

Date April 9, 2012

**CONTINUED HEARING FOR VACATION AND CONVEYANCE OF A SEGMENT OF LINDEN STREET WEST OF 14<sup>TH</sup> STREET TO WELLMARK HOLDINGS, INC. IN EXCHANGE FOR A PERMANENT EASEMENT FOR STREET RIGHT-OF-WAY CONNECTING THE EAST TERMINUS OF THE REMAINING LINDEN STREET TO INGERSOLL AVENUE**

**WHEREAS**, on February 13, 2012, by Roll Call No. 12-0183, the City Council received a recommendation from the City Plan and Zoning Commission that a segment of Linden Street west of 14<sup>th</sup> Street (“City Right-of-Way”), hereinafter more fully described, be vacated as requested by Wellmark Holdings, Inc. to allow for redevelopment of the eastern portion of the block for a passive recreation space with a pedestrian path circuit, subject to conditions; and

**WHEREAS**, Wellmark Holdings, Inc. is the owner of the real property that abuts the City Right-of-way and has requested the vacation and conveyance of such Right-of-way for the purpose of incorporation with surrounding properties for redevelopment as described above, in exchange and as consideration for conveyance by Wellmark Holdings, Inc. to the City of Des Moines of a permanent easement for street right-of-way across a comparable parcel of land from the east terminus of the remaining Linden Street right-of-way to Ingersoll Avenue (“Easement Area”); and

**WHEREAS**, said land exchange is proposed to occur following design, building demolition and construction by Wellmark Holdings, Inc., at its sole expense, of the proposed public right-of-way improvements within the Easement Area as recommended by the City Plan and Zoning Commission, Community Development staff and the City Traffic Engineer, pursuant to private construction contract to be submitted to the City Council for approval; and

**WHEREAS**, Wellmark Holdings, Inc. and the City Real Estate Division are negotiating a land exchange agreement which will include, among other terms, provisions that:

- (1) closing on the land exchange is subject to Wellmark Holdings, Inc. completing the street right-of-way construction as described above, at Wellmark’s sole expense, in accordance with all approved site plan, permitting, and other City requirements, and subject to approval and acceptance of the final roadway project improvements by the City Council of the City of Des Moines;
- (2) Wellmark shall remain responsible for all project improvements until closing has occurred, and for maintaining the planned retaining wall(s), sidewalks, and non-paved surfaces within the Easement Area following closing, and the City shall be responsible for maintaining the street surface within the Easement Area including snow removal and paving repairs following closing;
- (3) Wellmark, or its successors or assigns, shall obtain City Council approval of a development plan prior to undertaking any interim or permanent use of the City Right-of-Way or adjoining properties that differs from the planned use of said properties as shown in Wellmark’s conceptual plan as attached hereto;
- (4) in the future event that the permanent easement area is no longer needed for public street purposes by the City and Wellmark requests a release from the City of the Permanent Easement for Street Right-of-Way, Wellmark shall at said time be required to pay to the City the amount of \$177,247, which price represents \$31.20 per square foot for 5,681 square feet of easement area, minus a credit that shall be equal to the amount of Wellmark’s actual construction costs within the Easement Area that exceed the estimated cost of \$100,000, with a maximum credit of \$177,247; and
- (5) Wellmark shall indemnify the City for claims relating to the roadway improvements and land exchange; and

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**WHEREAS**, there is no known current or future public need or benefit for the City Right-of-way proposed to be conveyed to Wellmark Holdings, Inc., and the City will not be inconvenienced by the conveyance of said property in exchange for the proposed permanent roadway easement, pursuant to the conditions set forth above and set forth in the above-referenced City Plan and Zoning Commission recommendation; and

**WHEREAS**, on February 27, 2012, by Roll Call No. 12-0281, 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 March 12, 2012, 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**, on March 12, 2012, by Roll Call No. 12-0422, the hearing on said proposal was continued to March 26, 2012; and

**WHEREAS**, on March 26, 2012, by Roll Call No. 12-0488, the hearing on said proposal was continued to April 9, 2012, in order to complete negotiations relating to the land exchange agreement with Wellmark Holdings, Inc.; 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 or benefit for the right-of-way proposed to be vacated and the public would not be inconvenienced by reason of the vacation of a segment of Linden Street west of 14<sup>th</sup> Street, more specifically described below, in exchange for a permanent easement for street right-of-way connecting the east terminus of the remaining Linden Street right-of-way to Ingersoll Avenue:

PARCEL "A" OF THE SUBDIVISION OF LOT 5 PURSLEY'S ADDITION TO FORT DES MOINES

THAT PART OF LINDEN STREET OF THE SUBDIVISION OF LOT 5, PURSLEY'S ADDITION TO FORT DES MOINES, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING ON THE SOUTH LINE OF LINDEN STREET RIGHT-OF-WAY AND BEING THE NORTHWEST CORNER OF LOT 24 OF FOURTEENTH STREET PLACE, AN OFFICIAL PLAT; THENCE SOUTH 89°27'15" EAST ALONG SAID SOUTH LINE AND THE NORTH LINE OF SAID LOT 24, A DISTANCE OF 39.93 FEET TO THE NORTHEAST CORNER OF SAID LOT 24 AND THE POINT OF BEGINNING; THENCE NORTH 52°15'30" EAST, 55.55 FEET; THENCE NORTH 42°37'26" EAST, 42.25 FEET TO THE NORTH LINE OF SAID LINDEN STREET AND THE SOUTH LINE OF LOT 12 OF BLOCK 4 OF SAID SUBDIVISION OF LOT 5 PURSLEY'S ADDITION TO FORT DES MOINES;

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THENCE SOUTH 89°37'32" EAST ALONG SAID NORTH LINE AND ALONG THE SOUTH LINE OF SAID LOT 12, A DISTANCE OF 30.00 FEET TO THE SOUTHEAST CORNER OF SAID LOT 12; THENCE SOUTH 89°30'54" EAST CONTINUING ALONG SAID NORTH LINE AND ALONG THE SOUTH LINE OF LOT 13 AND LOT 14 OF BLOCK 4 OF SAID SUBDIVISION OF LOT 5 PURSLEY'S ADDITION TO FORT DES MOINES, 120.04 FEET TO THE WEST LINE OF 14TH STREET RIGHT-OF-WAY; THENCE SOUTH 0°05'30" EAST ALONG SAID WEST LINE OF 14TH STREET RIGHT-OF-WAY, 66.00 FEET TO SAID SOUTH LINE OF LINDEN STREET RIGHT-OF-WAY AND THE NORTHEAST CORNER OF LOT 27 OF SAID FOURTEENTH STREET PLACE; THENCE NORTH 89°27'15" WEST ALONG SAID SOUTH LINE AND THE NORTH LINE OF SAID LOT 27 AND ALONG THE NORTH LINE OF LOT 26 AND LOT 25 OF SAID FOURTEENTH STREET PLACE, A DISTANCE OF 222.69 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.28 ACRES (12,083 SF).

3. That the conveyance of such right-of-way as described below to Wellmark Holdings, Inc., as consideration and exchange for conveyance by Wellmark Holdings, Inc. to the City of a Permanent Easement for Street Right-of-Way connecting the east terminus of the remaining Linden Street right-of-way to Ingersoll Avenue, with said conveyance and exchange being subject to the conditions set forth above and all terms and provisions included in the Land Exchange Agreement between the City and Wellmark Holdings, Inc., be and is hereby approved:

PARCEL "A" OF THE SUBDIVISION OF LOT 5 PURSLEY'S ADDITION TO FORT DES MOINES

THAT PART OF VACATED LINDEN STREET OF THE SUBDIVISION OF LOT 5, PURSLEY'S ADDITION TO FORT DES MOINES, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING ON THE SOUTH LINE OF LINDEN STREET RIGHT-OF-WAY AND BEING THE NORTHWEST CORNER OF LOT 24 OF FOURTEENTH STREET PLACE, AN OFFICIAL PLAT; THENCE SOUTH 89°27'15" EAST ALONG SAID SOUTH LINE AND THE NORTH LINE OF SAID LOT 24, A DISTANCE OF 39.93 FEET TO THE NORTHEAST CORNER OF SAID LOT 24 AND THE POINT OF BEGINNING; THENCE NORTH 52°15'30" EAST, 55.55 FEET; THENCE NORTH 42°37'26" EAST, 42.25 FEET TO THE NORTH LINE OF SAID LINDEN STREET AND THE SOUTH LINE OF LOT 12 OF BLOCK 4 OF SAID SUBDIVISION OF LOT 5 PURSLEY'S ADDITION TO FORT DES MOINES; THENCE SOUTH 89°37'32" EAST ALONG SAID NORTH LINE AND ALONG THE SOUTH LINE OF SAID LOT 12, A DISTANCE OF 30.00 FEET TO THE SOUTHEAST CORNER OF SAID LOT 12; THENCE SOUTH 89°30'54" EAST CONTINUING ALONG SAID NORTH LINE AND ALONG THE SOUTH LINE OF LOT 13 AND LOT 14 OF BLOCK 4 OF SAID SUBDIVISION OF LOT 5 PURSLEY'S ADDITION TO FORT DES MOINES, 120.04 FEET TO THE WEST LINE OF 14TH STREET RIGHT-OF-WAY; THENCE SOUTH 0°05'30" EAST ALONG SAID WEST LINE OF 14TH STREET RIGHT-OF-WAY, 66.00 FEET TO SAID SOUTH LINE OF LINDEN STREET RIGHT-OF-WAY AND THE NORTHEAST CORNER OF LOT 27 OF SAID FOURTEENTH STREET PLACE; THENCE NORTH 89°27'15" WEST ALONG SAID SOUTH LINE AND THE NORTH LINE OF SAID LOT 27 AND ALONG THE NORTH LINE OF LOT 26 AND LOT 25 OF SAID FOURTEENTH STREET PLACE, A DISTANCE OF 222.69 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.28 ACRES (12,083 SF).

4. Following approval by the Legal Department as to form, the Mayor is authorized and directed to sign the Land Exchange Agreement and prior to closing, the Quit Claim Deed and related real estate documents for the

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conveyance to Wellmark Holdings, Inc., as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature and to endorse upon the conveyance documents to the City from Wellmark Holdings, Inc., and upon all related real estate documents, the approval and acceptance of the City Council.

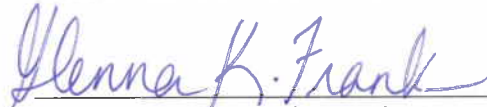
5. Upon final passage of an ordinance vacating said City right-of-way, the City Clerk is authorized and directed to forward the original of said documents, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Real Estate Division of the Engineering Department for recording purposes following closing.

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 Land Exchange Agreement; to approve and execute documents pertaining to minor or unsubstantial changes to said Agreement, 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 Agreement; and, if needed, to proceed with and execute documents pertaining to the termination of the Agreement if Wellmark Holdings, Inc. fails to fulfill the contract terms required therein, following approval of the City's Legal Department.

7. There will be no proceeds associated with the exchange of this property.

Moved by \_\_\_\_\_ to adopt.

APPROVED AS TO FORM:



Glenna K. Frank, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
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

