



**Date** November 20, 2023

**SET HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF AIR AND SURFACE RIGHTS WITHIN PORTIONS OF SOUTHWEST 7<sup>TH</sup> STREET RIGHT-OF-WAY ADJOINING 106 SOUTHWEST 7<sup>TH</sup> STREET AND CONVEYANCE OF A PERMANENT EASEMENT FOR AIR SPACE ABOVE CITY-OWNED PROPERTY AND A PERMANENT EASEMENT FOR BUILDING ENCROACHMENT-DOOR SWING TO 106 SW 7<sup>TH</sup> STREET, LLC FOR \$370.00**

**WHEREAS**, on October 2, 2023, by Roll Call No. 23-1314, 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 106 SW 7<sup>th</sup> Street, LLC to vacate the air and surface rights within a portion of Southwest 7<sup>th</sup> Street right-of-way adjoining 106 Southwest 7<sup>th</sup> Street, subject to the reservation of easements for all existing utilities in place until such time as they are abandoned or relocated; and

**WHEREAS**, 106 SW 7<sup>th</sup> Street, LLC, the owner of 106 Southwest 7<sup>th</sup> Street, has offered to the City of Des Moines, Iowa (“City”) the purchase price of \$370.00 for the purchase of a Permanent Easement for Air Space Above City-Owned Property and a Permanent Easement for Building Encroachment-Door Swing (“Easements”) over through and across portions of Southwest 7<sup>th</sup> Street right-of-way adjoining 106 Southwest 7<sup>th</sup> Street (hereinafter “Easement Area”), for the purpose of constructing, repairing, and maintaining balcony projections over the vacated right-of-way, and constructing, repairing, and maintaining building door swing areas, with planters or other City-approved barriers on each side of each door into and upon the vacated 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 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 Easements in said 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 air and surface rights-of-way within Southwest 7<sup>th</sup> Street adjoining 106 Southwest 7<sup>th</sup> Street, legally described as follows:

**AIR RIGHTS**

A PART OF THE VACATED SW 7TH STREET PUBLIC RIGHT-OF-WAY LYING DIRECTLY ADJACENT TO LOTS 7 AND 8, BLOCK 5, ORIGINAL TOWN OF FORT DES MOINES, AN OFFICIAL PLAT RECORDED IN BOOK 'A', PAGE 3 AT THE POLK COUNTY RECORDER'S OFFICE, CITY OF DES MOINES, POLK COUNTY, IOWA THAT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AS A POINT OF REFERENCE AT THE NE CORNER OF SAID LOT 8; THENCE S15°38'13"E, 78.00 FEET ALONG THE EAST LINE OF SAID LOTS 7 & 8, SAID EAST LINE

Date November 20, 2023

COINCIDES WITH THE WEST RIGHT-OF-WAY LINE OF SW 7TH STREET AS IT IS PRESENTLY ESTABLISHED, TO THE POINT OF BEGINNING; THENCE N74°21'47"E, 6.00 FEET TO A POINT THAT IS 6.00 FEET EAST OF SAID WEST RIGHT-OF-WAY; THENCE S15°38'13"E, 24.00 FEET ALONG A LINE THAT IS 6.00 FEET EAST OF AND PARALLEL WITH SAID WEST RIGHT-OF-WAY LINE TO A POINT; THENCE S74°21'47"W, 6.00 FEET TO A POINT ON SAID WEST RIGHT-OF-WAY LINE OF SW 7TH STREET AND SAID EAST LINE OF LOT 7; THENCE N15°38'13"W, 24.00 FEET ALONG SAID WEST RIGHT-OF-WAY LINE AND SAID EAST LINE OF LOT 7 TO THE POINT OF BEGINNING AND CONTAINING 144 SQUARE FEET MORE OR LESS.

THE PREVIOUS DESCRIPTION IS RESTRICTED BETWEEN THE FOLLOWING ELEVATIONS:

BOTTOM OF EASEMENT = 54.32 FEET

TOP OF EASEMENT = 69.32 FEET

A REFERENCE ELEVATION OF THE FIRST FLOOR OF 28.32 FEET AND A GROUND ELEVATION OF 26.30 FEET.

SURFACE RIGHTS

A PART OF THE SW 7TH STREET PUBLIC RIGHT-OF-WAY LYING DIRECTLY ADJACENT TO LOTS 7 AND 8, BLOCK 5, ORIGINAL TOWN OF FORT DES MOINES, AN OFFICIAL PLAT RECORDED IN BOOK 'A', PAGE 3 AT THE POLK COUNTY RECORDER'S OFFICE, CITY OF DES MOINES, POLK COUNTY, IOWA THAT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AS A POINT OF REFERENCE AT THE NE CORNER OF SAID LOT 8; THENCE S15°38'13"E, 84.00 FEET ALONG THE EAST LINE OF SAID LOTS 7 & 8, SAID EAST LINE COINCIDES WITH THE WEST RIGHT-OF-WAY LINE OF SW 7TH STREET AS IT IS PRESENTLY ESTABLISHED, TO THE POINT OF BEGINNING; THENCE N74°21'47"E, 5.00 FEET TO A POINT THAT IS 5.00 FEET EAST OF SAID WEST RIGHT-OF-WAY; THENCE S15°38'13"E, 8.00 FEET ALONG A LINE THAT IS 5.00 FEET EAST OF AND PARALLEL WITH SAID WEST RIGHT-OF-WAY LINE TO A POINT; THENCE S74°21'47"W, 5.00 FEET TO A POINT ON SAID WEST RIGHT-OF-WAY LINE OF SW 7TH STREET AND SAID EAST LINE OF LOT 7; THENCE N15°38'13"W, 8.00 FEET ALONG SAID WEST RIGHT-OF-WAY LINE AND SAID EAST LINE OF LOT 7 TO THE POINT OF BEGINNING AND CONTAINING 40 SQUARE FEET MORE OR LESS.

2. The City Council of the City of Des Moines, Iowa, further proposes to convey a Permanent Easement for Air Space Above City-Owned Property and a Permanent Easement for Building Encroachment-Door Swing in such vacated right-of-way, as legally described below, to 106 SW 7<sup>th</sup> Street, LLC for \$370.00 subject to any and all easements, restrictions and covenants of record.

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 December 4, 2023, 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.



 **Roll Call Number**

**Agenda Item Number**

15

Page 3

**Date** November 20, 2023

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/ Chas M. Cahill  
Chas M. Cahill, Assistant City Attorney

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

MOTION CARRIED

APPROVED

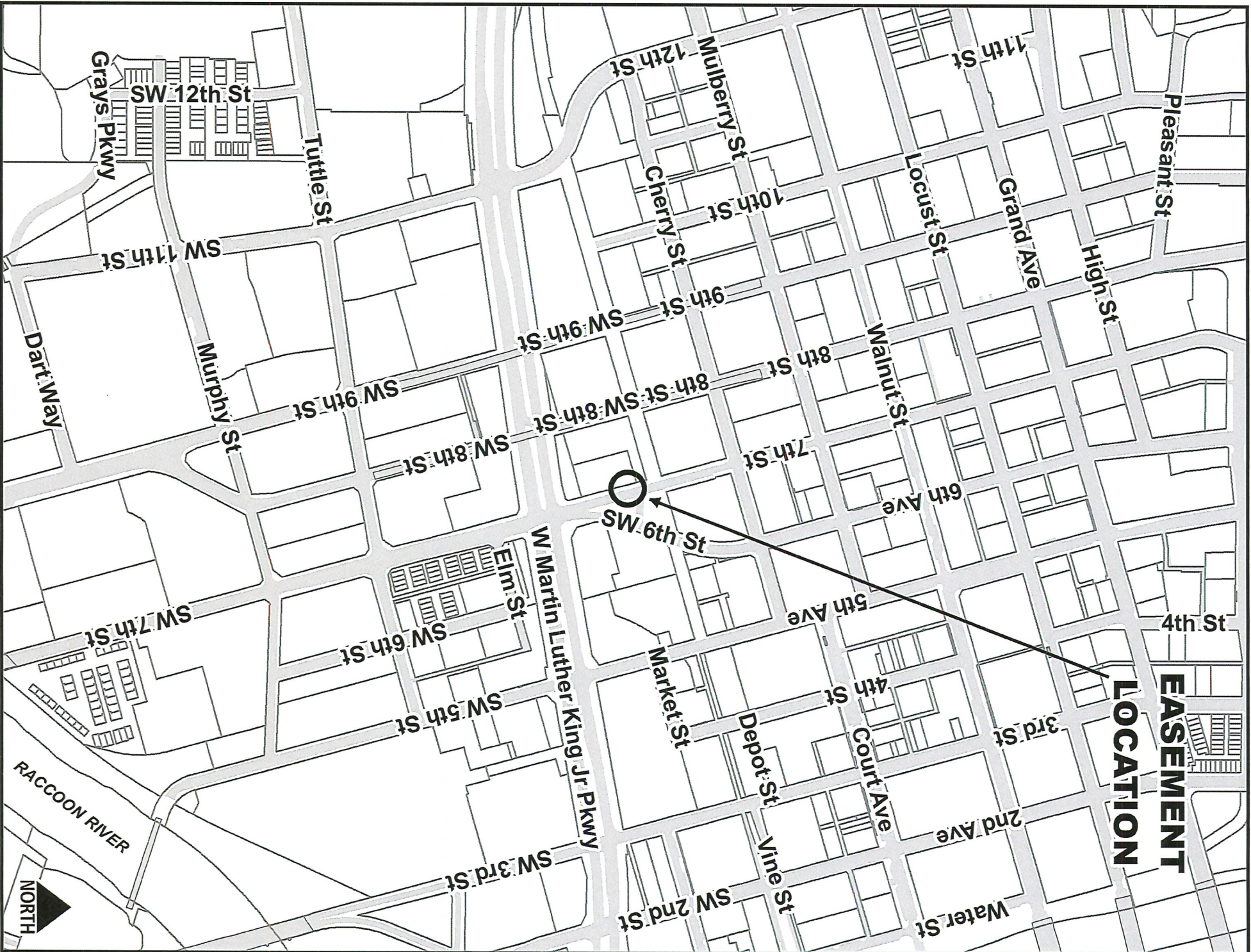
\_\_\_\_\_  
Mayor

**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.

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





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 106 SW 7<sup>th</sup> Street, LLC (owner), represented by Tim Rypma (officer), regarding the vacation of 144 square feet of air right-of-way and 40 square feet of surface right-of-way adjoining property at 106 Southwest 7<sup>th</sup> Street, to allow the encroachment of a new balcony and existing ground floor door swings within the Southwest 7<sup>th</sup> Street right-of-way.

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 8-0 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 vacation of air rights and 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 air rights and 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

1. **Purpose of Request:** The proposed vacation of air rights and surface rights within the Southwest 7<sup>th</sup> Street right-of-way adjoining the subject property is being requested to allow a new balcony to project from the existing building and to also allow a door to swing into the right-of-way. The applicant is proposing to renovate the existing building in compliance with State Historic Preservation Office (SHPO) standards and provide the Code-required site improvements through a Site Plan.
2. **Size of Site:** The requested area of air rights is approximately 144 square feet. The requested area of surface rights is approximately 40 square feet.
3. **Existing Zoning (site):** "DX2" Downtown Mixed-Use District.
4. **Existing Land Use (site):** The subject areas to be vacated are located in Southwest 7<sup>th</sup> Street right-of-way. The adjoining site is occupied by two vacant warehouse-style buildings and parking/loading areas.
5. **Adjacent Land Use and Zoning:**
  - North** – "DX2", Uses are a railroad and a surface parking lot.
  - South** – "DXR", Uses are Martin Luther King, Jr. Parkway, multiple-household residential dwelling units, and an accessory surface parking lot.
  - East** – "DX2", Uses are Southwest 7<sup>th</sup> Street, Southwest 6<sup>th</sup> Street, a City-owned "Right of Way Triangle," and a utility substation.
  - West** – "DX2", Uses are Southwest 8<sup>th</sup> Street and a surface parking lot.
6. **General Neighborhood/Area Land Uses:** The subject site is located on the southern fringes of the Downtown core, on the north side of Martin Luther King, Jr. Parkway between Southwest 7<sup>th</sup> and Southwest 8<sup>th</sup> Street. This portion of the corridor south of the Parkway has recently seen some new construction as well as adaptive reuse of existing warehouse buildings. This portion of the corridor north of the Parkway is dominated by surface parking lots.
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 September 1, 2023 and Final Agenda on September 15, 2023. Additionally, separate notifications of the hearing for this specific item were mailed on September 11, 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 SW 5<sup>th</sup> Street, Unit 101, Des Moines, IA 50309.
8. **Relevant Zoning History:** On August 3, 2023, the Plan and Zoning Commission approved a Type 2 Design Alternative for the Public Hearing Site Plan, "Carpenter and





Lortex Developments,” to allow total reconstruction of a surface parking lot. The Commission voted to approve this request by a vote of 13-0.

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 private properties or traffic patterns.

## SUMMARY OF DISCUSSION

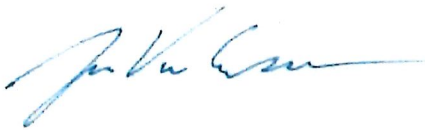
Abby Chungath asked if any member of the public or commission desired to speak on the item. No one requested to speak.

## COMMISSION ACTION:

Carolyn Jenison made a motion for approval of the requested vacation of air rights and 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: 8-0

Respectfully submitted,

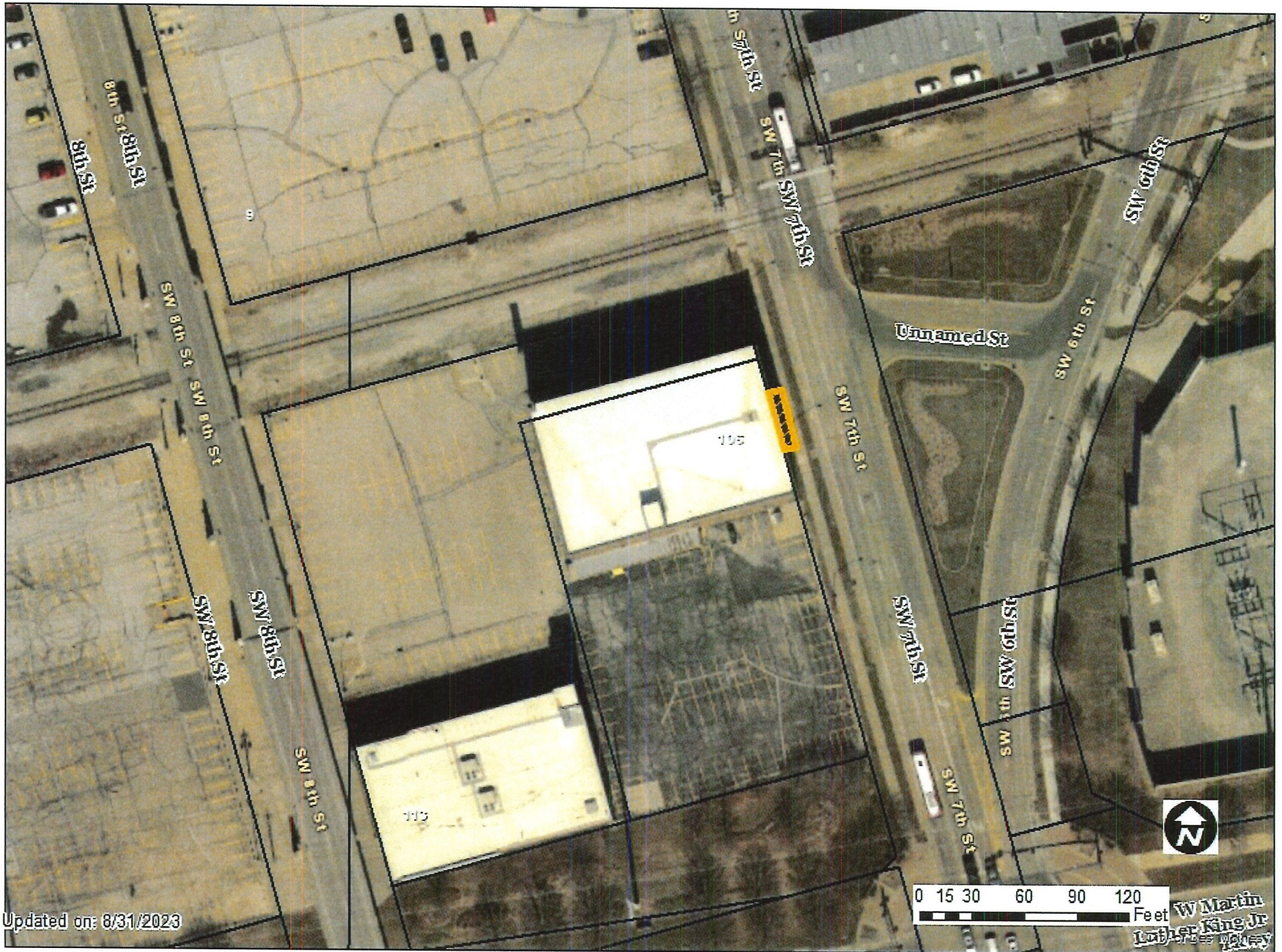


Jason Van Essen, AICP  
Planning & Urban Design Administrator

JMV:tjh







24/7/23



2415

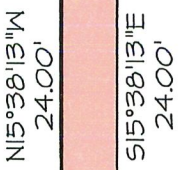
# EXHIBIT AIR RIGHTS EASEMENT DES MOINES, IOWA

NE CORNER  
LOT 8  
BLK 5 FORT DES MOINES

S15°38'13"E 78.00'

7TH STREET

N74°21'47"E  
6.00'



S74°21'47"W  
6.00'

WEST ROW LINE  
7TH STREET

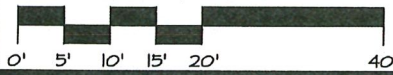
Q:\E-FILES\8-8000\8856\ C3D Drawings\Exhibits\8856 EASEMENT EXHIBIT.dwg, 8/25/2023 9:52:31 AM, mmorgan, 1:1



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"=20'



NORTH



SHEET

1

OF 1

E8856

DATE: August 25, 2023  
DESIGNED BY: ###  
DRAWN BY: ###

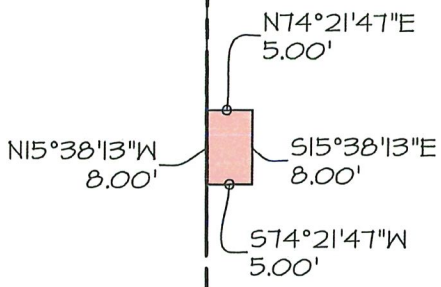
1515

# EXHIBIT DOOR SWING EASEMENT DES MOINES, IOWA

NE CORNER  
LOT 8  
BLK 5 FORT DES MOINES

S15°38'13"E 84.00'

7TH STREET



WEST ROW LINE  
7TH STREET

Q:\E-FILES\8-000\8856\ C3D Drawings\Exhibits\8856 DOOR SWING EASE.dwg, 8/25/2023 10:57:05 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" = 20'



NORTH



SHEET

1

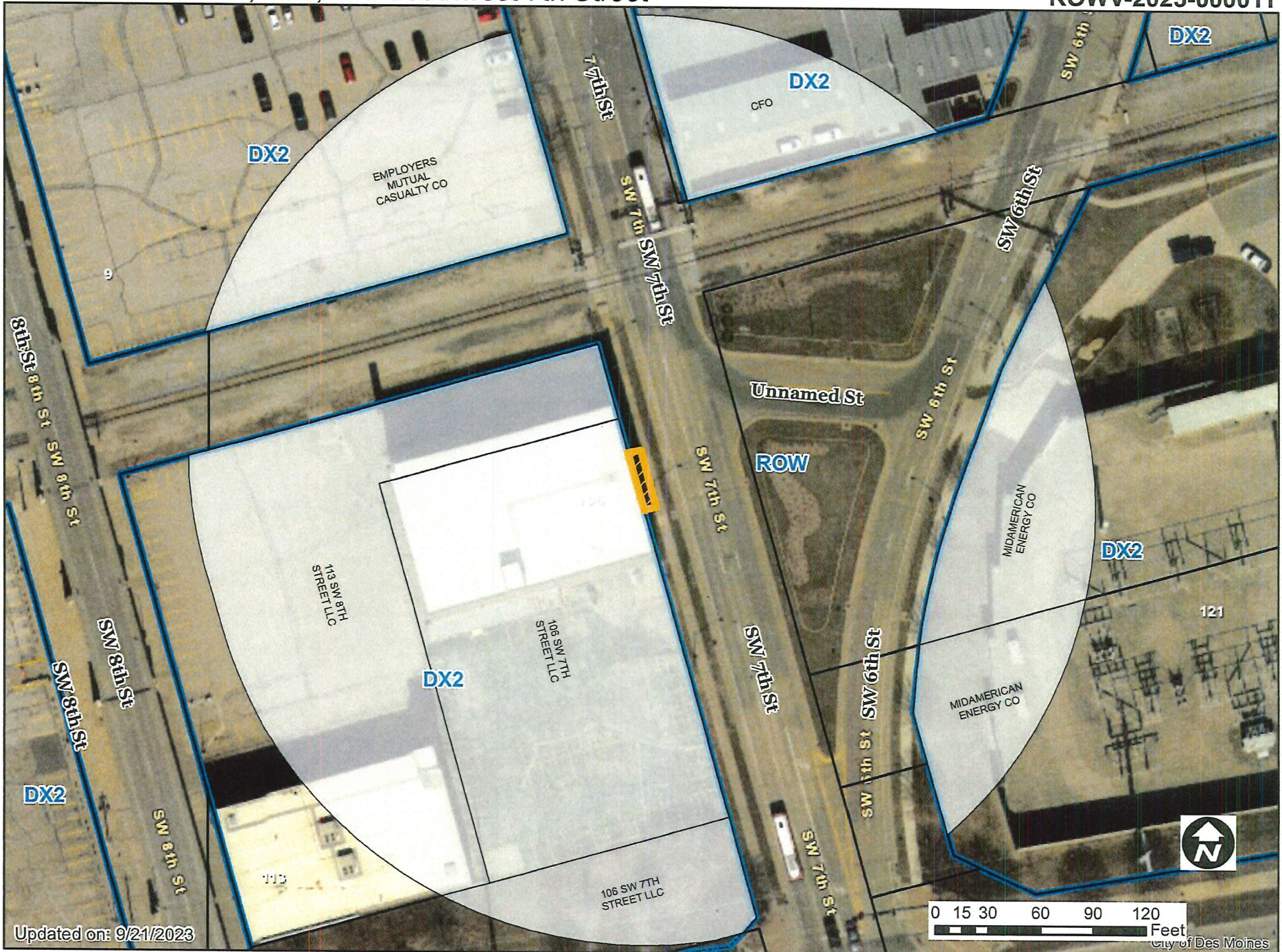
OF 1

E8856

DATE:	August 25, 2023
DESIGNED BY:	###
DRAWN BY:	###



24  
15



Updated on: 9/21/2023

