ITEM # 35
DATE 11-24-15

COUNCIL ACTION FORM

SUBJECT: 118/120 HAYWARD DEVELOPMENT OVER EXISTING STORM SEWER

BACKGROUND:

On September 21, 2015, Dean Jensen, owner of the parcels at 118 and 120 Hayward submitted to Planning & Housing a Sketch Plan Pre-application Conference request. The developers propose to redevelop these parcels into the Campus Plaza Subdivision. The redevelopment would create a mixed-use structure, which would have two levels of parking at the commercial level and 4 (+/-) levels of student residential apartments on the upper floors. This would be similar to the adjacent structure at 2519 Chamberlain Street. Construction is anticipated to commence in early 2016 for fall 2017 occupancy.

The existing building at 118 Hayward Avenue was constructed over the in-place 8'x7' box culvert. This culvert conveys College Creek under the site as well as beneath the buildings at 2522 and 2518 Lincoln Way. Ultimately, College Creek flows towards Lake LaVerne on the Iowa State University Campus. A map of the area is in Attachment A.

Prior to the meeting, staff consulted with City Legal Department for guidance about how to proceed with the development discussion since city staff had not located a land record of any official easement covering the existing box culvert. The Legal Department's determination is that, since no written easement document exists, the City nonetheless has an easement by prescription for this structure and has the rights typically attendant to any other utility that runs through a private site.

On October 9, 2015, staff met with the developer and the developer's engineer as part of the DRC sketch plan process. Existence of the box culvert and Legal's original determination was discussed during this meeting. Staff stated its desire to not place a new building over the existing box culvert. Options were discussed including re-routing the culvert or exploring how to provide off-site improvements to modify the amount of flow through the area which could reduce the size of the relocated pipe. **Historically, if a utility is in conflict with a development, the developer is responsible for all costs associated with relocation of the utility to a location that is not in conflict with the proposed development.**

On November 10, 2015, City Council referred a letter from Dean and Luke Jensen requesting that staff evaluate the possibility of leaving the culvert in place and building over it or relocating the culvert at the City's expense.

The official abstract was presented to the staff on November 19, 2015. Staff found that the abstract has an entry dated April 5, 1934, which references a contemplated storm

sewer by the City in this location. It is known that the building over the storm sewer was built in 1936. This information supports the conclusion that the culvert was constructed in 1935. **This abstract entry is important for another reason. It notes that the then owners of this land executed a waiver of any claims for damages now or hereafter sustained by the construction, reconstruction, perpetuation, repair, maintenance or overflow of the proposed storm sewer, and further waived any claims for damages sustained from any flood water caused by the inability of the storm sewer to receive same. This waiver was made expressly and was also made binding on their heirs and assigns.** This waiver was granted by those land owners in consideration of the benefits that were going to be derived from having it in existence. This kind of waiver exceeds the benefits and rights the City presently receives when it is granted a storm sewer easement.

Redevelopment of this site would still require the developer to meet all of the Post Construction Stormwater Management Ordinance requirements set forth in Municipal Code Section 5B, along with other DRC-related requirements.

ALTERNATIVES:

1) Leave the culvert in place pursuant to the existing prescriptive easement and liability waivers contained in the abstract

Staff has concerns about the structural integrity of the existing box culvert to withstand the impacts of the construction process as well as impacts of a building load over the structure. This information has been confirmed with a structural engineer familiar with the existing condition of the box culvert. The long term impact of having an active storm water structure located under a newly constructed building severely inhibits the ability to repair or maintain the majority of the existing box culvert from the outside. Some structural repairs can be made from within the box culvert.

If this option is preferred by the City Council, an existing conditions assessment of the existing box culvert should be performed, in-situ condition of the existing box culvert for load/vibration impacts must be monitored during construction, and a post-construction assessment of the existing box culvert must be completed, all at the developer's expense. Finally, the developer must certify that no additional load will be placed on the existing box culvert.

It should be emphasized that this alternative places the most significant risk on the developer because of the liability waiver contained the abstract.

2) Leave the culvert in place and allow the developer to perform an analysis to determine if an upstream flow reduction project would allow for the abandonment of the box culvert

This option would include the same requirements of the developer as noted in Alternative #1 with the additional provision that the developer can pay for an optional

study to determine if it is possible to abandon the existing box culvert through the addition of up stream flow reduction projects. If a viable solution is identified up stream within the College Creek Watershed, the City Council could then determine 1) whether or not to proceed with such a project and 2) whether to pay for the total cost of the project through the Storm Water Utility revenues or assess the cost to the benefitted property owners. A map of the College Creek Watershed is shown on Attachment B.

3) Relocate culvert (around this building only) at Developer's expense

This option removes the box culvert from being impacted by the footprint of the proposed structure. This would provide the opportunity to maintain the box culvert from outside the structure. Furthermore, this alternative would be consistent with past precedent of the relocation of utilities in conflict with a development being relocated at the developer's expense. This position is supported by the abstract language. A potential relocation alignment is shown in Attachment C.

It should be noted that this alternative is not a long term solution as it does not address the remaining portion of the box culvert that exists under buildings at 2522 and 2518 Lincoln Way as well as the undeveloped property at 110 Hayward.

4) Relocate culvert (around this building only) at City's expense

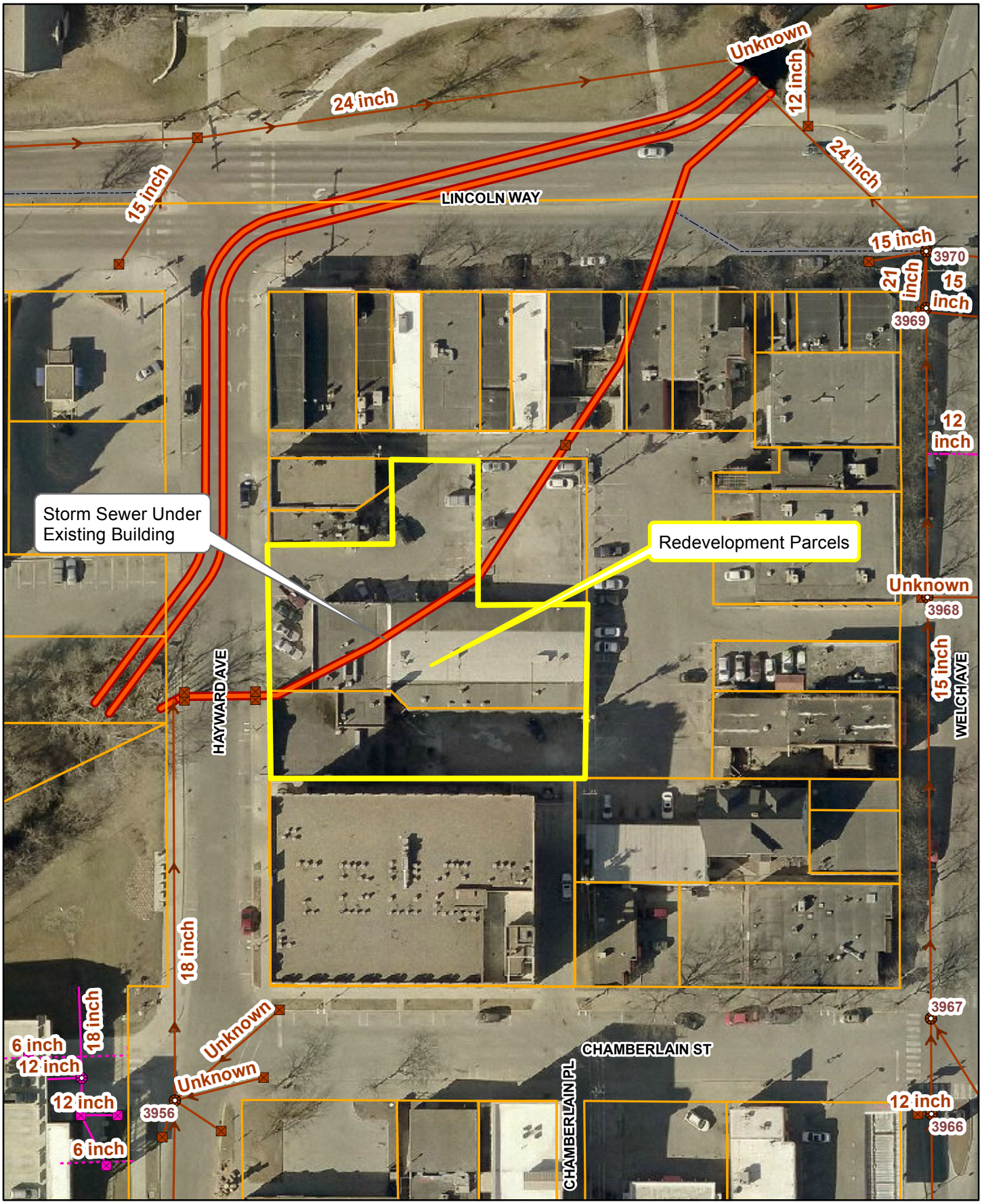
In this option the box culvert would no longer be impacted by the footprint of the proposed structure. This would provide the opportunity to maintain the box culvert from outside the structure. However, the ability for the City to bear the cost of the relocation is in question as this is not currently programmed in the Capital Improvements Plan and funding would need to be determined**. It should also be noted that, as stated above, historically the relocation of utilities in conflict with a development are relocated at the developer's expense.** A potential relocation alignment is shown in Attachment C.

It should be noted that this alternative is not a long term solution as it does not address the remaining portion of the box culvert that exists under buildings at 2522 and 2518 Lincoln Way as well as the undeveloped property at 110 Hayward.

MANAGER'S RECOMMENDED ACTION:

Assuming that that the City Council would prefer to facilitate further redevelop of Campustown, retain the City's current rights and protection as it relates to the existing box culvert, and allow the developer to mitigate their risk associated with building over the City's storm sewer, it is the recommendation of the City Manager that the City Council approve Alternative #2. It is suggested that all of the recommended requirements of the developer mentioned above be incorporated into a developer agreement at the time the site plan is approved for the project.

Attachment A



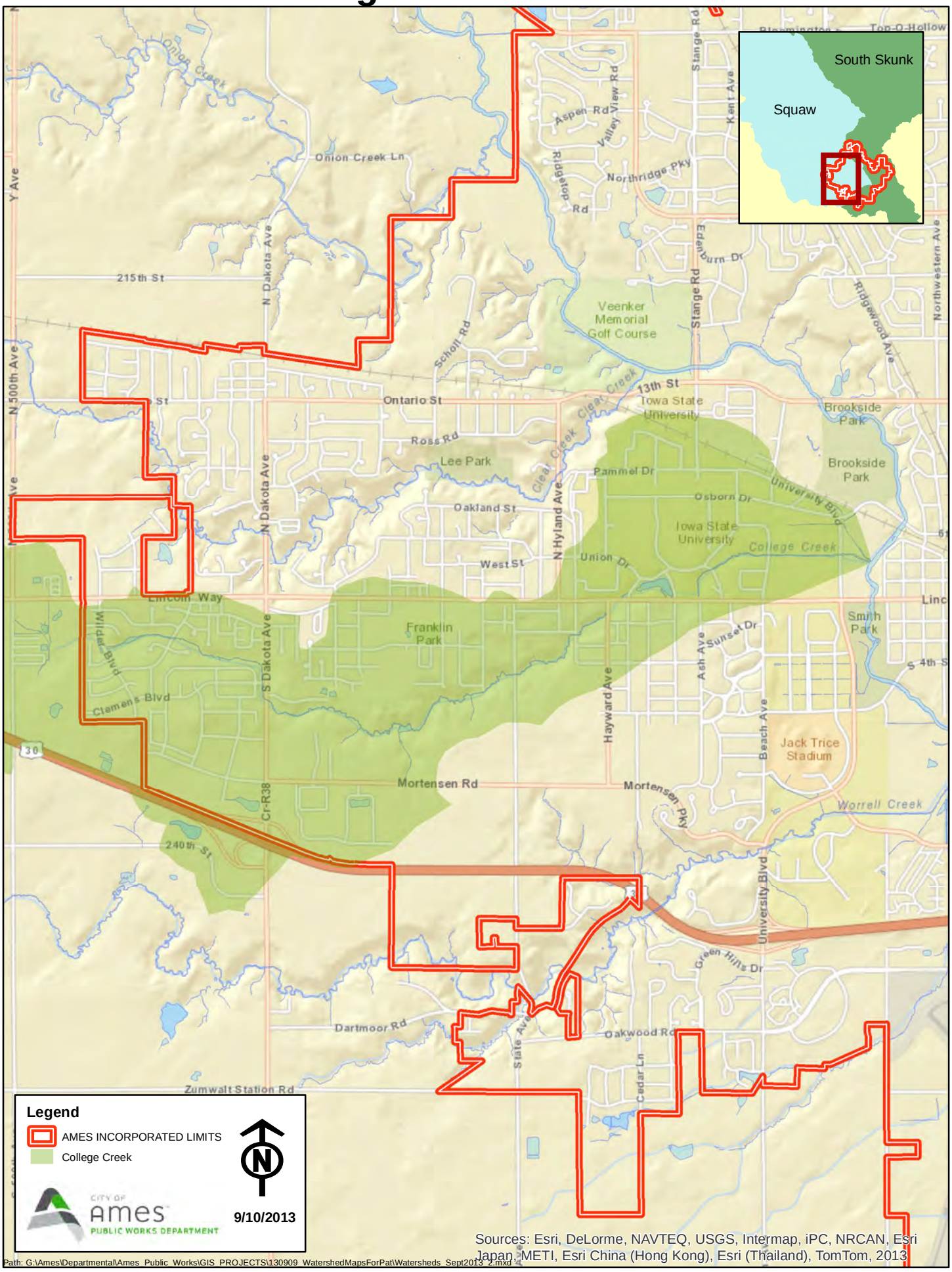
118/120 Hayward
Development Over Existing Storm Sewer

NORTH

Scale: 1 in = 75 ft
Date: 11/18/2015

College Creek Watershed

Attachment B



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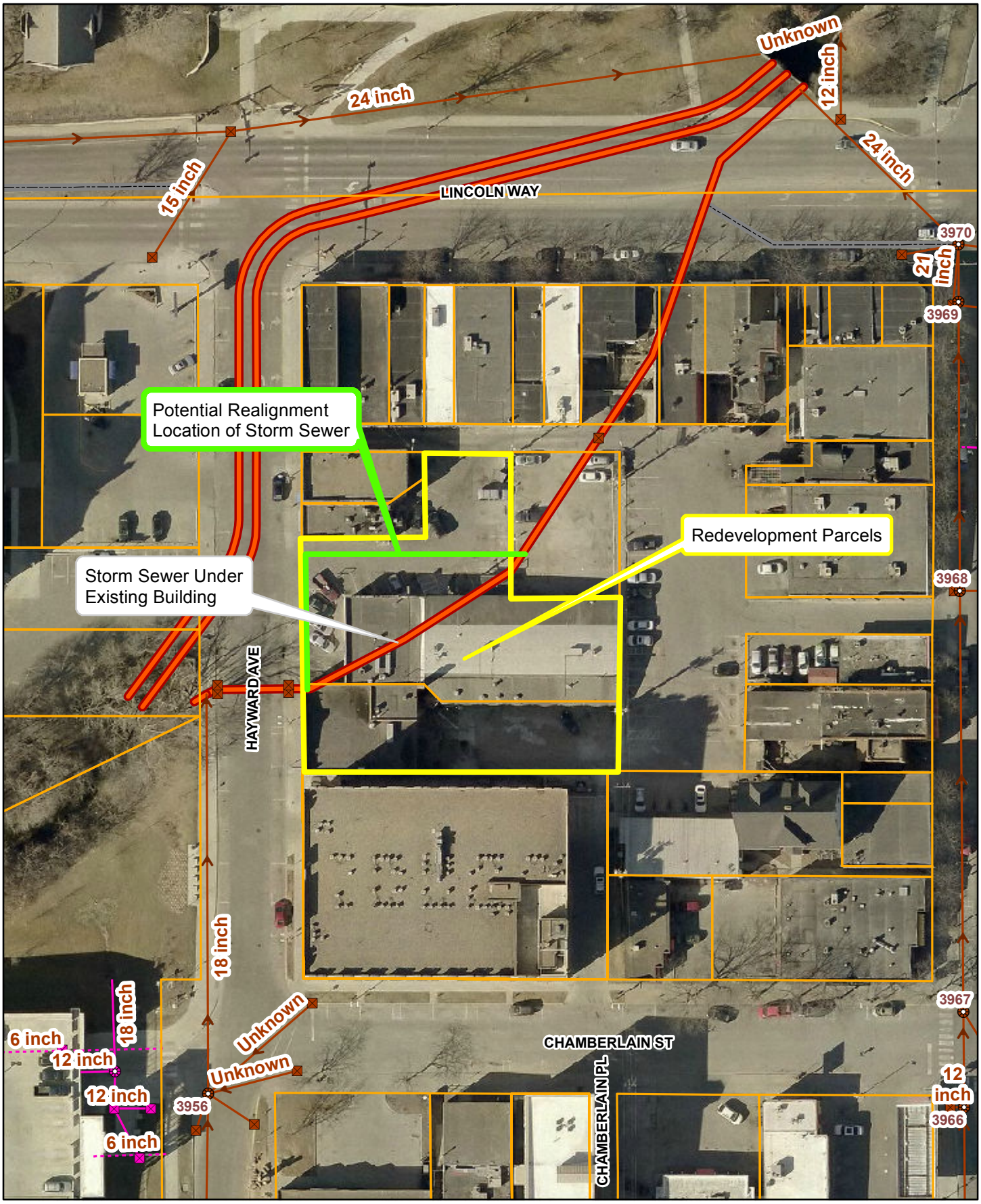
Attachment C



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