

**MINUTES**  
**July 9, 2013 – 5:30 p.m.**  
**Planning and Zoning Commission**  
**Muscatine City Hall**  
**City Council Chambers**

**Present:** Dyann Roby, Jane Reischauer, Allen Harvey, David Colton, and Larry Wolf.

**Excused:** George Fisher and Rochelle Conway.

**Staff:** Steve Boka, Director, Community Development  
 Andrew Fangman, City Planner, Community Development  
 Stephanie Oien, Office Coordinator, Community Development

Acting Chairperson Allen Harvey opened the meeting at 5:30 p.m. and read the Mission Statement.

**Minutes:** Minutes of the May 14, 2013, regular meeting were discussed. No official meeting was held as there were not enough members present for a quorum.

**Vacation:**

**Alley Right-of-Way Vacation request No. V-111 – Behind Lots 1-3, Block 2, Burnside 2<sup>nd</sup> Addition – Daniel & Cynthia Clark.** Dan and Cynthia Clark of 305 Burnside Avenue were present to discuss their request. Mr. Clark explained that they own property on both sides of the unimproved alley right-of-way (R.O.W.). They would like to construct a garage on the empty lot. City Code does not allow for accessory buildings to be constructed on a lot without a residence. The Clarks wish to purchase the R.O.W. and connect the parcels in order to build a garage on the rear parcel. They have offered to purchase the entire R.O.W. should the remaining adjacent property owners not wish to do so. Reischauer asked if they would use the driveway off Burnside Avenue to reach the proposed garage. Mr. Clark replied that they would extend the existing driveway to serve the new garage. Dennis Schroeder, 301 Burnside Avenue, submitted a written statement objecting to paying for the property. Junior Castillo, 303 Burnside Avenue, contended that he should not have to pay for land that he has already been maintaining. Mr. Castillo also stated that he would like to keep the land. Roby asked staff what was past practice. Boka responded that the City doesn't want surplus property. Action for disposing of such goes before the Planning & Zoning Commission and then to City Council. In selling surplus property, the City will not create a parcel that is landlocked. Boka explained that the Clarks cannot build a garage on a detached lot. The detached lot has no frontage on a city street and therefore is not buildable. He noted that adjacent property owners are not required to purchase the property, however the intent is to dispose of all of it. The Clarks could buy the whole alley R.O.W. if the adjacent owners do not wish purchase their portion. He stated that the rate for selling City property is \$1.05 per square foot and has been since 2004. Boka explained that City Council will make the determination as to whether the property should be sold and at what rate. In the past, Council has sold surplus property but not given it away. Mr. Schroeder asked if the Clarks could build and still cross the alley as they are using it now. Boka replied that the house has to be on

the same lot. A building permit cannot be issued for a garage to be constructed on a vacant lot per the Zoning Ordinance. Harvey noted that it falls in the hands of City Council to make sure the property to be sold is not vacated with remnants. Roby motioned to approve vacating all three portions of the alley lots as presented, making sure none become landlocked; seconded by Wolf. All present voted aye.

**Utility Easement Vacation request No. V-112 – Lots 9 & 10 Riverbend 2<sup>nd</sup> Addition – Keer Wilson and William “Bill” Allen.** Keer Wilson and Bill Allen were present to discuss their request. Boka explained that the Wilsons wish to build across the lots. The engineer working for them had the utilities signed off and recorded the plat but forgot to go through Planning and Zoning Commission and City Council. He stated that notices have been sent to adjacent property owners and the utility companies have already signed off on the request. Harvey asked if the lots will be combined. Boka responded that they will need to be combined and it will be taken care of as part of the permit issuance. Wolf motioned to approve the request; seconded by Reischauer. All present voted aye.

**Other:**

**Comprehensive Plan.** Fangman stated that the Comprehensive Plan draft has been sent out to Council members. City Council will decide how they wish to proceed with the review.

**Election of Officers.** George Fisher submitted his resignation as of June 30, 2013. Staff will look for someone to replace him. The general consensus was to wait until the August meeting to elect officers. It is hoped that everyone will be present.

Adjourn.

Respectfully Submitted,

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Steven Boka, Secretary  
Director of Community Development

ATTEST:

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Allen Harvey, Acting Chairperson  
Planning & Zoning Commission

**July 8, 2013      Subject: Vacation of alley right-of-way.**

Thank you for the opportunity to offer input on this issue. **My name is Dennis E. Schroeder**, I live at 301 Burnside Avenue which is two houses downhill from Cindi and Dan Clark. I received notification on July 5<sup>th</sup> as to the public meeting being held here this evening.

The 20 feet wide alley right-of-way in reality exists only on plat maps. The alley was never constructed and the subdivision was never completed. The 20x50 feet segment has been used as part of my back yard since 1930 which could be viewed as a benefit. On the other hand the area has been maintained for 83 years by preceding owners and for the past eleven years by me. When I purchased the property I had no idea that an easement existed until I saw the plat map at the closing. It wasn't a deal breaker but I really did not like the idea that the last 20 feet of my backyard was a city easement area and thereby has certain constraints on how it may be utilized. The right-of-way has over the years become simply a part of each adjacent landowner's back yards with landscaping, retaining walls, bushes and in my case a very large oak tree. Realistically there is no accessibility from either end of the right-of-way since it dead ends half way across my property.

Ten years ago I inquired at the city engineer's office if the city would consider deeding to me the right-of-way. I naively thought it would benefit both me and the city so it would be a slam dunk. I figured that the city would get increased tax revenue in perpetuity and I would have outright ownership of the 1000 square feet of land rather than have a city easement on my title. I had been informed by my brother in law that the city had in the past offered some alley rights-of-way to adjacent property owners for \$1.00 if they would accept responsibility for maintenance. The city engineer informed me that under existing rules I would have to get an okay from the council and pay over \$1000 (\$1.05 per sq. foot) for title to the right-of-way. I opined that the area was useless to the city and since I was maintaining it anyhow why would I pay \$1000. The added value to my lot would be minimal but the transaction would clean up my title and rid the city of an unusable plot of land. I also pointed out that there is a large oak tree on the alley right of way that will require maintenance sooner or later. His response was



"just let us know if we need to do anything regarding the tree". The city engineer pointed out that I am required to maintain the area between the sidewalk and the street so maintaining the alley right-of-way was a similar situation. I believe his comparison was incorrect. As far as I know I could erect a fence between my land and the alley and the city would then be responsible for maintenance of the right-of-way. Not that I would do such a thing but it is plausible.

I worked for the federal government for 29 years in areas that included rights-of-way permitting and administration, recreation area management, land leasing and grazing agreements, and working with distressed land owners who felt the, at times, heavy hand of the federal government's rules and regulations. I was advised on more than a few occasions by subordinates, peers, and sometimes supervisors that "we can't set a precedent" and my response was usually "why not". My feeling was that as civil servants we were getting paid to make reasonable and responsible decisions, not just go by the book. There are ways to deal with special circumstances. I say that only to encourage you to consider the situation at hand. This issue, in my opinion, requires special consideration. There should be mutual benefits to the city and the adjacent landowners, a win/win solution. In the letter I received it indicates "the intent is for the adjacent properties to purchase the property". While I sympathize with the Clark's situation I fail to understand why the city would expect me to offer up \$1000 plus for a land area on which the city has never spent a penny and probably never will, unless of course the oak tree previously mentioned dies and becomes a hazard to my house.

I suggest the city consider the long term advantage of selling at a minimal cost (\$1.00) or even quit claiming the alley right-of-way to the 4 property owners involved. This alley is of no use to the city now or in the future. I support Dan and Cindi's desire to build a garage on their property, but I don't care to spend \$1000 as part of the process nor do I think the other adjacent owners should be required to do so. I believe that the city should accept the future tax money, get rid of a useless right-of-way, dispense with the administrative responsibility and call it even. Thank you for your consideration of this matter.

*Respectfully, Dennis Schroeder*



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REDUCED COPY

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# AUDITOR'S PLAT BURNSIDE'S 2ND ADDITION MUSCATINE IOWA

Being a plat of the unplatted portion of O.L. 19, O.L. 20, and the northerly 140 ft. of O.L. 21, of Mrs. Auley's Subdiv. SW 1/4 Sec 24 T7N, R21W, S4EM, and also a replat of Burnside Addition, and Burnside's Subd. in O.L. 19.

March 1, 1930. I. Matheson, C.E.  
Scale - 1" = 100'

NOTE

AVIT Lot 2 Bk 1  
PAGE 645  
Recorder  
147

AVIT Lot 2 Bk 1  
PAGE 35  
Recorder  
147

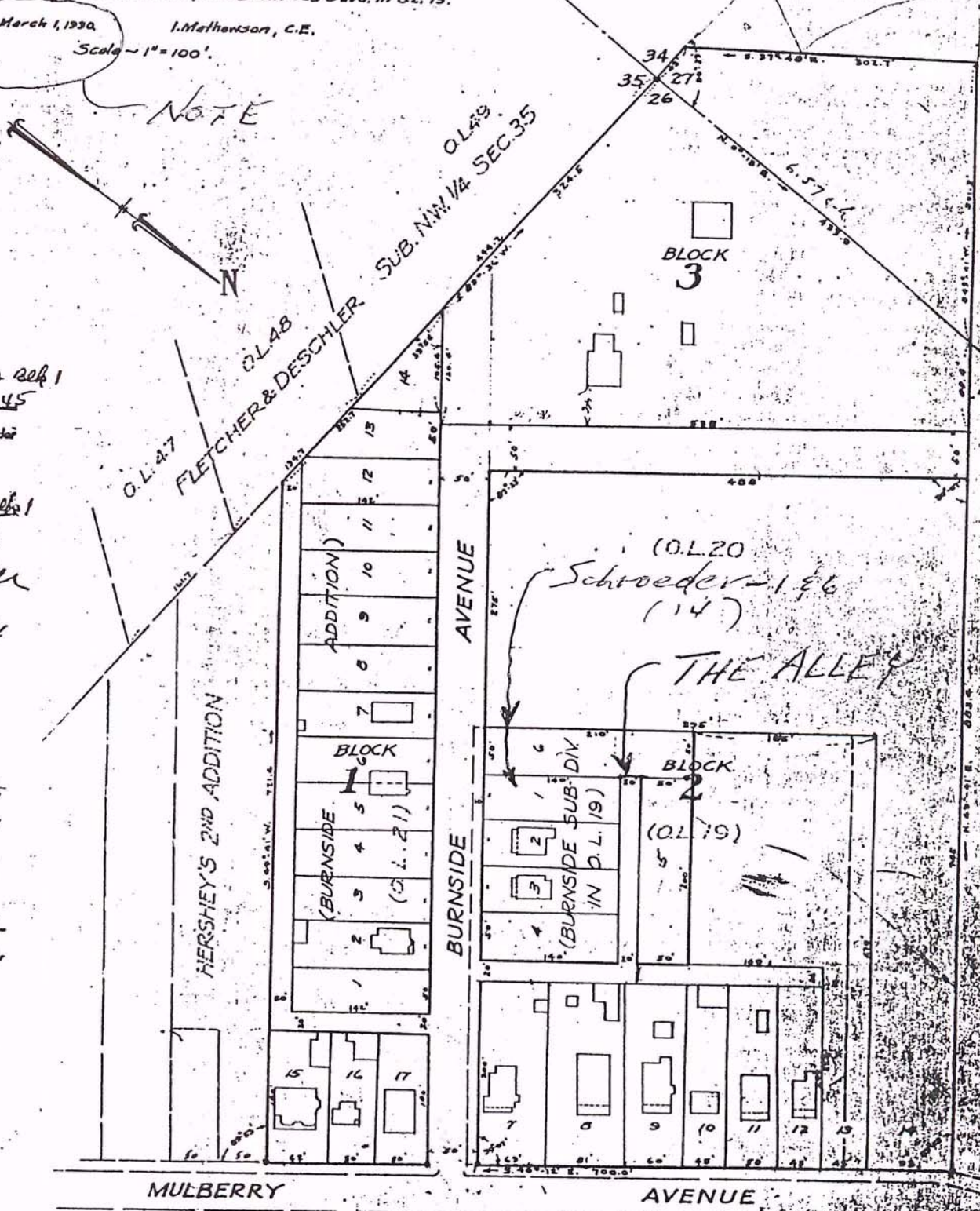
AVIT Lot 14  
PAGE 636  
Recorder  
147

AVIT  
PAGE 432  
Recorder  
147

AVIT  
PAGE 311  
Recorder  
147

AVIT  
PAGE 87

Recorder  
and Deputy



and for record the 16th day of August, A. D. 1930

at 1:30 O'clock P. M.  
G. O. Parks, Recorder