

★ Roll Call Number

11-1142

Agenda Item Number

47

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Date June 27, 2011

**HEARING FOR VACATION AND CONVEYANCE OF THE REMAINING PUBLIC ALLEY  
RIGHT-OF-WAY LOCATED IN THE BLOCK BOUND BY VINE, WATER, MARKET AND  
SOUTHWEST 2<sup>ND</sup> STREETS TO WATERFRONT LODGING, INC. FOR \$39,856**

**WHEREAS**, on July 27, 2009, by Roll Call No. 09-1315, the City Council received a recommendation from the City Plan and Zoning Commission that the remaining intervening public alley right-of-way located in the block bound by Vine, Water, Market and Southwest 2<sup>nd</sup> Streets, hereinafter more fully described, be vacated and sold subject to the site being developed in conformance with the City's Design Guidelines for the Court Avenue Historic Area as approved by the Urban Design Review Board and with a "D-R" District site plan as approved by the Plan and Zoning Commission; and

**WHEREAS**, Waterfront Lodging, Inc. is the purchaser of the property locally known as 101 Southwest 2<sup>nd</sup> Street that abuts such right-of-way and has offered to the City of Des Moines the purchase price of \$39,856 for the vacation and purchase of such right-of-way described below for the purpose of allowing the alley to be incorporated with surrounding properties for development, which price reflects the restricted use fair market value of the property as currently estimated by the City's Real Estate Division; and

**WHEREAS**, Waterfront Lodging, Inc., the City Real Estate Division and Legal Department have negotiated the Offer to Purchase Real Estate from the City of Des Moines and Acceptance ("Offer"), as on file in the office of the City Clerk, which includes, among other terms, provisions that (1) the sale of this right-of-way is subject to a no-build restriction, (2) closing on the sale is subject to Waterfront Lodging, Inc. closing on the purchase of the adjoining property and (3) closing is subject to approval of the development plan for the property by the City Council; and

**WHEREAS**, there is no known current or future public need for the right-of-way proposed to be sold and the City will not be inconvenienced by the sale of said property; and

**WHEREAS**, on June 13, 2011, by Roll Call No. 11-0987, it was duly resolved by the City Council that the proposed vacation and conveyance of such right-of-way be set down for hearing on June 27, 2011, at 5:00 p.m., in the Council Chamber; and

**WHEREAS**, due notice of said proposal to vacate and convey public right-of-way 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:

Date June 27, 2011

1. Upon due consideration of the facts and statements of interested persons, the objections to said proposed vacation and conveyance of public right-of-way, 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 the remaining intervening public alley right-of-way located in the block bound by Vine, Water, Market and Southwest 2<sup>nd</sup> Streets, more specifically described as follows:

THE SOUTH 16.0 FEET OF THE NORTH 20.0 FEET OF LOT 3; ALSO AN IRREGULAR SHAPED PIECE IN THE NORTHEAST CORNER OF SAID LOT 3, LYING WITHIN THE FOLLOWING DESCRIBED LINES: BEGINNING AT A POINT ON THE NORTH LINE OF SAID LOT 3, WHICH IS 16.1 FEET WEST OF THE NORTHEAST CORNER THEREOF; THENCE EAST ALONG THE NORTH LINE OF SAID LOT 3 TO THE NORTHEAST CORNER THEREOF; THENCE SOUTH ALONG THE EAST LINE OF SAID LOT 3 A DISTANCE OF 4.0 FEET; THENCE WEST ON A LINE 4.0 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID LOT 3 A DISTANCE OF 20.0 FEET; THENCE NORTHEASTERLY TO THE POINT OF BEGINNING, ALL IN BLOCK 36, FORT DES MOINES, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

AND

ALL OF THE NORTH / SOUTH ALLEY RIGHT-OF-WAY LYING EAST OF AND ADJOINING LOTS 1 AND 2, AND THE PREVIOUSLY VACATED EAST / WEST ALLEY RIGHT-OF-WAY (VACATED BY ORDINANCE NO. 6333, PASSED JANUARY 16, 1961) AND THE NORTH 20 FEET OF LOT 3, ALL IN BLOCK 36, FORT DES MOINES, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

3. That the sale and conveyance of such right-of-way to Waterfront Lodging, Inc. for \$39,856, together with payment by such grantee of the estimated publication and recording costs for this transaction, be and is hereby approved:

THE VACATED SOUTH 16.0 FEET OF THE NORTH 20.0 FEET OF LOT 3; ALSO A VACATED IRREGULAR SHAPED PIECE IN THE NORTHEAST CORNER OF SAID LOT 3, LYING WITHIN THE FOLLOWING DESCRIBED LINES: BEGINNING AT A POINT ON THE NORTH LINE OF SAID LOT 3, WHICH IS 16.1 FEET WEST OF THE NORTHEAST CORNER THEREOF; THENCE EAST ALONG THE NORTH LINE OF SAID LOT 3 TO THE NORTHEAST CORNER THEREOF; THENCE SOUTH ALONG THE EAST LINE OF SAID LOT 3 A DISTANCE OF 4.0 FEET; THENCE WEST ON A LINE 4.0 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID LOT 3 A DISTANCE OF 20.0 FEET; THENCE NORTHEASTERLY TO THE POINT OF BEGINNING, ALL IN BLOCK 36, FORT DES MOINES, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

AND

ALL OF THE VACATED NORTH / SOUTH ALLEY RIGHT-OF-WAY LYING EAST OF AND ADJOINING LOTS 1 AND 2, AND THE PREVIOUSLY VACATED EAST / WEST ALLEY RIGHT-OF-WAY (VACATED BY ORDINANCE NO. 6333, PASSED JANUARY 16, 1961) AND THE NORTH 20 FEET OF LOT 3, ALL IN BLOCK 36, FORT DES MOINES, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

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4. The Mayor is authorized and directed to sign the Offer to Purchase and the Quit Claim Deed 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 the said right-of-way and upon proof of payment of the deposit plus \$113.00 for publication and recording costs, the City Clerk is authorized and directed to forward the original of said Deed, 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 following closing.
6. Following closing, the Real Estate Division Manager is authorized and directed to forward the original of the Deed, 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. The City Manager and/or his designee, the City's Real Estate Division Manager, are hereby authorized and directed to administer and monitor the Offer to Purchase; to proceed to closing following fulfillment by Waterfront Lodging Inc. of the conditions set forth above and in the Offer; and, if needed, to approve, proceed with and execute documents pertaining to termination of the Offer if Waterfront Lodging Inc. fails to fulfill the contract terms required, following approval of the City Legal Department.
8. The proceeds from the sale of this property will be deposited into the following account: Property Maintenance Endowment Fund, SP767, ENG980500.

(Council Communication No. 11-412)

Moved by Hensley to adopt.

APPROVED AS TO FORM:

Glenna K. Frank  
 Glenna K. Frank, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
GRIESS	✓			
HENSLEY	✓			
MAHAFFEY	✓			
MEYER	✓			
MOORE	✓			
TOTAL	7			

MOTION CARRIED

APPROVED

T. M. Franklin 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.

Diane Rauh City Clerk