



City of Grand Island

Tuesday, March 25, 2014

Council Session (Corrected)

Item F-1

#9478 - Consideration of Sale of Real Estate to Michael Lilienthal

Staff Contact: Stacy Nonhof, Assistant City Attorney

Council Agenda Memo

From: Stacy R. Nonhof, Assistant City Attorney

Meeting: March 25, 2014

Subject: Land Sale to Michael Lilienthal

Item #'s: F-1

Presenter(s): Stacy R. Nonhof, Assistant City Attorney

Background

In the years following 9/11, Homeland Security resources were expected to be available for local application. Here, in Grand Island, the plan was to apply for funds to develop a fire training center. In December of 2005, the City Of Grand Island purchased two tracts of land measuring approximately 55.27 acres located at the corner of East Highway 30 and South Stuhr Road for \$583,900. No development occurred at the site and no development plans for the land exist.

Beginning in 2008, the larger tract of land (34.67 acres) was rented out for agricultural purposes. Through 2013, the City received rent payments of \$32,813.50. Aside from the approximate \$5,000 annual cash rent, the land is essentially a non-revenue producing city asset.

During the Council retreat in early 2011, the city's financial health and financial sustainability were discussed. This discussion included the status of the city's excess real estate.

Interest in acquiring the 55 acre site was expressed in September 2013. A Request for Proposals was issued in November 2013. In response to the Request for Proposals, two proposals were received and opened on November 12, 2013. The proposal submitted by Michael Lilienthal was reviewed and based upon the pre-approved selection criteria, determined to be the highest and best use of the property. The proposal of Michael Lilienthal is in compliance with all other terms of the Request for Proposals. The Legal Department has negotiated a Purchase Agreement with Michael Lilienthal in the amount of \$583,900.00.

Discussion

The current Farm Lease was terminated on December 3, 2013. There will be no rent received this year if this sale is not approved.

Mr. Lilienthal owns the adjacent property. Mr. Lilienthal, as part of the purchase agreement, is seeking tax increment financing for the purchase and redevelopment of this property and the redevelopment of the adjacent property owned by him. If tax increment financing cannot be obtained to the buyer's satisfaction, per the Purchase Agreement, Mr. Lilienthal has the right to cancel this agreement with no penalty to him. It is understood by Mr. Lilienthal that tax increment financing for the intended project cannot be guaranteed. The intended project that Mr. Lilienthal is seeking tax increment financing for was disclosed in the Proposal. Tax increment financing is one piece of the puzzle of the larger picture for the intended use of not only this property but also the redeveloped use of the adjacent property.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. 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 recommends selling these two tracts of land to Michael Lilienthal.

Sample Motion

Move to adopt Ordinance #9478 authorizing the sale of land to Michael Lilienthal.



Stacy Nonhof, Purchasing Agent

*Working Together for a
Better Tomorrow, Today*

**REQUEST FOR PROPOSAL
FOR
PURCHASE OF AGRICULTURAL LAND OWNED BY THE
CITY OF GRAND ISLAND**

RFP DUE DATE: November 12, 2013 at 4:15 p.m.

DEPARTMENT: Legal

PUBLICATION DATE: October 29, 2013

NO. POTENTIAL BIDDERS:

SUMMARY OF PROPOSALS RECEIVED

**MRL Crane Service – Michael Lilienthal
Dixon**
Grand Island, NE

Midwest Express – Craig and Lesa
Grand Island, NE

cc: Mary Lou Brown, City Administrator
Stacy Nonhof, Purchasing Agent

Jaye Monter, Finance Director
Bob Sivick, City Attorney

P1688

PURCHASE AGREEMENT

This Purchase Agreement ("Agreement") is entered into this _____ day of March, 2014 by and between the City Of Grand Island, ("Seller") and Michael Lilienthal ("Buyer").

Recitals:

WHEREAS, Seller is the owner of the two agricultural tracts of land and improvements located at the Southwest corner of East U.S. Highway 30 and South Stuhr Road, Grand Island, Nebraska, and legally described as:

Tract 1: A miscellaneous tract of land containing 34.67 acres in the East ½ of the Northeast ¼, Section 15, Township 11 North, Range 9 West of the 6th P.M., City of Grand Island, Hall County, Nebraska.

Tract 2: A miscellaneous tract of land containing 20.60 acres in the East ½ of the Northeast ¼, Section 15, Township 11 North, Range 9 West of the 6th P.m., City of Grand Island, Hall County, Nebraska, which tracts are referred to collectively as the "Property"; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase the Property, subject to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing, it is agreed by Seller and Buyer as follows:

1. Transfer of Property

- 1.1 Sale and Purchase. Seller agrees to sell the Property to Buyer, and Buyer agrees to purchase the Property from Seller on the terms and conditions set forth herein.
- 1.2 Purchase Price. The purchase price for the Property shall be FIVE HUNDRED EIGHTY-THREE THOUSAND AND NINE HUNDRED DOLLARS (\$583,900.00) payable in full at Closing.
- 1.3 Closing. The Closing shall take place on or about July 1, 2014, at the office of Grand Island Abstract, Escrow & Title Company in Grand Island, Nebraska.
- 1.4 Title Insurance. Within ten (10) days of execution of this Agreement, Seller shall furnish Buyer with an initial commitment for an owner's policy of title insurance prepared by Grand Island Abstract, Escrow & Title Company ("Title Company"), which insures marketable title to the Property; subject only to such exceptions as may be acceptable to Buyer ("Permitted Exceptions"). The initial commitment

shall be revised as needed upon receipt of the Survey provided herein. Buyer shall notify Seller of any objections to the initial or revised title commitment and Seller shall have a reasonable period to cure such objections. If Seller is unable or unwilling to cure any objections, Buyer may terminate this Agreement upon written notice to Seller without penalty.

- 1.5 Title and Possession. Seller agrees to convey the Property to Buyer at Closing by General Warranty Deed subject to only the Permitted Exceptions. Buyer shall receive full possession of the Property free and clear of any lease agreement or occupancy by any third party.
- 1.6 Taxes, Assessments, and Other Costs. All property taxes and assessments related to the Property for 2013 and all prior years (if any) shall be paid by Seller at or prior to Closing. All property taxes and assessments for the Property for 2014 shall be prorated to the date of Closing. Any special assessment levied or assessed against the Property prior to Closing shall be paid by Seller. Seller shall pay the transfer tax (if any) which is payable upon the recording of the warranty deed from Seller to Buyer. Buyer shall pay the fee for recording the deed. The Title Company shall close the transaction. The parties shall split the closing costs and fees, including the cost of the owner's title insurance policy.
- 1.7 Personal Property. Seller shall remove all of its personal property from the Property prior to closing.
- 1.8 Buyer Contingencies. Buyer's obligation to close the purchase of the Property is conditional upon:
 - 1.8.1 Seller providing a current ALTA survey of the Property (the "Survey") at Seller's expense, prepared by a Registered Public Surveyor acceptable to Buyer and the Title Company in their sole and absolute discretion. The Survey shall be satisfactory in all respects to Buyer in his sole and absolute discretion and shall reflect all improvements, highways, easements, rights-of-way and other matters affecting, located on or abutting the Property and shall be in a form sufficient to cause the Title Company to delete all standard and pre-printed exceptions contained in the Commitment. The Survey must reflect that there are no easements or other matters which would prevent or interfere with Buyer's intended use, development and improvement of the Property, that the Property has the required access, ingress and egress to abutting streets and highways, and that the Property contains not less than the number of acres described in the legal description set forth herein, exclusive of any portion lying within the right-of-way of any public street or highway;

- 1.8.2 Buyer's ability to obtain access and easements and the abandonment of easements objectionable to Buyer for his intended use, development and improvement of the Property upon such terms as are acceptable to Buyer in his sole and absolute discretion;
- 1.8.3 Buyer's ability to obtain tax increment financing for the purchase and redevelopment of the Property and the redevelopment of the adjacent property owned by Buyer's entity, Central Nebraska Transload I, LLC, a Nebraska Limited Liability Company, in such amounts and upon such terms as are acceptable to Buyer in his sole and absolute discretion.
- 1.8.4 If Buyer is unable to accomplish the foregoing contingencies to his satisfaction, Buyer may terminate this Agreement upon written notice to Seller without penalty.

2. Representations and Warranties

- 2.1 Representations and Warranties of Seller. Seller represents and warrants to Buyer as follows:
 - 2.1.1 Organization; Power, Good Standing. Seller is a municipal corporation organized and existing under the laws of the State of Nebraska and has all requisite power and authority to enter into this Agreement and perform the obligations hereunder.
 - 2.1.2 Authority Relative to Agreement. This Agreement has been duly approved by the City Council of Seller and executed by its Mayor, and constitutes a legal, valid, and binding obligation of Seller, enforceable against Seller in accordance with its terms.
 - 2.1.3 "AS-IS". Seller is selling the Property "AS-IS," making no representations or warranties concerning the Property of any kind or nature except Seller warrants the following:
 - A. Its ownership of the Property and the conveyance of marketable title to Buyer at closing.
 - B. Seller has no knowledge and has received no notice of: (i) any violation of applicable occupational safety and health standards established by law or regulation, or (ii) any hazardous materials or conditions existing or which existed in the past on or in the vicinity of the Property with respect to the air, soil, surface waters, ground waters or stream sediments, which may pose a threat to human health or to the environment and/or may require remedial action or any violations of any Environmental Laws.

C. The Property and its current use are in compliance with all applicable zoning ordinances.

2.1.4 Inspections. Buyer may obtain such inspections of the Property as Buyer may desire at Buyer's expense. If Buyer is dissatisfied with the condition of the Property or compliance with any applicable zoning or environmental regulations established by law or regulations and if Seller declines to make any requested repairs to the Property or comply with any claimed violations, Buyer may terminate the Agreement upon written notice to Seller without penalty. Seller has no obligation to perform any repairs to the Property.

2.2 Representations and Warranties of Buyer. Buyer represents and warrants to Seller as follows:

2.2.1 Organization; Power, Good Standing. Buyer is an individual citizen and has all requisite power and authority to enter into this Agreement and perform the obligations hereunder.

3. Miscellaneous

3.1 Binding Effect; Benefits. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Notwithstanding anything contained in this Agreement to the contrary, nothing in this Agreement, express or implied, is intended to confer on any person other than the parties hereto or their respective successors and assigns any right, remedy, obligation, or liability under or by reason of this Agreement.

3.2 Risk of Loss. All risk of loss or damage to the Property by fire or other casualty until Closing is assumed by the Seller. In the event of a material loss or damage to the Property the Buyer shall have the right to cancel this Agreement. Seller has no obligation to repair the Property.

3.3 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

3.4 Further Assurances. Each of the parties hereto, without further consideration, agrees to execute and deliver such other documents and take such other action, whether prior to or subsequent to Closing, as may be necessary to more effectively consummate the intent and purpose of this Agreement.

3.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.

- 3.6 Severability. If for any reason whatsoever any one or more of the provisions of this Agreement shall be held or deemed to be inoperative, unenforceable, or invalid, such circumstances shall not have the effect of rendering any of the other provisions of this Agreement inoperative, unenforceable, or invalid.
- 3.7 Survival and Nonmerger. All terms, conditions, representations, and warranties contained in this Agreement shall survive Closing, including, but not limited to, the execution and delivery of any deed related to the Property to be conveyed hereunder, and shall not merge into any deed.
- 3.8 Default. In the event of default by either party, the non-defaulting party may enforce all rights and remedies as by law provided.
- 3.9 Assignment. This agreement is assignable by Buyer to an entity in which he as a majority ownership interest upon prior written notice to the Seller.
- 3.10 Waiver. Buyer may waive any of the foregoing conditions or contingencies upon written notice to Seller and proceed to close the purchase of the Property on the remaining applicable terms set forth herein.
- 3.11 1031 Tax Free Exchange. Seller agrees to accommodate Buyer in effectuating a like-kind exchange of property pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended, provided that such exchange results in: (a) no additional cost, liability or expense to Seller; and (b) no delay to the closing. Seller's agreement to cooperate with Buyer to effect an exchange shall not require Seller to take title to any property, nor to incur any expense, liability, loss or risk as a consequence of the exchange

IN WITNESS WHEREOF THE PARTIES HAVE SET THEIR RESPECTIVE HANDS
THE DAY AND YEAR ABOVE WRITTEN.

SELLER:

BUYER:

CITY OF GRAND ISLAND, NEBRASKA

BY _____
MAYOR

MICHAEL LILIENTHAL

ATTEST:

ATTEST:

BY _____
CITY CLERK

BY _____

STATE OF NEBRASKA

SS:

COUNTY OF HALL

The foregoing was acknowledged before me on the _____ day of _____, 2014, by Jay Vavricek, Mayor of the City of Grand Island, Nebraska, a municipal corporation.

Notary Public

STATE OF NEBRASKA

SS:

COUNTY OF HALL

The foregoing was acknowledged before me on the _____ day of _____, 2014, by Michael Lilienthal.

Notary Public

THIS CONTRACT IS IN DUE FORM ACCORDING TO LAW AND HEREBY APPROVED:

Date: March _____, 2014

Date: March _____, 2014

Stacy R. Nonhof
Assistant Grand Island City Attorney

Ronald S. Depue
Attorney for Buyer

* This Space Reserved for Register of Deeds *

ORDINANCE NO. 9478

An ordinance directing and authorizing the sale of real estate to Michael Lilienthal, buyer; providing for the giving of notice of such conveyance and the terms thereof; providing for the right to file a remonstrance against such conveyance; providing for publication and the effective date of this ordinance.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA:

SECTION 1. The City of Grand Island, Nebraska, will convey to Michael Lilienthal, two tracts of land legally described as:

Tract 1:

A miscellaneous tract of land containing 34.67 acres in the East ½ of the Northeast ¼, Section 15, Township 11 North, Range 9 West of the 6th P.M., City of Grand Island, Hall County, Nebraska.

Tract 2:

A miscellaneous tract of land containing 20.60 acres in the East ½ of the Northeast ¼, Section 15, Township 11 North, Range 9 West of the 6th P.M., City of Grand Island, Hall County, Nebraska.

Approved as to Form ☐ _____
March 23, 2014 ☐ City Attorney

ORDINANCE NO. 9478 (Cont.)

SECTION 2. In consideration for such conveyance the buyer shall pay the City the sum of Five Hundred Eighty-Three Thousand and Nine Hundred and No/100 Dollars (\$583,900.00). The buyer will be responsible for the costs of recording the deed and one half the cost of a title insurance owner's policy and all the cost of any lender's policy. Conveyance of the real estate above described shall be by warranty deed, upon payment of the consideration pursuant to the terms and conditions of the Purchase Agreement between the parties.

SECTION 3. As provided by law, notice of such conveyance and the terms thereof shall be published for three consecutive weeks in the *Grand Island Independent*, a newspaper published for general circulation in the City of Grand Island. Immediately after the passage and publication of this ordinance, the City Clerk is hereby directed and instructed to prepare and publish said notice.

SECTION 4. Authority is hereby granted to the electors of the City of Grand Island to file a remonstrance against the conveyance of such within described real estate; and if a remonstrance against such conveyance signed by registered voters of the City of Grand Island equal in number to thirty percent of the registered voters of the City of Grand Island voting at the last regular municipal election held in such City be filed with the City Council within thirty days of passage and publication of such ordinance, said property shall not then, nor within one year thereafter, be conveyed.

SECTION 5. The conveyance of said real estate is hereby authorized, directed and confirmed; and if no remonstrance be filed against such conveyance, the Mayor shall make, execute and deliver to Michael Lilienthal, a warranty deed for said real estate, and the execution of such deed is hereby authorized without further action on behalf of the City Council.

ORDINANCE NO. 9478 (Cont.)

SECTION 6. This ordinance shall be in force and take effect from and after its passage and publication, within fifteen days in one issue of the Grand Island Independent as provided by law.

Enacted: March 25, 2014.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk