

September 2, 2014

To: Mayor Bemrich and City Council

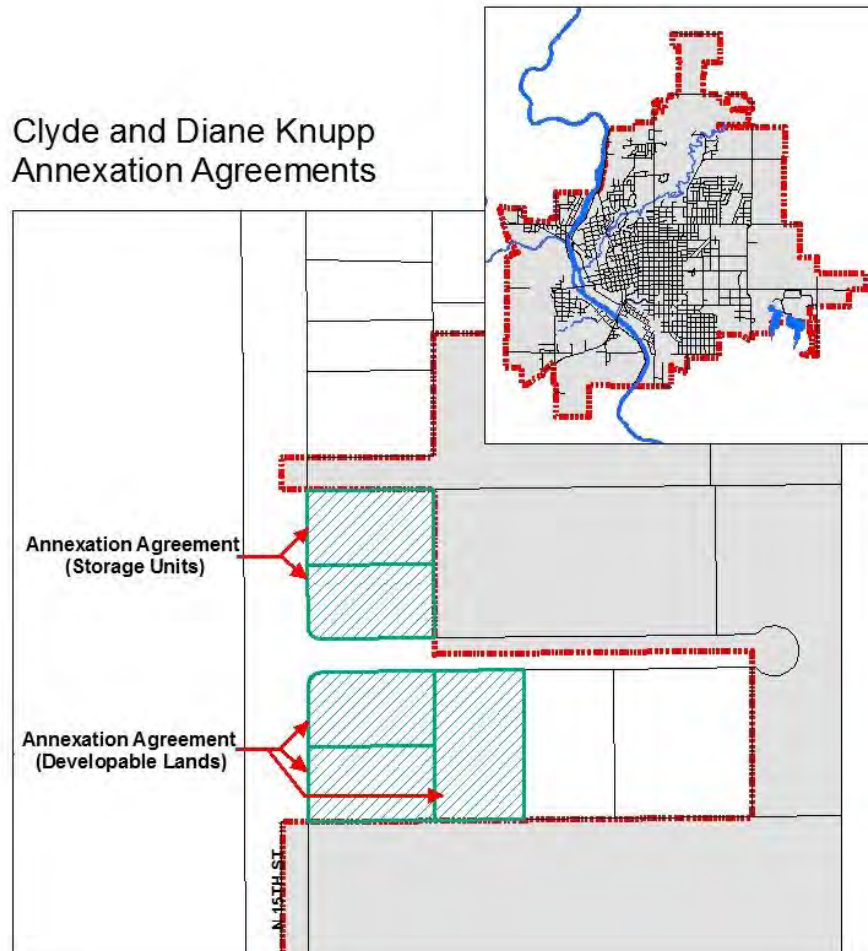
From: David Fierke, City Manager

Subject: Annexation Agreements

ACTION: Vote on Resolution Authorizing the City to Enter into Agreements for Annexation

Brief History

Clyde and Diane Knupp are desirous of annexing their property, situated north of and adjacent to Cardinal Avenue, into the City. To ensure consistent annexation of property in this area and avoid the creation of islands at the time the Council begins considering annexation of this and the surrounding area, City staff requested that Mr. and Mrs. Knupp sign a separate agreement for lands to the south of Cardinal Avenue. This would not require that these undeveloped lands **be annexed at this time, but at the time of the City's choosing**. The map below illustrates the location of lands included in the two Agreements and identifies the pertinent agreements.



A plat dividing the above-illustrated properties was created and stamped by an engineer on November 20, 1978 and later approved by the City and recorded in Book 45 page 451 on June 11, 1981.

Analysis of Issue

In order to develop their property for self-storage units, Clyde and Diane Knupp are looking to annex their property into the City. The buildings within the self-storage unit development would not be permitted as proposed under County setback requirements. The City finds this annexation to be acceptable so long as certain conditions are agreed upon.

Utilities

City utilities, including water, sanitary sewer and storm sewer are available to lands identified in both agreements. **According to section C.2. of the City's Annexation Policy**, in order to receive City water or sewer service, owners of unincorporated properties within the Extraterritorial Area must agree to sign a voluntary annexation petition, which runs with the land and binds the properties for future annexation when such annexation is determined appropriate by the Fort Dodge City Council. Upon approval and signature of the subject Agreements by both parties, the property owners would be allowed to connect the properties identified in the map above to City water and sanitary sewer services. Upon connection, the property owners will be responsible for maintenance of the installed service lines and for payment of the services **according to the City's rate, up and until the time of annexation.**

The subject properties are located in an assessment area. The Airport Area Sanitary Sewer Main Extension Policy Statement will require the property owners, upon connection to the City sanitary sewer service to pay a connection fee of \$5,800 per sanitary sewer service line. Under the Agreement for the storage unit properties, the City will agree to waive this fee, in exchange for a water utility easement for the existing City fire hydrant, manhole and water line mistakenly located on the property owners land. This will protect the City from having to spend the funds to relocate the hydrant, manhole and water line. The property owners will be required to pay this assessment upon connection to the City sanitary sewer for the south three properties identified in the Agreement for Developable Lands.

Land Use

The City's land use plan identifies both areas for industrial use. Under the Agreement for the Storage Units, the City will support a zoning of the identified lands as Light Industrial. This will **require a side yard setback of 5'. In addition, the City will require a 25' front yard setback** (along Cardinal and North 15th Street) to ensure visual clearance on this corner lot.

The property owners are requesting that the City take the necessary steps to ensure that the setback requirements of the south 3 undeveloped properties be honored as they were originally recorded with the **City in 1981. This would require a 25' front yard setback.** No side yard or rear yard setbacks were established within this recorded plat. To ensure side yard and rear yard setbacks are accounted for at the time of annexation, the Agreement for Developable Lands South of Cardinal Avenue will allow **a 25' front yard setback, and side and rear yard setbacks** as determined by the City Ordinance at the time of annexation.

In addition to the setback discussions above, C&S Products has made a request to the City to require within the Agreement for the Storage Units that the property owners **provide a 15'** side yard setback along the east property line, of which said side yard is abutting the west property line of C&S Products. **C&S Products'** noted that their reasoning for this request to reduce any concerns for access to the C&S Products property. In addition to the zoning setback **requirements in the Light Industrial District as discussed above (5')**, the City has adopted fire and building codes, which specify setback requirements from the property line that are based on the occupancy, size of building, etc. As proposed, it appears that the self-storage units meet zoning, building and fire requirements in relation to access and setbacks. Please see the attached letter **noting C&S Products' concerns.**

Development Requirements

Development upon any of the properties described in the Agreements will require that the property owners obtain and be responsible for any necessary permits, easements, or other approvals. Upon annexation of property into the City, any new development that occurs on either lot shall require the proper City approvals, including, but not limited to Site Plan Review, Building Permits, and Right-of-way Excavation Permits.

In regards to development on the lands identified in the Agreement for the Storage Units, City staff finds the Agreement acceptable, so long as all existing development is compliance with City requirements. Within this Agreement the owner acknowledges that is what is currently constructed on the Site for the Storage Units is in compliance with City requirements. The City has visited the site to confirm this. As of August 27, 2014 the site was in compliance, with **exception of one area where 5' of greenspace is required between the drive area and the property line, which was reduced to approximately 4'.**

Taxes

The property owners are requesting a 10-year phase-in of City taxes for both properties. City staff has communicated to the property owners that they are not in support of the phase-in for self-storage units. Further, City staff has communicated to the property owners that they would support a partial phase-in of City taxes for the south, undeveloped properties, **for primary sector development or retail entity(s) that provide job creation, is/are new to Fort Dodge and do not consist of self-storage.** In the enclosed Agreements the phase-in of City taxes is provided at a 10-year rate for both properties. It is ultimately up to the City Council whether to provide a phase-in of City taxes and to what extent.

Budget Impact

No City expenditures are anticipated; however, with the phase-in of taxes, a portion of City taxes would not be collected for the first ten years of the annexation of either lands.

Strategic Plan Impact

This action relates to the following Policy:

Policy D.7.1: The city shall participate and support on-going intergovernmental sharing of information and services, planning on issues of common concern, including land use and development, housing, transportation, utilities, environmental management, economic development, law enforcement, emergency management, education, and recreation and tourism, among others.

Existing Plan Impact

This action is supported by the Annexation Policy adopted by the Fort Dodge City Council on May 19, 2008, by Resolution 08-05-102.

Subcommittee or Commission Review / Recommendation

N/A

Staff Conclusions / Recommendations

Subject to the tax phase-in determination by Council and public comments on setbacks, Staff finds the attached Agreements acceptable.

Alternatives

Table the Resolution, should amendments to the Agreements be desired. Another option is to reject the Resolution, which would prevent the Agreements from moving forward and potentially the Knupp's from requesting annexation into the City.

Implementation and Accountability

If the Council approves the Resolution Authorizing the City to Enter into Agreements for Annexation, both parties shall meet the requirements established within the Agreements.

Signed

Approved



Carissa Miller
Associate Planner

David R. Fierke
City Manager

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE CITY TO ENTER INTO
AGREEMENT FOR ANNEXATION WITH PROPERTY OWNERS
DESIRING CITY SERVICES**

Whereas, Clyde and Diane Knupp, owners of property within the City's Extraterritorial Area, are desirous of voluntarily annexing into the City; and

Whereas the property owners have executed two separate Agreements with the City of Fort Dodge with respect to voluntary annexation, copies of which are attached hereto; and

Whereas the property owners agree to all of the terms established within each Agreement; and

Whereas the property owners acknowledge that what is currently constructed on the property identified in the Agreement subtitled "(Storage Units)" has been completed per City regulations; and

Whereas said Agreements will not take effect until both agreements have been signed by all applicable parties; and

Whereas said Agreements have been found to be consistent with the City's Annexation Policy; and

Whereas the City of Fort Dodge has the capability to provide services recognized within the executed Agreements to the applicable properties in a timely manner.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORT DODGE, IOWA:

Section 1. That the Annexation Agreements attached hereto are hereby approved as listed below:

AGREEMENT BY AND BETWEEN THE CITY OF FORT DODGE,
IOWA AND CLYDE AND DIANNE KNUPP (Storage Units)

AGREEMENT BY AND BETWEEN THE CITY OF FORT DODGE,
IOWA AND CLYDE AND DIANNE KNUPP (Developable Lands
South of Cardinal Avenue)

Passed and approved by the City Council of the City of Fort Dodge, Iowa, this
8th day of September, 2014, AD.

Ayes: _____

Nays: _____

Other: _____

CITY OF FORT DODGE

BY: _____
Matt Bemrich, Mayor

ATTEST:

Jeff Nemmers, City Clerk

Prepared by Carissa Miller, Associate Planner, Business Affairs & Community Growth, 819 1st Avenue South, Fort Dodge, IA 50501 (515) 573-8321 Return recorded document to: Business Affairs & Community Growth, 819 1st Avenue South, Fort Dodge, IA 50501

**AGREEMENT BY AND BETWEEN
THE CITY OF FORT DODGE, IOWA
AND
CLYDE AND DIANE KNUPP
(Storage Units)**

THIS AGREEMENT, made and entered into this ___ day of _____, 2014, by and between the City of Fort Dodge, Iowa, an Iowa Municipal Corporation (The "City") and Clyde and Diane Knupp (The "Property Owners").

WITNESSETH

WHEREAS, the City has constructed a water main, sanitary sewer main and storm sewer main which extend from the City of Fort Dodge past the Airport Industrial Development; and,

WHEREAS, the water, sanitary sewer and storm sewer mains are capable of providing service to certain owners of property along the route of said mains, as determined by the City Engineer; and,

WHEREAS, the property described in Exhibit A is currently located outside the corporate limits of the City of Fort Dodge and within the City's extraterritorial area; and,

WHEREAS, the Property Owners desire to connect to and receive City water, sanitary sewer and storm sewer service at their property as described in attached Exhibit A; and,

WHEREAS, per the City's Annexation Policy, adopted in 2008, the City requires any property owner within the City's extraterritorial area desirous of connecting to the City's utility infrastructure or expanding an existing service already connected to the City's utility infrastructure to agree to voluntary annexation at a time of the City's choosing; and,

WHEREAS, the property served by the connection to City water, sanitary sewer and storm sewer service is limited to the property described in Exhibit A; and,

WHEREAS, a desire to expand service beyond property described in Exhibit A would require approval by the City and an additional agreement between the City and the Property Owners; and,

WHEREAS, the Property Owners desire to annex their property into the City as described in attached Exhibit A; and,

WHEREAS, both parties are mutually benefited through their efforts that are identified by the following mutually acceptable stipulations.

NOW THEREFORE, the parties agree and stipulate as follows:

The City agrees to:

1. Allow the Property Owners to receive City water service for the property described in Exhibit A.

2. Allow the Property Owners to receive City sanitary sewer service for the property described in Exhibit A.
3. Allow the Property Owners to connect to the City's storm sewer service for the property described in Exhibit A.
4. Support the voluntary annexation of property described in Exhibit A.
5. As a condition of voluntary annexation, support the rezoning of property described in Exhibit A to Light Industrial.
6. Waive the connection fee for property described in Exhibit A, which is required by the Airport Area Sanitary Sewer Main Extension Policy Statement in exchange for a water utility easement for the existing City fire hydrant, manhole and water line located on the southwest corner of the Property Owners' property described in Exhibit A.
7. At the time lands described in Exhibit A are annexed into the City, allow for an exemption for said lands from city taxation of the following percentages of assessed valuation according to the following schedule (per Iowa Code §368.7):
 - a. For years one and two, seventy five percent
 - b. For years three and four, sixty percent
 - c. For years five and six, forty-five percent
 - d. For years seven and eight, thirty percent
 - e. For years nine and ten, fifteen percent

The Property Owners acknowledge that what is currently constructed on the Site described in Exhibit A has been completed per City regulations.

Further, the Property Owners agree to:

1. At the time of connection to the City's sanitary sewer or water main, construct one service line per utility, per building, receiving service as allowed by City regulations; said connection may occur at the time of the property owner's choosing.
2. Assume all responsibility for the construction and/or maintenance of utility service lines, acquisition of any necessary easements, property, or approvals from any other entity to facilitate construction and/or maintenance of utility service lines.
3. Assume all responsibility for any other permits from or agreements with any other authorities, associations, or districts of interest.
4. Maintain all service lines connecting the property described in Exhibit A to the City's infrastructure, either directly or indirectly, in compliance with City standards.
5. Submit a signed voluntary annexation petition to the City Council for property described in Exhibit A at a time of the City's choosing.
6. Submit a signed Annexation Agreement, approved by the City, for property described in Exhibit B.
7. Pay the City's extraterritorial rates for service, as periodically determined by the City, up to and until the date of annexation.
8. Upon annexation develop in accordance with all City requirements and obtain all required City approvals prior to development, including, but not limited to, Site Plan review and City Right-of-Way Excavation Permits.
9. Prior to annexation connect all drainage ways to the City's Storm Sewer System, in the manner approved by the City Engineer.
10. Provide a water utility easement to the City for the existing fire hydrant, manhole and water line located on the southwest corner of the Property Owners' property described in Exhibit A.
11. In addition to meeting all Light Industrial District setback requirements, the Property Owner's shall provide a 25' front yard setback along Cardinal Avenue and Nelson Avenue, meaning no structures shall be constructed within 25' of the front property lines.

This agreement shall be binding upon the heirs, successors in interest and assigns to all signatories to this agreement.

All parties of this agreement hereby and herewith agree to hold harmless and indemnify each of the other parties, their employees or representatives, from any and all liability to which they may be subject, arising out of the execution of this agreement.

This is the complete and final agreement of the parties and no statement not herein contained has been relied upon by any party in affixing their signature hereto.

All parties warrant that they have full and sufficient authority to execute this agreement and each party will sign whatever document is necessary to effectuate this agreement.

Failure by either party to perform the above-described stipulations would allow the other party to terminate this agreement.

IN WITNESS WHEREOF, we have affixed our signatures hereto.

PROPERTY OWNER:

Clyde Knupp

Diane Knupp

STATE OF _____,
_____ COUNTY,

ss:

On this ____ day of _____, 2014, before me, the undersigned, a Notary Public in and for said State, personally appeared Clyde & Diane Knupp, to me known to be the identical persons named in and who executed the foregoing instrument and acknowledged that they executed the same as their voluntary act and deed.

Notary Public

CITY OF FORT DODGE, IOWA

ATTEST:

By _____
Matt Bemrich, Mayor Jeff Nemmers, City Clerk
STATE OF IOWA, WEBSTER COUNTY, ss:

On this ____ day of _____, 2014 before me, the undersigned, a Notary Public in and for said State, personally appeared Matt Bemrich and Jeff Nemmers to me personally known, who being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of said corporation; that the seal affixed thereto is the seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its City Council; and that the said Mayor and City Clerk as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.

Subscribed and sworn to before me this ____ day of _____, 2014.

Notary Public

Exhibit A - Knupp Property

Legal Description: Lots 1 and 2 of the Official Plat for the Airport Industrial Development in Webster County, Iowa; as described in Book 45 at Page 451 Deed Record of the Webster County Recorder's Office.



Lot 1

Lot 2

75 37.5 0 75 Feet

Map created 8/1/14

Exhibit B - Knupp Property

Legal Description: Lots 3, 4 and 6 of the Official Plat for the Airport Industrial Development in Webster County, Iowa; as described in Book 45 at Page 451 Deed Record of the Webster County Recorder's Office.



75 37.5 0 75 Feet

Map created 8/1/14

Prepared by Carissa Miller, Associate Planner, Business Affairs & Community Growth, 819 1st Avenue South, Fort Dodge, IA 50501 (515) 573-8321 Return recorded document to: Business Affairs & Community Growth, 819 1st Avenue South, Fort Dodge, IA 50501

**AGREEMENT BY AND BETWEEN
THE CITY OF FORT DODGE, IOWA
AND
CLYDE AND DIANE KNUPP
(Developable Lands South of Cardinal Avenue)**

THIS AGREEMENT, made and entered into this ___ day of _____, 2014, by and between the City of Fort Dodge, Iowa, an Iowa Municipal Corporation (The "City") and Clyde and Diane Knupp (The "Property Owners").

WITNESSETH

WHEREAS, the City has constructed a water main, sanitary sewer main and storm sewer main which extend from the City of Fort Dodge past the Airport Industrial Development; and,

WHEREAS, the water, sanitary sewer and storm sewer mains are capable of providing service to certain owners of property along the route of said mains, as determined by the City Engineer; and,

WHEREAS, the property described in Exhibit A is currently located outside the corporate limits of the City of Fort Dodge and within the City's extraterritorial area; and,

WHEREAS, the Property Owners may connect to and receive City water, sanitary sewer and storm sewer service at their property as described in attached Exhibit A; and,

WHEREAS, per the City's Annexation Policy, adopted in 2008, the City requires any property owner within the City's extraterritorial area desirous of connecting to the City's utility infrastructure or expanding an existing service already connected to the City's utility infrastructure to agree to voluntary annexation at a time of the City's choosing; and,

WHEREAS, the property served by the connection to City water, sanitary sewer and storm sewer service is limited to the property described in Exhibit A; and,

WHEREAS, a desire to expand service beyond property described in Exhibit A would require approval by the City and an additional agreement between the City and the Property Owners; and,

WHEREAS, both parties are mutually benefited through their efforts that are identified by the following mutually acceptable stipulations.

NOW THEREFORE, the parties agree and stipulate as follows:

The City agrees to:

1. Allow the Property Owners to receive City water service for the property described in Exhibit A.
2. Allow the Property Owners to receive City sanitary sewer service for the property described in Exhibit A.
3. Allow the Property Owners to connect to the City's storm sewer service for the property described in Exhibit A.

4. At the time lands described in Exhibit A are annexed into the City, allow for an exemption for said lands from city taxation of the following percentages of assessed valuation according to the following schedule (per Iowa Code §368.7):
 - a. For years one and two, seventy five percent
 - b. For years three and four, sixty percent
 - c. For years five and six, forty five percent
 - d. For years seven and eight, thirty percent
 - e. For years nine and ten, fifteen percent
5. Upon the annexation of lands described in Exhibit A, the City will allow 25' front yard setbacks, and side and rear yard setbacks as determined by the City Zoning Ordinance, at the time of annexation.

The Property Owners agree to:

1. At the time of connection to the City's sanitary sewer or water main, construct one service line per utility, per building, receiving service as allowed by City regulations; said connection may occur at the time of the property owner's choosing.
2. Assume all responsibility for the construction and/or maintenance of utility service lines, acquisition of any necessary easements, property, or approvals from any other entity to facilitate construction and/or maintenance of utility service lines.
3. Assume all responsibility for any other permits from or agreements with any other authorities, associations, or districts of interest.
4. Maintain all service lines connecting the property described in Exhibit A to the City's infrastructure, either directly or indirectly, in compliance with City standards.
5. Submit a signed voluntary annexation petition to the City Council for property described in Exhibit A at a time of the City's choosing.
6. Pay the City's extraterritorial rates for service, as periodically determined by the City, up to and until the date of annexation.
7. At the time of connection to the City's sanitary sewer main, pay the entire connection fee per the Airport Area Sanitary Sewer Main Extension Policy Statement.

This agreement shall be binding upon the heirs, successors in interest and assigns to all signatories to this agreement.

All parties of this agreement hereby and herewith agree to hold harmless and indemnify each of the other parties, their employees or representatives, from any and all liability to which they may be subject, arising out of the execution of this agreement.

This is the complete and final agreement of the parties and no statement not herein contained has been relied upon by any party in affixing their signature hereto.

All parties warrant that they have full and sufficient authority to execute this agreement and each party will sign whatever document is necessary to effectuate this agreement.

Failure by either party to perform the above-described stipulations would allow the other party to terminate this agreement.

IN WITNESS WHEREOF, we have affixed our signatures hereto.

PROPERTY OWNER:

Clyde Knupp

Diane Knupp

STATE OF _____,

ss:

_____ COUNTY,

On this ____ day of _____, 2014, before me, the undersigned, a Notary Public in and for said State, personally appeared Clyde and Diane Knupp, to me known to be the identical persons named in and who executed the foregoing instrument and acknowledged that they executed the same as their voluntary act and deed.

Notary Public

CITY OF FORT DODGE, IOWA

ATTEST:

By _____
Matt Bemrich, Mayor

Jeff Nemmers, City Clerk

STATE OF IOWA, WEBSTER COUNTY, ss:

On this ____ day of _____, 2014 before me, the undersigned, a Notary Public in and for said State, personally appeared Matt Bemrich and Jeff Nemmers to me personally known, who being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of said corporation; that the seal affixed thereto is the seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its City Council; and that the said Mayor and City Clerk as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.

Subscribed and sworn to before me this ____ day of _____, 2014.

Notary Public

Exhibit A - Knupp Property

Legal Description: Lots 3, 4 and 6 of the Official Plat for the Airport Industrial Development in Webster County, Iowa; as described in Book 45 at Page 451 Deed Record of the Webster County Recorder's Office.



75 37.5 0 75 Feet

Map created 8/1/14

JOHNSON, KRAMER, GOOD
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Of Counsel
Dean P. Erb
William J. Good

September 4, 2014

Mr. Dave Fierke
819 1st Avenue South
Fort Dodge, IA 50501

Dear Dave:

This letter will serve as a brief summary of our discussions related to the proposed erection of storage units on property adjacent to the C & S Products plant. The owner of the property, who is planning to build the storage units, was denied a variance by Webster County to infringe upon current setback requirements. The property owner's request for modification of the existing setbacks was denied by the County Board of Adjustment and the Webster County Supervisors. Thereafter, the property owner sought annexation by the City of Fort Dodge to circumvent the County setback requirements. Unfortunately, the property owner took the liberty on his own to pour the concrete foundation in preparation for building his storage units. He did so without approval of the County and without any agreement by the City to annex his property.

C & S Products vehemently opposes construction of the storage units within fifteen feet of the west side of the C & S Products plant. C & S Products abided by all of the county set back requirements when their buildings were built. No other adjacent property owner has been permitted to build with the minimal setbacks contemplated by the construction of these storage buildings.

The City's zoning ordinance provides at 17.08.03G.2. that setback shall be in compliance with the City of Fort Dodge, Iowa, Zoning Ordinance. It also provides that it shall be in proportion with the development property and with existing and planned development structures and adjacent and surrounding property. The proposed eight foot setback on the east side of the planned storage buildings is inconsistent with this ordinance. Furthermore, it would create an inconsistency between the setback permitted for these storage units and existing structures in adjacent and surrounding property, namely C & S

JOHNSON, KRAMER, GOOD, MULHOLLAND, COCHRANE & DRISCOLL, P.L.C.
Attorneys and Counselors at Law

September 4, 2014
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Products. The precedent to allow deviation from setbacks required of other adjacent property owners is troubling. It not only creates inconsistency between property owners, but it encourages future inconsistent building setback requirements.

The County's setback requirements for this area were presumably based on legitimate safety and aesthetic concerns. It is inconsistent with those concerns to allow annexation of the property and ignore the same setback requirements imposed on adjacent landowners after the property owner's request for a variance from the County was rejected.

For the reasons set out above, C & S Products respectfully requests that any annexation of this property be accompanied by a condition that the property owner abide by at least a fifteen foot setback between the proposed storage building and the C & S Products property line at the west side of the C & S Products plant. Thank you for your consideration.

Very sincerely yours,

JOHNSON, KRAMER, GOOD, MULHOLLAND,
COCHRANE & DRISCOLL, P.L.C.

By _____
Stuart J. Cochrane

SJC/amm