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Request for Special City Council Meeting

Westmoreland, Kansas

Dated: February 20, 2019


To: Mark A. Goodenow
Mayor of Westmoreland

We, the undersigned, Council members of the City of Westmoreland, Kansas, hereby respectfully request you to call a Special Meeting of the Council for the object(s) and purpose(s) of:

Holding hearing regarding trash and debris on the property at 301 S. 6th as requested by property owner.

This meeting will take place at Westmoreland Community Center on February 28, 2019 at 7:00 PM.

Signed:  Council member
Mark Jack

 Council member
Jim Moore

 Council member
Waide Purvis

 Council member
Ashley Rice

 Council member
Jim Smith

Westmoreland City Council
Special Meeting Minutes
February 28, 2019

The Westmoreland City Council held a special meeting at the Westmoreland Community Center on February 28, 2019 for the purpose of a requested hearing by property owners of Umscheid Auto Works.

Governing Body members present: Mayor, Mark Goodenow; Councilmembers, Jim Smith, Mark Jack, Waide Purvis, Jim Moore and Ashley Rice.

City Staff present: City Attorney, John Watt; City Agent, Jeff Zimmerman and City Clerk, Vicki Zentner.

Others present: Troy and Ed Umscheid and Darlene Perry.

There being a quorum present Mayor Goodenow called the special meeting to order at 7:00 PM.

Attorney Watt gave a general synopsis of Ordinance #523 in regards to trash and debris. He stated that the Ordinance provides for the city agent to serve notice and orders for any violation of the Ordinance that was not taken care of after the property owner(s) had received a letter describing the violation along with pictures within the 14-day time limit. The order and notice is served after the time limit has passed and no obvious clean up has been done. The order and notice provides for the request by the property owner to ask for a hearing before the governing body within 10 days of the receipt of the notice and order, which Troy Umscheid requested.

Attorney Watt stated that the hearing is for the purpose of testimony from the city agent on his observations of the property and gives the council the opportunity to review all documents presented and then Troy and Ed Umscheid may present their side.

The council has the right to extend extra time for the Umscheids to remedy the situation if they so wish. However, the council may have city staff clean up the property and give the owners notice or Attorney Watt may prosecute the Umscheids in municipal court. Attorney Watt stated that he was hopeful that neither of these scenarios would be necessary if both the council and Umscheids could come to a mutual agreement to remedy the violations.

At this time, Attorney Watt asked City Clerk Zentner to swear in the city agent, Jeff Zimmerman, for his testimony.

Watt asked Zimmerman to state his name and position with the city, which he did. Watt asked Zimmerman if he views violations that have been presented to the city clerk, Zimmerman responded that he did. Watt asked when the first time Zimmerman had viewed the property in question and Zimmerman said within the last two (2) years. Watt also asked if

Zimmerman periodically observed the property within the last two (2) years for any progress that may have taken place. Mr. Zimmerman responded that he did.

Watt then asked if Zimmerman knew both Troy and Ed Umscheid, he stated that he did.

Attorney Watt asked Mr. Zimmerman what was presently outside of the gate when he observed the property on January 27, 2019. Mr. Zimmerman stated that there were dumpsters and car seats, but that the lids on the dumpsters were not closed thus allowing the contents to be seen. He stated he couldn't tell if the vehicles outside of the fence were operable or not. There was scrap iron and an old boat next to one (1) of the dumpsters, an old red truck and newer black truck was also observed outside of the fence as well as a pickup bed being used as a trailer with items piled in it.

At this time, Attorney Watt read from Section 2 of Ordinance #523 regarding the definition of trash and debris and then asked Mr. Zimmerman if he felt the items he observed on the property would fall under the definition. Mr. Zimmerman responded that he felt they did.

Watt then asked when the order and notice was served on the Umscheids. Mr. Zimmerman responded on February 18, 2019. Watt asked if a conversation had taken place between Mr. Zimmerman and Troy Umscheid at that time. Mr. Zimmerman stated that they had and Mr. Zimmerman suggested to Troy that he request a meeting with the council to get clarification and guidance as to what the council wanted Troy to do to clean up the property.

Troy responded that the items in the dumpsters and on the ground were no longer there.

Attorney Watt asked Mr. Zimmerman if he remembered why he suggested that Troy request a hearing before the council. Mr. Zimmerman stated that he felt that the council would be able to give better clarification on what they expected the Umscheids to do to clean up the property.

Troy stated that when he was given the order and notice there were no report or pictures attached and the only report and pictures that he had received were a year old and when he quizzed Mr. Zimmerman on the issues, Mr. Zimmerman responded that Councilmember Moore had told him to write up the property.

Ed Umscheid stated he felt that there should be a place on the order and notice for the city agent and the property owner(s) to initial as well as a date. Attorney Watt stated that this could be done, but the paperwork that the city agent returns to the city clerk for filing shows the date that the order and notice is served.

Attorney Watt stated that this issue had been going on for two (2) years and that for awhile the Umscheids started to do some clean up but some of the original items were still there. He stated that at that time the gate didn't have panels on it.

He informed the Umscheids that he and the council receive a report at every council meeting indicating violations that are still not taken care of for their review.

He stated that he finally was frustrated that nothing had been done and informed the city clerk to get paperwork started for prosecuting in municipal court.

Ed asked what issue besides the gate not being up was not taken care of. Watt responded that things outside the gate had not been moved and he considered this to still be a violation. Once the panels on the gate were in place and things were put behind the fence so as not to be seen, then it would be taken care of.

Ed stated that when Councilmember Moore first talked to the Umscheids about the issues, he stated that it was for the safety of the children. Mr. Watt stated that yes, that was part of the concern as well.

Councilmember Jack asked Attorney Watt if the vehicles fell under the definition of trash and debris as stated in the Ordinance, as he felt they were a separate issue. Watt responded that Councilmember Jack was correct, that the vehicles fell under a separate ordinance dealing with abandoned and inoperable vehicles.

Troy stated that it was time consuming for them to move a vehicle they are working on from the front of the business to behind the fence and bring it back out when they received the parts. He also stated that he knew of two (2) incidents where Councilmember Moore had contacted customers of theirs to get their vehicles removed (after work had been finished on them by the Umscheids) and pay their bill immediately. Troy felt that this was inappropriate of Councilmember Moore and an abuse of power. He stated that Councilmember Moore has a business and individuals do not tell him how much he can lend to his customers.

Ed stated he felt the council had a personal vendetta against his business and when he asked Councilmember Moore about this, Councilmember Moore had responded it would appear that way. Ed then asked if any other business in town had been served for the condition of their property and Councilmember Moore responded he didn't think so. Attorney Watt stated that no orders had been sent out recently. Troy asked if their property was worse than any of the other properties in the city.

Attorney Watt stated that he was not picking on the Umscheids, that in their situation, the violation had been going on for a while and after receiving pictures of the property in January, he decided he was going to do something about it. He stated that the council has rules in place and they don't make decisions on who to prosecute; that's left up to him.

Troy presented pictures of various properties in the city that were, in his opinion, in violation of the trash and debris ordinance including the county and city shop areas. He stated that these areas were also a potential danger to kids and felt that if they had to follow the rules that the county and city should have to as well.

Attorney Watt stated that at this point the city was dealing with the Umscheid situation and that should the Umscheids get things cleaned up, removed and or put behind the fence, there would be no problem. As for the pictures presented to the council of the other properties in

town, he stated that letters go out and 90% of the time owners take care of the problem. If they don't, they are summoned to municipal court.

Ed stated that some of the items were, at this time, hard to move due to the recent snow and ice the city had received and they were frozen in the ground. He asked if he could use city equipment to remove the items. Attorney Watt stated that this was not possible. Ed stated that the city had done it in the past and Attorney Watt stated that he had told the council to not allow this or staff to help.

Councilmember Jack stated that he had recently looked at the Umscheid's property and talked to both Troy and Ed about it. He said they have cleaned up more and the property looks better. He was understanding of their feelings that they were being picked on and stated that he would like to see the council give the Umscheids plenty of time, due to the weather, to finish cleaning up the property.

Attorney Watt asked how much time the Umscheids thought they might need for getting things taken care of. Troy stated as soon as it thawed out and was dry enough to move the items.

Darlene Perry stated that she would hope that the council took into consideration the weather and the potential of severe weather during the spring months before they picked a certain date.

Councilmember Purvis stated that he felt that as long as the council saw progress and could tell that they were working on the issues he was comfortable with allowing some more time for them to get things taken care of and asked the Umscheids if thought they would be able to get things taken care of by June 30th. Both Troy and Ed agreed that this date was attainable.

Councilmember Moore stated that he had not turned the property in because he saw the issues, that other citizens talked to him and complained. He stated he appreciated what the Umscheids have done so far and was impressed with the gate. He also stated that he would let a board member of the Rock Creek Valley Historical Society know of the concerns of items on their grounds that had been pointed out to the council by the Umscheids.

Attorney Watt informed the council and the Umscheids that he would prepare a resolution stating that the boat would be removed from the area outside the fencing and gate of the property; remove the building stock which is now located near the boat from the area outside the fencing and gate; remove the old red truck from the area outside the fencing and gate and empty the contents of the white pickup bed and place the contents into dumpsters for the council to approve and sign at the next council meeting.

There being nothing further from the Umscheids and Ms. Perry, they exited the meeting at 8:20 PM.

Councilmember Smith moved to adjourn the special meeting. Councilmember Rice seconded the motion. The motion passed five (5) ayes to zero (0) nays.

Mayor Goodenow declared the meeting adjourned at 8:21 PM.

Approved by the Governing Body on March 14, 2019.



Signed: Mark A. Goodenow
Mark A. Goodenow, Mayor

Vicki B. Zentner
Vicki B. Zentner, City Clerk