CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: **May 18, 2015**

ITEM:

Resolution – Approving Modification to Terms of the Agreement and Waiver
Silverwood Plat 4
Drake Homes, Inc.

FINANCIAL IMPACT: None.

BACKGROUND:

The original developers of the Silverwood subdivisions owned all the property between Bridgewood Boulevard and Mills Civic Parkway on the east side of South 88th Street. The City recognized that this entire tract of land should have some future responsibility for the improvements to the intersection of South 88th Street and Mills Civic Parkway. When Silverwood Plat 4 was approved an Agreement and Waiver for the intersection improvements was included as a condition of approval and said Agreement and Waiver has been provided.

The Council instructed staff to develop a theoretical special assessment district for the improvements to South 88th Street and Mills Civic Parkway. This district extended a nominal ¼ mile in each direction from the intersection. The northern boundary of this theoretical district extended to the north line of the SW ¼ of the NW ¼ of Section 14. Silverwood Plat 4 is located just north of this line.

At the March 25, 2015 Development and Planning Council Subcommittee, Todd and Christy Drake (Drake Homes/Silverwood Plat 4 Lot Owners) asked to have this agreement and waiver lifted from the properties. Silverwood Plat 4 extends somewhat southerly of the northern line of the theoretical district. Staff supported the obligation be removed because the probability of the district extending that far north into single family properties is remote when and if a district is adopted. The original agreement and waiver and the pertinent minutes of the March 25, 2015 subcommittee meeting are attached.

OUTSTANDING ISSUES: None.

RECOMMENDATION:

City Council Adopt:

- Resolution modifying the terms of the Agreement and Waivers for Silverwood Plat 4.

Lead Staff Member: **Duane C. Wittstock, P.E., L.S., City Engineer**

STAFF REVIEWS

Department Director	Duane C. Wittstock, P.E., L.S., City Engineer
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Richard Scieszinski, City Attorney
Agenda Acceptance	RTJ

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	Development and Planning		
Date Reviewed	March 25, 2015		
Recommendation	Yes	No	Split

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RESOLUTION
MODIFYING TERMS OF THE AGREEMENT AND WAIVERS
FOR SILVERWOOD PLAT 4

WHEREAS, a Preliminary Plat was reviewed and approved by the City Council of West Des Moines, Iowa, at a meeting held on November 5, 2007 said Plat being described as follows:

Silverwood Plat 4

WHEREAS, a Final Plat for Silverwood Plat 4 was submitted for review by the City Council of West Des Moines, Iowa, on August 25, 2014 and was found to be generally consistent with the Preliminary Plat for Silverwood.

WHEREAS, the West Des Moines City Council adopted a Resolution which approved the Final Plat for Silverwood Plat 4 at their meeting on August 25,2014 subject to any conditions of approval and contingent upon construction and acceptance of all public streets and utilities; and

WHEREAS, on August 25, 2014 the Final Plat was released for recordation.

WHEREAS, on August 25, 2014 an Agreement and Waiver for agreeing to participate in the assessment of S88th Street and Mills Civic Parkway intersection improvement project was approved; said assessment to be with future purchasers of Lots 1 thru 9 and Outlot Z, Silverwood Plat 4.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF WEST DES MOINES DOES RESOLVE AS FOLLOWS:

Section 1: The Agreement and Waiver for Silverwood Plat 4 is modified to remove any obligations for the initial construction of the intersection of South 88th Street and Mills Civic Parkway as outlined in the agreement and waiver.

PASSED AND APPROVED this **18th** day of **May, 2015.**

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson, City Clerk

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PLAT 4

Book 2014 Page 11577

Document 11577 Type AGMNT Pages 4
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Rec Amt $22.00

MTG -
PCRF -
BKRF -

Chad Airhart, Recorder
Dallas County IOWA

ODD -
D/C -

Bee

Prepared by: R.J. Scieszinski, Legal Dept., P. O. Box 65320, West Des Moines, IA 50265-0320 (515) 222-3614
Return to: City Clerk, City of W. Des Moines, P. O. Box 65320, W. Des Moines, IA 50265-0320

AGREEMENT AND WAIVER

THIS AGREEMENT made and entered into by and between the City of West Des Moines, Iowa, hereinafter referenced as the CITY, and **Jerry Bussanmas, LLC**, hereinafter referred to as "PROPERTY OWNERS".

WITNESSETH:

WHEREAS, the City desires to encourage orderly community development and provide for the regulation and control of the extension of public improvements, public services and utilities consistent with the City's Comprehensive Plan, adopted in September 2010, and as amended, and in accordance with Iowa Code Chapter 354, Platting, Division and Subdivision of Land; and

WHEREAS, pursuant to Goal 5 of Part V, Growth Policies, West Des Moines Comprehensive Plan, the City endeavors to provide for the safe and efficient movement of people, goods, and services throughout the City, and more specifically:

> As part of the development of vacant land or as part of an expansion of use on developed land, the property owner or developer shall contribute proportionally to the costs of improvements for transportation facilities necessary to accommodate proposed developments by dedicating, widening and/or extending and constructing its proportionate share of street and parkway improvements (including all appurtenances and necessary drainage structures) and on-site and/or off-site improvements reasonably related to the project;

and

WHEREAS, a property owner or developer may construct and dedicate, or obtain a bond for the necessary public improvements, or in accordance with Iowa Code Section 384.38, Certain Costs Assessed to Private Property, the City may assess to private property within the City the proportionate share of the cost of construction and repair of public improvements within the City; and

WHEREAS, as initiated by the City, or upon petition as provided in Iowa Code Section 384.41, Petition by Property Owners, the City may assess to private property affected by public improvements within three miles of the City's boundaries the cost of construction and repair of public improvements within that area; and

WHEREAS, the City may propose or be requested to construct certain Improvements (the "Improvements") generally described as:

Applicant agreeing to participate in the assessment of S88th Street and Mills Civic Parkway intersection improvement project.

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NOW, THEREFORE, BE IT AGREED AMONG THE PARTIES AS FOLLOWS:

1. As soon as practicable the City shall have the right to cause the above-described Improvements to be constructed in accordance with such plans and specifications as it shall deem appropriate. The construction of said Improvements shall be under the supervision of an engineer to be selected by the City.

2. For the purpose of this Agreement, the City may elect to enter into a contract for the construction of said Improvements as a part of any contract(s) for a public improvement project entered into prior to the receipt of this instrument as authorized by Section 384.41(2) of the Code of Iowa.

3. In consideration of the construction of said Improvements by the City, the undersigned Property Owners hereby WAIVE the following:

   A. All legal formalities of whatsoever kind or character required by the laws of Iowa to be observed by cities in the construction of said Improvements where the expense of such Improvements is to be assessed against private property; and

   B. Each and every question of jurisdiction, the intention of the Property Owners being to authorize and direct said City to construct the Improvements without requiring any of the formalities or legal proceedings required of cities by the statutes of Iowa; and

   C. Any limitation of the amount of said assessment as a percentage of valuation as provided in Section 384.62 of the Code of Iowa, subject to Paragraph 6, below; and

   D. Any right to defer or postpone the payment of any such assessment.

4. It is further agreed that:

   A. When said Improvements have been constructed in accordance with the plans and specifications, the City may make assessments against the properties of the undersigned Property Owners, or their successors or assigns, for their pro-rata share of the entire cost of the construction of said Improvements, including acquisition of necessary easements and right-of-way, the cost of engineering, supervision, and preparation of assessment schedule.

   B. Said assessments will be paid to the City of West Des Moines and shall be a lien upon the properties hereinafter described. Further, each of the undersigned Property Owners hereby agree to accept responsibility for the assessment which is thus assessed against the Owner's property.

   C. Said assessments shall have the same legal force and effect as if all the legal formalities provided by law in such cases had been fully and faithfully performed and observed.

   D. Said assessment shall be paid within the time provided by statute for the payment of special assessments for such Improvements.

   E. All Property Owners entitled to Agricultural Deferment under Chapter 384 of the City Code of Iowa hereby WAIVE their right to such deferral.

5. The amount and proportion of the cost of the Improvements to be paid shall be ascertained and determined by the Engineers and reported to the City Council, which shall make such changes or alterations as they may require. When said assessments are finally passed by the Council and by it levied, they shall constitute the assessments against the properties.

6. Any assessment, and the methodology of calculating the assessment, shall be made in accordance with Iowa law and the City's ordinance pertaining to special assessments for streets (Ordinance No. 1389) and any amendments thereto, in effect as of the date the City Council sets the date for a public hearing on the plans and specifications for the Improvement(s). During the assessment process the Property Owners retain the right to request of the City a review of the proposed assessment. In the sole discretion of the City Council, a reduction in the assessment may be made to ensure that the amount of the assessment is proportional to the benefit provided by the Improvements. The Property Owners also retain the right to request a review of the

Book 2014 Page 11577
2 of 4

mathematical calculations made to ensure their accuracy and compliance with Ordinance No. 1389, and any amendments thereto. No assessment will be made by the City Council unless notice to all Property Owners has been given as provided by state statute and City ordinance.

7. Property Owners hereby authorize the City Council to pass any Resolution requisite or necessary to order and secure said Improvements, to provide for the construction of the same and to make the assessments herein provided. Any such Resolution may contain recitals that said Improvements are ordered or made by the Council without petition of Property Owners, without in any way qualifying this Agreement or releasing the Property Owners from their obligation to pay the assessments levied against their property for the cost of said Improvements, and to issue improvement bonds payable out of said assessments.

8. Each Property Owner warrants that the real estate described below is free and clear of all liens and encumbrances other than for ordinary taxes, except for such liens as are held by lienholders hereinafter listed and designated as signers of this Agreement and Waiver. Each lienholder designated below, by execution of this Agreement and Waiver, consent to the subordination of its lien to the lien of the special assessment levied pursuant hereto.

9. Each Property Owner further agrees that the terms of this Agreement and Waiver shall become a covenant which runs with the land of the above-referenced property, and shall be binding upon all successors and assigns. Furthermore, each Property Owner shall give a copy of this Agreement and Waiver to all successors and assigns.

10. The signatories and the City agree this document will be recorded in the office of the appropriate county recorder to ensure that any and all future purchasers of property are put on notice of the above conditions.

Description of Property: Lots 1, 2, 3, 4, 5, 6, 7, 8, 9 and Outlot Z, Silverwood Plat 4

PROPERTY OWNER: Jerry Bussanmas, LLC an Iowa limited liability company

By Jerry Bussanmas LLC

Name Jerry Bussanmas

Title Manager

Date 8-19-14

LIENHOLDER'S NAME: American Trust

By

Name Jerry Tracy

Title 2nd Sr. V.P.

Date 8-19-14

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Presented and approved by the City Council on August 25, 2014.

Ryan T. Jacobson

Ryan T. Jacobson, City Clerk

Book 2014 Page 11577
4 of 4

CITY OF WEST DES MOINES
DEVELOPMENT AND PLANNING
CITY COUNCIL SUBCOMMITTEE MEETING
City Hall Training Room

Thursday, March 26, 2015

Attending:
Council Member John Mickelson
City Manager Tom Hadden
Development Director Lynne Twedt
Finance Director Tim Stiles
Planner Naomi Hamlett
Planner Brad Munford
City Engineer Duane Wittstock
Principal Engineer Brian Hemesath
Fire Marshal Mike Whitsell
Assistant City Attorney Greta Truman
Communication Specialist Lucinda Stephenson
Planner Kara Tragesser

Guests:
Item #1 – Silverwood
Todd & Christy Drake – Drake Homes

Item #2 – Whisper Ridge
Marc Abels – Simpson, Jensen
Bill Lowry – Hidden Creek

Item #4 – Alluvion Water Booster Station
Diana Wilson – WDMWW Director
William Mabuce – WDMWW Engineering Manager

The meeting of the Development and Planning City Council Subcommittee was called to order at 7:30 a.m.

1. **Silverwood Plats 3 & 4: Invalidate Agreement & Waivers S 88th Street/Mills Assessment (Drake Homes)**

   Director Twedt pointed out the locations of Silverwood Plats 3 & 4 stating that the Silverwood development is actually comprised of four different residential plats with an office piece at the corner. When Silverwood Plat 1, which encompasses all the ground, first came through for approval, an Agreement and Waiver was executed for the future S 88th Street and Mills Civic Parkway. Because the developer owned all of the ground, Silverwood Plat 1 was able to place all of the assessment on the office piece. The same was done with Silverwood Plat 2. Silverwood Plat 3 did not own the ground; therefore, there was no ability to relocate the assessment and as part of platting executed an Agreement and Waiver that identified a potential assessment for the residential lots. This was the same situation for Silverwood Plat 4.

   Todd and Christy Drake, owners of the Silverwood Plat 4 lots attended the meeting to request that these assessments be removed from the lots. Mr. Drake stated that having an assessment attached to the property was a huge impediment to selling homes, especially without knowledge of the timing or cost of the assessment.

   Council Member Mickelson asked if the Drakes were aware of the assessment when they purchased the property. Mr. Drake responded that they were unaware of the assessment at that time. Director Twedt stated that the agreement was executed, but did not show up on the title opinion.

   Council Member Mickelson stated he understood their concerns. City Engineer Wittstock interjected that the only exposure would be the financing of the intersection at Coachlight Drive and S 88th Street for the

east half. There is no special assessment pending, simply a Petition and Waivers has been provided, and if there was an assessment, it would have to be authorized by City Council. Mr. Wittstock explained that there were some agreements in place with property owners at one time to pave the road in segments to make S 88th Street useable.

City Engineer Wittstock stated that if the Council chooses to release the properties from the Petition and Waiver that still does not preclude the Council from approving a special assessment. With Petition and Waiver in place, residents would know that there could be a potential assessment.

Council Member Mickelson inquired how many lots would be affected. Director Twedt stated there were nine lots in Plat 4 specifically, but a total of 25 lots would be affected.

Mr. Wittstock reiterated that there would only be responsibility for the east half of the intersection or the northeast quadrant. The southeast quadrant would be the responsibility of the property owners of the office property to the south unless a private agreement exists between the property owners that the City does not know about.

Council Member Mickelson asked if there was a way to determine the intent of the responsibility for construction. Ms. Twedt stated that four Agreement and Waivers were executed. There have been multiple transfers of ownership, as well as bankruptcies, which makes it difficult to determine responsibility or intent.

Council Member Mickelson asked if it would be possible to identify a dollar amount or an estimate of the associated assessment costs. Mr. Wittstock stated there could be an amendment to the Petition and Waivers that would include the cost for the portion of intersection with a monetary cap identified per parcel. Ms. Twedt suggested the applicant calculate the cost of the intersection and divide that by four to know the responsibility of the northeast corner and then take that amount across the 25 lots included in Silverwood Plats 3 and 4. Ms. Twedt identified that the issue would be who was financially responsible for the amount above the cap should construction costs exceed the cap amount.

Mr. Drake inquired if his lots were part of the agreement because the lots were included in the original piece of ground from the beginning. Mr. Wittstock stated that the owners of the parcel pushed their obligation to the south with an agreement with the property owners to the west of how S 88th Street would be paved adjacent to their property. He continued that there may be some willingness to remove the potential obligation for paving S 88th Street and Mills Civic Parkway from the Petition and Waivers as long as the obligation for Coachlight Drive and S 88th Street intersection is addressed.

Mr. Drake will research to determine if there were any documents or testimony that indicated that obligations transferred responsibility for paving to the south or paving this intersection. The exposure or obligation for Mr. Drake currently is a quarter of the intersection of Coachlight and S 88th Street.

Directions: Council Member Mickelson was supportive of eliminating the Agreement and Waiver for the paving of S 88th Street and Mills Civic Parkway and having the Drakes only responsible for the quarter intersection of Coachlight and S 88th Street.

2. Whisper Ridge – S 88th Street/Coachlight Intersection & Coachlight Drive Construction

Ms. Twedt pointed out the area on a location map indicating that the remaining piece of Whisper Ridge had a medium density designation. She continued that Mr. Lowry has interest in selling this piece of property and has the responsibility for paving 88th Street to the north edge of the intersection, as well as a portion of Rockwood Lane.

City Engineer Wittstock gave an update from a recent meeting with Mr. Abels and Mr. Lowry. He

Location Map

N

0 200 400 800 Feet

Legend

Project Location

1/4 Section Line

Modifying Agreement & Waiver
Silverwood Plat 4