



Roll Call Number

23-1611

Agenda Item Number

15

Date November 20, 2023

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SET HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF AIR AND SURFACE RIGHTS WITHIN PORTIONS OF SOUTHWEST 7TH STREET RIGHT-OF-WAY ADJOINING 106 SOUTHWEST 7TH STREET AND CONVEYANCE OF A PERMANENT EASEMENT FOR AIR SPACE ABOVE CITY-OWNED PROPERTY AND A PERMANENT EASEMENT FOR BUILDING ENCROACHMENT-DOOR SWING TO 106 SW 7TH STREET, LLC FOR \$370.00

WHEREAS, on October 2, 2023, by Roll Call No. 23-1314, 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 106 SW 7th Street, LLC to vacate the air and surface rights within a portion of Southwest 7th Street right-of-way adjoining 106 Southwest 7th Street, subject to the reservation of easements for all existing utilities in place until such time as they are abandoned or relocated; and

WHEREAS, 106 SW 7th Street, LLC, the owner of 106 Southwest 7th Street, has offered to the City of Des Moines, Iowa (“City”) the purchase price of \$370.00 for the purchase of a Permanent Easement for Air Space Above City-Owned Property and a Permanent Easement for Building Encroachment-Door Swing (“Easements”) over through and across portions of Southwest 7th Street right-of-way adjoining 106 Southwest 7th Street (hereinafter “Easement Area”), for the purpose of constructing, repairing, and maintaining balcony projections over the vacated right-of-way, and constructing, repairing, and maintaining building door swing areas, with planters or other City-approved barriers on each side of each door into and upon the vacated right-of-way; 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 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 said vacated right-of-way.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that:

1. That the City Council of the City of Des Moines, Iowa, shall consider adoption of an ordinance permanently vacating air and surface rights-of-way within Southwest 7th Street adjoining 106 Southwest 7th Street, legally described as follows:

AIR RIGHTS

A PART OF THE VACATED SW 7TH STREET PUBLIC RIGHT-OF-WAY LYING DIRECTLY ADJACENT TO LOTS 7 AND 8, BLOCK 5, ORIGINAL TOWN OF FORT DES MOINES, AN OFFICIAL PLAT RECORDED IN BOOK 'A', PAGE 3 AT THE POLK COUNTY RECORDER'S OFFICE, CITY OF DES MOINES, POLK COUNTY, IOWA THAT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AS A POINT OF REFERENCE AT THE NE CORNER OF SAID LOT 8; THENCE S15°38'13"E, 78.00 FEET ALONG THE EAST LINE OF SAID LOTS 7 & 8, SAID EAST LINE

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COINCIDES WITH THE WEST RIGHT-OF-WAY LINE OF SW 7TH STREET AS IT IS PRESENTLY ESTABLISHED, TO THE POINT OF BEGINNING; THENCE N74°21'47"E, 6.00 FEET TO A POINT THAT IS 6.00 FEET EAST OF SAID WEST RIGHT-OF-WAY; THENCE S15°38'13"E, 24.00 FEET ALONG A LINE THAT IS 6.00 FEET EAST OF AND PARALLEL WITH SAID WEST RIGHT-OF-WAY LINE TO A POINT; THENCE S74°21'47"W, 6.00 FEET TO A POINT ON SAID WEST RIGHT-OF-WAY LINE OF SW 7TH STREET AND SAID EAST LINE OF LOT 7; THENCE N15°38'13"W, 24.00 FEET ALONG SAID WEST RIGHT-OF-WAY LINE AND SAID EAST LINE OF LOT 7 TO THE POINT OF BEGINNING AND CONTAINING 144 SQUARE FEET MORE OR LESS.

THE PREVIOUS DESCRIPTION IS RESTRICTED BETWEEN THE FOLLOWING ELEVATIONS:

BOTTOM OF EASEMENT = 54.32 FEET

TOP OF EASEMENT = 69.32 FEET

A REFERENCE ELEVATION OF THE FIRST FLOOR OF 28.32 FEET AND A GROUND ELEVATION OF 26.30 FEET.

SURFACE RIGHTS

A PART OF THE SW 7TH STREET PUBLIC RIGHT-OF-WAY LYING DIRECTLY ADJACENT TO LOTS 7 AND 8, BLOCK 5, ORIGINAL TOWN OF FORT DES MOINES, AN OFFICIAL PLAT RECORDED IN BOOK 'A', PAGE 3 AT THE POLK COUNTY RECORDER'S OFFICE, CITY OF DES MOINES, POLK COUNTY, IOWA THAT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AS A POINT OF REFERENCE AT THE NE CORNER OF SAID LOT 8; THENCE S15°38'13"E, 84.00 FEET ALONG THE EAST LINE OF SAID LOTS 7 & 8, SAID EAST LINE COINCIDES WITH THE WEST RIGHT-OF-WAY LINE OF SW 7TH STREET AS IT IS PRESENTLY ESTABLISHED, TO THE POINT OF BEGINNING; THENCE N74°21'47"E, 5.00 FEET TO A POINT THAT IS 5.00 FEET EAST OF SAID WEST RIGHT-OF-WAY; THENCE S15°38'13"E, 8.00 FEET ALONG A LINE THAT IS 5.00 FEET EAST OF AND PARALLEL WITH SAID WEST RIGHT-OF-WAY LINE TO A POINT; THENCE S74°21'47"W, 5.00 FEET TO A POINT ON SAID WEST RIGHT-OF-WAY LINE OF SW 7TH STREET AND SAID EAST LINE OF LOT 7; THENCE N15°38'13"W, 8.00 FEET ALONG SAID WEST RIGHT-OF-WAY LINE AND SAID EAST LINE OF LOT 7 TO THE POINT OF BEGINNING AND CONTAINING 40 SQUARE FEET MORE OR LESS.

2. The City Council of the City of Des Moines, Iowa, further proposes to convey a Permanent Easement for Air Space Above City-Owned Property and a Permanent Easement for Building Encroachment-Door Swing in such vacated right-of-way, as legally described below, to 106 SW 7th Street, LLC for \$370.00 subject to any and all easements, restrictions and covenants of record.

3. That the meeting of the City Council at which the adoption of said ordinance and the sale and conveyance of such right-of-way is to be considered shall be on December 4, 2023, said meeting to be held at 5:00 p.m., in the City Council Chamber, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa.



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At that time the City Council will consider the above-described proposal and any other(s) submitted prior to or during the public hearing. Persons interested in the proposal will be given the opportunity to express their views at that hearing.

4. That the City Clerk is hereby authorized and directed to publish notice of said proposal in the form hereto attached all in accordance with §362.3 of the Iowa Code.

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

Moved by Gatto to adopt. Second by Boesen

APPROVED AS TO FORM:

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

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
<u>COLEMAN</u>	✓			
GATTO	✓			
MANDELBAUM	✓			
VOSS	✓			
WESTERGAARD	✓			
TOTAL	7			

MOTION CARRIED

APPROVED

J. M. Franklin Cownie
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