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**Date** ..... March 8, 2021 .....

.....  
Page 1

**HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF A  
SEGMENT OF EAST 38<sup>TH</sup> STREET RIGHT-OF-WAY BETWEEN HUBBELL AVENUE  
AND EAST DOUGLAS AVENUE AND CONVEYANCE TO GIT-N-GO CONVENIENCE  
STORES, INC. FOR \$69,440**

**WHEREAS**, the Hubbell Avenue Improvements – East 33<sup>rd</sup> Street to East 38<sup>th</sup> Street Project required the partial acquisition and demolition of the Git-N-Go convenience store located at 3765 Hubbell Avenue; and

**WHEREAS**, as part of the terms of the purchase agreement with Git-N-Go Convenience Stores, Inc., the City agreed to present an offer to vacate and convey a dead-end segment of E. 38<sup>th</sup> Street adjoining their remaining property, subject to all statutory requirements and processes for approval, in order to provide Git-N-Go with an adequate site to rebuild a new convenience store after completion of the City’s project; and

**WHEREAS**, on February 4, 2021, the City Plan and Zoning Commission voted to recommend approval of a City-initiated request to vacate a segment of East 38<sup>th</sup> Street from Hubbell Avenue to East Douglas Avenue (“Property”), subject to the reservation of easements for existing utilities in place until such time as they are abandoned or relocated at the purchaser’s expense; and

**WHEREAS**, Git-N-Go Convenience Stores, Inc., the owner of 3765 Hubbell Avenue, which is located west of and adjoining the Property, has executed the offer presented by the City of Des Moines, Iowa (“City”) for the purchase of the portion of vacated East 38<sup>th</sup> Street adjoining its property for the purchase price of \$69,440, 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 of a no-build easement over a portion of the Property, which price reflects the restricted fair market value of said portion of street right-of-way as determined by an independent appraisal approved by the City’s Real Estate Division; 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; and

**WHEREAS**, on February 22, 2021, by Roll Call No. 21-0263, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation and conveyance of the alley right-of-way be set for hearing on March 8, 2021, at 5:00 p.m., in the City Council Chambers, Richard A. Clark Municipal Service Center, 1551 E. Martin Luther King Jr. Parkway, Des Moines, Iowa, and given Mayor Cownie’s March 15, 2020 Proclamation, as amended, prohibiting indoor gatherings of ten or more persons on public property, Section One of the Governor’s February 5, 2021 Proclamation strongly encouraging vulnerable Iowans to limit participation in gatherings of any size and any purpose during the COVID19 outbreak, and further given Section 108 of the Governor’s February 5, 2021 Proclamation suspending the regulatory provisions of Iowa Code §§ 21.8, 26.12, and 414.12, or any other statute imposing a requirement to hold a public meeting or hearing, and further given the City Manager’s decision to delay the opening of City buildings to the public due to the recent

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upwards spikes of positive COVID-19 cases and hospitalizations in Polk County and the need to maintain safety; it is impossible and impractical to have physical public access to the meeting location and the meeting will be conducted electronically with electronic public access to the meeting location; and

**WHEREAS**, due notice of said proposal to vacate and convey the street right-of-way was given as provided by law, setting forth the time and place for hearing on said proposal, including how to participate electronically and telephonically; 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 street 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 a segment of East 38th Street right-of-way from Hubbell Avenue to East Douglas Avenue, legally described as follows, and said vacation is hereby approved:

A PART OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4, SECTION 20, TOWNSHIP 79 NORTH, RANGE 23 WEST OF THE 5TH P.M., NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 20; THENCE NORTH 0°(DEGREES) 21'(MINUTES) 31"(SECONDS) EAST ALONG THE EAST LINE OF SAID SECTION, 25.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89°38'16" WEST ALONG A LINE BEING 25.00 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID SECTION, 30.00 FEET; THENCE NORTH 0°21'31" EAST ALONG A LINE BEING 30.00 FEET WEST OF AND PARALLEL TO SAID EAST LINE, 230.46 FEET TO A POINT BEING 53.00 FEET SOUTHEASTERLY OF AND PERPENDICULAR TO THE CENTERLINE OF HUBBELL AVENUE, AS PRESENTLY ESTABLISHED; THENCE NORTH 54°52'02" EAST ALONG A LINE BEING 53.00 FEET SOUTHEASTERLY OF AND PARALLEL TO SAID CENTERLINE, 36.85 FEET TO A POINT ON THE EAST LINE OF SAID SECTION; THENCE SOUTH 0°21'31" WEST ALONG SAID EAST LINE, 251.48 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.17 ACRES (7229 SQ. FT.)

AND

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A PART OF LOT "B", AQUARIUS, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT "B"; THENCE NORTH 0°(DEGREES) 21'(MINUTES) 31"(SECONDS) EAST ALONG THE WEST LINE OF SAID LOT, 25.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 0°21'31" EAST ALONG SAID WEST LINE, 251.48 FEET TO A POINT BEING 53.00 FEET SOUTHEASTERLY OF AND PERPENDICULAR TO THE CENTERLINE OF HUBBELL AVENUE, AS PRESENTLY ESTABLISHED; THENCE NORTH 54°52'02" EAST ALONG A LINE BEING 53.00 FEET SOUTHEASTERLY OF AND PARALLEL TO SAID CENTERLINE, 40.53 FEET TO A POINT ON THE EAST LINE OF SAID LOT "B"; THENCE SOUTH 0°21'31" WEST ALONG SAID EAST LINE, 274.85 FEET TO THE NORTHWEST CORNER OF LOT "A" OF SAID AQUARIUS; THENCE NORTH 89°55'22" WEST ALONG THE EXTENDED NORTH LINE OF SAID LOT "A", 33.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.20 ACRES (8646 SQ. FT.).

3. The proposed sale of such vacated street right-of-way, as legally described below, to Git-N-Go Convenience Stores, Inc. for \$69,440, subject to reservation of easements therein, and further subject to the reservation of a no-build easement over a portion of the Property, is hereby approved:

A PART OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4, SECTION 20, TOWNSHIP 79 NORTH, RANGE 23 WEST OF THE 5TH P.M., NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 20; THENCE NORTH 0°(DEGREES) 21'(MINUTES) 31"(SECONDS) EAST ALONG THE EAST LINE OF SAID SECTION, 25.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89°38'16" WEST ALONG A LINE BEING 25.00 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID SECTION, 30.00 FEET; THENCE NORTH 0°21'31" EAST ALONG A LINE BEING 30.00 FEET WEST OF AND PARALLEL TO SAID EAST LINE, 230.46 FEET TO A POINT BEING 53.00 FEET SOUTHEASTERLY OF AND PERPENDICULAR TO THE CENTERLINE OF HUBBELL AVENUE, AS PRESENTLY ESTABLISHED; THENCE NORTH 54°52'02" EAST ALONG A LINE BEING 53.00 FEET SOUTHEASTERLY OF AND PARALLEL TO SAID CENTERLINE, 36.85 FEET TO A POINT ON THE EAST LINE OF SAID SECTION; THENCE SOUTH 0°21'31" WEST ALONG SAID EAST LINE, 251.48 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.17 ACRES (7229 SQ. FT.)

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THE EAST LINE OF SAID LOT "B"; THENCE SOUTH 0°21'31" WEST ALONG SAID EAST LINE, 274.85 FEET TO THE NORTHWEST CORNER OF LOT "A" OF SAID AQUARIUS; THENCE NORTH 89°55'22" WEST ALONG THE EXTENDED NORTH LINE OF SAID LOT "A", 33.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.20 ACRES (8646 SQ. FT.).

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. 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.
6. 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.
7. 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.
8. The proceeds from this sale shall be deposited to the Hubbell Avenue Improvements – East 33<sup>rd</sup> Street to East 38<sup>th</sup> Street Project, ST259.

(Council Communication No. 21 - 102)

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

APPROVED AS TO FORM:

/s/ Lisa A. Wieland

Lisa A. Wieland, Assistant City Attorney

| COUNCIL ACTION | YEAS | NAYS | PASS | ABSENT |
|----------------|------|------|------|--------|
| COWNIE         |      |      |      |        |
| BOESEN         |      |      |      |        |
| GATTO          |      |      |      |        |
| GRAY           |      |      |      |        |
| MANDELBAUM     |      |      |      |        |
| VOSS           |      |      |      |        |
| WESTERGAARD    |      |      |      |        |
| TOTAL          |      |      |      |        |

MOTION CARRIED

APPROVED

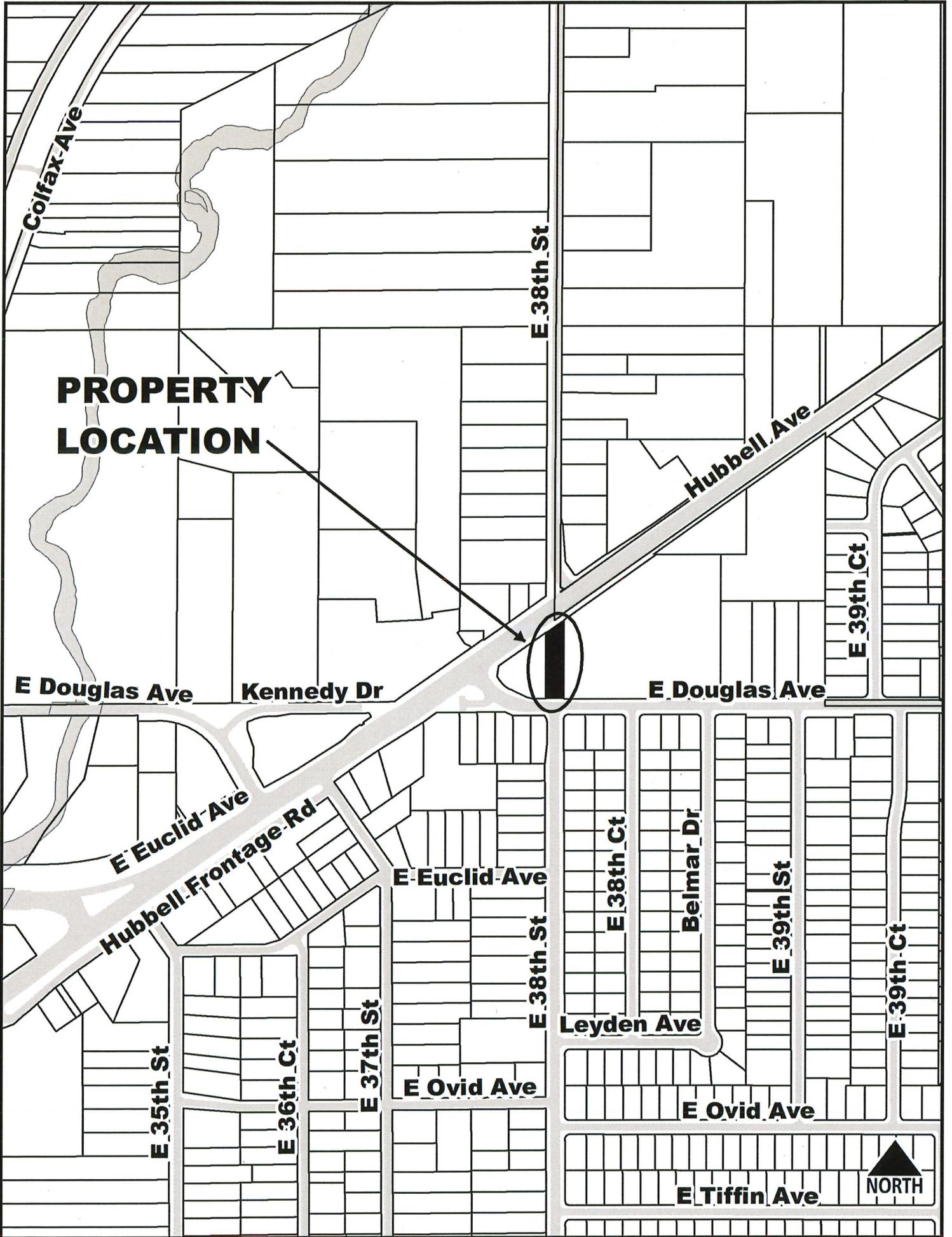
\_\_\_\_\_  
Mayor

**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.

\_\_\_\_\_  
City Clerk



February 16, 2021

Date March 8, 2021

Agenda Item 58

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 February 4, 2021 meeting, the following action was taken regarding a City initiated request from Phil Wageman (Real Estate Manager) for vacation of a segment of East 38<sup>th</sup> Street from Hubbell Avenue to East Douglas Ave, to allow it to be assembled with property at 3765 Hubbell Avenue owned by Git-N-Go Convenience Stores, Inc. as part of previous agreement with the owner for acquisition of a part of that property for use in the relocation of East Douglas Avenue project at Hubbell Avenue.

**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   |      |      |        |
| Kayla Berkson      | X   |      |      |        |
| Jann Freed         | X   |      |      |        |
| Johnny Alcivar     | 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   |      |      |        |

**APPROVAL** of the requested right-of-way vacation subject to the reservation of easements for any existing utilities until such time that they are abandoned or relocated at the applicant's expense. (11-2021-1.01)

Written Responses

2 in Favor

0 in opposition

**STAFF RECOMMENDATION TO THE P&Z COMMISSION**

Staff recommends approval of the requested right-of-way vacation subject to the reservation of easements for any existing utilities until such time that they are abandoned or relocated at the applicant's expense.

**STAFF REPORT TO THE PLANNING COMMISSION**

**I. GENERAL INFORMATION**

- 1. **Purpose of Request:** On May 22, 2017, the City Council voted to authorize the acquisition of property interests for the Hubbell Avenue Improvements - East 33rd Street to East 38th Street Project ("Project"). The Project required the acquisition of a partial fee, access rights, a permanent easement and a temporary easement from Git-N-Go Convenience Stores, Inc. at 3735 and 3765 Hubbell Avenue.

The City's acquisition required the purchase and removal of the former Git-N-Go convenience store at this location and did not leave an adequate amount of remaining land to replace the convenience store. The project also resulted in the permanent closure and removal of East 38 Street between the north right-of-way line of East Douglas Avenue and the south right-of-way line of Hubbell Avenue, allowing for the vacation and conveyance of this section of East 38th Street to Git-N-Go after the Project was completed to construct a replacement convenience store.

As part of the negotiated purchase agreement with Git-N-Go, the City agreed to vacate and convey the above referenced portion of East 38th Street to create a parcel of land comparable in size to Git-N-Go's original property before the Project, thus providing Git-N-Go with an adequate site to replace their convenience store.

- 2. **Size of Site:** 0.20 acres or 8,646 square feet.
- 3. **Existing Zoning (site):** "MX3" Mixed Use District.
- 4. **Existing Land Use (site):** Unpaved street right-of-way.
- 5. **Adjacent Land Use and Zoning:**

**North** – “MX3”; Uses are a self-service car wash facility and excess land owned by the City because of the street project discussed in Section I, paragraph 1 of this report.

**South** – “N3a”, Uses are one household dwellings.

**East** – “PUD”; Use is a shelter for the homeless for approximately 100 women and children including classroom, office, and daycare space operated by Hope Ministries.

**West** – “PUD”; Use is a multiple household residential development.

6. **General Neighborhood/Area Land Uses:** The subject right-of-way is located along the south side of the Hubbell Avenue corridor. This segment of Hubbell Avenue contains a mix of commercial uses and multiple household dwelling. The neighborhood to the south consists primary of one household dwellings.
7. **Applicable Recognized Neighborhood(s):** The subject properties are in the Sheridan Gardens Neighborhood. All recognized neighborhood associations were notified of the meeting by mailing of the Preliminary Agenda on January 15, 2021 and by mailing of the Final Agenda on January 29, 2021. Additionally, separate notifications of the hearing for this specific item were mailed on January 25, 2021 (10 days prior) to the applicable neighborhood associations and to the primary titleholder on file with the Polk County Assessor for each property adjoining the requested public Right-of-Way. The Sheridan Gardens Neighborhood Association mailings were sent to Kurt Lee, 3507 East 39<sup>th</sup> Court, Des Moines, IA 50317.
8. **Relevant Zoning History:** None.
9. **PlanDSM: Creating Our Tomorrow Land Use Plan Designation:** Commercial Mixed Use.
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:** Easements must be reserved for any existing utilities until such time that they are abandoned or relocated at the applicant’s expense.
2. **Traffic/Access:** The requested vacations would not negatively impact access to private properties or traffic patterns.
3. **Planning and Design Ordinance:** Any future redevelopment of the subject right-of-way by Git-N-Go Convenience Stores, Inc. or others must comply with all applicable Site Plan and Design regulations of the Chapter 135 Planning and Design Ordinance.

**SUMMARY OF DISCUSSION**

Jann Freed asked if any member of the public or the commission desired to speak on the item. No one requested to speak.

**COMMISSION ACTION:**

Dory Briles made a motion for approval of the requested right-of-way vacation subject to the reservation of easements for any existing utilities until such time that they are abandoned or relocated at the applicant's expense.

Motion passed: 13-0

Respectfully submitted,



Michael Ludwig, AICP  
Deputy Director of Development Services

MGL:tjh

|   |  |              |                                       |              |
|---|--|--------------|---------------------------------------|--------------|
| City initiated request from Phil Wageman (Real Estate Manager) for property located at 3765 Hubbell Avenue. |  |              | File #                                |              |
|   |  |              | 11-2021-1.01                          |              |
| Description of Action   | Vacation of a segment of East 38th Street from Hubbell Avenue to East Douglas Ave, to allow it to be assembled with property at 3765 Hubbell Avenue owned by Git-N-Go Convenience Stores, Inc. as part of previous agreement with the owner for acquisition of a part of that property for use in the relocation of East Douglas Avenue project at Hubbell Avenue. |              |                                       |              |
| Plan/DSM Future Land Use  | Current: Community Mixed Use and Medium Density Residential all within a Neighborhood Node.<br>Proposed: N/A.  |              |                                       |              |
| Mobilizing Tomorrow Transportation Plan   | 2035-2050 Widen US 6/Hubbell Ave from 4 lanes to 5 lanes between E. Euclid Ave and E. 38th St. (LRTP #4022)  |              |                                       |              |
| Current Zoning District   | "MX3" Mixed Use District.  |              |                                       |              |
| Proposed Zoning District  | N/A.   |              |                                       |              |
| Consent Card Responses  | In Favor   | Not In Favor | Undetermined                          | % Opposition |
| Outside Area (200 feet)   | 2  | 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 3765 Hubbell Avenue

11-2021-1.01



1 inch = 113 feet

Item: 11-2021-1.01

Date: 1/28/21 58

Please mark one of the following

I am in favor of the request

I am not in favor of the request

Signature: [Handwritten Signature]

Name: Get-N-Go Stores, Inc.

Address: 2716 Tadianda Ave. D.M.  
Iowa

Staff Use Only  
**RECEIVED**  
COMMUNITY DEVELOPMENT  
FEB 02 2021

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Item: 11-2021-1.01

Date: 1/27/21

Please mark one of the following

I am in favor of the request

I am not in favor of the request

Signature: [Handwritten Signature]

Name: JB Conlin, Conlin Apartments, Inc.

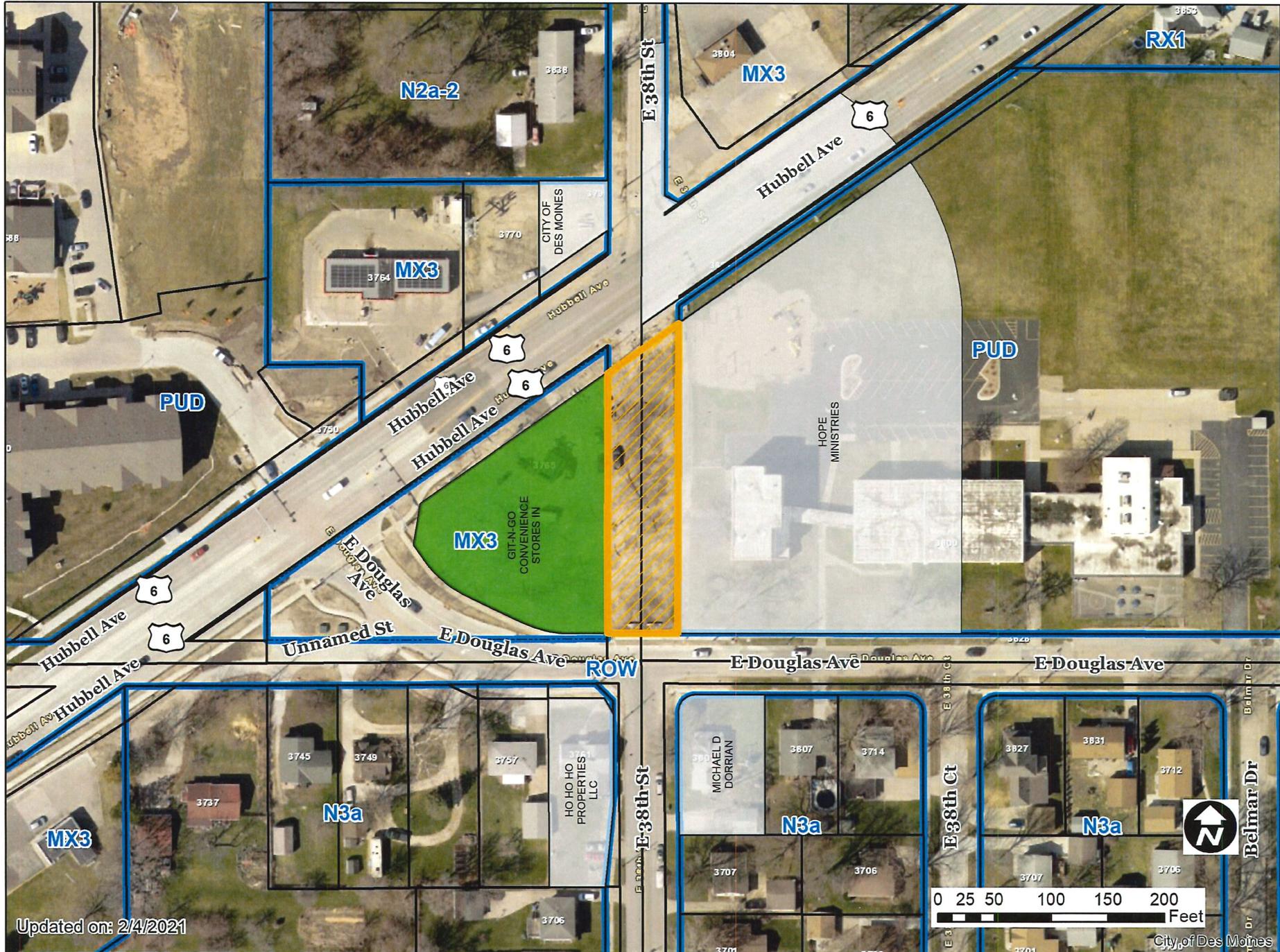
Address: 3720 Hubbell Ave  
Hilton Apartments

Staff Use Only  
**RECEIVED**  
COMMUNITY DEVELOPMENT  
FEB 02 2021

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

Get-N-Go has been a good  
neighbor.

\_\_\_\_\_  
\_\_\_\_\_



Updated on: 2/4/2021

1 inch = 113 feet