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Date April 5, 2021

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HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF A PORTION OF 6TH AVENUE RIGHT-OF-WAY ADJOINING 1230 6TH AVENUE AND CONVEYANCE OF A PERMANENT EASEMENT FOR AIR SPACE ABOVE CITY-OWNED PROPERTY AND A PERMANENT EASEMENT FOR SUBSURFACE BUILDING ENCROACHMENT TO ANAWIM A/K/A ANAWIM HOUSING, INC. FOR \$575.00

WHEREAS, March 4, 2021, the City Plan and Zoning Commission voted to approve a request from Urban Campus Apartments LLLP, holder of an option to purchase the property at 1230 6th Avenue, to vacate the air and subsurface rights within the west 3 feet of 6th Avenue right-of-way adjoining 1230 6th Avenue to allow for construction of structural footings, roof overhang and architectural elements as part of its 5-story, Storefront Type “6th Avenue Flats” building project; and

WHEREAS, Anawim a/k/a Anawim Housing, Inc., owner of property at 1230 6th Avenue, has offered to the City of Des Moines (“City”) the purchase price of \$575.00, which represents \$115.00 for the Permanent Easement for Air Space Above City-Owned Property, and \$460.00 for the Permanent Easement for Subsurface Building Encroachment on City-owned Property, for the purchase of such easement interests in the vacated 6th Avenue right-of-way adjoining 1230 6th Avenue, Des Moines, Iowa (hereinafter “Property”), to allow for building footings, overhangs and architectural element encroachments into the vacated right-of-way, which price reflects the fair market value of the Property as determined by the City’s Real Estate Division; and

WHEREAS, the Permanent Easement for Air Space Above City-owned Property and Permanent Easement for Subsurface Building Encroachment On City Property will run with the land and remain in place when Anawim a/k/a Anawim Housing, Inc. conveys 1230 6th Avenue to Urban Campus Apartments LLLP; and

WHEREAS, there is no known current or future public need for the street right-of-way proposed to be vacated and the City will not be inconvenienced by the vacation of said Property and conveyance of a Permanent Easement for Air Space Above City-owned Property, and a Permanent Easement for Subsurface Building Encroachment On City Property therein; and

WHEREAS, on March 22, 2021, by Roll Call No. 21-0456, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation and conveyance of the street right-of-way be set for hearing on April 5, 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 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

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meeting will be conducted electronically with electronic and telephonic public access to the meeting location; and

WHEREAS, due notice of said proposal to vacate the street right-of-way and convey a Permanent Easement for Air Space Above City-owned Property, and a Permanent Easement for Subsurface Building Encroachment On City Property in such vacated 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 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 air rights and subsurface rights in a portion of 6th Avenue right-of-way adjoining 1230 6th Avenue, Des Moines, Iowa, legally described as follows, and said vacation is hereby approved:

Air Rights

A PART OF LOTS 35 THROUGH LOT 38, GRAND PARK, AN OFFICIAL PLAT AND A PART OF THE RIGHT OF WAY OF 6TH AVENUE, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 35; THENCE NORTH 89°55'34" WEST ALONG THE NORTH LINE OF SAID LOT 35, A DISTANCE OF 3.00 FEET TO THE NORTHWEST CORNER OF THE ACQUISITION PLAT RECORDED IN BOOK 17667 PAGE 87-89; THENCE SOUTH 00°12'17" EAST ALONG THE WEST LINE OF SAID ACQUISITION PLAT, 1.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89°47'43" EAST, 4.00 FEET; THENCE SOUTH 00°01'48" EAST, 164.00 FEET; THENCE SOUTH 89°47'43" WEST, 3.50 FEET TO SAID WEST LINE; THENCE NORTH 00°12'17" WEST ALONG SAID WEST LINE, 164.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 615 SQUARE FEET AND LYING BETWEEN ELEVATIONS 137.00 FEET AND 165.00 FEET CITY OF DES MOINES VERTICAL DATUM (REFERENCE GROUND ELEVATION OF 116.50 FEET).

Subsurface Rights

Date April 5, 2021

A PART OF LOTS 35 THROUGH LOT 38, GRAND PARK, AN OFFICIAL PLAT AND A PART OF THE RIGHT OF WAY OF 6TH AVENUE, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 35; THENCE NORTH 89°55'34" WEST ALONG THE NORTH LINE OF SAID LOT 35, A DISTANCE OF 3.00 FEET TO THE NORTHWEST CORNER OF THE ACQUISITION PLAT RECORDED IN BOOK 17667 PAGE 87-89; THENCE SOUTH 00°12'17" EAST ALONG THE WEST LINE OF SAID ACQUISITION PLAT, 1.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89°47'43" EAST, 4.00 FEET; THENCE SOUTH 00°01'48" EAST, 164.00 FEET; THENCE SOUTH 89°47'43" WEST, 3.50 FEET TO SAID WEST LINE; THENCE NORTH 00°12'17" WEST ALONG SAID WEST LINE, 164.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 615 SQUARE FEET.

- 3. The proposed conveyance of a Permanent Easement for Air Space Above City-owned Property and a Permanent Easement for Subsurface Building Encroachment On City-Owned Property, as legally described below, to Anawim a/k/a Anawim Housing, Inc. for \$575 is hereby approved:

Air Space Easement

A PART OF LOTS 35 THROUGH LOT 38, GRAND PARK, AN OFFICIAL PLAT AND A PART OF THE VACATED RIGHT OF WAY OF 6TH AVENUE, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 35; THENCE NORTH 89°55'34" WEST ALONG THE NORTH LINE OF SAID LOT 35, A DISTANCE OF 3.00 FEET TO THE NORTHWEST CORNER OF THE ACQUISITION PLAT RECORDED IN BOOK 17667 PAGE 87-89; THENCE SOUTH 00°12'17" EAST ALONG THE WEST LINE OF SAID ACQUISITION PLAT, 1.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89°47'43" EAST, 4.00 FEET; THENCE SOUTH 00°01'48" EAST, 164.00 FEET; THENCE SOUTH 89°47'43" WEST, 3.50 FEET TO SAID WEST LINE; THENCE NORTH 00°12'17" WEST ALONG SAID WEST LINE, 164.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 615 SQUARE FEET AND LYING BETWEEN ELEVATIONS 137.00 FEET AND 165.00 FEET CITY OF DES MOINES VERTICAL DATUM (REFERENCE GROUND ELEVATION OF 116.50 FEET).

Subsurface Easement

A PART OF LOTS 35 THROUGH LOT 38, GRAND PARK, AN OFFICIAL PLAT AND A PART OF THE VACATED RIGHT OF WAY OF 6TH AVENUE, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 35; THENCE NORTH 89°55'34" WEST ALONG THE NORTH LINE OF SAID LOT 35, A DISTANCE OF 3.00 FEET TO THE NORTHWEST CORNER OF THE ACQUISITION PLAT RECORDED IN BOOK 17667 PAGE 87-89; THENCE SOUTH 00°12'17" EAST ALONG THE WEST LINE OF SAID ACQUISITION PLAT,

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Date April 5, 2021

1.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89°47'43" EAST, 4.00 FEET; THENCE SOUTH 00°01'48" EAST, 164.00 FEET; THENCE SOUTH 89°47'43" WEST, 3.50 FEET TO SAID WEST LINE; THENCE NORTH 00°12'17" WEST ALONG SAID WEST LINE, 164.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 615 SQUARE FEET.

4. The Mayor is authorized and directed to sign the Offer to Purchase, Permanent Easement for Air Space Above City-owned Property and Permanent Easement for Subsurface Building Encroachment On 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 and Permanent Easement for Subsurface Building Encroachment On 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 and Permanent Easement for Subsurface Building Encroachment On 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 Air Space Above City-owned Property and Permanent Easement for Subsurface Building Encroachment On City-Owned Property and a copy of the other documents to the grantee.

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

Date April 5, 2021

Moved by _____ to adopt.

APPROVED AS TO FORM:

/s/ Lisa A. Wieland
 Lisa A. Wieland, Assistant City Attorney

PJW

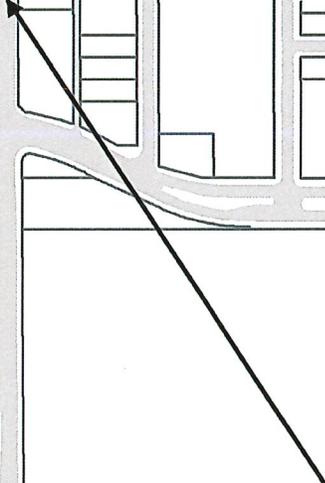
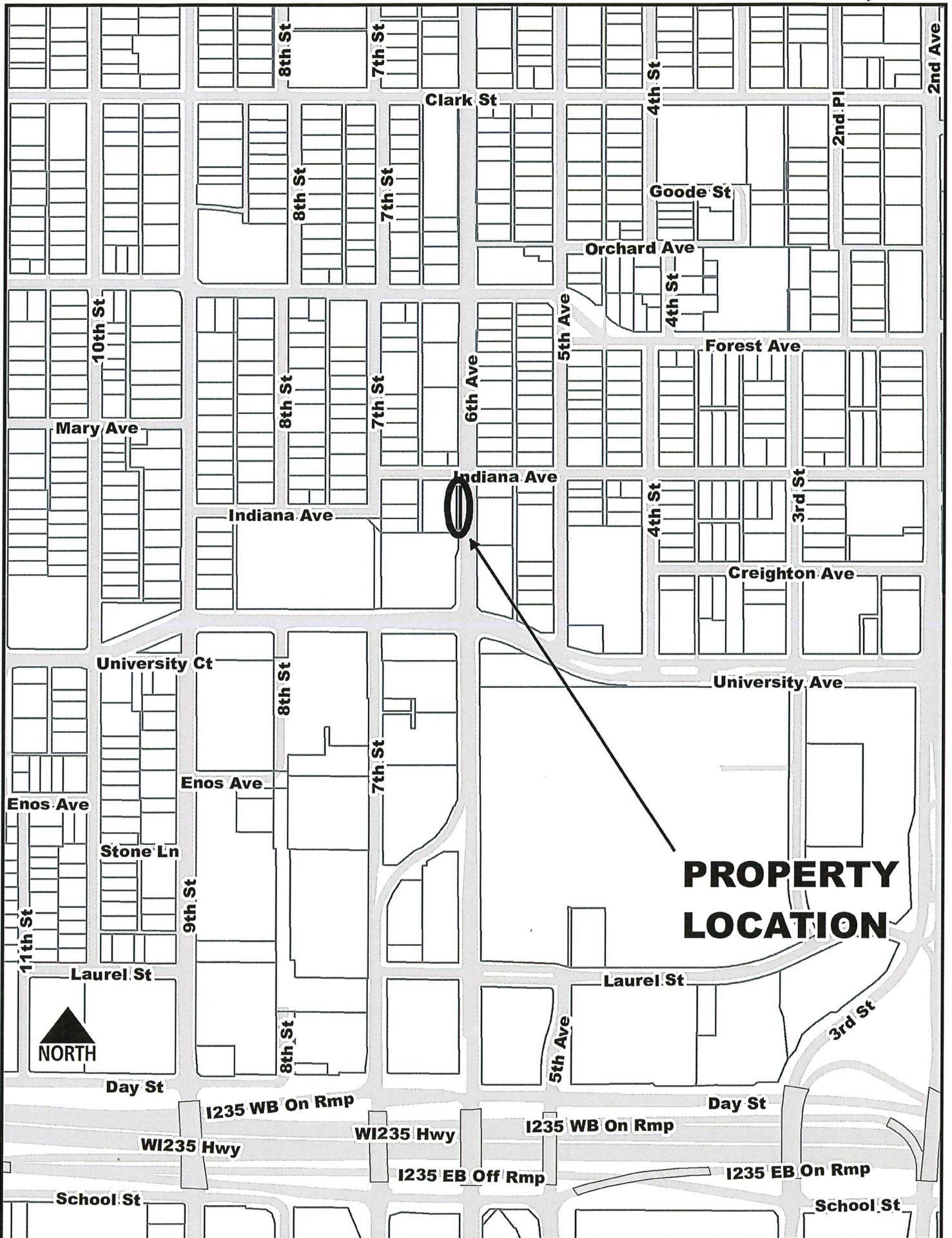
COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
GRAY				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				
MOTION CARRIED			APPROVED	
_____ Mayor				

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



**PROPERTY
LOCATION**



NORTH



March 16, 2021

Honorable Mayor and City Council
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their March 3, 2021 meeting, the following action was taken regarding a request from Urban Campus Apartments, LLLP (owner) represented by Jack Hatch (partner) for vacation of the air and subsurface rights within the west 3 feet of 6th Avenue adjoining the property located at 1230 6th Avenue to allow for encroachment of building footings and building overhangs.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 10-0 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. (11-2021-1.03)

Written Responses
0 in Favor
0 in opposition

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval of the requested Right-Of-Way vacation.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is in the process of developing a 5-story Storefront Type building “6th Avenue Flats” for 36 Household Living use and 6 Live/Work use units. The design of the building as conditionally approved would require vacation of subsurface rights for structural footings and air rights for roof overhang elements.
2. **Size of Site:** The area requested for vacation is 615 square feet. The adjoining site is 23,522 square feet (0.54 acres).
3. **Existing Zoning (site):** “MX2” Mixed Use District.
4. **Existing Land Use (site):** Street Right-Of-Way (ROW).
5. **Adjacent Land Use and Zoning:**
 - North** – “MX1”; Uses are Shelter, Temporary and Business/Professional Offices. (Bethel Mission).
 - South** – “Top Value Legacy PUD”, Uses are drive-through Restaurant (McDonald’s).
 - East** – “MX2”; Uses are 8-unit Household Living dwelling (The New Lawn) and Medical Offices (Blood Plasma Center).
 - West** – “N5” & “N5-2”; Uses are One- and Two-Household Living dwellings.
6. **General Neighborhood/Area Land Uses:** The subject ROW is located along the 6th Avenue corridor about a block north of the University Avenue corridor. This segment of 6th Avenue contains a mix of commercial uses and mixed-densities of Household Living dwellings.
7. **Applicable Recognized Neighborhood(s):** The subject ROW is in the River Bend Neighborhood. All recognized neighborhood associations were notified of the meeting by mailing of the Preliminary Agenda on February 12, 2021 and by mailing of the Final Agenda on February 26, 2021. Additionally, separate notifications of the hearing for this specific item were mailed on February 22, 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 River Bend Association mailings were sent to Chris Chiaramonte, 409 Franklin Avenue, Des Moines, IA 50314.

8. **Relevant Zoning History:** None.
9. **PlanDSM: Creating Our Tomorrow Land Use Plan Designation:** Neighborhood Mixed-Use within a Community Node.
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:** While there is a Des Moines Water Works water line and a City of Des Moines sanitary sewer subsurface main identified within 6th Avenue in this location, they are not in proximity to the ROW subsurface in question. Because the proposed building improvements are to encroach into the airspace and subsurface areas, easements would not be reserved for any existing utilities.
2. **Traffic/Access:** The requested vacations would not negatively impact access to private properties or to vehicle and pedestrian traffic patterns. It would allow for the 6th Avenue corridor streetscape project implementation.
3. **Planning and Design Ordinance:** Construction of the “6th Avenue Flats” development must comply with all applicable Building Code and Planning and Design regulations contained the Chapter 135 Planning and Design.

SUMMARY OF DISCUSSION

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

COMMISSION ACTION:

Jann Freed made a motion for approval of the requested Right-Of-Way vacation.

Motion passed: 10-0

Respectfully submitted,



Jason Van Essen, AICP
Planning & Urban Design Administrator

JMV:tjh

Request from Urban Campus Apartments LLLP (owner) represented by Jack Hatch (partner) for property located at 1230 6 th Avenue.				File #	
				11-2021-1.03	
Description of Action	Vacation of the air and subsurface rights within the west 3 feet of 6 th Avenue adjoining the subject property to allow for encroachment of building footings and building overhang.				
PlanDSM Future Land Use	Current: Neighborhood Mixed Use within a Community Node. Proposed: N/A.				
Mobilizing Tomorrow Transportation Plan	No planned improvements.				
Current Zoning District	"MX2" Mixed Use 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	X

Urban Campus Apartments LLLP, 1230 6th Avenue

11-2021-1.03



1 inch = 94 feet



Updated on: 3/3/2021

1 inch = 94 feet