

Date November 10, 2008

HOLD HEARING FOR VACATION AND CONVEYANCE OF THE EAST/WEST ALLEY BETWEEN WOODLAND AVENUE AND HIGH STREET, FROM A POINT 60 FEET EAST OF 14TH STREET TO 15TH STREET, AND 14TH STREET FROM WOODLAND AVENUE TO HIGH STREET, TO CENTRAL IOWA HEALTH PROPERTIES CORPORATION FOR \$414,750

WHEREAS, on October 27, 2008, by Roll Call No. 08-_____, the City Council adopted a recommendation from the City Plan and Zoning Commission that the East/West alley right-of-way between Woodland Avenue and High Street, from a point 60 feet east of 14th Street to 15th Street, and 14th Street right-of-way from Woodland Avenue to High Street, hereinafter more fully described, be vacated and sold; and

WHEREAS, the grantee identified below is the owner of property abutting such right-of-way and has 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 October 27, 2008, by Roll Call No. 08-_____, 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 November 10, 2008, 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 East/West alley between Woodland Avenue and High Street, from a point 60 feet east of 14th Street to 15th Street, and 14th Street right-of-way from Woodland Avenue to High Street, more specifically described as follows:

All of the East/West alley right-of-way lying North of and adjoining Lots 8 through 14, Block 1, Griffith's Subdivision of Lot 5 of the Pursley Addition, an Official Plat, and the West 60.0 feet of the East/West alley right-of-way lying West of the vacated East/West

DESCRIPTION REVIEWED
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alley right of way (Vacated by Ordinance 10,705, September 23, 1985) and lying South of and adjoining Lot 23, Highwood Replat, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

And

All of the Fourteenth Street right-of-way from the South right-of-way line of Woodland Avenue to the North right-of-way line of High Street, and lying East of and adjoining Block 1, Griffith's Subdivision of Lot 5 of the Pursley Addition, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

3. That the sale and conveyance of such right-of-way, as described below, to Central Iowa Health Properties Corporation for \$414,750, together with payment by such grantee of the estimated publication and recording costs for this transaction, be and is hereby approved:

All of the vacated East/West alley right-of-way lying North of and adjoining Lots 8 through 14, Block 1, Griffith's Subdivision of Lot 5 of the Pursley Addition, an Official Plat, and the vacated West 60.0 feet of the East/West alley right-of-way lying West of the vacated East/West alley right-of-way (Vacated by Ordinance 10,705, September 23, 1985) and lying South of and adjoining Lot 23, Highwood Replat, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

And

All of the vacated Fourteenth Street right-of-way from the South right-of-way line of Woodland Avenue to the North right-of-way line of High Street, and lying East of and adjoining Block 1, Griffith's Subdivision of Lot 5 of the Pursley Addition, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

4. The Mayor Pro Tem is authorized and directed to sign the Offer to Purchase and the Quit Claim Deed for the conveyance identified above, which includes a Permanent Ingress-Egress Access Easement for the benefit of the City and of the property at 1423 High Street, and the City Clerk is authorized and directed to attest to the Mayor Pro Tem'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 original of the said Deed, 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.

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Date November 10, 2008

6. The Real Estate Division Manager is authorized and directed to forward the original of the Deed, 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 grantee.

8. The proceeds from the sale of this property will be deposited into the following account: 2008-09 CIP, Page Street Improvements – 18, High Street Realignment – 10th Street to 14th Street, STR204.

(Council Communication No. _____)

Moved by _____ to adopt.

APPROVED AS TO FORM:

Glenna K. Frank
 Glenna K. Frank
 Assistant City Attorney

| COUNCIL ACTION | YEAS | NAYS | PASS | ABSENT |
|----------------|------|------|----------|--------|
| COWNIE | | | | |
| COLEMAN | | | | |
| HENSLEY | | | | |
| KIERNAN | | | | |
| MAHAFFEY | | | | |
| MEYER | | | | |
| VLASSIS | | | | |
| TOTAL | | | | |
| MOTION CARRIED | | | APPROVED | |

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.

 Mayor

 City Clerk

Pro Tem

DREHER, SIMPSON AND JENSEN, P.C.

Attorneys and Counselors at Law

The Equitable Building
604 Locust Street • Suite 222
Des Moines, Iowa 50309-3723
Telephone (515) 288-5000 • Facsimile (515) 288-7718

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D. Scott Simpson
John M. Bouslog
Jack H. Pennington
Michael K. Thibodeau

Of Counsel:
Walter T. Hart
Michael F. Burger

Retired:
Robert E. Dreher
Albert L. Harvey

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Writer's E-mail • jboslog@dreherlaw.com

November 4, 2008

VIA FACSIMILE 515-237-1643

Mr. Roger K. Brown
Assistant City Attorney
City of Des Moines Legal Department
City Hall
400 Robert D. Ray Drive
Des Moines, Iowa 50309-1891

Re: Vacation and Conveyance of 14th Street, between Woodland Avenue and High Street and East/West Alley between Woodland and High Street from a Point Sixty Feet East of 14th Street to 15th Street
Applicant: Iowa Methodist Medical Center
Our Clients: RDB Investment, LLC and Action Reprographics, Inc.
Our File No.: 34032

Dear Mr. Brown:

Our firm represents Action Reprographics, Inc., RDB Investments, LLC and Dan and Wanda Lienemann. RDB Investments, LLC, is the entity which owns the real estate located at 1423 High Street, Des Moines, Iowa. Action Reprographics, Inc. is the tenant of the building and operates its business exclusively from there. Wanda Lienemann is the majority shareholder of both Companies. Dan Lienemann is the minority shareholder of both Companies.

As you are aware, Central Iowa Hospital Corporation (sometimes known as Iowa Methodist Medical Center) has filed an application with the City of Des Moines to have the above-referenced street and alley vacated by the City and conveyed by the City to Iowa Methodist for \$414,750.00.

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As you are aware, Iowa Code §364.7 provides as follows:

"A city may not dispose of an interest in real property by sale, lease for a term of more than three years, or gift, except in accordance with the following procedure:

1. The council shall set forth its proposal in a resolution and shall publish notice as provided in §362.3, of the resolution and of a date, time and place of a public hearing on the proposal.
2. After the public hearing, the council may make a final determination on the proposal by resolution.
3. A city may not dispose of real property by gift except to a government body for a public purpose..."

My clients do not believe that the City has complied with §364.7. While my clients and I attended the City Council Meeting on October 27, 2008, at no time did we hear a resolution proposed or adopted concerning the vacation and conveyance of the above-referenced real estate (although it was approved under the Consent portion of the Agenda). Further, while we are only six days away from the next City Council Meeting, no notice of such public hearing has been received by my clients or me concerning the proposed vacation and conveyance. Accordingly, the public hearing cannot be legally held. Finally, we do not believe that the price offered for the real estate is the fair market value of same. In light of some recent sales occurring in the vicinity of the above-referenced property, we believe that the Hospital's offer to the City is substantially below the fair market value. We have retained an appraiser to assist us in analyzing this matter and intend on having him testify at a duly called public hearing on this matter.

Further, Iowa Code §364.15 provides:

"If a city has opened a street or alley, and any person has made improvements on lots abutting the street or alley, or uses such street or alley for ingress or egress, and afterward the street or alley is vacated causing damage or injury or loss of access, or diminishing the value of the improved property, the **city shall pay to the owner of the property the amount of such damage or injury** (emphasis added).

As my clients and I testified at the Plan and Zoning Commission meeting held on October 16, 2008, we believe that should the City go forward with the Hospital's proposal, that a loss of access will occur and may diminish the value of my clients' property. Again, our appraiser is currently in the process of calculating the amount of such diminished value. Once calculated, we will notify the City of same as the City will be responsible for paying my clients the amount of such damage or injury as provided in §364.15.

November 4, 2008

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Section 102.286 of the Des Moines Municipal Code sets forth the procedures to be followed for the vacation and conveyance of any street or alley within the city limits of Des Moines. §102.286 indicates that the application **shall** contain the following (emphasis added):

(4) **A consent** to the proposed vacation on a form acceptable to the legal department **signed by all owners of land adjoining the portion of street or alley sought to be vacated**. However, such consents are not needed if the street or alley is not open and in regular use (emphasis added).

In this case, the street and alley are open and in regular use. In this case, **my clients have not consented** to the proposed vacation and conveyance.

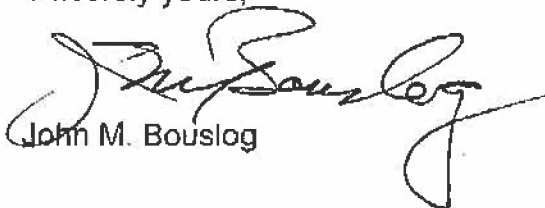
The policy for vacation and conveyance of alleys and streets as published by the Plan and Zoning Commission also requires the written consents from all adjoining property owners along with the right-of-way request form.

As indicated above, my clients do not consent to this vacation and conveyance. How does the City propose to proceed with this action? It appears to us that should the city proceed it would not only be in violation of its own policies and procedures, its own municipal code and the Iowa Code.

We have serious concerns about the steps taken by the City and the Hospital in connection with this proposed transaction. So that we may continue to evaluate our legal options in this regard, we would like to obtain a complete copy of all information in possession of the City in connection with the above-referenced matter. We hereby request a complete copy of all information concerning this proposed vacation and conveyance pursuant to the Freedom of Information Act. I would like to stop by your office on Wednesday, November 5, and pick up a copy of the City's file.

While my clients are not litigious by nature, they do not intend to sit idly by and allow the City to act contrary to its own policies and procedures, as well as the Code of Iowa to its detriment. I would like to visit with you about this matter. Please contact me at your earliest convenience so that we may discuss. I look forward to hearing from you soon.

Sincerely yours,



John M. Bouslog

JMB:rk
Enclosures
cc: Dan and Wanda Lienemann

DREHER, SIMPSON AND JENSEN, P.C.

Attorneys and Counselors at Law

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Michael K. Thibodeau

Of Counsel:
Walter T. Hart
Michael F. Burger

Retired:
Robert E. Dreher
Albert L. Harvey

jbouslog@dreherlaw.com

November 5, 2008

HAND DELIVERED

Glenna Frank
Assistant City Attorney
City of Des Moines Legal Department
City Hall
400 Robert D. Ray Drive
Des Moines, IA 50309-1891

In Re: Vacation and Conveyance of 14th Street between Woodland Avenue and High Street and East/West Alley between Woodland Avenue and High Street from a Point 60 Feet East of 14th Street to 15th Street
Applicant: Iowa Methodist Medical Center
Our Clients: RDB Investment, LLC and Action Reprographics, Inc.
Our File No. 34032

Dear Ms. Frank:

May this letter serve to acknowledge receipt of Roger Brown's e-mail to me dated November 4, 2008. Mr. Brown's e-mail, coupled with our phone conversations of this morning, cleared up at least one issue for me which was raised in my November 4, 2008, letter to the City. Clearly, the resolution was properly adopted and the public hearing has been properly noticed.

My clients are still concerned about the access being proposed by Iowa Methodist Medical Center. Pursuant to the request of the Planning and Zoning Commission, I am enclosing copies of letters from two vendors of Action Reprographics whereby they expressed their ongoing concern about the proposal.

As indicated in my November 4, 2008, letter to Mr. Brown, my clients have retained an appraiser to compute the diminution in value to its property, assuming the

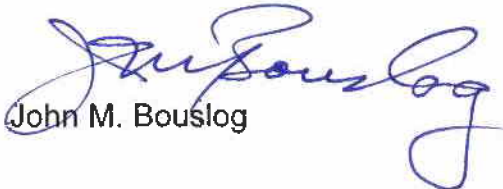
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November 5, 2008

City approves the Hospital's request. In addition, we have asked the appraiser to give an opinion as to the fairness of the proposal by Iowa Methodist to the City for the vacation and conveyance of the street and alley.

Unfortunately, due to the time constraints, our appraiser will not be able to complete his assignment prior to the scheduled public hearing. We hereby request that this matter be tabled on Monday, November 10, 2008, to a date following the completion of the appraiser's work. We believe the City Council should grant this request as we believe the City, if they are going to vacate and convey the street and alley, should do so at the fair market value. Based upon the attached estimates computed by my clients, the proposed purchase price of \$414,750 is substantially below the fair market value. By tabling this matter on Monday, November 10, 2008, the City Council will be able to satisfy itself that the proposed transaction, if they were to approve it, would be on terms fair to the citizens of Des Moines.

Thank you for your consideration of this matter of mutual concern. If you have any further questions of me, please feel free to contact me to discuss. Thank you for your consideration.

Sincerely yours,



John M. Bouslog

JMB/sat
cc: Dan & Wanda Lienemann



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At Work.®**

Keith Wendl
Major Account Executive

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Clive, IA 50325
(515) 205-6047
kwendl@ikon.com
www.ikon.com

October 21, 2008

To whom it may concern:

I previously wrote a letter concerning the vacating and conveyance of the alley and 14th street next to Action Reprographics, whom we make deliveries to. As I understand it the initial plans have changed and I have been asked to review the current "T shape" design. It is also my understanding that the city recommendation stated that this proposed "T shape" design provided "as good or better access" than what Action Reprographics currently has.

While we feel that under ideal circumstances we can navigate and back into the proposed area under the "T Shape" design we do want to point out that anytime you are backing up a truck as opposed to driving straight ahead like we currently do that it inherently presents more danger and therefore a safety risk. If given a choice we would much prefer the current situation.

We have also been asked about any concerns we might have regarding the proposed changes and as we understand it we will be backing up with cars parked around the area that we will need to navigate through. Illegally parked cars could block our ability to make a delivery in the back. In addition, during the winter months there could be snow removal concerns or more precisely pushed snow piles interrupting the turning radius of the trucks to mention a few.

If this new proposed "T shape" design were to take place we would need to monitor the risk it might pose and we would reserve our right to reevaluate this in the future should there be a problem.

Sincerely,

A handwritten signature in black ink that reads "Keith Wendl". The signature is fluid and cursive, written over a light blue horizontal line.

Keith Wendl
Major Account Executive

xpedx
3201 S.E. Convenience Blvd.
Ankeny, IA 50021

Direct 515 965-2100
Fax 515 965-2223
Toll Free 800 572-8389



October 31, 2008

To Whom It May Concern:

I previously wrote a letter about the changing of the alley behind Action Reprographics. I understand the new plan is to change to a T shape design and this plan has been deemed by the city to have as good or better access for deliveries.

When reviewing the new proposal I feel it is doable but do have a few concerns for our driver:

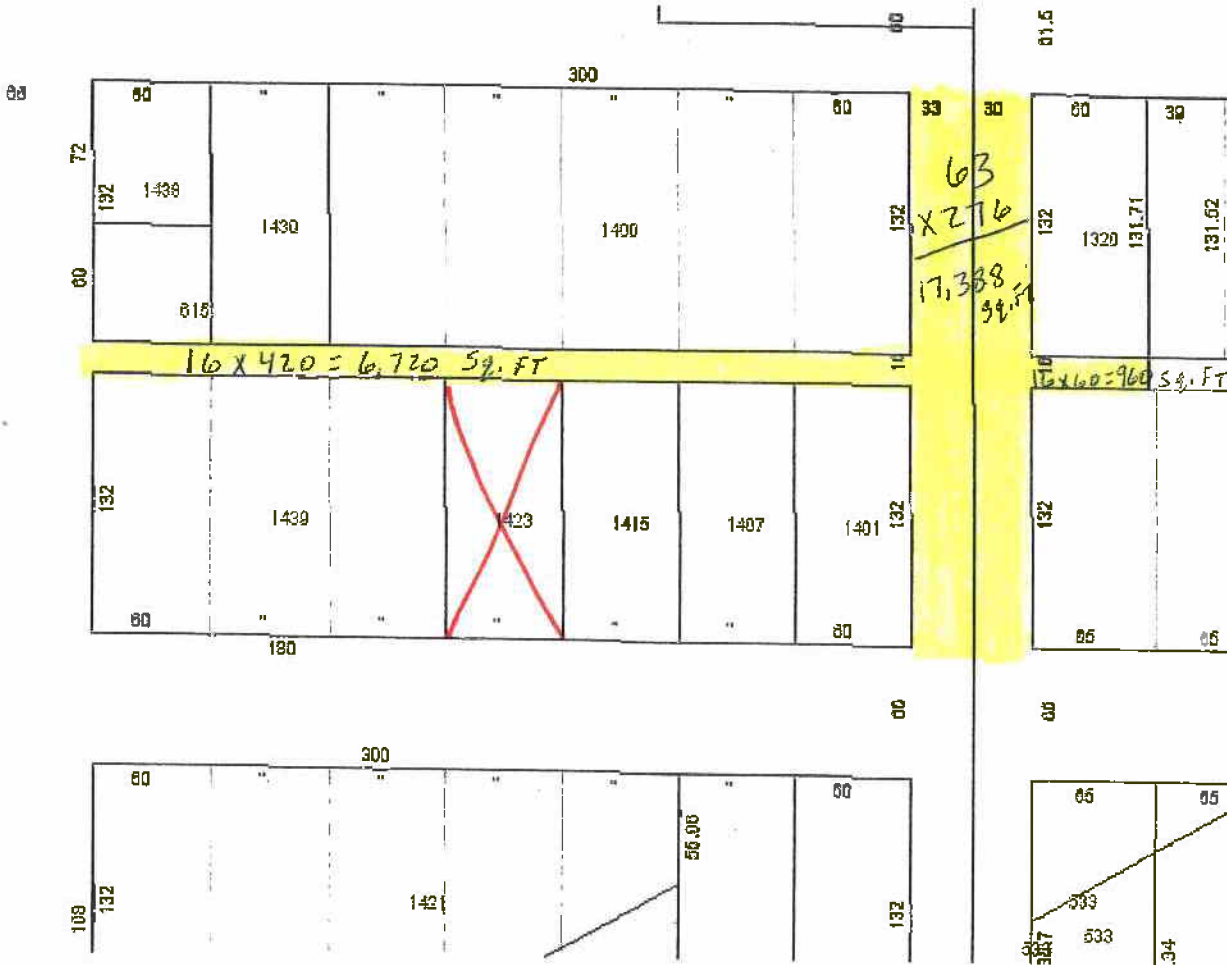
1. Any time you back a truck there is danger or safety risk because of visibility of the use of mirrors as opposed to straight line vision thru windshield.
2. Illegally parked cars could block our ability to make deliveries.
- 3... In winter months snow removal concerns in the turning radius of the trucks.

If and when the new proposed design were to take place, our safety committee would need to monitor the risk to our driver and equipment.

Sincerely

A handwritten signature in black ink that reads "Gary Edgington". The signature is written in a cursive style with a large initial "G".

Gary Edgington
Sales Representative



960 Sq. FT Small alley
 6,720 Sq. FT Large Alley
 17,388 Sq. FT STREET - 14th

 25,068 Sq. FT TOTAL

Purchase Price
\$ 414,750

25,068 (Hospital)
 x \$55 (Sold Prop. to Wellmark)

\$16.54 / Sq. FT.

.378,740

25,068
 \$194 (welding co.)

\$4,863,192