

James R. Walston  
Lindquist & Vennum LLP  
80 South Eighth Street  
4200 IDS Center  
Minneapolis, MN 55402-2100

jwalston@lindquist.com  
Phone: (612) 371-3211  
Fax: (612) 371-3207

## Elements of Negotiating a Deal

### *1. Identify all parties who will provide input/guidance on a conservation easement transaction:*

- a. Attorney
- b. Accountant
- c. Appraiser
- d. Surveyor

### *2. Identify all documents associated with a conservation transaction:*

- a. Landowner Engagement letter
  - i. make sure terms are accurate
- b. Baseline Report
  - i. make sure terms are accurate
- c. Appraisal
  - i. Appraiser should be well-versed in reports.
- d. Title Evidence
  - i. Title Commitment
- e. Survey
- f. Easement Agreement

### *3. Timing Issues*

- a. timing issues for funding, tax returns, etc.

### *4. Bargaining Position*

5. *Key Conservation Easement Terms*

- a. Policy Statements and Values
- b. Restrictions
- c. Representations and warranties (as to past facts)
- d. Covenants (as to future undertakings)
- e. Owner retained rights
- f. Rights and Remedies
  - i. Right to Enter
  - ii. Access
  - iii. Right to Enforce
  - iv. Costs of Enforcement
  - v. Acts beyond Owner's Control
    - 1. Force Majeure- natural acts
    - 2. Third party actions
- g. Indemnification and Insurance obligations