CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: **October 31, 2016**

ITEM: West Green Industrial Park Plat 1, 175 S. 9th Street – Vacation request of public sanitary sewer easement – City Initiated – VAC-003254-2016

RESOLUTION: **Approval of Vacation Request**

FINANCIAL IMPACT: Undetermined.

BACKGROUND: On May 2, 2016, the Council approved a site plan to construct industrial buildings at 175 S. 9th Street (See Exhibit I – Location Map). As part of that site plan a sanitary sewer line was proposed to service the site and it was proposed to be public. As part of the site plan approval process, a sanitary sewer easement was put in place over the sewer line to allow the city to access and maintain the sewer line since it was public.

On October 17, 2016, the City Council approved a final plat which subdivided the property into 39 lots and 1 outlot for a condominium regime. The sanitary sewer was placed in an outlot and is no longer needed to be a public sewer, but rather will be a private sewer.

Therefore, the public sanitary sewer easement that was established with the site plan is no longer needed and should be vacated. Staff reviewed the easement vacation request and supports the vacation of the public easement.

OUTSTANDING ISSUES: There are no outstanding issues.

RECOMMENDATION: Based upon the preceding review and a finding of consistency with the goals and policies of the Comprehensive Plan, Staff recommends the City Council approve the vacation of an existing Public Sanitary Sewer easement at Book 16013 Page 268, and as attached in Exhibit II, subject to the applicant meeting all City Code requirements.

Lead Staff Member: Kara Tragesser, AICP

STAFF REVIEWS

Department Director	
Appropriations/Finance	
Legal	
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	Des Moines Register Community Section	
Date(s) Published	October 21, 2016	
Letter sent to surrounding property owners		N/A

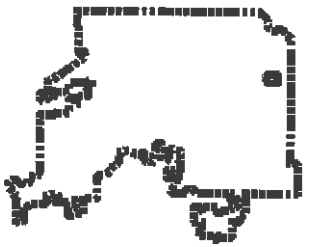
SUBCOMMITTEE REVIEW (if applicable)

Committee			
Date Reviewed			
Recommendation	Yes ☐	No ☐	Split ☐

ATTACHMENTS:

Exhibit I - Location Map
Exhibit II – City Council Resolution (No Conditions of Approval)

175 S. 9th Street



Legend

- Parcels
- Parks
- Greenways

473.4 0 236.71 473.4 Feet

NAD_1983_StatePlane_Iowa_South_FIPS_1402_Feet

© City of West Des Moines, Iowa

Disclaimer: The City of West Des Moines makes no warranties regarding the accuracy or completeness of the data provided herein.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

EXHIBIT I

EXHIBIT II

Prepared by: KTragesser, Development Services, P.O. Box 65320 West Des Moines, IA 50265-0320, (515)222-3620
When Recorded, Return to: City Clerk, City of West Des Moines, P.O. Box 65320, West Des Moines, IA 50265-0320

RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, APPROVING THE VACATION REQUEST (VAC-003254-2016) FOR THE PURPOSE OF VACATING AN EXISTING PUBLIC SANITARY SEWER EASEMENT IN WEST GREEN INDUSTRIAL PARK AND RECORDED AT BOOK 16013 PAGE 268 IN THE POLK COUNTY, IOWA, RECORDER OFFICE

WHEREAS, pursuant to the provisions of Title 10, Chapter 1 et seq, of the West Des Moines Municipal Code, the City of West Des Moines requests approval of a Vacation Request (VAC-003254-2016) for an existing Public Sanitary Sewer located in West Green Industrial Park;

WHEREAS, studies and investigations were made, and staff reports and recommendations were submitted which is made a part of this record and herein incorporated by reference;

WHEREAS, on October 31, 2016, this City Council held a duly-noticed public hearing to consider the application for Vacation Request (VAC-003254-2016);

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WEST DES MOINES DOES RESOLVE AS FOLLOWS:

SECTION 1. The findings, for approval, in the staff report, dated October 31, 2016, or as amended orally at the City Council hearing of October 31, 2016, are adopted.

SECTION 2. VACATION REQUEST (VAC-003254-2016) to vacate an existing Public Sanitary Sewer Easement recorded in Polk County, Book 16013, Page 268, and as included as Exhibit A, is approved subject to compliance with all the conditions in the staff report, dated October 31, 2016, including conditions added at the Hearing. Violation of any such conditions shall be grounds for any remedy, legal or equitable, which is available to the City.

PASSED AND ADOPTED on October 31, 2016.

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan Jacobson
City Clerk

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the City Council of the City of West Des Moines, Iowa, at a regular meeting held on October 31, 2016, by the following vote:

ATTEST:

_____

Ryan Jacobson
City Clerk

EXHIBIT A

Recorded: 5/24/2016 at 7:38:15.567 AM
Fee Amount: $22.00
Revenue Tax:
Polk County, Iowa
Julie M. Haggerty RECORDER
Number: 201500203528
BK: 16013 PG: 268

Prepared by: K Tragesser Development Services, PO Box 65320, West Des Moines, IA 50265-0320, 515-222-3620
When Recorded, Return to: City Clerk, City of West Des Moines, PO Box 65320, West Des Moines, IA 50265-0320

SANITARY SEWER EASEMENT(S)

KNOW TO ALL MEN BY THESE PRESENTS:

1. Grant of Easement(s).

The undersigned, **Reid Tamisiea and Sara Tamisiea**, (hereinafter referred to as the "Grantor(s)"), owner(s) and/or developer(s) of Lots 2 and 3 Goodman Industrial Park, an official plat in and forming a part of the City of West Des Moines, Polk County, Iowa, in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby sell, grant, and convey to the **City of West Des Moines, Iowa**, a municipal Corporation (hereinafter referred to as "the City"), a permanent and perpetual easement (hereinafter referred to as "Sanitary Sewer Easement" or "Easement(s)") and right-of-way upon, over, under, through and across the real property legally described as:

A part of lots 2 and 3, Goodman Industrial Park, an official plat in the City of West Des Moines, Polk County, Iowa more particularly described as follows:

A PUBLIC SANITARY SEWER EASEMENT LOCATED IN LOTS 2 AND 3 GOODMAN INDUSTRIAL PARK, AN OFFICIAL PLAT, CITY OF WEST DES MOINES, POLK COUNTY, IOWA, THAT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A 30.00 FOOT EASEMENT CENTERED ON A LINE MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 3, SAID POINT ALSO BEING ON THE WEST RIGHT-OF-WAY LINE OF SOUTH 9th STREET AS IT IS PRESENTLY ESTABLISHED; SAID POINT BEING ON A 64.50 FOOT RADIUS CURVE CONCAVE TO THE NORTHEAST; THENCE SOUTHEASTERLY 40.26 FEET ALONG THE EAST LINE OF SAID LOT 3 AND ALONG SAID RIGHT-OF-WAY AND SAID CURVE; SAID CURVE HAS A CHORD LENGTH OF 39.61 FEET AND A CHORD BEARING OF S17°40'38"E TO THE POINT OF BEGINNING; THENCE S19°41'58"W, 129.48 FEET; THENCE S45°05'27"W, 331.75 FEET; THENCE S46°06'23"W, 222.54 FEET; THENCE 45°50'38"W, 278.79 FEET TO WHERE SAID LINE TERMINATES.

AND

A PUBLIC SANITARY SEWER EASEMENT LOCATED IN LOT 3 GOODMAN INDUSTRIAL PARK, AN OFFICIAL PLAT, CITY OF WEST DES MOINES, POLK COUNTY, IOWA, THAT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A 30.00 FOOT EASEMENT CENTERED ON A LINE MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 3 SAID POINT ALSO BEING ON THE WEST RIGHT-OF-WAY LINE OF SOUTH 9th STREET AS IT IS PRESENTLY ESTABLISHED; SAID POINT BEING ON A 64.50 FOOT RADIUS CURVE CONCAVE TO THE NORTHEAST; THENCE SOUTHEASTERLY 40.26 FEET ALONG THE EAST LINE OF SAID LOT 3 AND ALONG SAID RIGHT-OF-WAY AND SAID CURVE; SAID CURVE HAS A CHORD LENGTH OF 39.61 FEET AND A CHORD BEARING OF S17°40'38"E; THENCE S19°41'58"W, 129.48 FEET; THENCE S45°05'27"W, 331.75 FEET TO THE POINT OF BEGINNING; THENCE N10°16'04"W, 155.73 FEET; THENCE N01°51'40"W, 223.51 FEET TO WHERE SAID LINE TERMINATES.

2. Use and Purpose of Easement(s).

This Easement shall be granted for the purpose of locating sanitary sewer(s) (hereinafter referred to as "Sewer(s)") and to permit and allow the city to enter at any time upon, over, under, through, and across into said Easement(s) herein described to use as much of the surface and sub-surface thereof to construct, replace, locate, rebuild, enlarge, reconstruct, patrol, repair (including the right to place and build additional Sewer(s) therein or to connect and/or join Sewer(s) and appurtenances thereto) and to forever maintain Sewer(s) whenever necessary within the Easement(s) granted herein. No structure or building of any kind whatsoever shall be erected upon property that is the subject of this Easement without the express written consent of the City.

3. Maintenance.

After the initial construction of the Sewer(s), and acceptance by the City, the City agrees, as part of the reconstruction, maintenance and patrolling of the Sewer(s), to restore and replace the Easement area(s) to substantially the same condition as prior to the time of entry or as agreed upon by the City and the Grantor(s), except the City shall not be required to replace landscaping, trees, shrubs, bushes, landscape elements, structures, or underground water systems nor shall the City be required to restore the Easement area by reason of settlement, depression, or any unknown conditions which arise subsequent to the restoration and/or replacing of the easement area; any subsequent restoration by reason of settlement, depression or any unknown conditions shall be the sole responsibility of the Grantor(s) at the Grantor(s)' sole expense.

4. Hold Harmless.

The Grantor(s) agrees to indemnify and hold harmless the City, its elected officials, employees, officers, agents, representatives, contractors, and attorneys from and against any and all claims or demands for liability, loss, damage, costs, expenses, or attorney's fees of any kind for actions or omissions of the Grantor(s) arising out of or in connection with any undertaking arising out of or otherwise related to this Easement.

5. Running of Benefits and Burdens.

The terms and conditions of this Easement are binding upon the Grantor including, but not limited to, future owners, developers, lessees or occupants. All provisions of this instrument, including benefits and burdens, run with the land and are binding upon and inure to the heirs, assigns, successors, tenants and personal representatives of the parties hereto.

6. Jurisdiction and Venue.

The City and the Grantor(s) agree the District Court of the State of Iowa shall have exclusive jurisdiction over the subject matter and enforcement of the terms and conditions of this Easement and said parties consent to the jurisdiction of the person being in Polk County, Iowa.

7. Words and Phrases.

Words and phrases shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to context.

8. Parties.

The term "City" as used herein shall refer to the City of West Des Moines, Iowa, its elected officials, agents, employees, officers, and contractors. The term "Grantor(s)" shall refer to Next Phase Development LLC, their heirs, assigns, successors-in-interest, or lessees, if any.

9. Attorney's Fees.

Either party may enforce this instrument by appropriate action, and should they prevail in such litigation they shall recover as part of their costs the reasonable attorney's fees incurred in such litigation.

10. Integration.

This Agreement shall constitute the entire Agreement between the parties and no amendments or additions to this Agreement shall be binding unless in writing and signed by both parties.

11. Paragraph Headings.

The paragraph headings in this Agreement are included solely for convenience and shall not affect or be used in connection with, the interpretation of this Agreement.

Dated this 19th day of April, 2016

By: _____
Reid Tamisiea, Property Owner

By: Sara Tamisiea
Sara Tamisiea, Property Owner

CITY OF WEST DES MOINES, IOWA

_____
Steven Gaer, Mayor

Attest:

Ryan T. Jacobson
Ryan Jacobson, City Clerk

STATE OF IOWA)
)SS
COUNTY OF POLK)

On this 19th day of April, 2016 before me, the undersigned, a Notary Public in and for said County and State personally appeared Reid Tamisiea, to me personally known, who being by me duly sworn, did say that he is President of Next Phase Development LLC, executing the within and foregoing instrument and acknowledged that he executed the same as his voluntary act and deed of the Next Phase Development LLC, by it and by him voluntarily executed.

Hollie L. Davidson
Notary Public in and for the State of Iowa

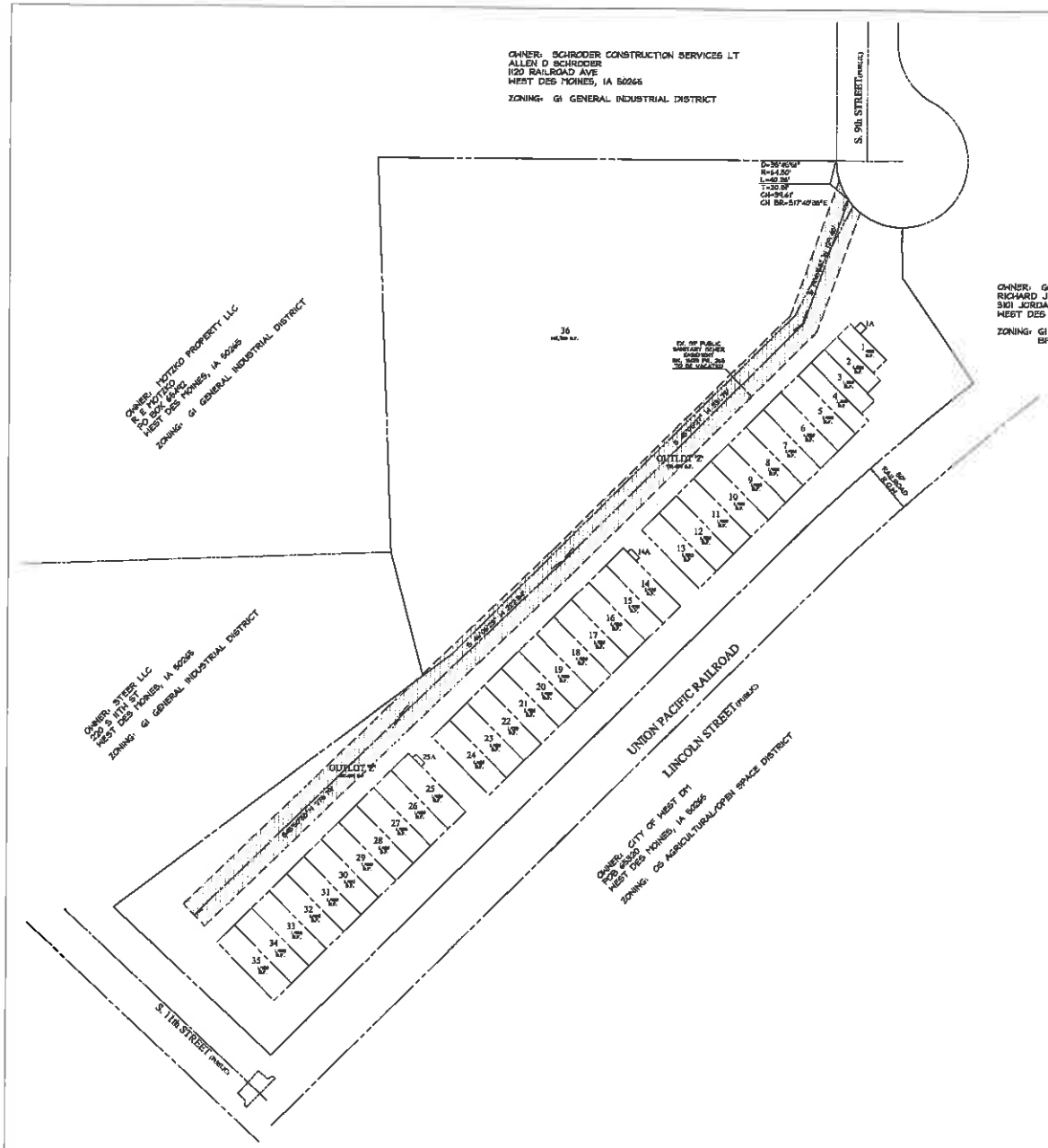
NOTARIAL SEAL IOWA
HOLLIE L DAVIDSON
Commission Number 782995
My Commission Expires
March 7, 2017

STATE OF IOWA)
)SS
COUNTY OF POLK)

On this 16th day of May, 2016, before me, the undersigned, a Notary Public in and for said County and State personally appeared Steven Gaer and Ryan Jacobson, to me personally known, who being by me duly sworn, did say that they are the Mayor and City Clerk of the City of West Des Moines, Iowa, a municipal corporation, executing the within and foregoing instrument and acknowledged that they executed the same as their voluntary act and deed of the City of West Des Moines, by it and by them voluntarily executed.

Katie Walters
Notary Public in and for the State of Iowa

NOTARIAL SEAL IOWA
KATIE WALTERS
Commission Number 787901
My Commission Expires
1-14-18



SANITARY SEWER EASEMENT VACATION

WEST GREEN INDUSTRIAL PARK PLAT 1

175 S. 9th & 250 S. 11th STREET

OWNER/APPLICANT

WEST GREEN INDUSTRIAL PARK, LLC.
175 S. 9th STREET
WEST DES MOINES, IOWA 50265
PH. 515-480-1868

ZONING

EXISTING: GENERAL INDUSTRIAL

LEGAL DESCRIPTION

LOTS 2 AND 3 GOODMAN INDUSTRIAL PARK, AN OFFICIAL PLAT, CITY OF WEST DES MOINES, POLK COUNTY IOWA.

SAID TRACT OF LAND CONTAINS 7.107 ACRES MORE OR LESS.

SAID TRACT OF LAND SUBJECT ALL EASEMENTS OF RECORD.

EASEMENT LEGAL DESCRIPTION

A PUBLIC SANITARY SEWER EASEMENT LOCATED IN LOTS 2 AND 3 GOODMAN INDUSTRIAL PARK, AN OFFICIAL PLAT, CITY OF WEST DES MOINES, POLK COUNTY, IOWA, THAT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A 50.00 FOOT EASEMENT CENTERED ON A LINE MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 3, SAID POINT ALSO BEING ON THE WEST RIGHT-OF-WAY LINE OF SOUTH 9th STREET AS IT IS PRESENTLY ESTABLISHED; SAID POINT BEING ON A 64.50 FOOT RADIUS CURVE CONCAVE TO THE NORTHEAST; THENCE SOUTHEASTERLY 40.36 FEET ALONG THE EAST LINE OF SAID LOT 3 AND ALONG SAID RIGHT-OF-WAY AND SAID CURVE; SAID CURVE HAS A CHORD LENGTH OF 39.51 FEET AND A CHORD BEARING OF S17°40'55"E TO THE POINT OF BEGINNING; THENCE S19°41'55"W, 121.45 FEET; THENCE S45°00'27"W, 331.75 FEET; THENCE S46°06'22"W, 222.64 FEET; THENCE 45°52'35"W, 278.74 FEET TO WHERE SAID LINE TERMINATES.

IOWA ONE-CALL

COOPER CRAWFORD
& ASSOCIATES, L.L.C.
CIVIL ENGINEERS
475 S. 50th STREET, SUITE 800, WEST DES MOINES, IOWA 50265
PHONE: (515) 224-1344 FAX: (515) 224-1345

DATE: 6-27-2016
REVISIONS:

SCALE: 1"=50'

APPROVED: 10-24-2016 INITIALED: KJC AS-BUILT: (X-X-2003)

JOB NUMBER CC 1771

FINAL PLAT
WEST GREEN INDUSTRIAL PARK

SHEET 1 OF 2