

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 5th day of November, 2007, 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: Coy, Lange, Van Dyke, Reeder, Wilson, Brenneman, Fauss, and Saunders. Absent: None.

Staff members present were: Director of Public Works Dennis Smith, City Attorney Clint Schukei, City Clerk Beth Deck, Prevention Manager Scott Cordes, Transportation, Building & Grounds Director Jim Koch, and Fire Chief Shane Weidner.

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.

Councilperson Van Dyke moved, seconded by Councilperson Lange to approve the consent agenda as printed.

Councilperson Fauss requested Item G-4, Don Wesely lobbyist agreement, be removed from the consent agenda and considered on the regular agenda.

Councilperson Van Dyke amended the motion to remove Item G-4 from the consent agenda and add to the regular agenda, Councilperson Lange amended the second. Roll call on the consent agenda as amended: Ayes: Councilpersons Coy, Lange, Van Dyke, Reeder, Wilson, Brenneman, Fauss and Saunders. Nays: None. Absent: None. Motion carried.

Councilperson Brenneman moved, seconded by Councilperson Fauss to adopt the regular agenda as amended with the addition of Item G-4, Don Wesely lobbyist agreement. Roll call: Ayes: Councilpersons Coy, Lange, Van Dyke, Reeder, Wilson, Brenneman, Fauss and Saunders. Nays: None. Absent: None. Motion carried.

SPECIAL PRESENTATION

The Mayor proclaimed November 5 – 11, 2007 as “Read Aloud to a Child Week”.

Transportation, Building & Grounds Director Jim Koch gave a presentation to the Mayor and City Council on the 2007 **Snow and Ice** Plan. In 1982 the City adopted the first formal Snow and Ice Plan. The Street Division begins plowing arterial and collector streets on predetermined routes. After clearing initial plowing routes, work begins on residential streets. The City is divided into ten snow removal sections. Each section is further divided into areas. The areas are rotated within the sections so a different area is plowed first after each snowstorm. Koch stated City ordinance prohibits any parking on snow emergency routes at any time when an emergency has been declared. During a snow emergency, parking is prohibited on odd-numbered sides of all streets. The following streets are less than one season old and will not be salted: Prospect Avenue from 3rd Street to 4th Street and Westbrook Drive from Wildwood Street northeast 1,000 feet. Koch reminded citizens that snow from private property cannot be placed on the public streets for removal. Koch invited citizens to visit the Street Division web site at www.ci.norfolk.ne.us/street/ or call (402) 844-2180 with questions and concerns about the snow plan.

CONSENT AGENDA

The City Council approved the minutes of the October 15, 2007, City Council meeting as printed.

The City Council adopted Resolution No. 2007-58 approving the final plat of **Green Meadow 5th** Addition and authorized the Mayor to sign the accompanying subdivision agreement. This five-lot subdivision is located in the 3300 block of Koenigstein Avenue and is being designed for additional townhouses.

The City Council adopted Resolution No. 2007-59 approving the final plat of **The Meadows 2nd** Addition and authorized the Mayor to sign the accompanying subdivision agreement. This is a thirty-four lot subdivision requested by Crafts, Inc. and located south of The Meadows on South 18th Street. The area is being developed for residential/commercial use.

The City Council approved and authorized the Mayor to sign Change Order No. 1 with Rutjens Construction, Inc. for the sewer by the **scale house** project at the wastewater treatment plant. The change order results in a net decrease of \$646.56.

The City Council approved the Mayor's reappointment of Councilman Jim Brenneman to the **Vehicle Parking** District Loan Advisory Board for a second term which expires in October 2011.

The City Council approved the appointment of Steve McNally to the **Vehicle Parking** District Loan Advisory Board for a four-year term expiring October 2011. McNally replaces Mark Raders on the Board.

The City Council approved award of and authorized the Mayor to sign a contract with Automatic Systems Co., Ames, Iowa, in the amount of \$41,925.00 for one **programmable controller** at the Water Pollution Control. Two bids were received at the October 25, 2007 bid letting. The other bidder was Siemens Water Technologies, Ames, Iowa, \$55,688.00.

The City Council approved and authorized the Mayor to sign Change Order No. 1 with Rutjens Construction of Tilden, Nebraska for **Meadow Ridge Phase 4**, 1st Addition improvement project resulting in a net increase of \$9,190.00. The change is due to the engineer inadvertently leaving out a water main on Sycamore Avenue connecting the existing mains on Jonathan Circle and Blue Stem Circle.

The City Council approved all bills on file in the amount of \$1,091,039.10.

REGULAR AGENDA

Public hearings were held simultaneously to consider amending the Comprehensive Plan from golf course to medium density residential and changing the zoning from R-1 (Single Family Residential District) to R-2 (One and Two Family Residential District) at **1620 North 37th Street** at the request of Bob **Hupp**. Prevention Manager Scott Cordes provided information to the Mayor and City Council. A Comprehensive Plan amendment is necessary because Hupp has applied for a zoning change from R-1 to R-2 on the property. The Comprehensive Plan shows this parcel as golf course and Hupp wants to build three two-unit residences on the property. At the Planning Commission meeting, two neighbors opposed the zoning change stating a desire for the property to remain as a golf course. The Planning Commission approved the Comprehensive Plan amendment on a 6-0 vote.

Cordes explained The Berrington Corporation, owners of **Eldorado Hills** Golf Course, attempted a zoning change on the property in March 2007, but were unsuccessful. Hupp has subsequently purchased the lot from The Berrington Corporation and wishes to develop it into three two-unit residences. Neighbors suggested a planned development be established on the lot. There were also concerns related to buffering and changes to the golf course. Cordes stated that Rick Waddington, co-owner of the golf course, assured neighbors that no trees will be removed from the golf course. Cordes understands the applicant (Hupp) has met with neighbors in the area and discussions continue about the proposal. There was some correspondence disseminated from Thomas Tomlinson, 3416 Golf View Drive, regarding the "Comprehensive Plan and Zone Change Applications, 1700 North 37th Street and Pasewalk and 25th Street." For the record, Cordes provided copy of a response from City Attorney Clint Schukei to the City Clerk.

Mayor Adams reminded persons wishing to testify to limit comments to five (5) minutes.

Bob Hupp, 900 North 37th Street, is owner and developer of the property at 1620 North 37th Street. Hupp distributed a booklet of information on the proposed development including letters of support from approximately 25 homeowners in the area of the development; overhead view of the property; map of Eldorado Hills Golf Course showing current townhouse zoning, pictures of the proposed three two-unit residences; picture of trees on the undeveloped property; picture of dilapidated storage unit on the undeveloped property; and letter dated October 31, 2007 from Robert L. Hupp addressing tree removal, adjacent trees, tree replacement, and new owners of the townhomes. Hupp has addressed the issue of townhouses with neighbors over the last six months and neighbors seem to be in agreement with the proposal. However, the neighbors still have concerns about tree removal. Hupp said it is difficult to determine how many of the trees will need to be removed from the property during construction. Hupp has no control over trees located on the golf course; however, Hupp stated the golf course doesn't have any intention of removing any of the trees. Hupp plans to remove "as few trees as possible" to keep the integrity

of the area as secluded as possible. Hupp said a homeowners association will be created for the development.

Dick Johnson, Johnson Engineering, 701 Michigan Avenue, spoke in favor of the amendment and zoning change. Johnson feels the R-2 zoning fits the area. Johnson distributed a "Comparison of Densities" and a portion of the Comprehensive Development Plan dated August 2001. The Comparison of Densities (units per acre) shows the following:

Eldorado Hills 6th Subdivision has a density of 2.17;
Eldorado Hills 7th Subdivision is 2.39;
Eldorado Hills 7th Subdivision (Golf View Drive Only) is 2.38;
Cedar Heights is .015 and
Eldorado Hills 18th Subdivision (proposed development) is 3.53.

Johnson attempted to find objective criteria for "when different uses fit each other". Johnson pointed out the "Growth and Land Use" under the "Framework for Decision-making" in the City's Comprehensive Development Plan states, "These tables together form a framework for findings by the Planning Commission and City Council which provide both needed flexibility and consistency with the plan's overall objectives." The Plan outlines the major uses in the Comprehensive Plan and page 74 states: Large Lot Residential typical density is less than one (1) per acre and typical zoning is S-R; Single-Family Residential typical density ranges from 1-6 units per acre and typical zoning is R-1; and Moderate-Density Residential/Urban Residential typical maximum density is 6-10 units per acre and typical zoning is R-2. Johnson also reviewed the "Existing Adjacent Land Use" found on page 78 of the Plan. Johnson said, "One can make the argument that, other than Cedar Heights, the existing neighborhood and Hupp's proposal, are both low density." Low-density residential is a 4 with large lot residential in the Plan. On page 79 of the Plan, a "4" use states, "The proposed use is basically compatible with the pre-existing adjacent use. Traffic from higher-intensity uses should be directed away from lower-intensity uses." Johnson said the traffic is being routed to 37th Street. The Plan also states, "Building elements and scale should be consistent with surrounding development." Johnson said Hupp indicates upscale duplexes will be constructed on the property. This information indicates the uses are compatible. Johnson said the Planning Commission unanimously approved the amendment and zoning change on October 16, 2007.

Councilperson Reeder questioned the neighbors' concerns with the proposal.

Johnson needs to prepare a grading plan for the area to determine which trees can be left on the property. However, Johnson said the properties need yards, basements and driveways. The idea is to keep as many of the nice trees, as possible, on the property. Johnson hopes to have the grading plan done by the end of the week or the beginning of next week.

Councilperson Van Dyke finds it difficult to understand why a neighbor should have a right to say what happens to trees on someone else's property. The property owner can be encouraged to keep as many trees as possible but "that's his call." Van Dyke doesn't feel the decision should be judged on whether the trees remain on the property.

Johnson is amazed, however, that lots adjacent to tree lines (e.g. College View development) usually sell first. Johnson stated Hupp wants to leave as many trees as possible to add value to the property.

Rick Waddington, Omaha, co-owner of Eldorado Hills Golf Course, has a lot of experience with golf courses. Waddington says golf course developments need zoning varieties. Waddington said the trees on the golf course surrounding Hupp's proposed development "won't come out" as long as they are good; however, some of the trees on Hupp's property need to be cleaned up. Waddington feels "this is an ideal situation for townhomes" and will be a benefit to everyone. Waddington stated the development will help the aesthetics of the golf course.

Al Rajae, 1706 Eldorado Road, initially opposed the proposed development. Rajae feels, because citizens have "paid for the homes we have, we have the right to oppose the zoning changes and changes to the Comprehensive Plan that allow things to be built there." Rajae stated the area is zoned R-1 and neighbors have the right to oppose R-2 zoning. Neighbors had discussions with Hupp and Hupp was to meet with the neighbors again to outline the project but that did not occur. Rajae wants more clarification of the plans. Rajae stated the neighbors' ideas included a Planned Unit Development or "making the City responsible for some of the upkeep of these trees." Rajae stated neighbors are "still asking for" a developed plan. Rajae stated, "we are not against the development, all we want is a clear picture of what is going to happen on this property." Rajae requested the Council only approve the Comprehensive Plan amendment on first reading to allow more time "for Hupp to come to the table."

Councilperson Van Dyke stated it would be a very long process if elected officials allow neighbors to approve plans for every building constructed in Norfolk that required a zoning change.

Rajae stated it would be a long process but would make neighborhoods get along a lot better. Rajae believes "in the harmony of neighbors and what goes on around them." Rajae is not against the townhomes but wants an overlay of the project.

Reeder understands that if the ordinance is passed on first reading, it automatically comes back at the next Council meeting.

City Attorney Clint Schukei stated Reeder's assumption is correct. Schukei explained that, under State Statute requirements, there are 13 property owners within 300 feet of Hupp's property and a protest has been signed by 4 of the owners which is more than the 20% required for a 2/3 approval (6 votes) by the City Council. Schukei suggests dealing with the Comprehensive Plan ordinance prior to the zoning change ordinance. Because the Comprehensive Plan approval comes first, Schukei suggested tabling the zoning change ordinance if the Comprehensive Plan ordinance is passed on first reading only.

Councilperson Lange feels the packet distributed by Bob Hupp shows an aerial view with plot plans and site layouts. Lange questioned, "At what stage/level the people (neighbors) are able to grasp what is going into the development." Lange understands from the documents distributed by Hupp what the proposal is for the land. Many people can't grasp a proposal until "the walls are up" and that isn't a fair situation for Hupp.

Rajae said Hupp promised "a complete overlay of the project". Rajae wants another meeting with Hupp. After receiving the letter from Hupp stating the tree lines are staying, etc., the neighbors "are comfortable" with the project. However, Rajae wants to see an overlay of the project "to match it with what" Hupp is stating.

Van Dyke questioned whether Hupp plans to begin construction of the units this year.

Hupp hopes to get started on the development before the end of the year.

Jeff White, 3609 Golf View Drive, is a resident living within the 300' radius of the proposed development. White was opposed to the amendment and zoning change at first but is "now happy with the proposed plan." White said there was a lack of communication initially. White said the neighbors feel R-2 is spot zoning but "will give" Hupp the R-2 if "you give us a few trees." White feels "neighbors can get involved when someone is doing something a little questionable. "This is about making concessions." White wants to see "exactly what trees are going to be left there." White stated some of the neighbors want to plant trees on Hupp's property. White is willing to make concessions on the project; otherwise, White will object to the proposal.

Van Dyke feels "this is opening a can of worms that has never been dealt with before".

White feels there needs to be more discussion as to how the Comprehensive Plan "is adhered to" by the City. The Plan is a long-term document which "seems to be thrown out" many times. White "expected the R-1 zoning to protect" the surrounding properties. White will not compromise if the builder doesn't compromise on the issue.

Waddington reiterated the trees around the proposed development "are mine and he's not going to take my trees out."

Thomas Tomlinson, 3416 Golf View Drive, addressed this issue in March, 2007. Tomlinson was a City planner for 30 years in California. Tomlinson spoke to two documents, dated October 19, 2007 and October 30, 2007, provided to elected officials regarding the Comprehensive Plan. Tomlinson has been "dealing with this business for over 30 years." Tomlinson said the issue is whether the proposed zoning conflicts with the Comprehensive Plan. In 2001 the City adopted a new Comprehensive Plan and the zoning should be consistent with the Plan. Tomlinson stated R-1 zoning is not consistent with a golf course. Tomlinson proposed an alternative to allow the City Council to take action. The alternative is entitled "City Council Resolution 11-05-2007" which approves "an amendment to the adopted comprehensive plan creating a land use category of Special Study Area and Clarification that all references to Medium Density Residential shall be revised to read Moderate Density Residential both in written text and as may be designated on map exhibits."

Mayor Adams stated the item distributed by Tomlinson cannot be considered by the elected officials because it isn't listed on the agenda and such a change would first need to go before the Planning Commission for review.

Tomlinson recommended elected officials "make a policy statement that the developer will defend any lawsuit" if no action could be taken at the meeting regarding the proposed resolution.

City Attorney Clint Schukei recognizes the inconsistency in the nomenclature in the language in the Comprehensive Plan but the meaning is clear. The specificity requested by the neighbors has not been contemplated or required by any developer in Norfolk. The platting process addresses many of those issues. Schukei stated that "type of standard has not been requested in Norfolk."

Language in the Nebraska Statutes addresses things that are in accordance with the Comprehensive Plan but that doesn't mean the Plan needs to be identical to the zoning. The Comprehensive Plan may be different in California than in Nebraska. Reading from a Nebraska case, Schukei stated, "This court has stated the comprehensive development plan is a guideline and is not binding but is merely a policy statement that may be implemented through zoning and that is the actual zoning that has the force of law." Schukei stated the zoning is the important issue. It is questionable whether the proposal even needs a change to the Comprehensive Plan since the area is only 1.7 acres. Schukei feels the Comprehensive Plan "can" be changed for this request but "doesn't" need to be changed. However, if the Comprehensive Plan and contemplated zoning change are not identical and there is a protest on file, there is a need for 6 votes to pass. Otherwise, the Comprehensive Plan is a guideline that only requires a majority vote.

There being no further discussion, the Mayor declared the hearings closed.

On October 16, 2007 the Norfolk Planning Commission held public hearings regarding the amendment and zoning change requests. The City Clerk read the Planning Commission's recommendations for approval into the record.

The Mayor requested consideration of Ordinance No. 4981 amending the Comprehensive Plan at 1620 North 37th Street from golf course to medium density residential.

Councilperson Van Dyke introduced Ordinance No. 4981 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. Councilperson Fauss seconded the motion. Said ordinance was then read into the record by title by the City Clerk.

Fauss is encouraged with the progress made by the applicant and neighbors.

Coy commends both sides of the issue for working towards a common resolution to the issue and is encouraged by the open communication between the parties.

Mayor pointed out that because of the protest Ordinance No. 4981 needs six favorable votes to move forward.

Roll call on Ordinance No. 4981: Ayes: Councilpersons Coy, Lange, Van Dyke, Reeder, Wilson, Brenneman, Fauss and Saunders. Nays: None. Absent: None. Motion carried. Ordinance No. 4981 passed on first reading only.

Councilperson Lange stated it is questionable whether a Comprehensive Plan change is necessary and would like to move forward with the issue.

Councilperson Lange moved, seconded by Councilperson Brenneman to suspend the rules and pass Ordinance No. 4981 on second reading.

Mayor Adams pointed out that even if the motion to suspend the rules fails, Ordinance No. 4981 will appear on the November 19, 2007 City Council meeting for second reading.

Councilperson Van Dyke agrees with the motion since the neighborhood is residential in nature and R-1 or R-2 zoning do not conflict with the Comprehensive Plan for that property.

Councilperson Fauss stated the neighbors requested the ordinance be passed on first reading only.

Schukei explained that if Ordinance No. 4981 is ultimately approved, the related zoning change from R-1 to R-2 only needs five votes for approval.

Roll call on suspending the rules and passing Ordinance No. 4981 on second reading: Ayes: Councilpersons Lange, Van Dyke, Brenneman and Saunders. Nays: Coy, Reeder, Wilson and Fauss. Absent: None. Motion to suspend the rules fails. Ordinance No. 4981 will appear on the November 19, 2007 City Council agenda.

The Mayor requested consideration of Ordinance No. 4982 changing the zoning from R-1 (Single Family Residential District) to R-2 (One and Two Family Residential District) at 1620 North 37th Street.

Councilperson Brenneman introduced Ordinance No. 4982 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. Councilperson Lange seconded the motion. Said ordinance was then read into the record by title by the City Clerk.

Councilperson Reeder moved, seconded by Councilperson Van Dyke to table consideration of Ordinance No. 4982. Roll call: Ayes: Councilpersons Coy, Lange, Van Dyke, Reeder, Wilson, Brenneman, Fauss and Saunders. Nays: None. Absent: None. Motion carried. Ordinance No. 4982 was tabled.

A public hearing was held to consider a zoning change from A (Agricultural District) to R-R (Rural Residential District) at **2807 South 1st** Street requested by Lucille **Gesell**, Lucille L. Gesell Trustee of the Lucille L. Gesell Revocable Trust and the City of Norfolk. Prevention Manager Scott Cordes provided information to the Mayor and City Council. Cordes stated a Conditional Use Permit was authorized for the property many years ago for a quarry operation by Lyman Richey (Gerhold Concrete). At that time, the developer intended to create residential units on the lake when possible. The zoning change will allow development of residential lots for lakeside homes.

On October 16, 2007 the Norfolk Planning Commission held a public hearing regarding the request from Lucille Gesell, Lucille L. Gesell Trustee of the Lucille L. Gesell Revocable Trust and the City of Norfolk. 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 zoning change and the Mayor declared the hearing closed.

The Mayor requested consideration of Ordinance No. 4983 for a zoning change from A (Agricultural District) to R-R (Rural Residential District) at 2807 South 1st Street.

Councilperson Van Dyke introduced Ordinance No. 4983 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. Councilperson Wilson seconded the motion. Said ordinance was then read into the record by title by the City Clerk. Roll call: Ayes: Councilpersons Coy, Lange, Van Dyke, Reeder, Wilson, Brenneman, Fauss and Saunders. Nays: None. Absent: None. Motion carried. Ordinance No. 4983 passed on first reading.

Councilperson Brenneman 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 Coy, Lange, Van Dyke, Reeder, Wilson, Brenneman, Fauss and Saunders. 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 Councilperson Brenneman 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. 4983 be passed and adopted?" Roll call: Ayes: Councilpersons Coy, Lange, Van Dyke, Reeder, Wilson, Brenneman, Fauss and Saunders. 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. 4983 as required by law.

A public hearing was held to consider a zoning change from R-3 (Multiple Family Residential District) to C-3 (Service Commercial District) on the east half of **301 South 1st Street** requested by Craig **Risor**. Prevention Manager Scott Cordes provided information to the Mayor and City Council. This zoning change request is for the east sixty feet of the lot. The west half is zoned C-3 and the east sixty feet is R-3. This is a housekeeping issue. Mr. Risor has applied for a Conditional Use Permit to house a fabrication of granite operation.

On October 16, 2007 the Norfolk Planning Commission held a public hearing regarding Risor's request. 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 zoning change and the Mayor declared the hearing closed.

The Mayor requested consideration of Ordinance No. 4984 changing the zoning from R-3 (Multiple Family Residential District) to C-3 (Service Commercial District) on the east half of 301 South 1st Street.

Councilperson Fauss introduced Ordinance No. 4984 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. Councilperson Coy seconded the motion. Said ordinance was then read into the record by title by the City Clerk. Roll call: Ayes: Councilpersons Coy, Lange, Van Dyke, Reeder, Wilson, Brenneman, Fauss and Saunders. Nays: None. Absent: None. Motion carried. Ordinance No. 40984 passed on first reading.

Councilperson Coy 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 Coy, Lange, Van Dyke, Reeder, Wilson, Brenneman, Fauss and Saunders. 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 Councilperson Coy 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. 4984 be passed and adopted?" Roll call: Ayes: Councilpersons Coy, Lange, Van Dyke, Reeder, Wilson, Brenneman, Fauss and Saunders. 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. 4984 as required by law.

The Mayor requested consideration of Ordinance No. 4979 amending Section 3-5 of City Code to establish the hours during which the holder of a Special Designated Permit may sell or distribute **alcoholic** liquors on Sunday. Ordinance No. 4979 passed on first reading at the October 15, 2007 City Council meeting.

Councilperson Brenneman introduced Ordinance No. 4979 entitled: AN ORDINANCE OF THE CITY OF NORFOLK, NEBRASKA TO AMEND SECTION 3-5 OF THE OFFICIAL CITY CODE TO AUTHORIZE THE CITY COUNCIL TO ESTABLISH THE HOURS DURING WHICH THE HOLDER OF A SPECIAL DESIGNATED PERMIT MAY SELL OR DISTRIBUTE ALCOHOLIC LIQUORS ON SUNDAY; 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 second reading. Councilperson Lange seconded the motion. Said ordinance was then read into the record by title by the City Clerk.

Stacy Riley, Project Extra Mile Coordinator from Columbus, spoke in opposition to changing the hours for the sale of alcohol on Sunday. Riley stated research shows cities without a ban on Sunday sales of packaged alcohol have seen a rise in alcohol-related accidents. In 1995, Albuquerque, New Mexico lifted its ban on Sunday sales and saw a 29% increase in alcohol-related crashes and a 42% increase in alcohol-related crash fatalities. Riley stated this will only

“open the flood gates” for applicants to receive approval of Special Designated Permits which, in turn, will “change what the community looks like.”

Councilperson Van Dyke appreciates Riley’s comments. However, Van Dyke stated the situation in Albuquerque, New Mexico was the outright approval of the sale of alcohol on Sunday.

Bob Plisek, Eagles Club, stated the event planned in February is a “closed event” and caution will be taken during the event so no alcohol is sold to minors.

Councilperson Coy stated this ordinance would give the Council the power to consider liquor sales on Sunday morning through the Special Designated Liquor License process.

City Attorney Schukei explained this ordinance, if enacted, would allow the Eagles to make an application for consideration by elected officials.

Councilperson Lange stated the ordinance, if approved, does not guarantee that the Eagles would be granted a Special Designated Liquor License for the event.

Councilperson Wilson stated the reason the ordinance was passed on first reading only was to allow time for citizen input. Wilson received only input opposing the ordinance.

Councilperson Reeder feels it would be tough for elected officials to allow such an event for one person/organization and not another.

Councilperson Brenneman is opposed to the ordinance and doesn’t feel alcoholic beverages should be sold on Sunday.

Roll call on Ordinance No. 4979: Ayes: Councilpersons Lange and Van Dyke. Nays: Coy, Reeder, Wilson, Brenneman, Fauss and Saunders. Absent: None. Motion failed. Ordinance No. 4979 failed on second reading.

The Mayor requested consideration of Resolution No. 2007-60 authorizing **Nebraska Public Power** District to apply to the Nebraska Power Review Board to amend the existing retail service area for the City of Norfolk to include a tract of land annexed by Ordinance No. 4920, which is generally located south of Eisenhower Avenue and west of Victory Road.

Councilperson Van Dyke moved for adoption of Resolution No. 2007-60 authorizing Nebraska Public Power District to apply to the Nebraska Power Review Board to amend the existing retail service area for the City of Norfolk to include a tract of land annexed by Ordinance No. 4920, which is generally located south of Eisenhower Avenue and west of Victory Road, seconded by Councilperson Reeder.

Public Works Director Dennis Smith stated the resolution is a step to get a uniform public power supplier across property within the City of Norfolk. When a portion of the Arnold Engineering property was annexed, the northern portion of the property was outside the NPPD area. This will be the first step in the process to get that moved from Elkhorn Public Power District to NPPD.

Roll call: Ayes: Councilpersons Coy, Lange, Van Dyke, Reeder, Wilson, Brenneman, Fauss and Saunders. Nays: None. Absent: None. Motion carried. Resolution No. 2007-60 was adopted.

At the request of Councilperson Fauss, Item G-4, agreement with Don **Wesely** for **lobbyist** services, was considered on the regular agenda. Term of the agreement is from November 1, 2007 through October 31, 2008 for a total of \$24,000.

Councilperson Fauss moved, seconded by Councilperson Reeder to approve and authorize the Mayor to sign an agreement with Don Wesely for lobbyist services through October 31, 2008.

Fauss questioned the status of the lobbying services. Fauss questioned whether Wesely works with two other lobbyists.

Mayor Adams understands Wesely works for himself and not with anyone else. Mayor Adams stated the Health and Human Services Committee considered LB 1083 and LB 1099 and Wesely defended the Norfolk Regional Center as necessary.

Fauss questioned whether the City has two separate contracts for lobbying services. Fauss has not received a report for 1-2 years and would like an update. Fauss isn't sure the City is getting \$24,000 worth of value for services rendered.

Schukei explained that at the inception there were two separate contracts with two different lobbying groups in conjunction with the City of Hastings. Schukei understands this is now the only lobbying contract with the City.

Mayor Adams stated Wesely is providing services to the City and not only on Norfolk Regional Center issues but also TIF funding (LR2CA). Mayor Adams said the City is getting value at this point in time but isn't sure "it should go on forever."

Smith stated lobbying efforts in the Legislature will also be helpful on upcoming natural gas issues.

Councilperson Van Dyke suggested tabling the item until the November 19, 2007 City Council meeting.

Councilperson Van Dyke moved, seconded by Councilperson Wilson to table consideration of the agreement with Don Wesely for lobbyist services until the November 19, 2007 City Council meeting. Roll call: Ayes: Councilpersons Coy, Lange, Van Dyke, Reeder, Wilson, Brenneman, Fauss and Saunders. Nays: None. Absent: None. Motion carried.

The Mayor requested consideration of an agreement with David M. **Fauss** and Catherine A. Fauss to occupy and expand the owner's facilities over the permanent easement on Lots 1 and 2 Fauss' Addition.

Councilperson Fauss abstained from voting and did not participate in discussion of this item.

Councilperson Reeder moved, seconded by Councilperson Wilson to approve and authorize the Mayor to sign an agreement with David M. Fauss and Catherine A. Fauss to occupy and expand the owner's facilities over the permanent easement on Lots 1 and 2 Fauss' Addition.

Public Works Director Dennis Smith explained a storm sewer runs from Georgia Avenue to the Elkhorn River that runs on the south side of the existing building that houses the National Champion Convenience Store. One storage unit is constructed on the site. Fauss wants to build a second storage unit over the top of the storm sewer system. The agreement allows the construction but Fauss must take over the maintenance responsibilities for the storm sewer under the building.

Roll call on the Fauss agreement: Ayes: Councilpersons Coy, Lange, Van Dyke, Reeder, Wilson, Brenneman, and Saunders. Nays: None. Absent: None. Abstaining: Fauss. Motion carried.

The Mayor requested consideration of awarding a contract to M.E. Collins Contracting Co. of Wahoo, Nebraska of the base bid plus add groups X-2A, X-3A and X-4A for Paving District No. 493 (**Norfolk Avenue** 1st to 8th Streets sidewalk and landscaping – **Streetscape** project) in an amount of \$1,425,804.90.

Councilperson Van Dyke moved, seconded by Councilperson Brenneman to approve award of and authorize the Mayor to sign a contract with M.E. Collins Contracting Co. of Wahoo, Nebraska of the base bid plus add groups X-2A, X-3A and X-4A for Paving District No. 493 (Norfolk Avenue 1st to 8th Streets sidewalk and landscaping) in an amount of \$1,425,804.90 to furnish all labor, materials, equipment and all else necessary to properly construct the project.

Smith stated four bids were received at the October 9, 2007 bid letting. The other bidders were: DACO Construction Co., Norfolk, Nebraska, \$1,472,546.45; A & R Construction, Plainview, Nebraska, \$1,550,624.21; and Steve Harris Construction, Homer, Nebraska, \$1,668,106.02. The project will include replacement of sidewalks, landscaping and street and pedestrian lighting. The four add groups provide for the concrete crossings that will be a different color and different texture at the mid-blocks of 2nd/3rd Streets, 3rd/4th Streets, and 4th/5th Streets and also provides for bollards at each of those locations at the curb line. The adds do not provide for any raised concrete in the street or curb grinding. The contractor is planning to complete the project in one year depending, of course, on good weather and cooperation. M.E. Collins plans to start the project the first of April, 2008.

Councilperson Reeder questioned whether the contractor plans to meet with the downtown businesses so the merchants know the time frame of the project. Reeder stated many businesses do not have a back door for access, which is a concern.

Smith stated the concern can be addressed; however, the contractor won't be doing any of those types of things for the project until about February 2008.

Roger Brummels, Chairperson of the Vehicle Parking District, spoke in favor of the contract. Brummels stated the District has been meeting for the last 3-4 years and reviewing the project step-by-step. Brummels stated the design should be easy to maintain and easy for pedestrian traffic. The District has concerns about discussions with business owners during the construction project so they know when the street/sidewalk will be torn up in front of their business. Brummels stated communication will be a key point during the project. Brummels stated the project is very nice and will be decorative for Downtown Norfolk from 1st Street through 8th Street.

Roll call on the M.E. Collins contract: Ayes: Councilpersons Coy, Lange, Van Dyke, Reeder, Wilson, Brenneman, Fauss and Saunders. Nays: None. Absent: None. Motion carried.

Sales and use tax collection for the month of August 2007 was reported as \$526,482.

No comments were received regarding the Police Division report for September 2007, the quarterly Police Division report ending September 2007 and the Works-In-Progress report for the period October 10 through 30, 2007. All the reports were included in the agenda packets.

Councilperson Fauss moved, seconded by Councilperson Van Dyke to adjourn the meeting at 9:33 p.m. Roll call: Ayes: Councilpersons Coy, Lange, Van Dyke, Reeder, Wilson, Brenneman, Fauss and Saunders. Nays: None. Absent: None. 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, November 5, 2007, 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

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