City Council Communication

Department: Community Development Case #SAV-19-008 Property Owner/Applicant: Richard L. Mowery Jr. 829 Avenue M Council Bluffs, IA 51503	Resolution of Intent No. _____ Resolution to Dispose No. _____	Set Public Hearing: 1/13/20 Public Hearing: 1/27/20 Planning Commission: 12/10/19

Subject/Title

Request: Public hearing on the request of Richard L. Mowery Jr. to vacate and dispose of Avenue M right-of-way located between North 8th and North 10th Streets, and abutting properties legally described as Lots 2 and 3, Block 8, Turley's Addition and Lots 2 through 5, Block 7, Turley's Addition along with the vacated alley adjacent, City of Council Bluffs, Pottawattamie County, Iowa.

Location: 1408 North 8th Street, 813 Avenue M, and 829 Avenue M

Background/Discussion

The Community Development Department has received an application from Richard L. Mowery Jr. to vacate and dispose of Public hearing on the request of Richard L. Mowery Jr. to vacate and dispose of Avenue M right-of-way located between North 8th and North 10th Streets. The subject right-of-way is unimproved and measures approximately 60 feet in width by 177 feet in length. The applicant owns property south of the subject right-of-way addressed as 829 Avenue M and legally described as Lots 4 and 5 and the North ½ of the vacated east/west alley adjacent, all in Block 7, Turley's Addition. If vacated, the applicant intends to acquire the portion adjoining his property to construct an accessory structure north of the existing principal structure.

The proposed vacation request will affect the abutting properties in different ways. Since the applicant's property is located southeast of the intersection of Avenue M and North 10th Street, it is considered a corner lot, which is defined in Section 14.04.220 of the Council Bluffs Municipal Code (Subdivision Ordinance) as "a lot situated at the intersection of two streets." For the purpose of determining setback requirements, the property line along Avenue M is considered the front lot line, which, as per Section 15.03.430 of the Municipal Code (Zoning Ordinance), is the "shortest lot line along a street." If Avenue M is vacated, the property will no longer be considered a corner lot. Furthermore, the property line along North 10th Street would be considered the new front lot line as it would be the only property line abutting a street. This would impact setback requirements drastically as all land west of the existing detached single-family dwelling would be considered the front yard. This, in turn, would prevent the applicant from constructing any accessory structures in that location since accessory structures cannot be set closer to the front property line than the principal structure in any residential district, thus losing almost 50% of buildable lot area. The property located east of the applicant's residence, addressed as 813 Avenue M, would be impacted in a similar manner by the vacation request.

If approved, the proposed vacation request would also eliminate or reduce existing nonconformities. There are currently three accessory structures located north of the existing dwelling. These structures are closer to the current front lot line than the principal structure, thus they are considered nonconforming. If Avenue M is vacated, these structures would no longer be considered nonconforming, with the exception of the shed located northwest of the existing dwelling. While the shed is closer to the property line which abuts North 10th Street than the house, it is almost 50 feet from said lot line, which far exceeds the minimum required front yard setback of 25 feet in an R-2/Two-Family Residential District.

The existing single-family dwellings at 813 Avenue M and 1404 North 8th Street are also nonconforming structures. The dwelling at 813 Avenue M is currently set at 22 feet from the current front lot line, closer than the minimum 25

feet required. If the vacation request is approved, the required setback to that property line would be reduced to the minimum required interior side yard setback of five feet, bringing the structure into conformance with the Zoning Ordinance. Similarly, the dwelling at 1404 North 8th Street will also be brought into conformance with the Zoning Ordinance if Avenue M is vacated as it is set approximately 7 feet from the property line along Avenue M, exceeding the required five-foot setback. As it exists today, the minimum required setback to the south property line is 15 feet.

Since the applicant's property and the neighboring property to the east are addressed off Avenue M, the Permits and Inspections Division will have to revise these addresses to reflect the change in frontage if vacation request is approved.

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 three property owners with land that abuts the subject right-of-way. The owners of these properties are as follows:

   North – Residential property owned by Clinton M. Mowery (1404 North 8th Street)
   South – Residential property owned by Richard L. Mowery Jr. (829 Avenue M)
   Residential property owned by Randall Mowery (813 Avenue M)

   All abutting property owners were mailed petitions asking if they are in favor of/opposed to the vacation request and if they were willing to/not willing to acquire the portion of the alley adjacent to 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*.
   All abutting properties have frontage on either North 8th Street or North 10th Street. However, there are two existing lots of record—Lots 3 and 4, Block 7, Turley's Addition—which only have frontage on Avenue M. Although these two lots share a parcel number with lots that have frontage along either North 8th Street or North 10th Street for taxation purposes, they can be sold separately by their respective owners, thus creating two properties with no access to a publically dedicated right-of-way. If Avenue M is vacated, a final plat will need to be executed to combine lots sharing a parcel number into new platted lots 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*.
   This request will not create a dead-end right-of-way, as the request is to vacate the entirety of Avenue M from North 8th Street to North 10th Street.

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 Public Works Department stated they would not be in favor of vacating the subject right-of-way as they have infrastructure (sanitary and storm sewer) located within said right-of-way and are concerned the applicant or future property owners may erect structures over these utility lines, thus depraving them of the access required to maintain them. They stated that if Avenue M were to be vacated, an easement would have to be retained over the subject right-of-way.
   - Black Hills Energy stated they have no concerns with the vacation request.
   - MidAmerican Energy Company stated they have no conflicts with the proposed vacation of Avenue M right-of-way.

6. *To maintain appropriate right-of-way width to ensure that an adequate pedestrian and vehicular circulation system is retained.*
   Not applicable.

7. *To discourage the vacation of a portion of an existing alley, street or other right-of-way.*
   The request is to vacate the entirety of Avenue M right-of-way between North 8th Street and North 10th Street.

8. *To assist in the implementation of the goals and objectives of the Comprehensive Plan.*
   The request is consistent with the local access and circulation 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:

    - Richard L. Mowery Jr. stated he is in favor of the request and is willing to acquire the portion of right-of-way adjacent to his property for the sum of $479.08.
    - Randall Mowery stated he is in favor of the request and is willing to acquire the portion of right-of-way adjacent to his property for the sum of $402.92.
    - Clinton M. Mowery stated he is in favor of the request and is willing to acquire the portion of right-of-way adjacent to his property for the sum of $796.97.

Recommendation

The Community Development Department recommends approval to vacate and dispose Avenue M right-of-way located between North 8th and North 10th Streets, and abutting properties legally described as Lots 2 and 3, Block 8, Turley's Addition and Lots 2 through 5, Block 7, Turley's Addition along with the vacated alley adjacent, City of Council Bluffs, Pottawattamie County, Iowa:

1. An easement shall be retained over the subject right-of-way for utility access and maintenance purposes;
2. All portions of the subject right-of-way shall be disposed of to an abutting property owner(s); and
3. A final plat shall be executed prior to the disposal of the South ½ of the subject right-of-way to the applicant, owner of property addressed as 829 Avenue M and legally described as Lots 4 and 5 and the North ½ of the vacated east/west alley adjoining, all in Block 7, Turley's Addition, and to the owner of property addressed as 813 Avenue M and legally described as Lots 1 through 3 and the North ½ of the vacated east/west alley adjoining, all in Block 7, Turley's Addition, to create new platted lots with access to a publically dedicated right-of-way.

Public Hearing

Staff speaker for the request:

1. Moises Monrroy, Planner, City of Council Bluffs, 209 Pearl Street, Council Bluffs, IA 51503
2. Christopher Gibbons, Planning Manager, City of Council Bluffs, 209 Pearl Street, Council Bluffs, IA 51503

Speakers in favor:

1. Diane Mowery, 829 Avenue M, Council Bluffs, IA 51503
2. Richard Mowery, 829 Avenue M, Council Bluffs, IA 51503

Speakers against: None

Planning Commission Recommendation

The Planning Commission recommends approval to vacate and dispose Avenue M right-of-way located between North 8th and North 10th Streets, and abutting properties legally described as Lots 2 and 3, Block 8, Turley's Addition and Lots 2 through 5, Block 7, Turley's Addition along with the vacated alley adjacent, City of Council Bluffs, Pottawattamie County, Iowa, as per staff's recommendation.

VOTE: AYE 9 NAY 0 ABSTAIN 0 ABSENT 2 VACANT 0 Motion: Carried

Attachment

Attachment A: Location and Zoning Map

Prepared by: Moises Monrroy, Planner, Community Development Department