

MINUTES OF THE BOARD OF CITY COMMISSIONERS
HELD OCTOBER 6, 2014

The regular meeting of the Devils Lake City Commission was held Monday, October 6, 2014 at 5:30 P.M. with the following members present: President Johnson, Commissioners Tim Heisler, Craig Stromme, and Dale Robbins. Commissioner Morse was absent.

Pledge of allegiance was recited.

Commissioner Robbins moved to approve the minutes of the regular City Commission meeting held September 15, 2014. The motion was seconded by Commissioner Stromme, and the motion carried unanimously.

5:30 P.M. – This was the time set for the Confirmation of the Assessment List confirmed by the Special Assessment Commission. Hearing and receiving no comments, President Johnson closed the hearing.

Commissioner Stromme moved to confirm the assessments on the 2013 Curb, Gutter & Sidewalk, 2014 Curb, Gutter & Sidewalk, 2014 Miscellaneous Charges, 2014 Parking Authority Maintenance and Beautification District No. 02-01, Street Improvement District No. 50-11 – Stone Ridge (Frontage Road), Street Improvement District No. 44-12 – 22nd St NE, Street Improvement District No. 46-12 – Elkhorn, and Water & Sewer Improvement District No. 53-12 – Applebee's. The motion was seconded by Commissioner Heisler, 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 a storage garage/warehouse in an area zoned as highway commercial (Hwy 20 S behind O'Reilly's Auto Parts). Hearing or receiving no comments, President Johnson closed the public hearing.

Commissioner Robbins moved to approve the recommendation submitted by the Devils Lake Planning Commission to approve a conditional use permit to construct a storage warehouse in an area zoned as highway commercial and described as Lot 7, Earl Smith Subdivision with the stipulation that storage of fireworks in the building is allowable only during the period of June 10 through July 10 of each year. The motion was seconded by Commissioner Heisler, and the motion carried unanimously.

Commissioner Morse arrived at the meeting at 5:35 P.M.

Camp Grafton Regional Training Institute Representatives appeared before the City Commission to thank the City for supporting their engineering training. A plaque was presented as a token of their appreciation.

President Johnson thanked Camp Grafton for all they do.

Jessica Ramey appeared before the City Commission to discuss the nuisance at the Roundhouse Subdivision. The City Engineer reiterated the material has been classified as a nuisance and not a hazardous material. The previous test results show it as a black, tar-like substance. It is not cresol. City staff is working with the State Health Department to remove the material in the Roundhouse Subdivision and dispose of it at the City's landfill.

John Kuntz appeared before the City Commission to inquire about the letter he was to receive concerning the land acquisition and relocation. The City Attorney stated the City Commission hasn't met since the committee meeting.

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

The Public Ways Supervisor stated everything was fine at the cemetery.

Commissioner Robbins stated there are some maintenance issues at the daycare center building including the hardware on the windows, stove and floors. The priorities are the stove which is estimated to cost \$1,500.00 and the floors which could cost \$2,000.00. He requested the City Commission approve up to \$5,000.00 for maintenance items at the daycare center building.

Commissioner Heisler moved to approve up to \$5,000.00 for maintenance items at the daycare center building. The motion was seconded by Commissioner Stromme, and the motion carried unanimously.

Commissioner Morse – The Public Ways Supervisor stated the Street Department started cutting trees today. They hope to cut down three trees a day.

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

Commissioner Heisler – The City Engineer asked if the Commission had any questions on remediation for the black, tar-like substance in Roundhouse Subdivision. The plan is to write a letter to the State Health Department outlining the remediation and clean-up and to request a variance to haul the material to the landfill to use as cover.

Commissioner Stromme - The Sanitation Supervisor stated the second week of fall cleanup has started.

The Police Chief stated everything was fine.

President Johnson – The City Auditor stated everything was fine.

The City Administrator said one employee is going through serious health issues, and another employee has been filling in for this absent employee. He requested that the employee filling in be temporarily changed from an 8J to a 9I.

Commissioner Stromme moved to approve on a temporary basis a grade change for Paul Arends from an 8J to a 9I until the absent employee returns to work. The motion was seconded by Commissioner Heisler, and the motion carried unanimously.

Commissioner Robbins moved to approve making the pay change for Paul Arends retroactive to when he took over the duties. The motion was seconded by Commissioner Stromme, and the motion carried unanimously.

The Fire Chief said the open house is Wednesday at the Fire Hall.

The City Attorney stated he would like to enter Executive Session at the end of the meeting to discuss the Kuntz case and land acquisition for Jason Bednarz.

The City Attorney reviewed the Lake Region Shooting Sports Association's agreement with the ND Highway Patrol. The City is not part of the agreement and should not sign it.

President Johnson stated the ND Department of Transportation (DOT) would like to deed some property to the City. The property is adjacent to Military Road. Some flood plain easements were needed on the north side of the road for the pump station at Camp Grafton as part of the 100-year flood plain. DOT elected to purchase the property as part of their road project. DOT does not need title to the property and would like to deed it to the City.

Commissioner Heisler moved to accept the five parcels from the ND Department of Transportation. The motion was seconded by Commissioner Morse. City staff will work with DOT on the details. The motion carried unanimously.

The Fire Chief reviewed the proposal for placing LED lights on College Dr from Hwy 19 to Hwy 2. Proposals from Devils Lake area electricians were above Graber Electric's prices. The proposal is for 15 LED lights and would be installed by the Fire Department.

Commissioner Robbins moved to approve the proposal for 15 LED lights on College Dr from Hwy 19 to Hwy 2 from Graber Electric for approximately \$8,100.00 as recommended by the Fire Chief. The motion was seconded by Commissioner Morse, and the motion carried unanimously. The project will be paid for with infrastructure funds.

The City Engineer reviewed the utility easement for a sewer line for Clint Campbell. The City acquired additional land beyond what was required for the flood protection. The easement would follow the vegetation free zone. The easement was previously conceptually approved by the City Commission, and it has been approved by the Corps of Engineers.

Commissioner Stromme moved to approve the utility easement for Clint Campbell as recommended by the City Engineer. The motion was seconded by Commissioner Heisler, and the motion carried unanimously.

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

1. Extension of premises application for a special event submitted by Thirsty's Bar for Oktoberfest on October 11, 2014;

2. Game of chance permits for the month of September 2014; and
3. Permit to sell alcoholic beverages at a special event submitted by Proz Inc for the Lake Region State College Key Event Fundraiser on October 24, 2014 at the Memorial Building.

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

The first reading of Ordinance No. 923 – Tobacco Sales was held. The ordinance was drafted at the request of Public Health.

The City Engineer stated Change Order No. 6 for the Stone Ridge Subdivision was for directional drill methods instead of open cut due to wet soil conditions and compaction requirements.

Commissioner Stromme moved to approve Change Order No. 6 for Peterson Construction for Stone Ridge Subdivision Water and Sewer Improvement for the addition to the scope of work to allow for pipe installed by directional drill methods rather than open cut due to wet soil conditions and compaction requirements and for a 2" curb stop for a net increase of \$3,425.00 as recommended by the City Engineer. The motion was seconded by Commissioner Robbins, and the motion carried unanimously.

The City Engineer stated Change Order No. 7 for the Stone Ridge Subdivision was for directional drill methods for the property adjacent to the Agassiz Improvement District. The property at 9th Ave SE has its own special assessment district and probables were provided.

Commissioner Robbins moved to approve Change Order No. 7 for Peterson Construction for Stone Ridge Subdivision Water and Sewer Improvement for the addition to the scope of work to allow for pipe installed by directional drill methods to extend pipe line installed as part of Agassiz Improvement to allow service for 9th Ave SE for a net increase of \$28,435.00 as recommended by the City Engineer. The motion was seconded by Commissioner Morse, and the motion carried unanimously.

The City Engineer reviewed the changes to the haul road permit. The requirements were put in place when all the large-scale, construction work was on-going. The bond requirements would be reduced from \$100,000 per city block to \$35,000 per city block for paved streets and from \$35,000 per city block to \$15,000 per city block for gravel streets. Haul permit is required for any project for 2,500 ton or more. Discussion continued on Enbridge hauling pipe from the railroad dock to the project site. The local road was constructed to handle truck traffic. No haul road permit is required for Highway 20 since it is a State highway and not a local street.

Commissioner Robbins moved to approve reducing the bond requirements from \$100,000 per city block to \$35,000 per city block for paved streets and from \$35,000 per city block to \$15,000 per city block for gravel streets on the haul road permit as recommended by the City Engineer. The motion was seconded by Commissioner Morse, and the motion carried unanimously.

Commissioner Stromme moved to approve payment of Estimate No.1 to Peterson Construction for work completed on Watermain Improvement 23-14 - 9th Ave SE in the amount of \$24,215.80 as recommended by the City Engineer. The motion was seconded by Commissioner Heisler. On roll call all Commissioners voted aye, and the motion carried.

Commissioner Robbins moved to approve payment of Estimate No. 2 to Peterson Construction for worked completed on Water and Sewer Improvement 50-11 – Stone Ridge in the amount of \$9,522.18 as recommended by the City Engineer. The motion was seconded by Commissioner Morse. On roll call all Commissioners voted aye, and the motion carried.

Commissioner Heisler moved to approve payment of Estimate No. 2 to Peterson Construction for worked completed on Water and Sewer Improvement 51-11 – Agassiz Subdivision in the amount of \$71,156.20 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 Robbins moved to approve payment of Estimate No. 2 to Strata Corporation for Street Improvement #48-13 – Highland Park in the amount of \$181,743.86 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 Heisler moved to approve payment of Estimate No. 2 to Strata Corporation for Street Improvement #53-14 – 6th St NE in the amount of \$7,386.53 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 Robbins moved to approve payment of Estimate No. 2 to Strata Corporation for Street Improvement #54-14 – 5th St NE in the amount of \$8,285.95 as recommended by the City Engineer. The motion was seconded by Commissioner Morse. On roll call all Commissioners voted aye, and the motion carried.

Commissioner Robbins moved to approve payment of Estimate No. 2 to Strata Corporation for Street Improvement #55-14 – 4th St NE in the amount of \$7,350.42 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 Heisler moved to approve payment of Estimate No. 3 to Peterson Construction for work completed on Watermain Improvement 22-13 – Hwy 2 in the amount of \$37,640.60 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 request for vacation of the west 125' of Brooks St SW lying between 14th Ave and 13th and between Lots 26 and 27, Auditor Lot 1000, Frison 2nd Subdivision.

Commissioner Robbins moved to approve publishing the notice of petition to vacate a portion of property set aside for public use - west 125' of Brooks St SW lying between 14th Ave and 13th and between Lots 26 and 27, Auditor Lot 1000, Frison 2nd Subdivision with the public meeting to be held November 17, 2014 at 5:30 P.M. The motion was seconded by Commissioner Morse, and the motion carried unanimously.

Commissioner Stromme moved to approve funding for the fourth quarter of 2014 for the Lake Region Heritage Center in the amount of \$4,500.00 to be paid from general fund (1000-000-55170). The motion was seconded by Commissioner Heisler. On roll call all Commissioners vote aye, and the motion carried.

Nick Hoffman appeared before the City Commission regarding extending the build date on Lot 2, City Estates Subdivision. They would like to restart the two-years for building at the time of purchase.

Commissioner Stromme moved to approve extending the build date on Lot 2, City Estates Subdivision. The two years will restart when the purchase agreement is signed. The motion was seconded by Commissioner Morse. Discussion followed on the extra curb stop. The motion carried unanimously.

The City Commission reviewed the request to purchase a tract of city owned property located on 9th Ave SE near Lake Region Diesel.

Joe Mertens stated he intends to build a 50x100 building on a city-owned parcel. The City Engineer stated there is a special assessment for the water main, and he must build within two years.

Commissioner Heisler moved to approve the purchase of a tract of city owned property by Joe & Bros Mow for Dough - parcel is 15,000 square feet and part of 39-2702-00039-001 - in the amount of \$1.00 per square foot as recommended by the City Assessor. The motion was seconded by Commissioner Robbins. The motion carried unanimously.

Commissioner Morse 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:
3rd Quarter Economic Data.

The City Attorney requested the Commission go into closed executive session to discuss legal settlement on the Jason Bednarz land acquisition case and on the Kuntz land acquisition.

Commissioner Robbins moved to enter into executive session to discuss payment on the Kuntz land acquisition and on a legal settlement on the Jason Bednarz land acquisition case. The motion was seconded by Commissioner Morse, and the motion carried unanimously.

City Commission recessed at 6:45 P.M.

City Commission reconvened at 6:50 P.M.

Executive session of the Commission was called to order at 6:50 P.M. on October 6, 2014 with Commissioners Tim Heisler, Craig Stromme, Rick Morse and Dale Robbins and President Johnson. None were absent.

During the executive session the City Commission met with the City Attorney to discuss payment on the Kuntz land acquisition and on a legal settlement on the Jason Bednarz land acquisition case. Since this discussion is considered attorney consultation, it is exempt from open meeting laws according to NDCC 44-04-19.1.

Commissioner Robbins moved to adjourn the executive session at 7:01 P.M. on October 6, 2014. The motion was seconded by Commissioner Heisler, and the motion carried unanimously.

Commissioner Heisler moved to approve offering \$650,000 plus reasonable, documented attorney fees to John and Nancy Kuntz for land acquisition for the embankment and for airport relocation. This offer amount includes the previous payments for a total of \$650,000 for both projects. The motion was seconded by Commissioner Morse, and the motion carried unanimously.

Commissioner Robbins moved to approve the settlement agreement in the amount of \$363,000.00 to Jason Bednarz, to authorize the President to sign the agreement and to have checks issued. The motion was seconded by Commissioner Morse, and the motion carried unanimously.

There being no further business to come before the Commission, President Johnson adjourned the meeting at 7:13P.M.

**LINDA LYBECK
CITY AUDITOR**

**RICHARD S. JOHNSON
PRESIDENT**