

Date April 5, 2021

HOLD PUBLIC HEARING ON THE INTENT TO COMMENCE A PUBLIC IMPROVEMENT PROJECT TO CONSTRUCT THE INDIANOLA AVENUE RECONSTRUCTION – E. ARMY POST ROAD TO HIGHWAY 69 PROJECT AND TO AUTHORIZE ACQUISITION OF THE NECESSARY PROPERTY INTERESTS, INCLUDING AGRICULTURAL LAND, FOR THE PROJECT BY GIFT, NEGOTIATION, OR EMINENT DOMAIN

WHEREAS, on March 9, 2020, by Roll Call No. 20-0402, the City Council approved execution of the Iowa Department of Transportation (IDOT) Agreement for the Indianola Avenue Reconstruction – E. Army Post Road to Highway 69 Project (hereinafter “Project”); and

WHEREAS, the City’s Real Estate Division of the Engineering Department will acquire the necessary property interests for this Project; and

WHEREAS, under the provisions of Section 6B.2A of the Iowa Code, a governmental body which proposes to acquire agricultural property, by eminent domain for public improvement purposes is required to give notice of a proposed resolution, motion, or other document authorizing such acquisition of property to each property owner and contract purchaser of record (collectively, “Property Owners”) of the meeting at which such proposed authorization will be considered; and

WHEREAS, in accordance with Iowa Code Section 6B.2A, before the City can proceed with acquisition of property by eminent domain for the aforementioned Project, the City Council must:

- (a) Give affected persons the opportunity to attend the Council meeting and present their views and objections regarding the proposed acquisition of agricultural property for public improvement projects by gift, negotiation or eminent domain.
- (b) Provide notice of the public hearing to all property owners and contract purchasers of record within the timeframes set forth in Iowa Code Sections 6B.2A.
- (c) Adopt a resolution to authorize acquisition of agricultural property for the public improvement project by gift, negotiation, eminent domain.

WHEREAS, on March 22, 2021, by Roll Call No. 21-0459, City Council set the time and place for a public hearing at which persons affected by the Indianola Avenue Reconstruction – E. Army Post Road to Highway 69 Project may present their views regarding the proposed acquisition of property interests, including agricultural property, for public improvement purposes by gift, negotiation or eminent domain 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 17, 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

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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 and telephonic public access to the meeting location; and

WHEREAS, in accordance with Iowa Code Sections 6B.2A, notice of intent to approve acquisition of the necessary property interests, including agricultural property, for the Project and notice of the public hearing providing an opportunity for public input on the proposed resolution has been mailed and published to all necessary parties required by law, including how to participate electronically and telephonically; and

WHEREAS, in accordance with said notices, those interested in said proposal to acquire property, including agricultural property, for public improvement purposes for the Indianola Avenue Reconstruction – E. Army Post Road to Highway 69 Project by gift, negotiation or eminent domain, both for and against, have been given an opportunity to provide public input and be heard with respect thereto and have presented their views to the City Council of the City of Des Moines, Iowa.

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

1. That all objections and endorsements having been fully reviewed and considered, the hearing providing the opportunity for public input on the question of acquisition or condemnation of property, including agricultural property, for the Indianola Avenue Reconstruction – E. Army Post Road to Highway 69 Project is now concluded and closed.
2. That the location of the Project as determined by the City’s Engineering Department is hereby approved; there is a reasonable expectation the City will be able to achieve its public purpose, comply with all applicable standards, and obtain the necessary permits; and the City of Des Moines Real Estate Division be and is hereby authorized to proceed with the necessary activities and negotiations to acquire by gift, negotiation, or condemnation the necessary property interests, including agricultural property interests, for construction of the Indianola Avenue Reconstruction – E. Army Post Road to Highway 69 Project, subject to approval of the City Manager in accordance with Section 2-201 (c) and (d), of the Municipal Code of the City of Des Moines, as applicable.

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3. That the property will be acquired in accordance with the guidelines of 49 CFR Part 24 of the Uniform Relocation and Real Property Acquisition Act, as revised, and that relocation assistance is hereby authorized.

4. That the City Manager is authorized to approve all Fair Market Values for the property interests for the Project in accordance with established City policy. If the property owners agree to convey the property to the City in an amount based on the established fair market value, including an approved administrative settlement, or if a condemnation award is based on the established fair market value or falls within an approved settlement amount, the Finance Director is authorized and directed to issue checks in the amounts necessary to carry out these transactions and to pay any unforeseen additional costs certified by the Legal Department and the Engineering Department; the Real Estate Division Manager is authorized and directed to complete these transactions in accordance with standard real estate practices and state law requirements.

5. That the Real Estate Division of the Engineering Department is directed to obtain the Legal Department's review and approval of all closing documents prior to closing.

6. That the City Clerk is hereby authorized and directed to endorse upon the real estate documents for this Project the approval and acceptance of this Council, the Mayor is authorized and directed to sign all necessary real estate documents, and the City Clerk is further authorized and directed to deliver the aforementioned documents to the Real Estate Division Manager, who shall proceed to closing in accordance with standard real estate practices.

(Council Communication No. 21- 161)

Moved by _____ to adopt.

APPROVED AS TO FORM:

/s/ Lisa A. Wieland

Lisa A. Wieland, Assistant City Attorney

RETW

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
GRAY				
MANDELBAUM				
VOSS				
WESTRGAARD				
TOTAL				

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.

MOTION CARRIED APPROVED

Mayor

City Clerk