

★ Roll Call Number
18-1943

Agenda Item Number
45

Date November 19, 2018

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HOLD HEARING FOR VACATION OF PORTIONS OF EAST 4TH STREET, DES MOINES STREET AND EAST 5TH STREET RIGHT-OF-WAY ADJOINING 415 AND 421 DES MOINES STREET AND CONVEYANCE OF A PERMANENT EASEMENT FOR SUBSURFACE BUILDING ENCROACHMENT ON CITY-OWNED PROPERTY TO 555 E FOURTH PARKING, LLC FOR \$13,830.00

WHEREAS, on May 7, 2018, the City Council of the City of Des Moines received a recommendation from the City Plan and Zoning Commission to approve a request from Nelson Construction Services, LLC, represented by Alexander Grgurich (officer) for vacation of the subsurface rights in the east 2.0 feet of East 4th Street, the south 4.5 feet of Des Moines Street and the west 3.0 feet of East 5th Street right-of-way all adjoining 415 and 421 Des Moines Street, Des Moines, Iowa (hereinafter "Property") to allow for building footing encroachments; and

WHEREAS, 555 E Fourth Parking, LLC, successor in interest to Nelson Development 1, LLC, is the owner the real property located south of Des Moines Street between East 4th Street and East 5th Street, formerly locally known as 415 and 421 Des Moines St, and has offered to the City the purchase price of \$13,830.00 for the purchase of a Permanent Easement for Subsurface Building Encroachment on City-owned Property (hereinafter "Easement") in a portion of the Property, hereinafter more fully described, to allow for construction and maintenance of building footings encroaching into the Property; which price reflects the fair market value of the Easement as determined by the City's Real Estate Division; and

WHEREAS, there is no public need or benefit for the subsurface rights proposed to be conveyed, and the public would not be inconvenienced by reason of the conveyance of the Permanent Easement for Subsurface Building Encroachment on City-owned Property; and

WHEREAS, on November 5, 2018, by Roll Call No. 18-1837, 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 Subsurface Building Encroachment on City-owned Property be set for hearing on November 19, 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 the subsurface rights in the east 2.0 feet of East 4th Street, the south 4.5 feet of Des Moines Street and the west 3.0 feet of East 5th Street right-of-way adjoining the property located south of Des Moines Street between East 4th Street and East 5th Street, formerly locally known as 415 and 421 Des Moines St, Des Moines, Iowa, and convey a Permanent Easement for Subsurface Building Encroachment on City-owned Property 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.

Date November 19, 2018

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 the subsurface rights in the east 2.0 feet of East 4th Street, the south 4.5 feet of Des Moines Street and the west 3.0 feet of East 5th Street right-of-way adjoining the property located south of Des Moines Street between East 4th Street and East 5th Street, formerly locally known as 415 and 421 Des Moines St, Des Moines, Iowa and conveyance of a Permanent Easement for Subsurface Building Encroachment on City-owned Property 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 subsurface rights within the street right-of-way proposed to be vacated, and the public would not be inconvenienced by reason of the vacation of said subsurface rights within street right-of-way, legally described as follows, and said vacation is hereby approved:

A PART OF THE EAST 4TH STREET, EAST 5TH STREET, AND DES MOINES STREET RIGHTS-OF-WAY LYING ADJACENT TO LOT 1, BLOCK 10, EAST FORT DES MOINES, AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST OF CORNER OF SAID LOT 1; THENCE SOUTH 15°17'24" EAST ALONG THE WEST LINE OF SAID LOT 1, A DISTANCE OF 142.21 FEET; THENCE SOUTH 74°49'57" WEST, 2.00 FEET; THENCE NORTH 15°17'24" WEST, 146.71 FEET; THENCE NORTH 74°47'22" EAST, 344.75 FEET; THENCE SOUTH 15°20'33" EAST, 155.35 FEET; THENCE SOUTH 74°50'22" WEST, 3.00 FEET TO THE EAST LINE OF SAID LOT 1; THENCE NORTH 15°20'33" WEST ALONG SAID EAST LINE, 150.85 FEET TO THE NORTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 74°47'22" WEST ALONG THE NORTH LINE OF SAID LOT 1, A DISTANCE OF 339.76 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.05 ACRES (2,288 S.F.).

3. The proposed conveyance of a Permanent Easement for Subsurface Building Encroachment on City-owned Property in such vacated subsurface rights within 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: 555 E Fourth Parking, LLC
Consideration: \$13,830.00

Legal Description:

A PART OF THE VACATED EAST 4TH STREET, VACATED EAST 5TH STREET, AND VACATED DES MOINES STREET RIGHTS-OF-WAY LYING ADJACENT TO LOT 1, BLOCK 10, EAST FORT DES MOINES, AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST OF CORNER OF SAID LOT 1; THENCE SOUTH 15°17'24" EAST ALONG THE WEST LINE OF SAID LOT 1, A DISTANCE OF 142.21 FEET; THENCE SOUTH 74°49'57" WEST, 2.00 FEET; THENCE NORTH 15°17'24" WEST, 146.71 FEET; THENCE NORTH 74°47'22" EAST,



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344.75 FEET; THENCE SOUTH 15°20'33" EAST, 155.35 FEET; THENCE SOUTH 74°50'22" WEST, 3.00 FEET TO THE EAST LINE OF SAID LOT 1; THENCE NORTH 15°20'33" WEST ALONG SAID EAST LINE, 150.85 FEET TO THE NORTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 74°47'22" WEST ALONG THE NORTH LINE OF SAID LOT 1, A DISTANCE OF 339.76 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.05 ACRES (2,288 S.F.).

4. The Mayor is authorized and directed to sign the Offer to Purchase and Permanent Easement for Subsurface Building Encroachment on City-owned Property 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 Subsurface Building Encroachment on 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 Subsurface Building Encroachment on 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 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 Subsurface Building Encroachment on City-owned Property 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.

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Moved by Gatto to adopt.

APPROVED AS TO FORM:

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

RSW

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

MOTION CARRIED 7 APPROVED
J. M. Franklin Cownie
 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