

**MINUTES  
CITY COUNCIL MEETING  
November 17, 2015**

The Wayne City Council met in regular session at City Hall on Tuesday, November 17, 2015, at 5:30 o'clock P.M. Mayor Ken Chamberlain called the meeting to order with the following in attendance: Councilmembers Cale Giese, Rod Greve, Jon Haase, Nick Muir, Jason Karsky, Matt Eischeid and Jill Brodersen; City Attorney Amy Miller; City Administrator Lowell Johnson; and City Clerk Betty McGuire. Absent: Councilmember Jennifer Sievers.

Notice of the convening meeting was given in advance by advertising in the Wayne Herald on November 5, 2015, 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 Giese, whereas, the Clerk has prepared copies of the Minutes of the meeting of November 3, 2015, 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 Sievers 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 11/3/15:** DELETE FIREMAN'S ASSOC-WSC FIRE AGREEMENT, 5000.00

**VARIOUS FUNDS:** AMERITAS, SE, 2437.73; AMY K. MILLER, SE, 675.00; APPEARA, SE, 109.77; BAKER & TAYLOR BOOKS, SU, 922.96; BARONE SECURITY SYSTEMS, SE, 81.96; CITY EMPLOYEE, RE, 374.34; BSN SPORTS, SU, 67.44; CAPSTONE PRESS, SU, 183.41; CERTIFIED TESTING SERVICE, SE, 3724.00; CHARLES RUTENBECK, RE, 500.00; CHARTWELLS, SE, 6345.90; CHRISTIANSEN CONSTRUCTION, SE, 175746.94; CITY OF WAYNE, RE, 150.00; CITY OF WAYNE, RE, 250.00; CITY OF WAYNE, PY, 65595.20; CITY OF WAYNE, RE, 199.96; COMMUNITY HEALTH, RE, 4.00; COPY WRITE, SE, 103.82; COUNTRY NURSERY, SE, 250.00; DUTTON-LAINSON, SU, 1308.02; ECHO GROUP, SU, 1477.88; ERIKSEN CONSTRUCTION, SE, 146199.12; FOURTH GENERATION FAMILY, RE, 12021.02; CITY EMPLOYEE, RE, 410.24; GALE GROUP, SU, 27.19; GROSSENBURG IMPLEMENT, SU, 69.64; CITY EMPLOYEE, RE, 284.80; HIRERIGHT SOLUTIONS, SE, 40.00; HOLIDAY INN OF KEARNEY, SE, 363.80; ICMA, SE, 6581.96; INGRAM BOOK CO, SU, 86.89; IRS, TX, 23942.75; JOHN'S WELDING AND

TOOL, SU, 604.70; K & S DOOR CO, SE, 75.75; CITY EMPLOYEE, RE, 368.02; KELLY SUPPLY CO, SU, 11.15; KRIZ-DAVIS, SU, 783.62; KTCH, SE, 85.00; LUTT OIL, SU, 4900.96; MAIN STREET AUTO CARE, SE, 100.00; MAJOR REFRIGERATION CO, SE, 755.55; MARCO, SE, 126.36; MES-MIDAM, SU, 683.86; MIDWEST LABORATORIES, SE, 87.00; MIDWEST TAPE, SU, 34.99; NNEDD, SE, 825.00; CITY EMPLOYEE, RE, 67.10; NE DEPT OF REVENUE, TX, 3408.71; NE LAW ENFORCEMENT, FE, 110.00; NE SAFETY COUNCIL, SE, 18.54; NHHS, FE, 121.06; NORFOLK DAILY NEWS, SE, 228.48; ONE CALL CONCEPTS, SE, 98.15; PAC N SAVE, SU, 177.86; PAM VANDER VEEN, SE, 100.00; PENGUIN RANDOM HOUSE, SU, 303.75; CITY EMPLOYEE, RE, 30.20; POLLARD PUMPING, SE, 140.00; QUALITY 1 GRAPHICS, SU, 16000.00; ROBERT WOEHLE & SONS, SE, 99912.12; ROSE EQUIPMENT, SU, 5519.27; SPARKLING KLEAN, SE, 3030.73; SHOPKO, SU, 37.24; STAPLES ADVANTAGE, SU, 532.88; STATE NEBRASKA BANK, SE, 59.12; TYLER TECHNOLOGIES, SE, 2625.00; USA BLUE BOOK, SU, 150.30; VERIZON, SE, 132.17; WAED, SE, 5000.00; WAYNE COUNTY CLERK, SE, 108.00; WAYNE EAST-PRIME STOP, RE, 675.00; WAYNE HERALD, SE, 1353.08; WAYNE VETERINARY CLINIC, SE, 434.00; WESCO, SU, 1235.85; WINGATE INN, SE, 659.70; ZEE MEDICAL SERVICE, SU, 69.98; AMERICAN RED CROSS, RE, 19.62; BARONE SECURITY SYSTEMS, SE, 39.00; CITY EMPLOYEE, RE, 35.26; CHARLESWORTH & ASSOCIATES, SE, 5500.00; CITY OF WAYNE, RE, 610.27; CDA, RE, 54930.88; DEARBORN NATIONAL LIFE, SE, 1919.36; ELECTRIC INNOVATIONS, SU, 70.88; ELKHORN FENCE, SE, 1128.00; ELLIS HOME SERVICES, SE, 60.00; FIREMAN'S ASSOCIATION, RE, 5000.00; FLOOR MAINTENANCE, SU, 60.48; KTCH, SE, 556.00; CITY EMPLOYEE, RE, 456.33; LUTT OIL, SE, 18.00; NE DEPT OF LABOR, SE, 72.00; NPPD, SE, 263305.96; NNPPD, SE, 12134.60; OLSSON ASSOCIATES, SE, 108.80; OTTE CONSTRUCTION CO, SE, 12242.00; PITNEY BOWES, SE, 271.62; RESCO, SU, 963.96; SCHMADER ELECTRIC CONST., SE, 23250.00; SUPERCIRCUITS, SU, 7090.94; UNITED WAY, RE, 6.00; VOLKMAN PLUMBING & HEAT, SE, 253.00; WESCO, SU, 802.50

Councilmember Haase made a motion, which was seconded by Councilmember Greve, to approve the claims. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Sievers 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.

Phil Monahan, Fire Chief, introduced Brett Santin and requested Council consideration to approving his membership application to the Wayne Volunteer Fire Department.

Councilmember Eischeid made a motion, which was seconded by Councilmember Giese approving the membership application of Brett Santin to the Wayne Volunteer Fire Department. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Sievers who was absent, the Mayor declared the motion carried.

CHS Trucking Company presented a check to the Wayne Volunteer Fire Department for \$5,249.40, as a donation for their response to a truck accident involving a hazardous waste spill near Wisner. This will go towards buying safety harnesses, as well as other miscellaneous equipment for the Fire Department. In addition, Brian Schwartz, representing Farmers Pride, thanked the Fire Department for their response to this accident.

Mayor Chamberlain stated the time was at hand for the public hearing regarding an application for a Retail Class CK Liquor License for Ken Jorgensen – The Jug Store, LLC, d/b/a “The Jug Store” located at 1005 E. 7<sup>th</sup> Street.

Ken Jorgensen was present to answer questions.

City Clerk McGuire had not received any comments for or against this public hearing.

There being no public comments, Mayor Chamberlain closed the public hearing.

Councilmember Giese introduced Resolution No. 2015-95 and moved for its approval; Councilmember Muir seconded.

#### RESOLUTION NO. 2015-95

A RESOLUTION APPROVING APPLICATION FOR RETAIL CLASS CK LIQUOR LICENSE — KEN JORGENSEN – THE JUG STORE, LLC, D/B/A “THE JUG STORE.”

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

Councilmember Eischeid introduced Ordinance No. 2015-44, and moved for approval of the third and final reading thereof; Councilmember Brodersen seconded.

ORDINANCE NO. 2015-44

AN ORDINANCE AMENDING WAYNE MUNICIPAL CODE, CHAPTER 78, ARTICLE III, SECTION 78-134 RELATING TO PARKING TIME LIMITS OF 15 MINUTES, 30 MINUTES, AND 1 HOUR; LOCATION; 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 Sievers who was absent, the Mayor declared the motion carried.

Tim Sutton, Electric Line Supervisor, stated that he received two bids on the Articulated/Telescopic Aerial Lift and three bids on the truck and chassis. The low bids were Truck Equipment - \$84,751 (Aerial Lift), and Arnie's Ford Mercury - \$44,388 (truck and chassis). \$155,000 was budgeted for the purchase of this equipment.

Councilmember Eischeid introduced Resolution No. 2015-96 and moved for its approval; Councilmember Giese seconded.

RESOLUTION NO. 2015-96

A RESOLUTION ACCEPTING BIDS AND AUTHORIZING THE PURCHASE OF A NEW 51' ARTICULATED TELESCOPIC AERIAL LIFT TRUCK.

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

Administrator Johnson stated the City retained the firm of Charlesworth & Associates to review the current property and casualty insurance policy, suggest changes as needed to clarify or change coverage, and then bid out that coverage for 2016. Three firms were able to respond to the bid specifications, but only two offered coverage proposals for 2016. Their recommendation is to award the contract to EMC/Northeast Nebraska Insurance Agency for 2016 for \$265,956, which is a savings of over \$45,000 compared to the expiring premium.

Cap Peterson, representing Northeast Nebraska Insurance Agency, was present to answer questions.

Councilmember Muir introduced Resolution No. 2015-97 and moved for its approval; Councilmember Eischeid seconded.

RESOLUTION NO. 2015-97

A RESOLUTION ACCEPTING PROPOSAL AND AWARDED CONTRACT ON THE 2016 PROPERTY AND CASUALTY INSURANCE POLICY PACKAGE.

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

John Zwingman, representing Advanced Consulting Engineering Services, the engineer on the “Grainland Road Water & Sanitary Sewer Extension Project” was present regarding Change Order No. 2 for \$1,100. This is a change order to replace the street paving with 8” paving in lieu of 7” paving as was originally placed in the design specifications. The thickness of the paving was discovered when the original paving was removed.

Councilmember Eischeid made a motion, which was seconded by Councilmember Brodersen, approving Change Order No. 2 on the “Grainland Road Water & Sanitary Sewer Extension Project” for \$1,100 to Robert Woehler & Sons Construction, Inc. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Sievers who was absent, the Mayor declared the motion carried.

Administrator Johnson stated that Change Order No. 3 is a request from Robert Woehler & Sons Construction, Inc., to extend the substantial completion date on the “Grainland Road Water & Sanitary Sewer Extension Project” from 11/1/15 to 11/30/15. Neither staff nor the project engineer have any recommendation on this.

It was noted that when this project was bid, the subdivision owner had a potential lot sale that was going to need water and sewer service in October. However, that sale fell through and the urgency was no more. He now has a house being built on Grainland Road that needs water and sewer service by February.

John Zwingman of Advanced Consulting Services stated that liquidated damages on this project are \$750 per day. When city staff discussed this, it was felt that this amount was enough to keep the contractor on schedule because of the time constraints at that time. At this time, the engineer would deem the project substantially complete. Woehler's submitted a revised schedule last Friday. The schedule indicated the following:

- Week 8 - November 15<sup>th</sup> through the 21<sup>st</sup> - finished installing sewer main, backfill and test, pour the trail and install water services;
- Week 9 - November 22<sup>nd</sup> through 28<sup>th</sup> - install water services and finish grading; and
- Week 10 - November 29<sup>th</sup> through December 5<sup>th</sup> - demobilize.

Mr. Zwingman stated as far as he was concerned, as of today (November 17<sup>th</sup>), he thought the project was substantially completed. He had noted that the water main installation was completed on October 16<sup>th</sup>. The sewer main would be complete on this date (11/17/15).

Councilmember Brodersen stated she did not see a problem with extending the substantial completion date to November 30<sup>th</sup>, since things are different now from what they were when the project was bid and signed.

Councilmember Haase stated he has talked to the developer several times and he does not have any problem with the project.

Mr. Zwingman distributed a spreadsheet showing rain delays, schedules, etc. for the project. Since September 16<sup>th</sup>, which was when the completion date was extended to November 1<sup>st</sup>, there were seven rain days. After review, Councilmember Eischeid thought there were only 5 days out of the seven rain days that would have had any effect on the project.

Councilmember Eischeid stated when this was before Council on September 15, 2015, he asked BJ Woehler several questions, which he was hoping would be answered by Mr. Woehler taking some responsibility for this project not being done on time. The Council gave the contractor an extension from 9/15/15 to 11/1/15, and they are now asking for another one. At some point, he thought the Council needed to hold a company accountable for not getting the work done on time.

Councilmember Eischeid also stated that Mr. Woehler sent out an email immediately after the September 15, 2015, Council meeting asking for another 30 days or until December 1<sup>st</sup>, which he claimed would have been more realistic. Councilmember Eischeid was not in favor of approving this extension since the Council had already given him one extension.

Mr. Zwingman noted the contract is written that liquidated damages are for calendar days, not working days, so whether to include weekends is at the discretion of the Council.

Because the water line project was completed in October, but the sewer project was not, a suggestion was to assess only one-half of the liquidated damages or \$375 per day.

Mayor Chamberlain stated we run the risk of other contractors not bidding on city projects. There is no sense in putting liquidated damages into a contract if we are never going to enforce them. If there is ever a reason to enforce liquidated damages, this is probably it.

Councilmember Giese stated he was not as concerned about the deadline. He was more concerned that the City was operating under the assumption that this project needed to be completed by a certain date, and since that is not the case at this time, he felt that the rate being charged is more of an issue than the number of days.

Mr. Zwingman responded this is still what all of the contractors bid on. Nobody else knows what happened in between. All of the contractors bid on a \$750 a day penalty. In the interest of keeping things fair, he did not think the City could weigh what happened behind the scenes.

Joel Hansen, Street Superintendent, stated liquidated damages on the City's current projects range from \$150 per day to \$1,600 per day.

Councilmember Eischeid made a motion, which was seconded by Councilmember Giese denying Change Order No. 3 on the "Grainland Road Water & Sanitary Sewer Extension Project" to extend the substantial completion date from 11/1/15 to 11/30/15, and to charge liquidated damages in the amount of \$1,875 (5 days at \$375 per day which is for the sewer work that was not completed), and extending the final project completion date to November 30, 2015. Mayor

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

The following Resolution would approve Supplemental Amendment No. 1 to the agreement for the “Logan Valley Drive Water & Sewer Extension Project” with Advanced Consulting Engineering Services. This increases the fees from \$4,000 to \$8,000 to include or add the water line design cost to the agreement.

Councilmember Eischeid introduced Resolution No. 2015-98 and moved for its approval; Councilmember Muir seconded.

#### RESOLUTION NO. 2015-98

A RESOLUTION APPROVING AMENDMENT NO. 1 TO THE SHORT FORM OF AGREEMENT BETWEEN THE CITY OF WAYNE AND ADVANCED CONSULTING ENGINEERING SERVICES FOR ADDITIONAL FEES FOR THE “LOGAN VALLEY DRIVE WATER AND SANITARY SEWER EXTENSION PROJECT.”

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

Leanne Ritter of Advanced Consulting Engineering Services stated three bids were received on the “Logan Valley Drive Water and Sewer Extension Project.” After review of the same, she was recommending that the project be awarded to the low bidder, Penro Construction for \$105,097.70. However, by accepting the low bid, the City accepts the completion date of July 15, 2016, rather than the preferred completion date of June 15, 2016. All three bids were below the engineer’s estimate of \$130,000.

Councilmember Haase thought the next lowest bid of \$107,865.50, which was from Robert Woehler & Sons Construction, should be the one the project is awarded to since their completion date was June 15, 2016.

Penro Construction sent the engineer an email and they agreed and acknowledged the May 1, 2016, completion date for the Chief’s Way right-of-way portion of the project, and that the contract they would sign would note that therein. This completion date was put in the bid

specs. The remainder of the project the engineer put in as a “requested completion date” of June 15, 2016. Also put in the specs is that the City has the right to accept the low bid and negotiate with the contractor the completion date or therefore accept the completion dates that they have put in their bids.

After discussion, Councilmember Eischeid introduced Resolution No. 2015-99 and moved for its approval; Councilmember Giese seconded.

RESOLUTION NO. 2015-99

A RESOLUTION ACCEPTING BID AND AWARDING CONTRACT ON THE “LOGAN VALLEY DRIVE WATER AND SEWER EXTENSION PROJECT” TO PENRO CONSTRUCTION - \$105,097.70.

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

Administrator Johnson stated the following Resolution would establish the water and sewer hook-up fees for the “Logan Valley Drive Water and Sewer Extension Project.” This document will be filed against the properties on the spreadsheet. The allocation of the project costs is based on the front footage of the lots.

Councilmember Brodersen introduced Resolution No. 2015-100 and moved for its approval; Councilmember Eischeid seconded.

RESOLUTION NO. 2015-100

A RESOLUTION OF THE CITY OF WAYNE ESTABLISHING SEWER AND WATER HOOK-UP FEES FOR THE “LOGAN VALLEY DRIVE WATER AND SANITARY SEWER EXTENSION PROJECT.”

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

The following Resolution would approve the “Joint Defense and Common Interest Agreement” between the City of Wayne, Northeast Nebraska Public Power District, the City of

South Sioux City and the City of Wakefield to add the City of Valentine regarding the rate dispute with Nebraska Public Power District.

Councilmember Muir introduced Resolution No. 2015-101 and moved for its approval; Councilmember Giese seconded.

#### RESOLUTION NO. 2015-101

A RESOLUTION APPROVING THE JOINT DEFENSE AND COMMON INTEREST AGREEMENT BETWEEN NORTHEAST NEBRASKA PUBLIC POWER DISTRICT, THE CITY OF WAYNE, NEBRASKA, THE CITY OF SOUTH SIOUX CITY, NEBRASKA, THE CITY OF WAKEFIELD, NEBRASKA, AND BAIRD HOLM LLP, TO ADD THE CITY OF VALENTINE, NEBRASKA.

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

JEO Consulting Group, Inc., presented Change Order No. 2 for the “2016 Wayne Aquatic Center Project,” which is an increase of \$359.00 to Christiansen Construction Company for locating underground electrical conflicts.

Councilmember Muir made a motion, which was seconded by Councilmember Giese, approving Change Order No. 2 for the “2016 Wayne Aquatic Center Project” which is an increase of \$359.00 to Christiansen Construction Company for locating underground electrical conflicts. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Sievers who was absent, the Mayor declared the motion carried.

JEO Consulting Group, Inc., presented Change Order No. 3 for the “2016 Wayne Aquatic Center Project,” which is an increase of \$1,169.00 to Christiansen Construction Company for installing anchors in the zero depth portion of the pool for future handrails.

Councilmember Eischeid made a motion, which was seconded by Councilmember Muir, approving Change Order No. 3 for the “2016 Wayne Aquatic Center Project” which is an increase of \$1,169.00 to Christiansen Construction Company for installing anchors in the zero depth portion of the pool for future handrails. Mayor Chamberlain stated the motion, and the result of

roll call being all Yeas, with the exception of Councilmember Sievers who was absent, the Mayor declared the motion carried.

JEO Consulting Group, Inc. presented Contractor's Application for Payment No. 2-Final for the "2015 Water Storage Tank Rehabilitation Project" for \$84,150.00 to Champion Coatings, Inc.

Councilmember Muir made a motion, which was seconded by Councilmember Giese, approving Contractor's Application for Payment No. 2-Final for \$84,150.00 to Champion Coatings, Inc. for the "2015 Water Storage Tank Rehabilitation Project." Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Sievers who was absent, the Mayor declared the motion carried.

Administrator Johnson requested Council authorization to offer for sale again the 1995 Mighty Giant Tub Grinder. We had an offer last year of \$35,000, which was rejected.

Councilmember Giese made a motion, which was seconded by Councilmember Eischeid, authorizing staff to advertise for sale the 1995 Mighty Giant Tub Grinder. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Sievers who was absent, the Mayor declared the motion carried.

Mayor Chamberlain requested Council consideration to approving the appointment of Tanner DeBoer (Junior in High School) to the Comprehensive Plan Steering Committee.

Councilmember Giese made a motion, which was seconded by Councilmember Muir, approving the appointment of Tanner DeBoer to the Comprehensive Plan Steering Committee. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Sievers who was absent, the Mayor declared the motion carried.

Councilmember Giese made a motion, which was seconded by Councilmember Muir, to adjourn the meeting. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Sievers who was absent, the Mayor declared the motion carried and the meeting adjourned at 7:15 p.m.