

Date June 5, 2006

WHEREAS, the City Plan and Zoning Commission has advised in the attached letter that at a public hearing held May 18, 2006, the members recommended by a vote of 10-1 for **APPROVAL** of a request from Michelle Kleiber (owner) 122 56th Street, for vacation and conveyance of an undeveloped 14 feet-wide segment of Terrace Drive extending from 56th Street to a point 150 feet to the west, subject to the reservation of an easement for all existing utilities.

MOVED by _____ to receive and file, and to refer to the City Manager for further processing in accordance with standard City property disposition procedures.

FORM APPROVED:

Roger K. Brown
 Roger K. Brown
 Assistant City Attorney

(11-2006-1.09)

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

Request from Michelle Kleiber (owner) 122 56 th Street, for vacation and conveyance of public right-of-way.			File #	
			11-2006-1.09	
Description of Action	Vacate and convey an undeveloped 14 feet-wide segment of Terrace Drive from 56 th Street to a point 150 feet to the west.			
2020 Community Character Plan	Low-Density Residential.			
Horizon 2025 Transportation Plan	No Planned Improvements.			
Current Zoning District	"R1-80" One-Family Residential District.			
Proposed Zoning District	N/A.			
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition
Inside Area				
Outside Area	0	7	0	N/A
Plan and Zoning Commission Action	Approval	10-1	Required 6/7 Vote of the City Council	Yes
	Denial			No

Michele Kleiber - 122 56th Street

11-2006-1.09



June 5, 2006

Date _____

Agenda Item 21

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 May 18, 2006, the following action was taken:

COMMISSION RECOMMENDATION:

After public hearing, the members voted 10-1 as follows:

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

APPROVAL of a request from Michelle Kleiber (owner) 122 56th Street, for vacation and conveyance of an undeveloped 14 feet-wide segment of Terrace Drive extending from 56th Street to a point 150 feet to the west, subject to the reservation of an easement for all existing utilities. (11-2006-1.09)

Written Responses

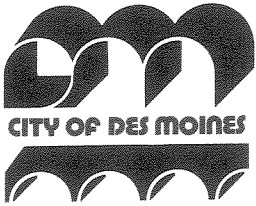
0 In Favor

7 In Opposition

This item would not require a 6/7 vote by City Council.

STAFF RECOMMENDATION AND BASIS FOR APPROVAL

Staff recommends approval of the requested right-of-way subject to the reservation of easement for all existing utilities.



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

STAFF REPORT

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is requesting to acquire and assemble an undeveloped segment of street right-of-way as part of the adjoining single-family residential property.
2. **Size of Site:** 14' x 150' (2,100 square feet).
3. **Existing Zoning (site):** "R1-80" One-Family Low-Density Residential District.
4. **Existing Land Use (site):** Undeveloped right-of-way.
5. **Adjacent Land Use and Zoning:**

North – "R1-80" Use is single-family dwelling.

South – "R1-80", Use is single-family dwelling.

East – "R1-80", Use is Hanawalt Elementary School.

West – "R1-80", Use is single-family dwelling.

6. **General Neighborhood/Area Land Uses:** The subject right-of-way is in a predominantly single-family neighborhood just south of Grand Avenue.
7. **Applicable Recognized Neighborhood(s):** Westwood Neighborhood.
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. **Natural Site Features:** The subject right-of-way contains the applicant's driveway and vegetation. The right-of-way slopes downward towards the west and appears to be part of the applicant's yard.
2. **Utilities:** Staff is not aware of any utilities located in the subject right-of-way. Staff recommends that an easement be maintained if any utilities are identified.
3. **Traffic/Street System:** The subject right-of-way is not utilized for vehicular traffic. It is staff's understanding that the right-of-way has historically been used as a pedestrian "cut-through" providing access to Hanawalt Elementary School. The subject right-of-way is not apart of the City's school route sidewalk system. The City Traffic & Transportation Division has indicated that reasonable alternative routes to the school exist and that it is not necessary to maintain this right-of-way for public access.
4. **Access or Parking:** The applicant uses the subject right-of-way for access. All adjoining properties are accessed from 56th Street or the developed portion of Terrace Drive.

SUMMARY OF DISCUSSION

This item was removed from the Consent agenda for discussion.

Jason Van Essen: Presented staff report and recommendation. Presented aerial photos and explained the location of the subject right-of-way, noting the applicant's driveway is in the subject right-of-way and it has been there for 30 years. Noted there were signed consent forms from the two adjoining property owners. Indicated it was the understanding of staff that the right-of-way was not utilized for vehicle traffic and has, over time been used as a pedestrian cut-through. Discussions regarding how it fit into the school route system indicated it is not a designated route and that Engineering staff did not see a need to make it a developed pedestrian connection. The grades and width of it would hinder the development of an improved pedestrian route. For it to be an improved public facility it would need to be ramped, which would be difficult and expensive because of the slope. He did not know how many children utilized it, but indicated the applicant communicated in their application that the subject right-of-way was not used. Noted prior to 30 years ago the driveway was on the north side of the house but has since been moved. The area is now part of the yard with a patio and there is no longer a curb cut. The driveway goes back and stops and then it is grass beyond that ending at Terrace Drive. The gravel stops at the back of the house and the remainder is grass and vegetation. Suggested to utilize it as pedestrian access would require going through the applicant's yard to get back on the right-of-way because of the overgrowth. Noted Traffic and Transportation indicated there were reasonable alternative school routes and presented the school route map, noting the designated routes are the collector system, which is where it is believed children will come together to funnel in and walk to school. Traffic and Transportation commented that there are other school routes that are greater distances and in the scope of the big picture they did not see this to be unreasonable compared to distances other children are walking in other parts of the city.

Lou Hockenberg, 6601 Westown Parkway: Spoke on behalf of the applicant. Explained the driveway was there when she bought the property and the City allowed her to put an apron in and it has been used as a driveway since 1981. Indicated the reason for the request is to hard surface the driveway and build a garage. Noted the area to the west is Terrace Road and there are one or two children that live on that street that go to Hanawalt School. The applicant has maintained the property and no one else has ever used it. Requested vacation pursuant to the staff recommendations, which they agree to.

CHAIRPERSON OPENED THE PUBLIC HEARING

There was no one in the audience to speak in favor of the request.

The following individuals spoke in opposition of the request:

John Massolini, 5620 Terrace Drive: Indicated it was agreed the right-of-way could be used as long as the kids could access it. Noted he would accept the maintenance of it if necessary. Noted the children would have to walk in excess of 2200 feet if the right-of-way was not available. Felt the property belonged to the community, Terrace Drive, 56th Street and 56th Place.

Bruce Heilman: Noted the subject area was designated as a street right-of-way. Asked if the people would object to the City putting a street in there.

John Massolini: Noted they are not trying to get cars down there, but are trying to maintain pedestrian traffic, especially for the children walking to school. Hanawalt, Roosevelt and Merrill students all use the right-of-way. Indicated the people would object to a street being put in there.

Jim Scott, 5616 Terrace Drive: Was told there was not an easement there when he bought his property. The primary purpose of the right-of-way was to allow children a way to get to school.

Jeffrey Johannsen joined the meeting at 6:24 p.m.

Lou Hockenberg: Noted the use by anyone other than the applicant is infrequent. The applicant only wants to own the property so she can use it as it has been used for 30 years. Due to overgrown trees etc., pedestrians have to cross onto his client's property to access the right-of-way.

CHAIRPERSON CLOSED THE PUBLIC HEARING

Brook Rosenberg: Asked if the school system was mailed a notice on the request.

Mike Ludwig: The school district was not notified and he was not aware of them ever inquiring about the subject land for school use.

Roger Brown: Noted that adverse possession does not generally run against right-of-way, which the subject land is dedicated as. As long as it is dedicated as right-of-way, the public has the right to use it as it is. To place improvements on it would require approval from the City to comply with the law.

Brook Rosenberg moved staff recommendation.

Motion passed 10-1 (Dann Flaherty was in opposition).

Mike Ludwig: Noted the recommendation will be forwarded to the City Council for their June 5, 2006 meeting. Comments can be made to City Council at that time.

Roger Brown: Noted vacations are normally on the Consent Agenda at City Council. If they are convinced not to proceed, staff will need to know.

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:dfa

Attachment

Item 11-2006-1.07

Date 5/11/06 21

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

(Circle One)

RECEIVED

MAY 17 2006

COMMUNITY DEVELOPMENT
DEPARTMENT

Print Name JERRY L. BENNETT
Signature [Handwritten Signature]
Address 5619 TERRACE DR.

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

Residents, especially school children, need a way to get from 58th St. to 56th St. legally without trespassing. Without this strip they may need to go blocks to get to their destination.

Item 11-2006-1.09

Date 5-13-06

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

(Circle One)

RECEIVED

MAY 16 2006

COMMUNITY DEVELOPMENT
DEPARTMENT

Print Name Donna Duelling
Signature [Handwritten Signature]
Address 5707 Terrace Dr

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

Item 11-2006-1.01

Date 5-16-06

21

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

RECEIVED

MAY 18 2006

COMMUNITY DEVELOPMENT DEPARTMENT

Print Name KENT NECHOLS

Signature [Signature]

Address 130 Nechols

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

No PRIVATE OR PUBLIC EGRESS FROM 56th TO TERRACE DR - TO 58th DR. WE also think they should just put in the sidewalk.

Item 11-2006-1.09

Date 5-14-06

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

RECEIVED

MAY 17 2006

COMMUNITY DEVELOPMENT DEPARTMENT

Print Name JOHN MASOLINI

Signature [Signature]

Address 5621- TERRACE Drive

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

The rightaway belong to the neighborhood of Terrace Dr + 58th + beyond. The ones who can use it to go to school or just use it for a walk. If that spit was taken away its a long walk to school. If anything a sidewalk should be put in for all to use. That was suppose to be there years ago.

Item 11-2006-1.09

Date 5-15-06 21

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

(Circle One)

RECEIVED

MAY 18 2006

COMMUNITY DEVELOPMENT DEPARTMENT

Print Name Brian J. Rogers

Signature *Brian J. Rogers*

Address 5615 Terrace Dr.

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

I think the sidewalk should be extended
from Ferrrace Dr on through to 56th St
so children in our neighborhood have more
direct access to the near-by grade school.

Item 11-2006-1.09

Date 5-12-06

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

(Circle One)

RECEIVED

MAY 18 2006

COMMUNITY DEVELOPMENT DEPARTMENT

Print Name MARVIN L. Neiderheiser

Signature *Marvin L. Neiderheiser by Bonnie L. Neiderheiser*

Address 5703 Terrace Dr.

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

Opposed because it will eliminate the
access to Hanawalt School by the
children in the neighborhood.