



City of Grand Island

Tuesday, March 22, 2011

Council Session

Item G3

#2011-65 - Approving Subordination Agreement for 322 East 10th Street

Staff Contact: Barbara Quandt

Council Agenda Memo

From: Barbara Quandt, Community Development
Council Meeting: March 22, 2011
Subject: Subordination Agreement for 322 East 10th Street
Item #'s: G-3
Presenter(s): Barbara Quandt
Community Development Administrator

Background

The City of Grand Island has a Deed of Trust filed on property owned by Rafael Esquivel and Cecilia Esquivel located at 322 East 10th Street, in the amount of \$13,900. On November 22, 2004, Community Development Block Grant funds in the amount of \$13,900 were loaned to Rafael Esquivel and Cecilia Esquivel, Husband and Wife, for down payment assistance for purchase of a home in the Community Development Block Grant program. The legal description is:

Lot One (1), H. A. Subdivision in the City of Grand Island, Hall County, Nebraska.

The owner is requesting permission from the City to subordinate to a new mortgage amount and accept second position to the first mortgage. The City is in second position with the current mortgage, and Wells Fargo Bank, N.A. is in senior position. The owner is refinancing the current mortgage for a better rate/term and Wells Fargo requests first position remain with them.

Discussion

The City's current Deed of Trust is junior in priority to a Deed of Trust to Wells Fargo Bank N.A. in the amount of \$57,211.00, which has a balance of \$42,316.87. A new lien in the amount of \$45,450.00 with Wells Fargo Bank, N.A. would replace the senior Deed of Trust. By law, the new Deed of Trust would be junior in priority to the City's lien;

however, the Wells Fargo Bank, N.A., has asked the City to subordinate its Deed of Trust to the new Deed of Trust.

The new appraised value of the property is \$72,000.00 and is sufficient to secure the first mortgage of \$45,450.00 and the City's mortgage of \$13,900.00. This new Deed of Trust would accommodate the "Rate-Term Refinance" which would reduce the annual interest rate from 5.875% for 30 years to 4.5% for 15 years with a very minimal increase in the monthly payment. The City's loan of \$13,900.00 will be forgiven if the original owners of the property (Rafael and Cecilia Esquivel) reside in the house for a period of 10 years from the date the lien was filed, which was November 23, 2004. The lien amount decreases 10% per year and has a current balance of \$5097.00.

ALTERNATIVES

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

1. Approve the Subordination Agreement
2. Refer the issue to a Committee
3. Postpone the issue to a later date
4. Take no action on the issue

RECOMMENDATION

City Administration recommends that the Council approves the Subordination Agreement with Wells Fargo Bank, N.A., placing the City in the junior position to the new Deed of Trust.

Sample Motion

Move to recommend approval of the Subordination Agreement with Wells Fargo Bank, N.A., placing the City in the junior position to the new Deed of Trust.

SUBORDINATION AGREEMENT

COMES NOW the City of Grand Island, Nebraska, secured party/beneficiary and hereby partially subordinates its trust deed/real estate lien recorded November 23, 2004 on the following described real estate:

Lot One (1), H.A. Subdivision, in the City of Grand Island, Hall County, Nebraska, a/k/a 322 E. 10th Street

It is the intent of this Agreement that the trust deed for amounts loaned by Wells Fargo Bank, N.A. to Rafael Esquivel and Cecilia Esquivel (Borrowers) that has been or is about to be filed, shall be superior to the trust deed/real estate lien of the City of Grand Island, its successors and assigns recorded November 23, 2004, up to the amount of \$45,450.00 plus interest and amounts advanced to protect the collateral. Thereafter, the City of Grand Island's lien shall have priority. It is further understood that this subordination shall include all current obligations, extensions, renewals, advances or modifications made by the City of Grand Island, Nebraska to Borrowers which is secured by the trust deed/real estate lien recorded November 23, 2004 as Document Number 0200411385 in the records of the Register of Deeds of Hall County, Nebraska. Nothing in this Subordination Agreement is intended as a promise to provide financing or make advances to Borrowers by the City of Grand Island, Nebraska and it is not the intention of the City of Grand Island, Nebraska to warrant or guarantee the obligations of Borrowers but merely to partially subordinate its lien interests under the instrument recorded at Document Number 0200411385. It is understood that Wells Fargo Bank, N.A. intends to lend funds to Borrowers but that the subordinated amount is not to exceed \$45,450.00 plus interest and amounts advanced to protect the collateral.

Nothing in this instrument is intended to relieve Borrowers of their obligation to the City of Grand Island, Nebraska or to subordinate any other lien interests including, but not limited to, real estate taxes and special assessments.

Dated: _____ City of Grand Island, Nebraska

By _____
Jay Vavricek, Mayor

STATE OF NEBRASKA)
)ss.
COUNTY OF HALL)

The foregoing instrument was acknowledged before me on _____, 2011, by Jay Vavricek, Mayor of the City of Grand Island, Nebraska.

Notary Public

SUBSTITUTION OF TRUSTEE

Jason Eley, attorney at law, is hereby appointed successor trustee under the trust deed executed by Rafael Esquivel and Cecilia Esquivel as Trustors, in which the City of Grand Island is named Beneficiary and Doug Walker, Grand Island City Attorney, as Trustee, and filed for record November 23, 2004 and recorded as Instrument No. 0200411385 in the office of the Register of Deeds of Hall County, Nebraska. The trust property affected is legally described as follows:

Lot One (1), H. A. Subdivision in the City Of Grand Island, Hall County, Nebraska.

Beneficiary also requests reconveyance.

Jay Vavricek, Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF HALL)

On this _____ day of _____, 2011, before me, the undersigned , a General Notary Public, duly commissioned and qualified, personally came Jay Vavricek, Mayor, and acknowledged the execution of this substitution to be his voluntary act and deed on behalf of the Beneficiary.

WITNESS my hand and notary seal the day and year last above written.

Notary Public

RESOLUTION 2011-65

WHEREAS, the City of Grand Island, is the lender and secured party of a Deed of Trust dated November 22, 2004 and recorded on November 23, 2004, as Instrument No.0200411385, in the amount of \$13,900.00, secured by property located at 322 E. 10th Street and owned by Rafael Esquivel and Cecilia Esquivel, husband and wife, said property being described as follows:

Lot One (1), H. A. Subdivision, in the City of Grand Island, Hall County, Nebraska.

WHEREAS, Rafael Esquivel and Cecilia Esquivel wish to execute a Deed of Trust and Note in the amount of \$45,450.00 with Wells Fargo Bank, N.A., to be secured by the above-described real estate conditioned upon the City subordinating its Deed of Trust to their lien priority; and

WHEREAS, the value of the above-described real estate is sufficient to adequately secure both loans.

WHEREAS, the requested subordination of the City's lien priority is in the best interests of all parties.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Mayor is hereby authorized and directed to execute an agreement subordinating the lien priority of the above described Deeds of Trust from Rafael Esquivel and Cecilia Esquivel, husband and wife, to the City of Grand Island, as beneficiary to that of the new loan and Deed of Trust of Wells Fargo Bank, N.A., Beneficiary, as more particularly set out in the subordination agreement.

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Adopted by the City Council of the City of Grand Island, Nebraska, March 22, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

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| Approved as to Form | ☐ _____ |
| March 18, 2011 | ☐ City Attorney |