

COUNCIL ACTION FORM

SUBJECT: PUBLIC UTILITY EASEMENT VACATION – LINK SUBDIVISION
(SOUTH KELLOGG AVENUE)

BACKGROUND:

Staff received a request from the property owner at 1614 South Kellogg Avenue to vacate the existing public utility easement as shown on the attached map. **This particular request was officially made on August 16th with the expectation that the vacation could be initially presented to Council at the August 27, 2013 Council Meeting. The property owner has been notified that the earliest hearing date for the potential vacation of the easement would then be at the September 10, 2013 Council Meeting.**

The owner of 1614 South Kellogg Avenue is in the process of selling this property. During the processing of the sale, the abstractor discovered that the existing easement appeared to be located under the existing building. The existing easement was established in 1974 as a part of the original Southtown Subdivision. In 2004 the property was re-platted as Link Subdivision and subdivided in order to construct the Grand Stay Hotel and Old Chicago Restaurant. Specific language in the subdivision easement document for the Link Subdivision clearly states the existing north/south easement was to remain in “full force and effect”.

Vacation requests involve substantial outreach to all right-of-way users to determine if there are utilities in the existing easement and if there are intentions of using the easement in the future. Public Works staff contacted all registered right-of-way users to determine the extent of utilities in this immediate area. **Under normal circumstances, a vacation request would not be presented to Council until all questions regarding impacts to the utility companies are known.**

As of August 20, 2013, seven utility companies have yet to respond to staff as to the impacts related to this public utility easement. One utility has responded that their facility maps were inconclusive as to the exact location related to the easement, so they are doing further investigation to locate their facilities in the area. Staff has emailed and left voice messages with the utility companies and requested to have responses prior to noon on August 26, 2013.

In this case, the property owner has asked for special consideration in order to maintain his schedule for the sale of the property. Since the typical process is not being followed, this has the potential to not be completed prior to the Council meeting. Should there still be a nonresponsive utility or a response that there is a utility in the existing easement, this item will be pulled from the Council agenda

on August 27. The sale of the property cannot take place until the easement issue has either been resolved or vacated.

ALTERNATIVES:

1. Set the date of public hearing as September 10, 2013 for approving the vacation of the existing public utility easement at 1606, 1610, and 1614 South Kellogg Avenue.
2. Choose not to approve vacation and maintain control of the current easement.
3. If there is a nonresponsive utility or a response that there is a utility in the existing easement, this item should be removed from the Council agenda and action deferred until the issue is resolved.

MANAGER'S RECOMMENDED ACTION:

In order to expedite this issue for a customer, staff has placed it on the agenda prior to receiving the necessary input from all utility companies that currently might be using this easement. Council vacation of the easement will meet this property owner's expedited needs. This will facilitate moving forward with the final platting process for the subdivision and subsequent sale and improvements of the lots.

Assuming staff has received a positive response from all right-of-way users prior to the City Council meeting, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, thereby approving the vacation of the existing public utility easement at 1606, 1610 and 1614 South Kellogg Avenue as shown and set the date of public hearing for September 10, 2013.

