

★ **Roll Call Number**  
130493

**Agenda Item Number**  
43

**Date** March 25, 2013

**HOLD HEARING FOR VACATION OF A PORTION OF THE EAST/WEST SEGMENT OF ALLEY BETWEEN REIGART STREET AND EAST HOLCOMB AVENUE, WEST OF OXFORD STREET, AND ON LAND EXCHANGE AGREEMENT BETWEEN EIW, LLC AND THE CITY OF DES MOINES FOR COMPARABLE PARCELS IN THE VICINITY OF 129 EAST HOLCOMB AVENUE**

**WHEREAS**, on January 14, 2013, by Roll Call No. 13-0025, the City Council received a recommendation from the City Plan and Zoning Commission that a portion of the east/west segment of alley between Reigart Street and East Holcomb Avenue running west of Oxford Street, hereinafter more fully described, be vacated subject to provision of easements for any existing utilities; and

**WHEREAS**, EIW (Eagle Iron Works), LLC is the owner of real property locally known as 136 Reigart Street (herein "EIW, LLC parcel"), which property would be beneficial to the City for assemblage; and

**WHEREAS**, the City of Des Moines also owns excess real property and alley right-of-way in the vicinity of the EIW, LLC parcel along the south side of Reigart Street, which property adjoins EIW, LLC's business located at 129 E. Holcomb Avenue; and

**WHEREAS**, City staff and EIW, LLC have negotiated a land exchange agreement by which EIW, LLC will convey the EIW, LLC parcel to the City for assemblage, in exchange and as consideration for the City's conveyance to EIW, LLC of the real property locally known as 146 East Holcomb Avenue, a portion of the east/west segment of alley between Reigart Street and East Holcomb Avenue running west of Oxford Street, and Polk County District/Parcel Nos. 070/04438-001-000 and 070/05165-001-000, subject to reservation by the City upon the alley of a permanent easement for existing utilities, with all properties being exchanged "as-is" and closing subject to environmental review(s) if desired by either party; and

**WHEREAS**, the properties to be exchanged have been determined by the City's Real Estate Division to be comparable in value, condition, and use; and

**WHEREAS**, there is no known current or anticipated public benefit or need for the portion of the east/west segment of alley between Reigart Street and East Holcomb Avenue running west of Oxford Street that is proposed to be vacated, or for the property including the alley right-of-way proposed to be conveyed to EIW, LLC, and the City will not be inconvenienced by the vacation of portions of the alley and sale of said property including the alley right-of-way, and will benefit from acquisition and acceptance of the EIW, LLC parcel; and

**WHEREAS**, on March 11, 2013, by Roll Call No. 13-0395, it was duly resolved by the City Council that the proposed conveyance be set down for hearing on March 25, 2013, at 5:00 p.m., in the Council Chamber; and

**WHEREAS**, due notice of said proposal to vacate the above-described public alley right-of-way and convey excess City-owned property 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.

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**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, the objections to said proposed vacation and conveyance of public right-of-way and excess City-owned property, as legally 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 the portion of the east/west segment of alley between Reigart Street and East Holcomb Avenue running west of Oxford Street, subject to reservation of easement for existing utilities, more specifically described as follows:

ALL OF THE EAST/WEST ALLEY LYING NORTH OF AND ADJOINING LOTS 14 THRU 36 AND THE EAST 20 FEET OF LOT 13 IN BLOCK 2, OLD ORCHARD BEACH, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA

3. That the conveyance of such vacated right-of-way, and other excess real property locally known as 146 East Holcomb Avenue and Polk County District/Parcel Nos. 070/04438-001-000 and 070/05165-001-000, all legally described below, to EIW, LLC, in exchange and as consideration for conveyance to the City of the real property locally known as 136 Reigart Street as owned by EIW, LLC, be and is hereby approved:

ALL OF LOTS 33, 34, 35 AND 36, BLOCK 2, OLD ORCHARD BEACH, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA;

AND

ALL OF THE VACATED EAST/WEST ALLEY LYING NORTH OF AND ADJOINING LOTS 14 THRU 36 AND THE EAST 20 FEET OF LOT 13 IN BLOCK 2, OLD ORCHARD BEACH, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA;

AND

ALL OF LOTS 64 AND 65 AND THE WEST 32 FEET OF LOT 63 OF TWINING'S ADDITION, 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 land exchange agreement, the Special Warranty Deed for the excess City-owned property and the Quit Claim Deed for the vacated alley right-of-way, and all related real estate documents for the conveyance to EIW, LLC, as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature and to endorse upon the conveyance documents to the City from EIW, LLC, and upon all related real estate documents, the approval and acceptance of the City Council.

5. Upon final passage of an ordinance vacating the said right-of-way, the City Clerk is authorized and directed to forward the original 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 following closing on the land exchange.

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6. The City Manager and/or his designee, the City's Real Estate Division Manager, is hereby authorized and directed to administer and monitor the land exchange agreement; to approve and execute documents pertaining to minor or unsubstantial changes to said agreement, following approval of the City's Legal Department as to form; to proceed to closing in accordance with the terms set forth herein and in the agreement; and, if needed, to proceed with and execute documents pertaining to the termination of the agreement if EIW, LLC fails to fulfill the contract terms required therein, following approval of the City's Legal Department.

7. There are no proceeds associated with this exchange of property.

(Council Communication No. 13-146)

Moved by Mahaffey to adopt.

APPROVED AS TO FORM:

Glenna K. Frank  
 Glenna K. Frank  
 Assistant City Attorney

*PIW*

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

MOTION CARRIED 7 APPROVED  
T. M. Franklin-Cownie 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