

ITEM # 38
DATE 06/10/08

COUNCIL ACTION FORM

SUBJECT: ANNEXATION AGREEMENT WITH FIRST EVANGELICAL FREE CHURCH OF AMES FOR PROPERTY LOCATED ON GEORGE WASHINGTON CARVER AVENUE AT CAMERON SCHOOL ROAD

BACKGROUND:

The First Evangelical Free Church of Ames is planning to build a new church on a single, 75-acre parcel on the west side of George Washington Carver Avenue north of Cameron School Road (see attached Location Map). Upon completion as currently planned, the entire project would include buildings, parking for 541 vehicles as well as open space containing two softball fields, two soccer fields, detention and retention ponds, prairie grasses, a trail system and a courtyard (see attached Site Master Plan). The property is located within the Ames Urban Fringe in an area that the *Ames Urban Fringe Plan* designates as Rural Transitional Residential (RTR), one of the designations in the Rural Urban Transitional Area (RUTA) land use classes.

The Church is now preparing to build the first phase of this project (see attached Phase 1 Plan). Story County has issued a Conditional Use Permit for this first phase, with one of the conditions stating:

Prior to the issuance of any Zoning Permit, the applicant shall work with the City of Ames in securing appropriate Annexation Agreements, as per RUTA Policy Two (2) of the Ames Urban Fringe Plan. In the instance where the City of Ames would not require such an Annexation Agreement, the applicant shall provide document from the City of Ames stating such.

RUTA Policy 2 states:

At the discretion of the cities, annexation agreements and other tools may be utilized to ensure that new development is prepared for potential annexation in the future.

RTR Policy 7 states:

Require annexation agreements and developer agreements in instances of new development that is particularly intense, or that occurs in certain critical locations.

City staff has worked with representatives of the First Evangelical Free Church of Ames to prepare the attached Covenant and Agreement for Annexation, which the City Council is now being asked to approve.

The Agreement provides that at any time the property becomes contiguous to the city, the City of Ames may notify the property owner that it is considering annexation. The property owner agrees to then file a request for annexation. The Owner also agrees to waive its right to withdraw this request or its consent to annexation. The Agreement runs with the property, regardless of changes in ownership, for 21 years and the City may seek extension of the Agreement beyond that time period.

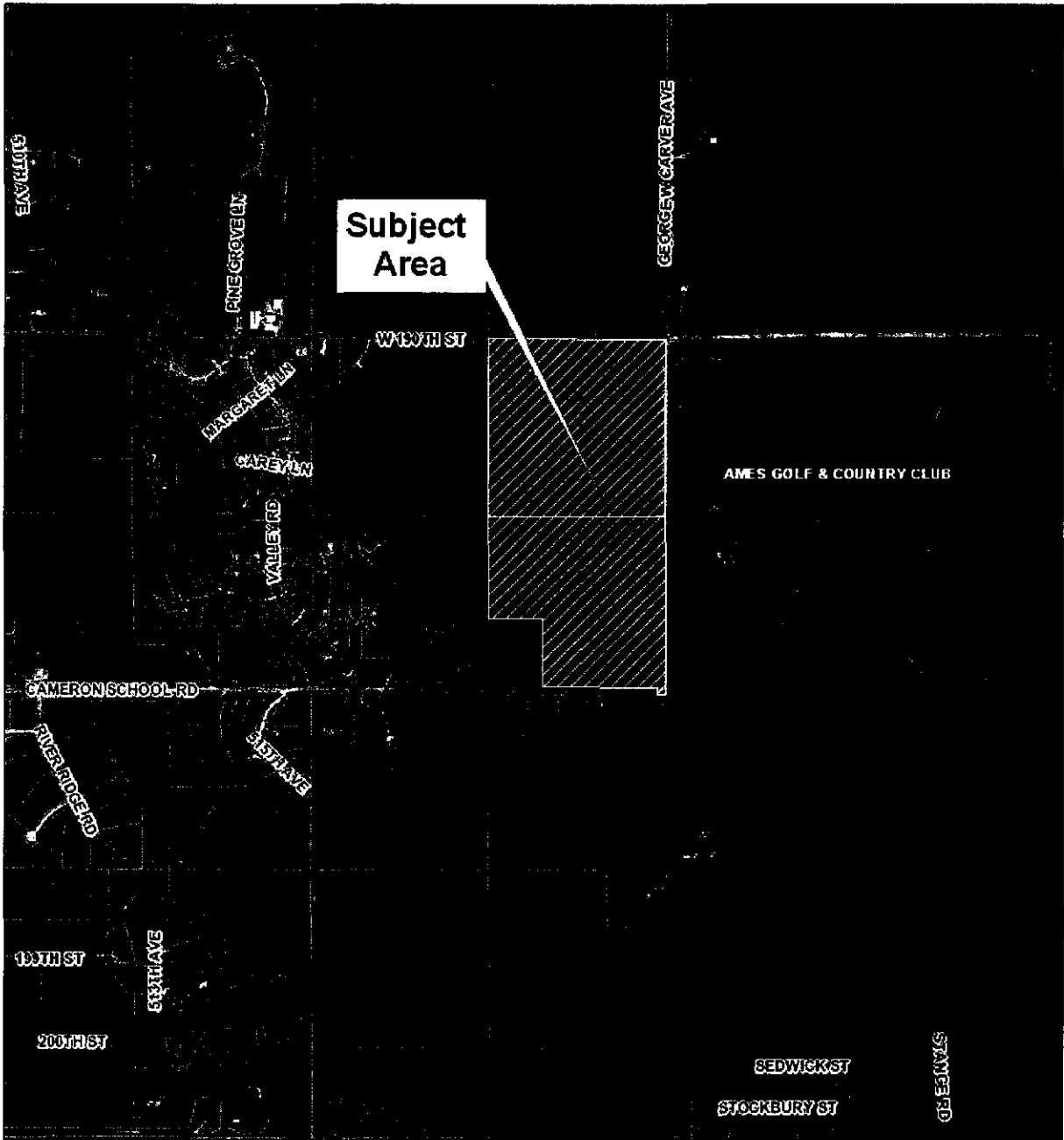
ALTERNATIVES:

1. The City Council can approve the Covenant and Agreement for Annexation with the First Evangelical Free Church of Ames for property located on George Washington Carver Avenue at Cameron School Road.
2. The City Council can approve the Covenant and Agreement for Annexation with the First Evangelical Free Church of Ames for property located on George Washington Carver Avenue at Cameron School Road with modifications.
3. The City Council can deny the Covenant and Agreement for Annexation with the First Evangelical Free Church of Ames for property located on George Washington Carver Avenue at Cameron School Road.
4. The City Council can return the request to staff for further information.

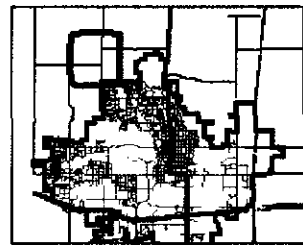
MANAGER'S RECOMMENDED ACTION:

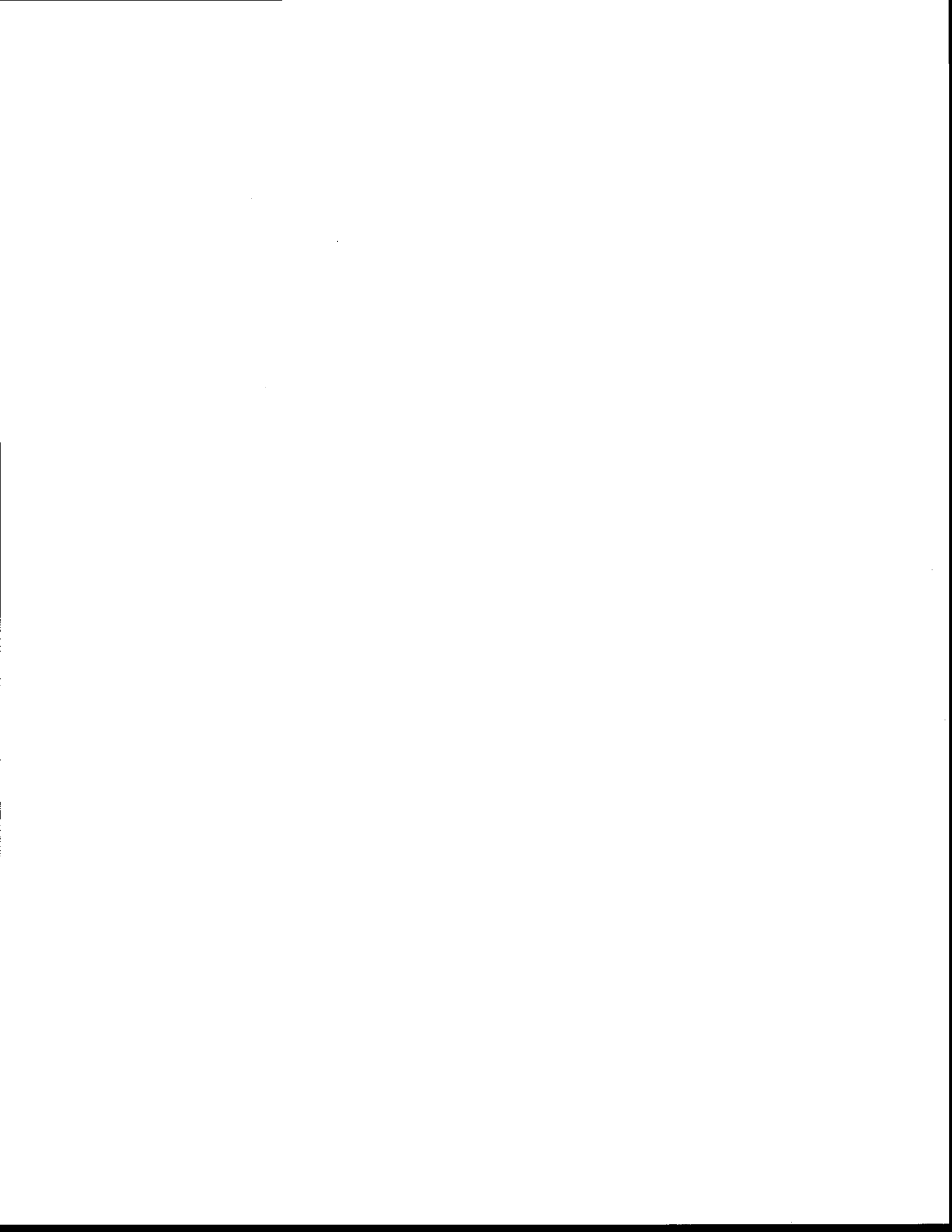
It is not necessary for the first Evangelical Free Church of Ames to divide its 75 acre property in order to proceed with its plans for a new church facility. That is why the City Council is not being asked to consider waiving its infrastructure standards, agreements for future assessments or for rural water buyout, typically associated with subdivisions.

The *Ames Urban Fringe Plan* designates the area north of Cameron School Road for Rural Transitional Residential land use partly because urban infrastructure may not be in place for a time period beyond the Ames Urban Fringe planning horizon. A significant amount of existing rural residential development to the west of the subject property, as well as the Ames Golf and County Club to the east, also make annexation unlikely during the Ames Urban Fringe planning time period. This area was not included in the North Study Area of the recent Targeted Growth Analysis. However, it is prudent to look beyond the next 25 years and reduce possible impediments to community growth. **Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, thereby approving the Covenant and Agreement for Annexation with the First Evangelical Free Church of Ames For property located on George Washington Carver Avenue at Cameron School Road.** Following this action, the First Evangelical Free Church of Ames would obtain its Zoning Permit from Story County and begin to develop Phase 1 of its project.



**Location Map
First Evangelical Free Church**





COVENANT AND AGREEMENT FOR ANNEXATION

THIS COVENANT AND AGREEMENT is made effective the ____ day of _____, 2008, by and between **FIRST EVANGELICAL FREE CHURCH of AMES** (hereinafter called "Owner"), their successors and assigns, and **THE CITY OF AMES, IOWA**, (hereinafter called "City").

WITNESSETH THAT:

The parties hereto have agreed and do agree as follows:

1. Owner is the legal owner of record of Real Estate, the legal description of which is set forth in Exhibit "A" attached hereto, and by this express reference made a part hereof. As of the date of this Agreement, said Real Estate is not contiguous to the corporate city limits of the City of Ames, and is generally described as shown on Exhibit "A", attached hereto. This agreement is made for the purpose of meeting the requirements of the conditional use permit issued by the Board of Adjustment for Story County, Iowa, to the Owner for said Real Estate.

2. Real Estate constitutes territory which may be annexed to the City of Ames as provided in Chapter 368 of the Code of Iowa.

3. Owners agree to have the Real Estate annexed to the City of Ames, Iowa, upon certain terms and conditions as hereinafter set forth in the event the said Real Estate becomes contiguous to the City.

4. At the time the Real Estate becomes contiguous to the City, the City Council may, after due and careful consideration, conclude that the annexation of said real estate to the City on the terms and conditioned hereinafter set forth would further the growth of the City, would provide the harmonious development of the City, would enable the City to control the development of the area and would serve the best interests of the City.

5. At any time after the Real Estate becomes contiguous to the City, the City Council may notify Owner of the City's desire to annex Real Estate. Upon such notification, Owner agrees to apply in writing to the City Council requesting annexation.

6. Pursuant to provisions of Chapter 368.7(e) of the Code of Iowa, the Owner waives the right to withdraw their application for annexation or their consent to annexation after the time that the Real Estate becomes contiguous to the City.

7. Notice of the proposed annexation shall be given to the parties legally required to be notified pursuant to Chapter 368 of the Code of Iowa at the time the Real Estate becomes contiguous to the City.

8. The Owner agrees that upon annexation all municipal regulations and requirements, including but not limited to zoning, subdivision and other ordinances, shall apply to the Real Estate, and the City shall have full jurisdiction over the Real Estate for the purpose of enforcing its codes presently in existence and as may be amended in the future.

9. 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 Real Estate 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.

10. This agreement shall be enforceable in any court of competent jurisdiction by any of the parties hereto by any appropriate action at law or in equity to secure the performance of the covenants herein contained. Invalidity 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.

Executed by the respective signatories effective the date first above written.

(Signature Page Follows)

OWNER

By: Kevin J. Geis

By: _____

CITY OF AMES, IOWA

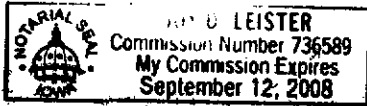
By: _____
Ann H. Campbell, Mayor

By: _____
Diane R. Voss, City Clerk

STATE OF IOWA, STORY COUNTY ss:

On this 3 day of June, 2008, before me, a Notary Public in and for the State of Iowa, personally appeared Kevin Geis, to me known to be the persons named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

Joy A. Leister
Notary Public in and for the State of Iowa



STATE OF IOWA, COUNTY OF STORY, ss:

On this _____ day of _____, 2008, before me, a Notary Public in and for the State of Iowa, personally appeared Ann H. Campbell and Diane R. Voss, to me personally known, and, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Ames, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in Resolution No. _____ adopted by the City Council on the _____ day of _____, 2008, and that Ann H. Campbell and Diane R. Voss acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

Notary Public in and for the State of Iowa

ATTACHMENT A

GENERAL PROPERTY LOCATION

East Half (E ½) of the Northeast Quarter (NE ¼) of Section Twenty (20), Township Eighty-four (84) North, Range Twenty-four (24) West of the 5th P.M., Iowa, except tract described as follows: Beginning at the Southwest (SW) Corner of said East Half (E ½) of the Northeast Quarter (NE ¼) of Section Twenty (20), thence North 0°22' West along the West line of the East Half (E ½) of the Northeast Quarter (NE ¼) a distance of Five Hundred Fifty (550) Feet, thence East Three Hundred Ninety-six (396) Feet, thence South 0°22' East a distance of Five Hundred Fifty (550) Feet, thence West Three Hundred Ninety-six (396) Feet to the place of beginning, subject to existing highway and easements of record, AND also except the South Fifty (50) Feet of the East Nine Hundred Sixteen and Fifty-five Hundredths (916.55) Feet of the Southeast Quarter (SE ¼) of the Northeast Quarter (NE ¼) of said Section Twenty (20), Township Eighty-four (84) North, Range Twenty-four (24) West of the 5th P.M., Iowa.