

ITEM #: 21  
DATE: 01-25-22

**COUNCIL ACTION FORM**

**SUBJECT: FINAL PLAT FOR KINGSBURY'S FIFTH ADDITION  
WITH SUPPLEMENTAL DEVELOPMENT AGREEMENT FOR  
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 Fifth Addition Subdivision is a 5.62-acre site on SE 3rd Street, just north and east of Target located on what is currently Lot 1 of Kingsbury's 4<sup>th</sup> Addition. (Location map - Attachment A) The property owner, WW Holdings Corporation, is requesting approval of a Final Plat creating 4 lots. (Lot Layout-Attachment B). At the time the Kingsbury's 4<sup>th</sup> Addition was approved, the City Council approved a development agreement for partial waiver of infrastructure improvements for approximately 152 feet of SE 3<sup>rd</sup> Street

**A preliminary plat for the 5<sup>th</sup> Addition was approved on March 23, 2021. The property owner proposes a supplemental development agreement in conjunction with this Final Plat to continue the terms of partial waiver of public improvements approved with the 4<sup>th</sup> Addition. The partial waiver reassigns the SE 3<sup>rd</sup> Street improvements to proposed Lot 3 of the 5<sup>th</sup> Addition**

The subject property is zoned Highway-Oriented Commercial (HOC). The largest proposed lot is Lot 4 (2.95 acres) on the north side of the site abutting SE 2<sup>nd</sup> Street and Kingsbury Avenue with Lots 1 (1.28 acres), Lot 2 (.71 acres) and Lot 3 (.68 acres) fronting on SE 3<sup>rd</sup> Street. The owner plans development of a new Carwash on Lot 1. The other lots do not have specified users.

Large portions of Lots 3 and 4 are located within the floodway fringe and any subsequent development on the portions of these lots within the floodway fringe will require adherence to floodplain development standards related to building elevation and protection.

All subdivisions require public improvements at the time of platting to serve proposed lots. This subdivision would require completing paving of SE 3<sup>rd</sup> Street, sidewalks along 2<sup>nd</sup> and 3<sup>rd</sup> Street, and a public water and sanitary sewer main to serve Lot 4. Appropriate

easements for water, sewer, and public utilities are shown on the Final Plat. The developer proposes to make these improvements subject to the terms of the proposed Subsequent Development Agreement for the 5<sup>th</sup> Addition.

### **SUBSEQUENT 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 3<sup>rd</sup> Street as well as to SE 5<sup>th</sup> Street further to the south. In recognition of this planned City street project, the property owner dedicated right-of-way to the City and was granted a partial waiver of street improvements for 152-foot SE 3<sup>rd</sup> Street extension so that it could be coordinated as a connection to the eventual City extension of Cherry. The waiver stated that if the street was needed to meet development requirements of Lot 1 in the 4<sup>th</sup> Addition, the developer must complete the paving if the City had not yet extended SE 3<sup>rd</sup> Street.

Staff supported the original waiver of street paving in recognition that there are practical difficulties in completing the extension of SE 3<sup>rd</sup> Street without a final design for Cherry Avenue to match grades. This is an unusual circumstance where a developer is required to construct a partial street extension at a time the City is planning a street improvement project that includes the subject site. Conditions from the time of the 4<sup>th</sup> Addition's approval have not changed.

The street frontage improvements that were initially waived relate to the frontage of the proposed Lot 3 of this final plat. Proposed Lot 3 is a 0.68 acre lot with approximately 153 feet of frontage on 3<sup>rd</sup> Street. The property owner proposes that the initial concept of waived street improvements be reassigned to proposed Lot 3 of the 5<sup>th</sup> Addition.

**The proposed supplemental agreement (Attachment D) is an update to the previous agreement approved on May 12, 2020 and previously amended on August 24, 2020. The original agreement and amendment delegated responsibility for extension of the 152 feet of SE 3<sup>rd</sup> Street to the City or conditionally to the property owner based upon whether the Cherry Street project occurred before or after the owner chooses to develop on the portion of the property where the street is yet unbuilt and if additional paved access was needed to serve the site.**

The proposed supplemental agreement included with 5<sup>th</sup> Addition includes the following provisions:

1. In the event the development of Lot 3 occurs and the City has not completed the Cherry Avenue and SE 3<sup>rd</sup> extension, it is the obligation of the property owner to complete the street improvements to support the development of Lot 3.
2. Sidewalk along SE 2nd will be deferred and installed by the Developer upon development of Lot 4. Sidewalks along SE 3<sup>rd</sup> Street will be completed for Lots 1 and 2 per subdivision standards.

Staff is supportive of the partial sidewalk deferral due to the conditions along the 2<sup>nd</sup> Street frontage .

3. All previous agreements applying to the property to date will continue to apply and they obligate the Developer to complete all other necessary public infrastructure improvements as required by Chapter 23 subdivision standards.

The 4<sup>th</sup> Addition included a financial security related to this site for sidewalks and a COSESCO of \$17,315. The current estimated cost for public improvements, including the water and sewer mains, but no paving of SE 3<sup>rd</sup> Street is \$63,800. The applicant is working to provide an updated financial security prior and public improvement agreement prior to City Council approval of the Final Plat.

### **ALTERNATIVES:**

1. The City Council can (A) approve the supplemental development agreement for the partial waiver of the construction of SE 3<sup>rd</sup> Street paving and associated storm sewer improvements and (B) approve the Final Plat for Kingsbury's Fifth Addition Subdivision with financial security for specified public improvements in the amount of \$63,800.
2. The City Council can deny the Final Plat for Kingsbury's Fifth 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.

The proposed supplemental development agreement follows the intent of previous agreements and makes minor amendments based on the new lot configuration relative to the unfinished portion of the street. 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. Note that the owner must provided and updated security in order to approve the Final Plat.

Attachment A- Location Map

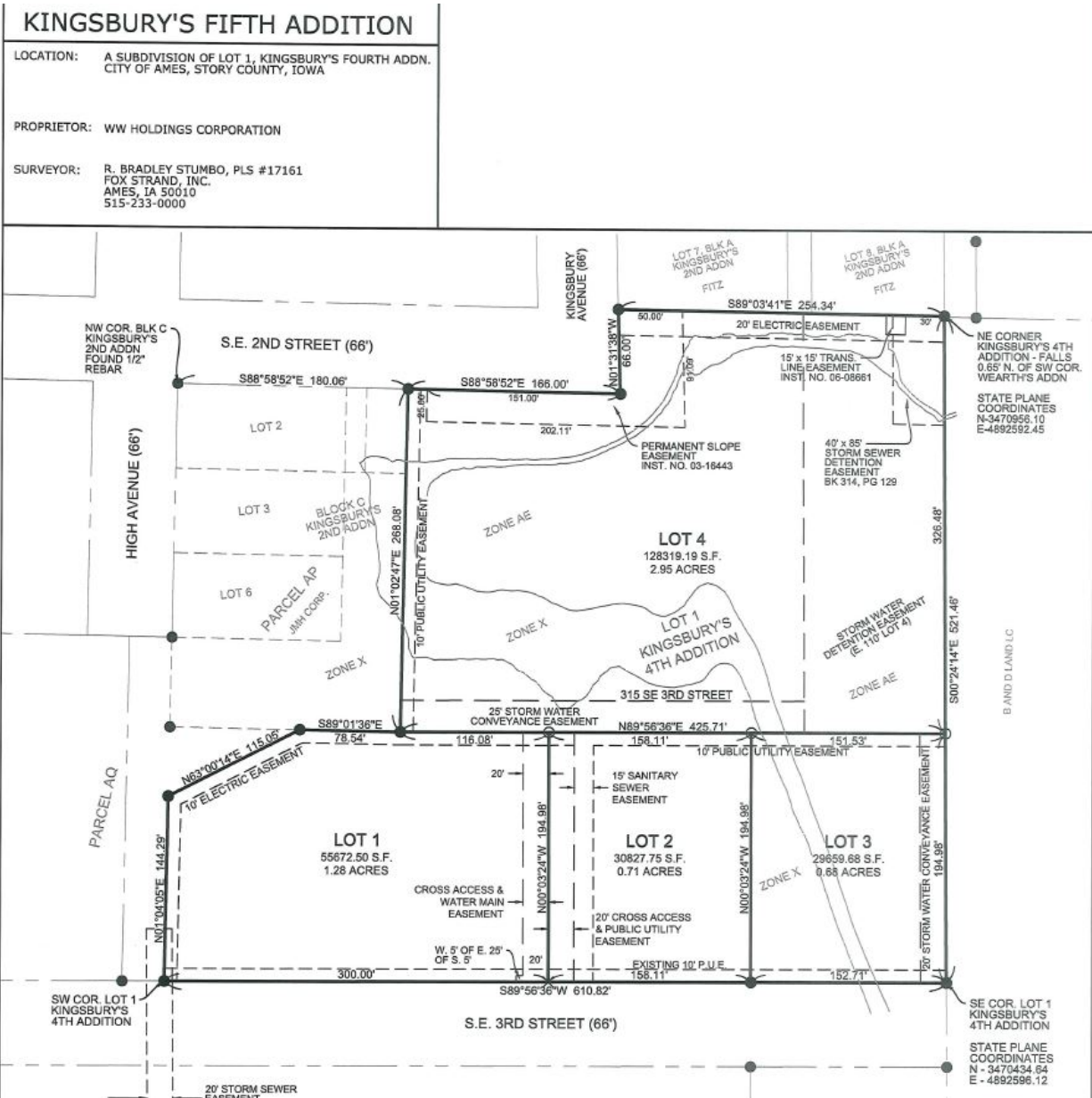


Location Map  
315 SE 3rd Street





## Attachment B- 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- Amended Agreement

Prepared by and upon recordation return to:

Robert W. Goodwin, 2211 Philadelphia Street, Suite 101, Ames, Iowa 50010, 515-232-7390

### **SUPPLEMENTAL AGREEMENT FOR PUBLIC IMPROVEMENTS (SIDEWALK AGREEMENT)**

This Supplemental Agreement For Public Improvements is made by and between the City of Ames, Iowa and WW Holdings Corporation.

- A. **DEFINITIONS.** The following terms are defined:
- A.1 "City" means the City of Ames, Iowa.
  - A.2 "WW" means WW Holdings Corporation.
- B. **ATTACHMENTS.** The Preliminary Plat Kingsbury's Addition, Ames, Iowa, consisting of two (2) sheets, is attached hereto and incorporated herein by this reference for the purpose of aiding in the description and understanding of the terms in this Supplement Agreement For Public Improvements.

WHEREAS, WW is the Owner of real property in Ames, Story County, Iowa, legally described as follows:

Lot One (1) in Kingsbury's Fourth Addition, Ames, Story County, Iowa.

WHEREAS, WW Holdings Corporation is in the process of platting and subdividing Lot One (1) Kingsbury's Fourth Addition, Ames, Story County, Iowa into Kingsbury's Fifth Addition to the City of Ames, Story County, Iowa.

WHEREAS, there is a Development Agreement Kingsbury's Third Addition (n/k/a Kingsbury's Fourth Addition) dated May 12, 2020 filed in the office of the Story County Recorder as Instrument No. 2020-05055 with DET Land Company, L.C., which owned Lot 1, Lot A and Lot 2 as shown on the attached sheet 1. Lot A was dedicated to the City of Ames, Iowa pursuant to that Agreement.

**Attachment D- Cont.**

WHEREAS, there is an Amendment To Agreement For Public Improvements dated August 24, 2020 filed in the office of the Story County Recorder as Instrument No. 2020-11151 on September 24, 2020. That Agreement recognizes that WW has become the Owner of Lot 1 as shown on sheet 1. WW is developing Lot 1 into four lots (1-4) as shown on sheet 2.

NOW THEREFORE, the Parties hereto agree as follows:

1. The event that will require paving SE 3<sup>rd</sup> Street and installing a sidewalk along SE 3<sup>rd</sup> Street as shown on sheet 2 is the issuance of a Minor or Major Site Development Plan for Lot 3 of the Fifth Addition owned by WW, or the development of Lot 2 of the 4<sup>th</sup> Addition, which is owned by DET Land Company, L.C.. As agreed by and between WW and DET Land Company, L.C. in the Amendment To Agreement For Public Improvements dated August 24, 2020, WW shall be responsible to pave SE 3<sup>rd</sup> Street and install the sidewalk along the north side of SE 3<sup>rd</sup> Street, both according to City standards.
2. The event that will require installing a sidewalk along the northwest portion of Lot 4 of the Fifth Addition as shown in sheet 2 is the issuance of a Minor or Major Site Development Plan for said Lot 4. WW shall be responsible for the installation of said sidewalk, according to City standards.
3. Nothing herein shall be construed to release or modify the amount of security deposited with the city required under the Amendment filed September 24, 2020 as Instrument No. 2020-11151.
4. This Agreement shall be binding on all successors and assigns of the parties hereto.

**WW HOLDINGS CORPORATION**

By:

  
Ryan E. Davis, President and Director

STATE OF IOWA, COUNTY OF STORY, SS:

This instrument was acknowledged before me on January 5, 2022, by Ryan E. Davis, President and Director of WW Holdings Corporation.



  
Notary Public in and for the State of Iowa



**Attachment D- Cont.**

Passed and approved on \_\_\_\_\_, 2022, by Resolution No. \_\_\_\_\_  
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 \_\_\_\_\_, 2022, by  
John A. Haila and Diane R. Voss, as Mayor and City Clerk, respectively, of the City of  
Ames, Iowa.

\_\_\_\_\_  
Notary Public in and for the State of Iowa