

Staff Report

**Request for Designation of 205 SE 5th Street as
Urban Revitalization Area**

February 26, 2013

Steve Scott of Ruhl and Ruhl Commercial Company is requesting that 205 SE 5th Street be designated as an Urban Revitalization Area under the policy of the City Council and Code of Iowa Chapter 404. A map showing the location of this site is attached.

BACKGROUND

In 2009 Mr. Scott submitted an application for a Minor Site Development Plan. (He had previously submitted preliminary plans in 2006, but the formal application was submitted in 2009.) At that time the applicant also sought designation of 205 SE 5th Street as an Urban Revitalization Area in order to receive a tax exemption for the development of the property. The proposal did not meet the criteria of City policy at that time. Therefore, in 2010 the City Council subsequently adopted new criteria for commercial development in the Highway-Oriented Commercial zoning district.

These new criteria are as follows:

Properties eligible for tax abatement must be within the Highway-Oriented Commercial zoning district, and also fit within one or more criteria.

1. Properties from which the principal building has been removed and the property has been vacant for at least seven years.
2. Properties with a principal building that has been determined by the Building Official as meeting the definition of "Public Nuisance" in the Ames *Municipal Code*, Chapter 5, "Building, Electrical, Mechanical and Plumbing Code" (Currently Section 5.401(7)).
3. Development or redevelopment of Brown Fields. Brown Fields include abandoned or underused industrial and commercial facilities or sites available for re-use or redevelopment. Expansion or redevelopment of such a facility or site is complicated by environmental contaminations.
4. Properties with at least 20% of the property area being within 1,000 feet of a City of Ames water well *and* within the Floodway-Fringe Overlay zoning district. The Developer must demonstrate that the proposed project cannot be configured or designed in a manner to avoid significant extra impact to the project because of its location near a City well head. [Emphasis in original.]

Non-qualifying Uses. Notwithstanding compliance under the above categories, tax abatement shall not be granted for properties developed for or otherwise used for the following uses:

1. Mini-storage warehouse facilities or other industrial uses.
2. Transportation, communications, and utility uses.
3. Institutional uses.
4. Automotive, boat, and/or RV sales.
5. Adult entertainment businesses.
6. Detention facilities.
7. Agricultural or industrial equipment sales.

The applicant is seeking this Urban Revitalization Area designation based on the fourth criterion of the Commercial Urban Revitalization Policy, which involves proximity to a City water well and location within the Floodway-Fringe Overlay zoning district. The applicant has provided extensive information on how they believe the criteria are met, and Council can review that information in Attachment 2. The property is located within the HOC zoning district. In addition, approximately 23 percent of the property lies within 1,000 feet of one of the City's water supply wells (as shown on Attachment 1); and about 97.5 percent of the property lies within the Floodway Fringe overlay district. In summary, the property meets all of the *location standards* for the fourth criterion.

The City's well head protection ordinance does not allow the placement of storm water detention areas within that protected area. Instead, the ordinance allows development to meet water quality-based treatment, or a combination of quantity- and quality-based treatment as approved by staff. Further, it does not allow for permanent excavation below the natural grade, although structures and foundation footings can be constructed in that area. In addition, the Floodway Fringe requires that development be elevated (or floodproofed) to three feet above the base flood elevation (the 100-year flood level). In this case, approximately five to seven feet of fill have been placed over the natural grade to meet the Floodway Fringe requirements.

The criterion also requires "that the proposed project cannot be configured or designed in a manner to avoid significant extra impact to the project because of its location near a City well head." The applicant has presented several justifications to demonstrate that need.

The applicant states that the location of the well head protection area, covering approximately the southeast 23 percent of the lot, restricts their ability to manage storm water as they had originally planned. The original 2009 site plan showed 31,300 square feet of buildings, supported by 191 parking spaces. In addition, the site plan had a detention area of about 7,100 square feet in the southeast corner of the property. A copy of the former site plan is included as Attachment 3. That site plan was reviewed by staff and was not approved, due to the storm water detention area being located in the well head protection area.

A new site plan was submitted in late 2012 to comply with the requirements of the well head protection area. This site plan, which forms the basis of the proposed Urban Revitalization Plan, now shows a storm water detention area of about 9,900 square feet in the north and northwest portions of the site, outside of the well head protection area. In addition, the site now contains 38,740 square feet of building supported by 163 parking spaces. A copy of the proposed site plan is included as Attachment 4. The plan is nearly ready for final approval, which can be done administratively by staff.

Because of the restrictions caused by the well head protection area, the applicant is placing the storm water detention area in the north and northwest portions of the site. The applicant states that this relocation of the detention cell results in the loss of a 5,800 square foot building that was originally proposed for the southwest corner of the site. According to the applicant, the elimination of that building represents a loss of at least \$500,000. He states that this loss is because the restaurant pad pays greater rents than do the main tenants of a commercial center. Thus, even though the total square footage of the commercial center now proposed is greater, the applicant states that the rents that Petco and Sports Authority pay are less, per square footage, than what a restaurant in the front of the lot would pay. However, it has not been made clear to staff why the restaurant pad could not go back to its original location if the other buildings were reduced in area closer to their original 2009 size.

Although the southwest corner of the site would be the natural location of a detention area due to the natural grade being the lowest on the site, the City's well head protection requirements preclude the use of that area for storm water detention. Staff would note, however, that the entire site has already been raised with fill to help address the flood plain requirements. Given that fact, the location of the detention area could be placed elsewhere on the lot, as long as it is outside of the well head protection area. It may be possible with minimal earth movement to redirect the storm water to a different portion of the lot.

Finally, the applicant has noted how costly it has previously been to attempt to comply with the City's standards for development in this area. In 2009, the applicant sought a storm water quality variance from the Zoning Board of Adjustment, in addition to a variance to the driveway width and a conditional use permit to allow construction in the Floodway Fringe. These latter two were approved, but the storm water management variance was not. Therefore, the minor site development plan was denied in the fall of 2009 due to non-compliance with the City's standards.

The final requirement regarding *non-qualifying uses* is met with the proposed plans for Petco and Sports Authority stores. This criterion will be protected by covenant at the time the Urban Revitalization Plan is adopted, as was done recently with the Deery Brothers site on SE 16th Street.

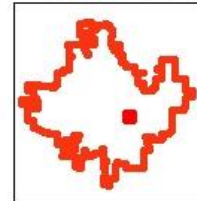
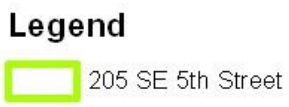
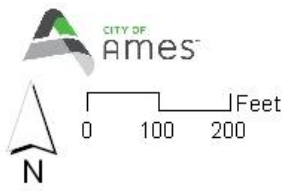
COUNCIL CONSIDERATIONS:

Based on the submitted site plans, the previous site plans, and the criteria for the designation of the Urban Revitalization, the City Council must determine whether at least one of the four criteria is met. To decide if the fourth criterion is met, the City Council must determine that the well head protection area created a “significant extra impact to the project.”

If the City Council believes that this criterion is met, it should approve a motion finding that the proposed project meets the criteria, a motion directing staff to prepare the Urban Revitalization Plan, and a resolution setting April 9, 2013 as the date of the public hearing to consider the establishment of the Urban Revitalization Area and the granting of the tax exemption. According to the applicant, the site offers unique challenges due to the inability to place the detention area at the southeast corner of the lot. By having to place the detention area at the north and northwest areas, the restaurant pad in the southwest had to be eliminated. The applicant also states that the project has suffered unusual costs due to the delays in obtaining approval to build and in having to redesign the site to accommodate the storm water quality requirements.

If the City Council does not believe that this criterion is met, it should approve a motion finding that the proposed project does not meet the criteria. In that event, the project would still be eligible for construction, but would not receive the temporary tax exemption. While the site has the double burden of being within 1,000 feet of a well head and within the Floodway Fringe, other development in the area, such as the Super Wal-Mart to the south, was able to comply with the well head protection requirements without the benefit of tax exemption. In addition, the proposed plan increases the gross floor space from 31,300 to 38,740 square feet, decreases the number of parking spaces provided, and increases the amount of land devoted to storm water detention. It is unclear to staff why the applicant proposes to expand the main building over the 2009 plan instead of retaining the restaurant pad in the southwest corner of the lot. Finally, this site has benefitted from the change in parking requirements for commercial uses allowing more retail space but fewer parking spaces from the 2009 plan.

ATTACHMENT 1 LOCATION MAP



ATTACHMENT 2 APPLICANT'S STATEMENT

Effective Date: September 19, 2012

Request for Designation of Urban Revitalization Area for Commercial Development *Criteria for Eligibility*

Please describe how the property meets the required criteria. Please attach additional sheets if necessary.

This property meets the criteria for abatement under item 1.d because the aquifer underlying the property that supplies the city wellfields to the east requires that the developer not excavate below the existing grade of the property and because no detention cells are allowed to be located within the 1000 foot radius of the nearest water well.

These requirements adversely impact the developability of the property because of the limitations they place on both the location and the size of stormwater detention cells. These limitations increase the cost of providing detention on the site. Because excavation below existing grade is not allowed in the most suitable area on the site for detention due to concerns of contamination of the groundwater in the existing aquifer, a combination of stormwater quality management methods and stormwater quantity management methods need to be utilized to provide adequate detention. Stormwater quality management methods are more costly than stormwater quantity management methods.

Additionally, because the site is not allowed to have stormwater detention of any kind in primarily the eastern one-fourth of the parcel, which is the area most suitable for detention because of its existing lower elevation prior to fill and because it is the least suitable location to place a building on the site, we are forced to relocate the detention in such a way that causes us to eliminate the most prime developable outlot site on the property (in the southwest corner of the parcel). Note that in our original site development plan submitted to city staff in 2006, a 5,800 square foot restaurant building pad was proposed for that area. With the requirement to have no detention in the area originally proposed, the only available outlot site is at the southeast corner of the property which is too far set back from Duff Avenue and is therefore not an acceptable site for such development. The loss of this outlot represents a significant opportunity cost to the property of at least \$500,000.

This property has been passed over for redevelopment repeatedly during the past 6 years that we have owned it while other properties along the South Duff retail corridor have developed. The majority of those sites, particularly those adjacent to or in very close proximity to this property, have been redeveloped with far less restrictive stormwater detention requirements, and in many cases with no

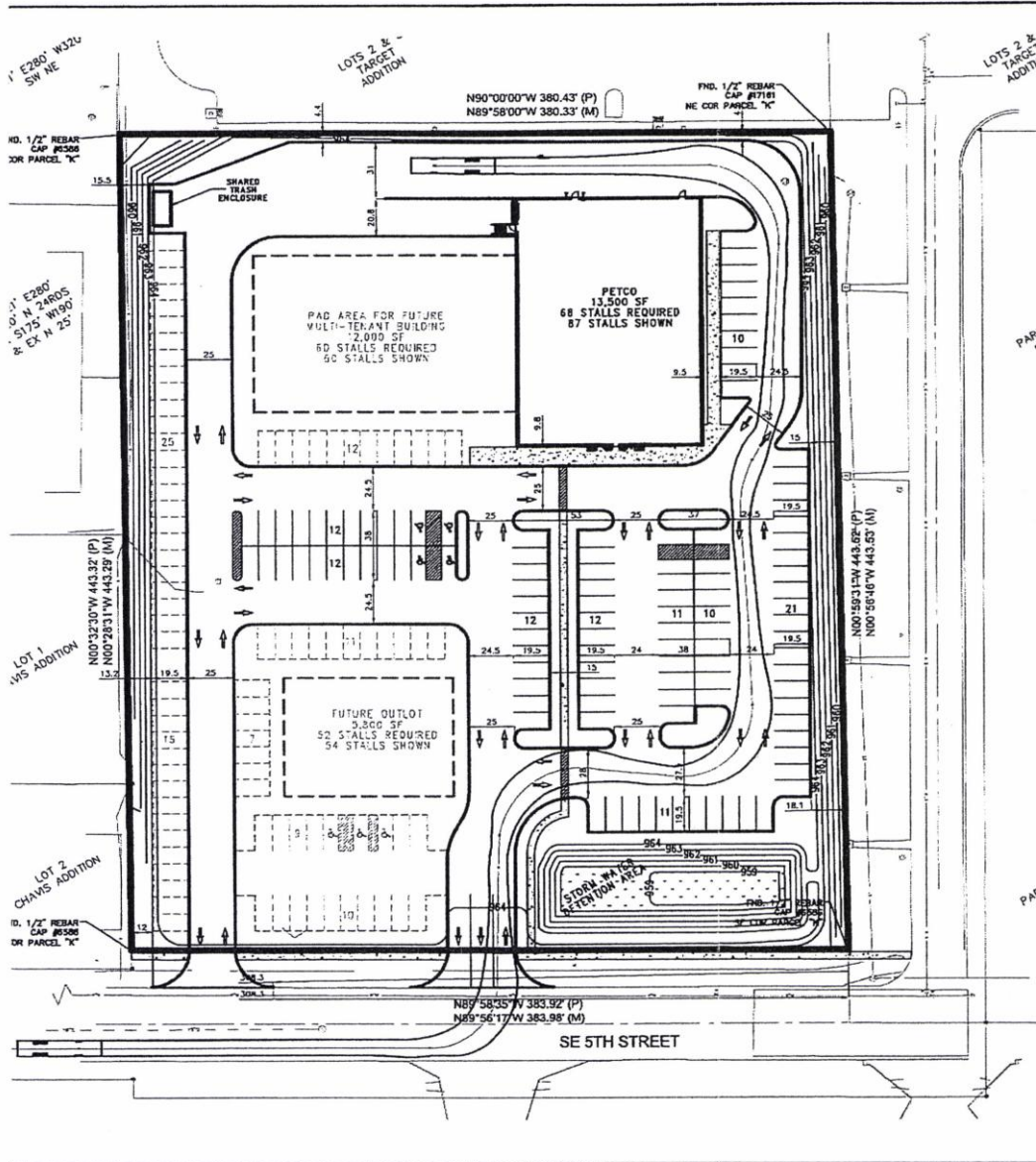
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detention at all. This lack of equity in application of development standards and criteria on properties that are literally adjacent to this property or in very close proximity places the property at a distinct competitive disadvantage.

Additionally, we have had to incur extra costs in design, review, and redesign due to the city's lack of storm water management direction for this property and the additional time spent interpreting, preparing, and submitting a variance request to the board of adjustment that would provide the option of an exemption from the typical storm water quantity standards and provide a plan with storm water quality treatment that could be approved by the Director of Public Works and Director of Water and Pollution Control. This variance application was facilitated and recommended for approval by the Planning Department. Ultimately, the board of adjustment rejected the staff's recommendation on the basis that the site could be developed using porous pavement and underground detention, both extremely expensive solutions (see the attached cost comparison analysis provided by our civil engineer at the time). It was at this point that the staff determined to pursue a policy modification of its criteria for a property to be designated as an Urban Revitalization Area that would then qualify for tax abatement due to a significant extra impact on its developability caused by the restriction of not detaining stormwater within the 1000' radius of the city water wells. While we have appreciated the efforts of the city staff to enable the redevelopment to move forward, these lengthy delays have added significantly to the redevelopment costs.

In summary, we identify two ways in which the property's developability continues to be significantly impacted by the proximity to the water wells. One is that placing stormwater detention in the location most suitable for detention on the property requires sustaining exorbitant costs which make that site design economically unfeasible with the further impact being the loss of a developable outlet that would have been sold or leased to a high value user such as a restaurant or financial institution with an economic value in the land of at least \$500,000. The other is the impact on the developability due to the delays and additional costs caused by the need for multiple redesigns of the project which has caused us to incur extraordinary expenses in civil design fees and carrying costs totaling in excess of \$250,000.

ATTACHMENT 3 FORMER SITE PLAN (NEVER APPROVED)



ATTACHMENT 4 PROPOSED SITE PLAN

