



# City of Grand Island

Tuesday, July 14, 2009

Council Session

## Item E3

**Public Hearing on Changes to Future Land Use Map of the GI  
Comp. Plan to Shift the Boundaries of Property Planned for GC  
General Commercial & Properties Planned for LM Low to  
Medium Density Residential in an Area East of So. Locust & So. of  
Wood River**

Staff Contact: Chad Nabity

# **Council Agenda Memo**

**From:** Regional Planning Commission

**Meeting:** July 14, 2009

**Subject:** Rezoning Request for 2819 South Locust, from R2 and LLR to B2 Zone. (C-20-2009GI)

**Item #'s:** E-3, E-4, F-2, & I-1

**Presenter(s):** Chad Nabity AICP, Regional Planning Director

## **Background**

Concerning rezone request of 2819 South Locust from R2 and LLR to B2 Zone. Rezoning of land proposed for changing located east of South Locust Street and north of Midaro Drive, in the City of Grand Island.

## **Discussion**

At the regular meeting of the Regional Planning Commission, held July 1st, 2009, the above item was considered following a public hearing, there was some discussion about property owners within 300 ft. of the rezone were notified of the requested zoning change.

From the Planning Commission Meeting:

Nabity explained that this application includes approximately 12 acres of land north of Midaro Drive and east of Locust Street. This property is owned by Lyman Richey Corporation and was the business location for the sand and gravel pit that operated out of this location since the mid 1970's. The property is located within the Grand Island municipal limits.

The applicant is asking that the zoning on this property be changed from R2 Low Density Residential and LLR Large Lot Residential to B2 General Business. The stated purpose of this rezoning is to allow the applicant to continue to store mining equipment and materials in the building.

Planning staff is including an amendment to the Grand Island Comprehensive Plan and Future Land Use map to change the proposed future use of this property



from low to medium density residential use to general commercial use as part of this application. A portion of the property is already planned for commercial use but the entire piece is not included in the general commercial area.

O'Neill entered into record the petition signed by 12 surrounding property owners, June 15, 2009, given to Grand Island Planning Department supporting the zoning request. *(A copy of this is attached for the Council Meeting)*

Entered into record was the protest for Central Sand & Gravel, 2819 S Locust by James and Bev Hatch.

The Hatch's protest the rezoning of 2819 S Locust, a part of Lot 34, Matthews Subdivision from R2 Low Density Residential Zone and LLR Large Lot Residential Zone to B2 General Business Zone contending that the following:

- a. The covenants prohibit anything but residential lots.
- b. This is a lake property for homes and should remain residential.
- c. The business does not abut a dedicated road.
- d. License agreement states when mining finished property will be sold.
- e. When 211 Midaro was purchased in 2003 Carl Roberts assured the Hatch's Central Sand and Gravel would clean up and leave after the Conditional Use Permit expired.
- f. Central Sand and Gravel has a history of not playing by the rules.
- g. Central Sand and Gravel has a new location on Shady Bend Road in Grand Island, it is time they finished moving.

Another concern presented by the Hatch's is the equipment that is lying around the location site is not appealing, they have future plans to build a new home on their property and the current view is obstructed by mining equipment. The Hatch's also stated the City is not taking action to enforce the clean up of the property now that the conditional use permit has expired.

The Hatches presented their testimony and evidence to the commission. A copy of their written and printed material was entered into the record of the case. *(A copy of this is attached for the Council Meeting)*

Mr. Don Razey, 520 Midaro Dr., stated Lyman Richey has never been a bad neighbor; they have followed through on every request he has made to them, working with him to improve area conditions. He stated there are some misstatements made by the Hatch's. Razey also commented on the Commercial building located to the west of Lyman Richey.

Carol White, 4315 Cremings St, Omaha NE, noted the scale house has been sold and removed as of July 1, 2009; all that remains is the metal building. Lyman Richey is currently mining in a separate location, they were hoping to keep the building on the property they own vs. moving to a new location that is just leased.

Snodgrass asked about all the excess unused equipment that is lying around, White stated they would like to move that equipment to their new location but at the time had not spoke to Mr. Williams.

Mr. Gary Williams, 610 Midaro Dr, stated there is not as much trash located around the area, he mowed the area last year and never had any issues. He stated this is a mining facility and you expect to find mining equipment on the site.

The Planning Commission asked if the city is responsible for enforcing or abiding by covenants. Nabity stated that covenants on the property are a private civil matter and do not apply to actions taken by the City with regard to zoning. The City can rezone the property as they feel appropriate regardless of what the private restrictions require.

There was further discussion regarding the roadway. A roadway easement has been dedicated when the property was platted. This easement appears to have been acquired to provide legal access to these properties from Midaro Drive. The City has enforced the easement and required that gates across the easement be removed to allow access.

Nabity stated the conditional use permit allowed the building to be used as a warehouse/shop for operation for as long as they were still operating or mining. Now they are no longer operating in the area, the building can stay, in LLR zone the building could be used as a house; this is a permitted use in the LLR zone. Lyman Richey would like to rezone the area to be used the building for commercial uses.

O'Neill closed the Public Hearing and asked for motions regarding the proposed changes.

Attached you will find the Planning Directors report to the Planning Commission on this item with a summary of the changes.

### **Alternatives**

Council should consider the change to the Comprehensive Plan and Future Land Use Map prior to considering the rezoning request.

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

1. Approve the changes to the Future Land Use Map as presented
2. Modify the changes to the Future Land Use Map to meet the wishes of the Council
3. Postpone the issue

If Council approves the changes to the Future Land Use Map they may:

1. Approve the changes to the Zoning Map as presented
2. Modify the changes to the Zoning Map to meet the wishes of the Council
3. Postpone the issue

If Council does not approve the changes to the Future Land Use Map they may choose to take no action on the ordinance to change the zoning map.

### **Recommendation**

A motion was made by Bredthauer and seconded by Reynolds, to recommend the approval of the changes to the Future Land Use Map of the Grand Island Comprehensive Plan finding that a portion of this property is already planned for General Commercial Use; the remainder of the property is adjacent to property planned for general commercial use and the future land use map is a general guideline not a strict.

A roll call vote was taken and the motion passed with 9 members present, 7 voting in favor (Aguilar, O'Neill, Ruge, Haskins, Eriksen, Bredthauer, Snodgrass) voting in favor and 2 members against (Hayes, Reynolds).

A motion was made by Ruge and seconded by Aguilar to recommend the approval of the zoning change for 2819 S Locust, a Part of Lot 34, Matthews Subdivision as presented from R2 and LLR to B2 Zone findings that the City is not bound by covenants and deed restrictions CCR or any private license agreements; that the existing use is consistent with the rezoning and that the zoning changes is consistent with the Grand Island Comprehensive Plan.

A roll call vote was taken and the motion passed with 9 members present, 7 voting in favor (Aguilar, O'Neill, Ruge, Haskins, Eriksen, Bredthauer, Snodgrass) voting in favor and 2 members against (Hayes, Reynolds).

### **Sample Motion**

Approve the resolution to amend the future land use map in the Grand Island Comprehensive Plan.

Move to approve the ordinance to the zoning change for 2819 S Locust St.

## **Agenda Item #4 & #5**

### **PLANNING DIRECTOR RECOMMENDATION TO REGIONAL PLANNING COMMISSION:**

June 22, 2009

**SUBJECT:** *Future Land Use Map and Zoning Change (C-20-2009GI)*

**PROPOSAL:** This application includes approximately 12 acres of land north of Midaro Drive and east of Locust Street. This property is owned by Lyman Richie Corporation and was the business location for the sand and gravel pit that operated out of this location since the mid 1970's. The property is located within the Grand Island municipal limits.

The applicant is asking that the zoning on this property be changed from R2 Low Density Residential and LLR-Large Lot Residential to B2 General Business. The stated purpose of this rezoning is to allow the applicant to continue to store mining equipment and materials in the building. A map of the proposed changes is attached.

It would be prudent to amend the Grand Island Comprehensive Plan and Future Land Use map to change the proposed future use of this property from low to medium density residential use to general commercial use as part of this application. A portion of the property is already planned for commercial use but the entire piece is not included in the general commercial area. A map of the proposed changes is attached.

### **OVERVIEW:**

#### **Site Analysis**

*Current zoning designation:*

LLR-Large Lot Residential and R2- Low Density Residential

*Permitted and conditional uses:*

LLR- Agricultural uses, recreational uses and residential uses at a density of 1 unit per 20,000 square feet. R2- Low Density Residential, Residential uses at a density of 6 dwelling units per acre with 35% coverage, non-profit uses, recreational uses and agricultural uses. Minimum lot size of 6000 square feet.

*Comprehensive Plan Designation:*

Designated for General Commercial and Low to Medium Density Residential.

*Existing land uses.*

Warehouse used for storage mining equipment and materials.

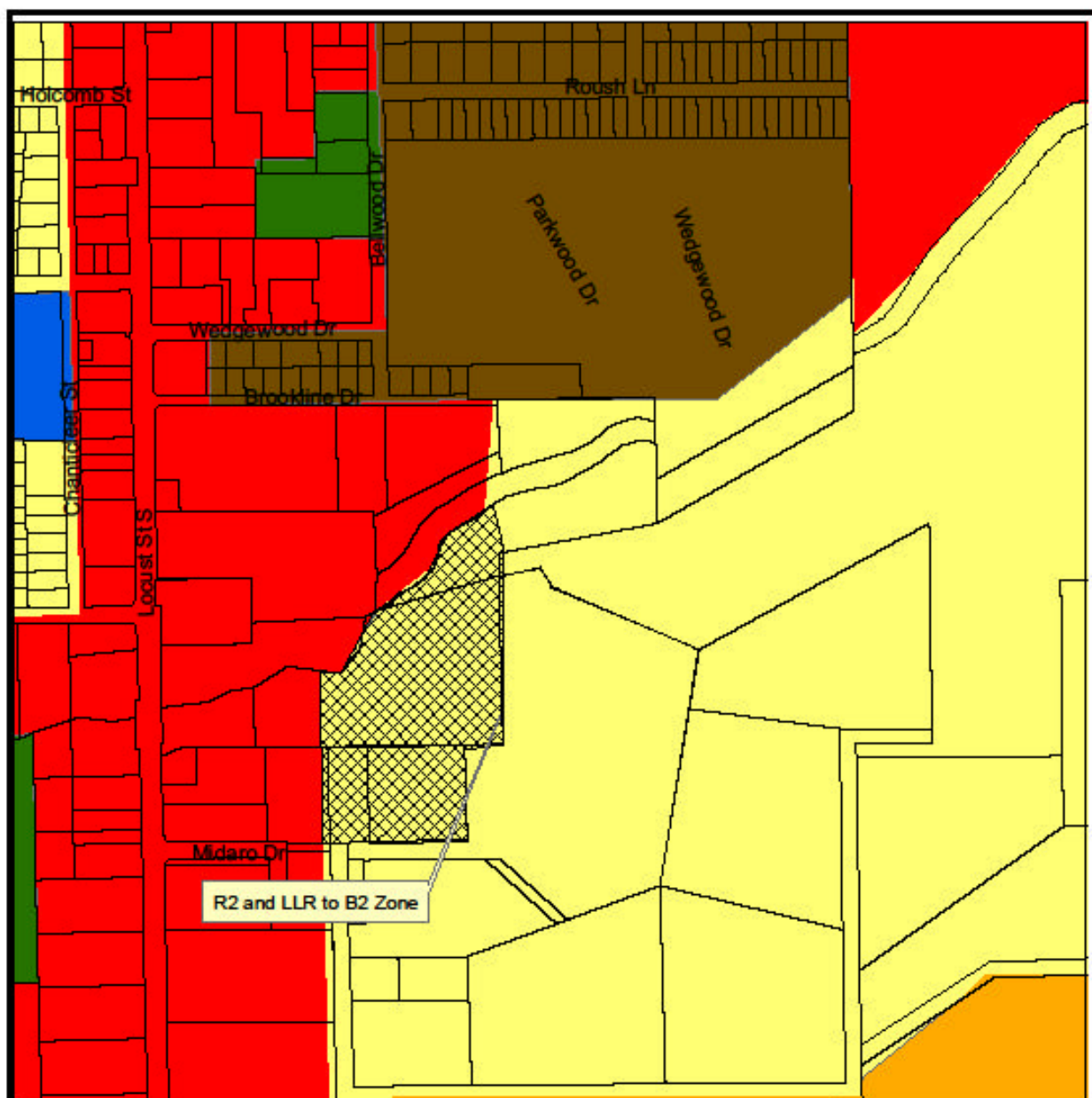
#### **Adjacent Properties Analysis**

*Current zoning designations:*

**South and East:** LLR- Large Lot Residential

**North:** R2-Medium Density Residential

**West:** LLR-Large Lot Residential and B2-AC General Business with an Arterial Commercial Overlay Zone



## Proposed Changes to Future Land Use Map



Scale : NONE

C-20-2009GI



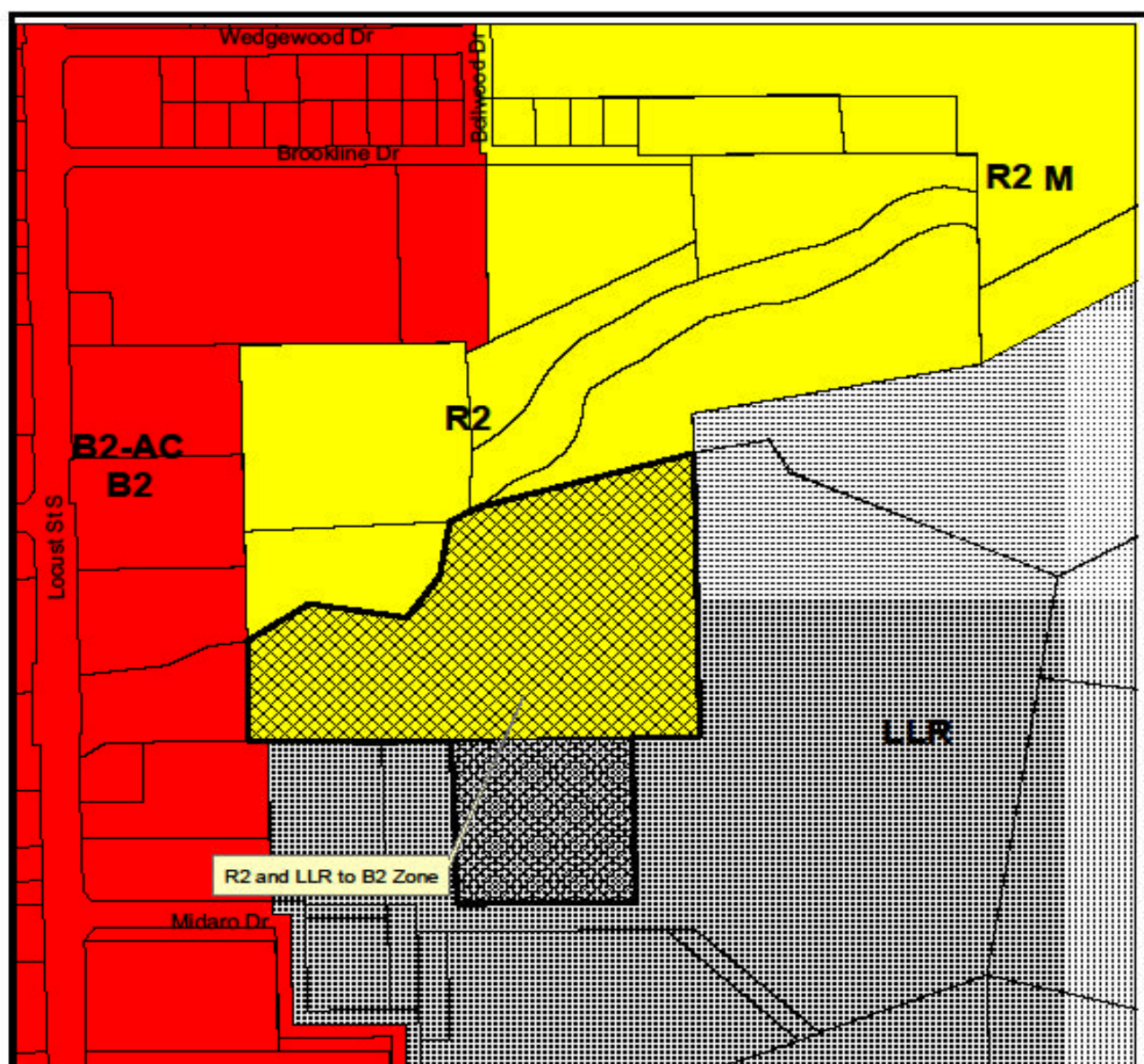
From LM: Low to Medium Density Residential



to GC General Commercial



CITY OF SAN MARCOS  
PLANNING & DEVELOPMENT DEPARTMENT



# Requested Zoning

-  From LLR: Large Lot Residential
-  From R2: Low Density Residential Zone
-  to B2 General Business Zone



Scale : NONE  
C-20-2009/GI



SAN ANTONIO



# Protest Zoning Change

Central Sand & Gravel  
2819 S. Locust St

Please return to: James Hatch  
Will need to be sent to City Council  
for July 14-09 meeting. Thank you.

Adjacent Property Address: 211 Midaro Dr.  
(Deed Attached)

Adjacent Property Owners: James & Beverly Hatch  
360 Midaro Dr.  
Grand Island NE 68801



211 Midaro Dr.

Entered As Instrument No  
0200312595

STATE OF NEBRASKA )  
COUNTY OF HALL ) SS

2003 SEP 19 PM 3 29

Kathy Brand  
REC OF REEDS

CASH 115.50

CHECK

REFUNDS:

CASH

CHECK

NEBRASKA DOCUMENTARY	
Date	9-19-2003
Stamp Tax	105.00
By	AT

## JOINT TENANCY WARRANTY DEED

MICHAEL D. ROUSH, a single person, MARLENE C. ROUSH, a single person and DANA JELINEK AKA DANA L JELINEK AND RONALD V JELINEK, wife and husband GRANTORS, in consideration of One Dollar (\$1.00) and Other Valuable Consideration received from GRANTEE,

C  
10.50

JAMES R. HATCH AND BEVERLY J. HATCH, HUSBAND AND WIFE

conveys to GRANTEE, as joint tenants and not as tenants in common, the following described real estate (as defined in Neb. Rev. Stat. 76-201):

LOT TWO (2), FIRETHORNE ESTATES SECOND SUBDIVISION,  
IN THE CITY OF GRAND ISLAND, HALL COUNTY, NEBRASKA.

211 Midaro

GRANTOR covenants (jointly and severally, if more than one) with GRANTEE that GRANTOR:

- (1) is lawfully seized of such real estate and that it is free from encumbrances except easements, reservations, covenants and restrictions of record;
- (2) has legal power and lawful authority to convey the same;
- (3) warrants and will defend title to the real estate against the lawful claims of all persons.

Executed: September 16, 2003

Michael D. Roush

MICHAEL D ROUSH

Marlene C. Roush

MARLENE C ROUSH

Dana Jelinek

DANA JELINEK AKA DANA L JELINEK

Ronald V. Jelinek

RONALD V JELINEK

STATE OF NEBRASKA

COUNTY OF HALL

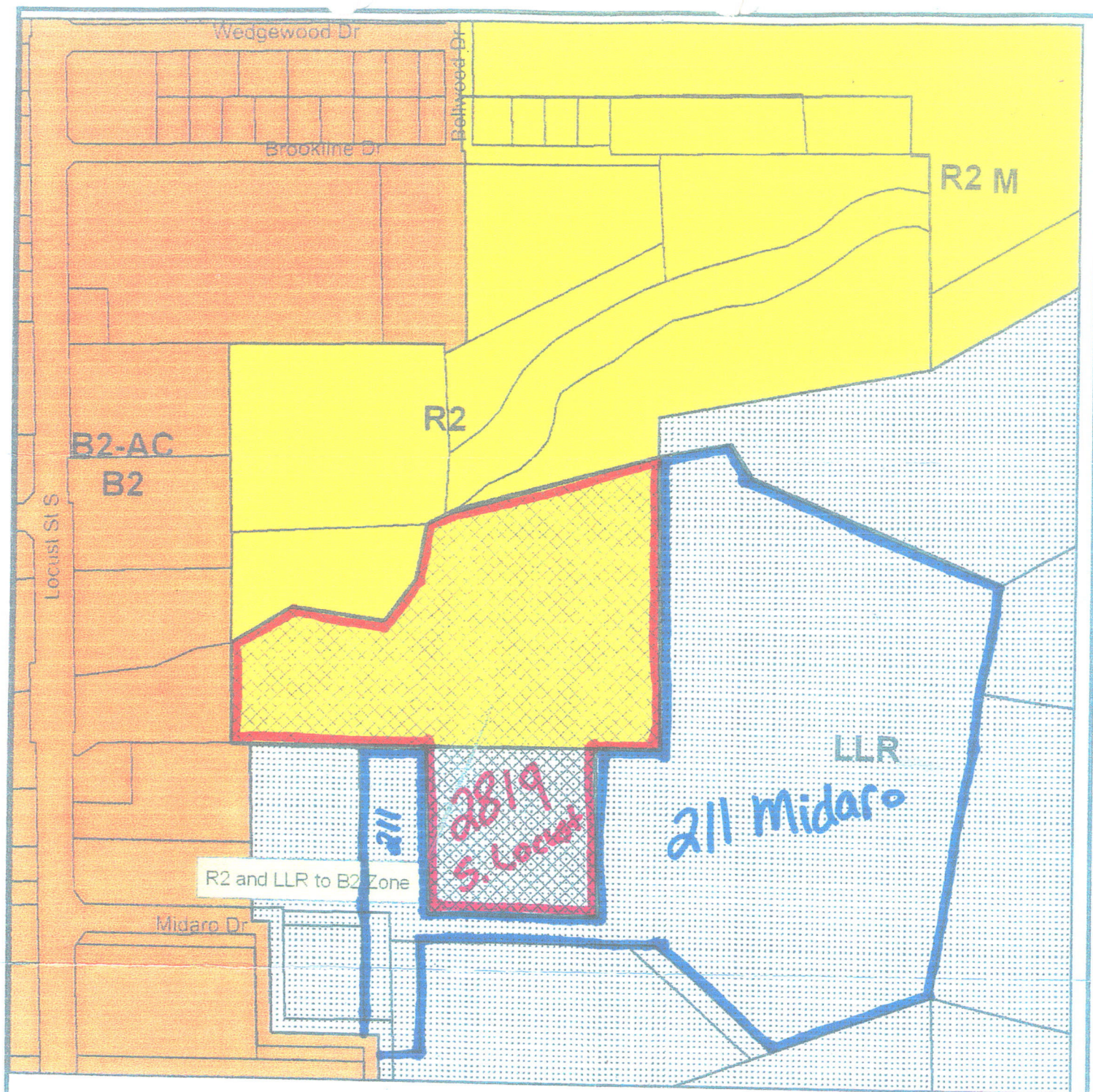
G.I.ABSTRACT

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Central Sand & Gravel  
2819 S. Locust St  
Grand Island NE

Requested rezone 2819 S. Locust a part of Lot 34, Mathews Subdivision from R2 Low Density Residential Zone and LLR Large Lot Residential Zone to B2 General Business Zone, located east of South Locust Street and north of Midaro Dr. in the City of Grand Island.





# Requested Zoning

- From LLR: Large Lot Residential
- From R2: Low Density Residential Zone
- to B2 General Business Zone

2819 S. Locust Scale : NONE  
C-20-2009-G1



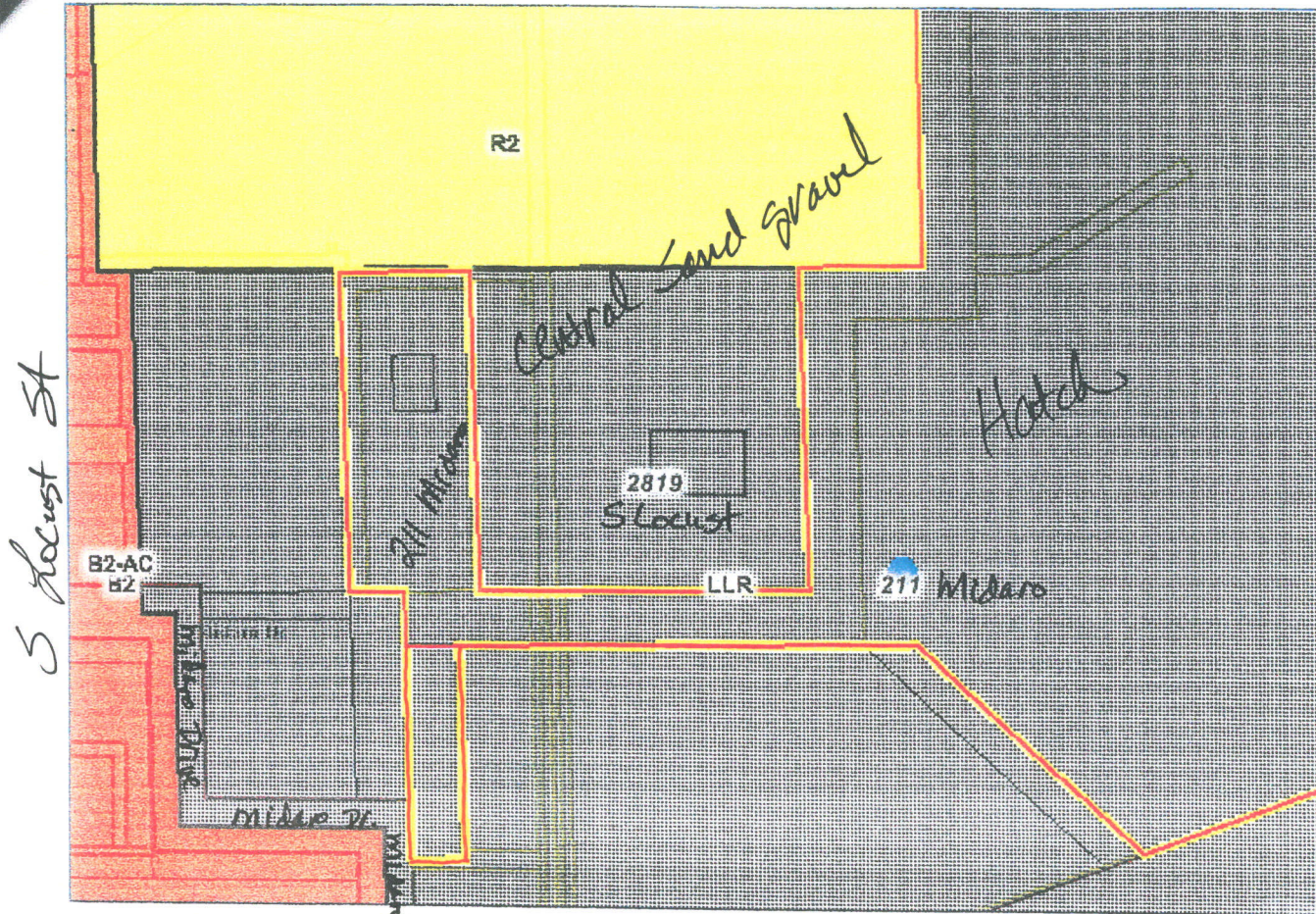


2819 S. Locust

Current Zoning Map

Large Lot Residential & Low Density Residential

City of Grand Island Mapsifter



Terrascan, Inc.

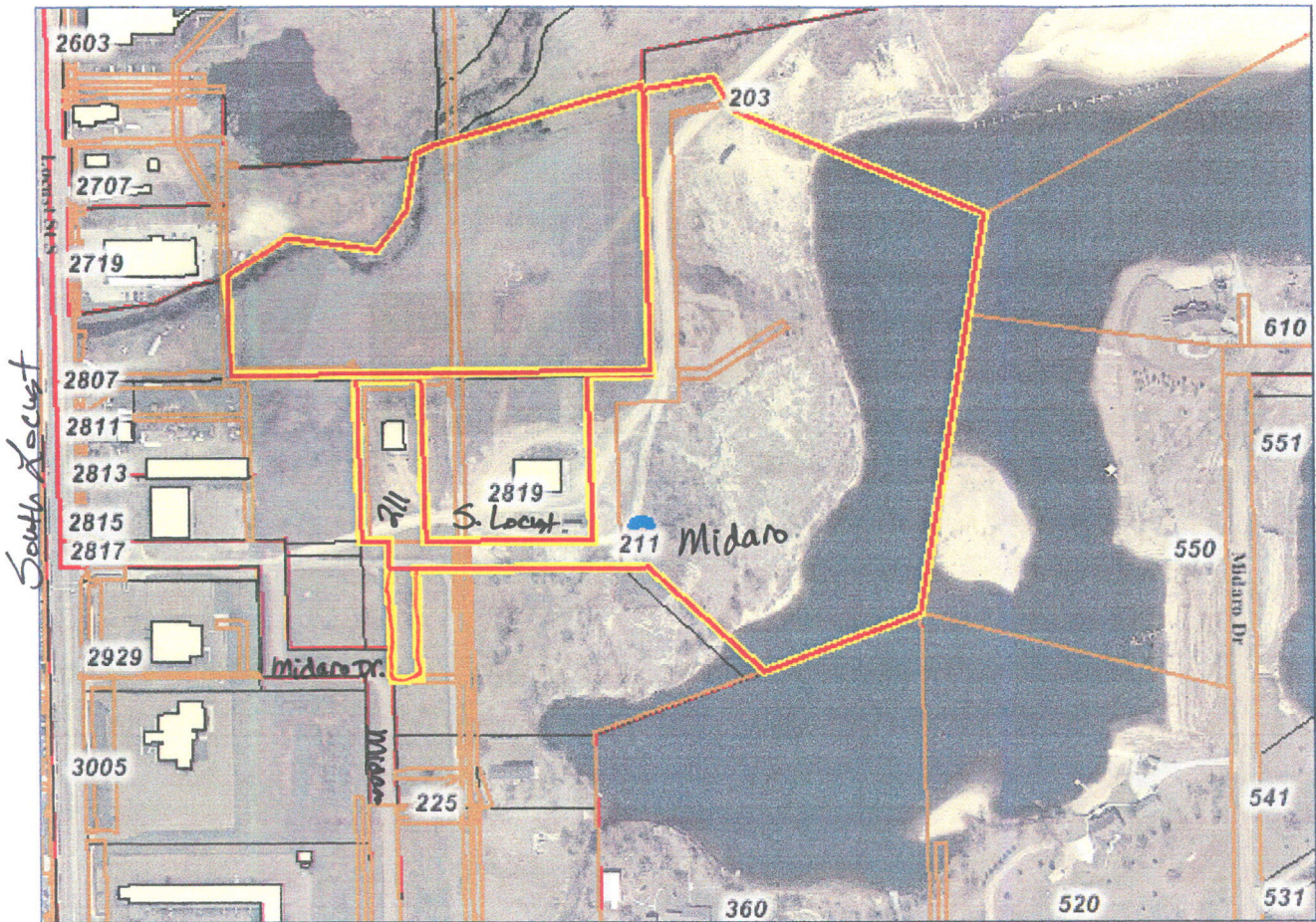
R2 - low density Residential

LLR - Large Lot Residential

**Aerial Map: 2819 S. Locust  
211 Midaro Dr.**



# City of Grand Island Mapsifter



Terrascan, Inc.

↑  
N

# Current Conditions at 2819 S. Locust St

Pictures Attached

Driveway View and Front View from 211 Midaro



I am standing on 211 Midaro property for all the attached pictures















06/24/2009





06/24/2009





05/04/2009

15





05/04/2009





05/06/2009



Back view of 211 Midaro Dr





# Covenants

## Firethorne Subdivision

2819 S. Locust included in legal description of covenants signed by Thomas L. Anderson (Developer) September 30, 1994. Document # 94-108191

#1. All lots shall be zoned and used as residential lots.

EXHIBIT A

104-108191

A tract of land comprising parts of Lots Two (2), Three (3) and Four (4), Island, together with the accretion land thereto; part of the Lot Eleven (11) Birch Subdivision; and all of the Northeast Quarter of the Southwest Quarter (NE1/4SW1/4), all of the above being situated in part of the North Half of the Southwest Quarter (NW1/4SW1/4); part of the East Half of the Northwest Quarter (E1/2NW1/4); and part of the West Half of the Northeast Quarter (W1/2NE1/4), all in Section Twenty Seven (27), Township Eleven (11) North, Range Nine (9) West of the 6th P.M. in Hall County, Nebraska, more particularly described as follows:

Beginning at a point on the east line of the West Half of the Northeast Quarter (W1/2NE1/4), said point being Three Hundred Twenty One and Twenty Five Hundredths (321.25) feet south of the northeast corner of said West Half of the Northeast Quarter (W1/2NE1/4); thence southerly along said east line of the West Half of the Northeast Quarter (W1/2NE1/4), a distance of Two Thousand Five Hundred Forty and Seventy Two Hundredths (2,540.72) feet, to the southeast corner of said West Half of the Northeast Quarter (W1/2NE1/4); thence westerly along the south line of said West Half of the Northeast Quarter (W1/2NE1/4), a distance of One Thousand Three Hundred Twelve and Eighty Two Hundredths (1,312.82) feet, to the center of said Section Twenty Seven (27); thence southerly along the east line of said Northeast Quarter of the Southwest Quarter (NE1/4SW1/4), a distance of One Thousand Three Hundred Twenty Two and Forty Two Hundredths (1,322.42) feet, to the southeast corner of said Northeast Quarter of the Southwest Quarter (NE1/4SW1/4); thence westerly along the south line of the North Half of the Southwest Quarter (NW1/2SW1/4), a distance of One Thousand Nine Hundred Forty Four and Eighty Three Hundredths (1,944.83) feet, to a point Six Hundred Sixty (660.0) feet east of the southwest corner of said North Half of the Southwest Quarter (NW1/2SW1/4); thence deflecting right 88° 40' 40" and running northerly, a distance of Six Hundred Sixty One (661.0) feet; thence deflecting left 88° 49' 30" and running westerly, a distance of Two Hundred Twenty Seven and Four Tenths (227.4) feet; thence running northerly along a line Four Hundred Thirty Three (433.0) feet east of and parallel to the west line of said Section Twenty Seven (27), a distance of Six Hundred Fifty Three and Fifteen Hundredths (653.15) feet, to a point on the north line of said Southwest Quarter (SW1/4); thence easterly along said north line of the Southwest Quarter (SW1/4), a distance of Eight Hundred Seventy Three and Fifty Two Hundredths (873.52) feet, to the southeast corner of Lot Thirty Four (34), Matthews Subdivision; thence northerly along the east line of said Lot Thirty Four (34), a distance of Six Hundred Twenty Six and Three Hundredths (626.03) feet; thence deflecting right 76° 06' 20" and running northeasterly, a distance of Eight and Five Tenths (8.5) feet; thence deflecting right 05° 21' and running northeasterly, a distance of One Hundred Forty Two and Nine Tenths (142.9) feet; thence deflecting left 44° 31' and running northeasterly a distance of Three Hundred Seventy Eight and Eighty Three Hundredths (378.83) feet; thence deflecting right 31° 34' and running northeasterly, a distance of Two Hundred Eighteen and Eighty Five Hundredths (218.85) feet, to a point on a westerly line of Lot Eleven (11), Birch Subdivision; thence southerly along said westerly line of Lot Eleven (11), a distance of Twenty Four and Twenty Six Hundredths (24.26) feet, to a point One Hundred Sixty Five (165.0) feet north of a southwesterly corner of said Lot Eleven (11); thence running northeasterly parallel to the southeasterly line of said Lot Eleven (11), a distance of Eight Hundred Thirty Eight and Sixty Three Hundredths (838.63) feet, to the east line of said Lot Eleven (11), also being the westerly line of said Northeast Quarter (NE1/4); thence northerly along said westerly line of the Northeast Quarter (NE1/4), a distance of Thirty and Thirty Four Hundredths (30.34) feet, to a point on the centerline of the North Channel of the Platte River, said point being One Thousand Three Hundred Sixty Five and Sixteen Hundredths (1,365.16) feet south of the northwest corner of said Northeast Quarter (NE1/4); thence deflecting right 53° 30' 40" and running northeasterly along said centerline, a distance of Two Hundred Forty Six (246.0) feet; thence deflecting left 12° 26' 40" and running northeasterly along said centerline a distance of Eight Hundred Ninety Nine and Seventy Nine Hundredths (899.79) feet; thence deflecting right 30° 16' 20" and running northeasterly along said centerline, a distance of Seventy Two and Eighty Five Hundredths (72.85) feet; thence deflecting right 19° 35' 50" and running northeasterly along said centerline, a distance of One Hundred Sixty Six and Twenty Four Hundredths (166.24) feet; thence deflecting left 21° 10' 20" and running northeasterly along said centerline, a distance of Two Hundred Fifty One and Eighty Four Hundredths (251.84) feet; thence deflecting left 41° 03' 40" and running northeasterly along said centerline a distance of One Hundred Sixteen and Thirteen Hundredths (116.13) feet, to the place of beginning.

STATE OF NEBRASKA)  
COUNTY OF HALL )

OCT 3 PM 2 04

R.F. OF DEEDS

CASH ———  
CHECK ———

REFRINDS:

CASH ———  
CHECK ———

ATTI TITLE CO.

104-108191 Entered as Document, No.

21



RESTRICTIVE COVENANTS

94-108191

WHEREAS, THOMAS L. ANDERSON, a single person; DONALD S. ROUSH and MARLENE C. ROUSH, husband and wife; and MICHAEL D. ROUSH, a single person, hereinafter referred to as "Owners", are the owners of property located in Section Twenty-seven (27), Township Eleven (11) North, Range Nine (9), West of the 6th P.M., Hall County, Nebraska more particularly described on Exhibit A attached hereto; and

WHEREAS, the Owners are developing the property described above without platting the property into a subdivision or addition to the City of Grand Island, Nebraska. The Owners intend to sell tracts of land containing more than ten (10) acres for residential development. In these covenants the tracts shall also be referred to as "lots".

WHEREAS, it is the desire of the owners to improve the property by encouraging the sale of lots and construction of modern and desirable dwelling houses;

NOW, THEREFORE, in consideration thereof, and of the mutual benefits to be derived by the Owners of said property, and any purchaser or purchasers of lots therein, their heirs, successors, personal representatives and assigns, the owners hereby stipulate and agree that any and all property sold, given, devised, transferred and conveyed shall be and the same are subject to the following restrictive covenants, all of which shall run with the land as follows:

1. All lots shall be zoned and used as residential lots. No structure shall be erected, altered, placed or permitted to remain on any lot other than one detached modern single family dwelling not to exceed two stories in height with not less than a two car attached garage. Only one additional accessory building shall be permitted on a lot and such building shall have the same exterior design, roof and finish as the dwelling house. Lots may not be split or divided to create additional lots. Only one family may occupy a dwelling. No multi-family dwellings shall be allowed.

2. The owner of each lot shall keep the house, garage, and any accessory building in good repair and appearance. The owner of each lot shall also properly maintain the yard, fences, lawn, shore line, bushes, trees and all other portions of the lot in such a manner as will be aesthetically attractive and not degrade the appearance of the property.

3. For purposes of front yard and side yard set back requirements, the zoning and building regulations of the City of Grand Island, Nebraska shall apply. For the purpose of determining the front lot line, it shall be conclusively presumed that the front of the lot is the side which faces away from the lake. The back of the lot shall be presumed to front upon the lake.

4. A one story dwelling shall have not less than 1200 square feet of ground floor area. A story and a half or two story dwelling shall have not less than 1200 square feet of ground floor area. No split level or basement houses shall be permitted. In determining the amount of square footage, all open porches and attached garages shall be excluded from such computation. All dwellings shall have an exterior appearance and elevation in keeping with the native and natural surroundings. All construction shall comply with the building codes of the City of Grand Island.

5. No trailer, mobile home, recreational vehicle, travel trailer, camper, basement, tent, shack, garage, barn, accessory building or other out building shall be used as a residence, temporarily or permanently, nor shall any structure of a temporary character be used as a residence.

## History of Central Sand & Gravel

- a.) Continued conducting business at 2819 S. locust to date even though their Conditional Use Permit expired 3-31-08. 16 months expired.
- b.) Company refused to smooth entire Conditional Use Permit area to a pleasing appearance as indicated in permit and License Agreement.
- c.) Company pumped gravel within 60 feet of property lines next to golf course and Midaro Drive. Agreement stipulates 100 from adjacent properties and 150 from the road.
- d.) Currently mining equipment remains on site.  
Scale and scale house remains on site.
- e.) They continue to pile dead trees, rubbish and debris on residential property without removal.
- g.) 2007 Central Sand attempted to remove gravel from 211 Midaro without reimbursement to owners.
- h.) We hate to even mention this but due to the company piling sand too high on a utility easement a boy lost his life. Stockpiling on a utility easement is also prohibited in the permit.

Attached: Conditional Use Permit

1 pg from License Agreement

Map of Permit Area

2 Maps of Pumped Area

Letter from Central Sand indicating they would be "finished" April 2008



February 8, 2005

Council Agenda Memo from Craig Lewis  
regarding Conditional Use Permit. (Item E1)

Approval for Conditional Use Permit at 2819 S.  
Locust St (Item G5)

Approved for additional 3 years with the proposed  
Memo conditions.



# **City of Grand Island**

**Tuesday, February 08, 2005**

**Council Session**

## **Item E1**

**Public Hearing on Request of Amy Anderson, Personal Representative of the Estate of Thomas Anderson for Conditional Use Permit for Sand and Gravel Operation Located at 2819 South Locust Street**

**Staff Contact: Craig Lewis**



## Council Agenda Memo

**From :** Craig A. Lewis, Building Department Director

**Meeting:** February 8, 2005

**Subject:** Public Hearing on Request of Lyman-Richey Corp. & Amy Anderson of A & L Farms, Inc for conditional use permit to continue to operate a sand and gravel pumping facility at 2819 S. Locust St.

**Item #'s:** E-1 & G-5

**Presenter:** Craig Lewis, Building Department Director

### Background

This request is for council approval to allow for the continued operation of a sand and gravel facility at the above referenced address. A conditional use permit is required as the current zoning classification, LLR or large lot residential does not allow for this type of use as a permitted principal use. The zoning classification does list as a permitted conditional use, commercial mines, quarries, sand and gravel pits and accessory uses. Conditional uses as listed in the zoning code must be approved by the City Council. The original request was presented to and approved by the City Council in 1972, and has received subsequent approvals for the past 33 years.

### Discussion

Sand and gravel operations have been a part of Grand Island and the surrounding areas for a long time, as residential development continues to expand and the two uses become closer neighbors more conditions need to be implemented to assure a compatible existence for both uses.

City administration has developed the following restrictions, or conditions which appear appropriate to impose upon sand and gravel operations.

- 1). **USE:** The proposed uses are limited to those listed in the application, sand and gravel pumping processing, storage, stocking piling, distribution, and sales, both wholesale and retail. Retail sale may also include the sale of black dirt, river rock, and similar landscaping materials. The storage, recycling, or processing of other aggregate materials, such as asphalt or concrete is not allowable unless specifically listed, nor are the operation of concrete or asphalt batch plants.
- 2). **CLOSURE:** A statement of the proposed use of the property after the closing of the sand and gravel operation has been provided along with the application.

### 3). PRIMARY CONDITIONS:

(a). The permit shall be granted for a period not to exceed 3 years with the possibility of renewal for an additional time at the end of the 3 year period.

(b). Pumping of product shall not be allowed within 150 feet of any public road right of way and protected by a 6 foot earthen berm during pumping. The finished width of developable property adjacent to the public right of way shall be 300 feet at the time of termination of the operation. A setback of 100 feet from any adjacent property line shall be maintained.

(c). Pumping and other activities (including lighting) at the site shall be limited to daylight hours (15) minutes before sunrise and (15) minutes after sunset Mondays through Saturdays. No pumping or other processing activities shall be permitted on Sundays or from fifteen minutes after sunset to fifteen minutes before sunrise. One exception to this condition shall be in the months of March, April, October, and November activities may operate from 6:00 a.m. to 10:00 p.m. to allow for winter condition.

(d). Any internal combustion pump motors utilized shall be equipped with a functioning "hospital grade muffler" designed to reduce exhaust noise by 32 to 40 decibels.

(e). Materials and equipment shall not be stored on the property within any easements or the regulated floodway as determined by the Federal Emergency Management Agency or its successor and the entity with jurisdiction and authority to enforce floodplain regulations. No product, material or equipment shall be stored within an easement or in such a manor that it would violate any safety provisions of the National Electric Safety Code.

(f). All dead trees, rubbish, and debris, if any must be cleared from the real estate as soon as practical and such real estate must, at all times, be kept in a clean and neat condition.

(g). No trash, rubbish, debris, dead trees, lumber, bricks, refuse or junk material of any nature whatsoever shall be dumped, placed or located upon such real estate.

(h). Applicant shall not use the real estate in any way so as to create or result in an unreasonable hazard or nuisance to adjacent land owners or to the general public.

(i). Applicant shall maintain any and all drainage ditches that may be located upon the real property.

(j). Applicant shall not permit the hauling of sand and gravel from the premises and over and across any public highway or road unless said sand and gravel is complete dry and free from water or is hauled in trucks which are designed and equipped so as to prevent water from leaking onto the traveled portion of the roadbed.

(k). All water accumulated upon the premises by virtue of such mining and pumping operations shall be retained upon the premises and shall not flow upon or encroach upon any adjacent land. Only surface waters that have historically flowed from the premises shall be permitted to leave the same through historical natural drainage ways.

(l). Applicant shall continue the mining operation but if at anytime during the life of the permit issued the operation shall cease for a period of a continuous 18 months the permit shall become void and a renewal shall be obtained before becoming once again operational.



## Grand Island Pit

1. **Time for completing mining-** We anticipate mining to be completed on the property during the year of 2005. The only remaining virgin land to be mined is located in the northeast corner of the property. There is approximately five acres yet to be mined.
2. **Permit time-** We are asking for three years on the extension of the permit to be sure and have enough time to complete mining and time to remove the equipment and replace dirt over placed sand. We also need some time to remove stockpiles of mined material from the property.
3. **Adjoining Lyman-Richey property-** Lyman-Richey Corporation does own property adjacent to the property being mined under the conditional use permit. In 2004 we cleaned accumulated material from the property, disk and seeded the area to grass to give a pleasing appearance to the property.
4. **Anderson property reclamation-** At the completion of mining we will accomplish the following items:
  - A. Remove mining equipment
  - B. Remove stockpiles of screened products
  - C. Smooth waste sand areas to a pleasing appearance.
  - D. Cover the waste sand with available topsoil.
  - E. Remove electrical service from the mine area.
  - F. Remove scale and scale house from the permitted property.
5. **Environmental Issues**

At all times the mining operation will be conducted in accordance with the State of Nebraska Department of Environmental Quality permits dealing with air and water quality.

The mining operation will follow all Federal Department of Environmental Quality required permits for diesel fuel, oil and gasoline storage. All fuel storage must and will have secondary containment previous to allowing any fuel or oil on the property.

There is minimal haul road length due to the proximity to Blaine Street, therefore there will little or no dust caused by truck traffic.

All of Lyman-Richey mining operations operate under the rules and regulations as written and enforced by the Mining Health and Safety Act, MSHA, a set of Federal mandated regulations for all mining operations. The regulations of this Act mandate the maximum noise level of the operation within the bounds of the mining operation at 85 decibels. We strictly abide by these Federal regulations. Special mufflers are fitted to the engines on the dredge. The processing plant is entirely electric and has minimal noise.

## **ALTERNATIVES**

It appears the Council has the following alternatives concerning the issue.

1. Approve the request with the proposed conditions.
2. Deny the request.
3. Approve the request with additional or revised conditions.

## **RECOMMENDATION**

Approve the request with the identified conditions presented by City Administration

## **SAMPLE MOTION**

Motion to approve the conditional use with the conditions identified by the City Administration, published in the Council packet and presented at the Council meeting.



# City of Grand Island

Tuesday, February 08, 2005

Council Session

## Item G5

**Approving Request of Amy Anderson, Personal Representative of the Estate of Thomas Anderson for Conditional Use Permit for Sand and Gravel Operation Located at 2819 South Locust Street**

*This item relates to the aforementioned Public Hearing Item E-1.*

Staff Contact: Craig Lewis



# **Page from License Agreement**

6. Pursuant to this Extension Agreement, the Licensee agrees to place sand along the north shore of the Owner's property to enhance residential development in exchange for the Owner allowing the Licensee to use four (4) acres of the Owner's property located adjacent to property owned by the Licensee to process and stockpile mined sand and gravel products. The use of the Owner's property for stockpiling will extend beyond June 6, 2006, which is the year of termination of all other items in this Extension of License Agreement. The use of Owner's property will terminate and all stockpiles and processing equipment shall be removed by November 30, 2010 or before.

The Licensee shall mine the Owner's property previous to mining the Licensee's property.

7. Pursuant to this Extension Agreement, the Licensee grants an option to the Owner for the Owner to purchase the metal shop building and approximately three acres of land upon which the building is located. The option to purchase the property shall extend for a period of 90 days after the gravel mining operation ceases due to Licensee having completed the gravel mining operations on the Owner's and the Lincensee's property. After the 90 day option period the Owner shall indefinitely have a first right of refusal on any written offer made to purchase the property on the same terms and conditions in the written offer, until the property is sold. The Owner shall have 10 days after receipt of the offer to accept or decline.

The three acre parcel of real estate is owned by the Licensee and adjoins the Owner's property on the west side as per attached Exhibit B and made a part of this agreement.

The sale of the three acre parcel and attached metal building shall be when all mining operations are terminated due to the depletion of sand and gravel on both the Licensee's property and the Owner's property.

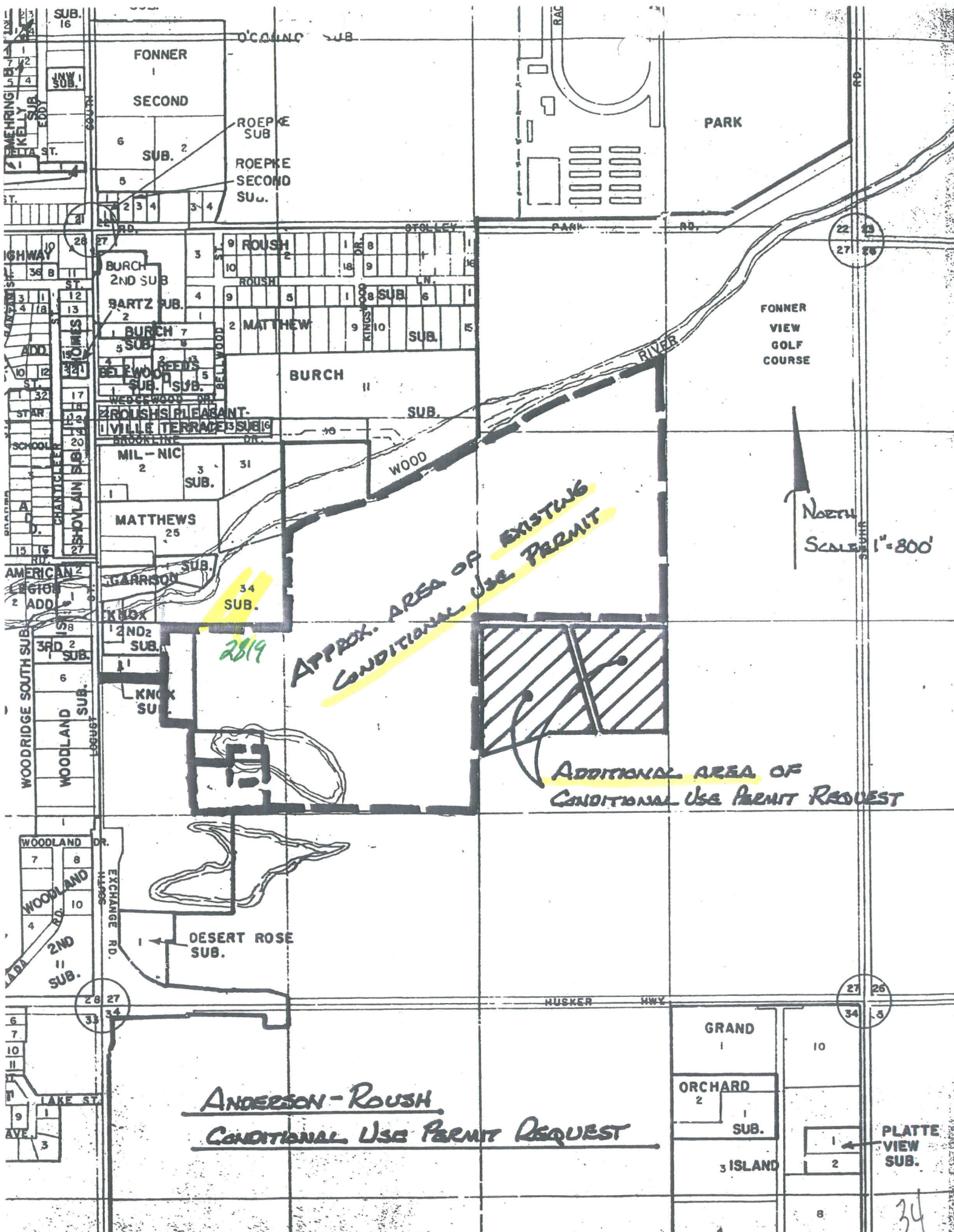
The option price of the three acres and attached metal building shall be determined by a

10. 1. 2. 3.

# **Map of Conditional Use Permit Area**

( Map submitted to City Council at Feb 8, 2005 session by Craig Lewis.)





ANDERSON - ROUSH

CONDITIONAL USE PERMIT REQUEST

PLATTE  
VIEW  
SUB.

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## 2 Maps of Pumped Area

Maps indicate a violation of the permit

Setback 100 ft from adjacent property

150 ft from public road



City of Grand Island Mapsifter



Terrascan, Inc.



## City of Grand Island Mapsifter



Terrascan, Inc.

## March 5, 2008 Letter from Central Sand & Gravel

Letter states work will be finished in April 2008



3-7-08  
CA

## CENTRAL SAND AND GRAVEL COMPANY

SUBSIDIARY OF LYMAN-RICHEY CORPORATION  
POST OFFICE BOX 626  
COLUMBUS, NE 68602-0626  
(402) 564-7141

March 5, 2008

Jim  
Hatch  
(could not find letter)  
Craig Lewis sent

Craig Lewis  
Building Director  
City of Grand Island  
100 E. First Street  
Grand Island, NE 68801

Re: Conditional Use Permit – 2819 S. Locust Street

Dear Craig:

As you know, our conditional use permit is set to expire March 27, 2008. We toured the property with you in late December of last year and at that time we had moved the mining equipment to our new mining site on the Williams property on Shady Bend Road. We have removed the electrical service we were utilizing at the mine site and the scale and scale house are located on our property which is properly zoned.

We are in the process of removing the remaining stockpiles at the Locust Street location and we will smooth the remaining waste sand areas to a pleasing appearance and cover it with any available topsoil once the weather allows us to do so. Because of the harsh winter we've had this year, we may not be completely done with these final steps by the end of March. We are committed to completing the work as soon as the weather allows.

We simply wanted to make you aware of the fact it may be necessary for us to be on the site a few days or a week or two in April to completely finish up.

Enclosed for your files is a copy of the survey Gilmore & Associates prepared for us showing the staking layout for the north end of the property.

Should you have any questions, please give me a call. Thank you for your assistance in this matter.

Sincerely,

*Carol White*

Carol White  
Real Estate Administrator

cc: Gene Bichlmeier  
Mel Kucera

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# Summary

We protest the rezoning of 2819 S. Locust a part of Lot 34, Mathews Subdivision from R2 low density residential zone and LLR large lot residential zone to B2 general business zone for the following reasons:

1. The covenants prohibit anything but residential lots.
2. This is lake property for homes and should remain residential.
3. The business does not abut a dedicated road.
4. License agreement states when mining finished property will be sold.
5. When we purchased 211 Midaro in 2003 Carl Roberts assured us Central Sand would clean up and leave after the Conditional Use Permit expired.
6. Central Sand and Gravel has a history of not playing by the rules.
7. Central Sand & Gravel has a new location on Shady Bend Road in Grand Island, it is time they finished moving.

LAW OFFICES

MATTSON, RICKETTS, DAVIES, STEWART & CALKINS

KELLY R. HOFFSCHNEIDER °  
REGINALD S. KUHN  
STEPHEN D. MOSSMAN °  
RANDALL V. PETERSEN  
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134 SOUTH 13<sup>TH</sup> STREET, SUITE 1200

LINCOLN, NEBRASKA 68508-1901

FAX (402) 475-0105

(402) 475-8433

[www.mattsonricketts.com](http://www.mattsonricketts.com)

C. RUSSELL MATTSON (1905-1988)  
LEWIS R. RICKETTS (1910-1990)  
RAYMOND K. CALKINS, RETIRED

THOMAS M. DAVIES, OF COUNSEL  
LAWAYNE L. FEIT, OF COUNSEL  
JOHN W. STEWART, OF COUNSEL  
DANIEL E. WHERRY, OF COUNSEL

° ALSO ADMITTED IN COLORADO  
° ALSO ADMITTED IN IOWA  
° ALSO ADMITTED IN SOUTH DAKOTA

July 1, 2009

Mr. and Mrs. James Hatch  
360 Midaro Drive  
Grand Island, NE 68801

RE: Easements attached to 211 Midaro Drive

Dear James and Beverly:

This letter is to set forth my legal position regarding access to the property that you own at 211 Midaro Drive and in particular, the right to ingress and egress over that property.

There are three instruments filed of record that impact the ingress and egress to the property. The first instrument is an Easement from Ruth E. Roush to Hartford Sand and Gravel Company filed in 1978. The second instrument is an Easement from Donald S. Roush and Marlene C. Roush, husband and wife, and Michael D. Roush, a single person to Thomas L. Anderson filed in 1999. The third instrument is the Dedication of the Firethorne Estates Second Subdivision Plat filed in 2003. Copies of each of these instruments are attached hereto.

The Hartford Sand and Gravel Company Easement grants only Hartford Sand and Gravel and its successors including Lyman-Richey, the right to ingress and egress to the property on which Lyman-Richey is currently located.

Similarly, the Easement to Thomas L. Anderson grants only ingress and egress to Thomas L. Anderson and his successors to the specific property referenced in the Easement.

Finally, the language in the Dedication is very specific. The Dedication is clearly not for a street. The Dedication simply grants to the City of Grand Island, Nebraska and "dedicates the easements, if any, as shown thereon for the location, construction and maintenance of public service utilities forever, together with the right of ingress and egress thereto, and hereby prohibiting the planting of trees, bushes and shrubs, or placing other obstruction upon, over, along or underneath the surface of such easement".

Under this Dedication, the City of Grand Island and its public service utilities also have the right of ingress and egress. However, it is my legal opinion that the right of ingress

James and Bev Hatch  
July 1, 2009  
Page 2

and egress does not run to the public at large. Therefore, the only entities granted ingress and egress over the property would be those specifically identified in the two Easements or their successors and assigns as well as the City of Grand Island public utilities under the Dedication.

In summary, my legal opinion is that the public at large has no right of ingress or egress over your 211 Midaro Drive property.

Very truly yours,

A handwritten signature in black ink, appearing to be 'Stephen D. Mossman', followed by a long horizontal line extending to the right.

Stephen D. Mossman  
sdm@mattsonricketts.com

SDM/cdb



June 15, 2009

City of Grand Island Planning Department  
100 East First Street  
Box 1968  
Grand Island, NE 68802-1968  
ATTN: Chad Nabity

Re: Lyman-Richey Corporation Application for Rezoning

To Whom It May Concern:

The undersigned reside within 300' of the two properties owned by Lyman-Richey Corporation located at 2819 S. Locust in Grand Island, NE.

We understand Lyman-Richey is requesting a rezoning of their two parcels of real estate from R2 and LLR to a B-2 classification which would allow for the properties to be used in a commercial nature.

The purpose of this letter is to express our support for the rezoning of the two properties from a residential use to a commercial use.

Don Razez

Printed Name: DON RAZEY

Deb Razez

Printed Name: Deb Razez

William Lawrey

Printed Name: WILLIAM LAWREY

Rich S Johnson

Printed Name: Rich S Johnson

Daniel D Naranjo

Printed Name: Daniel D. Naranjo

Scott Sahling

Printed Name: SCOTT Sahling

Garry Williams

Printed Name: GARRY Williams

Jeanne Williams

Printed Name: Jeanne Williams

Ryan Crouch

Printed Name: Ryan Crouch

Lisa Crouch

Printed Name: Lisa Crouch

Mason Probst

Printed Name: MASON PROBST

Mary Sahling

Printed Name: MARY Sahling