

Date May 20, 2019

HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF PORTIONS OF WALNUT STREET RIGHT-OF-WAY AND 10TH STREET RIGHT-OF-WAY ALL ADJOINING 1000 WALNUT STREET AND CONVEYANCE OF A PERMANENT EASEMENT FOR AIR SPACE ABOVE CITY-OWNED PROPERTY THEREIN TO JANSSEN LODGING, INC. FOR \$8,300.00

WHEREAS, Janssen Lodging, Inc., owner of 1000 Walnut Street, Des Moines, Iowa, has offered to the City the purchase price of \$8,300.00 for the purchase of a Permanent Easement for Air Space Above City-Owned Property (hereinafter "Easement") within a portion of Walnut Street right-of-way and a portion of 10th Street right-of-way all adjoining 1000 Walnut Street, Des Moines, Iowa, hereinafter more fully described, to allow for the permanent encroachment of entrance canopy encroachments into the vacated right-of-way, 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 air rights proposed to be vacated and conveyed, and the public would not be inconvenienced by reason of the vacation of said right-of-way and conveyance of the Easement within said City Property; and

WHEREAS, on May 6, 2019, by Roll Call No. 19-0703, 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 Air Space Above City-Owned Property be set for hearing on May 20, 2019, 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 10.0-foot by 16.0-foot segment of the south side of Walnut Street right-of-way, and a 10.0-foot by 35.0-foot segment of the west side of 10th Street right-of-way, all adjoining 1000 Walnut Street, Des Moines, Iowa, and convey a Permanent Easement for Air Space Above City-Owned Property 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 10.0-foot by 16.0-foot segment of the south side of Walnut Street right-of-way, and a 10.0-foot by 35.0-foot segment of the west side of 10th Street right-of-way, all adjoining 1000 Walnut Street, Des Moines, Iowa and conveyance of a Permanent Easement for Air Space Above City-Owned Property 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 air space within street the right-of-way proposed to be vacated, and the public would not be inconvenienced by reason of the vacation of said air space within the street right-of-way, legally described as follows, and said vacation is hereby approved:

Area 1

All that part of the Walnut Street Right of Way lying north of and abutting Lot 4, West Fort Des Moines, an Official Plat, Des Moines, Polk County, Iowa being more particularly described as follows:

Commencing at the Northeast corner of said Lot 4; thence North 89°22'48" West along the north line of said Lot 4, a distance of 43.29 feet to the Point of Beginning; thence continuing North 89°22'48" West, along the north line of said Lot 4, a distance of 16.00 feet; thence North 00°37'12" East, a distance of 10.00 feet; thence South 89°22'48" East, a distance of 16.00 feet; thence South 00°37'12" West, a distance of 10.00 feet to the Point of Beginning, containing 160 square feet and lying above a elevation plane of 48.00, City Datum, and below a plane elevation of 60.00, City Datum, with the ground elevation being at 39.70, City Datum.

Area 2

All that part of the 10th Street Right of Way lying east of and abutting Lot 4, West Fort Des Moines, an Official Plat, Des Moines, Polk County, Iowa being more particularly described as follows:

Commencing at the Northeast corner of said Lot 4; thence South 01°05'59" West along the east line of said Lot 4, a distance of 29.73 feet to the Point of Beginning; thence South 88°54'01" East, a distance of 10.00 feet; thence South 01°05'59" West, a distance of 35.00 feet; thence North 88°54'01" West, a distance of 10.00 feet to a point on the east line of said Lot 4; thence North 01°05'59" East, a distance of 35.00 feet to the Point of Beginning, containing 350 square feet and lying above a plane elevation of 48.00 and below a plan elevation of 60.00, City Datum, and the ground elevation being at 39.70, City Datum.

3. The proposed conveyance of a Permanent Easement for Air Space Above City-Owned Property 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: Janssen Lodging, Inc.

Consideration: \$8,300.00

Legal Description:

Area 1

All that part of the vacated Walnut Street Right of Way lying north of and abutting Lot 4, West Fort Des Moines, an Official Plat, Des Moines, Polk County, Iowa being more particularly described as follows:



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Commencing at the Northeast corner of said Lot 4; thence North 89°22'48"West along the north line of said Lot 4, a distance of 43.29 feet to the Point of Beginning; thence continuing North 89°22'48" West, along the north line of said Lot 4, a distance of 16.00 feet; thence North 00°37'12"East, a distance of 10.00 feet; thence South 89°22'48" East, a distance of 16.00 feet; thence South 00°37'12" West, a distance of 10.00 feet to the Point of Beginning, containing 160 square feet and lying above a elevation plane of 48.00, City Datum, and below a plane elevation of 60.00, City Datum, with the ground elevation being at 39.70, City Datum.

Area 2

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4. The Mayor is authorized and directed to sign the Offer to Purchase and Permanent Easement for Air Space Above City-Owned Property 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 Air Space Above City-Owned Property, 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 Permanent Easement for Air Space Above City-Owned Property, 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.

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Date May 20, 2019

Moved by _____ to adopt.

APPROVED AS TO FORM:

Ann DiDonato
Ann DiDonato, Assistant City Attorney

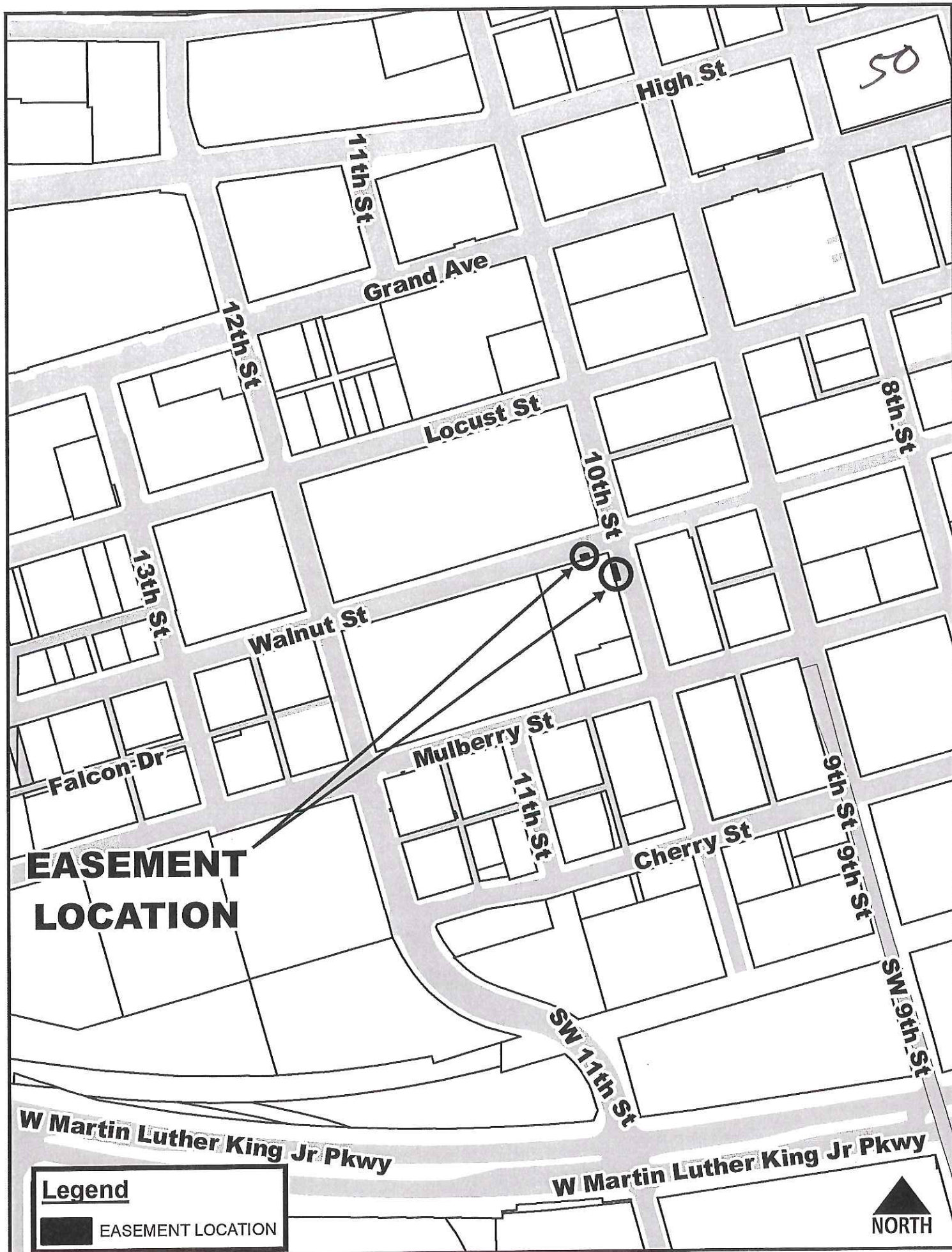
COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
COLEMAN				
GATTO				
GRAY				
MANDELBAUM				
WESTERGAARD				
TOTAL				
MOTION CARRIED			APPROVED	
_____ Mayor				

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



**EASEMENT
LOCATION**

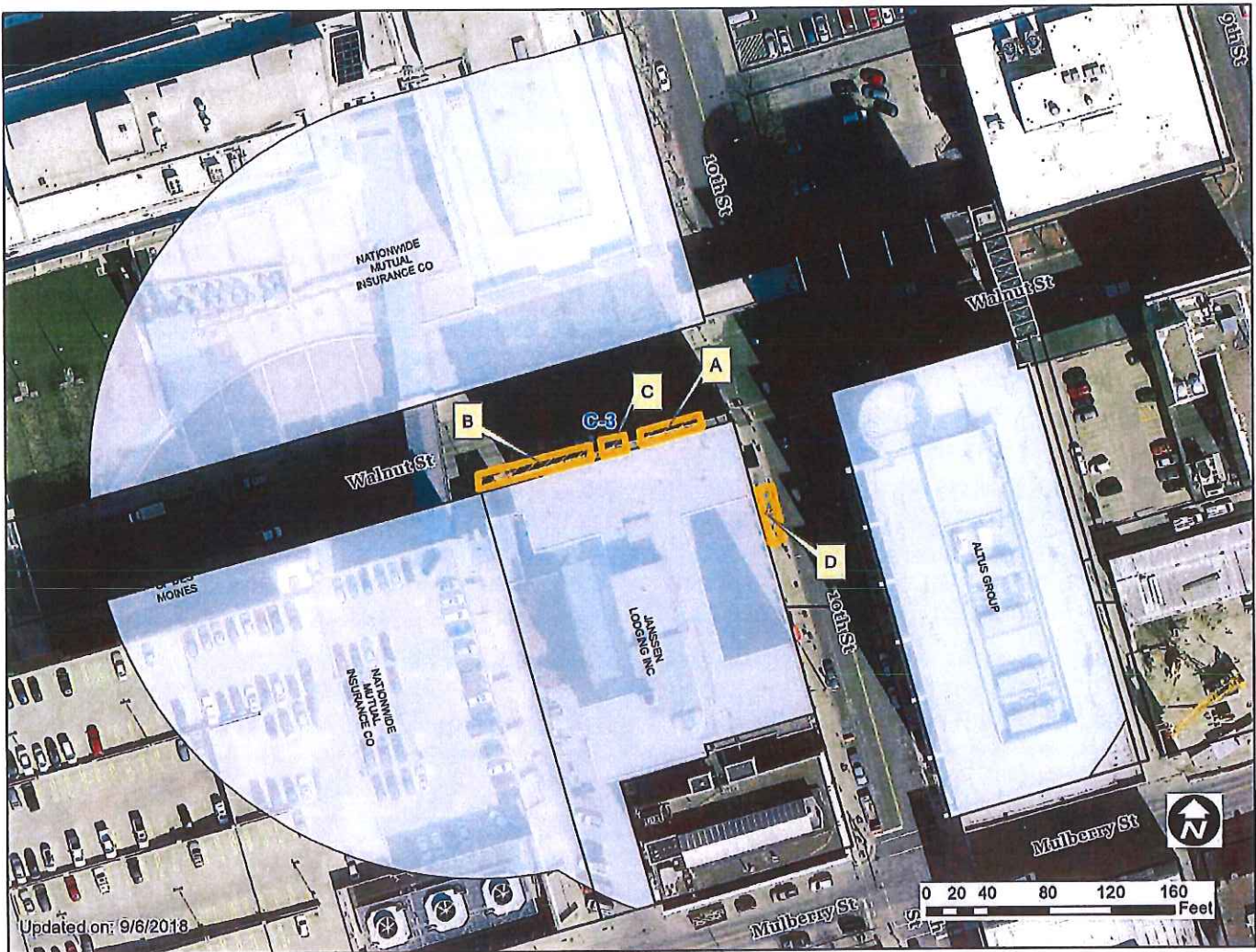
Legend

■ EASEMENT LOCATION



Janssen Lodging, Inc., 1000 Walnut Street

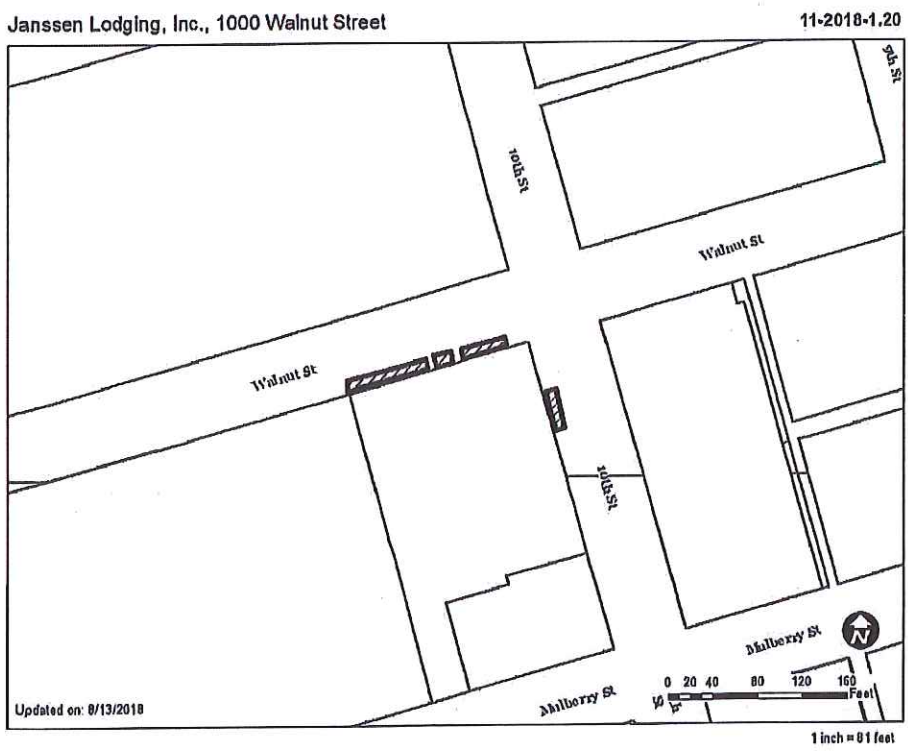
11-2018-1.20



1 inch = 81 feet

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Janssen Lodging, Inc. (owner), 1000 Walnut Street, represented by Raj Patel (registered agent).		File # 11-2018-1.20			
Description of Action	Vacation of the following segments of Right-Of-Way (ROW): A) A 9.00-foot by 39.42-foot segment of Walnut Street adjoining the subject property for sidewalk café lease purposes. B) A 9.00-foot by 74.24-foot segment of Walnut Street adjoining the subject property for sidewalk café lease purposes. C) A 10.00-foot by 16.00-foot segment of adjoining Walnut Street adjoining the subject property for air rights lease for an entrance canopy. D) A 10.00-foot by 35.00-foot segment of adjoining 10th Street adjoining the subject property for air rights lease for an entrance canopy.				
PlanDSM Future Land Use	Current: Downtown Mixed-Use in a Regional Node. Proposed: N/A.				
Mobilizing Tomorrow Transportation Plan	No planned improvements.				
Current Zoning District	"C-3" Central Business District Commercial 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	X



1 inch = 81 feet

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Date September 24, 2018
 Agenda Item 13
 Roll Call #

September 19, 2018

Honorable Mayor and City Council
 City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their September 6, 2018 meeting, the following action was taken regarding a request from Janssen Lodging, Inc. (owner), 1000 Walnut Street, represented by Raj Patel (registered agent) for vacation of the following segments of Right-Of-Way (ROW): A) 9.00-foot by 39.42-foot segment of Walnut Street adjoining the subject property for sidewalk café lease purposes, B) 9.00-foot by 74.24-foot segment of Walnut Street adjoining the subject property for sidewalk café lease purposes, C) 10.00-foot by 16.00-foot segment of adjoining Walnut Street adjoining the subject property for air rights lease for an entrance canopy and D) 10.00-foot by 35.00-foot segment of adjoining 10th Street adjoining the subject property for air rights lease for an entrance canopy.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 12-0 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 surface and air rights subject to reservation of easements for all public utilities in place.

(11-2018-1.20)

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Written Responses

0 in Favor

0 in opposition

RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval of the requested vacation of surface and air rights subject to reservation of easements for all public utilities in place.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The developer is renovating the 11-story Hotel Fort Des Moines. They are requesting to vacate two segments of surface rights on adjacent Walnut Street to allow for a sidewalk café. They are also seeking to vacate air rights for entrance canopies on both Walnut Street and 10th Street.

2. **Size of Site:** The building site is 35,742 square feet (0.821 acres). The requested Right-of-Way vacation would be a total of 1022 square feet of surface for the sidewalk café and 510 square feet of air rights for the entrance canopies.

3. **Existing Zoning (site):** "C-3" Central Business District Commercial District, "D-O" Downtown Overlay District, "GGP" Gambling Games Prohibition Overlay District, and "FSO" Freestanding Sign Overlay District.

4. **Existing Land Use (site):** Hotel Fort Des Moines.

5. Adjacent Land Use and Zoning:

North – "C-3"; Use is an 7-story office building for Nationwide Mutual Insurance.

South – "C-3"; Use is the 6-story Clemons Building, which is a mixed-use building with Bubba's restaurant and a Hotel Fort Des Moines Annex on the first two floors and 44 residential units in the upper four floors.

East – "C-3"; Use is the 13-story Davis Brown Tower mixed-use building with office and retail on first floor, structured parking on floors two through nine and office on floors 10-13.

West – "C-3"; Use is a 10-story parking structure for Nationwide Mutual Insurance.

6. **General Neighborhood/Area Land Uses:** The site is in western Downtown. The surrounding area contains a mix of office, hotel, retail, and multiple-family residential uses.

7. **Applicable Recognized Neighborhood(s):** The subject property is in the Downtown Des Moines Neighborhood. This neighborhood was notified of the Commission meeting by mailing of the Preliminary Agenda on August 17, 2018. Additionally, separate notifications of the hearing for this specific item were mailed on August 27, 2018 (10 days prior to the hearing) to the Downtown Des Moines Neighborhood Association and

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to the primary titleholder on file with the Polk County Assessor for each property adjacent to the subject ROW. A final agenda was mailed on August 31, 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 Downtown Des Moines Neighborhood Association notices were mailed to Austin Lewis, 915 Mulberry Street, Unit 504, Des Moines, IA 50393.

- 8. **Relevant Zoning History:** On July 26, 2004, by Ordinance No. 14,361, the City Council rezoned the subject property with the "GGP" Gambling Games Prohibition Overlay District. On November 7, 2011, by Ordinance No. 15,060, the City Council rezoned the subject property with the "D-O" Downtown Overlay District.
- 9. **PlanDSM 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.

II. ADDITIONAL APPLICABLE INFORMATION

- 1. **Utilities:** There are subsurface Des Moines Water Works mains in both Walnut Street and 10th Street. There is subsurface public sanitary sewer main in Walnut Street. There is subsurface electrical and street lighting operated by Mid-American Energy in both Walnut Street and 10th Street. There are subsurface fiber optic lines for traffic signals in Walnut Street. The proposed surface rights and air rights would not interfere with any of the identified utilities. The canopies would be spaced with adequate separation from the street lights.
- 2. **Street System/Access:** The project also involves construction of a "bump out" of the Walnut Street sidewalk streetscape. This would allow for tree planters and would align with the streetscape in the block to the east. The proposed café areas and entrance canopy areas would allow for 6-foot wide through public sidewalk movement with the proposed "bump out" into Walnut Street. The propose entrance canopies would provide 9-1/4 of clearance over the public sidewalk.

SUMMARY OF DISCUSSION

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

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COMMISSION ACTION:

David Courard-Hauri made a motion for approval of the requested vacation of surface and air rights subject to reservation of easements for all public utilities in place.

Motion passed: 12-0

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:tjh
Attachments