



Roll Call Number

Agenda Item Number

25

Date October 2, 2023

RECEIVE AND FILE COMMUNICATION FROM THE PLAN AND ZONING COMMISSION REGARDING REQUEST FROM THIKRA MADHAWI (OWNER), FOR VACATION OF APPROXIMATELY 160 LINEAL FEET OF THE REMAINING UNDEVELOPED NORTH/SOUTH ALLEY RIGHT-OF-WAY LOCATED IN THE VICINITY OF 1013 SCOTT AVENUE IN THE BLOCK BOUNDED BY SHAW STREET TO THE SOUTH, SOUTHEAST 11TH STREET TO THE EAST, MAURY STREET TO THE NORTH, AND SOUTHEAST 10TH STREET TO THE WEST

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on September 21, 2023 its members voted 8-0 to recommend **APPROVAL** of a request from Thikra Madhawi (Owner) for vacation of approximately 160 lineal feet of the north/south alleyway located in the vicinity of 1013 Scott Avenue, and bounded by Shaw Street to the south, Southeast 11th Street to the east, and Southeast 10th Street to the west, to allow the vacated area to be assembled and maintained for private use, subject to the following conditions:

1. Reservation of any necessary easements for any existing utilities until such time that they are abandoned or relocated at the applicant's expense.
2. Reservation of an easement for access to the Polk County owned parcel #040/00033-000-000 from the adjoining public street network.
3. Provision of a no-build easement for the benefit of the existing garage on the property at 625 SE 10th Street unless the owner of that property purchases an adjoining segment of the alley that is large enough to satisfy Building Code separation requirements. Should that owner purchase a segment of the alley then it must be joined with their existing lot to the satisfaction of the Permit and Development Administrator.

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

SECOND BY _____.

APPROVED AS TO FORM:

/s/ Chas M. Cahill

Chas M. Cahill
Assistant City Attorney

(ROWV-2023-000009)



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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				

MOTION CARRIED

APPROVED

CERTIFICATE

I, Laura Baumgartner, 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 26, 2023

Communication from the City Plan and Zoning Commission advising that at their September 21, 2023 meeting, the following action was taken regarding a request from Thikra Madhawi (owner), for vacation of 160 lineal feet of the north/south alleyway located in the vicinity of 1013 Scott Avenue, and bounded by Shaw Street to the south, Southeast 11th Street to the east, and Southeast 10th Street to the west, to allow the vacated area to be assembled and maintained for private use.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 8-0 as follows.

Commission Action:	Yes	Nays	Pass	Abstain	Absent
Francis Boggus	X				
Leah Rudolphi					X
Carol Maher	X				
Abby Chungath	X				
Kayla Berkson					X
Chris Draper					X
Todd Garner					X
Johnny Alcivar					X
Justyn Lewis	X				
Carolyn Jenison	X				
William Page	X				
Andrew Lorentzen	X				
Emily Webb					X
Katie Gillette					X
Rick Trower	X				

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.
3. Provision of a no-build easement for the benefit of the existing garage on the property at 625 SE 10th Street unless the owner of that property purchases an adjoining segment of the alley that is large enough to satisfy Building Code

separation requirements. Should that owner purchase a segment of the alley then it must be joined with their existing lot to the satisfaction of the Permit and Development Administrator.

STAFF 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.
3. Provision of a no-build easement for the benefit of the existing garage on the property at 625 SE 10th Street unless the owner of that property purchases an adjoining segment of the alley that is large enough to satisfy Building Code separation requirements. Should that owner purchase a segment of the alley then it must be joined with their existing lot to the satisfaction of the Permit and Development Administrator.

STAFF REPORT TO THE PLANNING COMMISSION

1. **Purpose of Request:** The applicant owns the property at 1013 Scott Avenue. They are requesting the vacation of the southern portion of the north-south alley right-of-way south of their property and the previously vacated segment of alley right-of-way adjoining their property. In 2019, the applicant had previously requested the entirety of the alley right-of-way to be vacated. The southern portion of the alley ROW was not vacated to allow continued access to the Polk County owned parcel #040/00033-000-000.
2. **Size of Site:** Approximately 3,200 square feet (20 feet by 160 feet).
3. **Existing Zoning (site):** "ROW" Right-of-Way.
4. **Existing Land Use (site):** Public alley ROW that is undeveloped and overgrown with voluntary trees.
5. **Adjacent Land Use and Zoning:**
 - North** – "N3c"; Use is paved drive access for a one-household dwelling.
 - East** – "N3c", Uses are one-household dwellings.
 - West** – "N3c"; Uses are one-household dwellings.
 - South** – "N3c"; Uses are one-household 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.

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7. **Applicable Recognized Neighborhood(s):** The subject property is in the Historic East Village Neighborhood. All neighborhood associations were notified of the public hearing by emailing of the Preliminary Agenda on September 1, 2023 and the Final Agenda on September 15, 2023. Additionally, separate notifications of the hearing for this specific item were mailed on September 11, 2023 (10 days prior to the public hearing) to the primary titleholder on file with the Polk County Assessor for each property adjacent to the request right-of-way.

All agendas are mailed to the primary contact person designated to the City of Des Moines Neighborhood Services Department by the recognized neighborhood association. The Historic East Village Neighborhood notices were mailed to Luke Dickens.

8. **Relevant Zoning History:** 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 owner has requested the entire width of ROW adjoining their property be conveyed to them.

On May 2, 2019, the Commission recommended denial of the request.

On May 20, 2019, by Roll Call No. 19-0793, the City Council approved the vacation of the northern portion of the north-south alley right-of-way located west of and adjoining 1013 Scott Avenue.

9. **PlanDSM: Creating Our Tomorrow Land Use Plan Designation:** Low-Medium Density.

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 subject area. Should any exist in place, the City must reserve easements for any public utilities.



3. **Building Code:** The existing detached garage at 625 SE 10th Street is built to the rear property line. The building code allows ROW to satisfy building separation requirements. Once the alley is vacated it no longer satisfies this requirement. Therefore, a no-build easement must be provided unless the owner of that property purchases their half of the alley. If they purchase their half, then they will need to combine it with their existing parcel or enter into a lot tie agreement. This would keep the properties from being sold separately.

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SUMMARY OF DISCUSSION

Bert Drost presented staff report and recommendation.

Rick Trower asked for the meaning of a no-build easement.

Bert Drost stated building code requires any building to be at least 5-feet from a property line for fire code purposes. This would ensure no other buildings get built too close to the existing shed.

Thikra Madhawi, 1013 Scott Avenue stated this is her second time requesting vacation of the alley with the first time being in 2019. She's requesting to purchase the alley, along with the portion that belongs to Polk County, so she can maintain the area that has been overgrown.

Francis Boggus asked if she disagrees with any of the 3 conditions in the staff recommendation.

Thikra Madhawi stated she agrees with the recommendation.

Abby Chungath stated the recommendation tonight is to determine whether the alley is needed for public purposes. The commission doesn't decide who gets to purchase the alley.

Jason Van Essen stated vacation of an alleyway is a 2-step process. First, the commission needs to determine if the alley is needed for public purposes, if it's not, the City Council can then vacate it and sale it. This commission is charged with the decision of the alley being needed for public purposes.

Carol Maher asked if this commission would make recommendations for the property owned by Polk County.

Abby Chungath stated Polk County would handle that request, not the City.

CHAIRPERSON OPENED THE PUBLIC HEARING

No one was present or requested to speak.

CHAIRPERSON CLOSED THE PUBLIC HEARING



COMMISSION ACTION:

Francis Boggus made a motion for 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.
3. Provision of a no-build easement for the benefit of the existing garage on the property at 625 SE 10th Street unless the owner of that property purchases an adjoining segment of the alley that is large enough to satisfy Building Code separation requirements. Should that owner purchase a segment of the alley then it must be joined with their existing lot to the satisfaction of the Permit and Development Administrator.

THE VOTE: 8-0

Respectfully submitted,



Jason Van Essen, AICP
Planning & Urban Design Administrator

JMV:tjh



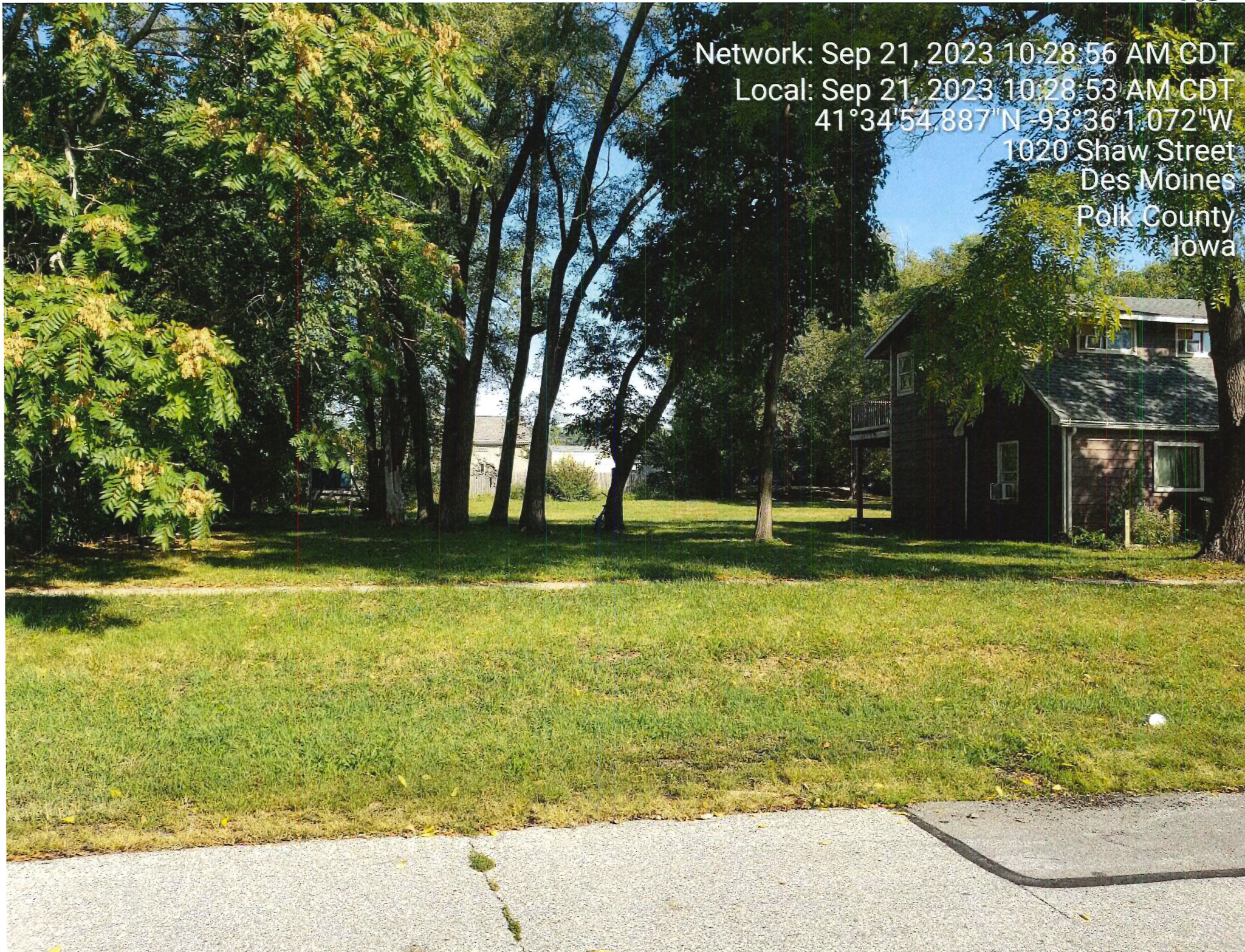
Network: Sep 21, 2023 10:27:53 AM CDT
Local: Sep 21, 2023 10:27:51 AM CDT
41°34'58.405"N -93°36'1.871"W
1012 Scott Avenue
Des Moines
Polk County
Iowa



Network: Sep 21, 2023 10:28:02 AM CDT
Local: Sep 21, 2023 10:28:00 AM CDT
41°34'58.251"N -93°36'2.523"W
1012 Scott Avenue
Des Moines
Polk County
Iowa



Network: Sep 21, 2023 10:28:56 AM CDT
Local: Sep 21, 2023 10:28:53 AM CDT
41°34'54.887"N -93°36'1.072"W
1020 Shaw Street
Des Moines
Polk County
Iowa



From: [Bret Vandelune](#)
To: [Dostart, Katherine E.](#)
Cc: [Rachelle A. Martin](#)
Subject: RE: Vicinity of 1013 Scott Avenue Right of Way Vacation Request
Date: Thursday, September 14, 2023 11:13:51 AM
Attachments: [image001.png](#)
[image002.png](#)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Katherine,

Thanks for the direct contact. We got the letter notice in the mail yesterday as well but sometimes those go the incorrect person.

As for the request. It seems odd that the alleyway would not be vacated to one or both of the directly adjacent property owners. As for our tax sale parcel we will reach out to try to sell it to the relatively new owner at 1020 Shaw St as the adjacent owner. The previous owner could not acquire it because they had been delinquent in their property taxes according to notes in our real estate files.

Thanks,

Bret Vandelune
Planning and Development Manager
Polk County Public Works
5885 NE 14th Street
Des Moines, IA 50313
P 515.286.2290
bret.vandelune@polkcountyiowa.gov



From: Dostart, Katherine E. <KEDostart@dmgov.org>
Sent: Wednesday, September 13, 2023 2:59 PM
To: Bret Vandelune <Bret.Vandelune@polkcountyiowa.gov>
Subject: Vicinity of 1013 Scott Avenue Right of Way Vacation Request

You don't often get email from kedostart@dmgov.org. [Learn why this is important](#)

Hi Bret,

