



Staff Report

PLANNING DIVISION
DEPARTMENT of COMMUNITY & NEIGHBORHOODS

To: Salt Lake City Planning Commission

From: Ashley Scarff, (801) 535-7660 or ashley.scarff@slcgov.com

Date: April 10th, 2019

Re: PLNPCM2018-00561: Street Vacation (park strip) near 14th Avenue & H Street

Street Vacation

PROPERTY ADDRESS: 538 E. 14th Avenue (address of applicant)

MASTER PLAN: Avenues Master Plan

ZONING DISTRICT: SR-1A Special Development Pattern Residential District

REQUEST: Justin and Jodi Miller, owners of 538 E. 14th Avenue, are requesting that Salt Lake City vacates a portion of public right-of-way (park strip) that abuts their property. In 2006, the applicants received a Revocable Permit from the City that allowed them to replace a fence that encroached into the right-of-way on the east side of their lot—the permitted encroachment was cost-free and good for ten (10) years. When the permit expired, the applicants found that the City had changed the policy related to encroachments onto public property, and would now charge them to lease the right-of-way.

Instead of entering a lease agreement, the applicants chose to request that the City vacate and sell the area of encroachment. If approved by the City Council, approximately 850 square feet of the park strip would be vacated, declared surplus property, and sold to the applicants for a fair market value. The subject property and adjacent lots are zoned SR-1A Special Development Pattern Residential District with the exception of Kay Rees Park to the north, a City-owned park that is zoned FR-3 Foothills Residential District.

RECOMMENDATION: Based on the information in this staff report, Planning Staff recommends that the Planning Commission forwards a positive recommendation to City Council for the request to vacate this portion of right-of-way adjacent to 538 E. 14th Avenue.

ATTACHMENTS:

- A. [Context Maps](#)
- B. [Site Photographs](#)
- C. [Application Materials](#)
- D. [Analysis of Standards](#)
- E. [Public Process and Comments](#)
- F. [Department Review Comments](#)

BACKGROUND

In the submitted narrative (Attachment C), the applicants claim that in 2004 when they purchased their home at 538 E. 14th Avenue there was a chain-link fence installed near the southeast corner of the lot. In 2006, they applied for a building permit to replace the chain-link fence with a cedar fence. It was at this time that they learned that the fenced-off area in their yard included a portion of City-owned right-of-way. They were directed to apply for, and were granted, a Revocable Permit to legalize the encroachment. The permit was good for a ten (10) year period and there were no costs associated with it.

In the spring of 2018, City Real Estate Services staff realized that the Millers' Revocable Permit had expired, and notified them that they needed to renew it. By this time, the City had changed their policy, and had begun to charge residents to lease portions of the right-of-way for encroachments. The Millers chose to request that the City vacate and sell them the portion of right-of-way that they occupy, rather than enter a lease agreement for it.

SCOPE OF REQUEST:

The applicants are requesting the vacation of a portion of park strip that abuts their property at 538 E. 14th Avenue. Existing improvements (6-foot fence, landscaping) currently occupy an area that measures approximately 23 feet wide by 50 feet long, or about 1,150 square feet. When Planning Staff routed the proposal out for review by City Divisions, Engineering and

Transportation both suggested that they could support the vacation if 6 feet (6') of width was reserved for a potential future sidewalk. The applicants agreed to amend their request to accommodate those comments, resulting in an area that measures approximately 17 feet wide by 50 feet long, or about 850 square feet. If the vacation is approved by the City Council and the City sells the property, the applicants would need to remove all fencing and landscaping that falls within 6' of the back of curb on H Street.



On this section of H Street, the right-of-way is approximately 84 feet wide, measured from front property line to front property line (the street itself is approximately 32 feet wide). There is a nearly continuous sidewalk on the east side of H Street for many blocks, but almost no sidewalks present on the west side of the street. The area is not part of a subdivision. If approved by Council, the applicant will be required to pay fair market value for the land. At the time that this report was published, Salt Lake City's Real Estate Services Division (part of Housing and Neighborhood Development) estimated that 850 square feet of City-owned property would cost \$23,995.50 (\$28.23/sf).

KEY CONSIDERATIONS:

Important considerations listed below have been identified through the analysis of the project.

1. **Utah State Code:** Section 10-9a-609.5 of the Utah Code Annotated establishes the power for cities to vacate streets upon the request of the governing body or a property owner. The City Council must determine that good cause exists for the vacation, and neither the public interest nor any person will be materially injured by the vacation. Aerial imagery shows that

encroachments consisting of accessory structures and fencing have existed in this portion of right-of-way since at least 1999. Owners of 538 E. 14th Avenue have been utilizing this area that is fenced off from public use for at least 20 years, and Staff finds that a transfer to private ownership would not be detrimental to public interest, especially since it would result in the applicant compensating the City for the property at a market rate.

2. **City Council Policies:** In 1999, the City Council adopted a street closure policy, which applies to street vacations. See Attachment D.
3. **City Master Plans:** The *Avenues Master Plan (1987)* does not include any specific policies or action items related to street vacations or the sale of City-owned property to private property owners. A section on Bicycle Paths and Pedestrian Circulation identifies all of H Street as a potential urban trail corridor, which the plan describes as bicycle paths and/or pedestrian trails that provide access to schools, parks, and open space amenities in the community, as well as major nearby destinations like the State Capitol, downtown, and Ensign Peak. The plan states that these corridors should receive priority for sidewalk installation or improvement. Currently, much of the east side of H Street contains sidewalks, while not many exist on the west side of the street. Even so, the applicants have agreed to amend the original vacation request to accommodate a potential future sidewalk on the west side of H Street—Staff finds that the amended request supports this section of the *Avenues Master Plan*.

The *Salt Lake City Urban Design Element (1990)* includes a section titled *Street as Elements of Open Space*, with a Policy Concept that states, “Decline to vacate streets, alleys, and other public right-of-way unless it is demonstrated that the vacation will result in a public benefit.” Though this proposal does not violate public policies, it does not have a stated public benefit. However, the property isn’t needed for a public purpose, and the City would benefit financially from the sale of the land—proceeds would be placed in the General Fund.

DISCUSSION:

The proposal has been reviewed according to Utah State Code, the City Council policies regarding street closures (Attachment D), and applicable city master plans, and staff finds that although there are no public policies that will be explicitly accomplished with the partial street vacation, it does not violate any public policies. Further, the city will benefit financially from the sale of the property to the applicant.

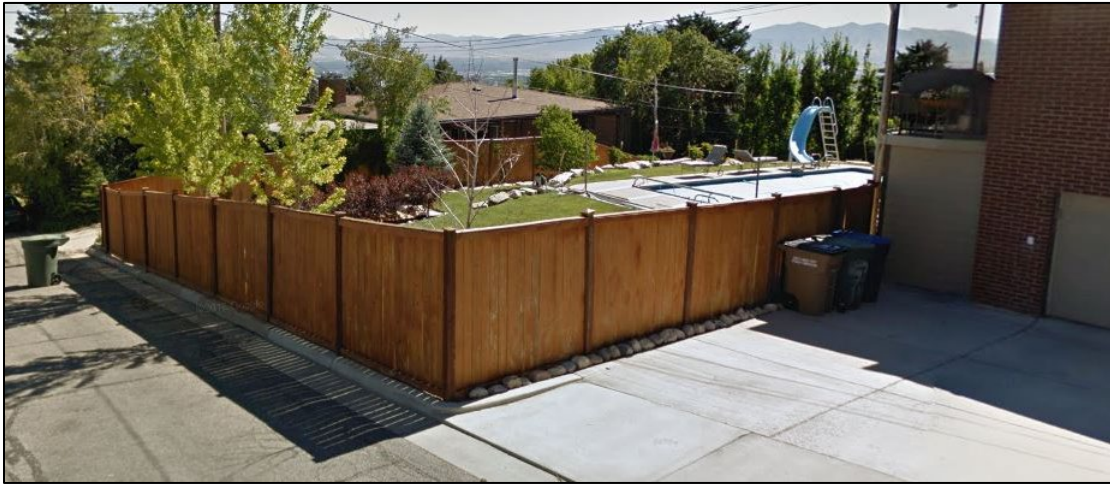
NEXT STEPS:

With a recommendation of approval or denial of the street vacation from the Planning Commission, the proposal will be sent to the City Council for a final decision by that body.

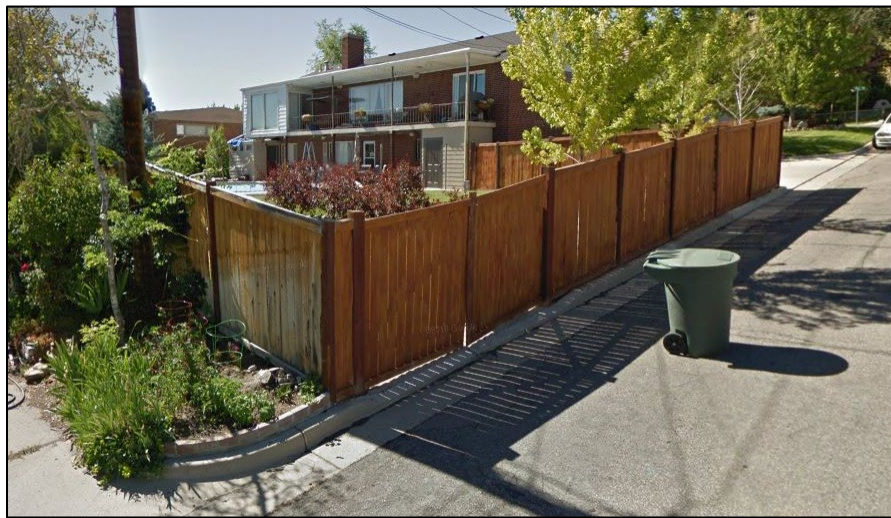
ATTACHMENT A: CONTEXT MAP



ATTACHMENT B: SITE PHOTOGRAPHS



View of subject area from the north—if vacation is approved, applicants would need to remove all encroachments that fall within 6 feet of the back of curb.



View of subject area from the south

ATTACHMENT C: APPLICATION MATERIALS

June 18, 2018

Planning Department
451 South State Street Room 215
Salt Lake City, UT 84101

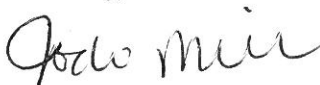
To whom it may concern,

We are applying for a Street Closure on the East border of our residence located at 538 E 14th Ave. When we purchased this house, in 2004, a chain-link fence was already installed in the South East corner of our lot. We elected to replace that with a cedar fence in 2007 and obtained a permit to do so. At the time of application, we learned that the fence was on city property, and so we obtained a free 10-year lease for the portion of city property inside the fence, approximately 1000 sqft. At the end of this lease, August 2017, we received a letter from the city that the lease was no longer free, and was in fact now going to cost fair-market value; at the time of this letter, roughly \$25,000.

For a variety of reasons, we believe the best option for us is to apply to purchase this property from the city, via a Street Closure. There are no utilities buried in this area, and no sidewalk. This land has been closed from public use for fifty plus years.

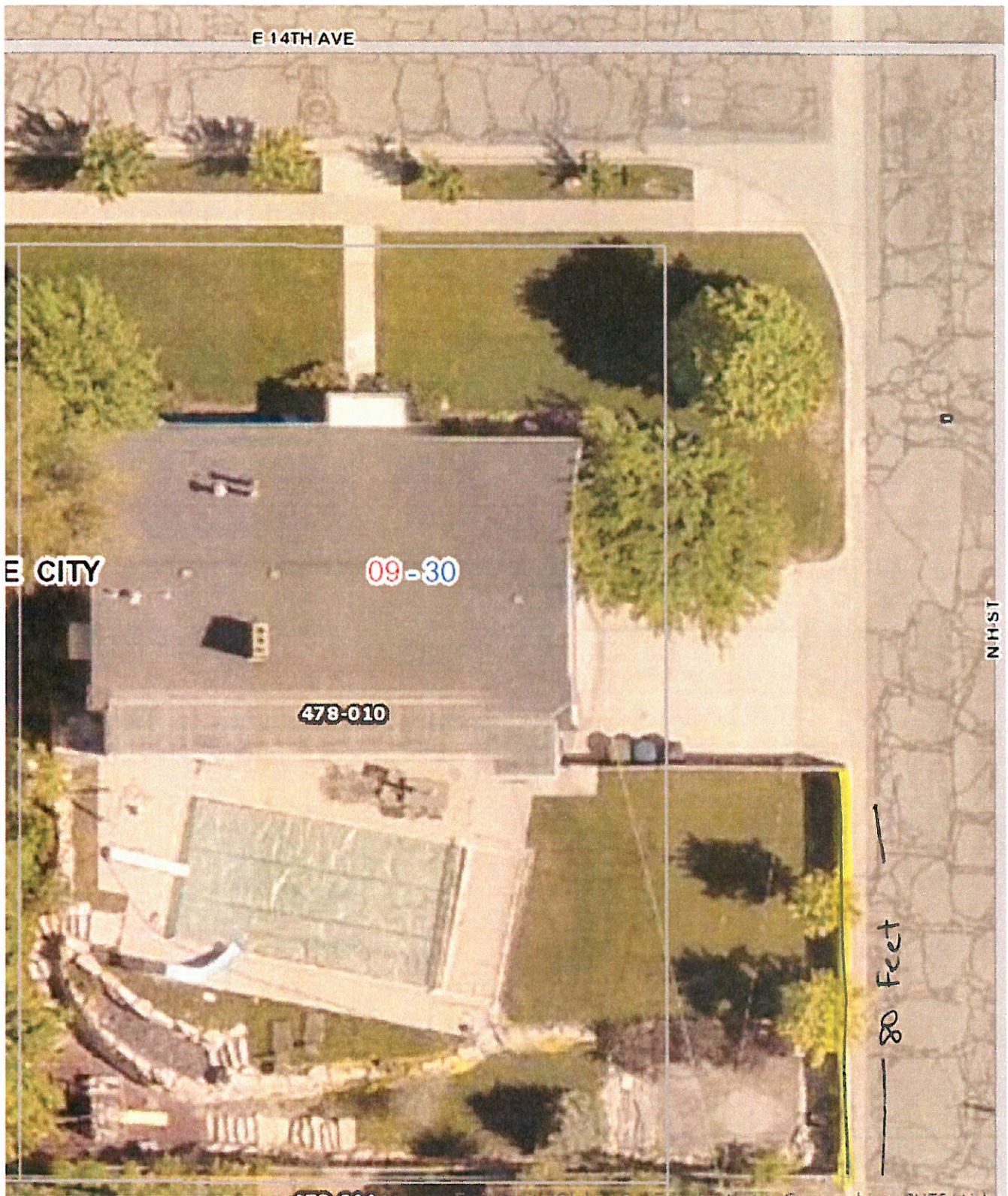
We appreciate your time in looking over our application and look forward in moving forward in the process. If you have any question you can contact Justin or Jodi at [REDACTED]

Sincerely,



Justin and Jodi Miller





ATTACHMENT D: ANALYSIS AND FINDINGS

In 1999, the City Council adopted a street closure policy that includes the following provisions:

1. **It is the policy of the City Council to close public streets and sell the underlying property. The Council does not close streets when the action would deny all access to other property.**

Analysis: The portion of right-of-way that the applicants have requested the City vacate does not contain any vehicular access ways—it is a part of the park strip that has been surrounded by a 6-foot fence for at least 10 years.

Finding: The proposed vacation would not deny vehicular or pedestrian access to any adjacent properties.

2. **The general policy when closing a street is to obtain fair market value for the land, whether the abutting property is residential, commercial or industrial.**

Analysis: If approved by the City Council, approximately 850 square feet of right-of-way would be declared surplus and sold at a fair market value to the applicant.

Finding: The City would give up ownership of this property and obtain fair market value for the sale of the property to the applicant.

3. **There should be sufficient public policy reasons that justify the sale and/or closure of a public street and it should be sufficiently demonstrated by the applicant that the sale and/or closure of the street will accomplish the stated public policy reasons.**

Analysis: As outlined in the ‘Key Considerations’ section above, the *Avenues Master Plan (1987)* does not include any specific policy direction when it comes to the vacation of City-owned right-of-ways. However, H Street is identified as a potential urban trail corridor, meant to facilitate bicycle and pedestrian connections throughout the community. Staff finds that the amended request, which provides adequate space for the City to construct a sidewalk in the future, supports this section of the Master Plan.

The *Salt Lake City Urban Design Element (1990)* indicates that the City should decline to vacate right-of-ways unless it will result in a public benefit. While there is no direct public benefit that would be gained, the City would benefit financially from the sale of the property to applicant.

Finding: The proposed right-of-way vacation does not conflict with the *Avenues Master Plan* but does not result in a direct public benefit per the *Salt Lake City Urban Design Element*. However, the property isn’t needed for a public purpose and the city would benefit from the sale of the land the proceeds from which would go into the General Fund.

4. **The City Council should determine whether the stated public policy reasons outweigh alternatives to the closure of the street.**

Analysis: As an alternative to the proposal, the City and applicant could enter into

a lease agreement for the land occupied by and enclosed by the fencing and landscaping. All maintenance of the subject property would be by the lessee (the applicants) subject to required permits for any work. In exchange for exclusive use of the subject property, the lessee (the applicants) would be required to pay annual rent based on fair market value.

A second alternative is for the applicants to remove the fencing and landscaping from the public right-of-way. This would involve re-locating the fence so that it is entirely on private property, and landscaping the park strip in a way that complies with the Zoning Ordinance.

Finding: Alternatives to the requested vacation maintain City ownership of the 850 sf portion of public right-of-way and require the applicant to either enter into a lease agreement for the encroachment or re-locate the fence and landscape the park strip. From a Planning perspective, Staff finds that the right-of-way is very wide in this portion of the upper Avenues, which doesn't experience a lot of vehicular traffic. For these reasons, it is highly unlikely that this portion of H Street will ever need to be widened. In addition, 6 feet (6') of width would be reserved in case the City ever decides to construct a sidewalk on the west side of the street. Aerial imagery shows that there have been improvements that encroach into/prevent access to the public right-of-way in this area for 20+ years, and the City now has an opportunity to benefit financially from this occupation.

ATTACHMENT E: PUBLIC PROCESS AND COMMENTS

Public Notice & Comments

- August 10, 2018 – Notice of the project was provided to the Greater Avenues Community Council Chair. No response was received.
 - On this date, letters were also mailed to property owners and residents within a 300 foot radius of the site. One neighbor called with general questions about the street vacation process, but he did not provide any comments.
- March 27, 2019 – Public hearing notices mailed for the Planning Commission meeting / Notice also posted on City & State web sites and emailed to Planning Division list serve
- March 29, 2019 – Public hearing notice sign posted at subject property

At the time that this report was published, no other public comments had been received. If any are submitted after this date, they will be forwarded to the Commission and included in the public record.

ATTACHMENT F: DEPARTMENT REVIEW COMMENTS

Real Estate Services: The only comment RES has is the fee. Since this process takes a while to complete, we will be selling the land at current market value at time of disposition. Right now the 850 sq. ft. of land has an approximate value of \$28.23 per sq. ft. compared to 2017 at \$25.02.

Engineering / Transportation: Both of these Divisions commented that they would advise against selling land that would preclude ever having a public sidewalk run in the park strip to the east of the subject property. Both were comfortable with the vacation if 6 feet (6'), measured from the back of curb, was reserved for this purpose. The applicant agreed to reduce the requested area to be vacated by a 6' width.

Public Utilities: Planning Staff asked Public Utilities the feasibility of vacating the entire length of park strip on the east side of the subject property vs. only vacating the current area of encroachment. They indicated that the entire length of park strip cannot be vacated due to the existence of a water main that runs through the corner (can be seen in exhibit to right).

Public Utilities has no concerns with vacating the 850 sf of area described in this staff report.

Zoning: No comments received.

Fire: No comments received.

