

Date May 9, 2016

**HOLD HEARING FOR VACATION AND CONVEYANCE OF A SEGMENT OF
MARTIN LUTHER KING, JR. PARKWAY ADJOINING 2120 INGERSOLL AVENUE
TO DJ INGERSOLL PROPERTIES L.L.C. FOR \$5,115.00**

WHEREAS, on April 7, 2016, the City Plan and Zoning Commission voted to recommend to the City Council of the City of Des Moines, Iowa, that a segment of Martin Luther King, Jr. Parkway adjoining 2120 Ingersoll Avenue, hereinafter more fully described, be vacated, subject to reservation of easements for all existing utilities in place, until such time that they are abandoned or relocated, and further subject to the reservation of a no-build easement; and

WHEREAS, DJ Ingersoll Properties L.L.C., owner of 2120 Ingersoll Avenue, has offered to the City of Des Moines, Iowa, (herein "City") the purchase price of \$5,115.00 for the vacation and purchase of a segment of Martin Luther King, Jr. Parkway right-of-way adjoining 2120 Ingersoll Avenue (herein "City Right-of-Way") for construction of an outdoor seating area and patio for the restaurant and lounge located at 2120 Ingersoll Avenue, which price reflects the fair market value of the City Right-of-Way as currently estimated by the City's Real Estate Division; and

WHEREAS, there is no known current or future public need or benefit for the portion of the City Right-of-Way proposed to be vacated, or for the City Right-of-Way proposed to be sold, and the City will not be inconvenienced by the vacation and sale of said property; and

WHEREAS, on April 25, 2016, by Roll Call No. _____, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation and conveyance of the City Right-of-Way be set down for hearing on May 9, 2016, at 5:00 p.m., in the City Council Chambers; and

WHEREAS, due notice of said proposal to vacate and convey the City 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 of the City of Des Moines, Iowa.

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 the City Right-of-Way, as described herein, are hereby overruled and the hearing is closed.
2. There is no public need or benefit for the City Right-of-Way proposed to be vacated, and the public would not be inconvenienced by reason of the vacation of the segment of Martin Luther King, Jr. Parkway right-of-way adjoining 2120 Ingersoll Avenue, as legally described below, and said vacation is hereby approved:

.....
Date May 9, 2016.....

Part of Lot 9 of the Official Plat of The Southwest ¼ of Section 5, Township 78 North, Range 24 West of the 5th P.M., described as follows:

The West 13.75 feet of the North 62.0 feet of the East 100.0 feet of said Lot 9, lying South of and adjoining Ingersoll Avenue, all now included in and forming a part of the City of Des Moines, Polk County, Iowa, and containing 852.5 square feet.

3. The proposed sale of such vacated right-of-way, as legally described below, to DJ Ingersoll Properties L.L.C. for \$5,115.00, together with payment by said grantee of the estimated publication and recording costs for this transaction, subject to the requirements of the Plan and Zoning Commission recommendation and the Offer to Purchase, including the reservation of easements for all existing utilities in place, until such time that they are abandoned or relocated and the reservation of a no-build easement, is hereby approved:

A vacated part of Lot 9 of the Official Plat of The Southwest ¼ of Section 5, Township 78 North, Range 24 West of the 5th P.M., described as follows:

The West 13.75 feet of the North 62.0 feet of the East 100.0 feet of said Lot 9, lying South of and adjoining Ingersoll Avenue, all now included in and forming a part of the City of Des Moines, Polk County, Iowa, and containing 852.5 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.

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 copies of the other documents to the grantees.

8. Non-project related land sale proceeds are used to support general operating budget expenses: Org – EG064090.

(Council Communication No. 16-240)

Date May 9, 2016

Moved by _____ to adopt.

APPROVED AS TO FORM:


 Lisa A. Wieland, Assistant City Attorney

PR

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MOORE				
WESTERGAARD				
TOTAL				

MOTION CARRIED APPROVED
 _____ Mayor

CERTIFICATE

I, DIANE RAUH, 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



April 18, 2016

Honorable Mayor and City Council
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their meeting held April 7, 2016, the following action was taken regarding a request from D J Ingersoll Properties, LLC (owner), 2120 Ingersoll Avenue, represented by Darby Smith (officer), for review and approval of a request for vacation of a 13.75-foot by 62-foot segment of Martin Luther King, Jr. Parkway Right-of-Way adjoining 2120 Ingersoll Avenue, for use as an outdoor seating and patio for the existing restaurant.

COMMISSION RECOMMENDATION:

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

Commission Action:	Yes	Nays	Pass	Absent
Francis Boggus	X			
Dory Briles	X			
JoAnne Corigliano	X			
David Courard-Hauri	X			
Jacqueline Easley	X			
Tim Fitzgerald	X			
Jann Freed	X			
John "Jack" Hilmes	X			
Greg Jones	X			
Sasha Kamper				X
William Page	X			
Mike Simonson	X			
CJ Stephens	X			
Greg Wattier	X			

APPROVAL of the requested vacation, subject to reservation of any necessary easements for existing utilities. (11-2016-1.03)

RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval of the requested vacation, subject to reservation of any necessary easements for existing utilities.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The proposed vacation would allow the restaurant on the adjoining parcel to provide alcohol sales on the outdoor patio along the east side of the building. In the past, this portion of the Right-of-Way has been leased to the restaurant for a patio in accordance with sidewalk café permit, which doesn't allow for the sale of alcohol on the patio.
2. **Size of Site:** 13.75 feet by 62 feet (852.5 square feet).
3. **Existing Zoning (site):** "C-3A" Central Business District Mixed-Use District, "D-O" Downtown Overlay District, "FSO" Freestanding Sign Overlay District, and "GGP" Gambling Games Prohibition District.
4. **Existing Land Use (site):** A patio within Martin Luther King, Jr. Parkway.
5. **Adjacent Land Use and Zoning:**

East – "C-2". Uses include Martin Luther King, Jr. Parkway and Midas (auto service).

West – "C-2", Use is The Waverly (restaurant).
6. **General Neighborhood/Area Land Uses:** The subject property is located along the west side of Martin Luther King, Jr. Parkway just to the south of Ingersoll Avenue. The surrounding area includes a mix of commercial, residential, and medical clinic uses.
7. **Applicable Recognized Neighborhood(s):** The subject property is located in the Woodland Heights Organization Neighborhood and within 250 feet of the Sherman Hill Neighborhood. All neighborhood associations were notified of the meeting by mailing of the Preliminary Agenda to all recognized neighborhood associations on March 22, 2016. Additionally, separate notifications of the hearing for this specific item were mailed on March 30, 2016 to the neighborhood associations and to the primary titleholder on file with the Polk County Assessor for each property adjacent to the requested right-of-way.

All agendas and notices are mailed to the primary contact designated by the recognized neighborhood association to the City of Des Moines Neighborhood Development Division on the date of the mailing. The Woodland Heights Organization Neighborhood Association notices were mailed to Kevin Cunningham, 2710 Woodland Avenue, Des Moines, IA 50312, and the Sherman Hill Neighborhood Association mailings were sent to David Schlarmann, 1503 Center Street, Des Moines, IA 50314.
8. **Relevant Zoning History:** None.
9. **2020 Community Character Land Use Plan Designation:** The subject property is located within an area designated on the Des Moines' 2020 Community Character Plan future land use map as Commercial: Pedestrian-Oriented Commercial Corridor. The plan defines this category as "Small-to-moderate scale commercial serving adjacent neighborhood and specialty retail/services. Cumulative building total of 75,000 to 100,000 square feet".

- 10. PlanDSM: Creating Our Tomorrow Plan Land Use Plan Designation:** The subject property is located within an area designated on the proposed PlanDSM future land use map as Neighborhood Mixed Use. The plan defines this category as "Small -scale mixed-use development typically located at the intersections of collector and/or arterial streets and along transportation corridors. Non-residential development is designed to serve the immediate neighborhood and include small retail, offices, restaurants, and service oriented development. Low-medium density residential may be included in mixed-use development".
- 11. Applicable Regulations:** In consideration of 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. Street System/Access:** The requested vacation would not impact the existing street network. The remaining Right-of-Way will accommodate the required roadway width. The right-of-way for Martin Luther King, Jr. Parkway is approximately 205 feet wide in this area. The portion of the right-of-way that has been requested for vacation is approximately 50 feet from the western curb along Martin Luther King, Jr. Parkway.
- 2. Utilities:** Easements must be provided for any existing utilities in place until such time that they may be abandoned or are relocated. No utilities have been identified at this time.

SUMMARY OF DISCUSSION

Greg Jones asked if anyone was present to speak on this item. None were present or requested to speak.

COMMISSION ACTION:

Will Page moved staff recommendation for approval of the requested vacation, subject to reservation of any necessary easements for existing utilities.

Motion passed 13-0.

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:clw
Attachment

11-2016-1.03

Item #

Date April 6, 2016

(am) (am not) in favor of the request.

RECEIVED
COMMUNITY DEVELOPMENT

(Circle One)

Ingersoll Square Partners, LLC

Print Name Ingersoll Square Phase III Associates, L.P.

APR 11 2016

Signature [Signature]

DEPARTMENT

Address 10 Newbury Management Co.

Reason for opposing or approving this request may be listed below:

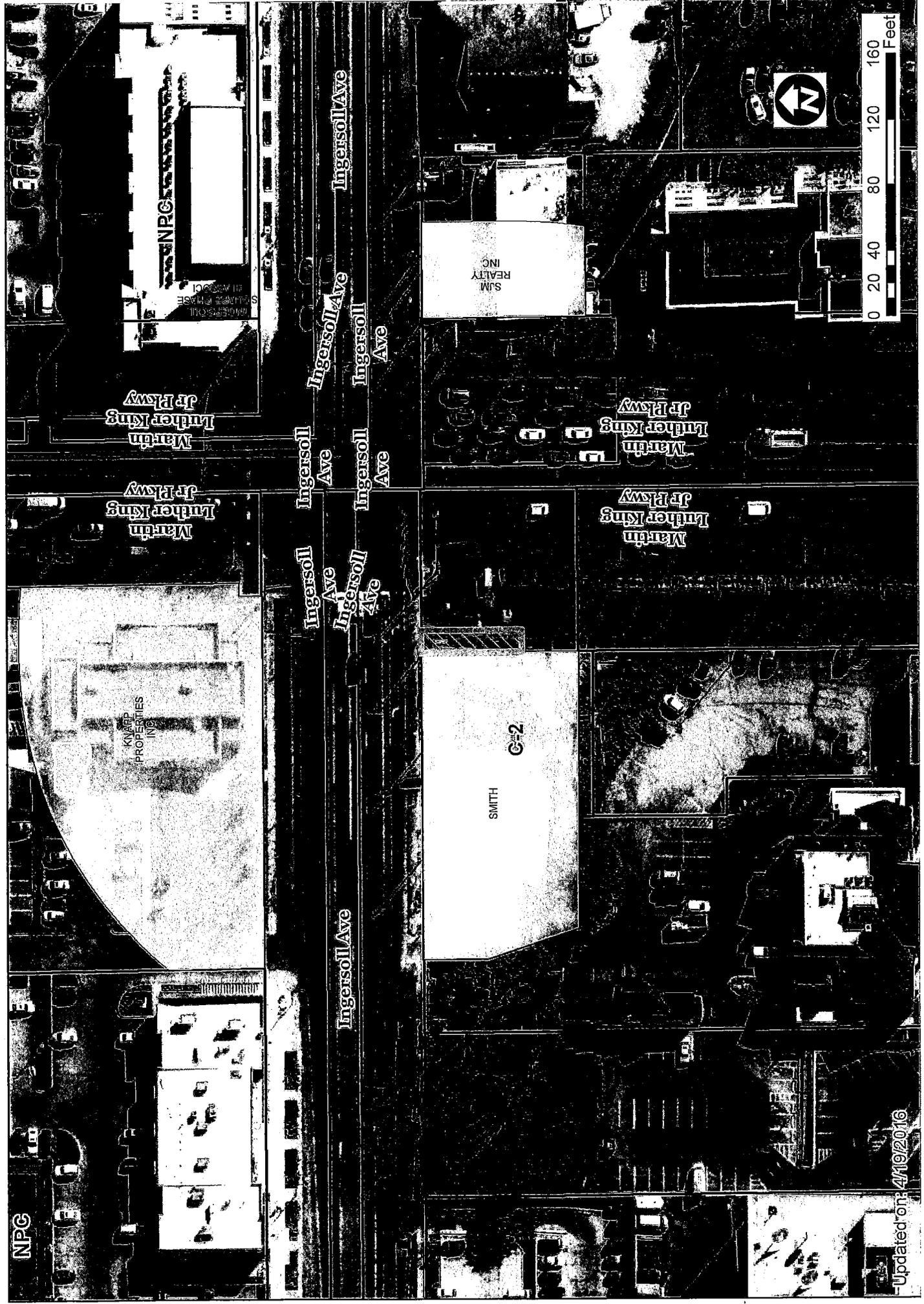
3408 Woodland Ave suite 504

west Des Moines, IA 50266

the
Neither we nor, Gusto Pizza guys believe the
proposed expansion will hurt our business.

D J Ingersoll Properties, LLC, 2120 Ingersoll Avenue

11-2016-1.03

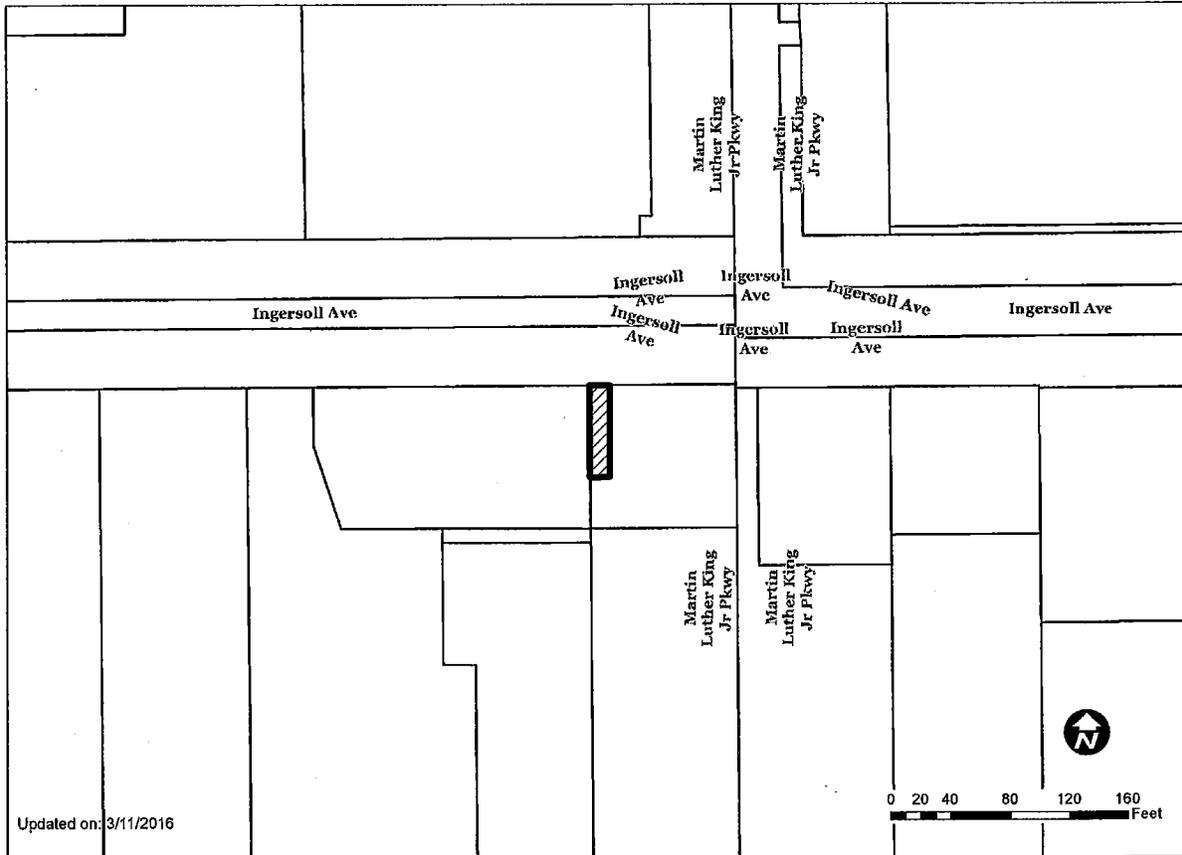


-Updated on: 4/10/2016

D J Ingersoll Properties, LLC (owner) represented by Darby Smith (officer) for property located at 2120 Ingersoll Avenue.			File #	
			11-2016-1.03	
Description of Action	Approval of vacation of a 13.75-foot by 62-foot segment of Martin Luther King, Jr. Parkway Right-of-Way adjoining 2120 Ingersoll Avenue, for use as an outdoor seating and patio for the existing restaurant subject to reservation of any necessary easements for existing utilities.			
2020 Community Character Plan	Current: Commercial: Pedestrian-Oriented Commercial Corridor. Proposed: N/A.			
Mobilizing Tomorrow Transportation Plan	No planned improvements.			
Current Zoning District	"C-2" General Retail and Highway-Oriented Commercial District and "FSO" Freestanding Signs Overlay District.			
Proposed Zoning District	N/A.			
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition
Inside Area				
Outside Area				
Plan and Zoning Commission Action	Approval	13-0	Required 6/7 Vote of the City Council	Yes
	Denial			No

D J Ingersoll Properties, LLC, 2120 Ingersoll Avenue

11-2016-1.03



1 inch = 76 feet