

**STAFF REPORT**

**CASE NUMBER:** VAC2021-00018 - City Vacation of a portion of a platted 70-foot street side yard setback

**APPLICANTS:** 21<sup>st</sup> Street Custard, LLC, c/o Doug Malone (applicants/owners) Baughman PA, c/o Russ Ewy (agent)

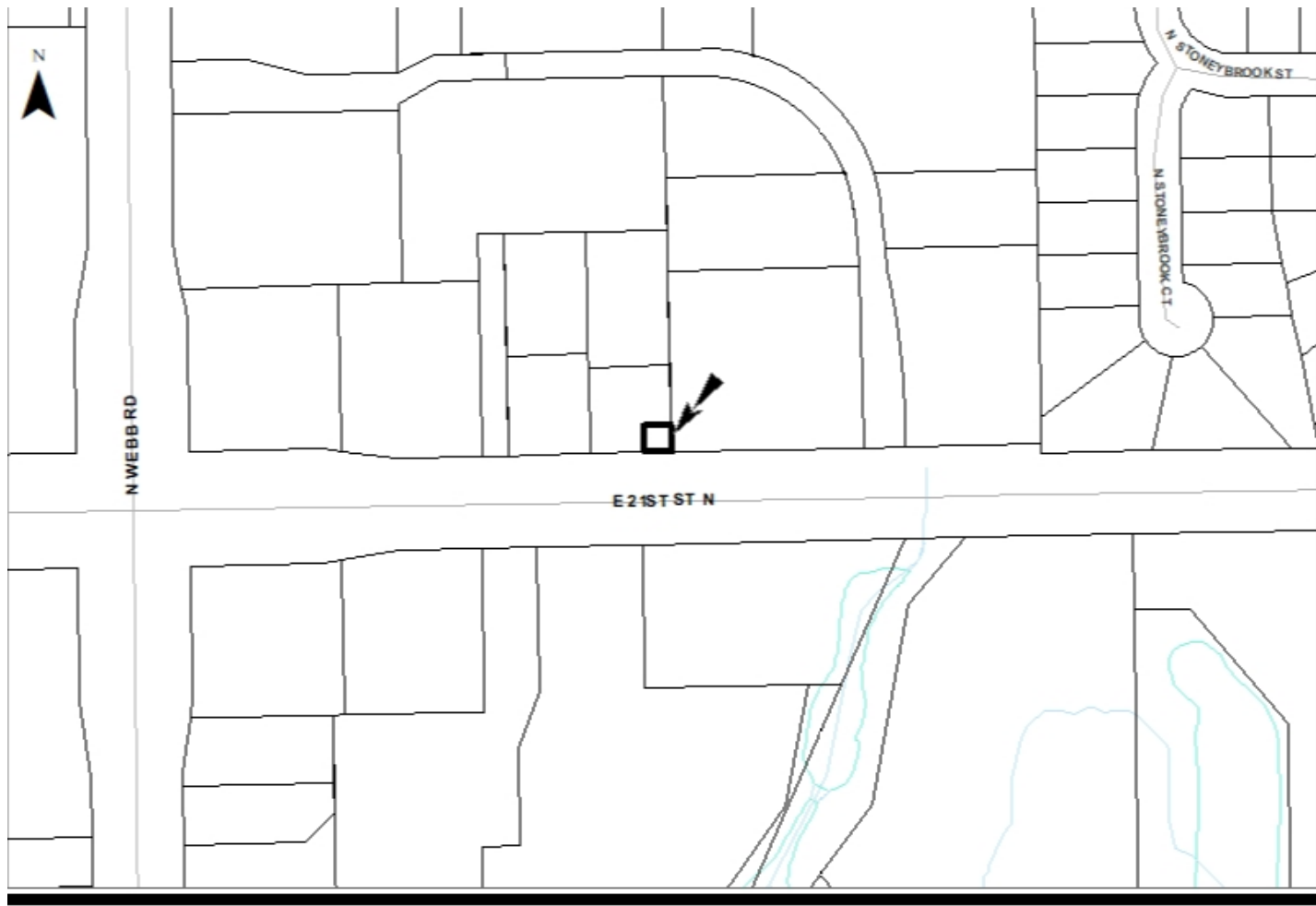
**LEGAL DESCRIPTION:** Generally described as vacating a 38.08-foot wide portion of the north 35 feet of the platted 70-foot street side yard setback located on a south portion Lot 4, Block 1, Tallgrass East Commercial Addition, Wichita, Sedgwick County; see attached legal description.

**LOCATION:** Generally located 380 feet east of North Webb Road on the north side East 21<sup>st</sup> Street North (9750 East 21<sup>st</sup> Street North, WCC II)

**REASON FOR REQUEST:** To facilitate building on the undeveloped site

**CURRENT ZONING:** LC Limited Commercial with Community Unit Plan CUP DP-168 overlay

**VICINITY MAP:**



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The applicant is requesting the vacation of a 38.08-foot wide portion of the north 35 feet of the platted 70-foot street side yard setback. The subject setback is located on the south side of Lot 4, Block 1, Tallgrass East Commercial Addition, running parallel to East 21<sup>st</sup> Street North Street. East 21<sup>st</sup> Street North is a four lane arterial road with a center turn lane and merging lanes at this location/intersection. The purpose of the vacation is to facilitate commercial building on the undeveloped site.

The LC Limited Commercial zoned subject site is located approximately 380 feet east of North Webb Road on the north side East 21<sup>st</sup> Street North; 9750 East 21<sup>st</sup> Street North. The subject site is part of the Community Unit Plan CUP DP-168 overlay. The plat's text of the Tallgrass East Commercial Addition states that "Building setbacks are per the requirements of the Tallgrass East Commercial Community Unit Plan DP-168." The UZC Unified Zoning Code requires a minimum 35-foot setback from all street right-of-ways and alleys for nonresidential CUPs; UZC Sec.III.C.2.(b) (2) (a) 1). The CUP setback standards exceed and override the LC zoning districts setback standards of 20 feet for a front yard setback and 10 feet for a street side yard setback; UZC Sec.III.B.14.d.(3) and (6).

The applicant's request equals the minimum 35-foot setback from all street right-of-ways and alleys for nonresidential CUPs. The subject site's 70-foot setback is unique for commercial and residential development along the North Webb Road and East 21<sup>st</sup> Street North intersection.

Evergy has no objection, but has noted that it has power lines and poles in the area of vacation area along the East 21<sup>st</sup> Street North right-of-way. LaDonna Vanderford is the Evergy contact for this case; 316-261-6490. There is a 10-foot sanitary sewer easement located in the south 10 feet of the subject setback. Water and sewer lines are located in the East 21<sup>st</sup> Street North right-of-way. Conditions #2 and #3 cover Evergy and all public and franchised utilities. There has been no objections from utilities. The Tallgrass East Commercial Addition was recorded with the Register of Deeds February 22, 1989.

Based upon information available prior to the public hearing and reserving the right to make recommendations based on subsequent comments from Public Works, Stormwater, Water and Sewer, Traffic, Fire, franchised utility representatives and other interested parties, planning staff has listed the following considerations (but not limited to) associated with the request to vacate the described portion of platted building setback.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time April 15, 2021, which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by vacating the described portion of the platted street side yard setback, and that the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner, the prayer of the petition ought to be granted.

Conditions (but not limited to) associated with the request:

- (1) Provide Planning staff with an approved legal descriptions of the vacated portion of the platted street side yard setback on a Word document, via e-mail, to be used on the Vacation Order. This must be provided to Planning prior to the case going to Council for final action.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. All improvements shall be according to City Standards and will be at the applicant's expense. Approval of plans for the relocation of any and all utilities by Public Works and/or franchised utilities must be completed prior to the case going to City Council for final action. Provide Planning with letters of approval or E-mails of approval.
- (3) Provide Planning with any required easement(s) dedicated by separate instrument(s) with original signatures for recording with the Register of Deeds. These original dedications will go with the Vacation Order to City Council for final action and filing with the Sedgwick County Register of Deeds.
- (4) Adjust CUP DP-168 to reflect the vacated portion of the subject setback, referencing the final action on VAC2021-00018.
- (5) Per MAPC Policy Statement #7, all conditions shall be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

#### **SUBDIVISION COMMITTEE'S RECOMMENDED ACTION**

The Subdivision Committee recommends approval subject to the following (but not limited to) conditions:

- (1) Provide Planning staff with an approved legal descriptions of the vacated portion of the platted street side yard setback on a Word document, via e-mail, to be used on the Vacation Order. This must be provided to Planning prior to the case going to Council for final action.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. All improvements shall be according to City Standards and will be at the applicant's expense. Approval of plans for the relocation of any and all utilities by Public Works and/or franchised utilities must be completed prior to the case going to City Council for final action. Provide Planning with letters of approval or E-mails of approval.
- (3) Provide Planning with any required easement(s) dedicated by separate instrument(s) with original signatures for recording with the Register of Deeds. These original dedications will go with the Vacation Order to City Council for final action and filing with the Sedgwick County Register of Deeds.
- (4) Adjust CUP DP-168 to reflect the vacated portion of the subject setback, referencing the final action on VAC2021-00018.

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- (5) Per MAPC Policy Statement #7, all conditions shall be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

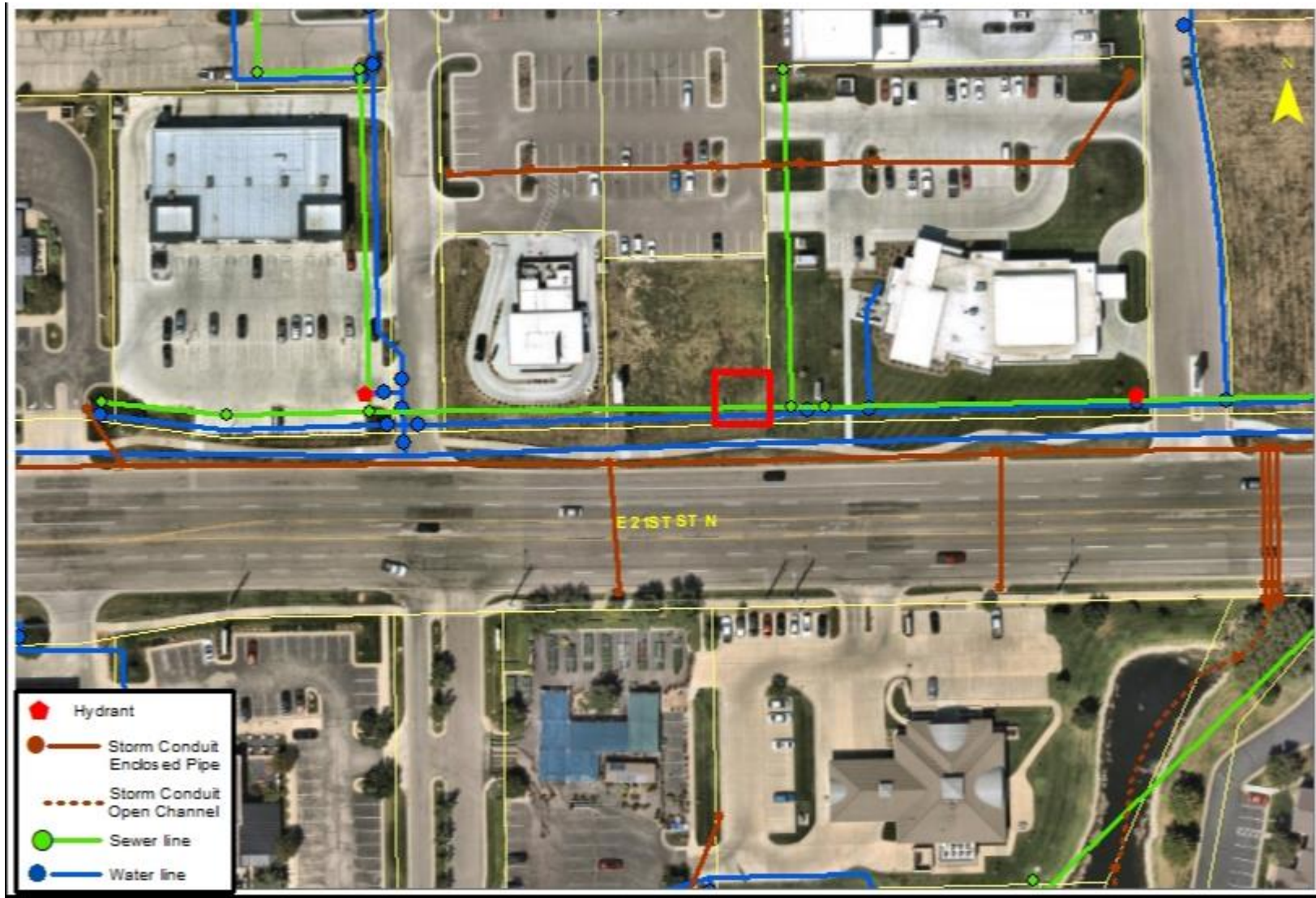
Attachments:

1. Water, storm water, sewer
2. Site Plan
3. Legal description

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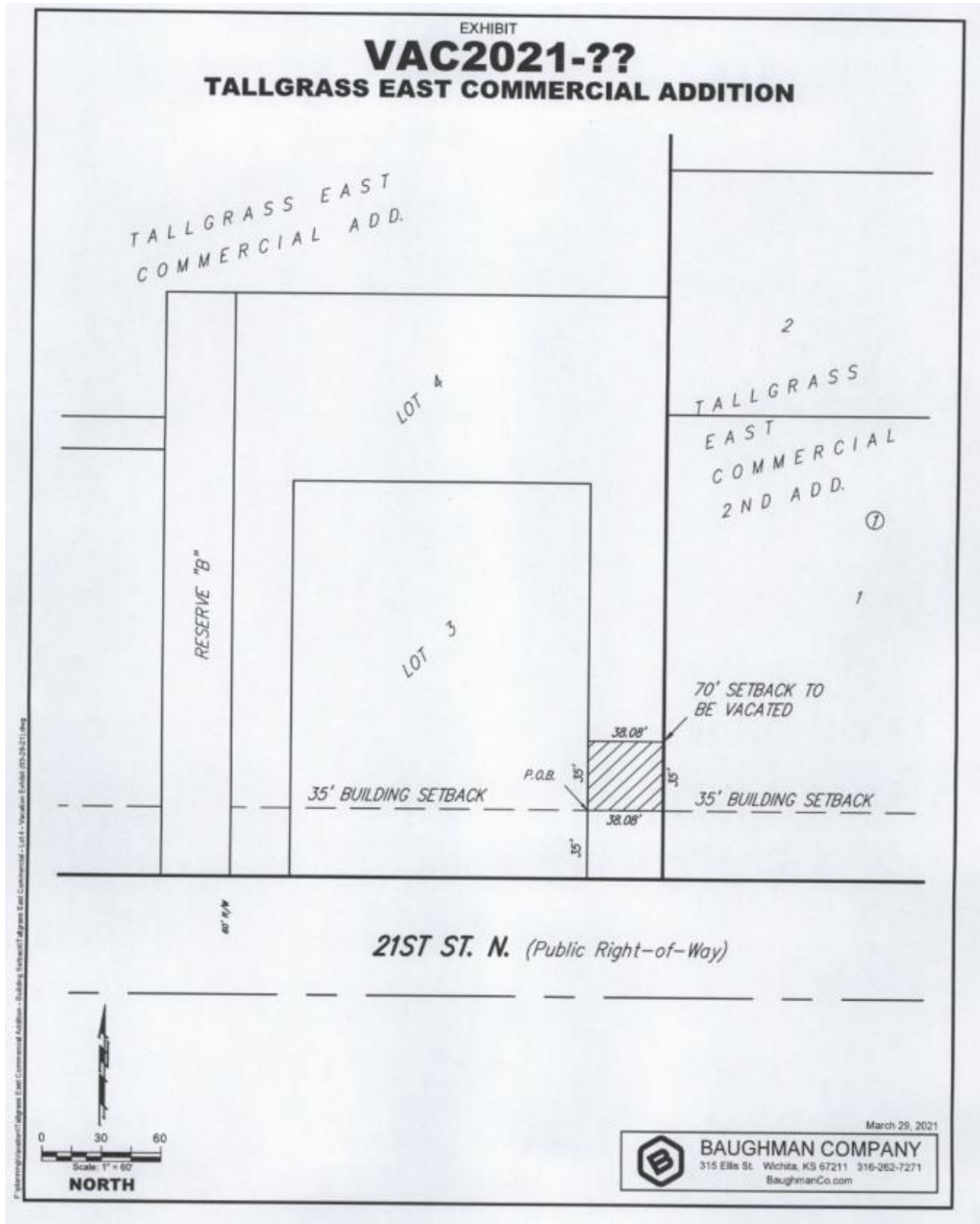
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### **LEGAL DESCRIPTION**

#### **BUILDING SETBACK VACATION:**

That part of Lot 4, Block 1, Tallgrass East Commercial Addition to Wichita, Sedgwick County, Kansas, described as commencing at the southeast corner of Lot 3 in said Tallgrass East Commercial Addition; thence N01°10'25"W along the east line of said Lot 3, 35.00 feet for a point of beginning; thence continuing N01°10'25"W along the east line of said Lot 3, 35.00 feet; thence N88°49'35"E, parallel with the south line of said Lot 4, 38.08 feet, more or less, to a point on the west line of Lot 1, Block 1, Tallgrass East Commercial 2<sup>nd</sup> Addition, Wichita, Sedgwick County, Kansas, said point being 70.00 feet north of the southwest corner of said Lot 1; thence S01°10'25"E along the west line of said Lot 1, 35.00 feet; thence S88°49'35"W, parallel with the south line of said Lot 4, 38.08 feet, more or less, to the point of beginning.