



Roll Call Number

16-0068

Agenda Item Number

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Date January 11, 2016

HOLD HEARING FOR VACATION OF AIR SPACE AND SUBSURFACE RIGHTS IN CITY STREET RIGHT-OF-WAY ADJOINING 219 EAST GRAND AVENUE AND CONVEYANCE OF AN AIR RIGHTS EASEMENT WITHIN EAST GRAND AVENUE AND EAST 2ND STREET, AND CONVEYANCE OF A SUBSURFACE EASEMENT WITHIN EAST GRAND AVENUE, TO 219 GRAND, LLC FOR \$6,307.00

WHEREAS, on December 7, 2015, by Roll Call No. 15-2049, the City Council of the City of Des Moines, Iowa, received a recommendation from the City Plan and Zoning Commission recommending approval of a request from 219 Grand, LLC for the vacation of the air rights over the south 4 feet of East Grand Avenue right-of-way adjoining 219 East Grand Avenue and the east 4 feet of East 2nd Street right of way adjoining 219 East Grand Avenue to allow for balcony encroachments, and for vacation of the subsurface rights within the south 4 feet of East Grand Avenue right-of-way adjoining 219 East Grand Avenue to allow for building footings and foundation, all subject to the reservation of easements for existing utilities in place until such time as they are abandoned or relocated; and

WHEREAS, on April 2, 2001, by Roll Call No. 01-995, the City Council of the City of Des Moines, Iowa, adopted Ordinance No. 13,937 vacating the East 25.25 feet of East 2nd Street right-of-way adjoining 219 East Grand Avenue; and

WHEREAS, 219 Grand, LLC is the owner of the real property locally known as 219 East Grand Avenue, which property is being developed into a new 6-story mixed use building; and

WHEREAS, 219 Grand, LLC has requested the vacation of air space and subsurface rights in portions of East Grand Avenue right-of-way adjoining 219 East Grand Avenue, hereinafter more fully described, and has further requested that the City of Des Moines, Iowa ("City") convey unto 219 Grand, LLC a Permanent Easement For Air Space Above City-owned Property in the vacated portion of East Grand Avenue right-of-way and in the vacated portion of East 2nd Street right-of-way, and a Permanent Subsurface Easement for Building Encroachment in the vacated portion of East Grand Avenue right-of-way, all adjoining 219 East Grand Avenue, hereinafter more fully described, to allow for balcony encroachments and building footing and foundation encroachments as part of the proposed 6-story mixed used building project; and

WHEREAS, 219 Grand, LLC, owner of the adjoining property at 219 East Grand Avenue, has offered to the City the purchase price of \$6,307.00 for the vacation and purchase of a Permanent Easement for Air Space Above City-Owned Property and a Permanent Subsurface 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, on December 21, 2015, by Roll Call No. 15-2115, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation and conveyance of such easement interests be set down for hearing on January 11, 2016, at 5:00 p.m., in the Council Chamber; and

WHEREAS, due notice of said proposal to vacate airspace and subsurface rights in portions of said City Right-of-Way and convey a Permanent Easement for Air Space Above City-Owned Property and a

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Permanent Subsurface 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 of the City of Des Moines, Iowa.

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 air space and subsurface easements 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 air space and subsurface rights in portions of East Grand Avenue right-of-way adjoining 219 East Grand Avenue, more specifically described as follows:

AIR SPACE

THE SOUTH 4.0 FEET OF EAST GRAND AVENUE RIGHT-OF-WAY LYING DIRECTLY ADJACENT TO THE NORTH LINE OF THE WEST 20 FEET OF LOT 2 AND ALL OF LOTS 3, 4, 5, AND 6 OF BLOCK 8, EAST FORT DES MOINES, AN OFFICIAL PLAT, ALL BEING LOCATED BELOW A PLANE WITH A CITY OF DES MOINES DATUM ELEVATION OF 88.0 FEET AND ABOVE A PLANE WITH A CITY OF DES MOINES DATUM ELEVATION OF 48.0 FEET WITH A CITY OF DES MOINES DATUM GROUND ELEVATION OF 25.0 FEET, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

AND

SUBSURFACE

THE SOUTH 4.0 FEET OF EAST GRAND AVENUE RIGHT-OF-WAY LYING NORTH OF AND ADJACENT TO THE WEST 20 FEET OF LOT 2 AND ALL OF LOTS 3, 4, 5, AND 6 OF BLOCK 8, EAST FORT DES MOINES, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

3. That the sale and conveyance of a Permanent Easement for Air Space Above City-Owned Property and a Permanent Subsurface Easement for Building Encroachment within such vacated East Grand Avenue right-of-way and the previously vacated East 2nd Street right-of-way, as described below, to 219 Grand, LLC for \$6,307.00, together with payment by such grantee of the estimated publication and recording costs for this transaction, be and is hereby approved:



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AIR SPACE

THE SOUTH 4.0 FEET OF VACATED EAST GRAND AVENUE RIGHT-OF-WAY LYING DIRECTLY ADJACENT TO THE NORTH LINE OF THE WEST 20 FEET OF LOT 2 AND ALL OF LOTS 3, 4, 5, AND 6 OF BLOCK 8, EAST FORT DES MOINES, AN OFFICIAL PLAT,

AND

THE EAST 4.0 FEET OF VACATED EAST SECOND STREET RIGHT-OF-WAY LYING DIRECTLY ADJACENT TO THE WEST LINE OF SAID LOT 6,

ALL BEING LOCATED BELOW A PLANE WITH A CITY OF DES MOINES DATUM ELEVATION OF 88.0 FEET AND ABOVE A PLANE WITH A CITY OF DES MOINES DATUM ELEVATION OF 48.0 FEET WITH A CITY OF DES MOINES DATUM GROUND ELEVATION OF 25.0 FEET, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

AND

SUBSURFACE

THE SOUTH 4.0 FEET OF VACATED EAST GRAND AVENUE RIGHT-OF-WAY LYING NORTH OF AND ADJACENT TO THE WEST 20 FEET OF LOT 2 AND ALL OF LOTS 3, 4, 5, AND 6 OF BLOCK 8, EAST FORT DES MOINES, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

4. The Mayor is authorized and directed to sign the Offer to Purchase, the Permanent Easement for Air Space Above City-Owned Property and the Permanent Subsurface 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 said air space and subsurface rights in portions of 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 the Easements, 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 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 Easements 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.

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(Council Communication No. 16- 018)

Moved by Gatto to adopt.

APPROVED AS TO FORM:

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

PSW

| COUNCIL ACTION | YEAS | NAYS | PASS | ABSENT |
|----------------|------|------|------|--------|
| COWNIE | ✓ | | | |
| COLEMAN | ✓ | | | |
| GATTO | ✓ | | | |
| GRAY | ✓ | | | |
| HENSLEY | ✓ | | | |
| MOORE | ✓ | | | |
| WESTERGAARD | ✓ | | | |
| TOTAL | | | | |

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