

**Excerpt from the
CITY PLANNING COMMISSION MINUTES
Minneapolis Community Planning & Economic Development (CPED)**

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MEMORANDUM

DATE: March 3, 2016

TO: Zoning and Planning Committee

FROM: Jason Wittenberg, Manager, Community Planning & Economic Development – Land Use, Design and Preservation

SUBJECT: Planning Commission decisions of February 8, 2016

The following actions were taken by the Planning Commission on February 8, 2016. As you know, the Planning Commission's decisions on items other than rezonings, text amendments, vacations, 40 Acre studies and comprehensive plan amendments are final subject to a ten calendar day appeal period before permits can be issued.

Committee Clerk

Lisa Kusz - 612.673.3710

Commissioners present

Matthew Brown, President | John Slack, Vice President | Alissa Luepke Pier, Secretary
Lisa Bender | Rebecca Gagnon | Ryan Kronzer | Nick Magrino | Sam Rockwell | Scott Vreeland

Commissioners absent

Ben Gisselman

I. Right-of-Way Vacation, Ward I

Staff report by [Hilary Dvorak](#), Vac-1634.

The City Planning Commission adopted staff findings for the applications by BNSF Railway Company.

A. Vacation.

Action: The City Planning Commission recommended that the City Council **approve** the vacation of the right-of-way of Main St NE from 29th Ave NE to 31st Ave NE and the right-of-way of 30th Ave NE from Main St NE, westerly for approximately 128 feet.

Aye: Bender, Gagnon, Kronzer, Luepke-Pier, Magrino, Rockwell, Slack and Vreeland

Absent: Gisselman

Not Approved by the Commission

Staff Dvorak presented the staff report.

Commissioner Slack: What kind of materials are being stored?

Staff Dvorak: I do not actually know, but the applicants are here and can respond to that question.

President Brown opened the public hearing.

Brian Sweeney: I'm with BNSF Railway Company. We concur with the recommendation. We've been working with planning staff for some months on how to make this thing work and have it be a win/win for everybody. We have people here if there are any specific questions about the engineering or design. We hope you recommend approval.

Commissioner Slack: What type of materials will be stored on this site and are there any requirements to providing some sort of visual or other protection methods?

Brian Sweeney: The materials that will be stored there are track materials that are currently being stored at another location. We've been working with planning staff on visual barriers such as plantings along the perimeter of the property.

Patrick Kvidera (3041 Grand St NE): The letter sent to the neighborhood was dated January 22nd. It says you require 18 days notice. I don't know what day I got to my mailbox, but from the 22nd to today is not 21 days. If paperwork is done by Verizon and other companies on 7-3-2014, why was the neighborhood not given advisement that this was under consideration? If the company has a year and a half to plan, why doesn't the neighborhood have a year and a half to think about it? The other thing is, he said the railroad ties and rails are currently stored someplace else, no, there's a pile of rails and a pile of railroad ties and other junk scattered over the north end of the property. We don't have a very good neighborhood there. The grass doesn't get mowed, people dump their garbage on the property, it doesn't get cleaned up in a reasonable amount of time. I would say we should have a full width of a street back there, not just an alley.

President Brown: I'd like to ask staff to clarify on the notice requirements. Also, if you could elaborate a little more on what the screen requirements are or if there are nonconforming rights to that storage area.

Staff Dvorak: There is a 21 day noticing requirement that we send out to the neighborhood organization and the council office. It's a 15 day notice to the property owners within 350 feet of the site. The site is zoned I1, to do outdoor storage you do need I2, however the railroad is exempt, it's a federal exemption that they have. They are exempt from our zoning rules. As part of the process, and this has been going on for over a year, in the memo that's in your packets, they will be fencing off...there will be a six foot, vinyl coated chain link fence and then on the side facing the alley there will be planting. The fence and landscaping will provide screening. We've reviewed the memo and landscape plan and we have approved that.

Commissioner Luepke-Pier: In the packet it talks about the easement across the alley and that that's a separate application, when is that going through the process and where's it at?

Staff Dvorak: The vacation will go through the Zoning and Planning Committee and also City Council, there will be a three pronged resolution that we'll be writing. One of those prongs will be acceptance of the easement over what will function as the alley.

Not Approved by the Commission

Commissioner Luepke-Pier: Since it's still considered private property even though there will be an easement for residents to use, does that mean that they can use equipment on it at all hours of the night?

Staff Dvorak: I don't know the answer to that question. They won't have access to this property from that area because there will be a fence there so they can't drive through onto this property where the storage will be occurring.

Commissioner Luepke-Pier: I'm talking about the easement or non-alley that functions as an alley.

Staff Dvorak: I guess I'd have to ask the Right Of Way Department of Public Works that question. I would think it'd have the rights of an alley like any alley does right now where utilities could be there for up to 30 minutes without an obstruction permit.

Commissioner Luepke-Pier: My other question was about the chain link fence, it's hard to tell in the graphics exactly what the site plan is in terms of where it's going and what's going under it to make sure it doesn't get weeds and crud going through it. It sounds like the stored materials are piles of railroad stuff. Is it my understanding that between the alley and the possibly to be vacated road that's where they're tossing the stuff anyway so they want to be able to have the ability to use that street as well?

Staff Dvorak: I don't think I'm following.

Commissioner Luepke-Pier: When you look at where the alley is versus the street to be vacated, that green area, that's owned by the railroad, correct?

Staff Dvorak: Correct. This is the northerly half. There's no street there. It was never constructed as a city alley. It's a bituminous driveway.

Commissioner Luepke-Pier: Is there a reason why we went for an easement instead of a swap? Wondering why you wouldn't swap and the city could gain formal access to pave it as they need to and such.

Staff Dvorak: The reason that it's taken this long to get to a public hearing is because of the agreement that needed to be drafted and signed by all parties. I don't know, that'd be a question for the railroad.

Commissioner Bender: I'm having trouble understanding this because what I'm hearing is that the railroad is using their property for a use that we don't allow but we can't regulate them, but then why would we give them this easement? This seems like our only control that we have left so I'm wondering what the benefit is to the city for this recommendation or is that not part of our consideration here?

Staff Dvorak: They're giving us the easement so we have an easement over what provides access to all those homes. They're vacating what was platted as public street but was never constructed. We're taking an easement over land that is currently theirs to continue to use that for access to those homes. If we didn't vacate, they could use their land today. They could put up a fence in back of all those garages and just cut off access to all of them. So, in a way we have to negotiate this deal because they could just say they're going to use their property for outdoor storage and will use the public streets to access it and then those homeowners don't have way to get to their garages. It's not a good situation, but I think this is the best outcome to provide access.

President Brown closed the public hearing.

Not Approved by the Commission

Commissioner Luepke-Pier: I have a question for the applicant. What is the scoop with the easement and the alley, why wasn't it just a land swap?

Brian Sweeney: I don't know why it was determined to do it as an easement than a conveyance. Your other question about our use of the alley, our goal is to not use the alley. What we want to be able to do is have access to this property from the rail yard side so that we would not be using the city streets or the alley. Plus, I think the screening and fencing would preclude us from being able to turn into the property anyway. Our goal is to not be on the alley.

Commissioner Luepke-Pier: Can you show where the fence and screening is all going? There's not a site plan that shows that in our packets very well.

Jim Hosch: If you look at the green alleyway line between the edge of that road and the fence there is a small ditch line. Just on the other side of the ditch line on top of the slope will be the fence. I believe we are 10 feet away from the road edge.

Commissioner Luepke-Pier: From the alley edge to the fence it'd be about 10 feet?

Jim Hosch: Correct.

Commissioner Luepke-Pier: What will be planted?

Jim Hosch: It's a variation of bushes and trees, about 169 total plantings we're putting there. There will be clusters of different types of trees.

Staff Wittenberg: One thing to be aware of is that many rights of way throughout the city actually are not owned by the city in fee title and are actually easements across properties and the public would generally not know the difference because we have the same rights to those easements as we would under a fee title arrangement. It's not an uncommon situation for public rights of way.

Commissioner Slack: I will move staff recommendation (Kronzer seconded).

President Brown: I sympathize with some of the neighbors that having outdoor storage right outside your back door can be rather unsightly. I think in this case the city does have a lot of excess land there that really is not needed and clearly the railroad has been using so it makes sense. Considering there is an existing alley there that people have been using as an alley, but really there isn't public access to that, this does correct that issue so that is very important. I'm also optimistic that because of the need for this negotiation the city will be able to at least require a little screening and management of that outdoor storage area.

Aye: Bender, Gagnon, Kronzer, Luepke-Pier, Magrino, Rockwell, Slack and Vreeland

Absent: Gisselman