

HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF AIR, SUBSURFACE, AND SURFACE RIGHTS WITHIN PORTIONS OF DES MOINES STREET AND EAST 6TH STREET RIGHT-OF-WAY ADJOINING 603 EAST 6TH STREET AND CONVEYANCE OF A PERMANENT EASEMENT FOR AIR SPACE ABOVE CITY-OWNED PROPERTY, A PERMANENT EASEMENT FOR SUBSURFACE BUILDING ENCROACHMENT ON CITY-OWNED PROPERTY, AND A PERMANENT EASEMENT FOR SURFACE BUILDING ENCROACHMENT ON CITY-OWNED PROPERTY TO HOA ASTON LLC FOR \$30,324

WHEREAS, HOA Aston LLC, the owner of 603 East 6th Street, has requested that the City of Des Moines, Iowa (“City”) vacate air, subsurface, and surface rights in portions of Des Moines Street and East 6th Street right-of-way adjoining 603 East 6th 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, HOA Aston, LLC has offered to the City the purchase price of \$30,324.00 for the purchase of a Permanent Easement for Air Space Above City-Owned Property, a Permanent Easement for Subsurface Building Encroachment on City-Owned Property, and Permanent Easement for Surface Building Encroachment on City-Owned Property (“Easements”) over, through and across portions of Des Moines Street and East 6th Street right-of-way adjoining 603 East 6th Street (hereinafter “Easement Area”) for the purpose of constructing, operating, maintaining and repairing balconies , footings and building encroachment for the apartment building 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. 24-1239, 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, a Permanent Easement for Subsurface Building Encroachment on City-Owned Property, and a Permanent Easement for Surface 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.

24-1378

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Date October 7, 2024

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 air, subsurface, and surface rights in portions of Des Moines Street and East 6th Street right-of-way adjoining 603 East 6th 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, subsurface, and surface rights within portions of Des Moines Street and East 6th Street right-of-way adjoining 603 East 6th Street, legally described as follows, and said vacation is hereby approved:

AIR RIGHTS

AERIAL EXHIBIT 'A'

A PART OF THE DES MOINES STREET RIGHT-OF-WAY AND A PART OF THE E 6TH STREET RIGHT-OF-WAY, BOTH ADJOINING THE SOUTH HALF OF THE WEST 333.50 FEET OF BLOCK A, RIVER HILLS PLAT THREE, AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID SOUTH HALF OF THE WEST 333.50 FEET; THENCE NORTH 74°43'00" EAST ALONG THE NORTH RIGHT-OF-WAY LINE OF DES MOINES STREET, 23.00 FEET; THENCE SOUTH 15°17'00" EAST, 3.00 FEET; THENCE SOUTH 74°43'00" WEST, 24.02 FEET; THENCE NORTH 14°56'16" WEST, 20.61 FEET; THENCE NORTH 75°03'44" EAST, 1.00 FEET TO THE EAST RIGHT-OF-WAY LINE OF E 6TH STREET; THENCE SOUTH 14°56'16" EAST ALONG SAID EAST RIGHT-OF-WAY LINE, 17.61 FEET TO THE POINT OF BEGINNING AND CONTAINING 90 SQUARE FEET.

APPROXIMATE GROUND ELEVATION IS 54-55 FEET WITH THE BOTTOM OF BALCONY ELEVATION BEING APPROXIMATELY 74 FEET AND THE TOP OF BALCONY ELEVATION BEING APPROXIMATELY 144 FEET. ELEVATIONS ARE CITY OF DES MOINES VERTICAL DATUM.

AERIAL EXHIBIT 'B'

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ALONG SAID NORTH RIGHT-OF-WAY LINE, 23.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 69 SQUARE FEET.

APPROXIMATE GROUND ELEVATION IS 61-62 FEET WITH THE BOTTOM OF BALCONY ELEVATION BEING APPROXIMATELY 74 FEET AND THE TOP OF BALCONY ELEVATION BEING APPROXIMATELY 144 FEET. ELEVATIONS ARE CITY OF DES MOINES VERTICAL DATUM.

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SUBSURFACE RIGHTS

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3. The proposed conveyance of the Permanent Easement for Air Space Above City-Owned Property, the Permanent Easement for Subsurface Building Encroachment on City-Owned Property, and the Permanent Easement for Surface Building Encroachment on City-Owned Property in such vacated street right-of-way, as legally described below, to HOA Aston LLC for \$30,324.00 is hereby approved:

PERMANENT EASEMENT FOR AIR SPACE ABOVE CITY-OWNED PROPERTY

AERIAL EXHIBIT 'A'

A PART OF THE VACATED DES MOINES STREET RIGHT-OF-WAY AND A PART OF THE VACATED E 6TH STREET RIGHT-OF-WAY, BOTH ADJOINING THE SOUTH HALF OF THE WEST 333.50 FEET OF BLOCK A, RIVER HILLS PLAT THREE, AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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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, Permanent Easement for Subsurface Building Encroachment on City-Owned Property, and Permanent Easement for Surface Building 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, Permanent Easement for Subsurface Building Encroachment on City-Owned Property, and Permanent Easement for Surface 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, Permanent Easement for Subsurface Building Encroachment on City-Owned Property, and Permanent Easement for Surface Building Encroachment on City-Owned Property, together with a certified copy of this resolution and of the

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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, Permanent Easement for Subsurface Building Encroachment on City-Owned Property, and Permanent Easement for Surface 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.

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			

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.

Connie Boesen Mayor

Laura Baumgartner
Laura Baumgartner, City Clerk