CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

6(d)

ITEM:

DATE: September 21, 2015

Public Hearing (5:35 p.m.)
Sugar Creek Stormwater Connection Fee District
Approval of First Reading

FINANCIAL IMPACT:

None at this time. The City would be required to construct the stormwater improvements when ordered by the Council and would be reimbursed at the time the property was subdivided, or as part of a site plan approval process, or when building permits are issued. The total estimated cost of the improvements covered by this ordinance is $8,984,000 with up to an estimated $6,851,900 to be recovered through the collection of fees. The connection fee will be $4,962.00/acre through June 30, 2016 and then adjusted annually. Specific details are included in the draft ordinance.

BACKGROUND:

The Sugar Creek Drainage basin is generally located west of South 88th Street, south of Interstate 80, east of South 105th Street, and north of the Raccoon River. This is the third public hearing on the issue. After the first Public Hearing on February 24, 2014, the Council decided to acknowledge and credit improvements in the amount of $1,190,783 that had been previously constructed by Commercial Business Lenders in the benefited district. As part of the decision it was also determined to re-distribute the costs to other benefited property owners. The fees were adjusted from $4,568/acre to $4,710/acre which necessitated the second Public Hearing. These fees were in place until June 30, 2015. The PWCC has visited the issue several times, and it was the subject of a Council Workshop. A public information meeting was also conducted on February 19, 2014. There were twelve property owners who signed-in at the meeting.

There are two properties located within the Sugar Creek Stormwater Connection Fee District where procedural issues were identified after the public hearing. The Stottlemeyers were not provided notice of the original hearing. Interstate Partners, LLC was informed by me that their parcel did not fall within the district boundaries. My statement was in error. Both parcels are located in the original boundaries of the district. Staff recommends these two parcels be included in the district. In order to provide these property owners due process, the Council should conduct another public hearing so their voice can be heard. The proposed public hearing would be held on September 21, 2015 for the purpose of amending the existing ordinance to incorporate these two properties into the connection fee district as shown on Exhibit A. The originally established fee of $4,710/acre will remain unchanged with annual adjustments methodology remaining in place as originally established

The Public Hearing should be held and public comments received. Once the hearing is closed, Council should consider approving the first reading of an ordinance creating the Sugar Creek Stormwater Connection Fee District with amendments as they deem appropriate. If approved the stormwater improvements would be constructed after authorization by the Council. The City is not making any guarantees regarding when and if improvements would be available to any particular property. Fees apply only when and if the property is subdivided, part of a site plan approval process, or during the building permit process unless a building permit has been applied for prior to June 30, 2014.

Any written objections that have been received by the City at the time the staff report was written are attached.

OUTSTANDING ISSUES:

None.

RECOMMENDATION:

City Council Adopt:

- Motion approving First Reading of Ordinance.

Lead Staff Member: Duane C. Wittstock, P.E., L.S., City Engineer

STAFF REVIEWS

Department Director	Duane C. Wittstock, P.E.,L.S., City Engineer
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Richard Scieszinski, City Attorney
Agenda Acceptance	RTG

PUBLICATION(S) (if applicable)

Published In	Des Moines Register
Dates(s) Published	September 4 and 11, 2015

SUBCOMMITTEE REVIEW (if applicable)

Committee	Public Works		
Date Reviewed	September 14, 2015		
Recommendation	Yes	No	Split

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE CITY CODE OF THE CITY OF WEST DES MOINES, 2009 BY AMENDING TITLE 7, PUBLIC WAYS AND PROPERTY, CHAPTER 8, SEWER REGULATIONS ARTICLE H, MAJOR STORMWATER DRAINAGE FACILITIES CONNECTION FEE DISTRICTS

WHEREAS, on the 14th day of October, 2013, this City Council passed Ordinance No. 2006, an ordinance to amend the Municipal Code of the City of West Des Moines, Iowa by adding and enacting thereto a new section relating to the procedure to be utilized in establishing connection fees to recover the cost of constructing major stormwater drainage facilities; and

WHEREAS, on the 7th day of April, 2014, the City Council passed Ordinance No. 2024, an ordinance to amend the Municipal Code of the City of West Des Moines, Iowa by adding and enacting a new section establishing the Sugar Creek Stormwater Connection Fee District; and

WHEREAS, two properties located in the northwest quarter of Section 10, Township 78 North, Range 26 West were identified as being within the established boundary of the connection fee district, but Ordinance No. 2024 did not include the two parcels within the property subject to the stormwater connection fee; and

WHEREAS, upon due notice and hearing the City Council finds that the general health and welfare of the community will be benefitted by the amendment of Section 7-8H-1-1 Sugar Creek Stormwater Connection Fee District to include within the areas subject to the connection fee the two parcels in the northwest quarter of Section 10 included within the original connection fee district boundary, but not originally subject to the connection fee.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA AS FOLLOWS:

SECTION 1. <u>MAJOR STORMWATER DRAINAGE FACILITY CONNECTION FEE DISTRICT</u>. Title 7, Public Ways and Property, Chapter 8, Sewer Regulations, Article H, Major Stormwater Drainage Facilities Connection Fee Districts, Section 7-8H-1-1 is amended as following:

7-8H-1-1: <u>SUGAR CREEK STORMWATER CONNECTION FEE DISTRICT</u>

The boundary of the Sugar Creek Stormwater Connection Fee District is hereby amended to confirm that a tract of land located Section 10, Township 78 North, Range 26 West of the 5th Principal Meridian, Dallas County, Iowa, more particularly described as follows is included within the Sugar Creek Stormwater Connection Fee District:

Commencing at the southeast corner of the southwest quarter of the northeast quarter of Section 10, Township 78 North, Range 26 West;

Thence north along the east line of the southeast quarter of the southwest quarter of the northeast quarter of said Section 10 to the northeast corner of the southeast quarter of the southwest quarter of the northeast quarter of said Section 10;

Thence west along the north line of the southeast quarter of the southwest quarter of the northeast quarter of said Section 10 to the northwest corner of the southeast quarter of the southwest quarter of the northeast quarter of said Section 10;

Thence north along the east line of the northwest quarter of the northwest quarter of the northeast quarter of said Section 10 to the northeast corner of the northwest quarter of the southwest quarter of the northeast quarter of said Section 10;

Thence north along the east line of the west one-half of the northwest quarter of the northeast quarter of said Section 10 to the south right-of-way line of Interstate Highway 80;

Thence southwesterly along the southerly right-of-way line of Interstate Highway 80 to the point of intersection with the west line of the northeast quarter of said Section 10;

Thence south along the west line of the northeast quarter of said Section 10 to the southwest corner of the southwest quarter of the northeast quarter of said Section 10;

Thence east along the south line of the southwest quarter of the northeast quarter of said Section 10 to the point of beginning.

Said parcel described herein is included in the description of the connection fee boundary in Ordinance 2024.

SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict with the provision of this Ordinance are hereby repealed.

SECTION 3. SEVERABILITY. If any section, provisions, sentence, clause, phrase or part of this Ordinance shall be adjusted invalid or unconstitutional, such adjudication shall not affect the validity of the Ordinance as a whole or any provision, section, subsection, sentence, clauses, phrase or part hereof not adjudged invalid or unconstitutional.

SECTION 4. VIOLATION. Any person who violates the provisions of this Ordinance, upon conviction, shall be punished as set forth in Section 1-4-1 of the City Code of the City of West Des Moines, Iowa.

SECTION 5. OTHER REMEDIES. In addition to the provisions set out in the Violation section herein, the City may proceed in law or equity against any person, firm or corporation for violation of any section or subsection of this Ordinance.

SECTION 6. EFFECTIVE DATE. This Ordinance shall be in full force and effect on _____, 2015, provided its passage, adoption and publication as required by law.

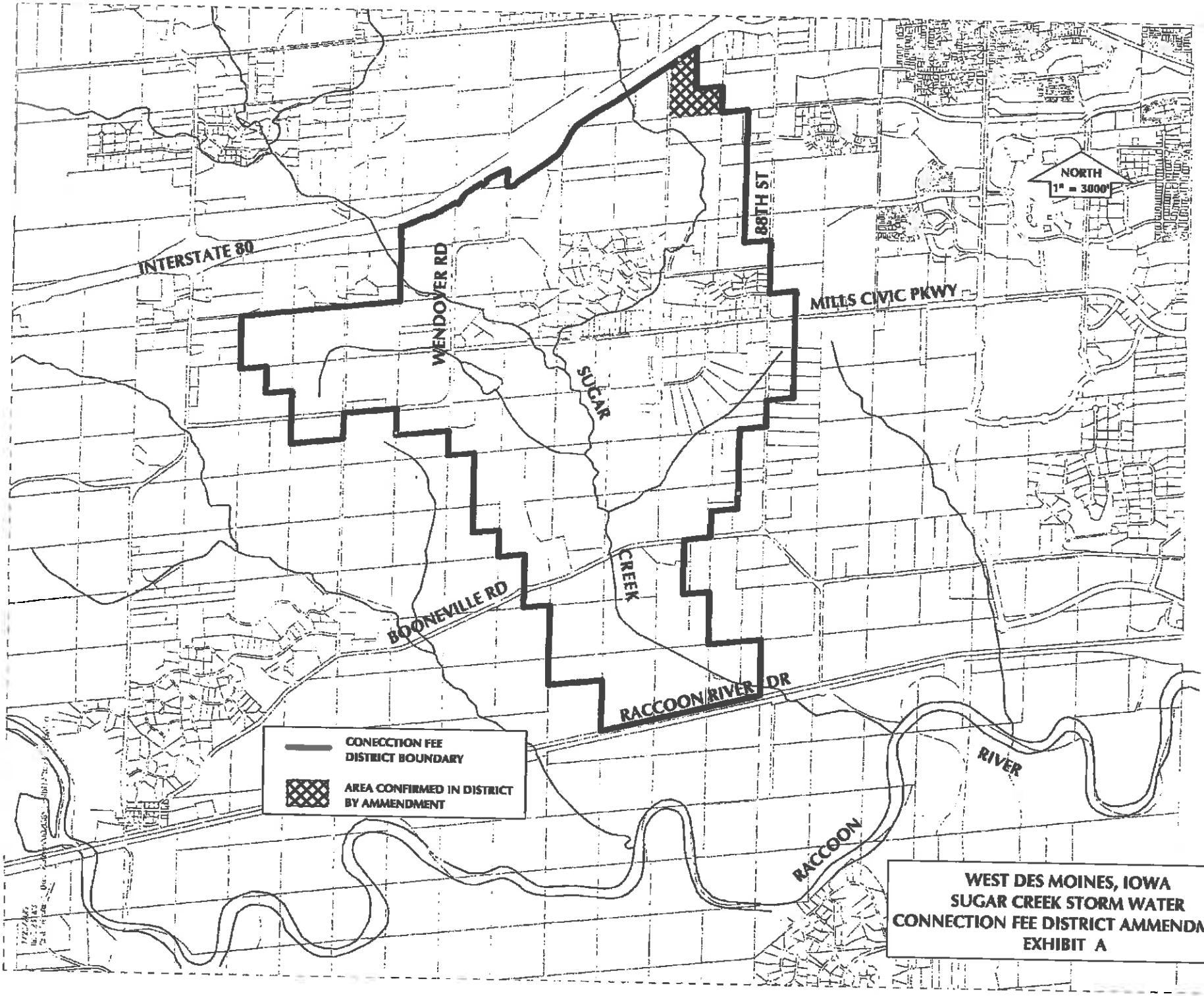
PASSED AND APPROVED this _____ day of _____, 2015.

_____
Steven K. Gaer
Mayor

ATTEST:

_____
Ryan T. Jacobson
City Clerk

Published in the Des Moines Register on _____.


INTERSTATE 80
WENDOVER RD
88TH ST
MILLS CIVIC PKWY
SUGAR
CREEK
BOONEVILLE RD
RACCOON RIVER DR
RACCOON
RIVER
NORTH
1" = 3000'
CONECCTION FEE DISTRICT BOUNDARY
AREA CONFIRMED IN DISTRICT BY AMMENDMENT
WEST DES MOINES, IOWA
SUGAR CREEK STORM WATER
CONNECTION FEE DISTRICT AMMENDMENT
EXHIBIT A
7/28/15

VEENSTRA & KIMM, INC.
3000 Westown Parkway • West Des Moines, Iowa 50266-1320
515-225-8000 • 515-225-7848(FAX) • 800-241-8000(WATS)

SUGAR CREEK STORMWATER CONNECTION FEE DISTRICT

CONNECTION FEE BASIS AND METHODOLOGY

Chapter 384 of the Code of Iowa includes language allowing the City of West Des Moines to establish the Sugar Creek Stormwater Connection Fee District. The connection fee district language in Chapter 384 is included in the same area of the Chapter 384 that sets forth the requirements for special assessment.

The Iowa Code generally provides cities can establish connection fee districts utilizing any methodology considered acceptable for special assessment. In establishing the Sugar Creek Stormwater Connection Fee District the methodology took into consideration acceptable procedures used for special assessment.

Under Chapter 384 the City may assess to individual property owners the "special benefit" the property receives from the improvement. The City is not able to assess the general benefit from the construction of the improvement.

The special benefit to a property differs with each type of improvement that may be assessed. For stormwater drainage improvements the concept of special benefit is based on the benefit the property receives from handling the stormwater discharge from the property. That property receives a benefit from downstream improvements that handle or facilitate the conveyance of that stormwater. It is important to distinguish the concept of special benefit with stormwater drainage improvements from other types of special benefit in which the assessed property receives some type of additional service or access. In the case of stormwater drainage the benefit is satisfying the obligation to handle the runoff downstream of the discharging property.

Special assessment law has long recognized the validity of assessing stormwater drainage improvements to handle water that runs off from a property. There has never been a requirement an assessable stormwater drainage improvement be located on or adjacent to the assessed property, or the particular improvement must extend to the assessed property. All that has been required is the assessed improvement accommodate or handle runoff generated from the assessed property. This concept has been recognized in both stormwater drainage improvements and other types of improvements. For example, for sanitary sewers and water mains properties can be assessed the special benefit even though the improvement may not adjoin or connect to the property as long as it provides benefit. The same concept applies to stormwater drainage in which the particular improvements may not connect to the property.

That same methodology is used in establishing the stormwater connection fee for the Sugar Creek basin. The properties subject to the connection fee are those that physically contribute runoff to the Sugar Creek basin. The enabling ordinance specifically provides if a property does not contribute runoff to the Sugar Creek basin, it is not subject to the connection fee.

The City of West Des Moines requires properties that develop to meet the City's stormwater management requirements and many properties are required to provide onsite facilities to meet those requirements. The requirement for onsite stormwater management is to reduce the impact of increased flows caused by development. The requirement for providing onsite stormwater management is distinct from the special benefit under the stormwater connection fee district. The connection fee district is based on handling the flow rates that are discharged from the property under the City's development requirement for stormwater management.

Even with the required onsite stormwater management improvements required under the City's ordinances there will be runoff from the property tributary to the Sugar Creek basin. The intent of the Sugar Creek Stormwater Connection Fee District and proposed improvements is not to provide capacity due to increased runoff caused by development. Under the ordinance there is no identifiable increase in runoff as a result of the onsite stormwater management provisions required as part of development. The improvements are based on the handling of the runoff that occurs in the undeveloped condition or the allowed runoff in the developed condition. Under the City's stormwater management ordinances developed properties still release flow downstream. Under traditional special assessment concepts that property benefits from improvements to assist in handling that downstream flow.

The concept of allowing an upstream property owner to discharge water that naturally runs downstream is a distinct concept from that of special assessment. The stormwater connection fee district does not prohibit the upstream property owners from discharging water in its natural course as allowed under common law. All that the connection fee does is indicate there is a fee or cost for the discharge.

One of the key elements of special assessment is recognizing there is general benefit to the City from improvements as well as special benefit to property owners. In establishing the stormwater connection fee district the City took into account the concept of general benefit and special benefit.

In determining general benefits and special benefits for stormwater drainage improvements the analysis is slightly different than what would be required for a project, such as a street improvement. All undeveloped property generates approximately the same rate of runoff. The runoff from any acre of property is essentially the same as any other acre of property as the runoff is caused by the rainfall. A detailed case by case analysis that is sometimes necessary to determine special benefits is not applicable when the runoff rate is based on the area of the property.

Therefore, in stormwater drainage the special benefit on an area basis is identical to all properties within the watershed. The appropriate analysis is to distinguish between the overall special benefit and general benefit.

In establishing the general benefit the City looked to its special assessment policy for street improvements. That policy prorates the percentage of a street improvement based on the characteristics of the street. In other words, streets that serve larger areas, such as an arterial street, have a higher general benefit and a lower special benefit. Conversely, local collector streets that serve neighborhood areas may have a much higher special benefit and a lower general benefit.

The City recognized the relationship between general benefit and special benefit in two manners. First, the City determined that stormwater drainage improvements on local projects that would be unique to any particular area within the drainage basin would not be included in the calculation of the connection fee. This procedure eliminates from the calculation of the connection fee any cost for unique improvements that would not affect the overall area.

Second, the City assumed a portion of the cost for all of the culverts improvements will be a general benefit. The percentage of the general benefit varied based on the nature of the street.

Because the runoff is essentially the same for all properties on an area basis the stormwater connection fee district determines a general benefit and allocates all of the remaining special benefit uniformly to properties based on area.

All of the improvements that are proposed in the Sugar Creek basin are related to street improvement projects. Special assessment under Chapter 384 has long recognized that stormwater drainage improvements associated with a street improvement can be specially assessed. In the case of the Sugar Creek Stormwater Connection Fee District the City is utilizing this underlying concept of stormwater drainage improvements being assessable, even though the City is not proposing to assess any cost of the street or street related improvements. Had the culverts been a part of the special assessment for a street project the assessment would clearly have been recognizable as valid concept. In this case the City is currently electing not to assess the street improvements, but that does not negate the validity of the concept of specially assessing stormwater drainage improvements.

The concept of stormwater drainage special assessments has never required a contiguity or connection to the individually assessed properties. The only nexus that has been required is runoff from the property be tributary to a particular improvement.

In the case of the Sugar Creek Stormwater Connection Fee District improvements the City followed the practice it has used for almost 20 years associated with connection fee districts. That concept is to establish relatively large connection fee districts and to establish a uniform cost over the entire area. The City has determined this procedure is a reasonable approach and preferable to assessing each improvement separately. The alternative to this approach would be to establish a separate connection fee for each of the improvements. For example, if the runoff from a particular area were tributary to multiple improvements this alternative concept requires the City establishing a separate connection fee for each improvement and properties would be subject to these multiple layers of improvements of connection fees.

The alternate approach of establishing a separate connection fee district for each improvement would result in a significant increase in the administrative costs and could result in some relatively significant differences in the connection fees between adjoining or adjacent properties. The City has recognized the use of the larger connection fee district eliminates these peculiar variations in cost due to the geographic proximity of a particular parcel to a particular improvement. This concept established for sanitary sewer connection fee districts is carried forward to the Sugar Creek Stormwater Connection Fee District.

In summary, the City in establishing the stormwater connection fee district has followed the concepts of special assessment of stormwater drainage improvements that has been long established. Some of the key elements are:

1. For stormwater drainage improvements the concept of special benefit is the handling of runoff from a property. In this case all properties subject to the connection fee would discharge water to the basin and therefore contribute flow.

2. Even with the City of West Des Moines' requirements for stormwater management there is an undeveloped flow that would be contributed and that remaining flow is the basis for the connection fee.

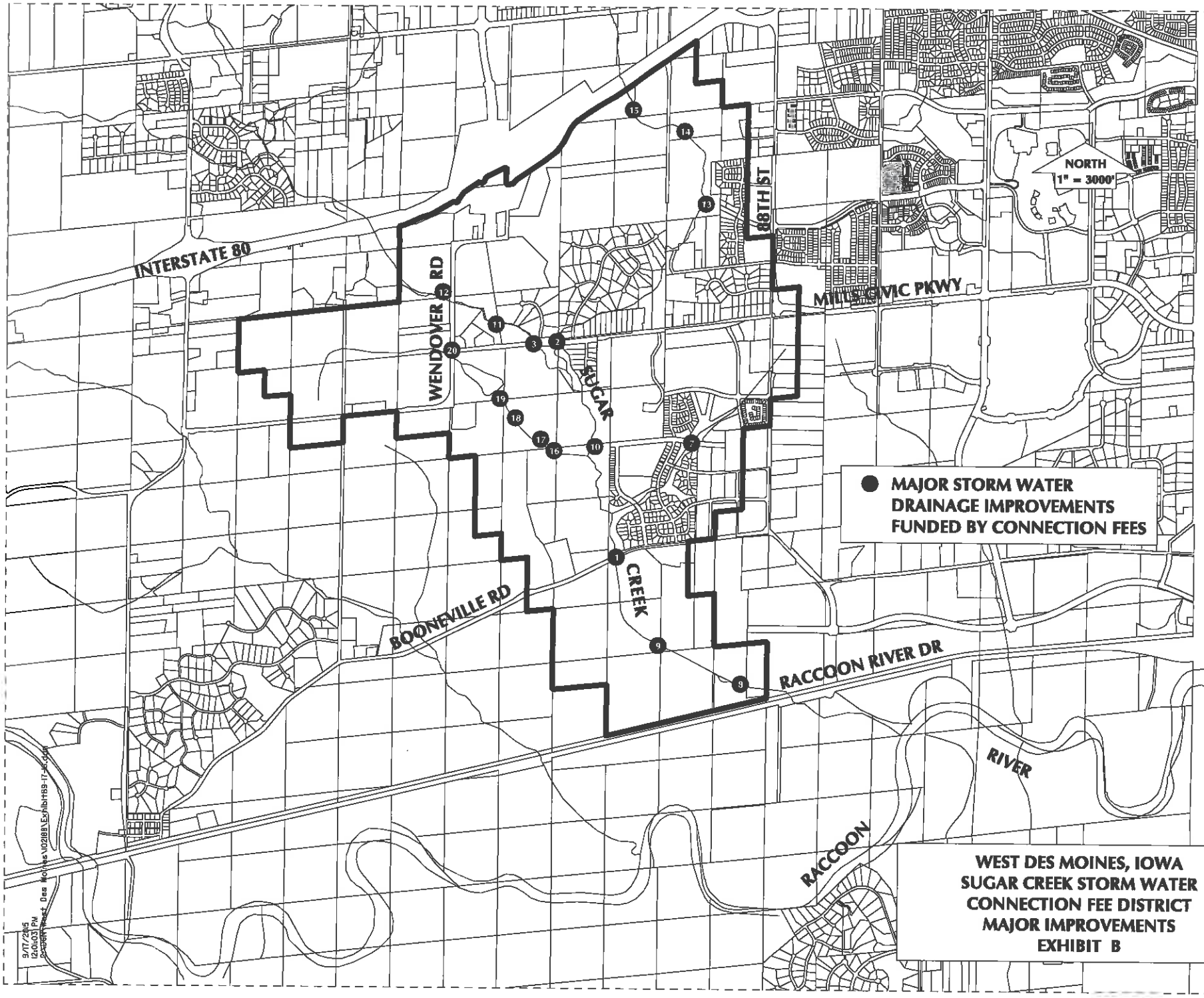
3. For stormwater drainage the runoff is based on area and not on the use of the property. There is no need to specifically identify a special benefit based on the location or use of the property as all runoff is the same on an area basis.

4. The City recognized the concept of general benefit and special benefit in two manners. First, projects that were extremely localized were not included within the connection fee district as the special benefit from those projects would not extend to the entire area. Only projects that have an overall benefit to the larger area were considered for inclusion in the connection fee district. Second, the City assumed a portion of the cost for all of the improvements with that proportion being varying with the type of improvement. The City's share of the cost is its recognition of general benefit.

5. Special assessments have always been recognized as a valid component of a street improvement project. The same concept was applied to the stormwater connection fee district, except the street improvements are not specially assessed.

6. With storm traditional special assessment for stormwater drainage there has never been a requirement that the improvements physically touch or be connected to any individual property as long as the property contributes to the runoff subject to a particular improvement that was being specially assessed.

7. For the Sugar Creek Stormwater Connection Fee District the City followed its traditional connection fee district policy of combining multiple projects within an area to establish a uniform connection fee over a large area. This approach provides a more equitable allocations of costs than establishing a connection fee for each individual project.


INTERSTATE 80
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88TH ST
MILLS CIVIC PKWY
SUGAR
CREEK
BOONEVILLE RD
RACCOON RIVER DR
RACCOON
RIVER
NORTH
1" = 3000'
MAJOR STORM WATER DRAINAGE IMPROVEMENTS FUNDED BY CONNECTION FEES
WEST DES MOINES, IOWA
SUGAR CREEK STORM WATER
CONNECTION FEE DISTRICT
MAJOR IMPROVEMENTS
EXHIBIT B
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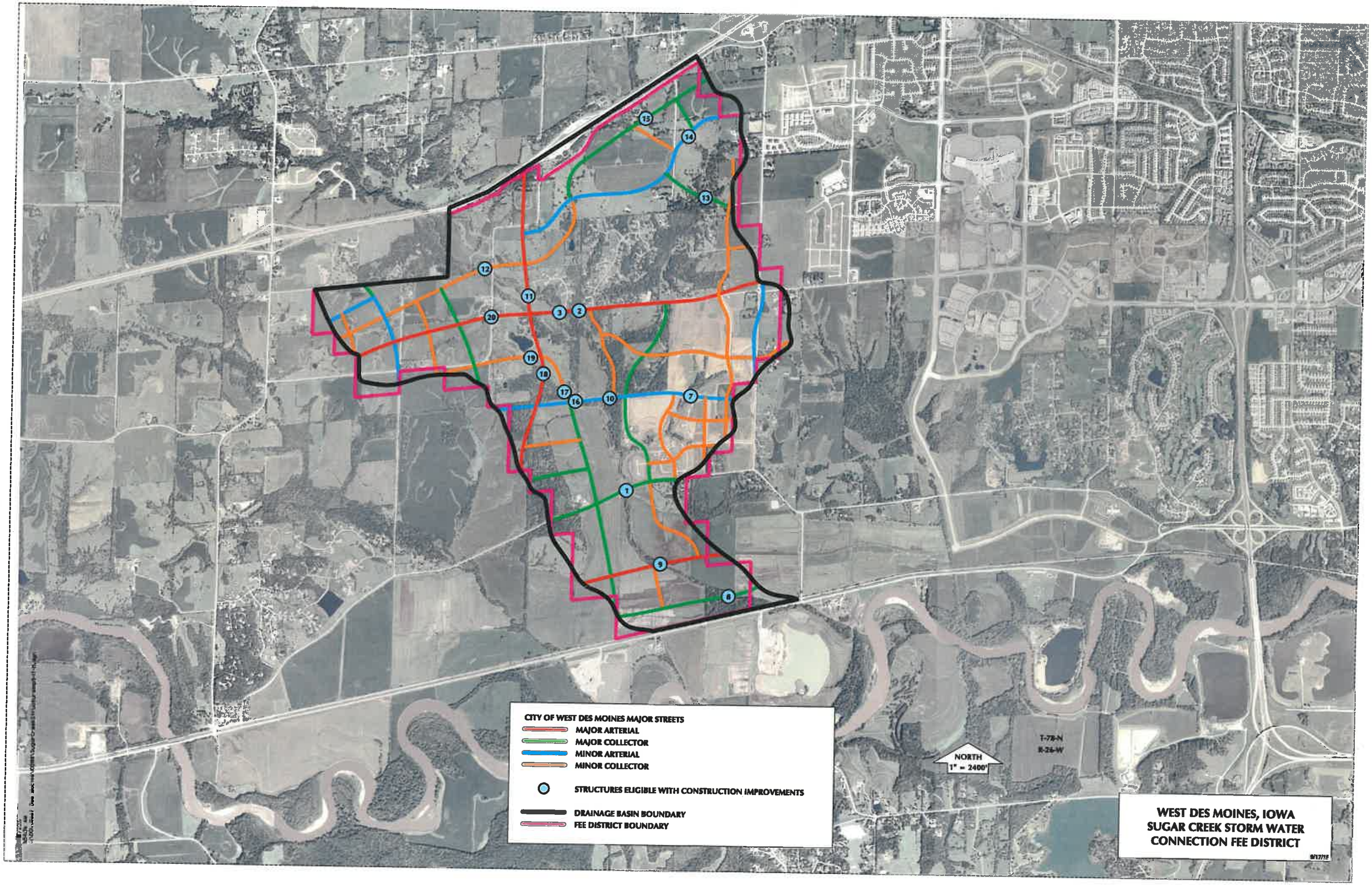
CITY OF WEST DES MOINES MAJOR STREETS
MAJOR ARTERIAL
MAJOR COLLECTOR
MINOR ARTERIAL
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STRUCTURES ELIGIBLE WITH CONSTRUCTION IMPROVEMENTS
DRAINAGE BASIN BOUNDARY
FEE DISTRICT BOUNDARY
NORTH
1" = 2400'
T-78-N
R-26-W
WEST DES MOINES, IOWA
SUGAR CREEK STORM WATER
CONNECTION FEE DISTRICT

Jacket File

THE CITY OF
West Des Moines®
www.wdm.iowa.gov

Development Services

4200 Mills Civic Parkway, Suite 2D
P.O. Box 65320
West Des Moines, IA 50265-0320

Building Inspection
515-222-3630

Planning and Engineering
515-222-3628

FAX 515-273-0602
TDD/TTY 515-222-3334

E-mail
developmentservices@wdm.iowa.gov

August 21, 2015

James & Bonnie Stottlemeyer
9220 Wendover Road
West Des Moines, IA 50266

RE: Sugar Creek Stormwater Connection Fee District

Dear Mr. and Mrs. Stottlemeyer:

Enclosed is a copy of a Notice of Public Hearing for the proposed adoption of an ordinance to amend the Sugar Creek Storm Water Connection Fee District. The Public Hearing and proposed amendment to the fee district is because you were inadvertently not provided notice when the original public hearing was held on March 24, 2014. This hearing will provide you an opportunity to voice your concerns to the City Council regarding the inclusion of your property in the Fee District. Also, enclosed is a map generally showing the boundary of the established fee district.

The connection fee district is a funding mechanism for the construction of major storm water facilities to serve the district. The originally established per acre fee was $4,710. The fee is subject to annual inflation increases based on The Engineering News Record construction cost index. The current per acre fee due to annual adjustments is $4,962 and is valid through June 30, 2016. The connection fees would cover the cost of construction of major storm water facilities identified in the Sugar Creek Stormwater Connection Fee District. The major storm water facilities consist of selected culverts and bridges on major streets. Additional non-fee district improvements may be needed to serve specific properties. Property owners will be responsible for all improvements except those identified in the Fee District Plan. The City does not make any guarantees regarding when the improvements in the Sugar Creek Stormwater Connection Fee District would be constructed. Fees would only apply and be payable when you develop your property.

The September 21, 2015 public hearing is for the proposed adoption of an ordinance to amend the Sugar Creek Storm Water Connection Fee District to include your property as originally intended.

If you have any questions concerning the proposed connection fee district amendments or the public hearing, please contact me at 515-222-3620 or by email at duane.wittstock@wdm.iowa.gov.

Sincerely,
Original signed by
DUANE C. WITTSTOCK

Duane Wittstock, P.E., L.S.
City Engineer

Enclosure

THE CITY OF
West Des Moines®
www.wdm.iowa.gov

Development Services

4200 Mills Civic Parkway, Suite 2D
P.O. Box 65320
West Des Moines, IA 50265-0320

Building Inspection
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Planning and Engineering
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FAX 515-273-0602
TDD/TTY 515-222-3334

E-mail
developmentservices@wdm.iowa.gov

Sent file

August 21, 2015

Mr. Steve Gillotti
Interchange Partners, LLC
1709 South 42nd Street
West Des Moines, IA 50266

RE: Sugar Creek Stormwater Connection Fee District

Dear Gillotti:

Enclosed is a copy of a Notice of Public Hearing for the proposed adoption of an ordinance to amend the Sugar Creek Storm Water Connection Fee District. The Public Hearing and proposed amendment to the fee district is because you were originally miss-informed that your property was not within the fee district and were inadvertently not provided notice when the public hearing was held on March 24, 2014. This hearing will provide you an opportunity to voice your concerns to the City Council regarding the inclusion of your property in the Fee District. Also, enclosed is a map generally showing the boundary of the established fee district.

The connection fee district is a funding mechanism for the construction of major storm water facilities to serve the district. The originally established per acre fee was $4,710. The fee is subject to annual inflation increases based on The Engineering News Record construction cost index. The current per acre fee due to annual adjustments is $4,962 and is valid through June 30, 2016. The connection fees would cover the cost of construction of major storm water facilities identified in the Sugar Creek Stormwater Connection Fee District. The major storm water facilities consist of selected culverts and bridges on major streets. Additional non-fee district improvements may be needed to serve specific properties. Property owners will be responsible for all improvements except those identified in the Fee District Plan. The City does not make any guarantees regarding when the improvements in the Sugar Creek Stormwater Connection Fee District would be constructed. Fees would only apply and be payable when you develop your property.

The September 21, 2015 public hearing is for the proposed adoption of an ordinance to amend the Sugar Creek Storm Water Connection Fee District to include your property as originally intended.

If you have any questions concerning the proposed connection fee district amendments or the public hearing, please contact me at 515-222-3620 or by email at duane.wittstock@wdm.iowa.gov.

Sincerely,
Original signed by
DUANE C. WITTSTOCK

Duane Wittstock, P.E., L.S.
City Engineer

Enclosure

P:\PWENGR\0405 Storm Water Connection Fee Districts\003 Sugar Creek Drainage Basin\Gillotti - Sugar Creek Notice Letter_08-21-15.docx

NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF AN ORDINANCE TO AMEND THE SUGAR CREEK STORMWATER CONNECTION FEE DISTRICT

The City Council of the City of West Des Moines, Iowa will hold a public hearing on the proposed Ordinance at 5:35 o'clock P.M. on the 21st day of September, 2015, in the City Council Chambers, City Hall, 4200 Mills Civic Parkway, West Des Moines, Iowa.

The Sugar Creek Stormwater Connection Fee District generally consists of an area located in the City of West Des Moines bounded on the east by South 88th Street, on the south by Raccoon River Drive, on the north by Interstate 80 and on the west by the approximate west ridgeline of the Sugar Creek basin. The City of West Des Moines established the Sugar Creek Stormwater Connection Fee District in April 2014 by Ordinance 2024. The boundary established for the connection fee district included certain properties located in the northeast quarter of Section 10, Township 78 North, Range 26 West of the 5th Principal Meridian. At the time the connection fee district was established two parcels located within the boundary of the connection fee district were not included within the connection fee district. The public hearing being held on September 21, 2015 is for the purpose of amending the existing ordinance to incorporate in the connection fee district the two properties included within the original established boundary, but not included within the connection fee district.

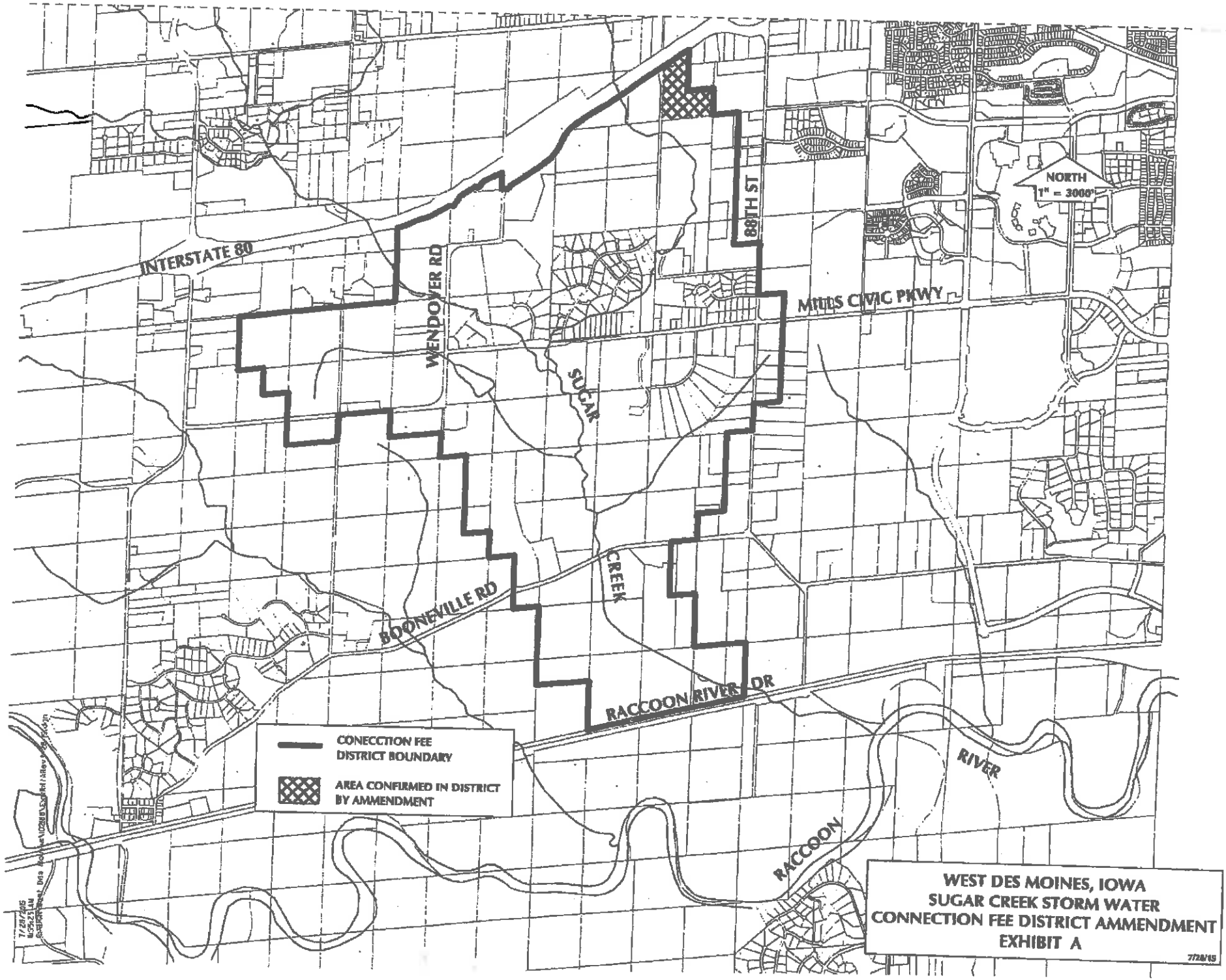
Major stormwater facilities under consideration include 17 culverts for street crossings of larger drainage ways and creeks. The estimated cost of these improvements in 2013 was $6,856,900.

The connection fee district for the property owners within the benefitted district that utilize the proposed facilities will be $4,962.00 per acre from enactment of this amendment through June 30, 2016. The fee shall be adjusted on July 1, 2016 and on July 1 of each succeeding year by the ENR Construction Cost Index.

The proposed connection fee ordinance and a plat of the proposed area are available in the office of the City Clerk.

Ryan T. Jacobson, City Clerk

Publish: September 4 & 11, 2015


INTERSTATE 80
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AREA CONFIRMED IN DISTRICT BY AMMENDMENT
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SUGAR CREEK STORM WATER
CONNECTION FEE DISTRICT AMMENDMENT
EXHIBIT A
7/28/15

VEENSTRA & KIMM, INC.
3000 Westown Parkway • West Des Moines, Iowa 50266-1320
515-225-8000 • 515-225-7848(FAX) • 800-241-8000(WATS)

July 28, 2015

Duane C. Wittstock
City Engineer
City of West Des Moines
4200 Mills Civic Parkway
P.O. Box 65320
West Des Moines, Iowa 50265

WEST DES MOINES, IOWA
SUGAR CREEK STORMWATER CONNECTION FEE DISTRICT
AMENDMENT TO CONNECTION FEE DISTRICT

Enclosed is a copy of a proposed Notice of Public Hearing to amend the Sugar Creek Stormwater Connection Fee District to include within the connection fee district two properties located in the northeast corner of the connection fee district. The two properties that would be subject to the public hearing are as follows:

1. Interchange Partner's, LLC
   1709 South 42nd Street
   West Des Moines, Iowa 50266

2. James F. and Bonnie Stottlemeyer
   9220 Wendover Road
   West Des Moines, Iowa 50266

The two parcels in question are located within the boundary of the District established in Ordinance 2024. The two parcels were not provided notice of the public hearing. The proposed public hearing is to notify the two property owners of the proposed amendment to include the two properties within the District.

Enclosed is a map showing the location of the two parcels that will be included in the District by the proposed amendment to the ordinance. Enclosed is a draft copy of the proposed ordinance. The ordinance describes the area to be added and indicates the connection fee district. The described area in the amending ordinance is already included within the boundary of the connection fee district and the adoption of the amending ordinance does not require a change in the boundary description of Ordinance 2024.

Under the Code of Iowa published notices to be a minimum of 20 days prior to the public hearing. Assuming the City Council takes action to set the public hearing at its meeting on August 10, 2015 and the notice is published on Friday, August 14, 2015, the public hearing could be at the City Council meeting on September 8, 2015.

The mailed notice to the property owners must be given at least 15 days in advance of the public hearing. It is suggested the mailed notice be sent no later than August 21, 2015.

If you have any questions or comments concerning the project, please contact the writer at 225-8000.

VEENSTRA & KIMM, INC.

H. R. Veenstra Jr.

HRVJr:pjh
102188
Enclosure

RECEIVED

SEP 14 2015

CITY OF WDM
MAYOR/COUNCIL

Interchange Partners, LLC

C: Council
Tom Hadden
Tim Stiles
Dick Scieszinski
-Duane Witstock

September 11, 2015

Honorable Mayor and City of West Des Moines Council Members
WDM City Hall
4200 Mills Civic Parkway
West Des Moines, IA 50265

Re: Sugar Creek Storm Water Fee District

Honorable Mayor and City Council Members,

Interchange Partners, LLC ("IP") has received Notice to attend a Public Hearing on September 21 about its property's inclusion within the Sugar Creek Storm Water Fee District. Interchange Partners is the owner of certain property with direct access to 88th St. and located along the north side of the future EP True Parkway alignment. A portion of IP's property is in the Sugar Creek Water-shed.

The purpose of this letter is to request that the City Council not tax IP in order to fund road-culvert improvements located on other properties, and not to tax it to fund the general obligation costs of capital improvements for upgrading the City's existing road system, as this Fee District does.

None of the District's road-culverts provide any improvement to "storm water" management or control on IP's property, and none of the road-culverts "connects" to any "city utility" or "property" as is required by the Code.

The dispute is not whether IP's property is within the Sugar Creek water-shed. It is. The question is whether or not IP's property benefits from the construction of the District's down-stream culverts; and if the District complies with the Code. The answer to the first question is simple... since IP's property can be immediately developed without any of the future road-culverts, it cannot benefit from any of those road-culverts.

The compliance-question is more complicated, but understandable. Careful examination of how the District's culverts function raises serious doubts about the District's compliance with the Code.

Even though it is called a "storm water connection" district, the City's staff has confirmed that the sole purpose of the District's road-culverts is to provide the physical structures which are required to construct roads across existing creeks.

However, calling it a "storm water connection" district is not accurate. The road-culverts do not "connect" to anything as required by the Code. They will be situated in the existing creeks, which are a naturally occurring geoform located almost entirely on private property and which have always carried away the water-shed's storm water runoff. What "storm water" is at issue? "Storm water" is currently running off now and flows through the existing naturally occurring creeks to the Raccoon River. The road-culverts don't improve creek flows or change the characteristics of the creeks in any way. The road-culverts are not related to "storm water" management or control in any way. They are stand-alone, independent drainage structures, and creek water simply passes through them so that roads can cross over ravines.

But calling the District a road-culvert or road district could be problematic since the City has had a long-standing policy of not paying for developers' "road improvements". So a different approach appears to have been necessary to "open-up" new areas for development without being seen as paying for road improvements.

The City is also facing the expensive reality of replacing or relocating existing road-culverts under George Mils Parkway and Booneville Road, and relocated Grand Avenue and "old" Highway 6 in order to upgrade the existing road system. How could the City pay for those expensive capital improvements without resorting to a special assessment project or budgeting it through the Capital Improvements Program?

The answer appears to be the novel idea of creating a "storm water connection" district. In a certain way, it was a clever approach because in today's development world, managing and controlling "storm water" is an unquestioned high priority, and after all, aren't culverts related to "storm water"? However, it is telling that the District's name is so ambiguous that no one can clearly explain what it even means. But it does refers to "storm water", and storm water management is a good thing, so who can argue against constructing "storm water" facilities? Problem solved.

Except that road-culverts aren't actually storm water facilities. They are drainage structures. They don't manage or control "storm water". Their sole function is only to pass creek flows under roads.

Road-culverts don't affect a water-shed's runoff or manage "storm water" in any way. They don't modify storm water flows; they don't affect or alter storm water runoff from any property; they don't remove sediment from water flows; they don't detain or retain water; they don't collect storm water flows; and they don't change in any way the water-shed's current natural characteristics. Road-culverts do only one thing... they permit future road construction.

Interchange Partners' property is ready for development today. It already has direct access from 88th St., access to water and sanitary sewer capacity, and storm water runoff disposal capacity. There isn't a single District-improvement to be located on IP's property. None: no "major storm water facilities", no culverts, no "connections of property to the city sewer on water utility", no storm-water control facilities, no storm-water management improvements, no storm-water retention ponds, no erosion control facilities, nothing. In fact, there isn't even a single creek located on IP's property. **And it doesn't need a single one of the District's road-culverts in order to develop its property.**

Claiming that a property benefits from down-stream culverts simply because its runoff naturally passes through a culvert seems obviously true, but it is an incomplete explanation.

In reality, IP already owns the "benefit" of run-off disposal from its property. It is called the creek-drainage system. IP will not gain any new or additional benefit from the District's new road-culverts.

Culverts are simply short conduits which permit water to pass through them unimpeded. Since runoff water has always flowed down the creek's channel including at a new culvert's location, it will continue to do so whether a culvert is present or not. Nothing about the runoff flow will be changed by the culverts. **They won't alter, manage, affect, or control runoff flows in any way. They are simply a physical requirement for roads to cross over the creek's channel. As such, the culverts solely benefit the properties gaining access from the culvert's new road.**

The only thing Interchange Partners would receive from inclusion in the District is a huge tax bill, and some vague generalities and lofty-sounding platitudes about how new roads will improve the City-wide development climate.

In comparison, other more fortunate developers will receive huge subsidies for the construction of expensive development improvements on their property, and will directly benefit from new roads connecting to their properties. These developers are the true beneficiaries of the road culverts.

This appears to be an unjust enrichment for those property owners, and in all events, certainly provides a City-subsidized competitive advantage over IP. In addition, subsidizing those improvements appears to be preferential treatment for certain property owners since it is a contradiction to the City's long-standing policy of requiring developers to pay for all costs of public improvements in their development.

It is also inexplicable why IP would be taxed to promote development on other people's properties, while the long-standing obstacles to extending EP True to the west and to receiving immediate sanitary sewer service remain unresolved.

Interchange Partners has always supported fee districts with clear, measurable benefits. In fact, IP has already endorsed 2 districts applicable to its property. When IP's property was included in the sanitary sewer district, it was promised sewer service in return. When it was included in the water main fee district, it was promised water service in return. Those are fair and equitable arrangements whereby IP pays a tax and receives something measurable in return.

But the Sugar Creek Fee District is different. Even though IP's property will be taxed a very large amount, it will receive absolutely nothing in return, and its fees will be used to subsidize other property owners.

Interchange Partners respectfully requests that the City continue to exclude IP's property from the District.

Sincerely,

RS Gillotti
Manager

FACT SHEET

SUGAR CREEK STORM WATER CONNECTION DISTRICT

9/21/15

Interstate Partners

1. **THE DISPUTE**. The question is does the Interchange Partners' property benefit from the construction of down stream road-culverts? What would IP receive for its nearly $150,000 tax bill? And that directly leads to an underlying question: Does the Sugar Creek Storm Water Connection District comply with the requirements of the authorizing Code Section?

2. **ATTORNEY GENERAL'S OPINION**. The City's Attorney has stated that the authorizing Code Section for the Sugar Creek Fee District Ordinance is 384.38(3)(a). The City requested an Iowa Attorney General's opinion about that Code Section, and that opinion states that the City may establish "storm water connection" districts, but that the districts must comply with the Code.

   Simply stated, the Code requires that the District provide facilities "for the connection of property to the city sewer or water utility". The question is, do stand-alone, independent drainage road-culverts provide a connection to "properties", to a "city sewer utility", or to anything? Or, do they serve some other purpose? And further, are creek-networks a "city sewer utility"?

3. **PURPOSE OF THE SUGAR CREEK STORM WATER CONNECTION DISTRICT**. Even though it is called a "storm water connection district", no one can give a clear explanation of what that means. It is obvious from examining the District's map, and the City's staff has confirmed, that the purpose of constructing the District's road-culverts is to provide the necessary drainage structures which are required to extend roads across the District's existing creeks.

4. **STORM WATER RUNOFF**. Storm water runoff from properties within the Sugar Creek water-shed is collected and removed from the water-shed's properties by the naturally occurring creek-network. Runoff flows downhill from the properties through the creeks to eventually discharge into the Raccoon River. **Except for those few locations where the creeks pass through the City's existing road-culverts, the creek-network is located entirely on private property. It does not belong to the City.** The creek-network is a naturally occurring geoform which is integral to each property it touches. Consequently, since these creeks are a natural feature and are not owned by the City, they cannot realistically be described as a "city sewer utility".

5. **ROAD-CULVERTS**. Road-culverts are simply short drainage tubes located in the creeks and positioned under existing or future roads. They are stand-alone, independent structures. not connected to any piping system or to a "city sewer utility"; they do not change the operation of the water-shed's existing creek-network; they do not improve the efficiency of storm water runoff within the creek-network; and they do not increase the capacity of the existing creek-network. In other words, construction of the District's road-culverts does not improve the existing creek-network in any way.

6. **TRANSPORTATION ACCESS**. What the road-culverts actually do is provide the necessary infrastructure to extend roads across existing creeks. **But for those road-culverts, roads could not cross over the creek-ravines.** The City's staff and officials have confirmed that the District's purpose is to "open-up" new areas for development...areas which can only be accessed by the construction of new roads crossing over the new road-culverts.

   So, the Sugar Creek Storm Water Connection District actually is a road-culvert district to permit roads to be constructed over creek-ravines...a road district. These are road connections, not storm water (disposal) connections as is authorized by Code Section 384.38 (3)(a).

   This type of district does not appear to meet the requirements of the Code.

7. **BENEFITS FROM THE ROAD-CULVERTS**. Only infrastructure which improves a property's access, increases the usage of the property or its saleability, or is required for development, benefits a property. Any benefit to a property must be, at a minimum, identifiable and measurable.

   Claiming that a property benefits from the construction of culverts simply because a property's runoff eventually passes through a downstream road-culvert sounds plausible, but it is not completely accurate. Runoff has flowed down the creeks for eons and will continue to do so whether a road-culvert is in the creek or not.

   Those road-culverts don't affect the discharge of runoff from the water-shed's properties in any way, and they don't manage or control storm water within the water-shed in any way: They don't modify storm water flows; they don't affect or alter storm water runoff from any property; they don't remove sediment from water flows; they don't detain or retain water; and they don't change in any way the water-shed's current natural characteristics. The District's road-culverts do only one thing... they permit future road construction.

   In reality, the water-shed's properties already own the "benefit" of run-off disposal. They have always owned it because it is the naturally occurring creek-network located on private property. The District's new road-culverts do not provide any new benefit for runoff disposal from the water-shed's properties.

   Only property owners who gain access to their properties from the new road-culverts actually benefit from their construction.

   The general public will probably indirectly benefit from facility upgrades to the City's existing transportation system permitted by the reconstruction or replacement of the City's existing road-culverts and bridges, but that is a City-wide benefit and not easily measured.

8. **INTERCHANGE PARTNER'S PROPERTY. Interchange Partners' property doesn't need a single one of the District's road- culverts in order to develop its property today. Interchange Partners' property already has:**

   - Direct access from 88th Street (frontage).
   - Sanitary sewer capacity (Fox Creek Sanitary Sewer Fee District).
   - Water service capacity (Water Fee District).
   - Storm water runoff capacity (existing creek network).

9. **CONCLUSION. Although the District is named a "storm water connection district", it is actually a road-culvert district intended to promote new road construction, and to upgrade the City's existing road system.**

   - **Construction of downstream road-culverts does not increase or improve the run-off capacity of IP's property; it does not improve the capacity of the creek-network; it does not improve the condition of IP's property; it does not improve the value of IP's property; it does not improve the usage of IP's property; and it does not increase its developability. Consequently, the Sugar Creek Storm Water Connection District provides absolutely no identifiable or measurable benefit to IP's property.**

   - **Lastly, from the above, it appears that the District does not actually comply with the requirements of the Code as described by the Attorney General's opinion.**

"STORM WATER CONNECTIONS"

FUNCTIONAL COMPARISON

09/21/15

INTERSTATE PARTNERS

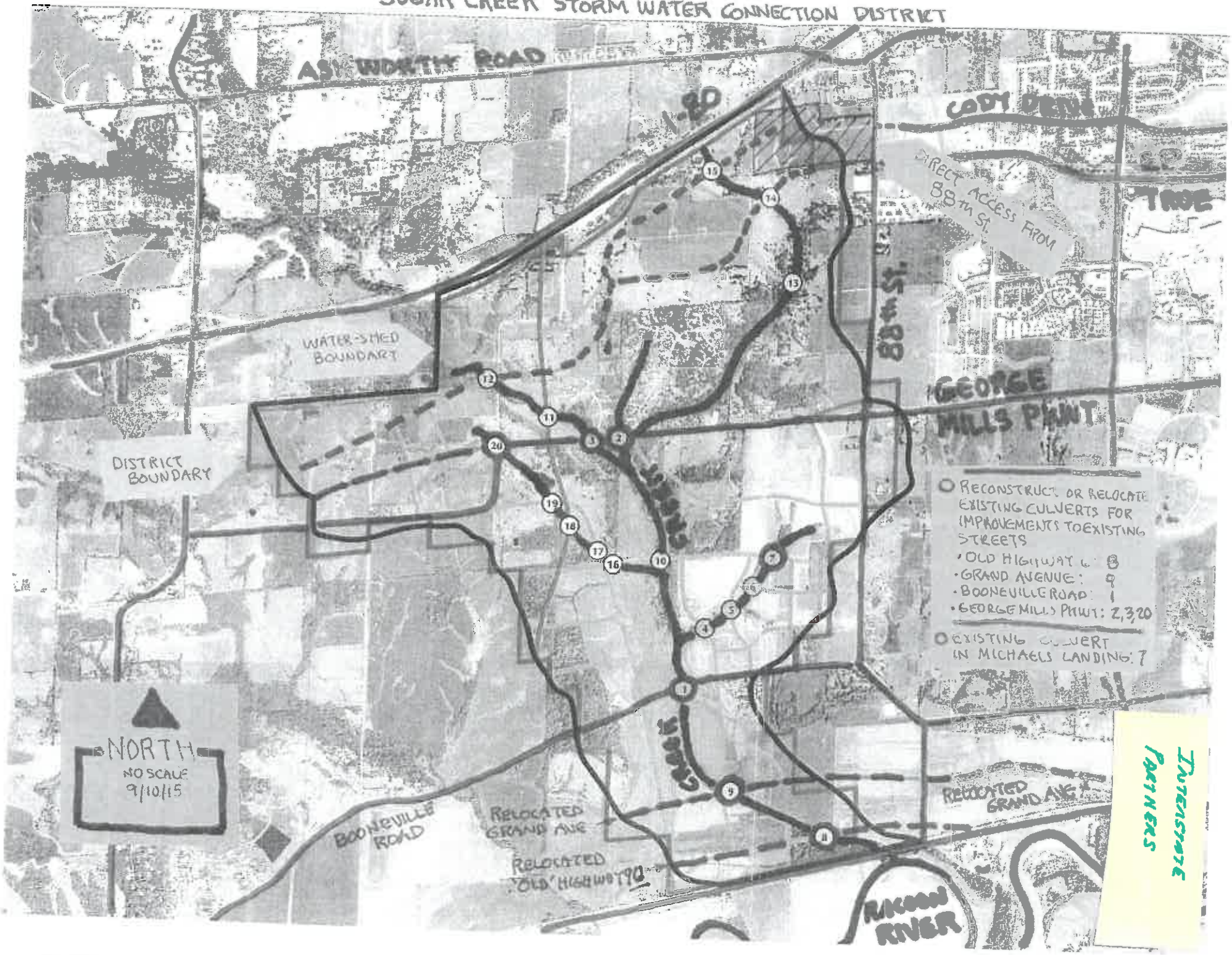
THE DISTRICT'S ROAD-CULVERTS

- The road-culverts are stand-alone, independent structures which convey currently existing creek flows.
- Only purpose is to move creek flows under roads.
- The outlet flow from the road-culvert is exactly the same as the inlet flow.
- The road-culverts do not retain, detain, or store storm water.
- The road-culverts do not collect storm water flows, or redirect flows.
- The road-culverts do not connect to any properties.
- The road-culverts do not connect to any sewer system or city utility.

STORM WATER MANAGEMENT OR CONTROL

- Composed of a system of inlets, piping, and outlet structures.
- Collection system functions only during a snow-melt or rain event.
- Piping system collects and consolidates run-off flows from a large area from multiple points of inlet.
- Treats run-off flows: removes sediment, debris, and/or chemical spills.
- Reduces rate of discharge (Q).
- Retains, detains, ponds, or stores run-off flows.
- Conveys, carries, transports, redirects, and discharges run-off flows at a system outlet.

SUGAR CREEK STORM WATER CONNECTION DISTRICT

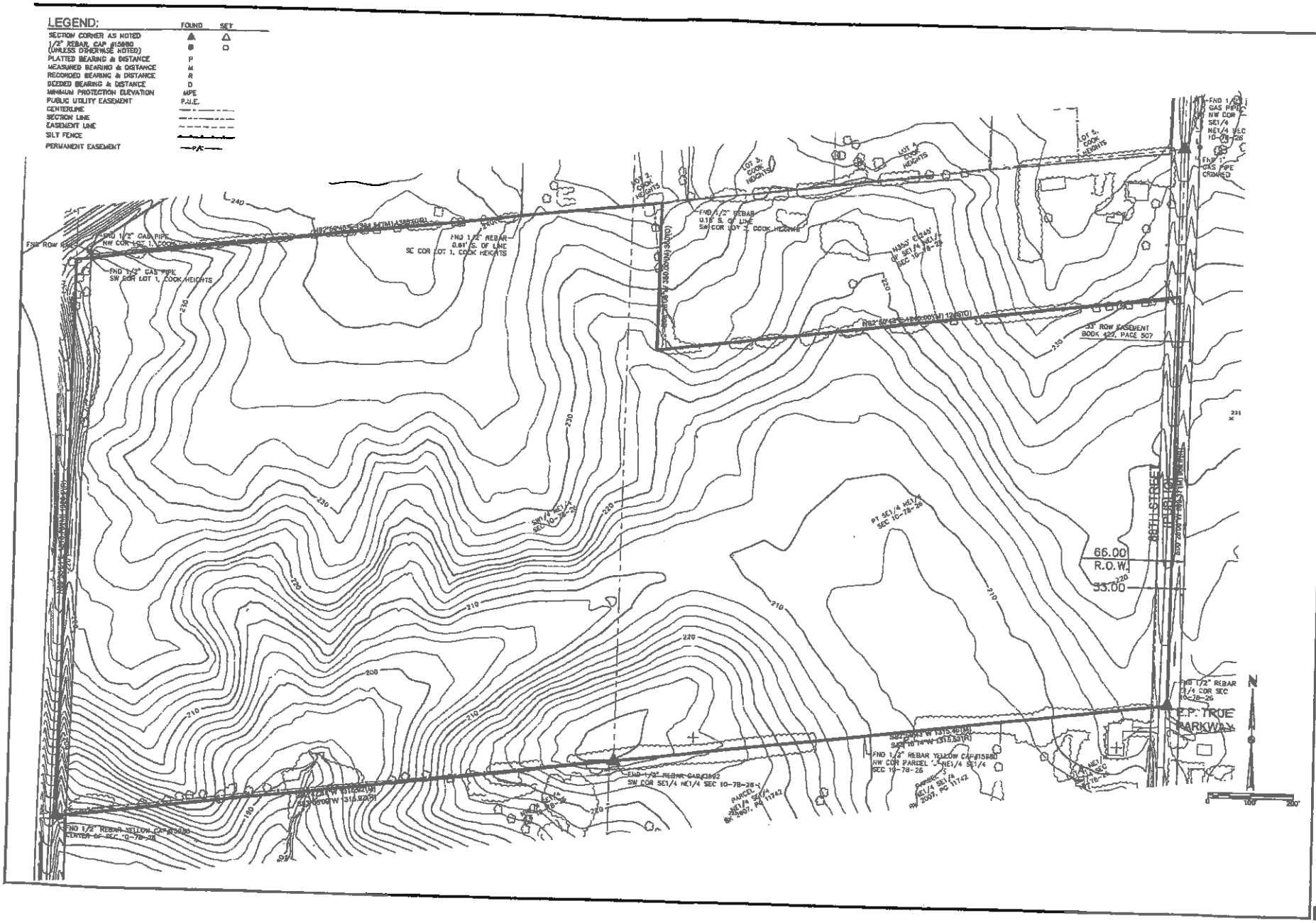


DRAFT V&K LETTER

A summary of the structure to be funded is as follows:

Structure No.	Street Classification	Watershed	Estimated Cost	District Cost
[redacted] 1	Major Collector	Sugar Creek	$830,000	$747,000 - REPLACE EXISTING
[redacted] 2	Major Arterial	Fox Creek	$674,000	$344,000 - REPLACE EXISTING
[redacted] 3	Major Collector	Sugar Creek	$640,000	$576,000 - REPLACE EXISTING
[redacted] 7	Minor Arterial	Small Watershed	$230,000	$184,000 - EXISTING
[redacted] 8	Major Collector	Sugar Creek	$670,000	$603,000 - RELOCATE
[redacted] 9	Major Arterial	Sugar Creek	$1,340,000	$804,000 - RELOCATE
10	Minor Arterial	Sugar Creek	$930,000	$744,000
11	Major Arterial	Sugar Creek	$1,180,000	$708,000
12	Minor Collector	Sugar Creek	$490,000	$465,500
13	Major Collector	Fox Creek	$310,000	$279,000
14	Minor Arterial	Fox Creek	$430,000	$344,000
15	Major Collector	Fox Creek	$310,000	$279,000
16	Minor Arterial	Small Watershed	$230,000	$184,000
17	Minor Collector	Small Watershed	$140,000	$133,000
18	Major Arterial	Small Watershed	$310,000	$186,000
19	Minor Collector	Small Watershed	$140,000	$133,000
[redacted] 20	Major Arterial	Small Watershed	$230,000	$138,000 - REPLACE EXISTING
		TOTAL	$8,984,000	$6,856,900

Based on the 1,500 acres of net developable area, the proposed connection fee would be $4,568 per acre. The fee is slightly higher than the original estimate primarily due to the revised cost estimates.



5501 NW 112th SUITE G GRIMES, IOWA 50111
PH: (515) 369-4400 Fax: (515) 369-4410

CIVIL DESIGN ARCHITECT ENGINEER

INTERCHANGE PARTNERS BOUNDARY

2/3

0503057

COUNCIL MEETING
MINUTES
2/24/14

February 24, 2014

West Des Moines City Council Proceedings
Monday, February 24, 2014

Mayor Steven K. Gaer opened the regularly scheduled meeting of the City Council of West Des Moines, Iowa, in the Council Chambers of the West Des Moines City Hall on Monday, February 24, 2014 at 5:32 PM. Council members present were: R. Messerschmidt, J. Mickelson, J. Sandager, K. Trevillyan, and R. Trimble

Jody Smith, Deputy City Manager/City Clerk, noted there is a memorandum on the dais regarding a minor change recommended by staff to Item 4(c)9 Approval of Liquor License - Boggs Properties, LLC d/b/a Sully's Irish Pub.

On Item 1. Agenda. It was moved by Trimble, second by Sandager to approve the agenda as amended.

Vote 14-043: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble…5 yes
Motion carried.

On Item 2. Public Forum:

Shawn Mori, 6 Sugar Creek Lane, Waukee, stated: "Since the McCormick opinion was already written about in the paper and given to the public, I just wanted a chance to tell you that we are preparing a response for the Council and will have that to each of you before the end of the week. I feel that Mr. Graham is better able to address some of the legal issues and hopefully you'll wait a few more days with any responses or directions until you've had a chance to read what we're preparing. And then I have a few comments on it myself as well. I guess it goes without saying for those of us who worked on this for these past five years that it was disheartening at best when Mr. McCormick simply wrote an opinion in defense of all that was done wrong. The night that you said we'd have an independent review had given us great hope that he might actually try to sit down with each governmental body that was involved in this and try to sort through what could be done to fix some of the past mistakes; instead what I read, about 90 to 95 percent of it, simply said it didn't matter if due process was followed, it didn't matter if laws were followed, it didn't matter if the City didn't supply the same maps to Linda's representatives as they supplied to the DOT - all leaving her without the knowledge she needed to bring an action. What he said is that none of it mattered so long as the City was able to get a quick settlement agreement signed before any of those things were discovered, and that was very disappointing to see. In this country we are a nation of laws, and the real issue of whether it was a violation of Linda's property rights and the laws that were supposed to protect those property rights, Mr. McCormick says is moot. If the judge who received the application for the condemnation would have known that the Robel property was outside of the West Des Moines jurisdiction, if he would have known that her land was not part of the DOT project number that was stated on the application, if he would have known that the property that was referenced was not for redevelopment purposes, would he even have ever allowed the condemnation to move

It was moved by Trevillyan, second by Sandager to waive the third reading and adopt the ordinance in final form.

Vote 14-053: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble…5 yes
Motion carried.

On Item 5(d) Grand Avenue Trail, Raccoon River Park to Fuller Road, initiated by the City of West Des Moines

It was moved by Sandager, second by Trevillyan to adopt Resolution - Preliminary Order for Construction, Resolution - Fixing Values of Lots, Resolution - Approval of Preliminary Plat and Schedule, and Resolution - Approval of Proposed Resolution of Necessity.

Mayor Gaer stated the City is proposing to build a trail that is ten feet wide and six inches thick and the adjacent property owners will be asked to pay their pro rata share of a sidewalk that is four feet wide and four inches thick.

Council member Trimble inquired if the residents have an option to pay their share through a payment plan.

Jody Smith, Deputy City Manager/City Clerk, responded if the final amount due is more than $500, the resident will have an option of a ten-year payment plan.

Council member Trimble inquired if the ten-year payment plan would be available to a property owner with two properties that are each due less than $500 but the total amount due exceeds $500.

Mr. Smith responded they could if the properties are legally connected. He noted staff is still seeking a definitive answer from Polk County as to how the City would assess properties within a townhome development.

Mayor Gaer expressed his preference to have a definitive answer on that question prior to the public hearing scheduled for March 24.

Vote 14-054: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble…5 yes
Motion carried.

On Item 6(a) Mayor Gaer indicated this was the time and place for a public hearing to consider Sugar Creek Stormwater Connection Fee District, generally bounded on the east by South 88th Street, on the south by the Raccoon River, on the north by Interstate 80 and on the east by the approximate west ridgeline of the Sugar Creek Basin - Establishment of District and Fees, initiated by the City of West Des Moines (continued from January 27, 2014 meeting). He asked for the date the notice was published and the City Clerk indicated the notice was originally

published on January 6, January 10, and January 17, 2014 in the Des Moines Register and re-published on February 14, 2014. Mayor Gaer asked if any written comments had been received. The City Clerk stated three written communications were included in the packet and an additional one was received this afternoon from the Developers Council of Greater Des Moines, a copy of which is on the dais.

Mayor Gaer stated the homebuilders initially asked the City to find a solution to open up the land on the west side of the city for development, so he finds it ironic that their association is sending letters expressing opposition to this proposed stormwater connection fee district. He noted Interstate Partners, LLC had inquired if they were a part of the district and asked if staff had confirmed that.

Duane Wittstock, City Engineer, stated the property owned by Interstate Partners, LLC is not included in the district.

Mayor Gaer noted that Sunset Company, Ltd. asked that only 6.24 acres of their property be included in the district, and he inquired if that is an issue.

Mr. Wittstock responded the proposed Ordinance has provisions so that when a property owner can prove an area does not drain into the district, the numbers will be adjusted accordingly.

Mayor Gaer asked if there were any public comments.

William Lillis, 317 6th Avenue, Suite 300, Des Moines, representing Community Business Lenders, stated his client concurs with the recommendation made by the Public Works Subcommittee.

Mayor Gaer asked if there were any public comments; hearing none he declared the public hearing closed.

It was moved by Trevillyan, second by Messerschmidt to consider the first reading of the ordinance.

Mayor Gaer inquired since Community Business Lenders constructed their own stormwater facilities and their potential fee of $207,296 is being waived, how that amount will be covered.

Mr. Wittstock responded the Council has two choices: the City can cover the cost or it can be allocated to the remaining area of the district at a rate increase of $142 per acre.

Council member Trevillyan expressed his preference to increase the rate per acre by $142 because he feels that cost should not be covered by the City.

Council member Mickelson noted that even though the rate per acre is increasing, the property owners will pay less than they otherwise would have if Community Business Lenders had not constructed their own stormwater facilities.

Vote 14-055: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble…5 yes
Motion carried.

The City Clerk read the preamble to the ordinance.

It was moved by Trevillyan, second by Messerschmidt to approve the first reading of the ordinance, with a provision to increase the rate by $142 per acre to cover the amount waived for Community Business Lenders.

Vote 14-056: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble…5 yes
Motion carried.

On Item 6(b) Mayor Gaer indicated this was the time and place for a public hearing to consider Jordan Creek Town Center Planned Unit Development (PUD), 101 Jordan Creek Parkway - Amend the PUD to Allow Signage in the Form of Blade Signs within the Jordan Creek Town Center Development, initiated by GGP Jordan Creek, LLC. He asked for the date the notice was published and the City Clerk indicated the notice was published on February 7, 2014 in the Des Moines Register. Mayor Gaer asked if any written comments had been received. The City Clerk stated on a vote of 6-0, with one member absent, the Plan and Zoning Commission recommended City Council approval of the proposed PUD amendment.

Mayor Gaer asked if there were any public comments; hearing none he declared the public hearing closed.

It was moved by Sandager, second by Trimble to consider the first reading of the ordinance.

Vote 14-057: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble…5 yes
Motion carried.

The City Clerk read the preamble to the ordinance.

It was moved by Sandager, second by Trimble to approve the first reading of the ordinance.

Vote 14-058: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble…5 yes
Motion carried.

Council member Trevillyan expressed his desire to see blade signs be included in the Historic Valley Junction Business District.