

Date October 14, 2019

HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF A PORTION OF EAST 4TH STREET AND EAST GRAND AVENUE RIGHT-OF-WAY ADJOINING 418 EAST GRAND AVENUE AND CONVEYANCE OF A PERMANENT EASEMENT FOR SUBSURFACE BUILDING ENCROACHMENT ON CITY PROPERTY AND A PERMANENT EASEMENT FOR AIR SPACE ABOVE CITY-OWNED PROPERTY TO DES MOINES NELSON DEVELOPMENT 1, LLC FOR \$12,630.00

WHEREAS, on September 5, 2019, the City Plan and Zoning Commission voted to approve a request from Nelson Development 1, LLC to vacate subsurface rights and air rights within East Grand Avenue right-of-way and East 4th Street right-of-way adjoining 418 East Grand Avenue, subject to the reservation of easements for all existing utilities in place, until such time that they are abandoned or relocated, and further subject to the condition that any development of the adjoining property that incorporates the vacated right-of-way shall comply with all site plan requirements; and

WHEREAS, Nelson Development 1, LLC, an Iowa limited liability company, has negotiated an agreement with the City of Des Moines for the purchase of 418 East Grand Avenue, and has further offered to the City the purchase price of \$12,630.00 for the purchase of a Permanent Easement for Subsurface Building Encroachment on City-owned Property and a Permanent Easement for Air Space Above City-Owned Property (hereinafter "Easements") within said portion of East Grand Avenue right-of-way and East 4th Street right-of-way adjoining 418 East Grand Avenue, Des Moines, Iowa, hereinafter more fully described, to allow for the permanent encroachment of building footings and balcony encroachments into the vacated right-of-way for the adjoining development of a 5-story multi-use building, which price reflects the fair market value of the Easements as determined by the City's Real Estate Division; and

WHEREAS, the closing on said Easements is contingent upon Nelson Development 1, LLC first closing on said development agreement for the purchase of 418 East Grand Ave; and

WHEREAS, 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 right-of-way and conveyance of the Easements within said City Property; and

WHEREAS, on September 23, 2019, by Roll Call No. 19-1485, 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 Subsurface Building Encroachment on City-owned Property and Permanent Easement for Air Space Above City-Owned Property be set for hearing on October 14, 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 portions of East Grand Avenue right-of-way and East 4th Street right-of-way located south of and west of and adjoining 418 East Grand Avenue, Des Moines, Iowa, and convey a Permanent Easement for Subsurface Building Encroachment on City-owned Property and 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

Date October 14, 2019

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 portions of East Grand Avenue right-of-way and East 4th Street right-of-way located south of and west of and adjoining 418 East Grand Avenue, Des Moines, Iowa and conveyance of a Permanent Easement for Subsurface Building Encroachment on City-owned Property and 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.
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, subject to the reservation of easements for all existing utilities in place, until such time that they are abandoned or relocated, and further subject to the condition that any development of the adjoining property that incorporates the vacated right-of-way shall comply with all site plan requirements, and said vacation is hereby approved:

Subsurface Area

A PART OF THE EAST 4TH STREET AND EAST GRAND AVENUE RIGHTS-OF-WAY LYING ADJACENT TO PARCEL 2018-107 AS RECORDED IN BOOK 17050, PAGE 789 OF THE POLK COUNTY RECORDER'S OFFICE, AND ALL IN EAST FORT DES MOINES, AN OFFICIAL PLAT, CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST OF CORNER OF SAID PARCEL 2018-107; THENCE NORTH 74°49'57" EAST ALONG THE SOUTH LINE OF SAID PARCEL 2018-107, A DISTANCE OF 141.33 FEET; THENCE SOUTH 15°12'42" EAST, 4.00 FEET; THENCE SOUTH 74°49'57" WEST, 144.33 FEET; THENCE NORTH 15°17'24" WEST, 173.91 FEET; THENCE NORTH 74°47'18" EAST, 3.00 FEET TO THE WEST LINE OF SAID PARCEL 2018-107; THENCE SOUTH 15°17'24" EAST ALONG SAID WEST LINE, 169.92 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.03 ACRES (1,087 S.F.);

AND

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Air Space Area

A PART OF THE EAST 4TH STREET AND EAST GRAND AVENUE RIGHTS-OF-WAY LYING ADJACENT TO PARCEL 2018-107 AS RECORDED IN BOOK 17050, PAGE 789 OF THE POLK COUNTY RECORDER'S OFFICE, AND ALL IN EAST FORT DES MOINES, AN OFFICIAL PLAT, CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

AREA "A"

BEGINNING AT THE SOUTHWEST OF CORNER OF SAID PARCEL 2018-107; THENCE NORTH 74°49'57" EAST ALONG THE SOUTH LINE OF SAID PARCEL 2018-107, A DISTANCE OF 138.01 FEET; THENCE SOUTH 15°10'03" EAST, 3.00 FEET; THENCE SOUTH 74°49'57" WEST, 141.00 FEET; THENCE NORTH 15°17'24" WEST, 53.00 FEET; THENCE NORTH 74°42'36" EAST, 3.00 FEET TO THE WEST LINE OF SAID PARCEL 2018-107; THENCE SOUTH 15°17'24" EAST ALONG SAID WEST LINE, 50.01 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.01 ACRES (573 S.F.) LYING BETWEEN ELEVATIONS 41.70 AND 42.70 FEET CITY OF DES MOINES VERTICAL DATUM (REFERENCE GROUND ELEVATION OF 25.70 FEET AT BUILDING SOUTHWEST ENTRANCE DOOR).

AREA "B"

COMMENCING AT THE SOUTHWEST OF CORNER OF SAID PARCEL 2018-107; THENCE NORTH 15°17'24" WEST ALONG THE WEST LINE OF SAID PARCEL 2018-107, A DISTANCE OF 85.17 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 74°42'36" WEST, 3.00 FEET; THENCE NORTH 15°17'24" WEST, 28.33 FEET; THENCE NORTH 74°42'36" EAST, 3.00 FEET; THENCE SOUTH 15°17'24" EAST, 28.33 FEET TO THE POINT OF BEGINNING AND CONTAINING 85 SQUARE FEET LYING BETWEEN ELEVATIONS 42.00 AND 43.00 FEET CITY OF DES MOINES VERTICAL DATUM (REFERENCE GROUND ELEVATION OF 26.00 FEET AT WEST ENTRANCE DOOR).

- 3. The proposed conveyance of a Permanent Easement for Subsurface Building Encroachment on City-owned Property and 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, and further subject to the condition that any development of the adjoining property that incorporates the vacated right-of-way shall comply with all site plan requirements, is hereby approved:

Grantee: Nelson Development 1, LLC

Consideration: \$12,630.00

Legal Description:

Subsurface Area

A PART OF THE VACATED EAST 4TH STREET AND VACATED EAST GRAND AVENUE RIGHTS-OF-WAY LYING ADJACENT TO PARCEL 2018-107 AS RECORDED IN BOOK 17050, PAGE 789 OF THE POLK COUNTY RECORDER'S OFFICE, AND ALL IN EAST FORT DES MOINES, AN OFFICIAL PLAT, CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

Date October 14, 2019

BEGINNING AT THE SOUTHWEST OF CORNER OF SAID PARCEL 2018-107; THENCE NORTH 74°49'57" EAST ALONG THE SOUTH LINE OF SAID PARCEL 2018-107, A DISTANCE OF 141.33 FEET; THENCE SOUTH 15°12'42" EAST, 4.00 FEET; THENCE SOUTH 74°49'57" WEST, 144.33 FEET; THENCE NORTH 15°17'24" WEST, 173.91 FEET; THENCE NORTH 74°47'18" EAST, 3.00 FEET TO THE WEST LINE OF SAID PARCEL 2018-107; THENCE SOUTH 15°17'24" EAST ALONG SAID WEST LINE, 169.92 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.03 ACRES (1,087 S.F.);

AND

Air Space Area

A PART OF THE VACATED EAST 4TH STREET AND VACATED EAST GRAND AVENUE RIGHTS-OF-WAY LYING ADJACENT TO PARCEL 2018-107 AS RECORDED IN BOOK 17050, PAGE 789 OF THE POLK COUNTY RECORDER'S OFFICE, AND ALL IN EAST FORT DES MOINES, AN OFFICIAL PLAT, CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

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4. The Mayor is authorized and directed to sign the Offer to Purchase and the Easements 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 Easements, together with a certified



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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 Easements, 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 Easements 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.

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, LAURA BAUMGARTNER, Acting 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.

Acting City Clerk



Roll Call Number

19-1486

Agenda Item Number

19A

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Date September 23, 2019

RECEIVE AND FILE COMMUNICATION FROM THE PLAN AND ZONING COMMISSION REGARDING REQUEST FROM NELSON DEVELOPMENT, LLC FOR VACATION OF A SEGMENT OF AIR RIGHTS AND SUBSURFACE RIGHTS IN EAST GRAND AVENUE AND EAST 4TH STREET ADJOINING 418 EAST GRAND AVENUE

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on September 5, 2019, its members voted 11-0 to recommend APPROVAL of a request from Nelson Development, LLC, represented by Alexander Grgurich (officer), to vacate the following segments of right-of-way, subject to (1) reservation of any necessary easements for all existing utilities in place until such time that they are abandoned or relocated at the applicant's expense; and (2) any development that incorporates the subject right-of-way shall comply with all site plan requirements:

- 1. Subsurface rights in the north 4.00 feet of East Grand Avenue and the east 3.00 feet of East 4th Street adjoining 418 East Grand Avenue to allow for footing encroachments; and
2. Air rights in the north 3.00 feet of East Grand Avenue and east 3.00 feet of East 4th Street adjoining 418 East Grand Avenue to allow for balcony encroachments.

MOVED by Gatto 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

(11-2019-1.19)

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, COLEMAN, GATTO, GRAY, MANDELBAUM, WESTERGAARD, and TOTAL (7 yeas).

MOTION CARRIED

APPROVED

J. M. Frankh Cownie 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



Date October 14, 2019
 Agenda Item 61
 Roll Call # _____

September 17, 2019

Honorable Mayor and City Council
 City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their September 5, 2019 meeting, the following action was taken regarding a request from Nelson Development, LLC (developer), 418 East Grand Avenue, represented by Alexander Grgurich (officer) for vacation of the following related to a proposed mixed-use project.

- A) Subsurface rights in the north 4.00 feet of East Grand Avenue and the east 3.00 feet of East 4th Street adjoining the subject property to allow for footing encroachments.
- B) Air rights in the north 3.00 feet of East Grand Avenue and east 3.00 feet of East 4th Street to allow for balcony encroachments.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 11-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Francis Boggus				X
Dory Briles				X
Abby Chungath	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			
Rocky Sposato	X			
Steve Wallace	X			
Greg Wattier	X			
Emily Webb	X			

RECOMMEND APPROVAL of the requested vacation of Right-of-Way, subject to the following conditions:

1. Reservation of any necessary easements for all existing utilities in place until such time that they are abandoned or relocated at the applicant's expense.
2. Any development that incorporates the subject Right-of-Way shall comply with all Site Plan requirements. (11-2019-1.19)

Written Responses

1 in Favor

0 in opposition

RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval of the requested vacation of Right-of-Way, subject to the following conditions:

1. Reservation of any necessary easements for all existing utilities in place until such time that they are abandoned or relocated at the applicant's expense.
2. Any development that incorporates the subject Right-of-Way shall comply with all Site Plan requirements.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The requested vacation of Right-of-Way (ROW) would accommodate footings and balconies for a 5-story building that would be constructed on the adjacent parcel. The proposed building would include commercial space on the first and second floors and a total of 105 dwelling units on the third, fourth, and fifth floors.
2. **Size of Site:** Grand Avenue: Approximately 4 feet by 160 feet (640 square feet).
East 4th Street: Approximately 3 feet by 180 feet (540 square feet).
3. **Existing Zoning (site):** "C-3B" Central Business Mixed-Use District, "CDO" Capitol Dominance Overlay District, "D-O" Downtown Overlay District, "GGP" Gambling Games Prohibition Overlay District, "PSO" Pedestrian-Oriented Sign Overlay District and "FSO" Freestanding Sign Overlay District.
4. **Existing Land Use (site):** Right-of-Way for East Grand Avenue and East 4th Street adjacent to a parcel that contains a parking lot.
5. **Adjacent Land Use and Zoning:**

North – "C-3B"; Use is a 3-level parking garage that is under construction.

South – “C-3B”; Uses are East Grand Avenue and a 6-story hotel (AC Hotel).

East – “C-3B”; Use is a 3-story commercial office building.

West – “D-R”; Uses are East 4th Street and a 6-story mixed-use building (E300).

6. General Neighborhood/Area Land Uses: The site is in an area of downtown known as the Historic East Village. The surrounding area contains a mix of multiple-family residential, office, retail, restaurant, and hotel uses.

7. Applicable Recognized Neighborhood(s): The subject property is in the Historic East Village Neighborhood. This neighborhood was notified of the Commission meeting by mailing of Preliminary Agenda on August 16, 2019, and by mailing of Final Agendas on August 30, 2019. Additionally, separate notifications of the hearing for this specific item were mailed on August 26, 2019 (10 days prior to the hearing) to the Historic East Village Neighborhood Association and to the primary titleholder on file with the Polk County Assessor for each property adjacent or directly across the street from the requested Right-of-Way.

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 Taylor Frame, 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 from “C-3” Central Business District to “C-3B” Central Business Mixed Use District classification. The following Overlay Districts are applicable to the subject property: 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 August 15, 2019, the Plan & Zoning Commission conditionally approved a Site Plan for “418 East Grand” (10-2020-7.06) under design guidelines in “C-3B” Districts and under design guidelines for multiple-family dwellings, to allow development of a 5-story building with 14,885 square feet of first floor retail area, 19,074 square feet of second floor office area and 105 multiple-family dwelling units.

The Site Plan was approved with the condition of that any encroachments within the adjoining Right-of-Way is subject to future vacation of the necessary Right-of-Way.

9. PlanDSM Land Use Plan Designation: Downtown Mixed Use, which allows mixed-use, high density residential uses, and compact combinations of pedestrian-oriented retail, office, residential, and parking in downtown. Development should include active uses (e.g. retail) on ground floor, particularly at key intersections.

10. Applicable Regulations: The Plan and Zoning 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:** While Staff is not aware of any existing utilities within the requested ROW, easements must be reserved for any existing utilities until such time that they are abandoned or relocated at the applicant's expense.
- 2. Site Plan Requirements:** The requested ROW would be developed in common with the adjoining parcel, for which the Plan & Zoning Commission conditionally approved a Site Plan on August 15, 2019 (10-2020-7.06). Any development that incorporates the subject ROW must comply with all Site Plan requirements.

SUMMARY OF DISCUSSION

Jacqueline Easley asked if any member of the audience or the commission desired to speak regarding the item. None were present or requested to speak.

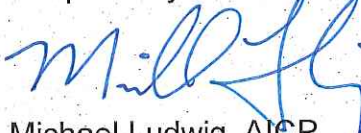
COMMISSION ACTION:

Will Page made a motion for approval of the requested vacation of Right-of-Way, subject to the following conditions:

1. Reservation of any necessary easements for all existing utilities in place until such time that they are abandoned or relocated at the applicant's expense.
2. Any development that incorporates the subject Right-of-Way shall comply with all Site Plan requirements.

Motion passed: 11-0

Respectfully submitted,



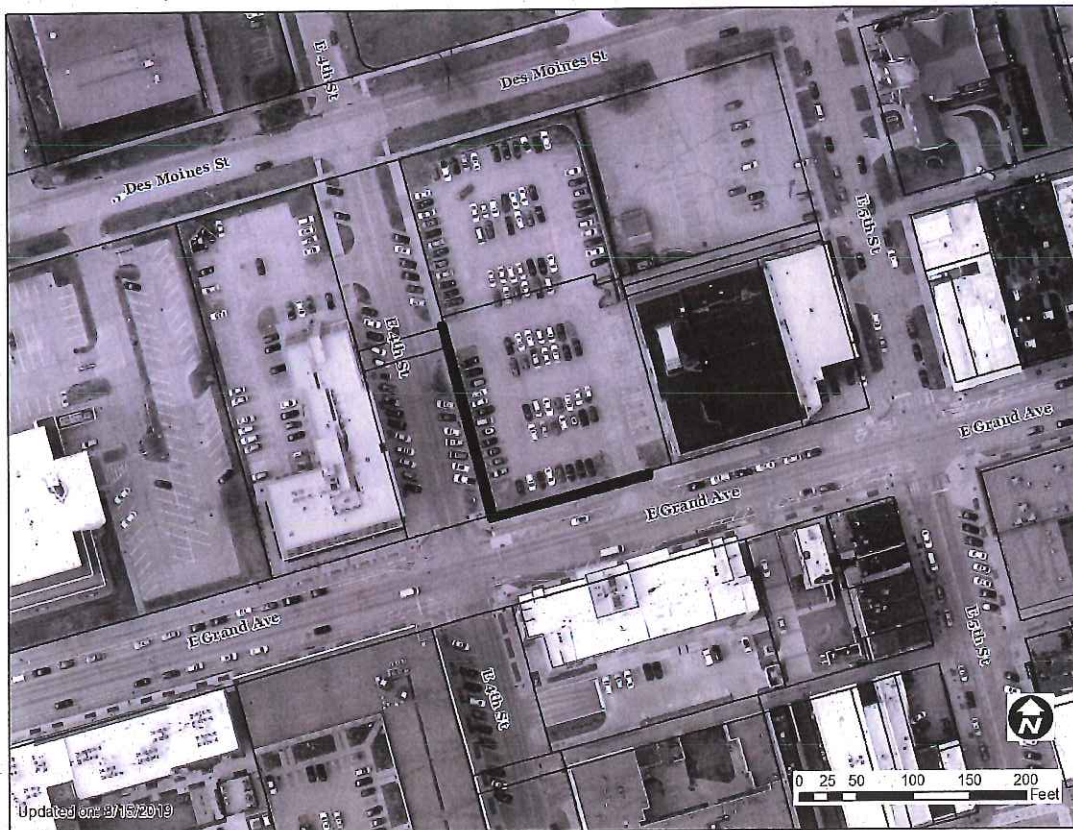
Michael Ludwig, AICP
Planning Administrator

MGL:tjh
Attachments

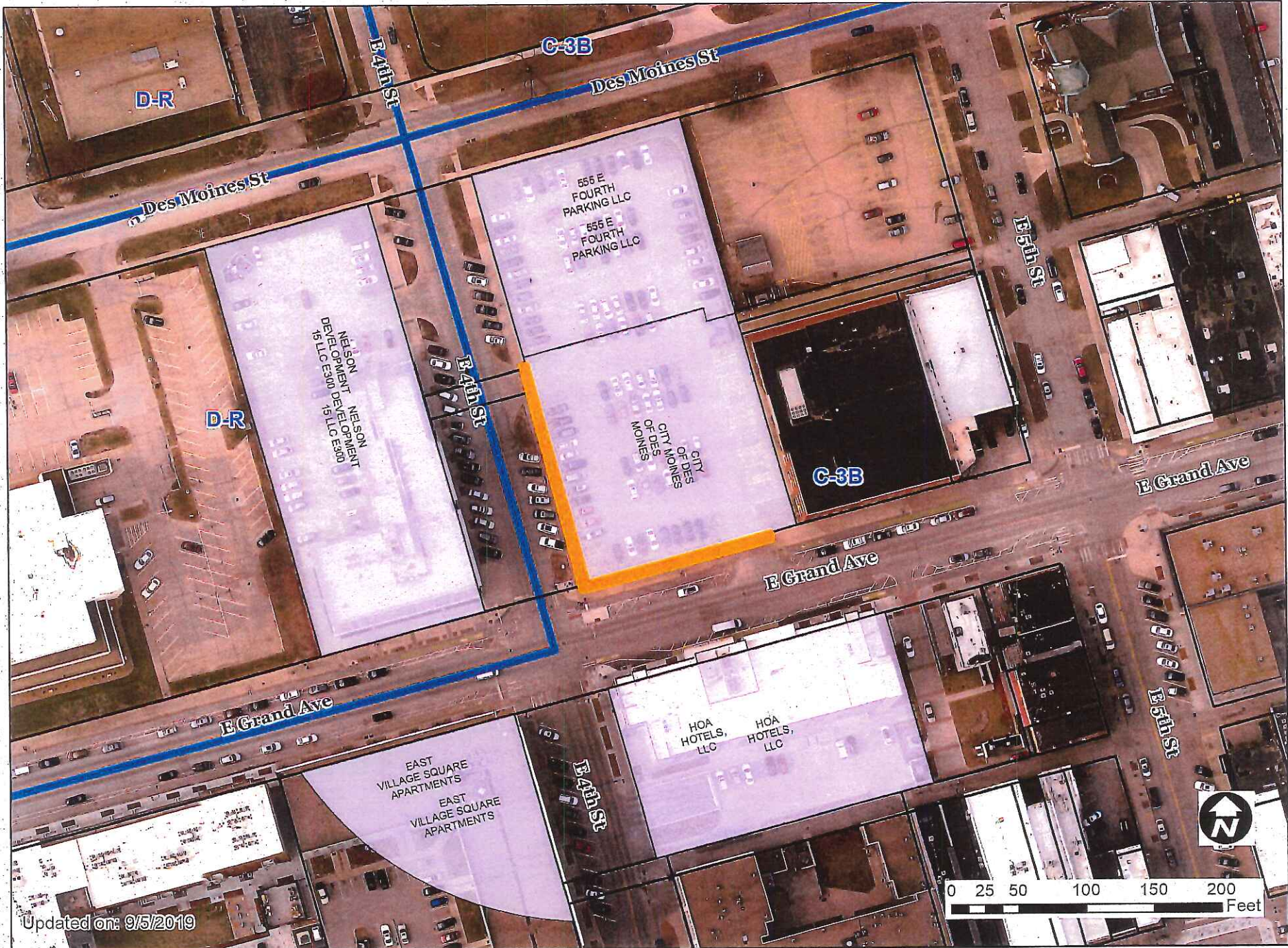
Nelson Development, LLC (developer) represented by Alexander Grgurich (officer) for property located at 418 East Grand Avenue.		File #		
		11-2019-1.19		
Description of Action	Vacation of the following related to a proposed mixed-use project: Part A) Subsurface rights in the north 4.00 feet of East Grand Avenue and the east 3.00 feet of East 4th Street adjoining the subject property to allow for footing encroachments. Part B) Air rights in the north 3.00 feet of East Grand Avenue and east 3.00 feet of East 4th Street to allow for balcony encroachments.			
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
Outside Area (200 feet)	1	0		
Within Subject Property				
Plan and Zoning Commission Action	Approval	X	Required 6/7 Vote of the City Council	Yes
	Denial			No

Nelson Development, LLC, 418 East Grand Avenue

11-2019-1.19



1 inch = 95 feet



Updated on: 9/5/2019

1 inch = 95 feet

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Item 11-2019-1.19

Date 08/29/19

I (am) (am not) in favor of the request.

SUBJECT PROPERTY

(Circle One)

Print Name ALEXANDER GRGURIC

RECEIVED
COMMUNITY DEVELOPMENT

Signature 

SEP 03 2019

Address 555 EAST FOURTH ST

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