

COUNCIL ACTION FORM

**SUBJECT: PUBLIC HEARING FOR GRANTING OF ACCESS EASEMENT
ACROSS CITY PROPERTY OF PARKING LOT X (WELCH PARKING
LOT) TO BENEFIT 122 HAYWARD AVENUE**

BACKGROUND:

Campus Plaza L.C., represented by Dean Jensen, is the owner of the property known as 122 Hayward Avenue that is intended to be a new mixed-use student housing development. The developer has requested that the City Council grant a perpetual access easement for the benefit of the development at 122 Hayward through the City's parking area to the west of Welch Avenue. (Attachment A – Location Map). City Council first reviewed this request on April 26th and gave direction to the City Attorney to draft an easement granting access rights across City property. However, the easement language was to be as general as possible about providing for access, but not in manner that delineates a precise route for access so as to limit future use of the City's property. On May 24th the City Council set a date of public hearing for May 31, 2016 to consider the granting of the perpetual easement.

The draft easement includes language that addresses following issues:

- It allows for standard vehicle and pedestrian access across the City parcel.
- There is no defined path of access to the 122 Hayward property parking entrances. It is a generalized "floating" easement that ensures access will be permitted to the parking entrances of 122 Hayward.
- The City maintains discretion on how to route access across the City's parcel.
- The City can provide access to 122 Hayward from adjoining properties if it becomes available in the future.
- Access to the 122 Hayward property can be closed temporarily by the City.
- Any changes to the City parcel that require modifications of 122 Hayward to maintain viable access on their property are at the property owner's expense.
- The City has no obligation for special maintenance or snow removal to the benefit of the property owner.

Although a perpetual right of access is granted with this easement, staff believes the draft language provides the greatest range of discretion possible for the City to choose how that occurs. As drafted, there is no obligation that access must come from any one location or street or that the access to each parking area on 122 Hayward must be continuous across

the City property. If the City was to acquire property interests in adjoining properties that permit access to the 122 Hayward site, the City can substitute access by the language of this easement agreement. Additionally, the term “standard passenger vehicles” was included to clarify that the City can build above the current parking area if it is desirable to the City and must only accommodate standard sized vehicles in the design of the ground level clearance of any future structure.

The easement language does address that the City bears no obligation for maintenance or snow removal to benefit 122 Hayward. **However, the easement does not address if the owner of 122 Hayward must participate in any costs for maintenance or potentially any future costs related to access through the City’s parcel.** If the City was to change the terms of usage or access to the City parcel and charge for entrance to the parking lot or to some future parking structure, usage of such a facility by the tenants of 122 Hayward would be at no cost under the terms of the current easement. If Council has a concern about future users of 122 Hayward being treated the same as other members of the public, a clause would need to be added to the easement stating that if conditions of use and access of the City’s parcel change for abutting property access or the public in general, then the 122 Hayward property would be subject to complying with the same requirements.

As staff noted at the April 26th meeting, it would be in the City’s interest to receive an easement from the 122 Hayward property owner that would allow for future expansion or relocation of the 16-foot access way along the north property line of 122 Hayward. Staff believes that the easement should be 10 feet in width and match the current overhead power line easement along the north property line. At a minimum, staff would request 8 feet to allow for future potential of two-way circulation. This easement has not been finalized for staff’s acceptance at the time of the writing of this report.

ALTERNATIVES:

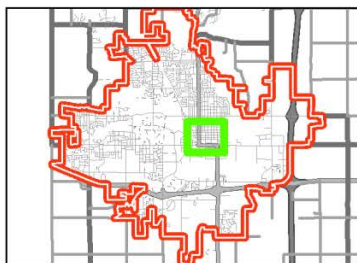
1. The City Council can grant the access easement across the City parcel (Parking Lot X) to the benefit of 122 Hayward Avenue per the terms of the attached easement and conditioned upon acceptance of a recorded access easement with language acceptable to the City Attorney along the north property line of 122 Hayward.
2. The City Council can decide not to grant the access easement.
3. The City Council can refer this request back to staff for additional information.

MANAGER’S RECOMMENDED ACTION:

Staff believes the draft language addresses the main interests of the City to minimize its obligations across the City’s property while ensuring access to 122 Hayward. Staff transmitted this draft to the property owner’s attorney on Friday for his review, and expects that the final easement with appropriate legal descriptions will be provided to Council by Tuesday’s City Council meeting.

Assuming the City Council is satisfied with the attached easement document, it is the recommendation of the City Manager that the City Council approve Alternative #1 with a condition that the owner of 122 Hayward grant the City an access easement along the north boundary of that property.

ATTACHMENT A



Location Map

INSTRUMENT PREPARED BY:	Brian D. Torresi, 2605 Northridge Pkwy., Ste.101, Ames, IA 50010 (515) 288-2500
RETURN TO:	Davis Brown Law Firm, 2605 Northridge Pkwy., Ste.101, Ames, IA 50010

FLOATING ACCESS EASEMENT AGREEMENT

WHEREAS, the City of Ames owns land in the middle of the block which is bordered by Lincoln Way on the north, Chamberlain on the south, Welch Avenue on the east and Hayward Avenue on the west, which is presently developed and in use by the City as Campustown Parking Lot X; and

WHEREAS, Campus Plaza, LLC, owns and is redeveloping property at 122 Hayward whose east and north sides will abut the City Campustown Parking Lot X; and

WHEREAS, Campus Plaza, LLC, as part of its redevelopment project desires to secure permanent rights allowing vehicular access and ancillary pedestrian access across the City's property into the parking facilities that Campus Plaza, LLC, is proposing to construct at 122 Hayward; and

WHEREAS, the City of Ames desires to grant those rights to Campus Plaza, but in such a way that preserves for the City its own ability to determine the specific route across its land, including the ability to change that route to be across land the City may acquire in the future;

NOW THEREFORE, the Parties do hereby agree as follows:

1. PURPOSE

The purpose of this agreement is for the City to grant the right of vehicular access and ancillary pedestrian access to Campus Plaza across property the City presently owns, or property the City may obtain rights to in the future, in such a way that Campus Plaza is assured it will always have a means for vehicles to access the parking facilities it is intending to construct at 122 Hayward Avenue while simultaneously preserving the maximum flexibility for the City to develop its property in whatever way it may determine so long as that development does not impede the granted access.

2. DEFINITIONS.

When used in this Agreement (as that term is defined herein), unless otherwise required by the context:

(a) "Grantor" means the City of Ames, Iowa, and includes Grantor's successors and assigns, whose mailing address for purposes of this Agreement is: 515 Clark Avenue, Ames, Iowa 50010.

(b) "Agreement" means this instrument as signed by the Grantor and the Grantee.

(c) "Benefitted Property" means the real property currently legally described as follows, and which may be legally described in the future as set forth in Plat-2 (as that term is defined herein):
Lots Twenty-three (23), Twenty-four (24), Thirty-four (34), and Thirty-five (35),
all in Block Four (4), Auditor's Replat of Blocks Three (3), Four (4), and Five
(5), Beardshear's Addition and Walter's Subdivision to Ames, Story County, Iowa

(d) "Burdened Property" means the real property legally described as follows:

Parcel "A" a part of the Northeast Quarter (NE1/4) of the Northwest Quarter (NW1/4) of Section Nine (9), Township Eighty-three (83) North, Range Twenty four (24) West of the 5th PM, Ames, Story County, Iowa, as shown on the Plat of Survey filed in the office of the Recorder of Story County, Iowa, on April 4, 1997, as Instrument No. 97-03178, Book 14, Page 181

(e) "Grantee" means Campus Plaza, L.C., and includes Grantee's successors and assigns, whose mailing address for purposes of this Agreement is: 2519 Chamberlain Street, Suite 101, Ames, Iowa 50014.

(f) "Parties" means, collectively, the Grantor and the Grantee.

(g) "Plat-1" means the Plat of Survey referenced in the legal description of the Burdened Property. A true and accurate copy of Plat-1 is attached hereto as Exhibit A and incorporated herein by this reference.

(h) "Plat-2" means the proposed Plat of Survey for the combination of the parcels of real property that comprise the Benefitted Property. A true and accurate copy of the proposed Plat of Survey of the Benefitted Property is attached hereto as Exhibit B and incorporated herein by this reference as if fully set forth.

3. GRANT OF ACCESS EASEMENT RIGHTS; FUTURE LIMITATION RIGHTS.

Grantor, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grants, sells, and conveys to Grantee, a floating ingress/egress and access easement upon and across the Burdened Property to the entrances of Grantee's parking facilities abutting the Burdened Property, and above the burdened property only to the extent as is necessary for pedestrian and conventional passenger vehicle access to those entrances, subject to the ability to limit the scope thereof as provided herein, for the benefit of the Benefitted Property, together with all other rights and appurtenances thereto.

The Grantor shall only be responsible for providing access in a manner that allows for access to the minimum number of required off-street parking spaces as defined under the

City of Ames Zoning ordinance, not to exceed forty five (45) parking spaces, to ensure the Benefitted Property complies with City ordinances for use of the property as commercial and apartment uses.

The Grantor shall have the right, at any time and upon fourteen (14) days written notice to the Grantee, to limit the scope of the access easement rights granted herein to a defined area within the Burdened Property so long as said limitation in scope does not prevent access to the Benefitted Property from the public streets which abut the street block where the burdened property is located. (as depicted on Plat-1).

The Grantor shall have the right, at any time and upon forty eight (48) hours written or posted notice to the Grantee, to temporarily close, restrict, or limit access through the Burdened property with no obligation to provide alternative means of access or replacement parking during the period of limited access or closure. Emergency closure or restriction of access may be done without prior notice to the Grantee.

Notwithstanding anything in this Agreement to the contrary, with proper title and authority and upon fourteen (14) days written notice to the Grantee, the area of the Burdened Property may be reduced in size, expanded and modified in any other manner so long as substantially similar access is provided to the Benefitted Property.

The Grantor bears no liability or obligation for improvements to the Benefitted Property under this agreement. Any modifications to the route of access to the Benefitted Property that create the need for adjustments or modifications of the improvements built on the Benefitted Property shall be done at the sole cost and expense of the owners of the Benefitted Property.

The Grantor has no obligation or special duty for maintenance or snow removal to accommodate Grantee's use of Grantor's property.

4. NONEXCLUSIVE EASEMENT; TERM.

The rights granted under this Agreement are not exclusive. This Agreement shall not preclude Grantor from granting similar easement rights to third parties upon terms and conditions that do not impair or diminish the rights granted under this Agreement to Grantee. This Agreement and the easement rights granted herein shall continue for a perpetual term and shall run with the Burdened Property and the Benefitted Property.

5. TITLE WARRANTY.

Grantor warrants to Grantee that Grantor holds the Burdened Property by title in fee simple and that Grantor has good and lawful authority to grant the easement rights herein provided for.

6. RIGHTS RESERVED.

Grantor reserves any and all rights to continue to use and enjoy the Burdened Property for any and all purposes that do not unreasonably interfere with or interrupt the enjoyment of the easement rights as referenced herein.

7. INTERPRETATION.

Words and phrases used in this Agreement shall be construed as in the single or plural number, and as masculine, feminine or neuter gender, according to the context. This Agreement shall be governed exclusively by and construed in accordance with the laws of the State of Iowa. The paragraph headings in this Agreement are for convenience only and in no way define or limit the scope or intent of any provisions herein.

8. ENTIRE AGREEMENT.

This instrument constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior statements, representations, promises, and agreements, oral or written. No addition to or change in the terms of this Agreement shall be binding upon the Parties unless it is expressed in a writing signed by the Parties.

9. EQUITABLE RIGHTS OF ENFORCEMENT.

The rights granted herein may be enforced by restraining orders and injunctions, temporary or permanent, prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the Parties to, or those Benefitted by, this Agreement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.

10. COUNTERPARTS.

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument, and in making proof hereof, it shall not be necessary to produce or account for more than one such counterpart.

IN WITNESS OF THIS AGREEMENT Grantor has executed this Agreement on this ___ day of _____, 2016.

CITY OF AMES, IOWA, Grantor

CAMPUS PLAZA, LLC, Grantee

By: _____
Ann Campbell, Mayor

By: _____
Dean Jensen, Manager

STATE OF IOWA, STORY COUNTY, ss:

STATE OF IOWA, STORY COUNTY, ss:

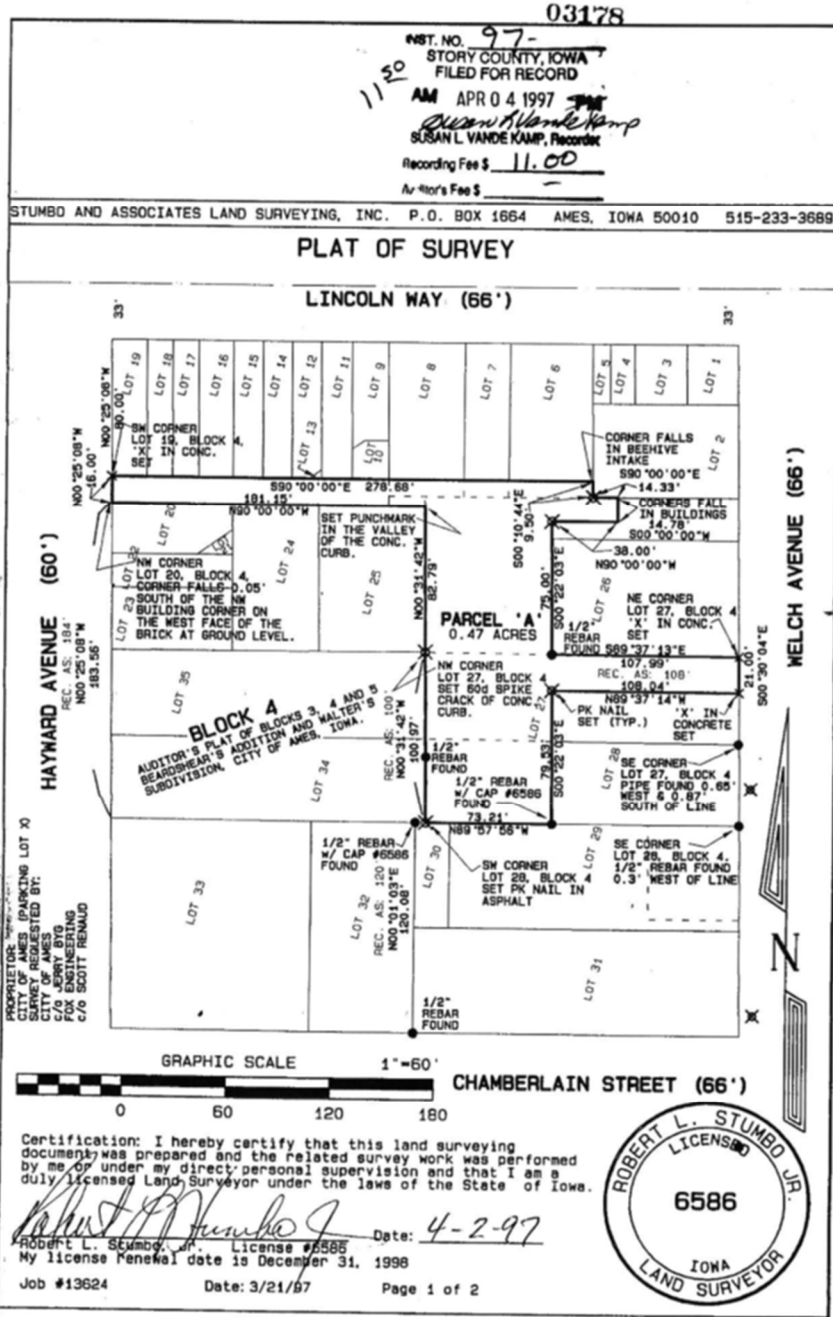
This instrument was acknowledged before me on this ___ day of _____, 2016, by Ann Campbell, as the Mayor of the City of Ames, Iowa.

This instrument was acknowledged before me on this ___ day of _____, 2016, by Dean Jensen, as a Manager of Campus Plaza, LLC.

Notary Public in and for the State of Iowa
My commission Expires _____

Notary Public in and for the State of Iowa
My commission Expires _____

EXHIBIT A
PLAT-1



**EXHIBIT B
PLAT -2**

