

★ Roll Call Number

15-1174

Agenda Item Number

50

Date July 13, 2015

HOLD HEARING FOR THE VACATION OF A PORTION OF WALNUT STREET
ABUTTING COWLES COMMONS AND AMENDMENT WITH DES MOINES PERFORMING
ARTS FOR LEASE OF COWLES COMMONS BLOCK AND CIVIC CENTER BLOCK

WHEREAS, on December 15, 1975, by Roll Call No. 5636, the City Council approved the Contract for Lease and Lease for Development of the Theater Block and the Park Plaza Block with the Civic Center of Greater Des Moines, n/k/a Des Moines Performing Arts; and

WHEREAS, on January 20, 1992, by Roll Call No. 92-204, the City Council approved an Agreement For Purchase of Redeveloper's Leasehold Estate Interest in the Park Plaza Block Property dated January 20, 1992 and filed at Book 6495, Page 5897, et. seq. in the records of the Polk County Recorder, which Agreement incorporated a Second Amendment to the Contract for Lease and Lease; and

WHEREAS, on January 22, 1996, by Roll Call No. 96-331, the City Council approved Third Amendment to the Contract for Lease and Lease dated January 22, 1996 and filed at Book 7411, Page 255 et. seq. in the records of the Polk County Recorder; and

WHEREAS, the Park Plaza Block improvements are more than thirty years old and the property is in need of major renovations and improvements in order to continue as a first-class recreational and cultural amenity in the downtown area; and

WHEREAS, Des Moines Performing Arts desires to enhance and improve the Park Plaza Block and the Theater Block and has undertaken a private fund raising effort to construct and fund capital improvements to the Park Plaza Block and Theater Block in the amount of approximately \$9,000,000 pursuant to a Schematic Design for improvements to the Park Plaza Block and Theater Block; and

WHEREAS, on May 6, 2013, by Roll Call No. 13-0752, the City Council approved the Schematic Design for the Theater Block and the Park Plaza Block and approved all improvements made in accordance with such Schematic Design, which includes in the Park Plaza Block an open plaza for large community events, intimate gathering areas, an interactive fountain, gardens, trees, paved walkways, adjacent sidewalks, lighting, seating, street lights, traffic signals and public art and, in the Theater Block, a paved walkway, and garden areas (hereinafter collectively "the Improvements"); and

WHEREAS, on May 20, 2013, by Roll Call No. 13-0803, the City Council approved the renaming of the Park Plaza Block from "Nollen Plaza" to "Cowles Commons"; and

15-1174

50

Date July 13, 2015

WHEREAS, on May 6, 2013, by Roll Call No. 13-0753, the City Council approved an Urban Renewal Development Agreement between the City and Redeveloper which provides for a \$400,000 economic development grant to Des Moines Performing Arts to be used for the payment or reimbursement of costs related to the construction or installation of improvements to the Park Plaza Block and surrounding area or costs related to its operation, management and maintenance; and

WHEREAS, the parties desire that Des Moines Performing Arts be solely responsible for all operational costs and be responsible for all maintenance and capital costs for the improvements and infrastructure and grounds maintenance, except for tree maintenance, on the Theater Block and the Park Plaza Block; and

WHEREAS, the parties desire to add to the leased Property a portion of vacated 4th Street right-of-way and Locust Street right-of-way abutting the Park Plaza Block needed to accommodate the Improvements on the Park Plaza Block, with the City retaining an easement for a pedestrian pathway between Locust Street and Walnut Street on the leased Property; and

WHEREAS, a Fourth Amendment to Lease of Land for Private Redevelopment has been prepared, a copy of which is on file in the City Clerk's Office, which provides for the lease of a portion of vacated 4th Street right-of-way and Walnut Street right-of-way abutting the Park Plaza Block needed to accommodate the Improvements on the Park Plaza Block, with the City retaining an easement for a pedestrian pathway between Locust Street and Walnut Street on the leased Property. The City shall pay Des Moines Performing Arts \$90,000 per year, with annual increases of \$2,000, in consideration of Des Moines Performing arts providing all maintenance except for tree care. In consideration of Des Moines Performing Arts paying for the Improvements in the amount of approximately \$9,000,000, no additional rent shall be paid to the City for such additional leased area; and

WHEREAS, it is proposed that the area of the leased premises be amended to add the following:

Vacated 4th Street (adjoining Park Plaza Block)

The East 10 feet of vacated 4th Street lying West of and adjoining Block 23, Fort Des Moines, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa, subject to any and all easements, restrictions and covenants of record.

Portions of Vacated Walnut Street (adjoining Park Plaza Block)

The North 7.75 feet of Walnut Street right of way lying South of and adjoining Block 23, Fort Des Moines, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa, subject to any and all easements, restrictions and covenants of record.

★ Roll Call Number

Agenda Item Number

15-1174

50

Date July 13, 2015

WHEREAS, the exclusive use of the above described portions of vacated 4th Street and Walnut Street are not presently required by the City of Des Moines for municipal purposes; and

WHEREAS, on June 22, 2015, by Roll Call No. 15- 1038, it was duly resolved by the City Council that the proposed vacation ordinance and lease of the vacated right-of-way and lease amendment be set down for hearing on July 13, 2015, at 5:00 p.m., in the Council Chamber; and

WHEREAS, due notice of said proposal to vacate and lease the above described real estate and to adopt an Amendment to Lease such real property 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 Amendment to Lease Agreement, 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, that:

1. Upon due consideration of the facts and circumstances of interested persons, the objections to said proposed vacation of right-of-way as described above and lease of the below described real estate are hereby overruled and the hearing is closed:

Vacated 4th Street (adjoining Park Plaza Block)

The East 10 feet of vacated 4th Street lying West of and adjoining Block 23, Fort Des Moines, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa, subject to any and all easements, restrictions and covenants of record.

Portions of Vacated Walnut Street (adjoining Park Plaza Block)

The North 7.75 feet of Walnut Street right of way lying South of and adjoining Block 23, Fort Des Moines, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa, subject to any and all easements, restrictions and covenants of record.

★ Roll Call Number

15-1174

Agenda Item Number

50

Date July 13, 2015

2. Upon due consideration of the facts and statements of interested persons, the objections to said proposed Fourth Amendment to Lease Agreement between the City and Des Moines Performing Arts, a copy of which is on file in the City Clerk's Office, which provides for the lease of a portion of vacated 4th Street right-of-way and vacated Walnut Street right-of-way abutting the Park Plaza Block needed to accommodate the Improvements on the Park Plaza Block, with the City retaining an easement for a pedestrian pathway between Locust Street and Walnut Street on the leased Property. The City shall pay Des Moines Performing Arts \$90,000 per year, with annual increases of \$2,000, in consideration of Des Moines Performing arts providing all maintenance except for tree care. In consideration of Des Moines Performing Arts paying for the Improvements in the amount of approximately \$9,000,000, no additional rent shall be paid to the City for such additional leased area, and to amend the area of the leased premises as described below, are hereby overruled and the hearing is closed:

Disposition Parcel 2A Theater Block (Civic Center)

Block 32 Fort Des Moines (aka Town of Fort Des Moines and Original Town of Fort Des Moines), an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, except that portion thereof nine feet in width lying parallel with and adjoining the westerly boundary line thereof which grantor reserves and by such reservation dedicates for street purposes, subject to any and all easements, restrictions and covenants of record.

Disposition Parcel 2B Park Plaza Block (Cowles Commons f/k/a Nollen Plaza)

Block 23 Fort Des Moines, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, subject to any and all easements, restrictions and covenants of record.

Vacated 4th Street (adjoining Park Plaza Block)

The East 10 feet of vacated 4th Street lying West of and adjoining Block 23, Fort Des Moines, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa, subject to any and all easements, restrictions and covenants of record.

Portions of Vacated Walnut Street (adjoining Park Plaza Block)

The North 7.75 feet of Walnut Street right of way lying South of and adjoining Block 23, Fort Des Moines, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

3. There is no public need for the above described vacated 4th Street and the above described portion of Walnut Street to be vacated and the public would not be inconvenienced by reason of the proposed vacation and lease of such real property.

★ Roll Call Number

15-1174

Agenda Item Number

50

Date

July 13, 2015

4. The Council hereby determines that the consideration in the form of public benefit to the City of the construction of the Improvements described in the Schematic Design approved by the City Council pursuant to Roll Call No. 13-0752, in the approximate amount of \$9,000,000 at the cost of Des Moines Performing Arts is acceptable to the City and constitutes the fair market value for such lease terms for such real property and the proposed Fourth Amendment to Lease Agreement, a copy of which is on file in the City Clerk's Office, be and is hereby approved.

5. The Mayor is authorized and directed to sign said Fourth Amendment to Lease Agreement identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.

6. Upon final passage of an ordinance vacating said Walnut Street right-of-way, the City Clerk is authorized and directed to forward the original of the Amendment to Lease Agreement, 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,

7. Upon receipt of said Amendment, the Real Estate Division of the Engineering Department is authorized and directed to forward the original of said Amendment, 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 said documents to be recorded.

8. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division shall file the original of this Amendment and send copies to the City Clerk, the Land Records Clerk and to the Des Moines Performing Arts.

(Council Communication No. 15-364)

Moved by Hensley to adopt.

APPROVED AS TO FORM:

Ann DiDonato

Ann DiDonato, Assistant City Attorney

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

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.

T. M. Franklin
Mayor

Diane Rauh
City Clerk