

Date August 21, 2006

HOLD HEARING ON THE VACATION AND CONVEYANCE OF AN ENCROACHMENT EASEMENT AND AIR RIGHTS ADJOINING 301 EAST COURT AVENUE TO EAST VILLAGE COURT, LLC FOR \$1,385 AND FOR THE VACATION AND CONVEYANCE OF THE NORTH/SOUTH ALLEY ADJOINING 301 EAST COURT AVENUE TO EAST VILLAGE COURT, LLC FOR \$5,800 AND TO TIMOTHY J. CONROY AND POLLY ANTON-LYMAN FOR \$5,800

WHEREAS, on March 20, 2006, by Roll Call No. 06-524, the City Council adopted a recommendation from the City Plan and Zoning Commission that the air rights over the southern portion of East Court Avenue and the eastern portion of East 3rd Street, and the north/south alley right-of-way adjoining property at 301 East Court Avenue, hereinafter more fully described, be vacated and sold; and

WHEREAS, the existing steps to the building at 301 East Court Avenue encroach into the right-of-way and it is necessary to convey a permanent easement for said encroachment for the life of the building; and

WHEREAS, the grantees identified below are the owners of property abutting such rights-of-way and have offered to the City of Des Moines the purchase price identified below for the vacation and purchase of such rights-of-way described below; and

WHEREAS, on August 14, 2006, by Roll Call No. 06- 1638, it was duly resolved by the City Council that the proposed vacation and conveyance of such rights-of-way be set down for hearing on August 21, 2006, at 5:00 p.m., in the Council Chamber; and

WHEREAS, due notice of said proposal to vacate and convey public rights-of-way was given as provided by law, setting forth the time and place for hearing on said proposal; and

WHEREAS, in accordance with said notice, those interested in said proposed vacation and conveyance, both for and against, have been given an opportunity to be heard with respect thereto and have presented their views to the City Council.

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

1. Upon due consideration of the facts and statements of interested persons, the objections to said proposed vacation and conveyance of public rights-of-way as described below are hereby overruled and the hearing is closed.

2. There is no public need for the rights-of-way proposed to be vacated and the public would not be inconvenienced by reason of the vacation of an encroachment easement for existing

Date..... August 21, 2006

front entrance steps, air rights over the southern portion of East Court Avenue and the eastern portion of East 3rd Street, and the north/south alley adjoining 301 East Court Avenue, more specifically described as follows:

Encroachment Easement

The South 5.0 feet of the East 12.0 feet of the West 46.0 feet of East Court Avenue right-of-way lying North of and adjoining Lots 5 and 6, Block 3, Scott and Dean's Addition to Fort Des Moines, 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 Northwest corner of said Lot 5; thence North 78°(degrees) 00'(minutes) 39"(seconds) East, along the southerly right-of-way line of said East Court Avenue, said line being the northerly line of said Lots 5 and 6, a distance of 34.00 feet to the point of beginning; thence North 11°59'21" West, 5.00 feet; thence North 78°00'39" East, 12.00 feet; thence South 11°59'21" East, 5.00 feet to a point on the southerly right-of-way line of said East Court Avenue; thence South 78°00'39" West, along the southerly right-of-way line of said East Court Avenue, said line being the northerly line of said Lots 5 and 6, a distance of 12.00 feet to the point of beginning, containing 60 square feet more or less.

Air Space

Air Space is all of the Air Space which is located above the South 5.00 feet of East Court Avenue right-of-way lying North of and adjoining Lots 5, 6 and 7, Block 3, Scott and Dean's Addition to Fort Des Moines, an Official Plat, and lying North of and adjoining the Vacated North/South alley right-of-way lying East of and adjoining said Lot 7, and all of the Air Space above the East 5.00 feet of East 3rd Street, lying West of and adjoining Lots 4 and 5 of said Block 3, and lying West of and adjoining the Vacated East/West alley right-of-way lying North of and adjoining said Lot 4, and all of the Air Space above the South 5.00 feet of East Court Avenue right-of-way lying North of and adjoining the East 5.00 feet of East 3rd Street right-of-way adjoining said Lot 5, which is below a plane with an elevation of 52.1 feet, City Datum, and which is above a plane with an elevation of 36.0 feet, City Datum, all now included in and forming a part of the City of Des Moines, Polk County Iowa, further described as follows:

Beginning at the Northwest corner of Lot 8 of said Block 3, Scott and Dean's Addition to Fort Des Moines; thence South 78°(degrees) 00'(minutes) 39"(seconds) West along the southerly right-of-way line of East Court Avenue, and along line being the westerly extension of the northerly line of said Lot 8 and the northerly line of said Lots 7, 6 and 5, a distance of 148.07 feet, to the Northwest corner of said Lot 5; thence South 12°35'37" East along the westerly line of East 3rd Street right-of-way and along a line being the westerly line of said Lot 5 and its southerly extension and along the westerly line of said Lot 4, a distance of 215.88 feet to the Southwest corner of said Lot 4; thence

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9/21/06 14:17

Date..... August 21, 2006

South 77°24'23" West, 5.00 feet; thence North 12°35'37" West, 225.94 feet; thence North 78°00'39" East, 153.12 feet; thence South 11°59'21" East, 5.00 feet to the point of beginning. Containing 1845 sq ft. 100.00 feet = 23.5 feet (City Datum)

Alley

All that part of the North/South alley right-of-way lying East of and adjoining Lot 4, Block 3, Scott and Dean's Addition to Fort Des Moines, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

3. That the sale and conveyance of such rights-of-way, as described below and to the grantees and for the consideration identified below, together with payment by such grantee of the estimated publication and recording costs for this transaction, be and is hereby approved:

To: East Village Court, LLC for \$7,185.00

Encroachment Easement

The Vacated South 5.0 feet of the East 12.0 feet of the West 46.0 feet of East Court Avenue right-of-way lying North of and adjoining Lots 5 and 6, Block 3, Scott and Dean's Addition to Fort Des Moines, 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 Northwest corner of said Lot 5; thence North 78°(degrees) 00'(minutes) 39"(seconds) East, along the southerly right-of-way line of said East Court Avenue, said line being the northerly line of said Lots 5 and 6, a distance of 34.00 feet to the point of beginning; thence North 11°59'21" West, 5.00 feet; thence North 78°00'39" East, 12.00 feet; thence South 11°59'21" East, 5.00 feet to a point on the southerly right-of-way line of said East Court Avenue; thence South 78°00'39" West, along the southerly right-of-way line of said East Court Avenue, said line being the northerly line of said Lots 5 and 6, a distance of 12.00 feet to the point of beginning, containing 60 square feet more or less.

Air Space

Air Space is all of the Vacated Air Space which is located above the South 5.00 feet of East Court Avenue right-of-way lying North of and adjoining Lots 5, 6 and 7, Block 3, Scott and Dean's Addition to Fort Des Moines, an Official Plat, and lying North of and adjoining the Vacated North/South alley right-of-way lying East of and adjoining said Lot 7, and all of the Vacated Air Space above the East 5.00 feet of East 3rd Street, lying West of and adjoining Lots 4 and 5 of said Block 3, and lying West of and adjoining the Vacated East/West alley right-of-way lying North of and adjoining said Lot 4, and all of

DESCRIPTION REVIEWED
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8/21/06 10:17

Date August 21, 2006

the Vacated Air Space above the South 5.00 feet of East Court Avenue right-of-way lying North of and adjoining the East 5.00 feet of East 3rd Street right-of-way adjoining said Lot 5, which is below a plane with an elevation of 52.1 feet, City Datum, and which is above a plane with an elevation of 36.0 feet, City Datum, all now included in and forming a part of the City of Des Moines, Polk County Iowa, further described as follows:

Beginning at the Northwest corner of Lot 8 of said Block 3, Scott and Dean's Addition to Fort Des Moines; thence South 78°(degrees) 00'(minutes) 39"(seconds) West along the southerly right-of-way line of East Court Avenue, and along line being the westerly extension of the northerly line of said Lot 8 and the northerly line of said Lots 7, 6 and 5, a distance of 148.07 feet, to the Northwest corner of said Lot 5; thence South 12°35'37" East along the westerly line of East 3rd Street right-of-way and along a line being the westerly line of said Lot 5 and its southerly extension and along the westerly line of said Lot 4, a distance of 215.88 feet to the Southwest corner of said Lot 4; thence South 77°24'23" West, 5.00 feet; thence North 12°35'37" West, 225.94 feet; thence North 78°00'39" East, 153.12 feet; thence South 11°59'21 East, 5.00 feet to the point of beginning. Containing 1845 sq ft. 100.00 feet = 23.5 feet (City Datum)

Alley

All that part of the vacated North/South alley right-of-way lying East of and adjoining Lot 4, Block 3, Scott and Dean's Addition to Fort Des Moines, 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 Southeast corner of said Lot 4; thence North 12°(degrees) 35°(minutes) 58"(seconds) West, 66.05 feet to the Northeast corner of said Lot 4; thence North 78°00'39" East, 15.99 feet to the Northwest corner of Lot 11, of said Block 3, Scott and Dean's Addition to Fort Des Moines; thence South 01°02'35" West, 67.79 feet to the point of beginning, containing 528 square feet, more or less.

To: Timothy J. Conroy and Polly Anton-Lyman for \$5,800

All that part of the vacated North/South alley right-of-way lying West of and adjoining Lot 11, Block 3, Scott and Dean's Addition to Fort Des Moines, 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 Southeast corner of Lot 4, of said Block 3, Scott and Dean's Addition to Fort Des Moines; thence North 01°(degrees) 02'(minutes) 35"(seconds) East, 67.79 feet to the Northwest corner of said Lot 11; thence South 12°35'37" East, 65.83 feet to the Southwest corner of said Lot 11; thence South 77°13'10" West, 15.98 feet to the point of beginning, containing 526 square feet, more or less.

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DESCRIPTION REVIEWED
8/21/06 14:14

Date..... August 21, 2006

4. The Mayor is authorized and directed to sign the Offers to Purchase and the Quit Claim Deeds for the conveyances identified above, and the City Clerk is authorized and directed to attest to the Mayor' signature.

5. Upon final passage of an ordinance vacating the said rights-of-way and upon proof of payment of the consideration plus \$113.00 for publication and recording costs, the City Clerk is authorized and directed to forward the original of the said Deeds, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing to the Real Estate Division of the Engineering Department for the purpose of causing said documents to be recorded.

6. The Real Estate Division Manager is authorized and directed to forward the original of the Deeds, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Polk County Recorder's Office for the purpose of causing these documents to be recorded.

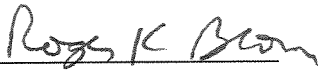
7. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division Manager shall mail the originals of the Quit Claim Deeds and copies of the other documents to the grantees.

8. The proceeds from the sale of this property will be deposited into the following account: 2006-07 Operating Budget, Page 310, Property Maintenance, SP767.

(Council Communication No. 06- 537)

MOVED by _____ to adopt.

FORM APPROVED:

RSW

 Roger K. Brown
 Assistant City Attorney

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

MOTION CARRIED

APPROVED

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.

 Mayor

 City Clerk