

ITEM #: 42 B
DATE: 01-24-2023
DEPT: P&H

COUNCIL ACTION FORM

SUBJECT: AMENDMENT TO REZONING AGREEMENT FOR ACCEPTING A LETTER OF CREDIT IN LIEU OF CASH SECURITY

BACKGROUND:

Hunziker Development Group, the owner of 28.58 acres of property located at 798 North 500th Avenue has applied to amend the previously approved Rezoning Master Plan for the North Sunset Ridge development. The site is located to the north of the existing Sunset Ridge Subdivision (Attachment A - Location Map). The property is located on land annexed to the City in February 2022. The current zoning of Floating Suburban Residential Low-Density (FS-RL) and Master Plan was approved by the City Council on August 9, 2022.

With the rezoning, the developer entered into a Contract Rezoning Agreement that included provision for a financial contribution to the extension for sanitary sewer line through the site and a separate section regarding a Master Plan for the zoning approval. **Specifically, the developer is required to provide a one-time payment to the City in the amount of \$604,725 within 14 days of the award of the contract for construction of the sanitary sewer extension, or approval of final plat, whichever occurs first.** The City would hold the funds in an interest-bearing escrow account for payments related to the sanitary sewer construction. The City awarded the contract for this project at its January 10th meeting.

In addition to a request to amend the existing Master Plan related to the configuration of access points and total number of units, the developer also is requesting an amendment to the rezoning agreement to allow temporarily substituting a letter of credit for the cash security. Accepting the letter of credit would defer cash payment to the City until March 31st, which would coincide with the start of construction of the sanitary sewer project.

This request is unusual in that it a change of terms to the agreement and City practice is to require cash security when there is a defined contribution to a project rather than a percentage share. Taking cash as security allows the City to earn some interest on the contribution as a slight hedge against inflated construction costs when the date of the project is unknown. In this instance, the project amount is known due to the award of the contract for the project, the project costs will not increase over the next two months. Therefore, satisfying this request should not set a precedent.

Revisions to the Rezoning Agreement require a public hearing as an amendment to the contract. The revision to the Master Plan and amendment to Rezoning Agreement were noticed for the January 24th City Council meeting. **The changes to the sanitary sewer terms of the Rezoning Agreement are not subject to a Planning and Zoning Commission recommendation, as is the case for the separate Master Plan revision issue. City Council can hold the public hearing for amendments to the Rezoning Agreement for this property and close the public hearing. At the conclusion of the hearing, City Council can determine whether to approve the amendment regarding the substitution of the letter of credit for cash security. This issue is differentiated from acting on the revision to the Master Plan that is also on this same agenda.**

ALTERNATIVES:

1. Approve the attached amendment to the Contract Rezoning Agreement authorizing acceptance of a Letter of Credit in the amount of \$604,725 in lieu of cash security until March 31st.

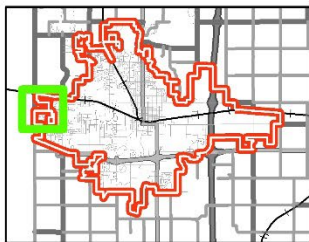
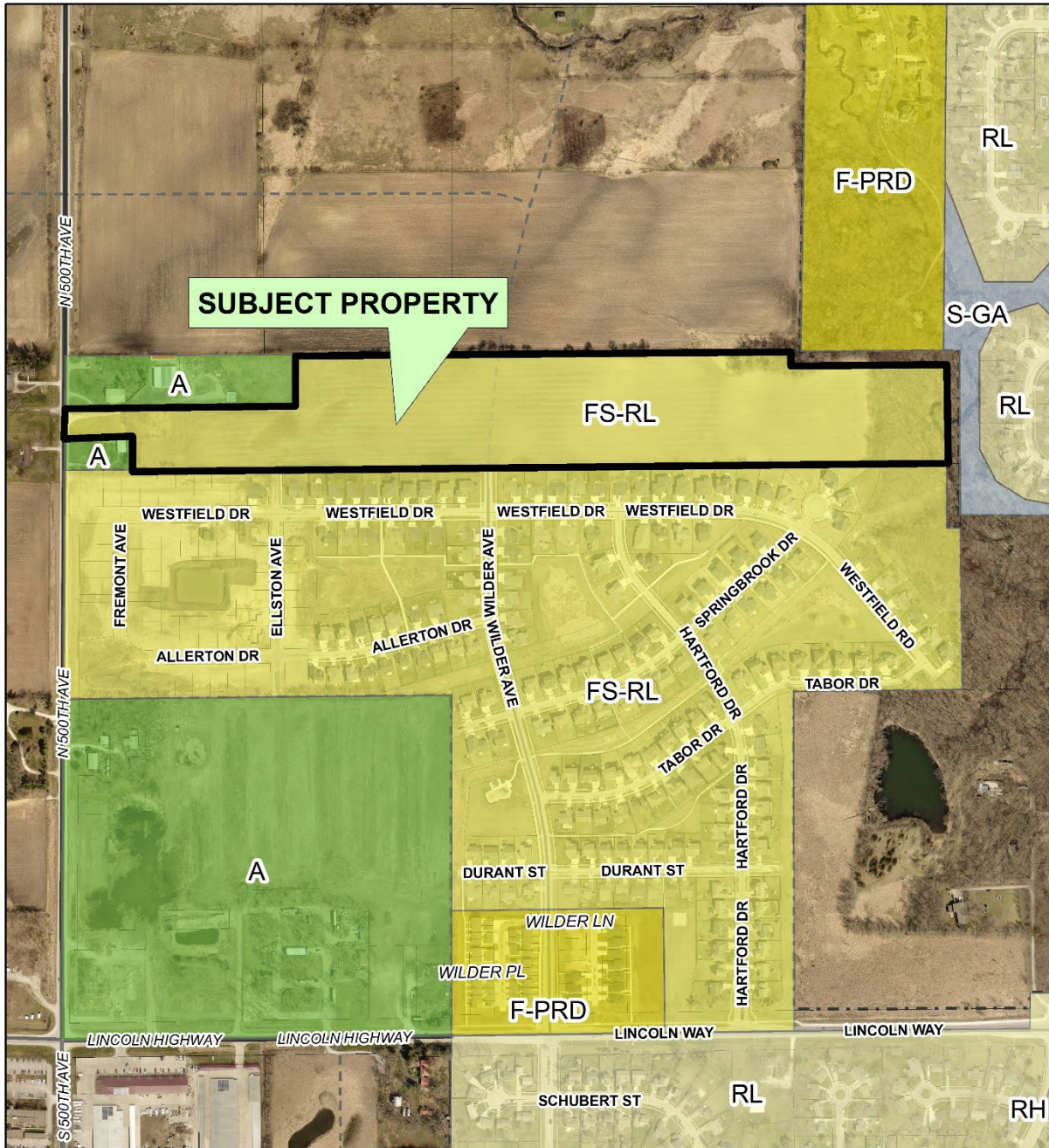
The unsigned amendment is attached. The developer must sign the agreement prior to the Public Hearing.

2. Decline to approve the amendment and required the cash payment to the City in the amount of \$604,725 on January 25, 2023.

CITY MANAGER'S RECOMMENDED ACTION:

The proposed change is a departure from typical City practice where cash in escrow is the preferred method of securing a developer's obligation. Cash in escrow is under the control of the City and can financially hedge against rising costs of a project. A letter of credit is typically used to secure public improvements constructed by a developer where the City is unlikely to readily need access to the funds. The developer requests this financial flexibility for their benefit and believes that the short term substitution does not change the costs for the project or the ability to pay the contractor by the City. With the short duration of the substitution and known costs of the project, this one-time substitution does not significantly affect the viability of the project for the City. Therefore, it is the recommendation of the City Manager that the City Council approve Alternative #1.

Attachment A- Location & Current Zoning



798 N 500th Avenue ZONING MAP



0 0.025 0.05 0.1 0.15 0.2 0.25 Miles

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: Mark O. Lambert, City of Ames Legal Department, 515 Clark Ave., Ames, IA 50010 – 515-239-5146

**FIRST AMENDMENT TO CONTRACT REZONING AGREEMENT
FOR ADOPTION OF THE MASTER PLAN FOR 798 N. 500TH
AVENUE**

THIS IS AN AMENDMENT to an Agreement made by and between the City of Ames, Iowa and Hunziker Development Group, LLC, upon the following terms and conditions:

1 DEFINITIONS. When used in this Amendment, unless otherwise required by the context:

- 1.1 “City” means the City of Ames, Iowa, an Iowa Municipal Corporation, the seller of the property herein.
- 1.2 “Developer” means Hunziker Development Group, LLC, an Iowa limited liability company.
- 1.3 “Agreement” means the recorded Agreement, presently in force between the City and Developer, filed in the office of the Recorder of Story County, Iowa, on August 15, 2022, as Instrument No. 2022-08152, which was a contract rezoning agreement with master plan, which set certain conditions for a rezoning of real property locally known as 798 N. 500th Avenue, Ames, Iowa.
- 1.4 “Site” means the real property located at 798 N. 500th Avenue, Ames, Iowa, the legal description for which is set forth in Exhibit ‘A’ attached hereto.

2 CIRCUMSTANCES. Under the terms of the Agreement made by Developer and the City; specifically Part II(c), Developer is obligated to pay to the City the sum of \$604,725 as of January 24, 2023. The funds are Developer’s share of the cost of a public improvements project that must timely be in the hands of the City to meet City’s contractual obligations. As a convenience to Developer, Developer requests to provide the City with a letter of credit (a “LOC”) in lieu of the cash requirement owed to the City for its sanitary sewer obligation for a temporary period.

3 **AMENDMENT.** The Agreement is amended at Part II(c) to allow Developer to provide a LOC payable to the City and in a form acceptable to the City in lieu of a cash payment in the amount of \$604,725. By noon on March 31, 2023, the Developer shall make the full cash payment to the City. Upon receipt of the full cash payment required, the City shall return said LOC to Developer. Said LOC shall be acceptable to the City if it is delivered to the City Clerk on or before noon on January 24, 2023, and if the LOC contains no contingencies or conditions that must be satisfied by the City to draw upon the LOC; that is, it shall be payable upon the City's demand at any time, for any reason. City shall draw upon the LOC provided if any part of the required cash payment has not been delivered to the City as required. If Developer is unable to provide a timely and acceptable LOC as described herein, Developer shall make the full escrow cash deposit in cash to the City on or before January 24, 2023, as required by the Agreement.

4 **CONTINUED FULL FORCE.** The Agreement shall continue to have full force and effect in accordance with the terms thereof, subject, however, to this Amendment.

IN WITNESS WHEREOF, the City and the Developer have executed this Amendment on this _____ day of January 2023.

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

	DEVELOPER:	HUNZIKER DEVELOPMENT GROUP, LLC
		By:
		Justin Dodge, Manager