

Date August 29, 2011

HOLD HEARING FOR VACATION AND CONVEYANCE OF A PORTION OF WAVELAND GOLF COURSE TO RUSSELL D. AND MARILYN A. PARKS IN EXCHANGE FOR A COMPARABLE PARCEL OF LAND ADJOINING CUMMINS WOODS

WHEREAS, Russell D. and Marilyn A. Parks are the owners of property on the north side of Observatory Road that adjoins Waveland Golf Course, and on March 17, 2010, Russell Parks submitted a request to the City's Parks Department to purchase a 70-foot by 132.19-foot portion of Waveland Golf Course ("Waveland Golf Course parcel") to incorporate with his existing property for redevelopment as a six-unit townhome project; and

WHEREAS, on September 13, 2010, by Roll Call No. 10-1504, the City Council received a recommendation from the City Park and Recreation Board, which recommendation was referred to the City Manager for further review and comment, that the above referenced Waveland Golf Course parcel be vacated and sold upon conditions including: (1) City approval of rezoning of the Waveland Golf Course parcel to allow the townhome proposal; (2) the intended use of the property is limited to redevelopment as a six-unit townhome project; (3) the development of the property shall include a landscaping plan presented to the Park and Recreation Board and shall conform to the City tree mitigation ordinance and any additional requirements set forth in the City's tree mitigation policy; and (4) the property adjacent to the Waveland Golf Course parcel referred to as a "Bird Sanctuary" will be protected from the construction process with silt fencing to control runoff; and

WHEREAS, on December 2, 2010, Russell Parks submitted a revised request to the City's Parks Department to purchase said Waveland Golf Course parcel, in exchange for conveyance to the City of an approximately 50-foot by 190.56-foot portion of land adjoining Cummins Woods and owned by Russell D. and Marilyn A. Parks ("Russell Parks parcel") as consideration for said purchase, as shown on the attached drawing, which property has been determined by the City's Real Estate Division to be comparable in value and use to the Waveland Golf Course parcel; and

WHEREAS, on July 11, 2011, by Roll Call No. 11-1198, the City Council received a recommendation from the City Park and Recreation Board that the above referenced Waveland Golf Course parcel be vacated and conveyed, in exchange and as consideration for conveyance to the City of said Russell Parks parcel and in accordance with conditions set forth above; and

WHEREAS, the City Parks Department and Real Estate Division have negotiated the terms of the land exchange with buyers Russell D. and Marilyn A. Parks, which includes, among other terms, provisions that (1) the exchange of the parcels shall occur on or before December 31, 2011, unless otherwise agreed upon by the parties, said exchange being subject to the due diligence period of the buyer and City rezoning approval; (2) the buyers shall be required to obtain and provide to City a survey for the above-referenced Waveland Golf Course parcel, as more fully described below, of which the full parcel or a portion thereof shall be conveyed to Russell D. and Marilyn A. Parks for development and the remainder, if any, shall be retained by the City and rededicated; (3) the aforementioned conditions as set forth in the Park and Recreation Board recommendations as well as the condition that development of the property shall include a site plan and landscaping plan that will be presented to the Park and Recreation Board for review and recommendation; and (4) Russell D. and Marilyn A. Parks will convey to the City a mutually agreeable access easement across property adjacent to the Waveland

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Golf Course parcel for public and City access to the "Bird Sanctuary" as additional consideration for this land exchange; and

WHEREAS, there is no known current or future public need for the parkland property proposed to be vacated and sold, as it does not serve any use as part of the Waveland Golf Course, and the City will not be inconvenienced by the sale of said Waveland Golf Course parcel and will benefit from acquisition and acceptance of the Russell Parks parcel; and

WHEREAS, on July 11, 2011, by Roll Call No. 11-1197, it was duly resolved by the City Council that the proposed vacation and conveyance of the Waveland Golf Course parcel be set down for hearing on July 25, 2011, at 5:00 p.m., in the Council Chamber; and

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

WHEREAS, on July 25, 2011, by Roll Call No. 11-1316, the City Council opened and continued said hearing to August 8, 2011, at 5:00 p.m. to allow for additional time to finalize negotiations; and

WHEREAS, on August 8, 2011, by Roll Call No. 11-1389, the City Council again opened and continued said hearing to August 29, 2011 at 5:00 p.m. as requested by Russell D. and Marilyn A. Parks in order to complete negotiations; 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 the Waveland Golf Course parcel, as described below, are hereby overruled and the hearing is closed.
2. There is no public need or benefit for the parkland proposed to be vacated and the public would not be inconvenienced by reason of the vacation of a portion of Waveland Golf Course, more specifically described as follows:

A PORTION OF THE NORTHWEST QUARTER OF SECTION 1, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5TH P.M. ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF THE SAID NORTHWEST QUARTER WHICH IS THE SOUTHWEST CORNER OF LOT 17 OF THE OFFICIAL REPLAT OF THE OFFICIAL PLAT OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5TH P.M. AND ALSO ON THE NORTH RIGHT-OF-WAY LINE OF OBSERVATORY

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ROAD, AS PRESENTLY ESTABLISHED; THENCE WEST, PERPENDICULAR TO THE SAID EAST LINE OF THE SAID NORTHWEST QUARTER, A DISTANCE OF 70.00 FEET; THENCE NORTH, PARALLEL WITH THE SAID EAST LINE, A DISTANCE OF 132.19 FEET; THENCE EAST, PERPENDICULAR TO THE SAID EAST LINE, A DISTANCE OF 70.00 FEET TO THE SAID EAST LINE; THENCE SOUTH, ALONG THE SAID EAST LINE, A DISTANCE OF 132.19 FEET TO THE POINT OF BEGINNING.

3. That the conveyance of a portion of Waveland Golf Course, more specifically described below, to Russell D. and Marilyn A. Parks, in exchange for conveyance to the City of an approximately 50-foot by 190.56 foot portion of land adjoining Cummins Woods and owned by Russell D. and Marilyn A. Parks as consideration for said purchase, is hereby approved subject to all terms and conditions set forth herein and in the Offers on file in the Office of the City Clerk:

A VACATED PORTION OF THE NORTHWEST QUARTER OF SECTION 1, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5TH P.M. ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF THE SAID NORTHWEST QUARTER WHICH IS THE SOUTHWEST CORNER OF LOT 17 OF THE OFFICIAL REPLAT OF THE OFFICIAL PLAT OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5TH P.M. AND ALSO ON THE NORTH RIGHT-OF-WAY LINE OF OBSERVATORY ROAD, AS PRESENTLY ESTABLISHED; THENCE WEST, PERPENDICULAR TO THE SAID EAST LINE OF THE SAID NORTHWEST QUARTER, A DISTANCE OF 70.00 FEET; THENCE NORTH, PARALLEL WITH THE SAID EAST LINE, A DISTANCE OF 132.19 FEET; THENCE EAST, PERPENDICULAR TO THE SAID EAST LINE, A DISTANCE OF 70.00 FEET TO THE SAID EAST LINE; THENCE SOUTH, ALONG THE SAID EAST LINE, A DISTANCE OF 132.19 FEET TO THE POINT OF BEGINNING.

(Subject to survey; a portion of this parcel may be retained and rededicated by City).

4. The Mayor is authorized and directed to sign the Offer to Purchase and, prior to closing, the Quit Claim Deed and related real estate documents for the conveyance to Russell D. and Marilyn A. Parks as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature and to deliver the aforementioned documents to the Real Estate Division Manager for recording and closing purposes, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing.

5. The Mayor is further authorized and directed to sign the Offer to Purchase for the conveyance to the City from Russell D. and Marilyn A. Parks as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature, and prior to closing, is further authorized and directed to endorse the approval and acceptance of this Council upon the related deed, upon the above-referenced access easement for public and City access to the "Bird Sanctuary", and upon other related real estate documents in the form approved by the City's Legal Department, and to deliver the aforementioned documents to the Real Estate Division Manager for recording and closing purposes.

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6. The City Manager and/or his designee, the City's Real Estate Division Manager, is hereby authorized and directed to administer and monitor the Offers to Purchase; to approve and execute documents pertaining to minor or unsubstantial changes to said Offers, following approval of the City's Legal Department as to form; to proceed to closing in accordance with the terms set forth herein and in the Offers; and, if needed, to proceed with and execute documents pertaining to the termination of the Offers if Russell D. and Marilyn A. Parks fail to fulfill the contract terms required therein, following approval of the City's Legal Department.

7. There will be no proceeds associated with this land exchange.

(Council Communication No. 11544)

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 | | | | |
| GRIESS | | | | |
| HENSLEY | | | | |
| MAHAFFEY | | | | |
| MEYER | | | | |
| MOORE | | | | |
| 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