



**NOTICE AND CALL OF PUBLIC MEETING-JOINT WORK SESSION
CITY COUNCIL AND HAMILTON COUNTY BOARD OF SUPERVISORS**

This meeting will be open to the public and can also be attended via Zoom.com:

Meeting ID 86958559758

Phone number to call to participate via telephone is **1-312-626-6799 US (Chicago)**

Governmental Body: **City Council
Hamilton County Board of Supervisors**

Date of Meeting: **October 17, 2023**

Time of Meeting: **5:30 p.m.**

Place of Meeting: **City Hall Council Chambers**

PUBLIC NOTICE IS HEREBY GIVEN that the above mentioned governmental body will meet at the date, time and place above set out. The tentative agenda for said meeting is as follows:

1. Roll Call of City Council
2. Approval of Agenda
3. Pledge of Allegiance
4. Work Session on Wilson Brewer Historic Park

Proposed 28E [AGREEMENT](#) 9-18-23

[MEMO](#) from Doug Herman, Lynch Dallas, Attorney 12-14-22

and any other matters that may come before the Council.

5. Adjourn

This notice is given at the direction of the City Council pursuant to Chapter 21 Code of Iowa and the local rules of the City of Webster City, Iowa.

Signature: Karyl K. Bonjour
Title: City Clerk
CITY OF WEBSTER CITY

Wilson Brewer Park Commission
28E Agreement
City of Webster City and Hamilton County

COMES NOW, the City of Webster City, by ~~and through~~ its' City Council, ("City") and Hamilton County, by ~~and through~~ its' Board of Supervisors, ("County") ~~and~~ consistent with the terms and provisions set out below, do voluntarily ~~hereby~~ join together to ~~voluntarily~~ form a public body, corporate and politic, and separate legal entity under Iowa Code Chapter 28E, ~~same~~ It is to be known as the Wilson Brewer Park Commission ("Commission"). The City and County having each ~~voluntarily~~ approved the following terms and provisions ("Agreement") hereof by Resolution ~~of each body,~~ ~~respectively~~, the dates and identifying information of said Resolutions being set out ~~subsequently~~ herein.

Article I

PARTIES TO AGREEMENT

The undersigned City and County ("Members") are political subdivisions and constitute "public agencies" as defined by Iowa Code section 28E.2. Additional members may be added to this Agreement from time to time as provided in this Agreement.

Article II

PURPOSE GOAL AND OBJECTIVE

Members entered into this Agreement to provide for the long term sustainability of Wilson Brewer Park ("Park") located within the City, ~~where~~ Members will share ~~in~~ the responsibilities, financial and otherwise, associated with the Park, take steps to provide for the long term sustainability, maintenance, growth, and improvement of the Park, and provide for the supervision and management of the Commission by a board, elected by Member residents. The Board, ~~same~~ to be defined and established by this Agreement, (The ("Governing Board")), being the Administrative Entity contemplated by Chapter 28E of the Iowa Code.

Article III

AGREEMENT TERM AND TERMINATION

1. **Term.** This Agreement shall be effective upon approval by Members, execution of Agreement by authorized Member representatives, and filing of Agreement with the Secretary of State as required by Iowa Code §28E.8. (“Effective Date”)
2. **Duration.** This Agreement shall be of perpetual duration unless terminated as provided herein.
3. **Termination.** This Agreement may be terminated by joint Resolution of the City Council and Board of Supervisors, ~~the said~~ joint resolution to be separately approved by a two-thirds (2/3) vote of the entire membership of each body within a period of thirty (30) days, in the same form and content. If approved by City and County, the termination date shall be deemed to be the date on which the last of the Members approved Termination. (“Termination Date”) In the event one of the Parties hereto, whether City or County, votes to terminate this Agreement and the other does not vote to do so within the thirty (30) day window set forth above, the Party voting to terminate may, after the passage of thirty (30) days from its first vote to terminate, consider a motion or resolution to terminate, or to affirm the previously approved termination, and if said renewed motion/resolution receives 2/3 support of the entire membership of the Board, this Agreement will stand terminated consistent with the “Wind Up” provisions of paragraph 4 below.
4. **Wind Up.** In the event the Agreement is terminated as provided in Section 3 above, the Governing Board shall begin winding up the activities and affairs of the Commission. If the Termination Date falls before December 1 of any year, the Governing Board shall wind up affairs and the Commission shall stand terminated by no later than the succeeding June 30th. If the Termination Date falls after December 1 of any year, the Governing Board shall wind up affairs and the Commission shall stand terminated by no later than one calendar year from the succeeding June 30th.
5. **Distribution of Assets.** In recognition ~~that of the fact that~~ the City owns all real and personal property related to the Wilson Brewer Park, upon Termination of this agreement by agreement of the Parties or by the sole action of the City or

County, all ~~of said~~ property will be distributed to, remain, and/or become property of the City of Webster City. The City and County may always agree to discuss a different distribution plan; ~~however, the City shall not be bound to agree to any distribution of real or personal property to the County. that.~~

Article IV GOVERNANCE

1. Governing Board Directors: The Commission shall be governed by a Governing Board, consistent with the following:

a. A five (5) member Governing Board to be made up of no more than two (2) members who reside outside the City limits of the City, all ~~of said~~ members ~~be elected~~being subject to election by the residents of Webster City and Hamilton County.

i. The first five (5) member Governing Board shall be appointed by the Parties, with the City appointing three (3) members and the County appointing two (2) members. One of the City appointees and one of the County appointees shall be appointed for two (2) year terms with the balance of appointees, City and County, to be appointed to one (1) year terms as further described below. (Note, the reference to one and two year terms does not, as noted below, mean that the terms will necessarily expire after one or two year, the description is meant to differentiate between the terms of the appointed members.)

ii. An election shall be held at the first Regular City Election following the passage of twelve (12) months from the approval of this Agreement by the Parties. At said election, the seats held by those Governing Board members appointed for one (1) year terms shall be up for election. Two of said three seats must be filled by residents of the City while one shall be filled by a resident of the County. At the first Regular City Election following the passage of twenty-four (24) months from the approval of this Agreement by the Parties, the seats held by those Governing Board members appointed to two (2) year

Commented [DH1]: Will want to coordinate with County Auditor as this agreement develops to ensure Auditor is comfortable with terms/provisions on this front.

terms shall be up for election. One of the seats must be filled by a City resident and the other by a County resident.

iii. All elected Board Members shall be elected to four (4) year terms.

2. Governing Board Vacancies.

a. If a vacancy occurs during the term of a Governing Board member, the remaining members of the Governing Board shall follow the procedures outlined in Iowa Code §372.13, regarding municipal appointments or special elections, to appoint and/or elect a replacement member.

3. Voting Procedures for Governing Board Members. Each Governing Board member shall have one vote, but for and not including the two Board members appointed by the Members as ex-officio non-voting members of the Board as outlined in Article IV, Paragraph 1(a)(ii) set forth above.

A quorum must be present in order for the Governing Board to take action. A quorum shall be at least 51% of all Governing Board members, including vacancies, but not including any Board member who abstains due to a Conflict of Interest.

The Governing Board shall take action by approval from a majority of the votes present, unless this agreement or the Iowa Code provides for a greater percentage vote for approval of an item. Voting shall be done by roll call vote. Proxy voting will not be allowed; however, a Governing Board member may attend meetings via electronic means and be considered present for purposes of quorum and voting.

4. Board Officers. The Governing Board shall organize itself and at its initial meeting elect a Chair, Vice-Chair and Secretary. Thereafter, at the first meeting each fiscal year, the Governing Board shall elect a Chair, Vice-Chair and Secretary for the next ensuing one (1) fiscal year.

a. The Chair shall preside at the Board's meetings, preserve order and enforce this Agreement.

b. The Vice-Chair shall assist the Chair. During the temporary absence or disability of the Chair, the Vice-Chair shall discharge the duties of the

Chair. Should the Chair be permanently absent or disabled, the Vice-Chair shall succeed to the office of the Chair.

- c. The Secretary, or the Secretary's designee shall keep minutes of all Governing Board meetings.

5. Powers of the Governing Board. Except and subject to any limits or restrictions imposed elsewhere in this Agreement, the Governing Board of Directors shall have the following powers:

- a. To make and enforce bylaws or rules and regulations for the management and operation of the Commission's business and affairs;
- b. To oversee and direct personnel hired by and under the control and oversight of the Governing Board.
- c. To do and perform any acts authorized by the Code of Iowa, under, through or by means of its officers, agents and employees, or by contracts with any person or entity. The Governing Board may delegate any of these powers to staff of the Commission, or staff of the Members if and as permitted herein or otherwise permitted by the Members. The Governing Board may adopt such policies, rules, regulations and actions not inconsistent with law or this Agreement.

6. Appointment of Committees. The Governing Board may establish Standing and/or Temporary committees to assist the Governing Board with its' obligations to the Commission. Members of any committee shall be appointed by the Governing Board. Committee members shall serve indefinitely at the pleasure of the Board, until a successor is appointed, or until the earlier death or resignation of such committee member.

7. Methods for Dispute Resolution. An internal dispute which cannot be resolved shall be described as 'any action which the Commission must take and for which no agreement on the particular action to be taken has been determined' and such determination of action has remained unresolved for 10 business days. Note-no method of actually resolving the dispute is contained in this paragraph or referenced.

8. Open Meetings / Public Records. The Governing Board, and operations of the Commission generally, will be subject to all provisions, requirements, and obligations

Commented [DH2]: An earlier draft included "dispute resolution" language that was removed and it appears I failed to delete this language as well. The City and County can consider whether dispute resolution language should be included. (Mediation, etc.)

imposed by Chapters 21 and 22 of the Iowa Code, pertaining to open meeting and public records laws.

9. **Publication of Minutes.** If the Commission holds more than \$100,000 cash on hand at the end of any fiscal year, the Governing Board shall, in the following fiscal year, produce a summary of the proceedings of each meeting, including the schedule of bills paid, and publish the summary in one newspaper of general circulation within the geographic area served by the joint board of the entity created in the agreement within twenty (20) days of the meeting, said summary of the proceedings to include the date, time, and place the meeting was held, the members present, and the actions taken at the meeting. If the Commission holds less than the \$100,000 threshold at the end of a fiscal year, the Governing Body must then, in lieu of the procedures set out above, must file electronically the summary of their meeting with the county recorder along with the 28E agreement.

Article V MEMBERS

1. **Specification, Requirements, Obligations, Expectations of Members:** Members agree to the following:
 - a. To respond to reasonable requests to make local records available to the Governing Board or Committees of the Governing Board for the purposes of this Agreement;
 - b. To provide access to, control of, and use of the facilities located at Wilson Brewer Park.
 - c. To support the effective collaboration of other Member departments and staff with the Commission, to meet the needs of the Commission, the Governing Board, and the Members and the ~~???~~;
 - d. To provide annual funding as required throughout the term of this Agreement; and
 - e. To contribute start-up funds as required by this Agreement upon the Effective Date of the agreement.
2. **Decision that Require a Member Vote.** The Governing Board shall not have authority to, and they ~~covenant and~~ agree ~~that~~ they shall not do, or cause the Commission to do, any of the following acts without the prior unanimous consent of the Members:

- a. Permit any new Members;
- b. Remove any Member
- c. Terminate or amend this Agreement, except as permitted by Article VIII (1); or
- d. Dissolve the Commission.

3. Member Voting Procedure. Any question related to the issues listed in Section 2 above may be presented to the Members by resolution of the Governing Board of the Commission by first adopting a recommendation on the issue and then submitting it to the Members. A separate explanation of the reasons for the recommendation shall be included. Each Member desiring to vote upon the proposal shall do so by resolution of its governing body and return to the Governing Board Chair a certified copy of the resolution setting forth the Member's vote within thirty (30) days of the date that the Member received a copy of the proposal. Any Member not voting upon the proposal within the allotted time shall be considered to have disapproved of the proposal. If the proposal receives approval of the Members, it shall become effective fourteen (14) days following the approval of the last Member to approve.

Article VI

STAFF / EMPLOYEES / VOLUNTEERS

1. Selection Process for Staff / Employees / Volunteers. The Governing Board will determine the number of employees necessary to fulfill the staffing needs of the Commission and will be responsible for hiring and determining the compensation of any and all employees, whether full-time, part-time, or seasonal, all of whom shall be employees of the Commission, not the Parties to this Agreement. The Governing Board shall see to the creation of job descriptions for staff, outlining the expectations of staff, qualifications required for the position, and defining the essential functions of the positions created.

The Governing Board, or designated staff, shall also actively seek to create a pool of volunteers to support the needs of the Park and shall see to the appropriate training, supervision, and development of the volunteer pool.

Article VII
COMMISSION FINANCES

1. Fiscal Year. The Commission shall operate on a fiscal year, from July 1 through June 30.

Member Financial Contributions. Members agree to contribute to the budget and operations of the Commission on a case by case / request basis, with neither Party guaranteeing nor agreeing to make any financial contributions to the Commission.

2. Member In-Kind, Indirect, or other Contributions. Members agree to provide the following in-kind, or other, investment in the Park and/or to the Commission:

a. City of Webster City

- i. Will mow and maintain the grounds of the Park and perform snow removal on the sidewalks, streets/roadways throughout the Park.
- ii. Continue to provide Property Casualty and General Liability Insurance for the Park and all improvements located at the Park, not including coverage for Commission operations or director / employee liability
- iii. Provide Water, Sewer, Electric, and Natural Gas service to the Park consistent with current services provided, subject to an appropriate annual cost adjustment, to be determined in the sole discretion of City.

b. Hamilton County

- i. ???????

Commented [DH3]: This is a place keeper to set out what if any obligations Hamilton County will have, agree to, etc.

3. Audit. Any and all financial accounts or investments of the Commission shall be made available for review by Members at all times and shall be subject to review and audit by Members during any audit performed of said Member. The Commission may be subject to an independent audit at any time upon the unanimous vote of the Members.

4. Budget. The Commission Budget shall be presented to the City Council and Board of Supervisors between January 1 and February 1 of each year, whether Commission is requesting funding from either Member. The Budget shall not be presented for approval, only for review, questions, and information. The inclusion in the budget of anticipated or desired contributions or investment by City or County is not a guarantee of said contributions or

investment and the Commission will be cautioned to only include such line items if those contributions or investments by City and/or County have previously been approved.

Article VIII

SCOPE & AMENDMENTS

1. **Amendments.** The Governing Board is authorized to make non-substantive amendments to this Agreement with a two-thirds vote of a quorum of the Governing Board. All other amendments to this Agreement shall be approved by the unanimous consent and approval of the Members as shown by Resolutions of said members approved by their governing bodies, and in compliance with Iowa Code Chapter 28E, which includes filing all amendments with the Iowa Secretary of State.
2. **Entire Agreement.** This Agreement represents the entire 28E Agreement of the Commission.
3. **Invalidity.** If any one or more provisions of this Agreement are declared unconstitutional or contrary to law, the validity of the remainder hereof shall not be affected.
4. **No Waiver.** The waiver by any party of a breach or violation of any provisions of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach.

Article IX

REAL PROPERTY OWNERSHIP

1. **Real Estate.** The City shall continue to own all of the real estate being part of the Park, same being legally described within Exhibit "~~___~~" "~~___~~" to this Agreement. The County will continue to own all of the real estate being part of the Park, same being legally described within Exhibit "~~___~~" to this Agreement.
2. **Improvements.** The City shall continue to own all of the improvements being part of the Park, same being described within Exhibit "~~___~~" to this Agreement. The County will continue to own all of the improvements being part of the Park, same being described within Exhibit "~~___~~" to this Agreement.

Commented [DH4]: The "?" marks will be addressed and completed if this agreement appears to be moving forward. No need to spend time and effort to come up with all applicable legal descriptions or other means of describing the property yet. Will need assistance from local staff to create list of improvements.

IN WITNESS WHEREOF, THE CITY OF WEBSTER CITY AND THE COUNTY OF HAMILTON, HEREBY AGREE TO THE ABOVE AND FOREGOING TERMS, THE CITY HAVING APPROVED ENTRY INTO THIS AGREEMENT BY RESOLUTION _____

DATED _____ AND THE COUNTY HAVING APPROVED HEREOF BY RESOLUTION
_____ DATED _____.

DRAFT

TODD W. ANDERSON
CORINNE R. BUTKOWSKI
HOLLY A. CORKERY
EMILY K. ELLINGSON
DOUGLAS D. HERMAN
SAMANTHA R. KUNTZ
STEVEN C. LEIDINGER
ERIC P. MARTIN
JON M. McCRIGHT
DANIEL M. MORGAN
MATTHEW J. NAGLE



526 Second Avenue SE www.lynchdallas.com
Cedar Rapids, IA 52401 WRITER'S EMAIL
Office 319.365.9101 dherman@lynchdallas.com
Toll Free 1.877.966.9101 VOICE MAIL EXT. 150
Fax 319.365.9512

BRETT S. NITZSCHKE
PATRICK J. O'CONNELL
CYNTHIA A.M. PARKER - RETIRED
AMY L. REASNER
SHAWNA M. SCHAMBERGER
KYLE A. SOUNHEIN
WILFORD H. STONE
DAVID L. WENZEL

MAILING ADDRESS:
P.O. Box 2457
Cedar Rapids, IA 52406-2457

To: Webster City Mayor and Council

From: Doug Herman

Re: Wilson Brewer Park

Date: December 14, 2022

Dear Mayor and Council:

At your request I have begun the examination of the genesis of the City ownership of what I will generally refer to as "Wilson Brewer Park". While I am sure you are all pretty aware of the background, I will set out some key dates and documents below:

1. Offer to transfer and Convey property to the City of Webster City signed by Bonerights and Carmichaels on December 19, 1932. (Recorded on June 25, 1952 in Book 8 Page 300 (Misc.) Hamilton County Recorder.) (Exhibit #1)
2. Warranty Deed from Bonerights and Carmichael to City of Webster City dated May 2, 1933 (Recorded November 21, 1933 in Book 62 Page 45, Hamilton County Recorder.) (Exhibit #2)
3. Webster City Council Meeting Minutes dated January 16, 1933. (Exhibit #3)
 - a. Joint Session with park Commission.
 - b. Resolution considering:
 - i. Proposed dedication [offer] of acreage as 'park'.
 - ii. Acceptance of offer as set forth within 'written proposition of the donors'.

To the best of my knowledge, there are no other documents of significance related to the gifting of the property, acceptance of the property, and actual transfer of the property to the City.

I understand the first issue to be whether the City may transfer the property or assign its' obligations to maintain the property to another entity. I believe the answer is 'yes' to both questions and will explain further below.

My explanation and analysis will focus largely on a recent Iowa Supreme Court Case that deals with the issue of whether or not a prior governing body [of a County] can take action to tie the hands of and/or bind a future Board. (Site A Landowners, Appellant, v. South Central Regional Airport Agency, City of Pella, and City of Oskaloosa, Appellees, and Mahaska County, Appellant) The facts of the cited case are not important to this analysis, but generally, it involved the approval of a 28E Agreement by the Cities and the County to build a regional airport and disallowed amendments to the agreement without the agreement of all parties. The suit ensued as a result of a newly elected Board of Supervisors seeking to extricate the County from the agreement, which was resisted and denied, if you will, by the Cities. The Court noting that the provisions requiring both Cities to agree to the withdrawal of the County obligated the County to “remain a party for the life of the airport facility”. The County Board took steps to approve amendments to the 28E agreement, one that would have removed the County from the agreement, and because it was not approved by the other governing bodies the County action, at least according to the terms of the 28E Agreement had no force and effect.

The Court in the above case looked first at relevant statutes and then considered constitutionality arguments. I will focus on the constitutional arguments as the case was decided on that analysis and that analysis is relevant to the Webster City “Wilson Brewer Park” scenario.

The Court, as it began to address the constitutionality of the agreement, noted:

First, we agree with the County that the 28E Agreement unlawfully binds the County’s board of supervisors to the decisions of an earlier-elected board regarding the exercise of governmental functions.

Second, we agree that the 28E Agreement unlawfully restricts the County from terminating its delegation of powers to the SCRAA. [The SCRAA was an entity/board created by the 28E Agreement.]

The Court went on to explain that because the terms of the 28E Agreement disallowed the withdrawal by the Board, upon the Board’s discretion, that the 28E Agreement as written, unconstitutionally allowed the approving board to bind a future board in the exercise of its legislative powers. “In legislative matters a municipality may not bind its successors.” Neuzil v. City of Iowa City, 451 N.W.2d 159, 165 (Iowa 1990).

The following citations have been copied from the decision.

We have previously explained the rationale for this rule:

The members of its legislative body are trustees for the public, and the nature and limited tenure of their office impress the ordinances enacted by them with liability to change. One council may not by an ordinance bind itself or its successors so as to prevent free legislation in matters of municipal government.

Hanna v. Rathje, 171 N.W.2d 876, 880 (Iowa 1969) (quoting Eugene McQuillin, *The Law of Municipal Corporations* § 21.10 (1969)).

We have stated this is a constitutional rule: the legislature derives its power from article III, section 1 of the Iowa Constitution, and the power of a legislative body to exercise its legislative functions cannot be abridged by either another branch of government or by an earlier-elected body of the same branch. See *Bd. of Ed. In & For Del. Cnty. v. Bremen Twp. Rural Indep. Sch. Dist. of Del. Cnty.*, 148 N.W.2d 419, 424 (Iowa 1967); *Iowa-Neb. Light & Power Co. v. City of Villisca*, 261 N.W. 423, 429 (Iowa 1935); *State v. Exec. Council of Iowa*, 223 N.W. 737, 740 (Iowa 1929); *State v. Platner*, 43 Iowa 140, 141 (1876). **This rule applies to the general assembly and “to boards or other groups properly delegated legislative authority,” including a county board of supervisors.** *Bd. of Ed. in & For Del. Cnty.*, 148 N.W.2d at 424; see *Marco Dev. Corp. v. City of Cedar Falls*, 473 N.W.2d 41, 44 (Iowa 1991) (“[A]uthority to bind successive legislative bodies could not be granted by the legislature, which itself is prohibited from doing so.”); Thomas M. Cooley, *A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union* 206 (1st ed. 1868) (“**Equally incumbent upon the State legislature and these municipal bodies is the restriction that they shall adopt no irrevocable legislation. No legislative body can so part with its powers by any proceeding as not to be able to continue the exercise of them.**”).

The above analysis differentiates between “governmental” functions as opposed to “proprietary” functions, the rule prohibiting one governing body from binding another in the arena of “governmental” functions, noting that the distinction can sometimes be difficult.

Examples of “Governmental/Legislative” functions noted in the decision include:

1. Decisions over **zoning, road relocations, eminent domain, and issuing building permits**—are unambiguously core governmental functions, not merely proprietary functions. *Residential & Agric. Advisory Comm., LLC v. Dyersville City Council*, 888 N.W.2d 24, 40 (Iowa 2016)
2. “[**Z**]oning determinations are a legislative function of a city council or board of supervisors.”; *Oakes Constr. Co. v. City of Iowa City*, 304 N.W.2d 797, 808 (Iowa 1981)
3. “[C]ounty supervisors have broad discretion of a legislative nature to determine **whether a street or road shall or shall not be established**, initially or by extension”; *Ermels v. City of Webster City*, 71 N.W.2d 911, 913 (Iowa 1955)
4. “The question **whether a municipal airport should be enlarged** by the taking of private property by **eminent domain** was a matter for the exclusive determination of the City Council in its legislative capacity”; *Rehmann v. City of Des Moines*, 215 N.W. 957, 959 (Iowa 1927)
5. “The exercise of the power to **grant or refuse the license to erect a building** was a governmental function.” (quoting *Clinard v. City of Winston–Salem*, 91 S.E. 1039, 1040 (N.C. 1917).

The Court, after consideration of the above and foregoing, determined that the Board that approved entry into the 28E agreement had bound future Boards to a specific course of ‘legislative action’ in violation of the Iowa Constitution. The result of the holding was to strike the unconstitutional provisions from the agreement.

The argument that the current City Council, or any future City Council, is bound by the 1933 Resolution of the City Council cannot stand constitutionally. In the situation at hand, the “unconstitutional” provisions would be those that suggest a permanent obligation of the City to maintain ownership, care for/maintain, etc., for eternity, and those provisions should be considered void and unenforceable.

I would also argue that it is not clear that the language of the Offer, as accepted, included definitive language binding the Council to forever own, maintain, and/or care for the property. The key ‘conditions’ of the agreement are laid out as follows:

The consideration for said conveyance and transfer and the conditions to be attached thereto shall be as follows:

First: **Shall** be Named “William Brewer Park”, “F.A. Bonebright Museum”, and “Burial Mound”

Second: **Shall** be subject to life use of F.A. Bonebright and Harriet Bonebright

Third: **Shall** be tax relief during life estate.

Fourth: Suitable burial ground **shall** be “dedicated as a cemetery” for persons noted.

Fifth: During life estate Grantors will work with City on improvements, so long as agreeable to Grantors.

Sixth: If City hires caretaker, supposed to give preference to Grantor family member.

Seventh: Grantors **desire** that log cabin and such additional cabins as may be erected...be preserved...but all other buildings may be altered or removed. It is also the **desire**that pioneer relics be accepted.

Finally, the agreement concludes:

It is **contemplated** that after the death of F.A. and Harriet...The City of Webster City, Iowa, shall become the sole owner of the property herein conveyed and that said Wilson Brewer Park and said Museum and the Burial Mound shall be maintained by the City as a suitable memorial to the founding [family?] of Webster City by Wilson Brewer.

The conditions, one through six, are largely satisfied or no longer applicable. The seventh condition speaks to ‘desires’, not obligations, and the final paragraph speaks to ‘contemplations’.

Other Notes:

1. Neither the “Offer” to gift the property to the City nor the Deed transferring the property to the City include any reversionary language; nothing to suggest that the discontinuation of the use, which wasn’t contemplated, would result in reversionary rights to grantors or grantors heirs.
2. The “Offer” suggests the existence and/or intended existence of a cemetery. Even if the terms of the Offer accepted by the City in 1933 are not enforceable on the current City Council, the City by State Code 523I.316 has a duty to preserve and protect burial sites, whether located within or without a dedicated cemetery. This obligation may, however, be assigned to another, however, the City will have a duty to ensure that the assignee is fulfilling their obligations.

Long story short, to the extent the 1933 Council Resolution sought to, or is argued to or interpreted to have put eternal obligations on the City Council, it is unconstitutional. The City Council is in my opinion free to make current day governmental/legislative decisions regarding the future of the Park without consideration of the Agreement terms. The Council will, of course, need to give consideration to any “Cemetery” obligations and to political considerations.

The second question, or task, is to consider options moving forward regarding the oversight, supervision, and funding, if you will, for Wilson Brewer Park “Park”.

Options would include, but not necessarily be limited to the following:

1. The Creation of a ‘Board or Commission’ by City Code
 - a. Board could be appointed, have specified duties, terms, obligations, etc.
 - b. Board could be elected, have specified duties, terms, obligations, etc.
 - i. Similar to Kendall Young Library
 - ii. Similar to Fuller Hall
2. The Creation of a 28E Agreement Entity to oversee the Park; including the following:
 - a. Duration
 - b. Description of any separate legal or administrative entity with description of powers delegated thereto.
 - c. Purposes
 - d. Manner of financing the joint or cooperative undertaking / budgeting
 - e. Methods of termination / disposition or property upon termination
 - f. Other necessary and proper matters
3. Sale, Transfer, or Lease of the Park and Assets (Partial or Total)
 - a. Qualifications of Possible Buyer
 - i. 501(c)(3)
 - ii. Proof of funding / purpose
 - iii. Rights of First Refusal / Reversion
 - iv. Deed Covenants / Restrictions
 - b. Consider what happens if goes into disrepair
 - c. Comfort level with demolition of structures, removal of artifacts, etc.
 - d. Redevelopment of some or all of property for other purposes
 - i. Zoning
 - e. Public Sentiment
 - f. Cemetery considerations

The Creation of a ‘Board or Commission’ by City Code

It is very common for Cities to create Boards/Commissions to provide for oversight/management/advice to the elected officials. Common examples include, Parks, Cemeteries, Memorial Halls/Civic Centers, Airports, and the like. It is most common for such boards to be made up of appointed and non-compensated members. Depending on City Code, the appointments may be made by the Mayor subject to Council Approval or by the Council directly.

It is less common, but permissible, to have Boards/Commissions as noted above where the members are subject to election by the residents of the community. Typically, when members are voted, they generally have more ‘powers’ beyond the power to make recommendations to the City Council. Some considerations regarding elections:

1. Some folks are willing to be appointed to a Board/Commission but have no interest in ‘running’ for office. An election may reduce the number of potential candidates to serve on the Board/Commission.

2. Election Costs. So long as the elections are all held at the same time as City General Election the additional cost should be minimal.
 - a. Vacancies: Language should be provided to deal with the temporary or permanent filling of vacancies on the Board/Commission. (I would suggest language similar to Chapter 372.13 regarding Council Vacancy.)

If the goal is to bind others to financial or other contributions, whether the County or other entities, the creation of an appointed board/commission or elected board/commission by City Code would not, in and of itself, include any [binding] language in that regard. (It is possible that the City and the County could each adopt an Ordinance dealing with the Park, each setting out the obligations of said entity to the Park; whether to fund the Park to a certain extent or to provide some share of maintenance. (City mows and County does snow removal, for example) Ordinances are always subject to amendment by the adopting entity.

The Creation of a 28E Agreement Entity to oversee the Park; including the following

A 28E Agreement is basically a contract between the parties named in the Agreement. The Code mandates, to some extent, the principal matters to be covered by the Agreement. The Agreement can, but does not have to, create an administrative entity to oversee the 28E Agreement.

Unlike the adoption of a City Ordinance creating a Board, this Agreement would include commitments by the parties to the agreement, those commitments could include, as noted above, both financial commitments and ‘other’ commitments. Like an Ordinance, the 28E is subject to amendment or termination consistent with its’ provisions and applicable law.

Positives of a 28E agreement would be the ‘partnership’ it could create between the various entities including but not limited to City, County, and private partners. The 28E would be broader and more all-inclusive than the adoption of an ordinance, or ordinances, of the City and County and would allow for a private entity to be involved.

Politically, donors and supporters may feel more comfortable contributing or donating to an entity deemed to be more of a stand-alone entity. I do not think it is uncommon for folks to fear that donations to a City for a specific purpose, care and support of the Park for example, may leak over into other City purposes. Being in a position to donate to the 28E may relieve or assuage those concerns. (It is possible that the 28E Organization could also establish a relationship with the local Community Foundation; that would be best explored and discussed with Foundation representatives.)

Sale, Transfer or Lease of the Park and Assets (Partial or Total)

Transfer of title to the property and all assets, in whole or in part, to another entity, with covenants/agreements to maintain the ‘Park’ as a park, with potential reversion covenants/terms, etc. would be one approach. While, in my opinion, the City could consider the outright unconditional sale of the property and artifacts, where the purchaser could do as they choose with

the property, I will not analyze that option in any depth as I do not perceive that to be an option the Council is looking to consider nor an option the community would likely support. This option would also, right or wrong, likely lead to litigation if pursued. This is not an option I am recommending be given any consideration based upon what I know at the present.

The obvious positive to the sale/transfer approach would be the relinquishment of responsibility, financial and otherwise for the Park. (With considerations required in relation to the cemetery portion.)

Negatives would include the loss of control, political push back, particularly if the Park is not well maintained, open to the Public, etc.

The most likely potentially successful sale would be the sale to a 501(c)(3) non-profit with the purpose of owning and maintaining the Park and related infrastructure. An existing "proven" 501(c)(3) entity would be the safest approach, however, a newly created 501(c)(3) Iowa Nonprofit with adequate funding sources or commitments would also be worth consideration. Under Iowa Law the municipality could continue to provide some level of funding to the 501(c)(3) but would need to do so in a way that ensured the City investment was being spent for a public purpose. This should not be a problem, would just require some documentation to pass muster under the Code and under potential audits.

A means of maintaining a bit more control and certainty, would be the consideration of a long-term lease between the City and an appropriate entity. The City, as Lessor, would have rights to seek enforcement and/or termination of the lease consistent with Lease terms.

While the above options are not necessarily all inclusive they seem to be the best options for consideration at this time. I would add that there could be crossover between some of the options. For example, a 28E Agreement could be negotiated between the City, County, and a newly created Nonprofit 28E entity, with the City leasing the property to the 28E entity, and, potentially, board/commission members being subject to election. (This would require some conversation with the County Auditor; however, it seems we should be able to proceed with elections under the following, or similar, example: Where the 28E provides that the Board would be made up of one or three (odd number) members appointed by the 501(c)(3), with two members who are residents of the City and elected by the electors of the City, and two members who are residents of rural Hamilton County, elected by the electors of Hamilton County.

At this point I think the best course of action is to consider the above options/provisions, pick and choose those options/provisions you like, rule out any options/provisions that should be ruled out, consider who your partners might be, and consider next steps. Potential next steps:

1. Set up a meeting with potential partners to discuss.
2. Direct further work on my end or City Staff end to put together a proposal deemed appropriate by the City Council before meeting or working with potential partners.
 - a. Provide said proposal to Partners for comment prior to a workshop to discuss.
3. Consider appropriateness of Public Open House where comments may be made/received.

Legal/other considerations applicable to all of the above:

1. While the Mayor, an individual Councilperson, and/or the City Manager may express opinions/desires if you will, only the elected city officials as a 'body' can make statements of the Council, binding statements or commitments, etc., whether a statement of intent or otherwise, or bind the City to any course of action. (Unless delegated to City Manager by the Council.)
2. The sale or lease of public property (for more than three years) requires public notice and public hearing in advance of the transfer or entry into lease agreement. Regardless of the path forward, this will likely be one of the steps.
3. In the event that any agreement or plan forward involves the continued maintenance of the Park by City staff, all should recognize that City staff will be performing their duties under the oversight and direction of the City Manager under City Code.

I look forward to discussing this matter with you next week.

Sincerely yours,

Douglas D. Herman

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