



City of Grand Island

Monday, December 22, 2014

Council Session

Item E-2

Public Hearing on Request from Grand Island Public Schools for Reconsideration of a Conditional Use Permit Submitted by John and Gloria Trejo for Off Street Parking located at 622 North Jefferson Street

Staff Contact: Craig Lewis

Council Agenda Memo

From: Craig A. Lewis, Building Department Director

Meeting: December 22, 2014

Subject: Request of Grand Island Public Schools for Reconsideration of a Conditional Use Permit Submitted by John and Gloria Trejo to Construct a Parking Lot at 622 North Jefferson Street

Item #'s: E-2 & H-1

Presenter(s): Craig Lewis, Building Department Director

Background

This request is for approval of a conditional use permit to allow for the construction of a parking lot at the above referenced address. The property is currently zoned R-4 High Density Residential and as such a parking lot is a listed conditional use. Conditional uses as listed in the zoning code must be approved by the City Council after a finding that the proposed use promotes the health, safety, and general welfare of the community, protects property against blight and depreciation, and is generally harmonious with the surrounding neighborhood.

This request came before the City Council on August 12, 2014, that approval has been determined invalid because of residency issues with a City Council Member (see attached opinion from the City Attorney).

Discussion

This proposal is to construct a parking lot on a residential zoned property south of Jefferson school. The property is located south of the school and southwest of the intersection of 7th St. and Jefferson St. A dwelling and garage currently exist on the site, and it appears they would be removed to facilitate the construction and provide parking for the elementary school. Because the property is zoned R-4 the landscaping regulations provided in the City code would be required. As a plan of the proposed construction has not been provided with this application I would suggest that the following items will need to be included as part of the construction permit; permanent type, dust free surface in conformance with section 36-96, and landscaping as provided in section 36-102, the

landscape provisions in the City code would require a ten foot landscape buffer adjacent to the streets, and plantings of one canopy tree, one understory tree, and three shrubs.

A 4' tall chain link fence is proposed along the west and south property lines to buffer the adjacent residential property and no lighting is proposed at this time.

Alternatives

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

1. Approve the request for a conditional Use Permit finding that the proposed use is a listed conditional use in the zoning code and that it will not be detrimental to public health, safety, and the general welfare of the community.
2. Disapprove or /Deny the request finding that the proposal does not conform to the purpose of the zoning regulations.
3. Modify the request to meet the wishes of the Council.
4. Refer the matter to a special committee for a determination of a finding of fact.
5. Table the issue

Recommendation

City Staff recommends that the Council approve the conditional use permit with the condition that all applicable city code sections including landscaping are provided in compliance with the City Code and finding that the request does promote the health, safety, and general welfare of the community, protects property against blight and depreciation, and is generally harmonious with the surrounding neighborhood.

Sample Motion

Move to reconsider the requested conditional use permit as specified in the staff recommendation published in the Council packet and presented at the City Council meeting and finding that the application will conform with the purpose of the zoning regulations.

Kneale Administration Building



December 2, 2014

To: Mr. Robert Sivick, Legal Council
City of Grand Island

From: Virgil D. Harden, Executive Director of Business
Grand Island Public Schools

Re: Conditional Use Permit – 622 N Jefferson

Virgil D. Harden, RSBA
Executive Director of Business
123 South Webb Road
P.O. Box 4904
Grand Island, NE 68802-4904

Phone: (308) 385-5900 x 144
Fax: (308) 385-5949
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It has come to our attention that the City of Grand Island vote concerning the conditional use permit for 622 N Jefferson may not be binding since the deciding vote was cast by Council Member Dr. Kenton Mann, who at the time of the vote, residence was outside the Ward he was appointed to represent.

At your earliest convenience please have the City Council of the City of Grand Island reconsider the conditional use permit for the above mentioned property on behalf of Grand Island Public Schools.

Sincerely,

A handwritten signature in black ink that reads "Virgil D. Harden". The signature is written in a cursive style with a large, sweeping initial "V".

Virgil D. Harden, RSBA
Executive Director of Business

OPINION OF THE GRAND ISLAND CITY ATTORNEY (2014-08)

TO: Mary Lou Brown, Grand Island City Administrator
FROM: Robert J. Sivick, Grand Island City Attorney
RE: Issues Related to Former Councilmember Kent Mann's
Residency
DATE: October 24, 2014

I have been asked to offer my opinion regarding legal issues arising out of former Grand Island City Councilmember Kent Mann's (Mann) change of residency. This document constitutes my opinion.

I. IS MANN ELIGIBLE TO CONTINUING SERVING AS A MEMBER OF THE GRAND ISLAND CITY COUNCIL?

No. The City of Grand Island does not elect its City Council representatives at large but by district. Accordingly, Neb. Rev. Stat. §16-302.01 requires all persons serving as Councilmembers be registered voters and residents of the Ward they are seeking to or actually representing. This is no longer an issue as Mann tendered his resignation earlier today.

II. WHEN DID MANN BECOME INELIGIBLE TO SERVE AS A MEMBER OF THE GRAND ISLAND CITY COUNCIL?

My understanding is on August 4, 2014 Mann, who represented Ward 1, closed on the purchase of a house located in Ward 5. Since his intent was to reside in this new house (which he does presently) he became ineligible to represent Ward 1 or serve as a member of the Council on August 4th, the day he took legal possession of his new residence.

III. DID MANN CAST A VOTE AS A MEMBER OF THE COUNCIL BETWEEN AUGUST 4 AND OCTOBER 24, 2014 THAT AFFECTS THE VALIDITY OF ANY COUNCIL ACTION?

Yes, on one matter.

During the timeframe Mann was ineligible, the Council held a total of nine meetings. Those meetings consisted of five regular, three special, and one study session meeting. Mann attended all of them. The Study Session meeting held on September 23, 2014 is of no concern as the

Council cannot take formal action during that type of meeting. Therefore, I focused my efforts on reviewing the votes of Mann during the five regular and four special meetings of the Council. In doing so I reviewed the minutes of each meeting. With the exception of the minutes of the October 14, 2014 regular meeting, all have been approved by the Council. I assume the minutes of the October 14th meeting will be approved during the upcoming October 28th meeting and if so this opinion will remain valid.

I did not concern myself with any motions to approve or second a motion to approve made by Mann. Those are procedural matters and in themselves do not constitute official action by the Council unlike a formal vote. Although Grand Island City Code §2-7 states Roberts Rules of Order shall "guide" the Council in its proceedings, those Rules do not themselves carry the weight of law. Since parliamentary procedural issues such as motions, seconding motions, etc. do not constitute official action, any actions by Mann in this regard are not matters of legal concern.

I also examined the minutes of the meetings during the period in question to determine if a quorum would not have existed if Mann had been absent. A quorum for all the regular and special meetings would have been reached regardless of Mann's attendance.

I did not concern myself with Mann's votes on approving the Consent Agenda as during each regular meeting held during the period in question those votes were unanimous and the total votes cast for approval exceeded six, making Mann's votes inconsequential.

I concentrated on examining the minutes for the regular and special meetings during the period in question with regard to votes cast by Mann regarding waiver of the statutory rules regulating the approval of ordinances, motions to approve, to amend, or votes to override vetoes. Mann's votes on all these matters did not affect the final decision of the Council with one exception.

On August 12, 2014 the Council considered a request from John and Gloria Trejo for a Conditional Use Permit to allow off street parking at 622 North Jefferson Street for the benefit of the Grand Island Public Schools. A motion was made to amend the request to require a six foot

privacy fence on the South and West sides of the property. Councilmembers Paulick, Stelk, Gericke, Haase, and Donaldson voted aye while Minton, Gilbert, Nickerson, Hehnke, and Mann voted no. The vote being tied, Mayor Vavricek cast the deciding no vote resulting in the failure of the motion. Without Mann's no vote the motion would have been 5-4 and still failed as Mayor Vavricek was opposed and presumably would not cast a sixth deciding vote in favor.

However, the Council then voted upon the main motion, that being to approve the request as originally proposed. Councilmembers Minton, Stelk, Nickerson, Donaldson, and Mann voted aye while Paulick, Gericke, Gilbert, Hehnke, and Haase voted no. Again Mayor Vavricek broke the tie by casting the deciding aye vote. Unlike the motion to amend, if Mann did not vote on this matter, the result would have been 4-5 in favor and Mayor Vavricek's aye vote would not constitute the necessary sixth vote to grant the request.

Correcting the situation through a motion to reconsider would not be appropriate as the action to be reconsidered was not valid in the first place. Rather, this matter must come back before the Council anew so there is no uncertainty regarding the property rights of Mr. and Mrs. Trejo or the Grand Island Public Schools. I would recommend the Council vote to grant the request so the City is not subject to liability resulting from a possible civil suit arising from the detrimental reliance by the Trejos and the Grand Island Public Schools on the invalid action of the Council.

If you need any additional information do not hesitate to contact me.

