



# City of Grand Island

Tuesday, December 20, 2022

Council Session

## Item I-5

**#2022-374 - Consideration of Amending Resolution #2022-341  
Approving the Redevelopment Plan for CRA No. 28 for Property  
Located between Webb Road and U.S. Highway 281 North of 13th  
Street for Commercial and Residential Purposes (Woodsonia  
Acquisitions)**

Staff Contact: Chad Nabity

# Council Agenda Memo

**From:** Laura D. McAloon, City Attorney

**Meeting:** December 20, 2022

**Subject:** 1. Resolution Amending Resolution 2022-341  
2. Resolution 2022-352, Approving a Redevelopment Contract between City and Woodsonia Hwy 281 LLC

**Presenter(s):** Laura D. McAloon, City Attorney  
Chad Nabity, Director of Regional Planning

## Background

On November 22, 2022, City Council adopted Resolution 2022-341, which approved the Redevelopment Plan of the City for Redevelopment Area No. 28 in the City of Grand Island, Hall County, Nebraska (the “Redevelopment Plan”). The Redevelopment Plan includes the project known as Conestoga Marketplace (the “Marketplace”). In addition to approving the Redevelopment Plan, Resolution 2022-341 also imposed two contingencies that must be satisfied by Woodsonia Hwy 281, LLC (the “Developer”) before the Community Redevelopment Authority (the “CRA”) can move forward on implementation of the Redevelopment Plan for the Marketplace, which will include the issuance of Tax Increment Financing (TIF) Bonds and Enhanced Employment Area (EEA) Bonds, both of which will be repaid through their respective dedicated tax revenue streams: TIF revenue from increased property valuation and tax collections within the project area and EEA revenue derived from an occupation tax on certain businesses located at the Marketplace.

Terms of the City and the CRA’s participation in the Redevelopment Plan will be approved by the City Council and the CRA Board through the execution of a Redevelopment Contract between the City, the CRA and the Developer. The Redevelopment Contract covers multiple topics, but in regards to City and CRA participation in the funding of the Marketplace project, it has these specific terms:

- the contractual obligations of the CRA to issue the TIF Bonds and EEA Bonds referenced above, as well as a promise to pay the Developer the total sum of \$4,000,000 through annual payments of \$200,000 for a period of 20 years (unrestricted use);

- the contractual obligations of the City to pay the Developer up to \$5,500,000 through the reimbursement of Developer's costs for the design, construction and installation of publicly owned infrastructure, i.e. water, sewer, streets, etc.; and
- the contractual obligation of the CRA and City to pay directly to the Developer any funds they receive from Grow Grand Island, Inc. identified as contributions to the Developer for the Marketplace project (this amount is anticipated to be \$1,000,000, equally paid over a 2 year period and for unrestricted uses).

All of the above funds will come, either directly or indirectly, from taxes paid by City taxpayers.

The Redevelopment Contract was initially scheduled for discussion and action by the City Council at the December 6, 2022 meeting, however, on December 5<sup>th</sup>, the Developer notified City staff that it needed to pull the Redevelopment Contract and related EEA occupation tax ordinance from the Council's agenda because Developer had determined it would be unable to satisfy the second contingency for implementation of the Redevelopment Plan. That contingency currently states:

*Developer shall provide written documentation of a contract between Developer and the entity that has been targeted as the "new to market approximately 150,000 SF retailer positioned on the southern portion of the redevelopment site" for its participation in the Redevelopment Project.*

The Developer advised City staff that it planned to ask the City Council to amend this language and would bring an amendment request to the City Council at their December 20, 2022 meeting. Developer also indicated it needed to revise certain language in the Redevelopment Contract that had been included in the December 6, 2022 agenda packet. City staff, City Attorney and the CRA's legal counsel have met with Developer and their legal counsel over the past two weeks to review and negotiate Developer's proposed revisions to the Redevelopment Contract. The revised Redevelopment Contract is included in this agenda packet. The City Attorney's office also reviewed the draft resolution amendment proposed by Developer's legal counsel and put their draft into correct City format for the Council's consideration.

Before you for consideration at this meeting are:

1. The approval or denial of Developer's proposed resolution amending the contingency language of Resolution No. 2022-341; and
2. The approval of a resolution approving the terms of the Redevelopment Contract as selected by the Council.

Because these two action items are so closely linked, this staff memo addresses two items on your agenda: Item I-5 and Item I-6. Staff have provided alternative motions below for Council's use, based on your discussion and deliberations.

## Discussion

### Agenda Item I-5 - Developer's Proposed Amendment to Resolution 2022-341

The Developer's requested language amending Resolution 2022-341 to revise the second contingency for implementation of the Redevelopment Plan does two things. First, it reduces the square footage of the anticipated anchor retail tenant store (located on Lot 3 of Conestoga Mall Eighth Subdivision) from 150,000 square feet to 148,000 square feet. This makes the area language consistent with the square footage for a future retail store located on Lot 3 that was approved by the City when it approved the rezone of this area of the Marketplace property to Commercial Development (CD) zone. City staff have no concerns with this amending language.

Second, the amending language makes a substantive change to the terms of the City's current contingency to the implementation of the Redevelopment Plan by the CRA. The existing contingency requires written proof of the participation of the anticipated anchor tenant's participation in the Redevelopment Plan. The Developer advised it cannot satisfy the existing contingency because it does not presently, nor will it in the near future, have a written contract with their anticipated anchor tenant to actually construct a retail store on Lot 3.

The requested amendment to the contingency language is a material change in the current language. This amendment would change the Developer's obligation to show proof of future construction of the anticipated anchor retail store before taxpayer resources are spent on the Marketplace project and would only require Developer to show proof of a contract with their anticipated anchor tenant for the acquisition of Lot 3 on or before April 6, 2027. Developer advises this is the only contract language it will be able to produce.

City staff are advising the Council that the risk of accepting this amendment to Resolution 2022-341 is that the Developer will have received the benefit of the City's \$5,500,000 public infrastructure cost contributions to the full Marketplace property without having constructed (and opened) the anticipated retail anchor store on which the future tax revenue projections were based and on which the Council relied in agreeing to this public private partnership. Based on the anticipated construction plans and schedule provided to City staff by the Developer, City staff anticipate that the Developer will have completed construction and received payment from the City for the reimbursable public improvements long before April 6, 2027. In addition, Developer will have received the benefit of an addition \$2,200,000 in taxpayer-sourced funds prior to the April 6, 2027 deadline to transfer ownership of Lot 3 to the anticipated anchor tenant because the annual payments of \$200,000 from the CRA are scheduled to begin on November 1, 2023 and the anticipated \$1,000,000 grant from Grow Grand Island, Inc. will have been disbursed in full by December 31, 2024.

The amended contingency will no longer provide the City with written proof that the anticipated retail anchor store will actually be constructed prior to, or even concurrent with,

the payment of the full \$5,500,000 from the City or the payment of an additional \$2,200,000 from Grow Grand Island and the CRA.

However, the Developer will continue to bear the risks associated with the issuance of the TIF Bonds and EEA Bonds. The Developer will be the purchaser of all bonds and it is anticipated that the bonds would be pledged to private lenders to secure the Developer's construction loans. If the Marketplace project does not generate the anticipated tax revenues from completed and operating retail, hospitality and residential operations, there will not be adequate cash flow for the CRA to pay the debt service on the bonds to Developer, who in turn may not be able to make required debt service payments on its construction loans. Both the TIF Bonds and EEA Bonds are secured only by revenue from the increased property value and revenues generated in the project area. Neither the CRA nor the City can be held liable for any shortfall in those anticipated revenues or for payment of the debt service on any of those bonds.

### **Agenda Item I-6 - Revised Terms of the Redevelopment Contract**

The substantive changes from the Developer to the terms of the Redevelopment Contract that had been included in your December 6, 2022 packets are listed below in order of appearance in the Redevelopment Contract. City staff edits, responses and comments are *italicized*:

- Page 6 - Change in the definition of "Private Improvements" to remove "Construction of an approximately 148,000 square foot retail store on Lot 3" and replace with a deadline of constructing the anticipated retail anchor store "before April 6, 2027 or alternatively construction of an approximately 100,000 square foot or larger retail store on Lot 3 by December 31, 2032." *City staff required the insertion of "new-to-market" in this definition to qualify both the original anticipated anchor store and any replacement store after April 6, 2027.*
- Page 7 - Change in the definition of "Start Date" to conform to the Developer's requested amendment to the contingency language in Resolution 2022-341. *"Start Date" defines the dates on which the first TIF Bond for the project will be issued by the CRA, and is also used in the definition of the date on which the first EEA Bond will be issued by the CRA. Staff do not recommend accepting this revision if the amendment to Resolution No. 2022-341 is not approved.*
- Page 16 - Text edit related to the change in the definition of "Start Date" for purposes of issuing the TIF Bonds. *This revision could be accepted regardless of whether the amendment to Resolution No. 2022-341 is approved because it now uses the defined term of "Start Date."*
- Pages 19-20 - Changes to the CRA's language requiring substantial performance of anticipated improvements by terminating the annual payments of \$200,000 if Developer has not completed construction of the Northern Mall, the Anchor Tract and the Multi-Family Apartments on or before December 31, 2030 (8 payments =

\$1,600,000). Developer proposed changing construction completion date to December 31, 2032 (10 payments = \$2,000,000) and CRA will accrue future payments until such time as construction has been completed. Upon completion the accrued payments will be paid to Developer in full and any remaining annual payments will resume. *Staff required the additional proviso that the CRA payments terminate completely on December 31, 2042 if construction of above areas still is not complete and CRA keeps any accrued amounts as of that date. If all goes as planned by Developer, the final CRA payment would be made on November 1, 2043.*

- Various pages – Developer requested removal of phrase “whose stock is publicly traded” throughout the document. *Staff have no concerns with this edit.*
- Page 21 - *Staff is requiring the inclusion of a new clause (l) to Article B “Obligations of Redeveloper” - Section 3.09A which states:*

In the event the new to market approximately 148,000 SF retailer proposed by Redeveloper as the anchor store for the Redevelopment Project does not acquire Lot 3 and begin construction by April 6, 2027, Redeveloper shall enter into all necessary contractual agreements necessary to provide for the construction and public opening or occupancy of a replacement anchor store that is a new-to-market, not less than 100,000 square feet retail store on or before December 31, 2032.

*It is the opinion of the City Attorney’s office that this language must be included in order to provide the City and CRA with an enforceable contract clause requiring Developer to construct and open a retail anchor store of at least 100,000 square feet on Lot 3, no later than ten years after execution of the Redevelopment Contract. Failure to include this clause will leave the City with little to no recourse against Developer in the event Lot 3 remains vacant after ten years. Developer has agreed to this language.*

- Exhibit L – Assignment and Assumption for Lot 3. This exhibit has been included at the request of Developer and City staff have been advised it closely mirrors language in the Developer’s proposed contract with its anticipated retail anchor tenant for Lot 3 and must be approved by that entity. Developer is requesting the deletion of a recital included in the December 6<sup>th</sup> agenda version of the Redevelopment Contract, which reads:

“WHEREAS, the Purchase Agreement [for Lot 3] requires the Assignee [purchaser of Lot 3] to construct a merchandise store greater than 135,000 square feet in size at the Conestoga Marketplace in Grand Island, Nebraska”

*This is a recital in the form of an agreement that will be used by Developer in the transfer of ownership of Lot 3, therefore City staff do not object to its removal. However, the Developer’s request for removal of this recital on December 4<sup>th</sup> is what prompted City staff to seek confirmation from the*

***Developer that it could satisfy the second contingency in Resolution 2022-341 for the implementation of the full Redevelopment Plan. Subsequently, the Developer notified City staff that it needed to pull their agenda items from the December 6, 2022 meeting.***

If Council does not approve Developer's request to amend Resolution 2022-341, staff recommend the approval of the December 6, 2022 agenda packet version of the Redevelopment Contract. If Council does approve the requested amendment of Resolution 2022-341, staff recommend the approval of the December 20, 2022 agenda packet version of the Redevelopment Contract. Sample motions for both alternatives are provided below.

### **Summary of Risks**

Should the Council decline to accept the requested amendment to Resolution 2022-341 and all of the requested edits to the Redevelopment Contract language, there is a risk that the Developer will not be able to proceed with its plans for the Conestoga Marketplace and redevelopment of an area that the Council has designated as extremely blighted. It is also possible that Developer will not be able to execute, or extend, its option to purchase the current Conestoga Mall property from the current owners who have not indicated any intent to redevelop the extremely blighted property.

Should the Council accept the requested amendment and contract modifications requested by the Developer, it risks the investment of up to \$10,000,000 of direct and indirect taxpayer funds in the Marketplace project without any recourse or assurance that the largest retail store planned for the project will be constructed. The City would also bear the risks that the Developer is unable to find a replacement anchor store, even with the smaller footprint requested, and that the projected retail sales tax revenues presented to the Council will not be realized. Further, by the time it would be clear that the construction plans for Lot 3 have failed, the City's funds, Grow Grand Island's funds, and a significant amount of CRA funding will have been paid to the Developer and will not be recoverable. Absent the anticipated retail anchor store's revenue and impact on the Redevelopment Project, there is also a risk that the Developer, a limited purpose entity, will be unable to make its debt service payments and may need to seek protection from the creditors to which the project bonds are pledged.

### **Alternatives**

It appears that the Council has the following alternatives concerning the two issues at hand. As to both issues, the Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

## **Recommendation**

City Administration takes no position on the Developer's requests, but advises the Council to consider the risks outlined above.

## **Sample Motions**

**Agenda Item I-5** Consideration of Amending Resolution #3033-341 Approving the Redevelopment Plan for CRA No. 28 for Property Located between Webb Road and U.S. Highway 281 North of 13<sup>th</sup> Street for Commercial and Residential Purposes (Woodsonia Acquisitions)

Move to approve Resolution 2022-374 amending Resolution 2022-341

OR

Move to deny request to amend Resolution 2022-341

**Agenda Item I-6** Consideration of Approving Redevelopment Contract with Woodsonia Hwy 281 LLC and the Redevelopment Authority of Grand Island for Redevelopment of the Conestoga Mall Property

*IF THE RESOLUTION IN AGENDA ITEM I-5 IS NOT APPROVED:*

Move to approve Resolution 2022-352 approving December 6, 2022 Council packet version of a Redevelopment Contract with Woodsonia Hwy 281 LLC and the Community Redevelopment Authority of Grand Island Nebraska

*IF THE RESOLUTION IN AGENDA ITEM I-5 IS APPROVED:*

Move to approve Resolution 2022-352 approving December 20, 2022 Council packet version of a Redevelopment Contract with Woodsonia Hwy 281 LLC and the Community Redevelopment Authority of Grand Island Nebraska



RESOLUTION 2022-374

WHEREAS, the City Council adopted Resolution 2022-341 (“Original Resolution”) on November 11, 2022 approving the Redevelopment Plan of the City for Redevelopment Area No. 28 in the City of Grand Island, Hall County, Nebraska, including the Redevelopment Project further described in the Original Resolution; and

WHEREAS, the Original Resolution established two contingencies that must be satisfied prior to the implementation of the Redevelopment Plan for Redevelopment Area No. 28 by the Community Redevelopment Authority of Grand Island, Nebraska; and

WHEREAS, the developer of the Redevelopment Project, Woodsonia HWY 281, LLC, (“Developer”) has requested City Council consider an amendment to the Original Resolution revising said contingencies; and

WHEREAS, the Developer has prepared this resolution for the City Council’s consideration.

NOW, THEREFORE, be it resolved by the City Council of the City of Grand Island, Nebraska:

1. Section 2 of Resolution No. 2022-314 is hereby amended as follows: (deletions in ~~striketrough~~, additions in underline)
  2. Approval of the Redevelopment Plan is hereby ratified and reaffirmed, as amended by Resolution No. 2022-314 and this Resolution, and the Authority is hereby directed to implement the Redevelopment Plan in accordance with the Act subject to City Administration’s written approval of the satisfaction of the following contingencies:
    - A. Developer shall have closed on the purchase of the land within Redevelopment Area No. 28 and shall be the owner in fee simple of such land; and
    - B. Developer shall provide written documentation of a contract between Developer and the entity that has been targeted as the “new to market approximately ~~150,000~~ 148,000 SF retailer positioned on the southern portion of the redevelopment site” for its participation in the Redevelopment Project acquisition of Lot 3 in the Redevelopment Area on or before April 6, 2027.
2. All other provisions of Resolution No. 2022-314 shall remain in full force and effect, except as amended herein. This amendment shall be effective only upon approval of this resolution by a majority of the members of the City Council.

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Approved as to Form	☐ _____
December 16, 2022	☐ City Attorney

Adopted by the City Council of the City of Grand Island, Nebraska, November 22, 2022

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Roger G. Steele, Mayor

Attest:

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RaNae Edwards, City Clerk