Council Commission

Department: Community Development Case #SAV-19-005 Applicant: Joseph McKenzie, Jr. 5061 S. 135th Street, #5308 Omaha, NE 68137	Resolution of Intent No. _____ Resolution to Dispose No. _____	Set Public Hearing: 6/10/2019 Public Hearing: 6/24/2019 Planning Commission: 5/14/2019

Subject/Title

Request: Public hearing on the request of Joseph McKenzie, Jr. to vacate and dispose of the section of Lindberg Drive located East of the right-of-way line of Madison Avenue, and abutting the West 40 feet of Lot 9, and all of Lot 10, Block 1, Oak Grove Addition; Lot 10, Block 2, Oak Grove Addition; and Lots 3-6 and Lot 8, Block 3, Oak Grove Addition.

Background

The Community Development Department has received an application from Joseph McKenzie Jr. to vacate and dispose of as section of the unimproved Lindberg Drive right-of-way as described above. The applicant has submitted an offer to purchase three surrounding city-owned properties, legally described as being Lots 8-10, Block 2, Oak Grove Addition, Lots 3-5, Block 3, Oak Grove Addition, and Lots 6-8, Block 3, Oak Grove Addition. The purchase of the subject right-of-way would make the three existing parcels contiguous, and would allow the applicant to execute a final subdivision plat to combine the entirety of the subject right-of-way and parcels into one buildable lot. Without the execution of the final subdivision plat, the vacation of the right-of-way of Lindberg Drive would leave four lots of record with no frontage to a publically dedicated roadway, therefore taking their ability to be built upon.

The following attachments have been included for reference:
Attachment A: Location and Zoning Map
Attachment B: Site Photos

On August 25, 2003 the City Council amended the adopted *Policy and Procedures for Alley, Street and Right-of-way Vacations.* The objectives of the amended Policy are as follows:

1. *To provide due process and citizen participation in the application and review process for vacations*.
   There are four separate property owners with land that abuts the subject right-of-way. The owners of these properties are as follows:
   North – A parcel owned by the City of Council Bluffs (proposed to be purchased by Joseph McKenzie, Jr.)
   A parcel owned by Jeff Kraft
   A parcel owned by the John S. and Ramona L. Crookham Trust (724 Hazel Street)
   South –Two parcels owned by the City of Council Bluffs (proposed to be purchased by Joseph McKenzie, Jr.)

   All abutting property owners were mailed petitions asking if they are in favor of/opposed to and/or willing to/not willing to acquire the portion of the alley that abuts their property, if vacated. Responses to these petitions are summarized in Comment #10 below.

2. *To ensure that no property owner is deprived of required and reasonable access*.
   If the proposed vacation of Lindberg Drive is approved, four lots (Lots 3-6, Block 3, Oak Grove Addition) will lose access to a publically dedicated right-of-way. Currently, those lots are all owned by the City of Council Bluffs, and have been proposed to be purchased by Joseph McKenzie, Jr. If the sale of those properties is approved by the City Council, a final plat will need to be executed to combine those lots into a new platted lot that would have access to a City right-of-way.

3. *To discourage the creation and eliminate or reduce existing dead-end alleys, streets or other rights-of-way*.
   The vacation of the subject right-of-way will turn Grove Street into a dead-end right-of-way, and the north/south alleyway platted in Block 1, Oak Grove Addition into a dead end alley as it will remove their southern outlets. Both Grove Street and the alleyway are not fully improved, and the section of Lindberg Drive is also unimproved, so there will be no change in access created as a result of this vacation.

4. *To reduce or eliminate hazardous and dangerous traffic conditions*. The subject right-of-way is unimproved and is not used for vehicular and/or pedestrian traffic.

5. *To protect all existing and proposed public utilities located in the right-of-way and to maintain necessary utility easements.*
   All City Departments and utilities were notified of the request. The following responses were received:
   - The Fire Marshall stated he has no comments.
   - The Parks Department stated they have no comments.
   - The Permits and Inspections Division stated they have no comments.
   - Public Works Department stated there is a sanitary sewer line that runs through the current right-of-way of Lindberg Drive, and a 30' utility easement would need to be maintained over the sewer if the vacation is approved. The Public Works department did specify that if the vacation would be approved, the property owner would be able to pave a driveway in the easement area.
   - Black Hills Energy stated they have no concerns with the proposed right-of-way vacation.
   - CenturyLink stated they have no issues with the proposed right-of-way vacation.
   - Council Bluffs Water Works stated they have no utilities in the subject right-of-way, and have no comments in regards to the vacation.
   - Cox Communications stated they have facilities in the subject alleyway, and stated that if vacated, an easement must remain.
   - MidAmerican Energy stated they have no objections to the proposed vacation and have no facilities located within the subject right-of-way. MidAmerican Energy did state that the applicant must contact MEC directly to discuss the requirements for extending electric facilities for any future development.

   Based on the information above, if vacated, a 30' utility easement centered over the existing sanitary sewer line shall be retained.

6. *To maintain appropriate right-of-way width to ensure that an adequate pedestrian and vehicular circulation system is retained.* Access will not change to any developed parcels.

7. *To discourage the vacation of a portion of an existing alley, street or other right-of-way.* This request will vacate the entirety of the right-of-way of Lindberg Drive between Madison Avenue and Hazel Street with the exception of the East 80 feet, which is adjacent to Lots 3-2, Block 3, Oak Grove Addition, and the East 80 feet of Lot 9, Block 1, Oak Grove Addition. The reason this section of Lindberg Drive will remain as right-of-way will be to ensure adequate access to Lots 1-2, block 3, Oak Grove Addition, both of which are lots of record.

8. *To assist in the implementation of the goals and objectives of the Comprehensive Plan.* The request has no impact local access and circulation, and is consistent with the objectives stated in Chapter 6, Transportation of the Bluffs Tomorrow: 2030 Plan (comprehensive plan).

9. *To reduce the City's maintenance liability on previously vacated right-of-way parcels from public improvement projects and various lots acquired through delinquent taxes or assessments.* Not applicable.

10. *To establish an equitable price for surplus public property.* All abutting property owners were notified about this vacation request. The following responses were received:
    - Joseph McKenzie, Jr., the individual who has proposed to purchase the adjacent City owned properties and the applicant of the request, stated he is in favor of the request and willing to acquire his portion of the right-of-way for $5,798.00.
    - A representative of the John S. and Ramona L. Crookham Trust, owner of the property addressed as 724 Hazel Street, stated they are in favor of the request and willing to acquire his portion of the right-of-way for $243.75.
    - Jeff Kraft, owner of the property legally described as Lots 10-12, Block 1, Oak Grove Addition, has not responded at the time of this report.

If the owner of Lots 10-12, Block 1, Oak Grove Addition indicate they are not interested in acquiring their portion of the right-of-way or do not respond by the time of the final decision, Joseph McKenzie, Jr. would be also be allowed to purchase their portion for $8,160.65.

Recommendation

The Community Development Department recommends approval of the request to vacate and dispose of the section of Lindberg Drive located East of the right-of-way line of Madison Avenue, and abutting the West 40 feet of Lot 9, and all of Lot 10, Block 1, Oak Grove Addition; Lot 10, Block 2, Oak Grove Addition; and Lots 3-6 and Lot 8, Block 3, Oak Grove Addition. The approval is subject to the following conditions:

1. A permanent 30' wide utility easement will be maintained over the sanitary sewer line that runs in the former right-of-way of Lindberg Drive.
2. Abutting property owners shall acquire their portion of the vacated Lindberg Drive right-of-way as follows:
    a. Joseph McKenzie Jr. and all successors in interest: The North ½ of the vacated Lindberg Drive right-of-way abutting Lot 10, Block 1, Oak Grove Addition and the West ½ of the alleyway adjacent; The North ½ of Lindberg Drive right-of-way abutting the right-of-way of Grove Street; The North ½ of Lindberg Drive right-of-way abutting Lot 10, Block 2, Oak Grove Addition; and the South ½ of Lindberg Drive right-of-way abutting Lot 3-6 and Lot 8, Block 3, Oak Grove Addition, for the total fee of $8,160.65.
    b. The John S. and Ramona L. Crookham Trust and all successors in interest: The North ½ of the vacated Lindberg Drive right-of-way abutting the West 40 feet of Lot 9, Block 1, Oak Grove Addition, and the East ½ of the vacated Lindberg Drive right-of-way abutting the alleyway platted in Block 1, Oak Grove Addition, for the total fee of $243.75.

Public Hearing

Speakers in favor:

1. Bill Somers, 207 Test Street, Council Bluffs, IA 51503
2. Joey McKenzie, 5061 S. 135th Street, #5308, Omaha, NE 68137

Speakers against: No one spoke in opposition.

Planning Commission Recommendation

The Planning Commission recommends approval to vacate and dispose of the section of Lindberg Drive located East of the right-of-way line of Madison Avenue, and abutting the West 40 feet of Lot 9, and all of Lot 10, Block 1, Oak Grove Addition; Lot 10, Block 2, Oak Grove Addition; and Lots 3-6 and Lot 8, Block 3, Oak Grove Addition, with the following conditions:

1. A permanent 30' wide utility easement shall be maintained over the sanitary sewer line that runs in the former right-of-way of Lindberg Drive.
2. Abutting property owners shall acquire their portion of the vacated Lindberg Drive right-of-way as follows:
   a. Joseph McKenzie Jr. and all successors in interest: The North ½ of the vacated Lindberg Drive right-of-way abutting Lot 10, Block 1, Oak Grove Addition and the West ½ of the alleyway adjacent; the North ½ of Lindberg Drive right-of-way abutting the right-of-way of Grove Street; the North ½ of Lindberg Drive right-of-way abutting Lot 10, Block 2, Oak Grove Addition; and the South ½ of Lindberg Drive right-of-way abutting Lot 3-6 and Lot 8, Block 3, Oak Grove Addition, for the total fee of $8,160.65.
   b. The John S. and Ramona L. Crookham Trust and all successors in interest: The North ½ of the vacated Lindberg Drive right-of-way abutting the West 40 feet of Lot 9, Block 1, Oak Grove Addition, and the East ½ of the vacated Lindberg Drive right-of-way abutting the alleyway platted in Block 1, Oak Grove Addition, for the total fee of $243.75.

VOTE: AYE 7 NAY 0 ABSTAIN 0 ABSENT 4 VACANT 0 Motion: Carried

Attachment A – Location and Zoning Map
Attachment B – Site Photos

Prepared By: Chris Meeks, Planner, Community Development Department