



Roll Call Number

Agenda Item Number

19-1646

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Date October 14, 2019

HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF A PORTION OF EAST 4TH STREET AND EAST GRAND AVENUE RIGHT-OF-WAY ADJOINING 418 EAST GRAND AVENUE AND CONVEYANCE OF A PERMANENT EASEMENT FOR SUBSURFACE BUILDING ENCROACHMENT ON CITY PROPERTY AND A PERMANENT EASEMENT FOR AIR SPACE ABOVE CITY-OWNED PROPERTY TO DES MOINES NELSON DEVELOPMENT 1, LLC FOR \$12,630.00

WHEREAS, on September 5, 2019, the City Plan and Zoning Commission voted to approve a request from Nelson Development 1, LLC to vacate subsurface rights and air rights within East Grand Avenue right-of-way and East 4th Street right-of-way adjoining 418 East Grand Avenue, subject to the reservation of easements for all existing utilities in place, until such time that they are abandoned or relocated, and further subject to the condition that any development of the adjoining property that incorporates the vacated right-of-way shall comply with all site plan requirements; and

WHEREAS, Nelson Development 1, LLC, an Iowa limited liability company, has negotiated an agreement with the City of Des Moines for the purchase of 418 East Grand Avenue, and has further offered to the City the purchase price of \$12,630.00 for the purchase of a Permanent Easement for Subsurface Building Encroachment on City-owned Property and a Permanent Easement for Air Space Above City-Owned Property (hereinafter "Easements") within said portion of East Grand Avenue right-of-way and East 4th Street right-of-way adjoining 418 East Grand Avenue, Des Moines, Iowa, hereinafter more fully described, to allow for the permanent encroachment of building footings and balcony encroachments into the vacated right-of-way for the adjoining development of a 5-story multi-use building, which price reflects the fair market value of the Easements as determined by the City's Real Estate Division; and

WHEREAS, the closing on said Easements is contingent upon Nelson Development 1, LLC first closing on said development agreement for the purchase of 418 East Grand Ave; and

WHEREAS, 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 right-of-way and conveyance of the Easements within said City Property; and

WHEREAS, on September 23, 2019, by Roll Call No. 19-1485, 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 and Permanent Easement for Air Space Above City-Owned Property be set for hearing on October 14, 2019, 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 portions of East Grand Avenue right-of-way and East 4th Street right-of-way located south of and west of and adjoining 418 East Grand Avenue, Des Moines, Iowa, and convey a Permanent Easement for Subsurface Building Encroachment on City-owned Property and a Permanent Easement for Air Space Above 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

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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 portions of East Grand Avenue right-of-way and East 4th Street right-of-way located south of and west of and adjoining 418 East Grand Avenue, Des Moines, Iowa and conveyance of a Permanent Easement for Subsurface Building Encroachment on City-owned Property and a Permanent Easement for Air Space Above 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 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, subject to the reservation of easements for all existing utilities in place, until such time that they are abandoned or relocated, and further subject to the condition that any development of the adjoining property that incorporates the vacated right-of-way shall comply with all site plan requirements, and said vacation is hereby approved:

Subsurface Area

A PART OF THE EAST 4TH STREET AND EAST GRAND AVENUE RIGHTS-OF-WAY LYING ADJACENT TO PARCEL 2018-107 AS RECORDED IN BOOK 17050, PAGE 789 OF THE POLK COUNTY RECORDER'S OFFICE, AND ALL IN EAST FORT DES MOINES, AN OFFICIAL PLAT, CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST OF CORNER OF SAID PARCEL 2018-107; THENCE NORTH 74°49'57" EAST ALONG THE SOUTH LINE OF SAID PARCEL 2018-107, A DISTANCE OF 141.33 FEET; THENCE SOUTH 15°12'42" EAST, 4.00 FEET; THENCE SOUTH 74°49'57" WEST, 144.33 FEET; THENCE NORTH 15°17'24" WEST, 173.91 FEET; THENCE NORTH 74°47'18" EAST, 3.00 FEET TO THE WEST LINE OF SAID PARCEL 2018-107; THENCE SOUTH 15°17'24" EAST ALONG SAID WEST LINE, 169.92 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.03 ACRES (1,087 S.F.);

AND

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Air Space Area

A PART OF THE EAST 4TH STREET AND EAST GRAND AVENUE RIGHTS-OF-WAY LYING ADJACENT TO PARCEL 2018-107 AS RECORDED IN BOOK 17050, PAGE 789 OF THE POLK COUNTY RECORDER'S OFFICE, AND ALL IN EAST FORT DES MOINES, AN OFFICIAL PLAT, CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

AREA "A"

BEGINNING AT THE SOUTHWEST OF CORNER OF SAID PARCEL 2018-107; THENCE NORTH 74°49'57" EAST ALONG THE SOUTH LINE OF SAID PARCEL 2018-107, A DISTANCE OF 138.01 FEET; THENCE SOUTH 15°10'03" EAST, 3.00 FEET; THENCE SOUTH 74°49'57" WEST, 141.00 FEET; THENCE NORTH 15°17'24" WEST, 53.00 FEET; THENCE NORTH 74°42'36" EAST, 3.00 FEET TO THE WEST LINE OF SAID PARCEL 2018-107; THENCE SOUTH 15°17'24" EAST ALONG SAID WEST LINE, 50.01 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.01 ACRES (573 S.F.) LYING BETWEEN ELEVATIONS 41.70 AND 42.70 FEET CITY OF DES MOINES VERTICAL DATUM (REFERENCE GROUND ELEVATION OF 25.70 FEET AT BUILDING SOUTHWEST ENTRANCE DOOR).

AREA "B"

COMMENCING AT THE SOUTHWEST OF CORNER OF SAID PARCEL 2018-107; THENCE NORTH 15°17'24" WEST ALONG THE WEST LINE OF SAID PARCEL 2018-107, A DISTANCE OF 85.17 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 74°42'36" WEST, 3.00 FEET; THENCE NORTH 15°17'24" WEST, 28.33 FEET; THENCE NORTH 74°42'36" EAST, 3.00 FEET; THENCE SOUTH 15°17'24" EAST, 28.33 FEET TO THE POINT OF BEGINNING AND CONTAINING 85 SQUARE FEET LYING BETWEEN ELEVATIONS 42.00 AND 43.00 FEET CITY OF DES MOINES VERTICAL DATUM (REFERENCE GROUND ELEVATION OF 26.00 FEET AT WEST ENTRANCE DOOR).

- 3. The proposed conveyance of a Permanent Easement for Subsurface Building Encroachment on City-owned Property and a Permanent Easement for Air Space Above City-Owned Property 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, and further subject to the condition that any development of the adjoining property that incorporates the vacated right-of-way shall comply with all site plan requirements, is hereby approved:

Grantee: Nelson Development 1, LLC

Consideration: \$12,630.00

Legal Description:

Subsurface Area

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AND

Air Space Area

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4. The Mayor is authorized and directed to sign the Offer to Purchase and the Easements 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 Easements, together with a certified



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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 Easements, 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 Easements 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.

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

Mayor

CERTIFICATE

I, LAURA BAUMGARTNER, Acting 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.

Acting City Clerk