

★ Roll Call Number

15-0424

Agenda Item Number

61A

Date March 9, 2015

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**SET HEARING FOR VACATION OF AIR SPACE AND SUBSURFACE RIGHTS WITHIN
EAST GRAND AVENUE AND SUBSURFACE RIGHTS WITHIN EAST 4TH STREET
ADJOINING 401 EAST GRAND AVENUE, AND FOR CONVEYANCE OF EASEMENTS TO
IOWA MACHINE SHED COMPANY FOR \$6,093**

WHEREAS, on December 22, 2014, by Roll Call No. 14-1928, the City Council received a recommendation from the City Plan and Zoning Commission that a portion of the air space over East Grand Avenue, and a portion of East Grand Avenue and East 4th Street rights-of-way adjoining 409-423 East Grand Avenue (herein collectively "City Right-of-Way"), be vacated to allow for the construction and maintenance of an entrance canopy and a sign over East Grand Avenue right-of-way, and to allow for the construction, repair and maintenance of below grade footings and foundations, all for the 6-story AC Marriot Hotel with underground and surface parking proposed to be constructed on the real property locally known as 409-423 East Grand Avenue; and

WHEREAS, Iowa Machine Shed Company is currently negotiating the terms of a development agreement with the City of Des Moines which includes the purchase of the real property locally known as 409 through 423 East Grand Avenue, which property abuts the City Right-of-Way; and

WHEREAS, Iowa Machine Shed Company has offered to the City of Des Moines the purchase price of \$6,093 for the vacation of the City Right-of-Way and purchase of an air space easement interest in portions of East Grand Avenue right-of-way, and subsurface encroachment easement interests in the East Grand Avenue and East 4th Street rights-of-way, for the purposes described above, which purchase price reflects the fair market value of the easements as currently estimated by the City's Real Estate Division; and

WHEREAS, the vacation and conveyance is proposed to be approved subject to Iowa Machine Shed Company closing on and providing proof of ownership of the real property located at 409 - 423 East Grand Avenue, and subject to the requirements of the City Plan and Zoning Commission recommendation dated December 12, 2014 and presented to the Des Moines City Council on December 22, 2014; and

WHEREAS, the above referenced property located at 409-423 East Grand Avenue consists of multiple tax parcels, which have since been combined into a single tax parcel with a new address of 401 East Grand Avenue; and

WHEREAS, the City will not be inconvenienced by the vacation and conveyance of easement interests in the right-of-way as described herein; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, as follows:

1. That the City Council of the City of Des Moines shall consider adoption of an ordinance permanently vacating a portion of the air space over East Grand Avenue, and a subsurface area of East Grand Avenue and East 4th Street rights-of-way adjoining 401 East Grand Avenue, more specifically described as follows:



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AREA 1 - AIR RIGHTS EASEMENT DESCRIPTION:

ALL OF THE AIR SPACE FOR THAT PART OF EAST GRAND AVENUE RIGHT-OF-WAY LYING ADJACENT TO AND NORTH OF LOT 5, BLOCK 9 OF EAST FORT DES MOINES, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 4 OF SAID BLOCK 9; THENCE SOUTH 74°50'22" WEST ALONG THE NORTH LINE OF SAID LOT 4 AND SAID LOT 5, A DISTANCE OF 69.88 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 74°50'22" WEST ALONG SAID NORTH LINE OF LOT 5, A DISTANCE OF 36.94 FEET; THENCE NORTH 15°09'38" WEST, 12.00 FEET; THENCE NORTH 74°50'22" EAST, 37.00 FEET; THENCE SOUTH 14°54'28" EAST, 12.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.01 ACRES (444 S.F.) WHICH IS BELOW A PLANE ELEVATION OF 48.21 FEET CITY DATUM AND WHICH IS ABOVE A PLANE ELEVATION OF 41.42 FEET CITY DATUM. THE GROUND ELEVATION WITHIN SAID DESCRIPTION IS APPROXIMATELY 27.2 FEET.

AREA 2 - AIR RIGHTS EASEMENT DESCRIPTION:

ALL OF THE AIR SPACE FOR THAT PART OF EAST GRAND AVENUE RIGHT-OF-WAY LYING ADJACENT TO AND NORTH OF LOTS 4 AND 5, BLOCK 9 OF EAST FORT DES MOINES, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 4; THENCE SOUTH 74°50'22" WEST ALONG THE NORTH LINE OF SAID LOT 4, A DISTANCE OF 31.63 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 74°50'22" WEST ALONG THE NORTH LINE OF SAID LOTS 4 AND 5, A DISTANCE OF 38.19 FEET; THENCE NORTH 15°09'38" WEST, 3.00 FEET; THENCE NORTH 74°50'22" EAST, 38.19 FEET; THENCE SOUTH 15°09'38" EAST, 3.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 115 S.F. WHICH IS BELOW A PLANE ELEVATION OF 103.44 FEET CITY DATUM AND WHICH IS ABOVE A PLANE ELEVATION OF 41.42 FEET CITY DATUM. THE GROUND ELEVATION WITHIN SAID DESCRIPTION IS APPROXIMATELY 28.4 FEET.

PROPERTY SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.

SUBSURFACE RIGHTS EASEMENT DESCRIPTION:

ALL THAT PART OF EAST GRAND AVENUE RIGHT-OF-WAY LYING ADJACENT TO AND NORTH OF BLOCK 9 OF EAST FORT DES MOINES AND THAT PART OF EAST 4TH STREET RIGHT-OF-WAY LYING WEST OF THE EAST 47.5 FEET OF LOT 6 OF SAID BLOCK 9 OF EAST FORT DES MOINES, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 4 OF SAID BLOCK 9; THENCE SOUTH 74°50'22" WEST ALONG THE SOUTH RIGHT-OF-WAY LINE OF EAST GRAND AVENUE, 167.50 FEET; THENCE SOUTH 15°24'21" EAST ALONG THE EAST RIGHT-OF-WAY LINE OF EAST 4TH STREET, 43.67 FEET;

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THENCE SOUTH 74°35'39" WEST, 5.00 FEET; THENCE NORTH 15°24'21" WEST, 48.69 FEET; THENCE NORTH 74°50'22" EAST, 205.42 FEET; THENCE SOUTH 15°09'38" EAST, 5.00 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF SAID EAST GRAND AVENUE; THENCE SOUTH 74°50'22" WEST ALONG SAID SOUTH RIGHT-OF-WAY LINE, 32.90 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.03 ACRES (1,245 S.F.).

PROPERTY SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.

2. That if the City Council decides to vacate the above described air space and subsurface areas, the City of Des Moines proposes to convey air space and subsurface encroachment easements in such vacated City Right-of-Way, as described below, to Iowa Machine Shed Company for \$6,093, subject to all conditions set forth in the above-described Plan and Zoning Commission recommendation:

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AREA 2 - AIR RIGHTS EASEMENT DESCRIPTION:

ALL OF THE AIR SPACE FOR THAT PART OF VACATED EAST GRAND AVENUE RIGHT-OF-WAY LYING ADJACENT TO AND NORTH OF LOTS 4 AND 5, BLOCK 9 OF EAST FORT DES MOINES, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

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PROPERTY SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.

3. That the meeting of the City Council at which the adoption of said ordinance and the sale and conveyance of such air space and subsurface encroachment easements are to be considered shall be on March 23, 2015, said meeting to be held at 5:00 p.m., in the City Council Chamber, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa.
4. That the City Clerk is hereby authorized and directed to publish notice of said proposal in the form hereto attached, all in accordance with Section 362.3 of the Iowa Code.
5. Non-project related land sale proceeds are used to support general operating budget expenses: Org – EG064090.

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Moved by Gatto to adopt.

APPROVED AS TO FORM:

Cori Kuhn Coleman, Assistant City Attorney

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

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
GATTO	✓			
GREY	✓			
HENSLEY	✓			
MAHAFFEY	✓			
MOORE	✓			
TOTAL	7			

MOTION CARRIED

APPROVED

T. M. Franklin Council Mayor