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City Manager's Office

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TO: Mayor and Ames City Council

FROM: Steven L. Schainker, City Manager

DATE: June 8, 2012

SUBJECT: Deery Brothers' Request For Tax Abatement

In accordance with your latest directive, the City Council will be reviewing a previous staff report presented on April 10, 2012. This study was prepared in response to a request to provide a tax abatement incentive for the three lots that the Deery Brothers hope to develop along S.E. 16th Street. As you revisit this proposal, I want to reiterate that the staff report provides a possible urban revitalization policy for properties along S.E. 16th Street between S. Duff and S. Dayton Road. Therefore, it offers possible eligibility criteria that the City Council members could utilize to determine whether or not to process requests for a tax abatement incentive in this area. In essence, it is the "decision making matrix" that you can utilize to determine eligibility.

Should you decide to provide a tax abatement incentive for this area, I want to emphasize that once the Council determines the eligibility criteria have been met, there is more work to be done on the part of the developer and City Council. (See pages 5 and 6 on the attached staff report.) After the application is processed, a plan has been developed, and a public hearing is held, the Council would then approve a specific economic development area for each plan.

It appears Council members are contemplating what I would characterize as "performance" criteria to determine eligibility for the tax abatement incentive. Possible criteria are listed on page 7 of the attached report. (I realize that the City Council might want to include others.) In establishing these criteria, the Council should understand that once the plan and the urban revitalization area have been approved, it will not be possible to eliminate the tax abatement incentive, even if the desired performance has not been met.

It appears that you have at least three strategies to assure the performance criteria are met:

- 1) You can make sure that the required action is accomplished prior to the public hearing on the plan.

This option will cause delays for the developer since the required task(s) and verification might have to come sometime much later in the development process.

- 2) You can develop a separate developer agreement that requires the developer to pay back to the City the value of the property tax abatement received should the performance requirements not be met.

This option imposes additional steps in the process for negotiating and monitoring a separate developer agreement.

- 3) You can approve the plan and the definition of the economic development area, but delay the 3rd reading of the ordinance until you are assured the performance requirements have been met.

This option could prove risky for the developer since there is no guarantee that the Council will vote to approve the plan on the third reading.

- 4) You can make sure to establish only performance criteria that can be verified prior to approving a plan.

This would be the preferred option, if feasible.

COUNCIL ACTION FORM

SUBJECT: SOUTHEAST 16TH STREET TAX ABATEMENT POLICY

BACKGROUND:

On February 28, 2012, staff reported to Council regarding a request from Brad Deery to consider granting tax abatement for their proposed development at the southwest corner of Southeast 16th Street and South Dayton Road. Because the property has been flooded in the past, it is their intent to raise the elevation of 11.5 acres of the 26-acre site above the road level using earth excavated from the floodway portion of the site. The Zoning Board of Adjustment approved that excavation in the floodway on March 14.

The Deerys intend to subdivide the land into three lots. Once this site work is completed, they intend to begin construction of a car dealership on the middle lot. Since uses for the remaining two lots have yet to be identified, development of these two lots most likely will occur at a later date. In order to offset some of the expense of excavation and fill for the development of these three properties, Mr. Deery requested that the City Council grant tax abatement.

On February 28, the City Council directed staff to develop a policy establishing qualifying criteria for an economic development tax abatement area that would specifically include the following criteria:

- a) Property located along Southeast 16th Street between South Duff Avenue and Dayton Road,
- b) The costs for raising land at least three feet out of the floodway fringe are equal to or greater than the value of the abatement,
- c) An engineer's certificate showing that raising the land would have no impact on surrounding properties, and
- d) Any other criteria that staff feels are necessary.

Code of Iowa Chapter 404 provides authority for municipalities to establish Urban Revitalization Areas and associated Plans as the mechanism for providing tax abatement in areas which the City Council has identified for economic development. Staff has developed the attached policy for City Council to consider for guiding the establishment of an Urban Revitalization Areas along Southeast 16th Street (see Attachment A).

Criterion #1

Because the Council directed that the abatement criteria include filling property above the base flood elevation, the only parcels along Southeast 16th Street between South Duff Avenue and Dayton Road that would be eligible are properties wholly or partly within the Floodway Fringe zoning overlay district, which Attachment B illustrates. **The Council should note that the Deery property is not one of the parcels within the floodway fringe as established by FEMA in 2008. However, staff believes this was an oversight on FEMA's part.**

Criterion #2

It should also be emphasized that the City Council directed that the qualifying criteria would specifically relate to the costs for raising land at least three feet out of the floodway fringe. However, because the Deery property is outside of the floodway fringe, the Council's direction would not apply to this property. In an effort to fulfill the spirit of Council's direction, staff is recommending that the FEMA-established base flood elevation of **adjacent** properties (884 feet) within the floodway fringe be used. **Therefore, the qualifying criterion for this issue references the elevation of 887, rather than three feet above the base flood elevation.**

Council also directed that an engineering study be provided showing that raising the land would have no impact on surrounding properties (See Criterion #2a on Attachment A). It is important to note that **any** filling in the floodplain will have impact on surrounding properties that have yet to be filled. **Therefore, this proposed policy of the Council could never be met.**

As an alternative, staff is providing Criterion #2b on Attachment A that requires an engineer to certify that the filling of the land will have no impact on surrounding properties beyond that impact already anticipated in establishing the Base Flood Elevation (a maximum rise of one foot).

Criterion #3

As stated above, the City Council directed that the criteria would specifically relate the costs for raising land at least three feet out of the floodway fringe to the amount of tax abatement received. Therefore Criterion #3 requires an engineer-certified cost estimate of flood protection measures to protect the improvements up to elevation of 887 feet. Working with the City Assessor, staff will provide estimates of the value of the tax abatement based on the three-, five- and ten-year tax abatement schedules that the City uses for all other Urban Revitalization Programs which allow the City Council to determine eligibility. Under Criterion #3, the estimated abatement value may not exceed the estimated cost of flood protection.

Criterion #3a, as proposed, allows for abatement related only to the costs of filling to elevation 887. The City Council should decide whether or not to offer the abatement for costs that exceed this local elevation requirement. It appears, for example, that Mr. Deery is seeking abatement beyond this minimum. **Criterion #3b would allow for tax abatement regardless of the level of fill brought on to the site.**

It should be emphasized that the Council's requirement that the cost of fill exceeds the tax abatement benefit received is a qualifying criteria. This calculation is based on the estimated cost for the fill work and projected assessed value of a proposed project. It is possible that, after the abatement is certified by the City Assessor, it may be determined that the actual value of the improvements or cost for fill are different from the original estimates. However, at that time it will not be possible to deny the abatement. Therefore, a technique to protect the City from this situation would be to require a Developer Agreement that would provide for the property owner to make annual payments back to the City during the life of the abatement for any amount of the total abatement that exceeds the cost of raising land out of the floodway fringe. **The Council will have to decide if you want to institute this contractual strategy, eliminate this qualifying criterion, or merely rely on the original estimates without verification at a later date.**

Criterion #4

Commercial areas usually include public sidewalks along the street. Public sidewalks are important for providing access to all users for commercial services, for continuity and connectivity in the walkable community as a whole, and in this location because of all of the visitors to the community who stay at the hotels at the east end of Southeast 16th Street. When new areas are developed, the subdivision regulations require the property owner or developer to construct the sidewalk.

A shared use path already exists along the north side of Southeast 16th Street and across the bridge, but no sidewalk exists along the south side. For the property on the south side of Southeast 16th Street and **west** of the Skunk River, a rezoning agreement approved on May 11, 2010 requires a sidewalk be constructed as the property develops. **Since the parcels on the south side of Southeast 16th Street and east of the Skunk River already exist, and thus no subdivision process may be needed, and because the property is already zoned as Highway Oriented Commercial, there may be no future opportunity to require sidewalks along this frontage. Therefore, the proposed Criterion #4 for tax abatement requires installation of the public sidewalk.**

Criterion #5

At that February 28 meeting, the City Council also discussed tax abatement as an incentive to initiate commercial development on the Southeast 16th Street corridor where infrastructure improvements have already been made. The Highway-Oriented Commercial Zoning permits a wide variety of uses (See Attachment C). Some uses may be more appropriate than others for stimulating commercial development along this major entry corridor into the community. For example, a retail sales use is more likely than wholesale trade to create customer activity that will attract other retail development.

Criterion #5 excludes the following uses from being eligible for tax abatement:

- Wholesale trade
- Mini-storage warehouse facilities
- Transportation, communications, and utility uses
- Institutional uses
- Adult entertainment businesses
- Detention facilities
- Agricultural or industrial equipment sales
- Agricultural and farm related activities

This list of ineligible uses is similar to that used in other Urban Revitalization policies in the City. **The City Council may want to consider designating other permitted uses listed on Attachment C as ineligible for consideration.** While improvements constructed for ineligible uses would not qualify for tax abatement, property owners would still have the right to develop all uses permitted within the zoning district. Council should note, however, that once an Urban Revitalization Area and Plan are adopted for construction of improvements for an eligible use, the abatement will continue for the remainder of the abatement schedule even if the eligible use is discontinued at that site. Here again, a technique to protect the City from this situation could be to require a Developer Agreement that would provide for the property owner to make annual payments back to the City during the life of the abatement for any years in which the property is used for an ineligible use.

In order to provide the information necessary to determine compliance with all five of the proposed criteria, it will be necessary for a Minor Site Development Plan and architectural floor plans and elevations to be prepared and approved by staff and submitted to the City Council as part of each Urban Revitalization Plan.

ALTERNATIVES:

1. City Council can approve the proposed policy for establishing Urban Revitalization Areas and Plans on Southeast 16th Street as described by Attachments A and B.

In order to accomplish this action, the City Council will need to select one of the alternatives for Criteria 2 and 3 and, if desired, add other exempted uses suggested in Criterion 5.

2. City Council can approve the proposed policy for establishing Urban Revitalization Areas and Plans on Southeast 16th Street as described by Attachments A and B, *with modifications.*
3. City Council can refer this issue to staff for further information.
4. City Council can choose to not adopt a policy for establishing Urban Revitalization Areas and Plans on Southeast 16th Street.

MANAGER'S RECOMMENDED ACTION:

The City has invested several million dollars in infrastructure to provide for quality commercial development along this entryway corridor into Ames. To date, no projects were proposed until Deery Brothers began planning for a new auto dealership here. Deery Brothers emphasized to the Council that the significant additional costs that are needed to protect new development from future flooding are a possible impediment to that project and to other commercial projects in this area. As a result of this input, the City Council directed staff to create criteria for a possible urban revitalization program along S.E. 16th Street.

Assuming it is Council's intent to approve such a policy, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, thereby approving the proposed policy for establishing Urban Revitalization Areas and Plans on Southeast 16th Street as described by Attachments A and B. In order to accomplish this action, the City Council will have to select one of the Alternatives for Criteria 2 and 3 and, if desired, add other exempted uses suggested in Criterion 5.

NEXT STEPS:

Should the City Council approve the Urban Revitalization Policy, the following steps would be necessary for any eligible project to take advantage of this incentive:

1. Developer prepares Minor Site Development Plan and architectural floor plans and elevations.
2. Developer works with the staff Development Review Committee for approval of these plans.
3. If the proposed project complies with attached policy, developer presents these plans to the City Council and Council sets a date for a public hearing on establishing the project site as an Urban Revitalization Area and approving an Urban Revitalization Plan for that site. The Minor Site Development Plan and architectural floor plans and elevations, and other requirements as determined by the City Council, serve as the Urban Revitalization Plan. State law requires 30 days prior notice for this hearing.

At this step the staff will create a developer agreement that will address the payback issues described in Criterion 3.

4. City Council conducts the hearing and approves the first reading of an ordinance establishing the Urban Revitalization Area and approves a resolution approving the Urban Revitalization Plan. In addition, Council would also approve the developer agreement at this step.

5. City Council approves the second and third readings of the ordinance establishing the Urban Revitalization Area.
6. Developer constructs the project. (Under state law, to be eligible for tax abatement, improvements cannot begin until the Urban Revitalization Area and Plan are approved.)
7. Upon completion of the project as described by the approved Urban Revitalization Plan, the developer applies for tax abatement.
8. City Council typically approves properties for tax abatement at its first meeting in February as a consent agenda item.
9. City forwards tax abatement approval to the City Assessor, who determines the final value and establishes the abatement.

ATTACHMENT A
URBAN REVITALIZATION POLICY
SOUTHEAST 16TH STREET

The City Council will consider establishing Urban Revitalization Areas and Plans for properties that meet all of the following qualifying criteria:

1. The properties have frontage on Southeast 16th Street between South Duff Avenue and South Dayton Avenue.
- 2a. Fill or other flood proofing will be placed on the site up to an elevation of, at least, 887 feet (NGVD29), when an engineer registered in Iowa provides written certification that raising the land would have no impact on surrounding properties.

or

- 2b. Fill or other flood proofing will be placed on the site up to an elevation of, at least, 887 feet (NGVD29), when an engineer registered in Iowa provides written certification that raising the land would have no impact on surrounding properties beyond that impact already anticipated in establishing the Base Flood Elevation.
- 3a. The cost of placing fill or flood proofing up to an elevation of 887 feet is expected to be equal to or greater than the value of the total tax abatement to be received under the Urban Revitalization Plan, as estimated by the City Assessor.

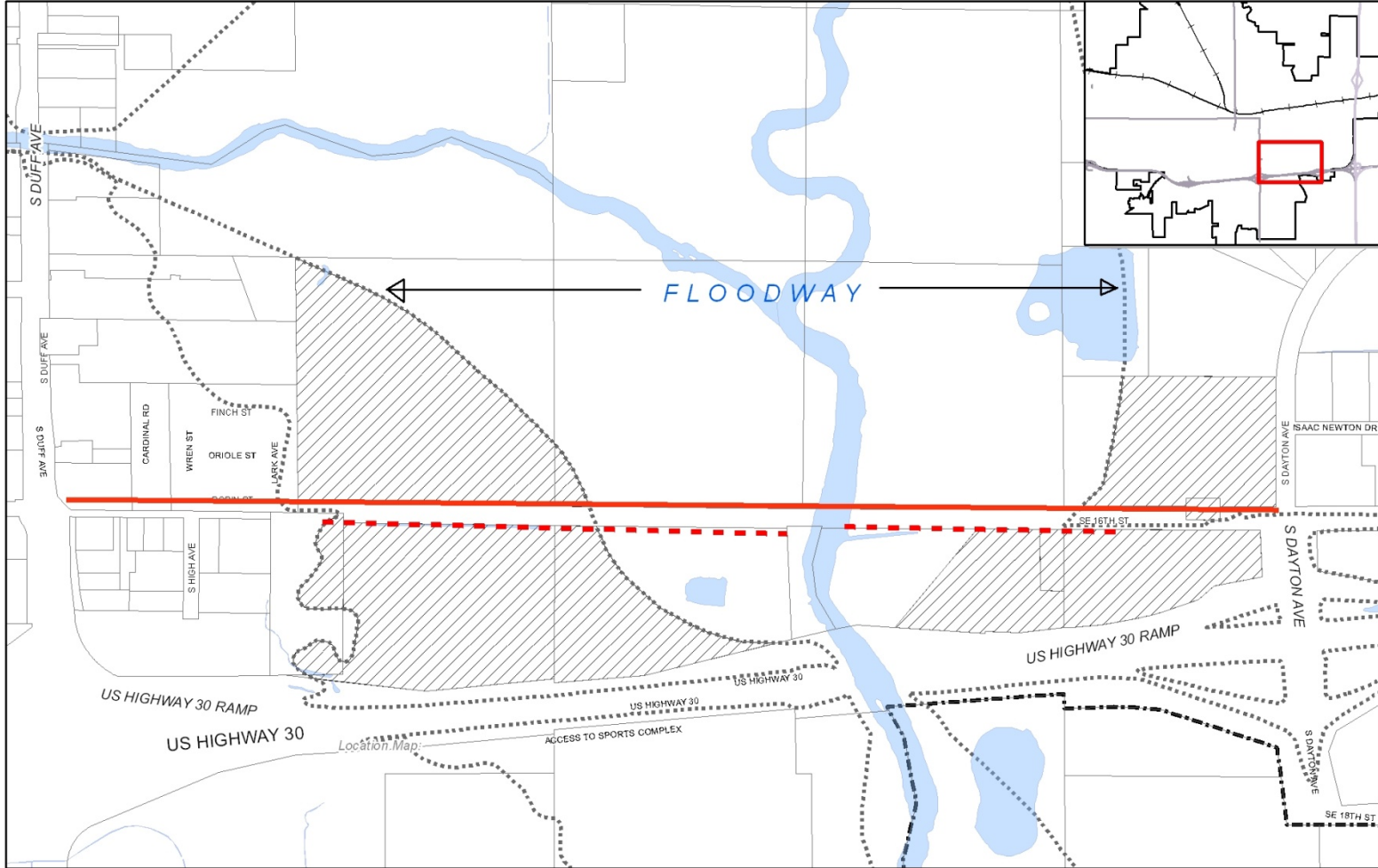
or

- 3b. The cost of placing fill or flood proofing up to an elevation of 887 feet or above is expected to be equal to or greater than the value of the total tax abatement to be received under the Urban Revitalization Plan, as estimated by the City Assessor.
4. A public sidewalk is to be constructed along the south side of Southeast 16th Street adjacent to the property.
5. The property will be used for uses permitted in the applicable zoning district except for the following as further defined and described in the Ames Zoning Ordinance:

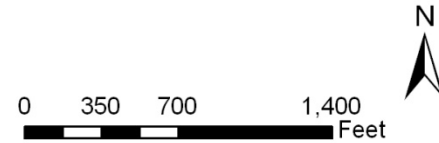
- a. Wholesale trade
- b. Mini-storage warehouse facilities
- c. Transportation, communications, and utility uses
- d. Institutional uses
- e. Adult entertainment businesses
- f. Detention facilities
- g. Agricultural or industrial equipment sales
- h. Agricultural and farm related activities

[City Council may want to consider other exceptions from the list of uses currently permitted in the Highway-Oriented Commercial zoning district shown on Attachment C.]

ATTACHMENT B SE 16th Urban Revitalization Program



- Floodway Fringe Overlay
- Properties to be considered as Urban Revitalization Areas
- Required Public Sidewalk
- Existing Shared Use Path



ATTACHMENT C
Permitted Uses in the
Highway Oriented Commercial Zoning District

- RESIDENTIAL USE CATEGORIES
 - Short-Term Lodging
- OFFICE USE CATEGORIES
 - Banking and bank-related services
 - Brokerage houses
 - Data processing centers
 - Government offices
 - Insurance services
 - Lenders and credit services
 - Public utility offices
 - Real estate and related services
 - Sales offices
 - General office uses
 - Medical and dental clinics, laboratories and offices
 - Professional service offices such as: Accountants, Architects, Engineers, Lawyers
 - Television and radio studios
 - Accessory Uses - Cafeterias, health facilities, and other amenities primarily for the use of employees or visitors of the firm or building
- TRADE USE CATEGORIES
 - Automotive and Marine Craft Trade
 - Entertainment, Restaurant and Recreational Trade
 - Retail Sales and Services—General
 - Wholesale Trade
- INSTITUTIONAL USE CATEGORIES
 - Colleges and Universities
 - Community Facilities
 - Funeral Facilities
 - Medical Centers
 - Religious Institutions
 - Social Service Providers
 - Parks and Open Areas
- TRANSPORTATION, COMMUNICATIONS AND ESSENTIAL SERVICES USE CATEGORIES
 - Basic Utilities
 - Commercial Parking
 - Passenger Terminals
 - Radio and Television Broadcast Facilities
 - Personal Wireless Service Facilities

- Rail Lines and Utility
- MISCELLANEOUS USE CATEGORIES
 - Adult Entertainment Facilities
 - Agricultural and Farm Related Activities
 - Commercial Outdoor Recreation
 - Detention Facilities
 - Major Event Entertainment
 - Vehicle Service Facilities
 - Child Day Care Facilities
 - Sports Practice Facilities

Corridors

April 5, 2012

Mayor Ann Campbell & Ames City Council Members
City of Ames
515 Clark Street
Ames IA 50010

RE: SE 16th Street Tax Abatement Project

Dear Mayor Campbell,

The Ames Economic Development Commission (AEDC) would like to reiterate its support of the SE 16th Street Tax Abatement Project. Although much of the discussion around this project has focused on the Deery project, please understand that we also support the entire SE 16th Street Tax Abatement Project which is before you at your April 10, 2012 meeting.

The Deery project, which will create 40 well-paid positions and will not negatively impact the floodway, is a huge benefit to our community. Additionally, a larger benefit comes from supporting development along this highly visible corridor that has remained undeveloped even with the significant investment made by the City of Ames in recent years.

Ultimately we see this project as a catalyst that will encourage other investment that will aesthetically upgrade this gateway to our community opening the opportunity to create additional jobs for the future.

Thank you for your consideration.

Sincerely,



Daniel A. Culhane, CEcD, CCE
President & CEO

CC: Tom Wacha, Ward I
Jami Larson, Ward II
Jeremy Davis, Ward III
Victoria Szopinski, Ward IV
Matthew Goodman, At-Large
Peter Orazem, At-Large
Steve Schainker, City Manager

