

COUNCIL ACTION FORM

SUBJECT: MAJOR FINAL PLAT FOR DEERY SUBDIVISION

BACKGROUND:

The proposed “Deery Subdivision” is generally located between Southeast 16th Street and Highway 30 and west of the interchange of Highway 30 and S. Dayton Avenue.

On September 25, 2012, the City Council approved the Preliminary Plat for Deery Subdivision with the conditions described in this report.. At this same time, the City Council granted the request for a waiver of the subdivision requirements for installation of a public sidewalk along Outlot A, with one condition. The condition is the signing of an Agreement which would require that the property owner pay the costs of constructing a sidewalk along the south side of Southeast 16th Street, next to Outlot A, in the event that the City would add a pedestrian walkway to the south side of the bridge over the Skunk River and deem it to be in the public interest to cause construction of the sidewalk next to Outlot A. The Agreement would be in the form of a “Covenant for Assessment of Costs of Sidewalk Improvements.”

The subdivision includes approximately 24 acres of land divided into four lots. The Final Plat includes easements for public water, sanitary sewer, storm sewer and access. A public sidewalk is to be constructed along the south edge of the Southeast 16th Street for the entire northern boundary of this subdivision, except along “Outlot A”, for which the City Council granted a waiver, as described above..

The following documents have been submitted with the Final Plat:

- Resolution Accepting the Plat of Deery Subdivision;
- Consent to Platting;
- Attorney’s Title Opinion;
- Certificate of the Treasurer of Story County, Iowa;
- Easements (access, drainage, water main, storm sewer, sanitary sewer, electric); and
- Agreement for Sidewalk and Street Trees.

Approval of the Preliminary Plat for Deery Subdivision included the following conditions:

1. The preparation of easement documents for all public utilities in the proposed subdivision, for submittal with the Final Plat.
2. The acceptance of the attached "Floating Future Stormwater Drainage Easement", ***in conjunction with approval of the Preliminary Plat for Deery Subdivision.***
3. 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.***
4. 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 requirement sidewalk construction prior to occupancy of structures on each lot as they develop.
5. 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.

"Condition #1" has been met with the easement documents submitted for approval with the Final Plat. "Condition #2" was satisfied with approval by the City Council at the September 25, 2012 meeting. The City Council met "Condition #3" upon granting approval of the request for a waiver from the requirement for sidewalk along Outlot A. "Condition #4" will be satisfied prior to the issuance of Occupancy Permits for the structures on each lot, as development occurs. "Condition #5" will be met as Lot 1 develops.

Approval of an Urban Revitalization Plan for this subdivision will be considered by the City Council at this same meeting. If the City Council chooses not to approve the Urban Revitalization Plan, the Final Plat can still be approved, but there would be no tax property tax exemption available to the owners of the lots in Deery Subdivision.

A Developer's Agreement for this subdivision is to be considered by the City Council concurrently with the Final Plat. The Developer's Agreement must be approved by the City Council, prior to approval of the Final Plat for this proposed subdivision.

Potential impacts associated with the proposed Final Plat were addressed during Preliminary Plat review, at which time it was determined that public infrastructure to serve the subdivision is adequate. It was also determined that the storm water management plan in combination with easements for the conveyance of storm water

across Lots 1 and 2 meets adopted standards. Streets serving the subdivision can accommodate the traffic generated by development of the lots in this subdivision. The impact of not requiring sidewalk along Outlot A will necessitate a pedestrian crossing of SE 16th Street at the western edge of Lot 1 with tapered sidewalk approaches on both sides of the street to meet the ADA standards for access. **Therefore, the City Council can conclude, pursuant to Section 23.302(10) of the *Municipal Code* (see attached), that there are no impacts upon this area of the city, by the proposed subdivision, which have not been addressed by the Applicant's proposed Final Plat of Deery Subdivision.**

It could also be determined that the proposed subdivision complies with all relevant and applicable design and improvement standards of the Subdivision Regulations, to the City's Land Use Policy Plan, to other adopted City plans, ordinances and standards, and to the City's Zoning Ordinance.

ALTERNATIVES:

1. The City Council can approve the Final Plat for Deery Subdivision by finding that all requirements of *Municipal Code* §23.302(10)(b) are met, with the following condition:
 - a. The "Covenant for Assessment of Costs of Sidewalk Improvements" be approved by the City Council.
2. The City Council can deny the Final Plat for Deery Subdivision.
3. The City Council can refer this request back to staff or the applicant for additional information and or documents to be submitted to City Council by a date certain, but no later than its November 20, 2012 meeting.

MANAGER'S RECOMMENDED ACTION:

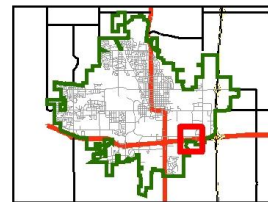
City staff has evaluated the proposed final subdivision plat and determined that the proposal is consistent with the Preliminary Plat approved by the City Council and that the plat conforms to the adopted ordinances and policies of the City of Ames as required by Code.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative #1, approving the Final Plat for Deery Subdivision with the condition that the "Covenant for Assessment of Costs of Sidewalk Improvements" be approved by the City Council.



Location Map

1400 - 1698 S.E. 16th Street



Applicable Laws and Policies Pertaining to Final Plat Approval

Adopted laws and policies applicable to this case file include, but are not limited to, the following:

Ames Municipal Code Section 23.302

(10) City Council Action on Final Plat for Major Subdivision:

(a) All proposed subdivision plats shall be submitted to the City Council for review and approval. Upon receipt of any Final Plat forwarded to it for review and approval, the City Council shall examine the Application Form, the Final Plat, any comments, recommendations or reports examined or made by the Department of Planning and Housing, and such other information as it deems necessary or reasonable to consider.

(b) Based upon such examination, the City Council shall ascertain whether the Final 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.

(c) The City Council may:

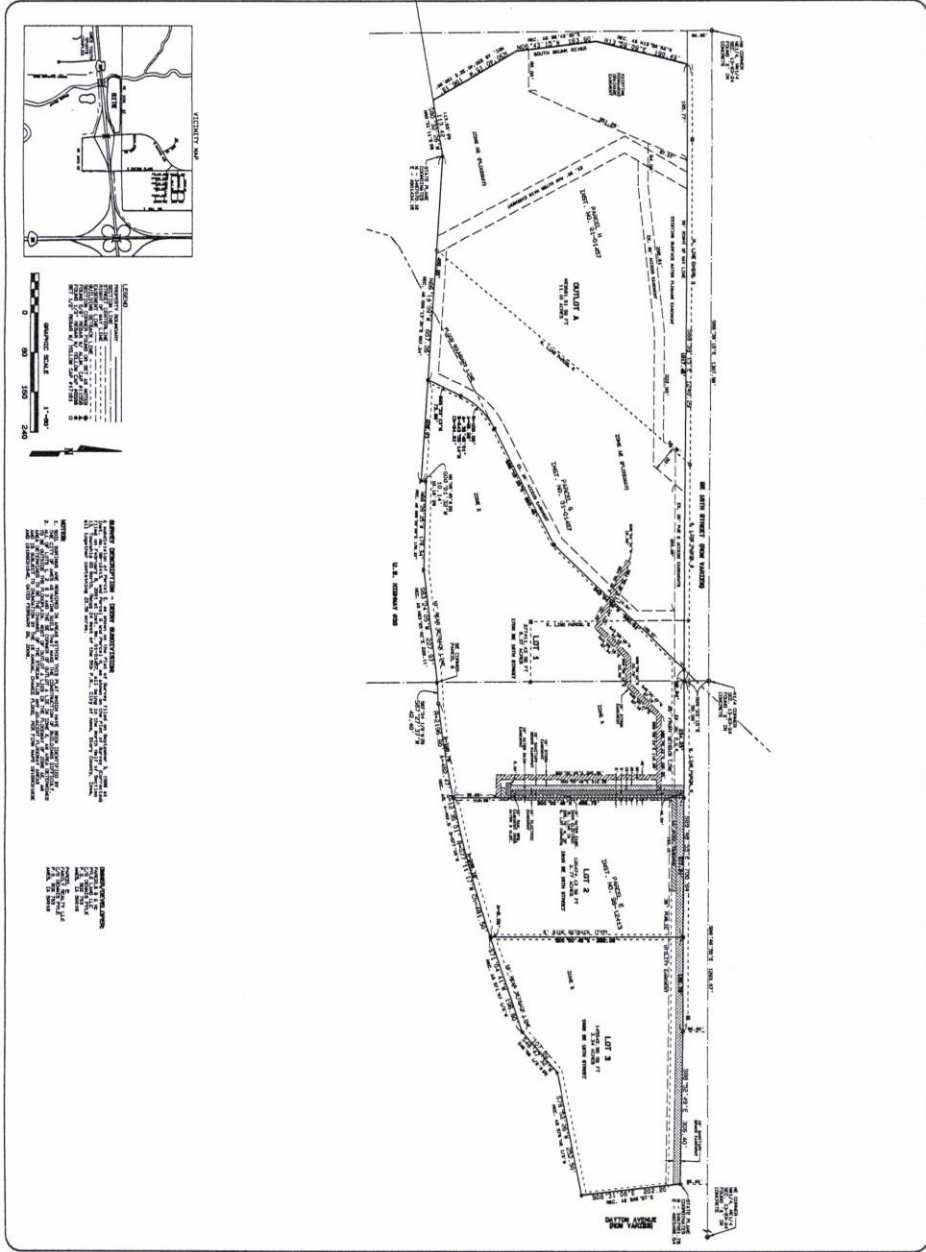
(i) deny any subdivision where the reasonably anticipated impact of such subdivision will create such a burden on existing public improvements or such a need for new public improvements that the area of the City affected by such impact will be unable to conform to level of service standards set forth in the Land Use Policy Plan or other capital project or growth management plan of the City until such time that the City upgrades such public improvements in accordance with schedules set forth in such plans; or,

(ii) approve any subdivision subject to the condition that the Applicant contribute to so much of such upgrade of public improvements as the need for such upgrade is directly and proportionately attributable to such impact as determined at the sole discretion of the City. The terms, conditions and amortization schedule for such contribution may be incorporated within an Improvement Agreement as set forth in Section 23.304 of the Regulations.

(d) Prior to granting approval of a major subdivision Final Plat, the City Council may permit the plat to be divided into two or more sections and may impose such conditions upon approval of each section as it deems necessary to assure orderly development of the subdivision.

(e) Following such examination, and within 60 days of the Applicant's filing of the complete Application for Final Plat Approval of a Major Subdivision with the Department of Planning and Housing, the City Council shall approve, approve subject to conditions, or disapprove the Application for Final Plat Approval of a Major Subdivision. The City Council shall set forth its reasons for disapproving any Application or for conditioning its approval of any Application in its official records and shall provide a written copy of such reasons to the developer. The City Council shall pass a resolution accepting the Final Plat for any Application that it approves.

(Ord. No. 3524, 5-25-99)



STUMBO & ASSOCIATES
LAND SURVEYING
 510 S. 17th STREET, SUITE 102 AMES, IOWA 50010
 PHONE 515-233-3684 FAX 515-233-4403

FINAL PLAT
DEERY SUBDIVISION
 PART OF PARCELS E, G & H IN THE N1/2 OF SECTION
 13-83-24, CITY OF AMES, STORY COUNTY, IOWA

Certification: I hereby certify that this land surveying
 plat was prepared in the State of Iowa and that I am
 a duly Licensed Professional Surveyor in the State of Iowa.
R. P. Stumbo Date: *10-16-12*
 My Expiration Date is December 31, 2013



SURVEY DESCRIPTION - DEERY SUBDIVISION:

A subdivision of Parcel E, as shown on the Plat of Survey filed on September 3, 1998 at Inst. No. 98-12413, and Parcel G and Parcel H, as shown on the Plat of Survey (Corrected) filed on February 8, 2001 at Inst. No. 01-01457, all being in the North Half of Section 13, Township 83 North, Range 24 West of the 5th P.M., City of Ames, Story County, Iowa, all together containing 23.58 acres.

INSTRUMENT PREPARED BY:	Doug Marek, 515 Clark Ave., P.O. Box 811, Ames, IA 50010 (515) 239-5146
RETURN TO:	Doug Marek, 515 Clark Ave., P.O. Box 811, Ames, IA 50010

**COVENANT FOR ASSESSMENT OF
COSTS OF SIDEWALK IMPROVEMENTS**

THIS COVENANT FOR ASSESSMENT OF COSTS OF SIDEWALK IMPROVEMENTS (this "Agreement") is made effective the ___ day of October, 2012, by and between **DEERY, DEERY AND DEERY, LLC**, and its successors and assigns (hereinafter collectively referred to as the "Owner"), and **THE CITY OF AMES, IOWA**, (hereinafter referred to as the "City").

WITNESSETH THAT :

The parties hereto have agreed and do agree as follows:

1. This Agreement is made for the purpose of satisfying the conditions of the waiver, granted by the Ames City Council on September 25, 2012, of the subdivision requirements to install sidewalks on the Southeast 16th Street frontage of Outlot A, Deery Subdivision, Ames, Story County, Iowa (the "Property").
2. In anticipation of the possibility that the City may at some time add a pedestrian walkway to the south side of the currently existing bridge over the Skunk River on Southeast 16th Street, and may then deem it to be in the public interest to cause construction of sidewalks along the south side of Southeast 16th Street that is contiguous to the Property by means of city awarded contracts to be paid by special assessments to be levied against the Property, the Owner does hereby covenant and agree that by execution of this Agreement, Owner shall pay and is bound to pay to the City, the costs of the aforesaid sidewalk improvements assessed to the Property, by action of the governing body for the City, after notice of hearing as provided by Section 384.50 of the Code of Iowa, the provisions of Section 384.38 of the Code of Iowa notwithstanding.
3. Without affecting the foregoing waivers of rights, it is understood and agreed that if and when the governing body of the City conducts a hearing on a proposed resolution of necessity to assess sidewalk improvement costs to the Property, the Owner may then appear before the governing body of the City and be heard.

4. Additionally, except as expressly provided herein, Owner, in consideration of the benefits derived from approval of the preliminary plat of the Property and conditional waiver of the subdivision requirement to install sidewalks, receipt of which is hereby acknowledged, does covenant with the City that it will never, at any future time, sue the City, or any officer or employee of the City, to test the regularity of the proceedings or legality of the assessment procedure, to appeal the amount of the assessment, to enjoin, set aside, overturn, or reduce the amount of such assessments levied against the Property by the City. Notwithstanding anything in this Agreement to the contrary, in the event Owner objects to the proposed amount of the assessment levied against the Property for the construction of the sidewalks adjacent to the Property as contemplated herein, Owner may, in the sole and absolute discretion of Owner, elect to construct the required sidewalks by providing written notice of such election to the City (the "Construction Election Notice"). Owner must provide the Construction Election Notice to the City Clerk: (a) no later than the date of the public hearing set for discussion and consideration of any public improvement project that includes the construction of the sidewalks adjacent to the Property; and (b) prior to any action by the City Council approving final plans and specifications and awarding the contract or contracts for any public improvement project that includes the construction of the sidewalks adjacent to the Property. The sidewalks that may be constructed by the Owner as contemplated herein shall be constructed in accordance with the applicable and then existing City rules and regulations concerning the construction of sidewalks.

5. This Agreement shall be filed for record in the office of the Story County Recorder and all covenants, agreements, promises and representations herein stated shall be deemed to be covenants running with the Property and shall endure and be binding on the parties hereto, their mortgagees, lien holders, successors and assigns, for a period of twenty-one (21) years from the date of the recording of this Agreement, unless claims to continue the interest set forth herein are filed as provided by law. The City shall have the right to file a claim to continue its interest in this Agreement.

6. Invalidation of any of provision or term of this Agreement by judgment or court order shall in no way affect any of the other provision or term herein, which shall remain in full force and effect.

The foregoing provisions encumber the real estate described as follows:

Outlot A, Deery Subdivision, Ames, Story County, Iowa

SIGNATURES ON FOLLOWING PAGE

Executed by the respective signatories effective the date first above written.

DEERY, DEERY AND DEERY, LLC, Owner

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

THE CITY OF AMES, IOWA, City

By: _____
NAME TITLE

STATE OF IOWA, STORY COUNTY, ss:

This instrument was acknowledged before me on this __ day of _____, 2012, by _____, the _____ of The City of Ames, Iowa.

Notary Public in and for the State of Iowa