



Roll Call Number

21-0853

Agenda Item Number

22

Date June 14, 2021

**SET HEARING FOR APPROVAL OF DOCUMENTS FOR CONVEYANCE OF A REPLACEMENT PERMANENT EASEMENT FOR BUILDING ENCROACHMENT IN A PORTION OF WAVELAND GOLF COURSE LOCATED WEST OF AND ADJOINING 4841 ALGONQUIN ROAD TO CORY L. SCHOOLEY AND KRISTIN K. SCHOOLEY FOR \$4,400.00**

**WHEREAS**, on November 9, 2020 by Roll Call No. 20-1837 the City Council of the City of Des Moines, Iowa voted to approve the conveyance of a Permanent Easement for Building Encroachment upon a portion of Waveland Golf Course adjoining 4841 Algonquin Road (hereinafter "Easement Area") to Cory L. Schooley and Kristin K. Schooley (Grantees), owners of 4841 Algonquin Road, for \$3,740.00, for the sole purpose of allowing the Grantees to maintain an existing building and concrete driveway encroachment and to maintain a concrete parking slab encroachment; and

**WHEREAS**, said Permanent Easement for Building Encroachment was subsequently filed of record with the Office of the Polk County Recorder on November 18, 2020 in Book 18198, Page 826; and

**WHEREAS**, Grantees have requested that said Permanent Easement for Building Encroachment be released and replaced with a larger easement that would allow them to maintain the building, concrete driveway and concrete parking slab encroachments, and would also add 294 square feet for a privacy fence encroachment; and

**WHEREAS**, Grantees have offered to the City of Des Moines ("City") the purchase price of \$4,400.00 for the purchase of a replacement Permanent Easement for Building Encroachment upon a portion of Waveland Golf Course adjoining 4841 Algonquin Road (hereinafter "Easement Area"), for the sole purpose of allowing the Grantees to maintain an existing building and concrete driveway encroachment; and maintain a concrete parking slab encroachment; and add a privacy fence encroachment, which price reflects the fair market value of the permanent easement as determined by the City's Real Estate Division; and

**WHEREAS**, said replacement Permanent Easement for Building Encroachment (Easement) is subject to the following conditions:

- a. In the event the encroaching improvements are ever destroyed by any means whatsoever, to such a degree that the estimated cost of the repairs necessary to restore the improvements to their condition prior to such destruction exceed 50% of the assessed value of the building or concrete improvements prior to such destruction, then the Easement shall terminate with or without recorded release.
- b. Grantees shall erect no structure, building or other improvements over or within the Easement Area except as depicted in the Easement. This restriction shall not preclude the construction or repair of a sidewalk within the right-of-way border area.



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- c. Grantees shall not remove any trees or shrubs from the Easement Area and shall not re-route the golf course fence line.
- d. Grantees and Grantee's successors and assigns of 4841 Algonquin Road agree to indemnify, defend, pay on behalf of and hold harmless the City, its elected and appointed officials, employees and volunteers and others working on behalf of the City from any and all property damage or personal injury caused by golf balls hit from Waveland Golf Course onto the Easement Area or the Benefitted Property; and

WHEREAS, there is no known current or anticipated public need or benefit for the City property interest proposed to be conveyed, and the City will not be inconvenienced by the sale of said replacement Permanent Easement for Building Encroachment.

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

1. The City Council of the City of Des Moines, Iowa, proposes to sell a replacement Permanent Easement for Building Encroachment in a portion of Waveland Golf Course located west of and adjoining 4841 Algonquin Road, as legally described, to the grantees, and for the consideration identified below, subject to a reservation of easements and other restrictions therein:

Grantee: Cory L. Schooley and Kristin K. Schooley

Consideration: \$4,400.00

Legal Description:

AREA A

Beginning at the Southwest corner of said lot 8; Thence S 00° 00' 00" W, 19.50 Feet; Thence N 45° 00' 00" W, 10.61 Feet; Thence N 00° 00' 00" E, 44.31 Feet; Thence N 34° 00' 00" W, 38.33 Feet; Thence N 00° 00' 00" E, 25.97 Feet; Thence S 90° 00' 00" E, 14.67 Feet; Thence N 10° 00' 00" E, 19.31 Feet; Thence S 90° 00' 00" E, 10.91 Feet; Thence S 00° 00' 00" W, 109.08, to the Point of Beginning and all containing 1,930 square feet more or less, and,

AREA B

Commencing from the Northwest Corner of said lot 8; Thence South 00° 00' 00" 1.75' to the Point of Beginning; Thence S 00° 00' 00" E, 1.00 Feet; Thence N 89° 39' 00" W, 29.00 Feet; Thence N 00° 00' 00" E, 1.00 Feet; Thence S 89° 39' 00" E, 29.00 Feet; containing 29 square feet more or less.

2. A public hearing shall be held on June 28, 2021, at 5:00 p.m. in the City Council Chamber, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa. At that time the City Council will consider the above-

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described proposal and any other(s) submitted prior to or during the public hearing. 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. June 24, 2021 (City Clerk's Office, Des Moines City Hall, 400 Robert D. Ray Drive, 1st Floor, Des Moines, IA 50309; Email cityclerk@dmgov.org). Please check the posted agenda in advance of the June 28, 2021 meeting for any update on the manner in which the public hearing will be conducted to comply with COVID-19 social distancing and safety guidelines.

- 3. 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.
- 4. Non-project related land sale proceeds are used to support general operating budget expenses: Org – EG064090.

Moved by Gatto to adopt.

APPROVED AS TO FORM:

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

*RM*

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

MOTION CARRIED APPROVED

J. M. Franklin 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