



**Roll Call Number**

**Agenda Item Number**

26

**Date** October 2, 2023

**RECEIVE AND FILE COMMUNICATION FROM THE PLAN AND ZONING COMMISSION REGARDING REQUEST FROM MMR ENTERPRISES, LLC (OWNER, 2400 COURTLAND AVENUE), REPRESENTED BY MARK DAVIS (OFFICER), FOR VACATION OF AN "L"-SHAPED ALLEY RIGHT-OF-WAY LOCATED IN THE VICINITY OF 2400 COURTLAND DRIVE, WHERE THE RIGHT-OF-WAY IS BOUNDED BY KIRKWOOD AVENUE TO THE NORTH AND COURTLAND DRIVE TO THE EAST**

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on September 21, 2023 its members voted 5-3 to recommend **APPROVAL** of a request from MMR Enterprises, LLC (owner), represented by Mark Davis (officer) for vacation of an "L"-shaped alley right-of-way located in the vicinity of 2400 Courtland Drive, where the right-of-way is bounded by Kirkwood Avenue to the north and Courtland Drive to the east, to allow the vacated area to be assembled and maintained for private use, 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-2022-000002)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
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 October 2, 2023

Agenda Item \_\_\_\_\_

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

September 26, 2023

Communication from the City Plan and Zoning Commission advising that at their September 21, 2023 meeting, the following action was taken regarding a request from MMR Enterprises, LLC (owner), represented by Mark Davis (officer), for vacation of an "L"-shaped alley right-of-way located in the vicinity of 2400 Courtland Drive, and bounded by Kirkwood Avenue to the north, and Courtland Drive to the east, to allow the vacated area to be assembled and maintained for private use.

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 5-3 as follows.

Commission Action:	Yes	Nays	Pass	Abstain	Absent
Francis Boggus		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
Rick Trower		X			

**APPROVAL** of the requested alley right-of-way vacation, subject to the reservation of easements for any existing utilities until such time that they are abandoned or relocated and provision of any necessary no-build easements.

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

Staff recommends approval of the requested alley right-of-way vacation, subject to the reservation of easements for any existing utilities until such time that they are abandoned or relocated and provision of any necessary no-build easements.

**STAFF REPORT TO THE PLANNING COMMISSION**

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- 1. Purpose of Request:** The proposed vacation would enable property owners adjoining the requested vacation to acquire the vacated land for assemblage with their properties.

The applicant owns the property located to the south of a portion of the alley right-of-way. The applicant’s vacation submittal included the area adjoining the property at 2400 Courtland Avenue only. However, the proposed right-of-way vacation in this form would have created a dead end right-of-way. Furthermore, the subject “L”-shaped alleyway is currently not being used for maintenance or access purposes by the City. Therefore, the City has expanded the applicant’s request to consider the vacation of the entire “L”-shaped alley right-of-way bounded by Kirkwood Avenue to the north and Courtland Drive to the east.

- 2. Size of Site:** 11,097 square feet.
- 3. Existing Zoning (site):** “N5” Neighborhood District and “RX1” Mixed Use District.
- 4. Existing Land Use (site):** The subject area consists of alleyway right-of-way.

- 5. Adjacent Land Use and Zoning:**

**North** – “N5”; Uses are one-household residential units.

**South** – “N5”; Uses are one- household residential units.

**East** – “N5”; Uses are one-household residential units.

**West** – “RX1”, Uses are one-household residential, office, and warehouse.

- 6. General Neighborhood/Area Land Uses:** The subject right-of-way is an “L”-shaped alley right-of-way surrounded primarily by one-household residential uses. The right-of-way is within a block immediately to the east of Southwest 9<sup>th</sup> Street.

- 7. Applicable Recognized Neighborhood(s):** The subject property is within the Indianola Hills Neighborhood Association and within 250 feet of the Grays Lake Neighborhood Association. All neighborhood associations were notified of the public hearing by emailing of the Preliminary Agenda on September 1, 2023, and of the Final Agenda on September 17, 2023. Additionally, separate notifications of the hearing for this specific item were mailed on September 1, 2023 (20 days prior to the public hearing) and September 11, 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 Indianola Hills Neighborhood mailings were sent to Molly Hanson, 1953 Courtland Drive, Des Moines, IA 50315. The Grays Lake Neighborhood mailings were sent to Heidi Ogden, PO Box 36162, Des Moines, IA



50315.

8. **Relevant Zoning History:** On July 17, 2023, a Development Zoning Inspector sent a Notice of Violation (pursuant to City Code Section 135-6.8.6) to the applicant regarding an illegal expansion of gravel within the front yard area of 2400 Courtland Drive.
9. **PlanDSM: Creating Our Tomorrow Land Use Plan Designation:** Low Density Residential, Community 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:** No existing utilities have been identified within the subject right-of-way. Easements must be reserved for any existing utilities until such time that they are abandoned or relocated.
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.

Carol Maher asked how the zoning violation will be resolved with vacation of the alley.

Sreyoshi Chakraborty stated the owner would need to address the gravel that's encroaching on the front lawn.

Jason Van Essen stated the commission should focus on if there is public purpose for this alley. City staff will sort out the enforcement action and sale later.

Mark Davis, Representing MMR Enterprises. LLC, 2669 Brookview Lane, Van Meter, IA stated he and the tenants at 2400 Courtland Drive have been maintaining the alley for the past 7 years. They are working with City staff to address the use of gravel.

## **CHAIRPERSON OPENED THE PUBLIC HEARING**

Andrea Zitoli, 718 Kirkwood Avenue asked what portion they would be able to purchase if the alley is vacated.

Jason Van Essen stated property owners would have the option to buy the portion of alley that adjoins their property.

Andrew Zitoli asked if they were to purchase their portion, could a fence be constructed in that area.



Jason Van Essen stated a fence could be constructed unless there's a utility easement. 26

Jennifer Gomez, 722 Kirkwood Avenue asked how they would access their lot to the south if they don't purchase their portion of the alley. She also asked why they are required to buy it if they have been maintaining it for many years.

Jason Van Essen stated this is publicly owned land, so the vacation and sale process is required. It would make sense for the family to acquire their portion of the alleyway.

Colleen McClain, 608 Kirkwood Avenue read submitted letter verbatim.

Mark Davis stated he has addressed all the legal issues with his tenants and there hasn't been any fires for the past 18 months. The shed that was located on City property has been removed.

Abby Chungath asked if the property at 2400 and 2402 Courtland Drive are accessed by the south driveway.

Mark Davis stated yes, the tenant at 2400 Courtland Drive do park their cars along the alley. Once you get past his property, the alley is impassable.

Abby Chungath asked if the official parking for 2400 Courtland Drive is located to the west.

Mark Davis states yes, there are 2 spots per unit.

Rick Trower asked if parking is allowed in an alley.

Jason Van Essen stated no.

Rick Trower asked if parking would be allowed if the alley is vacated.

Jason Van Essen stated it's possible for parking to be developed but would need to be done in accordance with the city's parking standards.

Rick Trower asked Mr. Davis for the intent of his request.

Mark Davis stated he has been maintaining the alley for many years and it would allow his tenants to use the alley for parking.

Will Page asked if tenants have used the north end of the alley for access.

Mark Davis stated they have occasionally.

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

Rick Trower made a motion for denial due to the value it brings to surrounding neighbors as they use it for accessing their properties.



**COMMISSION ACTION:**

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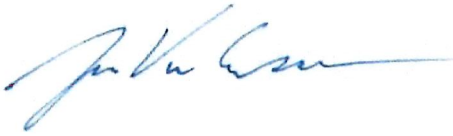
Rick Trower made a motion for denial of the requested alley right-of-way vacation.

**Motion Failed: 4-4 (Will Page, Abby Chungath, Carolyn Jenison, and Carol Maher voted in opposition).**

Carolyn Jenison made a motion for approval of the requested alley right-of-way vacation, subject to the reservation of easements for any existing utilities until such time that they are abandoned or relocated and provision of any necessary no-build easements.

**THE VOTE: 5-3**

Respectfully submitted,



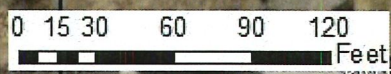
Jason Van Essen, AICP  
Planning & Urban Design Administrator

JMV:tjh





Updated on: 9/14/2023



*Handwritten signature or mark.*

**EXHIBIT A**

**OFFICIAL PLAT OF LOTS 542-577 INCLUSIVE  
AND LOTS A, B, C, D, E AND F IN THE  
FIRST PLAT OF CLIFTON HEIGHTS**

**Kirkwood Ave**

**Courtland Dr**

NORTH LINE  
OF LOT D

**LOT 566**

**LOT 567**

**LOT 568**

**LOT 569**

**LOT 570**

**LOT 571**

**LOT 572**

**LOT 573**

**LOT 574**

**LOT 575**

**LOT 576**

**LOT 577**

SOUTH LINE  
OF LOT D

**LOT C**

WEST LINE  
OF LOT C

SOUTH LINE OF THE  
NORTH 5 FEET OF LOT 7

**PT LOT 7**

**PT LOT 7**

**OFFICIAL PLAT OF SEC 16-78-24**

5 FT

132 FT  
EAST LINE  
OF LOT 4  
**LOT 4** 2400  
Courtland Dr

**IRVIN'S PLACE**

EAST LINE OF LOT 7  
OF OP 16-78-24

**PT LOT 7**

**Legend**

 AREA TO BE VACATED

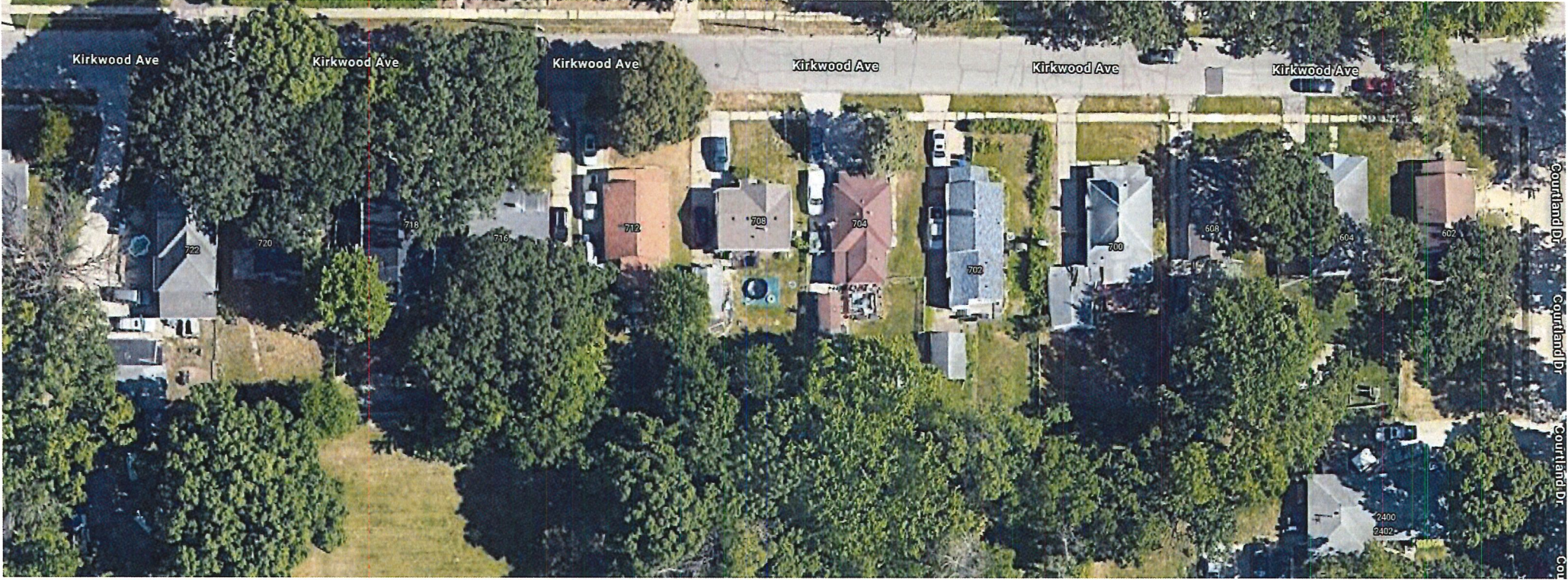


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Item: ROWV-2022-000002

Date: 9/18/23

Please mark one of the following:

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

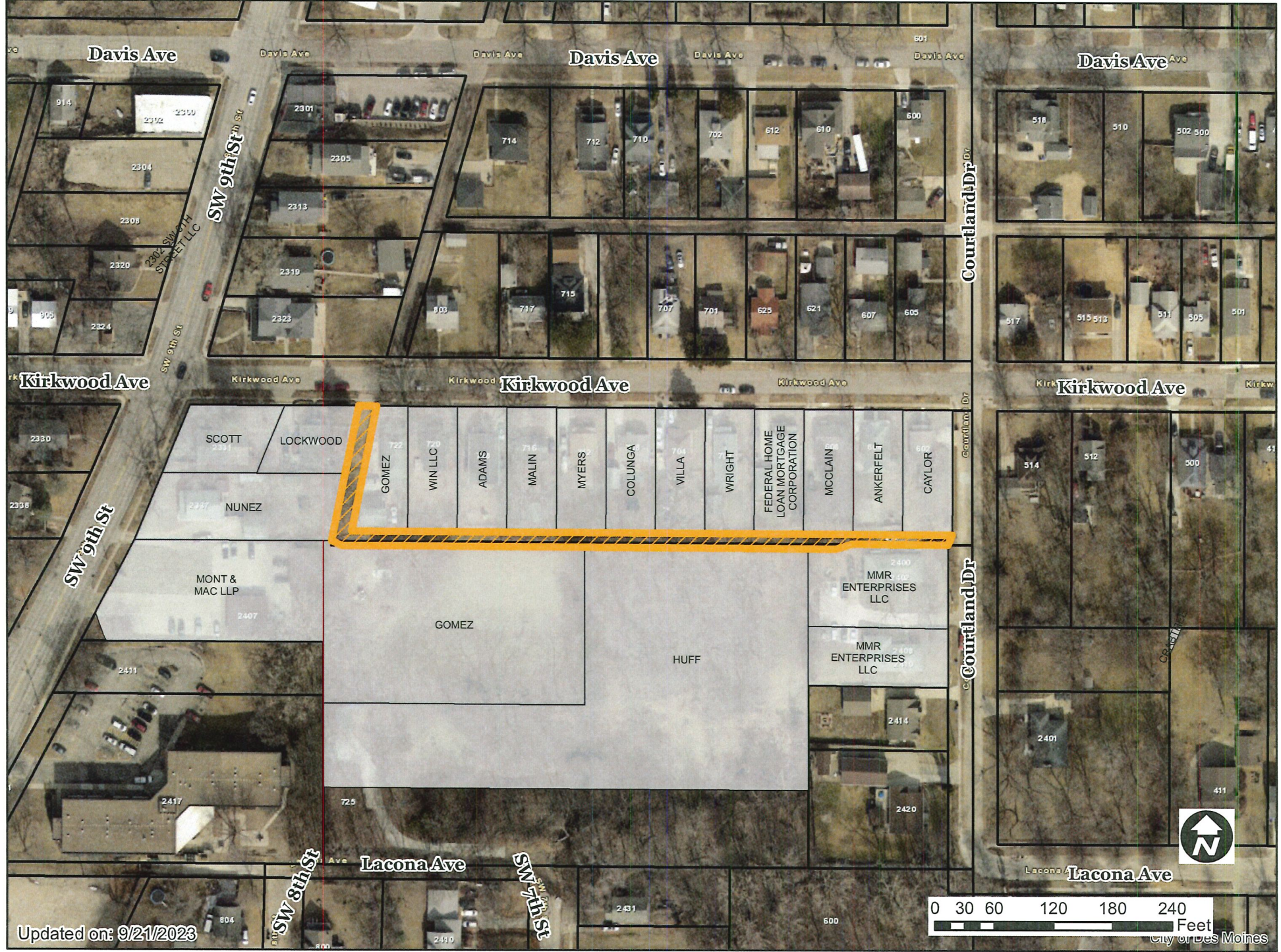
Staff Use Only  
**RECEIVED**  
COMMUNITY DEVELOPMENT  
SEP 20 2023

Titleholder Signature: *Murt D...*

Name/Business: MMR Enterprises LLC

Impacted Address: 2400 Courtland

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



My name is Colleen McClain

I live at 608 Kirkwood Ave in Des Moines.

Sept. 2020.

I purchased my home in ~~Oct.~~

When I purchased my home one reason I bought it was because it had an easement behind my home. This appealed to me because of the prospect of being able to use the easement for rear access to my property to pull a kayak trailer in. It also gave me a comfortable distance between my property and the multi unit rental behind.

After I moved in it became apparent that the tenants of Burtland were using the easement as their personal driveway and to amass junk cars ~~and~~ campers and utility trailers.

It was at this point I reached out to the owner MMR Enterprises Mark Davis. Mark offered no solution and did not intend to correct his tenants. I reached out

It is at that time I reached out to the city for assistance for the first time.

After I involved the city the behavior of the ~~the~~ tenants of 2400 Courtland ~~the~~ became harrassing.

They created many open burn pikes that I and others had to call in to the fire department. They began lighting professional grade fireworks over my garage at all hours of the night. There have been what sound like gun shots being shot into the air.

It became more about my safety and that of my property of that point and not just about ~~my~~ my ability to use the easement.

I hired a survey company to do a survey so I could install a fence (as my property line was farther out than where my current fence is installed)

The tenant at the rear of 2400 Courtland dug up my survey pin and when confronted by me blamed it on the front tenant only later to admit he'd done it because he'd hit his foot on it and didn't know what it was. Not only was there a survey pin there was a wooden stake with the words "property marker" on it.

I called Mark Davis from MMR and he told me his tenants "are not his problem" and to call the police.

I have emails to and from the city dating back to whenever in seeking resolution, forward to you where in record of the 911 there has to be record of the fire Dept. calls and responses from the fire Dept. and police.

I have communications from Susan Donovan, Assistant Director of Neighborhood Services back in June of 2022 looking into putting 2400 Courtland in as a nuisance property.



the police refer me to the city. 4  
the city refers me to the police.

I was told it would do me no good  
to apply to purchase the easement because  
all adjoining owners would have to agree and  
so I shouldn't worry because I'd never agree  
then 2400 Courtland could it either. Yet  
here we are.

I am not able to maintain my info  
lawn in the back for fear of running into  
the rear tenant who likes to call me a  
"bitch" and a "c-u--t"

My understanding is that if I  
tell you I will not agree to MR  
Gunter prizes purchasing the easement behind me.  
Gunter cannot purchase  
area behind my home.

My question to you is this  
What right do I have to live  
peacefully in my home?  
The answer is I have the right  
to quiet enjoyment and to not  
live in fear for my personal safety  
or the safety of my property.

I would ask you to decline  
MMR's petition to purchase the  
easement and follow through  
on promises to enforce city  
ordinances that maintain order  
and provide peace/safety for residents

like me.

Thank you