

Date October 7, 2013

HEARING FOR VACATION OF A SEGMENT OF 45th STREET RIGHT-OF-WAY IN THE VICINITY OF 4421 FRANKLIN AVENUE, AND CONVEYANCE OF A PORTION THEREOF TO DAVID A. WRIGHT TRUST AND KATHERINE N. SIRCY TRUST FOR \$200, AND CONVEYANCE OF A PORTION THEREOF TO MARY BETH ANZIVINO FOR \$200

WHEREAS, on September 23, 2013, by Roll Call No. 13-1471, the City Council received a recommendation from the City Plan and Zoning Commission that a segment of 45th Street right-of-way in the vicinity of 4421 Franklin Avenue (“City Right-of-Way”), hereinafter more fully described, be vacated for conveyance to the adjoining property owners, subject to reservation of easements for all utilities in place until such time that they are abandoned or relocated; and

WHEREAS, David A. Wright, as Trustee of the David A. Wright Trust, and Katherine N. Sircy, as Trustee of the Katherine N. Sircy Trust, are the owners of the property locally known as 4421 Franklin Avenue that abuts the City Right-of-Way to the east thereof, and have offered to the City of Des Moines the purchase price of \$200 for the vacation and purchase of a portion of the City Right-of-Way, as legally described below, for the purpose of residential side yard expansion, which price reflects the fair market value of the property as currently estimated by the City’s Real Estate Division; and

WHEREAS, Mary Beth Anzivino is the owner of the property locally known as 4501 Franklin Avenue that abuts the City Right-of-Way to the west thereof, and has offered to the City of Des Moines the purchase price of \$200 for the vacation and purchase of a portion of the City Right-of-Way, as legally described below, for the purpose of residential side yard expansion, which price reflects the fair market value of the property as currently estimated by the City’s Real Estate Division; and

WHEREAS, there is no known current or future public need or benefit for the City Right-of-Way proposed to be vacated and conveyed, and the City will not be inconvenienced by the vacation and sale of said property; and

WHEREAS, on September 23, 2013, by Roll Call No. 13-1472, 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 October 7, 2013, 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.

.....
Date October 7, 2013

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

1. Upon due consideration of the facts and statements of interested persons, any and all 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 45th Street right-of-way in the vicinity of 4421 Franklin Avenue, more specifically described as follows:

THE WEST 25 FEET OF LOT 24, HICKMAN HIGHLANDS, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

AND

THE EAST 25 FEET OF LOT 25, HICKMAN HIGHLANDS, 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 a portion of such right-of-way to David A. Wright, as Trustee of the David A. Wright Trust, and Katherine N. Sircy, as Trustee of the Katherine N. Sircy Trust, for \$200, and the remaining portion of such right-of-way to Mary Beth Anzivino for \$200, together with payment by such grantees of the estimated publication and recording costs for this transaction, be and is hereby approved, as more specifically described as follows:

To: David A. Wright, as Trustee of the David A. Wright Trust and Katherine N. Sircy, as Trustee of the Katherine N. Sircy Trust for \$200

THE VACATED WEST 25 FEET OF LOT 24, HICKMAN HIGHLANDS, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

To: Mary Beth Anzivino for \$200

THE VACATED EAST 25 FEET OF LOT 25, HICKMAN HIGHLANDS, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

4. The Mayor is authorized and directed to sign the Offers to Purchase and the Quit Claim Deeds for the conveyances as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.

 **Roll Call Number**

Agenda Item Number

41

Date October 7, 2013

5. Upon final passage of an ordinance vacating said right-of-way and upon proof of payment of the consideration plus \$113 for publication and recording costs, the City Clerk is authorized and directed to forward the originals of said Deeds, 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 Deeds, 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.

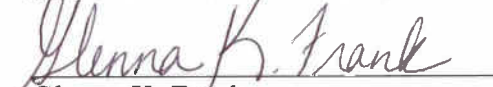
7. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division Manager shall mail the originals of the Quit Claim Deeds and copies of the other documents to the grantees.

8. Non-project related land sale proceeds are used to support general operating budget expenses: Org – EG064090.

(Council Communication No. 13- 496)

Moved by _____ to adopt

APPROVED AS TO FORM:


 Glenna K. Frank
 Assistant City Attorney

RSW

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
GRIESS				
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

September 12, 2013

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 September 5, 2013, the following action was taken regarding a request from David Wright (owner), 4421 Franklin Avenue for vacation of a 50-foot by 190-foot segment of adjoining land purchased for public right-of-way to extend 45th Street north of Franklin Avenue.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 12-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Dory Briles	X			
JoAnne Corigliano	X			
Shirley Daniels	X			
Jacqueline Easley	X			
Tim Fitzgerald	X			
Dann Flaherty				X
Jann Freed	X			
John "Jack" Hilmes				X
Ted Irvine	X			
Greg Jones	X			
William Page	X			
Christine Pardee				X
CJ Stephens	X			
Vicki Stogdill	X			
Greg Wattier	X			

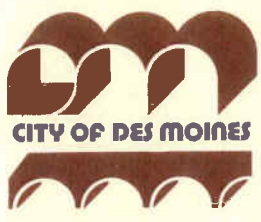
APPROVAL for vacation of a 50-foot by 190-foot segment of adjoining land purchased for public right-of-way to extend 45th Street north of Franklin Avenue subject to reservation of any necessary easements for all utilities in place until such time that they are abandoned or relocated. (11-2013-1.12)

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval of the requested vacation subject to reservation of any necessary easements for all utilities in place until such time that they are abandoned or relocated.

Written Responses

- 3 In Favor
- 1 In Opposition



CITY PLAN AND ZONING COMMISSION
ARMORY BUILDING
602 ROBERT D. RAY DRIVE
DES MOINES, IOWA 50309 -1881
(515) 283-4182

ALL-AMERICA CITY
1949, 1976, 1981
2003

STAFF REPORT

I. GENERAL INFORMATION

1. **Purpose of Request:** The appellant owns the property to the east of the subject right-of-way. The proposed vacation will allow the applicant and the property owner to the west (4501 Franklin Ave.) to acquire their halves of the undeveloped right-of-way.
2. **Existing Zoning (site):** "R1-60" One-Family Low Density Residential District.
3. **Existing Land Use (site):** Concrete driveway providing access to 4501 Franklin Avenue. The remaining portion of the right-of-way is maintained as yard space by the adjoining property owners.
6. **General Neighborhood/Area Land Uses:** The surrounding area consists predominately of single-family dwellings.
7. **Applicable Recognized Neighborhood(s):** The subject property is located in the Beaverdale Neighborhood. This neighborhood was notified of the Commission meeting by mailing of the Preliminary Agenda on August 9, 2013. Additionally, separate notifications of the hearing for this specific item were mailed on August 26, 2013 (10 days prior) to the neighborhood association and to the primary titleholder on file with the Polk County Assessor for each property adjacent to the affected right-of-way. A Final Agenda was mailed to the neighborhood association on August 30, 2013. All agendas and notices are mailed to the primary contact(s) designated by the recognized neighborhood association to the City of Des Moines Neighborhood Development Division. The Beaverdale Neighborhood Association notices were mailed to Mike Tiedens, 2520 45th Street, Des Moines, IA 50310.
8. **Relevant Zoning History:** N/A.
9. **2020 Community Character Land Use Plan Designation:** Low Density Residential.
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. **Utilities:** There are not any identified public utilities within the requested rights-of-way. Easements must be provided for all utilities in place unless they are abandoned or relocated.
2. **Traffic/Street System:** The subject right-of-way was purchased with the intention of extending 45th Street from Franklin Avenue northward to Hickman Road. The remaining land necessary for the extension of the street was never acquired and there are no longer plans to extend 45th Street in this location.

3. **Access:** The property to the west is the only parcel that relies on this right-of-way for access. This property owner has submitted written support of the request and is requesting to purchase the adjoining half of the right-of-way, which contains their driveway. There is a tax parcel to the north that fronts the subject right-of-way that has no other frontage on a public street. It is owned in common with the property addressed as 1917 46th Street to the west. The Polk County Auditor's Office has indicated that this parcel was created via quit claim deed in 1988 (Book 5826, Page 271-272) and has always been in common ownership with 1917 46th Street. The Auditor's office believes the lot split occurred as the result of financing relating to the owner's original purchase of the property on contract in 1977 (Book 4721, Page 254). This parcel is not a lot of record as established by the Zoning Ordinance. Therefore, no rights to develop it as a separate lot unitizing the subject right-of-way have been established.

SUMMARY OF DISCUSSION

There was no discussion.

CHAIRPERSON OPENED THE PUBLIC HEARING

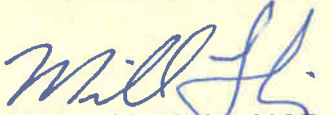
There was no one to speak in favor or in opposition of the applicant's request.

COMMISSION ACTION:

CJ Stephens moved staff recommendation to approve the requested vacation subject to reservation of any necessary easements for all utilities in place until such time that they are abandoned or relocated.

Motion passed 12-0.

Respectfully submitted,



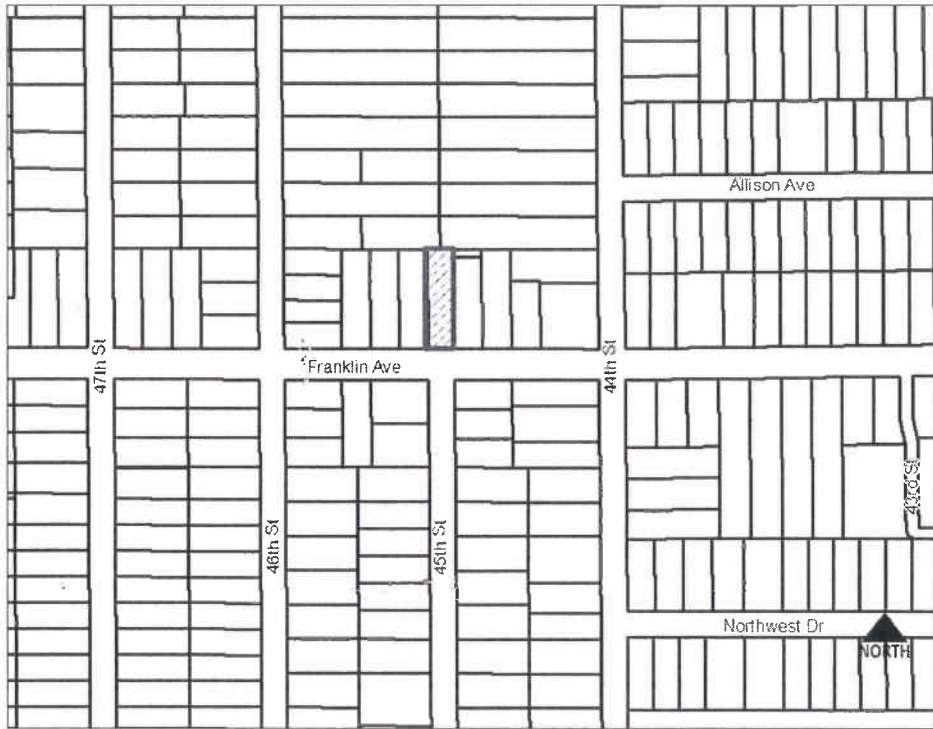
Michael Ludwig, AICP
Planning Administrator

MGL:clw
Attachment

Request from David Wright (owner), 4421 Franklin Avenue, for vacation of a 50-foot by 190-foot segment of adjoining land purchased for public right-of-way to extend 45 th Street north of Franklin Avenue.				File # 11-2013-1.12	
Description of Action	Approval for vacation of a 50-foot by 190-foot segment of adjoining land purchased for public right-of-way to extend 45 th Street north of Franklin Avenue subject to reservation of any necessary easements for all utilities in place until such time that they are abandoned or relocated.				
2020 Community Character Plan	Low-Density Residential (current & no change proposed)				
Horizon 2035 Transportation Plan	No Planned Improvements				
Current Zoning District	"R1-60" One-Family Low-Density Residential District				
Proposed Zoning District	"R1-60" One-Family Low-Density Residential District				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Inside Area	3	1			
Outside Area					
Plan and Zoning Commission Action	Approval	12-0	Required 6/7 Vote of the City Council	Yes	
	Denial			No	X

David Wright - 4421 Franklin Avenue

11-2013-1.12



Item 11-2013-1.12 Date 8/31/13 41

I (am) (am not) in favor of the request.

RECEIVED
(Circle One)
COMMUNITY DEVELOPMENT

Print Name DAVID A. WRIGHT

SEP 04 2013

Signature [Signature]

DEPARTMENT

Address 4421 Franklin

Reason for opposing or approving this request may be listed below:

As the land owner for the last 25 years, I have taken care of this land. I am willing to take care of it for the next 25 years AND PAY TAXES on it - [Signature]

Item 11-2013-1.12 Date 8-31-13

I (am) (am not) in favor of the request.

RECEIVED
(Circle One)
COMMUNITY DEVELOPMENT

Print Name Jim and Sue Meimann

SEP 04 2013

Signature [Signature]

DEPARTMENT

Address 1916 - 44th St.; Des Moines

Reason for opposing or approving this request may be listed below:

We support David Wright's petition for vacation of 50' X 190' segment of adjoining property.

Item 11-2013-1.12

Date 9/5/2013

I (am) (am not) in favor of the request.

RECEIVED
COMMUNITY DEVELOPMENT

Print Name ALAN K. CHRISTIANSEN

Signature [Signature]

SEP 05 2013

Address 1917 46th STREET

DEPARTMENT
Reason for opposing or approving this request may be listed below:

IT WILL NEGATE ANY FUTURE USE
AS A HOME SITE ON THE ~~EXISTING~~ ^{POSSIBLE}
~~LOT~~ 152.35# - OF LT 30 HICKMAN
HIGHLANDS)

Item 11-2013-1.12

Date 08-31-2013

I (am) (am not) in favor of the request.

RECEIVED
COMMUNITY DEVELOPMENT

Print Name Mary Beth Anzivino

Signature [Signature]

SEP 06 2013

Address 4501 Franklin Avenue

DEPARTMENT
Reason for opposing or approving this request may be listed below:

David Wright - 4421 Franklin Avenue

11-2013-1.12

