

COUNCIL ACTION FORM

**SUBJECT: NORTH GRAND MALL PARTNERS, LLC REQUEST FOR EXTENSION
 TO PARKING LOT IMPROVEMENTS**

BACKGROUND:

In July 2007, the City Council approved a final plat for Streets of North Grand. This was a three-lot commercial subdivision encompassing the North Grand Mall. The subdivision extends from 24th Street to 30th Street and from Grand Avenue to Ferndale Avenue. Lot 1 encompasses the southern part of the mall; Lot 2 extends from the former Sears northward; and Lot 3 is the site of the new Walgreen's. There is an island within Lot 1 that is not a part of the plat, as well as lots to the southwest and southeast that are also not a part of the plat. There is also a remnant Outlot lying west of Ferndale Avenue. The final plat for Streets of North Grand Mall was approved by the City Council on July 10, 2007 and recorded on July 18, 2007.

A development agreement was approved along with the final plat. That agreement creates certain responsibilities for the mall owner. Among these are reconfiguring the parking area on Lot 2 "to comply with the minimum off-street parking standards in the Ames Municipal Code in a manner consistent with an approved site plan and with the parking lots on Lots 1 and 3 not later than one year from the recording of the final plat." The agreement expects the mall to provide the number and size of parking spaces necessary to satisfy the requirements of the zoning ordinance.

A further responsibility requires the owner to make necessary improvements to bring the building up to code regarding fire resistance ratings. This involves the installation of a roll-up fire door (or similar fire resistant barrier) between the former Sears store and the rest of the mall building. This was required because the newly-platted lots resulted in property lines extending through buildings. The improvements were to have been completed by July 18, 2008.

The agreement identifies the remedies that the City can seek if the owner fails to make the necessary improvements. Until the parking lot improvements are made, the City can withhold occupancy permits for any construction within the subdivision, except for development on Lot 3 (the Walgreens) and except for any renovated spaces within the mall provided no new parking was required. The owner also provided a bond to the City in an amount to cover the parking lot reconfiguration and fire resistance improvements (\$478,638.00). The City has the option of drawing upon the bond and having the work done by the City.

The agreement allows for the owner, if he fails to make the parking lot improvements, to ask for a one-year extension to reconfigure the parking lot “If, due to circumstances beyond the control of the Owner such reconfiguration cannot be completed in a timely fashion...” Such a request was received last year; and the City Council did grant a one-year extension of the requirements of the development agreement on July 15, 2008. This extension required the reconfiguration of the parking lot on Lot 2 and the installation of the fire resistance improvements to be completed by July 18, 2009.

The owner has made no progress on the parking lot configuration or on the fire resistance improvements and is requesting an additional one-year extension (see attached letter).

Staff has conferred with the Building Official who does not support an additional delay in the installation of the fire resistance improvements. The modest cost (estimated in 2007 to be \$17,900 for a roll-down fire door—much less for a stationary wall) would help to ensure a greater level of life safety and compliance with a fire standard that we expect of commercial buildings within the remainder of the City.

The Municipal Engineer states that, due to increased costs of construction (especially asphalt), the financial guarantee for the parking lot should be raised an additional \$7,050 over the existing bonded amount of \$478,638. The engineer did not evaluate the quantities specified in the estimate supplied by Weiss Builders, only the unit costs.

The City Attorney has indicated that, while the original development agreement had a provision that “...the Owner may request and the City may grant extension of the one year time period,” that provision applied to the parking lot improvements paragraph of the agreement and not to the fire resistance requirement. While granting that extension in 2008 did not violate the agreement, it certainly is not a precedent for further extension of the agreement as it applies to the fire resistance requirement.

ALTERNATIVES:

1. The City Council can approve the request from North Grand Mall Partners, LLC to grant one year (until July 18, 2010) to reconfigure the parking lot on Lot 2; but require the Owner to install the fire resistance improvements by August 31, 2009 to comply with the terms of the development agreement. Under this alternative, the City would continue to withhold occupancy permits, subject to the exceptions in the current agreement, until the improvements are completed. If the fire resistance improvements are not installed, the City may then draw upon the bond and complete the work itself.
2. The City Council can approve the resolution granting North Grand Mall Partners, LLC one year (until July 18, 2010) to reconfigure the parking lot on Lot 2 and install the fire resistance improvements to comply with the terms of the development agreement of July 10, 2007. In this instance, the City will continue to withhold occupancy permits, subject to the exceptions in the current agreement, until the improvements are completed.

3. The City Council can deny the resolution granting North Grand Mall Partners, LLC an additional year to comply with the terms of the development agreement and direct staff to draw upon the bond and complete the improvements.
4. The City Council can refer this back to staff for additional analysis and options.

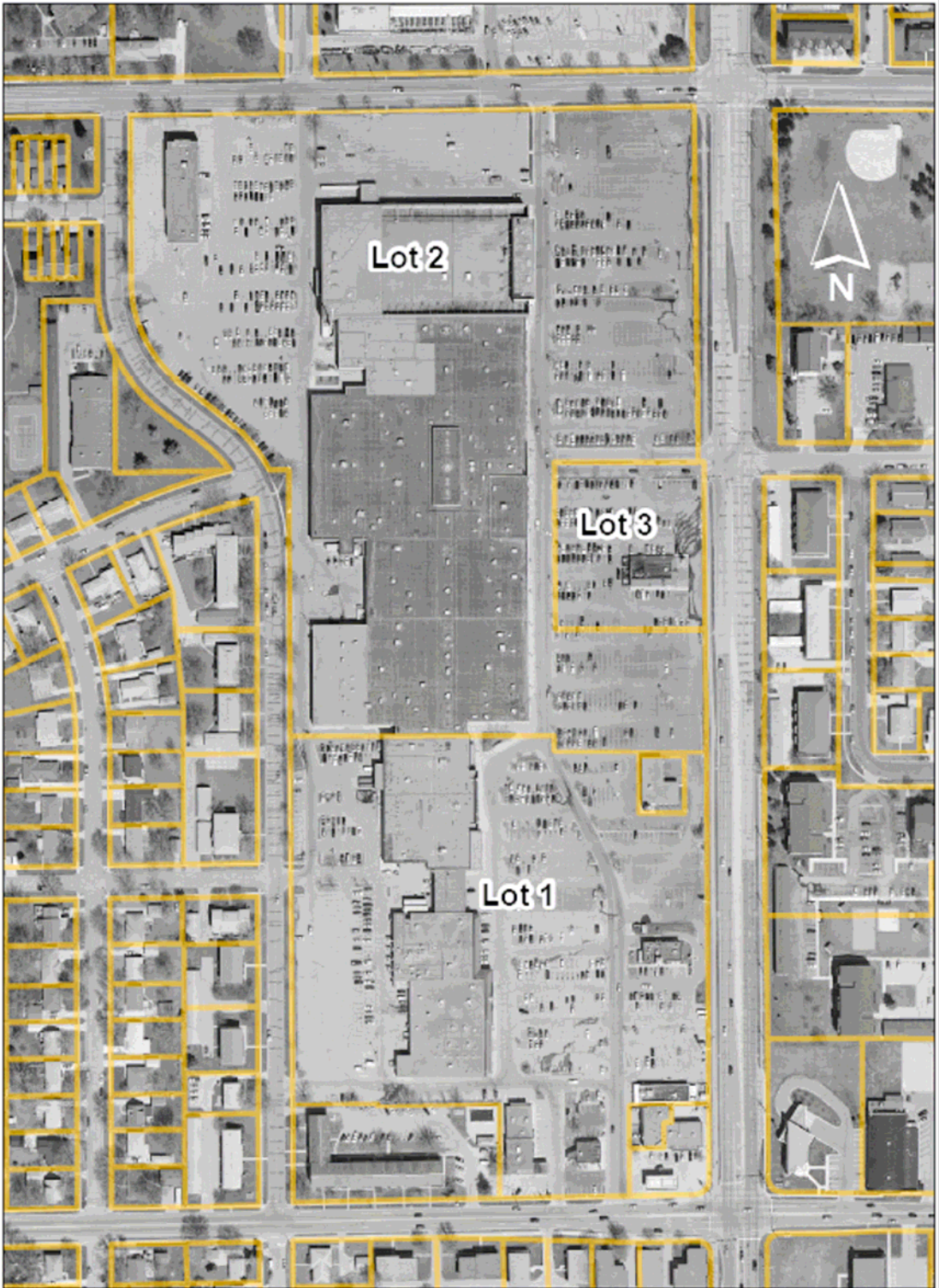
MANAGER'S RECOMMENDED ACTION:

The City and the mall owners entered into an agreement to allow the mall to meet certain improvements necessitated by the replatting of the mall site. Those improvements, while required at the time of replatting, were deferred, giving the mall a year to make those improvements. In July, 2008 the City Council extended that agreement one additional year at the request of the owners, who cited circumstances beyond their control. Also, at the request of the mall owners who sought a zoning ordinance text amendment, the City Council amended the parking requirements to allow remote parking agreements in the PRC Planned Regional Commercial zoning district. This was intended to accommodate future restaurants on possible building sites on the periphery of the mall site.

The City has previously accommodated the requests of the mall owners on multiple occasions, and should be willing to do so again to some degree. However, since the former Sears store now sits vacant with no fire resistance between it and the rest of the mall, including the theaters, the prudent course of action is to minimize fire risks by installing the fire resistance improvements. This action is required by the International Building Code adopted by the City of Ames.

Therefore, it is the City Manager's recommendation that the City Council act in accordance with Alternative #1, granting North Grand Mall Partners, LLC an additional year to July 18, 2010 to reconfigure the parking lot of Lot 2. The fire resistance improvements, however, should be installed within six weeks (by August 31, 2009) to comply with the terms of the developer's agreement dated July 10, 2007. It should be noted that the staff has worked with the mall owner to identify a less costly option for installing fire resistant improvements to separate the structure.

If the City Council selects Alternative #1, no additional financial security is needed by the mall owners, despite the increase costs of paving materials. The estimated increase in costs of asphalt will be offset by no longer needing to cover the estimated costs of the fire resistance improvements which will have been installed.





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June 10, 2009

City of Ames
515 Clark Avenue
Ames, IA 50010

Re: AN AGREEMENT PERTAINING TO THE SUBDIVISION PLATTING AND DEVELOPMENT OF THE LAND IN THE CITY OF AMES CALLED STREETS OF NORTH GRAND SUBDIVISION DATED JULY 10, 2007, BY AND BETWEEN THE CITY OF AMES, IOWA ("CITY") AND NORTH GRAND MALL PARTNERS, LLC, ("OWNER")

To Members of Council:

As you are aware, the parking lot reconfiguration outlined in the captioned agreement was made in conjunction with the re-platting of the existing North Grand Mall which redistributed the number of parking spaces on each tax parcel.

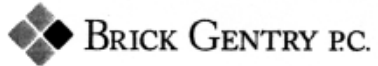
When looked at as a whole, the overall number of parking spaces among the tax parcels far exceeds code requirements; by 492 spaces to be exact. An existing cross easement agreement permits the free flow of traffic and parking throughout the Shopping Center and recent text amendments to the Ames Municipal Code regarding remote parking requirements could further recognize such cross parking.

At the City Council Meeting of July 15, 2008, the Owners formally requested and were granted an extension of time to comply with reconfiguring the parking lot and the addition of a fire door due to conditions beyond their control. Unfortunately, the volatile and stresses economy is continuing to add downward pressure on lenders and retailers alike, and therefore Owner must request an additional extension until July 18, 2010, when such endeavors could once again be viable. Please be aware that the requested extension was anticipated in the agreement and would not burden the City or public in any manner whatsoever.

RECEIVED
JUN 11 2009
CITY OF AMES, IOWA
DEPT. OF PLANNING & HOUSING

Brick, Gentry, Bowers, Swartz & Lewis P.C.


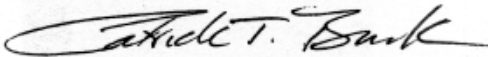
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If you have any questions on this matter, please do not hesitate to contact me.

Very truly yours,

Patrick T. Burk
On behalf of North Grand Mall Partners,
LLC and Grand Center Partners, LLC

PTB/kkh

cc: Steve Schainker
Steve Osguthorpe