



Roll Call Number

20-0667

Agenda Item Number

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Date April 20, 2020

HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF ALLEY RIGHT-OF-WAY AND PORTIONS OF 26TH STREET AND UNIVERSITY AVENUE RIGHT-OF-WAY ADJOINING 2530 UNIVERSITY AVENUE AND CONVEYANCE OF CERTAIN FEE AND EASEMENT INTERESTS TO ND DRAKE MULTIFAMILY, LLC FOR \$25,988.00; AND CONVEYANCE OF CERTAIN FEE AND EASEMENT INTRESTS TO LUTHERAN CHURCH OF HOPE FOR \$1,055.00; AND ACCEPTANCE OF A PERMANENT EASEMENT FOR PUBLIC INGRESS AND EGRESS

WHEREAS, on January 27, 2020, by Roll Call No. 20-0140, the City Council of the City of Des Moines, Iowa voted to receive and file a recommendation from the City Plan and Zoning Commission to approve a request from ND Drake Multifamily, LLC, owner of property at 2530 University Avenue, to vacate the following portions of street and alley rights-of-way, subject to the reservation of any necessary easements for all existing utilities in place until such time that they are abandoned or relocated; subject to the reservation of any necessary easements to allow public access to the remaining alley right-of-way from 26th Street; subject to the provision that any construction on the proposed vacated right-of-way shall be in accordance with all administrative comments from Traffic and Transportation as part of the Site Plan review; and further subject to the conveyance of all necessary alley right-of-way and easement rights to Lutheran Church of Hope, owner of 2500 University Avenue:

1. Adjoining north/south alley between 25th Street and 26th Street from University Avenue to point 281 feet to the south;
2. Adjoining air rights in a 4-foot by 13-foot segment to the south side of University Avenue and a 2-foot by 28-foot segment to the east side of 26th Street; and
3. Adjoining subsurface rights in the south 2 feet of University Avenue and the east 4 feet of 26th Street; and

WHEREAS, ND Drake Multifamily, LLC, owner of property at 2530 University Avenue, has offered to the City of Des Moines (“City”) the purchase price of \$25,988.00 for the purchase of a portion of the vacated north/south alley right-of-way between 25th Street and 26th Street from University Avenue to a point 281 feet to the south, a Permanent Easement for Air Space Above City-owned Property, and a Permanent Easement for Subsurface Building Encroachment in portions of vacated 27th Street and vacated University Avenue, all adjoining 2530 University Avenue, Des Moines, Iowa, for assemblage with the adjoining property for development with a 4-story mixed use building, which includes building footings, and architectural element encroachments, which price reflects the fair market value of the Property as determined by the City’s Real Estate Division; and

WHEREAS, Lutheran Church of Hope, owner of property at 2500 University Avenue, has offered to the City the purchase price of \$1,055.00 for the purchase of the portion of the vacated north/south alley right-of-way adjoining 2500 University Avenue, Des Moines, Iowa, in order to eliminate an existing building encroachment into the alley, which price reflects the fair market value of the Property as determined by the City’s Real Estate Division; and

WHEREAS, prior to closing on the conveyance to ND Drake Multifamily, LLC, the City of Des Moines shall convey the portion of vacated alley, a Permanent Easement for Building Setback, and a Non-



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Exclusive Permanent Easement for Ingress and Egress to Lutheran Church of Hope; in order to satisfy the fourth City Plan and Zoning Commission vacation condition; and

WHEREAS, prior to closing on the conveyance to ND Drake Multifamily, LLC, ND Drake Multifamily, LLC must deliver City with a fully executed Permanent Easement for Building Maintenance and a fully executed Permanent Easement for Subsurface Building Encroachment by and between ND Drake Multifamily, LLC as Grantor and Lutheran Church of Hope as Grantee, which shall allow Lutheran Church of Hope to access the western exterior of the church building in order to perform repairs and maintenance as necessary, and to access the existing fats, oils and grease (“FOG”) discharge interceptor located below the alley in order to operate, repair and maintain said FOG interceptor; and

WHEREAS, the City has no known current or anticipated public need for the property proposed to be vacated and conveyed, subject to reservation of easements therein and further subject to ND Drake Multifamily, LLC granting City a Permanent Easement for Public Ingress and Egress, and the City will not be inconvenienced by the vacation and sale of said Property.

WHEREAS, on March 23, 2020, by Roll Call No. 20-0516, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation and conveyance of the property be set for hearing on April 20, 2020, 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 (1) the north/south alley between 25th Street and 26th Street from University Avenue to point 281 feet to the south; (2) the air rights in a 4-foot by 13-foot segment to the south side of University Avenue and a 2-foot by 28-foot segment to the east side of 26th Street; and (3) the subsurface rights in the south 2 feet of University Avenue and the east 4 feet of 26th Street, all adjoining 2530 University Avenue, Des Moines, Iowa; subject to the reservation of any necessary easements for all existing utilities in place until such time that they are abandoned or relocated; subject to the reservation of any necessary easements to allow public access to the remaining alley right-of-way from 26th Street; subject to the provision that any construction on the proposed vacated right-of-way shall be in accordance with all administrative comments from Traffic and Transportation as part of the Site Plan review; and further subject to the conveyance of all necessary alley right-of-way and easement rights to Lutheran Church of Hope, owner of 2500 University Avenue, 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.

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 and conveyance of (1) the north/south alley between 25th Street and 26th Street



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from University Avenue to point 281 feet to the south; (2) the air rights in a 4-foot by 13-foot segment to the south side of University Avenue and a 2-foot by 28-foot segment to the east side of 26th Street; and (3) the subsurface rights in the south 2 feet of University Avenue and the east 4 feet of 26th Street, all adjoining 2530 University Avenue, as described herein, are hereby overruled and the hearing is closed.

2. There is no public need or benefit for the street and alley right-of-way proposed to be vacated, and the public would not be inconvenienced by reason of the vacation of said street and alley right-of-way, legally described as follows, and said vacation is hereby approved:

Alley

THE NORTH/SOUTH ALLEY LYING EAST OF AND ADJOINING LOTS 38-44 EXCEPT THE NORTH 7.00 FEET OF SAID NORTH/SOUTH ALLEY, DRAKE UNIVERSITY'S SECOND ADDITION TO THE CITY OF DES MOINES, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND CONTAINING 0.12 ACRES (5,259 S.F.).

Air Rights Easement

AREA "A"

A PART OF THE UNIVERSITY AVENUE RIGHT-OF-WAY, BEING THE EAST 13.00 FEET OF THE WEST 44.00 FEET OF THE SOUTH 4.00 FEET OF THE NORTH 7.00 FEET OF LOT 44 AND BEING A PART OF DRAKE UNIVERSITY'S SECOND ADDITION TO THE CITY OF DES MOINES, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND LYING BETWEEN ELEVATIONS 197.75 AND 226.35 FEET CITY OF DES MOINES VERTICAL DATUM (REFERENCE GROUND ELEVATION OF 186.25 FEET AT BUILDING ENTRANCE ON UNIVERSITY AVENUE), AND CONTAINING 52 SQUARE FEET.

AND

AREA "B"

A PART OF THE 26TH STREET RIGHT-OF-WAY, BEING A PART OF THE SUBDIVISION OF LOTS 2 AND 4 OF THE OFFICIAL PLAT OF THE NORTHWEST 1/4 OF SECTION 5, TOWNSHIP 78 NORTH, RANGE 24 WEST OF THE 5TH P.M., ALSO BEING THE EAST 2.00 FEET LYING ADJACENT TO THE SOUTH 28.00 FEET OF LOT 43, DRAKE UNIVERSITY'S SECOND ADDITION TO THE CITY OF DES MOINES, AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND LYING BETWEEN ELEVATIONS 198.55 AND 200.55 FEET CITY OF DES MOINES DATUM (REFERENCE GROUND ELEVATION OF 186.25 FEET AT BUILDING ENTRANCE ON 26TH STREET), AND CONTAINING 56 SQUARE FEET.

Subsurface Easement

A PART OF THE UNIVERSITY AVENUE RIGHT-OF-WAY, BEING THE SOUTH 2.00 FEET OF THE NORTH 7.00 FEET OF LOT 44, DRAKE UNIVERSITY'S SECOND ADDITION TO THE CITY OF DES MOINES, AN OFFICIAL PLAT, AND A PART OF THE VACATED 26TH STREET RIGHT-OF-WAY, BEING A PART OF THE SUBDIVISION OF LOTS 2 AND 4 OF THE OFFICIAL PLAT OF THE NORTHWEST 1/4 OF SECTION 5, TOWNSHIP 78 NORTH, RANGE 24 WEST OF THE 5TH P.M.,



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ALSO BEING THE EASTERLY 4.00 FEET LYING WESTERLY OF LOT 43 AND LOT 44 OF SAID DRAKE UNIVERSITY'S SECOND ADDITION, EXCEPT THE NORTH 5.00 FEET THEREOF, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND CONTAINING 0.01 ACRES (619 S.F.).

- 3. The proposed sale of a portion of the vacated alley, a Permanent Easement for Building Setback, and a Non-Exclusive Permanent Easement for Ingress and Egress to Lutheran Church of Hope for \$1,055.00, legally described as follows, is hereby approved:

Alley

THE EAST 0.75 FEET OF THE SOUTH 148 FEET OF THE NORTH 192 FEET OF THE ALLEY LYING WEST OF AND ADJACENT TO LOTS 1 THROUGH 5 DRAKE UNIVERSITY'S SECOND ADDITION TO THE CITY OF DES MOINES, AN OFFICIAL PLAT, CITY OF DES MOINES, POLK COUNTY, IOWA AND CONTAINING 111 SQUARE FEET.

Building Setback Easement:

THE EAST 8.6 FEET OF THE SOUTH 185.2 FEET OF THE NORTH 192.2 FEET OF THE VACATED NORTH/SOUTH ALLEY LYING WEST OF AND ADJOINING LOTS 1 THROUGH 5, DRAKE UNIVERSITY'S SECOND ADDITION TO THE CITY OF DES MOINES, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, EXCEPT THE EAST 0.75 FEET OF THE SOUTH 148.0 FEET OF THE NORTH 192.0 FEET THEREOF, AND CONTAINING 0.03 ACRES (1,484 S.F.).

Ingress-Egress Easement:

THE EAST 6.0 FEET OF THE SOUTH 230.0 FEET OF THE NORTH 237.0 FEET OF THE VACATED NORTH/SOUTH ALLEY LYING WEST OF AND ADJOINING LOTS 1 THROUGH 5, DRAKE UNIVERSITY'S SECOND ADDITION TO THE CITY OF DES MOINES, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, EXCEPT THE EAST 0.75 FEET OF THE SOUTH 148.0 FEET OF THE NORTH 192.0 FEET THEREOF, CONTAINING 0.03 ACRES (1,269 S.F.).

- 3. The proposed sale of a portion of the vacated alley right-of-way, a Permanent Easement for Air Space Above City-owned Property, and a Permanent Easement for Subsurface Building Encroachment, to ND Drake Multifamily, LLC for \$25,988.00, subject to reservation of easements for utilities therein; subject to Grantee granting City a Permanent Easement for Public Ingress and Egress; and further subject to the provision that any construction on the proposed vacated right-of-way shall be in accordance with all administrative comments from Traffic and Transportation as part of the Site Plan review, legally described as follows, is hereby approved:

Alley

THE VACATED NORTH/SOUTH ALLEY LYING EAST OF AND ADJOINING LOTS 38-44 EXCEPT THE NORTH 7.00 FEET OF SAID NORTH/SOUTH ALLEY, DRAKE UNIVERSITY'S SECOND ADDITION TO THE CITY OF DES MOINES, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, EXCEPT THE EAST



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0.75 FEET OF THE SOUTH 148.0 FEET OF THE NORTH 192.0 FEET THEREOF, CONTAINING 0.12 ACRES (5,148 S.F.).

Air Rights Easement
AREA "A"

A PART OF THE VACATED UNIVERSITY AVENUE RIGHT-OF-WAY, BEING THE EAST 13.00 FEET OF THE WEST 44.00 FEET OF THE SOUTH 4.00 FEET OF THE NORTH 7.00 FEET OF LOT 44 AND BEING A PART OF DRAKE UNIVERSITY'S SECOND ADDITION TO THE CITY OF DES MOINES, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND LYING BETWEEN ELEVATIONS 197.75 AND 226.35 FEET CITY OF DES MOINES VERTICAL DATUM (REFERENCE GROUND ELEVATION OF 186.25 FEET AT BUILDING ENTRANCE ON UNIVERSITY AVENUE), AND CONTAINING 52 SQUARE FEET.

AND

AREA "B"

A PART OF THE VACATED 26TH STREET RIGHT-OF-WAY, BEING A PART OF THE SUBDIVISION OF LOTS 2 AND 4 OF THE OFFICIAL PLAT OF THE NORTHWEST 1/4 OF SECTION 5, TOWNSHIP 78 NORTH, RANGE 24 WEST OF THE 5TH P.M., ALSO BEING THE EAST 2.00 FEET LYING ADJACENT TO THE SOUTH 28.00 FEET OF LOT 43, DRAKE UNIVERSITY'S SECOND ADDITION TO THE CITY OF DES MOINES, AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND LYING BETWEEN ELEVATIONS 198.55 AND 200.55 FEET CITY OF DES MOINES DATUM (REFERENCE GROUND ELEVATION OF 186.25 FEET AT BUILDING ENTRANCE ON 26TH STREET), AND CONTAINING 56 SQUARE FEET.

Subsurface Easement

A PART OF THE VACATED UNIVERSITY AVENUE RIGHT-OF-WAY, BEING THE SOUTH 2.00 FEET OF THE NORTH 7.00 FEET OF LOT 44, DRAKE UNIVERSITY'S SECOND ADDITION TO THE CITY OF DES MOINES, AN OFFICIAL PLAT, AND A PART OF THE VACATED 26TH STREET RIGHT-OF-WAY, BEING A PART OF THE SUBDIVISION OF LOTS 2 AND 4 OF THE OFFICIAL PLAT OF THE NORTHWEST 1/4 OF SECTION 5, TOWNSHIP 78 NORTH, RANGE 24 WEST OF THE 5TH P.M., ALSO BEING THE EASTERLY 4.00 FEET LYING WESTERLY OF LOT 43 AND LOT 44 OF SAID DRAKE UNIVERSITY'S SECOND ADDITION, EXCEPT THE NORTH 5.00 FEET THEREOF, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND CONTAINING 0.01 ACRES (619 S.F.).

4. The proposed acceptance of a Permanent Easement for Public Ingress and Egress from ND Drake Multifamily, LLC is hereby approved.
5. The Mayor is authorized and directed to sign the Offer to Purchase, the Quit Claim Deeds, the Permanent Easement for Air Space Above City-owned Property, the Permanent Easement for Subsurface Building Encroachment, the Permanent Easement for Building Setback, the Non-Exclusive Permanent Easement for Ingress and Egress, and the acceptance of the Permanent Easement for Public Ingress and



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Egress for the conveyances as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.

6. 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 Quit Claim Deeds, the Permanent Easement for Air Space Above City-owned Property, the Permanent Easement for Subsurface Building Encroachment, the Permanent Easement for Building Setback, the Non-Exclusive Permanent Easement for Ingress and Egress, and the acceptance of the Permanent Easement for Public Ingress and Egress, 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.

7. The Real Estate Division Manager is authorized and directed to forward the original of the Quit Claim Deeds, the Permanent Easement for Air Space Above City-owned Property, the Permanent Easement for Subsurface Building Encroachment, the Permanent Easement for Building Setback, the Non-Exclusive Permanent Easement for Ingress and Egress, and the acceptance of the Permanent Easement for Public Ingress and Egress, 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.

8. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division Manager shall mail the original of the Quit Claim Deeds, the Permanent Easement for Air Space Above City-owned Property, the Permanent Easement for Subsurface Building Encroachment, the Permanent Easement for Building Setback, the Non-Exclusive Permanent Easement for Ingress and Egress, and the acceptance of the Permanent Easement for Public Ingress and Egress, and a copy of the other documents to the grantees.

9. Non-project related land sale proceeds are used to support general operating budget expenses: Org – EG064090.



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Moved by Mandelbaum to adopt.

APPROVED AS TO FORM:

[Signature] Lisa A. Wieland, Assistant City Attorney

PSW

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

J. M. Frankin 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.

[Signature]

City Clerk