

Staff Report

REQUEST FOR AMENDMENT TO THE DEPOT DEVELOPMENT AGREEMENT

May 23, 2017

BACKGROUND:

At the April 25, 2017 meeting, the City Council referred to staff a letter from Brian Torresi, representing a potential purchaser of The Depot property in the 500 block of Main Street (aerial photo of the site is attached) for information about the current development agreement. **At the May 9th meeting, the City Council asked that this request to amend the development agreement be placed on a future agenda for discussion by the Council.**

The Depot is currently owned by Hubbell Realty Co. of West Des Moines. **The potential purchaser of the property, Merry Bee Properties, LLC, is seeking an amendment to the development agreement to allow up to half of the existing parking on the site (100 of the 199 spaces) to be allocated for use by the owner of the property, reserving 99 spaces for use by the general public.** Mr. Torresi provides some of the background in his letter (Attachment A) regarding the history of the development agreement. **The letter requests specific changes regarding the parking requirements and to restate and clarify the terms of the agreement that still apply to the property.**

The City entered into the development agreement with Hubbell in 1994 as part of a redevelopment plan for the entire site. The depot building was formerly used for City offices and included vast areas of open parking lots. The development agreement, among other things, included obligations for the developer to construct a certain amount of commercial square footage, maintain clear views, preserve the depot building, and allow for public parking on the site for 50 years upon completion of the project. The developer was granted the property at a nominal fee of 10 dollars for entering into the agreement, constructing the project, and meeting the requirements of the agreement.

At the time of the redevelopment of the Depot site, the area north of the Depot was used exclusively for public parking. To allow the developer to repurpose the Depot and to construct an additional 45,600 square feet of commercial uses, the developer was to provide 199 parking spaces on the site. A later addendum to the development agreement reduced the required new commercial space with the depot building to comprise a total of 38,459 square feet. **Although the agreement specified 199 spaces, it appears that there are currently 198 public parking spaces on the site. The development agreement allows for public use all of the parking spaces for a period of 50 years starting in 1995.** It should be noted that at the time of the redevelopment of the Depot, no off-street parking was required for what was then called the Concentrated Commercial District. It appears that the concept of retaining the existing public parking was a crucial element included in the development agreement to

meet general parking needs for the downtown area.

While the potential purchaser wishes to reduce the number of public parking to 98 spaces, he is willing to extend the terms of that public parking allowance for these remaining spaces to 2067. Based on his observation of utilization, the purchaser believes that 98 spaces is sufficient for public parking and that not having dedicated employee parking could limit leasing opportunities in the future. The purchaser is willing to limit the private spaces along the perimeter of the buildings and the two perimeter parking areas located to the west and southeast to be dedicated for private parking.

The parking layout at the Depot can be seen as four separate parking areas on the site. The number of spaces in each area is shown on the attached aerial photograph (Attachment B). Some of the areas have certain spaces designated as handicap spaces, some as compact stalls, and some are reserved for certain tenants. Most of the parking stalls are designated as 3-hour free parking.

STAFF COMMENTS:

In the Downtown Service Center zoning district (DSC), office, retail, and other commercial uses require no on-site parking. In this district, the City allows parking demand to be satisfied by the use of on-street or city-provided parking. The west end of downtown includes on-street metered parking on both sides of Main Street along the 500 block. Off-street free parking is provided on the Depot site and to the east of the site across Clark is CBD Lot X. Attachment C identifies the public parking options for Downtown.

If the Depot site was developed as 38,500 square feet of commercial space within a standard commercial zone it would required between 128 spaces and 200 spaces to accommodate general retail and limited amounts of restaurant uses. Purely office use would require approximately 128 parking spaces. However, the character of parking for retail versus office is considerably different, even though they require the same number of spaces. Changing from a commercial retail and service based tenants to employee based office tenants would mean high turnover of parking is not needed and that assurance of parking available throughout out the day is a priority. It also means that office uses are much less likely to have the ability to “share” parking as it will generally be occupied throughout the day compared to parking spaces used for retail customers.

OPTIONS:

Option 1: Grant Developer’s Request For 100 Private Parking Spaces And Retain 98 Public Spaces

The City Council can direct staff to prepare an addendum to the development agreement to require that 98 spaces be identified and allocated to the general public, to extend the terms of the parking allowance to 2067, clarify the currently relevant standards, and to reconfirm the language pertaining to the view of the Depot from Main Street and maintaining the historic facade. The potential owner also indicated that the

private spaces could be made available after normal business hours (evenings and weekends) for the general public.

The developer hopes to bring “high tech” companies to the downtown and believes that in order to attract employees to the Depot buildings, the availability of convenient parking is critical.

Under this option, staff would work with the potential owner to identify the location of those spaces that would remain as public parking. Proper signage to ensure that the public parking is readily identified would need to be designed and installed at the cost of the property owner for private parking.

Option 2: Grant the Developer 71 Private Parking Spaces And Retain 127 Public Spaces

The City Council can direct staff to prepare an addendum to the development agreement to require more spaces be retained for public use than proposed by Merry Bee Properties, but to allow for some private parking. This option would logically allocate the two perimeter parking areas for private parking and retain the central parking for the public. The parking at the west end of the lot (52 spaces) and the southeastern area (19 spaces) would be reserved for private parking. These lots are peripheral to the commercial spaces, not within the central area upon which most of the commercial spaces front. This option allows the potential owner to have 71 spaces reserved for tenants while maintaining 127 spaces for the general public.

To negotiate this option, specific spaces would be identified and allocated to the general public, terms of the parking allowance would be extended to 2067, clarify the currently relevant standards, and to reconfirm the language pertaining to the view of the Depot from Main Street and maintaining the historic facade.

Option 3: Delay Granting The Request From Developer Until Creation Of Or Resolution On A Broader Downtown Parking Strategy

The City Council can choose not to initiate any changes to the agreement at this time. Given the fact that the Council is in the process of evaluating public parking and private development parking requirements in the Downtown area (north and south of the railroad tracks), Under this option the Council would delay any decision to relinquish 100 public parking spaces until a final public parking strategy is developed by the Council. One concern about relinquishing public parking rights at this time would be if it pushed the City to construct replacement parking to meet demands for public parking.

This option would not preclude preparing an addendum to the development agreement at some future point in time when more data have been obtained. However, if no changes are made to the development agreement, the City Council would need to recognize that the on-site public parking would not be available past 2045. If Council chooses this option the potential purchaser would not have certainty on the arrangement of parking for the site, but could choose to still purchase the property.

Attachment A



Brian D. Torresi
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Ames Office

April 20, 2017

VIA E-MAIL TO JRIPPERGER@CITY.AMES.IA.US

City of Ames, Iowa
Attn: Diane Voss, City Clerk
515 Clark Ave.
Ames, IA 50010

Re: The Depot - 500 Main Street, Ames, Iowa (the "Property")

Mrs. Voss:

Please present this letter to the Ames City Council for consideration at the Council Comments section of their regular meeting on April 25, 2017. We are presenting this letter on behalf of Merry Bee Properties, LLC (the "Developer"), with the approval of the current titleholder of the Property, Main Street Station II, LLC (the "Owner"), and we request that the matter addressed herein be referred to staff for analysis and consideration, as Developer intends to purchase the Property from Owner with closing expected within the next two (2) months.

Some background information with respect to the Property and the parties might be in order. The City of Ames, Iowa (the "City") and Main Street Station, L.C. (the "Prior Owner") entered into that certain Ames Depot Development Agreement filed in the office of the Recorder of Story County, Iowa, on July 28, 1994, as Instrument No. 94-08439, as amended (the "Development Agreement"). The Development Agreement has been assigned and/or modified many times since it was entered into between the City and the Prior Owner in 1994. While many of the provisions and restrictions set forth in the Development Agreement are unenforceable under Iowa law due to the passage of time and/or were rendered moot by the completion and satisfaction by the Prior Owner of the various obligations under the Development Agreement, there are a few provisions within the Development Agreement that you should be aware of and which form the basis for the Developer's current request.

First, Paragraph 7 of the Development Agreement envisioned the conveyance of the Property from the City to the Prior Owner by quit claim deed (the "Deed") upon the completion of the development of the project contemplated in the Development Agreement and the lease of a certain percentage of the space developed by the Prior Owner on the Property. The delivery of the Deed served to convey all of the City's right, title and interest in and to the Property (including, arguably, rights of the City under the Development Agreement not specifically reserved in the Deed) except for: (a) drainage and utility easements shown on Plat-1 (as that term defined herein), and (b) the Parking Allowance (as that term is defined herein). The Deed was

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authorized by City Resolution No. 95-326 and was recorded in the office of the Recorder of Story County, Iowa, on July 17, 1995, as Instrument No. 95-06261. The Deed was re-filed in the office of the Recorder of Story County, Iowa, on October 27, 1995, as Instrument No. 95-09570 to reference information from Plat-2 (as that term is defined herein).

Second, a Plat of Survey of the Property ("Plat-1") was filed in the office of the Recorder of Story County, Iowa, on November 2, 1993, in Book 11 at Page 260. In accordance with the Development Agreement and the Deed, the City reserved drainage and utility easement rights on the Property in the locations identified on Plat-1. Furthermore, the City obtained a storm sewer easement on the Property in the location identified on the Plat of Survey of the Property ("Plat-2") filed in the office of the Recorder of Story County, Iowa, on June 17, 1994, as Instrument No. 94-06868.

Finally, in accordance with the Development Agreement and the Deed, the City reserved the Parking Allowance with respect to the Property. Specifically, Paragraph 11 of the Development Agreement provides that the City was given a license for the general public to park one hundred ninety-nine (199) vehicles on the Property (the "Parking Allowance") in the "Parking Area" (as that term is defined in the Development Agreement), and subject to the ability of the Prior Owner to relocate the Parking Area. The term of the Parking Allowance given to the City was fifty (50) years from and after March 1, 1995, i.e. March 1, 2045.

Without getting into an argument as to whether the Parking Allowance is a use restriction that has since expired and is unenforceable, a terminable license, or a non-perpetual easement, the Developer desires to completely amend and restate the Development Agreement as follows:

1. Limit the Parking Allowance to ninety-eight (98) spaces reserved for the general public in the Parking Area as designated by the Developer, and as may be relocated from time to time;
2. Extend the term of the Parking Allowance for fifty (50) years from and after the date the Developer takes title in and to the Property and/or fifty (50) years from and after the date the amended and restated Development Agreement is executed by the Owner and/or the Developer, as the case may be and as applicable; and
3. Retain certain language from Paragraph 14 of the Development Agreement pertaining to the view of the "Depot" (as that term is defined in the Development Agreement) from Main Street.

The Developer believes that ninety-eight (98) spaces is more than what is required by the City for use by the general public, and the original Parking Allowance of one hundred ninety-nine (199) spaces severely limits leasing opportunities as exclusive parking for employees of tenants is limited. The reduction of the Parking Allowance and the twenty-two (22) year extension afforded to the City, as well as maintaining the view of the Depot, seem to be a win-win scenario for the City and the Developer.

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For the reasons set forth above, the Developer hereby requests the referral of this correspondence to the Planning Department and/or the Legal Department to draft an amended and restated version of the Development Agreement that will only contain the provisions related to the Parking Allowance and other provisions customary in similar legal instruments.

Thank you in advance for your understanding and cooperation.

Very truly yours,

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

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

Brian D. Torresi

Cc: Cliff Smith

Attachment B



198 Number of Spaces in Parking Areas



Attachment C

