



Roll Call Number

25-0526

Agenda Item Number

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Date April 7, 2025

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HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF SUBSURFACE AND SURFACE RIGHTS WITHIN PORTIONS OF MULBERRY STREET RIGHT-OF-WAY ADJOINING 1435 MULBERRY STREET AND CONVEYANCE OF A PERMANENT EASEMENT FOR SUBSURFACE BUILDING ENCROACHMENT ON CITY-OWNED PROPERTY AND A PERMANENT EASEMENT FOR BUILDING ENCROACHMENT - DOOR SWING TO 1435 MULBERRY LLC FOR \$14,750.00

WHEREAS, on December 18, 2023, by Roll Call No. 23-1757, the City Council of the City of Des Moines, Iowa, received and filed a recommendation from the City Plan and Zoning Commission to approve a request from 1435 Mulberry LLC for the vacation of approximately 1,444 square feet subsurface rights within the Mulberry Street right-of-way adjoining 1435 Mulberry Street, Des Moines, Iowa (“Property”) to allow for the encroachment of proposed building footings, subject to the reservation of easements for all existing utilities in place until such time as they are abandoned or relocated at applicant’s expense; and

WHEREAS, 1435 Mulberry LLC, the owner of 1435 Mulberry Street, has also requested that the City of Des Moines, Iowa (“City”) vacate surface rights within a portion of Mulberry Street right-of-way adjoining said Property, 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, 1435 Mulberry LLC has offered to the City the purchase price of \$14,750.00 for the purchase of a Permanent Easement for Subsurface Building Encroachment on City-Owned Property and a Permanent Easement for Building Encroachment - Door Swing (“Easements”) over, through and across portions of Mulberry Street right-of-way adjoining 1435 Mulberry Street (hereinafter “Easement Area”) for the purpose of constructing, operating, maintaining and repairing building footings and door swing area for the residential 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 Easement in such vacated right-of-way; and

WHEREAS, on March 24, 2025 by Roll Call No. 25-0432, 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 Subsurface Building Encroachment on City-Owned Property and a Permanent Easement for Building Encroachment - Door Swing be set for hearing on April 7, 2025 at 5:00 p.m., in the City Council Chambers, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa; and

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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:

1. Upon due consideration of the facts and statements of interested persons, any and all objections to the proposed vacation of subsurface and surface rights in portions of Mulberry Street right-of-way adjoining 1435 Mulberry Street, Des Moines, Iowa, 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 subsurface and surface rights within portions of Mulberry Street right-of-way adjoining 1435 Mulberry Street, legally described as follows, and said vacation is hereby approved:

SUBSURFACE RIGHTS

A 3.75 FEET WIDE STRIP OF MULBERRY STREET RIGHT-OF-WAY LYING SOUTH OF AND ADJOINING THE FOLLOWING DESCRIBED PROPERTY:

LOT FOUR (4) IN KEENE AND POINDEXTER'S OFFICIAL PLAT, AND THAT PART OF VACATED WEST 14TH STREET ADJOINING SAID LOT 4 ON THE WEST, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

AND

LOTS SEVEN (7), EIGHT (8), NINE (9), TEN (10) AND ELEVEN (11) IN BLOCK THIRTY-NINE (39) IN J. LYON'S ADDITION TO FORT DES MOINES, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

AND

ALL THAT PART OF THE VACATED 16.5 FOOT WIDE NORTH-SOUTH ALLEY THAT LIES EAST OF AND ADJOINING TO THE EAST LINE OF LOT 8; AND ALSO ALL THAT PART OF THE VACATED 16.5 FOOT WIDE NORTH-SOUTH ALLEY THAT LIES EAST OF AND ADJOINING THE EAST LINE OF LOT 10; ALL IN BLOCK 39 IN J. LYON'S ADDITION TO FORT DES MOINES, AN OFFICIAL PLAT, NOW INCLUDED

IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA (BOTH VACATED BY ORDINANCE NO. 8066, ENACTED OCTOBER 5, 1970).

SAID STRIP OF RIGHT-OF-WAY BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 7 IN BLOCK 39 OF J. LYON'S ADDITION TO FORT DES MOINES ON THE NORTH RIGHT-OF-WAY LINE OF MULBERRY STREET; THENCE NORTH 74°(DEGREES) 09'(MINUTES) 48''(SECONDS) EAST, 47.00 FEET ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID MULBERRY STREET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 74°09'48" EAST, 385.00 FEET ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID MULBERRY STREET; THENCE SOUTH 15°50'12" EAST, 3.75 FEET; THENCE SOUTH 74°09'48" WEST, 385.00 FEET; THENCE NORTH 15°50'12" WEST, 3.75 FEET TO THE POINT OF BEGINNING.

CONTAINING 1,444 SQUARE FEET, MORE OR LESS.

SURFACE RIGHTS

PART OF MULBERRY STREET RIGHT-OF-WAY LYING SOUTH OF AND ADJOINING LOT 4 IN KEENE AND POINDEXTER OFFICIAL PLAT, AND THAT PART OF VACATED WEST 14TH STREET ADJOINING SAID LOT 4 ON THE WEST, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA. SAID PART OF MULBERRY STREET RIGHT-OF-WAY BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 4 IN KEENE AND POINDEXTER OFFICIAL PLAT; THENCE SOUTH 74°(DEGREES) 09'(MINUTES) 48''(SECONDS) WEST, 37.00 FEET ALONG THE NORTH RIGHT-OF-WAY LINE OF MULBERRY STREET TO THE POINT OF BEGINNING; THENCE SOUTH 15°50'12" EAST, 2.00 FEET; THENCE SOUTH 74°09'48" WEST, 6.00 FEET; THENCE NORTH 15°50'12" WEST, 2.00 FEET TO THE NORTH RIGHT-OF-WAY LINE OF MULBERRY STREET; THENCE NORTH 74°09'48" EAST, 6.00 FEET ALONG THE NORTH RIGHT-OF-WAY LINE OF MULBERRY STREET TO THE POINT OF BEGINNING. CONTAINING 12.00 SQUARE FEET.

- 3. The proposed conveyance of the Permanent Easement for Subsurface Building Encroachment on City-Owned Property and a Permanent Easement for Building Encroachment - Door Swing in such vacated street right-of-way, as legally described below, to 1435 Mulberry LLC for \$14,750.00, subject to any and all easements, restrictions and covenants of, is hereby approved:

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PERMANENT EASEMENT FOR SUBSURFACE BUILDING ENCROACHMENT ON CITY-OWNED PROPERTY

A 3.75 FEET WIDE STRIP OF VACATED MULBERRY STREET RIGHT-OF-WAY LYING SOUTH OF AND ADJOINING THE FOLLOWING DESCRIBED PROPERTY:

LOT FOUR (4) IN KEENE AND POINDEXTER'S OFFICIAL PLAT, AND THAT PART OF VACATED WEST 14TH STREET ADJOINING SAID LOT 4 ON THE WEST, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

AND

LOTS SEVEN (7), EIGHT (8), NINE (9), TEN (10) AND ELEVEN (11) IN BLOCK THIRTY-NINE (39) IN J. LYON'S ADDITION TO FORT DES MOINES, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

AND

ALL THAT PART OF THE VACATED 16.5 FOOT WIDE NORTH-SOUTH ALLEY THAT LIES EAST OF AND ADJOINING TO THE EAST LINE OF LOT 8; AND ALSO ALL THAT PART OF THE VACATED 16.5 FOOT WIDE NORTH-SOUTH ALLEY THAT LIES EAST OF AND ADJOINING THE EAST LINE OF LOT 10; ALL IN BLOCK 39 IN J. LYON'S ADDITION TO FORT DES MOINES, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA (BOTH VACATED BY ORDINANCE NO. 8066, ENACTED OCTOBER 5, 1970).

SAID STRIP OF VACATED RIGHT-OF-WAY BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 7 IN BLOCK 39 OF J. LYON'S ADDITION TO FORT DES MOINES ON THE NORTH RIGHT-OF-WAY LINE OF MULBERRY STREET; THENCE NORTH 74°(DEGREES) 09'(MINUTES) 48"(SECONDS) EAST, 47.00 FEET ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID MULBERRY STREET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 74°09'48" EAST, 385.00 FEET ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID MULBERRY STREET; THENCE SOUTH 15°50'12" EAST, 3.75 FEET; THENCE SOUTH 74°09'48" WEST, 385.00 FEET; THENCE NORTH 15°50'12" WEST, 3.75 FEET TO THE POINT OF BEGINNING.

CONTAINING 1,444 SQUARE FEET, MORE OR LESS.

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PERMANENT EASEMENT FOR BUILDING ENCROACHMENT - DOOR SWING

PART OF VACATED MULBERRY STREET RIGHT-OF-WAY LYING SOUTH OF AND ADJOINING LOT 4 IN KEENE AND POINDEXTER OFFICIAL PLAT, AND THAT PART OF VACATED WEST 14TH STREET ADJOINING SAID LOT 4 ON THE WEST, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA. SAID PART OF VACATED MULBERRY STREET RIGHT-OF-WAY BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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4. The Mayor is authorized and directed to sign the Offer to Purchase and the Permanent Easement for Subsurface Building Encroachment on City-Owned Property and Permanent Easement for Building Encroachment - Door Swing, 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 Subsurface Building Encroachment on 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.
7. The Real Estate Division Manager is authorized and directed to forward the original of the Permanent Easement for Subsurface Building Encroachment on 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.
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 Subsurface Building

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Encroachment on City-Owned Property and Permanent Easement for Building Encroachment - Door Swing 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/ Grant Hyland
Grant Hyland, Assistant City Attorney

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include BOESEN, SIMONSON, VOSS, COLEMAN, WESTERGAARD, MANDELBAUM, GATTO, and TOTAL.

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.

MOTION CARRIED APPROVED
Connie Boesen Mayor

Laura Baumgartner
Laura Baumgartner, City Clerk