

COUNCIL ACTION FORM

SUBJECT: WATER SERVICE AND ANNEXATION AGREEMENT FOR 2126 STATE AVENUE

BACKGROUND:

The owners of 2126 State Avenue, the executors of the estate of Mildred Caldwell, are seeking water service from the City of Ames. Xenia, the rural water provider, declined to serve the property because service could not reasonably be extended to the property in an efficient and cost effective manner. **Since the property is not contiguous to the City limits, annexation is not presently an option, and the City is under no obligation to provide water service without annexation.** However, on February 22, 2011 the City Council approved a previous request from the owners of this property (copy attached), stipulating the conditions under which the property could receive water from the City. It should be noted that there is a water main in State Avenue directly in front of the requesting property. This line was installed to serve residences on Dartmoor Road and Oakwood Road. There is no sanitary sewer serving this area—the nearest line is about 1,000 feet to the south along Worle Creek.

The previous Council resolution states the City's willingness to provide water service to this property. In return, the owners would need to agree to seek annexation into the City once annexation is possible and upon request from the City. The owners were also to agree not to seek a subdivision or to construct additional dwelling units that might also use the water provided by the City. An agreement that meets the stipulations of the resolution has been signed by the owners.

In 2009, the Ames *Municipal Code* was amended to establish detailed procedures to provide water service to rural customers prior to the property being incorporated into the City. These procedures require inspection of the premises' plumbing system and the installation of a backflow prevention device to protect the City's water utility from inadvertent contamination. The backflow prevention device must be inspected at least annually, which is then reported to the City. The owner is also required to install the wire for the water meter remote reader consistent with the City's requirements and pay an \$18 per frontage foot water connection fee. There is also a water meter setting fee that is dependent on the type and size of the meter installed, but is \$190 for a typical residential meter. The rates for water service outside the City limits are established by City ordinance and are somewhat higher than for City residents.

Other Requests Pending:

The City Council recently referred two other requests from property owners for water service on State Avenue. On July 26, 2011, the Council directed staff to prepare an annexation agreement with Wiley Press, the owners of 2121 State Avenue. The

direction of the Council at that time was that the agreement would require annexation of the Wiley property prior to water service being provided. It would also contain provisions to reduce the incompatibility of this use with the expected residential development of the area. These provisions would include limitations on expansion of the present use, and would increase landscaping to ameliorate impacts to the surrounding residential properties. Staff has discussed this with Wiley Press, who has passed the information on to their corporate owners. Wiley Press has not yet responded to the proposed conceptual terms of this agreement.

Another request was referred to staff on September 13, 2011 from Ron Mowers and Margaret Epplin of 2114 State Avenue. This property lies adjacent to the City limits and the owners are also seeking water service. This property currently shares a well with 2126 State Avenue.

Due to the configuration of the corporate limits in this area, it is not possible to annex both Wiley Press and the Mowers/Epplin property, since this would create an island of unincorporated land (2219 State Avenue) surrounded by the City. This tract is owned by the Committee for Agricultural Development (CAD) and is the site of a seed conditioning plant. CAD is not interested in annexing at this time.

Both the Wiley Press and the CAD properties are industrial in nature and, while they are consistent with County zoning, are not consistent with the City's Urban Fringe Plan, which calls for this area to be Urban Residential. Both the Caldwell and the Mowers/Epplin properties are single-family residential and are consistent with the expectations of the Plan regarding use. However, they likely do not meet the City's residential density standards.

"Land Banking":

The Ames Urban Fringe Plan states that it is the intent of the City to annex this area south of the City along State Avenue. The Land Use Policy Plan places it in the Southwest I Incentivized Growth Area. As noted above, the City is unable to annex both the Wiley Press and Mowers/Epplin properties, since to do so would create an unincorporated island.

One way to address the requests of all three parties, as well as to address the long-term interests of the City, is to "land bank" the Caldwell, Wiley Press, and Mowers/Epplin properties. This could be done by having them sign agreements that would allow them to obtain City water now, but would require annexation later at a time of the City's choosing. The model of this agreement would be the Caldwell agreement, which the City Council is being asked to act upon at this October 25th meeting. Specific language can be developed for these other two properties to address their unique needs, such as landscape screening/buffering and usage limitations for the Wiley Press property.

This banking of the three properties could be held until such time as the CAD property seeks annexation into the City, at which time the City could also require these three

properties to petition for annexation. Alternately, if additional property owners in this area seek voluntary annexation in the future, the CAD property could possibly be annexed under the state's "80/20" option (by which up to 20 percent of the land area of "non-consenting" owners can be annexed along with at least 80 percent of the land area of "consenting" owners, as provided by Code of Iowa, Chapter 368.7).

ALTERNATIVES:

Each of the four alternatives below begins with the premise that the City Council will approve the agreement with the Caldwell property (2126 State Avenue) since the agreement is consistent with the direction previously given to staff. Each of the alternatives differ regarding how the City Council chooses to address the other two properties at 2114 and 2121 State Avenue.

1. The City Council can approve the attached agreement to allow the owners of 2126 State Avenue (Caldwell property) to receive water service from the City subject to the terms of the agreement and the City *Municipal Code*.

The City can also direct staff to prepare similar agreements for Wiley Press and Mowers/Epplin that would allow them to obtain water from the City with an agreement to seek annexation into the City at a later date and at the Council's request (the "land banking" option). In the case of Wiley Press, the agreement would also contain the design/buffering provisions and limitations on land use that would reduce the impact on the adjacent properties. The annexation of these properties could be triggered at such time that the CAD property seeks annexation or if the Council wishes to annex the CAD property under the 80/20 provisions of the Code of Iowa.

2. The City Council can approve the attached agreement to allow the owners of 2126 State Avenue (Caldwell property) to receive water service from the City subject to the terms of the agreement and the City *Municipal Code*.

The City Council can then direct staff to seek an application for annexation from either Wiley Press or Mowers/Epplin (*but not both*) prior to receiving water service. The City would provide water service to the other but only after the property owner signs an agreement to annex at some future time. In determining which to allow to annex, the City Council can chose the property that requested water first (Wiley Press) or the property that is consistent with the Urban Fringe Plan (Mowers/Epplin).

3. The City Council can approve the attached agreement to allow the owners of 2126 State Avenue (Caldwell property) to receive water service from the City subject to the terms of the agreement and the City *Municipal Code*.

The City Council can direct staff to seek an application for annexation from either Wiley Press or Mowers/Epplin (*but not both*) prior to receiving water

service. The other property would not receive City water. Again, the City Council would need to discuss what criteria to use to determine which property should be annexed and receive water and which should not.

4. The City Council can approve the attached agreement to allow the owners of 2126 State Avenue (Caldwell property) to receive water service from the City subject to the terms of the agreement and the *City Municipal Code*.

The City Council can then decline to provide water or allow the annexation at this time to both the Wiley Press and Mowers/Epplin properties.

MANAGER'S RECOMMENDED ACTION:

The City has had a long-standing policy of not approving water sales to properties outside the city limits. The City made water available only to those properties that were annexed into the City. However, in 2009 the City Council adopted provisions in the *Ames Municipal Code* to address unique, limited requests of property owners seeking water from the City without annexation.

The City's intention, as demonstrated by both the Land Use Policy Plan and the Urban Fringe Plan, is to annex these State Avenue properties into the City. However, it is not possible to annex all three of these properties consistent with *Code of Iowa*, since to do so would create an island of unincorporated land.

An approach that would serve the interests of the various property owners as well as the City is to allow connection to the City's water system under terms similar to that contained in the Caldwell agreement, **albeit with any other specific stipulations unique to each property**. The interests of the owners are to receive access to the City water main. The interests of the City are that the eventual annexation of at least two of the properties be assured and that the annexation of all three properties would likely occur at some future point when the CAD property is annexed.

In this unique situation it seems preferable for the City to pursue an alternative to immediate annexation. This alternative will allow these properties to connect to the City water system with the stipulation that the owners will voluntarily seek annexation into the City at the request of the City Council at some later date. Agreements can be prepared between the City and the property owners with these and other stipulations to address issues such as landscape screening/buffering and usage limitations for the Wiley Press property.

Therefore, it is the recommendation of the City Manager that the City Council approve Alternative #1. This will allow the owners of 2126 State Avenue (Caldwell) to connect to the City water service subject to the standards of the *Ames Municipal Code* requiring an inspection of the sanitary sewer system, installation of a backflow prevention device and remote reader wire, and payment of the \$18 per frontage foot connection fee.

This alternative will also direct staff to offer agreements to the other two property owners, which would allow the owners of 2121 State Avenue (Wiley Press) and 2114 State Avenue (Mowers/Epplin) to connect to the City water system under terms similar to that of the Caldwell agreement but with stipulations unique to each of their situations. These separate agreements would return to the City Council for execution once negotiations are complete between the City and the owners.

In this limited instance, the “land banking” option offers the best method to move forward with the future annexation of these “Urban Residential”-designated properties. These properties are currently contiguous to the City, but the configuration of the boundary is irregular and, therefore, problematic. As is noted above, there is an existing water main in State Avenue, so there are no required extensions of City utilities. Although both properties are seeking annexation, such action must be mutually exclusive for Wiley and Mowers/Epplin until such time as the CAD property is also annexed.

ATTACHMENT 1
RESOLUTION NO. 11-063

**RESOLUTION APPROVING REQUEST TO PROVIDE
WATER SERVICE TO 2126 STATE AVENUE
FOR THE CITY OF AMES, IOWA**

WHEREAS, the City Council recently referred a letter to staff from Xenia Rural Water District regarding water service to 2126 State Avenue; and,

WHEREAS, this property is in unincorporated Story County on the east side of State Avenue directly across from Wiley/Blackwell Press, and is part of a peninsula of unincorporated land reaching into the City; and,

WHEREAS, a 12-inch City water main currently runs through the lot in the east ditch of State Avenue, and the letter states that a request was made for Xenia Rural Water to provide water service to the property, which was denied by its board of directors because service could not reasonably be extended to the property in an efficient and cost effective manner; and,

WHEREAS, due to the existence of a City water main on the property, Xenia released the property to the City of Ames for the purpose of providing water service; and,

WHEREAS, it has been long standing City policy to only provide municipal services to properties that have been incorporated into the City limits; and,

WHEREAS, this particular request is different, in that the rural water utility denied the service request due to Xenia's desire to not extend rural water to this unincorporated area; and,

WHEREAS, this request for water service could easily be granted if the property at 2126 State Avenue annexed into the City, and staff would support such an annexation; and,

WHEREAS, the property owner desires water service and is willing to be annexed whenever this property becomes contiguous to the City; and,

WHEREAS, given the fact that the City's long-term interests would be served by this annexation, this creates a unique situation that may merit an exception to the City's policy of not providing utilities outside the City; and,

WHEREAS, it is possible to facilitate approval of the present request now and still delay a decision on the annexation of either property until the sewer situation is better understood; and,

WHEREAS, this could be accomplished by authorizing the 2126 State Avenue property to connect onto City water in accordance with the requirements set up by Council in 2009, and by also requiring that the owner agree to voluntary annexation of the property either when it becomes contiguous, or at a later date, at the discretion of the Council; and,

WHEREAS, it would also be appropriate to seek a guarantee that the property will not be further subdivided in order to make it clear that this exception is for only one home on the property.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Ames, Iowa, that the request to provide rural water service to 2126 State Avenue is hereby approved, provided: the owner agrees to voluntarily annex into the City either when the property becomes contiguous, or at a later date, at the discretion of the City Council; and, that no further division of the lot or construction of additional homes be allowed on the property.

ADOPTED THIS 22nd day of February, 2011.

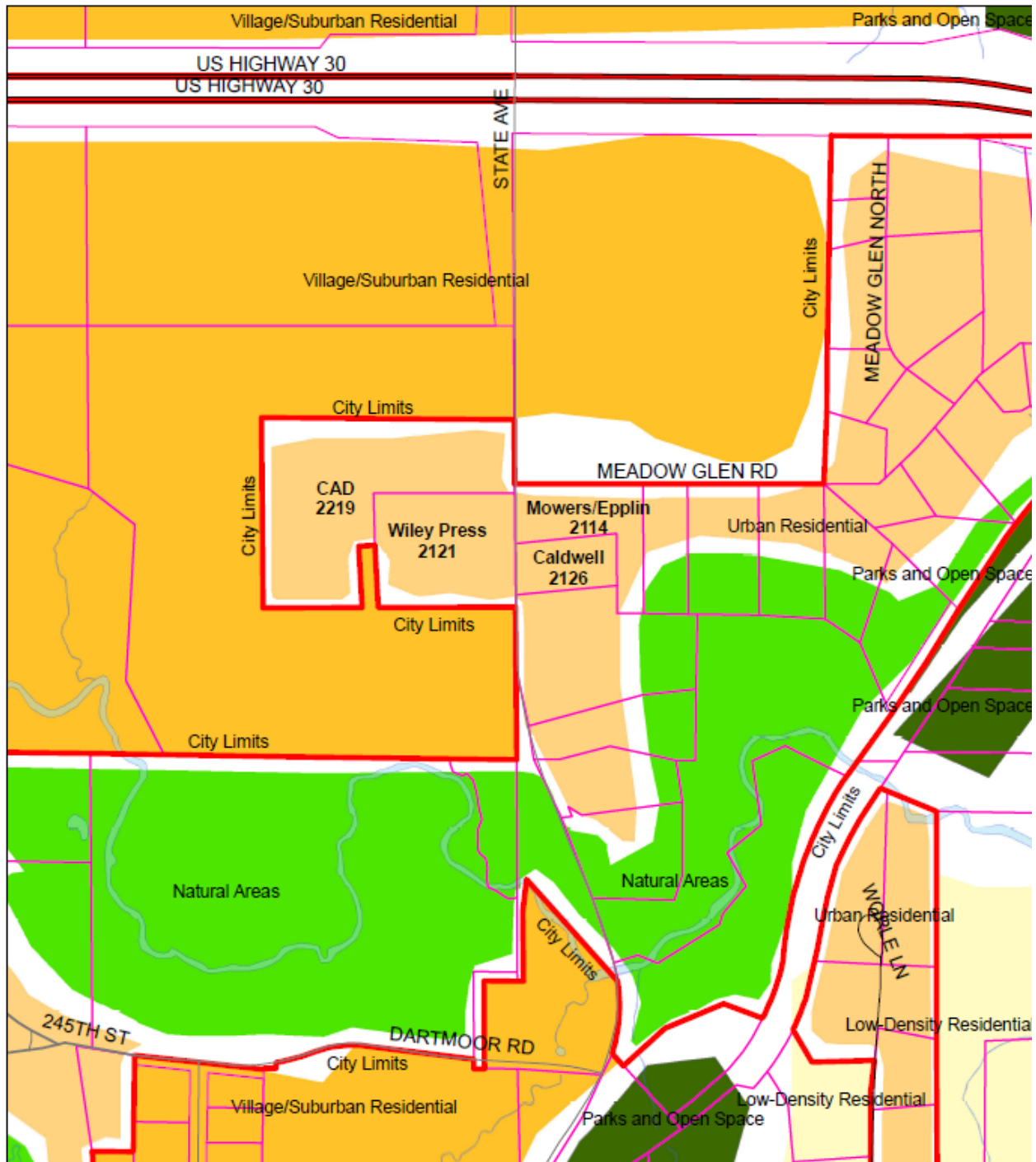

Diane R. Voss, City Clerk


Ann H. Campbell, Mayor

Introduced by:	Wacha		
Seconded by:	Mahayni		
Voting aye:	Larson, Mahayni, Orazem, Wacha		
Voting nay:	Davis, Goodman	Absent:	None

Resolution declared adopted and signed by the Mayor this 22nd day of February, 2011.

ATTACHMENT 2


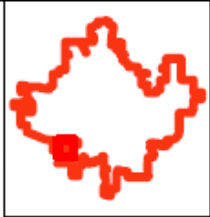


Legend

Ames City Limits

0 205 410 820 Feet

General Location Map

Covenant and Agreement for Annexation

THIS COVENANT AND AGREEMENT is made effective the ____ day of _____, 2011, by and between Owner, their successors and assigns, and City upon the following terms and conditions:

- 1 As used herein, the terms following shall have the meanings set out:
 - 1.1 *Owner* means Larry Laverne Caldwell and Karen Kay Reilly as executors of the estate of Mildred Caldwell, deceased, now pending in the Iowa District Court for Story County, Probate case No. ESPR027940.
 - 1.2 *City* means the City of Ames, Iowa.
 - 1.3 *Real Estate* means Lot Seven (7) in Christensen's Subdivision, Story County, Iowa.
- 2 Owner is the legal owner of record of Real Estate. As of the date of this Agreement, said Real Estate is not contiguous to the corporate city limits of City. This agreement is made for the purpose of facilitating extension and provision of water service by City to Real Estate, which is not within the corporate limits of City.
- 3 Real Estate constitutes territory which may be annexed to the City of Ames as provided in Chapter 368 of the Code of Iowa.
- 4 Owner agrees 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 receives water service from City.
- 5 At any time after the Real Estate receives water service from City, the City Council may, after due and careful consideration, conclude that the annexation of said Real Estate to 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.
- 6 At any time after the Real Estate receives water service from City, the City Council may notify Owner of City's desire to annex Real Estate. Upon such notification, Owner agrees to petition in writing to the City Council requesting annexation on an application form to be provided by City.
- 7 Pursuant to provisions of Section 368.7(e) of the Code of Iowa, Owner waives the right to withdraw Owner's application for annexation or consent to annexation after the time that the Real Estate becomes contiguous to the City.

- 8 Upon receipt of Owner's petition for annexation, pursuant to the provisions of chapter 368 of the Code of Iowa, City shall provide notice of the proposed annexation to all property owners, utilities, and governmental entities legally required to be notified.
- 9 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.
- 10 From and after the commencement of water service from City, Owner shall not subdivide the Real Estate or construct additional dwellings upon the Real Estate without the consent of City. Nothing herein shall be construed to prevent Owner to construct, reconstruct, or improve existing dwellings or structures or to construct, reconstruct, or improve new or existing secondary use structures consistent with applicable building and zoning ordinances.
- 11 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. City shall have the right to file a claim to continue its interest in these covenants.
- 12 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. 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.

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

OWNER:

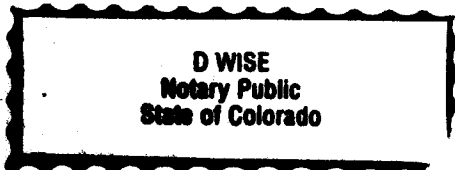
ghe
Dated the 10 day of Oct., 2011.

Larry Laverne Caldwell
Larry Laverne Caldwell, Executor

(D)

STATE OF Colorado, COUNTY OF Douglas, ss.:

This instrument was acknowledged before me on the 14 day of October, 2011 by Larry Laverne Caldwell as executor of the estate of Mildred Caldwell, deceased.



[Signature]
NOTARY PUBLIC

D. Wise

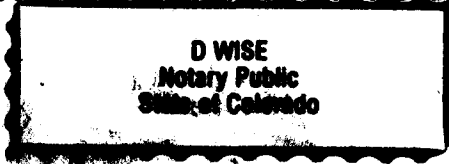
My Commission Expires 3-21-2015

KR Dated the 14 day of OCT., 2011.

Karen Kay Reilly
Karen Kay Reilly, Executor

STATE OF Colorado, COUNTY OF Douglas, SS.:

This instrument was acknowledged before me on the 14 day of October, 2011 by Karen Kay Reilly as executor of the estate of Mildred Caldwell, deceased.



NOTARY PUBLIC

D. wise

My commission expires 3-21-2015

CITY:
CITY OF AMES, IOWA

By: _____
Ann H. Campbell, Mayor

By: _____
Diane R. Voss, City Clerk

STATE OF IOWA, COUNTY OF STORY, SS.:

This instrument was acknowledged before me on the ____ day of _____, 2011 by Ann H. Campbell and Diane R. Voss as mayor and clerk of the City of Ames, Iowa.

NOTARY PUBLIC

APPROVED AS TO FORM
BY D. Marek
DOUGLAS R. MAREK
CITY ATTORNEY