

**ABILENE CITY COMMISSION - STUDY SESSION AGENDA**  
**DWIGHT D. EISENHOWER MUNICIPAL BUILDING - 419 N. BROADWAY AVENUE**  
**January 19, 2016 - 7:00 pm**

1. **PUBLIC COMMENTS.** Persons who wish to address the City Commission may do so when called upon by the Mayor. Comments on personnel matters and matters pending before court are not permitted. Speakers are limited to three minutes. Any presentation is for informational purposes only. No action will be taken.
2. **STRATEGIC DISCUSSION**
  - a. None
3. **ITEMS TO BE PLACED ON THE REGULAR AGENDA**
  - a. A Resolution approving a Land Exchange Agreement concerning the conveyance of certain real property to the Land Bank of the City of Abilene, Kansas.
  - b. A Resolution of support for a Housing Tax Credit application to be submitted to the Kansas Housing Resources Corporation by Cedar Ridge, LLC.
4. **ITEMS PROPOSED FOR THE CONSENT AGENDA**
  - a. Meeting Minutes: January 11, 2015 regular meeting
5. **ITEMS FOR PRESENTATION AND DISCUSSION**
  - a. Elections and Vacancies
  - b. Sister City Delegation Representative
6. **REPORTS**
  - a. City Manager's Report
7. **ANNOUNCEMENTS** (*Meetings at Abilene Public Library unless otherwise provided*)
  - Heritage Commission, January 21 at 4:00 pm
  - Commission Retreat, January 22 at 5:30 pm (Location TBD)
  - Commission Retreat, January 23 at 8:00 am (Location TBD)
  - City Commission Meeting, January 25 at 4:00 pm
  - Convention and Visitor's Board, January 26 at 2 pm (CVB)
  - Tree Board Committee, January 26 at 5:00 pm
  - Local Government Day, January 27

**TO:** City Commission  
**FROM:** David Dillner, City Manager  
**SUBJ:** Land Exchange Agreement  
**DATE:** January 15, 2016

The City Manager has been working on a proposal to exchange land located in the Abilene Highlands subdivision with the partners who presently own the Cedar Ridge Estates development. The transaction would exchange approximately fourteen lots at the Abilene Highlands with about eighteen acres commonly known as Cedar Ridge Estates, Phase II.

Rather than extending public infrastructure to the undeveloped Phase II of Cedar Ridge Estates, the partners have approached the City with a concept of exchanging the aforementioned land. The transaction is contingent upon the partnership receiving housing tax credits from the Kansas Housing Resources Corporation ("KHRC"). If tax credits are awarded to the Project, the partnership would develop twenty-eight affordable housing units on the fourteen lots at the Abilene Highlands. The Land Bank would own the eighteen acres of Cedar Ridge.

Cedar Ridge Estates, LLC has already donated a portion of the undeveloped acreage to the Land Bank. The donation was approved by the City Commission with the approval of Resolution No. 122815-1.

The main points of the Land Exchange Agreement are summarized as follows:

- Both parties will provide title insurance of \$40,000 for the properties to be exchanged in the transaction. This is based on an agreed figure because both properties were appraised as having little to no value given several factors analyzed in the appraisal. The Simmons Company of Manhattan, Kansas appraised both properties. A copy of the appraisals have been included with the Land Exchange Agreement.
- The City will require the Developer to provide a letter of credit equal to two years of special assessments, which will be held by the City until the Project is constructed and certificate of occupancy are issued for the units. The letter of credit will be available in the event the Developer does not pay special assessments during the construction period. It is anticipated that following the award of tax credits, the Project will be conveyed to a third party with experience in developing affordable housing projects using tax credits. The City will have an opportunity to review the qualifications of the Developer, and may negotiate terms and conditions to ensure performance.
- Per the agreement, the Land Bank would defer the special assessments on the fourteen lots for two years as construction is progressing. The first installment of the special assessments will be due once construction is complete and payments will continue for twenty years. The Land Bank will reamortize the special assessments to allow the City to receive all of the special assessments outstanding on the property and also allow reimbursement of the delinquent special assessments that were not paid by the previous property owner.
- The City has several remedies in the event the Developer does not pay special assessments or property taxes, or otherwise breaches the agreement. The City will not issue any building permits will be issued and the City may draw on the letter of credit. The Land Bank may also seek damages to expenses related to the land exchange transaction, and may pursue any available remedy in court.

- The properties being exchanged will have nearly the same annual special assessment payment, which is presently estimated at about \$22,000. As you know, the City is presently paying the debt service for the Highlands development. The property at Cedar Ridge Estates that is being donated also has special assessments that will need to be paid. The City will not have to increase the mill levy to cover the special assessments at Cedar Ridge Estates because transaction will closely align with the amount both properties pay in specials. The amortization schedule has not been finalized, and so is not included in the packet.
- The City will consider a request by the Developer to include the property in the Neighborhood Revitalization Program. Last year, the Economic Development Council recommended approval of a policy that would allow the Program to be applied to properties successfully requesting either the "EH-O, Elderly Housing Overlay District" or the "HO-O, Housing Opportunity Overlay District" included in the City's Zoning Regulations.

The City Commission would have to amend the Neighborhood Revitalization Program in order to allow this incentive within these overlay districts. In addition, the Developer would have to request and successful receive application of one or both of the overlay districts on the exchanged property. The Developer understands that neither of these actions may be guaranteed in the Land Exchange Agreement; the City is merely agreeing that it will process each request as provided by state law and local ordinances and policies.

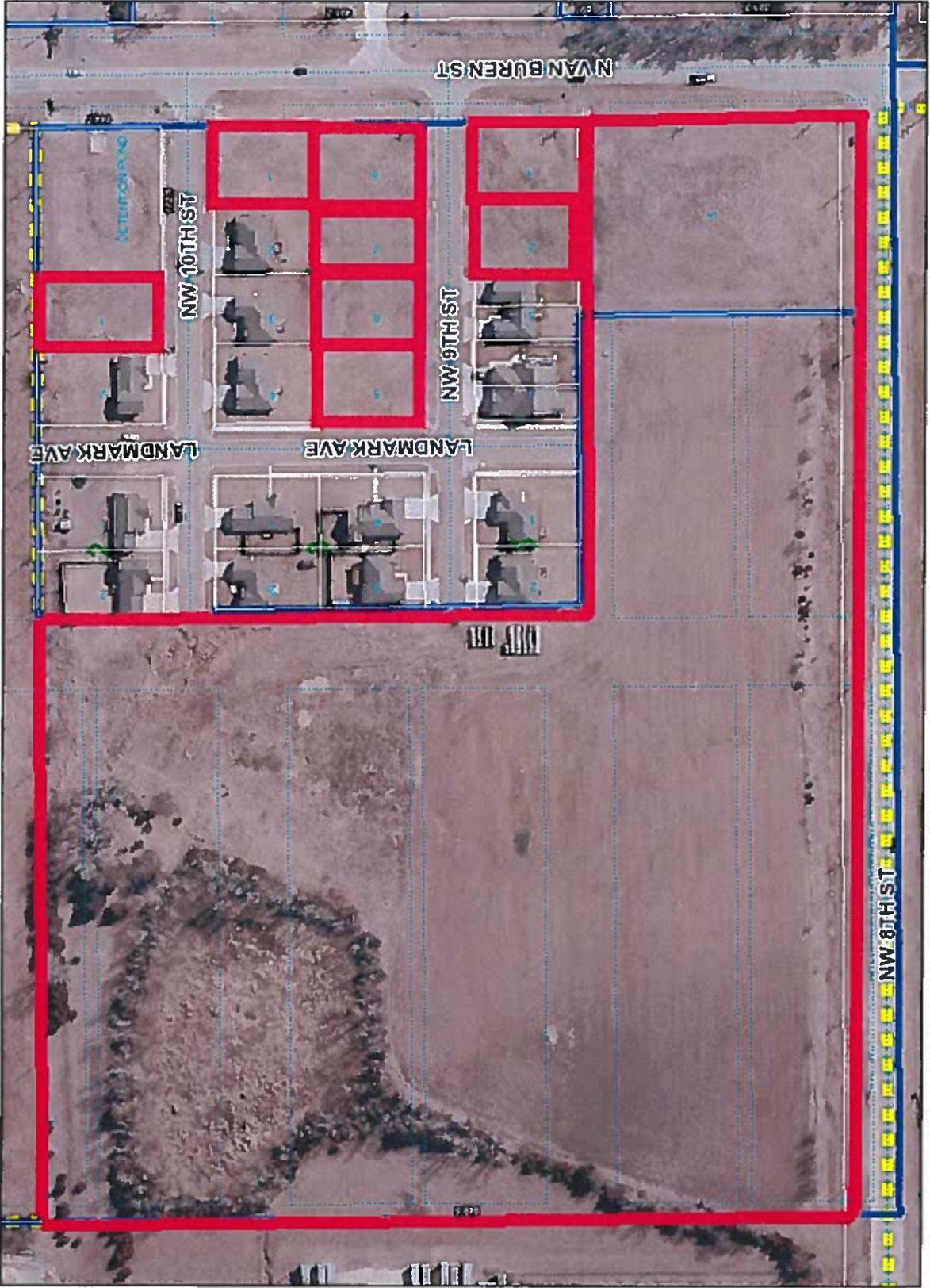
- The Developer agrees to pay the following costs related to the transaction: a) 100% of the title insurance for the transfer of the Deposited Property; b) 100% of the escrow and closing fee; c) cost of recording the deeds; d) the cost of obtaining an appraisal or other required due diligence; e) any attorney fees and expenses incurred by Developer.
- The Land Bank agrees to pay the title insurance for the transfer of the Received Property and any attorney fees and expenses incurred by the Land Bank.

**Lots to be Exchange in Abilene Highlands**





Land to be Exchanged Cedar Ridge Estates



## LAND EXCHANGE AGREEMENT

THIS LAND EXCHANGE AGREEMENT (the "Agreement") is made effective this \_\_\_\_ day of January, 2016 (the "Effective Date"), by and between the City of Abilene Land Bank, a land bank established by the City of Abilene, Kansas pursuant to City Ordinance No. 3265 (the "Land Bank") and \_\_\_\_\_, a Kansas limited liability company ("Developer"). The Land Bank and Developer are collectively referred to as the "Parties" and individually as a "Party."

### RECITALS

- A. The Land Bank is the record owner of certain real estate in the City of Abilene, Kansas legally described on Exhibit A, attached to and, by reference, incorporated herein (the "Received Property").
- B. Developer is the record owner of certain real estate in the City of Abilene, Kansas legally described on Exhibit B, attached to and, by reference, incorporated herein (the "Deposited Property").
- C. The Received Property and the Deposited Property are of equal fair market value, as set forth in appraisals of the Received Property and the Deposited Property, a summary of which are attached to and, by reference, incorporated herein as Exhibit C.
- D. Developer desires to convey the Deposited Property to the Land Bank, and the Land Bank desires to simultaneously convey the Received Property to Developer, all in accordance with the terms and conditions of this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein made, the Parties agree as follows:

1. **Recitals.** The recitals set forth above are part of this Agreement.
2. **Agreement of the Land Bank.** The Land Bank agrees to convey the Received Property to Developer, by special warranty deed.
3. **Agreement of Developer.** Developer agrees to convey the Deposited Property to the Land Bank, by general warranty deed.
4. **Closing Date.** The "Closing Date" shall be no later than ninety (90) days following the satisfaction or waiver of all conditions described in paragraph 9, below, unless both parties agree in writing to advance or delay the closing. "Closing" means the settlement of the obligations of the Parties to each other under this Agreement, including the payment of all amounts then required to be paid, and the delivery of deeds in proper form to the respective premises, free of all encumbrances, except as expressly provided in this Agreement. Possession to the respective premises shall be given to the respective parties upon Closing. The above-described deeds shall be recorded immediately following the Closing.
5. **Escrow Agent; Title Insurance.**

- a) First American Title Insurance Company, 315 Broadway, Abilene, Kansas, is designated as the Escrow Agent of the parties and shall hold this Agreement, the deed, the title insurance policy, and all other papers of transfer pending the complete fulfillment of this Agreement. The Escrow Agent shall receive and disburse all amounts to be paid under this Agreement.
  - b) Within ten (10) days after the Effective Date of this Agreement, each party shall furnish the other party with a commitment for an owner's title insurance policy (the "Commitment") with respect to the property such party will convey under this Agreement. The amount of the policy for the Received Property shall be \$40,000, and the amount of the policy for the Deposited Property shall be \$40,000. Each Commitment shall insure title subject only to liens, encumbrances, exceptions, or qualifications set forth in this Agreement, and those which shall be discharged at or before Closing. Each party shall have ten (10) days after receipt to examine the Commitment and to notify the other party in writing of any requirements to make the title marketable. If defects precluding marketability are not removed by Closing, the party objecting to marketability may either accept title or cancel this Agreement, or extend the Closing Date for a reasonable time to enable title to be made marketable. Each party shall diligently attempt before Closing to correct any defects to marketability of which the other party has given written notice of, and shall file and pursue any legal proceedings reasonably necessary to correct such defects. In case of dispute between the parties as to marketability of title, the Title Standards adopted from time to time by the Bar Association of the State of Kansas, and the Kansas Marketable Title Act, as amended, shall control. All costs of recording any corrective instruments with respect to the Received Property shall be paid by the Land Bank. All costs of recording any corrective instruments with respect to the Deposited Property shall be paid by Developer.
6. **Title Exceptions.** Title to the respective properties shall be subject to the following exceptions: (a) easements, rights of way, and restrictions of record that each respective party shall determine do not unreasonably interfere with such party's intended use and enjoyment of the property to be conveyed to such party; (b) the printed or standard exceptions set forth on Schedule B of the Commitment; and (c) full performance of this Agreement by each party.
7. **Condition of Property.** No representations or warranties have been made by either Party, or anyone in such Party's behalf, to the other Party as to the condition of the Received Property or the Deposited Property (as the case may be). Each Party has had a full and complete opportunity to inspect the premises being conveyed to such Party under this Agreement, to observe its physical characteristics and existing conditions, and to have conducted such investigations and studies on such premises as it deems necessary. Each Party acknowledges and agrees that the Received Property or the Deposited Property (as the case may be) is sold "As Is," and that each Party waives, from and after closing, any all obligations to or complaints about physical characteristics and existing conditions of the Received Property or the Deposited Property (as the case may be). This paragraph shall survive the transfer of title and the Closing of this Agreement. Notwithstanding the foregoing, however, each Party represents to the other Party, that the Received Property or the Deposited Property (as the case may be), to the best of the representing Party's actual knowledge: (i) no waste or hazardous materials have been deposited on the premises; (ii) no portion of the premises has been used as a landfill, dump, or depository for hazardous materials; (iii) no portion of the premises has been used for the storage, use, manufacture,

treatment, or disposal of toxic waste or hazardous materials; and (iv) such Party has neither filed nor been required to file with any local, state, federal, or regional governmental agency any reports of hazardous materials, toxic wastes or hazardous substances found or disposed of on the premises. As used in herein, the terms ("**hazardous materials**"), ("**toxic waste**"), and ("**hazardous substances**"), shall include, without limitation, any substance, the presence of which on the premises is prohibited by any federal, state, or local law, order or regulation. Notwithstanding anything herein to the contrary, it is hereby understood and agreed that the representing Party shall not be required hereby to make any investigation or obtain a Phase I Environmental Assessment, and that the term "to the best of the representing Party's actual knowledge" shall not include any fact or circumstance that would be discovered as a result of any such Phase I Environmental Assessment, unless the representing Party already has actual knowledge of such fact or circumstance.

8. **Prorations at Closing.** Each Party shall pay all taxes and assessments that accrue on or before the Closing Date, provided, however, that taxes and assessments for the tax year in which Closing occurs shall be prorated between the Parties on their respective properties as of the Closing Date. Developer shall have no obligation to pay any assessments or installments of special assessments that can be paid, but which are not due, on the Deposited Property before the Closing Date, other than assessments that are due for the year in which Closing occurs, which shall be prorated as of the Closing Date. The Land Bank shall have no obligation to pay any assessments or installments of special assessments that can be paid, but which are not due, on the Received Property before the Closing Date, other than assessments that are due for the year in which Closing occurs, which shall be prorated as of the Closing Date. In the event taxes and assessments for the tax year in which Closing occurs are not available on the Closing Date, then the amount will be presumed to be the same amount as that for the last preceding tax period for which the amount of taxes and assessments is known.
9. **Developer Closing Contingencies.** The Parties' obligations to Close this Agreement are specifically contingent upon the satisfaction of the following:
  - a) Developer shall receive notice of award of tax credits from the Kansas Housing Resources Commission, in a form acceptable to Developer in Developer's sole discretion.
  - b) The Governing Body of the City of Abilene, Kansas (the "**City**") shall have adopted an ordinance abating the delinquent installments of special assessments against the Received Property, and deferring and re-amortizing all of the special assessments, including those delinquent assessments that are abated, in such amounts and for such periods as are set forth in Exhibit D attached hereto. Developer acknowledges that the preceding sentence does not require the City to adopt such an ordinance, and such adoption is discretionary and subject to the approval of the governing body of the City and applicable law. The City and the Land Bank provide no guarantee, written or implied, regarding any such decision to be considered by the governing body.
  - c) The Received Property shall be in the same condition as in existence on the Effective Date, ordinary wear and tear excepted.

If any of the contingencies have not been satisfied or waived in writing by Developer on or before \_\_\_\_\_, 2016, Developer may terminate its obligations under this Agreement and cancel this Agreement by giving written notice of cancellation to the Land

Bank. Following such cancellation, neither Party shall have any further obligation or liability to any other Party under this Agreement. Alternatively, Developer may waive such contingencies at any time, in Developer's sole and absolute discretion.

10. **Letter of Credit.** For a period of ten (10) years following the Closing Date, Developer agrees to deliver to and maintain for the benefit of, or cause to be delivered to and maintained for the benefit of, the Land Bank and the City a financial guarantee in the form of an irrevocable letter of credit, in an amount equal to two (2) years' special assessments levied on the Received Property. In the event of non-payment of either special assessments or property taxes, or both, the Land Bank or the City shall be entitled to the remedy set forth in paragraph 14(b), below. The minimum required amount of the letter of credit shall be reduced automatically, from time to time, as set forth in paragraph 12, below. This paragraph shall survive the execution and delivery of this Agreement and the delivery of the deeds and transfer of titles.
11. **Assignment.** The rights, duties and obligations of Developer contained herein may not be assigned, in whole or in part, without the prior written approval of the City following verification by the City Attorney that the assignment complies with the terms of this Agreement. Any proposed assignee shall have qualifications and financial responsibility, as reasonably determined by the City Manager, necessary and adequate to fulfill the obligations of Developer with respect to the portion of the Property being transferred. Any proposed assignee shall, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of the City, assume all of the obligations of Developer under this Agreement and agree to be subject to all the conditions and restrictions to which Developer is subject. Developer shall not be relieved from any obligations set forth herein unless and until the City specifically agrees to release Developer. Developer agrees to record all assignments in the office of the Register of Deeds of Dickinson County, Kansas, in a timely manner following the execution of such agreements. Notwithstanding anything herein to the contrary, however, Developer may, with notice to the City, assign all or a portion of its interest under this Agreement to an entity owned or controlled by Developer or Developer's owners, or to a Kansas limited partnership wherein Developer or an entity owned or controlled by Developer or Developer's owners is the general partner, in connection with a low income housing tax credit project approved by the Kansas Housing Resources Commission.
12. **Post-Closing Conveyances of the Received Property.** The letter of credit obligation set forth in paragraph 10, above, shall cease automatically with respect to special assessments levied against any individual lot comprising the Received Property that is: (a) sold, transferred or conveyed for value to any homebuyer unaffiliated with and unrelated to Developer, its owners, officers, or directors (an "Eligible Buyer"); or (b) improved, as evidenced by the issuance of a certificate of occupancy or equivalent, provided in every case that special assessments are current on the portion of the Received Property so conveyed or improved. Developer shall have no further obligation to the Land Bank or the City under this Agreement with respect to such portions of the Received Property so conveyed or improved, and the Land Bank shall, upon written request, record a release with respect to such lots in a form reasonably acceptable to Developer. The Land Bank authorizes its Chair to execute and deliver the releases described in the preceding sentence upon approval of the release by the Land Bank's attorney. If any portion of the Received Property is sold, transferred, or conveyed to any person or entity that is not an Eligible Buyer, the Developer's letter of credit maintenance obligations set forth in paragraph 10 shall continue with respect to such portions of the Received property so conveyed, unless

the transferee delivers to and maintains for the benefit of the Land Bank and the City a replacement letter of credit in compliance with paragraph 10, in an amount equal to two (2) years' special assessments levied on the Received Property so conveyed.

13. **Default.** The occurrence of any one or more of the following shall constitute an event of default under this Agreement (“Event of Default”):

- a) Delinquency on the payment of special assessments or property taxes on the Received Property at any time during the ten (10) year term set forth in paragraph 10, above, except with respect to those portions conveyed under paragraph 12, above.
- b) A default in the performance or breach of any other term, covenant, condition, or obligation contained in this Agreement, and continuance of such default or breach for a period of 30 days after the Land Bank has delivered to Developer a written notice specifying such default or breach and requiring it to be remedied.

14. **Remedies.** Upon the occurrence of an Event of Default, and upon at least thirty (30) days prior notice to Developer (during which time Developer shall have the opportunity to cure such default or, if such default cannot, despite reasonable diligence, be cured within such period, commence to cure such default (provided Developer diligently pursues such cure to completion thereafter)), the Land Bank shall have the following rights and remedies, in addition to any other legal or equitable rights and remedies:

- a) No building permits or other applicable permits will be issued for any Received Property, except with respect to those portions conveyed under paragraph 12 above prior to the occurrence of an Event of Default.
- b) The Land Bank may draw upon the irrevocable letter of credit to pay delinquent special assessments or real estate taxes, except with respect to those portions conveyed under paragraph 12 above prior to the occurrence of an Event of Default.
- c) The Land Bank may seek damages for expenses realized in the land exchange transaction.
- d) The Land Bank may pursue any available remedy at law or in equity (including specific performance) by suit, action, mandamus or other proceeding to enforce and compel the performance of the duties and obligations of Developer as set forth in this Agreement, to enforce or preserve any other rights or interests of the Land Bank under the agreement or otherwise existing at law or in equity and to recover any damages incurred by the Land Bank resulting from such Event(s) of Default.

15. **Closing Deliveries.** At the Closing, Developer shall: execute and deliver a general warranty deed in recordable form, conveying the Deposited Property to the Land Bank; deliver to the title company and to the Land Bank evidence of Developer's authority to execute the documents reasonably necessary to consummate this transaction; deliver such affidavits as may be reasonably required by the title company to permit the issuance of a title policy in accordance with this Agreement; and deliver evidence of Developer's performance of its obligations set forth in paragraph 10, above. At the Closing, the Land Bank shall: execute and deliver a special warranty deed in recordable form, conveying the Received Property to Developer; deliver to the title company and to Developer evidence of

the Land Bank's authority to execute the documents reasonably necessary to consummate this transaction; and deliver such affidavits as may be reasonably required by the title company to permit the issuance of a title policy in accordance with this Agreement.

16. **Binding Effect; Covenant Running with the Received Property.** This Agreement shall be binding upon and inure to the benefit of the Parties to this Agreement and their respective heirs, executors, administrators, legal representatives, successors and authorized assigns and shall be construed as a covenant running with the Received Property, enforceable against the purchasers or other transferees as if such purchaser or transferee were originally a party and bound by this Agreement. This Agreement, or a memorandum thereof evidencing the covenants, conditions, and restrictions contained herein, may be recorded in the office of the Dickinson County Register of Deeds.
17. **Neighborhood Revitalization.** The parties acknowledge that applicable law permits the City to extend its Neighborhood Revitalization Program incentive to real property located within an Elderly Housing Overlay District (EH-O) or a Housing Opportunities Overlay District (HO-O) as established by the Zoning Regulations of the City. Nothing in this Agreement shall prevent Developer from petitioning the City for such an extension and/or to amend the City's Neighborhood Revitalization Program, and nothing herein shall be construed as the City's obligation to grant such petition.
18. **Notices.** All notices given by a party under this Agreement shall be in writing and sent by registered or certified mail to the other Party. Until notice of change is given in writing, notices shall be addressed to the parties as follows:

Developer:

\_\_\_\_\_  
Attn: Ryan B. Wedel  
4105 Wimbledon Drive  
Lawrence, Kansas 66047

Land Bank: City of Abilene Land Bank  
Attn: City Manager  
P.O. Box 519  
Abilene, KS 67410

19. **Time.** Time is of the essence of this Agreement. No extension will be granted unless in writing and signed by all parties to this Agreement. Any reference to a time period of less than six (6) days shall include Saturday and Sunday. Should the end of a time period fall on a legal holiday, that termination time shall extend to 5:00 p.m. of the next full business day.
20. **Amendment.** This Agreement may be amended or modified only in writing, signed by all Parties to this Agreement.
21. **Brokerage.** The Parties acknowledge and agree that no real estate broker or other person entitled to any commission or fee with respect to the transactions contemplated by this Agreement has been involved in procuring the exchange under this Agreement, and no real estate broker or other person entitled to a commission or fee with respect to the exchange of the premises described in this Agreement has been involved in negotiation or execution of this Agreement. Each party to this Agreement shall indemnify and hold harmless the other party with respect to any claimed brokerage commission pertaining to the exchange of the Deposited Property and the Received Property.

22. **Further Acts.** Each Party, upon the request of the other Party, agrees to perform any further acts and execute and deliver any documents which may be reasonably necessary to carry out the transactions contemplated by this Agreement.
23. **Kansas Law Applies.** This Agreement and its validity, construction and performance shall be governed by the laws of Kansas
24. **Merger Clause.** These terms are intended by the Parties as a complete, conclusive and final expression of all of the conditions of their agreement. No other promises, statements, warranties, agreements or understandings, oral or written, made prior to or at the signing of this Agreement, shall be binding unless in writing and signed by all parties and attached to this Agreement. This Agreement is the product of negotiations between the Parties, and no preference shall be applied against the drafting Party; rather, this Agreement shall be construed in accordance with its plain meaning.
25. **Waiver of Statutory Disclosures.** The Parties to this Agreement hereby acknowledge and agree that the Kansas statutory disclosure obligations pertaining to the sale and purchase of residential real property including, without limitation, the disclosure of sexual offenders, radon gas, special assessments and benefit improvement districts, shall be and are hereby waived by the parties to the fullest extent allowed by law, and shall not apply to this Agreement. The parties shall rely solely upon the title commitments and their own due diligence with respect to such matters. Each party hereby releases the other party, and waives any further disclosure obligations on the part of the other party, with respect to sexual offenders, radon gas, special assessments and benefit improvement districts.
26. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute together one and the same agreement.
27. **Legal and Tax Counseling.** The Parties acknowledge the opportunity to obtain legal and tax counseling to review this Agreement, and agree that each Party shall pay its respective fees for such legal and tax counseling. Developer acknowledges and agrees that (1) neither the City nor the Land Bank, or any of their respective officials, employees, consultants, attorneys or other agents have provided to Developer any legal advice or advice regarding the federal or state income tax implications or consequences of this Agreement and the transactions contemplated thereby, and (2) Developer is relying solely upon its own tax advisors and legal counsel in this regard.
28. **Developer's Costs.** Developer will pay the following costs associated with the transaction: 1) 100% of the title insurance premium for the transfer of the Deposited Property; 2) 100% of the escrow and closing fee, if any; 3) the cost of recording the deeds; 4) the cost of obtaining an appraisal or the cost of any additional preparatory information for due diligence purposes, as may be required by the Land Bank or Developer, if any; and 5) any attorneys' fees and expenses incurred by the Developer in the preparation and performance of the exchange.
29. **Land Bank's Costs.** The Land Bank will pay 100% of the title insurance premium for the transfer of the Received Property and any attorneys' fees and expenses incurred by the Land Bank in the preparation and performance of the exchange.

30. **Prevailing Party.** If any suit or action is instituted by either party under the Land Exchange Agreement, including all appeals, the prevailing party in such suit or action shall be entitled to recover reasonable attorney fees and expenses from the non-prevailing party, in addition to any other amounts to which it may be entitled.
31. **Subordination to Mortgagee.** Developer's post-Closing obligations to the Land Bank under this Agreement shall not apply to any security interest granted to secure indebtedness to any construction or permanent lender. The Land Bank's rights under this Agreement shall be subject and subordinate to any mortgage now or hereafter a lien upon or affecting the Received Property. Provided, however, that nothing in this paragraph shall be construed to subordinate the lien of the City's special assessments or other taxes on the Received Property. The Land Bank agrees, at any time hereafter, to execute any instruments, releases, or other documents that may be required by any mortgagee for the purpose of subjecting and subordinating this Agreement to the lien of any such mortgage.
32. **Authority and Consent to Transaction.** Each party represents to the other that the person executing this Agreement has full and legal authority to bind such party to the terms of this Agreement, and that the execution and delivery of this Agreement have been duly and validly authorized by the governing body of each party.
33. **No Offer to Sell or Buy.** The submission of this document for review, comment or signature does not constitute an offer to be bound hereby. This document and the various terms and conditions set forth in this document shall become effective only upon its full execution and delivery by all the parties hereto.

**IN WITNESS WHEREOF,** the Parties indicate their consent and have executed this Agreement as of the Effective Date.

**DEVELOPER:**

\_\_\_\_\_   
 a Kansas limited liability company

By: \_\_\_\_\_   
 Name: \_\_\_\_\_   
 Its: \_\_\_\_\_

**LAND BANK:**

**CITY OF ABILENE LAND BANK**

By: \_\_\_\_\_   
 Name: \_\_\_\_\_   
 Title: \_\_\_\_\_

**EXHIBIT A**  
**RECEIVED PROPERTY LEGAL DESCRIPTION**

**EXHIBIT B**

**DEPOSITED PROPERTY LEGAL DESCRIPTION**

1701 NW 10<sup>th</sup> St, Abilene, KS 0211141801001015000

1714 NW 9<sup>th</sup> St, Abilene, KS 0211141801001011000

1702 NW 9<sup>th</sup> St, Abilene, KS 0211141801001014000

Lots 1, 5 and 8, Block 4, Cedar Ridge Estates No. 1 to the City of Abilene, Dickinson County, Kansas.

1701 NW 9<sup>th</sup> St, Abilene, KS 0211141801001003000

1705 NW 9<sup>th</sup> St, Abilene, KS 0211141801001003010

800 N Van Buren St, Abilene, KS 0211141801001002040

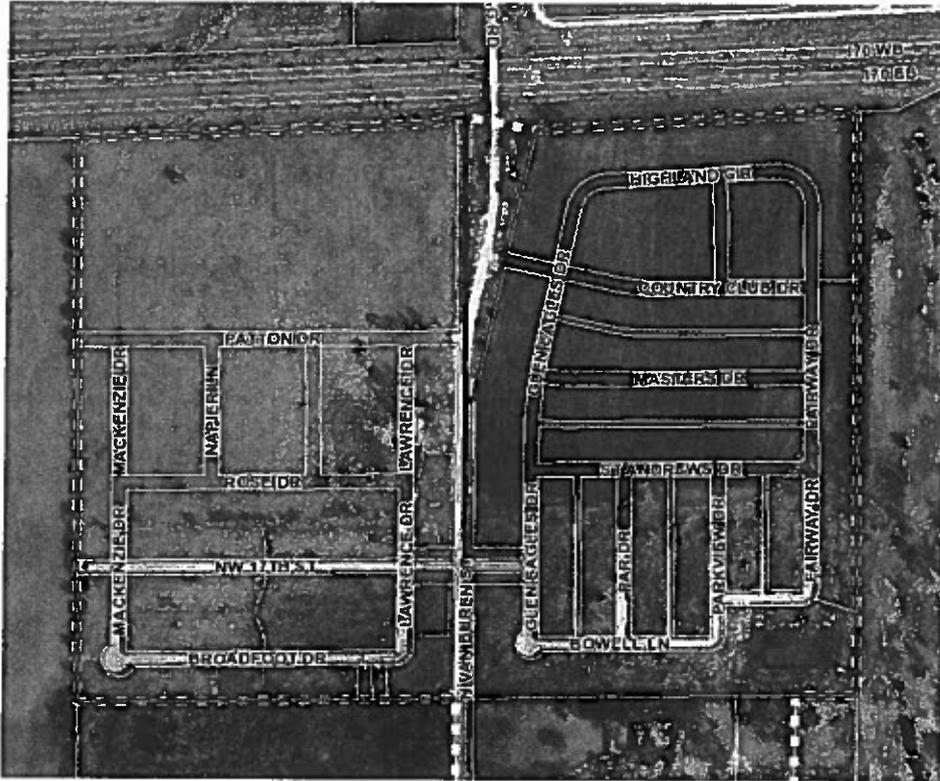
Lots 1, 2 and 5, Cedar Ridge Estates No. 1 to the City of Abilene, Dickinson County, Kansas.

**EXHIBIT C**

**APPRAISED VALUES OF PROPERTIES**

# Appraisal Report of Real Property:

West and East Highlands Subdivision  
Various Addresses  
Abilene, Kansas 67410



Effective Date of Valuation: October 30, 2015

Date of Report: November 13, 2015

Prepared For:  
David Dillner  
City of Abilene  
Abilene, KS

Prepared By:  
Bill Lansdowne, MAI



**THE SIMMONS COMPANY**  
Real Estate Appraisal & Consulting



**THE SIMMONS COMPANY**  
Real Estate Appraisal & Consulting

3244 Gary Avenue Suite #150  
Manhattan, Kansas 66503  
Phone (785) 539 6531  
Fax (785) 539 1433  
[www.simmonscompany.net](http://www.simmonscompany.net)

November 13, 2015

Mr. David Dillner  
City of Abilene  
419 North Broadway  
Abilene, Kansas 67410

Re: Appraisal report of real property known as West and East Highlands  
subdivision, Abilene, Kansas 67410

Dear Mr. Dillner:

As requested, I have made an inspection and analysis of the above referenced property for the purpose of developing an opinion of market value of the subject property fee simple, and the function of the assignment is to assist the Client in governmental financial decisions related to the transfer of the property to the City of Abilene land bank.

The attached appraisal report is intended to comply with the scope of work and requirements agreed upon by the client and The Simmons Company. This appraisal is presented in an Appraisal Report format as defined by USPAP Standards Rule 2-2(a). This format provides a brief description of the pertinent data gathered and analyzed, techniques employed, and the reasoning leading to the value opinions.

The analyses, opinions and conclusions communicated within this appraisal report were developed based upon our interpretation of the requirements and guidelines of the current Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation; the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute. This appraisal report sets forth the identification of the property, the assumptions and limiting conditions, and the results of the investigation. Please pay particular attention to the Extraordinary Assumptions and Hypothetical Conditions identified in this report, as the value opinions expressed could be different without these assumptions and conditions.

The opinion of market value of the fee simple interest for the subject real property, as of October 30, 2015, is:

**Zero Dollars  
(\$0)**

**Extraordinary Assumptions**

- None

**Hypothetical Conditions**

- None

This appraisal report should be read in its entirety, including all attachments, addendums, and cover pages. Lastly, you are specifically referred to sections entitled Environmental Hazards and ADA (Americans with Disabilities Act) identified in this report.

Respectfully Submitted,



Bill Lansdowne, MAI  
Certified General Appraiser  
State of Kansas  
Cert. No. G-2496

BL/bw

## USPAP 2014-2015 Certification

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial and unbiased professional analyses, opinions and conclusions.
- I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest with respect to the parties involved.
- I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement with this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- My analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice*.
- I have made a personal inspection of the property that is the subject of this report.
- No one provided significant business and/or intangible asset appraisal assistance to the person signing this certification.
- The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- As of the date of this report, I have completed the continuing education program of the Appraisal Institute for Associate Members.



Bill Lansdowne, MAI  
Certified General Appraiser  
State of Kansas  
Cert. No. G-2496

November 13, 2015

Date

## EXECUTIVE SUMMARY

---

The subject property is a partially completed residential subdivision, consisting of 292 platted lots, which as of the effective date of the appraisal, included 117 developed lots, meaning they have installed infrastructure including roads, sewer, water, electricity and gas utilities. To date, two lots have been absorbed, or developed with residential units.

Research and analysis of market data, and completion of the subdivision analysis for the subject, results in a overall negative value, when future cash flows are discounted to a net present value. The resulting negative value indicates a residential subdivision with the subjects current condition and circumstances is not financially feasible, and there would be no reasonable buyers, resulting in an opinion of market value of \$0. The two key items which had a significant negative impact on value within the subdivision analysis were the current absorption rate of residential units in the market, and the substantial amount of special assessments the property is burdened with.

As discussed in the appraisal, the subdivision was developed at a time when it was speculated significant residential growth would occur as a result of announced growth at Fort Riley. When this growth never materialized as expected, the absorption of the subdivision stopped. Furthermore, as discussed in the appraisal there are additionally reasons why the subject subdivision has not been well-accepted by the market. In summary, as the subdivisions past capture of new residential housing has been poor, while the overall Abilene housing market has slowed, there is no supportable data to support an absorption rate greater than 5 units per year, and any projected absorption rate between 3-5 units per year could be considered reasonable. In addition, the subject would likely not capture the entire absorption of housing in the Abilene market, as there are presently 47 competing lots available on the market in other subdivisions. Discounting the subject lot prices substantially could potentially improve the subject capture rate.

In regard to the current special assessments, based on data provided by the City of Abilene, there are presently \$660,232 in delinquent special assessments, and a remaining balance of \$4,529,838, for a total outstanding obligation of \$5,190,070. Of this total, \$4,417,089 are assessed to currently developed lots, while \$772,980 are assessed to undeveloped and vacant land. These special assessments are a substantial burden on the potential of the subject to maintain positive cash flow over the course of ownership for a potential investor.

The appraiser considered numerous scenarios, adjusting variables such as lot price, absorption rate, and discount rate in the process of completing the subdivision approach. Every variation of the scenario yielded a negative net present value. Included in the appraisal is a reasonable scenario, although it is recognized the capture rate of the subject may remain overly optimistic.

**PURPOSE OF THE APPRAISAL:**

The purpose of the appraisal is to develop an opinion of market value of the subject property, as of the effective date of the appraisal. Market value is defined as follows:

*"Market value means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:*

- *buyer and seller are typically motivated;*
- *both parties are well informed or well advised and acting in what they consider their own best interests;*
- *a reasonable time is allowed for exposure in the open market;*
- *payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and*
- *the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."*<sup>1</sup>

**CLIENT AND INTENDED USER:**

The client and intended users are the addressee of this appraisal report and officials with City of Abilene. The Appraiser does not authorize, and is not responsible for use of this appraisal by any party other than the Client or intended user.

**INTENDED USE:**

The function and intended use is to assist the client in governmental financial decisions related to the transfer of the property to the City of Abilene land bank. Any other use is prohibited. The acceptance of this assignment, by the Appraiser, is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the Client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event.

**PERTINENT DATES:**

Date of valuation:	October 30, 2015
Date of site visit:	October 30, 2015
Date of report:	November 13, 2015

<sup>1</sup> Uniform Standards of Professional Appraisal Practice (USPAP) 2014-2015 Edition, Appraisal Foundation, Statement 22, A-75

**PROPERTY RIGHTS APPRAISED:**

The property rights appraised are the fee simple interest, defined as follows:

*"An absolute ownership unencumbered by any other interest; subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat."*<sup>2</sup>

**MARKET EXPOSURE TIME:**

The market exposure time is presumed to precede the effective date of the appraisal. Exposure time may be defined as follows:

*"The estimated length of time the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal; a retrospective opinion based on an analysis of past events assuming a competitive and open market"*<sup>3</sup>

Exposure time is a function of price, time, and use. It must be noted that the concept of reasonable exposure time encompasses not only adequate, sufficient, and reasonable time, but adequate, sufficient, and reasonable effort.

The estimated exposure time presented herein is based on analysis of the following factors:

- statistical information about days on market
- information gathered through sales verification
- interviews with market participants
- anticipated changes in market conditions

Based on the data presented in this report, and the fact that the market value estimated herein is representative of a price based on current acceptable returns indicated by market participants, I am of the opinion that presently there is no market for the subject property.

---

<sup>2</sup> The Dictionary of Real Estate Appraisal Sixth Edition, Appraisal Institute, 2015

<sup>3</sup> USPAP 2014-2015 Edition, Appraisal Foundation, Statement 6, U-79

## SCOPE OF WORK:

Based on conversations with the client and intended users, the data researched and the type and extent of analysis, along with the detail of this appraisal report are adequate for intended use. The completed appraisal report discusses comparable sales and applies a subdivision analysis, and was considered appropriate to produce a credible report.

- Bill Lansdowne viewed the subject property on October 30, 2015. In addition, the subject neighborhood was viewed.
- The Appraiser researched and compiled market data for sales of comparable incomplete subdivisions, partially absorbed subdivisions, residential lot sales and other relevant comparable land sales.
- The Appraiser researched and analyzed residential lot sales and absorption rates in Abilene, including historical residential building permit numbers, and analyzed the information gathered in order to complete the subdivision analysis.
- The Appraiser considered the numerous absorption scenarios within the subdivision analysis to arrive at a final opinion of market value for the subject real estate, as of the effective date of this appraisal.

## Sources of Information:

- The Simmons Company proprietary database
- Dickinson County Appraiser Records
- Subject plat maps
- City of Abilene - Special Assesment Information
- Interviews with local real estate professionals including realtors, brokers, builders
- Representatives from financial institutions
- Interflood.com for flood maps and flood plain information
- Tax information - Dickinson County Treasurer
- Zoning information - City of Abilene
- Legal description - Plat Map

In addition to the standard assumptions and limiting conditions, the following extraordinary assumptions and hypothetical conditions, may correspond to the concluded value opinions. If any of them are found to be false, it could alter the Appraiser's opinions or conclusions.

A hypothetical condition is defined as "that which is contrary to what exists but is supposed for the purpose of analysis. Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis."<sup>1</sup>

---

<sup>1</sup> Appraisal Institute, *The Dictionary of Real Estate Appraisal*, 5<sup>th</sup> ed. (Chicago: Appraisal Institute, 2010), 73

### **Hypothetical Conditions**

- None

An extraordinary assumption is defined as “an assumption directly related to a specific assignment, which, if found to be false, could alter the appraiser’s opinions or conclusions. Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property such as market conditions or trends; or about the integrity of data used in an analysis.”<sup>2</sup>

### **Extraordinary Assumptions**

- None

---

<sup>2</sup> *Dictionary of Real Estate Appraisal*, 97

## Appraisal Report of Real Property:

Cedar Ridge Subdivision  
Various Addresses  
Abilene, Kansas 67410



Effective Date of Valuation: November 11, 2015  
Date of Report: December 30, 2015

Prepared For:  
Ryan Wedel  
4105 Wimbledon Drive  
Lawrence, Kansas

Prepared By:  
Bill Lansdowne, MAI

 **THE SIMMONS COMPANY**  
Real Estate Appraisal & Consulting



**THE SIMMONS COMPANY**  
Real Estate Appraisal & Consulting

3244 Gary Avenue Suite #150  
Manhattan, Kansas 66503  
Phone (785) 539 8531  
Fax (785) 539 1433  
www.simmonscompany.net

December 30, 2015

Mr. Ryan Wedel  
4105 Wimbledon Drive  
Lawrence, Kansas 66047

Re: Appraisal report of real property within Cedar Ridge subdivision, Abilene,  
Kansas 67410

Dear Mr. Wedel:

As requested, I have made an inspection and analysis of the above referenced property for the purpose of developing an opinion of market value of the subject property fee simple, and the function of the assignment is for accounting and tax purposes.

The attached appraisal report is intended to comply with the scope of work and requirements agreed upon by the Client and The Simmons Company. This appraisal is presented in an Appraisal Report format as defined by USPAP Standards Rule 2-2(a). This format provides a brief description of the pertinent data gathered and analyzed, techniques employed, and the reasoning leading to the value opinions.

The analyses, opinions and conclusions communicated within this appraisal report were developed based upon our interpretation of the requirements and guidelines of the current Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation; the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute. This appraisal report sets forth the identification of the property, the assumptions and limiting conditions, and the results of the investigation. Please pay particular attention to the Extraordinary Assumptions and Hypothetical Conditions identified in this report, as the value opinions expressed could be different without these assumptions and conditions.

The opinion of market value of the fee simple interest for the subject real property, as of November 11, 2015, is:

**Zero Dollars**  
**(\$0)**

**Extraordinary Assumptions**

- None

**Hypothetical Conditions**

- None

This appraisal report should be read in its entirety, including all attachments, addendums, and cover pages. Lastly, you are specifically referred to sections entitled Environmental Hazards and ADA (Americans with Disabilities Act) identified in this report.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Bill Lansdowne". The signature is fluid and cursive, with the first name "Bill" being more prominent and the last name "Lansdowne" following in a similar style.

Bill Lansdowne, MAI  
Certified General Appraiser  
State of Kansas  
Cert. No. G-2496

BL/bw

## USPAP 2014-2015 Certification

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial and unbiased professional analyses, opinions and conclusions.
- I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest with respect to the parties involved.
- I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement with this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- My analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice*.
- I have made a personal inspection of the property that is the subject of this report.
- No one provided significant business and/or intangible asset appraisal assistance to the person signing this certification.
- The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- As of the date of this report, I have completed the continuing education program of the Appraisal Institute for Associate Members.



Bill Lansdowne, MAI  
Certified General Appraiser  
State of Kansas  
Cert. No. G-2496

December 30, 2015

Date

## Executive Summary

---

The subject property is a partially completed residential subdivision, consisting of 6 developed residential lots, 17.3 acres of raw ground, and one 1.68 acre lot which was originally zoned commercial, but is now zoned R-3 Residential.

Research and analysis of market data, and completion of the subdivision analysis for the subject, results in a overall negative value, when future cash flows are discounted to a net present value. The resulting negative value indicates a residential subdivision with the subject's current condition and circumstances is not financially feasible, and there would be no reasonable buyers, resulting in an opinion of market value of \$0. The two key items which had a significant negative impact on value within the subdivision analysis were the current absorption rate of residential units in the market, and the substantial amount of special assessments the property is burdened with.

As discussed in the appraisal, the subdivision was developed at a time when it was speculated that significant residential growth would occur as a result of announced growth at Fort Riley. When this growth didn't materialize as expected, and when the national economy slowed, absorption within Abilene slowed, affecting the subject subdivision. The subject subdivision's past capture of new residential housing has been adequate; however, the overall Abilene housing market has slowed significantly, there is no supportable data to support an absorption rate greater than 5 units per year, and any projected absorption rate between 4-5 units per year could be considered reasonable. In addition, the subject would likely not capture the entire absorption of housing in the Abilene market, as there are presently 47 competing lots available on the market in other subdivisions; however, it is likely it could continue capturing approximately 30 percent of the lots absorbed in the market. It is noted that, discounting the subject lot prices substantially could potentially improve the subject capture rate.

In regard to the current special assessments, based on data provided by the owner, there are presently \$319,173 in outstanding special assessments. These special assessments are a substantial burden on the potential of the subject to maintain positive cash flow over the course of ownership for a potential investor.

The Appraiser considered numerous scenarios, adjusting variables such as lot price, absorption rate, and discount rate in the process of completing the subdivision approach. Most reasonable variations of the scenario yielded a negative net present value.

### **PURPOSE OF THE APPRAISAL:**

The purpose of the appraisal is to develop an opinion of market value of the subject property, as of the effective date of the appraisal. Market value is defined as follows:

*"Market value means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:*

- buyer and seller are typically motivated;*
- both parties are well informed or well advised and acting in what they consider their own best interests;*
- a reasonable time is allowed for exposure in the open market;*
- payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and*
- the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."<sup>1</sup>*

### **CLIENT AND INTENDED USER:**

The Client is the addressee of this appraisal report and additional intended users are members of the Cedar Ridge Estates, LLC. The Appraiser does not authorize, and is not responsible for use of this appraisal by any party other than the Client or intended user.

### **INTENDED USE:**

The function and intended use is for accounting and tax purposes for the Client and intended users. Any other use is prohibited. The acceptance of this assignment, by the Appraiser, is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the Client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event.

### **PERTINENT DATES:**

Date of valuation:	November 11, 2015
Date of site visit:	November 11, 2015
Date of report:	December 30, 2015

---

<sup>1</sup> Uniform Standards of Professional Appraisal Practice (USPAP) 2014-2015 Edition, Appraisal Foundation, Statement 22, A-75

**PROPERTY RIGHTS APPRAISED:**

The property rights appraised are the fee simple interest, defined as follows:

*"An absolute ownership unencumbered by any other interest; subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat."*<sup>2</sup>

**MARKET EXPOSURE TIME:**

The market exposure time is presumed to precede the effective date of the appraisal. Exposure time may be defined as follows:

*"The estimated length of time the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal; a retrospective opinion based on an analysis of past events assuming a competitive and open market"*<sup>3</sup>

Exposure time is a function of price, time, and use. It must be noted that the concept of reasonable exposure time encompasses not only adequate, sufficient, and reasonable time, but adequate, sufficient, and reasonable effort.

The estimated exposure time presented herein is based on analysis of the following factors:

- statistical information about days on market
- information gathered through sales verification
- interviews with market participants
- anticipated changes in market conditions

Based on the data presented in this report, and the fact that the market value estimated herein is representative of a price based on current acceptable returns indicated by market participants, I am of the opinion that presently there is a very limited to no market for the subject property.

---

<sup>2</sup> The Dictionary of Real Estate Appraisal Sixth Edition, Appraisal Institute, 2015

<sup>3</sup> USPAP 2014-2015 Edition, Appraisal Foundation, Statement 6, U-79

### **SCOPE OF WORK:**

Based on conversations with the client and intended users, the data researched and the type and extent of analysis, along with the detail of this appraisal report are adequate for intended use. The completed appraisal report discusses comparable sales and applies a subdivision analysis, and was considered appropriate to produce a credible report.

- Bill Lansdowne viewed the subject property on November 11, 2015. In addition, the subject neighborhood was viewed.
- The Appraiser researched and compiled market data for sales of comparable incomplete subdivisions, partially absorbed subdivisions, residential lot sales, agricultural land and other relevant comparable land sales.
- The Appraiser researched and analyzed residential lot sales and absorption rates in Abilene, including historical residential building permit numbers, and analyzed the information gathered in order to complete the subdivision analysis.
- The Appraiser considered the numerous absorption scenarios within the subdivision analysis to arrive at a final opinion of market value for the subject real estate, as of the effective date of this appraisal.

### **Sources of Information:**

- The Simmons Company proprietary database
- Dickinson County Appraiser Records
- Subject plat maps
- Infrastructure Costs - Loan information from ownership
- Interviews with local real estate professionals including realtors, brokers, builders
- Representatives from financial institutions
- Interflood.com for flood maps and flood plain information
- Tax information - Dickinson County Treasurer
- Zoning information - City of Abilene
- Legal description - Plat Map

In addition to the standard assumptions and limiting conditions, the following extraordinary assumptions and hypothetical conditions, may correspond to the concluded value opinions. If any of them are found to be false, it could alter the Appraiser's opinions or conclusions.

A hypothetical condition is defined as “that which is contrary to what exists but is supposed for the purpose of analysis. Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.”<sup>1</sup>

### **Hypothetical Conditions**

- None

An extraordinary assumption is defined as “an assumption directly related to a specific assignment, which, if found to be false, could alter the appraiser’s opinions or conclusions. Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property such as market conditions or trends; or about the integrity of data used in an analysis.”<sup>2</sup>

### **Extraordinary Assumptions**

- None

---

<sup>1</sup> Appraisal Institute, *The Dictionary of Real Estate Appraisal*, 5<sup>th</sup> ed. (Chicago: Appraisal Institute, 2010), 73

<sup>2</sup> *Dictionary of Real Estate Appraisal*, 97

**EXHIBIT D**

**SCHEDULE OF REAMORTIZED SPECIAL ASSESSMENTS ON RECEIVED PROPERTY**

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF SUPPORT FOR A HOUSING TAX CREDIT APPLICATION TO BE SUBMITTED TO THE KANSAS HOUSING RESOURCES CORPORATION BY ABILENE HIGHLANDS I, LLC**

**WHEREAS**, Abilene Highlands I, LLC (“Developer”) has requested a Resolution of Support from the City of Abilene, Kansas (“City”) concerning a housing tax credit application, attached hereto as **Exhibit A**, with the Kansas Housing Resources Corporation (“KHRC”) for the development of affordable rental housing to be located at property generally described as the Abilene Highlands in Abilene, Kansas, with a legal description as follows:

*[insert legal description]*

**WHEREAS**, the Developer desires to exchange real estate with property owned by the Land Bank of the City of Abilene, Kansas, and use such property for the development of affordable rental housing as defined by KHRC;

**WHEREAS**, the Project would assist in the development of a subdivision that has stalled and has created a financial burden on the taxpayers of the City;

**WHEREAS**, the exchange of such real estate is conditioned upon the successful application by Developer for KHRC housing tax credits;

**WHEREAS**, the Developer has requested an amendment to the City’s Neighborhood Revitalization Program (“Program”) that would provide a rebate of ad valorem property taxes on eligible residential development for ten years; and

**WHEREAS**, the Development is anticipated to include the new construction of 28 units planned to be marketed as affordable housing.

**NOW, THEREFORE BE IT RESOLVED**, by the City Commission of the City of Abilene, as follows:

**SECTION ONE. Finding.** The governing body makes a finding that the proposed Development is in the best interests of the City and that it will help the City provide affordable housing to eligible individuals and families and will facilitate the development of the Abilene Highlands subdivision.

**SECTION TWO. Support.** The City supports the Developer’s application for the Housing Tax Credit Program administered by the KHRC for the aforementioned Development. The Developer has provided the City with all pertinent information necessary for a thorough evaluation of the Project, and any regulatory approvals required by City ordinances and policies have been met to the satisfaction of the governing body.

**SECTION THREE. Rent Rates.** The Developer acknowledges that the rental rates for the Housing Development shall not exceed the Fair Market Rent, as defined by the KHRC, and as otherwise amended.

**SECTION FOUR. Local Incentives.** The governing body will consider the Developer's request to amend the Neighborhood Revitalization Program ("Program") to allow the Program to apply to the Development. The Economic Development Council has recommended approval of an amendment to the Program to allow it to apply to properties zoned with the "HO-O, Housing Opportunities Overlay District" and/or the "EH-O, Elderly Housing Overlay District," as set forth by the Zoning Regulations of the City. The governing body may also consider such other incentives as may be appropriate to make the Development feasible.

**SECTION FOUR. Effective Date.** That the effects of this Resolution shall be in full force after its approval by the City Commission.

**PASSED AND APPROVED** by the Governing Body of the City of Abilene, Kansas this \_\_\_ day of \_\_\_\_\_, 2016.

**CITY OF ABILENE, KANSAS**

By: \_\_\_\_\_  
Dennis P. Weishaar, Mayor

ATTEST:

\_\_\_\_\_  
Penny Soukup, CMC  
City Clerk

**EXHIBIT A**

**2016 KHRC Housing Tax Credit Application**

**Abilene Highlands I, LLC**

\_\_\_\_\_, 2016

**EXHIBIT B**

**Proposed Land Exchange Agreement**

**Abilene Highlands I, LLC**

\_\_\_\_\_, 2016



**Abilene City Commission Minutes  
Abilene Public Library  
January 11, 2016 @ 4:00 p.m.  
Abilene, Kansas**

**1. Call to Order**

**2. Roll Call** – City Commission Present: Mayor Weishaar, Commissioners Ray, Payne, Marshall and Shafer.

Staff Present: City Manager Dillner, Human Resources Director/City Clerk Soukup, City Attorney Martin, Finance Director Rothchild, Public Works Director Schrader, Parks & Recreation Director Foltz, Community Development Director Shea, Police Chief Heimer, and Fire Chief Sims.

Others Present: Mike Heronemus and James D. Holland.

**3. Pledge of Allegiance** - Mayor Weishaar led the Pledge of Allegiance.

**Consent Agenda**

**4. Agenda Approval** for January 11, 2016 the City Commission Meeting

**5. Meeting Minutes:** December 28, 2015, Regular Meeting

Motion by Commissioner Marshall, seconded by Commissioner Shafer to approve the Consent Agenda with the additions to the agenda of item 13a, purchase of water meters and item 13b, executive session to discuss personnel matters with the City Commission and City Manager. Motion carried unanimously 5-0.

**Public Comments and Communications**

**6. Public Comments.** Persons who wish to address the City Commission regarding items not on the agenda and that are under the jurisdiction of the City Commission may do so when called upon by the Mayor. Comments on personnel matters and matters pending before court are not permitted. Speakers are limited to three (3) minutes. Any presentation is for informational purposes only. No action will be taken.

Mayor Weishaar asked for any comments or communications from the public that are not on the agenda.

There were no public comments or communications.

**7. Declaration.** At this time City Commissioners may declare any conflict or communication they have had that might influence their ability to impartially consider today's issues.

There were no declarations.

**Proclamations and Recognition**

8. There were no proclamations or recognitions.

#### **Public Hearings**

9. There were no public hearings.

#### **Old Business**

10. There was no old business.

#### **New Business**

**11. Consideration of a motion to approve the acquisition of a used 2010 International Tandem Axle Dump Truck from Summit Truck Group, Inc. for \$55,332.00 and to declare as surplus a 1989 Dump Truck and authorizing its sale through Purple Wave, Inc.**

Public Works Director Schrader presented information regarding the purchase of a 2010 International Tandem Axle Dump Truck in the amount of \$55,332.00 from Summit Truck Group, Inc. \$60,000.00 was budgeted in 2016 for this purchase. This replaces the 1989 dump truck the department currently has and authorizes its sale through Purple Wave, Inc.

Motion by Commissioner Ray, seconded by Commissioner Payne to approve the acquisition of a 2010 International Tandem Axle Dump Truck in the amount of \$55,332.00 from Summit Truck Group, Inc., and to declare as surplus a 1989 Dump Truck and authorizing its sale through Purple Wave, Inc. Motion carried unanimously 5-0.

**12. Consideration of a motion to approve a bid of \$161,114.23 from Municipal Emergency Services, Inc. for air packs and related equipment for the Fire Department.**

City Manager Dillner said in the 2015 budget the City Commission approved the acquisition of 26 air packs. The Fire Department went out for bids on those and received a bid from Municipal Emergency Services, Inc. for \$161,114.23. This purchase was approved with the condition that they would be financed. At this meeting we are approving the bid for the air packs and at the next meeting we will approve the financing.

Motion by Commissioner Payne, seconded by Commissioner Marshall to approve the bid from Municipal Emergency Services, Inc. in the amount of \$161,114.23 for the purchase of air packs and related equipment for the Fire Department. Motion carried unanimously 5-0.

**13. Consideration of a Resolution establishing the 2016 Legislative Agenda for the City of Abilene, Kansas.**

City Manager Dillner presented information regarding Resolution No. 011116-1 establishing the 2016 Legislative Agenda for the City of Abilene. In essence it is the Statement of Municipal Policy as prepared by the League of Kansas Municipalities although the City also supplements it with its own local agenda. We focus on the Chisholm Trail/Historic Trail Project, the Greyhound Industry, Water Reclamation, Base Realignment and Closure and the Eisenhower Presidential Library, Museum and Boyhood Home.

City Manager Dillner reported on a couple important issues which are anticipated to be large topics for municipalities in the 2016 Legislative Session. The first is City elections should remain non-partisan and separate from state and national elections. Local spending and taxing decisions are best left to local officials for the citizens they represent. The League and the Statement of Municipal Policy opposes any limits on local revenue sources, the idea behind that is that the property tax lid legislation is presumed up again in 2016 and the proposal will be to make it effective July 1, 2016 as opposed to July 1, 2018 and there may also be a look at the exemptions that currently exist in state law. There are a couple other of items with respect to fees that are directed out of state commercial vehicles; those fees are meant to go to the Special City/County Highway Fund however they have been directed to the State General Fund in the recent past so we are urging the Legislature to keep those funds in the City/County Highway Fund. In addition we support current law regarding the use of state and local public monies to provide information and advocate on behalf of our citizens and cities. One federal issue is the urging of Congress to implement an action plan to require the mandatory collection of sales and use taxes. There are numerous other items on the legislative agenda that we can address as they come up to best serve the City.

Motion by Commissioner Ray, seconded by Commissioner Marshall to approve Resolution No. 0111161 A **RESOLUTION ESTABLISHING THE 2016 LEGISLATIVE AGENDA FOR THE CITY OF ABILENE, KANSAS. MOTION CARRIED UNANIMOUSLY 5-0.**

**13a. Consideration of a motion to approve the purchase water meters.**

Public Works Director Schrader presented information regarding the purchase of new Sensus water meters. We can get a considerable price break if we purchase a large amount of meters all at once instead a few here and there. There is \$118,000.00 budgeted in 2016 for the purchase of water meters.

Motion by Commissioner Ray, seconded by Commissioner Payne to approve the purchase water meters. Motion carried unanimously 5-0.

**13b. Consideration of a motion to adjourn into executive session for ten minutes to include the City Manger.**

Motion by Commissioner Marshall, seconded by Commissioner Payne to adjourn into executive session at 4:20 p.m. for a period of ten minutes to include the City Manager. Motion carried unanimously 5-0.

Motion by Commissioner Marshall, seconded by Commissioner Payne to return to regular session at 4:31 p.m. Motion carried unanimously 5-0.

There was no action taken in executive session.

**Reports**

**14. City Manager Reports**

The Commission retreat is scheduled for January 22<sup>nd</sup> and 23<sup>rd</sup>. If you have not already done so, please email John Devine the times you might be available on January 14<sup>th</sup> for a brief one on one meeting, he said the shouldn't take more than 15-20 minutes.

The League of Kansas Municipalities Legislative Preview was last week. There wasn't allot we didn't expect. They talked about the property tax cap, abandoned and blighted housing and possible streamline processing for that. They talked about anticipated legislation that would look at insurance proceeds, specifically now if you house is damaged by fire for example more that 75%, the City can make a claim for a lien against the insurance proceeds until it is repaired, replaced or removed and once that is done you get your money back. They are anticipating the amending that law to include seismic activity, such as an earthquake. They talked little bit about body cameras for Police Officers, there might be some gun legislation and other issues regarding cities.

Tonight is the first meeting of the STAR Bond committee.

## **15. Expenditure Report**

### **Adjournment**

## **16. Consideration of a motion to adjourn the January 11, 2016 City Commission meeting.**

Motion by Commissioner Marshall, seconded by Commissioner Ray to adjourn at 4:36 p.m. Motion carried unanimously 5-0.

(Seal)

\_\_\_\_\_  
Dennis P. Weishaar, Mayor

ATTEST:

\_\_\_\_\_  
Penny L. Soukup, CMC  
City Clerk

# CLARK, MIZE & LINVILLE CHARTERED

PETER L. PETERSON  
JOHN W. MIZE  
GREG A. BENGTON  
PAULA J. WRIGHT  
ERIC N. ANDERSON  
DUSTIN J. DENNING  
PETER S. JOHNSTON  
JARED T. HIATT  
JOSHUA C. HOWARD  
AARON O. MARTIN  
JACOB E. PETERSON  
JESSICA L. STOPPEL

ATTORNEYS AT LAW  
129 S. EIGHTH, P.O. BOX 380  
SALINA, KANSAS 67402-0380  
TELEPHONE: (785) 823-6325  
FAX: (785) 823-1868

128 N. MAIN  
LINDSBORG, KANSAS 67456  
TELEPHONE: (785) 227-2010

[www.cml-law.com](http://www.cml-law.com)

C.L. CLARK (1908 – 2004)  
JAMES P. MIZE (1910 – 1988)

AUBREY G. LINVILLE  
L.O. BENGTON  
MICKEY W. MOSIER  
RETIRED

## MEMORANDUM

**TO:** David Dillner, City Manager  
**FROM:** Aaron Martin, City Attorney  
**RE:** HB 2104 – Changes to Election Laws  
**DATE:** January 15, 2016

---

### INTRODUCTION:

In 2015, the Kansas Legislature adopted HB 2104 (“Act”), which moved city elections from April of odd-numbered years to November of odd-numbered years. In addition to affecting the timing of the City of Abilene’s (“City”) elections, the Act affects issues relating to elected officials’ terms of office, transitions, meeting dates, filing deadlines, and the filling of governing body vacancies.

In adopting the Act, the Legislature repealed the Kansas statutes commonly known as the City Manager Plan Act (“CMPA”). This was necessary to make the state election laws uniformly applicable to all cities. In the Act, the Legislature retained and recodified the core parts of the now-repealed CMPA. The Act provides that, if a city has previously adopted the CMPA via an election, the City will continue to operate under that form of government until such time as the city’s form of government is changed by a local election. The Act further provides that all existing ordinances and charter ordinances relating to a city’s form of government, except those provisions relating to the timing of city primary and general elections, shall remain in affect until amended or repealed by the city.

Because the City of Abilene adopted the commission-city manager form of government in 1939 pursuant to the now-repealed provisions of the CMPA, the City’s existing ordinances and charter ordinances relating to the commission-city manager form of government, except those provisions relating to the timing of city primary and general elections, still remain in effect. Based on my review of the City’s ordinances, the following is a short summary of the two primary ordinances

pertinent to a discussion of the City's status following the Legislature's 2015 adoption of the Act:

- Ordinance No. 762, dated April 15, 1939: In this ordinance, the City adopted the commission-city manager form of government, and became subject to the provisions of the CMPA that were applicable to cities of the second class. Generally, the ordinance provides for the appointment of a city manager, creates certain administrative departments, and provides for the appointment of certain officers and employees. Many of the provisions of Ordinance No. 762 are currently codified in Chapter 1 of the City Code, titled "Administration."

By adopting the commission-city manager form of government, the City became subject to K.S.A. 12-1005c and K.S.A. 12-1006, which were statutes within the CMPA that established the number and terms of city commissioners. These statutes provided for the election of a mayor and two commissioners, each with a term of four years.

- Charter Ordinance No. 10, dated April 12, 1982: In this charter ordinance, the City exempted itself from certain provisions of the CMPA – K.S.A. 12-1005c and K.S.A. 12-1006 – and provided substitute and additional provisions on the same subjects. Specifically, the charter ordinance provided for the staggered election of five commissioners, and it established rules related to tie votes, terms of office, and vacancies in office.

This memorandum summarizes the required, recommended, and optional actions to be taken by the City in light of the Act, and the Act's effect on the above-referenced City ordinances.

#### **SUMMARY OF THE ACT AND RECOMMENDATIONS/OPTIONS:**

1. **Move to Fall Elections**: Beginning in 2017, all primary elections for members of the governing body must be held on the first Tuesday in August of odd-numbered years, and all general elections must be held on the Tuesday succeeding the first Monday in November of odd-numbered years. The Act allows cities to hold elections in November of even-numbered years for the purposes of staggering elections or to establish three-year terms of office.

#### **Action Required/Recommended:**

- The City's ordinances do not currently reference spring elections, so there are no ordinances that need to be changed to correctly reference the timing of elections. If desired for purposes of providing clarity to citizens, the City may adopt an ordinance reciting the new election dates.

2. **Commencement of Terms of Office**. Terms of newly elected members of the governing body must now begin on the second Monday in January following the certification of election.

Action Required/Recommended:

- Charter Ordinance No. 10 currently states that terms will begin “on the first regular meeting of the Commission following their election . . . .” To comply with the new commencement date, it is recommended that the City repeal<sup>1</sup> Charter Ordinance No. 10 and adopt an ordinary ordinance to reflect a January commencement date for newly-elected officials.
- Article 8, Chapter 1 of the City Code establishes various appointed boards and commissions, and provides for appointments to be made by the governing body commencing on the first day of May. The City may wish to consider amending the various code provisions so that appointments take place earlier in the year and closer to the time when newly-elected officials take office. Under the current code language, future members of the governing body taking office in January must wait approximately four months to vote on appointees.

3. **Composition of Governing Body.** The Act provides that, if a city has adopted the CMPA, the existing structure of the city’s governing body will remain in place until changed by charter ordinance or election.

Action Required/Recommended:

- Charter Ordinance No. 10 establishes that the governing body shall be comprised of five city commissioners. Because Charter Ordinance No. 10 will be repealed (see section 3 above), it is recommended that the City affirm the governing body’s composition with a simple ordinance.

4. **Establishment of Terms of Office by Ordinance.** The Act requires cities to establish their governing body members’ terms of office by ordinance.

Action Required/Recommended:

- Charter Ordinance No. 10 currently establishes the terms of office. Specifically, it provides three commissioners will be elected at each election. The two receiving the most votes shall be elected for four-year terms, and the candidate receiving the third highest number of votes shall serve for a period of two years. However, as discussed

---

<sup>1</sup>The primary purpose of Charter Ordinance No. 10 was to charter out of the provisions within the CMPA relating to composition of the governing body and terms of office. The governing body’s composition relates to the City’s “form of government.” The Act provides that cities shall continue to operate under their current form of government whether established at election, or by adoption of a charter ordinance or ordinance until such time as the city’s form of government is changed as provided by law. The Act further provides that cities shall establish by ordinary ordinance the qualifications, oath and powers and duties and terms of office of the government body. Accordingly, the City will continue to operate under its five-commissioner form of government, and it is appropriate to repeal Charter Ordinance No. 10 and reaffirm its provisions relating to composition of the governing body via ordinary ordinance.

above, it is recommended that the charter ordinance be repealed due to other inconsistencies with the current law. To comply with the requirement that terms of office be established by ordinance, the City must adopt a regular ordinance establishing the terms of office, which can be identical to those terms established in existing Charter Ordinance No. 10.

5. **Extension of Existing Commissioners' Terms.** Terms of commissioners that would have ended in April 2017 are extended and will now expire on the second Monday in January 2018, when the officials elected in the November 2017 general election take office. Terms of commissioners that would have ended in April 2019 are extended to January 2020.

*Action Required/Recommended:*

- Under Kansas law, the City is not required to take any action to officially extend the current office-holders' terms; these office-holders will continue in office until their replacements take office, and any official actions taking during this extension period will be deemed valid and binding. However, the City may, at its option, pass an ordinance extending the terms for purposes of providing clarity to elected officials, staff, and citizens.

6. **Partisan Elections.** The Act authorizes, but does not require, the City to hold partisan elections after passing an ordinary ordinance.

*Action Required/Recommended:*

- Confirm that the City does not wish to hold partisan elections.

7. **Candidate Filing Deadlines.** The Act states that the filing deadline for all city candidates is June 1.

*Action Required/Recommended:*

- None.

8. **Candidate Filing Deadlines.** Under the Act, the City Clerk must certify to the county election officer a list of all city offices to be voted upon at each city election no later than May 1 of every year in which an election will be held.

*Action Required/Recommended:*

- The City Clerk should update her calendar to reflect the new May 1 notification date.

9. **Nomination Petition Requirements.** Under the Act, cities must establish by ordinance the number of qualified electors of the city which must sign a nomination petition.

Action Required/Recommended:

- The City should adopt an ordinance establishing the number of electors of the city which must sign a nomination petition. Notably, prior to the Act, a nomination petition in the City of Abilene needed to be signed by 50 qualified electors or by a number of such qualified electors equal to not less than 1% of the ballots cast and counted at the last general city election, whichever was less.

**10. Filling Vacancies.** The Act creates new rules for filling governing body vacancies. Specifically, the Act states that the governing body shall appoint, by a majority vote of the remaining members, a person to fill the vacancy within 60 days of the vacancy. If the appointment is not made within 60 days, the city must hold a special election to fill the vacancy. The Act further states that the foregoing procedures shall not apply to any city which has its own procedure for filling vacancies and which has filled such vacancy within 60 days.

Action Required/Recommended:

- Existing Charter Ordinance No. 10 establishes the procedures for filling vacancies, and states that “the mayor, by and with the consent of a majority of the remaining commissioners, shall appoint a qualified elector of the city to fill the vacancy until the next election for that office.” However, as discussed above, it is recommended that the charter ordinance be repealed. Upon repeal, the City’s vacancy process will be governed by the new Act, unless the City wishes to adopt its “own procedures[s]” for filling vacancies. If procedures different from those required under the Act are desired, the City should establish those procedures by ordinance.

**11. Implications of Recodified City Manager Plan Act.** As discussed above, the CMPA, adopted by the City of Abilene in 1939, has now been repealed. Although the CMPA was recodified as part of the Act, very few of the operational provisions that existed in the old CMPA were replaced in the new statutes. However, the Act provides that all existing ordinances and charter ordinances relating to a city’s form of government shall remain in effect. This “savings clause” operates to preserve Ordinance No. 762, which adopted the commission-city manager form of government. Fortunately, rather than simply incorporating the CMPA by reference, Ordinance No. 762 includes many of the statutory provisions from the CMPA, including those related to the powers of the mayor, special meetings, and the city manager position.

The Act states that cities shall, by ordinance, establish the qualifications, oath, powers, duties, and terms of office of the governing body, and may establish by ordinance:

- (1) The powers and duties of the governing body, including the mayor and other elected officials;
- (2) the terms of office of members of the governing body, including the mayor and other elected officials of either two, three or four years;
- (3) the election by ward or district of members of the governing body, if applicable;

Memo re: HB 2104  
January 15, 2016  
Page 6

- (4) the powers and duties of the city manager, if applicable;
- (5) the administrative departments of the city; and
- (6) other matters deemed appropriate by the governing body.

Because Ordinance No. 762 and the City's other ordinances relating to items (1) through (6) above remain in full force and effect, the City may continue to rely on its existing ordinances for purposes of establishing the operational provisions of its commission-city manager form of government. However, if the City wishes to modify or supplement any of these existing provisions, it may do so by adoption of an ordinance.