

**MINUTES
CITY COUNCIL MEETING
June 2, 2009**

The Wayne City Council met in regular session at City Hall on Tuesday, June 2, 2009, 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, Jon Haase, Dale Alexander, Doug Sturm, Kaki Ley and Kathy Berry; City Attorney Mike Pieper; City Administrator Lowell Johnson; and City Clerk Betty McGuire. Absent: Councilmember Ken Chamberlain.

Notice of the convening meeting was given in advance by advertising in the Wayne Herald on May 21, 2009, 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 Ley made a motion and seconded by Councilmember Frevert, whereas the Clerk has prepared copies of the Minutes of the meeting of May 19, 2009, 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: ALIGNMENT TECHNOLOGIES, SEC, 674.50; ALLTEL, SE, 489.24; AMERITAS, RE, 2009.30; AQUA-CHEM, SU, 399.85; ARNIE'S FORD-MERCURY, SE, 834.13; AS COMMUNICATIONS, SE, 448.00; ASA, FE, 1450.00; BANK FIRST, FE, 210.00; BARNES & NOBLE, SU, 11.99; BILL SCHNECK, RE, 281.68; BLACK HILLS ENERGY, SE, 205.51; CITY OF WAYNE, RE, 150.00; CITY OF WAYNE, RE, 427.98; CITY OF WAYNE, RE, 2002.30; CITY OF WAYNE, PY, 59867.80; CITY OF WAYNE, RE, 185.54; CITY OF WAYNE, RE, 2754.50; CITY OF WAYNE, RE, 27.51; CLASSY CLEANING LADIES, SE, 296.10; CLAUSSEN &

SONS IRRIGATION, SE, 203.60; DE LAGE LANDEN FINANCIAL, SE, 546.00; ECHO GROUP, SE, 2750.68; EGAN SUPPLY, SU, 86.67; ELECTRICAL ENGINEERING, SE, 240.08; FIRST SOURCE TITLE & ESCROW, SE, 50.00; FLETCHER, IRENE, RE, 500.00; FORT DEARBORN LIFE, SE, 103.20; FREDRICKSON OIL, SE, 23.04; FREMONT NATIONAL BANK, RE, 10798.75; GALE GROUP, SU, 167.82; GERHOLD CONCRETE, SU, 538.45; GRAYBAR ELECTRIC CO, SU, 2046.95; HAWKINS, SU, 1325.11; HD SUPPLY WATERWORKS, SU, 2131.92; HOLIDAY INN OF KEARNEY, SE, 271.80; HTM SALES, SU, 938.78; ICMA, RE, 5218.13; IRS, TX, 17749.49; JEFF ROBERTS, SU, 334.00; KELLY SUPPLY, SU, 78.08; KOENIG ENTERPRISES, RE, 825.00; L & L BUILDERS, RE, 1000.00; MIDWEST OFFICE AUTOMATION, SE, 79.31; NANCY JO POWERS, RE, 500.00; NE DEPT OF HEALTH, FE, 40.00; NE DEPT OF REVENUE, TX, 2541.12; NE PUBLIC HEALTH, SU, 1300.00; NORFOLK OFFICE EQUIPMENT, SE, 244.00; N.E. NE AMERICAN RED CROSS, RE, 59.24; NNPPD, SE, 1599.68; NORTHWEST ELECTRIC, SE, 1718.21; PAMIDA, SU, 190.92; QUILL, SU, 180.36; QWEST, SE, 435.83; QWEST, SE, 191.64; RAD, SU, 49.79; RICHARD CARMAN, RE, 500.00; RODNEY FOUTCH, RE, 500.00; STATE NATIONAL BANK, RE, 91017.50; STATE NATIONAL BANK, RE, 386.99; THOMPSON PUBLISHING GROUP, SE, 438.50; TONI HYTREK, SE, 735.00; UNITED STATES PLASTIC, SU, 227.52; UNITED WAY, RE, 30.98; VIAERO, SE, 71.88; WAKEFIELD BASEBALL, FE, 75.00; WAYNE AREA ECONOMIC DEVEL, RE, 375.00; WAYNE EAGLES, RE, 220.00; WAYNE STATE COLLEGE, RE, 3700.00; BILL KAUP, SU, 21.29; BLACK HILLS ENERGY, SE, 90.88; BOMGAARS, SU, 1282.63; BROWN SUPPLY, SU, 241.40; CARHART LUMBER COMPANY, SU, 605.10; CITY OF WAYNE, RE, 600.00; CITY OF WAYNE, RE, 50.00; CITY OF WAYNE, RE, 1409.73; CITY OF WAYNE, FE, 107.00; CITY OF WAYNE, RE, 55.00; CITY OF WAYNE, RE, 290.00; CITY OF WAYNE, RE, 69.06; CLASSY CLEANING LADIES, SE, 263.49; CONNEY SAFETY PRODUCTS, SU, 49.90; COPY WRITE, SE, 141.82; COUNTRY NURSERY, SU, 1000.00; DENNIS LIPP, RE, 484.30; DUTTON-LAINSON, SU, 6996.53; ELECTRICAL ENGINEERING, SU, 21.95; FLETCHER FARM SERVICE, SU, 93.00; FRITZ TEMME, RE, 50.00; GILL HAULING, SE, 2625.20; HAWKINS, SU, 677.69; HEIKES AUTOMOTIVE, SE, 47.93; JEO CONSULTING GROUP, SE, 10516.50; K & C GRAIN, SU, 741.68; KELLY SUPPLY COMPANY, SU, 624.95; L.G. EVERIST, SU, 172.13; LEAGUE OF NE, FE, 160.00; LP GILL, SE, 6479.72; MID-STATE ENGINEERING, SE, 185.00; MIDWEST SPECIAL SERVICES, SE, 179.69; NOTARY PUBLIC, FE, 87.50; NWEA, FE, 110.00; OFFICEMAX, SU, 23.17; PAC N SAVE, SU, 9.42; PIEPER, WIEBELHAUS & DAHL, SE, 1139.45; POSTMASTER, SU, 635.03; PUSH-PEDAL-PULL, RE, 1151.10; STADIUM SPORTING GOODS, SU, 379.00; STALP GRAVEL, SU, 781.16; STANLEY STEAMER, SE, 99.00; STATE NATIONAL BANK, RE, 483.07; STATE NATIONAL BANK, RE, 390.74; WAYNE AREA ECONOMIC DEVEL, RE, 6433.33; WEB SOLUTIONS OMAHA, SE, 275.00; WHITE DOG LAWN SERVICE, SE, 75.00

Councilmember Sturm made a motion and seconded by Councilmember Alexander 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.

Darin Greunke, Leader of the Sharp Shooters 4-H Club, was present requesting Council consideration to allowing them to operate a shooting gallery style air gun trailer at the Henoween and Chicken Show activities in July.

Councilmember Lutt made a motion and seconded by Councilmember Alexander approving the request made by Darin Greunke, Leader of the Sharp Shooters 4-H Club, to operate a shooting gallery style air gun trailer at the Henoween and Chicken Show activities in July. 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 hiring of Olsson Associates and also the plans and specifications for the "Public Utility Water Service District" for the water line going from the east side of the Larry Skokan property to the end of Highview Drive. The Ordinance following thereafter would create the district. This district is located outside of the city limits. If the City is going to construct and finance the project, then we must adhere to the only State Statute that allows us to do

that. The updated costs from Olsson Associates were distributed with the Council Packet -- \$117,300. However, there will be additional engineering costs added to this amount. Because stimulus funding will be used for the project, 25% of the amount will be forgivable. The remainder can be financed over 20 years at an interest rate of 3.5%. Because there is a timeline for the stimulus funding, recommendation was to waive the three readings on the ordinance. The stimulus funding is also available for the ¼ mile of transmission line that the City will be building from the well house to the east end of the Larry and Vicki Skokan property. Johnson stated the stimulus funding will not pay for the \$22,000 that has already been paid for engineering and legal costs to date on this project.

Administrator Johnson recommended adding an additional \$30,000 (estimated additional engineering and legal fees, etc.) to the \$117,000, thereby totaling \$147,000, which should then be inserted into the Resolution and Ordinance.

Phil Lorenzen, financial advisor with D.A. Davidson, stated that assessments on corner lots has been discussed at length with Bond Counsel. He gave an example regarding paving a street. Paving would be assessed on both sides of a corner lot because the property will benefit from that paving on the side yard as well as on the front yard. In terms of water, you do not gain any additional benefit from the side yard, so the determination is that the side abutting the area to be served should be assessed. When it comes time to levy the special assessments and the Board of Equalization hearing is taking place, a property that is affected by a side yard that is assessed an inordinate amount, as opposed to the frontage of other properties being assessed for that service of

water, then those points could be raised at that time. Nobody can assure how that may work out, but it cannot be resolved now.

Mark Klassen, acting president of the Muhs Acres Homeowners Association, wanted to clarify that even though the additional 400' or so of the two properties who have side yard frontage gets taken out of the total front footage, the cost of that extra 400' gets assessed and distributed to all of the property owners within the water district. The City is not picking up that extra 400' of costs.

Dennis Linster, who stated he was asked to speak on behalf of Linda Young and Larry and Vicki Skokan, opined that the distribution of costs on a front footage basis is inequitable. He wanted to get some type of consensus that the City Council would recognize, when they become the Board of Equalization, the inequities that exist and that they would try to correct them at that point.

Attorney Pieper and Mr. Lorenzen cautioned the Council on considering or declaring that inequities exist at this stage while they are not sitting as the Board of Equalization.

Mr. Lorenzen also stated that special counsel and bond counsel have stated that under the statute, the only basis for the creation of the district, the determination of objections and the success of the district is on front footage. There is no other formula. He has been advised by bond counsel that case law exists that councils cannot bind themselves in terms of making future obligations or commitments. That would be inappropriate. Case law also exists that finds Councils that make predeterminations of those kinds of things are in violation of the law. Mr. Lorenzen also advised the Council that it is not uncommon in new developments where you have one common owner of all

of the property, that assessments are done on a per lot basis rather than on a front footage basis. This, however, is done at the Board of Equalization hearing.

Councilmember Lutt introduced Resolution No. 2009-43 and moved for its approval; Councilmember Alexander seconded.

RESOLUTION NO. 2009-43

A RESOLUTION APPROVING THE HIRING OF SPECIAL ENGINEERS AND APPROVING PLANS, SPECIFICATIONS AND ESTIMATE OF COST FOR THE CONSTRUCTION OF CERTAIN WATER SYSTEM IMPROVEMENTS TO BE CONSTRUCTED OUTSIDE OF THE CORPORATE LIMITS BUT WITHIN THE JURISDICTIONAL LIMITS OF THE CITY OF WAYNE, NEBRASKA.

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

Councilmember Lutt introduced Ordinance 2009-11, and moved for approval thereof; Councilmember Alexander seconded.

ORDINANCE NO. 2009-11

AN ORDINANCE CREATING PUBLIC UTILITY WATER SERVICE DISTRICT NO. 2009-01 OF THE CITY OF WAYNE, NEBRASKA; ESTABLISHING THE PROPERTIES CONTAINED WITHIN THE BOUNDARIES OF THE SAID DISTRICT; DESIGNATING THE SIZE, LOCATION AND TERMINAL POINTS OF WATER MAINS WITHIN SAID DISTRICT; AND REFERRING TO PLANS AND SPECIFICATIONS AND COST ESTIMATES AS PREPARED BY THE ENGINEER IN CONNECTION THEREWITH AND ON FILE WITH THE CITY CLERK.

Mr. Lorenzen recommended that the Council strongly consider, when sitting as the Board of Equalization, having the payback period for these assessments at 20 years.

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

Councilmember Frevert 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, with the exception of Councilmember Sturm who abstained, the Mayor declared the motion carried.

Councilmember Alexander made a motion and Councilmember Frevert seconded to move for final approval of Ordinance No. 2009-11. Mayor Shelton stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Sturm who abstained, the Mayor declared the motion carried.

Councilmember Lutt made a motion and Councilmember Ley to approve Certificate of Payment No. 2 (Final) in the amount of \$21,546.75 for the 2009 Booster Pump Station Project. Mayor Shelton stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Councilmember Lutt introduced Ordinance 2009-9, and moved for approval of the second reading thereof; Councilmember Frevert seconded.

ORDINANCE NO. 2009-9

AN ORDINANCE DIRECTING THE SALE OF LOT THREE (3), BLOCK FOUR (4), JOHN LAKE'S ADDITION TO WAYNE, WAYNE COUNTY, NEBRASKA ("OLD WATER TOWER PROPERTY"), TO ALLAN R. BODLAK AND KAREN K. BODLAK, HUSBAND AND WIFE.

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

Councilmember Lutt made a motion and Councilmember Frevert 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 Haase seconded to move for final approval of Ordinance No. 2009-9. 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 Frevert introduced Ordinance 2009-10, and moved for approval of the second reading thereof; Councilmember Lutt seconded.

ORDINANCE NO. 2009-10

AN ORDINANCE DIRECTING THE SALE OF THE SOUTH 2.254 ACRES OF LOT 1 OF THE REPLAT OF THE ADMINISTRATIVE LOT SPLIT OF TOMPKINS INDUSTRIAL TRACT #1 SUBDIVISION LOCATED IN THE SOUTHWEST QUARTER OF SECTION 8, TOWNSHIP 26 NORTH, RANGE 4, EAST OF THE 6TH P.M., WAYNE COUNTY, NEBRASKA, TO MILO MEYER CONSTRUCTION, INC., A NEBRASKA CORPORATION.

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

Councilmember Lutt made a motion and Councilmember Frevert 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 Frevert made a motion and Councilmember Alexander seconded to move for final approval of Ordinance No. 2009-10. 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.

Administrator Johnson stated the following Resolution summarizes the Council goals from the retreat last winter. In addition, he presented a spreadsheet showing time lines on said goals.

Councilmember Alexander introduced Resolution No. 2009-45 and moved for its approval; Councilmember Frevert seconded.

RESOLUTION NO. 2009-45

A RESOLUTION IDENTIFYING CITY OF WAYNE GOALS.

Councilmember Ley questioned how the Council was going to track or measure these goals. Mayor Shelton stated an extra meeting or special meeting is going to be held on June 23rd which will be centered around the capital project budget. However, the goals can be discussed at that time.

Councilmember Alexander responded that we know a lot of the goals are going on right now. We don't have to measure all of them. We can see that some of them are progressing.

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

Discussion took place in regard to vacating some of the internal streets on the Wayne State College campus, and the recommendation to fix/repair the east ½ block of 12th Street at an estimated cost of \$22,000.

Councilmember Lutt made a motion to vacate the internal streets owned by the City to Wayne State College and not fix/repair the east ½ block of 12th Street.

Councilmember Sturm questioned why it would be the City's obligation to fix or repair the street before vacating it to the College. Mayor Shelton stated that the college does not have the money to fix it.

Councilmember Sturm seconded the motion.

Garry Poutre, Supt. of Public Works and Utilities, provided background information on the matter.

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

Dave Simonsen, Executive Director of Wayne Area Economic Development, stated that the LB840 Committee met concerning several projects that are in the planning stages at this time. The most eminent is the Digital Blue expansion project. A \$30,600 grant is being requested to install T-1 telephone lines for multiple computer stations at a new location site in the former Estes Midwest building on East Highway 35. The LB840 Committee is requesting Council consideration to allocating \$30,600 of LB840 funds to provide the T-1 service at the Estes Building for the Digital Blue project, including the necessary wiring, software, etc., for the call center. This is a performance based loan which would be forgiven over a five-year period. A lien will be placed on their property (equipment and/or inventory). This is not only a retention project, but also an expansion project.

Councilmember Ley made a motion and seconded by Councilmember Berry approving the recommendation of the LB840 Committee to allocate \$30,600 of LB840 Funds to provide T-1 Service at the Estes Building for Digital Blue, including the necessary wiring for the call center.

Lou Benscoter, representing Digital Blue, was present to answer questions.

Mr. Simonsen noted that there is a good possibility, this year, that there will be more requests for the LB840 funds than there is money. At that point, the Council will need to make a decision as to whether or not to bond those projects or not. Things are happening in Wayne right now that aren't happening in a lot of areas of the country.

Mayor Shelton noted that this will provide a huge investment in the industrial area.

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

Agenda Item No. 13 – Council Action on Enforcement of the Abatement of Nuisance Properties Identified at 120 W. 8th Street and 513 Fairacres Road was removed from the agenda and will be brought forward at a later date.

Councilmember Ley made a motion and seconded by Councilmember Sturm 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.

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

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

The next item on the CDA agenda was to approve the minutes of the May 19, 2009, meeting.

Member Frevert a motion and seconded by Member Haase approving the minutes of the May 19, 2009, meeting. Member Sturm stated the motion, and the result of roll call being all Yeas, Member Sturm declared the motion carried.

Member Lutt made a motion and seconded by Member Alexander approving Contractor's Progress Estimate No. 5 in the amount of \$19,804.99 for Steve Harris Construction, Contractor for the Western Ridge Project. Member Sturm stated the motion, and the result of roll call being all Yeas, Member Sturm declared the motion carried.

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

Councilmember Sturm made a motion and seconded by Councilmember Alexander 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 7:05 p.m.