

24-1467

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Date October 21, 2024

HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF PORTIONS OF 23RD STREET, HIGH STREET, 24TH STREET, AND THE NORTH/SOUTH ALLEY RIGHT-OF-WAY ADJOINING 601 24TH STREET AND 602 23RD STREET AND CONVEYANCE TO RALLY CAP PROPERTIES, LLC FOR \$200.00

WHEREAS, on September 16, 2024 by Roll Call No. 24-1234, 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 Rally Cap Properties, LLC, Ryan Francois, Manager, to vacate portions of 23rd Street, High Street, 24th Street, and the north/south alley right-of-way adjoining 601 24th Street and 602 23rd Street (hereinafter "Property"), to allow the property to be assembled with 601 24th Street and 602 23rd Street for an existing community garden and it's structures to allow installation of a required perimeter fence.

WHEREAS, Rally Cap Properties, LLC, owner of all of the property adjoining the right-of-way, has offered to the City of Des Moines ("City") the purchase price of \$200.00 for the purchase of the vacated right-of-way for assemblage with its adjoining properties at 601 24th Street and 602 23rd Street; and

WHEREAS, the conveyance of this Property is subject to any and all easements, restrictions, and covenants of record on the Property. Further, this sale is subject to the reservation of an easement upon the Property which will be included in the Quit Claim Deed from City to Rally Cap Properties, LLC for the continued use and maintenance of any and all utilities now in place and any and all future utilities, including but not limited to utilities for the benefit and use of the City of Des Moines, Iowa, with the right of entry for servicing same, until such time as said utilities are abandoned or relocated at Rally Cap Properties, LLC's sole expense following written approval of the City or applicable utility; and

WHEREAS, the conveyance of this Property is further subject to a no-build easement, which easement will be included in the Quit Claim Deed from City to Rally Cap Properties, LLC. Rally Cap Properties, LLC shall erect no structure, building or other improvement over or within the Property. This easement shall not preclude the construction of a fence, sidewalk, parking area or patio, and associated improvements, so long as such improvements are both above ground and do not interfere in any way with the utilities on the Property. This no build easement shall be lifted at any time after all of the following occur:

1. Written request submitted to the City Real Estate Division by Rally Cap Properties, LLC or Rally Cap Properties, LLC's successors or assigns to release said no-build easement;
2. Relocation of all utilities off the Property by Rally Cap Properties, LLC or Rally Cap Properties, LLC's successors or assigns at Rally Cap Properties, LLC 's or Rally Cap Properties, LLC's successors' or assigns' sole expense;



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3. Payment to City by Rally Cap Properties, LLC or Rally Cap Properties, LLC’s successors or assigns of the Fair Market Value of the Property at the time of the request to lift the no-build easement less the restricted Fair Market Value paid by Rally Cap Properties, LLC at the time of conveyance, or a proportional share thereof if a full release is not requested; and
4. Written release of said no-build easement by the City; and

WHEREAS, the conveyance of this Property is further subject to the reservation of a permanent easement upon the Property which will be included in the Quit Claim Deed from City to Rally Cap Properties, LLC for any future pedestrian sidewalks, for the benefit and use of the City of Des Moines, Iowa, with the right of entry for construction; and

WHEREAS, any future construction on the Property conveyed by this Deed shall comply with the setback guidelines originally established by the City at the time of construction. These setback guidelines, as established in the City’s Planning and Zoning regulations, shall remain in effect for any and all future development or construction on the property, unless otherwise amended by the City; and

WHEREAS, the City reserves an exclusive option to repurchase the property conveyed by this Deed at the original price of Two Hundred Dollars (\$200.00), should the property be needed for a public purpose at any time in the future. In the event the City determines that the property is required for such a public purpose, the City shall provide written notice to Rally Cap Properties, LLC, or its successors and assigns, of its intent to exercise this buy-back option. Upon receipt of said notice, the Rally Cap Properties, LLC shall promptly convey the property back to the City by Warranty Deed, free and clear of any encumbrances, at the price specified herein; and

WHEREAS, there is no known current or future public need or benefit for the portions of 23rd Street, High Street, 24th Street, and the north/south alley right-of-way adjoining 601 24th Street and 602 23rd Street proposed to be vacated and sold, and the City will not be inconvenienced by the sale of said Property; and

WHEREAS, on October 7, 2024, by Roll Call No. 24-1345, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation and conveyance of the alley right-of-way be set for hearing on October 21, 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 and convey the portions of 23rd Street, High Street, 24th Street, and the north/south alley right-of-way adjoining 601 24th Street and 602 23rd Street 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:

1. Upon due consideration of the facts and statements of interested persons, any and all objections to the proposed vacation and conveyance of portions of 23rd Street, High Street, 24th Street, and the north/south alley right-of-way adjoining 601 24th Street and 602 23rd Street, as described herein, are hereby overruled and the hearing is closed.

2. There is no public need or benefit for the portions of 23rd Street, High Street, 24th Street, and the north/south alley right-of-way adjoining 601 24th Street and 602 23rd Street proposed to be vacated, and the public would not be inconvenienced by reason of the vacation of the portions of 23rd Street, High Street, 24th Street, and the north/south alley right-of-way adjoining 601 24th Street and 602 23rd Street legally described as follows, and said vacation is hereby approved:

THE EAST 8.0 FEET OF 24TH STREET RIGHT OF WAY LYING WEST OF AND ADJOINING LOT 17 IN BLOCK C, WOODLAND PARK, AN OFFICIAL PLAT,

AND

THE EAST 8.0 FEET OF 24TH STREET RIGHT OF WAY ADJOINING THE NORTH 46.0 FEET OF LOT 16 IN SAID BLOCK C,

AND

THE WEST 8.0 FEET OF 23RD STREET RIGHT OF WAY LYING EAST OF AND ADJOINING THE SOUTH 10.0 FEET OF LOT 4 IN SAID BLOCK C,

AND

THE WEST 8.0 FEET OF 23RD STREET RIGHT OF WAY LYING EAST OF AND ADJOINING THE NORTH 46.0 FEET OF LOT 5 IN SAID BLOCK C,

AND

THE SOUTH 6.0 FEET OF THE NORTH 46.0 FEET OF LOTS 5 AND 16 IN SAID BLOCK C,

AND

ALL OF THE NORTH/SOUTH ALLEY RIGHT OF WAY LYING WEST OF AND ADJOINING THE SOUTH 6.0 FEET OF THE NORTH 46.0 FEET OF SAID LOT 5,

ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND CONTAINING APPROXIMATELY 2,880 SQUARE FEET.

3. The proposed sale of such vacated portions of 23rd Street, High Street, 24th Street, and the north/south alley right-of-way adjoining 601 24th Street and 602 23rd Street, as legally described below and to the grantee and for the consideration identified below, subject to reservation of easements therein, and said conveyance is hereby approved:

Grantee: Rally Cap Properties, LLC

Consideration: \$200.00

Legal Description:

THE EAST 8.0 FEET OF VACATED 24TH STREET RIGHT OF WAY LYING WEST OF AND ADJOINING LOT 17 IN BLOCK C, WOODLAND PARK, AN OFFICIAL PLAT,

AND

THE EAST 8.0 FEET OF VACATED 24TH STREET RIGHT OF WAY ADJOINING THE NORTH 46.0 FEET OF LOT 16 IN SAID BLOCK C,

AND

THE WEST 8.0 FEET OF VACATED 23RD STREET RIGHT OF WAY LYING EAST OF AND ADJOINING THE SOUTH 10.0 FEET OF LOT 4 IN SAID BLOCK C,

AND

THE WEST 8.0 FEET OF VACATED 23RD STREET RIGHT OF WAY LYING EAST OF AND ADJOINING THE NORTH 46.0 FEET OF LOT 5 IN SAID BLOCK C,

AND

THE SOUTH 6.0 FEET OF THE NORTH 46.0 FEET OF LOTS 5 AND 16 IN SAID BLOCK C,

AND

ALL OF THE VACATED NORTH/SOUTH ALLEY RIGHT OF WAY LYING WEST OF AND ADJOINING THE SOUTH 6.0 FEET OF THE NORTH 46.0 FEET OF SAID LOT 5,

ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND CONTAINING APPROXIMATELY 2,880 SQUARE FEET.



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4. The Mayor is authorized and directed to sign the Offer to Purchase and Quit Claim Deed and Reservation of Easements 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 Quit Claim Deed and Reservation of Easements, 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 Quit Claim Deed and Reservation of Easements, 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 Quit Claim Deed and Reservation of Easements 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.

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		

Conie Boesen 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