



Roll Call Number

14-1094

Agenda Item Number

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Date July 14, 2014

HEARING ON VACATION OF AIR SPACE OVER PORTIONS OF E. 5TH STREET AND E. GRAND AVENUE ADJOINING 505 EAST GRAND AVENUE, AND ON CONVEYANCE OF AN EASEMENT THEREIN TO 505 EAST GRAND, LLC FOR \$3,885

WHEREAS, on June 9, 2014, by Roll Call No. 14-0850, the City Council received a recommendation from the City Plan and Zoning Commission that air space over East 5th Street and East Grand Avenue rights-of-way adjoining 505 East Grand Avenue (herein "City Air Space"), be vacated to allow for overhang elements of a mixed-use building project to extend over the public sidewalks in East Grand Avenue and East 5th Street rights-of-way at a height of 10 feet above grade, subject to certain conditions as set forth below; and

WHEREAS, 505 East Grand, LLC is the owner of the real property locally known as 505 East Grand Avenue, which property abuts the City Air Space, and has offered to the City of Des Moines the purchase price of \$3,885 for the vacation and purchase of an air space easement interest in the City Air Space for the purposes described above, which purchase price reflects the fair market value of the easement as currently estimated by the City's Real Estate Division; and

WHEREAS, the vacation and conveyance is proposed to be approved subject to the requirements of the City Plan and Zoning Commission recommendation, as follows:

1. Any overhang elements shall generally be in accordance with the submitted building elevations and site sketch.
2. Compliance with comments by the Urban Design Review Board for any portions of the proposed project that will affect the adjoining rights-of-way.
3. Compliance with street tree planting specifications approved by the Permit and Development Center through a revised landscaping plan, and Tatarian Maple trees placed in planter beds at the approved locations; and

WHEREAS, there is no known current or future public need or benefit for the City Air Space proposed to be vacated, and the City will not be inconvenienced by the vacation and conveyance of an easement interest in said property as described herein; and

WHEREAS, on June 23, 2014, by Roll Call No. 14-0951, it was duly resolved by the City Council that the proposed vacation and proposed conveyance of such easement be set down for hearing on July 14, 2014, at 5:00 p.m., in the City Council Chamber; and

WHEREAS, due notice of said proposal to vacate the City Air Space and convey the proposed easement therein was given as provided by law, setting forth the time and place for hearing on said proposal; and

WHEREAS, in accordance with City Council direction, 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:



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1. Upon due consideration of the facts and statements of interested persons, any and all objections to said proposed vacation and proposed conveyance of the easement in such vacated air space as described below are hereby overruled, and the hearing is closed.
2. There is no public need or benefit for the air space proposed to be vacated and the public would not be inconvenienced by reason of the vacation of air space over East 5th Street and East Grand Avenue rights-of-way adjoining 505 East Grand Avenue, legally described as follows, and said vacation is hereby approved:

LEGAL DESCRIPTION: TRACT 'A' - AWNING - AIR RIGHTS EASEMENT

All of the air space for that part of East 5th Street Right-of-Way adjoining LOT 5 of BLOCK 18 of EAST FORT DES MOINES, an Official Plat, now included and forming a part of the City of Des Moines, Iowa and described as follows:

Beginning at the Northwest Corner of LOT 5 of BLOCK 18 of EAST FORT DES MOINES, an Official Plat, now included and forming a part of the City of Des Moines, Iowa; thence South 15°06'00" East, 65.00 feet along the West Line of said LOT 5, also being the East Right-of-Way Line of East 5th Street; thence South 74°54'00" West, 7.00 feet; thence North 15°06'00" West, 64.99 feet; thence North 74°49'22" East, 7.00 feet to the Point of Beginning, containing 455 Square Feet; located below a plane with an elevation of 55.00 feet (City of Des Moines Datum) and above a plane with an elevation of 35.00 feet (City of Des Moines Datum), all included in and forming a part of the City of Des Moines, Polk County, Iowa.

LEGAL DESCRIPTION: TRACT 'B' - AWNING - AIR RIGHTS EASEMENT

All of the air space for that part of East Grand Avenue Right-of-Way adjoining LOT 4 of BLOCK 18 of EAST FORT DES MOINES, an Official Plat, now included and forming a part of the City of Des Moines, Iowa and described as follows:

Commencing at the Northeast Corner of the West 20 feet of LOT 3 of BLOCK 18 of EAST FORT DES MOINES, an Official Plat, now included and forming a part of the City of Des Moines, Iowa; thence South 74°49'22" West, 20.00 feet along the North Line of said LOT 3, also being the South Right-of-Way Line of East Grand Avenue to the Point of Beginning, also being the Northeast Corner of LOT 4 of said BLOCK 18; thence continuing South 74°49'22" West, 20.00 feet along the North Line of said LOT 4, also being the South Right-of-Way Line of East Grand Avenue; thence North 15°10'38" West, 5.00 feet; thence North 74°49'22" East, 20.00 feet; thence South 15°10'38" East, 5.00 feet to the Point of Beginning, containing 100 Square Feet; located below a plane with an elevation of 58.00 feet (City of Des Moines Datum) and above a plane with an elevation of 38.00 feet (City of Des Moines Datum), all included in and forming a part of the City of Des Moines, Polk County, Iowa.

3. That the sale and conveyance of an easement in such vacated air space as described below, to 505 East Grand, LLC for \$3,885, together with payment by said grantee of the estimated publication and recording costs for this transaction, be and is hereby approved, subject to the conditions set forth in the Plan and Zoning Commission recommendation and set forth herein above:

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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 rights-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 following closing.
6. In accordance with the terms set forth in the Offer to Purchase, the Real Estate Division Manager is authorized and directed to close on the sale and 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. Non-project related land sale proceeds are used to support general operating budget expenses: Org – EG064090.

(Council Communication No. 14-341)

Moved by Gatto to adopt.

APPROVED AS TO FORM:

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

row

| COUNCIL ACTION | YEAS | NAYS | PASS | ABSENT |
|----------------|------|------|----------|--------|
| COWNIE | ✓ | | | |
| COLEMAN | ✓ | | | |
| GATTO | ✓ | | | |
| GRAY | ✓ | | | |
| HENSLEY | ✓ | | | |
| MAHAFFEY | ✓ | | | |
| 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