

★ Roll Call Number

10-225

Agenda Item Number

52

Date February 8, 2010

**HOLD HEARING ON THE INTENT TO ACQUIRE PROPERTY
FOR RECREATIONAL TRAIL PURPOSES AND AUTHORIZE ACQUISITION OF THE
NECESSARY PROPERTY INTERESTS THEREOF FOR THE DES MOINES AND
RACCOON RIVERS PROJECT BY GIFT, NEGOTIATION, OR EMINENT DOMAIN**

WHEREAS, under the provisions of 6B.2D of the Iowa Code, a governmental body which proposes to acquire private property by eminent domain for purposes other than those specified in such Code Section is required to give notice of a proposed resolution, motion, or other document authorizing such acquisition of property to each property owner, contract purchaser of record and any tenant known to be occupying the property prior to the date of the meeting at which such proposed authorization will be considered; and

WHEREAS, on September 13, 1999 , by Roll Call 99-2748, the City Council of the City of Des Moines, Iowa, entered into agreement with the Department of the Army for the Des Moines and Raccoon Rivers Feasibility Study; and

WHEREAS, on March 20, 2006, by Roll Call 06-497, the City Council approved the Design Agreement between the City and the Department of the Army for design of the Des Moines and Raccoon Rivers Project for Flood Protection; and

WHEREAS, on August 11, 2008, by Roll Call 08-1468, the City Council submitted a request to the Corps of Engineers to advance funds to complete the design of the Birdland and Central Place levees; and

WHEREAS, on January 26, 2009, by Roll Call 09-070, the City Council approved Amendment No. 1 to the Design Agreement to allow the City to provide funds in excess of the required twenty-five percent of the total cost to allow design of the Birdland and Central Place levees to proceed; and

WHEREAS, on October 12, 2009, by Roll Call No. 09-1832, the City Council approved a Memorandum of Understanding among Federal Highway Administration, Polk County, City of Des Moines, and Iowa Department of Transportation (Iowa DOT) designating roles and responsibilities as joint lead agencies in the environmental review process in the preparation of an environmental impact statement for the North-South Metro Connector (IA 415 to I-235) Polk County, Iowa Project; and

WHEREAS, on October 12, 2009, by Roll Call No. 09-1833, the City Council approved a Project Partnership Agreement between the City and the Department of the Army for construction of the Des Moines and Raccoon Rivers Project; and

WHEREAS, on October 12, 2009, by Roll Call No. 09-1834, the City Council authorized acquisition of the necessary right-of-way and easement for the stormwater improvements associated with the Des Moines and Raccoon Rivers Project by gift, negotiation, or condemnation; and

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WHEREAS, on November 23, 2009, by Roll Call No. 09-2143, the City Council approved plans for construction of a multi-use trail connection to McHenry Park as part of the Des Moines and Raccoon Rivers Project (“the Project”), which proposed recreational trail is further described as follows:

A 12 foot wide multipurpose recreational trail approximately 2,200 feet long from the Neal Smith Trail west of 6th Avenue atop the Birdland Levee through Riverview (Kiwanis Nature Island) to McHenry Park; and

WHEREAS, authorized mailing notice of this project was sent as provided by law, in accordance with the provisions of 6B.2D of the Iowa Code, setting forth the date, time and place for hearing on the proposal; and

WHEREAS, the City Council has met as provided in the notice to receive and consider input regarding the acquisition of private property for recreational trail purposes for the Project by gift, negotiation or eminent domain, and those interested in this proposed property acquisition, 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. 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 private property and property interests for the Project is now concluded and closed.
2. That acquisition of private property needed for this Project, including acquisition by eminent domain (condemnation) if necessary, is hereby authorized.
3. That the City Manager be and is hereby authorized to proceed with the necessary activities and negotiations to acquire by gift, negotiation, or condemnation the necessary property interests for construction of the Project, subject to approval by this Council, or approval of the City Manager in accordance with Section 2-201 (c) and (d), of the Municipal Code of the City of Des Moines, Iowa, as appropriate.
4. 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.
5. That the Fair Market Value of these parcels will be approved 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

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

(Council Communication No. 10- 062)

Moved by Mahaffey to adopt.

APPROVED AS TO FORM:

Glenna K. Frank, Assistant City Attorney

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
KIERNAN	✓			
HENSLEY	✓			
MAHAFFEY	✓			
MEYER	✓			
VLASSIS	✓			
TOTAL	7			

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.

Diane Rauh City Clerk

MOTION CARRIED APPROVED T. M. Franklin Council Mayor