

★ Roll Call Number

Agenda Item Number

52A

Date April 26, 2006

An Ordinance entitled, "AN ORDINANCE vacating portions of the subsurface rights within the public rights-of-way adjoining the block encompassed by 2<sup>nd</sup> Avenue, Watson Powell Jr. Parkway, 3<sup>rd</sup> Street and Grand Avenue",

presented.

Moved by \_\_\_\_\_ that this ordinance be considered and given first vote for passage.

FORM APPROVED:

(First of three required readings)

Ann DiDonato  
Ann DiDonato  
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BROOKS				
COLEMAN				
HENSLEY				
MAHAFFEY				
KIERNAN				
VLASSIS				
TOTAL				

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.

MOTION CARRIED

APPROVED

.....Mayor

.....City Clerk

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Prepared by: Ann DiDonato, Assistant City Attorney, 400 Robert D. Ray Drive, Des Moines, Iowa 50320 (515) 283-4130

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE vacating portions of the subsurface rights within the public rights-of-way adjoining the block encompassed by 2<sup>nd</sup> Avenue, Watson Powell Jr. Parkway, 3<sup>rd</sup> Street and Grand Avenue.

WHEREAS, all prior requirements of law pertaining to the vacation of public right-of-way have been fully observed; and

WHEREAS, it is desirable that the public right-of-way herein described be vacated;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Des Moines, Iowa:

Section 1. That portions of the subsurface rights within the public rights-of-way adjoining the block encompassed by 2<sup>nd</sup> Avenue, Watson Powell Jr. Parkway, 3<sup>rd</sup> Street and Grand Avenue, more specifically described as follows, be and is hereby vacated.

EXHIBIT "A"

A strip of ground below grade being the South 1.0 foot of Watson Powell Jr. Way lying North and adjoining Lot 1, except the West 9.0 feet, Block 4, Bird's Addition, an Official Plat, and lying North of and adjoining vacated alley in said Block 4, and lying North of and adjoining Lot 1, Second Street Place, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa, more particularly described as follows:

Commencing at the Northeast Corner, Lot 1, of said Second Street Place; Thence North 88°(degrees) 34'(minutes) 14" (seconds) West, along the South right-of-way line of Watson Powell Jr. Way, 76.01 feet to the POINT OF BEGINNING. Thence continuing North 88°34'14" West, 171.44 feet, along the South right-of-way line of Watson Powell Jr. Way; Thence South 00°34'17" West, along the East line of the West 9.0 feet of Lot 1, of said Block 4, a distance of 50.55 feet and being the East right-of-way line of 3rd Street; Thence North 89°25'43" West, 1.40 feet; Thence North 01°25'46" East, 51.54 feet;

DESCRIPTION APPROVED  
*[Signature]*  
11/14/06

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Thence South 88°34'14" East, 172.08 feet; Thence South 01°25'46" West, 1.00 foot to the POINT OF BEGINNING, containing by survey 225 sq. ft.

EXHIBIT "B"

The area below grade of a strip of ground in the West 9.0 feet of Lot 2, Block 4, Bird's Addition, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa more particularly described as follows:

Commencing at the Northeast Corner, Lot 1, Second Street Place, an Official Plat; Thence North 88°(degrees) 34'(minutes) 14"(seconds) West, along the South right-of-way line of Watson Powell Jr. Way, 247.46 feet to the East line of the West 9.0 feet Lots 1 thru 5, Block 4, Bird's Addition, an Official Plat, and being the East right-of-way line of 3rd Street; Thence South 00°34'17" West, along the East right-of-way line of 3rd Street, 75.80 feet to the POINT OF BEGINNING. Thence continuing South 00°34'17" West, along the said East right-of-way line of 3rd Street and being the East line of the West 9.0 feet of Lot 2, of said Block 4, 42.75 feet; Thence North 88°34'14" West, 1.40 feet; Thence North 01°25'46" East, 42.75 feet; Thence South 88°34'14" East, 0.76 feet to the POINT OF BEGINNING, containing by survey 46 sq. ft.

EXHIBIT "C"

The area below grade of a strip of ground in the West 9.0 feet of Lot 3 and 4, Block 4, Bird's Addition, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa more particularly described as follows:

Commencing at the Northeast Corner, Lot 1, Second Street Place, an Official Plat; Thence North 88°(degrees)34'(minutes)14"(seconds) West, along the South right-of-way line of Watson Powell Jr. Way, 247.46 feet to the East right-of-way line of 3rd Street also being the East line of the West 9.0 feet of Lots 1 thru 5, of said Block 4; Thence South 00°34'17" West, 192.35 feet to the POINT OF BEGINNING. Thence continuing South 00°34'17" West along the East right-of-way line of 3rd Street, 6.48 feet; Thence North 15°14'24" West, 6.23 feet; Thence North 74°45'36" East, 1.76 feet to the POINT OF BEGINNING, containing by survey 5.5 sq. ft.

EXHIBIT "D"

The area below grade of a strip of ground in the West 9.0 feet of Lot 5, Block 4, Bird's Addition, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa more particularly described as follows:

Commencing at the Northeast Corner, Lot 1, Second Street Place, an Official Plat; Thence North 88°(degrees) 34'(minutes) 14"(seconds) West, along the South right-of-way line of Watson Powell Jr. Way, 247.46 feet to the East line of the West 9.0 feet of Lots 1 thru 5, Block 4 of said Bird's Addition; and being the East right-of-way line of 3rd Street; Thence South 00°34'17" West, along the East right-of-way line of 3<sup>rd</sup> Street,

263.02 feet to the POINT OF BEGINNING. Thence continuing South 00°34'17" West, along the said East right-of-way line, 6.48 feet; Thence North 15°14'24" West, 6.23 feet; Thence North 74°45'36" East, 1.76 feet to the POINT OF BEGINNING, containing by survey 5.5 sq. ft.

#### EXHIBIT "E"

The area below grade of a strip of Grand Avenue right-of-way lying South of and adjoining Lots 3 and 4, Second Street Place, an Official Plat; and being a strip below grade being the North 1.0 foot of the South 7.0 feet of Lot 5, Block 4, Bird's Addition, an Official Plat, and the North 1.0 foot of the South 7.0 feet of vacated North/South alley in said Block 4, all now included in and forming a part of the City of Des Moines, Polk County, Iowa more particularly described as follows:

Commencing at the Northeast Corner, Lot 1, of said Second Street Place; Thence South 00°(degrees) 05'(minutes) 22"(seconds) West, along the West right-of-way line of 2nd Avenue to the Southeast Corner of said Lot 4, a distance of 241.73 feet; Thence South 74°45'36" West, along the North right-of-way line of Grand Avenue, 31.87 feet to the POINT OF BEGINNING. Thence South 15°14'24" East, 1.00 foot; Thence South 74°45'36" West, 213.71 feet; Thence North 15°14'24" West, 1.00 foot; Thence North 74°45'36" East, along the North right-of-way line of Grand Avenue, 213.71 feet to the POINT OF BEGINNING, containing by survey 214 sq. ft.

#### EXHIBIT "F"

The area below grade of a strip of street right-of-way lying North and East of and adjoining Lot 1 and lying East of and adjoining Lot 2 of Second Street Place, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa more particularly described as follows:

Beginning at the Northeast Corner, Lot 1, of said Second Street Place the POINT OF BEGINNING. Thence North 88°(degrees) 34'(minutes) 14"(seconds) West, 21.38 feet; along the South right-of-way line of Watson Powell Jr. Way; Thence South 89°54'38" East, 22.37 feet; Thence South 00°05'25" West, 192.75 feet; Thence North 89°54'38" West, to the West right-of-way line of 2nd Avenue, 1.00 foot; Thence North 00°05'22" East, along the West right-of-way line of 2nd Avenue, 192.25 feet to the POINT OF BEGINNING, containing by survey 230 sq. ft.

Sec. 2. The City of Des Moines hereby reserves an easement upon the property described above for the continued use and maintenance of any utilities now in place, with the right of entry for servicing same.

Sec. 3. That the City Clerk is hereby authorized and directed to cause certified copies of this ordinance and proof of publication thereof together with proof of publication of the notice of the

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public hearing on this matter to be properly filed in the office of the Recorder of Polk County, Iowa.

Sec. 4. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:

  
\_\_\_\_\_

Ann DiDonato  
Assistant City Attorney

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April 4, 2006

6900 Westown Parkway  
West Des Moines, IA 50266  
www.hubbellrealty.com  
515-243-3228  
FAX 515-280-2000

Honorable Mayor Frank Cownie and Members of the City Council  
C/o Nancy McMickle  
Real Estate Department  
City Hall  
400 Robert D. Ray Drive  
Des Moines, Iowa 50309

Re: Easements for footing encroachments under the City sidewalks adjacent to the Brownstones on Grand Project

Honorable Mayor and Members of the City Council:

Brownstones on Grand, LLC is developing 43 town homes in five buildings to be constructed on the City block bounded by Grand Avenue on the south, Third Street on the west, Watson Powell Jr. Way on the north and Second Avenue on the east. While the foundations for these five buildings will be entirely on our property, the spread footings for these buildings will encroach up to one foot under the adjacent City sidewalks at six locations. We request that the City of Des Moines, Iowa vacate and grant an easement for these footing encroachments, which easement would terminate for a particular footing encroachment if the related building were subsequently demolished and no replacement building constructed within two years of such demolition. We request this additional two year period to give time to redevelop in the event of a casualty and in order to be able to obtain financing for development and purchase of the town homes.

We enclose two original Offers to Purchase Real Estate from the City of Des Moines and Acceptance (with attachments) duly executed by Brownstones on Grand, L.L.C. In addition, we enclose a check in the amount of \$2,200.00 to pay for these easements and a check in the amount of \$113.00 to cover the costs of publication of notice and closing. We ask that upon recording, one original be returned to us at the address noted above.

We request that the City Council act on April 10, 2006 to schedule a public hearing on this request and that it hold the public hearing on April 24, 2006, waive readings and adopt the ordinance to vacate these easement areas and approve the easement agreement.

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Honorable Mayor Frank Cownie and  
Members of the City Council  
April 4, 2006  
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If you have any questions or need any further information, please contact me.

Very truly yours,

**BROWNSTONES ON GRAND, LLC**  
**By: Hubbell Realty Company, Managing Member**



**R. Michael Hayes**  
**Secretary and General Counsel**  
**Phone: 515-280-2051**  
**Fax: 515-223-3073**  
**E-mail: [michael.hayes@hubbellrealty.com](mailto:michael.hayes@hubbellrealty.com)**

Enclosures

cc: Nancy McMickle  
Ann DiDonato