

**MINUTES
CITY COUNCIL MEETING
January 6, 2009**

The Wayne City Council met in regular session at City Hall on Tuesday, January 6, 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, Kathy Berry and Ken Chamberlain; City Attorney Mike Pieper; City Administrator Lowell Johnson; and City Clerk Betty McGuire.

Notice of the convening meeting was given in advance by advertising in the Wayne Herald on December 26, 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 Ley, whereas the Clerk has prepared copies of the Minutes of the meeting of December 16, 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, with the exception of Councilmember Sturm who abstained, the Mayor declared the motion carried and the Minutes approved.

The following claims were presented to Council for their approval:

VARIOUS FUNDS: AIR-SIDE CONCEPTS, SU, 98.00; ALLTEL, SE, 639.61; AMERITAS, RE, 4119.80; AQUARIUS TECHNOLOGIES, SE, 2500.00; ARNIE'S FORD-MERCURY, SU, 2590.10; AS COMMUNICATIONS, SE, 448.00; BANK FIRST, FE, 390.00; BARCO MUN PRODUCTS, SU, 1626.18; BENSCOTER PLUMBING, SE, 1905.00; BIG T ENTERPRISES, SU, 95.95; BLACK HILLS, SE, 2012.38; BOARD OF EXAMINERS, FE, 10.00; BOMGAARS, SU, 170.19; BROWN SUPPLY, SU, 53.31; BURT CO COURT, RE, 162.76; CITY OF WAYNE, RE, 500.00; CITY OF WAYNE, RE, 113.35; CITY OF WAYNE, SU, 457.39; CITY OF WAYNE,

RE, 500.00; CITY OF WAYNE, RE, 997.40; CITY OF WAYNE, RE, 12075.93; CITY OF WAYNE, RE, 230.00; CITY OF WAYNE, PY, 104533.03; CITY OF WAYNE, RE, 371.08; CITY OF WAYNE, RE, 1063.46; CITY OF WAYNE, RE, 192.00; CLASSY CLEANING LADIES, SE, 380.45; CUSTOM FILTRATION, SU, 226.00; DARCA INC, SU, 604.75; DE LAGE LANDEN FINANCIAL, RE, 201.14; DLT SOLUTIONS, SU, 565.27; ECHO GROUP, SU, 292.74; EISENBRAUN & ASSOC., SE, 226.00; ELECTRIC INNOVATIONS, SU, 213.98; ELECTRICAL ENGINEERING, SU, 151.91; EMPLOYERS MUTUAL CASUALTY, RE, 291.47; ENGINEERED CONTROLS, SU, 208.74; EXHAUST PROS, SU, 97.28; FBINAA-NE CHAPTER, FE, 90.00; FLOOR MAINTENANCE, SU, 77.40; FORT DEARBORN LIFE, SE, 110.08; GERHOLD CONCRETE, SU, 183.51; GILL HAULING, SE, 1207.64; HAUFF MID-AMERICAN SPORTS, SU, 72.00; HEIKES AUTOMOTIVE SERVICE, SE, 207.68; HTM SALES, SE, 943.77; HUNTEL, SE, 30.00; ICMA, RE, 10208.95; INDUSTRIAL CHEM LABS, SU, 681.71; INNOVATIVE PROTECTIVES, SU, 240.00; IRS, TX, 36544.16; RAY JUNCK, SU, 395.50; KRIZ-DAVIS, SU, 717.82; LINWELD, SU, 99.21; MAEDC, FE, 425.00; MES-MIDAM, SE, 117.09; MICHAEL TODD & CO, SU, 1233.21; MIDWEST OFFICE AUTOMATION, FE, 83.73; MIKE TOWNE, SE, 600.00; NE DEPT OF REVENUE, TX, 5128.98; NE DEPT OF ROADS, SE, 5306.57; NEDA, FE, 150.00; NORTHEAST EQUIPMENT, SU, 202.90; N.E.NE AMERICAN RED CROSS, RE, 59.24; NNPPD, SE, 206.38; NWOD, FE, 10.00; OLSSON ASSOCIATES, SE, 5886.06; PAMIDA, SU, 253.42; PITNEY BOWES, SU, 215.97; PITNEY BOWES, SU, 637.00; PLUNKETT'S PEST CONTROL, SE, 40.00; POAN, FE, 30.00; POSTMASTER, SU, 643.25; QUILL, SU, 210.55; QWEST, SE, 150.00; QWEST, SE, 419.75; QWEST, SE, 235.36; RMI GOLF CART, SU, 10150.00; STATE NATIONAL BANK, RE, 399.94; STATE NATIONAL BANK, RE, 445.22; STEVE HARRIS CONSTRUCTION, SE, 36421.78; TAYMARK, SU, 61.01; TELEDYNE ISCO, SU, 50.28; UNITED WAY, RE, 32.28; UTILITY EQUIPMENT, RE, 209.90; VIAERO, SE, 71.94; WAYNE STATE COLLEGE, RE, 200.00; APPEARA, SE, 149.51; BACON & VINTON, SE, 300.00; BIG T ENTERPRISES, SU, 191.90; BOMGAARS, SU, 1055.69; CABLEONE ADVERTISING, SE, 75.00; CENTER TROPHY, SE, 266.62; CITY OF WAYNE, RE, 1500.00; CITY OF WAYNE, RE, 500.00; CITY OF WAYNE, RE, 4476.96; CITY OF WAYNE, SE, 140.00; CITY OF WAYNE, RE, 268.14; CITY OF WAYNE, RE, 106.46; CLASSY CLEANING LADIES, SE, 334.75; CONNECTING POINT, SE, 17.90; COPPLE & ROCKEY, SE, 1191.30; DANKO, SU, 66.80; ELECTRICAL ENGINEERING, SU, 104.94; FLOOR MAINTENANCE, SU, 289.06; GILL HAULING, SE, 1769.16; HAUFF MID-AMERICAN SPORTS, SU, 192.00; HEWLETT-PACKARD, SU, 7842.62; INGRAM BOOK COMPANY, SU, 60.00; JEO CONSULTING GROUP, SE, 5293.75; KNOEPFLER CHEVROLET, SU, 64.44; LP GILL, SE, 5327.52; MATT FRIEND TRUCKING, SU, 675.00; NE NEB INS AGENCY, SE, 61829.00; OLDS PIEPER & CONNOLLY, SE, 2158.00; PAC N SAVE, SU, 177.42; PAMIDA, SU, 15.99; PUSH-PEDAL-PULL, RE, 35.59; QWEST, SE, 1176.13; TAK, SE, 105.00; TNEMEC, SU, 4458.94; US BANK, SE, 4605.15; WHITE DOG LAWN SERVICE, SE, 125.00; ZACH OIL, SU, 6477.75

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 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.

Mayor Shelton stated the next agenda item was to hear the appeal of Amanda Brown and J. J. Washington regarding Municipal Code Sec. 14-76 – Dog Declared Vicious. The Council’s purpose in this matter will be to determine whether or not the dogs in question should be declared vicious. They will each be declared vicious or not vicious individually and on their own merit.

Attorney Pieper advised the Council that the Police Department has declared the three dogs to be vicious and euthanized. The individual owners of the dogs have appealed that decision to the City Council, and the City Council is now charged with the responsibility of hearing that appeal and determining whether the Police Department’s ruling should be affirmed or overturned. Attorney Pieper distributed the following Exhibits to the Council:

- Exhibit 1 – Appeal statement from J. J. Washington (one of the owners of the dogs)

- Exhibit 2 – Appeal statement from Amanda Brown (one of the owners of the dogs)
- Exhibit 3 – Certified copies of the Wayne City Code, Sections 14-41 Definitions and 14-76 Dog Declared Vicious
- Exhibit 4 – Pictures of dog named Napoleon
- Exhibit 5 – Pictures of dog named Honey
- Exhibit 6 – Pictures of dog named Cali
- Exhibit 7 - Pictures of dog named Casper
- Exhibit 8 – Police Department Misdemeanor Incident Report
- Exhibit 9 – Letter from City Clerk Betty McGuire to Larry J. Washington, Jr., and Amanda Brown advising them of the date, time and place of their appeal hearing
- Exhibit 10 – Police Incident Report noting the delivery of the letter (Exhibit 9) to Amanda Brown and J. J. Washington

Attorney Pieper then called the following witnesses to testify before the Council:

- Wilfred Gehner, whose address is 530 E. 6th Street, and who is the owner of the dog (Casper) that was attacked on December 26, 2008, and then passed away due to the injuries sustained that day. Mr. Gehner recounted the events that took place before, during and after the attack that day.

Attorney Pieper asked if Mr. Washington and/or Ms. Brown were present, and they were not.

- Officer Richard Haase who was on duty and responded to the 911 call.
- Lieutenant Philip Shear who was on duty and responded to the call for assistance by Officer Haase.
- Kimberly Zuniga who came to the assistance of Mr. Gehner during the attack.

Lieutenant Shear advised the Council that Officer Consoli served Amanda Brown and J. J. Washington the letter advising them of this appeal hearing. He presented a copy of the incident report to be marked as Exhibit No. 10.

- Dr. Lauri Zink, veterinarian and owner of Wayne Veterinary Clinic, who treated Casper's injuries and is boarding the three dogs in question.

Mayor Shelton again asked if Mr. Washington or Ms. Brown were present in the audience. They were not.

- Lowell Heggemeyer, who was called to pick up the injured dog, Casper, and transport her to the Vet Clinic.
- Sandra Gathje, the owner of another dog that was attacked by the dog identified as Honey, in June of 2008.

After hearing testimony from the witnesses and reviewing the reports and exhibits, Attorney Pieper requested the Council to consider, either individually or as a whole, to make a motion to accept the above listed Exhibits.

Councilmember Lutt made a motion and seconded by Councilmember Sturm accepting Exhibit Nos. 1-10 to be considered in the Council's deliberations. Mayor Shelton stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Attorney Pieper, for clarification purposes, advised the Council that the appeal that Mr. Washington and Ms. Brown have filed is of Lieutenant Shear's decision declaring the three dogs vicious and to be euthanized. Based on Wayne City Code, Section 14-41, one of the definitions of a vicious dog would include *any dog, which without provocation, attacks or bites or has attacked or bitten a human being or domestic animal*. The testimony this evening directly relates to that definition of a vicious dog. He requested Council to consider each dog individually to affirm Lieutenant Shear's decision declaring them vicious and to be destroyed and/or individually to have the dogs declared not vicious. They would then be released back to the owners unless someone would appeal that decision.

Mayor Shelton asked Attorney Pieper what the City's liability would be if the Council would determine that the dogs are not vicious and released, and they would attach or bite someone or something. Attorney Pieper stated, without further research, it would probably depend upon the negligence of the owners placing them into a new situation. Negligence would have to be found in the Council's decision in making an informed decision based upon the information presented to them.

Mayor Shelton clarified either the Council finds the dogs vicious and they are destroyed or the Council finds them not vicious.

In addition, the owners have the opportunity to appeal the Council's decision to a proper court of jurisdiction if the dogs are found to be vicious and euthanized. The owners have been provided a copy of the ordinance.

Councilmember Berry was concerned that the owners of the dogs may not have been clear on this process.

A letter will be sent to the owners advising them of the Council's decision and their option to appeal the matter.

Attorney Pieper requested Council to not only accept, by motion, Exhibits 1-10, but that they request the City Clerk to attach said Exhibits and be made a part of the minutes of this meeting for review purposes.

Councilmember Lutt made a motion and seconded by Councilmember Sturm requesting the City Clerk to attach said Exhibits 1-10 to the minutes of this meeting and be made part of the record hereof. Mayor Shelton stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Councilmember Berry made a motion and seconded by Councilmember Sturm declaring the dog named Napoleon (Exhibit No. 4) to be "not vicious."

Attorney Pieper stated in order to find the dog vicious and affirm Lieutenant Shear's decision, Council must consider the testimony and Exhibits that have been offered and the same would have to fit under one of the definitions of the code – Sec. 14-41.

Dr. Zink stated the dog Napoleon has not reached sexual maturity yet. Therefore, we do not totally know what his personality is going to be. We know he is submissive to the other dogs at this point. Most of what Napoleon's life is going to be is going to depend upon his owner. That is something you can't control.

Attorney Pieper stated because it does not appear that we have evidence that Napoleon attacked or bit without provocation a human being or domestic animal, it appears that the only other definition that he would fit under would be a "known propensity, tendency, or disposition to attack unprovoked, to cause injury to, or otherwise threaten the safety of human beings or domestic animals."

Dr. Zink stated Napoleon is in a situation where other dogs that have been fighting and an owner that has done nothing about it and that is not seeing what his dogs are capable of. She reminded the Council that neutering an animal decreased aggressiveness in 15% of the dogs. It did not decrease aggressiveness in 85% of the dogs. It was noted this statistic was on adult dogs.

Councilmember Chamberlain stated if the dog remains in the environment it is in, it will run a higher risk of an attack on a child or an animal.

Mayor Shelton stated the motion, and the result of roll call being three Yeas (Councilmembers Berry, Alexander and Chamberlain) and five Nays (Councilmembers Frevert, Lutt, Haase, Sturm and Ley), the Mayor declared the motion failed.

Councilmember Lutt made a motion and seconded by Councilmember Haase declaring the dog named "Napoleon" (Exhibit No. 4) be declared vicious and euthanized. Mayor Shelton stated the motion, and the result of roll call being all Yeas, with the

exception of Councilmembers Alexander, Berry and Chamberlain who voted Nay, the Mayor declared the motion carried.

Councilmember Lutt made a motion and seconded by Councilmember Frevert declaring the dog named “Cali” (Exhibit No. 6) be declared vicious and euthanized on the basis of Vicious Dog Definition No. 3. Mayor Shelton stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Berry who abstained, the Mayor declared the motion carried.

Councilmember Sturm made a motion and seconded by Councilmember Chamberlain declaring the dog named “Honey” (Exhibit No. 5) be declared vicious and euthanized on the basis of Vicious Dog Definition Nos. 1 and 3. Mayor Shelton stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Berry who abstained, 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 the Use by Exception Request of Pentagon Development, LLC, to construct townhouses on Lots 15 through 19 of Fairway Estates, a/k/a 236 Fairway Circle, 232 Fairway Circle, 228 Fairway Circle, 220 Fairway Circle, and 212 Fairway Circle.

Administrator Johnson stated the Planning Commission held a public hearing on this matter on January 5, 2009, and recommended approval thereof, based upon the following “Findings of Fact”:

1. The request is consistent with the future land use map; and
2. 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 Sturm introduced Resolution 2009-1, and moved for its approval;
Councilmember Frevert seconded.

RESOLUTION NO. 2009-1

A RESOLUTION APPROVING THE APPLICATION FOR ZONING USE BY EXCEPTION PERMIT TO ALLOW FOR THE CONSTRUCTION OF TOWNHOUSES ON LOTS 15 THROUGH 19 OF FAIRWAY ESTATES, A/K/A 236 FAIRWAY CIRCLE, 232 FAIRWAY CIRCLE, 228 FAIRWAY CIRCLE, 220 FAIRWAY CIRCLE, AND 212 FAIRWAY CIRCLE.

It was noted that this action will not affect the park fees already collected on this parcel of real estate. In addition, Pentagon Development, LLC, will be contacting staff regarding the reallocation of the special assessments on the lots in this subdivision.

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

Discussion then took place on the request of the Wayne Police Department to waive the 15-minute response time requirement to hire two police dispatchers.

Administrator Johnson advised the Council that two dispatchers are leaving employment with the City. This position was advertised in the Norfolk Daily News in addition to the Wayne Herald. The 15-minute response time was not included in the job advertisement.

Police Chief Lance Webster explained the hiring process to the Council. Notices were placed in the Wayne Herald, Morning Shopper, Norfolk Daily News and the Nebraska Job Service. Seventy-five application packets were mailed out. Of those 75 applications, only 15 or 20% were within the City's 15-minute response time. Twenty-three or 30% of the applications were returned on time. Of those, 8 applicants were from Wayne or the surrounding area within 15 minutes. Eighty-two percent of those who

returned applications showed up for the written test (19 people tested). Of those 19 applicants, 6 were from within Wayne or the 15 minute response time. Of the 19 that were tested, they interviewed the top ten. There were two people in that top 10 that were in the City's 15-minute response time. At the conclusion of the interviews, the candidate list was narrowed down to the top three, which is a common practice when they have two openings. One of these applicants did live within the 15-minute response time. She was offered the job last week and has declined the same. The remaining two applicants are Wayne State College graduates with degrees in criminal justice. One applicant lives in Allen and the other in Norfolk. The dispatch position is a very difficult position to fill. It requires a wide array of job skills. They allowed the applicants to job shadow the position. They believe if they have to re-advertise the position, the selection pool will not be any larger than it was this time.

Councilmembers Frevert, Sturm and Ley thought the 15-minute response time needed to be adhered to. They thought the job advertisements needed to include the "15-minute response time" therein.

Councilmember Alexander stated that requirement will not give us better applicants, which is what we need. He asked why we would want to limit the pool. We have had this argument before. He still feels they don't have to live within the community. They are providing our community with the service.

Councilmember Chamberlain stated what we don't need is a revolving door.

Mayor Shelton advised the Council that they need to be more concerned about people who can or want to do the job rather than where they live.

It was noted that the Department is looking at the shift schedule and making a determination if that can be changed, etc. The dispatchers have been given the opportunity to come up with a shift schedule they think is more workable than the one they have, and so far, they have chosen not to do that.

Lee Wrede, Dispatch Supervisor, addressed the Council concerning the hiring process, job shadowing, and shift scheduling.

Garry Poutre, Supt. of Public Works & Utilities, stated when this discussion previously took place, he thought it was decided that each would be case specific.

Councilmember Lutt made a motion to waive the 15-minute response time for hiring a police dispatcher, and Councilmember Alexander seconded the same. Mayor Shelton stated the motion, and the result of roll call being all Yeas, with the exception of Councilmembers Frevert, Sturm and Ley who voted Nay, the Mayor declared the motion carried.

Councilmember Alexander made a motion and seconded by Councilmember Lutt 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 Chamberlain 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, Doug Sturm, Kaki Ley, and Kathy Berry; City Attorney Mike Pieper; City Administrator Lowell Johnson; and City Clerk Betty McGuire.

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

The next item on the CDA agenda was to approve the minutes of the December 16, 2008, meeting.

Member Shelton made a motion and seconded by Member Alexander approving the minutes of the December 16, 2008, meeting. Chair Chamberlain stated the motion, and the result of roll call being all Yeas, the Chair declared the motion carried.

The next item on the agenda was to discuss and consider increasing the cap on certain lots in the Western Ridge Subdivision.

Chair Chamberlain stated, upon visiting with some of the builders in Wayne, he was recommending that the CDA consider eliminating or increasing the cap on the lots in Western Ridge. The builders are not threatened as far as competition. While the lots are inexpensive, the idea of when they build a home is to have equity when they are finished. A request from the Vintage Hills developer was to keep the cap under the \$200,000 mark because he did not think, with the covenants that they have in that area, that they can build a house for under \$200,000. If the cap is under that amount, it eliminates that direct competition. His recommendation was to increase the cap to \$200,000 rather than eliminate it on the seven \$12,000 priced lots. This will add some diversity to the neighborhood so it doesn't look like low-income housing. In addition, he was requesting consideration to increasing the value for the entire property at some future time.

Nancy Braden, City Treasurer, stated the CDA was going to try and get the \$5,000 lots under a certain dollar amount. However, that could change. The Subdivision Agreement allows for an annual review of those dollar amounts.

Member Shelton stated she thought the reason those prices were set that way to begin with was because that was what it was felt people at that particular income level that we are targeting could afford. Now, three years later, we probably need to up that a little bit. That is why the value was set where it is at.

Member Frevert opined that people that want to build a \$200,000 home in Western Ridge are just strictly looking for a cheap lot.

Member Shelton responded that those people, who build a house like that in Western Ridge, need to realize that they could have a house in the price range of \$125,000 next to it which will probably bring the value of their house down, too.

Ms. Braden stated that some of the comments that they have received as feedback is that they don't think they can get a house built for \$150,000.

Chair Chamberlain stated when you set a limit, we are eliminating the contractor's profit on what they get when they are done, so they are not going to build out there.

Member Lutt stated that the CDA needs to take as much action as they can to get any type of housing built in Western Ridge.

Member Lutt made a motion and seconded by Member Shelton to increase the limit or cap on the seven \$12,000 priced lots to \$200,000. Chair Chamberlain stated the motion, and the result of roll call being all Yeas, the Chair declared the motion carried.

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

There were no reports on meetings attended.

There were no appointments.

Councilmember Chamberlain 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 8:35 p.m.