RECONSIDERED
RESOLUTION NO. 18-273

A RESOLUTION GRANTING FINAL PLAT APPROVAL OF A THREE-LOT MINOR SUBDIVISION TO BE KNOWN AS ARBOR CREEK, LEGALLY DESCRIBED AS BEING A PART OF NE ¼ OF SECTION 29-75-43, CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA.

WHEREAS, The Community Development Department, on behalf of the City of Council Bluffs, is requesting final plat approval of a three-lot minor subdivision to be known as Arbor Creek, legally described as being part of the NE ¼ of Section 29-75-43, City of Council Bluffs, Pottawattamie County, Iowa and being more particularly described on Attachment 'A'; and

WHEREAS, The subdivision is comprised of 29.86 acres of city-owned property and is located immediately north of the intersection of Railroad Avenue and College Road.; and

WHEREAS, The following comments were provided for the proposed subdivision request:

1. The proposed subdivision is zoned A-2/Parks, Estates and Agricultural District. The minimum lot size in an A-2 District is three acres, as per Section 15.05 of the Municipal Code (Zoning Ordinance). Proposed Lot 1, Arbor Creek contains 17.73 acres, Lot 2, Arbor Creek contains 6.19 acres, and Lot 3, Arbor Creek contains 2.30 acres. Lots 1 and 2, Arbor Creek are located west of Railroad Avenue and are relatively uniform in shape, which makes them suitable for development. Both lots comply with A-2 District lot area, depth, and width requirements. Lot 3 is located east of Railroad Avenue and has limited development capabilities due to its irregular dimensions, which were caused by the construction of Railroad Avenue and the City's acquisition of abandoned railroad right-of-way. The City has no other land holdings to combined with Lot 3, Arbor Creek so that it can confirm with A-2 District standards due to its location. A subdivision variance to allow Lot 3, Arbor Creek to not comply with the minimum A-2 District lot size requirements (area, depth, and width) must be granted by City Council. Per Section 14.11.040, *Variance(s)* of the Council Bluffs Municipal Code (Subdivision Ordinance) a variance can be granted 'where it can be shown that due to special conditions, literal enforcement of the ordinance will result in unnecessary hardship', the City shall have the power to vary such regulations so that the substantial justice will be accomplished, provided that such variance would:
   a) Not be contrary to the public interest;
   b) Be in the interest of the City;
   c) Be within the spirit and intent of the ordinance; and
   d) Not be detrimental to future residents in or near the proposed subdivision.

   The Community Development recommends City Council grant a variance to allow Lot 3, Arbor Creek to not comply with the minimum A-2 District lot size requirements (area, depth, and width) based on reasons stated above.

2. On February 13, 2017, the City Council adopted Resolution No. 17-31 which declared the City's intent to execute a Lease Agreement and a Funding and Occupancy Agreement with Midlands Human Society for the lease of City owned property at 1020 Railroad Avenue for a term of 99 years. Included in the agreement was a plat of survey that identified 1020 Railroad Avenue as being separated into Parcels 'C' and 'D'. Parcel 'C' was left undeveloped and Parcel 'D' was leased to the Midlands Humane Society to be developed as an animal shelter. Proposed Lot 1, Arbor Creek is the same land area identified as Parcel 'C' and proposed Lot 2, Arbor Creek is the same land area identified as Parcel 'D'. The dimensions of proposed Lots 1 and 2, Arbor Creek are generally consistent with the dimensions shown for Parcels 'C' and 'D' on the plat of survey included in the lease agreement.

   The Community Development Department met with the Midlands Humane Society on two occasions to discuss the Arbor Creek Subdivision and development proposal for Lot 1. As part of these conversations, Midlands Humane Society expressed concern about their ability to expand their animal shelter operation if Lot 1, Arbor Creek were sold to another entity. The Community Development Department researched MHS's concern and provided them with a conceptual layout plan for how their animal shelter could expand the building and double in size on proposed Lot 2, Arbor Creek. The concept included expansions that would avoid the stormwater detention facility, avoid existing dog runs, and included additional parking. The Community Development Department is of the opinion that the proposed Arbor Creek Subdivision will not interfere with the Midlands Human Society ability to operate and expand upon their animal shelter at 1020 Railroad Avenue.

3. The Community Development Department has received an application from Zimmerman Properties to rezone proposed Lot 2, Arbor Creek from A-2 District to R-3/Low Density Multi-Family Residential District with a Planned Residential Overlay. The rezoning is scheduled for review by the City Planning Commission on October 9, 2018 and will then be forwarded to City Council for final consideration. The purpose of the rezoning is to allow Zimmerman Properties to develop a new 62-unit apartment building on the subject property. Lot 2, Arbor Creek contains 6.19 acres of land and is adequate in size to allow the applicant, Zimmerman Properties, to develop a 62-unit multi-family apartment building in accordance with R-3 District standards.

4. The proposed subdivision is located within Flood Zones 'AE' and '0.2% X" according to FEMA map number 19155C0418F, effective 4/16/2013. With adequate engineering and construction controls, the land is this subdivision is generally suitable for development.

5. A 33' x 783.66' (0.59 acre) strip of land, located south of Lots 2 and 3, Arbor Creek is being dedicated to the City for additional College Road right-of-way on the final plat. Additionally, 0.04 acres of land abutting the west right-of-way line for Railroad Avenue is being dedicated to the City on the final plat. This land dedication is necessary to ensure that existing trail located adjacent to Lots 1 and 2, Arbor Creek is within Railroad Avenue right-of-way.
6. All lots in this subdivision have direct access to Railroad Avenue and/or College Road. No street extensions and/or improvements are required to be completed for this subdivision.
7. All lots in the subdivision have access to public water, sanitary and storm sewers along Railroad Avenue. No utility extension are required to be completed for this subdivision.
8. All electric, cable and communication facilities shall be installed underground. All costs to construct, remove and/or relocate any utilities for the proposed subdivision shall be the responsibility of the developer.
9. A public sidewalk shall be installed along the frontage(s) of each lot prior to issuance of a Certificate of Occupancy for any development on each lot.
10. The Council Bluffs Fire Department stated they have no comments for the proposed subdivision.
11. The standard five and ten-foot wide side, front, and rear utility easements are notated on the final plat. The Public Works commented that the following language must be stated on the final plat relative to easements within this subdivision:
    a) 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 which shall not be unreasonably withheld, provided however grantor shall have the right to place and maintain a surfaced roadway over and within the Easement Area.
    b) 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 which shall not be unreasonably withheld.
    c) 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.
    d) REMOVAL AND REPLACEMENT: With the exception of existing structures, 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.

e) SURFACE RESTORATION: City's liability to restore the surface within the Easement Area shall be limited only to grading and seeding.

f) 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 and to Grantor's satisfaction.

g) 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.

12. No private restrictions or covenants will be recorded by the City with this plat. A note indicating such shall be stated on the plat prior to being executed; and

WHEREAS, The Community Development Department recommends final plat approval of a three lot minor subdivision to be known as Arbor Creek, legally described as being part of NE ¼ of Section 29-75-43, City of Council Bluffs, Pottawattamie County, Iowa and as shown on Attachment 'A', 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;

d. Granting a variance to allow proposed Lot 3, Arbor Creek to not meet the minimum A-2 District lot size and lot width requirements, based on reasons stated above;

e. 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

f. A public sidewalk shall be installed along the frontage(s) of each lot prior to issuance of a Certificate of Occupancy for any development on each lot.

**NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA**

That the final plat approval for a three lot minor subdivision to be known as Arbor Creek, legally described as being part of NE ¼ of Section 29-75-43, City of Council Bluffs, Pottawattamie County, Iowa and as shown on Attachment 'A', is hereby approved subject to all local, state and federal regulations; and

BE IT FURTHER RESOLVED

That the Mayor and City Clerk are hereby authorized and directed to endorse the final plat.

ADOPTED
AND October 22, 2018.
APPROVED

_____
MATTHEW J. WALSH Mayor

Attest: _____
JODI QUAKENBUSH City Clerk