

I. CALL TO ORDER

President Dennis Johnson called the meeting to order at 5:15 PM.

II. ROLL CALL

Present were: President Dennis W. Johnson, Gene Jackson, Rod Landblom, Carson Steiner and Klayton Oltmanns

Absent were: All present

STANDARD MOTIONS

1. ORDER OF BUSINESS

MOTION BY: Gene Jackson

SECONDED BY: Klayton Oltmanns

To approve the December 6, 2010 Order of Business as presented.

DISPOSITION: Motion carried unanimously.

2. CONSENT AGENDA

MOTION BY: Gene Jackson

SECONDED BY: Rod Landblom

A. Approval of minutes of regular meeting dated November 15, 2010.

B. Approval of Employee Assistance Program Agreement.

C. Approval of Memorandum of Understanding between ND Court System and City of Dickinson

Roll call vote...Aye 5, Nay 0, Absent 0.

Motion declared duly passed.

TIMETABLE AGENDA

5:20 PM

DICKINSON RENAISSANCE ZONE PROJECT PRESENTATION

Danielle Stuckle Museum Director presents a Renaissance Zone Project application from Ms. Carolyn True Bright White who has applied to purchase the property at 227 Sims Street. An application is normally approved before the property is purchased but Ms. White has already purchased the property. This historic property is located in the Renaissance zone walking site and historic zone. Ms. White will be living at this residence. Ms. Stuckle did present Ms. White's intentions list for the improvements to the exterior of the home. This program can and does support historic preservation but projects do not have to be connected with improvements.

President Johnson does not understand why any condition would be applied to this motion.

DISPOSITION: Roll call vote...Aye 5, Nay 0, Absent 0.
Motion declared duly passed.

Missy Thompson, Audit Manager from EideBailley presented the City's 2009 audit review. She highlighted the findings and recommendations. Highlighted in the report were EideBailley did help the City prepare the financial statements and notes that support the statement. One finding was the lack of segregation of duties. She does feel the financial condition of the City is good as it does not have a lot of debt. She also feels the City does have adequate cash. A more summarized report will be prepared for the Commissioners to review. This report will also compare other cities with Dickinson.

NON-TIMETABLE AGENDA

Administrator Kessel presented a late application for Liquid Assets.

MOTION BY: Carson Steiner SECONDED BY: Klayton Oltmanns
To approve the 2011 Liquid Assets Liquor License Renewal.

DISPOSITION: Roll call vote...Aye 5, Nay 0, Absent 0.
Motion declared duly passed

B. DEVELOPMENT AGREEMENTS

1. North Industries

Administrator Kessel presented two development agreements for North Industries and Lyons Subdivision. This agreement was previously approved but the developer would like the issuance of building permits omitted from the original agreement. This issuance of building permit already exists in the current city code. By eliminating this language, it does not alleviate the potential owner from the building permit. The request was made by the new land owner.

Attorney Kolling does agree with the new agreement.

MOTION BY: Klayton Oltmanns SECONDED BY: Gene Jackson
To approve the Development Agreement for North Industries.
DISPOSITION: Roll call vote...Aye 5, Nay 0, Absent 0.
Motion declared duly passed

2. Lyons Subdivision

MOTION BY: Gene Jackson SECONDED BY: Klayton Oltmanns
To approve the Development Agreement for Lyons Subdivision.
DISPOSITION: Roll call vote...Aye 5, Nay 0, Absent 0.
Motion declared duly passed

C. LIQUOR LICENSE REVIEW

President Johnson asked for public input on Ordinance No. 1402. No public input.

City Attorney Matt Kolling states this ordinance does not address specifically on and off sale. There may be a different reason a club may or may not sell on/off liquor because of tax laws. As far as Dickinson's ordinance and City regulations they are permitted to sell on/off sale liquor.

MOTION BY: Gene Jackson SECONDED BY: Klayton Oltmanns
To approve the second and final reading of Ordinance No. 1402

ORDINANCE NO. 1402

**An Ordinance Amending and Re-enacting the Following Sections of the
City Code of the City of Dickinson, North Dakota:**

- DISPOSITION: Roll call vote...Aye 5, Nay 0, Absent 0.
Motion declared duly passed

A. Reports:

A. FINAL PLAT – REPLAT OF COUNTRY OAKS ESTATES
SECOND ADDITION – BLOCK 12

City Engineer Shawn Soehren presents the final plat on Country Oaks Estates Second Addition – Block 12. This plat is located in the NW part of the city. The sizes of the lots were changed along with replatting of the cul-de-sac.

MOTION BY: Carson Steiner SECONDED BY: Rod Landblom
To authorize introducing Resolution No. 42-2010.

RESOLUTION NO. 42 – 2010

**A RESOLUTION APPROVING FINAL PLAT ENTITLED REPLAT OF
BLOCK 12, STARK COUNTY, NORTH DAKOTA**

DISPOSITION: Roll call vote...Aye 5, Nay 0, Absent 0.
Motion declared duly passed

B. FINAL PLAT – KLD SECOND SUBDIVISION

Engineer Soehren introduces the KLD Second Subdivision final plat which is located in the SE part of town. This is a continuation of a plat that was approved earlier, 20 acre tract. The proposal use is limited to industrial.

Commissioner Jackson states the subdivision was approved prior and the City should have had a Development Agreement signed. A development agreement

would eliminate any problems. This development agreement would specifically have a financial guarantee of infrastructure.

Engineer Soehren states there are no streets and it is very difficult for people to understand they are financially responsible for the streets when they are constructed. Recently this situation happened and the City worked through with a financial guarantee of a Certificate of Deposit. The development agreement would fit right in line with this. Soehren states in order to be consistent a development agreement should be signed.

Commissioner Jackson feels the Commissioners should look at the development thoroughly.

Attorney Kolling states the development substance is solid with no legal issues. Kolling states it would be good to get this into an ordinance instead of having a development agreement signed each time.

MOTION BY: Klayton Oltmanns SECONDED BY: Gene Jackson
To authorize introducing Resolution No. 43-2010 to include a Development Agreement.

RESOLUTION NO. 43 – 2010

**A RESOLUTION APPROVING FINAL PLAT ENTITLED REPLAT OF
KLD SECOND SUBDIVISION, STARK COUNTY, NORTH DAKOTA**

DISPOSITION: Roll call vote...Aye 5, Nay 0, Absent 0.

Motion declared duly passed

Attorney Kolling states the development agreement would require the developer to provide some financial guarantee of completion of infrastructure, certified check, CD, etc. in the amount of 35% of the anticipated engineers estimate cost of construction.

C. PAINTED CANYON ESTATES DEVELOPMENT IMPACT FEES

City Engineer Shawn Soehren received a request for Development Impact Fees from Jody Arthaud and Cory Haller for Painted Canyon Estates. These are improvements on 22nd Avenue East from 6th Street East to approximately 10th. This development area improves 10 lots on the west side and two lots on the east side. The developer does own at least 75% of the area. There are two property owners on the east side of the street. The City has received opposition letters from both of the land owners. This request does fit within the residential program of the development impact fees which would make it eligible for 50% of the project up to \$300,000. The improvements to this area are estimated to cost

\$369,000. Soehren states the cost of the improvements would be assessed not only to the lots the developer owns but to the two lots across the street that are owned by the other two individuals. The two lots across the street would receive water and sewer benefits. The estimated cost that would be assessed is \$46,000. This would be a 10 year assessment. The lots are approximately 33,000-35,000 square feet.

Don Mayer who owns one lot in question states his lots are basically one acre in size and is zoned that way. He states this area is a mini rural setting. He states they do not have curb, gutter, streets, lighting, etc. and they are perfectly happy the way it is in this area. He states if the special assessments are placed on his property he will have to sell this property. At this time there are no intentions to sell any of his property. He would be forced to sell his property if this special assessment would be applied to his taxes. Mayer states it is painful to know this as the people who want to move beside him should have to pay for the specials and not him or his neighbor who already reside in this area. Mayer had listed options for the developer such as having the backside of the homes face his rural property.

Attorney Kolling states the only way special assessments would be assessed onto the property owner is if the development impact fees were approved or a special assessment district was created. This cost of improvement would be assessed to all benefited properties. When a road is constructed both parties on either side of the street would benefit from it.

City Engineer Soehren states there have been several projects like this one and specials were placed on the properties.

Attorney Kolling feels a connection fee or hook up could be an option. This distinction would be that there would not be any special assessments to the property for the cost of building roads. The developer can pay the entire cost of road construction. Should development impact fees be used to construct the roads the properties would have to be assessed. The developer could construct the road by themselves and transfer the cost to the people when it is sold.

Walt Smith from KLJ who represents the developer states originally the developer did not want to put in curb, gutter, etc. Smith states this requirement was placed on them from the City. Smith does not believe the developer would be opposed to other options.

Randall Steffan who also owns property adjacent to the land in question states he does not plan on selling his property. Steffan states he purchased this property

with the intentions there would be no city water, sewer, curb and gutter. He said that when he first moved out there he drilled his own water well and the people who are going to live there should be responsible for their own installation of water, etc.

President Johnson states if the street is constructed this is an improvement to the land. Johnson does not see a benefit to Mayer or Johnson at this time as they are not willing to sell their property.

Engineer Soehren states the assessment of the street is based on square foot. Services are based on the lot size. The street is based on lineal foot. He feels these are options that could be reviewed. He does feel the number quoted for assessment is high but he wanted to state the worst case scenario. He does feel there are many more options that can be reviewed.

Don Mayer would have to sell a part of his land in order to pay for the specials. He does feel constructing a street would put a street right through his neighbor's yard. He feels the specials should be split according to the number of owners and not the square feet.

President Johnson feels negotiating some sort of agreement with the developer would be better for all involved at this time.

Walt Smith would like to get services in this area so the developing can begin next spring.

Jody Arthaud who is one of the owners would like to work with the other land owners and he is willing to wait two weeks as some other options can be reviewed. He states realistically the City is growing and this area may not stay a rural area as originally purchased.

President Johnson states if Mr. Soehren comes up with a large amount of money to be assessed to the property he does not see any benefit to Mayer or Steffan at this time as it does not benefit their lifestyle. Although it does enhance their property. He does question if Mr. Haller and Mr. Arthaud are the only owners on this property. Mr. Arthaud states they are the only owners.

The Commissioners took no further action on the Painted Canyon Estates Development Impact Fees and will review it again in two weeks.

D. REPORTS:

1. Board of Adjustment Meeting Minutes, November 8, 2010

For informational purposes only.

2. Planning and Zoning Commission Meeting Minutes, November 17, 2010

For informational purposes only.

3. Wastewater Treatment Facility Update

City Engineer Shawn Soehren states there are two projects in regards to the wastewater treatment facility. 1: Third cell hydraulic improvements which connect 3rd and 4th cell. This project is substantially completed. There is a stormwater culvert to replace and some cleaning and seeding left on the project. 2. A preliminary engineer report for the wastewater treatment facility upgrades is presented for the Commissioners review. Ulteig has been working on this project for quite some time. Approximately 20 employees separated from the Ulteig Company and have started their own company called Apex. The third cell project is relatively far enough along and the City will be working on this project with Ulteig to complete it. Also a wastewater treatment facility preliminary report does complete the City's contractual agreement with Ulteig. The engineer process of the design phase of this project needs to be reviewed to see if Ulteig can continue this process. Soehren feels the City should re-interview engineering firms to see which one would be the most appropriate one to complete the project. Soehren will continue to make the Commission aware of the progress.

Commissioner Jackson feels this is an unusual situation with this firm. Reality of this is highly unlikely the City would hire any other than these two companies. Jackson states the City is well within their rights to take one of these two companies.

Engineer Soehren will hopefully be able to bring to the second meeting in January the name of the firm that the City will move forward with. Commissioners Landblom and Oltmanns will serve on a committee with Mr. Soehren in regards to interviewing these two firms.

7. PUBLIC WORKS – MAINTENANCE AND UTILITIES

A. Total Control/TC Rolloffs Landfill Agreement

City Administrator Shawn Kessel presents the land fill agreements for Total Control/TC Rolloffs and Big K Rolloffs. These are private contractors who would like to have landfill agreements. These would be thru the year 2012.

MOTION BY: Gene Jackson

SECONDED BY: Klayton Oltmanns

To approve the landfill agreement with Total Control/TC Rolloffs
DISPOSITION: Roll call vote...Aye 5, Nay 0, Absent 0.
Motion declared duly passed

B. Big K Rolloffs Landfill Agreement

MOTION BY: Carson Steiner SECONDED BY: Rod Landblom
DISPOSITION: Roll call vote...Aye 5, Nay 0, Absent 0.
Motion declared duly passed

Commissioner Landblom would like to revisit the two day limitation on parking during the winter time and snow removal.

Administrator Kessel states the City does have a two day parking limit on vehicles.

8. ADMINISTRATION:

A. City Administrator Report

1. Building Permit Comparisons September, 2010

City Administrator Shawn Kessel presents the Commission with a North Dakota Building Permit Data Comparison. This comparison is relevant in that it shows how western North Dakota is growing.

2. Certified bid tab for the Dickinson Transit Building

Administrator Kessel presents the Bid Tabulation Form which was compiled for the Dickinson Transit Building. Kessel states this is a \$1.1 million dollar project. He does discuss the brick veneer that would be placed on the outside of the building.

3. Human Relations Recommendation for Religious Symbols on Public Property

Administrator Kessel has received several opinions in regards to the religious symbols on public property. Kessel states there is no connection between the star that already exists and the proposal. The Human Relations Commission will be reviewing the proposal on December 17, 2010 at 12:00 p.m. and does encourage opinions from the public.

Commissioner Jackson states this proposal will not prohibit displays like this, just managing them.

4. Set Date for Budget Amendment Meeting

The Budget Amendment Meeting will be set for December 27, 2010 at 5:15 p.m.

5. Public Works Director/Reorganization

Administrator Kessel states the City tried to hire a Public Works Director but this did not turn out. The amounts of applicants were very low and did not have the required background. For this purpose a co-title Public Works Director/City Engineer position has been created. Kessel presented the Commission with a new organizational chart to include this position. Creating this new position would cost the City \$46,000.

President Johnson states this new organizational chart is similar to the one in 2000. Johnson thinks this position was exempt from Civil Service. Johnson will be looking for feedback.

Commissioner Jackson does feel this is a difficult time for filling positions. He feels this new chart will work out okay.

President Johnson feels it should be easier to recruit some of the less senior position than the senior positions. Johnson states Mr. Soehren is qualified for this position and has demonstrated good quality performance and is doing this position at this time already.

6. Armory Update

Administrator Kessel advised that Ulteig revised their initial recommendation. They did rescind the original decision to ask the National Guard to leave the Armory. They feel there is no longer a need to vacate. The new recommendations will cost less and will take less time to get the improvements completed.

7. Funding Resolution for Impact Program

Administrator Kessel presented the Commissioners with a map which showed the developed and undeveloped lots. This map also showed the R1 zoning. Kessel computed the availability of lots that were available for building and undesirable lots from the years of 2011 – 2015.

President Johnson states this is an excellent process. What you need to do is make some assumptions and see where it takes you and as more actual information becomes available then you can adjust the figures. The Development Impact Program has a \$7 million dollar limit right now and Kessel shows that this may be reached by 2012. Johnson feels Dickinson will need more impact funds money then we have been receiving.

Kessel states this resolution would allow the transfer of sales tax dollars to support the impact program. This would come from the half percent sale tax dollars.

President Johnson states there are limited options to move money from the general fund or move money from the half cent taxes fund. These monies would cover the deficit for this year and the City would not end in a deficit. If the City does not generate enough sales tax money to cover the deficits here that Mr. Kessel is projecting in this scenario then the City is going to need more oil impact funds.

Commissioner Jackson feels this is an internal financing of sorts. The way the impact fees work is that the project is completed, funds are asked for and then special assessed back to the lots. This is a tremendous tool for the City and can be fine tuned as time goes on.

President Johnson would like for City Engineer Soehren to insert the information on developing, etc. every third meeting.

8. Annexation Letter from Mackoff Kellogg

City Administrator Kessel received a letter from Mackoff Kellogg Law Firm in which 15 different business or land owners were signatories to the letter itself demanding the City relook at the annexation process, to redo it and start over.

City Attorney Matt Kolling states that several protesters contracted an attorney from Mackoff Kellogg Law firm in regards to the annexation.

A letter was received which stated the four principal deficiencies: 1: The City listed a condition for granting a plat approval 2: Several landowners of interest never received notice of the City's intent to annex their property 3: A letter from the North Dakota Department of Transportation had not been received in favor of the annexation and 4: A significant discrepancy between the area proposed for annexation as it appeared on the City's resolution.

Kolling states in his opinion the City followed the North Dakota Century Code regulations in regards to the annexation. Kolling states the condition for annexation was not the only condition on the plat approvals. Also required was a Development Agreement. The City also does have a two mile jurisdiction of the City limits. The City will be providing services to the annexed area to include snow plowing, Police and Fire

Department. Kolling states even if there was an agreement remedy statute the court will void the agreement and not the annexation. Kolling states the City did publish the notice of annexation and sent notices to the property owners at their last known address. Kolling states some property owners do not care about the annexation and disregarded the mailing. Landowners were identified through the county records. Kolling states the City staff did go beyond notifying landowners by contacting them directly. Kolling did state the State law does not require a notification by certified mail. He did state City Engineer Soehren has been visiting with the ND DOT and they will be sending a written consent for the annexation. In order for an injunctive relief from the City completing the annexation the party must show an injury to the landowner.

Kolling reviewed the Mackoff Kellogg Law Firm letter and its demands as stated in the letter: 1: Disregard any conditions for platting or zoning 2: immediately terminate its current annexation proceedings 3: Restart the entire annexation 4: Redraw the annexation boundaries 5: Properly provide notice of the resolution to annex and 6: thereafter carefully follow appropriate North Dakota statutes.

Commissioner Oltmanns feels the Commission should stand ground on this issue and keep the annexation in place. He feels the City has gone through all recourse and has completed the annexation process according to the law. He feels the one voice that hasn't been heard from is the tax payers in this community. Oltmanns wants to continue to do the right thing the first time and not have to pay to correct it at a later date. He feels the Commission reviewed this annexation thoroughly and completed it in the correct manner. He doesn't feel the 99.9% of the tax payers should foot the bill for these businesses who do not want the annexation. He feels the Commission should not back down or give into the special interest people. Oltmanns feels the lawyer that is representing the opposed annexation people has a conflict of interest as she owns land adjacent to this annexation. Oltmanns does explain The Dickinson Press does a poor job in telling the whole story on the annexation details such as pushed through annexation, never told the story about the 99.9%, of the paying jobs this will create, the kind of pay, what we will lose by not having the annexation, not having a diversified economy with multiple businesses and multiple people. Commissioner Oltmanns asks the Commission not to be intimidated by the editorial staff by stating the City should slow down. He feels The Dickinson Press should offer pros and cons so readers can look at both sides of the issue and make a good

decision on what should be done. Again, Oltmanns reiterates to stand by your decision on what is right for the community.

In conclusion, President Johnson advises Mr. Kolling to stay the course in this matter.

Commissioner Jackson also concluded that Mr. Kolling should stay the course. Jackson states this subject is very important to him that the City meet the letter of the law in the process and he feels that we did. Jackson also feels the City needed to hear the people's voice and that was also done. It is most important to know that the spirit of what the City did was right for the community. Jackson believes this was the right thing for our community overall.

Commissioner Landblom advised that the City has made the right decision. Landblom states the City needs to keep an eye on the future and right now the way the community is growing and what the assets in the welfare of our citizens are at stake that this is the right decision. Landblom does feel there was a lack of communication with the county.

Commissioner Steiner did have some prior concerns of the way the notification was handled and he was in favor of notifying by certified mail. It would have been the same response even if the city would have mailed letters certified he would have still been in favor of the project moving on. He feels the City should take the extra step in certified notification on the next annexation.

President Johnson does echo Mr. Oltmanns's point about the development of this community and this is a great concern to him. Johnson visits about the oil activity in our community. He does agree with Mr. Oltmanns 's development pressure will be ratcheting up several notches in housing and the City needs to be conservative.

9. 2011 City Mill Levy

Kessel presented the 2011 city mill levy which shows a reduction in the City portion for 2011. The only increase will be in the park district which will be slightly higher. This is good news for the residents of Dickinson as the mill levy went down. Values of homes have continued to go up. Kessel reports most likely the property value will go up but the mill value is down.

10. Retirees

Administrator Kessel reports City Assessor Jan Zent tendered her resignation as of January 7, 2011. Ms. Zent has been a long time employee for 33 years. Kessel also sadly announces the retirement of Police Chief Chuck Rummel. Mr. Rummel has announced his retirement as of March 1, 2011. He also has 30+ years of dedication. Rummel does feel confident leaving the Police Department in a good position.

9. ACCOUNTS PAYABLE

MOTION BY: Klayton Oltmanns SECONDED BY: Carson Steiner

To approve the accounts payable list as presented along with the additional accounts payable list, numbers 074508 to 074651. Said list is available in the Accounting Office.

DISPOSITION: Roll call vote...Aye 5, Nay 0, Absent 0.
Motion declared duly passed.

10. CITY COMMISSION:

1. Review of Open Meetings Law

City Attorney Kolling explains the open meetings law and when Commissioners can attend functions. Kolling explains the definition of a public meeting is when a government body exists if quorum is present and business is discussed. A meeting is open to the public if it consists of three or more Commissioners and government information is discussed. Open meeting laws do not apply to social gatherings such as a basketball game, ND League of City Meeting, etc.

Commissioner Landblom was concerned as on more than one occasion several Commissioners attended the same information meeting. He is concerned the required notification would be announced should several Commissioners attend the same function.

President Johnson did explain on two occasions three of the Commissioners had attended an event. In this instance President Johnson did choose to exit the meeting.

2. Discussion of Snow Removal/Snow Gates

Commission Oltmanns has received several phone calls from citizens with their concerns of the snow plow leaving a considerable amount of snow in their driveways. Commissioner Oltmanns states there are several elderly people who live in this community and ask the City to work on better snow removal. Oltmanns suggests the use of snow gates. He has visited with individuals from Jamestown and the gates cost approximately \$5,500 each.

City Engineer Shawn Soehren has visited briefly with the City of Williston and they have been using snow gates for the past 30 years and they feel there would be an outcry from the City should they stop using the snow gates. Soehren explains these snow gates can handle up to 5" of snow and this would be useful for the first few snow falls of the year. Williston does use snow gates which are manufactured in Mandan. He does state the City's equipment is now currently set up with hydraulics but these could be added. Soehren states Bismarck also uses the snow gates and several staff have been hired to accommodate this procedure. Soehren states this is certainly doable but at what cost. He states Dickinson's employees work very hard and do the best they can with the equipment they have.

Commissioner Oltmanns states the independent contractors should build the cost of the snow gate into their bid for snow removal. Oltmanns states another option would be to turn the blade the opposite way and put the snow in the middle of the road and then removed.

Commissioner Steiner is also concerned about the snow removal in the City and would like to have the City come back and remove the snow from blocked driveways.

President Johnson suggests Mr. Soehren continue to update the Commission on what he has learned about the snow removal/gates.

3. City Administrator Evaluation

President Johnson has received and compiled the performance review on Mr. Kessel. A composite review will be in each Commissioners binder for the December 20th meeting. An extension on the Administrator's contract will be extended to three years opposed to two years. He does ask the Commissioners to be prepared to make a salary recommendation at the December 20th meeting.

11. PUBLIC ISSUES OF CITY CONCERN NOT ON THE AGENDA:

None

ADJOURNMENT

MOTION BY: Klayton Oltmanns

SECONDED BY: Carson Steiner

For adjournment of the meeting at approximately 9:15 PM.

DISPOSITION: Roll call vote...Aye 5, Nay 0, Absent 0.

Motion declared duly passed.

OFFICIAL MINUTES PREPARED BY:

Rita Binstock, Assistant to City Administrator

APPROVED BY:

Shawn Kessel, City Administrator

Dennis W. Johnson, President
Board of City Commissioners

Date: _____