

## Staff Report

**PROPOSAL REGARDING THE REDEVELOPMENT OF LAND OWNED BY  
BRECKENRIDGE GROUP LOCATED AT 321 AND 601 SOUTH STATE AVENUE  
AND 205 SOUTH WILMOTH**

July 8, 2014

**BACKGROUND:**

These three parcels are owned by Breckenridge Group LLC of Austin, Texas, which purchased the land from the Ames Community School District in 2012. Breckenridge purchased the three parcels with the intention of developing them with rental housing marketed toward students. The balance of this report outlines the relevant history of events occurring to give context to the proposal before Council to settle pending litigation.

**Land Description**

The three parcels of land under consideration are located at 205 South Wilmoth Avenue (North parcel), 321 State Avenue (Middle Parcel) and 601 State Avenue (South Parcel).

**South Parcel** – The south parcel is an L-shaped site that has 28.9 acres. There are approximately 1.6 acres north of College Creek and 27.4 acres south of the creek. The site contains notable natural features of College Creek adjacent to the north border of the site, rolling terrain with slopes in excess of 10% along the west third of the site and north border, wooded areas surrounding the creek, and grasses across the remainder of the site. This land has not been developed previously with the exception of a multi-use bike path that traverses east to west through the south side of the site. Vacant land owned by ISU for agricultural research plots abuts this parcel on the south. To the west, it abuts undeveloped land owned by the Ames Community School District. To the northwest, it abuts a neighborhood populated primarily with single-family residential properties and having some medium-density zoned properties built with multi-plex apartments. To the north and northeast, the parcel is bordered by the parcel which formerly was occupied by the Ames Middle School. The parcel's eastern frontage abuts State Avenue with ISU controlled land further to the east. (See Attachment A – Location Map)

**Middle Parcel** – The middle parcel is a rectangular shaped lot comprised of 10.8 acres. It had been developed and used as the Ames Middle School until it was vacated when the new Middle School was built at 3915 Mortensen Road and occupied in 2005. The vacant school building was

demolished and removed from the site in February of 2014. The site currently stands as vacant. The site includes a row of mature trees along its western frontage of Wilmoth Avenue with some wooded area along its south boundary along College Creek. The site is relatively flat due to the former development area of the Middle school. However, it does slope downward from the west to the southeast. This parcel has frontage on the west with South Wilmoth Avenue, and across that street is a neighborhood of low density single family detached residential homes on individual lots. The north side of this parcel abuts an unimproved alley right-of-way and the backyards of a block of homes addressed on Lettie Street. These homes are similar in makeup to those found on Wilmoth, with low density single family detached residential housing on individual lots. This parcel also has frontage to the east on State Avenue. Across State Avenue is the ISU Arboretum. The south property line of this parcel is where it abuts the south parcel. The only street access to this site that had been used for the school was off of State Avenue. However, Wilmoth abuts its whole western side running north-south; and Tripp Street runs east-west to the western edge of this parcel, and if continued east, would be able to create a street across this parcel that could connect with State Avenue.

**North Parcel** – The north site is made up of multiple parcels which are generally rectangular in shape. The former Middle School track and athletic field is 8.3 acres and the three parcels at the corner of Wilmoth and Lincoln Way total approximately 0.5 acres. There is one property fronting along Lincoln Way and surrounded by Breckenridge property that is not part of the north site. The northern edge of this site has frontage along Lincoln Way. Across Lincoln Way to the north, properties are mostly commercially developed, although there are also some detached single-family residences. To the south of this site is a neighborhood of single family homes on individual lots. At the very northwest corner of the parcel, there is property sitting on the intersection of Franklin and Lincoln Way which is commercially developed. Streets abut this parcel for a distance of 430 feet on both the east (Wilmoth) and the north (Lincoln Way). Lettie and Hilltop both run in to this parcel perpendicular to it; and if continued, could create street access through the parcel.

### **Ownership History**

The three parcels are owned by Breckenridge Group LLC of 1301 S. Capital, Texas Highway Suite B301, Austin, Texas. Until March 11, 2013 this land had been owned by the Ames Community School District (ACSD). Of these three sites, the south parcel came into ownership of ACSD after it was sold to ACSD by Iowa State University as land for a new middle school. The sale of this land by auction took place on December 7, 2012. The sale was conditioned on the requirement that the buyer remove the deteriorated middle school building within one year of its purchase. No other use restrictions were placed on the buyer by ACSD as part of the sale.

## **Land Use Policy Plan / Zoning Designation Background**

The Ames City Council directed staff on May 24, 2005 to initiate a citywide study of Government Land designations of the Land Use Policy Plan (LUPP) Future Land Use Map. This study was intended to give governmental sellers and potential buyers a clear indication of the acceptable zoning that would be applied if the lands moved from public to private ownership.

Staff initiated the study in 2006 and presented initial findings in February of 2007. After additional analysis and outreach to governmental land owners, the City Council ultimately adopted LUPP amendments in February of 2008 that included a variety of different designations across the city. At the time of the study the north and middle parcels were under ACSD control and specifically were considered as to what the appropriate options were for future development. The north parcel included options for a limited amount of commercial or high density residential with the large majority of the site retained as low density residential. After consultation with the ACSD Board of Trustees, low density residential was ultimately selected as the preferred choice for the entire north site and for the middle parcel. The implementing zoning for Low Density Residential is most commonly RL zoning. Since the lands were still owned by ACSD, however, the zoning on the two sites remained Government/Airport District upon the change of the future land use designations.

The south parcel was designated as University/Affiliated at the time and was included in the general redesignation of the area around Mortensen and State as Village/Suburban Residential. The University, which owned the land at that time, did not provide specific comment about this individual site, although it commented on land use designations of other sites. The zoning of this site remained Government/Airport District upon the change of the future land use designations. Under the current LUPP designation, there are multiple implementing zoning options for the south parcel's Village/Suburban Residential land use designation. This includes FS-RM, FS-RL, F-VR, and F-PRD zoning districts.

## **Rezoning Status**

Breckenridge submitted rezoning applications for the middle and south parcel in March of 2013 with a request that the Council make a determination regarding the need for a master plan for each property. A north site rezoning application was not submitted at that time. On April 9, 2013, the City Council indicated that a master plan should be prepared for the middle and south property, as well as for the north site. They also requested that additional master planning issues be addressed by the applicant, beyond the minimum requirements of the Zoning Code.

The applicant requested agreement on the neighborhood outreach process as part of developing a master plan. Council also recommended that staff work to facilitate a discussion with the neighborhood and the applicant to address concerns for the development sites and the integration of the proposed rental development into the neighborhood. The applicant agreed to a series of facilitated neighborhood meetings with Iowa State University representatives and the College Creek/Old Ames Middle School Neighborhood Association representatives in an effort to identify community issues and concerns in relation to the proposed development. City Council agreed on May 14, 2013 to the proposed four neighborhood workshop process, prior to submitting a master plan with the rezoning applications.

A series of four meetings were held in June and July, with a final Neighborhood Association meeting in August to present a collective master plan concept to the neighborhood and the general public. The discussions with ISU and the neighborhood representatives encompassed many concerns and issues for the sites including such items as: land use, density, storm water and utilities, impacts to the surrounding neighborhood, quality of life concerns, on-site amenities, traffic, parking, lighting, and safety. Neighborhood representatives also met with staff to discuss their various interests and to understand the many steps in a development review process. Upon completing these neighborhood meetings the applicant finalized their rezoning applications for the south and middle parcel in October of 2013. The applicant requested RL for the middle parcel and FS-RM for the south parcel. Staff requested a traffic study in November of 2013 to analyze the impacts of the proposed development of the south and middle parcels. The applicant submitted a traffic study on January 7, 2014.

The Planning and Zoning Commission held a public hearing on January 15, 2014 for the proposed RL rezoning of the middle parcel and recommended approval of the application. City Council held a public hearing on February 25, 2014 and approved rezoning of the middle parcel to RL, but with no master plan requirement.

The Planning and Zoning Commission held a public hearing for the south parcel rezoning request to FS-RM on February 3, 2014 and after hearing testimony and discussing the application referred it back to staff for more information on the rezoning options and continued the item until March 3, 2014. On March 3, 2014 the Planning and Zoning Commission recommended that the south property be rezoned to FS-RL with conditions placed on the master plan that limited development area and density of the site. City Council noticed a public hearing for consideration of the south parcel rezoning application to FS-RM on March 25, 2014. Prior to the hearing, the applicant withdrew their application on March 25<sup>th</sup> to avoid a potential denial of the FS rezoning request.

The applicant submitted a new FS-RL rezoning request for the south parcel on April 3, 2014 and the City Council determined that a master plan was required on April 22, 2014. The Planning and Zoning Commission held a public hearing on the proposed FS-RL request on June 4, 2014, and recommended denial of the FS-RL application with its proposed master plan. The City Council then gave notice of a public hearing for consideration of the FS-RL rezoning request for June 24, 2014. The applicant requested a continuance of the hearing to allow for Council and the applicant to pursue a settlement agreement of a pending lawsuit. The south parcel rezoning to FS-RL with a master plan is currently a tabled pending application.

The north site has a Low Density Residential designation for the former ACSD parcel owned by Breckenridge. Breckenridge originally requested that Council consider a LUPP amendment for this parcel. This request was referred to staff by Council on August 27, 2014 for a report that was considered on September 24, 2013. At that time, no one appeared at the Council meeting for Breckenridge to explain or support the request. Since Council was unable to get information it needed to determine the best action, it declined to move the request forward. On October 25, 2013, Breckenridge again asked the council to reconsider the LUPP amendment for the north site and also asked that Council direct whatever City staff it deemed appropriate to begin negotiations with Breckenridge toward a development agreement related to the development of all three parcels.

That date was approximately one week before the general election, at which time the Mayor's position and five of the six City Council positions were on the ballot. Since this number of open positions was unprecedented, it was known that there were going to be as many as three and possibly four brand new Council members after the election. The election did result in four brand new Council members, and the sitting Council chose not to move that request forward in deference to the new members who may have different wishes with respect to their approach to the whole development. The letter from Breckenridge was not referred during the time the sitting Council was in office.

Breckenridge ultimately applied for rezoning of the north property from S-GA to RL (Low Density Residential) on April 7, 2014. Council determined that a master plan was not needed on April 22, 2014. That application was considered by the Planning and Zoning Commission on June 4, 2014, and they recommended approval of the RL rezoning request. The application was noticed for a City Council public hearing on June 24, 2014. The applicant requested a continuance of the hearing to allow for Council and the applicant to pursue a settlement of a pending lawsuit. The north parcel rezoning to RL is currently a tabled pending application.

## **Other Significant Events**

**Litigation and Administrative Appeals.** Upon a request to rezone the south and middle parcels, City Council requested that staff provide an overview of the development process and the master plan process related to the sites. In light of the trends for multi-family development in addition to the Breckenridge development, staff presented a report on July 9, 2013 that described different housing types and development obligations with or without subdivision. One of the issues discussed was the ability to build multiple structures on a single lot. The City already had a prohibition of multiple single-family homes on lots less than one acre in size. Staff presented a follow up report on August 13, 2013 discussing subdivision improvement requirements and zone development standards. On August 13, 2013, the City Council directed staff to prepare a zoning text amendment applicable citywide to prohibit multiple single-family detached homes on any size of individual lot.

The Planning and Zoning Commission first reviewed the proposed text amendment on August 21, 2013, and referred it back to staff for more information regarding its potential for creating non-conformities. The Planning and Zoning Commission reconsidered the item on September 4, 2014 and voted to support the proposed text amendment and recommended it to the City Council. The City Council held a public hearing on September 10, 2014 and approved the first reading of the ordinance to prohibit multiple-single family homes on individual lots. The second reading of the ordinance occurred on September 24, 2014, and the third reading occurred on October 8, 2013.

On November 6, 2013, Breckenridge filed a petition in Story County District Court against the City of Ames alleging that the City had exceeded its authority in enactment of the above zoning ordinance text amendment. Breckenridge's petition was answered on November 15, 2013, and on November 25, 2013, the lawsuit was referred to the Iowa Communities Assurance Pool (ICAP), which provides liability insurance to the City. ICAP then selected outside counsel to represent the City in that litigation. The parcels were also assessed for taxation, since as privately-owned property they are no longer tax exempt. The tax assessments for all three have been appealed, and those appeals are also pending and are being handled by in-house legal counsel.

**Request for Settlement Negotiations.** In the meantime, Breckenridge had moved ahead with rezoning of the three sites as described above.

In April 2014, when Breckenridge's application for rezoning the south parcel to FS-RL and North parcel to RL was scheduled, Breckenridge broached the subject of negotiating a settlement of the litigation with counsel representing the City. However, at this point, only one parcel had gone through the rezoning process. As to the potential combined impacts of all three, the City

Council had only indirect knowledge of concerns of neighbors or other community members; since it had not participated directly in the facilitated neighborhood meetings nor been at the Planning and Zoning Commission meetings. In order to try to get a more fully informed view about the paramount concerns of citizens and other community entities for development of all three sites, the Council scheduled an open workshop for that purpose to determine if there was an interest to negotiate.

The workshop was held on May 6, 2014 with a presentation of interests by both the Developer and neighborhood representatives, followed by questions and discussion by the City Council. After that workshop, a series of closed meetings were held by Council with their legal counsel to discuss the strategic determinations by the attorneys on the pending litigation and potential settlement of the pending litigation. Legal counsel of the respective parties communicated negotiations. The proposal before the City Council at this meeting is the result of that process.

**Public Input.** The City Council was aware that whatever proposal was finally considered, its approval would still be required to follow all statutory steps for rezoning and other related approvals. This necessarily would allow additional opportunities for public input at both preliminary stages as recommendations were made by the Planning and Zoning Commission, as well as at other City Council meetings for hearings and other Council actions. However, Council had the desire to give as much advance notice as possible, rather than waiting only until the next statutory public input opportunity. Therefore, it requested publication of this staff report with an opportunity for public input about the proposal at their next regular City Council meeting.

### **Proposal Key Elements**

Even though the middle parcel has already been rezoned and Breckenridge, as owner, would by right be able to proceed with development consistent with its marketing plan, the settlement proposal involves all three parcels instead of just the two which still must be rezoned. Also, in order to facilitate negotiation, the proposal has been developed between the parties at a conceptual level, rather than as a formalized agreement. The components of the proposal are as follows:

#### **Middle Parcel**

Breckenridge will agree to:

- Sell this parcel as a whole to a developer for owner-occupied housing to be kept as owner-occupied homes for at least 21 years by way of deed restriction or restrictive covenants.
- If such sale has not been accomplished at the end of two years, this parcel will be given to the City of Ames without compensation.

### **South Parcel**

Breckenridge will be allowed:

- To develop the eastern two-thirds of this parcel with up to 305 beds in detached structures that allow for two, three, four, or five bedrooms per structure.
- To develop a clubhouse.
- To move the bike path to accommodate site design.

Other considerations:

- Site approval will be required, so the site will be subject to City Council site plan approval, but no subdivision will be required.
- Developer will be responsible for its proportion of off-site improvement costs.
- Basements will be constructed in roughly one dozen of the units.
- Developer will give a conservation easement to the City of Ames that encompasses the western third of the parcel.
- Developer will give a conservation easement to the City of Ames over the area within at least 100 feet on either side of College Creek.

### **North Parcel**

Breckenridge will be allowed:

- To develop a high density residential development with no more than 535 beds.
- To develop a clubhouse.
- Site plan will be subject to City Council review and approval of site layout and features including, but not limited to, building placement and orientation to Lincoln Way, enhanced architectural design, and expanded buffering and screening to the south and west.

It is also a condition that all litigation and administrative appeals related to the properties will be dismissed.

### **POLICY OPTIONS:**

1. The Council can decide to move forward with the proposal and direct staff to take the next steps to formalize it.

Should Council decide to accept this proposal, there are a number of procedural steps that would still need to be accomplished. The first of those would be to direct the City Attorney to draw up a development agreement that would include the component terms outlined above. The next action following that would be Council approval of the development agreement, after which would follow the additional steps and processes to carry out the terms of the agreement. These steps could include, but are not limited to, LUPP amendment, necessary rezonings of the parcels from their current S-GA designation with rezoning contracts to accompany them if needed, possible zoning code text amendments, and subsequent or simultaneous site plan approval for the two parcels.

2. The Council can delay action to allow additional time for public input.

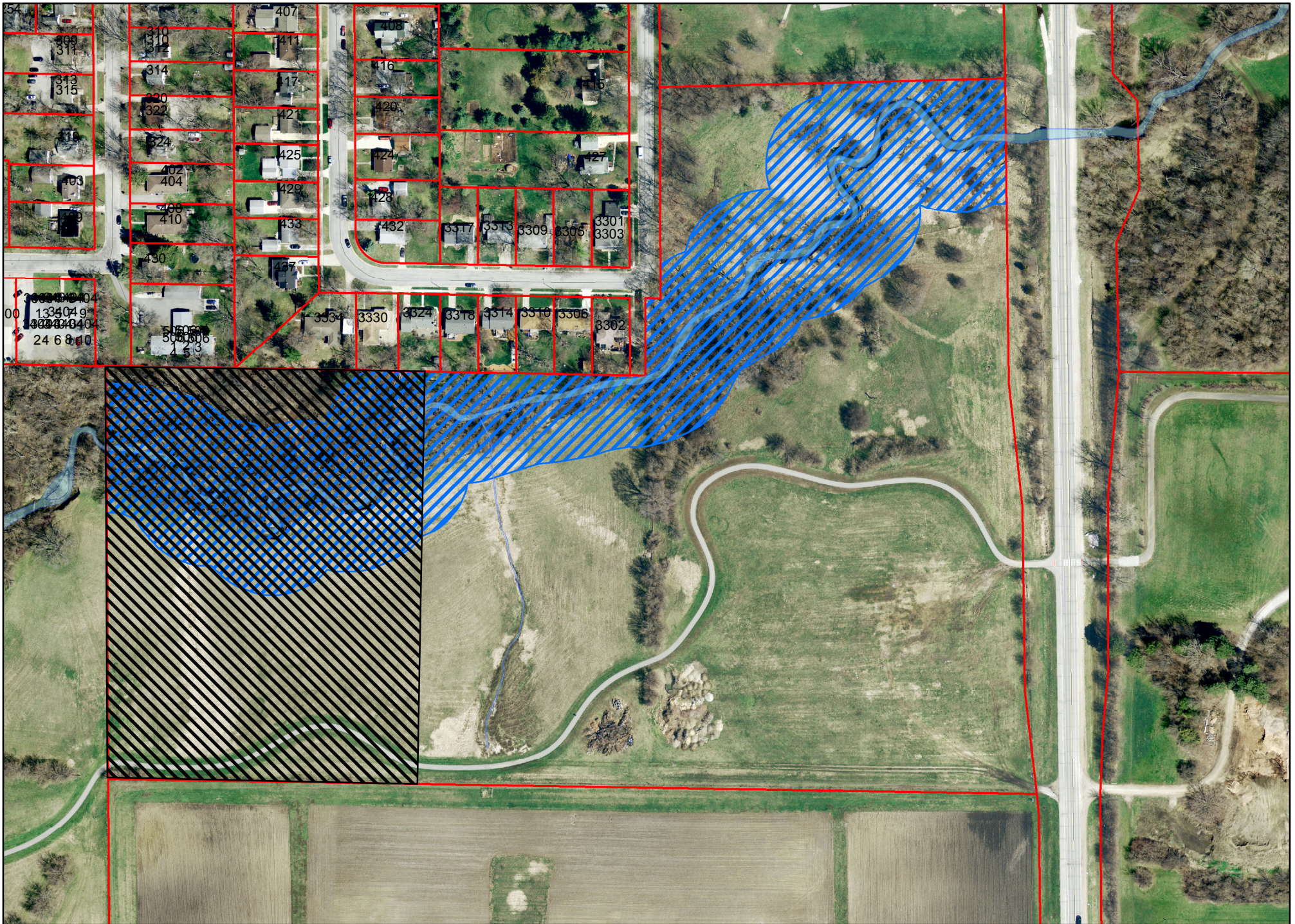


3. Based on public feedback received on July 8th, the City Council could modify some elements of the proposed settlement agreement. However, there would be no guarantee that the developer will accept these changes.
4. The Council can reject the proposal.

Should the Council reject the proposal, it is likely that Breckenridge would move forward with tabled pending rezoning applications.



**Breckenridge Development Parcels**



South Parcel Proposed Easement Area

