



Roll Call Number

20-0369

Agenda Item Number

49

Date February 24, 2020

HOLD HEARING FOR APPROVAL OF DOCUMENTS TO CORRECT THE VACATION OF PORTIONS OF EAST 4TH STREET, DES MOINES STREET AND EAST 5TH STREET RIGHT-OF-WAY ADJOINING 415 AND 421 DES MOINES STREET, AND CONVEYANCE OF A CORRECTED PERMANENT EASEMENT FOR SUBSURFACE BUILDING ENCROACHMENT ON CITY-OWNED PROPERTY TO 555 E FOURTH PARKING, LLC

WHEREAS, on November 19, 2018, by Roll Call No. 18-1943, the City Council of the City of Des Moines, Iowa voted to approve the vacation of the subsurface rights in the east 2.0 feet of East 4th Street, the south 4.5 feet of Des Moines Street and the west 3.0 feet of East 5th Street right-of-way adjoining the property located south of Des Moines Street between East 4th Street and East 5th Street, formerly locally known as 415 and 421 Des Moines St, Des Moines, Iowa (hereinafter "Property"), and conveyance of a Permanent Easement for Subsurface Building Encroachment on City-owned Property in such vacated right-of-way to 555 E Fourth Parking, LLC; and

WHEREAS, said Permanent Easement for Subsurface Building Encroachment on City-owned Property (hereinafter "Easement") was filed of record with the Polk County Recorder's Office on December 14, 2018, in Book 17183, Pages 745-762; and

WHEREAS, subsequent to the filing, the Polk County Auditor's Office discovered an error in the legal description of the Easement; and

WHEREAS, 555 E Fourth Parking, LLC, owner of 415 and 421 Des Moines Street, has asked the City of Des Moines to issue a Corrected Permanent Easement for Subsurface Building Encroachment on City-owned Property in order to correct the scrivener's error in the legal description of the vacation ordinance and Easement recorded on December 14, 2018, in Book 17183, Pages 745-762; and

WHEREAS, there is no public need or benefit for the subsurface rights proposed to be vacated and conveyed, and the public would not be inconvenienced by reason of the vacation and conveyance of the Corrected Permanent Easement for Subsurface Building Encroachment on City-owned Property; and

WHEREAS, on February 10, 2020 by Roll Call No. 20-0237, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation and conveyance be set down for hearing on February 24, 2020, 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 east 2.0 feet of East 4th Street, the south 4.5 feet of Des Moines Street and the west 3.0 feet of East 5th Street rights-of-way adjoining the property located south of Des Moines Street between East 4th Street and East 5th Street, and convey a Corrected Permanent Easement for Subsurface Building Encroachment on City-owned Property, was given to all necessary parties as provided by law, setting forth the time and place for hearing on said proposal; and



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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 the east 2.0 feet of East 4th Street, the south 4.5 feet of Des Moines Street and the west 3.0 feet of East 5th Street right-of-way adjoining the property located south of Des Moines Street between East 4th Street and East 5th Street, Des Moines, Iowa, and conveyance of a Corrected Permanent Easement for Subsurface Building Encroachment on City-owned Property in said vacated right-of-way, as described herein, are hereby overruled and the hearing is closed.

2. There is no public need or benefit for the City right-of-way proposed to be vacated, and the public would not be inconvenienced by reason of the vacation of the east 2.0 feet of East 4th Street, the south 4.5 feet of Des Moines Street and the west 3.0 feet of East 5th Street right-of-way adjoining the property located south of Des Moines Street between East 4th Street and East 5th Street, legally described as follows, and said vacation is hereby approved:

A PART OF THE EAST 4TH STREET, EAST 5TH STREET, AND DES MOINES STREET RIGHTS-OF-WAY LYING ADJACENT TO LOT 1, BLOCK 10, EAST FORT DES MOINES, AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST OF CORNER OF LOT 2, CITY CENTER PLAT NO. 1, AN OFFICIAL PLAT; THENCE NORTH 74°47'22" EAST, 80.00 FEET TO THE EAST RIGHT-OF-WAY LINE OF E. 4TH STREET AND TO THE POINT OF BEGINNING; THENCE SOUTH 15°17'24" EAST ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 142.21 FEET; THENCE SOUTH 74°49'57" WEST, 2.00 FEET; THENCE NORTH 15°17'24" WEST, 146.71 FEET; THENCE NORTH 74°47'22" EAST, 344.75 FEET; THENCE SOUTH 15°20'33" EAST, 155.35 FEET; THENCE SOUTH 74°50'22" WEST, 3.00 FEET TO THE EAST LINE OF SAID LOT 1; THENCE NORTH 15°20'33" WEST ALONG SAID EAST LINE, 150.85 FEET TO THE NORTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 74°47'22" WEST ALONG THE NORTH LINE OF SAID LOT 1, A DISTANCE OF 339.76 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.05 ACRES (2,288 S.F.);

PROPERTY SUBJECT TO ANY AND ALL EASEMENTS OF RECORD

3. The proposed conveyance of a Corrected Permanent Easement for Subsurface Building Encroachment on City-owned Property in such vacated right-of-way, as legally described below, to 555 E Fourth Parking, LLC, is hereby approved:



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A PART OF THE VACATED EAST 4TH STREET, VACATED EAST 5TH STREET, AND VACATED DES MOINES STREET RIGHTS-OF-WAY LYING ADJACENT TO LOT 1, BLOCK 10, EAST FORT DES MOINES, AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST OF CORNER OF LOT 2, CITY CENTER PLAT NO. 1, AN OFFICIAL PLAT; THENCE NORTH 74°47'22" EAST, 80.00 FEET TO THE EAST RIGHT-OF-WAY LINE OF E. 4TH STREET AND TO THE POINT OF BEGINNING; THENCE SOUTH 15°17'24" EAST ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 142.21 FEET; THENCE SOUTH 74°49'57" WEST, 2.00 FEET; THENCE NORTH 15°17'24" WEST, 146.71 FEET; THENCE NORTH 74°47'22" EAST, 344.75 FEET; THENCE SOUTH 15°20'33" EAST, 155.35 FEET; THENCE SOUTH 74°50'22" WEST, 3.00 FEET TO THE EAST LINE OF SAID LOT 1; THENCE NORTH 15°20'33" WEST ALONG SAID EAST LINE, 150.85 FEET TO THE NORTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 74°47'22" WEST ALONG THE NORTH LINE OF SAID LOT 1, A DISTANCE OF 339.76 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.05 ACRES (2,288 S.F.);

PROPERTY SUBJECT TO ANY AND ALL EASEMENTS OF RECORD

3. The Mayor is authorized and directed to sign the Corrected Permanent Easement for Subsurface Building Encroachment on City-owned Property for the conveyance as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.
4. The City Clerk is authorized and directed to forward the original of the Corrected Permanent Easement for Subsurface 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.
5. The Real Estate Division Manager is authorized and directed to forward the original of the Corrected Permanent Easement for Subsurface 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 Polk County Recorder's Office for the purpose of causing these documents to be recorded.
6. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division Manager shall mail the original of the Corrected Permanent Easement for Subsurface Building Encroachment on City-owned Property and copies of the other documents to the grantee.
7. There are no proceeds associated with this conveyance.



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Moved by Gatto to adopt.

APPROVED AS TO FORM:

Lisa A. Wieland, Assistant City Attorney

pen

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
GATTO	✓			
GRAY	✓			
MANDELBAUM	✓			
VOSS	✓			
WESTERGAARD	✓			
TOTAL	7			

MOTION CARRIED APPROVED Mayor

CERTIFICATE

I, P. Kay Cmelik, 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.

P. Kay Cmelik City Clerk