

ITEM #: 32
DATE: 04-28-20

COUNCIL ACTION FORM

SUBJECT: FINAL PLAT FOR KINGSBURY'S THIRD ADDITION AND WAIVER OF CERTAIN STREET IMPROVEMENTS

BACKGROUND:

The City's subdivision regulations are included in Chapter 23 of the *Ames Municipal Code*. Once the applicant has completed the necessary requirements, including provision of required public improvements or provision of financial security for their completion, a "final plat application" may then be submitted for City Council approval. After City Council approval of the final plat, it must then be recorded with the County Recorder to become an officially recognized subdivision plat. The final plat must be found to conform to the ordinances of the City and any conditions placed upon the preliminary plat approval.

Kingsbury's Third Addition Subdivision is a 6.91-acre site on SE 3rd Street, just north and east of Target. (Location map - Attachment A) The property owner, DET Land Company LC, is requesting approval of a Final Plat creating 2 lots, and one lot to be dedicated as right-of-way for the extension of SE 3rd Street. (Lot Layout-Attachment B). **The proposed subdivision is a Major Subdivision due to the requirements to extend infrastructure. A preliminary plat was approved on November 12, 2019. The property owner proposes a partial waiver of improvements, with a development agreement, in conjunction with the Final Plat.**

The largest lot is Lot 1 (5.61 acres) along the north side of SE 3rd Street with the smaller Lot 2 (1.07 acres) located directly east of Target. No immediate development is proposed for either of the two lots, however the property owner indicates that he has an immediate buyer for Lot 1 if the Final Plat and waiver are approved. The majority of both of the lots are located in the floodway fringe and any subsequent development will require adherence to floodplain development standards. The proposal for this subdivision requires the extension of infrastructure to fully serve both lots and extend to the east edge of the site. Appropriate easements for water, sewer, and public utilities are shown on the Final Plat.

DEVELOPMENT AGREEMENT:

The City plans for a future extension of Cherry Avenue to the east of this site that includes a future connection to SE 3rd Street as well as to SE 5th Street further to the south. In recognition of this planned City street project, the property owner proposes to waive the 152-foot SE 3rd Street extension requirement to facilitate dedication of right-of-way at this time and to plan for a coordinated connection to the eventual City extension of Cherry. Other infrastructure requirements for sidewalks, water, sewer, and electric are still required and included in the public improvement agreement with financial security

(Attachment D)

The proposed agreement is included as Attachment E. The agreement states the following:

1. The Developer dedicates right-of-way (Lot A) as part of the final plat at no cost to the City.
2. The City will complete the paving and storm sewer requirements for SE 3rd Street as part of a future Cherry Avenue extension project, but the timing of such an improvement is at the discretion of the City.
3. The Developer will complete all other necessary public infrastructure improvements as required by Chapter 23 subdivision standards.
4. In the event the development of Lot 1 or Lot 2 necessitate paved street access and the City has not completed the Cherry Avenue extension, it is the obligation of the property owner to complete the street improvements.

Staff supports the proposed waiver of street paving in recognition that there are practical difficulties in completing the extension of SE 3rd Street without a final design for Cherry Avenue to match grades. Secondly, staff supports the partial waiver in order to facilitate dedication of the right-of-way at this time rather than pursue acquisition and purchase of right-of-way in the future, which is viewed as a cost savings for the project that is planned for this year. **This is an unusual circumstance where a developer is required to construct a partial street extension when a final plat is approved in the same year that the City included this street extension in the CIP.**

The developer has provided a letter of credit in the amount of \$64,655 for the completion of public improvements as listed in Attachment D, including sidewalks, water lines, and sewer lines which the City Council is asked to accept with approval of the Final Plat.

ALTERNATIVES:

1. The City Council can approve the waiver of the construction of SE 3rd Street paving and storm sewer improvements, accept the Development Agreement related to dedication of right-of-way and future street improvements, and approve the Final Plat for Kingsbury's Third Addition Subdivision with financial security in the amount of \$64,655. ***Note-the final signed development agreement must be received prior to City Council action under this alternative.***
2. The City Council can deny the Final Plat for Kingsbury's Third Addition Subdivision, by not approving the proposed waiver and development agreement or a finding that the Final Plat does not meet the requirements of Section 23.302(10).
3. The City Council can defer action on this request to the next regular meeting and refer it back to City staff and/or the applicant for additional information.

CITY MANAGER'S RECOMMENDED ACTION:

City staff has reviewed the proposed final plat and find it conforms to the requirements of the Ames Subdivision Regulations and to the other adopted policies and ordinances of the City. This final plat proposal includes two developable lots. The attached development agreement allows the city to obtain street right-of-way now at no cost with the final plat of these lots.

Obtaining the right-of-way in conjunction with a waiver at this time is more cost effective for the City compared to purchasing right-of-way for the future street extension project. Although the dedication an improvement of right-of-way is a requirement of the Subdivision Code, the applicant indicates they would not proceed with the final plat at this time without waiver of the street paving requirements. This otherwise would require that City to purchase the right-of-way as well as pay for the construction of the street extension on Lot A. All other public improvements must otherwise be installed and paid for by the developer and according to City subdivision standards.

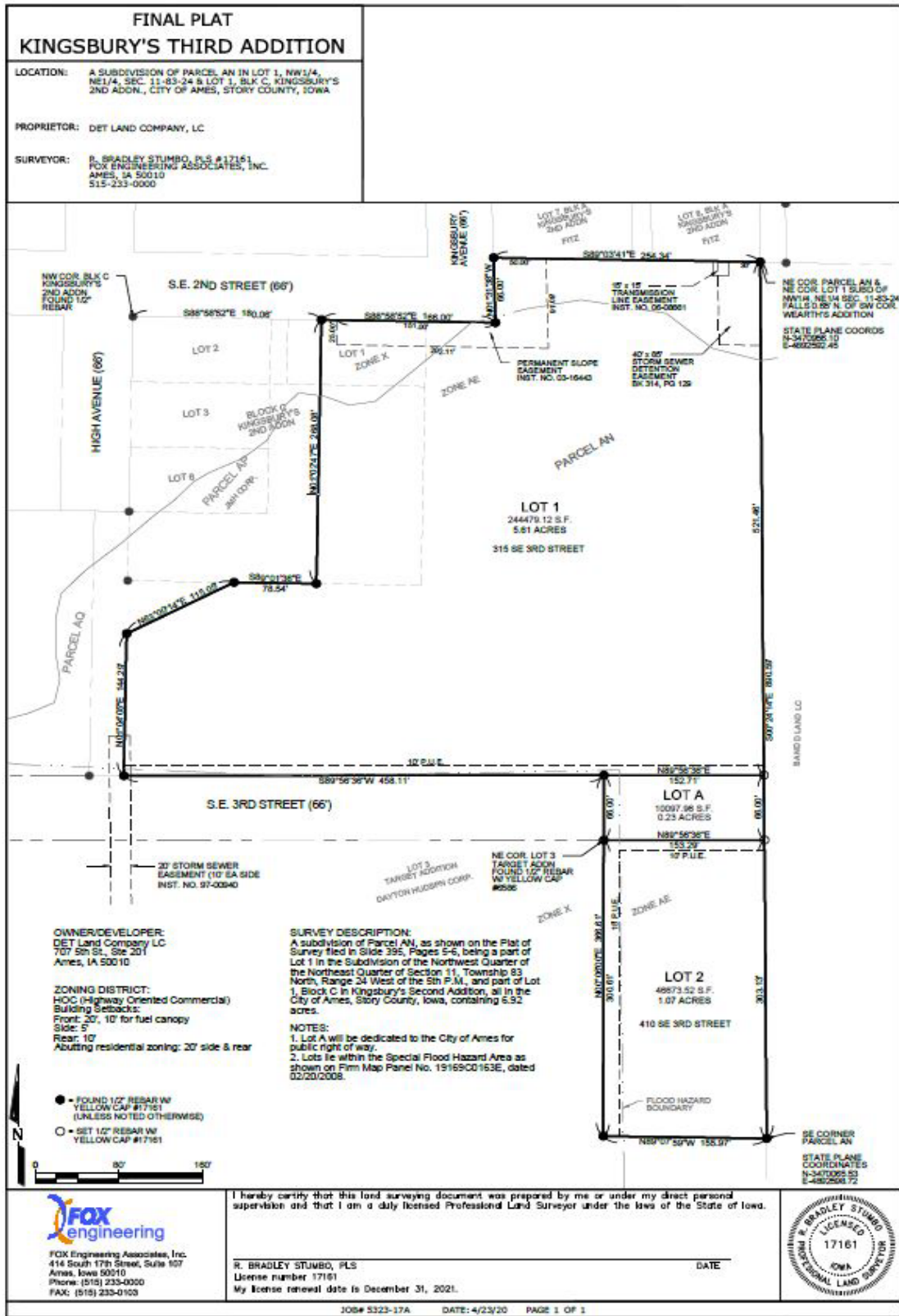
Therefore, it is the recommendation of the City Manager that the City Council act in accordance with Alternative #1 recommending approval of the Final Plat of Kingsbury's Third Addition Subdivision.

Attachment A: Location Map



315 SE 3rd Street
Location Map

Attachment B: Proposed Final Plat



Attachment C – Applicable Laws & 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)

Attachment D- Improvement Agreement Financial Security Estimate

Kingsbury's 3rd Addition Financial Security Estimate

Item	Quantity	Unit	Unit Price	Totals
Sidewalk Pavement, PCC, 4" thick	431	SY	\$40.00	\$17,240.00
Sidewalk Pavement, PCC, 6" thick	7	SY	\$75.00	\$525.00
Detectable Warning Panels	10	SF	\$30.00	\$300.00
Sanitary Sewer Connection	1	EA	\$2,000.00	\$2,000.00
Sanitary Sewer Manhole, SW-301, 48"	1	EA	\$5,000.00	\$5,000.00
Sanitary Sewer Gravity Main, Trenched, 8"	152	LF	\$75.00	\$11,400.00
Water Main, Trenched, 8"	154	LF	\$60.00	\$9,240.00
Water Valve, 8"	1	EA	\$2,500.00	\$2,500.00
Water Main Connection	1	EA	\$3,000.00	\$3,000.00
Fire Hydrant Assembly	1	EA	\$5,000.00	\$5,000.00
COESCO (erosion control)	6.9	AC	\$500.00	\$3,450.00
Street Lighting	1	LS	\$5,000.00	\$5,000.00
TOTAL:				\$64,655.00

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 5

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

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

**DEVELOPMENT AGREEMENT
KINGSBURY’S THIRD ADDITION**

THIS AGREEMENT, made and entered into this _ day of _ , 2020, by and

between the City of Ames, Iowa (hereinafter called “City”) and DET Land Company, L.C., (hereinafter called “Developer”), its successors and assigns. City and Developer are hereinafter referred to as the “Parties” or individually known as a “Party.” This Agreement shall be effective as of the date that it is approved by the City.

WITNESSETH THAT:

WHEREAS, the Developer is the owner of the real property described on Exhibit ‘A’ attached (hereinafter, the “Site”); and

WHEREAS, Developer intends to improve and develop the Site as a major subdivision to be known as *Kingsbury’s Third Addition, Ames, Story County, Iowa* (hereinafter the “Subdivision”) consisting of two buildable lots and Lot A, which is to be dedicated as an extension of S.E. 3rd Street; and

WHEREAS, as part of the development of the Subdivision, the City requires Developer to install certain public improvements; and

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

**I.
DEVELOPER OBLIGATIONS**

1. The Developer shall submit a final plat for the Subdivision as required by Section 23.302 of the Ames Municipal Code.

2. The Developer shall dedicate to City as right of way Lot A as shown on the plat of the Subdivision without cost to City, but subject to the street development provisions of Article II of this Agreement.

3. The Developer shall enter into and fully comply with a separate public improvements agreement for the installation of all of the improvements required by City for the development of the Subdivision.

4. The Developer shall enter into and fully comply with a separate sidewalk agreement for the Subdivision.

5. The Developer shall be responsible for and complete all public improvements specified in the separate public improvements agreement, except that street paving and storm sewer improvements shall be made in accordance with the street development provisions of Article II of this Agreement.

II. STREET DEVELOPMENT – KINGSBURY’S THIRD ADDITION

The Developer, at the Developer’s sole cost and expense, shall install street paving and storm sewers for Lot A unless Lot 2, or the eastern part of Lot 1 as set forth below, is developed before the completion of the City’s Cherry Avenue Extension Project. For purposes of this Article, the Parties acknowledge and agree:

1. The “Cherry Avenue Extension Project” (also known herein as the “Project”) means a street extension project contemplated by the City for extending Cherry Avenue on property located east of the Subdivision, at least to the south boundary as extended of Lot A, at a time and in a manner to be determined in the City’s sole option.

2. The development of the eastern part of Lot 1 with a building or site improvements that meet access requirements from the existing improved SE 3rd Street section is allowed without additional street improvements unless the development of the site includes a second point of access requiring a paved street extension along Lot 1 where SE 3rd Street is not built currently. If this is to occur the extension of 3rd Street shall be to City specifications and at the sole cost of the owner of Lot 1, and not at the cost of the City.

3. The development of Lot 2 means the further division of Lot 2 or the issuance of a building permit for construction and/or site improvements in accordance with such building permit upon Lot 2.

4. If the development of Lot 2 has not occurred before the City submits the Cherry Avenue Extension Project for bidding, the City shall include the extension of S.E. 3rd Street in the Project. Following acceptance of a bid for the Project, the City shall bear the cost of installing the grading, street paving and storm sewer improvements, as necessary. If the development of Lot 2 begins before the City has submitted the Cherry Avenue Extension Project for bidding, upon the City’s demand, the Developer shall construct the full street to city specifications, including any storm water improvements necessary. Upon the Developer’s default of any provision contained in this paragraph, the City may withhold a Certificate of Occupancy from the Developer, its successors and/or assigns. This remedy shall not be exclusive of any other remedy or remedies available to the City, but each and every remedy given under this Agreement shall be cumulative and shall be in addition to every other remedy existing at law or in equity or by statute.

5. Notwithstanding anything otherwise addressed by this agreement, the Developer shall be responsible for all required public improvements not related to the street paving, including, but not limited to, water, sewer and hydrants.

6. The City's obligations under this Article shall be contingent upon the Developer's compliance with all of the Developer's obligations under Article I of this Agreement.

**III.
MISCELLANEOUS PROVISIONS**

1. This Agreement shall be binding upon and shall inure to the benefit of the City and the Developer and their respective successors and assigns.

2. The City and the Developer have caused this Agreement to be signed, in their names and on behalf of their duly authorized officers and members with full authority to bind each of their respective entities.

3. The City and the Developer may take any action, including legal, equitable or administrative action, which may appear necessary or desirable to collect any payments due under this Agreement or to enforce performance and observance of any obligation, agreement or covenant under this Agreement.

4. The City shall record this Development Agreement in the office of the Story County Recorder and Developer shall pay the costs for so recording.

5. The obligations under this Agreement shall constitute a covenant running with the land. Both the City and the Developer shall constitute parties for the purpose of filing a verified claim to extend the covenants contained herein.

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

DET LAND COMPANY, L.C.

Dated _____, 2020.

By:

Douglas G. Pyle, Member

STATE OF IOWA, COUNTY OF STORY, SS.: This instrument was acknowledged before me on _____, 2020, by Douglas G. Pyle, as Member of DET Land Company, L.C.

NOTARY PUBLIC

Passed and approved on _ . 2020, by Resolution No. 20-_
adopted by the City Council of the City of Ames, Iowa.

CITY OF AMES, IOWA

By:

John A. Haila, Mayor

Attest:

Diane R. Voss, City Clerk

STATE OF IOWA, COUNTY OF STORY, SS.: This instrument was acknowledged before me on _ , 2020, by John A. Haila and Diane R. Voss, as Mayor and City Clerk, respectively, of the City of Ames, Iowa.

NOTARY PUBLIC

LEGAL DESCRIPTION – EXHIBIT ‘A’
[the SITE]

Parcel "AN" a part of Lot One (1) of the Subdivision of the Northwest Quarter (NW1/4) of the Northeast Quarter (NE1/4) of Section Eleven (11), Township Eighty-three (83) North, Range Twenty-four (24) West of the 5th P.M., Ames, Story County, Iowa, and of Lot One (1), Block C, Kingsbury's Second Addition to Ames, Story County, Iowa, as shown on the Plat of Survey recorded on November 30, 2010, as Instrument No. 10-12298, at Slide 395, Page 5.

To be known as

Kingsbury's Third Addition, Ames, Story County, Iowa.