

Date January 14, 2013

HOLD HEARING ON VACATION, CONVEYANCE, AND LEASE OF A PORTION OF EAST GRATIS AVENUE AND SE 14TH STREET RIGHT-OF-WAY TO KATNING, L.L.C. FOR \$2,580 (FEE) AND \$1,245 (LEASE)

WHEREAS, on November 19, 2012, by Roll Call No. 12-1762, the City Council received the recommendation from the Plan and Zoning Commission to vacate a portion of Gratis Avenue and SE 14th Street right-of-way adjoining the property locally known as 2102 SE 14th Street, subject to conditions; and

WHEREAS, Katning, L.L.C. (formally identified as Katning, Inc.) is the owner of the real property locally known as 2102 SE 14th Street that abuts such right-of-way, and has offered to the City of Des Moines the purchase price of \$2,580.00 for the vacation and purchase of a portion of said right-of-way as legally described below, and the rental price of \$1,245.00 for vacation and lease of a portion of said right-of-way as legally described below, for the purpose of resolving an existing parking lot encroachment and in compliance with the Plan and Zoning Commission recommendations, which purchase price and lease amount reflect the fair market value and fair market rent, respectively, of the property interests 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 right-of-way proposed to be vacated, sold, or leased, and the City will not be inconvenienced by the vacation, sale, and lease of said right-of-way; and

WHEREAS, on December 17, 2012, by Roll Call No. 12-1932, it was duly resolved by the City Council that the proposed vacation, conveyance, and lease of such right-of-way be set down for hearing on January 14, 2013, at 5:00 p.m., in the Council Chamber; and

WHEREAS, due notice of said proposal to vacate, convey, and lease public right-of-way was given as provided by law, setting forth the time and place for hearing on said proposal; and

WHEREAS, in accordance with said notice, those interested in said proposed vacation, conveyance, and lease, 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, that:

1. Upon due consideration of the facts and statements of interested persons, the objections to said proposed vacation, conveyance, and lease of public right-of-way as described herein are hereby overruled and the hearing is closed.
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 Gratis Avenue and SE 14th Street right-of-way adjoining the property locally known as 2102 SE 14th Street, more specifically described as follows:

ALL THAT PART OF GRATIS AVENUE RIGHT-OF-WAY, LYING NORTH AND ADJACENT TO LOTS 1, 2, AND 3 IN NELSON'S SUBDIVISION, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF LOT 3 IN SAID NELSON'S SUBDIVISION; THENCE SOUTH 75° (DEGREES) 07'(MINUTES) 15"(SECONDS) EAST, ALONG THE NORTH LINE OF SAID LOT 3, A DISTANCE OF 2.27 FEET TO THE POINT OF BEGINNING; THENCE FROM THE BEGINNING OF A LEFT CURVE, EASTERLY A DISTANCE OF 92.30 FEET ALONG THE CURVE CONCAVE TO THE NORTH, HAVING A RADIUS

Date January 14, 2013

OF 340.70 FEET AND A CENTRAL ANGLE OF 15°31'20" AND A CHORD BEARING OF SOUTH 84°51'39" EAST AND A CHORD DISTANCE OF 92.02 FEET; THENCE NORTH 89°37'35" EAST, A DISTANCE OF 26.83 FEET; THENCE SOUTH 45°13'49" EAST, A DISTANCE OF 14.10 FEET, TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF SE 14TH STREET; THENCE SOUTH 00°07'13" EAST, ALONG THE WEST RIGHT-OF-WAY LINE OF SE 14TH STREET, A DISTANCE OF 16.15 FEET; THENCE NORTH 75°07'15" WEST, ALONG THE NORTH LINE OF LOTS 1, 2 AND 3 IN NELSON'S SUBDIVISION, A DISTANCE OF 132.98 FEET TO THE POINT OF BEGINNING. CONTAINING 0.03 ACRES (1275 SQ FT), MORE OR LESS.

3. The proposed sale and conveyance of a portion of such vacated right-of-way, described as follows, to Katning, L.L.C. for \$2,580.00 and in accordance with the requirements of the Plan and Zoning Commission recommendations, be and is hereby approved:

ALL THAT PART OF VACATED GRATIS AVENUE RIGHT-OF-WAY, LYING NORTH AND ADJACENT TO LOTS 1, 2, AND 3 IN NELSON'S SUBDIVISION, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF LOT 3 IN SAID NELSON'S SUBDIVISION; THENCE SOUTH 75° (DEGREES) 07'(MINUTES) 15"(SECONDS) EAST, ALONG THE NORTH LINE OF SAID LOT 3, A DISTANCE OF 2.27 FEET TO THE POINT OF BEGINNING; THENCE FROM THE BEGINNING OF A LEFT CURVE, EASTERLY A DISTANCE OF 92.30 FEET ALONG THE CURVE CONCAVE TO THE NORTH, HAVING A RADIUS OF 340.70 FEET AND A CENTRAL ANGLE OF 15°31'20" AND A CHORD BEARING OF SOUTH 84°51'39" EAST AND A CHORD DISTANCE OF 92.02 FEET; THENCE NORTH 89°37'35" EAST, A DISTANCE OF 7.01 FEET; THENCE SOUTH 45°13'49" EAST, A DISTANCE OF 22.24 FEET; THENCE SOUTH 00°07'13" EAST, A DISTANCE OF 6.55 FEET; THENCE NORTH 75°07'15" WEST, ALONG THE NORTH LINE OF LOTS 1, 2 AND 3 IN NELSON'S SUBDIVISION, A DISTANCE OF 118.44 FEET TO THE POINT OF BEGINNING. CONTAINING 0.02 ACRES (860 SQ FT), MORE OR LESS.

4. The proposed lease of the remaining portion of such vacated right-of-way, described as follows, to Katning, L.L.C. for \$1,245.00 as a one-time, upfront lump sum payment for lease until December 31, 2099, subject to termination in the event of public need for the property or by either party upon notice, and in accordance with the requirements of the Plan and Zoning Commission recommendations, be and is hereby approved:

ALL THAT PART OF VACATED GRATIS AVENUE RIGHT-OF-WAY, LYING NORTH AND ADJACENT TO LOTS 1 AND 2 IN NELSON'S SUBDIVISION, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF LOT 3 IN SAID NELSON'S SUBDIVISION; THENCE SOUTH 75° (DEGREES) 07'(MINUTES) 15"(SECONDS) EAST, ALONG THE NORTH LINE OF SAID LOTS 1, 2 AND 3, A DISTANCE OF 120.71 FEET TO THE POINT OF BEGINNING; NORTH 00°07'13" WEST, PARALLEL TO THE WEST RIGHT-OF-WAY LINE OF SE 14TH STREET, A DISTANCE OF 6.55 FEET; THENCE NORTH 45°13'49" WEST, A DISTANCE OF 22.24 FEET; THENCE NORTH 89°37'35" EAST, A DISTANCE OF 19.82 FEET; THENCE SOUTH 45°13'49" EAST, A DISTANCE OF 14.10 FEET, TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF SE 14TH STREET; THENCE SOUTH 00°07'13" EAST, ALONG THE WEST RIGHT-OF-WAY LINE OF SE 14TH STREET, A DISTANCE OF 16.15 FEET; THENCE NORTH 75°07'15" WEST, ALONG THE NORTH LINE OF LOT 1 IN NELSON'S SUBDIVISION, A DISTANCE OF 14.55 FEET TO THE POINT OF BEGINNING. CONTAINING 0.01 ACRES (415 SQ FT), MORE OR LESS.

Date January 14, 2013

5. The Mayor is authorized and directed to sign the Offer to Purchase, Lease Agreement, and, prior to closing, the Quit Claim Deed and any related real estate documents for the sale and lease identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature and, upon final passage of an ordinance vacating the said right-of-way and upon proof of payment of the consideration plus \$113.00 for publication and recording costs, to deliver the aforementioned documents to the Real Estate Division Manager for recording and closing purposes, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing.

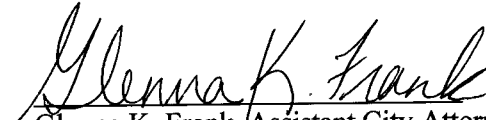
6. The City Manager and/or his designee, the City's Real Estate Division Manager, is hereby authorized and directed to administer and monitor the Offer to Purchase and the Lease Agreement to confirm compliance; to approve and execute documents pertaining to minor or unsubstantial changes to said Offer and Lease Agreement, except for renewals or extensions of the Lease Agreement, following approval of the City's Legal Department as to form; to proceed to closing in accordance with the terms set forth herein and in the Offer; and, if needed, to proceed with and execute documents pertaining to the termination of the Offer and/or Lease Agreement if Katning, L.L.C. fails to fulfill the terms required therein or if the Lease Agreement needs to be terminated for a City public improvement project or for any other purpose, pursuant to the provisions of the Offer and/or Lease Agreement as applicable and following approval of the City's Legal Department as to form.

7. The proceeds from the sale and lease of this property shall be deposited into the following account: \$3,825, Property Maintenance Endowment Fund, SP767, ENG980500.

(Council Communication No. 13-011)

Moved by _____ to adopt.

APPROVED AS TO FORM:


Glenna K. Frank, Assistant City Attorney

rsu

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

MOTION CARRIED APPROVED

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.

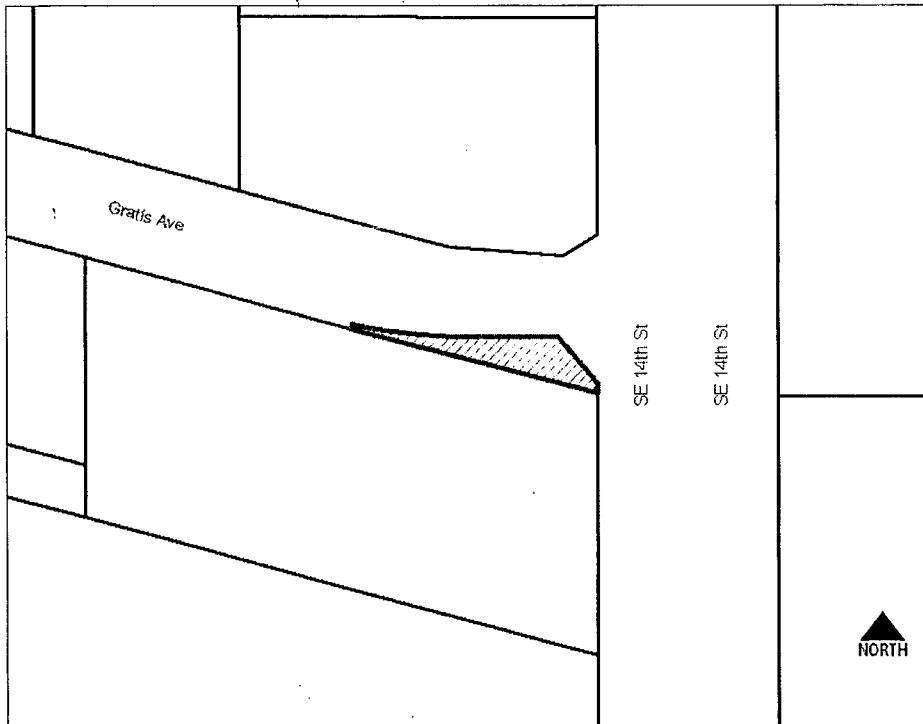
City Clerk

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Request from Katning, Inc. (owner) 2102 Southeast 14 th Street, represented by Timothy Neugent, for vacation of an irregular shaped segment of right-of-way from the south edge of Gratis Avenue extending from Southeast 14 th Street to a point approximately 115 feet to the west.				File # 11-2012-1.19	
Description of Action	Approval for vacation of an irregular shaped segment of right-of-way from the south edge of Gratis Avenue extending from Southeast 14 th Street to a point approximately 115 feet to the west, to allow for an ongoing encroachment of a vehicle display lot that occurred circa 2001. The proposed segment of right-of-way is entirely south of the existing travelled width and sidewalk in Gratis Avenue.				
2020 Community Character Plan	Commercial: Auto-Oriented Small-Scale Strip Development				
Horizon 2035 Transportation Plan	SE 14 th Street from E 15 th Street Extension to Park Avenue to widen from 4 lanes divided to 6 lanes divided				
Current Zoning District	"C-2" General Retail and Highway Oriented Commercial District				
Proposed Zoning District	"C-2" General Retail and Highway Oriented Commercial District				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Inside Area	2	0			
Outside Area					
Plan and Zoning Commission Action	Approval	11-0	Required 6/7 Vote of the City Council	Yes	N/A
	Denial			No	

Katning Inc - vicinity of SE 14th Street & Gratis Avenue

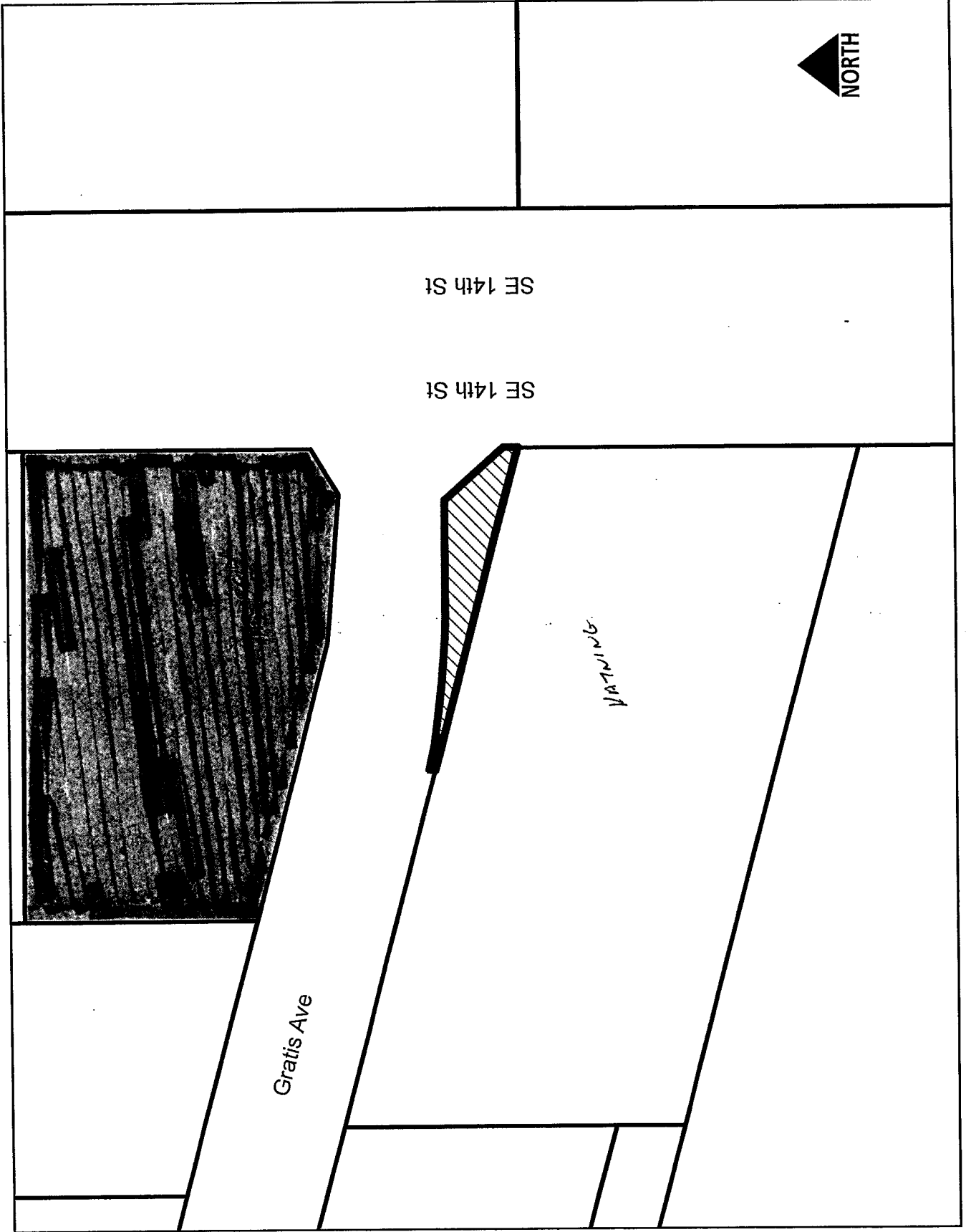
11-2012-1.19



OS

11-2012-1.19

Katning Inc - vicinity of SE 14th Street & Gratis Avenue



November 7, 2012

Honorable Mayor and City Council
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their meeting held November 1, 2012, the following action was taken regarding a request from Katning, Inc. (owner) 2102 Southeast 14th Street, represented by Timothy Neugent, for vacation of an irregular shaped segment of right-of-way from the south edge of Gratis Avenue extending from Southeast 14th Street to a point approximately 115 feet to the west.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 11-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
JoAnne Corigliano	X			
Shirley Daniels	X			
Jacqueline Easley	X			
Tim Fitzgerald				X
Dann Flaherty	X			
John "Jack" Hilmes				X
Ted Irvine	X			
Greg Jones	X			
William Page	X			
Christine Pardee	X			
Mike Simonson	X			
CJ Stephens	X			
Vicki Stogdill	X			

APPROVAL of the requested vacation subject to the following: 11-2012-1.19)

1. Any paving within the vacated right-of-way shall provide a 5-foot wide landscape area along the north and east perimeters.
2. Reservation of any necessary easements for all utilities in place, including the water line, until such time that they are abandoned or relocated.
3. Adequate right-of-way shall be maintained between the resulting property line and the existing curbs along Gratis Avenue and Southeast 14th Street, including any right-of-way necessary for a future widening of Southeast 14th Street.

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval of the requested vacation subject to the following:

1. Any paving within the vacated right-of-way shall provide a 5-foot wide landscape area along the north and east perimeters.



CITY PLAN AND ZONING COMMISSION
ARMORY BUILDING
602 ROBERT D. RAY DRIVE
DES MOINES, IOWA 50309 -1881
(515) 283-4182

ALL-AMERICA CITY
1949, 1976, 1981
2003

2. Reservation of any necessary easements for all utilities in place, including the water line, until such time that they are abandoned or relocated.
3. Adequate right-of-way shall be maintained between the resulting property line and the existing curbs along Gratis Avenue and Southeast 14th Street, including any right-of-way necessary for a future widening of Southeast 14th Street.

Written Responses

2 In Favor

0 In Opposition

STAFF REPORT

I. GENERAL INFORMATION

1. **Purpose of Request:** The request would allow the adjoining property (2102 Southeast 14th Street) to acquire a portion of Gratis Avenue right-of-way that includes paving and landscaping. The improvements within the right-of-way have been used in common with a vehicle display lot on the adjoining property since approximately 2001. No permits or certificates of occupancy were required for the adjoining property at that time since a vehicle display lot was a permitted use so long as the property provided the minimum required 5-foot landscaped setback along front property lines. It was only recently discovered that a portion of the existing pavement and the required landscaping are within Gratis Street right-of-way.

The structure on the property (currently known as 2102 Southeast 14th Street) was developed in accordance with a Site Plan approved July 5, 1996 for a property formerly known as 1231 Gratis Avenue. A Certificate of Occupancy was issued to Bill Polson on April 1, 1998 to allow this building to be occupied as an "auction assembly" use. The 2000 aerial photograph shows this use, as well as a tavern structure on the parcel adjacent to the east that was built up to the front property lines along Southeast 14th Street and Gratis Avenue. The 2002 aerial photograph shows that the tavern building on the east parcel was demolished and replaced with a parking lot, and the two parcels were combined. The 2002 aerial photograph also shows the parking lot in its current configuration encroaching into Gratis Street right-of-way. No new Certificate of Occupancy was necessary when the property converted to a vehicle display lot use from auction assembly and tavern uses.

The annual "Polk City Directories" list 2102 Southeast 14th Street as occupied by "Cheers" until 2000. The 2001 (and subsequent) Polk City Directories list 2102 Southeast 14th Street as occupied by Des Moines Auto Sales or Americ Auto.

If the requested right-of-way is vacated and assembled with the adjoining property, the applicant must maintain a 5-foot wide landscaped setback between the resulting property line and the edge of the pavement. If the requested right-of-way is not vacated and assembled with the adjoining property, the applicant must remove the paving within the public right-of-way and the paving within 5 feet of the existing property line.

The existing paving is located 19 feet south of the curb along Gratis Avenue and 20 feet west of the curb along Southeast 14th Street. Since the vacation would include the required 5-foot landscape area surrounding the parking lot, the resulting property line would be located approximately 14 feet south of the curb along Gratis Avenue and 15 feet west of

the curb along Southeast 14th Street.

- 2. **Size of Site:** Triangular area measuring approximately 115 feet by 25 feet (1,438 square feet).
- 3. **Existing Zoning (site):** "C-2" General Retail and Highway-Oriented Commercial District, with "VDL" Vehicle Display Lot and "GGP" Gambling Games Prohibition Overlay Districts.
- 4. **Existing Land Use (site):** Right-of-way that contains a 5-foot wide landscaped area and approximately 430 square feet of paving. The paving is located 19 feet south of the curb along Gratis Avenue and 20 feet west of the curb along Southeast 14th Street.

5. **Adjacent Land Use and Zoning:**

North – "R1-60", Use are a single-family dwelling and vacant land.

South – "R1-60", Use is a vacant land.

East – "R1-60", Use are single-family dwellings.

West – "R1-60", Uses are a single-family dwellings and vacant land.

- 6. **General Neighborhood/Area Land Uses:** The subject portion of undeveloped 24th Drive right-of-way is located in a low-density residential area.
- 7. **Applicable Recognized Neighborhood(s):** The subject property is located in the Indianola Hills neighborhood. The Indianola Hills was notified of the Commission meeting by mailing of the Preliminary Agenda on October 12, 2012. Additionally, on October 22, 2012, separate notifications of the hearing were mailed to the neighborhood association contact and the primary titleholder on file with the Polk County Assessor for each property adjacent to the right-of-way. A Final Agenda was mailed to the neighborhood association on October 26, 2012.

All agendas and notices are mailed to the primary contact(s) designated by the recognized neighborhood association to the City of Des Moines Neighborhood Development Division. The Ingersoll Hills Neighborhood Association notices were mailed to Nancy Watson, 326 East Broad Street, Des Moines, IA 50315.

- 8. **Relevant Zoning History:** On September 28, 2009, the City Council rezoned the properties along Southeast 14th Street to the Vehicle Display Lot Overlay District. However, the requested vacation of right-of-way to allow retention of an existing portion of a vehicle display lot is not considered an expansion.
- 9. **2020 Community Character Land Use Plan Designation:** Commercial Corridor: Small-Scale Strip Development.
- 10. **Applicable Regulations:** The Commission reviews all proposals to vacate land dedicated for a specific public purpose, such as for streets and parks, to determine whether the land is still needed for such purpose or may be released (vacated) for other use. The recommendation of the Commission is forwarded to the City Council.

II. ADDITIONAL APPLICABLE INFORMATION

- 1. Utilities:** An easement must be provided for the existing water line along Gratis Avenue. Easements must also be provided for any other existing utilities until such time they are relocated at the applicant's expense.
- 2. Access/Traffic:** The requested vacation would not adversely impact the surrounding street network so as adequate right-of-way is maintained between the resulting property line and the existing curbs along Gratis Avenue and Southeast 14th Street.

The City's Traffic & Transportation Division has indicated that in the future, Southeast 14th Street may be widened to three lanes in each direction. Therefore, it may be necessary retention of the right-of-way within 25 feet of the west curb along Southeast 14th Street. The paving and required landscaping within this area could potentially be leased to the adjoining property.

SUMMARY OF DISCUSSION

There was no discussion

CHAIRPERSON OPENED THE PUBLIC HEARING

There was no one to speak in favor or in opposition of the applicant's request

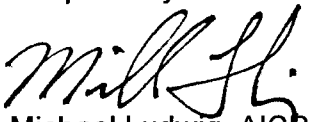
CHAIRPERSON CLOSED THE PUBLIC HEARING

COMMISSION ACTION:

Ted Irvine moved to deny the applicant's request to consider the disposition of City owned property which was dedicated for a public purpose.

Motion passed 11-0.

Respectfully submitted,


Michael Ludwig, AICP
Planning Administrator

MGL:clw

Attachment

Item 11-2012-1.19 Date 10/23/12 50

I (am) (am not) in favor of the request.

(Circle One)

Print Name Mike Burch

Signature Mike Burch

Address 2028 S.E. 14th St.

Reason for opposing or approving this request may be listed below:

Item 11-2012-1.19 Date 10-25-12

I (am) (am not) in favor of the request.

(Circle One)

Print Name Amer 2 Auto Financy LLC

Signature [Signature]

Address _____

Reason for opposing or approving this request may be listed below:

Have been at this property for
over 11 years. This property has
been financed with 2 banks and have
never been notified that the city owns
that piece of property !!