

**CITY OF WEST DES MOINES
PLAN AND ZONING COMMISSION COMMUNICATION**

Meeting Date: November 7, 2016

Item: Whisper Ridge Buffer Vacation Plat 3, Lots 15-18, 9104, 9110, 9116 and 9124 Autumn Court – Vacate 30 foot buffer park easement along the rear (south) lot lines of Lots 15-18 Whisper Ridge Plat 3 – Hidden Creek, L.L.C. – VAC-003253-2016

Requested Action: Approval of a Vacation Requests

Case Advisor: J. Bradley Munford 

Applicant's Request: Hidden Creek, L.L.C., represented by Marcus Abels of Simpson, Jensen, Abels, Fischer and Bouslog, P.C. is requesting approval of the vacation of a 30 foot buffer park easement along the rear (south) lot lines of Lots 15-18 Whisper Ridge Plat 3.

History: The Whisper Ridge Plat 3 property was annexed into the City as a part of the 88th Street Annexation in 2000. The Preliminary Plat for this subdivision was approved by the City in 2013. The associated Final Plat was approved by the City on October 31, 2014.

The buffer easement in question was included in the platting of Whisper Ridge Plat 3 in order to be in compliance with Title 9, Chapter 19, Section 8, Subsection E, of the Zoning code. The code requires a rear yard 60 or 30 foot landscape buffer easements for single-family lots that have double frontage (both its front and rear lines abutting a public street or a private street). The rear of the lots in question abut Rockwood Lane - currently a private drive serving several single family homes, but anticipated to become a public or private street as areas to the west further develop. Within single family developments, buffer easements are in addition to the required rear yard setback. Lots 15-18 Whisper Ridge Plat 3 were platted with a 30 foot buffer easement and a 35 foot rear yard setback (Noted on the plat as a combined rear setback of 65 feet). The applicant was approached by a buyer that wanted to place a home on one of the lots but, the proposed home would be 12 feet over the rear yard setback. The applicant made staff aware of the situation and requested to vacate the buffer easement. The rationale for the applicant's request is that Rockwood Lane is currently a private drive which does not trigger the buffer requirement and current development does not generate traffic heavy enough for the buffer to be necessary.

City Council Subcommittee: This item was presented to the Development and Planning City Council Subcommittee on October 3, 2016. The Subcommittee expressed support of the proposed vacation as long as solid fences are not installed in the vacated buffer.

Staff Review and Comment:

- **Neighbors' Concerns:** The neighbors in the Hickory Knolls Place subdivision expressed concern with the proposal to vacate. Hickory Knolls Place is made up of 5 property owners that access their property from the Rockwood Lane private drive (Rockwood Lane becomes private at the intersection of S91st Street). Their concerns revolve around the point that Rockwood Lane from 88th street west was originally their private drive and that during the development of Whisper Ridge, they agreed to help with the development by allowing Whisper Ridge to access Rockwood Lane and turn the section between 88th street and 91st into a street public. They did this with the understanding that they would not see solid fences or accessory buildings because a buffer park easement was required by code for the lots that back to Rockwood Lane. In a letter that is attached at the end of this report, they state that if a buffer was not part of the understanding they would have voiced objection during the approval discussions for Whisper Ridge. They also stated that with everything considered, they would have no objection to this application if both fences and structure would not be allowed in the 30 foot buffer area.

Under the direction of the Subcommittee, staff is recommending a stipulation that restrict solid fences from the south 30 feet of lots 15-18.

- **Plat Documents:** The plat documents do note the rear yard setback for these lots as 65 feet from the property line (not 35 feet from the 30 foot buffer park). Staff consulted with the City Attorney's office questioning if the plat document would need to be modified as the resulting setback without a buffer would be different than indicated in the plat documents. The City Attorney indicated that modification of the plat would not be necessary and a 35 foot rear yard setback as noted in the Zoning Ordinance would be applied to the subject lots once the easement was vacated.

Comprehensive Plan Consistency: The project has been reviewed for consistency with the Comprehensive Plan. Based upon that review, a finding has been made that the proposed project is consistent with the Comprehensive Plan in that the project is consistent with all of the goals and policies of the Comprehensive Plan and the land use map of the Comprehensive Plan.

Staff Recommendations and Conditions of Approval: Based upon the preceding review and a finding of consistency with the Comprehensive Plan, staff recommends the Plan and Zoning Commission adopt a resolution recommending the City Council approve the Vacation Requests to vacate a 30 foot buffer park easement along the rear (south) lot lines of Lots 15-18 Whisper Ridge Plat 3, subject to the applicant meeting all City Code requirements and the following Conditions of Approval:

1. Fences that are more than 50% opaque are prohibited within the south 30 feet of Lots 15-18 Whisper Ridge Plat 3.

Noticing Information: On October 28, 2016, notice for the November 7, 2016, Plan and Zoning Commission and November 14, 2016, City Council Public Hearings on this project was published in the Des Moines Register. Notice of these public hearings was also mailed to those property owners adjacent to the areas subject to vacation on October 25, 2016 and November 3, 2016.

Property Owner/Applicant:

William Lowry
Hidden Creek, LLC
36539 Meadowbrook Circle
Cumming, Iowa 50061
Wklowry@aol.com

Applicant's Representatives:

Marcus F. Abels
Simpson, Jensen, Abels, Fischer & Bouslog, P.C.
400 Locust Street, Suite 400
Des Moines, Iowa 50309
Mabels@iowafirm.com

Attachments:

Attachment A	-	Plan and Zoning Commission Resolution
Exhibit A	-	Conditions of Approval
Attachment B	-	Location Maps
Attachment C	-	Letter from Hickory Knolls property owners

RESOLUTION NO. PZC -16-066

A RESOLUTION OF THE PLAN AND ZONING COMMISSION OF THE CITY OF WEST DES MOINES, RECOMMENDING TO THE CITY COUNCIL THAT IT APPROVE THE VACATION REQUEST (VAC-003253-2016) FOR THE PURPOSE OF VACATING A 30 FOOT BUFFER PARK EASEMENT ALONG THE REAR (SOUTH) LOT LINES OF LOTS 15-18 WHISPER RIDGE PLAT 3

WHEREAS, pursuant to the provisions of Title 7, Chapter 1 et seq, of the West Des Moines Municipal Code, the applicant, Hidden Creek, L.L.C, has requested approval of a Vacation Request (VAC-003253-2016) for a 30 foot buffer park easement along the rear (south) lot lines of Lots 15-18 Whisper Ridge Plat 3 and as legally described as follows:

All of the south 30 feet of Lots 15-18, Whisper Ridge Plat 3, , an Official Plat, now included in and forming a part of the City of West Des Moines, Polk County, Iowa.

WHEREAS, pursuant to City code, vacation of the buffer park easement will reduce the required set-back, as measured from the south property line of each lot, from 65 feet to 35 feet;

WHEREAS, studies and investigations were made, and staff reports and recommendations were submitted which is made a part of this record and herein incorporated by reference;

WHEREAS, on November 7, 2016, this Commission held a duly-noticed hearing to consider the Vacation Requests;

NOW, THEREFORE, THE PLAN AND ZONING COMMISSION OF THE CITY OF WEST DES MOINES DOES RESOLVE AS FOLLOWS:

SECTION 1. The findings, for approval, in the staff report, dated November 7, 2016, or as amended orally at the Plan and Zoning Commission hearing of November 7, 2016, are adopted.

SECTION 2. The VACATION REQUESTS are recommended to the City Council for approval, subject to compliance with all the conditions in the staff report, dated November 7, 2016, including conditions added at the Hearing. Violation of any such conditions shall be grounds for revocation of the permit, as well as any other remedy which is available to the City.

PASSED AND ADOPTED on November 7, 2016.

Craig Erickson, Chair
Plan and Zoning Commission

ATTEST:

Recording Secretary

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Plan and Zoning Commission of the City of West Des Moines, Iowa, at a regular meeting held on November 7, 2016 by the following vote:

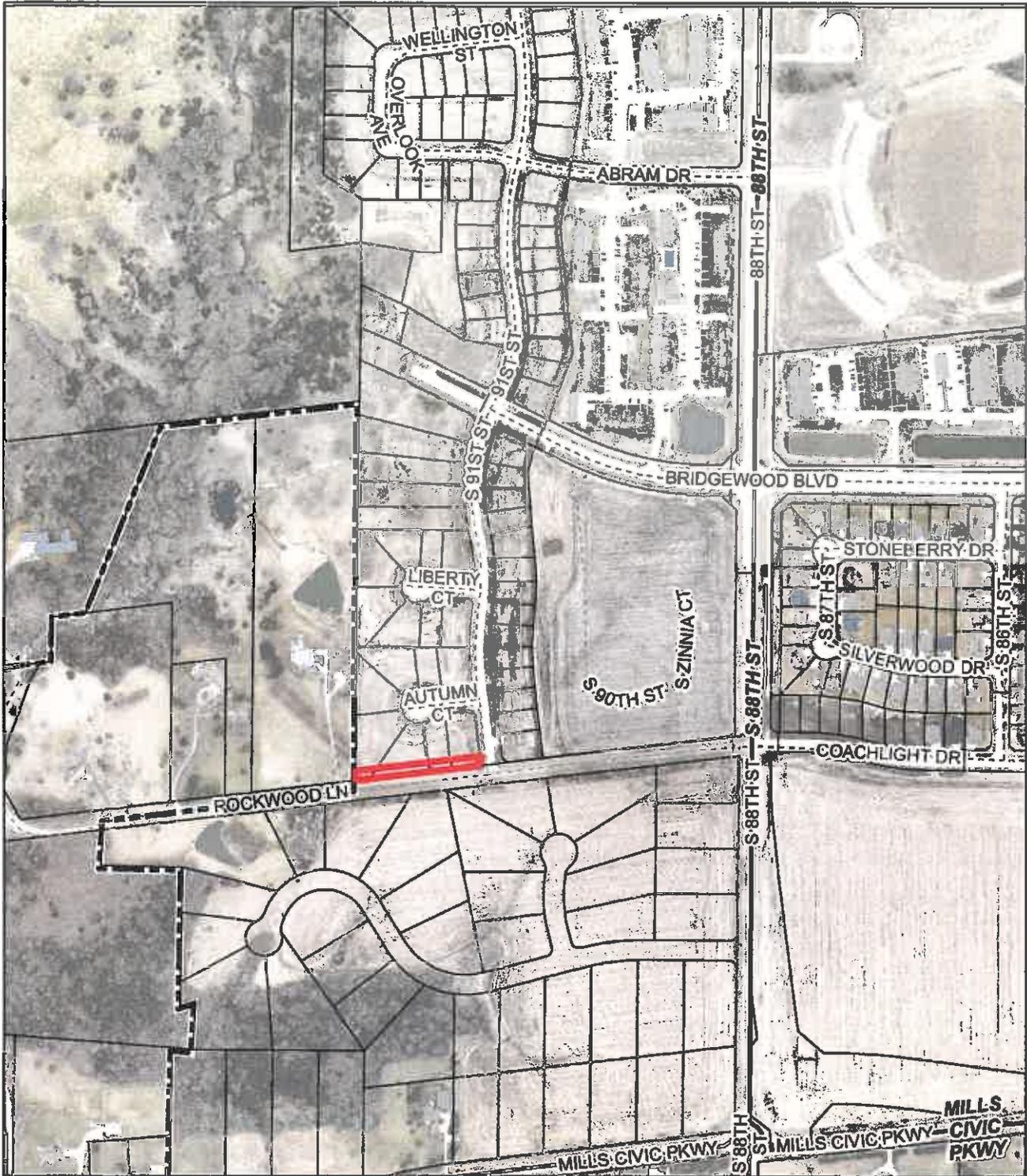
AYES:
NAYS:
ABSTENTIONS:
ABSENT:

ATTEST:

Recording Secretary

Exhibit A
Conditions of Approval

1. Fences that are more than 50% opaque are prohibited within the south 30 feet of Lots 15-18 Whisper Ridge Plat 3.



**Whisper Ridge Buffer Vacation Plat 3,
9104, 9110, 9116 and 9124 Autumn Court**



NOT TO SCALE



**Whisper Ridge Buffer Vacation Plat 3,
9104, 9110, 9116 and 9124 Autumn Court**



NOT TO SCALE

TO: WEST DES MOINES PLAN AND ZONING COMMISSION AND
WDM CITY COUNCIL

FROM: RESIDENT OWNERS OF ROCKWOOD LANE (DAVID AND
SARAH LACEY, STEVE AND MIKI CUNNINGHAM, CONRAD AND
ROSEMARY JUNGSMANN, RICHARD AND CAROLYN SANTI)

RE: REQUEST BY HIDDEN CREEK TO VACATE BUFFER PARK
EASEMENT ON LOTS 15-18, WHISPER RIDGE PLAT 3

DATE: NOVEMBER 1, 2016

The resident owners of Rockwood Lane (RL), a private roadway, submit the following comments and proposed resolution in connection with the subject application:

1. Notice of Public Hearing. Notice of public hearings on the application “was sent by regular mail to all property owners within 370 feet of the subject properties.” However, only two of the RL owners received this notice-the Cunninghams whose lot is adjacent to Whisper Ridge and the Santis who own a lot in Cedar Ridge. Despite the fact that (1) RL lies immediately to the south adjacent to the WR lots in question, (2) that RL is a privately owned roadway with each lot owner in Hickory Knolls Place Replat owning a 1/5 undivided interest, (3)and that the parties most adversely affected by the vacation request are the owners of RL, no notice was sent to these owners in that capacity by the city. The RL owners believe this was an error and that each RL owner should have received the notice.

The resident owners of RL hereby request that the WDM P&Z in the future provide notice to each of them with respect to any similar requests coming before them concerning properties adjacent to or within 370 feet of RL and that RL be recognized as a parcel for purposes of the required notice.

2. The Vacation Application

A. Public vs. private street distinction. RL west of South 91st to the east lot line of lot 1 of Hickory Knolls Place Replat, is currently a privately owned roadway serving the 5 lots in HKPR. However, as noted in the minutes of the WDM Development and Planning City Council

Subcommittee Meeting of October 3, 2016, the potential for development of one or more of these 5 large lots (8-10 acres each in size) which comprise HKPR given their proximity to WDM can not be disregarded such that in the future RL could well become a public street.

B. RL Owners' Reliance on Whisper Ridge Plat 3. The plat of WR Plat 3, specifically as it pertains to lots 15-18, provide for a 30 foot Buffer Park Easement (BPE) along their south lot lines adjacent to RL. This BPE was important to the RL owners as it prevented the erection of any fences or other structures except for trees and shrubs within the buffer area and thus protected RL by providing an aesthetically pleasing landscape adjacent to RL. Because of this protection, the owners of RL had no reason to and did not object to the plat when submitted. Had there been no buffer provided, the resident owners of RL would have voiced objection.

The resident owners of RL still have that same concern if the buffer is removed as requested in the application.

C. Suggested Resolution. Consistent with the discussion at the October 16 meeting by Marcus Abels and Mr. Sandager, and consistent with recent discussion between Mr. Abels and Mr. Santi concerning this matter, the resident owners of RL have no objection to the application as long as granting of the application is conditioned upon the binding imposition on lots 15-18 of a no build 30-35 foot set back buffer area adjacent to the north boundary line of RL. This no build area would include both fences and structures including buildings but would permit trees and shrubs as long as they did not encroach onto or over RL at any time.

Respectfully submitted by:

Steve and Miki Cunningham
Conrad and Rosemary Jungmann
Richard and Carolyn Santi
David and Sarah Lacey

Cc. Marcus Abels