

I request that this document be sent to the ICAAP Committee and be included with the City of Ankeny's application for funding for the NE 18th overpass project.

Asked what authority/jurisdiction is the City of Ankeny using to acquire property for and construction of the NE 18th Street Bridge overpass at I-35 project in the City of Ankeny, including any bridge over 4 Mile Creek and road improvement from I-35 to Frisk Drive;

Response: According to the City Attorney, the authority for acquiring property is described in Iowa Code Section 6B, which addresses condemnation, as well as the Code sections on Municipalities. Section 364.4 specifically addresses the acquisition process.

Rebuttal: After researching this section I found a ruling by the Iowa Supreme Court concerning 364.4 which expanded powers to cities outside of the city limits. Apparently city officials can exercise powers of eminent domain outside of their corporate boundaries upon citizens who are not allowed to vote for the very officials that exercise this power.

Iowa Code §364.4 provides that a city may "[a]cquire, hold, and dispose of property outside the city in the same manner as within." The Iowa Supreme Court has ruled that this provision allows a city to exercise its power of eminent domain outside its corporate boundaries. *Banks v. City of Ames*, 369 N.W.2d 451(1985).

Recently the house wisely removed this property seizure method in HF 2351 in most cases however the senate amended HF2351 before the final version was signed and allowed cities to retain power to confiscate property outside of the city limits for roads. I am sure the Senate is assuming this power will be used wisely and justly for necessary and reasonable public purposes.

Be aware there is a conflict of interest case involving the chair of the MPO. Placement of the NE 18th Street overpass in the LRTP and its use as a justification may be suspect. The placement of the NE 18th overpass into the LRTP may need to be reassessed. If the city takes the position that the overpass is not for Deer Creek Estates LLC then the City of Ankeny may be required to develop a compelling case for the necessity of the NE 18th overpass which is independent of any need of Deer Creek Estates LLC before justifying condemnation of private property outside of the city limits. The cities motivations and proof of necessity may be involved in future litigation if condemnation is pursued.

The authority of cities and counties to exercise eminent domain is found in Article I, §18, of the Iowa Constitution and Iowa Code §6A.4. Section 6A.4 provides that the right to take private property for public use is conferred upon cities and counties "for public purposes which are reasonable and necessary" as an incident to the powers and duties conferred upon cities and counties.

Stated that the NE 18th Street Bridge overpass at I-35 project would fill federally recognized wetlands north of 102nd Avenue and east of I-35;

Response: It is not an unusual circumstance for transportation projects to disturb a wetland area and the City of Ankeny has considerable experience dealing with the issue if and when it occurs. Based on the preliminary design completed at this time, the project will disturb approximately 0.25 acres of wetlands. The City will mitigate the disturbed wetlands as part of the project improvements. The required wetland permits will be obtained from the Iowa DNR and Army Corps of Engineers.

Rebuttal: The construction of the road leading to the overpass will disturb significantly more than .25 acres. A 4:1 embankment along the side of the road extends out in some cases in excess of 130 feet from the center of the road due to the elevation of the roadbed over the wetland/floodplain. I calculated approximately .65 acres will be covered by fill based on the information I have. I also assume that areas outside of the fill area will be disturbed. I think it is safe to say the vast majority of the wetland will be filled in or disturbed. Feel free to submit your calculations if you disagree. Make sure to review the vertical profiles when making these calculations. You cannot simply assume the ground will be disturbed a uniform given distance from the roadbed centerline, this distance varies and extends beyond the fill area. The construction will also fill in floodplain on both sides of I-35. Irregardless of the amount of wetland and floodplain the construction disturbs it will reduce the four mile basins water retention capabilities and increase the potential for flooding.

There are special extenuating circumstances associated with damage to the wetlands and the filling in of floodplain associated with the proposed NE 18th overpass in this case. Immediately up stream flooding occurred near numerous houses. The City of Ankeny even authorized a study to investigate this issue.

Picture of flooding near homes on Briarwood Court immediately up stream from proposed wetland reduction and area where floodplain will be filled.



The federal government recognizes the importance of wetlands:

Flood Protection

Reference: U.S. Environmental Protection Agency. 1995b. America's wetlands: Our vital link between land and water. Office of Water, Office of Wetlands, Oceans and Watersheds. EPA843-K-95-001.

Wetlands function as natural sponges that trap and slowly release surface water, rain, snowmelt, groundwater and flood waters. Trees, root mats, and other wetland vegetation also slow the speed of flood waters and distribute them more slowly over the floodplain. This combined water storage and braking action lowers flood heights and reduces erosion. Wetlands within and downstream of urban areas are particularly valuable, counteracting the greatly increased rate and volume of surface- water runoff from pavement and buildings. The holding capacity of wetlands helps control floods and prevents water logging of crops. Preserving and restoring wetlands, together with other water retention, can often provide the level of flood control otherwise provided by expensive dredge operations and levees. The bottomland hardwood-riparian wetlands along the Mississippi River once stored at least 60 days of floodwater. Now they store only 12 days because most have been filled or drained.

One of the recommendations McClure engineering submitted for consideration to the city of Ankeny was to create new wetlands. The NE 18th overpass will destroy wetlands.

Taken from the Four Mile Creek storm water management plan:

7.3 The City could establish wetland impact fees to develop wetlands in the basin. Wetlands can be designed to control storm water runoff and improve storm water runoff water quality. Portions of the wetlands could be “sold” or “banked” to developers in the area that need to mitigate wetlands from other developments nearby.

City of Ankeny’s Response to McClure Study item 7.3:

Response: Concur with McClure that this should be explored if storm water detention is pursued. The cost of 4 to 8 million dollars is similar to the cost of detention. It is questionable whether or not Ankeny is capable of undertaking a program of this magnitude all on its own.

So why is the City of Ankeny proposing destroying existing wetlands?

The City of Ankeny’s study sites concerns about construction in wetlands, which is exactly what Ankeny is proposing with the overpass.

McClure Recommendation 6.2.1 is to consider construction of levees or berms to protect homes in the projected flood prone areas:

Response: This measure should be considered only as a last resort. In Section 9 of the Four Mile Creek Storm Water Management Plan concerns about construction in a wetland, creation of additional problems in areas on the opposite side of the creek, cost of construction and dealing with water behind the berm are identified as concerns.

The City of Ankeny is being inconsistent when recommending the destruction of a naturally occurring wetland if the NE 18th overpass is constructed. The Briarwood residents that live immediately up stream need to be advised of the possible threat to their property if the City of Ankeny persists in pursuing the destruction of wetlands and filling in of floodplain as proposed in the NE 18th Street Feasibility Study. Construction in the wetlands and filling in the floodplain may expose the City of Ankeny to litigation in the future.

The following excerpts are taken from the City of Ankeny and the Polk County Comprehensive plans:

From Ankeny’s Comprehensive Plan:

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|----------------------|--|--|
| Conservation Reserve | -Environmentally sensitive areas, including wooded areas, creek basins, floodplains, and wetlands, that will remain generally undeveloped. | -These areas should remain undeveloped or in passive recreation use. |
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From Polk County 2030 Comprehensive Plan- Vision Goals Policies

Environmental Quality Goal
Policy 1 – Protect Natural and Recreational Areas

Existing natural areas, unique natural places, and recreational assets are essential to environmental quality. Polk County will protect, through appropriate land use regulation and incentives, unique natural and wildlife areas, parks, wetlands, and recreational amenities.

Environmental Quality Goal
Policy 2 – Protect Natural Infrastructure

Risks to surface water quality, risks from flooding, and risks to many natural areas can be avoided or mitigated by protecting and investing in the County’s natural infrastructure. Polk County will protect streams, waterways, and floodplains in land use decisions and by directing appropriate investment to enhance the County’s natural infrastructure.

The city of Ankeny and Polk County need to think twice about ignoring their own comprehensive plans. Remember this project involves both jurisdictions. Development plans are to maintain consistency. The effect of these decisions on development plans such as the building of the NE 18th overpass and road are to be considered and be consistent with stated policies.

**IN THE SUPREME COURT OF IOWA
No. 180 / 00-2113
Filed April 2, 2003**

Zoning must be in accordance with a comprehensive plan. Iowa Code § 414.3; Wolf v. City of Ely, 493 N.W.2d 846, 849 (Iowa 1992); Brackett v. City of Des Moines, 246 Iowa 249, 256-57, 67 N.W.2d 542, 546 (1954).

**American Planning Association
Iowa Planning
Spring 2003
Wal-Mart Case and the Comprehensive Plan/Zoning Nexus**

The Iowa Supreme Court found that the City of Decorah acted illegally when it allowed a Wal-Mart store to be built in a floodplain in conflict with the Comprehensive Plan

The Court furthermore found that the City's action was in direct conflict with their Comprehensive Plan:

The Court noted:

"Decorah's comprehensive plan expressly provides for the integrity of its floodplains. Goal number five is:

To provide that in the development and implementation of all land-use plans and policies, protection of the environment is ensured, including:

- a. Aesthetic quality; archaeological, historic, and cultural values; the unique geology of the area, and the woodlands and wetlands.
- c. The floodplains of the planning area as natural resources that should be preserved for use as permanent open space for parks and recreational uses and for wildlife protection.
- d. Regulation of development in the floodplains to protect life and property, prevent water pollution, and reduce costs to taxpayers.

Recommendation of American Planning Association

Respect the Comprehensive Plan. Keep it updated as necessary and tweak (or overhaul as the case may be) the Zoning Ordinance to assure consistency and reinforcement of the Plan. **If the Comprehensive Plan needs to be amended so be it, but do not disregard it. As this case has shown, ignoring the Comprehensive Plan could be legally fatal.**

It appears as if multiple deviations from the comprehensive plans are being proposed in the NE 18th Street overpass project. Substantial deviation from the Polk County or Ankeny comprehensive development plans are inconsistent and may be used in future litigation should the NE 18th overpass proceed.

Federal regulations involving metropolitan planning organizations state that they are to consider environmental impacts. Before the MPO recommends ICAAP funding the following should be considered:

Federal Code

§450.316 Metropolitan transportation planning process: Elements.

14) The likely effect of transportation policy decisions on land use and development and the consistency of transportation plans and programs with the provisions of all applicable short- and long-term land use and development plans (the analysis should include projections of metropolitan planning area economic, demographic, environmental protection, growth management, and land use activities consistent with metropolitan and local/central city development goals (community, economic, housing, etc.), and projections of potential transportation demands based on the interrelated level of activity in these areas);

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 777

[FHWA Docket No. FHWA-97-2514; 96-8]

RIN 2125-AD78

Mitigation of Impacts to Wetlands and Natural Habitat

Executive Order 11990, Protection of Wetlands, (42 FR 26961; 3 CFR, 1977 comp., p. 121) directs Federal agencies to avoid to the extent possible adverse impacts associated with the destruction or modification of wetlands, and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative. Other Federal programs designed to conserve and protect wetlands include the Emergency Wetlands Protection Resources Act of 1986 (16 U.S.C. 3921-3931), the North American Waterfowl Management Plan (16 U.S.C. 4401(a)(12)), and the Wetlands Reserve Program (16 U.S.C. 3837).

Many municipalities/Counties seem to feel they can make noble sounding comprehensive plans/policies and then substantially disregard them. The City and Polk County need to be sincere when creating these plans and policies and follow them to the best of their ability.

According to information contained within the NE 18th Street Feasibility study construction will deviate from numerous Polk County ordinances concerning construction in floodplains:

SECTION 7111. FLOODPLAINS

H. Protection Levels

For all developments, the level of protection provided floodplains shall distinguish between the floodway and the floodway fringe (as designated on FIRM maps or determined by the required on-site survey.)

1. Floodways

The channel of a river or stream and those portions of the flood plains adjoining the channel, which are reasonably required to carry and discharge flood waters or flood flows so that confinement of flood flows to the floodway area will not result in substantially higher flood levels and flow velocities, shall be provided with one-hundred (100) percent protection.

2. Floodway fringes, the remainder of the floodplain, shall be provided with seventy-five (75) percent protection.

All such protected areas shall be permanent open space. No uses or improvements other than those permitted herein shall be permitted in any area consisting of floodway as defined by this Ordinance.

J. General Floodplain Standards

4. Installation of Fill Materials

a. The cross-sectional area of a floodplain shall not be reduced by more than two and one-half (2.5) percent on either side of the centerline of the watercourse. {92/54, 11-12-92}

d. In no instance shall the depth of fill in a floodway fringe exceed five (5) feet, nor shall any fill be placed within twenty-five (25) feet of the floodway or in a location which might be endangered by, or accelerate, a meander. In an inland depressional floodplain, the depth of fill measured from the natural grade to the new surface shall not exceed five (5) feet. {90/96, 5-17-90}

According to information contained within the NE 18th Street Feasibility study construction will deviate from Polk County ordinances item 4a and several items in d. If Polk County were to collaborate with the City of Ankeny on the NE 18th Street overpass project they would have to ignore these ordinances.

Asked where Polk County's stance is on the NE 18th Street Bridge overpass at I-35 project, since 95 percent of the project lies within Polk County's jurisdiction;

Response: The City and Polk County routinely communicate on projects of this nature. The area of the project, west of the Interstate's east right-of-way, is located within the city limits of Ankeny and falls under the jurisdiction of the City of Ankeny and the Iowa Department of Transportation. The Polk County engineer is aware of this project. The City will keep Polk County informed as the project commences and a 28E agreement will be entered into with Polk County as required.

Rebuttal:

The City is assuming that Polk County will enter into a 28E agreement almost as a forgone conclusion. This is speculative in nature. Should ICAAP funding be awarded based on speculation? Is there some special non-public or non-disclosed agreement or arrangement in existence with Polk County? How does the City of Ankeny know this agreement will be entered into and approved? Can the City of Ankeny give me the names of Polk County officials that they have discussed this 28E agreement with? Can the City of Ankeny give me the name of the Polk county engineer or engineers they have discussed the NE 18th overpass with? Polk engineers may not agree with their assessment of the situation. I would like to have a list of names of all Polk County officials or employees that are involved with the NE 18th Street overpass project so I can send them information informing them of issues associated with this project. Once Polk County has analyzed the project they may agree that it is inconsistent with their comprehensive plans and ordinances. These inconsistencies may prevent Polk County from entering into a 28E agreement. Additional inconsistencies associated with the NE 18th Street overpass project that may influence the entrance by the county into a 28 E agreement include:

The Polk County Comprehensive plan states it will attempt to protect prime farmland and direct non-agricultural growth to municipalities.

From Polk County 2030 Comprehensive Plan- Vision Goals Policies

Character of Development Goal

Policy 1 - Preserve Rural Character

Polk County includes large agricultural areas and vibrant rural communities. **Polk County will protect prime farmland and maintain the rural character of non-urbanized areas.**

Agriculture Goal

Policy 3 - Rural Protection

Polk County will protect the rural character of agricultural landscapes and communities **by directing non-agricultural growth to municipalities, discouraging municipal expansion into productive farming areas,** and allowing rural communities to remain economically sustainable.

Clearly the NE 18th Street Overpass will promote sprawl and destroy agricultural land by promoting growth on farm ground in the Deer Creek Estates land development even though there is thousands of acres of land available for development within the city of Ankeny.

Finally, the acceptance of a 28E agreement by the Polk County Board of Supervisors for the purposes of extending a road into the Deer Creek Estates LLC land development might lend itself to additional scrutiny by citizens. Ed Skinner has made substantial donations to numerous Polk County supervisors. It would seem inappropriate for many of the supervisors to vote on this matter. I am personally concerned that Ed Skinner may exhibit very substantial political influence over Polk county officials, specifically the Polk County Supervisors who would then influence the Polk County engineers. I am concerned the Polk County engineers would not feel as though they can make an objective decision on the NE 18th street overpass project due to political pressures.

Mentioned an objection toward the NE 18th Street Bridge overpass at I-35 project, and stated that the 36th Street at I-35 interchange would be a better exit;

Response: The proposed project is not an interchange and will not provide an exit or the entrance to the interstate. The City of Ankeny realizes the need for both the NE 18th Street overpass and the NE 36 Street interchange. With the NE 36 Street interchange in place, there will be two mile spacing between it and the existing East First Street the interchange. The NE 18 Street overpass will be at the midway point between the two interchanges.

Rebuttal:

This question needs to be rephrased. The question itself makes no sense since the NE 18th Street bridge is not an exit. Obviously the 36th Street interchange would be a better exit. I think the question should have been reworded to say how would the NE 18th overpass better relieve traffic problems when compared to the 36th street interchange. The area the overpass thrusts in to is essentially rural with a low population density. I am at a loss to explain how this interchange will relieve traffic or for what purpose it is being proposed. The area is outside of the city limits of Ankeny and will offer little benefit to its citizens. The City sometimes states that the interchange is not for Deer Creek Estates LLC land development. The City seems to be evasive/inconsistent concerning the purpose of the overpass. What is the “need for the NE 18th Street”? Be specific. The fact that the overpass is at the midway point between the two interchanges does not explain what its intended purpose is and does not explain how it will relieve traffic since there is no access to I-35. There are currently no other overpasses or roads spaced at a 1 mile intervals across I-35 near the City of Ankeny.

Commented that it would be more cost-effective to relieve traffic by utilizing the existing two I-35 exits in Ankeny during the construction of the 1st Street Interchange;

Response: The NE 18 Street Overpass is being proposed to address a permanent transportation need, and is not being constructed solely for the purpose of providing a detour route during the future reconstruction of the East First Street interchange.

Rebuttal: I will not get into the details of the dangers associated with using the NE 18th Street overpass for a detour. The City of Ankeny as already received information discussing this matter. The rather cryptic response “The NE 18 Street Overpass is being proposed to address a permanent transportation need” does not address the specific purpose for the overpass. The city sometimes contends that the overpass is not for Deer Creek Estates LLC. What is the permanent transportation need the NE 18th overpass will address? The cities response is vague and does not properly address the question. Further specific clarification on the matter of how the overpass addresses transportation needs is requested.

Asked what jurisdiction the City of Ankeny has to come over into Polk County and make these improvements;

Response: Iowa Code Chapter 364.4, Subsection F authorizes a municipality to acquire property outside the city for this public purpose.

Rebuttal: Already responded to previously.

Commented that the NE 18th Street Bridge overpass at I-35 project is not going to help clean the air;

Response: The City has applied for an Iowa Clean Air Attainment Program (ICAAP) Grant for the project. The technical computations used for the grant application demonstrate that the reduced travel distance provided by the overpass will provide an overall reduction in emissions.

Rebuttal: This is another poorly worded question. The overpass may well have some positive impact on air quality. I contend this impact would be minimal and that there are many areas within Ankeny where ICAAP money could be more efficiently used. How many individuals will have reduced travel times? Why is the City of Ankeny interested in reducing the travel distance of a few Polk County residents? During the public input meeting the cost vs. benefits were discussed. Does the proposed overpass demonstrate a good Costs vs. benefit ratio. The NE 18th street is a dead end road that leads into a rural area. The NE 18th over pass thrusts into NE 102 Ave. and Frisk Drive. NE 102 Ave. transitions into a gravel road approximately 1/2 mile away from the end of the NE 18th project. Frisk Drive is a curvy road that has no shoulders with steep embankments. Neither road has the potential to carry substantial traffic. The NE 18th overpass project has a functional classification as a “local” road. The population density of the area the road goes into is low and is outside of the city limits of Ankeny. I am making the assumption that the overpass is not for Deer Creek Estates since use of this data would be speculative and inconsistent with City of Ankeny statements (see section detailing inconsistencies in City of Ankeny statements documented later). I am also assuming that future traffic projections for the area east of the NE 18th overpass are not being used since traffic reduction analysis is supposed to be based on traffic expected at completion of construction. The cost vs. benefit ratio is the highest weighted criteria used when determining ICAAP funding eligibility. Does the NE 18th overpass represent the highest potential for reduction of air pollution at time of project completion?

**Project Rating Criteria
All ICAAP projects**

(0-30 points): Project cost-effectiveness relative to associated air quality benefits. Project applicant must calculate the cost-effectiveness of the proposed project by dividing the average annual total cost of the project (total project cost divided by expected project life in years) by the total annual vehicle emissions reduction in kilograms per year for each target pollutant. [Average annual total project cost (dollars)] divided by [emissions reduction (kilograms per year)].

**Iowa Clean Air Attainment Program
Program Purpose**

The purpose of Iowa’s Clean Air Attainment Program (ICAAP) is to help finance transportation projects and programs that result in attaining or maintaining the national ambient air quality standards (NAAQS) of the 1990 Clean Air Act Amendments (CAAA) with a focus on volatile organic compounds (VOC) and nitrogen oxides (NOx), carbon monoxide (CO) and, under certain conditions, particulate matter (PM-2.5 and PM-10). VOC and NOx contribute to ground-level ozone (O3) formation. ICAAP funds are awarded to projects and programs with the highest potential for reducing transportation-related congestion and air pollution, thereby maintaining Iowa’s clean air quality.

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Asked for a clarification on a discrepancy between what statements have been made subsequent to the ICAAP application about the NE 18th Street Bridge overpass at I-35 project versus what statements were in the ICAAP application regarding current traffic of the project;

Response: The City is unaware of any discrepancy regarding the City’s justification for the NE 18th Street Bridge Overpass Project and the application for ICAAP funding. Without a specific reference to when and where this alleged discrepancy occurred, it is difficult to address the question.

However, in considering the City’s application for ICAAP funds, it is important to understand the City’s philosophy regarding growth and development. This issue was discussed at length during the annual Ankeny City Council strategic planning session held last month, with the following objectives being identified to position Ankeny for planned, thoughtful growth while protecting our sense of community:

- Ankeny preserves its sense of community and social connectedness. New neighborhoods are seamlessly incorporated into existing ones and maximize access to existing infrastructure and city service delivery.
- Easy transport through the city is sustained, with new travel options added including bike trails, mass transit, and multi-modal.

- Growth is geographically balanced (Excerpted from Ankeny City Council Strategic Priorities Report 2006)

The steps being taken by the City of Ankeny to construct the NE 18th Street overpass are consistent with the City of Ankeny's Comprehensive Development Plan adopted in 2004, the Des Moines Area Metropolitan Planning Organization Year 2030 Long-Range Transportation Plan and with the Ankeny City Council's strategic priorities.

Rebuttal: First of all this information was submitted to the MPO at the public input meeting so I am at a loss as to why the City has no idea what the question is referring to. I will resubmit the information and let the facts speak for themselves. I will present quotes from the Des Moines Register as well as the NE 18th Feasibility Study and the application for ICAAP money the City of Ankeny presented to the MPO.

The following is a quote from the August 29th issue of the Des Moines Register titled Vote splits on east-side annexation. The areas to be annexed are called the Deer Creek North and South Annexations.

City staff said both annexation packages are not related in any way to the proposed Northeast 18th Street bridge over I-35, or plans for an interstate interchange at Northeast 36th Street.

Both road proposals, Planning and Building Director John Peterson said, are due to current traffic issues and are not based on whether these areas east of the interstate are or are not annexed.

The following was taken from the NE 18 Street Feasibility Study that was paid for and authorized by the Ankeny City Council:

II. TRAFFIC

The proposed NE 18 Street extension across Interstate 35 would primarily serve expected residential development east of Interstate 35.

The following was taken from the ICAAP application requesting funding for the NE 18th Street overpass that was recently submitted to the Des Moines Area MPO. The traffic expected through the overpass is generated by the Deer Creek Estates Development that Ankeny claims the overpass is not for:

The City of Ankeny is in the process of annexing approximately 1,200 acres of land east of I-35, centered about NE 18th Street. This annexed land will include the proposed Deer Creek North and Deer Creek South developments, shown in the Project Location Map. Land east of I-35, between NE 36th Street and E. 1st Street, is planned to develop as low, medium and high-density residential with pockets of highway-oriented commercial development near the I-35 interchanges. The Deer Creek developments are expected to generate significant traffic volumes that will need an efficient route to travel to other areas within the city of Ankeny.

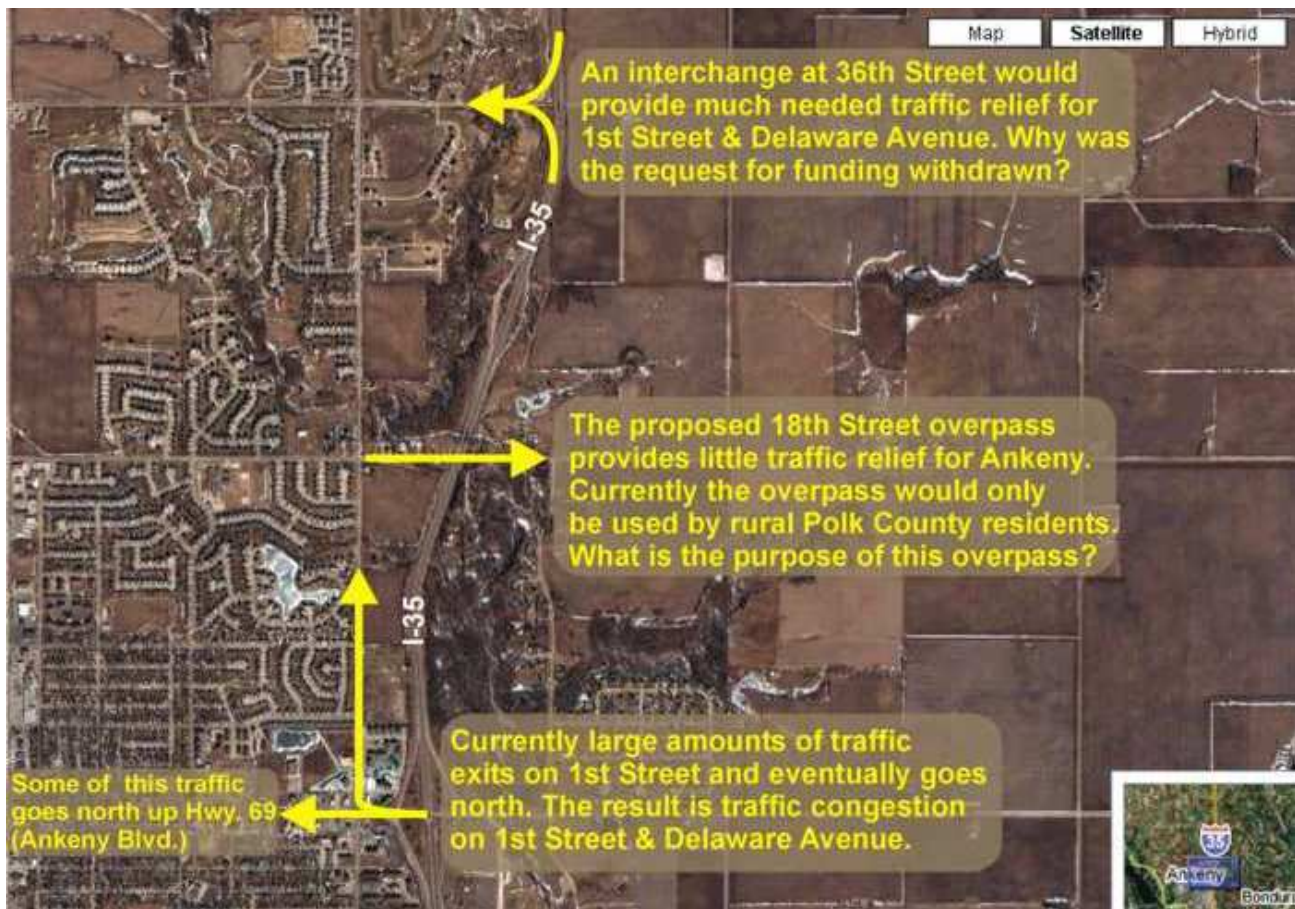
Due to projected land development and traffic growth in North Ankeny, the City of Ankeny proposes to construct the NE 18th Street connection across Interstate-35. A figure of the proposed improvements, as recommended in the *NE 18th Street Feasibility Study* (Snyder & Associates, 2004) is attached to this application. Per the *NE 18th Street Feasibility Study*, the proposed NE 18th Street

The issue has been clarified. I would like an answer to the discrepancy. The City has stated as documented in the Des Moines Register that the NE 18th overpass is not intended for Deer Creek Estates LLC. Numerous citizens have also heard this claim. There is a clear discrepancy in policy statements which is dependant on who the city is addressing. The City needs to clarify and give a consistent answer to what the overpass is for so it can be determined if the construction of the overpass is justifiable. How can planning decisions be made when the city cannot clearly define the purpose of the project? The city has stated in Responses in this document that the overpass is for "a permanent transportation need" and that they realize the need for the overpass. Specifically what are these permanent transportation needs?

Questioned why the City of Ankeny's 36th Street Interchange project was withdrawn from the ICAAP list and the NE 18th Street Bridge overpass at I-35 project was kept;

Response: The City originally proposed to apply for ICAAP funding for both of these projects. The ICAAP application requires specific technical computations based on the reduction in emissions that can be obtained by the proposed improvement. The computations for the NE 36 Street Interchange project yielded a low reduction in emissions, which did not appear to make the project eligible for ICAAP funding.

Rebuttal: I find it difficult to believe an overpass that goes into a rural area will reduce emissions more than an interchange that allows traffic to exit off of I-35, thereby relieving high traffic streets such as 1st street. Please review the graphic below.



I am eager for the City of Ankeny to demonstrate how the 18th street overpass will significantly reduce vehicle emissions, especially in relation to the 36th street interchange. I am therefore requesting the documentation where the calculations for both were made. If necessary this request will be made using Iowa's open records law. Alternately Tom Kane may gather this information with the assistance of the Des Moines MPO. I want the City of Ankeny, the ICAAP committee and the Des Moines MPO to understand that future projects of traffic are not admissible.

VIII. Project Sponsor Responsibilities

Sponsors must describe in the application the methodology, assumptions, and sources of data used in the analysis. For air quality improvement analysis, applicants should use the latest available VOC (HC), NOx, and CO, PM-2.5 and PM-10 emission factors provided by the Iowa DOT. For the traffic congestion reduction analysis, applicants should use travel demand (e.g. average daily traffic volumes) anticipated to occur when the project is implemented. Sponsors may need to provide additional information upon request by the Iowa DOT during its review of applications.

Consider the following when reviewing the calculations. Deer Creek Estates LLC, which the city sometimes refers to as not being involved in their decision concerning the NE 18th overpass, has not been annexed into the city as of this date and projections involving them would be inappropriate. There are no houses or buildings currently on Deer Creek Estates LLC properties. In any event the money is to be granted in 2008 and the LRTP states the project is for completion by 2010. Future projections beyond 2010 and speculation about population densities and traffic associated with Deer Creek Estates LLC should not be considered in the calculations for emissions. The ICAAP committee and the MPO (when considering recommendations) should disregard invalid traffic projections based on future population projections.

Commented that information on a federally-recognized wetland was not addressed in the ICAAP application for the NE 18th Street Bridge overpass at I-35 project;

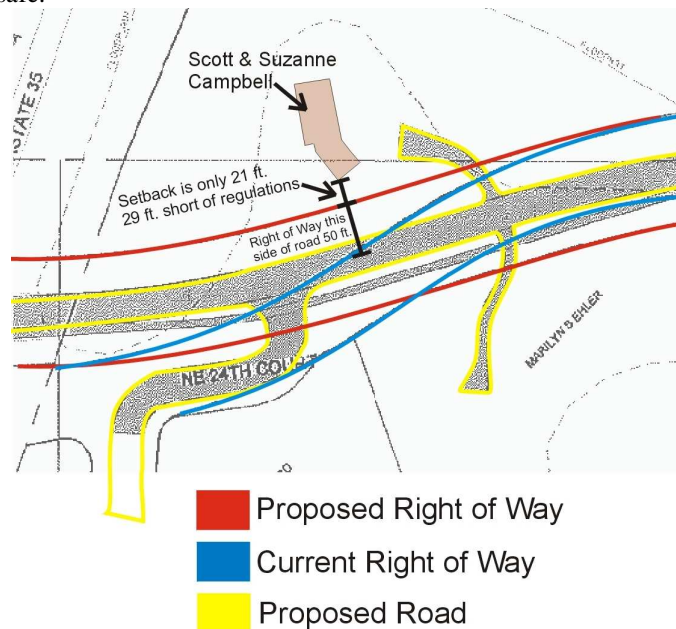
Response: The presence of wetlands is not a criterion of the ICAAP application process. The City has completed an environmental review / wetland delineation for the project, which identified some wetlands that will be mitigated as part of the improvements. If the City receives federal funding for the project, the process for environmental clearances based on NEPA (the National Environmental Policy Act) will be followed. The Iowa DOT will make a determination on the level of review needed to comply with NEPA.

Rebuttal: While I agree that is not required for application, the destruction of wetlands is a factor involved in approval of Federal funding and should be considered by the ICAAP committee. The presence of wetlands reduces the desirability of the NE 18th overpass in relation to those projects that do not impact wetlands. Also the ICAAP committee and the MPO (when considering recommendations) should be aware of the special circumstances of existing local flooding immediately upstream from the proposed NE 18th overpass and the fact that Ankeny/Polk County comprehensive plans, study recommendations and ordinances may not be adhered to.

A question I expected to be asked and answered by the City of Ankeny

I was under the impression at the MPO public input meeting that the city was to answer questions concerning property value devaluation associated with the NE 18th Street overpass project. The following items will adversely affect the property value of Scott Campbell's home located at 2480 NE 102nd Avenue. The information/data was derived from the NE 18th Street Feasibility Study that was authorized by the City of Ankeny:

- 1) Hundreds of trees will be destroyed, many of these are outside of the proposed right of way. This will negatively impact property values.
- 2) The pond on the property will be filled in. Much of the pond lies outside the proposed right of way. This will reduce the value of the property.
- 3) The road bed will be elevated obstructing the view of the naturally wooded area. The aesthetic qualities of the area will be devastated which will definitely impact property resale values.
- 4) The road will be placed so close to the house that it violates county setback rules by nearly 30 feet. Scott Campbell will never grant a variance for this since I have no desire to live in a home with a elevated roadbed so close to my house. I consider it to be undesirable and unsafe.



The Scott Campbell residence is currently within Polk County and the setback is 50 feet. There is only a 21 foot setback on the Scott & Suzanne Campbell property based on information in the NE 18th Feasibility Study. The setback is approximately 29 feet short of the legal amount. There is also a conflict with another house. Purchase of the Scott Campbell house was not included within the feasibility cost analysis.

Of course if I had the expectation of being properly compensated for the property damage previously outlined this would be less of an issue. What concerns me is the feasibility study does not address these damages. I believe the feasibility study is overly optimistic concerning the estimated costs associated with damages. I sincerely hope the City of Ankeny does not have the intention of offering inadequate compensation for damages they cause during the NE 18th Street project if it is authorized. The feasibility study does not address costs associated with purchase of the Scott Campbell residence due to the setback non-conformity or offer any solution. The roadbed is raised and a 4 to 1 slope is required on the road embankment. Significant amounts of property outside of the right of way, typically in the area of temporary easements, will be permanently altered and essentially be unusable due to the 4 to 1 slope embankment. The study only addresses costs associated with purchase of right of way and temporary easements. It does not mention compensation associated with damages in the area of temporary easements (destruction of pond) which are beyond the right of way that will be permanently altered.

Will the City of Ankeny please state its position concerning compensation for expected damages to property associated with the NE 18th Street overpass project that are not addressed in the NE 18th Feasibility Study? How does the City of Ankeny expect to resolve the violation of setback associated with the Scott Campbell residence at 2480 NE 102 Ave. since Scott Campbell will not grant a variance? The City of Ankeny can expect litigation on this matter if proper compensation is not offered. The City needs to reassess the accuracy of the feasibility study cost analysis and include compensation of the entire range of damages associated with the NE 18th Street overpass project. The City needs to stop quoting the figures associated with the feasibility study (i.e. the ICAAP funding application) until the omissions of costs associated with damages are included.

A summary of questions that have never been satisfactorily answered and requests for information for the purpose of clarification of the responses made by the City of Ankeny.

- 1) This is the single most important question that I need answered. Specifically what is the purpose of the 18th street overpass? What permanent transportation need does the overpass address? Please be specific and supply evidence. How can important planning decisions involving large amounts of taxpayer money be made if the City of Ankeny cannot answer this question?
- 2) It is also very important that this question be answered. Can the City of Ankeny explain its discrepancy concerning its statements that the overpass is not for Deer Creek Estates annexation area in some cases but then indicate it is for Deer Creek Estates in other cases.
- 3) Can the City of Ankeny supply the names of Polk County officials and Engineers involved in the NE 18th Street overpass project and the 28E agreement they indicate they will enter into?
- 4) Does the City of Ankeny think it is appropriate to disregard its comprehensive plan concerning floodplains and wetlands?
- 5) Does the City of Ankeny think it is appropriate to propose a project that would violate numerous Polk County ordinances?
- 6) Will the City of Ankeny please state its position concerning compensation for expected damages to property associated with the NE 18th Street overpass project that are not addressed in the NE 18th Feasibility Study? How does the City of Ankeny expect to resolve the violation of setback associated with the Scott Campbell residence at 2480 NE 102 Ave. since Scott Campbell will not grant a variance?
- 7) I will respond to the calculations concerning emission reductions for 18th street and 36th street when I receive the appropriate documentation. I will also do a detailed rebuttal of the ICAAP application which appears to be deeply flawed. The ICAAP application is inappropriately making constant references to future traffic projections (2030 data) and is using speculative 2010 data that does not appear to be accurate. The Deer Creek annexation was turned down in 2004 when the projections were made. The traffic projections were made while Geri Huser was chair. Geri Huser is the daughter and employee of the founder of Deer Creek Estates LLC. The projects were based on an optimistic assumption that her fathers housing development would already be underway (please review the conflict of interest documents that the MPO and the ICAAP committee has received). Not one new house has been built east of I-35 in line with the NE 18th overpass in approximately 10 years. In addition there is no city water or sewer currently available in the area. The ICAAP application does not address current traffic conditions east of I-35. There is very little traffic in this area due to its low population density. The projections site traffic flows on NE 18th west of the interstate which are not indicative or predictive of traffic flows which could potentially utilize the proposed overpass east of I-35. Other than the Deer Creek Estates land development which does not contain even one home, there is no indication in the ICAAP application what population the proposed overpass will serve.

I am reiterating my request that this document be sent to the ICAAP Committee and be included with the City of Ankeny's application for funding for the NE 18th overpass project.

If you need full documentation or sources associated with quoted material, have any questions on the meaning of statements made in this document or know of any errors which need to be corrected please contact Scott Campbell at ankenywatch@yahoo.com. My mailing address is:

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