



**Roll Call Number**

15-1061

**Agenda Item Number**

51

Page 1

**Date** June 22, 2015

**HOLD HEARING FOR VACATION OF SURFACE AND SUBSURFACE RIGHTS IN PORTIONS OF 4TH STREET, COURT AVENUE AND 5TH AVENUE ADJOINING 420 COURT AVENUE AND CONVEYANCE OF SURFACE AND SUBSURFACE EASEMENTS TO 420 COURT AVENUE, LLC FOR \$15,280.00**

**WHEREAS**, on May 18, 2015, by Roll Call No. 15-0805, the City Council received a recommendation from the City Plan and Zoning Commission that portions of 4<sup>th</sup> Street, Court Avenue and 5<sup>th</sup> Avenue rights-of-way adjoining 420 Court Avenue (herein collectively "City Right-of-Way"), be vacated to allow for the construction, repair and maintenance of vendor area screen wall footings, café patio retaining wall footings, patio screen wall and guard rail footings, and a loading area screen wall and footings as part of the construction and maintenance of a 4-story mixed-use development proposed by 420 Court Avenue, LLC to be constructed on the real property locally known as 420 Court Avenue; and

**WHEREAS**, 420 Court Avenue, LLC 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 420 Court Avenue, which property abuts the City Right-of-Way; and

**WHEREAS**, 420 Court Avenue, LLC has offered to the City of Des Moines the purchase price of \$15,280.00 for the vacation of the City Right-of-Way and purchase of surface and subsurface encroachment easement interests in the 4<sup>th</sup> Street, Court Avenue and 5<sup>th</sup> Avenue 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 subject to 420 Court Avenue, LLC closing on and providing proof of ownership of the real property located at 420 Court Avenue, and subject to the requirements of the City Plan and Zoning Commission recommendation dated May 14, 2015 and presented to the Des Moines City Council on May 18, 2015; and

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

**WHEREAS**, On April 6, 2015, by Roll Call No. 15-0629 the City Council approved the Urban Renewal Agreement for Sale of Land for Private Redevelopment between the City and 420 Court Avenue, LLC for the redevelopment of City-owned property located at 420 Court Avenue, which Agreement includes the purchase of the real property locally known as 420 Court Avenue, which property abuts the City right-of-way along Court Avenue, 5<sup>th</sup> Avenue and 4th Street.; and

**WHEREAS**, on June 8, 2015, by Roll Call No. 15-0908, it was duly resolved by the City Council that the proposed vacation and proposed conveyance of such subsurface and surface easement interests be set down for hearing on June 22, 2015, at 5:00 p.m., in the City Council Chamber; and

**WHEREAS**, due notice of said proposal to vacate the City Right-of-Way and convey the proposed easements was given as provided by law, setting forth the time and place for hearing on said proposal; and



**Roll Call Number**

15-1061

**Agenda Item Number**

51

**Date** June 22, 2015

**WHEREAS**, in accordance with City Council direction, those interested in said proposed vacation and easement conveyances, 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 proposed conveyance of the easements in such vacated right-of-way 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 subsurface and surface portions of 4<sup>th</sup> Street, Court Avenue and 5<sup>th</sup> Avenue rights-of-way adjoining 420 Court Avenue, more specifically described as follows, and said vacation is hereby approved:

**SUBSURFACE RIGHTS EASEMENT AREA DESCRIPTION:**

A Subsurface Rights Easement below grade and across the portion of the vacated Court Avenue right-of-way, the vacated Southwest 4<sup>th</sup> Street right-of-way, and the vacated southwest 5<sup>th</sup> Avenue right-of-way, described as follows:

ALL THAT PART OF VACATED COURT AVENUE AND VACATED SOUTHWEST 4TH STREET RIGHT-OF-WAY LYING ADJACENT TO AND NORTH AND EAST OF BLOCK 20 OF 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 SAID BLOCK 20 OF FORT DES MOINES; THENCE SOUTH 74°13'02" WEST ALONG THE SOUTH RIGHT-OF-WAY LINE OF COURT AVENUE, 152.99 FEET; THENCE NORTH 15°46'58" WEST, 2.00 FEET; THENCE NORTH 74°13'02" EAST, 155.00 FEET; THENCE SOUTH 15°22'54" EAST, 100.00 FEET; THENCE SOUTH 74°37'06" WEST, 2.00 FEET TO THE WEST RIGHT-OF-WAY LINE OF SOUTHWEST 4TH STREET; THENCE NORTH 15°22'54" WEST ALONG SAID WEST LINE, 97.99 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.01 ACRES (506 S.F.).

AND

ALL THAT PART OF VACATED SOUTHWEST 4TH STREET RIGHT-OF-WAY LYING ADJACENT TO AND EAST OF BLOCK 20 OF 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 SOUTHEAST CORNER OF LOT 8 OF SAID BLOCK 20 OF FORT DES MOINES; THENCE NORTH 15°22'54" WEST ALONG THE WEST RIGHT-OF-WAY LINE OF SOUTHWEST 4TH STREET, 90.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 15°22'54" WEST ALONG SAID WEST LINE, 115.00 FEET; THENCE NORTH 74°37'06" EAST, 3.00 FEET; THENCE SOUTH



**Roll Call Number**

15-1061

**Agenda Item Number**

51

**Date** June 22, 2015

15°22'54" EAST, 115.00 FEET; THENCE SOUTH 74°37'06" WEST, 3.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.01 ACRES (345 S.F.).

AND

ALL THAT PART OF VACATED SOUTHWEST 5TH AVENUE RIGHT-OF-WAY LYING ADJACENT TO AND WEST OF BLOCK 20 OF 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 NORTHWEST CORNER OF SAID BLOCK 20 OF FORT DES MOINES; THENCE SOUTH 15°22'54" EAST ALONG THE EAST RIGHT-OF-WAY LINE OF SOUTHWEST 5TH AVENUE, 90.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 15°22'54" EAST ALONG SAID EAST LINE, 85.00 FEET; THENCE SOUTH 74°37'06" WEST, 1.50 FEET; THENCE NORTH 15°22'54" WEST, 85.00 FEET; THENCE NORTH 74°37'06" EAST, 1.50 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.01 ACRES (128 S.F.).

AND

ALL THAT PART OF VACATED SOUTHWEST 5TH AVENUE RIGHT-OF-WAY LYING ADJACENT TO AND WEST OF BLOCK 20 OF 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 SOUTHWEST CORNER OF LOT 5 OF SAID BLOCK 20 OF FORT DES MOINES; THENCE NORTH 15°22'54" WEST ALONG THE EAST RIGHT-OF-WAY LINE OF SOUTHWEST 5TH AVENUE, 85.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 74°37'06" WEST, 4.00 FEET; THENCE NORTH 15°22'54" WEST, 60.00 FEET; THENCE NORTH 74°37'06" EAST, 4.00 FEET TO THE EAST RIGHT-OF-WAY LINE OF SOUTHWEST 5TH AVENUE; THENCE SOUTH 15°22'54" EAST ALONG SAID EAST LINE, 60.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.01 ACRES (240 S.F.).

PROPERTY SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.

**SURFACE RIGHTS EASEMENT AREA DESCRIPTION:**

A Surface Rights Easement above grade and across the vacated southwest 5<sup>th</sup> Avenue right-of-way, described as follows:

ALL THAT PART OF VACATED SOUTHWEST 5TH AVENUE RIGHT-OF-WAY LYING ADJACENT TO AND WEST OF BLOCK 20 OF 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 SOUTHWEST CORNER OF LOT 5 OF SAID BLOCK 20 OF FORT DES MOINES; THENCE NORTH 15°22'54" WEST ALONG THE EAST RIGHT-OF-WAY LINE OF SOUTHWEST 5TH AVENUE, 85.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 74°37'06" WEST, 4.00 FEET; THENCE NORTH 15°22'54" WEST, 60.00 FEET; THENCE NORTH 74°37'06" EAST, 4.00 FEET TO THE



Roll Call Number

15-1061

Agenda Item Number

51

Page 4

Date June 22, 2015

EAST RIGHT-OF-WAY LINE OF SOUTHWEST 5TH AVENUE; THENCE SOUTH 15°22'54" EAST ALONG SAID EAST LINE, 60.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.01 ACRES (240 S.F.).

PROPERTY SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.

- 4. The Mayor is authorized and directed to sign the Offer to Purchase and the Easements 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 portions of the 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(s), 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 conveyance of the Easements and forward the original of the Easements, 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(s) 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. 15-330)

Moved by Hensley to adopt.

APPROVED AS TO FORM:

Lisa A. Wieland, Assistant City Attorney

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

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

MOTION CARRIED APPROVED