

Staff Report

**STATUS OF NEGOTIATIONS WITH ROSE PRAIRIE
DEVELOPERS REGARDING A PRE-ANNEXATION
AGREEMENT**

July 13, 2010

On February 10, 2009 the City Council denied a request to approve the proposed Rose Prairie subdivision. Although the subdivision was to be built outside of the city limits, in accordance with State law the City Council retains approval power for this type of request, since it is within our two-mile planning area.

As a result of this denial of the subdivision, the developer of Rose Prairie, Story County Land, L.C., initiated legal action against the City of Ames to have the Court overturn this decision and allow this residential subdivision to be built outside of our city limits.

On June 9, 2009 the City Council directed staff to “engage in negotiations that may lead to a settlement in the case of Story County Land, L.C. v. the City of Ames.” As is the case with negotiations of this type, there is a hope that the threat of a possible loss in the court system will influence each party to compromise their initial positions so that a settlement can be reached. What results is something less than either party had hoped for. The results of the good faith negotiations by both parties reflect this type of outcome.

The purpose of this report is 1) to brief the City Council on the status of these negotiations, 2) to determine whether the City Council is supportive of the unusual features of the proposed settlement, and 3) to identify issues at impasse that will need Council direction in order to proceed further with our negotiations. What is ultimately contemplated is a mutually agreed upon Pre-Annexation Agreement that will result in the dropping of the legal challenge by Story County Land, L.C.

Because of the complexity of the issues reflected in this agreement, the Council is not being asked to approve the agreement in final form on July 13, 2010. However, in order for both parties to adequately prepare for the pending legal case that has been set for August 13, 2010, the Council needs to make a final decision regarding an agreement at your meeting on July 20, 2010. Therefore, it should be noted that there is a very short window of opportunity to make amendments to this agreement should you so desire. In addition, the City Council has the option to reject this proposed agreement if you believe it contains provisions that are unacceptable. If this is the case, the staff stands ready to defend against the legal challenge by Story County Land, L.C.

These negotiations have been very challenging. Understandably, the Developer is hoping to identify all of the potential costs related to the Rose Prairie subdivision and include these responsibilities in a Pre-Annexation Agreement. The staff has been concerned that it is premature to identify all of the specific requirements or

responsibilities prior to the submittal of the preliminary plat. This is typically when a development agreement containing this level of detail is created. Since it appears that the Rose Prairie development might not begin for three to five years, we have a concern that the Council's requirements and policies might change by that time.

Listed below is a summary of the major highlights of the proposed Pre-Annexation Agreement. Most of the responsibilities not reflected below are consistent with the current policies of the City.

CONDITIONS PRECEDENT

The Developer is requesting that the agreement stipulate that if the Council does not 1) amend the LUPP to designate the site as a Urban Service/Urban Residential Area (which has already been accomplished), 2) subdivide the site as requested by the Developer, 3) accept the voluntary annexation of the site, 4) rezone the site to Suburban residential Low-Density, 5) approve the preliminary plat for the site, and 6) approve the final plat for the site, then upon consent of all of the owners of the site, the property will de-annexed from the City and the agreement will become null and void.

Needless to say, this is a very unusual provision. Typically, these approvals come in the progression outlined above, but the Developer is not granted the ability to return to the status quo outside of the City if any one of the approval steps is not granted as the Developer wishes.

STREET IMPROVEMENTS

- Like previous agreements, the Developer will be responsible for constructing all streets within the subdivision on right-of-way dedicated to the City without charge.
- The Developer will contribute to the City at the time of final platting \$185,000 for their share of off-site traffic improvements identified in a previous traffic study. These improvements include the future installation of a traffic signal at Hyde and Bloomington Road, and an additional turning lane at Grand and Bloomington Road.
- What complicates this project is the need to improve Grant Avenue as a result of increased traffic anticipated from development. In order to secure a settlement and assure that improvements to Grant Avenue are completed at one time, the staff has recommended that the City take the lead and construct the Grant Avenue improvements from Bloomington Road to 190th Street, with the associated costs being paid back through a special assessment process. However, in order for the assessment strategy to be successful, the other two developer property owners (Hunziker and Friedrich/Johansen) along the Grant Avenue corridor must, before Rose Prairie requests annexation, sign pre-annexation agreements with the City to assure their commitment to various issues, including the special assessment proposal.

If support can be secured from all three developers, then the associated costs for the Grant Avenue street improvements will be assessed 37% to Rose Prairie, 23% to Hunziker, 23% to the City, and 17% to Friedrich/Johansen. In this scenario, Rose Prairie is contributing based on the front footage of their property along Grant Avenue, as well as the Sturges property. Friedrich/Johansen, Hunziker, and the City will be paying based on their front footage plus pro-rata shares of the cost of the Eness, Eness/Taylor, Frame, Gregg/Schwery, and Hamblin properties. Therefore, under this proposal, these property owners will have no responsibility to pay for the street improvements, if the three developers and City can agree on this concept.

- Under the assessment scenario, the Grant Avenue improvements will not be made any sooner than three years after the agreement is finalized. After this period of time, the City can initiate the improvement and the Developer will be bound to make assessment payments even if the Rose Prairie subdivision is not started.
- **It should be noted the estimated cost to the City for this scenario could be as much as \$700,000 which is not currently included in our Capital Improvement Plan. At first, this final participation might appear to be in contrast to your directive not to offer incentives to the developer. However, given the fact that the City (Hayden Park) owns a substantial amount of land adjacent to Grant Avenue, it seemed appropriate that we pay for a share of the improvements in order to secure an agreement.**

Impasse #1

- **We have reached an impasse about what to do if all three of the developers fail to enter into separate pre-annexation agreements with the City thereby negating the use of a special assessment. The staff's position is that the Rose Prairie Developer would then be required to deposit with the City cash in the amount equal to the associated costs estimated to construct one lane of Grant Avenue adjacent to their property as well as the Sturges property. This financial obligation would be required when the initial final plat for the overall subdivision is approved by the Council.**

The Developer, on the other hand, wants to meet this financial obligation by providing to the City a pro-rata share of their overall obligation as each lot is sold. Our standard practice, suggested above, it what leads to piecemeal construction and delays in completing a roadway. Their position would serve to further prolong the completion of the total road to an unacceptable level.

WATER AND SEWER IMPROVEMENTS

- Typically, developers will extend water and sewer lines to the extent of their property thereby making it available for the adjacent developers to hook onto and extend utilities throughout their properties. This is how orderly extension of utilities is accomplished. **The Rose Prairie subdivision is not immediately adjacent to water**

and sewer lines and a substantial cost must be incurred to bring these two utilities up from the south to service the proposed subdivision.

Rather than the City incurring these costs, the Developer has agreed to upfront the cost to construct the water and sewer lines from south of Bloomington Road north to 190th Street. This expenditure is conditioned on the City establishing water and sewer benefit districts so that the Developer can be reimbursed through hookup fees from other developers who take advantage of these lines in the future. Furthermore, any easements needed for these utility lines will be granted to the City at no charge. This arrangement is consistent with the Council's direction when the LUPP was amended to allow growth to the north that no incentives be offered to developers in the area.

- The City will be responsible to obtain easements for the water and sewer lines as they cross properties other than the Rose Prairie development

Concern Expressed

- While this appears to be a good financial arrangement for the City, it does pose potential problems for the developers to the north of Rose Prairie and to the City. Since there is no deadline for accomplishing the utility extensions, developers to the north will be dependent upon the progress of Rose Prairie to have utilities extended to their properties. Provisions have been made for easements through Rose Prairie so that Friedrich/Johansen can pay to extend utilities to their property to the north if they desire to move more quickly than Rose Prairie develops. However, they have expressed their concern for this arrangement and would prefer that the City up-fronts the costs to extend the water and sewer lines to serve all properties along the Grant Avenue corridor and repay the City through hookup fees.

The City Council should note that annexation of all of the properties along Grant Avenue between Bloomington Road and 190th will likely require a hearing before the State's City Development Board. Prior to granting an annexation request, the City must articulate a plan for providing services to the area within three years. Because our recommended plan to extend water and sewer utilities is reliant on progress made by the Developers, it is not certain how the Board will react to this arrangement.

PLATTING PROCESS

Impasse #2

- The staff would prefer that the Developer initiate approval of the subdivision as soon as possible. The process to begin this effort involves platting the site. With final platting comes the requirement to either begin construction or expend funds to secure certain responsibilities made in a developer agreement. Therefore, we have attempted to include a deadline for initiating final plat approval.

The Developer has resisted being held to any specific timeframe for moving ahead. Therefore, while the City has made an effort to settle the legal challenge by

supporting the Conditions Precedent that protects the Developer with de-annexation should the City not satisfy all of the requests for approvals, the City is not assured the Rose Prairie development will move ahead in a timely manner even after all of the concessions have been made.

SIDEWALKS AND SHARED USE PATHS

- The shared use path to serve this area will come from the south along the east side of the railroad tracks, and not along Grant Avenue. The Developer will be responsible to construct this path and provide the easement at no cost to the City.

PHOSPHATE FREE FERTILIZER

- In an effort to protect the Hayden watershed, the Developer will include a covenant on all lots that prohibits the application of any fertilizer that contains phosphate.

SPRINKLER SYSTEMS

- The need to add a fourth fire station to provide emergency service to this north growth area will be mitigated by the Developer including a covenant on all lots that will require all residential buildings to include a fire sprinkler system in accordance with the National Fire Protection Standard 13 D and, if applicable, the City's Building code.

RURAL WATER

- Since the proposed subdivision is within the service territory of the Xenia rural water districts, the Developer be required to reimburse the City for any costs required to "buy out" Xenia's interest in the area. This requirement is consistent with our other development agreements.

It is important to emphasize that there might be other issues at impasse once the specific language for an agreement is negotiated.