

FINANCE COMMITTEE MEETING

The Finance Committee of the City of Norfolk, Nebraska met in the City's Conference Room, 309 West Madison Avenue, Norfolk, Nebraska, on Monday, September 18, 2006, beginning at 7:00 a.m.

Mayor Gordon D. Adams called the meeting to order.

Roll call found the following Committee members present: Mayor Gordon Adams and Councilpersons Kaspar-Beckman, Brenneman, Fauss, Lange, Saunders, Stauffer, Van Dyke and Wilson. Absent: None.

Staff members present were City Administrator Mike Nolan, City Attorney Clint Schukei, City Clerk Beth Deck, Finance Officer Randy Gates, Solid Waste Manager Gary Lund and Fire Chief Shane Weidner.

The media was represented by Greg Wees, Norfolk Daily News.

Notice of the meeting was given in advance by publication in the Norfolk Daily News, and notice of the meeting was given to the Mayor and all members of the Council prior to the meeting.

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 meeting room and accessible to members of the public.

At the request of Councilperson Wilson, elected officials discussed **Transfer Station** operating hours. Solid Waste Manager Gary Lund considered the following regarding the request: site security, permit compliance, revenue & expenses, staff & equipment resources and scheduling, and perceived value of the service. Transfer Station staff are currently paid for 10 hours per weekday and 5 hours on Saturday. The 55 hour workweek requires 3 full-time operators – two dedicated to the Transfer Station and one split between the Transfer Station and the Water Pollution Control Plant – as well as three part-time scale clerks. Operation of the Transfer Station requires a scale clerk for accounting and payment transactions. Security concerns dictates that a second staff member be on site as well. The NDEQ operating permit requires a trained Operator on site during hours of operation. These two staff members will cost an additional \$473.00 per month, or \$5,676 for 12 months, to open the Transfer Station an additional two hours on one day per week. Lund estimates a minimal increase in gas, electric and fuel costs. Lund estimates revenue will not increase even with extended hours of operation. Lund stated customer use will just expand to fill the available hours of operation. Lund considered reducing Operator staff time throughout the week but felt that will only cause inefficiencies. Lund also considered delaying the Transfer Station start time by 2 hours but stay within the existing 10 hour days. However, this would be less accommodating to haulers who begin work after midnight for commercial clients because trucks are ready to unload at 7:00 a.m.

At first, Lund felt Monday might be the best day to be open the additional two hours. However, after consideration, Lund suggests Wednesday or Saturday would be more practical for extending the hours of operation. Lund feels the public will value extended hours of operation on Saturday more than any other day of the week.

Councilperson Wilson suggests a trial period of extended hours of operation. Wilson suggested the extended hours be in effect from April through September/October each year to accommodate citizens cleaning up yards.

Councilperson Fauss suggested skipping the summer months and having the extended hours of operation only for a couple of months during the spring and fall months.

Wilson would like the City Council to immediately implement a trial period of extended hours of operation for the Transfer Station through October and re-evaluate the situation in November. Wilson also suggested designating several months as "Spring and Fall clean up months".

Councilperson Stauffer suggested advertising any change in hours of operation by having the topic as a discussion on WJAG's radio talk show.

Councilperson Brenneman questioned whether Saturday hours of operation could be changed to start two hours later. Brenneman requested Lund study this option and report back to elected officials.

Councilperson Wilson moved, seconded by Councilperson Kaspar-Beckman to approve extending Transfer Station hours of operation by an additional 2 hours on Saturday with hours of operation from 7:00 a.m. to 2:00 p.m. for a trial period through October 2006 and revisit the program in November to see about the possibility of extending the hours of operation for next year. Roll call: Ayes: Councilpersons Kaspar-Beckman, Brenneman, Fauss, Lange, Saunders, Stauffer, Van Dyke, Wilson and Mayor. Nays: None. Absent: None. Motion carried.

The next item of discussion related to the **Meadow Ridge** Partners, LLC, loan documents. At the request of Phil Perry, City staff has been working with the Nebraska Department of Economic Development on a contract amendment to reduce the number of HOME-assisted units in the HOME contract #M94-SG-3101-13. The project is currently out-of-compliance with HOME rules regarding rent and income limits. The reduction of HOME-assisted units will enable the project to achieve compliance and generate the necessary income to meet obligations. The project was also funded with Low Income Housing Tax Credits that assure that 66 out of the 84 units in the project have rent and income restrictions. The amendment request proposes HOME designation of 10 units that are currently not in compliance with HOME guidelines. If NDED approves the request, Meadow Ridge Partners, LLC, indicates there will be full compliance with HOME rent and income limits by January 1, 2007.

Another portion of Perry's request is a loan modification agreement and related allonge with Meadow Ridge Partners, LLC, forgiving accrued interest on the \$935,000 HOME loan and reducing the interest rate from 7.88% to 0%. In 1995, the City loaned \$935,000 to Meadow Ridge Partners, LLC, from proceeds of a HOME grant to be used for construction of the original three apartment buildings in Meadow Ridge Housing Development. The interest rate is 7.88%. This is a residual receipts loan and project cash flow has not been sufficient to provide for any loan payments to the City. Unpaid interest is simply added to the loan. As of December 31, 2005, \$818,068 of accrued interest has been added to the loan balance. The modification agreement would forgive accrued interest and reduce the interest rate to 0%. Meadow Ridge Partners, LLC, is making this request because interest on the City's loan is causing negative capital accounts for the tax credit partners and will result in a taxable event at the end of the 15-year recapture period if the general partners exercise their option and take out the tax credit

partners. The operating agreement requires Meadow Ridge Partners, LLC, to pay any tax consequences that result to the tax credit investors when they exit the project. The Nebraska Department of Economic Development reviewed this request and believes it should be granted to avoid cash flow problems at the end of the 15-year recapture period. JP Morgan also requires this modification agreement prior to refinancing the existing first mortgage.

The final item related to Meadow Ridge Partners, LLC, is an agreement subordinating the City's \$935,000 HOME loan to Meadow Ridge Partners, LLC, to a loan from JP Morgan Chase Bank. Meadow Ridge Partners, LLC, requested the subordination to allow refinancing the existing loan from First National Mortgage Association with a new loan from JP Morgan Chase Bank. The balance of the current first mortgage is about \$1,980,000 with an interest rate of 7.2%. Monthly loan payments are \$14,933.34. The refinancing loan will be \$2,100,000 at 6.09% with a 30-year amortization and 10-year balloon. This results in monthly loan payments of \$12,739.46 and reduces monthly loan payments by \$2,193.88 which should substantially improve project cash flow. The project has never had sufficient cash flow to make any payments on the City's residual receipts loan. However, with these reduced senior loan payments it is possible the City may begin receiving payments. JP Morgan is acting as the loan originator. However, this is a conduit loan and will be packaged with other similar loans to be resold to a group of investors. Because this is a conduit loan, there are certain standard terms required in the loan documents including the subordination agreement. The subordination agreement is more than a simple subordination agreement but actually a standstill agreement which does not allow the City to take any enforcement action under its loan or regulatory agreement as long as the first mortgage remains outstanding. The Nebraska Department of Economic Development is aware of this and recommends the City proceed with this refinancing so the project can generate more cash flow to come into compliance with HOME program requirements.

Councilperson Van Dyke was involved with the Meadow Ridge Partners, LLC, projects "from the beginning" and has real concerns about moving forward with approval of the proposed documents. Van Dyke feels elected officials need more information before deciding whether or not to approve the documents (letter to NDEQ requesting reduction in number of HOME assisted units, loan modification agreement, subordination agreement). Van Dyke feels the City Council needs to meet with all of the Meadow Ridge partners (J Paul McIntosh, Phil Perry, Jim Hille and Elkhorn Valley Community Development Corporation—Roger Ndrachal) prior to making a decision on the documents. Van Dyke suggested a subcommittee meet to discuss the issues with all participants to decide whether or not "this is a good idea" or whether the City "has to do this." Van Dyke stated elected officials are the stewards of the \$935,000 federal money. There is also \$178,000 of TIF (tax increment financing) money in the project. Van Dyke has concerns with forgiving the interest on the loan since the funds could be used for more projects in the City of Norfolk. Van Dyke understands Phil Perry is receiving \$350,000 from the project plus \$6,000 per year for the project. Van Dyke feels "this is way too complicated" to just write off the interest.

City Administrator Mike Nolan stated the practical matter of distribution among the partners is part of the way the project was structured. The people who purchased the tax credits have already received "substantial benefit out of this project." Those people, by law, don't have any veto authority over what happens with the other partners. Nolan wants to "get Phil on the phone so he can have due process to explain" the documents.

Councilperson Stauffer would abstain from voting on the items because of the lack of knowledge about the project.

Councilperson Saunders feels a subcommittee meeting would be beneficial to discuss the items prior to consideration as a Council.

Van Dyke spent about 3 hours over the weekend pulling documents from the beginning of the project in 1994 and 1995 to read and try to understand documents related to the project in Meadow Ridge. Van Dyke read Perry's projections which "ended in 1999." Van Dyke said this is now 2006 and by now the accumulative cash flow should be about \$1.5 million for the project and yet Perry requests the City write off all of the interest. Van Dyke doesn't have a lot of confidence in Phil Perry. Van Dyke would like "the other players involved" to meet and discuss these documents before the Council makes a decision. Van Dyke stated Finance Officer Randy Gates needs to be involved in the meeting.

Nolan suggested the entire Council meet to discuss the proposal.

Van Dyke has "a lot of concerns" with the documents. Van Dyke stated the elected officials need "to be good stewards of taxpayer money" and doesn't feel the City should write off the interest. Van Dyke feels the Council needs to be better informed prior to making a decision.

Finance Officer Randy Gates indicated Perry is pushing for approval of the documents to refinance the project.

Councilperson Kaspar-Beckman stated the documents are confusing and should be tabled.

Van Dyke feels elected officials should meet with the four Meadow Ridge partners as well as the three banks involved in the project to discuss the documents prior to Council consideration. Van Dyke questioned whether the partners are still receiving tax credits.

Gates stated Phil Perry is pushing to refinance the project. The partners are still showing losses from the project.

Mayor Adams stated "that really isn't the City's problem" and the City isn't necessarily obligated to put the City's money "up to help them dodge income taxes." Mayor Adams questioned why the number of assisted units needs to be reduced from 42 to 19.

Gates stated there are 9 units in compliance with the HOME regulations. Perry said there isn't enough cash flow to keep the other 33 units in compliance with the HOME rules. Perry says he doesn't have to keep in compliance with the HOME rules because the regulatory agreement between Perry and the City is more liberal than the HOME rules. Gates re-read the agreements and feels Perry may be correct in that the regulatory agreement is more liberal than the HOME rules. Perry or his attorney prepared the regulatory agreement. Gates said DED was actively involved in that review process in early 1995 and the City relied heavily upon DED's recommendations as to whether or not the agreements met requirements. Gates said the funds are federal dollars passed through DED to local subdivisions.

Mayor said HUD "has no sense of humor". Mayor isn't sure NDED understands the agreements and the City should "back up and look at this pretty carefully." Mayor said Meadow Ridge Partners had a tax shelter and the purpose of that shelter is to provide low income housing. They are out of compliance by their own admission but they aren't providing low income housing. Mayor has real concerns about HUD agreeing to the changes even if NDED agrees. Mayor Adams is not comfortable with Perry's request.

Gates stated the reason the City received the HOME funds is because the CHDO (Community Housing Development Organization) was a general partner of Meadow Ridge Partners, LLC. The City of Norfolk was the pass through agency for the funds.

Van Dyke has a lot of concerns as where the money came from, who applied for it, who got it, who administered it, and there are agreements between the City and the Elkhorn Valley Community Development Corporation, agreements between the City and Phil Perry and Meadow Ridge Partners, LLC, and it is very confusing.

Mayor questioned why Meadow Ridge Partners, LLC, missed their targets. Mayor doesn't feel there has been a vacancy problem in the apartment complex. Mayor said there never seems to be answers to questions about this project.

Gates said the audit report shows no residual receipts except for a year ago and Perry is arguing whether there were residual receipts then or not. The project has never had sufficient cash flow to make any payments on the City's residual receipts loan.

Councilperson Saunders stated elected officials need to know the facts.

Gates explained one thing to keep in mind is that the City received the money from NDED and NDED is saying this is how they think the City should handle the request.

Councilperson Fauss questioned whether NDED thinks the City should forgive the interest on the loan.

Nolan said NDED recommends the City sign the documents.

Fauss feels NDED "is wrong." Fauss feels "something is wrong" if the City hasn't received any principal or interest payment for over 10 years.

Kaspar-Beckman said elected officials have been in this kind of situation before with a contract, and elected officials need to be informed before making a decision.

Gates said the way the documents were structured the City was probably never intended to "get a penny." There won't probably ever be residual receipts coming out of the project.

Van Dyke "doesn't understand the proforma then."

Stauffer said NDED can say that the City should forgive the interest. However, how do elected officials explain why the City forgave the interest and NDED won't "be there to help us."

Fauss requested elected officials receive copies of the Meadow Ridge Partners documents.

Nolan said these types of things are complicated. Nolan does understand, however, the tax partners have already received all the benefits the program is set up to provide them. They "aren't going to be hurt in this." Nolan believes the City has two long term interests, (1) people benefiting from the apartments need to be low-to-moderate income; and (2) the apartments are maintained properly. The City of Norfolk is not an investor or a revenue maker in this project. The City was a conduit to help the process occur to provide low-to-moderate income for qualifying citizens.

Van Dyke said the City could, however, use some of the money paid back as available to develop more housing.

Nolan stated that may be true over the long term. The issue in 30 years may be largely enough revenue to maintain the properties and still be used for low-to-moderate income persons.

Gates said the City's particular interest right now is the contract with NDED that says the apartments are going to be in compliance with the HOME rules. The contract with Phil Perry should have put that onus back on Perry but it is actually more liberal than the NDED contract. Gates said Perry is probably in compliance with the City's contract but the City is out of compliance with the contract with NDED. Gates said the City probably relied too heavily on NDED to review the documentation at the onset of the project.

Councilperson Brenneman understands the benefits to re-negotiating the agreement to zero percent interest and reducing the number of HOME assisted units. However, Brenneman cannot understand how elected officials will be able to explain to citizens why the City is foregoing all of the interest generated over 10 years.

Van Dyke wants to know what Perry and the other partners are receiving from the project and how much more they will receive in the future.

Councilperson Stauffer feels elected officials need full disclosure prior to making a decision.

Van Dyke is uncomfortable voting on the documents without further information.

Councilperson Van Dyke moved, seconded by Councilperson Kaspar-Beckman to table consideration of the documents related to Meadow Ridge Partners, LLC, until more information is provided to elected officials. Roll call: Ayes: Councilpersons Kaspar-Beckman, Brenneman, Fauss, Lange, Saunders, Stauffer, Van Dyke, Wilson and Mayor. Nays: None. Absent: None. Motion carried.

The last item discussed was a request by the Fire Division to purchase an **ambulance** and defibrillators. Fire Chief Shane Weidner explained the Fire Division FY 2006-2007 budget contains \$162,620 to purchase a medium duty ambulance similar to the current service models except the box is placed on a truck chassis. It was felt the truck chassis would provide longevity and ease of maintenance. However, after test driving a current year medium duty ambulance, staff felt the patient compartment ride was unsatisfactory and not in the best interest of long term patient care. Therefore, staff recommends purchasing a Type 3 ambulance with the same style of chassis on the current fleet. The City located a demonstrator ambulance for sale for \$99,000. Weidner is confident the City can purchase a new or demonstrator Type 3 ambulance for \$120,000 or less. Because of the cost savings, Weidner would like to upgrade the Division's defibrillators with the newest technology, biphasic. Biphasic electrical therapy causes less cardiac damage and is more efficient in defibrillating a patient in cardiac arrest. It is state of the art and the recognized standard of care by the American Heart Association. Weidner requests approval to purchase three (3) new biphasic defibrillators. Preliminary cost estimates for three new defibrillators is \$50,000. Weidner plans to keep the old ambulance to be able to have four ambulances in the fleet. The old ambulance will be used when the three primary ambulances are in for repair and/or out on calls.

Councilperson Saunders moved, seconded by Councilperson Van Dyke to approve the purchase of a new or demonstrator Type 3 ambulance and three (3) new biphasic defibrillators as discussed. Roll call: Ayes: Councilpersons Kaspar-Beckman, Brenneman, Fauss, Lange, Saunders, Stauffer, Van Dyke, Wilson and Mayor. Nays: None. Absent: None. Motion carried.

Councilperson Fauss moved, seconded by Councilperson Van Dyke to adjourn the meeting at 7:44 a.m. Roll call: Ayes: Council members Kaspar-Beckman, Brenneman, Fauss, Lange, Saunders, Stauffer, Van Dyke, Wilson and Mayor Adams. Nays: None. Absent: None. Motion carried.

Elizabeth A. Deck
City Clerk