

CITY OF NORFOLK, NEBRASKA

The Mayor and City Council of the City of Norfolk met in regular session in the Council Chambers, 309 West Madison Avenue, Norfolk, Nebraska on the 6th day of March, 2006, beginning at 7:30 p.m.

Following a moment of silence and the Pledge of Allegiance to the United States of America, Mayor Gordon Adams called the meeting to order. Roll call found the following Councilpersons present: Lange, Van Dyke, Kaspar-Beckman, Wilson, Brenneman, Fauss, and Saunders. Absent: Stauffer.

Staff members present were: City Administrator Mike Nolan, Director of Public Works Dennis Smith, City Attorney Clint Schukei, City Clerk Beth Deck, Solid Waste Manager Gary Lund, Wastewater Plant Superintendent Todd Boling, Park Superintendent Pat Mrsny, Fire Chief Shane Weidner, Police Captain Leon Chapman, Transportation, Building & Grounds Director Jim Koch, Prevention Manager Scott Cordes, Finance Officer Randy Gates, Police Chief Bill Mizner and Housing Development Manager Gary Hilkemann.

The Mayor presided and the City Clerk recorded the proceedings.

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.

Councilperson Kaspar-Beckman moved, seconded by Councilperson Fauss to approve the consent agenda as printed. Roll call: Ayes: Councilpersons Lange, Van Dyke, Kaspar-Beckman, Wilson, Brenneman, Fauss and Saunders. Nays: None. Absent: Stauffer. Motion carried.

Councilperson Brenneman moved, seconded by Councilperson Wilson to adopt the regular agenda as printed. Roll call: Ayes: Councilpersons Lange, Van Dyke, Kaspar-Beckman, Wilson, Brenneman, Fauss and Saunders. Nays: None. Absent: Stauffer. Motion carried.

SPECIAL PRESENTATIONS

Mayor Adams presented the Nebraska Amateur Softball Association Governor's Award to Park Superintendent Pat Mrsny.

The Mayor proclaimed the week of March 5-11, 2006, as "Juror Appreciation Week". Judge Taylor, Judge Ensz, certified court interpreter Natalie Malmberg and Latino Outreach Coordinator Josie Rodriguez provided comments regarding jurors contributions to the justice system and thanked citizens for serving as jurors.

The Mayor proclaimed the month of March 2006 as "Professional Social Work Month" with the 2006 Theme – "Life's Journey: Help Starts Here"; the month of March 2006 as "Gambling Awareness Month"; and the month of March 2006 as "American Red Cross Month".

CONSENT AGENDA

The City Council approved the minutes of the February 21, 2006 City Council meeting as printed.

The City Council approved the Corporate Manager Application of Deanna Hughes in connection with the Class C liquor license of **Veterans FW 1644**, 316 West Braasch Avenue.

The City Council approved award of and authorized the Mayor to sign a contract with Elkhorn Paving Construction of Norfolk, Nebraska for the **Concrete Improvements 2006-1** project in an amount of \$641,360.07 to furnish all labor, materials, equipment and all else necessary to properly construct all of the improvements. Four sealed bids were received at the February 23, 2006 bid letting. Other bidders were: M & B Quality Concrete, Norfolk, Nebraska, \$675,391.65; Wragge Construction, Inc., Norfolk, Nebraska, \$722,267.80; and A & R Construction, Plainview, Nebraska, \$760,901.55.

The City Council approved and authorized the Mayor to execute a Customer Services Agreement with Nebraska Public Power District for relocation of City of Norfolk owned **fiber optic cable** in conjunction with the Highway 275 West Project. Estimated cost of the project is \$6,200.

The City Council approved and authorized the Mayor to sign an engineering contract with Kirkham Michael & Associates for design, bidding, and construction engineering services for the **influent screen improvement** project at the Wastewater Treatment Plant. The contract is for an amount not to exceed \$80,500.

The City Council approved and authorized the Mayor to execute a revised NPDES Small Municipal Separate Storm Sewer System Notice of Intent Application for the City of Norfolk. The Plan covers the City of Norfolk storm sewer system to meet requirements established by NDEQ.

The City Council approved and authorized the Mayor to sign a Lease Agreement with **Madison County**. The agreement formalizes Madison County's leasing of a portion of the City Council Chambers at 309 Madison Avenue for courtroom and office space.

The City Council approved and authorized the Mayor to sign an agreement with Mid-America Working Terrier Club for use of TaHaZouka Park facilities from June 22 to June 26, 2006, for set-up and use for its annual **dog show**.

The City Council approved all bills on file in the amount of \$791,111.60.

REGULAR AGENDA

A public hearing was continued from the March 6, 2006 City Council meeting to consider the appeal received from Fred **Fisher** regarding the decision of the Planning Commission to not allow horses on property at 404 North Victory Road. Prevention Manager Scott Cordes provided information to the Mayor and City Council. Cordes explained the Police Division started receiving complaints in October 2005 from Fisher's neighbors and businesses in the area about the horses running at large. The Permits & Codes Division contacted Fisher regarding the horses and explained Fisher had two options: (1) remove the horses from the property since horses aren't allowed in that zoning district, or (2) apply for a Conditional Use Permit to allow horses

on the property. Fisher applied for a Conditional Use Permit and the Planning Commission considered the Conditional Use Permit on December 6, 2005. The Planning Commission denied the request from Fred Fisher to keep horses on property located at 404 North Victory Road. On December 21, 2005, the City received an undated letter from Fred Fisher of Fisher's Norfolk Nursery appealing the Planning Commission's decision. According to Section 27-56 of City Code, an appeal may occur to the City Clerk within fifteen days after the Planning Commission decision. City Code states that the City Council may reverse, affirm or modify the decision of the Planning Commission. However, since the original application for the conditional use permit was denied, only two options are available: either to affirm or reverse the Planning Commission decision.

Fred Fisher, 404 North Victory Road, spoke during the public hearing. Fisher purchased 10.9 acres on North Victory Road in April 2005 with 8 acres located outside the city limits but within the two mile zoning jurisdiction. Fisher didn't know a permit was needed to keep horses on the property. Fisher admits the horses have gotten out of the fencing and wandered onto neighboring properties. However, Fisher has a 40'x60' corral for the horses and he wants to expand the corral to approximately 40'x100'. Fisher also is in the process of fixing the fence around the property. Fisher loves the two horses and has never before owned property to be able to keep horses. Fisher admits to receiving tickets for animals at large but it was never Fisher's intention to let the horses wander. Fisher said the horses are Percherons but very gentle and neighborhood children like to ride the horses. Fisher has been incarcerated in the Madison County Jail for 48 days and hasn't been able to repair the fence. A friend of Fisher's took the horses and kept them during the incarceration. However, Fisher is attempting to fix the fence at this time and has already put in 40 posts. Fisher said the horses never caused any damage when they got loose. Fisher wants to be a responsible neighbor and requested permission to keep the horses on the North Victory Road property.

Councilperson Saunders questioned how many horses Fisher has and where the horses are currently being kept. Saunders questioned whether Fisher has a "safe shelter" for the horses.

Fisher has two horses and said the horses are back on the property at 404 North Victory Road. Fisher said the horses are large horses and "don't go inside". Fisher does have a barn on the property, if necessary, for sheltering the horses. Fisher "is in the process of getting steel stalls for the barn." Fisher has enough posts to repair the fence and requested time to make the repairs.

Councilperson Van Dyke questioned whether horses are being kept on other properties located in Suburban Residential areas of the City.

Cordes explained there are numerous examples of horses located in Suburban Residential areas, whether from grandfathering-in or by Conditional Use Permit. Cordes doesn't know of any problems with those situations.

Councilperson Saunders questioned why the Planning Commission denied Fisher's request for a Conditional Use Permit.

Cordes can't speak for the Planning Commission but said there have been numerous complaints reported to the Police Division regarding Fisher's horses getting out and wandering through the neighborhood. Cordes has sympathy for the horses but they won't stay on Fisher's property and the fence isn't finished around the property.

Councilperson Saunders questioned whether City staff can inspect the fence once it is finished and then the Council can consider approval of a Conditional Use Permit. Saunders feels city staff can monitor the fence project.

Cordes stated City staff will do as directed by the City Council. However, a Conditional Use Permit can only be approved by the Planning Commission.

Councilperson Kaspar-Beckman stated the corral fence can be opened up and the horses let out at any time to wander in the neighborhood again. Kaspar-Beckman stated Fisher has had enough time to fix the fence and hasn't done so.

Councilperson Saunders said it is in the best interest of everyone that the horses should not be on Fisher's property if the fence is not complete.

Councilperson Van Dyke agrees the horses should not be on the property.

Police Captain Leon Chapman distributed a chronology of Calls for Service regarding the horses running at large as well as pictures of the existing fence around Fisher's property. There were 11 calls for service prior to the December 6, 2005 Planning Commission hearing on the Conditional Use Permit. There were 8 calls for service from December 22, 2005 to January 26, 2006. The fence around the Fisher property includes portions where no fence exists, portions with only several posts in the ground and portions with posts and only one board along the top. Chapman also distributed a copy of a Notice of Trustee's Sale published in the March 4, 2006 Norfolk Daily News. The sale will occur on April 4, 2006 and is for the Fisher's property. Chapman attended the Planning Commission meeting in December. Planning Commission members questioned why Fisher wasn't fixing the fence. Fisher told Planning Commission members he couldn't afford to fix the fence. Chapman recommends the City Council affirm the Planning Commission's decision to deny a Conditional Use Permit for the horses.

Fisher said there is now a barb wire across the top of the north section of the property. Fisher has made an effort to fix the fence but it is hard to dig fence post holes in frozen ground. Fisher is currently feeding hay and oats to the horses. Fisher said "everyone is welcome to check on the horses" at any time.

Councilperson Saunders stated Fisher seems fond of the horses. However, Saunders feels the Council should uphold the Planning Commission's recommendation for denial of the Permit.

Cordes is frustrated with Fisher's actions. Cordes sent a letter to Fisher for the sole purpose of asking that the horses not be brought back onto the property. In the letter, Cordes explained that Fisher would be fined \$100 per day per horse if they were brought back to Fisher's property. Cordes stated Fisher made a "bad decision" to bring back the horses.

Councilman Brenneman stated it appears the entire issue is the fact that horses aren't allowed in the current zoning district and should not be on the property. Brenneman feels Fisher has had enough time to realize the horses aren't allowed on the property. The horses were off the premises during Fisher's incarceration but Fisher brought the horses back to the property in violation of the city ordinance.

Fisher said it was never his intention to take the horses off of the property—it was done while he was in jail.

No one else appeared either in favor of or in opposition to Fisher's appeal and the Mayor declared the hearing closed.

The Mayor requested a motion to bring Resolution No. 2006-3 regarding the appeal from Fred Fisher on the Planning Commission's denial to allow horses on property located at 404 North Victory Road off the table. Resolution No. 2006-3 was tabled at the February 21, 2006 City Council meeting.

Councilperson Saunders moved, seconded by Councilperson Kaspar-Beckman to bring Resolution No. 2006-3 off the table. Roll call: Ayes: Councilpersons Lange, Van Dyke, Kaspar-Beckman, Wilson, Brenneman, Fauss and Saunders. Nays: None. Absent: Stauffer. Motion carried.

Councilperson Saunders moved, seconded by Councilperson Wilson to uphold the Planning Commission's decision not to allow horses on the property and have them removed until such time as Fisher can meet the standards required by City Code.

The Mayor questioned Fisher's options if the resolution to uphold the Planning Commission's denial of the Conditional Use Permit is approved by the City Council.

City Attorney Clint Schukei explained the zoning code provides for a waiting period of six (6) months after the denial before a new application can be made. Schukei said that a strict reading of City Code would be that, if the City Council denied the appeal, the six months could start from March 6, 2006. However, if a fence was in place before that time period, a more liberal interpretation of City Code could mean that the six month time period began from the Planning Commission meeting on December 6, 2005. Schukei feels neighbors in the area aren't opposed to horses on the Fisher property but the problem has been that the horses are not on Fisher's property but in fact on the neighbors' property.

Fisher said the fence could be completed in one week.

Councilperson Lange has concerns with the motion. Lange doesn't feel it is the responsibility of the City Council to put "degrees on whether or not the issue can come back". Lange stated the City Council's responsibility at this hearing is to either affirm or reverse the actions of the Planning Commission. Lange stated the motion made by Saunders insinuates that the City Council or the Planning Commission would have approved Fisher's Conditional Use Permit if the fence was in place, which is "stepping beyond what we should be doing." Lange said the motion also insinuates that if the fence were in place the City Council would approve horses on the property and that may not be a fact.

Councilperson Saunders withdrew the motion, Councilperson Wilson withdrew the second.

Councilperson Saunders moved for adoption of Resolution No. 2006-3 affirming the Planning Commission's denial to allow horses on property located at 404 North Victory Road, seconded by Councilperson Wilson. Roll call: Ayes: Councilpersons Lange, Van Dyke, Kaspar-Beckman, Wilson, Brenneman, Fauss and Saunders. Nays: None. Absent: Stauffer. Resolution No. 2006-3 was adopted.

A public hearing was held to consider an application to the Nebraska Department of Economic Development for a Nebraska **Affordable Housing Program Grant** for local housing activities. Mechelle Grimes, Northeast Nebraska Economic Development District, provided information to

the Mayor and City Council. The grant will cover a three year time period. This is Phase IV of the Meadow Ridge housing development project located in Northeast Norfolk. The grant is for local housing activities in an amount of \$400,000 for construction of 35 (25 single family detached and 5 duplex) single family housing units in the Meadow Ridge Subdivision. Of the \$400,000 requested, \$248,000 will be used for infrastructure, \$100,000 will be used for down payment assistance, \$28,000 will be used for housing management and \$24,000 will be used for general management. All \$400,000 will benefit low to moderate income persons. The total project is \$4,963,500 of which \$400,000 will be Nebraska Affordable Housing Program Funds. The City of Norfolk will provide \$12,000 of matching funds on street improvements. The developer will provide \$308,500, \$4,130,000 will be local bank financing for 35 housing units and Elkhorn Valley Community Development Corporation will provide \$113,000 matching funds for Direct Homebuyer Assistance to help 16 homebuyers. This project will benefit at least 46% low to moderate income persons. There will be no persons displaced as a result of the Nebraska Affordable Housing Program Funds.

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

The Mayor requested consideration of Resolution No. 2006-6 approving submittal of an application to the Nebraska Department of Economic Development for a Nebraska Affordable Housing Program Grant for local housing activities.

Councilperson Van Dyke moved for adoption of Resolution No. 2006-6 approving submittal of an application to the Nebraska Department of Economic Development for a Nebraska Affordable Housing Program Grant for local housing activities, seconded by Councilperson Fauss. Roll call: Ayes: Councilpersons Lange, Van Dyke, Kaspar-Beckman, Wilson, Brenneman, Fauss and Saunders. Nays: None. Absent: Stauffer. Motion carried. Resolution No. 2006-6 was adopted.

The Mayor requested consideration of Ordinance No. 4869 enacting Section 24-86 of City Code to include **careless driving**. City Code currently does not have an ordinance addressing careless driving.

Councilperson Kaspar-Beckman introduced Ordinance No. 4869 entitled: AN ORDINANCE OF THE CITY OF NORFOLK, NEBRASKA TO ENACT SECTION 24-86 OF THE OFFICIAL CITY CODE TO INCLUDE THE OFFENSE OF CARELESS DRIVING; 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. Councilperson Van Dyke seconded the motion. Said ordinance was then read into the record by title by the City Clerk. Roll call: Ayes: Councilpersons Lange, Van Dyke, Kaspar-Beckman, Wilson, Brenneman, Fauss and Saunders. Nays: None. Absent: Stauffer. Motion carried. Ordinance No. 4869 passed on 1st reading.

Councilperson Van Dyke moved that the statutory rule requiring reading on three different days be suspended. Councilperson Fauss seconded the motion to suspend the rules. Roll call: Ayes: Councilpersons Lange, Van Dyke, Kaspar-Beckman, Wilson, Brenneman, Fauss and Saunders. Nays: None. Absent: Stauffer. 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 Councilperson Van Dyke moved that the statutory rules requiring reading on three different days be suspended and for final passage of the ordinance which motion was seconded by Councilperson Fauss. The Mayor then stated the question "Shall Ordinance No. 4869 be passed and adopted?" Roll call: Ayes: Councilpersons Lange, Van Dyke, Kaspar-Beckman, Wilson, Brenneman, Fauss and Saunders. Nays: None. Absent: Stauffer. 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. 4869 as required by law.

No comments were received regarding the Police Division report for January 2006. The report was included in the agenda packets.

Sales and use tax collection for the month of December 2005 was reported as \$716,146.53. The report was included in the agenda packets.

Fire Chief Shane Weidner presented the Norfolk **Fire** Division's 2005 Annual Report. The Fire Division's mission is to support a higher quality of life for the citizens of Norfolk through public education, loss prevention, and service response. Highlights for 2005: Planning Commission held 44 public hearings; Code Enforcement conducted 7,890 inspections and issued 103 dwelling permits for a total valuation of \$15,301,281 with a total of 533 building permits issued with a total valuation of \$38,001,988; and the Operations Bureau responded to 1,715 rescue calls and 139 fire calls.

No comments were received on the Works-In-Progress report for the period February 15 through 28, 2006. The report was included in the agenda packets.

Councilperson Fauss moved, seconded by Councilperson Kaspar-Beckman to adjourn the meeting at 8:44 p.m. Roll call: Ayes: Councilpersons Lange, Van Dyke, Kaspar-Beckman, Wilson, Brenneman, Fauss and Saunders. Nays: None. Absent: Stauffer. Motion carried.

Gordon D. Adams
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, March 6, 2006, had and done by the Mayor and 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

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