



Roll Call Number

19-1538

Agenda Item Number

57

Date September 23, 2019

**HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF A PORTION OF EAST 5<sup>TH</sup> STREET RIGHT-OF-WAY LYING EAST OF AND ADJOINING 120 EAST 5<sup>TH</sup> STREET AND CONVEYANCE OF A PERMANENT EASEMENT FOR BUILDING ENCROACHMENT TO DES MOINES HERITAGE TRUST FOR \$1,730.00**

**WHEREAS**, on August 5, 2019, by Roll Call No. 19-1205, 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 Des Moines Heritage Trust for the vacation of a segment of East 5<sup>th</sup> Street right-of-way adjoining 120 East 5<sup>th</sup> Street (hereinafter "City Right-of-Way") to allow for the reconstruction of an original porte-cochere addition to the eastern façade of the historic railroad depot extending into and above the City Right-of-Way, subject to a City-approved site plan; and

**WHEREAS**, Des Moines Heritage Trust, owner of the adjoining property at 120 East 5<sup>th</sup> Street, has offered to the City the purchase price of \$1,730.00 for the purchase of a Permanent Easement for Building Encroachment, hereinafter more fully described, to allow for encroachment into the City Right-of-Way of a porte-cochere addition to the eastern façade of the historic railroad depot, and further subject to a Permanent Easement for Public Pedestrian Way, which price reflects the fair market value of the Permanent Easement for Building Encroachment as determined by the City's Real Estate Division; and

**WHEREAS**, the public would not be inconvenienced by reason of the vacation and the conveyance of the Permanent Easement for Building Encroachment within said City Right-of-Way; and

**WHEREAS**, on September 9, 2019, by Roll Call No. 19-1395, 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 23, 2019, 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 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 Permanent Easement for Building Encroachment, as described below, are hereby overruled and the hearing is closed.



**Roll Call Number**

19-1538

**Agenda Item Number**

57

**Date** September 23, 2019

2. The public would not be inconvenienced by reason of the vacation of a portion of East 5<sup>th</sup> Street right-of-way lying east of and adjoining 120 East 5<sup>th</sup> Street, more specifically described as follows, subject to a City-approved site plan:

A PART OF THE E. 5TH STREET RIGHT-OF-WAY LYING EAST OF PARCEL 2017-207, FILED IN BOOK 16761, PAGE 952 OF THE POLK COUNTY RECORDER'S OFFICE, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID PARCEL 2017-207; THENCE NORTH 15°04'38" WEST ALONG THE EAST LINE OF SAID PARCEL 2017-207, A DISTANCE OF 13.75 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 15°04'38" WEST ALONG SAID EAST LINE, 19.00 FEET; THENCE NORTH 74°55'22" EAST, 15.17 FEET; THENCE SOUTH 15°04'38" EAST, 19.00 FEET; THENCE SOUTH 74°55'22" WEST, 15.17 FEET TO THE POINT OF BEGINNING, AND CONTAINING 288 SQUARE FEET.

3. That the conveyance of a Permanent Easement for Building Encroachment within said vacated street right-of-way, as described below, subject to a City-approved site plan, and further subject to a Permanent Easement for Public Pedestrian Way, to Des Moines Heritage Trust, for \$1,730.00, together with payment by such grantee of the estimated publication and recording costs for this transaction, is hereby approved:

A PART OF THE VACATED E. 5TH STREET RIGHT-OF-WAY LYING EAST OF PARCEL 2017-207, FILED IN BOOK 16761, PAGE 952 OF THE POLK COUNTY RECORDER'S OFFICE, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID PARCEL 2017-207; THENCE NORTH 15°04'38" WEST ALONG THE EAST LINE OF SAID PARCEL 2017-207, A DISTANCE OF 13.75 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 15°04'38" WEST ALONG SAID EAST LINE, 19.00 FEET; THENCE NORTH 74°55'22" EAST, 15.17 FEET; THENCE SOUTH 15°04'38" EAST, 19.00 FEET; THENCE SOUTH 74°55'22" WEST, 15.17 FEET TO THE POINT OF BEGINNING, AND CONTAINING 288 SQUARE FEET;

(VACATED BY ORDINANCE NO. 15,804 , PASSED September 23 , 2019);

4. The Mayor is authorized and directed to sign the Offer to Purchase and the Permanent Easement for 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 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, 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, together with a certified copy of this resolution and of the affidavit



**Roll Call Number**

19-1538

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57

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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 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.

Moved by *Latto* to adopt.

**APPROVED AS TO FORM:**

*Lisa A. Wieland*

Lisa A. Wieland, Assistant City Attorney

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

MOTION CARRIES

APPROVED

*J. M. Frankhu Cowrie*  
J. M. Frankhu Cowrie 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*  
Diane Rauh City Clerk