



Date June 23, 2008

Disposition – E5W, LLC: Page 1

HOLD HEARING FOR VACATION AND CONVEYANCE OF AN AIR SPACE EASEMENT ADJOINING 305 EAST 5th STREET TO E5W, LLC FOR \$240

WHEREAS, on May 5, 2008, by Roll Call No. 08-784, the City Council adopted a recommendation from the City Plan and Zoning Commission to vacate and convey an air space easement, hereinafter more fully described, to allow for encroachment of extension balconies at 305 East 5th Street; and

WHEREAS, the grantee identified below is the owner of property abutting such right-of-way and has offered to the City of Des Moines the purchase price identified below for the vacation and purchase of the air space easement described below; and

WHEREAS, on June 9, 2008, by Roll Call No. 08-992, it was duly resolved by the City Council that the proposed vacation and conveyance of such air space easement be set down for hearing on June 23, 2008, at 5:00 p.m., in the Council Chamber; and

WHEREAS, due notice of said proposal to vacate and convey public right-of-way was given as provided by law, setting forth the time and place for hearing on said proposal; and

WHEREAS, in accordance with said notice, those interested in said 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:

1. Upon due consideration of the facts and statements of interested persons, the objections to said proposed vacation and conveyance of public right-of-way, as described below, are hereby overruled and the hearing is closed.

2. There is no public need for the right-of-way proposed to be vacated and the public would not be inconvenienced by reason of the vacation of an air space easement adjoining 305 East 5th Street, more specifically described as follows:

All of the Air Space for part of East 5th Street right-of-way lying West of and adjoining Lots 5 and 6, Block D, Griffiths Addition to East Fort Des Moines, an Official Plat all now included in and forming a part of the City of Des Moines, Polk County, Iowa and described as follows.

Commencing at the Northwest corner of said Lot 5; thence South 09° (degrees) 36' (minutes) 02" (seconds) along the East right-of-way line of East 5th Street 15.00 feet to the Point of Beginning; thence continuing South 09° 36'02" East, 76.67 feet; thence South 81° 36'02" West, 5.00 feet; thence North 09° 36'02" West, 76.67 feet; thence North 81° 36'02" East, 5.00 feet to the Point of Beginning, which is below a plane elevation of 87.00 feet City

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Datum and which is above a plane elevation of 51.00 feet City Datum.(assumed) ground elevation (0.00') being 25.63 feet City Datum.

Surveyed by Leo A. Pelds, License Surveyor No. 4640.

3. That the sale and conveyance of such air space easement to E5W, LLC for \$240, together with payment by such grantee of the estimated publication and recording costs for this transaction, be and is hereby approved:

All of the Vacated Air Space for part of East 5th Street right-of-way lying West of and adjoining Lots 5 and 6, Block D, Griffiths Addition to East Fort Des Moines, an Official Plat all now included in and forming a part of the City of Des Moines, Polk County, Iowa and described as follows.

Commencing at the Northwest corner of said Lot 5; thence South 09° (degrees) 36' (minutes) 02" (seconds) along the East right-of-way line of East 5th Street 15.00 feet to the Point of Beginning; thence continuing South 09° 36'02" East, 76.67 feet; thence South 81° 36'02" West, 5.00 feet; thence North 09° 36'02" West, 76.67 feet; thence North 81° 36'02" East, 5.00 feet to the Point of Beginning, which is below a plane elevation of 87.00 feet City Datum and which is above a plane elevation of 51.00 feet City Datum.(assumed) ground elevation (0.00') being 25.63 feet City Datum.

Surveyed by Leo A. Pelds, License Surveyor No. 4640.

4. The Mayor is authorized and directed to sign the Offer to Purchase and the Easement for Use of Air Space Above City-owned Property for the conveyance identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.

5. Upon final passage of an ordinance vacating the said right-of-way and 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 said Easement, 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 Easement, 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 Easement and copies of the other documents to the grantees.

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8. The proceeds from the sale of this property will be deposited into the following account:
CDM Index: 950287, Fund: SP767, Org: ENG980500, Fund Description: Property Maintenance Fund

(Council Communication No. *08-380*)

Moved by _____ to adopt.

APPROVED AS TO FORM:

Glenna K. Frank
Glenna K. Frank
Assistant City Attorney

BN

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				

MOTION CARRIED

APPROVED

Mayor

CERTIFICATE

I, DIANE RAUH, 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.

City Clerk