



Legislation Text

File #: 21-0749R, Version: 1

RESOLUTION VACATING STREET EASEMENTS IN THE PLAT OF CENTRAL ACRES 2ND DIVISION, THE SOUTHEAST QUARTER OF NORTHWEST QUARTER (SE1/4 OF NW1/4) AND THE NORTHEAST QUARTER OF SOUTHWEST QUARTER (NE1/4 OF SW1/4) SECTION 21, TOWNSHIP 50 NORTH, RANGE 14 WEST OF THE 4TH PRINCIPAL MERIDIAN AND ACCEPTING A STREET AND UTILITY EASEMENT IN THE DULUTH HEIGHTS NEIGHBORHOOD

CITY PROPOSAL:

WHEREAS, the city council finds a sufficient petition was filed with the city requesting the vacations of street easements legally described below;

WHEREAS, pursuant to Section 100 of the City Charter and Section 50-37.6 of Chapter 50 of the Duluth City Code, as amended, such petition was duly referred to the city planning commission and such commission gave due notice of public hearing and did consider same in a public hearing and the city planning commission found that the street easements described below are not needed for public purposes;

WHEREAS, the city planning commission, at its special meeting on Tuesday, August 24, 2021, recommended approval of the vacation petition; and

WHEREAS, the city council finds that the street easements proposed to be vacated:

(i) are not and will not be needed for the safe and efficient circulation of automobiles, trucks, bicycles, or pedestrians or the efficient supply of utilities or public services in the city; and

(ii) are not otherwise needed to promote the public health, safety or welfare of the citizens of Duluth.

NOW, THEREFORE, BE IT RESOLVED that the city council of the city of Duluth approves the vacation of the following described street easements, contingent on the dedication of the street and utility easement by RFP LLC described below:

- (1) That portion of Upham Road legally described and depicted on the attached Exhibit 1; and
- (2) That portion of Blackman Avenue legally described and depicted on the attached Exhibit 2.

FURTHER RESOLVED, that the vacations of the street easements described in the preceding paragraph are intended to vacate any and all of the city's and the public's rights in the following described recital appearing on Certificate of Title No. 288971, as succeeded, on file with the St. Louis County, Minnesota Registrar of Titles:

SUBJECT to the right of way for road along the south line of said tract, and reserving to the public forever the right to use the easterly 20 feet of said tract for roadway purposes.

FURTHER RESOLVED, that the city council of the city of Duluth accepts a perpetual street and utility easement, substantially in the form attached as Exhibit 3, from RFP LLC, a Minnesota limited liability

company, over, under and across the real property legally described on Exhibits C and E to the attached Exhibit 3 and depicted on Exhibits B and D to the attached Exhibit 3, at no cost to the City.

FURTHER RESOLVED, that the city clerk is, pursuant to Section 100 (b)(7) of the Home Rule Charter of the city of Duluth, 1912, as amended, authorized to record, with the register of deeds and/or the registrar of titles of St. Louis County, Minnesota: (i) a certified copy of this resolution showing the street easements to be vacated, and (ii) the street and utility easement from RFP LLC.

STATEMENT OF PURPOSE: This resolution vacates two street easements in the Duluth Heights neighborhood, more specifically portions of Upham Road and Blackman Avenue. Most of as-built and as-used Upham Road lying west of Blackman Avenue, together with a portion of Blackman Avenue, has been used for decades, but have not been formally dedicated to the public.

In connection with an upcoming project to make certain improvements to the applicant's property, it was discovered that there were title issues with Upham Road and Blackman Avenue. After several months of working with city staff, it was determined that Upham Road could be vacated by the city and turned into a private driveway or used in connection with RFP and its adjacent neighbor's respective properties. Access to the properties west of the applicant's property will be maintained by Central Entrance and the City's ownership of certain property between Central Entrance and the private properties, which serves as an access point to those private properties. Additionally, the applicant and adjacent owner are working together on a reciprocal (private) road easement.

One of the Certificates of Titles affecting the applicant's property includes a recital dedicating certain portions of the applicant's property to the public. This recital was created in an old deed conveying the property, but an easement or grant to the city or public, or acceptance by the same, was never made. In order to avoid any doubt of the city and the public's continued rights, need and use of Blackman Avenue, the applicant is dedicating a street and utility easement for Blackman Avenue.

City staff worked with the State of Minnesota, Department of Transportation, to ensure that the portion of Upham Road proposed to be vacated is not needed in connection with existing or future purposes relating to Central Entrance.

At a special Planning Commission meeting on August 24, 2021, the commission held a public hearing on the proposal and voted 7 yeas, 0 nays, and 0 abstentions to recommend the city council approve the vacation. The staff report associated with this matter is attached as Exhibit 4.

The motion to approve the vacation by the city council must prevail with at least six affirmative votes.

Petition Received: July 7, 2021

Action Deadline: November 4, 2021

Petitioner: RFP LLC
PL 21-111