

Date April 4, 2022

HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF PORTIONS OF EAST 41ST STREET, EAST 41ST COURT, EAST 40TH COURT, FOUR MILE DRIVE, EAST 40TH STREET, HULL AVENUE AND COLFAX AVENUE RIGHT-OF-WAY LOCATED IN THE LOWER FOURMILE CREEK FLOODPLAIN AND CONVEYANCE TO POLK COUNTY CONSERVATION BOARD FOR THE FOURMILE CREEK GREENWAY PROJECT

WHEREAS, on July 15, 2019, by Roll Call No. 19-1121, the City Council of the City of Des Moines, Iowa (“City) approved the Lower Fourmile Creek Greenway Management and Maintenance Chapter 28E Agreement (“28E Agreement) between the City of Des Moines and the Polk County Conservation Board (“PCCB”); and

WHEREAS, the 28E Agreement provides for the transfer of certain lands from the City to Polk County to be managed by PCCB in accordance with the Lower Fourmile Creek Greenway Master Plan; and

WHEREAS, on March 21, 2022, by Roll Call No. 22-0414, the City Council of the City of Des Moines, Iowa voted to receive and file a recommendation from the City Plan and Zoning Commission to approve a request from the Polk County Conservation Board to vacate the following segments of public street in the vicinity of East 39th Street and Four Mile Drive and the vicinity of East Aurora Avenue and Colfax Avenue (“Property”) to allow for the removal of the roadways and the restoration of the areas for incorporation into the Lower Fourmile Creek Greenway:

- East 41st Street from Mattern Avenue to East Jefferson Avenue;
- East 41st Court from East Jefferson Avenue to Four Mile Drive;
- The south approximately 70 feet of East 40th Court north of Four Mile Drive;
- Four Mile Drive from East Jefferson Avenue to Williams Court;
- East 40th Street from East Jefferson Avenue to Four Mile Drive
- Hull Avenue connecting East 35th Street to East 35th Street
- North approximately 200 feet of East 40th Street south of Washington Avenue; and
- Easterly half of Colfax Avenue from East Aurora Avenue to East Shawnee Avenue;

subject to the reservation of easements for existing utilities in place until such time as they are abandoned or relocated at the Polk County Conservation Board’s expense, excluding the proposed vacation of the right-of-way identified above as the north approximately 200 feet of East 40th Street south of Washington Avenue; and

WHEREAS, in accordance with the 28E Agreement and Iowa Code 364.7, the City proposes to vacate and convey the Property to Polk County, Iowa, for the use and benefit of the Polk County Conservation Board at no cost for the public purpose of the Lower Fourmile Creek Greenway Project, subject to the following conditions:



Date April 4, 2022

- a) Reservation of a permanent easement upon the Property for the continued use and maintenance of any public utilities now in place, including those for the benefit of the City of Des Moines and other public utilities, with the right of entry for servicing same.
- b) Reservation of a permanent easement upon the Property for existing and/or future recreation trail.
- c) The Property will revert back to the City in the event that PCCB ceases to exist or loses its eligibility status as a public entity or qualified conservation organization.
- d) Compliance with the Lower Fourmile Creek Greenway Master Plan.

WHEREAS, there is no known current or future public need for the street right-of-way proposed to be vacated and conveyed, and the City will not be inconvenienced by the vacation and conveyance of said property; and

WHEREAS, on March 21, 2022, by Roll Call No. 22-0417, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation and conveyance of the street right-of-way be set for hearing on April 4, 2022, 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 and convey the street right-of-way 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 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 the proposed vacation and conveyance of street right-of-way as described herein, are hereby overruled and the hearing is closed.
2. There is no public need or benefit for the street right-of-way proposed to be vacated, and the public would not be inconvenienced by reason of the vacation of East 41st Street between Mattern Avenue and Jefferson Avenue, East 41st Court between East Jefferson Avenue and Four Mile Drive, the south 70 feet of East 40th Court north of Four Mile Drive, Four Mile Drive between E. Jefferson Avenue and Williams Street, East 40th Street between East Jefferson Avenue and Four Mile Drive, Hull Avenue between southbound East 35th Street and northbound East 35th Street, and the east portion of Colfax Avenue from East Shawnee Avenue north to City Limits, Des Moines, Iowa, legally described as follows, subject to the reservation of easements for existing utilities in place until such time as they are abandoned or relocated at the Polk County Conservation Board's expense, and said vacation is hereby approved:

Vacation Area A - E. 41st Street between Mattern Ave. and E. Jefferson Ave.

LOTS 325, 326, 479 AND 480, ELMWOOD PARK, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND CONTAINING APPROXIMATELY 0.28 ACRES (12,270 SQUARE FEET).

Vacation Area B - E. 41st Court between E. Jefferson Ave. and Four Mile Drive

LOT "L", ELMWOOD PARK, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND CONTAINING APPROXIMATELY 0.51 ACRES (22,302 SQUARE FEET).

Vacation Area C - South 70 feet of E. 40th Court north of Four Mile Drive

A PART OF LOT "J", ELMWOOD PARK, 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: BEGINNING AT THE SOUTHEAST CORNER OF LOT 248 IN SAID ELMWOOD PARK; THENCE NORTH ALONG THE WEST LINE OF SAID LOT "J", A DISTANCE OF 70.0 FEET; THENCE EAST AND PERPENDICULAR TO SAID WEST LINE TO THE EAST LINE OF SAID LOT "J"; THENCE SOUTH ALONG SAID EAST LINE TO THE SOUTH LINE OF SAID LOT "J"; THENCE WEST ALONG SAID SOUTH LINE TO THE POINT OF BEGINNING, AND CONTAINING APPROXIMATELY 0.07 ACRES (2,885 SQUARE FEET).

Vacation Area D - Four Mile Drive between E. Jefferson Ave. and Williams Street

ALL THAT PART OF FOUR MILE DRIVE RIGHT OF WAY (LOT "G") LYING BETWEEN WEST RIGHT OF WAY OF WILLIAMS STREET (LOT "M") AND THE SOUTH RIGHT OF WAY LINE OF EAST JEFFERSON AVENUE (LOT "N"), ALL IN ELMWOOD PARK, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND CONTAINING APPROXIMATELY 2.30 ACRES (100,177 SQUARE FEET).

Vacation Area E - East 40th Street between E. Jefferson Ave. and Four Mile Drive

LOT "I", ELMWOOD PARK, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND CONTAINING APPROXIMATELY 0.20 ACRES (8,735 SQUARE FEET).

Vacation Area F - Hull Ave. between southbound E. 35th Street and northbound E. 35th Street

THE SOUTH 20.0 FEET OF THE EAST 132.2 FEET OF LOT 39, MARKET GARDEN, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND A TRIANGULAR AREA IN THE NORTHWEST CORNER OF LOT 713, FOUR MILE, AN OFFICIAL PLAT, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 713; THENCE EAST ALONG THE NORTH LINE OF SAID LOT 713, A DISTANCE OF 10.0 FEET; THENCE SOUTHWESTERLY TO A POINT ON THE WEST LINE OF SAID LOT 713, SAID POINT BEING 10.0 FEET SOUTH OF THE NORTHWEST CORNER OF SAID LOT 713; THENCE NORTH ALONG THE WEST LINE OF SAID LOT 713 TO THE POINT OF BEGINNING, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND ALL THAT PART OF LOT "P", FOUR MILE, AN OFFICIAL PLAT, LYING WEST OF THE SOUTHERLY EXTENSION OF THE EAST LINE OF LOT 39, MARKET GARDENS, ALL NOW INCLUDED IN AND FORMING A PART OF THE

22-0549

33

Date April 4, 2022

CITY OF DES MOINES, POLK COUNTY, IOWA, AND CONTAINING APPROXIMATELY 0.16 ACRES (5,299 SQUARE FEET).

Vacation Area G - East portion of Colfax Ave. from E. Shawnee Ave. north to City Limits):

ALL THAT PART OF LOT "D", DOUGLAS ACRES PLAT 3, AN OFFICIAL PLAT, LYING NORTH OF THE EASTERLY EXTENSION OF THE NORTH RIGHT OF WAY OF EAST SHAWNEE AVENUE, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND CONTAINING APPROXIMATELY 0.82 ACRES (35,557 SQUARE FEET).

3. The proposed conveyance of such vacated street right-of-way, as legally described below, to Polk County, Iowa for the use and benefit of the Polk County Conservation Board at no cost for the public purpose of the Fourmile Creek Greenway Project, subject to the following conditions:

- a) Reservation of a permanent easement upon the Property for the continued use and maintenance of any public utilities now in place, including those for the benefit of the City of Des Moines and other public utilities, with the right of entry for servicing same;
- b) Reservation of a permanent easement upon the Property for existing and/or future recreation trail.
- c) The Property will revert back to the City in the event that PCCB ceases to exist or loses its eligibility status as a public entity or qualified conservation organization;
- d) Compliance with the Lower Fourmile Creek Greenway Master Plan;

is hereby approved:

Area A – Vacated E. 41st Street between Mattern Ave. and E. Jefferson Ave.

LOTS 325, 326, 479 AND 480, ELMWOOD PARK, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND CONTAINING APPROXIMATELY 0.28 ACRES (12,270 SQUARE FEET).

Area B – Vacated E. 41st Court between E. Jefferson Ave. and Four Mile Drive

LOT "L", ELMWOOD PARK, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND CONTAINING APPROXIMATELY 0.51 ACRES (22,302 SQUARE FEET).

Area C – Vacated South 70 feet of E. 40th Court north of Four Mile Drive

A PART OF LOT "J", ELMWOOD PARK, 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: BEGINNING AT THE SOUTHEAST CORNER OF LOT 248 IN SAID ELMWOOD PARK; THENCE NORTH ALONG THE WEST LINE OF SAID LOT "J", A DISTANCE OF 70.0 FEET; THENCE EAST AND PERPENDICULAR TO SAID WEST LINE TO THE EAST LINE OF SAID LOT "J"; THENCE SOUTH ALONG SAID EAST LINE TO THE SOUTH LINE OF SAID LOT "J"; THENCE WEST ALONG SAID SOUTH LINE TO THE POINT OF BEGINNING, AND CONTAINING APPROXIMATELY 0.07 ACRES (2,885 SQUARE FEET).

Area D – Vacated Four Mile Drive between E. Jefferson Ave. and Williams Street

Date April 4, 2022

ALL THAT PART OF FOUR MILE DRIVE RIGHT OF WAY (LOT "G") LYING BETWEEN WEST RIGHT OF WAY OF WILLIAMS STREET (LOT "M") AND THE SOUTH RIGHT OF WAY LINE OF EAST JEFFERSON AVENUE (LOT "N"), ALL IN ELMWOOD PARK, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND CONTAINING APPROXIMATELY 2.30 ACRES (100,177 SQUARE FEET).

Area E – Vacated East 40th Street between E Jefferson Ave. and Four Mile Drive

LOT "I", ELMWOOD PARK, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND CONTAINING APPROXIMATELY 0.20 ACRES (8,735 SQUARE FEET).

Area F – Vacated Hull Ave. between southbound E. 35th Street and northbound E. 35th Street

THE SOUTH 20.0 FEET OF THE EAST 132.2 FEET OF LOT 39, MARKET GARDEN, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, **AND** A TRIANGULAR AREA IN THE NORTHWEST CORNER OF LOT 713, FOUR MILE, AN OFFICIAL PLAT, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 713; THENCE EAST ALONG THE NORTH LINE OF SAID LOT 713, A DISTANCE OF 10.0 FEET; THENCE SOUTHWESTERLY TO A POINT ON THE WEST LINE OF SAID LOT 713, SAID POINT BEING 10.0 FEET SOUTH OF THE NORTHWEST CORNER OF SAID LOT 713; THENCE NORTH ALONG THE WEST LINE OF SAID LOT 713 TO THE POINT OF BEGINNING, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, **AND** ALL THAT PART OF LOT "P", FOUR MILE, AN OFFICIAL PLAT, LYING WEST OF THE SOUTHERLY EXTENSION OF THE EAST LINE OF LOT 39, MARKET GARDENS, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND CONTAINING APPROXIMATELY 0.16 ACRES (5,299 SQUARE FEET).

Area G – Vacated east portion of Colfax Ave. from E. Shawnee Ave. north to City Limits):

ALL THAT PART OF LOT "D", DOUGLAS ACRES PLAT 3, AN OFFICIAL PLAT, LYING NORTH OF THE EASTERLY EXTENSION OF THE NORTH RIGHT OF WAY OF EAST SHAWNEE AVENUE, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND CONTAINING APPROXIMATELY 0.82 ACRES (35,557 SQUARE FEET).

4. The Mayor is authorized and directed to sign the Quit Claim Deed for the conveyance as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.
5. The City Clerk is authorized and directed to forward the original of the Quit Claim 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 Quit Claim Deed, together with a certified copy of this resolution and of the affidavit of publication



Roll Call Number

22-0549

Agenda Item Number

33

Date April 4, 2022

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 a copy of the other documents to the grantee.

8. There will be no proceeds associated with the conveyance of this property.

Moved by Westergaard to adopt.

Second by Boesen.

APPROVED AS TO FORM:

/s/ Lisa A. Wieland

Lisa A. Wieland, Assistant City Attorney

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

J. M. Frankhu Cowne
MOTION CARRIED APPROVED
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