

Date October 21, 2013

**HEARING FOR VACATION AND CONVEYANCE OF A SEGMENT OF UNDEVELOPED FRANKLIN AVENUE BETWEEN 24<sup>TH</sup> DRIVE AND 26<sup>TH</sup> STREET TO ERICH J. RIESENBERG, TRUSTEE OF THE ERICH J. RIESENBERG LIVING TRUST, FOR \$375**

**WHEREAS**, on July 29, 2013, by Roll Call No. 13-1196, the City Council received a recommendation from the City Plan and Zoning Commission that a segment of undeveloped Franklin Avenue from a point approximately 90 feet west of 24<sup>th</sup> Drive to a point approximately 25 feet east of 26<sup>th</sup> Street (“City Right-of-Way”) be vacated, subject to the provision of any necessary easements for existing utilities until such time as they are relocated; and

**WHEREAS**, Erich J. Riesenber, as Trustee of the Erich J. Riesenber Living Trust dated June 8, 2002, is the owner of the real property locally known as 2519 Franklin Avenue, 2521 Franklin Avenue and Tax Parcel 080/00282-001-000 that adjoins said City Right-of-Way, and has offered to the City of Des Moines the purchase price of \$375.00 for the vacation and purchase of a fee simple interest in such excess Right-of-Way as legally described below, in order to incorporate the property into the buyer’s adjoining properties, which purchase price reflects the fair market value of the City Right-of-Way as currently estimated by the City’s Real Estate Division; and

**WHEREAS**, there is no known current or future public need or benefit for the 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 October 7, 2013, by Roll Call No. 13-1556, it was duly resolved by the City Council that the proposed vacation and conveyance of such right-of-way be set down for hearing on October 21, 2013, at 5:00 p.m., in the Council Chamber; and

**WHEREAS**, due notice of said proposal to vacate and convey public right-of-way was given as provided by law, setting forth the time and place for hearing on said proposal; and

**WHEREAS**, in accordance with said notice, those interested in said 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:

1. Upon due consideration of the facts and statements of interested persons, any and all objections to said proposed vacation and conveyance of public right-of-way, as described below, are hereby overruled and the hearing is closed.
2. There is no public need or benefit for the excess City-owned right-of-way proposed to be vacated, and the public would not be inconvenienced by reason of the vacation of a segment of undeveloped Franklin Avenue from a point approximately 90 feet west of 24<sup>th</sup> Drive to a point approximately 25 feet east of 26<sup>th</sup> Street, more specifically described as follows:

ALL THAT PART OF FRANKLIN AVENUE RIGHT-OF-WAY LYING SOUTH OF AND ADJOINING LOTS 16 AND 17, ALICE BRIAR, AN OFFICIAL PLAT, AND LYING SOUTH OF AND ADJOINING THE WEST ½ OF LOT 4 AND ALL OF LOT 5 IN C. H. ATKIN’S SUBDIVISION OF LOT 31 OF THE OFFICIAL PLAT OF SECTION 33, TOWNSHIP 79 NORTH, RANGE 24 WEST OF THE 5TH P.M., AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

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3. The proposed sale of such vacated right-of-way, as legally described below, to Erich J. Riesenberg, as Trustee of the Erich J. Riesenberg Living Trust Dated June 8, 2002, for \$375.00 and in accordance with the requirements of the Plan and Zoning Commission recommendation, is hereby approved:

ALL THAT PART OF VACATED FRANKLIN AVENUE RIGHT-OF-WAY LYING SOUTH OF AND ADJOINING LOTS 16 AND 17, ALICE BRIAR, AN OFFICIAL PLAT, AND LYING SOUTH OF AND ADJOINING THE WEST ½ OF LOT 4 AND ALL OF LOT 5 IN C. H. ATKIN'S SUBDIVISION OF LOT 31 OF THE OFFICIAL PLAT OF SECTION 33, TOWNSHIP 79 NORTH, RANGE 24 WEST OF THE 5TH P.M., AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

4. The Mayor is authorized and directed to sign the Offer to Purchase and the Quit Claim Deed for the conveyance identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.

5. Upon final passage of an ordinance vacating said right-of-way and 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 said 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.

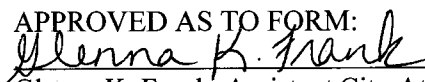
6. The Real Estate Division Manager is authorized and directed to forward the original of the Deed, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Polk County Recorder's Office for the purpose of causing these documents to be 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 copies of the other documents to the grantee.

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

(Council Communication No. 13- 512 )

Moved by \_\_\_\_\_ to adopt

APPROVED AS TO FORM:  
  
 Glenna K. Frank, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				
MOTION CARRIED			APPROVED	
Mayor				

**CERTIFICATE**

I, DIANE RAUH, 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