

ITEM #: 28  
DATE: 10/23/07

## COUNCIL ACTION FORM

**SUBJECT:** WAIVER OF SUBDIVISION AUTHORITY FOR APPROVAL OF SUBDIVISION PLAT FOR RURAL PROPERTY ON 550<sup>TH</sup> AVENUE

### **BACKGROUND:**

The City has received a request for approval of a proposed subdivision located directly west of 550<sup>th</sup> Avenue, east of U.S. Highway 69, south of Ken Maril Road, and north of 265<sup>th</sup> Street. The property is located south of the corporate limits of the City of Ames (see attached Location Map).

This request has been before the City Council at its regular meeting of September 12, 2006. At that meeting, the City Council moved to postpone this case file until the meeting of September 26, 2006, in order to afford staff the time to discuss the covenants with the property owners. Staff did discuss the covenants with the property owners and their representatives; however, Mr. Musselman, who is a 1/3 owner of the property, did not wish to sign the covenants. Therefore, staff closed the file due to lack of activity. This new application, although it is the same proposal, provides additional clarification of the circumstances surrounding the proposed subdivision. Please see the attached letter from B. Joan White dated September 27, 2007, which provides additional background information.

The proposed subdivision involves land owned by Crystalwood Estates LLC and Robert Musselman. The proposal involves a vacant property, approximately 34.45 acres in size. No public improvements or infrastructure are proposed. The applicant proposes to subdivide the property into two parcels, Parcel 'M' is proposed to be 11.48 acres in size, and Parcel 'N' is proposed to be 22.97 acres in size. City staff has determined that since the property does not contain public infrastructure, a Major Subdivision would be required.

A letter, dated September 27, 2007, from the owner's representative, B. Joan White, from White & Zaffarano Law Offices, requesting that the City waive its subdivision authority rather than apply for approval of a Major Subdivision, was received by the City Council during its regular meeting on October 9, 2007. At that meeting, the City Council referred this item to staff.

Chapter 354 of the Code of Iowa includes provisions for the division and subdivision of land. Section 354.9 addresses the "Review of subdivision plats within two miles of a city." Subsection two (2) includes the following provision:

*Section 354.9(2). "...Either the city or county may, by resolution, waive its right to review the subdivision or waive the requirements of any of its standards, or conditions for approval of subdivisions, and certify the resolution which shall be recorded with the plat."*

Chapter 23 of the Municipal Code includes provisions for the subdivision of land in Ames and within two (2) miles of the corporate limits. Section 23.103 addresses "Waiver/Modification." Subsection (1) reads as follows:

Section 23.103 (1). *"Where, in the case of a particular subdivision, it can be shown that strict compliance with the requirements of the Regulations would result in extraordinary hardship to the Applicant or would prove inconsistent with the purpose of the Regulations because of unusual topography or other conditions, the City Council may modify or waive the requirements of the Regulations so that substantial justice may be done and the public interest secured provided, however, that such modification or waiver shall not have the effect of nullifying the intent and purpose of the Regulations. In no case shall any modification or waiver be more than necessary to eliminate the hardship or conform to the purpose of the Regulations. In so granting a modification or waiver, the City Council may impose such additional conditions as are necessary to secure substantially the objectives of the requirements so modified or waived."*

The site is located to the south of the City in Story County, outside the current City of Ames corporate limits. The site is not located within the "Priority Growth Areas" as identified within Chapter 6 of the City of Ames Land Use Policy Plan. The property is further identified as being within the Rural Service and Agricultural Conservation Area, specifically Agriculture and Farm Service, within the Ames Urban Fringe Plan. The Urban Fringe Plan identifies five policies for the Agriculture and Farm Service area as follows:

**AFS Policy 1:** Recognizing that agricultural land is a natural resource of the Ames Urban Fringe that should be protected, farming and agricultural production is and will continue to be the predominant land use of areas given the Agriculture and Farm Service designation. Land given this designation has been determined to be moderate to high value agricultural land with regard to one or more of the following general factors: soil productivity, effect of surrounding land uses on agricultural use, and physical characteristics that affect the ease with which the land can be utilized for agriculture ...

**AFS Policy 2:** Recognizing that industrial and commercial land uses dependent on proximity to local agricultural land uses are essential to the continued feasibility of farming in Story County and Boone County, support these services within the Agriculture and Farm Service designation ...

**AFS Policy 3:** Strategically locate such industrial and commercial uses in order to:

- utilize existing adequate access and road capacity and otherwise assure the existence of adequate public facilities;
- protect productive soils and environmental resources;
- support the continued use of these areas for farming and agricultural production ...

**AFS Policy 4:** Limit non-agricultural residences in the Agriculture and Farm Service designation to homes existing at the time of this Plan or remaining scattered building sites where farmstead homes once existed or homes on very large parcels of ground typical of the agricultural setting. Otherwise, subdivision for the creation of new residential development lots is not supported within the Agriculture and Farm Service designation ...

**AFS Policy 5:** Allow the clustering of agricultural-related development at a limited scale where properties have adequate access to a public road. Such development shall be configured and designed to be harmonious with agricultural activities and avoid negative impacts to agricultural operations.

Story County has conducted a L.E.S.A. evaluation on the subject property and determined that it is high value agricultural land. The property is currently zoned A-1, which requires a minimum of 35 acres to be allowed to construct a home on this property. Prior to subdividing, the property is approximately 34.45 acres in size. Story County staff has further identified that due to the high L.E.S.A. score and the restrictive lot size, that it would be difficult for the property owner to further develop the property for residential use.

Normally, staff would recommend a waiver of the subdivision authority upon return of covenants for rural water and waiver of objections to future assessments; however, for the following reasons, the staff does not support the requirement of covenants:

- The applicant has no intent to develop residential uses on this site;
- Under the current zoning and with the high value L.E.S.A. score, Story County would not support residential development on this site;
- Rezoning of this property by Story County would be inconsistent with the Urban Fringe Plan;
- The site's Agricultural and Farm Service designation through the Urban Fringe Plan;
- That the site is not designated as a Priority Growth Area in the LUPP; and,
- That public infrastructure is not proposed nor requested through this subdivision request.

The platting requirements of Story County will need to be met and a copy of the recorded Plat of Survey should be delivered to the Ames City Clerk for our records.

Staff recommends that the following stipulation be placed upon the approval of the waiver of subdivision authority.

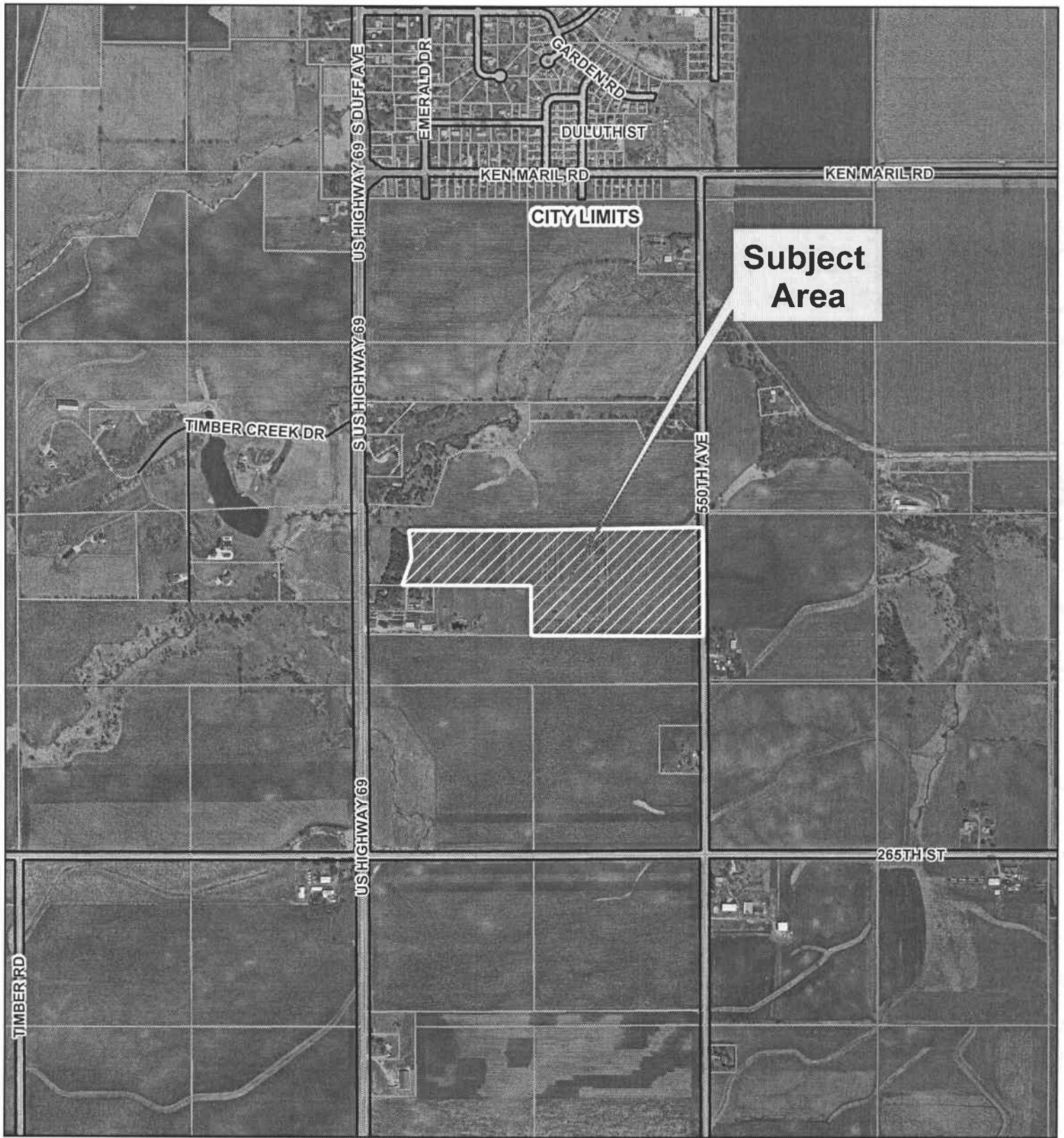
- The platting requirements of Story County will need to be met and a copy of the recorded Plat of Survey shall be delivered to the Ames City Clerk for our records.

**ALTERNATIVES:**

1. The City Council can grant the request for a waiver of subdivision authority for the proposed two-lot subdivision on 550<sup>th</sup> Avenue in Story County with the stipulation described above.
2. The City Council can deny the request for a waiver of subdivision authority for the proposed two-lot subdivision on 550<sup>th</sup> Avenue in Story County.
3. The City Council can refer this request back to staff and/or the applicant for additional information.

**MANAGER'S RECOMMENDED ACTION:**

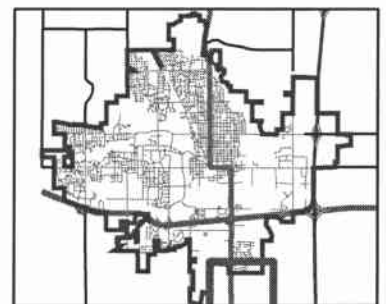
The applicant does not intend to develop this site further for residential uses, the City and Story County would not support residential development, the site is designated as Agricultural and Farm Service through the Urban Fringe Plan, the property is not designated as a Priority Growth Area in the LUPP, and public infrastructure is not proposed. Therefore, it is the recommendation of the City Manager that the City Council approve Alternative #1. Alternative #1 is a recommendation for approval of a resolution waiving subdivision authority by the City of Ames for the property identified as Tract D in the north half of the northeast quarter of Section 26-83-24, Story County, Iowa, with the stipulation that a copy of the recorded Plat of Survey be delivered to the City Clerk following its approval by Story County.



**Location Map:  
550th Avenue  
Rural Subdivision**



0 550 1,100 2,200  
Feet

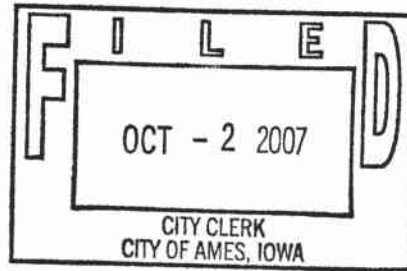


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September 27, 2007

Ann Campbell, Mayor, and  
Ames City Council  
City of Ames  
Fifth & Burnett  
Ames, Iowa 50010

Dear Mayor and Council members:

I represent Robert L. Musselman who is a 1/3 owner of a 34-acre parcel of agricultural land west of 550<sup>th</sup> Avenue and within two miles of the southern corporate limits of Ames. Rob and the co-owner have agreed to partition the land, and have had a survey completed to that end. We are requesting that the City waive its subdivision review authority over the partitioning of this land.

By way of background, Rob inherited his interest in this land from his mother. His mother, Sue Cafferty, died of cancer on November 24, 2004. She was only 63 years old, and Rob was her only child. They were very close. Rob's stepfather, Phil Cafferty, filed an election against her Will, and thus some of what she intended would go to Rob did not. He received a 1/3 interest in this 34-acre parcel through the probate proceedings and Mr. Cafferty received a 2/3's interest. Mr. Cafferty promptly sold his interest to Brent Buldhaupt, an adjoining landowner, and moved out-of-state. Rob and Brent agreed to have the property surveyed and execute deeds to each other, thereby dividing the property. Before this was accomplished, Mr. Buldhaupt transferred title of his portion into the name of Crystalwood Estates, L.L.C.

This piece of land is one of the few tangible assets remaining from Rob's mother's estate. It is within walking distance of his home and has significant sentimental value to him. He has no interest or intention to develop it. In fact, it is too small for him to even build a home on it.

Clearly, it is too small to be developed under current zoning regulations, and would never be developed unless it were sold to an adjoining landowner and became part of a larger development, at which time the City would have ample opportunity to require that the property meet all subdivision regulations.

Because of the strict limitations on his use of the land, his complete disinterest in developing it, and his interest solely in maintaining a little bit of his mother's memory in this small piece of land, Rob strongly objects to signing covenants agreeing to be bound for improvements and water service which others may initiate. Instead, he respectfully requests that the Council waive its subdivision review authority with respect to the partitioning of this land which he inherited from his mother.

Mr. Buldhaupt previously owned property to the immediate north, and also purchased other property belonging to Mr. Cafferty to the west of the property in question. Should he chose to develop it at anytime in the future, the City will have ample opportunity to require signed covenants from him.

The City Planning Dept recommended that signing of covenants be waived when this matter came before the Council in September, 2006, even though at that time the staff had no knowledge whether either owner objected to signing the covenants. The issue was postponed to afford staff time to discuss the covenants and waiver of objections with the property owners. We now request your re-consideration, and agreement to waiving these requirements.

Sincerely,

  
B. Joan White

cc: Brad Larson, Stumbo and Associates  
Brian Humke, Atty for Brent Buldhaupt  
Robert L. Musselman

