

City of Las Cruces⁴
PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 3

Ordinance/Resolution# 12-158

For Meeting of _____
 (Ordinance First Reading Date)

For Meeting of March 19, 2012
 (Adoption Date)

Please check box that applies to this item:

QUASI JUDICIAL

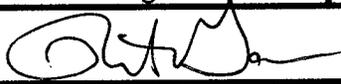
LEGISLATIVE

ADMINISTRATIVE

TITLE: A RESOLUTION APPROVING THE VACATION OF A 0.0165-ACRE PORTION OF REMNANT RIGHT-OF-WAY KNOWN AS MADERO AVENUE, AND TRANSFERRING OWNERSHIP OF THE REMNANT RIGHT-OF-WAY TO FRED J. AND CHARLENE HESS AS TRUSTEES OF THE FRED J. HESS AND CHARLENE HESS AMENDED AND RESTATED LIVING TRUST AGREEMENT, AS ADJACENT PROPERTY OWNER.

PURPOSE(S) OF ACTION:

Vacation of right-of-way.

COUNCIL DISTRICT: 1		
<u>Drafter/Staff Contact:</u> Bill R. Hamm	<u>Department/Section:</u> Public Works / Land Management	<u>Phone:</u> 528-3410
<u>City Manager Signature:</u>		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces (City) occasionally receives requests to right-of-way dedicated to the City which no longer serve their intended purpose. The City absorbs a cost to maintain these parcels that have no real benefit to the general public.

On July 7, 2011, Genesis Builders, Inc., as representative of Fred J. Hess and Charlene Hess Amended and Restated Living Trust Agreement ("Hess"), the property owner of subject property located at the southwest corner of Second Street and Madero Avenue, submitted an application (Attachment "B") requesting the vacation of a 0.0165-acre parcel of remnant right-of-way adjacent and parallel to the north and east boundaries of their property, as shown on Attachment "C". Both of these streets were dedicated by Palmer's Subdivision, filed on February 7, 1912, in plat book 4, page 44 of the Doña Ana County records, as depicted on Attachment "A".

Madero Avenue is currently fully built out at this location with curb, gutter, and sidewalk; and as such, the excess right-of-way serves no further public purpose and creates a maintenance liability for the City. Hess, is currently in the process of redeveloping the adjoining property and

desires to utilize the remnant right-of-way parcel by incorporating it into their adjoining property as part of the proposed development.

Requests to recommend approval or denial of the right-of-way were sent to the City departments and utility companies. Recommendations of approval were received from all departments and utility companies responding to the request. Upon further review by City staff, the City has no foreseeable use or need for the property. As such, the only feasible use of the property is for incorporation into the adjoining property owned by Hess.

To address concerns from City staff of the remote possibility that the City may need a portion of the property in the future to further expand Madero Avenue; Hess, has agreed to take title to the property subject to a reversionary clause. Should the City ever need the property for transportation-related purposes, such as future expansion Madero Avenue, or a bus shelter, all or part of the property would revert back to the City, at no cost to the City. This condition is incorporated as part of the quitclaim deed to Fred J. Hess and Charlene Hess Amended and Restated Living Trust Agreement, as a legally binding condition.

Vacating the parcel of remnant right-of-way would free the City of liability, ownership, and maintenance obligations and the property would be put into private productive use and placed on the tax rolls.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Statement of Vacation.
3. Exhibit "B", Quitclaim Deed.
4. Attachment "A", Palmer's Subdivision Plat.
5. Attachment "B", Request to Vacate.
6. Attachment "C", Vicinity Map.

SOURCE OF FUNDING:

Is this action already budgeted? N/A	Yes	<input type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from: _____
		<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
		<input type="checkbox"/>	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue?	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: _____ in the amount of \$ _____ for FY _____
	No	<input checked="" type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the vacation of remnant right-of-way known as Madero Avenue, being parallel and adjacent to Lots 3-5 of Block 11 in Palmer's Subdivision, and will allow Fred J. Hess and Charlene Hess Amended and Restated Living Trust Agreement, to accept ownership and maintenance of the subject area.
2. Vote "No"; this will reject the vacation of remnant right-of-way known as Madero Avenue, being parallel and adjacent to Lots 3-5 of Block 11 in Palmer's Subdivision.
3. Vote to "Amend"; and modify the vacation and instruct staff to seek alternative direction.
4. Vote to "Table"; for consideration at a later date.

REFERENCE INFORMATION:

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

1. Resolution No. 12-100

RESOLUTION NO. 12-158

A RESOLUTION APPROVING THE VACATION OF A 0.0165-ACRE PORTION OF REMNANT RIGHT-OF-WAY KNOWN AS MADERO AVENUE, AND TRANSFERRING OWNERSHIP OF THE REMNANT RIGHT-OF-WAY TO FRED J. AND CHARLENE HESS AS TRUSTEES OF THE FRED J. HESS AND CHARLENE HESS AMENDED AND RESTATED LIVING TRUST AGREEMENT, AS ADJACENT PROPERTY OWNER.

The City Council is informed that:

WHEREAS, the City of Las Cruces (City) occasionally receives requests to right-of-way, dedicated to the City which no longer serve their intended purpose. The City absorbs a cost to maintain these parcels that have no real benefit to the general public; and

WHEREAS, on July 7, 2011, Genesis Builders, Inc., as representative of Fred J. Hess and Charlene Hess Amended and Restated Living Trust Agreement ("Hess"), the property owner of subject property located at the southwest corner of Second Street and Madero Avenue, submitted an application requesting the vacation of a 0.0165-acre parcel of remnant right-of-way adjacent and parallel to the north and east boundaries of their property. Both of these streets were dedicated by Palmer's Subdivision, filed on February 7, 1912, in plat book 4, page 44 of the Doña Ana County records; and

WHEREAS, Madero Avenue is currently fully built out at this location with curb, gutter, and sidewalk; and as such, the excess right-of-way serves no further public purpose and creates a maintenance liability for the City; and

WHEREAS, upon further review by City staff; the City has no foreseeable use or need for the property. As such, the only feasible use of the property is for incorporation into the adjoining property owned by Hess; and

WHEREAS, to address concerns from City staff of the remote possibility that the

City may need all or part of the property in the future to further expand Madero Avenue, Hess, has agreed to take title to the property subject to a reversionary clause; and

WHEREAS, should the City ever need the property for transportation-related purposes, such as future expansion of Madero Avenue, or bus shelter, all or part of the property would revert back to the City, at no cost; and

WHEREAS, this condition is incorporated as part of the quitclaim deed to Hess, as a legally binding condition; and

WHEREAS, vacating the parcel of remnant right-of-way would free the City of liability, ownership, and maintenance obligations and the property would be put into private productive use and placed on the tax rolls.

NOW, THEREFORE, be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the 0.0165-acre parcel of excess right-of-way, know as Madero Avenue in the City of Las Cruces, Doña Ana County, New Mexico, is hereby vacated.

(II)

THAT the Mayor of the City of Las Cruces is hereby authorized to approve the attached Statement of Vacation and Quitclaim Deed attached hereto as Exhibit "A" and Exhibit "B".

(III)

THAT subsequent to the approval of the City Council, the duly approved Statement of Vacation shall be filed in the Office of the Clerk of Doña Ana County, New Mexico, and that the Clerk is required by Section 3-20-12, NMSA 1978, to mark the

word "vacate" across the vacated 0.0165-acre parcel, know as Madero Avenue and refer on the plat to the volume and page on which the Statement of Vacation is recorded.

(IV)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this _____ day of _____, 20__.

APPROVED:

Mayor

ATTEST:

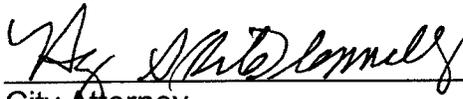
City Clerk

(SEAL)

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:



City Attorney

VOTE:

Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Smith: _____
Councillor Pedroza: _____
Councillor Small: _____
Councillor Sorg: _____
Councillor Thomas: _____

QUITCLAIM DEED

CITY OF LAS CRUCES, a New Mexico municipal corporation, for valuable consideration quitclaims to the FRED J. AND CHARLENE HESS AS TRUSTEES OF THE FRED J. HESS AND CHARLENE HESS AMENDED AND RESTATED LIVING TRUST AGREEMENT ("HESS"), whose address is 6480 Vista De Oro, Las Cruces, New Mexico, 88007, the following described real estate in Doña Ana County, New Mexico.

A 0.0165 acre tract of land situated within the corporate limits of the City of Las Cruces, Doña Ana County, New Mexico located at the southwest corner of Second Street and Madero Avenue, adjacent to Lots 3, 4, & 5, Block 11, of Palmer's Subdivision, as filed February 7, 1912 in Book 4, Page 44, of the Doña Ana County records. More particularly described on Exhibit "A", attached hereto.

This conveyance is made to grantee with the express condition and understanding that; in any event if the City of Las Cruces requires additional right-of-way for transportation related purposes, a portion, up to 0.0165 acres shall revert to the City of Las Cruces, on whose behalf this conveyance is made without compensation to Hess, its successors or assigns.

Subject to all reservations, covenants, easements and restrictions of record.

WITNESS its hand and seal this _____ day of March, 2012

Approved as to Form:

Mayor, Ken Miyagashima
City of Las Cruces

City Attorney

State of New Mexico)
)ss
County of Doña Ana)

The foregoing instrument was acknowledged before me this _____ day of March, 2012, by Ken Miyagashima, Mayor of the City of Las Cruces, a New Mexico municipal corporation.

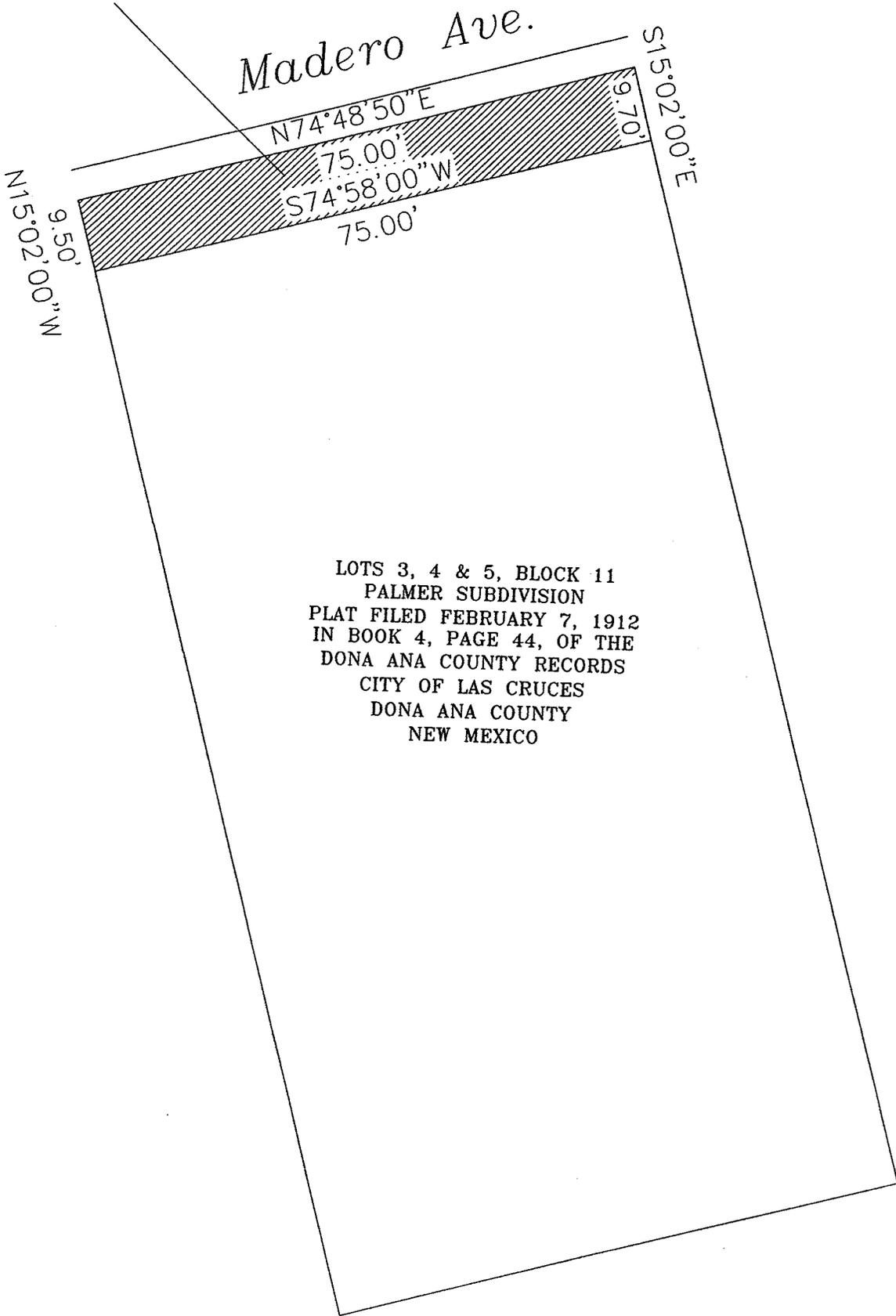
My Commission Expires: _____

Notary Public

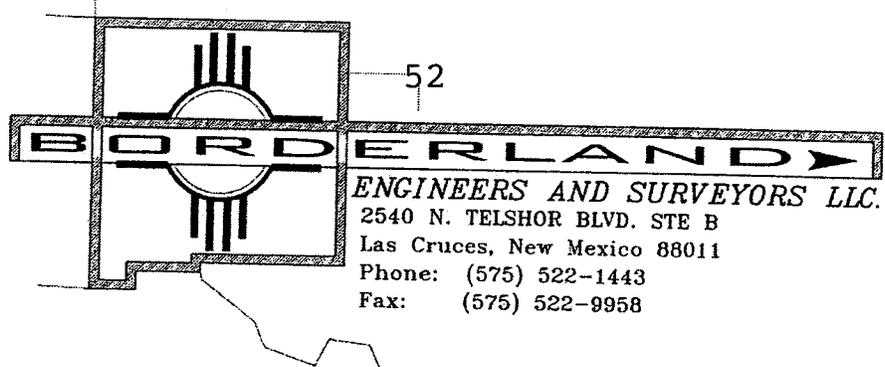
Area to edge of
parkway/
back of walk

51

0.0165 AC
(720 sq.ft.)



LOTS 3, 4 & 5, BLOCK 11
PALMER SUBDIVISION
PLAT FILED FEBRUARY 7, 1912
IN BOOK 4, PAGE 44, OF THE
DONA ANA COUNTY RECORDS
CITY OF LAS CRUCES
DONA ANA COUNTY
NEW MEXICO



DESCRIPTION OF A 0.0165 AC (720 SQ.FT.) TRACT

JANUARY 19, 2012

A TRACT OF LAND SITUATE WITHIN THE CORPORATE LIMITS OF THE CITY OF LAS CRUCES, DONA ANA COUNTY, NEW MEXICO, ENCOMPASSING THAT PORTION OF THE ROADWAY PARKWAY OF MADERO AVENUE, BEING OUTSIDE AND ADJACENT TO THE NORTH BOUNDARY OF A TRACT OF LAND BEING LOTS 3, 4 & 5, BLOCK 11 OF PALMER SUBDIVISION, PLAT FILED FEBRUARY 7, 1912 IN BOOK 4, PAGE 44, OF THE DONA ANA COUNTY RECORDS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO WIT:

BEGINNING AT A ½ INCH IRON ROD FOUND FOR THE SOUTHEAST CORNER OF THIS TRACT, BEING THE NORTHEAST CORNER OF SAID LOTS 3, 4 & 5, A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF MADERO AVENUE;

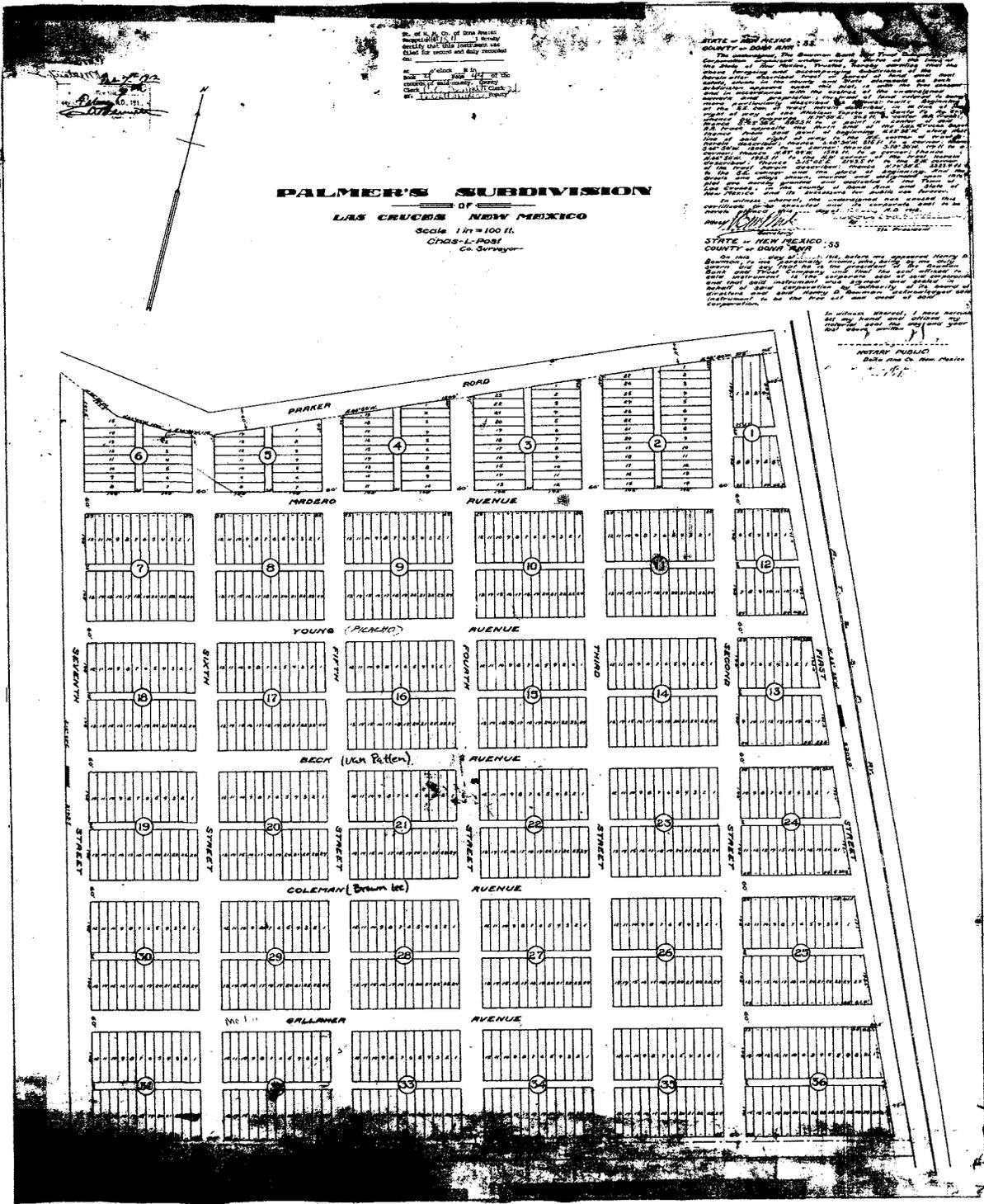
THENCE, FROM THE POINT OF BEGINNING, ALONG THE SOUTH RIGHT-OF-WAY LINE OF MADERO AVENUE, S.74°58'00"W., 75.00 FEET TO A ½ INCH IRON ROD FOUND FOR A CORNER OF THIS TRACT, BEING THE NORTHWEST CORNER OF SAID LOTS 3, 4 & 5;

THENCE, LEAVING THE SOUTH RIGHT-OF-WAY LINE OF MADERO AVENUE AND INTO THE RIGHT-OF-WAY, N.15°02'00"W., 9.50 FEET TO A POINT AT THE BACK OF THE EXISTING SIDEWALK FOR THE NORTHWEST CORNER OF THIS TRACT;

THENCE, ALONG THE BACK OF SIDEWALK, N.74°48'50"E., 75.00 FEET TO THE NORTHEAST CORNER OF THIS TRACT;

THENCE, LEAVING THE BACK OF SIDEWALK, S.15°02'00"E., 9.70 FEET TO THE POINT OF BEGINNING, ENCLOSING 0.0165 AC (720 SQ.FT.) OF LAND, MORE OR LESS. SUBJECT TO ALL EASEMENTS AND RESERVATIONS OF RECORD.

TED G. SCANLON
NMPS NO. 9433



Plat of S. A. Co. of Las Cruces, New Mexico, showing the subdivision of the land owned by said company and duly recorded in the office of the County Clerk of the County of Dona Ana, New Mexico, on the 15th day of August, 1911.

STATE OF NEW MEXICO
 COUNTY OF DONA ANA
 I, the undersigned, Notary Public for said County, do hereby certify that the foregoing is a true and correct copy of the original of the above described plat as the same appears on file in my office, and that the same has been duly recorded in the office of the County Clerk of said County, New Mexico, on the 15th day of August, 1911.

STATE OF NEW MEXICO
 COUNTY OF DONA ANA
 I, the undersigned, Notary Public for said County, do hereby certify that the foregoing is a true and correct copy of the original of the above described plat as the same appears on file in my office, and that the same has been duly recorded in the office of the County Clerk of said County, New Mexico, on the 15th day of August, 1911.

NOTARY PUBLIC
 State and Co. Not. Public



CITY OF LAS CRUCES LAND MANAGEMENT APPLICATION TO VACATE CITY STREET OR ALLEY

Please provide all information requested. Failure to complete this form will delay the vacation process.
PLEASE PRINT.

Name: Genesis Builders Inc

Address: 7711 Pyramid Peak Ct

City: Las Cruces, State: New Mexico, Zip Code: 88011

Telephone Number: (Home): _____; (Work) 575-649-0521

E-Mail Address: grandy-farmer@yahoo.com; (Fax No) 575-521-1865

Location of the requested Street or Alley to be vacated: ~~Alley between second street and third street and Maderno and Peaches Ave and right of way behind sidewalk on Second + Maderno Ave~~

Check list of items required to process the request to vacate:

- \$750.00 Non-Refundable application fee payable to the City of Las Cruces.
- Adjacent Property Owners Form.
- Clear sketch or a map of the area showing adjacent streets and properties**

Submitted to the City of Las Cruces Land Management this 7 day of July, 2011

Grandy Farmer 7/7/2011
signature date

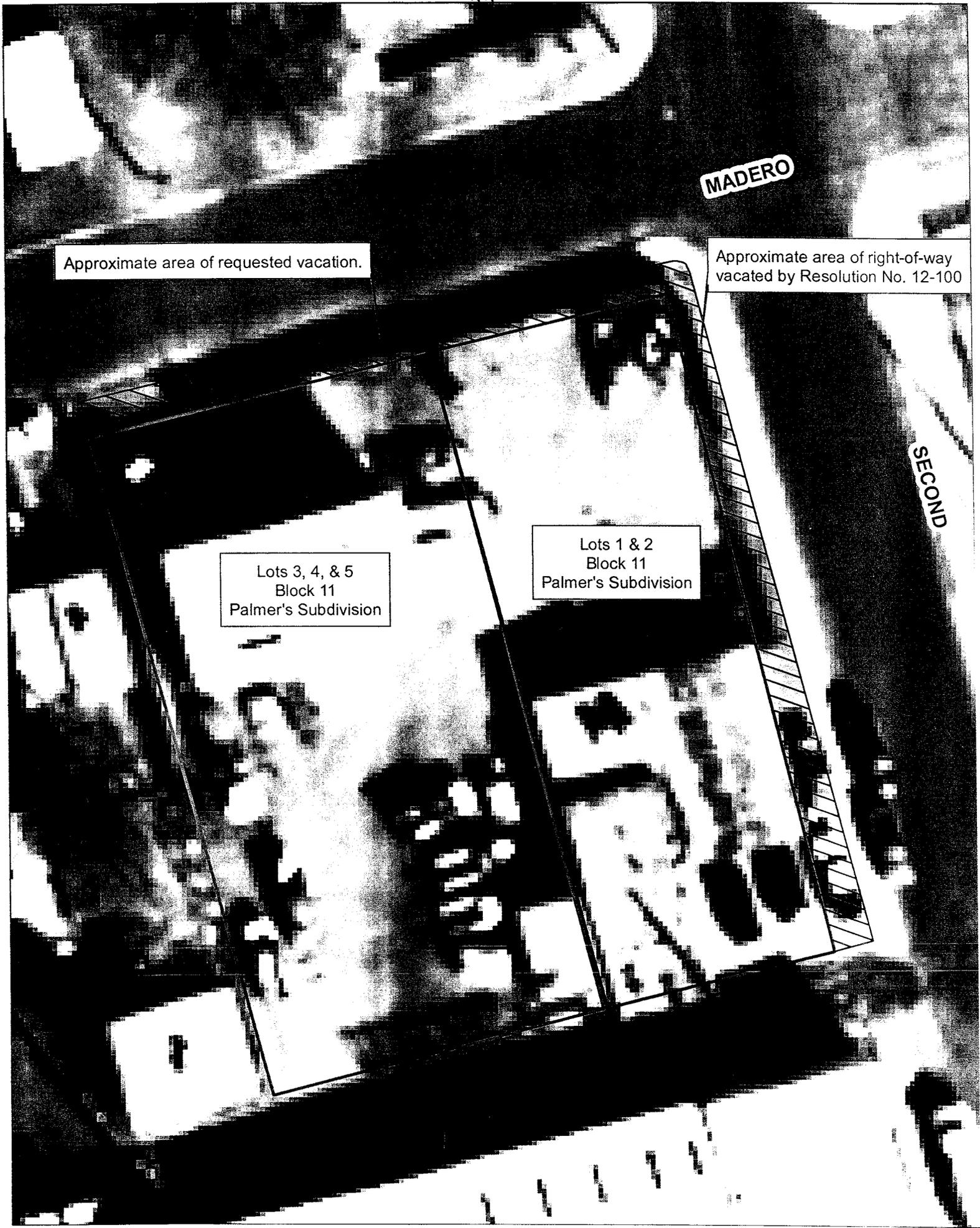
signature date

signature date

signature date

Vicinity Map

55



MADERO

Approximate area of requested vacation.

Approximate area of right-of-way vacated by Resolution No. 12-100

SECOND

Lots 3, 4, & 5
Block 11
Palmer's Subdivision

Lots 1 & 2
Block 11
Palmer's Subdivision