

★ Roll Call Number

12-0115

Agenda Item Number

38B

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Date January 23, 2012

CONTINUED HEARING FOR VACATION AND CONVEYANCE OF A SMALL SEGMENT OF THE REMAINING PUBLIC ALLEY RIGHT-OF-WAY LOCATED IN THE BLOCK BOUND BY VINE, SOUTHWEST WATER, MARKET AND SOUTHWEST 2ND STREETS TO WATERFRONT LODGING, INC.

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, Southwest Water, Market and Southwest 2nd 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, on June 27, 2011, by Roll Call No. 11-1144, the City Council passed Ordinance No. 15,027, vacating the alley right-of-way described above, and on June 27, 2011, by Roll Call No. 11-1142, approved the sale and conveyance of such vacated alley right-of-way to Waterfront Lodging, Inc. for \$39,856, subject to a no-build restriction and other conditions; and

WHEREAS, thereafter it was determined that the prior Council actions and Waterfront Lodging's Offer to Purchase inadvertently excluded a small segment of public alley right-of-way, more specifically described below, which segment is needed for completion of their project, was considered by Plan and Zoning Commission for vacation and conveyance, was intended to be purchased by Waterfront Lodging, Inc., and was included in the purchase price of \$39,856, and the buyer has signed a First Amendment to the Offer to Purchase to formally include this segment in the legal description of the property to be acquired thereunder; and

WHEREAS, there is no known current or future public need or benefit for the additional right-of-way proposed to be vacated and sold and the City will not be inconvenienced by the sale of said property, subject to the restrictions, conditions and terms set forth in Roll Call No. 11-1142 and the Offer to Purchase approved thereby; and

WHEREAS, on November 7, 2011, by Roll Call No. 11-1921, it was duly resolved by the City Council that the proposed vacation and conveyance of such additional right-of-way be set down for hearing on November 21, 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, on November 21, 2011, by Roll Call No. 11-1993, the hearing on said proposal was continued to December 5, 2011; and

WHEREAS, on December 5, 2011, by Roll Call 11-2082, the hearing was further continued to January 23, 2012; 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.

Date January 23, 2012

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa:

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 a small segment of the remaining public alley right-of-way located in the block bound by Vine, Southwest Water, Market and Southwest 2nd Streets, more specifically described as follows:

All that part of the east-west alley in Block 36 of the Original Town of Fort Des Moines, now included in and forming a part of the City of Des Moines, Iowa, lying between Vine Street and Market Street extending from the east line of Second Avenue to a straight line extending along the west line of the north-south alley in said Block 36 from the southeast corner of Lot 2 to the northeast corner of Lot 3, in said Block 36, except that part previously vacated by Ordinance No. 6333 described as all that part of the east-west alley lying between Vine Street and Market Street extending from the east line of Southwest Second Street (now known as Second Avenue) to a straight line extending from the southeast corner of Lot 2 to a point on the north line of Lot 3, which is sixteen and one-tenth (16.1) feet west of the northeast corner thereof, all in Block 36, Original Town of Fort Des Moines, now included in and forming a part of the City of Des Moines, Iowa.

3. That the sale and conveyance of such right-of-way to Waterfront Lodging, Inc., subject to the conditions set forth in Roll Call No. 11-1142 and pursuant to the existing Offer to Purchase, and as part of the consideration for the approved purchase price of \$39,856, be and is hereby approved:

All that part of the vacated east-west alley in Block 36 of the Original Town of Fort Des Moines, now included in and forming a part of the City of Des Moines, Iowa, lying between Vine Street and Market Street extending from the east line of Second Avenue to a straight line extending along the west line of the north-south alley in said Block 36 from the southeast corner of Lot 2 to the northeast corner of Lot 3, in said Block 36, except that part previously vacated by Ordinance No. 6333 described as all that part of the east-west alley lying between Vine Street and Market Street extending from the east line of Southwest Second Street (now known as Second Avenue) to a straight line extending from the southeast corner of Lot 2 to a point on the north line of Lot 3, which is sixteen and one-tenth (16.1) feet west of the northeast corner thereof, all in Block 36, Original Town of Fort Des Moines, now included in and forming a part of the City of Des Moines, Iowa.

4. The Mayor is authorized and directed to sign the First Amendment to the Offer to Purchase, and the Quit Claim Deed as authorized under Roll Call No. 11-1142 including the property 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 consideration, plus \$113.00 for publication and recording costs, the City Clerk is authorized and directed to forward the original of the 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.

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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 and amendments thereto; to negotiate and execute minor, unsubstantial amendments to the Offer; to proceed to closing following fulfillment by Waterfront Lodging Inc. of the conditions set forth in Roll Call No. 11-142 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.

Moved by Hensley to adopt subject to approval of the Final Development Plan by the City Council.

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	6	1		
MOTION CARRIED				APPROVED
<u>T. M. Franklin</u> 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