

20-1513

79

Date September 14, 2020

HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF A SEGMENT OF URBANDALE AVENUE RIGHT-OF-WAY AND CONVEYANCE OF AN EASEMENT FOR BUS SHELTER ENCROACHMENT ON CITY-OWNED PROPERTY TO DES MOINES AREA REGIONAL TRANSIT AUTHORITY FOR \$220.00

WHEREAS, Des Moines Area Regional Transit Authority (hereinafter “DART”) wishes to acquire a permanent easement on a portion of City right-of-way located along Urbandale Avenue east of Beaver Avenue, as legally described below (“Easement Area”), for the purpose of constructing, operating and maintaining a DART bus stop shelter; and

WHEREAS, DART and the City Real Estate Division have negotiated the terms of the permanent easement which include: (1) DART’s installation and use of the Bus Shelter, including any approved artwork, shall comply with all City, State and Federal ordinances and regulations; (2) DART, or its contractors, shall obtain, comply with, and pay all related fees for all necessary permits, and provide required insurance and bond, related to excavation and obstruction of City right-of-way upon and above the Easement Area prior to accessing the Easement Area, and, except in the case of emergency, access to the Easement Area shall be limited to the times set forth in such permits; (3) the bus shelter, including any approved artwork, shall be constructed and installed in accordance with plans and specifications approved by the City Engineer or designee, and DART shall certify to the City that the bus shelter, and any approved artwork, has been constructed and located within the Easement Area as shown on approved plans and specifications; and (4) DART shall be solely responsible for all activities related to and costs of maintenance of the Easement Area and installation, operation, maintenance and repair of the bus shelter, including snow removal, in accordance with City ordinances, policies and regulations, and State law, which easements are subject to the reservation of utilities therein; and

WHEREAS, DART shall pay to the City \$220.00 for costs incurred by the City in preparing necessary documentation for bus shelter location to allow for vacation and conveyance of an easement within the right-of-way, including but not limited to preparation of an exhibit and corresponding legal description, and no additional consideration is required in accordance with Iowa Code §364.7(3); and

WHEREAS, the vacation of said portion of City right-of-way located along Urbandale Avenue, as legally described below, and conveyance of said Easement for Bus Shelter Encroachment on City-owned Property will not inconvenience the City or public.

WHEREAS, on August 17, 2020, by Roll Call No. 20-1319, it was duly resolved by the City Council of the City of Des Moines, Iowa that the proposed vacation and conveyance of such permanent easement interests be set for hearing on September 14, 2020, at 5:00 p.m., at the Board Room of the Richard A. Clark Municipal Service Center, 1551 E. Martin Luther King Jr. Parkway, Des Moines, Iowa.; and given Mayor Cownie’s March 17, 2020 Proclamation, as amended prohibiting indoor gatherings of ten or more persons on public property, Section One of the Governor’s June 25, 2020 Proclamation strongly encouraging vulnerable Iowans to limit participation in gatherings of any size and any purpose during the COVID19 outbreak and the City Manager’s decision to delay the opening of City buildings to the public due to the recent upwards spikes of positive COVID-19 cases and hospitalizations in Polk County and the need to

Date September 14, 2020

maintain safety; it is impossible and impractical to have physical public access to the meeting location and the meeting will be conducted electronically with electronic public access to the meeting location; and

WHEREAS, due notice of said proposal to vacate a portion of City right-of-way located along Urbandale Avenue east of Beaver Avenue and convey said proposed easement therein was given to all necessary parties as provided by law, setting forth the time and place for hearing on said proposal, including how to participate electronically and telephonically; and

WHEREAS, in accordance with City Council direction, 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.

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

1. Upon due consideration of the facts and statements of interested persons, any and all objections to said proposed vacation and conveyance of the Easement for Bus Shelter Encroachment on City-owned Property in such vacated right-of-way as described below are hereby overruled, and the hearing is closed.
2. The public would not be inconvenienced by reason of the vacation of a portion of City right-of-way located along Urbandale Avenue east of Beaver Avenue, subject to the reservation of easement therein, legally described as follows, and said vacation is hereby approved:

A PART OF URBANDALE AVENUE RIGHT OF WAY LYING NORTH OF AND ADJOINING LOT 10 IN BEAVER GLEN, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 10; THENCE NORTHWEST ALONG THE NORTH LINE OF SAID LOT 10, A DISTANCE OF 62 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTHWEST ALONG SAID NORTH LINE, 14 FEET; THENCE NORTHEAST AND PERPENDICULAR TO SAID NORTH LINE, 6 FEET; THENCE SOUTHEAST AND PARALLEL TO SAID NORTH LINE, 14 FEET; THENCE SOUTHWEST AND PERPENDICULAR TO SAID NORTH LINE, 6 FEET AND TO THE POINT OF BEGINNING, AND CONTAINING APPROXIMATELY 84 SQUARE FEET.

3. That the conveyance of an Easement for Bus Shelter Encroachment on City-owned Property in such vacated right-of-way as described below, to Des Moines Area Regional Transit Authority for a fee of \$220.00, be and is hereby approved, subject to the reservation of easements therein, and further subject to the negotiated terms of the permanent easement as set forth herein above:

A PART OF VACATED URBANDALE AVENUE RIGHT OF WAY LYING NORTH OF AND ADJOINING LOT 10 IN BEAVER GLEN, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 10; THENCE NORTHWEST ALONG THE NORTH LINE OF SAID LOT 10, A DISTANCE OF 62 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTHWEST ALONG SAID NORTH LINE, 14 FEET;

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79

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THENCE NORTHEAST AND PERPENDICULAR TO SAID NORTH LINE, 6 FEET; THENCE SOUTHEAST AND PARALLEL TO SAID NORTH LINE, 14 FEET; THENCE SOUTHWEST AND PERPENDICULAR TO SAID NORTH LINE, 6 FEET AND TO THE POINT OF BEGINNING, AND CONTAINING APPROXIMATELY 84 SQUARE FEET.

4. The Mayor is authorized and directed to sign the Easement for Bus Shelter Encroachment on City-owned Property for the conveyance identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.
5. Upon final passage of an ordinance vacating said right-of-way, and upon proof of payment of the \$220.00 fee the City Clerk is authorized and directed to forward the original Easements, 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 original of the Easement, together with a certified copy of this resolution and of the affidavit of publication of 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 original of the Easement and copies of the other documents to the grantee.
8. Non-project related land sale proceeds are used to support general operating budget expenses: Org – EG064090.

Moved by Mandelbaum to adopt.

APPROVED AS TO FORM:

/s/
Lisa A. Wieland, Assistant City Attorney

AM

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
GATTO	✓			
GRAY	✓			
MANDELBAUM	✓			
VOSS	✓			
WESTERGAARD	✓			
TOTAL	7			
MOTION CARRIED				

J. M. Franke 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.

P. Kay Cmelik City Clerk