



City of Grand Island

Tuesday, August 07, 2007

Special Council Session

Item I2

#2007-188 - Approving Settlement Agreement Relative to the Howard Maxon Litigation

Staff Contact: Dale Shotkoski

Council Agenda Memo

From: Dale M. Shotkoski, City Attorney
Meeting: August 7, 2007
Subject: Howard Maxon Settlement Agreement
Item #'s: I-2 & J-2
Presenter(s): Dale M. Shotkoski, City Attorney

Background

In February, 2005, Howard Maxon, former Emergency Management Director, was terminated by the Mayor from city employment on the charges of misconduct. On March 29, 2005, a hearing was held before the City Council to determine whether the termination should be upheld. Council voted to affirm the charges of misconduct and the termination of Maxon's employment. Maxon then filed a petition in error with the Hall County District Court seeking review of the council's determination. The District Court affirmed the decision of the City Council. Maxon then appealed the District Court's decision to the Supreme Court. The decision of the Hall County District Court and the Grand Island City Council to uphold the termination of Mr. Maxon was reversed by the Supreme Court.

Discussion

On July 23, 2007, the City of Grand Island and Mr. Maxon participated in a mediated settlement conference involving the claims made by Mr. Maxon arising out of his termination by the City Council on March 29, 2005. At the conclusion of the mediation, both parties expressed their desire to end all disputes concerning the termination of Mr. Maxon and both parties have agreed to settle the matter in the amount of \$325,000, payable to Mr. Maxon, with the first payment of \$95,000 due October 1, 2007, and eight remaining semi-annual payments of \$28,750 on January 1st and July 1st of each year until paid in full.

Alternatives

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

1. Move to approve the settlement agreement in the amount of \$325,000.
2. Deny the claim of \$325,000.
3. Postpone the issue to future date.
4. Take no action on the issue.

Recommendation

City administration recommends that the Council approve the settlement agreement between the City of Grand Island and Howard Maxon in the amount of \$325,000.

Sample Motion

Move to approve the settlement agreement between the City of Grand Island and Howard Maxon in the amount of \$325,000.

SETTLEMENT AGREEMENT

Howard Maxon, hereinafter referred to as "Maxon", and the City of Grand Island, hereinafter referred to as "The City", participated in a mediated settlement on July 23rd, 2007 which involved the claims made by Maxon arising out of the termination of Maxon on or about March 29th, 2007 by the City.

The parties, having concluded such mediation session, and in consideration of all claims made by the parties, hereby resolve their dispute and express their agreement that end all disputes arising out of the employment or termination of Maxon are to be settled upon the following terms:

1. The City will pay to Maxon, or to his Estate in the event of Maxon's death before this Agreement is completed, the sum of \$325,000.00. Said sum shall be paid as follows:

- a. \$95,000.00 on or before October 1st, 2007;
- b. Eight payments of \$28,750.00 to be made on the first business day of January and the first day of July, commencing on the first business day of January, 2008 and continuing on such semiannual basis until payment in full is made. The City shall not have the right of prepayment unless Maxon agrees to do so in writing.

2. In consideration of the above, Maxon hereby grants and provides a release to the City with the following material terms:

- a. A full and complete release and discharge of any and all claims Maxon has, claims to have, or in the future may have against the City, its agents, employees, heirs, successors, assigns, and insurers arising out of the termination of Maxon.
- b. A warranty that Maxon is the sole owner of any and all such claims.
- c. Full and complete indemnification of the City by Maxon against any liens or subrogation claims arising out of the employment or termination of Maxon.

3. The City, in consideration of the above, hereby grants and provides a release to Maxon under the following material terms:

- a. A full and complete release and discharge of any and all

claims the City has, claims to have, or in the future may have against Maxon, his agents, employees, heirs, successors, assigns, and insurers arising out of Maxon's employment and subsequent termination.

b. A warranty that City is the sole owner of all such claims, and that the persons signing the settlement document is fully authorized by the Grand Island City Council to execute the same.

c. A full and complete indemnification of Maxon by the City against any lien, or other claims that may arise out of his employment or his termination.

4. Further, Maxon will voluntarily submit his resignation letter effective the date the City of Grand Island approves this Settlement Agreement.

5. Of the \$95,000.00 to be paid on or before October 1st, 2007, the parties hereto agree that the sum of \$31,090.84 shall be allocated to the out of pocket expenses of Maxon incurred for family health insurance coverage after his termination from employment, and approximately \$15,000.00 of said sum shall be allocated for attorneys fees, court costs, and transcript expenses. Upon the execution of this Agreement, such Settlement Agreement shall be filed in the District Court of Hall County, Nebraska in the case entitled Maxon v. City of Grand Island, Case No. CI05-390, and upon payment in full as set forth in this Agreement, Maxon agrees to file a satisfaction of judgment with said District Court.

6. This Agreement shall be binding upon the heirs and successors of Maxon, and shall be binding upon the City of Grand Island, and its elected officials, and shall not be revoked or set aside by either party. In the event either party attempts to challenge the Agreement or to set the same aside, or a third party would attempt to do so, the parties shall be restored to their rights and obligations and liabilities that they held prior to July 23, 2007 if any such attempt is successful.

7. City represents it has given full authority to have this Agreement executed by the official signing on its behalf.

Dated: _____

Howard L. Maxon, Claimant

Dated: _____

Colleen A. Maxon, Spouse of Claimant

Dated: _____

City of Grand Island, Nebraska

By: _____

F:\NET\NODE3\VINCE\CONTRACT\maxon.agr

RESOLUTION 2007-188

WHEREAS, in February, 2005, former Emergency Management Director, Howard Maxon, was terminated from city employment on the charges of misconduct; and

WHEREAS, on March 29, 2005, at a hearing before the Grand Island City Council, the termination of Howard Maxon was upheld; and

WHEREAS, Mr. Maxon appealed this decision to the Hall County District Court where the termination was upheld, but was then reversed by the Supreme Court of the State of Nebraska; and

WHEREAS, in an effort to resolve this dispute both parties agreed to mediation and a potential settlement agreement in the amount of \$325,000 has been negotiated between the parties; and

WHEREAS, it is recommended that the City approve the terms to such negotiated settlement; and

WHEREAS, the proposed Settlement Agreement has been reviewed and approved by the City Attorney.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Settlement Agreement in the amount of \$325,000 between the City of Grand Island and Howard Maxon is hereby approved for the settlement of all employment issues to be paid in the manner mediated.

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized and directed to execute such settlement agreement on behalf of the City of Grand Island.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, August 7, 2007.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form ☐ _____
August 2, 2007 ☐ City Attorney