



Roll Call Number

18-1113



Agenda Item Number

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Date June 25, 2018

HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF PORTIONS OF 5TH AVENUE RIGHT-OF-WAY AND ALLEY RIGHT-OF-WAY AND CONVEYANCE OF A PERMANENT EASEMENT FOR SUBSURFACE BUILDING ENCROACHMENT THEREIN TO 5TH AND WALNUT PARKING LLC FOR \$7,590.00

WHEREAS, 5th and Walnut Parking LLC is the owner of the real property locally known as 422 Walnut Street, Des Moines, Iowa, which property is being developed with a new 11-story mixed-use parking structure; and

WHEREAS, 5th and Walnut Parking LLC has requested the vacation of subsurface rights in portions of 5th Avenue right-of-way and alley right-of-way adjoining 422 Walnut Street, hereinafter more fully described (“City Right-of-Way”), and has further requested that the City of Des Moines, Iowa (“City”) convey unto 5th and Walnut Parking LLC a Permanent Easement for Subsurface Building Encroachment on City-Owned Property (“Easement”), in the vacated City Right-of-Way, hereinafter more fully described, in order to allow for subsurface building footing encroachments into the City Right-of-Way; and

WHEREAS, 5th and Walnut Parking LLC has offered to the City the purchase price of \$7,590.00 for the purchase of said Easement in the vacated City Right-of-Way, which price reflects the fair market value of the City Right-of-Way as determined by the City’s Real Estate Division; and

WHEREAS, the City will not be inconvenienced by the proposed vacation of the City Right-of-Way and conveyance of said Easement; and

WHEREAS, on June 11, 2018, by Roll Call No. 18-1024, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation and conveyance of such Easement be set down for hearing on June 25, 2018, at 5:00 p.m., in the Council Chamber; and

WHEREAS, due notice of said proposal to vacate subsurface rights in portions of said City Right-of-Way and convey said Easement 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 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 Easement as described below are hereby overruled, and the hearing is closed.



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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 subsurface rights in portions of 5th Avenue right-of-way and alley right-of-way, both adjoining 422 Walnut Street, more specifically described as follows:

SUBSURFACE EASEMENT DESCRIPTION:

AREA "A"

ALL OF THE SUBSURFACE SPACE FOR THAT PART OF THE EXISTING 5TH AVENUE RIGHT-OF-WAY LYING ADJACENT TO AND WEST OF BLOCK 21, FORT DES MOINES, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND BEING MORE ARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID BLOCK 21; THENCE SOUTH 15°25'01" EAST ALONG THE WEST LINE OF SAID BLOCK 21, A DISTANCE OF 98.93 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 15° 25' 01" EAST, 206.85 FEET; THENCE SOUTH 74° 34' 59" WEST, 2.50 FEET; THENCE NORTH 15° 25' 01" WEST, 206.85 FEET; THENCE NORTH 74° 34' 59" EAST, 2.50 FEET TO THE POINT OF BEGINNING AND CONTAINING APPROXIMATELY 517 S.F.

AREA "B"

ALL OF THE SUBSURFACE SPACE FOR THAT PART OF THE EXISTING ALLEY RIGHT-OF-WAY LYING ADJACENT TO AND EAST OF LOT 5, BLOCK 21 AND ADJACENT TO AND EAST OF THE EAST-WEST VACATED ALLEY RIGHT-OF-WAY NORTH OF SAID LOT 5 OF SAID BLOCK 21, FORT DES MOINES, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND BEING MORE ARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 6 OF SAID BLOCK 21; THENCE NORTH 15°23'28" WEST ALONG THE EAST LINE OF LOTS 6 AND 5 OF SAID BLOCK 21, A DISTANCE OF 129.03 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 15°23' 28" WEST ALONG SAID EAST LINE AND ALONG THE NORTHERLY EXTENSION OF SAID EAST LINE BEING THE EASTERLY LINE OF SAID VACATED ALLEY RIGHT-OF-WAY NORTH OF SAID LOT 5, A DISTANCE OF 10.00 FEET; THENCE NORTH 74°34' 59" EAST, 2.50 FEET; THENCE SOUTH 15°23' 28" EAST, 10.00 FEET; THENCE SOUTH 74°34' 59" WEST, 2.50 FEET TO THE POINT OF BEGINNING AND CONTAINING APPROXIMATELY 25 S.F.



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3. That the sale and conveyance of a Permanent Easement for Subsurface Building Encroachment on City-Owned Property within such vacated 5th Avenue street right-of-way and alley right-of-way adjoining 422 Walnut Street, as described below, to 5th and Walnut Parking LLC in consideration of \$7,590.00, together with payment of the estimated publication and recording costs for this transaction, subject to the requirements of the Offer to Purchase and the requirements of the City Plan and Zoning Commission, be and is hereby approved:

SUBSURFACE EASEMENT DESCRIPTION:

AREA "A"

ALL OF THE VACATED SUBSURFACE SPACE FOR THAT PART OF THE EXISTING 5TH AVENUE RIGHT-OF-WAY LYING ADJACENT TO AND WEST OF BLOCK 21, FORT DES MOINES, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID BLOCK 21; THENCE SOUTH 15°25'01" EAST ALONG THE WEST LINE OF SAID BLOCK 21, A DISTANCE OF 98.93 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 15° 25' 01" EAST, 206.85 FEET; THENCE SOUTH 74° 34' 59" WEST, 2.50 FEET; THENCE NORTH 15° 25' 01" WEST, 206.85 FEET; THENCE NORTH 74° 34' 59" EAST, 2.50 FEET TO THE POINT OF BEGINNING AND CONTAINING APPROXIMATELY 517 S.F.

AREA "B"

ALL OF THE VACATED SUBSURFACE SPACE FOR THAT PART OF THE EXISTING ALLEY RIGHT-OF-WAY LYING ADJACENT TO AND EAST OF LOT 5, BLOCK 21 AND ADJACENT TO AND EAST OF THE EAST-WEST VACATED ALLEY RIGHT-OF-WAY NORTH OF SAID LOT 5 OF SAID BLOCK 21, FORT DES MOINES, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 6 OF SAID BLOCK 21; THENCE NORTH 15°23'28" WEST ALONG THE EAST LINE OF LOTS 6 AND 5 OF SAID BLOCK 21, A DISTANCE OF 129.03 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 15°23' 28" WEST ALONG SAID EAST LINE AND ALONG THE NORTHERLY EXTENSION OF SAID EAST LINE BEING THE EASTERLY LINE OF SAID VACATED ALLEY RIGHT-OF-WAY NORTH OF SAID LOT 5, A DISTANCE OF 10.00 FEET; THENCE NORTH



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74°34' 59" EAST, 2.50 FEET; THENCE SOUTH 15°23' 28" EAST, 10.00 FEET;
THENCE SOUTH 74°34' 59" WEST, 2.50 FEET TO THE POINT OF BEGINNING
AND CONTAINING APPROXIMATELY 25 S.F.

4. The Mayor is authorized and directed to sign the Offer to Purchase and Easement 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 rights in portions of said City 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, 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, 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 and copies of the other documents to the grantee.
9. Non-project related land sale proceeds are used to support general operating budget expenses: Org - EG064090.



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(Council Communication No. 18-337)

Moved by Coleman to adopt. * Council Member Mandelbaum abstains from voting based on an appearance of a conflict of interest.

APPROVED AS TO FORM:

Lisa A. Wieland, Assistant City Attorney

RM

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
COLEMAN	✓			
GATTO	✓			
GRAY	✓			
* MANDELBAUM				
WESTERGAARD	✓			
TOTAL	6			

MOTION CARRIED APPROVED T. M. Franklin

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