

**MINUTES
CITY COUNCIL MEETING
August 3, 2010**

The Wayne City Council met in regular session at City Hall on Tuesday, August 3, 2010, at 5:30 o'clock P.M. Council President Doug Sturm called the meeting to order with the following in attendance: Councilmembers Brian Frevert, Jim Van Delden, Jon Haase, Dale Alexander, Kaki Ley, Kathy Berry, and Ken Chamberlain; City Attorney Kyle Dahl; City Administrator Lowell Johnson; and City Clerk Betty McGuire. Absent: Mayor Lois Shelton.

Notice of the convening meeting was given in advance by advertising in the Wayne Herald on July 22, 2010, 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 Chamberlain made a motion and seconded by Councilmember Alexander, whereas the Clerk has prepared copies of the Minutes of the meetings of July 20, 2010, 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.

Council President Sturm stated the motion, and the result of roll call being all Yeas, the Council President declared the motion carried and the Minutes approved, as corrected.

The following claims were presented to Council for their approval:

ADDITIONS TO CLAIMS LIST OF 7/20/10: PY, 4403.12 AND UTILITY REFUNDS, 197.54

VARIOUS FUNDS: AMERICAN PUBLIC POWER, FE, 1029.24; AMERITAS, SE, 2155.53; APPEARA, SE, 100.95; ARNIE'S FORD-MERCURY, SE, 259.60; AS CENTRAL SERVICES, SE, 448.00; BANK FIRST, FE, 195.00; BLACK HILLS ENERGY, SE, 560.76; BOMGAARS, SU, 3.49; CITY EMPLOYEE, RE, 5228.92;

CITY EMPLOYEE, RE, 85.43; CHANNING BETE COMPANY, SU, 1033.17; CITY OF WAYNE, RE, 425.00; CITY OF WAYNE, PY, 65706.56; CITY OF WAYNE, RE, 99.03; CITY EMPLOYEE, RE, 164.32; COMMUNITY HEALTH, RE, 4.00; DAVID H. PTAK, SE, 185.00; CITY EMPLOYEE, RE, 112.35; DUTTON-LAINSON, SU, 222.32; ECHO GROUP, SU, 149.93; CITY EMPLOYEE, RE, 944.42; ELECTRIC FIXTURE, SU, 42.14; ELLIS PLUMBING, SE, 315.80; ENERGY FEDERATION, SU, 1205.20; FIRST CONCORD GROUP, SE, 5682.17; FLOOR MAINTENANCE, SU, 635.34; GALE GROUP, SU, 29.69; GAYLORD BROS, SU, 72.61; GERHOLD CONCRETE, SU, 1252.87; HABITAT FOR HUMANITY, RE, 19472.92; HAWKINS, SU, 586.27; CITY EMPLOYEE, RE, 62.86; HOCKENBERGS, SU, 74.99; ICMA, RE, 5507.94; IRS, TX, 20339.26; JEO CONSULTING GROUP, SE, 2300.00; JOHN'S WELDING AND TOOL, SE, 82.40; JOHNSON HARDWARE, SU, 67.36; KELLY SUPPLY, SU, 86.61; KRIZ-DAVIS, SU, 1249.78; LANGEMEIER, WAYNE, SE, 125.00; MAIN STREET AUTO CARE, SE, 69.00; CITY OF WAYNE, RE, 500.00; CITY EMPLOYEE, RE, 166.89; MICROFILM IMAGING SYSTEMS, SE, 805.14; MIDWEST OFFICE AUTOMATION, SE, 1451.83; MIDWEST TAPE, SU, 179.94; MOONLIGHT TOWING, SE, 85.20; N.E. NEB ECONOMIC DEV DIS, SE, 906.64; NE DEPT OF REVENUE, TX, 2926.23; N.E. NE AMERICAN RED CROSS, RE, 59.24; NNPPD, SE, 2213.32; OLSSON ASSOCIATES, SE, 9066.01; PENRO CONSTRUCTION, SE, 1970.65; PETERSON THERAPY SERVICES, RE, 1027.00; QWEST, SE, 428.34; QWEST, SE, 163.42; SIEMENS WATER TECHNOLOGIES, SU, 66.00; STADIUM SPORTING GOODS, SU, 2100.00; TOM ADAMSON, SU, 8.00; UNITED WAY, RE, 32.32; UNIVERSITY OF NE-LINCOLN, FE, 30.00; VAN DIEST SUPPLY, SU, 276.70; VERIZON, SE, 301.61; VIAERO, SE, 135.34; VOSS LIGHTING, SU, 577.62; WAYNE COMMUNITY HOUSING, SE, 24178.00; WAYNE COMMUNITY THEATER, RE, 16100.00; WAYNE STATE COLLEGE, RE, 400.00; CITY EMPLOYEE, RE, 465.02; WESCO, SU, 13776.72; WHELEN ENGINEERING, SE, 23.35; WINGATE INN, SE, 140.00; BLACKBURN MANUFACTURING, SU, 160.37; BOMGAARS, SU, 418.82; CITY EMPLOYEE, RE, 1603.00; CARHART LUMBER, SU, 399.80; CHARTWELLS, SE, 5691.75; CITY OF NORFOLK, RE, 1500.00; CITY OF WAYNE, RE, 1000.00; CITY OF WAYNE, RE, 54.81; CITY OF WAYNE, RE, 20.00; CITY OF WAYNE, SU, 64.14; CLAUSSEN & SONS IRRIG., SE, 438.74; COPPLE & ROCKEY, SE, 522.40; COPY WRITE, SE, 146.00; DE LAGE LANDEN FINANCIAL, SE, 77.00; DUTTON-LAINSON, SU, 171.82; EASYPERMIT POSTAGE, SU, 1152.63; FLOOR MAINTENANCE, SU, 40.36; GALE GROUP, SU, 29.69; GILL HAULING, SE, 3196.00; GOV'T FINANCE OFFICERS, SU, 170.00; HAWKINS, SU, 1434.60; HD SUPPLY WATERWORKS, SU, METER 175.00; HEIKES AUTOMOTIVE, SE, 69.23; HOLIDAY INN "MIDTOWN", SE, 439.80; INGRAM BOOK COMPANY, SU, 35.41; ISLAND SPRINKLER SUPPLY, SU, 116.42; ELLIS PLUMBING & HEATING, SE, 285.00; JEO CONSULTING GROUP, SE, 17227.00; JOHN'S WELDING AND TOOL, SE, 99.50; KNIFE RIVER MIDWEST, SE, 225416.16; KNIFE RIVER MIDWEST, RE, 1500.00; KRIZ-DAVIS, SU, 63.90; LP GILL, SE, 7970.80; M. LEE SMITH PUBLISHERS, SU, 377.00; MARRIOTT HOTELS, SE, 358.00; MICROFILM IMAGING SYSTEMS, SE, 539.22; MIDWEST TAPE. SU, 109.97; NORTHEAST EQUIPMENT, SU, 17700.00; PAC N SAVE, SU, 19.53; PIEPER, MILLER & DAHL, SE, 4150.90; PLUNKETT'S PEST

CONTROL, SE, 88.00; PROVIDENCE MEDICAL CENTER, SE, 431.00; RAMADA INN – KEARNEY, SE, 70.00; ROBERT WOEHLE & SONS, SE, 1050.00; SIEMENS WATER TECHNOLOGIES, SU, 19.50; US BANK, SE, 1131.75; VAN DIEST SUPPLY, SU, 1883.20; WAED, SE, 6383.33; WAYNE COUNTY CLERK, SE, 13.00; WAYNE STATE COLLEGE, RE, 500.00; WESCO, SU, 15387.66; WINDCALL PUBLISHING, SU, 16.24

Councilmember Chamberlain made a motion and seconded by Councilmember Van Delden to approve the claims. Council President Sturm stated the motion, and the result of roll call being all Yeas, the Council President declared the motion carried.

Council President Sturm 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.

Administrator Johnson advised the Council that requests have been received from Gene and Shirley Fletcher, Russ and Courtney Volk and Clayton and Jan Stalling to waive the sidewalk requirements in the City Code on the west side of Providence Road between Sunnyview Drive and 10th Street.

Joel Hansen, Building Inspector/Planner provided background on the matter. The Fletchers built a new home at 810 Sunnyview Drive which is a corner lot. A sidewalk has been built on the south frontage of that lot. The owners are asking for a waiver of the code requirements for a sidewalk on the east front of this corner lot until there are sidewalks continuing north with which to connect to. The adjacent neighbors are also requesting waivers. However, there are some property owners in that area that were required to put in sidewalks, which is called “gap paving.” The Mayor and Council have

the option, when there is enough sidewalks in an area, to go back and require the remaining property owners to put in sidewalks to complete a gap for pedestrians to walk across.

In response to Councilmember Van Delden's question, Mr. Hansen stated there was a time when this section of the code was not enforced, and unfortunately, it has left a lot of gaps in different parts of town that were developed during that time. This is a fairness issue, which is why staff did not feel comfortable in making a recommendation to the Council. During a time when the City was creating sidewalk districts and cost-sharing with property owners who had to replace sidewalk, some of these areas that did not have sidewalk were addressed and were included in the district. However, those property owners had to pay for the full amount to have sidewalk installed. A moratorium was placed on creating sidewalk improvement districts several years ago.

Mr. Hansen stated this is not the only place in town where a new house was constructed and the property owners did not put in a sidewalk (Nebraska Street).

Council President Sturm stated as a city, we are responsible for providing a safe place for pedestrians to walk.

Administrator Johnson stated Council must decide if they want sidewalks for pedestrian traffic. If you don't, he would recommend deleting that section of the code. What is in our code is standard throughout the country. If Council is going to waive the sidewalk requirement on a case-by-case basis, they need to make sure they have a reason for each one. He recommended that if these waivers are approved, that they not be of a permanent nature.

Councilmember Chamberlain stated since the trail runs on the east side of Providence Road, he is inclined to approve this waiver. However, from Sunnyview south, he would like to see sidewalks on the west side of the street.

Chris Woehler was present and stated he also has a building permit. He is in the same situation as the Fletchers, where the sidewalk that he would have to be put in on the east side of his property would go nowhere to the south. Council President Sturm advised Mr. Woehler that at this time, the Council can only act on what is on the agenda. He would need to visit with staff about the steps he would need to take to request a waiver.

Councilmember Frevert made a motion and seconded by Councilmember Chamberlain to waive the code requirements for sidewalks on the properties of 810 Sunnyview Drive, 709 E. 10th Street, and 710 E. 10th Street at this time for the reason that the sidewalks would go nowhere, there is a gap where there is no house, this is the back of a lot instead of the front of a lot, and if you are walking north, you would still have to cross the street. Council President Sturm stated the motion, and the result of roll call being all Yeas, the Council President declared the motion carried.

Councilmember Van Delden introduced Resolution No. 2010-60 and moved for its approval; Councilmember Ley seconded.

RESOLUTION NO. 2010-60

A RESOLUTION APPROVING RENEWAL OF INTERLOCAL AGREEMENT FOR WAYNE COUNTY AND WAYNE COUNTY LIBRARY ASSOCIATION.

Lauran Lofgren, Library Director, advised the Council that the five-year time frame on the Interlocal Agreement with Wayne County and the Wayne County Library Association has ended. The Interlocal Agreement is being renewed for a ten-year term

with the Wayne County Commissioners. The agreement establishes a small amount of county cost-share to each of the libraries in Wayne, Winside and Carroll on behalf of the rural residents who use them. The Wayne Library received \$5,000 last year

Council President Sturm stated the motion, and the result of roll call being all Yeas, the Council President declared the motion carried.

Penny Vollbracht, Senior Center Coordinator, was present requesting Council consideration to formally approving the following agreements:

- III C Nutrition Agreement
- III B Service Agreement
- Catered Meal Agreement with Chartwells

Councilmember Ley made a motion and seconded by Councilmember Chamberlain approving the III C Nutrition Agreement for the Wayne Senior Center. Council President Sturm stated the motion, and the result of roll call being all Yeas, the Council President declared the motion carried.

Councilmember Ley made a motion and seconded by Councilmember Van Delden approving the III B Service Agreement for the Wayne Senior Center. Council President Sturm stated the motion, and the result of roll call being all Yeas, the Council President declared the motion carried.

Councilmember Ley made a motion and seconded by Councilmember Chamberlain approving the Catered Meal Agreement with Chartwells for the Wayne Senior Center. Council President Sturm stated the motion, and the result of roll call being all Yeas, the Council President declared the motion carried.

Mike Garvin and Dave Tietgen, owners of Renaise Energy, a small Iowa company that develops small wind turbine projects using federal funding and tax credits

were present requesting Council consideration to sending a letter of request to Nebraska Public Power District for consideration of an expansion of their ceiling of allowing a municipal utility to contain any renewable energy project to less than 2.5 megawatt, and asking NPPD if they are interested in having access to or claiming the renewable energy credits. Building a small wind turbine in Wayne to serve the industrial park will put Wayne in a position to be very competitive in an increasingly competitive economic development environment. Wayne needs something to differentiate it from other communities, and this could do it at no cost to the taxpayer and no cost to the City, because those dollars are being paid out to NPPD anyway. If the models can be built this fall, and we can work through the issues with NPPD, we could see construction of the wind turbine by June or July of next year.

Council President Sturm stated that after visiting with Mr. Garvin, Mr. Tietgen and Administrator Johnson, he was satisfied with the discussions that took place and the fact that this is basically not going to cost the rate payers of Wayne anything.

Councilmember Frevert was very much in favor of this and thought that being one of the first communities to provide renewable energy would help grow the industrial park.

Councilmember Chamberlain made a motion and seconded by Councilmember Frevert approving a letter of request be sent to Nebraska Public Power District in support of renewable energy and asking for consideration to allowing a 2.5 megawatt size wind turbine be built in Wayne. Council President Sturm stated the motion, and the result of roll call being all Yeas, the Council President declared the motion carried.

Councilmember Alexander made a motion and seconded by Councilmember Frevert to recess as Council and convene as the Community Development Agency. Council President Sturm stated the motion, and the result of roll call being all Yeas, the Council President declared the motion carried.

Chair Chamberlain called the meeting of the Community Development Agency to order. Those in attendance were: Members Brian Frevert, Jim Van Delden, Jon Haase, Dale Alexander, Doug Sturm, Kaki Ley and Kathy Berry; City Attorney Kyle Dahl; City Administrator Lowell Johnson; and City Clerk Betty McGuire. Absent: Member Lois Shelton.

Chair 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.

The next item on the CDA agenda was to approve the minutes of the July 20, 2010, meeting.

Member Van Delden made a motion and seconded by Member Alexander approving the minutes of the July 20, 2010, meeting. Chair Chamberlain stated the motion, and the result of roll call being all Yeas, the Chair declared the motion carried.

The next item on the agenda was to consider and adopt CDA Resolution 2010-2 recommending approval of an amended Redevelopment Plan/Contract for Northeast Nebraska Investors, LLC.

The original Tax Increment Financing (TIF) Agreement that was approved in 2009 allocates the new real estate taxes created by the new Cobblestone Hotel for the first 14 years to be used to reduce the cost of street and infrastructure improvements around

the hotel. The hotel construction did not get started as planned last fall. The new construction start date is October, 2010. Because of the one-year delay, the start and end dates in the TIF Agreement need to be amended to reset the clock for the 14 years of new taxes to be allocated to the infrastructure for the hotel.

Member Ley introduced CDA Resolution No. 2010-2 titled as follows and moved its passage and approval by the Agency:

CDA RESOLUTION NO. 2010-2

A RESOLUTION OF THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF WAYNE, NEBRASKA, RECOMMENDING APPROVAL OF AMENDED REDEVELOPMENT PLAN/CONTRACT FOR NORTHEAST NEBRASKA INVESTORS, LLC.

Member Van Delden seconded the motion.

Because Members Haase and Ley have a vested interest in this matter, they could not vote on the matter nor could they participate in any of the discussion. Member Ley then withdrew her motion and Member Van Delden withdrew his second.

It was noted that with tax increment financing, the increased taxes from any new construction is diverted to pay off the incentive bond or financing. For the next 14 years, nothing will change on the existing taxes.

Member Van Delden introduced CDA Resolution No. 2010-2 titled as follows and moved its passage and approval by the Agency:

CDA RESOLUTION NO. 2010-2

A RESOLUTION OF THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF WAYNE, NEBRASKA, RECOMMENDING APPROVAL OF AMENDED REDEVELOPMENT PLAN/CONTRACT FOR NORTHEAST NEBRASKA INVESTORS, LLC.

Member Sturm seconded the motion.

On roll call vote, the following Agency Members voted in favor of the motion: Frevert, Van Delden, Alexander, Sturm, Berry, and Chamberlain. The following Members voted against the motion: None; the following member was absent: Shelton; and the following members abstained due to a conflict of interest: Haase and Ley. The Chair declared the motion carried.

Member Alexander made a motion and seconded by Member Van Delden to adjourn as the Community Development Agency and reconvene as Council. Chair Chamberlain stated the motion, and the result of roll call being all Yeas, the Chair declared the motion carried.

Council President Sturm declared the time was at hand for the public hearing to obtain public comment prior to the consideration of a Resolution approving an amended redevelopment plan, including a redevelopment contract, for an area of the City previously declared blighted and substandard and in need of redevelopment pursuant to the Community Development Law, Chapter 18, Article 21, Reissue Revised Statutes of Nebraska, as amended (the “Act”). The Council President opened the public hearing and invited all interested persons to be heard.

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

There being no further comments, Council President Sturm closed the public hearing.

Councilmember Chamberlain introduced Resolution No. 2010-54 and moved for its approval; Councilmember Frevert seconded.

RESOLUTION NO. 2010-54

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF WAYNE, NEBRASKA, APPROVING AN AMENDED REDEVELOPMENT PLAN/CONTRACT; AND RELATED MATTERS.

Council President Sturm stated the motion, and the result of roll call being all Yeas, with the exception of Councilmembers Haase and Ley who abstained due to a conflict of interest, the Council President declared the motion carried.

Council President Sturm declared the time was at hand for the public hearing to amend the One and Six Year Street Improvement Plan to add Tomar Drive, 4th Street and Jaxon Street in the Benscoter Subdivision to said plan.

Joel Hansen, Certified Street Superintendent, stated this project probably should have been in the original One and Six Year Street Improvement Plan. However, once it was not, State Statute requires that a public hearing be held to amend the One and Six Year Street Improvement Plan to include this project so that construction can begin this fall.

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

There being no further comments, Council President Sturm closed the public hearing.

Councilmember Ley introduced Resolution 2010-55, and moved for its approval; Councilmember Van Delden seconded.

RESOLUTION NO. 2010-55

A RESOLUTION APPROVING THE ONE AND SIX YEAR STREET IMPROVEMENT PROGRAM AS AMENDED TO ADD TOMAR DRIVE, JAXON STREET AND 4TH STREET.

Council President Sturm stated the motion, and the result of roll call being all Yeas, the Council President declared the motion carried.

Council President Sturm declared the time was at hand for the public hearing to consider the Planning Commission's recommendation in regard to amending the B-3 Neighborhood Commercial District, specifically Section 90-424 Exceptions by adding "Vehicle Towing Service" and Section 90-425 Special Conditions and Conditions for Granting Exceptions. The Applicants are Main Street Auto and the City of Wayne.

The recommended changes to the code were as follows:

Section 90-424 Exceptions (B-3 Neighborhood Commercial District):

(17) Vehicle Towing Service

Section 90-425 Special Conditions and Conditions for Granting Exceptions (B-3 Neighborhood Commercial District):

(8) Storage of towed vehicles:

- a) Vehicles shall only be stored on-site, pending settlement or legal disposition of vehicles by insurance carrier and / or owner
- b) All towed and stored vehicles shall be stored behind the front building line;
- c) No demolition of towed or stored vehicles shall be allowed;
- d) All stored vehicles shall be owned by persons other than the towing service owner/operator and or land owner.
- e) All vehicles shall be stored behind a solid barrier fence of sufficient height to disallow visibility. Height of fence to be set by Planning Commission at the public hearing.
- f) Use by Exception shall only be effective upon compliance to all conditions as set forth by City Council and verified by the Zoning Administrator

The Planning Commission held a public hearing on this matter and recommended approval of amending Section 90-424 Exceptions in the B-3 Neighborhood Commercial District by adding "vehicle towing service" to the list of exceptions and amending Section 90-425 Special Conditions and Conditions for Granting Exceptions in the B-3 Neighborhood Commercial District by adding item # 8 "storage of towed vehicles", with the exception of "e", described above, with the "Findings of Fact" being staff's

recommendation, and it is consistent with the comprehensive plan, and the current and future land use maps.

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

Ted Kurpgeweit, a co-owner of Main Street Auto Care, was present and advised that Council that they were asking that the City include “vehicle towing service” as a use by exception in the B-3 Neighborhood Commercial District. The previous owners had a vehicle towing service for about 18 years. At the time they purchased the property, the property owners were not interested in selling their tow trucks, and not knowing how vital that would be to their business, they went without a tow truck for approximately 16 months. They inquired if they could get grandfathered in with this use since they were doing some towing with a trailer. They were advised that was not considered a towing service at that time. They have purchased a wrecker. Someone has voiced a concern about them towing vehicles in an area that is not zoned properly, so they were advised to ask for a use by exception. The City has allowed them to tow vehicles while working through this process. When they do tow vehicles, in most cases they don’t store the vehicles on their location, but take the cars to a body shop. In addition, they do not have a lot of extra space on their property, so they don’t want to store the towed vehicles on their property.

Joel Hansen, Zoning Administrator, advised the Council that the Planning Commission, after considerable discussion, struck subsection “e) All vehicles shall be stored behind a solid barrier fence of sufficient height to disallow visibility. Height of fence to be set by Planning Commission at the public hearing.” The Planning

Commission felt there would be difficulty requiring that fence/barrier. This may be fine for one property, but may not be different for another. He is somewhat uncomfortable to remove the fence/barrier requirement from the language. The Planning Commission did not see a problem with bringing in vehicles and letting them sit in front of the building or without a fence that weren't wrecked vs. a car that has been in an accident. He suggested reviewing the language regarding stored vehicles vs. wrecked vehicles.

Mr. Hansen noted that while Main Street Auto is one of the applicants for this change in the language, this does not just affect Main Street Auto's property. It would affect all property in the City of Wayne that is zoned B-3.

He also advised the Council that once an avenue is provided in the code for a use by exception, such as vehicle towing service, you must have a very good reason to deny a permit asking for that particular use. Otherwise, you will probably lose in a court of law if the denial is challenged. This is the reason for having "special conditions." Even if you allow the use by exception, this is a chance for the Council to put a set of conditions on it to protect the adjacent neighbors that may have concerns regarding that use by exception. He also reminded the Council that the special conditions outlined in the code are the minimum conditions, so if the Council would want to place other conditions on a use by exception, they may do so. Zoning is not meant to be restrictive, it is meant to be protective. When you are considering these changes, you have to stop and think about what you would consider to be reasonable if you owned a house or property next door.

He also advised the Council that this is only a recommendation from the Planning Commission, and that they could make changes to the wording as they see fit.

Council President Sturm suggested tabling this matter and sending it back to the Planning Commission for further deliberation.

BJ Woehler, representing Moonlight Towing, was present and stated the following for the record:

“In regards to Ordinance No. 2010-16 which would allow Vehicle Towing Service in B-3 Zoning as a Use by Exception in the entire B-3 district, I have some concerns I would like you to consider before acting tonight. First I want to state that I am not opposed to Main St Auto's pending future application at their current location as long as they are held to the same standard and conditions my business was required to follow in B-1, but after just finding out today around 10:30 am the planning board removed section (e) which required fencing I would ask why would fencing not be required?

What also concerns me is that if this ordinance passes as currently changed, you will have a difficult legal time to not allow this use to any other applicant in the B-3 area as we found out at a zoning steering committee meeting with your lawyer Dave Ptak on 6/21/10. The main areas of B-3 Zoning in Wayne fall along 7th Street from Main St to approximately Runza, the properties on the South West side of WSC, Logan St around American Broadband area and from Pearl St. to Lincoln St. from First St. to the alley just behind City Hall. Within those areas, there are some locations that this use makes sense but others do not. For example I would ask Councilmen Doug Sturm what his view and vote would be if one of his neighbors would apply for this use. I ask this because his current residence falls within and is surrounded by B-3 zoning. I am not sure what his answer will be, but I would hope the Council will add back the fencing requirement and some additional conditions to protect neighborhoods like his. I would suggest adding such conditions as limiting the overall size of area or number of vehicles, time of operation, size of vehicles allowed to be towed, and other requirements that may come to mind if I had more time.

The Nebraska State Patrol application for wrecker lists three classifications of sizes of vehicles, and they also require that services shall maintain towed vehicles and adequately secured storage facility where vehicles may be safely stored. Current permits, licenses and other evidence of compliance with the zoning requirements shall be presented and maintained with that application.

Overall it saddens me that the planning board did not do this ordinance justice by removing the fencing requirement nor did they do their job to protect the community and follow the first line of NEB. REV. STAT 19-901 "For the purpose of promoting health, safety, morals, or general welfare of the community, the legislative bodies in cities of the first and second class and in villages may adopt zoning regulations which regulate and restrict the height, number of stories, and size of building and other structures, the percentage of land that may be occupied, the size of yards, court and other open spaces, the density of population, and the location and use of buildings, structures, and land for

trade, industry, residence or other purposes. On a separate note I find it difficult and concerning that the public and I were given less than 24 hours to review the planning board's decision and then comment to our councilmen. I have reviewed my concern with staff and they say it is allowed, but I would ask where it states this in State or Local Law. You may want to consider reviewing that process. I had been following this Ordinance through the stages and reviewed what was posted online last night and this morning but was unable to attend last night's planning board meeting. But after sending an email to Joel around 7:30 am and getting his quick response around 10:30 am this morning, I found out things had changed. He just emailed me around noon and said he will not be able to get me the minutes from last night's meeting for review. So I have had to clear my day and rush to get you this letter, rather than calling all of you today and interrupting your day because it would have been too late to call you tonight.

I hope to be able to make tonight's meeting so I can voice my concern and hear your responses, but if not, I would also hope you would consider revising or postponing this ordinance to better protect the community.

Again I do not object to this use in B-3, but do think it needs to have conditions on it to protect the community and it is your job to make sure that happens if the planning board will not.”

Mr. Woehler did not think that the conditions in a B-3 zone should be less restrictive than those in a B-1 zone.

There being no further comments, Council President Sturm closed the public hearing.

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

After discussion, Councilmember Chamberlain made a motion and seconded by Councilmember Frevert to table action on Ordinance 2010-16 and to forward the matter back to the Planning Commission for further deliberation on the fence requirement and to come up with language that distinguishes wrecked vehicles from impounded vehicles and disabled vehicles. Council President Sturm stated the motion, and the result of roll call being all Yeas, the Council President declared the motion carried.

Council President Sturm declared the time was at hand for the public hearing to consider the Planning Commission's recommendation regarding the replat of the Benscoter Addition Planned Unit Development Replat 1, a Replat of Lots 3 and 4 and Plat of dedicated Jaxon Street. The applicant is Louis Benscoter, Jr.

The Planning Commission held a public hearing on this matter and recommended approval thereof subject to the following "Findings of Fact":

- Staff's recommendation; and
- The replat is consistent with the comprehensive plan and the current and future land use map, subject however to the following being met: Olsson Associates accurately describing the name of the replat in the Surveyor's Certificate, and subject to Olsson Associates accurately showing the property owners being Louis Benscoter Jr. and Javanah Benscoter, Northeast Nebraska Investors LLC, and the City of Wayne, and subject to Olsson Associates properly showing that the Planning Commission heard this at a regular meeting after proper notice on August 2, 2010 which appears in the bottom left-hand corner, and subject to the notes on the left hand side of Replat 1, it should reflect that zoning is R-4 for lots 5 through 23, and part of the recommendation is that the Planning Commission is in agreement with reducing the rear-yard setbacks for lots 5 through 14 as set forth in the subdivision agreement filed of record and entered into between the Benscoters, the LLC and the City of Wayne.

Louis Benscoter, Sr., was present to answer questions. They are requesting to change the plat to make the lot sizes larger to accommodate potential purchasers of the property.

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

There being no further comments, Council President Sturm closed the public hearing.

Councilmember Chamberlain introduced Resolution No. 2010-56 and moved for its approval; Councilmember Berry seconded.

RESOLUTION NO. 2010-56

A RESOLUTION APPROVING REPLAT OF THE BENSCOTER ADDITION PLANNED UNIT DEVELOPMENT REPLAT 1, A REPLAT OF LOTS 3 AND 4 AND PLAT OF DEDICATED JAXON STREET.

Council President Sturm stated the motion, and the result of roll call being all Yeas, the Council President declared the motion carried.

Council President Sturm declared the time was at hand for the public hearing to consider the Planning Commission's recommendation in regard to amending Section 90-205 Exceptions; Section 90-235 Exceptions; Section 90-265 Exceptions; Section 90-294 Permitted Conditional Uses; and Section 90-315 Special Exception Uses, to add the following: accessory structures exceeding 3,000 square feet, but not to exceed seven percent of the total lot area. The applicant is the City of Wayne.

The Planning Commission held a public hearing on this matter and recommended amending Sections 90-205, 90-235, 90-265 all Exceptions in the R-1, R-2, and R-3 districts respectively, and Section 90-294 Permitted Conditional Uses in the R-4 district, and Section 90-315 Special Exception Uses in the R-5 district of the Municipal Code, by adding the following language to each Section, "accessory structures exceeding 3,000 square feet, but not to exceed 4,000 square feet or seven percent of the total lot area", with the "Findings of Fact" being Planning Commission's recommendation, as discussed at the June 7, 2010 meeting.

Joel Hansen, Zoning Administrator, advised the Council that this recommendation comes before them to accommodate the size of accessory structures on some of the larger lots on the outskirts of Wayne. It still maintains the 7% of the total lot area as a cap, but up to 4,000 square feet.

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

There being no further comments, Council President Sturm closed the public hearing.

Councilmember Berry left the meeting at 7:18 p.m.

Councilmember Ley introduced Ordinance No. 2010-17, and moved for its approval; Councilmember Alexander seconded.

ORDINANCE NO. 2010-17

AN ORDINANCE AMENDING WAYNE MUNICIPAL CODE CHAPTER 90, ARTICLE IV, BY AMENDING SECTIONS 90-205, 90-235, 90-265, 90-294 and 90-315 REGARDING EXCEPTIONS - ACCESSORY USES.

Council President Sturm stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Berry who abstained, the Council President declared the motion carried. The second reading will take place at the next meeting.

Councilmember Berry returned at 7:19 p.m.

Council President Sturm declared the time was at hand for the public hearing to consider the Planning Commission's recommendation regarding the Preliminary and Final Plats of Karel Acres 2nd Subdivision. The applicant is Erna Karel.

The Planning Commission held a public hearing on this matter and recommended approval of the Preliminary and Final Plats of Karel Acres 2nd Subdivision with the "Findings of Fact" being:

- Staff's recommendation; and
- That this may be done administratively in the future.

Lisa Karel was present to answer questions. They own an acreage outside of Wayne and have purchased a small parcel next to it. They want to combine the two parcels to build a house on.

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

There being no further comments, Council President Sturm closed the public hearing.

Councilmember Chamberlain introduced Resolution No. 2010-57 and moved for its approval; Councilmember Ley seconded.

RESOLUTION NO. 2010-57

A RESOLUTION APPROVING PRELIMINARY AND FINAL PLATS OF KAREL ACRES 2ND SUBDIVISION.

Council President Sturm stated the motion, and the result of roll call being all Yeas, the Council President declared the motion carried.

Administrator Johnson stated the following Resolution would approve the amendment to the contract for engineering services with Olsson Associates for design services for completion of the Kardell lift station and force main connection to the City sewer system. The cost for said services is \$6,300.

Councilmember Frevert introduced Resolution No. 2010-58 and moved for its approval; Councilmember Chamberlain seconded.

RESOLUTION NO. 2010-58

A RESOLUTION APPROVING AMENDMENT TO CONTRACT FOR ENGINEERING SERVICES WITH OLSSON ASSOCIATES ON THE KARDELL INDUSTRIAL PARK LIFT STATION AND FORCE MAIN.

Council President Sturm stated the motion, and the result of roll call being all Yeas, the Council President declared the motion carried.

Administrator Johnson stated the following Resolution would amend the Energy Incentive Program by deleting reference to “electric entrance boxes” in section 1 and adding the following language:

5. The City will reimburse qualified applicants the sum of \$100 for undertaking an energy audit of their home or business by a certified energy auditor.
6. The City will provide an incentive of \$10.19 per installed kw to all commercial customers that design their facilities towards electric usage.

Councilmember Chamberlain introduced Resolution No. 2010-59 and moved for its approval; Councilmember Alexander seconded.

RESOLUTION NO. 2010-59

A RESOLUTION AMENDING THE ENERGY INCENTIVE PROGRAM OF THE CITY OF WAYNE TO ESTABLISH AND FUND THE ENERGY SAVER PROGRAM AND PROVIDE FOR COST-SHARING USING A SET ASIDE OF CITY OF WAYNE ENERGY SAVING INCENTIVE FUNDS.

Council President Sturm stated the motion, and the result of roll call being all Yeas, the Council President declared the motion carried.

Joel Hansen, Certified Street Superintendent, stated the following Resolution would adopt the Title VI – Civil Rights Regulations. This is part of the new Federal Highway Regulations for federally funded projects. In addition, this charges the Certified Street Superintendent as being responsible for the management of the Title VI Civil Rights Regulations. This is number five of ten policies that will be brought to Council for their approval in order to obtain federal funds on transportation projects. The regulations are essentially a paperwork trail for the Federal Government to verify we are not discriminating against anyone.

Councilmember Ley introduced Resolution No. 2010-61 and moved for its approval; Councilmember Alexander seconded.

RESOLUTION NO. 2010-61

A RESOLUTION ADOPTING TITLE VI – CIVIL RIGHTS REGULATIONS AND DESIGNATING THE STREET SUPERINTENDENT RESPONSIBLE FOR THE MANAGEMENT OF THE TITLE VI – CIVIL RIGHTS PROCESS.

Council President Sturm stated the motion, and the result of roll call being all Yeas, the Council President declared the motion carried.

Administrator Johnson stated a pay request has been received from Robert Woehler & Sons Construction for the Muhs Acres Water Main Extension Project in the amount of \$14,968.55. The engineer on the project has approved the same.

Councilmember Frevert made a motion and seconded by Councilmember Alexander approving Certificate of Payment No. 4 for the Muhs Acres Water Main Extension Project in the amount of \$14,968.55 to Robert Woehler & Sons Construction, Inc. Council President Sturm stated the motion, and the result of roll call being all Yeas, the Council President declared the motion carried.

Action on Agenda Item No. 24 - Certificate of Payment No. 6 (Final) for Kardell Subdivision Paving, Drainage and Water Improvement Project was postponed until the next Council meeting.

Administrator Johnson stated a pay request has been received from Knife River for the Asphalt Overlay Project in the amount of \$225,416.16. The engineer on the project has approved the same.

Councilmember Ley made a motion and seconded by Councilmember Chamberlain approving Certificate of Payment No. 1 for the Asphalt Overlay Project in

the amount of \$225,416.16 to Knife River. Council President Sturm stated the motion, and the result of roll call being all Yeas, the Council President declared the motion carried.

Administrator Johnson stated a pay request has been received from Layne Christensen Co. for the Well House and Municipal Well 2009-1 Project in the amount of \$38,969.83. The engineer on the project has approved the same.

Councilmember Alexander made a motion and seconded by Councilmember Chamberlain approving Pay Application No. 7 for the Well House and Municipal Well 2009-1 Project in the amount of \$38,969.83 to Layne Christensen Company. Council President Sturm stated the motion, and the result of roll call being all Yeas, the Council President declared the motion carried.

Administrator Johnson stated the following Resolution would approve Amendment No. 2 to the agreement with Kirkham Michael for professional construction engineering services which are necessary to reconstruct and stabilize the bank of South Logan Creek (Former Kardell Landfill Improvement Project). The cost for said services is \$3,900.

Councilmember Chamberlain introduced Resolution No. 2010-62 and moved for its approval; Councilmember Ley seconded.

RESOLUTION NO. 2010-62

A RESOLUTION APPROVING AMENDMENT NO. 2 – AGREEMENT FOR PROFESSIONAL CONSTRUCTION ENGINEERING SERVICES WITH KIRKHAM MICHAEL ON THE FORMER KARDELL LANDFILL IMPROVEMENT PROJECT.

Council President Sturm stated the motion, and the result of roll call being all Yeas, the Council President declared the motion carried.

Council President Sturm requested Council consideration to the appointment of Jessie Piper to the Zoning Steering Committee as the Wayne Area Economic Development representative.

Councilmember Chamberlain made a motion and seconded by Councilmember Ley approving the appointment of Jessie Piper to the Zoning Steering Committee as the Wayne Area Economic Development representative. Council President Sturm stated the motion, and the result of roll call being all Yeas, the Council President declared the motion carried.

Nancy Braden, Finance Director, gave a preliminary update/review of the 2010-2011 budget proposal.

Councilmember Alexander left the meeting at 7:48 p.m.

Councilmember Frevert made a motion and seconded by Councilmember Haase to adjourn the meeting. Council President Sturm stated the motion, and the result of roll call being all Yeas, the Council President declared the motion carried and the meeting adjourned at 7:50 p.m.