

★ Roll Call Number

21-0376

Agenda Item Number

25

Date March 8, 2021

SET HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF PORTIONS OF EAST 35TH STREET, EAST 39TH STREET, EAST 40TH STREET, EAST 41ST STREET, EAST SHERIDAN AVENUE AND OSCEOLA AVENUE RIGHT-OF-WAY LOCATED IN THE FOURMILE CREEK FLOODPLAIN AND CONVEYANCE TO POLK COUNTY CONSERVATION BOARD FOR THE LOWER FOURMILE CREEK GREENWAY PROJECT

WHEREAS, on July 15, 2019, by Roll Call No. 19-1121, the City Council of the City of Des Moines, Iowa (“City”) approved the Lower Fourmile Creek Greenway Management and Maintenance Chapter 28E Agreement (“28E Agreement”) between the City of Des Moines and the Polk County Conservation Board (“PCCB”); and

WHEREAS, the 28E Agreement provides for the transfer of certain lands from the City to Polk County to be managed by PCCB in accordance with the Lower Fourmile Creek Greenway Master Plan; and

WHEREAS, on February 8, 2021, by Roll Call No. 21-0187, the City Council of the City of Des Moines, Iowa voted to receive and file a recommendation from the City Plan and Zoning Commission to approve a request from the Polk County Conservation Board to vacate the following segments of public street in the vicinity of 3546 East Sheridan Avenue (“Property”) to allow for the removal of the roadways and the restoration of the areas for incorporation into the Lower Fourmile Creek Greenway:

- East Sheridan Avenue from East 35th Street to East 36th Street;
- East 35th Street from Hull Avenue to Arthur Avenue;
- East 39th Street from East Jefferson Avenue to Four Mile Drive;
- Osceola Avenue from East 40th Street to East 41st Street;
- East 40th Street from Osceola Avenue to East Washington Avenue right-of-way developed with the Gay Lea Wilson Trail; and
- East 41st Street from Osceola Avenue to Indianapolis Avenue;

subject to the reservation of easements for existing utilities in place until such time as they are abandoned or relocated at the Polk County Conservation Board’s expense; and

WHEREAS, in accordance with the 28E Agreement and Iowa Code 364.7, the City proposes to vacate and convey the Property to Polk County, Iowa, for the use and benefit of the Polk County Conservation Board at no cost for the public purpose of the Lower Fourmile Creek Greenway Project, subject to the following conditions:

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- a) Reservation of a permanent easement upon the Property for the continued use and maintenance of any public utilities now in place, including those for the benefit of the City of Des Moines and other public utilities, with the right of entry for servicing same.
- b) Reservation of a permanent easement upon the Property for existing and/or future recreation trail.
- c) The Property will revert back to the City in the event that PCCB ceases to exist or loses its eligibility status as a public entity or qualified conservation organization.
- d) Compliance with the Lower Fourmile Creek Greenway Master Plan.

WHEREAS, there is no known current or future public need for the street right-of-way proposed to be vacated and conveyed, and the City will not be inconvenienced by the vacation and conveyance of said Property.

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

1. That the City Council of the City of Des Moines, Iowa, shall consider adoption of an ordinance permanently vacating East Sheridan Avenue from East 35th Street to East 36th Street, East 35th Street from Hull Avenue to Arthur Avenue, East 39th Street from East Jefferson Avenue to Four Mile Drive, Osceola Avenue from East 40th Street to East 41st Street, East 40th Street from Osceola Avenue to East Washington Avenue right-of-way developed with the Gay Lea Wilson Trail, and East 41st Street from Osceola Avenue to Indianapolis Avenue, Des Moines, Iowa, legally described as follows, subject to the reservation of easements for all existing utilities in place until such time that they are abandoned or relocated:

Vacation Area A - E Sheridan Ave between E 35th St and E 36th St

ALL OF LOT "Q", FOUR MILE, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND CONTAINING APPROXIMATELY 0.23 ACRES (10,081 SQUARE FEET).

Vacation Area B - E 35th St between Arthur Ave and Hull Ave

A PART OF LOT "O", FOUR MILE, AN OFFICIAL PLAT, LYING NORTH OF THE WESTERLY EXTENSION OF THE SOUTH RIGHT OF WAY LINE OF ARTHUR AVENUE AND LYING SOUTH OF THE WESTERLY EXTENSION OF THE SOUTH RIGHT OF WAY LINE OF HULL AVENUE, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND CONTAINING APPROXIMATELY 2.06 ACRES (89,947 SQUARE FEET).

Vacation Area C - E 39th St between Four Mile Dr and E Jefferson Ave

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ALL OF LOT "H", ELMWOOD PARK, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND CONTAINING APPROXIMATELY 0.37 ACRES (16,086 SQUARE FEET).

Vacation Area D - Osceola Ave between E 40th St and E 41st St

A PART OF LOT "D", ELMWOOD PARK, AN OFFICIAL PLAT, LYING EAST OF THE NORTHERLY EXTENSION OF WEST RIGHT OF WAY LINE OF EAST 40TH STREET AND LYING WEST OF THE NORTHERLY EXTENSION OF THE EAST RIGHT OF WAY LINE OF EAST 41ST STREET, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND CONTAINING APPROXIMATELY 0.48 ACRES (21,035 SQUARE FEET).

Vacation Area E - E 40th St between Osceola Ave and E Washington Ave (Trail Corridor)

ALL OF LOT "C", ELMWOOD PARK, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND CONTAINING APPROXIMATELY 0.17 ACRES (7,218 SQUARE FEET).

Vacation Area F - E 41st St between Osceola Ave and Indianapolis Ave

ALL OF LOT "E", ELMWOOD PARK, AN OFFICIAL PLAT; AND PART OF LOT "D" BROADACRE, AN OFFICIAL PLAT, LYING SOUTH OF THE EASTERLY EXTENSIONS OF THE SOUTH LINE OF LOT "A" IN SAID BROADACRE AND LYING NORTH OF THE EASTERLY EXTENSION OF THE NORTH RIGHT OF WAY LINE OF INDIANAPOLIS AVENUE, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND CONTAINING APPROXIMATELY 0.73 ACRES (31,924 SQUARE FEET).

2. The City Council of the City of Des Moines, Iowa, further proposes to convey the vacated street right-of-way, as legally described below, to Polk County, Iowa for the use and benefit of the Polk County Conservation Board at no cost in accordance with Iowa Code 364.7(3) for the public purpose of the Fourmile Creek Greenway Project, subject to the following conditions:

- a) Reservation of a permanent easement upon the Property for the continued use and maintenance of any public utilities now in place, including those for the benefit of the City of Des Moines and other public utilities, with the right of entry for servicing same.
- b) Reservation of a permanent easement upon the Property for existing and/or future recreation trail.
- c) The Property will revert back to the City in the event that PCCB ceases to exist or loses its eligibility status as a public entity or qualified conservation organization.
- d) Compliance with the Lower Fourmile Creek Greenway Master Plan.

Area A – Vacated E Sheridan Ave between E 35th St & E 36th St

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Area C – Vacated E 39th St between Four Mile Dr and E Jefferson Ave

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Area E – Vacated E 40th St between Osceola Ave & E Washington Ave (Trail Corridor)

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3. That the meeting of the City Council at which the adoption of said ordinance and the sale and conveyance of such right-of-way is to be considered shall be on March 22, 2020, said meeting to be held at 5:00 p.m., in the City Council Chamber, Richard A. Clark Municipal Service Center, 1551 E. Martin Luther King Jr. Parkway, Des Moines, Iowa. Given Mayor Cownie's March 15,

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2020 Proclamation, as amended, prohibiting indoor gatherings of ten or more persons on public property, Section One of the Governor's February 5, 2021 Proclamation strongly encouraging vulnerable Iowans to limit participation in gatherings of any size and any purpose during the COVID19 outbreak, and further given Section 108 of the Governor's February 5, 2021 Proclamation suspending the regulatory provisions of Iowa Code §§ 21.8, 26.12, and 414.12, or any other statute imposing a requirement to hold a public meeting or hearing, and further given 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 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 as set forth below. To participate in the electronic meeting, access is available electronically and telephonically (details below):

Join from a PC, Mac, iPad, iPhone or Android device:

Please click this URL to join.

<https://dmgov-org.zoom.us/j/88235551829?pwd=MkNHd2VSZ0hHNmtuZ3NLenhBaEhwQT09>

Passcode: 389003

Or join by phone:

Dial(for higher quality, dial a number based on your current location):

US: +1 312 626 6799 or 877 853 5257 (Toll Free)

Webinar ID: 882 3555 1829

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 18, 2021 (City Clerk's Office, Des Moines City Hall, 400 Robert D. Ray Drive, 1st Floor, Des Moines, IA 50309; Email cityclerk@dmgov.org).

4. The City Clerk is hereby authorized and directed to publish notice of said proposal and hearing in the form hereto attached, all in accordance with Section 362.3 of the Iowa Code.

5. There will be no proceeds associated with the conveyance of this property.

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Moved by Voss to adopt.

APPROVED AS TO FORM:

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

RW

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
GATTO				✓
GRAY	✓			
MANDELBAUM	✓			
VOSS	✓			
WESTERGAARD	✓			
TOTAL	6			1
MOTION CARRIED		APPROVED		

A. M. Franckh Cownie
 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