

**MINUTES
CITY COUNCIL MEETING
January 4, 2011**

The Wayne City Council met in regular session at City Hall on Tuesday, January 4, 2011, at 5:30 o'clock P.M. Mayor Ken Chamberlain called the meeting to order with the following in attendance: Councilmembers Brian Frevert, Jim Van Delden, Jon Haase, Dale Alexander, Doug Sturm, Kaki Ley and Jill Brodersen; City Attorney Mike Pieper; City Administrator Lowell Johnson; and City Clerk Betty McGuire. Absent: Councilmember Kathy Berry.

Notice of the convening meeting was given in advance by advertising in the Wayne Herald on December 23, 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 Sturm made a motion and seconded by Councilmember Van Delden, whereas the Clerk has prepared copies of the Minutes of the meeting of December 21, 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.

Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried and the Minutes approved.

The following claims were presented to Council for their approval:

VARIOUS FUNDS: ALIGNMENT TECHNOLOGIES, SE, 355.55; AMERICAN BROADBAND, SE, 330.00; AMERITAS, SE, 2876.07; APPEARA, SE, 35.11; BANK FIRST, FE, 195.00; BARCO MUN PRODUCTS, SU, 316.54; CITY EMPLOYEE, RE, 11.95; CITY EMPLOYEE, RE, 113.14; BLACK HILLS ENERGY, SE, 1895.62; BOMGAARS, SU, 707.22; BROWN SUPPLY, SU, 1793.47; CITY OF NORFOLK, SE, 194.15; CITY OF WAYNE, RE, 1500.00; CITY OF WAYNE, PY, 56779.75; CITY OF WAYNE, RE, 826.92; COMMUNITY HEALTH, RE, 3.00; COPY WRITE, SU, 90.64; CITY EMPLOYEE, RE, 130.79; CITY EMPLOYEE, RE, 61.60; ECHO GROUP, SU,

118.61; ELECTRIC FIXTURE, SU, 141.63; ELLIS PLUMBING & HEATING, SE, 5499.24; FIRST CONCORD GROUP, SE, 5,682.17; FLOOR MAINTENANCE, SU, 45.95; FORT DEARBORN LIFE, SE, 103.20; GLEN'S AUTO BODY, SE, 77.43; GLOVER PAINTING, SE, 3083.00; CITY EMPLOYEE, RE, 6279.06; HEARTLAND FIRE PROTECTION, SE, 1225.20; HEARTLAND FIRE PROTECTION, SE, 1770.00; CITY EMPLOYEE, RE, 110.03; ICMA, SE, 5503.06; IRS, TX, 18937.57; JEO CONSULTING GROUP, SE, 30020.54; CITY EMPLOYEE, RE, 40.00; KLEIN ELECTRIC, SE, 1556.50; CITY EMPLOYEE, RE, 532.00; KRIS HINNERICHS, RE, 176.72; LAYNE CHRISTENSEN, SE, 39391.94; LOWER ELKHORN N.R.D., SU, 90.00; MERCY MEDICAL CLINIC, SE, 20.00; METZLER, CHAD, RE, 500.00; MILO MEYER CONSTRUCTION, SE, 468.75; MSC INDUSTRIAL, SU, 278.06; NE DEPT OF REVENUE, TX, 2833.92; NE ECONOMIC DEVELOP ASSN, RE, 100.00; NE PUBLIC HEALTH, SU, 307.00; NE RPA, SE, 50.00; NET-TECH, SU, 72.05; NORFOLK DAILY NEWS, SU, 120.50; NNPPD, SE, 2302.22; NWOD, FE, 10.00; CITY EMPLOYEE, RE, 67.08; CITY EMPLOYEE, RE, 925.06; PROPERTY EXCHANGE PARTNER, RE, 80.00; PUSH-PEDAL-PULL, SU, 153.00; CITY EMPLOYEE, RE, 1818.94; SKARSHAUG TESTING LAB, SE, 234.31; STATE NATIONAL BANK, RE, 423.76; VERIZON, SE, 160.83; VIAERO, SE, 135.34; WESCO, SU, 278.76; AMERITAS, SE, 580.00; APPEARA, SE, 46.69; AS CENTRAL SERVICES, SE, 448.00; BAUM HYDRAULICS CORP, SU, 24.22; CITY EMPLOYEE, RE, 37.90; BLACK HILLS ENERGY, SE, 548.41; BROWN SUPPLY, SU, 170.93; CHARTWELLS, SE, 4707.15; CITY OF WAYNE, RE, 150.00; COPY WRITE, SE, 267.53; DE LAGE LANDEN FINANCIAL, SE, 77.00; EAKES OFFICE PLUS, SE, 76.64; EASYPERMIT POSTAGE, SU, 1158.03; EGAN SUPPLY, SU, 24.37; EKBERG AUTO SALVAGE, SU, 25.00; ENVIROTECH SERVICES, SU, 4911.54; FLOOR MAINTENANCE, SU, 115.80; FREDRICKSON OIL, SU, 508.20; GERHOLD CONCRETE, SU, 81.75; GILL HAULING, SE, 133.00; CITY EMPLOYEE, RE, 159.41; HSBC BUSINESS SOLUTIONS, SU, 32.39; CITY EMPLOYEE, RE, 294.23; KRIZ-DAVIS, SU, 770.00; MID-STATES ORGANIZED, FE, 100.00; MIDLAND EQUIPMENT, SU, 247.78; N.E. NEB ECONOMIC DEV DIS, SE, 1112.50; NE NEB INS AGENCY, SE, 55677.00; NE RURAL WATER, FE, 450.00; OLSSON ASSOCIATES, SE, 1670.46; PAC N SAVE, SU, 27.96; CITY EMPLOYEE, RE, 15.16; PLUNKETT'S PEST CONTROL, SE, 41.60; QUALITY 1 GRAPHICS, SU, 75.00; STADIUM SPORTING GOODS, SU, 264.00; THOMPSON PUBLISHING GROUP, SU, 409.00; WATERLINK, SE, 1053.42; WAED, RE, 6383.33; WAYNE COUNTY CLERK, SE, 348.42; CITY EMPLOYEE, RE, 104.49; YOUNG, BILL, SU, 555.75; ZACH OIL COMPANY, SU, 5911.31

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

Jonathan Mohr of JEO Consulting Group stated the City applied for and was awarded a grant in the amount of \$21,500 from NDEQ to help pay for the costs of a wellhead protection plan. He explained since Wayne County does not have zoning in place, the City has no oversight over the land uses in and around the areas of the City owned wells. Other elements of the grant include educational efforts in regarding to protecting the water supply, managing contaminants and land use activities to insure there are no threats to the City's source of water, deep soil testing, and addressing abandoned wells. In addition, the Lower Elkhorn NRD can provide up to 75% cost-share to property owners who want to abandon their wells. This grant would then cover the other 25%, so there would be no cost to the property owner.

There is a state statute that has been used by some communities that allows them to establish controls to protect the source of water for up to 15 miles. However, that is not what they would recommend as Wayne's objective. JEO will put in the plan the legal description of the wellhead protection areas that are outside the extraterritorial jurisdiction, which will then protect those areas and give the City some oversight that you do not have now. The best way to summarize this project is that it gives you a level of oversight to make sure things are done right within your well protection area.

The total cost of the project will be \$45,260, which includes \$35,560 in engineering fees, a \$21,500 grant from NDEQ, \$14,760 which is the City's share and a \$9,000 in-kind match from both the NRD and City staff.

Garry Poutre, Supt. of Public Works & Utilities, stated the plan will address both quality and quantity of our water/wells. This plan will not make it more difficult for the landowners, but this is a way to help those landowners help themselves because they all are drinking and using water out of the same aquifer as we are. We will not do anything here but teach from the property owner's standpoint. He advised the Council that he is awaiting a proposal from a firm by the name of LBG to update the wellhead protection maps. They will provide more detailed hydro-geologic maps than what NDEQ would. However, if it is cost prohibitive, then the maps would be obtained from NDEQ.

Mayor Chamberlain stated this is something that has come up at retreat for a couple of years now.

Councilmember Sturm introduced Resolution No. 2011-1 and moved for its approval; Councilmember Ley seconded.

RESOLUTION NO. 2011-1

A RESOLUTION APPROVING AGREEMENT WITH JEO CONSULTING GROUP, INC., FOR PROFESSIONAL SERVICES FOR THE SOURCE WATER PROTECTION PROJECT (WELLHEAD PROTECTION PLAN).

Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Cap Peterson with Northeast Nebraska Insurance Agency presented and reviewed the 2011 Property and Casualty Insurance Package. The 2011 premium is \$222,657, which is approximately \$24,000 lower than the 2010 premium. The City buildings and

contents are insured at a 90% replacement value, with the exception of the power plant. The power plant building is insured by way of separate coverage at an agreed upon value, which is \$28,324,200. The company provides and has done a risk management analysis of all city buildings, etc., at no cost. In addition, Mr. Peterson advised the Council that because of the safety programs initiated and the decline in workers compensation claims, the experience modification has dropped from 1.12 to .89. This represents a significant savings in the premium.

Riley Tonkins, Marketing Representative with EMC, showed, via their website, some of the different services they offer. These services are free because we are insured with EMC.

Councilmember Ley made a motion and seconded by Councilmember Sturm approving the 2011 Property and Casualty Insurance Package with Northeast Nebraska Insurance Agency. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Karla Jensen, Assistant CAC Activities Director, gave a report on the \$8,000 grant she received from the Gardner Foundation for a new program called the “Kids Gym.” Additional funding has been provided by State National Bank, Pieper, Miller & Dahl Law Office, Gill Hauling and Charlene Rasmussen who donated the proceeds from two months of yoga classes she teaches at the CAC. The majority of the items needed for this program will be purchased locally. This is a program that is designed for 6 month olds to 4 year olds, and it will work on both gross motor skills, which is the large muscle group (e.g. walking, lifting, kicking, throwing the ball), and fine motor skills, which is the small muscle group (e.g. tying shoes, fastening buttons, etc).. She will be working

with the education majors and the early childhood majors at the College. She is hoping to keep the fees minimal for both members and non-members. There is not another gym like this in the surrounding area. The closest is located in the Omaha-Lincoln area. Partitions have been ordered to split the youth center for this program.

Administrator Johnson, in response to Councilmember Sturm's question, stated last summer when Karla's position was created, one of the things talked about was trying to close the overhead gap of \$80,000 per year at the CAC. If Council does not want staff to aim in that direction, they need to advise him of that. Councilmember Sturm thought that a program like this could very easily bring new members to the CAC, which could offset the fee proposed to be charged for this program.

Ms. Jensen also stated she is developing another program called "Kids' Care", where parents can come to the CAC, drop their kids off into "Kid's Care", and then workout. At this time, we have a lot of young people who have moved back into the community, and they can't come in and workout, because they need to worry about finding someone to take care of their children. They will not be charging for this program. As far as being licensed for that program, Karla is waiting for a response from Health & Human Services.

Councilmember Sturm suggested talking about this at their retreat.

Mayor Chamberlain thanked Karla for her hard work, because this is exactly what the Council asked for when they created that position last summer.

Anthony Lawrence, Deputy City Administrator, gave a report on an energy program he is working on and helping promote through Goldenrod Hills. Goldenrod Hills has concerns because they have had difficulty getting Wayne and Wayne County

residents to apply for these grant funds. This program is funded through the stimulus program. The timeline to use these funds ends in March, 2012. Goldenrod Hills' concern with Wayne is that in the past few years, only 8 houses from Wayne has participated in this program. They had 250 houses in their area participate in this program in 2010. Of that 250, only 3 were done in Wayne. There is over \$4,000,000 for Northeast Nebraska to use, and Wayne is not using their part. They have been to service groups, such as Kiwanis and the Senior Center, to get the word out about this program. They are now requesting the City for assistance in getting the word out. If this money is not used by 2012, it goes back to the Department of Energy, and it will then be allocated to another state or area. At this time, the other surrounding Counties are using these funds. Wayne County has 2,573 individuals at or below 20% of poverty level. Out of that, over 800 people in the City of Wayne are eligible for these grants that we are not using. He would like to get the landlords more involved in this process. College students can actually apply for weatherization programs. He plans on meeting with landlords and also helping them fill out the applications. His reason for being at the Council was to let the Council and the public know that a lot of funds are available to use to weatherize homes, and that you don't have to own your home to apply for these funds. If it is a rental home, it is the renter's income that is used to determine the income qualification. A lot of people are automatically eligible if they are receiving Supplemental Security Income, Temporary Assistance for Needy Families or participate in the Low Income Energy Assistance Program. Examples of income eligible households are:

- \$21,000 for a one person household
- \$29,000 for a two person household
- \$44,000 for a four person household
- \$59,000 for a six person household

- \$74,000 for an eight person household

Councilmember Berry suggested going door-to-door and dropping off flyers or information in areas that appear would qualify. Councilmember Sturm suggested putting the information in the utility newsletter again.

Mayor Chamberlain stated this is a win/win situation for the landlords, so we need to do whatever we can to try to get them on board. The average amount eligible per house is \$6,800.

Administrator Johnson stated a pay request has been received from M.E. Collins Contracting Co., for the 2010 Downtown Sidewalk Replacement Project in the amount of \$93,313.44. The engineer on the project has approved the same. It was noted that this is not the final payment. The City still has a 10% retainage in the amount of \$63,817.12. We have six days of liquidated damages at \$815.00 per day.

Roger Protzman, representing JEO Consulting Group, stated they still have some work yet to be finished but that the project is substantially complete as of this date. The project is functional and it is useable, which is one of the criteria for being substantially complete. Terry Mead, the engineer on the project, advised Mr. Protzman that there are some cracked panels, but that is considered warranty work and will be corrected in the spring.

Councilmember Sturm made a motion and seconded by Councilmember Frevert approving Pay Application No. 4 for the 2010 Downtown Sidewalk Replacement Project in the amount of \$93,313.44 for M.E. Collins Contracting Co., Inc. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Roger Protzman of JEO Consulting Group, engineer on the Wastewater Treatment Facility Project, presented the two change orders being proposed. Change Order No. 1 is for \$3,810.83. The two main components are additional control joints requested by the block layers, and modifying some plumbing for one of the treatment units in the headworks building. This was designed as the manufacturer directed them to, but when the shop drawings were received during the construction stage, a larger water service and a larger plumbing service to take the waste away from the unit were required. This was a manufacturer's change which is beyond their control.

Change Order No. 2 relates to a fish aquarium that is being proposed as a part of an educational piece to the project. This change order will accommodate the utilities to the fish aquarium, which includes running a supply line from a point at the end of the treatment system back to the lab building to supply the water and drain away the water because of the need continuous feed the aquarium. JEO and Aquarius have each agreed to donate \$1,000 each towards the cost of the aquarium. The aquarium came up during the bidding phase. Administrator Johnson seemed interested in this, as well as the University. The impact to the City would be \$2,226.63. There are no engineering fees for these two change orders. There will be additional cost of \$1,500, which is not included in this change order. This is for the aquarium, pump and other devices. The reason Mr. Protzman broke these items out was that the \$2,226.63 will be contractor costs. The additional \$1,500 is for items the City can purchase directly, which we don't want to run through the contractor and pay a mark-up on. This change order is purely optional, but if the Council would like to do this, now is the time.

Councilmember Sturm thought the costs for Change Order No. 2 should fall under the wastewater treatment budget instead of adding it onto this project.

Mr. Protzman understood some of Council's concerns regarding change orders. The word "change order" is very taboo, but he advised the Council that they have to realize that of a \$5,000,000 construction project, industry standards is to have a contingency budget of 10% for changes that will come up during construction. His record has been to be somewhere in the neighborhood of 1% actual.

Councilmember Alexander stated that on a huge project such as this, do you think we are really not going to get any change orders. He has change orders on little home projects that he is working on all the time. It will happen.

When is a change in relation to this project the contractor's responsibility vs. the City's responsibility? He provided two examples. He stated he is here to be the City's advocate; similar to the City Attorney's position. He is trying to also bring to the Council the things he thinks are the City's cost because there is some benefit to the City. He has to refer back to the plans and specs. If JEO makes a mistake, they will eat it. If there is something that the contractor messed up on, he is certainly here to defend the City because the City is his client. We are significantly under budget on the bids of this project, and they intend to keep it that way, but they also have to have a little bit of latitude to be able to draw on for some of these changes that are going to come up. There is nothing he can do to change the negative connotation of the word "change order."

Change Order No. 1 is a material cost only. Mr. Protzman was directed to ask the contractor why this was necessary at their progress meeting on Thursday.

Mr. Protzman feels that in regard to the aquarium, we will see some people with interest. The word is getting out that Wayne is building one of these facilities. He, again, advised the Council this is purely optional.

Garry Poutre, Supt. of Public Works & Utilities, stated he thought this aquarium idea came about early in the bidding stage when they heard that a treatment facility in Omaha did this. When the City had a chamber coffee at the treatment plant about a year ago, we took the water that we bring into the plant and the water that we took out of the plant and set them side by side. We told the people that were there that you could drink the one that was taken out of the plant. The aquarium is purely optional, but would lay claim to the success of the project. There were questions throughout the last couple of years as to whether or not we wanted to move into this new technology. Do we want to build this system that is only in Israel, and do we want to move toward that direction and be the first one in the United States to build one. So, when this idea came up, it really was in passing at one of their meetings. As far as the educational value, he thought there was someone from Wayne State College who thought they might use this in a class setting.

Councilmember Sturm made a motion and seconded by Councilmember Haase approving Change Order No. 1 for the 2009-2010 Wastewater Treatment Facility Improvements, Phase I Project – net increase of \$3,810.83. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Councilmember Sturm made a motion and seconded by Councilmember Ley approving Change Order No. 2 for the 2009-2010 Wastewater Treatment Facility

Improvements, Phase I Project – net increase of \$2,226.63, with said cost being taken out of the wastewater budget. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Roger Protzman of JEO Consulting Group addressed the Council on the Wayne 2009 Water Well Project. He advised the Council that this project is not substantially complete at this time, because we do not have approval from the Health Department to turn the well on and put it on line. To bring all of the Council up to speed, Mr. Protzman stated the project was bid and the contract initiation date was October 1, 2009. When we entered into that project, we did not know that it was going to be funded by stimulus funds. It was one of those projects that was shovel ready, so it got transitioned into a stimulus fund project, which added a whole other set of other requirements to it. The project had a 180 completion date – March 1, 2010. Due to the weather conditions, they gave the contractor a 145-day extension, which took the completion date to August 1, 2010. When August rolled around, the project still was not completed. They had a meeting on site with the previous Mayor, city staff and Layne Christensen, who is the general contractor. Layne Christensen indicated that if we gave them 6-8 more weeks, they would get this project wrapped up and we would be able to put the well on line. As of this date, we still do not have a system that is complete and ready to put on line. When they met out at the well in December with the contractor going over the list, they narrowed it down to three critical items that needed to be completed. Those three critical items needed to be able to put the well on line were:

1. All of the chemical tanks, piping and doors had to be labeled;
2. Installation of an emergency high shower wash system; and
3. Installation of a louver in the building that allows the air to leave as the fresh air is blown into the room.

It's his understanding that over the Christmas break, the shower was installed, the louver was supposed to be installed sometime this week, and the chemical supply company was going to come on the contractor's behalf and get the placards and everything put in this week and fill the chemical tank per the specs. The contractor has told me that they should be substantially complete this week.

As far as JEO's contract goes, it was originally predicated on the fact that the project would be completed in 180 days. They worked with the contractor not only through 180 days, but the additional 145 days on top of that. At that point, they had no thoughts of charging the City extra for additional services because they thought the contractor was going to get things completed. When it became obvious that the contractor was not going to get things completed, he wrote Administrator Johnson a letter stating that these were the terms and conditions of their contract. The contractor was supposed to get this project completed in 180 days. The project is still not finished after 365 days, and this is what they thought the additional effort was going to be and the time they were going to spend on this project between now and when the contractor was supposed to get the project completed. At that time, Mr. Protzman had an estimate of about \$12,000. He forwarded that letter to Administrator Johnson in August, and he did not hear anything back. In October, Mr. Protzman sent Administrator Johnson another letter to follow-up on the matter because they were all waiting to see if the project would get done. JEO has had some additional time invested in this, in following up and chasing the contractor and trying to get these things coordinated. They were really almost hand holding and babysitting the project. They also had additional time to comply with the

stimulus bill requirements that wasn't part of the original contract. That is why they are seeking some additional compensation on this project.

It was noted that the general contractor on the project is Layne Christensen, who has several sub-contractors.

When asked who was the sub who was holding the project up, Mr. Protzman stated he did not want to point fingers, but Benscoter Plumbing & Heating has probably been the one. Benscoter also had subs underneath him as well. However, ultimately, the responsibility lies with Layne Christensen, because that is who the contract with the City is with. That is where the buck should stop.

Mayor Chamberlain stated we also have liquidated damages accruing on this project since July 23, 2010.

The liquidated damages are \$222 per day, and at this point, that total is up to about \$39,000. This amount would be withheld from the final payment, and this is how the additional engineering fees would get paid.

Councilmember Ley made a motion and seconded by Councilmember Haase approving the request to amend the original contract with JEO Consulting Group to include payment for additional engineering services beyond the agreed contract amount on the Wayne 2009 Water Well Project. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Councilmember Ley made a motion and seconded by Councilmember Alexander to adjourn the meeting. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried and the meeting adjourned at 7:31 p.m.