



# City of Grand Island

Tuesday, April 11, 2017

Council Session

## Item I-3

**#2017-119 – Consideration of Approving Resolution Authorizing Amendment of the Conservation Easement with Respect of Tract #32, South Locust Street/I-80 Interchange Project**

Staff Contact: Jerry Janulewicz

# Council Agenda Memo

**From:** Jerom E. Janulewicz, City Attorney

**Meeting:** April 11, 2017

**Subject:** Amendment of Perpetual Conservation Easement, Tract #32, South Locust Street/I-80 Interchange Project.

**Presenter(s):** Jerom E. Janulewicz, City Attorney

## Background

In the late 1990's the City of Grand Island, Hall County, and the Nebraska Department of Roads entered into an interlocal agreement and amendments thereto relative to the construction of an interchange at the location of South Locust Street and Interstate 80 and the construction of a new four lane South Locust Street between the city and Interstate 80. The agreement provided, in part, that Hall County would acquire the necessary right-of-way for the project. In order to address environmental concerns of the Nebraska Game and Parks Commission and Federal Fish and Wildlife Service, Hall County agreed to acquire conservation easements upon properties surrounding the interchange area and the City agreed to be the grantee of the easements, with the duty to monitor and enforce compliance with the terms of the easements. Pursuant to agreements between the various governmental entities and agencies, the terms of a conservation easement cannot be amended or changed by the City and a landowner unless such amendment or change is approved by the County of Hall, the Nebraska Department of Roads, and the Nebraska Game and Parks Commission.

The owner of Tract #32 entered into a real estate purchase agreement with a buyer. The owner and buyer are requesting the conservation easement be amended, as the easement does not specifically provide authorization to use this 13 acre tract for a single-family residence even though a residence existed on the property when the easement was acquired. The buyer has plans to remove the existing residence and construct a new residence on the property.

The current conservation easement grants the continuing right to use the land for “[t]he construction of single family dwellings, restricted to one dwelling per 20-acre area or greater.” The buyer and seller are requesting that the language in the previous quotations be deleted and replaced with the following: “The construction and occupancy of a single family dwelling, restricted to one single family dwelling upon the Property.” All other provision of the conservation easement would remain unchanged and in full force and effect.

## **Discussion**

The City's legal department provided background information to and participated in telephone conferences with representatives of the Nebraska Department of Road, Nebraska Game and Parks Commission, Federal Highway Administration, Federal Fish and Wildlife Service, and Federal Highway Administration. On April 5, 2017, representatives of those agencies indicated they would recommend to their respective agencies approval of the following amendment to the Conservation Easement if such amendment were approved by the City and Hall County:

Delete "The construction of single family dwellings, restricted to one dwelling per 20 acre area or greater" and substitute in its place "The construction and occupancy of a single family dwelling, restricted to one single family dwelling upon the Property."

## **Alternatives**

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Adopt the Resolution authorizing the amendment of the Conservation Easement, subject to concurrence of Hall County, Nebraska Game and Parks Commission and Nebraska Department of Roads.
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

## **Recommendation**

City Administration recommends that the Council adopt the Resolution.

## **Sample Motion**

Move to approve the resolution authorizing amendment of the Conservation Easement with respect to Tract #32, South Locust Street/I-80 Interchange Project.

**AMENDMENT TO  
GRANT OF PERPETUAL CONSERVATION EASEMENT**

This Amendment to Grant of Perpetual Conservation Easement (the "Amendment") is made effective as of the \_\_\_ day of \_\_\_\_\_, 2017, by and between the parties set forth below.

RECITALS:

A. Vernon & Karlene Larson, husband and wife (collectively referred to as "Grantor") and the City of Grand Island, Nebraska, a Nebraska Municipal Corporation (referred to as "Holder") entered into that certain Grant of Perpetual Conservation Easement dated May 20, 1999 and recorded with the Hall County, Nebraska Registrar of Deeds on October 18, 1999 as document No. 99110123 (the "Conservation Easement").

B. The Conservation Easement encumbers a parcel of real property located in Hall County, Nebraska described as follows:

The South Four Hundred Forty Two (442.0) Feet of the East Half of the Southwest Quarter (E2 SW4) of Section 22, Township 10 North, Range 9 West of the 6<sup>th</sup> P.M., Hall County Nebraska (the "Property").

C. The entire Property is currently still owned by Karlene Larson, a widow; Vernon Larson is deceased.

D. At the time the Conservation Easement was granted in 1999, the Property contained 13.4 approximate acres; the Property still contains 13.4 approximate acres.

E. At the time the Conservation Easement was granted in 1999, the Property had one single family dwelling thereon; the Property still contains one single family dwelling.

F. The parties desire to clarify and amend certain provisions of the Conservation Easement as set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the undersigned parties agree as follows:

1. The Recitals set forth above are hereby incorporated into this agreement as if fully contained herein.

2. Article III, "Permitted Uses", Section C of the Conservation Easement shall be deleted in its entirety and the following provision shall be substituted therefor:

"C. The construction and occupancy of a single family dwelling, restricted to one single family dwelling upon the Property."

3. Except as amended hereby, the Conservation Easement remains unaltered and in full force and effect.

IN WITNESS WHEREOF, the parties hereby sign this Amendment, intending to be bound as of the date set forth above.

Grantor:

*Kaylene D Larson*

\_\_\_\_\_  
Kaylene Larson

### ACKNOWLEDGMENT

STATE OF NEBRASKA     )  
  )  
COUNTY OF HALL         )

On this 16<sup>th</sup> day of February, 2017, before me personally appeared Kaylene Larson, and executed and acknowledged the foregoing instrument.

SEAL



*Sheila R. Hulme*  
\_\_\_\_\_  
Notary Public  
My Commission expires: Nov 1<sup>st</sup> 2019

### ACCEPTANCE OF AMENDMENT BY HOLDER

The City of Grand Island, Nebraska, acting by and through its duly authorized representative, pursuant to Resolution, has executed this Amendment on this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**CITY OF GRAND ISLAND, NEBRASKA**  
A Municipal Corporation of the State of Nebraska

By : \_\_\_\_\_  
  , Mayor

Attest: \_\_\_\_\_  
  , City Clerk

**CONCURRENCE:**

The County of Hall, Nebraska, acting by and through its duly authorized representative, has executed this Amendment on this \_\_\_\_ day of \_\_\_\_\_, 2017.

**THE COUNTY OF HALL, NEBRASKA**  
A Body Corporate and Politic

By : \_\_\_\_\_, Chair

Hall County Board of Supervisors

Date: \_\_\_\_\_







RESOLUTION 2017-119

WHEREAS, the City of Grand Island is the grantee of a conservation easement upon the following described lands, to wit:

The South Four Hundred Forty Two (442.0) Feet of the East Half of the Southwest Quarter (E1/2SW1/4) of Section Twenty Two (22), Township Ten (10) North, Range Nine (9) West of the 6<sup>th</sup> P.M., Hall County, Nebraska; and

WHEREAS, the above-described property is approximately 13 acres in area; and

WHEREAS, Karlene Larson, owner of the property, requested that the conservation easement be amended by deleting the provisions of Article III, Section C and inserting in its place the following: “The construction and occupancy of a single family dwelling, restricted to one single family dwelling upon the Property”; and

WHEREAS, an effective amendment of the conservation easement requires concurrence of the County of Hall, the Nebraska Department of Roads, and the Nebraska Game and Parks Commission.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that proposed Amendment to the Grant of Perpetual Conservation Easement upon the above-described real estate is approved, subject to concurrence of the County of Hall, the Nebraska Department of Roads, and the Nebraska Game and Parks Commission. The mayor of the City of Grand Island should be and is hereby authorized to execute the amendment on behalf of the City.

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Adopted by the City Council of the City of Grand Island, Nebraska, April 11, 2017.

\_\_\_\_\_  
Jeremy L. Jensen, Mayor

Attest:

\_\_\_\_\_  
RaNae Edwards, City Clerk

Approved as to Form	☒ _____
April 7, 2017	☒ City Attorney