

MINUTES OF THE BOARD OF CITY COMMISSIONERS
HELD SEPTEMBER 16, 2013

The regular meeting of the Devils Lake City Commission was held Monday, September 16, 2013 at 5:30 P.M. with the following members present: President Dick Johnson, Commissioners Tim Heisler, Craig Stromme, and Dale Robbins. Commissioner Rick Morse was absent.

Pledge of allegiance was recited.

Commissioner Stromme moved to approve the minutes of the regular City Commission meeting held September 3, 2013. The motion was seconded by Commissioner Robbins, and the motion carried unanimously.

5:30 P.M. - This was the time set for the bid opening for Lots 1 & 2, Block 2, Stromquist 4th Addition. The following bid was opened and read:

MJ Industries of Devils Lake	Bid \$12,800 contingent upon the lots being rezoned to highway commercial
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Commissioner Heisler moved to accept the bid from MJ Industries, Devils Lake in the amount of \$12,800 for Lots 1 & 2, Block 2, Stromquist 4th Addition contingent upon the lots being rezoned to highway commercial. The motion was seconded by Commissioner Stromme. Discussion followed on the lots being zoned for manufactured housing. The motion carried unanimously.

5:30 P.M. – This was the time set for a public hearing for the 2014 City of Devils Lake Budget. Hearing and receiving no comments, President Johnson closed the public hearing.

Commissioner Robbins moved to approve the 2014 City of Devils Lake Budget as presented. The motion was seconded by Commissioner Heisler, and the motion carried unanimously.

5:30 P.M. – This was the time set for the public hearing to issue a Class II retail liquor license to Apple Lake Inc. dba Applebee's Neighborhood Grill and Bar located at 508 Hwy 2 E. Hearing or receiving no comments, President Johnson closed the hearing.

Commissioner Stromme moved to approve issuing a Class II retail liquor license to Apple Lake Inc. dba Applebee's Neighborhood Grill and Bar located at 508 Hwy 2 E. The motion was seconded by Commissioner Heisler. The number of seating required for this class of license was discussed. The motion carried unanimously.

5:30 P.M. – This was the time set for a public hearing to review a final plat for Davis Estates located on Hwy 2 W. Hearing and receiving no comments, President Johnson closed the public meeting.

Commissioner Heisler moved to approve the recommendation submitted by the Devils Lake Planning Commission to approve the final plat for Davis Estates located on Hwy 2 W. The motion was seconded by Commissioner Stromme, and the motion carried unanimously.

5:30 P.M. – This was the time set for a public hearing to review a request for a conditional use permit to allow more than 18 children in a home day care (406 10th St NW). Hearing and receiving no 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 allow up to 30 children in a home day care located at 406 10th St NW and submitted by Rose Janssen. The conditional use permit will be reviewed annually if warranted by complaints from the neighborhood. The motion was seconded by Commissioner Heisler. This is for an existing daycare which has been at this location for approximately five years. The motion carried unanimously.

5:30 P.M. – This was the time set for a public hearing to review a request for a conditional use permit to allow more than 18 children in a home day care (610 10th St NW). Hearing and receiving no comments, President Johnson closed the public meeting.

Commissioner Heisler moved to approve the recommendation submitted by the Devils Lake Planning Commission to approve a conditional use permit to allow up to 30 children in a home day care located at 610 10th St NW and submitted by

Carla Bjornson. The conditional use permit will be reviewed annually if warranted by complaints from the neighborhood. The motion was seconded by Commissioner Robbins, and the motion carried unanimously.

Jessica Ramey Gillam appeared before the City Commission to discuss the video equipment at the Police Department. She had attended a case in federal court in which a video was presented that had been recorded with equipment from the Devils Lake Police Department. There was a technical issue with the video. The Police Chief stated the dvr and monitor have been replaced, and the equipment is consistently updated, but there can be issues with aging equipment. The Police Chief has no knowledge of any other issues, and will check with the parties involved after the case is over.

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

The Public Ways Supervisor said the Street Department would be taking the flowers down.

Commissioner Heisler – The City Engineer reviewed the following:

1. Conditional use permits for allowing the two home day cares to have up to 30 children. It was the intent of the Planning Commission to review the permits annually if complaints were received from the neighborhood.
2. Elkhorn Subdivision – The curb is placed, and the gravel is being trimmed. Asphalt will be placed on Tuesday and Wednesday.
3. Highland Park – Installation of sewer is complete. Water is being installed.

The City Assessor said everything was fine.

Commissioner Stromme - The Police Chief stated the contract for overtime from DOT for DUI and seatbelt enforcement has been received with a start date of October 1, 2013.

The Police Chief indicated the missing youth was found in North Carolina this afternoon.

The Sanitation Supervisor reported work had been done on the 1994 pup trailer; however, it has more issues. The mechanic recommended replacing the trailer since it would cost between \$15,000 and \$20,000 to refurbish it. The trailer has 1.5 million miles on it. The mechanic stated the trailer would not pass DOT inspections because of the fractures in the frame. The Sanitation Supervisor received a quote to purchase a new pup trailer for \$44,150 less \$5,000 trade-in for the old trailer for a net cost of \$39,150.

Commissioner Robbins moved to declare an emergency to purchase a new pup trailer due to the unsafe condition of the 1994 pup trailer, and to accept the quote from Northland Truck Sales of West Fargo for a new 2014 Great Lakes Pup Trailer in the amount of \$44,150 less \$5,000 trade-in for the 1994 Great Lakes Pup Trailer for a net price of \$39,150. The motion was seconded by Commissioner Stromme. On roll call Commissioners voted aye, and the motion carried.

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

The Public Ways Supervisor stated everything was fine.

The City Auditor stated a thank you note was received from the Hope Center.

The Fire Chief state everything was fine.

The City Attorney said the Class II liquor license requires seating for 100 or more.

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

1. Appointment of Mary Compton as a member of the Lake Region Public Library to fill an unexpired term expiring on June 30, 2015;
2. Appointment of Greg Semenko as a member of the Devils Lake Planning Commission to fill an unexpired term expiring on June 30, 2016; and
3. Permit to sell alcoholic beverages a special event and a public dance permit submitted by Thirsty's Bar for the rodeo beer gardens to be held September 27, 28 and 29, 2013 at the Burdick arena and for the rodeo dance to be held September 27, 28 and 29, 2013 with the hours of 9:00 P.M. until 1:00 A.M. at the Burdick Arena.

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

The City Engineer reviewed the change order for Peterson Construction to add the water and sewer for Agassiz Subdivision at the same unit prices as Stone Ridge Estates. The City was requested to have the work completed this year. The roadways will be completed next year.

Commissioner Robbins moved to approve Change Order No.4 for Peterson Construction for Stone Ridge Subdivision Water and Sewer Improvement for the addition of water and sewer installation at Agassiz Subdivision for a net increase in the amount of \$224,246 and a completion date of November 1, 2013 as recommended by the City Engineer. The motion was seconded by Commissioner Stromme, and the motion carried unanimously.

The City Engineer reviewed the change order for Elkhorn Subdivision. The change order is for topsoil to place the curb back. The original price was \$18/cu yd; however, the City Engineer was able to negotiate a price for the overage at \$12/cu yd.

Commissioner Morse arrived at the meeting at 5:57 P.M.

Commissioner Heisler moved to approve Change Order No.4 for Strata Corporation for Street Improvement District No 44-12 (22nd St and Lincoln) for the addition of topsoil import and asphalt removal at Elkhorn Subdivision for a net increase in the amount of \$20,322 and a completion date of September 30, 2013 as recommended by the City Engineer. The motion was seconded by Commissioner Stromme, and the motion carried unanimously.

The City Assessor stated two properties for Phase III in Eagle Bend have stalled. The City has right of entries, and the project continues, but the property owners have not settled with the City. The City Assessor would like to proceed with eminent domain. The City Attorney stated he has a conflict of interest because he does other work for the property owners involved. Another attorney would need to be hired to represent the City. Dan Gaustad has represented the City on other items.

Commissioner Heisler moved to hire Dan Gaustad to represent the City on the land acquisitions for Dustin LaFleur and LaFleur and Thompson. The motion was seconded by Commissioner Morse. Discussion followed on the City having a tentative agreement with one other party, everything else being completed by agreements, and waiting for the other five properties which have been filed in court. The motion carried unanimously.

The City Attorney reviewed the condemnation process to obtain the needed land. The attorney would draft resolutions to start the condemnation process. After the resolutions are passed, they would be delivered to the clerk of court, and the monetary amounts would be deposited with the clerk.

Commissioner Robbins moved to approve the quick take process for the land owned by Dustin LaFleur and needed for the embankment as recommended by the City Assessor. The motion was seconded by Commissioner Morse. On roll call all Commissioners voted aye, and the motion carried.

Commissioner Morse moved to approve the quick take process for the land owned by LaFleurs and Thompsons and needed for the embankment as recommended by the City Assessor. The motion was seconded by Commissioner Robbins. On roll call all Commissioners voted aye, and the motion carried.

Commissioner Stromme moved to approve the statement of work for the BCBS health club credit. The motion was seconded by Commissioner Heisler, and the motion carried unanimously.

The City Auditor stated the request for the Mayor's Committee should be for the value of one mill which is \$11,920.

Commissioner Stromme moved to approve the payment of \$11,920.00 to the Mayor's Committee on Employment of People with Disabilities as allocated in the City's 2013 budget with funding from the General Fund – 1000-000-44940. The motion was seconded by Commissioner Morse. On roll call all Commissioners voted, and the motion carried.

A request from Carla and Paul Bjornson to purchase part of an outlot in the Roundhouse Subdivision for expanding the area of their home day care was reviewed.

The City Assessor has concerns with this request. The outlots were platted as part of the subdivision for green space. The outlot takes the property up to the railroad - 55-57 feet from lot line to property line of railroad. As it goes further east, the outlot narrows to 20 feet. There are no easements because the outlots were meant to be public property. The City would need to record easements. It was the City's intent to plant trees and have a buffer zone between the roundhouse lots and

the railroad. Utility lines underground are for Midcontinent Communication, North Dakota Telephone Company, Otter Tail Power and in some instances MDU.

Paul Bjornson stated Outlot A is listed for sale on the City's web site. They are only requesting part of the outlot and would leave 25 feet between their property and the railroad.

Discussion continued on no easements existing on this outlot, the expectation of more requests for part of this outlot if this one is approved, on where would you stop with the requests, and on how many feet would you need between the residential property and the railroad property. It was noted that the outlot is used for access, and it is the legal access for the railroad loading docks. Also discussed was the size of the lots in the subdivision, how much property individuals were allowed to purchase for their homes, setting a precedence for selling parts of the outlot, and the amount of property needed for access.

Carla Bjornson reviewed the day care requirements for inside and outside space. The City Assessor stated you cannot build on property with easements. It would need to be used as opened space. Easements do not allow fences.

The City Engineer stated more traffic is expected with BNSF. He indicated there is a need for a shelter belt there, for access and for a buffer zone. He inquired if the City could allow Bjornsons to use the area without selling it. The City Attorney would not recommend this because of liability issues.

The City Assessor stated that over time, use of the easements would evolve and to get in to make repairs becomes a mess.

Commissioner Robbins moved to approve the sale of 32 feet of parcel 39-1809-00117-000, Roundhouse Subdivision to Carla and Paul Bjornson for \$1,050.00. President Johnson called three times for a second to the motion. The motion died for the lack of a second.

Commissioner Heisler moved to approve payment of Estimate No. 1 to Strata Corporation for work completed in Elkhorn Subdivision Street Improvement 46-12 under Street Improvement 44-12 in the amount of \$140,405.87 as recommended by the City Engineer. The motion was seconded by Commissioner Stromme. On roll call all Commissioners voted aye, and the motion carried.

Commissioner Stromme moved to approve payment of Estimate No.3 to Tri-State Paving for 2013 Curb, Gutter & Sidewalk in the amount of \$23,750 as recommended by the City Engineer. The motion was seconded by Commissioner Robbins. On roll call all Commissioners voted aye, and the motion carried.

The City Engineer reviewed the power for the east ditch pump station. Nodak provided power to the old east ditch pump station. The feed wasn't adequate for the new pump station. Nodak was going to bring the line over, but the Corps of Engineer's requirement for total redundancy was too expensive. Nodak could provide power for three pumps. Otter Tail Power said they could provide the total redundant power so the property was annexed into the City. However, the price for providing the power has increased from \$500,000 to \$1.2 million. Therefore, the Corps of Engineers has adjusted their recommendation from total redundant power to power for three pumps. Nodak can provide power for the 3 pumps for less than \$100,000; however, with the recent change in the municipal code requiring a franchise to operate within City limits Nodak is hesitant to proceed. The City Engineer is requesting an exemption to the required franchise in order for Nodak to provide power to the east ditch pump station.

The City Attorney stated an exemption is not needed because Nodak is grandfathered in since they were the provider of power at the old east ditch pump station. He also indicated Nodak is working on requesting a limited franchise for areas within city limits where they provide current services. However, Nodak is waiting with the request until Nodak and Otter Tail Power negotiate their service agreement.

Consensus of the City Commission was for the City Attorney to send a letter to Nodak indicating the grandfather clause would apply to the east ditch pump station.

President Johnson indicated Heartland Care is refinancing bonds, and the City has no liability with respect to the bonds.

Commissioner Stromme moved to approve the resolution approving the issuance of senior housing refund revenue bonds (Heartland Care Center Project) Series 2013. The motion was seconded by Commissioner Heisler, and the motion carried unanimously.

The City Attorney stated the request to sell fireworks from December 26th through January 1st in accordance with State law would require the City to amend the city ordinance. The consensus of the Commission was to have the City Attorney prepare an amendment for the ordinance with the first reading to be held October 7, 2013.

Commissioner Stromme moved to approve payment of the list of bills as submitted. The motion was seconded by Commissioner Robbins. The City Engineer stated the check for Highway 20 would be held until the City received approval from the Corps of Engineers. On roll call all Commissioners voted aye, and the motion carried.

President Johnson acknowledged the following reports:

1. City Auditor monthly report;
2. Fire Department monthly report;
3. Municipal Court monthly report; and
4. Police Department monthly report.

Commissioner Morse inquired about the additional 15 feet along the dike at Eagle Bend. The City Engineer stated no additional footage was needed, and the trees removed were in the public right-of-way. The additional 20-foot stakes are gone, and the contractor will not be working in there. It was staked for new temporary work limits for construction of a drainage swale; instead, the work will be done in existing work limits. The area has drainage, tree and sanitary sewer issues.

There being no further business to come before the Commission, President Johnson adjourned the meeting at 6:50 P.M.

**LINDA LYBECK
CITY AUDITOR**

**RICHARD S. JOHNSON
PRESIDENT**