

**MINUTES
CITY COUNCIL MEETING
March 19, 2013**

The Wayne City Council met in regular session at City Hall on Tuesday, March 19, 2013, at 5:30 o'clock P.M. Mayor Ken Chamberlain called the meeting to order with the following in attendance: Councilmembers Cale Giese, Jim Van Delden, Jon Haase, Dale Alexander, Nick Muir, Jennifer Sievers and Jill Brodersen; City Attorney Amy Miller; City Administrator Lowell Johnson; and City Clerk Betty McGuire. Absent: Councilmember Kaki Ley.

Notice of the convening meeting was given in advance by advertising in the Wayne Herald on March 7, 2013, and a copy of the meeting notice and agenda were simultaneously given to the Mayor and all members of the City Council. All proceedings hereafter shown were taken while the Council convened in open session.

Councilmember Haase made a motion, which was seconded by Councilmember Brodersen, whereas, the Clerk has prepared copies of the Minutes of the meeting of March 5, 2013, and that each Councilmember has had an opportunity to read and study the same, and that the reading of the Minutes be waived and declared approved. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Ley who was absent, the Mayor declared the motion carried and the Minutes approved.

The following claims were presented to Council for their approval:

CORRECTIONS TO CLAIMS LIST OF 2/5/13: Delete Chartwells – Senior Citizen Meals - 5205.55 and City of Wayne-Building permit refund - 250.00

VARIOUS FUNDS: AMERITAS, SE, 2140.13; APPEARA, SE, 160.00; BACKUPWORKS.COM, SU, 2998.26; BAKER & TAYLOR, SU, 707.63; BANK FIRST, FE, 150.00; CITY EMPLOYEE, RE, 428.12; CITY EMPLOYEE, RE, 176.72; CARROT-TOP INDUSTRIES, SU, 266.19; CHARTWELLS, SE, 9,976.65; CITY OF

NORFOLK, SE, 204.21; CITY OF WAYNE, RE, 703.50; CITY OF WAYNE, PY, 59215.55; CITY OF WAYNE, RE, 720.00; COMMUNITY HEALTH, RE, 4.00; DAKOTA BUSINESS SYSTEMS, SE, 103.50; DE LAGE LANDEN FINANCIAL, SE, 394.00; DEARBORN NATIONAL LIFE, SE, 1715.21; DOESCHER APPLIANCE, SE, 93.00; ECHO GROUP, SU, 311.58; ED. M FELD EQUIPMENT, SE, 86.00; EGAN SUPPLY, SU, 50.57; ELLIS PLUMBING & HEATING, SE, 437.60; EMPLOYERS MUTUAL CASUALTY, RE, 250.70; FLOOR MAINTENANCE, SU, 489.63; HARDING & SHULTZ, SE, 547.00; HEWLETT-PACKARD, SU, 5049.07; ICC, FE, 125.00; ICMA, RE, 5737.85; INGRAM BOOK COMPANY, SU, 101.69; IRS, TX, 21167.90; JACK'S UNIFORMS, SU, 176.25; JEFF MORLOK, RE, 840.00; CITY EMPLOYEE, RE, 1220.70; KTCH, SE, 827.48; LAYNE CHRISTENSEN, SE, 1323.30; LINCOLN COMMISSION, FE, 180.00; LUNDAHL, EARL, RE, 350.00; MAIN STREET AUTO CARE, SE, 70.00; CITY EMPLOYEE, RE, 137.83; MIDWEST LABORATORIES, SE, 220.50; MIDWEST TAPE, SU, 149.96; MILO MEYER CONSTRUCTION, SE, 200.00; MSC INDUSTRIAL, SU, 121.25; NE DEPT OF REVENUE, TX, 2933.48; NE DEPT OF ROADS, SE, 3150.00; NE LAW ENFORCEMENT, SE, 90.00; NE LIBRARY ASSOCIATION, FE, 235.00; NE PUBLIC HEALTH, SE, 373.00; NE RURAL WATER, FE, 375.00; NE SAFETY COUNCIL, FE, 325.00; NPPD, SE, 291980.19; NMC EXCHANGE, SE, 1141.91; NORTHEAST LIBRARY SYSTEM, FE, 20.00; NNPPD, SE, 13024.70; NORTHWEST ELECTRIC, SU, 731.47; OMAHA WORLD-HERALD, SE, 389.29; CITY EMPLOYEE, RE, 475.30; CITY EMPLOYEE, RE, 96.29; PRESTO X, SE, 105.01; PUSH-PEDAL-PULL, SU, 6149.60; QUALITY 1 GRAPHICS, SU, 50.00; RANDOM HOUSE, SU, 269.25; SIOUX CITY INSTALLATION, SU, 111.11; SPARKLING KLEAN, SE, 1235.43; STATE NATIONAL BANK, RE, 3146.25; CITY EMPLOYEE, RE, 283.63; TACO'S AND MORE, SU, 1280.00; THE PENDER TIMES, SU, 37.95; TOM'S BODY & PAINT SHOP, SE, 706.37; UNITED COMMUNICATIONS, SU, 79.00; WAYNE AUTO PARTS, SU, 801.35; WAYNE COMMUNITY SCHOOLS, SU, 43.00; WAYNE COUNTY COURT, RE, 300.00; WAPA, SE, 32270.55; WESTERN IOWA TECH, FE, 225.00; ZEE MEDICAL SERVICE, SU, 37.65; AMAZON.COM, SU, 974.66; AMERITAS, SE, 1938.67; APPLIED INDUSTRIAL TECH, SU, 149.03; BANK FIRST, FE, 150.00; BIG T ENTERPRISES, SU, 205.80; CITY EMPLOYEE, RE, 44.38; CITY OF WAYNE, PY, 56900.32; CITY OF WAYNE, RE, 472.95; COMMUNITY HEALTH, RE, 4.00; CONSOLIDATED MANAGEMENT, RE, 27.50; CITY EMPLOYEE, RE, 426.20; ECHO GROUP, SU, 211.05; EGAN SUPPLY, SU, 359.50; FLOOR MAINTENANCE, SU, 68.48; GROSSENBURG IMPLEMENT, SU, 28.24; HAWKINS, SU, 1627.96; ICMA, RE, 5740.31; IRS, TX, 20559.86; LOWER ELKHORN N.R.D., SU, 135.00; LUCIEN HAMERNIK, SE, 450.00; MANDY/LOUIS BENSOTER, RE, 25000.00; MERCY MEDICAL CLINICS, SE, 29.00; METRO AREA PLANNING AGENCY, SU, 199.00; NE DEPT OF REVENUE, TX, 2833.76; NE PUBLIC HEALTH, SE, 98.00; OLSSON ASSOCIATES, SE, 11645.25; CITY EMPLOYEE, RE, 119.34; PIEPER & MILLER, SE, 9529.00; PITNEY BOWES, SE, 648.00; PROVIDENCE MEDICAL CENTER, SE, 351.00; QUILL, SU, 373.84; R.J. THOMAS MFG, SU, 1333.10; VOSS LIGHTING, SU, 378.52; WAYNE HERALD, SE, 1317.00;

Councilmember Haase made a motion, which was seconded by Councilmember Brodersen, to approve the claims. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Ley who was absent, the Mayor declared the motion carried.

Mayor Chamberlain advised the public that a copy of the Open Meetings Act was located on the south wall of the Council Chambers and was available for public inspection. In addition, he advised the public that the Council may go into closed session to discuss certain agenda items to protect the public interest or to prevent the needless injury to the reputation of an individual and if such individual has not requested a public hearing.

Terry Galloway of Almquist, Maltzahn, Galloway, & Luth, P.C., presented the FY 11-12 Audit. He provided Council with a spreadsheet that identifies “benchmarks” of how Wayne compares with other communities its size. It’s a study his firm has done across the State of Nebraska with approximately 35 municipalities, whose populations range from 3,000 to 10,000 people.

The business type activities (electric, water and sewer) are excellent. Wayne is about 50%; anything above 33% is considered excellent. Governmental Activities is at 5.44%, which is low and indicates the need to increase the cash reserves. The recommended is 33%.

Cash reserves are down this year in the General Fund. The norm is to have four to five months worth; Wayne has about 2.5 months. Last year, Wayne had around 9 months worth of cash reserves.

The outstanding general obligation debt/valuation is used a lot in the bonding world to see how much taxpayer pressure is going to be needed to meet obligations as you go forward. Wayne is a little over 1%. Anything less than 3% is excellent in Nebraska. Wayne does not have a lot of general obligation debt outstanding.

In regard to debt coverage ratio (water, sewer and electric), consideration should be given to increasing the electric and sewer rates this year. Ideally, you should have 1.5 to 2 times coverage. Wayne is barely getting one times the coverage in electric and less than one times the coverage in sewer.

In regard to the City's top six revenue sources, their recommendation, again, was that Wayne needs more retail trade. Sales tax runs \$120 per capita, and Wayne is at \$107. Property taxes are actually good for the taxpayers in Wayne. The per capita basis is \$200 per person. Wayne is asking \$128 per person. Wayne is way under what they call best practice for a City its size.

In lieu of tax payments (franchise fees) is \$120 per capita; Wayne is at \$104. This is a little bit less than what is recommended. Normally, they see about a 12% franchise fee. Wayne is charging 7% on water and sewer, and 8.5% on electric. This is something that could be increased if we needed more revenue in the general fund, etc. State Allocation is at \$130 per capita; Wayne is at \$142. Charges for services are \$160 per capita and Wayne is at \$92. Grants are a little bit low this year. The per capita is at \$85; Wayne is at \$51.

Under the business type activities, Wayne currently has \$8.9 million. Wayne needs about \$9.2 million.

In regard to the operating income, it reflects that rates need to be increased in the electric and sewer funds.

In regard to the tax levy rates, Wayne is, again, under what the recommended or state-wide average is. This is very good for the taxpayers in Wayne. In the general fund, the per capita is \$130 per person; Wayne is at \$123 per person. In debt service, Wayne is about half of what it would be in another city Wayne's size.

In regard to the State Allocations, the Highway Allocation went up from \$64 per capita to \$69 per capita, and Municipal Equalization went up from \$64 per capita to \$66 per capita.

Mr. Galloway then reviewed the per capita costs of departments compared to the state-wide average. The administrative costs to run the City of Wayne is very low compared to the other cities. The per capita cost is \$75; Wayne is at \$36.

In Public Buildings, Wayne is about \$11 per capita; the average is \$10. In Public Safety, Wayne is at about \$227 per capita; the average is \$200. Public Works is \$83 per capita; the average is \$100. The Library is about \$40 per capita, with the average being \$40 per capita. Recreation is at \$47 per capita; the average is \$50. The Community Activity Center is at \$38 per capita, with the average being \$40 per capita. Overall, Wayne has done an excellent job in keeping the costs and expenses down in the various departments and still being able to continue the level of service that everyone is used to.

Mr. Galloway noted that his firm did not encounter any difficulties in performing the audit. He ended his presentation by stating the City has done a very good job at being good stewards with the money that is here; the amount in cash reserves is very good; and commending the City staff on a job well done.

Nick Kemnitz, Wayne County Emergency Manager, presented an updated Operations Plan for Disaster Response and Recovery. Every five years, they are required by law to update the plan.

Councilmember Brodersen introduced Resolution No. 2013-22 and moved for its approval; Councilmember Giese seconded.

RESOLUTION NO. 2013-22

A RESOLUTION ADOPTING OPERATIONS PLAN FOR DISASTER RESPONSE AND RECOVERY.

Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Ley who was absent, the Mayor declared the motion carried.

Irene Fletcher, representing Wayne Area Economic Development, Inc., and on behalf of the Chicken Show Committee, was requesting the following streets be closed during the Chicken Show activities:

- ❖ On Friday, July 12th, the Committee is requesting the closure of the following streets from 2:30 p.m. until 2:00 a.m. for the Annual Henoween Celebration: Main Street from 1st Street to 4th Street (not including the end intersections); 2nd Street from Pearl Street to Logan Street; and 3rd Street from Pearl Street to Logan Street, not including the Pearl and Logan Street intersections. The Committee plans to hold a street dance on Main Street from approximately 10:00 p.m. to 1:00 a.m. on Friday night.

Councilmember Brodersen made a motion, which was seconded by Councilmember Muir approving the request of the Chicken Show Committee to close the following streets on Friday, July 12th from 2:30 p.m. until 2:00 a.m. for the Annual Henoween Celebration: Main Street from 1st Street to 4th Street (not including the end intersections); 2nd Street from Pearl Street to Logan Street; and 3rd Street from Pearl Street to Logan Street, not including the Pearl and Logan Street intersections. Mayor

Chamberlain stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Ley who was absent, the Mayor declared the motion carried.

Irene Fletcher, representing Wayne Area Economic Development, Inc., and on behalf of the Chicken Show Committee, was requesting the following streets be closed during the Chicken Show activities:

- ❖ On Saturday, July 13th, the Committee is requesting the closure of the following streets from 6:00 a.m. until 5:00 p.m., for the Annual Chicken Show Celebration in Bressler Park: 10th Street from Lincoln Street to Douglas Street; Lincoln Street from 10th Street to 8th Street; and Douglas Street from 8th Street to 10th Street. The intersections at 10th and Douglas and 10th and Lincoln Streets are also requested to be closed.

Councilmember Brodersen made a motion, which was seconded by Councilmember Muir approving the request of the Chicken Show Committee to close the following streets on Saturday, July 13th from 6:00 a.m. until 5:00 p.m. for the annual Chicken Show celebration in Bressler Park: 10th Street from Lincoln Street to Douglas Street; Lincoln Street from 10th Street to 8th Street; Douglas Street from 8th Street to 10th Street; and the intersections at 10th and Douglas and 10th and Lincoln Streets. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Ley who was absent, the Mayor declared the motion carried.

Irene Fletcher representing Wayne Area Economic Development, Inc., and on behalf of the Chicken Show Committee, was requesting the following streets be closed during the Chicken Show activities:

- ❖ On Saturday, July 13th for the Annual Chicken Show Parade from 9:00 a.m. until 11:30 a.m. (or until the end of the parade): Main Street from 1st to 10th Street

(including intersections) and 10th Street from Main Street to Lincoln Street. Lincoln Street from 10th Street to 7th Street will also be used for the parade.

Councilmember Brodersen made a motion, which was seconded by Councilmember Muir approving the request of the Chicken Show Committee to close the following streets on Saturday, July 13th for the Annual Chicken Show Parade from 9:00 a.m. until 11:30 a.m. (or until the end of the parade): Main Street from 1st to 10th Street (including intersections) and 10th Street from Main Street to Lincoln Street. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Ley who was absent, the Mayor declared the motion carried.

Councilmember Giese introduced Resolution No. 2013-23 and moved for its approval; Councilmember Sievers seconded.

RESOLUTION NO. 2013-23

A RESOLUTION ACKNOWLEDGING NEBRASKA DEPARTMENT OF ROADS' REQUIREMENTS FOR THE TEMPORARY USE OF THE STATE HIGHWAY SYSTEM FOR SPECIAL EVENTS.

Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Ley who was absent, the Mayor declared the motion carried.

Councilmember Giese introduced Ordinance 2013-16 and moved for approval of the third and final reading thereof; Councilmember Sievers seconded.

ORDINANCE NO. 2013-16

AN ORDINANCE AMENDING WAYNE MUNICIPAL CODE CHAPTER 34 ENVIRONMENT, ARTICLE II NUISANCES, SECTION 34-39 NUISANCE; DUTY OF OWNER OR OCCUPANT; TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES OR SECTIONS; AND TO PROVIDE FOR AN EFFECTIVE DATE.

Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Ley who was absent, the Mayor declared the motion carried.

Councilmember Giese introduced Ordinance 2013-17 and moved for approval of the third and final reading thereof; Councilmember Muir seconded.

ORDINANCE NO. 2013-17

AN ORDINANCE AMENDING WAYNE MUNICIPAL CODE CHAPTER 34 ENVIRONMENT, ARTICLE II NUISANCES, SECTION 34-40 ABATEMENT OF NUISANCE; TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES OR SECTIONS; AND TO PROVIDE FOR AN EFFECTIVE DATE.

Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Ley who was absent, the Mayor declared the motion carried.

Under the current tax code, if a City advances monies from another fund without having a reimbursement Resolution in place within sixty days of said advancement, then it is impossible to refund that borrowed fund using tax exempt bond proceeds. This will allow the City to roll the project into a bond issue, if it so desires.

Councilmember Brodersen introduced Resolution 2013-24 and moved for its approval; Councilmember Giese seconded.

RESOLUTION NO. 2013-24

A RESOLUTION APPROVING REIMBURSEMENT OF FUNDS TEMPORARILY ADVANCED FOR THE 10TH STREET, MAIN TO WINDOM IMPROVEMENT PROJECTS.

Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Ley who was absent, the Mayor declared the motion carried.

Councilmember Giese introduced Resolution 2013-25 and moved for its approval; Councilmember Muir seconded.

RESOLUTION NO. 2013-25

A RESOLUTION APPROVING REIMBURSEMENT OF FUNDS TEMPORARILY ADVANCED FOR THE MILO DRIVE STREET IMPROVEMENT PROJECT.

Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Ley who was absent, the Mayor declared the motion carried.

Joel Hansen, Street Superintendent, stated three proposals were received on the 10th Street, Main to Windom Improvements Project. Staff has reviewed the same and is recommending that the proposal of Advanced Consulting Engineering Services for a lump sum cost of \$40,500 (\$28,000 for construction phase engineering and \$12,500 for staking services) be accepted.

Councilmember Brodersen introduced Resolution No. 2013-26 and moved for its approval; Councilmember Sievers seconded.

RESOLUTION NO. 2013-26

A RESOLUTION ACCEPTING PROPOSAL AND APPROVING AGREEMENT FOR THE STAKING AND CONSTRUCTION ENGINEERING SERVICES ON THE 10TH STREET, MAIN TO WINDOM IMPROVEMENTS PROJECT.

Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Ley who was absent, the Mayor declared the motion carried.

The following agenda item came out of discussions that took place at the Wellhead Protection public hearing, etc., which was to include all of the city limits of Wayne in the Wellhead Protection Area. This request must be made to NDEQ.

Councilmember Muir made a motion, which was seconded by Councilmember Brodersen requesting that the Nebraska Department of Environmental Quality to place all of the city limits of Wayne into the Wellhead Protection Area. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Ley who was absent, the Mayor declared the motion carried.

Police Chief Marlen Chinn stated that additional changes needed to be made to the job description for “Police Sergeant” that was previously approved by Council. Those changes are as follows:

Education and/or Experience

Preferred minimum of Associates Degree or equivalent from a two year college or technical school; must be a Nebraska Certified Officer with a minimum of four years related experience and/or training.

~~Associate's degree (A. A.) or equivalent from two year college or technical school; or Certified Officer with a minimum of four years related experience and/or training.~~

Other Qualifications

Must be 21 years of age; must be a United States Citizen; must be a high school graduate or GED equivalent; must be able to pass a high school equivalency (TABE) test; must maintain a valid Nebraska motor vehicle operator's license; must be able to complete and maintain state firearms qualification. Must live within the City of Wayne zoning jurisdiction if hired after January 1, 2012.

Councilmember Giese made a motion, which was seconded by Councilmember Sievers approving the job description for Police Sergeant, as amended. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Ley who was absent, the Mayor declared the motion carried.

Police Chief Marlen Chinn presented the job description for “Senior Patrolman.”

This was a situation where a job title/position was created and given to an employee, but the Council never officially adopted a job description. The position has been accepted because the Council has approved the wage and salary schedules with this title included therein.

Councilmember Muir made a motion, which was seconded by Councilmember Sievers approving the job description for Senior Patrolman. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Ley who was absent, the Mayor declared the motion carried

Administrator Johnson presented the job description for “Administrative Assistant.” This is the same situation as the Senior Patrolman position.

Councilmember Brodersen made a motion, which was seconded by Councilmember Sievers approving the job description for Administrative Assistant. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Ley who was absent, the Mayor declared the motion carried

Administrator Johnson explained the “Public Buildings Manager” job description. In the past, we had a full-time person and a three-quarter time person who was building manager and custodian. We did not fill those positions, but somebody still has to look

after the buildings. We have found all the expertise that we need for the systems in the buildings and the surface maintenance of the buildings resides in the power plant. We have gravitated towards having them take care of most or all of our building issues. This doesn't have to be done at the power plant, but that is where the expertise is. These are additional duties outside of Gene Hansen's job description that he will be compensated for.

Councilmember Muir made a motion, which was seconded by Councilmember Giese approving the job description for Public Buildings Manager. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Ley who was absent, the Mayor declared the motion carried.

Administrator Johnson presented the wage and salary schedule Resolution for City employees. The same proposes a 2% cost of living increase effective January 1st. State Law requires municipalities to pay comparability wages. Wayne participates yearly in the League of Nebraska Municipalities' wage survey to determine comparability and recommend changes as are necessary. In the past, we have been lax in making some of the changes that should have been made, particularly in the starting wages. This Resolution addresses that.

Councilmember Giese recommended Labor Grade 5 be exempted from the 2% increase. Mayor Chamberlain agreed with not changing the starting wage (\$7.25), but thought the other steps in that Labor Grade should get the 2% COLA.

Discussion also took place regarding the Labor Grade for lifeguards.

Councilmember Alexander introduced Resolution 2013-27 and moved for its approval, leaving the minimum hourly rate for Labor Grade 5 at \$7.25; Councilmember Brodersen seconded.

RESOLUTION NO. 2013-27

A RESOLUTION APPROVING WAGE AND SALARY SCHEDULE.

Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Giese who voted Nay and Councilmember Ley who was absent, the Mayor declared the motion carried.

Administrator Johnson stated the following wage and salary Resolution pertains to the Police Department. This also includes a 2% cost of living increase, which is within the range of 0% to 2% that was agreed to in the FOP Labor Contract with the City.

Councilmember Sievers introduced Resolution 2013-28 and moved for its approval; Councilmember Alexander seconded.

RESOLUTION NO. 2013-28

A RESOLUTION APPROVING WAGE AND SALARY SCHEDULE FOR POLICE DEPARTMENT PERSONNEL.

Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Ley who was absent, the Mayor declared the motion carried.

Discussion took place on authorizing the developer of Bencoter Subdivision to install a 6 foot partial visual barrier fence on city property on the northwest side of the trail bordering the subdivision. Administrator Johnson stated the owner of the Bencoter Subdivision and the owners of the trailer court have agreed to each pay \$5,000 towards the cost of purchasing a \$15,000 white vinyl, non-contiguous, residential style fence if

the City will pay \$5,000. The fence would be installed in discontinuous segments in the right-of-way segments in the railroad as a visual distraction between the two developments. The fence would be accompanied by plantings of small shrubs and trees to create an open park area on the right-of-way. The fence would be removed in 5 years and become property of the City for use at another city site.

Councilmember Alexander questioned why the City would pay for something on this right-of-way.

Administrator Johnson stated this was negotiated over time with two guys who are not happy with each other's presence in the neighborhood. This is staff's proposal to keep things moving there. Mr. Bencoter wants the fence because of the appearance of the property on the other side of the railroad right-of-way. In response to Councilmember Alexander's question, Administrator Johnson stated Mr. Bencoter platted the property.

Councilmember Alexander asked why Mr. Bencoter couldn't put this fence in his own yard. Why does the City have to put a fence on the City's right-of-way using taxpayer money to pay for it? He doesn't see using taxpayer money to fix a problem that shouldn't have happened -- the developer created his own issue there.

Councilmember Brodersen thought this was a great way for the City to get a fence there to make the trail look better.

Councilmember Alexander stated when the City originally built the trail, there was a property owner who wanted a fence built to block the trail, and the City refused to build it or give them any relief. That precedent has been set. If we do this for Mr.

Benscoter, then who is the next guy that is going to want a fence on the property to block the trail or block his neighbor.

Councilmember Giese made a motion, which was seconded by Councilmember Brodersen, authorizing the developer of Benscoter Subdivision to install a 6 foot partial visual barrier fence on city property on the northwest side of the trail bordering the subdivision, with the cost being borne 1/3 by City, 1/3 by Benscoter, and 1/3 by Wriedt. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, with the exception of Councilmembers Haase, Alexander and Sievers who voted Nay, and Councilmember Ley who was absent, the Mayor declared the motion carried.

Councilmember Alexander made a motion, which was seconded by Councilmember Brodersen, to recess as Council and convene as the Community Development Agency. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Ley who was absent, the Mayor declared the motion carried.

Chair Haase called the meeting of the Community Development Agency to order. Those in attendance were: Members Cale Giese, Jim Van Delden, Dale Alexander, Ken Chamberlain, Nick Muir, Jennifer Sievers, and Jill Brodersen; City Attorney Amy Miller; City Administrator Lowell Johnson; and City Clerk Betty McGuire. Absent: Member Kaki Ley.

Chair Haase advised the public that a copy of the Open Meetings Act was located on the south wall of the Council Chambers and was available for public inspection.

Member Brodersen made a motion, which was seconded by Member Sievers, to approve the minutes of the March 5, 2013, meeting. Chair Haase stated the motion, and

the result of roll call being all Yeas, with the exception of Member Ley who was absent, the Chair declared the motion carried.

Chair Haase stated the next item on the agenda is action on proposed purchase agreement on Lot 2A and Lot 2B, Replat of Kardell Industrial Park — Robert Woehler & Sons Construction, Inc.

BJ Woehler of Robert Woehler & Sons Construction, Inc., was present and stated that they have negotiated a proposal to purchase 10 acres from the CDA in the Kardell Industrial Park to relocate their concrete business to that site from their current location on Fairgrounds Avenue.

Administrator Johnson stated we are proposing that the purchase agreement say \$7,575 for all 10 acres, and the City is recommending that the cost of 4 acres be paid for by LB840 funds. That needs to be a contingent upon this agreement.

Because of the extreme topography of the site, there is also a lot of site preparation cost for them or any other buyer to be able to utilize the property, and they will seek LB840 funding for these costs also when they have completed the engineering plan.

If this property would be annexed, they could be eligible for tax increment financing. Mr. Woehler stated he did not have any problem with being annexed.

Member Giese suggested lowering the purchase price of the land to adjust for the additional engineering costs, thereby keeping the LB840 money for other projects.

Member Chamberlain made a motion to move forward with the proposed terms for the sale of Lot 2A and Lot 2B, Replat of Kardell Industrial Park to Robert Woehler & Sons Construction, Inc., and staff/CDA get creative on some sort of performance-based

forgiveness loan on the cost of 2-4 of those acres; Member Giese seconded. Chair Haase stated the motion, and the result of roll call being all yeas, with the exception of Member Ley who was absent, the Chair declared the motion carried.

The following Resolution is needed to issue the tax increment financing bond (\$50,000) that has already been approved for the six-plex apartment project at 4th and Windom Street by Hank Overin Field. This is the property owned by MZRB Properties, LLC (McManigal).

Member Muir introduced CDA Resolution 2013-4 and moved for its approval; Member Sievers seconded.

CDA RESOLUTION NO. 2013-4

A RESOLUTION AUTHORIZING THE ISSUANCE OF TAX INCREMENT REVENUE BONDS — MZRB PROPERTIES, LLC, PROJECT.

Chair Haase stated the motion, and the result of roll call being all Yeas, with the exception of Member Ley who was absent, the Chair declared the motion carried.

Member Giese made a motion, which was seconded by Member Chamberlain, to enter into executive session to protect the public interest when discussing the purchase of property at 939 Main Street to protect the public interest, and to allow Attorneys Miller and Knutson, City Administrator Johnson, City Clerk McGuire and Street Superintendent Hansen to be in attendance. Chair Haase stated the motion, and the result of roll call being all Yeas, with the exception of Member Ley who was absent, the Chair declared the motion carried, and executive session began at 7:58 p.m.

Chair Haase again stated that the matter to be discussed in executive session to protect the public interest when discussing the purchase 939 Main Street.

Member Giese made a motion, which was seconded by Member Alexander, to resume open session. Chair Haase stated the motion, and the result of roll call being all Yeas, with the exception of Member Ley who was absent, the Mayor declared the motion carried, and open session resumed at 8:07 p.m.

The next item on the agenda is to discuss the purchase of 109 E. 10th Street.

Member Sievers made a motion, which was seconded by Member Giese, to table action on the recommendation to make an offer to purchase property — 109 E. 10th Street. Chair Haase stated the motion, and the result of roll call being all Yeas, with the exception of Member Ley who was absent, the Chair declared the motion carried.

Member Brodersen made a motion, which was seconded by Member Sievers to adjourn as the Community Development Agency and reconvene as Council. Chair Haase stated the motion, and the result of roll call being all Yeas, with the exception of Member Ley who was absent, the Chair declared the motion carried.

Mayor Chamberlain stated they needed to go back to Agenda Item No. 21 – Action to authorize the developer of Benscoter Subdivision to install a 6 foot partial visual barrier fence on city property on the northwest side of the trail bordering the subdivision.

Attorney Miller advised the Council that whenever there is an appropriation of money, there needs to be five affirmative votes in order to pass the motion (a majority of Councilmembers elected). If it is just a normal motion where money is not spent, then the motion only needs four affirmative votes to pass. Mayor Chamberlain was requesting Council to take a new vote on the matter. The Mayor can vote on the matter if he so chooses.

Councilmember Giese made a motion, which was seconded by Councilmember Brodersen authorizing the developer of Benscoter Subdivision to install a 6 foot partial visual barrier fence on city property on the northwest side of the trail bordering the subdivision, with the cost being borne 1/3 by City, 1/3 by Benscoter, and 1/3 by Wriedt. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, with the exception of Councilmembers Giese, Haase, Alexander and Sievers who voted Nay, and Councilmember Ley who was absent, the Mayor declared the motion failed.

Mayor Chamberlain requested Council consideration to approving the appointment of Cale Giese to the Wellhead Protection Committee.

Councilmember Brodersen made a motion, which was seconded by Councilmember Sievers, approving the appointment of Cale Giese to the Wellhead Protection Committee. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Ley who was absent, the Mayor declared the motion carried.

Councilmember Brodersen made a motion, which was seconded by Councilmember Sievers, to adjourn the meeting. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Ley who was absent, the Mayor declared the motion carried and the meeting adjourned at 8:12 p.m.