



Roll Call Number

Agenda Item Number

40

Date March 23, 2015

COMMUNICATION FROM WARREN COUNTY BOARD OF SUPERVISORS  
REQUESTING CITY ENTER INTO NEGOTIATIONS REGARDING A NEW  
ANNEXATION MORATORIUM AGREEMENT WITH WARREN COUNTY

WHEREAS, on May 23, 2005, by Roll Call No. 05-1319, the Des Moines City Council approved an *Annexation Moratorium Agreement and 28E Agreement* (the "Agreement") with the City of Indianola and Warren County for the following purposes:

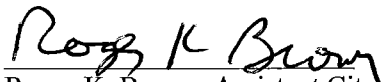
1. To establish agreed upon boundaries for the future growth of each city towards the other to allow each city to better plan for the orderly future extension of their public infrastructure and services;
2. To establish an area between the two cities which is intended to be preserved for agricultural, outdoor recreational and open space uses; and,
3. To avoid duplication in the review of plats of unincorporated land located within two miles of both cities.

WHEREAS, the Agreement expires on May 30, 2015; and,

WHEREAS, the Warren County Board of Supervisors has requested in the accompanying letter that the City of Des Moines enter into negotiations with Warren County and Indianola to extend the Agreement.

MOVED by \_\_\_\_\_ to receive and file, and to authorize and direct the City Manager or his designee to negotiate with Warren County and Indianola to extend the Agreement.

FORM APPROVED:



Roger K. Brown, Assistant City Attorney

U:\Rog Docs\Annex\28E Agr\Indianola\2015 Agr\Ltr Warren Co request.doc

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MAHAFFEY				
MOORE				
TOTAL				

MOTION CARRIED

APPROVED

Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk



**WARREN COUNTY BOARD OF SUPERVISORS**

**301 North Buxton, Suite 202**

**Indianola, IA 50125**

[www.co.warren.ia.us](http://www.co.warren.ia.us)

**RECEIVED**

**MAR 5 2015**

**LEGAL DEPARTMENT**

Doug Shull, Chair  
Dean Yordi, Vice Chair  
Crystal McIntyre, Member

Phone (515) 961- 1030  
961-1028  
961-1028

March 3, 2015

Mayor T. M. Franklin Cownie  
Des Moines City Council  
400 Robert D. Ray Drive  
Des Moines, Iowa  
50309

Re: Annexation Moratorium Agreement and 28E Agreement

Dear Mayor Cownie and Council Members,

I am writing on behalf of the Warren County Board of Supervisors to inform you that Warren County, Iowa wishes to enter into negotiations regarding the Annexation Moratorium Agreement and 28E Agreement approved by Warren County and the City of Des Moines May 31, 2005. The Agreement expires on May 31, 2015.

Warren County's counsel in this matter is Karla J. Fultz, Hopkins & Huebner, P.C.. She has spoken to Assistant City Attorney, Roger Brown, regarding this matter. He suggested that a formal request to you and the Council Members was the appropriate avenue to bring our desire to negotiate to your attention.

Please communicate with me and Ms. Fultz regarding your proposals. She will be representing Warren County in this matter. Her contact information is: Karla J. Fultz, Hopkins & Huebner, P.C., 2700 Grand Avenue, Suite 111, Des Moines, IA, 50312, direct telephone: 515-697-4230, email: [kfultz@hhlawpc.com](mailto:kfultz@hhlawpc.com).

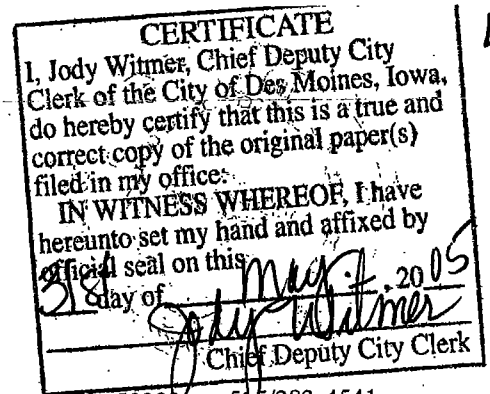
We look forward to a mutually agreeable resolution in this matter. Thank you.

Sincerely,

Dean Yordi  
Warren County Board of Supervisors

Cc Assistant City Attorney Roger Brown  
400 Robert D. Ray Drive, Suite B  
Des Moines, Iowa  
50309

AFTER RECORDING RETURN TO:



Prepared by: Roger K. Brown, Assist. City Atty, 400 Robert D. Ray Drive, Des Moines, IA 50309 515/283-4541

**STATE OF IOWA**

**JUN 01 2005 Annexation Moratorium Agreement**

and

**CITY DEV BOARD**

**28E Agreement**

**STATE OF IOWA**

**JUN**

**CITY DEV BOARD**

This Annexation Moratorium Agreement and 28E Agreement (hereinafter "this Agreement") is made and entered into as of the 31<sup>st</sup> day of May, 2005, by and between the **City of Indianola**, an Iowa municipal corporation, the **City of Des Moines**, a Iowa municipal corporation, and **Warren County, Iowa**.

WHEREAS, Indianola and Des Moines desire to establish boundaries upon their potential future growth into the area separating the two cities; and,

WHEREAS, Indianola, Des Moines and Warren County desire to maintain and preserve an area between the two cities for agricultural, outdoor recreational and open space use; and,

WHEREAS, Indianola, Des Moines, and Warren County have approved this Agreement after notice and public hearing as provided by Iowa Code § 368.4.

NOW THEREFORE, The parties to this Agreement hereby covenant and agree as follows:

**ARTICLE 1. GENERAL**

Section 11. Purpose. A. The purpose of this Agreement is to allow the cities of Indianola and Des Moines to each plan for their orderly future growth. By establishing agreed upon boundaries for the future growth of each city, both cities can better plan for the orderly future extension of their public infrastructure and services to serve their future growth areas.

B. A further purpose of this Agreement is to establish an area between the cities of Indianola and Des Moines which is intended to be preserved for agricultural, outdoor recreational and open space uses.

C. A further purpose of this Agreement is to avoid duplication in the review of plats of unincorporated land located within two miles of both cities. It is the intent of the two cities that such plats be reviewed only by Warren County and by the city in whose planning area it is located.

Section 12. Term. The term of this Agreement shall commence upon the date this Agreement is approved by the City Council of the City of Des Moines, by the City Council of the City of Indianola, or by the Warren County Board of Supervisors, whichever occurs last. The term of this Agreement shall expire on the tenth anniversary of its commencement.

## **ARTICLE 2. ANNEXATION MORATORIUM**

Section 21. Annexation Limitations. For the term of this Agreement, the City of Des Moines shall not annex any property located south of the North Boundary Line illustrated on Exhibit "A" attached hereto, and as legally described in Exhibit "B" attached hereto. For the term of this Agreement, the City of Indianola shall not annex any property located north of the South Boundary Line illustrated on Exhibit "A" attached hereto, and as legally described in Exhibit "B" attached hereto. This limitation shall apply to both voluntary and involuntary annexations. Pursuant to Iowa Code (2005) §368.4, the City Development Board shall dismiss any petition, plan or application for a boundary adjustment which would cause either city to annex land in violation of this section.

## **ARTICLE 3. REVIEW OF DEVELOPMENT PROPOSALS.**

Section 31. Plat Review Authority. A. Subdivision plats and plats of survey for land located north of the Middle River in the portion of unincorporated Warren County within two miles of the boundaries of the City of Des Moines shall be subject to the extraterritorial jurisdiction of the City of Des Moines pursuant to Iowa Code (2003) §354.9. The City of Indianola hereby waives all right to review and approve any subdivision plats and plats of survey located within such area. However, Indianola reserves its jurisdiction to review and approve subdivision plats located north of the Middle River which are outside the 2-mile review area of the City of Des Moines.

B. Subdivision plats and plats of survey for land located south of the Middle River in the portion of unincorporated Warren County within two miles of the boundaries of the City of Indianola shall be subject to the extraterritorial jurisdiction of the City of Indianola pursuant to Iowa Code (2003) §354.9. The City of Des Moines hereby waives all right to review and approve any subdivision plats and plats of survey located south of the Middle River.

Section 32. Notice. A. Warren County shall give notice to Indianola and Des Moines at least 10 days in advance of any meeting of the Warren County Planning Commission and of any meeting of the Warren County Board of Supervisors at which any subdivision plat, plat of survey, or rezoning of land within two miles of the boundaries of such city is to be considered for approval.

B. Warren County shall give notice to Indianola and Des Moines at least 5 business days in advance of the administrative approval or recording of any plat of survey of land within two miles of the boundaries of such city.

C. Des Moines shall give notice to Warren County at least 10 days in advance of any meeting of the Des Moines Plan and Zoning Commission and any meeting of the Des Moines City Council at which any rezoning of land adjoining or within 200 feet of the city's boundaries with unincorporated Warren County is to be considered.

D. Indianola shall give notice to Warren County at least 10 days in advance of any meeting of the Indianola Plan and Zoning Commission and any meeting of the Indianola City Council at which any rezoning of land adjoining or within 200 feet of the city's boundaries with unincorporated Warren County is to be considered.

E. Any notice required to be given by this Article shall:

- Identify the address of the subject property;
- Include either a legal description, the tax parcel number(s), or a map sufficient to reasonably identify the subject property;
- Include a general description of the proposed action; and,
- In the case of a plat of survey or subdivision plat, include a copy of the plat map.

F. Any notice required by this Agreement to be given by one party to another shall be considered to have been sufficiently given if delivered to the party at the address below, or if an electronic copy of the notice is sent to the party at the fax or e-mail address below, or at such other address as may be designated from time to time by the party:

For the City of Des Moines, notice shall be given to:

By delivery to: Attention: Mike Ludwig, Planning Administrator  
602 Robert D. Ray Drive  
Des Moines, Iowa 50309  
or by fax to: 515/237-1694  
or by e-mail to: [MGLudwig@dmgov.org](mailto:MGLudwig@dmgov.org)

For the City of Indianola, notice shall be given to:

By delivery to: Attention: Chuck Burgin, Building and Zoning Official  
110 North First Street  
Indianola, IA 50125  
or by fax to: 515/961-9402  
or by e-mail to: [CBergin@CityofIndianola.com](mailto:CBergin@CityofIndianola.com)

For Warren County, notice shall be given to:

By delivery to: Robert Folkestad, Zoning Administrator  
301 N. Buxton Street, Room 212  
Indianola, IA 50125  
or by fax to: 515/961-1082  
or by e-mail to: [RobertF@co.warren.ia.us](mailto:RobertF@co.warren.ia.us)

IN WITNESS WHEREOF, the City of Des Moines and the City of Indianola have caused this Agreement to be executed by their respective Mayors and attested to by their respective City Clerks.

(signature pages to follow)

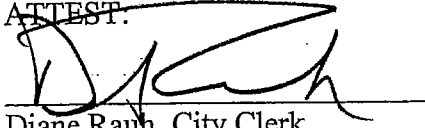
**Exhibits:**

A – Map of Boundary Lines


B - Legal Description of Boundary Lines

CITY OF DES MOINES, IOWA

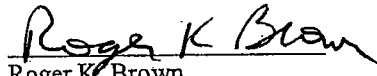
ATTEST.

  
Diane Rauh, City Clerk

By:

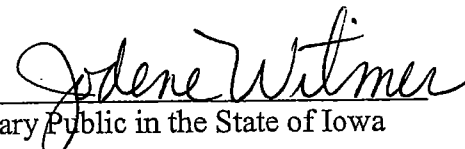
  
T.M. Franklin Cownie, Mayor

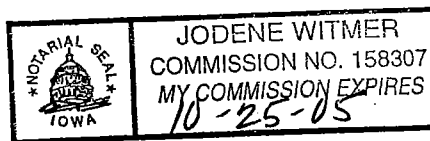
APPROVED AS TO FORM:

  
Roger K. Brown  
Assistant City Attorney  
C:\Rog\Annex\28E Agr\Indianola\28E Agr v3.doc

STATE OF IOWA     )  
                                  ) ss:  
COUNTY OF POLK    )

On this 31<sup>st</sup> day of May, 2005, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared T.M. FRANKLIN COWNIE and DIANE RAUH, to me personally known, and who, being by me duly sworn did state that they are the Mayor and City Clerk, respectively, of City of Des Moines, Iowa, a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; that the instrument was signed on behalf of City of Des Moines, Iowa, by authority of its City Council, as contained in the Resolution adopted by City Council under Roll Call No. 05- 1319 of City Council on the 23<sup>rd</sup> day of May, 2005, and that T.M. Franklin Cownie and Diane Rauh acknowledged the execution of the instrument to be the voluntary act and deed of City of Des Moines, Iowa, by it and by them voluntarily executed.

  
Notary Public in the State of Iowa



CITY OF INDIANOLA, IOWA

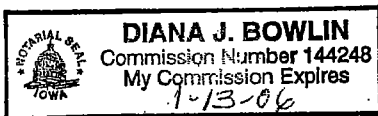
ATTEST:

Todd Kielkopf  
Todd Kielkopf, City Clerk

By: Jerry Kelley  
Jerry Kelley, Mayor

STATE OF IOWA     )  
                              ) ss:  
COUNTY OF POLK )

On this 16 day of May, 2005, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared JERRY KELLEY and TODD KIELKOPF, to me personally known, and who, being by me duly sworn did state that they are the Mayor and City Clerk, respectively, of City of Indianola, Iowa, a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; that the instrument was signed on behalf of City of Indianola, Iowa, by authority of its City Council, as contained in the Resolution No. 08-03 adopted by City Council on the 2 day of May, 2005, and that Jerry Kelley and Todd Kielkopf acknowledged the execution of the instrument to be the voluntary act and deed of City of Indianola, Iowa, by it and by them voluntarily executed.



Diana Bowlin  
Notary Public in the State of Iowa



WARREN COUNTY, IOWA

By: Dave Mineart  
Dave Mineart, Chairperson,  
Board of Supervisors

Attest:

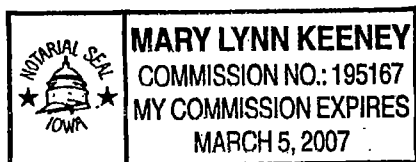
Approved as to Form:

Traci Vander Linden  
Traci Vander Linden,  
Warren County Auditor

Gay W. Russell  
Warren County Attorney

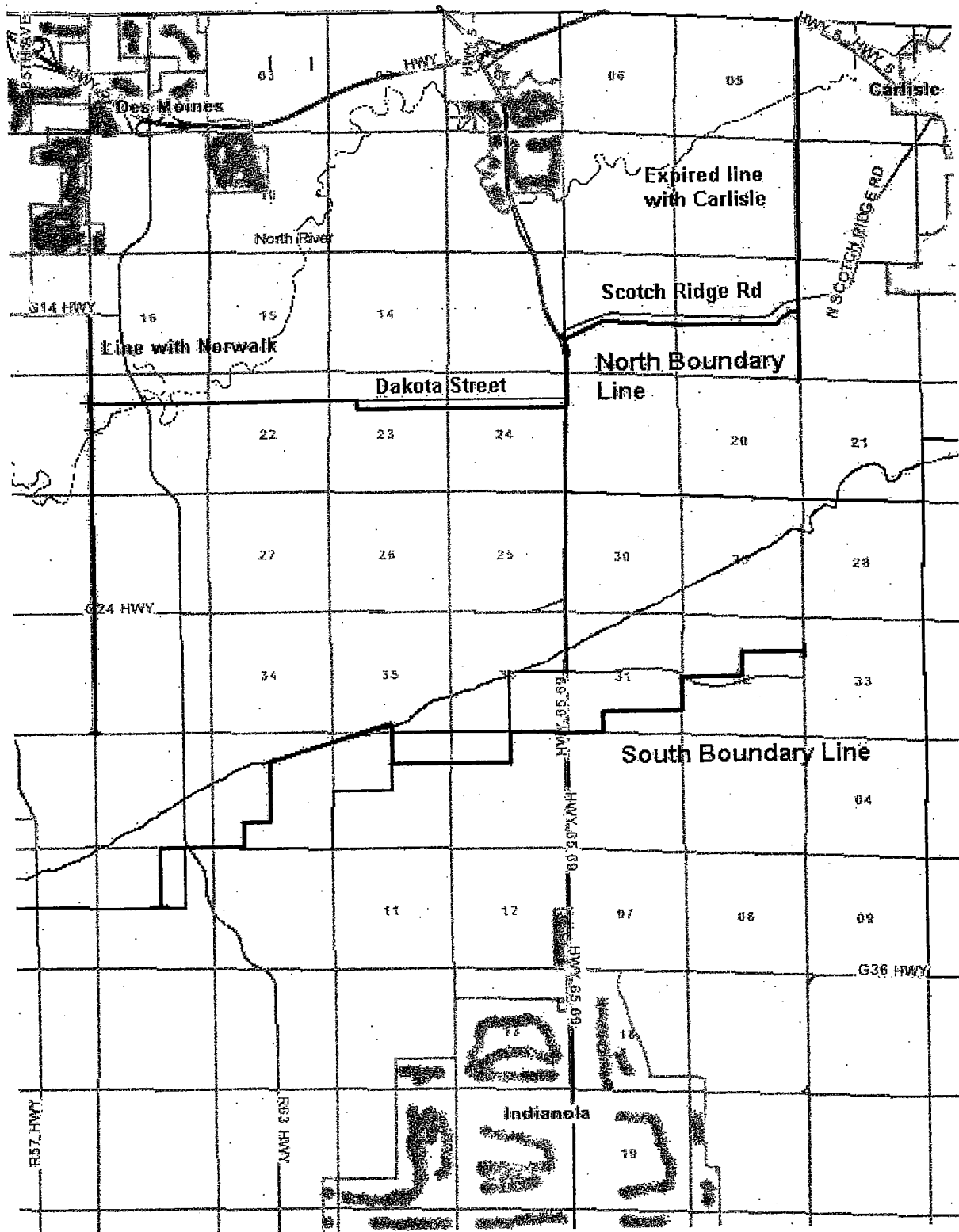
STATE OF IOWA                    )  
  ) ss:  
COUNTY OF WARREN            )

On this 31 day of May, 2005, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared DAVE MINEART and TRACI VANDER LINDEN, to me personally known, and who, being by me duly sworn, did say that they are the Chairperson of the Board of Supervisors and County Auditor, respectively, of WARREN COUNTY, IOWA; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its Board of Supervisors, as contained in Resolution and Roll Call No. 05 - 227 adopted by the Board of Supervisors on the 17 day of May, 2005, and DAVE MINEART and TRACI VANDER LINDEN acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.



Mary Lynn Keene  
Notary Public in the State of Iowa

# Exhibit "A" Map of the Boundary Lines



**Exhibit "B"**  
**Legal Description of the**  
**North and South Boundary Lines**

North Boundary Line:

The North Boundary Line, which serves as the southern limit of any annexation by the City of Des Moines, is described as follows:

Beginning at a point on the East line of Section 17, Township 77, Range 23, located 250.0 feet South of the centerline of Scotch Ridge Road; thence West along a line parallel to and 250.0 feet distant from the centerline of Scotch Ridge Road to the centerline of the median of Iowa Highway 65/69; thence South along the centerline of the median of Iowa Highway 65/69 to a point located 250.0 feet South of the centerline of Dakota Street; thence West along a line parallel to and 250.0 feet distant from the centerline of Dakota Street to a point on the centerline of 113th Avenue; thence North along the centerline of 113th Avenue to the southern line of the North 1/4 of Section 23, Range 77, Township 24; thence West along the southern line of the North 1/4 of said Section 23, and continuing West along the southern line of the North 1/4 of Sections 22 and 21, of said Township 77, to a Point of Terminus on the West line of Section 21, all in Warren County, Iowa.

South Boundary Line:

The South Boundary Line, which serves as the northern limit of any annexation by the City of Indianola, is described as follows:

Beginning at the Southwest corner of the Northeast 1/4 of Section 9, Township 76, Range 24; thence North along the West line of said Northeast 1/4 to the Northwest corner of said Northeast 1/4; thence East along the North line of said Section 9, and continuing East along the South line of Section 3, Township 76, Range 24 to the Southwest Corner of the Southeast 1/4 of the Southwest 1/4 of said Section 3; thence North along the West line of said Southeast 1/4 of the Southwest 1/4 to the Northwest corner of the Southeast 1/4 of the Southwest 1/4 of said Section 3; thence East along the North line of said Southeast 1/4 of the Southwest 1/4 to the Northeast Corner of the Southeast 1/4 of the Southwest 1/4 of said Section 3; thence North along the East line of the Northeast 1/4 of the Southwest 1/4 of said Section 3, and continuing North along the East line of the Northwest 1/4 of said Section 3 to the centerline of the Middle River, thence northeasterly along the centerline of the Middle River to its intersection with the northerly extension of the West line of the Northeast 1/4 of Section 2, Township 76, Range 24; thence South along the northerly extension of the West line of the Northeast 1/4 of said Section 2, and along the West line of the Northeast 1/4 of said Section 2, to the Southwest corner of the North 1/2 of the Northeast 1/4 of said Section 2; thence East along the South line of the North 1/2 of the Northeast 1/4 of said Section 2 and continuing along the South line of the North 1/2 of the Northwest 1/4 of Section 1, Township 76, Range 24 to the Southeast corner of the North 1/2 of the Northwest 1/4 of said Section 1; thence North along the East line of the North 1/2 of the Northwest 1/4 of said Section 1 to the Northeast corner of said North 1/2 of the Northwest 1/4 of said Section 1; thence East along the North line of the Northeast 1/4 of said Section 1, and continuing East along the South line of Section 31, Township 77, Range 23 to the Southwest corner of the Southeast 1/4 of the Southwest 1/4 of said Section 31; thence North along the West line of said Southeast 1/4 of the Southwest 1/4 of said Section

31 to the Northwest corner of the Southeast 1/4 of the Southwest 1/4 of said Section 31; thence East along the North line of said Southeast 1/4 of the Southwest 1/4 and continuing East along the North line of the South 1/2 of the Southeast 1/4 of said Section 31 to the Northeast corner of the South 1/2 of the Southeast 1/4 of said Section 31; thence North along the East line of the Northeast 1/4 of the Southeast 1/4 of said Section 31 to the Northeast corner of the Northeast 1/4 of the Southeast 1/4 of said Section 31; thence East along the South line of the Northwest 1/4 of Section 32, Township 77, Range 23, to the Southeast corner of the Northwest 1/4 of said Section 32; thence North along the East line of the Southeast 1/4 of the Northwest 1/4 of said Section 32 to the Northeast corner of the Southeast 1/4 of the Northwest 1/4 of said Section 32; thence East along the South line of the North 1/2 of the Northeast 1/4 of said Section 32 to a Point of Terminus at the Southeast corner of the North 1/2 of the Northeast 1/4 of said Section 32, all in Warren County, Iowa.