

MINUTES OF THE BOARD OF CITY COMMISSIONERS
HELD MAY 19, 2014

The regular meeting of the Devils Lake City Commission was held Monday, May 19, 2014 at 5:30 P.M. with the following members present: President Johnson, Tim Heisler, Craig Stromme, Rick Morse and Dale Robbins. None were absent.

Pledge of allegiance was recited.

Commissioner Morse moved to approve the minutes of the regular City Commission meeting held May 5, 2014. The motion was seconded by Commissioner Robbins, and the motion carried unanimously.

5:30 P.M. - This was the time set for the bid opening for a front mount mower. The following bids were opened and read:

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| 1. Dakota Implement – Devils Lake, ND | Bid \$15,049.00 |
| 2. Leading Edge Equipment – Devils Lake, ND | Bid \$14,725.00 |

Commissioner Morse moved to accept the bids as read, and refer them to the Public Ways Supervisor for further review and recommendation. The motion was seconded by Commissioner Heisler, and the motion carried unanimously.

5:30 P.M. – This was the time set for the bid opening for the sale of Lot 4, Block 2, Stromquist 4th Addition. The following bids were opened and read:

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| 1. Joe & Bros Mow for Dough of Devils Lake | Bid \$6,000.00
Contingent upon no underground issues for building on
4-ft deep footings & on lot being rezoned to commercial |
| 2. MJ Industries of Devils Lake | Bid \$5,000.00
Contingent upon the lot being rezoned to highway
commercial |

Verbal bidding occurred in accordance with the bid specifications.

Commissioner Heisler moved to accept the verbal bid from MJ Industries, Devils Lake in the amount of \$7,500.00 for Lot 4, Block 2, Stromquist 4th Addition contingent upon the lot being rezoned to highway commercial. The motion was seconded by Commissioner Stromme, and the motion carried unanimously.

5:30 P.M. - This was the time set for the bid opening for Street Improvement District 51-11 Phase 2. The following bid was opened and read:

Strata Corporation - Grand Forks, ND	Base Bid \$479,222.00 Alternate Bid \$473,461.00
License No 693 A	Bid Bond 5%

Commissioner Morse moved to accept the bid as read, and refer it to the City Engineer for further review and recommendation. The motion was seconded by Commissioner Robbins, and the motion carried unanimously.

5:30 P.M. – This was the time set for a public hearing on a petition to vacate a portion of property set aside for public use – Summers Street NW. Doug Broden, Attorney for Davis Family Partnership, stated the Davis Family owns land at the end of Summers Street. They are opposed to the closing of Summers Street because it will negatively impact the value of the property. The closure will limit access to the property. Discussion followed on the Davis proposed new subdivision, proposed new street and the improbability of getting another approach off of Highway 2. Frank Van Steen Voort, Summers Manufacturing, stated they had proposed giving the end lot to the City if the City was to put in a frontage road. He stated there is another approach. Fire hydrant access was discussed. Frank indicated Summers Manufacturing can build the street better privately than the City can because of constraints placed on the City. Discussion continued on the rehabilitation cost, time frame of the project and on the forklift safety issue. The City Engineer stated the public access will remain. The right-of-way is not being vacated. Discussion continued on access to the rest of the Industrial Park. Hearing and receiving no other comments, President Johnson closed the public hearing.

Commissioner Stromme moved to approve the petition to vacate a portion of property set aside for public use – Summers Street NW. The motion was seconded by Commissioner Morse, and the motion carried unanimously.

Commissioner Robbins moved to approve the resolution vacating property set aside for public use – portion of Summers Street NW that lies between Kelly Drive NW and US Highway 2. The motion was seconded by Commissioner Stromme, and the motion carried unanimously.

Commissioner Robbins - The Public Ways Supervisor stated everything was fine.

The Public Utilities Supervisor said everything was fine in the Water Department.

Commissioner Morse - The Public Ways Supervisor requested approval to accept the low bid from Leading Edge Equipment for the front mount mower.

Commissioner Morse moved to accept the low bid from Leading Edge Equipment for the front mount mower in the amount of \$14,725.00. The motion was seconded by Commissioner Robbins, and the motion carried unanimously.

The Public Utilities Supervisor stated everything was fine in the Sewer Department.

Commissioner Heisler – The City Engineer indicated Kadrmas, Lee & Jackson would be opening bids on the perimeter road-truck route. The City Engineer discussed the truck route from Highway 20 north of the City to Highway 2 near the grain elevator. The City had agreed to in the past to cost share up to \$55,000 to improve the safety of the roadway, bring a couple of hills down and acquire some right-of-way prior to work beginning on the west underpass. The construction estimate for the project is \$1.1 million to \$1.2 million. To acquire the real estate and for construction and project engineering, the project total would increase to about \$1.5 million. With that budget, there would still be a \$40,000 shortfall after the \$55,000 from the City. The County will be discussing the project at their Tuesday's meeting and would like someone from the City to attend. Paul Bjornson from Kadrmas, Lee & Jackson reviewed what had been done so far.

Consensus of the City Commission was to have a special meeting with the County Commission to discuss the project.

The City Assessor reviewed the embankment land acquisition from the Martin family. Properties on Exhibit A and Exhibit B are necessary for the embankment project. However, the Martins own some additional property in the area and would like the City to purchase some of it (Exhibit C). The Corps of Engineers has verbally approved LEERD credit for this purchase.

Commissioner Heisler moved to approve the agreement to purchase real estate from Barry Martin and Estate of Nannette Martin due to the embankment project in the amount of \$50,000.00 as identified in Exhibit D plus \$1,000.00 for landowner's interest in property identified in Exhibit E and \$1,000.00 for personal property the landowner may have lost as part of the flood protection work as recommended by the City Assessor. The motion was seconded by Commissioner Robbins, and the motion carried unanimously.

Commissioner Stromme - The Police Chief said two, sealed bids were opened on the seized vehicle described as a 2007 Jeep Commander 4x4 sport utility 4-door, black in color. The City Auditor opened the bids since the Police Chief had submitted a bid. The high bid was \$1,875.00 from Keith Schroeder.

Commissioner Stromme moved to approve accepting the high bid from Keith Schroeder for the 2007 Jeep Commander 4X4 4-door, black sport utility in the amount of \$1,875.00. The motion was seconded by Commissioner Morse, and the motion carried unanimously.

The Police Chief indicated one of the officers has a conditional employment offer someplace else so there may be an opening later this summer.

The Sanitation Supervisor stated everything was fine.

President Johnson - The City Administrator reviewed a request from the Lake Region Heritage Center to forgive the bill for a roll-off.

Commissioner Robbins moved to approve forgiving the roll-off bill in the amount of \$253.00 for the Lake Region Heritage Center. The motion was seconded by Commissioner Morse, and the motion carried unanimously.

The Fire Chief stated he has received a request from Mercy Hospital to incorporate into a training session the recovery of a statue on the fifth floor of the hospital.

Consensus of the City Commission was for the Fire Chief to incorporate the statue removal into a training session.

The City Attorney reviewed the Attorney General's opinion regarding a meeting on March 5, 2014. Although the City does not agree with the opinion, what the Attorney General has requested be done has been completed. The City Attorney is recommending that anytime a committee is appointed that a chair is named, notice is given to the media, and minutes taken. The meetings would be subject to the open meeting laws.

Discussion followed on the lack of a quorum.

According to the opinion, if the committee is delegated to do work of the Commission or work for the Commission to consider then it is subject to the open meeting laws even though there isn't a quorum and the statute says quorum. Discussion continued on the statute specifically referring to a quorum. Discussion followed on since there was no quorum of any jurisdiction who publicizes the meeting, on them not being able to make decisions because of no quorum, and on who declares an executive session if they go into executive session when you don't have a jurisdiction of authority. The City Attorney stated that demonstrates why the opinion is not practical. The City Commission requested the City Attorney get clarification on those items from the Attorney General so errors are not made in the future, and so the Commission knows how to handle those situations. Discussion continued on committees and on how you go into executive session when you do not have a quorum. It was noted there was no interpretation as to what was done wrong.

The City Attorney noted the City has a motion for summary judgment pending on the Mertens' condemnation case. Responses from the landowners' attorneys have been received, and they have conceded the interest condemnation claim and the trespassing claim would be dismissed. Those were counterclaims brought against the City, and the ND Insurance Reserve Fund (NDRIF) has been defending them. NDRIF had hired Dan Gaustad to defend the City. If those claims are thrown out, as they are expected to be, Mr. Gaustad will no longer be involved in the case. The City Attorney would like to keep him involve since he has been since the beginning, and it is a complicated case.

Commissioner Morse moved to approve the City Attorney working with Dan Gaustad on the Mertens case. The motion was seconded by Commissioner Robbins. Discussion followed on Mr. Gaustad using the same billing rate as he did for the other cases he has handled for the City. The motion carried unanimously.

Commissioner Morse moved to authorize the City Auditor to call for bids for 2014 Sand, Gravel and Rip Rap with the bids to be opened on Monday, June 2, 2014 at 5:30 P.M. at the City Office as recommended by the Public Ways Supervisor. The motion was seconded by Commissioner Stromme, and the motion carried unanimously.

Commissioner Stromme moved to approve the consent agenda which included the following:

Authorizing the City Auditor to call for bids for custodial service for city office with the bids to be opened on Monday, June 16, 2014 at 5:30 P.M. at the City Office as recommended by the City Administrator.

The motion was seconded by Commissioner Morse, and the motion carried unanimously.

Commissioner Heisler moved to approve Budget Amendment No. 04-14 – Library. The motion was seconded by Commissioner Stromme, and the motion carried unanimously.

The City Assessor reviewed the DLCE Interior Drainage Real Estate Certification. The Corps of Engineers is getting ready to bid this project. There are three separate areas for drainage, and all are in the City's existing right-of-way. This certifies to the Corps of Engineers that the City has the needed right-of-ways.

Commissioner Heisler moved to approve the Attorney's Certificate and the Project Cooperation Agreement as to Right-of-Way for the Devils Lake, North Dakota, Creel Township, Flood Risk Management Project, Devils Lake City Embankments, DLCE Interior Drainage, North Dakota State Highway 20 & North Tieback Drainage Reach as recommended by the City Assessor. The motion was seconded by Commissioner Robbins, and the motion carried unanimously.

The City Administrator reviewed the request from DLHMP for waiver of the penalty fees on roll-off bills for work done on their property by a contractor. The contractor was to pay the bills; therefore, the bills were sent directly to the contractor. Since DLMHP was not the recipient of the bills, they would like the penalty fees waived.

Commissioner Stromme moved to waive the penalty fees of \$101.83 on the bills for work done at Pitcher Park for DLMHP and billed to Kris Allred. The motion was seconded by Commissioner Morse, and the motion carried unanimously.

The City Engineer reviewed the request from Lake Region Bowmen for an archery shooting range on city property adjacent to Ed's Bait Shop.

Bill Sackenreuter, Lake Region Bowmen, requested use of the land by the Bowmen and the 4-H Shooting Sports. The request would be for joint-usage of the property as an archery shooting range. Discussion followed on if there would be general usage of the range. It was noted only members of the Lake Region Bowmen or the 4-H Shooting Sports can use the range due to liability issues. There will be trails, stakes, targets, and maybe two storage units. A fence and signage will be needed for liability issues. Guidelines are in place for archery ranges.

The City Engineer stated as the range develops the plans will be submitted to the City for review. Discussion followed on the ponding easement and not building in the floodplain. The agreement will need to address the shooters not interfering with the fish cleaning station including parking. Discussion continued on the lease amount, the date of the lease, and the legal description

Commissioner Robbins moved to approve the agreement with the Lake Region Bowmen for use of city property for an archery shooting range with payment of \$1.00 annually contingent upon the changes suggested by the City Engineer and on final approval by the City Attorney. The motion was seconded by Commissioner Morse, and the motion carried unanimously.

Rachel Lindstrom, Executive Director of Forward Devils Lake, appeared before the Commission to review an application for the multi-family housing incentive program for building two duplexes and submitted by Northland Properties. These four units would be in the Roundhouse Subdivision. The community share would be \$50,000 and would be paid back. This allows the developer to access \$100,000 from the State. For this program, construction has to start within six months.

Commissioner Heisler moved to approve the request from Forward Devils Lake for a multi-family housing incentive program for Northland Properties in the amount of \$50,000. The motion was seconded by Commissioner Morse, and the motion carried unanimously.

Rachel Lindstrom, Executive Director of Forward Devils Lake, appeared before the Commission to review an application for the multi-family housing incentive program for Sungate Properties. Four units will be located at 16th Street SE. The community share would be \$50,000, and the developer can access \$100,000 from the State. The community share will be paid back.

Commissioner Heisler moved to approve the request from Forward Devils Lake for a multi-family housing incentive program for Sungate Properties in the amount of \$50,000. The motion was seconded by Commissioner Morse, and the motion carried unanimously.

Discussion followed on how much funding Forward still has available for this program, if the program would be extended, on the shortage of housing in the area and on the correct address for the Sungate Properties' units.

Commissioner Morse moved to approve payment of the list of bills as submitted. The motion was seconded by Commissioner Stromme. On roll call all Commissioners voted aye, and the motion carried.

President Johnson acknowledged the following reports:

1. Municipal court monthly report; and
2. Police department monthly report.

President Johnson indicated he signed a grant application for the Lake Region Narcotics Task Force on May 16, 2014 since it had to be submitted on May 16, 2014. The Task Force has been very active.

Discussion followed on why the payments from Municipal Court have been way lower for the first four months of 2014 compared to previous years. The Police Chief noted citations were down the first quarter of 2014.

There being no further business to come before the Commission, President Johnson adjourned the meeting at 6:55 P.M.

LINDA LYBECK
CITY AUDITOR

RICHARD S. JOHNSON
PRESIDENT