

COUNCIL ACTION FORM

SUBJECT: **AMENDMENT TO SOUTH BELL AGREEMENT WITH DAYTON PARK, LLC**

BACKGROUND:

The City of Ames and Dayton Park, LLC entered into a development agreement on February 4, 2009 in order to establish an urban renewal area and tax increment finance (TIF) district for the construction of the Ames Community Development Park 4th Addition. This development created 14 lots for industrial development and completed the connection of S. Bell Avenue between E. Lincoln Way and SE 16th Street.

The agreement, among other things, requires the developer to construct a series of speculative buildings. The first building was required within 18 months after the completion of the public improvements. The second speculative building was required to be constructed within twelve months of the occupancy of the first (or by July 23, 2013). This requirement was not met by the developer.

The agreement also required the developer to grant to the City a first lien mortgage in the amount of \$350,000 encumbering not less than 6.36 acres of the development. This mortgage was to ensure the completion of the required speculative buildings. This mortgage was never granted and the City is holding no financial security to ensure satisfactory performance by the developer.

At the December 17, 2013 meeting, the City Council directed staff to prepare amendments to the agreement to grant a one-time extension to require the second speculative building to be completed by June 1, 2014. The City Council also directed staff to obtain a letter of credit (rather than a mortgage) and to assess the developer \$12,000 as consideration for non-performance to meet the timeline for completion of the second speculative building and grant an extension.

At the January 28, 2014 City Council meeting, the Council reviewed a letter from Dayton Park, LLC offering amended terms to the development agreement (see attached). In response to this request, City Council directed staff to prepare an amendment to the agreement that required completion of the second building by July 1, 2014 and **to accelerate the construction of the third speculative building to be completed by December 31, 2014.**

On March 25, 2014, the City Council asked for a review of the building materials requirements and its relationship to the second speculative building that was under construction at 2812 Hyatt Circle. The second building has now received an occupancy permit from the City's Inspections Department as a shell building. On April 22, 2014,

Council directed staff to work with the representative of Dayton LLC on how future buildings would conform to the design requirements of the Development Agreement for the Ames Community Development Park 4th Addition.

The Developer Agreement includes certain design standards that are incorporated as covenants for new development. The covenants within the developer agreement specify a wide range of materials that are acceptable, but limit the front façade to no more than 60% corrugated metal. Discussion on April 22, 2014 revolved around the meaning of corrugated steel in terms of ridges and colored finish and how the 4th addition's design requirements differ from the prior 3rd addition's covenants.

The following is the current language from the 4th Addition's covenants that are binding upon development by Dayton LLC and to subsequent property owners within the 4th Addition.

4. Buildings constructed in the Subdivision shall have all exterior surfaces constructed with steel, brick, wood trim, split face block, stone, glass, exterior insulation and finish systems (EIFS), or precast wall panels. or combinations thereof. Any corrugated steel on the front facade shall comprise less than 60 percent of the area of the facade.

To resolve both the issue of timing of construction of the speculative buildings and the interpretation of design requirements, the following terms are offered by the applicant to execute as an amendment to the Development Agreement:

1. Provide a \$350,000 letter of Credit to secure construction of the next speculative building
2. Complete the third speculative building by December 31, 2014
3. The second speculative building at 2812 Hyatt will remain as is, with no changes required to the exterior finishes
4. The common understanding that references to "Corrugated Steel" for the front facade shall mean metal with raised ridges, curved or straight. Corrugated does not mean only unfinished or galvanized steel panels.
5. The third speculative building and all subsequent development in the 4th addition will be constructed consistent with the above understanding.
6. No changes to covenants of the subdivision, current language applies to all projects and Dayton LLC will be bound by the understanding of the design terms described in #4.

ALTERNATIVES:

1. The City Council can agree to enter into amended Development Agreement for the Ames Community Development Park 4th Addition that requires the Developer to complete the third speculative building by December 31, 2014, and to provide a letter of credit to the City in the amount of \$350,000, rather than a first lien mortgage at execution of the agreement.

To assure a common understanding of the exterior design standards, the City Council can further direct that a Memorandum of Understanding be executed to document the definition of corrugated steel as described above.

2. The City Council can deny the request to approve the amended the agreement and direct staff to pursue a different means of recourse for failure to perform consistent with the obligations of the agreement.
3. The City Council can refer this item to staff for further information.

MANAGER'S RECOMMENDED ACTION:

The development agreement approved in 2009 required certain timeframes for completion of speculative buildings in the South Bell business park. Unfortunately, the timeframe to complete the second speculative building was not met by the developer. The 2812 Hyatt building now has a building permit occupancy permit as a shell building, approximately one year later than required by the agreement.

The proposed modification to the existing agreement accelerates the construction of the third speculative building by the developer as consideration for the City Council extending the time for the construction of the second building.

This agreement also provides the City with a more liquid form of financial security. With a letter of credit, the City will be better able to draw upon any funds than with a mortgage, which would require foreclosure on the property.

Going forward, there is also clarity on the design intent of the Development Agreement for use of multiple materials on the front façade. While the language for the exterior design standards will not be changed with this recommended alternative, there will be an understanding between the City and developer as to the meaning of corrugated steel.

Therefore, it is the recommendation of the City Manager that the City Council accept Alternative #1 as described above, thereby approving an amended Development Agreement for the Ames Community Development Park 4th with a requirement that the third speculative building be completed by December 31, 2014, and for the developer to provide a letter of credit in the amount of \$350,000 rather than a first lien mortgage. To assure a common understanding of the exterior design standards, a Memorandum of Understanding will be executed to document the definition of corrugated steel.

Attachment A-Developer Letter

Date: January 24, 2014

To: Honorable Mayor and City Council

From: Chuck Winkleblack

RE: S. Bell development agreement

Mayor and Council,

In December council directed staff to meet with our organization and make some modifications to our existing agreement as well as impose a penalty for not completing the second spec building per the terms of the agreement.

I met with the planning director to discuss alternatives to the council action that was taken in December. Dayton Park would like to suggest an alternative proposal to the direction that the council gave staff. Rather than pay a penalty of \$12,000 to the city of Ames, I propose that in addition to completing the building under construction prior to July 1 of 2014, Dayton Park also agrees to start another building within the TIF district by July 1, 2014 and completing the building by December 31, 2014.

Dayton Park would also like to amend the agreement to allow for a letter of credit instead of a mortgage for security against future improvements.

Thanks in advance for your consideration.

Respectfully submitted,



Chuck Winkleblack
Hunziker & Associates, Realtors