

**COUNCIL ACTION FORM**

**SUBJECT: AMENDMENT TO SOUTH BELL AGREEMENT WITH DAYTON PARK, LLC**

**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.

**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. The second speculative building was required to be constructed within twelve months of the occupancy of the first (or by July 23, 2013). This requirement was not met by the developer.

**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 development.** 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 satisfactory performance by the developer.

At the December 17, 2013 meeting, the City Council directed staff to prepare amendments to the agreement to grant a one-time extension to require the second speculative building to be completed by June 1, 2014. The City Council also directed staff to obtain a letter of credit (rather than a mortgage) and to assess the developer \$12,000 as consideration for non-performance to meet the timeline for completion of the second speculative building and grant an extension.

**At the January 28, 2014 City Council meeting, the Council reviewed a letter from Dayton Park, LLC offering amended terms to the development agreement. In response to this request (see attached), City Council directed staff to prepare an amendment to the agreement that required completion of the second building by July 1, 2014 and to accelerate the construction of the third speculative building to be completed by December 31, 2014.**

An amendment to the Ames Community Development Park Subdivision 4<sup>th</sup> Addition Development Agreement has been prepared by staff based on that direction. The agreement has been reviewed by the developer and is signed and ready for execution by the City Council.

The Developer Agreement also includes certain design standards that are incorporated

as covenants for new development. **At the March 25, 2014, City Council asked for a review of the building materials requirements and its relationship to the 2<sup>nd</sup> speculative building that is currently under construction at 2812 Hyatt Circle.** The covenants with the developer agreement specifies a wide range of materials that are acceptable, but limits the front façade to no more than 60% corrugated metal.

4. Buildings constructed in the Subdivision shall have all exterior surfaces constructed with steel, brick, wood trim, split face block, stone, glass, exterior insulation and finish systems (EIFS), or precast wall panels, or combinations thereof. Any corrugated steel on the front façade shall comprise less than 60 percent of the area of the façade.

The 2812 Hyatt building was approved through a Minor Site Development Plan review in October 2013 with an indication of the use of white metal panels for the exterior finish. Staff did not request additional details about the type of materials at the time of approval. The installed metal panel does have ribbed pattern similar to that associated with corrugated metal. The installed metal panels have a white finish and do not have the traditional unfinished or galvanized metal appearance that can be associated with corrugated steel.

#### **ALTERNATIVES:**

1. The City Council can approve the amended Development Agreement for the Ames Community Development Park 4<sup>th</sup> Addition that requires the developer to complete the second speculative building by July 1, 2014, to commence construction of the third speculative building by July 1, 2014 with completion by December 31, 2014, and to provide a letter of credit to the City in the amount of \$350,000, rather than a first lien mortgage at execution of the agreement.
2. The City Council can deny the request to approve the amended the agreement.
3. The City Council can refer this item to staff for further information.

#### **MANAGER'S RECOMMENDED ACTION:**

The development agreement approved in 2009 required certain timeframes for completion of speculative buildings in the South Bell business park. Unfortunately, the timeframe to complete the second speculative building was not met by the developer. The proposed modification to the existing agreement accelerates the construction of the third speculative building by the developer as consideration for the City Council extending the time for the construction of the second building.

This agreement also provides the City with a more liquid form of financial security. With a letter of credit, the City is better able to draw upon any funds than with a mortgage, which would require foreclosure on the property.

Therefore, it is the recommendation of the City Manager that the City Council accept Alternative #1 as described above, thereby approving the amended Development Agreement for the Ames Community Development Park 4<sup>th</sup> Addition that requires the developer to complete the second speculative building by July 1, 2014, to commence

construction of the third speculative building by July 1, 2014 with completion by December 31, 2014, and to provide a letter of credit in the amount of \$350,000 rather than a first lien mortgage.

## Attachment A-Developer Letter

Date: January 24, 2014

To: Honorable Mayor and City Council

From: Chuck Winkleblack

RE: S. Bell development agreement

Mayor and Council,

In December council directed staff to meet with our organization and make some modifications to our existing agreement as well as impose a penalty for not completing the second spec building per the terms of the agreement.

I met with the planning director to discuss alternatives to the council action that was taken in December. Dayton Park would like to suggest an alternative proposal to the direction that the council gave staff. Rather than pay a penalty of \$12,000 to the city of Ames, I propose that in addition to completing the building under construction prior to July 1 of 2014, Dayton Park also agrees to start another building within the TIF district by July 1, 2014 and completing the building by December 31, 2014.

Dayton Park would also like to amend the agreement to allow for a letter of credit instead of a mortgage for security against future improvements.

Thanks in advance for your consideration.

Respectfully submitted,



Chuck Winkleblack  
Hunziker & Associates, Realtors