

Date November 7, 2016

**HOLD HEARING FOR VACATION OF AIR SPACE AND SUBSURFACE RIGHTS IN PORTIONS OF STREET RIGHT-OF-WAY ADJOINING 220 SOUTHEAST 6TH STREET AND CONVEYANCE OF A PERMANENT EASEMENT FOR AIR SPACE WITHIN EAST ELM STREET AND SOUTHEAST 6TH STREET RIGHT-OF-WAY, AND CONVEYANCE OF A PERMANENT SUBSURFACE EASEMENT WITHIN EAST ELM STREET AND SOUTHEAST 5TH STREET RIGHT-OF-WAY, ALL ADJOINING 220 SOUTHEAST 6TH STREET, TO 220 SE 6TH STREET PROPERTIES, LLC FOR \$732.00**

**WHEREAS**, 220 SE 6<sup>th</sup> Street Properties, LLC is the owner of the real property locally known as 220 Southeast 6<sup>th</sup> Street, which property is being developed with a new office building with structured parking; and

**WHEREAS**, 220 SE 6<sup>th</sup> Street Properties, LLC has requested the vacation of air space and subsurface rights in portions of Southeast 5<sup>th</sup> Street, Southeast 6<sup>th</sup> Street and East Elm Street right-of-way all adjoining 220 Southeast 6<sup>th</sup> Street, hereinafter more fully described (collectively "City Right-of-Way"), and has further requested that the City of Des Moines, Iowa ("City") convey unto 220 SE 6<sup>th</sup> Street Properties, LLC a Permanent Easement For Air Space Above City-Owned Property in the vacated portion of Southeast 6<sup>th</sup> Street and East Elm Street right-of-way, and a Permanent Subsurface Easement for Building Encroachment in the vacated Southeast 5<sup>th</sup> Street and East Elm Street right-of-way, all adjoining 220 Southeast 6<sup>th</sup> Street, hereinafter more fully described, in order to allow for entrance canopy and building parapet encroachments and building footing and foundation encroachments into the City Right-of-Way; and

**WHEREAS**, 220 SE 6<sup>th</sup> Street Properties, LLC has offered to the City the purchase price of \$732.00 for the purchase of a Permanent Easement for Air Space Above City-Owned Property and a Permanent Subsurface Easement for Building Encroachment in the vacated portions of Southeast 5<sup>th</sup> Street, Southeast 6<sup>th</sup> Street and East Elm Street right-of-way, all adjoining 220 Southeast 6<sup>th</sup> Street, which price reflects the fair market value of the City Right-of-Way as determined by the City's Real Estate Division; and

**WHEREAS**, on October 24, 2016, by Roll Call No. 16-1817, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation and conveyance of such easement interests be set down for hearing on November 7, 2016, at 5:00 p.m., in the Council Chamber; and

**WHEREAS**, due notice of said proposal to vacate air space and subsurface rights in portions of said City Right-of-Way and convey a Permanent Easement for Air Space Above City-Owned Property and a Permanent Subsurface Easement for Building Encroachment 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 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.

Date November 7, 2016

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

1. Upon due consideration of the facts and statements of interested persons, any and all objections to said proposed vacation and conveyance of the air space and subsurface easements as described below 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 air space and subsurface rights in portions of Southeast 5<sup>th</sup> Street, Southeast 6<sup>th</sup> Street and East Elm Street right-of-way all adjoining 220 Southeast 6<sup>th</sup> Street, more specifically described as follows:

**SUBSURFACE:**

**EXH-1**

A ONE FOOT SUBSURFACE FOOTING EASEMENT BEING A PART OF EAST ELM STREET RIGHT-OF-WAY LYING BETWEEN SOUTHEAST 5TH STREET AND SOUTHEAST 6TH STREET BEING LOCATED IN MARKET SQUARE IN THE TOWN OF DE MOINE, AN OFFICIAL PLAT, INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE SOUTH HALF OF THE SOUTH HALF OF SAID MARKET SQUARE IN THE TOWN OF DE MOINE; THENCE S14°54'27"E, 1.00 FEET; THENCE S74°58'01"W, 206.02 FEET; THENCE N15°01'59"W, 1.00 FEET TO THE NORTH RIGHT-OF-WAY LINE OF EAST ELM STREET; THENCE ALONG SAID NORTH RIGHT-OF-WAY LINE N74°58'01"E, 206.02 FEET TO THE POINT OF BEGINNING. DESCRIBED EASEMENT CONTAINS 206 SQUARE FEET AND IS SUBJECT TO OTHER EASEMENTS AND RESTRICTIONS OF RECORD AND FURTHER SUBJECT TO CITY OF DES MOINES ORDINANCE NOS. 157 AND 1067;

**EXH-2**

A ONE FOOT SUBSURFACE FOOTING EASEMENT BEING A PART OF SOUTHEAST 5TH STREET RIGHT-OF-WAY LYING BETWEEN EAST ELM STREET AND EAST MARKET STREET BEING LOCATED IN MARKET SQUARE IN THE TOWN OF DE MOINE, AN OFFICIAL PLAT, INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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Date November 7, 2016

TO THE POINT OF BEGINNING. DESCRIBED EASEMENT CONTAINS 14 SQUARE FEET AND IS SUBJECT TO OTHER EASEMENTS AND RESTRICTIONS OF RECORD;

**AIR SPACE:**

**EXH-3**

A FOUR FOOT AIR RIGHTS EASEMENT BEING A PART OF EAST ELM STREET RIGHT-OF-WAY LYING BETWEEN SOUTHEAST 5TH STREET AND SOUTHEAST 6TH STREET BEING LOCATED IN MARKET SQUARE IN THE TOWN OF DE MOINE, AN OFFICIAL PLAT, INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTH HALF OF THE SOUTH HALF OF SAID MARKET SQUARE IN THE TOWN OF DE MOINE; THENCE ALONG THE NORTH RIGHT-OF-WAY LINE OF EAST ELM STREET S74°58'01"W, 167.36 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID NORTH RIGHT-OF-WAY LINE S74°58'01"W, 26.00 FEET; THENCE S15°01'59"E, 4.00 FEET; THENCE N74°58'01"E, 26.00 FEET; THENCE N15°01'59"W, 4.00 FEET TO THE POINT OF BEGINNING. DESCRIBED EASEMENT CONTAINS 104 SQUARE FEET AND IS SUBJECT TO OTHER EASEMENTS, AND RESTRICTIONS OF RECORD AND FURTHER SUBJECT TO CITY OF DES MOINES ORDINANCE NOS. 157 AND 1067.

ASSUMING A FINISHED FLOOR ELEVATION OF 18.45 FEET (CITY OF DES MOINES VERTICAL DATUM), THE BOTTOM OF CANOPY ELEVATION IS APPROXIMATELY 29.37 FEET (CITY OF DES MOINES VERTICAL DATUM), AND THE TOP OF CANOPY ELEVATION IS APPROXIMATELY 31.05 FEET (CITY OF DES MOINES VERTICAL DATUM);

**EXH-4**

A TWO FOOT AIR RIGHTS EASEMENT BEING A PART OF SOUTHEAST 6TH STREET RIGHT-OF-WAY LYING BETWEEN EAST ELM STREET AND EAST MARKET STREET BEING LOCATED IN MARKET SQUARE IN THE TOWN OF DE MOINE, AN OFFICIAL PLAT, INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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Date November 7, 2016

ASSUMING A FINISHED FLOOR ELEVATION OF 18.45 FEET (CITY OF DES MOINES VERTICAL DATUM), THE BOTTOM OF CANOPY ELEVATION IS APPROXIMATELY 32.42 FEET (CITY OF DES MOINES VERTICAL DATUM), AND THE TOP OF CANOPY ELEVATION IS APPROXIMATELY 33.69 FEET (CITY OF DES MOINES VERTICAL DATUM);

**EXH-5**

A ONE FOOT AIR RIGHTS EASEMENT BEING A PART OF SOUTHEAST 6TH STREET RIGHT-OF-WAY LYING BETWEEN EAST ELM STREET AND EAST MARKET STREET BEING LOCATED IN MARKET SQUARE IN THE TOWN OF DE MOINE, AN OFFICIAL PLAT, INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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ASSUMING A FINISHED FLOOR ELEVATION OF 18.45 FEET (CITY OF DES MOINES VERTICAL DATUM), THE BOTTOM OF PARAPET ELEVATION IS APPROXIMATELY 63.45 FEET (CITY OF DES MOINES VERTICAL DATUM), AND A TOP OF PARAPET ELEVATION IS APPROXIMATELY 65.14 FEET (CITY OF DES MOINES VERTICAL DATUM);

- 3. That the sale and conveyance of a Permanent Easement for Air Space Above City-Owned Property and a Permanent Subsurface Easement for Building Encroachment within such vacated Southeast 5<sup>th</sup> Street, Southeast 6<sup>th</sup> Street and East Elm Street right-of-way, as described below, to 220 SE 6<sup>th</sup> Street Properties, LLC for \$732.00, together with payment by such grantee of the estimated publication and recording costs for this transaction, subject to the requirements of the Offer to Purchase and the City Plan and Zoning Commission review, be and is hereby approved:

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.....  
**Date** November 7, 2016

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4. The Mayor is authorized and directed to sign the Offer to Purchase, the Permanent Easement for Air Space Above City-Owned Property and the Permanent Subsurface Easement for Building Encroachment for the conveyance 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 air space and subsurface rights in portions of said right-of-way and upon proof of payment of the consideration plus \$113.00 for publication and recording costs, 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 Easements, together with a certified copy of this resolution and of the affidavit of publication of 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 Easements and copies of the other documents to the grantee.
8. Non-project related land sale proceeds are used to support general operating budget expenses: Org – EG064090.

★ Roll Call Number

Agenda Item Number

47

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Date November 7, 2016

(Council Communication No. 16- 625)

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

APPROVED AS TO FORM:

*Lisa A. Wieland*

Lisa A. Wieland, Assistant City Attorney

RSW

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

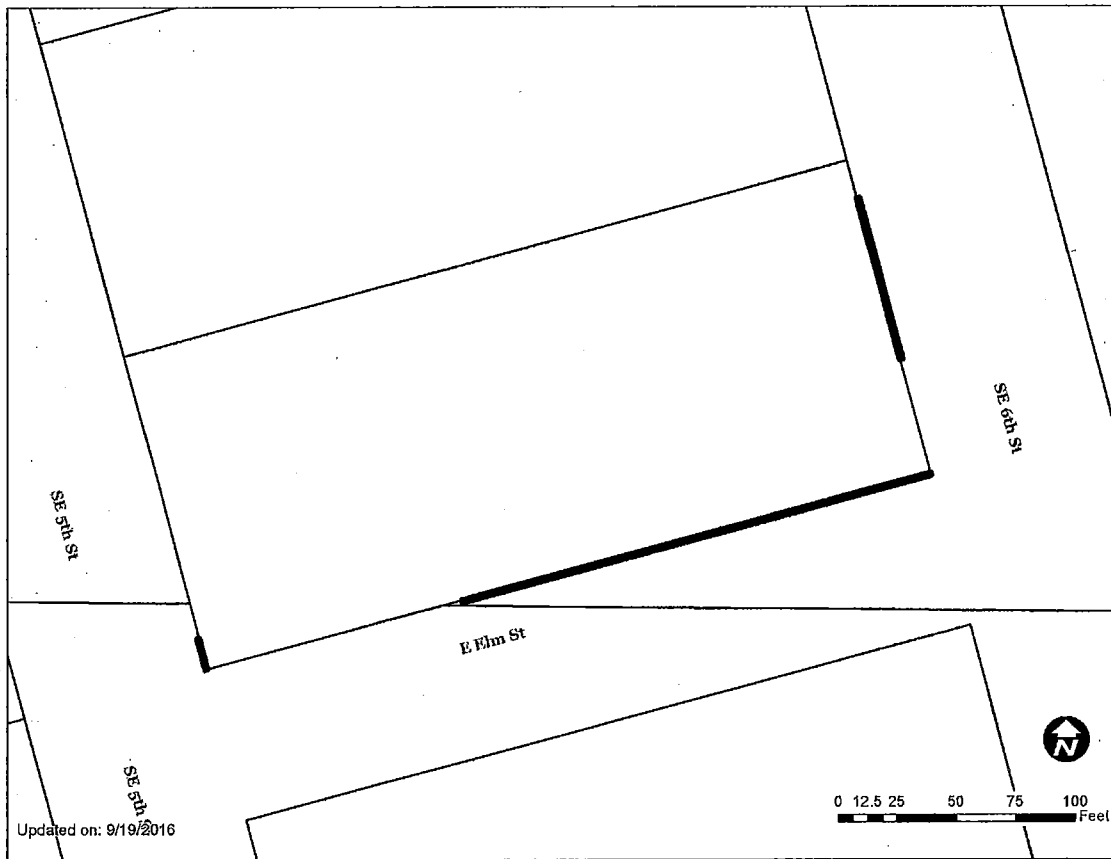
\_\_\_\_\_  
City Clerk



220 SE 6th Street Properties, LLC (owner) 220 Southeast 6th Street, represented by Adam Peterson (officer).		File #		
		11-2016-1.19		
Description of Action	Approval of request for vacation of various segments of ROW to accommodate lease of air rights and subsurface rights for proposed footing, canopy, and roof overhang encroachments, subject to reservation of any necessary easements for any existing utilities until such time that they are abandoned or are relocated.			
PlanDSM Future Land Use	Current: Downtown Mixed Use. Proposed: N/A.			
Mobilizing Tomorrow Transportation Plan	No planned improvements.			
Current Zoning District	Limited "C-3B" Central Business Mixed Use District, "CDO" Capitol Dominance Overlay District, "GGP" Gambling Games Prohibition District, "D-O" Downtown Overlay District and "FSO" Freestanding Signs Overlay District.			
Proposed Zoning District	N/A.			
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition
Inside Area				
Outside Area				
Plan and Zoning Commission Action	Approval	12-0	Required 6/7 Vote of the City Council	Yes
	Denial			No

220 SE 6th Street Properties, LLC, 220 Southeast 6th Street

11-2016-1.19



1 Inch = 48 feet

October 12, 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 October 6, 2016, the following action was taken regarding a request from 220 SE 6th Street Properties, LLC (owner) 220 Southeast 6th Street, represented by Adam Peterson (officer), for vacation of the following:

- A) Subsurface rights in the north 1 foot of East Elm Street running from Southeast 6th Street to a point 206.02 feet to the west, to allow for the encroachment of the foundation system of a proposed building on the adjoining subject property.
- B) Subsurface rights in the east 1 foot of East 5<sup>th</sup> Street running from East Elm Street to a point 13.5 feet to the north, to allow for the encroachment of the foundation system of the proposed building.
- C) Air rights in the north 4 feet of East Elm Street running from a point 167.36 feet west of East 6<sup>th</sup> Street to a point 193.36 west of East 6<sup>th</sup> Street, to allow for the encroachment of a canopy over a parking structure entrance on the proposed building.
- D) Air rights in the west 2 feet of East 6<sup>th</sup> Street running from a point 53.45 feet north of East Elm Street to a point 64.55 feet north of East Elm Street, to allow for the encroachment of a canopy over a proposed front entrance on the proposed building.
- E) Air rights in the west 1 foot of East 6<sup>th</sup> Street running from a point 50.58 feet north of East Elm Street to a point 120.58 feet north of East Elm Street, to allow for the encroachment of a roof overhang from the proposed building.

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 12-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Francis Boggus	X			
Dory Briles	X			
JoAnne Corigliano	X			
David Courard-Hauri	X			
Jacqueline Easley				X
Jann Freed	X			
John "Jack" Hilmes	X			

Carolyn Jenison	X	
Greg Jones	X	
William Page	X	
Mike Simonson	X	
CJ Stephens		X
Steve Wallace	X	
Greg Wattier		X

**APPROVAL** of the requested vacation subject to reservation of any necessary easements for any existing utilities until such time that they are abandoned or are relocated.  
(11-2016-1.19)

**RECOMMENDATION TO THE P&Z COMMISSION**

Staff recommends approval of the requested vacation subject to reservation of any necessary easements for any existing utilities until such time that they are abandoned or are relocated.

**STAFF REPORT TO THE PLANNING COMMISSION**

**I. GENERAL INFORMATION**

**1. Purpose of Request:** The applicant is proposing to construct a three (3) story, 50,000-square foot office building, with a 3-level parking structure. The foundation design would encroach 1 foot into the subsurface area of East Elm Street running from Southeast 6th Street to a point 206.02 feet to the west, and 1 foot into the subsurface area of East 5th Street running from East Elm Street to a point 13.5 feet to the north. The building canopy and roof overhang will cantilever into the East Elm Street and East 6th Street Right-Of-Ways, requiring vacation of air rights.

The Site Plan drawings submitted for Plan and Zoning Commission review placed the proposed building within the vision clearance triangle at the East Elm Street and Southeast 6th Street intersection. On August 4, 2016, the Commission conditionally approved the Site Plan for the proposed development, where condition number 2 stated – *“any proposed building must be placed outside of the vision clearance triangle”*. The City has since negotiated with the applicant to move the building outside of the vision triangle. The redesign has identified need for subsurface footing encroachment into East Elm Street and Southeast 5th Street.

**2. Size of Site:** The total area of the requested vacation is 416.02 square feet.

- Part A) Subsurface rights on East Elm Street - 1 foot by 206.02 feet (206.02 square feet).
- Part B) Subsurface rights on Southeast 5th Street - 1 foot by 13.50 feet (14 square feet).
- Part C) Air rights for parking entrance canopy on East Elm Street - 4 feet by 26 feet (104 square feet).
- Part D) Air rights for building entrance canopy on Southeast 6th Street - 2 feet by 11.10 feet (22 square feet).
- Part E) Air rights for roof overhang on Southeast 6th Street - 1 foot by 70.04 feet (70 square feet).

The total site area is 43,566 square feet (1.0 acre).

**3. Existing Zoning (site):** "Limited C-3B" Central Business Mixed Use District, "D-O" Downtown Overlay District, "CDO" Capitol Dominance Overlay District, "GGP" Gambling Games Prohibition District, and "FSO" Freestanding Sign Overlay District.

**4. Existing Land Use (site):** Vacant land.

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

**North** – "C-3", Use is office (Enterprise Rent-A-Car) on east half of the lot.

**South** – "M-1", Use is East Elm Street Right-Of-Way and light industrial (AJ Allen Mechanical Contractors).

**East** – "M-2", Use is Southeast 6<sup>th</sup> Street Right-Of-Way and a recycling company (Recycling Inc.).

**West** – "M-1", Use is Southeast 5<sup>th</sup> Street Right-Of-Way and City of Des Moines Public Works offices.

**6. General Neighborhood/Area Land Uses:** The site is located at the eastern edge of the Market District in the portion of downtown known as the Historic East Village. It is bound by Southeast 5<sup>th</sup> Street, Southeast 6<sup>th</sup> Street and East Elm Street. The area contains a mix of commercial and light industrial uses. In 2010, a plan for the surrounding area (east of Des Moines River to Southeast 7<sup>th</sup> Street and East Court Avenue to East Martin Luther King Jr. Parkway) was prepared. The Market District of East Village Urban Study envisions this predominately light-industrial area redeveloping as a mixed-use urban neighborhood.

**7. Applicable Recognized Neighborhood(s):** The subject property is located in the Historic East Village Neighborhood. The neighborhood was notified of the Commission meeting by mailing of the Preliminary Agenda on September 20, 2016. A Final Agenda was mailed to the neighborhood association on September 30, 2016. Additionally, separate notifications of the hearing for the Site Plan were mailed on September 26, 2016 (10 days prior to the hearing) to the neighborhood association and to the primary titleholder on file with the Polk County Assessor for every owner of property adjoining or directly across from the public street from the site.

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 Historic East Village Neighborhood Association notices were mailed to Chris LoRanz, PO Box 93904, Des Moines, IA 50393.

**8. Zoning History:** On February 11, 2013, the City Council adopted Ordinance number 15,166, which amended the zoning of property located at 200 and 220 Southeast 6<sup>th</sup> Street, from "M-1" Light Industrial District and "M-2" Heavy Industrial District to "Limited C-3B" Central Business Mixed Use District classification, subject to the following imposed additional conditions:

(1) The following uses shall be prohibited:

- a. Assembly and packaging of small components from previously prepared materials within a fully enclosed building.
  - b. Auction businesses.
  - c. Financial institutions whereby a majority of loans are made based on collateral of future payroll or vehicle titles.
  - d. Lumberyards, retail and wholesale.
  - e. Machine shops.
  - f. Freestanding package goods stores for the sale of alcoholic beverages.
  - g. Pawnshops.
  - h. Printing, publishing houses and lithographing shops.
  - i. Plumbing and heating shops.
  - j. Miniwarehouse uses.
  - k. Freestanding taverns and night clubs.
  - l. Warehousing.
- (2) The site layout of any development shall be in accordance with the Market District of East Village Urban Design Study.
  - (3) The density of any residential development shall be dependent upon Site Plan review.
  - (4) Any residential development shall utilize measures to minimize impacts on the health, safety, and welfare of future residents from the nearby industrial uses. Such measures may include additional soundproofing, landscaping, and/or screening.
  - (5) Any development shall be in accordance with a Site Plan that satisfies the design guidelines for the C-3B and Downtown Overlay Districts.
  - (6) Any development of a multiple-family residential use shall be in accordance with a Site Plan that satisfies the Design Guidelines for Multiple-Family Residential use.
  - (7) The developer shall be responsible for the costs associated with improvements within the adjoining public right-of-ways.

**9. PlanDSM: Creating Our Tomorrow Plan Land Use Plan Designation:** "Downtown Mixed Use". The Plan describes this category as an "area that allows mixed-use, high-density residential uses, and compact combinations of pedestrian-oriented retail, office, residential, and parking in downtown. Should include active uses (e.g. retail) on ground floor, particularly at key intersections."

**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. Right-of-Way Vacation Request:** The appellant has requested vacation of portions of the adjoining rights-of-ways in order to accommodate the proposed parking garage foundation system. The foundation of the structure would extend underground approximately 1 foot into East Elm Street and Southeast 5<sup>th</sup> Street ROWs. The surface portions of the ROW would still be available for public use.
- 2. Air Rights:** The parking entrance canopy would cantilever into the East Elm Street Right-Of-Way. The building entrance canopy and roof overhang will cantilever into the

Southeast 6<sup>th</sup> Street Right-Of-Way. All building projections require vacation of air rights. These would not extend over vehicular travelled portions of the adjoining streets.

- 3. **Utilities:** The proposed building projections would not interfere with any aerial utilities, public street lighting, Right-of-Way signage or traffic control devices. Any existing utilities impacted by the proposed extensions must be relocated in coordination with the impacted utility.

**SUMMARY OF DISCUSSION**

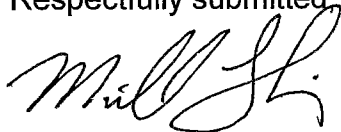
Greg Jones asked if anyone was present to speak on this item. None were present or requested to speak.

**COMMISSION ACTION:**

Jann Freed moved staff recommendation for approval of the requested vacation subject to reservation of any necessary easements for any existing utilities until such time that they are abandoned or are relocated.

Motion passed 12-0.

Respectfully submitted



Michael Ludwig, AICP  
Planning Administrator

MGL:cwl  
Attachment