

Date January 22, 2024

HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF SUBSURFACE RIGHTS IN A PORTION OF 6TH AVENUE RIGHT-OF-WAY IN THE VICINITY OF 1716 6TH AVENUE AND CONVEYANCE OF A PERMANENT EASEMENT FOR SUBSURFACE BUILDING ENCROACHMENT ON CITY-OWNED PROPERTY TO CENTER AT SIXTH FOR \$450

WHEREAS, on November 20, 2023 by Roll Call No. 23-1607, the City Council of the City of Des Moines, Iowa, voted to receive and file a recommendation from the City Plan and Zoning Commission to approve a request to vacate subsurface rights within the 6th Avenue right-of-way in the vicinity of 1716 6th Avenue, subject to the reservation of any necessary easements for all existing utilities in place until abandoned or relocated at the applicant’s expense; and

WHEREAS, on November 2, 2023, 6th Avenue Corridor, Inc. transferred ownership of 1716 6th Avenue, now known as 1760 6th Avenue, to Center at Sixth, an Iowa non-profit corporation, for future development.

WHEREAS, Center at Sixth has offered to the City of Des Moines, Iowa (“City”) the purchase price of \$450.00 for the purchase of a Permanent Easement for Subsurface Building Encroachment On City-Owned Property (“Easement”) within the 6th Avenue right-of-way adjoining the property at 1760 6th Avenue (hereinafter “Easement Area”), for the purpose of constructing, operating and maintaining a subsurface building encroachment into the 6th Avenue right-of-way; which price reflects the fair market value of the Easements as determined by the City’s Real Estate Division; and

WHEREAS, there is no known current or future public need for the 6th Avenue right-of-way proposed to be vacated, and the City will not be inconvenienced by the vacation of said property and the conveyance of the Easement in such vacated right-of-way.

WHEREAS, on January 8, 2024, by Roll Call No. 24-0044, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation and conveyance of the 6th Avenue right-of-way adjoining 1760 6th Avenue be set for hearing on January 22, 2024 at 5:00 p.m., in the City Council Chambers, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa; and

WHEREAS, due notice of said proposal to vacate a portion of the 6th Avenue right-of-way adjoining 1760 6th Avenue and convey the Easement was given 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 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 the proposed vacation of the subsurface rights within a portion of 6th Avenue right-of-way located east of and adjoining 1760 6th Avenue as described herein, 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 the subsurface rights within a portion of 6th Avenue right-of-way located east of and adjoining 1760 6th Avenue legally described as follows, and said vacation is hereby approved:

A VACATION OF PART OF THE 6TH AVENUE PUBLIC RIGHT-OF-WAY LYING DIRECTLY ADJACENT TO LOTS 2 THROUGH 5, BLOCK 5 OF THE OFFICIAL PLAT OF THE SW1/4 NE1/4 OF SECTION 34, TOWNSHIP 79 NORTH, RANGE 24 WEST OF THE 5TH P.M. (ALSO KNOWN AS POLK COUNTY HOMESTEAD AND TRUST COMPANY ADDITION), AN OFFICIAL PLAT, CITY OF DES MOINES, POLK COUNTY, IOWA THAT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SE CORNER OF SAID LOT 5; THENCE N00°03'43"W, 199.97 FEET ALONG THE EAST LINE OF SAID LOTS 2 THROUGH 5, SAID EAST LINE COINCIDES WITH THE WEST RIGHT-OF-WAY LINE OF 6TH AVENUE AS IT IS PRESENTLY ESTABLISHED, TO THE NE CORNER OF SAID LOT 2; THENCE N89°56'17"E, 2.50 FEET TO A POINT THAT IS 2.50 FEET EAST OF SAID WEST RIGHT-OF-WAY LINE; THENCE S00°03'43"E, 199.97 FEET ALONG A LINE THAT IS 2.50 FEET EAST OF AND PARALLEL WITH SAID WEST RIGHT-OF-WAY LINE TO A POINT; THENCE S89°56'17"W, 2.50 FEET TO THE POINT OF BEGINNING CONTAINING 500 SQUARE FEET MORE OR LESS.

3. The proposed conveyance of the Permanent Easement for Subsurface Building Encroachment On City-Owned Property in such vacated street right-of-way, as legally described below, to Center at Sixth for \$450.00 , and said conveyance is hereby approved:

A SUBSURFACE RIGHTS EASEMENT IN THE VACATED 6TH AVENUE PUBLIC RIGHT-OF-WAY LYING DIRECTLY ADJACENT TO LOTS 2 THROUGH 5, BLOCK 5 OF THE OFFICIAL PLAT OF THE SW1/4 NE1/4 OF SECTION 34, TOWNSHIP 79 NORTH, RANGE 24 WEST OF THE 5TH P.M. (ALSO KNOWN AS POLK COUNTY HOMESTEAD AND TRUST COMPANY ADDITION), AN OFFICIAL PLAT, CITY OF DES MOINES, POLK COUNTY, IOWA THAT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SE CORNER OF SAID LOT 5; THENCE N00°03'43"W, 199.97 FEET ALONG THE EAST LINE OF SAID LOTS 2 THROUGH 5, SAID EAST LINE COINCIDES WITH THE WEST RIGHT-OF-WAY LINE OF 6TH AVENUE AS IT IS PRESENTLY ESTABLISHED, TO THE NE CORNER OF SAID LOT 2; THENCE N89°56'17"E, 2.50 FEET TO A POINT THAT IS 2.50 FEET EAST OF SAID WEST RIGHT-OF-WAY LINE; THENCE S00°03'43"E, 199.97 FEET ALONG A LINE THAT IS 2.50 FEET EAST OF AND PARALLEL WITH SAID WEST RIGHT-OF-WAY LINE TO A POINT; THENCE S89°56'17"W, 2.50 FEET TO THE POINT OF BEGINNING CONTAINING 500 SQUARE FEET MORE OR LESS.

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4. The Mayor is authorized and directed to sign the Offer to Purchase and Permanent Easement for Subsurface Building Encroachment On City-Owned Property for the conveyance as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.

5. 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 Subsurface Building Encroachment On 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.

6. The Real Estate Division Manager is authorized and directed to forward the original of the Permanent Easement for Subsurface Building Encroachment On 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 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 Permanent Easement for Subsurface Building Encroachment On City-Owned Property and a copy of the other documents to the grantee.

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

Moved by _____ to adopt. Second by _____.

APPROVED AS TO FORM:

/s/ Mackenzie L. Moreno
Mackenzie L. Moreno, Assistant City Attorney

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

CERTIFICATE

I, Laura Baumgartner, 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.

Laura Baumgartner, City Clerk

