



PKTS. 4-23-2021

To: Mayor and City Council

From: Kelly Diekmann, Planning & Housing Director

Date: April 23, 2021

Subject: **Waiver of Platting Authority in the Urban Fringe – 229th Place, Boone County**

Background:

At the April 13, 2021 meeting, City Council referred to staff a request from Leon Wuebker and Kim Olmstead to have the City waive its platting authority within 2 miles of the Ames City Limits in the Urban Fringe. The property in question (Lots 5, 6, 7, 8, and 10 of Westwoods, Plat 3) is located on 229th Place in Boone County, just north of US HWY 30. The applicant wishes to subdivide one of the lots in the near future and the remainder at a later date. This would be a replat of existing vacant lots within a subdivision.

The Final Plat for Westwoods, Plat 3 was approved by the Ames City Council on December 10, 2002 as a commercial/industrial subdivision in Boone County within 2 miles of Ames. At that time, the Council also approved a covenant waiving the right to appeal future special assessments if levied in the future by the City. This was a condition of waving City infrastructure requirements for the rural development. Later the applicant approached the City Council about a waiver of further platting requirements on April 25, 2006 for additional divisions. However, no action was taken by the applicant to move forward with that plan. Staff believes that enough time has passed without action on behalf of the property owner (Leon Wuebker) that the item merited revisiting as a new wavier request.

Chapter 354 of the *Code of Iowa* gives provision for cities to exert jurisdiction over platting within 2 miles of its corporate limits. The same code also allows cities to waive that right.

Chapter 23 of the Ames Municipal Code also addresses platting and waiving of the right to review subdivision:

Sec. 23.103. WAIVER/MODIFICATION. (1) Where, in the case of a particular subdivision, it can be shown that strict compliance with the requirements of the Regulations would result in extraordinary hardship to the Applicant or would prove inconsistent with the purpose of the Regulations because of unusual topography or other conditions, the City Council may modify or waive the requirements of the Regulations so that substantial justice may be done and the public interest secured provided, however, that such modification or waiver shall not have the effect of nullifying the intent and purpose of the Regulations. In no case shall any modification or waiver be more than necessary to eliminate the hardship or conform to the purpose of the Regulations. In so granting a modification or waiver, the City Council may impose such additional conditions as are necessary to secure substantially the objectives of the requirements so modified or waived.

OPTIONS:

The applicant is requesting to have the City's platting authority waived for the replat of the specified existing lots.

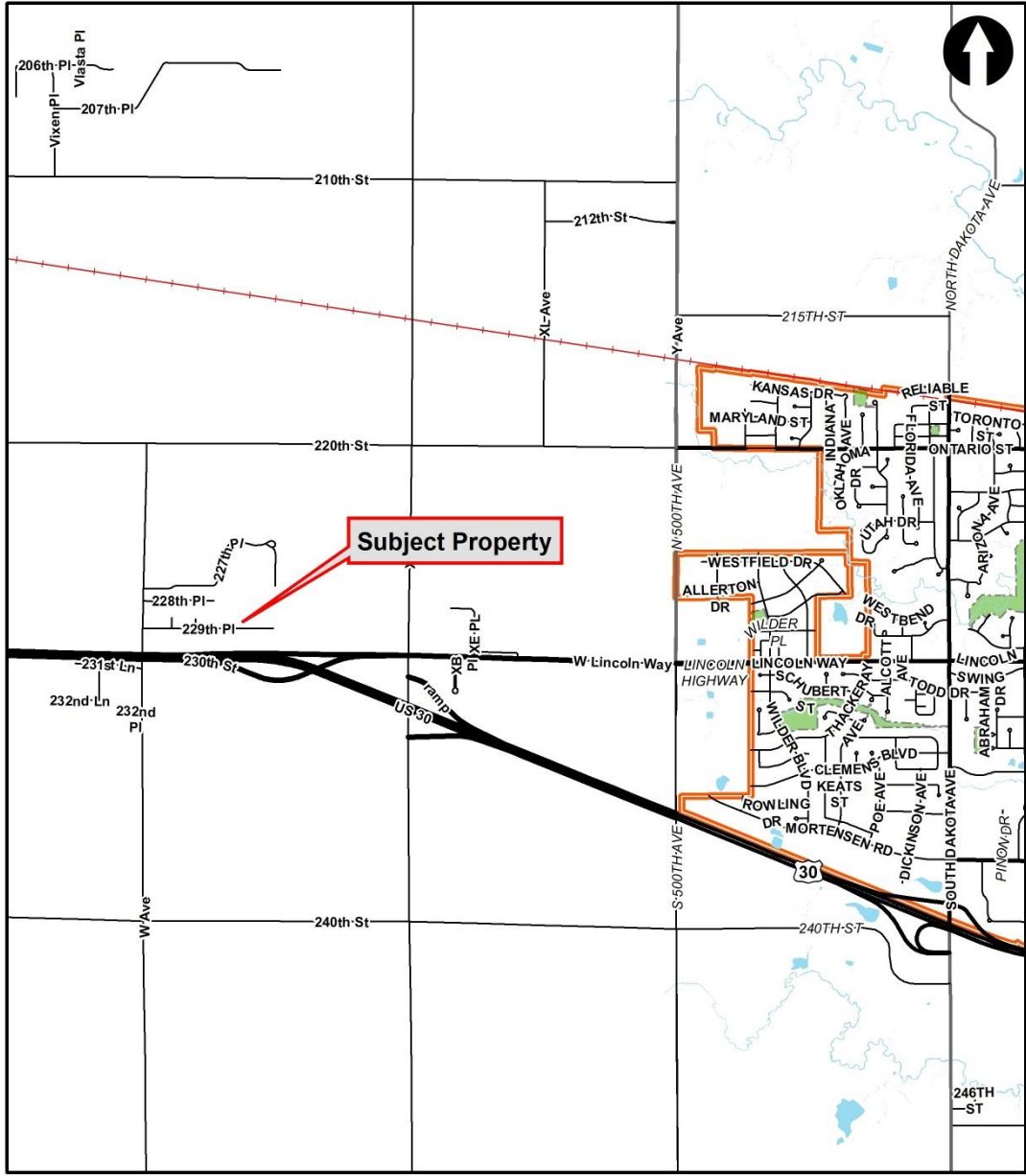
Option 1: The City Council can place the request on future agenda to approve a waiver of City Subdivision requirements and platting authority for the property.

Option 2: The City Council can decline to waive the requirements and require review of Preliminary and Final Plat.

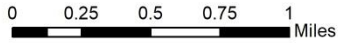
STAFF COMMENTS:

The subject property is over one and a half miles from the Ames City Limits. It is not within a Priority Growth Area. The scenario work for Ames Plan 2040 does not identify expansion of the City to include these already developed lands that do not meet City standards for infrastructure. The land has been previously subdivided and no new public improvements are planned to effectuate the proposed division. Replatting the property will provide more development flexibility for the owner and will not necessarily increase the intensity of new development if it is to occur. With the previous approval of the covenant that waived the rights of the owner to not protest future special assessments, the City's long-term interests are not compromised by waiving its authority in this instance. Staff believes that Option 1 can be found consistent with City policies.

Attachment A – Location Map

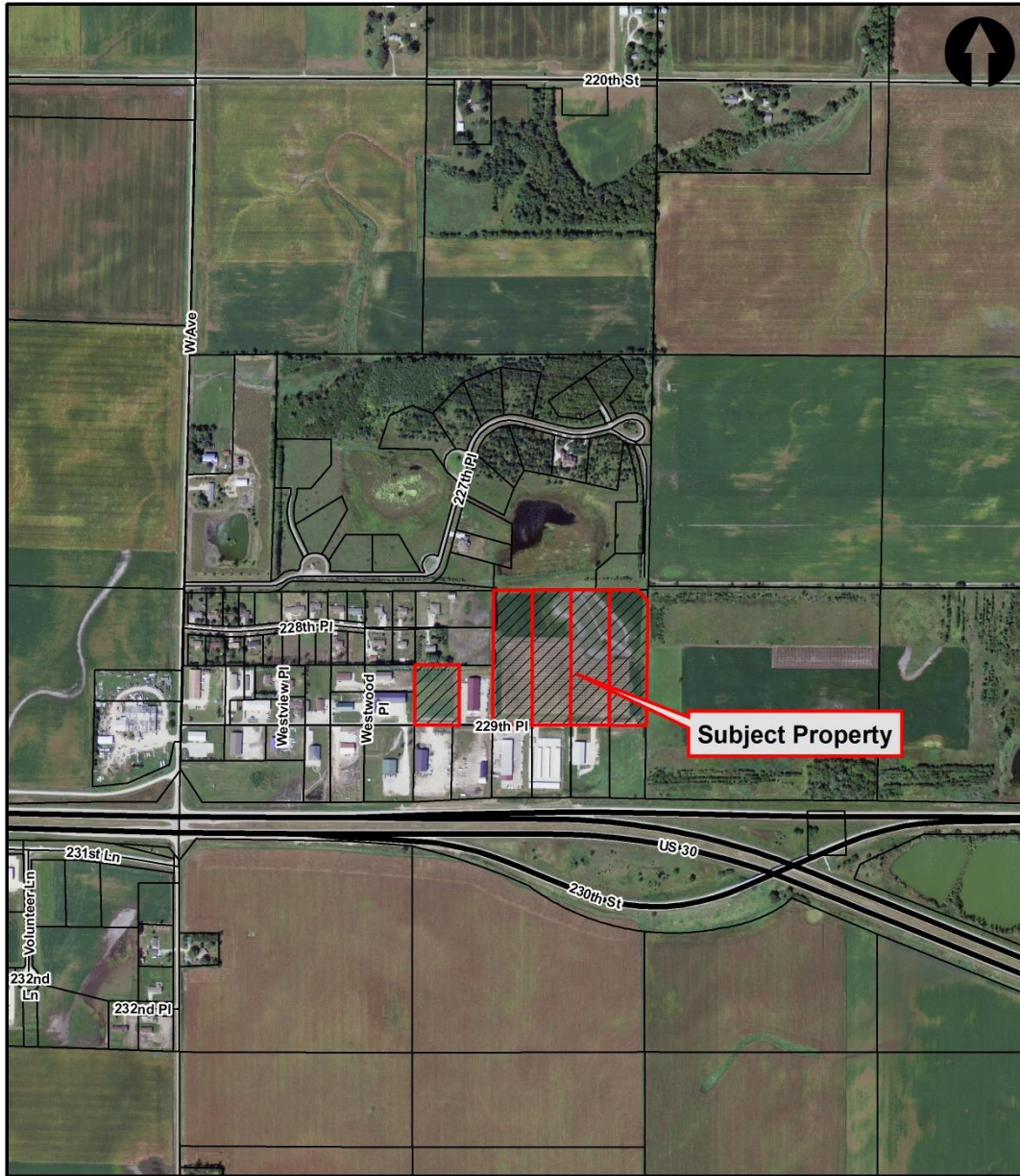


Westwoods, Plat 3



Legend

- Ames City Limits



Westwoods, Plat 3



Legend

 Subject Parcels

Attachment C – Westwoods, Plat 3 Covenant

DOC# 030136

02-20304

INST. NO. STORY COUNTY, IOWA FILED FOR RECORD

RETURN TO: (enw) Bill Ret AMES CITY CLERK BOX 811 AMES IOWA 50010

11 29 AM DEC 13 2002 PM

SUSAN L. VANDE KAMP, Recorder SW REG. FEE \$ 11.00 AUD. FEE \$

Handwritten signature and initials

DO NOT WRITE IN THE SPACE ABOVE THIS LINE, RESERVED FOR RECORDER Prepared by: John R. Klaus, City of Ames Legal Department, 515 Clark Avenue, Ames, Iowa 50010 (Phone: 515-239-5146)

WESTWOOD PLAT 3 COVENANT FOR ASSESSMENT OF COSTS OF IMPROVEMENTS

Instrument No. 030233 State of Iowa, Boone County, SS Filed for Record at 2:45 P.M. This 10. day of Jan, 2003 Sheryl J. Thul, Recorder, Fees \$ 11.00 due Number of Pages 2

THIS COVENANT AND AGREEMENT is made effective the 25th day of November, 2002, by and between LEON J. WUEBKER and LINDA C. WUEBKER, their successors and assigns (hereinafter called "Developer"), and THE CITY OF AMES, IOWA, (hereinafter called "City").

WITNESSETH THAT:

The parties hereto have agreed and do agree as follows:

- 1. This agreement is made for the purpose of meeting the subdivision regulations and plat approval requirements of the City.
2. In anticipation of the possibility that the City may at some time deem it to be in the public interest to cause construction of street paving, curbs and guttering, storm sewers, water mains, sanitary sewer mains, bicycle paths, and sidewalks by means of city awarded contracts to be paid by special assessments to be levied against the lots in Westwood Plat 3, Developer does hereby covenant and agree that by execution of this instrument Developer, its successors and assigns, including purchasers of lots, and each of them, shall pay and are bound to pay to the City, the costs of the aforesaid improvements assessed to the lots in Westwood Subdivision, Plat 3, by action of the governing body for the City, after notice of hearing as provided by Section 384.50 Code of Iowa, the provisions of Section 384.38 Code of Iowa notwithstanding.
3. Without affecting the forgoing waivers of rights, it is understood and agreed that if and when the governing body of the City conducts a hearing on a proposed resolution of necessity to assess public improvement costs to land referred to in this agreement, the owners of such land may then appear before the governing body of the City and be heard.
4. Additionally, Developer, in consideration of the benefits derived from approval of the said plat of subdivision, receipt of which is hereby acknowledged, does covenant with the City that it will never, at any future time, sue the City, or any officer or employee of the City, to test the regularity of the proceedings or legality of the assessment procedure, to appeal the amount of the assessment, to enjoin, set aside, overturn, or reduce the amount of such assessments levied against the said land by the City.

The foregoing provisions encumber the land that is platted as Westwood Plat 3, Boone County, Iowa.

5. This covenant and agreement shall be filed for record in the office of the Boone County Recorder and all covenants, agreements, promises and representations herein stated shall be deemed to be covenants running with the land and shall endure and be binding on the parties hereto, their mortgagees, lienholders, successors and assigns, for a period of twenty-one (21) years from the date of the recording of these covenants, unless claims to continue any interest in the covenants are filed as provided by law. The City shall have the right to file a claim to continue its interest in these covenants.

6. Invalidation of any of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

Executed by the respective signatories effective the date first above written.

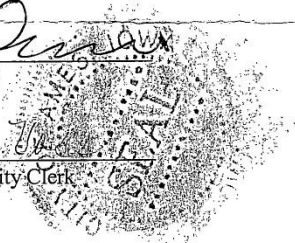
DEVELOPER

CITY OF AMES, IOWA

By: Leon J. Wuebker
Leon J. Wuebker

By: Ted Tedesco
Ted Tedesco, Mayor

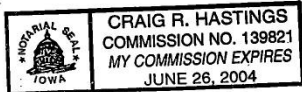
By: Diane R. Voss
Diane R. Voss, City Clerk



By: Linda C. Wuebker
Linda C. Wuebker

STATE OF IOWA, STORY COUNTY ss:
On this 25 day of NOV, 2002, before me, a Notary Public in and for Story County, personally appeared Leon J. Wuebker and Linda C. Wuebker, to me known to be the persons named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

Craig R. Hastings
Notary Public in and for Story County, Iowa



STATE OF IOWA, COUNTY OF STORY, ss:
On this 10th day of December, 2002, before me, a Notary Public in and for the State of Iowa, personally appeared Ted Tedesco and Diane R. Voss, to me personally known, and, 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. 22-609 adopted by the City Council on the 10th day of December, 2002, and that Ted Tedesco 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.

Jill L. Ripperger
Notary Public in and for Story County, Iowa



Attachment D – Request from Applicant

RE: Westwoods Waiver Request

 kim@charterhouseiowa.com
To Campbell, Benjamin
Cc Leon Wuebker

[Reply](#) [Reply All](#) [Forward](#) [...](#)

Thu 3/25/2021 11:04 AM

 You forwarded this message on 4/7/2021 12:19 PM.

[External Email]

Thank you for your follow up, Ben. See below for our updated request. Additionally, I will contact Boone County to obtain their documented opinion (our conversations were via phone) and forward to you when I receive.

On behalf of Leon Wuebker, I would like to request the Ames City Council consider a waiver of its subdivision authority for the Lots 5, 6, 7, 8, and 10 of Westwoods Plat 3. Their use will continue to be consistent with the use of their current zoning (commercial) and those other developed lots around it.

We have spoken with Boone County who agreed that an equal land split would be acceptable on all 5 properties.

Please let us know if there are any further items that we may need to address with this waiver and we thank you for all of your guidance through the process.

Best,
Kim



Kim

Kim Olmstead

REALTOR® • License #S66194000

📧 Kim@CharterHouseIowa.com

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📍 107 NE Delaware Ave, Ste 1
Ankeny, IA 50021

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Attachment E – Resolution 06-156

RESOLUTION NO. 06-156

**RESOLUTION APPROVING REQUEST FOR WAIVER OF
SUBDIVISION REQUIREMENTS FOR
WESTWOOD'S PLAT 3, LOCATED IN BOONE COUNTY
FOR THE CITY OF AMES, IOWA**

WHEREAS, on April 11, 2006, the City Council referred to staff a request from Leon Wuebker requesting a waiver of subdivision requirements for further subdivision (replatting) of Lots 5, 6, 7, 8, and 10 of Westwood's, Plat 3, located in Boone County; and,

WHEREAS, the proposed subdivision is located inside the two-mile jurisdiction of Ames on the north side of U.S. Highway 30; and,

WHEREAS, the applicant is requesting that the Council defer the subdivision review and approval authority for this proposed division of land to the Boone County Supervisors; and,

WHEREAS, on November 12, 2002, the Council approved a resolution approving a Preliminary Plat for Westwood's, Plat 3, and on December 10, 2002, the Council approved the Final Plat as well as a covenant that waives the right to appeal future special assessments if levied in the future; and,

WHEREAS, the subject property is located to the west of the City in Boone County, which is well outside the current corporate limits, and it is not located within the "Priority Growth Area"; and,

WHEREAS, the land has been previously subdivided and no new public improvements are planned; and,

WHEREAS, replatting the property will provide more development flexibility for the owner and will not necessarily increase the intensity of new development if it is to occur; and,

WHEREAS, with the previous approval of the covenant waiving the rights of the owner to not protest future special assessments, the City's long-term interests are not compromised by waiving its authority in this instance.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Ames, Iowa, that the request for waiver of subdivision requirements for Westwood's, Plat 3, located in Boone County is hereby approved.

ADOPTED THIS 25th day of April, 2006.



Diane R. Voss, City Clerk



Ann H. Campbell, Mayor

Introduced by: Mahayni
Seconded by: Goodman
Voting aye: Doll, Goodman, Mahayni, Popken, Rice
Voting nay: None Absent: Goodhue

Resolution declared adopted and signed by the Mayor this 25th day of April, 2006.