

Date.....November 23, 2015..

HOLD HEARING FOR VACATION OF CITY STREET AND ALLEY RIGHTS-OF-WAY ADJOINING 915 MULBERRY STREET AND CONVEYANCE OF A PERMANENT EASEMENT FOR AIR SPACE ABOVE CITY-OWNED PROPERTY WITHIN MULBERRY STREET, 9TH STREET, AND THE EAST/WEST ALLEY RIGHT-OF-WAY ALL ADJOINING 915 MULBERRY STREET TO HUBBELL TOWER II, LLC FOR \$5,922.00

WHEREAS, Hubbell Tower II, LLC is the owner of the real property locally known as 915 Mulberry Street, which property is being developed into the DWELL Apartments; and

WHEREAS, Hubbell Tower II, LLC has offered to the City of Des Moines the purchase price of \$5,922.00 for the vacation and conveyance of a Permanent Easement for Air Space Above City-Owned Property over portions of Mulberry Street, 9th Street, and east/west alley rights-of-way adjoining 915 Mulberry Street (“City Right-of-Way”), as legally described below, to allow for the construction of a second floor canopy, a first floor awning, light canopies and a pedestrian air bridge as part of the proposed DWELL Apartments building at 915 Mulberry Street, which price reflects the fair market value of the easement as currently estimated by the City’s Real Estate Division; and

WHEREAS, on October 26, 2015, by Roll Call No. 15-1775, the City Council of the City of Des Moines, Iowa, received a recommendation from the City Plan and Zoning Commission approving a request from Hubbell Tower II, LLC for the vacation of the City Right-of-Way subject to a City approved site plan; and

WHEREAS, on November 9, 2015, by Roll Call No. 15-1862, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation and conveyance of such easement interests be set down for hearing on November 23, 2015, at 5:00 p.m., in the Council Chamber; and

WHEREAS, due notice of said proposal to vacate said City Right-of-Way and convey the Permanent Easement for Air Space Over City-Owned Property 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 of the City of Des Moines, Iowa.

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 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 air space over portions of Mulberry Street, 9th Street, and east/west alley rights-of-way adjoining 915 Mulberry Street, more specifically described as follows:

Date November 23, 2015

ALL OF THE AIR SPACE FOR THAT PART OF THE EAST-WEST ALLEY LYING NORTH OF AND ADJOINING LOT 2, BLOCK 2, WEST FORT DES MOINES, AN OFFICIAL PLAT, DES MOINES, POLK COUNTY, IOWA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 2; THENCE SOUTH 74°(DEGREES) 10'(MINUTES) 15"(SECONDS) WEST ALONG THE NORTH LINE OF SAID LOT 2 AND ALONG THE SOUTH LINE OF SAID ALLEY AS IT IS PRESENTLY ESTABLISHED, A DISTANCE OF 27.34 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 74°10'15" WEST ALONG SAID SOUTH LINE OF ALLEY, A DISTANCE OF 12.00 FEET; THENCE NORTH 15°44'02" WEST, A DISTANCE OF 16.50 FEET TO THE NORTH LINE OF SAID ALLEY; THENCE NORTH 74°10'15" EAST ALONG SAID NORTH LINE, A DISTANCE OF 12.00 FEET; THENCE SOUTH 15°44'02" EAST, A DISTANCE OF 16.50 FEET TO THE POINT OF BEGINNING AND CONTAINING 198.00 SQUARE FEET, WHICH IS BELOW A PLANE ELEVATION OF 64.75 FEET CITY DATUM AND WHICH IS ABOVE A PLANE ELEVATION OF 48.50 FEET CITY DATUM. ASSUMED GROUND ELEVATION BEING AT OR NEAR 37.50 FEET CITY DATUM,

ALL OF THE AIR SPACE FOR THAT PART OF MULBERRY STREET RIGHT-OF-WAY ADJOINING LOT 1, BLOCK 12, H.M. HOXIE'S ADDITION TO THE TOWN OF FORT DES MOINES, IOWA, AN OFFICIAL PLAT, DES MOINES, POLK COUNTY, IOWA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 15°(DEGREES) 22'(MINUTES) 47"(SECONDS) EAST ALONG THE SOUTHERLY PROJECTION OF THE EAST LINE OF SAID LOT 1, A DISTANCE OF 2.00 FEET; THENCE SOUTH 74°10'12" WEST PARALLEL WITH AND 2.00 FEET SOUTH OF THE SOUTH LINE OF SAID LOT 1, A DISTANCE OF 13.00 FEET; THENCE NORTH 15°22'47" WEST, A DISTANCE OF 2.00 FEET TO THE SOUTH LINE OF SAID LOT 1; THENCE NORTH 74°10'12" EAST ALONG THE SOUTH LINE OF SAID LOT 1, A DISTANCE OF 13.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 26.00 SQUARE FEET, WHICH IS BELOW A PLANE ELEVATION OF 97.50 FEET CITY DATUM AND WHICH IS ABOVE A PLANE ELEVATION OF 83.00 FEET CITY DATUM. ASSUMED GROUND ELEVATION BEING AT OR NEAR 37.00 FEET CITY DATUM,

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COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 74°(DEGREES) 10'(MINUTES) 12"(SECONDS) WEST ALONG THE SOUTH LINE OF SAID LOT 1 AND ALONG THE NORTH RIGHT-OF-WAY LINE OF MULBERRY STREET AS IT IS PRESENTLY ESTABLISHED, A DISTANCE OF 73.25 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 15°44'02" EAST, A DISTANCE OF 3.73 FEET; THENCE SOUTH 74°17'46" WEST, A DISTANCE OF 20.00 FEET; THENCE NORTH 15°44'02" WEST, A DISTANCE OF 3.69 FEET; THENCE NORTH 74°10'12" EAST, A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 74.20 SQUARE FEET, WHICH IS BELOW A PLANE ELEVATION OF 59.25 FEET CITY DATUM AND WHICH IS ABOVE A PLANE ELEVATION OF 58.25 FEET CITY DATUM. ASSUMED GROUND ELEVATION BEING AT OR NEAR 37.00 FEET CITY DATUM.

3. That the sale and conveyance of a Permanent Easement for Air Space Above City-Owned Property within such vacated City right-of-way, as described below, to Hubbell Tower II, LLC for \$5,922.00, together with payment by such grantee of the estimated publication and recording costs for this transaction, be and is hereby approved:

ALL OF THE VACATED AIR SPACE FOR THAT PART OF THE EAST-WEST ALLEY LYING NORTH OF AND ADJOINING LOT 2, BLOCK 2, WEST FORT DES MOINES, AN OFFICIAL PLAT, DES MOINES, POLK COUNTY, IOWA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 2; THENCE SOUTH 74°(DEGREES) 10'(MINUTES) 15"(SECONDS) WEST ALONG THE NORTH LINE OF SAID LOT 2 AND ALONG THE SOUTH LINE OF SAID ALLEY AS IT IS PRESENTLY ESTABLISHED, A DISTANCE OF 27.34 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 74°10'15" WEST ALONG SAID SOUTH LINE OF ALLEY, A DISTANCE OF 12.00 FEET; THENCE NORTH 15°44'02" WEST, A DISTANCE OF 16.50 FEET TO THE NORTH LINE OF SAID ALLEY; THENCE NORTH 74°10'15" EAST ALONG SAID NORTH LINE, A DISTANCE OF 12.00 FEET; THENCE SOUTH 15°44'02" EAST, A DISTANCE OF 16.50 FEET TO THE POINT OF BEGINNING AND CONTAINING 198.00 SQUARE FEET, WHICH IS BELOW A PLANE ELEVATION OF 64.75 FEET CITY DATUM AND WHICH IS ABOVE A PLANE ELEVATION OF 48.50 FEET CITY DATUM. ASSUMED GROUND ELEVATION BEING AT OR NEAR 37.50 FEET CITY DATUM,

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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 said subsurface portion of 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 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

Date November 23, 2015

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.

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

(Council Communication No. 15- 619)

Moved by _____ to adopt.

APPROVED AS TO FORM:

(Signature)
Lisa A. Wieland, Assistant City Attorney

| COUNCIL ACTION | YEAS | NAYS | PASS | ABSENT |
|----------------|------|------|----------|--------|
| COWNIE | | | | |
| COLEMAN | | | | |
| GATTO | | | | |
| GRAY | | | | |
| 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



October 20, 2015

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 October 15, 2015, the following action was taken regarding a request from Hubbell Tower II, LLC (owner) represented by Steve Niebuhr (officer) for vacation of air rights adjoining 915 Mulberry Street within the adjoining north 3.73-feet of Mulberry Street for a second floor canopy and a first floor awning, within the west 1.8-feet of 9th Street for light canopies, and within a 12-foot by 16.5 foot segment of the adjoining east/west alley for a pedestrian air bridge within the east/west alley.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 13-0 as follows:

| Commission Action: | Yes | Nays | Pass | Absent |
|---------------------|-----|------|------|--------|
| Dory Briles | X | | | |
| JoAnne Corigliano | X | | | |
| Jacqueline Easley | X | | | |
| Tim Fitzgerald | X | | | |
| Jann Freed | X | | | |
| John "Jack" Hilmes | X | | | |
| Greg Jones | X | | | |
| Sasha Kamper | X | | | |
| Brian Millard | X | | | |
| William Page | X | | | |
| Jonathan Rosenbloom | X | | | |
| Mike Simonson | X | | | |
| CJ Stephens | X | | | |
| Greg Wattier | | | | X |

APPROVAL of the requested vacation so long as any proposed structure is constructed in compliance with the approved Site Plan (11-2015-1.19)

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval of the requested vacation of Market Street right-of-way.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is proposing to construct a 5-story apartment building with ground floor parking. The site is located on the northwest corner of the 9th and Mulberry Street intersection to the north of the Des Moines Social Club.

The Site Plan and building elevations for Hubbell Tower II, previously known as the 'Dwell Apartments', were approved by the Plan and Zoning Commission on August 6, 2015. It has since been identified that portions of the building would extend over Mulberry and 9th Streets and the north alley, requiring vacation of air rights. The requested vacation includes air rights for light canopies along 9th Street, second floor canopy along Mulberry Street, fifth floor cantilever along the southeast corner of the building along Mulberry, and a pedestrian skywalk segment over the east/west alley along the north façade of the proposed building. The canopies and building extensions would have no impact on the use of Mulberry Streets and 9th Streets.

2. **Size of Site:** 0.43 acres or 18,578 square feet.
3. **Existing Zoning (site):** "C-3" Central Business District, "D-O" Downtown Overlay District, "GGP" Gambling Games Prohibition Overlay District and "FSO" Freestanding Sign Overlay.
4. **Existing Land Use (site):** Surface parking lot.
5. **Adjacent Land Use and Zoning:**

North – "C-3"; Use is a multiple-family residential building.

South – "C-3"; Use is the Des Moines Social Club.

East – "C-3"; Use is an office building.

West – "C-3"; Use is a mixed-use building containing office, retail, restaurant and structured parking uses.

6. **General Neighborhood/Area Land Uses:** The site is located on the northwest corner of the 9th Street and Mulberry Street intersection in the downtown core. The area contains a mix of restaurants, office and multiple-family residential uses.
7. **Applicable Recognized Neighborhood(s):** The subject property is located in the Downtown Des Moines Neighborhood. This neighborhood was notified of the Commission meeting by mailing of the Preliminary Agenda on September 25, 2015. A Final Agenda was mailed to the neighborhood association on October 9, 2015. Additionally, separate notifications of the hearing for this specific item were mailed on October 5, 2015 (10 days prior to the hearing) to the Downtown Des Moines Neighborhood Association and to the primary titleholder on file with the Polk County Assessor for each property adjoining or directly across a public street from the subject site.

All agendas and notices are mailed to the primary contact(s) designated by the recognized neighborhood association to the City of Des Moines Neighborhood Development Division. The Downtown Des Moines Neighborhood Association notices were mailed to Larry Bradshaw, 418 6th Avenue, Suite 902, Des Moines, IA 50309.

8. **Zoning History:** The Site Plan and building elevations for Hubbell Tower II, previously known as the 'Dwell Apartments', were approved by the Plan and Zoning Commission on August 6, 2015. The approval was subject to the following conditions –

Compliance with all administrative review comments of the City's Permit and Development Center.

Provision of black KIM Archetype Street Light Fixtures.

All rooftop mechanical equipment shall be screened with material that is architecturally compatible with the building to the satisfaction of the Planning Administrator.

There shall be a return around the corner.

Provision of a 12-foot wide sidewalk with street trees and planter beds along 9th Street.

9. **2020 Community Character Land Use Plan Designation:** Retail/Office Core/Core Fringe.

10. **Applicable Regulations:** The Commission, considering the criteria set forth in Chapter 18B of the Iowa Code, 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. **Air Rights:** The proposed building projections would have portions of the first, second and fifth floors extend over the public sidewalk. This would not extend over vehicular travelled portions of the adjoining streets.
2. **Utilities:** The proposed building projections would not interfere with any aerial utilities, public street lighting, Right-of-Way signage or traffic control devices. Any existing utilities impacted by the proposed extensions must be relocated in coordination with the impacted utility.
3. **Street System/Access:** The provision of a 12-foot sidewalk as required by the Site Plan approval would ensure that the proposed light canopies and streetscape including street trees would be accommodated along 9th Street. The canopies and extension of building elevation would not impact the use of Mulberry and 9th Streets.

SUMMARY OF DISCUSSION

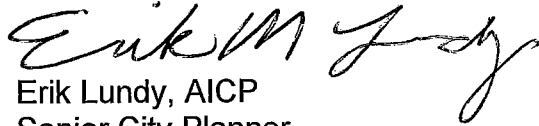
Greg Jones asked if anyone was present to speak on this item. None were present or requested to speak.

COMMISSION ACTION:

Jann Freed moved staff recommendation for approval of the requested vacation so long as any proposed structure is constructed in compliance with the approved Site Plan.

Motion passed 13-0.

Respectfully submitted,



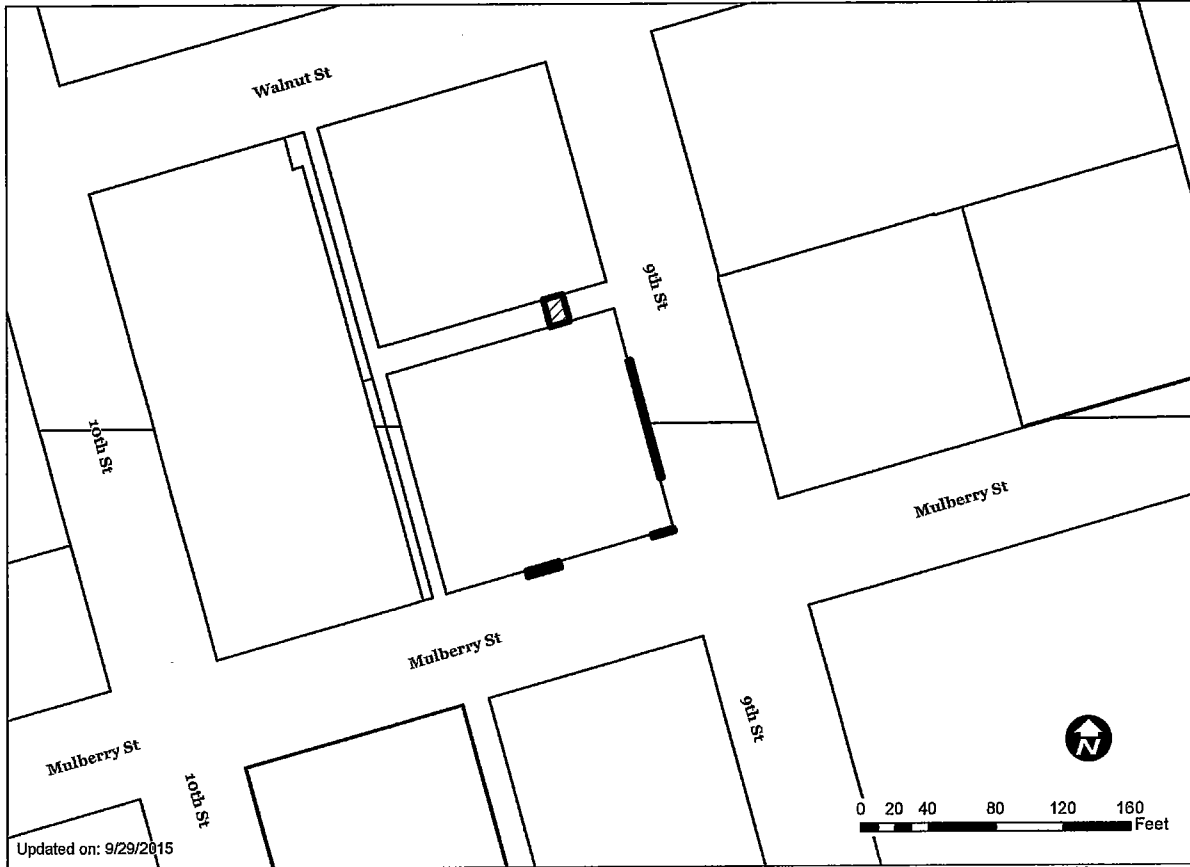
Erik Lundy, AICP
Senior City Planner

EML:clw
Attachment

| | | | | |
|--|---|------------------------|--|--------------|
| Hubbell Tower II, LLC (owner) represented by Steve Niebuhr (officer) on property located at 915 Mulberry Street. | | File # 11-2015-1.19 | | |
| Description of Action | Approval of vacation of air rights within the adjoining north 3.73-feet of Mulberry Street for a second floor canopy and a first floor awning, within the west 1.8-feet of 9th Street for light canopies, and within a 12-foot by 16.5 foot segment of the adjoining east/west alley for a pedestrian air bridge within the east/west alley so long as any proposed structure is constructed in compliance with the approved Site Plan. | | | |
| 2020 Community Character Plan | Current: Downtown Retail/Office Core/Core Fringe. Proposed: N/A. | | | |
| Mobilizing Tomorrow Transportation Plan | No Planned Improvements. | | | |
| Current Zoning District | "C-3" Central Business District Commercial District, "GGP" Gambling Games Prohibition District, "D-O" Downtown Overlay District, and "FSO" Freestanding Sign Overlay District. | | | |
| Proposed Zoning District | N/A. | | | |
| Consent Card Responses | In Favor | Not In Favor | Undetermined | % Opposition |
| Inside Area | | | | |
| Outside Area | | | | |
| Plan and Zoning Commission Action | Approval | 13-0 | Required 6/7 Vote of the City Council | Yes |
| | Denial | | | No X |

Hubbell Tower, LLC, 915 Mulberry Street

11-2015-1.19



1 inch = 67 feet

