

Date March 23, 2015

**HOLD HEARING FOR VACATION OF AIR SPACE AND SUBSURFACE RIGHTS WITHIN
EAST GRAND AVENUE AND SUBSURFACE RIGHTS WITHIN EAST 4TH STREET
ADJOINING 401 EAST GRAND AVENUE, AND FOR CONVEYANCE OF EASEMENTS TO
IOWA MACHINE SHED COMPANY FOR \$6,093**

WHEREAS, on December 22, 2014, by Roll Call No. 14-1928, the City Council received a recommendation from the City Plan and Zoning Commission that a portion of the air space over East Grand Avenue, and a portion of East Grand Avenue and East 4th Street rights-of-way adjoining 409-423 East Grand Avenue (herein collectively "City Right-of-Way"), be vacated to allow for the construction and maintenance of an entrance canopy and a sign over East Grand Avenue right-of-way, and to allow for the construction, repair and maintenance of below grade footings and foundations, all for the 6-story AC Marriot Hotel with underground and surface parking proposed to be constructed on the real property locally known as 409-423 East Grand Avenue; and

WHEREAS, Iowa Machine Shed Company has offered to the City of Des Moines the purchase price of \$6,093 for the vacation of the City Right-of-Way and purchase of an air space easement interest in portions of East Grand Avenue right-of-way, and subsurface encroachment easement interests in the East Grand Avenue and East 4th Street rights-of-way, for the purposes described above, which purchase price reflects the fair market value of the easements as currently estimated by the City's Real Estate Division; and

WHEREAS, the vacation and conveyance is proposed to be approved subject to Iowa Machine Shed Company closing on and providing proof of ownership of the real property located at 409 - 423 East Grand Avenue, and subject to the requirements of the City Plan and Zoning Commission recommendation dated December 12, 2014 and presented to the Des Moines City Council on December 22, 2014; and

WHEREAS, the above referenced property located at 409-423 East Grand Avenue consists of multiple tax parcels, which have since been combined into a single tax parcel with a new address of 401 East Grand Avenue; and

WHEREAS, the City will not be inconvenienced by the vacation and conveyance of easement interests in the right-of-way as described herein; and

WHEREAS, On March 9, 2015, by Roll Call No. 15-0423 Iowa Machine Shed Company entered into an Urban Renewal Agreement with the City of Des Moines, which agreement includes the purchase of the real property locally known as 401 East Grand Avenue, which property abuts the City Right-of-Way; and

WHEREAS, on March 9, 2015, by Roll Call No. 15-0424, it was duly resolved by the City Council that the proposed vacation and proposed conveyance of such easements be set down for hearing on March 23, 2015, at 5:00 p.m., in the City Council Chamber; and

WHEREAS, due notice of said proposal to vacate the City Right-of-Way and convey the proposed easements was given as provided by law, setting forth the time and place for hearing on said proposal; and

Date March 23, 2015

WHEREAS, in accordance with City Council direction, those interested in said proposed vacation and easement conveyances, 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, any and all objections to said proposed vacation and proposed conveyance of the easements in such vacated right-of-way and air space 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 portion of the air space over East Grand Avenue, and subsurface portions of East Grand Avenue and East 4th Street rights-of-way adjoining 401 East Grand Avenue, more specifically described as follows, and said vacation is hereby approved:

AREA 1 - AIR RIGHTS EASEMENT DESCRIPTION:

ALL OF THE AIR SPACE FOR THAT PART OF EAST GRAND AVENUE RIGHT-OF-WAY LYING ADJACENT TO AND NORTH OF LOT 5, BLOCK 9 OF EAST FORT DES MOINES, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 4 OF SAID BLOCK 9; THENCE SOUTH 74°50'22" WEST ALONG THE NORTH LINE OF SAID LOT 4 AND SAID LOT 5, A DISTANCE OF 69.88 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 74°50'22" WEST ALONG SAID NORTH LINE OF LOT 5, A DISTANCE OF 36.94 FEET; THENCE NORTH 15°09'38" WEST, 12.00 FEET; THENCE NORTH 74°50'22" EAST, 37.00 FEET; THENCE SOUTH 14°54'28" EAST, 12.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.01 ACRES (444 S.F.) WHICH IS BELOW A PLANE ELEVATION OF 48.21 FEET CITY DATUM AND WHICH IS ABOVE A PLANE ELEVATION OF 41.42 FEET CITY DATUM. THE GROUND ELEVATION WITHIN SAID DESCRIPTION IS APPROXIMATELY 27.2 FEET.

AREA 2 - AIR RIGHTS EASEMENT DESCRIPTION:

ALL OF THE AIR SPACE FOR THAT PART OF EAST GRAND AVENUE RIGHT-OF-WAY LYING ADJACENT TO AND NORTH OF LOTS 4 AND 5, BLOCK 9 OF EAST FORT DES MOINES, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 4; THENCE SOUTH 74°50'22" WEST ALONG THE NORTH LINE OF SAID LOT 4, A DISTANCE OF 31.63 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 74°50'22" WEST ALONG THE NORTH LINE OF SAID LOTS 4 AND 5, A DISTANCE OF 38.19 FEET; THENCE NORTH 15°09'38" WEST, 3.00 FEET; THENCE NORTH 74°50'22" EAST, 38.19 FEET; THENCE SOUTH 15°09'38" EAST, 3.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 115 S.F. WHICH IS BELOW A PLANE ELEVATION OF 103.44 FEET

Date March 23, 2015

CITY DATUM AND WHICH IS ABOVE A PLANE ELEVATION OF 41.42 FEET CITY DATUM. THE GROUND ELEVATION WITHIN SAID DESCRIPTION IS APPROXIMATELY 28.4 FEET.

PROPERTY SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.

SUBSURFACE RIGHTS EASEMENT DESCRIPTION:

ALL THAT PART OF EAST GRAND AVENUE RIGHT-OF-WAY LYING ADJACENT TO AND NORTH OF BLOCK 9 OF EAST FORT DES MOINES AND THAT PART OF EAST 4TH STREET RIGHT-OF-WAY LYING WEST OF THE EAST 47.5 FEET OF LOT 6 OF SAID BLOCK 9 OF EAST FORT DES MOINES, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 4 OF SAID BLOCK 9; THENCE SOUTH 74°50'22" WEST ALONG THE SOUTH RIGHT-OF-WAY LINE OF EAST GRAND AVENUE, 167.50 FEET; THENCE SOUTH 15°24'21" EAST ALONG THE EAST RIGHT-OF-WAY LINE OF EAST 4TH STREET, 43.67 FEET; THENCE SOUTH 74°35'39" WEST, 5.00 FEET; THENCE NORTH 15°24'21" WEST, 48.69 FEET; THENCE NORTH 74°50'22" EAST, 205.42 FEET; THENCE SOUTH 15°09'38" EAST, 5.00 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF SAID EAST GRAND AVENUE; THENCE SOUTH 74°50'22" WEST ALONG SAID SOUTH RIGHT-OF-WAY LINE, 32.90 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.03 ACRES (1,245 S.F.).

PROPERTY SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.

3. That the sale and conveyance of easements in such vacated air space and subsurface portions of the rights-of-way, as described below, to Iowa Machine Shed Company for \$6,093, together with payment by said grantee of the estimated publication and recording costs for this transaction, be and is hereby approved, subject to the conditions set forth in the Plan and Zoning Commission recommendation and set forth herein above:

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PROPERTY SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.

4. The Mayor is authorized and directed to sign the Offer to Purchase and the Easement(s) 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 said portions of the 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 Easement(s), 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 following closing.
6. In accordance with the terms set forth in the Offer to Purchase, the Real Estate Division Manager is authorized and directed to close on the conveyance of the Easements and forward the original of the

Date March 23, 2015

Easements, 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(s) and copies of the other documents to the grantee.

8. Non-project related land sale proceeds are used to support general operating budget expenses: Org – EG064090.

(Council Communication No. 15- 146)

Moved by _____ to adopt.

APPROVED AS TO FORM:


Cori Kuhn Coleman, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GREY				
HENSLEY				
MAHAFFEY				
MOORE				
TOTAL				

MOTION CARRIED

APPROVED

Mayor

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