

CITY OF NORFOLK, NEBRASKA

The Mayor and City Council of the City of Norfolk, Nebraska met in regular session in the Council Chambers, 309 North 5th Street, Norfolk, Nebraska on the 2nd day of November, 2015, beginning at 5:30 p.m.

Following a moment of silence and the Pledge of Allegiance to the flag of the United States of America, Mayor Sue Fuchtman called the meeting to order. Roll call found the following Councilmembers present: Corey Granquist, Jim Lange, Rob Merrill, Shane Clausen, Thad Murren, Josh Moenning, Dave Fauss, and Dick Pfeil. Absent: None.

Staff members present were: City Administrator Shane Weidner, Director of Public Works Dennis Smith, City Attorney Clint Schukei, City Clerk Beth Deck, Administrative Secretary Bethene Hoff, Finance Officer Randy Gates, Information Systems Manager Jim McKenzie, Risk Manager Lyle Lutt, Wastewater Plant Superintendent Todd Boling, Fire Chief Scott Cordes, City Planner Valerie Grimes, City Engineer Mark Dolechek, Water & Sewer Director Dennis Watts, Communications Director Diane Becker, Economic Development Director Courtney Dentlinger and Police Chief Bill Mizner.

The Mayor presided and the City Clerk recorded the proceedings.

The Mayor informed the public about the location of the current copy of the Open Meetings Act posted in the City Council Chambers and accessible to members of the public.

Notice of the meeting was given in advance thereof by publication in the Norfolk Daily News, Norfolk, Nebraska, the designated method of giving notice, as shown by affidavit of publication.

Notice was given to the Mayor and all members of the Council and a copy of their acknowledgement of receipt of notice and agenda is attached to the minutes. Availability of the agenda was communicated in the advance notice and in the notice to the Mayor and Council of this meeting. All proceedings hereafter shown were taken while the convened meeting was open to the public.

Agenda Motions

Councilmember Merrill moved, seconded by Councilmember Fauss to approve the consent agenda as printed. Roll call: Ayes: Councilmembers Granquist, Lange, Merrill, Clausen, Murren, Moenning, Fauss and Pfeil. Nays: None. Absent: None. Motion carried.

Councilmember Lange moved, seconded by Councilmember Granquist to adopt the full agenda as printed. Roll call: Ayes: Councilmembers Granquist, Lange, Merrill, Clausen, Murren, Moenning, Fauss and Pfeil. Nays: None. Absent: None. Motion carried.

Consent Agenda Items Approved

Minutes of the October 19, 2015, City Council meeting

City of Norfolk's Owner-Occupied Housing Rehabilitation Program Guidelines to increase the maximum loan amount from \$20,000 to \$25,000 for owner-occupied housing rehabilitation

Precision Technology Inc. agreement to provide for the sale of excess fiber optic cable in the amount of \$5,061.60

Precision Technology Inc. easement agreement for property located along Madison Avenue between 3rd and 4th Streets

Advertise for bids for SBR diffusers for two of four SBR basins at the Water Pollution Control Plant

Special designated liquor license for Jim Rutten, dba Jim's Fine Wine & More, to serve wine and distilled spirits on Tuesday, November 24, 2015 from 4:00 p.m. to 8:00 p.m. at Dream Boutique, 428 W Norfolk Avenue, for a sampling/tasting event

Special designated liquor license for Jim Rutten, dba Jim's Fine Wine & More, to serve wine and distilled spirits on Saturday, December 5, 2015 from 3:00 p.m. to 8:00 p.m. at Magnolia's, 2118 Market Lane, for a sampling/tasting event

Lutheran High School Association of Northeast Nebraska, Incorporated (a Nebraska Nonprofit Corporation) agreement to use City streets to hold a 5K Turkey Trot on Thursday, November 26, 2015, beginning at 8:00 a.m. and lasting approximately two hours

Memorandum of Understanding (MOU) with OCT Pipe, LLC, a Wyoming Limited Liability Company, to develop real property for construction of a seamless pipe mill

Bills in the amount of \$1,290,606.19

Special Presentations

The Mayor proclaimed November 2015 as "Read Aloud to a Child Month".

Special recognition of the eighteen members of the third class of Norfolk 101: Citizens Academy who completed eight sessions learning about all divisions of the City of Norfolk.

Public Hearings and Related Items

Public Hearing

(Stoffer appeal on Telebeep Conditional Use Permit 2015PC-9)

A public hearing was held to consider the appeal requested by Ross & Maggie Stoffer regarding Conditional Use Permit 2015PC-9 which the Planning Commission approved on a 6 to 3 vote on October 6, 2015 for Telebeep to have a communications tower at 2208 Elmers Lane.

City Planner Valerie Grimes said it came to the City's attention that the 2208 Elmers communications tower did not have a Conditional Use Permit (CUP). City staff talked with Tom Schommer who began the process to obtain a CUP. On October 6, 2015, the Planning Commission approved Conditional Use Permit 2015PC-9 on a 6 to 3 vote.

Ross and Maggie Stoffer, 2200 Western Circle, appealed the decision made by the Norfolk Planning Commission on October 6, 2015 to approve Resolution No. 2015PC-9 for Telebeep, Inc. to have a communications tower at 2208 Elmers Lane. Stoffer spoke in opposition to the communications tower including the following points:

1. A tower was illegally placed at 2208 Elmer's Lane in 2004 and then illegally expanded in May, 2015. The issue involved is the construction of a tower and not installation of a utility pole, as indicated by Tom Schommer, Telebeep, Inc. on the conditional use permit application;
2. Telebeep is not a utility company;
3. City Code, Section 27-2, states: "Tower shall mean a structure situated on a site that is intended for transmitting or receiving television, radio or telephone communication";
4. The pole is there only because it was illegally placed and a permit should be considered as if the pole is not there;
5. The current tower is wider, more noticeable than the previous tower and appears to be 70-80 feet tall;
6. Mr. Schommer has been in business for many years and should know the process for placement and construction of a communications tower;
7. The tower is much taller and more visible than the previous tower;
8. The tower is placed outside the utility easement area and probably can't be located in the easement because it isn't a utility pole;
9. When the communications tower was installed, Schommer trespassed on Stoffer's property and used electricity without permission.

Stoffer said the City Council needs to decide whether codes are meaningful and enforceable or just used as suggestions with no consequences for violations. The City should send a message that codes must be adhered to and violations will not be allowed otherwise the codes are meaningless.

Councilman Merrill questioned whether Stoffer was opposed to the tower constructed in 2004.

Stoffer said the tower placement in 2004 happened while they were on vacation; Stoffer's wanted to be a good neighbor so didn't complain; however, the current tower is much bigger, taller and more visible.

Councilman Lange questioned the width of the utility easement.

Public Works Director Dennis Smith stated the easement would be 5 feet for a side yard and 10 feet for a rear yard.

City Attorney Clint Schukei explained the utility easement is platted and may be occupied by public utilities.

Tom Schommer, Telebeep Inc., spoke during the hearing and has been in business for over 30 years. Schommer asked for support of the Planning Commission resolution to exceed height restrictions. Schommer said a shorter pole height would render the site useless and cause a hardship. Schommer briefly discussed a handout entitled, "Utility Pole Timeline Overview" from the Spring of 2004 through October 26, 2015. Schommer also distributed to elected officials a copy of "Standard Specifications for Wood Poles" as well as a document entitled, "Telebeep Wireless Response to Appeal Statements." Schommer highlighted the following information, in part, that was included in the document:

*A utility pole was in fact used as indicated in the Conditional Use Permit Application.

*A tower is defined by City Code as a "structure" and a utility pole is not considered a "structure."

*City Code Section 27-2 definitions of a structure and public utility -- structure shall mean anything constructed or erected which requires permanent location on the ground or which is attached to something having permanent location on the ground, but not including driveways, sidewalks or other surfacing, or public items such as utility poles, street lights

*It is a utility pole delivering broadband Internet access.

Schommer said a communications tower is a structure and a utility pole is not. The utility pole is not a safety hazard and is what the industry is beginning to use instead of the communication towers such as the one located on Eisenhower Avenue.

Mayor Fuchtman does not feel citizens will be receptive to communications towers in residential areas. Fuchtman questioned whether the previous tower was legal.

Schommer does not know if the previous tower was legal or not and said there are many poles 80' or taller in Norfolk. The pole sits on private property and not in the utility easement.

City Administrator Shane Weidner explained there is a 35 foot overall height restriction for utility poles in residential districts and a conditional use permit is not required. Anything that is not a public utility and that is taller than 35 feet requires a Conditional Use Permit.

City Attorney Clint Schukei stated electric power poles are taller than 35 feet; however, zoning doesn't apply to eminent domain companies, such as power and gas companies. City Code allows for two exceptions to the height of poles: (1) eminent domain companies and (2) conditional use permit for communications towers.

Councilman Moenning questioned how other communities the size of Norfolk are handling these types of issues.

Weidner said staff has not contacted other communities but can get the information for elected officials.

Stoffer feels the end use of the pole qualifies it as a communications tower because of the things added onto the top of the pole. If it isn't a communications tower, than what is the basis for the conditional use permit since utility poles do not require a permit.

Citizens speaking in favor of the Telebeep Conditional Use Permit were: Brian Hewitt; Mark Wagner and Russ Wilcox.

There being no further comments, the Mayor closed the hearing.

Schukei explained elected officials have three options for Resolution No. 2015-34: Option A - Reverse; Option B - Affirm; and Option C - Modify. Elected officials could also table the resolution to provide opportunity for further discussion and/or conditions in the Conditional Use Permit. Schukei explained the Planning Commission can only grant a Conditional Use Permit for a communications tower, not a utility pole.

No one else appeared either in favor of or in opposition to the Conditional Use Permit and the Mayor declared the hearing closed.

Resolution No. 2015-34
(Stoffer appeal, Telebeep Conditional Use Permit 2015PC-9)

Councilmember Moenning moved, seconded by Councilmember Lange, to table consideration of Resolution No. 2015-24 regarding the Conditional Use Permit for Telebeep, Inc. to have a communications tower at 2208 Elmer's Lane.

Roll call: Ayes: Councilmembers Granquist, Lange, Merrill, Clausen, Murren, Moenning, and Pfeil. Nays: Fauss. Absent: None. Motion to table carried.

Public Hearing
(amend City Code land use matrix, Section 27-401)

A public hearing was held to consider an amendment to the City Code land use matrix Section 27-401 to change provisions therein including permissible uses related to fertilizer and places of assembly. City Planner Valerie Grimes provided information to the Mayor and City Council and explained inconsistencies in the land use matrix are being resolved for the following fertilizer categories: "Agricultural fertilizers, hazardous – retail" and "Fertilizers, agricultural hazardous – retail". Inconsistencies in places of assembly categories were considered at the time of the public hearing notification but were postponed for further staff review.

On October 27, 2015, the Norfolk Planning Commission held a public hearing regarding the amendment to the land use matrix. The City Clerk read the Planning Commission's recommendation for approval into the record.

No one appeared either in favor of or in opposition to the amendment and the Mayor declared the hearing closed.

Ordinance No. 5371
(amend land use matrix)

Councilmember Merrill introduced, seconded by Councilmember Lange, Ordinance No. 5371 entitled: AN ORDINANCE OF THE CITY OF NORFOLK, NEBRASKA TO AMEND THE LAND USE MATRIX IN SECTION 27-401 TO CHANGE PROVISIONS THEREIN INCLUDING PERMISSIBLE USES RELATED TO FERTILIZER; TO PROVIDE WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT; AND TO PROVIDE FOR THE PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM and moved that the ordinance be passed on first reading. Said ordinance was then read into the record by title by the City Clerk.

Roll call: Ayes: Councilmembers Granquist, Lange, Merrill, Clausen, Murren, Moenning, Fauss and Pfeil. Nays: None. Absent: None. Motion carried. Ordinance No. 5371 passed on first reading.

Councilmember Lange moved, seconded by Councilmember Fauss, that the statutory rule requiring reading on three different days be suspended.

Roll call: Ayes: Councilmembers Granquist, Lange, Merrill, Clausen, Murren, Moenning, Fauss and Pfeil. Nays: None. Absent: None. Motion carried. The motion to suspend the rules was adopted by three-fourths of the Council and the statutory rule requiring reading on three different days was suspended for consideration of said ordinance.

Thereafter Councilmember Lange moved, seconded by Councilmember Fauss, that the statutory rules requiring reading on three different days be suspended and for final passage of the ordinance. The Mayor then stated the question "Shall Ordinance No. 5371 be passed and adopted?"

Roll call: Ayes: Councilmembers Granquist, Lange, Merrill, Clausen, Murren, Moenning, Fauss and Pfeil. Nays: None. Absent: None. Motion carried. The passage and adoption of said ordinance having been concurred in by a majority of all members of the Council, the Mayor signed and approved the ordinance and the City Clerk attested the passage and adoption of the same and affixed her signature thereto. The Mayor then instructed the City Clerk to publish said Ordinance No. 5371 as required by law.

Public Hearings

(amend Comprehensive Plan & zone change, 306 & 308 N 13th Street)

Public hearings were held simultaneously to consider the feasibility of an amendment to the present Comprehensive Plan to change single family residential to local business district and a zone change from R-1 (Single-family Residential) to C-1 (Local Business) on property located at 306 & 308 N 13th Street as requested by Shawn and Leigh Fuhrman. City Planner Valerie Grimes provided information to the Mayor and City Council. The requested Comprehensive Plan amendment corresponds to the zone change request for R-1 (Single-family Residential District) to C-1 (Local Business District). The publication requested an amendment to local business district rather than commercial. The reference of local business district is not at odds with commercial which would be the correct Comprehensive Plan designation. When this item was before the Planning Commission, no questions were raised by any Planning Commissioner, citizen or city staff, and no questions were raised to staff outside the public hearing. There were also no objections raised to the requested zone change at the Planning Commission.

Shawn Fuhrman, 84418 560th Ave, spoke in favor of the comprehensive plan amendment and zoning change. The applicant is constructing a windshield replacement business on the property at 306 & 308 N 13th Street.

On October 27, 2015, the Norfolk Planning Commission held public hearings regarding the Comprehensive Plan amendment and zone change. The City Clerk read the Planning Commission's recommendations for approval into the record.

No one else appeared either in favor of or in opposition to the comprehensive plan amendment and zone change and the Mayor declared the hearings closed.

Ordinance No. 5372

(amend Comprehensive Plan, 306 & 308 N 13th Street)

Councilmember Merrill introduced, seconded by Councilmember Moenning, Ordinance No. 5372 entitled: AN ORDINANCE OF THE CITY OF NORFOLK, MADISON COUNTY, NEBRASKA; AMENDING THE FUTURE LAND USE MAP OF THE CITY OF NORFOLK, NEBRASKA; PROVIDING WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT; AND PROVIDING FOR THE PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM and moved that the ordinance be passed on first reading. Said ordinance was then read into the record by title by the City Clerk.

Roll call: Ayes: Councilmembers Granquist, Lange, Merrill, Clausen, Murren, Moenning, Fauss and Pfeil. Nays: None. Absent: None. Motion carried. Ordinance No. 5372 passed on first reading.

Councilmember Fauss moved, seconded by Councilmember Moenning, that the statutory rule requiring reading on three different days be suspended.

Roll call: Ayes: Councilmembers Granquist, Lange, Merrill, Clausen, Murren, Moenning, Fauss and Pfeil. Nays: None. Absent: None. Motion carried. The motion to suspend the rules was adopted by three-fourths of the Council and the statutory rule requiring reading on three different days was suspended for consideration of said ordinance.

Thereafter Councilmember Fauss moved, seconded by Councilmember Moenning, that the statutory rules requiring reading on three different days be suspended and for final passage of the ordinance. The Mayor then stated the question "Shall Ordinance No. 5372 be passed and adopted?"

Roll call: Ayes: Councilmembers Granquist, Lange, Merrill, Clausen, Murren, Moenning, Fauss and Pfeil. Nays: None. Absent: None. Motion carried. The passage and adoption of said ordinance having been concurred in by a majority of all members of the Council, the Mayor signed and approved the ordinance and the City Clerk attested the passage and adoption of the same and affixed her signature thereto. The Mayor then instructed the City Clerk to publish said Ordinance No. 5372 as required by law.

Ordinance No. 5373
(brief explanation)

Councilmember Lange introduced, seconded by Councilmember Granquist, Ordinance No. 5373 entitled: AN ORDINANCE OF THE CITY OF NORFOLK, MADISON COUNTY, NEBRASKA; AMENDING THE ZONING DISTRICT MAP OF THE CITY OF NORFOLK, NEBRASKA; PROVIDING WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT; AND PROVIDING FOR THE PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM and moved that the ordinance be passed on first reading. Said ordinance was then read into the record by title by the City Clerk.

Roll call: Ayes: Councilmembers Granquist, Lange, Merrill, Clausen, Murren, Moenning, Fauss and Pfeil. Nays: None. Absent: None. Motion carried. Ordinance No. 5373 passed on first reading.

Councilmember Moenning moved, seconded by Councilmember Fauss, that the statutory rule requiring reading on three different days be suspended.

Roll call: Ayes: Councilmembers Granquist, Lange, Merrill, Clausen, Murren, Moenning, Fauss and Pfeil. Nays: None. Absent: None. Motion carried. The motion to suspend the rules was adopted by three-fourths of the Council and the statutory rule requiring reading on three different days was suspended for consideration of said ordinance.

Thereafter Councilmember Moenning moved, seconded by Councilmember Fauss, that the statutory rules requiring reading on three different days be suspended and for final passage of the ordinance. The Mayor then stated the question "Shall Ordinance No. 5373 be passed and adopted?"

Roll call: Ayes: Councilmembers Granquist, Lange, Merrill, Clausen, Murren, Moenning, Fauss and Pfeil. Nays: None. Absent: None. Motion carried. The passage and adoption of said ordinance having been concurred in by a majority of all members of the Council, the Mayor signed and approved the ordinance and the City Clerk attested the passage and adoption of the same and affixed her signature thereto. The Mayor then instructed the City Clerk to publish said Ordinance No. 5373 as required by law.

Regular Agenda Items

(Advertise for Proposals to develop housing City owned property, Oak Street)

Councilmember Pfeil moved, seconded by Councilmember Fauss, to approve advertising for proposals to develop housing on City owned property located on Oak Street.

Risk Manager Lyle Lutt stated that, because of a significant need for housing within the community, staff suggest the City-owned property in the 700 Block of North Oak Street on the west side of the road be sold to assist with the community housing needs. The property is adjacent to a paved road with water and sewer lines already in place. The successful bidder will be required to sign a Memorandum of Understanding for the completion timeline with failure to comply resulting in a 24% (APR) financial payment penalty.

Roll call: Ayes: Councilmembers Granquist, Lange, Merrill, Clausen, Murren, Moenning, Fauss and Pfeil. Nays: None. Absent: None. Motion carried.

October sales tax report (August sales)

There being no further business, the Mayor declared the meeting adjourned at 8:14 p.m.

Sue Fuchtman
Mayor

ATTEST:

Elizabeth A. Deck
City Clerk

(S E A L)

I, the undersigned Clerk, hereby certify that the foregoing is the full, true and correct original document of proceedings of Monday, November 2, 2015, had and done by the Mayor and City Council; that all of the subjects included in the proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to the meeting; that at least one copy of all reproducible material discussed at the meeting was available at the meeting for examination and copying by members of the public; that the said minutes were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

Elizabeth A. Deck
City Clerk

(S E A L)