



Roll Call Number

16-1935



Agenda Item Number

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Date November 7, 2016

**HOLD HEARING FOR VACATION OF AIR SPACE AND SUBSURFACE RIGHTS IN PORTIONS OF STREET RIGHT-OF-WAY ADJOINING 220 SOUTHEAST 6TH STREET AND CONVEYANCE OF A PERMANENT EASEMENT FOR AIR SPACE WITHIN EAST ELM STREET AND SOUTHEAST 6TH STREET RIGHT-OF-WAY, AND CONVEYANCE OF A PERMANENT SUBSURFACE EASEMENT WITHIN EAST ELM STREET AND SOUTHEAST 5TH STREET RIGHT-OF-WAY, ALL ADJOINING 220 SOUTHEAST 6TH STREET, TO 220 SE 6TH STREET PROPERTIES, LLC FOR \$732.00**

**WHEREAS**, 220 SE 6<sup>th</sup> Street Properties, LLC is the owner of the real property locally known as 220 Southeast 6<sup>th</sup> Street, which property is being developed with a new office building with structured parking; and

**WHEREAS**, 220 SE 6<sup>th</sup> Street Properties, LLC has requested the vacation of air space and subsurface rights in portions of Southeast 5<sup>th</sup> Street, Southeast 6<sup>th</sup> Street and East Elm Street right-of-way all adjoining 220 Southeast 6<sup>th</sup> Street, hereinafter more fully described (collectively "City Right-of-Way"), and has further requested that the City of Des Moines, Iowa ("City") convey unto 220 SE 6<sup>th</sup> Street Properties, LLC a Permanent Easement For Air Space Above City-Owned Property in the vacated portion of Southeast 6<sup>th</sup> Street and East Elm Street right-of-way, and a Permanent Subsurface Easement for Building Encroachment in the vacated Southeast 5<sup>th</sup> Street and East Elm Street right-of-way, all adjoining 220 Southeast 6<sup>th</sup> Street, hereinafter more fully described, in order to allow for entrance canopy and building parapet encroachments and building footing and foundation encroachments into the City Right-of-Way; and

**WHEREAS**, 220 SE 6<sup>th</sup> Street Properties, LLC has offered to the City the purchase price of \$732.00 for the purchase of a Permanent Easement for Air Space Above City-Owned Property and a Permanent Subsurface Easement for Building Encroachment in the vacated portions of Southeast 5<sup>th</sup> Street, Southeast 6<sup>th</sup> Street and East Elm Street right-of-way, all adjoining 220 Southeast 6<sup>th</sup> Street, which price reflects the fair market value of the City Right-of-Way as determined by the City's Real Estate Division; and

**WHEREAS**, on October 24, 2016, by Roll Call No. 16-1817, 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 November 7, 2016, at 5:00 p.m., in the Council Chamber; and

**WHEREAS**, due notice of said proposal to vacate air space 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 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.



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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 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 City 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 Southeast 5<sup>th</sup> Street, Southeast 6<sup>th</sup> Street and East Elm Street right-of-way all adjoining 220 Southeast 6<sup>th</sup> Street, more specifically described as follows:

**SUBSURFACE:**

**EXH-1**

A ONE FOOT SUBSURFACE FOOTING EASEMENT BEING A PART OF EAST ELM STREET RIGHT-OF-WAY LYING BETWEEN SOUTHEAST 5TH STREET AND SOUTHEAST 6TH STREET BEING LOCATED IN MARKET SQUARE IN THE TOWN OF DE MOINE, AN OFFICIAL PLAT, INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE SOUTH HALF OF THE SOUTH HALF OF SAID MARKET SQUARE IN THE TOWN OF DE MOINE; THENCE S14°54'27"E, 1.00 FEET; THENCE S74°58'01"W, 206.02 FEET; THENCE N15°01'59"W, 1.00 FEET TO THE NORTH RIGHT-OF-WAY LINE OF EAST ELM STREET; THENCE ALONG SAID NORTH RIGHT-OF-WAY LINE N74°58'01"E, 206.02 FEET TO THE POINT OF BEGINNING. DESCRIBED EASEMENT CONTAINS 206 SQUARE FEET AND IS SUBJECT TO OTHER EASEMENTS AND RESTRICTIONS OF RECORD AND FURTHER SUBJECT TO ANY RIGHTS GRANTED IN CITY OF DES MOINES ORDINANCE NOS. 157 AND 1067;

**EXH-2**

A ONE FOOT SUBSURFACE FOOTING EASEMENT BEING A PART OF SOUTHEAST 5TH STREET RIGHT-OF-WAY LYING BETWEEN EAST ELM STREET AND EAST MARKET STREET BEING LOCATED IN MARKET SQUARE IN THE TOWN OF DE MOINE, AN OFFICIAL PLAT, INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTH HALF OF THE SOUTH HALF OF MARKET SQUARE OF SAID MARKET SQUARE IN THE TOWN OF DE MOINE; THENCE S74°58'01"W, 1.00 FEET; THENCE N14°48'50"W, 13.50 FEET; THENCE N74°58'01"E, 1.00 FEET TO THE EAST RIGHT-OF-WAY LINE OF SOUTHEAST 5TH STREET; THENCE ALONG SAID EAST RIGHT-OF-WAY LINE S14°48'50"E, 13.50 FEET

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TO THE POINT OF BEGINNING. DESCRIBED EASEMENT CONTAINS 14 SQUARE FEET AND IS SUBJECT TO OTHER EASEMENTS AND RESTRICTIONS OF RECORD;

**AIR SPACE:**

**EXH-3**

A FOUR FOOT AIR RIGHTS EASEMENT BEING A PART OF EAST ELM STREET RIGHT-OF-WAY LYING BETWEEN SOUTHEAST 5TH STREET AND SOUTHEAST 6TH STREET BEING LOCATED IN MARKET SQUARE IN THE TOWN OF DE MOINE, AN OFFICIAL PLAT, INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTH HALF OF THE SOUTH HALF OF SAID MARKET SQUARE IN THE TOWN OF DE MOINE; THENCE ALONG THE NORTH RIGHT-OF-WAY LINE OF EAST ELM STREET S74°58'01"W, 167.36 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID NORTH RIGHT-OF-WAY LINE S74°58'01"W, 26.00 FEET; THENCE S15°01'59"E, 4.00 FEET; THENCE N74°58'01"E, 26.00 FEET; THENCE N15°01'59"W, 4.00 FEET TO THE POINT OF BEGINNING. DESCRIBED EASEMENT CONTAINS 104 SQUARE FEET AND IS SUBJECT TO OTHER EASEMENTS, AND RESTRICTIONS OF RECORD AND FURTHER SUBJECT TO ANY RIGHTS GRANTED IN CITY OF DES MOINES ORDINANCE NOS. 157 AND 1067.

ASSUMING A FINISHED FLOOR ELEVATION OF 18.45 FEET (CITY OF DES MOINES VERTICAL DATUM), THE BOTTOM OF CANOPY ELEVATION IS APPROXIMATELY 29.37 FEET (CITY OF DES MOINES VERTICAL DATUM), AND THE TOP OF CANOPY ELEVATION IS APPROXIMATELY 31.05 FEET (CITY OF DES MOINES VERTICAL DATUM);

**EXH-4**

A TWO FOOT AIR RIGHTS EASEMENT BEING A PART OF SOUTHEAST 6TH STREET RIGHT-OF-WAY LYING BETWEEN EAST ELM STREET AND EAST MARKET STREET BEING LOCATED IN MARKET SQUARE IN THE TOWN OF DE MOINE, AN OFFICIAL PLAT, INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTH HALF OF THE SOUTH HALF OF SAID MARKET SQUARE IN THE TOWN OF DE MOINE; THENCE ALONG THE WEST RIGHT-OF-WAY OF SOUTHEAST 6TH STREET N14°54'27"W, 53.45 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID WEST RIGHT-OF-WAY LINE N14°54'27"W, 11.10 FEET; THENCE N75°05'33"E, 2.00 FEET; THENCE S14°54'27"E, 11.10 FEET; THENCE S75°05'33"W, 2.00 FEET TO THE POINT OF BEGINNING. DESCRIBED EASEMENT CONTAINS 22 SQUARE FEET AND IS SUBJECT TO OTHER EASEMENTS AND RESTRICTIONS OF RECORD.



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ASSUMING A FINISHED FLOOR ELEVATION OF 18.45 FEET (CITY OF DES MOINES VERTICAL DATUM), THE BOTTOM OF CANOPY ELEVATION IS APPROXIMATELY 32.42 FEET (CITY OF DES MOINES VERTICAL DATUM), AND THE TOP OF CANOPY ELEVATION IS APPROXIMATELY 33.69 FEET (CITY OF DES MOINES VERTICAL DATUM);

**EXH-5**

A ONE FOOT AIR RIGHTS EASEMENT BEING A PART OF SOUTHEAST 6TH STREET RIGHT-OF-WAY LYING BETWEEN EAST ELM STREET AND EAST MARKET STREET BEING LOCATED IN MARKET SQUARE IN THE TOWN OF DE MOINE, AN OFFICIAL PLAT, INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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ASSUMING A FINISHED FLOOR ELEVATION OF 18.45 FEET (CITY OF DES MOINES VERTICAL DATUM), THE BOTTOM OF PARAPET ELEVATION IS APPROXIMATELY 63.45 FEET (CITY OF DES MOINES VERTICAL DATUM), AND A TOP OF PARAPET ELEVATION IS APPROXIMATELY 65.14 FEET (CITY OF DES MOINES VERTICAL DATUM);

- 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 Southeast 5<sup>th</sup> Street, Southeast 6<sup>th</sup> Street and East Elm Street right-of-way, as described below, to 220 SE 6<sup>th</sup> Street Properties, LLC for \$732.00, together with payment by such grantee of the estimated publication and recording costs for this transaction, subject to the requirements of the Offer to Purchase and the City Plan and Zoning Commission review, be and is hereby approved:

**SUBSURFACE:**

**EXH-1**

A ONE FOOT SUBSURFACE FOOTING EASEMENT BEING A PART OF THE VACATED EAST ELM STREET RIGHT-OF-WAY LYING BETWEEN SOUTHEAST 5TH STREET AND SOUTHEAST 6TH STREET BEING LOCATED IN MARKET SQUARE IN THE TOWN OF DE MOINE, AN OFFICIAL PLAT, INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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BEGINNING AT THE SOUTHEAST CORNER OF THE SOUTH HALF OF THE SOUTH HALF OF SAID MARKET SQUARE IN THE TOWN OF DE MOINE; THENCE S14°54'27"E, 1.00 FEET; THENCE S74°58'01"W, 206.02 FEET; THENCE N15°01'59"W, 1.00 FEET TO THE NORTH RIGHT-OF-WAY LINE OF EAST ELM STREET; THENCE ALONG SAID NORTH RIGHT-OF-WAY LINE N74°58'01"E, 206.02 FEET TO THE POINT OF BEGINNING. DESCRIBED EASEMENT CONTAINS 206 SQUARE FEET AND IS SUBJECT TO OTHER EASEMENTS AND RESTRICTIONS OF RECORD AND FURTHER SUBJECT TO ANY RIGHTS GRANTED IN CITY OF DES MOINES ORDINANCE NOS. 157 AND 1067;

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**AIR SPACE:**

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SUBJECT TO ANY RIGHTS GRANTED IN CITY OF DES MOINES ORDINANCE NOS. 157 AND 1067.

ASSUMING A FINISHED FLOOR ELEVATION OF 18.45 FEET (CITY OF DES MOINES VERTICAL DATUM), THE BOTTOM OF CANOPY ELEVATION IS APPROXIMATELY 29.37 FEET (CITY OF DES MOINES VERTICAL DATUM), AND THE TOP OF CANOPY ELEVATION IS APPROXIMATELY 31.05 FEET (CITY OF DES MOINES VERTICAL DATUM);

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OF-WAY LINE N14°54'27"W, 70.04 FEET; THENCE N75°05'33"E, 1.00 FEET; THENCE S14°54'27"E, 70.04 FEET; THENCE S75°05'33"W, 1.00 FEET TO THE POINT OF BEGINNING. DESCRIBED EASEMENT CONTAINS 70 SQUARE FEET AND IS SUBJECT TO OTHER EASEMENTS AND RESTRICTIONS OF RECORD.

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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. 16-625)

Moved by Gatto to adopt.

APPROVED AS TO FORM:

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

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