

★ Roll Call Number
11-1960

Agenda Item Number
17

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Date November 21, 2011

APPROVING SETTLEMENT OF CONDEMNATION APPEAL FOR THE ACQUISITION OF PROPERTY LOCATED AT 3030 MERLE HAY ROAD FROM FRANK A. AND MELBA L. SCAGLIONE IN THE AMOUNT OF \$105,000 FOR THE MERLE HAY ROAD AND URBANDALE AVENUE INTERSECTION IMPROVEMENTS PROJECT

WHEREAS, on March 23, 2009 by Roll Call No. 09-454, the City Council of the City of Des Moines authorized the acquisition, by gift, negotiation, or condemnation, of the right-of-way required to construct the Merle Hay and Urbandale Avenue Intersection Improvements Project; and

WHEREAS, on October 12, 2009, by Roll Call No. 09-1843, the City Council of the City of Des Moines established fair market value of the properties located at 3000 and 3030 Merle Hay Road, owned by Frank A. and Melba L. Scaglione, in the amount of \$40,875; and

WHEREAS, the City's Real Estate Division made good faith efforts but was unable to negotiate a purchase of the property; and

WHEREAS, condemnation proceedings were subsequently instituted for the acquisition of the property; and

WHEREAS, the Polk County Compensation Commission convened on February 24, 2010, in Des Moines, Iowa and made an award to the property owners in the amount of \$80,900 plus an additional \$10,000 in attorney fees; and

WHEREAS, Frank A. and Melba L. Scaglione appealed the award in *Frank A. and Melba L. Scaglione v. City of Des Moines et al*, Polk County District Court Case No. CL116814; and

WHEREAS, the parties have agreed to settle the case whereby Frank A. and Melba L. Scaglione will dismiss their case with prejudice in consideration of an additional payment of \$105,000 above the original compensation commission award; and

WHEREAS, The Legal and Engineering Departments recommend approval of this condemnation appeal settlement, in lieu of proceeding with district court and possible future court appeals.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that the City Council hereby authorizes the additional payment of \$105,000 as full and final settlement of the condemnation appeal for the property acquired from Frank A. and Melba L. Scaglione for the Merle Hay Road and Urbandale Avenue Intersection Improvements Project.



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BE IT FURTHER RESOLVED:

That the Real Estate Division of the Engineering Department is directed to obtain the Legal Department's review and approval of the Settlement Agreement prior to payment.

That the City Clerk is hereby authorized and directed to endorse upon the Settlement Agreement the approval and acceptance of this Council and is further authorized and directed to deliver the aforementioned documents to the Real Estate Division Manager, who shall proceed in accordance with standard real estate practices.

That the Finance Director is authorized and directed to issue checks in the amounts necessary to carry out the transaction and to pay any unforeseen additional costs certified by the Legal Department and the Engineering Department.

(Council Communication No. 11- 714)

Moved by Hensley to adopt.

APPROVED AS TO FORM:

Gary D. Goudelock, Jr., Assistant City Attorney

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
GRIESS	✓			
HENSLEY	✓			
MAHAFFEY	✓			
MEYER	✓			
MOORE	✓			
TOTAL	7			

MOTION CARRIED

APPROVED

T. M. Franklin Council 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.

Diane Rauh City Clerk