

THE MINNEHAHA COUNTY COMMISSION CONVENED IN JOINT SESSION WITH THE SIOUX FALLS CITY COUNCIL AT 5:00 P.M., July 20, 2009, pursuant to adjournment on July 14, 2009.

Commissioners present were: Pekas, Hajek, Barth, Kelly, and Twedt. Sandy Kinder, Deputy Auditor, was also present.

City Council Members present: Anderson, Beninga, Brown, Costello, Jamison, Knudson, Litz, Staggers, and Mayor Munson.

Chairman Pekas called the meeting to order.

Pat Herman, Planner, was present for the scheduled hearing to consider a request to vacate a public right-of-way described as that portion of S Overlund Pass beginning 33 feet north of the platted centerline intersection of Dan Ridge and S Overlund Pass, lying adjacent to Lot 20 & 22A Block 5 Split Rock Heights 2<sup>nd</sup> Addition and Lots 15-19 & Lots 21 Block 2 Split Rock Heights 3<sup>rd</sup> Addition, and ending 100 feet south of the north property line of Lot 21 Block 2 Split Rock Heights 3<sup>rd</sup> Addition and extending 66 feet west to a point abutting Lot 22A Block 5 Split Rock Heights 2<sup>nd</sup> Addition; all in Section 19-T101N-R50W Minnehaha County. The request was previously heard on 8/18/08 and denied. Ms. Herman gave a briefing on some of the issues from the last hearing related to legal concerns, questions on what the property owners abutting Shaffer Pond actually own, rights of the existing dam owner, and concerns over the pumping of water from the pond. The portion of Overlund Pass, requested to be vacated, was platted in 1977 as a roadway, but no road was ever constructed. Staff has met with the proponents who have expressed an interest to improve the pond and its dam, but do not want to invest monetarily unless the pond is closed to all public access. Staff also met with opponents who expressed concerns over closing the public access to the pond. At the last hearing, there were concerns over a neighbor, Gary Bills, pumping water from the pond through a line that is buried under the right-of-way. If the R-O-W is vacated, the land will be split with a 33' strip going to each adjoining property owner, and the pump lines would become a civil matter between the property owners and Mr. Bills. Staff supported vacation noting that development of a road is unlikely, there are no utility easements, and no current abutting properties would lose access to the pond. At the last hearing, Chad Huwe, City Engineer expressed concerns on the ability for the City to access the pond for potential area development. Mark Cotter, Sioux Falls Director of Public Works, reported that the views of staff with the City have changed and if there is a future need for utility access, the issue would be addressed at that time. Shawn Nichols, attorney for the proponents, explained that he believes that the pond was for private use by the lot owners based on information in a covenant filed with the plat and later changed in 1989 allowing the pond to be controlled by a homeowners association. Gordy Swanson, Deputy State's Attorney, reported that the plat of the subdivision would likely not have been approved as drawn if it were presented today. Marvin Coulter, opponent, reported that he feels the R-O-W is considered private property, owner unknown, and not subject to vacation. He believed because he has maintained the R-O-W for many years, it should become his through adverse possession. Mr. Swanson disagreed, noting that the R-O-W was dedicated as a road but not accepted. MOTION by Kelly, seconded by Twedt to approve Resolution MC09-26. 5 ayes. City concurred.

RESOLUTION MC09-26  
RESOLUTION TO VACATE PUBLIC RIGHT-OF-WAY

WHEREAS, a public hearing was held on July 20, 2009, pursuant to the provisions of SDCL 31-3-7 to consider a petition to vacate a platted public right-of-way; and

WHEREAS, said hearing was for the purpose of determining whether the public interest will be better served by such proposed vacation.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED, by the Minnehaha County Board of

Commissioners that the following described public right-of-way, recorded in Book 38 Pages 23 & 24 and Book 48 Page 135 of Plats, is hereby declared vacated:

That portion of S. Overlund Pass beginning 33 feet north of the platted centerline intersection of Dan Ridge and S. Overlund Pass, lying adjacent to Lot 20 & 22A Block 5 Split Rock Heights 2<sup>nd</sup> Addition and Lots 15-19 & Lots 21 Block 2 Split Rock Heights 3<sup>rd</sup> Addition, and ending 100 feet south of the north property line of Lot 21 Block 2 Split Rock Heights 3<sup>rd</sup> Addition and extending 66 feet west to a point abutting Lot 22A Block 5 Split Rock Heights 2<sup>nd</sup> Addition; all in Section 19-T101N-R50W of the 5<sup>th</sup> PM Minnehaha County.

BE IT FURTHER RESOLVED, pursuant to SDCL 31-3-44, that this resolution be forwarded to the City of Sioux Falls for concurrence.

BE IT FURTHER RESOLVED, that this resolution be placed on file with the Minnehaha County Auditor and, upon concurrence by the City of Sioux Falls, recorded with the Minnehaha County Register of Deeds.

Dated the 20<sup>th</sup> day of July, 2009.

APPROVED BY THE COMMISSION  
John Pekas, Commission Chair

ATTEST:  
Sandy Kinder, Deputy Auditor

MOTION by Barth, seconded by Twedt to adjourn until 9:00 a.m. on Tuesday, July 21, 2009. 5 ayes.

APPROVED BY THE COMMISSION:  
John Pekas, Chairman

ATTEST:  
Sandy Kinder, Deputy Auditor

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