

APPROVED MINUTES
WATKINS CITY COUNCIL
PUBLIC HEARING
THURSDAY, MAY 13, 2021

Mayor Rowan called the hearing to order at 6:32 p.m. at City Hall.

MEMBERS PRESENT: Mayor Chris Rowan, Marc Wirz, Sue Unterberger, Brenda Carlson

MEMBERS ABSENT: Tootz Tschumperlin

Others: City attorney Boe Piras, Chuck Unterberger, Wayne Tschumperlin, Dave Hokanson, Kris Petermeier, Becky Berg, Wayne Lindberg, Duane Peterson, Karri Hokanson, Brian Teubert

Purpose of the hearing is to consider a proposed vacation of all or a portion of the platted but unconstructed 16-foot-wide alley extending north from 4th Street North/CSAH 2 and then traveling east/west, and located between Western Avenue North and Meeker Avenue North.

Mayor Rowan opened the floor for public comment.

Dave Hokanson: Why is the alley being considered for vacation?

Mayor Rowan: Why is the alley being considered for vacation? I guess, ah

Councilor Carlson: Per the meeting we had last month, just my opinion, what I got out of it, in the best interest of what we feel for everybody in the city is to vacate the easement and then leave it up to the property owners to decide how to handle it. An easement would put the property back to the original owners.

Dave Hokanson: Right, but that doesn't explain why this alley is being proposed to be vacated.

Councilor Carlson: I think, the best interest of the city and those associated with it, so that would be my reasoning for it.

Dave Hokanson: Why is this the only alley in town that's being proposed for vacation?

Councilor Carlson: This is the only one that has come up as an issue so I suppose if there's others that do come up we would consider those as well.

Dave Hokanson: So, it's simply because, from the sounds of it, is the property owner wanted to utilize that alley as a primary ingress and egress and then a way for the city to, not essentially, wash their hands of the issue is to vacate the alley? Otherwise, it never would have come up for vacation?

Councilor Wirz: As far as I'm concerned we don't want to be tied up in litigation on this thing ongoing, down the road. We don't think it's in the best interest of the city to have to invest money into improving that alley or continue to litigate over it. I think everything is better off letting it go back, like Brenda said, so the property owners, it becomes a property owner issue and removes the city from that equation.

Dave Hokanson: So, has the city determined who the original property owner is?

Councilor Wirz (and Carlson): Would happen after city makes a decision.

City attorney Boe Piras: The city doesn't take any part in that. It's just an operation of law and if there's, the auditor. So, we don't determine who, the city doesn't determine who [is the owner], but you stated the law correctly, it goes back to the original owner.

Dave Hokanson: So, I suppose none of that's determined right now as far as if the individual even wants the property? If that individual does not want the property and how this property is going to be split to the adjacent property owners, none of that's been determined yet? Voting to do it or not and then I take it from them? (A cell phone was ringing during this time and audio was not clear.)

Mayor Rowan: Yes.

Dave Hokanson: Doesn't seem like a very educated decision. Seems like you have part of the information. (Audio not clear again.)

Councilor Wirz: It's not our responsibility to figure out who it goes back to after that, is the way I'm understanding it, right? (Question directed to the city attorney.)

City attorney Boe Piras: Right.

Councilor Wirz: It's not our function of the city. It's back to the private land owner deal.

Councilor Carlson: So, at this point, if the easement is between the Bergs and Wayne and then across the back it would be up to one, or all of you, to go back through the legal documented with the county who owns the property.

Brian Teubert: Who would acquire the cost of removing the utility pole?

Councilor Wirz: Why would it have to be moved? We're not going anywhere. We're not putting an alley anywhere.

Mayor Rowan: If there were an alley there, the pole would be right in the middle of the alley.

Councilor Wirz (and Carlson): We're not putting an alley there.

Chuck Unterberger: Start talking about vacating the alley, that property goes all the way back to Mary Kramer. Maybe she is the one who owned that property when that alley was put in there.

Councilor Wirz: My understanding, if I'm correct, that if you can't determine the original property owner then it would get split evenly between the abutting property.

Chuck Unterberger: So, your saying

Councilor Wirz: Half would go this way, half would go that way, half would go that way, half would go that way. Am I correct on that? (Directing question to city attorney.)

City attorney Boe Piras: If you can't determine

Chuck Unterberger: If city took it from Mary Kramer, didn't take it from the Hokansons or Bergs or Tschumperlin.

City attorney Boe Piras: It would be the original property owner.

Brian Teubert: I didn't get a notification when that apartment building went up in that area back there. I just moved here a few years ago. Did everyone get notified that was going up?

Councilor Wirz: Probably not. I don't know if we had a reason to notify for that. It's a private entity. No different if you were going to build a house on a lot. We wouldn't have to notify.

Dave Hokanson: What's the go forward plan? If you decide and you vote to vacate the alley?

Councilor Wirz: We would vacate it and then land owners can figure it out from there I guess. Between land owner and land owner.

Karri Hokanson: When you vacate the land, aren't you suppose to reallocate the line?

Councilor Wirz: No, he (the attorney) said that's not a function of the city. After we vacate it you have to work with the county.

Councilor Carlson: So, once we vacate the easement, then the property just goes back to the land owner, and again

Karri Hokanson: Isn't an alley an easement though?

City attorney Boe Piras: It's essentially similar. The right to use the property. The city doesn't own the property. So, the city currently has a right to build the alley if they want to and if it vacates that right, then that right goes away. There's no fee ownership of that alley.

Chuck Unterberger: How is this going to affect all the other alleys in Watkins that are setting, there, people mowing or whatever? Is this going to affect any of the others? Many years ago, I requested the city to vacate all alleys to eliminate this type of problem. Wouldn't it behoove the city to do that? To vacate all the alleys and be rid of the problem rather than deal with this every time somebody decides, "Hey, I don't like that", you know.

Mayor Rowan: I guess that would be something to look at further or another day.

Councilor Wirz: I guess this one has come up because it's been a point of contention between property owners and it's been brought to us to deal with, so that's why we're looking at this one but

City attorney Boe Piras: Every vacation has to be analyzed specifically. You look at future use and benefit to the city for each specific one.

Chuck Unterberger: But there's a lot of alleys in Watkins.

Karri Hokanson: Yes, and I would imagine that we aren't the only people who had this issue or similar issues, you know. But if it's an alley or whatever you want to call it, who gets the right and how much right do they have? Because at this point 16 feet of all that goes to Randy. He's using for his own use on the north/south and east/west. So, he gets 100% of that? That doesn't seem right either. Do you know what I mean? He's using it for his own use. I'm sure stuff like that happens, not just with our case but also with other cases as well and that just creates problems for neighbors that doesn't need to happen.

Councilor Unterberger: This is the first time being a councilmember that this has been a problem.

Karri Hokanson: That's surprising. That's pretty surprising. That's good.

Karri Hokanson: Who is responsible for mowing and taking care of it? Can I do this? Can I do that? Most people can work it out but if you have someone who is using it all for himself and then doesn't want to give it up, that's where the contention really comes in. You know, it's not that anybody wants to do any of that, anger other people, it's just that we want access to our back property.

Councilor Carlson: Right, and that's the unfortunate part, there again is that there was approval given to build on the alleys at the time, so that's unfortunate too. Now again, like Marc said, we're dealing with it, trying to make it the best we can for everybody, but not everybody's going to be happy.

Karri Hokanson: I know that.

Councilor Carlson: It's unfortunate.

Karri Hokanson: There's going to be other things like that in the future. I hate to have anyone else go through this because this is a real pain in the arse for everybody.

Councilor Carlson: I agree, absolutely. I kind of want to know how many alleys are in Watkins.

Kris Petermeier: Wouldn't it just make more sense and wouldn't it save the city more money if they vacated all the alleys?

Mayor Rowan: Well, he (city attorney) said it's on a case-by-case basis, basically. We'd have to analyze each individual issue.

Kris Petermeier: Well, I get that but it makes kind of more sense to me instead of just singling one, you do them all.

Mayor Rowan: To my knowledge, this is the first time this has ever happened.

Becky Berg: When we moved into our property, everything was there. We had trees lining our property where we thought our property was. We have been taking care of the property since we moved in there and into the alleyway. Our garage which has always been there for who knows how long, I don't even know how long, since my grandparents owned the property back in the day and it's a half-foot off of what would be the alleyway so the alley is 16 feet, it's 7.5 feet into the alleyway. So, I mean, literally,

we would have a half-foot behind our house if only got half of it and there's really not enough room there to maintain it. If we needed to fix something on our garage we'd be on his property then.

Mayor Rowan: It's very unfortunate how this is playing out.

Becky Berg: And I don't know how it would go back to the original property owners if they're passed or deceased and how it was split up and which lots were lotted off first. Were they all lotted off at the same time or was one or two and the rest lotted off? Does the city or does the county know that?

Councilor Wirz: That's something you're going to have to go to the county, I would assume, and work with them on it. They're going to have to go back in their records and look at plats and when things were developed and that's going to be a county

Mayor Rowan: I thought I read somewhere one time if a building had been, like you know what she's got there, you know for so many years it's just kind of grandfathered in type of thing? I don't know if that's the right term but

City attorney Boe Piras: So, we talked at the last meeting about, on all of the encroachments, benefit of all the encroachments over the easement. The property owners who have those encroachments could serve different claims against the city. Without talking about the merits of those, there are potential claims for Estoppel, things like that, that you could potentially, if you had the documents proving it, but you could assert those claims against the city. So, one of the benefits to the vacation is the city getting out of that area and then it's to the property owners to decide. So, you wouldn't be taking a claim against the city any more, you'd be working it out with the property owners.

Becky Berg: So, we'd have to get a lawyer and determine who gets it?

Karri Hokanson: So basically, the city wants to be out of it (multiple people talking at one time).

Dave Hokanson: Property owners hire attorneys. Doesn't seem very fair.

Councilor Wirz: In your case (referring to Becky Berg), you split that alley, theoretically splits, half is going to you and half's going to go to your property owner to the east.

Becky Berg: Right.

Councilor Wirz: Right, so the other option is what they want to do is to improve that alley and turn that alley into a road where your garage is.

Becky Berg: Right.

Dave Hokanson: It's not the garage, it's the driveway.

Councilor Wirz: Driveway, whatever you've got on that part. So, this way it's split and everybody's going to get a piece, assuming they can't determine an original land owner. That sounds like that will probably be the case but

Dave Hokanson: I do have the original plat at home and it's Mary Kramer's. It was done in 1916.

Chuck Unterberger gave a summary of former land owners.

Dave Hokanson: On the plat states that any alleys, roadways and easements need to remain as such forever.

Councilor Wirz: What was that? I didn't catch that.

Dave Hokanson: It states in the legal description of that plat from 1916 that all alleys, roadways and easements need to remain as such forever.

Councilor Carlson: I don't think anything remains as such forever, so

Dave Hokanson: I don't disagree with you. I'm just saying what the legality of the document, I'm just trying to give you guys all the information that we have, that I have, because if I get forcibly landlocked I am going to have to be forced to sue the city for violating my rights. So that's what will have to happen, if you choose to do so, because by law, you also need to financially compensate the individual you are forcibly landlocking. So, by not by saying you're not going to have any litigation or minimal litigation, there's going to be litigation either way because you are violating my rights by forcibly landlocking my property.

Councilor Unterberger: Which is exactly what you said the last time.

Councilor Carlson: Again, I don't think there's no happy solution here for everybody and you are going to do what's right for you and we'll just have to deal with the consequences, unfortunately.

Dave Hokanson: And like I stated several times at other meetings, I guess I would like to understand the justification or the thought process of how vacating an alley is more beneficial for the City of Watkins vs. allowing a piece of property, that's rather large, to be developed for the benefit of the city for hundreds and hundreds of years from this day forward. I guess I'd like to understand that, that thought process and how vacation is in the benefit of the city.

Councilor Wirz: I don't think it's in the financial interest of the city to build an access there, maintain an access where there isn't anything now.

Dave Hokanson: That's essentially like every other road that's been put it.

Councilor Wirz: No, because every other road doesn't serve the purpose of one citizen.

Dave Hokanson: It wouldn't serve the purpose of one citizen. It would serve the purpose of every adjacent property owner there.

Councilor Wirz: Why? Why does anybody else need a road right there? It's a detriment to your other property owners.

Dave Hokanson: That's their determination. (Audio unclear)

Councilor Wirz: That's my opinion. You asked my opinion. That's my opinion.

Mayor Rowan: Yeah, because to put that alleyway in, you'd have to take down part of the garage, right?

Councilor Carlson: No, a driveway.

Mayor Rowan: A driveway.

Councilor Wirz: You'd be putting a road right in between two property owners.

Becky Berg: You'd have to dig up the county road to put in. You'd have to change all the piping because there is no piping there to get any sort of utilities back there. You'd have to pull the power line pole. You'd have to rip up all the concrete and the curb because they put it in the wrong spot when they made the road and put that in the alleyway. So, it would cost more to maintain it and put the road in there than it would cost to get rid of it.

Dave Hokanson: I believe that's in the short-term. I don't believe that's in the long-term. Yes, it's going to be a chunk of money that would need to be spent in the short-term but in the long term, it's a ½ acre of grass that's undevelopable, which is of no benefit to the city as well. So, in short-term I don't have to agree with you, there's going to be some financial costs in the short-term but in the long-term there's a ½ acre of property in the middle of town that's undevelopable. (City Hall door is opening during this time and noise from outside makes it difficult to hear.)

Someone asked if there was a drain tile that runs through there and into the creek. It was confirmed there is for stormwater.

Becky Berg: When we put that drainage part in there two years ago to get rid of the water from back there, now where is the water going to go if you put a road in there? It's going to flood my garage and my house.

Dave Hokanson: No, it wouldn't. It would be lower than what your garage is.

Mayor Rowan asked if anyone hadn't spoken yet.

Duane Peterson: By keeping the alley there how much, who is all going to benefit from it? You can't even put a road in there. It's 16 feet wide, right?

Mayor Rowan: Correct, I think.

Duane Peterson: It's got to have a certain amount of width for the road, right?

Mayor Rowan: 16 feet.

Duane Peterson: How many property owners are going to benefit from keeping the alley there?

Councilor Wirz: Not even necessarily one if it's not improved. Nobody is going to benefit from it being there unless the city would improve that alley and turn it into a useable access. Is that what you're asking?

Duane Peterson: I'm just wondering how many people are gonna benefit from keeping the 16-foot road there.

Becky Berg: By putting the road in or

Duane Peterson: No. It's only got an easement for 16 feet. You can't build a road in 16 feet (the rest is inaudible).

Councilor Wirz: I guess I don't know Duane, what the rule is.

Duane Peterson: I mean it's gotta be a 2-way street. That isn't even 8 feet each way. I'm pretty sure there's specific occasions what kind of road has to be put in there.

Councilor Wirz: It'd have to be built to a certain standard I'm sure.

Mayor Rowan: That would be an engineering question.

Mayor Rowan: Anybody else?

With no further public comment, Mayor Rowan closed the public hearing.

MOTION BY WIRZ TO ADJOURN THE HEARING, SECONDED BY CARLSON. MOTION CARRIED.

Adjourned at 6:57 p.m.

Submitted by

Deb Kramer
Clerk

ATTEST:

Mayor Chris Rowan