



Date June 26, 2023

HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF AN UNDEVELOPED PORTION OF SOUTHWEST 4TH STREET RIGHT-OF-WAY LOCATED BETWEEN PORTER AVENUE AND DIEHL AVENUE AND CONVEYANCE OF A PORTION OF SAID VACATED RIGHT-OF-WAY TO MRL ENTERPRISES, LLC FOR \$150.00

WHEREAS, on May 8, 2023, by Roll Call No. 23-0645 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 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 easements for all existing utilities in place until such time as they are abandoned or relocated; and

WHEREAS, MRL Enterprises, LLC, owner of 315 Diehl Avenue, has offered to the City the purchase price of \$150.00 for the purchase of the east half of the portion of vacated Southwest Fourth Street right-of-way located west of and adjoining 315 Diehl Avenue; (hereinafter "Property") for incorporation into its adjoining residential property for expanded sideyard, subject to the reservation of easements for all existing utilities in place until such time that they are abandoned or relocated, which price reflects the fair market value of the vacated street right-of-way as determined by the City's Real Estate Division; and

WHEREAS, there is no known current or future public need for the alley right-of-way proposed to be vacated and sold, and the City will not be inconvenienced by the vacation and sale of said Property.

WHEREAS, on June 12, 2023, by Roll Call No. 23-0824, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation and conveyance of the street right-of-way be set for hearing on June 26, 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 and convey the street right-of-way was given 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:

1. Upon due consideration of the facts and statements of interested persons, any and all objections to the proposed vacation and conveyance of street right-of-way, as described herein, are hereby overruled and the hearing is closed.

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2. There is no public need or benefit for the SW 4th Street right-of-way proposed to be vacated, and the public would not be inconvenienced by reason of the 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, legally described as follows, and said vacation is hereby approved:

A PART OF LOT H IN THE CORRECTED PLAT OF THE FIRST ADDITION TO THOMAS HEIGHTS, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF CITY OF DES MOINES, POLK COUNTY, IOWA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 32, BLOCK 3 IN SAID CORRECTED PLAT OF THE FIRST ADDITION TO THOMAS HEIGHTS; THENCE WEST ALONG THE WESTERLY EXTENSION OF THE SOUTH LINE OF SAID LOT 32 TO THE WEST LINE OF SAID LOT H; THENCE NORTHWEST ALONG THE WEST LINE OF SAID LOT H TO THE WESTERLY EXTENSION OF THE NORTH LINE OF LOT 1 IN SAID BLOCK 3; THENCE EAST ALONG SAID WESTERLY EXTENSION OF THE NORTH LINE OF SAID LOT 1 TO THE NORTHWEST CORNER OF SAID LOT 1; THENCE SOUTHEAST ALONG THE WEST LINE OF SAID LOTS 1 AND 32 TO THE POINT OF BEGINNING, AND CONTAINING APPROXIMATELY 0.32 ACRES (14,002 SQUARE FEET).

3. The proposed sale of the east half of the portion of vacated Southwest Fourth Street right-of-way located west of and adjoining 315 Diehl Avenue, as legally described below, to MRL Enterprises, LLC for \$150.00, subject to reservation of easements therein, is hereby approved:

A PART OF LOT H IN THE CORRECTED PLAT OF THE FIRST ADDITION TO THOMAS HEIGHTS, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF CITY OF DES MOINES, POLK COUNTY, IOWA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 32, BLOCK 3 IN SAID CORRECTED PLAT OF THE FIRST ADDITION TO THOMAS HEIGHTS; THENCE WEST ALONG THE WESTERLY EXTENSION OF THE SOUTH LINE OF SAID LOT 32 TO THE CENTERLINE OF SAID LOT H; THENCE NORTHWEST ALONG THE CENTERLINE OF SAID LOT H TO THE WESTERLY EXTENSION OF THE NORTH LINE OF SAID LOT 32; THENCE EAST ALONG SAID WESTERLY EXTENSION OF THE NORTH LINE OF SAID LOT 32 TO THE NORTHWEST CORNER OF SAID LOT 32; THENCE SOUTHEAST ALONG THE WEST LINE OF SAID LOT 32 TO THE POINT OF BEGINNING, AND CONTAINING APPROXIMATELY 0.08 ACRES (3,501 SQUARE FEET).

4. The Mayor is authorized and directed to sign the Offer to Purchase and Quit Claim Deed for the conveyance as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.

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 Quit Claim Deed, 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.

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6. The Real Estate Division Manager is authorized and directed to forward the original of the Quit Claim Deed, 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 Quit Claim Deed and a copies 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				

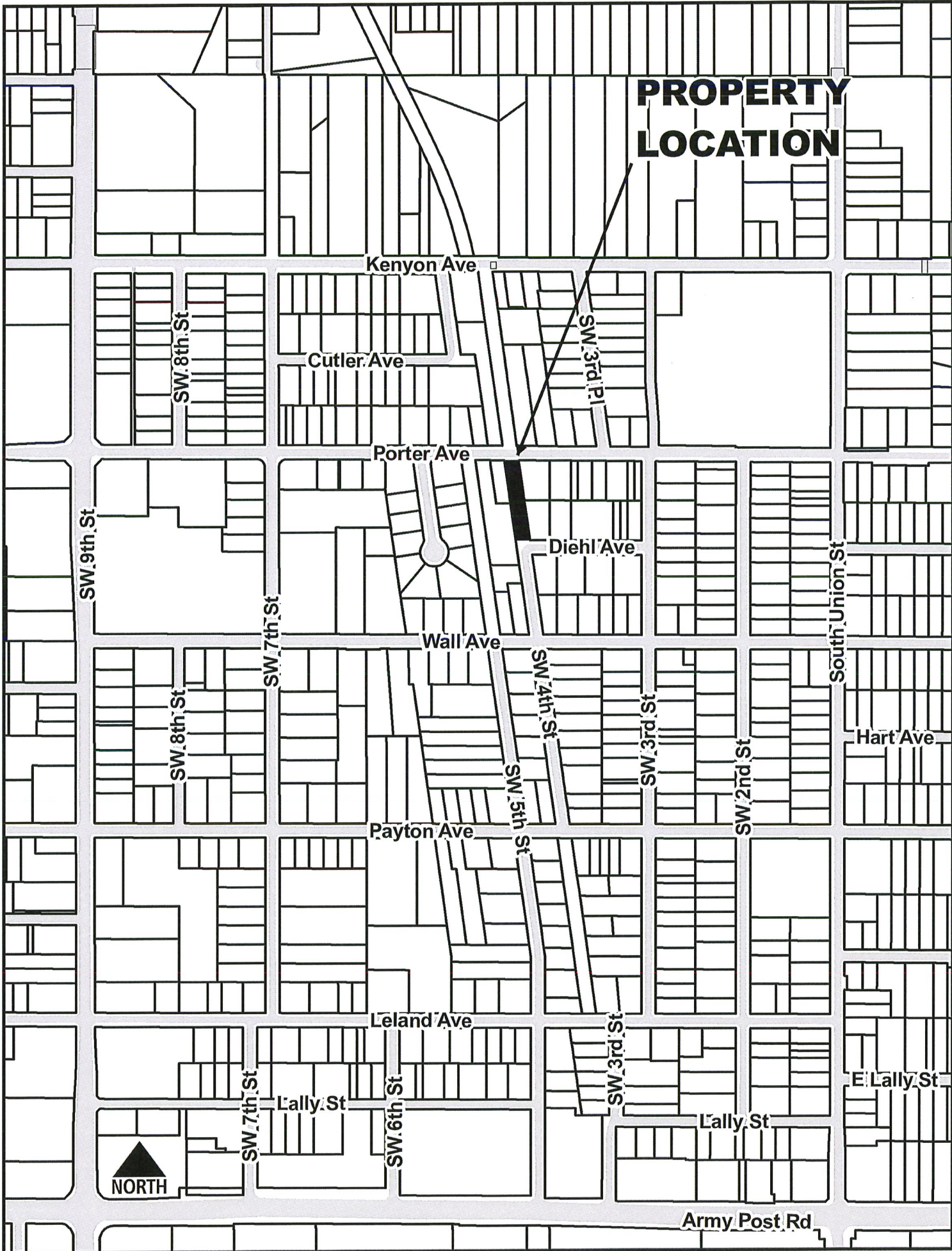
CERTIFICATE

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



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

534

Lisa & Kristopher Wertz, ROW In Vicinity of 315 Diehl Avenue and Porter Avenue

ROWV-2023-000003



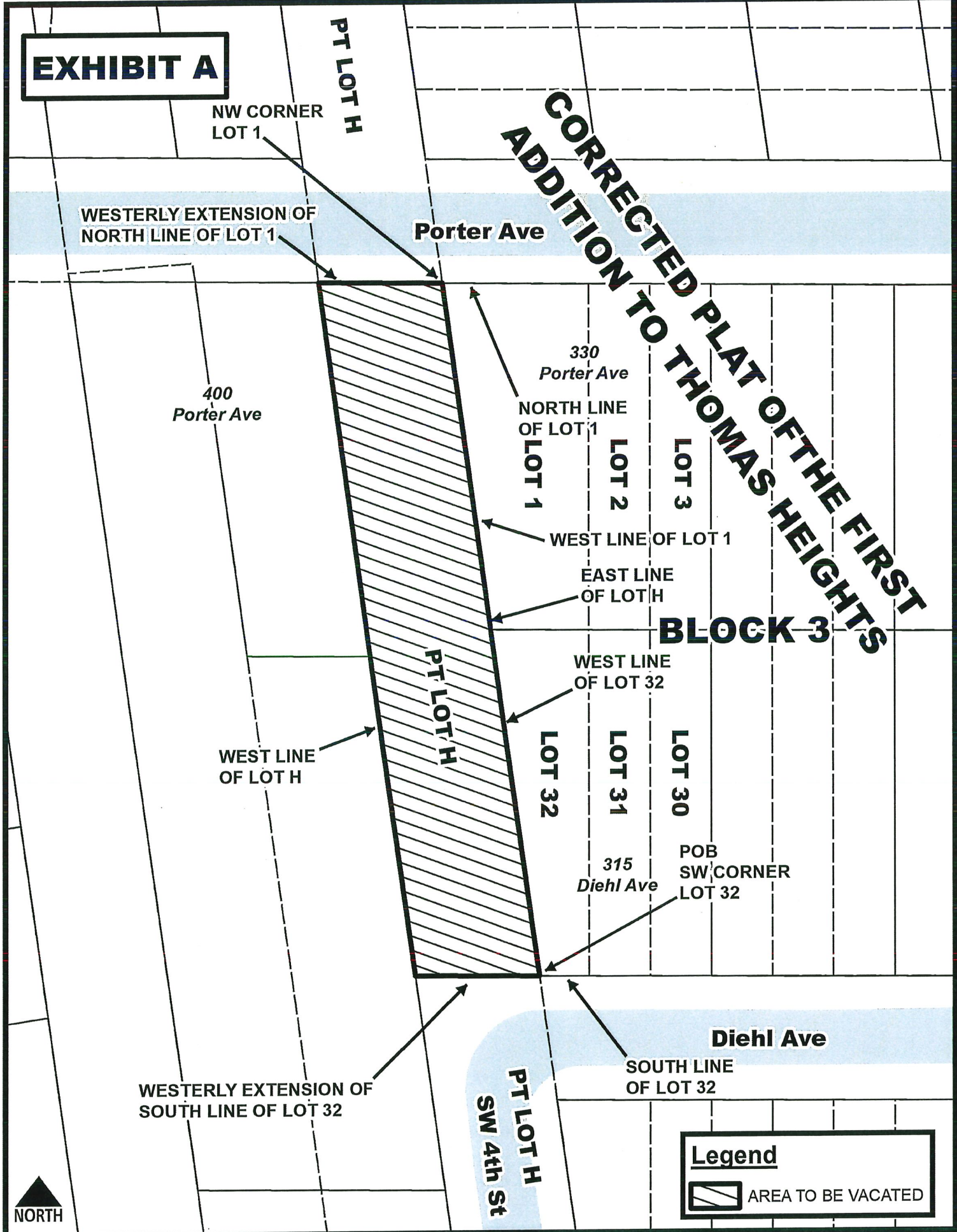
Updated on: 3/30/2023

1 inch = 113 feet

1400-58

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

400 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

BLOCK 3

WEST LINE OF LOT 32

WEST LINE OF LOT H

LOT 32

LOT 31

LOT 30

315 Diehl Ave

POB SW CORNER LOT 32

Diehl Ave

WESTERLY EXTENSION OF SOUTH LINE OF LOT 32

SOUTH LINE OF LOT 32

PT LOT H SW 4th St

Legend

 AREA TO BE VACATED













Item: ROWV-2023-000003 Date: 4-13-2023

29
53

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

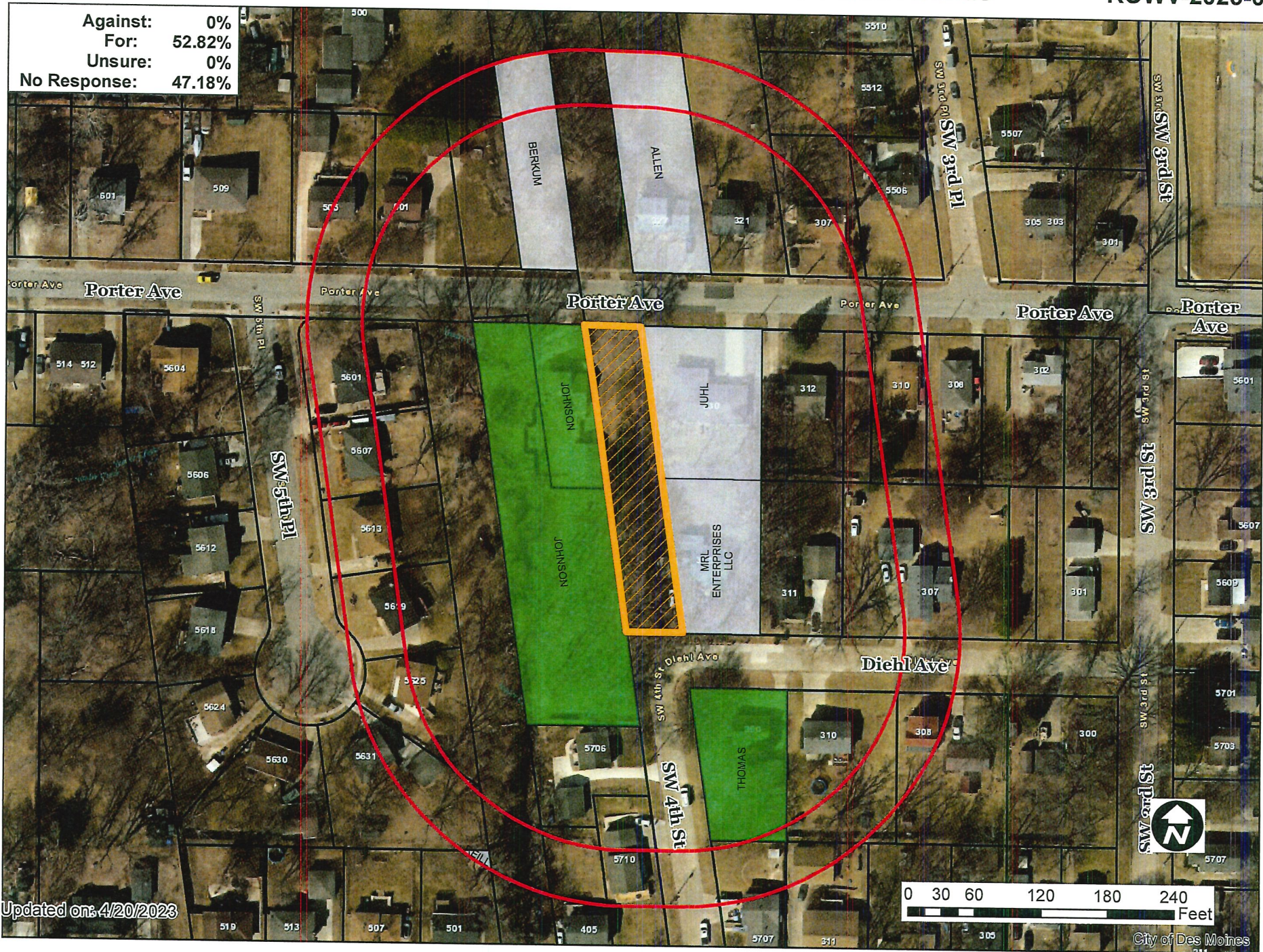
Impacted Address: 390 Diehl ave

Comments: Allowing them a true privacy seems reasonable

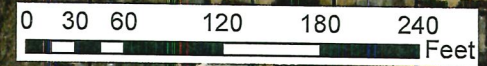
Lisa & Kristopher Wertz, ROW In Vicinity of 315 Diehl Avenue and Porter Avenue

ROWV-2023-000003

Against:	0%
For:	52.82%
Unsure:	0%
No Response:	47.18%



Updated on: 4/20/2023



City of Des Moines

1 inch = 113 feet