

★ **Roll Call Number**
22-0365

Agenda Item Number
57

Date March 7, 2022

HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR CONVEYANCE OF EXCESS CITY-OWNED PROPERTY LOCATED IN THE FOURMILE CREEK FLOODPLAIN TO POLK COUNTY, IOWA FOR THE USE AND BENEFIT OF THE 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, the City has identified a number of excess City-owned properties (“Property”) that are ready to be transferred to Polk County under the terms of said 28E Agreement; and

WHEREAS, in accordance with the 28E Agreement and Iowa Code 364.7, the City proposes to 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 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) Compliance with the deed restrictions and open space requirements according to Title 44 of the Code of Federal Regulations (CFR) Part 80.19(a) for all properties acquired with funding from the U.S. Department of Homeland Security’s Federal Emergency Management Agency (FEMA).
- c) Certification to the City every three (3) years that the federally funded properties are maintained consistent with the provisions of 44 CFR Part 80.
- d) 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.
- e) Compliance with the Lower Fourmile Creek Greenway Master Plan.

WHEREAS, the City has received written approval from FEMA for the transfer of the Property to PCCB, subject to the conditions listed above; and

WHEREAS, on February 21, 2022, by Roll Call No. 22- 0237, it was duly resolved by the City Council that the proposed conveyance be set down for hearing on March 7, 2022, at 5:00 p.m., in the City Council Chambers; and



Roll Call Number

22-0365

Agenda Item Number

57

Date March 7, 2022

WHEREAS, due notice of said proposal was given to all necessary parties as provided by law, setting forth the time and place for hearing on said proposal; and

WHEREAS, in accordance with City Council direction, those interested in this proposed 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:

1. Upon due consideration of the facts and statements of interested persons, the objections to the proposed conveyance of the City-owned property, real estate located in the Fourmile Creek floodplain, all located within NE Aurora Avenue on the north, E. 33rd Street and Colfax Avenue on the west, E. University Avenue on the south, and E. 42nd Street on the east, Des Moines, Iowa, as described below, are hereby overruled and the hearing is closed:

LOTS 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57 AND 58, ELMWOOD PARK, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

AND

- **EXCEPT** THE WEST 10 FEET, LOTS 59, 60, 61 AND 62, ELMWOOD PARK, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

AND

THE SOUTH 60 FEET OF THE EAST 130 FEET OF LOT 4 IN BROADACRE, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

AND

LOTS 436, 437, 438, 439, 440, 441, 442, 443 AND 444 IN ELMWOOD PARK, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

AND

LOTS 259 AND 260 IN SUNRISE PARK, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

 **Roll Call Number**
..... 22-0365

Agenda Item Number
..... 57

Date March 7, 2022

AND

LOT 113 IN SUNRISE PARK, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

AND

LOT 827 IN FOUR MILE, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

AND

LOTS 646, 647 AND 648 IN FOUR MILE, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

AND

LOTS 679, 680 AND 681 IN FOUR MILE, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

AND

LOTS 858, 859, 860, 892 AND 893 IN FOUR MILE, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

AND

LOTS 638, 639 AND 640 IN FOUR MILE, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

AND

- **EXCEPT** THE WEST 10 FEET, LOTS 63, 64, 65, 66, 67, 68, 69, 70 AND 71, ELMWOOD PARK, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

AND

ALL OF LOT 980, FOUR MILE, AN OFFICIAL PLAT, LYING NORTHEASTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF SAID LOT 980, SAID POINT BEING 290 FEET NORTHEAST ALONG SAID NORTHWESTERLY LINE FROM THE NORTHWEST CORNER OF SAID LOT 980; THENCE SOUTHEASTERLY ALONG A STRAIGHT



Roll Call Number

22-0365

Agenda Item Number

57

Date March 7, 2022

LINE TO A POINT ON THE NORTHWESTERLY LINE OF LOT 979 OF SAID FOUR MILE, SAID POINT BEING 220 FEET NORTHEAST ALONG SAID NORTHWESTERLY LINE FROM THE NORTHWEST CORNER OF SAID LOT 979,

ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND CONTAINING APPROXIMATELY 42,046 SQUARE FEET.

AND

ALL OF LOT 981, FOUR MILE, AN OFFICIAL PLAT, LYING NORTHEASTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF SAID LOT 981, SAID POINT BEING 260 FEET NORTHEAST ALONG SAID NORTHWESTERLY LINE FROM THE NORTHWEST CORNER OF SAID LOT 981; THENCE SOUTHEASTERLY ALONG A STRAIGHT LINE TO A POINT ON THE SOUTHEASTERLY LINE OF SAID LOT 981, SAID POINT BEING 290 FEET NORTHEAST ALONG SAID SOUTHEASTERLY LINE FROM THE SOUTHWEST CORNER OF SAID LOT 981,

ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND CONTAINING APPROXIMATELY 24,735 SQUARE FEET.

AND

ALL OF THE NORTH HALF (1/2) OF LOT 979, FOUR MILE, AN OFFICIAL PLAT, LYING NORTHEASTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF SAID NORTH HALF (1/2) OF SAID LOT 979, SAID POINT BEING 220 FEET NORTHEAST ALONG SAID NORTHWESTERLY LINE FROM THE NORTHWEST CORNER OF SAID NORTH HALF (1/2) OF SAID LOT 979; THENCE SOUTHEASTERLY ALONG A STRAIGHT LINE TO A POINT ON THE SOUTHEASTERLY LINE OF SAID NORTH HALF (1/2) OF SAID LOT 979, SAID POINT BEING 220 FEET NORTHEAST ALONG SAID SOUTHEASTERLY LINE FROM THE SOUTHWEST CORNER OF SAID NORTH HALF (1/2) OF SAID LOT 979,

ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND CONTAINING APPROXIMATELY 10,282 SQUARE FEET.

AND

LOTS 354 AND 355, DOUGLAS ACRES, PLAT 3, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.



Roll Call Number

22-0365

Agenda Item Number

57

Date March 7, 2022

AND

THE EAST 299 FEET OF THE NORTH 5 FEET OF LOT 1, BROADACRE, AN OFFICIAL PLAT;
AND

THE EAST 299 FEET OF LOT A OF SAID BROADACRE; AND

- **EXCEPT** THE WEST 10 FEET, ALL THAT PART OF THE VACATED EAST WASHINGTON AVENUE RIGHT-OF-WAY LYING SOUTH OF AND ADJOINING LOTS 58 AND 59, ELMWOOD PARK, AN OFFICIAL PLAT; AND

ALL THAT PART OF THE VACATED EAST WASHINGTON AVENUE RIGHT-OF-WAY LYING BETWEEN THE SOUTHERLY EXTENSION OF THE EAST LINE OF SAID LOT 58 AND THE EAST LINE OF SAID ELMWOOD PARK; AND

ALL THAT PART OF THE VACATED EAST 42ND STREET RIGHT-OF-WAY LYING EAST OF AND ADJOINING LOTS 46 THROUGH 58, ALL IN SAID ELMWOOD PARK; AND

ALL OF THE WEST 40 FEET OF THE NORTHEAST QUARTER (NE ¼) OF SECTION 33, TOWNSHIP 79 NORTH, RANGE 23 WEST OF THE 5TH P.M., LYING BETWEEN THE EASTERLY EXTENSION OF THE NORTH LINE OF SAID LOT 46 OF ELMWOOD PARK AND THE SOUTH LINE OF SAID NORTHEAST QUARTER (NE ¼);

ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

2. That the conveyance by the City of Des Moines of said real 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 Fourmile Creek Greenway Project, is in accordance with the above 28E Agreement and Iowa Code 364.7, and subject to the following conditions, be and is hereby approved.

- 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) Compliance with the deed restrictions and open space requirements according to Title 44 of the Code of Federal Regulations (CFR) Part 80.19(a) for all properties acquired with funding from the U.S. Department of Homeland Security's Federal Emergency Management Agency (FEMA).



Roll Call Number

22-0365

Agenda Item Number

57

Date March 7, 2022

- c) Certification to the City every three (3) years that the federally funded properties are maintained consistent with the provisions of 44 CFR Part 80.
 - d) 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.
 - e) Compliance with the Lower Fourmile Creek Greenway Master Plan.
3. The Mayor is authorized and directed to sign the Quit Claim Deed(s) for the conveyance as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.
 4. The City Clerk is authorized and directed to forward the original of this Quit Claim Deed(s), 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 delivered to the Polk County Conservation Board for their acceptance.
 5. Following acceptance of the Quit Claim Deed(s) by the Polk County Conservation Board, the Real Estate Division Manager is authorized and directed to forward the original of the fully executed Quit Claim Deed(s), 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.
 6. 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(s) and copies of the other documents to the Polk County Conservation Board.
 7. There will be no proceeds associated with the conveyance of this property.



Roll Call Number

22-0365

Agenda Item Number

57

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Moved by Westergaard to adopt, Second by Boesen.

APPROVED AS TO FORM:

/s/ Lisa A. Wieland

Lisa A. Wieland, Assistant City Attorney

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

MOTION CARRIED APPROVED
J. M. Frankhu Cowme 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