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Date May 21, 2018

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HOLD HEARING FOR VACATION OF A PORTION OF EAST 5TH STREET RIGHT-OF-WAY LOCATED EAST OF AND ADJOINING 440 EAST GRAND AVENUE AND CONVEYANCE OF A PERMANENT EASEMENT FOR BUILDING ENCROACHMENT TO RE3, LLC FOR \$3,960.00

WHEREAS, on April 19, 2018, the City of Des Moines Plan and Zoning Commission, voted to recommend approval of a request from RE3, LLC, owner of the property at 440 East Grand Avenue, to vacate a 5.5-foot by 60.0-foot segment of the west side of East 5th Street right-of-way located east of and adjoining 440 East Grand Avenue, Des Moines, Iowa (hereinafter "City Property"); and

WHEREAS, RE3, LLC, owner of 440 East Grand Avenue, has offered to the City the purchase price of \$3,960.00 for the purchase of a Permanent Easement for Building Encroachment (hereinafter "Easement") in said City Property, hereinafter more fully described, to allow for encroachment into the City Property of door swings, footings, and an ADA ramp; which price reflects the fair market value of the Easements as determined by the City's Real Estate Division; and

WHEREAS, there is no public need or benefit for the Easement proposed to be conveyed, and the public would not be inconvenienced by reason of the conveyance of the Permanent Easement for Building Encroachment within said City Property; and

WHEREAS, on May 7, 2018, by Roll Call No. 18-0763, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation and conveyance of the Permanent Easement for Building Encroachment be set for hearing on May 21, 2018, at 5:00 p.m., in the City Council Chambers, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa; and

WHEREAS, due notice of said proposal to vacate a 5.5-foot by 60.0-foot segment of the west side of East 5th Street right-of-way located east of and adjoining 440 East Grand Avenue, Des Moines, Iowa, and convey a Permanent Easement for Building Encroachment in such vacated right-of-way, was given to all necessary parties 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.

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 the proposed vacation of a 5.5-foot by 60.0-foot segment of the west side of East 5th Street right-of-way located east of and adjoining 440 East Grand Avenue, Des Moines, Iowa and conveyance of a Permanent Easement for Building Encroachment in such vacated right-of-way, as described herein, are hereby overruled and the hearing is closed.

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2. There is no public need or benefit for the street right-of-way proposed to be vacated, and the public would not be inconvenienced by reason of the vacation of said street right-of-way, legally described as follows, and said vacation is hereby approved:

THE EAST 5TH STREET PUBLIC RIGHT OF WAY LYING DIRECTLY ADJACENT TO LOT 8, BLOCK 10, EAST FORT DES MOINES, AN OFFICIAL PLAT RECORDED IN BOOK 'A', PAGE 136, AT THE POLK COUNTY RECORDERS OFFICE IN THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND MORE PARTICULARLY DESCRIBED AS:

COMMENCING AS A POINT OF REFERENCE AT THE NORTHEAST CORNER OF SAID LOT 8; THENCE S15°17'47"E, 32.00 FEET TO THE POINT OF BEGINNING; THENCE S15°17'47"E, 60.00 FEET ALONG THE EAST LINE OF SAID LOT TO A POINT; THENCE N74°42'13"E, 5.50 FEET TO A POINT; THENCE N15°17'47"W, 60.00 FEET TO A POINT; THENCE S74°42'13"W, 5.50 FEET TO THE POINT OF BEGINNING AND ALL CONTAINING 330 SQUARE FEET MORE OR LESS.

3. The proposed conveyance of a Permanent Easement for Building Encroachment in such vacated street right-of-way, as legally described below and to the grantees and for the consideration identified below, subject to reservation of easements therein, is hereby approved:

Grantee: RE3, LLC

Consideration: \$3,960.00

Legal Description: LEGAL DESCRIPTION FOR ENCROACHMENT EASEMENT FOR DOOR SWINGS, FOOTINGS AND ADA RAMP AT 440 E. GRAND AVENUE:

ENCROACHMENT EASEMENT IN THE VACATED EAST 5TH STREET PUBLIC RIGHT OF WAY LYING DIRECTLY ADJACENT TO LOT 8, BLOCK 10, EAST FORT DES MOINES, AN OFFICIAL PLAT RECORDED IN BOOK 'A', PAGE 136, AT THE POLK COUNTY RECORDERS OFFICE IN THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND MORE PARTICULARLY DESCRIBED AS:

COMMENCING AS A POINT OF REFERENCE AT THE NORTHEAST CORNER OF SAID LOT 8; THENCE S15°17'47"E, 32.00 FEET TO THE POINT OF BEGINNING; THENCE S15°17'47"E, 60.00 FEET ALONG THE EAST LINE OF SAID LOT TO A POINT; THENCE N74°42'13"E, 5.50 FEET TO A POINT; THENCE N15°17'47"W, 60.00 FEET TO A POINT; THENCE S74°42'13"W, 5.50 FEET TO THE POINT OF BEGINNING AND ALL CONTAINING 330 SQUARE FEET MORE OR LESS.

4. The Mayor is authorized and directed to sign the Offer to Purchase and 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 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 Permanent Easement for Building Encroachment, together with a certified copy of this resolution and of the affidavit of publication of the

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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 Building Encroachment, together with a certified copy of this resolution and of the affidavit of publication of the 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 Building Encroachment and a copy of the other documents to the grantees.

8. Non-project related land sale proceeds are used to support general operating budget expenses: Org – EG064090.

(Council Communication No. 18- 271)

Moved by _____ to adopt.

APPROVED AS TO FORM:



Lisa A. Wieland, Assistant City Attorney

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

MOTION CARRIED

APPROVED

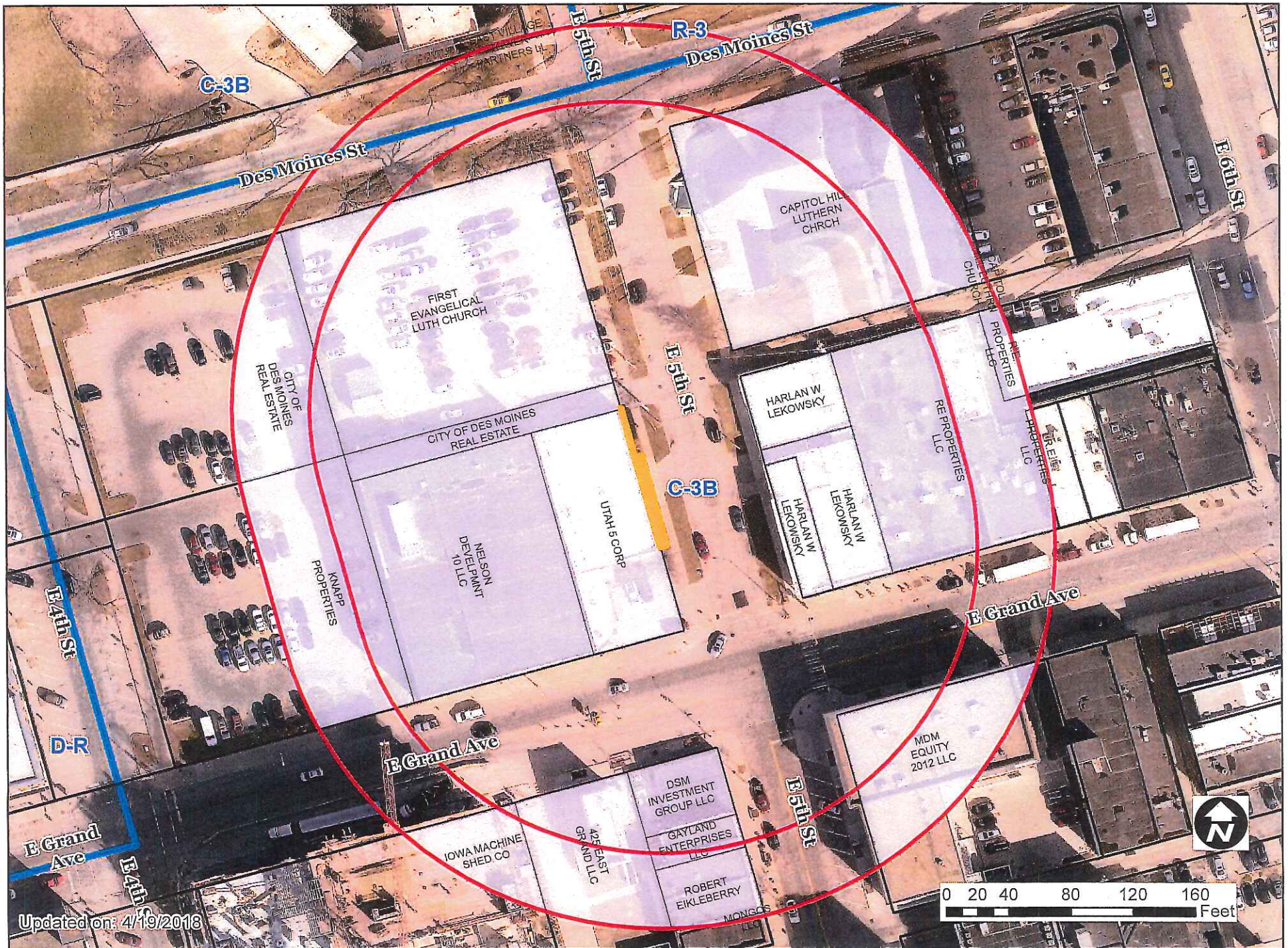
Mayor

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



May 4, 2018

Date

Agenda Item 69

Roll Call #

Honorable Mayor and City Council
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their April 19, 2018 meeting, the following action was taken regarding a request from RE3, LLC (developer), 440 East Grand Avenue, represented by Tim Rypma (officer) for vacation of a 5.5-foot by 60.0-foot segment of the west side of East 5th Street ROW adjoining 440 East Grand Avenue, to allow for entrances, an egress ramp and stairs as part of renovation of the existing building.

COMMISSION RECOMMENDATION:

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

<u>Commission Action:</u>	<u>Yes</u>	<u>Nays</u>	<u>Pass</u>	<u>Absent</u>
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, subject to provision of easement of easement for any existing utilities or to relocation of any existing utilities at the developer's expense.
(11-2018-1.07)

Written Responses

0 in Favor

0 in opposition

RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval of the requested vacation, subject to provision of easement of easement for any existing utilities or to relocation of any existing utilities at the developer's expense.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The requested vacation of Right-of-Way would allow for entrances and an egress ramp and stairs as part of renovation of the existing building. The recently approved Site Plan allows for renovation of the existing building for four commercial/office suites within the 6,919-square foot first floor area and a residential dwelling unit on the 1,428-square foot second floor area.
2. **Size of Site:** 5.5 feet by 60 feet (330 square feet).
3. **Existing Zoning (site):** "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):** Commercial building and a parking lot containing four (4) parking spaces.
5. **Adjacent Land Use and Zoning:**
 - North** – "C-3B", use is a parking lot that serves a church (Capitol Hill Lutheran Church). However, there is a pending Site Plan that would allow redevelopment of this parking lot with a parking structure.
 - South** – "C-3B", uses are public right-of-way (East Grand Avenue) and a tavern (Lime Lounge).
 - East** – "C-3B", uses are public right-of-way (E. 5th Street) and retail (Reclaimed and Silo Vintage).
 - West** – "C-3B", use is office (Iowa Workforce Development).
6. **General Neighborhood/Area Land Uses:** The site is in Historic East Village in an area that contains a mix of residential and commercial uses.
7. **Applicable Recognized Neighborhood(s):** The subject property is in the Historic East Village Neighborhood. The neighborhood was notified of the Commission meeting by mailing of the Preliminary Agenda on March 30, 2018. A Final Agenda was mailed to the neighborhood association on April 13, 2018. Additionally, separate notifications of the hearing for the Site Plan were mailed on April 9, 2018 (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 within 250 feet of 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 LoRang, PO Box 93904, Des Moines, IA 50393.

8. **Zoning History:** On September 27, 2010, the City Council adopted Ordinance number 14,960 which amended the zoning of property located at 440 Grand Avenue from "C-3" Central Business District to "C-3B" Central Business Mixed Use District classification. The following is a list of Overlay Districts that are applicable to the subject property and the date they were approved by City Council: Capitol Dominance Overlay District (Ordinance 14,098; June 3, 2002); Gambling Games Prohibition Overlay (Ordinance 14,361; July 26, 2004); Pedestrian Sign Overlay District (Ordinance 14,363; July 26, 2004); Downtown Overlay District (Ordinance 15,060; November 7, 2011); and Freestanding Sign Overlay District (Ordinance 15,290; June 23, 2014).

On April 5, 2018, the Plan & Zoning Commission approved a Site Plan "RE3, L.L.C." under design guidelines in "C-3B" Districts, to allow the building to be renovated for four commercial/office suites within the 6,919-square foot first floor area and a residential dwelling unit on the 1,428-square foot second floor area.

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:** 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.

The requested subsurface rights will have negligible impact on public utilization of the right-of-way.

II. ADDITIONAL APPLICABLE INFORMATION

1. **Utilities:** Staff is not aware of any utilities within the request Right-of-Way. However, the vacation must be subject to provision of easement of easement for any existing utilities or to relocation of any existing utilities at the developer's expense.
2. **Additional Information:** The recently approved Site Plan is contingent upon the requested vacation of Right-of-Way, as it includes door swings that encroach into the East 5th Street Right-of-Way.

SUMMARY OF DISCUSSION

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

COMMISSION ACTION:

Dory Briles made a motion for approval of the requested vacation, subject to provision of easement of easement for any existing utilities or to relocation of any existing utilities at the developer's expense.

Motion passed: 10-0

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Michael Ludwig".

Michael Ludwig, AICP
Planning Administrator

MGL:tjh
Attachments

RE3, LLC (developer) represented by Tim Rypma (officer) for property located adjacent to 440 East Grand Avenue.				File # 11-2018-1.07	
Description of Action	Vacation of a 5.5-foot by 60.0-foot segment of the west side of East 5th Street ROW adjoining the subject property, to allow for entrances, an egress ramp and stairs as part of renovation of the existing building.				
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, "PSO" Pedestrian Sign 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
					X

RE3, LLC, RE3, L.L.C., 440 East Grand Avenue

10-2018-7.96

