



Roll Call Number

14-1167

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Date July 28, 2014

**HEARING FOR VACATION OF PORTIONS OF ELM STREET AND SW 6TH STREET
RIGHT-OF-WAY ADJOINING 300 SW 5TH STREET AND CONVEYANCE OF SUCH
RIGHT-OF-WAY AND OTHER ADJOINING CITY-OWNED PROPERTY TO
HARBACH BUILDING, LLC FOR \$51,960**

WHEREAS, on July 28, 2014, by Roll Call No. **14-1163**, the City Council received and filed a recommendation from the City's Plan and Zoning Commission to deny a request by Harbach Building, LLC (purchaser), represented by Kent Mauck, and by Ricon LLC (owner), that portions of Elm Street and SW 6th Street right-of-way adjoining 300 SW 5th Street, be vacated due in part to vehicle maneuvering concerns raised by an adjoining property owner; and

WHEREAS, Harbach Building, LLC is the purchaser of the property locally known as 300 SW 5th Street that abuts portions of Elm Street and SW 6th Street right-of-way ("City Right-of-Way"), and has offered to the City of Des Moines the purchase price of \$51,960.00 for the vacation and purchase of the City Right-of-Way and other adjoining City-owned property, as described below, for construction of a parking lot, which price reflects the restricted-use fair market value of the property as determined by an independent appraisal; and

WHEREAS, the terms of the proposed sale include, among other terms, provisions that: (1) use of the property is subject to easement for existing public utilities; (2) closing is subject to demonstration by Harbach Building, LLC of closing on the purchase and ownership of 300 SW 5th Street; (3) the property is subject to a no-build restriction prohibiting improvements other than parking lot and associated improvements, which restriction can be removed, upon resolution of the City Council, following appraisal of the property and payment by the buyer of the unrestricted fair market value thereof less the purchase price already paid; (4) provision of a public access easement upon the property for pedestrian traffic generally connecting SW 6th Street with the West Martin Luther King Jr. Parkway sidewalk; (5) use of the property is undertaken in accordance with the conceptual site sketch attached to the Offer to Purchase and a site plan approved administratively by the City; and (6) any parking lot frontage along SW 5th Street, West Martin Luther King Jr. Parkway and SW 7th Street on the property shall have a perimeter ornamental metal fence; and

WHEREAS, there is no known current or future public need or benefit for the City Right-of-Way proposed to be vacated and sold, or for the adjoining City-owned property proposed to be sold, and the City will not be inconvenienced by the sale of said property; and

WHEREAS, on July 14, 2014, by Roll Call No. 14-1054, it was duly resolved by the City Council that the proposed vacation of City Right-of-Way and conveyance of the City Right-of-Way and conveyance of the adjoining City-owned property be set down for hearing on July 28, 2014, at 5:00 p.m., in the Council Chamber; and

WHEREAS, due notice of said proposal to vacate public right-of-way and convey such City Right-of-Way and adjoining City-owned property was given as provided by law, setting forth the time and place for hearing on said proposal; and

WHEREAS, following said July 14, 2014 resolution and publication, the City Right-of-Way, as legally described below, has been reduced in square footage and purchase price upon request of Harbach Building, LLC, to address the vehicle maneuvering concerns raised by the adjoining property owner, and therefore the City Right-of-Way as



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legally described and for the purchase price stated herein reflects a portion of the right-of-way as described in Roll Call No. 14-1054 and thereafter published; 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:

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 and conveyance of City-owned property, 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 portions of Elm Street and SW 6th Street right-of-way adjoining 300 SW 5th Street, legally described as follows, and said vacation is hereby approved:

AN IRREGULAR SHAPED PORTION OF SW 6TH STREET RIGHT OF WAY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 4, FORT DES MOINES, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA; THENCE SOUTH 15°(DEGREES)19'(MINUTES)55"(SECONDS) EAST (ASSUMED BEARING FOR THE PURPOSE OF THIS DESCRIPTION) ALONG THE SOUTHERLY EXTENSION OF SAID LOT 4, 28.01 FEET; THENCE SOUTH 74°14'51" WEST, 33.00 FEET TO THE CENTERLINE OF SAID SW 6TH STREET AS IT IS PRESENTLY ESTABLISHED; THENCE NORTH 15°19'55" WEST ALONG SAID CENTERLINE OF SW 6TH STREET, 71.95 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF WEST MARTIN LUTHER KING JR PARKWAY AS IT IS PRESENTLY ESTABLISHED; THENCE NORTH 79°58'05" EAST ALONG SAID SOUTHERLY RIGHT OF WAY LINE, 33.15 FEET TO THE WESTERLY LINE OF SAID LOT 4; THENCE SOUTH 15°19'55" EAST ALONG THE WESTERLY LINE OF SAID LOT 4, 40.60 FEET TO THE POINT OF BEGINNING. CONTAINING APPROXIMATELY 2,319 SQUARE FEET.

AND

AN IRREGULAR SHAPED PORTION OF ELM STREET RIGHT OF WAY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEASTERLY CORNER OF LOT 12, REPLAT OF PART OF FACTORY ADDITION, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND BEING THE INTERSECTION OF THE PRESENT SOUTHERLY RIGHT OF WAY LINE OF ELM STREET AND THE PRESENT WESTERLY RIGHT OF WAY LINE OF SW 5TH STREET; THENCE SOUTH 74°(DEGREES) 14'(MINUTES) 51" (SECONDS) WEST (ASSUMED BEARING FOR THE PURPOSE OF THIS DESCRIPTION) ALONG THE NORTHERLY LINE OF SAID LOT 12, AND BEING THE PRESENT SOUTHERLY RIGHT OF WAY LINE OF ELM STREET, 133.56 FEET TO THE NORTHWESTERLY CORNER OF SAID LOT 12; THENCE NORTH 15°45'10" WEST, 35.00 FEET; THENCE SOUTH 74°14'51" WEST, 149.28 FEET; THENCE NORTH 15°19'55" WEST, 3.00 FEET; THENCE NORTH 74°16'51" EAST, 283.08 FEET; THENCE SOUTH 15°20'24" EAST, 37.84 FEET TO THE POINT OF BEGINNING. CONTAINING APPROXIMATELY 5,505 SQUARE FEET.



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3. That the sale and conveyance of such vacated right-of-way and other adjoining City-owned property, as legally described below, to Harbach Building, LLC for \$51,960, together with payment by such grantee of the estimated publication and recording costs for this transaction, be and is hereby approved subject to the conditions set forth hereinabove and in the Offer to Purchase:

ALL THAT PART OF LOTS 4 AND 5, BLOCK 17, FORT DES MOINES, AN OFFICIAL PLAT, AND PART OF THE VACATED RIGHT OF WAY OF ELM STREET , AND THE INTERVENING ALLEYS IN SAID PARCEL, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERLY CORNER OF SAID LOT 5, AND BEING THE INTERSECTION OF THE PRESENT NORTHERLY RIGHT OF WAY LINE OF ELM STREET AND THE PRESENT WESTERLY RIGHT OF WAY LINE OF SOUTHWEST 5TH STREET; THENCE SOUTH 15°(DEGREES) 20'(MINUTES) 24" (SECONDS) EAST (ASSUMED BEARING FOR THE PURPOSE OF THIS DESCRIPTION) ALONG THE SOUTHERLY EXTENSION OF THE EAST LINE OF SAID LOT 5, 28.00 FEET; THENCE NORTH 74°18'06" WEST, 283.08 FEET; THENCE NORTH 15°19'55" WEST, 28.01 FEET TO THE SOUTHWEST CORNER OF SAID LOT 4; THENCE NORTH 74°09'37" EAST ALONG THE SOUTHERLY LINE OF SAID LOT 4, 133.30 FEET TO THE SOUTHEAST CORNER OF SAID LOT 4; THENCE NORTH 15°20'12" WEST ALONG THE EASTERLY LINE OF SAID LOT 4, 20.82 FEET; THENCE SOUTH 75°02'29" WEST, 133.29 FEET TO THE WEST LINE OF SAID LOT 4; THENCE NORTH 15°19'55" WEST ALONG THE WEST LINE OF SAID LOT 4, 17.73 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF WEST MARTIN LUTHER KING JR PARKWAY AS IT IS PRESENTLY ESTABLISHED; THENCE NORTH 79°58'05" EAST ALONG SAID SOUTHERLY RIGHT OF WAY LINE, 235.40 FEET; THENCE SOUTH 10°01'55" EAST, 12.05 FEET; THENCE NORTH 79°58'05" EAST 50.00 FEET TO THE POINT OF BEGINNING. CONTAINING APPROXIMATELY 11,932 SQUARE FEET.

AND

AN IRREGULAR SHAPED PORTION OF VACATED SW 6TH STREET RIGHT OF WAY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 4, FORT DES MOINES, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA; THENCE SOUTH 15°(DEGREES)19'(MINUTES)55"(SECONDS) EAST (ASSUMED BEARING FOR THE PURPOSE OF THIS DESCRIPTION) ALONG THE SOUTHERLY EXTENSION OF SAID LOT 4, 28.01 FEET; THENCE SOUTH 74°14'51" WEST, 33.00 FEET TO THE CENTERLINE OF SAID SW 6TH STREET AS IT IS PRESENTLY ESTABLISHED; THENCE NORTH 15°19'55" WEST ALONG SAID CENTERLINE OF SW 6TH STREET, 71.95 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF WEST MARTIN LUTHER KING JR PARKWAY AS IT IS PRESENTLY ESTABLISHED; THENCE NORTH 79°58'05" EAST ALONG SAID SOUTHERLY RIGHT OF WAY LINE, 33.15 FEET TO THE WESTERLY LINE OF SAID LOT 4; THENCE SOUTH 15°19'55" EAST ALONG THE WESTERLY LINE OF SAID LOT 4, 40.60 FEET TO THE POINT OF BEGINNING. CONTAINING APPROXIMATELY 2,319 SQUARE FEET.

AND



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AN IRREGULAR SHAPED PORTION OF VACATED ELM STREET RIGHT OF WAY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF LOT 12, REPLAT OF PART OF FACTORY ADDITION, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND BEING THE INTERSECTION OF THE PRESENT SOUTHERLY RIGHT OF WAY LINE OF ELM STREET AND THE PRESENT WESTERLY RIGHT OF WAY LINE OF SW 5TH STREET; THENCE SOUTH 74°(DEGREES) 14'(MINUTES) 51" (SECONDS) WEST (ASSUMED BEARING FOR THE PURPOSE OF THIS DESCRIPTION) ALONG THE NORTHERLY LINE OF SAID LOT 12, AND BEING THE PRESENT SOUTHERLY RIGHT OF WAY LINE OF ELM STREET, 133.56 FEET TO THE NORTHWESTERLY CORNER OF SAID LOT 12; THENCE NORTH 15°45'10" WEST, 35.00 FEET; THENCE SOUTH 74°14'51" WEST, 149.28 FEET; THENCE NORTH 15°19'55" WEST, 3.00 FEET; THENCE NORTH 74°16'51" EAST, 283.08 FEET; THENCE SOUTH 15°20'24" EAST, 37.84 FEET TO THE POINT OF BEGINNING. CONTAINING APPROXIMATELY 5,505 SQUARE FEET.

4. The Mayor is authorized and directed to sign the Offer to Purchase and the Quit Claim Deed for the conveyances 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 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.
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 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. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division Manager shall mail the original of the Quit Claim Deed and copies of the other documents to the grantee.
8. The proceeds associated with the sale of this property will be deposited into the following accounts:
 - (a) 2014-15 CIP, Street Improvements - 15, Fed Title-23 Land Sales, ST500 - \$31,382
 - (b) Non-project related land sale proceeds are used to support general operating budget expenses: Org - EG064090 - \$20,578

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(Council Communication No. 14-367)

Moved by Hensley to adopt.

APPROVED AS TO FORM:

Glenna K. Frank

Glenna K. Frank, Assistant City Attorney

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