

**MINUTES  
CITY COUNCIL MEETING  
September 16, 2008**

The Wayne City Council met in regular session at City Hall on Tuesday, September 16, 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, Don Buryanek, Dale Alexander, Doug Sturm, Darrel Fuelberth, and Ken Chamberlain; City Attorney Mike Pieper; City Administrator Lowell Johnson; and City Clerk Betty McGuire. Absent: Councilmember Kaki Ley.

Notice of the convening meeting was given in advance by advertising in the Wayne Herald on September 4, 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 Sturm made a motion and seconded by Councilmember Fuelberth, whereas the Clerk has prepared copies of the Minutes of the meeting of September 2, 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:** AMERITAS, RE, 2041.10; BANK FIRST, FE, 225.00; BARONE SECURITY SYSTEMS, SE, 180.00; BROWN SUPPLY, SU, 2065.62; CITY OF WAYNE, RE, 425.00; CITY OF WAYNE, RE, 1500.00; CITY OF WAYNE, RE, 33.75; CITY OF WAYNE, RE, 299.00; CITY OF WAYNE, RE, 3032.38; CITY OF WAYNE, RE, 1500.00; CITY OF WAYNE, PY, 53303.92; CITY OF WAYNE, RE, 185.54; CITY OF WAYNE, RE, 309.43; CITY OF WAYNE, RE, 108.00; CITY OF WAYNE, RE, 50.00; CDA, RE, 14631.00; CONNECTING POINT, SE, 17.90; DEMCO, SU, 146.42; ECHO GROUP, SU, 677.52; ENGINEERED CONTROLS, RE, 870.50; GERHOLD

CONCRETE, SU, 988.00; ICMA, RE, 5418.11; INGRAM BOOK COMPANY, SU, 412.71; IRS, TX, 17735.28; JEO CONSULTING GROUP, SE, 1700.00; KIRKHAM MICHAEL, SE, 5440.00; LAGE AUCTION, SU, 13500.00; MIDWEST TAPE, SU, 244.93; NE DEPT OF ENVIRONMENTAL, FE, 500.00; NE DEPT OF REVENUE, TX, 2412.15; NE LIBRARY COMMISSION, SE, 66.29; NE MOSQUITO, FE, 50.00; NE PUBLIC HEALTH, SE, 78.00; NE STATEWIDE ARBORETUM, FE, 95.00; PAPER 101, SU, 2400.00; QWEST, SE, 1318.14; SMEAL FIRE APPARATUS, SU, 170419.00; SQUARE D COMPANY, SE, 1993.00; STATE NATIONAL BANK, RE, 830.40; STRATTON & KUBE, SE, 610.60; TOM ADAMSON, SU, 8.00; TSRS, FE, 40.00; WAEDI, RE, 10000.00; WAYNE COUNTRY CLUB, RE, 33963.48; WAYNE MONUMENT WORKS, SU, 2000.00; WAYNE STATE COLLEGE, SE, 200.00; WAPA, SE, 23861.80; AMERICAN LIBRARY ASSOC, SU, 59.40; BAKER & TAYLOR BOOKS, SU, 1246.83; BENSCOTER PLUMBING, SE, 340.00; BENSCOTER PLUMBING, SE, 3510.00; BOMGAARS, SU, 767.23; CARHART LUMBER, SU, 1863.06; CDBG CERTIFICATION, FE, 105.00; CITY OF WAYNE, RE, 150.00; CITY OF WAYNE, RE, 143.65; COPPLE & ROCKEY, SE, 305.30; COPY WRITE PUBLISHING, SU, 318.95; COVENTRY HEALTH, SE, 20436.55; CULLIGAN WATER OF NE, SE, 41.00; DAKOTA BUSINESS SYSTEMS, SE, 73.16; DE LAGE LANDEN FINANCIAL, SE, 411.00; DEMCO, SU, 98.37; GILL HAULING, SE, 2244.20; GILL HAULING, SE, 3115.70; HARDING & SHULTZ, SE, 560.00; LP GILL, FE, 6861.40; MARSHALL CAVENDISH, SU, 146.90; MEDIA CONCEPTS, SE, 235.00; MIDWEST TAPE, SU, 302.91; NE CHAPTER OF IAEL, FE, 145.00; NE DEPT OF ENVIRONMENTAL, FE, 325.00; NE DEPT OF HEALTH, FE, 40.00; OLDS PIEPER & CONNOLLY, SE, 3924.00; PAC N SAVE, SU, 41.36; PROVIDENCE MEDICAL CENTER, SE, 4916.50; PURCHASE POWER, SU, 1000.00; QUALITY FOOD CENTER, SU, 17.90; RANDOM HOUSE, SU, 160.00; ROBERT WOEHLE & SONS, SE, 1028.00; SIOUX CITY JOURNAL, SU, 156.00; STATE NATIONAL BANK, RE, 395.79; STATE NATIONAL BANK, RE, 66780.00; TACO'S AND MORE, SU, 50.48; WAYNE COUNTY COURT, RE, 150.00; ZACH OIL COMPANY, SU, 5987.77; ZACH PROPANE SERVICE, RE, 277.13

Councilmember Fuelberth made a motion and seconded by Councilmember Sturm 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 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.

Mark Schults, General Manager of Northeast Nebraska Public Power District, was present, along with members of the board, to discuss the status of the Water Booster Pumping Station Project. This project comes about because of the low water pressure at their new facility on West Highway 35. Their new warehouse was built in May 2006. Discussions have taken place over the past few years about when and how the water pressure would be improved. They are now in the process of building another facility. They want Council to assure them that the water pressure is going to be adequate or the assurance that the plans that are underway are actually going to be concrete and steadfast. Their new building is anticipated to be completed by February 1, 2009.

Mayor Shelton advised the Board that the City, in lieu of just looking at the Power District's low water pressure, decided to look at the community as a whole and what might be needed for better water pressure throughout the community. The study that was done to address that is part of what has delayed the implementation of this booster pump project.

Garry Poutre, Supt. of Public Works & Utilities, addressed the matter. He stated the water pressure is not dangerously low at 38 pounds. The DHHS considers 20 pounds and above to be what is required for sanitation of the water lines. They do have low water pressure. When the City realized the problem, staff investigated the situation and found that the building was built with a 2" water line. In addition, when the plumber put it together, they put it together with an 1 1/2" meter. The building also had an extra backflow device that was not needed. We then purchased a meter on our own and got

that meter replaced so there was not any bottlenecking in the service. It helped some, but not a lot. Staff also found that the backflow device that was not needed had quite an accumulation of debris in the screen. Staff also put in a water tank with a pressure system to help in their shop area. We have been metering in the fire hydrant to help with the watering of the lawn, etc. Since that time, the City looked at the bigger picture and had a comprehensive water study done of the whole system, so we knew after that exactly what elevation we could and could not provide adequate water service at. We then had Olsson Associates go to work on designing the pumping station. They provided two options. The pumping station will cost between \$200,000 to \$300,000. The Engineer's agreement is in place, and the pumping station will be built by the water tower. The expectation is that the water booster pumping station will be completed in February of 2009. It was key to have this be part of the Western Ridge Subdivision because we didn't want to duplicate 8" water mains.

The NNPPD Board asked to be kept informed on a monthly basis.

Mayor Shelton declared the time was at hand for the public hearing on the Application of Sand Creek Post Beam, Inc., to the Nebraska Department of Economic Development for a grant under the CDBG Program to purchase real estate for their business expansion in Wayne.

Dave Simonsen of Wayne Area Economic Development was present to answer questions. In addition, Jeff Christensen of Northeast Nebraska Economic Development District was present to answer questions. They both have assisted Sand Creek Post and Beam, Inc., in submitting this application.

Mr. Simonsen stated the nine new employees that Sand Creek will employ will create an additional 8.9 jobs within the community of Wayne to support those nine jobs, totaling 17.9 jobs. From a labor standpoint, on an annual basis, those nine jobs will bring in \$324,000 in labor income, including benefits and adders. The total income added to the Wayne economy (which includes the additional jobs) would be \$558,000. In addition, the value of the annual output directly associated with the Sand Creek Post & Beam expansion project would be an estimated \$2,000,000 to the economy of Wayne. From that, when you bring in the total output effects into that, you are looking at \$2,900,000. From a retail sales standpoint, on an annual basis, the calculations show that the affects on our retail sales will be increased by \$167,000 over a one-year period. It goes to show that while nine jobs may not seem like a lot, it is a lot when you look at the total affect on the economy and the community. This is a locally started business that has had outstanding growth and has been a real community partner.

Sand Creek Post and Beam, Inc., is requesting \$205,000 of CDBG Funds, of which \$200,000 will be used for financial assistance to Sand Creek Post and Beam, Inc., to purchase real estate for their business expansion in Wayne which will create nine new jobs, and \$5,000 will be for general administration of the grant. Total Project costs are estimated to be \$956,300, with \$200,000 requested from CDBG Funds, \$100,000 from the Northeast Nebraska Economic Development District (NENEDD) Revolving Loan Fund, \$559,320 in the form of bank financing, and the remaining \$96,980 provided by the business. All of the CDBG funds will be used for activities that meet the CDBG national objective of benefiting low-to-moderate income persons. There will be no persons displaced as a result of the CDBG activities.

Lennard Dickinson and Jule Goeller were present to answer questions and provide background on their business.

There being no further discussion, Mayor Shelton closed the public hearing.

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

The following Resolution would authorize the Mayor to sign the application for CDBG Funds.

Councilmember Sturm introduced Resolution 2008-84, and moved for its approval; Councilmember Buryanek seconded.

#### RESOLUTION NO. 2008-84

A RESOLUTION AUTHORIZING CHIEF ELECTED OFFICIAL TO SIGN AN APPLICATION FOR CDBG FUNDS FOR FINANCIAL ASSISTANCE TO SAND CREEK POST AND BEAM, INC.

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

Mayor Shelton declared the time was at hand for the public hearing on the Redevelopment Plan for the Windom Ridge Redevelopment Project.

The Planning Commission reviewed the Redevelopment Plan and recommended approval thereof.

Lou Benscoter, the owner of the property at 814 Windom Street, is applying for \$74,760 in tax increment financing to help with the construction of a replacement 10-unit rental apartment complex on the vacant property.

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

There being no further comments, Mayor Shelton closed the public hearing.

Councilmember Sturm introduced Resolution 2008-85, and moved for its approval; Councilmember Fuelberth seconded.

RESOLUTION NO. 2008-85

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF WAYNE; APPROVING A REDEVELOPMENT PLAN AS CONTAINED IN A REDEVELOPMENT CONTRACT; MAKING FINDINGS WITH REGARD TO SUCH PLAN AND APPROVING OTHER ACTION THEREON.

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

Mayor Shelton declared the time was at hand for the public hearing to consider the Planning Commission's recommendation in regard to the Final Plat for the Western Ridge II Subdivision.

George Ellyson, Chief Inspector/Planner, stated the Planning Commission reviewed the Final Plat at their meeting held on September 8<sup>th</sup>, and recommended approval thereof subject to the following "Findings of Fact":

1. Staff recommendation;
2. It is consistent with the current and future land use maps; and
3. It is consistent with the Comprehensive Plan.

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

There being no further comments, Mayor Shelton closed the public hearing.

Councilmember Chamberlain introduced Resolution 2008-86, and moved for its approval; Councilmember Fuelberth seconded.

RESOLUTION NO. 2008-86

A RESOLUTION APPROVING FINAL PLAT OF WESTERN RIDGE II SUBDIVISION.

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

Mayor Shelton declared the time was at hand for the public hearing to consider the Planning Commission's recommendation regarding a rezoning request of Vicki Burmood to rezone property from A-1 Agricultural to A-2 Agricultural Residential.

George Ellyson, Chief Inspector/Planner, stated the Planning Commission held a public hearing on this matter and recommended approval thereof subject to the following "Findings of Fact":

1. It is not indifferent from its current use;
2. The area under consideration is large enough that buffering between the A-1 and A-2 districts can occur, as the A-2 is defined as Ag Residential, and it is consistent with the agricultural usage of the parent district, being A-1; and
3. Future land use for any surrounding areas in the A-1 district allow or is consistent with reduction of land area sizes consistent with A-2 zoning; this reduction allows for an agricultural trend wherein heavy agricultural users utilize larger tracts of land that ultimately creates smaller areas for hobby farm/agricultural uses, typical of A-2 districts and thus supporting the future growth of Wayne into these areas.

The rezoning request is critical in order for the Burmooods to sell the acreage. The intent is to split the 10.3 acres into two tracts/parcels.

Vicki Burmood was present to answer questions.

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

There being no further comments, Mayor Shelton closed the public hearing.

Councilmember Sturm introduced Ordinance 2008-15, and moved for approval thereof; Councilmember Alexander seconded.

#### ORDINANCE NO. 2008-15

AN ORDINANCE AMENDING THE ZONING MAP AND CHANGING THE ZONING OF AN AREA MORE PARTICULARLY DESCRIBED AS A TRACT

OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION NINETEEN, TOWNSHIP TWENTY-SIX NORTH, RANGE FOUR, EAST OF THE 6<sup>TH</sup> P.M., WAYNE COUNTY, NEBRASKA, FROM A-1 (AGRICULTURAL) TO A-2 (AGRICULTURAL RESIDENTIAL).

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

Councilmember Chamberlain made a motion and Councilmember Fuelberth 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 Sturm seconded to move for final approval of Ordinance No. 2008-15. Mayor Shelton stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Mayor Shelton declared the time was at hand for the public hearing to consider the Planning Commission's recommendation in regard to the Final Plat for Burmood Acres Subdivision.

George Ellyson, Chief Inspector/Planner stated the Planning Commission reviewed both the Preliminary and Final Plats at their meeting held on September 8<sup>th</sup>, and recommended approval thereof subject to the following "Findings of Fact":

1. Zoning Administrator's recommendation; and
2. The request is consistent with the Comprehensive Plan and the current and future land use maps.

Mr. Ellyson stated the subdivision requirements identify a park fee or a land dedication. Eight percent of the assessed value comes to \$7,186.80. The assessed value for 10.03 acres was \$89,835.

Councilmember Chamberlain asked if there was any reason not to waive this fee. He noted Sec. 74-295 of the Wayne Municipal Code which states that land and fees received under this article shall be used only for the purpose of providing parks, recreational facilities and open spaces to serve the approximate area of the subdivision. He asked if the City intended to build a park out there.

Councilmember Lutt stated the money received could be used to upgrade the Henry Victor Park which is within  $\frac{3}{4}$  of a mile of the land in question.

If the applicant was going to provide land in lieu of the fee, the park area would be .5 acres.

BJ Woehler opposed waiving the fee because it would set a precedent. He would like to see improvements made to Henry Victor Park.

Mr. Ellyson stated the assessed value based on the tax statement from the Assessor's office was \$89,835. Mr. Ellyson noted that the code states that the subdivider of land shall dedicate a portion of such land or pay a fee as set forth in this article for the purpose of providing a park... He did not see any option in the language to waive the fee.

Councilmember Chamberlain stated that Sec. 74-296 provides exceptions to lot split subdivisions, light and heavy industrial park subdivisions and all business commercial districts.

Mr. Ellyson noted that the house is valued at \$64,220, and the land is valued at \$25,300. The total land area of the subdivision is 10.03 acres.

Councilmember Buryanek stated when you look at the fee and the way it is calculated, it is on the land value, not the land and the house.

Mr. Ellyson responded that his opinion is that the fee is based on the area value of the subdivision. That is what he has charged park fees on in the past. The fee is based on the total value of the subdivision. The Karel Subdivision, which consisted of 2.5 acres, included the house and the land. The fee of around \$800 was based on the total sale price.

Mayor Shelton stated it would be her suggestion that the Council ask the Burmoods to dedicate the half acre of land.

Vicki Burmood asked that they not be required to dedicate the half acre of land. They want to move forward with this sale as quickly as possible. In regard to a fair value, she suggested using the price that she is selling the land for, which house and land together is \$77,350. She is selling the land for \$22,350.

Councilmember Alexander asked Ms. Burmood if she knew they had to pay the park fee or dedicate land. Ms. Burmood stated at the time they discussed this matter with Mr. Ellyson, they were not aware of that. He later sent documents concerning the park fee requirement. She would prefer not to have to pay anything, but in view of the time constraints, she would prefer to pay the park fee.

Councilmember Alexander stated if the code is the way Mr. Ellyson reads it and it is “shall”, then there is no choice. Mr. Ellyson is correct. There is no choice—it is one or the other. It is not a matter of whether or not it is fair; it is the way the code is written.

Councilmember Sturm was surprised that since they are located outside city limits, the City can force them to do that. Attorney Pieper stated it is because they are within the two-mile zoning jurisdiction.

Ms. Braden stated this has been in effect since 1974, and the City has collected numerous amounts of park fees from outside of the community.

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

There being no further comments, Mayor Shelton closed the public hearing.

Councilmember Fuelberth introduced Resolution 2008-87, and moved for its approval; Councilmember Buryanek seconded.

#### RESOLUTION NO. 2008-87

A RESOLUTION APPROVING PRELIMINARY AND FINAL PLAT OF BURMOOD ACRES SUBDIVISION.

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

Mayor Shelton declared the time was at hand for the public hearing to consider the Planning Commission's recommendation in regard to amending Section 90-710 (c) Interior of the Lot (e) to allow for a weed, grass, vegetation population evaluation grid.

Mayor Shelton stated this public hearing will not be taking place this evening, for the reason that this needs to go back to the Planning Commission for their review and recommendation to Council.

Administrator Johnson stated we are not changing anything in the zoning, so as of October 1<sup>st</sup>, the Police Department will be putting warning tickets on cars that are actually parked in areas where they can't be. Nothing changes – the zoning still requires a border around everything. For the enforcement side on Sec. 78-139, staff is going ahead with the Council's suggestion that instead of bordering the driveway, we measure from a center line out six feet either way and just simplify it that way. This does not

change anything on where people are parking in the parking area; it only changes how we designate the driveway. It also establishes a system for measuring how much grass and how much dirt violates too much grass on a parking area. We then went with if more than 20% of the squares show any vegetation, it is considered grass and dirt and not adequate aggregate. We will do this from the centerline of the driveway and in the parking lots, as bordered parking lots, until we change.

Attorney Pieper stated this will have an affect on enforcement. The ordinance is in effect as written right now, with anticipated review or potential changes by the Planning Commission. He did not know how vigorous enforcement was going to be as of October 1<sup>st</sup>, as it pertains to the zoning ordinance. What Administrator Johnson is referring to is Sec. 78-139 which is the prohibited parking area and grass or unimproved area. Attorney Pieper visited with Police Chief Webster, and they tried to simplify the ordinance which reads as follows:

**“It shall be unlawful for any person to park, or leave standing, any vehicle, upon any front yard area in front of the building line on any private residential property or City owned terrace property which has not been improved for parking purposes pursuant to the provisions of Section 90-710(c). “Front yard” means a yard extending across the front of a lot between side lot lines. There shall be a required front yard on each street side of a corner lot. Through lots shall require frontages on both streets.**

**Vehicle shall be defined as set forth in Section 60-676 of the Nebraska Revised Statutes.**

**Any vehicle found in violation of this section is subject to a fine in accordance with Section 78-122.”**

It has to be hard surfaced or aggregate parking. If it is terrace parking, it has to be either cement or asphalt. If it is non-terrace parking interior of the lot, then it has to be improved by those items that are currently in 90-710(c) and/or any changes that are made

in the future. The other change which the Council needs to consider is where the wording now states “any vehicle” as opposed to a “motor vehicle”. The word vehicle alone would include drawn trailers intended to haul persons or property on highways, which is why we have included the vehicle definition as set forth in Nebraska Revised Statutes. We are hopeful that this minimizes the definition we have to deal with and just leave it either improved and therefore allowed parking or not improved and therefore, prohibited. To determine improved, you need to reference 90-710(c). If it is terrace parking, it is going to have to either be concrete or asphalt. If it is interior parking, it has to be improved under one of those aggregates set forth in Sec. 90-710(c). If it is 50% grass and 50% dirt, then it is not improved. We are going to attempt to enforce the ordinance as vigorously as possible. If some changes are required, we may be pointing those out for consideration. Right now, we believe the ordinance to be enforceable.

Part of 710(c), without having it right in front of him or otherwise to digest, included evenly distributed aggregate of at least 2” deep. We will rely or attempt to enforce the parking prohibition.

Administrator Johnson stated this does not address borders along driveways.

Mayor Shelton stated that relates to the zoning portion of the code. We are just talking about Section 78.

Attorney Pieper stated the grid may be necessary for purposes of determining whether a driveway is improved sufficiently. But for a prohibited parking area, it should not be applied to the driveway surface area, and therefore, there should potentially be enough definition to enforce the prohibited parking ordinance.

Councilmember Chamberlain noted that the code states that interior of the lot, no weeds, grass or other vegetation shall be allowed within the defined area for parking or driveway surfaces. That is specific.

Administrator Johnson stated so on October 1<sup>st</sup>, the defined area is still all bordered. The Planning Commission does not meet until October 6<sup>th</sup>. If a car is parked on dirt or grass, that is a no brainer. The grey area is what we are trying to figure out here.

Councilmember Buryanek stated after the last Council meeting, we were trying to get the border requirement at least off the driveways. It sounds like part of the enforcement has to be held up until the Planning Commission has had a chance to look at the ordinance again.

Attorney Pieper stated the enforcement of the zoning code portion could be held up. This ordinance before you is strictly parking on unimproved areas.

Mayor Shelton stated this involves the Police Department only.

Administrator Johnson asked Attorney Pieper what enforcement will look like on a weedy aggregate interior of the lot. What do you want the Police Department to do on weedy aggregate with no borders? Attorney Pieper replied that if it is the driveway or appears to be the driveway, then we are not going to issue citations for prohibited parking. If it appears to be on bare ground, lawn or grass and not constituting a driveway surface, it appears it may be eligible for a warning.

Councilmember Lutt introduced Ordinance 2008-16, and moved for approval thereof; Councilmember Fuelberth seconded.

ORDINANCE NO. 2008-16

AN ORDINANCE AMENDING SECTION 78-139 OF THE WAYNE MUNICIPAL CODE REGARDING PROHIBITED PARKING; UNIMPROVED AREA; TO REPEAL CONFLICTING ORDINANCES AND SECTIONS; AND TO PROVIDE AN EFFECTIVE DATE.

Mayor Shelton stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Frevert who voted Nay, the Mayor declared the motion carried. The second reading will take place at the next meeting.

Mayor Shelton stated the following ordinance would remove the midnight to 5:00 a.m. parking restriction on the north side of Fairgrounds Avenue (along the Woehler Trailer Court Property). This is pursuant to a request made by Woehler Trailer Court LLC.

BJ Woehler, Asst. Manager of Woehler Trailer Court, was present. Pursuant to the new parking ordinance, they will be required to pave the terrace parking where their tenants park. There is parking on Fairgrounds Avenue except from midnight to 5:00 a.m. They are requesting Council to consider changing that designation to 24-hour parking. They are in a transition stage in the trailer court along with the City and the Comprehensive Plan. He does not want to have to incur the cost of the paving if he doesn't have to and if they make improvements to the court. There are ten lots along this side. There are five permanent trailers in the court. They have cleaned up the other five. There are two seasonal trailer/camper situations. They are only talking about cars for five trailers. This is a 37 foot wide street.

Mayor Shelton stated this does seem to be a request to benefit one individual when everybody else has been trying to comply. Others could have come to the Council and asked for 24-hour parking on the street so they didn't have to pave their terraces.

You do have aggregate that you could put on the inside of your property line in those empty lots for parking.

Councilmember Buryanek stated if they are truly looking at phasing that trailer court out and doing something that fits in with the Comprehensive Plan and we are down to five trailers, then that might be something we need to consider also, because if they are trying to divest themselves of those trailers and turn it into something else, maybe the money would be better spent on something else two years from now.

Councilmember Chamberlain opined he thought the overnight parking question should go on a city-wide ballot to let people decide whether or not they want overnight parking or not.

Mayor Shelton noted that a few years ago, the citizens of Wayne voted against overnight parking.

Councilmember Frevert stated with the width of this street and the traffic that is on it, he did not see a problem with this at all. It seemed like a reasonable request to him.

Councilmember Chamberlain disagreed. He would like to see a deadline on the request – two years for example.

Councilmember Sturm reminded the Council that we just got done talking to a woman and said we were not going to give her a break. We were adamant about making her pay the park fee. We have been adamant with everybody for as long as he has been on the Council about no more on-street parking. He would much rather see some other way of working with the Woehlers. If we open up that street for on-street parking, then it will be like that forever.

Councilmember Alexander stated if he had a 37 foot wide street in front of his house, he would ask that it be opened up for on-street parking.

Councilmember Alexander introduced Ordinance 2008-17, and moved for its approval; Councilmember Frevert seconded.

#### ORDINANCE NO. 2008-17

AN ORDINANCE TO AMEND SECTION 78-131 OF CHAPTER 78, ARTICLE III, OF THE WAYNE MUNICIPAL CODE RELATING TO PARKING; RESTRICTED PARKING 12:00 MIDNIGHT TO 5:00 A.M.; SOUTHEAST QUADRANT OF THE CITY; TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES OR SECTIONS; AND TO PROVIDE FOR AN EFFECTIVE DATE.

Brent Doring spoke against the approval of this overnight parking request. Safety reasons were his primary concern.

In response to Mr. Doring's concerns, Mr. Woehler stated that there is parking allowed on this street during the day. Approval of this would allow parking from midnight to 5:00 a.m.

Joel Hansen, Street Superintendent, stated he would assume this street was built this width because of the size and the number of pound vehicles and equipment going down to the elevator.

Mayor Shelton stated the motion, and the result of roll call being all Nays, with the exception of Councilmembers Alexander, Frevert and Buryanek who voted Yea, the Mayor declared the motion failed.

Administrator Johnson stated the following ordinance would prohibit parking on 14<sup>th</sup> Street as follows:

The north side of the center line of 14<sup>th</sup> Street between the east boundary of the Wayne State College Technology Building Lot on the quarter section line east to Claycomb Road; and

The south side of the center line of 14<sup>th</sup> Street from Providence Road east to Claycomb Road.

Councilmember Buryanek introduced Ordinance 2008-18, and moved for its approval; Councilmember Lutt seconded.

#### ORDINANCE NO. 2008-18

AN ORDINANCE TO AMEND SECTION 78-126 OF CHAPTER 78, ARTICLE III, OF THE WAYNE MUNICIPAL CODE RELATING TO PARKING; PROHIBITED PARKING; NORTHEAST QUADRANT OF THE CITY; TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES OR SECTIONS; AND TO PROVIDE FOR AN EFFECTIVE DATE.

Councilmember Buryanek suggested looking at putting in a stop sign at the intersection of Claycomb Road and 14<sup>th</sup> Street and bringing the same forward at the next meeting for Council consideration.

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 Alexander 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 Sturm made a motion and Councilmember Fuelberth seconded to move for final approval of Ordinance No. 2008-18. Mayor Shelton stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Administrator Johnson stated the following ordinance would prohibit parking on both sides of West 13<sup>th</sup> Street from Main to Lincoln Streets.

Councilmember Lutt introduced Ordinance 2008-19, and moved for its approval; Councilmember Fuelberth seconded.

ORDINANCE NO. 2008-19

AN ORDINANCE TO AMEND SECTION 78-128 OF CHAPTER 78, ARTICLE III, OF THE WAYNE MUNICIPAL CODE RELATING TO PARKING; PROHIBITED PARKING; NORTHWEST QUADRANT OF THE CITY; 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 Alexander made a motion and Councilmember Lutt 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, with the exception of Councilmember Sturm who voted Nay, the Mayor declared the motion carried.

Councilmember Alexander made a motion and Councilmember Fuelberth seconded to move for final approval of Ordinance No. 2008-19. Mayor Shelton stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Sturm who voted Nay, the Mayor declared the motion carried.

Leonard Gill, representing Gill Hauling, was present to discuss and inform the Council of the increase in the transportation charges. The disposal fee of \$26/ton will remain the same. They want to combine the hauling contract and the disposal contract into one contract. The hauling fee will be increased from \$8.00 to \$10.00.

Mr. Gill will be in contact with Administrator Johnson to prepare a contract for Council approval.

Administrator Johnson stated the following ordinance would allow ATV's to be used on city streets. This coincides with discussions on how to decrease the City's fuel costs. The Legislature, last year, has allowed cities to authorize these on city streets with certain conditions that are outlined in the ordinance. Police Chief Webster has concerns regarding the ordinance.

Brent Doring and Westin \_\_\_\_\_ expressed opposition to the passage of the ordinance.

BJ Woehler supported the passage of the ordinance and suggested the City visit with the College about the matter.

Administrator Johnson stated this ordinance could be written to pertain to city employees only or make the ATV's electric only.

Councilmember Alexander asked if the fleet would be reduced if we purchase one of these vehicles. If not, we are just adding more to the budget.

Councilmember Buryanek stated he thought these vehicles would be better to use on the trail and in the parks rather than driving the pickups.

Councilmember Lutt was not ready to use these types of vehicles for city use because they are very seasonal. Mayor Shelton disagreed.

After further discussion, a motion was made by Councilmember Buryanek and seconded by Councilmember Alexander to table action on Ordinance 2008-20 until the next meeting. Mayor Shelton stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Councilmember Sturm introduced Ordinance 2008-13, and moved for approval of the second reading thereof; Councilmember Chamberlain seconded.

ORDINANCE NO. 2008-13

AN ORDINANCE AMENDING THE ZONING MAP AND CHANGING THE ZONING OF AN AREA MORE PARTICULARLY DESCRIBED AS THAT PART OF VACATED DEARBORN STREET AND RIGHT-OF-WAY FROM B-3 (NEIGHBORHOOD COMMERCIAL DISTRICT) TO B-1 (HIGHWAY COMMERCIAL DISTRICT).

Mayor Shelton stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried. The third and final reading will take place at the next meeting.

Administrator Johnson stated that the following Resolution would incorporate all of the zoning changes that have already been approved by the Planning Commission and Council since the last official zoning map was approved in March of 2005.

Councilmember Sturm introduced Resolution 2008-81, and moved for its approval; Councilmember Frevert seconded.

RESOLUTION NO. 2008-81

A RESOLUTION ADOPTING NEW OFFICIAL ZONING MAP.

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

Administrator Johnson stated the following Resolution would approve the agreement with Aquarius for the pilot plant for the wastewater system. The Engineers and staff have met with two firms that produce these systems. However, none are located in the United States. There are existing systems, but they are small and they are being used for private use. Both JEO and the Dept. of Environmental Quality believe they understand or are learning to understand the science of these systems, which is to extend the bacteriological process of waste breakdown all the way to the end where it eats up the sludge also.

These two agreements are only dealing with the two biological systems. JEO has said when a system is this new, if you don't run a pilot plant, you are not going to get approval from NDEQ and you probably are not going to get them (the engineer) to sign off on it until they know how it will react with the system here and in a winter time setting. We have asked both of them to give us a quote for a pilot plant. Aquarius wants \$10,000 for the first month and \$5,000 per month thereafter. Bioshaft will not charge us to run a pilot plant, but we would have to install it. His concern is that we need to run the pilot plant in the same environment as the scaled up system would be run in. We will have serious costs in setting that system in the ground. The Mayor has suggested bringing both of the systems in and letting them work against each other. The energy costs with these systems are quite a bit lower, and we would never have to deal with the sludge. It will probably cost around \$20,000 to install the Bioshaft system.

Mayor Shelton stated we not only have to be concerned about the cost right now of putting the system in, but we also have to be concerned with what it is going to cost in the future. Anything that is going to continue to produce sludge, we are eventually going to have problems with (e.g. how we get rid of it, etc.). In addition, energy costs will continue to rise.

After further discussion, a motion was made by Councilmember Lutt and seconded by Councilmember Chamberlain to not take action on the Agreement or adopt Resolution 2008-88 with Aquarius at this time and have the Wastewater Committee get together and make negotiations with the two companies before we decide on accepting any pilot plant agreement. Mayor Shelton stated the motion, and the result of roll call being all Yeas, Mayor Shelton declared the motion carried.

Administrator Johnson stated the following Resolution would direct the City Clerk to certify unpaid razing costs to become a lien on the property described as 509 Nebraska Street.

Councilmember Sturm introduced Resolution 2008-89, and moved for its approval; Councilmember Chamberlain seconded.

RESOLUTION NO. 2008-89

A RESOLUTION DIRECTING CITY CLERK TO CERTIFY RAZING COSTS TO THE WAYNE COUNTY CLERK AND THE WAYNE COUNTY TREASURER TO BECOME A LIEN ON LOT 4 AND ADJACENT 8 FEET OF THE VACATED ALLEY, BLOCK 7, NORTH ADDITION TO WAYNE, WAYNE COUNTY, NEBRASKA, MORE COMMONLY DESCRIBED AS 509 NEBRASKA STREET, WAYNE, NEBRASKA.

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

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

Chair Don Buryanek called the meeting of the Community Development Agency to order. Those in attendance: Members Brian Frevert, Verdel Lutt, Dale Alexander, Lois Shelton, Doug Sturm, Darrel Fuelberth, and Ken Chamberlain; City Attorney Mike Pieper; City Administrator Lowell Johnson; and City Clerk Betty McGuire. Absent: Member Kaki Ley.

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

Member Shelton left the meeting.

The next item on the CDA agenda was to approve the minutes of the September 2, 2008, meeting.

Member Fuelberth made a motion and seconded by Member Alexander approving the minutes of the September 2, 2008, meeting. Chair Buryanek 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 the CDA Claims of \$7,331.00 to Olds, Pieper & Connolly, and \$3,186.00 to Media Concepts.

Member Alexander made a motion and seconded by Member Chamberlain approving the CDA Claims of \$7,331.00 to Olds, Pieper & Connolly and \$3,186.00 to Media Concepts. Chair Buryanek stated the motion, and the result of roll call being all Yeas, the Chair declared the motion carried.

Member Shelton returned to the meeting.

The next agenda item was the Change Order from Kirkham Michael on the Western Ridge II Project for site work by Schmitt Construction in the sum of \$8,500.

Administrator Johnson stated there were three items on the Change Order:

- Additional fill in cul-de-sac for \$2,880;
- Removal and disposal of waste from project site - \$1,140; and
- Remobilization and temporary access expense - \$8,500.

Administrator Johnson recommended approval of the \$2,880 and \$1,140 costs. In regard to the remobilization and temporary access expense, there are some issues regarding the permit, whether we had access to the property or not, etc. In a three-week period, Kirkham Michael changed engineers and some things got left hanging. There was not adequate communication between Kirkham Michael and the contractor and

between the State and the local agencies of the Department of Roads. We had a pipe contractor and a dirt contractor waiting for someone to tell them they could work after they had been approved to work. There were two times when Schmitt Construction pulled off the job and came back. He is of the opinion that Kirkham Michael has a chunk of the blame, as does the City and the NDOR. However, the contractors should not have to foot this cost, so who do you make the claim to. We will never get money out of the DOR and Kirkham Michael is refusing to pay it. So our choices are to either sue them or pick up the tab ourselves. There are two numbers regarding this issue: one is \$4,500 which is for the temporary access Schmitt Construction had to go out and find on his own. Kirkham Michael told Schmitt they would find him temporary access from NDOR. We were pushing hard to get this project going, and it didn't move through their system. There was a lot of verbal communication going on between the City, the contractor, Kirkham Michael and NDOR. In the absence of any paper, Schmitt Construction contacted Kelby Herman and asked to buy access through his property, exchange for doing equivalent work or paying him cash which was \$4,500. Johnson was requesting Council to not approve the \$4,500 until he can get better documentation on it.

Chair Buryanek stated when Schmitt talked about it at the meeting, he said a lot of the expense on the access was to repair some of the lane they tore up when moving their equipment in and out. They were required to put the lane back in the same condition as it was before they used it to gain entrance to the property.

Member Lutt made a motion and seconded by Member Shelton to approve the Change Order as follows, as per Administrator Johnson's recommendation: \$2,880 for the additional fill in the cul-de-sac as directed by the CDA; \$1,140 for the removal and

disposal of waste from project site as directed by the CDA; and \$4,000 for the remobilization and temporary access expense. Chair Buryanek 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 action on the Contractor's Progress Estimate No. 3 (Final) for Schmitt Construction in the amount of \$56,033.04. Kirkham Michael has approved this final payment.

Member Shelton made a motion and seconded by Member Fuelberth approving Contractor's Progress Estimate No. 3 (Final) for Schmitt Construction in the amount of \$56,033.04. Chair Buryanek 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 action on CDA Resolution 2008-3 approving the Redevelopment Contract for Windom Ridge.

Councilmember Shelton introduced CDA Resolution 2008-3, and moved for its approval; Councilmember Fuelberth seconded.

#### CDA RESOLUTION NO. 2008-3

A RESOLUTION OF THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF WAYNE RECOMMENDING APPROVAL OF A REDEVELOPMENT CONTRACT.

Chair Buryanek stated the motion, and the result of roll call being all Yeas, the Chair declared the motion carried.

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

Discussion took place regarding the purchase of a Segway for the Police Department from the 2007-2008 Budget. This would save wear and tear on one of the cars being used at the College. We probably wouldn't reduce the fleet, but we would reduce a lot of mileage.

Councilmember Frevert stated at \$4/gallon for gas, you could buy 1,839 gallons of gas. To burn that much gas at 15 mpg, you could put on 27,500 miles on a car. If you reduce that down to \$3.50/gallon, you could buy 2,100 gallons of gas and you could put on 31,500 miles on a car. He thinks this vehicle is an accident waiting to happen. If we are not going to reduce the fleet, he can not see spending this money on a piece of equipment like this.

Councilmember Lutt questioned why the officer can't ride a bike around the campus. Again, this is seasonal.

Administrator Johnson stated this just gives you one option to not use gas.

Councilmember Chamberlain suggested an electric golf cart.

Councilmember Frevert stated when he visited with Police Chief Webster and brought the suggestion of scooters, he responded that you can't take a scooter into an elevator, but you can take a Segway in one.

Because no one was present from the Police Department to answer questions, action on the agenda item was postponed until the next meeting.

The next agenda item was to consider reserving funds from the 2007-2008 Budget for the purchase of a police car. Administrator Johnson stated after conferring with Councilmember Frevert, he thinks there are better ideas coming down the road than we are ready for as far as energy options, etc. If we don't reserve the money, it goes back

into the general fund and it is lost out of that budget. In this case, he would like to reserve the funds until one comes along, so we are not waiting two years before we purchase another police car.

Councilmember Lutt asked if we could reserve the funds in the Police Budget without having it dedicated to a police car. Johnson responded it could be reserved for capital purchases. \$30,000 is the number we are looking at.

Councilmember Buryanek made a motion and seconded by Councilmember Frevert to reserve funds from the 2007-2008 Police Department Budget for the purchase of capital items. Mayor Shelton stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Administrator Johnson stated there has been some interest by Brian Bowers and the City to extend the water main west along 7<sup>th</sup> Street to Pheasant Run Road. This would be a spring project. The cost would probably be around \$40/ft which includes engineering fees. The length would be around 600'.

Councilmember Sturm stated he has been conferring with Mr. Bowers and he does not think he is interested in this water main extension.

No action was taken on the matter.

Administrator Johnson stated the design specs are ready for the booster pumping station project. He is requesting Council action to authorize staff to bid out the project.

Councilmember Lutt made a motion and seconded by Councilmember Alexander authorizing staff to bid out the Booster Pumping Station Project. Mayor Shelton stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Administrator Johnson stated the CDA approved \$3,100 to the “Wayne Works” marketing campaign. There was interest in the Council contributing to this marketing campaign, so it is back on the agenda for Council discussion.

Dave Simonsen of Wayne Area Economic Development, Inc., was present requesting Council consideration to contributing \$5,000 to the marketing campaign.

Councilmember Buryanek made a motion and seconded by Councilmember Fuelberth approving a \$5,000 contribution to the “Wayne Works” marketing campaign. Mayor Shelton stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Gene Hansen, Superintendent of Electric Production, gave a presentation on the new incentive programs being offered by NPPD and the City.

There were no reports on meetings attended.

Councilmember Lutt made a motion and seconded by Councilmember Buryanek 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 8:37 p.m.