

★ Roll Call Number

16-0883

Agenda Item Number

49

Page 1

Date May 23, 2016

HOLD HEARING FOR VACATION OF AIR SPACE AND SUBSURFACE RIGHTS IN A PORTION OF CITY RIGHT-OF-WAY ADJOINING 215 EAST 3RD STREET AND CONVEYANCE OF A PERMANENT EASEMENT FOR BUILDING ENCROACHMENT AND A PERMANENT EASEMENT FOR AIR SPACE ABOVE CITY-OWNED PROPERTY TO 215 EAST 3RD STREET, LLC FOR \$683.00

WHEREAS, on April 25, 2016, by Roll Call No. 16-0667, the City Council of the City of Des Moines, Iowa, received and filed a communication from the City Plan and Zoning Commission recommending approval of a request from 215 East 3rd Street, LLC for the vacation of a 9-foot by 10-foot segment of East 3rd Street adjoining 215 East 3rd Street (hereinafter "City Right-of-Way") to allow for encroachment of an entrance canopy feature with support beams and grain silo element, subject to the following conditions:

1. Review and approval of the finalized canopy design and elevations by the City's Planning Administrator.
2. Review and approval of an amended Site Plan by the City's Permit and Development Center for any modified parkway planting scheme along East 3rd Street to accommodate the proposed canopy structure ensuring provision of a minimum 6 feet of public pedestrian way clearance.
3. Compliance with all conditions of the existing Non-exclusive Easement for Encroachment onto City-owned Property allowing door swings.
4. Reservation by the City of easements for all existing utilities in place until such time that they are abandoned or are relocated.
5. Compliance with all administrative review comments of the City's Permit and Development Center; and

WHEREAS, 215 East 3rd Street, LLC, owner of the adjoining property at 215 East 3rd Street, has offered to the City the purchase price of \$683.00 for the purchase of a Permanent Easement For Building Encroachment and a Permanent Easement for Air Space Above City-Owned Property in said City Right-of-Way, hereinafter more fully described, to allow for encroachment into the right-of-way of an entrance canopy feature with support beams and grain silo element, 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, 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 a portion of East 3rd Street right-of-way adjoining 215 East 3rd Street; and

WHEREAS, on May 9, 2016, by Roll Call No. 16-0759, 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 May 23, 2016, at 5:00 p.m., in the Council Chamber; and



16.0883

49

Date May 23, 2016

WHEREAS, due notice of said proposal to vacate air space and subsurface rights in a portion of said City Right-of-Way and convey a Permanent Easement For Building Encroachment and a Permanent Easement for Air Space Above City-Owned 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 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 Permanent Easement For Building Encroachment and the Permanent Easement for Air Space Above City-Owned Property 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 a portion of East 3rd Street right-of-way adjoining 215 East 3rd Street, more specifically described as follows:

BUILDING ENCROACHMENT

Two 2.00-foot x 3.50-foot easements in the right-of-way of East 3rd Street as it is presently established adjoining Parcel B of that Plat of Survey filed in Book 15437 at Page 978 in the Office of the Recorder for Polk County, Iowa, of Lots 3 and 4 in Block 2 of Scott and Dean's Addition, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa. Said easements being more particularly described as follows:

Easement #1

Commencing as a point of reference at the Southwest corner of said Parcel B on the East right-of-way line of East 3rd Street; thence North 15(degrees) 26'(minutes) 52''(seconds) West, 99.08 feet along the East right-of-way line of said East 3rd Street to the Point of Beginning; thence South 74°33'08'' West, 3.50 feet; thence North 15°26'52'' West, 2.00 feet; thence North 74°33'08'' East, 3.50 feet to the East right-of-way line of said East 3rd Street; thence South 15°26'52'' East, 2.00 feet along the East right-of-way line of said East 3rd Street to the point of beginning. Containing 7.00 square feet;

Easement #2

Commencing as a point of reference at the Southwest corner of said Parcel B on the East right-of-way line of East 3rd Street; thence North 15(degrees) 26'(minutes) 52''(seconds) West, 107.08 feet along the East right-of-way line of said East 3rd Street to the Point of Beginning; thence South 74°33'08'' West, 3.50 feet; thence North 15°26'52'' West, 2.00 feet; thence North 74°33'08'' East, 3.50 feet to the East right-of-way line of

★ **Roll Call Number**

16-0883

Agenda Item Number

49

Page 3

Date May 23, 2016

said East 3rd Street; thence South 15°26'52" East, 2.00 feet along the East right-of-way line of said East 3rd Street to the point of beginning. Containing 7.00 square feet;

AIR SPACE

A 9.00-foot x 10.00-foot easement in the right-of-way of East 3rd Street as it is presently established adjoining Parcel B of that Plat of Survey filed in Book 15437 at Page 978 in the Office of the Recorder for Polk County, Iowa, of Lots 3 and 4 in Block 2 of Scott and Dean's Addition, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa. Said easement being more particularly described as follows:

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Lying between elevations 31.70 feet and 45.75 feet, City of Des Moines Vertical Datum (reference ground elevation of 21.95 feet at NW corner of easement).

3. That the sale and conveyance of a Permanent Easement For Building Encroachment and a Permanent Easement for Air Space Above City-Owned Property within such vacated East 3rd Street right-of-way, as described below, to 215 East 3rd Street, LLC for \$683.00, together with payment by such grantee of the estimated publication and recording costs for this transaction, be and is hereby approved:

BUILDING ENCROACHMENT

Two 2.00-foot x 3.50-foot easements in the vacated right-of-way of East 3rd Street as it is presently established adjoining Parcel B of that Plat of Survey filed in Book 15437 at Page 978 in the Office of the Recorder for Polk County, Iowa, of Lots 3 and 4 in Block 2 of Scott and Dean's Addition, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa. Said easements being more particularly described as follows:

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Easement #2

Date May 23, 2016

Commencing as a point of reference at the Southwest corner of said Parcel B on the East right-of-way line of East 3rd Street; thence North 15°(degrees) 26'(minutes) 52"(seconds) West, 107.08 feet along the East right-of-way line of said East 3rd Street to the Point of Beginning; thence South 74°33'08" West, 3.50 feet; thence North 15°26'52" West, 2.00 feet; thence North 74°33'08" East, 3.50 feet to the East right-of-way line of said East 3rd Street; thence South 15°26'52" East, 2.00 feet along the East right-of-way line of said East 3rd Street to the point of beginning. Containing 7.00 square feet;

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Lying between elevations 31.70 feet and 45.75 feet, City of Des Moines Vertical Datum (reference ground elevation of 21.95 feet at NW corner of easement).

4. The Mayor is authorized and directed to sign the Offer to Purchase and the Permanent Easement for Building Encroachment and the Permanent Easement for Air Space Above City-Owned Property 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 the portion 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 Permanent Easement for Building Encroachment and the Permanent Easement for Air Space Above City-Owned Property, 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 and the Permanent Easement for Air Space Above City-Owned Property, 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.

★ Roll Call Number

16-0883

Agenda Item Number

49

Page 5

Date May 23, 2016

7. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division Manager shall mail the original of the Permanent Easement for Building Encroachment and the Permanent Easement for Air Space Above City-Owned Property 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. 16-278)

Moved by Gatto to adopt.

APPROVED AS TO FORM:

Lisa A. Wieland

Lisa A. Wieland, Assistant City Attorney

pen

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	1			
COLEMAN	1			
GATTO	1			
GRAY	1			
HENSLEY	1			
MOORE	1			
WESTERGAARD	1			
TOTAL	7			

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 Fauh

City Clerk