

★ Roll Call Number  
09-136

Agenda Item Number  
60

Date January 26, 2009

**HOLD HEARING ON THE INTENT TO ACQUIRE PROPERTY  
FOR RECREATIONAL TRAIL PURPOSES AND AUTHORIZE ACQUISITION OF THE  
NECESSARY PROPERTY INTERESTS THEREOF FOR THE WAVELAND TRAIL, PHASE  
1 PROJECT BY GIFT, NEGOTIATION, OR EMINENT DOMAIN**

**WHEREAS**, under the provisions of 6B.2D of the Iowa Code, a governmental body which proposes to acquire private property by eminent domain for recreational trail purposes is required to give notice of a proposed resolution, motion, or other document authorizing such acquisition of property to each property owner, contract purchaser of record and any tenant known to be occupying the property prior to the date of the meeting at which such proposed authorization will be considered; and

**WHEREAS**, on March 24, 2008, by Roll Call No. 08-531, the City Council approved the Trail Alignment for the Waveland Trail – Phase 1 Project (“the Project”), including the proposed improvement, which is further described as follows:

The Waveland Trail – Phase 1 Project improvement includes construction of a ten (10) foot wide, six (6) inch thick hot mix asphalt (HMA) trail from the existing Walnut Creek Trail to 56<sup>th</sup> Street. The project includes a HMA trail, grading, drainage structures, fencing, surface restoration, and additional incidental items; and

**WHEREAS**, on December 22, 2008 by Roll Call No. 08-2196, City Council set the time and place for a hearing in accordance with the provisions of 6B.2D of the Iowa Code, at which hearing persons affected by the Waveland Trail – Phase 1 Project may present their views regarding the proposed acquisition of private property for the Project by gift, negotiation or eminent domain; and

**WHEREAS**, on January 5, 2009, by Roll Call No. 09-028, the public hearing was further continued and set down for hearing on January 26, 2009, at 5:00 p.m., in the City Council Chambers; and

**WHEREAS**, authorized notice of this hearing was given as provided by law, in accordance with the provisions of 6B.2D of the Iowa Code, setting forth the date, time and place for hearing on the proposal; and

**WHEREAS**, the City Council has met as provided in the notice to receive and consider input regarding the acquisition of private property for recreational trail purposes for the Project by gift, negotiation or eminent domain, and those interested in this proposed property acquisition, 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:

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 private property and property interests for the Project is now concluded and closed.

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2. That acquisition of private property needed for this Project, including acquisition by eminent domain (condemnation) if necessary, is hereby authorized.

3. That the City Manager be and is hereby authorized to proceed with the necessary activities and negotiations to acquire by gift, negotiation, or condemnation the necessary property interests for construction of the Project, subject to approval by this Council, or approval of the City Manager in accordance with Section 2-201 (c) and (d), of the Municipal Code of the City of Des Moines, Iowa, as appropriate.

4. 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.

5. That the Fair Market Value of these parcels will be approved 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.

(Council Communication No. 09-040)

Moved by Hensley to adopt.

APPROVED AS TO FORM:

Glenna K. Frank, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
KIERNAN	✓			
HENSLEY	✓			
MAHAFFEY	✓			
MEYER	✓			
VLISSIS	✓			
TOTAL	7			

MOTION CARRIED APPROVED T. M. Franklin Council 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