

ITEM NO. 42

Staff Report

MASTER DEVELOPMENT AGREEMENT FOR BRECKENRIDGE PARCELS

August 12, 2014

GENERAL BACKGROUND

Breckenridge Group Ames Iowa, LLC, has purchased three parcels of land located at 205 S. Wilmoth Avenue, 321 State Avenue, and 601 State Avenue, respectively, with the intention of developing them for residential housing. They have been in the process of taking steps toward that end, initially by applying for rezoning of the parcels to a designation other than S-GA (Government lands). The middle parcel has been rezoned to RL (Low Density Residential) and the rezoning of the other two parcels is pending.

BACKGROUND OF NEGOTIATIONS ON DEVELOPMENT AGREEMENT

As this development was being planned, other major residential development was being initiated which proposed large numbers of residences on a single lot in a novel configuration. This led to a review by Council of several sections of the zoning ordinance which allowed these unique applications of the code. The Council discussion considered whether this was consistent with their intent. Their conclusion was that it was not as intended and they gave staff direction to revise the code. Ultimately, the City amended a provision of the zoning ordinance that had formerly allowed multiple single family structures on lots larger than one acre to prohibit that in the future. This enactment occurred prior to rezoning of any of the parcels Breckenridge owned. Breckenridge initiated litigation against the City for that enactment. In the course of the litigation, they proposed that a negotiated development plan for all three parcels be considered, one result of which would be resolution of the litigation by dismissal. To potentially resolve the litigation, negotiation of the conceptual parameters of the development proposal took place in a series of closed sessions. That proposal was presented for public input on July 8.

After receiving public input, the Council directed that the proposal move forward by formalization of a development agreement. This agreement is the result of that direction.

MASTER DEVELOPMENT AGREEMENT FRAMEWORK

This agreement is designed to set out the framework for the further steps that would follow on the three parcels Breckenridge owns. This situation is unique in that, while ownership is in one entity, each of these parcels is quite distinct from the others and functions more akin to being three discrete developments. The proposed development

agreement takes into account that a single type of development across all three parcels would likely not be the ideal fit for any of them. Under this agreement, there is explicit acknowledgement that each parcel going to develop in a manner that is different from the other two. All of the features set out in the proposal concept identified on July 8 have been incorporated into this Master agreement.

PROCEDURAL ALTERNATIVES

There are multiple routes that can be taken to achieve the result of development on all three parcels that is in accordance with this agreement. This sequential process will depend on which stage any of the interim steps is at. If Council wishes to move ahead with this development agreement, it needs to be understood that this action alone does not rezone the north or south parcels, and there very likely will need to be five concurring votes to accomplish any necessary rezoning which this agreement contemplates.

While it is very difficult to outline every possible route to get there, the most critical initial determination is whether Council wishes to pursue this option at all. At this stage, it is possible for Council to rezone these parcels from their present S-GA designation to the RL and FS-RL designations which the applicant has requested. Then, to accomplish the zoning necessary for this agreement, additional steps would be need to be taken to change the RL and FS-RL designations to another designation.

Since the pending rezonings can take place and still allow the Council to move this agreement forward, all three of these agenda items need to be acted upon to give direction on what steps to take next.

DO NOT WRITE IN THE SPACE ABOVE THIS LINE; RESERVED FOR RECORDER

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**MASTER AGREEMENT PERTAINING TO THE
DEVELOPMENT OF LAND IN THE CITY OF AMES
OWNED BY BRECKENRIDGE GROUP AMES IOWA, L.L.C.,
LOCATED AT 205 SOUTH WILMOTH AVENUE,
321 STATE AVENUE AND 601 STATE AVENUE**

THIS AGREEMENT, made and entered into this _____ day of _____, 2014, by and between the CITY OF AMES, IOWA (hereinafter called "City") and Breckenridge Group Ames Iowa, LLC (hereinafter called "Developer"), their successors and assigns,

WITNESSETH THAT:

WHEREAS, the Developer owns three separate tracts of land located at 205 South Wilmoth Avenue, 321 State Avenue and 601 State Avenue pursuant to a purchase of this land from the Ames Community School District; and

WHEREAS, the tracts, while under ownership of the School District, were zoned consistent with that ownership, but having been sold, now must be rezoned consistent with their private ownership, which Developer has made application for; and

WHEREAS, it has been the intention and representation of the Developer to undertake a project of construction of residential housing upon those tracts; and

WHEREAS, the Developer's tracts are located in an area of the community which is characterized by a multiplicity of uses, including but not limited to single family owner-occupied housing, residential rental housing, commercial retail development, university owned agricultural lands, community school district facilities and natural greenway; and

WHEREAS, the Parties hereto desire to allow development of these tracts structured in a way that will protect, preserve and respect the existing community, the vicinity's natural features and institutional interests, which they believe can best be accomplished in a defined process through a Master Development Agreement, followed by conventional zoning approvals

combined with tract-specific zoning contracts, site plan review processes and subdivision code application and review, to accomplish the rezoning and development of these parcels.

NOW, THEREFORE, the Parties hereto have agreed and do agree as follows:

**I.
PURPOSES**

The purposes of this agreement are to:

- A. Define the types of uses that are permitted on each of the three tracts;
- B. Describe the types and levels of development for those uses on the three tracts;
- C. Delineate the areas of the tracts which will be preserved as natural areas through conservation easements;
- D. Identify any ancillary requirements or obligations of the parties to carry out the agreement; and
- E. Identify the procedures pursuant to which these various purposes will be accomplished, with dates of completion, where dates have been agreed upon.

**II.
OVERALL PROJECT DESCRIPTION**

A. Identity of Tracts.

The land at 205 South Wilmoth Avenue is hereinafter described at the “North Parcel.”

The land at 601 State Avenue is hereinafter described as the “South Parcel.”

The land at 321 State Avenue is hereinafter described as the “Middle Parcel.” The Middle Parcel also includes the portion of the South Parcel which lies north of College Creek and outside of the 100 foot conservation easement area north of the creek.

The legal descriptions of the parcels are set out in Exhibit A.

B. General Description of Project. This agreement is intended to authorize the Developer to construct high density residential housing on the North Parcel and low density housing on the South Parcel. It is further intended that the Middle Parcel shall be sold by Developer to a third party for development with low density detached owner-occupied housing, or if not sold, that it shall be given to the City. Developer will set aside conservation areas, which will remain undeveloped.

C. Development Specifications by Parcel.

1. General Specifications.

- (a) The Developer agrees to develop the three tracts in accordance with the specifications herein, subject to council approval of specific development plans.
- (b) “Beds” in this agreement is understood and agreed to be synonymous throughout this agreement with “units,” both of which shall be limited to one occupant.
- (c) Subdivision is not required with development of the north or south parcels; however, site development will be reviewed for equivalency of meeting on- and off-site infrastructure standards for a residential development.

2. North Parcel.

- (a) Permitted Use and Level of Development. Upon rezoning and obtaining all necessary approvals, the Developer will be permitted to develop a residential housing development with no more than 535 beds.

A clubhouse may be developed on this parcel.

- (b) Review. The improvements on site will be required to undergo major site plan review or equivalent, to include council review and approval of site layout and site design features, and architectural plans.
- (c) Site Design Features. In addition to compliance with all other regulatory site approvals, the site plan shall include building placement and orientation to Lincoln Way, enhanced architectural design and expanded buffering and screening to the south and west.

3. Middle Parcel.

- (a) Ownership. The Developer agrees to permanently and completely divest itself of ownership of this tract, either by sale to a third party or by donation to the City. If sold, the new owner shall not in any way be affiliated, associated, a subsidiary of or otherwise connected with Developer.

- (b) Timing of Sale of Ownership. The Developer will be given until October 1, 2016, to complete the sale of this property.
- (c) Sale of Whole Parcel. The Middle Parcel shall be sold in its entirety, and not in smaller parcels. The Developer agrees to include in this sale or transfer that portion of the South Parcel which is located north of College Creek.
- (d) Conditions Attached to Sale. The Developer shall condition the sale with the requirement that this parcel shall be developed and used exclusively for a low density residential housing development. This housing shall be single family detached homes on individual lots in a subdivision having a blend of lot sizes consistent in layout and density so as to be compatible with the surrounding neighborhood. The Developer shall further condition the sale of this tract with the requirement that the new buyer shall establish a homeowner's association for the subdivision and as part of that homeowners' association, establish covenants that restrict those homes to owner occupied residential use for at least 21 years. The provisions which establish the homeowners' association shall specifically provide that the City of Ames may seek enforcement of the covenants.
- (e) Transfer to City. If this sale is not accomplished by October 1, 2016 years, the Developer agrees that it will give the entire parcel to the City of Ames with no restrictions on its use by the City, without cost or other compensation required from the City.
- (f) The provisions related to the Middle Parcel will also apply to the portion of the South Parcel which lies north of College Creek and outside of the 100 foot conservation easement area north of the creek.

4. South Parcel.

- (a) Permitted Use and Development. Upon rezoning, the Developer will be permitted to develop the area of this tract shown on Exhibit B as "buildable area" with detached residential housing that has occupancies of two to five beds per structure, provided that the total bed count on the south parcel shall not exceed 305. Basements shall be included in at least 12 of these structures.

This parcel may have a clubhouse which, if included in the site design, shall be located in the buildable area.

- (b) Review. The improvements on this site will be required to undergo major site plan review, to include council review and approval of site layout and site design features.
- (c) Conservation Easement. The Developer shall grant a conservation easement to the City of Ames over the approximate western one-third of the parcel, and along each side of College Creek for a width of not less than 100 feet, as depicted in Exhibit B, as “Conservation Area.”
- (d) Bike Path. The Parties agree that the bike path through this parcel may be relocated to a mutually agreed upon location, to accommodate site design.

D. Additional Developer Responsibilities.

- (a) Off-site Improvements. With regard to off-site improvements, the Developer agrees that it shall pay its proportionate costs for improvements to streets, intersections and other infrastructure as needed to safely absorb the additional pedestrian and vehicular traffic generated by the development contemplated by this agreement.
- (b) Litigation Resolution. This shall include dismissal with prejudice of all pending civil and administrative litigation and administrative appeals, and forbearance in the initiation of additional litigation or other causes of action here upon execution of this agreement.

E. Processing and Procedural Requirements. Developer agrees to make timely application(s) for Land Use Policy Plan amendments and/or base zoning designations as are needed to attain the zoning designation(s) for the permitted levels of development. Developer acknowledges that this may require withdrawal of pending zoning applications, and/or it may require filing of further applications to changed the Land Use Policy Plan or the zoning ordinance to a different designation than is already established. To incorporate parcel specific zoning requirements, the Parties agree that they will execute additional contracts at time of the rezoning, as authorized under Iowa Code section 414.5

F. General Applicability of Other Laws and Ordinances. The Developer understands and agrees that all work done by or on behalf of the Developer with respect to streets, sidewalks, shared use paths, building design and construction, and utilities (both on-site and off-site) shall be made in compliance with the Iowa Code, the Ames Municipal Code, Iowa Statewide Urban Design and Specifications and all other federal, state and local laws of general application, whether or not such requirements are specifically stated in this agreement. All ordinances, regulations and policies of the City now existing, or as may hereafter be enacted, shall apply to activity or uses on the site.

G. Amendments. The provisions of this agreement may be amended only upon the mutual agreement of the Parties in writing.

H. Incorporation of Recitals, and Exhibits. The recitals, together with any and all exhibits attached hereto, are confirmed by the Parties as true and incorporated herein by reference as if fully set forth verbatim. The recitals and exhibits are a substantive contractual part of this agreement.

I. Covenant Running With the Land. This agreement shall run with the land and shall be binding upon Developer, and on successors, assigns, heirs and any and all future titleholders of record of the land or portions thereof.

J. Cause of Action. This agreement does not create or vest in any person or organization, other than the City, any rights or cause of action with respect to any performance, obligation, plan, schedule or undertaking stated in this agreement, with respect to the Developer.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed effective as of the date first above written.

<p>CITY OF AMES, IOWA</p> <p>By _____ Ann H. Campbell, Mayor</p> <p>Attest by _____ Diane R. Voss, City Clerk</p> <p>STATE OF IOWA, COUNTY OF STORY, ss:</p> <p>On this ____ day of _____, 2014, before me, a Notary Public in and for the State of Iowa, personally appeared Ann H. Campbell and Diane R. Voss, to me personally known and who, by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Ames, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in Resolution No. _____ adopted by the City Council on the ____ day of _____, 2014, and that Ann H. Campbell and Diane R. Voss acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.</p> <p>_____ Notary Public in and for the State of Iowa</p>	<p>BRECKENRIDGE GROUP AMES IOWA, LLC</p> <p>By _____</p> <p>By _____</p> <p>STATE OF IOWA, COUNTY OF STORY, ss:</p> <p>This instrument was acknowledged before me on _____, 2014, by _____ and _____ as _____ and _____, respectively, of Breckenridge Group Ames Iowa, LLC.</p> <p>_____ Notary Public in and for the State of Iowa</p>
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South Parcel Proposed Easement Area



EXHIBIT
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