

SET HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF SUBSURFACE AND SURFACE RIGHTS WITHIN PORTIONS OF MULBERRY STREET RIGHT-OF-WAY ADJOINING 1435 MULBERRY STREET AND CONVEYANCE OF A PERMANENT EASEMENT FOR SUBSURFACE BUILDING ENCROACHMENT ON CITY-OWNED PROPERTY AND A PERMANENT EASEMENT FOR BUILDING ENCROACHMENT - DOOR SWING TO 1435 MULBERRY LLC FOR \$14,750.00

WHEREAS, on December 18, 2023, by Roll Call No. 23-1757, the City Council of the City of Des Moines, Iowa, received and filed a recommendation from the City Plan and Zoning Commission to approve a request from 1435 Mulberry LLC for the vacation of approximately 1,444 square feet subsurface rights within the Mulberry Street right-of-way adjoining 1435 Mulberry Street (“Property”) to allow for the encroachment of proposed building footings, subject to the reservation of easements for all existing utilities in place until such time as they are abandoned or relocated at applicant’s expense; and

WHEREAS, 1435 Mulberry LLC, the owner of 1435 Mulberry Street, has also requested that the City of Des Moines, Iowa (“City”) vacate surface rights within a portion of Mulberry Street right-of-way adjoining said Property, which request was not presented to the City’s Plan and Zoning Commission for review and has instead been determined by the City Traffic Engineer to have no significant impact upon the public use of the right-of-way, in accordance with Municipal Code 102-286(b); and

WHEREAS, 1435 Mulberry LLC has offered to the City the purchase price of \$14,750.00 for the purchase of a Permanent Easement for Subsurface Building Encroachment on City-Owned Property and a Permanent Easement for Building Encroachment - Door Swing (“Easements”) over, through and across portions of Mulberry Street right-of-way adjoining 1435 Mulberry Street (hereinafter “Easement Area”) for the purpose of constructing, operating, maintaining and repairing building footings and door swing area for the residential building being constructed on the property, 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 street 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 and surface rights in portions of Mulberry Street right-of-way adjoining 1435 Mulberry Street, legally described as follows:

Date March 24, 2025

SUBSURFACE RIGHTS

A 3.75 FEET WIDE STRIP OF MULBERRY STREET RIGHT-OF-WAY LYING SOUTH OF AND ADJOINING THE FOLLOWING DESCRIBED PROPERTY:

LOT FOUR (4) IN KEENE AND POINDEXTER'S OFFICIAL PLAT, AND THAT PART OF VACATED WEST 14TH STREET ADJOINING SAID LOT 4 ON THE WEST, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

AND

LOTS SEVEN (7), EIGHT (8), NINE (9), TEN (10) AND ELEVEN (11) IN BLOCK THIRTY-NINE (39) IN J. LYON'S ADDITION TO FORT DES MOINES, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

AND

ALL THAT PART OF THE VACATED 16.5 FOOT WIDE NORTH-SOUTH ALLEY THAT LIES EAST OF AND ADJOINING TO THE EAST LINE OF LOT 8; AND ALSO ALL THAT PART OF THE VACATED 16.5 FOOT WIDE NORTH-SOUTH ALLEY THAT LIES EAST OF AND ADJOINING THE EAST LINE OF LOT 10; ALL IN BLOCK 39 IN J. LYON'S ADDITION TO FORT DES MOINES, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA (BOTH VACATED BY ORDINANCE NO. 8066, ENACTED OCTOBER 5, 1970).

SAID STRIP OF RIGHT-OF-WAY BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 7 IN BLOCK 39 OF J. LYON'S ADDITION TO FORT DES MOINES ON THE NORTH RIGHT-OF-WAY LINE OF MULBERRY STREET; THENCE NORTH 74°(DEGREES) 09'(MINUTES) 48"(SECONDS) EAST, 47.00 FEET ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID MULBERRY STREET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 74°09'48" EAST, 385.00 FEET ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID MULBERRY STREET; THENCE SOUTH 15°50'12" EAST, 3.75 FEET; THENCE SOUTH 74°09'48" WEST, 385.00 FEET; THENCE NORTH 15°50'12" WEST, 3.75 FEET TO THE POINT OF BEGINNING.

CONTAINING 1,444 SQUARE FEET, MORE OR LESS.

Date March 24, 2025

SURFACE RIGHTS

PART OF MULBERRY STREET RIGHT-OF-WAY LYING SOUTH OF AND ADJOINING LOT 4 IN KEENE AND POINDEXTER OFFICIAL PLAT, AND THAT PART OF VACATED WEST 14TH STREET ADJOINING SAID LOT 4 ON THE WEST, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA. SAID PART OF MULBERRY STREET RIGHT-OF-WAY BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 4 IN KEENE AND POINDEXTER OFFICIAL PLAT; THENCE SOUTH 74°(DEGREES) 09'(MINUTES) 48"(SECONDS) WEST, 37.00 FEET ALONG THE NORTH RIGHT-OF-WAY LINE OF MULBERRY STREET TO THE POINT OF BEGINNING; THENCE SOUTH 15°50'12" EAST, 2.00 FEET; THENCE SOUTH 74°09'48" WEST, 6.00 FEET; THENCE NORTH 15°50'12" WEST, 2.00 FEET TO THE NORTH RIGHT-OF-WAY LINE OF MULBERRY STREET; THENCE NORTH 74°09'48" EAST, 6.00 FEET ALONG THE NORTH RIGHT-OF-WAY LINE OF MULBERRY STREET TO THE POINT OF BEGINNING. CONTAINING 12.00 SQUARE FEET.

- 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 and a Permanent Easement for Building Encroachment - Door Swing in such vacated right-of-way, as legally described below, to 1435 Mulberry LLC for \$14,750.00, subject to any and all easements, restrictions and covenants of record:

PERMANENT EASEMENT FOR SUBSURFACE BUILDING ENCROACHMENT ON CITY-OWNED PROPERTY

A 3.75 FEET WIDE STRIP OF VACATED MULBERRY STREET RIGHT-OF-WAY LYING SOUTH OF AND ADJOINING THE FOLLOWING DESCRIBED PROPERTY:

LOT FOUR (4) IN KEENE AND POINDEXTER'S OFFICIAL PLAT, AND THAT PART OF VACATED WEST 14TH STREET ADJOINING SAID LOT 4 ON THE WEST, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

AND

LOTS SEVEN (7), EIGHT (8), NINE (9), TEN (10) AND ELEVEN (11) IN BLOCK THIRTY-NINE (39) IN J. LYON'S ADDITION TO FORT DES MOINES, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

Date March 24, 2025

AND

ALL THAT PART OF THE VACATED 16.5 FOOT WIDE NORTH-SOUTH ALLEY THAT LIES EAST OF AND ADJOINING TO THE EAST LINE OF LOT 8; AND ALSO ALL THAT PART OF THE VACATED 16.5 FOOT WIDE NORTH-SOUTH ALLEY THAT LIES EAST OF AND ADJOINING THE EAST LINE OF LOT 10; ALL IN BLOCK 39 IN J. LYON'S ADDITION TO FORT DES MOINES, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA (BOTH VACATED BY ORDINANCE NO. 8066, ENACTED OCTOBER 5, 1970).

SAID STRIP OF VACATED RIGHT-OF-WAY BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 7 IN BLOCK 39 OF J. LYON'S ADDITION TO FORT DES MOINES ON THE NORTH RIGHT-OF-WAY LINE OF MULBERRY STREET; THENCE NORTH 74°(DEGREES) 09'(MINUTES) 48''(SECONDS) EAST, 47.00 FEET ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID MULBERRY STREET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 74°09'48'' EAST, 385.00 FEET ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID MULBERRY STREET; THENCE SOUTH 15°50'12'' EAST, 3.75 FEET; THENCE SOUTH 74°09'48'' WEST, 385.00 FEET; THENCE NORTH 15°50'12'' WEST, 3.75 FEET TO THE POINT OF BEGINNING.

CONTAINING 1,444 SQUARE FEET, MORE OR LESS.

PERMANENT EASEMENT FOR BUILDING ENCROACHMENT - DOOR SWING

PART OF VACATED MULBERRY STREET RIGHT-OF-WAY LYING SOUTH OF AND ADJOINING LOT 4 IN KEENE AND POINDEXTER OFFICIAL PLAT, AND THAT PART OF VACATED WEST 14TH STREET ADJOINING SAID LOT 4 ON THE WEST, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA. SAID PART OF VACATED MULBERRY STREET RIGHT-OF-WAY BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 4 IN KEENE AND POINDEXTER OFFICIAL PLAT; THENCE SOUTH 74°(DEGREES) 09'(MINUTES) 48''(SECONDS) WEST, 37.00 FEET ALONG THE NORTH RIGHT-OF-WAY LINE OF MULBERRY STREET TO THE POINT OF BEGINNING; THENCE SOUTH 15°50'12'' EAST, 2.00 FEET; THENCE SOUTH 74°09'48'' WEST, 6.00 FEET; THENCE NORTH 15°50'12'' WEST, 2.00 FEET TO THE NORTH RIGHT-OF-WAY LINE OF SAID VACATED MULBERRY STREET; THENCE NORTH 74°09'48'' EAST, 6.00 FEET ALONG THE

Date March 24, 2025

NORTH RIGHT-OF-WAY LINE OF SAID VACATED MULBERRY STREET TO THE POINT OF BEGINNING. CONTAINING 12.00 SQUARE FEET.

3. That the meeting of the City Council at which the adoption of said ordinance and the sale and conveyance of such right-of-way is to be considered shall be on April 7, 2025, 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.

Moved by _____ to adopt. Second by _____

APPROVED AS TO FORM:

/s/ Grant Hyland
Grant Hyland, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
BOESEN				
SIMONSON				
VOSS				
COLEMAN				
WESTERGAARD				
MANDELBAUM				
GATTO				
TOTAL				

CERTIFICATE

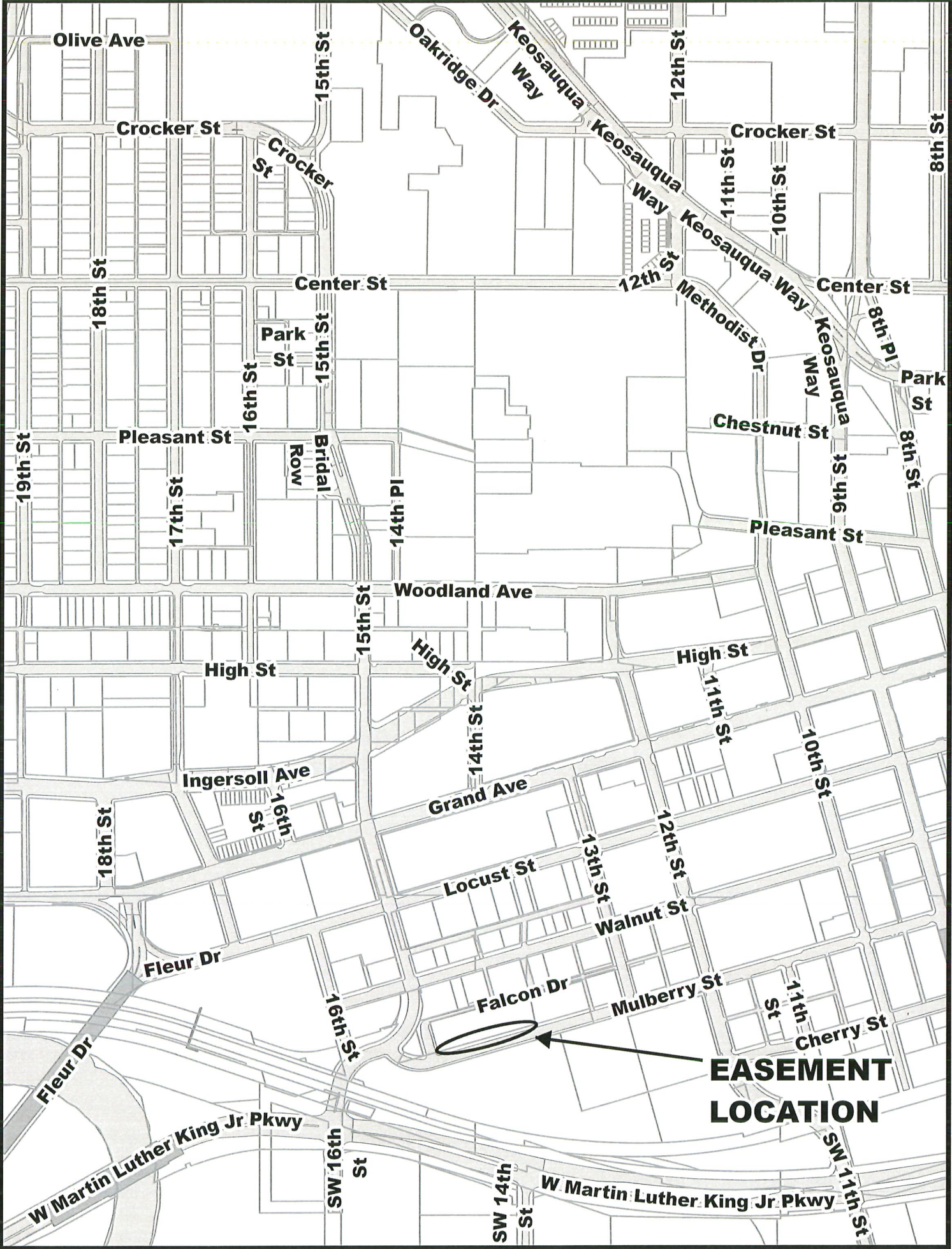
I, Laura Baumgartner, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

MOTION CARRIED APPROVED

Mayor

Laura Baumgartner, City Clerk



**EASEMENT
LOCATION**

Date March 24, 2025

Agenda Item 22

Roll Call # _____

December 12, 2023

Communication from the City Plan and Zoning Commission advising that at their December 7, 2023 meeting, the following action was taken regarding a request from 1435 Mulberry, LLC (owner), represented by Andrew Juiris (officer), for vacation of approximately 1,444 square feet of subsurface rights within the Mulberry Street right-of-way adjoining property at 1435 Mulberry Street, to allow the encroachment of proposed building footings.

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				
Laura Kessel	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.

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval of the requested vacation of subsurface rights.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The proposed vacation of subsurface rights is being requested to allow the encroachment of the footings of a proposed new multiple household residential building. The applicant is proposing to demolish the existing building and construct a new 7-story apartment building with approximately 140 dwelling units and two levels of structured parking.
2. **Size of Site:** The requested vacation area measures 3.75 feet by 385 feet (1,443.75 square feet).
3. **Existing Zoning (site):** "DX2" Downtown District.
4. **Existing Land Use (site):** The subject area proposed to be vacated is located within the Mulberry Street right-of-way. The adjoining site consists of a parcel with an existing office building and surface parking lot.
5. **Adjacent Land Use and Zoning:**
 - North** – "DX2", Uses are a commercial building and multiple household residential building.
 - South** – "DX2", Uses are Central Iowa Shelter and Services building.
 - East** – "DX2", Uses are surface parking lot.
 - West** – "ROW", "DX2", Uses are Falcon Street right-of-way and an undeveloped parcel.
6. **General Neighborhood/Area Land Uses:** The subject site is located east of the intersection of Mulberry Street and 15th Street. The area is in the core of downtown and in proximity to the ML King Jr Parkway corridor. Uses in the area are downtown focused and include a mix of residential, commercial, offices, hospitality and recreational amenities.
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 emailing of the Preliminary Agenda on November 17, 2023 and Final Agenda on December 1, 2023. Additionally, separate notifications of the hearing for this specific item were mailed on November 27, 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 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:** NA.
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 Mulberry Street 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:

Carolyn Jenison made a motion for approval of the requested vacation of subsurface rights.

THE VOTE: 13-0

Respectfully submitted,

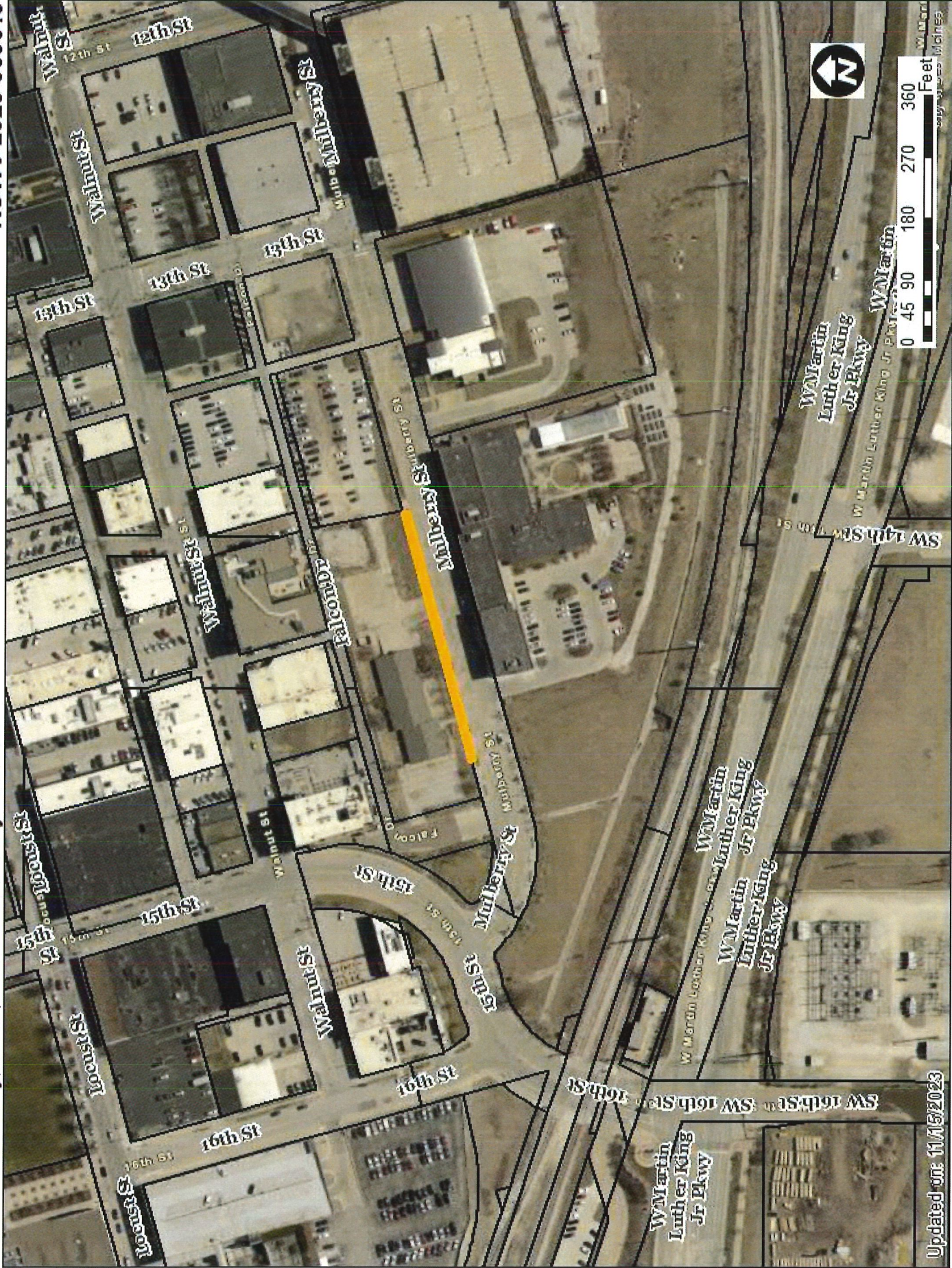


Jason Van Essen, AICP
Planning & Urban Design Administrator

JMV:tjh

1435 Mulberry, LLC, 1435 Mulberry Street

ROWV-2023-000019

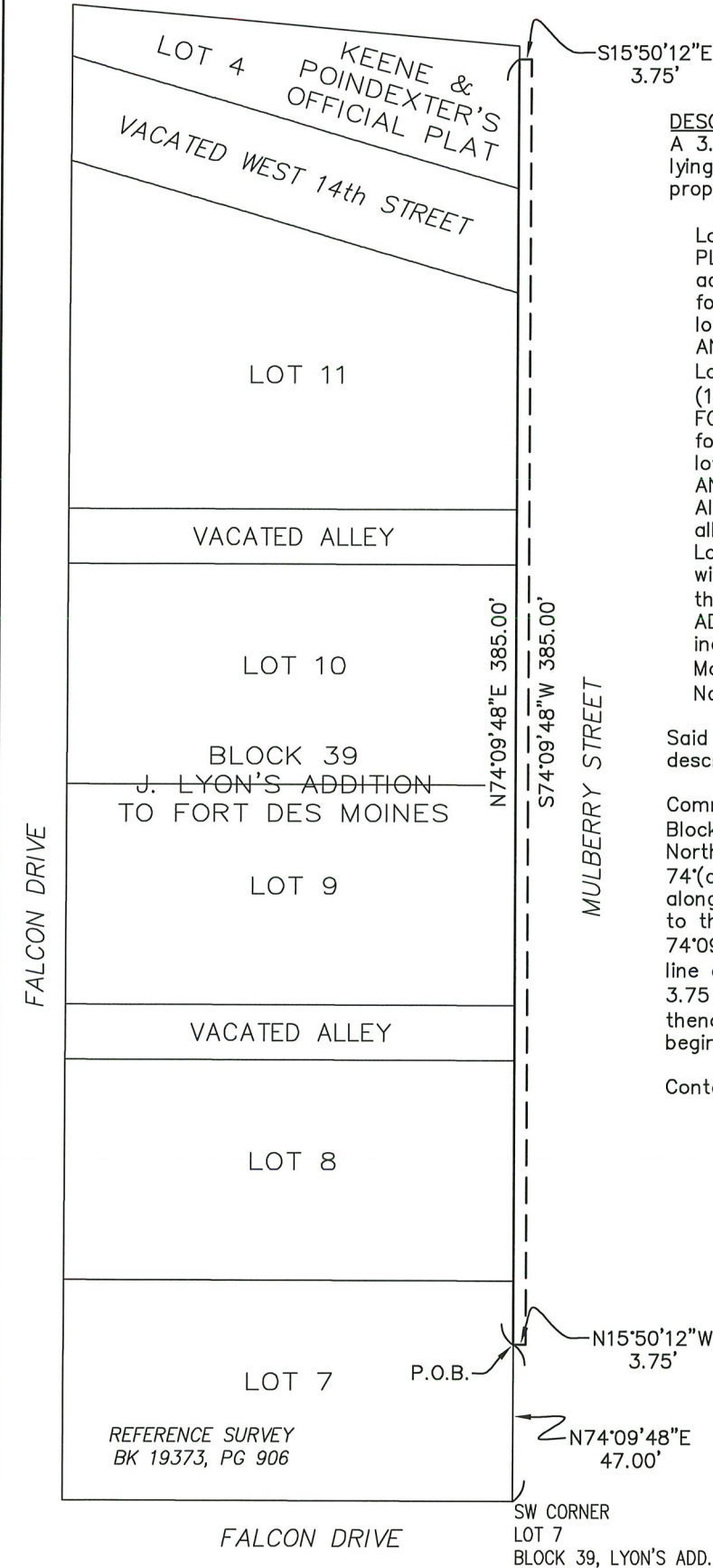


Updated on: 11/16/2023

1 inch = 186 feet

VACATION EXHIBIT

SUBSURFACE ENCROACHMENTS



DESCRIPTION OF RIGHT-OF-WAY TO BE VACATED

A 3.75 feet wide strip of Mulberry Street right-of-way lying South of and adjoining the following described property:

Lot Four (4) in KEENE AND POINDEXTER'S OFFICIAL PLAT, and that part of vacated West 14th Street adjoining said Lot 4 on the West, now included in and forming a part of the City of Des Moines, Polk County, Iowa.

AND

Lots Seven (7), Eight (8), Nine (9), Ten (10) and Eleven (11) in Block Thirty-nine (39) in J. LYON'S ADDITION TO FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa.

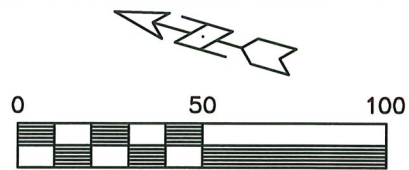
AND

All that part of the vacated 16.5 foot wide North-South alley that lies East of and adjoining to the East line of Lot 8; and also all that part of the vacated 16.5 foot wide North-South alley that lies East of and adjoining the East line of Lot 10; all in Block 39 in J. LYON'S ADDITION TO FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa (Both vacated by Ordinance No. 8066, enacted October 5, 1970).

Said strip of right-of-way being more particularly described as follows:

Commencing at the Southwest corner of said Lot 7 in Block 39 of J. Lyon's Addition to Fort Des Moines on the North right-of-way line of Mulberry Street; thence North 74(degrees) 09(minutes) 48(seconds) East, 47.00 feet along the North right-of-way line of said Mulberry Street to the Point of Beginning; thence continuing North 74°09'48" East, 385.00 feet along the North right-of-way line of said Mulberry Street; thence South 15°50'12" East, 3.75 feet; thence South 74°09'48" West, 385.00 feet; thence North 15°50'12" West, 3.75 feet to the point of beginning.

Containing 1,444 square feet, more or less.



Scale: 1" = 50'

ERG Engineering Resource Group, Inc.
 2413 GRAND AVENUE
 DES MOINES, IOWA 50312
 (515) 288-4823

VACATION EXHIBIT

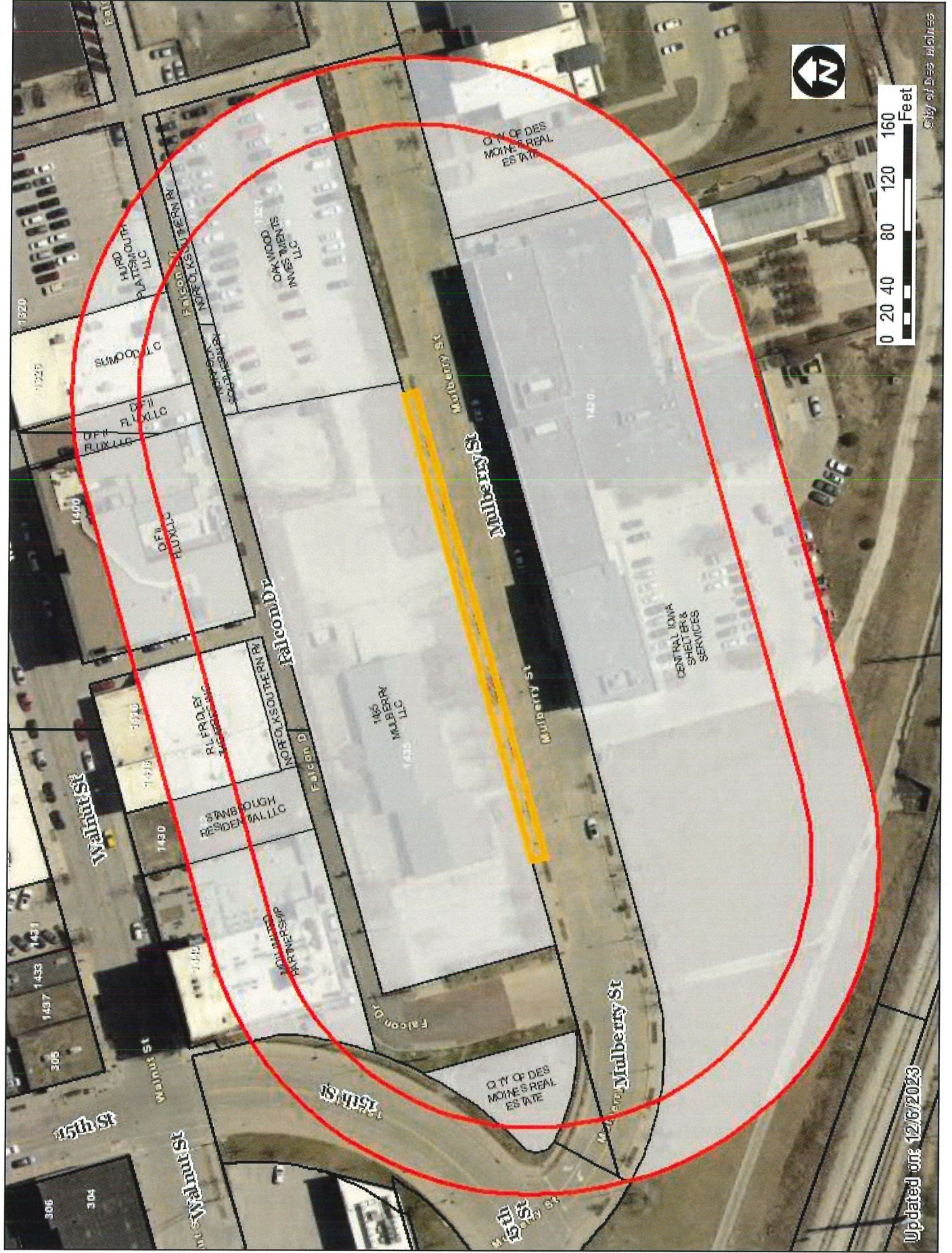
DATE: 10/30/2023	PROJ. NO.: 22-104
DWG: 22-104-EASE.DWG	22-104





1435 Mulberry, LLC, 1435 Mulberry Street

ROWV-2023-0000019



Updated on 12/6/2023

City of Des Moines

1 inch = 93 feet