



Roll Call Number

Agenda Item Number

25

Date May 9, 2022

RECEIVE AND FILE COMMUNICATION FROM THE PLAN AND ZONING COMMISSION REGARDING REQUEST FROM HOA HOTELS, LLC (OWNER), REPRESENTED BY JOHN SCHULZ (OFFICER), FOR VACATION OF AIR RIGHTS AND SUBSURFACE RIGHTS WITHIN EAST WALNUT STREET RIGHT-OF-WAY, ADJOINING THE PROPERTY AT 610 EAST WALNUT STREET, TO ALLOW BALCONIES TO PROJECT FROM THE PROPOSED BUILDING AND TO ALLOW FOR ENCROACHMENT OF BUILDING FOOTINGS

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on April 21, 2022, its members voted 11-0-1 to recommend **APPROVAL** of a request from Kelly Garner to vacate air rights and subsurface rights within East Walnut Street right-of-way, adjoining the property at 610 East Walnut Street, to allow balconies to project from the proposed building and to allow for encroachment of building footings, subject to the reservation of any necessary easements for any existing utilities until such time that they are abandoned or relocated at the applicant's expense.

MOVED by _____ to receive and file the attached communication from the Plan and Zoning Commission, and refer to the Engineering Department, Real Estate Division.

MOVED BY _____ TO ADOPT- SECOND BY _____.

APPROVED AS TO FORM:

/s/ Lisa A. Wieland

Lisa A. Wieland
Assistant City Attorney

(ROWV-2022-000009)

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

MOTION CARRIED

APPROVED

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.

Mayor

City Clerk

Date May 9, 2022
 Agenda Item 25
 Roll Call # _____

May 3, 2022

Communication from the City Plan and Zoning Commission advising that at their April 21, 2022 meeting, the following action was taken regarding a request from HOA Hotels, LLC (owner), represented by John Schulz (officer), for vacation of air rights and subsurface rights, within East Walnut Street right-of-way, adjoining the property at 610 East Walnut Street, to allow balconies to project from the proposed building and for encroachment of building footings.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 11-0-1 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Francis Boggus	X			
Dan Drendel	X			
Leah Rudolphi	X			
Dory Briles				X
Abby Chungath	X			
Kayla Berkson				X
Chris Draper			X	
Jann Freed	X			
Todd Garner	X			
Johnny Alcivar	X			
Justyn Lewis	X			
Carolyn Jenison	X			
William Page	X			
Andrew Lorentzen	X			
Emily Webb				X

APPROVAL of the requested vacation of air rights and subsurface rights, 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 RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval of the requested vacation of air rights and subsurface rights, subject to the reservation of easements for any existing utilities until such time that they are abandoned or relocated at the applicant's expense.

Written Responses

0 in Favor

0 in opposition

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The proposed vacation of air rights and subsurface rights within the East Walnut Street right-of-way adjoining the subject property is being requested to allow balconies to project from the building and to also allow the encroachment of building footings. The applicant is proposing to demolish the existing building and construct a new, seven-story apartment building.
2. **Size of Site:** The requested segments of air and subsurface rights-of-way encompass a total 198 square feet of area.
3. **Existing Zoning (site):** “DX2” Downtown Mixed-Use District.
4. **Existing Land Use (site):** The subject areas consist of East Walnut Street right-of-way.
5. **Adjacent Land Use and Zoning:**
 - North** – “DX2”; Use is multi-tenant commercial building.
 - South** – “DX2”; Uses are offices in nature.
 - East** – “DX2”; Use is a financial service business.
 - West** – “DX2”; Use is a mixed-use building.
6. **General Neighborhood/Area Land Uses:** The subject property is located in the Historic East Village Neighborhood. The area contains a mix of commercial, industrial, and residential uses.
7. **Applicable Recognized Neighborhood(s):** The subject property is in the Historic East Village Neighborhood. The neighborhood associations were notified of the public hearing by mailing of the Preliminary Agenda on April 1, 2022 and by mailing of the Final Agenda on April 15, 2022. Additionally, separate notifications of the hearing for this specific item were mailed on April 11, 2022 (10 days prior to the public hearing) to the primary titleholder on file with the Polk County Assessor for each property adjacent to the request right-of-way.

All agendas are mailed to the primary contact person designated to the City of Des Moines Neighborhood Development Division by the recognized neighborhood association. The East Village Neighborhood Association mailings were sent to Luke Dickens, 3311 54th Street, Des Moines, IA 50310.

8. Relevant Zoning History: On March 17, 2022, the Plan and Zoning Commission approved a Public Hearing Site Plan for the following Type 2 Design Alternatives in accordance with City Code Sections 135-9.2.4(B) and 135-9.3.1(B):

- Allow for surface parking along the eastern side of the building, where not allowed within a “DX” District, per City Code Section 135-6.4.
- Allow for dwelling units on the ground story within the first 30 feet of the primary street frontage, which is prohibited in Downtown Storefront building types, per City Code Section 135-2.3.C.3.15.
- Allow for the minimum height along the primary frontage of East Walnut Street to be one (1) story tall, rather than the minimum required three (3) stories, per City Code Section 135-2.3.C.3.10.

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: While no utilities have been identified within the requested right-of-way, 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 vacation would not negatively impact access to private properties or traffic patterns.

SUMMARY OF DISCUSSION

Sreyoshi Chakraborty presented staff report and recommendation.

Jason Van Essen stated these types of requests are common for balconies and footings in downtown projects.

Chris Draper asked if the vacation is only for the boundary around the balcony.

Sreyoshi Chakraborty stated yes.

Chris Draper asked if the building was demolished, would those air rights go back to the city.

Lisa Weiland stated if the building was destroyed or demolished beyond a certain percentage, the easements would expire.

Chris Draper asked if this request would impact future decisions on subsurface rights as needed in this part of town.

Lisa Weiland stated air rights are tied to specific elevations so subsurface rights would not be impacted. The subsurface rights are specific to the footings.

CHAIRPERSON OPENED THE PUBLIC HEARING

Carol Maher, 701 Polk Blvd stated the city is eager to approve air rights when it seems to be a risk to the pedestrian traffic.

Lisa Weiland stated some of the concerns raised will be addressed in the document sent to city council and will be available to the public.

Justyn Lewis asked what percent of the sidewalk will be taken up by the balconies.

Josh Trygstad, Civil Design Advantage, 4121 NW Urbandale Drive, Urbandale, IA stated 3.24 feet would extend over the sidewalk.

Justyn Lewis asked what the full width of the balcony is.

Josh Trygstad stated 14 to 15 feet wide.

Abby Chungath asked if there is only 1 balcony that encroaches into the right-of-way.

Josh Trygstad stated it's a stack, starting at the second floor and running up to the seventh floor.

Chris Draper asked if there are specific design standards for these balconies.

Josh Trygstad stated that will be taken care of during the building permit process with structural calculations.

CHAIRPERSON CLOSED THE PUBLIC HEARING

COMMISSION ACTION:

Francis Boggus made a motion for approval of the requested vacation of air rights and subsurface rights, subject to the reservation of easements for any existing utilities until such time that they are abandoned or relocated at the applicant's expense.

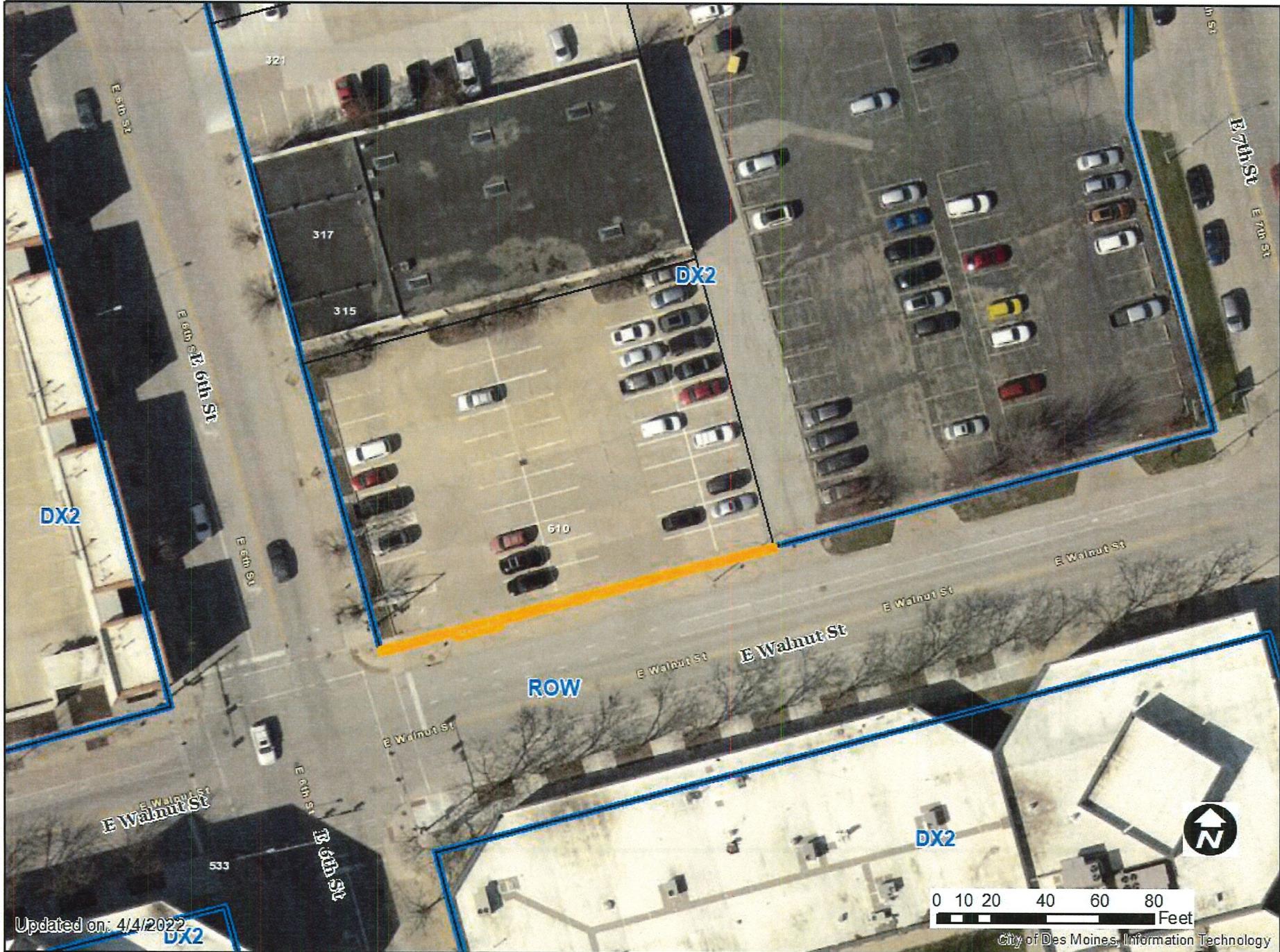
Motion passed: 11-0-1

Respectfully submitted,



Jason Van Essen, AICP
Planning & Urban Design Administrator

JMV:tjh



Updated on: 4/4/2022

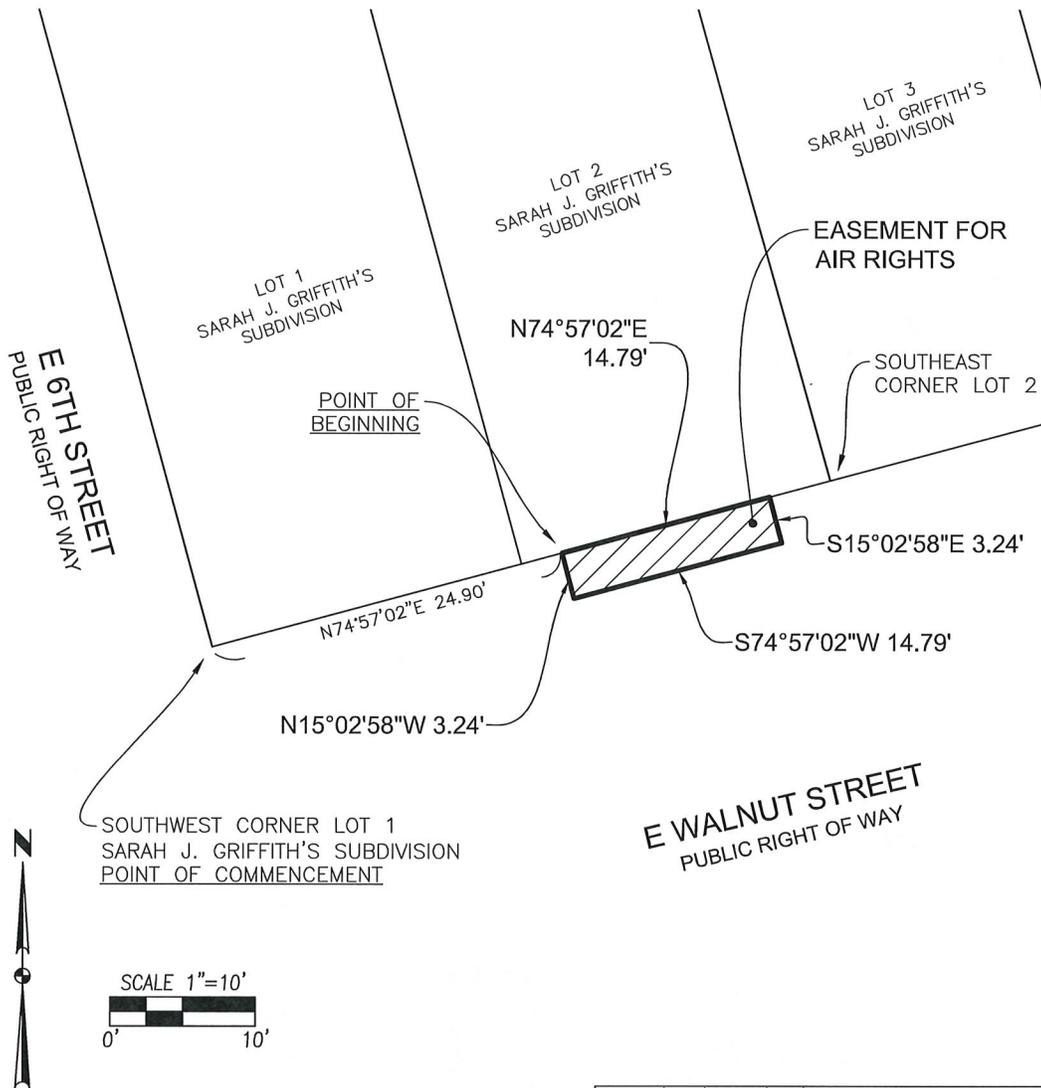
1 inch = 47 feet

EXHIBIT 'A' PERMANENT EASEMENT FOR AIR RIGHTS

EASEMENT FOR AIR RIGHTS DESCRIPTION

THAT PART OF E WALNUT STREET PUBLIC RIGHT OF WAY BEING SOUTH OF AND ADJOINING LOT 2, SARAH J. GRIFFITH'S SUBDIVISION, AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 1, SAID SARAH J. GRIFFITH'S SUBDIVISION; THENCE NORTH 74°57'02" EAST ALONG THE SOUTH LINE OF SAID LOT 1 AND LOT 2, SARAH J. GRIFFITH SUBDIVISION, 24.90 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 74°57'02" EAST ALONG SAID SOUTH SIDE OF LOT 2, A DISTANCE OF 14.79 FEET; THENCE SOUTH 15°02'58" EAST, 3.24 FEET; THENCE SOUTH 74°57'02" WEST, 14.79 FEET; THENCE NORTH 15°02'58" WEST, 3.24 FEET TO THE POINT OF BEGINNING, AND CONTAINING 48 SQUARE FEET.

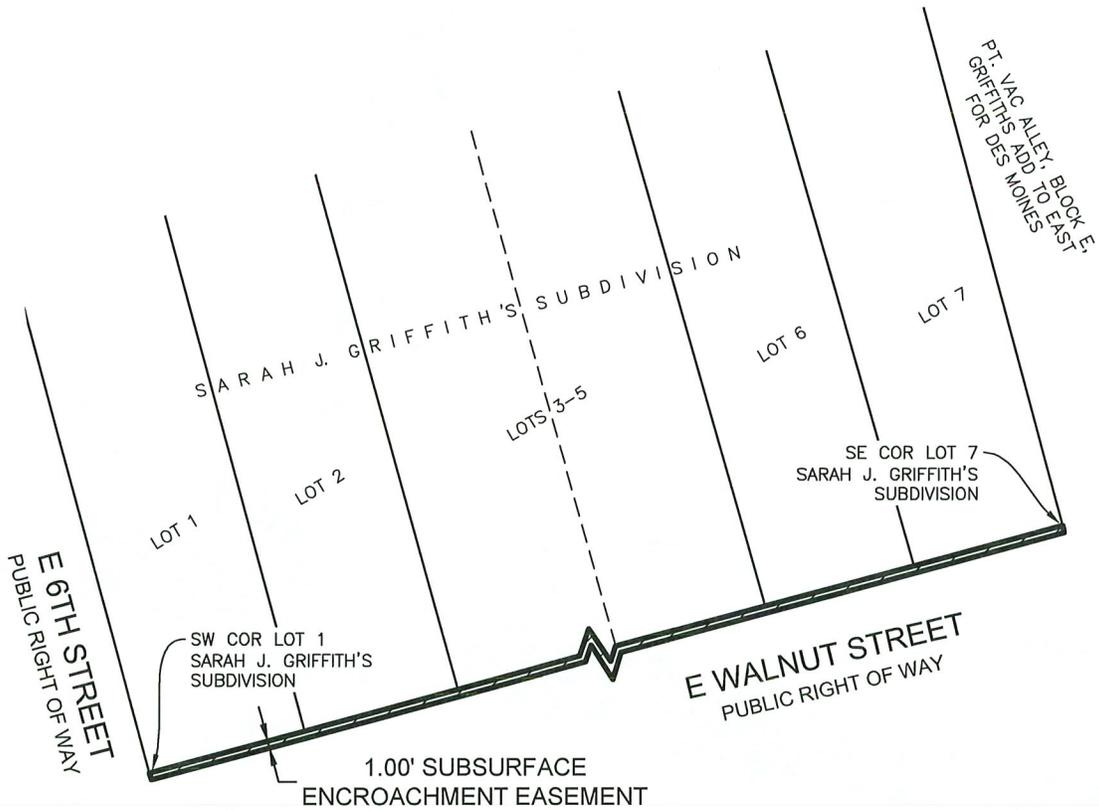


FILE: H:\2021\2102112\DWG\2102112-AERIAL EASEMENT PLAT.DWG
FILE DATE: 3/9/22 DATE PLOTTED: 3/9/2022 6:49 PM
PLOTTED BY: MIKE BROONER:

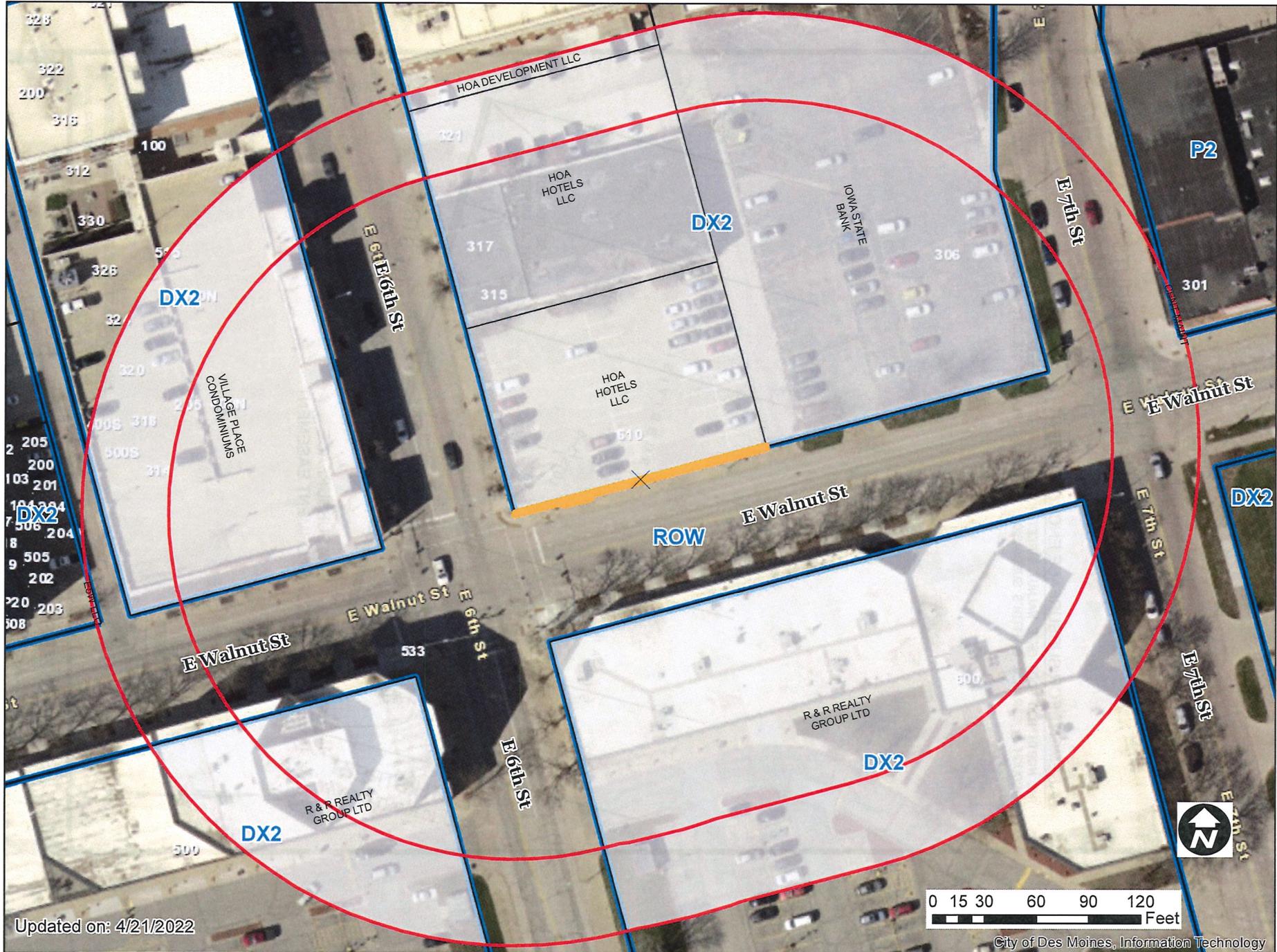
EXHIBIT 'A' PERMANENT EASEMENT FOR AIR RIGHTS

EASEMENT FOR SUBSURFACE ENCROACHMENT

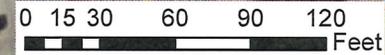
THE NORTH 1.00 FOOT OF E WALNUT STREET PUBLIC RIGHT OF WAY BEING SOUTH OF AND ADJOINING LOTS 1 THROUGH 7, SARAH J. GRIFFITH'S SUBDIVISION, AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA.



FILE: H:\2021\2102112\DWG\2102112-SUBSURFACE ENCROACHMENT EASEMENT.DWG
FILE DATE: 3/31/22 DATE PLOTTED: 3/31/2022 2:40 PM
PLOTTED BY: CARTER YOUNGBLOOD:



Updated on: 4/21/2022



City of Des Moines, Information Technology

1 inch = 73 feet