



Roll Call Number

19-1826

Agenda Item Number

23 ✓

Date November 18, 2019

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**SET HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF SEGMENTS OF EAST 3<sup>RD</sup> STREET, EAST WALNUT STREET AND ALLEY RIGHT-OF-WAY ADJOINING 304 EAST WALNUT STREET AND CONVEYANCE OF A PERMANENT EASEMENT FOR SUBSURFACE BUILDING ENCROACHMENT ON CITY-OWNED PROPERTY TO SWAPS CASH, LLC FOR \$8,000.00**

**WHEREAS**, on July 15, 2019, by Roll Call No. 19-1095, the City Council of the City of Des Moines, Iowa voted to receive and file a communication from the City Plan and Zoning Commission recommending approval of a request from PRKG 1212, LLC to vacate subsurface rights in portions of East 3<sup>rd</sup> Street, East Walnut Street and alley right-of-way adjoining 304 East Walnut Street, Des Moines, Iowa (hereinafter "City Right-of-Way"), further described below, to allow for the permanent encroachment of subsurface building footings into the City Right-of-Way for the proposed hotel and retail development project, subject to the following:

- (1) Reservation of any necessary easements for all existing utilities in place until such time that they are abandoned or relocated at the applicant's expense; and
- (2) Any development that incorporates the subject right-of-way shall comply with all Site Plan requirements; and

**WHEREAS**, Swaps Cash, LLC, successor in interest to PRKG 1212, LLC, owner of 304 East Walnut Street, has offered to the City the purchase price of \$8,000.00 for the purchase of a Permanent Easement for Subsurface Building Encroachment in said City Right-of-Way, hereinafter more fully described, to allow for encroachment into the City Right-of-Way of subsurface building footings, which price reflects the fair market value of the Permanent Easement for Subsurface Building Encroachment 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 conveyance of the Permanent Easement for Building Encroachment within said vacated City Right-of-Way.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Des Moines, Iowa, as follows:

1. That the City Council of the City of Des Moines, Iowa, shall consider adoption of an ordinance permanently vacating portions of East 3<sup>rd</sup> Street, East Walnut Street and alley right-of-way adjoining 304 East Walnut Street, Des Moines, Iowa, more specifically described as follows, subject to the following:
  - (1) Reservation of any necessary easements for all existing utilities in place until such time that they are abandoned or relocated at the applicant's expense; and
  - (2) Any development that incorporates the subject right-of-way shall comply with all Site Plan requirements;

**EAST WALNUT EASEMENT:**

A RECTANGULAR SHAPED PORTION OF THE E. WALNUT STREET RIGHT OF WAY LYING SOUTH OF AND ADJOINING LOTS 1 THROUGH 6 INCLUSIVE, IN STEWART & HEUGLE'S SUBDIVISION OF LOT 1,



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BLOCK 1, IN SCOTT & DEAN'S ADDITION TO FORT DES MOINES, AN OFFICIAL PLAT, DES MOINES, POLK COUNTY, IOWA, IS DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 6; THENCE S77°54'25"W ALONG THE SOUTH LINE OF SAID LOT 6, A DISTANCE OF 8.53 FEET TO THE POINT OF BEGINNING; THENCE S17°08'11"E, A DISTANCE OF 0.79 FEET; THENCE S72°51'49"W, A DISTANCE OF 6.00 FEET; THENCE N17°08'11"W, A DISTANCE OF 0.90 FEET; THENCE S77°51'49"W, A DISTANCE OF 26.82 FEET; THENCE S12°00'37"E, A DISTANCE OF 1.26 FEET; THENCE S77°51'49"W, A DISTANCE OF 7.00 FEET; THENCE N12°00'37"W, A DISTANCE OF 1.24 FEET; THENCE S77°51'49"W, A DISTANCE OF 16.62 FEET; THENCE S12°08'11"E, A DISTANCE OF 4.00 FEET; THENCE S77°51'49"W, A DISTANCE OF 24.00 FEET; THENCE N12°08'11"W, A DISTANCE OF 4.00 FEET; THENCE S77°51'49"W, A DISTANCE OF 7.27 FEET; THENCE S12°08'11"E, A DISTANCE OF 4.00 FEET; THENCE S77°51'49"W, A DISTANCE OF 24.00 FEET; THENCE N12°08'11"W, A DISTANCE OF 3.75 FEET; THENCE S77°51'49"W, A DISTANCE OF 9.67 FEET; THENCE N12°08'11"W, A DISTANCE OF 0.75 FEET TO THE SOUTH LINE OF SAID LOT 1; THENCE N77°54'25"E ALONG THE SOUTH LINE OF SAID LOTS 1 THROUGH 6 INCLUSIVE, A DISTANCE OF 121.36 FEET TO THE POINT OF BEGINNING. SAID EASEMENT CONTAINS 262 SQUARE FEET.

**EAST 3<sup>rd</sup> STREET EASEMENT:**

AN IRREGULAR SHAPED PORTION OF THE E. THIRD STREET RIGHT OF WAY LYING WEST OF AND ADJOINING LOT 1 IN STEWART & HEUGLE'S SUBDIVISION OF LOT 1, BLOCK 1, IN SCOTT & DEAN'S ADDITION TO FORT DES MOINES, AN OFFICIAL PLAT, AND WEST OF AND ADJOINING LOT 2 IN BLOCK 1, SCOTT & DEAN'S ADDITION TO FORT DES MOINES, AN OFFICIAL PLAT, AND THE INTERVENING ALLEY IN SAID BLOCK 1, ALL IN DES MOINES, POLK COUNTY, IOWA, IS DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 1; THENCE N17°14'03"W ALONG THE WEST LINE OF SAID LOT 1, A DISTANCE OF 17.68 FEET TO THE POINT OF BEGINNING; THENCE S72°51'49"W, A DISTANCE OF 2.11 FEET; THENCE N17°08'11"W, A DISTANCE OF 86.92 FEET; THENCE N72°51'49"E, A DISTANCE OF 1.96 FEET; THENCE N17°14'03"W, A DISTANCE OF 22.75 FEET; THENCE S72°51'49"W, A DISTANCE OF 1.17 FEET; THENCE N17°08'11"W, A DISTANCE OF 24.00 FEET; THENCE N72°51'49"E, A DISTANCE OF 1.13 FEET TO THE WEST LINE OF SAID LOT 2; THENCE S17°14'03"E ALONG THE EAST LINE OF THE E 3RD STREET RIGHT OF WAY AS IT IS PRESENTLY ESTABLISHED, A DISTANCE OF 133.67 FEET TO THE POINT OF BEGINNING. SAID EASEMENT CONTAINS 205 SQUARE FEET.

**EAST ALLEY EASEMENT:**

AN IRREGULAR SHAPED PORTION OF THE NORTH/SOUTH ALLEY LYING EAST OF AND ADJOINING LOT 6 IN STEWART & HEUGLE'S SUBDIVISION OF LOT 1, BLOCK 1, IN SCOTT & DEAN'S ADDITION TO FORT DES MOINES, AN OFFICIAL PLAT, AND EAST OF AND ADJOINING LOT 2 IN BLOCK 1, SCOTT & DEAN'S ADDITION TO FORT DES MOINES, AN OFFICIAL PLAT, AND THE INTERVENING ALLEY IN SAID BLOCK 1, ALL IN DES MOINES, POLK COUNTY, IOWA, IS DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 2; THENCE N72°49'23"E ALONG THE EASTERLY EXTENSION OF THE NORTH LINE OF SAID LOT 2, A DISTANCE OF 3.50 FEET; THENCE S17°08'11"E, A DISTANCE OF 5.30 FEET; THENCE S72°51'49"W, A DISTANCE OF 2.00 FEET; THENCE S17°08'11"E, A DISTANCE OF 119.65 FEET; THENCE N72°51'49"E, A DISTANCE OF 1.25 FEET; THENCE S17°08'11"E, A DISTANCE OF 9.00 FEET; THENCE S72°51'49"W, A DISTANCE OF 0.75 FEET; THENCE S17°08'11"E, A DISTANCE OF 41.19 FEET; THENCE S72°51'49"W, A DISTANCE OF 2.00 FEET; THENCE N17°08'11"W ALONG THE EAST LINE OF SAID LOT 6 AND THE EAST LINE OF SAID LOT 2, A DISTANCE OF 175.13 FEET TO THE POINT OF BEGINNING. SAID EASEMENT CONTAINS 305 SQUARE FEET.

**NORTH ALLEY EASEMENT:**



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AN IRREGULAR SHAPED PORTION OF THE EAST/ WEST ALLEY LYING NORTH OF AND ADJOINING LOT 2 IN BLOCK 1, SCOTT & DEAN'S ADDITION TO FORT DES MOINES, AN OFFICIAL PLAT AND THE EASTERLY EXTENSION OF THE NORTH LINE OF SAID LOT 2, ALL IN DES MOINES, POLK COUNTY, IOWA, IS DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 2; THENCE N72°49'23"E ALONG THE NORTH LINE OF SAID LOT 2, A DISTANCE OF 1.39 FEET TO THE POINT OF BEGINNING; THENCE N17°08'11"W, A DISTANCE OF 1.80 FEET; THENCE N72°51'49"E, A DISTANCE OF 5.00 FEET; THENCE S17°08'11"E, A DISTANCE OF 1.50 FEET; THENCE N72°51'49"E, A DISTANCE OF 121.00 FEET; THENCE N17°08'11"W, A DISTANCE OF 2.50 FEET; THENCE N72°51'49"E, A DISTANCE OF 8.00 FEET; THENCE S17°08'11"E, A DISTANCE OF 2.70 FEET; THENCE S72°49'23"W ALONG THE NORTH LINE OF SAID LOT 2 AND ITS EASTERLY EXTENSION, A DISTANCE OF 134.00 FEET TO THE POINT OF BEGINNING. SAID EASEMENT CONTAINS 61 SQUARE FEET.

2. That, if the City Council of the City of Des Moines, Iowa, first decides to vacate the above described City Right-of-Way, the City of Des Moines, Iowa, further proposes to convey a Permanent Easement for Subsurface Building Encroachment therein, as legally described as follows, to Swaps Cash, LLC, for \$8,000.00:

**EAST WALNUT EASEMENT:**

A RECTANGULAR SHAPED PORTION OF THE VACATED E. WALNUT STREET RIGHT OF WAY LYING SOUTH OF AND ADJOINING LOTS 1 THROUGH 6 INCLUSIVE, IN STEWART & HEUGLE'S SUBDIVISION OF LOT 1, BLOCK 1, IN SCOTT & DEAN'S ADDITION TO FORT DES MOINES, AN OFFICIAL PLAT, DES MOINES, POLK COUNTY, IOWA, IS DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 6; THENCE S77°54'25"W ALONG THE SOUTH LINE OF SAID LOT 6, A DISTANCE OF 8.53 FEET TO THE POINT OF BEGINNING; THENCE S17°08'11"E, A DISTANCE OF 0.79 FEET; THENCE S72°51'49"W, A DISTANCE OF 6.00 FEET; THENCE N17°08'11"W, A DISTANCE OF 0.90 FEET; THENCE S77°51'49"W, A DISTANCE OF 26.82 FEET; THENCE S12°00'37"E, A DISTANCE OF 1.26 FEET; THENCE S77°51'49"W, A DISTANCE OF 7.00 FEET; THENCE N12°00'37"W, A DISTANCE OF 1.24 FEET; THENCE S77°51'49"W, A DISTANCE OF 16.62 FEET; THENCE S12°08'11"E, A DISTANCE OF 4.00 FEET; THENCE S77°51'49"W, A DISTANCE OF 24.00 FEET; THENCE N12°08'11"W, A DISTANCE OF 4.00 FEET; THENCE S77°51'49"W, A DISTANCE OF 7.27 FEET; THENCE S12°08'11"E, A DISTANCE OF 4.00 FEET; THENCE S77°51'49"W, A DISTANCE OF 24.00 FEET; THENCE N12°08'11"W, A DISTANCE OF 3.75 FEET; THENCE S77°51'49"W, A DISTANCE OF 9.67 FEET; THENCE N12°08'11"W, A DISTANCE OF 0.75 FEET TO THE SOUTH LINE OF SAID LOT 1; THENCE N77°54'25"E ALONG THE SOUTH LINE OF SAID LOTS 1 THROUGH 6 INCLUSIVE, A DISTANCE OF 121.36 FEET TO THE POINT OF BEGINNING. SAID EASEMENT CONTAINS 262 SQUARE FEET.

**EAST 3rd STREET EASEMENT:**

AN IRREGULAR SHAPED PORTION OF THE VACATED E. THIRD STREET RIGHT OF WAY LYING WEST OF AND ADJOINING LOT 1 IN STEWART & HEUGLE'S SUBDIVISION OF LOT 1, BLOCK 1, IN SCOTT & DEAN'S ADDITION TO FORT DES MOINES, AN OFFICIAL PLAT, AND WEST OF AND ADJOINING LOT 2 IN BLOCK 1, SCOTT & DEAN'S ADDITION TO FORT DES MOINES, AN OFFICIAL PLAT, AND THE INTERVENING ALLEY IN SAID BLOCK 1, ALL IN DES MOINES, POLK COUNTY, IOWA, IS DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 1; THENCE N17°14'03"W ALONG THE WEST LINE OF SAID LOT 1, A DISTANCE OF 17.68 FEET TO THE POINT OF BEGINNING; THENCE S72°51'49"W, A DISTANCE OF 2.11 FEET; THENCE N17°08'11"W, A DISTANCE OF 86.92 FEET; THENCE N72°51'49"E, A DISTANCE OF 1.96 FEET; THENCE N17°14'03"W, A DISTANCE OF 22.75 FEET; THENCE S72°51'49"W, A DISTANCE OF 1.17 FEET; THENCE N17°08'11"W, A DISTANCE OF 24.00 FEET;



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THENCE N72°51'49"E, A DISTANCE OF 1.13 FEET TO THE WEST LINE OF SAID LOT 2; THENCE S17°14'03"E ALONG THE EAST LINE OF THE E 3RD STREET RIGHT OF WAY AS IT IS PRESENTLY ESTABLISHED, A DISTANCE OF 133.67 FEET TO THE POINT OF BEGINNING. SAID EASEMENT CONTAINS 205 SQUARE FEET.

**EAST ALLEY EASEMENT:**

AN IRREGULAR SHAPED PORTION OF THE VACATED NORTH/SOUTH ALLEY LYING EAST OF AND ADJOINING LOT 6 IN STEWART & HEUGLE'S SUBDIVISION OF LOT 1, BLOCK 1, IN SCOTT & DEAN'S ADDITION TO FORT DES MOINES, AN OFFICIAL PLAT, AND EAST OF AND ADJOINING LOT 2 IN BLOCK 1, SCOTT & DEAN'S ADDITION TO FORT DES MOINES, AN OFFICIAL PLAT, AND THE INTERVENING ALLEY IN SAID BLOCK 1, ALL IN DES MOINES, POLK COUNTY, IOWA, IS DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 2; THENCE N72°49'23"E ALONG THE EASTERLY EXTENSION OF THE NORTH LINE OF SAID LOT 2, A DISTANCE OF 3.50 FEET; THENCE S17°08'11"E, A DISTANCE OF 5.30 FEET; THENCE S72°51'49"W, A DISTANCE OF 2.00 FEET; THENCE S17°08'11"E, A DISTANCE OF 119.65 FEET; THENCE N72°51'49"E, A DISTANCE OF 1.25 FEET; THENCE S17°08'11"E, A DISTANCE OF 9.00 FEET; THENCE S72°51'49"W, A DISTANCE OF 0.75 FEET; THENCE S17°08'11"E, A DISTANCE OF 41.19 FEET; THENCE S72°51'49"W, A DISTANCE OF 2.00 FEET; THENCE N17°08'11"W ALONG THE EAST LINE OF SAID LOT 6 AND THE EAST LINE OF SAID LOT 2, A DISTANCE OF 175.13 FEET TO THE POINT OF BEGINNING. SAID EASEMENT CONTAINS 305 SQUARE FEET.

**NORTH ALLEY EASEMENT:**

AN IRREGULAR SHAPED PORTION OF THE VACATED EAST/ WEST ALLEY LYING NORTH OF AND ADJOINING LOT 2 IN BLOCK 1, SCOTT & DEAN'S ADDITION TO FORT DES MOINES, AN OFFICIAL PLAT AND THE EASTERLY EXTENSION OF THE NORTH LINE OF SAID LOT 2, ALL IN DES MOINES, POLK COUNTY, IOWA, IS DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 2; THENCE N72°49'23"E ALONG THE NORTH LINE OF SAID LOT 2, A DISTANCE OF 1.39 FEET TO THE POINT OF BEGINNING; THENCE N17°08'11"W, A DISTANCE OF 1.80 FEET; THENCE N72°51'49"E, A DISTANCE OF 5.00 FEET; THENCE S17°08'11"E, A DISTANCE OF 1.50 FEET; THENCE N72°51'49"E, A DISTANCE OF 121.00 FEET; THENCE N17°08'11"W, A DISTANCE OF 2.50 FEET; THENCE N72°51'49"E, A DISTANCE OF 8.00 FEET; THENCE S17°08'11"E, A DISTANCE OF 2.70 FEET; THENCE S72°49'23"W ALONG THE NORTH LINE OF SAID LOT 2 AND ITS EASTERLY EXTENSION, A DISTANCE OF 134.00 FEET TO THE POINT OF BEGINNING. SAID EASEMENT CONTAINS 61 SQUARE FEET.

(VACATED BY ORDINANCE NO. \_\_\_\_\_, PASSED \_\_\_\_\_, 20\_\_);

- 3. That the meeting of the City Council at which said vacation and the conveyance is to be considered shall be on December 2, 2019, said meeting to be held at 5:00 p.m., in the City Council Chamber, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa.
- 4. That the City Clerk is hereby authorized and directed to publish notice of said proposals in the form hereto attached, all in accordance with §362.3 of the Iowa Code.
- 5. Non-project related land sale proceeds are used to support general operating budget expenses: Org – EG064090.

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Moved by Boesen to adopt.

APPROVED AS TO FORM:

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

*REN*

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

J. M. Franklin Cownie Mayor

**CERTIFICATE**

I, P. KAY CMELIK, 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.

P. Kay Cmelik City Clerk