

Date March 21, 2016

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**HOLD HEARING FOR VACATION OF AIR SPACE AND SURFACE RIGHTS  
ADJOINING 110 6<sup>TH</sup> AVENUE AND CONVEYANCE OF A PERMANENT  
EASEMENT FOR AIR SPACE ABOVE CITY-OWNED PROPERTY WITHIN 6<sup>TH</sup>  
AVENUE, AND CONVEYANCE OF A PERMANENT EASEMENT FOR BUILDING  
ENCROACHMENT WITHIN 6<sup>TH</sup> AVENUE AND CHERRY STREET TO POLK  
COUNTY FOR \$1**

**WHEREAS**, Polk County, Iowa (“Polk County”) is the owner of the real property locally known as 110 6<sup>th</sup> Avenue, which property previously contained the Polk County Main Jail; and

**WHEREAS**, Polk County has requested the vacation of a portion of the west 0.6 feet of 6th Avenue right-of-way adjoining 110 6th Avenue and a portion of the north 1.9 feet of Cherry Street right-of-way adjoining 110 6th Avenue to accommodate a proposed building encroachment; and has requested the vacation of air rights within the west 3 feet of 6th Avenue right-of-way adjoining 110 6th Avenue to accommodate a proposed entry way canopy; and has further requested that the City convey a Permanent Easement for Air Space Above City-owned Property and a Permanent Easement for Building Encroachment in the vacated rights-of-way to Polk County for the public purposes of property redevelopment and use for the Polk County Criminal Court Annex renovation project, as consideration for acquisition of said easement interests in accordance with Iowa Code Section 364.7(3); and

**WHEREAS**, on February 18, 2016, the City Plan and Zoning Commission voted to recommend to the City Council of the City of Des Moines, Iowa that portions of 6<sup>th</sup> Avenue and Cherry Street rights-of-way adjoining 110 6<sup>th</sup> Avenue (hereinafter “City Right-of-Way”), more fully described below, be vacated, subject to reservation of easements for all existing utilities in place; and

**WHEREAS**, there is no known current or future public need or benefit for the portion of the City Right-of-Way proposed to be vacated, and the City will not be inconvenienced by the vacation of said property and conveyance of easement interests therein; and

**WHEREAS**, on March 7, 2016, by Roll Call No. 16-0385, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation and conveyance of easement interests in the City Right-of-Way be set down for hearing on March 21, 2016, at 5:00 p.m., in the City Council Chambers; and

**WHEREAS**, due notice of said proposal to vacate and convey the City 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 City Council direction, those interested in the proposed vacation and conveyance, both for and against, have been given an opportunity to be heard with respect thereto and have presented their views to the City Council of the City of Des Moines, Iowa.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Des Moines, Iowa, as follows:

**Date** March 21, 2016

1. Upon due consideration of the facts and statements of interested persons, any and all objections to the proposed vacation and conveyance of easement interests in the City Right-of-Way, as described herein, are hereby overruled and the hearing is closed.

2. There is no public need or benefit for the City Right-of-Way proposed to be vacated, and the public would not be inconvenienced by reason of the vacation of portions of 6<sup>th</sup> Avenue and Cherry Street rights-of-way adjoining 110 6<sup>th</sup> Avenue, as legally described below, and said vacation is hereby approved:

A PART OF THE AIR SPACE FOR THAT PART OF 6TH AVENUE LYING ADJACENT TO BLOCK 10 OF THE ORIGINAL TOWN OF FORT DES MOINES, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEASTERLY CORNER OF LOT 7 OF SAID BLOCK 10 OF ORIGINAL TOWN OF FORT DES MOINES; THENCE SOUTH 15°25'07" EAST ALONG THE EASTERLY LINE OF SAID BLOCK 10, A DISTANCE OF 102.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 74°34'53" EAST, 3.00 FEET; THENCE SOUTH 15°25'07" EAST, 18.00 FEET; THENCE SOUTH 74°34'53" WEST, 3.00 FEET TO SAID EASTERLY LINE; THENCE NORTH 15°25'07" WEST ALONG SAID EASTERLY LINE, 18.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 36 S.F. WHICH IS BELOW A PLANE ELEVATION OF 48.00 FEET CITY DATUM AND WHICH IS ABOVE A PLANE ELEVATION OF 45.00 FEET CITY DATUM, CURRENT GROUND ELEVATION 31.0 FEET.

AND

A PART OF 6TH AVENUE AND CHERRY STREET RIGHT-OF-WAY LYING ADJACENT TO BLOCK 10 OF THE ORIGINAL TOWN OF FORT DES MOINES, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEASTERLY CORNER OF LOT 7 OF SAID BLOCK 10 OF THE ORIGINAL TOWN OF FORT DES MOINES; THENCE SOUTH 15°25'07" EAST ALONG THE EASTERLY LINE OF SAID BLOCK 10, A DISTANCE OF 31.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 74°34'53" EAST, 0.60 FEET; THENCE SOUTH 15°25'07" EAST, 136.02 FEET; THENCE SOUTH 74°13'48" WEST, 24.45 FEET; THENCE SOUTH 15°46'12" EAST, 1.09 FEET; THENCE SOUTH 74°13'48" WEST, 3.00 FEET; THENCE NORTH 15°46'12" WEST, 1.90 FEET; THENCE SOUTH 74°13'48" WEST, 114.75 FEET; THENCE NORTH 15°46'12" WEST, 0.60 FEET TO THE SOUTHERLY LINE OF SAID BLOCK 10; THENCE NORTH 74°13'48" EAST ALONG SAID SOUTHERLY LINE OF BLOCK 10, A DISTANCE OF 141.60 FEET TO THE SOUTHEASTERLY CORNER OF SAID BLOCK 10; THENCE NORTH 15°25'07" WEST ALONG THE EASTERLY LINE OF SAID BLOCK 10, A DISTANCE OF 135.42 FEET TO THE POINT OF BEGINNING AND CONTAINING 172 S.F.

3. The conveyance of a Permanent Easement for Air Space Above City-owned Property and a Permanent Easement for Building Encroachment in the vacated rights-of-way, as legally described as follows, to Polk County for the public purposes of property redevelopment and use for the Polk County Criminal Court Annex renovation project, as consideration for acquisition of said easement interests in accordance with Iowa Code Section 364.7(3), is hereby approved:

Date March 21, 2016

PERMANENT EASEMENT FOR AIR SPACE ABOVE CITY-OWNED PROPERTY:

A PART OF THE AIR SPACE FOR THAT PART OF VACATED 6TH AVENUE LYING ADJACENT TO BLOCK 10 OF THE ORIGINAL TOWN OF FORT DES MOINES, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEASTERLY CORNER OF LOT 7 OF SAID BLOCK 10 OF ORIGINAL TOWN OF FORT DES MOINES; THENCE SOUTH 15°25'07" EAST ALONG THE EASTERLY LINE OF SAID BLOCK 10, A DISTANCE OF 102.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 74°34'53" EAST, 3.00 FEET; THENCE SOUTH 15°25'07" EAST, 18.00 FEET; THENCE SOUTH 74°34'53" WEST, 3.00 FEET TO SAID EASTERLY LINE; THENCE NORTH 15°25'07" WEST ALONG SAID EASTERLY LINE, 18.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 36 S.F. WHICH IS BELOW A PLANE ELEVATION OF 48.00 FEET CITY DATUM AND WHICH IS ABOVE A PLANE ELEVATION OF 45.00 FEET CITY DATUM, CURRENT GROUND ELEVATION 31.0 FEET.

PERMANENT EASEMENT FOR BUILDING ENCROACHMENT:

A PART OF VACATED 6TH AVENUE AND VACATED CHERRY STREET RIGHT-OF-WAY LYING ADJACENT TO BLOCK 10 OF THE ORIGINAL TOWN OF FORT DES MOINES, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEASTERLY CORNER OF LOT 7 OF SAID BLOCK 10 OF THE ORIGINAL TOWN OF FORT DES MOINES; THENCE SOUTH 15°25'07" EAST ALONG THE EASTERLY LINE OF SAID BLOCK 10, A DISTANCE OF 31.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 74°34'53" EAST, 0.60 FEET; THENCE SOUTH 15°25'07" EAST, 136.02 FEET; THENCE SOUTH 74°13'48" WEST, 24.45 FEET; THENCE SOUTH 15°46'12" EAST, 1.09 FEET; THENCE SOUTH 74°13'48" WEST, 3.00 FEET; THENCE NORTH 15°46'12" WEST, 1.90 FEET; THENCE SOUTH 74°13'48" WEST, 114.75 FEET; THENCE NORTH 15°46'12" WEST, 0.60 FEET TO THE SOUTHERLY LINE OF SAID BLOCK 10; THENCE NORTH 74°13'48" EAST ALONG SAID SOUTHERLY LINE OF BLOCK 10, A DISTANCE OF 141.60 FEET TO THE SOUTHEASTERLY CORNER OF SAID BLOCK 10; THENCE NORTH 15°25'07" WEST ALONG THE EASTERLY LINE OF SAID BLOCK 10, A DISTANCE OF 135.42 FEET TO THE POINT OF BEGINNING AND CONTAINING 172 S.F.

4. The Mayor is authorized and directed to sign the Permanent Easement for Air Space Above City-owned Property and the Permanent Easement for Building Encroachment for the conveyance as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.
5. Upon final passage of an ordinance vacating said rights-of-way, the City Clerk is authorized and directed to forward the original of the Easements, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Real Estate Division of the Engineering Department for the purpose of causing said documents to be recorded.
6. The Real Estate Division Manager is authorized and directed to forward the original of the Permanent Easement for Air Space Above City-owned Property and the Permanent Easement for Building Encroachment, together with a certified copy of this resolution and of the affidavit of publication of the

Date March 21, 2016

notice of this hearing, to the Polk County Recorder's Office for the purpose of causing these documents to be recorded.

7. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division Manager shall mail the original of the Permanent Easement for Air Space Above City-owned Property and the Permanent Easement for Building Encroachment and copies of the other documents to the grantees.

8. There will be no proceeds associated with the conveyance of this property.

Moved by \_\_\_\_\_ to adopt.

APPROVED AS TO FORM:

  
 Lisa A. Wieland, Assistant City Attorney

*PSW*

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MOORE				
WESTERGAARD				
TOTAL				

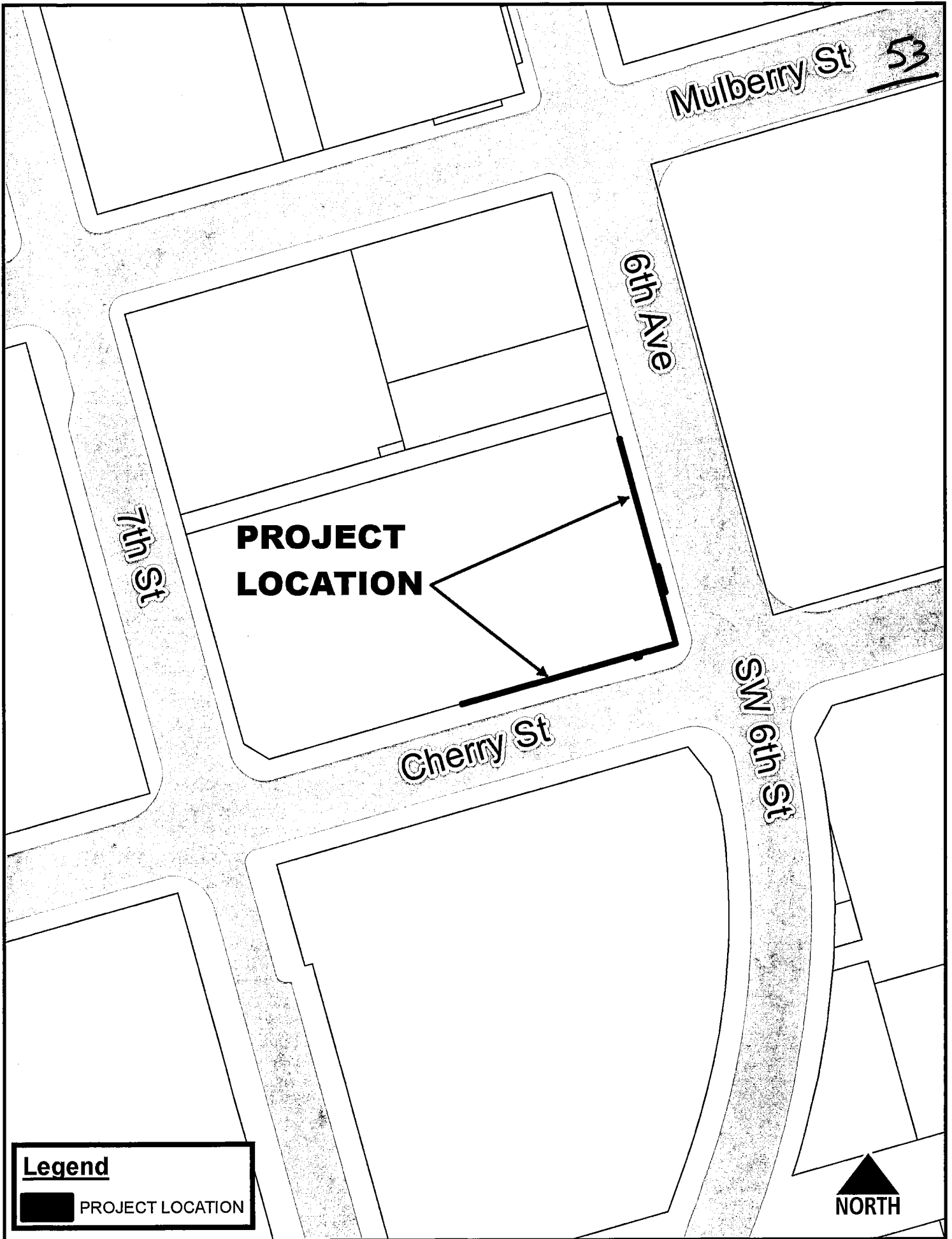
**CERTIFICATE**

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.

\_\_\_\_\_  
 City Clerk

\_\_\_\_\_  
 Mayor



Mulberry St 53

6th Ave

7th St

**PROJECT  
LOCATION**

Cherry St

SW 6th St

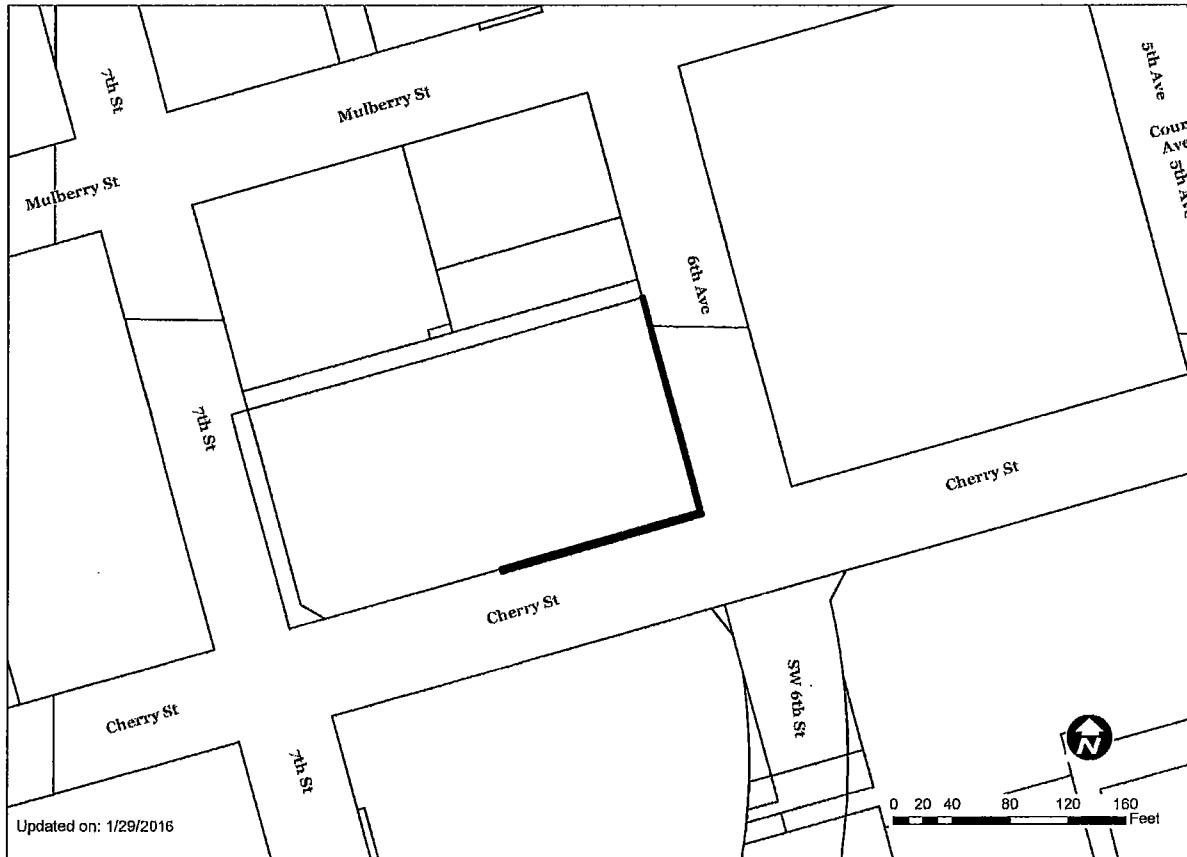
**Legend**  
[Thick black rectangle] PROJECT LOCATION



Polk County (owner) represented by John Rowen (General Services Manager) for property at 110 6th Avenue.		File #		
		11-2016-1.01		
<b>Description of Action</b>	Approval of request from for vacation of a portion of the west 0.6 feet of 6th Avenue right-of-way adjoining 110 6th Avenue and a portion of the north 1.9 feet of Cherry Street right-of-way adjoining 110 6th Avenue to accommodate a proposed building encroachment; along with a request for vacation of air rights within the west 3 feet of 6th Avenue right-of-way adjoining 110 6th Avenue to accommodate a proposed entry way canopy subject to the reservation of any necessary easements for any existing utilities.			
<b>2020 Community Character Plan</b>	Current: Downtown Retail/Office Core/Core Fringe. Proposed: N/A.			
<b>Mobilizing Tomorrow Transportation Plan</b>	No planned improvements.			
<b>Current Zoning District</b>	"C-3A" Central Business District Support Commercial District and "FSO" Freestanding Signs Overlay District.			
<b>Proposed Zoning District</b>	N/A.			
<b>Consent Card Responses</b>	In Favor	Not In Favor	Undetermined	% Opposition
Inside Area				
Outside Area				
<b>Plan and Zoning Commission Action</b>	Approval	9-0	<b>Required 6/7 Vote of the City Council</b>	Yes
	Denial			No
				X

Polk County General Services, 110 6th Avenue

11-2016-1.01



1 inch = 78 feet

February 23, 2016

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 February 18, 2016, the following action was taken regarding a request from Polk County (owner) represented by John Rowen (General Services Manager) for vacation of a portion of the west 0.6 feet of 6th Avenue right-of-way adjoining 110 6th Avenue and a portion of the north 1.9 feet of Cherry Street right-of-way adjoining 110 6th Avenue to accommodate a proposed building encroachment; along with a request for vacation of air rights within the west 3 feet of 6th Avenue right-of-way adjoining 110 6th Avenue to accommodate a proposed entry way canopy.

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 9-0 as follows:

<u>Commission Action:</u>	<u>Yes</u>	<u>Nays</u>	<u>Pass</u>	<u>Absent</u>
Dory Briles	X			
JoAnne Corigliano	X			
David Courard-Hauri	X			
Jacqueline Easley				X
Tim Fitzgerald	X			
Jann Freed				X
John "Jack" Hilmes				X
Greg Jones				X
Sasha Kamper	X			
William Page	X			
Mike Simonson	X			
CJ Stephens	X			
Greg Wattier	X			

**APPROVAL** of the requested vacation subject to the reservation of any necessary easements for any existing utilities. (11-2016-1.01)

## RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval of the requested vacation subject to the reservation of any necessary easements for any existing utilities.

## STAFF REPORT TO THE PLANNING COMMISSION

### I. GENERAL INFORMATION

1. **Purpose of Request:** The proposed vacation would allow renovations to the existing structure that would include a new façade protruding 0.6-foot from the existing building on the south and east facades, and a new canopy projecting 3 feet from the east façade.
2. **Size of Site:** The proposed façade requires a cumulative 172 square feet of Right-of-Way and the proposed canopy requires 36 square feet of Right-of-Way.
3. **Existing Zoning (site):** "C-3A" Central Business District Mixed-Use District, "D-O" Downtown Overlay District, "FSO" Freestanding Sign Overlay District, and "GGP" Gambling Games Prohibition District.
4. **Existing Land Use (site):** Right-of-Way 6<sup>th</sup> Avenue and Cherry Street.
5. **Adjacent Land Use and Zoning:**
  - North** – "C-3". Use is a parking lot.
  - East** – "C-3". Use is the Polk County Courthouse.
  - South** – "C-3A". Use is the DART Central Station.
  - West** – "C-3A", Use is a parking lot.
6. **General Neighborhood/Area Land Uses:** The subject property is located in an area of downtown that contains a mix of public uses, including the Polk County Courthouse and the DART Central Terminal.
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 January 29, 2016. Additionally, separate notifications of the hearing for this specific item were mailed on February 8, 2016 (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 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:** In consideration of the criteria set forth in Chapter 18B of the Iowa Code, 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 vacations would not impact the existing sidewalk network. The remaining Right-of-Way could accommodate required sidewalk widths.
3. **Additional Information:** A request to vacate a strip of Right-of-Way that is less than a foot wide can be considered by City Council without review by the Plan & Zoning Commission. However, in this instance the request has been "bundled" with the request to vacate air rights for a canopy that would project 3 feet from the building, which does necessitate review by the Plan and Zoning Commission.

## SUMMARY OF DISCUSSION

Greg Jones asked if anyone was present to speak on this item. None were present or requested to speak.

## COMMISSION ACTION:

Mike Simonson moved staff recommendation for approval of the requested vacation subject to the reservation of any necessary easements for any existing utilities.

Motion passed 9-0.

Respectfully submitted,



Michael Ludwig, AICP  
Planning Administrator

MGL:clw  
Attachment