

Staff Report

**REQUEST FOR ACCESS EASEMENT
THROUGH THE CITY'S WELCH PARKING LOT (LOT X)
TO FACILITATE REDEVELOPMENT AT 122 HAYWARD**

April 26, 2016

BACKGROUND:

Dean Jensen is the owner and developer of two properties proposed to be merged for redevelopment into a new mixed-use student housing development at 122 Hayward Avenue. The project would include 45 apartments totaling 145 bedrooms with approximately 3,300 square feet of commercial space on the ground floor.

On November 24, 2015, City Council considered the effects of an existing storm sewer that ran underneath a portion of the site and the developer's desire to obtain an indication from the City whether or not he would be allowed to build over the sewer. Given the existence of satisfactory language reflected in the current abstract that waived any claims against the City for damages sustained by property owner from the construction or maintenance of the storm sewer, the Council indicated its willingness to allow for the developer to build on the property, including over the storm sewer.

The developer then proceeded to create plans for the new project and applied for a Minor Site Development Plan on January 29, 2016. The proposed plans are predicated on receiving vehicular access to private structured parking across the City's property (commonly identified as the Welch Parking Lot X) located to the north and east of the site. (See Attachment A, Location Map.) **Staff noted, during the review of the project that, as currently designed, the property owner would need to secure an easement to have perpetual access for the proposed project across the City property.**

Subsequent to staff's discussion about access needs, on March 26, 2016 the City Council finalized its goals/objectives for the next two years. One of the objectives under the goal of Strengthening Downtown and Campustown is to, "Explore public/private improvements (e.g. entertainment, parking, housing, amenities) for public/private space in Campustown and Downtown." The first task under this objective is to, "Work with CAA, business, and property owners to help determine what type of use can be made of the interior parking lot between Welch Avenue and Hayward Avenue." The dimensions and layout of this .42 acre parcel are shown on Attachment B.

Based upon City Council's direction to investigate use of the Parking Lot X area for a variety of purposes, it appears there is a conflict with granting a perpetual

easement to the 122 Hayward project at this time, since it could diminish the opportunities for the use of the area in the future.

Attachment C depicts a potential easement alignment to provide access to 122 Hayward at two points that fit the design of the project. The access from Welch would accommodate two way traffic, while the route to Hayward is only 16 feet in width and provides for one way traffic exiting onto Hayward.

OPTIONS:

Option 1- Provide An Easement

Staff could investigate a means of providing for an easement as requested by the developer within either a defined area or broadly in a manner that gives the City the ability to alter the path of travel in the future, but guarantees access to the property. Staff would return with a formal easement document for Council's approval within the next month.

This option would give the developer assurance of access to the site as requested, after which he would continue with development of the 122 Hayward site. However, this option would reduce the range of options that would be desirable and feasible for either use of the space as currently configured or for redevelopment of the space in conjunction with other properties in the future.

Option 2 Decline The Granting Of An Easement And Initiate Study Of Area

With this option the City Council would not guarantee a perpetual easement to the developer of 122 Hayward at this time. City Council would wait for staff to complete the task identified for their Objective before deciding how to proceed with granting of a perpetual easement.

Under this option, the developer would be delayed in initiating his project and miss the construction cycle for occupancy in 2017. The developer could consider a redesign of the project and utilize access from Hayward to provide required parking. However, the redesign of the project would prove costly to the developer and likely delay the construction of the project.

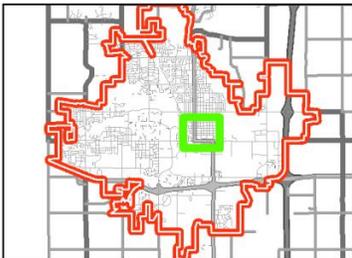
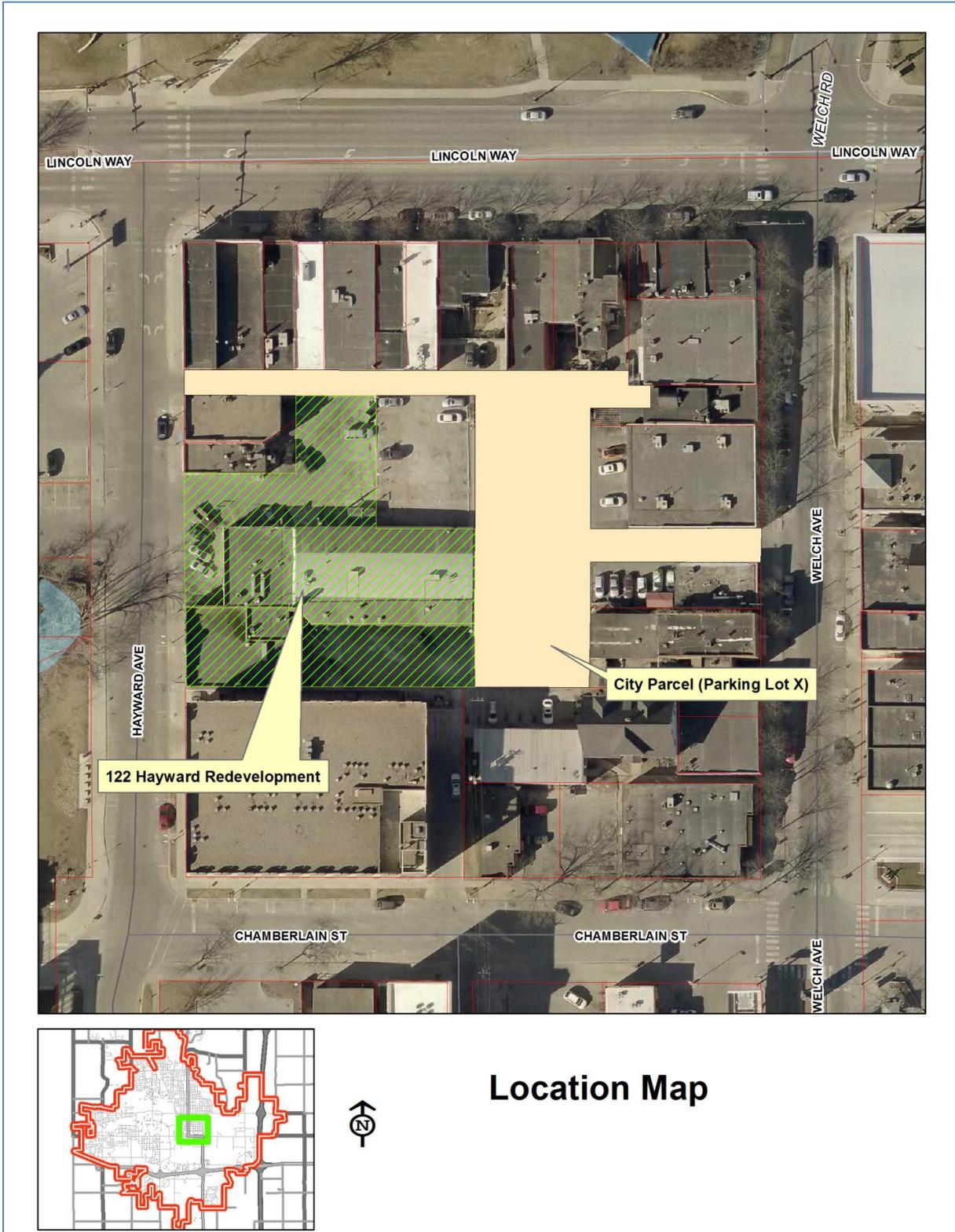
STAFF COMMENTS:

The developer initiated the project design for 122 Hayward relying upon access through the City's parcel, believing that by not taking access from Hayward he was supporting a walkable environment along Hayward and that Parking Lot X was publicly available for access. The existing properties currently use Lot X for access to the side and rear of the site along with a driveway to Hayward.

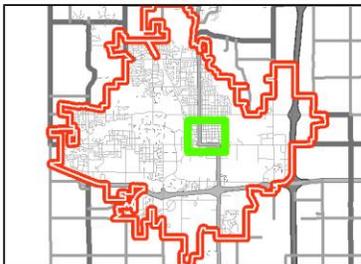
After consulting with the City Attorney, the current use of the site does not grant a permanent right for access through the city property. It is unlikely that the developer has "prescriptive rights" because of the ability of the property owner to access public streets due to the site's frontage along Hayward.

Given the Council's Goal/Objective regarding the future use of Parking Lot X, the staff is hesitant to approve the Minor Site Development Plan that is currently being proposed by the developer. As proposed, the granting of a perpetual easement in the Welch Parking Lot could diminish the opportunities for the use of the area in the future as envisioned by the Council. **Therefore, both the developer and staff are seeking Council guidance regarding this apparent conflict.**

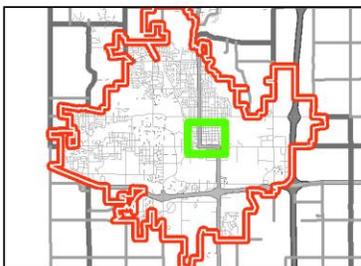
Attachment A Location Map



Location Map



City Parcel Dimensions



Hayward Proposed Access Points and Access Easement Request

