



Date September 14, 2015

RECEIVE AND FILE COMMUNICATION FROM THE PLAN AND ZONING COMMISSION REGARDING VACATION OF SOUTHWEST 4TH STREET LYING SOUTH OF WEST MARTIN LUTHER KING, JR. PARKWAY AND A PORTION OF WEST MARTIN LUTHER KING JR. PARKWAY (ALSO KNOWN AS ELM STREET) BETWEEN SOUTHWEST 3RD STREET AND SOUTHWEST 4TH STREET, ALL ADJOINING 300 WEST MARTIN LUTHER KING JR. PARKWAY

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on September 3, 2015, its members voted 8-0 in support of a motion to recommend APPROVAL of a City-initiated request for vacation of Southwest 4th Street lying south of West Martin Luther King, Jr. Parkway and a portion of West Martin Luther King Jr. Parkway (also known as Elm Street) between Southwest 3rd Street and Southwest 4th Street, all adjoining 300 West Martin Luther King Jr. Parkway, subject to the following:

- 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 are relocated.
2. Provision of private drive connections to West Martin Luther King, Jr. Parkway and Southwest 5th Street from 300 West Martin Luther King, Jr. Parkway, if determined necessary following further discussion with the City Traffic Engineer regarding the need and requirements for provision of private access easements for separately owned private properties adjoining to the west.
3. The access from remaining Elm Street to the west shall be closed with a permanent barrier, including a curb and a landscaped berm.
4. Restoration of the vacated Elm Street right-of-way by the purchaser in accordance with an administratively approved site plan.

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

(11-2015-1.14)

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, COLEMAN, GATTO, GRAY, HENSLEY, MAHAFFEY, MOORE, and TOTAL.

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.

MOTION CARRIED APPROVED

Mayor

City Clerk

Date SEP 14 2015

Agenda Item 20

Roll Call # _____

September 8, 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 September 3, 2015, the following action was taken regarding a City initiated request for vacation of Southwest 4th Street lying south of West Martin Luther King, Jr. Parkway and a portion of West Martin Luther King Jr. Parkway (also known as Elm Street) between Southwest 3rd Street and Southwest 4th Street, all adjoining 300 West Martin Luther King Jr. Parkway.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 8-0 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			
Brian Millard				X
William Page	X			
Jonathan Rosenbloom	X			
Mike Simonson				X
CJ Stephens	X			
Greg Wattier				X

APPROVAL of the request to vacate the street rights-of-way, subject to the following:
(11-2015-1.14)

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 are relocated.

2. Provision of private drive connections to West Martin Luther King, Jr. Parkway and Southwest 5th Street from 300 West Martin Luther King, Jr. Parkway, with further discussion with Traffic Engineer and applicant for possible easements.
3. The access from remaining Elm Street to the west shall be closed with a permanent barrier, including a curb and a landscaped berm.
4. The right-of-way shall be restored in accordance with the approved site plan.

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval of the City initiated request for vacation of street rights-of-way, subject to the following:

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 are relocated.
2. Provision of private drive connections to West Martin Luther King, Jr. Parkway and Southwest 5th Street from 300 West Martin Luther King, Jr. Parkway, with provision of private access easements for separately owned private properties adjoining to the west.
3. The access from remaining Elm Street to the west shall be closed with a permanent barrier, including a curb and a landscaped berm.

STAFF REPORT TO THE PLANNING COMMISSION

Written Responses

3 In Favor

0 In Opposition

I. GENERAL INFORMATION

1. **Purpose of Request:** The proposed vacation would allow the owner/developer of the subject property to provide direct access to both West Martin Luther King, Jr. Parkway and Southwest 5th Street.
2. **Size of Site:** Approximately 12,670 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):** Semi-developed street right-of-way.
5. **Adjacent Land Use and Zoning:**

North – "C-3R". Uses are West Martin Luther King, Jr. Parkway and Science Center of Iowa.

East – “C-3R”. Use is a multi-tenant commercial center.

South – “C-3R” & “C-3A”. Uses are Southwest 4th Street, flex office, and light industrial.

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

6. **General Neighborhood/Area Land Uses:** The subject property is located south of the West Martin Luther King, Jr. Parkway corridor in the southern part of the central business district. The surrounding area contains a mix of residential, flex office space, light industrial, and warehouse uses.
7. **Applicable Recognized Neighborhood(s):** The subject property is located in the Downtown Neighborhood. The neighborhood association was notified of the meeting by mailing of the Preliminary Agenda to all recognized neighborhood associations on July 31, 2015 and by mailing of the Final Agenda on August 14, 2015. Additionally, separate notifications of the hearing for this specific item were mailed on August 10, 2015 (10 days prior to the original public hearing) 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 Southwest 4th Street right-of-way contains a 6-inch water main and a 24-inch sanitary sewer main. The subject West Martin Luther King, Jr. Parkway (former Elm Street) right-of-way contains a 60-inch sanitary sewer, a 30-inch water main, and overhead electrical lines. Easements must be reserved for any existing utilities until such time that they may be abandoned or are relocated.
2. **Street System/Access:** The requested Southwest 4th Street right-of-way is a dead-end segment of semi-developed public street. A 110-foot long dead-end segment adjoining on the south was recently recommended for vacation by the Commission at their July 16, 2015 meeting. The subject segment also connects to a dead-end segment of Elm Street running east of Southwest 5th Street.

Traffic engineering staff have indicated that access to the private properties that adjoin the west side of Southwest 4th Street must be maintained and an access easement via private driveways to both West Martin Luther King, Jr. Parkway and Southwest 5th Street must be provided. The developer of the adjoining property at 300 West Martin Luther King, Jr. Parkway has provided a schematic drawing that demonstrates provision of this access. This access easement will be necessary until such time as these properties are redeveloped with alternate access to a public street. Traffic engineering staff have also indicated that any drive extending to West Martin Luther King, Jr. Parkway should not have access onto the remaining segment of Elm Street in order to prevent commercial traffic from using it as an exit in close proximity to the signal at Southwest 5th Street and Elm Street. Instead, the access to Southwest 5th Street will be located further south away from West Martin Luther King, Jr. Parkway.

SUMMARY OF DISCUSSION

Jason Van Essen presented the staff report and recommendation.

Jonathan Rosenbloom asked if the City of Des Moines is responsible for maintaining and installing the curb that is not on the property being conveyed.

Jason Van Essen stated this will be a private drive and driveways curb cuts within the public right-of-way are subject to permit. The width of the 4th Street right-of-way is wider than the drives, so additional curb will be installed.

Jonathan Rosenbloom reiterated that when coming down MLK heading east and turn right to the south at that point you will be on public land, but the land that is maintained or at least the curbs and the driveway will be maintained by the applicant.

Jason Van Essen stated once a car is behind the sidewalk it will be on private property.

Jonathan Rosenbloom asked if pedestrian options have been looked at and is the proposal the best for a walkable area.

Jason Van Essen stated staff tries to minimize driveways and driveway approaches so this is good in the sense that there will be one driveway approach that will serve the development on the side that will hopefully one day be developed. What is being shown tonight is a concept so staff has not looked at the site plan as to how everything will work with pedestrian activity within the site.

Mike Ludwig stated SW 3rd Street right-of-way will have a 17' wide sidewalk constructed along the front of the commercial center which will help to improve the pedestrian circulation and traffic that is coming from the baseball stadium.

Sasha Kamper asked about staff's concern with maintaining access for the two other tenants down to 5th Street.

Jason Van Essen stated the City must ensure that equal or alternate access is provided. He pointed out that this is just a recommendation going to the Council and there is an opportunity for Mr. Eychaner and his neighbors to discuss. If they are all comfortable with an alternate, they can talk to the Traffic and Transportation Engineer and City Council.

Dan Manning 317 6th Avenue, Suite 300 representing Crescent Electric neighbor to the west stated he appreciates the fact that Mr. Eychaner and group and the Commission was grateful enough to grant the continuance from the last meeting. They used the continuance to visit with neighbors about what they could do and what was needed. After meeting with the neighbors and Mr. Eychaner they believe they all have a better understanding. Crescent Electric semis currently enter off of SW 5th come down Elm Street, make a maneuver with their trucks causing them to be in the need of that 4th Street maneuverability. With the current plan and the discussion they had with Eychaner group and their neighbors they have come to an agreement. Access would come off of MLK directly onto former 4th Street. If there is no curb on the west edge of the private drive adjoining the Crescent and Funaro properties, then they are comfortable with having the access easements terminated at that location. That will give their truckers the ability to come in pull up the nose of their truck and back into the eastern edge of the property which is where their loading docks are. They support the applicant's request.

Jonathan Rosenbloom asked if he knows of any plans between Elm Street and MLK.

Dan Manning stated possibly vacating Elm Street and make improvements along that area.

Doug Saltsgaver stated he agrees with Mr. Manning regarding Elm Street and Traffic and Transportation would like for Elm Street to go away because it is so close to the intersection of SW 5th and MLK that it causes some traffic issues. Traffic and Transportation is very happy to see what they have done here. They are in agreement with staff recommendation except they would ask that they not be required to provide an access easement south down to SW 5th. The primary purpose of that was to serve the two adjacent properties Crescent and Funaro. Currently, Funaro is in agreement and the applicant is not going to put a gate or gate keeper to monitor anyone driving south. They do not want that land encumbered with an easement because at some point there could be a higher and better use for that property to the south and Mr. Eychaner doesn't want an easement holding a development up that everyone would be in favor of.

Mike Ludwig stated staff understands the concern about the easements. However, in the absence of a recommendation from the City Traffic Engineer to support that, he would recommend leaving the condition as is. If the Plan and Zoning wants to alter the wording to say "unless determined unnecessary by the City Traffic Engineer" the Commission can do so. He would not recommend eliminating the requirement at this time.

Sasha Kamper asked if the issue is the Traffic Engineer was out on leave and no one has been able to talk to her.

Mike Ludwig stated there is an Acting City Traffic Engineer. Staff found out today that the adjoining property owners were all in agreement but staff was not able to reach the Acting City Traffic Engineer before the Plan and Zoning meeting. He believes there will be a resolution on this matter before it goes to City Council for their action. He suggest leaving the condition as is or modifying the language. The right-of-way will not be vacated or conveyed unless there is a resolution.

Jonathan Rosenbloom stated if the property owners to the west can vacate their own property rights at any time and he does not believe the Commission needs to currently address it.

Rich Eychaner 300 Walnut Street stated all of the surrounding property owners are in agreement. He believes the City staff is asking they get four different property owners to provide access to the south via a written easement, forcing four different property owners to agree to something that the people who are supposedly being protected do not wish to have. He believes City staff is also saying that the person who owns 1,512 square feet of land will make the decision as to what will be developed because they have easement rights that they will then be able to sell or convey to someone else. It makes no sense. Therefore, they are respectfully saying it is not a reasonable expectation.

Mike Ludwig requested the Plan and Zoning leave the condition asking for the provision of private drive connections to West Martin Luther King Jr. Parkway and Southwest 5th Street from 300 West Martin Luther King Jr. Parkway, with provision of private access easements for separately owned private properties adjoining to the west. If the City Traffic Engineer wants to modify the condition he believes it could be addressed before the Council meeting.

Jonathan Rosenbloom asked how is the pedestrian playing a role in any of this and is there any improvement plans for the area between Elm and MLK and/or the buildings moving to the east and MLK.

Rich Eychaner stated there is a 17' sidewalk going in from the property line to the curb along SW 3rd. This project will be enhancing a pedestrian corridor.

Jonathan Rosenbloom asked that all involved work to make this area pleasant for pedestrian to walk by.

Rich Eychaner stated once Elm Street is cut off on the east it might as well be closed at 5th Street as well. Then there will be a nice chunk of land and they will be supportive of any efforts that the property or the City wanted to have for that area.

CJ Stephens asked if the utility is buried underground or is there a plan for underground utilities.

Mike Ludwig stated there is an approved site plan and they would have to double check and see.

Rich Eychaner stated his understanding during the site plan process they were told that the size, the voltage of those lines and the current they carry was not conducive to putting underground.

CHAIRPERSON OPENED THE PUBLIC HEARING

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

CHAIRPERSON CLOSED THE PUBLIC HEARING

Will Page stated this proposal is an excellent one. This is a very confusing part of the City and it is a very important part of the City. What they are proposing makes sense and since there is an agreement among the property owners he believes the questions raised by the

applicant can be adequately addressed and answered by City staff. He proposes to moved staff recommendation but modify condition #2 to read provision of private drive connections to West Martin Luther King Jr. Parkway and Southwest 5th Street from 300 West Martin Luther King Jr. Parkway, with further discussion between Traffic Engineer and applicant regarding any possible easements. That would leave open to whatever negotiation could occur.

Jonathan Rosenbloom expressed concern regarding condition #3. He is concerned that the Elm Street portion will be a barrier for pedestrian.

Mike Ludwig stated that area is City public right-of-way so the City can maintain that area. If there are concerns about how it is being maintained or how it looks the Public Works department needs to be reached.

Jason Van Essen clarified that anytime a site is being developed or vacation of a right-of-way is requested it is an understood requirement that all of the asphalt and all the curb has to be removed and restored. If they want to use it as a driveway the site plan has to be amended.

Jonathan Rosenbloom asked then could this be added as a condition.

Jason Van Essen stated yes, they could wording that any unnecessary pavement needs to be removed and the area restored to grass/sod. Staff does have a site plan to go through.

CJ Stephens asked would the site plan be coming back to the Commission.

Jason Van Essen stated he believes the site plan is subject to administrative approval.

Mike Ludwig stated it is an administrative site plan. The only reason the site plan came to the Commission before was because of the request for a drop off lane for the previous tenant.

Jonathan Rosenbloom asked for a friendly amendment to request that the right-of-way shall be restored in accordance with the approved site plan.

Will Page accepted the friendly amendment.

COMMISSION ACTION:

Will Page moved approval of the City initiated request for vacation of street rights-of-way, subject to the following:

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 are relocated.
2. Provision of private drive connections to West Martin Luther King, Jr. Parkway and Southwest 5th Street from 300 West Martin Luther King, Jr. Parkway, with further discussion with Traffic Engineer and applicant for possible easements.

3. The access from remaining Elm Street to the west shall be closed with a permanent barrier, including a curb and a landscaped berm.
4. The right-of-way shall be restored in accordance with the approved site plan.

Motion passed 8-0.

Respectfully submitted,



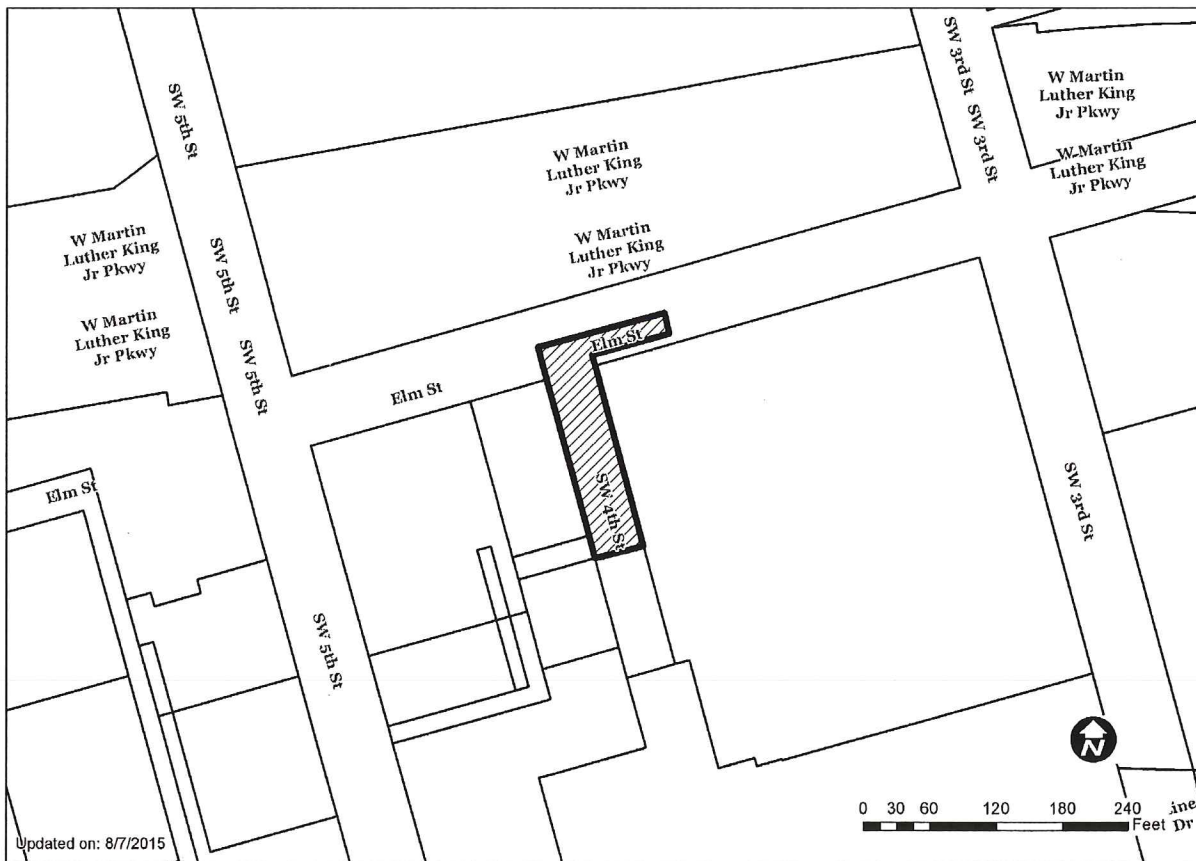
Michael Ludwig, AICP
Planning Administrator

MGL:clw
Attachment

City initiated request adjoining 300 West Martin Luther King Jr. Parkway				File #	
				11-2015-1.14	
Description of Action	Approval of a request to vacate the Southwest 4th Street lying south of West Martin Luther King, Jr. Parkway and a portion of West Martin Luther King Jr. Parkway (also known as Elm Street) between Southwest 3rd Street and Southwest 4th Street subject to conditions.				
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, "FSO" Freestanding Sign 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	3				
Outside Area					
Plan and Zoning Commission Action	Approval	8-0	Required 6/7 Vote of the City Council	Yes	
	Denial			No	X

City initiated, 300 Martin Luther King Jr. Parkway

11-2015-1.14



1 inch = 103 feet

20

City initiated, 300 Martin Luther King Jr. Parkway

11-2015-1.14



Item 11-2015-1.14

Date 8-18-2015

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

EXCHANGER HOLDINGS, INC

RECEIVED (Circle One)

COMMUNITY DEVELOPMENT

Print Name RICH EXCHANGER

Signature [Signature]

Address Lot 60, 61 & 62 RAILROAD ADDITION

AUG 20 2015

DEPARTMENT

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

WE SUPPORT VARIATION OF 4TH STREET
IN ORDER TO GET THE DRIVE PAVED AND
IMPROVED AND PROVIDE US WITH DIRECT
ACCESS TO MLK PARKWAY.

Item 11-2015-1.14

Date 8/19/2015

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

MIDWEST RADIO, INC.

RECEIVED (Circle One)

COMMUNITY DEVELOPMENT

Print Name MICHAEL BOWSER

Signature [Signature]

Address 325 SW 5th STREET

AUG 20

DEPARTMENT

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

I AM IN FAVOR OF REDEVELOPMENT IN THE AREA
AND THE OPPORTUNITY TO GET 4th STREET PAVED
AND PROVIDE US WITH A MEANS FOR US TO GET
TO MARTIN LUTHER KING.

80

**MLK River Park LLC
525 S. W. 5th Street
P. O. Box 1797
Des Moines, Iowa 50305
515-262-0000 x 102**

August 19, 2015

City of Des Moines
City Plan and Zoning Commission
602 Robert D. Ray Drive
Des Moines, Iowa 50309-1881

Ref: 11-2015-1.14, vacating SW 4th Street and Elm east of 4th Street

I am writing on behalf of MLK River Park LLC, owner of property directly south of proposed vacation, and in support of the vacation by the City.

MLK River Park LLC objects to any effort to require an easement through our property to Southwest 5th Street as a condition to granting the vacation.

The two impacted properties on the west side of 4th Street will have increased access going directly north to Martin Luther King Jr. Parkway (the shortest route to a public street), and do not need a convoluted and lengthy route to the south to access Southwest 5th Street at Tuttle or further south. The larger parcel already has a direct curb cut onto Southwest 5th Street, and adding access from the former 4th Street to Martin Luther King Jr. Parkway also provides them with expanded access to public streets.

Thank you for your consideration.

Sincerely,

MLK River Park LLC



Andy Burton
Vice President

Lundy, Erik M.

From: Funaro, Patty [LEGIS] <patty.funaro@legis.iowa.gov>
Sent: Wednesday, August 19, 2015 1:26 PM
To: Lundy, Erik M.
Subject: RE: 4th street property

Erik: My aunt and I just met with Mr. Eychaner and have a better understanding of his plans for the area. I told him that I had already responded to you with regard to the P and Z proposal regarding vacating 4th street. He asked if we would reconsider, remove the initial objection to vacating 4th street, and instead support, outright, the P and Z recommendation to vacate with the condition that access be maintained for adjoining private properties (condition #2). My aunt and I discussed it and we feel his request is fair. So, I'm writing to ask that you convey that we are now in support of the P and Z recommendation. Our overall concern is to continue to have access to our property, but we understand that both Mr. Eychaner and the city are trying to balance the interests of all involved and improve traffic flow in the area, so the P and Z recommendation with condition 2 would meet everyone's needs. Please let me know if this is unclear. Thanks for your assistance.


Patty Funaro

From: Lundy, Erik M. [mailto:EMLundy@dmgov.org]
Sent: Monday, August 17, 2015 11:42 AM
To: Funaro, Patty [LEGIS]
Subject: RE: 4th street property

I see what you are asking now. You are looking to oppose the vacation, but if they are inclined to recommend in favor of vacation then your back pocket input is wanting to make sure it includes condition 2.

ERIK M. LUNDY, AICP, CPM
 SENIOR CITY PLANNER


 CITY OF DES MOINES
 COMMUNITY DEVELOPMENT
 602 ROBERT D. RAY DRIVE
 DES MOINES IA 50309
 515.283.4144 VOICE
 515.237.1694 FAX
emlundy@dmgov.org

 BE GREEN Please don't print this e-mail unless necessary!

From: Funaro, Patty [LEGIS] [mailto:patty.funaro@legis.iowa.gov]
Sent: Monday, August 17, 2015 10:43 AM
To: Lundy, Erik M.