

ORDINANCE NO. 1415

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, vacating by the petition method City right-of-way known as South 239th Street located in the Zenith Neighborhood within the City of Des Moines, subject to the petitioners' compliance with requirements set forth herein.

WHEREAS, Alice McCabe, Robert Benson and Maxine Benson, and Marine View Investments of Washington, LLC, have filed a petition to vacate a certain City right-of-way within the Zenith Neighborhood, and

WHEREAS, the petitioners for this street vacation request represent all ownership interest of real property abutting the segment of South 239th Street proposed to be vacated, and

WHEREAS, the City of Des Moines and certain purveyors of utilities providing services within the City of Des Moines continue to have a municipal use and an interest in constructing, operating, and maintaining utilities within said right-of-way, and

WHEREAS, this segment of the South 239th Street right-of-way is required to be improved to meet city street standards and provide access and infrastructure to serve the Zenith Viewpointe mixed use development currently under construction which abuts the right-of-way to the north, and

WHEREAS, this portion of the Zenith Neighborhood has historically experienced property survey discrepancies and conflicts, and

WHEREAS, certain property owners that have owned property in the immediate area for longer than twenty (20) years have recently discovered that the historic single family residential yard improvements associated with their properties are encroaching into the South 239th Street right-of-way, and

WHEREAS, the petitioners seek to continue to allow for the construction of street improvements within the South 239th Street right-of-way, but eliminate the requirement for sidewalk and related pedestrian improvements along the south margin to preserve historic yard improvements and residential use of this space, and

WHEREAS, vacation of South 239th Street as proposed would enable the City to review the proposed street improvements under more flexible standards for private streets and eliminate the conflict between construction of the sidewalk and historic yard and residential use of approximately a continuous five (5) foot-wide portion of the right-of-way, and

WHEREAS, petitioners have entered into a private agreement to perform future lot line adjustments and deeds conveying ownership of property as necessary to allow all remaining street improvements to be constructed to serve the Zenith Viewpointe mixed use development currently under construction, and

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WHEREAS, DMMC 12.12.040 adopts the street vacation procedures of Chapter 35.79 RCW, and

WHEREAS, RCW 35.79.010 authorizes the City Council to initiate such street vacation procedures by resolution and further requires setting of a public hearing and date for council action which was, in this case, established by Resolution No. 1051 fixing the public hearing for October 25, 2007, to be followed by Council action, and

WHEREAS, notice of the public hearing was given in accordance with law and the public hearing was held before the City Council of the City of Des Moines on October 25, 2007, and all persons wishing to be heard were heard, and

WHEREAS, no objections to vacation were filed by any abutting property owners prior to the hearing, and the Council finds that no person has demonstrated special injury due to substantial impairment of access to such person's property, and

WHEREAS, on October 25, 2007, the City Council voted to pass Draft Ordinance No. 07-198 (Ordinance No. 1415) to a second reading scheduled for November 8, 2007, and

WHEREAS, the Council finds that vacation of the rights-of-way legally described herein and as depicted on the map marked "Exhibit A" to this ordinance, is in the public interest; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:

Sec. 1. Findings adopted. Based on the evidence presented, the City Council adopts the following findings of fact:

(1) The public right-of-way which is the subject of this ordinance consists of a segment of public right-of-way known as South 239th Street which is located within the Zenith Neighborhood; and

(2) The public right-of-way which is the subject of this ordinance was improved as a gravel road for transportation and access purposes, has previously been opened for transportation purposes, contains city and other public utilities, and is not subject to vacation by operation of law under the Laws of 1889-90; and

(3) The public right-of-way which is the subject of this ordinance is not necessary for present and future use by public utilities because present and future needs for use by public utilities will be met by appropriate easements retained by the City; and

(4) Provided that the city and public utilities retain easements to allow for future utility construction and needs and

to ensure the continued operation of all existing utilities within this portion of South 239th Street, the public right-of-way which is the subject of this ordinance is surplus to the present and future needs of the citizens of the City of Des Moines for public transportation purposes, and it is in the public interest to vacate these rights-of-way, and to allow this property to be developed for private street purposes in concert with historic residential yard improvements.

Sec. 2. Right-of-way vacation. Subject to the requirements set forth in this ordinance, the following legally described public right-of-way as depicted on the attached map entitled "Exhibit A" is vacated and the property within the rights-of-way so vacated shall belong to the respective abutting property owners, one-half to each as required by RCW 35.79.040, subject to the conditions set forth in section 3 of this ordinance:

THAT PORTION OF THE SOUTH HALF OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 22 NORTH, RANGE 04 EAST, W.M. IN KING COUNTY, WASHINGTON, INCLUDED WITHIN A STRIP OF LAND DESCRIBED AS FOLLOWS:

ALL THAT PORTION OF RIGHT-OF-WAY FOR SOUTH 239TH STREET LYING EAST OF THE SOUTHERLY EXTENSION OF THE EAST RIGHT-OF-WAY MARGIN OF 7TH AVENUE SOUTH AND WEST OF THE WEST RIGHT-OF-WAY MARGIN OF MARINE VIEW DRIVE SOUTH AND SOUTH OF THE SOUTH PROPERTY BOUNDARY LINE OF TRACT 4 OF THE MAPLES PLAT AND NORTH OF THE NORTH PROPERTY BOUNDARY LINES OF LOTS 1 AND 5 IN BLOCK 1 OF THE REPLAT OF A PORTION OF THE MAPLES AND THE NIMOCK'S REPLAT OF THE MAPLES AS SHOWN IN RECORDS OF THE KING COUNTY ASSESSOR.

Sec. 3. Conditions of right-of-way vacation. The right-of-way subject to vacation under this ordinance shall be subject to the following conditions:

(1) The abutting property owners shall be required to compensate the City of Des Moines for vacation of these Class A rights-of-way, pursuant to DMMC 12.12.050(2)(a).

(2) Notwithstanding section 2 of this ordinance, easements for the purposes of construction, repair, expansion, and maintenance of all existing utilities located within said South 239th Street right-of-way are reserved for both underground facilities and other related facilities and structures that are substantially at grade and which do not conflict or interfere with street improvements or vehicular use of South 239th Street as determined by the City of Des Moines. The abutting property owners recognize that in addition to reserving easements for existing public utilities and services, the City of Des Moines also reserves the right to exercise and grant

future easements for any and all areas or portions of the land vacated by this ordinance provided that the future facilities for these utilities do not conflict or interfere with street improvements or vehicular use of South 239th Street as determined by the City of Des Moines. Accordingly, easements for existing and future public utilities as described above shall encumber the entire area legally described in section 2 of this ordinance.

(3) Easements over and across that portion of the proposed vacated South 239th Street right-of-way that is improved to city standards and which is located in the westerly 100 feet and the north 23.5 feet of the south 28.5 feet of the area legally described in Section 2 of this Ordinance are reserved for the owner of the South 50 feet of Lot 4 of plat The Maples and the owners of lots 1 and 5 in Block 1 of the Plat Nimock's Addition as shown in records of King County and their successors and assigns for the purposes of vehicular access, ingress, and egress.

(4) Should the abutting property owners fail to satisfy the conditions set forth in the previous subsections within ninety (90) days of passage of this ordinance, then this ordinance shall be deemed void and of no legal effect and the underlying right of way vacation shall be deemed denied.

Sec. 4. Easements and reservation of easements.
Pursuant to RCW 35.79.030, the City of Des Moines retains or will be granted easements as set forth in section 3 of this ordinance and retains the right to exercise and grant easements in respect to the land vacated by this ordinance and abutting property for the construction, repair, and maintenance of public utilities and services, and for vehicular access.

Sec. 5. Severability - Construction.

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

(2) If the provisions of this ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this ordinance is deemed to control.

Sec. 6. Recordation. The City Clerk shall cause a certified copy of this ordinance to be recorded in the records of the King County Recorder.

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Sec. 7. Effective date. This ordinance shall take effect and be in full force thirty (30) days after its passage, approval, and publication in accordance with law.

PASSED BY the City Council of the City of Des Moines this 8th day of November, 2007 and signed in authentication thereof this 8th day of November, 2007.


M A Y O R

APPROVED AS TO FORM:


City Attorney

ATTEST:


City Clerk

Effective Date: December 8, 2007

Published: November 16, 2007

LEGAL NOTICE
SUMMARY OF ADOPTED ORDINANCE
CITY OF DES MOINES

ORDINANCE NO. 1415, Adopted November 8, 2007

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This ordinance vacates by the petition method City right-of-way known as South 239th Street located in the Zenith Neighborhood within the City of Des Moines, subject to the petitioners' compliance with requirements set forth herein.

The full text of the ordinance will be mailed without cost upon request.

Denis Staab
City Clerk

Published: November 16, 2007

Exhibit A

