

## Staff Report

**SETTLEMENT PROPOSAL BETWEEN THE CITY OF AMES &  
BRECKENRIDGE GROUP CONCERNING LAND LOCATED AT 321 AND 601 SOUTH  
STATE AVENUE AND 205 SOUTH WILMOTH**

July 23, 2015

**BACKGROUND:**

These three parcels are owned by Breckenridge Group LLC of Austin, Texas, which purchased the land from the Ames Community School District in 2012. Breckenridge purchased the three parcels with the intention of developing them with rental housing marketed toward students. The balance of this report outlines the relevant history of events occurring to give context to the proposal before Council to settle pending litigation.

**Land Description and current zoning designation**

The three parcels of land affected are located at 205 South Wilmoth Avenue (North Parcel), 321 State Avenue (Middle Parcel), and 601 State Avenue (South Parcel).

**South Parcel** – The South Parcel is an L-shaped site that has 28.9 acres. There are approximately 1.6 acres north of College Creek and 27.4 acres south of the creek. This parcel is presently zoned RL (low density residential).

**Middle Parcel** – The Middle Parcel is a rectangular shaped lot comprised of 10.8 acres. It had been developed and used as the Ames Middle School until it was vacated when the new Middle School was built at 3915 Mortensen Road and occupied in 2005. The vacant school building was demolished and removed from the site in February of 2014. The site currently stands as vacant. This parcel is presently zoned RL (low density residential).

**North Parcel** – The north site is made up of multiple parcels which are generally rectangular in shape. The former Middle School track and athletic field is 8.3 acres and the three parcels at the corner of Wilmoth and Lincoln Way total approximately 0.5 acres. There is one property fronting along Lincoln Way and surrounded by Breckenridge property that is not part of the north site. The 8.3 acre parcel is presently zoned RL (low density residential). The three parcels have occupied rental structures on them, and Breckenridge has options to purchase these.

**Ownership History**

The three parcels are owned by Breckenridge Group LLC of 1301 S. Capital, Texas Highway Suite B301, Austin, Texas. Until March 11, 2013, this land had been owned by the Ames Community School District (ACSD). Of these three sites, the South Parcel came into ownership of ACSD after it was sold to ACSD by Iowa State University as land for a new middle school.

The sale of this land by auction took place on December 7, 2012. The sale was conditioned on the requirement that the buyer remove the deteriorated middle school building within one year of its purchase. No other use restrictions were placed on the buyer by ACSD as part of the sale.

### **Other Significant Events**

#### **Litigation and Administrative Appeals.**

On November 6, 2013, Breckenridge filed its first petition in Story County District Court against the City of Ames alleging that the City had exceeded its authority in enactment of a zoning ordinance text amendment that prohibited multiple single family detached homes on any size of individual lots. Breckenridge's petition was answered by city legal staff, which subsequently referred the lawsuit to the Iowa Communities Assurance Pool (ICAP), which provides liability insurance to the City. ICAP then selected outside counsel to represent the City in that litigation and that representation has been ongoing since then. Subsequently, a second petition was filed by Breckenridge to add additional counts related to actions taken by the City in rezoning the three parcels from Government-owned land to its current zoning. This litigation has been proceeding toward trial, which is now scheduled for March 1, 2016.

The parcels were also assessed for taxation, since as privately-owned property they are no longer tax exempt. The tax assessments for all three had also been appealed, and those appeals have subsequently been handled by in-house legal counsel and have been resolved.

#### **Purchase Negotiations with ISU**

In the Spring of 2015, Breckenridge and Iowa State University entered into discussions concerning ISU's interest in purchasing the South Parcel. Those discussions resulted in the Board of Regents approving the purchase of the South Parcel from Breckenridge at their June 2015 meeting .

#### **Request for Settlement Negotiations.**

In April 2014, when Breckenridge's application for rezoning the South Parcel to FS-RL and the North Parcel to RL were scheduled for hearing, Breckenridge broached the subject of negotiating a settlement of the litigation with counsel representing the City. However, at this point, only the Middle Parcel had gone through the rezoning process. A settlement proposal went before the City Council in July of 2014 but was rejected by Council at their July 7, 2014 meeting.

In early May of 2015, at approximately the same time as Breckenridge was in discussions with ISU about the South Parcel, it also communicated to the City a request to once again enter into settlement discussions. Discussions have been ongoing since then, resulting in the negotiated agreement that is now before the City Council for consideration.

#### **Public Input.**

Approval of this settlement will still require other future public actions by the City Council. This includes following all statutory steps for rezoning and other related approvals. This will allow additional opportunities for public input at both preliminary stages as recommendations are made by the Planning and Zoning Commission, as well as at other City Council meetings. rather than waiting only until the next statutory public input opportunity.

## **Proposal Key Elements**

Even though all parcels have been rezoned and Breckenridge, as owner, would by right be able to proceed with RL development on all three, the settlement proposal contemplates different ownership and uses for each of the three parcels. An agreement with these elements is attached. The significant components of it are as follows:

### **Middle Parcel**

Breckenridge will be required to sell this parcel to the City of Ames for \$550,000 by January 15, 2016, subject to the site passing an environmental review.

### **South Parcel**

Breckenridge will be required to sell this parcel to ISU by August 31, 2015.

### **North Parcel**

Breckenridge and the City will:

- Take steps with the purpose of creating a mixed use residential and commercial development
- Breckenridge will be allowed, at its option, to consolidate with the North Parcel three additional lots on which it has purchase options.
- Breckenridge will be allowed to develop no more than 422 beds of housing if the optioned lots are combined to the North Parcel, or no more than 350 beds if the optioned lots are excluded.
- Breckenridge will develop a minimum of 15,000 square feet up to a maximum of 40,000 square feet of commercial space on the first floor of buildings along Lincoln Way
- Breckenridge will limit building height to 3 stories or less.
- Breckenridge will be eligible for partial urban revitalization tax exemption for 10 years for the North Parcel and the optioned lots.
- The City will take steps to amend the Land Use Policy Plan, rezone, enact the tax abatement, and approve a Plat of Survey.

These City's actions need to be completed by January 15, 2016.

It is also a condition that all litigation and administrative appeals related to the properties will be dismissed.



**Breckenridge Development Parcels**

**AGREEMENT BETWEEN BRECKENRIDGE AND CITY OF AMES**

WHEREAS Breckenridge Group Ames Iowa L.L.C., and its successors and assigns (hereinafter "Breckenridge") has filed two separate but consolidated Petitions which have made claims against the City of Ames (hereinafter "the City") both of which were filed in the Iowa District Court for Story County and identified as CVCV048455 and CVCV048881 ("Petitions") (Breckenridge and the City will be referred to herein as the "Parties");

WHEREAS Breckenridge is the owner of certain land formerly owned by the Ames Community School District containing the Ames Middle School ("the Property") that has been designated in the Petitions and will be referred to herein as the North Parcel (locally known as 205 S. Wilmoth Avenue), Middle Parcel (locally known as 321 State Avenue) and South Parcel (locally known as 601 State Avenue); and

WHEREAS Breckenridge and the City are desirous of resolving all of their disputes pursuant to this Agreement ("Agreement"):

It is hereby agreed as follows:

1. This Agreement shall be subject to the following condition precedent: Breckenridge agrees to sell or convey to Iowa State University the South Parcel for an agreed upon price negotiated between Breckenridge and Iowa State University; closing of the sale will occur at a reasonable time but no later than August 31, 2015.

Thus, if Breckenridge does not sell the South Parcel to Iowa State University and close on such sale by August 31, 2015, then the Agreement shall be null and void.

2. Breckenridge agrees to sell and the City agrees to buy the Middle Parcel for \$550,000.00, with the closing of such sale occurring within a reasonable time after the satisfaction/completion of the condition precedent set forth in paragraph 1 and in no event later than January 15, 2016. The Parties will cooperate and execute all reasonable and necessary

documents to accomplish this sale and purchase by the aforementioned date. The City will conduct an environmental due diligence and the Middle Parcel must be free of environmental hazards, which shall mean asbestos, petroleum, radioactive materials, and any other materials defined as "hazardous substances" or "hazardous materials" under federal, state, or local law. In the event the Middle Parcel is found not to be free of environmental hazards, Breckenridge will promptly engage in all reasonable steps to remediate and remove such hazardous substances before the sale and purchase closes.

3. Regarding the North Parcel, Breckenridge and the City agree as follows to create a mixed-use residential – commercial use development:
  - A. Breckenridge may in its sole discretion consolidate three lots (“Option Parcels”), which border on South Wilmoth Avenue upon which it currently holds options to purchase, with the North Parcel (the “Enlarged North Lot”).
  - B. Provided that Breckenridge meets the required eligibility prerequisites for the urban revitalization plan, the City shall provide partial urban revitalization tax exemption for ten (10) years to Breckenridge with respect to any and all completed improvements on the Enlarged North Lot in accordance with and pursuant to Iowa Code §404.3 and the City’s Urban Revitalization Program (Tax Exemption Schedule) in existence as of the Effective Date, as attached as Ex. A. Any relocation costs or assistance for any tenant displaced by the urban revitalization shall not be borne by the City.
  - C. Breckenridge may develop no more than 422 beds of housing for no more than 422 residents spread across the Enlarged North Lot. The City will issue certificates of occupancy for the bedrooms constructed by Breckenridge up to and for no more than 422 residents.
  - D. If Breckenridge develops the Enlarged North Lot as referenced in 3(C), then Breckenridge will also develop a minimum of 15,000 square feet of commercial space up to a maximum of 40,000 square feet on the first floor of those buildings that may have frontage on Lincoln Way on the Enlarged North Lot.
  - E. None of the buildings on the Enlarged North Lot may exceed three stories in height.

F. The City will promptly rezone the Enlarged North Lot to accomplish the purposes and terms of this Agreement, appropriately amend the City's Land Use Policy Plan, approve a Plat of Survey to combine the original North Parcel and any Option Parcels, enact the tax abatement in paragraph 3(B) and engage in any other administratively necessary action to accomplish the rezoning, tax exemption, and other terms set forth in this Agreement, with all such actions occurring no later than January 15, 2016. Breckenridge will cooperate with the City to accomplish such acts and will comply with the City's ordinances and both Parties will act reasonably and in good faith G. If Breckenridge does not consolidate the Option Parcels with the North Parcel, then subparagraphs B, C, D, E, and F of Paragraph 3 apply only to the original North Parcel. In such event, only a maximum of 350 beds of housing for a maximum of 350 residents may be built on the original North Parcel.

4. In consideration of the terms set forth in this Agreement, together with other good and valuable consideration, the Parties hereby agree and do release, acquit, and forever discharge each other, including each Parties' respective employees, officers, elected officials, directors or agents, insurers and like entities (including the Iowa Communities Assurance Pool (ICAP), American Risk Pooling Consultants, Inc., and Public Entity Risk Services of Iowa, Inc. (PERSI)), subsidiaries, parent companies, affiliate companies (collectively the "Released Parties"), from any and all liability whatsoever for all claims, demands, damages, expenses, causes of action of every nature including all statutory, constitutional, and common law claims, and claims for attorney fees and costs relating to the Petitions and/or Property that are known or could have been known as of the Effective Date of the Agreement that any of the Parties may have or ever claim to have against each other affecting them as more fully set forth in the Petitions and arising from Breckenridge's development of the Property. The Parties acknowledge and agree the release set forth herein does not release claims for breach of this Agreement. Finally, the Parties acknowledge and agree that Breckenridge is providing the aforementioned release and will be engaging in the required actions under this Agreement, including selling the South Parcel and Middle Parcel, in reliance upon the City's promise under

this Agreement to complete the required actions under this Agreement, including those actions set forth in Paragraphs 2 and 3.

5. Breckenridge agrees that not later than five days following the later of either:

- a). the receipt of the City's payment for the Middle Parcel or
- b). the re-zoning of the Enlarged North Lot and completion of the other actions under paragraph 3(F).

that it will file a Dismissal With Prejudice of both of its Petitions. Both Breckenridge and the City are responsible for the payment of their own attorneys' fees and costs.

6. The effective date ("Effective Date") of this Agreement is the date the last of the Parties hereto executes this Agreement. 7. The consideration referenced in this Agreement is all that either Party will ever receive for its claims released in this Agreement including unasserted claims whether presently known or not, and no promise for any other or further consideration has been made by any person or anyone acting on either Party's behalf including its employees, officers, directors, agents and attorneys.

8. This Agreement is executed as a compromise settlement of a disputed claim. The City expressly denies it has done anything improper in regards to the matters set forth in the Petitions. This Agreement does not constitute an admission of liability on the part of the City, Breckenridge, or any other person, or entity.

9. The Parties are voluntarily executing this Agreement solely upon their knowledge, belief, and judgment and not on any representation made by the other Party or any of its employees, officers, directors or agents or anyone acting on its behalf. The Parties have been advised of their right to seek legal counsel prior to executing this Agreement and the Parties acknowledge they have consulted attorneys of their choice.



10. This Agreement and its enforceability shall be governed by and construed in accordance with the substantive law of the State of Iowa.

11. This is the entire agreement between Breckenridge and City, and supersedes and prevails over all other prior and/or contemporaneous agreements, understandings or representations by or between the Parties, whether oral or written. The Agreement may not be modified or amended, and there shall be no waiver of its provisions, except by a written instrument executed by Breckenridge and the City. The Parties have made no promises to Breckenridge other than those in the Agreement.

12. Breckenridge acknowledges that it is the sole owner of the claims set forth in the Petitions against the City and has not assigned nor alienated such claim. Further, each of the Parties warrants and represents that it has good right and authority to enter into and execute this Agreement.

13. The Parties acknowledge that all Parties, through their counsel, played a substantive role in drafting and/or had an equal opportunity to review and/or modify this Agreement. Thus in the event of any misunderstanding, ambiguity, or dispute concerning this Agreement's provisions, or interpretation, the Parties agree that no rule of construction shall be applied that would result in having this Agreement interpreted against any Party. Should any provision of this Agreement be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable, excluding the general release language, such provision shall immediately become null and void, leaving the remainder of the agreement in full force and effect. This Agreement and its enforceability shall be governed by and construed in accordance with the substantive law of the State of Iowa.

14. This Agreement is binding upon, and shall inure to the benefit of, the Parties hereto and their respective successors, successor companies, assigns, heirs and representatives. The Parties understand, acknowledge, and agree that this Agreement and the obligations hereunder is and are freely assignable by Breckenridge without the requirement of any prior consent by the City.

15. This Agreement may be executed in counterparts, each of which is deemed to be an original. This Agreement may be executed by facsimile or by email/pdf transmission and such signatures shall be binding and deemed original. A copy of the Agreement shall have the same legal effects as the original.

16. The Parties agree to cooperate and to execute such documents and to take such other action as may be reasonably necessary to further the purposes of this Agreement. In particular, the Parties will file a motion to stay or other document with the Court, promptly after the Effective Date of this Agreement, to further the purposes of this Agreement. The Parties agree that, by execution hereof, they acknowledge receipt of a copy of this Agreement.

**CAUTION: THIS IS A RELEASE. READ BEFORE SIGNING.**

Dated in \_\_\_\_\_ this \_\_\_ day of \_\_\_\_\_, 2015

**Breckenridge Group Ames Iowa, LLC:**

Sign: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_

Date: \_\_\_\_\_

**City of Ames:**

Sign: \_\_\_\_\_

Print Name and Title: Ann Campbell, Mayor

Date: \_\_\_\_\_

# Urban Revitalization Program

## *Tax Exemption Schedule*

All qualified real estate located in the designated Urban Revitalization Area is eligible to receive a partial exemption from taxation on the Actual Value added by the improvements as specified by the schedules below. Any qualified real estate may elect one of the three schedules.

**The exemption period for ten (10) years.** The amount of the partial exemption is equal to a percent of the Actual Value added by the improvements, determined as follows:

For the first year	80%
second	70%
third	60%
fourth	50%
fifth	40%
sixth	40%
seventh	30%
eighth	30%
ninth	20%
tenth	20%

**The exemption period for five (5) years.**

For the first year	100%
second	80%
third	60%
fourth	40%
fifth	20%

**The exemption period for three (3) years.** All qualified real estate is eligible to receive a 100% exemption on the Actual Value added by the improvements for each of the three years.

