

MINUTES OF THE BOARD OF CITY COMMISSIONERS  
HELD SEPTEMBER 6, 2016

The regular meeting of the Devils Lake City Commission was held Tuesday, September 6, 2016 at 5:30 P.M. with the following members present: President Johnson, Commissioners Ben Sander, Craig Stromme, Rick Morse, and Dale Robbins. None were absent.

Pledge of allegiance was recited.

Commissioner Stromme moved to approve the minutes of the regular City Commission meeting held August 15, 2016 and of the budget City Commission meetings held August 10, 2016 and August 16, 2016. The motion was seconded by Commissioner Morse, and the motion carried unanimously.

5:30 P.M. – This was the time set for a public hearing to review a final plat for Mauve Estates, a parcel of land located in SE1/4 of Section 35 (north side of 3<sup>rd</sup> St NE and 16<sup>th</sup> Ave NE)

The City Engineer noted work was needed on the agreements so the item was tabled for now.

President Johnson stated the bid opening for the rubber membrane at the water treatment plant needed to be added to the agenda.

Commissioner Stromme moved to approve the addition to the agenda for the bid opening of the rubber membrane roof system for the water treatment plant. The motion was seconded by Commissioner Morse. The bid opening was advertised. The motion carried unanimously.

5:30 P.M. – This was the time set for the bid opening for a rubber membrane roof system for the water treatment plant. The following bid was opened and read:

D&D Roofing - Aneta, ND Bid \$60,458.00 base  
Bid \$ 4,200.00 ledger anchoring option  
License #26621 Class A

Commissioner Robbins 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 Morse. The City Engineer plans to recommend awarding the bid tonight contingent upon approval of the State Fire and Tornado Fund. The motion carried unanimously.

President Johnson requested to move item #8 under new business to #1.

Commissioner Morse moved to swap item #8 under new business with item #1. The motion was seconded by Commissioner Robbins, and the motion carried unanimously.

Jessica Ramey appeared before the City Commission to discuss human trafficking.

**Commissioner Robbins** – The Public Utilities Supervisor said there was a water break Friday on the west side.

The Public Ways Supervisor stated the cemetery fence is progressing nicely. The bid was several thousands of dollars under so he would like to use the remaining funds for a barricade on the east end of 10<sup>th</sup> Street.

**Commissioner Morse** –The Public Ways Supervisor said Tri-state Paving will be back in two weeks to finish the street openings. Work needs to be done on Lincoln and 21<sup>st</sup> St. Sump pumps run, and it is flat there. The water doesn't stay in valley gutter.

The Public Ways Supervisor talked with Grand Forks about the procedure for requesting the Grand Forks Air Force Base to spray for mosquitoes. As of now, it is on hold in Grand Forks due to issues with Air Force personnel. There is a two year wait for the service. Paperwork submitted now would be for 2018. An application would need to be submitted to

the Pentagon, and an environmental impact statement would need to be completed. Discussion continued on changing from ground spraying to aerial spraying. It costs approximately \$1,000.00 for just the chemical every time the City ground sprays, and this is done every night that the weather allows. Aerial spraying would cover more backyards. For ground spraying conditions need to be just right with the optimal wind speed 5-8 mph. The Public Ways Supervisor will check into aerial spraying for 2017.

The City Engineer recommended accepting the bid from D&D Roofing. This contractor did the repair work on the upper roof section. The \$60,458.00 for repair of intermediate roof section would be covered by insurance. The anchoring option would not be covered.

Commissioner Robbins moved to accept the low bid from D&D Roofing LLP of Aneta, ND in the amount of \$60,458.00 for rubber membrane at the water treatment plant contingent upon the approval of the State Fire and Tornado Fund as recommended by the City Engineer. The motion was seconded by Commissioner Morse, and the motion carried unanimously.

The City Engineer stated the additional option is for anchoring. It has been an issue to secure warranty on the roof because the ledger wasn't anchored properly. The option on the bid would be for removing the metal cap/flashing, securely anchoring the wood ledger and re-anchoring the flashing. After it is anchored, any damaged from wind under 55 mph would be covered by warranty. Therefore, the City Engineer recommended awarding the anchoring option for \$4,200.00 to D&D Roofing. This would be paid with City funds, and not insurance. Discussion followed on it being a latent deficiency and the efforts made for holding the contractor and warranty company responsible.

Commissioner Robbins moved to accept the low bid from D&D Roofing LLP of Aneta, ND in the amount of \$4,200.00 for ledger anchoring as recommended by the City Engineer. The motion was seconded by Commissioner Sander, and the motion carried unanimously.

The City Attorney will send a letter to contractor that completed the original work.

**Commissioner Sander** – The Public Utilities Supervisor discussed the spraying of the dike for weeds. Summer's Manufacturing lent the City a sprayer to use this year, and it worked well. It was a prototype, and is not made anymore. The City could buy it for \$35,000.00, and there is not anything on the market with a 70 foot boom. The helicopter for spraying has been unreliable and costs about \$8,500.00/year.

Commissioner Stromme moved to declare a sole source and approve purchasing the sprayer from Summer's Manufacturing in the amount of \$35,000.00. The motion was seconded by Commissioner Robbins, and the motion carried unanimously.

The City Assessor stated he received a listing price from a realtor for the day care building. The estimated value is \$190,000.00-\$200,000.00. He would like to list the building with all the realtors for \$195,000.00.

Commissioner Sander moved to approve listing the day care building with all the realtors for \$195,000.00. The motion was seconded by Commissioner Stromme. Discussion followed on if a long-term lease would be feasible. The option would need to be offered to the public. The motion carried unanimously.

**Commissioner Stromme** - The Police Chief stated the taxi businesses are causing trouble for each other. He tried to set up a meeting, but his phone calls were unanswered. He sent letters stating their licenses may be suspended if these activities continue.

The Police Chief indicated the canine is sick. It could be pancreatitis.

The Police Chief said on September 1<sup>st</sup>, Officer Nick Holter started with the Police Department. He is from East Grand Forks.

The Sanitation Supervisor reported fall cleanup starts at the end of the month.

**President Johnson** – The City Auditor stated everything was fine.

The City Administrator said everything was fine.

The Fire Chief gave the following updates:

1. The ground fault for the street lights on the highway has been repaired.
2. The city crews will start cutting trees down the week of September 19<sup>th</sup>.
3. Chuck Nelson was awarded a bid to cut trees down on 8<sup>th</sup> Avenue. They will also be bidding some more trees and then stump removal.
4. The lights on 5<sup>th</sup> Avenue are being switched to LED.

Commissioner Morse inquired on how long the City has had the canine and any recourse. There is a six month warranty on the dog.

The City Attorney said everything was fine.

Commissioner Robbins moved to table Ordinance No 942 – Braunagel Annexation since the land has not been purchased as recommended by the Devils Lake Planning Commission. The motion was seconded by Commissioner Sander and the motion carried unanimously.

The City Administrator reviewed the 2017 Budget Overview.

Commissioner Morse moved to approve the 2017 preliminary budget. The motion was seconded by Commissioner Robbins. Discussion followed on removing the amount for the sprayer from the 2017 budget since it will be purchased in 2016. The motion carried unanimously.

The request from Joe Gleason regarding purchasing some of the daycare equipment was reviewed. It would need to be a public sale if it was more than \$2,500.00. Discussion followed on declaring the equipment surplus, four other groups being interested in the equipment, selling the items on an auction, having a silent auction, the amount of items, and hiring an auctioneer to organize it.

Commissioner Morse moved to approve declaring all the daycare equipment as surplus, to sell the items by auction and to call for bids for an auctioneer. The motion was seconded by Commissioner Sander, and the motion carried unanimously.

The Public Utilities Supervisor requested to award the pipeline television inspection system to Flexible Pipe Tool Co.

Commissioner Stromme moved to accept the low bid from Flexible Pipe Tool Co of St Joseph, MN in the amount of \$69,500.00 as recommended by the Public Utilities Supervisor. The motion was seconded by Commissioner Robbins, and the motion carried unanimously.

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

1. Authorizing the City Auditor to cancel Check No 110177 dated June 21, 2016 in the amount of \$225.00 to Taser Training Academy (General Fund – Police Department – Education & Training) and Check No 110363 dated August 2 2016 in the amount of \$50.00 to Bismarck Public Schools (General Fund – Fire Department – Education & Training). The first check was lost and will be reissued. The second check was for an event cancelled.
2. Game of chance permits for the month of August 2016;
3. Parade permit submitted by Devils Lake High School for Saturday, September 17, 2016 at 10:00 A.M.;
4. Permit to sell alcoholic beverages at a special event submitted by Thirstys Bar for a private wedding reception and dance September 24, 2016 at the Memorial Building; and
5. Public dance permit for the rodeo dance to be held September 24, 2016 at the Burdick Arena and a permit to sell alcoholic beverages at a special event for the rodeo beer gardens to be held September 23, 24 and 25, 2016 at the Burdick Area with both submitted by Thirstys Bar.

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

Dan Gaustad, acting City Attorney, reviewed issues with the Ultra Green Packaging settlement. According to the agreement Ultra Green was to pay the taxes for 2014 and 2015; however, they do not have the resources to pay the taxes. The deed for the building can not be recorded unless the taxes are paid. The closing is scheduled for tomorrow. Ultra Green did pay the first half of the 2014 taxes. The amount owed for 2014 is \$20,879.57 and for 2015 is \$37,470.40. Discussion followed on the City possibly being responsible for the 2016 taxes. Usually the taxes are prorated according to the date of the sale. The amount for 2016 is \$23,360.83 and is not due until next spring. Mr. Gaustad would like authority to expend up to \$81,710.80 for the taxes. In addition, the City will need to pay closing costs of \$5,560.00 to the title company. The last item to discuss is a short term agreement for Ultra Green Packaging to store their equipment in the building. Ultra Green is negotiating the sale of equipment to another company. The agreement is a storage license with no fee at this time. It can be terminated with 30 days notice and ends on November 15, 2016. The City would not be liable for the equipment, and it is up to Ultra Green to carry insurance on it.

The City Administrator stated Forward Devils Lake did approve these items at their meeting earlier today. The City will incur approximately \$200,000.00 more in cost which brings the amount given to Ultra Green to \$2.2 million. The building is worth \$2.5 million. The last appraisal of the equipment was for \$720,000 .00.

The City Assessor inspected the building today. It is in good shape. There is a mold issue upstairs in an office area, but the downstairs was cleaned well. He also noted some spotty roof issues where it changes elevation; however, structurally it is a good building.

Commissioner Sander moved to approve expending up to \$81,710.80 for taxes on the Ultra Green Packaging building and \$5,560.00 for closing costs. The motion was seconded by Commissioner Morse. On roll call all Commissioners vote aye, and the motion carried.

Discussion followed on the storage license agreement and penalties for not removing the equipment when asked to or at the end of the agreement.

Commissioner Sander moved to approve the storage license agreement with Ultra Green Packaging dated September 7, 2016. The motion was seconded by Commissioner Morse, and the motion carried unanimously.

Commissioner Robbins moved to approve payment of Estimate No. 4 to Elshaug Concrete Construction for 2016 Curb, Gutter & Sidewalk in the amount of \$8,938.69 as recommended by the City Engineer. The motion was seconded by Commissioner Stromme. On roll call all Commissioners voted aye, and the motion carried.

Commissioner Morse left the meeting at 6:36 P.M.

Commissioner Stromme moved to approve payment of Estimate No. 13 to Murphy Pipeline Contractors Inc for Watermain Improvement District #24-15 - various in the amount of \$24,751.68 as recommended by the City Engineer. The motion was seconded by Commissioner Robbins. On roll call all Commissioners voted aye, and the motion carried.

Jason Hodous appeared before the Commission to request assistance on a bill for a blocked sewer and for relief on a street opening bill.

Commissioner Morse returned to the meeting at 6:41 P.M.

Mr. Hodous stated his home had sewage backup twice in two weeks, and he had Hasse Plumbing come cleanout the line both times. After the second time the line was video; however, the camera was not able to reach the main because of blockage. The contractor dug up the street to fix the sewer. The homeowner stated the blockage was due to root balls in the main.

The City Engineer questioned whether the sewage was the homeowner's or if it came from the main. It is a significant cost to repair a sewer line, but typically more than one homeowner would be affected if it was a blockage on the main.

This sewer main is a large main and has significant flow so blockage in the main should have affected multiple homeowners. The City Engineer reviewed the video from 2011, and the main pipe was clean, but there were roots coming in at the service tap. He believes the root balls were associated with the tap and not with the joint. The cost associated with the tap would be the responsibility of the homeowner. It is a difficult and expensive situation. The City Engineer went through the process of how the City normally submits claims to the North Dakota Insurance Reserve Fund if it is the City's responsibility. He also questioned the cost billed to the homeowner by the contractor. The City has had several similar sewer repairs in the past with the most expensive being \$1,400.00. This does not include labor for the City crew, but even if you doubled the bill to \$2,800.00, this is still several thousand dollars less than what this contractor billed Mr. Hodous. Discussion continued on the type of pipe, slip lining, and submitting the claim to insurance.

Commissioner Robbins moved to approve submitting Jason Hodous' claim to the North Dakota Insurance Reserve Fund. The motion was seconded by Commissioner Morse. The insurance company may contact Mr. Hodous in regards to the claim. The motion carried unanimously.

The City Attorney reviewed the settlement agreement and release with BNSF Railway Company for some property deeded to the County in 1921. The deed contained some restrictions that if the land was ever not used as a public highway the title reverts back to the railroad. The City acquired the property from the County. Some of the land has been developed while some of it is still public highway. The railroad is agreeable to donating the property, but they would like an administrative fee of \$2,000.00. The City Assessor reviewed the lots impacted by this agreement.

Commissioner Stromme moved to approve the settlement agreement and release, the real estate donation agreement and charitable contribution receipt between the City of Devils Lake and BNSF Railway Company and to pay a \$2,000.00 administrative fee as recommended by the City Attorney. The motion was seconded by Commissioner Robbins, and the motion carried unanimously.

The letter from Midway Lanes was reviewed for extending their liquor license during construction of a new building. Discussion was held on if the business was currently operating and if they needed an extension.

Commissioner Stromme moved to approve a 180-day extension from November 3, 2016 until May 2, 2017 for Midway Lanes liquor license. The motion was seconded by Commissioner Robbins, and the motion carried unanimously.

The City Attorney stated the Boline case is a inverse condemnation case. The property owners feel the City damaged their property. The settlement agreement provides that the City will buy the lot for \$41,000.00 while deeming the lot is undamaged. The City will then try to sell the lot. The Bolines will take care of their attorney fees, interest and extra costs.

Commissioner Stromme moved to approve the settlement agreement of \$41,000.00 to Ryan and Alissa Boline in exchange for a warranty deed for Lot 10 of Quiet Acres Subdivision as recommended by the City Attorney. The motion was seconded by Commissioner Morse. On roll call all Commissioners voted aye, and the motion carried.

Commissioner Robbins moved to approve payment of the list of bills as submitted. The motion was seconded by Commissioner Morse. The City Engineer stated the list of bills includes a payment to a contractor for \$5,314.23. The contractor was authorized to perform work at the direction of a city employee. The City Engineer has asked for a breakdown of the charges and hourly rates. The contractor has not provided this information so the City Engineer asked that the check be cut and held until the contractor provides the breakdown and hourly rates. On roll call all Commissioners voted aye, and the motion carried.

Commissioner Stromme moved to approve Budget Amendment #04-16 – Library. The motion was seconded by Commissioner Morse, and the motion carried unanimously.

President Johnson acknowledged the following reports:

1. City Auditor monthly report; and
2. Police Department monthly report.

There being no further business to come before the Commission, President Johnson adjourned the meeting at 7:36 P.M.

**LINDA LYBECK  
CITY AUDITOR**

**RICHARD S. JOHNSON  
PRESIDENT**