

COUNCIL ACTION FORM

SUBJECT: **REQUEST FROM UTHE DEVELOPMENT COMPANY, LLC, TO
REVISE AGREEMENT FOR PUBLIC IMPROVEMENTS
(BLOOMINGTON ROAD EXPANSION)**

BACKGROUND:

The City Council received the attached letter from Chuck Winkleblack representing the Uthe Development Company, LLC requesting a second amendment to their agreement with the City to allow the occupancy of four apartment buildings.

The original agreement related to the development of the Uthe Farm was approved back in November 2000. In this agreement, the developer was required, among other things, to construct two street lanes on the north side of Bloomington Road from the east line of the Union Pacific Railroad tracks to George Washington Carver no later than one year after the construction of 375 dwelling units in the subdivision.

It should be remembered that originally Northridge Heights was planned to be totally a residential subdivision. After the subdivision was rezoned to allow commercial uses, a new agreement had to be finalized to provide new guidance as to how off-site improvements, including the widening of Bloomington Road, would be handled. Therefore, in June 2008 an agreement for public improvements was approved by the City Council allowing the City to withhold occupancy permits for any improvements made within Northridge Heights, 12th Addition until the off-site improvements specified in the November 2000 agreement were completed.

Historically, commitments made by developers through contracts with the City are secured with bonds or letters of credit. In this case, the developer is required to provide financial security prior to the completion of the public improvements required of them in the original agreement, except for the work that would occur within the Union Pacific Railroad (UPRR) crossing. Timing of the railroad crossing work was to be determined by the UPRR.

According to UPRR rules, only their employees can do work to establish or extend a grade crossing. Because the City did not have a solid estimate for the cost of the work from the UPRR and we were concerned that the subdivision might be built out all at once, causing the immediate need for widening Bloomington Road, the authority to withhold occupancy permits was selected as the method for securing the promise to widen the railroad crossing. This approach was selected in lieu of requiring financial security.

ALTERNATIVES:

1. The City Council can support the request from the Uthe Development Company, LLC to approve a second amendment to the Agreement For Public Improvements (Bloomington Road Expansion) and thereby allow the apartment buildings on Lots 5,6,7, and 8 to be occupied prior to the completion of the railroad widening project.
2. The City Council can deny the request from the Uthe Development Company, LLC to approve a second amendment to the Agreement For Public Improvements (Bloomington Road Expansion) and thereby not allow the apartment buildings on Lots 5,6,7, and 8 to be occupied prior to the completion of the railroad widening project.

MANAGER'S RECOMMENDED ACTION:

Back in March 2009, the City Council approved the first amendment to this developer agreement to allow the Fareway Store and car wash to be occupied prior to the completion of the widening of the railroad crossing. At that time it was acknowledged that completion of this remaining off-site improvement was not under the control of the developer, and the City's Traffic Engineer determined there would be no negative impact with the opening of these two commercial operations.

Once again, the Traffic Engineer has determined that the traffic from opening these four new apartment buildings can be accommodated by the existing two lanes of Bloomington Road. In addition, it appears the UPRR has finally scheduled the crossing widening for mid-July. Therefore, in an effort to facilitate these developments, it is the recommendation of the City Manager that the City Council adopt Alternative #1, thereby allowing the apartment buildings on Lots 5,6,7, and 8 to be occupied prior to the completion of the railroad widening project.

It should be emphasized that the Traffic Engineer has indicated a concern if the remaining three lots (lots 1, 3 and 9) in the subdivision – man apartment building, convenience store, or medical clinic – are occupied prior to the railroad crossing widening. These three remaining lots will still be subject to the original occupancy prohibition.

June 19, 2009

Honorable Mayor and City Council
515 Clark Ave
Ames, IA 50010

Dear Mayor and Council,

I respectfully request that the council amend the agreement between the City of Ames and Uthe Development Company, LLC for the "Agreement for public improvements (Bloomington Road Expansion)". I understand that the normal procedure is to have requests like this referred to staff and have council act on the request at a future council meeting. I am requesting that it be acted upon at this meeting because the developers sold these properties to people that are waiting for occupancy permits to move tenants into the buildings.

The reason for the needed amendment is that the 2nd paragraph from the bottom on page 2 of the agreement reads as follows: It is further agreed that the City shall withhold occupancy permits for any improvements made within Northridge Heights subdivision twelfth addition, Ames, Story County, Iowa until such time as the off site improvements have been completed. In March of 2009 the council amended the agreement to allow for occupancy of the car wash and the grocery store. Attached is the same document that was signed in March except for the lot numbers have been changed.

The Union Pacific Railroad had given the developers and the city staff some assurances that this work would be completed in early spring of 2009. Subsequently they assured the city traffic engineer that the work would begin either June 8th or 15th. They have completed some of the work on the signalization but the crossing has yet to be widened. The traffic engineer from public works has been in contact with the UP and feel like we now have a firm date of the second week in July for the UP to complete the crossing. According to the UP the project is now on their union schedule for the second week in July to be completed. I have talked with Manatt's and they will complete the city's portion of the project just as soon as the UP is done.

The developers have completed all of the required infrastructure that they are responsible for and are now just waiting for the City of Ames and the UP to finish their portions of this project.

I appreciate your time and consideration of this matter.

Sincerely,



Chuck Winkleblack
Uthe Development Company, LLC

From: Damion Pregitzer [mailto:dpregitzer@city.ames.ia.us]
Sent: Thursday, June 18, 2009 3:34 PM
To: Eric Cowles
Cc: Chuck Winkleblack; Corey Mellies; Tracy Warner
Subject: Fw: Folder No. 2527-90 - Crossing DOT 197073F - Milepost 242

Hey Eric!

Below please see a note that I have received from Mike Blackley regarding the scheduled work to widen the Bloomington Road crossing. A little later that early June as we had previously thought, however this sounds like it has now been officially put into the UP's work schedule!

Please feel free to call Dave to coordinate, Tracy and I know him from the Quiet Zone process and he is very easy to work with. Let me know if any questions come up.

Thanks!



Damion Pregitzer, Traffic Engineer | Public Works Department | City Hall, 515 Clark Avenue | Ames, IA 50010-0811 | (P) 515.239.5275 | (F) 515.239.5404 | (E) dpregitzer@city.ames.ia.us
----- Forwarded by Damion Pregitzer/COA on 06/18/2009 03:11 PM -----

MGBLACKL@up.com

06/18/2009 11:02 AM

To: Damion Pregitzer <dpregitzer@city.ames.ia.us>
cc

Subject: Re: Folder No. 2527-90 - Crossing DOT 197073F - Milepost 242

Talked to Dave Deurloo the Manager Track Maintenance for the territory, he is planning on the second week of July. We will need a 3 day closure on the existing Bloomington Road to facilitate the installation of the new crossing. Dave's phone number is 402-233-1022. His office is in Eagle Grove.

Mike Blackley
Mgr Industry and Public Projects

1400 Douglas Street - Stop 0910
Omaha, NE 68179
(402) 544-2029
mgblackl@up.com

Damion Pregitzer
<dpregitzer@city.ames.ia.us>

To MGBLACKL@up.com

06/08/2009 02:46

cc PM

Subject Folder No. 2527-90 - Crossing DOT
197073F - Milepost 242

Hey Mike!

I just wanted to see if the surfacing crossing crews have solidified their schedules for widening the Bloomington Road crossing. I remember last time we spoke that it looked like they'd be here either this week or the week of June 15th, but had not yet confirmed the dates. If you could let me know what their plans are I would greatly appreciate it!

As always, thanks your help!

(Embedded image moved to file: pic13180.gif)Damion Pregitzer, Traffic Engineer | Public Works Department | City Hall, 515 Clark Avenue | Ames, IA 50010-0811 | (P) 515.239.5275 | (F) 515.239.5404 | (E) dpregitzer@city.ames.ia.us

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RETURN TO: Ames City Clerk – Box 811 – Ames Iowa 50010 (ENV)

**SECOND AMENDMENT TO AN
AGREEMENT FOR PUBLIC IMPROVEMENTS
(BLOOMINGTON ROAD EXPANSION)**

THIS AGREEMENT is made and entered into effective this 23rd day of June, 2009, by and between THE CITY OF AMES, IOWA (“CITY”) and UTHE DEVELOPMENT CO., L.L.C. (“DEVELOPER”), it’s successors and assigns, to AMEND the one certain agreement between the aforesaid parties dated the 23rd of June, 2009, and recorded as instrument number 2008-00007214 in the office of the Story County Recorder (the Agreement for Public Improvements – Bloomington Road Expansion).

WHEREEAS, the Agreement for Public Improvements – Bloomington Road Expansion requires Developer to complete Off-Site Improvements before City issues occupancy permits for any improvements made within the Northridge Heights Subdivision Twelfth Addition, Ames, Story County, Iowa; and

WHEREAS, City and Developer desire to except Lots 5, 6, 7 and 8 of Northridge Heights Subdivision Twelfth Addition, Ames, Story County, Iowa, from that requirement in order to allow occupancy permits to issue for those Lots prior to such time as Off-Site Improvements can be completed.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt of which is hereby acknowledged, the City and Developer agree that the aforesaid Agreement for Public Improvements – Bloomington Road Expansion shall be and is hereby amended as follows:

1. The fifth unnumbered paragraph on page two of the agreement relating to the withholding of occupancy permits for an improvements made within Northridge Heights Subdivision Twelfth Addition, Ames, Story County, Iowa until such time as the Off-Site improvements have been completed, is amended by adding the following:

“Notwithstanding the preceding, City may issue occupancy permits for improvements made within Lots 5, 6, 7 and 8 of Northridge Heights Subdivision Twelfth Addition, Ames, Story County, Iowa, prior to such time as the Off-Site Improvements have been completed.”

2. In all other respects, the said Agreement for Public Improvements – Bloomington Road Expansion shall remain unchanged.


DATED this _____ day of _____, 2009.

UTHE DEVELOPMENT CO., L.L.C.

CITY OF AMES, IOWA

By: 
Robert K Friedrich, Jr.

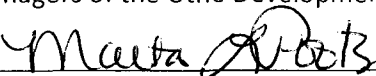
By: _____
Ann H. Campbell, Mayor

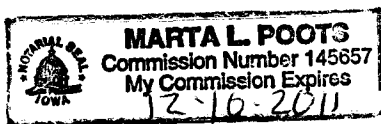
By: 
Charles E. Winkleblack

By: _____
Diane R. Voss, City Clerk

STATE OF IOWA, STORY COUNTY, ss:

This instrument was acknowledged before me on June 19, 2009, by Robert K. Friedrich, Jr. and Charles E. Winkleblack as Managers of the Uthe Development Co., L.L.C.





STATE OF IOWA, COUNTY OF STORY, ss:

On this _____ day of Mark, 2009, before me, the undersigned, a Notary Public in and for said State, personally appeared Ann H. Cambell, Mayor, and Diane R. Voss, City Clerk, to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.