

Date May 21, 2012

HEARING FOR VACATION AND CONVEYANCE OF A SUBSURFACE PORTION OF EAST WALNUT STREET FOR A PERMANENT SUBSURFACE EASEMENT FOR FAT, OIL AND GREASE (FOG) INTERCEPTOR ADJOINING 101 EAST LOCUST STREET (EMBASSY SUITES) TO ATRIUM FINANCE III, L.P. FOR \$2,700

WHEREAS, on May 7, 2012, by Roll Call No. 12-0693, the City Council received the recommendation from the Plan and Zoning Commission to vacate a subsurface portion of East Walnut Street adjoining the property locally known as 101 East Locust Street (Embassy Suites Hotel), subject to acquisition by Atrium Finance III, L.P. of a subsurface easement in said area for a fat, oil and grease discharge (FOG) interceptor as required by Des Moines Municipal Code Sections 118-421 et seq.; and

WHEREAS, Atrium Finance III, L.P., is the owner of the real property locally known as 101 East Locust Street that abuts such right-of-way and has offered to the City of Des Moines the purchase price of \$2,700 for the vacation and purchase of a permanent easement within a subsurface portion of East Walnut Street, as legally described below, for the purpose of installing, operating, and maintaining a FOG Interceptor as a building improvement to the Embassy Suites Hotel, which purchase price reflects the fair market value of the easement interest as currently estimated by the City's Real Estate Division; and

WHEREAS, there is no known current or future public need or benefit for the subsurface portion of the right-of-way proposed to be vacated and sold by easement, and the City will not be inconvenienced by the vacation and sale by easement of said property.

WHEREAS, on May 7, 2012, by Roll Call No. 12-0694, it was duly resolved by the City Council that the proposed vacation and conveyance of such easement be set down for hearing on May 21, 2012, at 5:00 p.m., in the Council Chamber; and

WHEREAS, due notice of said proposal to vacate and convey the subsurface easement 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, as follows:

1. Upon due consideration of the facts and statements of interested persons, the objections to said proposed vacation and conveyance of the subsurface easement 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 subsurface portion of East Walnut Street adjoining the property locally known as 101 East Locust Street, more specifically described as follows:

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A RECTANGULAR PORTION OF THE EAST WALNUT STREET RIGHT OF WAY LYING SOUTH OF AND ADJOINING LOT 10, BLOCK F, SCOTT AND DEAN'S ADDITION, AN OFFICIAL PLAT, DES MOINES, POLK COUNTY, IOWA, ALL MORE ACCURATELY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF LOT 1, BLOCK F, IN SAID SCOTT AND DEAN'S ADDITION; THENCE NORTH 74°(DEGREES)29'(MINUTES)16"(SECONDS) EAST ASSUMED FOR THIS DESCRIPTION ALONG THE SOUTH LINE OF BLOCK F OF SAID SCOTT AND DEAN'S ADDITION, A DISTANCE OF 166.59 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 74°29'16" EAST ALONG THE SOUTH LINE OF SAID BLOCK F, A DISTANCE OF 45.00 FEET; THENCE SOUTH 15°30'44" EAST, A DISTANCE OF 6.00 FEET; THENCE SOUTH 74°29'16" WEST PARALLEL WITH AND 6.00 FEET SOUTH OF THE SOUTH LINE OF SAID BLOCK F, A DISTANCE OF 45.00 FEET; THENCE NORTH 15°30'44" WEST, A DISTANCE OF 6.00 FEET TO THE POINT OF BEGINNING.

3. That the sale and conveyance of a permanent subsurface easement for FOG interceptor within such vacated area to Atrium Finance III, L.P. for \$2,700, together with payment by such grantee of the estimated publication and recording costs for this transaction, be and is hereby approved, subject to the requirements of the Plan and Zoning Commission recommendation:

A VACATED RECTANGULAR PORTION OF THE EAST WALNUT STREET RIGHT OF WAY LYING SOUTH OF AND ADJOINING LOT 10, BLOCK F, SCOTT AND DEAN'S ADDITION, AN OFFICIAL PLAT, DES MOINES, POLK COUNTY, IOWA, ALL MORE ACCURATELY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF LOT 1, BLOCK F, IN SAID SCOTT AND DEAN'S ADDITION; THENCE NORTH 74°(DEGREES)29'(MINUTES)16"(SECONDS) EAST ASSUMED FOR THIS DESCRIPTION ALONG THE SOUTH LINE OF BLOCK F OF SAID SCOTT AND DEAN'S ADDITION, A DISTANCE OF 166.59 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 74°29'16" EAST ALONG THE SOUTH LINE OF SAID BLOCK F, A DISTANCE OF 45.00 FEET; THENCE SOUTH 15°30'44" EAST, A DISTANCE OF 6.00 FEET; THENCE SOUTH 74°29'16" WEST PARALLEL WITH AND 6.00 FEET SOUTH OF THE SOUTH LINE OF SAID BLOCK F, A DISTANCE OF 45.00 FEET; THENCE NORTH 15°30'44" WEST, A DISTANCE OF 6.00 FEET TO THE POINT OF BEGINNING.

4. The Mayor is authorized and directed to sign the Offer to Purchase and the Easement 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 consideration plus \$113.00 for publication and recording costs, the City Clerk is authorized and directed to forward the original of the said Easement, 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 Easement, 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 back from the Polk County Recorder, the Real Estate Division Manager shall mail the original of the Easement and copies of the other documents to the grantee.

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8. The proceeds from the sale of this property shall be deposited into the following account: Property Maintenance Endowment Fund, SP767, ENG980500.

(Council Communication No. 12-250)

Moved by Meyer to adopt.

APPROVED AS TO FORM:

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

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, COLEMAN, GRIESS, HENSLEY, MAHAFFEY, MEYER, MOORE, and TOTAL.

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

MOTION CARRIED APPROVED

T. M. Franklin Council Mayor