

HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF AIR AND SUBSURFACE RIGHTS WITHIN PORTIONS OF TUTTLE STREET, SW 13TH STREET AND MURPHY STREET RIGHT-OF-WAY ADJOINING 1300 TUTTLE 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 HRC NFS I, LLC FOR \$8,061

WHEREAS, HRC NFS I, LLC, the owner of 1300 Tuttle Street, has requested that the City of Des Moines, Iowa (“City”) vacate air and subsurface rights in portions of Tuttle Street, SW 13th Street and Murphy Street right-of-way adjoining 1300 Tuttle Street, 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, HRC NFS I, LLC has offered to the City the purchase price of \$8,061.00 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, through and across portions of Tuttle Street, SW 13th Street and Murphy Street right-of-way adjoining 1300 Tuttle Street (hereinafter “Easement Area”) for the purpose of constructing, operating, maintaining and repairing balconies and footing for the apartment buildings being constructed on the property, 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 September 16, 2024, by Roll Call No. 24-1240, 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 the conveyance of a Permanent Easement for Air Space Above City-Owned Property and a Permanent Easement for Subsurface Building Encroachment on City-Owned Property be set for hearing on October 7, 2024, 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 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.

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

Date October 7, 2024

1. Upon due consideration of the facts and statements of interested persons, any and all objections to the proposed vacation of air and subsurface rights within portions of Tuttle Street, SW 13th Street and Murphy Street right-of-way adjoining 1300 Tuttle Street, as described herein, are hereby overruled and the hearing is closed.

2. There is no public need or benefit for the right-of-way proposed to be vacated, and the public would not be inconvenienced by reason of the vacation of air and subsurface rights within portions of Tuttle Street, SW 13th Street and Murphy Street right-of-way adjoining 1300 Tuttle Street, legally described as follows, and said vacation is hereby approved:

AIR RIGHTS

A-1

A PART OF LOT 'C', CENTRAL DES MOINES INDUSTRIAL PARK, AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 41, GRAY'S STATION PLAT 5, AN OFFICIAL PLAT; THENCE NORTH 81°10'49" EAST ALONG THE SOUTHERLY LINE OF SAID LOT 'C', 22.59 FEET TO THE POINT OF BEGINNING; THENCE NORTH 08°49'11" WEST, 2.00 FEET; THENCE NORTH 81°10'49" EAST, 260.00 FEET; THENCE SOUTH 08°49'11" EAST, 2.00 FEET TO SAID SOUTHERLY LINE; THENCE SOUTH 81°10'49" WEST ALONG SAID SOUTHERLY LINE, 260.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.01 ACRES (520 SQUARE FEET). APPROXIMATE GROUND ELEVATION IS 20.00 FEET WITH THE BOTTOM OF BALCONY ELEVATION BEING APPROXIMATELY 27.00 FEET AND THE TOP OF BALCONY ELEVATION BEING APPROXIMATELY 65.00 FEET. ELEVATIONS ARE CITY OF DES MOINES VERTICAL DATUM.

A-2

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COMMENCING AT THE NORTHEAST CORNER OF SAID STREET LOT 'A'; THENCE SOUTH 06°58'06" EAST ALONG THE EASTERLY LINE OF SAID STREET LOT 'A', 17.52 FEET; THENCE SOUTHERLY ALONG SAID EASTERLY LINE AND A CURVE CONCAVE WESTERLY WHOSE RADIUS IS 856.39 FEET, WHOSE ARC LENGTH IS 54.99 FEET AND WHOSE CHORD BEARS SOUTH 04°59'29" EAST, 54.99 FEET TO THE POINT OF BEGINNING; THENCE SOUTHERLY ALONG SAID EASTERLY LINE AND A CURVE CONCAVE WESTERLY WHOSE RADIUS IS 856.39 FEET, WHOSE ARC LENGTH IS 45.18 FEET AND WHOSE CHORD BEARS SOUTH 01°38'25" EAST, 45.18 FEET; THENCE SOUTH 00°08'11" EAST ALONG SAID EASTERLY LINE, 101.50 FEET; THENCE SOUTH 89°51'49" WEST, 3.50 FEET; THENCE NORTH 00°08'11" WEST, 101.50 FEET; THENCE NORTHERLY ALONG A CURVE CONCAVE WESTERLY WHOSE RADIUS IS 852.89 FEET, WHOSE ARC LENGTH IS 45.00 FEET AND WHOSE CHORD BEARS NORTH 01°38'25" WEST, 44.99 FEET; THENCE

NORTH 86°50'54" EAST, 3.50 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.01 ACRES (513 SQUARE FEET). APPROXIMATE GROUND ELEVATION IS 20.00 FEET WITH THE BOTTOM OF BALCONY ELEVATION BEING APPROXIMATELY 27.00 FEET AND THE TOP OF BALCONY ELEVATION BEING APPROXIMATELY 65.00 FEET. ELEVATIONS ARE CITY OF DES MOINES VERTICAL DATUM.

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A-4

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SUBSURFACE RIGHTS

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Date October 7, 2024

Page 4

ALONG SAID SOUTHERLY LINE, 20.00 FEET; THENCE NORTH 08°49'11" WEST, 0.50 FEET; THENCE NORTH 81°10'49" EAST, 20.00 FEET; THENCE SOUTH 08°49'11" EAST, 0.50 FEET TO THE POINT OF BEGINNING AND CONTAINING 10 SQUARE FEET.

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3. The proposed conveyance of the Permanent Easement for Air Space Above City-Owned Property and the Permanent Easement for Subsurface Building Encroachment on City-Owned Property in such vacated street right-of-way, as legally described below, to HRC NFS I, LLC for \$8,061.00 is hereby approved:

PERMANENT EASEMENT FOR AIR SPACE ABOVE CITY-OWNED PROPERTY

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AND

PERMANENT EASEMENT FOR SUBSURFACE BUILDING ENCROACHMENT ON CITY-OWNED PROPERTY

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



Date October 7, 2024

Encroachment on City-Owned Property, as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.

5. The City Manager is authorized to sign any minor and non-substantial amendments to the purchase agreement and is further authorized to grant any temporary rights of entry for construction-related activities prior to closing.

6. 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.

7. 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.

8. 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.

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



Roll Call Number

241372

Agenda Item Number

43

Date October 7, 2024

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
BOESEN	✓			
SIMONSON	✓			
VOSS	✓			
COLEMAN	✓			
WESTERGAARD	✓			
MANDELBAUM	✓			
GATTO	✓			
TOTAL	7			
MOTION CARRIED		APPROVED		
<u>Connie Boesen</u> 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