



# Memorandum

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To: City Council  
From: Brandon Garrett, AICP, Community Development Director  
Cc: Mayor Walsh and Jodi Quakenbush, City Clerk  
Date: November 19, 2018  
Re: Lot 2, Arbor Creek

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The following supplemental information is provided regarding the property located at Lot 2, Arbor Creek and associated development proposals.

## **Planning and Zoning**

### *Comprehensive Plan*

The Comprehensive Plan's future land use map (see Exhibit A) shows Lot 2, Arbor Creek as "Rural Residential/Agriculture", the same future land use designation for the ground developed for St. Patrick's Church, Presbyterian Home, a future townhome development, and Immanuel Pathways all nearby at Valley View Drive and College Road. The Parks & Recreation Framework Plan in the Comprehensive Plan (see Exhibit B) does not show a future park in this vicinity. Council Bluffs is under increasing pressure for residential development. This quarter of the city around Iowa Western Community College has undergone significant development since the Bluffs Tomorrow Plan was adopted in 2014. Generally speaking, it is more difficult to predict future land uses in undeveloped areas and market forces often play a major role in determining what the City supports. While the Comprehensive Plan is not a regulatory document, the City should strive to amend the future land use map to reflect larger incremental changes.

### *Spot Zoning*

The proposed change does not meet the definition of spot zoning. A classic case of spot zoning would be a much different use wedged between similar uses—for example, zoning a small lot for Industrial within a residential block in an older neighborhood. In this case, the proposal is for roughly six acres and proposes to zone to a residential district adjacent to other residential districts. It is at the corner of two collector-style streets and has the capacity for much higher density. See attached memo regarding spot zoning cases in Iowa (see Exhibit C).



## *A-2 Zoning*

A-2 is an agricultural type of zoning that is a default for areas that have not developed. Several City parks and other City-owned parcels are zoned A-2 for lack of a “Public” zoning district. Iowa Western Community College is zoned A-2. Sometimes the City will proactively rezone land to A-2 as a placeholder for future parks or development such as in the Mid City area near the West Broadway Viaduct. In this case, there was no need to change the zoning from A-2 in the past because it was a combination of undeveloped land and publicly owned property. “Animal Shelters”, as defined in the zoning code are only allowed in A-2 zoning.

## *Density*

The proposed project includes 60 multi-family dwelling units (10 units per acre). Originally, the developers had hoped for a second phase, but the land request was reduced to align with the lease parcel for Midlands Humane Society. By zoning, the six acres could have yielded 135 dwelling units (22.5 units per acre), but the request was for substantially fewer units. The “PR” Overlay proposed would secure the number of units at 60. For reference, a typical low density single-family detached area in the West End is roughly 7.5 units per acre; not much less than the proposal.

## *Other 5+ Acre R-3 or R-4 Zoned Sites Available*

GIS was utilized to identify sites that were 5 acres or larger, vacant, and zoned R-3 or R-4. The Zimmerman proposal was for 6 acres and R-3, but this search was more broadly-inclusive. 19 properties were identified that met the criteria (see Exhibit D). However, upon closer examination of these sites, many have obstacles to development including terrain, utilities, access, forestation, or have already been approved for development. Zero properties discovered were zoned R-4. Six of the 19 properties are only partially zoned R-3 and would therefore require additional zoning action.

## **Infrastructure and Site Preparation**

### *Water Service*

Resolution 13-236 (see Exhibit E) states that the City, Midlands Humane Society, and Council Bluffs Water Works equally shared the cost of extending the water main in the amount of \$476,484 (\$158,828 City’s share). Ultimately, the City paid slightly less (\$158,250) when the work was completed (see Exhibit F). The resolution states that the water main will “...service the Midlands Humane Society and any future City developments at that location.” (see Exhibit E)

### *Additional Infrastructure*

Sanitary sewer, storm sewer, paving, a traffic signal, right-of-way, and other general costs are attributed to developing this area (see Exhibit G). These are costs associated with extending Railroad Avenue and utilities between E. Kanesville Blvd. and College Road to make the ground developable for the Midlands Humane Society building and additional future development to the south—specifically, a new police headquarters building. A different site for the police headquarters was ultimately chosen, but the site was preserved by the City for future development since it had all necessary infrastructure.



Exhibit G:

<b>Infrastructure and Site Preparation Costs</b>	
<i>Grading and Fill</i>	\$ 234,882.00
<i>Water Service</i>	\$ 158,250.00
<i>Sanitary Sewer</i>	\$ 105,159.63
<i>Storm Sewer</i>	\$ 658,040.99
<i>Pavement: Road and Bike Trail</i>	\$ 1,097,003.31
<i>Traffic Signal</i>	\$ 189,871.41
<i>Right-of-Way</i>	\$ 852,000.00
<i>General Costs and Construction Engineering for Road and Infrastructure</i>	\$ 662,265.02
<b>TOTAL CITY COSTS</b>	<b>\$ 3,957,472.36</b>

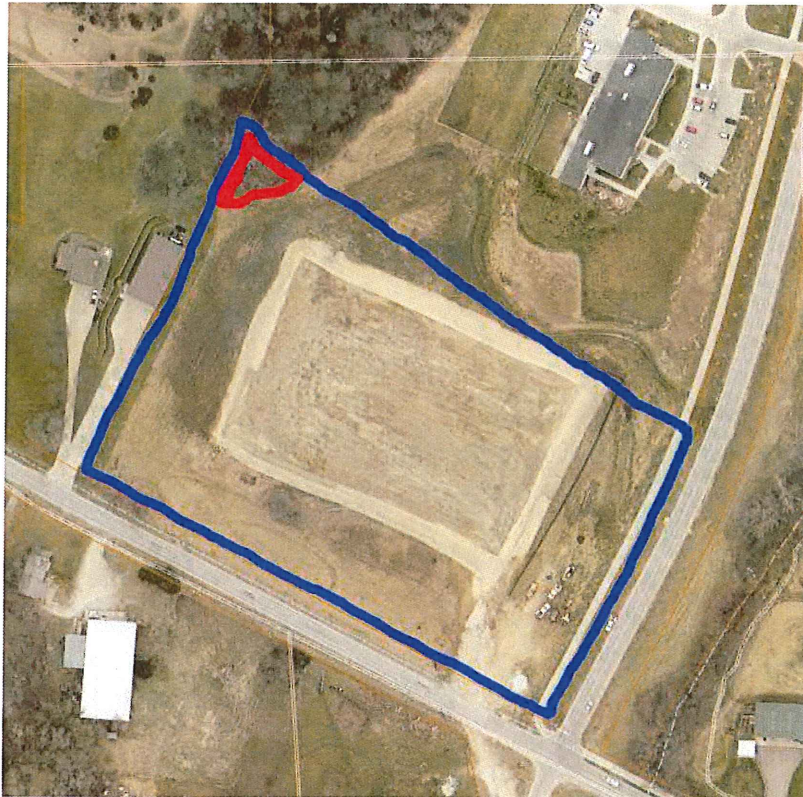
*Grading and Fill*

A developer representing another project calculated the site at what is now Lot 2, Arbor Creek needed 2-3' of fill dirt to raise it out of the floodplain. Months later, it was determined that the site of the new police headquarters had excess dirt that would have to be removed at additional expense. Rather than discard this resource, the City coordinated the relocation of the dirt to be utilized as fill at Lot 2, Arbor Creek in order to make the site more developable and marketable. The relocation of the dirt and stabilization was coordinated by Public Works and was carried out properly. The cost of moving this resource to the site from the police headquarters was \$234,882 in 2017.

Any future development of the site will regrade it to accommodate their design. Any development will have to be engineered to follow all applicable grading and stormwater drainage requirements for retention etc. The proposed development did not plan to impact or grade any Loess Hills slopes; the development site is relatively flat (see Exhibit H).



## Exhibit H



Red area above is a portion of Loess Hill slope. This area is not proposed for grading.

### *Bus Route*

The site is served by the Blue bus route (see Exhibit I).

### **City Financial Support of the Midlands Humane Society**

The City made six payments in 2014 totaling \$1,500,000 to the Midlands Humane Society for construction of the facility (see Exhibit J). The City paid HGM Associates \$26,977 for design work related to the project in 2014 (see Exhibit J). In addition, from FY2015 to FY2018, the City made payments of \$259,845 (see Exhibit K). The City recently increased its contributions to the Midlands Humane Society from \$1.25 to \$2.00 per capita. This payment is calculated at 61,938 x \$2 (totaling \$123,876 per year). As of 11/09/18, the City has paid the Midlands Humane Society \$41,312.68 for FY2019 (see Exhibit K). From FY2014 to date, the City has spent \$1,828,134.68 in support of Midlands Humane Society (excluding infrastructure costs). The City owns the building and Midlands Humane Society leases the space for \$1 per year as part of a 99-year lease agreement. The City's Animal Control Division of the Community Development Department is located in the building and pays no additional rent above the City's per capita contribution.

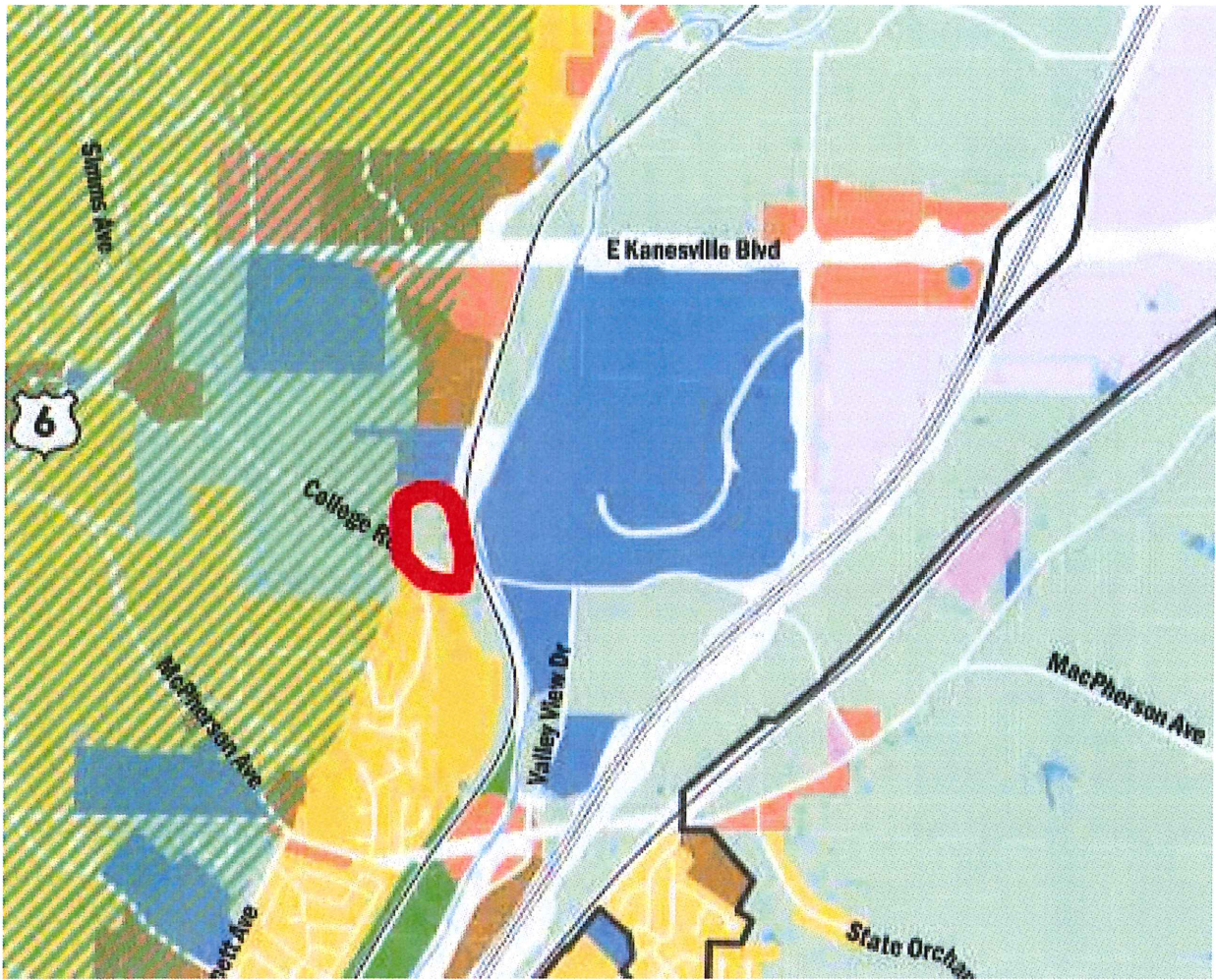
### **Estimated Local Property Taxes**

Midlands Humane Society: \$0/year

Current Zimmerman Proposal (60 dwelling units): \$61,844/year (see Exhibit L)



EXHIBIT "A"



**Land Use Legend**

**Residential**

- Rural Residential/Agriculture
- Low-Density Residential
- Medium-Density Residential
- High-Density Residential
- Multi-family/Mixed-use

**Commercial**

- Local Commercial
- Regional Commercial
- Downtown/Mixed-use

**Industrial**

- Office/Industrial
- Light Industrial
- Heavy Industrial

**Public Land Uses**

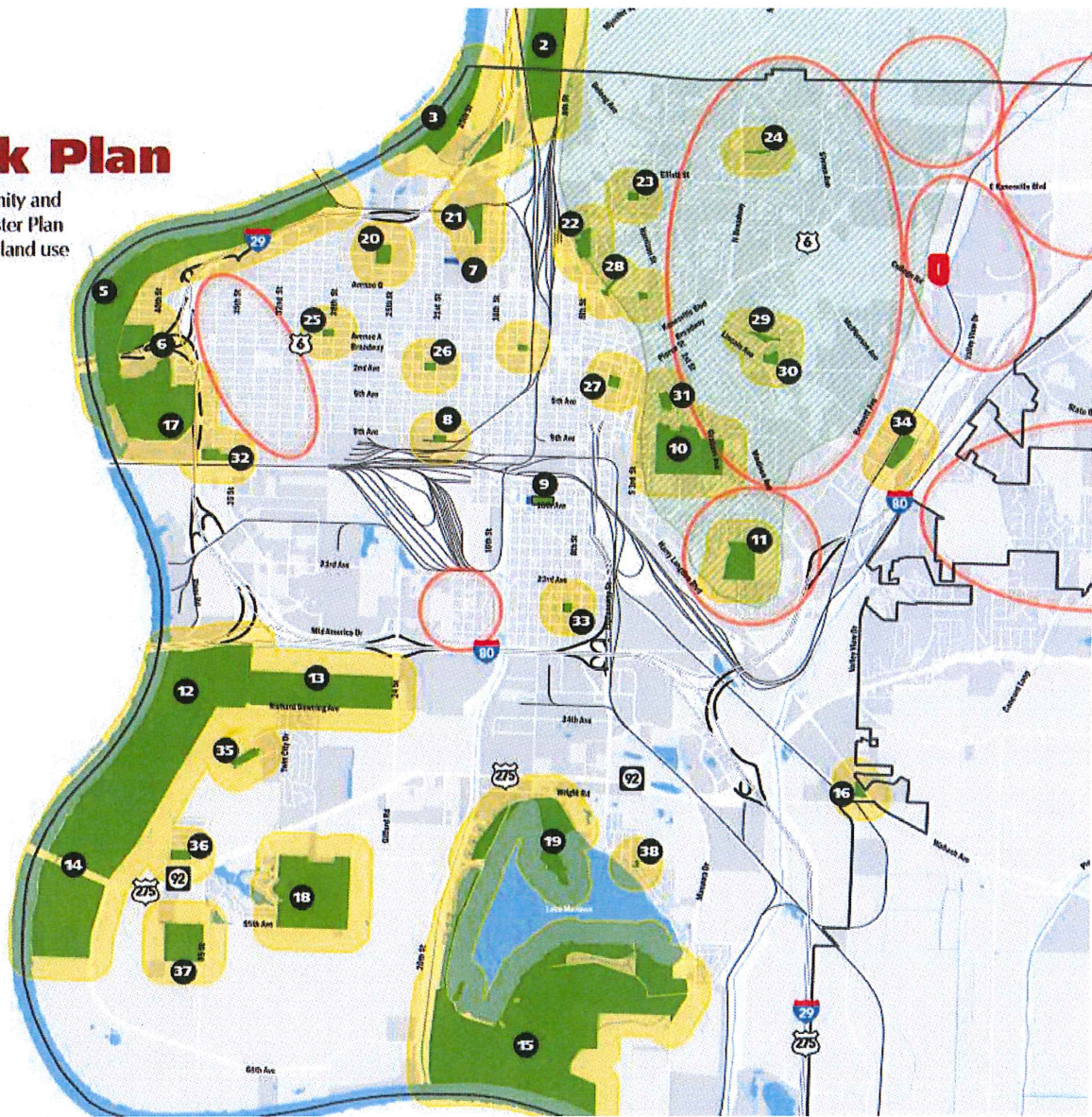
- Natural Areas
- Public Park
- Public/Semi-public
- Transportation/Utility
- Loess Hills Preservation Area










## EXHIBIT "B"

### Open Space Plan

Community and  
Master Plan  
Land Use



### Open Space Legend

-  Loess Hills Preservation Area
-  Lakes
-  Rivers and Creeks
-  Pedestrian Priority Zone
-  Underserved Areas (as identified in Park Master Plan)
-  Existing Developed/Urbanized Footprint
-  Rural/Undeveloped



## INTER-OFFICE MEMO

TO: Honorable Thomas P. Hanafan, Mayor  
and Members of the City Council

FROM: Legal Department

DATE: January 10, 1991

RE: Spot Zoning

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The Council has requested information about and examples of "spot zoning". Spot zoning results when a rezoning creates a small island of property with use restrictions different from those imposed on the surrounding property. Spot zoning is not necessarily illegal. Iowa courts look at several factors to determine whether spot zoning is reasonable and valid, including the following.

- a. the size of the spot rezoned
- b. the prior use of the rezoned tract
- c. the tract's suitability for various uses
- d. the uses of the surrounding property

In general, where a court can find that a city or county had a reasonable basis for rezoning a particular tract to serve the public welfare, rather than solely for private gain, spot zoning will be upheld. The public welfare is promoted by zoning that encourages efficient urban development, lessens congestion on streets, prevents overcrowding, increases or stabilizes property values and the tax base, and conforms to the comprehensive plan.

Some examples from Iowa cases are illustrative.

### Illegal Spot Zoning

1. An ordinance rezoned one corner of an interstate intersection to light industrial. The other corners remained agricultural districts. This rezoning was illegal spot zoning because the evidence showed that all four corners were used similarly before the rezoning, and each corner was equally adaptable to a light industrial use. There was no public benefit in choosing one corner over the others. Keppy v. Ehlers, 115 NW2d 198 (Iowa 1962).

2. An ordinance rezoned one lot in the middle of a block surrounded by single-family dwellings. The property in question was a large home near Drake University; the owners wanted to convert it to a sorority house. At the time of the requested rezoning, however, it had always been used as a single-family dwelling. The court found that there was no rational basis to distinguish this property from the others in the block, since all shared the same prior use and were equally suited for the proposed rezoning. Hermann v. City of Des Moines, 97 NW2d 893 (Iowa 1959).



EXHIBIT "C" (continued)

January 10, 1991  
Spot Zoning  
Page 2

Legal Spot Zoning

1. Agricultural land was rezoned to allow a hog-slaughtering plant. The land around the rezoned tract remained agricultural. This rezoning was valid because, unlike the surrounding land, the rezoned parcel was not prime agricultural land and was near a road, river and railroad tracks.

In this case, the public benefits (adding manufacturing to a troubled agriculture-based economy, increasing tax revenues, and creating jobs) were consistent with the goals of the comprehensive plan. The rezoning was not solely for private gain. Montgomery v. Bremer County Board of Supervisors, 299 NW2d 687 (Iowa 1980).

2. An undeveloped two-acre tract of single-family residential district was rezoned to a neighborhood shopping district. Because the tract was at the corner of a busy intersection, it was not well suited for a home, but was uniquely appropriate for a neighborhood shopping center. Once again, the benefits to the public (providing needed shopping in a rapidly growing residential area) were in accord with the goals of the comprehensive plan. Jaffe v. City of Davenport, 179 NW2d 554 (Iowa 1970).

3. A four-story, 16-room structure was rezoned from single-family to multiple-family. The rest of the neighborhood remained single-family. This rezoning was legal. The building had been used as a medical clinic, rooming house and nursing home and had little appeal as a single-family dwelling. Rezoning would have little or no impact on the value of surrounding properties, and would not otherwise burden them. There is public benefit in eliminating nonconformities. Keller v. City of Council Bluffs, 66 NW2d 113 (Iowa 1954).

To summarize, illegal spot zoning benefits a particular owner at the expense of the public good and is inconsistent with the goals of the comprehensive land use plan.

Respectfully submitted,

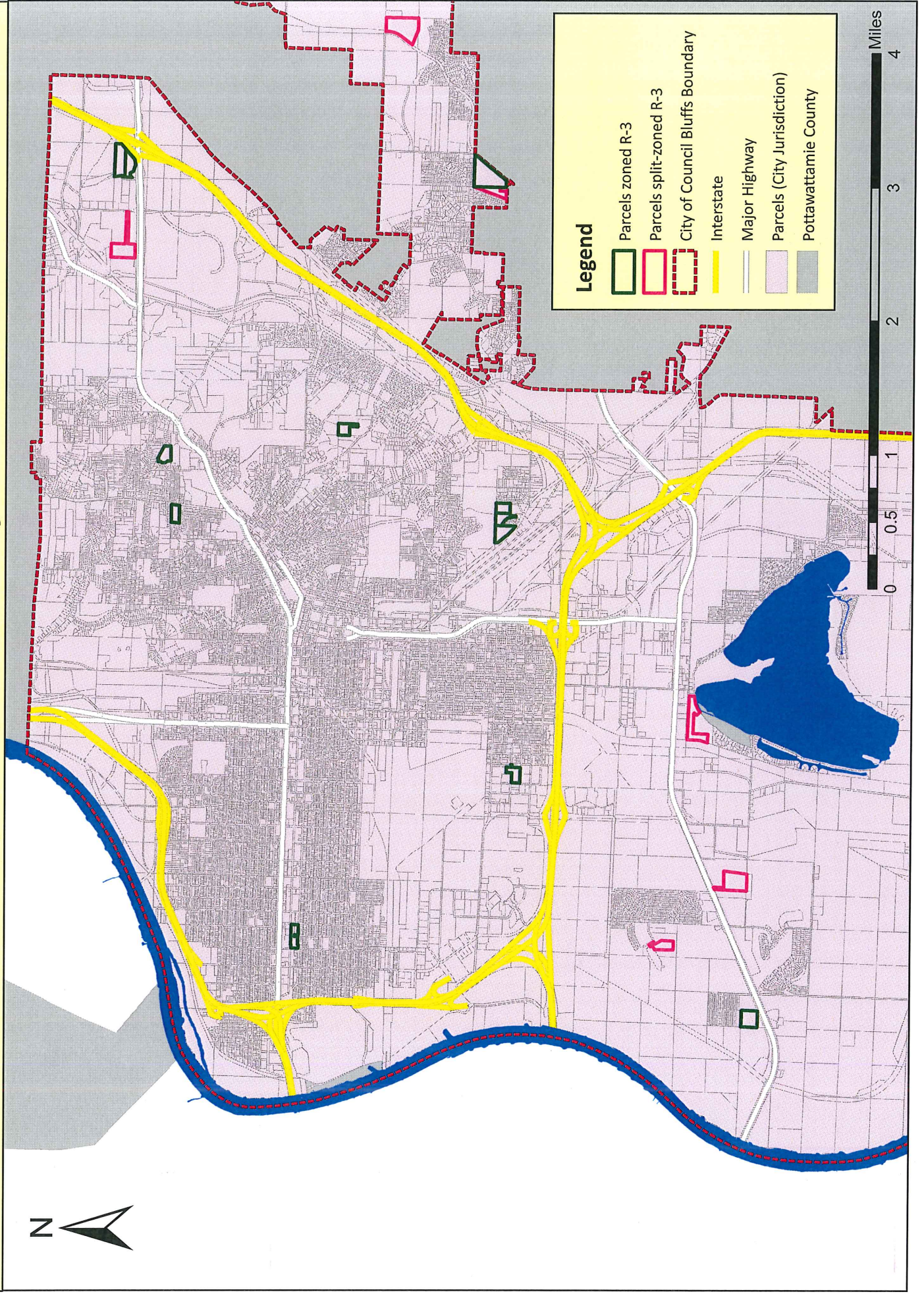
Kathleen A. Kilnoski  
KATHLEEN A. KILNOSKI  
Assistant City Attorney

KAK/jk



# EXHIBIT "D"

## Undeveloped Parcels over 5 acres Zoned Appropriately for Multifamily Development in the City of Council Bluffs





# EXHIBIT "E"

## Council Communication

Department: Health Department	Ordinance No.:	City Council: September 9, 2013
Case/Project No.: N/A	Resolution No.: <u>13-236</u>	First Reading: N/A
		Second Reading: N/A
		Third Reading: N/A
		Public Hearing: N/A
<b>Subject/Title</b>		
Midlands Humane Society Project – Water Main Extension Agreement		
<b>Location</b>		
Running from Indian Hills Road to Railroad Avenue		
<b>Background/Discussion</b>		
<p><u>Background</u></p> <p>The City owns approximately 28.88 acres of property along College Road and Railroad Avenue. The Midlands Humane Society and the City has been working diligently over the past several years to develop and construct a new humane society and associated dog park on approximately 7 acres of said property.</p> <p><u>Discussion</u></p> <p>Since there is no water at this location, a water main extension must be brought in from the top of Indian Hills Road. This will service the Midlands Humane Society and any other future City developments at that location. At the September 9<sup>th</sup> City Council meeting, a public hearing will be held to approve the plans, specifications and form of contract for the water main extension portion of the project. At this same meeting, we are also asking for approval of the Water Works agreement detailed below.</p> <p>A water main extension agreement has been prepared by the Water Works that details the roles and responsibilities of each participant. The Water Works estimates the cost for improvements will be \$476,484.00; 1/3 of the cost will be incurred by the City, 1/3 by Midlands Humane Society and 1/3 by the Council Bluffs Water Works. The cost to the City will be funded through existing fund balances. This includes the installation of approximately 1,750 linear feet of eight inch ductile iron pipe and 810 linear feet of twelve inch ductile iron and all necessary fire hydrants and other appurtenances.</p>		
<b>Staff Recommendation</b>		
The Council Bluffs Health Department recommends that City Council adopt the resolution authorizing the Mayor to execute an agreement with the Council Bluffs Water Works for a water main extension in conjunction with the Midlands Humane Society Project.		



# EXHIBIT "F"

## City of Council Bluffs

Proj 00503 Midlands Humane Society and Water Main Extension

\$'s

### Expense

Payments to CB Water Works for Water Main

158,250

Payments to Midlands Humane Society for Construction

1,500,000 see detail

Payments to HGM Associates

26,977

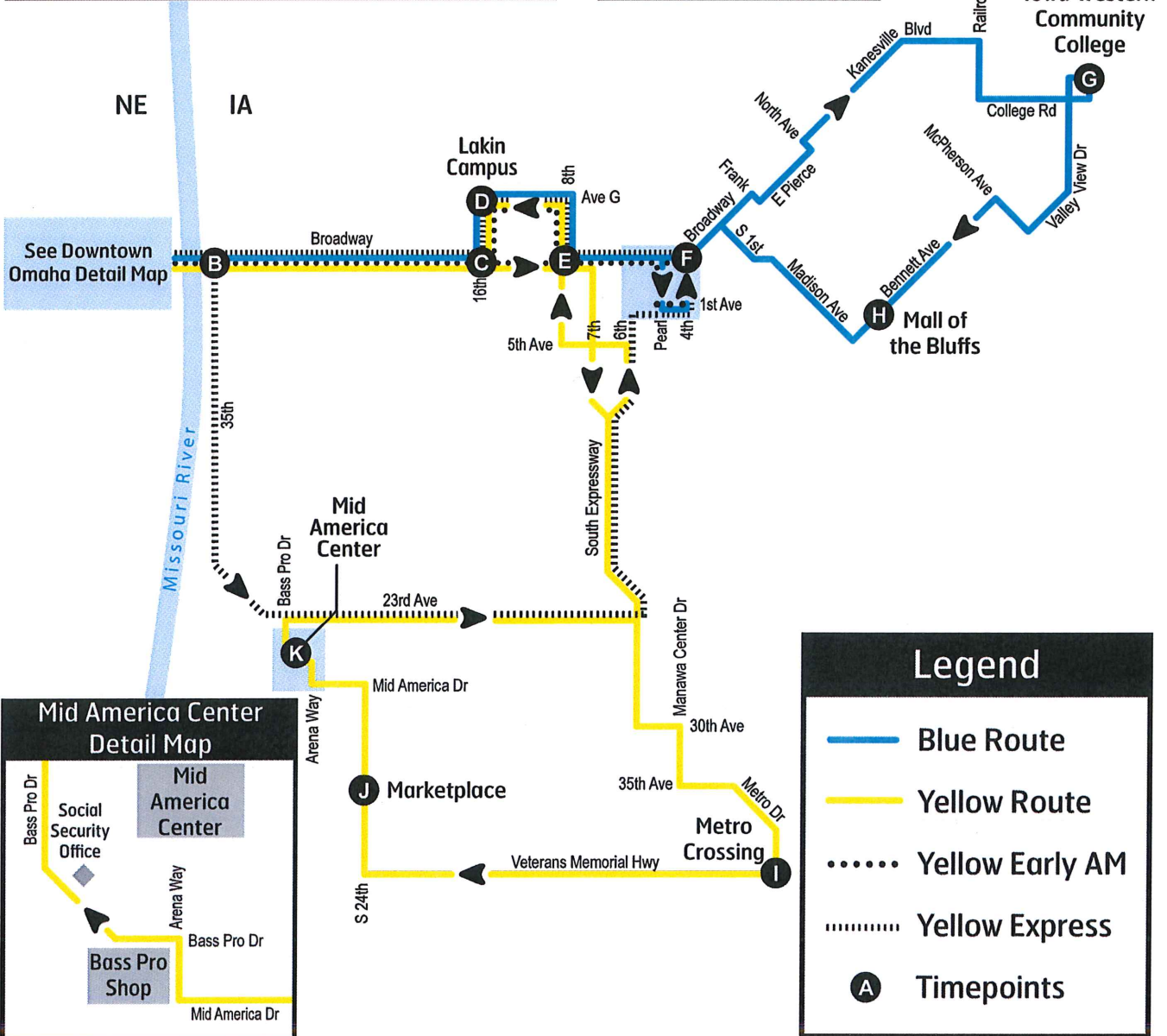
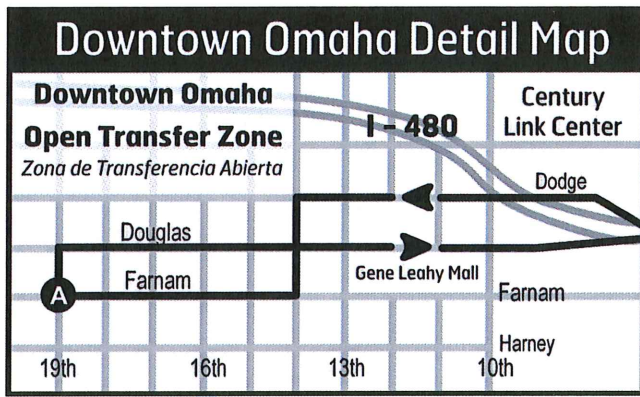
**Total Expense**

**1,685,227**

**Funding sources: General Obligation Bond, Gaming and General Fund**



# EXHIBIT "I"





# EXHIBIT "J"

## Project Construction payments to Midlands Humane Society

Other Capital Improvements - \$1,500,000.00

<u>Vendor</u>	<u>Description</u>	<u>CK Amt</u>	<u>Ck No</u>	<u>Ck Date</u>
Midlands Humane Society	Reimb Anderson Construction/BVH	305,608.76	CK#6375	1/31/2014
Midlands Humane Society	Animal Shelter Construction	240,655.53	213820	7/8/2014
Midlands Humane Society	Animal Shelter Construction	295,047.05	213820	7/8/2014
Midlands Humane Society	Animal Shelter Construction	140,290.61	7136	9/15/2014
Midlands Humane Society	Animal Shelter Construction	231,774.54	7137	9/15/2014
Midlands Humane Society	Construction Pymt #6	286,623.51	7292	10/31/2014
		<u>1,500,000.00</u>		



# EXHIBIT "K"

## City of Council Bluffs

Payments to Midlands Humane Society FY15 to FY19 year-to-date  
As of 11/14/2018

### FY19 Payments to Midlands Humane Society as of 11/15/2018

Check #	Warrant	Amount
37,525	11/09/18	10,328.17
37,057	10/03/18	10,328.17
36,770	09/05/18	10,328.17
36,447	08/08/18	10,328.17
		<u>41,312.68</u>

### FY18 Payments to Midland Humane Society

Inv No	Inv Date	Warrant	Ck #	Amt	
6111	05/31/2018	06/27/18	35981	6,455.10	
5824	04/30/2018	05/23/18	35559	6,455.10	
5467	03/31/2018	04/11/18	35072	6,455.10	
5055	02/28/2018	03/07/18	34691	6,455.10	
4783	01/31/2018	02/07/18	34408	6,455.10	
4499	12/31/2017	01/10/18	34107	6,455.10	
4130	11/30/2017	12/06/17	33740	6,455.10	
3895	10/31/2017	11/08/17	33436	6,455.10	
3679	09/30/2017	10/11/17	33054	6,455.10	
3613	09/21/2017	09/26/17	32893	891.00	Garage Door Repair
3428	08/31/2017	09/05/17	32655	6,455.10	
3144	07/31/2017	08/08/17	32346	6,455.10	
2858	06/30/2017	07/11/17	31962	6,455.10	
				<u>78,352.20</u>	

### FY17 Payments to Midland Humane Society

Inv No	Inv Date	Warrant	Ck #	Amt
2613	05/31/2017	06/27/17	31807	6,455.10
2343	04/30/2017	06/27/17	31807	6,455.10
2059	03/31/2017	04/11/17	30932	6,455.10
1851	02/28/2017	04/11/17	30932	6,455.10
021017	02/10/2017	02/21/17	30457	750.00
1747	01/31/2017	04/11/17	30932	6,455.10
1660	12/31/2016	01/24/17	30196	6,455.10
1597	11/30/2016	12/06/16	29741	6,455.10
1543	10/31/2016	11/01/16	29390	6,455.10
1498	09/30/2016	10/18/16	29250	6,455.10
83116	08/31/2016	09/20/16	28958	6,455.10
73116	07/31/2016	08/09/16	28505	6,455.10
63016	07/18/2016	07/26/16	28352	6,455.10
				<u>78,211.20</u>

### FY16 Payments to Midland Humane Society

Inv No	Inv Date	Warrant	Ck #	Amt
53116	05/31/2016	06/14/16	27901	6,455.10
43016	04/30/2016	05/17/16	27584	6,455.10
33116	04/05/2016	04/05/16	27142	6,455.10
22916	02/29/2016	03/08/16	26865	6,455.10
13116	01/31/2016	02/16/16	26706	6,455.10
123115	12/31/2015	02/16/16	26706	6,455.10
NOV-2015	11/30/2015	12/29/15	26304	6,455.10
OCT-2015	10/31/2015	12/29/15	26304	6,455.10
093015	09/30/2015	11/10/15	25911	6,455.10
AUGUST-2015	08/31/2015	12/29/15	26304	6,455.10
073115	07/31/2015	08/25/15	25204	6,455.10
				<u>71,006.10</u>

### FY15 Payments to Midland Humane Society

Inv No	Inv Date	Warrant	Ck #	Amt	
053115	05/31/2015	06/23/15	268	6,455.10	
043015	04/30/2015	06/23/15	268	6,455.10	
033115	03/31/2015	05/26/15	220055	6,455.10	
022815	02/28/2015	03/03/15	218434	6,455.10	
100	01/31/2015	02/03/15	217949	6,455.10	
c5f412783b	10/31/2014	8142	7292	286,623.51	included on construction payments schedule
BVH#12078-5	07/31/2014	8071	7137	231,774.54	included on construction payments schedule
				<u>550,673.55</u>	



# EXHIBIT "L"

<u>Apt. Name</u>	<u>Address</u>	<u># of units</u>	<u>Mkt units</u>	<u>LIHTC units</u>	<u>Assessed Value</u>	<u>Taxes Paid</u>	<u>Taxes per unit</u>			<u>Mill rate</u>
Prime Square Apartments	822 South Main Street	80	24	56	\$ 3,322,000	\$ 117,678	\$ 1,471	highest		45.35326
			30%							
Beacon Place Apartments	2400 South 19th Street	40	0	40	\$ 1,301,000	\$ 50,656	\$ 1,266			45.35326
Thornbury Way	1951 Nash Blvd.	30	0	30	\$ 636,900	\$ 28,100	\$ 937		Mid Average	45.35326
									\$ 1,030.73	
Salisbury Court	1835 Nash Blvd.	18	0	18	\$ 404,500	\$ 16,004	\$ 889			45.35326
Sherwood Place Apartments	2331 Sherwood Drive	32	0	32	\$ 849,800	\$ 21,014	\$ 657	lowest		45.35326
OVERALL AVERAGES FOR FIVE DEVELOPMENTS ABOVE		40	4.8	35.2	\$ 1,302,840	\$ 46,690	\$ 1,043.97			
Valley Ridge Apartments (Zimmerman Proposal)		60	10	50		\$ 61,844	\$ 1,030.73			