

## MINUTES OF THE REGULAR MEETING OF THE AMES CITY COUNCIL

AMES, IOWA

JULY 13, 2010

The regular meeting of the Ames City Council was called to order at 7:00 p.m. on July 13, 2010, in the City Council Chambers in City Hall, 515 Clark Avenue, pursuant to law with Mayor Ann Campbell presiding and the following Council members present: Davis, Larson, Orazem, and Wacha. *Ex officio* Member England was also present. Council Members Goodman and Mahayni were absent.

Mayor Campbell announced that Item No. 28, a new Special Class C Liquor License for the Octagon Center for the Arts, 427 Douglas Avenue, had been pulled at the request of the applicant.

**PROCLAMATION:** Mayor Campbell proclaimed July 18 - 24, 2010, as "Probation, Parole, & Community Supervision Week." Accepting the Proclamation were Mark Kubic, Executive Director for the Center for Creative Justice, and Courtney Tuhl, Supervisor of the Ames Office for the Iowa Department of Corrections.

**CONSENT AGENDA:** Council Member Orazem requested to pull Items numbered 12, 13, and 14 pertaining to Funding Agreements with the Ames Historical Society, Main Street Cultural District, and Ames Economic Development Commission, respectively.

Moved by Orazem, seconded by Wacha, to approve the following items on the Consent Agenda:

1. Motion approving payment of claims
2. Motion approving minutes of Special Meetings of June 15 and July 8, 2010, and Regular Meeting of June 22, 2010
3. Motion approving certification of civil service applicants
4. Motion approving Report of Contract Change Orders for June 16-30, 2010
5. Motion approving renewal of the following beer permits, wine permits, and liquor licenses:
  - a. Class C Liquor - Welch Ave. Station, 207 Welch Avenue
  - b. Class B Beer - Panchero's Mexican Grill, 1310 South Duff Avenue
  - c. Class C Liquor - Applebee's, 105 Chestnut
  - d. Class C Liquor - Sportsman's Lounge, 123 Main Street
6. RESOLUTION NO. 10-311 approving appointment of Lisa Griffith to fill vacancy on ASSET
7. RESOLUTION NO. 10-312 approving appointment of Sean Morrissey to fill Student Tenant vacancy on Property Maintenance Appeals Board
8. RESOLUTION NO. 10-313 approving appointment of Tobit Bowles to fill Rental Property Owner representative vacancy on Student Affairs Commission
9. RESOLUTION NO. 10-314 approving request to waive formal bidding requirements and authorize purchase of City-wide software maintenance from Sungard Public Sector
10. RESOLUTION NO. 10-315 approving request to waive formal bidding requirements and authorize purchase of shared public safety software maintenance from Sungard Public Sector
11. RESOLUTION NO. 10-319 acquiring State Patent of Easement from Iowa Department of Transportation (IDOT) in connection with 161-kV Transmission Line
12. RESOLUTION NO. 10-320 approving Architectural/Engineering Agreement with Shive-Hattery for City Hall Heat Pump Replacement Project
13. RESOLUTION NO. 10-321 awarding Engineering Services Agreement to Brown Engineering Company of Des Moines, Iowa, for Unit Nos. 7 and 8 Cooling Tower Repairs
14. RESOLUTION NO. 10-322 approving preliminary plans and specifications for Vet Med Substation 15-kV Metal-Clad Switchgear; setting August 11, 2010, as bid due date and August 24, 2010, as date of public hearing
15. RESOLUTION NO. 10-323 approving preliminary plans and specifications for Vet Med

Substation Electrical Materials; setting August 11, 2010, as bid due date and August 24, 2010, as date of public hearing

16. RESOLUTION NO. 10-324 approving preliminary plans and specifications for Unit No. 8 Stack Repair Project; setting September 1, 2010, as bid due date and September 14, 2010, as date of public hearing
  17. RESOLUTION NO. 10-325 approving contract and bond for 2009/10 and 2010/11 Neighborhood Curb Replacement Program (Marston Avenue from 10<sup>th</sup> Street to 13<sup>th</sup> Street)
  18. RESOLUTION NO. 10-326 approving contract and bond for Resource Recovery Recyclables Building and Storage Area, Phase I (Parking Lot)
  19. RESOLUTION NO. 10-327 approving contract and bond for 2009/10 Asphalt Resurfacing and Seal Coat Removal/Asphalt Reconstruction Program)
  20. RESOLUTION NO. 10-328 approving contract and bond for 2008/10 Storm Sewer Outlet Erosion Control Program (College Creek Restoration Project)
  21. RESOLUTION NO. 10-329 accepting completion of Water Plant Well Rehabilitation Project (Year 3)
  22. RESOLUTION NO. 10-330 approving Plat of Survey for property located at 5318 and 5500 - 240<sup>th</sup> Street
- Roll Call Vote: 4-0. Resolutions declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

**AGREEMENT FOR JOINT AND COOPERATIVE ACTIVITY WITH THE AMES ECONOMIC DEVELOPMENT COMMISSION:** Council Member Orazem noted that the Agreement, under *VI. Summary Report*, called for a written report by the AEDC to the City “no later than August 31, 2010;” it should be 2011.

Moved by Davis, seconded by Larson, to adopt RESOLUTION NO. 10-318 approving the Agreement for Joint and Cooperative Activity with the Ames Economic Development Commission, with the correction that a written report be given to the City by August 31, 2011. Roll Call Vote: 4-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

**FUNDING AGREEMENT WITH AMES HISTORICAL SOCIETY:** Council Member Orazem pointed out that the Funding Agreement with the AEDC called for a written report to the Council. He preferred that the Funding Agreements with the Ames Historical Society and Main Street Cultural District contain the same provision.

Moved by Orazem, seconded by Davis, to adopt RESOLUTION NO. 10-316 approving a Funding Agreement with the Ames Historical Society with the addition of a requirement to provide an annual report to the City Council. Roll Call Vote: 4-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

**FUNDING AGREEMENT WITH MAIN STREET CULTURAL DISTRICT:** Moved by Orazem, seconded by Davis, to adopt RESOLUTION NO. 10-317 approving a Funding Agreement with Ames Chamber of Commerce for the Main Street Cultural District with the addition of a requirement to provide an annual report to the City Council. Roll Call Vote: 4-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

**PUBLIC FORUM:** Joe Rippetoe, 419 Pearson Avenue, Ames, noted that there were only four Council members present at this meeting for what appeared to be a very lengthy and complicated Agenda. Mr. Rippetoe recalled a series of editorials in the Ames Tribune concerning tie votes and the suggestion that an alternative form of government be discussed. He questioned whether a six-person Council was the right form of government for the City of Ames and whether it was truly serving the best interests of the public. Mr. Rippetoe suggested that the City Council revisit that as, in his opinion, the current form of government is not functioning in the best way that it can.

**5-DAY SPECIAL CLASS C LIQUOR LICENSE:** Moved by Davis, seconded by Larson, to approve a new 5-Day Special Class C Liquor License for Gateway Hotel & Conference Center at Kildee Hall.

Vote on Motion: 4-0. Motion declared carried unanimously.

**SPECIAL CLASS C LIQUOR LICENSE FOR OCTAGON CENTER FOR THE ARTS:** This item was pulled from the Agenda at the request of the applicant.

**OUTDOOR SERVICE PRIVILEGE FOR ELKS LODGE, 522 DOUGLAS AVENUE:** Moved by Davis, seconded by Larson, to approve an Outdoor Service Privilege for the Elks Lodge, 522 Douglas Avenue.

Vote on Motion: 4-0. Motion declared carried unanimously.

**REQUEST FOR WAIVER OF SUBDIVISION REGULATIONS FOR PROPERTY LOCATED AT 265<sup>TH</sup> STREET:** City Planner Charlie Kuester advised that property owner Norine Black was proposing a subdivision of land within two miles of Ames' corporate limits, which makes it subject to the provisions of the City's subdivision regulations. The site lies approximately one-quarter mile south of the Ames city limits. Ms. Black is seeking a waiver of the City's subdivision standards for the proposed division of land, which would be a two-lot split of a 40-acre fractional parcel. One proposed lot would be six acres on which a home is proposed to be built; the remaining 34 acres would remain in agricultural production.

Mr. Kuester explained that the three covenants normally required when subdivision regulations are waived would be required. He reported that approval of the request is consistent with past practices and with the policies and intent of the Ames Urban Fringe Plan

Moved by Davis, seconded by Orazem, to adopt RESOLUTION NO. 10-331 approving a waiver of subdivision regulations for a two-lot 40-acre subdivision on 265<sup>th</sup> Street contingent upon:

1. Within six months of the date of the approval resolution, receipt of signed covenants that a) agree to annexation at the time the City requests, b) waive objections to assessments that may be imposed in the future if public improvements are necessary, and c) pay any fees associated with the buy-out of rural water
2. Receipt of an application for a Final Plat.

Roll Call Vote: 4-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

**MAIN STREET CULTURAL DISTRICT (MSCD) REQUESTS FOR JULY SIDEWALK SALES:** Jennifer Schill, MSCD Events Coordinator, stated that the sales would occur on July 29,

30, and 31, 2010. She advised that all merchants had been notified of the City's insurance requirement if they want to vend their wares on the sidewalk.

Moved by Orazem, seconded by Davis, to adopt RESOLUTION NO. 10-332 approving suspension of parking regulations in the Central Business District from 8 AM on July 29 through 8 PM on July 31, 2010.

Roll Call Vote: 4-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

Moved by Orazem, seconded by Davis, to approve a Blanket Temporary Obstruction Permit.  
Vote on Motion: 4-0. Motion declared carried unanimously.

Moved by Orazem, seconded by Davis, to approve a Blanket Vending License.  
Vote on Motion: 4-0. Motion declared carried unanimously.

Moved by Orazem, seconded by Davis, to adopt RESOLUTION NO. 10-333 approving a waiver of the fee for a Blanket Vending License.  
Roll Call Vote: 4-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

**ALL-AMERICAN WEEKEND ON SEPTEMBER 2 - 6, 2010:** Seann Demaris, Ames Convention and Visitors Bureau Sports & Leisure Sales Manager, highlighted some of the events that will occur. He said a new attraction this year is the "Ribs Festival," which is hosted by the Iowa Barbecue Society.

Moved by Davis, seconded by Larson, to approve a Blanket Temporary Obstruction Permit.  
Vote on Motion: 4-0. Motion declared carried unanimously.

Moved by Davis, seconded by Larson, to approve a Blanket Vending License.  
Vote on Motion: 4-0. Motion declared carried unanimously.

Moved by Davis, seconded by Larson, to adopt RESOLUTION NO. 10-334 approving closure of portions of Main Street, Kellogg Avenue, Douglas Avenue, and Burnett Avenue.  
Roll Call Vote: 4-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

Moved by Davis, seconded by Larson, to adopt RESOLUTION NO. 10-335 approving waiver of fees for electricity usage.  
Roll Call Vote: 4-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

Moved by Davis, seconded by Larson, to adopt RESOLUTION NO. 10-336 approving waiver of parking meter fees and enforcement.  
Roll Call Vote: 4-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

Moved by Davis, seconded by Larson, to adopt RESOLUTION NO. 10-337 approving waiver of fee for a Blanket Vending License.  
Roll Call Vote: 4-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

Moved by Davis, seconded by Wacha, to adopt RESOLUTION ON. 10-338 approving closure of Lot N and portions of Clark Avenue and Fifth Street for barbeque contest.  
Roll Call Vote: 4-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

**FIREWORKS FOR IOWA GAMES:** Moved by Davis, seconded by Wacha, to approve a permit to shoot fireworks from the area southeast of the intersection of University Boulevard and SE 16<sup>th</sup> Street for Opening Ceremonies of Iowa Games at approximately 9:15 p.m. on July 16, 2010.  
Vote on Motion: 4-0. Motion declared carried unanimously.

**HEARING ON VACATING JACKSON DRIVE RIGHT-OF-WAY ADJACENT TO 1605 AND 1609 JACKSON DRIVE:** Mayor Campbell opened the public hearing. No one wished to speak, and the hearing was closed.

City Attorney Doug Marek stated that only after the Ordinance vacating the right-of-way had been adopted could the sale of the subject property, if approved, move forward. He also advised that both affected property owners had expressed their desires to purchase their respective one-half.

Moved by Orazem, seconded by Larson, to pass on first reading an ordinance vacating Jackson Drive right-of-way adjacent to 1605 and 1609 Jackson Drive.  
Roll Call Vote: 4-0. Motion declared carried unanimously.

**HEARING ON THE SALE OF THE VACATED RIGHT-OF-WAY ADJACENT TO 1605 AND 1609 JACKSON DRIVE:** The public hearing was opened by the Mayor. She closed same after no one requested to speak.

Moved by Larson, seconded by Orazem, to adopt RESOLUTION NO 10-339 approving the sale of vacated right-of-way adjacent to 1605 and 1609 Jackson Drive to the abutting property owners in the amount of \$1,154 each for their respective one half and the granting of a ten-foot easement to the City, subject to the adoption of the Ordinance vacating the right-of-way.  
Roll Call Vote: 4-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

**HEARING ON VET MED SUBSTATION POWER TRANSFORMERS:** The Mayor opened the public hearing and closed it after no one came forward to speak.

Council Member Orazem asked for clarification of the requirement for an evaluation of energy losses when reviewing the bids. Electric Services Director Donald Kom said that rather than look at only the cost of the transformer, staff also looks at its ongoing operating costs. He advised that staff members from the Electric Services Department and Purchasing Division calculate the amount of loss based on data provided by the manufacturer.

Moved by Wacha, seconded by Davis, to adopt RESOLUTION NO. 10-340 approving final plans and specifications and awarding a contract to Delta Star, Inc., of Lynchburg, Virginia, in the amount of \$994,652, plus applicable sales taxes.  
Roll Call Vote: 4-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

**HEARING ON VET MED SUBSTATION SF, CIRCUIT BREAKERS:** Mayor Campbell opened the public hearing. No one wished to speak, and the Mayor closed the hearing.

Council Member Orazem asked Director Kom to clarify what the alternate number was under the bid submitted by Mitsubishi Electric. Mr. Kom said that he did not have the bid document in front of him; however, he would research what comprised the alternates and provide that information to the City Council. Mr. Kom noted that staff was still reviewing the bids and the action requested at this meeting was to accept the report of bids and delay award of contract. Prior to it returning for final action, the information requested by Council Member Orazem would be provided.

Moved by Wacha, seconded by Davis, to accept the report of bids and delay award of contract. Vote on Motion: 4-0. Motion declared carried unanimously.

**AGREEMENT WITH JUDICIAL BRANCH AND STORY COUNTY FOR COURT SERVICES IN CITY HALL:** City Attorney Doug Marek stated that the Ames City Hall includes space for the Story County Clerk of Court and for the District Associate Court. Approval at that time was based on the fact that residents of Ames benefit by being able to access the court system, file documents, and attend hearings for small claims actions, municipal infractions, mental health and substance abuse proceedings, and simple misdemeanor criminal offenses.

According to Mr. Marek, in 2003, there was a change in state law to require that a non-county seat city requesting court services would pay costs for holding court that otherwise would not have been paid by the judicial branch. Story County did not assess any charges to the City from 2003 through 2009; however, last year, the state budget shortfall caused the judicial branch to reduce services, and in February, the City of Ames agreed on a temporary basis to assume the costs of telephone service for the Ames locations of the Clerk of Court and District Associate Court. Since that time, the City has been paying \$508.31/month in order to assist with the continued operation of court services in Ames. Those expenses are currently being billed to the Ames Police Department; however, the City Manager is recommending that if the arrangement continues, the costs should be shared by all benefitted City departments. If continued, that would amount to a total of \$6,099.72/annually.

Mr. Marek said that, with the beginning of a new fiscal year, the Second Judicial District has requested that the City of Ames and Story County enter into a more formal Chapter 28E Agreement for the funding of continuing court operations in Ames City Hall. Under the terms of the Agreement, the County and City would each assume a portion of the costs of operation of the court that would not be incurred by the Judicial Branch if those same services were provided only in the Story County Courthouse in Nevada.

The Council was advised by Attorney Marek that the proposed Agreement provides for the City to assume certain expenses of the Court totaling \$9,234.58, plus copy machine and fax machine maintenance as needed. It also presents several alternatives for providing in-kind services, such as mail delivery, in lieu of cash reimbursement. City staff believes that some of the in-kind services can be provided efficiently as a way to reduce costs. The Ames Police Department has already initiated delivery of mail between the Ames and Nevada locations of the Clerk of Court in conjunction with their daily trips between the Story County Jail and Ames City Hall. The Purchasing Division has also offered to process the Court's mail using the City's postage machine, charging only for actual postage costs, in order to further reduce costs. By providing these in-kind services, the City can reduce total annual expenses to \$6,734.58.

According to Mr. Marek, having the court system located in City Hall provides tremendous savings in travel costs and staff time for both the Legal Department and the Police Department, and he strongly recommended that the City Council approve the Agreement to allow those services to be continued, with the expenses shared by the benefitted City departments.

Moved by Larson, seconded by Davis, to adopt RESOLUTION NO. 10-341 approving a 28E Agreement with the Judicial Branch and Story County for court services to be located in the Ames City Hall.

Roll Call Vote: 4-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

**DISCUSSION OF SUSTAINABILITY TASK FORCE CHARGE:** City Manager Schainker recalled that the first time the City had formal agreements with the Ames Community School District was in December 2009 when the District first put the City on notice that they were going to start charging for the costs that they were perceiving were caused by having City recreation participants in its facilities. The School District's initial request was for approximately \$80,000, but after negotiations regarding incremental costs, the amount was lowered to approximately \$3,500, which is approximately \$1.25/participants. That request came in the middle of the fiscal year after the City's budget had been approved, and the District agreed not to assess any fees during FY 2009/10. The City has, with the support of the Parks & Recreation Commission, built this into its fee structure.

Moved by Davis, seconded by Larson, to adopt RESOLUTION NO. 10-342 approving Agreements between Ames Community School District and City of Ames for use of each other's facilities for 2010/11.

Council Member Orazem asked if there was an estimate as to what the City's cost is for providing the services outlined in the Agreement. Mr. Schainker pointed out that the City currently assesses the School District for its share of operational costs of the joint-use facilities (Municipal Pool, baseball diamond in Brookside Park, and tennis courts).

Council Member Larson asked if the \$1.25/person is being absorbed by the Parks and Recreation Department or was being added on to the fee structure. Parks and Recreation Department Director Nancy Carroll said that the \$3,500 requested by the School District would be spread to participants using School District facilities and the Community Center. That decision was made because a recreation program could be held in one of the schools or it could be in the Community Center gymnasium; however, the participants do not decide where the events are scheduled. Fees for those programs reflect the additional \$1.25/participant. Ms. Carroll advised that there are so many participants that the increase is relatively negligible. City Manager Schainker clarified that the City did not establish an increase in the fees and then add the \$1.25/participant on to that. Because it was known before the budget was approved, the additional amount was built in to the fee structure prior to it being adopted.

Council Member Wacha said that he would support the motion, but expressed his extreme disappointment that the School District would look to raise \$3,500 through this route, especially because the increase just has to be passed on to the users of the programs.

Roll Call Vote: 4-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

**CONSERVATION SUBDIVISION ORDINANCE:** Planner Kuester recalled that the Council had directed staff, on June 22, 2010, to include the philosophy behind having a density requirement when the Subdivision Ordinance came back to the City Council. He said the density requirement is an integral part of the Land Use Policy Plan (LUPP). Many of the goals of the Plan specifically emphasize density, both as a means of creating the type of community desired and in determining the costs to provide services. Sprawl increases operating costs in police and fire response time and the overall cost to provide needed services. The LUPP also emphasizes establishing a cost-effective and efficient growth pattern, which is best accomplished by having a dense community.

Council Member Orazam stated that he rejects the idea that the outcomes are consistent with any of the LUPP's objectives. In his opinion, allowing large concentrations of apartments, thus increasing density on the outskirts, has exactly the opposite effect; you are then increasing the number of persons who have to commute. The emphasis that density was not going to be increased in the older areas of Ames is the exact opposite of each of the goals. Mr. Kuester said one of the problems with increasing density in the interior of Ames is that it is already built.

Planner Kuester stated that any attempts to remove density as a requirement would have a lot of implications. If that is a possibility, he recommended that the Council open up a discussion on all the goals and objectives of the LUPP, starting with a vision for the community. City Manager Schainker recalled that the discussion on density began with whether density requirements should be modified within conservation subdivisions; however, staff suggested that a discussion on density should be done on a broader scale rather than just this development technique.

Council Member Orazem asked to have information on how common the density requirements are among other communities. He wondered specifically if the requirement for 5.6 dwelling units/gross acre was high or low in comparison. Planner Kuester said he thought staff could find some communities; however, he noted that not a lot of other communities use density as an approach to land use policy. Mr. Schainker said that that might be a topic that Council would want to assign staff to look at, but it would be included in the broader issue of density. He referenced a special workshop regarding Planning Priorities to be held in the future, stating that it could be assigned to staff at that time. Council Member Larson recommended that a broader discussion on density be scheduled. He would have liked that discussion to have occurred prior to the Conservation Subdivision Ordinance coming before the City Council. Mr. Larson felt that it was time to revisit the LUPP knowing the problems that the City Council has seen related to the density issue.

Council Member Davis brought attention to a paragraph on Page 3, which states that it is possible to achieve targeted densities in conservation subdivisions "by abutting smaller lots to large areas of open space," and asked if that meant that the number of parks to be maintained by the City would increase. He interpreted that as meaning more responsibility to maintain open areas would fall on the City. Municipal Engineer Tracy Warner said that those protected natural features would be via easements, which does mean responsibility for the City. Planner Kuester stated that it would not necessarily need to be parkland; it could be natural areas that could be the responsibility of the homeowners association to take care of.

It was unclear to Council Member Larson why medium density was referenced in the proposed Conservation Subdivision Ordinance. He questioned if the only reason apartments or condos were included was to meet a density requirement. Council Member Orazem noted that the

density requirement sits outside the proposal before them. Council Member Larson said that he hoped the Council would have a discussion on density prior to any project falling under the Conservation Subdivision Ordinance moves forward. City Manager Schainker noted that there are two developments outside the City limits that are currently awaiting adoption of a Conservation Subdivision Ordinance.

Moved by Larson, seconded by Davis, to pass on first reading the Conservation Subdivision Ordinance.

Chuck Winkleblack, 105 S. 16<sup>th</sup> Street, Ames, clarified that the medium density areas are not in the density calculation; they sit to the side and are not part of the 3.75. The developers have included medium density areas at their own choosing.

Kurt Friedrich, 100 Sixth Street, Ames, showed a photo of property adjacent to Grant Road that is along the northern boundary of Ada Hayden Heritage Park. He hoped that urban density requirements would not be enforced in this area; the developers hope to preserve a more open and natural setting for this area. Mr. Friedrich urged that the density requirement be relaxed for this area.

Roll Call Vote: 4-0. Motion declared carried unanimously.

#### **COMMERCIAL CRITERIA FOR TAX ABATEMENT IN URBAN REVITALIZATION**

**AREAS:** City Manager Schainker reported that, on June 8, 2010, the City Council reviewed a draft of proposed criteria for tax abatement in urban revitalization areas within the Highway-Oriented Commercial (HOC) District. At that meeting, the Council had identified one additional change that it wanted made before moving forward with final action on the proposal. The change pertained to proposed Criteria #4. The concern expressed at the meeting was how much extra cost associated with development within 1,000 feet of a City well head should warrant tax abatement. The Council had discussed various costs and directed staff to develop alternatives to address that cost/benefit issue. In accordance with that directive, five alternatives for Criteria #4 had been developed by staff, which were explained by City Manager Schainker, as follows:

Alternative 1: is the language originally presented to the City Council.

Alternative 2: adds the word “significant” to the cost issue, but does not provide any guidance on what would be considered significant; this would leave it to the Council’s discretion to determine if the estimated costs are significant enough to warrant tax abatement.

Alternative 3: focuses on the negative impact on a proposed project that might result because of its proximity to a City well head. This negative impact might be associated with the extra costs or a diminished project.

Alternative 4: defines “significant” as the extra costs being at least 50% of the expected value of the tax abatement. City Manager Schainker noted that the Council could substitute any other percentage that it feels is warranted.

Alternative 5: Tax abatement is warranted only if the entire property is located within the 1,000 foot radius (and therefore fully subject to stormwater quality measures). According to Mr. Schainker, if that is the case, staff believes there would be significant enough costs associated with the entire site to warrant tax abatement.

Mr. Schainker noted that in Alternatives 1 through 4, the developer must demonstrate to the City that the project cannot be redesigned to avoid extra costs. The engineering staff believes it would be difficult for them to verify the cost estimates that are presented to them. Therefore, the Council would have to rely on the estimates presented by the developer to justify the extra costs. Alternative 5 is the easiest to administer because no review of cost estimates would be required.

Council Member Wacha sees Alternative 4 as being much more measurable than the others.

Scott Blum, 305 West Riverside Road, Ames, identified himself as an architect working on a project located at 205 SE Fifth Street. He explained the additional costs on this project that had been incurred due to its proximity to a well head. Mr. Blum noted that there is a variety of reasons that costs can be driven up on projects other than proximity to a well head, e.g, being in the floodway fringe.

Council Member Davis expressed that the criteria are very restrictive and there would not be that many projects that would meet them.

Moved by Davis, seconded by Larson, to direct that Alternative 3 be included as Criteria #4.  
Vote on Motion: 4-0. Motion declared carried unanimously.

Moved by Davis, seconded by Orazem, to approve the Commercial Criteria for Tax Abatement in Urban Revitalization Areas including Alternative 3 as Criteria #4.  
Vote on Motion: 4-0. Motion declared carried unanimously.

**REQUEST FOR EXTENSION OF TIME FOR PARKING LOT IMPROVEMENTS AT NORTH GRAND MALL:** Planner Kuester recalled that, in July 2007, the City Council had approved a Final Plat, Adaptive Reuse Plan, and Development Agreement for the Streets of North Grand. At that time, it was envisioned that the North Grand Mall area would include expanded retail space in the form of a new life-style center to the south of the current site. The Development Agreement created certain responsibilities for the Mall owner, one of which was to reconfigure the parking area on Lot 2 to comply with the City's minimum off-street parking standards by no later than one year from the recording of the Final Plat. Because of the downturn in the economy, no progress had been made towards implementing that vision, and in response to the Mall owner's request, in July 2008, the City Council granted a one-year extension to that obligation. As the economy failed to improve, the owners once again requested and received a second extension in July 2009; that extension is due to expire on July 18, 2010, and the Mall owners are now requesting a third extension. If the extension is not granted, the City would cash in a bond that was provided as security and hire a contractor to reconfigure the lot as required in the Development Agreement.

City Manager Schainker emphasized that the motivation behind this extension is different from the previous requests in that the Mall owners have indicated that they no longer plan to construct a life-style center. They now hope to take advantage of their existing space in order to avoid the construction of new space that would necessitate an increase in lease costs. In order to achieve the Mall owners' new vision for this development, it appears that a new site/adaptive reuse plan must be approved by the City Council. In order to provide sufficient time to develop, process, and approve the new plan, the Mall owners are seeking another extension of the requirement to reconfigure the parking lot. The developers have indicated that an extension of six months should provide adequate time.

Greg Kveton, representing GK Development, the owners of North Grand Mall, said that the owners had reached an agreement with the City in 2007 to build the “Streets of North Grand,” however, despite three years of effort, they have not been able to achieve the necessary tenant commitments to get the project off the ground. He explained that they are now focusing on determining the tenants that are expanding in today’s economy and plan to build a project around those tenants. He noted the costs savings from utilizing the current infrastructure. Mr. Kveton said that it is not possible to charge the amount of rent to new retailers that would be necessary if the costs to reconfigure the parking lot would be incurred, as those costs would have to be passed on to those retailers. The owners feel confident that they will be able to reach agreement with two key retailers in the next six months. Construction to accommodate those new retailers would begin in Spring 2011.

Mr. Kveton said the mall owners recognize that the property is not meeting people’s expectations as far as its appearance. He advised that within two weeks, there will be improvements being made to the front of the Mall; they are beginning a painting project. Other improvements will also be made this summer.

Council Member Larson asked if the six-month extension was being requested in order to negotiate a new adaptive reuse agreement and if that would change the parking and landscaping issue. Mr. Kveton said that variable is tenant-driven as they have different needs. City Manager Schainker said staff has to study what will ultimately be proposed; however, reconfiguration of the parking lot may not be necessary. Mr. Larson said that he would not like six months to elapse and the issue not yet be resolved. He believes that it has been an extreme frustration to the community not to have this project move forward. It was stated by Mr. Larson that he gets phone calls and hears comments repeatedly about the lack of improvement to the Mall. It was clarified by Mr. Kveton that the “facelift” would consist of painting the front of the Mall now with more improvements to follow.

Council Member Orazem asked for clarification as to what was actually being requested. It appeared to him that an extension of time for reconfiguration of the parking lot was being requested, but the parking lot ultimately would not be reconfigured. Specifically, he asked if the current agreement was then moot. Planner Kuester said that reconfiguration of the parking lot and landscaping was required as part of the replatting approved in 2007. A bond was filed with the City to guarantee that those requirements were made, and it allows the City to draw upon that bond after one year to make the improvements if the owners have not done so. City Attorney Marek said that the Agreement entered into in 2007 allows for extensions to be granted. City Manager Schainker noted that an extension was being requested, but not to accomplish the same project. Until there is a new plan, however; the one for which the Agreement was originally entered into is still in effect.

Diane Huffman, 2125 Prairie View West, Ames, expressed her extreme disappointment in the North Grand Mall. She said she has been shopping there ever since it opened, and it looks the same today as it did the day it opened. The only difference today, in 2010, and 2007 is that “Bucky isn’t in town.” Ms. Huffman believes that is the only reason the parking lot has not been reconfigured and no landscaping has been installed. She pointed out that in six months it will be winter, and landscaping cannot be done then; she foresees that the Council will be voting again on another extension. According to Ms. Huffman, “the party is over,” and it is time for the Council to say no. She said North Grand Mall is an embarrassment to Ames. It is time to let Ames grow, otherwise, it is going to die. According to Ms. Huffman, there have been millions of tax dollars that Ames could have had if a new mall had been put in; those tax dollars are now

going out of town. She has seen smaller towns look better than the City of Ames, and she urged the Council to stop embarrassing its residents and say no to this request. Ms. Huffman stated that she has lived in Ames since 1991, and the Mall looks the same today as it did then; in fact, it offers less. In her opinion, painting the outside the same color “does not cut it.” Ms. Huffman noted that Ames could be bettering itself with the tax dollars that are now going elsewhere when people go further down the road to shop.

Council Member Wacha said that he shares Ms. Huffman’s frustration; however, there are not a lot of alternatives available to the City Council at this time, and it is better to do what it can to avoid the Mall failing entirely. Mr. Davis noted that it would not be wise to cash in the developer’s bond and reconfigure the parking lot for a project that is ultimately not going to happen. Council Member Larson echoed those comments. He noted that the Wolford project is not dead; Mr. Wolford still owns the land. Mr. Larson said that the Council should have the ability to be flexible with Mr. Wolford, if and when he comes back, as it has been with the owners of the North Grand Mall. He agreed that Ames does need better shopping.

Moved by Larson, seconded by Davis, to adopt RESOLUTION NO. 10-343 approving an extension of time for reconfiguring the parking on Lot 2 for six months.

Roll Call Vote: 4-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

#### **TAX ABATEMENT ELIGIBILITY FOR REDEVELOPMENT PROJECT AT 3505**

**LINCOLN WAY:** City Manager Schainker recalled that, in June 2008, Chuck Winkleblack purchased the property at 3503 Lincoln Way, which included a mobile home trailer court on the south side of the property and vacant, non-developed land on the north. It was his intent to initiate the building of new homes on the north portion of the property and remove the trailers in anticipation of a commercial redevelopment project. Although Mr. Winkleblack had no specific plans to redevelop the commercial portion of the property, his intent was to remove the mobile home units from the site and clean it up. Mr. Schainker advised that the criteria in the current Urban Revitalization Commercial Criteria Matrix requires a property to be either “Slum or Blighted” or “Underutilized,” as defined in the decision-making matrix, and it can not be a vacant property. Mr. Winkleblack was concerned that once the property became vacant because of his efforts to immediately clean it up, City Council members might determine that the site would not meet the required criteria when a specific project was ultimately brought before them for approval. City Manager Schainker recalled that, at the June 24, 2008, meeting, the City Council adopted a resolution declaring that the commercial property at 3503 Lincoln Way met the underutilized criteria of the Urban Revitalization Commercial Criteria Matrix. This action was taken with the understanding that when a project was eventually brought forward for City Council consideration, it had to meet the other optional criteria reflected in the matrix in order to qualify for tax abatement.

When the City Council began to consider revisions to the Urban Revitalization Commercial Criteria Matrix, Mr. Winkleblack sent an email to the members of the City Council citing his concerns; that email was referred to City staff on June 22, 2010. According to Mr. Schainker, what makes this request so unique is the fact that the City Council is being asked to take action regarding tax abatement eligibility for some yet-to-be-determined commercial redevelopment project. Typically, Council’s determination for eligibility would not be made piecemeal.

Mr. Schainker emphasized that if any property was worthy of tax abatement to stimulate redevelopment, this would be it. Not only was the property unsightly, but it had become a focal

point for illegal activity. According to Mr. Schainker, Mr. Winkleblack could have refrained from taking any action to clean up the property until plans were finalized for a redevelopment project in order to retain eligibility for future tax abatement. However, this approach would not have benefited the City in the short term. City Manager Schainker recommended that the City Council take action to help facilitate that a future commercial redevelopment project at 3503 Lincoln Way qualifies for tax abatement. If the Council members were in agreement, Mr. Schainker advised that they could:

1. Create an urban revitalization area that encompasses 3503 Lincoln Way in order to provide tax abatement for any commercial redevelopment project within its boundaries. According to state law, in order to accomplish this option, an urban revitalization area must include at least two qualifying lots.

Mr. Schainker stated that this was the approach that the Council supported prior to 1999. This area approach was discontinued after 1999 to ensure the City received something more than an increased tax base from the redevelopment projects (design standards, landscaping, signage, shared parking, structured parking, under-represented businesses).

2. Prior to approving the proposed changes to the Urban Revitalization Commercial Criteria Matrix, the City Council could pass a resolution declaring that, for this one property at 3503 Lincoln Way, the previous Commercial Criteria Matrix would be utilized for determining eligibility for the tax abatement incentive. Included in this resolution would be a reaffirmation that the property already met the required criterion of “underutilized.” Therefore, the project would still have to meet the optional criteria reflected in the previous Commercial Criteria Matrix in order to qualify for tax abatement.

According to City Manager Schainker, because this is a unique case, any action to accommodate this request would not establish a precedent because there are no other properties where the Council has previously gone on record to approve a portion of the matrix criteria in advance of a specific project approval request.

Chuck Winkleblack, 105 S. 16<sup>th</sup> Street, Ames, asked for clarification of the first criterion pertaining to design standards. It states “properties where the structure that is constructed on the property meets the design standards where applicable.” He questioned whether his case “was applicable” and what the design standards were. According to Mr. Winkleblack, that criterion is difficult to meet. His preference would be that the Council approve Option #1.

Moved by Wacha, seconded by Orazem, to approve Option #2: that the property at 3503 Lincoln Way, which already met the required criteria of underutilized, fall under the previous Commercial Criteria Matrix, which will be utilized for determining the eligibility for the tax abatement incentive.

Vote on Motion: 4-0. Motion declared carried unanimously.

The meeting recessed at 9:03 p.m. and reconvened at 9:12 p.m.

**GROWTH PRIORITIES:** City Manager Schainker recommended that the City Council not make a decision until all Council members are present for the remaining three items on the Agenda; hopefully, that will occur at the Council’s workshop on July 20. Mr. Schainker noted that decisions on the three issues will affect the City for generations to come. He said that the three issues had been referred to staff separately. The most time-sensitive is the one pertaining

to Rose Prairie due to a pending lawsuit that is scheduled for trial in the next three weeks. Although the items are separate, they are interrelated because they deal with the City's growth strategy. Mayor Campbell noted that the two Council members who are absent from this meeting would be reviewing the videotape prior to the meeting on July 20.

Discussion of "Scenario 4." Planner Kuester outlined the boundaries of the City's Growth Priority Areas, i.e., Northwest A and B; Southwest A, B, C, and D; and North A, B, and C. The City currently provides incentives for all growth in Northwest A and B and in Southwest A, B, C, and D; however, there has not been much growth in any of those areas. On April 13, 2010, The City Council added North B, not as a priority growth area, but changing the LUPP designation to Urban Residential. That change established the area lying south of 190<sup>th</sup> Street and east of the Union Pacific railroad tracks as a "new lands" area, which would be able to be developed for residential purposes, but only upon annexation. The motion at that meeting directed staff to bring back "Scenario 4," but staff has altered that Scenario to some degree to add the Southwest A area. If the Council concurs, it should direct staff to add that to the Capital Investment Strategy and make it a Priority Growth Area. Another issue that needs to be addressed is the direction by the Council to make North B an Urban Residential Area and allow growth only upon annexation. That means that the City needs then to start planning for full City services to that Area, including fire service as full build-out of that area would result in the City falling below its fire response policy.

Mr. Kuester emphasized that "Scenario 4" brings in Northwest A, Southwest B, and North B as growth areas, but allows incentives for oversizing only in Northwest A and Southwest B. According to Planner Kuester, it was not intended that the Growth Priority Areas would be the only areas where development would happen; annexation could still occur, but incentives would not be offered by the City.

Planner Kuester clarified that "Priority Growth Areas" mean that the City will provide incentives for development. He felt that "priority" was a misnomer and a better term would be "targeted" growth area or an "incentivized" growth area. Again, currently, those Areas are Northwest A, Southwest A, and Southwest B. Council Member Larson preferred that the word "Priority" be dropped pertaining to Growth Areas as it creates confusion. He preferred the areas be called "Incentivized" or "Allowable."

City Manager Schainker said that the Council also needed to revisit where the incentivized areas should be; there could be major costs to extend City services. He noted gaps that would exist in infrastructure and the costs to extend City services to certain areas. Council Member Wacha stated his opinion that costs should be "a factor, but not the determining factor," in deciding which direction the City should grow.

According to Mr. Kuester, staff is suggesting that Allowable Growth Areas be all of the Southwest, the Northwest, and North B. Incentivized Growth Areas would be a subset of those. According to Mr. Kuester, the fiscal impact to the City is that the Capital Investment Strategy would limit the City's participation in oversize costs to a smaller geographic area. He noted that if the City were to assist in the oversize costs for all of the Northwest and Southwest Growth Areas, the impact would be over \$6.3 million.

Discussion of Fieldstone request to modify Northwest A. Planner Kuester presented the background of the Fieldstone request. In February 2006, Fieldstone Development requested the annexation of 442 acres. The original proposal envisioned a village-type residential development

north of 215<sup>th</sup> Street, south of Onion Creek, and east of County Line Road. It lies within the area designated by the Urban Fringe Plan as Urban Residential, and as such, development must be preceded by annexation and by the extension of City infrastructure and services. In order to qualify for City incentives, the developer sought changes to the Village Residential zoning designation and changes to the Capital Investment Strategy of the LUPP. Although the Council has not taken any direct action on the 2006 annexation request, Planner Kuester explained ownership changes that have occurred and Studies that have been created or reviewed.

According to Planner Kuester, in April 2010, Attorney Frank Feilmeyer submitted a letter to the City requesting to develop some of the Fieldstone land lying south of Onion Creek. Because of the requirement of annexation and because that is not imminent and would be extensive and expensive, Attorney Feilmeyer asked for changes to the Urban Fringe Plan that would allow for more immediate development of portions of the Fieldstone property for large-lot residential uses. Specifically, the written request was that the City Council change Northwest A from Urban Residential, which requires full City services after annexation, to Rural Residential, which would allow very low-density development to be built to County infrastructure standards. Staff believes that Rural Residential development in certain areas would be problematic for the City in the future if it were to grow in that direction.

Planner Kuester defined how the requests made by Mr. Feilmeyer would affect the interests of the City. He presented five options to handle the request from Fieldstone Development, as follows:

Option 1. Maintain the Status Quo as Urban Residential (develop within the city limits; minimum 3.75 units/acre; full city services)

Option 2. Priority Transitional Residential (develop outside city limits, minimum 3.75 units/acre, full city services or equivalent)

Option 3. Rural Transitional Residential (develop outside city limits, minimum 1.00 unit/acre, rural infrastructure allowed)

Option 4. Rural Residential (develop outside city limits, no density requirement, rural infrastructure allowed)

Option 5. Exempt Density Requirements Adjacent to Natural Areas.

Mr. Kuester summarized the options. Under Options 1 and 2, the City can expect to see development to urban densities with urban infrastructure. The difference is that Option 1 would create Ames property taxpayers while Option 2 would not. These options would create development that would be within the City or could be annexed readily and seamlessly. Under Options 3 and 4, the City can expect to see development to rural densities with rural infrastructure. Option 3 would require densities of at least one unit/acre. Option 4 has no density standard. Both options would allow rural right-of-way and road standards and would allow on-site septic and well systems. Option 5 allows a limited amount of residential at rural densities. This would be confined to areas within 200 feet of the Natural Area, but would require that rights-of-way and streets be built to City standards and that provisions for connection to the City sewer and water systems be made once the utilities are extended in the future.

It was noted by Mr. Kuester, that as residential development becomes less dense, total housing units and estimated population decline proportionally. He said that was important to note because as densities decrease, more rural land will need to be developed for residential purposes to accommodate the same population.

Council Member Orazem said it was his understanding that if the City annexes property, it commits to a certain fire response time, which means that the fire truck cannot be waiting for a train. He saw an overpass as needing to figure into the costs. City Manager Schainker asked Public Works Director John Joiner to address that based on the Long-Range Transportation Plan. Mr. Joiner said that the timing of the overpass would be based on the rate that the area develops. Ontario to County Line Road includes an underpass, so that would be accessible from the west, rather than the east; that would be used until the area reaches a certain percentage of development. Mr. Schainker said it would be up to the City Council to determine how many homes need to be built before an overpass would be mandated.

Council Member Orazem said it was difficult to make a decision on any of the options until it is known how the adjacent property owners feel about the development. Planner Kuester noted that they would be notified as part of the process after it was decided which option would be approved.

Council Member Larson emphasized that when costs are considered, the revenues need to be considered as well. He gave sample numbers of the amount of property taxes that would be collected based on the net developable acres.

Attorney Frank Feilmeyer, 323 Sixth Street, Ames, said that he represents Fieldstone Development, which is a subsidiary of Friedrich & Sons. According to Mr. Feilmeyer, his client favors Option 4, Option 5 is not workable. His client believes that the area in question should have lower density requirements. He stated that Story County is interested in an overlay being created over the area. Mr. Feilmeyer noted that his client has been waiting for four years for an answer to its request to annexation.

Mr. Feilmeyer summarized that his client requests that Fieldstone's 231 acres be taken out of Scenario 4; the natural areas should be redefined, and the Urban Fringe Plan can and should be redrawn.

Chuck Winkleblack suggested that government lands not be considered when calculating net developable acres in Southwest B and C; he is concerned how the infrastructure costs would be spread out. Mr. Winkleblack asked that the Council actually look at what land could be developed and where there are willing sellers.

Kurt Friedrich showed pictures of ways the land in question could develop. He said that the developers want the best possible development for this site. Mr. Friedrich pointed out the developments that currently exist near or adjacent to the proposed Fieldstone Subdivision. He noted that consideration must be given as to what would sell. According to Mr. Friedrich, it is important to keep natural areas intact. Existing neighborhoods also need to be considered. Mr. Friedrich shared an email that had been sent to him from a currently adjacent property owner acknowledging support for the Fieldstone project. In the opinion of Mr. Friedrich, timing and costs must be considered. He pointed out that they had been waiting for years for an answer to their request. Mr. Friedrich said that they would be willing to consider a combination of Options 3 and 4.

The meeting recessed at 10:44 p.m. and reconvened at 10:52 p.m.

Discussion of Negotiations with Rose Prairie Developers. City Manager Schainker reminded the Council that on February 10, 2009, the City Council denied a request to approve the proposed Rose Prairie Subdivision. Although the Subdivision was to be built outside of the city limits, in accordance with state law, the City Council retains approval power for this type of request since it is within Ames' two-mile planning area. As a result of that denial, the developer of Rose Prairie (Story County Land, L.C.) initiated legal action against the City of Ames to have the Court overturn that decision and allow the residential subdivision to be built outside Ames' city limits. On June 9, 2009, the City Council directed staff to "engage in negotiations that may lead to a settlement in the case of Story County Land, L.C. v. the City of Ames." According to Mr. Schainker, as is the case with negotiations of this type, there is a hope that the threat of a possible loss in the court system will influence each party to compromise their initial positions so that a settlement can be reached.

Mr. Schainker briefed the City Council on the status of negotiations with Story County Land, L.C. He said there is further pressure to come to a resolution of the issues because the case is scheduled to go to court in a few weeks. In addition, it needs to be determined whether the City Council is supportive of the unusual features of the proposed settlement and issues at impasse identified that will need Council direction in order to proceed further with negotiations. What is ultimately contemplated is a mutually-agreed-upon Pre-Annexation Agreement that will result in the dropping of the legal challenge by Story County Land, L.C.

Because of the complexity of the issues reflected in this agreement, Mr. Schainker advised that the Council is not being asked to approve the agreement in final form at this meeting. However, in order for both parties to adequately prepare for the pending legal case that has been set for August 13, 2010, the Council will need to make a final decision regarding an agreement at its meeting on July 20, 2010. Mr. Schainker recognized that there is a very short window of opportunity to make amendments to this agreement should the Council so desire. In addition, the City Council has the option to reject this proposed agreement if it believes it contains provisions that are unacceptable. If this is the case, he said City staff stands ready to defend against the legal challenge by Story County Land, L.C.

According to Mr. Schainker, these negotiations have been very challenging. The developer is hoping to identify all of the potential costs related to the Rose Prairie Subdivision and include those responsibilities in a Pre-Annexation Agreement. Staff has been concerned that it is premature to identify all of the specific requirements or responsibilities prior to the submittal of the Preliminary Plat. Since it appears that the Rose Prairie development might not begin for three to five years, staff has concerns that the Council's requirements and policies might change by that time.

City Manager Schainker gave a summary of the major highlights of the proposed Pre-Annexation Agreement, as follows:

1. The Developer is requesting that the agreement stipulate that if the Council does not:
  - a. Amend the LUPP to designate the site as a Urban Service/Urban Residential Area (which has already been accomplished)
  - b. Subdivide the site as requested by the Developer
  - c. Accept the voluntary annexation of the site

- d. Rezone the site to Suburban Residential Low-Density
- e. Approve the Preliminary Plat for the site
- f. Approve the Final Plat for the site

then, upon consent of all of the owners of the site, the property will de-annexed from the City and the agreement will become null and void. According to Mr. Schainker, this is a very unusual provision. Typically, these approvals come in the progression outlined above, but the developer is not granted the ability to return to the status quo outside of the City if any one of the approval steps is not granted as the developer wishes.

2. The developer will be responsible for constructing all streets within the Subdivision on right-of-way dedicated to the City without charge.
3. The developer will contribute to the City at the time of final platting \$185,000 for their share of off-site traffic improvements identified in a previous traffic study. These improvements include the future installation of a traffic signal at Hyde and Bloomington Road and an additional turning lane at Grand and Bloomington Road.
4. Grant Avenue will need to be improved as a result of increased traffic anticipated from development. In order to secure a settlement and ensure that improvements to Grant Avenue are completed at one time, staff has recommended that the City construct the Grant Avenue improvements from Bloomington Road to 190<sup>th</sup> Street, with the associated costs being paid back through a special assessment process. However, in order for the assessment strategy to be successful, the other two developer property owners (Hunziker and Friedrich/Johansen) along the Grant Avenue corridor must, before Rose Prairie requests annexation, sign pre-annexation agreements with the City to guarantee their commitment to various issues, including the special assessment proposal.

If support can be secured from all three developers, the associated costs for the Grant Avenue street improvements would be assessed 37% to Rose Prairie, 23% to Hunziker, 23% to the City, and 17% to Friedrich/Johansen. In this scenario, Rose Prairie will be contributing based on the front footage of its property along Grant Avenue as well as the Sturges property. Friedrich/Johansen, Hunziker, and the City will be paying based on their front footage plus pro-rata shares of the cost of the Eness, Eness/Taylor, Frame, Gregg/Schwery, and Hamblin properties. Under this proposal, these property owners will have no responsibility to pay for the street improvements.

Under the assessment scenario, the Grant Avenue improvements will not be made any sooner than three years after the agreement is finalized. After that period of time, the City can initiate the improvement and the developer will be bound to make assessment payments even if the Rose Prairie Subdivision is not started.

Mr. Schainker noted the estimated cost to the City for this scenario could be as much as \$700,000, which is not currently included in the City's Capital Improvement Plan. At first, this final participation might appear to be in contrast to the Council's directive not to offer incentives to the developer. However, given the fact that the City (Hayden Park) owns a substantial amount of land adjacent to Grant Avenue, it seemed appropriate that we pay for a share of the improvements in order to secure an agreement.

According to City Manager Schainker, the parties are at an impasse about what to do if all three of the developers fail to enter into separate pre-annexation agreements with the City, thereby negating the use of a special assessment. The staff's position is that the Rose Prairie Developer would then be required to deposit with the City cash in the amount equal to the associated costs estimated to construct one lane of Grant Avenue adjacent to their property as well as the Sturges property. This financial obligation would be required when the initial Final Plat for the overall Subdivision is approved by the Council. The developer wants to meet this financial obligation by providing to the City a pro-rata share of their overall obligation as each lot is sold. Mr. Schainker said that that practice leads to piecemeal construction and delays in completing a roadway. The developer's position would serve to further prolong the completion of the total road to an unacceptable level.

Mr. Schainker also advised that, typically, developers will extend water and sewer lines to the extent of their property thereby making it available for the adjacent developers to hook onto and extend utilities throughout their properties; that is how orderly extension of utilities is accomplished. The Rose Prairie Subdivision is not immediately adjacent to water and sewer lines, and a substantial cost would be incurred to bring these two utilities up from the south to service the proposed Subdivision. Rather than the City incurring these costs, the developer has agreed to up-front the cost to construct water and sewer lines from south of Bloomington Road north to 190<sup>th</sup> Street. However, that expenditure is conditioned on the City establishing water and sewer benefit districts so that the developer can be reimbursed through hook-up fees from other developers who take advantage of these lines in the future. Also, any easements needed for these utility lines would be granted to the City at no charge. This arrangement is consistent with the Council's direction when the LUPP was amended to allow growth to the north: that no incentives be offered to developers in the area. It was noted that the City will be responsible to obtain easements for the water and sewer lines as they cross properties other than the Rose Prairie development

Mr. Schainker advised that the proposed agreement does pose potential problems for the developers to the north of Rose Prairie and to the City. Since there is no deadline for accomplishing the utility extensions, developers to the north will be dependent upon the progress of Rose Prairie to have utilities extended to their properties. Provisions have been made for easements through Rose Prairie so that Developers Friedrich/Johansen can pay to extend utilities to their property to the north if they desire to move more quickly than Rose Prairie develops. However, they have expressed their concern for this arrangement and would prefer that the City upfront the costs to extend the water and sewer lines to serve all properties along the Grant Avenue corridor and they would repay the City through hookup fees.

City Manager Schainker emphasized that annexation of all of the properties along Grant Avenue between Bloomington Road and 190<sup>th</sup> will likely require a hearing before the State's City Development Board. Prior to granting an annexation request, the City must articulate a plan for providing services to the area within three years. Because the City's recommended plan to extend water and sewer utilities is reliant on progress made by the developers, it is not certain how the Board would react to that arrangement.

Mr. Schainker reported that City staff prefers that the developer initiate approval of the Subdivision as soon as possible. The process to begin this effort involves platting the site. With final platting comes the requirement to either begin construction or expend funds to secure certain responsibilities made in a developer agreement, and the City has attempted to include a deadline for initiating final plat approval. According to Mr. Schainker, the developer has resisted

being held to any specific timeframe for moving ahead. While the City has made an effort to settle the legal challenge by supporting the Conditions Precedent that protects the developer with de-annexation should the City not satisfy all of the requests for approvals, the City is not assured the Rose Prairie development will move ahead in a timely manner even after all of the concessions have been made. Mr. Schainker emphasized that there might be other issues at impasse once the specific language for an agreement is negotiated.

Kurt Friedrich, Quarry Estates, stated that they would feel more comfortable if all developers signed the Pre-Annexation Agreement.

Chuck Becker, Belin Law Firm, Des Moines, representing Rose Prairie, gave the developers' perspective on the issues. He noted that it had been one and one-half years since the lawsuit was filed, and it is his belief that the Court will not continue it again. Mr. Becker explained that the developers preferred to pay for connection fees on a per-lot basis. He outlined the issues where the developers and the City were at impasse.

Mr. Becker acknowledged that this City Council cannot bind future Councils; that is why they need the option to back out of the provisions of the Agreement at any time. Council Member Wacha pointed out that "this is a new Council." He noted the dangers to the City of allowing the developers to back out at any time. Mr. Wacha said he cannot agree to such an alternative; if that is absolutely necessary, then "the City might as well go to court now." Mr. Becker noted that the condo regime is in place; it can't be stopped now, and it is buildable. According to Mr. Becker, they are not going to make the requirements so stringent that the City cannot agree; they have too much time and money invested. He stressed that it is likely that the Council make-up will change in the next five to ten years, and the developer cannot take the chance of not getting approval of the Preliminary or Final Plat; that is why they need the option of backing out of the Pre-Annexation Agreement.

Council Member Wacha again expressed his concern about allowing the property to be de-annexed from the City; it puts the City in a very bad position, and he feels that Rose Prairie developers "will have to give on that." He interpreted that as a request for the City to allow Rose Prairie developers to de-annex and nullify its agreement at any point up to the Final Plat approval. Mr. Wacha thinks that means that the developers would be dictating to the City every single term and condition and when the City finally cannot say yes, the developers will walk away. That would lead back to a court case to see if the development would be allowed as a condo regime in the County. That is not a model for development in Ames and would set a precedent. He said he can work with the developers on the other three issues, but not on the de-annexing alternative.

Council Member Larson also pointed to the problems that would be created if the other developers wanted to move ahead, but Rose Prairie Developers did not. He noted that just like the Council make-up could change, the owners/developers could change. Attorney Becker said this is a difficult position for all because it is not known when development will occur. He is also concerned about what demands will be made by the other two developers.

Council Member Davis asked Attorney Becker if he felt it was "fundamentally fair" to hold the City to the fire on this issue, i.e., the Conditions Precedent. Mr. Becker said that it definitely was given what they had been through. In his opinion, it is not fair for Rose Prairie to be put in the position of being brought into the City and not being able to change that if the City will not approve its Final Plat. He noted that after going through such a process, the provisions of the

Preliminary or Final Plat would not be so stringent as to set themselves up to fail. Council Member Wacha questioned, if that were the case, why they would not be willing to give on the Conditions Precedent.

City Attorney Marek advised that there was one thing that Attorney Becker, City Manager Schainker, and he had been working through that was not before the Council, i.e., a set of exhibits that would accompany the Agreement. Those would include a street lay-out of the Conservation Subdivision and a lay-out of the water, sewer, etc. The exhibits would be included into the terms of the Agreement. Mr. Marek acknowledged that they would not be to the level of detail of a Preliminary Plat filing, so there could not be 100% assurance that what was filed would be to the City's standards. That is why it is important for the Council to maintain its ability to apply its discretion at that time. However, what would be incorporated into the Agreement would be the general street lay-out; therefore, Rose Prairie could not bring in a plan for a completely different subdivision.

Council Member Orazem asked to know where the City was in the process of figuring out what to do if all three developers failed to enter into the Pre-Annexation Agreements. City Manager Schainker said for it to be a true assessment project, which would be necessary because several property owners are involved, the Pre-Annexation Agreements would need to be signed by all three developers. Mr. Schainker advised that the other two developers had not even seen the Pre-Annexation Agreement. The City could attempt to meet with them as soon as possible, but if they fail to agree, the question would be how to handle road improvements if they can't be specially assessed. There are several unknowns, e.g., deficiencies, possible protests. According to City Manager Schainker, right now, due to the pending lawsuit, there was also a timing issue.

Council Member Larson again expressed his concern over the Conditions Precedent, specifically, what happens to the assessment agreement if one of the developers is proceeding with their portion, and due to an issue that the Council cannot agree to, the Rose Prairie developers decide to de-annex. Mr. Schainker said the contract would be null and void and the water and sewer would not be constructed. City Attorney Marek advised that if the special assessment agreements are in place and the City begins the project, those requirements continue to run with the land. City Manager Schainker said that part of the problem is that there is currently no timeframe for building the water or sewer.

Council Member Wacha said that he would feel more comfortable discussing a proposal to avoid litigation in closed session. City Attorney Marek reviewed what could be discussed in closed session: "strategy for matters in litigation when the information being discussed, if it were done publicly, would jeopardize the position of the City."

Moved by Wacha, seconded by Larson, to go into Closed Session under *Iowa Code* Section 21.5(c)(3) for the purposes of discussing a potential settlement with Story County Land, LC, in order to avoid the pending litigation.

Attorney Marek said the legal rationale would be for discussing strategy with counsel on a matter in litigation where public disclosure would likely prejudice the City's case.

Roll Call Vote: 4-0. Motion declared carried unanimously.

The meeting resumed in Open Session at 1:05 a.m. on July 14, 2010.

Moved by Wacha, seconded by Larson, to direct staff to continue negotiations with Story County Land, LC, specifically regarding areas of financing for the water, sewer, and roads and also alternate language to the Conditions Precedent.

Vote on Motion: 4-0. Motion declared carried unanimously.

Moved by Wacha, seconded by Davis, to direct staff to make contingent on any agreement with Story County Land the signing on by all three parties involved to Pre-Annexation Agreements.

Vote on Motion: 4-0. Motion declared carried unanimously.

**COUNCIL COMMENTS:** Moved by Orazem, seconded by Davis, to direct staff to expedite a meeting where the issues on Rental Housing Code enforcement would be discussed.

City Manager Schainker referenced a Manager Alert that he had sent to the City Council regarding Rental Housing Code enforcement, not to solve any of the issues, but to lay out a process to receive input and respond to some of the questions from rental property owners. These owners are now being faced with the enforcement of the new Code that took effect July 1. A 5-step process had been proposed by Mr. Schainker. He noted that it was planned for the Property Maintenance Appeal Board to hold public meetings on August 5 and September 2, 2010, with it meeting with the City Council on September 21. Mr. Schainker stated his request that a meeting with the City Council be held before that, perhaps on August 17.

Vote on Motion: 4-0. Motion declared carried unanimously.

Moved by Orazem, seconded by Wacha, to refer to staff the issue in the letter received on June 30, 2010, from Debbie Lee pertaining to safety in neighborhoods and repeated police response.

Vote on Motion: 4-0. Motion declared carried unanimously.

Moved by Wacha, seconded by Davis, to refer to staff the request of the Ames Tribune for waiver of parking enforcement on July 23, 2010.

Vote on Motion: 4-0. Motion declared carried unanimously.

Moved by Wacha, seconded by Orazem, to refer to staff the petition requesting a three-way stop sign at the corner of Jewel Drive and Diamond.

Vote on Motion: 4-0. Motion declared carried unanimously.

Moved by Davis, seconded by Orazem, to refer to staff the request from R. Friedrich & Sons for a LUPP change within the Northridge Heights commercial area.

Vote on Motion: 4-0. Motion declared carried unanimously.

Moved by Davis, seconded by Larson, to refer to staff the letter from Emrah Simsek and Gary Smiley requesting a “no parking” section on Berkshire Avenue.

Council Member Wacha stated that he could not support the motion because he believed it was an issue between two neighbors. City Manager Schainker explained that they wanted specific parking restrictions in front of their homes.

Motion withdrawn.

Council Member Larson updated the Council on the referral made by the Conference Board pertaining to the time accountability for the GIS Coordinator. A memo will be distributed soon by City Assessor Greg Lynch.

**ADJOURNMENT:** Moved by Davis to adjourn the meeting at 1:15 a.m. on July 14, 2010.

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Diane R. Voss, City Clerk

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Ann H. Campbell, Mayor