



Roll Call Number

Agenda Item Number

16

Date September 25, 2017

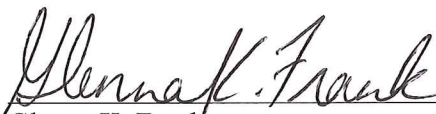
**RECEIVE AND FILE COMMUNICATION FROM THE
PLAN AND ZONING COMMISSION REGARDING REQUEST FROM
IMPERIAL PROPERTIES, INC. FOR VACATION OF LYON STREET BETWEEN EAST 15TH
STREET AND EAST 16TH STREET AND OF THE EAST/WEST ALLEY RIGHT-OF-WAY
ADJOINING 1500-1554 DES MOINES STREET AND 606 EAST 16TH STREET**

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on September 7, 2017, its members voted 11-0 to recommend **APPROVAL** of a request from Imperial Properties, Inc. (owner), for vacation of a segment of Lyon Street right-of-way between East 15th Street and East 16th Street and the east/west alley right-of-way between East 15th Street and East 16th Street adjoining 1500-1554 Des Moines Street and 606 E. 16th Street, to allow for assemblage with adjoining property for commercial and/or residential redevelopment, subject to the following conditions:

1. Easements shall be provided for any existing utilities in place until such time that they are abandoned or are relocated.
2. Any future use of the vacated right-of-way shall be in accordance with all Site Plan policies and requirements, including but not limited to any applicable zoning that may be adopted.
3. Any conveyance of the vacated right-of-way shall be subject to approval by City Council of a redevelopment concept plan.
4. A permanent vehicular and pedestrian access easement, in form approved by the City and the adjoining owner, shall be granted across the portion of the East/West alley adjoining 620 E. 16th Street for the benefit of said property.
5. The portion of Lyon Street north of and adjoining 620 E. 16th Street shall remain open space.

MOVED by _____ to receive and file the attached communication from the Plan and Zoning Commission, and refer to the Engineering Department, Real Estate Division.

FORM APPROVED:



Glenna K. Frank
Assistant City Attorney

(11-2017-1.09)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MOORE				
WESTERGAARD				
TOTAL				

MOTION CARRIED

APPROVED

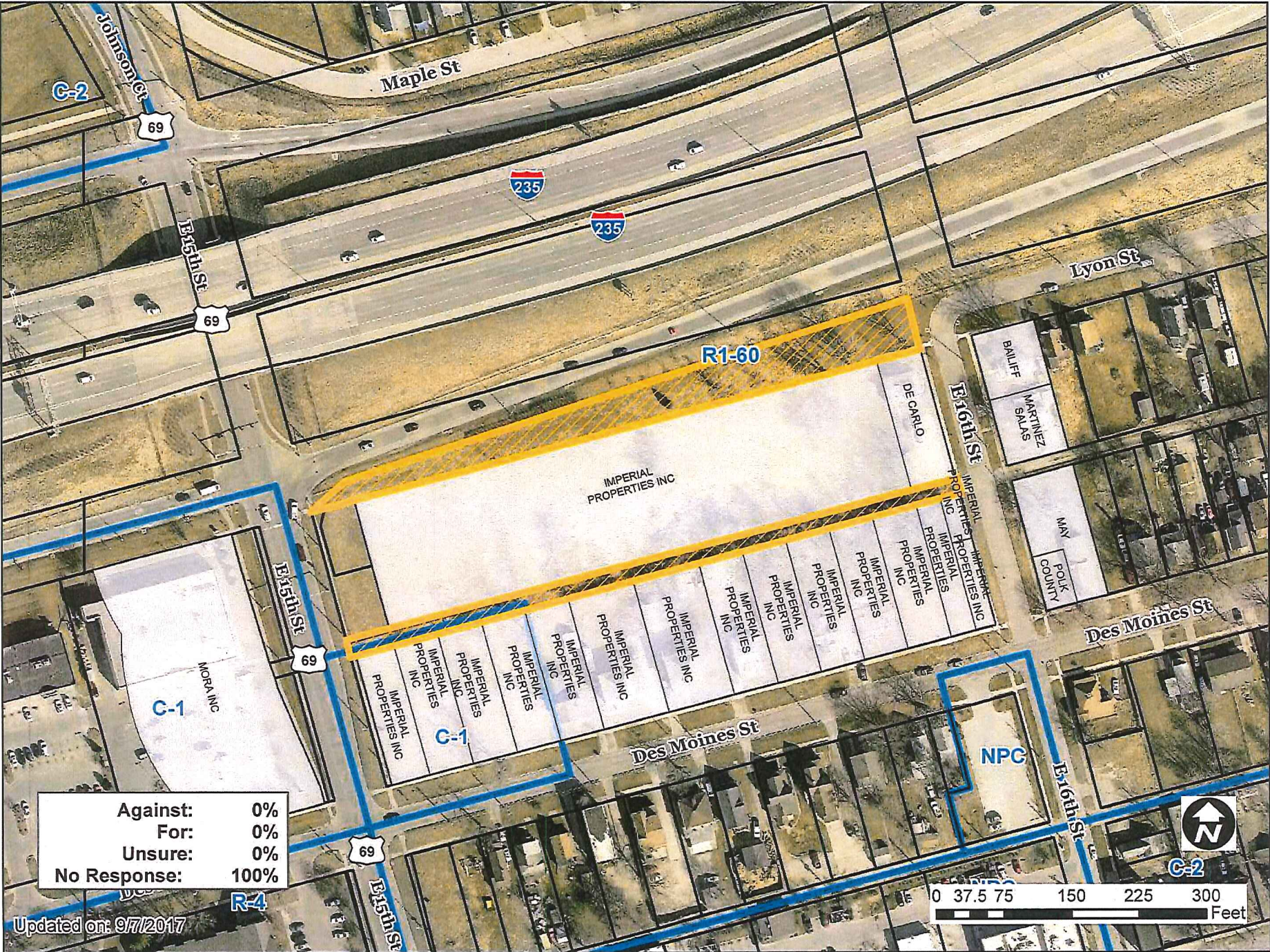
Mayor

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.

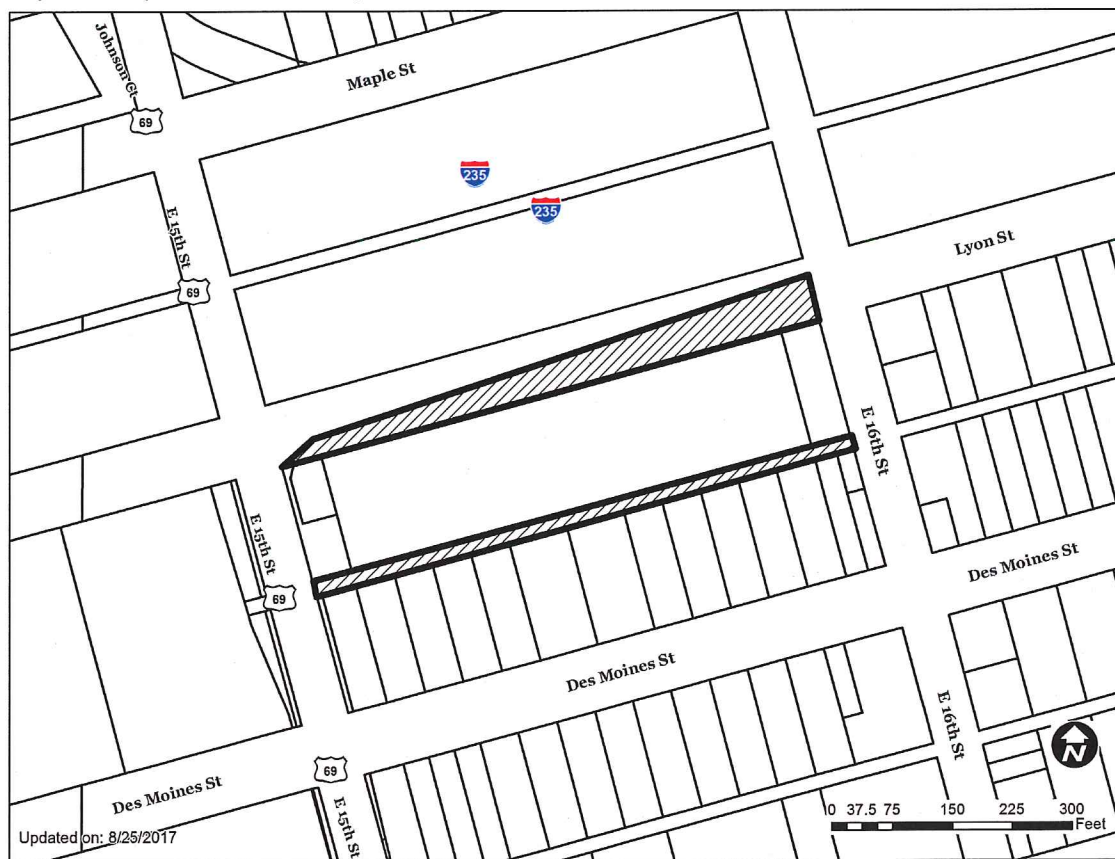
City Clerk



Imperial Properties, Inc. (owner) vicinity of 1500-1554 Des Moines Street and 606 East 16th represented by Bill Moyer (officer). Additional adjoining property is owned by Oscar Padilla.				File #	
				11-2017-1.09	
Description of Action	Approval of vacation of the following segments of Right-Of-Way, subject to conditions: A) An irregular portion of Lyon Street Right-Of-Way (ROW) between East 15th Street and East 16th Street, determined to be excess from the Interstate 235 project. B) East/west alley ROW between Des Moines Street and Lyon Street (Interstate 235) from East 15th Street to East 16th Street.				
PlanDSM Future Land Use	Current: Community Mixed Use. Proposed: N/A.				
Mobilizing Tomorrow Transportation Plan	2025-2034 US 65/SE 15 th Street Extension: Extend SE 15 th Street from North of E. Court Avenue to South of Hartford Avenue with 3 lanes.				
Current Zoning District	Limited "C-1" Neighborhood Retail Commercial District, "R1-60" One-Family Low-Density Residential District, and "FSO" Freestanding Signs Overlay District.				
Proposed Zoning District	N/A.				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Subject Property					
Outside Area (200 feet)					
Plan and Zoning Commission Action	Approval	11-0	Required 6/7 Vote of the City Council	Yes	
	Denial			No	X

Imperial Properties, Inc., Vicinity of 1500-1554 Des Moines Street

11-2017-1.09



1 inch = 142 feet

September 19, 2017

Honorable Mayor and City Council
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising at their meeting held September 7, 2017, regarding a request from Imperial Properties, Inc. (owner) for property located in the vicinity of 1500-1554 Des Moines Street and 606 East 16th represented by Bill Moyer (officer) for vacation of the following segments of Right-Of-Way. Additional adjoining property is owned by Oscar Padilla.

- A) An irregular portion of Lyon Street Right-Of-Way (ROW) between East 15th Street and East 16th Street, determined to be excess from the Interstate 235 project.
- B) East/west alley ROW between Des Moines Street and Lyon Street (Interstate 235) from East 15th Street to East 16th Street.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 11-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Francis Boggus				X
Dory Briles	X			
JoAnne Corigliano	X			
David Courard-Hauri	X			
Jacqueline Easley	X			
Jann Freed	X			
John "Jack" Hilmes				X
Lisa Howard	X			
Carolyn Jenison	X			
Greg Jones	X			
William Page	X			
Mike Simonson				X
Rocky Sposato				X
Steve Wallace	X			
Greg Wattier	X			

APPROVAL of the vacation subject to the following conditions: (11-2017-1.09)

1. Easements shall be provided for any existing utilities until such time that they are abandoned or are relocated.

2. Any future use of the right-of-way shall be in accordance with all Site Plan policies, such as any applicable zoning that may be adopted.
3. Any conveyance shall be subject to approval by City Council of a redevelopment concept plan.
4. Access easement shall be provided for the portion of the alley from E. 16th Street to the west property line of 620 E. 16th Street.
5. Use of the area on the along the north property line of 620 E. 16th Street shall be limited to open space.

RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval of the requested vacation subject to the following conditions:

1. Easements shall be provided for any existing utilities until such time that they are abandoned or are relocated.
2. Any future use of the right-of-way shall be in accordance with all Site Plan policies, such as any applicable zoning that may be adopted.
3. Any conveyance shall be subject to approval by City Council of a redevelopment concept plan.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The proposed vacation would allow the property owner to develop the area for commercial and residential use.
2. **Size of Site:** 35,762 square feet (0.8 acres).
3. **Existing Zoning (site):** "R1-60" One Family, Low Density Residential District and "C-1" Neighborhood Retail Commercial District.
4. **Existing Land Use (site):** An irregular portion of Lyon Street right-of-way between East 15th Street and East 16th Street and the east/west alley right-of-way between East 15th Street and East 16th Street and between Des Moines Street and Lyon Street right-of-way.
5. **Adjacent Land Use and Zoning:**
 - North** – "R1-60": Use is Interstate 235 right-of-way.
 - South** - "R1-60" and "C-1": Uses are a mix of single family residential and neighborhood commercial properties.
 - East** – "R1-60": Use is single family residential properties.

West - "C-1": Uses are commercial properties.

6. **General Neighborhood/Area Land Uses:** The subject site is located between East 15th Street and East 16th Street and between Interstate 235 right-of-way and Des Moines Street. The surrounding area predominantly contains single-family residential uses and commercial uses.
7. **Applicable Recognized Neighborhood(s):** The subject property is located in the Capitol East Neighborhood. The neighborhood association was notified of the meeting by mailing of the Preliminary Agenda to all recognized neighborhood associations on August 18, 2017 and by mailing of the Final Agenda on September 1, 2017. Additionally, separate notifications of the hearing for this specific item were mailed on August 28, 2017 (10 days prior to the original public hearing) to the neighborhood association and the primary titleholder on file with the Polk County Assessor for each property adjoining or directly across the subject property.

All agendas and notices are mailed to the primary contact designated by the recognized neighborhood associations to the City of Des Moines Neighborhood Development Division. The Capitol East Neighborhood Association notices were mailed to Jack Leachman, 1921 Hubbell Avenue, Des Moines, IA 50316.

8. **Relevant Zoning History:** None.

9. **PlanDSM: Creating Our Tomorrow Plan Land Use Plan Designation:** The subject right-of-way is designated Community Mixed Use on the PlanDSM future land use map. The plan defines this category as "small- to medium-scale mixed use development, located on high capacity transit corridors or at the intersection of transportation corridors and include a mix of medium density residential and a mix of retail and service establishments designed to attract customers from a large service area encompassing multiple neighborhoods and may include specialty retail that attracts regional customers."
10. **Applicable Regulations:** The Commission, considering the criteria set forth in Chapter 18B of the Iowa Code, 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:** There are identified sewer and water facilities within the Lyon Street and East 15th Street rights-of-way. Easements must be reserved for any existing utilities until such time that they are abandoned or relocated.
2. **Street System/Access:** The Lyon Street right-of-way does not serve as an access way for the adjoining properties. The east/west alley right-of-way serves as access to the property at 620 East 16th Street. If the vacation is approved, the property owner has indicated interest in acquiring the adjacent portion of the alley. The requested vacation would not impact the existing street system or the vehicular or pedestrian flow in the area.

SUMMARY OF DISCUSSION

Jason Van Essen presented staff report and recommendation.

Jacqueline Easley asked if anyone was present to speak on this item.

David Churchill 20701 Kirkwood St., Milo IA representing Imperial Properties. He stated they believed that things could be worked out with the adjoining property.

Greg Wattier asked how the alley could be sold.

Jason Van Essen explained that the applicant owned all the adjoining properties except for the DeCarlo property (620 East 16th Street) and everyone had signed that they were in agreement prior to coming to the Plan and Zoning Commission.

Bill Moyer part owner of Imperial Properties, stated that he had no problem in giving the DeCarlo property access. His group intends to buy the alley and Lyon Street, and it is not their intention to block access to the DeCarlo property.

Will Page questioned which properties were zoned C-1 and which were R-160.

Bill Moyer pointed out the first four lots on East 15th to the south were zoned C-1 and he had been approached about possible fast food chains locating here but has not put a deal together yet.

Will Page questioned where Capitol View School was located relative to location.

Bill Moyer stated several blocks to the south.

David Churchill wanted to clarify that the property rights to the adjacent property are half of the alley behind his property. They are not asking for his half of the alley nor the front portion of Lyon Street. They wish to have their properties combined into one parcel and do not wish to take away the DeCarlo property access.

CHAIRPERSON OPENED THE PUBLIC HEARING

Alexander Gugurich 218 6th Ave, Des Moines. Speaking on behalf of property owner Oscar Padilla who is the contract buyer of 620 E. 16th Street. He stated that Oscar had come to him with some confusion on what was actually happening when he had agreed to vacating the alley. He felt that some of the original commitments were being changed. It was his thought that the case should be continued so they make look into it further as to what Imperial Properties truly intends to do with this area.

Oscar Padilla 3930 E. 16th St., Runnells, stated that he has bought the property in question on contract. He had concerns after signing that he had agreed to the original vacation request that it was not explained correctly, and now he is in opposition. He has concerns that what he signed will exclude him from buying his portion of the alley and the alley provides the only vehicular access to his property.

Alexander Gugurich added two more reason that the alley should not be vacated. One being that it could increase the tax burden of the property and two, it is unclear what Lyon Street may be used for and they are concerned about the overall access to the property.

Mike Ludwig clarified the City Council policy on vacation of residential alleys is to offer ½ of the alley to each adjoining property owner. An option would be to not vacate the alley from East 16th to the west property line of 620 E. 16th Street. It would require a turnaround if the fire department deemed it necessary. He also noted that Lyon Street does not have any houses on it with the exception of the structure at 620 E. 16th Street. Therefore the portion of right-of-way adjoining 620 E. 16th Street could be sold solely to that owner. If the owner of 620 E. 16th Street doesn't want to buy it, it could be sold to another entity.

Alexander Gugurich stated that this was still an unfair position to put Mr. Padilla in by forcing his hand to have to the property or it can be taken by Imperial Properties. This is not an equitable deal even if he gets the opportunity to buy it first.

Mike Ludwig stated that Lyon Street currently does not go through and there is no plan to extend Lyon Street west of E. 16th Street. Clearly, the property is not needed for right-of-way purposes.

Alexander Gugurich stated that perhaps the compromise will be to carve out an area in front on Lyon Street that the city would maintain ownership.

Mike Ludwig stated it would depend on what the commission recommends and ultimately what the City Council decides.

David Courard-Hauri asked Mr. Padilla if he were given half the alley, would it be sufficient for access to his property.

Oscar Padilla stated it is his only access and he feels he would need the whole thing to access his back garage building.

Rebuttal

David Churchill stated in the current plan they are working on with Iowa Finance Authority is to develop 1/3 of the property to the east for senior housing. The plans include using the alley way as an access off of East 16th Street. They would widen it to the south. He would still have access to his property, but it would be available for everyone to use. He is certain that they can work out a solution but they need the sign off of the alley way for access to make this project work. They are trying to do something nice in this area and he would hate to see things get held up over this.

Glenna Frank stated in the past there have been vacations and conveyances that are subject access easements. Rather than carve something out, she believed it would be possible to make an access easement either available to the public, or the city, or the adjoining property owner.

Greg Jones asked if that could be made a condition of the right-of-way vacation.

Glenna Frank confirmed it could be a condition.

Oscar Padilla asked what the intention is for the area where Lyon Street is located to the north of his property.

David Churchill stated it is currently slated for open space with vegetation and landscaping.

David Courard-Hauri asked if they would be agreeable to providing an access easement.

David Churchill stated they would agree to provide an access easement on the alley.

CHAIRPERSON CLOSED THE PUBLIC HEARING

COMMISSION ACTION:

David Courard-Hauri moved staff recommendations for the approval of the vacation subject to the following conditions:

1. Easements shall be provided for any existing utilities until such time that they are abandoned or are relocated.
2. Any future use of the right-of-way shall be in accordance with all Site Plan policies, such as any applicable zoning that may be adopted.
3. Any conveyance shall be subject to approval by City Council of a redevelopment concept plan.
4. Access easement shall be provided for the portion of the alley from E. 16th Street to the west property line of 620 E. 16th Street.

Greg Wattier requested a friendly amendment that the area on the north side of the property located at 620 E. 16th Street be left as open space.

David Courard-Hauri accepted the friendly amendment and moved the following:

1. Easements shall be provided for any existing utilities until such time that they are abandoned or are relocated.
2. Any future use of the right-of-way shall be in accordance with all Site Plan policies, such as any applicable zoning that may be adopted.
3. Any conveyance shall be subject to approval by City Council of a redevelopment concept plan.
4. Access easement shall be provided for the portion of the alley from E. 16th Street to the west property line of 620 E. 16th Street.

5. Use of the area on the along the north property line of 620 E. 16th Street shall be limited to open space.

Motion passed 11-0.

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:tjh
Attachments