



**Roll Call Number**

**Agenda Item Number**

17

**Date** March 19, 2018

**RECEIVE AND FILE COMMUNICATION FROM THE PLAN AND ZONING COMMISSION REGARDING REQUEST FROM NEWBURY PROPERTY MANAGEMENT FOR VACATION OF AIR RIGHTS WITHIN EAST MARTIN LUTHER KING, JR. PARKWAY ADJOINING 401 SOUTHEAST 6<sup>TH</sup> STREET/400 SOUTHEAST 7<sup>TH</sup> STREET**

**WHEREAS**, the City Plan and Zoning Commission has advised that at a public hearing held on March 1, 2018, its members voted 9-0 to recommend **APPROVAL** of a request from Newbury Property Management (developer), represented by Frank Levy (officer), for vacation of air rights within the north 1 foot of East Martin Luther King, Jr. Parkway adjoining 401 Southeast 6<sup>th</sup> Street and 400 Southeast 7<sup>th</sup> Street, to allow for encroachment of upper story balconies for a multiple-family residential development.

**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

(11-2018-1.01)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
COLEMAN				
GATTO				
GRAY				
MANDELBAUM				
WESTERGAARD				
TOTAL				

MOTION CARRIED APPROVED

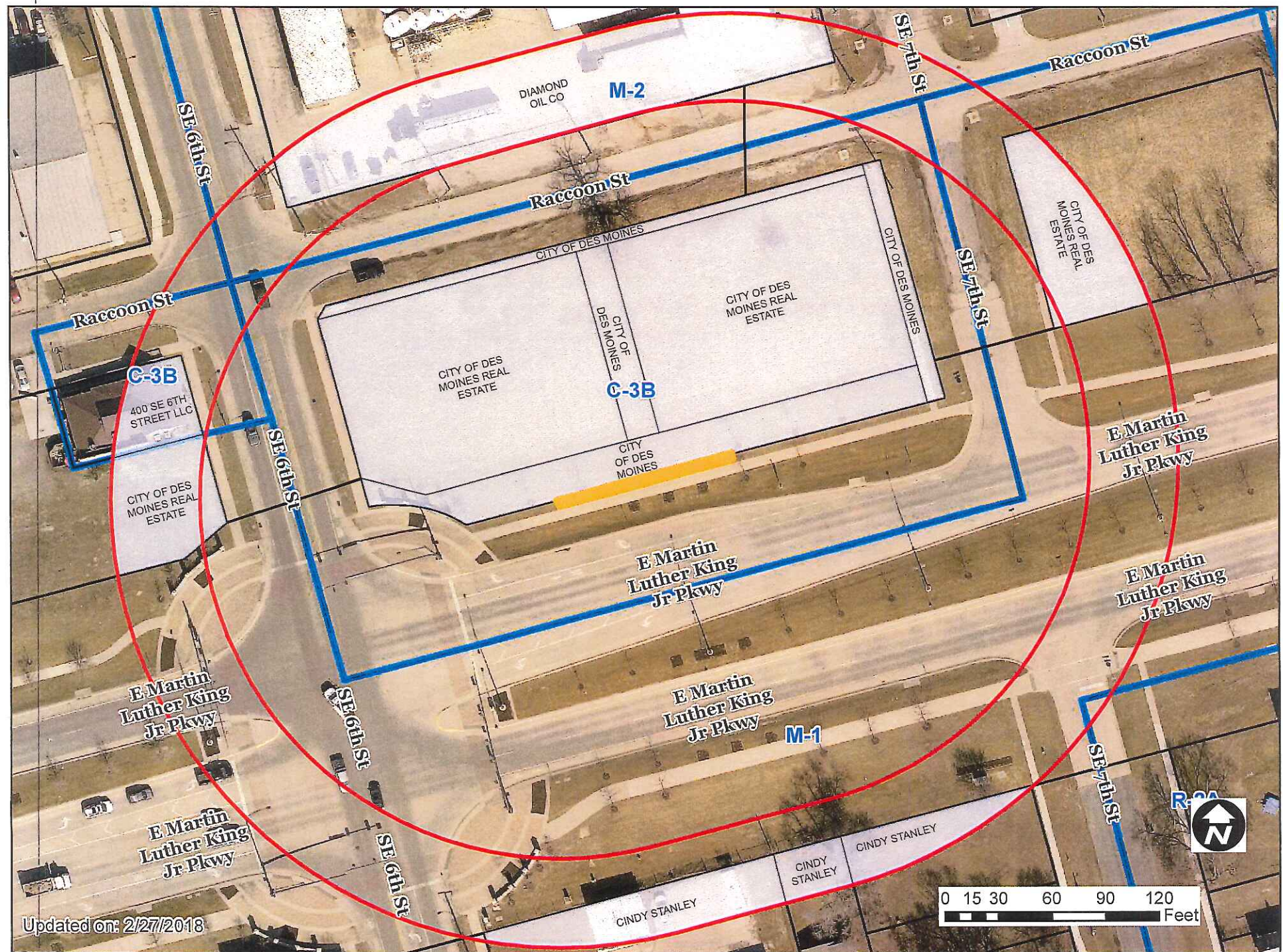
**CERTIFICATE**

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.

\_\_\_\_\_  
Mayor

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



17



March 14, 2018

Honorable Mayor and City Council  
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their March 1, 2018 meeting, the following action was taken regarding a request from Newbury Property Management (developer), 401 Southeast 6<sup>th</sup> Street/400 Southeast 7<sup>th</sup> Street, represented by Frank Levy (officer) for vacation of air rights within the north 1-foot of adjoining East Martin Luther King, Jr. Parkway, to allow upper story balcony encroachments for a multiple family residential dwelling. The adjoining subject property is owned by the City of Des Moines.

**COMMISSION RECOMMENDATION:**

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

Commission Action:	Yes	Nays	Pass	Absent
Francis Boggus				X
Dory Briles	X			
Chris Cutler	X			
David Courard-Hauri				X
Jacqueline Easley	X			
Jann Freed	X			
John "Jack" Hilmes	X			
Lisa Howard				X
Carolyn Jenison				X
Greg Jones	X			
William Page	X			
Mike Simonson				X
Rocky Sposato	X			
Steve Wallace	X			
Greg Wattier				X

**APPROVAL** of the requested vacation.

(11-2018-1.01)

Written Responses

0 in Favor

0 in opposition

## RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval of the requested vacation.

## STAFF REPORT TO THE PLANNING COMMISSION

### I. GENERAL INFORMATION

1. **Purpose of Request:** The proposed Site Plan would allow the construction of a 4-story apartment building containing 59 dwelling units having upper level balconies that would encroach up to a foot into the adjoining air space of East M.L. King, Jr. Parkway.
2. **Size of Site:** 45,367 square feet (1.04 acres).
3. **Existing Zoning (site):** Limited "C-3B" Central Business Mixed Use District, "CDO" Capitol Dominance Overlay District, "D-O" Downtown Overlay District, "GGP" Gambling Games Prohibition Overlay District and "FSO" Freestanding Sign Overlay.
4. **Existing Land Use (site):** Vacant land.
5. **Adjacent Land Use and Zoning:**
  - North* – "M-2": Use is Diamond Oil Company bulk distribution.
  - South* - "M-1": Use is garage for general motor vehicle repair.
  - East* – "M-1": Use is vacant land.
  - West* - "M-1" & Limited "C-3B": Uses are Margaritas restaurant and vacant land.
6. **General Neighborhood/Area Land Uses:** The subject site is located in the East Village, Market District subarea. The immediate area consists of a mix of vacant land and light industrial uses north of the East M.L King Jr. Parkway southeast connector.
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 for the February 9, 2018. Additionally, notifications were mailed on February 16, 2018 (13 days prior to the hearing) to the neighborhood association and every property owner adjoining or across the street for the ROW vacation requests. A Final Agenda was mailed on February 23, 2018.

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 mailings were sent to Chris LoRang, P.O. Box 93904, Des Moines, IA 50393.
8. **Relevant Zoning History:** On October 6, 2014, the City Council rezoned the property to "C-3B" Central Business Mixed Use District with no conditions under Ordinance No. 15,320. The Plan and Zoning Commission approved a Site Plan on December 1, 2016 for "Connolly Lofts" under design guidelines for multiple-family dwellings and under design guidelines in "C-3B" Districts, to allow the development of a 4-story multiple family dwelling with 58 residential units. They approved an amendment to this on

December 7, 2017 to reconfigure the project and increase the number of units to 59. The balcony design for the reconfigured building is necessitating the subject air rights vacation request for balconies.

**9. PlanDSM: Creating Our Tomorrow Plan Land Use Plan Designation: Downtown Mixed Use.**

**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. Rights-Of-Way (ROW):** The developer is seeking to accommodate the encroachment of upper level balconies based on the final building design of their 59- unit multiple-family residential project. Staff believes that this would be a minimal encroachment and would not affect the use of the public Right-Of-Way (ROW) all East M.L. King, Jr. Parkway, which is a wider boulevard than the typical street ROW width. The City would likely lease the air rights with a long-term lease instrument.

**SUMMARY OF DISCUSSION**

Jacqueline Easley asked if anyone was present to speak on this item. None were present or requested to speak.

**COMMISSION ACTION:**

John "Jack" Hilmes made a motion to recommend approval of the requested vacation.

Motion passed: 9-0

Respectfully submitted,

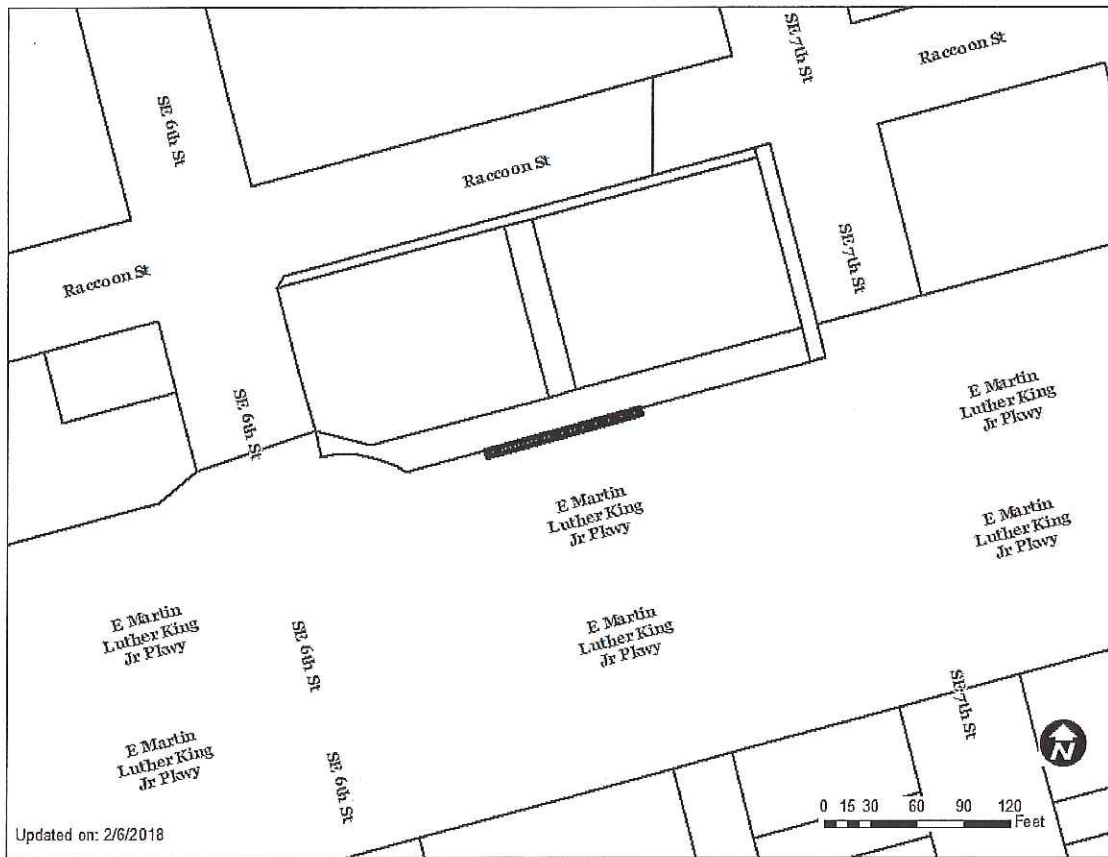


Michael Ludwig, AICP  
Planning Administrator

MGL:tjh  
Attachments

Newbury Property Management (developer) represented by Frank Levy (officer) for property located at 401 Southeast 6th Street/400 Southeast 7th Street. The adjoining subject property is owned by the City of Des Moines.		File #		
		11-2018-1.01		
Description of Action	Vacation of air rights within the north 1-foot of adjoining East Martin Luther King, Jr. Parkway, to allow upper story balcony encroachments for a multiple family residential dwelling.			
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 Overlay 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
Subject Property	0	0		
Outside Area (200 feet)				
Plan and Zoning Commission Action	Approval	X	Required 6/7 Vote of the City Council	Yes
	Denial			No

Newbury Property Management, 401 Southeast 6th Street/400 Southeast 7th Street 11-2018-1.01



1 inch = 72 feet