

Date November 5, 2018

**SET HEARING FOR VACATION OF PORTIONS OF EAST 4<sup>TH</sup> STREET, DES MOINES STREET AND EAST 5<sup>TH</sup> STREET RIGHT-OF-WAY ADJOINING 415 AND 421 DES MOINES STREET AND CONVEYANCE OF A PERMANENT EASEMENT FOR SUBSURFACE BUILDING ENCROACHMENT ON CITY-OWNED PROPERTY TO 555 E FOURTH PARKING, LLC FOR \$13,830.00**

**WHEREAS**, on May 7, 2018, the City Council of the City of Des Moines received and filed a recommendation from the City Plan and Zoning Commission to approve a request from Nelson Construction Services, LLC, represented by Alexander Grgurich (officer) for vacation of the subsurface rights in the east 2.0 feet of East 4<sup>th</sup> Street, the south 4.5 feet of Des Moines Street and the west 3.0 feet of East 5<sup>th</sup> Street right-of-way all adjoining 415 and 421 Des Moines Street, Des Moines, Iowa (hereinafter "Property") to allow for building footing encroachments; and

**WHEREAS**, 555 E Fourth Parking, LLC, successor in interest to Nelson Development 1, LLC, is the owner the real property located south of Des Moines Street between East 4<sup>th</sup> Street and East 5<sup>th</sup> Street, formerly locally known as 415 and 421 Des Moines St, and has offered to the City the purchase price of \$13,830.00 for the purchase of a Permanent Easement for Subsurface Building Encroachment on City-owned Property (hereinafter "Easement") in a portion of the Property, hereinafter more fully described, to allow for construction and maintenance of building footings encroaching into the Property; which price reflects the fair market value of the Easement as determined by the City's Real Estate Division; and

**WHEREAS**, there is no public need or benefit for the subsurface rights proposed to be conveyed, and the public would not be inconvenienced by reason of the conveyance of the Permanent Easement for Subsurface Building Encroachment on City-owned Property within said Property.

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

1. The City Council of the City of Des Moines, Iowa, shall consider adoption of an ordinance permanently vacating the subsurface rights in the east 2.0 feet of East 4<sup>th</sup> Street, the south 4.5 feet of Des Moines Street, and the west 3.0 feet of East 5<sup>th</sup> Street right-of-way adjoining the property located south of Des Moines Street between East 4<sup>th</sup> Street and East 5<sup>th</sup> Street, formerly locally known as 415 and 421 Des Moines St, legally described as follows:

A PART OF THE EAST 4TH STREET, EAST 5TH STREET, AND DES MOINES STREET RIGHTS-OF-WAY LYING ADJACENT TO LOT 1, BLOCK 10, EAST FORT DES MOINES, AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST OF CORNER OF SAID LOT 1; THENCE SOUTH 15°17'24" EAST ALONG THE WEST LINE OF SAID LOT 1, A DISTANCE OF 142.21 FEET; THENCE SOUTH 74°49'57" WEST, 2.00 FEET; THENCE NORTH 15°17'24" WEST, 146.71 FEET; THENCE NORTH 74°47'22" EAST, 344.75 FEET; THENCE SOUTH 15°20'33" EAST, 155.35 FEET; THENCE SOUTH 74°50'22" WEST, 3.00 FEET TO THE EAST LINE OF SAID LOT 1; THENCE NORTH 15°20'33" WEST ALONG SAID EAST LINE, 150.85 FEET TO THE NORTHEAST CORNER OF SAID LOT 1; THENCE SOUTH

Date November 5, 2018

74°47'22" WEST ALONG THE NORTH LINE OF SAID LOT 1, A DISTANCE OF 339.76 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.05 ACRES (2,288 S.F.).

2. The City Council of the City of Des Moines, Iowa, further proposes to convey a Permanent Easement for Subsurface Building Encroachment on City-owned Property in such vacated street right-of-way, as legally described and to the grantee and for the consideration identified below, subject to reservation of easements therein:

Grantee: 555 E Fourth Parking, LLC

Consideration: \$13,830.00

Legal Description:

A PART OF THE VACATED EAST 4TH STREET, VACATED EAST 5TH STREET, AND VACATED DES MOINES STREET RIGHTS-OF-WAY LYING ADJACENT TO LOT 1, BLOCK 10, EAST FORT DES MOINES, AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST OF CORNER OF SAID LOT 1; THENCE SOUTH 15°17'24" EAST ALONG THE WEST LINE OF SAID LOT 1, A DISTANCE OF 142.21 FEET; THENCE SOUTH 74°49'57" WEST, 2.00 FEET; THENCE NORTH 15°17'24" WEST, 146.71 FEET; THENCE NORTH 74°47'22" EAST, 344.75 FEET; THENCE SOUTH 15°20'33" EAST, 155.35 FEET; THENCE SOUTH 74°50'22" WEST, 3.00 FEET TO THE EAST LINE OF SAID LOT 1; THENCE NORTH 15°20'33" WEST ALONG SAID EAST LINE, 150.85 FEET TO THE NORTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 74°47'22" WEST ALONG THE NORTH LINE OF SAID LOT 1, A DISTANCE OF 339.76 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.05 ACRES (2,288 S.F.).

3. That the meeting of the City Council at which the adoption of said ordinance and the conveyance of such permanent easement for subsurface building encroachment is to be considered shall be on November 19, 2018, said meeting to be held at 5:00 p.m., in the City Council Chamber, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa.

4. That the City Clerk is hereby authorized and directed to publish notice of said proposal in the form hereto attached all in accordance with §362.3 of the Iowa Code.

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

★ Roll Call Number

Agenda Item Number

21

Page 3

Date November 5, 2018

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

APPROVED AS TO FORM:

*Lisa A. Wieland*  
\_\_\_\_\_  
Lisa A. Wieland, Assistant City Attorney

RV

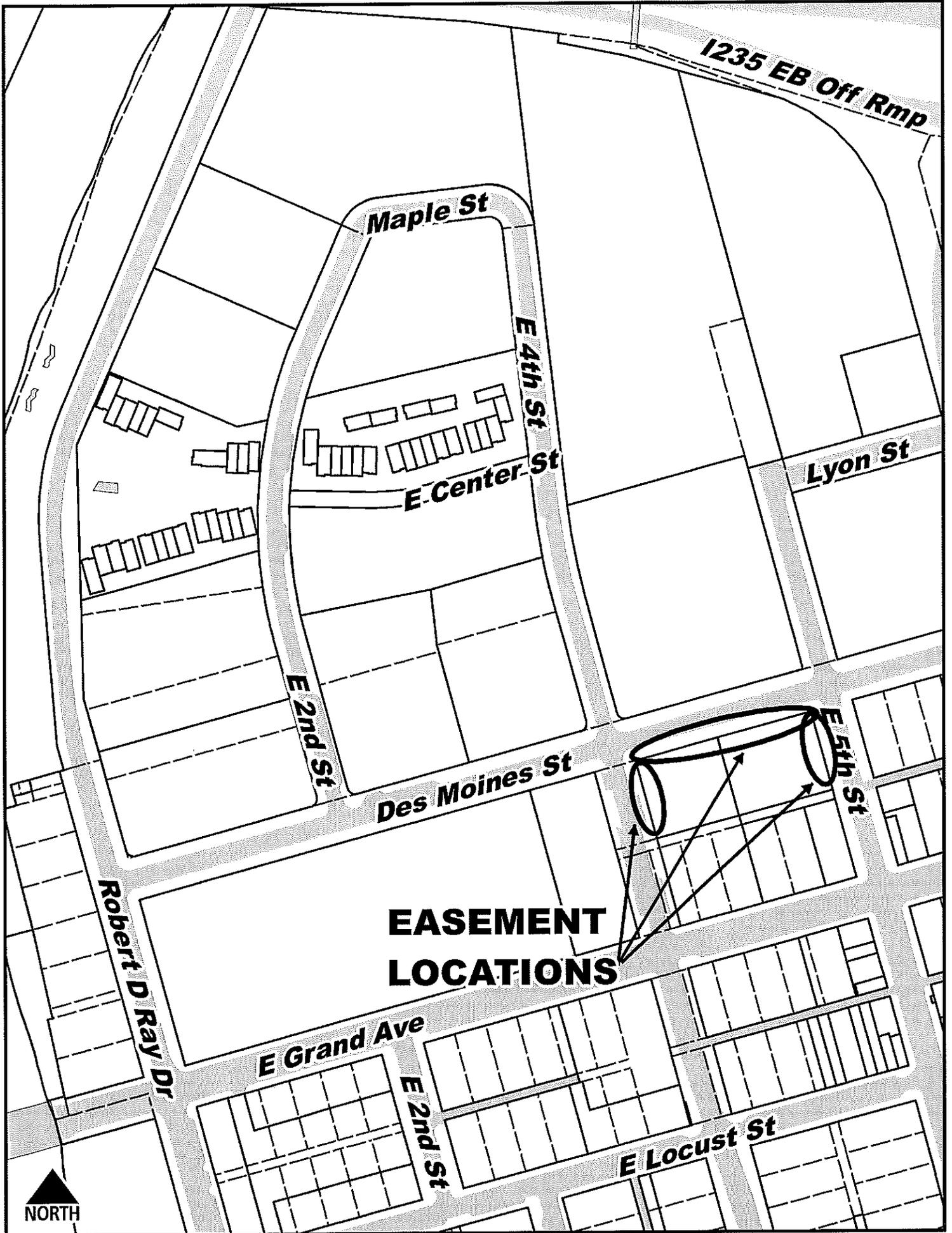
COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
COLEMAN				
GATTO				
GRAY				
MANDELBAUM				
WESTERGAARD				
TOTAL				
MOTION CARRIED			APPROVED	
			Mayor	

**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



1235 EB Off Rmp

Maple St

E 4th St

E Center St

E 2nd St

Des Moines St

Lyon St

E 5th St

# EASEMENT LOCATIONS

Robert D Ray Dr

E Grand Ave

E 2nd St

E Locust St



★ Roll Call Number  
18-0760

Agenda Item Number  
15

Date May 7, 2018

RECEIVE AND FILE COMMUNICATION FROM THE PLAN AND ZONING COMMISSION  
REGARDING REQUEST FROM NELSON CONSTRUCTION SERVICES, LLC FOR  
VACATION OF SUBSURFACE RIGHTS WITHIN EAST 4<sup>TH</sup> STREET, DES MOINES STREET, AND  
EAST 5<sup>TH</sup> STREET, ADJOINING 415 AND 421 DES MOINES STREET

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on April 19, 2018, its members voted 10-0 to recommend APPROVAL of a request from Nelson Construction Services, LLC (developer), represented by Alexander Grgurich (officer), for vacation of subsurface rights within the east 2.0 feet of East 4<sup>th</sup> Street, the south 4.5 feet of Des Moines Street and the west 3.0 feet of East 5<sup>th</sup> Street, all adjoining 415 and 421 Des Moines Street, to allow for construction of footings necessary for redevelopment of the adjoining property, subject to relocation of any existing utilities.

MOVED by Gray 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  
Glenna K. Frank, Assistant City Attorney

(11-2018-1.04)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
COLEMAN	✓			
GATTO				✓
GRAY	✓			
MANDELBAUM	✓			
WESTERGAARD	✓			
TOTAL	10			1

MOTION CARRIED

APPROVED

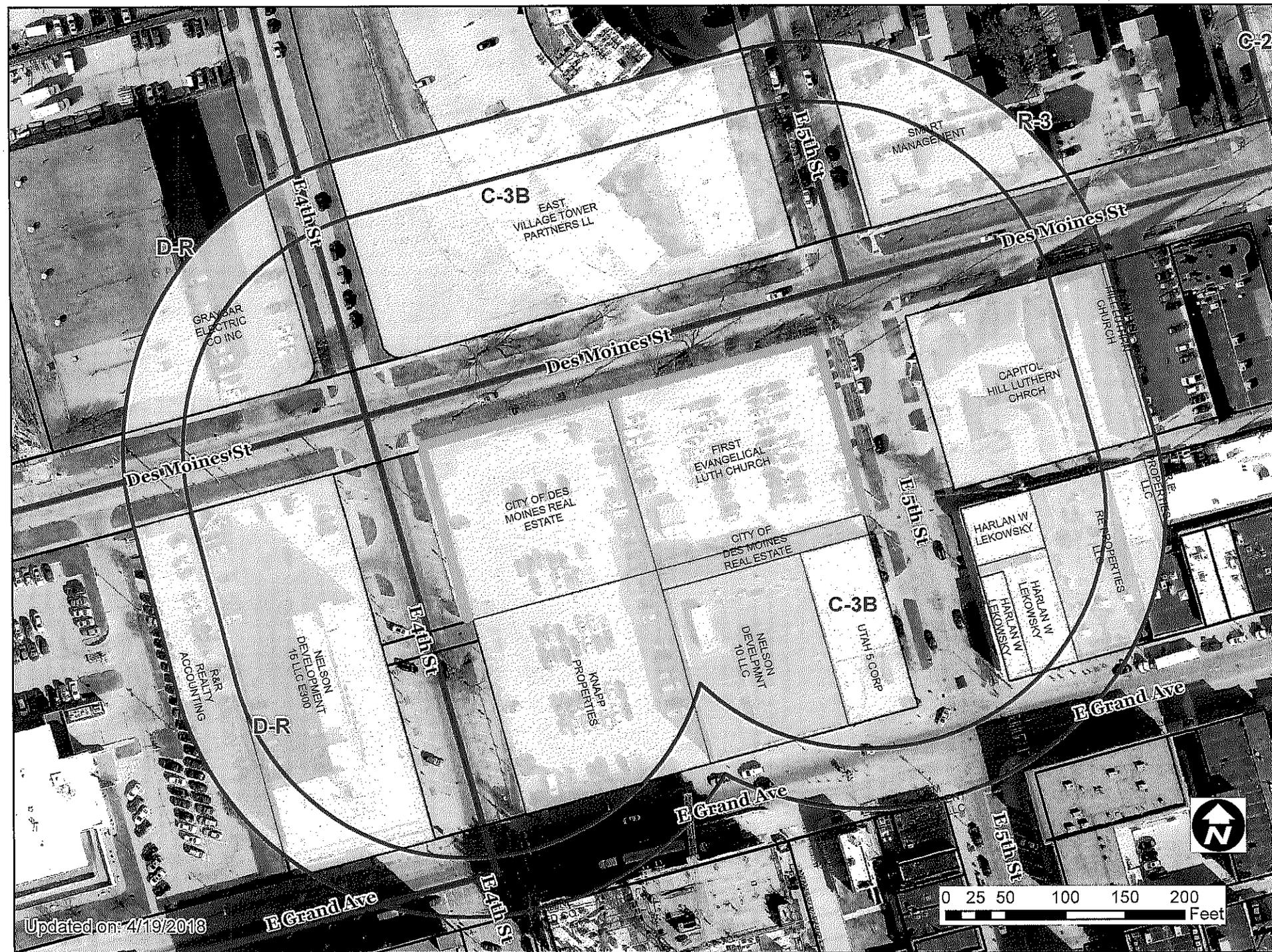
T. M. Franklin Mayor

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.

Diane Rauh City Clerk



Updated on: 4/19/2018



21



May 4, 2018

Date November 5, 2018  
 Agenda Item 21  
 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 Nelson Construction Services, LLC (developer) represented by Alexander Grgurich (officer) for vacation of subsurface rights within the East 2.0 feet of East 4th Street, the South 4.5 feet of Des Moines Street and the West 3.0 feet of East 5th Street, to allow the development of property located at 415 and 421 Des Moines Street. The subject property is owned by First Evangelical Lutheran Church of Des Moines and the City of Des Moines.

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 10-0 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 of subsurface rights subject to relocation of any existing utilities. (11-2018-1.04)

Written Responses

0 in Favor  
 0 in opposition

## RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval of the requested vacation of subsurface rights subject to relocation of any existing utilities.

## STAFF REPORT TO THE PLANNING COMMISSION

### I. GENERAL INFORMATION

1. **Purpose of Request:** The requested vacation of Right-of-Way would allow for construction of footings that are necessary for the construction of a 3-story parking structure containing approximately 403 off-street parking spaces would be jointly used by the First Evangelical Lutheran Church, an office building currently occupied by State of Iowa Workforce Development, and a future mixed-use building at the northeast corner of Grand Avenue and East 4<sup>th</sup> Street. The first level would be leased by the City for public use. The first level of the parking structure would be accessed from East 4<sup>th</sup> Street. The second level would be accessed from Des Moines Street. The third level would be accessed from East 5<sup>th</sup> Street.
2. **Size of Site:** The requested East 4<sup>th</sup> Street Right-of-Way generally measures 2 feet by 150 feet (300 square feet). The requested Des Moines Street Right-of-Way generally measures 4.5 feet by 340 feet (1,530 square feet). The requested East 5<sup>th</sup> Street Right-of-Way generally measures 3 feet by 150 feet (450 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):** Existing surface parking lots.
5. **Adjacent Land Use and Zoning:**
  - North** – "D-R" and C-3B", uses are public right-of-way (Des Moines Street), warehouse/office (Graybar Electric Company), multi-family residential (Bridge District) and mixed-use building (Lyon's Apartments / Sam & Gabe's Restaurant).
  - South** – "C-3B, uses are surface parking lot (future mixed-use building), public right-of-way (Grand Avenue), hotel (AC Hotel) and mixed-use building (East Village Square Apartments and various retail shops).
  - East** – "C-3B", uses are office (Iowa Workforce Development), public right-of-way (E. 5<sup>th</sup> Street) and church (First Evangelical Lutheran Church).
  - West** – "D-R", uses are public right-of-way (E. 4<sup>th</sup> Street), mixed-use building (E300 Apartments / Zombie Burger) and office (East Grand Office Park).
6. **General Neighborhood/Area Land Uses:** The site is in Historic East Village. It is bound on three sides by Des Moines Street, East 4<sup>th</sup> Street and East 5<sup>th</sup> Street. The area contains a mix of multi-family residential, office and mixed retail/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 19, 2018. A Final Agenda was mailed to the neighborhood association on March 30, 2018 and on April 13, 2018. Additionally, separate notifications of the hearing were mailed on March 26, 2018 (10 days prior to the April 5, 2018 hearing) and on April 9, 2018 (10 days prior to the April 19, 2018 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 415 and 421 Des Moines Street 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 "E555 Parking Ramp" under design guidelines in "C-3B" Districts, to allow development of a 3-story parking structure on the property.

- 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 relocation of any existing utilities at the developer's expense.
- 2. Parking & Access:** A total of 403 off-street parking spaces that would be jointly used by the First Evangelical Lutheran Church, an office building currently occupied by State of Iowa Workforce Development, a future mixed-use building at the northeast corner of

Grand Avenue and East 4<sup>th</sup> Street, with the first level leased by the City for public use. The first level would be accessed from E. 4<sup>th</sup> Street. The second level would be accessed from Des Moines Street. The third level would be accessed from E. 5<sup>th</sup> Street. A bike rack is proposed as part of the streetscape along E. 4<sup>th</sup> Street. Pedestrian access between levels would be provided by an elevator and stairwell at the midpoint on the south side of the parking structure and a stairwell at the northeast corner of the parking structure.

- 3. Additional Information:** The recently approved site plan for the parking ramp is contingent upon the requested vacation of subsurface rights.

### **SUMMARY OF DISCUSSION**

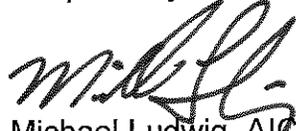
Jacqueline Easley asked if anyone was present to speak on this item. None were present or requested to speak.

### **COMMISSION ACTION:**

Dory Briles made a motion for approval of the requested vacation of subsurface rights subject to relocation of any existing utilities.

Motion passed: 10-0

Respectfully submitted,



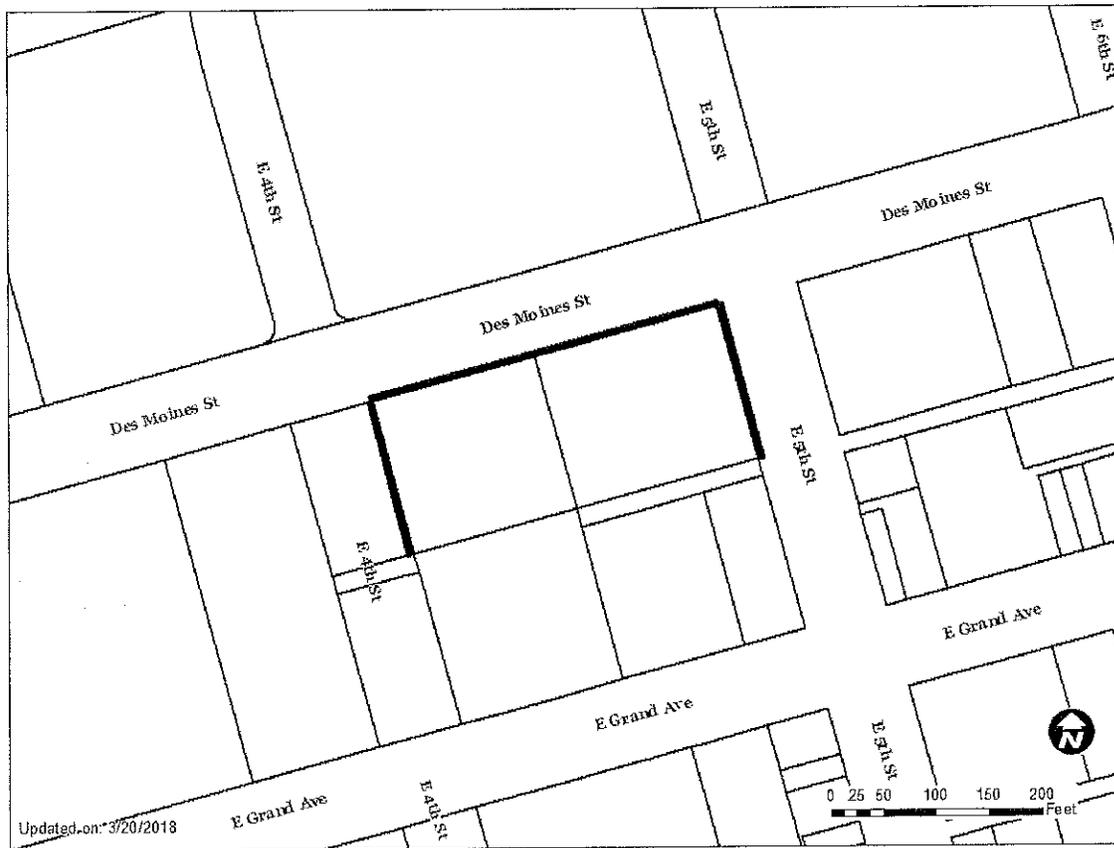
Michael Ludwig, AICP  
Planning Administrator

MGL:tjh  
Attachments

Nelson Construction Services, LLC (developer) represented by Alexander Grgurich (officer) for property located at 415 and 421 Des Moines Street. The subject property is owned by First Evangelical Lutheran Church of Des Moines and the City of Des Moines.		File # 11-2018-1.04		
Description of Action	Vacation of subsurface rights within the East 2.0 feet of East 4th Street, the South 4.5 feet of Des Moines Street and the West 3.0 feet of East 5th Street.			
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

Nelson Construction Services, LLC, 415 and 421 Des Moines Street

11-2018-1.04



1 inch = 107 feet