



City of Grand Island

Tuesday, November 28, 2017

Council Session

Item I-2

#2017-339 - Consideration of Request from Rachel Dieken (aka Rachel Senff) to Allow Privacy Fence in Public Right-of-Way

Staff Contact: John Collins, P.E. - Public Works Director

Council Agenda Memo

From: Keith Kurz PE, Manager of Engineering Services

Meeting: November 28, 2017

Subject: Consideration of Request from Rachel Dieken (aka Rachel Senff) to Allow Privacy Fence in Public Right-of-Way

Presenter(s): John Collins PE, Public Works Director

Background

On July 3, 2017 Code Enforcement received complaint of a privacy fence in the public right-of-way at 2320 W 6th Street, due to causing a sight obstruction for neighboring property owner leaving their driveway.

On July 6, 2017 Code Enforcement notified property owner of 2320 W 6th Street of City Code Section 20-11; Obstructing Public Right-of-Way (shown below) violation and option of either removing the portion of fence in the public right-of-way or applying for a License Agreement to allow the fence to remain as is.

§20-11. Obstructing Public Right-of-Way

(A) It shall be illegal for any person, corporation or entity to erect, plant, place, or maintain, fences, hedges, shrubbery, or other natural or man-made objects or structures on any public right-of-way which interfere with or are hazardous to the City's or the general public's use of the right-of-way. No such objects may be placed on any public right-of-way without the prior consent of the City.

(B) When the City discovers any objects on the city right-of-way as described in Subsection (A) herein, the City will notify the adjacent property owner or tenant that said objects shall be removed immediately upon giving personal notice or posting the property.

(C) Any objects not removed pursuant to Subsections (A) and (B) herein may be removed by city personnel and taken to the Grand Island Police Department impoundment facility or such other facility as the city deems appropriate for storing said objects. If the objects are not claimed by the owners within thirty days after being placed in storage, then the city may dispose of the property as it deems appropriate. If said objects are auctioned, the City may retain sufficient funds to pay all of the expenses of removal from the right-of-way and storage. Any person who has items removed from the right-of-way by the City shall pay a daily storage fee, the cost of disposal and an administrative fee of \$50.00.

Amended by Ordinance No. 8936, effective 10-13-2004

Property owner notified Code Enforcement that she would be applying for the License Agreement, which application for was submitted to Public Works Administration on July 6, 2017.

On July 10, 2017, written notification was mailed to property owner of 2320 W 6th Street of License Agreement application denial; with City Code Section 32-69 referenced which pertains to Occupancy of Public Right-of-Way.

§32-69. General

(1) It shall be unlawful for any person, as defined in §1-2 of this code, to use, occupy or obstruct any portion of any street, alley, sidewalk, easement or other public right-of-way or real estate owned by or under the control of the City of Grand Island without first applying for, securing and executing a License Agreement and paying the processing fee in accordance with the City of Grand Island Fee Schedule, which fee shall not be refundable. The procedure for application and review of a license agreement shall be as follows:

(A) An applicant or their agent shall file an application and a processing fee shall be paid in the Public Works Department on forms to be provided by the City.

(B) The Public Works Department shall review the information provided on the application and shall distribute copies of said application to such departments and agencies within the City as may have an interest in or be affected by the proposed use set out in the application for review, comment and/or recommendations.

(C) The application for license agreement shall be approved, unless a department or agency of the City finds that the proposed use violates a federal, state or local statute, regulation, ordinance, code, rule, regulation or policy or impedes, impairs, diminishes the use of the public land by the City, the public or other person which has a lawful right to use and/or occupy said lands.

(2) The Public Works Director or his/her designee, upon receipt of comments and/or recommendations from the aforementioned departments and agencies, may approve, or disapprove, in whole or in part an application for license agreement. The director or his/her designee may specify such conditions and terms to be included in the requested license agreement as are necessary and prudent to protect the interests of the City, public, or any person which has a lawful right to use and/or occupy said lands. The director shall inform the applicant or their agent in writing of any decision disapproving in whole or in part the application for license agreement, said decision to be sent to the address shown on the application.

(3) In the event an application submitted under (1) above is disapproved in whole or in part, the applicant, within fifteen (15) days of the date of the decision by the Public Works Director or his/her designee, may request that the application be placed on the agenda at a regular meeting of the Mayor and City Council for review and final decision. A request for review shall be made in writing and filed in the Public Works Department, along with the appeal fee set out in the Grand Island Fee Schedule.

(4) This section shall not apply to personal property which is not affixed or attached to the real estate except movable buildings or structures.

(5) An owner of an underground lawn sprinkling system encroaching into public Right-of-Way on any improvement project that is to receive Federal Transportation Funds shall obtain a license agreement subject to the requirements pursuant to this article.

(i) A processing fee is not required for a license agreement for underground sprinkling systems encroaching into public Right-of-Way, so long as it is in connection with Federal Transportation Funded projects.

(6) Underground vault space under public sidewalk on buildings constructed prior to 1972 in the Downtown Improvement Parking District, as defined in Section 13-1 of the Grand Island City Code, are maintained solely at the sufferance of the City. The City reserves the authority to require structural upgrades or removal if in the interest of public safety.

Amended by Ordinance No. 9372, effective 04/03/2012

Amended by Ordinance No. 9391, effective 08/14/2012

Such denial was based on City staff review and non-compliance with Code Section 20-11; Obstructing Public Right-of-Way. Staff review concluded by allowing the fence to remain in the public right-of-way the sight distance is obstructed for motor vehicular traffic.

Discussion

On August 7, 2017, Public Works Administration received an email from Rachel Dieken requesting an appeal to the license agreement denial and such be placed on the City Council agenda.

Public Works staff recommended denial of the license agreement appeal to City Council at their August 22, 2017 meeting. Rachel Dieken spoke in support of the fence remaining in the public right-of-way, and after City Council discussion a motion was made by Haase, with a second by Nickerson to defer the issue to the Public Works Department. Upon roll call motion passed 9-1 and was adopted.

On August 24, 2017 Public Works staff made contact with Ms. Dieken to work out an agreeable solution to either lower the fence in public right-of-way to 30" or less or move the fence to her private property, both of which will eliminate the sight obstruction for her neighbor when backing out of his driveway.

On August 31, 2017 Ms. Dieken made a request to move the full height fence back 32 or 34 inches. This distance is not sufficient to move the fence from the public right-of-way; therefore Ms. Dieken was informed the portion remaining in the public right-of-way must be no higher than 30 inches.

As of September 22, 2017 Rachel had not responded to staff, nor made the necessary modifications to the fence within the public right-of-way.

Staff reached out to Ms. Dieken again on October 4, 2017, with no response or action.

To date no action has been taken by Ms. Dieken to either lower the fence in public right-of-way to 30" or less or move the fence to her private property. Notice of this item being presented to City Council on November 28, 2017 was sent certified mail to Ms. Dieken. At this time Public Works staff recommends denial of the fence in the public right-of-way, with direction from City Council to remove such.

Alternatives

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

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council deny the request as the encroachment causes sight obstructions for motor vehicular traffic and direct Public Works staff to remove the fence located within the public right-of-way.

Sample Motion

Move to deny the request and direct Public Works staff to remove the fence located within the public right-of-way.



*Working Together for a
Better Tomorrow, Today*

CERTIFIED MAIL

November 20, 2017

Ms. Rachel Dieken
2320 W 6th Street
Grand Island, NE 68803

RE: Fence in Public Right-of-Way at 2320 W 6th Street

This letter is to notify you of the above referenced matter being presented to City Council at their November 28, 2017 meeting (draft documents enclosed). As of the date of this letter the fence remains in the public right-of-way at a height above 30", therefore Public Works is recommending removal of such.

If you have any questions please contact our office at 308-385-5455.

Sincerely,

A handwritten signature in black ink, appearing to read "John Collins".

John Collins, P.E.
Public Works Director

JC/CD/cd

Enclosures

City Hall · 100 East First Street · PO Box 1968 · Grand Island, Nebraska 68802-1968
Office: 308-385-5455 · Fax: 308-385-5488 · Emergency: 308-385-5000 · www.grand-island.com

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From: Keith Kurz PE, Manager of Engineering Services

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Sample Motion

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DRAFT

RESOLUTION 2017

DRAFT

WHEREAS, the City has the authority under Section 20-11 of the City Code to direct the removal of obstructions from the public right-of-way; and

WHEREAS, fencing is in the public right-of-way on the west side of 2320 West 6th Street, legally described as Lots 103 & 104, Belmont Addition, City of Grand Island, Hall County, Nebraska.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that notice be sent to the property owner to remove the fence from the public right-of-way within 15 days at 2320 West 6th Street (Lots 103 & 104, Belmont Addition, City of Grand Island, Hall County, Nebraska). If the property owner fails to remove such fence from the public right-of-way within the 15 day timeframe, the City will cause the work to be done and assess the cost against the property.

Adopted by the City Council of the City of Grand Island, Nebraska, November 28, 2017.

Jeremy L. Jensen, Mayor

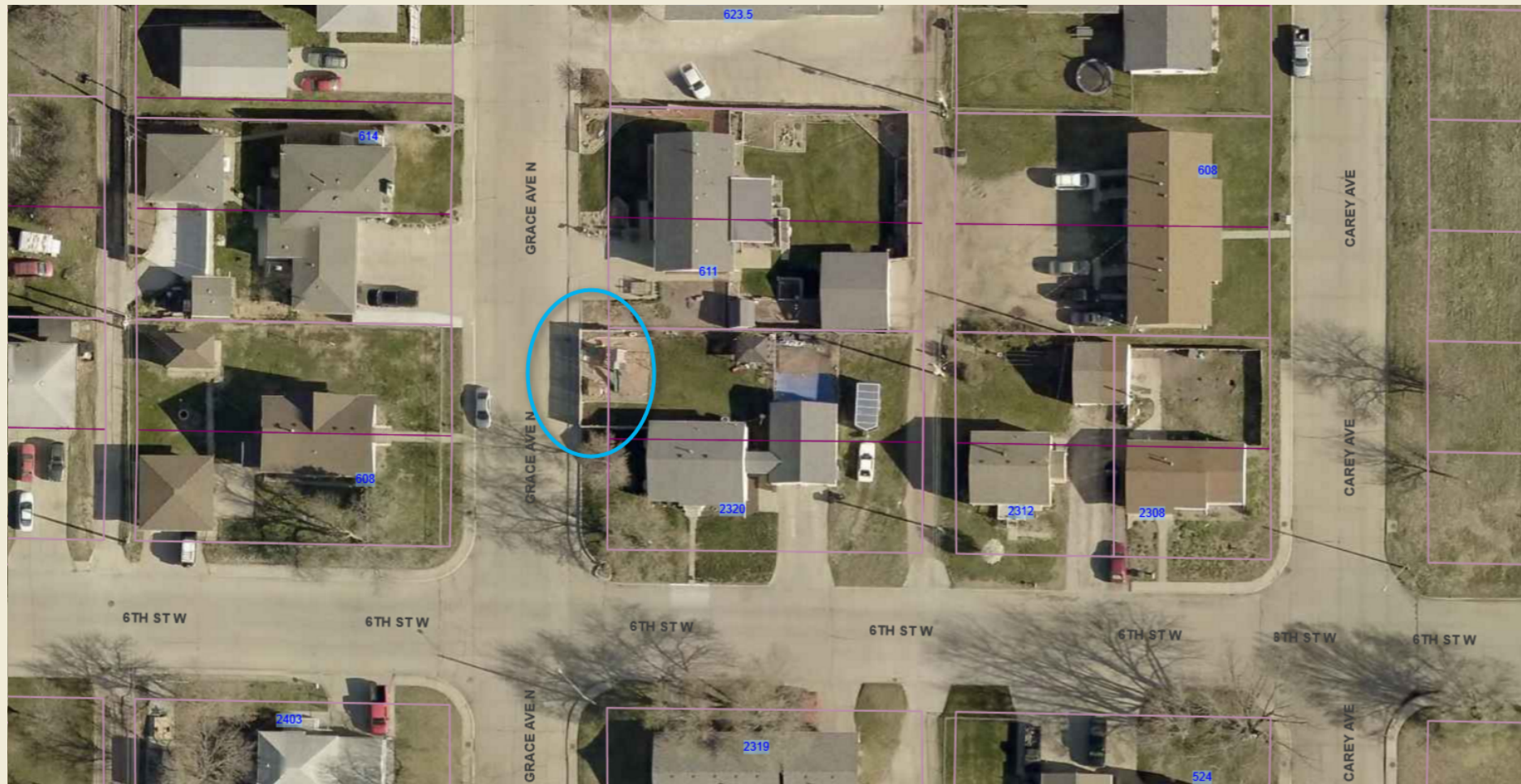
Attest:

RaNae Edwards, City Clerk

Approved as to Form	<input type="checkbox"/>	_____
November 20, 2017	<input type="checkbox"/>	City Attorney

2320 W 6th Street Fence in ROW





RESOLUTION 2017-339

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- - -

Adopted by the City Council of the City of Grand Island, Nebraska, November 28, 2017.

Jeremy L. Jensen, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
November 22, 2017	☐ City Attorney