

Item #45

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DATE: February 11, 2003

TO: Michael Booher
Assistant City Attorney
Rapid City, South Dakota

FAX NO.: (605) 394-6633

FROM: Ron Schmidt

Re: Opposition and Protest of Joanne O'Brien and Kevin Kirkland to Legal and Finance Committee Agenda Item 20 Scheduled for Hearing on Wednesday, February 12, 2003

NO. OF PAGES: (Including cover sheet) 5

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COMMENTS: See attached Memorandum which I understand you will distribute to the members of the Legal and Finance Committee, Council and Mayor Munson in connection with the above.

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MEMORANDUM

TO: Members of the Rapid City Legal and Finance Committee,
Council, and Mayor Jerry Munson

FROM: Ron Schmidt

SUBJECT: Opposition and Protest of Joanne O'Brien and Kevin
Kirkland, 2621 Arrowhead Drive, Rapid City, SD 57702,
to Legal and Finance Committee Agenda Item 20 Scheduled
for Hearing Wednesday, February 12, 2003 ---
No. LF021203-06 -- Introduction and First Reading of
Ordinance No. 3913 -- An Ordinance Amending Sections
17.50.280 of Chapter 17.50 of the Rapid City Municipal
Code Relating to Storage and Parking of Trucks,
Trailers and Commercial Vehicles

DATE: February 11, 2003

I represent the above-referenced parties, Joanne O'Brien and Kevin Kirkland of Rapid City. My clients purchased their above-described real estate during the year 2000. Kevin Kirkland is a typesetter and of necessity maintains his tools and supplies in a pickup which he has parked on his premises since the purchase of the home.

Prior to purchasing their home, Joanne called the City Planning Office and specifically asked if it would be okay to park Kevin's vehicle in the driveway at the residence they were planning to buy. Joanne talked to a "Brenda" and was expressly advised that it would be okay to park the 1-ton commercial vehicle on the

premises. Kevin's vehicle has a "1-ton rating as specified by the manufacturer's designated series." My clients expressly relied upon the City's representation in buying their home.

During late 2002, my clients were advised by Brenda Rose, Ordinance Officer, of the City of Rapid City, that Kevin's vehicle violated Rapid City Municipal Code § 17.50.280. I understand the City Attorney's office has construed Rapid City Code § 17.50.280 as giving rise to a violation by my clients. I respectively disagree with the City Attorney's interpretation.

Subsections 1, 2, and 7 of Ordinance 17.50.280 read as follows:

"17.50.280A. Allowed storage. Vehicles and trailers of all types, including commercial, travel, boat, camping, storage and hauling, shall not be parked or stored on any lot occupied by a dwelling or on any lot in any residential or commercial district except in accordance with the following provisions:

"1. Number. Only one vehicle used principally for commercial purposes per family living on the premises shall be permitted.

"2. Vehicle size. Vehicles parked in residential districts shall not exceed one ton rating as specified by the manufacturer's designated series. These restrictions shall not apply to recreational vehicles.

" * * *

"7. Parking of commercial vehicles. Any commercial truck or trailer other than a construction trailer, used for the storage or transport of merchandise, equipment or business supplies shall be located on a commercial lot which contains an existing principal structure. Such a truck or trailer shall be screened by a 6-foot opaque fence or plant materials from any abutting residential lots and public ways or housed in an enclosed building." (Emphasis added)

These Ordinances are clear, and may be construed harmoniously and consistently when read together. The intent and meaning of the quoted subsections is clear as follows:

- (1) One commercial vehicle with a 1-ton rating as specified by the manufacturer's designated series is clearly allowable under §§ 1 and 2; and

- (2) Any commercial vehicle (exceeding the 1-ton rating) must be located separately on a commercial lot containing an existing principal structure.

Kevin's vehicle (which has a 1-ton manufacturer's rating) was, and is clearly legal under Ordinance 17.50.280 §§ 1 and 2.

The existing Ordinance is clear and appropriate. Here you have citizens who, in good faith contacted the City prior to buying the property and were told that the storage of their single 1-ton vehicle was legal. They relied upon the City's interpretation and representation in consideration of purchasing the property.

Numerous other similar vehicles are parked on private property under similar circumstances throughout Rapid City. The proposed changes to § 17.50.280 to be considered by the Legal and Finance Committee on Wednesday, February 12, 2003, in the form of proposed Ordinance 3913, is totally unnecessary and inappropriate under the totality of the circumstances. There are numerous young people throughout Rapid City who are trying to make an honest living, who pay taxes, and who of necessity must park their vehicles at their residences. They do not have, nor do they need or can they afford a separate commercial location. The proposed ordinance changes would have an onerous and burdensome effect on numerous people throughout the community.

On behalf of my clients, I respectfully request that the Legal and Finance Committee and/or Council:

- (1) Either defeat the proposed Ordinance change; or
- (2) Provide a specific grandfather clause protecting my clients, and others similarly situate. As mentioned, they relied on the existing Ordinance and its interpretation by City officials in good faith and deserve to continue this proper use.

It might be added in conclusion that all of my clients' neighbors have specifically signed letters stating they have no objection, nor have they ever had any objection to my client's parking of his vehicle in his driveway.

I have discussed this matter with Assistant City Attorney, Mike Booher, who assures me he will distribute this Memorandum to the members of the Legal and Finance Committee, Council, and Mayor Munson. I am unfortunately out of town and residing in Pierre during the Legislative Session. I specifically request that this

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Memorandum be made a part of the official proceedings of the
Committee and/or the Council.

RGS:cw

cc: Joanne O'Brien
✓ Kevin Kirkland