

RESOLUTION NO. 05-13

A RESOLUTION SETTING A BALLOT TITLE AND SUBMITTING TO THE ELECTORATE ON APRIL 2, 2013 A MEASURE REGARDING ZONING PROPERTY LOCATED AT 347 27 1/2 ROAD, 348 27 1/2 ROAD AND 2757 C 1/2 ROAD IN THE CITY OF GRAND JUNCTION, COLORADO

RECITALS.

SLB Enterprises *d.b.a.* Brady Trucking purchased the property at 347 and 348 27 1/2 Road and 2757 C1/2 Road in 2006. At that time the property had not been annexed to the City. The property was zoned I-2 (heavy industrial) in the County.

After annexation in 2008 the City Council zoned some of the property I-1 (light industrial) and some I-O (industrial office). As part of the zoning process City staff and the applicant agreed on and proposed a trail location/plan for the extension of the Riverfront trail. That proposal was included in and approved by the City Council in the form of Ordinance 4295.

A citizens group petitioned to suspend Ordinance 4295 under section 136 of the City Charter. The City Charter states "a petition signed by registered electors of the city equal in number to at least ten per centum of the last preceding vote cast in the city for all candidates for Governor of the State of Colorado, be presented to the council, protesting against such ordinance taking effect, the same shall thereupon and thereby be suspended from taking effect, the council shall immediately reconsider such ordinance, and if the same be not entirely repealed, the council shall submit it, by the method provided in this article, to a vote of the registered electors of the city, either at the next general municipal election, or at a special election, which may, in their discretion, be called by them for that purpose, and such ordinance shall not take effect unless a majority of the registered electors voting on the same at such election, shall vote in favor thereof."

At the time of the protest 1860 signatures were required for a valid protest petition. Under the Charter if the petition/signatures are found to be valid then the City Council must reconsider the ordinance and either repeal it or submit it to a vote.

On November 10, 2008, after invalidating 744 signatures, City Clerk Tuin found that the petition contained 1864 valid signatures and thus Ordinance 4295 was suspended from taking effect. The property owner and Diane Schwenke filed a protest of the City Clerk's decision.

On January 9, 2009 the City Clerk held a hearing on the protest. Among other arguments the protesters claimed that the petition was defective because Candi Clark had a disqualifying interest under the Colorado Notary Act.

After the hearing the City Clerk issued a ruling that disqualified one petition section (section 079) and with that disqualification the number of valid signatures on the petition dropped to 1846. Because the 1860 signature threshold was not met, the petition was legally insufficient. The petition proponents filed suit challenging the City's findings.

Mesa County District Court Chief Judge David Bottger affirmed the City Clerks decision. The petition proponents appealed Bottger's decision. The Colorado Court of Appeals overturned Bottger; the Colorado Supreme Court declined to hear an appeal and the case was remanded to Judge Bottger for disposition. Bottger ruled on all matters in the case in early August 2012 and the case was remanded to the City.

Pursuant to the Charter and because of the prior legal rulings, the City Council reconsidered Ordinance 4295 on September 5, 2012. Under the City Charter the City Council had the option to repeal the ordinance or to refer it to the ballot. The City Council acted by a majority vote to refer Ordinance 4295 to the voters at the April 2013 election.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION THAT THE FOLLOWING QUESTION BE PLACED ON THE APRIL 2, 2013 BALLOT:

CITY OF GRAND JUNCTION REFERRED MEASURE A

Shall Ordinance 4295 zoning property located at 347 27 1/2 Road to I-1, Light Industrial, and zoning property located at 348 27 1/2 Road and 2757 C 1/2 Road to I-O, Industrial Office, with certain conditions, including but not limited to the dedication of a public trail easement 50 feet wide adjacent to the Colorado River along the entire southern property boundary; dedication of a public trail easement 50 feet wide along the east property boundary and installation of a landscape buffer 25 feet wide and a screen wall along the west, north and south property boundaries be adopted?

YES, FOR THE ORDINANCE


NO, AGAINST THE ORDINANCE

Adopted this 16th day of January, 2013.



President of the Council

ATTEST:



City Clerk

