



City of Grand Island

Tuesday, April 13, 2004

Council Session

Item E4

Public Hearing on Acquisition of Property Located at 508 South Shady Bend Road (Jerry and Pamela Miller)

Staff Contact: Steven P. Riehle, P.E., Public Works Director

Council Agenda Memo

From: Steven P. Riehle, P.E., Director of Public Works
Doug Walker, City Attorney

Meeting: April 13, 2004

Subject: Public Hearing on Purchase of Miller Property located at
508 South Shady Bend Road (Jerry and Pamela Miller)

Item #'s: E-4 & I-1

Presenter(s): Steven P. Riehle, P.E., Director of Public Works

Background

A public hearing must be held and Council action must be taken by resolution for the City of Grand Island to acquire property. Jerry and Pamela Miller own the property at 508 Shady Bend Road and have agreed to sell there property as part of the overall settlement of the litigation that was initiated by the Millers in 2003.

Discussion

The settlement of the lawsuit is in the total amount of \$200,000. This property is being acquired for \$175,000 of the total. The remaining \$25,000 of the settlement is for partial reimbursement of the Miller's expenses including remediation of the algae growth, fish kill problems, and water quality testing in their lake.

The Millers property was appraised for \$175,000 in an appraisal done several months ago by a certified appraiser. The appraisal was part of establishing an acquisition price for the real estate and an overall settlement for the lawsuit. An appraisal was also done to comply with the requirements of Nebraska Revised Statute Section 13-403 which requires municipalities to obtain an appraisal of real property purchased for more than \$100,000.

Alternatives

1. Approve the acquisition of the Miller Property.
2. Disapprove or /Deny the acquisition of the Miller property.
3. Modify the recommendation to meet the wishes of the Council.
4. Table the issue.

Recommendation

City Administration recommends that the Council approve the purchase of the Miller Property for \$175,000 and pass a resolution authorizing the Mayor to sign a purchase agreement with the Millers and approve the overall settlement of all legal issues in the lawsuit.

Sample Motion

Move to approve the acquisition of the Miller Property.

HARDING, SHULTZ & DOWNS

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*Please respond to our
Lincoln office*

March 25, 2004

Mr. Vincent Valentino
Angie Murphy Valentino & Campbell
617 Grant Avenue
P.O. Box 584
York, NE 68467-0584

Re: *Jerry and Pamela Miller Property
508 S. Shady Bend Road
Grand Island, Nebraska*

Dear Mr. Valentino:

As you know, I represent the City of Grand Island (hereinafter referred to as "the City"). The purpose of this letter is to confirm the agreement we have reached in oral negotiations concerning the real property located at 508 S. Shady Bend Road, Grand Island, Nebraska (hereinafter referred to as "the subject property") owned by your clients, Jerry Miller and Pamela Saber-Miller (hereinafter referred to as "the Millers" or as "your clients"), and the complete resolution of all claims and causes of action which the Millers have or may have against the City of Grand Island and any officials, employees or representatives related in any manner to such property or your clients' agreement to convey such property to the City and relocate. As we have discussed, this agreement is subject to and contingent upon approval of the Grand Island City Council, which will be sought promptly upon your clients' signature and return to me of the original of this letter (an additional copy of this letter is enclosed for your file).

It is my understanding that an agreement has been reached on the following terms, subject to and contingent upon the subsequent approval of the Grand Island City Council:

1. The City would pay the total sum of \$200,000.00 to the Millers in exchange for the conveyance to the City by warranty deed of a fee simple interest in the subject
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property (to be legally described exactly as set forth in the Joint Tenancy Warranty Deed dated June 1, 2001 through which the Millers acquired their interest in the property, which was recorded with the Hall County Register of Deeds on June 5, 2001 as Instrument No. 200105340, a copy of which is attached hereto), such sum to be due at the time of closing provided for below.

2. Such conveyance would be free of all liens, debts, taxes, special assessments and other encumbrances, but subject to any easements, reservations, covenants and restrictions of record. All real estate taxes on the subject property for the year in which closing takes place shall be prorated, based on current assessment and tax rate, as of the date of closing. The Millers shall pay all real estate taxes for prior years.
 3. Such conveyance would be free of any right of occupancy of and/or access to the subject property by the Millers or any third persons, except as specifically provided for in this letter.
 4. Possession of the subject property shall be given to the City as of the date of closing. This agreement shall in no manner be construed to convey the subject property or to give any right of possession to the City prior to the date of closing. Risk of loss or damage to the subject property prior to the closing date shall be the sole responsibility of the Millers.
 5. The Millers shall be permitted to remove the double wide modular home currently located on the subject property at the Millers' sole expense and risk, provided that such modular home is removed prior to the date of closing provided for below (or such later specific date as may be subsequently agreed to in writing by the Millers and a representative of the City authorized by the City Council to enter into such a written agreement).
 6. The City shall seek to obtain a title insurance policy prior to closing insuring marketability of title. A current title insurance commitment, showing a good and marketable title in fee simple in the Millers in accordance with Nebraska title standards, is a precondition to the City's obligation to close the purchase of the subject property. Should a valid title defect exist, the Millers shall have a reasonable time to correct said defect. If any title defects are not cured within a reasonable time period, the City may declare this agreement null and void. If a
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survey is necessary, such survey shall be obtained at the City's expense and the Millers agree to grant access to the property for the purpose of being surveyed.

7. Approval of the terms of the agreement set forth in this letter by the Grand Island City Council would be sought promptly following your clients' execution of and delivery to me of a written memorandum of agreement to convey such property to the City on the terms set forth herein, such written memorandum to be in the form of your clients' notarized signatures on the original of this letter.
 8. If City Council approval is obtained to proceed with the purchase of the subject property in accordance with the terms of the agreement set forth in this letter, your clients would convey such property to the City by warranty deed in a form satisfactory to the City at a closing to occur no later than ninety (90) days after formal approval by the City Council of the written memorandum of agreement set forth in this letter and previously signed by your clients as provided for in Item 5 above; *provided, however* that such closing shall not occur prior to June 30, 2004 and the aforesaid ninety (90) day period shall be deemed extended to June 30, 2004 if it would otherwise expire prior to June 30, 2004 and *provided further* that the Millers and a representative of the City authorized by the City Council may enter into a subsequent written agreement to permit the Millers, the aforesaid modular home and/or other personal property belonging to the Millers to remain on the subject property for a specified period of time following such date of closing without affecting the validity and effectiveness of the Millers' conveyance of a fee simple interest in the subject property to the City.
 9. At the time of closing and as a condition of the City's obligation to pay the consideration provided for in Item 1 above, the Millers shall execute a general release in a form satisfactory to the City to completely and forever release any and all rights, claims and causes of action they may have or hereafter acquire against the City or any officials, employees or representatives of the City relating in any manner to the subject property, their ownership and/or occupancy of the subject property, any asserted property damage and any asserted personal injury, including, but not limited to:
 - (A) All rights, claims and/or causes of action asserted in your letter to the Grand Island City Clerk dated November 6, 2003 that you described as "Political Subdivision Tort Claim and Public Records Demand for Jerry and Pamela Miller;"
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- (B) Any other rights, claims and/or causes of action against the City or any officials, employees or representatives of the City for any property damage personal injuries and/or other interference with any right(s) arising from or related in any manner to the subject property and/or any act or omission of the City or any representative(s) of the City that is asserted to have had any effect on the subject property and/or on your clients;
 - (C) Any rights, claims and/or causes of action of any kind relating to and/or arising in any manner from any events, transactions or occurrences occurring prior to the date of such release;
 - (D) Any rights, claims and/or causes of action of any kind relating to and/or arising in any manner from any occupancy of the subject property by the Millers and/or any presence on the subject property of any property belonging to the Millers, whether occurring prior to or following the date of closing provided for above;
 - (E) Any rights, claims and/or causes of action arising under and/or from any state or federal statutes and relating in any manner to (i) the subject property, (ii) the Millers' conveyance of the subject property, (iii) the relocation of any residence, business and/or tenant occurring either prior to or as a result of such conveyance and/or this settlement, (iv) any occupancy of the subject property by the Millers following the date of closing provided for above and/or (v) any presence on the subject property of any property belonging to the Millers following the date of closing provided for above – the rights, claims and/or causes of action referred to in this subparagraph 7(E) shall include, but not be limited to, any rights, claims and/or causes of action arising under and/or from the Nebraska Relocation Assistance Act, Neb. Rev. Stat. §§ 76-1214 to 76-1242;
 - (F) Any other rights, claims and/or causes of action arising from or related in any manner to the Millers' conveyance of the subject property and/or the relocation of any residence, business and/or tenant occurring either prior to or as a result of such conveyance and/or this settlement.
10. The pending litigation instituted by the Millers and which is pending in the Hall County District Court as Case No. CF03-421 shall be dismissed, with prejudice, promptly following the time of closing provided for above and such dismissal
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shall require each party to bear his, her or its own costs, attorney's fees and expert fees, and your clients will sign any and all documents necessary to authorize their attorneys to effectuate the dismissal of such litigation on such terms. The Millers further agree they will not institute any other litigation, claim or proceeding in any forum to assert any claim or contention against the City and/or any employees or representatives of the City that has been previously asserted by the Millers in either any prior or pending litigation or in any tort claim proceeding.

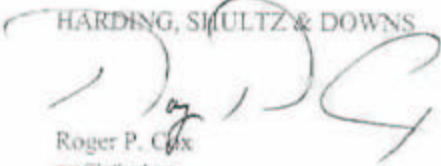
11. If the City Council formally approves the terms of the agreement set forth in this letter, a duly authorized representative of the City shall promptly affix his or her signature on the space provided for such signature below and a copy of this letter, bearing such signature, shall be promptly provided to the Millers.
12. There are no agreements between the parties other than as expressly set forth in this letter and the agreement set forth in this letter shall not be modified without the express written consent of both the Millers and the City (*provided* that this Item 12 shall not be construed to prevent the parties from entering into a supplemental written agreement pursuant to Items 5 and/or 8 above).
13. This agreement supersedes all prior discussions, negotiations and agreements regarding the subject matter of this agreement.

Please have your clients each sign below on the spaces for their respective signatures, have their signatures notarized and return the signed original letter of this letter to me to serve as a written memorandum of agreement to convey the property to the City on the terms set forth herein. I will notify you promptly when the City Council has determined whether to approve the terms of this written memorandum of agreement.

Thank you for your time and consideration.

Very truly yours,

HARDING, SMULTZ & DOWNS


Roger P. Cox

rcx@hdtlegal.com

RPC:tbm