

COUNCIL ACTION FORM

**SUBJECT: REQUEST FOR WAIVER OF SUBDIVISION REGULATIONS
REGARDING SIDEWALKS AND SANITARY SEWER EXTENSION
AT 2825 E. 13TH STREET**

BACKGROUND:

Council referred to staff a letter from I&S Group, Inc. seeking a waiver of subdivisions standards (See *Attachment 1*) for the property at the northwest corner of the intersection of I-35 and East 13th Street. Turn Key Investments, LLC, property owner, is proposing a subdivision of land for the construction of a new Burger King restaurant and is subject to the provisions of the City's subdivision regulations.

The proposed division of land is a 2-lot split of approximately 1.23 acres of land abutting the off ramp from south bound I-35 (See *Attachment 2, Location Map*). The existing commercial building on the site will remain with the new lot created between the building at 2811 East 13th Street (Credit Union) and the existing building on the subject property. The new lot will have a shared access with the two adjacent properties. (See *Attachment 3, Proposed Subdivision/Site Plan Map*).

I&S Group, Inc., on behalf of Turn Key Investments are requesting a waiver of the design and improvement standards otherwise applicable for the proposed subdivision. In this case, only the extension of the sanitary sewer main and the construction of the required sidewalk are necessary since the site already meet the other requirements of the city subdivision codes.

Waivers for the sidewalk installation and sanitary sewer extension are being requested for the following reasons:

- 1) There is no connection to existing sidewalk abutting the subject lots to make a connection with any new sidewalk.
- 2) The proposed extension of the existing 8" sanitary sewer main would only serve the two lot subdivision, since the property abuts the I-35 Interchange and the expansion of any new development east of the interchange would require a much larger main for service.
- 3) Due to the required installation of the sidewalk and the extension of the sanitary sewer main, the development would be required to be processed as a major subdivision requiring a Preliminary and Final Plat. If the waivers are approved the subdivision could be processed as a minor subdivision and be approved administratively.

Advanced planning and engineering work associated with the former regional commercial development determined that the eastward extension of the shared use path should be put on the south side of East 13th Street. Therefore, the waiver of the sidewalk installation requirement may be appropriate, since there are no current plans to have a sidewalk connection along the north side of East 13th Street in this area. However, if Council desires to retain the option of having sidewalks installed along the north side of East 13th, a deferment in the installation of the requirement sidewalk could be approved until such time as a sidewalk connection to the subject property is approved.

With regard to the request to waive the sanitary extension, the intent of the code is to allow for future connections beyond the property being developed. However, engineering designs for the regional commercial development east of I-35 indicated that a larger sewer main will be required to functionally service the size and type of development there. The subdivision proposed on the subject property is the full extent of the development west of the I-35 interchange.

Due to time constraints, the applicant would propose development of the property as show in attachment 3 under the approval of a Minor Site Development Plan as one single lot with two conforming buildings with shared parking (the existing building plus the addition of the new Burger King site). Once the property is developed with the new building, and if approved by the Council, the applicant would then file the proposed Minor Subdivision to split the two lots as show on the attached subdivision plat.

Staff would suggest, if Council agrees to the waiver requests, that the approval be conditioned with a time frame of 12 months to file the application for the Minor Final Plat for the subdivision of the lot. If the Council does not agree to the request for the waivers, the subdivision would need to be processed as a Major Subdivision, which would include the installation of the sidewalk and sanitary sewer extension.

ALTERNATIVES:

1. The City Council can approve the request to waive installation of the sidewalk and the extension of sanitary sewer across the frontage of the property along East 13th Street, subject to the condition that the application for subdivision be filed within 12 months of the waiver approval.
2. The City Council can deny the request to waive installation of the sidewalk and the extension of sanitary sewer across the frontage of the property along East 13th Street.
3. The City Council can approve only one of the two waiver requests.
4. The City Council can approve the waiver request for the extension of the sanitary sewer and approve **deferment** of the sidewalk installation along the frontage of the property along East 13th Street, with the following conditions:
 - a. An agreement will be executed between the property owner/developer and the City to ensure the future installation of the sidewalk, and

- b. The application for subdivision must be filed with the City within 12 months of the waiver approval.

5. The City Council can refer this request back to staff for additional information.

MANAGER'S RECOMMENDED ACTION:

The property owner has emphasized that the property in question is in an area where no existing sidewalks are installed, that the closest sidewalk or shared use path is west at Dayton Avenue, and that the sidewalk they would install will never connect with a public sidewalk. Council should also consider that existing plans for the larger area indicate that the shared use path should be located on the south side of East 13th Street, not on the north.

The purpose of the utility main extension requirement within the subdivision code is to allow for utility extensions for future developments. However, with the property abutting the I-35 interchange, this extension does not likely have a functional value for future development connection. If the Council agrees, the waiver of the sanitary sewer extension could be granted allowing for the proposed property to be subdivided as a Minor Final Plat.

In this case, it appears that installation of the sidewalk and extension of the sanitary sewer would not benefit future development in the area. Therefore, it is the City Manager's recommendation that Council can approve Alternative #1, thereby granting the waiver of sanitary sewer extension and installation of the public sidewalk, with the condition that the subdivision application be filed within 12 months of the waiver approval.

If Council determines that there is a need to meet the code requirement for the installation of the sidewalk for future development, but understands the installation at this point in time does not serve a current need, the Council should approve Alternative #4, which would approve the waiver request for the extension of the sanitary sewer and approve deferment of the sidewalk installation along the frontage of the property along East 13th Street, with the conditions that an agreement will be executed between the property owner/developer and the City to ensure the future installation of the sidewalk, and the application for subdivision must be filed with the City within 12 months of the waiver approval.

ADDENDUM

ADDITIONAL BACKGROUND INFORMATION:

At the May 28, 2013 City Council meeting, Council referred to staff a letter from I&S Group, Inc. seeking a waiver of subdivisions standards (*See Attachment 1*) for the property at the northwest corner of the intersection of I-35 and East 13th Street. Turn Key Investments, LLC, property owner, is proposing a subdivision of land for the construction of a new Burger King restaurant and is subject to the provisions of the City's subdivision regulations.

The proposed division of land is a 2-lot split of approximately 1.23 acres of land abutting the off ramp from south bound I-35 (*See Attachment 2, Location Map*). The existing commercial building on the site will remain with the new lot created between the building at 2811 East 13th Street (Credit Union) and the existing building on the subject property. The new lot will have a shared access with the two adjacent properties. (*See Attachment 3, Proposed Subdivision/Site Plan Map*).

I&S Group, Inc., on behalf of Turn Key Investments, is requesting a waiver of the design and improvement standards otherwise applicable for the proposed subdivision. In this instance, only the extension of the sanitary sewer main and the construction of the required sidewalk are necessary since the site already has access to City water. No new public streets are proposed for the subdivision, since the existing shared access will be used for the connection to East 13th Street. **The purpose of the request for a waiver is to allow approval of a Final Plat for 2825 East 13th Street, as a "Minor Subdivision," not as a "Major Subdivision."**

A division of land is classified as a "Major Subdivision" if the subdivision includes three or more lots, and/or if there is a requirement for the construction of public improvements as part of the subdivision. A "Major Subdivision" requires the approval of a Preliminary Plat and a Final Plat.

A "Minor Subdivision" is the division of land into no more than three lots, with **no** requirements for public improvements. Approval of a "Minor Subdivision" requires only a Minor Final Plat, which is approved administratively. **I&S Group requests that the City process the proposed subdivision as a "Minor Subdivision" to expedite the approval process by saving the time it would take to process a Preliminary Plat. The Final Plat for 2825 E. 13th Street can only be approved without first approving a Preliminary Plat if the City Council waives the requirements for construction of public improvements in the E. 13th Street right-of-way by the Developer.**

Division IV of Chapter 23 of the Municipal Code, contains the site design standards for the creation of new subdivisions. This section describes the minimum standards for streets and rights-of-way, public utilities (water, sanitary sewer, and storm water management), residential landscaping, street lighting, and all other public improvements necessary for an urban development.

However, Section 23.103(1) of the Municipal Code allows the City Council to waive or modify the requirements of the subdivision regulations where “...*strict compliance with the requirements of the regulations would result in extraordinary hardship to the Applicant or would prove inconsistent with the purpose of the Regulations because of unusual topography or other conditions...provided, however, that such modification or waiver shall not have the effect of nullifying the intent and purpose of the Regulations.... In so granting a modification or waiver, the City Council may impose such additional conditions as are necessary to secure substantially the modifications of the requirements so modified or waived.*” In addition, Chapter 354.9(2) of the *Code of Iowa* allows cities to “...*waive the requirements of any of its standards or conditions....*”

Due to time constraints, the applicant is proposing to develop the property under the approval of a Minor Site Development Plan as one single lot with two conforming buildings with shared parking (the existing building plus the addition of the new Burger King site). Once the property is developed with the new building, and if approved by the Council, the applicant would then file the proposed Minor Subdivision to split the two lots as show on the attached subdivision plan.

Staff would suggest, if Council agrees to the waiver request, that the approval be conditioned with a time frame of 12 months to file the application for the Minor Final Plat for the subdivision of the lot. If the Council does not agree to the request for the waivers, the subdivision would need to be processed as a Major Subdivision, which would include the installation of the sidewalk and sanitary sewer extension.

Sidewalks

The subdivision regulations in Section 23.403(14)(a) require that sidewalks be installed on both sides of the street in commercially zoned areas. This request for waiver involves the required construction of approximately 300 feet of sidewalk along East 13th Street. The owner states that the reason for the requested waiver is because the sidewalk would “not connect to anything as there are no existing sidewalks on the adjoining parcels.”

Deferment: The deferment section of the sidewalk requirements in Section 23.403 (14)(a)(i) was added to Municipal Code in May 2004. It allows Council to postpone the construction under one of two criteria: (1) premature installation or (2) unusual topography. **In the case of deferment, the Council does not waive, but postpones the installation of the sidewalk through the use of financial security which requires approval by City Council in order to record the Minor Subdivision Final Plat.**

Under Section 23.403 (14)(a)(i), A deferment for the installation of sidewalks may be granted by the City Council when topographic conditions exist that make the sidewalk installation difficult or when the installation of the sidewalk is premature. Where the installation of a sidewalk is deferred by the City Council, an agreement will be executed between the property owner/developer and the City that ensures the future installation of the sidewalk. The deferment agreement will be accompanied by a cash escrow, letter of credit, or other form of acceptable financial security to cover the cost of the installation of the sidewalk.

The subject property (1.23 acres) is zoned "HOC", Highway Oriented Commercial as well as the properties to the west fronting on the north side of East 13th Street. The properties across East 13th Street are zoned General Industrial and Agricultural, which under the subdivision ordinance would require sidewalk along one side of the street. All the properties in the area would be subject to the same sidewalk requirements; however, no sidewalks have been installed along East 13th in this area. The closest sidewalk on the north side of East 13th Street is the shared use trail west at Dayton Avenue, where the trail then turns south and reduces to a sidewalk width along the west side of Dayton Avenue. The shared use path then crosses on the south side of East 13th Street and runs south along the east side of Dayton Avenue. The only other sidewalk in the area is on the north side of the developments that extend between East 13th Street and Philadelphia Street, west of Dayton Avenue. The nearest signaled pedestrian crossing point from the north side to the south side of East 13th Street is at Dayton Avenue. In the Major Site Development Plan approved previously for the commercial property east of the I-35 Interchange, the shared use path would have been extended east from the interchange along the south side of East 13th Street.

Sanitary Sewer

The subdivision regulations in Section 23.405 require that sanitary sewers be installed including all necessary or desirable appurtenances to provide for discharge of sanitary sewage at the cost of the applicant and subject to City specifications. Under this requirement, sanitary sewer would be extended to the full width of the frontage of the newly created lots for access by all lots within the subdivision. This would also allow for reasonable connection for any future development to the east.

The applicant states that the existing building sewer system outlets to a manhole just west of the subject property and the new lot could also connect at that location without the need for an extension of the public sewer main. The applicant also notes that the location of the lot abutting the I-35 ramp would make the extension of the sewer main beyond the subject property unlikely. (See Attachment 4 for Current Utilities Map)

In looking at possible future development on the east side of the I-35 interchange, it is very unlikely that the existing 8" main could functionally serve that area. Under the development agreement negotiated several years ago, the mall developer would have extended a significantly larger main from Dayton Avenue eastward on E. 13th Street and under the Interstate to serve the larger regional commercial area.

Attachment 1
Applicant Letter

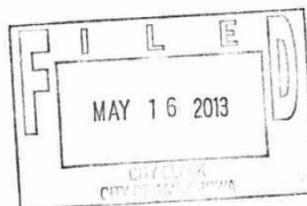


Pets. 5-17-13

Facebook, MI
Storm Lake, IA
Algona, IA
Viroqua, WI
La Porte, WI

APPLICANTS - PLANNERS - ENGINEERS - SURVEYORS - SCIENTISTS

May 15, 2013



Mayor and City Council
City of Ames
PO Box 811
Ames, IA

Honorable Mayor and Council members,

I am a Land Surveyor with I&S Group in Storm Lake, Iowa. We are working with an individual planning to develop a parcel in Ames for a new Burger King Restaurant at 2825 E. 13th St. The legal description of the parcel is: Lot one (1), Production Credit Association Subdivision to the City of Ames, Story County, Iowa. The Lot is currently in one ownership under the name of Turn Key Investments, LLC. The owner's plans would require a new interior lot division which would be described as: The West one hundred seventy-two feet (W. 172') of Lot one (1), Production Credit Association Subdivision to the City of Ames, Story County, Iowa.

Attached are four exhibits labeled A-D. "A" is the original subdivision plat which created Lot One. "B" shows the existing improvements. "C" shows the proposed new division line. "D" is a site plan which shows the relationship of the proposed improvements to the existing.

The city of Ames subdivision ordinance requires that sanitary sewer main and sidewalks be extended across the full frontage of a newly created lot. We are requesting that those requirements be waived so that this division may fall under the requirements of a "minor subdivision".

The sanitary sewer to the existing office building outlets to the manhole shown on exhibit B. Sewer service for the proposed restaurant could flow to the same manhole without the need for a sewer main extension. The proximity of the parcel to the

Attachment 1 (Cont.)
Applicant Letter



Interstate ramp and I-35 make the extension of the sewer main easterly beyond the existing manhole unlikely. We therefore request that the sewer extension requirement be waived for this property.

A sidewalk across the frontage of the proposed division would not connect to anything as there are no existing sidewalks on the adjoining parcels. We therefore request that the requirement that sidewalk be constructed along the frontage of the proposed division also be waived.

We have spoken with the Public Works Director Mr. Cowles, and he is aware of what is being requested.

Please feel free to contact me with any questions or concerns that you may have. I can be reached at (712-732-7745).

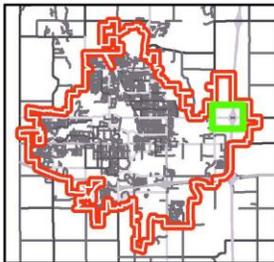
Sincerely,


I&S Group, Inc.

Enc.

cc:

Attachment 2
Location Map

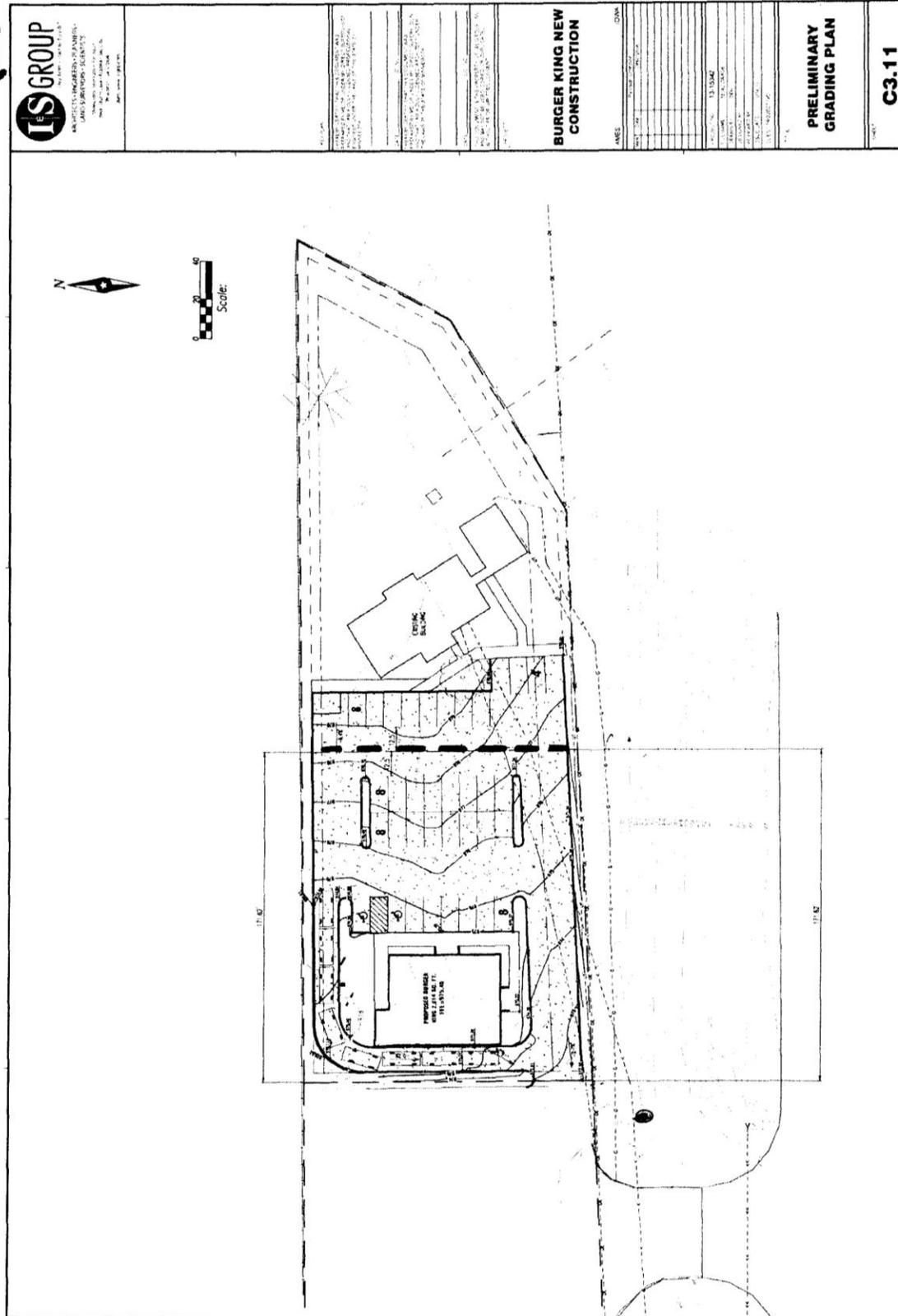


Location Map
2825 E. 13th Street

0 50 100 200 300 400 Feet



Attachment 3 Proposed Subdivision/Site Plan Map



ITS GROUP
 ARCHITECTS-ENGINEERS-PLANNERS-
 LAND SURVEYORS-SCIENTISTS
 10000 W. 10th Avenue, Suite 100
 Denver, Colorado 80202
 Phone: 303.733.1100
 Fax: 303.733.1101
 www.itsgroup.com

BURGER KING NEW CONSTRUCTION

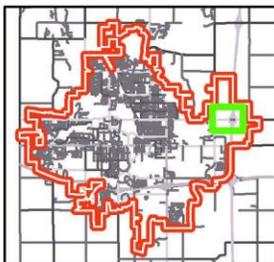
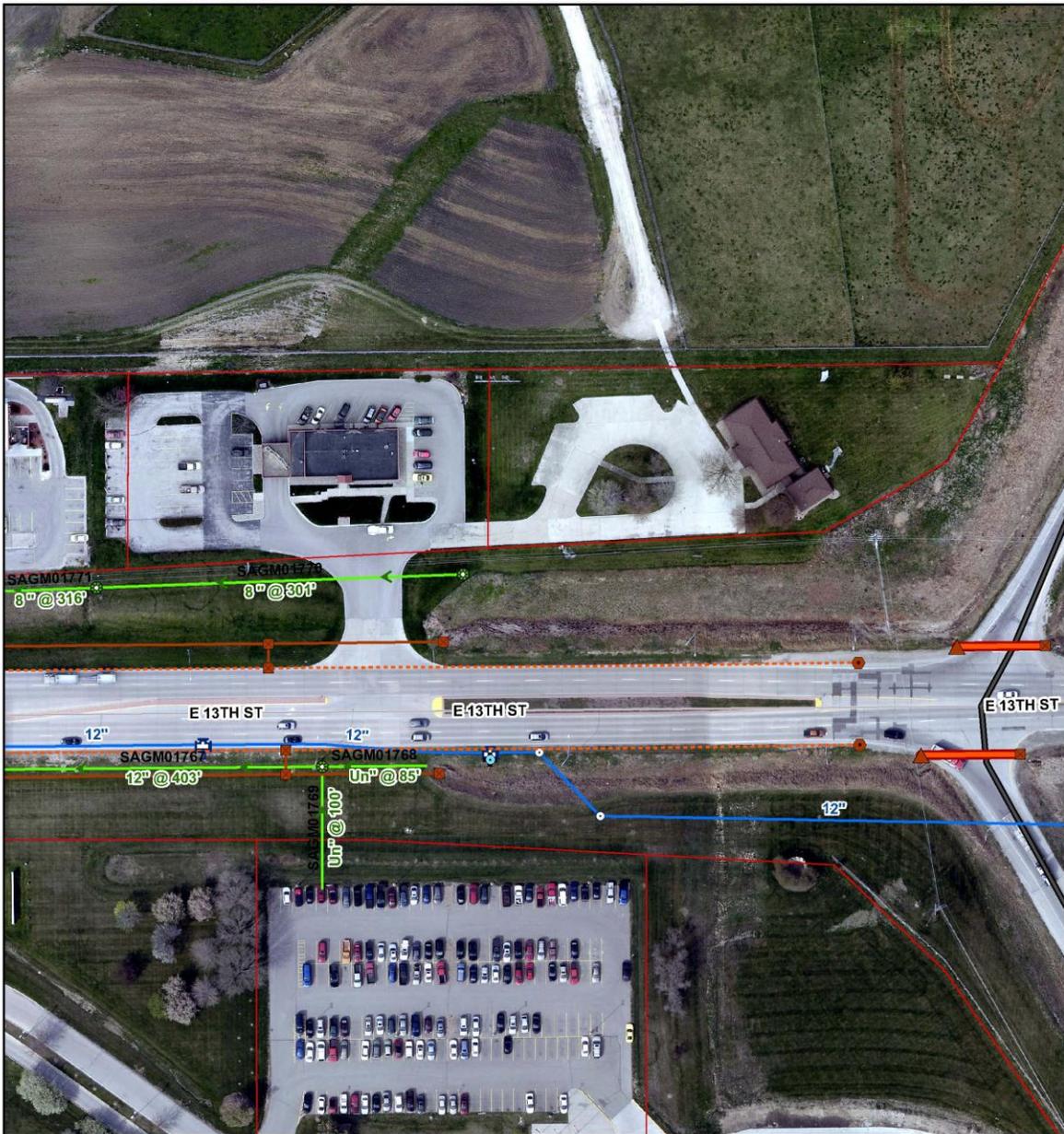
DATE: 11/11/11
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 SHEET NO: [Number]

NO.	DATE	DESCRIPTION	BY	CHKD
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2	11/11/11	REVISION	[Name]	[Name]
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10	11/11/11	REVISION	[Name]	[Name]

PRELIMINARY GRADING PLAN

C3.11

**Attachment 4
Utilities Map**



**Existing Utilities
2825 E. 13th Street**

