

Date December 7, 2015

**HOLD HEARING FOR VACATION OF A PORTION OF EAST 5<sup>TH</sup> STREET RIGHT-OF-WAY ADJOINING 407 EAST 5<sup>TH</sup> STREET AND CONVEYANCE OF A PERMANENT EASEMENT FOR BUILDING ENCROACHMENT TO TEACHOUT PROPERTIES, L.L.C. FOR \$885.00**

**WHEREAS**, Teachout Properties, L.L.C. is the owner of the real property locally known as 407 East 5<sup>th</sup> Street; and

**WHEREAS**, Teachout Properties, L.L.C. has requested the vacation of a 6 foot by 12.75 foot segment of East 5<sup>th</sup> Street adjoining 407 East 5<sup>th</sup> Street ("City Right-of-Way"), hereinafter more fully described, and has requested that the City of Des Moines, Iowa ("City") convey a Permanent Easement for Building Encroachment in the vacated City Right-of-Way to Teachout Properties, L.L.C. for constructing, using, repairing, and maintaining a ramp for handicap access to the building currently situated on the property; and

**WHEREAS**, Teachout Properties, L.L.C. has offered to the City the purchase price of \$885.00 for the vacation and purchase of the Permanent Easement for Building Encroachment in the City Right-of-Way, which price reflects the fair market value of the City Right-of-Way as currently estimated by the City's Real Estate Division; and

**WHEREAS**, on November 5, 2015, the City Plan and Zoning Commission voted to approve a request from Teachout Properties, L.L.C. for the vacation of a 6 foot by 11 foot segment of East 5<sup>th</sup> Street adjoining 407 East 5<sup>th</sup> Street, which segment to be vacated was subsequently determined to be 6 foot by 12.75 foot; and

**WHEREAS**, there is no current or future City need or benefit for the City Right-of-Way to be vacated, the City will not be inconvenienced by the vacation of the City Right-of-Way and the conveyance of a Permanent Easement for Building Encroachment to Teachout Properties, L.L.C.; and

**WHEREAS**, on November 23, 2015, by Roll Call No. 15-1958, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation and conveyance of such Permanent Easement for Building Encroachment be set down for hearing on December 7, 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 Building Encroachment 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:

.....  
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1. Upon due consideration of the facts and statements of interested persons, any and all objections to said proposed vacation and conveyance of the Permanent Easement for Building Encroachment 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 6 foot by 12.75 foot segment of East 5<sup>th</sup> Street adjoining 407 East 5<sup>th</sup> Street, more specifically described as follows:

A PART OF EAST 5<sup>TH</sup> STREET RIGHT OF WAY LYING WEST OF AND ADJOINING LOT 1, H.E. TEACHOUT PLACE, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND DESCRIBED AS FOLLOWS:  
COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 1; THENCE SOUTH ALONG THE WEST LINE OF SAID LOT 1, A DISTANCE OF 21 FEET AND THE POINT OF BEGINNING; THENCE CONTINUING SOUTH ALONG SAID WEST LINE, 12.75 FEET; THENCE WESTERLEY AND PERPENDICULAR TO SAID WEST LINE, 6 FEET; THENCE NORTHERLY AND PARALLEL TO SAID WEST LINE, 12.75 FEET; THENCE EASTERLY AND PERPENDICULAR TO SAID WEST LINE, 6 FEET TO THE POINT OF BEGINNING.

3. That the sale and conveyance of a Permanent Easement for Building Encroachment within such vacated City right-of-way, as described below, to Teachout Properties, L.L.C. for \$885.00, together with payment by such grantee of the estimated publication and recording costs for this transaction, be and is hereby approved:

A PART OF VACATED EAST 5<sup>TH</sup> STREET RIGHT OF WAY LYING WEST OF AND ADJOINING LOT 1, H.E. TEACHOUT PLACE, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND DESCRIBED AS FOLLOWS:  
COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 1; THENCE SOUTH ALONG THE WEST LINE OF SAID LOT 1, A DISTANCE OF 21 FEET AND THE POINT OF BEGINNING; THENCE CONTINUING SOUTH ALONG SAID WEST LINE, 12.75 FEET; THENCE WESTERLEY AND PERPENDICULAR TO SAID WEST LINE, 6 FEET; THENCE NORTHERLY AND PARALLEL TO SAID WEST LINE, 12.75 FEET; THENCE EASTERLY AND PERPENDICULAR TO SAID WEST LINE, 6 FEET TO THE POINT OF BEGINNING.

4. The Mayor is authorized and directed to sign the Offer to Purchase and the Permanent Easement for Building Encroachment 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 City 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 Permanent Easement for Building Encroachment, 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 Permanent Easement for Building Encroachment, 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.

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7. Upon receipt of the recorded documents 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- 635)

Moved by \_\_\_\_\_ to adopt.

APPROVED AS TO FORM:

  
 Lisa A. Wieland, Assistant City Attorney

PSW

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