

STAFF REPORT

July 10, 2003

No. 03VR005 - Vacation of Right-of-Way

ITEM 40

GENERAL INFORMATION:

PETITIONER	William H. Siegel
REQUEST	No. 03VR005 - Vacation of Right-of-Way
EXISTING LEGAL DESCRIPTION	The 40 foot right-of-way north of Lot 5, Freeland Subdivision, located in the SE1/4 SW1/4, Section 19, T2N, R8E, BHM, Pennington County, South Dakota
PARCEL ACREAGE	Approximately 2.0 acres
LOCATION	2925 Freeland Avenue
EXISTING ZONING	General Agriculture District (County)
SURROUNDING ZONING	
North:	General Agriculture District (County)
South:	General Agriculture District (County)
East:	General Agriculture District (City)
West:	General Agriculture District (County)/Suburban Residential District
PUBLIC UTILITIES	Private on-site wastewater and water
DATE OF APPLICATION	05/09/2003
REPORT BY	Tom Kurtenbach/ Vicki L. Fisher

RECOMMENDATION:

Staff recommends that the Vacation of Right-of-Way be denied.

GENERAL COMMENTS: **This item was continued at the June 5, 2003 Planning Commission meeting to allow the applicant to identify legal access to the applicant's property located directly north of the proposed vacation of right-of-way. This Staff Report has been revised as of July 1, 2003. All revised and/or added text is shown in bold print.** The applicant is proposing to vacate a 40 foot wide right of way located north of Lot 5 of the Freeland Subdivision and south of an approximate one acre parcel owned by the applicant. The applicant currently resides on the parcel located to the north of the right of way proposed for vacation. A petition to vacate the right of way was submitted by the applicant on May 9, 2003.

STAFF REVIEW: According to Pennington County records, the owners of the land located adjacent to the segment of right of way proposed for vacation include the applicant and Louise E. Wold. State statute requires that the vacation petition include the signatures of

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the owners of land located adjacent to the segment of right of way proposed for vacation. A signed petition was submitted with the vacation of right of way request.

Exhibit A: The vacation of right of way procedures requires that the applicant submit four copies of the vacation instruments marked "Exhibit A" prepared by a registered Professional Engineer or Land Surveyor. The vacation instrument shall include book, page number and date of original plat dedicating right of way. The date of the original plat dedicating the right of way proposed for vacation was not submitted by the applicant. **To date, the vacation instrument has not been updated to show the date of the original plat dedicating the right-of-way proposed for vacation.**

Utilities: The vacation of right of way requires the permission of all affected utility companies. At the time of this writing, Qwest Communications, Inc. has not responded to the vacation request. **On May 27, 2003, Qwest submitted documentation indicating that they do not oppose the request.**

Street Network: The Pennington County Highway Department staff does not support the vacation of right of way. By vacating this segment of right of way, Freeland Avenue effectively becomes a dead end right of way. The Exhibit A submitted by the applicant does not accurately identify the extent of Freeland Avenue right of way. The plat document identifies the northern extent of the Freeland Avenue right of way ending at the northern extent of the right of way proposed for vacation.

The right of way proposed for vacation is located one block north of Mullock Street. Ardee Avenue is located one block west of Freeland Avenue, and extends to a point located south of the western extent of the right of way proposed for vacation. Staff is concerned with vacating this segment of right of way. When future development occurs to the north and west, this right of way will provide street and utility connectivity to these future parcels.

Update: **As previously indicated, the Planning Commission continued this item to the July 10, 2003 Planning Commission meeting to allow the applicant to demonstrate legal access to his property located directly north of the right-of-way proposed to be vacated. On June 16, 2003, the applicant submitted a copy of an easement document showing a 40 foot wide "access easement" located directly north of Freeland Avenue along the east lot line of the applicant's property. However, the easement does not provide legal access to properties located further north and west of the subject property. As such, this right-of-way must be maintained in order to provide future street and utility connectivity to undeveloped properties within the area. In particular, an approximate 128 acre parcel is located north and west of Freeland Subdivision. With the on-going extension(s) of City sewer and water to properties located east of this area and along Mall Drive, it is anticipated that additional development within this area will occur. As such, staff can not support the proposed vacation of right-of-way request; and, subsequently is recommending that the vacation request be denied.**