

MINUTES OF THE BOARD OF CITY COMMISSIONERS
HELD MAY 6, 2013

The regular meeting of the Devils Lake City Commission was held Monday, May 6, 2013 at 5:30 P.M. with the following members present: President Johnson, Commissioners Tim Heisler, Craig Stromme, Rick Morse, and Dale Robbins. None were absent.

Commissioner Stromme moved to approve the minutes of the regular City Commission meeting held April 15, 2013 and of the special City Commission meeting held April 18, 2013. The motion was seconded by Commissioner Heisler, and the motion carried unanimously.

The City Commission agreed to review the new business item #6 – Development Agreement after the proclamation.

5:30 P.M. – Bid opening for 2013 Curb, Gutter and Sidewalk has been moved to May 20, 2013 at 5:30 P.M.

5:30 P.M. – This was the time set for a public hearing to review a conditional use permit to construct a power sub station and zoned as agricultural (17th St SE). The City Engineer stated the sub station is required as part of the flood protection project. The pump station needs two independent power suppliers since redundant power is required. Since the amount of power required is so large, Nodak Electric can not supply both the regular and the redundant power. Otter Tail Power has a line that runs by there; therefore, they are willing to build a sub station to assist with the power supply at the pump station. The pump station has eight pumps – Nodak Electric will supply power for four pumps and Otter Tail Power will supply power to the other four pumps. If either company has a failure the other company will be able to run all the pumps. Hearing and receiving no other comments, President Johnson closed the public meeting.

Commissioner Robbins moved to approve the recommendation submitted by the Devils Lake Planning Commission to approve a conditional use permit to construct a power sub station adjacent to 17th St SE in an area zoned as agricultural and submitted by Otter Tail Power Company. The motion was seconded by Commissioner Stromme, and the motion carried unanimously.

Commissioner Morse moved to sign a proclamation proclaiming May 24, 2013 as “**Arbor Day**” and urging all citizens to celebrate and to support efforts to protect trees and woodlands. The motion was seconded by Commissioner Heisler, and the motion carried unanimously.

The City Attorney discussed the development agreement for Wal-Mart. In Paragraph 2, the City’s contribution is capped at 25% of 125% of the estimate in Exhibit D which would be approximately \$718,171.50.

The City Engineer stated the City’s share of 25% is standard for new developments. The City will be providing water and sewer out to the site. This agreement is consistent with other city development agreements. Traffic signals will be installed at 14th Avenue and Hwy 2 and turn lanes at Goulding’s Road. The shared-use path and frontage road will be extended. Water and sewer will be extended adjacent to the Wal-Mart property and installed in public right-of-way so they will be available for public use. Fourteenth Avenue will not connect to 14th Street S. Exhibit C lists additional work the City will be doing – fix broken water main under Hwy 2 and extend water mains to provide water access to the new subdivision. Costs for the additional work are not included in cost mentioned above.

Commissioner Stromme moved to approve the development agreement with Wal-Mart as recommended by the City Engineer. The motion was seconded by Commissioner Morse. On roll call all Commissioners voted aye, and the motion carried.

Jessica Ramey Gillam appeared before the City Commission to inquire about the fertilizer plant on College Dr. The Fire Chief stated there is nothing explosive in the facilities. The Fire Department conducted training last Wednesday at Crop Production Service’s facility at the airport. The Fire Chief has reviewed the plans and chemicals at the facility. The facility on Hwy 2 is in the County’s jurisdiction, but they also do not have anything out there above the limits the area is prepared for.

Commissioner Robbins – The Public Utilities Supervisor reviewed the transmission line water break. The City Engineer said this break and the one 40 feet away seemed to be from overhoning. There have been five breaks in the 32 miles of pipe for the transmission line. No service was interrupted due to the break since the water tower and reservoir contained enough water.

The Public Utilities Supervisor stated Jeff Trana has resigned. Advertising for this position started on May 3rd.

The Public Ways Supervisor said the cemetery was closed for a couple of weeks, but is now reopened.

Commissioner Morse – The Public Utilities Supervisor reviewed the issue with the redundant power to the main sanitary lift station. There are three bad wires between the Ford storm lift station and the main sanitary lift station.

Commissioner Morse moved to approve replacing 525 feet of the three wires for the redundant power to the main sanitary lift station for \$15,357 plus installation. Discussion followed on if a conduit was in place which there is. Installation would be for just pulling the wires. The motion was seconded by Commissioner Stromme, and the motion carried unanimously.

The Public Ways Supervisor reported Jerry Saylor resigned two weeks ago. The position is being advertised. The Street Department has been sweeping, and will start painting next week.

Commissioner Stromme – The Police Chief stated a COPS grant is available. He would like to apply for this grant to fund the task force position. The grant is a 4-year commitment and pays 75% up to \$125,000 of base salary.

Commissioner Robbins moved to authorize the Police Chief to apply for a COPS Hiring Grant to assist funding the task force position. The motion was seconded by Commissioner Robbins, and the motion carried unanimously.

The Police Chief indicated he was awarded a radar grant from the ND Department of Transportation (NDDOT). The funds were for car radar, but after checking with NDDOT the funds may be used for the radar sign. The radar sign would flash speeds and do traffic surveys. The grant is 75/25 up to \$1,500. Anything over \$2,000 would be the City's responsibility.

The Sanitation Supervisor said the second week of spring clean up was started. There have been more items this year than usual.

Commissioner Heisler – The City Assessor said everything was fine.

The City Engineer said work on the pump stations is ongoing. Work at the airport will start next - runway work and embankment work. Dewatering and prep work continue.

President Johnson - The City Auditor stated everything was fine.

The City Administrator will update the City Commission at the next meeting on the infrastructure account.

The Fire Chief stated the bid opening for the fire truck will be at the next meeting. Also the firefighter one class is ending. Live burn training will be at the tower on Saturday, and the regional test will be on May 18th.

The City Attorney said everything was fine.

The 2nd reading of Ordinance No. 909 – Cats leashed was held.

President Johnson thanked the committee members for all their work on drafting these ordinances.

Guy Desautel, committee member, provided a letter stating the committee was ultra sensitive to the responsible pet owners; the committee believes we now have enforceable ordinances to handle the complaints; we have a grandfather clause to appease pet owners that have multiple pets that are over the allowable limits at this time, and we believe we have turned the corner of progress when the committee involved the community pet owners to give their perspectives on the ordinances.

Jan Shelver, cat owner, stated the cat leash ordinance was ridiculous and mean-spirited to cats. She inquired on the penalty for not leashing cats, on feral cats and on the extra expensive for cat owners to have fence areas with tops and purchase leashes. She indicated those with sand boxes should cover them and indicated certain aromas keep cats away.

President Johnson stated the ordinances would be complaint driven, and the City would not be hiring extra personnel to enforce them.

Jessica Ramey Gillam, cat owner, said the committee did a pretty good job, but people came in with prejudices and experiences. She thinks a degreed veterinarian should have been consulted. She said leashing goes against the grains of cats. Older cats can't be trained. Cats kill rodents.

Commissioner Stromme inquired what other cities do for cats. The Fire Chief stated ordinances from Grand Forks, Jamestown, Valley City, Grafton and Williston were reviewed. All five cities require animals to be leashed.

Commissioner Robbins moved to deny the second and final reading of Ordinance No. 909 – Cats leashed. The motion was seconded by Commissioner Morse. Discussion followed on concern about cats in neighbors' yards and rodents. On roll call all Commissioners voted aye, and the motion carried.

The 2nd reading of Ordinance No. 910 – Animal Care & Treatment was held.

Luann Hinderscheit, TLC animal rescue, referred to Paragraph H of the ordinance which gives the violator 30 days to correct the violation. Her concern is an animal could expire in 30 days. She has been operating the rescue for dogs since May of 2011 and for cats since May of 2012. Based on her experience she would suggest the animals be removed within 48 to 72 hours. The Committee is agreement to amending the ordinance to have the animals removed within 48 hours. Discussion followed on how the ordinance should be worded - 48 hours in consultation with licensed veterinarian and in case of emergency remove immediately. Discussion continued on if wording should include imminent danger and if documentation of neglect or abuse is needed. It was suggested leaving 30 days unless immediate action is necessary to secure health and safety of the animal, and then the animal could be removed immediately.

The City Attorney recommended adding Paragraph I stating "A law enforcement officer has the authority to remove the animal immediately if the animal is in imminent danger".

Commissioner Robbins moved to approve the second and final reading of Ordinance No. 910- Animal Care & Treatment with an effective date of August 1, 2013 - An ordinance which upon adoption shall be codified as Chapter 6.36 of the Devils Lake Municipal Code with the addition of Paragraph I - A law enforcement officer has the authority to remove the animal immediately if the animal is in imminent danger. The motion was seconded by Commissioner Morse. On roll call all Commissioners voted aye, and the motion carried.

President Johnson indicated during his discussions with the Municipal Judge it was noted records need to be up-to-date and must include the gender, color and name of pet. The Police Chief indicated there is a module in Crimestar for pet licensing, and most of this information is in there.

The 2nd reading of Ordinance No. 911 – Number of Allowable Pets was held.

The City Attorney noted the ordinance has a process for a kennel permit and has an exception for if an animal gives birth.

Luann Hinderscheit inquired as to how she can be in compliance with this ordinance and operate the animal rescue. She lives within city limits, but rents the house. According to the ordinance she can't qualify to get a kennel license because she is not the property owner. The City Attorney indicated that both she and the property owner should sign the application for the kennel license. Discussion followed on her not being the owner of the pets. The City Attorney recommended adding at the end of Paragraph C a statement that the City Commission may waive any of the requirements for a kennel license.

Commissioner Robbins moved to approve the second and final reading of Ordinance No. 911 –Number of Allowable Pets with an effective date of August 12, 2013 – An ordinance which upon adoption shall be codified as Chapter 6.34 of the Devils Lake Municipal Code with the addition at the end of Paragraph C "any of which may be waived by the City Commission". The motion was seconded by Commissioner Morse. On roll call all Commissioners voted aye, and the motion carried.

The 2nd reading of Ordinance No. 912 – Penalties for Animal Control Ordinances was held. According to the ordinance the first and second offenses would be infractions (minor fines). The third offense would be a misdemeanor (\$1,000 fine or 30 days in jail).

Jessica Ramey Gilliam inquired if it is still a misdemeanor for animal cruelty. That would be determined by conditions of court.

This ordinance is needed by the judge to eliminate repeat offenders. The committee's comments included the same owners have violations over and over with and just receiving simple fines.

Commissioner Robbins moved to approve Ordinance No. 912 – Penalties for Animal Control Ordinances with an effective date of August 1, 2013 – An ordinance which upon adoption shall be codified as Chapter 6.38 of the Devils Lake Municipal Code. The motion was seconded by Commissioner Morse. On roll call all Commissioners voted aye, and the motion carried.

The 2nd reading of Ordinance No. 913 – Animal Defecation was held.

Commissioner Heisler moved to approve Ordinance No. 913 – Animal Defecation with an effective date of August 1, 2013 – An ordinance which upon adoption shall amend Nos. 680 and 897 which have been codified as Section 6.08.050 of the Devils Lake Municipal Code. The motion was seconded by Commissioner Stromme. On roll call all Commissioners voted aye, and the motion carried.

Commissioner Stromme moved to approve the consent agenda which included the following:

1. Game of chance permits for the month of April 2013;
2. Extension of premises application for a special event submitted by Star City Investments Inc dba Liquor Locker for a truckload beer sale to be held May 24, 2013;
3. Fireworks permit submitted by American Promotion Events dba TNT Fireworks;
4. Fireworks permit submitted by Black Powder Fireworks dba TNT Fireworks;
5. Fireworks permit submitted by Glenn Hahn;
6. Fireworks permit submitted by Robin Gisvold dba Big Tog Fireworks;
7. Fireworks permit submitted by Steve Martinson;
8. Fireworks permit submitted by Troy & GERALYN Lang dba Generous Jerry's Fireworks;
9. Gaming site authorization submitted by Devils Lake Volunteer Fire Department for January 23, 2014 through January 25, 2014 at the Memorial Building - #6, 524 4th Ave NE;
10. Gaming site authorization submitted by Rotary Club of Devils Lake for June 1, 2014 at the Roosevelt Park – Elks Bank Shelter – 4th St NW & Roosevelt Ave;
11. Parade permit submitted by Spirit Lake Riders MC on May 25, 2013 to begin at 12:00 P.M.;
12. Permit to sell alcoholic beverages at a special event submitted by Proz Inc for a private wedding reception and dance for Jordan Mertens and Brooke Calderwood to be held May 18, 2013 at the Burdick Arena;
13. Permit to sell alcoholic beverages at a special event submitted by Proz Inc for a private wedding reception and dance for Shana Rutten to be held May 25, 2013 at the Memorial Building;
14. Permit to sell alcoholic beverages at a special event submitted by Proz Inc for a beer garden area for Devils Run park event to be held June 1, 2013 at Roosevelt Park;
15. Extension of premises application for a special event submitted by Proz Inc for a front beer garden area for Shriners to be held June 1, 2013;
16. Permit to sell alcoholic beverages at a special event submitted by Proz Inc for a private wedding reception and dance for Kathryn Alfonso to be held June 8, 2013 at the Memorial Building;
17. Permit to sell alcoholic beverages at a special event submitted by Thirsty's Bar for a concert for Lunacy Search and Rescue Run to be held August 9-10, 2013 at Roosevelt Park;
18. Permit to sell alcoholic beverages at a special event submitted by Ye Olde Tavern for a wedding dance for Katie Edlund and Ryan Myklebust to be held July 20, 2013 at the Memorial Building;
19. Permit to sell alcoholic beverages at a special event submitted by Ye Olde Tavern for a wedding dance for Michelle Knutson & Gary Rieger to be held August 24, 2013 at the Bill Jerome Arena;
20. Permit to sell alcoholic beverages at a special event submitted by Ye Olde Tavern for a wedding dance for Megan Soper and Forrest Balritch to be held September 28, 2013 at the Memorial Building;
21. Street dance permit and an extension of premises for a special event submitted by Nellie's Bar & Lounge Inc to be held July 13, 2013;
22. Authorizing the City Auditor to call for bids for 2013 Asphalt & Street Repairs with the bids to be opened on Monday, May 20, 2013 at 5:30 P.M. at the City Office as recommended by the Public Ways Supervisor;
23. Authorizing the City Auditor to call for bids for 2013 Sand, Gravel and Rip-Rap with the bids to be opened on Monday, May 20, 2013 at 5:30 P.M. at the City Office as recommended by the Public Ways Supervisor;
24. Designating the *Devils Lake Journal* as the official newspaper for the City of Devils Lake;
25. Reappointment of Dan Wakefield, Mary Lundy, Susan L Goulding and Doug Goulding as members of the Devils Lake Historic Preservation Commission for two-year terms expiring April 30, 2015;

26. Reappointment of Kevin Vistad and Nancy Lundon as members of the Devils Lake Special Assessment Commission for six-year terms expiring April 30, 2019.

The motion was seconded by Commissioner Morse, and the motion carried unanimously.

Commissioner Morse left the meeting at 6:55 P.M.

The first reading of Ordinance No. 914 – Franchises Required was held.

The City Assessor reviewed the purchase agreements for purchasing land needed for the embankment project. The first parcel is located north of Hwy 19, west of the airport.

Commissioner Heisler moved to approve the agreement to purchase real estate from Mark and Kristel Peterson due to the embankment in the amount of \$6,768.65 and the appraisal waiver as recommended by the City Assessor. The motion was seconded by Commissioner Stromme. On roll call all Commissioners voted aye, and the motion carried.

The City Assessor stated the next agreement was for four separate parcels and black dirt. Parcels one, two and three are needed for the project. Parcel four is being purchased because it would be an uneconomical remnant due to the lack of access. The parcels are owned by the four kids of Norman and Myrna Peterson, but the agreement calls for payment to go to the parents.

Commissioner Morse returned to the meeting at 6:58 P.M.

Commissioner Robbins moved to approve the agreement to purchase real estate from Mark Peterson, Elizabeth Black, Patricia Rime, and Kathleen Seitzer for the benefit of Norman and Myrna Peterson due to the embankment in the amount of \$33,800.50 as recommended by the City Assessor. The motion was seconded by Commissioner Stromme. On roll call all Commissioners voted aye, and the motion carried.

The City Assessor reviewed the purchase agreement for purchasing land needed for Phase I of the embankment project. The City had previously purchased land from these owners; however, the Corps of Engineers had revised the embankment drawings and 10 feet more is needed. This additional land will be purchased for the same price as the initial land purchased.

Commissioner Heisler moved to approve the agreement to purchase real estate from Joe and Cecilia Kraft due to the embankment in the amount of \$500.00 as recommended by the City Assessor. The motion was seconded by Commissioner Stromme. On roll call all Commissioners voted aye, and the motion carried.

Commissioner Stromme moved to approve the ND Department of Transportation Agreement for Temporary Highway Closure to close ND Highway 19 from College Dr and Highway 2 from 12:00 P.M. on May 31, 2013 until 2:00 P.M. on June 2, 2013 for the Devils Run car show as recommended by the City Engineer. The motion was seconded by Commissioner Heisler, and the motion carried unanimously.

Chris Schilken, executive director of Forward Devils Lake, explained that the loan recipients failed to meet payment terms on the original agreement. The recipients agreed on restructuring the repayment schedule. The principal and interest rate will remain the same. The term was lengthened from five years to ten years.

Commissioner Stromme moved to approve the agreement to restructure the loan repayment schedule for Richard Goldade and Joan Jacobs as recommend by Forward Devils Lake. The motion was seconded by Commissioner Morse. Discussion followed on the date of the first payment being April 1, 2013 and the term ten years. These changes will be made to the agreement. The motion carried unanimously.

The City Engineer reviewed the bid award for Hwy 20. The City's share would be \$284,750.07. The bid is for the entire project, (NDDOT and City). The City's project would be embankment work for restructuring of the roadway on the dry side of the embankment and on top. The pavement from last year will need to come up and some incidentals are included. The project has been approved for LERRD credit.

Commissioner Morse moved to approve awarding the bid for subgrade repair, milling and paving of Highway 20 at the levee location to Knife River Materials in the amount of \$5,716,190.76 with the City's share being \$284,750.07 as recommended by the City Engineer and the ND Department of Transportation. The motion was seconded by Commissioner Robbins. On roll call all Commissioners voted aye, and the motion carried.

The City Engineer reviewed the cost participation and maintenance agreement for US Highway 2 from 14th Avenue to Goulding Road. This work is the second part needed for the Wal-Mart development. The work is being completed in highway right-of-way; therefore, it needs to meet DOT specifications.

Commissioner Robbins moved to approve the cost participation and maintenance agreement with ND Department of Transportation for US Highway 2 from 14th Avenue to Goulding Road as recommended by the City Engineer. The motion was seconded by Commissioner Stromme, and the motion carried unanimously.

Commissioner Heisler moved to approve payment of the list of bills as submitted. The motion was seconded by Commissioner Stromme. On roll call all Commissioners voted aye, and the motion carried.

President Johnson acknowledged the following report:
City Auditor monthly report.

Commissioner Morse indicated he would like the ordinance banning various breeds of animals to be reviewed.

There being no further business to come before the Commission, President Johnson adjourned the meeting at 7:12 P.M.

LINDA LYBECK
CITY AUDITOR

RICHARD S. JOHNSON
PRESIDENT