



Roll Call Number

Agenda Item Number

20

Date May 18, 2015

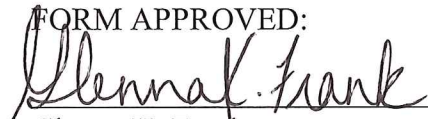
**RECEIVE AND FILE COMMUNICATION FROM THE
PLAN AND ZONING COMMISSION REGARDING REQUEST TO VACATE A
SEGMENT OF WEST MARTIN LUTHER KING, JR. PARKWAY ADJOINING
300 WEST MARTIN LUTHER KING, JR. PARKWAY**

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on May 7, 2015, its members voted 10-0-1 in support of a motion to recommend **APPROVAL** of a request from Green LTD., LLC (owner), represented by Richard Eychaner (officer), for vacation of a 10-foot by 362-foot segment of West Martin Luther King, Jr. Parkway (formerly Elm Street) adjoining 300 West Martin Luther King, Jr. Parkway, subject to the following conditions:

1. Reservation of any necessary easements for all existing utilities in place, including known water and sanitary sewer mains, until such time that they are abandoned or relocated.

MOVED by _____ to receive and file the attached communication from the Plan and Zoning Commission, and refer to the Engineering Department, Real Estate Division.

FORM APPROVED:



 Glenna K. Frank
 Assistant City Attorney

(11-2015-1.04)

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

May 14, 2015

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 May 7, 2015, the following action was taken regarding a request from Green LTD., LLC (owner) 300 West M.L. King Jr. Parkway represented by Richard Eychaner (officer) for vacation of A 10-foot by 362-foot segment of West M.L. King Jr. Parkway (formerly Elm Street).

COMMISSION RECOMMENDATION:

After public hearing, the members voted 10-0-1 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Dory Briles	X			
JoAnne Corigliano	X			
Jacqueline Easley				X
Tim Fitzgerald	X			
Jann Freed	X			
John "Jack" Hilmes	X			
Greg Jones	X			
Sasha Kamper	X			
William Page	X			
Jonathan Rosenbloom				X
Mike Simonson			X	
CJ Stephens	X			
Vicki Stogdill	X			
Greg Wattier				X

APPROVAL of the request for Part B) to vacate a 10-foot by 362-foot segment of West M.L. King Jr. Parkway (formerly Elm Street) subject to the following condition:

(11-2015-1.04)

1. Reservation of any necessary easements for all existing utilities in place, including know water and sanitary sewer mains, until such time that they are abandoned or are relocated.

AND

CONTINUANCE OF PART A) to vacate a 46-foot by 112.5-foot segment of Southwest 4th Street.

Written Responses

- 1 In Favor
- 1 In Opposition

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval of the requested vacation of street and alley rights-of-way subject to the following conditions:

1. Reservation of any necessary easements for all existing utilities in place, including know water and sanitary sewer mains, until such time that they are abandoned or are relocated.
2. Reservation or provision of vehicular access easements for the adjoining property to the south of the existing dead-end segment of SW 4th Street, and for any other property within the immediate vicinity that demonstrates a legal right to access said segment of SW 4th Street or property that the City desires to obtain access from said segment of SW 4th Street.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The proposed vacation would allow the owner/developer to make site edge improvements along West M.L. King Parkway and provide access to Southwest 5th Street for the site under construction at Southwest 3rd Street and West M.L. King Jr. Parkway.
2. **Size of Site:** Part A) 10-foot by 362-foot segment (3,620 square feet) Part B) 46-foot by 112.5-foot segment of right-of-way. (5,175 square feet).
3. **Existing Zoning (site):** "C-3R" Central Business District Mixed-Residential District, "D-O" Downtown Overlay District, "FSO" Freestanding Sign Overlay District, and "GGP" Gambling Games Prohibition District.
4. **Existing Land Use (site):** Part A) clear zone for West M.L. King Jr. Parkway. Part B) Semi-developed public street right-of-way.
5. **Adjacent Land Use and Zoning:**
 - North** – "C-3R". Use is semi-developed street right-of-way.
 - East** – "C-3R". Uses are vacant industrial buildings. This property is currently under construction for redevelopment as a mixed office/retail reuse of the historic industrial buildings.
 - South** – "C-3A". Use is flex office and industrial site.

West – “C-3R”, Uses are an electrical supply warehouse, a general warehouse buildings, and vacant properties.

6. **General Neighborhood/Area Land Uses:** The subject property is located south of the West M.L. King Jr. Parkway corridor in the southern part of the central business district with mixed densities of residential development, flex office, light industrial and warehouse uses.
7. **Applicable Recognized Neighborhood(s):** The subject property is located in Downtown Neighborhood. The neighborhood association was notified of the meeting by mailing of the Preliminary Agenda to all recognized neighborhood associations on April 21, 2015 and by mailing of the Final Agenda on May 1, 2015. Additionally, separate notifications of the hearing for this specific item were mailed on April 27, 2015 (10 days prior) to the neighborhood associations and to the primary titleholder on file with the Polk County Assessor for each property adjacent to the requested right-of-way and alley.

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

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

9. **2020 Community Character Land Use Plan Designation:** Downtown Support Commercial.

10. **Applicable Regulations:** The Commission, considering the criteria set forth in Chapter 18B of the Iowa Code, 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:** The subject 10-foot wide segment of West M.L. King Jr. Parkway contains a 30-inch feeder water main which requires reservation of an easement.

The subject Southwest 4th Street right-of-way contains a 6-inch water main and a 24-inch sanitary sewer main. Easements must be reserved for any existing utilities until such time that they may be abandoned or are relocated.

2. **Street System/Access:** The proposed Southwest 4th Street right-of-way is already a dead-end segment of public street. The remaining segment of Southwest 4th Street ties into a dead-end segment of Elm Street running east of Southwest 5th Street. These remaining segments of right-of-way must be maintained for access to private properties adjoin the west of Southwest 4th Street and south of Elm Street. This will be necessary until such time as these properties may be redeveloped with different access to a public street, at which time they may be considered for vacation.

There is existing through access from the requested segment of Southwest 4th Street to the flex office site adjoining to the south. This access must be maintained in order to comply with the Site Plan approved for that property. Additionally, the owner of that property, Foresite Realty Partners, LLC, has not consented to the vacation or otherwise given up their right of access to Southwest 4th Street. Therefore an access easement to that property must be reserved with any vacation of the property.

The property located at 319 Southwest 5th Street currently uses the applicant's intervening property as a way to provide loading access from that property to the portion of Southwest 4th Street requested for vacation. There is no evidence of a recorded easement or other agreement providing any legal access to the owner of that property. Should that owner demonstrate legal access through the applicant's property adjoining Southwest 4th Street, then an access easement must also be reserved for that property owner.

SUMMARY OF DISCUSSION

Jason Van Essen presented the staff report and recommendation and pointed out the change in staff recommendation.

Rich Eychaner 300 Walnut stated he cannot support the change to staff recommendation regarding the easement across his property. He believes that is a legal matter for the property owners to work out. He did have a conversation with the property owner at 319 SW 5th Street and they have worked out an arrangement. They currently own a lot that their building sits on, the lot behind them and a lot to the south of their building. After an hour discussion today, they stated they would convey to them the lots behind the building in exchange for two feet of easement so they would have an 18 foot wide space to back in trucks to their space. He pointed out that the 319 SW 5th Street neighbor has created the problem that they are now responding to.

Mike Ludwig explained that staff received comments from the City of Des Moines Traffic and Transportation Division this morning. The City Traffic Engineer does not want trucks backing out to SW 5th Street. There are a lot of plans for additional rehabilitation of buildings in the area and future development along SW 5th Street so the traffic volumes will continue to increase. Mr. Eychaner noted that there has not been an ability to negotiate a common agreement other than what he is showing tonight, which is the first time staff has seen this proposal. Staff cannot speak to whether or not Traffic and Transportation opinion would change or whether there was maneuvering available to drive out to SW 5th Street instead of backing out. The City has the right to vacate or not to vacate 4th Street at this point and in order to resolve additional traffic safety issues the City is requiring an access easement across the Eychaner property. At this point staff supports the Traffic and Transportation engineer's opinion. However, staff can take it back to Traffic and Transportation engineer and see if that changes their opinion.

Rich Eychaner pointed out the property owner had two years to purchase that property and did not. Now City staff wants to convey it to them for free is just not fair. He disagrees with Mr. Ludwig. He pointed out on ballpark nights there are parking issues. Therefore, parking has to be controlled in order to protect the tenants who are paying thousands of dollars a month to locate in this area. To say that random people will be allowed to come through the lot in case they want to use a loading dock that they were unwilling to buy access to after the 6th Avenue loading dock opportunity was closed is hard for him to contemplate.

Mike Ludwig stated the easement would be for truck access to 319 SW 5th Street. He believes there could be an option to provide maneuvering so a truck can drive out to SW 5th Street versus backing out. The wording is "Should the City Traffic Engineer desire that access to be there." Not the owner.

Rich Eychaner believes there is no intention to back out onto 5th Street. He believes the intention is to back from 5th Street into the property, and the access the City is trying to provide to an adjoining property owner that does not border 4th Street is an option that they said they no longer want.

Mike Ludwig stated that is information that the City Traffic Engineer did not have. Staff suggests keeping the condition as is and if it can be resolved before the Council meeting, it will be resolved.

Greg Jones asked if the applicant was willing to continue the item.

Rich Eychaner stated he came into this meeting and waited for almost two hours for a recommendation that he was in agreement with the original staff recommendation now that recommendation has changed. He would rather get it resolved on the original staff recommendation and he believes he has already resolved the access issue with the neighboring property owner. His other issue is in regards to the property Patty Funaro owns. He has tried for a year to talk to Patty Funaro about her property. Ms. Funaro has refused to see him in person. He has offered to supply his plans, archeological studies from the property to show and she has refused his offer. So he is delighted to receive a letter from her saying she would like to talk about it and see the plans. As mentioned by staff her property does not touch the vacation and it does not change her access to 4th Street. He also sent her the plans in April to see if she had any comments, he did not receive any reply.

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

John "Jack" Hilmes stated that the applicant has done a lot of good things in the City of Des Moines and continues to do good things in the City of Des Moines and he believes the Commission is in the middle of a dispute between City Planning, neighbors and the applicant and what came into the Commission that seemed rather simple has been made more complex. He believes more study needs to be done given the late breaking information from all sides of this case. He feels confused and conflicted.

COMMISSION ACTION:

John "Jack" Hilmes moved to continue this item to the May 21, 2015 Plan and Zoning Commission meeting.

Motion passed 10-0-1 (Mike Simonson abstained).

Jason Van Essen stated that Mr. Eychaner has asked that the Commission separate Part A and Part B. There are no known issues for Part B. To do this someone on the prevailing side would have to make a motion to open the whole item and then a motion will be needed to continue Part A and a separate motion of approval of Part B.

Glenna Frank explained the Commission would need a motion and vote to reconsider the item. Motion and vote would be needed for Part A to continue. Then a motion and vote to approve Part B. She stated that the question that is an issue was raised with the Traffic Engineer and she does not want the Planning staff to be blamed for the last minute change.

CJ Stephens made a motion to reconsider Item #9.

Motion passed 10-0-1 (Mike Simonson abstained).

Will Page made a motion to continue Part A) to the May 21, 2015 Plan and Zoning Commission.

Motion passed 10-0-1 (Mike Simonson abstained).

Sasha Kamper asked to see a picture of the area on Part B.

Jason Van Essen noted Part B is 10-foot by 362-foot segment of West M.L. King Jr. Parkway (formerly Elm Street).

Will Page made a motion to approve Part B) to vacate a 10-foot by 362-foot segment of West M.L. King Jr. Parkway (formerly Elm Street) subject to reservation of any necessary easements for all existing utilities in place, including know water and sanitary sewer mains, until such time that they are abandoned or are relocated.

Motion passed 10-0-1 (Mike Simonson abstained).

Respectfully submitted,



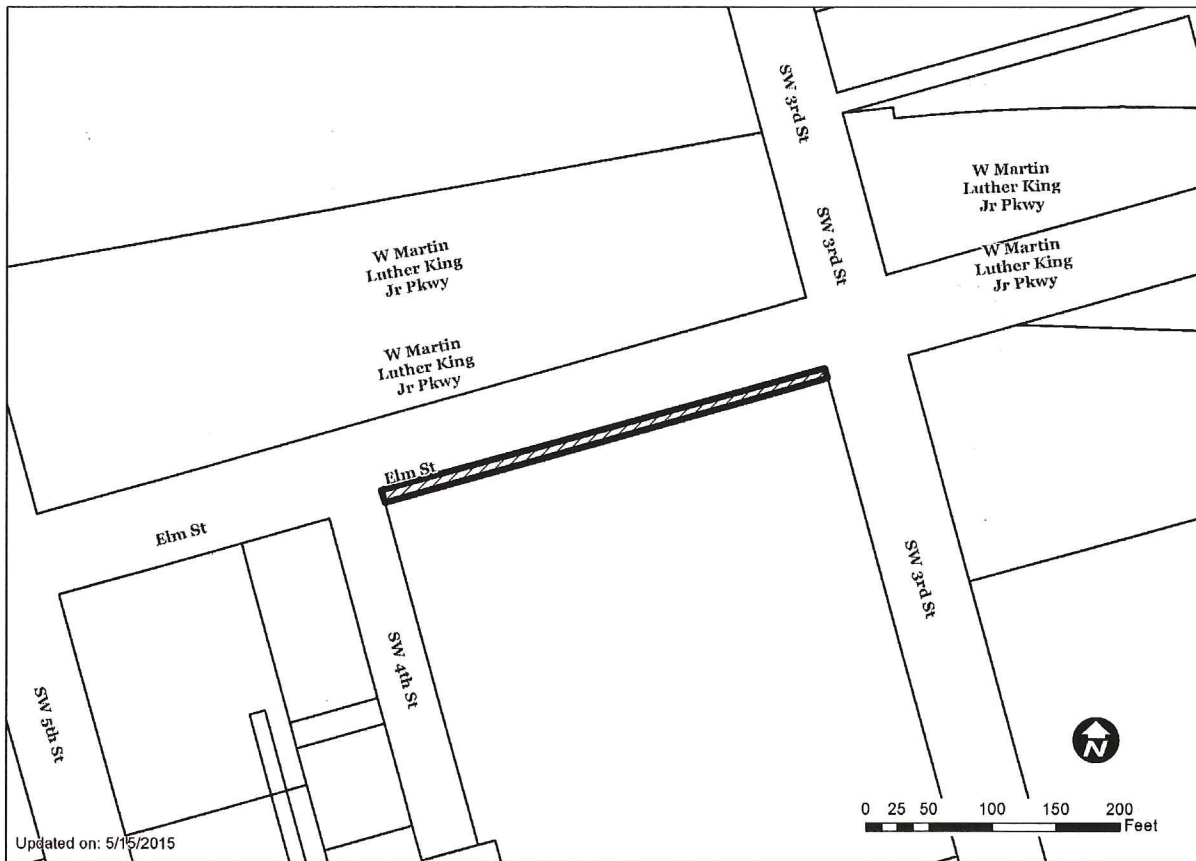
Michael G. Ludwig, AICP
Planning Administrator

MGL:clw
Attachment

Green LTD., LLC (owner) 300 West M.L. King Jr. Parkway represented by Richard Eychaner (officer)				File #	
				11-2015-1.04 B	
Description of Action	Approval of request to vacate A 10-foot by 362-foot segment of West M.L. King Jr. Parkway (formerly Elm Street).				
2020 Community Character Plan	Current: Downtown Support Commercial. Proposed: N/A.				
Mobilizing Tomorrow Transportation Plan	No Planned Improvements.				
Current Zoning District	"C-3R" Central Business District Mixed-Residential District, "D-O" Downtown Overlay District and "GGP" Gambling Games Prohibition District.				
Proposed Zoning District	N/A.				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Inside Area	1	1			
Outside Area					
Plan and Zoning Commission Action	Approval	11-0	Required 6/7 Vote of the City Council	Yes	
	Denial			No	X

Green Ltd, LLC, 300 W. Martin Luther King Jr. Parkway

11-2015-1.04B



11-2015-1.04

20

Item _____

Date 5/6/15

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

RECEIVED
COMMUNITY DEVELOPMENT

MAY 07 2015

Print Name Andy Burton *Midwest Radio Inc*
Signature [Signature]
Address 725 SW 5th St.

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

Great development for neighborhood. Vacating
+ paving to the make sense!

11-2015-1.04

Item _____

Date May 5, 2015

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

RECEIVED
COMMUNITY DEVELOPMENT

MAY 07 2015

Print Name Michael Bowser
Signature [Signature]
Address 444 SW 5th St

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

We think zoning is terrible for the neighborhood and
support their work

11-2015-1.04

Item

Date

5-1-15

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

Applicant

(Circle One)

RECEIVED
COMMUNITY DEVELOPMENT

Print Name

[Handwritten Signature]

Signature

EYCHNER HOLDINGS, INC

Address

LOT 60, 61 + 62

MAY 07 2015

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

DEPARTMENT

NEIGHBORHOOD REDEVELOPMENT IS IMPORTANT TO
IMPROVE VALUES AND SERVICES IN THE AREA.

Whitfield, Cathy L.

From: Ludwig, Michael G.
Sent: Thursday, May 07, 2015 12:30 PM
To: Lundy, Erik M.; Van Essen, Jason M.; Whitfield, Cathy L.
Subject: Fwd: item 11-2015-1.04
Attachments: SKMBT_C36015050712100.pdf; ATT00001.htm

Sent from my iPhone

Begin forwarded message:

From: "Funaro, Patty [LEGIS]" <patty.funaro@legis.iowa.gov>
Date: May 7, 2015 at 12:12:46 PM CDT
To: "'mgludwig@dmgov.org'" <mgludwig@dmgov.org>
Subject: item 11-2015-1.04

Mr. Ludwig: Thank you for speaking with me earlier this week regarding the vacation of the right-of-way item coming before the City Plan and Zoning Commission this evening. Below are comments that Lucretia Funaro and I would like to submit for consideration. Thank you for your assistance.

Patty Funaro

We appreciate the opportunity to respond to the request for vacation of the right-of-way as specified in the notice of public hearing. While we respect the fact that development is taking place in the area and want to proceed as good neighbors in a collaborative manner, we do have concerns that result in our opposing approval of the vacation at the present time. Some of our concerns include:

1. Our property has been in the family since the early 1900's. Lucretia L. Funaro still retains a majority ownership interest in the property which her parents purchased following their immigration to the United States from Italy. Her parents' firstborn son, and father of the remaining owners of record, Charles Dominic Funaro, was born in the home that once stood on the property. The area was home to many of the immigrants who built this city. Our family has retained the property all these years because of this special significance. We hope that any development in the future preserves the historical significance of the area and provides for recognition of the Italian immigrants, and others like them, who settled in Des Moines and made this city their home.

2. Our specific concerns regarding the granting of vacation of the right-of-way include:

a. The plan for development has evolved over time, and our understanding is that vacation of the right-of-way was not part of the original plan. We'd like to know the developer's plans for the area to be vacated to determine the full impact on our property. We're also concerned that as the development plan continues to evolve, and as additional properties are purchased for development, there will be unforeseen negative consequences affecting the use and value of our property, ultimately resulting in our selling of the property against our wishes. We'd like to know how the developer foresees our property aligning with his evolving plan for development so that our concerns might be alleviated.

b. Currently, a number of the properties impacted by the vacation are owned by parties other than the developer. A vacation at this point would seem to require the granting of easements to allow these parties

continued access to these properties. This seems to evidence the premature nature of granting a vacation of the right-of-way at this time.

c. We feel that granting the vacation will negatively impact the use, and therefore the value of, our property. As an example, although the granting of the vacation of the right-of-way would not totally restrict ingress to and egress from our property, restricting the movement of traffic to the south of our property will negatively impact traffic flow. Such restriction will result in more limited use of our property as well as the unauthorized use of our property to maintain traffic flow and for parking. If a vacation of the right-of-way is granted in the future, at a minimum we would request an easement to allow traffic to our property to access the vacated space for the purpose of traffic flow.

For the decades that developers were not interested in this area of the city, our family maintained its personal and financial interest in this property. Ownership of this small parcel, referred to in our family as the "white chapel," has always been a source of pride. Almost one hundred years after Michael and Catherine Funaro purchased this property, the city and developers are finally appreciating its value. We hope that as the city and developers move forward, they will continue to work with us to maintain and recognize its personal and historical significance.

Once again, thank you for the opportunity to provide our input and to respond to this notice of public hearing.

