



**Roll Call Number**

23-1465

**Agenda Item Number**

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**Date** October 23, 2023

**HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF AIR AND SUBSURFACE RIGHTS WITHIN 13<sup>TH</sup> STREET, FALCON DRIVE, MULBERRY STREET, AND NORTH/SOUTH ALLEY RIGHT-OF-WAY ADJOINING 1301 MULBERRY STREET, AND CONVEYANCE OF A PERMANENT EASEMENT FOR AIR SPACE ABOVE CITY-OWNED PROPERTY AND A PERMANENT EASEMENT FOR SUBSURFACE BUILDING ENCROACHMENT ON CITY-OWNED PROPERTY TO 13<sup>TH</sup> AND MULBERRY, LLC FOR \$24,100**

**WHEREAS**, on October 24, 2022, by Roll Call No. 22-1635, 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 to vacate the air and subsurface rights-of-way adjoining 1301 Mulberry Street, within 13<sup>th</sup> Street, Falcon Drive, Mulberry Street, and a north/south alleyway, subject to the reservation of easements for all existing utilities in place until such time as they are abandoned or relocated; and

**WHEREAS**, 13<sup>th</sup> and Mulberry, LLC, the owner of 1301 Mulberry Street, has offered to the City of Des Moines, Iowa (“City”) the purchase price of \$24,100.00 for the purchase of a Permanent Easement for Air Space Above City-Owned Property and a Permanent Easement for Subsurface Building Encroachment On City-Owned Property (“Easements”) over and below portions of 13<sup>th</sup> Street, Falcon Drive, Mulberry Street, and north/south alley rights-of-way adjoining 1301 Mulberry Street (hereinafter “Easement Area”), for the purpose of constructing, repairing, and maintaining balcony projections and canopies over the right-of-way, and building footings and subsurface encroachments into the right-of-way from such building as part of a 5-story mixed-use building project at 1301 Mulberry Street; which price reflects the fair market value of the Easements as determined by the City’s Real Estate Division; and

**WHEREAS**, there is no known current or future public need for the street and alley right-of-way proposed to be vacated, and the City will not be inconvenienced by the vacation of said property and the conveyance of the Easements in such vacated right-of-way; and

**WHEREAS**, on October 2, 2023, by Roll Call No. 23-1317, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation of the street and alley right-of-way and conveyance of the Permanent Easement for Air Space Above City-Owned Property and Permanent Easement for Subsurface Building Encroachment On City-Owned Property be set for hearing on October 23, 2023, 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 and alley right-of-way and convey the Easements 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

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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 the air and subsurface rights-of-way within 13<sup>th</sup> Street, Falcon Drive, Mulberry Street, and a north/south alleyway all adjoining 1301 Mulberry Street, as described herein, are hereby overruled and the hearing is closed.
2. There is no public need or benefit for the rights-of-way proposed to be vacated, and the public would not be inconvenienced by reason of the vacation of the air and subsurface rights-of-way within 13<sup>th</sup> Street, Falcon Drive, Mulberry Street, and a north/south alleyway all adjoining 1301 Mulberry Street, legally described as follows, and said vacation is hereby approved:

AIR RIGHTS

A PART OF MULBERRY STREET RIGHT OF WAY, A PART OF 13<sup>TH</sup>/ STREET RIGHT OF WAY, A PART OF FALCON DRIVE RIGHT OF WAY, AND A PART OF THE NORTH/SOUTH ALLEY RIGHT OF WAY IN BLOCK 34, KEENE & POINDEXTER’S ADDITION TO FORT DES MOINES, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND BEING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 8 IN BLOCK 34 IN KEENE & POINDEXTER’S ADDITION TO FORT DES MOINES; THENCE S29°20’46”W A DISTANCE OF 11.37 FEET TO THE POINT OF BEGINNING; THENCE N15°21’07”W A DISTANCE OF 148.99 FEET; THENCE N73°29’18”E A DISTANCE OF 148.36 FEET; THENCE S15°25’33”E A DISTANCE OF 150.43 FEET; THENCE S74°02’40”W A DISTANCE OF 148.53 FEET TO THE POINT OF BEGINNING, EXCEPT LOTS 8 & 9 BLOCK 34 KEENE & POINDEXTER’S ADDITION TO FORT DES MOINES,

LYING BETWEEN ELEVATIONS 50.57 AND 95.33 FEET, CITY OF DES MOINES DATUM (REFERENCE GROUND LEVEL ELEVATION OF 36.85 FEET, CITY OF DES MOINES DATUM, AT THE POINT OF COMMENCEMENT OF THE ABOVE-DESCRIBED LOCATION). HORIZONTALLY CONTAINING 4,382 SQUARE FEET, MORE OR LESS.

SUBSURFACE RIGHTS

A PART OF MULBERRY STREET RIGHT OF WAY, A PART OF 13<sup>TH</sup>/ STREET RIGHT OF WAY, A PART OF FALCON DRIVE RIGHT OF WAY, AND A PART OF THE NORTH/SOUTH ALLEY RIGHT OF WAY IN BLOCK 34, KEENE & POINDEXTER’S ADDITION TO FORT DES MOINES, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND BEING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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11.37 FEET TO THE POINT OF BEGINNING; THENCE N15°21'07"W A DISTANCE OF 148.99 FEET; THENCE N73°29'18"E A DISTANCE OF 148.36 FEET; THENCE S15°25'33"E A DISTANCE OF 150.43 FEET; THENCE S74°02'40"W A DISTANCE OF 148.53 FEET TO THE POINT OF BEGINNING, EXCEPT LOTS 8 & 9 BLOCK 34 KEENE & POINDEXTER'S ADDITION TO FORT DES MOINES. CONTAINING 4,382 SQUARE FEET, MORE OR LESS. THE ABOVE-DESCRIBED AREA IS INTENDED TO ENCOMPASS THE ENTIRETY OF THE SUBSURFACE STRUCTURE BENEATH 1301 MULBERRY STREET WHICH EXTENDS INTO THE RIGHT-OF-WAY OF MULBERRY STREET, 13<sup>TH</sup> STREET, FALCON DRIVE AND ALLEY.

3. The proposed conveyance of the Permanent Easement for Air Space Above City-Owned Property and Permanent Easement for Subsurface Building Encroachment On City-Owned Property in such vacated street and alley right-of-way, as legally described below, to 13<sup>th</sup> and Mulberry, LLC for \$24,100.00, and said conveyance is hereby approved:

AIR RIGHTS

A PART OF VACATED MULBERRY STREET RIGHT OF WAY, A PART OF VACATED 13<sup>TH</sup> STREET RIGHT OF WAY, A PART OF VACATED FALCON DRIVE RIGHT OF WAY, AND A PART OF THE VACATED NORTH/SOUTH ALLEY RIGHT OF WAY IN BLOCK 34, KEENE & POINDEXTER'S ADDITION TO FORT DES MOINES, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND BEING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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



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Moved by Mandelbaum to adopt. Second by Gatto

APPROVED AS TO FORM:

/s/ Chas M. Cahill
Chas M. Cahill, Assistant City Attorney

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, GATTO, MANDELBAUM, VOSS, WESTERGAARD, and TOTAL.

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.

MOTION CARRIED APPROVED
J. M. Franke, Mayor

Laura Baumgartner, City Clerk