Date _May 24, 2021_

RESOLUTION ON APPEAL OF FLOODPLAIN PERFORMANCE STANDARDS AND REQUEST FOR VARIANCE FOR THE CENTRAL IOWA WATER TRAILS SCOTT AVENUE PROJECT (DES MOINES MUNICIPAL CODE SECTIONS 50-35(C) AND 50-34(14))

WHEREAS, Des Moines Municipal Code Chapter 50 requires that development within the City's floodplain and floodway districts, as designated by flood insurance studies published by the Federal Emergency Management Agency (FEMA) and shown on related flood insurance rate maps utilized by the City, comply with the City's floodplain performance standards; and

WHEREAS, specifically, Des Moines Municipal Code Section 50-34(14) prohibits proposed development within a designated floodway from increasing flood levels within the flood plain during the occurrence of a 100-year flood; and

WHEREAS, Des Moines Municipal Code Section 50-35 requires that a certificate of compliance, or floodplain development permit, must be issued by the City prior to commencement of any proposed development within a floodplain area, and that any application for such certificate/permit shall be denied if the City Engineer determines that the proposed development does not meet applicable performance standards of Section 50-34; and

WHEREAS, the Des Moines Area Metropolitan Planning Organization (DMAMPO) applied for and has been awarded a Better Utilizing Investments to Leverage Development (BUILD) Transportation Discretionary Grant for the Central Iowa Water Trail: Phase I Dam Mitigation and User Access Project; and

WHEREAS, the project is proceeding as a joint effort by the DMAMPO and Central Iowa Water Trails, LLC (CIWT) and includes mitigating the low-head dam at Scott Avenue to help facilitate a water recreational trail, and enhance three additional access points along the Des Moines River, including Prospect Park, Birdland Marina, and the Harriet Street Corridor; and

WHEREAS, the scope of improvements for the CIWT Scott Avenue Project ("Project") include modifications to the Scott Avenue dam, construction of two drop structures and multiple rock outcrops for recreational purposes, safety improvements, and improved river access, located within and adjacent to the Des Moines River and is bounded by Scott Avenue (upstream) and SE 6th Street (downstream); and

WHEREAS, DMAMPO and CIWT have applied for a floodplain development permit for the Project, which application was denied by the City Engineer for failure to meet Section 50-34(14) development standards because the Project proposes to increase flood levels in the project area by between 0.01 and 0.06 feet; and

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WHEREAS, on April 30, 2021, by communication attached hereto as Exhibit A, DMAMPO and CIWT appealed said denial in accordance with Des Moines Municipal Code Section 50-35(c); and

WHEREAS, Section 50-35(c) allows the City Council to authorize a variance of the floodplain development standards in order to avoid unnecessary hardship to the applicant or to further the public interest, when the requested variance meets six criteria as set forth in the Council Communication No. _21-228_, submitted herewith and incorporated herein by this reference; and

WHEREAS, said criteria include the concurrence or approval of the Iowa Department of Natural Resources (IDNR), which has been provided by May 14, 2021 communication from IDNR attached hereto as Exhibit B, subject to DMAMPO and CIWT meeting specified conditions which said parties have agreed to meet by May 14, 2021 communication attached hereto as Exhibit C; and

WHEREAS, as stated in Council Communication No. _21-228_, the City Engineer has determined that the Project fulfills the criteria required by Section 50-35(c) for Council to grant a variance, subject to conditions stated below.

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

1. The attached Exhibits are hereby received and filed:
    a. April 30, 2021 communication requesting appeal, from the DMAMPO and attached hereto as Exhibit A;
    b. May 14, 2021 communication concurring with the variance request, from the IDNR and attached hereto as Exhibit B; and
    c. May 14, 2021 communication asserting that the Project will comply with the conditions required by the City and by IDNR, from the DMAMPO and attached hereto as Exhibit C.
2. The City Council hereby adopts the findings and determinations of the City Engineer as set forth in Council Communication No. _21-228_, regarding the criteria required for variance approval for the CIWT Scott Avenue Project.
3. Based on the findings and determinations set forth in Council Communication No. _21-228_, and based on the representations made in the attached Exhibits, the City Council hereby further finds in regard to the CIWT Scott Avenue Project that:
    a. An exception to full application of performance standard Section 50-34(14) is necessary to avoid unnecessary hardship to the applicant and to further the public interest; and
    b. All variance approval criteria have been met by DMAMPO and CIWT.
4. Pursuant to Section 50-35(c), the City Council hereby conditionally approves the variance to Section 50-34(14) as requested by DMAMPO and CIWT for the CIWT Scott Avenue Project, subject to the following:
    a. The design and construction of the Project must conform to the representations made in the submitted floodplain development application and the Exhibits attached hereto,

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including but not limited to the requirement that the Project does not increase flood levels in the project area by more than 0.01 and 0.06 feet depending on location.

b. Any change or revision to the design or construction of the Project requires review by the City Engineering Department pursuant to Des Moines Municipal Code Chapter 50, and the City Engineer may request reconsideration of this variance by the City Council as a result of said further review.

c. This variance will be revoked, effective immediately and with no further action required by the City Engineer and/or City Council, in the event of (i) any change in projected or actual rise in the flood levels above those represented by DMAMPO and/or CIWT of between 0.01 and 0.06 feet in the project area, as shown in the design or construction plans for the Project; and/or (ii) any failure by the DMAMPO and/or CIWT to comply with the IDNR conditions of concurrence set forth in Exhibit B hereto. The applicant may submit a subsequent variance application pursuant to Section 50-35(c) in the event of such revocation.

d. This variance is subject to City approval of design, construction, maintenance and operations, and similar related agreements between the City and DMAMPO and CIWT and other required entities or consultants, which agreements shall be submitted to Council for consideration and approval.

(Council Comm. No. __21-228__)

MOVED BY ___Mandelbaum___ TO ADOPT.

APPROVED AS TO FORM:

/s/ *Glenna K. Frank*

Glenna K. Frank, Assistant City Attorney

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

MOTION CARRIED _____ APPROVED _____ 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