

★ Roll Call Number

Agenda Item Number

15

Date September 10, 2012

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on September 6, 2012, its members voted 9-1-1 in support of a motion to recommend **DENIAL** of a request from Park Forest Residential Cooperative represented by Peter Spindler (officer) for consideration of the disposition of City owned property in the vicinity of 2001 East Virginia Avenue located at the northeast corner of East Park Avenue and Southeast 20th Street which was dedicated for a public open space purpose.

MOVED by _____ to receive and file and refer to the Engineering Department, Real Estate Division.

FORM APPROVED:


Michael F. Kelley
Assistant City Attorney

(11-2012-1.15)

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

September 7, 2012

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 September 6, 2012, the following action was taken regarding a request from Park Forest Residential Cooperative represented by Peter Spindler (officer) for property in the vicinity of 2001 East Virginia Avenue located at the northeast corner of East Park Avenue and Southeast 20th Street.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 9-1-1 as follows:

Commission Action:	Yes	Nays	Pass	Absent
JoAnne Corigliano	X			
Shirley Daniels	X			
Jacqueline Easley	X			
Tim Fitzgerald	X			
Dann Flaherty				X
John "Jack" Hilmes			X	
Ted Irvine		X		
Greg Jones	X			
William Page	X			
Christine Pardee	X			
Mike Simonson				X
CJ Stephens	X			
Vicki Stogdill	X			

DENIAL of the request to consider the disposition of City owned property which was dedicated for a public open space purpose. (11-2012-1.15)

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval of the vacation of subject property dedicated for a public purpose subject to the following:

1. Reservation of easements for existing storm water utilities and necessary public drainage functions.
2. Provision of a deed restriction to keep the property as undeveloped open space, unless the Park Forest Final Development Plan is amended to allow the release of this restriction.



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

Written Responses

0 In Favor

1 In Opposition

STAFF REPORT

I. GENERAL INFORMATION

1. Purpose of Request: The request would allow the City to sell the land to the applicants.

2. Size of Site: Approximately 2.4 acres.

3. Existing Zoning (site): "R-6" Planned Residential District.

4. Existing Land Use (site): Undeveloped open space and drainage detention.

5. Adjacent Land Use and Zoning:

North – "R-3", Uses are multiple-family dwellings.

South – "R-6", Uses are single-family dwellings.

East – "R-3", Use is multiple-family dwelling.

West – "R-6", Use is undeveloped open space.

6. General Neighborhood/Area Land Uses: The surrounding neighborhood is comprised of mixed densities of residential use including townhomes, apartments, and single-family dwellings. At the intersection of East Park Avenue and Southeast 22nd Street nearby there is a neighborhood commercial area with a supermarket, gas station/convenience store, carwash, and a church.

7. Applicable Recognized Neighborhood(s): Pioneer Park Neighborhood. This neighborhood was notified of the meeting by mailing of the Preliminary Agenda to all recognized neighborhoods on August 21, 2012. Additionally, separate notifications of the hearing for this specific item were mailed on August 28, 2012 (10 days prior to the scheduled hearing) to Pioneer Park Neighborhood Association and to the primary titleholder on file with the Polk County Assessor for each adjoining property to the site. A Final Agenda for the meeting was mailed to all the recognized neighborhood associations on August 31, 2012.

All agendas and notices are mailed to the primary contact person designated to the City of Des Moines Neighborhood Development Division by the recognized neighborhood association. The Pioneer Park Neighborhood Association mailings were sent to Carole Jones, 1603 Pioneer Road.

8. Relevant Zoning History: N/A.

9. 2020 Community Character Land Use Plan Designation: Medium-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. Open Space: The subject property was dedicated on December 8, 1978 to the City of Des Moines as open space for the Park Forest Planned Residential District to the west and northwest. Section 134-658(4) of the "R-6" District regulations requires a minimum amount of 250 square feet of land to be reserved per dwelling unit for open space. This is not required to be publicly owned. This property would not be able to be taken out of open space or developed without amending the "R-6" Final Development Plan for Park Forest. A deed restriction will be necessary with any sale of the property to ensure that it is kept as open space for the originally intended purpose for the "R-6" development.

2. Drainage/Utilities: The only utilities that have been identified within the subject property are storm sewer improvements in the northwestern portion of the outlot. Additionally much of the property was designed as a storm water detention facility to serve Park Forest Plat 1 to the west of Southeast 20th Street. Easements will need to be reserved for storm water facilities and to maintain proper drainage with any sale of the property.

SUMMARY OF DISCUSSION

Jason Van Essen presented the staff report and recommendation.

CJ Stephens asked how large the open space area is.

Jason Van Essen stated it is 2.4 acres.

John Bessesen 253 E. Lake Street, Wayzata, MN 55391 stated they were unaware that this property was owned by the City until the property owner got a letter advising them to pick up the garbage in the area. When the owner of the property hired a new property management group for this project and additional security the feedback on this property was that there was a problem with this site because it is so heavily wooded and it has an approximately 15 foot drop to the basin and you cannot see through it. There is a trail that goes through to the convenience store which people use. He talked to the property manager and he stated that because of the heavily wooded area people use it to drink and other things which become problematic for the whole development. The applicant thought they could get rid of some of the scrub trees, clean it up, have a survey done on the trees they wanted to keep and have that approved to make the area an open space and friendly environment for both this project and the assisted living facility next door. They met with Councilmember Brian Meyer who said he was in favor of the project and he was going to talk to some of neighbors in the community to see if they can make this project work.

Tim Fitzgerald asked for clarification if the applicant stated that Councilmember Brian Meyer was in favor of this project.

John Bessesen confirmed that Councilmember Brian Meyer told him that he was in favor of this project.

JoAnne Corigliano asked did the applicant submit a plan with this request and did they hire more security for the apartment complex.

John Bessesen stated the first process they had to go through was to pay to have an appraisal done. After the appraisal was completed they were told to go to Plan and Zoning Commission meeting and then they would go back to work on a plan. But first they had to buy the property. The multi-family development originally had no security before the new property manager came on. Now there is a person that goes through the whole complex periodically throughout the day. There has been quite a bit of money spent to rehab 44 units. A new property management team was put in place and the application process for tenants has been changed since the first of the year.

CJ Stephens asked for clarification as to who owns the property currently and it is a wooded area that is not maintained.

John Bessesen stated that currently the City owns the property and it is a wooded area that is not maintained.

CJ Stephens asked about the role John Bessesen plays; whether or not he is the owner of the apartment complex.

John Bessesen stated that he represents the owners of the apartment complex. He is the real estate developer that they asked to look at this project.

CJ Stephens asked if he was aware that tree removals would be subject to the tree mitigation ordinance.

John Bessesen stated that he is aware and it was discussed earlier and the owners gave him instructions to wait until they get approval to buy the property.

CJ Stephens stated that this area does have value to the City because it offers tree canopy and the City of Des Moines is very sensitive to the canopy that is in the City because it makes the air clean, and reduces illnesses in children.

John Bessesen stated that they are aware of that.

John "Jack" Hilmes asked if the applicant's request was granted does that mean the liability for ownership of the property transfers from the City to the new owners. It becomes a taxable parcel. Maintenance of the property also transfers to the new owners, and public access is maintained by the restriction in the deed.

John Bessesen stated yes the liability for ownership of the property transfers from the City to the new owners. It becomes a taxable parcel and maintenance of the property also transfers to the new owners.

Mike Ludwig clarified that easements would be needed.

John "Jack" Hilmes stated the concern of the neighbor who is not in favor of the applicant's request because of drainage and the alteration of the drainage way. Asked if there are any plans to change the drainage way.

John Bessesen stated there are no plans to change the drainage way.

John "Jack" Hilmes stated the plan sounds like it could potentially reduce crime or delinquency which is happening in the woods.

Tim Fitzgerald stated this property is the reason the Southside Committee on Crime was started and that he is the Chair of the Committee. The Committee brought to Peter Spindler's attention some things that they felt needed to be taken care of. He also owns the Radio City Mobile Home Park. He never has been proactive on the upkeep of his property. Repairs or conformance has been in response to City initiated complaint. More City resources are used on his property including police, fire, and inspections than the average multi-housing unit owner/operators. He drove through today and saw no lid on dumpsters, they are not enclosed, furniture next to the dumpsters, grass and weeds growing out the garage roofs, no gutters, parking and curbs are in desperate need of repair, soffits are coming down on most of the buildings, cable wire exposed on every building, no cover on splitter boxes, mold is a huge issue on one side of a building, fire doors are propped open, litter and broken glass, and broken windows in some units. Therefore, he does not agree with what they are saying. The timber area is a swamp. He asks that before the Commission allows the applicant to have this property they need to show that they can take care of what they already have.

JoAnne Corigliano stated that she is aware of the problems there and agrees with Tim Fitzgerald that the property has been a problem property with the owners being out of town and unavailable or uninterested.

John Bessesen stated he understands what they are saying. Peter Spindler is a minority partner. The owner owns a number of properties which keeps him very busy. It is not Mr. Spindler's job to run this property. He was asked by the owner of the property if he could get this property turned around for resale. It will not sell the way it is. Therefore, we know we have to put some money into it.

Christine Pardee stated on the information that the Commissioner Fitzgerald provided regarding the property management i.e. maintenance, non-conformance or lack of efforts put forth also concerns her.

John Bessesen stated he has asked many times for them to get the dumpsters enclosed and to redo the parking lot. He was told that if they do not get the apartments fixed up inside they cannot get any tenants to rent. Therefore, they are putting the money inside the building and as soon as that is turned around they will start on the outside. He does have a commitment that something is going to be done this fall about the parking lot.

Tim Fitzgerald stated that he heard that same commitment three years ago.

Ted Irvine suggested that the applicant meet with the neighborhood and supply an accountable plan to the City with assurances that these things will happen.

John Bessesen stated they are in the process of hiring Fox Engineering to do a study, overlay and plan such as lighting, egress, changes to the parking lot and other improvements to the complex. Their goal is to improve the complex because they believe it is a problem for the community in its current state.

JoAnne Corigliano stated that the decision is not about whether or not she likes the owner it has to do with what the owner has shown so far. She believes the work needs to be done before the Commission can go any further.

Tim Fitzgerald stated that he does not believe the danger is in the timber but in the complex. The applicant was proactive in the beginning but the neighborhood has not seen them since. They just do what they can to get by.

John Bessesen stated that he had no idea of all the underlying problems. He was the one that came to the owner of the property and suggested that they purchase this property from the City, get it back on the tax rolls, clean it up and make it look more appealing to make the entire project more saleable. The owner's goal is to sell the project. Peter Spindler's goal may not be to sell the project. They have had several buyer prospects that have come back with the same complaints that Commissioner Tim Fitzgerald says about the outside. He has been putting some pressure on the people that have the money to get it done. This is the first step which is to see if they can get some of the crime out of the area. They have no plan to go in and just start taking trees down without a full study and approval from the City. They have met with Hubbell Development who is interested in the property but not as it currently sits.

Mike Ludwig clarified that the Commission is only making a recommendation to the Council this evening. The Council would have a public hearing on whether or not to actually vacate and convey the property to a private entity. The Council would receive a Plan and Zoning Commission communication that is a summary of comments and discussion of tonight's meeting. They have asked for that for Monday night, September 10, 2012. There are a few options:

1. To continue the request and see if they will come forward with more information if the Commission does not feel comfortable with making recommendations;
2. Approve subject to conditions and specify those conditions;
3. Recommend denial

In any of these recommendations the full discussion will be forwarded to the Council. They will know what the concerns are and what the discussion was to take into consideration at their hearing. The Council will make the final decision.

CHAIRPERSON OPENED THE PUBLIC HEARING

The following spoke in favor of the applicant's request:

Kim Bockstruck 253 E. Lake Street, Wayzata, MN stated she has been working with John and the owners of the property as well and she understands the Commissioner's concerns because it is the concern she has been hearing from people that want to purchase the property. She asked that the Commission to give them the opportunity to have more land to offer amenities like other projects around the area, such as, Rosemont, the Hubbell project behind it. Lancaster has a new media center, office, pool, wonderful things that create a community environment. That is what they are trying to promote and what she has to do to sell it. She cannot sell it with the things that are going on behind it. The other properties do not have this disadvantage. It is not entirely their property that is showing like this they have no choice it is abutted up to this property. This is one solution that would be an enhancement to the beautiful part that is already in place in the other corner. The challenge with the people that she brings to the property is they would need to sink money into it. The Commission has not seen the balcony repairs, inside foyers, the kitchens with appliance replacements or the total units that have been repaired. She has no knowledge of the partner or the owner's other businesses.

Tim Fitzgerald stated that he has been in the neighborhood for a very long time, he has never heard of any issues in that timber. At the beginning of this meeting the impression was giving that the applicant wanted to buy this property because they wanted to take care of it and make it look good. It appears now that they want to buy it because they have potential buyers to buy out their property if they acquire the City property.

Kim Bockstruck stated no, it is not desirable to have this activity going on and she has talked to many people who say that activity is going on in the timber and that is what some of the police calls are about.

Tim Fitzgerald stated that he sees every quarter where the police have been called. It is to the applicant's complex, not to the timber. He will double check with the Neighborhood Association liaison officer but the timber has never, ever been an issue. To go into the timber it is a swamp, a natural watershed. If anyone ventures into it, they can get stuck.

Kim Bockstruck stated they have come to Des Moines a couple of times. She cannot speak for Peter who is a minority partner in this project but they have spoken to Councilmember Brian Meyer, Rita Connor and Erik Lundy many times about what they could do to make this a better place for the neighborhood. They have not heard any objections from them. They just expressed interest in selling the property to make it a better place as well.

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

CHAIRPERSON CLOSED THE PUBLIC HEARING

CJ Stephens stated that she agrees with Tim that this is a precious piece of property, it is a natural drainage, it is a timber and timber does not cause the activity that is going on. It is the apartment complex causing the problem. She has never seen a tree cause a problem, it is because of what is going on around it.

Ted Irvine stated that he would like to see some type of work plan with some accountable dates on it as to when these improvements are going to be made. If they were able to clean it up, get it on the tax rolls and be subject to the tree mitigation plan he would not have a problem with that being conveyed to them if it is part of their plan to improve the property and reduce the crime.

Christine Pardee stated that this is a difficult situation. It sounds like the repair and improvements have needed to happen for awhile. It is a really difficult situation that people are trying to make the best from and move forward. She is uncomfortable with the fact that if this property has been in disrepair for this long why some of the repairs haven't been done before now. There must be a cash flow problem.

John "Jack" Hilmes asked how does this parcel of property fall into worse shape than now if it is under private ownership? How does its potential for crime or delinquency get any worse if it is in private ownership? If that property is in private ownership which is what we have been asked to consider, does that make the activity and/or the lack of responsibility that Tim points out a higher likelihood? Does it possibly render that less likely? He hears the representative from the southside saying we need to clean this place up and he hears the representative of the owners saying we need to clean this place up and wonders if there is a solution somewhere that is not influenced by emotion. How can we make this location better, how can we improve the neighborhood, how can we enhance the City of Des Moines, how are we making things worse if this parcel falls into private ownership? He has no answer but believes that these are some of the things to think about.

Jacqueline Easley stated that she believes that John "Jack" Hilmes has presented a fair and provocative line of reasoning and she would go along with that with the exception that she heard Tim say that it is not the parcel that is the issue, it is the apartment complex that has had no improvements. If we were to allow transfer to the same people who have done nothing with the property they currently own why would we expect them to make improvements on the property they do not currently own.

JoAnne Corigliano states that she believes that improvements to the apartment complex should be Phase I and then the acquiring of the City property should be Phase II. Fix the problem and then move forward.

John "Jack" Hilmes asked if it was not the owner of these units to the north that wanted to come in and buy this parcel and relieve the City of this obligation with the idea that they wanted to clean up the neighborhood what would the Commission say?

Vicki Stogdil wanted to clarify that the land could not be developed because it is drainage area.

Tim Fitzgerald stated that it could not be developed based on the restriction placed on it. He asked if there was any possible way that a potential buyer can come in and present a plan to the Commission.

Shirley Daniels stated that perhaps if a developer came to a neighborhood meeting and presented what they are proposing to do to get some dialogue started that would be a place to start.

Tim Fitzgerald agreed.

COMMISSION ACTION:

Ted Irvine moved to deny the applicant's request to consider the disposition of City owned property which was dedicated for a public purpose.

Motion passed 9-1-1 (Ted Irvine voted in opposition and John "Jack" Hilmes abstained).

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:clw

Attachment

Park Forest Residential Cooperative -
vicinity of SE 20th Street and East Park Avenue

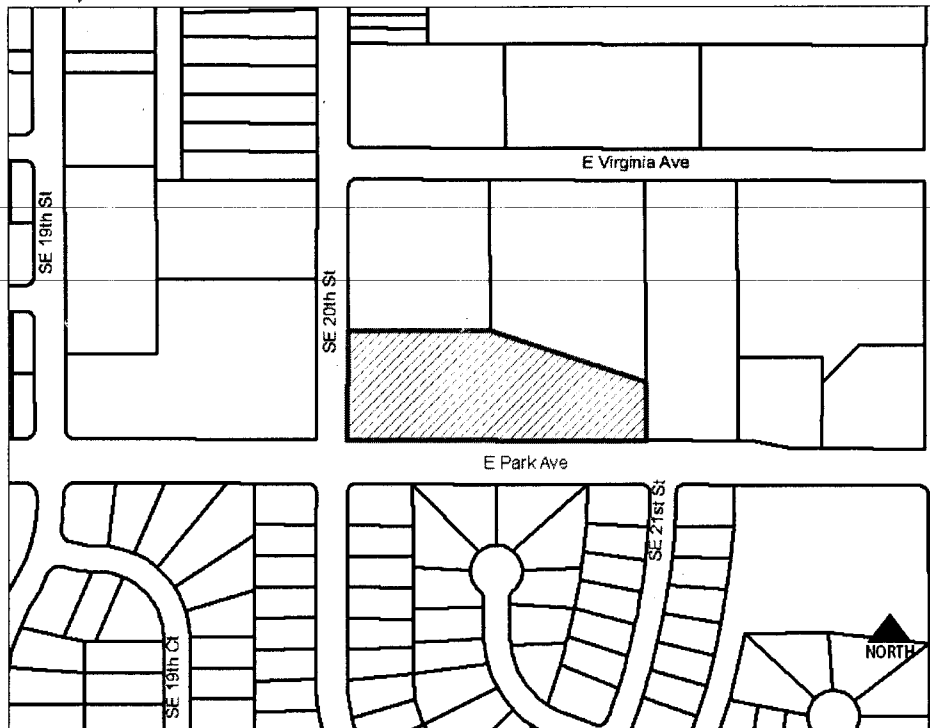
11-2012-1.15



Request from Park Forest Residential Cooperative represented by Peter Spindler (officer) for consideration of the disposition of City owned property in the vicinity of 2001 East Virginia Avenue located at the northeast corner of East Park Avenue and Southeast 20 th Street.				File # 11-2012-1.15	
Description of Action	Recommendation to deny disposition of City owned property in the vicinity of 2001 East Virginia Avenue located at the northeast corner of East Park Avenue and Southeast 20 th Street which was dedicated for a public open space purpose.				
2020 Community Character Plan	Medium-Density Residential				
Horizon 2035 Transportation Plan	No Planned Improvements				
Current Zoning District	"R-6" Planned Residential Development				
Proposed Zoning District	"R-6" Planned Residential Development				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Inside Area		1			
Outside Area					
Plan and Zoning Commission Action	Approval		Required 6/7 Vote of the City Council	Yes	N/A
	Denial	9-1-1		No	

Park Forest Residential Cooperative - vicinity of SE 20th Street and East Park Avenue

11-2012-1.15



Item 11-2012-1.15 Date 8-29-2012

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

(Circle One)

RECEIVED
COMMUNITY DEVELOPMENT DEPARTMENT

Print Name Richard Witzenburg

Signature Richard Witzenburg

SEP 03 2012

Address 2001 - E. Hughes Ave

Reason for **DEPARTMENT** approving this request may be listed below:

It is the only noise barrier between our
home & all the Apt complexes. It is also
the natural water shed from the sewer system
down Hughes Ave - going under Park Ave.