

Date June 25, 2018

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**HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF PORTIONS OF 5<sup>TH</sup> AVENUE RIGHT-OF-WAY AND ALLEY RIGHT-OF-WAY AND CONVEYANCE OF A PERMANENT EASEMENT FOR SUBSURFACE BUILDING ENCROACHMENT THEREIN TO 5<sup>TH</sup> AND WALNUT PARKING LLC FOR \$7,590.00**

**WHEREAS**, 5<sup>th</sup> and Walnut Parking LLC is the owner of the real property locally known as 422 Walnut Street, Des Moines, Iowa, which property is being developed with a new 11-story mixed-use parking structure; and

**WHEREAS**, 5<sup>th</sup> and Walnut Parking LLC has requested the vacation of subsurface rights in portions of 5<sup>th</sup> Avenue right-of-way and alley right-of-way adjoining 422 Walnut Street, hereinafter more fully described ( "City Right-of-Way"), and has further requested that the City of Des Moines, Iowa ("City") convey unto 5<sup>th</sup> and Walnut Parking LLC a Permanent Easement for Subsurface Building Encroachment on City-Owned Property ( "Easement"), in the vacated City Right-of-Way, hereinafter more fully described, in order to allow for subsurface building footing encroachments into the City Right-of-Way; and

**WHEREAS**, 5<sup>th</sup> and Walnut Parking LLC has offered to the City the purchase price of \$7,590.00 for the purchase of said Easement in the vacated City Right-of-Way, which price reflects the fair market value of the City Right-of-Way as determined by the City's Real Estate Division; and

**WHEREAS**, the City will not be inconvenienced by the proposed vacation of the City Right-of-Way and conveyance of said Easement; and

**WHEREAS**, on June 11, 2018, by Roll Call No. 18-1024, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation and conveyance of such Easement be set down for hearing on June 25, 2018, at 5:00 p.m., in the Council Chamber; and

**WHEREAS**, due notice of said proposal to vacate subsurface rights in portions of said City Right-of-Way and convey said Easement 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 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.

**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 Easement as described below are hereby overruled, and the hearing is closed.



**Date** June 25, 2018

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 subsurface rights in portions of 5<sup>th</sup> Avenue right-of-way and alley right-of-way, both adjoining 422 Walnut Street, more specifically described as follows:

SUBSURFACE EASEMENT DESCRIPTION:

AREA "A"

ALL OF THE SUBSURFACE SPACE FOR THAT PART OF THE EXISTING 5TH AVENUE RIGHT-OF-WAY LYING ADJACENT TO AND WEST OF BLOCK 21, FORT DES MOINES, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND BEING MORE ARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID BLOCK 21; THENCE SOUTH 15°25'01" EAST ALONG THE WEST LINE OF SAID BLOCK 21, A DISTANCE OF 98.93 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 15° 25' 01" EAST, 206.85 FEET; THENCE SOUTH 74° 34' 59" WEST, 2.50 FEET; THENCE NORTH 15° 25' 01" WEST, 206.85 FEET; THENCE NORTH 74° 34' 59" EAST, 2.50 FEET TO THE POINT OF BEGINNING AND CONTAINING APPROXIMATELY 517 S.F.

AREA "B"

ALL OF THE SUBSURFACE SPACE FOR THAT PART OF THE EXISTING ALLEY RIGHT-OF-WAY LYING ADJACENT TO AND EAST OF LOT 5, BLOCK 21 AND ADJACENT TO AND EAST OF THE EAST-WEST VACATED ALLEY RIGHT-OF-WAY NORTH OF SAID LOT 5 OF SAID BLOCK 21, FORT DES MOINES, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND BEING MORE ARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 6 OF SAID BLOCK 21; THENCE NORTH 15°23'28" WEST ALONG THE EAST LINE OF LOTS 6 AND 5 OF SAID BLOCK 21, A DISTANCE OF 129.03 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 15°23' 28" WEST ALONG SAID EAST LINE AND ALONG THE NORTHERLY EXTENSION OF SAID EAST LINE BEING THE EASTERLY LINE OF SAID VACATED ALLEY RIGHT-OF-WAY NORTH OF SAID LOT 5, A DISTANCE OF 10.00 FEET; THENCE NORTH 74°34' 59" EAST, 2.50 FEET; THENCE SOUTH 15°23' 28" EAST, 10.00 FEET; THENCE SOUTH 74°34' 59" WEST, 2.50 FEET TO THE POINT OF BEGINNING AND CONTAINING APPROXIMATELY 25 S.F.

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3. That the sale and conveyance of a Permanent Easement for Subsurface Building Encroachment on City-Owned Property within such vacated 5<sup>th</sup> Avenue street right-of-way and alley right-of-way adjoining 422 Walnut Street, as described below, to 5<sup>th</sup> and Walnut Parking LLC in consideration of \$7,590.00, together with payment of the estimated publication and recording costs for this transaction, subject to the requirements of the Offer to Purchase and the requirements of the City Plan and Zoning Commission, be and is hereby approved:

SUBSURFACE EASEMENT DESCRIPTION:

AREA "A"

ALL OF THE VACATED SUBSURFACE SPACE FOR THAT PART OF THE EXISTING 5TH AVENUE RIGHT-OF-WAY LYING ADJACENT TO AND WEST OF BLOCK 21, FORT DES MOINES, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND BEING MORE ARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID BLOCK 21; THENCE SOUTH 15°25'01" EAST ALONG THE WEST LINE OF SAID BLOCK 21, A DISTANCE OF 98.93 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 15° 25' 01" EAST, 206.85 FEET; THENCE SOUTH 74° 34' 59" WEST, 2.50 FEET; THENCE NORTH 15° 25' 01" WEST, 206.85 FEET; THENCE NORTH 74° 34' 59" EAST, 2.50 FEET TO THE POINT OF BEGINNING AND CONTAINING APPROXIMATELY 517 S.F.

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COMMENCING AT THE SOUTHEAST CORNER OF LOT 6 OF SAID BLOCK 21; THENCE NORTH 15°23'28" WEST ALONG THE EAST LINE OF LOTS 6 AND 5 OF SAID BLOCK 21, A DISTANCE OF 129.03 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 15°23' 28" WEST ALONG SAID EAST LINE AND ALONG THE NORTHERLY EXTENSION OF SAID EAST LINE BEING THE EASTERLY LINE OF SAID VACATED ALLEY RIGHT-OF-WAY NORTH OF SAID LOT 5, A DISTANCE OF 10.00 FEET; THENCE NORTH



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74°34' 59" EAST, 2.50 FEET; THENCE SOUTH 15°23' 28" EAST, 10.00 FEET;  
THENCE SOUTH 74°34' 59" WEST, 2.50 FEET TO THE POINT OF BEGINNING  
AND CONTAINING APPROXIMATELY 25 S.F.

4. The Mayor is authorized and directed to sign the Offer to Purchase and Easement 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 subsurface rights in portions of said City 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 Easement, 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 Easement, 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 Easement and copies of the other documents to the grantee.
9. Non-project related land sale proceeds are used to support general operating budget expenses: Org – EG064090.



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(Council Communication No. 18-337)

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

APPROVED AS TO FORM:

Lisa A. Wieland, Assistant City Attorney

PCW

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

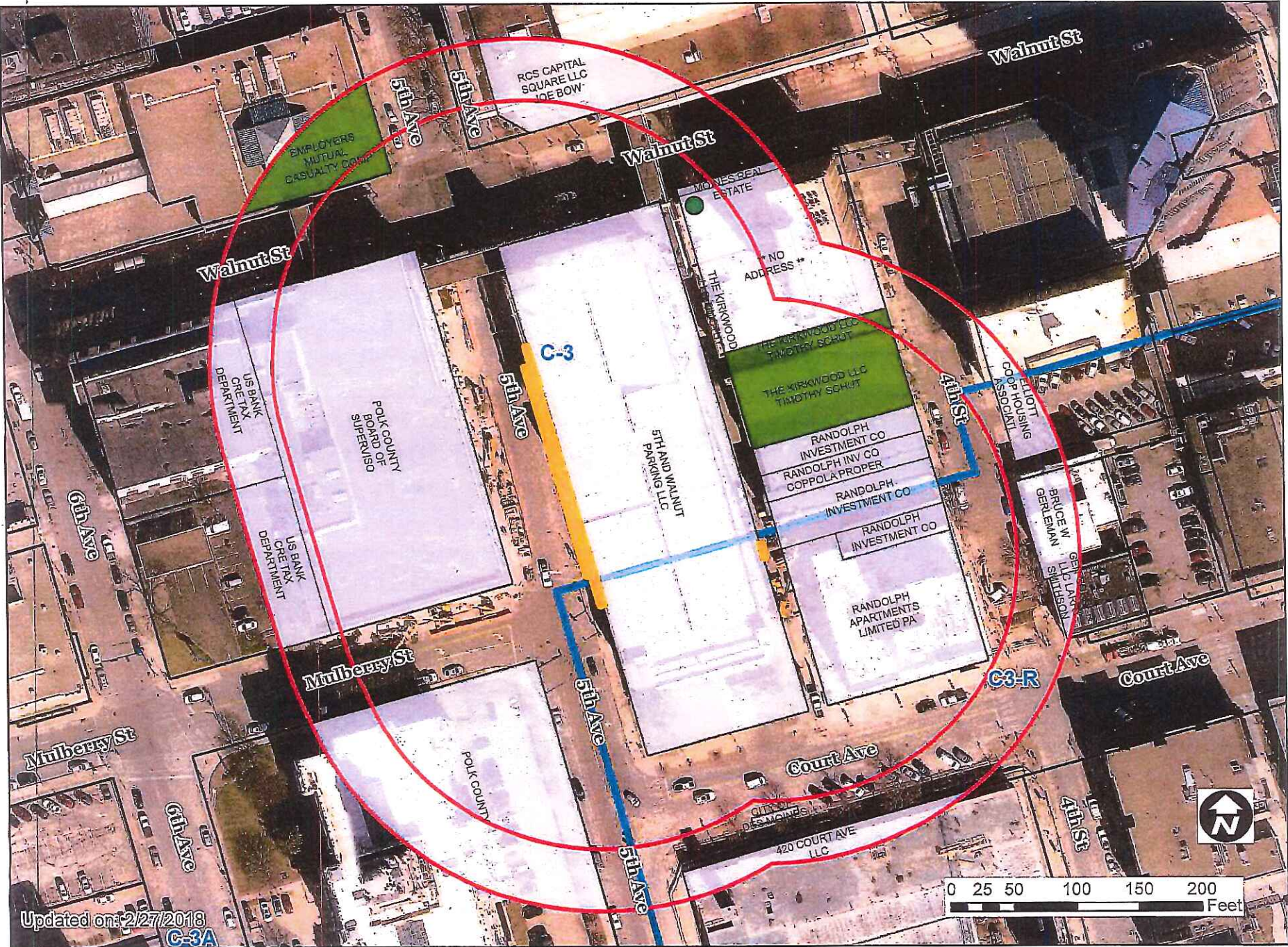
Mayor

## CERTIFICATE

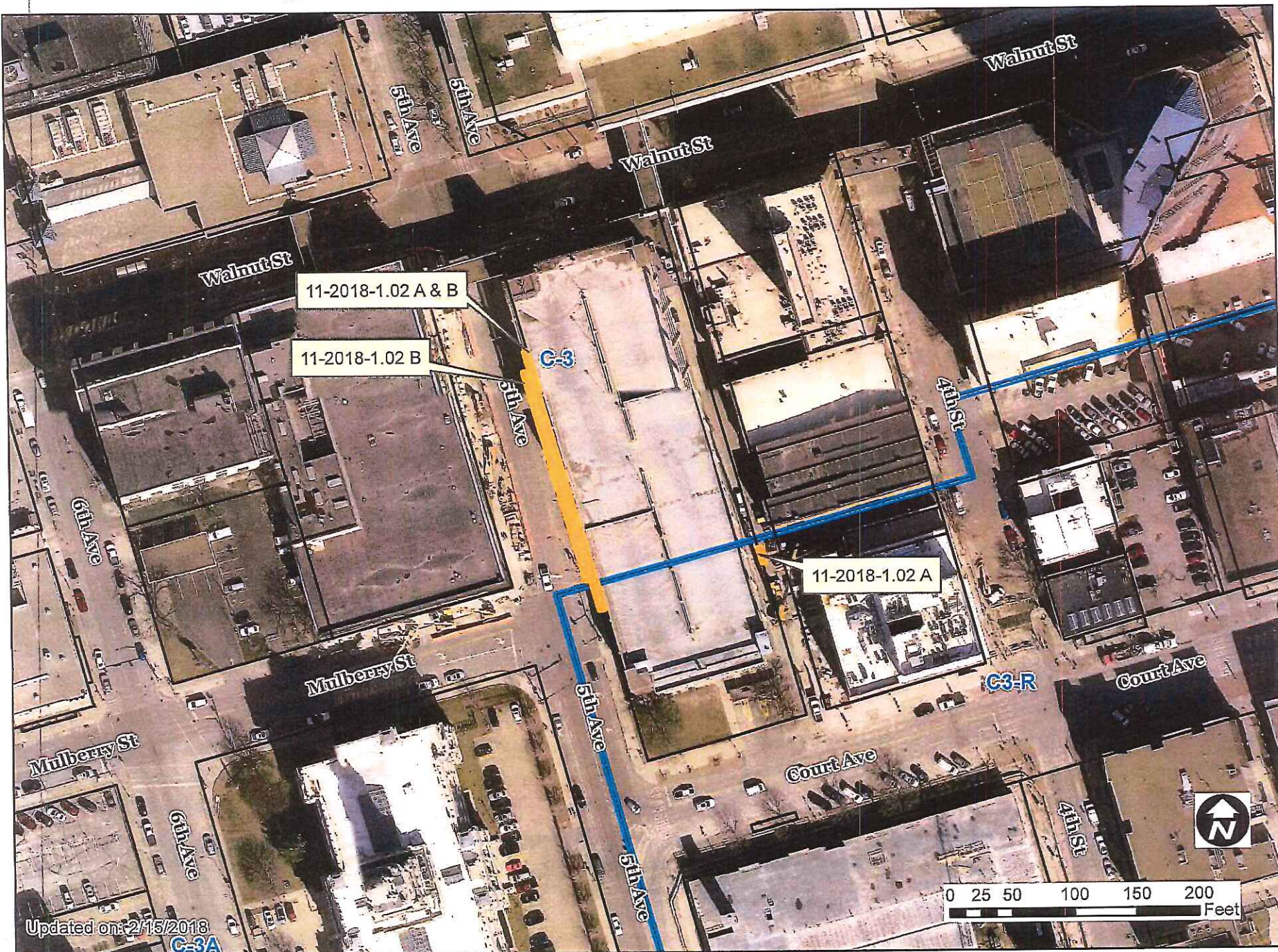
I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk



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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 5<sup>th</sup> and Walnut Parking, LLC (purchaser), 422 Walnut Street, represented by Justin Mandelbaum (officer) for vacation of the following for a proposed parking structure. 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 proposed air and subsurface rights vacations subject to the provision of easements for any existing utilities until such time that they are abandoned or relocated and so long as any proposed structure is constructed in compliance with an approved Site Plan. (11-2018-1.02)

Written Responses

4 in Favor

0 in opposition

## RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval of the proposed air and subsurface rights vacations subject to the provision of easements for any existing utilities until such time that they are abandoned or relocated and so long as any proposed structure is constructed in compliance with an approved Site Plan.

## STAFF REPORT TO THE PLANNING COMMISSION

### I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is proposing to construct an 11-story parking structure. The proposed building would have an entrance canopy and sun shade projections that would cantilever over the sidewalk along 5<sup>th</sup> Street. The footings for the building would encroach into the subsurface under the sidewalk along 5<sup>th</sup> Street, and a footing for an egress landing would encroach into the subsurface under the north/south alley to the east.
2. **Size of Site:** The area of the requested vacations are as follows:
  - 1) Subsurface easement on 5<sup>th</sup> Street for the footing – 2.50 feet by 206.85 feet (517 square feet)
  - 2) Subsurface easement in north/south alley for landing – 2.50 feet by 10.00 feet (25 square feet)
  - 3) Air rights easement on 5<sup>th</sup> Street for grade screen – 1.50 feet by 225.00 feet (338 square feet).
  - 4) Air rights easement on 5<sup>th</sup> Street for canopy – 5.00 feet by 185.80 feet (929 square feet)
3. **Existing Zoning (site):** "C-3" Central Business District Commercial, "C-3R" Central Business District Mixed-Residential, "GGP" Gambling Games Prohibition District, "D-O" Downtown Overlay District, and "FSO" Freestanding Sign Overlay District.
4. **Existing Land Use (site):** Street Right-Of-Way (ROW) in 5<sup>th</sup> Street and alley ROW.
5. **Adjacent Land Use and Zoning:**

North – "C-3"; Uses are Capitol Square office building.  
South – "C-3R"; Uses are Hy-Vee mixed-use building.  
East – "C-3R"; Use is Randolph mixed-use building.  
West – "C-3"; Uses are Polk County Justice Center and Polk County Court House.
6. **General Neighborhood/Area Land Uses:** The site is located on the block bounded by Walnut Street, 4<sup>th</sup> Street, Court Avenue, and 5<sup>th</sup> Street in the Downtown. The area contains a mix of civic, commercial, office and mixed-use development.
7. **Applicable Recognized Neighborhood(s):** The subject property is located in the Downtown Des Moines Neighborhood. The neighborhood association was notified of

the public hearing by mailing of the Preliminary Agenda on February 9, 2018 and a Final Agenda on February 23, 2018. Additionally, separate notifications of the hearing for this specific item were mailed on February 16, 2018 (13 days prior to the public hearing) to the neighborhood association and to the primary titleholder on file with the Polk County Assessor for each 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 Downtown Des Moines Neighborhood Association notices were mailed to Tony Filippini, 1719 Grand Avenue #210, Des Moines, IA 50309.

8. **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."

## **II. 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.

## **III. ADDITIONAL APPLICABLE INFORMATION**

1. **Air and Subsurface Rights:** The building entrance canopies and sun shade would cantilever into the 5<sup>th</sup> Street Right-Of-Way (ROW), requiring vacation of air rights. These would not extend over vehicular travelled portions of the adjoining street. The subsurface rights would be below grade in the sidewalk on 5<sup>th</sup> Street and in the north/south alley to provide a frost depth footing for an egress door landing.
2. **Utilities:** There are existing Des Moines Waterworks main, public sanitary sewer main, public storm sewer and buried traffic signal fiber optic lines within the adjoining 5<sup>th</sup> Street ROW. There are not any identified utilities within the north/south alley. The proposed building projections would not interfere with any existing aerial utilities, public street lighting, ROW signage or traffic control devices. The proposed subsurface footing encroachments would not interfere with any existing underground utilities or vaults.
3. **Urban Design Review Board:** The Urban Design Review Board made an initial review of the commercial building project on September 26, 2017. A final review of the project will be reviewed and approved by the Urban Design Review Board.

## **SUMMARY OF DISCUSSION**

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

#8 54

**COMMISSION ACTION:**

John "Jack" Hilmes made a motion to recommend approval of the proposed air and subsurface rights vacations subject to the provision of easements for any existing utilities until such time that they are abandoned or relocated and so long as any proposed structure is constructed in compliance with an approved Site Plan.

Motion passed: 9-0

Respectfully submitted,



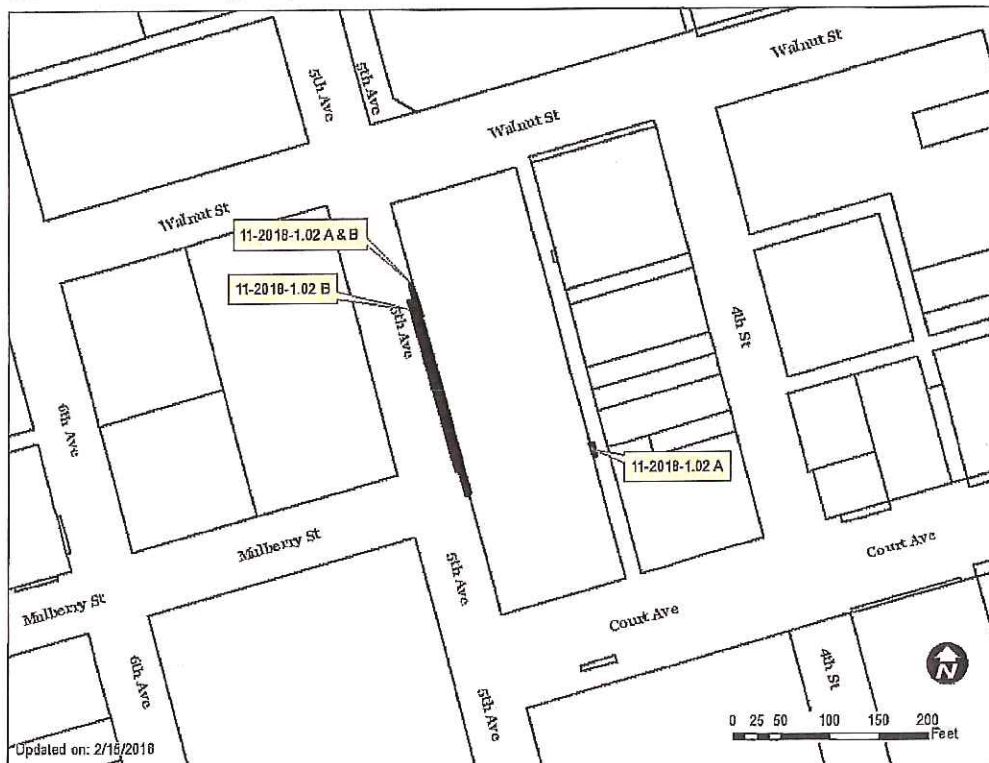
Michael Ludwig, AICP  
Planning Administrator

MGL:tjh  
Attachments

5th and Walnut Parking, LLC (purchaser) represented by Justin Mandelbaum (officer) for property located at 422 Walnut Street. The adjoining subject property is owned by the City of Des Moines.				File # 11-2018-1.02	
Description of Action		Vacation of the following for a proposed parking structure: A) A 2.50-foot by 206.85-foot segment of subsurface rights from 5th Street west of and adjoining the subject property and a 2.50-foot by 10.00-foot segment of the subsurface rights in the north/south alley east of and adjoining the subject property, to allow subsurface footing encroachments. B) A 1.50-foot by 225.00-foot segment of air rights 5th Street west of and adjoining the subject property for an attached grade screen and a 5.00-foot by 185.80-foot segment of air rights from 5th Street west of and adjoining the subject property for an entrance canopy.			
PlanDSM Future Land Use		Current: Downtown Mixed-Use District. Proposed: N/A.			
Mobilizing Tomorrow Transportation Plan		No planned improvements.			
Current Zoning District		"C-3" Central Business District Commercial District, "C-3R" Central Business District Mixed-Residential 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		43	0		
Outside Area (200 feet)					
Plan and Zoning Commission Action		Approval	X	Required 6/7 Vote of the City Council	Yes
		Denial			No

5th and Walnut Parking, LLC, 422 Walnut Street

11-2018-1.02



1 inch = 103 feet

Item 11-2018-1.02 Date 2/22/18  
(am) (am not) in favor of the request  
(Circle One)  
**RECEIVED** Print Name EMPLOYERS MOTOR  
CASUALTY COMPANY  
COMMUNITY DEVELOPMENT Signature Donald Capps  
FEB 26 2018 Address 717 MULBERRY STREET

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

THIS REQUEST APPEARS TO BE  
APPROPRIATE TO GO AHEAD WITH  
THEIR NEW PROJECT.

Item 11-2018-1.02 Date 2-22-18  
(am) (am not) in favor of the request.  
(Circle One)  
**RECEIVED** Print Name Jacob Minkel  
COMMUNITY DEVELOPMENT Signature [Signature]  
FEB 26 2018 Address 4th & Walnut

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

Item 11-2018-1.02 Date 2-20-18  
(am) (am not) in favor of the request.  
(Circle One)  
**RECEIVED** Print Name Timothy Schulte  
COMMUNITY DEVELOPMENT Signature [Signature]  
FEB 26 2018 Address 400 Walnut / 218 4th

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