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Date March 7, 2022

HOLD PUBLIC HEARING ON THE INTENT TO COMMENCE A PUBLIC IMPROVEMENT PROJECT TO CONSTRUCT THE WATROUS AVENUE FROM SW 56TH STREET TO SW 61ST STREET PROJECT AND TO AUTHORIZE ACQUISITION OF THE NECESSARY PROPERTY INTERESTS, INCLUDING AGRICULTURAL LAND, FOR THE PROJECT BY GIFT, NEGOTIATION, OR EMINENT DOMAIN

WHEREAS, the City’s Engineering Department has determined that it is necessary to acquire right-of-way in connection with the Watrous Avenue from SW 56th Street to SW 61st Street Project (hereinafter “Project”); and

WHEREAS, the City’s Real Estate Division of the Engineering Department will acquire the necessary property interests for this Project; and

WHEREAS, under the provisions of Section 6B.2A of the Iowa Code, a governmental body which proposes to acquire agricultural property, by eminent domain for public improvement purposes is required to give notice of a proposed resolution, motion, or other document authorizing such acquisition of property to each property owner and contract purchaser of record (collectively, “Property Owners”) of the meeting at which such proposed authorization will be considered; and

WHEREAS, in accordance with Iowa Code Section 6B.2A, before the City can proceed with acquisition of property, including agricultural property, by eminent domain for the aforementioned Project, the City Council must:

- (a) Give affected persons and members of the public the opportunity to attend the Council meeting and present their views and objections regarding the proposed acquisition of agricultural property for public improvement projects by gift, negotiation or eminent domain.
- (b) Provide notice of the public hearing to all property owners and contract purchasers of record within the timeframes set forth in Iowa Code Sections 6B.2A.
- (c) Adopt a resolution to authorize acquisition of agricultural property for the public improvement project by gift, negotiation, eminent domain.

WHEREAS, on February 21, 2022, by Roll Call No. 22-0235, City Council set the time and place for a public hearing at which persons affected by the Watrous Avenue from SW 56th Street to SW 61st Street Project may present their views regarding the proposed acquisition of property interests, including agricultural property, for public improvement purposes by gift, negotiation or eminent domain in the City Council Chamber, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa; and

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WHEREAS, in accordance with Iowa Code Sections 6B.2A, notice of intent to approve acquisition of the necessary property interests, including agricultural property, for the Project and notice of the public hearing providing an opportunity for public input on the proposed resolution has been mailed and published to all necessary parties required by law; and

WHEREAS, in accordance with said notices, the public and those interested in said proposal to acquire property, including agricultural property, for public improvement purposes for the Watrous Avenue from SW 56th Street to SW 61st Street Project by gift, negotiation or eminent domain, both for and against, have been given an opportunity to provide public input and be heard with respect thereto and have presented their views to the City Council of the City of Des Moines, Iowa.

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

1. That all objections and endorsements having been fully reviewed and considered, the hearing providing the opportunity for public input on the question of acquisition or condemnation of property, including agricultural property, for the Watrous Avenue from SW 56th Street to SW 61st Street Project is now concluded and closed.
2. That the location of the Project as determined by the City's Engineering Department is hereby approved; there is a reasonable expectation the City will be able to achieve its public purpose, comply with all applicable standards, and obtain the necessary permits; and the City of Des Moines Real Estate Division be and is hereby authorized to proceed with the necessary activities and negotiations to acquire by gift, negotiation, or condemnation the necessary property interests, including agricultural property interests, for construction of the Watrous Avenue from SW 56th Street to SW 61st Street Project, subject to approval of the City Manager in accordance with Section 2-201 (c) and (d), of the Municipal Code of the City of Des Moines, as applicable.
3. That the property will be acquired in accordance with the guidelines of 49 CFR Part 24 of the Uniform Relocation and Real Property Acquisition Act, as revised, and that relocation assistance is hereby authorized.
4. That the City Manager is authorized to approve all Fair Market Values for the property interests for the Project in accordance with established City policy. If the property owners agree to convey the property to the City in an amount based on the established fair market value, including an approved administrative settlement, or if a condemnation award is based on the established fair market value or falls within an approved settlement amount, the Finance Director is authorized and directed to issue checks in the amounts necessary to carry out these transactions and to pay any unforeseen additional costs certified by the Legal Department and the Engineering Department; the

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Real Estate Division Manager is authorized and directed to complete these transactions in accordance with standard real estate practices and state law requirements.

5. That the Real Estate Division of the Engineering Department is directed to obtain the Legal Department's review and approval of all closing documents prior to closing.

6. That the City Clerk is hereby authorized and directed to endorse upon the real estate documents for this Project the approval and acceptance of this Council, the Mayor is authorized and directed to sign all necessary real estate documents, and the City Clerk is further authorized and directed to deliver the aforementioned documents to the Real Estate Division Manager, who shall proceed to closing in accordance with standard real estate practices.

7. That the permanent property interests acquired as part of this Project for use as City right-of-way are hereby dedicated as such, except to land determined to be excess by the City Engineer, with dedication effective upon acquisition and/or closing by gift, negotiation, or eminent domain, or upon the recording of a plat of survey for dedication of right-of-way with the county recorder's office.

(Council Communication No. 22- 088)

Moved by _____ to adopt.

APPROVED AS TO FORM:

/s/ Lisa A. Wieland
 Lisa A. Wieland, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
MANDELBAUM				
SHEUMAKER				
VOSS				
WESTRGAARD				
TOTAL				
MOTION CARRIED			APPROVED	
_____ Mayor				

CERTIFICATE

I, P. Kay Cmelik, 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

NOTICE OF HEARING ON THE INTENT TO COMMENCE A PUBLIC IMPROVEMENT PROJECT TO CONSTRUCT THE WATROUS AVENUE FROM SW 56TH STREET TO SW 61ST STREET PROJECT AND TO AUTHORIZE ACQUISITION OF THE NECESSARY PROPERTY INTERESTS, INCLUDING AGRICULTURAL LAND, FOR THE PROJECT BY GIFT, NEGOTIATION, OR EMINENT DOMAIN

TO:

Property Owner	Mailing Address	Location of Affected Property	County
R. Michael Knapp 2001 Revocable Trust and Ellyn Patrice Knapp 2001 Revocable Trust	5935 McKinley Avenue Des Moines, IA 50321	Parcel 7825-23-400-002 Des Moines, IA 50321	Polk
Airport Development, L.C.	c/o Knapp Properties 5000 Westown Parkway Suite 400 West Des Moines, IA 50266	6000 Watrous Avenue Des Moines, IA 50321	Polk
Monarch Cement of Iowa Inc. a/k/a Monarch Cement Co	5200 Park Avenue Des Moines, IA 50321	Parcel 7825-24-100-006 Des Moines, IA 50321	Polk

and other Polk County Property Owners.

Under the provisions of Chapter 6B.2A of the Iowa Code, a governmental body which proposes to acquire agricultural land under power of eminent domain for a public improvement project is required to give notice of its intent to commence the project to all owners and record contract purchasers of such agricultural land whose properties may be acquired in whole or in part for the project. (See Sections 6A.21 and 6B.2A of the Iowa Code.)

1. DESCRIPTION OF THE PROJECT.

NOTICE IS HEREBY GIVEN to the above-identified owners of agricultural land and contract purchasers of record known to be occupying the property (collectively, "Property Owners") that the Des Moines City Council will consider authorizing acquisition of property, including agricultural property, by gift, negotiation or eminent domain for the Watrous Avenue from SW 56th Street to SW 61st Street Project (the "Project"). This Project includes construction of a new two-lane roadway through currently undeveloped land extending Watrous Avenue from SW 56th Street to SW 61st Street, including sidewalk on both sides of the roadway (see attached map).

2. PRIVATE AGRICULTURAL PROPERTY MAY BE ACQUIRED BY PURCHASE OR CONDEMNATION.

The Project, if approved by the City Council, will require acquisition of property interests for the Project improvements. Upon review of Polk County property records, it appears that agricultural land owned by the above-identified persons may have to be acquired in whole or in part for the Project. The proposed location of the above-described public improvement is shown on the attached map.

3. CITY OF DES MOINES PROCESS TO DECIDE TO PROCEED WITH THE PROJECT AND TO ACQUIRE AGRICULTURAL PROPERTY BY PURCHASE OR EMINENT DOMAIN; CITY COUNCIL ACTION REQUIRED TO PROCEED WITH PROJECT; OPPORTUNITY FOR PUBLIC INPUT.

In making the decision to proceed with the above-described Project and to authorize the acquisition of property and property interests, the City Council will hold a **public hearing**, giving members of the public and all persons interested in the proposed Project the opportunity to present their views and voice objections regarding the Project and proposed acquisition of agricultural property for the Project by eminent domain. **The public hearing will be held at 5:00 p.m. during the City Council's regularly scheduled meeting on March 7, 2022, in the City Council Chamber, City Hall, 400 Robert D. Ray Drive, Des Moines Iowa.**

Persons interested in the proposal will be given the opportunity to express their views at that hearing. In addition, the City Council shall receive written views, comments, objections and arguments from any resident or taxpayer of the City that are received by the City Clerk prior to 5:00 p.m. March 3, 2022 (City Clerk's Office, Des Moines City Hall, 400 Robert D. Ray Drive, 1st Floor, Des Moines, IA 50309; Email cityclerk@dmgov.org).

Please check the posted agenda in advance of the March 7, 2022 meeting for any update on the manner in which the public hearing will be conducted to comply with COVID-19 social distancing and safety guidelines.

In order for the City of Des Moines to proceed with the above-described Project and commence the acquisition of agricultural property for the Project, the City Council will be required to approve the Project and authorize acquisition of private agricultural property for the Project by eminent domain by City Council resolution. The City Council is scheduled to consider adoption of the resolution authorizing the acquisition of property for the Project by gift, negotiation, or eminent domain following the public hearing on March 7, 2022.

If the Project is approved by the City Council, an appraiser retained by the City of Des Moines will determine the compensation to be paid for the property or property interests that are needed for the Project. The City of Des Moines will offer no less than the appraised value and will attempt to purchase the property or property interests needed for the Project by good faith negotiations. If the City of Des Moines is unable to acquire properties needed for the Project by negotiation, the City of Des Moines would proceed by acquiring those properties or property interests by condemnation.

Please give a copy of this notice to any owner or contract purchaser on your agricultural land not listed above and provide contact information for said owner or contract purchaser to the City of Des Moines contact person listed below.

4. CONTACT PERSON.

Jonathan Bullock has been designated by the City as the person to contact regarding the Project. Persons desiring further information regarding the Project or its impact on the agricultural properties identified above may contact Jonathan Bullock by mail at the City of Des Moines, Engineering Department, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa 50309, by email at JRBullock@dmgov.org, or by telephone at (515) 283-4074.

5. STATEMENT OF RIGHTS.

Just as the law grants certain entities the right to acquire private property, you, as the owner of property, have certain rights. You have the right to:

- a. Receive just compensation for the taking of property. (Iowa Const., Article I, Section 18)
- b. An offer to purchase that may not be less than the lowest appraisal of the fair market value of the property. (Iowa Code Section 6B.45; Iowa Code Section 6B.54 (3))
- c. Receive a copy of the appraisal, if an appraisal is required, upon which the acquiring agency's determination of just compensation is based not less than 10 days before being contacted by the acquiring agency's acquisition agent. (Iowa Code Section 6B.45)
- d. An opportunity to accompany at least one appraiser of the acquiring agency who appraises your property when an appraisal is required. (Iowa Code Section 6B.54(2))
- e. Participate in good-faith negotiations with the acquiring agency before the acquiring agency begins condemnation proceedings. (Iowa Code Section 6B.2B)
- f. Retain legal counsel of your choosing at your expense for the purpose of bringing a court action to challenge the exercise of eminent domain authority or the condemnation proceedings in accordance with the provisions of law. (Iowa Code Section 6B.3A; Iowa Code Section 6A.24)
- g. A determination of just compensation by an impartial compensation commission and the right to appeal its award to district court if you cannot agree on a purchase price

with the acquiring agency. (Iowa Code Section 6B.4; Iowa Code Section 6B.7; and Iowa Code Section 6B.18)

- h. Payment of the agreed upon purchase price, or, if condemned, a deposit of the compensation commission award before you are required to surrender possession of the property. (Iowa Code Section 6B.25; Iowa Code Section 6B.26; Iowa Code Section 6B.54(11))
- i. Reimbursement for expenses incidental to transferring title to the acquiring agency. (Iowa Code Section 6B.33; Iowa Code Section 6B.54(10))
- j. Reimbursement of certain litigation expenses: (1) if the award of the compensation commissioners exceeds 110 percent of the acquiring agency's final offer before condemnation; and (2) if the award on appeal in court is more than the compensation commissioners' award. (Iowa Code Section 6B.33)
- k. To the greatest extent practicable, be provided at least 90 days' written notice to vacate occupied property prior to construction or development of a public improvement. (Iowa Code Section 6B.54(4))
- l. Relocation services and payments, if you are eligible to receive them, and the right to appeal your eligibility for and amount of payments. (Iowa Code Section 316.9; Iowa Code Section 6B.42)

The rights set out in this Statement are not claimed to be a full and complete list or explanation of an owner's rights under the law. They are derived from Iowa Code Chapters 6A, 6B and 316. For a more thorough presentation of an owner's rights, you should refer directly to the Iowa Code or contact an attorney of your choice.

Mailed to all affected Property Owners on February 3, 2022.

