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Date September 25, 2006

HOLD HEARING ON THE VACATION AND CONVEYANCE OF THE NORTH 25 FEET OF ARMY POST ROAD BETWEEN SW 5TH STREET AND SW 6TH STREET TO THOMAS J. AND LOIS L. AKERS FOR \$1,200

WHEREAS, on July 8, 2002, by Roll Call No. 02-1682, the City Council adopted a recommendation from the City Plan and Zoning Commission that the north 40 feet of Army Post Road between SW 5th Street and SW 6th Street, hereinafter more fully described, be vacated and sold; and

WHEREAS, the City Engineer determined that only 25 feet could be sold at this time, subject to certain conditions, due to the future widening needs of Army Post Road; and

WHEREAS, the grantees identified below are the owners of property abutting such right-of-way and have offered to the City of Des Moines the purchase price identified below for the vacation and purchase of such right-of-way described below; and

WHEREAS, on September 11, 2006, by Roll Call No. 06-1765, it was duly resolved by the City Council that the proposed vacation and conveyance of such right-of-way be set down for hearing on September 25, 2006, at 5:00 p.m., in the Council Chamber; and

WHEREAS, due notice of said proposal to vacate and convey public right-of-way was given as provided by law, setting forth the time and place for hearing on said proposal; and

WHEREAS, in accordance with said notice, those interested in said proposed vacation and conveyance, both for and against, have been given an opportunity to be heard with respect thereto and have presented their views to the City Council.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa:

1. Upon due consideration of the facts and statements of interested persons, the objections to said proposed vacation and conveyance of public right-of-way as described below are hereby overruled and the hearing is closed.

2. There is no public need for the right-of-way proposed to be vacated and the public would not be inconvenienced by reason of the vacation of the north 25 feet of Army Post Road between SW 5th Street and SW 6th Street, more specifically described as follows:

The North 25.00 feet of the South 75.00 feet of the West 460.80 feet of the East 1532.80 feet of Army Post Road right-of-way being in the Southeast ¼ of Section 28, Township 78 North, Range 24 West of the 5th P.M., all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

DESCRIPTION REVIEWED
[Signature]
09/25/06 oct 20

Date September 25, 2006

3. That the sale and conveyance of such right-of-way, as described below, and to the grantees and for the consideration identified below, together with payment by such grantees of the estimated publication and recording costs for this transaction, be and is hereby approved:

To: Thomas J. and Lois L. Akers for \$1,200

The vacated North 25.00 feet of the South 75.00 feet of the West 460.80 feet of the East 1532.80 feet of Army Post Road right-of-way being in the Southeast 1/4 of Section 28, Township 78 North, Range 24 West of the 5th P.M., all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

DESCRIPTION REVIEWED
8/27/06
[Signature]

4. The Mayor is authorized and directed to sign the Offer to Purchase and Quit Claim Deed for the conveyance identified above, and the Temporary Easement for Construction and Permanent Easement for Storm Sewer Right-of-Way are hereby approved and accepted, and the City Clerk is authorized and directed to attest to the Mayor's signature.

5. Upon final passage of an ordinance vacating the said right-of-way and upon proof of payment of the consideration plus \$113.00 for publication and recording costs, the City Clerk is authorized and directed to forward the originals of the said Deed and Easements, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing to the Real Estate Division of the Engineering Department for the purpose of causing said documents to be recorded.

6. The Real Estate Division Manager is authorized and directed to forward the originals of the Deed and Easements, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Polk County Recorder's Office for the purpose of causing these documents to be recorded.

7. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division Manager shall mail the original of the Quit Claim Deed and copies of the other documents to the grantees.

8. The proceeds from the sale of this property will be deposited into the following account: 2006-07 Operating Budget, Page 310, Property Maintenance, SP767.

★ Roll Call Number

Agenda Item Number

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Dispositions - Akers: Page 3

Date September 25, 2006

(Council Communication No. 06-615)

Moved by _____ to adopt.

APPROVED AS TO FORM:

Ann DiDonato

Ann DiDonato
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
VLASSIS				
TOTAL				

MOTION CARRIED APPROVED

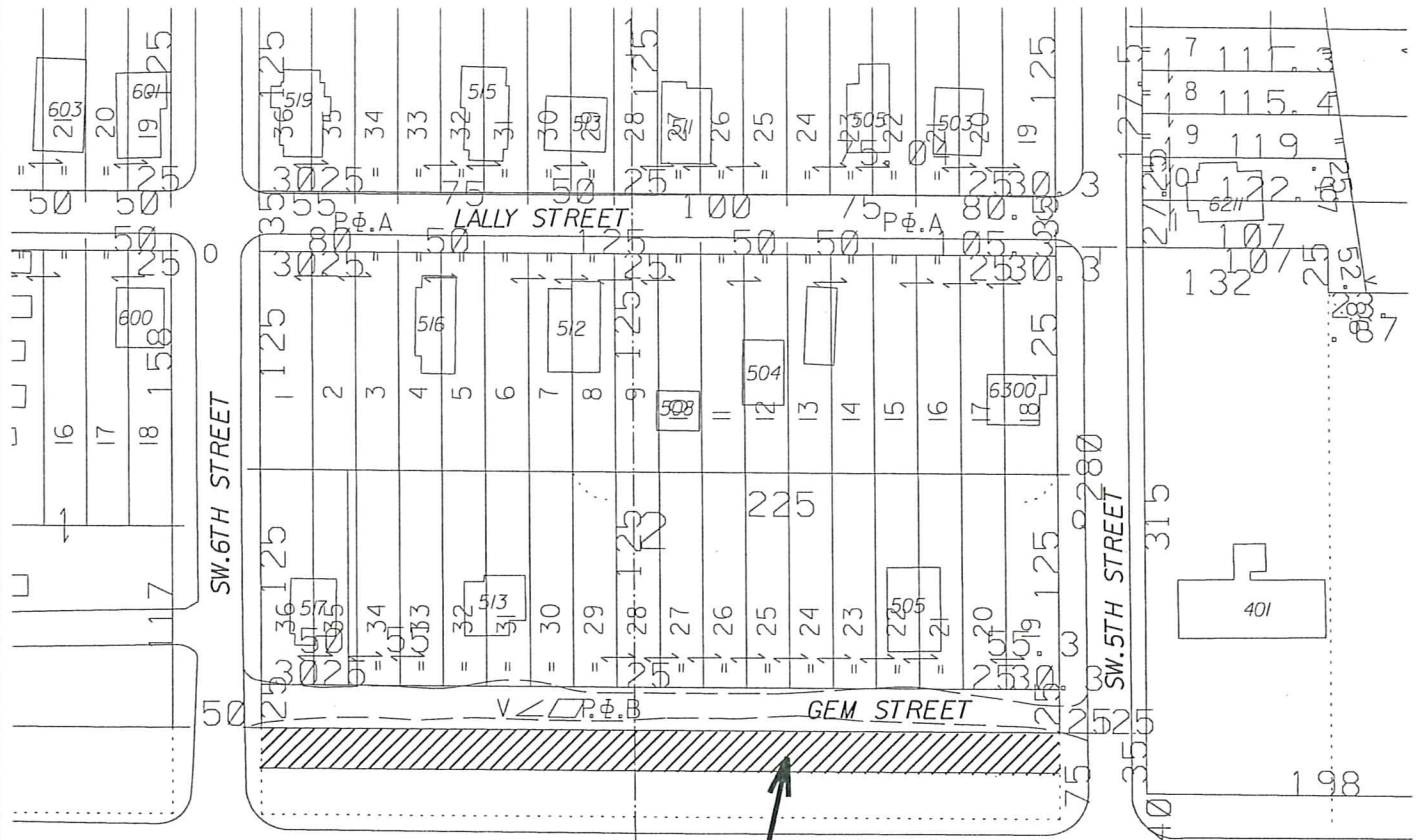
Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

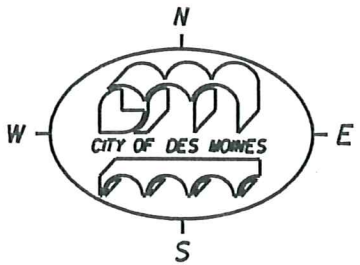
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk



ARMY POST ROAD

**PROPERTY
LOCATION**



**PROPERTY DISPOSITION
NORTH 25' ARMY POST ROAD R.O.W.
BETWEEN S.W. 5TH & S.W. 6TH STREETS
ACTIVITY I.D. 34-2006-012**

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★ Roll Call Number

Agenda Item Number

Date July 8, 2002

WHEREAS, the City Plan and Zoning Commission has advised in the attached letter that at a public hearing held June 20, 2002, the members recommended by a vote of 11-0 for APPROVAL of a request from Tom Akers (Owner of adjoining property in the 500 block of Army Post Road) to vacate and convey a 460.3'x40' segment of right-of-way from the north side of Army Post Road between SW 5th Street and SW 6th Street subject to reservation of necessary easements for utilities.

MOVED by _____ to adopt and to refer to the City Manager and City Properties Administrator to implement.

FORM APPROVED:

Roger K. Brown
Assistant City Attorney

(11-2002-1.28)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
DANIELS				
COLEMAN				
COWNIE				
HENSLEY				
MCPHERSON				
BROOKS				
VLASSIS				
TOTAL				
MOTION CARRIED			APPROVED	
_____ Mayor				

CERTIFICATE

I, DONNA V. BOETEL-BAKER, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

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

City Clerk

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July 8, 2002

Honorable Mayor and City Council
 City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their meeting held June 20, 2002, the following action was taken:

COMMISSION RECOMMENDATION:

After public hearing, the members voted 11-0 as follows:



CITY PLAN AND ZONING COMMISSION
 ARMORY BUILDING
 603 EAST FIRST STREET
 DES MOINES, IOWA 50306-1661
 (515) 283-4182

ALL-AMERICA CITY 1949, 1976, 1991

Commission Action:	Yes	Nays	Pass	Absent
Thomas Clarke	X			
Shirley Daniels	X			
Dann Flaherty				X
Bruce Heilman	X			
Frances Koontz				X
Kaye Lozier				X
Robert Mahaffey	X			
Brian Millard	X			
Becky Morelock	X			
Christine Paskins	X			
Mike Simonson				X
Kent Sovern	X			
Marilyn Staples	X			
Tim Urban	X			

APPROVAL of a request from Tom Akers (Owner of adjoining property in the 500 block of Army Post Road) to vacate and convey a 460.3'x40' segment of right-of-way from the north side of Army Post Road between SW 5th Street and SW 6th Street subject to reservation of necessary easements for utilities. (11-2002-1.28)

Response Cards

0 In Favor
 0 In Opposition

This item would not require a 6/7 vote of City Council.

STAFF RECOMMENDATION AND BASIS FOR APPROVAL

Staff recommends approval of the requested vacation and conveyance subject to reservation of necessary easements for utilities.

STAFF REPORT

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is seeking to assemble the right-of-way with the existing "C-2" property adjoining to the north.

SZ

2. **Size of Site:** 460.3'x40' segment
3. **Existing Zoning (site):** "C-2" General Retail and Highway Oriented Commercial
4. **Existing Land Use (site):** Right-of-way serving as open drainage way.
5. **Adjacent Land Use and Zoning:**
North - "C-2", Uses are vacated Gem Street and single family residential.
South - "C-2", Army Post Road street right-of-way
6. **General Neighborhood/Area Land Uses:** The subject property is within the Army Post Road major commercial corridor on the City's south side.
7. **Applicable Recognized Neighborhood(s):** N/A
8. **Relevant Zoning History:** N/A
9. **2020 Community Character Land Use Plan Designation:** Commercial: Auto-Oriented Small-Scale Strip Commercial
10. **Applicable Regulations:** The Commission reviews all proposals to vacate land dedicated for a specific public purpose, such as for streets and parks, to determine whether the land is still needed for such purpose or may be released (vacated) for other use. The recommendation of the Commission is forwarded to the City Council.

II. ADDITIONAL APPLICABLE INFORMATION

1. **Drainage/Grading:** There is an existing storm sewer drainage outlet and flow easement that will need to be maintained or accommodated with any future development of the property.
2. **Utilities:** All existing utilities will require reservation of a public easement upon vacation.
3. **Traffic/Street System:** The proposed widening will require the southern 10' of the original 50' width of the requested parcel. This leaves a 40' segment available to vacated and convey to the applicant.

SUMMARY OF DISCUSSION

Erik Lundy: Presented staff report and recommendation and explained it was rezoned to C-2 recently. This is another step forward in attempting to assemble the entire block.

Becky Morelock: Asked if there were plans for the ditch to the west that is similar to the subject item; if something is done with this will it affect the ditch to the west.

Erik Lundy: Explained staff would want them to maintain the surface water easement and if it was redeveloped it would be expected for them to pipe it underground.

Bob Mahaffey: Asked if there would be a need for that in the future for road expansion.

Erik Lundy: Explained traffic has looked at this; the piece in question was originally a 50' piece north off the Army Post right-of-way and looking at future widening needs of Army Post Road, they

are satisfied that 40' could be sold of as excess and 10' of that needs to be retained, which is already incorporated into the request.

Tom Clarke, Sr.: Asked if all the property adjoining the subject property to the north is all C-2.

Erik Lundy: Affirmed and explained the entire block between Lally and Army Post Road between 5th and 6th was rezoned. The subject request would incorporate into that zoning.

Tom Clarke, Sr.: Asked if the proposed usage of the property would be C-2 if the subject segment were vacated and if the applicant could put a used car lot in.

Erik Lundy: Explained the zoning of this particular piece would be different than the conditional zoning of the rest of the property, but it would be looked at as a split zone site so the C-2 conditional would like prevail in that case.

Tom Clarke, Sr.: Asked about a bar.

Erik Lundy: Thought a bar was also limited and explained the zoning on the property was limited to some conditions.

Tom Clarke, Sr.: Asked if staff looked at the usage of the property to the east, the west and the south on Army Post when considering the vacation of the parcel, to recommend any kind of zoning that would be friendly to those uses.

Erik Lundy: Explained it was looked at knowing it would become C-2, as a result of the way the ordinance was written, which was compatible with the adjoining properties.

Marilyn Staples: Asked if the Commission could add that the zoning should be compatible with the property immediately north of the piece to be vacated, which is conditional.

Roger Brown: Explained the area to the north was recently rezoned and the conditions were imposed to make it appropriately rezoned to C-2. The 40' strip along the road would have to done in common with the already previously rezoned land behind it. As a split-zoned parcel they would have to comply with the more restrictive covenants of the northern area. The covenants were sufficient to convince the Commission and Council to approve the rezoning and because a 40' strip is not able to be developed for commercial use independently those conditions will also apply to the subject property.

Erik Lundy: Indicated the split-zone would likely prevail.

CHAIRPERSON OPENED THE PUBLIC HEARING

Tom Akers, 129 Mariou Parkway: Explained he has been maintaining the ditch for 9 or 10 years; has no value to anyone except for the 10' potential expansion of Army Post Rd. Has no intention of putting a car lot on it; intentions are to complete the block. Has had several people approach him about purchasing the property, but the ditch holds the value back; it has flooded at the bottom because there is no outlet.

Bob Mahaffey: Asked if he was in agreement with staff recommendations.

Tom Akers: Affirmed.

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Joe Medonia: Owner of property west of Mr. Akers': Felt if it were vacated, something would go in there that Army Post Rd. deserves, versus single-family dwelling rentals. Thought Mr. Akers would do a better job of maintaining it than the City has.

CHAIRPERSON CLOSED THE PUBLIC HEARING

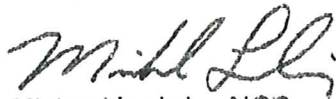
Marilyn Staples: Moved staff.

Tom Clarke, Sr.: Asked if only ½ of the property to the north was subject to conditions; the other half was C-2.

Roger Brown: Explained that based on a preliminary review of the acceptance of rezoning ordinance that occurred at the time of the rezoning of the back part of the block, it required that any commercial use of the property, which would be the block, be part of a unified development. It required front yard setback from Lally, which is to the north, in accordance with an approved landscaping plan and it prohibited the use of the property for adult entertainment, taverns and night clubs. At this time, in order to have a used car lot, they would have to return to the Commission for site plan approval; to have a bar or tavern they would have to go to the Board of Adjustment for approval after a public hearing. Because the strip of land is only 40' wide, any development would have to comply with the restrictions applicable to the balance of the property.

All voted in favor; 11-0.

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:dfa

Attachment

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Council Fact Sheet

Date July 8, 2002

Agenda Item _____

Roll Call No. _____

Name/Title (as shown on agenda): (3 lines)

Request from Tom Akers (Owner of adjoining property in the 500 block of Army Post Road) to vacate and convey a 460.3'x40' segment of right-of-way from the north side of Army Post Road between SW 5th Street and SW 6th Street. (11-2002-1.28)

Description of Action: (6 lines)

APPROVAL of a request from Tom Akers (Owner of adjoining property in the 500 block of Army Post Road) to vacate and convey a 460.3'x40' segment of right-of-way from the north side of Army Post Road between SW 5th Street and SW 6th Street subject to reservation of necessary easements for utilities.

Total \$:

Amount:	
Funding Source:	
Amount:	
Funding Source:	
Amount:	
Funding Source:	

Physical Location: 500 block of Army Post Road

Map: YES NO

Previous Related Council Action(s):

Date:	
Roll Call #:	
Action:	
Date:	
Roll Call #:	
Action:	
Date:	
Roll Call #:	
Action:	

Board/Commission Action(s):

Date:	June 20, 2002
Board/Commission:	Plan and Zoning Commission
Action:	11-0 APPROVAL
Date:	
Board/Commission:	
Action:	

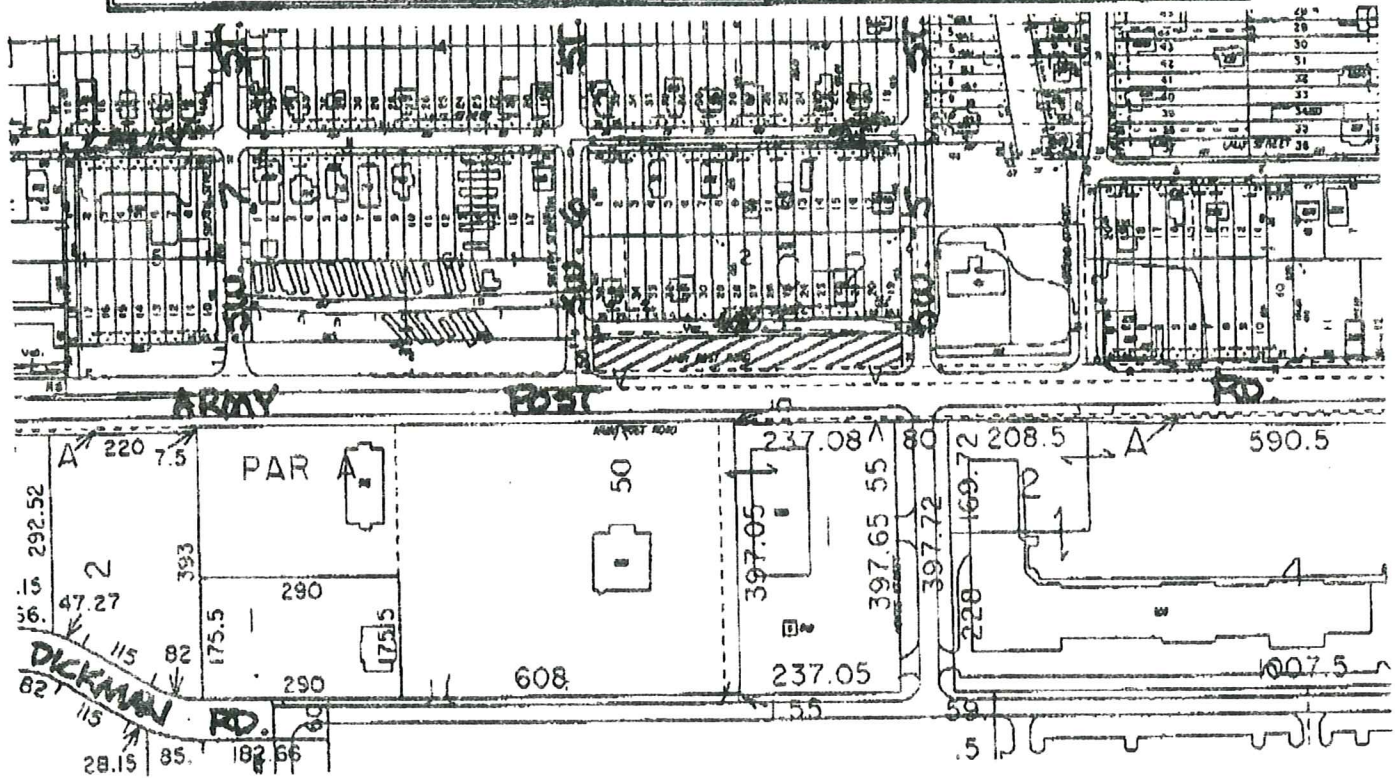
Anticipated Actions and Future Commitments: (2 lines)

Added Comments: (2 lines)

Department: Community Development Department

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Request from Tom Akers (owner) 500 block of Army Post Road to vacate and convey a segment of right-of-way from the north side of Army Post Road between SW 5 th Street and SW 6 th Street.		File # 11-2002-1.28		
Description of Action	Vacate and convey a 460.3'X40' segment of street right-of-way.			
2020 Community Character Plan	Commercial: Auto-Oriented Small Scale Strip Development			
Horizon 2025 Transportation Plan	Widening of Army Post Road			
Current Zoning District	"C-2" General Retail and Highway Oriented Commercial			
Proposed Zoning District	N/A			
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition
		0	0	0
Plan and Zoning Commission Action	Approval	11-0	Required 5/7 Vote of the City Council	Yes
	Denial			No



11-2002-1.28

