CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: October 4, 2021

ITEM:

Resolution - Public Hearing Regarding the Final Design and Site Selection and Approval of the Acquisition of Property, Including Agricultural Property
Grand Avenue West Segment 4 Sewer Extension

FINANCIAL IMPACT:

None at this time.

BACKGROUND:

Pursuant to state law, a municipality is required to provide notice and hold a public hearing to receive public input regarding the final design and site selection of a public improvement project when the acquisition of agricultural property for the project is necessary. The public hearing is necessary to make the final selection for the site of the project and to authorize the acquisition of property, including agricultural property, for the project.

The attached Resolution opens and closes the public hearing; approves the design and location of the project; approves the acquisition of property, including agricultural property necessary for the project, at the fair market value to be established by compensation estimate and/or appraisal; approves hiring of appraiser; and approves initiation and completion of condemnation proceedings, if necessary.

This agenda item was distributed to the Public Services Subcommittee by e-mail only since there was no meeting.

OUTSTANDING ISSUES: None.

RECOMMENDATION:

City Council Adopt:

- Resolution for Public Hearing Regarding the Final Design and Site Selection and Approval of the Acquisition of Property, Including Agricultural Property

Lead Staff Member: Brian J. Hemesath, P.E., City Engineer

STAFF REVIEWS

Department Director	Brian J. Hemesath, P.E., City Engineer
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Richard Scieszinski, City Attorney
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	Des Moines Register
Dates(s) Published	September 24, 2021

SUBCOMMITTEE REVIEW (if applicable)

Committee			
Date Reviewed			
Recommendation	Yes	No	Split

RESOLUTION FOR PUBLIC HEARING REGARDING THE FINAL DESIGN AND SITE SELECTION AND APPROVAL OF THE ACQUISITION OF PROPERTY, INCLUDING AGRICULTURAL PROPERTY, FOR THE CONSTRUCTION OF THE PROJECT

GRAND AVENUE WEST SEGMENT 4 SEWER EXTENSION
PROJECT NO. 0510-027-2021

WHEREAS, the City of West Des Moines has previously approved funding for the construction of the Grand Avenue West Segment 4 Sewer Extension, Project No. 0510-027-2021 (hereinafter "Project"); and

WHEREAS, the proposed project site includes agricultural property; and

WHEREAS, Code of Iowa Section 6B.2A requires a municipality to hold a public hearing to receive input regarding the final design and site selection for a public improvement project in which agricultural property will be acquired, and Code of Iowa Section 6B.2D requires a municipality to allow individuals with an interest in property that may be acquired for the Project to voice objection to the Project; and

WHEREAS, pursuant to Code of Iowa Section 6B.2A, written notice of the public hearing was made on August 31, 2021 to each known owner, contract purchaser and tenant of agricultural property that may be acquired; and

WHEREAS, pursuant to Code of Iowa Section 6B.2A, published notice of the public hearing was made on September 24, 2021, a copy of which is on file in the Office of the City Clerk; and

WHEREAS, the City Council has received public input regarding the general nature of the Project, including objections to the Project, has determined the source of funding for the Project, has reviewed the site-specific design and location of the Project and has determined that the acquisition of property, including the acquisition of agricultural property through voluntary purchase or condemnation is for a public purpose and necessary for completion of the Project; and

WHEREAS, upon consideration of the information received by the City Council, including public input regarding the Project, the City Council has determined that it is in the best interest of the City of West Des Moines to proceed with the construction of the Project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA THAT:

1. Pursuant to Code of Iowa Section 6B.2A, written and published notice of the public hearing has been properly made to each owner and contract purchaser of agricultural property which may be needed for construction of the Project.

2. Pursuant to Code of Iowa Section 6B.2D, written notice of the public hearing has been properly made to each known property owner, contract purchaser and tenant of property that may be acquired for the Project in order for these owners, purchasers and tenants to voice objections to the Project.

3. Input from individuals with an interest in property to be acquired for the Project, including the owners and contract purchasers of agricultural property, have been received and considered.

4. The public hearing on this matter is closed.

5. The design and location of the Project, which shall be funded with funds identified by the City of West Des Moines at the hearing, has been reviewed and is acceptable and appropriate.

6. The City shall obtain compensation estimates and/or appraisals establishing the fair market value of the property and easements required for construction of the Project, the locations and descriptions of which are shown on the attached Exhibit A.

7. Pursuant to the property acquisition policy of the City of West Des Moines, acquisition of all property and easements necessary for the construction of the Project is hereby approved.

8. City staff is authorized to acquire M.A.I. appraisals or formulate compensation estimates establishing the fair market value of the property necessary for the Project.

9. City staff is further authorized to acquire the property and easements through voluntary acquisition or gift based upon the fair market value of each property as determined by the M.A.I. appraisal or compensation estimates, which upon the appraisals/estimates completion are hereby approved (copies of which shall be on file in the Office of the City Clerk).

10. Upon the inability of the City to acquire the property voluntarily or by gift, condemnation of such property is hereby approved. The City Legal Department is authorized to initiate and complete condemnation proceedings.

11. Acquisition of property related to the Project shall be done in accordance with all local, state and federal laws and regulations.

PASSED AND ADOPTED on this **4th** day of **October, 2021**.

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson, City Clerk

Agricultural Properties
Grand Avenue West Segment 4 Sewer Extension
Project No. 0510-027-2021

Parcel No.	Mail Name	Mail Address	Mail City	Mail ST	Mail ZIP
1623300011	JAMES C. & DEBORAH L. MILLER	1390 SOUTH 88TH STREET	WEST DES MOINES	IA	50266
1623300006	DB BOONEVILLE, LLC	7395 NW 100TH STREET	JOHNSTON	IA	50131

NOTICE OF INTENT TO COMMENCE A PUBLIC IMPROVEMENT PROJECT AND TO ACQUIRE AGRICULTURAL LAND FOR THE PROJECT

GRAND AVENUE WEST SEGMENT 4 SEWER EXTENSION PROJECT NO. 0510-027-2021

All or a portion of the property as shown on the Parcel Location Map attached hereto as Exhibit "A".

TO: Owners and Parties in Possession

Under the provisions of Chapter 6B of the Iowa Code, a governmental body which proposes to acquire agricultural land under power of eminent domain for a public improvement project is required to give notice of intent to commence the project to all owners of such agricultural land whose properties may be acquired in whole or in part for the project (see Iowa Code §§ 6A.21(a) and 6B.2A).

1. DESCRIPTION OF THE PROJECT.

NOTICE IS HEREBY GIVEN to the above identified owners of agricultural land that the City Council of the City of West Des Moines, Iowa will consider authorizing the commencement of a project to acquire property and property interests for the construction of sanitary sewer improvements which will comprise the Grand Avenue West Segment 4 Sewer Extension.

2. PRIVATE PROPERTY MAY BE ACQUIRED BY PURCHASE OR CONDEMNATION.

If the above described project and/or acquisition of property is approved by the City Council, the City will be required to acquire property for the project improvements. Upon review of Dallas County property records, it appears that agricultural land and property interests owned by the above identified persons/entities may have to be acquired in whole or in part for the Project. The City will attempt to purchase the required agricultural land and/or property interests by good faith negotiations, and it may condemn those properties which it is unable to purchase. The proposed location of the above described public improvement is shown on a conceptual drawing of the Project which is now on file in the office of the City Clerk and available for public inspection.

3. CITY PROCESS TO DECIDE TO PROCEED WITH THE PROJECT AND TO ACQUIRE PROPERTY; CITY COUNCIL ACTION REQUIRED TO PROCEED WITH PROJECT; OPPORTUNITY FOR PUBLIC INPUT.

In making the decision to proceed with the Project and to authorize the acquisition of property and property interests, the City Council will hold a public hearing, giving persons interested in the proposed Project the opportunity to present their views, including the proposed acquisition of property. The public hearing will be held during the City Council's regularly scheduled meeting on **the 4th day of October, 2021 in the City Council Chambers, City Hall, 4200 Mills Civic Parkway, West Des Moines, Iowa, commencing at 5:35 p.m.** In order for the City to proceed, the City Council will be required to consider and approve the Project and authorize acquisition of private property by Council resolution following the public hearing.

If the Project is approved, an appraiser retained by the City will determine the compensation to be paid for property or property interests that are needed for the Project. The City will offer no less than the appraised fair market value and will attempt to purchase only the needed property by good faith

negotiations. If the City is unable to acquire property needed for the Project by negotiation, the City will acquire the property by condemnation.

4. CONTACT PERSON.

Further information regarding this proposed public improvement project or its impact on the properties identified above may be obtained by contacting **Brian Hemesath, West Des Moines City Engineer, 4200 Mills Civic Parkway, West Des Moines, Iowa 50265, or by telephone at (515) 222-3475.**

5. STATEMENT OF RIGHTS.

Just as the law grants certain entities the right to acquire private property, you as the owner of property have certain rights. You have the right to:

a. Receive just compensation for the taking of property. (Iowa Const., Article 1, Section 18)

b. An offer to purchase which may not be less than the lowest appraisal of the fair market value of the property. (Iowa Code §§ 6B.45, 6B54)

c. Receive a copy of the appraisal, if an appraisal is required, upon which the acquiring agency's determination of just compensation is based, not less than ten (10) days before being contacted by the acquiring agency's acquisition agent. (Iowa Code §6B.45)

d. When an appraisal is required, an opportunity to accompany at least one appraiser of the acquiring agency who appraises your property. (Iowa Code §6B.54)

e. Participate in good faith negotiations with the acquiring agency before the acquiring agency begins condemnation proceedings. (Iowa Code §6B.3(l))

f. If you cannot agree on a purchase price with the acquiring agency, a determination of just compensation by an impartial compensation commission and the right to appeal its award to district court. (Iowa Code §§ 6B.4, 6B.7, and 6B.18)

g. A review by the compensation commission of the necessity for the condemnation if your property is agricultural land being condemned for industry. (Iowa Code § 6B.4A)

h. Payment of the agreed upon purchase price, or if condemned, a deposit of the compensation commission award before you are required to surrender possession of the property. (Iowa Code §§ 6B.25 and 6B.54(11))

i. Reimbursement for expenses incidental to transferring title to the acquiring agency. (Iowa Code §§ 6B.33 and 6B.54(10))

j. Reimbursement of certain litigation expenses: (1) if the award of the compensation commissioners exceeds 110 percent of the acquiring agency's final offer before condemnation; and (2) if the award on appeal in court is more than the compensation commissioner's award. (Iowa Code § 6B.33)

k. At least 90 days written notice to vacate occupied property. (Iowa Code § 6B.54(4))

l. Relocation services and payments, if you are eligible to receive them, and the right to appeal your eligibility, and the amount of payments. (Iowa Code §316.9)

The rights set out in this Statement are not claimed to be a full and complete list or explanation of an owner's rights under the law. They are derived from Iowa Code Chapters 6A, 6B and 316. For a more thorough presentation of an owner's rights, you should refer directly to the Iowa Code or contact an attorney of your choice.

This Notice is given by authority of the City Council of the City of West Des Moines, Iowa.

/s/ Ryan T. Jacobson
City Clerk, West Des Moines, Iowa

To be published in the Des Moines Register no less than four (4) nor more than twenty (20) days before October 4, 2021.

Mailed to all affected Property Owners on August 31, 2021.

Agricultural Properties
Grand Avenue West Segment 4 Sewer Extension
Project No. 0510-027-2021

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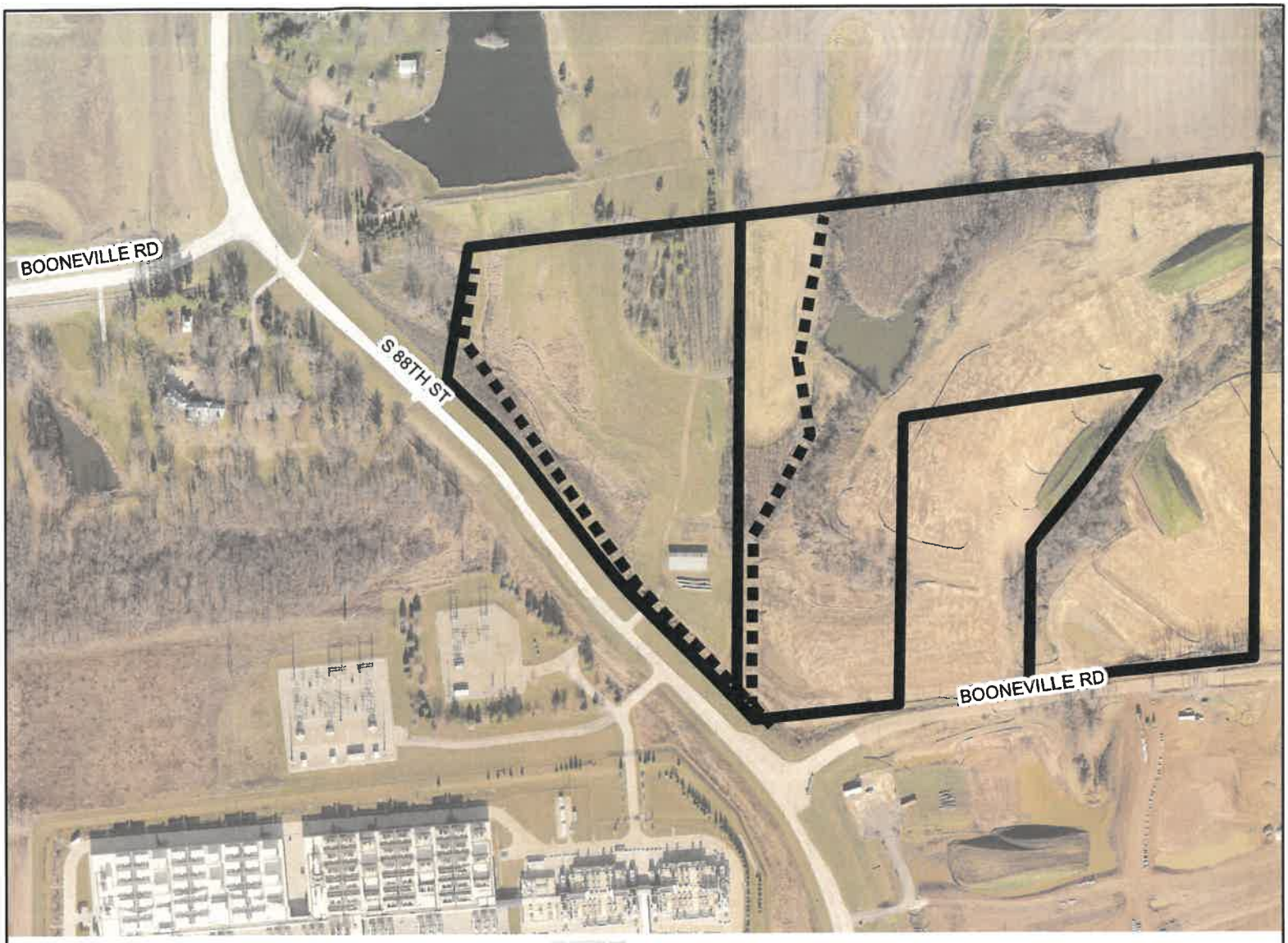
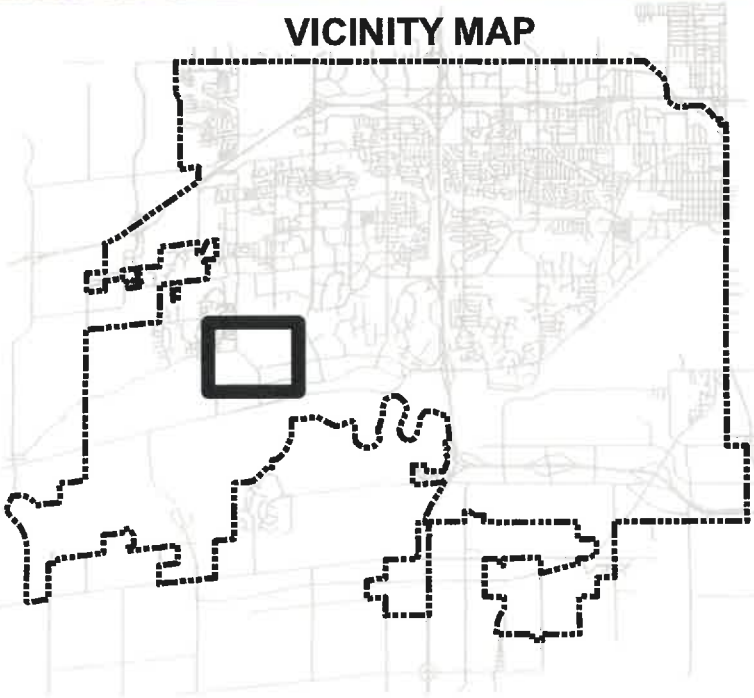


VICINITY MAP



LEGEND

PROJECT LOCATION

N
W E
S

THE CITY OF WEST DES MOINES

PROJECT:

Grand Avenue West Segment 4 Sewer Extension Ag Properties

LOCATION: **Exhibit 'A'**

DRAWN BY: JPM	DATE: 9/27/2021	PROJECT NUMBER/NAME: 0510-027-2021	SHT. 1 of 1