

Sidney, Nebraska, May 22, 2012 A Fair Housing City

A meeting of the Mayor and Council of the City of Sidney, Nebraska, was convened in open and public session at 7:15 P.M. on May 22, 2012 in the Council Room. Present were: Mayor Gaston and Council Members: Weiderspon, Nienhueser, and Van Vleet. Others present: City Manager Person, City Attorney Leef and City Clerk Anthony. Notice of the meeting was given in advance thereof by publication in *The Sidney Sun Telegraph*, the designated method for giving notice, a copy of the proof of publication being attached to these minutes. Advance notice of the meeting was also given to the members of the City Council and a copy of their acknowledgment of receipt of notice is attached to these minutes. Availability of the agenda was communicated in the advance notice and in the notice to the City Council. All proceedings shown hereafter were taken while the convened meeting was open to the attendance of the public.

Mayor Gaston informed the public of the location of the posted Open Meetings Act.

Nienhueser moved, Van Vleet seconded "That the minutes of the May 8, 2012 meeting be approved." Roll call vote: Yeas: All council members present.

Pursuant to the publicized notice that the Mayor and Council would hold a public hearing at this time and place for the purpose of the nature of and necessity for acquiring a utility easement by eminent domain across property known as Lot 10, Grandview Estates Subdivision which is currently owned by Hal Zalesky in order to complete the construction of the sanitary sewer line being built along 11<sup>th</sup> Avenue from Summit Drive and across Old Post Road, the Mayor called the public hearing to order.

City Attorney Leef reviewed the process of Eminent Domain and the circumstances leading to this point: The City has a duty to provide services, including utilities, to citizens in the city limits if it is possible at a reasonable cost. In order to provide utilities to the Wamsley Development Project and other future users in that area at a reasonable cost, the city needs to place utilities using 25 feet (which is the standard front yard set back) under the ground owned by Hal Zalesky. As payment for the underground easement, Mr. Zalesky has requested the City pay \$30,000 and perform substantial work to his property, including placing an underground ditch system the length of his property and completing grading work to his property. This would cost the City of Sidney substantially more than what we believe to be market value of the easement we are requesting. Attempts to reach an agreement for said easement have failed. The power of eminent domain provides the City with a legal way to obtain necessary property from private citizens for City purposes at a fair market price when the City and the private citizen can't agree on a price for the necessary property. Through this process, the court ensures disinterested parties determine what a reasonable price for the land, or in this case, the easement the City needs. Law requires that in order to start the process, the City Council give notice and hold a public hearing and authorize the acquisition by action (RSN #18-1755) thus this public hearing which was noticed in *The Sidney Sun Telegraph* (proof of publication of said notice is attached to these minutes). Once the Council authorizes the acquisition, a petition is filed with the County Court and a notice of intent to acquire property is served upon Mr. Zalesky. Within three days, three appraisers are appointed to assess the value of the interest the City is requesting (RSN #76-704.01-76-706). The appraisers prepare their report stating what they believe the fair value of the easement is and files it with the Court. The report is sent to Mr. Zalesky within ten days of the court receiving it and the City must deposit that amount with the Court within sixty days of the report. The City is then entitled to get Court assistance if necessary to put them in possession of the land (RSN #76-710-76-714). Mr. Zalesky is entitled to appeal the amount awarded to him within thirty days from the date the report is filed if he does not feel the amount specified by the appraisers is fair, but he is not entitled to the land itself (RSN #76-715).

The following filed written objections: None. The following appeared in person or by agent or by attorney and were heard: Hal Zalesky appeared to voice his opposition to the City obtaining the easement. He also spoke of drainage issues and contamination from the Wamsley project. Larry McCaslin, engineer

on the sanitary sewer project in question, presented pertinent information on the utility easement needed. The Mayor informed Mr. Zalesky that the public hearing was for the consideration of the utility easement only. Any non-easement questions would have to be addressed at a later time or place. Considerable discussion was held on the utility easement by the City Council, the City Attorney and City Staff. All persons having been heard, Mayor Gaston closed the public hearing.

Nienhueser moved, Van Vleet seconded "That Resolution No. 20120503 be passed and adopted." Roll call vote: Yeas: Nienhueser, Gaston and Van Vleet. Nays: Weiderspon. Motion carried.

#### **RESOLUTION NO. 20120503**

**WHEREAS**, the City of Sidney Nebraska is constructing a sanitary sewer line along 11<sup>th</sup> Avenue from Summit Drive and across Old Post Road; and

**WHEREAS**, it is necessary that the City obtain a utility easement across property known as Lot 10, Grandview Estates Subdivision, City of Sidney in order to complete said sanitary sewer line at a reasonable cost; and

**WHEREAS**, negotiations for the acquisition of said utility easement across Lot 10, Grandview Estates Subdivision have failed;

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIDNEY, NEBRASKA:** That the acquisition, by purchase or eminent domain, of a utility easement across Lot 10, Grandview Estates Subdivision, as shown on the attached survey, is hereby authorized.

Adopted this 22nd day of May, 2012 at Sidney, Nebraska by the Mayor and City Council of the City of Sidney, Nebraska.

Nienhueser moved, Weiderspon seconded "That Resolution No. 20120504 be passed and adopted." Roll call vote: All council members present.

#### **RESOLUTION NO. 20120504**

**Whereas:** the State of Nebraska desires to make improvements on a portion of Highway 30 within the Corporate Limits of the City of Sidney, Nebraska under a highway improvement project denoted as Project No. STP-30-1 (130);

**Whereas:** this highway improvement project will also improve municipal infrastructure at various locations within the project limits as shown in the agreement, and

**Whereas:** the improvements to be completed within the municipal boundaries are adequately described in the agreement, and

**Whereas:** the City of Sidney, Nebraska's responsibilities under this agreement are adequately described in the agreement and are understood by the City of Sidney, Nebraska, and

**Whereas:** the City of Sidney, Nebraska, concurs to enter into this agreement with the State of Nebraska, Department of Roads, for said improvement,

**Be It Resolved:** by the City Council of the City of Sidney, Nebraska that:

Wendall Gaston; Mayor of the City of Sidney, Nebraska is hereby authorized to sign the attached Project Agreement between the City of Sidney, Nebraska and the State of Nebraska, Department of Roads.

Project Number STP-30-1 (130), Control Number 51402.

Adopted this 22nd day of May, 2012 at Sidney, Nebraska by the Mayor and City Council of the City of Sidney, Nebraska.

A request to vacate a right of way in Prairie Winds Subdivision was presented by City Attorney Leef, City Manager Person, and Valerie Nienhueser of Cheyenne County Abstract. Extensive discussion was held regarding the pros and cons of the request.

Weiderspon moved, Nienhueser seconded "That the Ordinance entitled "AN ORDINANCE OF THE

CITY OF SIDNEY, NEBRASKA, VACATING THE RIGHTS-OF-WAY LYING ALONG THE EAST BOUNDARY LINE OF TRACT 14 AS SHOWN RECORDED ON THE UPLAND INDUSTRIES BOUNDARY SURVEY RECORDED ON OCTOBER 1, 1986 IN BOOK 233 AT PAGE 100, AND AMENDED AND RECORDED ON JANUARY 9, 1987 IN BOOK 235 AT PAGE 379, OF THE MISCELLANEOUS RECORDS BOOKS OF THE CHEYENNE COUNTY REGISTRAR OF DEEDS IN THE CITY OF SIDNEY, CHEYENNE COUNTY, NEBRASKA; AND, PROVIDING CERTIFICATION AND RECORDING OF THE ORDINANCE designated as Ordinance No. 1677.” Roll call vote: Yeas: All council members present. Weiderspon moved, Van Vleet seconded “That the Statutory requirement requiring the ordinance to be read by title three different days be suspended.” Roll call vote: Yeas: All council members present. The motion having been concurred in by three-fourths of the Council be declared passed and adopted and said statutory requirement suspended. The Clerk then read the Ordinance by number. Van Vleet moved, Nienhueser seconded “That Ordinance No. 1677 be finally passed.” Roll call vote: Yeas: All council members present. The passage and adoption of said ordinance having been concurred in by a majority of all members of the City Council was declared passed and adopted and the Mayor in the presence of the City Council signed and affixed his signature thereto. Weiderspon moved, Van Vleet seconded “That Ordinance No. 1677 be published in The Sidney Sun Telegraph.” Roll call vote: Yeas: All council members present.

Weiderspon moved, Van Vleet seconded “That the Budget Reports for April, 2012 be approved.” Roll call vote: Yeas: All council members present.

As per the Notice of Vacancy for the elective office that had been held by Dalan Hiett and that the term for said office expires December 9, 2014, Mayor Gaston announced that one additional letter of interest/resume had been received in addition to the original six applicants and that person would be given two minutes to say a few words about their interest in the position. The following candidate was heard: Jeff Pippitt.

Weiderspon moved, Van Vleet seconded “That Roger Gallaway be appointed to fill the existing city council vacancy.” Roll call vote: Yeas: All council members present.

City Attorney Leef administered the Oath of Office to Roger Gallaway. Mr. Gallaway then joined the Council at the bench.

City Manager’s report consisted of updates of recent and upcoming meetings and/or events; i.e.: Board of Health 6/6; 5/23 meeting with business owners and NDOR re: L17J construction; 5/23 Volunteer luncheon; SPNRD drainage meetings 5/30; Kids Fishing Day 6/2; Lt. Governor in Sidney 6/5; PRT 6/8; Gold Rush Days 6/9 -10; Leadership Cheyenne County 6/14, etc. Since the Burbach contract for the Pool Study could not be resolved, Request for Proposals will be on the next Council agenda. The old FSC building which is in disrepair has defaulted to the UPRR and will be remedied. A letter has been received from the Power Review acknowledging the settlement between Wheatbelt and the City of Sidney. Announcement has been made of the receipt of a \$250,000 grant for a Convention Center. Announcement was made of a new burial monument along Fort Sidney Road. Public Services Director Hehnke reported on repairs to the Sky Manor Booster pump which will cause a temporary water outage on 5/24. Swimming Pool is filled and will open 5/28.

Mayor Gaston and all Council Members thanked the candidates that had applied to fill the Council Vacancy and all welcomed Roger to the Council. Roger thanked the Council for the opportunity to serve.

The meeting adjourned at 9:09 p.m.

\_\_\_\_\_MAYOR

ATTEST: \_\_\_\_\_CITY CLERK











