

Date April 9, 2007

RESOLUTION CLOSING PUBLIC HEARING ON PROPOSED REZONING

WHEREAS, on December 4, 2006, by Roll Call No. 06-2374, it was duly resolved by the City Council that the application of Jerry's Homes (purchaser), represented by Ron Grubb, to rezone certain property owned by the Michael Tobis and Tom Tobis trusts and located in the vicinity of the 2200 block of East Pine Avenue, more fully described below, be set down for hearing on January 22, 2007, at 5:00 P.M., in the Council Chambers at City Hall; and,

WHEREAS, due notice of said hearing was published in the Des Moines Register on January 10, 2007, as provided by law, setting forth the time and place for hearing on said proposed amendment to the Zoning Ordinance; and,

WHEREAS, on January 22, 2007, by Roll Call No. 07-152, and on February 26, 2007, by Roll Call No. 07-377, the City Council continued the public hearing on the proposed rezoning until April 9, 2007, at 5:00 p.m.; and,

WHEREAS, in accordance with the published notice those interested in said proposed rezoning, both for and against, have been given opportunity to be heard with respect thereto and have presented their views to the City Council; and,

WHEREAS, the Legal Department has prepared an amendment to the Zoning Ordinance of the City of Des Moines to rezone the following described property:

Parcel "A" to be rezoned to a Limited "R-3" Multiple Family Residential District (up to 17 units per acre):

A PARCEL OF LAND IN THE NW 1/4 OF SECTION 36, TOWNSHIP 78 NORTH, RANGE 24 WEST OF THE 5TH P.M., CITY OF DES MOINES, POLK COUNTY, IOWA THAT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER OF SAID SECTION 36; THENCE N00°07'13"W, 45.00 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF PINE AVENUE, A PLATTED STREET; THENCE S89°57'13"W, 1414.44 FEET ALONG SAID NORTH R.O.W. LINE TO THE POINT OF BEGINNING; THENCE CONTINUING S89°57'13"W, 1181.69 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF INDIANOLA AVENUE, A PLATTED STREET; THENCE N00°13'10"W, 822.33 FEET ALONG SAID EAST R.O.W. LINE TO A POINT; THENCE S89°28'59"E, 519.69 FEET TO A POINT; THENCE N00°14'24"W, 177.47 FEET TO A POINT ON THE SOUTH LINE OF PARCEL 'K' (RECORDED IN BOOK 10394, PAGE 736), IN SAID SECTION 36 ; THENCE N90°00'00"E, 665.91 FEET ALONG SAID SOUTH LINE TO A POINT; THENCE S00°00'00"W, 994.15 FEET TO THE POINT OF BEGINNING AND CONTAINING 24.937 ACRES, MORE OR LESS.

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Parcel "B" to be rezoned to a Limited "R-3" Multiple Family Residential District (limited to a maximum of 12 units per acre):

A PARCEL OF LAND IN THE NW 1/4 OF SECTION 36, TOWNSHIP 78 NORTH, RANGE 24 WEST OF THE 5TH P.M., CITY OF DES MOINES, POLK COUNTY, IOWA THAT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AS A POINT OF REFERENCE AT THE CENTER OF SAID SECTION 36; THENCE N00°07'13"W, 45.00 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF PINE AVENUE, A PLATTED STREET; THENCE S89°57'13"W, 715.10 FEET ALONG SAID NORTH R.O.W. LINE TO THE POINT OF BEGINNING; THENCE CONTINUING S89°57'13"W, 699.34 FEET ALONG SAID NORTH R.O.W. LINE TO A POINT; THENCE N00°00'00"E, 994.15 FEET TO A POINT ON THE SOUTH LINE OF PARCEL 'K' (RECORDED IN BOOK 10394, PAGE 736), IN SAID SECTION 36; THENCE S90°00'00"E, 104.10 FEET ALONG THE SOUTH LINE OF SAID PARCEL 'K' TO THE SW CORNER OF PARCEL 'L' AS RECORDED IN BOOK 10928, PAGE 300; THENCE CONTINUING S90°00'00"E 296.49 FEET TO A POINT ON THE SOUTH LINE OF SAID PARCEL 'L'; THENCE S00°00'00"W, 261.52 FEET TO A POINT; THENCE S40°28'21"E, 462.19 FEET TO A POINT; THENCE S00°00'00"E, 380.47 FEET TO THE POINT OF BEGINNING AND CONTAINING 12.944 ACRES, MORE OR LESS.

Parcel "C" to be rezoned to a Limited "R1-60" One-Family Low-Density Residential District:

A PARCEL OF LAND IN THE NW 1/4 OF SECTION 36, TOWNSHIP 78 NORTH, RANGE 24 WEST OF THE 5TH P.M., CITY OF DES MOINES, POLK COUNTY, IOWA THAT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER OF SAID SECTION 36; THENCE N00°07'13"W, 45.00 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF PINE AVENUE, A PLATTED STREET; THENCE S89°57'13"W, 100.00 FEET ALONG SAID NORTH R.O.W. LINE TO THE POINT OF BEGINNING; THENCE CONTINUING S89°57'13"W, 615.10 FEET ALONG SAID R.O.W. LINE TO A POINT; THENCE N00°00'00"E, 380.47 FEET TO A POINT; THENCE N40°28'21"W, 462.19 FEET TO A POINT; THENCE N00°00'00"E, 261.52 FEET TO A POINT ON THE SOUTH LINE OF PARCEL 'L' (RECORDED IN BOOK 10928, BOOK 300), IN SAID SECTION 36; THENCE S90°00'00"W, 308.28 FEET ALONG SAID SOUTH LINE TO THE SE CORNER OF PARCEL 'K' (RECORDED IN BOOK 10394, PAGE 736) IN SAID SECTION 36; THENCE CONTINUING S90°00'00"E, 103.44 FEET ALONG THE SOUTH LINE OF SAID PARCEL 'K' TO A POINT; THENCE N00°00'00"E, 175.84 FEET TO A POINT; THENCE S90°00'00"E, 103.32 FEET TO A POINT ON THE WEST LINE OF SAID PARCEL 'L'; THENCE CONTINUING S90°00'00"E, 3082.8 FEET TO A POINT ON THE EAST LINE OF SAID PARCEL 'L';

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THENCE N00°00'00"W, 128.48 FEET TO A POINT ON THE SOUTH LINE OF SAID PARCEL 'L'; THENCE S90°00'00"E, 811.50 FEET ALONG SAID SOUTH LINE TO A POINT; THENCE S18°12'23"W, 394.90 FEET TO A POINT; THENCE S85°51'37"W, 203.72 FEET TO A POINT; THENCE S00°00'00"E, 121.80 FEET TO A POINT; THENCE S40°00'00"E, 183.90 FEET TO A POINT; THENCE S70°00'00"E, 424.12 FEET TO A POINT ON THE EAST LINE OF SAID NW 1/4; THENCE S00°07'13"E, 399.75 FEET ALONG SAID EAST LINE TO A POINT; THENCE S44°55'00"W, 141.33 FEET TO THE POINT OF BEGINNING AND CONTAINING 21.947 ACRES, MORE OR LESS.

Parcel "D" to be rezoned to a Limited "R1-80" One Family Residential District:

PARCEL OF LAND IN THE NW 1/4 OF SECTION 36, TOWNSHIP 78 NORTH, RANGE 24 WEST OF THE 5TH P.M., CITY OF DES MOINES, POLK COUNTY, IOWA THAT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER OF SAID SECTION 36; THENCE N00°07'13"W, 544.75 FEET ALONG THE EAST LINE OF SAID NW 1/4 TO THE POINT OF BEGINNING; THENCE N70°00'00"W, 424.12 FEET TO A POINT; THENCE N40°00'00"W, 183.90 FEET TO A POINT; THENCE N00°00'00"E, 121.80 FEET TO A POINT; THENCE N85°51'37"E, 203.72 FEET TO A POINT; THENCE N18°12'23"E, 394.90 FEET TO A POINT ON THE SOUTH LINE OF PARCEL 'L' (RECORDED IN BOOK 10928, PAGE 300), IN SECTION 36; THENCE S90°00'00"E 188.50 FEET ALONG SAID SOUTH LINE TO A POINT ON THE EAST LINE OF SAID NW 1/4; THENCE S00°07'13"E 797.57 FEET ALONG SAID EAST LINE TO THE POINT OF BEGINNING AND CONTAINING 5.882 ACRES, MORE OR LESS.

Parcels "A", "B", "C" and "D" described above are hereinafter collectively referred to as the "Property."

subject to the following conditions which are agreed to and accepted by execution of an Acceptance of Rezoning Ordinance in writing by all owners of said property and is binding upon the owners and their successors, heirs and assigns as follows:

- A. A tree survey of all trees over 6" in caliper and a tree protection plan and shall be submitted as part of any Preliminary Plat for the Property.
- B. There shall be no removal of vegetation from the anticipated conservation easement areas and no removal of any vegetation on the Property until a grading plan is approved as part of a Preliminary Plat.
- C. Each single-family dwelling unit on the Property shall have an attached two-car garage and basement.

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- D. Any single-family dwelling on the portions of the Property outside the "R1-80" zoned area shall have a minimum finished interior area, exclusive of basement and garage, as follows:
  - 1. Single-story (ranch) 1,200 square feet.
  - 2. Two-story 1,400 square feet.
- E. Any single family dwelling on the portions of the Property rezoned to the "R1-80" District shall have a minimum finished interior area, exclusive of basement and garage, as follows:
  - 1. Single-story (ranch) 1,500 square feet, excluding basements.
  - 2. Two-story 1,700 square feet, excluding basements.
- F. At least 50% of any single family dwellings constructed or placed upon the Property shall have either: i) masonry (stone or brick) covering one-third to one-half of the square footage of the front elevation exclusive of windows and doors; or, ii) a 60 square foot porch.
- G. The front elevation of each single-family dwelling constructed or placed on the Property must contain either: i) Shutters on each side of each window; or, ii) window trim not less than 4" in width.
- H. The exterior of each single-family dwelling constructed or placed on the Property must be of masonry (brick or stone) and/or vinyl, cedar, Masonite, or Hardi-Plank siding. If vinyl siding is selected, it must be greater than 40 mills thick.
- I. The roof on any single family dwelling constructed or placed on the Property shall be of architectural type shingles or cedar shakes.
- J. All fencing hereafter constructed or placed on the Property shall conform to the following requirements:
  - 1. Black vinyl-clad chain link is the only fencing material permitted, except as specifically provided below.
  - 2. The maximum height of fencing allowed in a side or rear yard is five-feet (5').
  - 3. Fencing is prohibited within any front yard and within access easements to detention basins or trails.
  - 4. If fencing is placed in an easement that prohibits access, the City may remove the fence to gain access. Any replacement of the fence shall be the responsibility of the homeowner.
  - 5. Wood privacy screens up to six-feet (6') in height are permitted when located outside of the required setbacks for a principal structure, outside of conservation easements and when adjoining private patios or decks outside the required front yard.
  - 6. All other fencing or screening not prohibited by the Zoning Ordinance is subject to the review and approval of the Des Moines Community Development Director for compatibility with the overall design and appearance of the neighborhood in which it is located.

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- K. Any development of the property, including erosion control, shall be undertaken and maintained in conformance with the applicable standards imposed by the Environmental Protection Agency and the Iowa Department of Natural Resources.
- L. The maximum residential density of any subdivision within Parcel "B" described above is 12 units per acre. No platted lot within Parcel "B" may be split or divided without the prior written approval of the Des Moines Community Development Director.
- M. All single-family residential lots within Parcels "A", "B" and "C" shall have a minimum lot width of 65 feet.
- N. Any subdivision plat for the Property shall be in substantial conformance with the zoning concept plan submitted by Jerry's Homes, Inc., as part of its application for the rezoning of the Property.

WHEREAS, the Community Development Director recommends that the rezoning be subject to an amended set of conditions, with the conditions in paragraphs L, M and N, above, replaced with the following conditions:

- L. A maximum of 531 dwelling units shall be allowed on the Property, with a maximum of 455 multiple family dwelling units allowed on Parcels "A" and "B", and a maximum of 76 single family dwelling units allowed on Parcels "C" and "D". Subject to the overall maximums, the maximum residential density of any subdivision or multiple family site plan within Parcel "A" described above is 14 units per acre, and the maximum residential density of any subdivision or multiple family site plan within Parcel "B" described above is 12 units per acre. Furthermore, the first row of development north of Pine Avenue within Parcel "A" shall be at a density equal to or less than the density of existing development on the south side of Pine Avenue (approximately 8 units per acre). No subdivision or multiple family site plan shall be submitted or approved which would cause these limitations to be exceeded.
- M. No platted lot may be split or divided without the prior written approval of the Des Moines Community Development Director.
- N. All single-family residential lots within Parcels "A", "B" and "C" shall have a minimum lot width of 65 feet.
- O. Any subdivision plat for the Property shall be in substantial conformance with the zoning concept plan submitted by Jerry's Homes, Inc., as part of its application for the rezoning of the Property.
- P. Any multi-family residential phase of the development will be subject to a site plan review by the Plan and Zoning Commission.

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NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

1. Upon due consideration of the facts, statements of interested persons and arguments of counsel, the objections to the proposed rezoning of the Property to a Limited "R-3" Multiple-Family Residential District, Limited "R1-60" One-Family Low-Density Residential District and Limited "R1-80" One-Family Residential District are hereby overruled, and the hearing is closed.

2. The proposed rezoning is hereby found to be in conformance with the Des Moines 2020 Community Character Land Use Plan.

( Council Communication No. 07- )

MOVED by \_\_\_\_\_ to adopt and to close the public hearing.

FORM APPROVED:

*Roger K. Brown*  
 Roger K. Brown  
 Assistant City Attorney

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**NOTES:**

1. Six affirmative votes are required for passage of the rezoning ordinance due to the sufficient protest by the adjoining landowners. I.C. §414.5, City Code §134-4(b)(3)
2. If the City Council desires to amend the zoning conditions from that agreed to in writing by the landowners, the Council should continue the public hearing and direct the Legal Department to amend the proposed Ordinance and the Acceptance of Rezoning Ordinance signed by the property owners to reflect the amended conditions. Any special conditions must be accepted in writing by the property owners before the hearing is closed to be effective and enforceable. I.C. §414.5.

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				

MOTION CARRIED

APPROVED

Mavor

**CERTIFICATE**

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

\_\_\_\_\_  
 City Clerk