

★ **Roll Call Number**
19-1936

Agenda Item Number
37

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Date December 2, 2019

HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF SEGMENTS OF EAST 3RD 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 3rd 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 vacation and the conveyance of the Permanent Easement for Subsurface Building Encroachment on City-Owned Property within said City Right-of-Way; and

WHEREAS, on November 18, 2019, by Roll Call No. 19-1826 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 December 2, 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 Subsurface Building Encroachment on 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

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:

Date December 2, 2019

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 Subsurface Building Encroachment on 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 portions of East 3rd 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, 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 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

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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 RIGHT OF WAY 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 EAST/ WEST ALLEY RIGHT OF WAY 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.

3. That the conveyance of a Permanent Easement for Subsurface Building Encroachment on City-Owned Property within said vacated East 3rd Street, East Walnut Street and alley, as described below, to Swaps Cash, LLC, 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, for \$8,000.00, together with payment by such grantee of the estimated publication and recording costs for this transaction, is hereby approved:

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



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NORTH ALLEY EASEMENT:

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(VACATED BY ORDINANCE NO. 15,839, PASSED December 2, 2019);

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 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 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 Subsurface Building Encroachment on 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 Subsurface Building Encroachment on 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 Gatto 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 CARRIED		APPROVED		

J. M. Franke 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