

Date November 4, 2019

**HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR CONVEYANCE OF
A PERMANENT EASEMENT FOR AIR SPACE ABOVE CITY-OWNED
PROPERTY TO ANDERSON ERICKSON DAIRY CO. FOR \$2,200.00**

WHEREAS, on April 19, 1999, by Roll Call No. 99-1167 the City Council of the City of Des Moines voted to approve the vacation of air rights over a 30-foot by 70-foot segment of Hubbell Avenue located northeast of East 22nd Street and adjoining 2201 Hubbell Avenue and 2230 Hubbell Avenue, Des Moines, Iowa, (hereinafter "Easement Area"), as legally described below, and lease said Easement Area to Anderson Erickson Dairy Co. to allow for construction of a private bridge, conveyor system and related improvements; and

WHEREAS, said lease agreement expired on April 30, 2019, and the parties now desire to replace the lease agreement with a permanent easement for use of the air space above Hubbell Avenue; and

WHEREAS, Anderson Erickson Dairy Co., an Iowa corporation, owner of 2201 Hubbell Avenue and 2230 Hubbell Avenue, Des Moines, Iowa, which properties abut the Easement Area on the north and south side of Hubbell Avenue, has offered to the City the purchase price of \$2,200.00 for the purchase of a Permanent Easement for Air Space Above City-Owned Property (hereinafter "Easement") in said 30-foot by 70-foot segment of Hubbell Avenue, hereinafter more fully described, to allow for the permanent encroachment of the private bridge, conveyor system and related improvements over the vacated right-of-way, subject to the reservation for easements therein, which price reflects the fair market value of the Easement as determined by the City's Real Estate Division; and

WHEREAS, the City has no known current or anticipated public need for the Easement Area and the City will not be inconvenienced by the conveyance of said Permanent Easement for Air Space Above City-Owned Property; and

WHEREAS, on October 14, 2019, by Roll Call No. 19-1591, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed conveyance of the Easement be set down for hearing on November 4, 2019, at 5:00 p.m., in the City Council Chambers; and

WHEREAS, due notice of said proposal to convey the Easement was given to all necessary parties as provided by law, setting forth the time and place for hearing on said proposal; and

WHEREAS, in accordance with City Council direction, those interested in the proposed 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:

Date November 4, 2019

1. Upon due consideration of the facts and statements of interested persons, any and all objections to the proposed conveyance, as described below, are hereby overruled and the hearing is closed.
2. There is no public need or benefit for the Easement Area proposed to be conveyed, and the public would not be inconvenienced by reason of the conveyance of a Permanent Easement for Air Space Above City-Owned Property in the a vacated 30-foot by 70-foot segment of Hubbell Avenue located northeast of East 22nd Street and adjoining 2201 Hubbell Avenue and 2230 Hubbell Avenue, Des Moines, Iowa, as legally described, to the grantee, and for the consideration identified below, and said conveyance be and is hereby approved, subject to a reservation of easements therein:

Grantee: Anderson Erickson Dairy Co.
Consideration: \$2,200.00
Legal Description:

ALL THOSE AIR RIGHTS ABOVE ELEVATION 49.0 CITY OF DES MOINES DATUM, AND BELOW ELEVATION 80.0 CITY OF DES MOINES DATUM OVER THE FOLLOWING DESCRIBED PORTION OF THE AVENUE FREDERICK M. HUBBELL RIGHT-OF-WAY:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 43, HUBBELL AVENUE ADDITION, AN OFFICIAL PLAT, DES MOINES, POLK COUNTY, IOWA; THENCE EASTERLY ALONG THE SOUTH LINE OF SAID LOT 43 AND 44 IN SAID HUBBELL AVENUE ADDITION AND ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF AVENUE FREDERICK M. HUBBELL A DISTANCE OF 80.0 FEET TO THE POINT OF BEGINNING; THENCE SOUTHEASTERLY A DISTANCE OF 70.0 FEET TO A POINT 20.0 FEET WESTERLY OF THE NORTHEAST CORNER OF LOT 146 IN SAID HUBBELL AVENUE ADDITION, SAID POINT ALSO BEING ON THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID AVENUE FREDERICK M. HUBBELL; THENCE NORTHEASTERLY ALONG THE NORTHERLY LINES OF LOT 146 AND 145 IN SAID HUBBELL AVENUE ADDITION AND ALONG THE SAID SOUTHERLY RIGHT-OF-WAY LINE A DISTANCE OF 30.0 FEET TO A POINT 10.0 FEET EASTERLY OF THE NORTHWEST CORNER OF SAID LOT 145; THENCE NORTHWESTERLY A DISTANCE OF 70.0 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF THE SAID AVENUE FREDERICK M. HUBBELL AND ON THE SOUTHERLY LINE OF LOT 45 IN SAID HUBBELL AVENUE ADDITION, SAID POINT BEING 10.0 FEET EASTERLY OF THE SOUTHWEST CORNER OF SAID LOT 45; THENCE SOUTHWESTERLY ALONG THE SOUTH LINE OF SAID LOTS 45 AND 44 IN SAID HUBBELL AVENUE ADDITION AND ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF SAID AVENUE FREDERICK M. HUBBELL A DISTANCE OF 30.0 FEET TO THE POINT OF BEGINNING.

(VACATED BY ORDINANCE NO. 13,700, PASSED APRIL 19, 1999.)

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3. The Mayor is authorized and directed to sign the Permanent Easement for Air Space Above City-Owned Property for the conveyance as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.
4. Upon proof of payment of the consideration, the City Clerk is authorized and directed to forward the original of the Permanent Easement for Air Space Above City-Owned Property, 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.
5. The Real Estate Division Manager is authorized and directed to forward the original of the Permanent Easement for Air Space Above City-Owned Property, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Polk County Recorder's Office for the purpose of causing the documents to be recorded.
6. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division Manager shall mail the original of the Permanent Easement for Air Space Above City-Owned Property and copies of the other documents to the grantee.
4. Non-project related land sale proceeds are used to support general operating budget expenses: Org – EG064090.

Moved by _____ to adopt.

APPROVED AS TO FORM:



Lisa A. Wieland, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
COLEMAN				
GATTO				
GRAY				
MANDELBAUM				
WESTERGAARD				
TOTAL				
MOTION CARRIED		APPROVED		
_____ Mayor				

CERTIFICATE

I, P. Kay Cmelik, 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

