

**MINUTES
CITY COUNTY COMMON
MONDAY, DECEMBER 3, 2012**

Present: Commissioner Jane Raybould, Chair; Mayor Chris Beutler; City Council Members: Jon Camp; Gene Carroll; Doug Emery; Carl Eskridge; and DiAnna Schimek. County Commissioners: Bernie Heier; Larry Hudkins (1:52 p.m.); Deb Schorr; and Brent Smoyer.

Absent: Councilman Jonathan Cook

Others: Dave Sands, Executive Director, Nebraska Land Trust; and Josh Anderson, Edgar, Nebraska.

Chair Raybould opened the meeting at 12:45 p.m. and announced the location of the Open Meetings Act.

1. Approval of Common Meeting Minutes of November 6, 2012

Carroll made the motion to accept the Common Meeting minutes of November 6, 2012, seconded by Heier. Correction submitted by Schorr. Page 3, paragraph 2, eliminate Channel 10 and insert the Hispanic Center.

Raybould called for vote to the minutes with the correction. Ayes: Raybould, Mayor Beutler, Camp, Emery, Carroll, Eskridge, Heier, Schorr, Smoyer, and Schimek. Hudkins, Cook absent. Passed 10 - 0

2. Conservation Easements - Dave Sands, Executive Director, Nebraska Land Trust; and Josh Anderson, Edgar, Nebraska (Attachments A & B)

Raybould introduced Dave Sands and Josh Anderson, who presented at the October NaCO conference. A fascinating subject and think sometimes urban areas need to appreciate the significance.

Sands distributed information on the Nebraska Land Trust and Conservation Easements. He has heard that the National Parks Service identified conservation easements as the primary method of land protection which should be used on the Niobrara River, unlike most national rivers flowing through public land, and that conservation easements are a United Nations conspiracy, with some opposition to easements stemming from this fear. People say other land owners are not smart enough to make their land decisions. A basic property right is a person's right to determine the future of their land.

When a person sells their land for retail development it's permanent. The decision is in perpetuity. But is the flip side of the property right allowing owners to keep in agriculture, and/or in habitat forever. It is a person's right to sell their land but will argue a person's right to determine their land's future through a conservation easement. Some support development, but not the other side of a property right.

Sands' presentation showed Nebraska properties in easements. Nebraska is diversified and a private land state. About 97% of Nebraska land is privately owned, and protection of private lands provides benefits to all. Public benefits, including historical prevention, scenic, outdoor rec and tourism. The federal government recognizes the public benefits when you donate a public easement, or any part of a conservation easement, and regard as a charitable donation as you accomplish public good.

Conservation easements are not about stopping growth, but protecting special places as growth occurs. Not getting in the way of subdivisions, but identifying unique places and getting them protected.

Conservation easements are used in many ways by various practitioners. A misconception is conservation easements harm agriculture. The Nebraska Land Trust uses conservation easements to

preserve agriculture. If easements ruined agriculture we wouldn't have Agricultural Land Trusts, protecting from subdivisions and development. Agriculture may be listed as an item to protect. This easement part is called recitals, stating what to protect.

In most cases easements do not lower property taxes. County Assessors state they have no comparable sales on easement protected land. In our experience easements have not harmed County bases. May have heard a County is a sensitive property tax base, with federal land off the tax rolls. One County isn't the State and suggest they're not harming tax values.

Conservation easements do not harm property tax values. They protect large working farms and ranches, taxed as farms and ranches. If taxed this way, with an easement, no use change and continues to be taxed the same. Easements do not lower property taxes as there's nothing below the agricultural assessment, but some protected lands can have increased property tax values. An example, a wasteland, upgraded, has an evaluation which goes up. Property values also may increase with scenic value.

An argument is easements prevent subdivisions, and someday will forego tax revenues which would come from the subdivision. Studies show service costs often not compensated by increased tax base.

Conservation easements held by non-profits amount to .003% of Nebraska land. Anyone who says this causes problems, doesn't have the facts. Possibly a problem in a county with concentrated easements.

Conservation easements are not implemented without local scrutiny. Nebraska needs approval from whomever has jurisdiction, most states do not. Land protection should occur by keeping land in agriculture and private land. Conservation easements conceived as an alternative to acquisition.

Nebraska has a statute that we have to be approved by Planning Commission, and appropriate bodies. Easements can be disapproved for three reasons. Not in conformance with the Comprehensive Plan at the time the easement is conveyed. If contrary to any government conservation program, and if intended to stop any identified public works program.

Conservation easements do not remove any property right the owner doesn't want removed. We're a land driven organization. We ask, what are your goals, and design accordingly. Land owners make permanent decisions about their land. We show there is no clear public harm but in fact clear public good, and the reason for tax breaks.

At the NaCO conference heard land trusts are sold to young farmers and ranchers who don't know what they're doing. The average age we work with is over 60, and if they want to protect forever should have the right. We always say never do a conservation easement solely for financial reasons. Important, but when the money is gone the easement is still there.

Easements don't require public access. The only access which must be provided is for the landowner to monitor the property at least once a year. Doesn't mean no visual access. A woodlands, or other, view is important, and a form of public access. Many easements provide for fee based access, and many preserved lands have an element of public access.

Conservation easements by design cannot be terminated or modified easily. May be with District Court approval if the protected conservation value is no longer present. Can be modified or amended. No land trust should amend to make less protected, but could for unforeseen activity which doesn't harm conservation values.

Some think easements have become unpopular in Nebraska. The Nebraska Land Trust tries to make

sure people understand. First, avoid restrictions which could impair your economic ability. The language is understandable and doesn't include permission clauses, unless necessary. Almost all have a building envelope, and some have an undeveloped envelope.

Hudkins asked how many easements in Lancaster County? Sands stated in Lancaster County the Lower Platte South NRD does a great job. Our focus up till now is Sarpy County, surrounded on 3 sides by rivers, farmland, woodlands. Another is the Pine Ridge. No one is doing land preservation there, and an area with a lot of public land. We don't think acquisition is the right tool, but want to keep land in ranching. Did an easement on the Niobrara River, and others around were recreational properties, most owned by people out of State. The problem occurs when land transitions to family out of State.

Raybould stated we have Tiger Beetles located here and there's easements for wetlands. What if the Tiger Beetle becomes extinct? Dissolves the easement? Sands replied it depends on how the easement is drawn. If the Beetle is the only reason it's protected, yes it could be withdrawn. But, if it lists wetland habitat, it depends.

Mayor Beutler stated an environment trust, with it's grants, had specific rules on the payment of property taxes. Do you know what those are currently? Sands replied if you purchase lands with environmental trust funds you pay property taxes. In lieu of taxes, you pay assessed property taxes. Don't know if they passed a rule to tax conservation easement property, but taxes have to be paid, still private land.

Raybould asked when a farmer, rancher, has property which increased in value and want to pass to the next generation, is that when you typically see a conservation easement? Because of inheritance tax liability, or other tax obligations? Sands replied easements are used as an estate planning tool. An example, an 83 year old man has a son who's ranched with him for 30 years, but couldn't buy the land because of development value. Also 3 daughters not in ranching but 1 in canoe renting. An Omaha man wanted to buy the ranch. We did a conservation easement. First, a purchase conservation easement, the father got a payment to settle with the daughters. Then it reduced the ranch value, and took away the development potential so the son could buy the ranch. The canoeing campground was cut out of the easement, and could be transferred to the daughters. When he passes the land will be half of what it was for estate taxes. Raybould thanked Sands for his presentation.

Commissioner Heier Raybould thanked Commissioner Heier for his service to the County. Thanks and well wishes all around from the Board.

Josh Anderson introduced himself as a Clay County farmer and engineer. He realized the focus of conservation shifted, changing from conservation to preservation. The challenge is incorporating conservation into the needs of nature and society, not segregating.

Conservation easements are relatively new on property rights, and legally binding. Conservation easements conflicted with the State's common law, requiring a Nebraska statute. This allowed conservation easements to exist in their negative fashion. The statute provides a link to local land use plans which most States do not.

The government created tax breaks to encourage use through Federal and State tax benefits. Important to note all conservation easements are not perpetual, but only perpetual easements are IRS recognized for benefits. We could set up a term limited conservation easement, negotiated at term's end. Most national affiliated Land Trust organizations only pursue perpetual easements.

Anderson stated a good source is the Land Trust Alliance website. In 1980 only 128,000 conservation

areas were encumbered by easements, owned by national State and Local Land Trusts. Conservation easements tripled from 2000 to 2005. From 2005 to 2010 more than doubled their funding due to monitoring and defense. An easement owner is required to monitor, and defend the easement terms.

Land Trusts have no certification requirements, and no public standard. The Land Trust Alliance does have an accreditation process, not a public standard/requirement.

A rationale for conservation easements is the government's vision as a more cost effective way for the government to acquire/control land, without red tape and scrutiny. The government considers conservation easements land acquisitions. Not fee title land acquisitions. Conservation easements have public appeal as they appear to avoid a regulation type of approach. Easements held by levels of government and non profits, help implement some strategies on behalf of the government. Most programs get a substantial portion of the Federal Farm Bill through the NRCS. If an NRD holds a conservation and cease to exist there's a backup holder, usually the next higher level of government.

Anderson pointed out the map of Clay County. A large portion is the Naval Ammunition depot. Also shown are Federal, State, or conservation land trust ownership whether by fee title or conservation easement. The premise of a conservation easement value is from appraising the land before, and after, the easement. The appraisals' difference is the easement value. The easement wouldn't be worth money if not reducing land value.

Adverse effects in Clay County is erosion of the property tax base. Loss of income generating revenue, from conversion of irrigated crop ground to non use. Limits economic development opportunities. There's nothing I can't do on my land that an easement would enable me to do. An easement doesn't create extra opportunities for me, but restricts what I, or my kids, do in the future. They eschew assessed property values. We've had groups purchase land and know they pre-arranged to put a conservation easement on it. The value they pay for the land is going to be mostly reimbursed by the easement, distorting the free market of the land. Permanent land use change, and fosters federal ownership of the land. Lots of money used comes from local sources, and effects neighbors.

Anderson gave examples of lost tax base in one easement property protest. Removes property tax revenue and lowers economic impact to communities.

For information on Lancaster County he gave a website address. Who holds the easement, easements by purpose, public access, and date. Groups which hold easements in the State.

Our statute links easements to local planning, and requires compliance with the comprehensive plan, review by Planning and Zoning, and the County Board has the right to approve or disapprove. The Assessor has responsibility of taxation and the County Clerk records. Land use regulations, like zoning, implement the comprehensive plan. Allowed, conditional, and prohibitive uses result from a transparent and participatory process. One has the ability to work easements through this process.

Easements can constrict land use purpose. Or increase urban sprawl by creating disjointed community growth. An urban area can have large blocks of undeveloped space on the fringes, and these interrupted development tracts can increase cost to provide public services, and increase the value of the remaining development land so lower and middle income families cannot afford to build. Like restrictive covenants conservation easements generally do not receive public input or oversight. Easements cannot be amended or terminated by agreement, but by court order.

In summary, easements are privately negotiated, and publically funded affecting everyone around them. The Federal tax code has influenced conservation. Conservation easements prevent flexibility and

adaptability required for sound land use planning, development and regulation. State statute provides a link between these and land use planning. Think incorporating conservation easements with permitted, prohibitive or limited uses, into County Planning and Zoning is a logical step for land use planning. In conclusion find complete information for all different sources, and find the motivation and drive.

Hudkins said good to hear a pro/con, particularly in northern Lancaster County, where nearly 8,000 acres belong to the Game Commission and Corps of Engineers with Branch Oak and Pawnee. People don't realize the tremendous shift to the rest of the people. Services for rural fire, the ground out of production, and the cooperative elevator that failed when much of the clientele was removed, nor that taxes do not go down. They pay taxes but not on \$4,000 irrigated land, which was reduced to grassland values. Taxes paid but not near the future value. Some places are glad to preserve prairie and have a home for their children. The County Board needs to take time to understand and look at all provisions.

Hudkins asked Anderson if he was a private citizen or representing an organization? Anderson replied he fed cows this morning and then came. Hudkins and Raybould verbally thanked him. Raybould commented this was healthy to have point, counter-point. Thank you.

3. Follow-up City/County Consolidation Task Force Focus

Raybould stated a letter was sent by the County Board to see if there's consideration and who would like to look at the scope. Discussed possibly looking at other departments, but think we want to narrow the scope to the four items: Public Works & County Engineers; Lincoln Police & County Sheriff; City & County Clerks; and City Attorney Misdemeanor Prosecution Division & County Attorney.

Camp stated a citizen, who served in the mid 90's on a consolidation effort, offered to participate. Perhaps have individuals who participated 15 - 20 years ago give us a base line of their conclusions, or direction. Does the County Board anticipate having private citizens or to be between our two bodies?

Raybould stated originally talked of opening up to the community. Think it's customary to open up to interested individuals to submit their letter, application of interest if they would like to participate. The County Board expressed an interest in waiting until January to appoint County Board representatives to be on the Task Force. The City Council would probably like to do the same?

Smoyer thought possibly make up entirely with citizens. Private citizens are objective, will look for the best scenario for them as taxpayers and for the community. Advocate bringing in someone from 15 years ago, and new citizens, having this task force be an entirely private group. The City Council and County Board could check in after they're finished and weigh in on the findings.

Raybould stated several communities across the State have successfully gone on their own consolidation efforts. Douglas and Hall Counties consolidated their Assessor and Register of Deeds. Boone County passed consolidation of the Clerk and Clerk of the District Court. Invaluable having private citizens, but think they also need structure. Certainly the participation of both budget directors to access the economic information.

Carroll stated he was a member of the '96 Task Force, with no elected official on the Task Force, but had staff. Important to have staff from the City and County showing where everything is and how to access. Important to have community members and staff members to provide information, having no Task Force vote. Do like the four areas presented by the County Board. A good start.

Hudkins agreed, adding have the City and County budget directors, ex-officio. County and City agencies should be willing to input information. Believes there's merit including the local community. See no

problem if each City Council and County Board member name one person. It was approximately 12 years ago the County got involved in this and now wouldn't have a total consolidation goal but look at places where we see the synergies, with our past history of inner-local agreements. Now nearly 30 agreements but if there are places to make more efficient let's see what the community wants.

Camp heard, maybe we don't restrict to the four items enumerated in Schorr's letter, or do you want you want to open it up? Secondly, hearing colleagues suggest it be totally private citizens with ex-officio support. If we can give direction here while we're discussing.

Hudkins thought possibly each County Commissioner and City Council Member, and the Mayor, appoint a person to serve on the committee. Like the four. If there are additions this body agrees on don't have any problem with adding.

Schimek added perhaps suggest ways these four need to be looked at, but if the task force sees the possibility of looking at others, investigate.

Camp asked if we should take back to our respective bodies and pass the resolution? With the holidays probably will be the first of the year.

Mayor Beutler commented further consolidation is always a desirable goal. A matter of prioritization of a number of goals, whatever we decide.

Raybould stated the direction is we'll take back to each of our respective bodies and revisit the issue in January to see if we can select, or open up to members in the community. Discuss at our next Commons Meeting. Is that fair to say? Thank you.

4. Adjournment

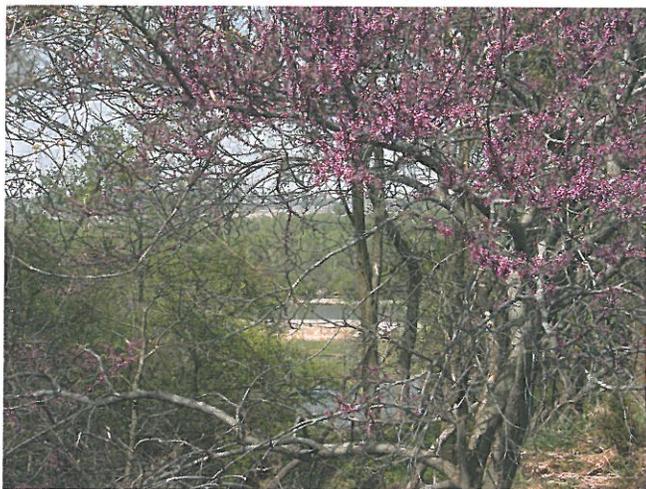
Schimek made motion to adjourn the meeting, Carroll seconded. All in favor said aye.

Meeting adjourned at 1:58 p.m.



Preserving Our Agricultural, Historical And Natural Resources.

An Introduction



The Shanahan Farm Easement in Saunders County protects a sacred Pawnee bluff, one half-mile of Platte River frontage, scenic views, eastern oak woodlands at the western edge of its range, and prime farmland.

In Nebraska, we live in a state of diversity when it comes to the landscape. From oak/hickory woodlands in the east to sandstone buttes in the Panhandle, there is undeniable beauty in the changing biology and topography as the land transitions from east to west. The middle Niobrara Valley is unique blend of both, with northern birch trees thrown in for good measure, and the Sandhills to the south are the largest unbroken prairie ecosystem in America.

Nebraskans also live in a state where wildlife habitat, historic sites, and scenic vistas are largely found on private land. In fact, about 97% of land in Nebraska is privately owned. In many cases, landowners can point with pride to a legacy of good stewardship that has preserved natural, historic, and agricultural values. The Nebraska Land Trust is a non-profit conservation organization that works with private landowners who want to see this legacy maintained by those who follow.

A Brief History

In 1950, there were fewer than 50 land trusts in America. More than 1,700 land trusts exist today, as people are drawn by their love of the land and a preference for voluntary, win/win approaches to conservation. Some land trusts achieve this by working with landowners who want to protect their land from development through a voluntary land preservation agreement known as a conservation easement. At the end of this cooperative process, agricultural, historical, and natural resources are preserved in perpetuity.

The success of this approach is reflected by more than six million acres that has been permanently preserved through conservation easements nationwide. By the late 1990s, conservationists in Nebraska were beginning to recognize the common ground that these voluntary agreements offered, and the need for a land trust with to work with private landowners who wanted to permanently preserve their land. From that vision, the Nebraska Land Trust was born as a 501 (c) (3) non-profit conservation organization in 2001.



The Sunny Brook Ranch Easement in Keya Paha County preserves 1,124 acres along the Niobrara National Scenic River. The property will continue as a working cattle ranch, while preserving scenic views and a variety of habitats that the Niobrara valley is known for.

A Focus on Conservation Easements

Conservation easements, which are sanctioned by state and federal law, can be a valuable tool for landowners who want to permanently protect their land from development. The landowner continues to own and manage the land and easements are flexible, allowing for many activities that are compatible with private stewardship and conservation, such as agriculture and hunting. There can also be financial benefits in the form of tax deductions and estate planning. Conservation easements are sometimes purchased as well.

A Unique Board of Directors

When it was formed, the Nebraska Land Trust took the unusual step of asking other organizations and agencies with an interest in land stewardship to serve on its Board of Directors. This was done to stimulate collaboration and to bring a wide range of professional expertise to a variety of land trust activities and decisions.

The NLT Board of Directors currently includes:

- **Fontenelle Nature Association**
- **Lower Platte North Natural Resources District (NRD)**
- **Lower Platte River Corridor Alliance***
- **Lower Platte South NRD**
- **National Park Service***
- **Nebraska Cattlemen**
- **Nebraska Farm Bureau Federation**
- **Nebraska Game and Parks Commission**
- **Nebraska Sportsmen's Foundation**
- **Nebraska State Historical Society**
- **Nebraska Wildlife Federation**
- **Niobrara Council**
- **Papio-Missouri River NRD**
- **Platte River Basin Environments**
- **Sandhills Cattle Association**
- **U.S. Fish and Wildlife Service***
- **Wachiska Audubon Society**

*Advisory, non-voting members

A Statewide Mission

The NLT was conceived to preserve special places on private land, that provide lasting benefits to us all. One such place is the lower Platte River Valley, between the state's two largest cities. Currently, the NLT has more than 2,200 acres of land under conservation easement in this region,

including six miles of river frontage, 20 individual wetlands, numerous ponds used by waterfowl, grasslands, woodlands, prime cropland, scenic views from public places, and several historical/cultural sites, including an archeological site more than 1,000 years old.

True to its name, the Nebraska Land Trust was also conceived to foster private land preservation in other parts of the state where it is needed. Completed projects include preservation of a 1,124-acre ranch on the Niobrara National Scenic River adjacent to Rocky Ford, one of the most heavily used take-out points for thousands of people that float the river every year. The Nebraska Land Trust has also preserved nearly 2,000 acres of native prairie in the Loess Canyons southeast of North Platte, which provides habitat for a herd of wild elk.

Conservation for the Future

By the year 2050, the Omaha/Lincoln metropolitan area is projected to have 2,000,000 people. Running through the middle of this anticipated growth, the lower Platte Valley provides a vital source of drinking water, biological diversity, scenic vistas, and recreation that could be adversely impacted by development.

Along the Niobrara and other rivers, working farms and ranches are being transformed into recreational properties. This same process is occurring in the Panhandle, where the beautiful Wildcat Hills and Pine Ridge are experiencing development pressure from out-of-state buyers.

Whatever the future holds for Nebraska, the preservation of wildlife habitat, scenic views, water quality, agriculture, and historic sites will largely depend on the stewardship of private land. The Nebraska Land Trust will be there to work with those landowners who want to preserve these resources for generations to come.

For more information, call us at 402/438-5263 or visit our web site at www.nelandtrust.org. If you would like to support our work with a tax deductible donation, please mail it to: Nebraska Land Trust; 9200 Andermatt Drive, Suite 7; Lincoln, NE 68526.



Preserving Our Agricultural, Historical And Natural Resources.

Questions and Answers about Conservation Easements

What is a conservation easement?

Essentially, a conservation easement is a legal agreement between a landowner and a non-profit conservation organization or government agency that forever prohibits specified land uses that are not compatible with conservation goals, while allowing those uses that are.

How do conservation easements affect property rights?

Every landowner holds certain rights related to the use of their land and its resources. Historically, the law has allowed some of these rights (such as mineral rights) to be transferred to other parties. A conservation easement transfers some development rights on a property to another entity, which is then prohibited from exercising those rights by the terms of the easement. The landowner still owns the land and retains all other rights not specifically prohibited by the conservation easement.

What land uses do conservation easements typically prohibit?

Every conservation easement is different depending on the conservation goals and each landowner's circumstances, but most will prohibit excessive new development that results in the destruction of agricultural land, wildlife habitat, native plant communities or historic sites.

What land uses are typically allowed?

This list is driven by each landowner's needs so it can vary, but the landowner usually retains the rights to live, farm, ranch, hunt, fish, and camp on the land, along with other activities that are consistent with conservation goals, which can even include some limited development.

Are there any criteria for lands that can be protected by easements?

The guidelines for conservation lands can vary with each organization or agency. The Nebraska Land Trust will accept conservation easements to preserve lands that: remain essentially in their natural state; are ecologically, historically or archeologically significant; serve as wildlife habitat; or are used for low-impact agriculture.

*To learn more, please visit our website at www.nelandtrust.org;
or call (402) 438-LAND (5263)*

Does the entire property have to be included in an easement?

An owner may divide their property for the purposes of a conservation easement, restricting certain activities on a part of the land while reserving other portions of the land for some development, so long as that development does not adversely affect the conservation values of the easement land.

Do conservation easements restrict a landowner's ability to sell or bequeath land?

Land protected by a conservation easement may be sold or transferred at any time, but the conservation easement is attached to the title so that any restrictions will apply to all future landowners.

Does a conservation easement grant public access to the land?

No. A landowner may choose to allow limited access for hunting, fishing, ecotourism, educational, or scientific purposes, but this is not required by the Nebraska Land Trust as a condition of accepting an easement.

What rights of access would the land trust have?

The Nebraska Land Trust is obligated to arrange an annual visit to the site by one of its representatives to assure compliance with the terms of the easement.

How is a conservation easement enforced?

When conservation easements are created, a baseline report is required to document current conditions. Among other things, these reports usually include detailed maps, a description of plants, animals, wetlands, woodlands, cropland, grasslands, existing development, and historic sites, along with photographic documentation of visual appearance. When annual monitoring visits are scheduled, this report will be compared to existing conditions. If a violation is identified, the landowner will be notified immediately in writing by the land trust and an attempt will be made to find an agreed upon solution that corrects the problem. If necessary, the Nebraska Land Trust can take legal action to fulfill its conservation easement obligations.

Are there tax breaks from the donation of a conservation easement?

Every situation is different, but the Internal Revenue Service will allow the value of a donated easement to be deducted from federal income tax according to its guidelines. Conservation easements can also lower the value of land in an estate which can lead to a savings on estate taxes. There can be significant costs associated with the creation of an easement, but landowners often offset these costs through tax savings.

Is a conservation easement right for me?

If you have land that meets conservation guidelines and you want to see the land protected forever, then your land may be a good prospect for a conservation easement. **However, any landowner should always consult with their family as well as legal and financial advisors to see if an easement is right for them.**