



**PLANNING AND ZONING COMMISSION**  
**Regular Meeting**  
**Monday, January 11, 2016**

Notice is hereby given that the **Planning and Zoning Commission** will hold a **Regular Meeting at 7:00 p.m. on Monday, January 11<sup>th</sup>, 2016**, in the Council Chambers of Johnston City Hall, 6221 Merle Hay Road, Johnston, Iowa, to discuss the following business:

**AGENDA:**

1. **Call to Order**
2. **Roll Call**
3. **Approval of Agenda**
4. **Approval of Meeting Minutes:** Regular Meeting of November 30, 2015
5. **PZ Case No. 15-41; Crosshaven Outlots Plat 2;** The applicant, Hubbell Properties I, L.C. proposes to subdivide a 58.36 acre parcel into 3 unbuildable outlots to facilitate a 1031 property exchange. The subject property is located east of NW 100<sup>th</sup> Street and north of Little Beaver Creek.
6. **PZ Case No. 15-40; Coons Heights Plat 2, Preliminary and Final Plats;** The applicant, Art Coons, has submitted a Preliminary and Final Plat to subdivide 1.49 acres at the NE corner of NW Beaver Drive and Forest Drive.
7. **Other Business:**
8. **Adjournment**

**Next Scheduled Regular Meeting: Monday, January 25, 2016.**

Posted on or before January 10, 2015 at: Johnston City Hall, Johnston Public Library, Johnston Post Office, Johnston Public Works, Crown Point Community Center, and Johnston Website (<http://www.cityofjohnston.com/agendacenter>)



**PLANNING & ZONING COMMISSION**

City of Johnston  
 6221 Merle Hay Road, Johnston, IA 50131

Minutes  
 Regular Meeting: Monday, November 30, 2015

**AGENDA**

**1. Call to Order**

Presiding Officer Anderson called the meeting to order at 7:00 p.m.

**2. Roll Call**

	Spencer	Severino	Johnson	Smith	Whitaker	Petersma	Anderson
<b>Present</b>	X	X		X	X		X
<b>Absent</b>			X			X	

**City Staff Present:** David Wilwerding

**3. Approval of Agenda**

Anderson called for a vote to approve the agenda.

	Spencer	Severino	Johnson	Smith	Whitaker	Petersma	Anderson
<b>Aye</b>	X	X		X	X		X
<b>Nay</b>							
<b>Abstain</b>							

**4. Approval of Meeting Minutes:** Regular Meeting of November 9, 2015

Anderson called for a vote to approve the minutes of November 9, 2015.

**Roll Call Vote:**

	Spencer	Severino	Johnson	Smith	Whitaker	Petersma	Anderson
<b>Aye</b>	X	X		X	X		X
<b>Nay</b>							
<b>Abstain</b>							

**5. Case PZ No. 15-30; Tucker Place Preliminary Plat;** The applicant, Tucker Properties, proposes to subdivide 4.54 acres into four lots for residential development.

Wilwerding presented the staff report.

Spencer clarified that the proposed road would be privately owned and maintained. Wilwerding confirmed that it would be.

Ed Pelds, 2323 Dixon Street, Des Moines, representing the applicant indicated they were in agreement with the recommended conditions of approval.

Harold Turner, 9110 NW 62nd Avenue indicated his property is immediately east of the subject property and that the development would change the perspective of his property, but indicated he didn't have specific concerns or objections.

Motion by Smith, second by Spencer to approve PZ Case PZ Case No. 15-30, a Preliminary Plat for Tucker Place, subject to the following conditions:

1. The project shall be in conformance and in accordance with the requirements, standards and regulations of the City of Johnston, and any other requirement of state or federal law or administrative rule.
2. Submission of all final plat documentation to City's Staff and Attorney, for review and approval, must occur six (6) working days prior to the City Council's regular meeting.
3. This property is located in the Beaver Creek Trunk Sewer Connection district. Payment of district connection fees is required prior to City Council approval of the final plat. The fee is \$909.70 per acre or \$4,130.04 total.
4. Utilities must be installed prior to approval of a final plat.
5. The preliminary plat shall be amended to address comments 1-22 of the review letter provided by Foth Infrastructure and Environment, LLC dated 11/18/2015.

**Roll Call Vote:**

	<b>Spencer</b>	<b>Severino</b>	<b>Johnson</b>	<b>Smith</b>	<b>Whitaker</b>	<b>Petersma</b>	<b>Anderson</b>
<b>Aye</b>	<b>X</b>	<b>X</b>		<b>X</b>	<b>x</b>		<b>X</b>
<b>Nay</b>							
<b>Abstain</b>							

**6. Other Business: Distribute 2016 Planning and Zoning Deadline and Meeting Schedule.**

Wilwerding noted that the 2016 P&Z schedule was attached for the Commissions information.

**7. Adjournment.**

Meeting adjourned at 7:12 PM.

\_\_\_\_\_ **Chair**

\_\_\_\_\_ **Secretary**



## Planning & Zoning Commission

COMMUNITY DEVELOPMENT DEPARTMENT

January 11, 2016 Meeting

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**SUBJECT:** Consider approval of PZ Case 15-41 a Final Plat for Crosshaven Outlots Plat 2 subdividing 58.36 acres into 3 eight outlots. The subject property is located east of NW 100<sup>th</sup> Street and north of Little Beaver Creek.

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**SYNOPSIS:**

The applicant, Hubbell Properties I, L.C. (Series D and Hubbell Realty Company are proposing to subdivide a 58.36 acre parcel into 3 outlots. The plat is being proposed to facilitate a 1031 property exchange, none of the outlots are buildable and the property would need to be further subdivided to be developed. The property is zoned PUD via ordinance 782.

**RECOMMENDATION:**

The staff recommends approval and provides the following motion for the commission's consideration:

**The Planning & Zoning Commission recommends approval of PZ Case No. 15-41, the Final Plat for Crosshaven Outlots Plat 2, subject to the following conditions:**

1. The project shall conform to the requirements, standards and regulations of the City of Johnston.
2. Submission of all final plat documentation to City's Staff and Attorney, for review and approval, must occur six (6) working days prior to the City Council's regular meeting.

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**Attachments:**

Final Plat prepared by McClure Engineering, dated 1-4-16;  
Comment Memos from City Staff dated 12-18-15;

<b>APPLICANT:</b>	Joe Pietruszynski Hubbell Properties I, L.C. and Hubbell Realty Company 6600 Westown Parkway West Des Moines, IA 50266
<b>REPRESENTATIVE:</b>	Caleb Smith, P.E. McClure Engineering Company 8101 Birchwood Court, Suite D Johnston, IA 50131
<b>BACKGROUND &amp; PRIOR APPROVALS:</b>	<p>This property was part of the Northwest/Elmerodo Estates annexation which was approved by the City Council on February 19, 2008, and approved by the City Development Board in June 9, 2008. The annexation was finalized in September 2008 when it was recorded with the Secretary of State and Polk County Recorder.</p> <p>The property was rezoned from A-R the automatic designation for annexed property to PUD via Ordinance 782 which was adopted by the Council on October 6, 2008.</p> <p>In addition, portions of the property are within the Floodway and Floodway Fringe Overlay Zoning Districts and will be required to meet the requirements of those districts in addition to the PUD requirements.</p>
<b>COMPREHENSIVE PLAN:</b>	The Comprehensive Plan for this area was amended in 2006. The Plan calls for this area to be developed at an overall average density of 2.0 units per acre. Pursuant to the Comprehensive Plan that PUD allows for a density of not to exceed 2.06 units per acre, with the area south of Little Beaver Creek (the portion proposed with this plat) to have a density not to exceed 1.66 units per acre. In addition, buffers/setbacks are required along the west and south boundaries of the site.
<b>ZONING DISTRICT &amp; BULK REGULATIONS:</b>	Not applicable with this plat as all outlots will be unbuildable until they are further subdivided. The bulk regulations are however spelled out in Ordinance 782.
<b>PUBLIC UTILITIES:</b>	Sanitary sewer is under construction to the Crosshaven site, and water main is existing along NW 100 <sup>th</sup> Street. No improvements are planned with this subdivision.
<b>DRAINAGE:</b>	No proposed grading or construction is proposed with this plat.

LITTLE BEAVER  
CREEK TRUNK  
SANITARY SEWER  
CONNECTION  
DISTRICT:

This property is within the Little Beaver Creek Trunk Sanitary Sewer Connection District, payment of the per acre fee is deferred until the property is subdivided into developable lots.

PLAT SUMMARY:

Lots:	0
Area:	58.36Acres
Area of Streets:	0 Acres
Other Area Dedicated:	N/A
Outlot Area:	58.36
Net Area in Lots	N/A
Net Average Lot Area:	N.A

FINAL  
DOCUMENTATION:

The following documentation is required to be submitted and will be recorded with the Final Plat.

Attorney's Title Opinion  
Consent to Plat (Owner)  
Consent to Plat (Lender)  
Polk County Treasurer's Certificate

# CROSSHAVEN OUTLOTS PLAT 2 JOHNSTON, IOWA

PREPARED BY & RETURNED TO: BRADLEY R. GEATER, PLS, MCCLURE ENGINEERING, 1360 NW 121ST STREET, CLIVE, IOWA 50325, 515-964-1229



building strong communities.

1360 NW 121ST Street  
Clive, Iowa 50325  
515-964-1229  
fax 515-964-2370

## OWNERS

HUBBELL PROPERTIES I LC (SERIES D)  
6900 WESTOWN PARKWAY  
WEST DES MOINES, IOWA 50266  
515-243-3228

## ENGINEER

McCLURE ENGINEERING  
1360 NW 121ST STREET  
CLIVE, IA 50325  
(515) 964-1229  
ATTN: CALEB SMITH

## LEGAL DESCRIPTION

A PARCEL OF LAND BEING A PART OF OUTLOT Z OF CROSSHAVEN OUTLOTS PLAT 1, AN OFFICIAL PLAT, INCLUDED IN AND FORMING A PART OF THE CITY OF JOHNSTON, POLK COUNTY, IOWA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF OUTLOT Z OF CROSSHAVEN PLAT 6, AN OFFICIAL PLAT, INCLUDED IN AND FORMING A PART OF THE CITY OF JOHNSTON; THENCE ALONG THE WEST LINE OF OUTLOT Z OF SAID CROSSHAVEN OUTLOTS PLAT 1 N00°00'03"E, 304.03 FEET TO THE SOUTH LINE OF PARCEL B, AS RECORDED IN POLK COUNTY RECORDS AT BOOK 12648, PAGE 648; THENCE ALONG THE SOUTH LINE OF SAID PARCEL B S89°30'08"E, 945.32 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL B; THENCE ALONG THE EAST LINE OF SAID PARCEL B N00°23'10"E, 665.15 FEET TO THE NORTHEAST CORNER OF SAID PARCEL B, ALSO BEING THE NORTHWEST CORNER OF OUTLOT Z OF CROSSHAVEN OUTLOTS PLAT 1; THENCE ALONG THE NORTH LINE OF OUTLOT Z OF CROSSHAVEN OUTLOTS PLAT 1 S89°38'48"E, 1122.78 FEET TO THE NORTHWEST CORNER OF PARCEL B, AS RECORDED IN POLK COUNTY RECORDS AT BOOK 15813, PAGE 296; THENCE ALONG THE WEST LINE OF SAID PARCEL B S00°15'51"W, 973.50 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL B; THENCE ALONG THE SOUTH LINE OF SAID PARCEL B S89°38'48"E, 535.28 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL B; THENCE ALONG THE EAST LINE OF OUTLOT Z OF CROSSHAVEN OUTLOTS PLAT 1 S00°02'13"E, 499.72 FEET TO THE SOUTHEAST CORNER OF OUTLOT Z OF CROSSHAVEN OUTLOTS PLAT 1; THENCE N90°00'00"W, 2088.73 FEET; THENCE N36°58'34"W, 654.02 FEET; THENCE N89°59'57"W, 121.53 FEET TO THE POINT OF BEGINNING. DESCRIBED AREA CONTAINS 58.36 ACRES AND IS SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

## ZONING

ZONING: CROSSHAVEN P.U.D. (ORDINANCE 782)  
FIRM PANEL: 190901 0085 D  
EFFECTIVE DATE 7/19/2000

SETBACKS (SINGLE FAMILY LOTS)  
FRONT: 15 FT (FOR USABLE PORCH AREA)  
25 FEET GARAGE  
SIDE: 5 FEET  
REAR: 10 FEET  
MIN LOT WIDTH: 60 FEET  
MIN LOT AREA: 6,000 SF

## NOTE

1) THIS PLAT WOULD ONLY ACCOMMODATE ADMINISTRATIVE AND PROPERTY TRANSFER PURPOSES, IT DOES NOT PERMIT DEVELOPMENT OF ANY INDIVIDUAL OUTLOT.

## FLOOD INSURANCE INFORMATION

THE SUBJECT PROPERTY IS LOCATED ENTIRELY WITHIN FLOOD INSURANCE PANEL 1909010085D WITH AN EFFECTIVE DATE OF JULY 19, 2000. SUBJECT PROPERTY IS LOCATED IN ZONE AE & ZONE X.

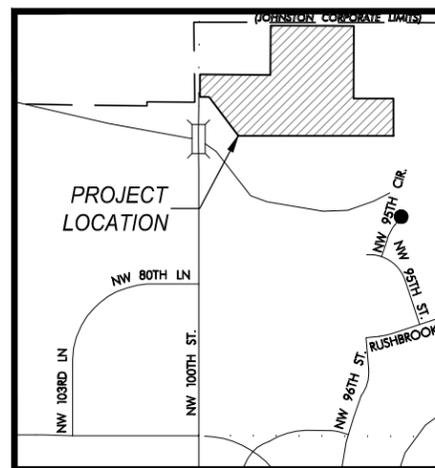
## GENERAL LEGEND

— BOUNDARY LINE  
- - - PROPERTY LINE  
- - - SECTION LINE  
- - - ROAD EASEMENT

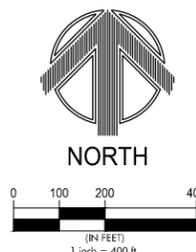
CORNERS FOUND:  
▲ - SECTION CORNER (TYPE AS NOTED)  
● - BOUNDARY CORNER; FOUND IDOT MARKER (UNLESS NOTED OTHERWISE)

CORNERS SET:  
○ - BOUNDARY CORNER 1/2" REBAR OPC #19828  
△ - SECTION CORNER 1/2" REBAR OPC #19828

ABBREVIATIONS:  
ROW - RIGHT-OF-WAY  
BK, PG - BOOK AND PAGE  
(M) - MEASURED DISTANCE/ANGLE  
(R) - RECORD DISTANCE/ANGLE  
PUE - PUBLIC UTILITY EASEMENT  
YPC - YELLOW PLASTIC CAP  
OPC - ORANGE PLASTIC CAP



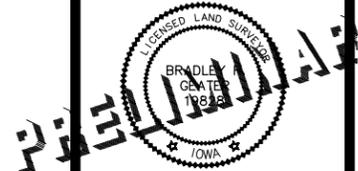
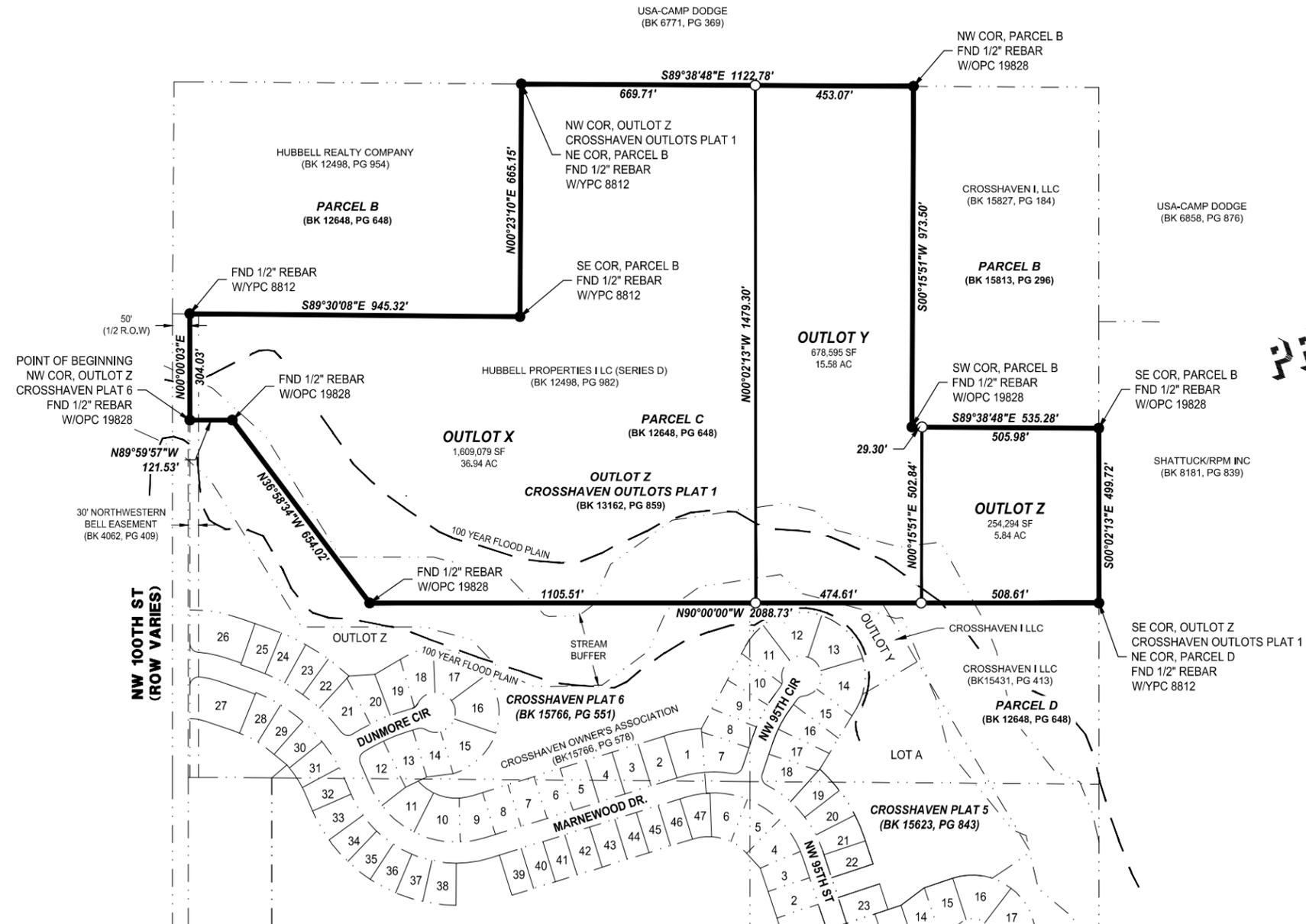
VICINITY MAP- NTS



## BENCHMARK

RR SPIKE IN 2ND POWER POLE SOUTH OF THE INTERSECTION OF NW 78TH AVE AND NW 100TH STREET. ELEVATION: 893.19'

ARROW FIRE HYDRANT (FH-100-28) NW CORNER OF THE INTERSECTION OF NW 76TH PL AND NW 100TH STREET. ELEVATION: 900.71'



I HEREBY CERTIFY THAT THIS LAND SURVEYING DOCUMENT WAS PREPARED AND THE RELATED SURVEY WORK WAS PERFORMED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF IOWA.

BRADLEY R. GEATER, PLS  
NO. 19828

MY LICENSE RENEWAL DATE IS DECEMBER 31, 2015

PAGES OR SHEETS COVERED BY THIS SEAL:  
1 SHEETS

CROSSHAVEN OUTLOTS  
PLAT 2  
FINAL PLAT

JOHNSTON, IOWA  
226053  
12/07/2015

REVISIONS  
01/04/2016

ENGINEER C. SMITH DRAWN BY D. GRATE

CHECKED BY B. GEATER FIELD BOOK NO. -

DRAWING NO. FP-02 SHEET NO. 01/01



## MEMORANDUM

### *City of Johnston, Iowa*

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#### **SENT VIA EMAIL**

**DATE:** December 18, 2015

**TO:** Joe Pietruszynski, Hubbell Realty  
Caleb Smith, McClure Engineering

**FROM:** David R. Wilwerding, AICP  
Community Development Director

**RE: Crosshaven Outlots Plat 2 Final Plat**

The following are preliminary comments on the Final Plat for Crosshaven Plat 2; the comments are in addition to any comments provided by Josh DeBower, Foth:

1. The platting would only accommodate administrative and property transfer purposes, it does not permit development of any individual out.

The legal documents listed below must be received by City staff and the City attorney for review at least six (6) working days prior to the City Council meeting that the item will be taken up at:

1. Attorney's Title Opinion
2. Polk County Treasurer's Tax Certificate
3. Owner(s) Consent to Plat
4. Lender(s) Consent to Plat (if mortgage on the property)

This project is scheduled for a development review meeting on Wednesday, December 23<sup>rd</sup>, 2015 at 1:30 P.M. However, based upon the limited comments and scope of this project, I don't believe this meeting is necessary, and therefore can be cancelled. Four full size copies of revised final plat, four 11 x 17 inch reductions and a PDF version of the final plat, if revisions are necessary, must be submitted by Wednesday, December 30<sup>th</sup>, 2015 in order to proceed to the Planning and Zoning Commission on Monday, January 11<sup>th</sup>, 2016 and to the City Council on Monday January 19<sup>th</sup>, 2016. In order for the item to proceed to the January 19<sup>th</sup> City Council meetings, all of the noted legal documents will need to be submitted by Friday, January 8, 2016.

If you have any questions, please contact me at 727-7775 or by email at [dwilwerding@ci.johnston.ia.us](mailto:dwilwerding@ci.johnston.ia.us).

cc: Josh DeBower, Foth  
Matt Greiner, Construction Inspector



# Planning & Zoning Commission

COMMUNITY DEVELOPMENT DEPARTMENT

Monday, January 11<sup>th</sup>, 2016

**SUBJECT:** Consider recommending approval of the Preliminary and Final Plat for Coons Heights Plat 2, subdividing 1.49 acres into two single family residential lots(PZ Case 15-40).

**SYNOPSIS:**

The applicant, Art Coons, has submitted a Preliminary Plat and Final Plat to subdivide 1.49 acres at the NE corner of NW Beaver Drive and Forest Drive into two single family lots. The subject property is zoned R-1(100).

**RECOMMENDATION:**

Staff recommends approval and provides the following motion for the Commission’s consideration:

**The Planning & Zoning Commission recommends approval of PZ Case 15-40, the Preliminary and Final Plats for Coons Heights Plat 2 subject to the following conditions:**

1. The project shall be in conformance and in accordance with the requirements, standards and regulations of the City of Johnston, and any other requirement of state or federal law or administrative rule.
2. Submission of all Final Plat documentation to City’s Staff and Attorney, for review and approval, must occur six (6) working days prior to the City Council’s regular meeting.
3. Prior to Council approval of the Final Plat the applicant shall submit a petition and waiver for future NW Beaver Drive improvements.
4. Lots 1 and 2 are required to connect to sanitary sewer, the timing and installation of which is detailed on the plat.
5. **The Preliminary Plat shall be amended to address the following items:**
  - a. Indicate the location and size of existing sanitary sewer on NW Beaver Drive and means/method of connecting to such.
  - b. Address all outstanding comments provided by Foth Infrastructure & Engineering, LLC. in their letter dated January 8, 2016.

Motion by \_\_\_\_\_, Seconded by \_\_\_\_\_ to recommend approval of PZ Case No. 15-40, the Preliminary and Final Plats for Coons Heights Plat 2 subject to conditions noted.

Attachments:

- Vicinity Map
- Preliminary Plat, Prepared by Associated Engineering Company, dated December 28, 2015
- Final Plat, prepared by Associated Engineering Company., dated December 28, 2015
- City Staff Comments, dated December 22<sup>nd</sup>, 2015
- Comments by Foth Infrastructure & Environment, LLC dated December 18<sup>th</sup>, 2015 and January 8<sup>th</sup>, 2016
- Neighbor Mailing Notice and Mailing List
- Neighbor Comments

**APPLICANT/OWNER:**

Art Coons  
6921 NW Beaver Drive  
Johnston, IA, 50131

**REPRESENTATIVES:**

Associated Engineering Company  
2917 MLK JR Parkway  
Des Moines, IA, 50310

**BACKGROUND &  
PRIOR APPROVALS:**

The property was platted as Lot 1 in Coons Heights Plat 1 in 1987. There is currently a single family home and detached garage on what would become Lot 1 of the new plat. New Lot 2 is being platted for future construction of a new home.

Subsequent to approval of Coons Heights Plat 1, the final plat for The Forest was approved by Resolution 88-90 on September 8, 1988. Said platting action turned Mr. Coons' property into a corner lot. As a corner lot, Mr. Coons' property was thereafter subject to the increased encumbrances associated with such (i.e. imposition of greater setback requirements and limitation on where structures and fencing can be placed on the lot).

On June 24, 2014 the City of Johnston issued a building permit to Art Coons for a 1,376 square foot (32' x 43') accessory structure proposed to be located in the rear of his property at 6921 NW Beaver Drive.

On July 3, 2014, a consortium of neighboring property owners filed an appeal with the city and also filed a Petition for Certiorari seeking Temporary and Permanent Injunctive Relief to prevent the construction of the proposed accessory building.

On July 16, 2014 the aggrieved parties withdrew their Petition for Certiorari pending outcome of an appeal to the Board of Adjustment of the Zoning Administrator's decision to issue a building permit. Also on July 16, 2014, the City issued a letter to Mr. Coons noting the building permit had been temporarily revoked pending the outcome of a hearing before the Board of Adjustment.

A public hearing was conducted on August 21, 2014. Following the hearing, the Board by a vote of 3-2, voted to repeal the decision of the Zoning Administrator. In their findings, the Board repealed the issuance of a building permit noting the architecture of the proposed accessory building was not common to the area. After the vote, staff noted Chapter 166.16(6) required the concurring vote of four members of the Board to reverse a decision of the Zoning Administrator; therefore, the motion failed. Counsel for the aggrieved parties then requested the item be reconsidered before the full Board since two members were absent.

On September 3, 2014 The Board of Adjustment voted to repeal the

decision of the Zoning Administrator by a vote of 6 to 1.

On September 15, 2014, the City Council reviewed the Board's action based upon Chapter 166.16(6) and approved a motion to partially remand the decision back to the Board for further study.

On October 16, 2014, the Board of Adjustment considered a remand of their September 3<sup>rd</sup>, 2014 decision with direction from the City Council to reconsider findings related to the rear yard setback for the accessory structure. The Board of Adjustment voted on a motion to modify Finding #5 of the September 3<sup>rd</sup> Resolution to read that the permitted accessory structure does not meet the required setbacks and that the platted setback supersedes the setbacks described in Chapter 166.23. The resulting vote on the motion was three in favor and three against, with one member absent. As a tie vote, the motion did not carry. Counsel for the aggrieved parties requested the case be heard by a full board.

On November 20, 2014 the Board of Adjustment re-considered the council remand of their September 3<sup>rd</sup>, 2014 decision. The board voted to modify their earlier decision by finding that the permitted accessory structure did not meet the required setbacks and that the platted setback supersedes the setbacks described in Chapter 166.23."

On March 23, 2015, the applicant submitted a building permit for a 1,376 square foot accessory structure. On April 1, 2015, this application was denied due to lack of sufficient information. In subsequent discussion with the applicant indicated that the proposed building materials would not be the same or comparable building materials as the primary residential dwelling. Staff advised the applicant that further review of the building permit could not be completed until either the building materials were modified or a special exception was granted by the Board of Adjustment. A special exception application was filed on April 10, 2015.

On June 2, 2015 The Board of Adjustment considered a Special Exception Request for Accessory Structure Building Materials, for a structure greater than 720 square feet in area with a material that is not consistent with the primary residential structure but is consistent with the color scheme. The special exception was approved by a vote of 6 to 0 with one member absent.

**ZONING & BULK  
REQUIREMENTS:**

This site is zoned R-1(100), Single Family Residential, with the following bulk requirements:

Minimum Lot Area = 15,000 square feet  
Minimum Lot width = 100 feet  
Front Yard Setback = 40 feet  
Rear Yard Setback = 40 feet  
Side Yard Setback = 10 feet/21 feet total

The current plat indicates a 35' rear yard setback along the east property line. This platting action would supersede said setback in favor of a 10' side yard setback on newly-created lot 2.

The existing home shown on new lot 1 is accompanied by a detached accessory structure constructed 2.04' from the property line with eaves extending over said property line. A letter provided by four residents of The Forest subdivision submitted December 15, 2015 suggests the property cannot be subdivided citing Chapter 166.03 of the City Code of Ordinances:

**166.03 COMPLIANCE REQUIRED. Except as hereinafter specified, no building or structure shall be erected, converted, enlarged, reconstructed, or structurally altered, nor shall any building or land be used or site improved, or land subdivided, which does not comply with or maintained in accordance with all of the district regulations established by this ordinance for the district in which the building or land is located.**

Staff has examined the issue, and notes the following:

Mr. Coons was granted a variance from the Board of Adjustment on July 6, 1988 approving the location of the garage in the side yard (Resolution regarding BOA Case No. 88-6 attached). The variance supersedes the district setback requirements for the property. Neither the variance, nor the City Code at the time, addressed maximum roof overhang. Based upon this action the Board of Adjustment, and the lack of regulations at the time regarding roof overhang, would allow the garage to be considered a conforming structure.

Should the structure be deemed non-conforming for some reason, the applicable setback requirement for detached accessory structures at the time Mr. Coons's garage was 2'. Ordinance requirements have changed since construction, making Mr. Coons' garage a lawful-nonconforming structure. The code language cited at chapter 166.03 is excepted by language "**hereinafter specified**" in Chapter 166.12 of the code of ordinances. Said code section allows continuance of a lawful non-conforming use provided it is not altered in a way which increases its nonconformity. Continued use of property implies all rights of an otherwise conforming property, including the ability to subdivide. The proposed subdivision of property does not increase a nonconformity as it will not place the garage any closer to the property line than its current position. Chapter 166.12 is included as an attachment.

**BUFFERS:** All adjacent properties are zoned R-1(100); as such no buffers are required for this project.

**FLOODPLAIN:** The site is not located within the 100-year floodplain.

**PETITION AND WAIVER:** The city requires the property owner of a project to improve adjacent roadways to collector street standards. Ordinance 180.42.5.B of the City of Johnston Code of Ordinances allows for the submittal of a petition and waiver in lieu of immediate road improvements. The adjacent street that would be impacted by this ordinance is NW Beaver Drive. Currently there are no plans to improve NW Beaver Drive, but NW Beaver Drive is considered a minor arterial road in the Johnston 2030 Comprehensive Plan and the plan indicates that traffic volumes are forecasted to increase. An increase in traffic may make it necessary in the future to improve NW Beaver Drive to keep up with demand.

**COVENANTS:** The applicant has chosen not to provide covenants affecting properties in the proposed subdivision. However, a letter written on behalf of four property owners in adjacent subdivision, "The Forest" urges the city require the new lot be held to the same covenants as properties within said subdivision. The letter references chapter 180.39 of City Code as authority of the city to mandate adherence to covenants:

Chapter 180.39 of the Code of Ordinances does provide the council with "...the right to agree with the subdivider regarding the type and character of development that will be permitted in the subdivision, and may require that certain minimum regulations regarding this matter be incorporated in deed restrictions. Such regulations shall be intended to protect the character and value of the surrounding development and shall also tend to secure the most appropriate development of the property being subdivided."

The city controls character of development through use of zoning regulations and allows private property owners to voluntarily exercise tighter land use controls through exercise of covenants. Ultimately, covenants are enforced by private property owners through the civil court system. It has not been practice to require execution of covenants affecting character of development for the above-listed reasons.

**UTILITIES:** Water: The existing home on new lot 1 is served by connection to existing public water main. New lot 2 will be served by connection to the existing 8" public water main within the Forest Drive Right-of-Way.

Sanitary Sewer: The existing home on new lot 1 is served by septic and is

not required to hook up to sanitary sewer until such time said septic system fails; however, the plat contains a note indicating the home will connect to the 12" sanitary sewer force main located within the NW Beaver Drive Right-of-Way when sanitary is installed for new Lot 2. Both sanitary sewer service connections serving lots 1 and 2 will be installed through private easement across adjacent Outlot 'X'. A 40' lateral field easement is shown on Lot 2 to accommodate the existing septic laterals until such time they are abandoned. When one or both lots connect to the sanitary sewer, each respective owner will be responsible for paying a sanitary sewer connection fee. The property has previously been assessed for NW Beaver Drive sewer improvements; therefore, no additional assessments are required of the newly created lot.

**PLAT SUMMARY:**

Lots: 2 Lots  
Area: 1.09 Acres Lot 1, 0.40 Acres Lot 2  
Other Area Dedicated: N/A

**DRAINAGE:**

This plat is considered a Minor Subdivision and, consistent with other minor subdivisions approved by the council, is therefore exempt from the requirements to provide storm water quality and quantity treatment measures.

**FINAL DOCUMENTATION:**

The legal documents listed below must be received by City staff and the City attorney for review at least six (6) working days prior to the City Council meeting that the item will be taken up at:

1. Attorney's Title Opinion
2. Polk County Treasurer's Tax Certificate
3. Owner(s) Consent to Plat
4. Lender(s) Consent to Plat (if mortgage on the property)
5. Easement for septic laterals
6. Private sanitary sewer easement
7. Petition and Waiver for Future Improvements to NW Beaver Drive

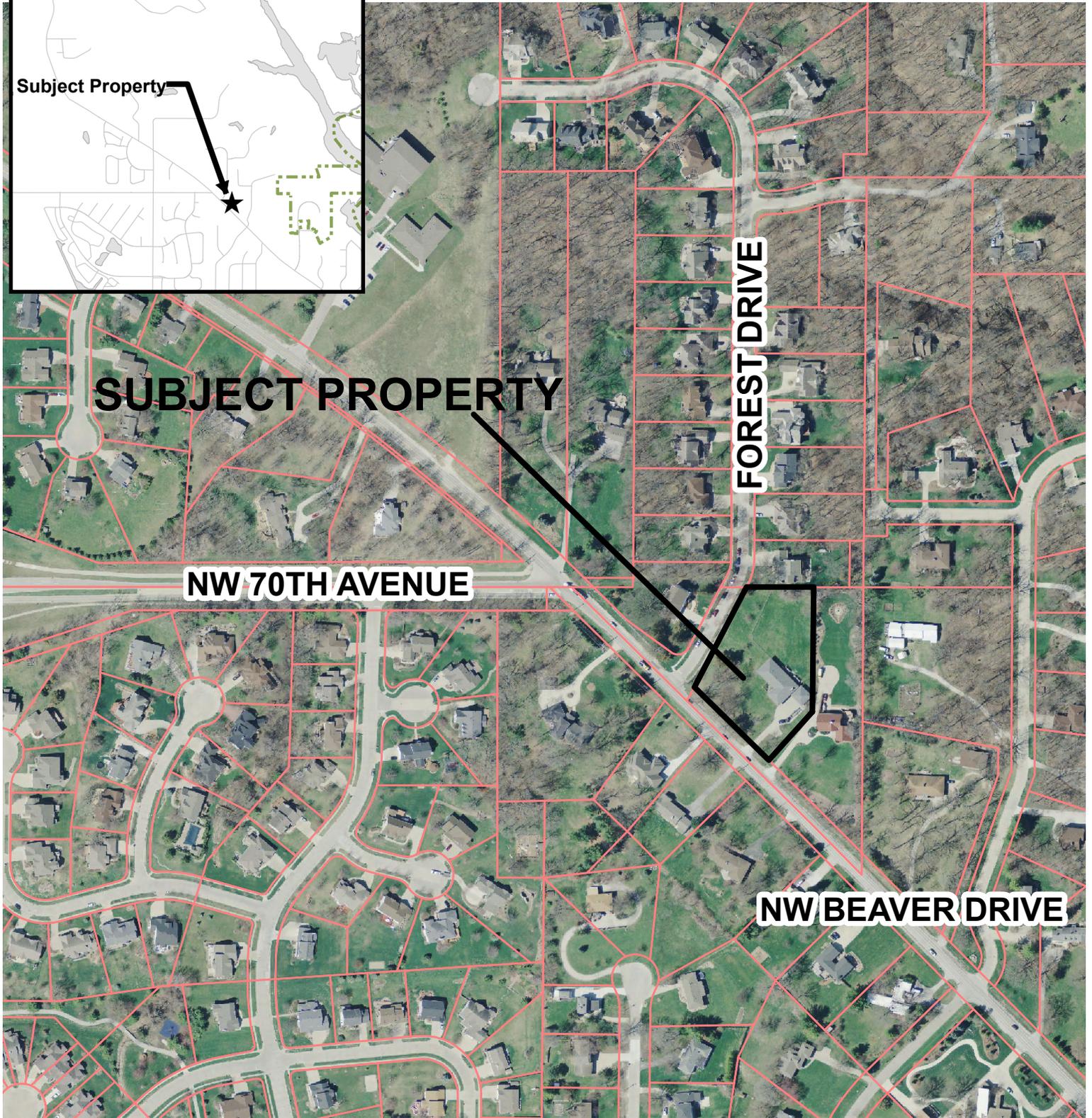
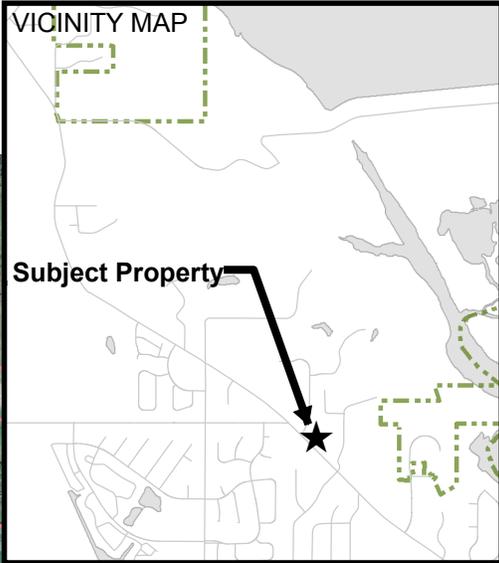
**NEIGHBOR COMMENTS:**

Prior to the Planning and Zoning Commission meeting a notice of the proposed action was mailed to all property owners within 320 feet of the subject property. A letter addressing concerns from four residents of The Forest subdivision is included in the packet for review. A second letter received from the Davis Brown Law Firm is also attached.

**CONSULTANT COMMENTS:**

Foth Infrastructure & Environment, LLC has reviewed the Preliminary Plat and Final Plat and have provided comments in their December 18<sup>th</sup>, 2015 and January 8, 2016 letters. Unresolved issues from said review have been incorporated into suggested conditions for approval.

**PZ CASE 15-40  
COONS HEIGHTS PLAT 2 PRELIMINARY & FINAL PLATS**



Created by City of Johnston Department of Community Development  
6221 Merle Hay Road, P.O. Box 410, Johnston, IA, 50131-0410 (515)278-2344 Fax:(515)278-2033







December 18, 2015

Aaron Wolfe  
Senior Planner  
City of Johnston  
P.O. Box 410  
6221 Merle Hay Road  
Johnston, IA 50131

RE: Coon Heights Plat 2  
Development Review No. 1  
Case No. PZ 15-40

Foth Infrastructure and Environment, LLC has completed a review of the Preliminary and Final Plat dated December 7th, 2015 for the above referenced project. Based on our review of project reference above, the following comments are offered:

**Preliminary Plat**

1. Please label driveway culvert pipe as proposed or existing as well as design information of pipe.
2. Is fence proposed to be removed or replaced?
3. Show and label rear and side yard setbacks in addition to noting them.
4. Include vicinity map.
5. Include ROW lines along NW Beaver and Forest Dr.
6. Include lot 2 address once assigned by City of Johnston.
7. Include names and zoning of adjacent property owners.
8. Even if utilities are not being proposed at this time, applicant shall display proposed and existing utilities and design information to ensure lot 2 can be serviced.

**Final Plat**

9. Include certification by a land surveyor.
10. Include lot 2 address once assigned by City of Johnston.
11. Label rear and side yard setbacks.

Please contact me at 515.251.2564 if you have questions or comments.

Sincerely,

**Foth Infrastructure & Environment, LLC**

A handwritten signature in blue ink, appearing to read "Joshua C. DeBower".

Joshua C. DeBower  
*Lead Civil Engineer*

jcd:mms3



January 8, 2016

Aaron Wolfe  
Senior Planner  
City of Johnston  
P.O. Box 410  
6221 Merle Hay Road  
Johnston, IA 50131

RE: Coon Heights Plat 2  
Development Review No. 2  
Case No. PZ 15-40

Foth Infrastructure and Environment, LLC has completed a review of the Preliminary and Final Plat dated December 28, 2015 for the above referenced project. Based on our review of project reference above, the following comments are offered:

**Preliminary Plat**

1. Applicant shall show the existing sanitary sewer that run the north side of Beaver Drive and provide FL information on the services to ensure they can provide the required slopes.

**Final Plat**

2. No further comments.

Please contact me at 515.251.2564 if you have questions or comments.

Sincerely,

**Foth Infrastructure & Environment, LLC**

A handwritten signature in blue ink that reads "Joshua C. DeBower".

Joshua C. DeBower  
*Lead Civil Engineer*

jcd:mms3



MEMORANDUM  
*City of Johnston, Iowa*

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DATE: December 22, 2015

TO: Art Coons, Owner / Applicant  
Associated Engineering, Consultant

FROM: Aaron Wolfe, Senior Planner

**RE: Coons Heights Plat 2 Preliminary and Final Plats**

We have reviewed the preliminary and final plats for Coons Heights Plat 2 and note the following:

**Lot Configuration**

1. Subdivision of this property, as proposed would shift the rear yard setback for Lot 1 to the east property line. As such, this would cause the house on Lot 1 to become a legally non-conforming land use since the building would be partially inside the required 40 foot rear yard setback. The zoning ordinance prohibits the subdivision of land that will create a nonconforming land use. This issue will need to be resolved prior to the plat proceeding through the review/approval process.

**Preliminary Plat**

1. Include a vicinity sketch.
2. Include the names of adjacent property owners.
3. The following is the address for Lot 2 and should be listed on the preliminary plat: 7001 Forest Drive.
4. Show existing utilities that Lot 2 will connect into and their size.
5. Indicate Lot 2 connections for water and sanitary sewer into the existing systems and their size.
6. Provide a note regarding who's responsible for installation of utilities to Lot 2 and when they'll be constructed.
7. Indicate fire hydrant coverage area. Hydrants shall be separated by no less than 100 feet and have a 300 foot coverage radius.
8. Indicate all building setback lines (front, side, and rear yard).
9. Please see additional comments on the preliminary plat as provided by Foth Infrastructure and Environment, LLC.

### **Final Plat**

1. Include the names of adjacent property owners.
2. The following is the address for Lot 2 and should be listed on the final plat:  
7001 Forest Drive.
3. Provide a note regarding who's responsible for installation of utilities to Lot 2.
4. Indicate all building setback lines (front, side, and rear yard).
5. A petition and waiver for future NW Beaver Drive improvements must be submitted prior to council approval of the final plat. A copy of the petition and waiver will be provided by the City.
6. Please see additional comments on the final plat as provided by Foth Infrastructure and Environment, LLC..

The legal documents listed below must be received by City staff and the City attorney for review at least six (6) working days prior to the City Council meeting that the item will be taken up at:

1. Attorney's Title Opinion
2. Polk County Treasurer's Tax Certificate
3. Owner(s) Consent to Plat
4. Lender(s) Consent to Plat (if mortgage on the property)

**This project is scheduled for a development review meeting on Wednesday, December 23<sup>rd</sup>, 2015 at 1:30 P.M.** The meeting will be held at Johnston City Hall Community Development Department. Four full size copies of revised final plat, four 11 x 17 inch reductions and a PDF version of the final plat must be submitted by Wednesday, December 30<sup>th</sup>, 2015 in order to proceed to the Planning and Zoning Commission on Monday, January 11<sup>th</sup>, 2016 and to the City Council on Monday January 19<sup>th</sup>, 2016. In order for the item to proceed to the January 19<sup>th</sup> City Council meetings, all of the noted legal documents will need to be submitted by Friday, January 8, 2016. Prior to the above noted meetings, a notice will be sent to adjacent properties regarding the proposed replatting.

If you have any questions, please contact me at 727-7766 or by email at [awolfe@cityofjohnston.com](mailto:awolfe@cityofjohnston.com).

cc: Josh DeBower, Foth  
David Wilwerding, Community Development Director  
Clayton Ender, Planning Intern

JOHNSTON BOARD OF ADJUSTMENT

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IN RE: THE MATTER OF ( ART COONS  
)  
BOA CASE NO. 88-6 ( 6921 NW BEAVER DRIVE

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Now on this 6th day of July, 1988, the Board of Adjustment convened in open public session at 7:30 p.m. The appellant was represented by Art Coons of 6921 NW Beaver Drive. The City was represented by Ray Briggs, Community Services Director. The Board was present by Wagner, Britson, Hansen, Soldat, Lehman, and Winter constituting a quorum. Johnson was absent.

FINDINGS OF FACT

1. That Art Coons is the owner and has requested a variance for construction of an accessory building within a side yard in lieu of the rear yard.
2. That the variance sought is in an R-1 Zoning District.
3. That the rear yard is encumbered by septic field, preventing a detached garage from being built there.
4. That the rear yard topography constitutes a hardship for construction of an accessory building.

CONCLUSIONS AND DECISION

Under the provisions of Chapter 17.16 of the Johnston Municipal Code and Chapter 414 of the Code of Iowa, the Board, by a vote of 5 to 0 with 1 Pass reaches the following "conclusions" and makes the following decision:

1. The Board has the power under Section 17.16.020 of the Johnston Municipal Code to consider this variance.
2. That Art Coons demonstrated hardship due to encumbrances by the septic field, the topography, and the irregular lot shape, in the rear yard.

Based upon the above "conclusions" the Board decides to grant the variance with the stipulation that Final Occupancy Certificate be issued before issuance of building permit for accessory structure. It is also the Board's duty to advise the appellant that Section 17.16.030 of the Johnston Zoning Regulations allows any person aggrieved by any decision of the Board to present within thirty (30) days a duly verified petition to a court of law specifying grounds as to why he or she thinks the Board's decision illegal from the date of filing in the office of the Board. The date of filing is 7/11/88 or before.

ATTEST:

  
\_\_\_\_\_  
COMMUNITY SERVICES DIRECTOR

  
\_\_\_\_\_  
CHAIRPERSON, BOARD OF ADJUSTMENT

combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

7. Any structure devoted to a use made non-conforming by this ordinance that is destroyed or has substantial damage by any means to an extent of fifty percent (50%) or more of its replacement cost at the time of destruction, exclusive of the foundations, shall not be reconstructed and used as before such event. If the structure is less than 50% destroyed above the foundation, it may be reconstructed and used as prior to the event, provided it is done within six months of such event, and is built of similar materials.

**166.12 NONCONFORMING STRUCTURES AND SITE IMPROVEMENTS.** Where a building or structure exists at the effective date of adoption or amendment of this ordinance that does not comply with the terms of this ordinance by reason of restrictions on area, lot coverage, height, setbacks, architecture, or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No such building or structure may be enlarged or altered in a way which increases its nonconformity.
2. Should such structure be destroyed by any means to an extent of 50% or more of its replacement cost at time of its destruction, it shall not be reconstructed except in conformity with the provisions of this ordinance.
3. If the site improvements on an existing building site do not conform to the requirements of this ordinance, the use of the site cannot be expanded or new buildings constructed, unless the site improvements are brought into conformance with this ordinance.

**166.13 REQUIRED REPAIRS AND UNAUTHORIZED NONCONFORMITIES.**

1. Nothing in this ordinance shall be deemed to prevent the restoring to a safe condition any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.
2. Any use of land, use of structure, or structure, in existence at the time of adoption of this ordinance which was an unlawful nonconformity under any previous zoning ordinance or similar regulations shall not be authorized to continue its nonconforming status pursuant to this ordinance or amendments thereto.

**166.14 PERMITS PREVIOUSLY ISSUED.** Nothing herein contained shall require any change in the overall layout, plans, construction, size, or designated use of any building, or part thereof, for which approvals and required permits have been granted before the enactment of this ordinance, the construction of which in conformance with such plans shall have been started prior to the effective date of this ordinance and completion thereof carried on in a normal manner and not discontinued for reasons other than those beyond the builder's control.

**166.15 AMENDMENTS.** The City Council may, from time to time, on its own action, upon request by the owner of a parcel of land, or on petition, initiate the process to change the zoning of the property and after public notice and hearings as provided by law, and after recommendation by the Planning and Zoning Commission, change the zoning boundaries and classifications shown on the Official Zoning Map, or subsequently established, and such

PUD	Planned Unit Development District
MUC	Mixed Use Center
GF	Government Facility District

#### OVERLAY ZONING DISTRICTS

FW	Floodway Overlay Zoning District
FF	Floodway Fringe Overlay Zoning District
FP	General Flood Plain Overlay Zoning District
MHR	Merle Hay Road Corridor Overlay Zoning District
A	Animal Keeping Overlay Zoning District
CL	Cluster Overlay Zoning District

**166.02 DISTRICT BOUNDARIES AND OFFICIAL ZONING MAP.** The boundaries of the Zoning Districts are indicated upon the Official Zoning Map of the City, which is made a part of this ordinance by reference. The Official Zoning Map and all notations, references and other matters shown thereon shall be as much a part of this ordinance as if the notations, references and other matters set forth by said map were all fully described herein; the original of which is properly attested to and is on file in the Office of the City Clerk. The City Council may from time to time amend the Official Zoning Map or adopt a new Official Zoning Map which shall supersede the prior Map, in the event the Official Zoning Map becomes damaged or destroyed; or for purposes of clarity due to a number of boundary changes, or to correct drafting errors or omissions; provided, however, that any such adoption shall not have the effect of amending the original zoning ordinance or any subsequent amendment thereof.<sup>†</sup> The district boundaries are either lot lines or the centerlines of streets and alleys, unless otherwise shown. Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:

1. Boundaries indicated as approximately following the centerlines of streets, highways, alleys, or other public rights-of-way shall be construed to follow such centerlines.
2. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.
3. Boundaries indicated as approximately following corporate limits shall be construed as following corporate limits.
4. Boundaries indicated as approximately following section lines, quarter section lines, or quarter-quarter section lines shall be construed as following such lines.
5. Boundaries indicated as following railroad lines shall be construed to be the centerline of the railroad right-of-way.
6. Boundaries indicated as approximately following the centerlines of rivers, streams, creeks or other waterways shall be construed to follow such centerlines.
7. Boundaries not capable of being determined in the previous paragraphs shall be as dimensioned on the Official Zoning Map or if not dimensioned shall be determined by the scale shown on the map.

**166.03 COMPLIANCE REQUIRED.** Except as hereinafter specified, no building or structure shall be erected, converted, enlarged, reconstructed, or structurally altered, nor shall

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<sup>†</sup> See Editor's Note at the end of this chapter for ordinances amending the zoning map.

any building or land be used or site improved, or land subdivided, which does not comply with or maintained in accordance with all of the district regulations established by this ordinance for the district in which the building or land is located.

**166.04 ENFORCEMENT BY ZONING ADMINISTRATOR.** There is hereby created the position of Zoning Administrator who shall be appointed by the Mayor subject to confirmation by the City Council. The Zoning Administrator shall administer and enforce the provisions of this ordinance and shall have the following powers and duties, in connection therewith:

1. The Zoning Administrator shall issue all permits and certificates required by this ordinance.
2. If the Zoning Administrator shall find that any of the provisions of this ordinance are being violated, such official shall notify in writing the person(s) responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. The Zoning Administrator shall order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings, or structures or of additions, alterations, or structural changes thereto; discontinuance of any illegal work being done; or shall take any other action authorized by this chapter to insure compliance with or to prevent violation of this ordinance.

The City Council may, by resolution approved by a majority vote of the entire Council, delegate the powers and duties of the office of Zoning Administrator to any officer or employee of the City or may combine the powers and duties of this office with any other office or position.

**166.05 CONFIRMATION OF ZONING COMPLIANCE.** No land shall be occupied or used, and no building hereafter erected or structurally altered shall be occupied or used in whole or in part for any purpose whatsoever, until there is a zoning certificate issued by the Zoning Administrator, stating that the use of the building and the site improvements comply with the provisions of this ordinance.

1. Any change of site improvements not conforming to the current approved site plan for the property or change of use shall not be made on any land, in any building or part thereof, existing or hereafter erected or structurally altered, without a zoning certificate being issued by the Zoning Administrator. No certificate of occupancy shall be issued unless the uses, buildings and site improvements are in conformity with provisions of this ordinance and other applicable codes of the City.
2. No building or premises shall be occupied until a temporary or final certificate of occupancy has been issued. Application for building permits and certificates of occupancy shall be signed by the Building Official after confirming zoning compliance and conformity to the provisions of this ordinance.
3. No certificate of occupancy shall be issued unless the Building Official approves such use and unless the provisions of this ordinance are in compliance. If weather conditions do not allow the completion of certain site improvements and their completion is not essential to the normal operation of the business, a temporary certificate of occupancy may, in the discretion of the Building Official, be issued for a period not to exceed six months as long as a bond or other security acceptable to the Building Official is provided.
4. A temporary certificate of occupancy extension or the issuance of a temporary certificate of occupancy beyond that set forth in subsection 3 above may be issued

## Notice of Public Meeting

January 4<sup>th</sup>, 2016

The Johnston Planning and Zoning Commission will hold a Public Meeting at 7:00 p.m. on Monday, January 11<sup>th</sup>, 2016. This meeting will be held in the Council Chambers of Johnston City Hall, 6221 Merle Hay Road to consider the following item:

### **PZ Case No. 15-40; Coons Heights Plat 2 Preliminary & Final Plat**

The applicant, Art Coons has submitted a preliminary plat & final plat for the subdivision of 1.49 acres at the NE corner of NW Beaver Drive and Forest Drive. The site is zoned R-1(100), Single Family Residential.

If you have questions or comments on the above-described action, please contact the city staff person listed below, or attend the meeting at the above-listed date and time. Additional information, including the preliminary & final plat is also available at <http://www.cityofjohnston.com/index.aspx?nid=435>.

Aaron Wolfe, Senior Planner  
Johnston City Hall; 6221 Merle Hay Road; Johnston, IA 50131  
Phone: 727-7766; Email: [awolfe@cityofjohnston.com](mailto:awolfe@cityofjohnston.com)

# PZ Case No. 15-40 Neighbor Mailing List

OWNER	ADDRESS	CITY, STATE, ZIP
WHITEY STANGE	7020 FOREST DR	JOHNSTON, IA, 50108
RICHARD GRADOVILLE	5220 NW 70TH PL	JOHNSTON, IA, 50109
KRISTINE FLYNN	5271 NW 70TH PL	JOHNSTON, IA, 50110
SHANE VER STEEG	7031 FOREST DR	JOHNSTON, IA, 50111
THOMAS EVANS	7005 NW BEAVER DR	JOHNSTON, IA, 50112
POLK COUNTY	5885 NE 14TH ST	JOHNSTON, IA, 50113
GREGORY CERASO (TRUSTEE)	7030 FOREST DR	JOHNSTON, IA, 50114
MARK YOCUM	7021 FOREST DR	JOHNSTON, IA, 50115
KRISTINE FLYNN	5251 NW 70TH PL	JOHNSTON, IA, 50116
NANCY KNAPP (TRUSTEE)	5221 NW 70TH PL	JOHNSTON, IA, 50117
DANIEL HANNAN	7041 FOREST DR	JOHNSTON, IA, 50118
RUSSEL GERKE	6915 NW BEAVER DR	JOHNSTON, IA, 50119
BILLY BROWN	6910 NW BEAVER DR	JOHNSTON, IA, 50120
BRUCE ILER	6960 NW BEAVER DR	JOHNSTON, IA, 50121
RICHARD GRADOVILLE	5220 NW 70TH PL	JOHNSTON, IA, 50122
JACK DAVIS	6917 NW BEAVER DR	JOHNSTON, IA, 50123
BENSON ASHMEAD	6885 NW BEAVER DR	JOHNSTON, IA, 50124
MARY ELLEN ANDERSON	7000 FOREST DR	JOHNSTON, IA, 50125
ARTHUR SLUSARK	7010 FOREST DR	JOHNSTON, IA, 50126
BRAD MOCK	6980 NW BEAVER DR	JOHNSTON, IA, 50127
BRUCE ILER	6970 NW BEAVER DR	JOHNSTON, IA, 50128
MATTHEW BEDNAR	7011 FOREST DR	JOHNSTON, IA, 50129
LISA SOLDAT (TRUSTEE)	6940 NW BEAVER DR	JOHNSTON, IA, 50130
LARRY GULLEN	7050 FOREST DRIVE	JOHNSTON, IA, 50131
LARY ANDERSON	7040 FOREST DRIVE	JOHNSTON, IA, 50132

December 15, 2015

David,

Again, thank you for continuing to keep us abreast of the applications and actions taken on the property at 6921 NW Beaver Drive. In general we see the application to subdivide as having potentially positive impact on our situation. That, of course, depends on how the new lot is ultimately used.

In looking at the application, we would like the City to consider the following items in its deliberations:

1. We are most concerned with the nature of any residence that would be built on this lot. Last year, Mr. Coons told us about his thoughts on a potential subdivision of his property. He said he would consider subdivision of the property if he could not build his desired accessory structure on his current property. He threatened to subdivide his lot and build a multiple stall garage with a residential rental property on the second story. This, of course, would not be acceptable to us.

City Code paragraph 180.39 states:

**CHARACTER OF DEVELOPMENT. *The Council shall have the right to agree with the subdivider regarding the type and character of development that will be permitted in the subdivision, and may require that certain minimum regulations regarding this matter be incorporated in deed restrictions. Such regulations shall be intended to protect the character and value of the surrounding development and shall also tend to secure the most appropriate development of the property being subdivided (emphasis added).***

Our subdivision includes the frontage land that the new homeowner must cross for access from Forest Drive. The house number will likely be within our subdivision numbering system. We would like the new property be required to submit to the Forest Drive covenants for construction of a home. Such covenants serve to improve the value of the lot. They protect the value of our homes and, in fact, will protect the value of Mr. Coons' home as well. Alternatively, a simple requirement that a single story home have at least 2,000 square feet of living space and a two story home have at least 2,700 square feet of living space (with minimum of 1,350 square feet of living space on the first floor) would be representative of the neighborhood, including Coons Heights. A third option would be to have this property would now be contained in two plats (Coons Heights and Forest Drive) replatted into the single Forest Subdivision, where the covenants would apply naturally. As we have shown, it is well within the law for these types of covenants to be required by the City when property values may be impacted.

2. City Code paragraph 166.03 states:

COMPLIANCE REQUIRED. Except as hereinafter specified, no building or structure shall be erected, converted, enlarged, reconstructed, or structurally altered, *nor shall any building or land be used or site improved, or land subdivided, which does not comply with or maintained in accordance with all of the district regulations established by this ordinance for the district in which the building or land is located (emphasis added).*

We do not believe that Mr. Coons has a fully compliant property for five reasons:

- His current unattached garage was built within the 10' side yard setback area next to 6917 NW Beaver Drive. The submitted plat agrees with our statement that the accessory structure is built in the setback area in violation of the side yard setback code. This is not compliant.
- The eaves of the accessory structure extend approximately 4' from the garage and overhang the neighboring property. That is not compliant with the following code section.

165.04 (44) "Building setback line" means the extreme overall dimensions of a lot beyond which buildings and structures are not allowed. *Horizontally projecting roof overhangs and chimneys into the setback up to two (2) feet shall be permitted,* provided no part of a side of a building for residential occupancy which is not attached to another building shall be closer than five (5) feet to a lot line or within 10 feet of another building. A lot may have multiple building setback lines for primary structures, accessory structures, decks, etc. *(emphasis added).*

To our knowledge, no easement has been granted to Mr. Coons and no property has been carved out and sold to Mr. Coons to accommodate the non-compliant siting of the accessory structure.

- Mr. Coons's satellite dish overhangs the property at 6917 NW Beaver Drive.
- Parts of his chain link fences are over the property lines of neighboring properties.
- The fencing for his pets is not in compliance with City Code section 166.36 (5), which applies to both domestic and non-domestic animals, and states:

Animal Enclosures. Any enclosure constructed to house any animal that is considered a building shall be setback a distance equal to the setback required for an accessory structure in Table 166.23 (5). *The animal or fowl under this section may not be maintained, enclosed or fenced in the front yard of a dwelling (emphasis added).*

This is still an outstanding compliance issue for the property and will be even more important to the overall visual impact on the neighborhood after a new home is built..

We believe these issues must be addressed before the application proceeds to the Planning and Zoning Commission.

3. We would note that there is no engineer's signature and seal on the application and proposed plat. We believe that a signed and sealed survey is required before the application can be considered. Also, side yard and rear yard setbacks are not shown.
4. In particular, the 35' setback from the Bednar property is not on the proposed plat. The setback was originally created in favor of Mr. Coons. That setback was relied upon by the Bendars when they purchased their house, and therefore the setback is binding. This legal position was upheld as a proper building setback line by action of the Board of Adjustments. No court challenge was completed by Mr. Coons in the allotted timeframe. Because the setback line was originally created in Mr. Coons's favor and relied upon by the Bednars, the City should not legally be allowed to nullify it.
5. As far as the current septic system,
  - We believe the new lot line, coupled with septic system siting requirements will encroach upon the current septic lateral field. That would mean that Mr. Coons will need to connect to the City Sewer system.
  - Also, we understand that there is a new law that requires septic system inspection upon transfer or sale of property. This law may apply here should Mr. Coons attempt to maintain his current septic field.
  - We believe that there may be a requirement that Mr. Coons pay for the sewer hookup fee on the new property to accomplish this subdivision of his property.
6. We believe that any new lot must comply with the grading requirements of section 145 of the code, including storm water control.
7. We think that it would be beneficial to have the new lot be named 7001 Forest Drive, in keeping with our numbering system. Again, this property will appear to be part of the Forest Drive development.

We would like to be kept informed on any developments in this filing. Thank you again for your help and consideration.

Respectfully,

Larry Gulleen	Jeff & Mary Ellen Anderson	Matt and Mary Bednar	Larry Anderson
7050 Forest Dr.	7000 Forest Drive	7011 Forest Drive	7040 Forest Drive
Johnston, IA	Johnston, IA	Johnston, IA	Johnston, IA



REPLY TO DES MOINES OFFICE

January 8, 2016

Via Email: [Tim@ladenpearsonlaw.com](mailto:Tim@ladenpearsonlaw.com)

Mr. Tim Pearson  
Johnston City Attorney  
LADEN AND PEARSON, P.C.  
3231 E. Euclid Avenue  
Suite 300  
Des Moines, IA 50317

RE: Proposed Subdivision of Coons Heights

Dear Tim:

As you know, I represent a variety of Johnston residents, specifically Dr. and Mrs. Matthew and Mary Bednar and Dr. and Mrs. Jeff and Mary Ellen Anderson. I have been provided with information regarding a proposed development at the entryway of the Forest Development. My clients, along with their neighbors, have provided the City with their concerns.

As my clients and their neighbors pointed out, there is a concern with the continued trespass by virtue of the illegal overhang of the detached garage on the Coons' current property. While the City may or may not have had code provisions in place in 1988 regarding overhangs, property lines and trespass laws have not changed. The overhang is a continuing trespass and should not be deemed conforming. Such a declaration is tantamount to the City sanctioning this continuing trespass. I understand there was a variance in 1988. The variance, BOA Case number 88-6, does not grant a taking of the adjoining neighbor's land. Rather, the variance is plainly limited and speaks to location of the detached structure. Accordingly, variance or not, the trespass is non-conforming.

Also missing from the proposed subdivision is the 35' setback along the Bednar property. As previously discussed, this setback was relied upon in the development and sale of the adjoining property, and is therefore an enforceable right by adjoining neighbors; such a right survives subsequent sales. Gray v. Osborn, 739 N.W.2d 855, 860 (Iowa 2007); Middle Road Developers v. Windmill Design & Develop., 746 N.W.2d 279, 2008 WL 141658, at \*3 (Iowa Ct. App. 2008) ("The recent case of Gray v. Osborn makes it *clear* that the plat map alone can provide the necessary language to bind successive owners of real estate to restrictions or limitations on its use.").

Further, planned expansion requires critical assessment of any purposed development. The plans should bear an engineer's stamp and approval for several reasons, but one of the most

DAVIS BROWN KOEHN SHORS & ROBERTS P.C.

PHONE 515.288.2500  
FIRM FAX 515.243.0654  
WWW.DAVISBROWNLAW.COM

THE DAVIS BROWN TOWER, 215 10<sup>TH</sup> ST., STE. 1300, DES MOINES, IA 50309  
THE HIGHLAND BUILDING, 4201 WESTOWN PKWY., STE. 300, WEST DES MOINES, IA 50266  
THE AMES OFFICE, 2605 NORTHRIDGE PKWY., STE. 101, AMES, IA 50010  
THE EMMETSBURG OFFICE, 2214 MAIN ST., P.O. BOX 314, EMMETSBURG, IA 50536

important is water and flooding concerns. Runoff is a common concern in central Iowa and changing topography necessarily changes runoff and water collection. Flooding is a devastating and expensive issue for homeowners. What is the plan for grading and water runoff?

Also, as a part of planned expansion, the City Code empowers the City Council to protect Johnston residents through section 180.39. This section empowers the City Council to keep accountability on developers and subdivisions. Certainly, Johnston wants to continue its place in the greater Des Moines area as an appealing suburb where home values are secure investments. Allowing a rental unit on top of a garage into an existing development will undercut property values, without question. It is, without a doubt, a garage in disguise. The City has an obligation to protect property values from the devastating impacts of unplanned expansion, and section 180.39 does exactly that.

In that vein, the protection of the character suggests that the primary structure on the proposed subdivision should be in line with neighborhood. To be in line with the neighborhood, the structure should be something more than an apartment. My clients have suggested a square footage minimum. Such a requirement is certainly permitted by section 180.39 and would serve to protect the neighborhood's property values by maintaining character, resell potential and property taxes.

My clients appreciate your attention to these very important matters.

Very truly yours,

DAVIS, BROWN, KOEHN, SHORS & ROBERTS, P.C.



Michele L. (Warnock) Brott