

Date April 22, 2013

HOLD HEARING FOR VACATION AND CONVEYANCE OF A SUBSURFACE EASEMENT ALONG GRAND AVENUE ADJOINING 430 GRAND AVENUE TO EMM ASSOCIATES, L.P. FOR THE ELSIE MASON MANOR REDEVELOPMENT PROJECT FOR \$1,250

WHEREAS, EMM Associates, L.P. is the purchaser of the real property locally known as 430 Grand Avenue, and has offered to the City of Des Moines the purchase price of \$1,250 for the vacation and purchase of an easement for subsurface building encroachment within the subsurface portion of City right-of-way along Grand Avenue adjoining 430 Grand Avenue, as legally described below, for the purpose of constructing, operating and maintaining elevator shaft footings for the Elsie Mason Manor Redevelopment Project, which price reflects the fair market value of the easement as currently estimated by the City's Real Estate Division; and

WHEREAS, EMM Associates, L.P. and the City Real Estate Division have negotiated an Offer to Purchase which includes, among other terms, closing subject to the condition that EMM Associates, L.P. closes on the purchase of and demonstrates ownership of 430 Grand Avenue; and

WHEREAS, such subsurface portion of City-owned Grand Avenue has been determined by the City Engineer and City Traffic Engineer to have no significant impact upon the public use of Grand Avenue, and the City will not be inconvenienced by the vacation and sale of said easement; and

WHEREAS, on April 8, 2013, by Roll Call No. 13-0552, it was duly resolved by the City Council that the proposed vacation and conveyance of such easement be set down for hearing on April 22, 2013, 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 City right-of-way along Grand Avenue adjoining the property locally known as 430 Grand Avenue, more specifically described as follows:

A SUBSURFACE PORTION OF GRAND AVENUE RIGHT-OF-WAY DESCRIBED AS FOLLOWS:

THE WEST 20 FEET OF THE EAST 72.25 FEET OF THE SOUTH 2.5 FEET OF THE NORTH 7 FEET OF LOT 15 IN THE OFFICIAL PLAT OF THE NORTHWEST QUARTER (1/4) OF THE SOUTHEAST QUARTER (1/4) OF SECTION 4, TOWNSHIP 78 NORTH, RANGE 24 WEST OF THE 5TH P.M., ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

3. That the sale and conveyance of an easement for subsurface building encroachment within such vacated

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subsurface portion of City right-of-way along Grand Avenue, adjoining the property locally known as 430 Grand Avenue, to EMM Associates, L.P. for \$1,250, subject to the closing conditions set forth above and together with payment by such grantee of the estimated publication and recording costs for this transaction, be and are hereby approved:

A VACATED SUBSURFACE PORTION OF GRAND AVENUE RIGHT-OF-WAY DESCRIBED AS FOLLOWS:

THE VACATED WEST 20 FEET OF THE EAST 72.25 FEET OF THE SOUTH 2.5 FEET OF THE NORTH 7 FEET OF LOT 15 IN THE OFFICIAL PLAT OF THE NORTHWEST QUARTER (1/4) OF THE SOUTHEAST QUARTER (1/4) OF SECTION 4, TOWNSHIP 78 NORTH, RANGE 24 WEST OF THE 5TH P.M., ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

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 said subsurface portion of 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 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.
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. 13- 191)

APPROVED AS TO FORM:

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

Moved by Hensley to adopt.

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

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.

T.M. Franklin Mayor

Diane Rauh City Clerk