

## **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 22nd day of January, 2019, 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 Josh Moenning called the meeting to order. Roll call found the following Councilmembers present: Jim Lange, Rob Merrill, Fred Wiebelhaus, Thad Murren, Gary L. Jackson, Shane Clausen and Dick Pfeil. Absent: Corey Granquist.

Staff members present were: City Administrator Andy Colvin, City Attorney Danielle Myers-Noelle, City Clerk Beth Deck, Finance Officer Randy Gates, Administrative Secretary Bethene Hoff, Public Works Director Steve Rames, Risk Manager Lyle Lutt, City Planner Val Grimes, Gary Bretschneider and Police Captain Don Miller.

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 Lange to approve the consent agenda as printed.

Councilmembers Clausen and Wiebelhaus abstained from voting on the consent agenda.

Roll call: Ayes: Councilmembers Lange, Merrill, Murren, Jackson and Pfeil. Nays: None. Absent: Granquist. Abstaining: Wiebelhaus and Clausen. Motion carried.

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

### **Consent Agenda Items Approved**

Minutes of the January 7, 2019 City Council meeting

Keno report for December 2018

Food & beverage and lodging occupation tax report for 4th quarter 2018

Olsson Associates, Inc. dba Ochsner Hare & Hare (a Design Studio of Olsson Associates) agreement to provide professional services for RiverPoint Square Phase II of the project located at the southwest corner of 3rd Street and Norfolk Avenue

Termination Agreement and Release in Full of all Claims in the amount of \$32,700 between the City of Norfolk and Mark Clausen related to his employment with the City of Norfolk and a long-standing workers compensation claim

Notification of a Settlement Agreement and Release of Claims between the City of Norfolk and Mark Clausen related to his employment with the City of Norfolk and a long-standing workers compensation claim which has been settled with the payment of \$506,510.73 on behalf of the City being made by the City's workers compensation carrier

Plans, specifications, and engineer's estimate on file in the City offices for South 5th Street at Corporation Gulch culvert project and authorization for the City Clerk to advertise for bids

Resolution No. 2019-3 approving Midtown Events LLC, dba The O Lounge, as a satellite location of Endgame Lottery Services LLC dba Big Red Keno for the City in accordance with the City's satellite location criteria and the City Administrator, City Clerk and such other City officials as may be necessary or appropriate are authorized and directed to sign the necessary application and to take such other actions as may be necessary or appropriate in order to establish the location as a satellite for the City's Keno lottery

Norfolk Golden Girls, Inc. (a Nebraska Nonprofit Corporation) agreement to use softball fields in Ta-Ha-Zouka Park and Liberty Bell Park to be used for softball practice, games, tournament and a softball clinic for their 2019 softball season; the softball tournament to be held Friday, June 7, 2019, through Sunday, June 9, 2019, the softball clinic at a date yet to be determined, with the term of agreement from March 1, 2019 through December 31, 2019

Special Designated Liquor License for Taylor's Bar & Grill, 116 S 2nd Street, Pierce, NE, to serve beer, wine and distilled spirits at The National Guard Armory, 817 S 1st Street, Norfolk, Nebraska for a fundraiser on Saturday, February 16, 2019 from 4:00 p.m. to 12:00 a.m.

Special Designated Liquor License for Taylor's Bar & Grill, 116 S 2nd Street, Pierce, NE, to serve beer, wine and distilled spirits at The National Guard Armory, 817 S 1st Street, Norfolk, Nebraska for a fundraiser on Friday, April 12, 2019 from 4:00 p.m. to 12:00 a.m.

Faith Regional Health Services Highway Right-of-Way Use Agreement for a Skywalk over and above West Norfolk Avenue

Tina M. Kassmeier, doing business as Kelly's Fast Pitch Softball, agreement to use softball fields in Ta-Ha-Zouka Park and Liberty Bell Park to hold a softball tournament Friday, May 17, 2019, through Sunday, May 19, 2019

Norfolk Soccer Club, Inc. (a Nebraska Nonprofit Corporation) agreement to use soccer fields and green space located in North Pine Park, Winter Park, Liberty Bell Park, Johnson Park, and Ta-Ha-Zouka Park for soccer practice for the 2019 soccer season, from April 1, 2019 through November 1, 2019

Norfolk Youth Baseball, Inc. (a Nebraska Nonprofit Corporation) agreement to use baseball fields at Ta-Ha-Zouka Park for baseball practice, camps, and games (not including tournaments) for the 2019 baseball season, from March 13, 2019 through December 1, 2019

Luis Cortez, doing business as Norfolk Adult Soccer League, agreement to use soccer fields located in North Pine Park for soccer games for the 2019 summer/fall soccer season from April 21, 2019 through September 29, 2019

Bills in the amount of \$1,745,905.17

### **Public Hearings and Related Items**

#### Public Hearing

(CDBG 15-CR-007 grant contract amendment)

A public hearing was held to consider submitting a contract amendment to the Nebraska Department of Economic Development for the Community Development Block Grant (CDBG) #15-CR-007 for a contract extension, decrease in proposed housing activity accomplishments and budget amendment. City Planner Valerie Grimes provided information to the Mayor and City Council. Jan Merrill, Northeast Nebraska Economic Development District, provided information to the Mayor and City Council. The City of Norfolk is requesting the following amendments on the 15CR007 contract:

- 12 Month Extension Request: Current contract end date is October 1, 2018. An extension to October 1, 2019 is being requested to allow additional time for completing the final commercial rehabilitation project which includes window replacements to be completed in the spring of 2019 and infrastructure improvements on Braasch Avenue.
- Decrease in proposed accomplishments: The City of Norfolk is requesting a decrease in proposed accomplishments as it relates to the housing activities of the CDBG contract from 12 units to 1 unit. Owner occupied and rental rehabilitation have been an activity in the Comprehensive Revitalization (CR) target area since 2013. Since that time, there have been 4 owner-occupied and one rental rehabilitation projects completed under the CR program. In addition, the City was awarded an owner-occupied rehabilitation grant during this time that completed 17 owner-occupied units.
- Budget Amendment: This reduction in accomplishments will result in also requesting a budget amendment to move the remaining housing related activity funds of \$247,539.73 to 0230 Streets (\$247,539.73) for the Braasch Avenue improvements.

Jan Merrill said the City of Norfolk has assisted 22 households since 2015 and there aren't any more low-to-moderate income households applications that have been received that qualify for assistance. There is, however, one more commercial rehabilitation to be completed in the spring of 2019. The Nebraska Department of Economic Development (NDED) suggested the money be moved into the street budget for the Braasch Avenue improvements project.

Melissa Alvarado, 306 N 8th Street, questioned "why there aren't any more low-to-moderate income households" to use the funds and what measures the City has taken to inform citizens of

the grant money available. Alvarado asked how many application were submitted to the City and feels citizens aren't aware of the funds. Alvarado has concerns "with the lack of knowledge about the resource."

Merrill said no more applications have been received that are income eligible for the grant funds. The Housing Agency has been advertising and promoting in the defined geographical area to make citizens aware of the grant funds.

Gary Bretschneider, Interim Housing Director, explained the defined area for the grant funds is Prospect Avenue south to Monroe Avenue and west to 12th Street. The Housing Agency has used Facebook, the newspaper, radio and other social media outlets, as well as door hangers to every house in the defined area, to promote the grant funds. Applicants that have reverse mortgages, life estates, trusts, etc. do not qualify for grant funds. Bretschneider said the City of Norfolk does have about the same amount of reuse money (funds received from loan repayments) to rehabilitate seven homes. Bretschneider said approximately 22 applications have been received with 5 approved for this grant (both owner occupied and second-story), 7 did not want to follow through with the grant process, and remaining did not qualify for funding. Bretschneider said the reuse funds need to be used before any more grant applications can be submitted for housing rehabilitation.

Councilmember Merrill feels the Housing Agency did its due diligence with marketing the grant funds.

Jan Merrill said the grant contract has expired and NDED suggested the funds be moved to the Braasch Avenue improvements projects.

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

#### CDBG 15-CR-007 grant contract amendment

Councilmember Merrill moved, seconded by Councilmember Jackson, to approve the Mayor signing and forwarding a letter to the Nebraska Department of Economic Development on the 15-CR-007 CDBG grant contract extension, decrease in proposed housing activity accomplishments and budget amendment as discussed.

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

#### **Regular Agenda Items**

##### Olsson Amendment #2 (Northeast Industrial Water & Sewer Mains)

Councilmember Pfeil moved, seconded by Councilmember Murren, to approve Amendment #2 to the engineering services agreement with Olsson for construction administration, observation, and project close out for the Northeast Industrial Water Main project and the Northeast Industrial Sewer Main, Phase II project for an amount not to exceed \$225,100.00.

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

Resolution No. 2019-4  
(Norfolk Wings sidewalk waiver)

Councilmember Merrill moved, seconded by Councilmember Wiebelhaus, to adopt Resolution No. 2019-4 approving a sidewalk waiver for Norfolk Wings, LLC at 2019 Krenzien Drive.

City Planner Val Grimes provided information to elected officials. Norfolk Wings, LLC is Buffalo Wild Wings, 2019 Krenzien Drive, and the request is for a sidewalk waiver at the corner of 20th Street and Krenzien Drive. The Planning Commission recommended granting a sidewalk waiver on 20th Street but not on Krenzien Drive because the City is putting in a crosswalk across Highway 275 and the sidewalk would connect to the crosswalk.

Public Works Director Steve Rames said the parking lot is too close to 20th Street and a retaining wall would need to be installed to put in a sidewalk. Rames said the terrace on Krenzien is about 15 feet wide. The other businesses in that location were built before City Code sidewalk requirements; and there isn't enough room for sidewalk installation.

Councilmember Clausen questioned whether installation of a sidewalk going west in front of Buffalo Wild Wings is practical.

Councilmember Merrill feels more discussion should be had with the property owners prior to making a decision.

Councilmember Lange said elected officials can vote on the waiver or modify the request. Lange suggested staff meet with US Bank and Buffalo Wild Wings representatives to discuss placement of a sidewalk.

Councilmember Merrill moved, seconded by Councilmember Wiebelhaus to amend Resolution No. 2019-4 to grant a sidewalk waiver for Norfolk Wings, LLC on 20th Street and have additional conversations about a sidewalk waiver on Krenzien Drive.

City Attorney Myers-Noelle suggested Resolution No. 2019-4 be tabled.

Councilmember Merrill moved, seconded by Councilmember Wiebelhaus to table consideration of Resolution No. 2019-4 on the Norfolk Wings, LLC sidewalk waiver request.

Roll call on the motion to table Resolution No. 2019-4: Ayes: Councilmembers Lange, Merrill, Wiebelhaus, Murren, Jackson, Clausen and Pfeil. Nays: None. Absent: Granquist. Motion carried. Resolution No. 2019-4 was tabled.

Schemmer Associates contract  
(Benjamin Avenue reconstruction project)

Councilmember Lange moved, seconded by Councilmember Jackson, to approve an Engineering Services contract with The Schemmer Associates Inc. for the Benjamin Avenue from 13th Street to 1st Street project for a total project fee of \$947,406.98.

Public Works Director Steve Rames said the total project cost is approximately \$10.3 million: construction - \$7.3 million; property acquisition - \$625,000; engineering costs - \$1.5 million; and right-of-way acquisition -- \$875,000. The engineering cost is 12.9% of the anticipated construction costs and includes a study of 1st Street and Benjamin Avenue north (maintenance or reconstruction) to identify the process needed to extend the life of 1st Street. The engineering will also include a plan for active transportation analysis (pedestrian and bike traffic) as well as two signal designs; reviewing the bridge sidewalk at the levee to get a sidewalk on the south side; and a traffic study on Highway 81 east to Victory Road. The contract does not include construction services for the project.

Councilmember Clausen feels it is important to explain where the funds come from for this project.

Rames said the funds will come from City Highway Allocation Funds (CHAF) which is gas tax money. The City of Norfolk receives approximately \$3 million (\$2.5 million from CHAF and about \$476,000 from STP fund buyout money) each year. Rames said “about \$7.5 million this project will be bonded.” Over the next 15-20 years, a portion of the CHAF funds will be used to pay off the bonds.

Doug Holle, Transportation Manager for The Schemmer Associates, was available to answer questions.

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

Rescind Ordinance No. 5582 action  
(North Fork of Elkhorn River Overlay District)

Councilmember Merrill moved, seconded by Councilmember Jackson, to rescind action taken on Ordinance No. 5582 at the December 17, 2018 City Council meeting which failed by a vote of 4-3 to approve an amendment to Section 27-280.02 of the City Code to modify the boundaries of the North Fork of the Elkhorn River Overlay District and to consider approval of a North Fork of the Elkhorn River Overlay District Map delineating the resulting boundary.

Mayor Moenning said “various opportunities” were provided for public input on the proposed Elkhorn River Overlay District including a neighborhood meeting, town hall meeting, Planning Commission hearing and City Council hearing.

Councilmember Merrill moved, to amend Ordinance No. 5582 by deleting the area north of Benjamin Avenue from the proposed expanded boundaries of the North Fork of the Elkhorn River Overlay District, seconded by Councilmember Jackson.

Rod Wilke, 2401 Hardison Drive, said the City “has done good things with the downtown revitalization” but wondered why “this keeps coming back when it failed?” Wilke understands this is a “lawful discussion but highly unethical.” The proposed expansion puts more regulations on citizens and negatively affects people. Wilke said “this is not good for the public” and citizens need to be protected from further overreach by government. Other concerns are altered water flow in the Elkhorn River and water quality and Wilke said the 2018 DEQ report says “the

Elkhorn River is impaired for recreational use because of E-coli in the water.” Wilke feels the current Overlay District map is ok and encompasses the downtown Norfolk area and riverfront. Wilke feels elected officials should discuss and implement improvements on the current overlay district and enhancements in Johnson Park.

Mayor Moenning said the downtown Norfolk improvements are ongoing and the City “is planning, saving and budgeting for that.” Moenning feels expansion of the Overlay District “is reasonable for long-term development and orderly and consistent management of growth.” The Overlay District “only applies to new development.”

Councilmember Clausen has concerns with including residential properties zoned R-1 in the Overlay District. Clausen feels the Overlay District on businesses “is not a bad thing to make the areas aesthetically pleasing.” Clausen feels zoning needs “to be cleaned up” but more discussion needs to be had before voting on the Overlay District expansion. Clausen suggests this item be tabled and taken back to subcommittee to discuss how R-1 properties will be handled.

Mayor Moenning said “this is the 5th public input on this topic” and a lot of time has been spent on this issue. The only way the Overlay District affects residential property owners is if a natural disaster or fire occurs and then the property owners can obtain an exemption to rebuild.

City Planner Val Grimes said the Overlay District ordinance has an exemption that says, “a single family development existing as of September 5, 2017, shall be exempt from all Overlay District Special Development Regulations except for non-conforming uses and newly built structures.” Therefore, those homes already there will not need to follow the regulations and the ordinance includes a waiver process, if a natural disaster of over 50% -- tornado, fire, etc. -- where the homeowners must rebuild, to go before the Planning Commission to request to not follow the Overlay District regulations.

Councilmember Clausen “doesn’t quite agree with some of that and I don’t think you should have to get a waiver in R-1.”

City Attorney Danielle Myers-Noelle reviewed three options to be considered by elected officials: (1) rescind the action taken on the ordinance with the one amendment proposed or make more amendments; (2) vote on rescinding the ordinance as amended and if the motion fails, the ordinance would go back to the December 17, 2018 date and the six month waiting period to start the process over; (3) table consideration of rescinding the action taken on the ordinance.

Councilmember Lange said there is nothing to prevent conversations to continue during the six month time period to bring this issue back before the Planning Commission and City Council. Lange feels this is a very complicated issue and the proposed expansion “is almost more than double the area” that was previously put in the Riverfront Overlay District and “probably almost triples the area if the area north of Benjamin Avenue is included.” Lange doesn’t see a rush to do this now and doesn’t know why “the significant addition of space” needs to be included in the Overlay District and does not feel “this was thought out very well.” Lange feels zoning should be addressed instead of an Overlay District.

Mayor Moenning “agrees with the need to look at, as called for in our Comprehensive Plan, an overhaul of some of our more antiquated zoning designations throughout the community and that

process is an on-going process.” Moenning doesn’t feel “there is a certain urgency to move on this but there is also the case that we do undergo Comprehensive Planning for a reason and we do have a process and this has happened over two years since the Comprehensive Plan was adopted and if we don’t initiate it now when will we do that.” Moenning feels that “at this point, a motion to table essentially provides the same options with no definitive date to come back and gives us a chance to press pause as Councilmember Clausen said it is an important thing and a needed thing and we want to get it right from the beginning so a motion to table seems reasonable at this time to sit down at the subcommittee level” to review public input and concerns.

Councilmember Merrill withdrew the motion to amend Ordinance No. 5582 and Councilmember Jackson withdrew the second.

Councilmember Merrill moved, seconded by Councilmember Murren to table consideration of rescinding action taken on Ordinance No. 5582 at the December 17, 2018 City Council meeting.

Roll call on the motion to table consideration of rescinding action taken on Ordinance No. 5582:  
Ayes: Councilmembers Lange, Merrill, Wiebelhaus, Murren, Jackson, Clausen and Pfeil.  
Nays: None. Absent: Granquist. Motion to table carried.

Ordinance No. 5583

(Elkhorn River Overlay District clarification & board members)

Councilmember Merrill introduced, seconded by Councilmember Jackson, Ordinance No. 5583 entitled: AN ORDINANCE OF THE CITY OF NORFOLK, NEBRASKA TO AMEND SECTION 27-280.01 OF THE OFFICIAL CITY CODE TO CLARIFY THE INTENT OF THE NORTH FORK OF THE ELKHORN RIVER OVERLAY DISTRICT; TO AMEND SECTION 27-280.05 TO INCREASE THE NUMBER OF REVIEW BOARD MEMBERS FROM FIVE TO NINE AND TO INCLUDE RESIDENCY REQUIREMENTS; 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.

Councilmember Wiebelhaus moved, seconded by Councilmember Jackson to table consideration of Ordinance No. 5583.

Roll call on the motion to table Ordinance No. 5583: Ayes: Councilmembers Lange, Merrill, Wiebelhaus, Murren, Jackson, Clausen and Pfeil. Nays: None. Absent: Granquist. Motion carried. Ordinance No. 5583 was tabled.

Greater Norfolk Economic Development Foundation

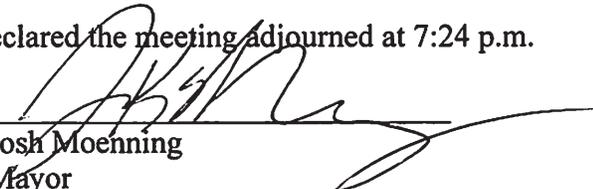
(Land and site development)

Councilmember Merrill moved, seconded by Councilmember Lange, to approve an agreement between the Greater Norfolk Economic Development Foundation and the City of Norfolk wherein Norfolk will engage in community betterment activities by contributing \$300,000.00 of keno funds to establish a fund to be used for the purchase of land and site development for industrial and commercial use in the City’s zoning jurisdiction.

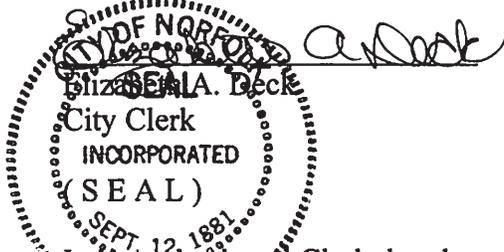
City Administrator Andy Colvin provided information to elected officials and said the funding will come from Keno revenue which can be used for community betterment activities. The money will help establish a fund to be used for the purchase of land and site development for industrial and commercial use in the City’s zoning jurisdiction. Colvin said the Greater Norfolk Economic Development Foundation “is taking on most of the risk” for the purchase of 140 acres. The Foundation has requested requests for proposals for master planning for the property and will own, develop, manage and sell the property.

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

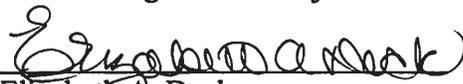
There being no further business, the Mayor declared the meeting adjourned at 7:24 p.m.

  
Josh Moenning  
Mayor

ATTEST:



I, the undersigned Clerk, hereby certify that the foregoing is the full, true and correct original document of proceedings of Tuesday, January 22, 2019, 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

