

★ Roll Call Number

13-1584

Agenda Item Number

41

Date October 7, 2013

**HEARING FOR VACATION OF A SEGMENT OF 45<sup>th</sup> STREET RIGHT-OF-WAY IN THE VICINITY OF 4421 FRANKLIN AVENUE, AND CONVEYANCE OF A PORTION THEREOF TO DAVID A. WRIGHT TRUST AND KATHERINE N. SIRCY TRUST FOR \$200, AND CONVEYANCE OF A PORTION THEREOF TO MARY BETH ANZIVINO FOR \$200**

**WHEREAS**, on September 23, 2013, by Roll Call No. 13-1471, the City Council received a recommendation from the City Plan and Zoning Commission that a segment of 45<sup>th</sup> Street right-of-way in the vicinity of 4421 Franklin Avenue (“City Right-of-Way”), hereinafter more fully described, be vacated for conveyance to the adjoining property owners, subject to reservation of easements for all utilities in place until such time that they are abandoned or relocated; and

**WHEREAS**, David A. Wright, as Trustee of the David A. Wright Trust, and Katherine N. Sircy, as Trustee of the Katherine N. Sircy Trust, are the owners of the property locally known as 4421 Franklin Avenue that abuts the City Right-of-Way to the east thereof, and have offered to the City of Des Moines the purchase price of \$200 for the vacation and purchase of a portion of the City Right-of-Way, as legally described below, for the purpose of residential side yard expansion, which price reflects the fair market value of the property as currently estimated by the City’s Real Estate Division; and

**WHEREAS**, Mary Beth Anzivino is the owner of the property locally known as 4501 Franklin Avenue that abuts the City Right-of-Way to the west thereof, and has offered to the City of Des Moines the purchase price of \$200 for the vacation and purchase of a portion of the City Right-of-Way, as legally described below, for the purpose of residential side yard expansion, which price reflects the fair market value of the property 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 City Right-of-Way proposed to be vacated and conveyed, and the City will not be inconvenienced by the vacation and sale of said property; and

**WHEREAS**, on September 23, 2013, by Roll Call No. 13-1472, 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 7, 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.

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

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 right-of-way proposed to be vacated, and the public would not be inconvenienced by reason of the vacation of a segment of 45<sup>th</sup> Street right-of-way in the vicinity of 4421 Franklin Avenue, more specifically described as follows:

THE WEST 25 FEET OF LOT 24, HICKMAN HIGHLANDS, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

AND

THE EAST 25 FEET OF LOT 25, HICKMAN HIGHLANDS, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

3. That the sale and conveyance of a portion of such right-of-way to David A. Wright, as Trustee of the David A. Wright Trust, and Katherine N. Sircy, as Trustee of the Katherine N. Sircy Trust, for \$200, and the remaining portion of such right-of-way to Mary Beth Anzivino for \$200, together with payment by such grantees of the estimated publication and recording costs for this transaction, be and is hereby approved, as more specifically described as follows:

To: David A. Wright, as Trustee of the David A. Wright Trust and Katherine N. Sircy, as Trustee of the Katherine N. Sircy Trust for \$200

THE VACATED WEST 25 FEET OF LOT 24, HICKMAN HIGHLANDS, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

To: Mary Beth Anzivino for \$200

THE VACATED EAST 25 FEET OF LOT 25, HICKMAN HIGHLANDS, 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 Offers to Purchase and the Quit Claim Deeds for the conveyances as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.

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5. Upon final passage of an ordinance vacating said right-of-way and upon proof of payment of the consideration plus \$113 for publication and recording costs, the City Clerk is authorized and directed to forward the originals of said Deeds, 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 originals of the Deeds, 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 originals of the Quit Claim Deeds and copies of the other documents to the grantees.

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

(Council Communication No. 13- 496 )

Moved by Griess to adopt.

APPROVED AS TO FORM:

Glenna K. Frank  
 Glenna K. Frank  
 Assistant City Attorney

*RSN*

| COUNCIL ACTION | YEAS     | NAYS | PASS | ABSENT |
|----------------|----------|------|------|--------|
| COWNIE         | ✓        |      |      |        |
| COLEMAN        | ✓        |      |      |        |
| HENSLEY        | ✓        |      |      |        |
| GRIESS         | ✓        |      |      |        |
| MAHAFFEY       | ✓        |      |      |        |
| MEYER          | ✓        |      |      |        |
| MOORE          | ✓        |      |      |        |
| TOTAL          | 7        |      |      |        |
| MOTION CARRIED | APPROVED |      |      |        |

T. M. Franklin 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.

Diane Rauh City Clerk