

Date November 21, 2022

**HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF A PORTION OF 7TH STREET, WALNUT STREET AND MULBERRY STREET RIGHT-OF-WAY ADJOINING 207 7TH STREET AND CONVEYANCE OF A PERMANENT EASEMENT FOR BUILDING ENCROACHMENT AND A PERMANENT EASEMENT FOR SUBSURFACE BUILDING ENCROACHMENT TO LAWMARK, L.P. FOR \$102,128**

**WHEREAS**, Lawmark, L.P., a Delaware limited partnership has requested the vacation of portions of 7<sup>th</sup> Street, Walnut Street and Mulberry Street right-of-way adjoining 207 7<sup>th</sup> Street, 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 are relocated, which request was not presented to the City’s Plan and Zoning Commission for review and has instead been determined by the City Traffic Engineer to have no significant impact upon the public use of the right-of-way, in accordance with Municipal Code 102-286(b); and

**WHEREAS**, Lawmark, L.P., the owner of 207 7<sup>th</sup> Street, has offered to the City of Des Moines, Iowa (“City”) the purchase price of \$102,128.00 for the purchase of a Permanent Easement for Building Encroachment and a Permanent Easement for Subsurface Building Encroachment in said vacated right-of-way for existing encroachments into the street right-of-way from their adjoining building, subject to the reservation of easements for all existing utilities in place, until such time that they are abandoned or relocated, which price reflects the fair market value of the street right-of-way as determined by the City’s Real Estate Division; and

**WHEREAS**, there is no known current or future public need for the street right-of-way proposed to be vacated, and the City will not be inconvenienced by the vacation of said street right-of-way and the conveyance of a Permanent Easement for Building Encroachment and a Permanent Easement for Subsurface Building Encroachment in said vacated right-of-way; and

**WHEREAS**, on November 7, 2022, by Roll Call No. 22-1724, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation of said street right-of-way and the conveyance of a Permanent Easement for Building Encroachment and a Permanent Easement for Subsurface Building Encroachment in such vacated right-of-way be set for hearing on November 21, 2022, 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 and convey the street right-of-way and convey the Permanent Easement for Building Encroachment and Permanent Easement for Subsurface Building Encroachment was given 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.

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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 street right-of-way and conveyance of a Permanent Easement for Building Encroachment and a Permanent Easement for Subsurface Building Encroachment in such 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 subsurface and surface portions of 7<sup>th</sup> Street, Walnut Street and Mulberry Street right-of-way adjoining 207 7<sup>th</sup> Street, legally described as follows, and said vacation is hereby approved:

SUBSURFACE AREA:

THE EAST 14.5 FEET OF THE 7<sup>TH</sup> STREET RIGHT-OF-WAY LYING WEST OF BLOCK 11 OF FORT DES MOINES, AN OFFICIAL PLAT, AND -EXCEPT THE EAST 66 FEET THEREOF-, THE SOUTH 14 FEET OF THE WALNUT STREET RIGHT OF WAY LYING NORTH OF AND ADJOINING SAID BLOCK 11, AND THE SOUTH 14 FEET OF THE WALNUT STREET RIGHT OF WAY LYING NORTH OF AND ADJOINING THAT PORTION OF THE EAST 14.5 FEET OF 7<sup>TH</sup> STREET RIGHT OF WAY WHICH IS LYING WEST OF AND ADJOINING SAID BLOCK 11, ALL PORTIONS OF RIGHT OF WAYS ARE IN SAID FORT DES MOINES, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND CONTAINING APPROXIMATELY 0.17 ACRES (7,388 SQUARE FEET).

SURFACE AREA:

THE NORTH 0.25 FEET OF THE MULBERRY STREET RIGHT-OF-WAY LYING SOUTH OF AND ADJOINING LOT 4, BLOCK 11, TOWN OF FORT DES MOINES, AN OFFICIAL PLAT, AND THE NORTH 0.25 FEET OF THE MULBERRY STREET RIGHT-OF-WAY LYING SOUTH OF AND ADJOINING THAT PORTION OF THE EAST 0.25 FEET OF 7<sup>TH</sup> STREET RIGHT-OF-WAY WHICH IS LYING WEST OF AND ADJOINING SAID BLOCK 11, AND THE EAST 0.25 FEET OF THE 7<sup>TH</sup> STREET RIGHT-OF-WAY LYING WEST OF AND ADJOINING SAID BLOCK 11, ALL PORTIONS OF RIGHT OF WAYS ARE IN SAID FORT DES MOINES, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND CONTAINING APPROXIMATELY 104 SQUARE FEET.

3. The proposed conveyance of a Permanent Easement for Building Encroachment and a Permanent Easement for Subsurface Building Encroachment in such vacated right-of-way, as legally described below, to Lawmark, L.P. for \$102,128.00, subject to reservation of easements therein, and said conveyance is hereby approved:

SUBSURFACE ENCROACHMENT EASEMENT:

THE EAST 14.5 FEET OF THE VACATED 7<sup>TH</sup> STREET RIGHT-OF-WAY LYING WEST OF BLOCK 11 OF FORT DES MOINES, AN OFFICIAL PLAT, AND -EXCEPT THE EAST 66 FEET

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THEREOF-, THE SOUTH 14 FEET OF THE VACATED WALNUT STREET RIGHT OF WAY LYING NORTH OF AND ADJOINING SAID BLOCK 11, AND THE SOUTH 14 FEET OF THE VACATED WALNUT STREET RIGHT OF WAY LYING NORTH OF AND ADJOINING THAT PORTION OF THE EAST 14.5 FEET OF VACATED 7<sup>TH</sup> STREET RIGHT OF WAY WHICH IS LYING WEST OF AND ADJOINING SAID BLOCK 11, ALL PORTIONS OF VACATED RIGHT OF WAYS ARE IN SAID FORT DES MOINES, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND CONTAINING APPROXIMATELY 0.17 ACRES (7,388 SQUARE FEET).

SURFACE ENCROACHMENT EASEMENT:

THE NORTH 0.25 FEET OF THE VACATED MULBERRY STREET RIGHT-OF-WAY LYING SOUTH OF AND ADJOINING LOT 4, BLOCK 11, TOWN OF FORT DES MOINES, AN OFFICIAL PLAT, AND THE NORTH 0.25 FEET OF THE VACATED MULBERRY STREET RIGHT-OF-WAY LYING SOUTH OF AND ADJOINING THAT PORTION OF THE EAST 0.25 FEET OF 7<sup>TH</sup> STREET RIGHT-OF-WAY WHICH IS LYING WEST OF AND ADJOINING SAID BLOCK 11, AND THE EAST 0.25 FEET OF THE VACATED 7<sup>TH</sup> STREET RIGHT-OF-WAY LYING WEST OF AND ADJOINING SAID BLOCK 11, ALL PORTIONS OF VACATED RIGHT OF WAYS ARE IN SAID FORT DES MOINES, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND CONTAINING APPROXIMATELY 104 SQUARE FEET.

4. The Mayor is authorized and directed to sign the Offer to Purchase Easements and Acceptance, Permanent Easement for Building Encroachment and Permanent Easement for Subsurface Building Encroachment 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 non-refundable payment of \$14,589.71, plus \$113.00 for publication and recording costs, the City Clerk is authorized and directed to forward the original of the Offer to Purchase Easements and Acceptance, 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. Upon satisfaction of the terms and conditions of the Offer to Purchase Easements and Acceptance including proof of payment of the Consideration, the City Clerk is authorized and directed to forward the original of the Permanent Easement for Building Encroachment and Permanent Easement for Subsurface Building Encroachment, 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 document to be recorded.
7. The Real Estate Division Manager is authorized and directed to forward the original of the Offer to Purchase, 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.

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8. Upon satisfaction of the terms and conditions of the Offer to Purchase Easements and Acceptance including proof of payment of the Consideration, the Real Estate Division Manager is authorized and directed to forward the original of the Permanent Easement for Building Encroachment and Permanent Easement for Subsurface Building Encroachment, 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.

9. 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 Building Encroachment and Permanent Easement for Subsurface Building Encroachment and a copy of the Offer to Purchase Easements and Acceptance to the grantee.

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

Moved by Mandelbaum to adopt. Second by Voss.

APPROVED AS TO FORM:

/s/ Mackenzie L. Moreno  
Mackenzie L. Moreno, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
GATTO	✓			
MANDELBAUM	✓			
SHEUMAKER				✓
VOSS	✓			
WESTERGAARD	✓			
TOTAL	6			1

MOTION CARRIED APPROVED  
J. M. Frank Mayor

CERTIFICATE

I, Laura Baumgartner, 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.

Laura Baumgartner

Laura Baumgartner, City Clerk