



Roll Call Number

15-2148

Agenda Item Number

47

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Date December 21, 2015

**HOLD HEARING FOR VACATION OF A PORTION OF 35TH STREET RIGHT-OF-WAY
ADJOINING 3501 INGERSOLL AVENUE AND CONVEYANCE OF A PERMANENT
EASEMENT FOR BUILDING ENCROACHMENT TO THE ESTATE OF DAVID L. BARNES,
MICHAEL D. BARNES AND EVIE J. BARNES FOR \$100.00**

WHEREAS, the Estate of David L. Barnes, Michael D. Barnes and Evie J. Barnes are the owners of the real property locally known as 3501 Ingersoll Avenue; and

WHEREAS, David Elkin, attorney representing the Estate of David L. Barnes, Michael D. Barnes and Evie J. Barnes, has requested the vacation of a .27 foot segment of 35th Street adjoining 3501 Ingersoll Avenue ("City Right-of-Way"), hereinafter more fully described, and has requested that the City of Des Moines, Iowa ("City") convey a Permanent Easement for Building Encroachment in the vacated City Right-of-Way to the Estate of David L. Barnes, Michael D. Barnes and Evie J. Barnes in order to mitigate the existing encroachment into City right-of-way; and

WHEREAS, the Estate of David L. Barnes, Michael D. Barnes and Evie J. Barnes have offered to the City the purchase price of \$100.00 for the vacation and purchase of the Permanent Easement for Building Encroachment in the City Right-of-Way, which price reflects the fair market value of the City Right-of-Way as currently estimated by the City's Real Estate Division; and

WHEREAS, such portion of City-owned 35th Street right-of-way has been determined by the City Engineer and City Traffic Engineer to have a de minimis impact upon the public use of 35th Street thereby obviating the required Plan and Zoning Commission review; and

WHEREAS, there is no current or future City need or benefit for the City Right-of-Way to be vacated, the City will not be inconvenienced by the vacation of the City Right-of-Way and the conveyance of a Permanent Easement for Building Encroachment to the Estate of David L. Barnes, Michael D. Barnes and Evie J. Barnes; and

WHEREAS, on December 7, 2015, by Roll Call No. 15-2055, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation and conveyance of such Permanent Easement for Building Encroachment be set down for hearing on December 21, 2015, at 5:00 p.m., in the Council Chamber; and

WHEREAS, due notice of said proposal to vacate said City Right-of-Way and convey the Permanent Easement for Building Encroachment 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 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.



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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 conveyance of the Permanent Easement for Building Encroachment 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 a segment of 35th Street adjoining 3501 Ingersoll Avenue, more specifically described as follows:

A PORTION OF THE 35TH STREET RIGHT-OF-WAY LYING EAST OF AND ADJOINING LOT 29 IN THE OFFICIAL PLAT OF LOT 1 OF THE OFFICIAL PLAT OF THE SOUTHEAST ¼ OF THE SOUTHWEST ¼ OF SECTION 6, TOWNSHIP 78 NORTH, RANGE 24 WEST OF THE 5TH P.M., NOW LOCATED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 29; THENCE N00°06'12"W, ALONG THE EAST LINE OF SAID LOT 29, A DISTANCE OF 12.07 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING N00°06'12"W, ALONG SAID EAST LINE, A DISTANCE OF 108.23 FEET TO THE NORTH LINE OF SAID LOT 29; THENCE S89°56'06"E, ALONG SAID NORTH LINE, A DISTANCE OF 0.27 FEET TO AN EXISTING BUILDING WALL; THENCE S00°00'54"W, ALONG SAID BUILDING WALL, A DISTANCE OF 108.23 FEET; THENCE N89°47'21"W, A DISTANCE OF 0.05 FEET TO THE POINT OF BEGINNING, CONTAINING APPROXIMATELY 17.179 SQUARE FEET.

3. That the sale and conveyance of a Permanent Easement for Building Encroachment within such vacated City right-of-way, as described below, to the Estate of David L. Barnes, Michael D. Barnes and Evie J. Barnes for \$100.00, together with payment by such grantee of the estimated publication and recording costs for this transaction, be and is hereby approved:

A PORTION OF THE VACATED 35TH STREET RIGHT-OF-WAY LYING EAST OF AND ADJOINING LOT 29 IN THE OFFICIAL PLAT OF LOT 1 OF THE OFFICIAL PLAT OF THE SOUTHEAST ¼ OF THE SOUTHWEST ¼ OF SECTION 6, TOWNSHIP 78 NORTH, RANGE 24 WEST OF THE 5TH P.M., NOW LOCATED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 29; THENCE N00°06'12"W, ALONG THE EAST LINE OF SAID LOT 29, A DISTANCE OF 12.07 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING N00°06'12"W, ALONG SAID EAST LINE, A DISTANCE OF 108.23 FEET TO THE NORTH LINE OF SAID LOT 29; THENCE S89°56'06"E, ALONG SAID NORTH LINE, A DISTANCE OF 0.27 FEET TO AN EXISTING BUILDING WALL; THENCE S00°00'54"W, ALONG SAID BUILDING WALL, A DISTANCE OF 108.23 FEET; THENCE N89°47'21"W, A DISTANCE OF 0.05 FEET TO THE POINT OF BEGINNING, CONTAINING APPROXIMATELY 17.179 SQUARE FEET.



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- 4. The Mayor is authorized and directed to sign the Offer to Purchase and the Permanent Easement for Building Encroachment 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 City 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 the Permanent Easement for Building Encroachment, 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. The Real Estate Division Manager is authorized and directed to forward the original of the Permanent Easement for Building Encroachment, 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 from the Polk County Recorder, the Real Estate Division Manager shall mail the original of the Permanent Easement for Building Encroachment 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. 15-655)

Moved by Hensley to adopt.

APPROVED AS TO FORM:

Lisa A. Wieland
Lisa A. Wieland, Assistant City Attorney

RSW

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

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