



Roll Call Number

18-1621

Agenda Item Number

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Date September 24, 2018

HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF A PORTION OF WEST MARTIN LUTHER KING, JR. PARKWAY RIGHT-OF-WAY ADJOINING LOT 1, GRAY'S STATION PLAT 1, AND CONVEYANCE OF A PERMANENT EASEMENT FOR BUILDING ENCROACHMENT AND A PERMANENT EASEMENT FOR AIR SPACE ABOVE CITY-OWNED PROPERTY TO HRC NFS I, LLC FOR \$7,500.00

WHEREAS, on August 6, 2018, by Roll Call No. 18-1329, 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 HRC NFS I, LLC to vacate the air rights in a portion of West Martin Luther King, Jr. Parkway adjoining Lot 1, Gray's Station Plat 1, Des Moines, Iowa (hereinafter "City Right-of-Way"), further described below, to allow for the permanent encroachment of balcony and building overhang elements into the City Right-of-Way; and

WHEREAS, HRC NFS I, LLC subsequently requested the vacation of a portion of the City Right-of-Way to allow for the encroachment of door stoops and steps, door swings, bike racks, and building footings and foundations into the vacated right-of-way, which request has been determined by the City Traffic Engineer to have no significant impact upon the public use of the right-of-way, in accordance with Municipal Code 102-286(b); and

WHEREAS, HRC NFS I, LLC, owner of the adjoining property, has offered to the City the purchase price of \$7,500.00 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, which represents \$4,364.00 for the Permanent Easement for Air Space Above City-owned Property, and \$3,136.00 for the Permanent Easement for Building Encroachment, to allow for encroachment into the City Right-of-Way of balcony and building overhang elements, door stoops and steps, door swings, bike racks, and building footings and foundations, which price reflects the fair market value of the Permanent Easement for Building Encroachment and Permanent Easement for Air Space Above City-Owned Property as determined 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 and the conveyance of the Permanent Easement for Building Encroachment and the Permanent Easement for Air Space Above City-Owned Property within said City Right-of-Way; and

WHEREAS, on September 10, 2018, by Roll Call No. 18-1553, it was duly resolved by the City Council of the City of Des Moines, Iowa, that said proposed vacation and conveyance be set down for hearing on September 24, 2018, at 5:00 p.m., in the Council Chamber; and

WHEREAS, due notice of the proposal to vacate 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 to all necessary parties as provided by law, setting forth the time and place for hearing on said proposal; and



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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 City Right-of-Way proposed to be vacated, and the public would not be inconvenienced by reason of the vacation of a portion of West Martin Luther King, Jr. Parkway adjoining Lot 1, Gray's Station Plat 1, Des Moines, Iowa, 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 are relocated:

A PART OF THE RIGHT OF WAY OF WEST MARTIN LUTHER KING JR. PARKWAY LYING, NORTH OF LOT 1, GRAY'S STATION PLAT 1, AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 84°40'04" WEST ALONG THE NORTH LINE OF SAID LOT 1, A DISTANCE OF 193.85 FEET; THENCE SOUTH 86°10'40" WEST CONTINUING ALONG THE SAID NORTH LINE, 100.23 FEET TO A CORNER OF SAID LOT 1; THENCE NORTH 03°49'20" WEST, 5.00 FEET; THENCE NORTH 86°10'40" EAST, 33.35 FEET; THENCE NORTH 02°05'55" WEST, 12.01 FEET; THENCE NORTH 86°10'40" EAST, 142.18 FEET; THENCE NORTH 84°40'04" EAST, 53.94 FEET; THENCE SOUTH 04°39'09" EAST, 10.00 FEET; THENCE NORTH 84°40'04" EAST, 63.94 FEET; THENCE SOUTH 05°19'56" EAST, 5.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.08 ACRES (3,643 SQUARE FEET).

AND

A PART OF THE AIR RIGHTS IN THE RIGHT OF WAY OF WEST MARTIN LUTHER KING JR. PARKWAY LYING NORTH OF LOT 1, GRAY'S STATION PLAT 1, AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 84°40'04" WEST ALONG THE NORTHERLY LINE OF SAID LOT 1, A DISTANCE OF 28.97 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 84°40'04" WEST ALONG SAID NORTHERLY LINE, 164.88 FEET; THENCE SOUTH 86°10'40" WEST CONTINUING ALONG SAID NORTHERLY LINE, 100.23 FEET; THENCE SOUTH 00°21'12" EAST CONTINUING ALONG SAID NORTHERLY LINE, 8.59 FEET; THENCE NORTH 89°04'27" WEST CONTINUING ALONG SAID NORTHERLY LINE, 4.11 FEET; THENCE NORTH 05°19'56" WEST, 11.14 FEET; THENCE NORTH 84°40'04" EAST, 120.17 FEET; THENCE SOUTH 05°19'56" EAST, 5.67 FEET TO SAID NORTHERLY



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LINE OF LOT 1; THENCE NORTH 82°14'52" EAST, 122.14 FEET; THENCE SOUTH 84°46'59" EAST, 28.17 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.02 ACRES (959 SQUARE FEET). APPROXIMATE GROUND ELEVATION IS 29.00 FEET WITH THE BOTTOM OF BALCONY ELEVATION BEING APPROXIMATELY 46.00 FEET AND THE TOP OF BALCONY ELEVATION BEING APPROXIMATELY 95.00 FEET. ELEVATIONS ARE CITY OF DES MOINES VERTICAL DATUM.

3. That the conveyance of a Permanent Easement for Building Encroachment and a Permanent Easement for Air Space Above City-Owned Property within said vacated West Martin Luther King, Jr. Parkway right-of-way, as described below, to HRC NFS I, LLC, for \$7,500.00, together with payment by such grantee of the estimated publication and recording costs for this transaction, is hereby approved:

Building Encroachment Easement

A PART OF THE VACATED RIGHT OF WAY OF WEST MARTIN LUTHER KING JR. PARKWAY LYING, NORTH OF LOT 1, GRAY'S STATION PLAT 1, AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 84°40'04" WEST ALONG THE NORTH LINE OF SAID LOT 1, A DISTANCE OF 193.85 FEET; THENCE SOUTH 86°10'40" WEST CONTINUING ALONG THE SAID NORTH LINE, 100.23 FEET TO A CORNER OF SAID LOT 1; THENCE NORTH 03°49'20" WEST, 5.00 FEET; THENCE NORTH 86°10'40" EAST, 33.35 FEET; THENCE NORTH 02°05'55" WEST, 12.01 FEET; THENCE NORTH 86°10'40" EAST, 142.18 FEET; THENCE NORTH 84°40'04" EAST, 53.94 FEET; THENCE SOUTH 04°39'09" EAST, 10.00 FEET; THENCE NORTH 84°40'04" EAST, 63.94 FEET; THENCE SOUTH 05°19'56" EAST, 5.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.08 ACRES (3,643 SQUARE FEET).

Air Space Easement

A PART OF THE VACATED AIR RIGHTS IN THE RIGHT OF WAY OF WEST MARTIN LUTHER KING JR. PARKWAY LYING NORTH OF LOT 1, GRAY'S STATION PLAT 1, AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 84°40'04" WEST ALONG THE NORTHERLY LINE OF SAID LOT 1, A DISTANCE OF 28.97 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 84°40'04" WEST ALONG SAID NORTHERLY LINE, 164.88 FEET; THENCE SOUTH 86°10'40" WEST CONTINUING ALONG SAID NORTHERLY LINE, 100.23 FEET; THENCE SOUTH 00°21'12" EAST CONTINUING ALONG SAID NORTHERLY LINE, 8.59 FEET; THENCE NORTH 89°04'27" WEST CONTINUING ALONG SAID NORTHERLY LINE, 4.11 FEET; THENCE NORTH 05°19'56" WEST, 11.14 FEET; THENCE NORTH 84°40'04" EAST, 120.17 FEET; THENCE SOUTH 05°19'56" EAST, 5.67 FEET TO SAID NORTHERLY LINE OF LOT 1; THENCE NORTH 82°14'52" EAST, 122.14 FEET; THENCE SOUTH 84°46'59" EAST, 28.17 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.02 ACRES (959 SQUARE FEET). APPROXIMATE GROUND ELEVATION IS 29.00 FEET WITH THE BOTTOM OF BALCONY ELEVATION BEING APPROXIMATELY 46.00 FEET AND THE TOP OF BALCONY ELEVATION



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BEING APPROXIMATELY 95.00 FEET. ELEVATIONS ARE CITY OF DES MOINES VERTICAL DATUM.

(VACATED BY ORDINANCE NO. 15,709, PASSED September 24 2018);

4. The Mayor is authorized and directed to sign the Offer to Purchase, Permanent Easement for Building Encroachment, and 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 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 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.
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.



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Moved by Mandelbaum to adopt.

APPROVED AS TO FORM:

[Signature]

Lisa A. Wieland, Assistant City Attorney

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

MOTION CARRIED

APPROVED

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.

[Signature]

City Clerk

[Signature] Mayor