



**Roll Call Number**

**Agenda Item Number**

42A

**Date** November 3, 2014

**RECEIVE AND FILE COMMUNICATION FROM THE PLAN AND ZONING COMMISSION  
REGARDING A CITY-INITIATED REQUEST TO VACATE A SEGMENT OF THE NORTH/SOUTH  
ALLEY LYING BETWEEN 2ND AVENUE AND 3RD STREET ADJOINING THE WEST OF THE  
PROPERTY AT 120 2ND AVENUE OWNED BY POLK COUNTY, EXTENDING FROM THE  
EAST/WEST ALLEY LYING BETWEEN COURT AVENUE AND VINE STREET  
TO A POINT 66 FEET TO THE SOUTH**

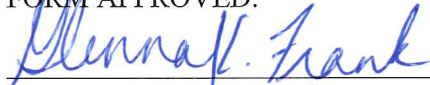
**WHEREAS**, the City Plan and Zoning Commission has advised that at a public hearing held on October 16, 2014, its members voted 11-0-1 in support of a motion to recommend **DENIAL** of a City initiated request for vacation of a segment of the north/south alley lying between 2nd Avenue and 3rd Street adjoining the west of the property at 120 2nd Avenue owned by Polk County, extending from the east/west alley lying between Court Avenue and Vine Street to a point 66 feet to the south; and

**WHEREAS**, on October 20, 2014, by Roll Call No. 14-1627, City Council received the above-described recommendation from the Plan and Zoning Commission to deny the requested vacation, and directed the Community Development Director and designee to submit the Commission's formal written communication, staff report and summary of discussion for receipt and filing at the November 3rd Council meeting; and

**WHEREAS**, said formal written communication from the Plan and Zoning Commission regarding the Commission's recommendation to deny the requested vacation is attached hereto.

**MOVED** by \_\_\_\_\_ to receive and file the attached communication from the Plan and Zoning Commission.

**FORM APPROVED:**



Glenna K. Frank  
Assistant City Attorney

(11-2014-1.14)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MAHAFFEY				
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

October 24, 2014

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 October 16, 2014, the following action was taken regarding a City initiated request for vacation of a segment of the north/south alley lying between 2nd Avenue and 3rd Street adjoining the west of the property at 120 2nd Avenue owned by Polk County, extending from the east/west alley lying between Court Avenue and Vine Street to a point 66 feet to the south.

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 11-0-1 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Dory Briles	X			
JoAnne Corigliano	X			
Jacqueline Easley	X			
Tim Fitzgerald	X			
Dann Flaherty			X	
Jann Freed	X			
John "Jack" Hilmes	X			
Ted Irvine	X			
Greg Jones	X			
William Page	X			
Christine Pardee	X			
CJ Stephens				X
Vicki Stogdill	X			
Greg Wattier				X

**DENIAL** of the requested to vacate a segment of the north/south alley lying between 2<sup>nd</sup> Avenue and 3<sup>rd</sup> Street adjoining the west of the property at 120 2<sup>nd</sup> Avenue owned by Polk County, extending from the east/west alley lying between Court Avenue and Vine Street to a point 66 feet to the south. (11-2014-1.14)

## STAFF RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval subject to the following conditions:

1. Provision of any necessary easements for all existing utilities until such time that they are abandoned or are relocated.
2. Provision of an access easement necessary to maintain access to the property adjacent to the west of the subject segment of alleyway.

### Written Responses

0 In Favor

1 In Opposition

## STAFF REPORT TO THE PLANNING COMMISSION

### I. GENERAL INFORMATION

1. **Purpose of Request:** The proposed vacation would allow the adjoining property occupied by the Polk County Auditor, to utilize the space for deliveries of equipment and supplies during local, state and federal elections.
2. **Size of Site:** 16 feet by 66 feet (2,112 square feet).
3. **Existing Zoning (site):** "C3-R", Central Business District Mixed-Residential District, "D-O", Downtown Overlay District, "GGP", Gambling Games Prohibition Overlay District.
4. **Existing Land Use (site):** Improved north/south alley way.
5. **Adjacent Land Use and Zoning:**

**North** – "C3-R"; Uses include mixed-use building (Legends), retail buildings (Tonic), a vacant store front and a surface parking lot.

**East** – "C3-R"; Use is Government (Polk County building).

**South** – "C3-R"; a multi-family residential building (Metro Lofts).

**West** – "C3-R"; Use is a surface parking lot.

6. **General Neighborhood/Area Land Uses:** The subject segment of alley way is located in an area known as the Court Avenue Entertainment District within the downtown area. The surrounding area is predominantly commercial and mixed-use neighborhood.
7. **Applicable Recognized Neighborhood(s):** The subject property is located in the Downtown Neighborhood. This neighborhood association was notified of the meeting by mailing of the Preliminary Agenda to all recognized neighborhood associations on September 26, 2014. Additionally, separate notifications of the hearing for this specific item were mailed on October 6, 2014 (10 days prior to the hearing) to the Downtown Neighborhood Association and to the primary titleholder on file with the Polk County Assessor for each property adjacent to the requested right-of-way. A Final Agenda for the meeting was mailed to all the recognized neighborhood associations on October 10,



2014.

All agendas and notices are mailed to the primary contact person designated to the City of Des Moines Neighborhood Development Division by the recognized neighborhood association. The Downtown Neighborhood Association notices were mailed to Larry Bradshaw, 418 6<sup>th</sup> Avenue, Suite 902, Des Moines, IA 50309.

**8. Relevant Zoning History:** None.

**9. 2020 Community Character Land Use Plan Designation:** Downtown Retail/Office Core/Core Fringe.

**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:** Easements must be provided for any existing utilities in place until such time that they may be abandoned or are relocated. No utilities have been identified at this time.

**2. Street System/Access:** The requested vacation of improved alleyway would not significantly impact the existing surrounding street network. However, the subject segment of alleyway currently provides a direct link from the parking lot on the west to the east/west alleyway on the north. Any approval of vacation and conveyance of the subject alleyway should be subject to maintaining vehicular access to the property to the west.

## **SUMMARY OF DISCUSSION**

Bert Drost presented the staff report and recommendation.

JoAnne Corigliano wanted assurance that the person who has the objection would be able to use the space as they have been in the past.

Bert Drost noted condition #2 states: "Provision of an access easement necessary to maintain access to the property adjacent to the west of the subject segment of alleyway". This would ensure that property owner would be able to continue their use of the space.

Ted Irvine asked if the dumpsters would stay where they are.

Bert Drost stated in order to construct the loading dock they would have to do a minor site plan. At that time it might be possible to require a dumpster enclosure. Currently, the dumpster is in public right-of-way so they are not allowed to build a dumpster enclosure, but once it is vacated they would be able to provided it does not impede access.

Will Page asked if the current loading dock is code compliant or legal non-conforming.

Bert Drost stated he believes it has grandfather rights. The building is over 100 years old and he is not sure how long the loading dock has been there.

## **CHAIRPERSON OPENED THE PUBLIC HEARING**

Joe Coppola 1004 56<sup>th</sup> Street representing the people who own the adjoining parking lot. They want to make clear that circulation is important to make that parking lot function. The owners of the adjoining property did not have much time to review the County's request. However, their position is as long as the egress is kept they are good. They believe the City should sell the County the piece beneath their dock and leave the remaining alley as it is. The parking lot has development potential and vacating the alley will limit development. He and the people he is representing do oppose the complete vacation and wish the Commission would consider giving them the minimum needs to ensure their development. He asked that the Commission consider what is best for the entire area.

Vicki Stogdill asked if Polk County is paying for the right-of-way.

Mike Ludwig stated the sales price has to be determined by the City's Real Estate Division and ultimately is decided by the Council.

Vicki Stogdill asked if there is a price determined would Mr. Coppola be interested in purchasing it.

Joe Coppola stated he cannot make that decision tonight but believes they would want the opportunity to at least purchase half of the alley.

Mike Ludwig stated for residential alleys the policy is one half to each adjoining property owner. For commercial alleys there is not a policy for that. The Council can convey the entire alley to one adjoining property owner if they desire. The zoning district has a zero foot setback from property lines. However, building code might have a restriction on openings or a requirement for a fire wall if it was built right to an adjoining building. At this time no building is proposed.

## **CHAIRPERSON CLOSED THE PUBLIC HEARING**

Christine Pardee asked if there is any way for the County to make the repairs without vacating the entire alley.

Mike Ludwig stated the vacation allows the work within the right-of-way to be done subject to permits. However, that is not what is requested by the County at this time. If the Commission believes it should not be vacated and keep it as an alley that could be the recommendation.

Ted Irvine reminded the Commission that Condition #2, requires an access easement to be maintained.

Mike Ludwig noted the easement would be required for continued access and they would not be able to take the easement away. If they chose to develop a building they would have to come back to the City to get rid of the easement.

## **COMMISSION ACTION:**

Ted Irvine moved staff recommendation and to include a dumpster enclosure as long as it does not impede any flow through the parking lot.



Vicki Stogdill stated she would have to vote against Commissioner Irvine's motion because if the repairs can be made without vacating it she would prefer that business owners in the area have opportunity to purchase it. She prefers that the property be sold to a private entity and returned to the tax rolls.

Ted Irvine stated if there was development in this area it would probably include the County building along with that parking lot and he does not see much opportunity in redeveloping that.

Jacqueline Easley asked for clarification.

Ted Irvine stated he understands that nothing changes about access for the adjacent property owner. They will continue to have the same access. His motion allows the County to repair the loading dock and gets a dumpster enclosed.

Greg Jones stated there could be building code issues for redevelopment if the alley is vacated. He believes that Mr. Coppola does have an issue with giving it all up. He would prefer that it be as restricted as possible. He is going to vote against the motion.

Tim Fitzgerald stated the County is going to spend tax payer's money if they own this. He would like to see the loading dock repaired and not torn down and completely replaced.

Motion failed 2-9-1. (Ted Irvine and JoAnne Corigliano voted in favor. Tim Fitzgerald, Will Page, Vicki Stogdill, Christine Pardee, Greg Jones, Jann Freed, Jacqueline Easley, Dory Briles, John "Jack" Hilmes voted in opposition. Dan Flaherty abstained)

Tim Fitzgerald moved to deny the request to vacate a segment of the north/south alley lying between 2<sup>nd</sup> Avenue and 3<sup>rd</sup> Street adjoining the west of the property at 120 2<sup>nd</sup> Avenue owned by Polk County, extending from the east/west alley lying between Court Avenue and Vine Street to a point 66 feet to the south.

Motion passed 11-0-1 (Dann Flaherty abstained)

Respectfully submitted,

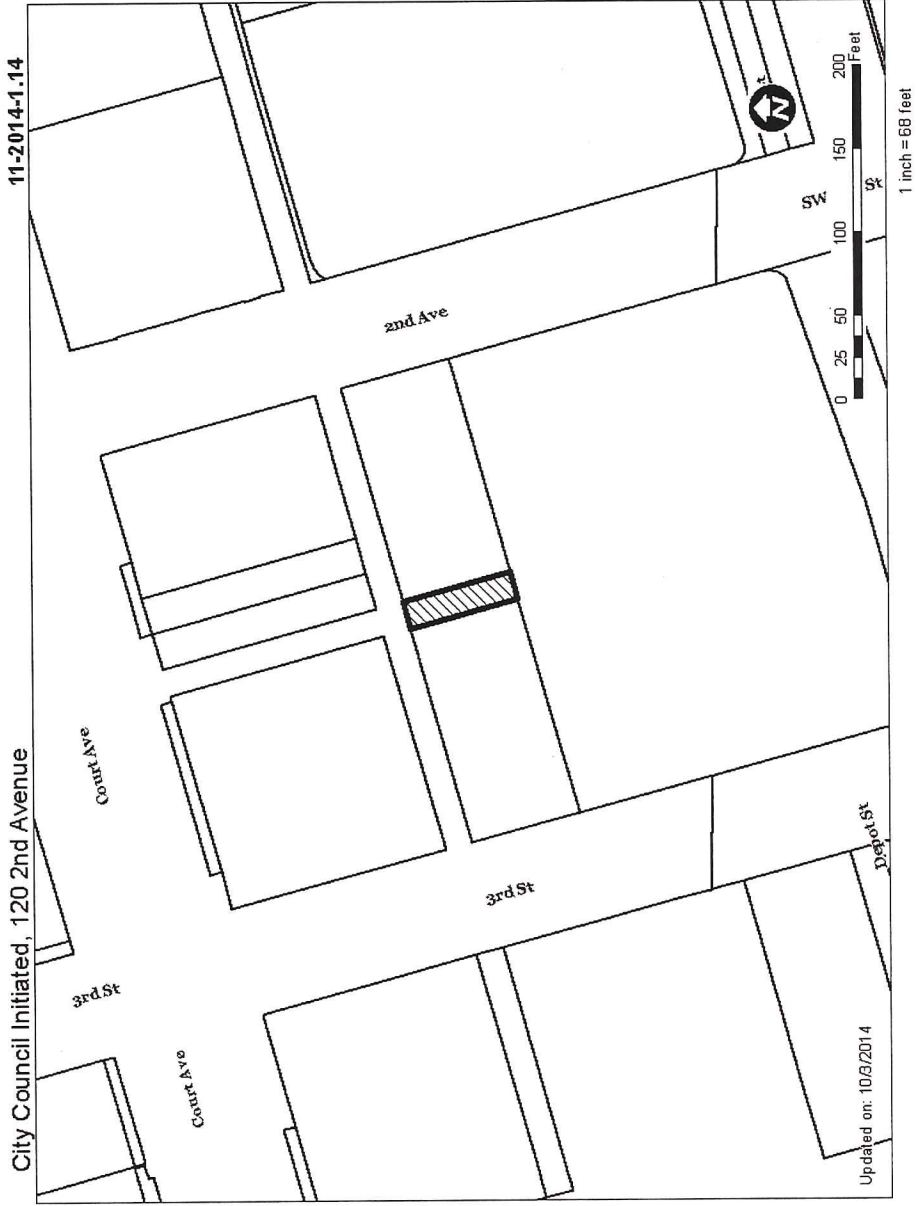


Michael Ludwig, AICP  
Planning Administrator

MGL:clw

Attachment

City Council initiated request for alley adjoining the west of the property at 120 2nd Avenue owned by Polk County.										File # 11-2014-1.14	
<b>Description of Action</b>		Denial of the requested vacation of a segment of the north/south alley lying between 2nd Avenue and 3rd Street adjoining the subject property extending from the east/west alley lying between Court Avenue and Vine Street to a point 66 feet to the south.									
<b>2020 Community Character Plan</b>		Current: Downtown Support Commercial. Proposed: N/A.									
<b>Horizon 2035 Transportation Plan</b>		No planned improvements.									
<b>Current Zoning District</b>		"C-3R" Central Business District Mixed Residential District.									
<b>Proposed Zoning District</b>		N/A.									
<b>Consent Card Responses</b>		In Favor	Not In Favor	Undetermined	% Opposition						
Inside Area			1								
Outside Area											
<b>Plan and Zoning Commission Action</b>		Approval		Required 6/7 Vote of the City Council							
Denial		11-0-1		Yes		X					
				No							



Item 11. 2014-1.14

Date - Oct 15-2014

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

Contract buyer. csk

(Circle One)

Print Name

Joe Coppola

Signature

Joe Coppola

Address

400 Walnut

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

Owner of ~~Block 3~~ <sup>Block 3 in Block 30</sup> object to the  
proposed vacation, the alley provides  
access and primary egress from our property.  
We object to any vacation or alteration of the  
alley which interferes with that access and egress.



