

COUNCIL ACTION FORM

SUBJECT: **APPROVAL OF PRELIMINARY PLAT FOR DEERY SUBDIVISION**

BACKGROUND:

Project Description. Pyle Land L.L.C. is requesting approval of a Preliminary Plat for Deery Subdivision, located at 1400, 1500, 1598 and 1698 Southeast 16th Street. The proposed subdivision includes 24.02 acres of land divided into four lots. Lot 1 includes 6.37 acres, Lot 2 has 2.77 acres, Lot 3 is 3.34 acres, and Outlot A, which is reserved for floodway, includes 11.10 acres. (See attached Preliminary Plat for Deery Subdivision).

The purpose of this subdivision is to reconfigure four existing lots into the four proposed lots in order to (a) accommodate the development of an automobile dealership on proposed Lot 1 and (b) establish Lots 2 and 3 for future commercial development. The developer has separately submitted a Minor Site Development Plan for the development of the dealership on proposed Lot 1. This site plan can be approved by City staff once the City Council approves the Final Plat for Deery Subdivision.

Use and Designation of Surrounding Properties. The proposed subdivision is bordered on the north by S.E. 16th Street with undeveloped land zoned as "HOC" abutting the north side of the street, the Skunk River flood plain to the west, the U.S. Highway 30 on-ramp to the south, and South Dayton Avenue to the east with undeveloped "HOC" land abutting the east side of the street.

Applicable Law. Laws pertinent to the City Council's decision on the proposal are described in "***Attachment A.***"

Utilities, Easements, and Sidewalks. Public improvements available to serve the proposed subdivision are described as follows:

Water. An 8-inch water main exists in the S.E. 16th Street right-of-way abutting the north boundary of the subdivision.

Sanitary Sewer. An 8-inch sanitary sewer main exists in the S.E. 16th Street right-of-way abutting the north boundary of the subdivision.

Storm Sewer. The storm water plan for the subdivision includes a network of underground pipes to convey the storm water for discharge to a detention basin on Outlot A at the west end of the subdivision. The Public Works Department has reviewed the proposed storm water management plan for the subdivision and found it to be in conformance with City standards.

In conjunction with City Council action on the Preliminary Plat, it is necessary that the attached 'Floating Future Stormwater Drainage Easement' be accepted by the City Council. The floating easement remains in effect until the current owner or any

future owner of Lot 2 provides a storm sewer easement as needed for conveyance of storm water from Lot 3 across Lot 2, prior to site plan approval of Lot 2, and prior to issuance of occupancy permits on Lot 3. This future easement on Lot 2, along with a defined stormwater easement on Lot 1, provides a conveyance route to the stormwater detention area on Outlot A.

Electric. The City of Ames will provide electric service to the subdivision from the S.E. 16th Street right-of-way, and via public utility easements (10 feet wide) following the lot line between proposed Lots 1 and 2.

Public Sidewalk. Installation of public sidewalk by the developer is required along the entire street frontage of S.E. 16th Street of this proposed subdivision. The sidewalk is to be constructed of concrete and be a minimum of four feet wide. [See Section 23.403(14(a))]

Sidewalks are required along each side of any street within commercially zoned areas. A multi-use path, 8 feet wide, exists on the north side of S.E. 16th Street and extends the entire distance between Dayton Avenue and Duff Avenue. **The developer proposes to construct sidewalk, five feet wide, along the street frontage of Lots 1, 2 and 3. A letter requesting that the City Council grant a waiver of the requirement for sidewalk along Outlot A, a distance of approximately 1,217 feet, has been received from the developer and is included in this report as “Attachment B.”**

The Municipal Code, Section 23.103(1), allows the granting of waivers from the subdivision requirements provided the City Council finds that one of the two following criteria is met:

1. Strict compliance with the requirements of the regulations would result in extraordinary hardship to the applicant, or
2. It would prove inconsistent with the purpose of the regulations because of unusual topography or other conditions.

According to the Municipal Code, if the City Council waives or modifies any one of the subdivision regulations, it must find that “substantial justice [has been] done and the public interest [will be] secured,” and that “such modification or waiver shall not have the effect of nullifying the intent and purpose of the regulations.”

If the City Council determines that one, or both, of the two criteria listed above have been met, then the regulation(s) can be completely waived or modified by the establishment of certain conditions.

Reasons given by the applicant for the granting of a waiver from sidewalk requirements along Outlot A are described as follows:

- A portion of Outlot A’s frontage on S.E. 16th Street is in the river and river Bank;
- The remainder of Outlot A does not have access to the bridge crossing for

pedestrians over the Skunk River as the pedestrian crossing is on the north side of S.E. 16th Street;

- If a sidewalk were installed along Outlot A, pedestrians would have to cross S.E. 16th Street at the bridge in order to use the pedestrian bridge crossing on the other side of the street;
- The applicant would prefer to have pedestrians cross S.E. 16th Street at a safer location, which is the east end of Outlot A (or the west end of Lot 1) than crossing S.E. 16th Street at the bridge. The site distance is better at this location than placement of a crossing adjacent to the bridge.

To approve the Preliminary Plat, the developer's request for a waiver from the requirement to extend sidewalk along the frontage of Outlot A will require City Council approval. Without granting of the waiver for sidewalk, the Developer will be required to construct sidewalk along the entire frontage of Deery Subdivision along S.E. 16th Street.

Standard procedures in the subdivision code for sidewalks require installation of sidewalks prior to Final Plat approval unless the Council approves deferral of installation subject to the provision of financial security. However, standard practice has been to defer sidewalk installation under the provisions of a sidewalk agreement that requires sidewalk installation prior to occupancy of each fronting lot. That allows for construction activity to occur between the lot and fronting street without damage to newly installed sidewalks. The City Council will have to determine, as part of its Preliminary Plat decision, if installation will be required prior to Final Plat approval, or if it should be deferred under either a financial guarantee or occupancy provision in the developer's agreement.

FINDINGS OF FACT:

Staff makes the following findings of facts:

1. The site of the proposed Deery Preliminary Plat is designated as “Highway-Oriented Commercial” on the Land Use Policy Plan Map.
2. The Preliminary Plat shows that the three buildable lots have frontages that exceed 200 feet for each lot. The minimum standard for lot frontage in “HOC” zone is 50 feet.
3. Because the stormwater plan for the re-subdivision conveys stormwater to Outlot A across intervening lots, easements will be necessary to facilitate stormwater conveyance across these lots.
4. Sidewalk is not proposed along the entire frontage of the proposed subdivision along S.E. 16th Street. The applicant has submitted a request (***see Attachment B***) to waive the sidewalk requirements along Outlot A and has addressed the waiver criteria. Facts pertinent to this request include:
 - a. Outlot A will have no development to which access is necessary from a public sidewalk.
 - b. Requiring sidewalks along Outlot A will lead the sidewalk to the S.E. 16th Street bridge, which has no room for pedestrian crossing on the south side of the street.
 - c. The City engineer has determined that, because of the crown in the bridge deck, visibility for pedestrians attempting to cross the bridge on the south side will be limited, and therefore hazardous.
 - d. Without a continuous sidewalk on the south side of S.E. 16th Street, it is necessary to facilitate pedestrian crossings in safe locations to access the share use path on the north side of S.E. 16th Street. The City Engineer has determined that crossing the street at the western edge of Lot 1’s frontage is a safe location, and will require tapered sidewalk approaches for ADA access on both sides of So. 16th Street at this location.
5. The Public Works Department has reviewed the stormwater management plan for the proposed subdivision and found it to be adequate, provided that provisions are made for conveyance across each lot as anticipated in the stormwater plan.
6. The Public Works Department has reviewed the traffic impact of the proposed subdivision and found that the streets serving the subdivision can accommodate the traffic generated by development of the lots in the Deery Subdivision.

CONCLUSIONS:

Based upon the findings of fact, as described above, staff has the following conclusions:

1. The proposed subdivision will facilitate uses consistent with the Land Use Policy Plan and the associated Land Use Policy Plan map designation of the site. Staff is not aware of any other inconsistencies with the Land Use Policy Plan; therefore, staff concludes that *Code of Iowa* Chapter 354, Section 8 has been satisfied.
2. The proposed subdivision complies with the minimum frontage standards of the *Ames Municipal Code*, Section 29.804(3).
3. The proposed subdivision will meet the relevant and applicable design standards in Section 23.302(6)(a) of the *Municipal Code*, provided that (a) an agreement for a floating storm water drainage easement from Lot 3 across Lot 2 is approved by the City Council in conjunction with approval of the Preliminary Plat; (b) the City Council grants the request for waiver of the requirement for sidewalk along the frontage of proposed "Outlot A"; and, (c) easements for all public utilities identified on the plat are included as part of the Final Plat approval for Deery Subdivision.
4. The requested waiver is consistent with criteria necessary for the granting of a waiver. Specifically: a) strict compliance with the requirements of the regulations would result in extraordinary hardship to the applicant, and b) it would prove inconsistent with the purpose of the regulations because of unusual topography or other conditions, provided that the developer construct a handicap accessible ramp at the east end of Outlot A between the sidewalk and the street pavement, and directly across the street in the same location to provide access to the existing multi-use path.

Recommendation of the Planning & Zoning Commission. At its meeting of September 5, 2012, with a vote of 6-0, the Planning and Zoning Commission recommended approval of the Preliminary Plat for Deery Subdivision with the stipulations as stated by staff.

ALTERNATIVES:

1. The City Council can approve the Preliminary Plat for Deery Subdivision based upon the findings of facts and conclusions in this report, conditioned on:
 - a) The preparation of easement documents for all public utilities in the proposed subdivision, for submittal with the Final Plat.
 - b) The acceptance of the attached "Floating Future Stormwater Drainage Easement", ***in conjunction with approval of the Preliminary Plat for Deery Subdivision.***
 - c) Approval of a request for a waiver from the requirement for construction of a sidewalk on the south side of the right-of-way for S.E. 16th Street next to proposed "Outlot A", as specified in Section 23.403(14)(a) of the *Municipal Code*, ***in conjunction with approval of the Preliminary Plat for Deery Subdivision.***

- d) The required sidewalk along the frontages of Lots 1, 2, and 3 shall be installed per the standard sidewalk agreement submitted with the Final Plat Application. This agreement will require sidewalk construction prior to occupancy of structures on each lot as they develop.
 - e) The construction of handicap ramps facilitating pedestrian crossing from the sidewalk on the south side of S.E. 16th Street to the multi-use path on the north side of the street at the end boundary of Outlot A, at the time of construction of the sidewalk along the street frontage of Lot 1. This includes construction of handicap ramps by the developer on both sides of S.E. 16th Street.
2. The City Council can approve the Preliminary Plat for Deery Subdivision, as illustrated on Attachment B, subject to the same findings, conclusions and conditions of Alternative 1, except that it can deny the requested waiver of sidewalk requirements along Outlot A and require either installation of, or financial security for, sidewalks along Outlot A prior to final plat approval. Financial security would be of a type and amount approved by the Public Works Director.
 3. If the City Council finds that the proposed Preliminary Plat does not conform to all adopted standards and applicable law pertaining to subdivisions, the City Council can deny the Preliminary Plat for Deery Subdivision.
 4. Action on this request can be postponed and referred back to City staff and/or the applicant for additional information to be provided at a Planning and Zoning Commission meeting before October 5, 2012.

MANAGER'S RECOMMENDED ACTION:

The "Floating Future Stormwater Drainage Easement Agreement" addresses the need to plan for the conveyance of stormwater from Lot 3 across Lot 2, until such time as a site plan is approved for either lot.

The applicant has demonstrated that criteria for the granting of a waiver from the requirement for a sidewalk along the street frontage of Outlot A has been met. Strict compliance with the requirements of the regulations would result in extraordinary hardship to the applicant, and it would prove inconsistent with the purpose of the regulations because of unusual topography or other conditions to require sidewalk in this location.

Given the limitations for seeing oncoming eastbound traffic crossing the bridge from the south side of the street next to the bridge, it is necessary that the street crossing be located further to the east, at the property line between Outlot A and Lot 1, to provide adequate site distance to the west for the safety of pedestrians crossing the street to reach the multi-use path on the other side. The need to cross the street at this location provides justification for not installing sidewalk along Outlot A.

Therefore, it is the recommendation of the City Manager that the City Council act in accordance with Alternative No. 1, which is to approve the Preliminary Plat for Deery Subdivision, based upon the facts and conclusions stated herein, and conditioned on:

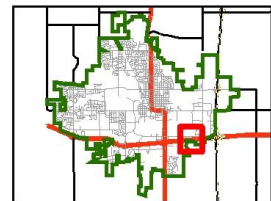
- a) The preparation of easement documents for all public utilities in the proposed subdivision, for submittal with the Final Plat.
- b) The acceptance of the attached “Floating Future Stormwater Drainage Easement”, ***in conjunction with approval of the Preliminary Plat for Deery Subdivision.***
- c) Approval of a request for a waiver from the requirement for construction of a sidewalk on the south side of the right-of-way for S.E. 16th Street next to proposed “Outlot A”, as specified in Section 23.403(14)(a) of the *Municipal Code*, ***in conjunction with approval of the Preliminary Plat for Deery Subdivision.***
- d) The required sidewalk along the frontages of Lots 1, 2, and 3 shall be installed per the standard sidewalk agreement submitted with the Final Plat Application. This agreement will require sidewalk construction prior to occupancy of structures on each lot as they develop.
- e) The construction of handicap ramps facilitating pedestrian crossing from the sidewalk on the south side of S.E. 16th Street to the multi-use path on the north side of the street at the end boundary of Outlot A, at the time of construction of the sidewalk along the street frontage of Lot 1. This includes construction of handicap ramps by the developer on both sides of S.E. 16th Street.

Location Map



Location Map

1400 - 1698 S.E. 16th Street



ATTACHMENT A

Applicable Law

The laws applicable to this case file include, but are not limited to, the following: (verbatim language is shown in *italics*, other references are paraphrased):

Code of Iowa Chapter 354, Section 8 requires that the governing body shall determine whether the subdivision conforms to its Land Use Policy Plan.

Ames Municipal Code Chapter 23, Subdivisions, Division I, outlines the general provisions for subdivisions within the City limits and within two miles of the City limits of Ames.

Ames Municipal Code Section 23.103(1) describes criteria for granting a waiver/modification to the requirements of the regulations, as follows:

- (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.

Ames Municipal Code Section 23.302(5):

- (3) *City Council Review of Preliminary Plat: All proposed subdivision plats shall be submitted to the City Council for review and approval in accordance with these Regulations. The City Council shall examine the Preliminary Plat, any comments, recommendations or reports examined or made by the Planning and Zoning Commission, and such other information as it deems necessary and reasonable to consider.*

Ames Municipal Code Section 23.302(6):

- (4) *City Council Action on Preliminary Plat:*
 - (a) *Based upon such examination, the City Council shall determine whether the Preliminary Plat conforms to relevant and applicable design and improvement standards in these Regulations, to other City ordinances and standards, to the City's Land Use Policy Plan and to the City's other duly adopted plans. In particular, the City Council shall determine whether the subdivision conforms to minimum levels of service standards set forth in the Land Use Policy Plan for public infrastructure and shall give due consideration to the possible burden of the proposed subdivision on public improvements in determining whether to require the installation of additional public improvements as a condition for*

approval.

- (b) *Following such examination and within 30 days of the referral of the Preliminary Plat and report of recommendations to the City Council by the Planning and Zoning Commission, the City Council shall approve, approve subject to conditions, or disapprove the Preliminary Plat. The City Council shall set forth its reasons for disapproving any Preliminary Plat or for conditioning its approval of any Preliminary Plat in its official records and shall provide a written copy of such reasons to the developer.*

Ames Municipal Code Chapter 23, Subdivisions, Division III, provides the procedures for the subdivision of property; specifically Section 23.302 discusses Major Subdivisions.

Ames Municipal Code Chapter 23, Subdivisions, Division IV, identifies design and improvement standards for subdivisions.

Ames Municipal Code Section 23.403(14)(a) requires installation of sidewalks and walkways in new subdivisions on land that has been zoned as residential, commercial, or industrial, and is described as follows:

- (a) Sidewalks and walkways shall be designed to provide convenient access to all properties and shall connect to the City-wide sidewalk system. A minimum of a four-foot wide concrete sidewalk shall be installed in the public right-of-way along each side of any street within residentially and commercially zoned areas and along at least one side of any street within industrially zoned areas. Such a sidewalk shall connect with any sidewalk within the area to be subdivided and with any existing or proposed sidewalk in any adjacent area. Any required sidewalk shall be constructed of concrete and be at least four feet wide.

Ames Municipal Code Chapter 29, Zoning, Section 29.1202, includes standards for the Suburban Residential zone.

Ames Municipal Code Chapter 29, Zoning, Table 29.1202(5)-2 includes Residential Medium Density (FS-RM) Supplemental Development Standards.

Ames Municipal Code Chapter 29, Zoning, Table 29.1202(6) includes Suburban Residential Floating Zone Suburban Regulations.

Ames Municipal Code Section 23.107 reads as follows:

In addition to the requirements of the Regulations, all plats of land must comply with all other applicable City, county, state and federal statutes or regulations. All references in the Regulations to other City, county, state or federal statutes or regulations are for informational purposes only, and do not constitute a complete list of such statutes or regulations. The Regulations are expressly designed to supplement and be compatible with, without limitation, the following City plans, regulations or ordinances:

- (1) *Land Use Policy Plan*
- (2) *Zoning Ordinance*

- (3) Historic Preservation Ordinance*
- (4) Flood Plain Ordinance*
- (5) Building, Sign and House Moving Code*
- (6) Rental Housing Code*
- (7) Transportation Plan*
- (8) Parks Master Plan*
- (9) Bicycle Route Master Plan*

Plats may be disapproved on the basis of the above, and other City Council approved plans and policies that may be adopted from time to time.

ATTACHMENT B

(Page 1 of 2)

Letter Requesting Waiver of Sidewalk Requirements



Aspen Business Park | 414 South 17th Street, Suite 107 | Ames, Iowa 50010

September 4, 2012

Honorable Mayor and City Council
City of Ames
515 Clark Avenue
Ames, Iowa 50010

RE: Request for Waiver from Sidewalk Requirements
Deery Preliminary Plat
FOX Ref. No. 5174-12a.410

Honorable Mayor and City Council:

The Deerys' are requesting a waiver of the sidewalk requirement along Outlot A of the proposed Deery Subdivision in accordance with the City's ordinance in 23.103(1). A portion of Outlot A's frontage on S.E. 16th is in the river and river bank. The remainder does not have access to the pedestrian bridge as the bridge is on the north side of the road. If a sidewalk was installed along Outlot A, then the pedestrians would have to cross the road at the bridge in order to use the bridge. We would prefer to cross the road to the bike path at a safer location which is the east end of Outlot A (or the west end of Lot 1) than crossing at the bridge. The site distance is better at this location than placement of a crossing adjacent to the bridge. See the attached display for the location of the sidewalk waiver shown in yellow.

Thank for consideration of this request.

Sincerely,

A handwritten signature in blue ink, appearing to read "Scott Renaud".

Scott Renaud, P.E.

Cc: Planning & Housing Department
Fred Rose

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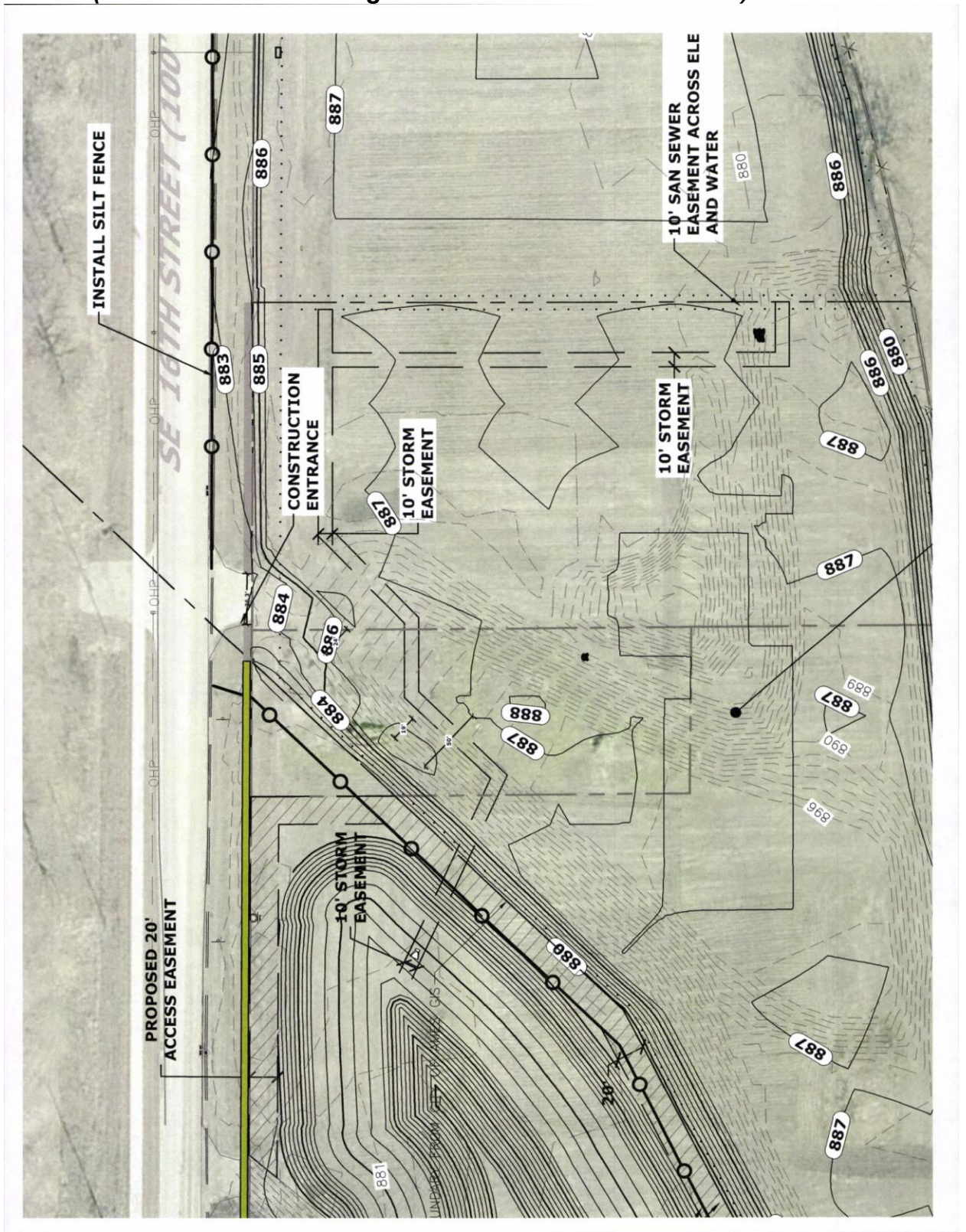
800.433.3469 | 515.233.0000 | www.foxeng.com

ATTACHMENT B

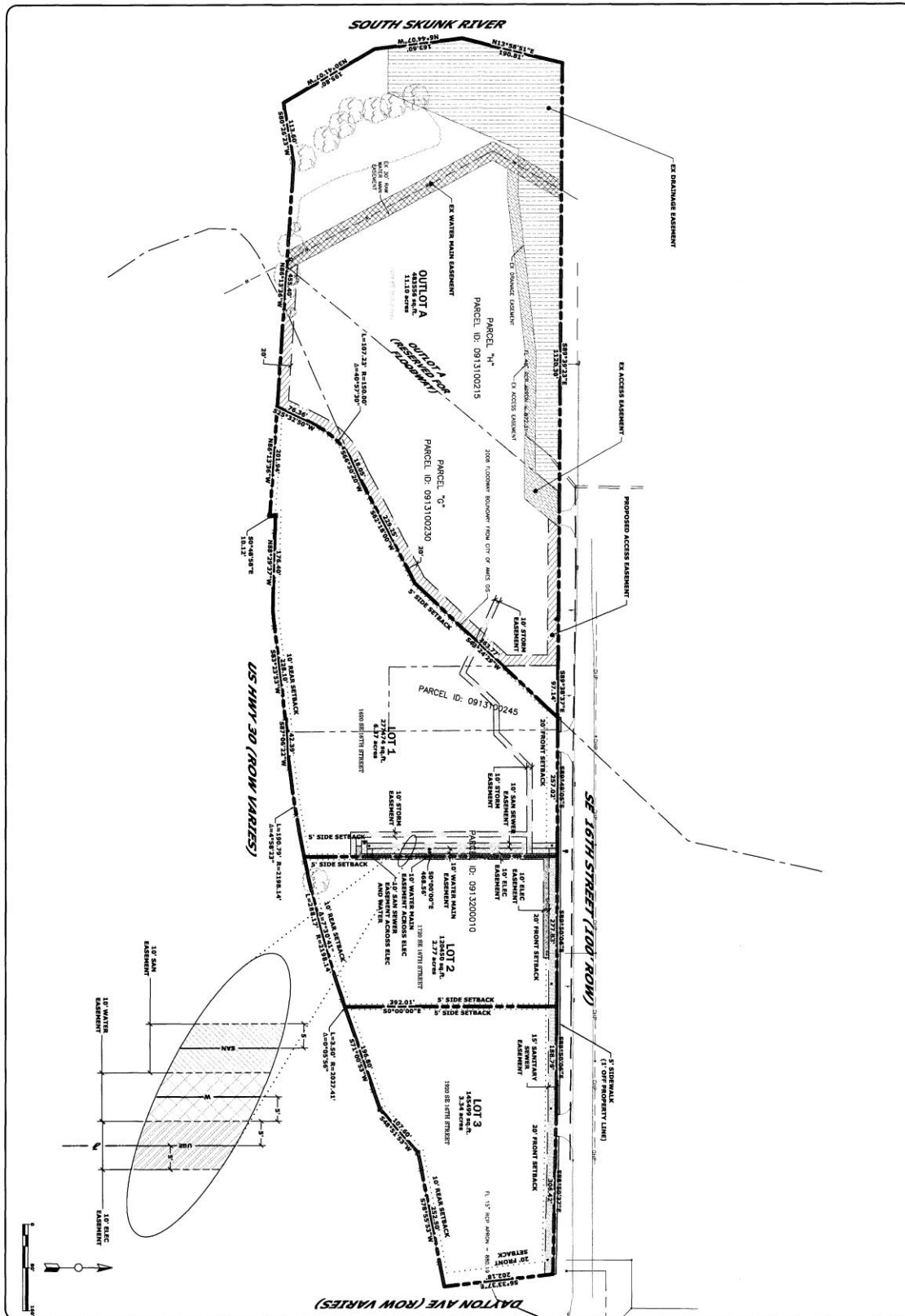
(Page 2 of 2)

Location for Waiver of Required Sidewalk

(See Double Lines Along SE 16th Street Next to Outlot A)



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PLOT STYLE TABLE	LAYER NAME	LAYOUT NAME
acadplot.ctb		P3



PROPOSED PRELIMINARY PLAT
DEERY SUBDIVISION
PRELIMINARY PLAT
SOUTH 16TH AND DAYTON
AMES, IOWA

FOX
Engineering

FOX Engineering Associates, Inc.
414 South 17th Street, Suite 107
Ames, Iowa 50010
Phone: (515) 233-0000
FAX: (515) 233-0103

DATE	REVISION	BY	CHK
		DESIGNED	BLA
		DRAWN	SRS
		CHECKED	DRG
		LAST UPDATE: 08/03/17	

PROJECT NO.
3174/174

SHEET
P3

INSTRUMENT PREPARED BY:	Brian D. Torresi, 2605 Northridge Pkwy., Ste.101, Ames, IA 50010 (515) 288-2500
RETURN TO:	Davis Brown Law Firm, 2605 Northridge Pkwy., Ste.101, Ames, IA 50010

FLOATING FUTURE STORMWATER DRAINAGE EASEMENT

1. DEFINITIONS. When used in this agreement, unless otherwise required by the context:

(a) "Grantor" means Deery, Deery and Deery, LLC, and includes Grantor's successors and assigns, whose mailing address for purposes of this Agreement is: 7404 University Avenue, Cedar Falls, Iowa 50613.

(b) "Agreement" means this instrument as signed by the Grantor.

(c) "Benefited Property" means the real property described as follows:

Lot Three (3), Deery Subdivision, Ames, Story County, Iowa

(d) "Burdened Property" means the real property described as follows:

Lot Two (2), Deery Subdivision, Ames, Story County, Iowa

(e) "City" means the City of Ames, Iowa.

2. GRANT OF FUTURE EASEMENT RIGHTS. Grantor, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grants, sells, and conveys to the City, the right to require the Grantor to establish an easement upon, over and across any portion of the Burdened Property, at a future date in accordance with Paragraphs 3 and 4 herein, for the purpose of stormwater drainage, for the benefit of the Benefited Property, together with all other rights and appurtenances thereto.

3. PURPOSE. This Agreement: (a) allows the City to require the establishment of a stormwater drainage easement upon, over and across the Burdened Property for the benefit of the Benefited Property; (b) does not represent the actual stormwater drainage easement area, but only an agreement to a future easement to be enacted prior to occupancy of an improvement on the Burdened Property; and (c) is being established due to the Grantor's desire to phase the site development. Notwithstanding anything in this Agreement to the contrary, any and all rights or privileges granted or purportedly granted herein, whether present or future, are all subject to and conditioned upon the Benefited Property being developed prior to the Burdened Property.

4. **TIMING AND REVIEW.** The final stormwater drainage easement authorized and contemplated under this Agreement shall be reviewed and approved by the City prior to being recorded in the office of the Story County Recorder. The rights granted herein shall terminate upon the earlier to occur of: (a) the location and establishment by the City of an identifiable stormwater drainage easement area on the Burdened Property; or (b) the commencement date of construction of an improvement on the Burdened Property.

5. **NONEXCLUSIVE EASEMENT.** The rights granted under this Agreement to the City are not exclusive. This Agreement shall not preclude Grantor from granting similar easement rights to third parties upon terms and conditions that do not impair or diminish the rights granted under this Agreement to the City.

6. **TITLE WARRANTY.** Grantor warrants to the City that Grantor holds the Burdened Property by title in fee simple; that Grantor has good and lawful authority to grant the easement rights herein provided for; and that any prior liens or encumbrances on the Burdened Property will either be released forthwith or will be subordinated to the easement rights granted herein by a duly executed and recorded subordination agreement.

7. **RIGHTS RESERVED.** Grantor reserves any and all rights to continue to use and enjoy the Burdened Property for any and all purposes that do not unreasonably interfere with or interrupt the enjoyment of the easement rights as referenced herein.

8. **OBSTRUCTIONS PROHIBITED.** Except as may be provided in this Agreement, unless the prior written consent of the City is obtained: (a) no buildings, structures or improvements, either permanent or temporary in nature, may be installed on the Burdened Property; (b) no building permits or site development plans may be approved for the Burdened Property; (c) no terrain of the Burdened Property may be altered; and (d) no utilities may be placed in, on, through, over or across the Burdened Property.

IN WITNESS OF THIS AGREEMENT Grantor has executed this Agreement on this __ day of _____, 2012.

DEERY, DEERY AND DEERY, LLC, Grantor

By: _____

_____, _____
NAME TITLE

STATE OF IOWA, _____ COUNTY, ss:

This instrument was acknowledged before me on this __ day of _____, 2012, by _____, the _____ of Deery, Deery and Deery, LLC.

Notary Public in and for the State of Iowa