

Date June 12, 2017

**HOLD HEARING FOR VACATION OF A PORTION OF CITY RIGHT-OF-WAY ADJOINING  
2301 INGERSOLL AVENUE AND CONVEYANCE OF A SUBSURFACE EASEMENT  
THEREIN TO 23 INGERSOLL LLC FOR \$1,425.00**

**WHEREAS**, on December 5, 2016, by Roll Call No. 16-2060, the City Council of the City of Des Moines, Iowa, received and filed a recommendation from the City Plan and Zoning Commission recommending approval of a request from Vue 23, LLC (developer) represented by Jeff Koch (officer), for vacation of the north 2 feet of Ingersoll Avenue adjoining 2301 Ingersoll Avenue to allow for subsurface encroachment of patio footings, subject to reservation of any necessary easements for any existing utilities until such time that they are abandoned or are relocated; and

**WHEREAS**, 23 Ingersoll LLC, represented by Jeff Koch (officer), is the current owner of the real property locally known as 2301 Ingersoll Avenue, which property is being developed into a mixed use building; and

**WHEREAS**, 23 Ingersoll LLC has requested the vacation of a portion of Ingersoll Avenue right-of-way adjoining 2301 Ingersoll Avenue ("City Right-of-Way"), hereinafter more fully described, and has requested that the City convey an easement interest in subsurface rights in the vacated City Right-of-Way to 23 Ingersoll LLC to allow for patio footings for the proposed mixed use building; and

**WHEREAS**, 23 Ingersoll LLC has offered to the City of Des Moines the purchase price of \$1,425.00 for purchase of an Easement for Subsurface Building Encroachment interest in the vacated City Right-of-Way, which price reflects the fair market value of the easement interest in the vacated City Right-of-Way as determined by the City's Real Estate Division; and

**WHEREAS**, there is no known current or future public need for the subsurface rights within the Ingersoll Avenue street right-of-way which adjoin 2301 Ingersoll Avenue, proposed to be vacated and sold, and the City will not be inconvenienced by the vacation and sale of said property interest; and

**WHEREAS**, on May 22, 2017, by Roll Call No. 17-0864, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation and conveyance of such Easement for Subsurface Building Encroachment interest be set down for hearing on June 12, 2017, 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 Easement for Subsurface Building Encroachment interest 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.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Des Moines, Iowa, as follows:

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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 Easement for Subsurface Building Encroachment as legally 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 subsurface rights in a portion of Ingersoll Avenue right-of-way adjoining 2301 Ingersoll Avenue, more specifically described as follows, subject to the reservation of any necessary easements for all existing utilities in place until such time that they are abandoned or relocated:

THAT PART OF SUBSURFACE RIGHT OF WAY OF INGERSOLL AVENUE LYING SOUTH OF AND ADJACENT TO LOT 1 (EXCEPT THE WEST 33 FEET) AND LOTS 2 THROUGH 4 OF THE OFFICIAL PLAT OF LOT 13 OF OFFICIAL PLAT OF THE SOUTHWEST 1/4 OF SECTION 5, TOWNSHIP 78, RANGE 24 WEST OF THE 5TH P.M., ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 4; THENCE SOUTH 00°11'29" EAST, 2.00 FEET; THENCE SOUTH 89°48'31" WEST, 273.39 FEET; THENCE NORTH 00°11'29" WEST, 2.00 FEET TO THE NORTH RIGHT-OF-WAY LINE OF INGERSOLL AVENUE; THENCE NORTH 89°48'31" EAST ALONG SAID NORTH RIGHT-OF-WAY LINE, 273.39 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.01 ACRES (547 S.F.).

PROPERTY SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.

3. That the sale and conveyance of an Easement for Subsurface Building Encroachment interest within such vacated City right-of-way, as legally described below, to 23 Ingersoll LLC for \$1,425.00, together with payment by such grantee of the estimated publication and recording costs for this transaction, subject to the reservation of any necessary easements for all existing utilities in place until such time that they are abandoned or relocated, be and is hereby approved:

THAT PART OF VACATED SUBSURFACE RIGHT-OF-WAY OF INGERSOLL AVENUE LYING SOUTH OF AND ADJACENT TO LOT 1 (EXCEPT THE WEST 33 FEET) AND LOTS 2 THROUGH 4 OF THE OFFICIAL PLAT OF LOT 13 OF OFFICIAL PLAT OF THE SOUTHWEST 1/4 OF SECTION 5, TOWNSHIP 78, RANGE 24 WEST OF THE 5TH P.M., ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 4; THENCE SOUTH 00°11'29" EAST, 2.00 FEET; THENCE SOUTH 89°48'31" WEST, 273.39 FEET; THENCE NORTH 00°11'29" WEST, 2.00 FEET TO THE NORTH RIGHT-OF-WAY LINE OF INGERSOLL AVENUE;

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THENCE NORTH 89°48'31" EAST ALONG SAID NORTH RIGHT-OF-WAY LINE, 273.39 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.01 ACRES (547 S.F.).

PROPERTY SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.

4. The Mayor is authorized and directed to sign the Offer to Purchase and the Easement for Subsurface 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 subsurface portion of 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 Easement for Subsurface 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 Easement for Subsurface 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 back from the Polk County Recorder, the Real Estate Division Manager shall mail the original of the Easement for Subsurface 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. 17-474)

Moved by Hensley to adopt.

APPROVED AS TO FORM:

Ann DiDonato

Ann DiDonato, Assistant City Attorney

PTW

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

APPROVED BY T. M. Franklin Course

**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