



Roll Call Number

18-0927

Agenda Item Number

69

Date May 21, 2018

Page 1

**HOLD HEARING FOR VACATION OF A PORTION OF EAST 5<sup>TH</sup> STREET RIGHT-OF-WAY LOCATED EAST OF AND ADJOINING 440 EAST GRAND AVENUE AND CONVEYANCE OF A PERMANENT EASEMENT FOR BUILDING ENCROACHMENT TO RE3, LLC FOR \$3,960.00**

**WHEREAS**, on April 19, 2018, the City of Des Moines Plan and Zoning Commission, voted to recommend approval of a request from RE3, LLC, owner of the property at 440 East Grand Avenue, to vacate a 5.5-foot by 60.0-foot segment of the west side of East 5th Street right-of-way located east of and adjoining 440 East Grand Avenue, Des Moines, Iowa (hereinafter "City Property"); and

**WHEREAS**, RE3, LLC, owner of 440 East Grand Avenue, has offered to the City the purchase price of \$3,960.00 for the purchase of a Permanent Easement for Building Encroachment (hereinafter "Easement") in said City Property, hereinafter more fully described, to allow for encroachment into the City Property of door swings, footings, and an ADA ramp; which price reflects the fair market value of the Easements as determined by the City's Real Estate Division; and

**WHEREAS**, there is no public need or benefit for the Easement proposed to be conveyed, and the public would not be inconvenienced by reason of the conveyance of the Permanent Easement for Building Encroachment within said City Property; and

**WHEREAS**, on May 7, 2018, by Roll Call No. 18-0763, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation and conveyance of the Permanent Easement for Building Encroachment be set for hearing on May 21, 2018, at 5:00 p.m., in the City Council Chambers, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa; and

**WHEREAS**, due notice of said proposal to vacate a 5.5-foot by 60.0-foot segment of the west side of East 5th Street right-of-way located east of and adjoining 440 East Grand Avenue, Des Moines, Iowa, and convey a Permanent Easement for Building Encroachment in such vacated right-of-way, was given to all necessary parties as provided by law, setting forth the time and place for hearing on said proposal; and

**WHEREAS**, in accordance with City Council direction, those interested in the 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:

1. Upon due consideration of the facts and statements of interested persons, any and all objections to the proposed vacation of a 5.5-foot by 60.0-foot segment of the west side of East 5th Street right-of-way located east of and adjoining 440 East Grand Avenue, Des Moines, Iowa and conveyance of a Permanent Easement for Building Encroachment in such vacated right-of-way, as described herein, are hereby overruled and the hearing is closed.



2. There is no public need or benefit for the street right-of-way proposed to be vacated, and the public would not be inconvenienced by reason of the vacation of said street right-of-way, legally described as follows, and said vacation is hereby approved:

THE EAST 5TH STREET PUBLIC RIGHT OF WAY LYING DIRECTLY ADJACENT TO LOT 8, BLOCK 10, EAST FORT DES MOINES, AN OFFICIAL PLAT RECORDED IN BOOK 'A', PAGE 136, AT THE POLK COUNTY RECORDERS OFFICE IN THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND MORE PARTICULARLY DESCRIBED AS:

COMMENCING AS A POINT OF REFERENCE AT THE NORTHEAST CORNER OF SAID LOT 8; THENCE S15°17'47"E, 32.00 FEET TO THE POINT OF BEGINNING; THENCE S15°17'47"E, 60.00 FEET ALONG THE EAST LINE OF SAID LOT TO A POINT; THENCE N74°42'13"E, 5.50 FEET TO A POINT; THENCE N15°17'47"W, 60.00 FEET TO A POINT; THENCE S74°42'13"W, 5.50 FEET TO THE POINT OF BEGINNING AND ALL CONTAINING 330 SQUARE FEET MORE OR LESS.

3. The proposed conveyance of a Permanent Easement for Building Encroachment in such vacated street right-of-way, as legally described below and to the grantees and for the consideration identified below, subject to reservation of easements therein, is hereby approved:

Grantee: RE3, LLC

Consideration: \$3,960.00

Legal Description: LEGAL DESCRIPTION FOR ENCROACHMENT EASEMENT FOR DOOR SWINGS, FOOTINGS AND ADA RAMP AT 440 E. GRAND AVENUE:

ENCROACHMENT EASEMENT IN THE VACATED EAST 5TH STREET PUBLIC RIGHT OF WAY LYING DIRECTLY ADJACENT TO LOT 8, BLOCK 10, EAST FORT DES MOINES, AN OFFICIAL PLAT RECORDED IN BOOK 'A', PAGE 136, AT THE POLK COUNTY RECORDERS OFFICE IN THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND MORE PARTICULARLY DESCRIBED AS:

COMMENCING AS A POINT OF REFERENCE AT THE NORTHEAST CORNER OF SAID LOT 8; THENCE S15°17'47"E, 32.00 FEET TO THE POINT OF BEGINNING; THENCE S15°17'47"E, 60.00 FEET ALONG THE EAST LINE OF SAID LOT TO A POINT; THENCE N74°42'13"E, 5.50 FEET TO A POINT; THENCE N15°17'47"W, 60.00 FEET TO A POINT; THENCE S74°42'13"W, 5.50 FEET TO THE POINT OF BEGINNING AND ALL CONTAINING 330 SQUARE FEET MORE OR LESS.

4. The Mayor is authorized and directed to sign the Offer to Purchase and Permanent Easement for Building Encroachment for the conveyance as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.

5. 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



Roll Call Number

18-0927

Agenda Item Number

69

Page 3

Date May 21, 2018

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 the 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 Permanent Easement for Building Encroachment and a copy of the other documents to the grantees.

8. Non-project related land sale proceeds are used to support general operating budget expenses: Org - EG064090.

(Council Communication No. 18-271)

Moved by Gatto to adopt.

APPROVED AS TO FORM:

Lisa A. Wieland, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
COLEMAN	✓			
GATTO	✓			
GRAY	✓			
MANDELBAUM	✓			
WESTERGAARD	✓			
TOTAL	7			

MOTION CARRIED

APPROVED

7. M. Franklin Council 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