

Date June 14, 2010

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on May 6, 2010, its members voted 8-5 in support of a motion to recommend **DENIAL** of a request to vacate the east five (5) feet of East 27<sup>th</sup> Court adjoining 2731 Indianapolis Avenue, in order to accommodate the encroachment of an existing car port.

MOVED BY \_\_\_\_\_ to receive, file and take no further action on the vacation request.

FORM APPROVED:

  
 Michael F. Kelley  
 Assistant City Attorney

| COUNCIL ACTION | YEAS | NAYS | PASS     | ABSENT |
|----------------|------|------|----------|--------|
| COWNIE         |      |      |          |        |
| COLEMAN        |      |      |          |        |
| GRIESS         |      |      |          |        |
| HENSLEY        |      |      |          |        |
| MAHAFFEY       |      |      |          |        |
| MEYER          |      |      |          |        |
| MOORE          |      |      |          |        |
| TOTAL          |      |      |          |        |
| MOTION CARRIED |      |      | APPROVED |        |

**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.

\_\_\_\_\_  
 Mayor

\_\_\_\_\_  
 City Clerk

★ Roll Call Number  
10-805

20  
 Agenda Item Number  
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Date May 24, 2010

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on May 6, 2010, its members voted 8-5 in support of a motion to recommend **DENIAL** of a request to vacate the east five (5) feet of East 27<sup>th</sup> Court adjoining 2731 Indianapolis Avenue, in order to accommodate the encroachment of an existing car port.

MOVED by Maahaffey to defer consideration to June 14, 2010 Council meeting.

FORM APPROVED:

[Signature]  
 Michael F. Kelley  
 Assistant City Attorney

(11-2010-1.02)

| COUNCIL ACTION | YEAS | NAYS | PASS | ABSENT |
|----------------|------|------|------|--------|
| COWNIE         | ✓    |      |      |        |
| COLEMAN        | ✓    |      |      |        |
| GRIESS         | ✓    |      |      |        |
| HENSLEY        | ✓    |      |      |        |
| MAHAFFEY       | ✓    |      |      |        |
| MEYER          | ✓    |      |      |        |
| MOORE          | ✓    |      |      |        |
| TOTAL          | 7    |      |      |        |

MOTION CARRIED 7 APPROVED  
T. M. Franklin Mayor

**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.

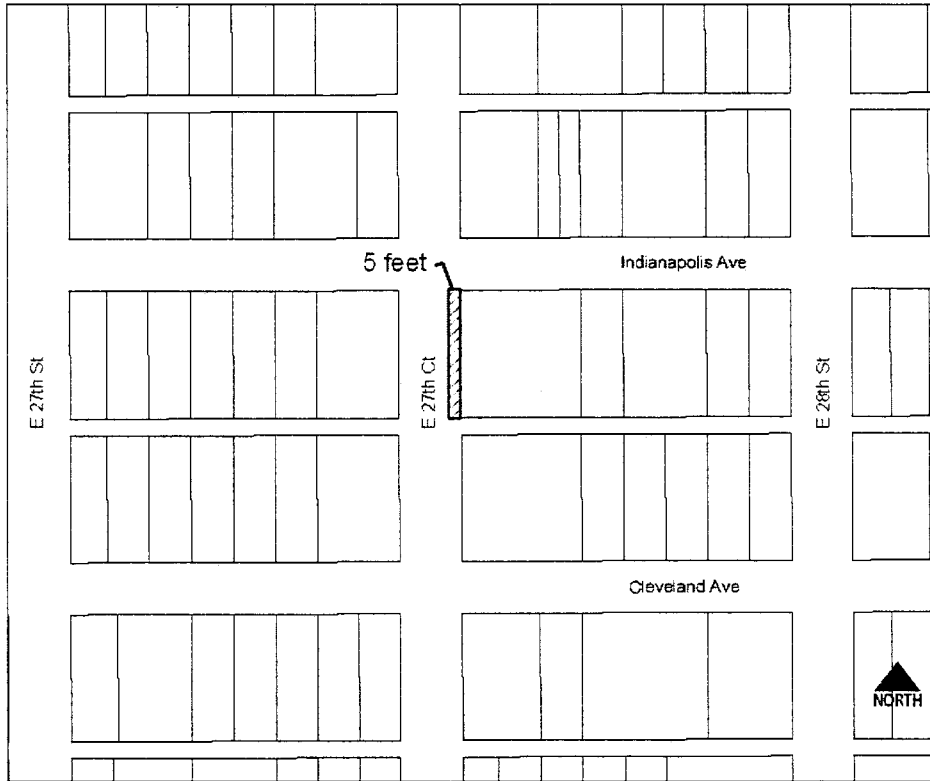
[Signature] City Clerk

10-805  
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|   |  |              |  |              |   |
|---|--|--------------|--|--------------|---|
| Request from Donald Haynes (owner) for vacation of the east five (5) feet of East 27 <sup>th</sup> Court adjoining 2731 Indianapolis Avenue, in order to accommodate the encroachment of an existing accessory structure. |  | File #       |  |              |   |
|   |  | 11-2010-1.02 |  |              |   |
| <b>Description of Action</b>  | Vacation of the east five (5) feet of East 27 <sup>th</sup> Court adjoining 2731 Indianapolis Avenue, in order to accommodate the encroachment of an existing accessory structure. |              |  |              |   |
| <b>2020 Community Character Plan</b>  | Low-Density Residential  |              |  |              |   |
| <b>Horizon 2035 Transportation Plan</b>   | No Planned Improvements  |              |  |              |   |
| <b>Current Zoning District</b>  | "R1-60" One-Family Low-Density Residential District  |              |  |              |   |
| <b>Proposed Zoning District</b>   | "R1-60" One-Family Low-Density Residential District  |              |  |              |   |
| <b>Consent Card Responses</b>   | In Favor   | Not In Favor | Undetermined                                 | % Opposition |   |
| Inside Area   | 2  | 0            |  |              |   |
| Outside Area  |  |              |  |              |   |
| <b>Plan and Zoning Commission Action</b>  | Approval   |              | <b>Required 6/7 Vote of the City Council</b> | Yes          | X |
|   | Denial   | 8-5          |  | No           |   |

Donald Haynes - 2731 Indianapolis Avenue

11-2010-1.02



Item 11-2010-1.02

Date 5-3-10

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I (am) ~~(am not)~~ in favor of the request.

(Circle One)

Applicant

Print Name Donald W. Haynes

Signature Donald W Haynes

Address 2731-Indianapolis

Reason for opposing or approving this request may be listed below:

This carport keeps frost, snow, & hail off of  
vehicles, plus it improves the looks of the  
driveway, also good shade on a hot  
summer day, its nice to unload a car &  
not get rained on

Item 11-2010-1.02

Date 050110

I (am)  (am not) in favor of the request.

(Circle One)

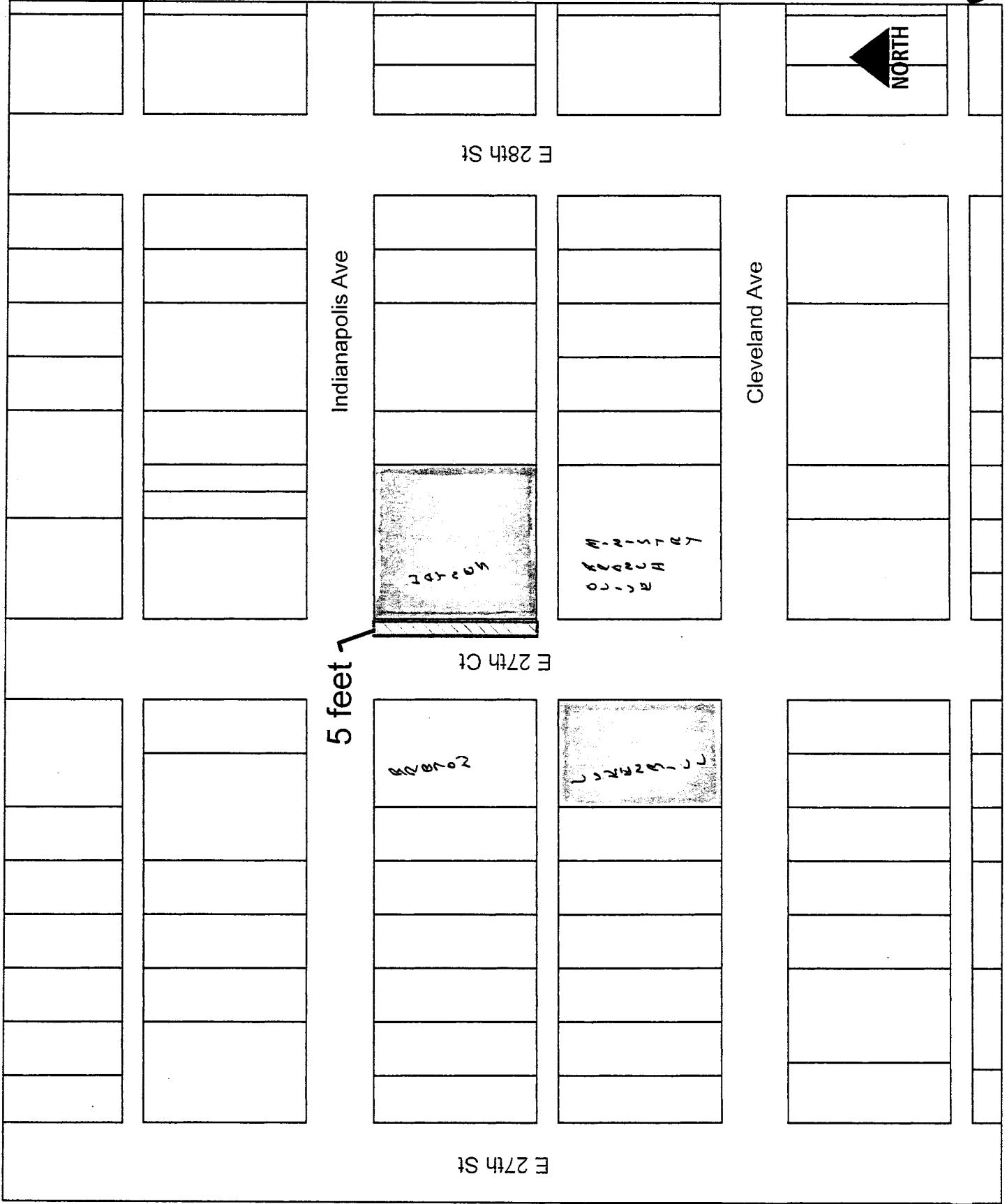
Print Name Peggy Lukenbill

Signature P Lukenbill

Address 2726 Cleveland

Reason for opposing or approving this request may be listed below:

The carport has been there for a few  
years. I see no reason why it  
shouldn't remain there.



Date \_\_\_\_\_  
 Agenda Item 24 20  
 Roll Call # 14-805

May 11, 2010

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 May 6, 2010, the following action was taken:

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 8-5 as follows:

| Commission Action: | Yes | Nays | Pass | Absent |
|--------------------|-----|------|------|--------|
| Leisha Barcus      | X   |      |      |        |
| JoAnne Corigliano  | X   |      |      |        |
| Shirley Daniels    | X   |      |      |        |
| Jacqueline Easley  |     |      |      | X      |
| Dann Flaherty      | X   |      |      |        |
| Joel Huston        | X   |      |      |        |
| Ted Irvine         |     | X    |      |        |
| Jeffrey Johannsen  |     | X    |      |        |
| Greg Jones         | X   |      |      |        |
| Jim Martin         |     | X    |      |        |
| Brian Millard      |     | X    |      |        |
| William Page       | X   |      |      |        |
| Mike Simonson      |     | X    |      |        |
| Kent Sovern        | X   |      |      |        |

**DENIAL** of the request from Donald Haynes (owner), for vacation of the east five (5) feet of East 27<sup>th</sup> Court adjoining 2731 Indianapolis Avenue, in order to accommodate the encroachment of an existing car port on the basis that staff would not be in support of any relief required by Board of Adjustment. Furthermore, staff does not believe such request is a viable solution given the increase in non-conformity with regard to the required setbacks.

11-2010-1.02

Written Responses

2 In Favor  
 0 In Opposition

**STAFF RECOMMENDATION TO THE P&Z COMMISSION**

Staff recommends denial of the requested vacation on the basis that staff would not be in support of any relief required by Board of Adjustment. Furthermore, staff does not believe such request is a viable solution given the increase in non-conformity with regard to the required setbacks.



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

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**STAFF REPORT**

**I. GENERAL INFORMATION**

- 1. **Purpose of Request:** The applicant has constructed a carport that encroaches into the excess right-of-way. The applicant is seeking to acquire the street right-of-way in order to accommodate the existing carport.
- 2. **Size of Site:** Five-foot by 122-foot segment of right-of-way (610 square feet).
- 3. **Existing Zoning (site):** "R1-60" One-Family Low-Density Residential District.
- 4. **Existing Land Use (site):** East 27th Street Court right-of-way.
- 5. **Adjacent Land Use and Zoning:**
  - North* – "R1-60"; Uses include Indianapolis Avenue right-of-way and single-family dwellings.
  - South* – "R1-60"; Use is the Olive Branch Ministry.
  - West* – "R1-60"; Uses include East 27th Court right-of-way and a single-family dwelling.
  - East* – "R1-60"; Use is undeveloped land owned by Neighborhood Builder, LLC.
- 6. **General Neighborhood/Area Land Uses:** The subject right-of-way is located at the southeast corner of the intersection of Indianapolis Avenue and East 27th Court in a predominantly low-density residential area.
- 7. **Applicable Recognized Neighborhood(s):** ACCENT Neighborhood Association.
- 8. **Relevant Zoning History:** N/A.
- 9. **2020 Community Character Land Use Plan Designation:** Low-Density Residential.
- 10. **Applicable Regulations:** The Commission reviews all proposals to vacate land dedicated for a specific public purpose, such as for streets and parks, to determine whether the land is 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:** MidAmerican Energy has indicated that there are electrical utilities located in the right-of-way including electric line, poles, and lighting. Should the right-of-way be vacated, staff recommends that easements be reserved for these utilities until such time as they may be relocated at the expense of the applicant.
- 2. **Traffic/Street System:** The excess right-of-way is not developed or required for access by any of the adjoining properties. Typically a 12 foot right-of-way is desired from the back of curb on a 26 foot wide back-to-back paved street width from a traffic

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design perspective. This request would reduce the right-of-way width to 11 feet from back of curb.

- 3. **Zoning Requirements:** Should the right-of-way **be** vacated, the subject property would lose Lot of Record status requiring it to maintain a 30-foot front yard (west) setback. The applicant would have to appeal for relief from the Board of Adjustment in accordance with Section 134-414(3) for a Variance of 27 feet less than the minimum required 30-foot west front yard setback.

*Sec. 134-414. Bulk regulations.*

*In the R1-60 one-family low-density residential district, The following minimum or maximum requirements, as indicated, shall be observed, subject to the modifications contained in section 134-1296:*

- (3) *Front yard: 30 feet, minimum.*

Should the right-of-way **not be** vacated, the subject property as a Lot of Record it is required to maintain a 7-foot west side yard setback. The applicant would have to appeal for relief from the Board of Adjustment in accordance with Section 134-1296(b)(2) & 134-414(4)(a) for a Variance of 7 feet less than the minimum required 7-foot west side yard setback.

*Sec. 134-1296. Permitted.*

- (b) *Use of existing lots of record. In any district where dwellings are permitted, a single-family detached dwelling may be located on any lot platted or of record as of July 16, 1965, regardless of its area or width; provided, however, that the following shall apply:*

- (2) *The sum of the side yard widths of any such lot shall not be less than 30 percent of the width of the lot, but in no case less than ten percent of the width of the lot for any one side yard. Additionally, **where such lot is a corner lot, the width of the side yard on the longer street side of the corner lot shall not be less than (i) 50 percent of the front yard required on the lot to the rear if there is reverse frontage, or (ii) the side yard setback for the district in which the corner lot is located if there is no reverse frontage.***

*Sec. 134-414. Bulk regulations.*

*In the R1-60 one-family low-density residential district, The following minimum or maximum requirements, as indicated, shall be observed, subject to the modifications contained in section 134-1296:*

- (4) *Side yards:*
  - a. *Fifteen feet total side yard, **seven feet minimum on one side.***



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## **SUMMARY OF DISCUSSION**

Jason Van Essen presented staff report and recommendation.

Brian Millard asked if this is an accessory structure and also are carports allowed.

Jason Van Essen stated that if a carport is an allowable accessory structure.

Mike Ludwig noted that the applicant was advised of the multiple processes required to retain the carport. Staff does not believe that a variance for setbacks will be justified at a later time. Therefore, staff is recommending denial of the right-of-way vacation request.

Don Haynes 2731 Indianapolis stated that he is requesting to acquire the street right-of-way in order to accommodate the existing carport.

## **CHAIRPERSON OPENED THE PUBLIC HEARING**

*There was no one to speak in opposition of applicant's request.*

## **CHAIRPERSON CLOSED THE PUBLIC HEARING**

Jason Van Essen stated that if the applicant purchases this right-of-way and adds it to their property, the accessory structure must be setback 30 feet instead of 7 feet. Regardless of any recommendation the Commission makes the applicant will have to go to the Board of Adjustment to obtain relief for setback of carport.

Brian Millard asked if the applicant understands if he buys that 5 foot he cannot make any changes to his property without meeting the new zoning requirements.

Jason Van Essen stated yes and the City's process is complex and staff does their best to guide the applicants through the process.

Kent Sovern asked what other option the applicant has. Could he ask for undue hardship?

Jason Van Essen stated that the applicant cannot seek relief until he knows where his property line is and right now he is trying to add land so that he can reduce the amount of setback relief needed.

Greg Jones asked if the carport can be moved to the rear yard.

Jason Van Essen stated if you have a corner lot you have two front yard setbacks. The carport can be moved to the side of the garage without relief.

Mike Ludwig stated that one of the criteria the Board has to take into consideration when considering a variance is whether there are other options available to the applicant.

Greg Jones stated he believes the City might need the right-of-way in the future, and that the carport can be moved without violating any ordinances.

Mike Ludwig affirmed.

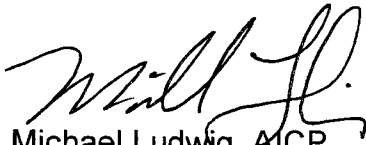
10-805  
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**COMMISSION ACTION**

Kent Sovern moved staff recommendation to deny the requested vacation on the basis that staff would not be in support of any relief required by Board of Adjustment. Furthermore, staff does not believe such request is a viable solution given the increase in non-conformity with regard to the required setbacks.

Motion passed 8-5 (Jeffrey Johannsen, Mike Simonson, Ted Irvine, Jim Martin and Brian Millard were in opposition)

Respectfully submitted,



Michael Ludwig, AICP  
Planning Administrator

MGL:clw

Attachment