

Date May 21, 2012

HEARING FOR VACATION AND CONVEYANCE OF A SUBSURFACE PORTION OF EAST WALNUT STREET FOR A PERMANENT SUBSURFACE EASEMENT FOR FAT, OIL AND GREASE (FOG) INTERCEPTOR ADJOINING 101 EAST LOCUST STREET (EMBASSY SUITES) TO ATRIUM FINANCE III, L.P. FOR \$2,700

WHEREAS, on May 7, 2012, by Roll Call No. 12-0693, the City Council received the recommendation from the Plan and Zoning Commission to vacate a subsurface portion of East Walnut Street adjoining the property locally known as 101 East Locust Street (Embassy Suites Hotel), subject to acquisition by Atrium Finance III, L.P. of a subsurface easement in said area for a fat, oil and grease discharge (FOG) interceptor as required by Des Moines Municipal Code Sections 118-421 et seq.; and

WHEREAS, Atrium Finance III, L.P., is the owner of the real property locally known as 101 East Locust Street that abuts such right-of-way and has offered to the City of Des Moines the purchase price of \$2,700 for the vacation and purchase of a permanent easement within a subsurface portion of East Walnut Street, as legally described below, for the purpose of installing, operating, and maintaining a FOG Interceptor as a building improvement to the Embassy Suites Hotel, which purchase price reflects the fair market value of the easement interest as currently estimated by the City's Real Estate Division; and

WHEREAS, there is no known current or future public need or benefit for the subsurface portion of the right-of-way proposed to be vacated and sold by easement, and the City will not be inconvenienced by the vacation and sale by easement of said property.

WHEREAS, on May 7, 2012, by Roll Call No. 12-0694, it was duly resolved by the City Council that the proposed vacation and conveyance of such easement be set down for hearing on May 21, 2012, at 5:00 p.m., in the Council Chamber; and

WHEREAS, due notice of said proposal to vacate and convey the subsurface easement 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, as follows:

1. Upon due consideration of the facts and statements of interested persons, the objections to said proposed vacation and conveyance of the subsurface easement as described below are hereby overruled, and the hearing is closed.
2. There is no public need or benefit for the right-of-way proposed to be vacated and the public would not be inconvenienced by reason of the vacation of a subsurface portion of East Walnut Street adjoining the property locally known as 101 East Locust Street, more specifically described as follows:

Date May 21, 2012

A RECTANGULAR PORTION OF THE EAST WALNUT STREET RIGHT OF WAY LYING SOUTH OF AND ADJOINING LOT 10, BLOCK F, SCOTT AND DEAN'S ADDITION, AN OFFICIAL PLAT, DES MOINES, POLK COUNTY, IOWA, ALL MORE ACCURATELY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF LOT 1, BLOCK F, IN SAID SCOTT AND DEAN'S ADDITION; THENCE NORTH 74°(DEGREES)29'(MINUTES)16"(SECONDS) EAST ASSUMED FOR THIS DESCRIPTION ALONG THE SOUTH LINE OF BLOCK F OF SAID SCOTT AND DEAN'S ADDITION, A DISTANCE OF 166.59 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 74°29'16" EAST ALONG THE SOUTH LINE OF SAID BLOCK F, A DISTANCE OF 45.00 FEET; THENCE SOUTH 15°30'44" EAST, A DISTANCE OF 6.00 FEET; THENCE SOUTH 74°29'16" WEST PARALLEL WITH AND 6.00 FEET SOUTH OF THE SOUTH LINE OF SAID BLOCK F, A DISTANCE OF 45.00 FEET; THENCE NORTH 15°30'44" WEST, A DISTANCE OF 6.00 FEET TO THE POINT OF BEGINNING.

3. That the sale and conveyance of a permanent subsurface easement for FOG interceptor within such vacated area to Atrium Finance III, L.P. for \$2,700, together with payment by such grantee of the estimated publication and recording costs for this transaction, be and is hereby approved, subject to the requirements of the Plan and Zoning Commission recommendation:

A VACATED RECTANGULAR PORTION OF THE EAST WALNUT STREET RIGHT OF WAY LYING SOUTH OF AND ADJOINING LOT 10, BLOCK F, SCOTT AND DEAN'S ADDITION, AN OFFICIAL PLAT, DES MOINES, POLK COUNTY, IOWA, ALL MORE ACCURATELY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF LOT 1, BLOCK F, IN SAID SCOTT AND DEAN'S ADDITION; THENCE NORTH 74°(DEGREES)29'(MINUTES)16"(SECONDS) EAST ASSUMED FOR THIS DESCRIPTION ALONG THE SOUTH LINE OF BLOCK F OF SAID SCOTT AND DEAN'S ADDITION, A DISTANCE OF 166.59 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 74°29'16" EAST ALONG THE SOUTH LINE OF SAID BLOCK F, A DISTANCE OF 45.00 FEET; THENCE SOUTH 15°30'44" EAST, A DISTANCE OF 6.00 FEET; THENCE SOUTH 74°29'16" WEST PARALLEL WITH AND 6.00 FEET SOUTH OF THE SOUTH LINE OF SAID BLOCK F, A DISTANCE OF 45.00 FEET; THENCE NORTH 15°30'44" WEST, A DISTANCE OF 6.00 FEET TO THE POINT OF BEGINNING.

4. The Mayor is authorized and directed to sign the Offer to Purchase and the Easement for the conveyance identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.

5. Upon final passage of an ordinance vacating the said right-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 Easement, 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 Easement, together with a certified copy of this resolution and of the affidavit of publication of 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 original of the Easement and copies of the other documents to the grantee.

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8. The proceeds from the sale of this property shall be deposited into the following account: Property Maintenance Endowment Fund, SP767, ENG980500.

(Council Communication No. 12-250)

Moved by _____ to adopt.

APPROVED AS TO FORM:

Glenna K. Frank
Glenna K. Frank, Assistant City Attorney

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, COLEMAN, GRIESS, HENSLEY, MAHAFFEY, MEYER, MOORE, and TOTAL. Includes MOTION CARRIED and APPROVED checkboxes.

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.

City Clerk

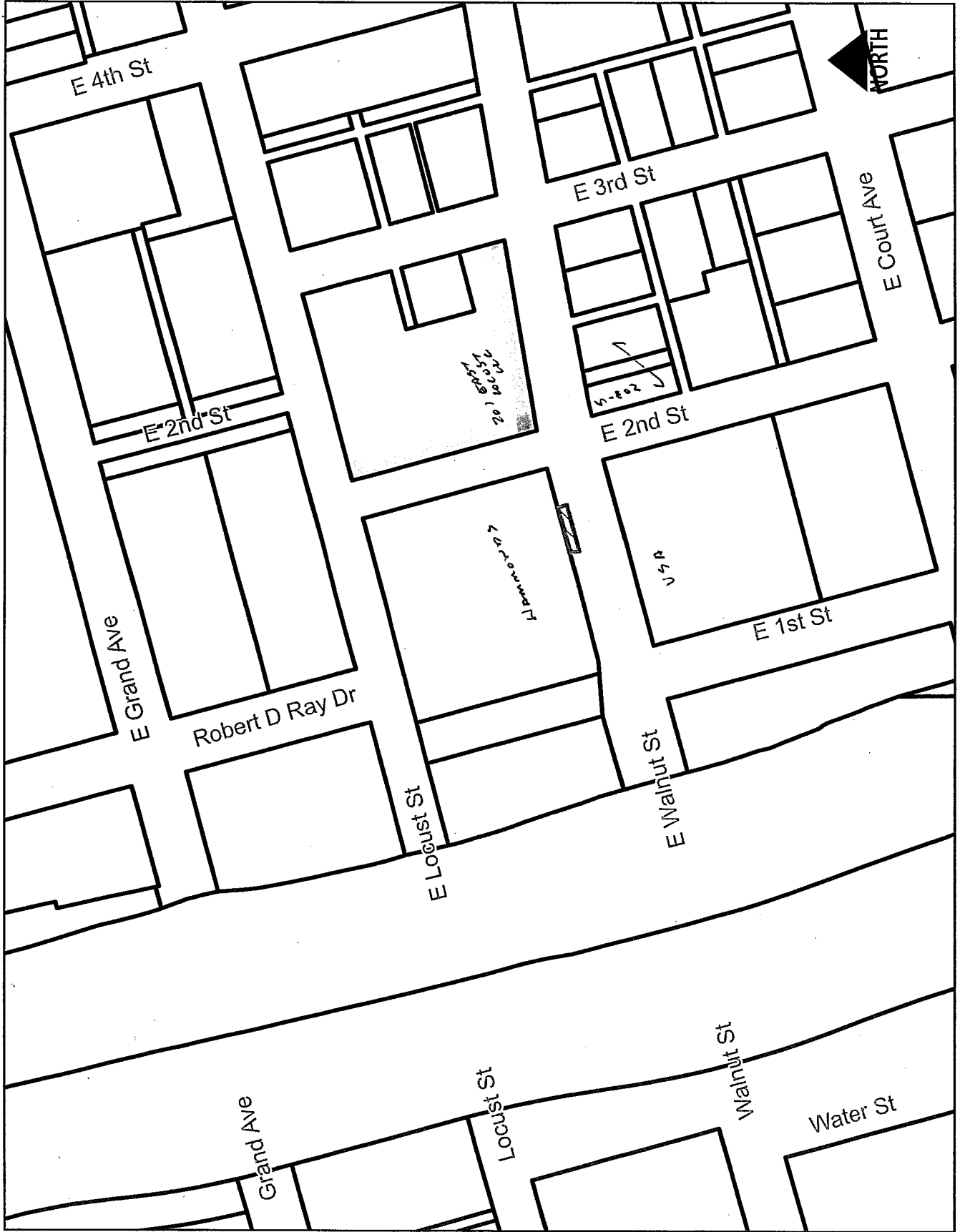
Mayor

Request from Atrium Finance III, LP (owner) represented by Joe Morrissey (officer) for vacation of a 48-foot by 6-foot segment of the subsurface rights within the north six (6) feet of the Walnut Street right-of-way adjoining the property at 101 East Locust Street.				File # 11-2012-1.06	
Description of Action	Review and approval for vacation of a 48-foot by 6-foot segment of the subsurface rights within the north six (6) feet of the Walnut Street right-of-way adjoining the property at 101 East Locust Street, to allow for placement of a Fats, Oils, and Grease (FOG) interceptor on the sanitary sewer service within the public right-of-way for the Embassy Suites Hotel.				
2020 Community Character Plan	Downtown: Retail/Office Core/Core Fringe				
Horizon 2035 Transportation Plan	No Planned Improvements				
Current Zoning District	Downtown Riverfront District				
Proposed Zoning District	Downtown Riverfront District				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Inside Area	2	0			
Outside Area					
Plan and Zoning Commission Action	Approval	12-0	Required 6/7 Vote of the City Council	Yes	
	Denial			No	X

Atrium Finance III LP - Walnut Street between E 1st St and E 2nd St 11-2012-1.06



Atrium Finance III LP - Walnut Street between E 1st St and E 2nd St 11-2012-1.06



Date May 21, 2012
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May 4, 2012

Honorable Mayor and City Council
 City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their meeting held May 3, 2012, the following action was taken:

COMMISSION RECOMMENDATION:

After public hearing, the members voted 12-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
JoAnne Corigliano	X			
Shirley Daniels	X			
Jacqueline Easley				X
Tim Fitzgerald	X			
Dann Flaherty	X			
John "Jack" Hilmes	X			
Ted Irvine	X			
Greg Jones	X			
William Page	X			
Christine Pardee	X			
Mike Simonson	X			
CJ Stephens	X			
Vicki Stogdill	X			

APPROVAL of a request from Atrium Finance III, LP (owner) represented by Joe Morrissey (officer) for vacation of a 45-foot by 6-foot segment of the subsurface rights within the north six (6) feet of the Walnut Street right-of-way adjoining the property at 101 East Locust Street, to allow for placement of a Fats, Oils, and Grease (FOG) interceptor on the sanitary sewer service within the public right-of-way for the Embassy Suites Hotel subject to acquisition of a subsurface easement for the installation of the FOG interceptor by the applicant.
 (11-2012-1.06)

Written Responses

2 In Favor
 0 In Opposition

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval of the requested vacation of subsurface rights subject to acquisition of a subsurface easement for the installation of the FOG interceptor by the applicant.



CITY PLAN AND ZONING COMMISSION
 ARMORY BUILDING
 602 ROBERT D. RAY DRIVE
 DES MOINES, IOWA 50309 -1881
 (515) 283-4182

ALL-AMERICA CITY
 1949, 1976, 1981
 2003

STAFF REPORT

I. GENERAL INFORMATION

- 1. **Purpose of Request:** The applicant is seeking to vacate the subsurface area in Walnut Street adjoining the Embassy Suites hotel to accommodate a FOG interceptor. This is a system of tanks that separate fats, oils, and grease from the wastewater prior to release into the public sanitary sewer system. It is a requirement based on \$175,000 of permitted renovations to the first floor atrium kitchen, buffet, and bar/lounge area of the hotel.
- 2. **Size of Site:** 270 square feet (6-feet by 45-feet). This segment is on the north edge of the Walnut Street right-of-way approximately 141 feet west of East 2nd Street adjoining the hotel site property.
- 3. **Existing Zoning (site):** “D-R” Downtown Riverfront District, “CDO” Capitol Dominance Overlay District, “GGP” Gambling Games Prohibition Overlay District, and Downtown Overlay District.
- 4. **Existing Land Use (site):** The subject portion of right-of-way contains a landscaped area directly north of the sidewalk along the north side of Walnut Street. The specific area for the FOG interceptor would be located in a portion of the right-of-way that does not require removal of any trees.

5. Adjacent Land Use and Zoning:

- North* – “D-R”, Use is the Embassy Suites hotel.
- South* – “D-R”, Use is the U.S. Federal Courthouse.

- 6. **General Neighborhood/Area Land Uses:** The subject property is located in riverfront area of the East Village.
- 7. **Applicable Recognized Neighborhood(s):** East Village Neighborhood.
- 8. **Relevant Zoning History:** N/A.
- 9. **2020 Community Character Land Use Plan Designation:** Downtown Support Commercial.
- 10. **Applicable Regulations:** The Commission reviews all proposals to vacate land dedicated for a specific public purpose, such as for streets and parks, to determine whether the land is still needed for such purpose or may be released (vacated) for other use. The recommendation of the Commission is forwarded to the City Council.

II. ADDITIONAL APPLICABLE INFORMATION

- 1. **Utilities:** The location of the requested vacation was partially determined based on existing underground electrical service along the west side of the building. There are not any existing utilities in place within the area requested for vacation. Due to the placement of the proposed FOG interceptor, this requested area would not be available for future installation of utilities. Therefore a permanent easement for the subsurface rights is necessary.

2. Alternative Evaluation: The consulting engineer for the applicant has reviewed alternative locations within the hotel site property for placement of the necessary FOG interceptor. The following findings and factors determined the selection of the requested location of the facility:

- Age and brick construction of the surrounding sanitary sewer would require connection of the FOG interceptor to the upper half of an existing manhole.
- Underground electrical utility lines along the west side of the hotel prevent routing of sanitary sewer service from the FOG interceptor around the west side of the building.
- Routing of the sanitary lines from the kitchen in the southeastern part of the building to the north and west side of the building would be impractical and infeasible. This would cause disruption of the hotel operation and would require demolition of extensive area within the hotel that would not otherwise be disturbed.
- Location within the parking garage below the hotel would place the FOG interceptor at elevations below the elevation necessary for a gravity flow connection to an existing sanitary sewer manhole in East Walnut Street.
- Length of piping and slopes from the kitchen area in the southeast to an area on the southwest side of the property would not provide cleansing velocities for the FOG Interceptor to function properly; nor would it allow depth necessary to for a gravity flow connection to the required sanitary sewer manhole.

SUMMARY OF DISCUSSION

There was no discussion.

CHAIRPERSON OPENED THE PUBLIC HEARING

There was no one to speak in favor or in opposition of the applicant's request.

CHAIRPERSON CLOSED THE PUBLIC HEARING

COMMISSION ACTION:

Greg Jones moved staff recommendation to approve the requested vacation of subsurface rights subject to acquisition of a subsurface easement for the installation of the FOG interceptor by the applicant.

Motion passed 12-0.

Respectfully submitted,


Michael Ludwig, AICP
Planning Administrator

MGL:clw

Attachment

Item 11-2012-1.06 Date _____

(am) (am not) in favor of the request.

(Circle One)

RECEIVED
COMMUNITY DEVELOPMENT
DEPARTMENT
APR 30 2012

Print Name Alynn Dixon Pres. East Village

Signature [Signature]

Address 110 11th

Reason for opposing or approving this request may be listed below:

Item 11-2012-1.06 Date 4.26.12

(am) (am not) in favor of the request.

(Circle One)

RECEIVED
COMMUNITY DEVELOPMENT
DEPARTMENT
APR 30 2012

Print Name 201 E. Locust, LLC - Troy Hansen

Signature [Signature]

Address 201 E. Locust.

Reason for opposing or approving this request may be listed below:

