

★ Roll Call Number

Agenda Item Number

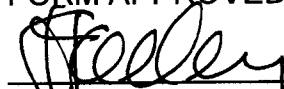
28

.....
Date January 28, 2008
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WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on January 17, 2008, its members voted 8-6 in support of a motion to recommend **DENIAL** of a request from SUD Des Moines, LLC (owner) 1165 2nd Avenue, represented by Gian C. Sud (agent) to vacate and convey a 8.5' x 5' portion of the 2nd Avenue right-of-way west of and adjoining the subject property to allow for the inclusion of a 20' tall pylon sign for the central Post Office that was constructed 8.5' into the right-of-way with a 5' sub-surface footing width.

MOVED by _____ to receive and file.

FORM APPROVED:



Michael F. Kelley
Assistant City Attorney

(11-2007-1.23)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

MOTION CARRIED APPROVED

Mayor

City Clerk

January 28, 2008

Agenda Item 28

Roll Call # _____

Honorable Mayor and City Council
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their meeting held January 17, 2008, the following action was taken:

COMMISSION RECOMMENDATION:

After public hearing, the members voted 8-6 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Leisha Barcus		X		
David Cupp	X			
Shirley Daniels		X		
Dann Flaherty	X			
Bruce Heilman		X		
Jeffrey Johannsen	X			
Greg Jones		X		
Frances Koontz	X			
Kaye Lozier		X		
Jim Martin		X		
Brian Millard	X			
Mike Simonson	X			
Kent Sovern	X			
Tim Urban				X
Marc Wallace	X			

in support of a motion to recommend **DENIAL** of a request from SUD Des Moines, LLC (owner) 1165 2nd Avenue, represented by Gian C. Sud (agent) to vacate and convey a 8.5' x 5' portion of the 2nd Avenue right-of-way west of and adjoining the subject property to allow for the inclusion of a 20' tall pylon sign for the central Post Office that was constructed 8.5' into the right-of-way with a 5' sub-surface footing width. (11-2007-1.23)

Written Responses

0 In Favor

0 In Opposition

This item will not require a 6/7 vote of City Council.

STAFF RECOMMENDATION AND BASIS FOR APPROVAL

Staff recommends approval of the requested vacation and conveyance subject to the following:



CITY PLAN AND ZONING COMMISSION
ARMORY BUILDING
602 ROBERT D. RAY DRIVE
DES MOINES, IOWA 50309 -1881
(515) 283-4182

ALL-AMERICA CITY
1949, 1976, 1981
2003

1. Reservation of easements for any public utilities in place and for a future 30" feeder water main planned for construction by the Des Moines Waterworks in the 2nd Avenue right-of-way such that any necessary removal of the existing sign or its foundation system will be made by the owner or at their expense, not to be replaced.
2. Any conveyance shall be made in the form of a lease.

STAFF REPORT

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is seeking to purchase additional right-of-way to accommodate the encroachment of a freestanding pylon sign for the Central Post Office that was constructed within the 2nd Avenue right-of-way without a permit. This includes the sign and concrete foundation.
2. **Size of Site:** 8.5' x 5' (42.5 square feet)
3. **Existing Zoning (site):** "M-1" Light Industrial District.
4. **Existing Land Use (site):** Landscaped right-of-way.
5. **Adjacent Land Use and Zoning:**
 - East* – "M-1", Use is Central Post Office.
 - West* – "M-1" & "PUD", Uses are 2nd Avenue public street and Mercy Hospital Medical Center.
6. **General Neighborhood/Area Land Uses:** The subject property is located along the 2nd Avenue major commercial corridor between University Avenue and Interstate 235.
7. **Applicable Recognized Neighborhood(s):** N/A.
8. **Relevant Zoning History:** N/A.
9. **2020 Community Character Land Use Plan Designation:** Public/Semi-Public.
10. **Applicable Regulations:** The Commission reviews all proposals to vacate land or air rights dedicated for a specific public purpose, such as for streets and parks, to determine whether the land or air rights are still needed for such purpose or may be released (vacated) for other use. The recommendation of the Commission is forwarded to the City Council.

II. ADDITIONAL APPLICABLE INFORMATION

1. **Utilities:** Mid-American energy has indicated an underground gas main and an underground primary electric conduit are both located east of the paved portion of 2nd Avenue adjoining the subject right-of-way. MidAmerican energy requires reservation of an easement equivalent to the existing right-of-way to operate and maintain the existing facilities.

The Des Moines Waterworks is currently designing a new 30" feeder main that will pass in front of the Central Post Office on the east side of the travel portion of 2nd Avenue. The Des Moines Waterworks does not object to the existing sign encroachment, but they request that

easement be reserved over any right-of-way vacated for the sign in the event that future construction or maintenance of the planned feeder main require access through the property for these activities.

Based on these comments, staff recommends that easements be reserved for all utilities in place and for a future feeder main to be developed by the Des Moines Waterworks. Any easement should allow the utilities to access their existing and future facilities, and that any necessary removal of the sign from the vacated right-of-way will be required by the sign owner at their expense, not to be replaced. Staff further recommends that conveyance of any vacated right-of-way be made in the form of a long-term lease.

- 2. Traffic/Street System:** Traffic and Transportation staff has indicated that the requested right-of-way is not necessary for any projected improvements to the 2nd Avenue public street. The sign is located such that it does not interfere with the traffic function of the 2nd Avenue right-of-way.

SUMMARY OF DISCUSSION

Brian Millard asked to remove this item from the Consent Agenda for discussion.

Erik Lundy: Presented staff report and recommendation.

Jeffrey Johannsen joined the meeting at 6:05 p.m.

Kent Sovern: Suggested the City should provide an easement to the violator for the placement of the sign and should retain the ownership as a public entity and not convey.

Mike Ludwig: Indicated the staff recommendation is for the right-of-way to be vacated and then leased to the applicant for use for the sign. If there was a need to remove the sign to access the utilities underground it would be at the applicant's expense.

David Cupp: Indicated signs have been an issue for a long time and he was concerned the City has set a precedent to go ahead and place signs and get the right-of-way easement later.

Erik Lundy: Noted it would be the City Council's authority to negotiate the cost of the lease.

Brian Millard: Asked if there is an underlying need for a sign there. Asked about encouraging monument signs instead of pole signs.

Erik Lundy: Noted it is in a zoning district that doesn't require monument signs.

Brian Millard: Suggested something should be given up in exchange for the sign.

Erik Lundy: Noted the applicant was given the staff recommendation and were advised of the hearing but were not present.

Larry Hulse: Noted most signs are processed correctly and done right; indicated the Commission has the obligation to act on the request, but does not have to make it right for the applicant. Indicated regulations allow a sign so the City does not require a reason as to why a sign is needed. In the subject case staff thought the way the sign was done was acceptable with the architectural design.

Brian Millard: Suggested when a sign goes up in the public right-of-way in a commercial business the City makes them take it down. Explained sign contractors are aware that they have to pull permits to install a sign.

Erik Lundy: Noted the sign contractor was not involved in the installation.

Fran Koontz: Did not think the sign was installed without being directed by the Post Office.

CHAIRPERSON OPENED THE PUBLIC HEARING


There was no one in the audience to speak on this item.

CHAIRPERSON CLOSED THE PUBLIC HEARING

Brian Millard: Moved to deny the request.

Motion passed 8-6 (Greg Jones, Leisha Barcus, Jim Martin, Kaye Lozier, Bruce Heilman & Shirley Daniels were in opposition).

Respectfully submitted,


Michael Ludwig, AICP
Planning Administrator

MGL:dfa

Attachment

Request from SUD Des Moines, LLC (owner) 1165 2 nd Avenue, represented by Gian C. Sud (agent) for vacation and conveyance of right-of-way.		File # 11-2007-1.23		
Description of Action	Vacate and convey a 8.5' x 5' portion of the 2 nd Avenue right-of-way west of and adjoining the subject property to allow for the inclusion of a 20' tall pylon sign for the central Post Office that was constructed 8.5' into the right-of-way with a 5' sub-surface footing width.			
2020 Community Character Plan	Downtown: Support Commercial			
Horizon 2025 Transportation Plan	No Planned Improvements			
Current Zoning District	"M-1" Light Industrial			
Proposed Zoning District	N/A			
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition
Inside Area				
Outside Area	0	0	0	N/A
Plan and Zoning Commission Action	Approval	8-6	Required 6/7 Vote of the City Council	Yes
	Denial			No

SUD Des Moines, LLC - 1165 2nd Avenue

11-2007-1.23

