

Date May 20, 2013

RESOLUTION CLOSING PUBLIC HEARING AND APPROVING THE VACATION OF PORTIONS OF THE 6th AVENUE, MULBERRY STREET AND ALLEY RIGHTS-OF-WAY ADJOINING THE MIDLAND BUILDING AT 206 6th AVENUE AND THE CONVEYANCE OF AN EASEMENT UPON SUCH VACATED RIGHTS-OF-WAY TO LEGALIZE THE EXISTING BUILDING ENCROACHMENT

WHEREAS, the Midland Building at 206 6th Avenue was constructed in 1913 with a basement that extends under the adjoining public sidewalks along 6th Avenue and Mulberry Streets and under a portion of the adjoining alley to the north, with building encroachments at the ground level that extend into the adjoining public rights-of-way, and with architectural projections that encroach into the air rights over the adjoining public rights-of-way; and,

WHEREAS, the building encroachments have previously been allowed under authority of a series of temporary areaway permits that require annual administration and renewal; and,

WHEREAS, the Midland Building is currently owned by Community State Bank, NA, and it has requested that the City vacate the rights-of-way occupied by the building encroachments, and convey it an Easement for Building Encroachment for the continued use, maintenance and repair of the existing building encroachments for the remaining life of the building; and,

WHEREAS, on May 6, 2013, by Roll Call No. 13-0714, it was duly resolved by the City Council that the proposed vacation and conveyance of such right-of-way be set down for hearing on May 20, 2013, at 5:00 p.m., in the Council Chambers; and,

WHEREAS, the proposed vacation ordinance and Easement for Building Setback have been on file and available for public inspection in the office of the City Clerk; and,

WHEREAS, due notice of said proposal to vacate and convey public right-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, as follows:

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

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2. The City Council hereby makes the following findings in support of the vacation and conveyance of the public rights-of-way as described below:
  - a) The portions of the public rights-of-way described below are occupied by encroachments from the Midland Building at 206 6th Avenue and have not been used for public purposes for approximately 100 years;
  - b) The vacation of these areas will have no impact upon the continued use of the adjoining public rights-of-way; there is no public need for the right-of-way proposed to be vacated; and, the public would not be inconvenienced by reason of the vacation of the rights-of-way, more specifically described below.
  
3. That the vacation of the public rights-of-way described below, and the sale and conveyance of an Easement for Building Setback upon such vacated rights-of-way to Community State Bank, NA, or its designee, for the continued use, maintenance and repair of the existing encroachments from the Midland Building for the remaining life of the Midland Building, in consideration for a payment of \$10,045, be and is hereby approved.

ENCROACHMENTS AT GROUND GRADE

**E2 BUILDING LINE:**

A STRIP OF MULBERRY STREET RIGHT OF WAY LYING SOUTH OF AND ADJOINING THE SOUTH LINE OF LOT 5 BEGINNING 70.10 FEET EAST OF THE SOUTHWEST CORNER OF LOT 5 LYING 0.35 FEET SOUTH AND 3.16 FEET EAST, SAID LOT IN BLOCK ELEVEN IN THE ORIGINAL TOWN OF FORT DES MOINES, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, CONTAINING APPROXIMATELY 1.2 SQUARE FEET.

**E3 BUILDING LINE:**

A STRIP OF MULBERRY STREET RIGHT OF WAY LYING SOUTH OF AND ADJOINING THE SOUTH LINE OF LOT 5 BEGINNING AT THE SOUTHEAST CORNER OF LOT 5 LYING 0.25 FEET SOUTH AND 3.40 FEET WEST, SAID LOT IN BLOCK ELEVEN IN THE ORIGINAL TOWN OF FORT DES MOINES, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, CONTAINING APPROXIMATELY 0.9 SQUARE FEET.

**E4 BUILDING LINE:**

A STRIP OF PUBLIC ALLEY LYING NORTH OF AND ADJOINING THE NORTH LINE OF LOT 6 BEGINNING AT THE NORTHEAST CORNER OF LOT 6 LYING 3.50 FEET WEST AND 3.43 FEET NORTH, ALL IN BLOCK ELEVEN IN THE ORIGINAL TOWN OF FORT DES MOINES, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, CONTAINING APPROXIMATELY 12.0 SQUARE FEET.

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UNDERGROUND ENCROACHMENTS

**UE1 BASEMENT EXTENSION:**

THE SUBSURFACE AREA EXTENDING BELOW GRADE BENEATH A 12.10 FEET WIDE STRIP OF 6TH AVENUE RIGHT OF WAY LYING EAST OF AND ADJOINING THE EAST LINE OF LOT 5, AND BENEATH A 12.10 FEET WIDE STRIP OF 6TH AVENUE RIGHT OF WAY LYING EAST OF AND ADJOINING THE EAST LINE OF LOT 6 EXCEPT THE NORTHERLY 33.00 FEET THEREOF, ALL IN AND ADJOINING BLOCK ELEVEN IN THE ORIGINAL TOWN OF FORT DES MOINES, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, CONTAINING APPROXIMATELY 1210.6 SQUARE FEET.

**UE2 BASEMENT EXTENSION:**

AN AREA OF MULBERRY STREET RIGHT OF WAY LYING SOUTH OF AND ADJOINING THE SOUTH LINE OF LOT 5, BLOCK ELEVEN, ORIGINAL TOWN OF FORT DES MOINES, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, SAID AREA DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 5; THENCE 65 FEET ALONG SAID SOUTH LINE OF LOT 5 TO THE POINT OF BEGINNING; THENCE SOUTH 12.10 FEET ON A LINE THAT IS PERPENDICULAR TO SAID SOUTH LINE OF LOT 5; THENCE EAST AND PARALLEL TO SAID SOUTH LINE OF LOT 5 TO A POINT ON THE SOUTHERLY EXTENSION OF THE EAST LINE OF SAID LOT 5; THENCE NORTHEASTERLY ON A CURVE WITH A RADIUS OF 12.10 FEET AND THE CENTER OF SAID RADIUS BEING THE SOUTHEAST CORNER OF SAID LOT 5, TO A POINT ON THE EASTERLY EXTENSION OF THE SOUTH LINE OF SAID LOT 5; THENCE WEST ALONG SAID EASTERLY EXTENSION AND CONTINUING ALONG SAID SOUTH LINE OF LOT 5 TO THE POINT OF BEGINNING, CONTAINING APPROXIMATELY 712.3 FEET.

**UE3 BASEMENT EXTENSION:**

THE SUBSURFACE AREA EXTENDING BELOW GRADE BENEATH A 4.10 FEET WIDE STRIP OF PUBLIC ALLEY LYING NORTH OF AND ADJOINING LOT 6 BEGINNING AT THE NORTHEAST CORNER OF LOT 6 EXTENDING 67.00 FEET WEST ALL IN AND ADJOINING BLOCK ELEVEN IN THE ORIGINAL TOWN OF FORT DES MOINES, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, CONTAINING APPROXIMATELY 274.7 SQUARE FEET.

ABOVE GROUND ENCROACHMENTS

**AR1 MID LEVEL AND UPPER CORNICE EXTENSION:**

THE AIR RIGHTS COMMENCING 18 FEET ABOVE GRADE OVER THE WEST 1.60 FEET OF 6TH AVENUE RIGHT OF WAY LYING EAST OF AND ADJOINING LOT 5 AND LOT 6; AND OVER THE NORTH 1.60 FEET OF MULBERRY STREET RIGHT OF WAY LYING SOUTH OF AND ADJOINING LOT 5 EXCEPT THE WEST 73.00 FEET THEREOF; AND OVER THE SOUTH 1.60 FEET OF PUBLIC ALLEY LYING NORTH OF AND ADJOINING

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LOT 6 EXCEPT THE WEST 112.00 FEET THEREOF, SAID LOTS IN BLOCK ELEVEN IN THE ORIGINAL TOWN OF FORT DES MOINES, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, CONTAINING APPROXIMATELY 345.3 SQUARE FEET.

4. The Mayor is authorized and directed to sign the Easement for Building Setback for the conveyance identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature on such document.
5. Upon final passage of an ordinance vacating the said right-of-way and upon proof of payment of the consideration, 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 City Legal Department for release to Community State Bank, NA.

( Council Communication No. 13- 248 )

MOVED by \_\_\_\_\_ to adopt, and to allow a credit against the purchase price equal to the prorated portion of the Areaway Permit fees paid for the encroachments.

FORM APPROVED:

*Roger K. Brown*

Roger K. Brown

Assistant City Attorney

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| COUNCIL ACTION | YEAS | NAYS | PASS | ABSENT |
|----------------|------|------|------|--------|
| COWNIE         |      |      |      |        |
| COLEMAN        |      |      |      |        |
| GRIESS         |      |      |      |        |
| HENSLEY        |      |      |      |        |
| MAHAFFEY       |      |      |      |        |
| MEYER          |      |      |      |        |
| MOORE          |      |      |      |        |
| 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