

ITEM: 31  
DATE: 05-11-21

### **COUNCIL ACTION FORM**

**SUBJECT: WAIVER OF THE REQUIREMENT FOR APPROVAL OF A SUBDIVISION PLAT BY THE CITY OF AMES FOR FURTHER SUBDIVISION OF WESTWOODS, PLAT 3, LOCATED IN BOONE COUNTY, OUTSIDE THE AMES CORPORATE LIMITS, BUT INSIDE THE CITY'S TWO-MILE SUBDIVISION JURSDICTION BOUNDARY**

#### **BACKGROUND:**

At the April 13, 2021 meeting, City Council referred to staff a request from Leon Wuebker and Kim Olmstead to have the City waive its platting authority within 2 miles of the Ames City Limits in the Urban Fringe. The property in question (Lots 5, 6, 7, 8, and 10 of Westwoods, Plat 3) is located on 229<sup>th</sup> Place in Boone County, just north of US HWY 30. The five lots are all vacant. The applicant intends to subdivide (replat) one of the existing lots in the near future and the rest at a later date.

The Final Plat for Westwoods, Plat 3 was approved by the Ames City Council on December 10, 2002 as a commercial/industrial subdivision in Boone County within 2 miles of Ames. At that time, the Council also approved a covenant waiving the right to appeal future special assessments if levied in the future by the City. This was a condition of waving City infrastructure requirements for the rural development. Later the applicant approached the City Council about a waiver of further platting requirements on April 25, 2006 for additional divisions. However, no action was taken by the applicant to move forward with that plan.

Chapter 354 of the *Code of Iowa* gives provision for cities to exert jurisdiction over platting within 2 miles of its corporate limits. The same code also allows cities to waive that right. **The applicant requests that the City waive its right to review the subdivision plat, rather than have the city review and approve the plat and waive our infrastructure improvement requirements.**

If the City agrees to waive our authority, the platting requirements of Boone County will still need to be met. Additionally, the 2002 covenant pertaining to future assessment would apply. (Note: the City will have to extend the covenant prior to its expiration in 2023 if it is interested in maintaining the requirements for all lots in the subdivision.)

The City's current practice for rural subdivision of land is slightly different than it was in 2002. The City typically requires three covenants rather than just one covenant as part of a waiver of its authority when reviewing a plat. The City would typically receive the agreement for future special assessment, agreement to annex upon city request, and acknowledgement that any future rural water buyout would be the responsibility of the property owner. In 2002 we only required the special assessment agreement.

### **ALTERNATIVES:**

The applicant is requesting to have the City's platting authority waived for the replat of the specified existing lots.

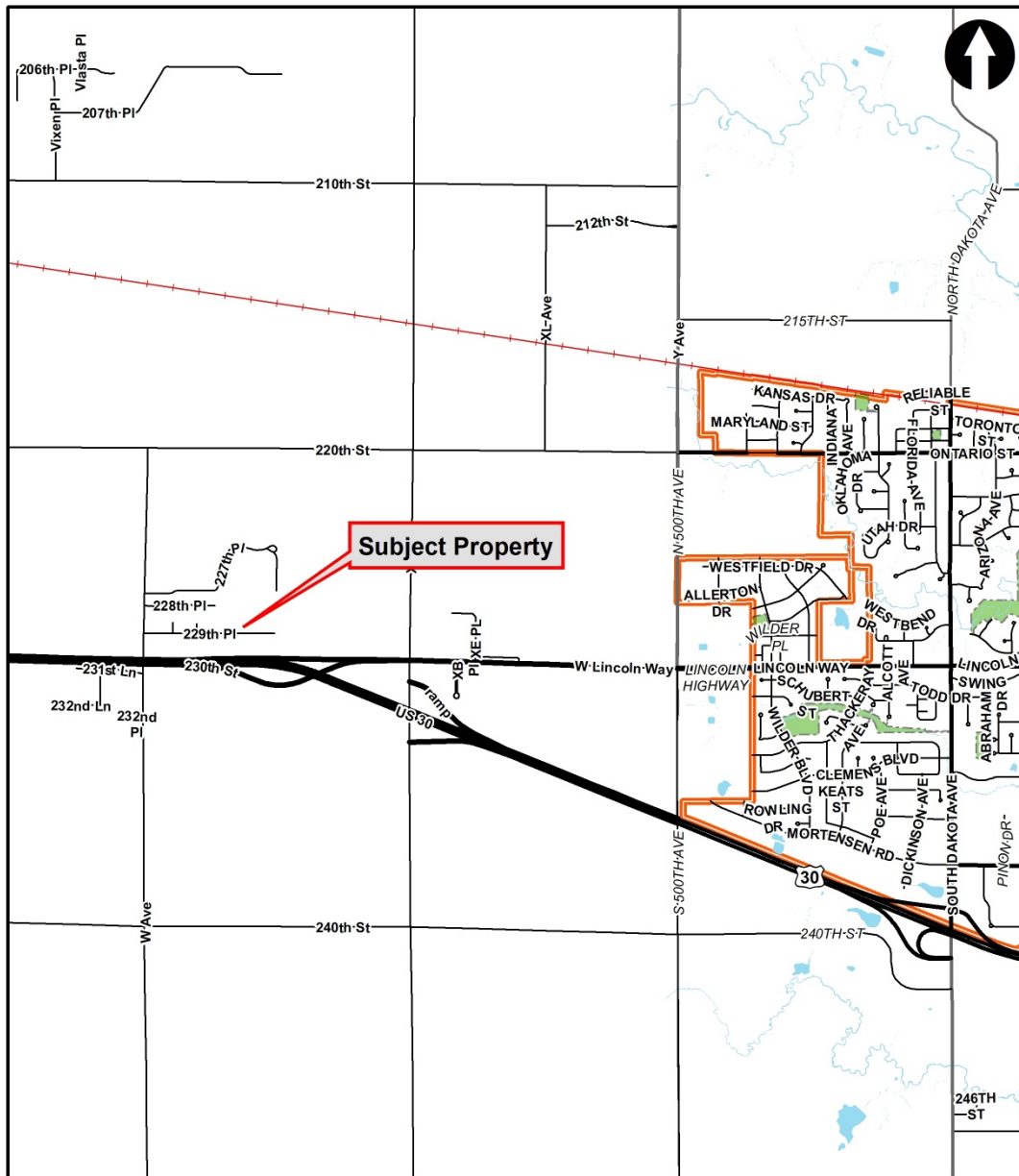
1. The City Council can approve the resolution waiving the requirement for approval of a subdivision plat by the City of Ames for the division of Lots 5, 6, 7, 8, and 10 of Westwood, Plat 3, subject to the current 2002 covenant related to special assessments. No new or additional covenants would be required.
2. The City Council can direct the applicant to provide new covenants addressing special assessments, future annexation, and rural water buyout for the proposed five lots prior to approving a waiver of the City's authority to review a subdivision.
3. The City Council can decline to waive the City's subdivision authority as requested and require the applicant to submit a subdivision application for approval by the City Council with accompanying waivers of City infrastructure requirements.
4. The City Council can refer this request back to staff and/or the applicant for additional information.

### **CITY MANAGER'S RECOMMENDED ACTION:**

The subject property is over one and a half miles from the Ames City Limits and is not within a Priority Growth Area. The scenario work for Ames Plan 2040 does not identify expansion of the City to include these already developed lands that do not meet City standards for infrastructure. The land has been previously subdivided and no new public improvements are planned to effectuate the proposed division. Replatting the property will provide more development flexibility for the owner and will not necessarily increase the intensity of new development if it is to occur. With the previous approval of the covenant that waived the rights of the owner to not protest future special assessments, the City's long-term interests are not compromised by waiving its authority in this instance.

**Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, as described above.**


## Attachment A – Location Map

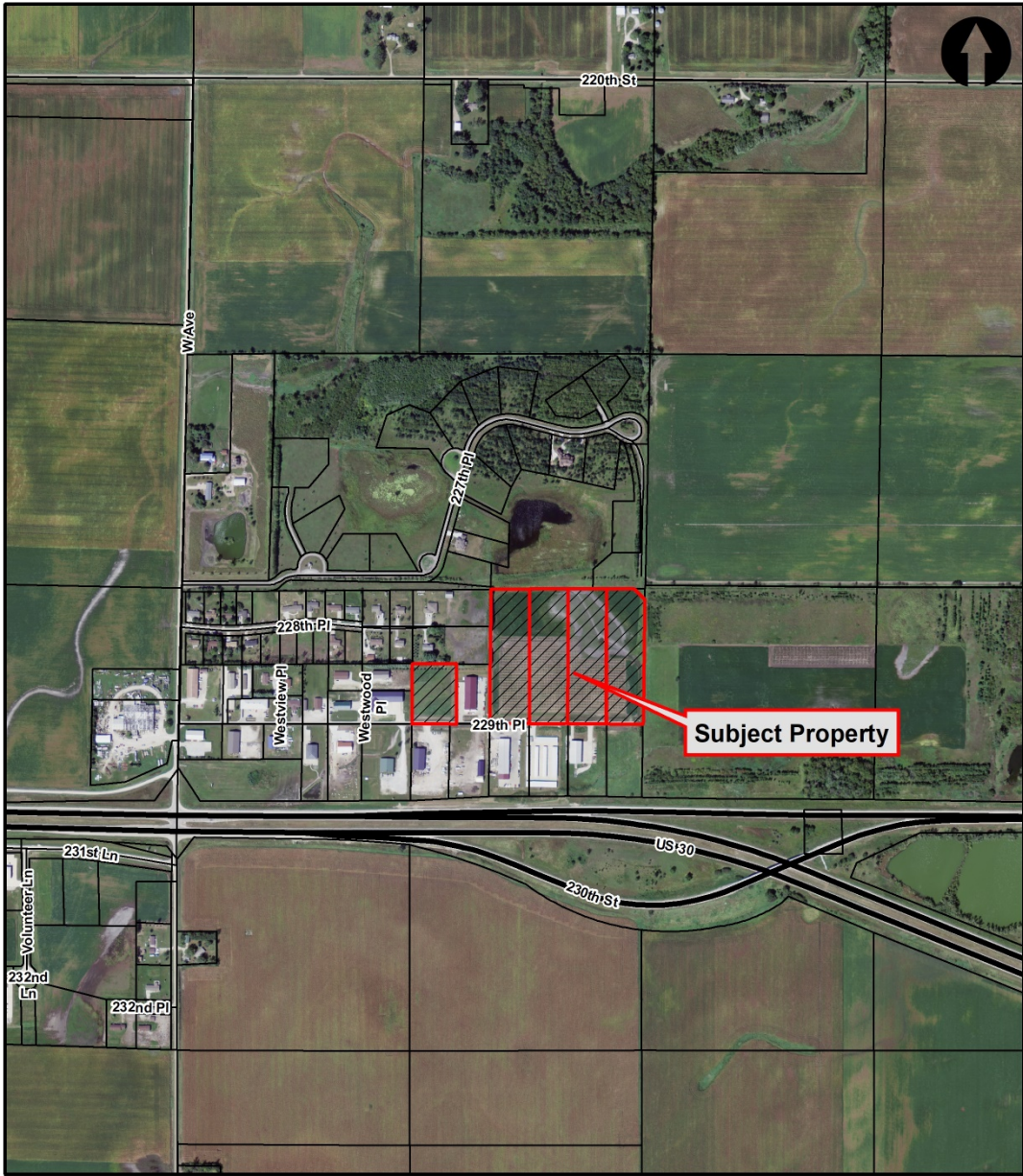


Westwoods, Plat 3

0 0.25 0.5 0.75 1 Miles

### Legend

 Ames City Limits

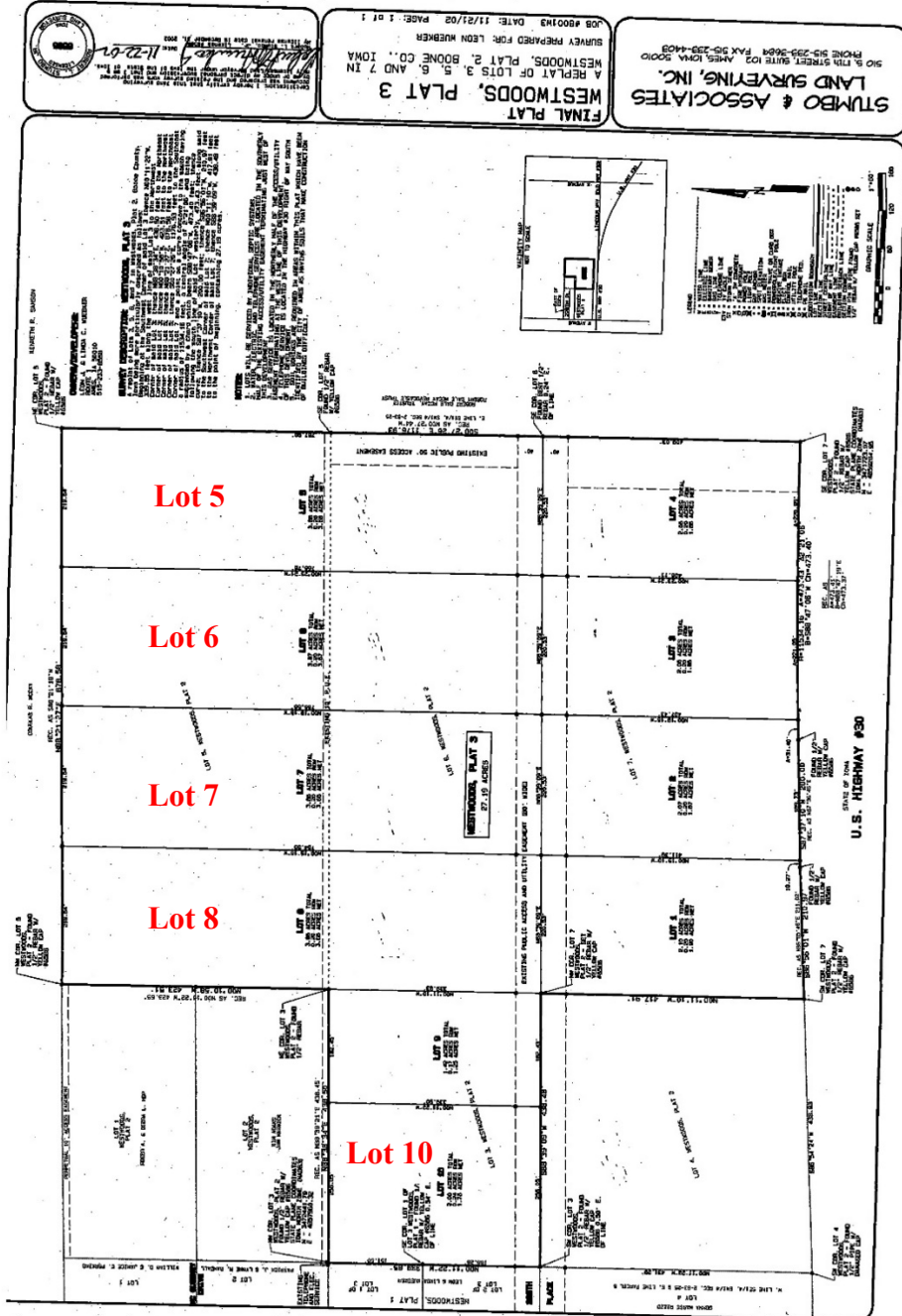


Westwoods, Plat 3



# Attachment B – Westwoods, Plat 3

BOOK 35 PAGE 34





## Attachment C – Westwoods, Plat 3 Covenant

Doc# 030156

RETURN TO: (ew)  
Billie Red  
AMES CITY CLERK  
BOX 811  
AMES IOWA 50010

INST. NO. 02-20304  
STORY COUNTY, IOWA  
FILED FOR RECORD

11 29 AM DEC 18 2002 PM

SUSAN L. VANDE KAMP, Recorder SW  
REG. FEE \$ 11.00 AUD. FEE \$

✓  
W  
D  
G  
R

DO NOT WRITE IN THE SPACE ABOVE THIS LINE, RESERVED FOR RECORDER  
Prepared by: John R. Klaus, City of Ames Legal Department, 515 Clark Avenue, Ames, Iowa 50010 (Phone: 515-239-5146)

### WESTWOOD PLAT 3 COVENANT FOR ASSESSMENT OF COSTS OF IMPROVEMENTS

Instrument No. 030233  
State of Iowa, Boone County, SS  
Filed for Record at 2:45 P.M.  
This 10 day of Jan, 2003  
Sheryl J. Thul, Recorder, Fees \$ 11.00 due  
Number of Pages 2

THIS COVENANT AND AGREEMENT is made effective the 25th day of November, 2002, by and between LEON J. WUEBKER and LINDA C. WUEBKER, their successors and assigns (hereinafter called "Developer"), and THE CITY OF AMES, IOWA, (hereinafter called "City").

#### WITNESSETH THAT:

The parties hereto have agreed and do agree as follows:

1. This agreement is made for the purpose of meeting the subdivision regulations and plat approval requirements of the City.
2. In anticipation of the possibility that the City may at some time deem it to be in the public interest to cause construction of street paving, curbs and guttering, storm sewers, water mains, sanitary sewer mains, bicycle paths, and sidewalks by means of city awarded contracts to be paid by special assessments to be levied against the lots in Westwood Plat 3, Developer does hereby covenant and agree that by execution of this instrument Developer, its successors and assigns, including purchasers of lots, and each of them, shall pay and are bound to pay to the City, the costs of the aforesaid improvements assessed to the lots in Westwood Subdivision, Plat 3, by action of the governing body for the City, after notice of hearing as provided by Section 384.50 Code of Iowa, the provisions of Section 384.38 Code of Iowa notwithstanding.
3. Without affecting the forgoing waivers of rights, it is understood and agreed that if and when the governing body of the City conducts a hearing on a proposed resolution of necessity to assess public improvement costs to land referred to in this agreement, the owners of such land may then appear before the governing body of the City and be heard.
4. Additionally, Developer, in consideration of the benefits derived from approval of the said plat of subdivision, receipt of which is hereby acknowledged, does covenant with the City that it will never, at any future time, sue the City, or any officer or employee of the City, to test the regularity of the proceedings or legality of the assessment procedure, to appeal the amount of the assessment, to enjoin, set aside, overturn, or reduce the amount of such assessments levied against the said land by the City.

The foregoing provisions encumber the land that is platted as Westwood Plat 3, Boone County, Iowa.

5. This covenant and agreement shall be filed for record in the office of the Boone County Recorder and all covenants, agreements, promises and representations herein stated shall be deemed to be covenants running with the land and shall endure and be binding on the parties hereto, their mortgagees, lienholders, successors and assigns, for a period of twenty-one (21) years from the date of the recording of these covenants, unless claims to continue any interest in the covenants are filed as provided by law. The City shall have the right to file a claim to continue its interest in these covenants.

6. Invalidation of any of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

Executed by the respective signatories effective the date first above written.

DEVELOPER

CITY OF AMES, IOWA

By: Leon J. Wuebker  
Leon J. Wuebker

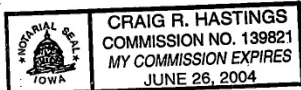
By: Ted Tedesco  
Ted Tedesco, Mayor

By: Linda C. Wuebker  
Linda C. Wuebker

By: Diane R. Voss  
Diane R. Voss, City Clerk

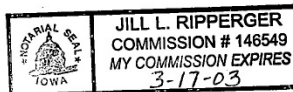
STATE OF IOWA, STORY COUNTY ss:  
On this 25 day of Nov, 2002, before me, a Notary Public in and for Story County, personally appeared Leon J. Wuebker and Linda C. Wuebker, to me known to be the persons named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

Craig R. Hastings  
Notary Public in and for Story County, Iowa



STATE OF IOWA, COUNTY OF STORY, ss:  
On this 10<sup>th</sup> day of December, 2002, before me, a Notary Public in and for the State of Iowa, personally appeared Ted Tedesco and Diane R. Voss, to me person-ally known, and, who, being 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. 02-609 adopted by the City Council on the 10<sup>th</sup> day of December, 2002, and that Ted Tedesco 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.

Jill L. Ripperger  
Notary Public in and for Story County, Iowa



## Attachment D – Request from Applicant

RE: Westwoods Waiver Request



kim@charterhouseiowa.com

To: Campbell, Benjamin

Cc: Leon Wuebker

[Reply](#) [Reply All](#) [Forward](#) [...](#)

Thu 3/25/2021 11:04 AM

You forwarded this message on 4/7/2021 12:19 PM.

[External Email]

Thank you for your follow up, Ben. See below for our updated request. Additionally, I will contact Boone County to obtain their documented opinion (our conversations were via phone) and forward to you when I receive.

On behalf of Leon Wuebker, I would like to request the Ames City Council consider a waiver of its subdivision authority for the Lots 5, 6, 7, 8, and 10 of Westwoods Plat 3. Their use will continue to be consistent with the use of their current zoning (commercial) and those other developed lots around it.

We have spoken with Boone County who agreed that an equal land split would be acceptable on all 5 properties.

Please let us know if there are any further items that we may need to address with this waiver and we thank you for all of your guidance through the process.

Best,  
Kim



*Kim*

**Kim Olmstead**

REALTOR® • License #S66194000

[Kim@CharterHouselowa.com](mailto:Kim@CharterHouselowa.com)

515.231.1607 515.532.7770

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