



**Roll Call Number**

**Agenda Item Number**

19A

**Date** June 25, 2018

**RECEIVE AND FILE COMMUNICATION FROM THE PLAN AND ZONING COMMISSION REGARDING REQUEST FROM 111 EAST GRAND, LLC FOR VACATION OF SUBSURFACE RIGHTS IN EAST 2<sup>ND</sup> STREET RIGHT-OF-WAY ADJOINING 111 EAST GRAND AVENUE**

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on June 7, 2018, its members voted 7-5 to recommend **APPROVAL** of a request from 111 East Grand, LLC (owner), represented by Tim Rypma (officer), for vacation of a 12-foot by 40-foot subsurface segment of East 2<sup>nd</sup> Street adjoining 111 East Grand Avenue, to allow for placement of underground Fats, Oils, and Grease (FOG) interceptors to serve the proposed adjoining building, subject to the following conditions:

1. The vacation and conveyance of any subsurface easement shall be subject to termination by the City at any time the easement area should be needed for municipal facilities or improvements;
2. Upon termination of the easement by the City, the developer/owner shall remove the FOG Interceptor and related appurtenances at developer/owner's expense;
3. In the event that the City exercises its right to terminate the easement within the City's Right-of-Way, the building shall be plumb at this time and at the developer/owner's expense to allow for future relocation of the FOG interceptor to a location outside the City's Right-of-Way; and
4. Prior to the City granting the easement within the City's Right-of-Way, the developer/owner shall secure the alternative location for the FOG interceptor.

**MOVED** by \_\_\_\_\_ to receive and file the attached communication from the Plan and Zoning Commission, and refer to the Engineering Department, Real Estate Division.

FORM APPROVED:

Glenna K. Frank  
Glenna K. Frank, Assistant City Attorney

(11-2018-1.08)

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

MOTION CARRIED

APPROVED

\_\_\_\_\_  
Mayor

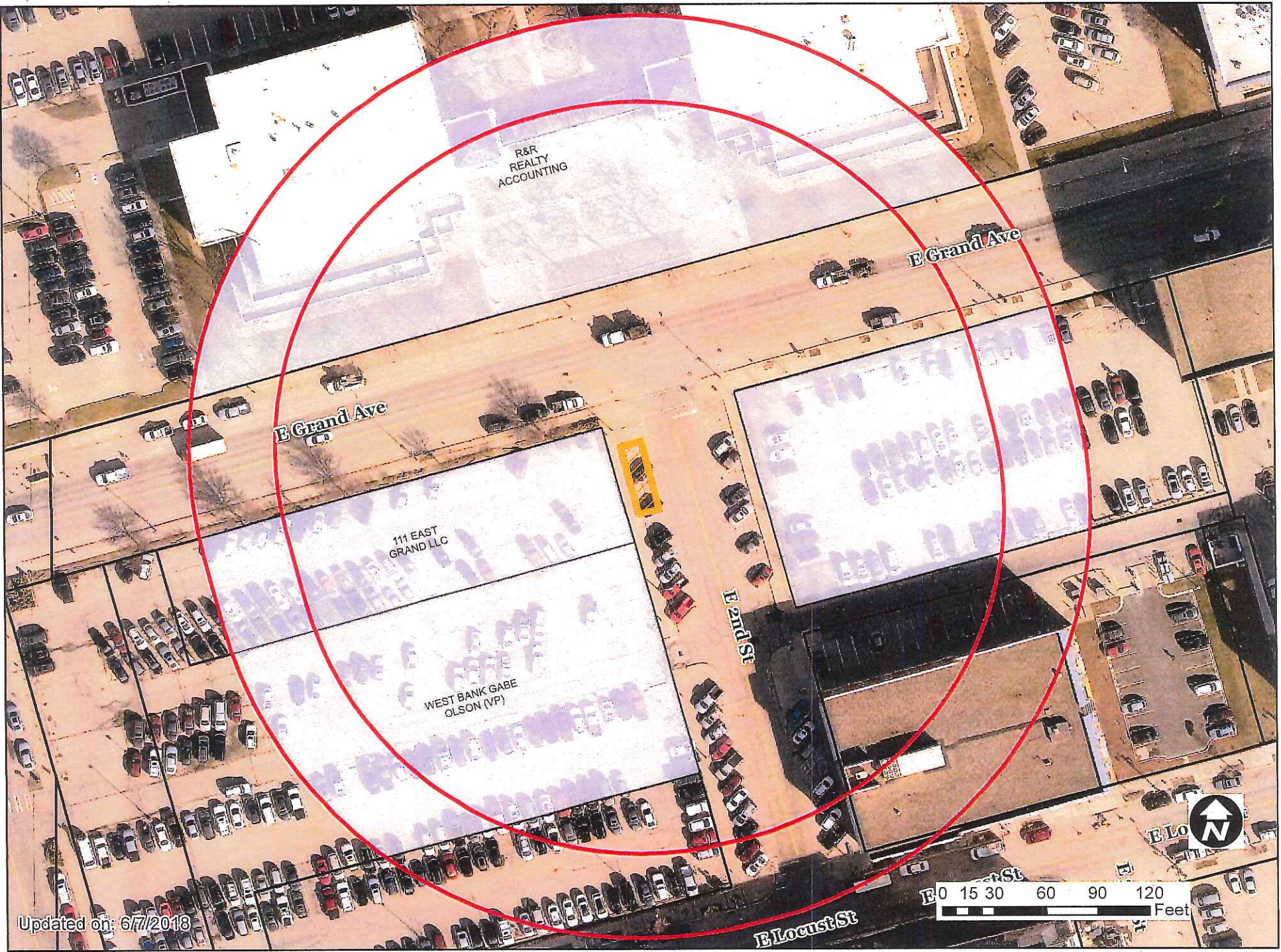
**CERTIFICATE**

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.

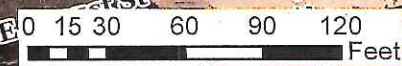
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

\_\_\_\_\_  
City Clerk





Updated on: 6/7/2018





5/29/18 13:36







5/29/18 13:35

June 19, 2018

Honorable Mayor and City Council  
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their June 7, 2018 meeting, the following action was taken regarding a request from 111 East Grand, LLC (owner), 111 East Grand Avenue, represented by Tim Rypma (officer) for vacation of a 12-foot by 40-foot segment of subsurface from the East 2<sup>nd</sup> Street ROW adjacent the subject property, to allow for placement of underground Fats, Oils, and Grease (FOG) interceptors to serve the building.

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 12-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Francis Boggus	X			
Dory Briles		X		
Chris Cutler				X
David Courard-Hauri	X			
Jacqueline Easley	X			
Jann Freed				X
John "Jack" Hilmes	X			
Lisa Howard		X		
Carolyn Jenison		X		
Greg Jones	X			
William Page	X			
Mike Simonson				X
Rocky Sposato		X		
Steve Wallace	X			
Greg Wattier		X		

**APPROVAL** of the requested subsurface rights vacation, subject to the following conditions recommended by the City Engineer:

1. The vacation and conveyance of any subsurface easement shall be subject to termination by the City at any time the easement area should be needed for municipal facilities or improvements.



2. Upon termination of the easement by the City, the developer/owner shall remove the FOG Interceptor and related appurtenances at developer/owner's expense.
3. In the event that the City exercises its right to terminate the easement within the City's Right-of-Way, the building shall be plumb at this time and at the developer/owner's expense to allow for future relocation of the FOG interceptor to a location outside the City's Right-of-Way.
4. Prior to the City granting the easement within the City's Right-of-Way, the developer/owner shall secure the alternative location for the FOG interceptor.

(11-2018-1.08)

Written Responses

0 in Favor

0 in opposition

**RECOMMENDATION TO THE P&Z COMMISSION**

Staff recommends denial of the requested vacation of subsurface rights as the land has been identified for specific public purpose in the future.

Should P&Z recommend approval of the requested vacation, then such recommendation should be subject to the following conditions recommended by the City Engineer:

1. The vacation and conveyance of any subsurface easement shall be subject to termination by the City at any time the easement area should be needed for municipal facilities or improvements.
2. Upon termination of the easement by the City, the developer/owner shall remove the FOG Interceptor and related appurtenances at developer/owner's expense.
3. In the event that the City exercises its right to terminate the easement within the City's Right-of-Way, the building shall be plumb at this time and at the developer/owner's expense to allow for future relocation of the FOG interceptor to a location outside the City's Right-of-Way.
4. Prior to the City granting the easement within the City's Right-of-Way, the developer/owner shall secure the alternative location for the FOG interceptor.

**STAFF REPORT TO THE PLANNING COMMISSION**

**I. GENERAL INFORMATION**

1. **Purpose of Request:** The developer is proposing to construct a 4-story office building with ground level restaurant/retail space. They are requesting to vacate a 12-foot by 40-foot segment of subsurface from the adjacent East 2<sup>nd</sup> Street Right-of-Way for placement of underground Fats, Oils, and Grease (FOG) interceptor to serve the building.
2. **Size of Site:** The building site is 18,987 square feet (0.436 acres). The requested Right-of-Way vacation would be 480 square feet of subsurface area.

**3. Existing Zoning (site):** “D-R” Downtown Riverfront District, “CDO” Capitol Dominance Overlay District, “D-O” Downtown Overlay District, “GGP” Gambling Games Prohibition Overlay District, “PSO” Pedestrian-Oriented Sign Overlay District, and “FSO” Freestanding Sign Overlay District.

**4. Existing Land Use (site):** Undeveloped land.

**5. Adjacent Land Use and Zoning:**

**North** – “D-R”; Use is the 3-story East Grand Office Park office building.

**South** – “D-R”; Use is the 6-story public parking structure.

**East** – “C-3B”; Uses are a 6-story mixed-use building with residential, office and retail uses; a 3-story Metro Waste Authority office building; and a surface parking lot.

**West** – “D-R”; Use is an interim surface off-street parking lot for City Hall.

**6. General Neighborhood/Area Land Uses:** The site is in the Historic East Village of Downtown. The surrounding area contains a mix of office, hotel, retail, government and multiple-family residential uses.

**7. Applicable Recognized Neighborhood(s):** The subject property is in the Historic East Village Neighborhood. This neighborhood was notified of the Commission meeting by mailing of the Preliminary Agenda on May 18, 2018. Additionally, separate notifications of the hearing for this specific item were mailed on May 25, 2018 (13 days prior to the hearing) to the Historic East Village Neighborhood Association and to the primary titleholder on file with the Polk County Assessor for each property adjacent to the subject Right-of-Way. A final agenda was mailed on June 1, 2018.

All agendas and notices are mailed to the primary contact(s) designated by the recognized neighborhood association to the City of Des Moines Neighborhood Development Division. The Historic East Village Neighborhood Association notices were mailed to Chris LoRang, PO Box 93904, Des Moines, IA 50393.

**8. Relevant Zoning History:** On June 3, 2002, by Ordinance No. 14,097, the City Council rezoned the subject property with the “CDO” Capitol Dominance Overlay District. On March 22, 2004, by Ordinance No. 14,324, the City Council rezoned the subject property to “D-R” Downtown Riverfront District. On July 26, 2004, by Ordinances No. 14,361 and No. 14,362, the City Council rezoned the subject property with the “GGP” Gambling Games Prohibition Overlay District and the “PSO” Pedestrian-Oriented Sign Overlay District respectively. On November 7, 2011, by Ordinance No. 15,060, the City Council rezoned the subject property with the “D-O” Downtown Overlay District.

On February 28, 2018, the Zoning Board of Adjustment approved an Exception to allow the proposed building height to exceed the maximum height of 55 feet in the “CDO” Capitol Dominance Overlay.



On March 1, 2018, the Plan and Zoning Commission approved as Site Plan "111 East Grand Office Building" under design guidelines in "D-R" Districts on property located at 111 East Grand Avenue, to allow development of a 4-story, 62,704-square foot office/retail building.

On May 3, 2018, the Plan and Zoning Commission approved a Vacation of the subsurface rights in the west 2 feet of 2nd Street Right-Of-Way (ROW) and the subsurface rights north 2 feet of East Grand Avenue ROW adjoining the subject property, to allow for building footing encroachments.

9. **2020 Community Character Land Use Plan Designation: "Downtown Mixed Use".** The Plan describes this category as an "area that allows mixed-use, high-density residential uses, and compact combinations of pedestrian-oriented retail, office, residential, and parking in downtown. Should include active uses (e.g. retail) on ground floor, particularly at key intersections."
10. **Applicable Regulations:** The Commission, considering the criteria set forth in Chapter 18B of the Iowa Code, 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:** Des Moines Water Works has identified a fire hydrant in close proximity to the subject Right-of-Way vacation. DMWW regulations require a FOG interceptor system to be located greater than 10 feet from public water appurtenances. City Engineering staff has identified that the subject Right-of-Way vacation could cause potential future conflicts with public utilities. They have indicated that a preferred solution would be to locate the FOG interceptors on the west side of the proposed building in City-owned property that is not in the Right-of-Way. Easements must be reserved for any existing utilities until such time that they are abandoned or relocated.

Should the Commission grant the requested vacation, any FOG interceptor would need to comply with Des Moines Water Works' regulations for separation distance from water appurtenances.

2. **Traffic:** A non-City street light signal asset is in close proximity to the subject Right-of-Way segment. Engineering has identified that the subject Right-of-Way vacation could result in future conflicts with potential traffic signals and geometric changes to East 2<sup>nd</sup> Street. Easements must be reserved for any existing utilities until such time that they are abandoned or relocated.
3. **Additional Information:** The recently approved Site Plan "111 East Grand Office Building", for development of a 4-story, 62,704-square foot office/retail building, must be amended to show any FOG interceptor that is to be installed.



## **SUMMARY OF DISCUSSION**

Erik Lundy presented the staff report and recommendation.

### **CHAIRPERSON OPENED THE PUBLIC HEARING**

Jake Christensen, 215 E 3<sup>rd</sup> Street stated at the beginning of this project the grease interceptor was always planned to be on City owned property. Due to the storm water requirements for the parking ramp, they were not able to use the alley way North of the ramp as planned. The other proposed location was to the West, which is now the emergency drive aisle and fire lane for the ramp. On the East side of the building, they are proposing a Right of Way that is 3 times wider with the grease interceptor placed underneath a landscaped area.

David Courard-Hauri asked if it was feasible for them to move the location of the grease interceptor if the City needed that space in the future?

Jake Christensen stated they believe there is ample room and a lot of things would need to happen before the interceptor would need to be moved.

Greg Jones asked if they in agreement with the 4 conditions from the Engineering department?

Jake Christensen stated they have really tried to future-proof this and he struggles to find a plausible situation where they would need to trigger the conditions recommended.

Greg Wattier asked what leverage the City has to revoke a vacation?

Glenna Frank stated if the conditions are incorporated into the Ordinance, it would take another Ordinance to amend the original Ordinance.

Will Page asked how deep underground the interceptor would be and how much room above is needed for other utilities?

Erik Lundy stated that would fall under the Plumbing Code. But, due to it being hooked into the sewer lines, they wouldn't be able to go as deep as they'd like too to avoid utility conflicts.

Rocky Sposato asked if they have met all the requirements set by Water Works?

Jake Christensen stated yes.

### **CHAIRPERSON CLOSED THE PUBLIC HEARING**

Greg Jones moved approval of the applicant's request subject to the conditions recommended by the City Engineer.

Greg Wattier requested discussion from the Commission on the conditions given.



David Courard-Hauri stated he would not suggest getting rid of any recommended conditions due to changes that might be needed in the future.

Rocky Sposato stated he was challenged by the recommended conditions because of the extra green space and wider sidewalk they are providing and then still leaving it open ended so the City can request to have it torn out at any time.

Greg Wattier asked if a friendly amendment to remove the 4 conditions would be accepted?

Greg Jones stated no, he wouldn't want to get rid of them before going in front of City Council. They will know some of the Commissioners believe the conditions aren't necessary and they should leave it up to City Council to make that decision.


**COMMISSION ACTION:**

Greg Jones made a motion for approval of the requested subsurface rights vacation, subject to the following conditions recommended by the City Engineer:

1. The vacation and conveyance of any subsurface easement shall be subject to termination by the City at any time the easement area should be needed for municipal facilities or improvements.
2. Upon termination of the easement by the City, the developer/owner shall remove the FOG Interceptor and related appurtenances at developer/owner's expense.
3. In the event that the City exercises its right to terminate the easement within the City's Right-of-Way, the building shall be plumb at this time and at the developer/owner's expense to allow for future relocation of the FOG interceptor to a location outside the City's Right-of-Way.
4. Prior to the City granting the easement within the City's Right-of-Way, the developer/owner shall secure the alternative location for the FOG interceptor.

Motion passed: 7-5-0

Respectfully submitted,

  
Michael Ludwig, AICP  
Planning Administrator

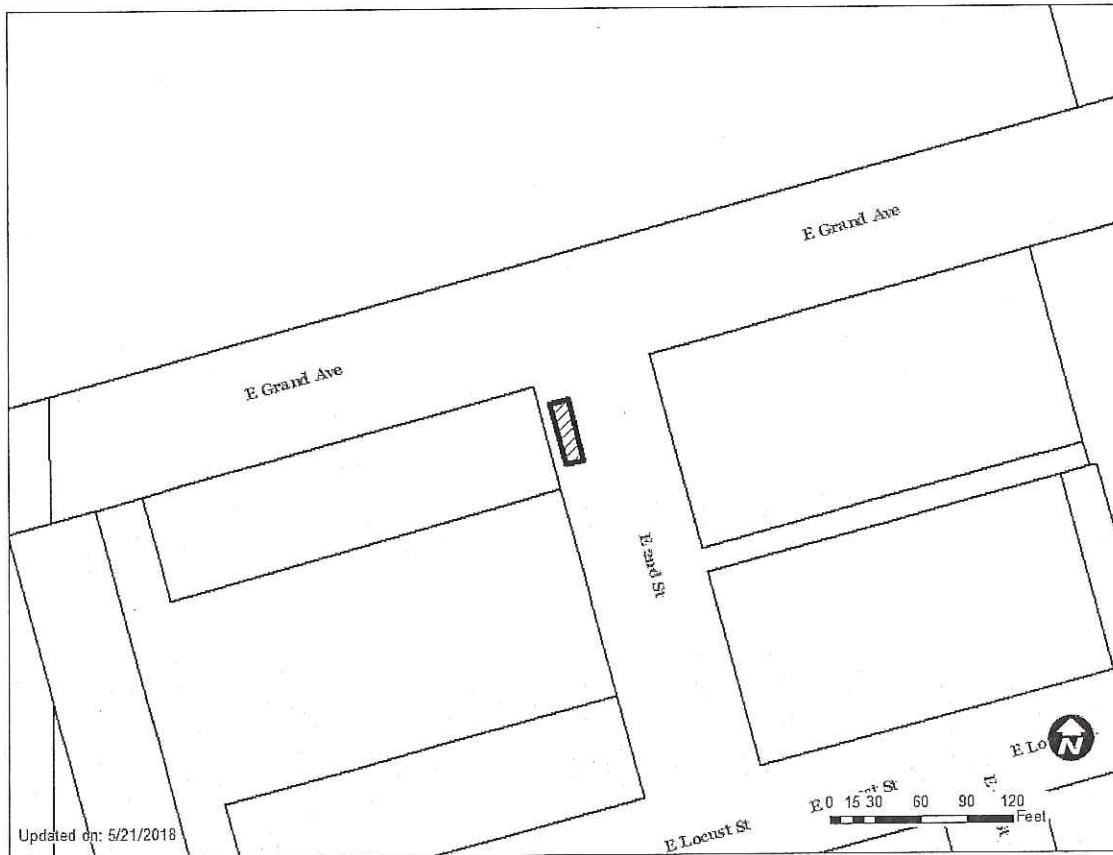
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Attachments



111 East Grand, LLC (owner), 111 East Grand Avenue, represented by Tim Rypma (officer).		File #		
		11-2018-1.08		
Description of Action	Vacation of a 12-foot by 40-foot segment of subsurface from the East 2nd Street ROW adjacent the subject property, to allow for placement of underground Fats, Oils, and Grease (FOG) interceptors to serve the building.			
PlanDSM Future Land Use	Current: Downtown Mixed Use. Proposed: N/A.			
Mobilizing Tomorrow Transportation Plan	No planned improvements.			
Current Zoning District	"D-R" Downtown Riverfront District, "CDO" Capitol Dominance Overlay District, "GGP" Gambling Games Prohibition Overlay District, "D-O" Downtown Overlay District, and "FSO" Freestanding Signs Overlay District.			
Proposed Zoning District	N/A.			
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition
Subject Property	0	0		
Outside Area (200 feet)				
Plan and Zoning Commission Action	Approval	X	Required 6/7 Vote of the City Council	
	Denial		Yes	No
				X

111 East Grand, LLC, 111 East Grand Avenue

11-2018-1.08



1 inch = 74 feet