

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
JULY 19, 2016 AGENDA**

Subject:	Type:	Submitted By:
APPLICATION FOR REZONING LOTS 1-7, BRENTWOOD CROSSING, LOTS 8B & 8C, BRENTWOOD CROSSING REPLAT NO. 1, LOTS 8A1, 8A2, 8A3 & 8A4, BRENTWOOD CROSSING REPLAT NO. 2, AND PORTIONS OF TAX LOT 12, 14-14-12 (SE OF 84 TH ST. & SUMMER DR.)	RESOLUTION ◆ ORDINANCE RECEIVE/FILE	ANN BIRCH COMMUNITY DEVELOPMENT DIRECTOR

SYNOPSIS

A public hearing has been scheduled and an ordinance prepared for the rezoning of approximately 34.93 acres located generally southeast of 84th Street and Summer Drive.

FISCAL IMPACT

None.

RECOMMENDATION

Approval.

BACKGROUND

A public hearing has been scheduled to consider a rezoning application by La Vista City Center LLC, on behalf of the property owners, Brentwood Crossing Associates, Brentwood Crossing Associates II, Brentwood Crossing Associates III, and the City of La Vista (portions of the golf course property), for approximately 34.93 acres identified as Lots 1-7 Brentwood Crossing, Lots 8B & 8C, Brentwood Crossing Replat No. 1, Lots 8A1, 8A2, 8A3 & 8A4, Brentwood Crossing Replat No. 2, and portions of Tax Lot 12, 14-14-12 (to be replatted as proposed Lots 1-17 and Outlots A-C, La Vista City Centre). The property is generally southeast of 84th Street and Summer Drive.

The property is currently zoned C-1 Shopping Center Commercial with the Gateway Corridor Overlay District. The applicant has requested rezoning to MU-CC Mixed Use City Centre District in connection with its acquisition of the property for the purpose of a redevelopment project. Approval will be subject to recording of the final plat, subdivision agreement and redevelopment agreement.

A detailed staff report is attached.

The Planning Commission held a public hearing on June 2, 2016, and unanimously recommended approval of the rezoning, subject to recording of the final plat, subdivision agreement and redevelopment agreement, as the rezoning request is consistent with the Comprehensive Plan and the Zoning Regulations.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA; AND TO PROVIDE FOR THE EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA:

Section 1. Approval of Rezoning. On June 2, 2016, the La Vista Planning Commission conducted a public hearing on the matter of rezoning the tract of land set forth in Section 2 of this ordinance and reported to the City Council that it recommended approval of the zoning of said tract be changed from "C-1" Shopping Center Commercial District, Gateway Corridor District (Overlay District) to "MU-CC" Mixed Use City Centre District, subject to recording of the final plat, subdivision agreement and redevelopment agreement for the tract. On June 21, 2016, the City Council held a public hearing on said proposed change in zoning and found and determined that said proposed changes in zoning are advisable and in the best interests of the City. The City Council further found and determined that public hearings were duly held and notices pursuant to Section 9.01 of the Zoning Ordinance and otherwise were duly given, including published notice, written notice to adjacent property owners and notice posted at the property. The City Council hereby approves said proposed changes in zoning as set forth in Section 2 of this ordinance.

Section 2. Amendment of the Official Zoning Map. Pursuant to Article 3 of the Zoning

Ordinance, the following described tract of land is hereby rezoned from "C-1" Shopping Center Commercial District, Gateway Corridor District (Overlay District) to "MU-CC" Mixed Use City Centre District, and the Official Zoning Map of the City of La Vista is hereby amended to reflect the changes in zoning of the following described tract of land from "C-1" Shopping Center Commercial District, Gateway Corridor District (Overlay District) to "MU-CC" Mixed Use City Centre District, subject to recording of the final plat, subdivision agreement and redevelopment agreement for such tract with the Sarpy County Register of Deeds on or before November 1, 2016:

A TRACT OF LAND LOCATED IN SECTION 14, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A TRACT OF LAND BEING A PART OF TAX LOT 12 LOCATED IN THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TRACT 1:

BEGINNING AT THE SOUTHWEST CORNER OF SAID TAX LOT 12, SAID CORNER ALSO BEING ON THE EAST RIGHT-OF-WAY LINE OF 84TH STREET; THENCE ON AN ASSUMED BEARING OF N02°22'12"E ON THE EAST RIGHT-OF-WAY LINE OF 84TH STREET, 55.20 FEET; THENCE N87°27'28"E, 217.26 FEET; THENCE S57°58'55"E, 96.96 FEET TO A POINT ON THE SOUTH LINE OF SAID TAX LOT 12; THENCE S87°27'28"W ON SAID SOUTH LINE, 301.84 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS A CALCULATED AREA OF 14,275.29 SQ. FT. OR 0.328 ACRES MORE OR LESS.

A TRACT OF LAND BEING A PART OF TAX LOT 12 LOCATED IN THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TRACT 2:

COMMENCING AT THE SOUTHWEST CORNER OF SAID TAX LOT 12, SAID CORNER ALSO BEING ON THE EAST RIGHT-OF-WAY LINE OF 84TH STREET; THENCE ON AN ASSUMED BEARING OF N87°27'28"E ON SAID SOUTH LINE OF TAX LOT 12, 541.84 FEET TO THE POINT OF BEGINNING; THENCE N58°06'08"E,

112.19 FEET; THENCE N87°27'28"E, 191.50 FEET; THENCE S02°33'02"E, 55.00 FEET TO A POINT ON SAID SOUTH LINE OF TAX LOT 12; THENCE S87°27'28"W ON SAID SOUTH LINE, 289.29 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS A CALCULATED AREA OF 13,221.81 SQ. FT. OR 0.304 ACRES MORE OR LESS.

SAID TRACTS 1 AND 2 CONTAIN A TOTAL CALCULATED AREA OF 27,497.10 SQ. FT. OR 0.631 ACRES MORE OR LESS.

TRACT 3:

LOTS 1 THRU 7, BRENTWOOD CROSSING, LOTS 8B AND 8C, BRENTWOOD CROSSING REPLAT 1, AND LOTS 8A1, 8A2, 8A3 AND 8A4, BRENTWOOD CROSSING REPLAT 2, LOCATED IN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 14, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, SAID TRACT CONTAINS A CALCULATED AREA OF 34.93 ACRES MORE OR LESS.

ALL BEING REPLATTED AS PROPOSED LOTS 1 THRU 17 AND OUTLOTS A THRU C, LA VISTA CITY CENTRE, A SUBDIVISION IN SARPY COUNTY, NEBRASKA.

The amended version of the official zoning map of the City of La Vista is hereby adopted and shall be signed by the Mayor, attested to by the City Clerk and shall bear the seal of the City under the following words:

"This is to certify that this is the official zoning map referred to in Article 3 Section 3.02 of Ordinance No. 848 of the City of La Vista, Nebraska"

and shall show the date of the adoption of that ordinance and this amendment.

Section 3. Effective Date. This ordinance shall be in full force and effect upon the date passage, approval and publication as provided by law.

PASSED AND APPROVED THIS 19TH DAY OF JULY 2016.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk



CITY OF LA VISTA
PLANNING DIVISION

RECOMMENDATION REPORT

CASE NUMBER: 2016-ZMA-02

FOR HEARING OF: July 19, 2016
Report Prepared on: July 12, 2016

I. GENERAL INFORMATION

A. APPLICANT:

La Vista City Centre LLC
P.O. Box 428
Boys Town, NE 68010

B. PROPERTY OWNERS:

Lots 2-7 Brentwood Crossing, 8A1, 8A3 Brentwood Crossing
Replat No 2:

Brentwood Crossing Associates
211 North Stadium Blvd, Ste 201
Columbia, MO 65203

Lot 1 Brentwood Crossing:
Brentwood Crossing Associates II
211 North Stadium Blvd, Ste 201
Columbia, MO 65203

Lots 8B and 8C Brentwood Crossing Replat No 1; Lots 8A2, 8A4
Brentwood Crossing Replat No 2:
Brentwood Crossing Associates III
211 North Stadium Blvd, Ste 201
Columbia, MO 65203

Portions of Tax Lot 12, 14-14-12:
City of La Vista
8116 Park View Blvd.
La Vista, NE 68128

C. LOCATION: Southeast of the intersection of 84th Street and
Summer Drive.

D. LEGAL DESCRIPTION: Lots 1-7 Brentwood Crossing, Lots 8B,
and 8C Brentwood Crossing Replat No 1, Lots 8A1, 8A2, 8A3, and
8A4 Brentwood Crossing Replat No 2, and portions of Tax Lot 12,
14-14-12

E. REQUESTED ACTION(S): Conditional rezoning of proposed Lots
1-7 Brentwood Crossing, Lots 8B, and 8C Brentwood Crossing
Replat No 1, Lots 8A1, 8A2, 8A3, and 8A4 Brentwood Crossing
Replat No 2 (proposed Lots 1-17 and Outlots A-C, La Vista City
Centre) and portions of Tax Lot 12, 14-14-12

- F. EXISTING ZONING AND LAND USE:**
C-1 Shopping Center Commercial with a Gateway Corridor Overlay (Overlay District); various commercial uses.
- G. PURPOSE OF REQUEST:** Rezoning the lots listed in the request to MU-CC, Mixed Use City Centre District for the purpose of redevelopment.
- H. SIZE OF SITE:** 34.93 Acres

II. BACKGROUND INFORMATION

- A. EXISTING CONDITION OF SITE:** The property is the former site of the Brentwood Crossing shopping center. Most of the buildings are vacant. The main strip building and much of the parking is in poor condition. The land is generally flat with a gradual downward slope generally east and west of the high point at the Brentwood Drive entrance.
- B. GENERAL NEIGHBORHOOD/AREA ZONING AND LAND USES:**
- 1. North:** La Vista Falls Golf Course, R-1 Single-Family Residential with a Gateway Corridor Overlay (Overlay District); public golf course
 - 2. East:** Briarwood Subdivision and La Vista Junior High; R-1 Single-Family Residential; single-family dwellings and public school
 - 3. South:** Witham Place; C-1 Shopping Center Commercial District with a Gateway Corridor Overlay (Overlay District); various commercial uses.
 - 4. West:** Brentwood Square and Brentwood Plaza; C-1 Shopping Center Commercial District with a Gateway Corridor Overlay (Overlay District); various commercial uses.
- C. RELEVANT CASE HISTORY:**
- 1.** On May 17, 2016, the City Council approved Ordinance No. 1282, which created a Mixed Use City Centre Zoning District (MU-CC).
- D. APPLICABLE REGULATIONS:**
- 1.** Section 5.19 of the Zoning Regulations – MU-CC Mixed Use City Centre District

III. ANALYSIS

- A. COMPREHENSIVE PLAN:** The Future Land Use Map of the Comprehensive Plan designates the area for commercial uses.
- B. OTHER PLANS:** This site was identified in *A Vision Plan for 84th Street* as a mixed use city center. This site has also been designated as blighted and substandard and in need of

redevelopment, and identified as the initial redevelopment project in the *84th Street Redevelopment Plan*.

C. TRAFFIC AND ACCESS:

1. Existing access points are at 84th Street and Summer Drive, 84th Street and Brentwood Drive, and 83rd Avenue. The preliminary plat proposes to move the intersection of 84th Street and Summer Drive approximately 275 feet south of its current location. This plat also proposes a new right-in/right-out between the relocated intersection and Brentwood Drive. A total of four vehicular access points will be available, including the private 83rd Avenue.

All existing sidewalk connections will remain. Additional sidewalk connections into the proposed park and to Marisu Lane are proposed.

2. As 84th Street is a state highway each new access point along the street needs approval from the Nebraska Department of Roads. The applicant has submitted a copy of their draft plans to NDOR and has received approval for the access points along the western edge of the development. A copy of this letter, dated May 3, 2016, has been attached for review.
3. The City Engineer has reviewed a traffic study that was performed by Olsson Associates for the applicant. This study was also reviewed by the NDOR. The traffic study indicates that the additional right-in/right-out access point and the relocation of Summer Drive will not significantly affect traffic operations for through movements on 84th Street. The NDOR has indicated that with increased development and traffic growth, signal timings on 84th Street will be adjusted to maintain acceptable conditions on 84th Street during peak hours, but there may be delays on the side streets trying to enter onto 84th Street. This is not unusual as there is emphasis on keeping State Highways at a higher level of service than local streets. The study has identified that the intersection of 84th and Harrison is expected to experience high levels of delay in 2040. This is not the result of the City Centre project, although it is a contributor. The solutions identified in the report are to add additional through lanes on either Harrison Street or 84th Street, however, that is not the responsibility of this project and may not be feasible given right of way constraints.

D. UTILITIES:

1. The properties have access to water, sanitary sewer, gas, power and communication utilities.

IV. REVIEW COMMENTS:

1. In 2010, the City Council adopted *A Vision Plan for 84th Street* which included an extensive public process resulting in a master plan which identifies that the vision for 84th Street is the creation of a downtown for the community. Numerous references throughout the plan called for a mixed use city center. Step 7 of the "Next Steps" section of the plan also noted the need to identify action items, such as rezoning of the property. Staff, in review of *A Vision Plan for 84th Street*, concluded a mixed use district was necessary for the proper implementation of the plan.

As such the Mixed Use - City Centre zoning district was adopted to:

1. Accommodate mixed use buildings with neighborhood-serving retail, service, and other uses on the ground floor and residential units and office uses above the ground floor.
2. Buildings can be solely residential provided they are designed in a building-forward environment, with buildings at the street edge or having only shallow front setbacks.
3. Encourage development that exhibits the physical design characteristics of pedestrian-oriented, storefront-style shopping streets, and
4. Promote the health and well-being of residents by encouraging physical activity, alternative transportation, and greater social interaction.

The site plan for the development proposed for the subject area meets the intentions of the MU-CC District mentioned above.

2. Although the Gateway Corridor District (Overlay District) will be removed from the subject area through this rezoning, the area will still be subject to design review through design guidelines that will be an exhibit to the Redevelopment Agreement.

VI. STAFF RECOMMENDATION – Rezoning:

Approval of the rezoning, conditional on the recording of the Final Plat, Subdivision Agreement and Redevelopment Agreement, as the Rezoning request is consistent with the Comprehensive Plan and the Zoning Regulations.

VII. PLANNING COMMISSION RECOMMENDATION – Rezoning:

The Planning Commission held a public hearing on June 2, 2016 and unanimously recommended approval of the rezoning, conditional on the recording of the Final Plat, Subdivision Agreement and Redevelopment Agreement, as the Rezoning request is consistent with the Comprehensive Plan and the Zoning Regulations.



VIII. ATTACHMENTS TO REPORT:

1. Vicinity Map
2. Zoning Map
3. Letter requesting conditional rezoning

IX. COPIES OF REPORT SENT TO:

1. Eric Galley, Olsson Associates Inc.
2. Chris Erickson, La Vista City Centre, LLC
3. Public Upon Request

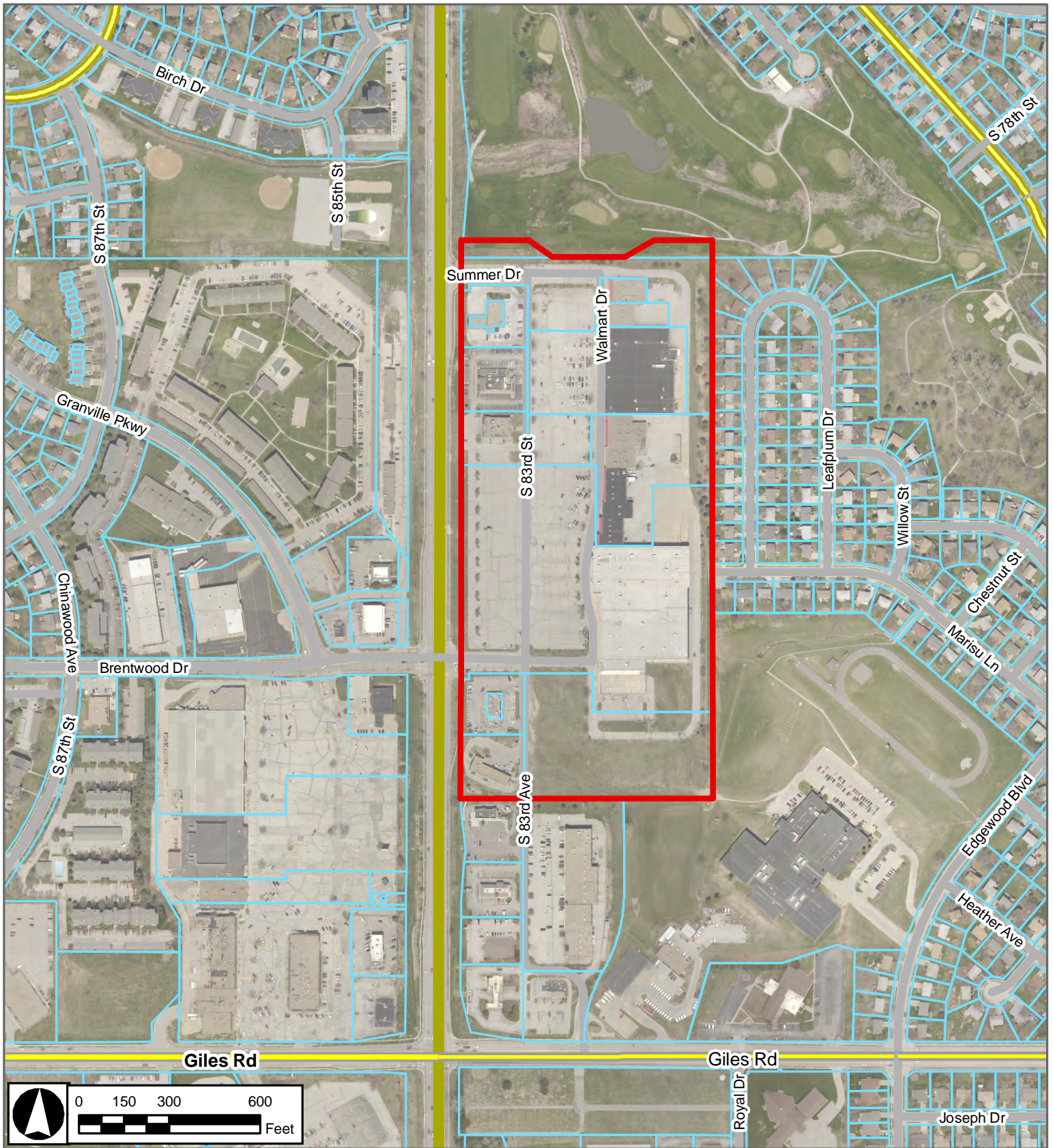
Prepared by:



Community Development Director

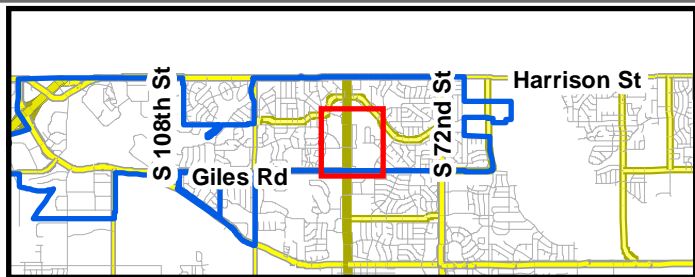


Date

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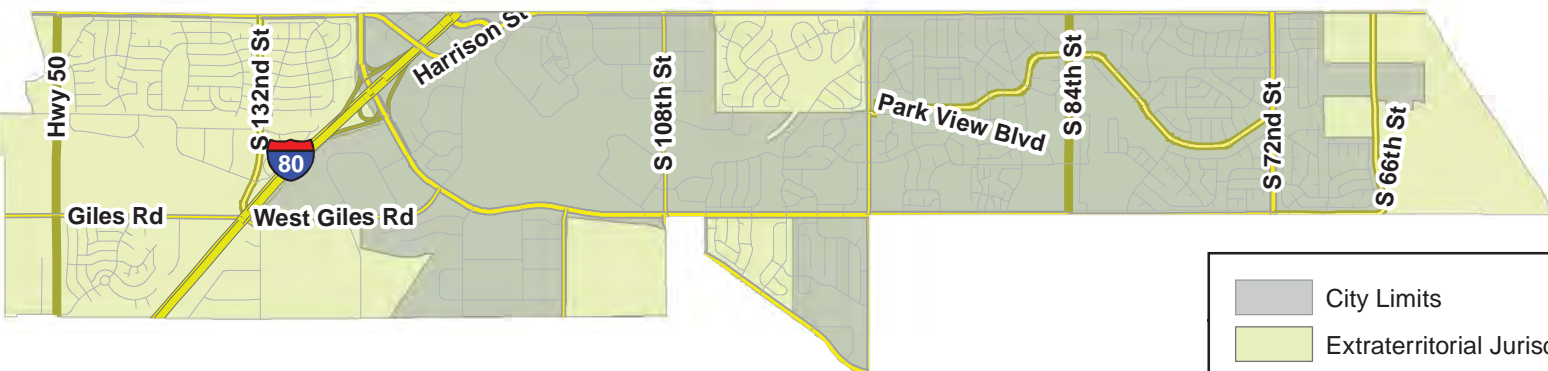
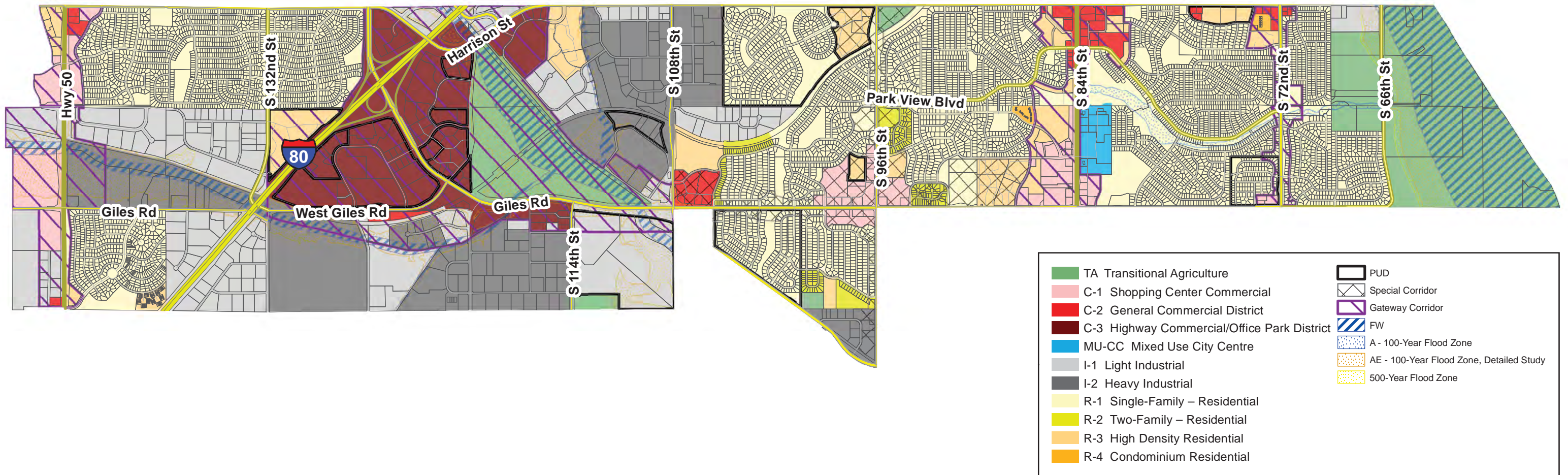
Project Vicinity Map



Zoning Map Amendment La Vista City Centre

05-27-2016
CAS





City of La Vista
Official Zoning Map
Adopted _____
Ordinance Number _____



5-14-2015
Drawn By: CSB



April 26, 2016

VIA ELECTRONIC CORRESPONDENCE

Fitzgerald Schorr, PC, LLC
200 Regency One
10050 Regency Circle
Omaha, Nebraska 68114
Attn: Tom McKeon

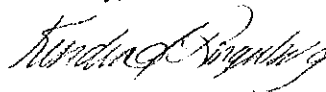
Re: La Vista City Centre, LLC's ("City Centre") applications for replat, rezoning, tax increment financing and related redevelopment efforts in connection with that certain real property located at 7904 S 83rd Street, La Vista, Nebraska ("Project")
Our File No.: 03078.0000

Dear Tom:

As you know, City Centre is pursuing replatting, rezoning, tax increment financing and related redevelopment matters with the City of La Vista in connection with the Project. This letter shall serve as notice that City Centre has authority to submit such applications on behalf of the Project pursuant to Section 11 of the Purchase and Sale Agreement and Escrow Instructions, dated September 28, 2015 ("Purchase Agreement"). Please find attached a copy of the application section of the Purchase Agreement for your records. We advise that all such actions can only take effect upon the closing under the Purchase Agreement and, accordingly, all applications shall be contingent upon closing. We wanted to let you know our plan for how to proceed but will also state the contingency in all applications.

If you have any questions regarding the foregoing, please do not hesitate to contact me.

Sincerely,



Kendra J. Ringenberg

cc: Chris Erickson

9. Brokerage. Purchaser and Seller warrant and represent to each other that neither has dealt with any real estate broker or salesperson in connection with this transaction except _____, no broker _____, hereinafter "**Purchaser's Broker**", and Adam Hartig, hereinafter "**Seller's Broker**" and collectively with Purchaser's Broker, the "**Brokers**". Seller shall be responsible for the payment of a brokerage commission to the Seller's Broker and Purchaser shall be responsible for the payment of a brokerage commission to the Purchaser's Broker, both in amounts pursuant to separate written agreements between Seller and Seller's Broker and between Purchaser and Purchaser's Broker, but only in the event that the Closing occurs. If the Closing fails to occur for any reason whatsoever, including the default by either party hereunder, Seller shall have no obligation to pay the Seller's Broker and Purchaser shall have no obligation to pay the Purchaser's Broker any brokerage commission with regard to the transaction contemplated herein and in no event shall either of the Brokers have any claim to any portion of the Deposit that may be forfeited in the event of a default hereunder. If any other person shall assert a claim to a finder's fee, brokerage commission, or any other compensation on account of alleged employment as a finder or broker or performance of services as a finder or broker in connection with this transaction, the party under whom the finder or broker is claiming shall indemnify and hold the other party harmless from and against any such claim and all costs, expenses and liabilities incurred in connection with such claim or any action or proceeding brought on such claim, including, but not limited to, counsel and witness fees and court costs in defending against such claim. This indemnity shall survive the Closing or termination and termination of this Agreement and the escrow. By its execution of the Acceptance by Brokers below, the Brokers agree to the provisions of this Article 9.

10. Remedies.

10.1. Seller's Remedies. If Purchaser defaults under this Agreement, Seller's sole remedy shall be to terminate this Agreement and retain the Deposit as liquidated damages, with Purchaser responsible for the payment of any escrow fees.

10.2. Purchaser's Remedies. If Seller defaults under this Agreement, Purchaser may, at its option, (a) cancel this Agreement in which case the Seller is irrevocably instructed to return the Deposit, to Purchaser, Seller shall be responsible for any escrow cancellation fees and Purchaser may recover from the Seller all reasonable expenses paid or incurred by Purchaser in connection with this Agreement, or (b) proceed with this Agreement and purchase the Property pursuant to this Agreement, subject to an abatement in the Purchase Price, that both Purchaser and Seller agree upon.

11. Review Period. Purchaser's obligations under this Agreement shall also be contingent and specifically conditioned, until noon of the last day of the then current Option Period ("Review Period"), upon Purchaser, in Purchaser's sole and absolute discretion, being satisfied with and accepting the zoning, environmental condition, physical condition, suitability for development, and nature of the Property ("Contingencies"). Purchaser shall have the right to enter onto the property to conduct inspections, reviews, and investigations of the Property, including but not limited to environmental assessments, surveys, soil tests, as Purchaser shall determine necessary in its sole discretion ("Inspections"). Purchaser agrees to repair any damage to the Property caused by the Inspections and restore the Property substantially to its original condition after completion of the

9/22/11
CLF

Inspections. Additionally, Purchaser agrees that no liens shall be permitted to be attached to the Property as a result of the Inspections. Purchaser may extend the Review Period by exercising an option to extend an Option Period defined in Article 1.3.1. Notice to extend such Option period must be received within 24 hours prior to the expiration of the then current Option Period. Purchaser, for any reason, may terminate this Agreement at any time during the Review Period by written notice to Seller, in which any Deposit paid shall be non-refundable and not be returned to the Purchaser. Seller agrees to reasonably cooperate with Purchaser during the Inspection Period in obtaining any governmental approvals deemed necessary by Purchaser ("Governmental Approvals"); provided (a) all direct and indirect costs in obtaining such Governmental Approvals shall be paid by the Purchaser, and (b) no Governmental Approvals shall be binding on the Seller or the Property prior to Closing. Notwithstanding any provisions herein to the contrary, if Purchaser does not give written notice to Seller of its election to terminate this Agreement by not later than noon on the expiration date of the then current Option Period, and Purchaser has not exercised any available Option Periods, Purchaser shall be deemed satisfied with the Property in all respects, and the Deposit shall become non-refundable to Purchaser. At any time during this Agreement, Purchaser may waive the Contingencies, of which at that time, the Agreement shall be in full force and effect, and the closing shall occur in accordance with Article 2.1

12. Representations and Warranties.

12.1. Seller's Representations and Warranties. Seller represents and warrants to Purchaser, as of the Opening Date, as follows:

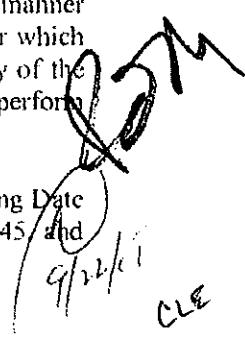
12.1.1. Full Power and Authority. Seller is a Fictitious Name duly organized and validly existing under the laws of the state of Missouri, and has the full power and authority to execute and deliver this Agreement.

12.1.2. Legal, Valid and Binding. This Agreement and all other instruments or documents executed or delivered in connection with this transaction each constitute legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms.

12.1.3. No Approval by Governmental Authority. No consent, approval, authorization, registration, qualification, designation, declaration or filing with any governmental authority is required in connection with the execution and delivery of this Agreement by Seller.

12.1.4. No Lawsuits. To the actual knowledge of Seller, there are no actions, suits, proceedings or investigations pending or threatened with respect to or in any manner affecting Seller's ownership of the Property or otherwise affecting any portion thereof, or which will become a cloud on the title to the Property or question the validity or enforceability of the transaction contemplated herein, or which may adversely affect Seller's ability to perform hereunder.

12.1.5. Non-Foreign Certification. Seller is not, and as of the Closing Date will not be, a "foreign person" within the meaning of Internal Revenue Code Section 1445 and


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CLB