



Roll Call Number

23-1317

Agenda Item Number

27

Date October 2, 2023

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SET HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF AIR AND SUBSURFACE RIGHTS WITHIN 13TH STREET, FALCON DRIVE, MULBERRY STREET, AND NORTH/SOUTH ALLEY RIGHT-OF-WAY ADJOINING 1301 MULBERRY STREET, AND CONVEYANCE OF A PERMANENT EASEMENT FOR AIR SPACE ABOVE CITY-OWNED PROPERTY AND A PERMANENT EASEMENT FOR SUBSURFACE BUILDING ENCROACHMENT ON CITY-OWNED PROPERTY TO 13TH AND MULBERRY, LLC FOR \$24,100

WHEREAS, on October 24, 2022, by Roll Call No. 22-1635, the City Council of the City of Des Moines, Iowa, voted to receive and file a recommendation from the City Plan and Zoning Commission to approve a request to vacate the air and subsurface rights-of-way adjoining 1301 Mulberry Street, within 13th Street, Falcon Drive, Mulberry Street, and a north/south alleyway, subject to the reservation of easements for all existing utilities in place until such time as they are abandoned or relocated; and

WHEREAS, 13th and Mulberry, LLC, the owner of 1301 Mulberry Street, has offered to the City of Des Moines, Iowa ("City") the purchase price of \$24,100.00 for the purchase of a Permanent Easement for Air Space Above City-Owned Property and a Permanent Easement for Subsurface Building Encroachment On City-Owned Property ("Easements") over and below portions of 13th Street, Falcon Drive, Mulberry Street, and north/south alley rights-of-way adjoining 1301 Mulberry Street (hereinafter "Easement Area"), for the purpose of constructing, repairing, and maintaining balcony projections and canopies over the right-of-way, and building footings and subsurface encroachments into the right-of-way from such building as part of a 5-story mixed-use building project at 1301 Mulberry Street; 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 and alley 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 Easements in said vacated right-of-way.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that:

- 1. That the City Council of the City of Des Moines, Iowa, shall consider adoption of an ordinance permanently vacating air and subsurface rights-of-way within 13th Street, Falcon Drive, Mulberry Street, and a north/south alleyway all adjoining 1301 Mulberry Street, legally described as follows:

AIR RIGHTS

A PART OF MULBERRY STREET RIGHT OF WAY, A PART OF 13TH/ STREET RIGHT OF WAY, A PART OF FALCON DRIVE RIGHT OF WAY, AND A PART OF THE NORTH/SOUTH ALLEY RIGHT OF WAY IN BLOCK 34, KEENE & POINDEXTER'S ADDITION TO FORT DES MOINES, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND BEING A PART OF THE CITY



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OF DES MOINES, POLK COUNTY, IOWA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 8 IN BLOCK 34 IN KEENE & POINDEXTER'S ADDITION TO FORT DES MOINES; THENCE S29°20'46"W A DISTANCE OF 11.37 FEET TO THE POINT OF BEGINNING; THENCE N15°21'07"W A DISTANCE OF 148.99 FEET; THENCE N73°29'18"E A DISTANCE OF 148.36 FEET; THENCE S15°25'33"E A DISTANCE OF 150.43 FEET; THENCE S74°02'40"W A DISTANCE OF 148.53 FEET TO THE POINT OF BEGINNING, EXCEPT LOTS 8 & 9 BLOCK 34 KEENE & POINDEXTER'S ADDITION TO FORT DES MOINES,

LYING BETWEEN ELEVATIONS 50.57 AND 95.33 FEET, CITY OF DES MOINES DATUM (REFERENCE GROUND LEVEL ELEVATION OF 36.85 FEET, CITY OF DES MOINES DATUM, AT THE POINT OF COMMENCEMENT OF THE ABOVE-DESCRIBED LOCATION). HORIZONTALLY CONTAINING 4,382 SQUARE FEET, MORE OR LESS.

SUBSURFACE RIGHTS

A PART OF MULBERRY STREET RIGHT OF WAY, A PART OF 13TH/ STREET RIGHT OF WAY, A PART OF FALCON DRIVE RIGHT OF WAY, AND A PART OF THE NORTH/SOUTH ALLEY RIGHT OF WAY IN BLOCK 34, KEENE & POINDEXTER'S ADDITION TO FORT DES MOINES, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND BEING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 8 IN BLOCK 34 IN KEENE & POINDEXTER'S ADDITION TO FORT DES MOINES; THENCE S29°20'46"W A DISTANCE OF 11.37 FEET TO THE POINT OF BEGINNING; THENCE N15°21'07"W A DISTANCE OF 148.99 FEET; THENCE N73°29'18"E A DISTANCE OF 148.36 FEET; THENCE S15°25'33"E A DISTANCE OF 150.43 FEET; THENCE S74°02'40"W A DISTANCE OF 148.53 FEET TO THE POINT OF BEGINNING, EXCEPT LOTS 8 & 9 BLOCK 34 KEENE & POINDEXTER'S ADDITION TO FORT DES MOINES. CONTAINING 4,382 SQUARE FEET, MORE OR LESS. THE ABOVE-DESCRIBED AREA IS INTENDED TO ENCOMPASS THE ENTIRETY OF THE SUBSURFACE STRUCTURE BENEATH 1301 MULBERRY STREET WHICH EXTENDS INTO THE RIGHT-OF-WAY OF MULBERRY STREET, 13TH STREET, FALCON DRIVE AND ALLEY.

2. The City Council of the City of Des Moines, Iowa, further proposes to convey a Permanent Easement for Air Space Above City-Owned Property and a Permanent Easement for Subsurface Building Encroachment On City-Owned Property, as legally below, to 13th and Mulberry, LLC for \$24,100.00 subject to any and all easements, restrictions and covenants of record.
3. That the meeting of the City Council at which the adoption of said ordinance and the sale and conveyance of such right-of-way is to be considered shall be on October 23, 2023, said meeting to be held at 5:00 p.m., in the City Council Chamber, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa.



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At that time the City Council will consider the above-described proposal and any other(s) submitted prior to or during the public hearing. Persons interested in the proposal will be given the opportunity to express their views at that hearing.

4. That the City Clerk is hereby authorized and directed to publish notice of said proposal in the form hereto attached all in accordance with §362.3 of the Iowa Code.

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

Moved by Gatto to adopt. Second by Boesen

APPROVED AS TO FORM:

/s/ Chas M. Cahill

Chas M. Cahill, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
GATTO	✓			
MANDELBAUM	✓			
VOSS	✓			
WESTERGAARD	✓			
TOTAL	6			

J. M. Franklin Cownie Mayor

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.

Laura Baumgartner

Laura Baumgartner, City Clerk