



HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF A PORTION OF 6TH AVENUE RIGHT-OF-WAY ADJOINING 1230 6TH AVENUE AND CONVEYANCE OF A PERMANENT EASEMENT FOR AIR SPACE ABOVE CITY-OWNED PROPERTY AND A PERMANENT EASEMENT FOR SUBSURFACE BUILDING ENCROACHMENT TO ANAWIM A/K/A ANAWIM HOUSING, INC. FOR \$575.00

WHEREAS, March 4, 2021, the City Plan and Zoning Commission voted to approve a request from Urban Campus Apartments LLLP, holder of an option to purchase the property at 1230 6th Avenue, to vacate the air and subsurface rights within the west 3 feet of 6th Avenue right-of-way adjoining 1230 6th Avenue to allow for construction of structural footings, roof overhang and architectural elements as part of its 5-story, Storefront Type “6th Avenue Flats” building project; and

WHEREAS, Anawim a/k/a Anawim Housing, Inc., owner of property at 1230 6th Avenue, has offered to the City of Des Moines (“City”) the purchase price of \$575.00, which represents \$115.00 for the Permanent Easement for Air Space Above City-Owned Property, and \$460.00 for the Permanent Easement for Subsurface Building Encroachment on City-owned Property, for the purchase of such easement interests in the vacated 6th Avenue right-of-way adjoining 1230 6th Avenue, Des Moines, Iowa (hereinafter “Property”), to allow for building footings, overhangs and architectural element encroachments into the vacated right-of-way, which price reflects the fair market value of the Property as determined by the City’s Real Estate Division; and

WHEREAS, the Permanent Easement for Air Space Above City-owned Property and Permanent Easement for Subsurface Building Encroachment On City Property will run with the land and remain in place when Anawim a/k/a Anawim Housing, Inc. conveys 1230 6th Avenue to Urban Campus Apartments LLLP; 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 conveyance of a Permanent Easement for Air Space Above City-owned Property, and a Permanent Easement for Subsurface Building Encroachment On City Property therein; and

WHEREAS, on March 22, 2021, by Roll Call No. 21-0456, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation and conveyance of the street right-of-way be set for hearing on April 5, 2021, at 5:00 p.m., in the City Council Chambers, Richard A. Clark Municipal Service Center, 1551 E. Martin Luther King Jr. Parkway, Des Moines, Iowa, and given Mayor Cownie’s March 15, 2020 Proclamation, as amended, prohibiting indoor gatherings of ten or more persons on public property, Section One of the Governor’s February 5, 2021 Proclamation strongly encouraging vulnerable Iowans to limit participation in gatherings of any size and any purpose during the COVID19 outbreak, and further given Section 108 of the Governor’s February 5, 2021 Proclamation suspending the regulatory provisions of Iowa Code §§ 21.8, 26.12, and 414.12, or any other statute imposing a requirement to hold a public meeting or hearing, and further given the City Manager’s decision to delay the opening of City buildings to the public due to the recent upwards spikes of positive COVID-19 cases and hospitalizations in Polk County and the need to maintain safety; it is impossible and impractical to have physical public access to the meeting location and the

★ **Roll Call Number**
21-0578

Agenda Item Number
33

Date April 5, 2021

Page 2

meeting will be conducted electronically with electronic and telephonic public access to the meeting location; and

WHEREAS, due notice of said proposal to vacate the street right-of-way and convey a Permanent Easement for Air Space Above City-owned Property, and a Permanent Easement for Subsurface Building Encroachment On City Property in such vacated right-of-way was given as provided by law, setting forth the time and place for hearing on said proposal, including how to participate electronically and telephonically; 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 street right-of-way as described herein, are hereby overruled and the hearing is closed.
2. There is no public need or benefit for the street right-of-way proposed to be vacated, and the public would not be inconvenienced by reason of the vacation of air rights and subsurface rights in a portion of 6th Avenue right-of-way adjoining 1230 6th Avenue, Des Moines, Iowa, legally described as follows, and said vacation is hereby approved:

Air Rights

A PART OF LOTS 35 THROUGH LOT 38, GRAND PARK, AN OFFICIAL PLAT AND A PART OF THE RIGHT OF WAY OF 6TH AVENUE, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 35; THENCE NORTH 89°55'34" WEST ALONG THE NORTH LINE OF SAID LOT 35, A DISTANCE OF 3.00 FEET TO THE NORTHWEST CORNER OF THE ACQUISITION PLAT RECORDED IN BOOK 17667 PAGE 87-89; THENCE SOUTH 00°12'17" EAST ALONG THE WEST LINE OF SAID ACQUISITION PLAT, 1.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89°47'43" EAST, 4.00 FEET; THENCE SOUTH 00°01'48" EAST, 164.00 FEET; THENCE SOUTH 89°47'43" WEST, 3.50 FEET TO SAID WEST LINE; THENCE NORTH 00°12'17" WEST ALONG SAID WEST LINE, 164.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 615 SQUARE FEET AND LYING BETWEEN ELEVATIONS 137.00 FEET AND 165.00 FEET CITY OF DES MOINES VERTICAL DATUM (REFERENCE GROUND ELEVATION OF 116.50 FEET).

Subsurface Rights

A PART OF LOTS 35 THROUGH LOT 38, GRAND PARK, AN OFFICIAL PLAT AND A PART OF THE RIGHT OF WAY OF 6TH AVENUE, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 35; THENCE NORTH 89°55'34" WEST ALONG THE NORTH LINE OF SAID LOT 35, A DISTANCE OF 3.00 FEET TO THE NORTHWEST CORNER OF THE ACQUISITION PLAT RECORDED IN BOOK 17667 PAGE 87-89; THENCE SOUTH 00°12'17" EAST ALONG THE WEST LINE OF SAID ACQUISITION PLAT, 1.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89°47'43" EAST, 4.00 FEET; THENCE SOUTH 00°01'48" EAST, 164.00 FEET; THENCE SOUTH 89°47'43" WEST, 3.50 FEET TO SAID WEST LINE; THENCE NORTH 00°12'17" WEST ALONG SAID WEST LINE, 164.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 615 SQUARE FEET.

- 3. The proposed conveyance of a Permanent Easement for Air Space Above City-owned Property and a Permanent Easement for Subsurface Building Encroachment On City-Owned Property, as legally described below, to Anawim a/k/a Anawim Housing, Inc. for \$575 is hereby approved:

Air Space Easement

A PART OF LOTS 35 THROUGH LOT 38, GRAND PARK, AN OFFICIAL PLAT AND A PART OF THE VACATED RIGHT OF WAY OF 6TH AVENUE, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 35; THENCE NORTH 89°55'34" WEST ALONG THE NORTH LINE OF SAID LOT 35, A DISTANCE OF 3.00 FEET TO THE NORTHWEST CORNER OF THE ACQUISITION PLAT RECORDED IN BOOK 17667 PAGE 87-89; THENCE SOUTH 00°12'17" EAST ALONG THE WEST LINE OF SAID ACQUISITION PLAT, 1.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89°47'43" EAST, 4.00 FEET; THENCE SOUTH 00°01'48" EAST, 164.00 FEET; THENCE SOUTH 89°47'43" WEST, 3.50 FEET TO SAID WEST LINE; THENCE NORTH 00°12'17" WEST ALONG SAID WEST LINE, 164.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 615 SQUARE FEET AND LYING BETWEEN ELEVATIONS 137.00 FEET AND 165.00 FEET CITY OF DES MOINES VERTICAL DATUM (REFERENCE GROUND ELEVATION OF 116.50 FEET).

Subsurface Easement

A PART OF LOTS 35 THROUGH LOT 38, GRAND PARK, AN OFFICIAL PLAT AND A PART OF THE VACATED RIGHT OF WAY OF 6TH AVENUE, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 35; THENCE NORTH 89°55'34" WEST ALONG THE NORTH LINE OF SAID LOT 35, A DISTANCE OF 3.00 FEET TO THE NORTHWEST CORNER OF THE ACQUISITION PLAT RECORDED IN BOOK 17667 PAGE 87-89; THENCE SOUTH 00°12'17" EAST ALONG THE WEST LINE OF SAID ACQUISITION PLAT,



Roll Call Number

21-0578

Agenda Item Number

33

Date April 5, 2021

Page 4

1.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89°47'43" EAST, 4.00 FEET; THENCE SOUTH 00°01'48" EAST, 164.00 FEET; THENCE SOUTH 89°47'43" WEST, 3.50 FEET TO SAID WEST LINE; THENCE NORTH 00°12'17" WEST ALONG SAID WEST LINE, 164.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 615 SQUARE FEET.

4. The Mayor is authorized and directed to sign the Offer to Purchase, Permanent Easement for Air Space Above City-owned Property and 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.
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 Permanent Easement for Air Space Above City-owned Property and 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.
6. The Real Estate Division Manager is authorized and directed to forward the original of the Permanent Easement for Air Space Above City-owned Property and 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.
7. 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 Air Space Above City-owned Property and Permanent Easement for Subsurface Building Encroachment On City-Owned Property 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.



Roll Call Number

21-0578

Agenda Item Number

33

Date April 5, 2021

Moved by Gray to adopt.

APPROVED AS TO FORM:

/s/ Lisa A. Wieland

Lisa A. Wieland, Assistant City Attorney

PTW

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

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.

J. M. Frank Cownie Mayor

P. Kay Cmelik City Clerk