

**COUNCIL ACTION FORM**

**SUBJECT:**     **NORTHERN RESIDENTIAL GROWTH – APPROVAL OF XENIA  
RURAL WATER DISTRICT SERVICE TERRITORY AGREEMENT,  
PRE-ANNEXATION AGREEMENTS, AND ANNEXATION  
REQUESTS**

**BACKGROUND:**

Over the past several years there has been a nearly continuous series of initiatives and challenges related to development of residential housing on the north side of Ames. This included the Rose Prairie development proposals, lawsuit, settlement and annexation; expansion of the City's planned northern growth area; annexation applications for the Quarry Estates and Athen subdivisions; negotiation of annexation agreements with multiple developers; discussions with current Grant Avenue residents regarding potential annexation of their properties; concerns from existing Hyde Avenue neighborhood residents regarding the traffic impacts of northern growth; Xenia Rural Water District's severe financial difficulties; and Xenia's stance whereby it now requires substantial buy-out payments for water service territory.

The City Council previously considered whether the lands to be annexed would be better served by Xenia or by the City. **Council ultimately directed staff to negotiate an agreement with Xenia whereby the service territory will be served by the City, which is better equipped to provide high quality urban water service for our residents.** In giving up its rights to this service territory, Xenia insisted upon a very expensive territory buy-out payment in order to address its creditors' insistence that it receive top value for what the creditors see as a valuable asset. Concerned with the pace of those City-Xenia negotiations, some of our local developers took the initiative to individually negotiate buy-out agreements with Xenia.

The developers of the Quarry Estates, Hunziker North and Hunziker South developments have finalized agreements with Xenia. As of this writing (Friday late afternoon), it is unclear whether a Xenia agreement for the Athen property will be completed.

**Staff from Xenia and the City have also completed negotiations on a service territory agreement that builds upon the developers' agreements. As of this writing, that agreement is still being reviewed for approval by Xenia's creditors. Both the City-Xenia agreement and the developer-Xenia agreements will be considered at a Xenia Board meeting on Monday, December 16. With the assumption that those agreements all receive approval, the City-Xenia agreement is being presented to the City Council for approval on Tuesday.**

City staff has also worked with the developers to negotiate pre-annexation agreements that, among other commitments, confirm the developers' contributions to City infrastructure costs. Should the proposed Xenia agreement and the various pre-annexation agreements be acceptable to the Council, the last barriers will have been removed for the immediate annexation of the Quarry Estates and Hunziker North lands, and possibly for the Athen property.

The consummation of these various agreements also opens the way for the planned installation of water and sanitary sewer mains serving the Grant Avenue developments during 2014, as well as for the paving of Grant Avenue during the 2014-15 construction seasons. These steps in turn will facilitate the opening of multiple new residential subdivisions in 2014-15. That will be a major step towards relieving the shortage of single-family residential lots within our growing City.

The following report provides additional information regarding each of these agreements and applications, and lays out actions that Council can take at this meeting to facilitate residential growth in the City.

#### DEVELOPERS' AGREEMENTS WITH XENIA

The developers have reached agreements with Xenia whereby \$2,700 will be paid to Xenia each time a new customer connects to the City's water utility. With that agreement tied to the land, Xenia will then release the developers' land to be transferred to the City's water service territory.

Those agreements have reportedly received approval by Xenia's creditors – USDA Rural Development and Assured Guaranty. Approval of those agreements is on the Xenia Rural Water District Board agenda for Monday, December 16.

As of this writing, an agreement for the Athen property had not yet been presented to the Xenia Board for their approval. If that can occur in time, it will also be considered by the Xenia Board next Monday.

#### CITY OF AMES AGREEMENT WITH XENIA

City and Xenia staff have spent several months negotiating an agreement that would confirm terms whereby the City's northern growth area would be transferred to the City for provision of urban water service. Staff had asked that this agreement include all of the City's northern growth area. However, in order to get an agreement approved by December 2013, Xenia staff felt it was vital to limit the agreement to only those areas for which they had signed developers' agreements. The resulting agreement is included as **Attachment A**.

Key points in this agreement include the following:

- For each tract of land, the release by Xenia of its water service territory rights will become effective when (but not until) the following conditions are accomplished:
  - Recordation of agreements between Xenia and a Property Owner that provides for compensation and covenants running with the land satisfactory to Xenia in exchange for the release of its water service rights attached to the tract of property; and
  - Annexation of the tract pursuant to Iowa Code Section 368.7(2) is complete and final.
- Upon approval by USDA and Assured Guaranty, Xenia will provide to the City a written release of Xenia's water service rights for Ada Hayden Heritage Park. (Since this is City-owned park land that should never be developed, it seemed appropriate to include the Park in the released service territory.)
- The terms of this agreement are not a binding precedent on any other Xenia service territory buy-outs in the area surrounding Ames.
- Provision is included for the two Frame properties – which are not Xenia customers – to be transferred to the City's water service territory at no cost once Xenia releases its water service rights to all contiguous properties.
- Xenia would not make any provision for the remaining residential properties along Grant Avenue to utilize the \$2,700 buy-out of Xenia, should those properties elect to hook on to City water. Rather, Xenia indicated that those properties that are **current Xenia customers** would need to buy out their proportionate shares of the District's debt. Xenia indicated that the buy-out amount would be approximately **\$20,000 per customer**.

**It is important to note that the City has no plans to require these homeowners to sever their ties with Xenia and connect to City water, whether they annex to the City or not. Therefore, there is no obligation for these families to exercise this buy-out.**

This agreement is also scheduled for consideration by the Xenia Board on Monday, December 16. At the time of this writing, however, USDA and Assured Guaranty approval of the agreement still had not been received. **Council approval of the agreement should be contingent upon approval by the Xenia Board and its two creditors.**

City staff still feels it is important to reach an agreement establishing a process or formula whereby the remainder of the City's northern growth area can be transferred to

the City. Xenia staff has committed to continue working with the City to negotiate such an agreement and to take it to Xenia's Board and creditors for their approval.

## PRE-ANNEXATION AGREEMENTS

City staff has negotiated pre-annexation agreements with five land owners along Grant Avenue. The City's northern growth area, along with the properties covered by these agreements, are shown on **Attachment B**. As of this writing, signed annexation agreements have been received from all five of these owners (Quarry Estates, Frame, Frame, Hunziker North and Hunziker South). A signed agreement has not, however, been received for the Athen property.

In July 2010 the City Council approved a pre-annexation agreement with the owners of the Rose Prairie subdivision that spelled out various responsibilities of both parties associated with development of that land. This included the developer's commitment to pay the following:

- 37% of the cost for constructing Grant Avenue from the current City limits north to 190<sup>th</sup> Street
- \$185,000 as a prorated portion of the City's eventual cost to improve the Bloomington Road intersections with Grand Avenue and Grant Avenue
- Any buy-out amount due to a rural water provider
- A prorated portion of the City's costs for installation of the water and sanitary sewer mains serving this area

The Rose Prairie agreement also included the following two conditions:

- In order to protect Ada Hayden Lake, the homeowners' association would have a covenant binding all lots not to use fertilizers containing phosphate
- In recognition of the distance of this area from an existing fire station, all residential buildings would include fire sprinkler systems

City staff and the developers involved with the other three developments along Grant Avenue – Quarry Estates and the two Hunziker subdivisions – have also now negotiated pre-annexation agreements (**Attachments C, D and E**). In accordance with direction given by Council, those agreements no longer include a provision for providing fire sprinklers within the residential units. They do, however, include the covenant not to use phosphate fertilizer.

Specifics terms of the three agreements are shown below:

	<b>Quarry Estates</b>	<b>Hunziker North</b>	<b>Hunziker South</b>
Percent of Grant Avenue design & construction costs	17%	3%	20%
Payment for Off-site Traffic Improvements	\$125,500	\$17,700	\$106,000

These three agreements also include developer commitments to assume responsibility for any buy-out amount due to a rural water provider, as well as to pay prorated portions of the City's costs for installation of the water and sanitary sewer mains serving the area through utility connection districts.

**It should be noted that, when the owners of the Hunziker North and South properties delivered their signed agreements, a portion of the assessment waivers included in those agreements' Exhibit C had been stricken. The City's legal staff needs time to research the implications to the City of having that section removed. Further analysis will be presented to the Council next week.**

The Hunziker South agreement includes two other provisions of note. The first is for the City to pay the cost of bringing overhead electric distribution lines northward along the railroad tracks up to that property. That step is appropriate, since the City itself – relying on Council's previous policy of not growing northward – chose not to require the Bloomington Heights development south of this property to extend electric distribution lines to their northern boundary.

The Hunziker South agreement also includes a unique, two-pronged approach to facilitating annexation of this property. If the owners of enough land adjacent to the property consent to annexation, then the entire 69.80 acre Hunziker parcel will be annexed, along with land belonging to any non-consenting neighbors. However, if enough owners of adjacent land do not consent to annexation, this agreement provides for a subdivision of the parcel to first take place. That subdivision would create a 50 foot "flagpole" strip across the entire northern edge of the property, which would be sufficient under the Code of Iowa to maintain connection of the non-consenting property owners to unincorporated Story County.

In a related development, City staff was recently approached by the Sturges family, who suggested that the City consider purchasing most of their property for use as parkland with a lake possibly being constructed. Their suggestion included having their property being annexed into the City. Staff is currently researching potential benefits to Ada Hayden Lake of having a smaller lake on this property. Should that be desirable from an environmental standpoint, there may be outside grants available to help acquire and make stormwater quality improvements to this property. It must be noted, however, that the process of evaluating and possibly financing such an acquisition would take more time than may be available before the Hunziker South property seeks annexation.

The Quarry Estates agreement also includes one unique provision, whereby the developer will have the option of providing a letter of credit to cover the cost of anticipated future off-site traffic improvements in lieu of making a one-time, upfront payment for this purpose.

In order to ameliorate the impact of annexation upon the existing rural Grant Avenue neighbors, Council approved an offer whereby those neighbors could connect to City

water and sanitary sewer – at a time of their choosing – at a connection fee rate comparable to what would be paid for a typical residential lot within the City. In exchange, the property owners would consent to annexation and would supply any needed easements to the City for construction of the utility mains and street. To date, the two Frame families living between Quarry Estates and Hunziker North have agreed to these terms and are requesting to be voluntarily annexed. Since those agreements are nearly identical, only one of them is included as [Attachment F](#).

Finally, City Council conditioned the Athen annexation request upon approval of two elements. The first was that the developer agree to pay an amount estimated at \$197,600 as its prorated contribution for the cost of expansion to the City's off-site sanitary sewer infrastructure. The second was that pre-annexation agreements for the two Hunziker properties must be signed before Council would approve the Athen annexation request. That step would insure that full funding is available for the construction of Grant Avenue. **As of this writing, the signed pre-annexation agreement has not been received from the owners of the Athen property.** Should that be received later, it will be sent out to Council as [Attachment G](#).

Since negotiations began on the Athen annexation, one other change has been made. This request originally included provision for a senior living facility with medium density residential (RM) zoning. Since that time, however, that facility has changed its plans to locate elsewhere in north Ames. At the request of the developer and under Council's direction, the requirement for a senior living center with RM zoning has now been eliminated. The entire development will be developed as low density residential.

As of this writing, some of the signatures on the pre-annexation agreement assessment waiver forms are still missing. Staff will work with the developers to secure those signatures prior to Council's action Tuesday night. **Staff has told all of the land owners, developers and Xenia (with its creditors) that signed copies of all agreements must be in the City's hands prior to Council approval of the agreements Tuesday night.**

### HYDE AVENUE NEIGHBORHOOD CONCERNS

During the Planning and Zoning Commission and City Council discussions and public hearings regarding the proposed annexations along Grant Avenue, members of the Bloomington Heights Neighborhood Association spoke to share their concerns. Grant Avenue becomes Hyde Avenue inside the City limits and the neighbors are concerned that the traffic that will be generated with new residential construction will impact the quality of life for residents along Hyde Avenue. City staff met with the neighborhood and discussed possible solutions. These include placing a stop sign on Welbeck Drive and Grant Circle where they intersect with Hyde Avenue, moving the on-street parking from the west side of Hyde Avenue to the east side adjacent to Lloyd Kurtz Park, and installing traffic calming features. Staff will continue to work with the Neighborhood Association to address their concerns.

## ACTION ON ANNEXATION REQUESTS

After giving proper notice to affected land owners, on April 9, 2013 the City Council held public hearings for the Quarry Estates and Athen annexation requests. At that time, however, the developers were not in a position to sign the pre-annexation agreements, since terms had not been reached with Xenia. The Council then approved a motion “to delay the vote to annex Quarry Estates, Frames, and Hunziker properties until rural water issues are resolved and Development Agreements are signed.”

Since that time, voluntary annexation requests have been received from Harold and Bette Frame, Brian and Jamie Frame, and the owners of the Hunziker North property. Thus, both the Quarry Estates and the Athen annexation requests are now 100% consenting. As was noted above, the Frames elected to take advantage of Council’s offer to allow them to connect to City water and sewer at the “in town” connection rate (currently estimated at \$1,440 for each water or sewer connection), rather than the higher, per acre assessments under the proposed utility connection districts.

**If Council is satisfied that all issues have been resolved related to the rural water buy-out and service territory transfer, as well as to arrangements for developers’ participation in infrastructure costs, then approval can be given to both the Athen and Quarry Estates area annexations. Again, a signed pre-annexation agreement must be received for the Athen land before that annexation is approved.**

Following annexation of these properties, the developers will be positioned to initiate rezoning and platting of their land. Platting of the Quarry Estates and two Hunziker developments will be accomplished under the City’s relatively new Conservation Subdivision Ordinance, which was adopted to help protect the City’s back-up water supply in Ada Hayden Lake. Once the owners of the Rose Prairie property reach terms with Xenia for the rural water buy-out, that subdivision will also be developed under this new ordinance.

## GRANT AVENUE IMPROVEMENTS STEPS & TIMING

With resolution of the water service territory issue, approval of the pre-annexation agreements, and approval of the annexations, the next step to facilitate residential development in the northern growth area is the extension of utilities and the street along Grant Avenue.

Within the 2012/13 City budget and CIP, City Council approved \$703,000 for the North Ames Water Extension project and \$698,000 for the North Ames Sanitary Sewer Extension project. In addition, the water and sewer rate increases that took effect on July 1, 2013 were structured to cover the cost of those capital projects.

Section 384 of the Code of Iowa provides for cities to establish utility connection districts to recover the costs of extending water and sanitary sewer mains to an area. The City will utilize these districts to apportion the costs of these extensions to benefitted portions

of the Northern Growth Area. The City itself will not be a direct contributor to those costs, since Ada Hayden Park will not utilize those services. However, the City will assume some of the costs for the water and sewer district if the existing residents take advantage of the “voluntary annexation offer” extended to them by the City Council. At the most, that expense would be \$50,688 for the sanitary sewer and \$37,208 for the water if all of the rural homeowners along Grant Avenue chose to accept this offer. That offer will have ended, however, when the Hunziker South annexation is completed.

The costs for improving Grant Avenue are not yet in the City’s CIP or budget, but they will be included in the City Manager’s Recommended 2014/15 CIP and budget. That timing will allow for the project to be bid out after July 1, 2014, with work to follow installation of the water and sewer mains and with completion anticipated in mid-2015.

Most of the design work for these water, sewer and street improvements has already been completed. As soon as that work is finished and needed easements are in hand, plans and specifications for those combined projects will be brought to Council for approval. The utility work should then be initiated next spring, and will hopefully be completed by the Fall of 2014. Those mains can then be connected to the mains that the Quarry Estates developers plan to install after their subdivision is approved.

#### **OTHER XENIA-RELATED ISSUES**

Although not directly related to northern growth, two other Xenia-related initiatives continue. First, City staff continues to await Xenia’s response related to establishing a clear definition of the Xenia-City service territory boundaries on the west and south sides of Ames. Second, representatives of the ISU Research Park are engaged in negotiations with Xenia to transfer Phase III land currently in Xenia’s service territory to the City, so that the entire Research Park can receive urban water service from the City of Ames.

#### **ALTERNATIVES**

1. Assuming the City Council’s concerns related to this northern growth have now been addressed, the following three actions should be approved:
  - a) Approve the water service territory agreement with Xenia Rural Water District (Attachment A).
  - b) Approve the pre-annexation agreements for Quarry Estates, the two Hunziker developments, the two Frame properties, and – if a signed agreement is received in time – the Athen property (Attachments B through G).
  - c) Approve the annexation requests for Quarry Estates, the Hunziker North property, the two Frame properties, and – if a signed pre-annexation agreement is received - the Athen property (Attachments H, I and J).



2. Do not approve the attached water service territory and pre-annexation agreements, and direct staff to take further action before the agreements and annexations are approved.

### **MANAGER'S RECOMMENDED ACTION**

Agreements have finally been reached with Xenia Rural Water District over the vexing rural water issue. The developers have reached terms with Xenia whereby private purchasers of homes will pay Xenia a premium in order to receive City water service. The corresponding agreement between Xenia and the City confirms the transfer of the Quarry Estates and two Hunziker developments into the City's water service territory. Having resolved the rural water issue, the developers have now signed pre-annexation agreements that include commitments to help pay for the cost of extending City infrastructure to their respective areas. Transfer of the Athen property is still pending inclusion by Xenia.

**Before Council considers approval of the two Hunziker pre-annexation agreements, staff still needs to analyze the impact of this developer's unwillingness to sign the complete assessment waiver documents. It is difficult for the Manager to recommend approval of these agreements without that provision, since it was intended to eliminate the City's financial risk as the street is constructed. Further, both Rose Prairie and Quarry Estates have acquiesced to this waiver in their respective signed agreements.**

**Assuming that Hunziker agrees to all of the City's waiver provision terms in their pre-annexation agreements, that all of Council's concerns related to this northern growth have then been addressed, and that all appropriate documents have been approved and signed by Xenia Rural Water District, by Xenia's creditors, and by the respective land owners and developers, it is the recommendation of the City Manager that the Council approve Alternative #1, thereby taking the following three actions:**

- a) **Approve the water service territory agreement with Xenia Rural Water District.**
- d) **Approve the pre-annexation agreements for Quarry Estates, the two Hunziker developments, the two Frame properties, and – if a signed agreement is received in time – the Athen property.**
- e) **Approve the annexation requests for Quarry Estates, the Hunziker North property, the two Frame properties, and – if a signed pre-annexation agreement is received - the Athen property.**

Following these actions, the developers can move forward with the next steps in their respective development processes of rezoning and subdivision while City staff prepares plans and specifications for the North Ames Water and Sewer Extension projects.

## **ATTACHMENTS**

- A. City-Xenia Agreement
- B. Northern Growth Area and Properties Requesting Annexation
- C. Quarry Estates Pre-annexation Agreement
- D. Hunziker North Pre-annexation Agreement
- E. Hunziker South Pre-annexation Agreement
- F. Frame Pre-annexation Agreement
- G. (Reserved for Athen Pre-annexation Agreement, if received)
- H. Frame Annexation Application (to be provided on December 16)
- I. Frame Annexation Application (to be provided on December 16)
- J. Hunziker North Annexation Application