



**Roll Call Number**

Agenda Item Number

21

Date May 8, 2023

**RECEIVE AND FILE COMMUNICATION FROM THE PLAN AND ZONING COMMISSION REGARDING REQUEST FROM LISA WERTZ (CONTRACT BUYER) AND KRISTOPHER WERTZ (CONTRACT BUYER) FOR VACATION OF SURFACE RIGHTS-OF-WAY OF APPROXIMATELY 283 LINEAL FEET OF UNDEVELOPED SOUTHWEST FOURTH STREET RIGHT-OF-WAY BOUNDED BY PORTER AVENUE TO THE NORTH AND DIEHL AVENUE TO THE SOUTH, AND TO THE WEST OF AND ADJACENT TO THE PROPERTY AT 315 DIEHL AVENUE**

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on April 20, 2023, its members voted 11-0 to recommend **APPROVAL** of a request from Lisa Wertz and Kristopher Wertz (Contract Buyers), for vacation of approximately 283 lineal feet of undeveloped Southwest Fourth Street right-of-way bounded by Porter Avenue to the north and Diehl Avenue to the south, and to the west of and adjacent to the property at 315 Diehl Avenue, 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.

SECOND BY \_\_\_\_\_.

APPROVED AS TO FORM:

/s/ Chas M. Cahill  
Chas M. Cahill  
Assistant City Attorney

(ROWV-2023-000003)

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

**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.

\_\_\_\_\_  
Mayor

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

Date 5/8/23

Agenda Item 21

Roll Call # \_\_\_\_\_

May 2, 2023

Communication from the City Plan and Zoning Commission advising that at their April 20, 2023 meeting, the following action was taken regarding a request from Lisa Wertz and Kristopher Wertz (contract buyers), for vacation of approximately 283 lineal feet of undeveloped Southwest Fourth Street right-of-way bounded by Porter Avenue to the north and Diehl Avenue to the south, and to the west of and adjacent to the property at 315 Diehl Avenue.

**COMMISSION RECOMMENDATION:**

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

Commission Action:	Yes	Nays	Pass	Abstain	Absent
Francis Boggus	X				
Dan Drendel	X				
Leah Rudolphi	X				
Carol Maher	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

**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 and provision of any necessary no-build easements.

**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 and provision of any necessary no-build easements.

**STAFF REPORT TO THE PLANNING COMMISSION**

**I. GENERAL INFORMATION**

**1. Purpose of Request:** The proposed vacation would enable the property owner to assemble a portion of the undeveloped Southwest Fourth Street right-of-way between Porter Avenue and Diehl Avenue, with their property located immediately to the east of the right-of-way. The applicant has been utilizing part of the right-of-way for parking and driveway purposes. Additionally, a portion of the residential dwelling structure on the property encroaches into the right-of-way.

**2. Size of Site:** 50 feet by 283 feet (14,150 square feet).

**3. Existing Zoning (site):** "N3b" Neighborhood District.

**4. Existing Land Use (site):** The subject area consists of undeveloped right-of-way.

**5. Adjacent Land Use and Zoning:**

**North** – "N3b" and "N3a"; Use is one-household residential.

**South** – "N3b" and "N3a", Use is one-household residential.

**East** – "N3b"; Use is one-household residential.

**West** – "N3a", Use is one-household residential.

**6. General Neighborhood/Area Land Uses:** The applicant's property consists of a one-household residential lot fronting the intersection of Diehl Avenue and Southwest Fourth Street. The surrounding area consists of predominantly residential uses.

**7. Applicable Recognized Neighborhood(s):** The subject property is within the South Central DSM Neighborhood Association. All neighborhood associations were notified of the public hearing by emailing of the Preliminary Agenda on March 31, 2023 and of the Final Agenda on April 14, 2023. Additionally, separate notifications of the hearing for this specific item were mailed on March 31, 2023 (20 days prior to the public hearing) and April 10, 2023 (10 days prior to the public hearing) to the Neighborhood Association and to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site.

All notices are mailed to the primary contact(s) designated by the recognized neighborhood association to the City of Des Moines Neighborhood Development Division on the date of the mailing. The South Central DSM Neighborhood mailings were sent to Webster Kranto, 310 East Emma Avenue, Des Moines, IA 50315.

**8. Relevant Zoning History:** None

**9. PlanDSM: Creating Our Tomorrow Land Use Plan Designation:** Low Density Residential.

**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:** There is an existing sewer line that runs within the requested ROW. Because existing utilities have been identified within the 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. Building Code:** Any portion of the vacated right-of-way adjoining the properties on Southwest Fourth Street must be acquired by the respective property owners to ensure that they continue to be in conformance with Building Code separation requirements.
- 3. Traffic/Access:** The requested vacation would not negatively impact access to private properties or traffic patterns.

## **SUMMARY OF DISCUSSION**

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

## **COMMISSION ACTION:**

Carolyn Jenison 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 and provision of any necessary no-build easements.

Motion passed: 11-0

Respectfully submitted,

*Bert Drost*

Bert Drost, AICP  
Planning & Urban Design Administrator

BAD:tjh



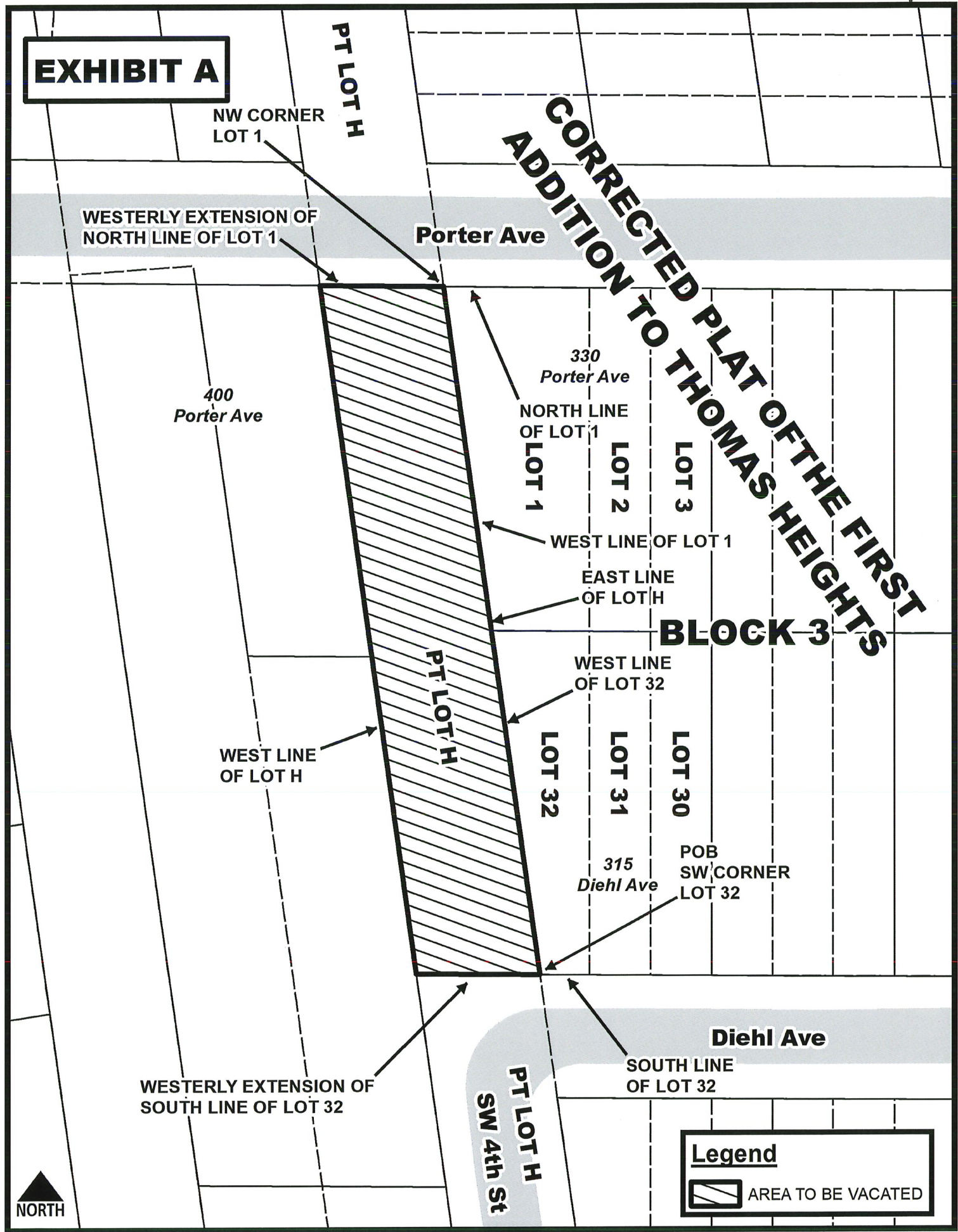
Updated on: 3/30/2023

1 inch = 113 feet

**EXHIBIT A**

**CORRECTED PLAT OF THE FIRST ADDITION TO THOMAS HEIGHTS**

**BLOCK 3**



NW CORNER LOT 1

WESTERLY EXTENSION OF NORTH LINE OF LOT 1

Porter Ave

330 Porter Ave

NORTH LINE OF LOT 1

LOT 1

LOT 2

LOT 3

WEST LINE OF LOT 1

EAST LINE OF LOT H

400 Porter Ave

PT LOT H

WEST LINE OF LOT 32

LOT 32

LOT 31

LOT 30

WEST LINE OF LOT H

315 Diehl Ave

POB SW CORNER LOT 32

Diehl Ave

SOUTH LINE OF LOT 32

WESTERLY EXTENSION OF SOUTH LINE OF LOT 32

PT LOT H SW 4th St

**Legend**

 AREA TO BE VACATED















Item: ROWV-2023-000003

Date: 4-13-2023

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Please mark one of the following:

- I support the request
- I am undecided
- I oppose the request

Staff Use Only  
**RECEIVED**  
 COMMUNITY DEVELOPMENT  
 APR 17 2023

Titleholder Signature: ~~Jess L Johnson Rev Trust~~

Name/Business: Jess L Johnson Rev. Trust

Impacted Address: 400 Porter Ave.

Comments: I am interested in my share of the vacated property.

Item: ROWV-2023-000003

Date:

Please mark one of the following:

- I support the request
- I am undecided
- I oppose the request

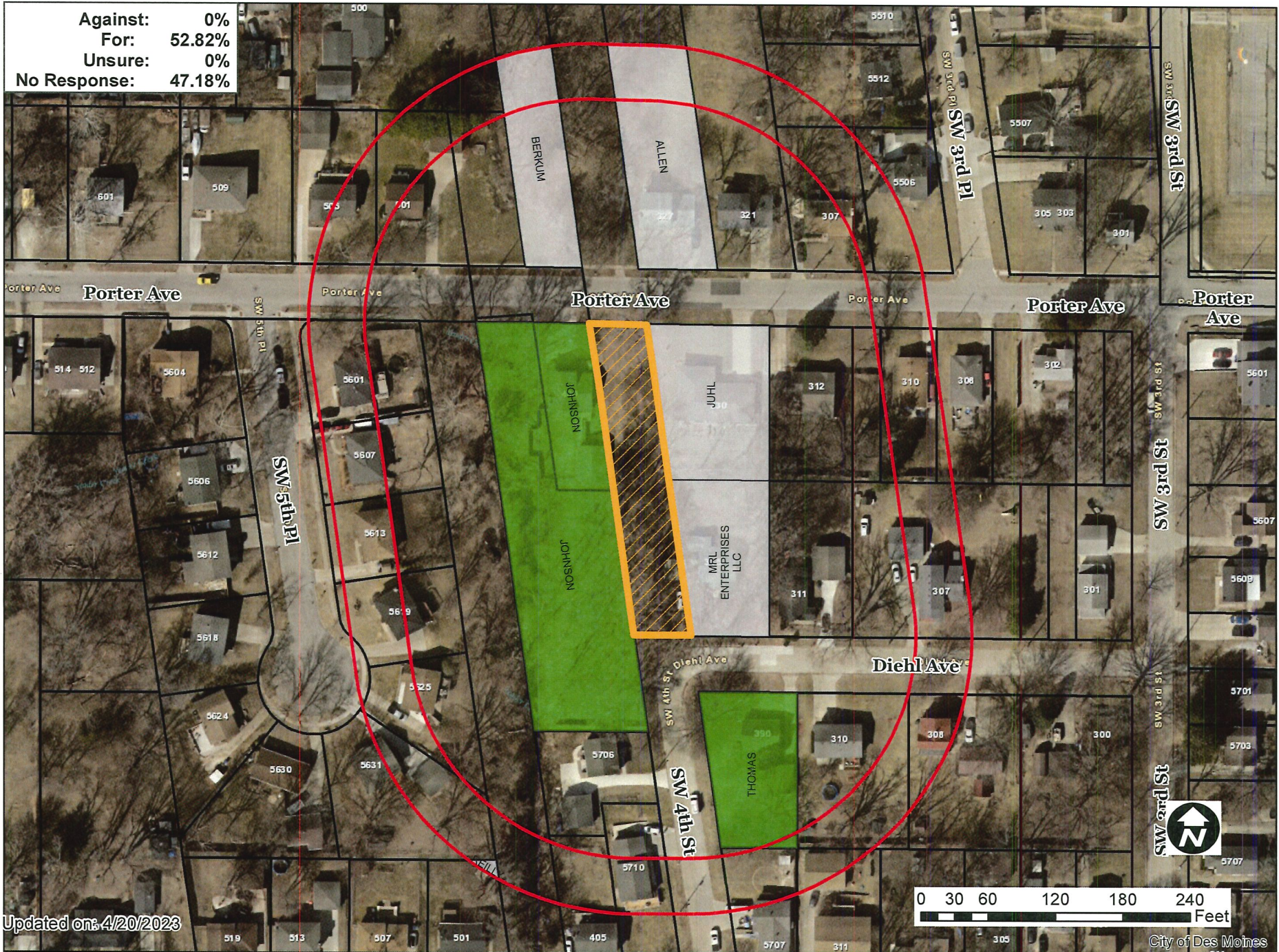
Staff Use Only  
**RECEIVED**  
 COMMUNITY DEVELOPMENT  
 APR 17 2023

Titleholder Signature: Tom Thomas

Name/Business: Tom Thomas

Impacted Address: 390 Diehl ave

Comments: Allowing them a true driveway seems reasonable



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