



Roll Call Number

21-1152

Agenda Item Number

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Date July 19, 2021

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HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF SEGMENTS OF 42ND STREET RIGHT-OF-WAY AND CONVEYANCE OF EASEMENTS FOR BUS SHELTER ENCROACHMENT ON CITY-OWNED PROPERTY TO DES MOINES AREA REGIONAL TRANSIT AUTHORITY FOR \$440.00

WHEREAS, Des Moines Area Regional Transit Authority (hereinafter “DART”) wishes to acquire permanent easements on portions of City right-of-way located on the west side of 42nd Street north of Rollins Avenue, and on the east side of 42nd Street south of Rollins Avenue, as legally described below (“Easement Areas”), for the purpose of constructing, operating and maintaining a DART bus stop shelter on each location; and

WHEREAS, DART and the City Real Estate Division have negotiated the terms of two permanent easements which include: (1) DART’s installation and use of the Bus Shelter, including any approved artwork, shall comply with all City, State and Federal ordinances and regulations; (2) DART, or its contractors, shall obtain, comply with, and pay all related fees for all necessary permits, and provide required insurance and bond, related to excavation and obstruction of City right-of-way upon and above the Easement Areas prior to accessing the Easement Areas, and, except in the case of emergency, access to the Easement Areas shall be limited to the times set forth in such permits; (3) the bus shelter, including any approved artwork, shall be constructed and installed in accordance with plans and specifications approved by the City Engineer or designee, and DART shall certify to the City that the bus shelter, and any approved artwork, has been constructed and located within the Easement Areas as shown on approved plans and specifications; and

WHEREAS, DART shall pay to the City \$440.00 for costs incurred by the City in preparing necessary documentation for bus shelter locations to allow for vacation and conveyance of easements within the right-of-way, including but not limited to preparation of an exhibit and corresponding legal description for each location, and no additional consideration is required in accordance with Iowa Code §364.7(3); and

WHEREAS, the vacation of said portions of City right-of-way located along 42nd Street, as legally described below, and the conveyances of said Easements for Bus Shelter Encroachment on City-owned Property will not inconvenience the City or public.

WHEREAS, on June 28, 2021, by Roll Call No. 21-0970, it was duly resolved by the City Council of the City of Des Moines, Iowa that the proposed vacation of said 42nd Street right-of-way and conveyances of said Easements for Bus Shelter Encroachment on City-owned Property be set for hearing on July 19, 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 vacate said portions of City right-of-way located on the west side of 42nd Street north of Rollins Avenue, and on the east side of 42nd Street south of Rollins Avenue and convey said proposed easements therein 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 said proposed vacation and



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WHEREAS, in accordance with City Council direction, 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, as follows:

1. Upon due consideration of the facts and statements of interested persons, any and all objections to said proposed vacation and conveyance of the Easements for Bus Shelter Encroachment on City-owned Property in such vacated right-of-way as described below are hereby overruled, and the hearing is closed.
2. The public would not be inconvenienced by reason of the vacation of portions of City right-of-way located on the west side of 42nd Street north of Rollins Avenue, and on the east side of 42nd Street south of Rollins Avenue, subject to the reservation of easements therein, legally described as follows, and said vacation is hereby approved:

WEST SIDE OF 42ND STREET

A PART OF 42ND STREET RIGHT OF WAY IN LOT 32 OF THE OFFICIAL REPLAT OF THE OFFICIAL PLAT OF THE NE 1/4 OF SECTION 1, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5TH P.M., ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 32; THENCE SOUTH ALONG THE EAST LINE OF SAID LOT 32, A DISTANCE OF 138 FEET; THENCE WEST AND PERPENDICULAR TO SAID EAST LINE, 6.5 FEET TO THE POINT OF BEGINNING; THENCE SOUTH AND PARALLEL TO SAID EAST LINE, 14 FEET; THENCE WEST AND PERPENDICULAR TO SAID EAST LINE, 5 FEET TO THE WEST RIGHT OF WAY LINE OF 42ND STREET, AS PRESENTLY ESTABLISHED; THENCE NORTH ALONG SAID WEST RIGHT OF WAY LINE, 14 FEET; THENCE EAST AND PERPENDICULAR TO SAID EAST LINE, 5 FEET TO THE POINT OF BEGINNING, AND CONTAINING APPROXIMATELY 70 SQUARE FEET.

EAST SIDE OF 42ND STREET

A PART OF LOT 10 AND A PART OF 42ND STREET RIGHT OF WAY LYING WEST OF SAID LOT 10, ALL IN BRYN MAWR HEIGHTS ADDITION TO THE CITY OF DES MOINES, IA, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 10; THENCE EAST ALONG THE NORTH LINE OF SAID LOT 10, A DISTANCE OF 5 FEET TO THE EAST RIGHT OF WAY LINE OF 42ND STREET; THENCE SOUTH ALONG SAID EAST RIGHT OF WAY LINE, 20 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH ALONG SAID EAST RIGHT OF WAY LINE, 14 FEET; THENCE WEST AND PERPENDICULAR TO SAID EAST RIGHT OF WAY LINE, 6 FEET; THENCE NORTH AND PARALLEL TO SAID EAST RIGHT OF WAY LINE, 14 FEET; THENCE EAST AND PERPENDICULAR TO SAID EAST RIGHT OF WAY LINE, 6 FEET TO SAID EAST RIGHT OF WAY LINE AND TO THE POINT OF BEGINNING, AND CONTAINING APPROXIMATELY 84 SQUARE FEET.

3. That the conveyance of an Easement for Bus Shelter Encroachment on City-owned Property in such vacated right-of-way as described below, to Des Moines Area Regional Transit Authority for a fee of \$440.00, be and is hereby approved, subject to the reservation of easements therein, and further subject to the negotiated terms of the permanent easement as set forth herein above:

WEST SIDE OF 42ND STREET

A PART OF VACATED 42ND STREET RIGHT OF WAY IN LOT 32 OF THE OFFICIAL REPLAT OF THE OFFICIAL PLAT OF THE NE 1/4 OF SECTION 1, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5TH P.M., ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 32; THENCE SOUTH ALONG THE EAST LINE OF SAID LOT 32, A DISTANCE OF 138 FEET; THENCE WEST AND PERPENDICULAR TO SAID EAST LINE, 6.5 FEET TO THE POINT OF BEGINNING; THENCE SOUTH AND PARALLEL TO SAID EAST LINE, 14 FEET; THENCE WEST AND PERPENDICULAR TO SAID EAST LINE, 5 FEET TO THE WEST RIGHT OF WAY LINE OF 42ND STREET, AS PRESENTLY ESTABLISHED; THENCE NORTH ALONG SAID WEST RIGHT OF WAY LINE, 14 FEET; THENCE EAST AND PERPENDICULAR TO SAID EAST LINE, 5 FEET TO THE POINT OF BEGINNING, AND CONTAINING APPROXIMATELY 70 SQUARE FEET.

EAST SIDE OF 42ND STREET

A PART OF LOT 10 AND A PART OF VACATED 42ND STREET RIGHT OF WAY LYING WEST OF SAID LOT 10, ALL IN BRYN MAWR HEIGHTS ADDITION TO THE CITY OF DES MOINES, IA, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 10; THENCE EAST ALONG THE NORTH LINE OF SAID LOT 10, A DISTANCE OF 5 FEET TO THE EAST RIGHT OF WAY LINE OF 42ND STREET; THENCE SOUTH ALONG SAID EAST RIGHT OF WAY LINE, 20 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH ALONG SAID EAST RIGHT OF WAY LINE, 14 FEET; THENCE WEST AND PERPENDICULAR TO SAID EAST RIGHT OF WAY LINE, 6 FEET; THENCE NORTH AND PARALLEL TO SAID EAST RIGHT OF WAY LINE, 14 FEET; THENCE EAST AND PERPENDICULAR TO SAID EAST RIGHT OF WAY LINE, 6 FEET TO SAID EAST RIGHT OF WAY LINE AND TO THE POINT OF BEGINNING, AND CONTAINING APPROXIMATELY 84 SQUARE FEET.

4. The Mayor is authorized and directed to sign each Easement for Bus Shelter Encroachment on City-owned Property for the conveyances 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 \$440.00 fee the City Clerk is authorized and directed to forward the original Easements, 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.

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- 6. The Real Estate Division Manager is authorized and directed to forward the original of the Easements, together with a certified copy of this resolution and of the affidavit of publication of 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 Easements 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.

Moved by Mandelbaum to adopt.

APPROVED AS TO FORM:

/s/ Lisa A. Wieland

Lisa A. Wieland, Assistant City Attorney

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

MOTION CARRIED

APPROVED

J. M. Franklin 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