

# COMMUNITY COMPLIANCE SUB-COMMITTEE MEETING MINUTES

May 20, 2024

Present: Doug Loots, Council Member  
Kevin Trevillyan, Council Member  
Gary Rank, Public Services Director  
Joe Cory, Deputy Public Services Director  
Bharabi Pandit, Assistant City Attorney  
Dennis Patrick, Chief Building Official, Development Services  
Linda Schemmel, Development Coordinator, Development Services  
Nick Lindberg, Community Compliance Specialist  
Guests: Rob Parker, Sarah Mayberry, Josh Dallman, Brett Pegg

The meeting was called to order at 4:30 PM. Councilman Loots facilitated the meeting.

## **1. Review Ordinances 9-14-14(C)(6): Solar Energy Systems – General Regulations and 9-10-4(A)(7): Specific Use Regulations**

Council Member Doug Loots requested information about the ordinance related to solar energy panel installation, due to a request from the homeowners at 271 S 85<sup>th</sup> Street, who claim there is excessive glare from the solar panels installed in May 2023 at 282 S 86<sup>th</sup> Street. Council Member Kevin Trevillyan stated that the ordinance stipulates that solar energy systems must be anti-reflective, but it doesn't indicate the level of anti-reflective required. Development Coordinator Linda Schemmel explained that glare from direct sunlight is easy to predict based on season and direction (east/west), however, reflective glare is harder to predict, which is why the glass on solar panels should have some sort of texture or anti-reflective coating. Development Coordinator Schemmel further explained that in the industry, reflections are considered glint (momentary flash) or glare (continuous, excessive source of light), so it is difficult to regulate because it's hard to predict with the continuous movement of the sun. The requirement for the textured or anti-glare glass is measured by how much the surface reflects. Reflection of a mirror has about 90% reflection, versus a texture-coated glass is about 1-2% reflective. One caveat with the textured or anti-glare coating is that with large, incident angles (when sun reflects at a very low angle), the coating doesn't work as well to keep the reflection down.

Council Member Trevillyan asked about what the process is when a reflection issue does come up, what are the steps for correction, since the code stipulates if there is a code issue, it has to be resolved. Development Services stated they believe it is a private matter, since they have certification from the contractor that the surface is anti-reflective and the way to mitigate this issue is by the contractor changing the installation. Council Member Loots inquired if there was a way to enforce mitigation by the contractor with the current City ordinances. Development Coordinator Schemmel stated the current ordinance states if there is a glare issue it must be resolved, however, it does not define who is responsible for resolving the issue, so Legal will need to review.

Council Member Loots summarized that it has been established there is a glare issue, that permits were issued appropriately, and that there is regulation regarding glare issues in the ordinance. Requested staff to research and provide recommendations on what the next steps are. The possible next steps could be any of the following:

1. Staff determines there is no further action required of the City.
2. Request contractor to approach the homeowner to correct the installation.
3. It's a private matter and the private parties would have to resolve on their own.

West Des Moines Resident, Sarah Mayberry, requested that staff consider adding to the ordinance a requirement that neighbor sign-off agreeing to the panels must be provided prior to solar panel installation.

Council Member Trevillyan agreed with Council Member Loots assessment and asked that another meeting be held in two weeks. Council Member Trevillyan also requested Development Services staff to research what other municipalities solar panel regulations/requirements are.

***Direction:*** Staff will research and report their findings and recommendations for next steps in two weeks. The next Community Compliance Subcommittee meeting is scheduled for Monday, June 3, 2024, at 4:30 PM.

## **2. Review Ordinances 5-3-2: Definitions: At Large (B) and 5-3-9: Running at Large Prohibited**

West Des Moines resident Josh Dallman, who resides at 673 Venus Avenue, uses an electronic shock collar for his dog, and a couple weeks ago was notified by police of a complaint against him regarding his dog running at large. His request is to get clarification on if the electronic collar he uses would be considered a control device, and to amend the code if it is determined to be a control device.

Assistant City Attorney Bharabi Pandit stated that his interpretation of the current code is that a dog must be at heel or with a physical control device (leash) and stated the code could be changed to include electronic control devices. Josh, however, for enforcement purposes the dog would still be required to be in visual line of site. He also stated that he is not aware of any cases where someone has been charged with an animal at large violation, when a pet owner had constructive control over an animal without having a physical control device, so code could remain as is and it would be law enforcement discretion on a case-by-case basis on whether to charge the violation or not.

There was discussion on what code stipulates regarding invisible fencing. Council Member Trevillyan reasoned that if an invisible fence is definitive in the code as a containment option, then this code could be expanded to include electronic shock collars as a control device. Assistant City Attorney Pandit stated that from a legal perspective, there is no difference between an invisible fence versus a physical fence, once an animal is outside of the property lines, it's considered running at large.

**Direction:** Council Member Loots is split on keeping the code as is or changing it. Staff is requested to review the current code and provide a recommendation.

### **3. City Permit for Replacement of Mechanical Equipment**

Council Member Doug Loots requested information about the permitting and inspection process for installation of furnaces. Dennis Patrick, Chief Building Official, explained the current state of Iowa and City licensing for mechanical equipment replacement requires a permit whenever an installation is done, and an inspection with the contractor present is also required. Currently there is approximately 25% compliance among contractors on having the inspection completed. Dennis stated that in many scenarios, the inspection isn't schedule at the time of the installation and as time goes by, the contractor finds it easier to request the homeowner to schedule the inspection. There was discussion about how to increase compliance on the inspections. From a Development Services standpoint, to get to 100% compliance they would need more personnel to conduct all the inspections. Dennis stated that Development Services plans to provide more information to educate contractors on the process and requirements in an attempt to increase compliance.

There was discussion about the consequences if a contractor doesn't even pull a permit to do an installation. There is risk to contractors of losing their licensing if they don't pull a permit, but again, the licensing board would require more personnel to audit contractors to determine who is complying with the permit requirements.

**Direction:** Information Only.

### **4. Review of Punitive Fees for Repeat Offenders**

Deputy Public Services Director Joe Cory stated during the budget meetings, they were asked if there was anything the City could do to help improve compliance for properties that are repeatedly out of compliance on nuisances. One option is to raise the punitive fees for repeat offenders. Staff met with Legal and determined that the people this would apply to are typically people who already owe fees to the City and adding another punitive fee won't really help with these types of cases. Legally the City is limited to a \$1,000 municipal infraction fee for a repeat offence. Assistant City Attorney Pandit stated that often the best incentive to get compliance on civil infraction cases is to offer a reduction of the punitive fees and court fees.

**Direction:** Staff recommends no increase to punitive fees. Council Members agree with staff recommendation.

### **5. Review of Ordinance Amendment for 7-1-5**

Community Compliance Specialist Nick Lindberg is periodically reviewing current ordinances and providing updates and/or corrections on outdated information (such as obsolete department names, titles, etc.). The amendments to this ordinance provide two

updates. The first update is to director position titles and department names. The second update is regarding notification requirements on various lots. This will bring the code in line with how tall grass/weed notices are posted on vacant and multi-residential lots, with one option being to post notice on a sign on the property. The different notice requirements for emergency abatements and non-emergency abatements were also explained. Staff will continue to make necessary updates to the code as they are able to.

**Direction:** Information only.

## 6. **Other Matters**

A. Deputy Public Services Director Cory provided an updated regarding the ROW mowing at 3725 Greenbranch Drive. The property owner, Fred Bell, and Legal signed a settlement agreement regarding the party responsible for maintaining the curb-adjacent and sidewalk-adjacent areas of City ROW abutting the property. A map was provided with the agreement, as a reference for the area that requires maintenance by the property owner, Mr. Bell. However, Mr. Bell refuses to mow any area that is not specifically indicated in orange hash marks on the map, claiming it's not included in the agreement. Staff advised Mr. Bell that the next step would be to abate that portion of the property and bill him for the abatement cost. If Mr. Bell does not pay the bill, he can contest it at the next subcommittee meeting.

Council Members Loots and Trevillyan agree with staff and agree that the ordinance is clear.

**Direction:** Staff recommends abating the portion that Mr. Bell refuses to maintain and billing him for the cost. Council Members agree with staff recommendation.

B. Staff reported there is an ongoing dispute between two neighbors and staff has put excessive hours into trying to help the two parties resolve the issue. The properties in dispute are 537 2<sup>nd</sup> Street (Wendy Lacina) and 533 2<sup>nd</sup> Street (Kathleen Johnson). Staff will suggest a mediation meeting with the county and the two parties. The number of calls and amount of time spent by City staff, including Community Compliance, Police, and Legal, has increased. Council Member Trevillyan has also spoken with them and told them it is a civil matter they need to resolve. The current complaints between the two parties include a variety of nuisances. There was discussion on the current ordinance definitions of a fence and non-conforming shed.

**Direction:** Information only. Staff will recommend the two parties schedule a mediation meeting with Polk county.

C. Assistant City Attorney Pandit advised Council Members that he received a couple different complaints. One was from a landowner about the 72-hour notice period for mowing abatement. The case being referred to had an entire week pass between the time the initial notice was given and when the mowing abatement was completed. The second was about the lack of a specific ordinance regarding the release of large quantities of

water from a pool. Staff confirmed there is an ordinance about illicit discharge of water and there was additional discussion about how and when that ordinance is applied.

**Direction:** Information only.

7. **Citizen's Forum**

None.

The meeting adjourned at 5:16 PM. Respectfully submitted by Kim Pinegar, Executive Assistant to the Director.

**All visitors to the Community Compliance Sub-Committee meetings are asked to sign in.**

**Thank you!**

**COMMUNITY COMPLIANCE SUB-COMMITTEE MEETING  
GUEST ATTENDANCE**

Printed Name and/or Organization	Address / E-mail	Day time phone #	Topic
Rob Parker	RParker85@gmail.com	515-422-6615	Solar glare
Sarah Mayberry	Sarah.Mayberry1985@gmail.com	503-357-0199	Solar glare
Josh Dallman	Josh.Dallman@wdm.iowa.gov	515-954-5810	Dog at Large
Brett Pegg	bpegg2005@g.com	515-313-6320 <del>515</del>	Solar panels

## SETTLEMENT AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into on the latest date signed below (“Effective Date”) by and between City of West Des Moines, Iowa (“City”) and Fredrick A. Bell and Lynne E. Bell (“Bells”). City and Bells may individually be referred to herein as “Party” or collectively as “Parties.”

### RECITALS:

A. Bells are the owners of property locally known as 3725 Greenbranch Drive, West Des Moines, IA 50265, and legally described as:

Lot 15, Thornwood Second Addition, an official Plat, now included in and forming a part of the City of West Des Moines, Polk County, Iowa.

(hereinafter referred to as the “Property”).

B. There has been a good faith disagreement between the Parties about Bells' responsibility for maintaining the curb-adjacent and sidewalk-adjacent areas of City right-of-way abutting the Property pursuant Section 7-1-6 of the City Code of the City;

C. The City has also alleged that Bells have a responsibility to restore portions of City right-of-way adjacent to S. 35th Street to a level prior to a die-off that occurred in said area in 2023;

D. On August 29, 2023, the City invoiced Bells for abatement of Bells' alleged nuisance violation of Section 4-4-2:A of the City Code of the City ("Violation");

E. The City has amended Title 7, Chapter 1 of the City Code of the City to make clear Bells' responsibility for mowing curb-adjacent and sidewalk-adjacent areas of City right-of-way abutting the Property;

F. In order to avoid the high costs and uncertainties of litigation, the Parties have decided to compromise and settle the claim between the Parties on the terms set forth in this Settlement Agreement, without admitting any liability or wrongdoing.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the Parties agree as follows:

1. Recitals. The above recitals are true and correct and form a part of this Agreement.
2. Performance. Bells, for themselves, their heirs, successors and assigns, acknowledge responsibility to maintain those areas of City right-of-way abutting the Property shown on Exhibit "A" in accordance with Section 7-1-6 of the City Code of the City, as may be amended from time time.

3. Release by City. City, in consideration of the performance described in paragraph 2, above, does for itself, its successors and assigns, members, managers, and/or officers, forever remise, release, and discharge Bells from any and all claims, known or unknown, matured or not yet matured, recognizable at law or in equity, founded upon statute or common law, secreted or concealed, now owned, that have been brought or could be brought arising out of: (i) the facts set forth in the Violation; or (ii) any allegations of die-off of portions of City right-of-way adjacent to S. 35th Street that occurred in 2023. City further agrees to quash and extinguish any special assessment in full connected to the Infraction within ten days of this Agreement.

4. Attorneys' Fees and Costs. The Parties shall each bear its own attorneys' fees and costs incurred in this matter.

8. Representations and Warranties. The Parties represent and warrant to each other that:

(i) This Agreement represents a compromise of a disputed claim. The execution of this Agreement by any party hereto shall not be deemed an admission of liability or fault on the part of any person or entity executing this Agreement;

(ii) The consideration provided in this Agreement is all the consideration that any party hereto shall receive and there are no promises, written or oral, express or implied for the receipt of any additional consideration made by any party so as to induce any party hereto to execute this Agreement; and

(iii) Each party has had the opportunity to review this Agreement with their own independent legal counsel prior to the execution of this Agreement and so executes this Agreement solely upon the reliance of the advice of their own independent legal counsel and not any conversation, writing or remark of any other party, or legal counsel acting on behalf of any other party.

10. Other Documents or Action May Be Necessary. The parties, without further consideration, agree to execute and deliver such other documents and take such other action as may be necessary to effectuate this Agreement.

11. Default. If any Party defaults in any promises, duties, or obligations under this Agreement, the other Party or Parties may pursue any legal means necessary to enforce this Agreement. If future litigation involving this Agreement is brought, the Party deemed to be the prevailing party by a court of competent jurisdiction may recover its reasonable attorney's fees, expenses, and costs.

12. Governing Law/Jurisdiction. This Agreement is entered into in the State of Iowa and shall be construed and interpreted in accordance with the laws of the State of Iowa. This Agreement shall be deemed to be performed and enforceable within the State of Iowa, and any cause of action brought pursuant to this Agreement or between any party shall only be brought in the Iowa District Court for Polk County.



13. Construction of Agreement. Each Party to this Agreement and its attorneys have reviewed this Agreement, and accordingly, this Agreement shall not be construed for or against any party by reason of source of drafting.

14. Miscellaneous.

- a. This Agreement contains the entire agreement between the parties hereto with regard to the matters set forth in it, and fully supersedes any and all prior agreements and understandings between the Parties.
- b. If any portion, provision, or part of this Agreement is held, determined, or adjudicated to be invalid, unenforceable or void for any reason whatsoever, each such portion, provision, or part of this Agreement shall be severed from the remaining portions, provisions or parts of this Agreement and shall not affect the validity or enforceability of such remaining portions, provisions or parts.
- c. The Parties understand and expressly agree that this Agreement shall bind and benefit the respective party, its parent, the party's subsidiaries, divisions or affiliated companies or successors, and any of the party's or such companies' directors, officers, shareholders, partners, predecessors, employees, agents, attorneys, representatives, heirs, executors, administrators, successors and assigns, past or present.
- d. The parties acknowledge and agree that they have discussed in detail the provisions of this Agreement with their respective legal counsel and that each party has a full and complete understanding of its terms, that it accurately and completely reflects the agreement of the parties, and that the signatures below signify a voluntary decision to settle actual and potential claims against the other party according to the terms stated herein.
- e. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context.
- f. The enumerations and headings contained in this Agreement are for the convenience of reference only and are not intended to have any substantive significance in interpreting this document.
- g. Each individual executing this Agreement on behalf of an entity represents that he/she is authorized to do so.

IN WITNESS WHEREOF, the parties hereto voluntarily enter into this Agreement.

Dated: March 27, 2024

Dated: April 1, 2024

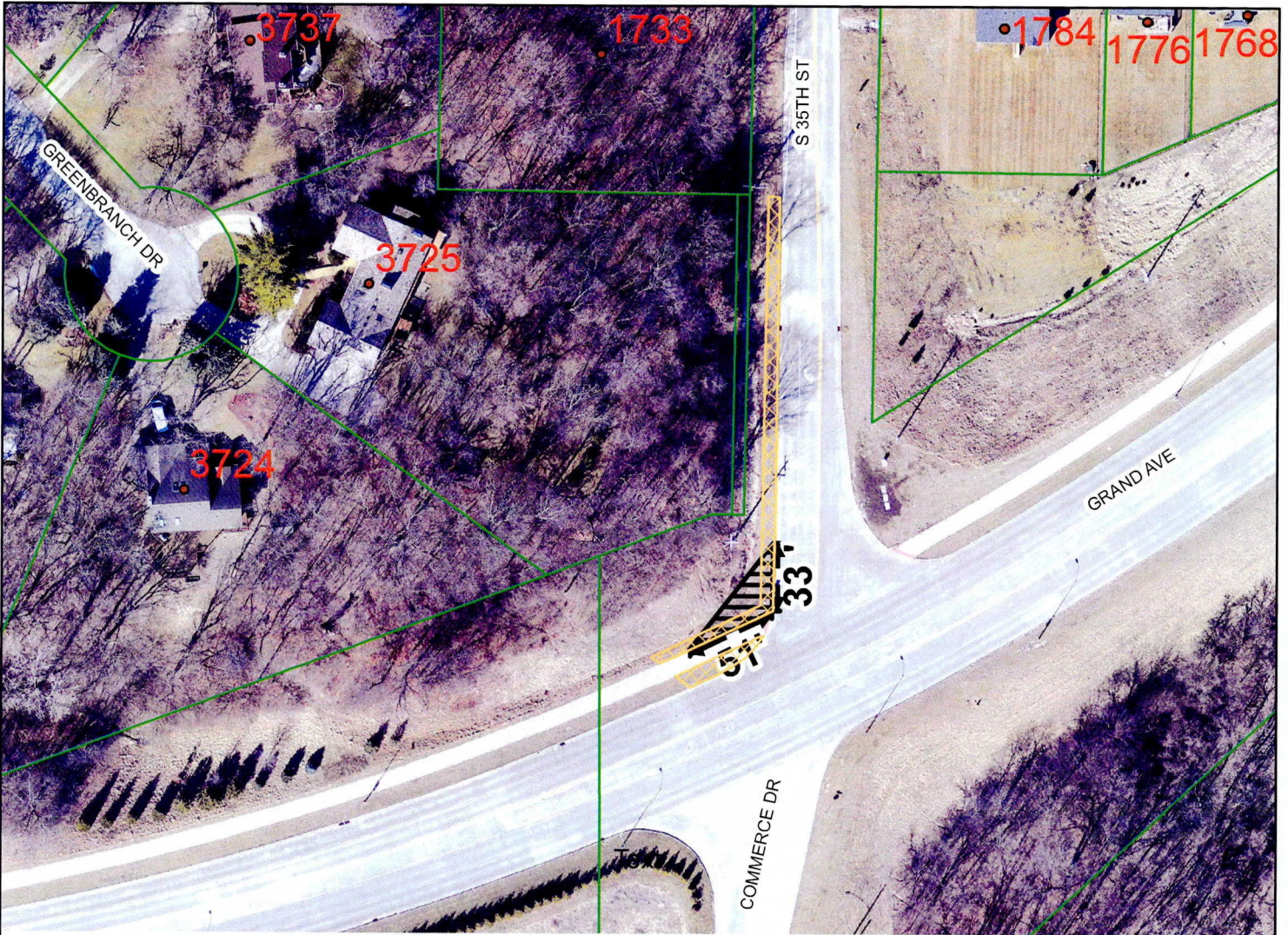
CITY OF WEST DES MOINES,  
IOWA

Fredrick A. Bell  
Fredrick A. Bell

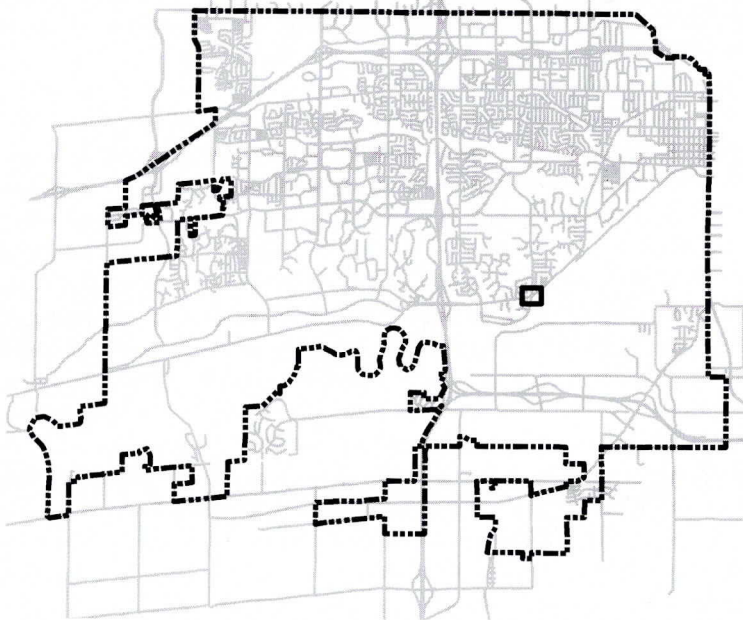
By: Russ Trimble  
Russ Trimble, Mayor

Lynne E. Bell  
Lynne E. Bell

Attest: Ryan T. Jacobson  
Ryan T. Jacobson, CMC  
City Clerk

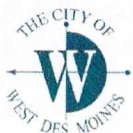


VICINITY MAP



LEGEND

- VISION TRIANGLE AREA 
- R.O.W. MOWING AREA 
- PARCEL LINE 
- ADDRESS 3725



PROJECT:

**MOWING VISION TRIANGLE**

LOCATION:

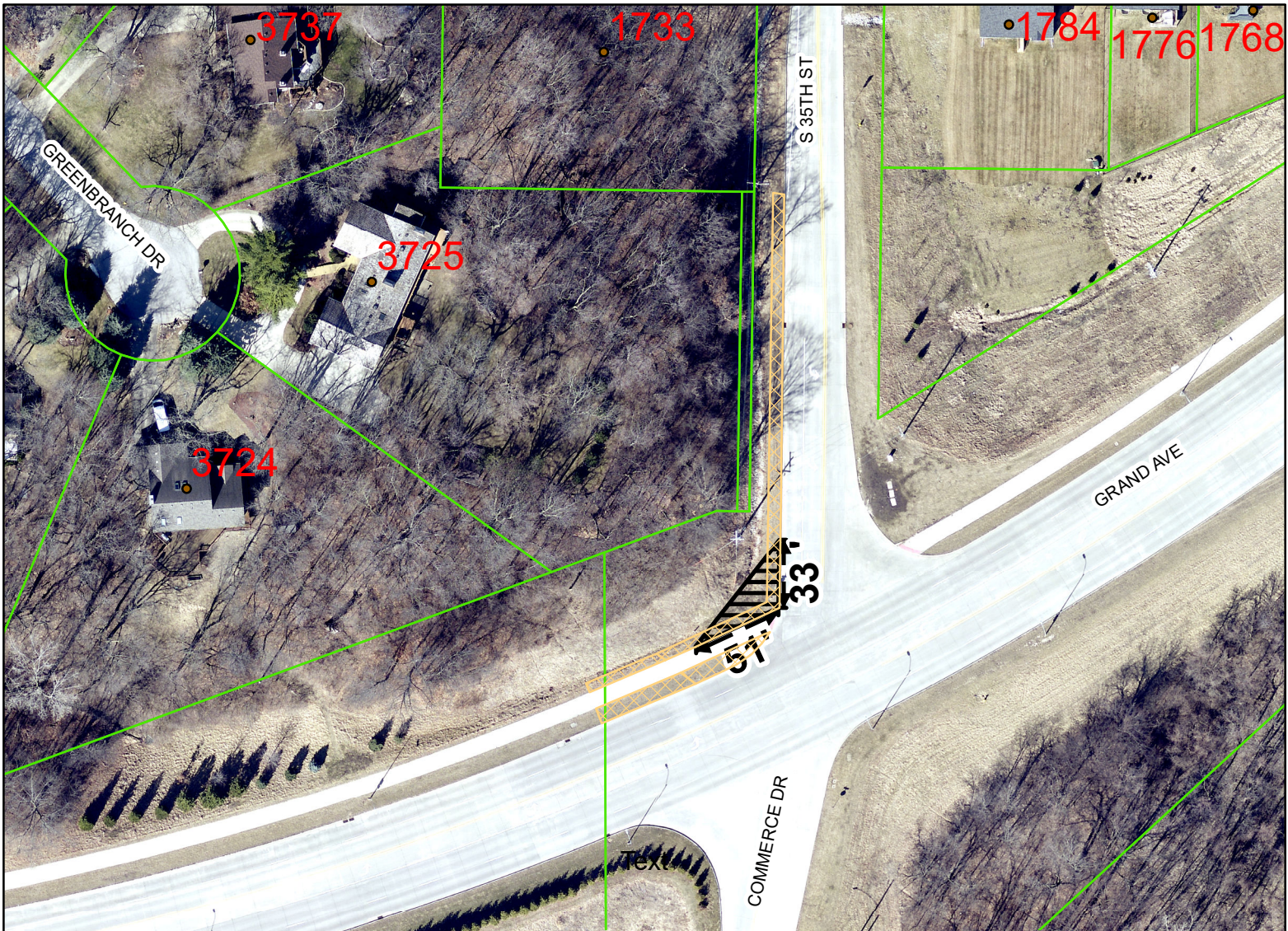
**NW Corner of South 35th Street and Grand Avenue**

DRAWN BY: REF

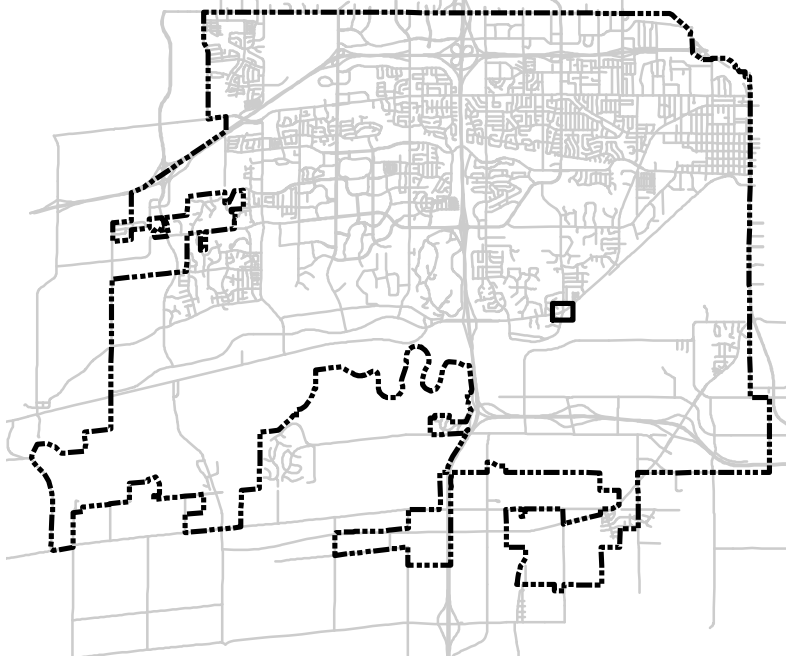
DATE: 3-21-2024

PROJECT: Mowing Vision Triangle




SHT. 1 of 1

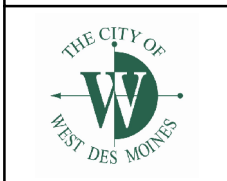
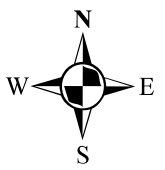


**VICINITY MAP**



**LEGEND**

- VISION TRIANGLE AREA 
- R.O.W. MOWING AREA 
- PARCEL LINE 
- ADDRESS 3725



PROJECT:	<b>MOWING VISION TRIANGLE</b>		
LOCATION:	<b>NW Corner of South 35th Street and Grand Avenue</b>		
DRAWN BY: REF	DATE: 5-13-2024	PROJECT: Mowing Vision Triangle	SHT. 1 of 1