

ORDINANCE NO. 233

ORDINANCE APPROVING THE VACATION OF AN UNNEEDED EASEMENT AND CONVEYANCE OF THE SAME BY QUIT CLAIM DEED, IN RETURN FOR CONVEYANCE OF A NEW EASEMENT TO THE CITY AND SUBJECT TO CERTAIN TERMS

WHEREAS, Valerie J. Sampson, a married person (“Sampson”) owns real estate property located at 5503 Lakeshore Dr., Okoboji, Iowa and legally described as Lot 18, in Hayward’s Bay, in the City of Okoboji, Dickinson County, Iowa (“Sampson Property”);

WHEREAS, the City of Okoboji, Dickinson County, Iowa (“City”) is a municipal corporation organized and existing under the laws of the State of Iowa;

WHEREAS, the City has an existing storm sewer and easement for storm sewer over the Sampson Property, recorded January 25, 2011 in Book 36, Page 269, as Instrument No. 11-00484 of the Dickinson County Recorder’s Office (“Existing Easement”);

WHEREAS, Sampson has requested the City relocate a portion of the Existing Easement, subject to certain terms and conditions as more specifically set forth in an Agreement and Easement re Storm Sewer executed by the City and Sampson (“Agreement”), including without limitation:

1. Conveyance by Sampson to the City of a new easement, the boundaries of which are legally described as:

That part of Lot 18, Hayward's Bay, City of Okoboji, Dickinson County, Iowa, more particularly described as follows: Commencing at the Southeast corner of said Lot 18; thence North 37°38'39" East 2.01 feet along the Easterly line of said Lot 18 to the Point of Beginning; thence continuing North 37°38'39" East 24.54 feet along the Easterly line of said Lot 18; thence North 87°46'16" West 87.59 feet; thence South 46°01'44" West 4.45 feet; thence North 88°58'16" West 42.00 feet; thence North 43°58'16" West 5.91 feet; thence North 87°46'16" West 37.74 feet; thence South 81°51'05" West 93.86 feet; thence North 88°58'16" West 87 feet, more or less, to a point on the Ordinary High Water Mark of West Okoboji Lake; thence Southerly 10 feet, more or less, along said Ordinary High Water Mark to the South line of said Lot 18; thence South 88°58'16" East 149 feet, more or less, along the South line of said Lot 18; thence North 81°51'05" East 30.95 feet; thence South 87°46'16" East 36.34 feet; thence South 43°58'16" East 5.91 to the South line of said Lot 18; thence South 88°58'16" East 42.00 feet along the South line of said Lot 18; thence North 46°01'44" East 4.44 feet; thence South 87°46'16" East 72.96 feet to the Point of Beginning,

containing 5,782 square feet and subject to easements and encumbrances both apparent or of record (the "New Easement"); and

2. Sampson paying all the engineering, legal, construction, and other expenses of such relocation, including without limiting, all the costs of preparing the necessary proceedings, publication and recording costs therefor and recording fees of the deed and proceedings.

WHEREAS, the City Council has been presented with a request for vacation of a portion of the Existing Easement, the boundaries of which are legally described as:

THAT PART OF LOT 18, HAYWARD'S BAY, CITY OF OKOBOJI, DICKINSON COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 18; THENCE NORTH 36°41'26" EAST ALONG THE EASTERLY LINE OF SAID LOT 18 2.01 FEET TO THE POINT OF BEGINNING; THENCE NORTH 88°43'29" WEST 158.63 FEET; THENCE SOUTH 80°53'52" WEST 30.95 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 18; THENCE NORTH 89°55'30" WEST ALONG THE SOUTH LINE OF SAID LOT 18 149 FEET, MORE OR LESS, TO THE ORDINARY HIGH WATER MARK OF WEST OKOBOJI LAKE; THENCE NORTHERLY ALONG THE ORDINARY HIGH WATER LINE OF WEST OKOBOJI LAKE 10 FEET, MORE OR LESS, TO THE POINT WHERE SAID ORDINARY HIGH WATER LINE INTERSECTS A LINE THAT IS 10 FEET NORTHERLY AND PARALLEL TO THE SOUTH LINE OF SAID LOT 18; THENCE SOUTH 89°55'30" EAST ALONG SAID LINE THAT IS 10 FEET NORTHERLY AND PARALLEL TO THE SOUTH LINE OF SAID LOT 18 87 FEET, MORE OR LESS; THENCE NORTH 80°53'52" EAST 93.86 FEET; THENCE SOUTH 88°43'29" EAST 174.67 FEET TO THE EASTERLY LINE OF SAID LOT 18; THENCE SOUTH 36°41'26" WEST ALONG THE EASTERLY LINE OF SAID LOT 18 24.54 FEET TO THE POINT OF BEGINNING. THE SOUTH LINE OF SAID LOT 18 IS ASSUMED TO BEAR NORTH 89°55'30" WEST (the "Vacated Easement");

WHEREAS, the Vacated Easement is not needed for the use of the public, and therefore, its maintenance at public expense is no longer justified. The proposed vacation will not deny owners of abutting property reasonable access to the City's storm sewer;

WHEREAS, the City intends to convey the Vacated Easement, by Quit Claim Deed to Sampson in return for said New Easement from Sampson to the City and subject to all the terms of the Agreement;

WHEREAS, Iowa Code § 364.7 requires a public hearing prior to a city disposing of an interest in real estate;

WHEREAS, City Code § 137.02 requires any proposal to vacate a street, alley, or portion thereof or any public grounds be referred by the Council to the Planning and Zoning Commission for its study and recommendation prior to further consideration by the Council. The Commission has held said meeting, submitted a written report to the Council, and recommended approval;

WHEREAS, the City has heretofore caused notice to be published of a public hearing on said aforementioned proposal;

WHEREAS, the City Council has had said public hearing on the aforementioned proposal and has determined it is in the best interest of the City to approve the same;

WHEREAS, once said Vacated Easement has been conveyed to Sampson, the Vacated Easement real estate will have the same zoning classification as the Sampson Property, under the City's Zoning Code;

WHEREAS, a motion was made by Councilmember Mendenhall and seconded by Councilmember Robinson to consider approval of this Ordinance (first consideration) and upon roll call the following vote was recorded: AYES: Andres, Mendenhall, Robinson; NAYS: None; ABSENT: Delperdang, Hentges. Said motion to consider approval of this Ordinance (first consideration) was approved by the City Council;

WHEREAS, a motion was made by Councilmember Andres and seconded by Councilmember Mendenhall to waive the second and third considerations of this Ordinance and upon roll call the following vote was recorded: AYES: Andres, Mendenhall, Robinson; NAYS: None; ABSENT: Delperdang, Hentges. Said motion to waive the second and third considerations of this Ordinance was approved by the City Council, and therefore, the second and third considerations of this Ordinance were waived;

WHEREAS, a motion was made by Councilmember Mendenhall and seconded by Robinson to adopt this Ordinance and upon roll call the following vote was recorded: AYES: Andres, Mendenhall, Robinson; NAYS: None; ABSENT: Delperdang, Hentges. Said motion to adopt this Ordinance was approved by the City Council. Thereupon, the Mayor declared this Ordinance, passed and approved on the date shown below.

NOW, THEREFORE, BE IT ENACTED by the City Council of the City of Okoboji, Iowa:

Section 1. Purpose. The purpose of this Ordinance is to vacate the Vacated Easement subject to certain terms, including conveyance of a New Easement to the City, all as above set forth.

Section 2. Vacation. That the Vacated Easement in Section 1 above is hereby declared vacated.


Section 3. Repealer. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed to the extent of such conflict.

Section 4. Severability Clause. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

Section 5. When Effective. This ordinance shall be in effect after its final passage, approval and publication as provided by law.

Section 6. Publication. The City Clerk/Administrator is hereby authorized and directed to publish this Ordinance in a newspaper of general circulation in Dickinson County, Iowa in conformance with the Iowa law.

Passed and approved this 11th day of April, 2017.



Mary Vander Woude, Mayor

ATTEST:



Jason Peters, City Clerk/Administrator

I, the undersigned, hereby certify that I am the duly appointed, qualified and acting City Administrator/Clerk for the City of Okoboji, Iowa, and the foregoing Ordinance was duly adopted by the City Council of the City of Okoboji, on the 11th day of April, 2017 and thereafter on the 26th day of April, 2017, the same was published in the Dickinson County News, a weekly newspaper published in Dickinson County, Iowa.

Dated this 26th day of April, 2017.



Jason Peters, City Clerk/Administrator