



Date July 9, 2018

**HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR CONVEYANCE OF A  
PERMANENT EASEMENT FOR SUBSURFACE BUILDING ENCROACHMENT FOR A  
FATS, OILS AND GREASE (FOG) DISCHARGE INTERCEPTOR LOCATED ON CITY-  
OWNED PROPERTY WEST OF AND ADJOINING 111 EAST GRAND AVENUE TO  
111 EAST GRAND, LLC FOR \$10,800.00**

**WHEREAS**, on June 7, 2018, the City of Des Moines Plan and Zoning Commission, voted to recommend approval of request from 111 East Grand, LLC, represented by Tim Rypma (officer) for vacation of the subsurface rights in a 12-foot by 40-foot segment of East 2nd Street right-of-way adjoining 111 East Grand Avenue, Des Moines, Iowa (hereinafter "City Property") to allow for placement of an underground fats, oils and grease (FOG) discharge interceptor to serve the building currently under construction on the adjoining property, subject to the following:

- Termination by the City at any time the easement area should be needed for municipal facilities or improvements.
- Upon termination of the easement by the City, the developer/owner shall remove the FOG Interceptor and related appurtenances at developer/owner's expense.
- The building shall be plumbed 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.
- 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; and

**WHEREAS**, 111 East Grand, LLC has identified a portion of City-owned property located west of and adjoining their property at 111 East Grand Avenue (hereinafter "City Property") as a potential alternative location for the FOG Interceptor proposed to be placed within vacated East 2nd Street right-of-way, thereby satisfying the fourth condition of the June 7, 2018 City of Des Moines Plan and Zoning Commission recommendation to City Council for vacation of said East 2nd Street right-of-way; and

**WHEREAS**, 111 East Grand, LLC, owner of 111 East Grand Avenue, has offered to the City the purchase price of \$10,800.00 for the purchase of a Permanent Easement for Subsurface Building Encroachment on City-owned Property (hereinafter "Easement") in said City Property, hereinafter more fully described, to allow for placement of the FOG interceptor into the City Property, which price reflects the fair market value of the Easement as determined by the City's Real Estate Division; and

**WHEREAS**, there is no public need or benefit for the subsurface rights proposed to be conveyed, and the public would not be inconvenienced by reason of the conveyance of the Permanent Easement for Subsurface Building Encroachment on City-owned Property; and

**WHEREAS**, on June 25, 2018, by Roll Call No. 18-1067, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed conveyance of the Permanent Easement for Subsurface Building Encroachment on City-owned Property be set for hearing on July 9, 2018, 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 convey a Permanent Easement for Subsurface Building





Date July 9, 2018

Encroachment on City-owned Property in such City Property, was given to all necessary parties 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 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 conveyance of a Permanent Easement for Subsurface Building Encroachment on City-owned Property in such City Property, as described herein, are hereby overruled and the hearing is closed.
2. There is no public need or benefit for the subsurface rights within the City Property located west of and adjoining 111 East Grand Avenue, and the public would not be inconvenienced by reason of the conveyance of said Permanent Easement for Subsurface Building Encroachment on City-owned Property, legally described as follows, to 111 East Grand, LLC for \$10,800.00, subject to reservation of easements for all existing utilities in place, until such time that they are abandoned or relocated:

SUBSURFACE RIGHTS EASEMENT IN PART OF PARCEL 2016-21 AND LYING WEST OF AND DIRECTLY ADJACENT TO PARCEL 2016-20, BLOCK 3, EAST FORT DES MOINES, AN OFFICIAL PLAT OF SURVEY RECORDED IN BOOK 15934, PAGE 39, AT THE POLK COUNTY RECORDERS OFFICE IN THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND MORE PARTICULARLY DESCRIBED AS:

COMMENCING AT A POINT BEING THE NORTHWEST CORNER PARCEL 2016-20, OF BLOCK 3, EAST FORT DES MOINES, THENCE S15°21'53"E, 5.00 FEET TO A POINT ON THE WEST LINE OF SAID PARCEL 2016-20; THENCE S74°50'43"W, 7.15 FEET TO THE POINT OF BEGINNING; THENCE S15°16'11"E, 30.00 FEET TO A POINT; THENCE N74°50'43"E, 7.20 FEET TO A POINT; THENCE S15°21'53"E, 10.00 FEET TO A POINT; THENCE S74°50'43"W, 16.21 FEET TO A POINT; THENCE N15°16'11"W, 40.00 FEET TO A POINT; THENCE N74°50'43"E, 9.00 FEET TO THE POINT OF BEGINNING. ALL CONTAINING 432 SQUARE FEET MORE OR LESS.

3. The Mayor is authorized and directed to sign the Offer to Purchase and Permanent Easement for Subsurface Building Encroachment on City-owned Property for the conveyance as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.
4. 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 Permanent Easement for Subsurface Building Encroachment on City-owned Property, 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.



## Roll Call Number

Agenda Item Number

47

Page 3

Date July 9, 2018

5. The Real Estate Division Manager is authorized and directed to forward the original of the Permanent Easement for Subsurface Building Encroachment on City-owned Property, 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.

6. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division Manager shall mail the original of the Permanent Easement for Subsurface Building Encroachment on City-owned Property and a copy of the other documents to the grantees.

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

(Council Communication No. 18- 356)

Moved by \_\_\_\_\_ to adopt.

APPROVED AS TO FORM:

Lisa A. Wieland, Assistant City Attorney

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



June 19, 2018

Date July 9, 2018  
Agenda Item \_\_\_\_\_  
Roll Call # \_\_\_\_\_

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.

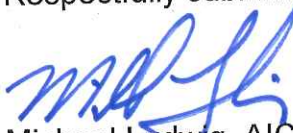
**COMMISSION ACTION:**

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,



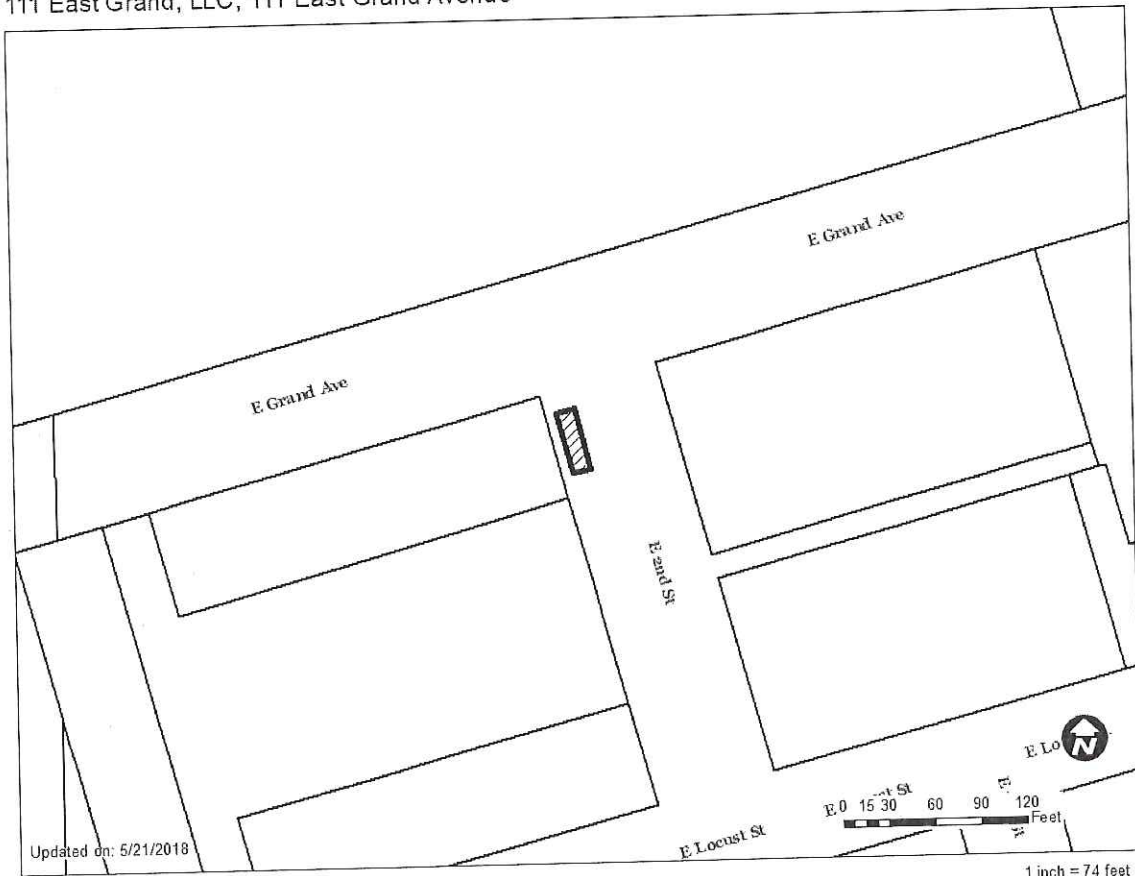
Michael Ludwig, AICP  
Planning Administrator

MGL:tjh  
Attachments

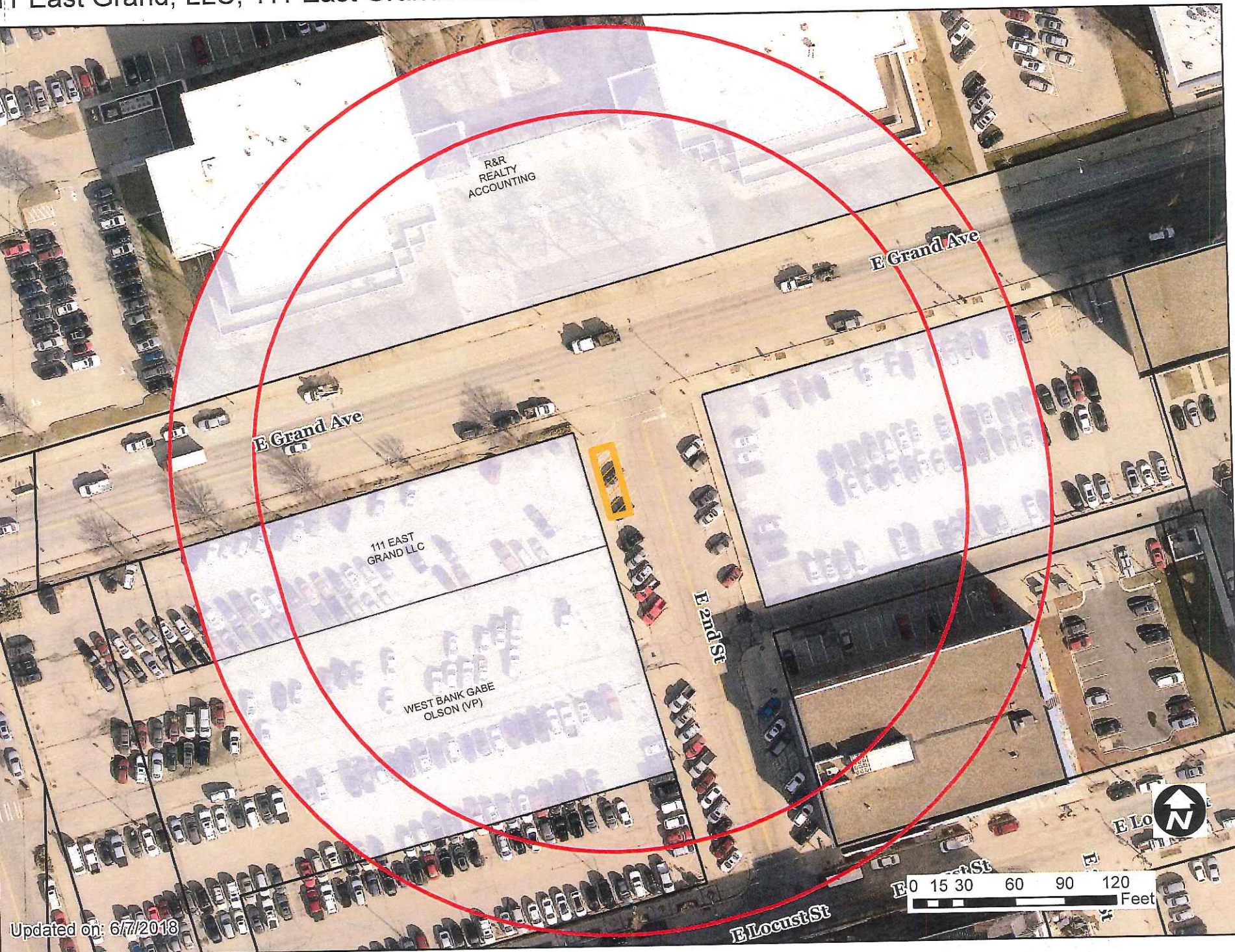
111 East Grand, LLC (owner), 111 East Grand Avenue, represented by Tim Rypma (officer).		File # 11-2018-1.08	
Description of Action	Vacation of a 12-foot by 40-foot segment of subsurface from the East 2nd Street ROW adjacent the subject property, to allow for placement of underground Fats, Oils, and 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
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









5/29/18 13:36







5/29/18 13:35

67



111 East Grand, LLC, 111 East Grand Avenue

11-2018-1.08

