

STAFF REPORT

CASE NUMBER: VAC2022-00015 – Request in the City to vacate a portions of a utility easements dedicated by separate instrument

APPLICANT: Miriam Cook (owner/applicant)

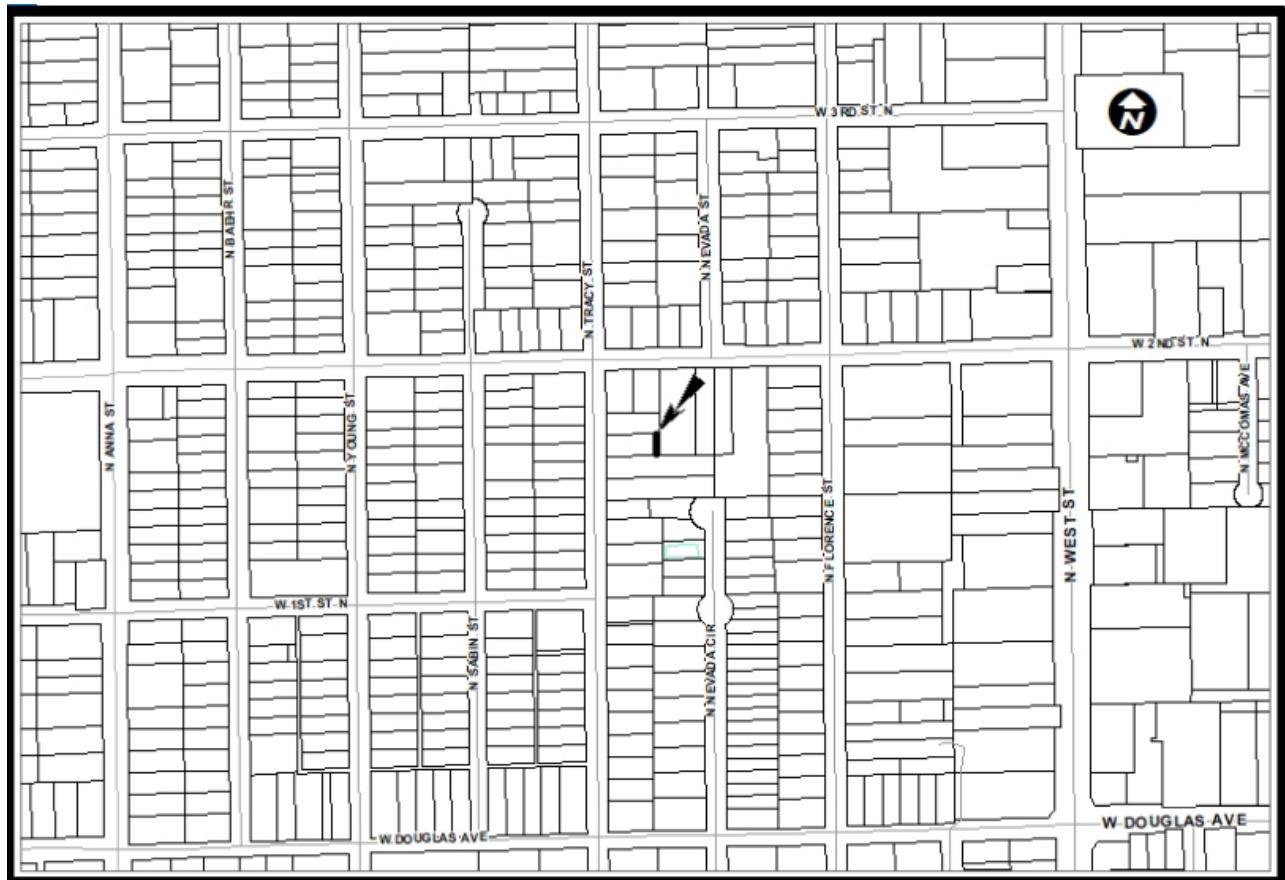
LEGAL DESCRIPTION: Generally described as vacating that west 4-feet of an 8-foot wide utility easement dedicated by separate instrument (Misc. BK 502, PG 326) and the west 2-feet of a utility easement dedicated by separate instrument (DOC#/FLM-PG 28792094) all located in the back yard of the West 150 feet of Lot 4, Block 18, excluding the north 60 feet thereof the Parkwilde Addition, Wichita, Sedgwick County, Kansas

LOCATION: Generally located west of North West Street, south of West 2nd Street, on the east side of North Tracy Street (238 N. Tracy Street, District VI)

REASON FOR REQUEST: Remove the encroachment of an existing detached garage.

CURRENT ZONING: The subject site and all abutting and adjacent properties are zoned SF-5 Single-Family Residential & are developed with single-family residences

VICINITY MAP:



The applicant proposes to vacate the west 4-feet of an 8-foot wide utility easement dedicated by separate instrument (Misc. BK 502, PG 326, recorded May 24,1962) and the west 2-feet of a utility easement dedicated by separate instrument (DOC#/FLM-PG 28792094, recorded June 21, 2006) all running north -south and parallel to the east, back yard property line of the SF-5 Single-Family Residential zoned subject site; the West 150 feet of Lot 4, Block 18, excluding the north 60 feet thereof the Parkwilde Addition. The applicant wishes to remove the encroachment of an existing detached garage from the subject easements as shown on the applicant’s exhibit. The applicant did not build the encroaching garage.

The subject site is located in the City, west of North West Street, south of West 2nd Street, on the east side of North Tracy Street; 238 N. Tracy Street. The subject site and all abutting and adjacent properties are zoned SF-5 and are developed with single-family residences. The Parkwilde Addition was recorded March 4, 1887.

The Parkwilde Addition’s plat shows no utility easements, nor does it reference them in its original plat’s text; 1887 is pre utility era. There are references to subsequent dedications of utility easements noted on the plat, but none of them reference the subject utility easements dedicated by separate instruments. The subject site originally was a 120-ft (x) 308-ft, 0.84-acre property, Lot 4, Block 18, which was a typical lot size in the Parkwilde Addition. The Parkwilde Addition has been subdivided by sale or Lot Splits through time. If lots were subdivided by sale there was no opportunity to require easements. If lots were subdivided by Lot Splits easements were required as needed.

The applicant has stated that garage encroachment is an encumbrance on the title to the property. Per the Appraiser’s link the detached garage was built in 1982. The subject property is the result of a Lot Split, SUB2006-00036. A condition of the Lot Split was the dedication of a 2-foot utility easement (DOC#/FLM-PG 28792094), which was added on top of an 8-foot utility easement (Misc. BK 502, PG 326) already in place. The 8-foot utility easement was acquired when sewer was put in this area in 1962. SUB2006-00036 noted that the existing detached garage was already encroaching 4-feet into 8-foot utility easement. The additional 2-foot of easement was dedicated knowing that it would run through the garage. At the time of the Lot Split there was discussion of issuing a “Hold Harmless Agreement” on the encroaching garage, but it was decided that the sewer line was located far enough away from the garage that the Hold Harmless was not necessary. The subject easements were required to cover the sewer line.

Water is located in the North Tracy ROW. Power poles and lines are located in the North Tracy ROW and along the interior side yards of the subject site and the abutting south lot. Everyy has no equipment in the subject easements. Ennidh Garcia is the Everyy Design Representative for this area and can be contacted at 316-261-6359. Conditions #1, #2, #3, and #4 cover all utilities. Vehicular traffic, pedestrian traffic and public safety will not be impacted by this vacation request if approved with the listed conditions.

Based upon information available prior to the public hearing and reserving the right to make recommendations based on subsequent comments from Public Works, Storm Water, Water and Sewer, Traffic, Fire, franchised utility representatives and other interested parties, Planning Staff has listed the following considerations (but not limited to) associated with the request to vacate those portions of the subject easements that encroached into by the garage..

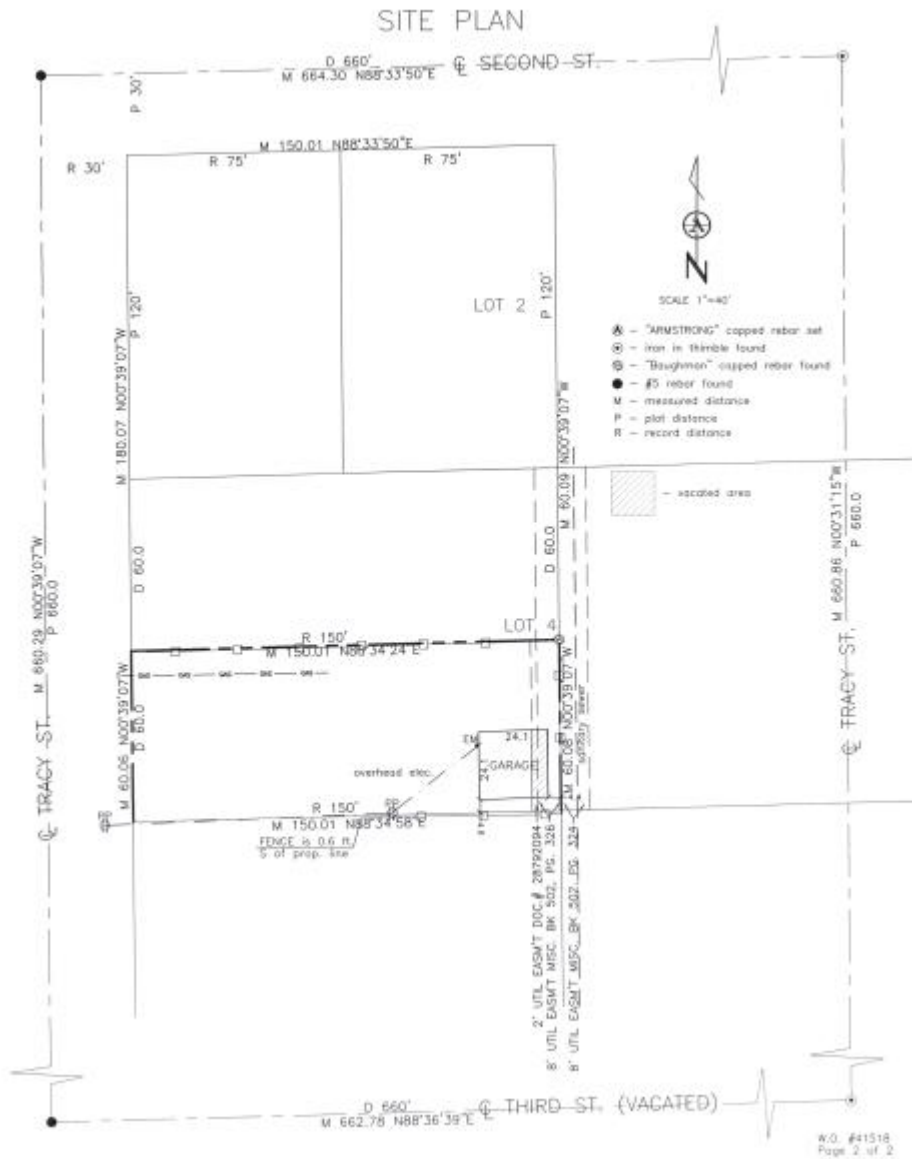
- (1) Provide Planning with an approved legal description, as prepared by a Surveyor, of the vacated portions of the 8-foot wide utility easement dedicated by separate instrument (Misc. BK 502, PG 326, recorded May 24,1962) and the 2-foot wide utility easement dedicated by separate instrument (DOC#/FLM-PG 28792094, recorded June 21, 2006) on a Word document that can be copied and used on the Vacation Order. The vacated area will only be those portions encroached onto by the garage.
- (2) As needed provide easements dedicated by separate instrument(s), with original signatures. This must be provided to Planning prior to the case going to City Council for final action and subsequent recording with the Vacation Order at the Register of Deeds.

- (3) As needed provide utilities with project plans for relocation of utilities for review and approval. Relocation of the utilities will be the responsibility and at the expense of the applicant and to City standards. The approved project number must be provided to Planning prior to the case goes to City Council for final approval.
- (4) All improvements shall be according to City Standards and at the applicants' expense.
- (5) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order, and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

Attachments:

- Aerial showing sewer & location of the garage encroachment
- Applicant's exhibit
- 2006 dedication of easement
- Lot 4, Block 18, Parkwilde Addition, 1887
- 238 N Tracy





Sedgwick County
Register of Deeds - Bill Mack
DOC #/FLM-PG: 28792094
Receipt #: 1625676
Pages Recorded: 2
Cashier Initials: DM
Recording Fee: \$12.00
Authorized Dgt: [Signature]
Date Recorded: 6/21/2006 12:28:55 PM

CITY CLERK'S ORIGINAL
RETURN TO CITY CLERK

UTILITY EASEMENT

Approved / Accepted by City Council
This June 6, 2006

THIS EASEMENT made this 1st day of May, 2006, by and between Leah J. McGeeney, a single person, party of the first part, and the City of Wichita, party of the second part.

WITNESSETH: That the said first party, in consideration of the sum of One Dollar (\$1.00) and other valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant and convey unto the said second party, for the benefit of the public, a perpetual right-of-way and easement for the purpose of constructing, maintaining, and repairing sewer, all other public utilities, over, along, and under the following-described real estate situated in Sedgwick County, Kansas, to-wit:

The west 2.00 feet of the east 10.00 feet of the west 150.00 feet of Lot 4, Block 18, Parkwilde Addition, Wichita, Sedgwick County, Kansas
EXCEPT the north 50.00 feet.

And said second party, for the benefit of the public, is hereby granted the right to enter upon said premises at any time for the purpose of constructing, operating, maintaining, and repairing such sewer, all other public utilities.

IN WITNESS WHEREOF: The said first party has signed these presents the day and year first above written.

By: Leah J. McGeeney
Leah J. McGeeney
OED 6006-13
(S&D 2006-36)

#12,000
06-0600

000028792094

Utility Easement
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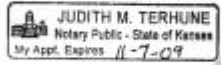
STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

BE IT REMEMBERED, that on this 14th day of May, 2006, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Leah J. McGeerney, a single person, personally known to me to be the same persons who executed the within instrument of writing and such persons duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

Judith M. Terhune
Notary Public

(My Appointment Expires: 11-7-09)



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