



Roll Call Number

21-1024

Agenda Item Number

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Date June 28, 2021

HOLD 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 asked 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.



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- 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.
- 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, the City will not be inconvenienced by the sale of said replacement Permanent Easement for Building Encroachment; and

WHEREAS, on June 14, 2021 by Roll Call No. 21-0853, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed conveyance of the replacement permanent easement be set for hearing on June 28, 2021, at 5:00 p.m., in the City Council Chamber, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa; and

WHEREAS, due notice of said proposal to convey the replacement Permanent Easement for Building Encroachment 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 the 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, as follows:

1. Upon due consideration of the facts and statements of interested persons, any and all objections to the proposed conveyance of a replacement Permanent Easement for Building Encroachment upon a portion of Waveland Golf Course adjoining 4841 Algonquin Road, Des Moines, Iowa, as described herein, are hereby overruled and the hearing is closed.
2. The City will not be inconvenienced by the sale of said replacement Permanent Easement for Building Encroachment upon a portion of Waveland Golf Course adjoining 4841 Algonquin Road, Des Moines, Iowa, legally described as follows, to Cory L. Schooley and Kristin K. Schooley for \$4,400.00, and said



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conveyance is hereby approved, subject to reservation of easements for all existing utilities in place, until such time that they are abandoned or relocated, and the other restrictions set forth therein:

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.

3. The Mayor is authorized and directed to sign the replacement Permanent Easement for Building Encroachment for the conveyance as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.
4. The City Manager is authorized to sign any minor and non-substantial amendments to the purchase agreement.
5. 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 replacement Permanent Easement for Building Encroachment, 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 replacement Permanent Easement for Building Encroachment, 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 replacement Permanent Easement for Building Encroachment 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.



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Moved by Mandelbaum to adopt.

APPROVED AS TO FORM:

/s/ Lisa A. Wieland

Lisa A. Wieland, Assistant City Attorney

PIW

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

MOTION CARRIED

APPROVED

J. M. Franklin Cowan 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