Council Communication

Department: Community Development CASE #SUB-22-014 Applicant/Owner OPUS Development Company, LLC 10350 Bren Road W Minnetonka, MN 55343 Surveyor: David E. Forsythe HGM Associates Inc. 640 5th Avenue Council Bluffs, Iowa 51501	Resolution No. _____	City Council: 11/14/2022

Subject/Title

Request: Final plat approval of a two-lot minor industrial subdivision to be known as River Road Subdivision, Replat 1, legally described as being a replat of Lot 1, River Road Subdivision, City of Council Bluffs, Pottawattamie County, Iowa along with a subdivision variance to allow proposed Lot 2, River Road Subdivision, Replat 1 to exceed the maximum 3:1 lot-depth-to-width ratio.

Location: Land lying north of property addressed as 2849 River Road.

Background/Discussion

The Community Development Department has received a request from OPUS Development Company, LLC, represented by Jason Conway, for final plat approval of a two-lot minor industrial subdivision to be known as River Road Subdivision, Replat 1, legally described as being a replat of Lot 1, River Road Subdivision, City of Council Bluffs, Pottawattamie County, Iowa along with a subdivision variance to allow proposed Lot 2, River Road Subdivision, Replat 1 to exceed the maximum 3:1 lot-depth-to-width ratio.

The proposed subdivision is comprised of 39.47 acres (more/less) of land and is bounded by Nebraska Avenue to the north, River Road to the west, the SIECK Levee to the east, and Warren Distribution (2849 River Road) to the south. In 2019, the City of Council Bluffs sold Lot 1, River Road Subdivision to OPUS Development Company, LLC (Resolution No. 19-220) so they could develop the property in phases with industrial warehouses. OPUS is underway with Phase 1 construction and has plans to begin Phase 2 in the near future. The purpose of this final plat is to create two separate lots of record for each new industrial warehouse building and their associated parking/loading docks. At this time, OPUS plans to develop and own both lots in the proposed subdivision; however they want the flexibility to sell one or both lots to other private entities in the future. The proposed final plat includes all existing easements that were recorded with the original River Road Subdivision final plat (CASE #SUB-19-007), as well as, new declarations for vehicle access, utilities, and stormwater management between the two proposed lots.

Land Use/Zoning

The subject property is zoned I-2/General Industrial District and consists of 398.479 acres more/less of undeveloped land (see Attachment B). Surrounding zoning includes I-2 District to the south and west, along with P-C District to the northwest. Existing land uses in the general vicinity of the request includes Warren Distribution, Heartland Co-Op, Ameristar Casino, and Interstate 29. The future land use plan of the

Bluffs Tomorrow: 2030 Plan designates the property as Light Industrial.

Comments

1. The minimum lot size in an I-2 District is 15,000 square feet, lot width is 75 feet, and lot depth is 150 feet, as per Section 15.21.050, Site development Regulations of the Municipal Code (Zoning Ordinance). Both lots exceed the minimum lot size and dimension requirements for the I-2 District; however, the lot dimensions of proposed Lot 2, River Road Subdivision, Replat 1 result in the parcel exceeding the maximum 3:1 lot depth to width ratio.

   Section 14.14.040, *Variances,* of the Council Bluffs Municipal Code (Subdivision Ordinance) states: *"where it can be shown that due to special conditions, a literal enforcement of this ordinance shall result in unnecessary hardship, the City shall have the power to vary such regulation so that substantial justice will be accomplished, provided that such variance would:*
   a. Not be in contrary to the public interest;
   b. Be in the best interest of the City;
   c. Be within the spirit and intent of this title;
   d. Not be detrimental to the future residents in and near the proposed subdivision; and
   e. Be consistent with the City's comprehensive plan."

   The Community Development Department has reviewed the applicant's subdivision variance request and recommends approval on the basis the property experiences several unnecessary hardships relative to its existing irregular geometric shape, the presence of several existing and proposed access/utility easements, and is bounded by rights-of-way and/or a levee on three of its four sides. The applicant is proposing to subdivide the property into two parcels in order to create new warehouses which increases the economic vitality of the City via tax base increase and job creation. In order to efficiently develop the property, the applicant is proposing to create a two lot subdivision and have vehicle access and utilities coordinated to run between the two parcels within designated easements. The location of said easements and the resulting limited area for placing a warehouse building on the property results in Lot 2, River Road Subdivision, Replat 1 having to be irregularly shaped and exceeding the maximum 3:1 lot depth to width ratio. The size and shape of the lot is generally consistent with the spirit and intent of the City's Subdivision Ordinance and will not be detrimental to development in and/or around the subdivision. Furthermore, the granting of the variance will allow the property to be developed with new industrial uses which is consistent with Light Industrial designation for the property, as per the Bluffs Tomorrow 2030 Plan.

2. The proposed subdivision is consistent with the Bluffs Tomorrow: 2030 Plan and the purpose and intent of the Council Bluffs Subdivision and Zoning Ordinances.

3. All construction within this subdivision shall comply with site development standards stated in Chapter 15.21, I-2/General Industrial District.

4. The subdivision is located within a Flood Zone 'X', according to FEMA Map Number 19155C0560E, dated February 4, 2005, and is protected from Missouri River flooding by an industrial levee that is maintained by a collection of property owners in the general vicinity of this request. In 2016, D.E.B. Partnership conveyed ownership of the subject property to the City of Council Bluffs, which then made the City responsible for 16.1878% of the ongoing industrial levee maintenance costs. The City transferred 3.006% of the ongoing levee maintenance costs to Warren Distribution when they purchased Lot 2, River Road Subdivision from the City in 2019. Additionally, the City transferred the remaining 13.1819% of their ongoing levee maintenance responsibility to OPUS when they purchased Lot 1, River Road Subdivision from the City in 2021. The City's Legal Department stated the proposed

final plat should include a note that identifies how the 13.1819% of the ongoing levee maintenance will be split between proposed Lots 1 and 2, River Road Subdivision, Replat 1.

5. Both lots in this subdivision have direct access to River Road and Nebraska Avenue, which are public roadways. No street extensions are required to be completed for the proposed two-lot subdivision. The proposed final plat includes an access easement which allows vehicle traffic to cross between the two parcels.

6. Utilities are available along River Road to service both parcels of land. The plat includes all previously recorded utility easements that were established when River Road Subdivision was recorded in 2019. Additionally, the proposed final plat includes easements for utilities to cross between both parcels. The Council Bluffs Public Works Department commented that Note 'K' on Page 2 of 2 of the final plat shall define who is responsible for perpetual maintenance and repair of the storm water management infrastructure on proposed Lot 2, River Road Subdivision, Replat 1.

7. All electric, gas, water, cable and communication facilities shall be installed underground. All costs to construct, remove, and/or relocate any utilities within the proposed subdivision shall be the responsibility of the entity developing the subject property.

8. Section 14.14.040, *Sidewalks/pedestrian ways* of the Municipal Code (Subdivision Ordinance) requires that sidewalks be installed in all new subdivisions. The City has discussed the possibility of extending River Road to the south to connect into Richard Downing Avenue. This connection will provide better vehicular circulation, as well as, improve upon the existing bike network along River Road. Since there are many unknowns associated with this proposed street extension (e.g., timing, design, rights-of-way needs, etc.) it is premature to require sidewalks be provided along this segment of River Road at this time. The City and OPUS previously agreed the best course of action is to allow OPUS to pay a fee in-lieu of installing the sidewalk along the frontage of River Road. The fee was supposed to have been paid as part of the land sale transaction between the City and OPUS; however, the City and OPUS have a verbal agreement in place that fee will be paid prior to OPUS being granted a final Certificate of Occupancy for any buildings within the subdivision. OPUS and the Council Bluffs Parks and Recreations Department shall continue working together on establishing the appropriate fee for installation of a sidewalk along the frontage of Lots 1 and 2, River Road Subdivision, Replat 1.

9. No private restrictions or covenants will be recorded by the City with this plat. A note indicating such is stated on the final plat.

10. All City Departments, local utility providers, and the Iowa Department of Transportation (IDOT) were provided a copy of the proposed final plat to review. The following comments were received:
    a. The Council Bluffs Fire Department stated they have no comments.
    b. Council Bluffs Water Works stated they have no comments.
    c. Council Bluffs Permits and Inspections Division stated they have no issues with the plat.
    d. Iowa Department of Transportation (IDOT) stated the subdivision is located within their Council Bluffs Interstate System Corridor Preservation Zone and they have no issues with the proposed final plat.

11. The following technical corrections must be made to the final plat prior to being signed by the City:
    a. The standard dedication of public easements shall appear on the final plat as stated below:
    A perpetual easement is reserved for storm drainage and the installation and maintenance of utilities 5 feet wide along each side of interior lot lines and 10 feet in width along all front and rear lot lines:

ERECTION OF STRUCTURES PROHIBITED: Grantor shall not erect any structure over or within the Easement Area without obtaining the prior written consent of the City Engineer, provided however grantor shall have the right to place and maintain a surfaced roadway over and within the Easement Area.

CHANGE OF GRADE PROHIBITED: Grantor shall not change the grade, elevation or contour of any part of the Easement Area without obtaining the prior written consent of the City Engineer.

RIGHT OF ACCESS: City shall have the right of access to the Easement Area and have all right of ingress and egress reasonably necessary for the use and enjoyment of the Easement Area as herein described.

REMOVAL AND REPLACEMENT: The cost of removal and replacement of any unauthorized improvement or structures within the Easement Area, necessitated by the exercise of the rights under this easement, shall be borne by the Grantor or their successors or assigns.

SURFACE RESTORATION: City's liability to restore the surface within the Easement Area shall be limited only to grading and seeding, and replacement of grantors surfaced roadway.

DUTY TO REPAIR: City agrees that any drain tile, drive or access way, fence, or yard or other improvements outside of the Easement Area which may be damaged as a result of any entry made through an exercise of the City's right of access shall be repaired at no expense to Grantor.

EASEMENT RUNS WITH LAND: This easement shall be deemed to run with the land and shall be binding on Grantor and on Grantor's successors and assigns.

b. State the width of storm sewer easement identified on Note J on Sheet 2 of 2 on the plat.
c. State the width of the storm water easement identified on Note K on Sheet 2 of 2 on the plat.
d. State all book and page numbers that are associated with the declarations identified on Sheet 2 of 2 on the plat. Said declarations should be recorded with the Pottawattamie County Recorder's Office prior to the final plat being executed.
e. Add the linear dimensions for the "Truck Court Easement" on Detail A on Sheet 2 of 2
f. Identify Nebraska Avenue as a right-of-way that abuts Lot 2, River Road Subdivision, Replat 1 on the final plat.
g. The Pottawattamie County Assessor's Office identifies a separate PIN number (744404400901) on the proposed Lot 1, River Road Subdivision, Replat 1 that is associated with a billboard owned by Lamar Outdoor Advertising. If OPUS allows the billboard to remain on the subject property, an easement and/or outlot shall be shown on the final plat since this area is identified as a separate parcel identification number.

Recommendation

The Community Development Department recommends final plat approval of a two lot minor subdivision to be known as River Road Subdivision, Replat 1, legally described as being a replat of Lot 1, River Road Subdivision, City of Council Bluffs, Pottawattamie County, Iowa, and as shown on Attachment 'B', along

with approval for a subdivision variance to allow proposed Lot 2, River Road Subdivision, Replat 1 to exceed the maximum 3:1 lot-depth-to-width ratio, subject to all comments stated above and following conditions:

a. All technical corrections shall be incorporated into the final plat document prior to being executed; and
b. The final plat shall be recorded within 90 days of City Council approval or the plat shall become null and void unless an extension of has been requested and granted by the Community Development Department Director; and
c. Conform to all City standards and specifications, the zoning and subdivision ordinances and the Department of Public Works Standards for Public Improvements; and
d. All utilities shall be installed underground. Any cost to remove and/or relocate any utilities shall be the sole expense of the applicant and not the City; and
e. OPUS shall pay the City of Council Bluffs a fee in lieu of installing a sidewalk along the frontages of Lots 1 and 2, River Road Subdivision, Replat 1 prior to issuance of any final Certificate of Occupancies for any structures on said lots; and
f. All owners of Lots 1 and 2, River Road Subdivision, Replat 1 shall be responsible for their portion of the ongoing industrial levee maintenance costs.

Attachments

Attachment A: Location/zoning map
Attachment B: River Road Subdivision, Replat 1 final plat

Surveyor: David Forsyth, HGM Associates Inc., 640 5th Avenue, Council Bluffs, Iowa 51501

Prepared by: Christopher N. Gibbons, AICP, Planning Manager