



City of Grand Island

Tuesday, June 10, 2014

Council Session

Item I-5

#2014-166 – Consideration of Approving Settlement with the Ponderosa Lake Estates Subdivision Homeowners Associations, Inc.

Staff Contact: Robert J. Sivick, City Attorney

Council Agenda Memo

From: Robert J. Sivick, City Attorney

Meeting: June 10, 2014

Subject: Consideration of Approving Settlement with the Ponderosa Lake Estates Subdivision Homeowners Association, Inc.

Item #'s: I-5

Presenter(s): Robert J. Sivick, City Attorney

Background

In the early 1990s the City of Grand Island (City) installed a water line in a portion of the Ponderosa Lake Estates Subdivision (Ponderosa) without obtaining the necessary construction and permanent easements. This situation was discovered last year. Since that time the City Legal Department investigated the matter and engaged in negotiations with Ponderosa's legal counsel to resolve the matter without resorting to litigation.

Discussion

The Release and Settlement Agreement and the Resolution approving such is before you for consideration this evening. They will allow the City to obtain the necessary permanent easement for the water line in question and release the City from any present and future claims for damages arising out of the installation of said water line. In exchange for the easement and release the City agrees to pay the Ponderosa Lake Estates Subdivision Homeowners Association, Inc., twenty thousand dollars (\$20,000.00).

Alternatives

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

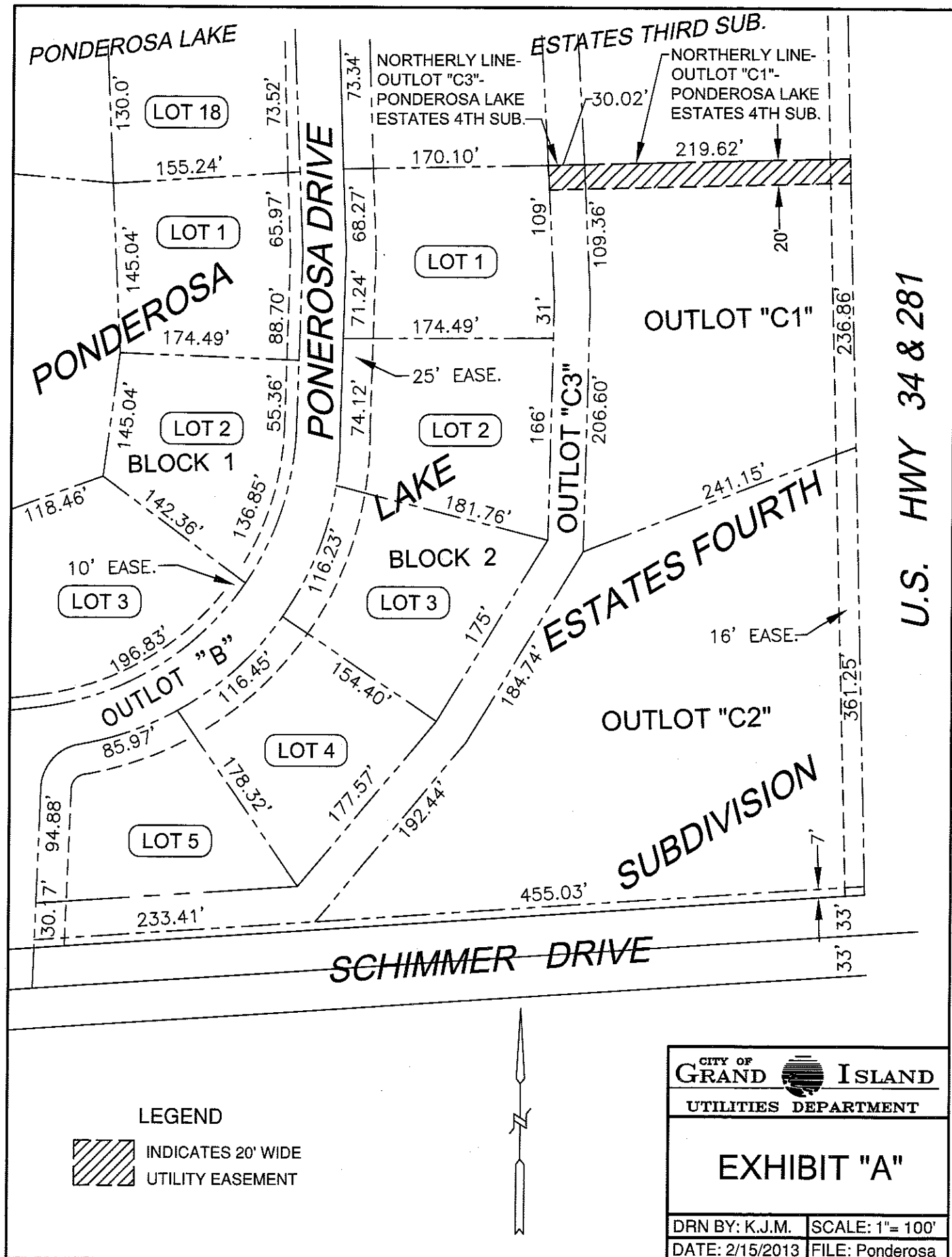
1. Move to approve.
2. Refer the issue to a Committee.
3. Postpone the issue to a future date.
4. Take no action on the issue.

Recommendation

The City Administration recommends the Council approve Resolution 2014-166 approving the Release and Settlement Agreement with the Ponderosa Lake Estates Subdivision Homeowners Association, Inc.

Sample Motion

Move to approve Ordinance Resolution 2014-166 approving the Release and Settlement Agreement with the Ponderosa Lake Estates Subdivision Homeowners Association, Inc. and authorizing the Mayor to execute the same on behalf of the City.



RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement (the "Agreement"), executed this _____ day of _____, 2014, by and between the City of Grand Island, Nebraska, a municipal corporation (hereinafter "City") and the Ponderosa Estates Subdivision through the City of Grand Island, (hereinafter "Subdivision"), is intended to settle and compromise once and for all, all of the disputes, controversies, and claims arising out of the City's Settlement Agreement, obtaining a utility easement through Outlot "C1" of the Ponderosa Subdivision, and any and all other claims arising prior to the date of this agreement.

In consideration of the premises and mutual promises contained herein, it is hereby agreed as follows:

1. The City, in consideration for signing this Settlement Agreement and General Release and the Subdivision's fulfillment of the promises herein, agrees to pay the Subdivision the total sum of Twenty Thousand and no/100 Dollars (\$20,000.00) in complete settlement arising out of the City securing a utility easement with the Subdivision, and any and all other claims potentially arising from the events occurring prior to the execution of this agreement. Payment shall be made as follows:

Within ten (10) business days of receipt of the parties executed agreement, the City agrees to pay to the Subdivision the cash sum hereinabove set forth.

2. The Subdivision, in consideration of the receipt of the aforementioned sum, does hereby, on behalf of its successors, and assigns release, acquit and forever discharge the City from any and all claims, actions, causes of action, rights, demands, damages or accounting of whatever nature, whether known or unknown, including but not limited to claims, demands, or causes of action arising out of or in any way

connected to or with the granting of the utility easement between the City and the Subdivision.

3. It is expressly understood and agreed that this release and settlement agreement covers and includes, but is not limited to any claim for actual damages, compensatory damages, statutory damages, common law damages, punitive damages, or any other type of damages and includes all attorney's fees incurred in the granting of the utility easement for the City through Outlot "C1" of the Subdivision.

4. All agreements and understandings between the City and the Subdivision are invited and expressed herein, and the terms of this release and settlement agreement shall be construed as continuing and constituting a contract between the City and the Subdivision.

5. The invalidity or unenforceability of any provision of this agreement shall not effect or impair any other provisions which shall remain in full force and effect. If any portion of this release and agreement is found to be invalid, the parties agree to enter into a full and general release of each other that would be valid.

IN WITNESS WHEREOF, the parties have signed this agreement on the day and year set opposite their respective names.

STATE OF NEBRASKA)
) ss.
COUNTY OF HALL)

The undersigned hereby certifies that he is the City Mayor; that he is familiar with the contents of the above and foregoing Release and Settlement Agreement and that the statements set forth therein are true and correct as he verily believes.

Jay Vavricek, Mayor

RESOLUTION 2014-166

WHEREAS, in the early 1990s the City of Grand Island installed a water line in a portion of the Ponderosa Lake Estates Subdivision without first obtaining the necessary construction and permanent easements; and

WHEREAS, the City Legal Department negotiated a settlement with the Ponderosa Lake Estates Subdivision Homeowners Association, Inc. containing terms granting the City a permanent easement for the water line in question and releasing it from any present and future claims arising out of the installation of said water line; and

WHEREAS, the City Legal Department advises approving the Release and Settlement Agreement is in the best interests of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the City approves the Release and Settlement Agreement with the Ponderosa Lake Estates Subdivision Homeowners Association, Inc. and authorize the Mayor to execute the same on behalf of the City.

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Adopted by the City Council of the City of Grand Island, Nebraska, June 10, 2014.

Jay Vavricek, Mayor

ATTEST:

RaNae Edwards, City Clerk

Approved as to Form	☒ _____
June 6, 2014	☒ City Attorney