



Roll Call Number

Agenda Item Number

23

Date October 24, 2022

RECEIVE AND FILE COMMUNICATION FROM THE PLAN AND ZONING COMMISSION REGARDING REQUEST FROM 13TH AND MULBERRY, LLC (OWNER) FOR VACATION OF AIR AND SUBSURFACE RIGHTS-OF-WAY ADJOINING 1321 MULBERRY STREET, FALCON DRIVE, MULBERRY STREET, AND A NORTH/SOUTH ALLEYWAY

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on October 6, 2022, its members voted 15-0 to recommend **APPROVAL** of a request from 13th and Mulberry, LLC (owner), represented by Byron Schafersman (officer), for vacation of air and subsurface rights-of-way adjoining 1321 Mulberry Street, within 13th Street, Falcon Drive, Mulberry Street, and a north/south alleyway, legally described as follows, 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:

AIR AND SUBSURFACE PORTIONS OF THE FOLLOWING:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 8 IN BLOCK 34 IN KEENE & POINDEXTER'S ADDITION: THENCE S29°20'46"W ADISTANCE OF 11.37 FEET TO THE POINT OF BEGINNING: THENCE N15°21'07"W A DISTANCE OF 148.99 FEET: THENCE N73°29'18"EA DISTANCE OF 148.36 FEET: THENCE S15°25'33"E A DISTANCE OF 150.43 FEET: THENCE S74°02'40"W A DISTANCE OF 148.53FEET TO THE POINT OF BEGINNING. LESS AND EXCEPT LOT 8 & 9 BLOCK 34 KEENE & POINDEXTER'S ADDITION TO FORT DES MOINES. ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA. CONTAINING 4,382 SQUARE FEET OR 0.101 ACRES, MORE OR LESS.

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

APPROVED AS TO FORM:

/s/ Lisa A. Wieland

Lisa A. Wieland
Assistant City Attorney

(ROWV-2022-00022)



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

CERTIFICATE

I, Laura Baumgartner, 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

Date 10/24/22
 Agenda Item 33
 Roll Call # _____

October 18, 2022

Communication from the City Plan and Zoning Commission advising that at their October 6, 2022 meeting, the following action was taken regarding a request from 13th and Mulberry, LLC (owner), represented by Byron Schafersman (officer), regarding the vacation of air and subsurface rights-of-way adjoining 1321 Mulberry Street, within 13th Street, Falcon Drive, Mulberry Street, and a north/south alleyway.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 15-0 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			
Todd Garner	X			
Johnny Alcivar	X			
Justyn Lewis	X			
Carolyn Jenison	X			
William Page	X			
Andrew Lorentzen	X			
Emily Webb	X			
Katie Gillette	X			

ARPROVAL 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 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.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The proposed vacation of air rights and subsurface rights within the 13th Street, Falcon Drive, Mulberry Street, and alleyway rights-of-way adjoining the subject property is being requested to allow balconies to project from the building and to allow the encroachment of building footings. The applicant is proposing a 5-story, mixed-use (commercial and residential) building. The requested air rights would also allow ground level commercial spaces to have canopies projection above the entries. The proposed building would be built to maximize the building footprint on the property. In some locations, the footings would extend a maximum of approximately 2 feet past the property line.
2. **Size of Site:** The requested segments of air and subsurface rights-of-way encompass a total of 4,382.12 square feet of area.
3. **Existing Zoning (site):** "DX2" Downtown Mixed-Use District.
4. **Existing Land Use (site):** The subject areas are within 13th Street, Falcon Drive, Mulberry Street, and alleyway rights-of-way.
5. **Adjacent Land Use and Zoning:**
 - North** – "DX2"; Use is multi-tenant office building.
 - South** – "P2"; Uses are government offices and City of Des Moines Fire Station Number 1.
 - East** – "DX1"; Use is an office building.
 - West** – "DX2"; Use is a surface parking lot.
6. **General Neighborhood/Area Land Uses:** The subject area to be vacated is located in the Downtown Des Moines Neighborhood. The area contains a mix of commercial, civic, and residential uses.
7. **Applicable Recognized Neighborhood(s):** The subject property is in the Downtown Des Moines Neighborhood. The neighborhood associations were notified of the public hearing by mailing of the Preliminary Agenda on September 16, 2022 and by mailing of the Final Agenda on September 30, 2022. Additionally, separate notifications of the hearing for this specific item were mailed on September 26, 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 Downtown Des Moines Neighborhood Association mailings were sent to Brandon Brown, 120 Southwest 5th Street, Unit 101, Des Moines, IA 50309.

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:** Existing utilities have been identified within the requested right-of-way. Easements must be reserved for any such 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, including pedestrian circulation on sidewalks.
3. **Permanent Easement for Air Space:** The requested air-rights vacation shall comply with the terms and conditions of any necessary easements for air space above City-owned property.

SUMMARY OF DISCUSSION

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

COMMISSION ACTION:

Dory Briles 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: 15-0

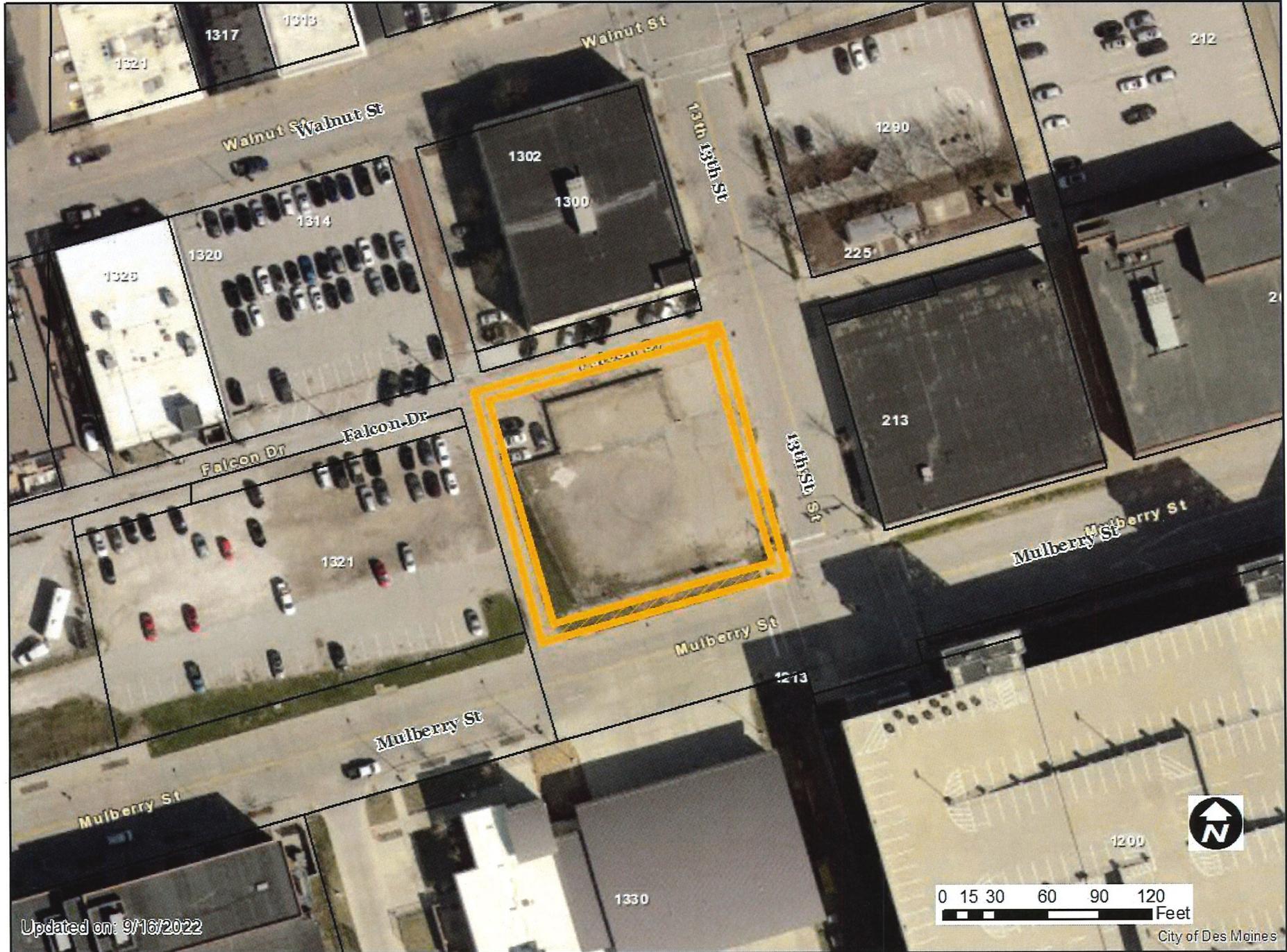
Respectfully submitted,

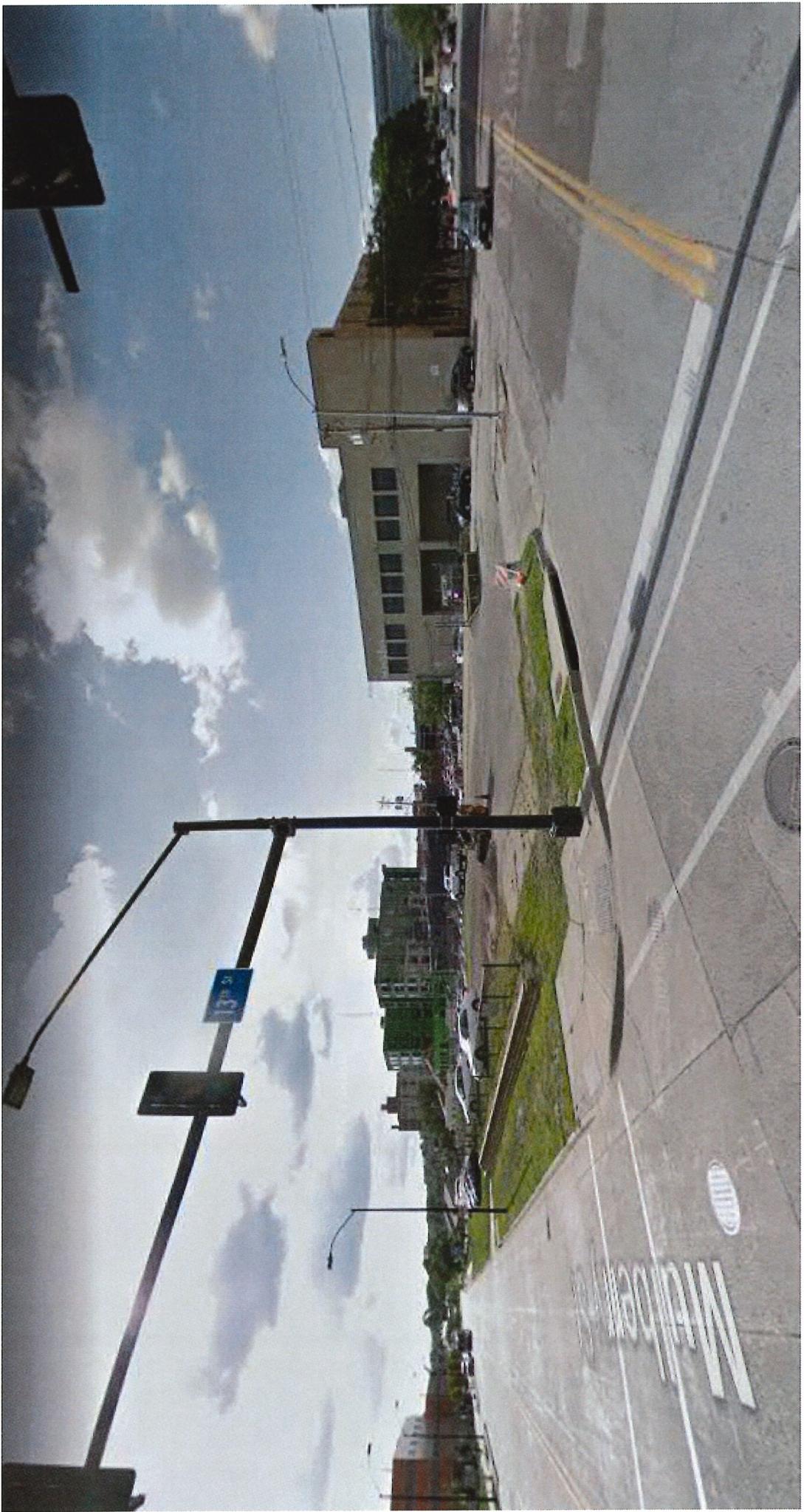
Bert Drost

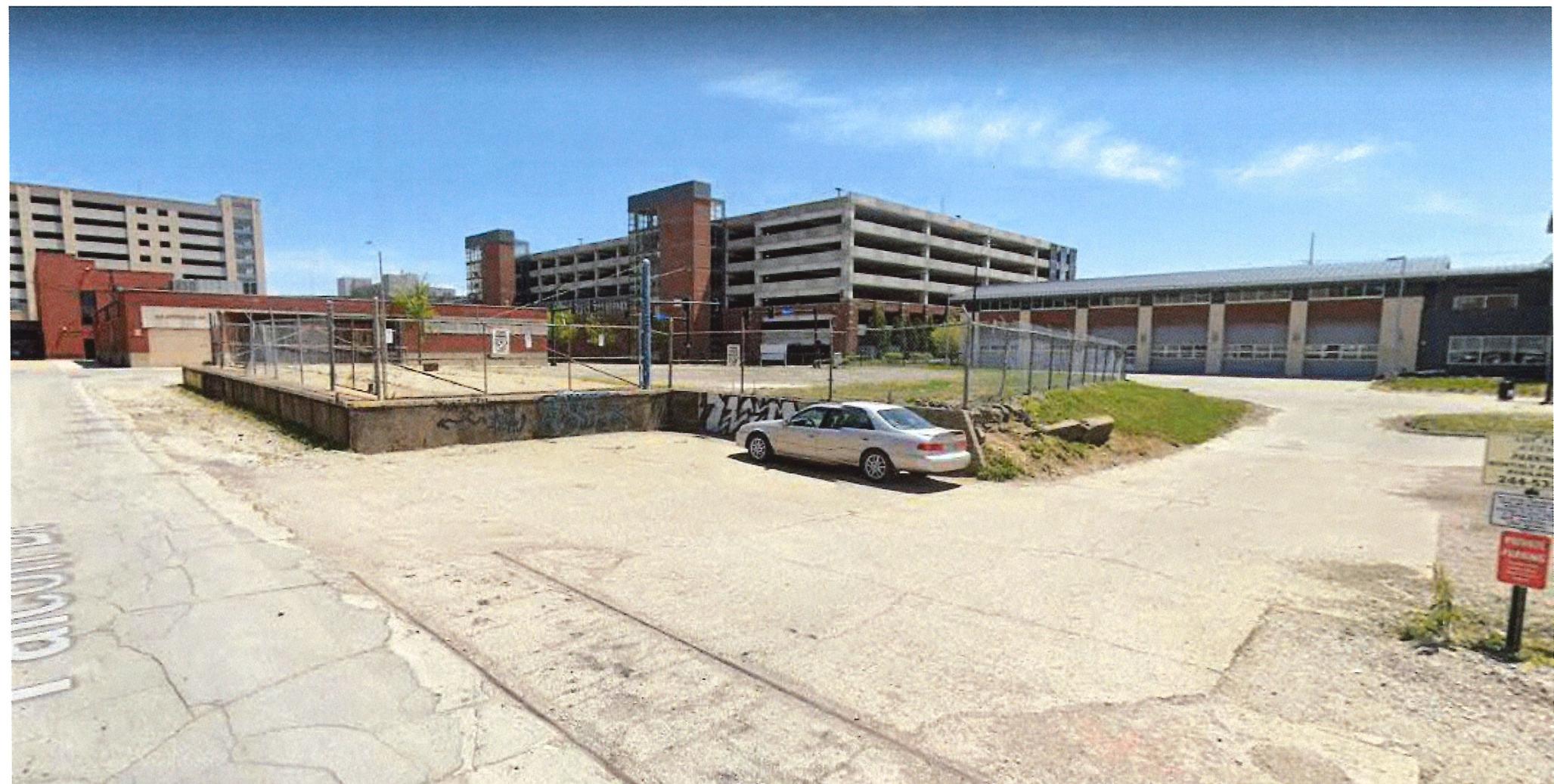
Bert Drost, AICP
Planning & Urban Design Deputy Administrator

BAD:tjh

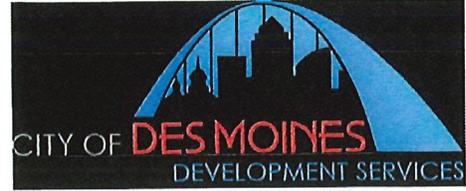








OWNER AFFIDAVIT



The City of Des Moines requires Property Owner's Consent for each development application. A completed and signed copy of this form is required to be included with every application request. For property with more than one owner/titleholder, each owner/titleholder must sign a copy of this form. If the owner/titleholder of the property is an organization/entity, proof of signature authority on behalf of the organization/entity must be attached to this form.

I Byron Schlarsson am the Titleholder(s)/Owner(s), or authorized representative of
(printed name)
the Titleholder(s)/Owner(s), of the property located at 1321 Mulberry St, Des Moines, IA,
(address) Parcel: 782409103022
in Des Moines, Iowa.

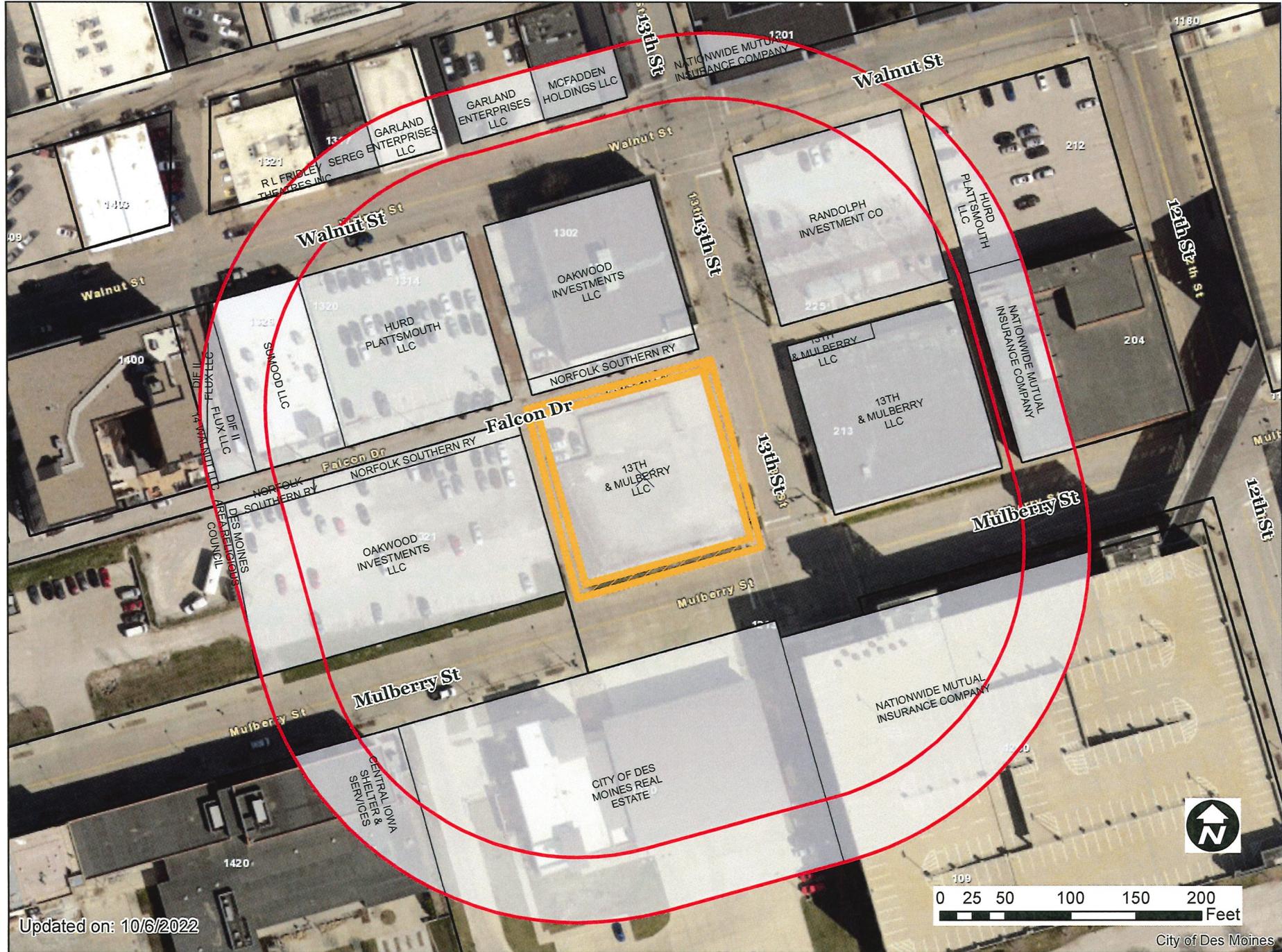
I hereby give consent to the submittal and consideration of the following application regarding my property:

- Zoning Map Amendment (Rezoning)
- Land Use Plan Amendment
- PUD Amendment
- Conditional Use Approval
- Zoning Exception
- Zoning Variance
- Site Plan
- Plat of Survey
- Preliminary Plat
- Vacation Request
- Other (write in): Subsurface & Air Rights

I am authorized to submit this application on behalf of the Titleholder/Owner. I certify under penalty of perjury and according to the laws of the State of Iowa that the foregoing is true and correct.

Signature: [Signature] Date: 8/8/22

Signature: _____ Date: _____



Updated on: 10/6/2022

City of Des Moines

1 inch = 98 feet