City Council Communication

Department: Community Development Cases #SAV-21-005 & #ZC-21-010 Applicant/Property Owner: Tom Eyman c/o Eyman Investments, LLC 8506 South 117th Street LaVista, NE 68128	Ordinance No. _____ Resolution of Intent No. _____ Resolution to Dispose No. _____	Planning Commission: 09/14/2021 CASE #ZC-21-010 1st Consideration: 09/27/2021 2nd Consideration: 10/11/2021 3rd Consideration: Requested to be waived CASE #SAV-21-005 Resolution of Intent: 09/27/2021 Resolution to Vacate: 10/11/2021

Subject/Title

Requests: Combined public hearings on the request of Eyman Investments, LLC, represented by Max Kelch, to rezone 6.87 acres of land legally described as Parcel "21219" of the West 1/2 of the NE1/4 and a portion of SE1/4 NE1/4, all in Section 15-74-44, City of Council Bluffs, Pottawattamie County, Iowa from A-2/Parks, Estates, and Agricultural District to I-2/Industrial District; and to vacate the southerly portion of 45th Avenue right-of-way lying west of Gifford Road and south of Veterans Memorial Highway and being legally described as a portion of Parcels 21219 and 21220 of the SE1/4 NE1/4 and a portion of the NE1/4 SE1/4, all in Section 15-74-44, City of Council Bluffs, Pottawattamie County, Iowa. Location: Lying west/southwest of property addressed as 4445 Gifford Road.

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Background/Discussion

The Community Development Department has received an application from Tom Eyman, represented by Max Kelch to rezone property legally described as Parcel "21219" of the West 1/2 of the NE1/4 and a portion of SE1/4 NE1/4, all in Section 15-74-44, City of Council Bluffs, Pottawattamie County, Iowa from A-2/Parks, Estates, and Agricultural District to I-2/Industrial District; and to vacate the southerly portion of 45th Avenue right-of-way lying west of Gifford Road and south of Veterans Memorial Highway and being legally described as a portion of Parcels 21219 and 21220 of the SE1/4 NE1/4 and a portion of the NE1/4 SE1/4, all in Section 15-74-44, City of Council Bluffs, Pottawattamie County, Iowa.

The applicant owns 31.6 acres of land immediately east of the subject 45th Avenue right-of-way and has a purchase agreement with Robert D. Adkins to acquire the subject 6.87 acres of land, which is proposed to be rezoned from A-2 District to I-2 District. The applicant has requested to vacate the southerly portion of 45th Avenue right-of-way and to rezone the subject property legally described above so that they can subdivide their landholdings into multiple parcels to facilitate new industrial development adjacent to South Pointe Subdivision. A letter of intent from the applicant is included with this staff report as Attachment 'A'. Additionally, the applicant has provided the City with plats of survey for the southerly portion of 45th Avenue right-of-way proposed to be vacated (Attachment B), and for the 6.87 acre parcel of land proposed to be rezoned from A-2 District to I-2 District (Attachment C).

CASE #SAV-21-005 – Vacate the southerly portion of 45th Avenue right-of-way, being legally described on Attachment B.

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 property owners with land that abuts the subject 45th Avenue right-of-way, as follows:

   - East – A 21.9 acre parcel of land owned by Eyman Investments, LLC.
   - West – An undeveloped 5.16 acre parcel of land owned by Robert D. Adkins Jr. This parcel is under contract to be purchased by the applicant and to be rezoned from A-2 District to I-2 District.
   - South – An undeveloped 39 acre parcel of land owned by Kenneth L. Adkins, and an undeveloped 69 acre parcel of land owned by Walter and Cynthia Bussey.

   All abutting property owners were mailed petitions asking if they are in favor of/opposed to the vacation request. Responses to these petitions are summarized in Comment #10 below.

2. *To ensure that no property owner is deprived of required and reasonable access*. The subject portion of 45th Avenue proposed to be vacated is unimproved and does not provide vehicular and/or pedestrian access to any of the abutting parcels. Furthermore, all abutting properties have access to other existing public rights-of-way such as: Veterans Memorial Highway, Gifford Road, and 55th Avenue.

3. *To discourage the creation and eliminate or reduce existing dead-end alleys, streets or other rights-of-way*. The proposed request will create a dead-end section of 45th Avenue; however, the subject right-of-way is unimproved, relatively inaccessible due to existing vegetation, and is not needed for required access to any abutting parcels. The creation of a dead-end street at this location is not anticipated to negatively impact the development potential for any abutting properties, nor would it impede access for any abutting properties.

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:

   - Council Bluffs Fire Department stated they have no comments for the vacation request.
   - Council Bluffs Parks and Recreations Department stated they have no comments for the vacation request.
   - Council Bluffs Water Works stated they have no public water mains or appurtenances within the subject right-of-way.
   - MidAmerican Energy stated they have no utilities in the subject right-of-way.
   - Lumen's stated that CenturyLink has a buried telecommunication line that extends the entire length of 45th Avenue and that a utility easement must be reserved for perpetual access/maintenance purposes. Lumen's further stated any cost to move and/or relocate this existing telecommunication will be at the developer's expense.

6. *To maintain appropriate right-of-way width to ensure that an adequate pedestrian and vehicular circulation system is retained.* The subject right-of-way is unimproved and not being used for pedestrian and/or vehicular circulation.

7. *To discourage the vacation of a portion of an existing alley, street or other right-of-way.* The proposed request will vacate the southerly portion of 45th Avenue right-of-way which is unimproved, relatively

inaccessible due to existing vegetation, and is not needed for required access to any abutting parcels. The partial vacation at this location is not anticipated to negatively impact the development potential for any abutting properties, nor would it impede access for any abutting properties.

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.* The subject 45th Avenue right-of-way exists as an easement on private property, and not land that was formally dedicated as right-of-way to the City of Council Bluffs. As such, there is no land to dispose of to any adjacent owners. If vacated, the City will release their easement interest over the subject right-of-way, and land will continue to be owned by each abutting property owner. All abutting property owners retuned their petitions to the City stating they are in favor of the vacation request.

CASE #ZC-21-010 – Rezone 6.87 acres of land legally described on Attachment 'C' from A-2/Parks, Estates, and Agricultural District to I-2/Industrial District.

The applicant has submitted a request to rezone 6.87 acres of land legally described above, and being more particularly described in Attachment 'C' from A-2/Parks, Estates, and Agricultural District to I-2/Industrial District. The applicant currently owns 31.6 acres of land to the immediate east of this subject property. If the rezoning request is approved, the applicant intends to subdivide their total combined 38.47 acres into multiple parcels of land to facilitate new industrial development (e.g., warehousing/distribution, contractor shops, etc.) adjacent to the South Pointe Subdivision.

Land Use and Zoning
The following zoning and land uses surround the subject property (see Attachment D):

North: Veterans Memorial Highway (US Hwy 275) and a single-family residential dwelling (2601 Veterans Memorial Highway) zoned A-2/Parks, Estates, and Agricultural District.
South: Fox Run Golf Course and undeveloped land zoned A-2/Parks, Estates, and Agricultural District.
East: Undeveloped land zoned I-2/General Industrial District
West: Undeveloped land zoned R-3/Low Density Multi-Family Residential District.

The future land use plan of the Bluffs Tomorrow: 2030 Comprehensive Plan designates the subject 6.87 acre parcel as Office/Industrial.

Public notices were mailed to all property owners within 200 feet of the request. No comments from the public have been received as of the date of this report.

All City Departments and local utilities were notified of the proposed rezoning. No comments in opposition of this request were received.

Discussion

1. The applicant currently owns 31.6 acres of land to the immediate east of this subject property. If the rezoning request is approved, the applicant intends to subdivide their total combined 38.47 acres into multiple parcels of land to facilitate new industrial development (e.g., warehousing/distribution, contractor shops, etc.) adjacent to the South Pointe Subdivision.

2. On July 12, 2021, the Council Bluffs City Council rezoned land immediately east and southeast of the subject property from A-2/Parks, Estates, and Agricultural District to I-2/Industrial District (see Case #ZC-21-006). The purpose of said rezoning was to facilitate new industrial development within an area of the City that has pre-existing industrial land uses (e.g., Consolidated Concrete, CB Recycling Center, CyrusOne, etc.).

3. The subject parcel contains 6.87 acres of land which complies with the minimum lot size requirement (15,000 square feet) for property zoned I-2/Industrial District.

4. The future land use plan of the Bluffs Tomorrow: 2030 Comprehensive Plan designates the subject property "Office/Industrial." The proposed rezoning request is consistent with the Bluffs Tomorrow: 2030 Future Land Use Plan.

5. Adequate utilities (e.g. water, sanitary sewer, storm sewer, electric, etc.) are available to accommodate the uses permitted in the I-2/General Industrial District.

6. If the rezoning request is approved, the property located at 2601 Veterans Memorial Highway will be surrounded by industrial land uses/zoning. The owner of this parcel has not expressed any interest to the City to include their property in the previous rezoning request (Case #ZC-21-006) or the proposed rezoning request (Case #ZC-21-010). Additionally, the Community Development Department did not voluntarily include this property in the proposed rezoning request as it would cause the existing single-family residential dwelling to become non-conforming.

Recommendation

The Community Development Department recommends the following:

1. Approval to vacate the southerly portion of 45th Avenue right-of-way, as legally described on Attachment 'B', subject to the reservation of a permanent and perpetual easement for existing utilities within said right-of-way; and
2. Approval to rezone property legally described on Attachment 'C' from A-2/Parks, Estates, and Agricultural District to I-2/Industrial District

Public Hearing

Staff speaker for the request:
1. Christopher Gibbons, Planning Manager, City of Council Bluffs, 209 Pearl Street, Council Bluffs, IA 51503

Speakers in favor:
1. Max Kelch, 8506 S. 117th Street, LaVista, NE 68128

Speakers against: None

Planning Commission Recommendation

The City Planning Commission recommended:
1. Approval to vacate the southerly portion of 45th Avenue right-of-way, as legally described on Attachment 'B', subject to the reservation of a permanent and perpetual easement for existing utilities within said right-of-way; and
2. Approval to rezone property legally described on Attachment 'C' from A-2/Parks, Estates, and Agricultural District to I-2/Industrial District.

VOTE: AYE - Bass, Danielsen, Halm, Hutcheson, Opperman, Rater, Scott, Stroebele, and VanHouten.
NAY - None ABSTAIN - Rew ABSENT – Haner VACANT - None Motion: Carried.

Attachments

Attachment A: Letter of intent from the applicant
Attachment B: Plat of survey for the subject portion of 45th Avenue right-of-way proposed to be vacated
Attachment C: Plat of survey for subject property proposed to be rezoned from A-2 District to I-2 District
Attachment D: Location/zoning map

Prepared by: Christopher Gibbons, AICP, Planning Manager, Community Development Department