

MINUTES
CITY COUNCIL MEETING
April 17, 2012

The Wayne City Council met in regular session at City Hall on Tuesday, April 17, 2012, at 5:30 o'clock P.M. Mayor Ken Chamberlain called the meeting to order with the following in attendance: Councilmembers Brian Frevert, Jim Van Delden, Jon Haase, Dale Alexander, Kaki Ley, and Jill Brodersen; City Attorney Amy Miller; City Administrator Lowell Johnson; and City Clerk Betty McGuire. Absent: Councilmembers Doug Sturm and Kathy Berry.

Notice of the convening meeting was given in advance by advertising in the Wayne Herald on April 5, 2012, 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 Haase made a motion, which was seconded by Councilmember Van Delden, whereas the Clerk has prepared copies of the Minutes of the meeting of April 3, 2012, and that each Councilmember has had an opportunity to read and study the same, and that the reading of the Minutes be waived and declared approved.

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

The following claims were presented to Council for their approval:

VARIOUS FUNDS: AMAZON.COM, SU, 1090.43; AMERITAS, SE, 1744.36; APPEARA, SE, 155.47; BAKER & TAYLOR BOOKS, SU, 634.56; BANK FIRST, SE, 140.00; CITY EMPLOYEE, RE, 16.86; BENSCOTER PLUMBING, SE, 1000.00; CITY EMPLOYEE, RE, 65.35; C & D PUBLISHING, SU, 150.00; CAPSTONE PRESS, SU, 239.87; CHARTWELLS, SE, 5772.30; CITY OF WAYNE, RE, 600.00; CITY OF WAYNE, RE, 15.00; CITY OF WAYNE, PY, 58307.12; CITY OF WAYNE, RE, 759.13; COMMUNITY HEALTH, RE, 3.00; COPY WRITE, SU, 470.24; COUNTRY NURSERY, SU, 100.00; DAKOTA BUSINESS SYSTEMS, SE, 205.00; DAVE'S

UNIFORM CLEANING, SE, 60.00; DEMCO, SU, 155.26; DOESCHER APPLIANCE, SE, 80.00; EARL LUNDAHL, SE, 350.00; EMPLOYERS MUTUAL CASUALTY, RE, 88.47; FLOOR MAINTENANCE, SU, 65.55; FORT DEARBORN LIFE, SE, 1478.23; FREDRICKSON OIL, SE, 35.00; GALE GROUP, SU, 62.62; GERHOLD CONCRETE, SU, 387.50; GREAT PLAINS ONE-CALL, SE, 49.49; CITY EMPLOYEE, RE, 58.40; HARDING & SHULTZ, SE, 499.82; HELENA CHEMICAL, SU, 311.50; HIRERIGHT SOLUTIONS, SE, 53.15; HOBBY LOBBY, SU, 78.96; HOLIDAY INN ""MIDTOWN"", SE, 210.00; ICMA, SE, 5254.90; IIMC, FE, 135.00; INGRAM BOOK COMPANY, SU, 737.04; IRS, TX, 19200.16; JANWAY COMPANY, SU, 174.00; JOHN'S WELDING AND TOOL, SE, 138.80; KAREN MECSEJI, RE, 500.00; KTCH, SE, 525.00; LERNER PUBLISHING GROUP, SU, 473.87; LUMBERMEN'S BRICK & SUPPLY, SU, 518.64; MATTHEWS CO, SU, 176.88; MCGRATH NORTH, SE, 81.00; MES-MIDAM, SU, 236.00; MIDLAND COMPUTER, SE, 2309.19; MIDSTATES ERECTORS, SE, 29522.00; MIDWEST LABORATORIES, SE, 961.55; N.E. NEB ECONOMIC DEV DIS, SE, 202.50; CITY EMPLOYEE, RE, 12.64; NCO PORTFOLIO MANAGEMENT, RE, 47.79; NE DEPT OF REVENUE, TX, 3062.24; NEBRASKA U.C. FUND, RE, 1344.79; NMPP ENERGY, FE, 2256.30; NNPPD, SE, 12180.28; ORIENTAL TRADING CO, SU, 40.99; PAC N SAVE, SU, 329.96; PAMIDA, SU, 260.93; PENRO CONSTRUCTION, SE, 36940.91; PEPSI-COLA, SU, 398.15; PRO CRANE SERVICE, SE, 1615.50; QUILL, SU, 23.47; RANDOM HOUSE, SU, 1228.75; SPARKLING KLEAN, SU, 1647.00; STATE NATIONAL BANK, RE, 5162.50; THE CORNHUSKER HOTEL, SE, 178.00; W.T. COX SUBSCRIPTIONS, SU, 15.97; WATERLINK, SE, 1053.42; WATTIER TRUE VALUE, SU, 3250.00; WAYNE COUNTY CLERK, SE, 6.00; WAYNE HERALD, SE, 2017.97; WAYNE KORTH, SU, 1827.24; WAYNE VETERINARY CLINIC, SE, 84.00; WESCO, SU, 2140.65; WAPA, SE, 32208.48; ZACH HEATING & COOLING, SE, 74.00; ZEE MEDICAL SERVICE, SU, 59.96; CITY EMPLOYEE, RE, 228.32; CITY EMPLOYEE, RE, 174.24; BSN SPORTS, SU, 604.70; CARROT-TOP INDUSTRIES, SU, 204.17; CENTRAL COMMUNITY COLLEGE, FE, 85.00; CITY OF NORFOLK, SE, 204.21; CITY OF WAYNE, RE, 150.00; CITY OF WAYNE, RE, 160.08; CITY OF WAYNE, RE, 373.22; CITY OF WAYNE, RE, 82.22; CLAUSSEN & SONS IRRIG., SE, 229.80; COVENTRY HEALTH, SE, 16703.36; DANKO, SU, 76.44; DE LAGE LANDEN FINANCIAL, SE, 394.00; DGR & ASSOCIATES, SE, 168.00; DUTTON-LAINSON, SU, 478.29; ECHO GROUP, SU, 191.07; CITY EMPLOYEE, RE, 708.92; CITY EMPLOYEE, RE, 35.19; HD SUPPLY WATERWORKS, SU, 3410.77; HOLIDAY INN-DOWNTOWN, SE, 255.00; INTELICOM COMPUTER, SU, 2115.00; CITY EMPLOYEE, RE, 57.69; KELLY MEYER, SU, 65.00; KRIZ-DAVIS, SU, 280.19; KTCH, SE, 80.00; CITY EMPLOYEE, RE, 22.77; MOONLIGHT TOWING, SE, 170.41; CITY EMPLOYEE, RE, 427.79; NE AIR FILTER, SU, 132.54; NE PLANNING & ZONING, FE, 160.00; NPPD, SE, 240528.55; OVERHEAD DOOR COMPANY, SU, 112.90; PAMIDA, SU, 16.77; PITNEY BOWES, SE, 648.00; CITY EMPLOYEE, RE, 483.41; PRESTO X, SE, 47.00; QUILL, SU, 424.73; REGIONAL CARE, FE, 50.00; SAYRE ANDERSEN, RE, 327.44; ZIMCO, SU, 2500.75; STATE NATIONAL BANK, RE, 107.47; WAYNE COUNTY COURT, RE, 150.00; CITY EMPLOYEE, RE, 82.22; WESCO, SU, 13032.10

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

Mayor Chamberlain advised the public that a copy of the Open Meetings Act was located on the south wall of the Council Chambers and was available for public inspection. In addition, he advised the public that the Council may go into closed session to discuss certain agenda items to protect the public interest or to prevent the needless injury to the reputation of an individual and if such individual has not requested a public hearing.

Cap Peterson of Northeast Nebraska Insurance Agency, the city's property and casualty insurance carrier, presented the City with a dividend check in the amount of \$16,904.97. This is the 14th dividend paid by the Company out of the past 18 years.

Mayor Chamberlain proclaimed, Friday, April 27, 2012, as Arbor Day.

Lesli Rawlings, a Wayne State College Professor, who teaches a class on "Urban GIS", gave a presentation on the service learning project that her class just completed for the City using a software program that allows the user to develop maps. It is a preliminary interactive map which shows some of the prominent historical buildings and artwork along the Main Street corridor.

Councilmember Sturm arrived at 5:43 p.m.

Change Order No. 1 was received from Olsson Associates, the engineers on the Bencoter Addition – Phase 1 Paving and Utility Improvement Project. The amount is for \$34,489.33. This is for sewer improvements only. This Change Order covers additional quantities installed and an increase in pricing allowance. The project engineer,

Rod Hanson of Olsson Associates, approved the detail of the additional cost per linear foot as follows:

- \$1.45/lf for materials
- \$1.20/lf for fuel
- \$.30/lf for aggregate
- \$1.50/lf for labor

The project engineer also approved an additional \$3.00/lf for costs incurred as a result of not only the delay requested by the City, but also the short notice completion date requested by the City when the original contractor (Benscoter Plumbing) had committed to other work during the delay. In addition, there is a \$7.45/lf requested by the contractor over the original bid cost of \$15/lf because of the City's request to delay the project for one year and then meet a deadline requirement.

This project was created and bid out in August 2010. Bids were received and the contract was awarded in September, 2010. The project was halted because of the uncertainty of the hotel getting financing. The City Administrator and Finance Director conferred with TIF Attorney Mike Bacon who advised them that the City would have time to reset the clock for the tax increment financing. The hotel finally got their financing together in late summer of 2011. The City then asked the contractor to get the sewer installed so that the project would not be delayed. The City created some waves in the plans of the contractor to build this by stopping it after it had been bid it out and then starting it in the latter part of the construction season. There are also additional costs that the general contractor is paying. Staff has met with both the project engineer and the City Attorney, and they are comfortable that this is a fair representation of the costs that were incurred by the contractor due to the City changing the schedule and resetting the clock.

The City owns three lots and some park area in this subdivision. This change order, if approved, will increase exposure to the City in the amount of approximately \$2,844. There is also some increase costs to the hotel of approximately \$2,208. The remainder of the costs will be part of the assessments against the lots that the developer owns, who is also the contractor.

Councilmember Frevert asked if staff has seen the original bills presented on this project, because he had received an e-mail which had an increase of 50% on some costs, which seemed excessive for a two-year time frame.

It was noted that the quantities increased because the project was originally for Jaxon Street and Tomar Drive. In the construction of the project, the engineer staked out more (both the first and second phase), and the subcontractor (Penro) began to install the sewer on the second phase. No one knew why the staking got set out for the second phase, but it did.

Lou Benscoter was present. Mr. Benscoter stated that under the terms of the contract, he could have walked away from this project, and if he had, the project would have had to be rebid, and the bids would have been considerably higher because he ate a lot of the costs.

Councilmember Frevert asked whether or not Mr. Benscoter bought the materials at the time he was awarded the project which was back in September, 2010, or did he wait until he started the project. Mr. Benscoter stated he was getting ready to go, and that's when the financing fell through on the motel, which put the project in the hold pattern.

Mr. Bencoter stated when he saw that the hotel was going to go, he was the one who contacted the engineer to get the project going again.

Councilmember Alexander stated he did not know any of this project was put on hold for months until after the fact. Administrator Johnson stated typically the engineer issues a delay, and he did not do that, and staff didn't catch it.

Councilmember Alexander stated when he looks at the bids for this project, the Bencoter bid compared to the other bids, is so much lower. He does not know why that is by looking at the numbers, which raises red flags for him. Then, when he sees change orders come through, those flags get a little bigger. That is why he is apprehensive about approving this. This doesn't include the water project yet, and he's assuming there will be change orders there, too.

Mr. Bencoter responded that the only change in the water will be the price of pipe, which has changed by \$3/ft. The labor he can do himself. He has time now to do that himself. The water is in for the hotel. The rest they can do themselves. If he had had time to do this last fall, they probably wouldn't be having this discussion now, but they didn't want to hold the hotel up. If he hadn't approached the engineer back in November/December, they wouldn't have water and sewer in there yet. He was the one that pushed. He is just trying to recover some of the extra costs. He is also upset with the City in allowing 4th Street to be put in because now he has a bunch of sewer out there that he has to pay for. It never should have been done. What he's trying to do is get along and say, okay, go ahead and assess it to the lots. In reality, there is 500' there with manholes and sewer taps that never should have been done. It's not his fault or the City's

fault. He blames the engineer. Mistakes have been made all over out there, but he's just trying to get along.

Councilmember Sturm stated this is almost like every other thing we do, we are held up by engineers, and somehow there was a big mistake between the engineer and what they told Penro to do. The motel was here, and then it wasn't, etc. This just ends up going back to one of the main things since he's been on the Council, which is it ends up costing the City more because of one thing or another. He didn't want to make Mr. Benscoter pay for this.

Councilmember Berry arrived at 6:04 p.m.

Councilmember Sturm made a motion, which was seconded by Councilmember Berry, approving Change Order No. 1 for the Benscoter Addition – Phase 1 Paving and Utility Improvement Project in the amount of \$34,489.33.

Councilmember Alexander stated he would like to pay the majority of it, but still wanted to discuss the \$7.45 line item, and the additional \$3/lf cost. He would be agreeable to paying for everything except the \$3/lf. He would like to know a little bit more about that, and then bring it back for action.

Councilmember Sturm was not going to amend the motion.

Councilmember Haase stated any meeting he was at, it was never brought up that the hotel was not going to go through. There was a lot of money put up by individuals for this hotel, and it was a project that was delayed because of paperwork and a lot of lawyer work, but it was always going to go through. Everybody also knew where the hotel was going to be.

Mayor Chamberlain stated they didn't want anything moving forward without the hotel since this was a TIF funded project. Until things were definite and financing was in place, we didn't want to take that risk. When there's a delay, you have to find other work to do, and then when all of a sudden they want to get it done and you're in the middle of something else, you have to make other arrangements to get that done. That is where these extra costs came from. It was Mr. Benscoter's intention from the beginning to do the project himself.

BJ Woehler stated that was incorrect, and that if you look in the minutes, Mr. Benscoter stated he was going to have Siouxland Engineering do this project.

Councilmember Sturm couldn't understand the questions regarding this change order since Council has approved change order upon change order for other projects.

Councilmember Alexander stated there was close to a \$200,000 difference in the bids for this job. The change order draws a red flag to him as to whether or not the project is going to end up costing an extra \$200,000. I'm going to bid low, and I'm going to get the job, and then I'm going to have \$200,000 in change orders. That is the problem he has with this. I'm going to insure that I get jobs for the City because I bid low, and then I'm going to increase everything and give you my change orders, and it's going to end up being a little bit higher or around the same price as the other bids. When you have a project and you have four people bidding on it, and they are all within the same number except for one, which is substantially lower than the others, he is going to pay attention to that.

Mayor Chamberlain stated if the City hadn't asked him to delay his start and he would have done the project himself, this probably wouldn't be before the Council. The

extra costs came because he had to hire somebody else to finish the project to get it done in time.

Councilmember Alexander asked Mr. Bencoter if that's where the extra cost came from. Mr. Bencoter responded no, it cost him a lot more than that \$3. That is his offer to settle. He had a lot more costs than that into the project. Had he been able to do it, he would have went in there and done it.

Administrator Johnson stated this completes the project so there will be no more change orders coming. The water has been bid out. We changed the pipe. We went to a different grade of pipe. That is the only cost that is going to change on that. In regard to communication, the City works really well with Olsson's, but there were some breakdowns in our communication with them. The communication breakdown that is troubling Council is that staff did not tell the Council that they put this project on hold. They felt that it was in the best interest of the community to not head down that road without proof the hotel was going to get built. Staff made that judgment call. That should have come to the Council for their direction. Typically when there is a delay like that, there's notice that goes from the engineer to the contractor. That didn't happen either, but everybody kept thinking it was a gradual thing.

Mayor Chamberlain stated the motion, and the result of roll call being all yeas, with the exception of Councilmembers Frevert and Haase who voted Nay, the Mayor declared the motion carried.

Councilmember Ley made a motion and Councilmember Brodersen seconded to approve Certificate of Payment No. 2 for the Bencoter Addition – Phase 1 Utility Project

in the amount of \$43,224.02. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Administrator Johnson stated the current lease with the transfer station will end this year. We are preparing to bid the lease out for a three-year period with an option to extend the lease for an additional two years. The agreement can be terminated upon 90 days written notice by either party.

Garry Poutre, Superintendent of Public Works & Utilities, was present to answer questions.

Councilmember Sturm made a motion, which was seconded by Councilmember Alexander, approving the “Request for Proposals for Operation Agreement” for leasing of the transfer station, and directing the City Clerk to begin the bid process. Mayor Chamberlain stated the motion, and the result of roll call being all yeas, the Mayor declared the motion carried.

Wes Blecke, Executive Director of WAED, was present and advised the Council that the LB 840 Sales Tax Advisory Committee met and reviewed an application to Wayne’s Economic Development Program Fund. The applicant, the City of Wayne, had requested a \$300,000 grant to set up a revolving loan fund to assist with funding construction loans for housing units being built within the corporate limits of the City of Wayne. The Committee met, and they recommended revising the request to be a 12-year interest free loan to the City (which could be renegotiated after that time depending on need) for \$160,000 to support loan incentives for builders to construct market-rate housing units inside the City limits. The modification of terms by the Committee from the original application reduced the amount from \$300,000 to \$160,000 and changed the

grant request to a 0% loan from the fund. This modified recommendation was unanimously approved with 5 voting members present. The rationale for amending the request was that if this program is successful, the City could reapply for more money. They questioned whether or not there would be \$300,000 out at one time, and their thought was that as the money is repaid as lots are sold, maybe the City wouldn't need the full \$300,000 to fund the project.

Mayor Chamberlain noted that if Council does approve the Committee's recommendation, Council may want to amend the "Housing Construction Loan Incentives to Builders" that they approved at the last meeting.

Councilmember Frevert made a motion, which was seconded by Councilmember Brodersen, approving the recommendation of the LB840 Sales Tax Advisory Committee which was to approve a \$160,000, 12-year interest free loan (which could be renegotiated after that time depending on need) to support loan incentives for builders to construct market-rate housing units inside the City limits.

Mr. Blecke stated Administrator Johnson told the Committee that it did not matter if it was a loan or a grant because if it is granted to you, it is a perpetual revolving loan fund after 15 years. In addition, he always tells the applicant, which in this case is the City, that they can request the Council to disregard the LB840 recommendation and consider the original request.

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

Councilmember Alexander asked Mr. Blecke if he is following up on all of these LB840 grants and loans to make sure the applicants are following the guidelines. Mr. Blecke responded that Finance Director Nancy Braden does that.

The following Resolution would approve the reserve contract with Western Area Power Administration (WAPA). This contract will affirm the resource commitment that WAPA made through the 2021 Power Marketing Initiative. This Reserve Contract will assist customer resource planning activities until a new long-term Firm Electric Service Contract is executed.

Councilmember Sturm introduced Resolution 2012-32 and moved for its approval; Councilmember Haase seconded.

RESOLUTION NO. 2012-32

A RESOLUTION APPROVING A CONTRACT WITH THE WESTERN AREA POWER ADMINISTRATION (WAPA) TO RESERVE FIRM ELECTRIC CONTRACT RATES OF DELIVERY WITH ASSOCIATED ENERGY FOR THE CITY OF WAYNE, NEBRASKA.

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

The following Resolution would authorize the City to apply for a grant or assistance from the Nebraska Emergency Management Agency – Hazard Mitigation Grant Program for the purpose of purchasing and replacing the emergency sirens. The total cost to replace all of the sirens is \$104,000. The City’s match, which is 25%, will be \$26,000.

Administrator Johnson stated that \$93,000 has been placed in reserve for this project in case we are not successful in getting the grant.

Marlen Chinn, Interim Police Chief, was present to answer questions.

Councilmember Alexander introduced Resolution 2012-33 and moved for its approval; Councilmember Van Delden seconded.

RESOLUTION NO. 2012-33

A RESOLUTION TO APPLY FOR ASSISTANCE FROM THE NEBRASKA EMERGENCY MANAGEMENT AGENCY – HAZARD MITIGATION GRANT PROGRAM FOR THE PURPOSE OF PURCHASING AND REPLACING THE EMERGENCY CIVIL DEFENSE SIRENS.

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

Councilmember Alexander made a motion and seconded by Councilmember Sturm to enter into executive session in regard to the agenda item – Action to Hire Ranson Roman to undertake appraisal on commercial property, to prevent injury to the reputation of the property owner, and to allow Attorney Miller, Administrator Johnson, and City Clerk McGuire to in attendance. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried, and executive session began at 6:50 p.m.

Mayor Chamberlain again stated that the matter to be discussed in execution session relates to the hiring of Ranson Roman to undertake an appraisal on commercial property.

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

Councilmember Brodersen made a motion, which was seconded by Councilmember Alexander approving the hiring of Ranson Roman to undertake an

appraisal on some commercial property for the sum of \$2,000. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Mayor Chamberlain advised the Council that he will be distributing the evaluation/questionnaire forms for City Administrator Johnson, and that the evaluation will take place at either the May 1st or May 15th Council meeting.

Councilmember Brodersen made a motion, which was seconded by Councilmember Alexander, to adjourn the meeting. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried and the meeting adjourned at 7:03 p.m.