

Date October 21, 2013

**CONTINUED HEARING FOR VACATION AND CONVEYANCE OF EASEMENT FOR USE OF AIR SPACE OVER THE NORTH FOUR FEET OF EAST LOCUST STREET ADJOINING 350 EAST LOCUST STREET TO EAST VILLAGE GROWTH PARTNERS, LLC FOR \$1,000**

**WHEREAS**, on September 23, 2013, by Roll Call No. 13-1474, the City Council received a recommendation from the City Plan and Zoning Commission that a portion of the air rights over the north four feet of East Locust Street adjoining 350 East Locust Street, hereinafter more fully described, be vacated to allow for private balconies connected to the building being constructed at 350 East Locust Street, subject to the requirements that any balcony constructed and/or reconstructed shall be in accordance with the submitted building elevations and site sketch, and that any balcony constructed and/or reconstructed shall have a rounded top railing and/or no ledge; and

**WHEREAS**, East Village Growth Partners, LLC is the owner of the real property locally known as 350 East Locust Street, the purchase of which closed on September 25, 2013, which property abuts said City-owned air space, and East Village Growth Partners, LLC has offered to the City of Des Moines the purchase price of \$1,000 for the vacation and purchase of an easement interest in such air space for construction and maintenance of the proposed private balconies, which purchase price reflects the fair market value of the easement as currently estimated by the City's Real Estate Division; and

**WHEREAS**, there is no known current or future public need or benefit for the air space proposed to be vacated and conveyed by easement, and the City will not be inconvenienced by the vacation and conveyance of said property interest; and

**WHEREAS**, on September 23, 2013, by Roll Call No. 13-1473, it was duly resolved by the City Council that the proposed vacation and conveyance of such easement be set down for hearing on October 7, 2013, at 5:00 p.m., in the City Council Chamber; and

**WHEREAS**, due notice of said proposal to vacate and convey the easement for use of air space was given as provided by law, setting forth the time and place for hearing on said proposal; and

**WHEREAS**, on October 7, 2013, by Roll Call No. 13-1587, the hearing on said proposal was continued to October 21, 2013; and

**WHEREAS**, in accordance with City Council direction, 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, as follows:

1. Upon due consideration of the facts and statements of interested persons, any and all objections to said proposed vacation and conveyance of the easement for use of air space as described below are hereby overruled, and the hearing is closed.

★ **Roll Call Number**  
13-1678

**Agenda Item Number**  
48

Page 2

**Date** October 21, 2013

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 a portion of air space over the north four feet of East Locust Street adjoining 350 East Locust Street, more specifically described as follows, and said vacation is hereby approved:

ALL OF THE AIR SPACE WHICH IS LOCATED ABOVE THE NORTH 4.0 FEET OF EAST LOCUST STREET RIGHT-OF-WAY LYING SOUTH OF AND ADJACENT TO PARCEL "B" OF THE PLAT OF SURVEY RECORDED IN BOOK 10868, PAGES 275-276 IN THE POLK COUNTY RECORDER'S OFFICE, POLK COUNTY, IOWA; LOCATED BELOW A PLANE WITH AN ELEVATION OF 67.40 FEET (CITY OF DES MOINES DATUM) AND ABOVE A PLANE WITH AN ELEVATION OF 56.40 FEET, ALL INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

3. That the sale and conveyance of an easement in such vacated air space, as described below, to East Village Growth Partners, LLC for \$1,000, together with payment by said grantee of the estimated publication and recording costs for this transaction, be and is hereby approved, subject to the conditions set forth in the Plan and Zoning Commission recommendation and set forth in the Offer to Purchase between the City and grantee:

AIR SPACE EASEMENT

ALL OF THE VACATED AIR SPACE WHICH IS LOCATED ABOVE THE NORTH 4.0 FEET OF EAST LOCUST STREET RIGHT-OF-WAY LYING SOUTH OF AND ADJACENT TO PARCEL "B" OF THE PLAT OF SURVEY RECORDED IN BOOK 10868, PAGES 275-276 IN THE POLK COUNTY RECORDER'S OFFICE, POLK COUNTY, IOWA; LOCATED BELOW A PLANE WITH AN ELEVATION OF 67.40 FEET (CITY OF DES MOINES DATUM) AND ABOVE A PLANE WITH AN ELEVATION OF 56.40 FEET, ALL INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

4. The Mayor is authorized and directed to sign the Offer to Purchase and the Easement 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 said air space portion of 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 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 following closing.

6. In accordance with the terms set forth in the Offer to Purchase, the Real Estate Division Manager is authorized and directed to close on the sale and forward the original of the Easement, together with a certified copy of this resolution and of the affidavit of publication of notice of this hearing, to the Polk County Recorder's Office for the purpose of causing these documents to be recorded.

★ Roll Call Number  
13-1678

Agenda Item Number  
48

Date October 21, 2013

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 grantee.

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

(Council Communication No. 13- 514)

Moved by Moore to adopt.

APPROVED AS TO FORM:

Glenna K. Frank  
Glenna K. Frank, Assistant City Attorney

*PSW*

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
GRIESS	✓			
HENSLEY	✓			
MAHAFFEY	✓			
MEYER	✓			
MOORE	✓			
TOTAL	7			

MOTION CARRIED APPROVED  
T. M. Franklin 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.

Diane Rauh City Clerk