

Date January 8, 2024

SET HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF SUBSURFACE RIGHTS IN A PORTION OF 6TH AVENUE RIGHT-OF-WAY IN THE VICINITY OF 1716 6TH AVENUE AND CONVEYANCE OF A PERMANENT EASEMENT FOR SUBSURFACE BUILDING ENCROACHMENT ON CITY-OWNED PROPERTY TO CENTER AT SIXTH FOR \$450

WHEREAS, on November 20, 2023, by Roll Call No. 23-1607, 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 to vacate subsurface rights within the 6th Avenue right-of-way in the vicinity of 1716 6th Avenue, subject to the reservation of any necessary easements for all existing utilities in place until abandoned or relocated at the applicant’s expense; and

WHEREAS, on November 2, 2023, 6th Avenue Corridor, Inc. transferred ownership of 1716 6th Avenue, now known as 1760 6th Avenue, to Center at Sixth, an Iowa non-profit corporation, for future development.

WHEREAS, Center at Sixth has offered to the City of Des Moines, Iowa (“City”) the purchase price of \$450.00 for the purchase of a Permanent Easement for Subsurface Building Encroachment On City-Owned Property (“Easement”) within the 6th Avenue right-of-way adjoining the property at 1760 6th Avenue (hereinafter “Easement Area”), for the purpose of constructing, operating and maintaining a subsurface building encroachment into the 6th Avenue right-of-way; which price reflects the fair market value of the Easements as determined by the City’s Real Estate Division; and

WHEREAS, there is no known current or future public need for the 6th Avenue right-of-way proposed to be vacated, and the City will not be inconvenienced by the vacation of said property and the conveyance of the Easement in such vacated right-of-way.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that:

1. That the City Council of the City of Des Moines, Iowa, shall consider adoption of an ordinance permanently vacating subsurface rights within a portion of 6th Avenue right-of-way adjoining the property of 1760 6th Avenue, Des Moines, Iowa, legally described as follows:

A VACATION OF PART OF THE 6TH AVENUE PUBLIC RIGHT-OF-WAY LYING DIRECTLY ADJACENT TO LOTS 2 THROUGH 5, BLOCK 5 OF THE OFFICIAL PLAT OF THE SW1/4 NE1/4 OF SECTION 34, TOWNSHIP 79 NORTH, RANGE 24 WEST OF THE 5TH P.M. (ALSO KNOWN AS POLK COUNTY HOMESTEAD AND TRUST COMPANY ADDITION), AN OFFICIAL PLAT, CITY OF DES MOINES, POLK COUNTY, IOWA THAT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SE CORNER OF SAID LOT 5; THENCE N00°03'43"W, 199.97 FEET ALONG THE EAST LINE OF SAID LOTS 2 THROUGH 5, SAID EAST LINE COINCIDES WITH THE WEST

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RIGHT-OF-WAY LINE OF 6TH AVENUE AS IT IS PRESENTLY ESTABLISHED, TO THE NE CORNER OF SAID LOT 2; THENCE N89°56'17"E, 2.50 FEET TO A POINT THAT IS 2.50 FEET EAST OF SAID WEST RIGHT-OF-WAY LINE; THENCE S00°03'43"E, 199.97 FEET ALONG A LINE THAT IS 2.50 FEET EAST OF AND PARALLEL WITH SAID WEST RIGHT-OF-WAY LINE TO A POINT; THENCE S89°56'17"W, 2.50 FEET TO THE POINT OF BEGINNING CONTAINING 500 SQUARE FEET MORE OR LESS.

2. The City Council of the City of Des Moines, Iowa, further proposes to convey a Permanent Easement for Subsurface Building Encroachment On City-Owned Property in such vacated right-of-way, as legally described below, to Center at Sixth for \$450.00 subject to any and all easements, restrictions and covenants of record.

A SUBSURFACE RIGHTS EASEMENT IN THE VACATED 6TH AVENUE PUBLIC RIGHT-OF-WAY LYING DIRECTLY ADJACENT TO LOTS 2 THROUGH 5, BLOCK 5 OF THE OFFICIAL PLAT OF THE SW1/4 NE1/4 OF SECTION 34, TOWNSHIP 79 NORTH, RANGE 24 WEST OF THE 5TH P.M. (ALSO KNOWN AS POLK COUNTY HOMESTEAD AND TRUST COMPANY ADDITION), AN OFFICIAL PLAT, CITY OF DES MOINES, POLK COUNTY, IOWA THAT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SE CORNER OF SAID LOT 5; THENCE N00°03'43"W, 199.97 FEET ALONG THE EAST LINE OF SAID LOTS 2 THROUGH 5, SAID EAST LINE COINCIDES WITH THE WEST RIGHT-OF-WAY LINE OF 6TH AVENUE AS IT IS PRESENTLY ESTABLISHED, TO THE NE CORNER OF SAID LOT 2; THENCE N89°56'17"E, 2.50 FEET TO A POINT THAT IS 2.50 FEET EAST OF SAID WEST RIGHT-OF-WAY LINE; THENCE S00°03'43"E, 199.97 FEET ALONG A LINE THAT IS 2.50 FEET EAST OF AND PARALLEL WITH SAID WEST RIGHT-OF-WAY LINE TO A POINT; THENCE S89°56'17"W, 2.50 FEET TO THE POINT OF BEGINNING CONTAINING 500 SQUARE FEET MORE OR LESS.

3. That the meeting of the City Council at which the adoption of said vacation ordinance and the sale and conveyance of such permanent easement is to be considered shall be on January 22, 2024, said meeting to be held at 5:00 p.m., in the City Council Chamber, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa. At that time the City Council will consider the above-described proposal and any other(s) submitted prior to or during the public hearing. Persons interested in the proposal will be given the opportunity to express their views at that hearing.
4. That the City Clerk is hereby authorized and directed to publish notice of said proposal in the form hereto attached all in accordance with §362.3 of the Iowa Code.
5. Non-project related land sale proceeds are used to support general operating budget expenses:
Org – EG064090.

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Date January 8, 2024

Moved by _____ to adopt. Second by _____

APPROVED AS TO FORM:

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

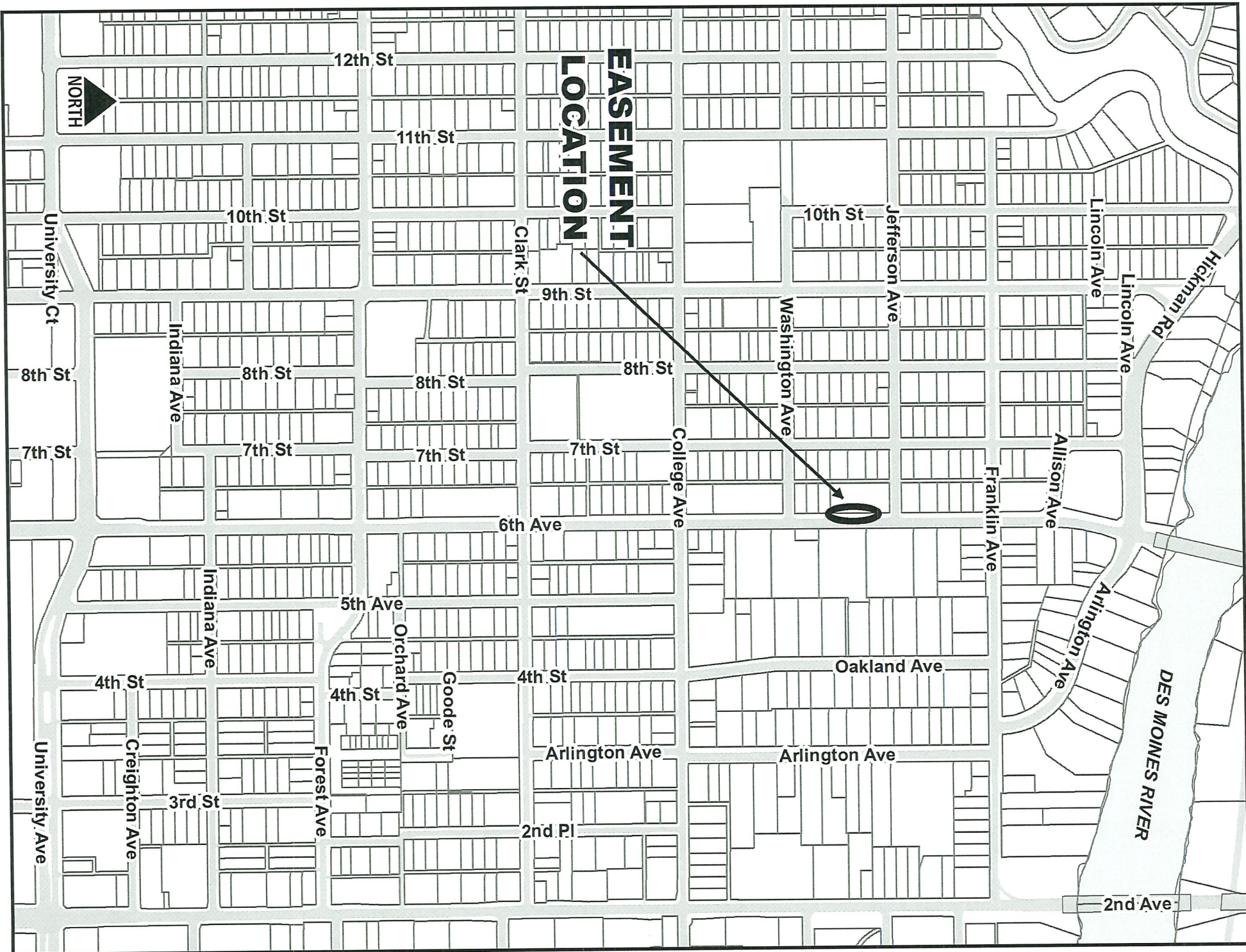
COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
BOESEN				
VOSS				
COLEMAN				
WESTERGAARD				
MANDELBAUM				
GATTO				
TOTAL				
MOTION CARRIED			APPROVED	
_____ Mayor				

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



**EASEMENT
LOCATION**



November 14, 2023

Communication from the City Plan and Zoning Commission advising that at their November 2, 2023 meeting, the following action was taken regarding a request from 6th Avenue Corridor Inc (owner), represented by Marquas Ashworth (officer), for vacation of subsurface rights within the 6th Avenue Right-of-Way adjoining property in the vicinity of 1716 6th Avenue, to allow building footings and foundations to encroach into the right-of-way.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 13-0 as follows.

Commission Action:	Yes	Nays	Pass	Abstain	Absent
Francis Boggus	X				
Leah Rudolphi	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 vacation of 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 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 subsurface rights within the 6th Avenue right-of-way adjoining the subject property is being requested to allow the encroachment of a new building foundations and footings. The applicant is proposing to construct a new 2-story commercial building, approximately 13,000 square feet in area. The building is proposed to have multiple tenants and is expected to include retail/office/restaurant/and coffee shop type uses. The central area is proposed to be set up as a “marketplace” with food vendors, seating area, and shared kitchen spaces.
2. **Size of Site:** The requested area for vacation of subsurface rights is approximately 500 square feet.
3. **Existing Zoning (site):** “MX1” Mixed-Use District.
4. **Existing Land Use (site):** The subject area proposed to be vacated is located in the 6th Avenue right-of-way. The adjoining site consists of a vacant parcel with an existing Carriage House on the northwest corner.
5. **Adjacent Land Use and Zoning:**
 - North** – “RX1”, Uses are a one-family residential unit.
 - South** – “MX1”, Uses are a one-family residential unit.
 - East** – “RX1”, Uses are multiple-family residential apartment and a nursing home.
 - West** – “N5”, Uses are one-family residential units.
6. **General Neighborhood/Area Land Uses:** The subject site is located at the southwest corner of the intersection of 6th Avenue and Jefferson Avenue with frontage along the 6th Avenue corridor. This area is centered around and within the 6th Avenue and College Avenue Neighborhood Node that includes new mixed use redevelopment along the 6th Avenue corridor, as well as a mix of various residential uses.
7. **Applicable Recognized Neighborhood(s):** The subject property is in the River Bend Neighborhood. The neighborhood associations were notified of the public hearing by emailing of the Preliminary Agenda on October 13, 2023 and Final Agenda on October 27, 2023. Additionally, separate notifications of the hearing for this specific item were mailed on October 23, 2023 (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 Services Department by the recognized neighborhood association. The River Bend Neighborhood Association mailings were sent to Kathy Hellstern, 803 Hickman Road, Des Moines, IA 50314.
8. **Relevant Zoning History:** NA.

9. PlanDSM: Creating Our Tomorrow Land Use Plan Designation: Neighborhood Mixed Use within a Neighborhood Node.

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 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

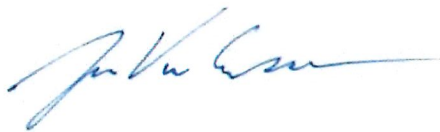
Abby Chungath asked if any member of the public or commission desired to speak on the item. No one requested to speak.

COMMISSION ACTION:

Emily Webb made a motion for approval of the requested vacation of 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.

THE VOTE: 13-0

Respectfully submitted,



Jason Van Essen, AICP
Planning & Urban Design Administrator

JMV:tjh

6th Avenue Corridor Inc., vicinity of 1716 6th Avenue

ROWV-2023-000015



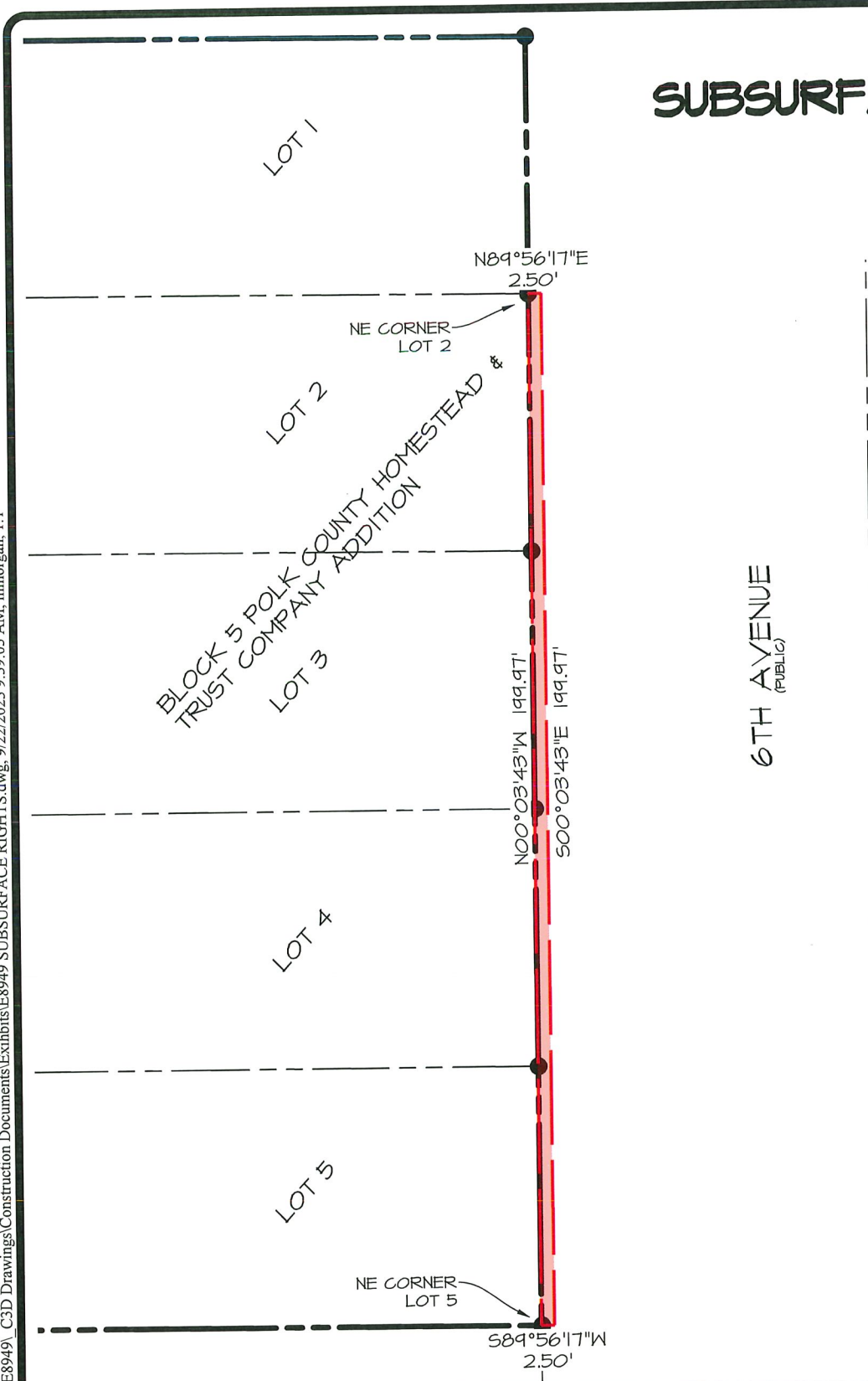
Updated on: 10/9/2023



0 25 50 100 150 200 Feet

1 inch = 99 feet

EXHIBIT SUBSURFACE RIGHTS EASEMENT DES MOINES, IOWA



Q:\E-FILES\8-8000\ES8949_C3D Drawings\Construction Documents\Exhibits\ES8949 SUBSURFACE RIGHTS.dwg, 9/22/2023 9:39:03 AM, mmorgan, 1:1



Civil Engineering Consultants, Inc.

2400 86th Street . Unit 12 . Des Moines, Iowa 50322
515.276.4884 . Fax: 515.276.7084 . mail@ceclac.com

SCALE: 1"=30'



SHEET
1
OF 1
E8949

DATE: September 22, 2023
DESIGNED BY: ###
DRAWN BY: ###







Item: ROWV-2023-000015

Date: Oct. 31, 2023

Please mark one of the following:

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

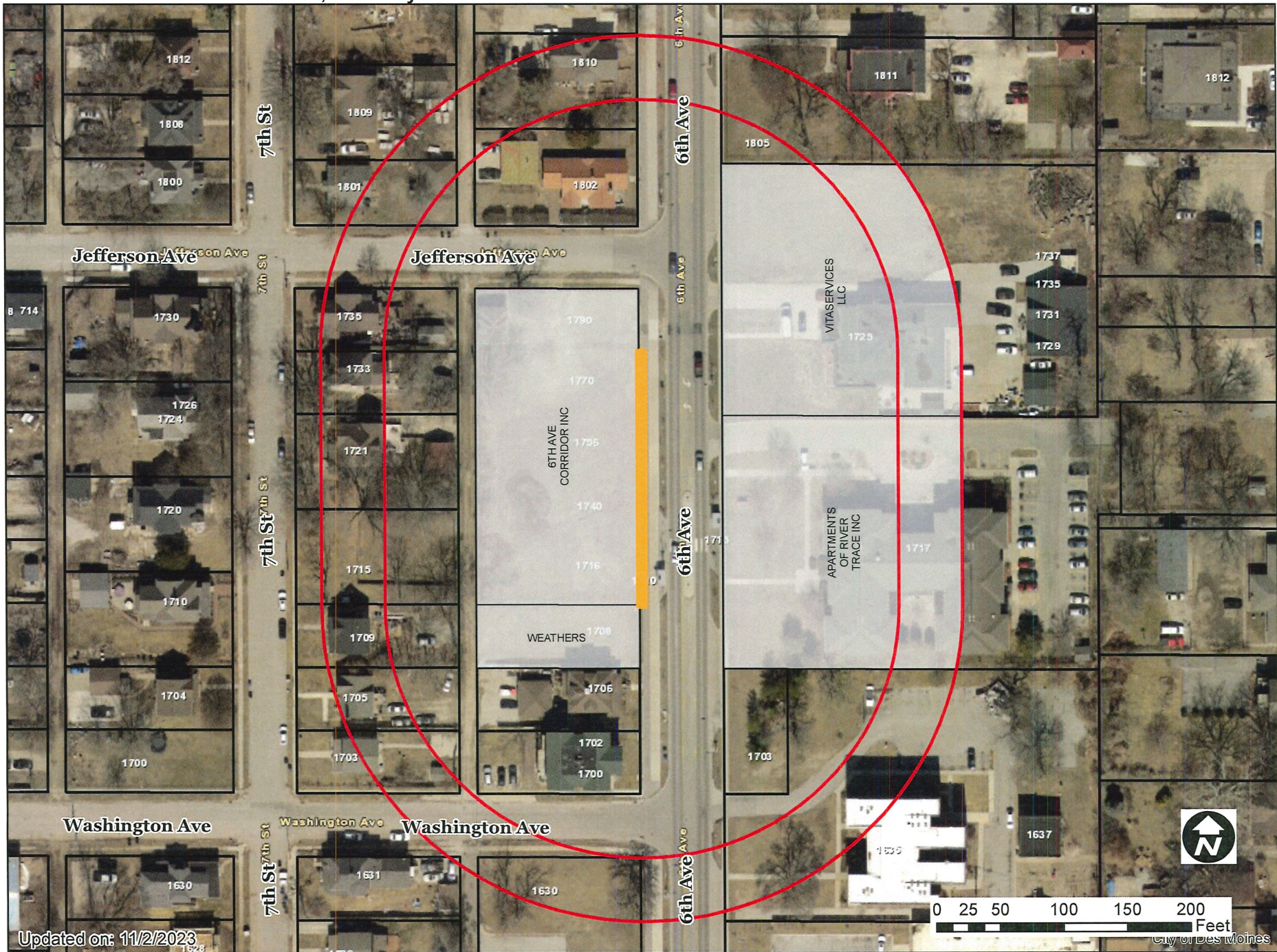
Staff Use Only

Titleholder Signature: Kathy Hellstern

Name/Business: River Bend Neighborhood Association

Impacted Address: River Bend Neighborhood

Comments: RBNA is in full support of the
Center at 4th project and Marquis
Ashworth. This development will be a
major asset to our neighborhood and we
look forward to its swift completion.



Updated on: 11/2/2023

0 25 50 100 150 200 Feet

CITY OF DES MOINES

1 inch = 100 feet