

Date May 8, 2023

**HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF ALLEY RIGHT-OF-WAY IN THE VICINITY OF 1601 HIGH STREET AND CONVEYANCE OF A PERMANENT EASEMENT FOR BUILDING ENCROACHMENT – DOOR SWING TO HOYT, LLC FOR \$2,045.00**

**WHEREAS**, February 6, 2023, by Roll Call No. 23-0153, 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 Hoyt, LLC to vacate alley right-of-way in the vicinity of 1601 High Street, bounded by 16th Street to the east, 17th Street to the west, High Street to the south, and Woodland Avenue to the north to allow for trash enclosure gates to swing into the existing alleyway, subject to the following conditions:

1. Reservation of easements for any existing utilities until such time that they are abandoned or relocated at the applicant's expense.
2. The requested vacation area shall be leased, not conveyed to the applicant.
3. Any future door swing easement shall note that enclosure doors are to remain closed except during trash pick-up; and

**WHEREAS**, Hoyt, LLC, owner of 1601 High Street, has offered to the City of Des Moines, Iowa (“City”) the purchase price of \$2,045.00 for the purchase of a Permanent Easement for Building Encroachment – Door Swing through and across the above grade segment of alley right-of-way located north of 1601 High Street, Des Moines, Iowa; bounded by 16th Street to the east, 17th Street to the west, High Street to the south, and Woodland Avenue to the north (hereinafter “Property”); 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 – Door Swing therein; and

**WHEREAS**, on April 24, 2023, by Roll Call No. 23-0584, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation of the alley right-of-way and conveyance of the Permanent Easement for Building Encroachment – Door Swing be set for hearing on May 8, 2023, at 5:00 p.m., in the City Council Chambers, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa; and

**WHEREAS**, due notice of said proposal to vacate the alley right-of-way and convey the Permanent Easement for Building Encroachment – Door Swing was given to all necessary parties as provided by law, setting forth the time and place for hearing on said proposal; 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:

.....  
**Date** May 8, 2023

1. Upon due consideration of the facts and statements of interested persons, any and all objections to the proposed vacation of the above grade segment of alley right-of-way located north of 1601 High Street, Des Moines, Iowa; bounded by 16th Street to the east, 17th Street to the west, High Street to the south, and Woodland Avenue to the north, and conveyance of a Permanent Easement for Building Encroachment – Door Swing, as described herein, are hereby overruled and the hearing is closed.

2. There is no public need or benefit for the alley right-of-way proposed to be vacated, and the public would not be inconvenienced by reason of the vacation of the above grade segment of alley right-of-way located north of 1601 High Street, Des Moines, Iowa; bounded by 16th Street to the east, 17th Street to the west, High Street to the south, and Woodland Avenue to the north, legally described as follows, and said vacation is hereby approved:

A PART OF EAST/WEST ALLEY RIGHT OF WAY IN BLOCK A IN THE SUBDIVISION OF LOT 6 OF THE PURSLEY ESTATE, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, MORE PARTICULARLY DESCRIBED:

COMMENCING AT THE NORTHEAST CORNER OF LOT 5 IN SAID BLOCK A; THENCE N89°34'47"W, 119.06 FEET ALONG THE NORTH LINE OF LOTS 5 AND 6 IN SAID BLOCK A, TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG THE NORTH LINE OF LOTS 6 AND 7 IN SAID BLOCK A, N89°34'47"W 15.66 FEET; THENCE N00°24'56"E, 6.00 FEET; THENCE S89°34'47"E, 15.67 FEET; THENCE S00°25'19"W, 6.00 FEET TO THE POINT OF BEGINNING.  
THE DESCRIBED AREA CONTAINS 95 SF MORE OR LESS.

3. The proposed sale of a Permanent Easement for Building Encroachment – Door Swing, as legally described below to Community Foundation of Greater Des Moines for \$600.00, subject to any and all easements, restrictions and covenants of record, and said conveyance is hereby approved:

A PART OF EAST/WEST VACATED ALLEY RIGHT OF WAY IN BLOCK A IN THE SUBDIVISION OF LOT 6 OF THE PURSLEY ESTATE, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, MORE PARTICULARLY DESCRIBED:

COMMENCING AT THE NORTHEAST CORNER OF LOT 5 IN SAID BLOCK A; THENCE N89°34'47"W, 119.06 FEET ALONG THE NORTH LINE OF LOTS 5 AND 6 IN SAID BLOCK A, TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG THE NORTH LINE OF LOTS 6 AND 7 IN SAID BLOCK A, N89°34'47"W 15.66 FEET; THENCE N00°24'56"E, 6.00 FEET; THENCE S89°34'47"E, 15.67 FEET; THENCE S00°25'19"W, 6.00 FEET TO THE POINT OF BEGINNING.  
THE DESCRIBED AREA CONTAINS 95 SF MORE OR LESS.

4. The Mayor is authorized and directed to sign the Offer to Purchase and Permanent Encroachment – Door Swing for Building Encroachment for the conveyance as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.

**Date** May 8, 2023

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 Building Encroachment – Door Swing, 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 Building Encroachment – Door Swing, 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 Building Encroachment – Door Swing 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.

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

APPROVED AS TO FORM:

/s/ Mackenzie L. Moreno  
 Mackenzie L. Moreno, Assistant City Attorney

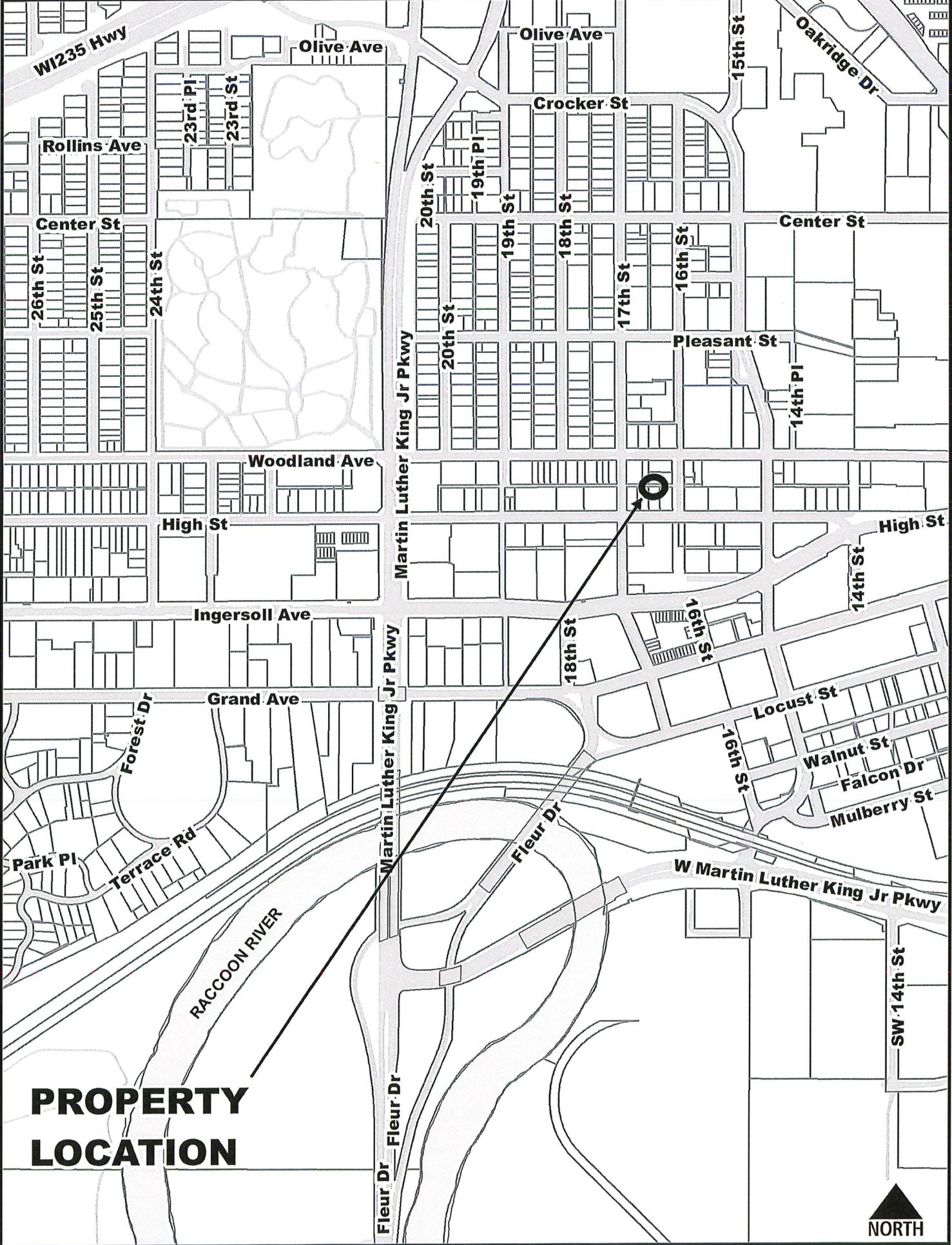
COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
MANDELBAUM				
SHEUMAKER				
VOSS				
WESTERGAARD				
TOTAL				
MOTION CARRIED			APPROVED	
_____ Mayor				

**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.

\_\_\_\_\_  
 Laura Baumgartner, City Clerk



**PROPERTY  
LOCATION**



January 31, 2023

Communication from the City Plan and Zoning Commission advising that at their January 19, 2023 meeting, the following action was taken regarding a request from Hoyt, LLC (owner), represented by Ryan Wade (officer), regarding the vacation of alleyway surface rights-of-way adjoining property in the vicinity of 1601 High Street to allow trash enclosure gates to swing into the right-of-way.

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 14-0 as follows.

<u>Commission Action:</u>	<u>Yes</u>	<u>Nays</u>	<u>Pass</u>	<u>Absent</u>
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 vacation, subject to the following conditions:

- A) Reservation of easements for any existing utilities until such time that they are abandoned or relocated at the applicant's expense.
- B) The requested vacation area shall be leased, not conveyed, to the applicant.
- C) Any future door swing easement shall note that enclosure doors are to remain closed except during trash pick-up.

## Written Responses

1 in Favor

0 in opposition

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

Staff recommends approval of the requested vacation, subject to the following conditions:

- A) Reservation of easements for any existing utilities until such time that they are abandoned or relocated at the applicant's expense.
- B) The requested vacation area shall be leased, not conveyed, to the applicant.
- C) Any future door swing easement shall note that enclosure doors are to remain closed except during trash pick-up.

### **STAFF REPORT TO THE PLANNING COMMISSION**

#### **I. GENERAL INFORMATION**

1. **Purpose of Request:** The applicant is proposing to construct an apartment building at 1601 High Street with a footprint that would extend up to the site's northern property line, which abuts an alley. As part of the site improvements, the applicant is proposing to locate the building's trash enclosure directly adjacent to the alley right-of-way. The requested portion of alley right-of-way represents the extents of swinging doors from the building's proposed trash enclosure when they would be opened.
2. **Size of Site:** The requested surface rights-of-way consists of approximately 95 square feet of area (approximately 15.75 feet by 6 feet).
3. **Existing Zoning (site):** "RX1" Mixed-Use District.
4. **Existing Land Use (site):** The subject area consists of public alley right-of-way.
5. **Adjacent Land Use and Zoning:**
  - North** – "NX2a", Uses are one- and multiple-household dwellings.
  - East** – "RX1", Uses are 16<sup>th</sup> Street, a one-household dwelling unit, and a 7-unit apartment building.
  - South** – "MX2"; Uses are High Street, a parking lot, and Big Grove (restaurant and brewery).
  - West** – "RX1"; Uses are vacant commercial and multiple-household dwellings.
6. **General Neighborhood/Area Land Uses:** The subject portion of alley right-of-way is located on the north side of High Street between 16<sup>th</sup> Street and 17<sup>th</sup> Street. It is within

a transitional area located among a variety of residential uses at varying densities, as well as a mix of office, hospitality, and other supportive commercial uses.

7. **Applicable Recognized Neighborhood(s):** The subject right-of-way is within the Sherman Hill Neighborhood. The neighborhood associations were notified of the public hearing by email of the Preliminary Agenda on January 3, 2023, and by email of the Final Agenda on January 13, 2023. Additionally, separate notifications of the hearing for this specific item were mailed on January 9, 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 adjacent to the request right-of-way.

All agendas and notices are sent to the primary contact person designated to the City of Des Moines Neighborhood Development Division by the recognized neighborhood association. The Sherman Hill Neighborhood Association emails and mailings were sent to Angela Broughton-Romain, 731 16<sup>th</sup> Street, Des Moines, IA 50314.

8. **Relevant Zoning History:** N/A.

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 the surrounding public and private properties or existing traffic patterns. The existing alley is 16 feet wide. The doors would swing no more than 6 feet into the right-of-way only when a garbage truck is present.

## SUMMARY OF DISCUSSION

Bert Drost presented staff report and recommendation.

Mike Welch, Welch Design and Development, North Liberty, IA stated this request is to allow for an easement within the alley, access will not be taken away. They would provide 14-feet of paving within the 16-foot wide alley right-of-way. To avoid impediments with the alley, pedestrian access to the enclosure would be at the southwest corner. The property manager and trash company would be the only personnel with keys to the gate.

Francis Boggus asked how often trash would be picked up.

Mike Welch stated that hasn't been determined but every other day is typical for a building this size.

Carol Maher asked if they would be supporting both trash and recycling.

Mike Welch stated yes.

Francis Boggus asked how long it takes the trash company to empty the dumpsters.

Mike Welch stated less than 10 minutes.

Dan Drendel asked if any bollards would stick out beyond the trash enclosure structure.

Mike Welch stated there will be a bollard on each corner of the trash enclosure.

### **CHAIRPERSON OPENED THE PUBLIC HEARING**

Josh Boghs, 614 16<sup>th</sup> Street stated he is opposed to this request due to his garage being directly across from the proposed trash enclosure. This would impact his ability to get in and out of his garage and would impact the safety of people walking through the alley. With the adjacent property being new construction, he believes there is opportunity to find a better place for the trash enclosure.

Angela Broughton-Romain, President of the Sherman Hill Neighborhood Association, 731 16<sup>th</sup> Street stated that overtime this is going to create issues with long standing residence as there are exiting problems with alleyways in Sherman Hill.

Angie Pfannkuch, Owners Rep for Hoyt, LLC, 220 SE 6<sup>th</sup> Street stated this trash enclosure is one of the first in this neighborhood that would comply with current standards including having a pedestrian access door. Noted that many apartments in the area only have dumpsters and no enclosure. The doors should only be open when the garbage truck is there to empty it. The tenants occupying the new building would not be using the alley for vehicular access since parking would be accessed from High Street.

Dan Drendel asked if she could speak to the next phase of development.

Angie Pfannkuch stated they are required to provide a trash enclosure on the site covered by this site plan. Therefore, they cannot put it on the adjoining property they own. They do not have plans for the adjacent site at this time.

Carol Maher asked if enforcement action can be taken if the enclosure becomes a problem.

Jason Van Essen stated yes, it would be an enforcement action based on the easement agreement.

### **CHAIRPERSON CLOSED THE PUBLIC HEARING**

**COMMISSION ACTION:**

Francis Boggus made a motion for approval of the requested vacation, subject to the following conditions:

- A) Reservation of easements for any existing utilities until such time that they are abandoned or relocated at the applicant's expense.
- B) The requested vacation area shall be leased, not conveyed, to the applicant.
- C) Any future door swing easement shall note that enclosure doors are to remain closed except during trash pick-up.

Motion passed: 14-0

Respectfully submitted,



Jason Van Essen, AICP  
Planning & Urban Design Administrator

JMV:tjh

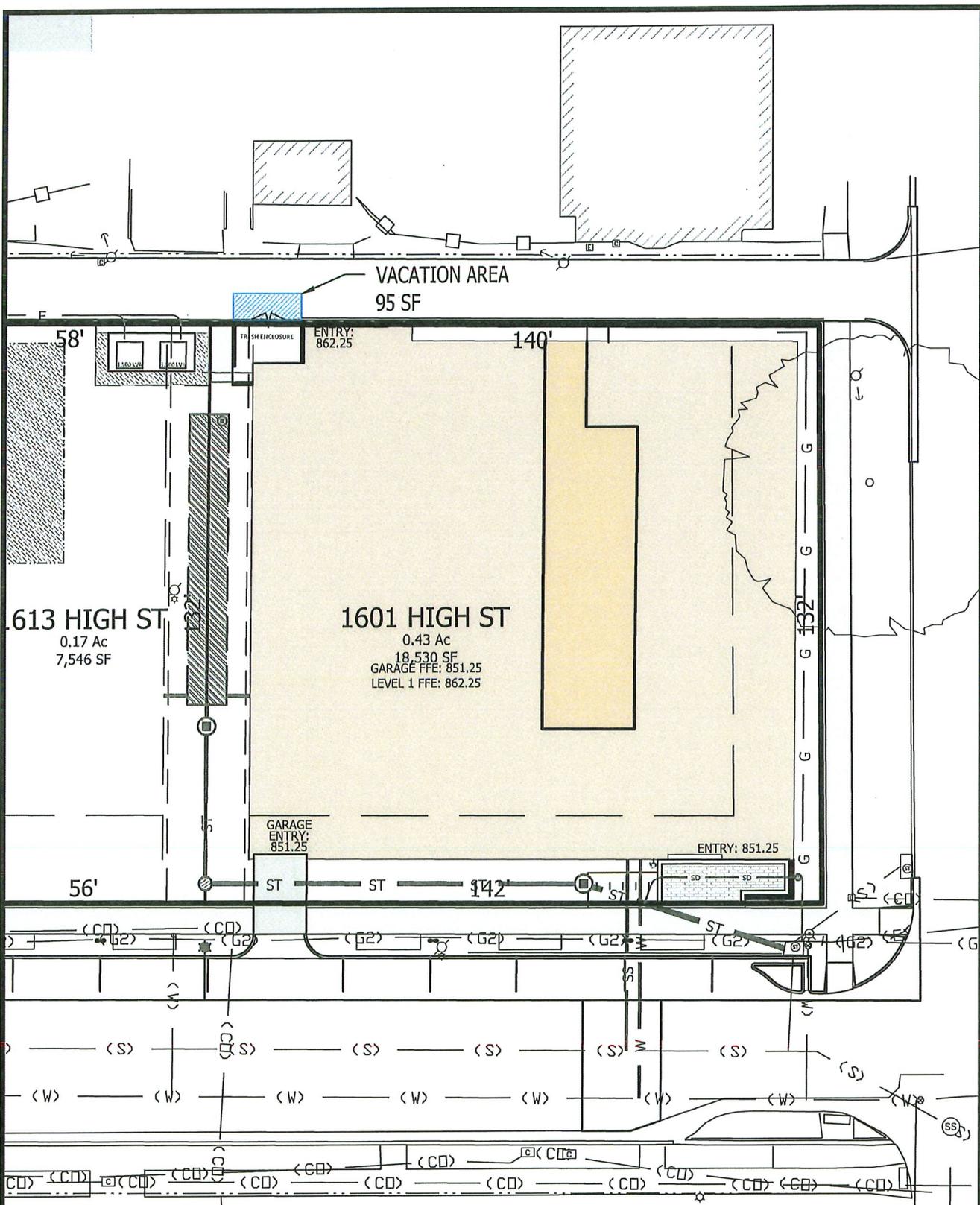
Hoyt, LLC, Alleyway Rights-of-Way in Vicinity of 1601 High Street

ROWV-2022-000025

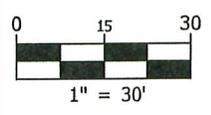


1 inch = 68 feet





PLANNING: 10 PM ARCHITECTS AND ASSOCIATES, INC.  
 PROJECT: 1601 HIGH STREET VACATION AREA  
 DRAWING: 12/21/2022 - 12/21/2022 - WELCH DESIGN AND DEVELOPMENT, LLC



ENGINEER:  
**welch**  
 design+development

CLIENT:  
 STREAMLINE ARCHITECTURE  
 PROJECT NAME:  
 1601 HIGH STREET  
 DES MOINES

SHEET NAME: RIGHT-OF-WAY VACATION		
PROJECT NO: 1046	PROJECT MANAGER: WELCH	SHEET NUMBER: 1 OF 1
REVISION: ---	ISSUED DATE: 12/21/2022	





# Hoyt, LLC, Alleyway Rights-of-Way in Vicinity of 1601 High Street

ROWV-2022-000025



Updated on: 1/19/2023

1 inch = 68 feet

Item: ROWV-2022-000025

Date: 1/16/2023

Please mark one of the following:

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

Staff Use Only  
**RECEIVED**  
 COMMUNITY DEVELOPMENT  
 JAN 19 2023

Titleholder Signature: [Signature]

Name/Business: Josh Bogus

Impacted Address: 614 16th St DSM, IA 50309

- Comments: - This property's reduced/zero setbacks will directly impact the ability to get in and out of my garage.
- \_\_\_\_\_ - Reducing the setback to zero feet will make it impossible for two-way traffic in the alley. This will result in cars driving on adjacent residences' private properties.
- \_\_\_\_\_ - This property's reduced/zero setbacks will increase the risk of accidents to people and property in a high-traffic alley.
- \_\_\_\_\_ - Trash enclosure doors will come halfway out into the alley, prohibiting the ability for vehicles from driving through when left open.

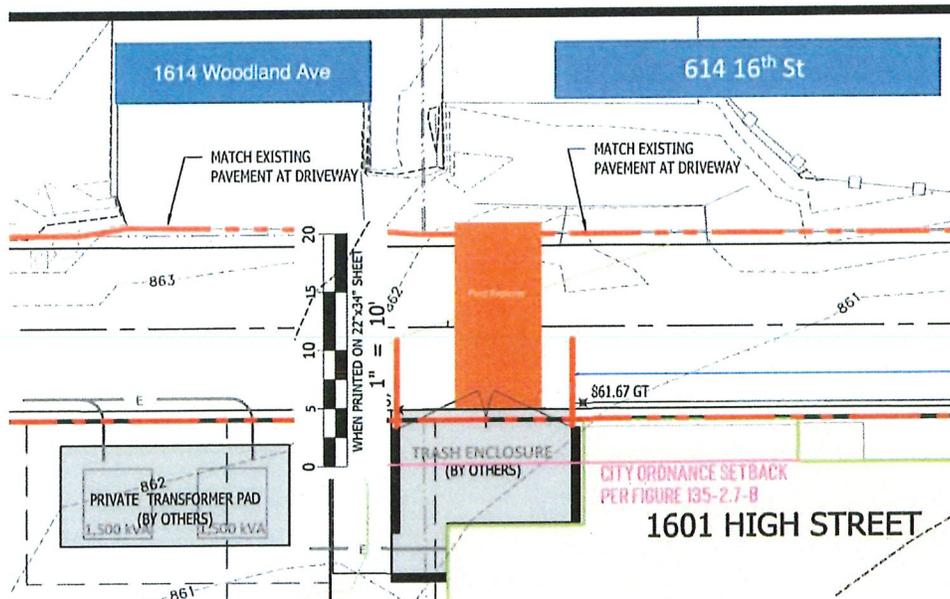
The following is being submitted for public hearing regarding ROWV-2022-000025 and SITE-2022-000137 on January 19, 2023.

Submitted by:

Josh & Sarah Bogus	Phil Ohnemus & Ashley Scheidel
614 16 <sup>th</sup> St	1614 Woodland Ave
Des Moines, IA 50309	Des Moines, IA 50309

Comments:

- This is new construction. The existing property is completely empty.
- This property's reduced/zero setbacks will directly impact the ability to get in and out of my garage. The figure below illustrates this using a mid-sized SUV.
- Reducing the setback to zero feet will make it impossible for two-way traffic in the alley. This will result in cars driving on adjacent residences' private properties. This will be especially difficult in the winter.
- This property's reduced/zero setbacks will increase the risk of accidents to people and property in a high-traffic alley.
- Trash enclosure doors will come halfway out into the alley, prohibiting the ability for vehicles from driving through when left open.



- The above illustration is based on Project No:1046, Revision A, Sheet Number: C1.00, Issue Date 12-21-2022.
- Orange box – set to represent the size of a mid-sized SUV backing out of the garage in the alley.
- Two red lines on each side of the Trash Enclosure show how far out the doors will swing when open.

# 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 Ryan Wade am the Titleholder(s)/Owner(s), or authorized representative of  
*(printed name)*

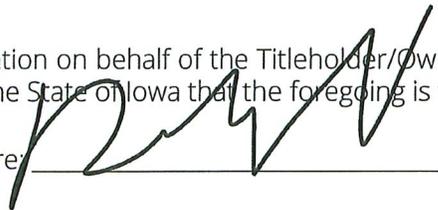
the Titleholder(s)/Owner(s), of the property located at 1601 High St  
*(address)*

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 x
- Other (write in): \_\_\_\_\_

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:  Date: 1-30-23

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