

Staff Report

DEERY BROTHERS DEVELOPMENT AGREEMENT

September 11, 2012

On June 12, 2012, the City Council approved a policy for establishing Urban Revitalization Areas and Plans along Southeast 16th Street. The six qualifying criteria are attached for your review (Attachment I).

On September 11, 2012 the Council is being asked to set October 23, 2012 as the date of a hearing to approve the proposed Urban Revitalization Area and Plan for the Deery Brothers' four-lot subdivision. This subdivision includes one lot for the car dealership, two lots for future commercial developments, and one unbuildable outlot for storm water drainage.

Because of the nature of the recently approved qualifying criteria, it is not possible for all of the criteria to be satisfied by the developer at the time of the public hearing. This fact is very important, because once the Urban Revitalization Area and Plan are approved in October as currently requested, the development will qualify for tax abatement. If it is later determined that the developer has not satisfied each of the six qualifying criteria, the City Council cannot rescind the tax abatement incentive to the Deery Brothers.

Therefore, the City Council will have to determine at the September 11, 2012 meeting if there has been sufficient information provided to lead the Council to believe that all six of the qualifying criteria can be met. If the Council believes this to be so, the public hearing should be scheduled.

In order to protect the City, should it be determined at a later date that not all of the required qualifying criteria have been met, staff will negotiate a development agreement with the Deery Brothers for approval prior to the October 23, 2012 public hearing that assures that the City will be reimbursed for the amount the developer receives in tax abatement for failure to satisfy all six criteria.

To make sure these negotiations progress as efficiently as possible, staff is seeking City Council concurrence and direction on the following important issues that should be addressed in such an agreement.

Issue 1: Location of Development

The first qualifying criterion requires the development to have frontage on Southeast 16th Street between South Duff and South Dayton Avenue.

The site plan presented for approval at the public hearing of the Urban Revitalization Plan will indicate that this proposal intends to meet this qualifying criterion. **The developer agreement should reference the requirement to complete construction of the car dealership within a specified timeframe.**

Issue 2: No Rise Certification

The second criterion requires a registered engineer to certify that bringing in fill to raise the land to an elevation of 887 feet will result in “no rise” to the Base Flood Elevation (100 year flood level).

Scott Renaud from FOX Engineering has provided the attached letter (Attachment II) “certifying” that “no rise” will occur as a result of the development of the three lots at the proposed elevations.

It should be pointed out, however, that the accomplishment of the “no rise” requirement is possible only as a result of the channel improvements proposed on Attachment III. Since some of the land needed for the channel improvements is State property, approval from IDOT will be necessary. The developer intends to obtain a right to work permit to work in the IDOT right-of-way prior to the October hearing.

The development agreement should require that the channel improvements that are approved by the IDOT be completed within a certain timeframe. (For example prior to the application for the tax abatement, or within X number of years.) The City Council will need to give staff direction as to how long it is willing to wait before these improvements are completed. The agreement will need to stay in place for this same timeframe.

Issue 3: The Cost of Fill Exceeds Value of Abatement

The third criterion requires that the cost to the developer for the placement of fill on the property for flood proofing up to an elevation of 887 feet or above must be equal to or more than the value of the City’s portion of the tax abatement incentive received by the developer.

The developer should be able to provide his estimates for the cost of the fill and the expected assessed value of the improvements on the three developable lots in the Urban Revitalization Area. However, proof of satisfaction of this criterion will not be possible until after the approval of the Urban Revitalization Plan when actual costs can be documented and the City Assessor establishes a value for the improvements.

Therefore, the development agreement should require that the City be provided with documentation of the actual costs incurred for the placement of the fill and the agreement should remain in place until the actual assessed value has been established. What makes this analysis a bit tricky is the fact that the developer is seeking tax abatement on all three developable lots. While the cost of the fill for all three of the developable lots will occur at one time, only the car dealership lot is expected to be developed immediately. Thus, the development agreement will need to specify how the cost of fill will be allocated among the three lots in order to calculate satisfaction of this criterion.

Issue 4: Construction of Sidewalk Along South Side Of Southeast 16th Street Adjacent To The Property

While the fourth qualifying criterion required the developer to construct a sidewalk on the south side of Southeast 16th Street along the entire stretch of subdivision, the developer is requesting that this requirement be limited to only the three developable lots.

Since there is no sidewalk west of their property, pedestrians are required to cross over to the path on the north side of Southeast 16th Street anyway. Therefore, the Deery Brothers see no reason to pay the extra money to construct a sidewalk along the undeveloped outlot so that pedestrians can cross over farther to the west.

Technically this is a waiver of the public improvement requirements that will be dealt with at the time of approval of the preliminary plat. However, the City Council should decide at this time if this requirement should remain as a qualifying criterion for tax abatement or be modified.

If the Council elects not to require the extension of the sidewalk across the outlot, the developer should be required to build handicapped ramps on both sides of Southeast 16th Street to facilitate the crossing.

Issue 5: Permitted Uses For The Property

The fifth criterion obligates the developer not to utilize the property within the Urban Revitalization Area for eight specific uses (Attachment I). **Because it will not be possible to determine full compliance with this requirement while reviewing the site plan, the developer agreement should list the prohibited uses to bind future owners of the property as well.**

The Council will need to determine the length of time that the developer should be bound by these use restrictions. (For example, should the restriction be for the life of the covenant – renewable periods of 21 years -- or only for the duration of the selected tax abatement period.) The duration of this obligation will impact how long the agreement must be in place.

Issue 6: Mitigation of Flooding

The sixth criterion requires the property owner who develops land abutting a river in this Urban Revitalization Area to perform channel improvements and provide certification from an engineer that these improvements will mitigate flooding.

The Deery Brothers have indicated that channel improvements have been identified that will mitigate future flooding. As you can see from the information provided by Scott Renaud in Attachment II, he has “certified” that the proposed channel improvements will reduce the flood elevation by up to 0.05 feet.

The development agreement will need to include the requirement that these improvements be made. As was explained under Issue 2, the Council will need to

determine how long it should take to complete these channel improvements. Here again, the development agreement will need to remain in effect until the improvements are accomplished.

Issue 7: Maintenance of Channel Improvements and Storm Water Management Area

In addition, the development agreement should also require that the conditions that allowed the determination of “no rise” be maintained by the property owner. This will include the dredging or removal of any silt or debris that may settle in or alter the finished grades of the river channel and storm water management area/borrow pit, and the maintenance of any erosion control/bank stabilization measures associated with the river channel and borrow pit, including vegetation and/or installed rip-rap.

Issue 8: Security

It is probable that the staff will be able to negotiate an agreement that will bind the developer to satisfy the qualifying criteria. However, the Council should expect this agreement will be executed with a Limited Liability Corporation (LLC) created specifically for this project. As such, the LLC will have little or no assets. Therefore, should the developer fail to satisfy all of the criteria required of the Council in a timely manner, it will be difficult for the City to recoup the value of the tax abatement incentive that was granted.

Historically, the technique used by the City to assure payment should a developer fail to perform in accordance with our agreement is to require a Letter of Credit. Because this type of security will add to the developer’s cost, staff is confident that the Deery Brothers will be opposed to this requirement. **The Council must decide whether or not some form of security should be included in the developer agreement.**

Issue 9: Amendment Of Site Plan

As originally submitted, the site plan for the Deery Brothers will include one outlot and three developable lots. Two of these three lots will be vacant since there are no current plans to develop them. As each of the two remaining developable lots is sold, the site plan should be amended to reflect any new development. **The development agreement should reflect this requirement for the developer to obtain approval from the City Council of an amended site plan in order for each of the two remaining developable lots to qualify for tax abatement.**

Issue 10: IDOT’s Request For The City To Delay Any Approvals

The City Manager had previously informed the City Council that Scott Dockstader from the IDOT had stated that,

“The department recommends that the City of Ames hold any approvals that would further the development of this site until the results of our comprehensive hydraulic study are known. We anticipate that the study will be completed by the end of September.”

As you can see from the most recent communication from IDOT (Attachment IV), the DOT has now determined that,

“Our analysis indicates that replacing the existing 320 foot structures with longer structures will allow us to meet DNR criteria for the 100-year flood. An overflow channel through the Deery site plan will not be necessary to meet the 100-year flood requirements.”

Therefore, IDOT is no longer requesting that the City withhold any approvals related to the Deery Brothers property.

6-12-12 Around
dais**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.
2. 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 result in "no rise" to the Base Flood Elevation (100 year flood level).
3. The cost incurred after making the request for tax abatement for the placement of fill for flood proofing up to an elevation of 887 feet or above and/or channel improvements (See Criterion 6), if applicable, is expected to be equal to or greater than the value of the City's portion of the tax abatement.
4. A public sidewalk is to be constructed along the south side of the 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

(The City Council might want to consider other exceptions from the list of uses currently permitted in the Highway-Oriented Commercial zoning district shown on Attachment C)

6. Owners of property abutting a river must perform channel improvements (widening, straightening, clearing, etc.) and provide certification from an engineer registered in Iowa that the improvements will mitigate flooding. These improvements must be approved by the DNR, Army Corps of Engineers, and the City of Ames.

Since satisfaction of criterion 3, 5, and 6 cannot be guaranteed at the time of approving the tax abatement incentive, a developer agreement prior to the approval of the Urban Revitalization Plan will be required to assure that the City will repaid an amount equal to the tax abatement received for any criterion not met. In addition, the developer agreement should also require that the conditions that allowed the determination of "no rise" be maintained by the property owner.



Aspen Business Park | 414 South 17th Street, Suite 107 | Ames, Iowa 50010

August 17, 2012

City of Ames
Planning and Housing Department
515 Clark Avenue
Ames, Iowa 50010

RE: Certification for "No-Rise" and Flood Mitigation
for the Deery Subdivision, Ames, Iowa
FOX Ref. No. 5174-12a.410

To the City of Ames:

I hereby certify that the proposed channel improvements on the Skunk River will result in no-rise in the 100 year flood elevation and will mitigate flooding.

The no-rise certification is based on the attached documents and site plan showing the widening and channel stabilization being performed on the Skunk River Channel. The calculations include the fill being placed on the site, the excavation taking place in the floodway, and the work in the channel itself.

The project will mitigate flooding by providing an improved and stabilized channel in addition to the no-rise condition. The channel improvements will remove large trees that are in imminent danger of falling into the river during the next major flood event. These trees will potentially lodge in the downstream Highway 30 bridge and create blockages that will catch debris and severely restrict water flow through the bridge.

Sincerely,

A handwritten signature in blue ink, appearing to read 'S. Renaud', written over a circular stamp.

Scott Renaud, P.E.
Iowa Registration No. 12109
My license expires December 31, 2012



Cc: Fred Rose, Rose Companies

K:\Iproj\5000\5174-12a car dealership\Urban Rev\August 17 2012 Engineers Certification.docx

MEMO

August 17, 2012

TO: City of Ames, Planning & Zoning and Public Works

FR: Scott Renaud, P.E.

RE: **No Rise Certification**
Deery Brothers Site
FOX Ref. No. 5174-12a.410

Attached are the draft calculations for the no-rise certification. There are 3 parts to the attached documentation. First is the existing condition. Second is the fill without the channel modification. Third is the fill and the channel modification. We are had this work done by Aaron Bousselot, P.E., of ICON in Denver who had done all the work at FOX prior to leaving and going to ICON. Below are his comments:

The HEC RAS files have been set up to model several scenarios:

- Existing conditions
- Proposed Deery site (no channel work)
- Proposed Deery site with channel repair

Please note that the FEMA effective model was not obtained. Instead, recent survey and LiDAR was used to develop the existing conditions model. Additionally, bridge structures were not included in the models. In order utilize effective data, the tailwater at downstream cross section was set at elevation 882.0 to match the effective BFE. As we discussed before, backwater from the Hwy 30 bridge controls flood elevations.

Attached are .pdf HEC RAS output files for each scenario. Also attached is summary spreadsheet showing changes to 100-year water surface elevations (WSEL). If the Deery site is constructed without channel improvements, a minimal rise (less than 0.1 ft) is anticipated. With channel improvements, the WSEL is less and no-rise can be achieved.

FEMA instructions for No-Rise Certification are attached. The last page of the .doc has an example form that can be used for a No-Rise submittal.

Once you have had time to review this information and have someone on board to do the technical review we will exchange the electronic files so the calculations can be verified. We are in the process of getting the Corp of Engineers and IDNR approval of the channel modifications.

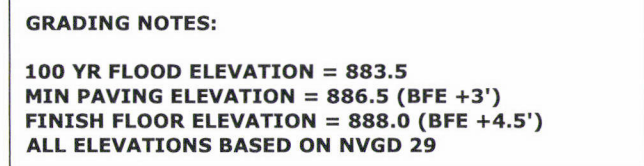
K:\proj\5000\5174-12a car dealership\Urban Rev\2012 08 20 No Rise memo - slr.docx

Skunk River at Hwy 30
5174-12A

HEC RAS Hydraulic Analysis

Station	Existing Conditions 100-YR WSEL (a)	Proposed Deery Site 100-YR WSEL (b)	WSEL Compare (b-a)
585	882.95	883.03	0.08
320	882.83	882.88	0.05
193	882.75	882.75	0.00
0	882.00	882.00	0.00

Proposed Site and Channel Repair 100-YR WSEL (c)	WSEL Compare (c-a)
882.90	-0.05
882.80	-0.03
882.75	0.00
882.00	0.00



ATTACHMENT IV

From: "Dockstader, Scott [DOT]" <Scott.Dockstader@dot.iowa.gov>
To: City Ames <jjoiner@city.ames.ia.us>, "Tracy Warner" <twarner@city.ames.ia.us>
Cc: "Adam, John [DOT]" <John.Adam@dot.iowa.gov>, "Gustafson, Tony [DOT]" <Tony.Gustafson@dot.iowa.gov>, "Dillavou, Mitchell [DOT]" <Mitchell.Dillavou@dot.iowa.gov>
Date: 09/05/2012 01:46 PM
Subject: FW: Proposed Deery Motors Site Plan - US 30 Ames

John, our staff has finished the initial 2D hydraulic analysis for the future replacement of bridges on US 30 over the Skunk River.

It appears the department will be able to meet DNR criteria for the 100-year flood on US 30 by lengthening our existing bridges when they are replaced in the future. Our analysis indicates that replacing the existing 320 foot structures with longer structures will allow us to meet DNR criteria for the 100-year flood. An overflow channel through the Deery site plan will not be necessary to meet the 100-year flood requirements.

In addition, the department does not have any concerns with the proposed channel excavation along the Skunk River just north of US 30. This channel excavation will require a work on ROW permit from the department.

I want to thank the City for holding off on site approvals until the department completed this analysis. Let me know if you want to set up a meeting to go over any of these details.

Thanks. Scott