

MINUTES OF THE BOARD OF CITY COMMISSIONERS
HELD AUGUST 5, 2013

The regular meeting of the Devils Lake City Commission was held Monday, August 5, 2013 at 5:30 P.M. with the following members present: President Johnson, Commissioners Tim Heisler, Rick Morse, and Dale Robbins. Commissioner Craig Stromme was absent.

Pledge of allegiance was recited.

Commissioner Robbins moved to approve the minutes of the regular City Commission meeting held July 15, 2013 and of the special City Commission meetings held July 29, 2013 and August 1, 2013. The motion was seconded by Commissioner Morse, and the motion carried unanimously.

5:30 P.M. – This was the time set for a public hearing concerning the approval of the issuance by the Colorado Health Facilities Authority of its Health Facilities Revenue Bonds (The Evangelical Lutheran Good Samaritan Society Project), Series 2013 on behalf of The Evangelical Lutheran Good Samaritan Society. The Good Sam is refinancing bonds, and the City has no liability with respect to the bonds. Hearing and receiving no comments, President Johnson closed the public hearing.

Commissioner Heisler moved to approve the issuance of the Colorado Health Facilities Authority for its Health Facilities Revenue Bonds (The Evangelical Lutheran Good Samaritan Society Project), Series 2013 on behalf of The Evangelical Lutheran Good Samaritan Society to refund that portion of the Colorado Authority's Health Facilities Revenue Bond (The Evangelical Lutheran Good Samaritan Society Project), Series 2004 issued on behalf of the Society, the proceeds of which were used for the acquisition, construction, improvement and equipping of a 24 unit assisted living facility at the Good Samaritan Society-Devils Lake. The motion was seconded by Commissioner Morse, and the motion carried unanimously.

Mike Nieman appeared before the City Commission to address the noise complaint. Badland Sportsclub of America held an event at Ruger Park. There were 24 entries with only four from Devils Lake. Except for the go carts, all the rest are licensed vehicles. The event is held from 11 AM to 4 PM.

Discussion followed on the letter from concerned citizens. It did not specifically mention this event, and since it was an anonymous letter it is hard to pinpoint their concern.

The Police Chief recommended having more publicity as to when the events will be held so that the neighbors are apprised of the situation.

Mike Nieman reviewed the safety mandated by the club. There are safety stewards that shutdown any out of control drivers. If something goes wrong the track is set up so it heads towards the curb and not the spectators. The activities are separated from each other and from spectators.

Cletus Kraft appeared before the City Commission to show his support for the Badland Sportsclub.

The Commission recognized the letter from the concerned citizens as a legitimate concern, but needed more information to follow up on it.

Commissioner Heisler – The City Assessor said everything was fine.

The City Engineer stated work is being done on shaping the road for Elkhorn. Curb will be placed later this week.

As for the embankment, some quantities are over, and the timeline is being pushed into the fall. Cleanup will probably be pushed into next year. Some test pumping needs to be done at East Ditch. The work on the Airport reach needs to be coordinated with the Airport runway project.

The water and chlorine are in at the Sleep Inn. Two bacteria tests need to pass. The sewer work was finished last week. Discussion followed on the water line being bored in.

Commissioner Robbins - The Public Ways Supervisor said everything was fine.

The Public Utilities Supervisor stated everything was fine in the Water Department.

Commissioner Morse – The Public Ways Supervisor reported on the 2013 street repairs. Funding is short so the City parking lot next to the Armory will be dropped. City crews will be doing some of the work, and Tri-State Paving will be back the beginning of next week.

The Public Utilities Supervisor said everything was fine in the Sewer Department.

President Johnson – The Police Chief thanked the Street Department for putting the trailer together for the mobile radar sign. The sign has capacity for traffic surveys and traffic counts.

The Sanitation Supervisor said Al Shorey retired after 36 years.

The City Auditor stated everything was fine.

The City Administrator said a budget meeting will be held at noon on Thursday for water, sewer and sanitation. A meeting with Greater Ramsey Water District is scheduled for Thursday morning.

The Fire Chief stated four applications were received for the new position.

The City Attorney said everything was fine.

The City Administrator indicated the Kurtzs wanted an option to decide how to finance their project – tax increment financing or special assessment. He questioned if the development agreement could be written to accommodate this.

Keith Kurtz indicated the project would be started next year, and he would like all the paper work completed beforehand.

Commissioner Morse moved to table the development agreement for K&K. The motion was seconded by Commissioner Robbins, and the motion carried unanimously.

The second reading of Ordinance No. 915 – Home Day Care Facilities was read.

Commissioner Heisler moved to approve the second and final reading of Ordinance No. 915 – Home Day Care Facilities effective immediately – An ordinance which upon adoption shall amend, in part, Ordinances Nos. 827, 834, 879 and 887, which amendments have been codified as Sections 17.16.020(E), 17.16.030(D), 17.20.020(F), 17.20.030(D), 17.24.020(G), 17.24.030(B), 17.28.020(J), 17.28.030(C), 17.32.020(F), 17.320.030(D), 17.36.020(F), 17.36.030(D), 17.38.020(G), 17.38.030(C), and 17.40.020(E) of the Devils Lake Municipal Code, and which ordinance shall further create a new section to the Devils Lake Municipal Code, which will be Section 17.40.030(F). The motion was seconded by Commissioner Morse. It was noted that facilities with over 18 children would need to go through the Planning Commission for a conditional use permit. The City Assessor explained the conditional use permit procedure. A \$50 fee is required to cover the cost of the publications. The motion carried unanimously.

Cary Stephenson, in-house counsel for Otter Tail Power Company (OTP), raised concerns OTP has with the unconditional franchise for Nodak Electric Cooperative (Nodak). If it is approved as an unlimited franchise, how would the conditions be imposed afterwards? OTP would like the boundaries established first; otherwise, the scope is subject to debate. The City needs to impose limits defining the limit of franchise.

A contingent understanding between OTP and Nodak has been reached. The agreement calls for city approval, and lists the City as the third party of the agreement. The agreement will not go forward without the City participating. This is one option with the scope of boundary being defined before issuing the franchise. The City may choose other boundaries and limits. OTP is not opposed to a limited franchise for Nodak that is approved and limited by the City.

The full Commission has not seen the service agreement and all the maps which makes it difficult for them to make a decision.

Nodak's response letter indicated they were requesting a limited franchise with the boundary defined.

Tim Greene, Otter Tail Power Company, stated both OTP and Nodak worked on the agreement, but the City needs to be a party. He also indicated the rates and reliability information provided by Nodak used just the Devils Lake area for Nodak,

but used the whole area of the state served by OTP. OTP has reached a compromise with Nodak, but it is subject to approval by the City.

Milo Einarson, Nodak Electric Cooperative, stated Nodak is interested in a limited franchise. He stated in other areas served by Nodak, boundaries are not set by the cities. It is worked out internally between Nodak and the service provider for the area. Their intention was to have orderly development of the grid system and not overlapping of boundaries. The service area agreement is acceptable to Nodak. For the service area agreement Nodak and OTP looked at the current infrastructure and came up with a compromise. He stated Nodak's reliability falls within the limits and are comparable to other utilities.

Discussion followed on the authority of the Public Service Commission (PSC), and if the PSC would step in if infrastructure already existed.

One concern of the City Commission was that neighbors would be paying different rates. Nodak indicated this was common to larger communities. Discussion continued on the rates for Nodak and OTP and on how they vary depending on when investments in infrastructure are made.

Another concern was customer preference. Customer preference is not a deciding factor according to the Supreme Court because it does not go with orderly development. Consideration of the investment made in the infrastructure that is already available should be taken into account.

The service agreement was agreed upon by Nodak and OTP. OTP provided the verbiage while Nodak provided the maps.

Also discussed was OTP needing approval from PSC and meeting the public necessity requirement to go outside of city limits. Nodak would consider any services provided by OTP outside of city limits as a taking.

John Dahlen, Highland Park Estates, indicated when he brought his 40 acres into the city limits in 2001 it was with OTP providing the service. He would like OTP to service the area since their rates are cheaper.

Wade Schwan, Stone Ridge Estates, stated with OTP you know the rate, and rate increases go through the PSC. Nodak rates do not go through the PSC, and they have a facility charge.

Cary Stephenson, in-house counsel for OTP, stated the agreement only gives the City one option for a limited franchise. The City could leave the Nodak footprint, slightly expand it, or come to some other agreement. The City has the constitutional authority to decide who provides the service. The reason for the service agreement was to present an option to the City to show that OTP and Nodak tried to work it out. It came about because of the area up north.

The City Commission was concerned about picking and choosing who gets what company for service. They need to look out for what is best for the citizens.

Milo Einarson, Nodak, stated the agreement is needed as the City grows so there isn't leapfrogging of infrastructure and extra lines. On the outskirts of town, Nodak has the infrastructure in place.

Tom Reule stated the Commissioners were elected to represent the citizens.

Jessica Ramey Gilliam questioned why the City would not accept the service agreement when it was done in good faith.

The second and final reading of Ordinance No. 916 – Nodak Electric Cooperative Franchise failed for the lack of a motion.

The City Assessor requested the bid from Howatt's Excavating be accepted for the demolition of the city-owned house. The work is to be completed by November 1, 2013.

Commissioner Robbins moved to award the bid for Alternate A for the demolition of the city-owned house to Howatt's Excavating, Starkweather, ND in the amount of \$17,000 as recommended by the City Assessor. The motion was seconded by Commissioner Morse, and the motion carried unanimously.

Commissioner Heisler moved to approve the consent agenda which included the game of chance permits for the month of July 2013. The motion was seconded by Commissioner Robbins, and the motion carried unanimously.

The City Administrator reviewed the Blue Cross Blue Shield contract for 2014. It is for the same coverage. There will be no change in the rate for family coverage even though the stop loss premium increased by 8%.

Commissioner Morse moved to approve the Blue Cross Blue Shield contract for 2014. The motion was seconded by Commissioner Robbins, and the motion carried unanimously.

The City Engineer indicated the development agreement addresses issues for creating the street improvement district for Highland Park Estates. The district includes the entire subdivision including the old lots.

Commissioner Morse moved to approve the resolution creating Street Improvement District No 48-13 (Highland Park Estates 2nd) and ordering the preparation of a preliminary report as recommended by the City Engineer. The motion was seconded by Commissioner Heisler, and the motion carried unanimously.

The City Engineer stated the preliminary report was addressed in the development agreement and the change order addresses the construction costs of water and sewer. The roadway improvement will be considered Phase 2.

Commissioner Robbins moved to approve the resolution approving the preliminary report and directing preparation of plans and specifications for Street Improvement District No 48-13 (Highland Park Estates 2nd) as recommended by the City Engineer. The motion was seconded by Commissioner Heisler, and the motion carried unanimously.

The City Engineer stated the City did not have a water easement for the Applebee's property; therefore the City will pay for this portion of the project. The City did have a sewer easement so Applebee's will pay for sewer. Storm sewer was added.

The City Engineer reviewed the change order for Peterson Construction. This change order would add the work for Applebee's to the original contract for Stone Ridge Subdivision Water & Sewer Improvement. The unit prices were the same for this project as for the previous project except the original project did not include storm sewer.

Commissioner Heisler moved to approve Change Order No. 2 for Peterson Construction for Stone Ridge Subdivision Water & Sewer Improvement for water and sewer installation at the Applebee's project for a net increase in the amount of \$70,247.84 as recommended by the City Engineer. The motion was seconded by Commissioner Morse, and the motion carried unanimously.

The City Engineer reviewed the change order for Peterson Construction. This change order would add the work for Highland Park Estates 2nd. The project is an extension of the water and sewer project completed in Stone Ridge Estates. The unit prices would be the same for this project and would allow for the water and sewer to be completed this fall.

Commissioner Robbins moved to approve Change Order No. 3 for Peterson Construction for Stone Ridge Subdivision Water & Sewer Improvement for water and sewer installation at Highland Park Estates 2nd project for a net increase in the amount of \$200,380.00 as recommended by the City Engineer. The motion was seconded by Commissioner Morse, and the motion carried unanimously.

The City Administrator reviewed the general consulting agreement with Tanya Wieler for human resource issues. This new agreement allows for a more flexible schedule.

Commissioner Heisler moved to approve the general consulting agreement between Ramsey County, the City of Devils Lake, the Law Enforcement Center and Tanya Wieler at the rate of \$3,000 per month to be divided evenly between the three entities. The motion was seconded by Commissioner Morse, and the motion carried unanimously.

Commissioner Morse moved to approve funding for the year for the Retired & Senior Volunteer Program in the amount of \$4,800.00 to be paid from general fund (1000-000-55160). The motion was seconded by Commissioner Robbins. On roll call all Commissioners voted aye, and the motion carried.

Commissioner Robbins moved to approve payment of Estimate No. 1 to Peterson Construction for the Applebee's project in the amount of \$38,842.88 as recommended by the City Engineer. The motion was seconded by Commissioner Morse. On roll call all Commissioners vote aye, and the motion carried.

The City Engineer indicated the pay estimates for 2013 Curb, Gutter & Sidewalks do not reflect work completed by property owners.

Commissioner Morse moved to approve payment of Estimate No. 2 to Tri-State Paving for 2013 Curb, Gutter & Sidewalk in the amount of \$19,204.16 as recommended by the City Engineer. The motion was seconded by Commissioner Robbins. On roll call all Commissioners voted aye, and the motion carried.

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

President Johnson acknowledged the following reports:

1. City Auditor monthly report; and
2. Police Department monthly report.

There being no further business to come before the Commission, President Johnson adjourned the meeting at 7:05 P.M.

LINDA LYBECK
CITY AUDITOR

RICHARD S. JOHNSON
PRESIDENT