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|  <p style="text-align: center;"><b>Council<br/>Communication</b><br/>Office of the City Manager</p> | <b>Date:</b> June 11, 2018   |
|  | <b>Agenda Item No.</b> 14<br><b>Roll Call No.</b> <u>18-0971</u><br><b>Communication No.</b> <u>18-293</u><br><b>Submitted by:</b> Erin Olson-Douglas,<br>Economic Development<br>Director |

**AGENDA HEADING:**

Resolution Approving City’s Consent to Easement for Building Setback on the Public Alley West of the Kirkwood Building at 400 Walnut Street.

**SYNOPSIS:**

On April 3, 2017, the City Council approved an Urban Renewal Agreement for Sale of Land for Private Redevelopment with 5th and Walnut Parking LLC (Justin Mandelbaum, Developer, Mandelbaum Properties, 4500 Westown Parkway, West Des Moines, Iowa), whereby the Developer has purchased the site of the former Fifth and Walnut Parking Garage, and has agreed to redevelop that property.

The Residential Tower Building is now planned to be at least 40 stories tall and is separated from the Kirkwood Building at 400 Walnut Street by a 16.5-foot wide north/south alley owned by the City of Des Moines. The Developer is seeking to construct and maintain the Residential Tower Building with a greater quantity of windows and other openings in its exterior east wall at and above the 4<sup>th</sup> floor than would be allowed by the building and fire codes without the proposed Easement for Building Setback with the Kirkwood Building.

Staff recommends that the City Council consent to the Easement for Building Setback on the public alley west of the Kirkwood Building.

**FISCAL IMPACT: NONE**

**ADDITIONAL INFORMATION:**

- The Residential Tower Building is now planned to be at least 40 stories tall and is separated from the Kirkwood Building at 400 Walnut Street by a 16.5-foot wide north/south alley owned by the City of Des Moines.
- The portion of the Kirkwood Building adjoining the public alley is only two (2) stories tall, and the air space above the Kirkwood Building is owned and controlled by the Kirkwood Commons Condominium Association, Inc. (the "Association").

- The Association has granted the Developer an Easement for Building Setback whereby the Association has agreed that the portion of any new building and any expansion of the existing Kirkwood Building, that lies above the elevation of the existing parapet wall adjoining the public alley, shall maintain the required building and fire code setback from the east line of the public alley.
- The Easement for Building Setback operates to allow that portion of the planned Residential Tower Building at and above the fourth floor to use the entire public alley for purposes of satisfying the required setback under the building and fire codes, versus being able to only use half of the alley without the easement.
- In the absence of an easement or other agreement to the contrary, the Residential Building and the Kirkwood Building would each be allowed to use one-half of the width of the intervening public alley to satisfy the required setback under the building and fire codes.
- Without consent to the Easement for Building Setback, the project would need to decrease the quantity of windows and openings along the east exterior wall of the Residential Tower Building to comply with building and fire code.

**PREVIOUS COUNCIL ACTION(S):**

Date: March 19, 2018

Roll Call Number: [18-0477](#)

Action: [Extension](#) of timelines in the urban renewal agreement for sale of land for private redevelopment with 5th and Walnut Parking, LLC regarding the redevelopment of the Fifth and Walnut parking garage site. ([Council Communication No. 18-123](#)) Moved by Gatto to adopt. Motion Carried 6-0. Council Member Mandelbaum abstains from voting based on an appearance of a conflict of interest.

**BOARD/COMMISSION ACTION(S):**

Board: Urban Design Review Board

Date: September 26, 2017

Resolution Number: N/A

Action: Motion to approve incorporating the Board's comments by Reynolds. Seconded by Rypma. Motion carried. Yes – 8, No – 0, Absent – 2, Abstain – 0.

**ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:**

- Consideration of Amended Conceptual Development Plan
- 3<sup>rd</sup> Amendment to the Urban Renewal Development Agreement

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