



# **City of Grand Island**

**Tuesday, March 08, 2005**

**Council Session**

## **Item E1**

**Public Hearing on Acquisition of Property Located at 1204 West  
2nd Street (James and Barbara Wiltgen)**

**Staff Contact: Doug Walker**

# **Council Agenda Memo**

**From:** Douglas R. Walker, City Attorney

**Meeting:** March 8, 2005

**Subject:** Public Hearing Regarding the Purchase of the Property Located at 1204 West Second Street and Resolution Authorizing the Purchase of the Property at 1204 West Second Street, Grand Island, Nebraska

**Item #'s:** E-1 & G-12

**Presenter(s):** Douglas R. Walker, City Attorney

## **Background**

The Grand Island Library Foundation has been acquiring property in the block west of the Edith Abbott Memorial Library to donate to the City of Grand Island. The Library Foundation did not have sufficient funds to purchase the property at 1204 West Second Street, which is currently occupied by a Taco John's restaurant. The City has entered into negotiations with the owners of this property, who are James J. Wiltgen and Barbara A. Wiltgen, and has concluded an Agreement for Warranty Deed for this property. The acquisition of this property and the Agreement for Warranty Deed are the subject of the public hearing and the subsequent resolution for the Council's consideration at this meeting.

## **Discussion**

In order to complete the purchase of all of the properties on the block west of the Edith Abbott Memorial Library, it was necessary for the City of Grand Island to purchase the property at 1204 West Second Street, on which a Taco John's restaurant is located. The agreement that has been reached with the current owners of the property, James J. Wiltgen and Barbara A. Wiltgen, takes into account the purchase of the property as well as several items of personal property in the restaurant business and relocation expenses. It is the opinion of city staff that the agreement that has been reached with the Wiltgens for the purchase of this property is an equitable agreement and will enable the city to complete the acquisition of property in the block west of the Edith Abbott Library to enable the planned library expansion.

## **Alternatives**

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

1. Move to approve the purchase of the property.
2. Do not pass the resolution authorizing the purchase of this property which would not enable the city to proceed with the purchase.
3. Postpone the issue to future date.
4. Take no action on the issue.

## **Recommendation**

City Administration recommends that the Council approve the purchase of the property at 1204 West Second Street for \$400,000 and pass a resolution authorizing the Mayor to sign the Agreement for Warranty Deed to complete the purchase.

## **Sample Motion**

Motion to approve the resolution authorizing the acquisition of the property at 1204 West Second Street, described as Fractional Lot 8 in Fractional Block 2, Spaulding and Gregg's Addition and its Complements, to-wit: Fractional Lot 8 in Fractional Block 16, Arnold and Abbott's Addition and Fractional Lot 8 in Fractional Block 2 in Arnold Place, all being additions to the City of Grand Island, Hall County, Nebraska.

## AGREEMENT FOR WARRANT DEED

THIS AGREEMENT made and entered into this 25<sup>th</sup> day of February, 2005, by and between the CITY OF GRAND ISLAND, NEBRASKA, A Municipal Corporation, hereinafter referred to as "City" and JAMES J. WILTGEN and BARBARA A. WILTGEN, Husband and Wife, hereinafter referred to as "Sellers".

1. STATEMENT OF PURPOSE. This Agreement for Warranty Deed (Agreement) is made for the purpose of setting forth the terms and conditions under which the City will buy and the Seller will sell the real estate described below in accordance with the parties' respective terms and conditions set herein.

2. REAL ESTATE TO BE CONVEYED. The tract of real estate to be conveyed by the Sellers to the City pursuant to this Agreement is described as follows:

Fractional Lot Eight (8) in Fractional Lot Block (2), Spaulding and Gregg's Addition and its complements, to-wit:

Fractional Lot Eight (8) in Fractional Block 16 in Arnold and Abbott's Addition, and Fractional Lot 8, in Fractional Block 2 in Arnold Place, all being additions to the City of Grand Island, Hall County, Nebraska.

In consideration of the following payments by the City to the Seller, the Seller agrees to sell and convey to the City by warranty deed, free and clear of all liens and encumbrances except covenants, easements and restrictions of record, the above described tracts. Closing shall occur at the earliest convenience of the parties following compliance with the conditions precedent set forth in this Agreement.

3. CONSIDERATION TO BE PAID. The consideration for the real estate described above to be paid by the City to the Seller will be in the total amount of Four Hundred Thousand Dollars (\$400,000.00). Of this amount, the City will pay Five Thousand Dollars (\$5,000.00) as a down payment, which will be due upon approval and execution of this Agreement by all parties hereto. The balance of Three Hundred Ninety Five Thousand Dollars (\$395,000.00) shall be payable upon closing.

4. TITLE INSURANCE. As soon as practical after execution of this Agreement by all parties, but prior to closing, the City may at its own cost obtain a current commitment for an owner's policy of title insurance for the above described tracts, in favor of the City. After receipt

of the commitment, the City shall have a period of thirty (30) days thereafter to examine the commitment to ascertain whether or not there is any defect or condition which renders any of the conditions precedent in this Agreement unsatisfied. In such event, the City shall during the examination period, provide written notice to the Seller specifying the relevant defect or condition (defect notice) and thereafter the Seller shall have a reasonable period of time, not to exceed ninety (90) days within which to cure such defect or condition and provide written notice of such cure (cure notice) to the City, or at the Seller's option, to provide the City written notice of the Seller's election to cancel this Agreement. If the City provides the Seller a defect notice in the manner and within the time specified herein, and the Seller fails to cure such defect or condition and provide the City with a cure notice, the City, at its sole discretion, may terminate this Agreement and Seller will be required to return the down payment or the City may file an action in the Hall County District Court to require specific performance of this Agreement by the Seller.

5. ENTRY PRIOR TO POSSESSION. Prior to the delivery of possession of the above described land, the City and/or its representatives shall have the right to enter upon this real estate after making an appointment with the Seller, for the purpose of making borings, surveys, studies or other tests which may assist the City in determining the suitability of this land for use as a location for development of public parking facilities and/or construction of a governmental building. The City shall indemnify and hold the Seller harmless from any injuries, liabilities or damages caused by the City's entry upon the land and shall restore the land to its original state prior to any such entry in the event closing does not occur. This undertaking of indemnity shall survive the closing and/or termination of this Agreement.

6. SURVEY. Prior to closing on this real estate, the City may at its own cost obtain a physical survey of the above described land. In the event the results of the survey disclose a defect or condition which renders any of the conditions precedent specified herein unsatisfied, the City shall provide written defect notice to the Seller and the Seller shall have a reasonable period of time, not to exceed ninety (90) days within which to cure such defect or condition and provide written cure notice to the City or, at the Seller's option, to provide the City written notice of the Seller's election to cancel this Agreement.

7. CLOSING AND POSSESSION. Closing shall occur on or about April 11, 2005, after approval and execution of this Agreement by all parties and completion of all

conditions precedent. Seller may continue to occupy this real estate until June 30, 2005, when Buyer shall be entitled to complete possession of the premises. Buyer may rent the premises to the Seller after the date of possession on a month to month basis depending on when the Buyer needs to develop this property.

8. CONDITIONS PRECEDENT. The City's obligation to purchase this real estate and pay the purchase price for the respective tracts are subject to the following conditions precedent having been fully satisfied or waived, in writing, by the City:

- a. The Seller shall have, and be able to convey to the City at closing, marketable fee simple title to the real estate by warranty deed, free and clear of all liens, claims and encumbrances.
- b. There shall be no pending proceedings or actions of any kind whatsoever, or judgments or claims or any nature whatsoever, pending against the Seller with respect to the above described real estate.
- c. The above referenced survey of the above described real estate shall disclose that to the respective tracts which would interfere with the development or use of any of the tracts by the City as public parking facilities or a location of a governmental building; that there are no material encroachments or projections on the property structures, facilities or improvements.
- d. There shall be no uncured violations of any state, federal, local laws, ordinances or regulations with respect to the above described real estate.
- e. The borings, studies, inspections or other tests made by the City and/or its representatives pursuant to this Agreement shall not discover the presence of, release from or storage on the above described tracts of pollutants, contaminants other hazardous substances and shall not discover that soil, drainage or subsurface conditions render the property not suitable for use of any one or more of the tracts for public parking facilities or governmental buildings.
- f. The above described tracts shall be free and clear of all leases, licenses, tenancies, and other occupancies and all adverse claims however they may be derived or claimed.
- g. The above described tracts shall be in substantially the same physical condition as they are on the date of execution of this Agreement by all parties.

- h. There shall be no unpaid bills, charges, costs or expenses of any kind which create or permit the filing of a statutory lien of any kind against any of the above described real estate.

The City shall have a period of 30 days from the date of receipt of the commitment for an owner's policy of title insurance during which to determine that the foregoing conditions precedent have been met, to the reasonable satisfaction of the City and to deliver written notice to the Seller specifying, in reasonable detail, all conditions precedent (condition notice) which have not been met. Upon receipt of such condition notice, the Seller, may at their option, elect to cancel this Agreement by written notice to the City in which event this Agreement shall be automatically canceled, or elect to undertake such action as is necessary to satisfy the conditions precedent identified in the condition notice. If the Seller elects to undertake such action as is necessary to satisfy the conditions precedent identified in a condition notice, the Seller shall have a reasonable period of time, not to exceed ninety (90) days, within which to complete such action as is necessary to meet all unsatisfied conditions precedent identified in said condition notice. If the Seller fails to satisfy such conditions precedent, the City may elect to terminate this Agreement or waive such unsatisfied condition precedent. Upon expiration of the 30 day due diligence period set forth above, unless the City has provided a condition notice to the Seller in the manner and within the time specified herein, the City shall be deemed to have waived any right to terminate this Agreement because of the non-satisfaction of any of the foregoing conditions precedent and, subject to the Seller's performance of their obligations under this Agreement, the City shall be obligated to consummate the purchase transactions described above.

9. ENVIRONMENTAL WARRANTIES. The Seller hereby represents and warranties that during its period of ownership, the Seller, its agents and employees, have complied with all federal, state and municipal environmental laws, regulations and ordinances as they relate to the above described tracts, and that the Seller has no actual notice or knowledge of any prior violations of environmental laws effecting the tracts.

10. TAXES. The Seller shall pay all real estate taxes for 2004 and all prior years which are levied on the above described real estate prior to the date of closing. Taxes for 2005 shall be prorated to the date of closing.

11. CLOSING EXPENSES. The City shall pay all closing costs in connection with the above described tracts.

12. BUYER'S RIGHTS TO RENTS AND FIXTURES. The Buyer shall receive the following items of furniture, fixtures and equipment along with the real estate: seating, steam table, exhaust system, menu boards and exterior signs.

13. RELOCATION RIGHTS AND EXPENSES. The Sellers acknowledge that the purchase price set forth above includes compensation for relocation assistance and the Sellers waive any rights, claims or causes of action arising under and/or from any State or Federal Statutes including, but not limited to, the Nebraska Relocation Assistance Act, Neb. Rev. Stat., §76-1214 to §76-1242.

14. NOTICES. All notices envisioned under the terms and conditions of this Agreement may be sent to the other party by first class mail, postage prepaid and addressed as follows or delivered in hand to said same addresses:

City of Grand Island	Mr. James J. Wiltgen
Attention: City Attorney	P.O. Box 1835
100 East First Street	Kearney, NE 68848
P.O. Box 1968	
Grand Island, NE 68802-1968	

15. CHOICE OF LAWS. This Agreement shall be construed in accordance with the laws of the State of Nebraska and the United States of America.

16. ENTIRE AGREEMENT. This Agreement shall constitute the entire agreement between the City and Seller, notwithstanding any written or oral agreements to the contrary. This Agreement may be amended only in writing, duly reviewed, approved and executed by the respective parties.

17. BINDING EFFECT. All covenants and conditions herein contained shall extend to and be obligatory upon the successors, assigns, heirs and legal representatives of the parties hereto.

ATTEST:

CITY OF GRAND ISLAND, NEBRASKA,  
A Municipal Corporation,

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

By: \_\_\_\_\_  
Jay Vavricek, Mayor

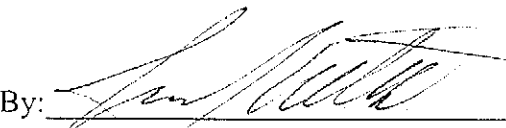



STATE OF NEBRASKA )  
 ) ss:  
COUNTY OF HALL )

Before me, a notary public qualified in said county, personally came Jay Vavricek, Mayor of the City of Grand Island, Nebraska, a municipal corporation, known to me to be such officer and the identical person who signed the foregoing document and acknowledged that the foregoing signature was his voluntary act and deed pursuant to Resolution \_\_\_\_\_.

Witness my hand and notarial seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Notary Public

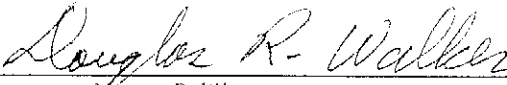
By:   
JAMES J. WILTGEN, Seller

By:   
BARBARA A. WILTGEN, Seller

STATE OF NEBRASKA )  
 ) ss:  
COUNTY OF HALL )

Before me, a notary public in and for said county and state, personally appeared James J. Wiltgen and Barbara A. Wiltgen, Husband and Wife, to me known to be the identical persons who executed the foregoing instrument and acknowledged the execution thereof to be their voluntary act and deed.

Witness my hand and notarial seal this 25<sup>th</sup> day of February, 2005.

  
Notary Public

