

**MINUTES  
CITY COUNCIL MEETING  
April 1, 2008**

The Wayne City Council met in regular session at City Hall on Tuesday, April 1, 2008, at 5:30 o'clock P.M. Mayor Lois Shelton called the meeting to order with the following in attendance: Councilmembers Brian Frevert, Verdel Lutt, Dale Alexander, Doug Sturm, Kaki Ley, Darrel Fuelberth and Ken Chamberlain; City Attorney Mike Pieper; City Administrator Lowell Johnson; and City Clerk Betty McGuire. Absent: Councilmember Don Buryanek.

Notice of the convening meeting was given in advance by advertising in the Wayne Herald on March 20, 2008, 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 Frevert, whereas the Clerk has prepared copies of the Minutes of the meeting of March 18, 2008, 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 Shelton 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:** ALLTEL, SE, 486.14; AMERITAS, RE, 2041.22; AQUILA, SE, 1830.37; DAS COMMUNICATIONS, SE, 448.00; BANK FIRST, FE, 210.00; BOMGAARS, SU, 7.99; BROWN SUPPLY, SU, 2500.44; CITY OF WAYNE, RE, 49.90; CITY OF WAYNE, RE, 343.34; CITY OF WAYNE, PY, 53326.74; CITY OF WAYNE, RE, 428.78; CITY OF WAYNE, FE, 270.00; CITY OF WAYNE, RE, 75.00; CULLIGAN WATER OF NE, SE, 41.00; EDM EQUIPMENT, SU, 56.47; ELECTRIC FIXTURE, SU, 58.91; EMPLOYERS MUTUAL CASUALTY, 1116.30; FARMERS AND MERCHANTS, RE, 160000.00; FIRST SOURCE TITLE & ESCROW, SE, 75.00;

FLOOR MAINTENANCE, SU, 42.45; FORT DEARBORN LIFE, SE, 127.28; G-NEIL, SE, 549.90; GERHOLD CONCRETE, SU, 22.60; HATTIG CONSTRUCTION, SE, 4150.00; HILLYARD, SU, 74.42; HUNTEL, SE, 30.00; ICMA, RE, 5494.71; IRS, TX, 17666.88; JACK'S UNIFORMS, SU, 183.60; JIM'S SMALL ENGINE REPAIR, RE, 34.40; KIRKHAM MICHAEL, SE, 12840.00; MIDWEST OFFICE AUTOMATION, SE, 73.73; MUNICIPAL SUPPLY, SU, 101.70; NE DEPT OF REVENUE, TX, 2383.02; NE NEB INS AGENCY, SE, 58787.00; NE PUBLIC HEALTH, SE, 376.00; NEW WORLD INN, SE, 136.00; NORFOLK SPORTING GOODS, SU, 61.85; N.E. NE AMERICAN RED CROSS, RE, 59.24; OLSSON ASSOCIATES, SE, 13698.03; POSTMASTER, SU, 123.00; QWEST, SE, 419.57; SKARSHAUG TESTING LAB, SE, 106.91; STATE NATIONAL BANK, RE, 3214.30; TURFWERKS, SU, 38.11; UNITED WAY, RE, 45.35; UTILITIES SECTION, SE, 185.00; VIAERO, SE, 71.81; WAHOO DIAMOND, FE, 570.00; WALKER WIRELESS, SU, 860.35; WAEDI, RE, 6383.33; WAYNE COUNTY COURT, RE, 95.50; WELLS FARGO FINANCIAL, SE, 17008.20; AQUILA, SE, 170.16; BAUM HYDRAULICS CORP, SU, 25.16; BOMGAARS, SU, 1050.29; CITY OF WAYNE, RE, 150.00; CITY OF WAYNE, RE, 705.45; COMFORT INN, SE, 380.46; COPY WRITE, SU, 361.24; DUTTON-LAINSON, SU, 431.80; ELECTRIC FIXTURE, SU, 240.72; GERHOLD CONCRETE, SU, 46.50; HAUFF MID-AMERICAN SPORTS, SU, 683.90; HEIKES AUTOMOTIVE, SE, 95.85; HOLIDAY INN OF KEARNEY, SE, 119.90; INDUSTRIAL TOOL, SU, 313.79; JACK'S UNIFORMS, SE, 10.00; JOHN'S WELDING AND TOOL, SE, 31.98; KELLY SUPPLY, SU, 492.16; KIRKHAM MICHAEL, SE, 16692.00; KNOEPFLER CHEVROLET, SU, 5.00; KRIZ-DAVIS, SU, 688.27; MARRIOTT HOTELS, SE, 111.00; MERCY MEDICAL CLINIC, SE, 141.00; N.E. NEB ECONOMIC DEV DIS, SE, 5837.42; NNPPD, SE, 2113.24; OFFICEMAX, SU, 37.50; PETERSON INDUSTRIAL, SE, 175.00; POSTMASTER, SU, 614.62; PUSH-PEDAL-PULL, SE, 400.00; QUILL, SU, 655.65; QWEST, SE, 191.62; RDG PLANNING & DESIGN, SE, 1170.00; SD MEYERS, SE, 1412.00; STATE NATIONAL BANK, RE, 2363.60; US BANK, SU, 7840.60; VOSS LIGHTING, SU, 165.50; WAEDI, SE, 6383.33; WESCO, SU, 191.19

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

Mayor Shelton proclaimed the week of April 1-5<sup>th</sup> as "Support Citizens with Mental Retardation Week."

Mayor Shelton 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, she 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.

Brian Gibson, representing the Wayne County Jaycees, was present requesting Council consideration to increasing the amount of the annual donation given for the 4<sup>th</sup> of July fireworks and to donating for the 125<sup>th</sup> celebration to be held in 2009. Five years ago the fireworks display cost the Jaycees about \$3,500. Currently, they put on a show that costs about \$6,500. This kind of show, if hired out, would cost between \$9,000 and \$11,000. Five years ago the City increased their donation from \$500 to \$1,000. Mr. Gibson was requesting the Council to increase their annual contribution from \$1,000 to \$2,000.

For the 125<sup>th</sup> celebration, he was not sure if they were going to have that on a different day than the weekend of Chicken Days. The Jaycees will still do the fireworks display on Henoween.

After next year, Mr. Gibson would like to increase the cost of the show to \$7,500 and then raise it again after that.

Councilmember Lutt preferred that the fireworks celebration take place on the 4<sup>th</sup> of July.

Mr. Gibson stated the year the date changed was the year they celebrated the 25<sup>th</sup> anniversary of the Chicken Show. In addition, because the show has been taking place after the 4<sup>th</sup> of July weekend, they are able to get the equipment to put on a pyro musical, which is a \$30,000, and the same kind they use at Disney World. By having it a different

weekend, they are not in competition with the fireworks show in Norfolk. They have received a great response from the Chicken Show Committee and business people that have said they get more bang for their buck doing the show the week after the 4<sup>th</sup>.

In response to Councilmember Ley's question, Mr. Gibson responded that the Jaycees can only raise so much money. They would be fighting inflation if the City would stay at the same contribution. The show is a reflection of the City, and he feels the Jaycees have gone over and above what is expected. They could still put on a nice show if the City stayed at \$1,000. However, there are some cities that pay the whole bill and there are some cities that pay half.

Mayor Shelton stated she understood that the Jaycees are trying to continually make this something that people are going to want to come to. That is admirable, but they increased the value of the show with no consultation with the group he is expecting to help support it. The Council did not ask to have the show made better. She is not complaining, because she thought it was beautiful last year. They have budgeted \$1,000.

Councilmember Lutt made a motion and seconded by Councilmember Alexander to increase the annual contribution for the 2008 Fireworks Celebration from \$1,000 to \$1,500.

Councilmember Sturm stated for the last several years, we have asked the departments to work with less, but then we always seem to come up with extra money in our budget somewhere. How does that work?

Mr. Gibson suggested increasing the permit fees for the firework's stands, which could then go towards the fireworks' display.

Councilmember Sturm suggested that the Jaycees put on a pancake feed to raise money.

Mr. Gibson stated the Jaycees did put on a spaghetti feed and fell flat on their face.

Councilmember Ley thought the Council should wait until they are working on the budget to increase the donation.

Mayor Shelton stated the motion, and the result of roll call being all Yeas, with the exception of Councilmembers Sturm and Ley who voted Nay, the Mayor declared the motion carried.

Cap Peterson of Northeast Nebraska Insurance Agency presented two dividend checks to the City: Rural Fire District - \$766.73 and City - \$25,208.98. This is the 10<sup>th</sup> time out of the past 14 years that the City has received dividend checks from EMC.

Administrator Johnson stated the following Resolution would approve a Service/Consultant Agreement for Housing Administration with the Wayne Community Housing Development Corporation. The grant for this project (\$385,000) allocates \$23,200 to pay WCHDC to administer the program to assist with building the homes, qualifying households for down payment assistance and preparing the loan documents.

Councilmember Sturm introduced Resolution 2008-26, and moved for its approval; Councilmember Fuelberth seconded.

#### RESOLUTION NO. 2008-26

A RESOLUTION APPROVING SERVICE/CONSULTANT AGREEMENT FOR HOUSING ADMINISTRATION WITH THE WAYNE COMMUNITY HOUSING DEVELOPMENT CORPORATION.

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

Discussion took place regarding the proposed Incentive Program and Energy Incentive Agreement with Wayne Community Housing Development Corporation. A proposed Resolution was distributed with the packet for discussion purposes. There is approximately \$17,000 left of the \$25,000 annual allocation that we use for our electric incentive program. This proposal does not increase the amount we put into it. This is a proposal to take some of the \$25,000 and set it aside for the WCHDC rehab program. The resolution proposes \$12,000.

Della Pries, Director of the Wayne Community Housing Development Corporation, was present and stated that this program would help their home buyers, and it could possibly be used on two homes that have recently been inspected.

Council consensus was to bring the Resolution back in final draft form at the next meeting.

Councilmember Buryanek arrived at the meeting at 5:55 p.m.

Discussion took place regarding the claim of Jason Karsky on a code enforcement issue in the amount of \$985.00. Administrator Johnson reviewed the process that the Chief Inspector/Planner goes through when issuing building permits.

The Chief Inspector/Planner receives the building permit application. He then reviews the building plans and the site plan, checks the setbacks and reviews the zoning for the area. Once that is done, a card is given to the contractor. The City's job is to look at the site plan as it is drawn out on paper, with the setbacks indicated thereon. Then the

Inspector receives a call from the contractor saying he has laid out the building lines, dug the footings, and needs a footing inspection.

As he understands the situation, Mr. Ellyson went out and looked at the footings. The footing trenches were fine. However, he thought they seemed too close to the alley. Mr. Ellyson got out his metal finder and found the corner pin on the lot across the alley which indicated that the footings were dug too close to the alley. Mr. Ellyson put a check mark on the building permit for that inspection. In addition, he noted on the building permit that before they poured the footings, they needed to verify the setbacks. At the time he was there, he demonstrated to the contractor that they were too close. The contractor then moved the footings and called for another inspection. Mr. Ellyson went out and said they were okay, and then the footings were poured.

We do not go out and lay building lines for contractors. We approve the site plan, and the contractors lay out the building lines. We don't go out and approve the building lines after they are laid out because we wait until the footings are dug. To him it seems relatively clear that we did our job. We approved the site plan. The contractor erred in building and digging the footings too close, and it is a simple mistake on the contractor's part.

Jason Karsky, 901 Lincoln Street, was present and stated one of the major things in that time line is that Mr. Ellyson inspected the footings and signed off on it and then determined the pins were to be located. According to the residential building code, after the building inspector signs off on the building permit, it can go to the next successive stage in construction by the contractor.

Administrator Johnson asked if he left and came back between when he signed. Mr. Karsky responded that he was not there -- he was at work. Mr. Ellyson signed off on the building permit and came back later and changed his mind. His contractor was there who called him immediately. Mr. Karsky then called Mr. Ellyson who indicated he did sign off on the building permit and that he did approve the site plan.

When asked who laid out the building lines, Mr. Karsky stated his contractor did according to the site plan. Administrator Johnson asked Mr. Karsky whose job is it to find the boundary of the lot to measure the building lines from? Mr. Karsky responded that if it is not Mr. Ellyson's job, how can he tell me it needs to be moved. Administrator Johnson stated that is not George's job. No town goes out and measures out building lines. Mr. Karsky stated Mr. Ellyson indicated it needed to be moved, so if he is not to determine that, how can he tell me it needs to be moved. Administrator Johnson stated Mr. Ellyson's job is to approve the site plan, and asked Mr. Karsky if he agreed with that. Mr. Karsky replied yes. Administrator Johnson stated on paper, Mr. Ellyson approves a site plan with the boundary lines and building on it, right or wrong. Mr. Karsky replied correct. Administrator Johnson then stated the contractor takes that site plan and goes out to the lot -- whose job is it to find the boundary lines and then lay out the building lines? Mr. Karsky responded they followed the site plan. Administrator Johnson asked whose job is it to lay the site plan out on the lot itself. Mr. Karsky replied that would be the contractor. Then Administrator Johnson asked was it laid out right or wrong. Mr. Karsky replied he was not sure because the City's Building Inspector approved it.

Administrator Johnson stated Mr. Karsky was not answering his question. You picked up the site plan, you took it out to your contractor, your contractor measured out

what he thought was the lot line, and then dug the footings. Is that your contractor's job or not? Mr. Karsky stated yes, he supposed.

Administrator Johnson asked Mr. Karsky if it was his contractor's job to find the lot lines and measure it from there to the footings before he digs them. Mr. Karsky stated he was not sure of that. Administrator Johnson stated he was telling him it was.

Mr. Karsky stated he understood that but before we went any further, he wanted to note that according to the agenda that was printed on the website, it said that the insurance company found the City of Wayne was not at fault. That is a misrepresentation of what was on the agenda. The letter from the City's insurance company does not indicate anywhere that the City was not at fault. It indicated that they don't cover that kind of claim. So, he is assuming that the Council was informed that the City was not at fault. That is not true. So, he is coming into this once again with what he feels is stretching the truth and splitting hairs. He asked the Council if they honestly thought Mr. Ellyson would approve a footing if he knew it was in the wrong spot.

Administrator Johnson asked him again -- whose job is it to lay out the boundary lines. Mr. Karsky stated he answered that already. Administrator Johnson stated and what did you say -- it's the contractor's job to lay out the building lines correctly. Mr. Karsky stated yes. Administrator Johnson stated what Mr. Ellyson wrote on the building permit is totally irrelevant. If he wrote on there happy birthday to you, it means nothing. Mr. Karsky then asked so why does anyone get a building permit? Administrator Johnson stated that is his record that he went out and looked at the site.

Mr. Karsky stated it says approved check mark footings -- 9/26/07. Administrator Johnson reiterated what Mr. Ellyson did. He got out of this truck and went over and

looked at the footings. There was no loose dirt in them. They were laid out right. He measured them out. As he was done, he started looking at the alley and he signed off on it. Mr. Karsky stated no, that he signed off and then started looking at the alley. Administrator Johnson now, does that make those footings in the right place? Mr. Karsky replied he would assume so. Mayor Shelton told Mr. Karsky that assumed wrong.

Administrator Johnson asked to explain two things that could have happened. Mr. Ellyson was out there and he said these buildings look fine. As he is walking back to his truck, he looks and says, "I think that is too close to the alley." The contractor says no, I think they are okay. Mr. Ellyson then gets his metal finder out and finally finds a corner pin, which is not his job. It is the contractor's job to locate the pins and demonstrate to us that he has found the boundary lines and has measured the setbacks correctly. Now, at the same time he was standing there, not a later visit but during the same visit, he says I don't think that looks right, so they check it out. Mr. Ellyson went back to help you out. He was helping the contractor out. He advised your contractor to verify the setbacks and move the footings if they needed to be moved, which was what he wrote on the building permit. It was during the same visit. Where is the loss – how did the City cause you loss because they were dug in the wrong place the first time before we ever got out there? Whenever Mr. Ellyson told you this, it doesn't make any difference. They were already wrong.

Mr. Karsky asked once again, do you think Mr. Ellyson would approve a footing that he knew was in the wrong spot?

Mayor Shelton stated Mr. Ellyson's job is to approve the way the hole is dug – if it is right and if it is dry enough to have concrete in it, not where it is placed.

Mr. Karsky stated so how can he tell me that it needs to be moved then? Mayor Shelton responded he saved you a hell of a lot of trouble, because if that building was built and somebody came along and challenged it and it was in the wrong place, you would have to move it.

Administrator Johnson asked Mr. Karsky to tell him where the City caused him loss. The footings were dug wrong before we ever got there. So, how did the City cause you loss? Mr. Karsky replied he had to move those footings after he had approved them. Administrator Johnson replied, "You're serious aren't you?" Mr. Karsky stated you know what -- there is a history with this though. This isn't the first time. Administrator Johnson told Mr. Karsky that we are talking about this claim, and Mr. Karsky stated exactly.

Administrator Johnson stated "Let me run through this one more time." Mr. Karsky stated "You don't have to – I know where this is going." Administrator Johnson stated your contractor dug them in the wrong place, and Mr. Karsky stated he followed the site plan.

Mayor Shelton thought it was time for the Council to have something to say.

Councilmember Ley asked if the building permit was a legal document. The answer was yes. She stated so if George signed it and then came back. Administrator Johnson stated he didn't come back, that he signed the permit on the spot. Mr. Karsky stated he left his property, and Administrator Johnson stated to walk to his pickup.

Councilmember Ley stated if he signed it, then they can go to the next step. Mayor Shelton stated he signed the fact that the footings were dug correctly, not placed correctly. Councilmember Sturm stated there is nothing on that permit that talks about where they need to go or whether they are in the right spot.

Attorney Pieper stated maybe distances of where they go, but that isn't what Mr. Ellyson is inspecting for as far as setback. Councilmember Sturm stated but on our building permit, there is nothing on there that says if it's in a residential area it has to be so many feet.

Mayor Shelton stated the site plan that was approved indicated that. Mr. Lindner is very well aware that he has to find the pins.

Councilmember Sturm stated so Mr. Ellyson doesn't have to sign off on a distance. Mayor Shelton stated that is correct, he does not.

Councilmember Chamberlain stated he already did when he approved the site plan.

Councilmember Buryanek stated when he approves a site plan, he is approving the setbacks, and they are supposed to be built by the setbacks.

Councilmember Sturm stated and Mr. Ellyson had nothing to do with saying this is where the foundation should be dug. The foundation is dug. Nobody asked him to come out and see that it was laid out properly. Councilmember Sturm wanted to know why Mr. Ellyson was not here to answer questions.

Administrator Johnson stated he told Mr. Ellyson not to come tonight, as did Attorney Pieper. Johnson stated the reason is because it is his job to see that this stuff gets done right. It is clear to him that we approved the site plan, and the contractor's job

is to measure, find the lot lines, measure in, and then dig the footings. I see what Mr. Karsky is talking about. He is saying Mr. Ellyson initialed on the building permit that the footings were okay, and at some point while they were still at the same visit, George got to looking at where it was from the alley, and so, they checked it out. Then he wrote on the building permit at the same visit not to pour until they check the setbacks because he thought they were wrong. It is written on the permit. He initialed on there.

Councilmember Chamberlain stated Mr. Ellyson did not find any errors with the footings.

Administrator Johnson stated on the permit is written “verify setbacks before you pour the footings.” He did not have to do that. He could have let them pour the footings and then he could have come out and said that they poured those too close. You have to chop all of those footings up and move the building over. But he didn’t. He did it at the same visit and the same time. I have told Mr. Ellyson not to get his metal finder out and find corner pins because that is not his job. It’s the contractor’s job to find the lot lines and lay out setbacks from those corner lines. That is what they do. That is what all contractors do.

Councilmember Ley asked why is it ever a problem then if it is not George’s job to find those pins. If Mr. Lindner would have gone ahead and built that garage and done all that, then everything is okay, isn’t it, because who checks that if George doesn’t check that. Administrator Johnson responded if they were to sell the property later, and it was determined that the building is out of zoning compliance, that could cost him money.

Warren Elmore of EMC is the guy Mr. Karsky talked to. Mr. Elmore told Administrator Johnson on the phone that it is clear that the City has no loss here because

it is not the City's job to lay these out. Administrator Johnson then asked Mr. Elmore if he was going to put that in the letter. Mr. Elmore responded no, that it is not his job to determine fault. However, he would put this statement in there – You may want to contact your contractor regarding a resolution of your loss. He told him that is the most he can say. Irregardless of what he said, the damage was done when the contractor laid the footings out wrong. That is his job to find the lot line and lay out the building lines. Mr. Ellyson told Mr. Lindner as soon as he saw it.

Councilmember Frevert stated when he came to talk to Administrator Johnson about this originally, that Administrator Johnson said he had to talk to Mr. Ellyson and find out what went on. He would take it if he approves the footings that they were good to go. Have we changed our policy on this? Administrator Johnson responded no. Frevert stated they are not good if the placement is wrong.

Councilmember Chamberlain stated he is not there to inspect the placement of the footings.

Administrator Johnson stated we are now having the contractors demonstrate that they have found the lot lines so we can check that on site. On that day, Mr. Ellyson did not leave and come back and say at a different say time that the footings aren't in the right place. This claim is about did the City of Wayne do something that caused harm and loss to the property owner. The property owner has loss and harm because the contractor, before we ever got to the site, laid the footings out wrong and dug them in the wrong spot. No matter what you say, that damage was already done before Mr. Ellyson got there, and even though he wrote two different things at the same time on the building permit, he did cover what had to be done. He told them on the spot that these aren't in

the right place, and you had better check. He helped them out. He could have walked away and said I hope they figure this out, but he didn't. He told them.

Councilmember Lutt made a motion and seconded by Councilmember Buryanek to deny the claim of Jason Karsky on the code enforcement issue in the amount of \$985.00.

Councilmember Buryanek wanted to respond to the comment about the contractor being responsible for locating the pins on the property lines and Mr. Ellyson just inspecting the footings. Mr. Ellyson inspects the footings and then at some point during that site visit, he does look at setbacks. That is just part of the process. When you go to evaluate something, you look around. He does that with students all the time. They come in with their drawings and ask does this look good. And he says yea, it looks pretty good and then he starts looking at it. It is just something that happens during the process of evaluating anything. He does and should be conscience of the setbacks when he goes out and visits.

Councilmember Ley stated but apparently they thought they had the green light to go ahead and pour their concrete and do rebar. Administrator Johnson stated they only had the green light for about ten minutes. Councilmember Ley asked Mr. Lindner if Mr. Ellyson was only gone ten minutes. Administrator Johnson stated he wasn't even gone; he just went to his pickup.

Mr. Lindner stated they measured everything from the front lot lines and measured back. This was according to the site plan. That is where it was established from – those points. It wasn't established from any other reference points. They measured from specific points.

Mayor Shelton asked how they determined the front lot line. Mr. Lindner stated Mr. Karsky did that. They had the location of the front corner pin. They had the front pin. That is where the lines were located from. They didn't establish a point at random.

Mayor Shelton stated that would be where a surveyor would come in handy because he would find all of the lines and find out that the property depth was probably not correct. Mr. Lindner stated but you had said you only need to find one pin. They found one pin in the front. He is just telling them what happened. He was not placing blame or saying anything. He was just saying the sequence of events that happened while he was there. They located it and measured it out. Mr. Karsky drew up the site plan for it, and everything was approved. They went by the site plan because the site plan was approved by the City. If they would have deviated from the site plan, he could see that it would have been his fault because he went by where they were told to put it – from the points they found.

Administrator Johnson asked if there was setback on the site plan from the alley. Mr. Lindner stated there is a 5' setback from the alley. They found this point and that is where they measured from. Those are the points they went by. They trenched the footings. Mr. Ellyson came and inspected the footings. He said everything looks fine. As he was walking away, he looked down the alley and did a line of site. He said I think we might be a little close. I told him we went by the site plan. That is what happened. He did not leave the site.

Administrator Johnson stated so while he was there, he was solving this problem. Mr. Linder stated they did what they were told by the site plan. That is what they followed. They went by a pin across the alley. It was not a pin on Jason's property. It

was the adjacent property pin. He did not dispute the pin. This happened at the same inspection. He could not give Administrator Johnson a time frame. Mr. Linder told Mr. Ellyson that they went by the site plan, this is what you approved, and these are the setbacks they went by, and he told them they were going to have to change it. He got in his truck and left. That was it. The permit that Mr. Ellyson wrote on was posted on the building. Mr. Lindner stated if he would have deviated from the site plan that was approved, he could see that it would be his fault.

Administrator Johnson asked if he found the back lot line. Mr. Lindner stated there was not a pin there. They looked and they couldn't find Mr. Karsky's pin. The only pin they (George and Lindner) found was on the lot across the alley. Then they (Lindner's crew and Mr. Karsky) tried to find Jason's pin on their own, and they could not find it. Mr. Lindner stated it was not his place to dispute it, because he didn't approve the site plan. He had nothing to do with the site plan. He is just saying what happened.

Administrator Johnson stated site plans are site plans. Mr. Lindner responded he was just saying they went by the site plan and went by the pins they found. Johnson stated the code says no matter how big the lot is, you build five feet away from the alley. Mr. Lindner stated they measured everything from the front. That is how they determined that point. Administrator Johnson stated so you based your measurements from the front lot line. Mr. Lindner stated because of the depth of the lot and those lines accordingly, that is how they determined where it was to be set.

Councilmember Sturm asked if there was a difference between where Mr. Ellyson was measuring from and where they were measuring from. Attorney Pieper asked if a

surveyor would have brought to light that there were some potential distance problems. Mr. Lindner stated he did not know. They saw the pin. They measured from that pin and that is how they determined where the location should be. Attorney Pieper asked if surveyors locate the pins. Mr. Lindner stated if the pins are there, yes. A lot of times if the pins aren't there, then they will measure from the front pin and measure to that point in order to create a line. That is what they did. They came from the front point. They measured back to create a line. They only had to find one pin because they were only working on the east/west access of the property. They had nothing to do with the north/south access, so they did not have to measure going back from it because they had to stay in line of site with the building. Attorney Pieper asked if they get paid surveyor fees. Mr. Lindner stated he was told where it went, and that is what they went by. They went by the site plan and where the setbacks were supposedly set.

Administrator Johnson stated there is an assumption when you measure from the front. Mr. Lindner responded there is an assumption when you measure from anything.

Mayor Shelton stated the motion, and the result of roll call being all Yeas, with the exception of Councilmembers Frevert and Ley who voted Nay, the Mayor declared the motion carried.

Kent Franzen, Past President of Wayne Industries, updated the Council on the bids received on the "Opportunity Building" and the status of the project. Medallion of Norfolk received the bid at \$15 sq. ft.

Kent Franzen also updated the Council on the LB840 Sales Tax effort.

Councilmember Ley made a motion and seconded by Councilmember Fuelberth to enter into executive session to discuss the matter involving the litigation filed against

the City of Wayne on the vacating of the Spangler Drive Right-of-Way, (litigation) and to allow Lowell Johnson, City Administrator, Betty McGuire, City Clerk, Garry Poutre, Supt. of Public Works and Utilities, Jim Kube, Attorney, and Mike Pieper, Attorney, to be in attendance. Mayor Shelton stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried, and executive session began at 6:45 p.m.

Mayor Shelton again stated that the matter to be discussed in execution session relates to the litigation filed against the City of Wayne on the vacating of the Spangler Drive Right-of-Way.

Councilmember Sturm made a motion and seconded by Councilmember Alexander to resume open session. Mayor Shelton stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried, and open session resumed at 6:59 p.m.

Councilmember Sturm made a motion and seconded by Councilmember Lutt approving the request of the Wayne Volunteer Fire Department to submit a grant application to FEMA for replacement of bunker gear and cleansing and disinfecting washing machine for dirt, chemical and pathogen cleanup with the local match being \$3,000.00. Mayor Shelton stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Garry Poutre, Supt. of Public Works and Utilities, was present to review the bids received on the Softball Field Lighting Project. Bids were received on steel poles (remote ballast construction) from four companies. Council previously made a decision to seek bids on one, two or three fields just to see if there was a significant savings in doing more than one field. The bids received were quite good, when you consider that

last year, we were talking about a single Musco field installed was somewhere around \$110,000. The Ardent bid is a concrete pole and not a steel pole. The concrete pole has a lifetime warranty.

Mr. Poutre contacted Ardent Lighting (low bidder) references, which included the cities of Fremont, Kearney, and Wahoo, and the Millard Athletic Association. They did not have enough good things to say about Ardent Lighting. They were very pleased with them. In Millard, they did not even go to bid the last time they did a field. They just called Ardent. The contractor has been contacted and advised that the City may choose to negotiate on some things for the project, and he was open to that. Last year (fall) we had a bid from Schmader Electric to light a field on wood poles for \$65,000. They said to use steel poles would be another \$19,000. We are significantly under that amount with these bids with a steel pole.

Recommendation is to accept the low bid of Ardent Lighting. To do one field was \$73,209; two fields was \$126,289.00; and three fields was \$188,498.00. This is a Council decision.

Councilmember Sturm asked if two fields could be done this year even though there is only \$65,000 in this year's budget. Administrator Johnson stated that the cost of the second field could be allocated in next year's budget.

Mr. Poutre stated the contractors were asked for bids to install the lights in May and then October. Nobody bid an October date.

Councilmember Buryanek thought there might be concerns with one set of lights with going slightly over the budget, but he was in favor of spreading the costs of lighting

the two fields over two years. We also saved money on the installation of the water line which could be used towards this.

Administrator Johnson stated if we pay for this out of the General Fund and cash flow it to the Park Fund, we will save \$4,700 in sales tax on the first field, and probably \$3,000 on the second field. We can then reimburse that from the Electric Fund rather than taking the amount directly out of the Electric Fund because that is considered taxable property. If you want to save \$7,000 and do two fields, that is a cheap way to fundraise. This can be done administratively.

Councilmember Lutt asked when you are talking about two fields, are you talking about two fields plus the one that is down there, or are the lights being taken off that one and doing two fields with the new lighting. He had a hard time believing that we need three lit fields to attract and keep softball tournaments, whether they be district, state, etc. If we get three tournaments a year for a total of nine days, the lights are going to be on probably two hours a day. We are spending a lot of money for about 20 hours of lights to get tournaments here in town, while we are still strapped without being able to buy park equipment for parks that can be used by people who may not be associated with ball. He had a hard time spending money on lights when park equipment is needed. There has been a lot of money put into the concession stand. It looks very nice and it will be a really nice place to play. He thought it was going overboard on the basis that we might get tournaments if we have lights. He would be in favor of approving one field.

Mayor Shelton noted that the money saved by Benscoter helping us with the water line was supposed to go towards the building.

Councilmember Lutt introduced Resolution 2008-25, and moved for its approval with the bid being awarded to Ardent Lighting for one field; Councilmember Ley seconded.

RESOLUTION NO. 2008-25

A RESOLUTION ACCEPTING BID AND AWARDED CONTRACT ON THE SOFTBALL FIELD LIGHTING PROJECT FOR THE CITY OF WAYNE, NEBRASKA, TO ARDENT LIGHTING OF KNOXVILLE, IOWA (ONE FIELD - \$73,209.00).

Mayor Shelton stated the motion, and the result of roll call being all Yeas, with the exception of Councilmembers Sturm and Alexander who voted nay, the Mayor declared the motion carried.

Administrator Johnson stated the following Ordinance is being amended to reflect that the fees are set by Council and on file with the City Clerk's Office. By doing this, the ordinance does not have to be amended and published every time fees are changed.

Councilmember Lutt introduced Ordinance 2008-5, and moved for approval thereof; Councilmember Sturm seconded.

ORDINANCE NO. 2008-5

AN ORDINANCE AMENDING CHAPTER 18, ARTICLE I, SECTION 18-2 DEMOLITION OF BUILDINGS; REGULATION OF THE WAYNE MUNICIPAL CODE; TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES OR SECTIONS; AND TO PROVIDE FOR AN EFFECTIVE DATE.

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

Councilmember Sturm made a motion and Councilmember Ley seconded to suspend the statutory rules requiring ordinances to be read by title on three different days.

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

Councilmember Buryanek made a motion and Councilmember Chamberlain seconded to move for final approval of Ordinance No. 2008-5. Mayor Shelton stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Administrator Johnson reviewed the draft “Energy Policy Resolution.” This Resolution will put into words what we are doing staff wise. We have a group of department heads and some other employees that meet occasionally to come up with ways to cut our energy costs (ventilation, insulation, sealing things up, not idling vehicles, etc.). If there is an idea that comes up that doesn’t have a payback period of less than 10 years, then they are probably not going to consider it. This Resolution basically puts into words what they are trying to do. This is for review only this evening. The same will be brought back to Council at the next meeting for consideration.

Administrator Johnson presented a proposed Subdivision Agreement for the Western Ridge Subdivision. This is based off of the three Vintage Hills Agreements that have been done in the past. There is a difference between a Subdivision Agreement and covenants. Covenants are between the developer and the people who buy the lots and build the houses. No one enforces those except the attorney representing the association or the neighbors. What we are doing here is requiring two large shade trees on each lot perpetually maintained. In addition, there will be a detention structure which will control and meter out through a 30” culvert the storm water runoff from 60 acres during a 50-year frequency rainfall event. This assures that whatever we do up there will release less

water into the road ditch than is currently being released now, which would be an improvement. This will go to the Planning Commission in May for their consideration.

Administrator Johnson gave a report on the “Pumping Station” cost estimates for the western area of Wayne that was prepared by Olsson Associates. Maps showing the south and north locations were in the packet. The cost estimate for Site #1 (south site) is \$217,580.00. The cost estimate for Site #2 (north site) is \$293,986.00. Site #2 includes the costs for constructing a water main that will be required for proposed development. Northeast Nebraska Public Power District is getting ready to build their building, and they are going to make sure that we are making our commitment on this. It was noted that time is not that critical to warrant “Pre-packaged Pump Stations” which will probably decrease the cost of the project a little bit. \$100,000 was budgeted for the project. Johnson stated an alternative is to put a booster station in where the service goes into Northeast or inside the building. Northeast, right now, is unable to irrigate their lawn or use the water system in their shop like they would like to. Right now, we are metering a fire hydrant for them so they can irrigate. This was for information purposes only.

Councilmember Sturm made a motion and seconded by Councilmember Ley approving the submittal of Form 73A on the 1<sup>st</sup> Street and 10<sup>th</sup> Street Projects. Mayor Shelton stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Administrator Johnson stated that the next agenda item will adjust or reallocate some of the approved expenditures between lines of the already approved Senior Center Budget as recommended by the Area Agency on Aging. The total expenditures do not change.

Councilmember Ley made a motion and seconded by Councilmember Sturm approving the request of the Wayne Senior Center to revise their FY2008 Budget to reallocate \$900 from “Personnel Costs” to “Supplies.” Mayor Shelton stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Administrator Johnson discussed the budget process/concept for 2008-2009 fiscal year. Mayor Shelton stated this is the Council’s opportunity to be hands on involved in the budget process.

Councilmember Sturm preferred to meet on Tuesdays or get the schedule out a few months in advance so they can all rearrange their schedule.

Mayor Shelton stated since there is a Committee-of-the-Whole meeting scheduled for April 15<sup>th</sup> that may be the time to start this process.

Mayor Shelton requested Council consideration to appointing Jean Lutt on the Housing Authority (replace Bonnie Stanley).

Councilmember Fuelberth made a motion and seconded by Councilmember Sturm approving the appointment of Jean Lutt to the Housing Authority. Mayor Shelton stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Mayor Shelton requested Council consideration to appointing Lee Brogie to the Planning Commission (replace Mark Ahmann).

Councilmember Sturm made a motion and seconded by Councilmember Ley approving the appointment of Lee Brogie to the Planning Commission. Mayor Shelton stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Administrator Johnson reported on the fact-finding trip to Roselle, Illinois, for the Wastewater Treatment Plant Project.

Nancy Braden, City Treasurer, gave a report on the Home Town Competitiveness Conference she attended.

Councilmember Buryanek made a motion and seconded by Councilmember Ley to adjourn the meeting. Mayor Shelton stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried and the meeting adjourned at 8:10 p.m.