

Staff Report

South Fork Subdivision Development Agreement

September 28, 2010

BACKGROUND:

Recently, the developers of the South Fork Subdivision, which is located approximately south of the West Hy-Vee Grocery Store and north of the Ames Middle School (see attachment), contacted staff to discuss a possible modification to a Developer's Agreement that was executed in August 2001.

The current Developer's Agreement establishes triggers for off-site intersection improvements at two locations along Lincoln Way: 1) left-turn lanes at Franklin Avenue and 2) left-turn lanes and a traffic signal at Dotson Drive. At each location, the developer is ultimately responsible for 50 percent of the actual cost of construction only, whereas the City will pay for the remaining 50 percent, as well as any engineering design and right-of-way costs as needed to complete the project. The requirement to initiate the intersection improvements is tied to the level of service at the intersections or further development in the subdivision.

The modification being sought deals with the additional requirement that the developer provide security to the City for the completion of the intersection work at Franklin and Lincoln Way as a condition of approval of the final plat for Phase Two. Ever since the final plat was approved by the City, the developer has supplied a Letter of Credit to secure the promise to complete the intersection improvement. The existing Letter of Credit in the amount of \$350,000 is set to expire as of October 1, 2010. Neither the bank nor the developers wished to renew this security, therefore, they are proposing an amendment to the Developer's Agreement. The developer would prefer to modify the agreement so that the security would not be required until any development occurs east of Dotson Drive. Since the developer has no intention to build in this area in the foreseeable future, a modification of the agreement would save him the additional cost of providing a Letter of Credit.

On June 23, 2010, an updated traffic study was conducted by Bolton & Menk Inc., the consulting engineers for the South Fork Developers, to assess the current state of traffic operations in and around the subdivision. The study confirmed that the current LOS at the Lincoln Way and Franklin Avenue intersection is C or better for all periods of the day. The study did indicate it is possible within the next twenty-five years that a reduced level of service will require the construction of intersection improvements even if there is no further development east of Dotson.

STAFF COMMENTS:

There are three **alternatives** the City Council might consider regarding this issue.

The **first alternative** is for the City Council to keep the Developer's Agreement in its current state, thereby continuing to require the developer to provide a Letter of Credit to secure his promise to share in the cost of the intersection improvements at Lincoln Way and Franklin when needed. Apparently, it is not possible for the developer to have the Letter of Credit extended for another year, and it will be even more difficult as the need to make the improvements are delayed for many years into the future. It appears that if no change is made to the agreement, the City will have to cash in the Letter of Credit when it expires in the near future.

The **second alternative** is for the Council to modify the Developer's Agreement to allow the developer to submit a Letter of Credit to the City only after any further development occurs in the subdivision. This is the preferred option for the developer. However, without security in place, it will put the City in greater risk having to seek payment from the developer, or the developer's successor in ownership of the parcels, at an undetermined time in the future when the project is ready to be constructed.

A **third alternative** would be to keep the current Developer's Agreement in place, but to accept security in a form other than the current letter of credit. The developer has offered to grant the City a security interest in two undeveloped parcels instead of renewing the Letter of Credit. In order to accomplish this alternative, additional time is needed to make sure there is sufficient unencumbered value in this property to provide sufficient security for the City.

It does not seem advisable to do away with any form of security related to this promise to share in the cost of intersection improvements at Lincoln Way and Franklin. However, because the improvements at this intersection are now projected to be required much later than first anticipated, it might impractical for the developer to secure a Letter of Credit for the next twenty years. Therefore, it is the recommendation of the City Manager that the City Council support Alternative #3 and attempt to work with the developer to modify the existing agreement to secure a different form of security. In the interim, the developer will have to make sure the existing Letter of Credit is extended for an additional one to two months to allow staff time to determine if this option is viable. It is important to note that the agreement will still require security to the City at the time the developer proceeds to build out the subdivision further.