

Date June 3, 2019

HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF A PORTION OF THE NORTH-SOUTH ALLEY RIGHT-OF-WAY LOCATED WEST OF AND ADJOINING 1013 SCOTT AVENUE AND CONVEYANCE TO THIKRA NOORI AL MAHDAWI AND SALAH ABDULRAZZAK ABDULWAHAB FOR \$150.00

WHEREAS, on May 2, 2019 the Plan and Zoning Commission voted to recommend denial of a City-initiated request to vacate the north/south alley right-of-way located in the vicinity of 1013 Scott Avenue, between Southeast 10th Street and Southeast 11th Street from Scott Avenue to Shaw Street, to allow the alley to provide a paved driveway to access a proposed garage upon the rear yard area of 1013 Scott Avenue; and

WHEREAS, said recommendation was based upon the determination by the Commission that said north/south alley is currently required for public vehicular access; and

WHEREAS, the City Plan and Zoning Commission further recommended, as part of the 9-2 vote of its members to recommend denial, that in the event that the City Council decides to vacate said north/south alley right-of-way, that such vacation would be subject to the following conditions:

- (1) Reservation of easements for any existing utilities; and
- (2) Reservation of a 16-foot wide easement, running the full length of the vacated north/south alley, to provide vehicular access from the adjoining public street network to 1003 Scott Avenue and to Polk County District/Parcel No. #040/00033-000-000.

WHEREAS, Thikra Noori Al Mahdawi and Salah Abdulrazzak Abdulwahab, owners of 1013 Scott Avenue have asked that the City Council of the City of Des Moines move forward with the vacation and conveyance of only that portion of the north-south alley right-of-way that adjoins their property at 1013 Scott Avenue, Des Moines, Iowa to allow the alley to provide a paved driveway to access a proposed garage upon the rear yard area; and

WHEREAS, after further review by City staff, if only the portion of the alley adjoining 1013 Scott Avenue is vacated and conveyed, the property at 1003 Scott Avenue would not be affected, as it currently maintains vehicular access directly from Scott Avenue and does not currently use the alley for vehicular access; and

WHEREAS, if only the portion of the alley adjoining 1013 Scott Avenue is vacated and conveyed, Polk County's property located at District/Parcel No. 040/00033-000-000 will continue to have legal access to the alley from Shaw Street; and

WHEREAS, based on further City staff review, the City Plan and Zoning Commission's condition No. 2 above is not needed if only that adjoining portion of the alley is vacated and conveyed to the owners of 1013 Scott Avenue; and

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WHEREAS, Thikra Noori Al Mahdawi and Salah Abdulrazzak Abdulwahab, have further offered to the City of Des Moines (“City”) the purchase price of \$150.00 for the purchase of that portion of vacated alley right-of-way way located west of and adjoining 1013 Scott Avenue, Des Moines, Iowa (hereinafter “Property”), to allow for assemblage with their adjoining property for development of a paved driveway access to access a proposed garage upon the rear yard area, which price reflects the fair market value of the Property as determined by the City’s Real Estate Division; and

WHEREAS, the City has no known current or anticipated public need for the Property proposed to be sold, subject to reservation of easements therein, and the City will not be inconvenienced by the vacation and sale of said Property; and

WHEREAS, on May 20, 2019, by Roll Call No. 19-0793, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation and conveyance of the Property be set for hearing on June 3, 2019, at 5:00 p.m., in the City Council Chambers, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa; and

WHEREAS, due notice of said proposal to vacate and convey the north-south alley right-of-way located west of and adjoining 1013 Scott Avenue, Des Moines, Iowa, was given to all necessary parties as provided by law, setting forth the time and place for hearing on said proposal; and

WHEREAS, in accordance with City Council direction, those interested in the proposed vacation and conveyance, both for and against, have been given an opportunity to be heard with respect thereto and have presented their views to the City Council.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, as follows:

1. Upon due consideration of the facts and statements of interested persons, any and all objections to the proposed vacation and conveyance of the north-south alley right-of-way located west of and adjoining 1013 Scott Avenue, as described herein, are hereby overruled and the hearing is closed.
2. There is no public need or benefit for the right-of-way proposed to be vacated, and the public would not be inconvenienced by reason of the vacation of said right-of-way, legally described as follows, and said vacation is hereby approved:

A PART OF THE NORTH/SOUTH ALLEY RIGHT OF WAY IN BLOCK 3, ALLEN’S SECOND ADDITION TO DES MOINES, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 10 IN SAID BLOCK 3; THENCE SOUTHEASTERLY ALONG THE EASTERLY LINE OF SAID VACATED NORTH/SOUTH ALLEY RIGHT OF WAY, A DISTANCE OF 120 FEET; THENCE SOUTHWESTERLY ALONG A LINE THAT IS PARALLEL WITH THE SOUTHWESTERLY EXTENSION OF

Date June 3, 2019

THE NORTH LINE OF SAID LOT 10, TO THE WESTERLY LINE OF SAID VACATED NORTH/SOUTH ALLEY RIGHT OF WAY; THENCE NORTHWESTERLY ALONG SAID WESTERLY VACATED RIGHT OF WAY LINE, TO THE NORTHEAST CORNER OF LOT 1 IN SAID BLOCK 3; THENCE NORTHEASTERLY ALONG A STRAIGHT LINE TO THE POINT OF BEGINNING, AND CONTAINING APROXIMATELY 2,400 SQUARE FEET.

3. The proposed sale of such vacated right-of-way, as legally described below and to the grantees and for the consideration identified below, subject to reservation of easements for utilities therein, is hereby approved:

Grantee: Thikra Noori Al Mahdawi and Salah Abdulrazzak Abdulwahab

Consideration: \$150.00

Legal Description: A PART OF THE VACATED NORTH/SOUTH ALLEY RIGHT OF WAY IN BLOCK 3, ALLEN'S SECOND ADDITION TO DES MOINES, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 10 IN SAID BLOCK 3; THENCE SOUTHEASTERLY ALONG THE EASTERLY LINE OF SAID VACATED NORTH/SOUTH ALLEY RIGHT OF WAY, A DISTANCE OF 120 FEET; THENCE SOUTHWESTERLY ALONG A LINE THAT IS PARALLEL WITH THE SOUTHWESTERLY EXTENSION OF THE NORTH LINE OF SAID LOT 10, TO THE WESTERLY LINE OF SAID VACATED NORTH/SOUTH ALLEY RIGHT OF WAY; THENCE NORTHWESTERLY ALONG SAID WESTERLY VACATED RIGHT OF WAY LINE, TO THE NORTHEAST CORNER OF LOT 1 IN SAID BLOCK 3; THENCE NORTHEASTERLY ALONG A STRAIGHT LINE TO THE POINT OF BEGINNING, AND CONTAINING APROXIAMATELY 2,400 SQUARE FEET.

4. The Mayor is authorized and directed to sign the Offer to Purchase and Quit Claim Deed for the conveyance as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.

5. Upon proof of payment of the consideration, plus \$113.00 for publication and recording costs, the City Clerk is authorized and directed to forward the original of the Quit Claim Deed, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Real Estate Division of the Engineering Department for the purpose of causing said documents to be recorded.

6. The Real Estate Division Manager is authorized and directed to forward the original of the Quit Claim Deed, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Polk County Recorder's Office for the purpose of causing these documents to be recorded.

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7. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division Manager shall mail the original of the Quit Claim Deed and a copy of the other documents to the grantee.

8. Non-project related land sale proceeds are used to support general operating budget expenses: Org – EG064090.

Moved by _____ to adopt.

APPROVED AS TO FORM:



Ann DiDonato, Assistant City Attorney

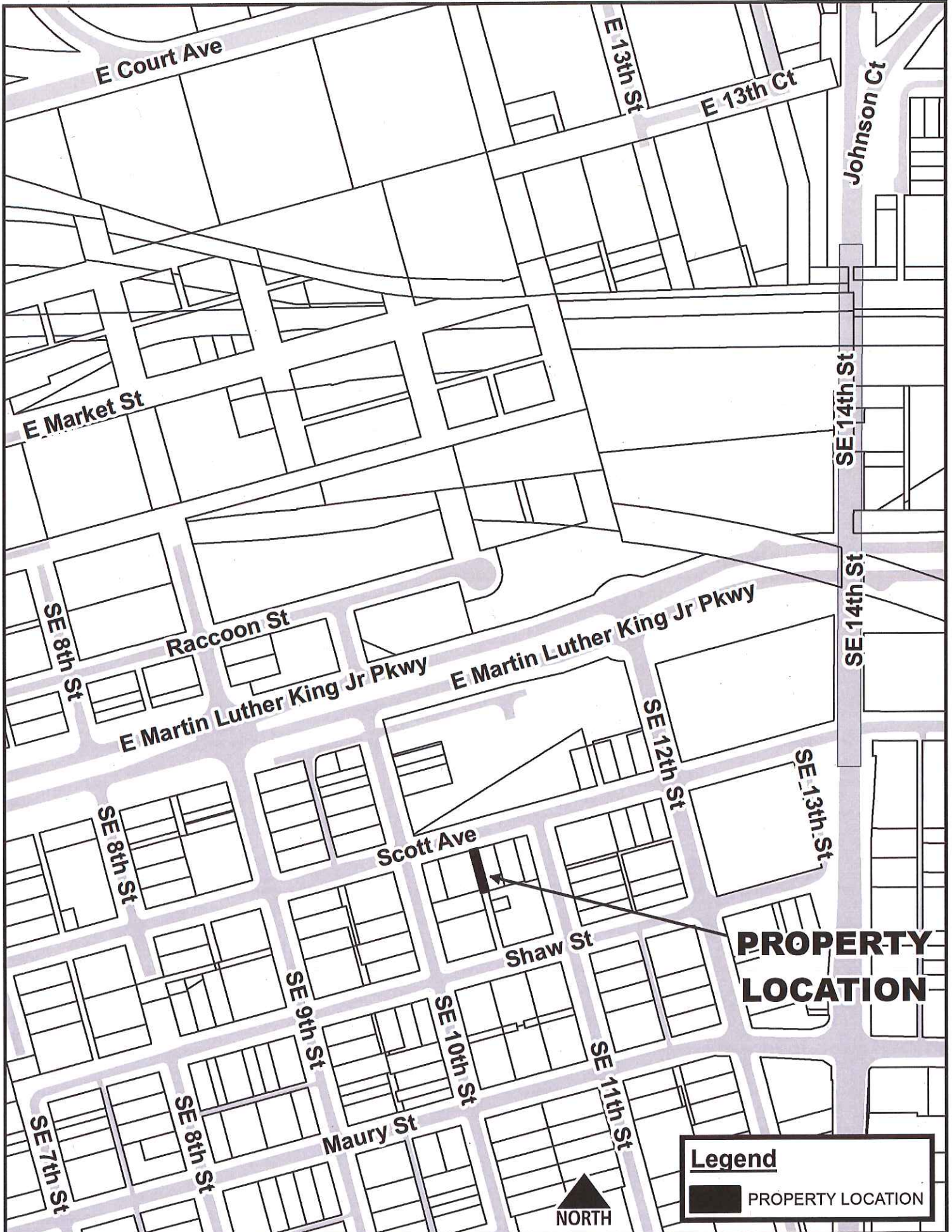
COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
COLEMAN				
GATTO				
GRAY				
MANDELBAUM				
WESTERGAARD				
TOTAL				
MOTION CARRIED			APPROVED	
_____ Mayor				

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



**PROPERTY
LOCATION**

Legend

 PROPERTY LOCATION



★ Roll Call Number

19-0793

Agenda Item Number

20

Date May 20, 2019

RECEIVE AND FILE COMMUNICATION FROM THE PLAN AND ZONING COMMISSION REGARDING CITY-INITIATED REQUEST FOR VACATION OF NORTH/SOUTH ALLEY RIGHT-OF-WAY BETWEEN SOUTHEAST 10TH STREET AND SOUTHEAST 11TH STREET FROM SCOTT AVENUE TO SHAW STREET

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on May 2, 2019, its members voted 9-2 to recommend DENIAL of a City-initiated request to vacate the north/south alley right-of-way located in the vicinity of 1013 Scott Avenue, between Southeast 10th Street and Southeast 11th Street from Scott Avenue to Shaw Street, to allow the alley to provide a paved driveway to access a proposed garage upon the rear yard area of 1013 Scott Avenue; and

WHEREAS, said recommendation was based upon the determination by the Commission that said north/south alley is currently required for public vehicular access; and

WHEREAS, the City Plan and Zoning Commission further recommended, as part of the 9-2 vote of its members to recommend denial, that in the event that the City Council decides to vacate said north/south alley right-of-way, that such vacation would be subject to the following conditions:

- (1) Reservation of easements for any existing utilities; and
(2) Reservation of a 16-foot wide easement, running the full length of the vacated north/south alley, to provide vehicular access from the adjoining public street network to 1003 Scott Avenue, 1013 Scott Avenue and to Polk County District/Parcel No. #040/00033-000-000.

MOVED by Gatto 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

(11-2019-1.07)

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, COLEMAN, GATTO, GRAY, MANDELBAUM, WESTERGAARD, and TOTAL (7).

CERTIFICATE

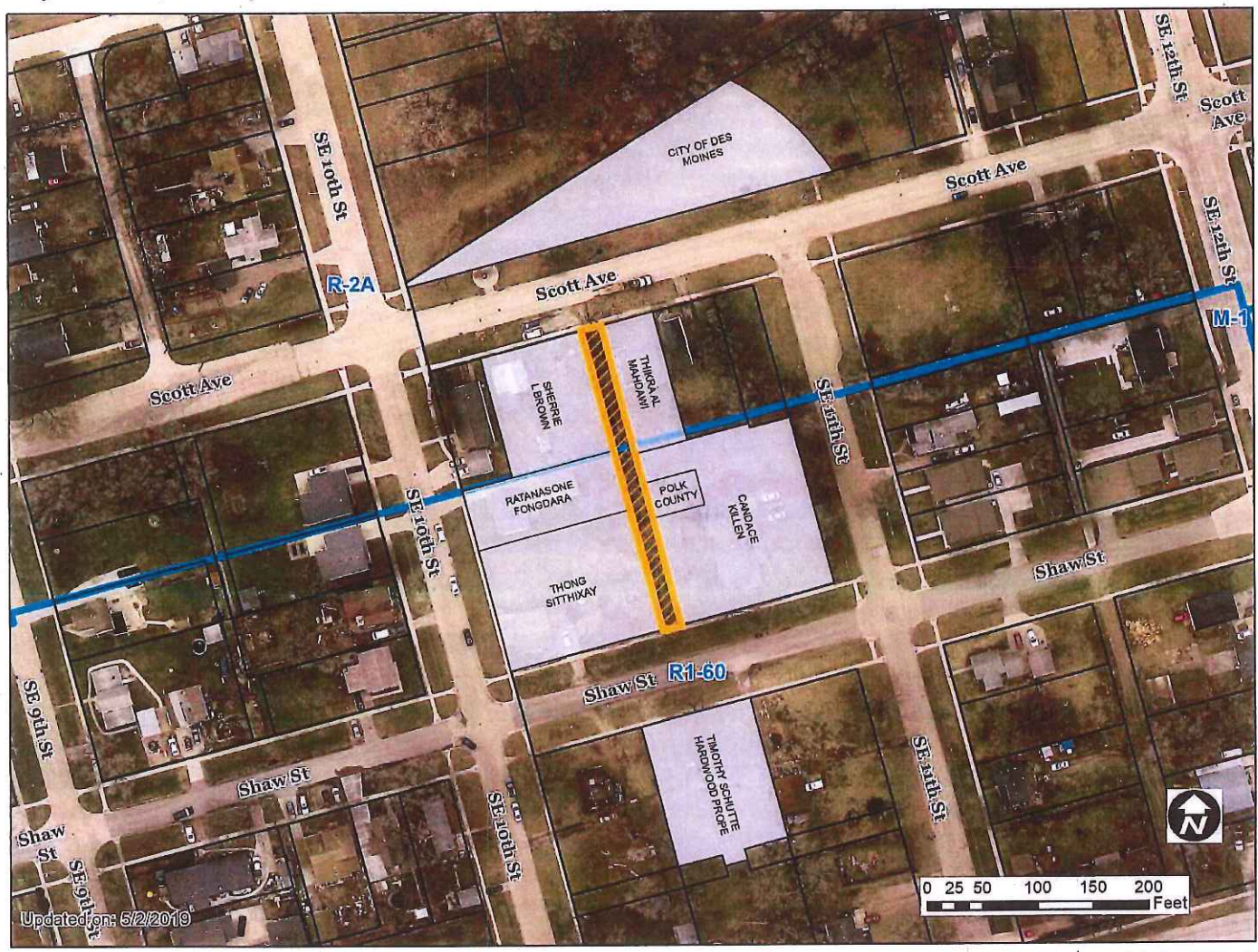
I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

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

J. M. Frankh Cowrie Mayor

Diane Rauh City Clerk

City initiated, Vicinity of Southeast 10th St., Southeast 11th St., Scott Ave. & Shaw St. 11-2019-1.07



1 inch = 113 feet





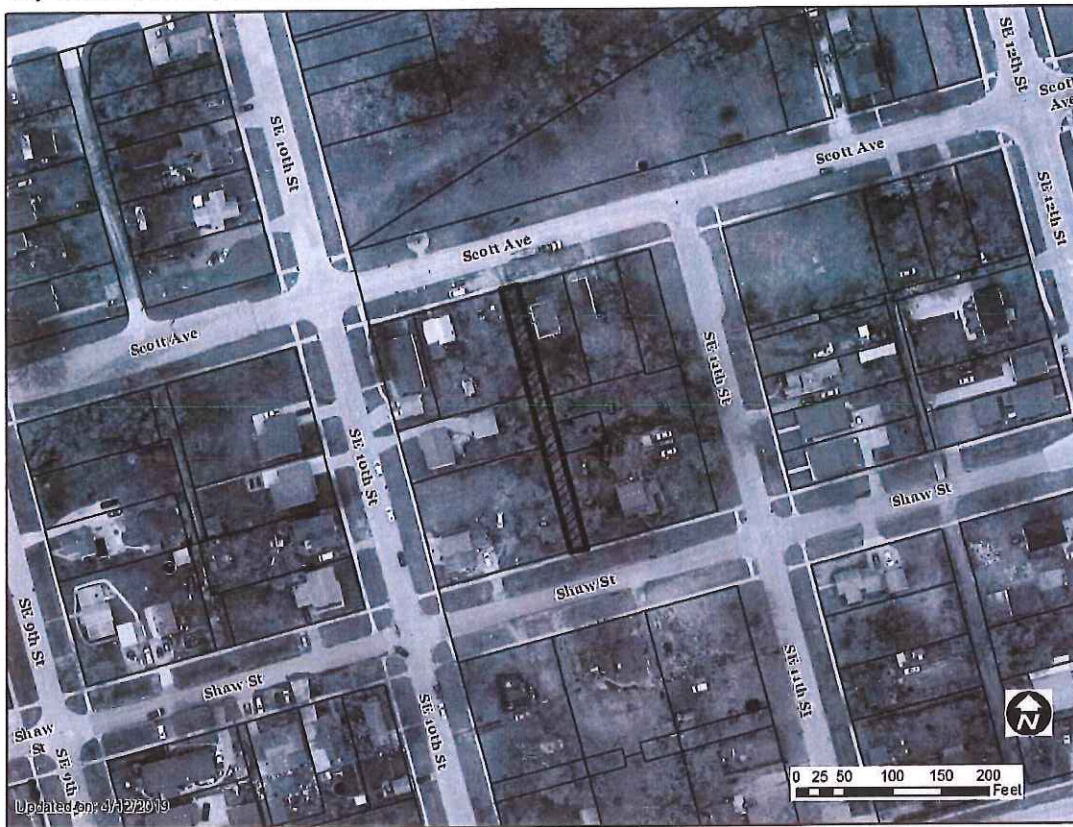


08

58

City Council initiated request.		File #		
		11-2019-1.07		
Description of Action	Vacation of the north/south alley Right-Of-Way between Southeast 10th Street and Southeast 11th Street from Scott Avenue to Shaw Street.			
PlanDSM Future Land Use	Current: Low-Medium Density Residential. Proposed: N/A.			
Mobilizing Tomorrow Transportation Plan	No planned improvements.			
Current Zoning District	"R-2A" General Residential District, "R1-60" One-Family Low-Density Residential District, "GGP" Gambling Games Prohibition Overlay District, "D-O" Downtpwn Overlay District and "FSO" Freestanding Signs Overlay District.			
Proposed Zoning District	N/A.			
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition
Subject Property	0	0		
Outside Area (200 feet)				
Plan and Zoning Commission Action	Approval		Required 6/7 Vote of the City Council	Yes
	Denial	X		No

City initiated, Vicinity of Southeast 10th St., Southeast 11th St., Scott Ave. & Shaw St. 11-2019-1.07



1 inch = 113 feet

May 14, 2019

Date _____
 Agenda Item 70
 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 May 2, 2019 meeting, the following action was taken regarding a City initiated request for vacation of the north/south alley Right-Of-Way between Southeast 10th Street and Southeast 11th Street from Scott Avenue to Shaw Street.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 9-2 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Francis Boggus				X
Dory Briles				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			
Emily Webb	X			

RECOMMEND DENIAL of the council initiated request to vacate the alley. However, if Council decides to vacate the alley right-of-way, the vacation should be subject to a 16-foot wide access easement to provide vehicular access from the Scott Avenue to 1003 Scott Avenue, 1013 Scott Avenue and to the Polk County parcel.

(11-2019-1.07)

Written Responses

0 in Favor

0 in opposition

RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval of the initiated vacation of Right-of-Way, subject to the following conditions:

1. Reservation of easements for any existing utilities.
2. Reservation of an easement for access to the Polk County owned parcel #040/00033-000-000 from the adjoining public street network.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** On April 8, 2019 the City Council initiated the vacation of the alley Right-Of-Way (ROW) at the request of the property owner at 1013 Scott Avenue. That property owner indicated interest in acquiring the alley for a paved driveway to their rear yard area for a new garage. The house is too close to the existing west property line to allow a drive way on the existing parcel. That owner has requested the entire width of ROW adjoining their property be conveyed to them.
2. **Size of Site:** 5,600 square feet (20-feet by 280 feet).
3. **Existing Zoning (site):** "R-2A" General Residential District, "R1-60" One-Family Low-Density Residential District, "D-O" Downtown Overlay District, "GGP" Gambling Games Prohibition Overlay District and "FSO" Freestanding Signs Overlay District.
4. **Existing Land Use (site):** ROW that undeveloped and overgrown with voluntary trees.
5. **Adjacent Land Use and Zoning:**

 East – "R-2A" & "R1-60", Uses are single-family dwellings.

 West – "R-2A" & "R1-60"; Uses are single-family dwellings.
6. **General Neighborhood/Area Land Uses:** The subject adjoining property and ROW are generally located in a low density residential area of the Historic East Village Neighborhood south of Scott Avenue.
7. **Applicable Recognized Neighborhood(s):** The subject property is in the Historic East Village Neighborhood. This neighborhood was notified of the Commission meeting by mailing of the Preliminary Agenda on April 12, 2019. Additionally, separate notifications of the hearing for this specific item were mailed on April 22, 2019 (10 days prior to the hearing) to the Historic East Village Neighborhood and to the primary titleholder on file with the Polk County Assessor for each property adjacent to the subject ROW. A final agenda was mailed on April 26, 2019.

All agendas and notices are mailed to the primary contact(s) designated by the recognized neighborhood association to the City of Des Moines Neighborhood Development Division. The Historic East Village Neighborhood notices were mailed to Taylor Frame, P.O. Box 93904, Des Moines, IA 50393.

8. Relevant Zoning History: None.

9. 2020 Community Character Land Use Plan Designation: Low-Medium Density Residential.

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. Access: The segment of north/south alley is not developed for any access to adjoining properties. Polk County owns a 33-foot by 46.67-foot parcel adjoining the alley ROW on the east. This parcel is otherwise surrounded by the parcel at 1020 Shaw Street. Communication with the Polk County Public Works Real Estate office has determined that the County has not been able to sell the parcel to the adjoining owner. So, an access easement to that parcel will also have to be reserved with any vacation of the initiated ROW.

2. Utilities: There are not any identified public utilities within the initiated ROW. Should any exist in place, the City must reserve easements for any public utilities.

SUMMARY OF DISCUSSION

Mike Ludwig presented staff report and recommendations.

CHAIRPERSON OPENED THE PUBLIC HEARING

Sheri Brown 1003 Scott Avenue, stated when the neighbors first moved in they discussed sharing the alley way. When the neighbors decided to purchase the alley way they began blocking the portion she uses to get in and out of her driveway. It will cost too much for her to construct a separate access off the street and she is worried about what will happen in the future since this has already become a problem.

Mike Ludwig stated an access easement could be granted for public access and council could then convey the property subject to an easement.

David Courard-Hauri asked what's the difference between an easement and public access.

Mike Ludwig stated if the alley is conveyed, the city is no longer responsible for maintaining it. The easement would then allow access across private property.

Greg Wattier asked if they were to approve the conveyance, would it be sold immediately to a property owner or sit in limbo until someone purchases it.

Mike Ludwig stated the general Council policy is that each half of a residential alley is offered to the adjoining property owner. However, conveyance would be Council's decision and they could decide to convey the entire alley to a single property owner. The Planning Commission is asked to review and decide if the alley is needed for public access.

Will Page asked if the City maintains this alley.

Mike Ludwig stated there is a very minimal maintenance policy for residential alleys and there are numerous ones around the City that are overgrown and non-traversable.

Will Page asked for the impetus of this vacation.

Mike Ludwig stated the City Council initiated this request as the adjoining property owner at 1013 Scott Avenue was not able obtain consents from all property owners that adjoin the alley.

Mike Simonson stated the staff report shows the property owner at 1013 Scott wants to pour a new driveway to gain access to a garage.

Mike Ludwig stated that was correct and the owner of 1013 Scott Avenue was not present. They would have to allow people to drive over the alley for any existing, legal access to any adjoining property and a property owned by Polk County.

Mike Simonson stated he fears cars will end up being parked in the driveway and block access because that is what's happening now. How would this solve that issue.

Mike Ludwig stated the easement would be enforceable as a private matter between property owners. If one-half of the alley was conveyed to each adjoining owner, the owners would have to work together to construct the driveway. The owner of 1003 Scott Avenue has expressed concern about the cost of providing a separate drive approach for their property.

John "Jack" Hilmes asked for the customary width for a residential driveway.

Mike Simonson stated it would be more than 8 feet.

Mike Ludwig stated the minimum is typically 9 feet but most are 10 feet or more.

Greg Wattier stated he thinks it would be best not to do an easement and make it clear that both parties have the option to buy half.

Mike Ludwig stated they need an easement regardless because access must be maintained to the Polk County parcel.

Greg Wattier asked if the easement would come from Scott or Shaw Avenue?

Mike Ludwig stated they recommend it comes from Scott based on the current grade, vegetation and fencing.

David Courard-Hauri stated he's nervous about vacating an alley when people that use it are opposed.

Will Page stated he was opposed to vacation this public right of way as well.

John "Jack" Hilmes stated that's what the easement is for.

Emily Webb asked why it can't remain public access.

Mike Ludwig stated Council initiated the vacation and public access would be provided via an easement.

Greg Jones asked what the use is for the Polk County Property.

Mike Ludwig stated from the aerial it appears to be vacant. He was not aware of any historical use of the property.

CHAIRPERSON CLOSED THE PUBLIC HEARING

COMMISSION ACTION:

Mike Simonson made a motion to deny the council initiated request to vacate the alley. However, if Council decides to vacate the alley right-of-way, the vacation should be subject to a 16-foot wide access easement to provide vehicular access from the Scott Avenue to 1003 Scott Avenue, 1013 Scott Avenue and to the Polk County parcel.

Motion passed: 9-2

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:tjh
Attachments