

★ **Roll Call Number**
13-1672

Agenda Item Number
46

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Date October 21, 2013

**HEARING FOR VACATION OF CITY RIGHT-OF-WAY AND CONVEYANCE OF A
SUBSURFACE EASEMENT WITHIN SW 2ND STREET AND MARKET STREET ADJOINING
101 SW 2ND STREET TO DSM COMMON, INC. FOR \$3,342.00**

WHEREAS, DSM Common, Inc. is the owner of the real property locally known as 101 SW 2nd Street, and has offered to the City of Des Moines the purchase price of \$3,342.00 for the vacation and purchase of an easement for subsurface building encroachment within the subsurface portion of City right-of-way within SW 2nd Street and Market Street adjoining 101 SW 2nd Street, as legally described below, for the purpose of using, repairing, and maintaining the footings and foundations extending from the adjoining parking garage at 101 SW 2nd Street, which price reflects the fair market value of the easement as currently estimated by the City's Real Estate Division; and

WHEREAS, such subsurface portion of City-owned SW 2nd Street and Market Street has been determined by the City Engineer and City Traffic Engineer to have no significant impact upon the public use of SW 2nd Street or Market Street, and the City will not be inconvenienced by the vacation thereof and sale of a subsurface easement therein; and

WHEREAS, on October 7, 2013, by Roll Call No. 13-1557, it was duly resolved by the City Council that the proposed vacation and conveyance of such easement be set down for hearing on October 21, 2013, at 5:00 p.m., in the Council Chamber; and

WHEREAS, due notice of said proposal to vacate said City right-of-way 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, any and all 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 within SW 2nd Street and Market Street adjoining the property locally known as 101 SW 2nd Street, more specifically described as follows:

A SUBSURFACE PORTION OF SW 2ND STREET, AND A SUBSURFACE PORTION OF MARKET STREET, AS LOCATED IN THE PLAT OF FORT DES MOINES, DES MOINES, POLK COUNTY, IOWA, DESCRIBED AS FOLLOWS:

Date October 21, 2013

BEGINNING AT THE SOUTHWEST CORNER OF PARCEL "C" OF THE PLAT OF SURVEY IN BLOCK 36 OF THE PLAT OF FORT DES MOINES, DES MOINES, POLK COUNTY, IOWA, IN ACCORDANCE WITH THE PLAT THEREOF RECORDED IN BOOK 14447, AT PAGE 391-392 OF THE RECORDS OF THE POLK COUNTY RECORDER'S OFFICE; THENCE N74°15'34"E, ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF MARKET STREET, 126.63 FEET; THENCE S15°44'26"E, 3.50 FEET; THENCE S74°15'34"W, ALONG A LINE PARALLEL WITH AND 3.50 FEET NORMALLY DISTANT SOUTHEASTERLY FROM SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 130.16 FEET; THENCE N15°19'18"W, ALONG A LINE PARALLEL WITH AND 3.50 FEET NORMALLY DISTANT SOUTHWESTERLY FROM THE EASTERLY RIGHT-OF-WAY LINE OF SW 2ND STREET, A DISTANCE OF 191.77 FEET; THENCE N74°40'42"E, 3.50 FEET, TO A POINT ON SAID EASTERLY RIGHT-OF-WAY LINE; THENCE S15°19'18"E, ALONG SAID EASTERLY RIGHT-OF-WAY LINE, 188.25 FEET, TO THE POINT OF BEGINNING. SAID SUBSURFACE EASEMENT CONTAINS 1,114 SQUARE FEET (0.03 ACRE), AND IS SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

3. That the sale and conveyance of an easement for subsurface building encroachment within such vacated City right-of-way, as described below, to DSM Common, Inc. for \$3,342.00, 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 SW 2ND STREET, AND A VACATED SUBSURFACE PORTION OF MARKET STREET, AS LOCATED IN THE PLAT OF FORT DES MOINES, DES MOINES, POLK COUNTY, IOWA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF PARCEL "C" OF THE PLAT OF SURVEY IN BLOCK 36 OF THE PLAT OF FORT DES MOINES, DES MOINES, POLK COUNTY, IOWA, IN ACCORDANCE WITH THE PLAT THEREOF RECORDED IN BOOK 14447, AT PAGE 391-392 OF THE RECORDS OF THE POLK COUNTY RECORDER'S OFFICE; THENCE N74°15'34"E, ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF MARKET STREET, 126.63 FEET; THENCE S15°44'26"E, 3.50 FEET; THENCE S74°15'34"W, ALONG A LINE PARALLEL WITH AND 3.50 FEET NORMALLY DISTANT SOUTHEASTERLY FROM SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 130.16 FEET; THENCE N15°19'18"W, ALONG A LINE PARALLEL WITH AND 3.50 FEET NORMALLY DISTANT SOUTHWESTERLY FROM THE EASTERLY RIGHT-OF-WAY LINE OF SW 2ND STREET, A DISTANCE OF 191.77 FEET; THENCE N74°40'42"E, 3.50 FEET, TO A POINT ON SAID EASTERLY RIGHT-OF-WAY LINE; THENCE S15°19'18"E, ALONG SAID EASTERLY RIGHT-OF-WAY LINE, 188.25 FEET, TO THE POINT OF BEGINNING. SAID SUBSURFACE EASEMENT CONTAINS 1,114 SQUARE FEET (0.03 ACRE), AND IS SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

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

(Council Communication No. 13- 515)

Moved by Hensley to adopt.

APPROVED AS TO FORM:

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

PSW

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

MOTION CARRIED 7 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