

## Staff Report

**Old Middle School Rezoning Process**

March 26, 2013

At the March 5, 2013, meeting, the City Council directed staff to provide a report on the rezoning process and options for the former Middle School. **This report is intended as an overview of the process, and does not deal with the merits of these rezoning requests. That information will be provided to Council as the process unfolds.**

**BACKGROUND**

On March 11, 2013, deeds were recorded transferring ownership of three parcels of land from the Ames Community School District to Breckenridge Group Ames Iowa LLC. These three parcels are addressed as 205 S. Wilmoth Avenue (the north parcel—former athletic field), 321 State Avenue (the middle parcel—former middle school building), and 601 State Avenue (the south parcel—recently divided from the current middle school site). A map is included as Attachment 1.

All three parcels are zoned S-GA (Special Government Airport). This zoning category is intended to apply to land owned by governments at the local, county, state, federal, or school level.

The Land Use Policy Plan provides guidance for these properties in the event that a rezoning is sought. For the north and middle parcels, the LUPP designation is Low-Density Residential. This designation is summarized as “single-family residential with a maximum net density of 7.26 dwelling units per net acre.”

The south parcel is designated in the LUPP as Village/Suburban Residential, summarized as “all single-family, two-family, multi-family and manufactured residential uses that involve more than a net density of 8.0 units per acre with supporting convenience/neighborhood-scale commercial uses.”

On March 11<sup>th</sup>, an application was submitted to the City by Breckinridge Group requesting the rezoning of the middle parcel from S-GA to RL (Residential Low Density). RL is intended “to accommodate primarily single-family dwellings, while accommodating certain existing two-family dwellings and other uses customarily found in low-density areas.” While the LUPP designation of Low-Density Residential would support a rezoning to RL, it does not mandate that the City Council change the zoning designation.

**To summarize, the permitted uses in the requested zoning district for the middle parcel, RL, allows for single family homes, but not any new duplexes, any townhomes or any apartments.** It should be noted that, in this zoning district,

occupancy in a single family home is limited by the zoning code to a family or no more than three unrelated persons or a family. The rental code also limits occupancy to a family or no more than three unrelated adults.

On March 15<sup>th</sup>, an additional application was submitted to the City by Breckinridge Group requesting the rezoning of the south parcel from S-GA to FS-RM (Floating Suburban Residential Medium Density). FS-RM is intended to “accommodate contemporary development patterns similar to development in the past 20 to 30 years.”

**Again, the Village/Suburban Residential designation would support a rezoning to FS-RL (Floating Suburban Low Density Residential), FS-RM, F-VR (Floating Village Residential), or F-PRD (Floating Planned Residential Development). However, it does not mandate that the City Council change the zoning designation to any particular one of these designations. Therefore, it would be possible to rezone the southern parcel to FS-RL, RS-RM, F-VR or F-PRD.**

The permitted uses in the requested zoning district for the southern parcel, FS-RM, allows single family homes, but also duplexes, townhomes of up to 12 attached units, and apartments of up to 12 units. No more than three unrelated persons or a family can live in a single family home or townhome. The zoning code limits occupancy of apartments to no more than five unrelated persons or a family. The rental code allows occupancy of one more than the number of bedrooms up to a total of five persons, subject to meeting the available parking as required by the rental housing code.

### **PROCESS AND DECISIONS**

The City Council, the Planning and Zoning Commission, or owners of land (or 50 percent of the owners of land if multiple parcels) can initiate the rezoning of any property in the City. **The first step in the rezoning process is for the City Council to determine whether a Master Plan shall be required for the rezoning. In this case, these two rezoning requests will be brought to the City Council at the April 9<sup>th</sup> meeting.**

The Master Plan may be required if any of a number of specified conditions are present in the request. These conditions are noted in Section 29.1507(3)(b) of the Zoning Code, and are included in Attachment 2. **The City Council will be asked to determine the need for a Master Plan on April 9<sup>th</sup>.** At that meeting, staff will provide more information regarding the level of information provided in a Master Plan and its relationship to this proposed development. Furthermore, at that time Council could also inform staff and/or the applicant of any additional information that it desires to review so that it has enough information to understand the impacts of what will result from the rezoning.

If the City Council does not require a Master Plan, then the applications were considered complete on March 11<sup>th</sup> (for the middle parcel) and March 15<sup>th</sup> (for the south parcel). The Planning and Zoning Commission would need to make a recommendation to the City Council within 90 days. Should the Commission fail to reach a recommendation within 90 days (by its June 5 meeting), these rezoning requests will be

forwarded to the City Council with a presumed recommendation for approval by the Commission.

If the City Council does require a Master Plan, then the applications will be considered complete upon submittal of that Master Plan to the Department of Planning and Housing. The requests for rezoning will then be presented to the Planning and Zoning Commission for their recommendation within 90 days from that submittal.

Prior to the Planning and Zoning Commission's public hearing, staff will prepare reports to the Commission outlining the background of the requests and the applicable law governing the requests. The report will also present recommendations to the Commission and will describe any conditions staff proposes for the rezonings. After conducting its public hearings, the Commission will make recommendations on the requests to the City Council, including any conditions it deems appropriate. Those items will then be placed on a subsequent agenda of the City Council, allowing time for the necessary published notices and mailings.

The City Council will also conduct a public hearing on the requests. Staff will prepare reports similar to those prepared for the Commission. These reports will include the Commission's recommendations, as well as summaries of comments received during the Commission's public hearings.

The City Council will then conduct its public hearings after which it may take action approving or denying the rezoning requests. **It is important to note that, under Section 414.5 of the Code of Iowa, the City Council may impose conditions on the rezoning request provided that the applicant agrees to those conditions prior to the close of the public hearing.** This type of arrangement is sometimes referred to as "contract zoning." Any conditions "must be reasonable and imposed to satisfy public needs which are directly caused by the requested change." The full section is found in Appendix 3.

**If, prior to the close of the public hearing, a petition is presented to the City Council opposing the rezoning and is signed by owners representing 20 percent or more of the land within 200 feet of the area proposed for rezoning, then the City Council will need a three-fourths majority vote to approve the request.** Since our Council has six members, the request would need five affirmative votes for approval of the ordinance. The full text of the state and local codes are found in Appendix 3.

If the requests are ultimately denied by the City Council, those particular requests cannot be reconsidered for one year unless 50 percent of the original objectors petition for reconsideration or unless the City Council itself initiates reconsideration.

### **REZONING CONSIDERATIONS**

The City Council should be aware that a request to rezone a property is a legislative action. Therefore, the Council has some degree of discretion, although it cannot arbitrarily deny the request if it is consistent with the Land Use Policy Plan. The Council

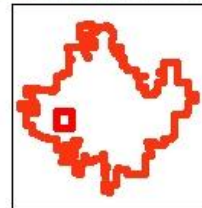
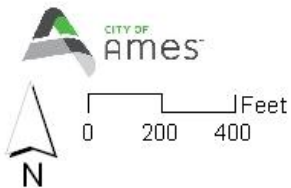
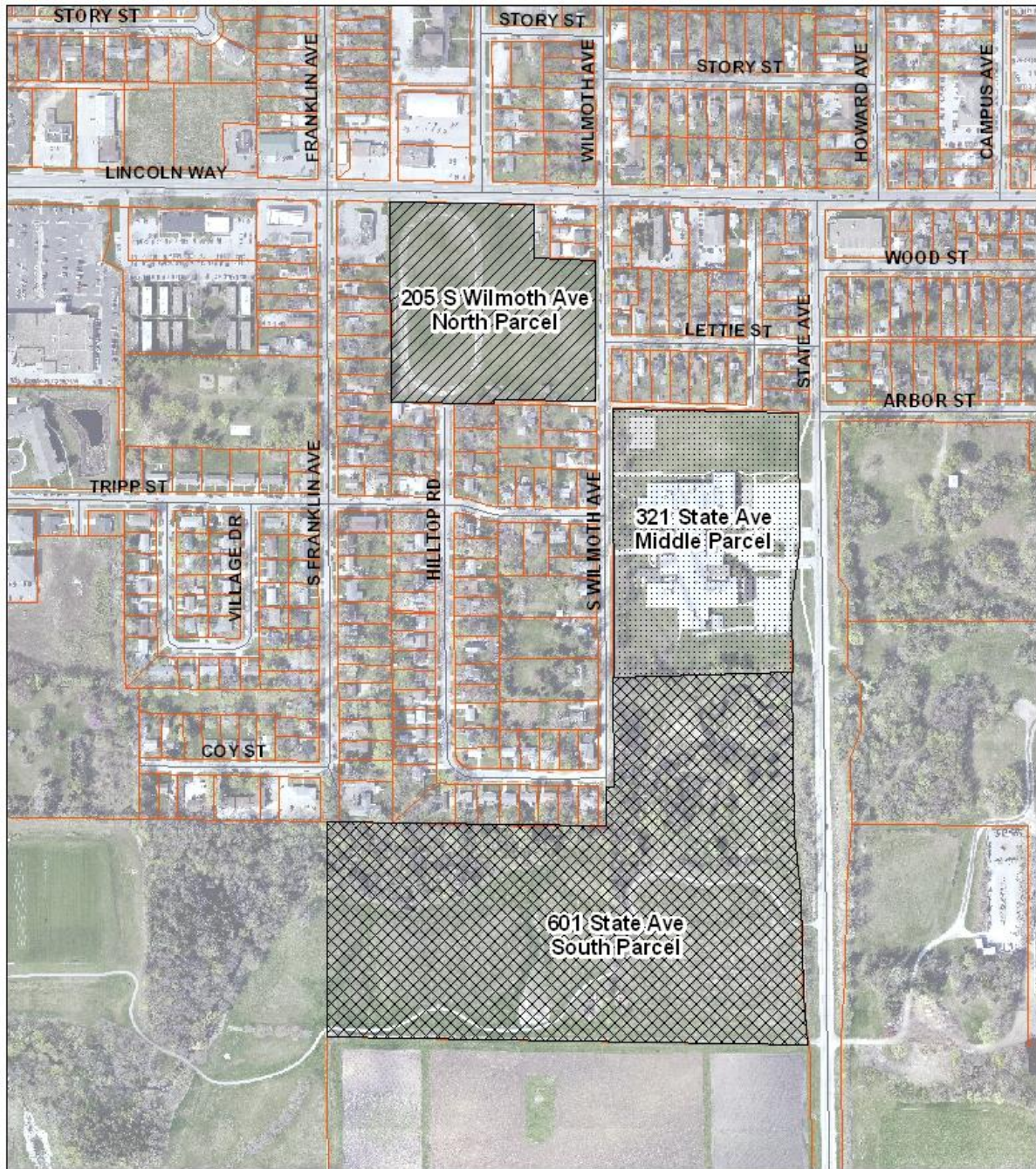
is allowed to impose any reasonable conditions provided they are satisfying “public needs which are directly caused by the requested change.” The owner will also need to agree to these conditions, which will be the basis for a development agreement between the City and the owner.

The City Council can ask for enough information about the proposed change and proposed project so as to better understand what the public needs are and what conditions may be necessary to ameliorate the negative impacts. The City Council is not obligated to approve a rezoning if the proposed project is not consistent with the intent and purpose of the zoning district.

These two properties are currently zoned S-GA. This is a designation that applies only to properties owned by governmental agencies. A private owner would not be allowed to use the property or build anything on it. Therefore, it would be inappropriate for these properties to remain as S-GA, especially since the LUPP identifies a future (non-governmental) land use for the property. Failure to ultimately change the zoning designation might be considered a “taking” by a jury.

The Council’s considerations of a rezoning request must be an examination of the potential impacts of the proposed request on the existing neighborhood and community as a whole. The Council is not obligated to rezone a property to maximize the profit of the owner, since the Council has no control over how much was paid for the property. The Council must not, however, eliminate all return from the property.

# Attachment 1: Location Map



## **Attachment 2: Conditions for a Master Plan**

### **Section 29.1507(3)**

- (b) The City Council may require a Master Plan to be submitted with a rezoning application if it determines that any one of the following conditions is met:
  - (i) The area to be rezoned will contain more than one type of residential dwelling unit and will be developed in multiple phases.
  - (ii) The area to be rezoned contains designated wetlands; flood plain and floodway boundaries; areas designated by the Ames Land Use Policy Plan as Greenways and Environmentally Sensitive Areas; conservation easements or other documented sensitive environmental conditions or valuable natural resources.
  - (iii) Development of the area with the most intensive uses permitted by the proposed zoning designation may require new, enlarged or upgraded off-site public improvements.
  - (iv) The City Council determines that due to specific conditions that exist on or around the area proposed to be rezoned, or due to situations that require more careful consideration of how the layout and design of a site affects general health, safety, and welfare, a Master Plan is necessary for consideration of the proposed zoning map amendment.
- (c) If the City Council determines that a Master Plan is required it shall be prepared in compliance with the requirements of Section 29.1507(4) and shall be reviewed concurrently with the application for a zoning text amendment.

### **Appendix 3: Applicable Law excerpts**

#### Code of Iowa excerpt

##### 414.5 Changes—protest.

The regulations, restrictions, and boundaries may, from time to time, be amended, supplemented, changed, modified, or repealed. Notwithstanding section 414.2, as a part of an ordinance changing land from one zoning district to another zoning district or an ordinance approving a site development plan, a council may impose conditions on a property owner which are in addition to existing regulations if the additional conditions have been agreed to in writing by the property owner before the public hearing required under this section or any adjournment of the hearing. The conditions must be reasonable and imposed to satisfy public needs which are directly caused by the requested change. In case, however, of a written protest against a change or repeal which is filed with the city clerk and signed by the owners of twenty percent or more of the area of the lots included in the proposed change or repeal, or by the owners of twenty percent or more of the property which is located within two hundred feet of the exterior boundaries of the property for which the change or repeal is proposed, the change or repeal shall not become effective except by the favorable vote of at least three-fourths of all the members of the council. The protest, if filed, must be filed before or at the public hearing. The provisions of section 414.4 relative to public hearings and official notice apply equally to all changes or amendments.

#### City of Ames Municipal Code excerpt

##### Section 29.1507—Zoning Text and Map Amendments.

(8) **Vote Required When Amendment Protested.** If a written protest against any proposed amendment, supplement or change has been filed with the City Clerk, signed by the owners of 20% or more of the area of the lots included in the proposed amendment, supplement or change or by the owners of 20% or more of the property that is located within 200 feet of the exterior boundaries of the property for which the amendment, supplement or change is proposed, such amendment, supplement or change shall not become effective except by favorable vote of at least  $\frac{3}{4}$  of all members of the City Council.