

COUNCIL ACTION FORM

SUBJECT: THE WEST END CENTER SUBDIVISION, MINOR FINAL PLAT FOR 1114 SOUTH DAKOTA AVENUE

BACKGROUND:

The property owners of 1114 South Dakota Avenue, Dickson and LuAnn Jensen are requesting approval of a Final Plat for The West End Center, which is a Minor Subdivision of 4.68 acres. A minor subdivision includes three, or fewer, lots and does not require additional public improvements. A minor subdivision does not require a Preliminary Plat, and may be approved by the City Council as a Final Plat, subject to the applicant completing the necessary requirements.

1114 South Dakota Avenue is located on the northeast corner at the intersection of South Dakota Avenue and Mortensen Road. The proposed Final Plat divides the land into two new buildable lots and is located within the "CCR" (Community Commercial/Residential) Zoning District (w/Master Plan) (see *Attachment A – Location & Zoning Map*)

Lot 1 includes approximately 1.86 acres and will maintain the 1114 South Dakota Avenue address. Lot 2 will be approximately 2.82 acres and addressed off Mortensen Road. Lot 1 and 2 will have shared access off Mortensen Road. A private internal cross access easement (Attachment C) will exist along the shared property line and will run the entire width of the property.

At the time of Rezoning and Master Plan approval, there was discussion regarding pedestrian safety and driveway crossings. Given the proximity to the Ames Middle School and the number of residential dwellings in the area it is high bike and pedestrian traffic area. The proposed subdivision does not directly address future driveway locations; however, all future access drive locations and the design of existing driveways will be evaluated and designed to promote pedestrian safety as discussed during the rezoning process. **Additionally, a raised median will be required on Mortensen Road to limit access to right in/right out for westbound traffic for any new driveway constructed west of the Coconino Road. The median will be required as part of a Site Development Plan approval.** Access to North Dakota will continue for the site with one driveway. Section 23.403(9) of the City's Subdivision Code limits direct access to any arterial street that does not meet necessary separation distances and the number of drives allowed to promote pedestrian and vehicular safety. Construction of the median will meet the intent of this Code standard along with shared access between the two sites. There is a private shared access easement included with the Plat.

Public utilities serve both proposed lots. An eight-foot shared use path exists on both South Dakota Avenue and Mortensen Road. New water, sanitary sewer, and electric easements will be established with this plat. **The City Council is being asked to accept and approve two amendments to two easements. Changes to easements are**

usually processed as an easement vacation and new easements would be approved. However, in this instance an Electric and Shared Use Path Easement, in the southwest corner of the plat, were allowed to be changed as amended easements as the area is only being expanded, not reduced. All land within the existing easements will be within the new easements.

The applicant has provided an agreement for the installation of sidewalks. The agreement requires sidewalk installation along all street public frontages Street on each lot as they develop. No financial security is required. The proposed lots and future development are subject to Master Plan requirements approved in April 2019.

After reviewing the proposed Final Plat of The West End Center, staff finds that it complies with all relevant and applicable design and improvement standards of the Subdivision Regulations, to the City's Land Use Policy Plan, to other adopted City plans, ordinances and standards, and to the City's Zoning Ordinance.

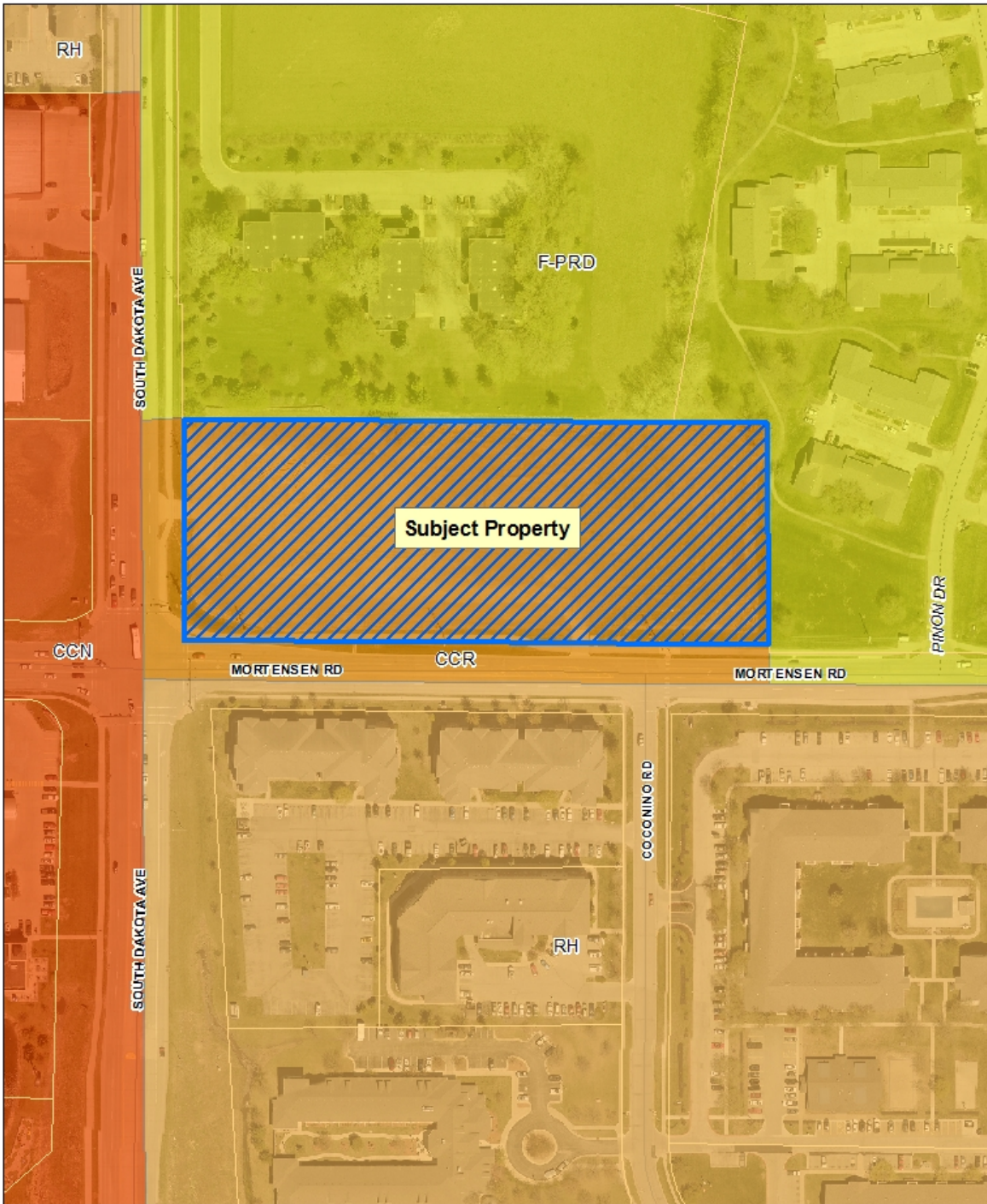
ALTERNATIVES:

1. Approve the Final Plat of The West End Subdivision based upon the findings and conclusions stated above, subject to:
 - a. City Council accepting the Amended Electric Easement and the Amended Shared Use Path Easement; and
 - b. Construction of a raised median along Mortensen Road, allowing only right in/right out turning movements, to the specifications of the City of Ames Public Works Director. The median is a requirement of a Minor Site Development Plan approval for relocating or adding an additional driveway along Mortenson Road.
2. Deny the Final Plat of The West End Center and find that the proposed subdivision does not comply with applicable ordinances, standards or plans.
3. Refer this request back to staff or the applicant for additional information.

CITY MANAGER'S RECOMMENDED ACTION:

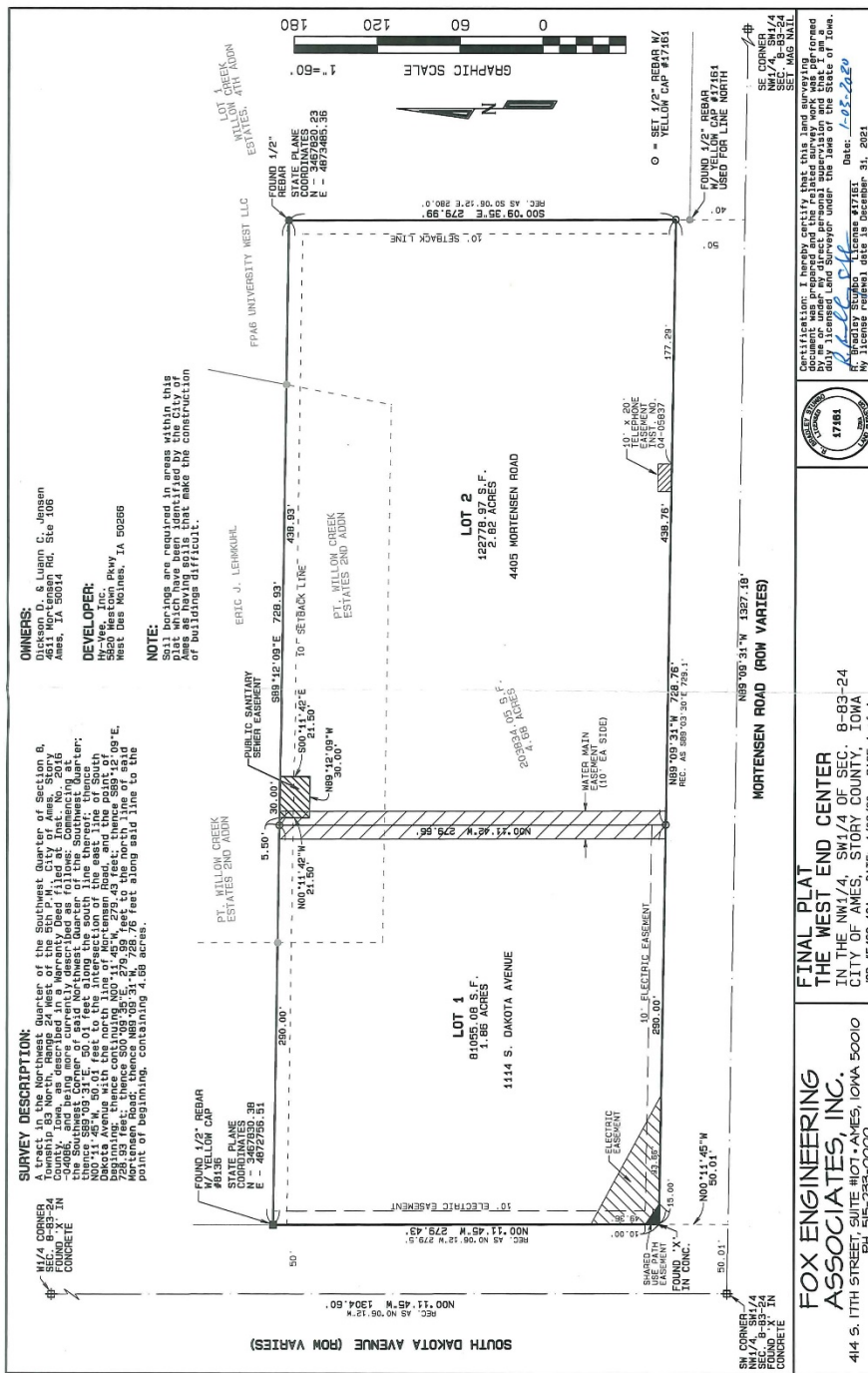
City staff has evaluated the proposed Final Plat of The West End Center Subdivision and determined that the proposal is consistent with the requirements of the Municipal Code. The applicant has provided an agreement for the installation of sidewalks and all necessary easement documents. A raised median along Mortensen will be required to be installed with development of the site, along with compliance with the approved Master Plan. **Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative #1 as described above.**

Attachment A – Location Map



**Location Map:
1114 S Dakota Avenue**

Attachment B – Final Plat of The West End Center



Attachment C – Private Access Easement Agreement

Prepared by and when recorded return to: Nathan Allen, 5820 Westown Parkway, West Des Moines, IA, 50266
(515) 267-2870

ACCESS EASEMENT AGREEMENT

THIS ACCESS EASEMENT AGREEMENT (“Easement”) is made and entered into as of the ____ day of _____, 2019, by and between DICKSON D. JENSEN and LUANN C. JENSEN, husband and wife, with principal address of 4611 Mortensen Rd., STE 106, Ames, IA 50014 (“Jensen”), and HY-VEE, INC., an Iowa corporation (“Hy-Vee”), with principal place of business at 5820 Westown Parkway, West Des Moines, IA 50266; WITNESSETH:

WHEREAS, Jensen owns real estate situated in Ames, Story County, Iowa, legally described on Exhibit “A” attached hereto and incorporated herein (the “Jensen Tract”); and

WHEREAS, Hy-Vee owns real estate in Ames, Story County, Iowa, legally described on Exhibit “B” attached hereto and incorporated herein (the “Hy-Vee Tract”), which is adjacent to the Jensen Tract; and

WHEREAS, Jensen and Hy-Vee have agreed to grant certain easements for vehicular and pedestrian ingress and egress for the benefit of the Jensen Tract and the Hy-Vee Tract as described herein.

NOW, THEREFORE, for and in consideration of One Dollar (\$1.00), the receipt and adequacy of which are hereby acknowledged, it is agreed as follows:

1. Access Easement Area.
 - a. Access Easement Area. The “Access Easement Area” is legally described on Exhibit “C” attached hereto and incorporated herein, and visually depicted “D” attached hereto and incorporated herein.
 - b. Construction. Contemporaneous with the development by Hy-Vee of the Hy-Vee Tract, Hy-Vee shall construct a paved roadway upon the Access Easement Area at Hy-Vee’s sole cost and expense. Thereafter, the owner of the Hy-Vee Tract shall maintain such driveway in conjunction with owner of the Hy-Vee Tract’s operation of its business upon the Hy-Vee Tract at such owner’s sole cost and expense until such time as

development is completed on the Jensen Tract. At such time as development is completed on the Jensen Tract, the owner of the Jensen Tract shall be responsible for fifty percent (50%) of the cost of maintenance, repair, replacement, snow removal, and line striping (if any) of the driveway improvements upon the Access Easement Area from and after such time, payable by the owner of the Jensen Tract within thirty (30) days following receipt of an invoice therefore.

c. Easement Grant. Jensen hereby grants for the benefit of the Hy-Vee Tract a perpetual, non-exclusive easement in, over and upon that portion of the Access Easement Area that is located on the Jensen Tract for use as a private drive and crossing for vehicular ingress and egress for the owners, employees, agents, licensees, and invitees of the Hy-Vee Tract, and for the initial construction and thereafter maintenance, repair and replacement of the paved roadway improvements within the Access Easement Area. In addition, Jensen hereby grants to the owner of the Hy-Vee Tract a temporary construction easement over only so much of the Jensen Tract as may be necessary for the initial construction and installation of the paved roadway improvements within the Access Easement Area.

d. Easement Grant. Hy-Vee hereby grants for the benefit of the Jensen Tract a perpetual, non-exclusive easement in, over and upon that portion of the Access Easement Area located on the Hy-Vee Tract for use as a private drive and crossing for vehicular ingress and egress for the owners, employees, agents, licensees, and invitees of the Jensen Tract.

e. Easement Grant – Blanket Cross-Access. Hy-Vee and Jensen hereby grant for the mutual benefit of the Hy-Vee Tract and the Jensen Tract, an easement for pedestrian and vehicular ingress and egress over the driveways that exist upon the Hy-Vee Tract and the Jensen Tract, from time-to-time to accommodate access to and from the Hy-Vee Tract, the Jensen Tract, Mortensen Rd., and S. Dakota Ave.

2. Restrictions. The owners of the Jensen Tract and the Hy-Vee Tract shall use reasonable efforts to ensure that no barricades, signs, fences, or other dividers will be constructed in, over or upon, and that nothing will be done to prohibit or discourage the free and uninterrupted access over and across the Access Easement Area and/or ingress and egress between the Hy-Vee Tract and the Jensen Tract generally; provided, however, Hy-Vee may temporarily restrict access to certain portions of the Access Easement Area in conjunction with the installation, repair or re-construction of the driveway improvements upon such easement area.

3. Covenants Running with the Land. The Jensen Tract and the Hy-Vee Tract shall be held, sold and conveyed subject to the restrictions, covenants and easements contained herein, all of which shall be covenants running with the land and shall be binding upon, and inure to the benefit of, all parties having any right, title and interest in said properties, or any part thereof, and their respective heirs, successors and assigns.

4. Waiver. No covenant, restriction, condition or provision of this Easement shall be deemed to have been abrogated or waived by reason of any failure to enforce the same at any time, irrespective of the number of violations or breaches which may occur.

5. Savings Clause. The invalidity of any covenant, restriction, condition, limitation or any other provision of this Easement, as the case may be, shall not render the remainder of the Easement invalid.

6. Amendment; Modification. This Easement may be amended by the written consent and mutual agreement of the owner of the Hy-Vee Tract and the owner of only those portions of the Jensen Tract that directly abut the Access Easement Area.

7. Governing Law. This Easement shall be construed and enforced in accordance with the laws of the State of Iowa.

8. Counterparts. This Easement may be executed in one or more counterparts and on separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, Jensen and Hy-Vee have executed this Easement on the date first above written.

JENSEN:

Dickson D. Jensen

LuAnn C. Jensen

STATE OF IOWA, COUNTY OF _____, ss

This record was acknowledged before me on _____, 2019, by Dickson D. Jensen and LuAnn C. Jensen, husband and wife.

Notary Public in and for the
State of Iowa

HY-VEE:

HY-VEE, INC., an Iowa corporation

By: _____
Peter Hosch
Vice President

By: _____
Nathan Allen
Assistant Secretary

STATE OF IOWA, COUNTY OF POLK, ss

On this ____ day of _____, 2019, before me, the undersigned, a Notary Public in and for the state of Iowa, personally appeared Peter Hosch and Nathan Allen, to me personally known, who being by me duly sworn did say that they are the Vice President and Assistant Secretary, respectively, of Hy-Vee, Inc., an Iowa corporation, that the instrument to which this is attached was signed on behalf of said corporation by authority of its Board of Directors; and that the said Peter Hosch and Nathan Allen as such officers acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.

Notary Public in and for the
State of Iowa

- Attachments:
Exhibit "A" – Legal Description of Jensen Tract
Exhibit "B" – Legal Description of Hy-Vee Tract
Exhibit "C" – Legal Description of Access Easement Area
Exhibit "D" – Visual Depiction of Access
Easement Area

Attachment D – Applicable Laws and Policies Pertaining to Final Plat Approval

Adopted laws and policies applicable to this case file include, but are not limited to, the following:

Code of Iowa, Chapter 354.8 states in part:

A proposed subdivision plat lying within the jurisdiction of a governing body shall be submitted to that governing body for review and approval prior to recording. Governing bodies shall apply reasonable standards and conditions in accordance with applicable statutes and ordinances for the review and approval of subdivisions. The governing body, within sixty days of application for final approval of the subdivision plat, shall determine whether the subdivision conforms to its comprehensive plan and shall give consideration to the possible burden on public improvements and to a balance of interests between the proprietor, future purchasers, and the public interest in the subdivision when reviewing the proposed subdivision and when requiring the installation of public improvements in conjunction with approval of a subdivision. The governing body shall not issue final approval of a subdivision plat unless the subdivision plat conforms to sections 354.6, 354.11, and 355.8.

Ames *Municipal Code* Section 23.303(3) states as follows:

(3) City Council Action on Final Plat for Minor Subdivision:

(a) All proposed subdivision plats shall be submitted to the City Council for review and approval in accordance with Section 354.8 of the Iowa Code, as amended or superseded. Upon receipt of any Final Plat forwarded to it for review and approval, the City Council shall examine the Application Form, the Final Plat, any comments, recommendations or reports examined or made by the Department of Planning and Housing, and such other information as it deems necessary or reasonable to consider.

(b) Based upon such examination, the City Council shall ascertain whether the Final Plat conforms to relevant and applicable design and improvement standards in these Regulations, to other City ordinances and standards, to the City's Land Use Policy Plan and to the City's other duly adopted plans. If the City Council determines that the proposed subdivision will require the installation or upgrade of any public improvements to provide adequate facilities and services to any lot in the proposed subdivision or to maintain adequate facilities and services to any other lot, parcel or tract, the City Council shall deny the Application for Final Plat Approval of a Minor Subdivision and require the Applicant to file a Preliminary Plat for Major Subdivision.