



Roll Call Number

21-0422

Agenda Item Number

58

Date March 8, 2021

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HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF A SEGMENT OF EAST 38TH STREET RIGHT-OF-WAY BETWEEN HUBBELL AVENUE AND EAST DOUGLAS AVENUE AND CONVEYANCE TO GIT-N-GO CONVENIENCE STORES, INC. FOR \$69,440

WHEREAS, the Hubbell Avenue Improvements – East 33rd Street to East 38th Street Project required the partial acquisition and demolition of the Git-N-Go convenience store located at 3765 Hubbell Avenue; and

WHEREAS, as part of the terms of the purchase agreement with Git-N-Go Convenience Stores, Inc., the City agreed to present an offer to vacate and convey a dead-end segment of E. 38th Street adjoining their remaining property, subject to all statutory requirements and processes for approval, in order to provide Git-N-Go with an adequate site to rebuild a new convenience store after completion of the City’s project; and

WHEREAS, on February 4, 2021, the City Plan and Zoning Commission voted to recommend approval of a City-initiated request to vacate a segment of East 38th Street from Hubbell Avenue to East Douglas Avenue (“Property”), subject to the reservation of easements for existing utilities in place until such time as they are abandoned or relocated at the purchaser’s expense; and

WHEREAS, Git-N-Go Convenience Stores, Inc., the owner of 3765 Hubbell Avenue, which is located west of and adjoining the Property, has executed the offer presented by the City of Des Moines, Iowa (“City”) for the purchase of the portion of vacated East 38th Street adjoining its property for the purchase price of \$69,440, subject to the reservation of easements for all existing utilities in place, until such time that they are abandoned or relocated, and further subject to reservation of a no-build easement over a portion of the Property, which price reflects the restricted fair market value of said portion of street right-of-way as determined by an independent appraisal approved by the City’s Real Estate Division; and

WHEREAS, there is no known current or future public need for the street right-of-way proposed to be vacated and sold, and the City will not be inconvenienced by the vacation and sale of said property; and

WHEREAS, on February 22, 2021, by Roll Call No. 21-0263, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation and conveyance of the alley right-of-way be set for hearing on March 8, 2021, at 5:00 p.m., in the City Council Chambers, Richard A. Clark Municipal Service Center, 1551 E. Martin Luther King Jr. Parkway, Des Moines, Iowa, and given Mayor Cownie’s March 15, 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; and

WHEREAS, due notice of said proposal to vacate and convey the street right-of-way was given 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 the 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 the proposed vacation and conveyance of street right-of-way as described herein, are hereby overruled and the hearing is closed.
2. There is no public need or benefit for the street right-of-way proposed to be vacated, and the public would not be inconvenienced by reason of the vacation of a segment of East 38th Street right-of-way from Hubbell Avenue to East Douglas Avenue, legally described as follows, and said vacation is hereby approved:

A PART OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4, SECTION 20, TOWNSHIP 79 NORTH, RANGE 23 WEST OF THE 5TH P.M., NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 20; THENCE NORTH 0°(DEGREES) 21'(MINUTES) 31"(SECONDS) EAST ALONG THE EAST LINE OF SAID SECTION, 25.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89°38'16" WEST ALONG A LINE BEING 25.00 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID SECTION, 30.00 FEET; THENCE NORTH 0°21'31" EAST ALONG A LINE BEING 30.00 FEET WEST OF AND PARALLEL TO SAID EAST LINE, 230.46 FEET TO A POINT BEING 53.00 FEET SOUTHEASTERLY OF AND PERPENDICULAR TO THE CENTERLINE OF HUBBELL AVENUE, AS PRESENTLY ESTABLISHED; THENCE NORTH 54°52'02" EAST ALONG A LINE BEING 53.00 FEET SOUTHEASTERLY OF AND PARALLEL TO SAID CENTERLINE, 36.85 FEET TO A POINT ON THE EAST LINE OF SAID SECTION; THENCE SOUTH 0°21'31" WEST ALONG SAID EAST LINE, 251.48 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.17 ACRES (7229 SQ. FT.)

AND

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A PART OF LOT "B", AQUARIUS, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT "B"; THENCE NORTH 0°(DEGREES) 21'(MINUTES) 31"(SECONDS) EAST ALONG THE WEST LINE OF SAID LOT, 25.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 0°21'31" EAST ALONG SAID WEST LINE, 251.48 FEET TO A POINT BEING 53.00 FEET SOUTHEASTERLY OF AND PERPENDICULAR TO THE CENTERLINE OF HUBBELL AVENUE, AS PRESENTLY ESTABLISHED; THENCE NORTH 54°52'02" EAST ALONG A LINE BEING 53.00 FEET SOUTHEASTERLY OF AND PARALLEL TO SAID CENTERLINE, 40.53 FEET TO A POINT ON THE EAST LINE OF SAID LOT "B"; THENCE SOUTH 0°21'31" WEST ALONG SAID EAST LINE, 274.85 FEET TO THE NORTHWEST CORNER OF LOT "A" OF SAID AQUARIUS; THENCE NORTH 89°55'22" WEST ALONG THE EXTENDED NORTH LINE OF SAID LOT "A", 33.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.20 ACRES (8646 SQ. FT.).

- 3. The proposed sale of such vacated street right-of-way, as legally described below, to Git-N-Go Convenience Stores, Inc. for \$69,440, subject to reservation of easements therein, and further subject to the reservation of a no-build easement over a portion of the Property, is hereby approved:

A PART OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4, SECTION 20, TOWNSHIP 79 NORTH, RANGE 23 WEST OF THE 5TH P.M., NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 20; THENCE NORTH 0°(DEGREES) 21'(MINUTES) 31"(SECONDS) EAST ALONG THE EAST LINE OF SAID SECTION, 25.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89°38'16" WEST ALONG A LINE BEING 25.00 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID SECTION, 30.00 FEET; THENCE NORTH 0°21'31" EAST ALONG A LINE BEING 30.00 FEET WEST OF AND PARALLEL TO SAID EAST LINE, 230.46 FEET TO A POINT BEING 53.00 FEET SOUTHEASTERLY OF AND PERPENDICULAR TO THE CENTERLINE OF HUBBELL AVENUE, AS PRESENTLY ESTABLISHED; THENCE NORTH 54°52'02" EAST ALONG A LINE BEING 53.00 FEET SOUTHEASTERLY OF AND PARALLEL TO SAID CENTERLINE, 36.85 FEET TO A POINT ON THE EAST LINE OF SAID SECTION; THENCE SOUTH 0°21'31" WEST ALONG SAID EAST LINE, 251.48 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.17 ACRES (7229 SQ. FT.)

AND

A PART OF LOT "B", AQUARIUS, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT "B"; THENCE NORTH 0°(DEGREES) 21'(MINUTES) 31"(SECONDS) EAST ALONG THE WEST LINE OF SAID LOT, 25.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 0°21'31" EAST ALONG SAID WEST LINE, 251.48 FEET TO A POINT BEING 53.00 FEET SOUTHEASTERLY OF AND PERPENDICULAR TO THE CENTERLINE OF HUBBELL AVENUE, AS PRESENTLY ESTABLISHED; THENCE NORTH 54°52'02" EAST ALONG A LINE BEING 53.00 FEET SOUTHEASTERLY OF AND PARALLEL TO SAID CENTERLINE, 40.53 FEET TO A POINT ON

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THE EAST LINE OF SAID LOT "B"; THENCE SOUTH 0°21'31" WEST ALONG SAID EAST LINE, 274.85 FEET TO THE NORTHWEST CORNER OF LOT "A" OF SAID AQUARIUS; THENCE NORTH 89°55'22" WEST ALONG THE EXTENDED NORTH LINE OF SAID LOT "A", 33.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.20 ACRES (8646 SQ. FT.).

4. The Mayor is authorized and directed to sign the Offer to Purchase and Quit Claim Deed for the conveyance as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.
5. Upon proof of payment of the consideration, plus \$113.00 for publication and recording costs, the City Clerk is authorized and directed to forward the original of the Quit Claim Deed, 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 Quit Claim Deed, together with a certified copy of this resolution and of the affidavit of publication of the 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 Quit Claim Deed and a copy of the other documents to the grantee.
8. The proceeds from this sale shall be deposited to the Hubbell Avenue Improvements – East 33rd Street to East 38th Street Project, ST259.

(Council Communication No. 21 - 102)

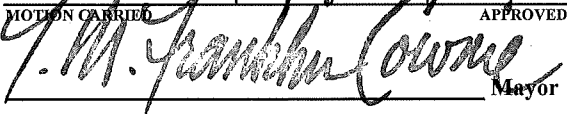
Moved by Westergaard to adopt.

APPROVED AS TO FORM:

/s/ Lisa A. Wieland

Lisa A. Wieland, Assistant City Attorney

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

MOTION CARRIED APPROVED

 P. M. Frank 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.



City Clerk