

COUNCIL ACTION FORM

SUBJECT: **REQUEST BY BRECKENRIDGE FOR DESIGNATION OF URBAN REVITALIZATION AREA AT 101, 105, 107, AND 205 S WILMOTH AVENUE**

BACKGROUND:

Breckenridge Group Ames, LLC (commonly referred to as Breckenridge) is requesting the designation of 101, 105, 107, and 205 S. Wilmoth Avenue as an Urban Revitalization Area. The proposed Urban Revitalization Area comprises the former north middle school parcel (205 S Wilmoth Avenue) as well as three additional parcels (101, 105, and 107 S Wilmoth Avenue) acquired by Breckenridge. 205 S Wilmoth is a vacant piece of land while the three other parcels have vacant residential structures on them. A location map is found in Attachment 1.

The settlement agreement with Breckenridge Group, approved on July 28, 2015, allows Breckenridge to construct an apartment complex of up to 422 beds. The project may also have between 15,000 and 40,000 square feet of commercial space along the Lincoln Way frontage.

The City Council approved an amendment to the Land Use Policy Plan future land use map on September 22. The Lincoln Way frontage was designated Highway-Oriented Commercial while the remainder of the project site was designated as High-Density Residential.

Another step, the rezoning, will soon be initiated. Breckenridge is seeking rezoning to HOC (with the Lincoln Way Mixed Use Overlay) along the north portion of the site and RH (High Density Residential) over the remaining portion. In addition, Breckenridge is seeking to remove the O-UIW (West University Impacted Overlay) from the three small parcels on the northeast corner of the site. The approval of any rezoning would require a development agreement between the City and Breckenridge.

URBAN REVITALIZATION PLAN:

The draft South Wilmoth Avenue Urban Revitalization Plan, which is attached to the Council Action Form, meets the state requirements and also includes qualifying criteria selected by the City Council at their August 11 meeting. These criteria are found in Attachment 3 of the Urban Revitalization Plan and are highlighted below.

1. All buildings shall use clay brick as the principal building material for 80% of the front facades, excluding openings. The remaining facades shall incorporate clay brick or cut stone into 50% of the façade materials.
2. Buildings used solely for residential and accessory uses shall utilize hipped or

gabled roofs. Mixed-use buildings are exempt from this standard.

3. The project shall provide additional commercial parking in excess of the retail/office parking rate of 3.3 spaces per 1,000 square feet of gross commercial floor area. A minimum of 20% of the commercial floor area shall provide parking at a rate of 9 spaces per 1,000 square feet of gross commercial floor area for the first 30,000 square feet of gross floor area.
4. A clubhouse, as defined in the Zoning Ordinance, shall not be permitted on the ground floor of a commercial mixed use building.
5. Ground floor commercial uses of mixed use buildings must be a permitted use of the HOC base zone for Office Uses; Retail Sales and Services Uses; Entertainment, Restaurant, and Recreation; and miscellaneous use of childcare.
6. Typical commercial tenant footprint shall have a minimum depth of 40 feet.
7. Commercial areas shall have a floor to ceiling height of a minimum of 12 feet.
8. Primary entrances to residential buildings shall include covered entries with architectural enhancements.
9. The residential project shall receive and maintain certification for the Iowa Crime Free Multi-Housing Program administered by the Ames Police Department.
10. The project shall utilize a Sign Program for commercial tenants that provide a cohesive design and lighting style to the site. Sign Program will allow for wall signage per the Sign Code. If a commercial ground sign is constructed, it is restricted to a single monument sign along Lincoln Way and shall include a decorative base compatible with the commercial buildings finishes and have an opaque sign face background. The Sign Program must be approved by the Planning Director.
11. The project shall provide landscape buffering with the L3 and F2 standards in a minimum of a 10-foot-wide planter along the perimeter property lines of the site.
12. The project shall provide street trees, per City specifications, along Wilmoth Avenue.
13. The project shall demonstrate that 30 percent of the commercial space is occupied or leased for occupancy prior to final approval for tax abatement.

The City Council also included a motion directing staff to come back with a recommendation on how to accomplish getting an easement or a bike path. In reviewing other tax abatement programs, the South Lincoln URA does include an optional criteria of providing public space as an “Activity Node” as indicated on the adopted South Lincoln Sub-Area Plan. It was the only example we have of a public improvement requirement for tax abatement eligibility. Other means of acquiring an easement or providing for the path could be part of a contract rezoning process,

subdivision approval, or potentially with major site plan approval.

Breckenridge has reviewed the criteria and feels that they go beyond the expectations of the settlement agreement. They have provided a written response after reviewing the minutes of the August 11 meeting. This is included in Attachment 2.

The College Creek/Old Ames Middle School neighborhood has provided additional proposed criteria that they would like to see included. They provided the Council and staff with a letter which is included in Attachment 3.

At the November 24 meeting, the City Council will conduct a public hearing, act on a resolution to approve the Urban Revitalization Plan, and act on the first reading of an ordinance exempting the improvements from property taxes within the Urban Revitalization Area for projects that meet the qualifying criteria.

ALTERNATIVES:

1. If the City Council accepts the draft South Wilmoth Avenue Urban Revitalization Plan, it can set November 24 as the date of the public hearing for the adoption of the Plan and the approval of the Urban Revitalization Area.
2. The City Council may amend the draft South Wilmoth Avenue Urban Revitalization Plan, by amending the qualifying criteria. The City Council can then set November 24 as the date of the public hearing for the adoption of the Plan and the approval of the Urban Revitalization Area.

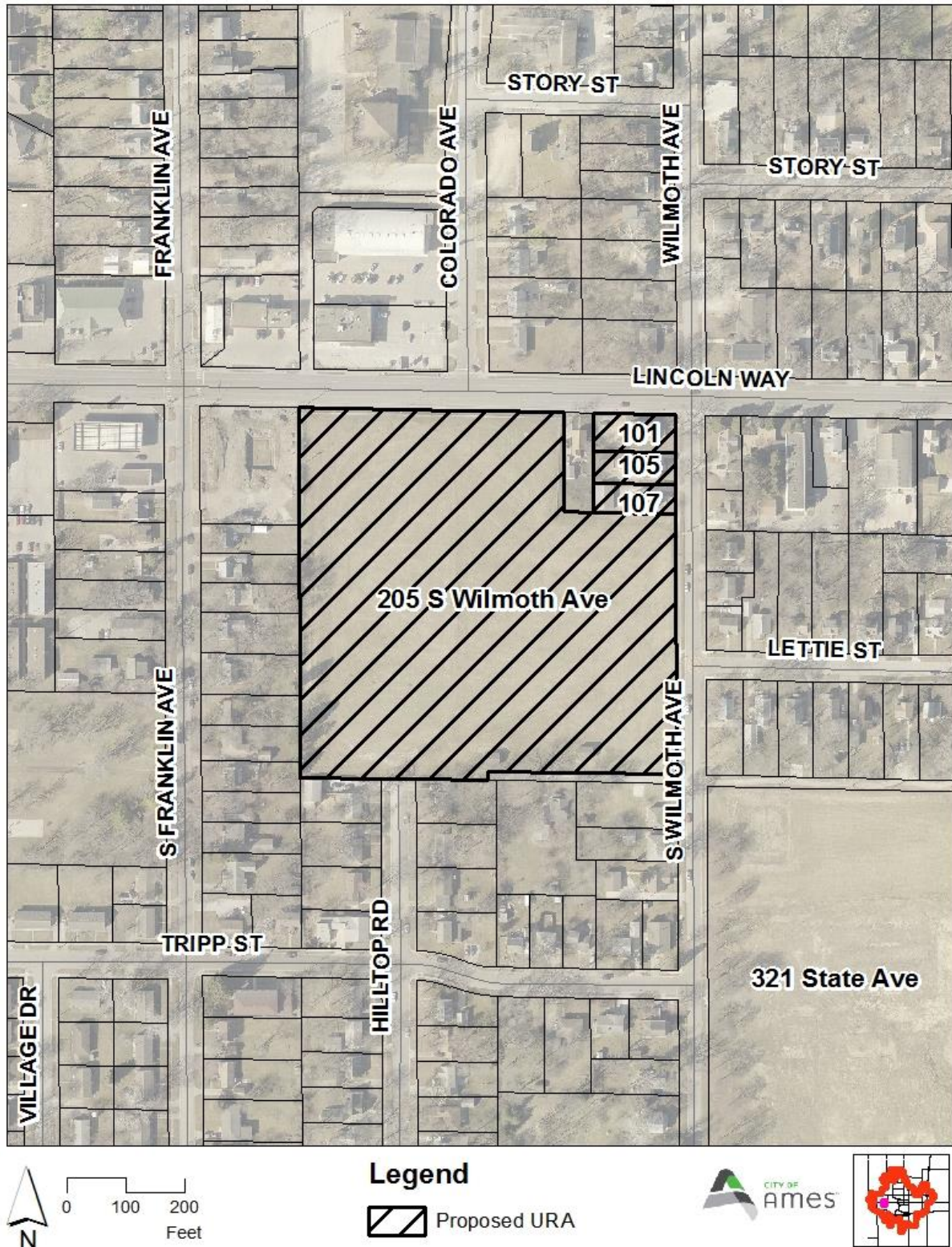
MANAGER'S RECOMMENDED ACTION:

The settlement agreement identified a number of steps necessary for Breckenridge and the City to undertake. In summary, Breckenridge has transferred the south parcel (601 State Avenue) to Iowa State University, the City is conducting due diligence on the middle parcel (321 State Avenue), and the City has amended the Land Use Policy Plan future land use map. Remaining to be completed are the rezoning, the establishment of the Urban Revitalization Area, the consolidation of the Breckenridge parcels by means of a plat of survey, and any subsequent subdivision.

If the City Council wishes to support the same qualifying criteria it selected by motion at the August 11 meeting, it can approve Alternative #1. The City Council can still amend the criteria following the public hearing on November 24.

However, Alternative #2 can be pursued if the City Council wishes to amend the qualifying criteria at this time. It may do so by giving explicit guidance to City staff who will incorporate them into the draft plan. The Council may still amend them again following the November 24 public hearing.

ATTACHMENT 1: LOCATION MAP



ATTACHMENT 2: COMMENTS FROM BRECKENRIDGE



Brian D. Torresi
BrianTorresi@davisbrownlaw.com
phone: 515-246-7860
Ames Office

October 7, 2015

Judy Parks, City Attorney
City of Ames, Iowa
515 Clark Ave.
Ames, IA 50010

Re: Breckenridge Group Ames Iowa, LLC ("Breckenridge")

Judy:

We understand that the Ames City Council (the "Council") will meet on October 13, 2015 to discuss the proposed qualifying criteria for urban revitalization tax exemption for Breckenridge's combined north parcel along Lincoln Way and Wilmoth Avenue (the "Property"). As you are aware, on August 11, 2015 the Council approved a list of twelve (12) items that would be considered qualifying criteria that Breckenridge would need to comply with in order for the Property to be eligible for tax exemption. Councilmember Betcher subsequently moved to add a thirteenth (13th) criterion related to the occupancy threshold of the commercial space on the Property, which Councilmember Gartin disagreed with but which ultimately passed, and there was further discussion related to acquiring a bicycle easement on the Property to meet the needs of the Ames Bicycle Coalition. Subsequently, a neighborhood group delivered correspondence to the Council in which the group proposed an even longer list of eligibility criteria. For the reasons set forth below, Breckenridge hereby rejects the imposition of the aforementioned laundry list of eligibility criteria and contends that such imposition is a breach of the implied duty of good faith and fair dealing with respect to the Agreement Between Breckenridge and City of Ames (the "Agreement") dated on or about August 3, 2015.

In support of its contention, Breckenridge hereby directs your attention to the Council's minutes of July 28, 2015 and August 11, 2015. In the former minutes, Councilmember Orazem specifically provided that affording Breckenridge with tax exemption for the Property was in consideration of Breckenridge selling the parcel locally known as 321 State Avenue (the "Middle Parcel") to the City of Ames (the "City") for a lower purchase price that would allow the City to use Community Block Development Grant funds to acquire the Middle Parcel and make the Middle Parcel available for affordable housing. In the latter minutes, Mr. Diekmann specifically cautioned the Council on lengthening the list of qualifying criteria and, as referenced above, Councilmember Gartin expressed concern that the criterion requested by Councilmember Betcher was "an unfair change" to Breckenridge.

Breckenridge obviously agrees with the statements and general concerns expressed by Councilmembers Orazem and Gartin. The Agreement provides that Breckenridge would sell the

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THE HIGHLAND BUILDING
4201 WESTOWN PKWY, STE. 300
WEST DES MOINES, IA 50266

THE AMES OFFICE
2805 NORTHRIDGE PKWY, STE. 101
AMES, IA 50010

Middle Parcel to the City for an extremely low purchase price of \$550,000. As part of settlement negotiations, the City, not Breckenridge, first brought up the idea of tax exemption with respect to the Breckenridge development on the Property, and as Councilmember Orazem correctly stated, Breckenridge relied on the entitlement to tax exemption for the Property in agreeing to sell the Middle Parcel to the City at a lower value.

The Agreement provides in Paragraph 3(B) thereof, “[p]rovided 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” (emphasis added) but does not list any required eligibility prerequisites. In pre-settlement discussions with the City, Breckenridge was aware of a list of three (3) proposed criteria: (i) enhanced façade design of buildings with frontage along Lincoln Way; (ii) landscape buffering where the development would abut residential properties; and (iii) adequate access to streets and sidewalks by residents of the development. This list has now potentially ballooned to more than thirteen (13) items and the requirement of a bicycle path easement, which Breckenridge is not interested in granting at this time. The imposition of these multiple items is unreasonable, will result in increased costs to Breckenridge, is not feasible (with respect to the occupancy threshold criterion), and further, these items have not been, together, applied to or required from any other property in the City in order to qualify for urban revitalization tax exemption.

Breckenridge hereby notifies the City that it is their position that the imposition of more than the three (3) initial criteria in order for Breckenridge to obtain tax exemption for the Property is a breach of the Agreement as a violation of the implied duty of good faith and fair dealing. However, the purpose of this correspondence is not to threaten litigation related to the potential breach of the Agreement, but rather, this is an attempt to identify the unreasonableness of the criteria so that Breckenridge and the City can work toward a more reasonable list of criteria in accordance with the good faith requirements of the Agreement.

Very truly yours,

DAVIS, BROWN, KOEHN, SHORS & ROBERTS, P.C.

A handwritten signature in blue ink, appearing to read "Brian D. Torresi", with a stylized flourish at the end.

Brian D. Torresi

Cc: Charlie Vatterott

ATTACHMENT 3: COMMENTS FROM CC/OAMS

Dear City Council members and Mayor Campbell,

We, as representatives of the CC/OAMS neighborhood, are writing with additional suggestions to help integrate the Breckenridge development on the Enlarged North Parcel into the neighborhood in the best way possible. What we have outlined below are ideas to improve the Urban Revitalization Criteria.

We approach the consideration of Urban Revitalization criteria for the Enlarged North Parcel out of the following basic concerns of any neighborhood, and suggest adding the following mitigating criteria to that put forth by City Council on Aug.11:

1. Protection of property
 - a. 24 hr. private security personal required sponsored by Breckenridge
 - b. No vehicle/pedestrian access from the Enlarged North Parcel to Hilltop
 - c. Fence along perimeter property lines to be constructed of steel, minimum 7' tall.
 - i. fencing/shrubs to be located along S. Wilmoth
 - ii. fencing/shrubs also surrounding 3316 Lincoln Way
 - d. Enlarged North Parcel buildings placed sufficient distance from adjacent homes
2. Noise
 - a. No balconies facing south, west, or east on the perimeter of the property
 - b. Sufficient trees/bushes planted as a noise buffer
3. Traffic
 - a. A complete and verifiable traffic analysis of vehicle traffic generated by the Enlarged North Parcel, including its impact on parking as well as traffic congestion
 - b. All traffic into and out of the development be restricted to Lincoln Way
 - c. Bicycle and pedestrian infrastructure be provided that exceeds City of Ames requirements and provides connectivity for these transportation modes.
 - d. Traffic calming devices in place before units are rented
 - e. Infrastructure (traffic control devices, street improvements, etc.) in place prior to issuance of building permits
 - f. A bike path easement along the south property line of the Enlarged North Parcel only if there is a continuous 7 foot fencing along the south boundary line. The fence is to be comparable to Reiman Gardens' black metal fencing on its North and East sides.
4. Flooding
 - a. Hydrology study of Enlarged North Parcel
 - b. Semi-permeable paved surfaces
 - c. Attractive rain gardens, and proactive runoff management systems
5. Light pollution
 - a. Adequate lighting on the property for safety
 - b. Lighting that is restricted to Enlarged North Parcel, exceeding current City of Ames municipal code standards for light pollution does not extend in to neighboring properties.

Thank you, City Council Members and Mayor Campbell, for your attention to these concerns.

Sincerely,

Joanne Pfeiffer, Michael Petersen - Co-chairs CC/OAMS

Marilyn Clem, Sarah Cady, Sharon Guber, Bob Lorr, Jason Paull, Emily Paull, Sharon Stewart

CCOAMS Neighborhood Association Core

South Wilmoth Avenue Urban Revitalization Plan

In accordance with Chapter 404, Code of Iowa

Legal Description (see Attachment 1: Location Map for Map Numbers)

Map #	Parcel ID	Address	Legal Description
1	09-08-225-020	205 S Wilmoth Ave.	Parcel M of Garden Subdivision Lots 5-13 and a part of the Northeast Quarter (NE $\frac{1}{4}$) of Section Eight (8), Township Eighty-three (83) North, Range Twenty-four (24) West of the 5 th P.M., in the City of Ames, Story County, Iowa as recorded on Slide 483, Page 4 as Instrument No. 2014-00003844 in the Office of the Story County Recorder
2	09-08-225-040	101 S Wilmoth Ave.	Lot One (1), except the South four (4) feet thereof, in Block One (1) in Garden Subdivision of the North 201.9 feet of the Northwest Quarter (NW $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section Eight (8), Township Eighty-three (83) North, Range Twenty-four (24) West of the 5 th P.M., in the City of Ames, Story County, Iowa
3	09-08-225-050	105 S Wilmoth Ave.	The South four (4) feet of Lot One (1), Block One (1) in Garden Subdivision of the North 201.9 feet of the Northwest Quarter (NW $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section Eight (8), Township Eighty-three (83) North, Range Twenty-four (24) West of the 5 th P.M., in the City of Ames, Story County, Iowa and Lot Two (2), Block One (1) in Garden Subdivision of the North 201.9 feet of the Northwest Quarter (NW $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section Eight (8), Township Eighty-three (83) North, Range Twenty-four (24) West of the 5 th P.M., in the City of Ames, Story County, Iowa
4	09-08-225-060	107 S Wilmoth Ave.	Lot Three (3), Block One (1) in Garden Subdivision of the North 201.9 feet of the Northwest Quarter (NW $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section Eight (8), Township Eighty-three (83) North, Range Twenty-four (24) West of the 5 th P.M., in the City of Ames, Story County, Iowa

Assessed Valuations

Map #	Land Value	Building Value	Total Value
1	\$350,000	\$0	\$350,000
2	\$76,300	\$73,700	\$150,000
3	\$31,100	\$71,900	\$103,000
4	\$30,000	\$62,500	\$92,500

Owners and Addresses

Map#	Owner Name	Owner Address
1	Breckenridge Group Ames Iowa LLC	1301 S Capital of Texas Highway, Ste. B201, Austin TX 78746
2	Breckenridge Group Ames Iowa LLC	1301 S Capital of Texas Highway, Ste. B201, Austin TX 78746
3	Breckenridge Group Ames Iowa LLC	1301 S Capital of Texas Highway, Ste. B201, Austin TX 78746
4	Breckenridge Group Ames Iowa LLC	1301 S Capital of Texas Highway, Ste. B201, Austin TX 78746

Zoning and Land Uses (See Attachment 2: Zoning of Proposed URA)

Map #	Existing		Proposed	
	Zoning	Land Use	Zoning	Land Use
1	RL	Vacant	RH or Commercial	Commercial and Apartments
2	RH, O-UIW	Apartments	RH or Commercial	Commercial and Apartments
3	RH, O-UIW	Apartments	RH or Commercial	Commercial and Apartments
4	RH, O-UIW	Apartments	RH or Commercial	Commercial and Apartments
RL=Low Density Residential RM=Medium Density Residential O-UIW=West University Impacted Overlay				

Proposed Expansion of Services)

The proposed urban revitalization area will continue to receive all services from the City of Ames. There is no proposed extension or increase in the level of service.

Applicability

Revitalization is applicable only to new construction and only in conformance with the approved site development plan for the project. Revitalization is available to all allowed uses on the site that meet the qualifying criteria found in Attachment 3 of this Plan.

Relocation Plan

There are no occupied residential structures in the proposed area. No relocations are necessary.

Tax Exemption Schedule

The project shall be eligible for tax exemption according to the schedule in Code of Iowa, Chapter 404.3.

Required Increase in Valuation

The project shall require an increased in assessed valuation of at least fifteen percent.

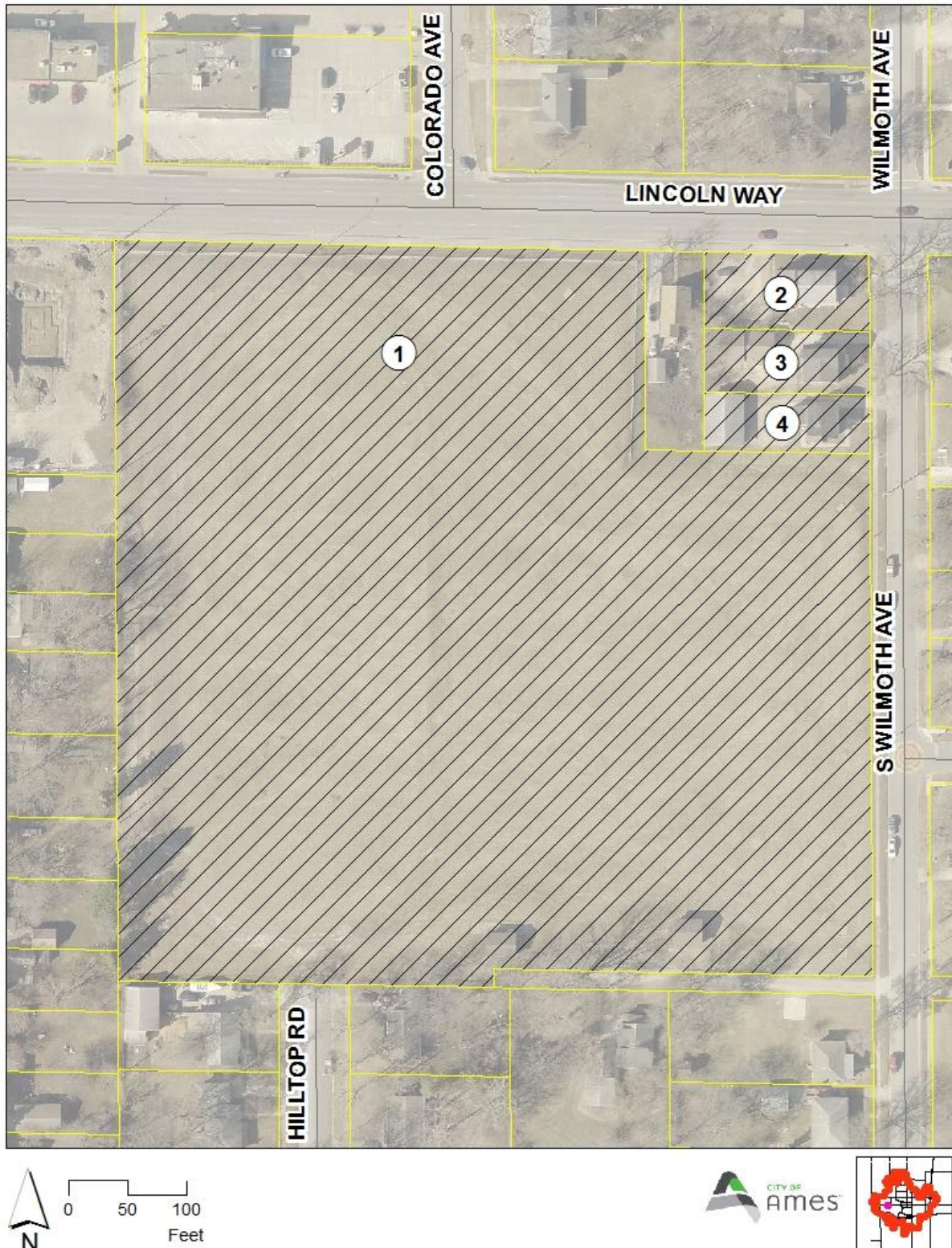
Federal, State or Private Funding

No federal, state, or private funding (other than the developer's financing) is anticipated for this project.

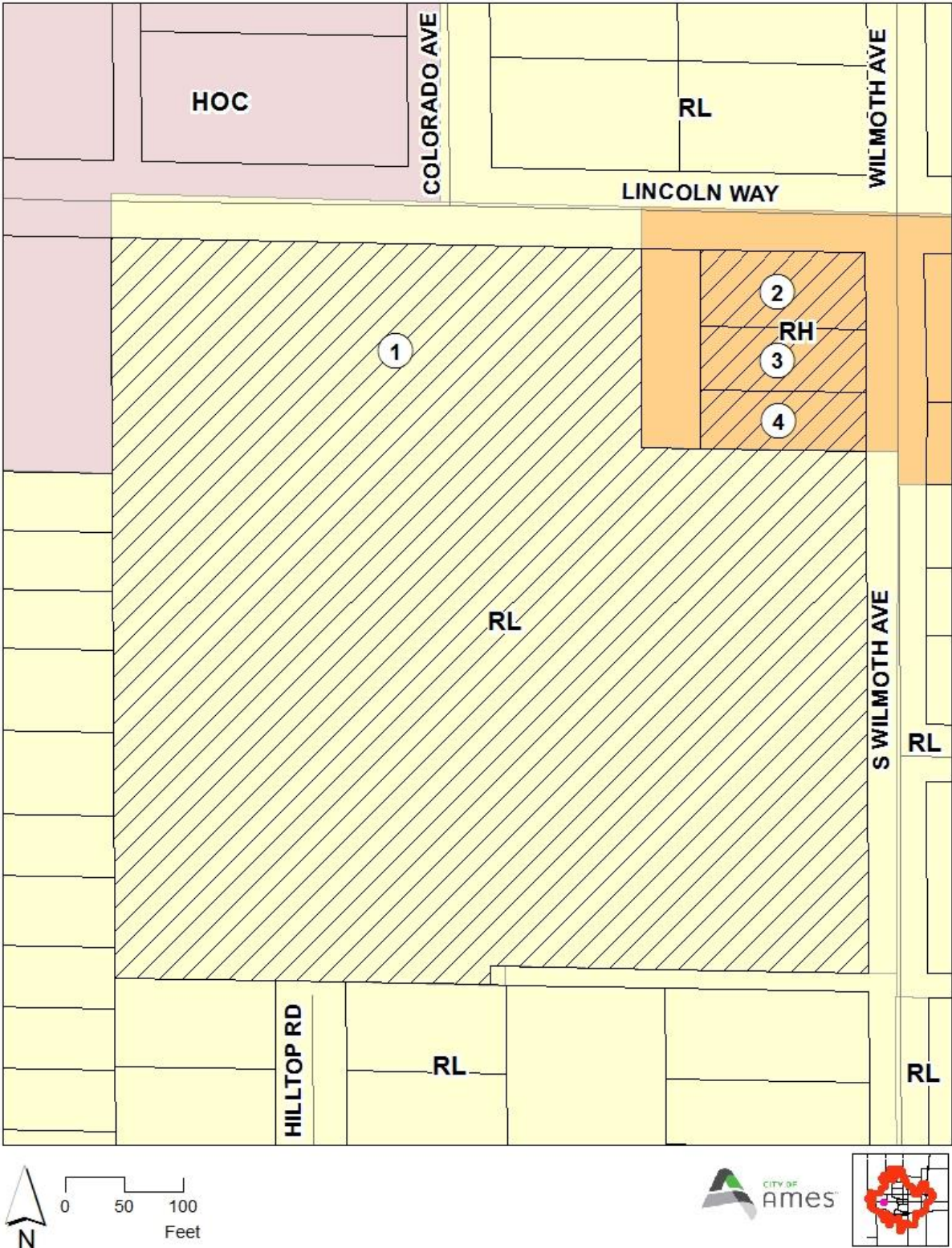
Additional Criteria

In order to be eligible for tax abatement, the project must also meet the criteria in Attachment 3.

ATTACHMENT 1: LOCATION OF PROPOSED URBAN REVITALIZATION AREA



ATTACHMENT 2: ZONING OF PROPOSED URBAN REVITALIZATION AREA



ATTACHMENT 3: ADDITIONAL QUALIFYING CRITERIA

1. All buildings shall use clay brick as the principal building material for 80% of the front facades, excluding openings. The remaining facades shall incorporate clay brick or cut stone into 50% of the façade materials.
2. Buildings used solely for residential and accessory uses shall utilize hipped or gabled roofs. Mixed-use buildings are exempt from this standard.
3. The project shall provide additional commercial parking in excess of the retail/office parking rate of 3.3 spaces per 1,000 square feet of gross commercial floor area. A minimum of 20% of the commercial floor area shall provide parking at a rate of 9 spaces per 1,000 square feet of gross commercial floor area for the first 30,000 square feet of gross floor area.
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