

COUNCIL ACTION FORM

SUBJECT: REQUEST FOR WAIVER OF SUBDIVISION REGULATIONS AND APPROVAL OF MINOR SUBDIVISION PLAT FOR ACTS SUBDIVISION AT 4001 LINCOLN WAY

BACKGROUND:

Habitat for Humanity is seeking approval of a minor subdivision plat for a parcel at 4001 Lincoln Way. This single parcel would be split into two lots to allow construction of two single family homes. The current parcel sits at the intersection of a Lincoln Way frontage road and McDonald Drive, and the two new lots would have frontage on McDonald Drive.

At the pre-plat conference, City staff noted that the existing 25 feet of McDonald Drive right-of-way should be widened to 55 feet. This 55-foot width is the minimum necessary for new streets created as part of subdivisions. Staff also noted that street trees, street lights, and sidewalks should be installed, consistent with the requirements of the City's subdivision ordinance.

The applicant is requesting four waivers from these code requirements. Attached is a letter requesting these waivers and describing the reasons for seeking them. If the City Council approves the waivers, then Council should also approve the minor subdivision plat for this subdivision.

The Ames Municipal Code includes a provision for waiving or modifying the requirements for subdivision improvements. A waiver or modification of the regulations in Section 23.103(1) requires the Council to find that one of the two following criteria is met:

1. Strict compliance with the requirements of the Regulations would result in extraordinary hardship to the applicant or:
2. It would prove inconsistent with the purpose of the Regulations because of unusual topography or other conditions

According to the Municipal Code, the City Council by waiving or modifying any one of the subdivision regulations according to the above criteria ensures that "substantial justice [has been] done and the public interest [will be] secured," and that "such modification or waiver shall not have the effect of nullifying the intent and purpose of the regulations."

If the City Council determines that one, or both, of the two criteria listed above have been met, then the four waivers can be granted in whole or with other conditions. If The City Council approves the waiver of the requirements, the Council is then asked to approve the minor subdivision plat for Acts Subdivision.

The applicant is requesting the waiver of the four requirements addressed in the attached letter from Mr. Gene Dreyer, HWS Consulting Group. The first waiver is from the requirement that **McDonald Drive be a minimum width of 55 feet**. As a residential cul-de-sac, McDonald Drive requires a right-of-way width of 55 feet (Section 23.403(10)). It currently lies within a 25-foot right-of-way. In 1963, the City acquired, through a deed of dedication, this 25-foot strip of land from McDonald, Yoder and Yoder. The lots currently in place were, more or less, established prior to 1963. In 1994, the City approved a subdivision plat for Westwood Village, on the east side of McDonald Drive, for the 58-unit Westwood Village residential development. At the time of that 1994 plat, the 25-foot street was already in place; and the City did not require a widening of the street at that time.

Staff had determined that the proposed creation of one additional lot will not create any significant impact on the traffic of the existing street. The street will likely not ever be extended north to Hickory Drive, nor widened to accommodate additional pavement. Staff has no concerns with the granting of the waiver. On the other hand, the impact on this small parcel of dedicating an additional 30 feet of right-of-way would be very detrimental and would advance little public betterment, especially with no expectation that McDonald Drive would ever be extended or widened.

The second requested waiver is for **street trees** required in Section 23.402. The existing site has several mature trees, although on private property. The applicant's letter contains an inventory of the existing trees. Staff also noted that for any newly-planted street trees to thrive, the existing trees would need to be thinned, if not outright clear cut. The existing tree canopy meets the intent of the street tree requirement and little public good would be obtained by requiring new trees to be planted, especially if such plantings required the removal of the existing mature trees. The proposed street tree agreement notes that these trees will be retained to the greatest extent possible.

The third requested waiver is for **street lights** required in Section 23.403(13). Two street lights exist already—one to the southeast of the subdivision on the frontage road, and one to the northeast of the subdivision on McDonald Drive. Because of these existing street lights and the coverage they provide, Electric Services does not require the installation of any additional lights.

The fourth request is for a waiver of the required **sidewalks** as found in Section 23.403(14). This section requires sidewalks along street frontages in the right-of-way. In this instance, the owner seeks a waiver from the requirement for a sidewalk along the east property line (the west side of McDonald Drive). Waiving the requirement for sidewalks along the west side of McDonald Drive resolves two issues. One is that the McDonald Drive right-of-way is only 25 feet wide. There is little room within the right-of-way for the safe placement of a sidewalk. Second is that the existing mature trees may be an impediment for the installation of the sidewalks, either in the right-of-way or on the private side of the lot line. Staff supports the waiver of the sidewalk along McDonald Drive, and notes that sidewalks along the north side of Lincoln Way will be extended in this area in the near future. The applicant will install the sidewalk along the south side of the subdivision. This improves the connectivity of the pedestrian system along the frontage road with only

the two lots to the west of the proposed subdivision without sidewalks.

At the owner's request, staff has reviewed the final subdivision plat for Acts Subdivision with the assumption that the requested waivers would be granted. This allows the waivers and the subdivision plat to be brought forward concurrently. However, denial of any of the waivers would require denial of the proposed subdivision plat.

ALTERNATIVES:

1. The City Council can approve the request to waive the requirements for dedication of a 55-foot McDonald Drive right-of-way, installation of street trees, installation of street lights, and installation of the McDonald Drive sidewalk by finding that one or both of the criteria are met, and can then approve the minor subdivision plat of Acts Subdivision.
2. The City Council can approve any combination of requested waivers, deny the remaining waivers as not meeting either of the criteria, and direct staff to seek compliance with the remaining requirements. The City Council should then defer action on the subdivision plat until it is resubmitted in accordance with the requirements for which waivers were not granted. Final action would need to occur no later than September 21 unless the applicant requested an extension.
3. If the City Council supports all the waivers except the waiver for the sidewalk along McDonald Drive, the City Council can approve the three other requested waivers as well as a new, fourth waiver. This fourth waiver would be to allow the sidewalk to be placed on private property (rather than in the right-of-way). In this case, the City Council should defer action on the subdivision plat approval while staff works with the applicant to obtain an updated plat, an updated easement grant, and an updated sidewalk installation agreement. Final action would need to occur no later than September 21 unless the applicant requested an extension.
4. The City Council can deny the request to waive the four subdivision requirements, and deny the minor subdivision plat of Acts Subdivision for not meeting the requirements of the subdivision ordinance.
5. The City Council can refer this request back to staff or the applicant for additional information. Final action would need to occur no later than September 21 unless the applicant requested an extension.

MANAGER'S RECOMMENDED ACTION:

This parcel lies within an already-built environment. It already has virtually all of the required infrastructure. Of those that it lacks, alternatives are in place or proposed that will ensure that the intent of the subdivision improvement requirements is met. The undersize right-of-way has existed since 1963 and has served the development of the area, including the later development of Westwood Villages. For those infrastructure needs that do not meet the letter of the subdivision regulations, the applicant has provided evidence that

seems compelling to allow approval of the waivers. If the waivers are approved, the subdivision plat would then meet the requirements of the Ames Municipal Code.

Therefore, it is the recommendation of the City Manager that the City Council approve Alternative #1 and approve the request to waive the requirements for dedication of a 55-foot McDonald Drive right-of-way, installation of street trees, installation of street lights, and installation of the McDonald Drive sidewalk by finding that one or both of the criteria are met; as well as approve the minor subdivision plat of Acts Subdivision, along with the associated easement grant and sidewalk installation agreement.

