



**Roll Call Number**

21-1502

**Agenda Item Number**

43

Date October 4, 2021

Page 1

**HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF A PORTION OF 6<sup>TH</sup> AVENUE RIGHT-OF-WAY ADJOINING 3524 6<sup>TH</sup> AVENUE AND CONVEYANCE OF A PERMANENT EASEMENT FOR AIR SPACE ABOVE CITY-OWNED PROPERTY TO 3524 6<sup>TH</sup> AVENUE, LLC FOR \$800**

**WHEREAS**, on June 28, 2021, by Roll Call No. 21-0967, 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 3524 6<sup>th</sup> Avenue, LLC to vacate a 5.50-foot by 50.61-foot segment of air rights at the west side of 6<sup>th</sup> Avenue adjoining property located at 3524 6<sup>th</sup> Avenue to allow continued encroachment of existing 2nd and 3rd floor bay window projections with the renovation of the building; and

**WHEREAS**, 3524 6<sup>th</sup> Avenue, LLC, owner of 3524 6<sup>th</sup> Avenue, has offered to the City of Des Moines, Iowa (“City”) the purchase price of \$800.00 for the purchase of a Permanent Easement for Air Space Above City-Owned Property over, through and above a 5.50-foot by 50.61-foot segment of 6<sup>th</sup> Avenue right-of-way located east of and adjoining 3524 6<sup>th</sup> Avenue, Des Moines, Iowa (hereinafter “Property”); and

**WHEREAS**, the City has no known current or anticipated public need for the Property proposed to be vacated, and the City will not be inconvenienced by the vacation of said Property and conveyance of a Permanent Easement for Air Space Above City-Owned Property therein; and

**WHEREAS**, on September 13, 2021, by Roll Call No. 21-1411, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation of the street right-of-way and conveyance of the Permanent Easement for Air Space Above City-Owned Property be set for hearing on October 4, 2021, 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 the street right-of-way and convey the Permanent Easement for Air Space Above 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 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 a 5.50-foot by 50.61-foot segment of 6<sup>th</sup> Avenue right-of-way located east of and adjoining 3524 6<sup>th</sup> Avenue and conveyance of a Permanent Easement for Air Space Above City-Owned Property, as described herein, are hereby overruled and the hearing is closed.



Date October 4, 2021

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 a 5.50-foot by 50.61-foot segment of 6<sup>th</sup> Avenue right-of-way located east of and adjoining 3524 6<sup>th</sup> Avenue, legally described as follows, and said vacation is hereby approved:

Part of 6<sup>th</sup> Avenue right-of-way lying East of and adjoining Lot 1 in Block 3 of Oak Park, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows:

Beginning at the Northeast corner of said Lot 1; thence North 89°(degrees) 54'(minutes) 32"(seconds) East, 5.50 feet along an extension of the North line of said Lot 1; thence South 00°03'34" West, 50.61 feet along a line that is parallel to and 5.50 feet easterly of the East line of said Lot 1; thence North 89°56'26" West, 5.50 feet to the East line of said Lot 1; thence North 00°03'34" East, 50.60 feet along the East line of said Lot 1 to the point of beginning.

Lying between elevations 900.5 feet and 927.0 feet, North American Vertical Datum of 1988 (reference ground level elevation of 888.87 feet, NAVD 88, at the Northeast corner of said Lot 1). Horizontally containing 278 square feet.

3. The proposed sale of a Permanent Easement for Air Space Above City-Owned Property, as legally described below to 3524 6<sup>th</sup> Avenue, LLC for \$800.00, subject to to any and all easements, restrictions and covenants of record, and said conveyance is hereby approved:

Part of Vacated 6<sup>th</sup> Avenue right-of-way lying East of and adjoining Lot 1 in Block 3 of Oak Park, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows:

Beginning at the Northeast corner of said Lot 1; thence North 89°(degrees) 54'(minutes) 32"(seconds) East, 5.50 feet along an extension of the North line of said Lot 1; thence South 00°03'34" West, 50.61 feet along a line that is parallel to and 5.50 feet easterly of the East line of said Lot 1; thence North 89°56'26" West, 5.50 feet to the East line of said Lot 1; thence North 00°03'34" East, 50.60 feet along the East line of said Lot 1 to the point of beginning.

Lying between elevations 900.5 feet and 927.0 feet, North American Vertical Datum of 1988 (reference ground level elevation of 888.87 feet, NAVD 88, at the Northeast corner of said Lot 1). Horizontally containing 278 square feet.

4. The Mayor is authorized and directed to sign the Offer to Purchase and Permanent Easement for Air Space Above City-Owned Property 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 Permanent Easement for Air



**Roll Call Number**

21-1502

**Agenda Item Number**

43

**Date** October 4, 2021

Space Above 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 Permanent Easement for Air Space Above 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 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 Air Space Above City-Owned Property and a copy 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 Westergaard to adopt.

APPROVED AS TO FORM:

/s/ Lisa A. Wieland

Lisa A. Wieland, Assistant City Attorney

DM

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

J. M. Frankhu Cowne  
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