



Roll Call Number

23-1711

Agenda Item Number

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Date December 4, 2023

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HOLD 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, 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 such vacated right-of-way; and

WHEREAS, on November 20, 2023, by Roll Call No. 23-1611, 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 and Permanent Easement for Building Encroachment-Door Swing be set for hearing on December 4, 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 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 the air and surface rights within portions of Southwest 7th Street right-of-way adjoining 106 Southwest 7th 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 surface rights within portions of Southwest 7th Street right-of-way adjoining 106 Southwest 7th Street, legally described as follows, and said vacation is hereby approved:

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 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.

SUBSURFACE 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



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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.

3. The proposed conveyance of the Permanent Easement for Air Space Above City-Owned Property and Permanent Easement for Building Encroachment-Door Swing in such vacated street right-of-way, as legally described below, to 106 SW 7th Street, LLC for \$370.00, and said conveyance is hereby approved:

AIR RIGHTS

AN AIR RIGHTS EASEMENT IN 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 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 DOOR SWING EASEMENT IN 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, 84.00 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, 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.

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 Building Encroachment-Door Swing 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 Building Encroachment-Door Swing, 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 Building Encroachment-Door Swing, 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 Building Encroachment-Door Swing 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, COLEMAN, GATTO, MANDELBAUM, VOSS, WESTERGAARD, and TOTAL.

Conie Boesen Mayor PRO TEM

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 City Clerk