

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 7th day of November, 2016, 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, Finance Officer Randy Gates, Police Chief Bill Mizner, Administrative Secretary Bethene Hoff, City Planner Val Grimes, Communications Director Diane Becker, City Engineer John Heine, Library Director Jessica Chamberlain, Risk Manager Lyle Lutt and Water & Sewer Director Dennis Watts.

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.

Prior to voting to approve the regular agenda, Mayor Fuchtman explained to those in attendance that, with the recent purchase of the TCK property by Our Savior Lutheran Church, the TCK application is no longer valid because it was not submitted by the owner of the property. Therefore, there isn't anything on the agenda to address the TCK rezoning application. Mayor Fuchtman requested a motion to approve the full agenda.

Councilmember Fauss moved, seconded by Councilmember Murren to adopt the full agenda as printed.

Jason Doele, an attorney, requested to be heard prior to voting on approval of the agenda and objected to the decision to not hear the TCK Leasing zoning application, which lead to some

spirited discussion. Doele said the church's position is that an assignment from TCK Leasing to Our Savior Lutheran Church would be valid to carry over the zoning application to the new owner and that the zoning application runs with the land and not a particular property owner.

Schukei explained that Norfolk City Code only allows a property owner to apply for rezoning. Our Savior Lutheran Church must file its own application to rezone the property.

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 17, 2016, City Council meeting

October sales tax report (August sales)

Resolution No. 2016-53 approving the final plat and subdivision agreement of O.L. Scheer Second Addition generally located at the northwest corner of 13th Street and Omaha Avenue

Mayor's appointment of Kathleen Means and re-appointment of Jan Einsphar, Jim Mangels, Cindy Morrow, and Aaron Otten to the Economic Development Citizens Advisory Review Committee for three-year terms expiring October 31, 2019

Resolution No. 2016-54 releasing the 5 foot utility easement (2.5 feet on each side of the common Lot Line) between Lots 10 and 11, Block 3, less the northerly 15 feet thereof, of Western Heights 1st Platting, a subdivision in the South 1/2 of the Southwest 1/4 of Section 16, Township 24 North, Range 1 West, of the 6th P.M., Madison County, Nebraska

Maintenance Agreement No. 19 with the Nebraska Department of Roads for calendar year 2017, and authorization for Mayor to execute Certificate of Compliance at the end of 2017

Advertise for bids for painting of swimming pools for the Park Division to be completed by May 1, 2017

Easement Agreement with BSB, L.L.C. for property along the Norfolk Avenue Bridge and Roadway Improvements project for \$4,500.00

Resolution No. 2016-55 rescinding all resolutions approved prior to 1998 that declared certain areas of the City blighted

Marty Clausen agreement for a fence/gate installation and the use of a portion of the property belonging to the City on property located north and west of 1840 South 37th Street

Amended Subdivision Agreement for Conover First Subdivision to revise grading and drainage plan to all installation of storm sewer in place of an open ditch

Resolution No. 2016-56 approving the final plat and subdivision agreement of Petersen-City Addition located at 1005 N 13th Street (Lot 1) and 1503 Glenmore Road (Lot 2)

Resolution No. 2016-57 approving the final plat and subdivision agreement of Lingenfelters' Wedgewood Addition located at 702 N Willow Street (Lot 1) and 705 N Boxelder Street (Lot 2)

School District No. 2 of Madison County, Nebraska (also known as Norfolk Public Schools and a Political Subdivision of the State of Nebraska) agreement to use Memorial Field at Veterans Memorial Park for soccer practice, camps and games for the School's 2017 soccer season on dates and times approved by the City's park and building maintenance superintendent from February 27, 2017 to May 16, 2017

Downtown Norfolk Association, Inc., a Nebraska Nonprofit Corporation, to discharge a minimal fireworks display on November 22, 2016 in conjunction with the tree lighting ceremony in downtown Norfolk at the Chamber of Commerce building, 609 W Norfolk Avenue

Bills in the amount of \$1,349,128.60

Special Presentations

The Mayor proclaimed November 6, 2016, as "Small Business Saturday", and November 2016 as, "Read Aloud To A Child Month".

Recognition of the 2016 Norfolk 101: Citizens Academy

Presentation of the commercial Green Leaf Landscape Award to Deets HomeStore located at 2010 South 13th Street, and the residential Green Leaf Landscape Award to Marsha Eckert at 2207 Clearfield Drive, as selected by the City of Norfolk Tree Advisory Board

A town hall meeting was held to receive comments on the Northeast Nebraska Solid Waste Coalition (NNSWC) budget and rates for the fiscal year ending September 30, 2017. Finance Officer Randy Gates provided information on the NNSWC's preliminary budget for fiscal year ending September 30, 2017. Gates explained that according to the Northeast Nebraska Solid Waste Coalition interlocal agreement, town hall meetings are held in the three largest communities each year to review the Coalition's proposed budget and rates. The budget assumes Waste Connections continues operation of the Coalition landfill with no fee increase. Tipping fees also remain unchanged at \$24.00 per ton. Balance forward decreases \$1,300,111 going from \$3,564,173 last year to \$2,264,062 this year primarily due to construction of Cell 5. Use fees increase \$35,304, or 1.43%, due to a 1,471 increase in budgeted tonnage for regular waste. With tipping fees at \$24.00 per ton, budgeted use fees are \$2,502,722. Interest income increases \$1,000 due to an increase in budgeted interest rate from .15% last year to .30% this year. Personnel costs increase \$19,555 or 29.60%. The budget includes one full-time and one part-time employee compared to three part-time employees in the prior year budget. Personnel costs include a 2% cost of living adjustment and a \$1,000 per month health insurance stipend for the full-time employee. Disposal fees increase \$7,722 or 0.75% due to an increase in budgeted tonnage. Other professional fees decrease \$25,146 or 10.94% primarily due to Tier II monitoring that was budgeted in the prior year. Also decreasing is interfund operating transfer out from \$1,200 to \$267,200 which is for the 2016 closure/post closure funding. Capital outlay is budgeted at \$250,000 and consists of the remaining engineering and construction of Cell 5 and \$15,000 to extend depth of a test well. Effective October 1, 2015 the NNSWC changed its

capitalization policy. The capitalization threshold has been increased from \$500 to \$5,000 which means capital items below \$5,000 are now budgeted in an operating expenditure account such as account 26 Minor Apparatus & Tools. The Closure/Post Closure Care Fund transfer from the operating fund decreases \$1,200 from \$268,400 last year to \$267,200 this year. Total funds available for Closure/Post Closure increase 8.38% from \$6,575,400 last year to \$7,126,473 this year. Approximately half of the increase is due to interest earnings and half is due to current year funding.

No one else spoke during the town hall meeting and no action was necessary on this item.

Public Hearings and Related Items

Public Hearing (SWAD, L.L.C.)

Mayor Fuchtman stated this hearing was removed from the October 17, 2016 City Council meeting at the request of the authorized agent for SWAD, L.L.C. Prior to opening the public hearing, Fuchtman explained that an update to Norfolk's Comprehensive Plan is pending and a public meeting is scheduled for November 17, 2016 to review of the draft document. Fuchtman asked whether Paul Medelman would consider pulling this public hearing and Ordinance No. 5432 off the agenda to give opportunity to review the updated Comprehensive Plan.

Paul Medelman agreed to remove the hearing and ordinance from the agenda. Following further discussion, Dick Johnson, authorized agent for SWAD, L.L.C. clarified that the applicant is not wanting the hearing opened and just wants the items removed from the agenda to allow opportunity to re-advertise as required by state statutes prior to bring back the rezone request at a future City Council meeting.

Regular Agenda Items

Ordinance No. 5431 (zone change) (3204 W Benjamin Ave)

Councilmember Merrill introduced, seconded by Councilmember Moenning, Ordinance No. 5431 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 second reading. Said ordinance was then read into the record by title by the City Clerk.

City Planner Val Grimes explained City staff, at the direction from elected officials, worked on a change in city code to allow multi-family residential zoning in an O-D District only with a Conditional Use Permit (CUP). The Planning Commission is considering the code change at their November 8, 2016 meeting and, therefore, if this ordinance is passed on second reading only it would allow for the city code change and reading of Ordinance No. 5431 on third reading to both appear on the November 21, 2016 City Council meeting. Allowing multi-family in an O-D District only with a CUP will alleviate concerns expressed by neighbors.

Roll call: Ayes: Councilmembers Lange, Merrill, Clausen, Murren, Moenning, Fauss and Pfeil. Nays: Granquist. Absent: None. Motion carried. Ordinance No. 5431 passed on second reading only.

Change Order No. 1
(Water Improvements 2016-1)

Councilmember Merrill moved, seconded by Councilmember Fauss, to approve Change Order No. 1 with Robert Woehler & Sons Construction, Inc. for the Water Improvements 2016-1 (Madison Avenue; 1st to 7th) project resulting in a net increase of \$136,513.82.

City Engineer John Heine explained the change order primarily provides for installation of 10-inch concrete as opposed to 6-inch concrete for the Madison Avenue portion of the pavement replacement.

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

Ordinance No. 5437
(amend City Code – enforcement locations)

Councilmember Murren introduced, seconded by Councilmember Fauss, Ordinance No. 5437 entitled: AN ORDINANCE OF THE CITY OF NORFOLK, NEBRASKA TO AMEND SECTION 24-293 OF THE OFFICIAL CITY CODE TO ADD TWO ADDRESSES FOR ENFORCEMENT ACTION RELATED TO DRIVING OR TURNING ON PUBLIC OR PRIVATE PROPERTY; 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.

Police Chief Bill Mizner received requests from business owners to be added to the list of enforcement locations for vehicles driving through their parking areas. The vehicles do not stop to do business and create safety concerns for employees and customers. The locations are: Hy-Vee East, 120 E Norfolk Avenue; and Country Club Plaza, 600, 700 and 714 West Benjamin Avenue.

Roll call: Ayes: Councilmembers Granquist, Lange, Merrill, Clausen, Murren, Moenning, Fauss and Pfeil. Nays: None. Absent: None. Motion carried. Ordinance No. 5437 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. 5437 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. 5437 as required by law.

Closed Session

Mayor Fuchtman requested a motion to go into closed session to discuss and update elected officials on potential Religious Land Use and Institutionalized Persons Act (RLUIPA) litigation.

Councilmember Lange moved, seconded by Councilmember Clausen to go into closed session at 6:40 p.m. to discuss and update elected officials on potential Religious Land Use and Institutionalized Persons Act (RLUIPA) litigation. Roll call: Ayes: Councilmembers Granquist, Lange, Merrill, Clausen, Murren, Moenning, Fauss and Pfeil. Nays: None. Absent: None. Motion carried.

Mayor Fuchtman stated the motion to go into closed session carried and the closed session is to discuss and update elected officials on potential Religious Land Use and Institutionalized Persons Act (RLUIPA) litigation.

Councilmember Granquist did not participate in the closed session and stayed in the City Council Chambers while other elected officials went to the Training Room for the closed session.

Mayor Fuchtman and elected officials returned to the City Council Chambers. Mayor Fuchtman stated the only item discussed during the closed session was a discussion and update to elected officials on potential Religious Land Use and Institutionalized Persons Act (RLUIPA) litigation and requested a motion to come out of closed session.

Councilmember Merrill moved, seconded by Councilman Lange to come out of closed session and reconvene into open session at 7:24 p.m. Councilmember Granquist joined other elected officials at the dais. Roll call: Ayes: Councilmembers Granquist, Lange, Merrill, Clausen, Murren, Moenning, Fauss and Pfeil. Nays: None. Absent: None. Motion carried.

There being no further business, the Mayor declared the meeting adjourned at 7: 25 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 7, 2016, 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)