

Date October 8, 2012

RESOLUTION REDEDICATING A SEGMENT OF VACATED LINDEN STREET WEST OF 14TH STREET AS PUBLIC RIGHT-OF-WAY AND APPROVING FIRST AMENDMENT TO LAND EXCHANGE AGREEMENT WITH WELLMARK HOLDINGS, INC.

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 14th Street (“City Right-of-Way”), hereinafter more fully described, be vacated as requested by Wellmark Holdings, Inc. (“Wellmark”) 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, on February 27, 2012, by Roll Call No. 12-0281, the City Council set a hearing on its proposal to enter into a land exchange agreement with Wellmark whereby the City would vacate and convey the City Right-of-Way to Wellmark for the purpose of incorporation with surrounding properties for redevelopment, in exchange and as consideration for conveyance by Wellmark to the City of a permanent easement for street right-of-way (“Easement Area”) across a comparable parcel of land; and

WHEREAS, due notice of said proposal to vacate and convey the City Right-of-Way was given as provided by law; and

WHEREAS, on April 9, 2012, by Roll Call No. 12-0547, it was duly resolved by the City Council that the vacation of the City Right-of-Way, and conveyance thereof to Wellmark pursuant to land exchange agreement between the City and Wellmark, be approved; and

WHEREAS, also on April 9, 2012, by Ordinance No. 15,097, the City Council vacated the City Right-of-Way as required by the land exchange agreement; and

WHEREAS, Wellmark is required by the land exchange agreement to complete certain conditions precedent including design, building demolition and construction of the proposed public right-of-way improvements within the Easement Area by April 1, 2013; and

WHEREAS, Wellmark Holdings, Inc. has represented that it is unable to complete these conditions on or before April 1, 2013 and has requested a First Amendment to the Land Exchange Agreement, as on file in the office of the City Clerk, which Amendment delays the completion deadline for the conditions precedent to April 1, 2018, and allows the City Right-of-Way to be rededicated for public right-of-way usage until such time as Wellmark anticipates commencement of its required construction work under the land exchange agreement, both of which are considered to be substantive changes to the land exchange agreement and thus require Council approval; and

WHEREAS, City staff and Wellmark agree that it is in the City’s best interest to rededicate the City Right-of-Way for continued public use as a public street, until needed by Wellmark for construction purposes pursuant to the land exchange agreement.

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

1. The following segment of vacated Linden Street is hereby rededicated as public right-of-way:

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).

(VACATED BY ORDINANCE NO. 15,097, PASSED APRIL 9, 2012.)

2. That the First Amendment to Land Exchange Agreement between the City and Wellmark Holdings, Inc., be and is hereby approved.
3. The Mayor is authorized and directed to sign the First Amendment to Land Exchange Agreement, and the City Clerk is authorized and directed to attest to the Mayor's signature and to endorse thereon the acceptance of the City Council.
4. The City Clerk is authorized and directed to forward the original of the First Amendment to Land Exchange Agreement to the Real Estate Division of the Engineering Department for the purpose of causing said document to be recorded in the office of the Polk County Recorder.
5. The City Manager and/or his designee, the City's Real Estate Division Manager, remain authorized and directed to administer and monitor the Land Exchange Agreement and all amendments thereto; to approve and execute documents pertaining to minor or unsubstantial changes to said agreement, following approval of the City's Legal

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Department as to form; 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.

(Council Communication 12- 527)

Moved by _____ to adopt.

APPROVED AS TO FORM:


 Glenna K. Frank, Assistant City Attorney

psw

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