

Staff Report

WOODVIEW UTILITIES SPECIAL ASSESSMENT

April 9, 2012

This report is intended to provide information in response to personal conversations, phone calls, emails, and letters that have been sent to City Council members, the Mayor, and City staff regarding the installation of utilities on Woodview Drive pursuant to a resident initiated Special Assessment process.

In 2010, the residents of Woodview Drive made the request to City Council for a Special Assessment for the installation of water main and sanitary sewer. Because the residents approached the City seeking this project, rather than the City initiating it, the residents were willing to waive the cost limitations and contest procedures established under Iowa law which establish how the cost of the project is to be divided.

Since that time, Public Works and Inspections staff attended neighborhood meetings explaining the project design details, project impacts, special assessment process, and estimated project costs. There were also discussions about how to divide the project costs among the affected residents, which ultimately led to the neighborhood reaching a proposed consensus resolution.

Staff then prepared engineering plans and shared the proposed design and cost estimates with the residents at the last neighborhood meeting held in May 2012. At that meeting, Contract and Waiver forms, as prepared by City of Ames Legal staff, were hand-delivered for signature by the property owners (and mailed lien holders, if any). Residents were informed that once these forms were returned, the process specified in Iowa Code for Special Assessment would begin. The intention is to have the forms returned in time to allow for the utility installations during the 2013 construction season. During the 2012/2013 budget process, assessment revenue abated General Obligation Bonds (G.O. Bonds) were sold to fund the Woodview Drive Water and Sewer Project in anticipation of installation in 2013.

To date, these forms have been returned by all but three of the 11 affected residents. One of the three has a verbal agreement with the lien holder to be signed. The remaining two property owners have the same lien holder which to date refuses to sign the document. On February 20, 2013, the lender for the two properties in question was contacted by Legal staff to converse about their position on signing the waiver. The lender expressed concerns with the language in the contract and waiver form and specifically indicated that they do not ever agree to take a subordinate position to another lien holder. Legal Staff explained the process being contemplated, the benefit it provides to the property in having improved, reliable services and thus a more valuable property, has answered questions and was told that the lien holder would revisit the

document and determine if it could be signed. This lender has not signed or made additional contact with Legal since that time. Staff has provided the affected residents with the contact information of the lien holder personnel that discussed the issues with Legal regarding the Contract and Waiver form. Given this lender's policy, these two property owners began investigating the option to pay for the assessment outright and avoid the need to have the lien holder signature. Both have verbally indicated that, if given the option to forego the mortgage holder's signature, they have means to pay their portion outright. A separate additional agreement with each would be necessary to accomplish this work around.

The residents continue to express concerns that the City has not done enough to assist in the signature process with the lien holders and get the proposed plans out for bid. Though contacting the individual lien holders is not the responsibility of the City, staff is committed to assisting as appropriate. The residents' concerns stem from the need for updated sanitary septic systems and wells on their properties as they are near the end of their useful life. Staff has communicated with the residents that improvements to maintain their private sanitary sewer systems, are allowed under Iowa Code 567, Chapter 69.1(3), as they are not within the 200 foot radius of a Locally Owned Treatment Works. Residents have also been advised that it is allowable to keep/repair their wells at any time, even after the installation of the water main; however, if they are connected to the water main, there are Plumbing Code requirements in order to keep both water sources active. Repair and maintenance of septic systems and wells fall under the jurisdiction of Story County.

Staff has continued to provide answers to residents as questions arise, and some residents have made weekly contact as to the status of the project.

In response to the resident communications and in an effort to keep the process moving forward, staff has identified several options to continue toward the intended utility installation in 2013. Each of these options has the end result of utility installation in mind; however, there are noteworthy impacts of each option. Some impacts would have more direct impacts to the City and others with more direct impact to the residents.

OPTIONS:

- 1. Continue with the current process and wait until the required signatures on the Contract and Waiver forms are received before proceeding to bid letting.**

City Impacts:

City will recuperate the intended cost of the improvements through property tax assessments.

Resident Impacts:

Residents will have to wait for the forms to be signed and may experience septic or well failure while waiting.

2. Waive the requirement of the lien holder signature on the Contract and Waiver forms and proceed to bid letting immediately.

City Impacts:

Staff would begin the assessment and bid letting processes right away, but for those properties where the mortgage holder did not sign, the City would incur the risk that it may have a more difficult process to recoup its costs in the event that property went into foreclosure. There is also a slight possibility that the City may not recuperate the cost of the improvements through property tax assessments from those few properties whose lenders have refused to sign the form.

Resident Impacts:

Staff would begin the assessment and bid letting processes right away. The project would still be financed as a special assessment through the City. However, without the lien holder signature, the City would not be first in line for recovery of costs if a property was to go into default on their mortgage.

3. Proceed with a Standard Assessment (the cost sharing formula agreed to by the residents would not be valid).

City Impacts:

Under a standard assessment, the lien holders are not required to sign but there are opportunities for the property owners to contest the amount of the assessment and a statutory cap on how much any property owner can be assessed is imposed. Staff would begin the assessment and bid letting processes right away. The City would recuperate as much of the cost of the improvements as legally allowed through property tax assessment, but may not be able to recoup all of the project costs.

Resident Impacts:

Staff would begin the assessment and bid letting processes right away. However, the formula used to split the costs among the

residents would be different than the cost sharing arrangement to which there has been agreement. Some residents will pay more than anticipated, while others will pay less than originally agreed upon, and the process may take longer in order to follow statutory requirements.

4. City of Ames installs the utilities and foregoes the assessment process.

City Impacts:

Under this option, there would be a project funding change. The total cost would be covered by the Water and Sewer Utility Funds, or G.O. Bonds, but would not be recovered from the property owners.

Resident Impacts:

Staff would begin the bid letting processes right away. The property owners in the area would not have to pay for water and sewer utilities to serve their lots, as other residents had to do when lots were developed.

This option would establish a precedent that cannot be supported at this time.

5. Property owners perform as a developer, which means they would pay for the utility installation without City involvement.

City Impacts:

G.O. Bonds sold would be evaluated whether they could be re-appropriated to another project. Financial support for City staff time for design and administration to-date would still need to be covered through project funds.

Resident Impacts:

The process could begin right away with the residents hiring a Professional Engineer to complete and certify the public improvement plans (for review by the City). To date, a Professional Engineer as part of City staff has overseen design and plans to certify the plans and contract documents once complete. As with any public improvement installed by a developer, residents would need to provide financial security upfront for the entire cost of the

improvements. Additionally, the residents would still be responsible for the actual cost of construction inspection and administration by City staff to ensure that the public improvements meet standards and specifications.

Given the complexity of this project, this option would not be feasible for the residents.

STAFF COMMENTS:

Staff recognizes the importance, timeliness, and impacts of the utility installations for the residents of Woodview Drive. Should a well or septic system fail between now and the final installation, the residents will be required to repair or update facilities that could become very costly for a homeowner who might also then be faced with the added cost of the utility assessment.

The special assessment procedure in which the City takes a lien position ahead of the mortgage holder provides the most protection to the City for recovery of all of its costs for this project. The City, however, has little leverage with which to force a mortgage holder to agree to subordinate their position to the City's position.

It appears that we are very close to moving ahead with this project. If two of the remaining property owners would sign an agreement to pay for their portion of the "assessment" up front and thereby avoid the need for the lien holder's signature, and if the third property can finally obtain written approval from the lien holder as promised, then we could proceed under Option #1.

However, if the Council believes it is an acceptable level of risk to waive its practice of requiring that the mortgage holders subordinate their position to the City because there are only a few property owners in this situation, then a motion directing Staff to proceed with Option #2 would be appropriate.