

Date July 13, 2020

HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF A PORTION OF EAST MARTIN LUTHER KING, JR. PARKWAY RIGHT-OF-WAY LOCATED BETWEEN EAST 15TH STREET AND EAST 18TH STREET AND CONVEYANCE TO DES MOINES INDUSTRIAL, LLC FOR \$100.00

WHEREAS, on Thursday June 4, 2020, the City Plan and Zoning Commission voted to recommend approval of a City-initiated request for the vacation of a portion of East Martin Luther King, Jr. Parkway right-of-way located between East 15th Street and East 18th Street, subject to the reservation of easements for all existing utilities in place until such time as they are abandoned or relocated, and further subject to the following conditions:

1. City reserves the right to repurchase the vacated right-of-way in the future for \$1.00, if needed for the expansion of East M.L. King, Jr. Parkway;
2. City reserves an access easement over the vacated right-of-way for operation, maintenance, repair, construction, and replacement of the existing East M.L. King, Jr. Parkway roadway improvements, and for any expansion of East M.L. King, Jr. Parkway;
3. The purchaser and any successors shall be responsible for replacement of any landscaping that is damaged as a result of the City’s use of the vacated right-of-way, or any utility’s use of the vacated right-of-way; and

WHEREAS, upon further review, City staff has determined the third condition above is satisfied by the City’s right to repurchase the property pursuant to the first condition set forth above; and

WHEREAS, Des Moines Industrial, LLC, the owner and developer of the adjoining property at 301 Southeast 15th Street, has offered to the City of Des Moines, Iowa (“City”) the purchase price of \$100.00 for the purchase of the portion of East Martin Luther King, Jr. Parkway right-of-way located between East 15th Street and East 18th Street for incorporation into their adjoining property for creation of a landscaped buffer between East Martin Luther King, Jr. Parkway and the future railroad transloading facility to the north., 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 reservation by the City of the right to repurchase the vacated right-of-way or a portion thereof in the future for \$1.00, if needed for the expansion of East M.L. King, Jr. Parkway; and reservation by the City of an access easement over the vacated right-of-way for operation, maintenance, repair, construction, and replacement of the existing East M.L. King, Jr. Parkway roadway improvements, and for any expansion of East M.L. King, Jr. Parkway; and

WHEREAS, there is no known current or future public need for the street right-of-way proposed to be vacated and sold, and the City will not be inconvenienced by the vacation and sale of said property.

WHEREAS, on June 22, 2020 by Roll Call No. 20-1002, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed conveyance be set down for hearing on July 13, 2020, at 5:00 p.m., in the MSC Board Room, Richard A. Clark Municipal Service Center, 1551 E. Martin Luther King Jr. Parkway, Des Moines, Iowa, and given Mayor Cownie’s June 5, 2020 Proclamation Amendment placing certain requirements on gatherings of ten or more persons on public property and Section One of the Governor’s May 26, 2020 Proclamation strongly

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encouraging vulnerable Iowans to limit participation in gatherings of any size and any purpose during the COVID19 outbreak, the City Council has determined that a meeting at a physical place is impossible or impracticable and all Council meetings for the time being will be conducted electronically with the public allowed to attend electronically or telephonically; and

WHEREAS, due notice of said proposal to vacate and convey the street right-of-way was given to all necessary parties as provided by law, setting forth the time and place for hearing on said proposal, including how to participate telephonically or electronically; 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 and conveyance of a portion of East Martin Luther King, Jr. Parkway right-of-way located between East 15th Street and East 18th Street, 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 a portion of East Martin Luther King, Jr. Parkway right-of-way located between East 15th Street and East 18th Street, legally described as follows, and said vacation is hereby approved:

A PORTION OF RIGHT OF WAY DEDICATION TRACT A, AS SHOWN ON PLAT OF SURVEY RECORDED IN BOOK 16485, PAGE 889, IN THE OFFICE OF THE RECORDER, POLK COUNTY, IOWA, SAID PORTION BEING A PORTION OF LOTS 1 THRU 19, AND A PORTION OF VACATED RACCOON STREET ADJOINING LOTS 1 THRU 3, AND A PORTION OF VACATED SOUTHEAST 16TH STREET ADJOINING LOT 19, ALL IN COTTAGE ADDITION, AND A PORTION OF LOT 2, 3, 6 AND A PORTION OF THE VACATED NORTH/SOUTH ALLEY ADJOINING LOT 2, 3, AND 6, AND A PORTION OF THE VACATED RAILROAD, ALL IN CHOICE ADDITION TO DES MOINES, IOWA, AND A PORTION OF LOTS 34, 35, AND 36, BROOKS AND COS ADDITION TO THE CITY OF DES MOINES, AND A PORTION OF LOT 38, CAPITAL ADDITION, AND A PORTION OF FORMER CHICAGO, ROCK ISLAND, & PACIFIC RAILROAD, ALL OFFICIAL PLATS, ALL NOW FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF EAST MARTIN LUTHER KING JR PARKWAY AND SOUTHEAST 15TH STREET; THENCE NORTH 83°(DEGREES) 07'(MINUTES) 17'(SECONDS) EAST, 508.46 FEET ON THE NORTHERLY RIGHT OF WAY

Date July 13, 2020

LINE OF EAST MARTIN LUTHER KING PARKWAY; THENCE 614.07 FEET ON A 5115.00 FOOT RADIUS CURVE TO THE RIGHT WITH A CHORD BEARING NORTH 86°33'39" EAST, 613.71 FEET ON SAID NORTH RIGHT OF WAY LINE; THENCE NORTH 90°00'00" EAST, 775.21 FEET ON SAID NORTH RIGHT OF WAY LINE TO THE WEST RIGHT OF WAY LINE OF SOUTHEAST 18TH STREET; THENCE SOUTH 43°02'05" WEST, 58.83 FEET; THENCE NORTH 90°00'00" WEST, 671.03 FEET; THENCE 887.57 FEET ON A 7527.00 FOOT RADIUS CURVE TO THE LEFT WITH A CHORD BEARING SOUTH 86°37'19" WEST, 887.06 FEET; THENCE SOUTH 88°49'59" WEST, 80.56 FEET; THENCE SOUTH 83°07'17" WEST, 180.15 FEET; THENCE NORTH 61°20'28" WEST, 41.62 FEET TO THE EAST RIGHT OF WAY LINE OF SOUTHEAST 15TH STREET; THENCE NORTH 00°03'46" EAST, 0.81 FEET ON SAID EAST RIGHT OF WAY LINE TO THE POINT OF BEGINNING CONTAINING (72,704 SQUARE FEET) 1.67 ACRES, MORE OR LESS.

3. The proposed sale of such vacated street right-of-way, as legally described below and to the grantee and for the consideration identified below, subject to reservation of easements therein, and further subject to the following conditions:

1. City reserves the right to repurchase the vacated right-of-way or a portion thereof in the future for \$1.00, if needed for the expansion of East M.L. King, Jr. Parkway;
2. City reserves an access easement over the vacated right-of-way for operation, maintenance, repair, construction, and replacement of the existing East M.L. King, Jr. Parkway roadway improvements, and for any expansion of East M.L. King, Jr. Parkway;

and said conveyance is hereby approved:

Grantee: Des Moines Industrial, LLC

Consideration: \$100.00

Legal Description:

A PORTION OF RIGHT OF WAY DEDICATION TRACT A, AS SHOWN ON PLAT OF SURVEY RECORDED IN BOOK 16485, PAGE 889, IN THE OFFICE OF THE RECORDER, POLK COUNTY, IOWA, SAID PORTION BEING A PORTION OF LOTS 1 THRU 19, AND A PORTION OF VACATED RACCOON STREET ADJOINING LOTS 1 THRU 3, AND A PORTION OF VACATED SOUTHEAST 16TH STREET ADJOINING LOT 19, ALL IN COTTAGE ADDITION; AND A PORTION OF LOT 2, 3, 6 AND A PORTION OF THE VACATED NORTH/SOUTH ALLEY ADJOINING LOT 2, 3, AND 6, AND A PORTION OF THE VACATED RAILROAD, ALL IN CHOICE ADDITION TO DES MOINES, IOWA; AND A PORTION OF LOTS 34, 35, AND 36, BROOKS AND COS ADDITION TO THE CITY OF DES MOINES; AND A PORTION OF LOT 38, CAPITAL ADDITION; AND A PORTION OF FORMER CHICAGO, ROCK ISLAND, & PACIFIC RAILROAD; ALL OFFICIAL PLATS, ALL NOW FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

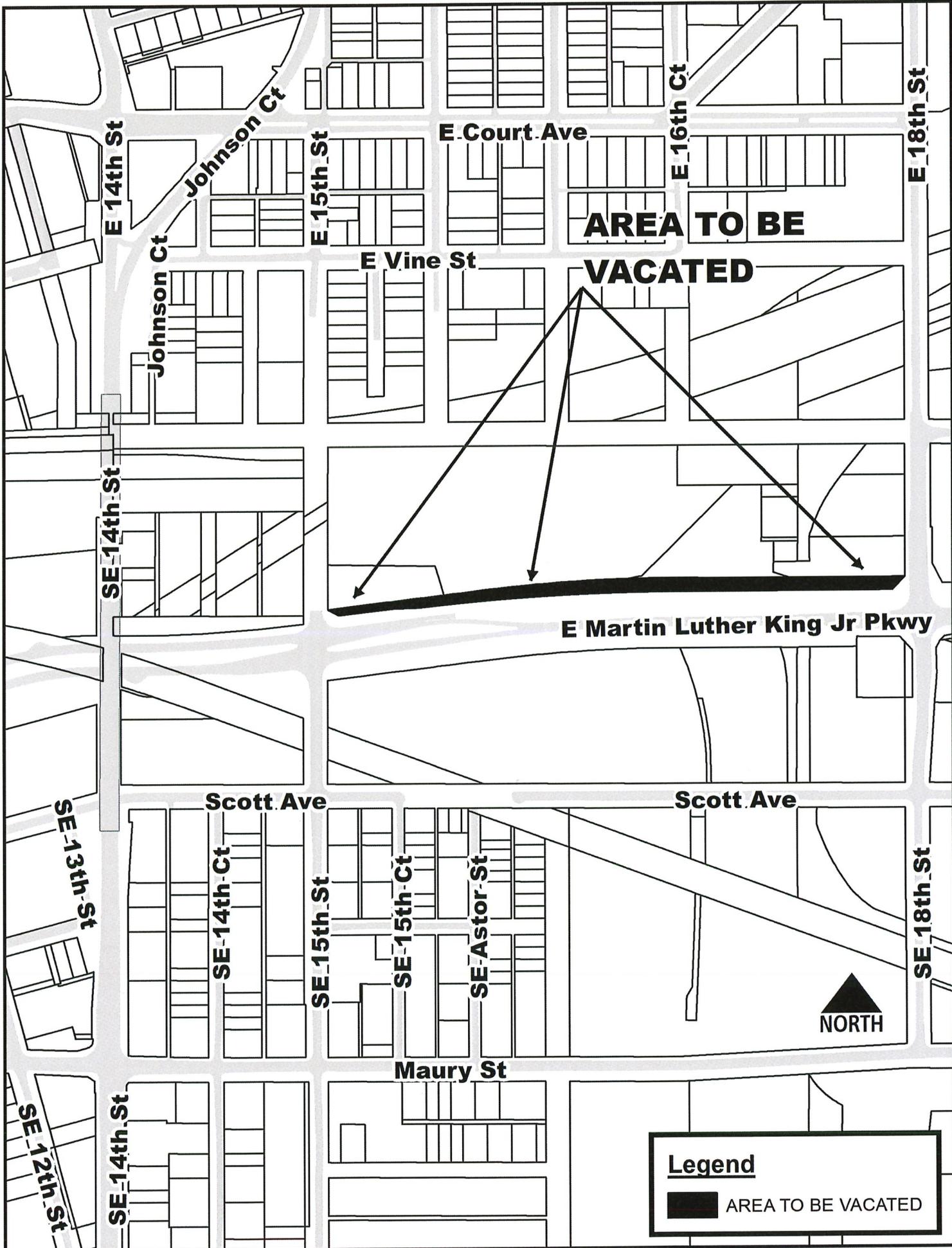
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LINE OF EAST MARTIN LUTHER KING PARKWAY; THENCE 614.07 FEET ON A 5115.00 FOOT RADIUS CURVE TO THE RIGHT WITH A CHORD BEARING NORTH 86°33'39" EAST, 613.71 FEET ON SAID NORTH RIGHT OF WAY LINE; THENCE NORTH 90°00'00" EAST, 775.21 FEET ON SAID NORTH RIGHT OF WAY LINE TO THE WEST RIGHT OF WAY LINE OF SOUTHEAST 18TH STREET; THENCE SOUTH 43°02'05" WEST, 58.83 FEET; THENCE NORTH 90°00'00" WEST, 671.03 FEET; THENCE 887.57 FEET ON A 7527.00 FOOT RADIUS CURVE TO THE LEFT WITH A CHORD BEARING SOUTH 86°37'19" WEST, 887.06 FEET; THENCE SOUTH 88°49'59" WEST, 80.56 FEET; THENCE SOUTH 83°07'17" WEST, 180.15 FEET; THENCE NORTH 61°20'28" WEST, 41.62 FEET TO THE EAST RIGHT OF WAY LINE OF SOUTHEAST 15TH STREET; THENCE NORTH 00°03'46" EAST, 0.81 FEET ON SAID EAST RIGHT OF WAY LINE TO THE POINT OF BEGINNING CONTAINING (72,704 SQUARE FEET) 1.67 ACRES, MORE OR LESS.

SUBJECT TO ANY AND ALL EASEMENTS, RESTRICTIONS AND COVENANTS OF RECORD.

4. The Mayor is authorized and directed to sign the Offer to Purchase and Quit Claim Deed for the conveyance as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.
5. The City Manager is authorized to sign any minor and non-substantial amendments to the purchase agreement and is further authorized to grant any temporary rights of entry for construction-related activities prior to closing.
6. 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 Quit Claim Deed, 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.
7. The Real Estate Division Manager is authorized and directed to forward the original of the Quit Claim Deed, 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.
8. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division Manager shall mail the original of the Quit Claim Deed and a copy 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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★ Roll Call Number

20-1003

Agenda Item Number

34A

Date June 22, 2020

RECEIVE AND FILE COMMUNICATION FROM THE PLAN AND ZONING COMMISSION REGARDING CITY-INITIATED REQUEST FOR VACATION OF SEGMENT OF EAST MARTIN LUTHER KING, JR. PARKWAY RIGHT-OF-WAY SOUTH OF AND ADJOINING 301 SOUTHEAST 15TH STREET

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on June 4, 2020, its members voted 13-0 to recommend APPROVAL of a City-initiated request to vacate an approximately 48-foot wide segment of East Martin Luther King, Jr. Parkway right-of-way south of and adjoining 301 Southeast 15th Street between Southeast 15th Street and Southeast 18th Street, to allow developers of the transload facility at 301 Southeast 15th Street to have additional land for frontage buffer plantings in accordance with Des Moines Municipal Code Section 135-7.7, subject to the following conditions:

- 1. Retention of an easement to accommodate any existing utilities in place, and all future utilities that require use of the vacated right-of-way.
2. City reserves the right to repurchase the vacated right-of-way in the future for \$1.00, if needed for the expansion of East Martin Luther King, Jr. Parkway.
3. City reserves an access easement over the vacated right-of-way for operation, maintenance, repair, construction, and replacement of the existing East Martin Luther King, Jr. Parkway roadway improvements, and for any expansion of East Martin Luther King, Jr. Parkway.
4. The purchaser and any successors shall be responsible for replacement of any landscaping that is damaged as a result of the City's use of the vacated right-of-way, or any utility's use of the vacated right-of-way.

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:

/s/ Glenna K. Frank
Glenna K. Frank, Assistant City Attorney

(11-2020-1.05)

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

CERTIFICATE

I, P. KAY CMELIK, 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.

J. M. Franklin Cownie Mayor

P. Kay Cmelik City Clerk

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June 16, 2020

Date July 13, 2020

Agenda Item _____

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 June 4, 2020 meeting, the following action was taken regarding a City initiated request for vacation of an approximately 48-foot wide segment of East M.L. King Jr. Parkway Right-Of-Way south of and adjoining property located at 301 Southeast 15th Street between Southeast 15th Street and Southeast 18th Street.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 13-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Francis Boggus	X			
Dory Briles	X			
Abby Chungath	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 City initiated vacation subject to the following conditions:

1. Retention of an easement to accommodate any existing utilities in place, and all future utilities that require use of the vacated ROW.
2. City reserves the right to repurchase the vacated ROW in the future for \$1, if needed for the expansion of East M.L. King, Jr. Parkway.
3. City reserves an access easement over the vacated ROW for operation, maintenance, repair, construction, and replacement of the existing East M.L. King, Jr. Parkway roadway improvements, and for any expansion of East M.L. King, Jr. Parkway.

The purchaser and any successors shall be responsible for replacement of any landscaping that is damaged as a result of the City’s use of the vacated ROW, or any utility’s use of the vacated ROW.

(11-2020-1.05)

Written Responses

0 in Favor

0 in opposition

RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval of the City initiated vacation subject to the following conditions:

1. Retention of an easement to accommodate any existing utilities in place, and all future utilities that require use of the vacated ROW.
2. City reserves the right to repurchase the vacated ROW in the future for \$1, if needed for the expansion of East M.L. King, Jr. Parkway.
3. City reserves an access easement over the vacated ROW for operation, maintenance, repair, construction, and replacement of the existing East M.L. King, Jr. Parkway roadway improvements, and for any expansion of East M.L. King, Jr. Parkway.

The purchaser and any successors shall be responsible for replacement of any landscaping that is damaged as a result of the City’s use of the vacated ROW, or any utility’s use of the vacated ROW.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. Purpose of Request: The proposed vacation would allow the developers of the adjoining property at 301 Southeast 15th Street to have additional land for frontage buffer plantings in accordance with Chapter 135 Section 135-7.7.

2. Size of Site: Approximately 91,200 square feet (2.1 acres).

3. Existing Zoning (site): “I2” Industrial District.

4. Existing Land Use (site): Undeveloped street ROW.

5. Adjacent Land Use and Zoning:

North – “I2”, Use is undeveloped land and railroad proposed for multimodal transloading facility.

South – Municipal Services Center “PUD” & “I2”; Uses are City of Des Moines Richard A. Clark Municipal Services Center, ACE Logistics Trucking Company, and warehousing.

6. General Neighborhood/Area Land Uses: The subject property is in a primarily industrial area north of the East M.L. King Jr. Parkway and east of Southeast 14th Street.

- 7. **Applicable Recognized Neighborhood(s):** The subject property is not in a recognized neighborhood. All Neighborhood Associations were notified of the public hearing by mailing of the Preliminary Agenda on May 15, 2020. Notifications of the hearing for this specific item were mailed on May 22, 2020 (13 days prior to public hearing due to Memorial Day holiday) to the primary titleholder on file with the Polk County Assessor for each property adjacent or directly across the street from the requested ROW. All agendas are mailed to the primary contact(s) designated by the recognized neighborhood association to the City of Des Moines Neighborhood Development Division on the date of the mailing. A Final Agenda was mailed to the Neighborhood Associations on May 29, 2020.
- 8. **Relevant Zoning History:** On March 22, 2020 by Ordinance No. 15,878 the City Council rezoned the adjoining property to the north from "I1" Industrial District to "I2" Industrial District.
- 9. **PlanDSM: Creating Our Tomorrow Plan Land Use Plan Designation:** Industrial.
- 10. **Applicable Regulations:** Taking into consideration the criteria set forth in Chapter 18B of the Iowa Code, the Commission 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 public storm and sanitary sewer mains within the requested ROW. Easements must be reserved for any utilities that may exist until such time that they are abandoned or relocated at the applicant's expense.
- 2. **Traffic/Access:** The proposed requested ROW is adjoining the East M.L. King, Jr. Parkway/Southeast Connector. The request would reserve an adequate amount of ROW width for future construction of a planned double westbound segment to the existing Southeast Connector facility. The requested vacation would not impede any existing access to adjoining property.
- 3. **City Real Estate Comments:** The City Real Estate Manager has requested the following conditions with the vacation of the requested ROW:
 - A) Retention of an easement to accommodate any existing utilities in place, and all future utilities that require use of the vacated ROW.
 - B) City reserves the right to repurchase the vacated ROW in the future for \$1, if needed for the expansion of East M.L. King, Jr. Parkway.
 - C) City reserves an access easement over the vacated ROW for operation, maintenance, repair, construction, and replacement of the existing East M.L. King, Jr. Parkway roadway improvements, and for any expansion of East M.L. King, Jr. Parkway.
 - D) The purchaser and any successors shall be responsible for replacement of any landscaping that is damaged as a result of the City's use of the vacated ROW, or any utility's use of the vacated ROW.

SUMMARY OF DISCUSSION

Erik Lundy suggested Item #5, #7 and #8 can be moved the consent as the applicant agrees with staff recommendations.

Jann Freed asked if any members of the public or the Commission had any concerns about moving Items #5, #7 and #8 to the consent agenda. None requested to speak.

John "Jack" Hilmes made a motion to move Items #5, #7 and #8 to the consent agenda. Motion Carried 13-0

Jann Freed asked if any members of the public or the Commission wanted to speak regarding consent agenda Items #1, #2, #5, #7 or #8. None requested to speak.

COMMISSION ACTION:

John "Jack" Hilmes made a motion for approval of the City initiated vacation subject to the following conditions:

- 1. Retention of an easement to accommodate any existing utilities in place, and all future utilities that require use of the vacated ROW.
- 2. City reserves the right to repurchase the vacated ROW in the future for \$1, if needed for the expansion of East M.L. King, Jr. Parkway.
- 3. City reserves an access easement over the vacated ROW for operation, maintenance, repair, construction, and replacement of the existing East M.L. King, Jr. Parkway roadway improvements, and for any expansion of East M.L. King, Jr. Parkway.

The purchaser and any successors shall be responsible for replacement of any landscaping that is damaged as a result of the City's use of the vacated ROW, or any utility's use of the vacated ROW.

Motion passed: 13-0

Respectfully submitted,



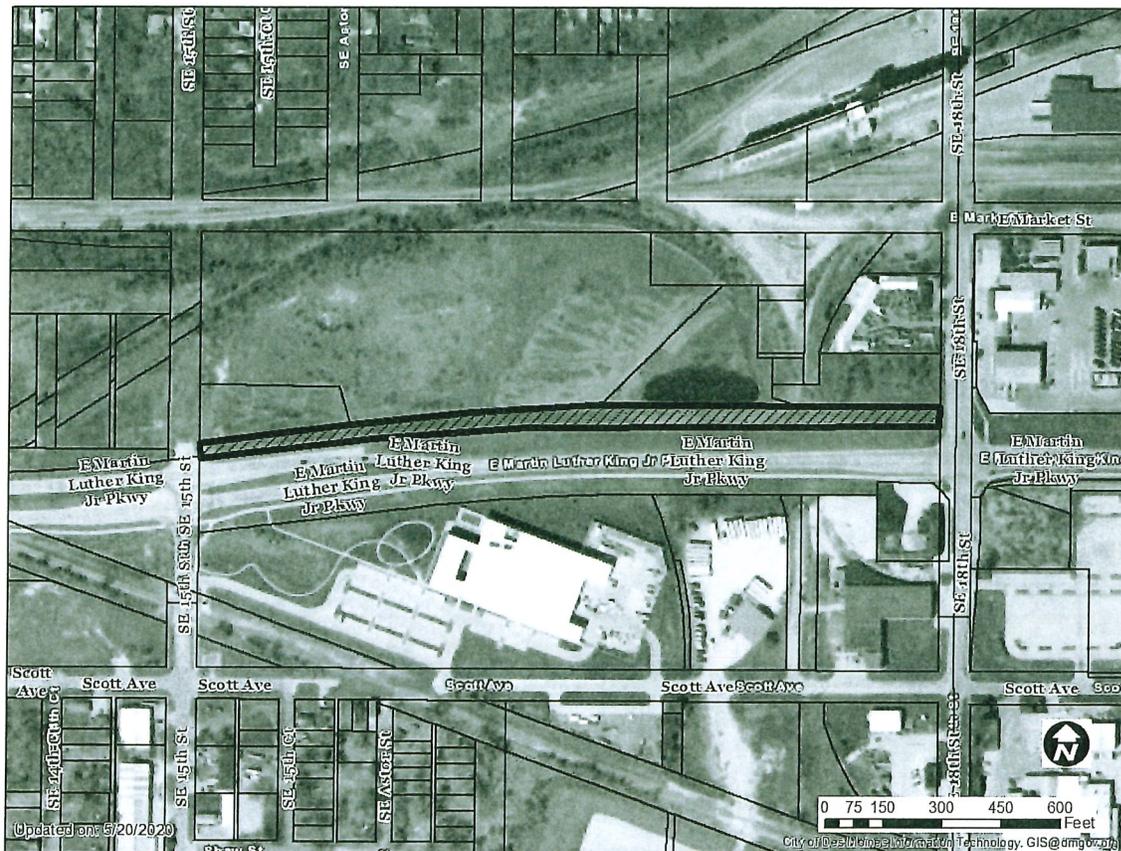
Michael Ludwig, AICP
Planning Administrator

MGL:tjh
Attachments

City initiated request for property located at 301 Southeast 15th Street.		File #		
		11-2020-1.05		
Description of Action	Vacation of an approximately 48-foot wide segment of East M.L. King Jr. Parkway Right-Of-Way south of and adjoining the subject property between Southeast 15th Street and Southeast 18th Street.			
PlanDSM Future Land Use	Current: Industrial. Proposed: N/A.			
Mobilizing Tomorrow Transportation Plan	No planned improvements.			
Current Zoning District	"I2" Industrial District.			
Proposed Zoning District	N/A.			
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition
Outside Area (200 feet)	0	0		
Within Subject Property				
Plan and Zoning Commission Action	Approval	X	Required 6/7 Vote of the City Council	Yes
	Denial			No

City initiated, Vicinity of 301 Southeast 15th Street

11-2020-1.05



1 inch = 287 feet

