

MEMO

Legal Department

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To: Mayor Haila and Members of the City Council
From: Mark Lambert, City Attorney
Date: January 19, 2018
Subject: 415 Stanton Avenue Contract Rezoning Agreement

Our office has been asked to include a provision in the Contract Rezoning Agreement limiting the occupancy of the property at 415 Stanton Avenue to persons over the age of the 30 years old in addition to the requirement that every unit in the property is occupied by at least one person 55 years of age. It is the Legal Department's opinion that the proposed addition to adopt a minimum age of 30 violates both the Iowa Civil Rights Act and the federal Fair Housing Act prohibition on discrimination on the basis of *familial status*, which is defined narrowly as discrimination against families with children under the age of 18 and includes discrimination against pregnant persons and those in the process of seeking custody to any individual under 18.

Housing communities which qualify as "Housing For Older Persons" under both Iowa and Federal law are exempt from the requirements that prohibit discrimination on the basis of familial status. However, establishing a Housing for Older Persons exemption is not as simple as merely requiring at least one occupant of every unit to be 55 or older. There are additional factors that must be established, and Iowa law is actually more restrictive than the federal law. Under the Iowa Civil Rights Act (Chapter 216), in order to be exempt from familial status housing claims, the community must establish : (1) at least 80% occupancy by at least one person 55 or older per unit; and (2) it provides significant facilities and services specifically designed to meet the physical or social needs of the persons; and (3) that the housing facility must publish and adhere to policies and procedures which demonstrate an intent by the owner or manager (*which would include the HOA*) to provide housing for persons fifty-five years of age or older; or, alternatively; that it is occupied by persons 62 years of age or older

The previous version of the Contract Rezone states that at least one occupant of every unit has to be 55 or older, and requires compliance with all other federal, state and local laws of general application. The proposed minimum age requirement does not match the elements needed to have a valid Housing for Older Persons exemption. It is our opinion that adding a provision that violates provisions prohibiting familial status discrimination, as a City-mandated requirement of a contract rezoning agreement, is unwise. If the housing community fails to qualify for the Housing for Older Persons

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exemption--for any reason--the proposed minimum age of 30 requirement constitutes illegal discrimination. The City of Ames cannot be in the position of including this as part of a contract rezoning agreement.

ITEM # 18
DATE: 01-09-18

COUNCIL ACTION FORM

SUBJECT: REZONING CONTRACT FOR PROPERTY LOCATED AT 415 STANTON AVENUE FROM S-GA (GOVERNMENT/AIRPORT DISTRICT) TO RH (RESIDENTIAL HIGH DENSITY).

BACKGROUND:

The City Council approved the first reading for the rezoning of the property at 415 Stanton Avenue to Residential High Density (RH) on November 28, 2017 with the condition to complete a contract rezoning agreement to limit the use. **At the December 19, 2017, City Council meeting, it was determined that a condition of the rezoning can be altered to allow the 55 or older age restriction to apply to one or more members of the household, rather than all members of the household. Staff has prepared a contract rezoning agreement consistent with this age restriction as requested by the developer. The other rezoning conditions will remain as approved on November 28, 2017.**

The attached draft agreement limits the site use to Senior Living with a minimum of one occupant per dwelling as 55 or older, that the existing Crawford School building will be retained and adapted to residential use, and that the new development is restricted to a maximum of three stories and 50 feet. (Attachment A.)

ALTERNATIVES:

1. The City Council can approve and adopt the contract rezoning agreement that specifies the use is limited to Senior Living with a minimum of one occupant per dwelling as 55 or older, retain and adapt the existing Crawford School building for residential purposes and restrict the maximum height to three stories and 50 feet.
2. The City Council can deny the contract rezoning agreement on property located at 415 Stanton Avenue.
3. The City Council can defer the third reading and provide staff with different direction on the contract rezoning agreement or for a zoning text amendment.

CITY MANAGER'S RECOMMENDATION:

The attached contract rezoning agreement requires the re-use of the existing Crawford School site and new building to be used for residential purposes. The proposed rezoning limitations are consistent with the applicant's intended use of the site. The

contract rezoning agreement is a permissible method of restricting use of a site at the time of rezoning when agreed upon with the applicant.

Alternative #1 reflects the direction from December 19th that would allow occupants to be limited to Senior Living with a minimum of one occupant per dwelling as 55 or older. **Therefore, it is the City Manager's recommendation that the City Council approve Alternative #1.**

S P A C E A B O V E R E S E R V E D F O R O F F I C I A L U S E

Legal description: See page 4.

Return document to: City Clerk, 515 Clark Avenue, Ames IA 50010

Document prepared by: Victoria A. Feilmeyer, City of Ames Legal Department, 515 Clark Ave., Ames, IA 50010 – 515-239-5146

**CONTRACT REZONING AGREEMENT PERTAINING TO THE
LAND AT 415 STANTON AVENUE**

THIS AGREEMENT, made and entered into this ____ day of _____, 201__, by and between the City of Ames, Iowa (hereinafter called “City”) and The Crawford Ames, LLC, an Iowa limited liability company (hereinafter called “Developer”), its successors and assigns.

WITNESSETH THAT:

WHEREAS, the Developer owns real property which had formerly been used by the Ames Community School District for an elementary school and later for school district offices, legally described as set out on Attachment A and locally addressed as 415 Stanton Avenue, Ames, Iowa, (hereinafter called the “Property”); and

WHEREAS, the Developer desires to redevelop the property so that it may be intended and operated for occupancy as Housing for Older Persons aged 55 years or older; and

WHEREAS, the City approved a Minor Map Amendment to the Land Use Policy Plan (LUPP) designation for the subject real property by Resolution 17-676, which changed its designation from Low-Density Residential/Governmental Lands to High Density Residential to provide for a LUPP designation compatible with the proposed Housing for Older Persons; and

WHEREAS, the Developer has applied for a zoning designation of RH (Residential High Density) for the subject property in order to advance its plan of renovating the site to be used as Housing for Older Persons; and

WHEREAS, as contemplated by Iowa Code section 414.5, the City desires to impose certain additional conditions on the property owner in addition to existing regulations in connection with granting the base zoning; and

WHEREAS, both City and the Developer expressly agree that said additional conditions are reasonable and imposed to satisfy public needs which are directly caused by the requested zoning change to RH (Residential High-Density).

NOW, THEREFORE, the parties hereto have agreed and do agree as follows:

I. INTENT AND PURPOSE

A. It is the intent of this Agreement to:

1. Recognize that the Developer, The Crawford Ames, LLC, is the owner of the real property being rezoned and expressly agrees to the imposition of additional conditions as authorized by Iowa Code section 414.5.
2. Confirm and document that the Parties recognize and acknowledge that a substantial benefit to the public will be realized by imposition of the additional conditions for rezoning.
3. Grant rezoning of the real property from Government/Airport Lands (S-GA) to Residential High Density (RH) subject to these additional conditions:
 - a. The residential use of the site is age restricted to Housing for Older Persons with each unit having at least one occupant who is 55 years of age or older.
 - b. The existing Crawford School Building will be retained and adapted to residential use.
 - c. New development shall be restricted to a maximum of three stories no more than 50 feet in height in the aggregate.
 - d. Prior to the approval of the third reading of the Ordinance rezoning the property, this rezoning agreement must be signed by the Developer and delivered to the City.

II. GENERAL PROVISIONS

A. Modification. The parties agree that this Agreement may be modified, amended or supplemented only by written agreement of the parties, and their successors and/or assigns.

B. General Applicability of Other Laws and Ordinances. The Developer understands and agrees that all work done by or on its behalf shall be made in compliance with Iowa Code, the Ames Municipal Code, Iowa Statewide Urban Design and

Specifications and all other federal, state and local laws of general application (including the Fair Housing Act as applicable), whether or not such requirements are specifically stated in this agreement. All ordinances, regulations and policies of the City now existing, or as may hereafter be enacted, shall apply to activity or uses on the site.

C. Incorporation of Recitals and Exhibits. The recitals, together with any and all exhibits attached hereto, are confirmed by the parties as true and incorporated herein by reference as if fully set forth verbatim. The recitals and exhibits are a substantive contractual part of this agreement.

III. COVENANTS RUN WITH THE LAND

This Agreement shall run with the site and shall be binding upon the Developer, its successors, subsequent purchasers and assigns. Each party hereto agrees to cooperate with the other in executing a Memorandum of Agreement that may be recorded in place of this document.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed effective as of the date first above written.

<p>CITY OF AMES, IOWA</p> <p>By _____ John A. Haila, Mayor</p> <p>Attest _____ Diane R. Voss, City Clerk</p> <p>STATE OF IOWA, COUNTY OF STORY, ss:</p> <p>On this _____ day of _____, 2016, before me, a Notary Public in and for the State of Iowa, personally appeared John A. Haila and Diane R. Voss, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Ames, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation by authority of its City Council, as contained in Resolution No. _____ adopted by the City Council on the _____ day of _____, 201____, and that John A. Haila and Diane R Voss acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.</p> <p>_____ Notary Public in and for the State of Iowa</p>	<p>THE CRAWFORD AMES, LLC</p> <p>By _____</p> <p>STATE OF IOWA, COUNTY OF STORY, ss: This instrument was acknowledged before me on _____, 2017, by _____, as Manager, of The Crawford Ames, LLC.</p> <p>_____ Notary Public in and for the State of Iowa</p>
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Legal Description – Exhibit ‘A’

Lots Two (2), Three (3), Four (4), Five (5), Six (6) and Seven (7), except the South five (5) feet of Lot Seven (7), all in W.T. Smith's addition to Ames, Story County, Iowa, **AND** the East fifteen (15) feet of Lots Three (3), Four (4), Five (5), Six (6) and Seven (7), and the East fifteen (15) feet of the North forty-five (45) feet of Lot Eight (8), all in Block One (1), Lee & Little's Addition to Ames, Story County, Iowa