

ITEM #: 28
DATE: 09-12-23
DEPT: P&H

Staff Report

**REQUEST TO AMEND AUBURN TRAIL
CONTRACT REZONING AGREEMENT FOR SHARED USE PATH**

September 12, 2023

BACKGROUND:

At the City Council meeting on August 22, 2023, based upon a prior referral request, the City Council directed that this item be placed on a Council agenda.

In a letter dated July 13, 2023, Justin Dodge of Hunziker Companies requested an extension related to construction of a shared use path along Hyde Avenue. The obligation is included within a Contract Rezoning Agreement for the proposed Auburn Trail Subdivision located at 4605 & 4514 Hyde Avenue. The Agreement was approved on July 21, 2021, between the City and two property owners: Erben Hunziker and Margaret Hunziker Apartments, LLC and Hunziker Development Group, LLC.

The current trigger for construction of the shared use path as stated in the agreement is “within two years of the date that the first final plat is approved by the City Council” (see Attachment A). The first final plat for Auburn Trail was approved by the City Council on February 22, 2022, through the minor subdivision process, meaning the path is to be installed by February 22, 2024. Hunziker is asking for an amendment to the agreement to allow the construction of a shared use path to correspond to development on the west side of Hyde with a future final plat (see Attachment B).

The original final plat approval was for the purpose of splitting off an existing house from the remainder of the subdivision area. A final plat was required to establish the boundary so the home could be sold. The plat did not create any new developable lots. Instead, it created one parcel having an existing residence, two outlots, and conveyance of Hyde Avenue right-of-way.

Prior to any development on either outlot, a preliminary plat and final plat are required. The Major Subdivision Preliminary Plat for Auburn Trail was recommended for approval by the Planning and Zoning Commission on March 16, 2022. However, in May 2022, the developer requested that the project be placed on hold. Consequently, the Preliminary Plat did not proceed to the City Council for approval. **To date, no developable lots have been created within the Auburn Trail Subdivision.**

Hunziker states in the July 13 letter that it agreed to the provision in the Contract Rezoning Agreement “under the belief that completion of the trail would coincide with the grading of the west side of Hyde Avenue” when they “would have lots prepared and available for sale”. **Hunziker now is requesting that the trigger for construction of the shared use path be changed to read, “the Developer will construct a shared use path along the west side of Hyde Avenue within two years of the date that the first final plat *on the West side of Hyde Avenue* is approved by the City Council.”** At such time, Hunziker indicates that it would be able to “grade for this path.” (see Letter, Attachment B)

OPTIONS:

Option 1: Grant the Developer’s Request to Amend the Agreement Allowing Construction of the Shared Use Path to be Delayed.

The City Council can direct the Developer to submit a Rezoning Application for an Amendment to the Agreement allowing the shared use path to be constructed within two years of the date that the first final plat *on the West side of Hyde Avenue* is approved by the City Council.

Once approved, the amendment would allow the construction of the shared use path to coincide with grading of future developable lots on the west side of Hyde Avenue.

Under this arrangement, there is no date certain for the construction of the shared use path. Construction of the shared use path would continue to be tied developer’s timeline, as is also the case with Hayden’s Preserve and that developer’s obligations under its development agreement.

Option 2: Revise the Agreement with Alternative Language Addressing the Construction of the Shared Use Path.

The City Council can direct staff to prepare an alternative amendment to the development agreement that includes a specific timeline for construction rather than tie it to a development phase.

Option 3: Decline the Request From Developer and Require Construction of the Share Use Path under the Current Terms of the Agreement.

The City Council can choose not to initiate any changes to the agreement at this time. The Developer would then be obligated to construct the shared use path by February 22, 2024 (within two years of the date that the first final plat).

While this option might allow the construction of the shared use path sooner, it will not address the gap to the north associated with the Hayden’s Preserve Subdivision and therefore, the overall trail network in this area would still contain a gap.

STAFF COMMENTS:

A gap in the trail network exists between Bloomington Heights and 190th Street along the west side of Hyde Avenue. This is a highly desired connection for north Ames trail users and was an important element of proceeding with the rezoning and planning for development of the site. At the time of approval of the agreement, the developer believed it would proceed with the project within the next year and easily complete the project.

The overall completion of the shared use path is currently reliant on the development of two subdivisions located along Hyde Avenue. This includes the subject Auburn Trail project and Hayden's Preserve (formerly known as Rose Prairie) located to the north of Auburn Trail. Although the Hayden's Preserve Preliminary Plat was approved by City Council on May 24, 2022, it too—as with Auburn Trail—has been halted and has not moved forward to final platting.

If the City Council requires the Auburn Trail portion to proceed as currently required under the existing language of the agreement, the segment to the north associated with Hayden's Preserve would continue to remain unfinished for an indeterminant period of time. Therefore, Staff supports an extension for the developer to complete the shared use path construction. The original intent was to align the improvement with development of the site. An extension described with Option 1 would be consistent with this intent.

ATTACHMENT A
Contract Rezoning Agreement

Instrument #: 2021-09213
07/19/2021 09:40:15 AM Total Pages: 8
00 OTHER
Recording Fee: \$ 42.00
Stacie Herridge, Recorder, Story County Iowa



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

(enw) Return document to: City Clerk, P.O. Box 811, Ames IA 50010

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

**CONTRACT REZONING AGREEMENT FOR THE PROPOSED AUBURN
TRAIL SUBDIVISION LOCATED AT 4605 & 4514 HYDE AVENUE**

THIS AGREEMENT, made and entered into this 21st day of July 2021, by and between the City of Ames, Iowa, (hereinafter "City") and two property owners, namely, **Erben Hunziker and Margaret Hunziker Apartments, L.L.C.** and **Hunziker Development Group, LLC**, (collectively, hereinafter "Developers"), and their successors and assigns,

WITNESSETH THAT:

WHEREAS, the Developers are seeking to improve and develop areas located within the corporate boundaries of the City at 4605 Hyde Avenue (Parcel ID No. 05-21-400-005), owned by Erben Hunziker and Margaret Hunziker Apartments, L.L.C., and 4514 Hyde Avenue (Parcel ID No. 05-22-300-375), owned by Hunziker Development Group, LLC, which is legally described as set forth in Exhibit 'A' attached hereto; and as depicted generally in Exhibit 'B' attached hereto (collectively, the "Site"); and

WHEREAS, the Developers have applied to the City for a rezoning of the Site from the present designation of Agricultural (A) to Suburban Residential Low Density (FS-RL) to develop a residential subdivision to be known as Auburn Trail; and

WHEREAS, the Developer and City desire to ensure reasonable conditions for the development of the site and offsite improvements are agreed to per Iowa Code 414.5; and

WHEREAS, the Developers have submitted to the City a Master Plan for the development of the Site as required by Ames Municipal Code §29.1507 and this Agreement is intended to meet the requirement of a "zoning agreement" to be approved by the City and agreed to by the owners of the real property as set forth by §29.1507(5); and

WHEREAS, the City desires to ensure that the Site will be compatible with infrastructure requirements and future incorporation into the City through an agreement between the Developer and the City with respect to public improvements.

WHEREAS, offsite improvements are necessary for the site to be compatible with infrastructure requirements.

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. Induce the City to rezone the Site.
 - 2. Provide for certain conditions binding upon the Developer that are the conditions necessary to induce the City to rezone the Site.
- B. It is the intent of the parties to conform to the approved Master Plan of Auburn Trail as reflected in the attached Exhibit 'B.'
- C. It is the intent and expectation of the Parties that the Site will be developed in two or more phases, or subdivisions of the Site.
- D. It is the intent of the Parties that neither the City nor the Developers shall be bound by the terms of this Agreement if the City Council does not approve the rezoning of the Site.
- E. The parties reaffirm the terms of the Pre-Annexation Agreement recorded August 20, 2015, as Instrument 2015-08125, as it pertains to the Site.

**II
AGREEMENT FOR PUBLIC INFRASTRUCTURE**

- A. The Site shall be developed consistent with the Master Plan as attached to this agreement and as approved by the City Council. Any Preliminary Plat submitted and every subsequent development action upon the Site shall conform to the approved Master Plan as required by §29.1507(5) of the Code.
- B. The Developer will construct a shared use path along the west side of Hyde Avenue within two years of the date that the first final plat is approved by the City Council. The shared use path shall conform to City specifications. The shared use path shall be a minimum of ten feet in width. The shared use path shall extend north from the terminus of the existing sidewalk south of the Auburn Trail site to the south line of Outlot X, Rose Prairie Final Plat, including the frontage of Outlot B, Cochrane Farm Subdivision, Ames, Story County, Iowa, a distance of approximately 1,400 feet.
- C. As part of Phase Two of the Site development, the Developer will extend public infrastructure from the Site northward in conformance with the master plan approved by the City. The public infrastructure shall extend through Outlot A, Cochrane Farm Subdivision, Ames, Story County, Iowa, and the public infrastructure shall align with the Hayden's Preserve street network north of said Outlot A, in Cochrane Farm Subdivision. City Council may allow for deferral of these

improvements as part of the Final Plat approval.

- D. Developer shall be responsible for preparing improvement plans and plats necessary for right-of-way acquisition within Outlot A of Cochrane Farm Subdivision, as identified in paragraph II(C) above, for review and approval by the City. Developer shall be responsible for obtaining any and all necessary consents, transfers, and acquisition costs of real property dedicated for right-of-way purposes within Outlot A of Cochrane Farm Subdivision.
- E. "Public infrastructure" includes public right-of-way, street, street trees, sidewalks, shared use paths, water mains and lines, and sanitary and storm sewer lines.

III AGREEMENT FOR STREETS

- A. The Developer shall, with respect to all streets as shown on the Site, convey fee title for the street land to the City at no charge or cost to the City, said conveyance to occur at the time of subdivision platting.
- B. The Developer shall establish a street right-of-way developed in accordance with City standards.

IV. GENERAL PROVISIONS

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

B. 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.

C. Noninclusion of Other Improvement Obligations. The Parties acknowledge and agree that it is not possible to anticipate all the infrastructure and Code requirements that the Developer may be required to complete or comply with to properly develop the Site. Therefore, the Parties agree that all work done by and on behalf of the Developers with respect to other improvements, including but not limited to, building design, building construction, and utilities, both on-site and off-site, shall be made in compliance with the Iowa Code, SUDAS, and all other federal, state, and local laws and policies of general application, including but not limited to building and zoning codes, whether or not such requirements are specifically stated in this Agreement.

V.
COVENANT WITH THE LAND

- A. This covenant and agreement shall be filed for record in the office of the Story County Recorder and all covenants, agreements, promises, and representations herein stated shall be deemed to be covenants running with the Site 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.

- B. 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.

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

[S I G N A T U R E S O N S U C C E S S I V E P A G E S]

Dated July 8, 2021.

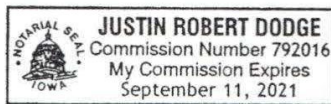
**ERBEN AND MARGARET
HUNZIKER APARTMENTS, L.L.C.**

By: 
Dean E. Hunziker, Manager

By: 
Jon E. Hunziker, Manager

STATE OF IOWA, COUNTY OF STORY, SS.:

This instrument was acknowledged before me on July 8th, 2021, by Dean E. Hunziker and Jon E. Hunziker, as Managers of Erben and Margaret Hunziker Apartments, L.L.C.




NOTARY PUBLIC

**HUNZIKER DEVELOPMENT
GROUP, LLC**

By: 
Justin R. Dodge, Manager

STATE OF IOWA, COUNTY OF STORY, SS.:

This instrument was acknowledged before me on July 8, 2021, by Justin R. Dodge, as Manager of Hunziker Development Group, LLC.



NOTARY PUBLIC

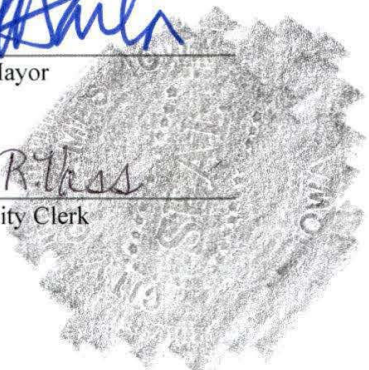


Passed and approved on July 13, 2021, by Resolution No. 21- 402
adopted by the City Council of the City of Ames, Iowa.

CITY OF AMES, IOWA

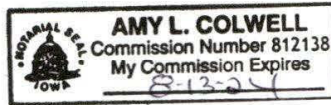
By: 
John A. Haila, Mayor

Attest: 
Diane R. Voss, City Clerk



STATE OF IOWA, COUNTY OF STORY, SS.:

This instrument was acknowledged before me on July 13, 2021, by John A. Haila and Diane R. Voss, as Mayor and City Clerk, respectively, of the City of Ames, Iowa.




NOTARY PUBLIC

Exhibit 'A' – Legal Description

Outlot Z, Cochrane Farm Subdivision, Ames, Story County, Iowa

(approximately 67.23 acres and locally known as 4605 Hyde Avenue, Ames, Iowa)

Parcel E, a part of the Southwest Quarter of the Southwest Quarter of Section 22, Township 84 North, Range 24 West of the 5th P.M., Story County, Iowa, as shown on that Plat of Survey recorded on December 19, 1998, as Instrument No. 98-17594, Slide 12, Page 3.

(approximately 6.989 acres and locally known as 4514 Hyde Avenue, Ames, Iowa)

Exhibit 'B' – Depiction of Site – Master Plan

Figure 1: Master Plan
June 2021

Auburn Trail
Hunter Land Development



ATTACHMENT B
Letter received by City Council from Justin Dodge, representing Hunziker

July 13, 2023

To: Ames City Council and Mayor

From: Justin Dodge, Hunziker Companies

Re: Path along Hyde for Auburn Trail

Dear Honorable Mayor and Ames City Council:

As part of our developer's agreement with the City for Auburn Trail Subdivision, the trigger mechanism for completing the path on the West side of Hyde Avenue was approval of the first final plat of the subdivision.

We agreed to this provision under the belief that completion of the trail would coincide with the grading of the West side of Hyde Avenue when we would have lots prepared and available for sale. However, when we separated the existing home on the East side of Hyde Avenue from the outlot for future development, the process we were directed to follow was to create a final plat to establish this boundary. This set into motion the provision of the developer's agreement requiring completion of the path on the West side of Hyde Avenue.

This was not our intention. We would ask you to amend our developer's agreement to have the trigger mechanism for completion of this path as the first final plat on the West side of Hyde Avenue when we are also able to grade for this path.

Thank you for your time and consideration.

Sincerely,

Justin Dodge

Hunziker Companies

105 S 16th St

Ames, IA 50010

515-520-2478

justin.dodge@hunziker.com