

**COUNCIL ACTION FORM**

**SUBJECT: STORM WATER EASEMENT VACATION – 301, 303, 305 AND 321  
SOUTH 5<sup>TH</sup> STREET**

**BACKGROUND:**

The property owner of 301, 303, 305, 321, and 407 South 5<sup>th</sup> Street and of 420-428 South Walnut Avenue is in the process of selling those properties. During the title opinion search, it was discovered that there are easements over the properties at 301, 305, 307 and 321 South 5<sup>th</sup> Street (Lots 2 and 3 of Lindholm's Subdivision). The first easement is "to construct, reconstruct, operate and maintain a storm sewer outlet", and the second is "to construct, reconstruct, operate, open and forever maintain an open ditch from said old creek channel to Squaw Creek". Both of these easement descriptions found at Story County are shown in Attachment A.

These existing easements have impeded the sale of these properties, since the easements encompass the entirety of the parcels. Staff was unable to find any evidence that these easements were ever vacated, even though there has been significant development in the area since their creation in 1929. Aerial maps of the existing easement areas are shown for the area in 1930 [the exhibit says 1929] (Attachment B) and in 2013 (Attachment C).

An additional map in Attachment D shows the storm sewer infrastructure for the area to provide drainage from the south end of Kellogg Avenue (installed in 1977) in Corieri's Subdivision 1<sup>st</sup> Addition. **This storm sewer line is in an existing easement that was established with the subdivision, and adequately covers the City's interest for the storm sewer.**

**Staff has determined that the easements over lots 2 and 3 are no longer needed, since there is no longer an open ditch from the south end of Kellogg Avenue to Squaw Creek.** Vacating that portion of the easements would allow the sale of the properties to take place. The remaining areas (affected properties that were not part of this request) could also be vacated and new easements established over the existing storm sewer pipes, should City Council direct staff to set this as a priority project.

**ALTERNATIVES:**

1. Set February 10, 2015, as the date of public hearing for the proposed vacation of the storm sewer easement at 301, 305, 307 and 321 South 5<sup>th</sup> Street (Lots 2 and 3 of Lindholm's Subdivision).

2. Set February 10, 2015, as the date of public hearing for the proposed vacation of the storm sewer easement at 301, 305, 307 and 321 South 5<sup>th</sup> Street (Lots 2 and 3 of Lindholm's Subdivision) and direct staff to begin the process of negotiating new easements over the existing storm sewer, which are currently covered by the 1929 easement, and return at a later date to set a hearing date for the vacation of the existing easements.
3. Reject the request to vacate the easement.

**MANAGER'S RECOMMENDED ACTION:**

By moving forward with the process to approve the vacation of the easement, City Council will meet this property owner's ability to sell the property.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, as described above.

3--62--248  
Cont'd.

That this Court has full and complete jurisdiction of the subject matter of this action and each and all of the parties thereto;

That each and all of the allegations of plaintiff's petition are true and he is entitled to all of the relief ask\_ for in said petition that the plaintiff is the absolute and unqualified owner in fee simple of the property hereinafter described. That the plaintiff and the parties from whom he derived title have been in open, continued and notorious possession of said real estate for a period of more than twenty years last past. That plaintiff's title and estate should be quieted in him against all of the defendants and all persons claiming by through, or under them; and should be forever barred and estopped from making any claim in and to the real estate hereinafter described, or to any part or parcel thereof.

It is therefore Ordered, Adjudged and Decreed that the plaintiff was at the time of the commencement of this action and is now the owner in fee simple for the following described real estate; Lots One, (1), and Two, (2), in the Northwest Quarter; and the Southeast Quarter of the Northwest Quarter, (except "Out-Lot 'A' and Sunnyside Addition); and the Northeast Quarter of the Southwest Quarter, (except 8 Acres in the Southeast corner) and Lot 8 and the East 8 Acres of Lot Seven, (7), in the West half of the Northwest Quarter; all of said property is in Section Eleven, (11), and Township 83 North and Range 24 West of the 5th P.M. Iowa; and his right and interest in said premises as such owner in fee simple is hereby declared, fixed and established.

O. J. Henderson  
Judge of the District Court of Iowa.

Case Closed

Costs Paid In Full.

\*-----\*

J. L. Harper and Anna R. Harper	:	Easement \$350.00
To	:	Dated July 5, 1929
City of Ames, Iowa	:	Ack'd July 5, 1929
	:	Filed September 27, 1929

KNOW ALL MEN BY THESE PRESENTS:

That J. L. Harper and Anna R. Harper, of Story County, State of Iowa, in consideration of the sum of Three hundred Fifty and 00/100 (\$350.00) Dollars, in hand paid by the City of Ames, Iowa, do hereby sell and convey unto the said City of Ames, Iowa an easement in and across the following described premises, situated in the County of Story, State of Iowa, to-wit:

Through and across Lot two (2) of the Northwest quarter (NW $\frac{1}{4}$ ), the Southeast quarter (SE $\frac{1}{4}$ ) of the Northwest quarter (NW $\frac{1}{4}$ ), the Northeast Quarter (NE $\frac{1}{4}$ ) of the Southwest quarter (SW $\frac{1}{4}$ ), all in Section Eleven (11), Township Eight-three (83) North, Range 24, from the South end of Kellogg Avenue in Ames, Story County, Iowa, to Squaw Creek, with the right in said grantee to construct, reconstruct, operate and maintain a storm sewer outlet,

And we hereby covenant with the said City of Ames, Iowa, that we are lawfully seized of said premises; that they are free from encumbrance and that we have good and lawful authority to sell and convey the same, and we do hereby covenant to warrant and defend the said premises against the lawful claims of all persons whomsoever.

And the said Anna R. Harper hereby relinquishes her right of dower in and to the premises above conveyed.

Dated this 5th day of July 1929,

J. L. Harper  
Anna R. Harper, Duly Acknowledged.

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BATMAN - SAYERS ABSTRACT CO., NEVADA, IOWA

4--42--568

#6

NO. BOOK PAGE

5--42--571

# 7

J. L. Harper and Anna R. Harper, : Easement \$675.00  
 his wife :  
 :  
 : Dated August 26, 1929  
 To : Ack'd August 26, 1929  
 : Filed September 27, 1929  
 City of Ames :

KNOW ALL MEN BY THESE PRESENTS:

That J. L. Harper and Anna R. Harper, his wife, of Story County, and State of Iowa, in consideration of the sum of Six Hundred Seventy-five and 00/100(\$675.00) Dollars, in hand paid by the City of Ames, Iowa, do hereby Sell and Convey unto the said City of Ames, an easement and right to empty storm sewer outlet into the old Squaw Creek channel at a point about four hundred (400) feet North of Squaw Creek and to open and forever maintain an open ditch from said old channel to Squaw Creek, upon the following described premises, situated in the County of Story, State of Iowa, to-wit:

Lot Two (2) of the Northwest Quarter (NW $\frac{1}{4}$ ) the Southeast Quarter (SE $\frac{1}{4}$ ) of the Northwest Quarter (NW $\frac{1}{4}$ ) the Northeast (NE $\frac{1}{4}$ ) of the Southwest Quarter (SW $\frac{1}{4}$ ), all in Section Eleven (11), Township Eight-three (83) North, Range Twenty-four (24) from the South end of Kellogg Avenue to Ames, Story County, Iowa.

with the right in said grantee to construct, re-construct, operate, open and forever maintain an open ditch from said old creek channel to Squaw Creek.

And we hereby covenant with the said City of Ames, Iowa that we are lawfully seized of said premises; that they are free from encumbrance and that we have good and lawful authority to sell and convey the same, and we do hereby covenant to warrant and defend the said premises against the lawful claims of all persons whomsoever.

And the said Anna R. Harper hereby relinquishes her right of dower in and to the premises above conveyed.

Dated this 26th day of August 1929.

J. L. Harper  
 Anna R. Harper, Duly Acknowledged.

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ESTATE OF JAMES L. HARPER, DECEASED

Combined Probate Docket 15, Page 121, Estate #7121 and other records and files in the office of the Clerk of the District Court of Story County, Iowa, show:

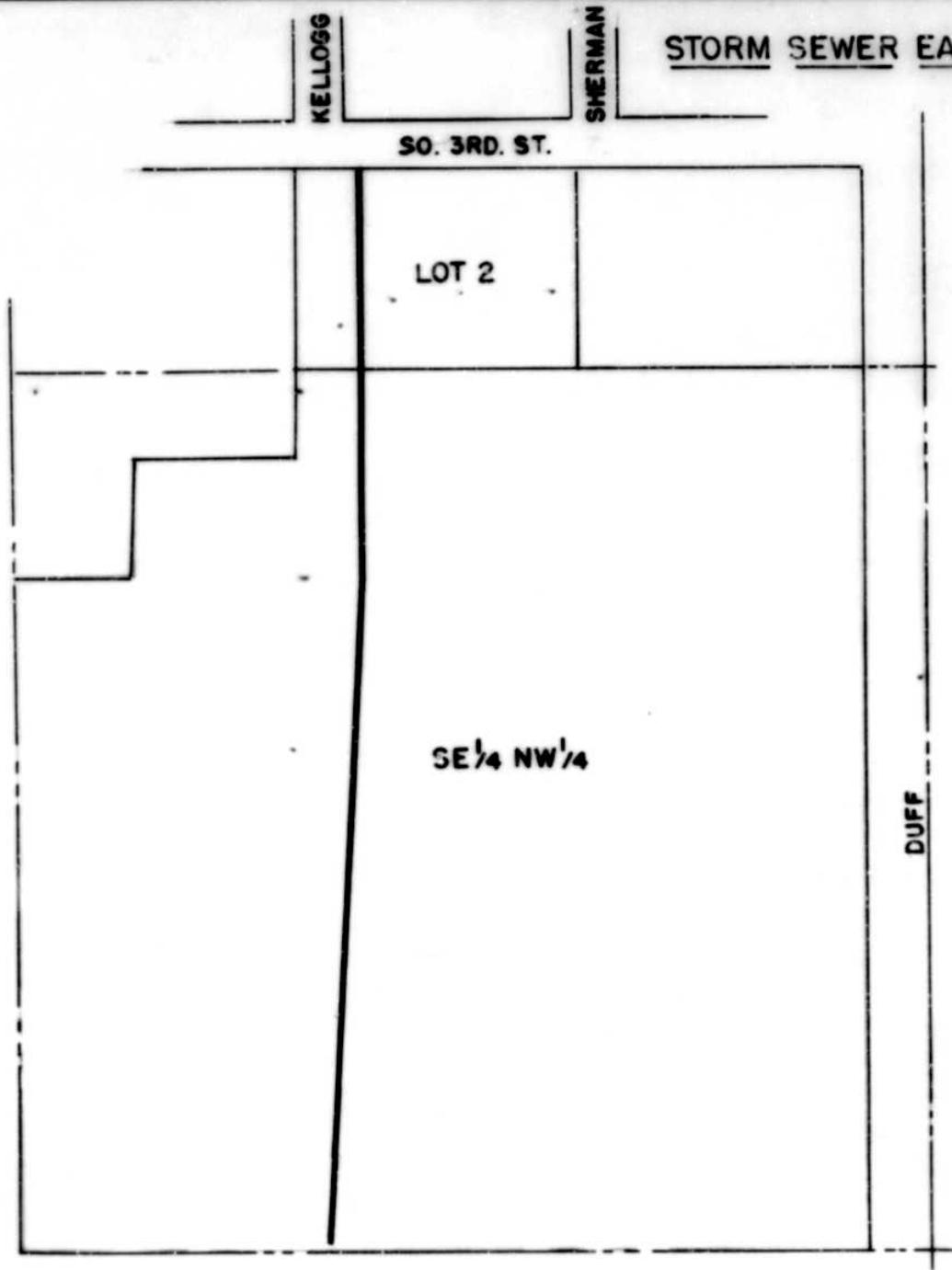
January 22, 1942 AFFIDAVIT OF DEATH filed by Arthur Buck, shows James L. Harper died on January 18, 1942 a resident of Ames, Iowa and he was not related to me.

January 22, 1942 LAST WILL AND TESTAMENT filed as follows:

BATMAN - SAYERS ABSTRACT CO., NEVADA, IOWA

--15--121

STORM SEWER EASEMENT



1" = 250'

03493

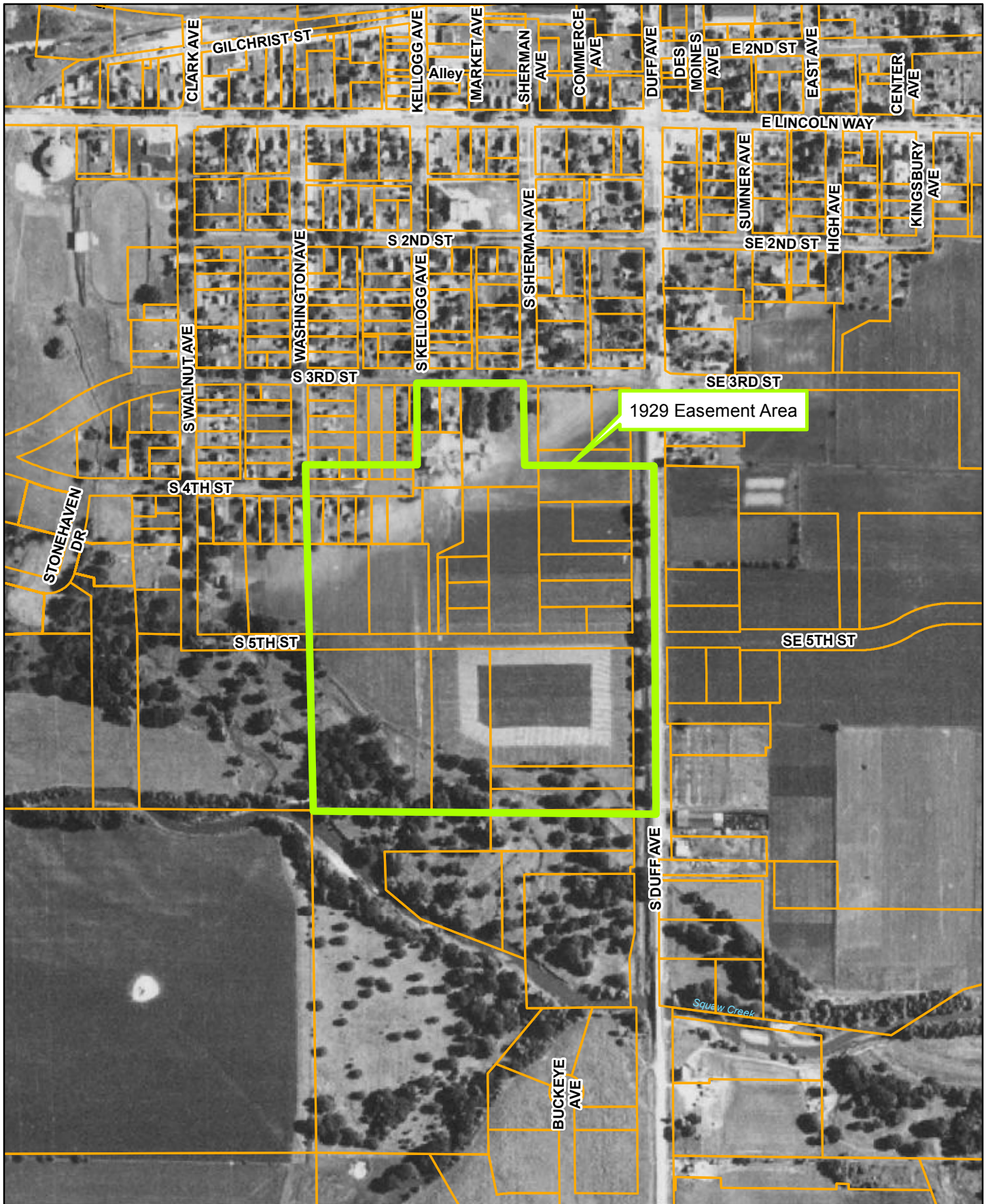
Attachment A

THROUGH AND ACROSS LOT 2 OF NW 1/4, AND SE 1/4 NW 1/4 SEC. 11 - 83 - 24 FROM THE SOUTH END KELLOGG AVE. TO SQUAW CREEK.

FROM: J.L. & A.R. HARPER JULY 5, 1929 \$ 350.00

RECORDED IN BOOK 42 PAGE 568 OF MISC. SEPT. 27, 1929

RECORDED IN BOOK 42 PAGE 571 OF MISC. SEPT. 27, 1929 \$ 675.00



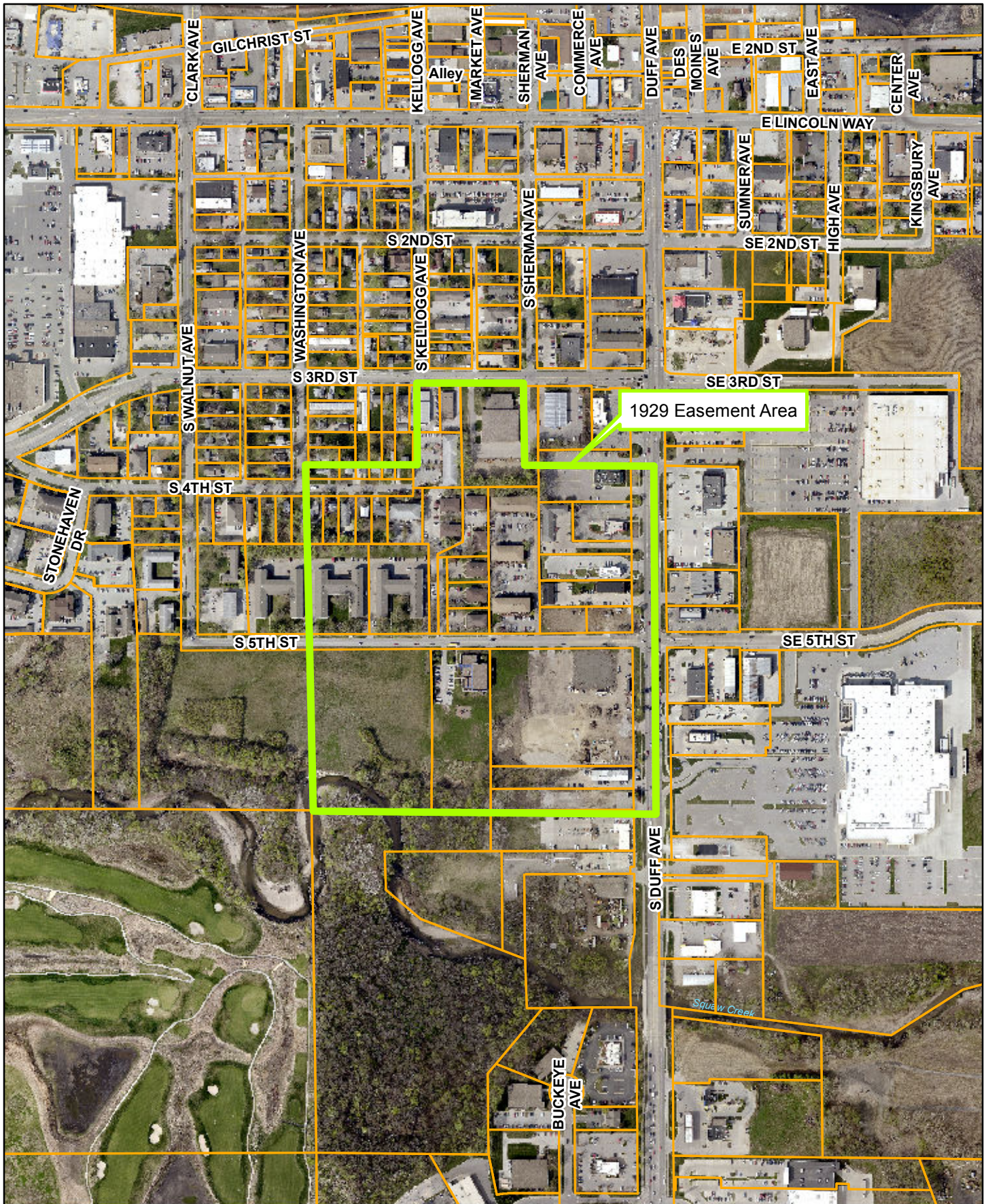
Geographic Information System (GIS) Product Disclaimer: City of Ames GIS map data does not replace or modify land surveys, deeds, and/or other legal instruments defining land ownership & land use nor does it replace field surveys of utilities or other features contained in the data. All features represented in this product should be field verified. This Product is provided "as is" without warranty or any representation of accuracy, timeliness or completeness. The burden for determining accuracy, completeness, timeliness, merchantability and fitness for or the appropriateness for use rests solely on the User.



1929 Easement for  
South Meadow 1929  
Attachment B



Scale: 1 in = 500 ft  
Date: 1/20/2015



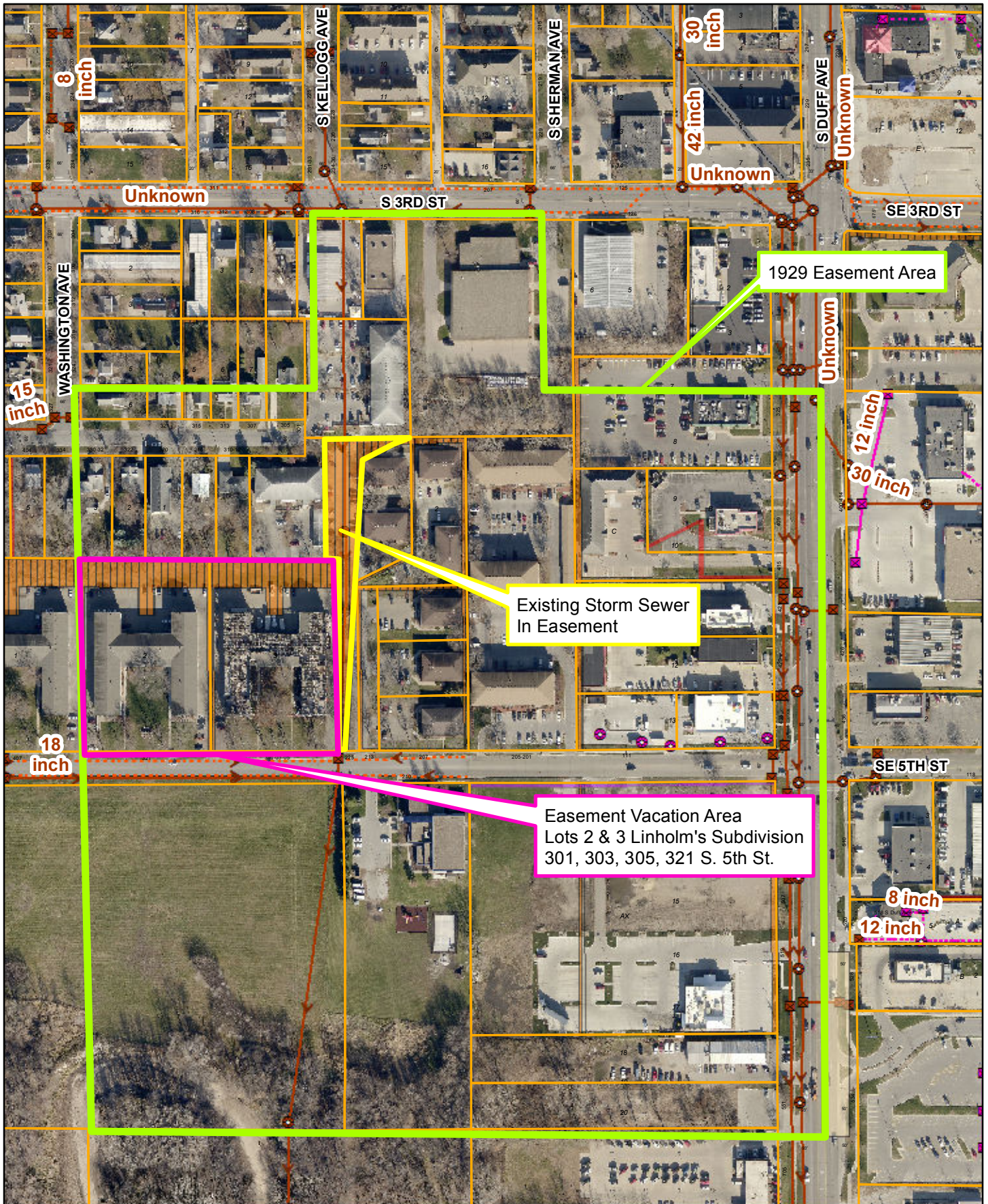
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1929 Easement for  
South Meadow 2013  
Attachment C



Scale: 1 in = 500 ft  
Date: 1/20/2015



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1929 Easement for  
South Meadow 1929  
Attachment B



Scale: 1 in = 233 ft  
Date: 1/23/2015