

Date December 21, 2015

**HOLD HEARING FOR VACATION OF A PORTION OF 35TH STREET RIGHT-OF-WAY
ADJOINING 3501 INGERSOLL AVENUE AND CONVEYANCE OF A PERMANENT
EASEMENT FOR BUILDING ENCROACHMENT TO THE ESTATE OF DAVID L. BARNES,
MICHAEL D. BARNES AND EVIE J. BARNES FOR \$100.00**

WHEREAS, the Estate of David L. Barnes, Michael D. Barnes and Evie J. Barnes are the owners of the real property locally known as 3501 Ingersoll Avenue; and

WHEREAS, David Elkin, attorney representing the Estate of David L. Barnes, Michael D. Barnes and Evie J. Barnes, has requested the vacation of a .27 foot segment of 35th Street adjoining 3501 Ingersoll Avenue (“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 the Estate of David L. Barnes, Michael D. Barnes and Evie J. Barnes in order to mitigate the existing encroachment into City right-of-way; and

WHEREAS, the Estate of David L. Barnes, Michael D. Barnes and Evie J. Barnes have offered to the City the purchase price of \$100.00 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, such portion of City-owned 35th Street right-of-way has been determined by the City Engineer and City Traffic Engineer to have a de minimis impact upon the public use of 35th Street thereby obviating the required Plan and Zoning Commission review; 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 the Estate of David L. Barnes, Michael D. Barnes and Evie J. Barnes; and

WHEREAS, on December 7, 2015, by Roll Call No. 15-2055, 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 21, 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.

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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 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 segment of 35th Street adjoining 3501 Ingersoll Avenue, more specifically described as follows:

A PORTION OF THE 35TH STREET RIGHT-OF-WAY LYING EAST OF AND ADJOINING LOT 29 IN THE OFFICIAL PLAT OF LOT 1 OF THE OFFICIAL PLAT OF THE SOUTHEAST ¼ OF THE SOUTHWEST ¼ OF SECTION 6, TOWNSHIP 78 NORTH, RANGE 24 WEST OF THE 5TH P.M., NOW LOCATED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 29; THENCE N00°06'12"W, ALONG THE EAST LINE OF SAID LOT 29, A DISTANCE OF 12.07 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING N00°06'12"W, ALONG SAID EAST LINE, A DISTANCE OF 108.23 FEET TO THE NORTH LINE OF SAID LOT 29; THENCE S89°56'06"E, ALONG SAID NORTH LINE, A DISTANCE OF 0.27 FEET TO AN EXISTING BUILDING WALL; THENCE S00°00'54"W, ALONG SAID BUILDING WALL, A DISTANCE OF 108.23 FEET; THENCE N89°47'21"W, A DISTANCE OF 0.05 FEET TO THE POINT OF BEGINNING, CONTAINING APPROXIMATELY 17.179 SQUARE FEET.

3. That the sale and conveyance of a Permanent Easement for Building Encroachment within such vacated City right-of-way, as described below, to the Estate of David L. Barnes, Michael D. Barnes and Evie J. Barnes for \$100.00, together with payment by such grantee of the estimated publication and recording costs for this transaction, be and is hereby approved:

A PORTION OF THE VACATED 35TH STREET RIGHT-OF-WAY LYING EAST OF AND ADJOINING LOT 29 IN THE OFFICIAL PLAT OF LOT 1 OF THE OFFICIAL PLAT OF THE SOUTHEAST ¼ OF THE SOUTHWEST ¼ OF SECTION 6, TOWNSHIP 78 NORTH, RANGE 24 WEST OF THE 5TH P.M., NOW LOCATED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 29; THENCE N00°06'12"W, ALONG THE EAST LINE OF SAID LOT 29, A DISTANCE OF 12.07 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING N00°06'12"W, ALONG SAID EAST LINE, A DISTANCE OF 108.23 FEET TO THE NORTH LINE OF SAID LOT 29; THENCE S89°56'06"E, ALONG SAID NORTH LINE, A DISTANCE OF 0.27 FEET TO AN EXISTING BUILDING WALL; THENCE S00°00'54"W, ALONG SAID BUILDING WALL, A DISTANCE OF 108.23 FEET; THENCE N89°47'21"W, A DISTANCE OF 0.05 FEET TO THE POINT OF BEGINNING, CONTAINING APPROXIMATELY 17.179 SQUARE FEET.

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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.
7. Upon receipt of the recorded documents from the Polk County Recorder, the Real Estate Division Manager shall mail the original of the Permanent Easement for Building Encroachment 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. 15-655)

Moved by _____ to adopt.

APPROVED AS TO FORM:



 Lisa A. Wieland, Assistant City Attorney

BN

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



Dec. 18, 2015

Dear Mayor Cownie and Des Moines City Council,

As part of the 3501 Ingersoll Avenue pending property sale transaction from Barnes et al to Hurd, the city has been asked for a permanent vacation (\$100) easement because during a survey, it was discovered that the building (constructed around 1998) extends in the city's right of way altogether about 17 square feet. At the Dec. 7, 2015 City Council meeting, a hearing was set to take place at the Dec. 21st City Council meeting.

There was a lot of discussion and compromises made when the site plan and neighborhood pedestrian-friendly commercial re-zoning was approved. As customers, neighbors and taxpayers, we have the following requests:

- To restore public trust in the process, we request an explanation of how this mistake occurred and what steps have been made in the city's processes to prevent future encroachment errors on public right of ways.
- Would the owners remove the unsightly rust stains from the stucco on the east side of the building?
- Would the property owners replant the missing tree in the southeast space?
- We are glad that we have an occupant on that busy corner that is committed to the health and wellness of the nearby community. Would the property owners contribute \$1,275 total the cost of the school crossing guard services¹ at 35th and Ingersoll Avenue? This is a public expense shared by the Des Moines Police Department and Des Moines Public Schools, so a win-win for the community and the owner of 3501 Ingersoll.
- In addition, if any proposed site plan changes, building use changes, sign permit, Plan and Zoning Commission (PNZ) and/or Zoning Board of Adjustment (ZBOA) requests are expected in the next two years for 3501 and 3515 Ingersoll (Barnes parcels, and the store's buffer / parking area at 620 35th Street (currently owned by the Lee Family) would you delay this vote until those processes have been completed? As you well know, PNZ and ZBOA requests trigger professional staff review, allow for public notification and comments, and professional experts who serve on boards and commissions weigh in with clarifications, recommendations and conditions. These processes are all very valuable input and the public would lose considerable leverage if the permanent easement request occurred prior to any site plan changes, building use changes, sign permits, PNZ, ZBOA, etc. Hence, we are going on the record now to ask that the city deny this request until after Barnes, Hurd, Walgreen's have an opportunity to follow these processes. Otherwise it very difficult of us to approve the permanent easement request.

We appreciate these considerations, 
 Colleen Kinney, president and the North of Grand Neighborhood Association Board
 Agenda Item 20 from Dec. 7th Council hearing <http://www.dmgov.org/Government/CityCouncil/Agendas/ag20151207.pdf>
 Council resolution to set hearing on Dec. 21st <http://www.dmgov.org/government/CityCouncil/Resolutions/20151207/20.pdf>

¹ According to the Des Moines Police Department, which administers the school crossing guard program, in FY2015 taxpayers spent about \$10,000 total (1.5 crossing guards / location / school year) for this location. According to the Polk Co. Assessor's Office, the assessed land is about \$7.35/ sq foot x 17 square feet = \$125. Assessed land plus leased building w/improvements totals roughly \$81/square foot (includes \$7.35 amount). Request = \$1,375, which equates to \$100 for General Operating Fund and remainder to school guard program.

