

Date May 24, 2021

SET HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF PORTIONS OF 12<sup>TH</sup> STREET AND KEOSAUQUA WAY RIGHT-OF-WAY ADJOINING 1201 KEOSAUQUA WAY AND CONVEYANCE OF A PERMANENT EASEMENT FOR BUILDING ENCROACHMENT AND A PERMANENT EASEMENT FOR BUILDING ENCROACHMENT-DOOR SWING TO AUST REAL ESTATE, LLC FOR \$11,280

WHEREAS, on May 10, 2021, by Roll Call No. 21-0690, the City Council of the City of Des Moines, Iowa voted to receive and file a recommendation from the City Plan and Zoning Commission to approve a request from Aust Real Estate, LLC, owner of property at 1201 Keosauqua Way, to vacate portions of Crocker Street, 12<sup>th</sup> Street and Keosauqua Way right-of-way adjoining 1201 Keosauqua Way, Des Moines, Iowa, subject to the reservation of any easements for all existing utilities until such time that they are abandoned or relocated; and

WHEREAS, Aust Real Estate, LLC has offered to the City of Des Moines ("City") the purchase price of \$11,280.00, which price reflects \$5,520.00 for a Permanent Easement for Building Encroachment and \$5,760.00 for a Permanent Easement for Building Encroachment – Door Swing, for the purchase of such easement interests in the vacated Crocker Street, 12<sup>th</sup> Street and Keosauqua Way right-of-way adjoining 1201 Keosauqua Way, Des Moines, Iowa (hereinafter "Property"), to allow for door swing encroachments and existing building 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 City has no known current or anticipated public need for the Property proposed to be vacated, and the City will not be inconvenienced by the vacation of said Property and conveyance of a Permanent Easement for Building Encroachment and a Permanent Easement for Building Encroachment – Door Swing therein.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that:

- 1. That the City Council of the City of Des Moines, Iowa, shall consider adoption of an ordinance permanently vacating portions of Crocker Street, 12<sup>th</sup> Street and Keosauqua Way right-of-way adjoining 1201 Keosauqua Way, Des Moines, Iowa, legally described as follows:

A PART OF CROCKER STREET RIGHT-OF-WAY LYING NORTH AND ADJACENT TO THE NORTH LINE OF LOT 3, FERRINGTON PLACE, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE WEST 80 FEET OF LOT 18, BLOCK 1, WHITES ADDITION, AN OFFICIAL PLAT; THENCE NORTH 89°22'09" WEST ALONG THE SOUTH RIGHT-OF-WAY LINE OF CROCKER STREET, 234.42 FEET AND TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 89°22'09" WEST ALONG SAID SOUTH RIGHT-OF-WAY LINE, 30.00 FEET; THENCE NORTH 00°37'51" EAST, 6.00 FEET; THENCE SOUTH 89°22'09" EAST, 30.00 FEET; THENCE SOUTH 00°37'51" WEST, 6.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 180 S.F.

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AND

A PART OF CROCKER STREET RIGHT-OF-WAY LYING NORTH AND ADJACENT TO THE NORTH LINE OF LOT 2, FERRINGTON PLACE, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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AND

A PART OF 12TH STREET RIGHT-OF-WAY LYING EAST AND ADJACENT TO THE EAST LINE OF LOT 2, FERRINGTON PLACE, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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AND

A PART OF KEOSAUQUA WAY RIGHT-OF-WAY LYING SOUTH AND ADJACENT TO THE SOUTHWESTERLY LINE OF LOTS 1 AND 2, FERRINGTON PLACE, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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SOUTHWEST LINE OF SAID LOT 1 AND ALSO THE NORTHEAST RIGHT-OF-WAY LINE OF KEOSAUQUA WAY, 34.20 FEET AND TO THE POINT OF BEGINNING; THENCE SOUTH 47°25'07" WEST, 5.00 FEET; THENCE NORTH 42°34'53" WEST, 69.13 FEET; THENCE NORTH 47°25'07" EAST, 5.00 FEET TO SAID NORTHEAST RIGHT-OF-WAY LINE; THENCE SOUTH 42°34'53" EAST ALONG SAID NORTHEAST RIGHT-OF-WAY LINE, 69.13 FEET TO THE POINT OF BEGINNING AND CONTAINING 346 S.F.

AND

A PART OF KEOSAUQUA WAY RIGHT-OF-WAY LYING SOUTH AND ADJACENT TO THE SOUTHWESTERLY LINE OF LOTS 1 AND 2, FERRINGTON PLACE, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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AND

A PART OF 12TH STREET RIGHT-OF-WAY LYING EAST AND ADJACENT TO THE EAST LINE OF LOTS 1 AND 2, FERRINGTON PLACE, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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PROPERTY SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.

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- 2. The City Council of the City of Des Moines, Iowa, further proposes to convey a Permanent Easement for Building Encroachment and a Permanent Easement for Building Encroachment – Door Swing, as legally described and to the grantees and for the consideration identified below:

Grantee: Aust Real Estate, LLC

Consideration: \$11,280.00

Legal Description:

**Building Encroachment**

EASEMENT DESCRIPTION (A)

A PART OF VACATED KEOSAUQUA WAY RIGHT-OF-WAY LYING SOUTH AND ADJACENT TO THE SOUTHWESTERLY LINE OF LOTS 1 AND 2, FERRINGTON PLACE, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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AND

EASEMENT DESCRIPTION (B)

A PART OF VACATED 12TH STREET RIGHT-OF-WAY LYING EAST AND ADJACENT TO THE EAST LINE OF LOTS 1 AND 2, FERRINGTON PLACE, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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1.00 FOOT; THENCE SOUTH 00°20'33" EAST, 172.25 FEET; THENCE NORTH 89°39'27" EAST, 1.00 FOOT TO THE SOUTH CORNER OF SAID LOT 1 AND THE WEST RIGHT-OF-WAY LINE OF 12TH STREET; THENCE NORTH 00°20'33" WEST ALONG SAID WEST RIGHT-OF-WAY LINE, 172.27 FEET TO THE POINT OF BEGINNING AND CONTAINING 172 S.F.

PROPERTY SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.

**Building Encroachment – Door Swing**

EASEMENT DESCRIPTION (A)

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AND

EASEMENT DESCRIPTION (B)

A PART OF VACATED CROCKER STREET RIGHT-OF-WAY LYING NORTH AND ADJACENT TO THE NORTH LINE OF LOT 2, FERRINGTON PLACE, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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AND

Date May 24, 2021

EASEMENT DESCRIPTION (C)

A PART OF VACATED 12TH STREET RIGHT-OF-WAY LYING EAST AND ADJACENT TO THE EAST LINE OF LOT 2, FERRINGTON PLACE, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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AND

EASEMENT DESCRIPTION (D)

A PART OF VACATED KEOSAUQUA WAY RIGHT-OF-WAY LYING SOUTH AND ADJACENT TO THE SOUTHWESTERLY LINE OF LOTS 1 AND 2, FERRINGTON PLACE, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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PROPERTY SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.

**Date** May 24, 2021

- That the meeting of the City Council at which the adoption of said ordinance and the sale and conveyance of such easements is to be considered shall be on June 14, 2021, at 5:00 p.m. in the City Council Chamber, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa. At that time the City Council will consider the above-described proposal and any other(s) submitted prior to or during the public hearing.

Please check the posted agenda in advance of the June 14, 2021 meeting for any update on the manner in which the public hearing will be conducted to comply with COVID-19 social distancing and safety guidelines.

- That the City Clerk is hereby authorized and directed to publish notice of said proposal in the form hereto attached all in accordance with §362.3 of the Iowa Code.
- Non-project related land sale proceeds are used to support general operating budget expenses: Org – EG064090.

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

APPROVED AS TO FORM:

/s/ Lisa A. Wieland

Lisa A. Wieland, Assistant City Attorney

*pn*

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

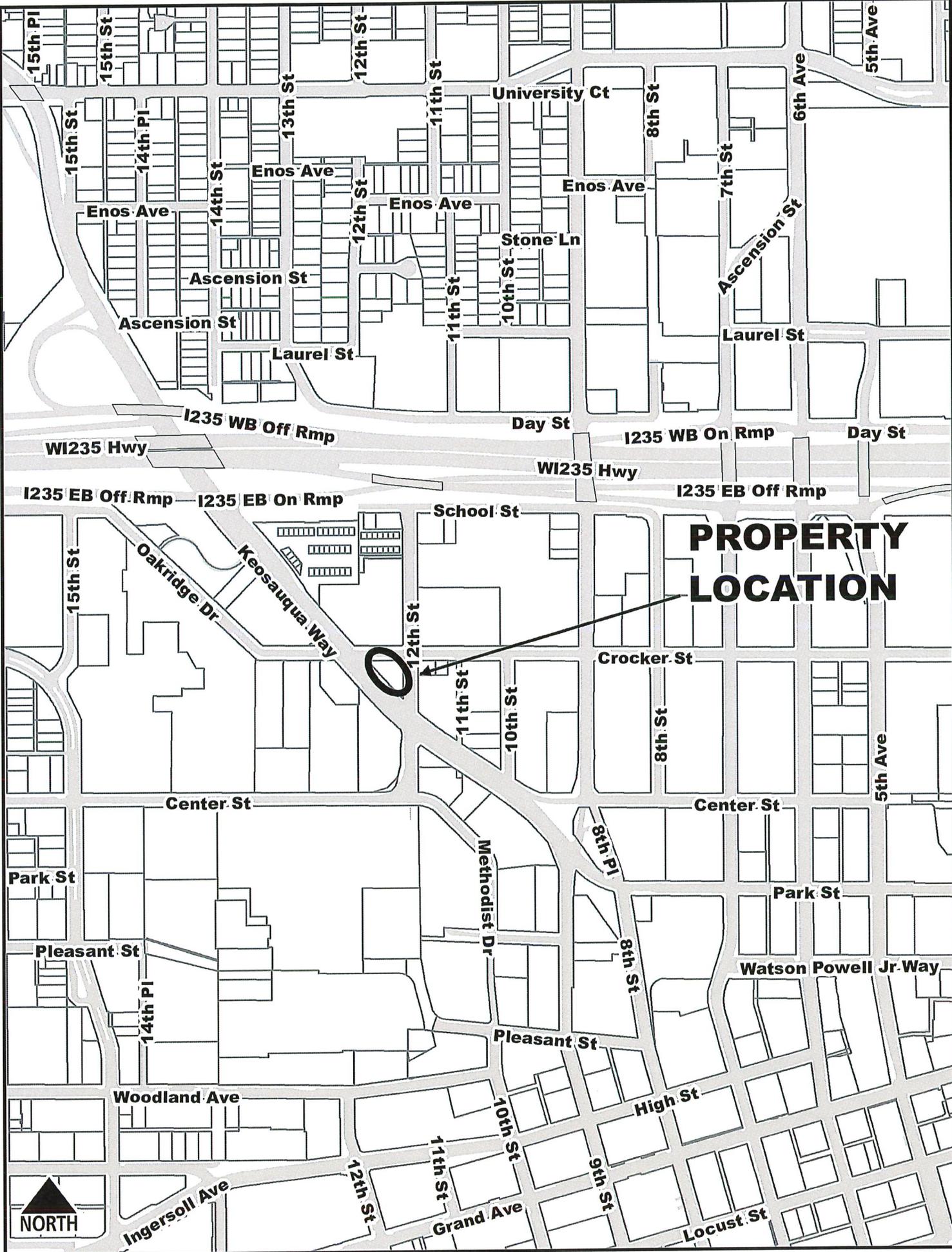
MOTION CARRIED APPROVED  
 \_\_\_\_\_ Mayor

**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



REGISTER ORDER NO. \_\_\_\_\_ ROLL CALL LEGAL BULLETIN BOARD  
FOLLOW UP

NOTICE OF PROPOSAL TO VACATE AND CONVEY CITY-OWNED PROPERTY

NOTICE IS HEREBY GIVEN that the City Council of the City of Des Moines, Iowa, shall consider adoption of an ordinance permanently vacating portions of Crocker Street, 12<sup>th</sup> Street and Keosauqua Way right-of-way adjoining 1201 Keosauqua Way, Des Moines, Iowa, legally described as follows:

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PROPERTY SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.

NOTICE IS FURTHER GIVEN, that the City Council of the City of Des Moines, Iowa, has adopted a resolution setting a hearing relating to a proposal that if the City Council first decides to vacate the above-described right-of-way, then the City of Des Moines proposes to convey a Permanent Easement for Building Encroachment and a Permanent Easement for Building Encroachment – Door Swing in such vacated right-of-way to Aust Real Estate, LLC for \$11,280, which represents \$5,520.00 for a Permanent Easement for Building Encroachment and \$5,760.00 for a Permanent Easement for Building Encroachment – Door Swing.

NOTICE IS FURTHER GIVEN that the City Council will consider the adoption of the proposed vacation ordinance and approval of the proposed conveyance after a public hearing to be held at 5:00 p.m. on June 14, 2021 in the City Council Chamber, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa. At that time the City Council will consider the above-described proposal and any other(s) submitted prior to or during the public hearing. Persons interested in the proposal will be given the opportunity to express their views at that hearing.

In addition, the City Council shall receive written views, comments, objections and arguments from any resident or taxpayer of the City that are received by the City Clerk prior to 5:00 p.m. June 10, 2021 (City Clerk's Office, Des Moines City Hall, 400 Robert D. Ray Drive, 1<sup>st</sup> Floor, Des Moines, IA 50309; Email [cityclerk@dmgov.org](mailto:cityclerk@dmgov.org)).

Please check the posted agenda in advance of the June 14, 2021 meeting for any update on the manner in which the public hearing will be conducted to comply with COVID-19 social distancing and safety guidelines.

PUBLISHED IN THE DES MOINES REGISTER ON \_\_\_\_\_.



May 4, 2021

Date 5-24-21  
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 April 15, 2021 meeting, the following action was taken regarding a request from Aust Real Estate, LLC (owner), 1201 Keosauqua Way, represented by Mindy Aust for vacation of various adjoining surface/subsurface rights.

- A) A 6-foot wide by 30-foot long segment of adjoining Crocker Street for surface rights to allow door swings for proposed trash enclosures.
- B) A 5-foot by 5-foot segment of adjoining Crocker Street for surface/subsurface rights for a door swing and landing.
- C) A 5-foot by 5-foot segment of adjoining 12<sup>th</sup> Street for surface/subsurface rights for a door swing and landing.
- D) A 5-foot by 69.13-foot long segment of adjoining Keosauqua Way for surface/subsurface rights to accommodate four (4) door swings and landings.
- E) A 3-foot by 126.54-foot long segment of adjoining Keosauqua Way for subsurface encroachment of the exiting building.
- F) A 1-foot by 172.25-foot long segment of adjoining 12<sup>th</sup> Street for subsurface encroachment of the exiting building.

**COMMISSION RECOMMENDATION:**

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

<u>Commission Action:</u>	<u>Yes</u>	<u>Nays</u>	<u>Pass</u>	<u>Absent</u>
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 vacations subject to the reservation of easements for any existing utilities until such time that they are abandoned or relocated at the applicant’s expense. (11-2021-1.05)

Written Responses

4 in Favor  
0 in opposition

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

Staff recommends approval of the requested right-of-way vacations 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:** The proposed vacations would facilitate redevelopment of the existing building.
- 2. Size of Site:** The requested segments of Right-of-Way encompass a total 1,128 square feet of area.
- 3. Existing Zoning (site):** “ROW” Public Right-of-Way. The subject ROW segments would be zoned “MX2” Mixed Use District upon vacation.
- 4. Existing Land Use (site):** The subject areas consist of public street rights-of-way.
- 5. Adjacent Land Use and Zoning:**

**North** – “MX2”; Use is multiple-tenant retail building.

**South** – “MX2”, Use is vacant auto service and office building.

**East** – “DX2”; Uses are Earlham Bank building and surface parking lots.

**West** – “MX2”; Use is Git-n-Go fuel station/convenience store.

6. **General Neighborhood/Area Land Uses:** The applicant’s property is irregularly shaped and bordered by Crocker Street to the north, 12<sup>th</sup> Street to the east, and Keosauqua Way to the southwest. The surrounding area consists of a mix of residential and commercial uses.
7. **Applicable Recognized Neighborhood(s):** The subject areas are not located within a recognized neighborhood. All recognized neighborhood associations were notified of the meeting by mailing of the Preliminary Agenda on March 26, 2021 and by mailing of the Final Agenda on April 9, 2021. Additionally, separate notifications of the hearing for this specific item were mailed on April 5, 2021 (10 days prior) to the primary titleholder on file with the Polk County Assessor for each property adjoining the requested public Right-of-Way.
8. **Relevant Zoning History:** None.
9. **PlanDSM: Creating Our Tomorrow Land Use Plan Designation:** Downtown 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:** Identified utilities located in or near the impacted area may include water valves, water hydrants, distribution water mains, sanitary sewer conduit, sanitary sewer manholes, and non-city-owned street lights. 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.

## SUMMARY OF DISCUSSION

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

**COMMISSION ACTION:**

Carolyn Jension made a motion for approval of the requested right-of-way vacations 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: 11-0

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jason Van Essen".

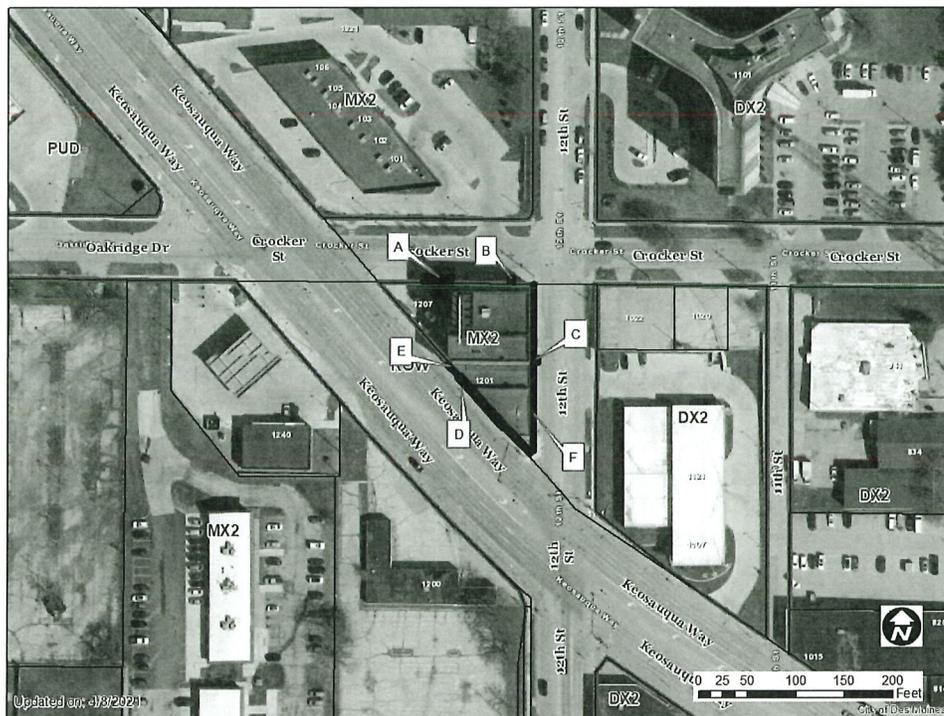
Jason Van Essen, AICP  
Planning & Urban Design Administrator

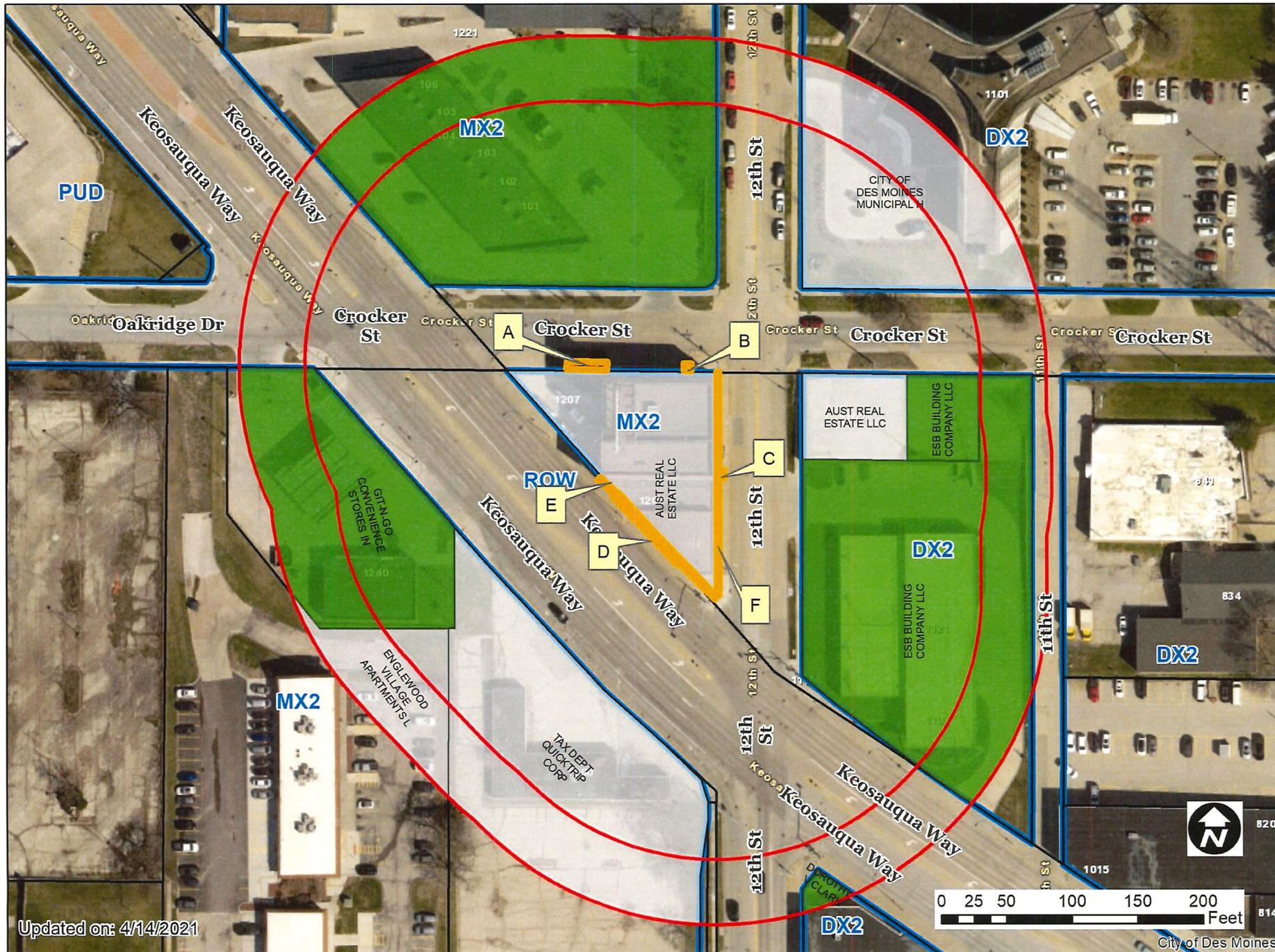
JMV:tjh

<b>Request from Aust Real Estate, LLC (owner), represented by Mindy Aust for property located at 1201 Keosauqua Way.</b>				<b>File #</b>	
				11-2021-1.05	
<b>Description of Action</b>	Vacation of various adjoining surface/subsurface rights. A) A 6-foot wide by 30-foot long segment of adjoining Crocker Street for surface rights to allow door swings for proposed trash enclosures. B) A 5-foot by 5-foot segment of adjoining Crocker Street for surface/subsurface rights for a door swing and landing. C) A 5-foot by 5-foot segment of adjoining 12 <sup>th</sup> Street for surface/subsurface rights for a door swing and landing. D) A 5-foot by 69.13-foot long segment of adjoining Keosauqua Way for surface/subsurface rights to accommodate four (4) door swings and landings. E) A 3-foot by 126.54-foot long segment of adjoining Keosauqua Way for subsurface encroachment of the exiting building. F) A 1-foot by 172.25-foot long segment of adjoining 12 <sup>th</sup> Street for subsurface encroachment of the exiting building.				
<b>PlanDSM Future Land Use</b>	Current: Downtown Mixed Use. Proposed: N/A.				
<b>Mobilizing Tomorrow Transportation Plan</b>	No planned improvements.				
<b>Current Zoning District</b>	"MX2" Mixed Use District.				
<b>Proposed Zoning District</b>	N/A.				
<b>Consent Card Responses</b>	In Favor	Not In Favor	Undetermined	% Opposition	
<b>Outside Area (200 feet)</b>	4	0			
<b>Within Subject Property</b>					
<b>Plan and Zoning Commission Action</b>	Approval	X	<b>Required 6/7 Vote of the City Council</b>	Yes	
	Denial			No	X

Aust Real Estate, LLC, 1201 Keosauqua Way

11-2021-1.05





Updated on: 4/14/2021

1 inch = 98 feet

Item: 11-2021-1.05

Date: 4/8/2021

Please mark one of the following

I am in favor of the request

I am not in favor of the request

Staff Use Only

Signature: *Garret W Hulse*

Name: Garret W Hulse

Address: 7300 Lake Dr. WDM IA

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

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

Item: 11-2021-1.05

Date: 4.7.21

Please mark one of the following

I am in favor of the request

I am not in favor of the request

Staff Use Only

Signature: *Jaqueline A Nickolous*

Name: Jaqueline A Nickolous

Address: 1251 keo

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

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

Item: 11-2021-1.05

Date: 4/7/21

Please mark one of the following

I am in favor of the request

I am not in favor of the request

Staff Use Only

Signature: *Pemin Lee*, President

Name: Git-N-Co Stores, Inc

Address: 2716 Indiana Ave.

Des Moines, Iowa 50315

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

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

Item: 11-2021-1.05

Date: \_\_\_\_\_

Please mark one of the following

I am in favor of the request

I am not in favor of the request

Staff Use Only

Signature: *Mark Clark*

Name: Mark Clark

Address: 1100 605

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

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