

## Staff Report

**South Bell Avenue Development Agreement and Compliance**

December 17, 2013

**BACKGROUND**

The City of Ames and Dayton Park, LLC entered into a development agreement on February 4, 2009 in order to establish an urban renewal area and tax increment finance (TIF) district for the construction of the Ames Community Development Park 4<sup>th</sup> Addition. This development created 14 lots for industrial development and completed the connection of S. Bell Avenue between E. Lincoln Way and SE 16<sup>th</sup> Street (see location map on Attachment 1).

**The agreement, among other things, requires the developer to construct a series of speculative buildings.** The first building was required within 18 months after the completion of the public improvements. Subsequent speculative buildings are required to be constructed within twelve months of the occupancy of each prior building until the ten small lots are developed or the City's debt is paid off (see paragraph 9 of the agreement in Attachment 2).

The first speculative building was completed at 615 S. Bell Avenue and occupied by Solum on July 23, 2012. Therefore, **the second speculative building was to be completed and available by July 23, 2013. While a site plan and building permit have been approved for the next speculative building at 2812 Hyatt Circle, the building is not finished.**

The agreement also required the developer to grant to the City, a first lien mortgage in the amount of \$350,000 encumbering not less than 6.36 acres of the subdivision (see paragraph 10 in Attachment 1). This mortgage was to ensure the completion of the required speculative buildings. **This mortgage was never granted and the City is holding no financial security to ensure the developer performs.**

As a tax-increment financing district, the City constructed the infrastructure, streets, sanitary sewer, and water mains upfront with the goal of paying those costs with the increased property tax revenue from the increased land and improvement values. The financing plan included assumptions about the timing and value of buildings as well as the taxable value for vacant land during the build out of the project. However, state administrative rules changed during the creation of this project to allow the undeveloped lots in industrial subdivisions to be taxed at agricultural rates rather than at industrial rates. Thus, the City does not receive any increased incremental property tax revenue from the vacant industrial land until it is developed. This has caused a reduction of \$21,000 per year in revenue to help repay the TIF debt. Currently the developers pay total property taxes of only about \$22 to \$108 per undeveloped lot annually even though they receive the additional value of the TIF funded infrastructure. Once developed, of

course, the City's property tax levy is placed on the taxable valuation of the property consistent with original projections.

The current principal balance of outstanding bonds for the project is \$830,596, annual debt service payments are approximately \$120,000 per year through 2021. With the property improvements currently in place, the TIF district is expected to generate approximately \$32,000 per year in incremental revenue for debt service. It is common for TIF districts to carry a deficit balance in early years, with the deficit being quickly made up as the district develops and generates excess TIF revenue. This was the City's experience with the past two TIF districts. **With the South Bell District, the combination of slow development and taxation of undeveloped land as agricultural property rather than as commercial has resulted in lower than expected revenue.**

### Options:

**The Council can direct staff to prepare an amendment to the development agreement that would cover some or all of the following issues:**

#### Timeframe To Complete Speculative Building Completion

- a. Grant a onetime extension for the 2<sup>nd</sup> speculative building to be completed by June 1, 2014.

Once this building is sold or leased, the developer would need to complete the subsequent speculative buildings in accordance with the current terms of the agreement.

#### Financial Security

- a. Allow Dayton Park, LLC to submit a letter of credit in the amount of \$350,000 rather than a first lien mortgage encumbering no less than 6.36 acres with a minimum value of \$350,000.

The letter of credit is a more liquid form of security, allowing the City to draw the funds without first foreclosing on a mortgage.

#### Or

- b. Continue to require Dayton, LLC to provide a first lien mortgage encumbering no less than 6.36 acres with a minimum value of \$350,000.

If the owner is reluctant or fails to provide this mortgage in a prescribed time frame, a lien could be placed on the property in the amount of \$350,000. The City would then be in a position to foreclose on the mortgage or seek satisfaction of the lien in order to service the debt.

### Vacant Land Assessment

- a. Make no changes to the existing agreement, thereby allowing the vacant lots to continue to be assessed at agricultural values.

Or

- b. In consideration of the lost potential tax revenue for debt service, require Dayton Park, LLC to waive the right to have the land assessed as agricultural land and allow it to be assessed as industrial land. The assessor could assess the land as vacant industrial, which would generate substantially more tax revenue, with the consent of the property owner.

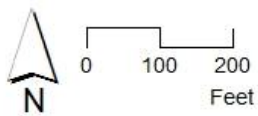
### **Staff Comments:**

There are two instances where the developer is out of compliance with the terms of the development agreement. The first is the timing of the completion of the second speculative building to provide for economic development opportunities and taxable value for repayment of debt. This partnership was intended to make industrial land available for development and speculative buildings available for occupancy. This arrangement proved fruitful with the occupation of the first speculative building by Solum, an out-of-state business that created 25 jobs in 2012. However, the developer has not made a second speculative building available within the 12 months required following the occupation of the first building.

The second is that the developer has not submitted the required financial security to the City. Without the financial security in place, enforcement of the terms of the development agreement is more onerous for the City. While a mortgage seemed the safest security in 2009 when the development agreement was written, City staff believes an alternative security of a letter of credit would better protect the interests of the City.

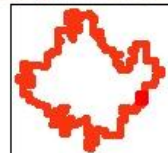
**The City staff is seeking direction from the City Council regarding how to address these compliance issues. In discussions with the developer, he would 1) request an extension to the timeframe to complete the second speculative building, 2) be open to providing a letter of credit in lieu of mortgage, and 3) is opposed to any change to the taxable value of vacant land.**

# AMES COMMUNITY DEVELOPMENT PARK 4<sup>TH</sup> ADDITION



## Legend

-  Ames City Boundary
-  Ames Community Development Park 4th Addition





**ATTACHMENT 2**  
**DEVELOPMENT AGREEMENT EXCERPTS**

Paragraph 9:

**9. SECOND SPECULATIVE BUILDING AND SUBSEQUENT SPECULATIVE BUILDINGS.** Not later than twelve (12) months after the construction and occupancy of the First Speculative Building, or not later than twelve (12) months after the First Speculative Building is no longer speculative in nature, whichever occurs first (the "**Second Speculative Building Completion Date**"), the Developer shall complete the construction of a second building (the "**Second Speculative Building**") having an assessed taxable value, exclusive of land, of not less than \$350,000, and having not less than 10,000 square feet of floor area. Thereafter, not later than twelve (12) months after the construction and occupancy of the Second Speculative Building, or not later than twelve (12) months after the Second Speculative Building is no longer speculative in nature, additional buildings (the "**Subsequent Speculative Buildings**"), each of which shall have an assessed taxable value, exclusive of land, of not less than \$350,000, and shall not have less than 10,000 square feet in floor area, shall be constructed by the Developer so that there is at all times, a Subsequent Speculative Building available for occupancy or under construction. Subsequent Speculative Buildings shall be constructed by the Developer: (i) not later than twelve (12) months after the construction and occupancy of the Second Speculative Building, (ii) not later than twelve (12) months after the construction and occupancy of any Subsequent Speculative Building, or (iii) not later than twelve (12) months after the Second Speculative Building or any Subsequent Speculative Building is no longer speculative in nature, whichever occurs first (the "**Subsequent Speculative Building Completion Date**"). This requirement shall continue until all lots within the Subdivision, except lots greater than 1.5 acres in size, contain either the First Speculative Building, the Second Speculative Building, or Subsequent Speculative Buildings, or until the debt issued by the City to pay for the Public Improvements is paid in full, whichever occurs first. The Second Speculative Building and Subsequent

Paragraph 10:

**10. SECURITY.** As security to the City for the completed construction of the aforesaid First Speculative Building, the Second Speculative Building or the Subsequent Speculative Buildings, the Developer hereby promises to pay the sum of \$350,000.00 to the City on the First Speculative Building Completion Date, the Second Speculative Building Completion Date or any Subsequent Speculative Building Completion Date, as the case may be, if said buildings are not then completed by said dates and, to effectuate this Paragraph 10, the Developer shall execute and deliver to the City a first lien mortgage in the amount of \$350,000.00 that shall encumber a portion of the Subdivision. Said portion shall be identified and determined at the time the final plat and other platting documents for the Subdivision are approved by the City and shall encumber only that portion of the Subdivision identified therein and only as to the amount specified herein; however, said portion shall encumber not less than 6.36 acres of land within the Subdivision. Said mortgage shall be delivered to the City within thirty (30) days after the recording of the final plat and other documents necessary to subdivide the real property of which the Subdivision is comprised.