



# **City of Grand Island**

**Tuesday, June 10, 2008**

**Council Session**

## **Item G6**

**#2008-152 - Approving Authorization of Settlement with John R.  
Menard for Property along Capital Avenue**

**Staff Contact: Wes Nespor**

# **Council Agenda Memo**

**From:** Wesley D. Nespor, Legal Department  
**Meeting:** June 10, 2008  
**Subject:** Authorize Settlement of Menard Appeal  
**Item #'s:** G-6  
**Presenter(s):** Wesley D. Nespor, Attorney

## **Background**

The City previously authorized an improvement project to widen a portion of Capital Avenue. It was necessary to acquire permanent and temporary rights-of-way and easements to complete this project as designed. Negotiations to purchase the needed property from John R. Menard stalled and eminent domain proceedings were commenced. The Board of Appraisers awarded the sum of \$126,230.00 which was deposited by the City last year in an account controlled by the Hall County Court. Mr. Menard appealed the award to the District Court seeking more money.

## **Discussion**

After due consideration of all the factors, costs, and the potential outcome of a new trial in District Court, a settlement was negotiated by the legal department with John R. Menard subject to approval by the Nebraska Department of Roads (NDOR) and the City Council. Pre-approval has been received from the NDOR and approval is now sought from the Council.

## **Alternatives**

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

1. Move to approve
2. Move to deny

## **Recommendation**

City Administration recommends that the Council approve a resolution authorizing settlement with John R. Menard as follows:

That the One Hundred Twenty-Six Thousand Two Hundred Thirty Dollars (\$126,230.00) deposited with the Hall County Court in Case No. CI07-4107, together with any interest accrued thereon, may be released to John R. Menard.

The City of Grand Island, Nebraska, shall pay to John R. Menard the additional sum of Thirty-Seven Thousand Two Hundred Eighty-Three Dollars and Sixty-Six Cents (\$37,283.66) in full and complete settlement of all claims and damages arising out of the public taking of the subject property.

Each party shall be responsible for its own costs and attorneys fees and no additional interest will be due on the settlement except the interest that has accrued on the amount deposited in County Court.

Nothing in this Stipulation is intended to affect the City of Grand Island's ability to specially assess the adjoining real estate for street improvements.

## **Sample Motion**

Move to approve a resolution authorizing settlement with John R. Menard under the terms negotiated by the legal department.

RESOLUTION 2008-152

WHEREAS, the City of Grand Island, Nebraska condemned certain real estate belonging to John R. Menard; and

WHEREAS, John R. Menard appealed the award of appraisers to the Hall County District Court; and

WHEREAS, a settlement has been negotiated that is fair and reasonable;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the settlement is approved and the Mayor is authorized to sign the settlement agreement which provides, in pertinent part:

That the One Hundred Twenty-Six Thousand Two Hundred Thirty Dollars (\$126,230.00) deposited with the Hall County Court in Case No. CI07-4107, together with any interest accrued thereon, may be released to John R. Menard.

The City of Grand Island, Nebraska, shall pay to John R. Menard, the additional sum of Thirty-Seven Thousand Two Hundred Eighty-Three Dollars and Sixty-Six Cents (\$37,283.66) in full and complete settlement of all claims and damages arising out of the public taking of the subject property.

Each party shall be responsible for its own costs and attorneys fees and no additional interest will be due on the settlement except the interest that has accrued on the amount deposited in County Court.

Nothing in this Stipulation is intended to affect the City of Grand Island's ability to specially assess the adjoining real estate for street improvements.

Adopted by the City Council of the City of Grand Island, Nebraska, June 10, 2008.

---

Margaret Hornady, Mayor

Attest:

---

RaNae Edwards, City Clerk

Approved as to Form	<input type="checkbox"/>	_____
June 5, 2008	<input type="checkbox"/>	City Attorney