

RECORD OF PROCEEDINGS OF THE GOVERNING BODY CITY OF GARDNER, KANSAS

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April 1, 2024

The City Council of the City of Gardner, Kansas met in regular session on March 18, 2024, at 7:00 p.m. in the Council Chambers at Gardner City Hall, 120 East Main Street, Gardner, Kansas, with Mayor Todd Winters presiding. Present were Councilmembers Mark Baldwin, Kacy Deaton, Mark Wiehn, Steve Shute and Steve McNeer. City staff present were City Administrator Jim Pruetting; Finance Director Matt Wolff; Police Chief Pam Waldeck; Utilities Director Gonz Garcia; Parks Director Jason Bruce; Community Development Director Dave Knopick; Public Works Director Kellen Headlee; City Attorney Ryan Denk; City Clerk Renee Rich. Others present included those listed on the sign-in sheet and others who did not sign in.

There being a quorum of Councilmembers present, Mayor Winters called the meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE

Mayor Winters led those present in the Pledge of Allegiance.

PRESENTATIONS

1. Proclaim April as Autism Acceptance Month in the City of Gardner

Mayor Winters read into the record a proclamation that April be known as Autism Acceptance Month in the City of Gardner. Several members of Gardner Gold were present to accept the proclamation.

2. Proclaim April as Fair Housing Month in the City of Gardner

Mayor Winters read into the record a proclamation that April be known as Fair Housing Month in the City of Gardner.

PUBLIC HEARING

1. Hold a public hearing for the purpose of receiving comments to a request for a Waiver of the Distance Limitation to allow for the sale of alcoholic liquor for consumption on premise within 200 feet of a school, church or library during a special event.

Councilmember Baldwin made a motion to open a public hearing for the purpose of receiving comments to a request for a Waiver of the Distance Limitation to allow for the sale of alcoholic liquor for consumption on premise within 200 feet of a school, church or library during a special event.

Councilmember Deaton Seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

No members of the public came forward.

Councilmember McNeer made a motion to close the public hearing.

Councilmember Shute Seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

PUBLIC COMMENTS

CONSENT AGENDA

- 1. Standing approval of the minutes as written for the regular meeting on March 18, 2024.**
- 2. Standing approval of City expenditures prepared March 14, 2024 in the amount of \$247,896.00; March 19, 2024 in the amount of \$85,975.00; March 21, 2024 in the amount of \$484,982.48; and March 22, 2024 in the amount of \$61,556.91.**
- 3. Consider authorizing the City Administrator to execute an agreement with Tyler Technologies, Inc. for municipal court credit card processing services for online and point of sale credit card transactions.**

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Councilmember Shute made a motion to approve the Consent Agenda.

Councilmember McNeer Seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

PLANNING & ZONING CONSENT AGENDA

None

COMMITTEE RECOMMENDATIONS

None

OLD BUSINESS

- 1. Consider adopting an ordinance approving a rezoning County RUR (Rural) District to A (Agriculture) District; for potential animal care facility located on the north side of 199th Street approximately 1300' west of Gardner Road (Tax ID CP19000000 0004).**

Community Development Director David Knopick provides a quick overview since items one and two are tied together. These items were before the council on March 4th, and it was determined to continue the items for potential revisions regarding screening issues and how waste will be handled. Since that time, the applicant has provided revised materials that have been provided in the packet.

Applicant Jason Carman, 29852 W. 199th St, said he is seeking approval to construct a pet lodging facility on his property. He said Gardner needs this type of project in the city as we are lacking this type of service. He feels he has provided thoughtful plans to provide minimal disruption to neighboring properties and still provide a nurturing environment for pets. The proposed site location was identified due to providing convenience for our residents, while not being intrusive or a nuisance concern to the neighboring structures. The building is proposed to be at the back of a 10-acre lot. The selected area is currently surrounded by a dense tree lot to the south, west and north sides. Landscaping and trees will be planted on the east side of the proposed area. The tree lines will not only minimize visibility to the facility but will also dampen any acoustical noise from the outdoor play areas. The building is proposed to be a 40 by 80 modern steel type building which is very common in this area. Dogs will be allowed to play in outdoor areas and will be rotated in small groups. It is expected there would be five to ten dogs outside at a time. With the tree lines and the proposed location, neither noise nor visual is expected to be a nuisance to the neighbors at the residences and all dogs will be boarded indoors at night.

Other locations have been considered for building this facility. The price of land needed to support this and the ability to charge a reasonable rate to clients, makes the business case fall apart. Unless we were able to find a large piece of land, the linear distance from the site would be closer to residences. He provided pictures of the property to show what it may look like. Sound has been an important piece of this entire process, so additional decibel levels were provided including what the loudest group of dogs ever recorded would sound like at the neighboring addresses. Additional testing was done using a speaker playing dog barking sounds at 110 decibels and what the decibel level would be at several measured distances. A complete water study and filtration proposal has been completed and submitted. A berm and sand filter has been proposed for waste runoff to assure the stream area and waterway is kept clean. An enclosed septic containment system at the facility to include solid waste from both indoors and outdoors would be picked up by a professional service.

Frank Bannister, 19815 S. Gardner Rd., discussed a list of neighbors for and against this proposal. A personal survey was done by knocking on doors, phone calls and included what is already a matter of public record as to who supports and who doesn't. The applicant's PowerPoint shows eight neighboring houses regarding the proposal, four are for, two are against and two are neutral. A total of 16 houses were surveyed, all of these would be considered neighbors. The majority would be able to see the structure from their backyard or while passing by

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on Gardner Road. Three are in support and thirteen are against the proposal. I have provided a list of those families as well as a map. I'm sharing a letter from the developer of Tuscan Farms. The initial plan was multi-family housing in the southeastern area. As a result of meeting and coordinating with the southern neighbors, which included the subject property, an agreement was reached for a band of single-family homes along the entire southern border of Tuscan Farm. The border was to act as a buffer between the county estate residences and the multi-family area of Tuscan Farms. The developer does not believe it would be in the best interest of the single-family homes along the southern border to be subject to any potential noise from a pet lodge. Frank thinks this is a great idea in the wrong place. He is opposed to commercial operations in this subdivision. This building is going to be huge, will block views and does not feel this is a good fit.

Rod Freund, 29750 W 199th St., provided paperwork that shows discrepancies in the distances in the study by the applicant. A lot of them aren't huge but make a difference. This also causes me to question the acoustical study. The google earth photos show the trees while they are in full foliage, but that would only be accurate six months out of the year.

Mary Freund, 19980 S Gardner Rd., provided documents that show a slide from the presentation. The Gardner Veterinarian Clinic is on Santa Fe, east of Moonlight. It is a zone C-3 business, which is commercial. The adjoining properties are zoned C-2, business, as well as trailer courts zoned multi-family. There is a big train track to the north which trains travel through extremely often with at least 100 cars. This is not a comparison of our single-family neighborhood with open space, quiet and privacy. It also states there are trees surrounding the property, but the east side is wide open. I think it is ideal that a dog kennel should be commercial and not in a subdivision. Item 7 in the Conditional Use Permit is the intensity of use as proposed or foreseeable. Having a 40 by 80 dog kennel with a capacity of 40 dogs does not fit into a subdivision of estate family homes. There is a floodplain that runs through here which concerns me because it is in the Hillsdale Watershed. The creek on the north side of the building runs right down to Hillsdale Lake. The Watershed is where the city and Rural Water 7 get their water. They have decreased the number of dog runs from 22 to 5, but that doesn't seem fair or workable if there are going to be 20-40 dogs.

Mike Hale, 31058 W. 199th St., said if this is going to affect my property value in any way, then I would not be in favor of it.

Ron Freund, 19980 S. Gardner Rd., said looking at the provided map, I don't see the trees included being a buffer zone. A buffer zone would be a six-foot berm with four-foot shrubs on it. That is something that should be put in at the start. They are going to be evergreen trees and would take some time to get big enough to make a difference.

City Attorney Denk said he is aware some of the members of the governing body may have had communications with proponents or opponents outside of the meetings. It is appropriate for disclosure of those contacts. Shute said he has communications with the opponent; Deaton said she visited the property of the opponent; Winters visited the property of the opponent; Baldwin visited the property of the opponent; Wiehn visited the property of the opponent; and McNeer visited the property of the opponent and had a phone conversation with the applicant.

Baldwin said this is not a simple yay or nay decision. It is a conditional use permit so there are special considerations. Whether you have a berm or trees, the reason is to mitigate possibly noise and sight. We discussed hours of restriction for light pollution. There may not be much of a noise issue, especially if you move the kennels to the north and west side of the structure, which have to be screened per our code. It is a piano key lot, and that is the biggest factor in looking at this, particularly with this size building. 40 by 80 is huge and doesn't meet our code. However, this is a special use permit. You can't have more than one accessory building on a lot, and there is already one there in the back. So, this is taking into consideration whether or not we will allow another one. I'm not concerned about this one, but does everyone else put one up along 199th St. That building can't exceed 30% of the building coverage of the rear yard including the size of the other building. And you can't exceed 250 square feet per 3000 square feet of the lot area up to a maximum of up to 1200 square feet. We are talking about a 3200 square foot building. Also, you have to be 100 feet from residential use for a kennel. The

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east set back would be difficult with that size building. Is the applicant set on a 40x80 building or open to the idea of a smaller building?

Applicant Carman says the models are built off of a 40x80 with the capacity that I could reasonably have. If it was a requirement to have a smaller building, I would have to run numbers to see if I would be able to shrink the building and then make a determination of whether or not to move forward. Baldwin says we can impose lots of restrictions and look at it at either angle and say they can make it work or look at it and say it doesn't fit. Oakbrook is across the street from single family. It would not be out of the place to do this, but there is still a question about the size of the building because none of those buildings are 3200 square feet.

Shute spent an hour visiting the property and found the property is low lying and almost everything else is higher. Sound typically travels upward and outward. I don't think evergreen foliage will be sufficient screening to prevent sound from coming to the southeast. An acoustic wall would be a better option of up to 10 feet tall. I don't think any other screening would work. Concerns about staffing considerations. Max capacity of 40 dogs and you would need a 10 to 1 ratio. Jason said employment would take place based on the demand. As we scale and get up to full capacity, we would need to hire additional staff. Initially, it would be family operated. Jason was asked if he would be open to an acoustic wall. He said he would have to look into it, but the evergreens were not meant for acoustics. There is already acoustic paneling and sound proofing in the building plan. Shute says there is an L shaped parcel to the north and there would be a concern if the other property owner wanted to build at the edge of their property, it would not be an option due to the sound aspect. Jason said he could have the reverse concern about what is being built that could affect his property value.

Baldwin asks Shute what his concern about noise is. Shute says due to the lay of the land, he doesn't feel those decibels are going to be applicable. Baldwin wants to know if this would be worse than a pack of coyotes and other ambient noises. Baldwin feels putting up a wall would be a burden. Baldwin said there are trees. Shute says that is more for screening. Shute is mostly concerned about the noise level.

Wiehn said both parties have done a good job trying to address the concerns. His concern is the shape of the lot and proximity to the neighbors, as well as the commerciality of this project. Deaton said her family members in rural Johnson County live next door to dog kennel. When asked how it affected them, they said they had forgotten it was even there. Deaton is concerned about the narrow lots that are piano key rather than a big square. Wiehn said he does believe the city needs this but doesn't think this is the right spot for this business. He has thought about what would be right for this property. Deaton is concerned with the size of the building and has hesitations.

Mayor said his thoughts were summarized by Mr. Bannister. It is a great idea; I just don't feel it is the right location.

Baldwin said he thinks the applicant could make this work. The concern is the size of the building, it's a second accessory building and a rural area where we encouraged everyone to come into the city to keep it rural. If we allow this building, we have set a precedence if everyone in that area wanted to build a big building. Baldwin was appreciative of all the plans that Jason came up with, he just doesn't feel like it is going to work in this location.

Knopick explained the motions that would be required. If you make a motion to adopt the recommendation of the Planning Commission, you would do so by creating the motion in the packet. If you are reaffirming the Planning Commission recommendation, it is a simple majority vote. If you are going to make a motion to override the Planning Commission, it would take a two-thirds vote. We did take significant time looking over the structures that are allowed. When talking about accessory structures that are allowed, there is a lot of variation in the various zoning districts. In the A (Agricultural) district, there is a lot more flexibility in the sizes. Even though this would be in an A district, this would not be for agricultural purposes.

Jason responds to Baldwin's concern about the size of the building. There are other very sizable buildings on adjacent properties. The Freund's have a large building at the front of their lot that may be about the similar size to what is being proposed. If this is all about the size, then I would ask you to say what size would be appropriate. Shute reminded that these items are tied together. Rezoning would be required.

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Councilmember Shute made a motion to adopt the recommendation of the Planning Commission and deny the rezoning of certain land located in the City of Gardner, Kansas.

Councilmember Wiehn Seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

Baldwin: Yes
Deaton: Yes
Wiehn: Yes
Shute: Yes
Winters: Yes
McNeer: Yes

2. Consider adopting an ordinance approving a conditional use permit for an animal care facility located on the north side of 199th Street approximately 1300' west of Gardner Road (Tax ID CP1900000 0004).

Councilmember McNeer made a motion to adopt the recommendation of the Planning Commission and deny the request for a conditional use permit on certain land located in the City of Gardner, Kansas.

Councilmember Deaton Seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

NEW BUSINESS

1. Consider a request for a Waiver of the Distance Limitation and a Temporary Permit to allow for the sale of alcoholic liquor for consumption on premise within 200 feet of a school, church, or library during an event at Crown Realty.

City Clerk Rich said there is an event on April 6, 2024 in downtown Gardner from 5:00 pm to 9:00 pm in which White Tail Run Winery has asked to sell glasses of wine for consumption inside Crown Realty. They will also be selling unopened bottles for people to take home. Due to the location being within 200 feet of a school, church or library, they need the Council to approve a Waiver of the Distance Limitation and a Temporary Permit.

Chief Waldeck said the police department has no issue with this request.

Councilmember Deaton made a motion to approve a request for a Waiver of the Distance Limitation and a Temporary Permit to allow for the sale of alcoholic liquor for consumption on premise within 200 feet of a school, church or library during a special event on April 6, 2024, at Crown Realty, 202 E. Main St.

Councilmember Shute Seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

COUNCIL UPDATES

Mayor Winters said he appreciated the police escort on Saturday for the gentleman running through town on his way from L.A. to New York. Chief Waldeck said the runner did a shout out on his Instagram and the officers enjoyed doing this.

Public Works Director Headlee mentioned they are seeking direction from the council on bridge aesthetics for the I-35 and Gardner Road bridge. KDOT provides a basic product when they design these, it is designed to get traffic over the interstate. Colors, signage, and fencing are on the cities to handle. Items noted in the packet are typical Johnson County and metro area bridge aesthetic add-ons. We need authority to be able to go back to the

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KDOT designer to let them know if the city is willing to put in up to \$500,000 for aesthetics. Baldwin wants everyone to keep in mind we have discussed signage at both the east and west sides of town. Wiehn said as the trail system continues to expand south, having something that would allow safe crossing on the bridge is necessary. Headlee said street lighting and pedestrian lighting are definite needs.

Shute wants to thank Risk and Finance for their excellent work on the health insurance options, as well as CBIZ to come up with an innovative solution that is going to save the city money and provide options for employees at potentially lower cost. Finance Director Wolff said he will share with all staff involved in this process.

Mayor gives a shout out to the athletic teams doing well and dominating.

EXECUTIVE SESSION

ADJOURNMENT

There being no further business to come before the Council, on a motion duly made by Councilmember Deaton and seconded by Councilmember Shute the meeting adjourned at 8:05 pm.

City Clerk