

**MINUTES OF THE CITY COUNCIL REGULAR MEETING HELD JUNE 17, 2013, AT 7:00 P.M. IN THE BPS ADMINISTRATION MEETING ROOM, 320 NORTH 5<sup>TH</sup> STREET.**

**Pledge of Allegiance**

**1 – Roll Call:** Present: Mayor Schuster, Councilmembers Carey, Catlin, Cook, Fairbanks, Langdale, Moore, Parde  
Absent: Councilmember Tiemann

Mayor Schuster announced that a copy of the Open Meetings Act is posted in the meeting room and is accessible to members of the public.

Councilmember Tiemann arrived at 7:02 p.m.

**2 - Consent Agenda**

- a. Approve agenda as submitted.
- b. Receive and place on file all notices pertaining to this meeting.
- c. Receive and place on file all materials having any bearing on this meeting.
- d. Approval of minutes of regular meeting on June 3, 2013, as on file in the City Clerk's Office.
- e. Approval of Treasurer's Report of Claims
  - (1) Approval of claims for Robert L. Tiemann Construction in the amount of \$97,375.51.
  - (2) Approval of balance of Treasurer's Report of Claims in the amount of \$615,473.44.
- f. Approval of BASWA Report of Claims in the amount of \$32,837.06.
- g. Approval of change order increase of \$1,627.50 for a total contract price of \$52,657.50 to TH Construction for the Waterline Project on High from 9<sup>th</sup> to 19<sup>th</sup>, as recommended by the BPW.
- h. Approval of special designated liquor permit application of D&J Enterprises LLC dba KABO for a beer garden located at 115 South 5<sup>th</sup> Street on July 27, 2013 from 2:00 p.m. until 2:00 a.m.; August 16, 2013 from 6:00 p.m. until 2:00 a.m.; August 17, 2013 from 2:00 p.m. until 2:00 a.m.; August 31, 2013 from 2:00 p.m. until 2:00 a.m.; September 20, 2013 from 2:00 p.m. until 2:00 a.m.; and September 28, 2013 from 2:00 p.m. until 2:00 a.m.; and permission use a portion of City property for said beer garden.
- i. Resolution Number 5530 appointing Rex Behrends and Michael Fakler as Interim City Building Inspectors.
- j. Resolution Number 5531 terminating the lease agreement with B-7 Investments for use of sidewalk at 106 North 5<sup>th</sup> St.

Moved by Catlin, seconded by Cook, that the items listed under the consent agenda, with the exception of items h, i, and j, be approved, accepted and/or ratified as presented. Tiemann abstained from item e(1)

Roll Call: Yea: Carey, Catlin, Cook, Fairbanks, Langdale, Moore, Parde, Tiemann  
Nay : None

Motion carried.

Moved by Catlin, seconded by Langdale, to approve the special designated liquor permit application of D&J Enterprises LLC dba KABO for a beer garden located at 115 South 5<sup>th</sup> Street on July 27, 2013 from 2:00 p.m. until 2:00 a.m.; August 16, 2013 from 6:00 p.m. until 2:00 a.m.; August 17, 2013 from 2:00 p.m. until 2:00 a.m.; August 31, 2013 from 2:00 p.m. until 2:00 a.m.; September 20, 2013 from 2:00 p.m. until 2:00 a.m.; and September 28, 2013 from 2:00 p.m. until 2:00 a.m.; and permission use a portion of City property for said beer garden.

h - Councilmember Cook requested more information whether the adjacent alley was being used and if the City would be liable in the case of an accident. City Attorney, Greg Butcher, responded that there is inherent responsibility on the City's part if anything should happen. Councilmember Parde expressed opposition to allowing alcohol on City property.

Roll Call: Yea: Carey, Cook, Fairbanks, Langdale, Tiemann  
Nay : Catlin, Moore, Parde

Motion carried.

Moved by Catlin, seconded by Langdale that Resolution Number 5330 appointing Rex Behrends and Michael Fakler as Interim City Building Inspectors, be passed and adopted.

i - Councilmember Fairbanks requested separate consideration to discuss the arrangement and duration of the agreement and expressed concern for any conflicts. Mayor Schuster responded that the search to fill the position is underway and that the City Engineer will inspect plans and administration will determine when Mr. Fakler's services are needed.

Roll Call: Yea: Carey, Catlin, Cook, Fairbanks, Langdale, Moore, Parde, Tiemann  
Nay : None

Motion carried.

Moved by Catlin, seconded by Fairbanks, that Resolution Number 5331 terminating the lease agreement with B-7 Investments for use of the sidewalk at 106 North 5<sup>th</sup> Street, be passed and approved.

j - City Attorney Butcher removed the item per public request to explain that with the 5<sup>th</sup> Street reconstruction project, the area in the lease will not fit within the re-designed area, therefore this will terminate the lease by August 1<sup>st</sup> and any future agreement would need to be drafted with a new legal description. Jim Nelson, Attorney for the VIP Lounge, appeared and stated that they have no problems with this action to terminate the current lease and bring back a new lease and legal description for consideration at a later date.

Roll Call: Yea: Carey, Catlin, Cook, Fairbanks, Langdale, Moore, Parde, Tiemann  
Nay : None

Motion carried.

### **3 - Public Hearings/Bids:**

#### **a. Hearing:**

#### **(1) Public hearing on the proposed annexation of certain properties owned by Max L & Michelle R Manes, and Worldlawn Power Equipment.**

Mayor Schuster announced that a Public hearing will now be held on the proposed annexation of certain properties owned by Max L & Michelle R Manes, and Worldlawn Power Equipment.

No one appeared for discussion during the public hearing.

Moved by Catlin, seconded by Cook, that the public hearing be closed at 7:13 p.m.

Roll Call: Yea: Carey, Catlin, Cook, Fairbanks, Langdale, Moore, Parde, Tiemann  
Nay : None

Motion carried.

### **4 – Resolutions:**

#### **a. Resolution entering into an Interlocal Agreement with Gage County for the City to operate a County-wide Enhanced 911 System and radio dispatch system.**

Mayor Schuster introduced Resolution Number 5532 entering into an Interlocal Agreement with Gage County for the City to operate a County-wide Enhanced 911 System and radio dispatch system.

Moved by Catlin, seconded by Tiemann, that Resolution Number 5532 be passed and adopted.

City Administrator, Tobias Tempelmeyer, explained that the main change to the contract was an increase in the fees paid by the County to the City over the next 3 years and how that fee was determined and agreed upon by the County. Also, the Gage County Emergency Management Director was added to the Advisory Committee.

Roll Call: Yea: Carey, Catlin, Cook, Fairbanks, Langdale, Moore, Parde, Tiemann  
Nay : None

Motion carried.

Resolution Number 5532 has been passed and approved.

**b. Resolution amending the Contract 10-DTR-102 for a CDBG Grant for the Downtown Revitalization Phase II.**

Mayor Schuster introduces Resolution Number 5533 amending the Contract 10-DTR-102 for a CDBG Grant for the Downtown Revitalization Phase II.

Moved by Catlin, seconded by Langdale, that Resolution Number 5533 be passed and adopted.

City Administrator Tempelmeyer explained the reason for the amendment.

Roll Call: Yea: Carey, Catlin, Cook, Fairbanks, Langdale, Moore, Parde, Tiemann  
Nay : None

Motion carried.

Mayor Schuster announced that the council now skip to consider action on Agenda Item 5 (a).

**5 – Ordinance:**

**a. Ordinance amending the City Code creating Beatrice Plus and establishing its advisory board members.**

Mayor Schuster introduced an Ordinance amending the City Code to add Article X and Sections 2-370 through 2-375, creating Beatrice Plus and establishing its advisory board members.

Moved by Catlin, seconded by Moore, that said ordinance be given number 13-026, the title thereof be approved, the rules be suspended and said ordinance be read by number only three times tonight.

Roll Call: Yea: Carey, Catlin, Fairbanks, Langdale, Moore, Parde, Tiemann  
Nay : None  
Abstain: Cook

Motion carried.

Mayor Schuster read Ordinance Number 13-026 by number only the first, second and third times.

Moved by Catlin, seconded by Moore, that Ordinance Number 13-026 be passed and approved.

City Attorney Butcher explained that this change to the City Code will add an additional at-large member which should help to meet a quorum; he also explained the function of the Advisory Board.

Roll Call: Yea: Carey, Catlin, Fairbanks, Langdale, Moore, Parde, Tiemann  
Nay : None  
Abstain: Cook

Motion carried.

Ordinance Number 13-026 has been passed and approved.

Mayor Schuster announced to move back to consider Agenda Item 4(c)

**4 – Resolution:**

**c. Resolution appointing members to the Beatrice Plus Advisory Board.**

Mayor Schuster introduced Resolution Number 5534 appointing members to the Beatrice Plus Advisory Board.

Moved by Catlin, seconded by Langdale, that Resolution Number 5534 be passed and adopted.

Discussion held regarding the board member selection; if it is a conflict for Mr. Eskra to represent a ward and also serve on the Board of Public Works; and how and when members would be replaced. Mayor Schuster explained that he did not for-see any problems with these appointments.

Roll Call:        Yea: Carey, Fairbanks, Langdale, Moore, Parde, Tiemann  
                      Nay : Catlin  
                      Abstain: Cook

Motion carried.

Resolution Number 5534 has been passed and adopted.

**5 – Ordinances:**

**b. Ordinance amending City Code Section 23 regarding excavations in City right-of-way.**

Mayor Schuster introduced an Ordinance amending City Code Sections 23-61, 23-62 and 23-63 regarding excavations in City right-of-way and repealing Section 23-61.1.

Moved by Catlin, seconded by Moore, that said ordinance be given number 13-027, the title thereof be approved, the rules be suspended and said ordinance be read by number only three times tonight.

Roll Call:        Yea: Carey, Catlin, Cook, Fairbanks, Langdale, Moore, Parde, Tiemann  
                      Nay : None

Motion carried.

Mayor Schuster read Ordinance Number 13-027 by number only the first, second and third times.

Moved by Catlin, seconded by Moore, that Ordinance Number 13-027 be passed and approved.

City Administrator Tempelmeyer explained the proposed change to the City Code to adopt these Board of Public Works policies into the City Code.

Roll Call:        Yea: Carey, Catlin, Cook, Fairbanks, Langdale, Moore, Parde, Tiemann  
                      Nay : None

Motion carried.

Ordinance Number 13-027 has been passed and adopted.

**c. Ordinance amending City Code to repeal Sections regarding bingo regulations.**

Mayor Schuster introduced an Ordinance amending City Code to repeal Sections 17-146 through 17-152, regarding bingo regulations.

Moved by Catlin, seconded by Langdale, that said ordinance be given number 13-028, the title thereof be approved, the rules be suspended and said ordinance be read by number only three times tonight.

Roll Call:        Yea: Carey, Catlin, Cook, Fairbanks, Langdale, Moore, Parde, Tiemann  
                      Nay : None

Motion carried.

Mayor Schuster read Ordinance Number 13-028 by number only the first, second and third times.

Moved by Catlin, seconded by Langdale, that Ordinance Number 13-028 be passed and approved.

City Attorney Butcher explained that this will clean-up the City Code as the City no longer has statutory authority to tax or enforce bingo operations.

Roll Call: Yea: Carey, Catlin, Cook, Fairbanks, Langdale, Moore, Parde, Tiemann  
Nay : None

Motion carried.

Ordinance Number 13-028 has been passed and adopted.

**d. Ordinance Number 13-021 on the proposed annexation of property owned by The Toro Company, Exmark Mfg, and Gage County, located in the Gage Co Industrial Park. (final reading)**

Mayor Schuster introduced consideration of Ordinance Number 13-021, annexing property owned by The Toro Company, Exmark Mfg, and Gage County, located in the Gage Co Industrial Park, for the final reading.

Moved by Catlin, seconded by Langdale, that said Ordinance Number 13-021, the title thereof be approved, and said ordinance be read by title only the third and final time tonight.

Receive action from the Planning and Zoning Commission to reconsider their previous recommendation.

Richard Clabaugh, representing the Planning and Zoning Commission, appeared and reported that the commission took a vote at their next meeting to reconsider their previous vote to recommend annexation and changed their recommendation to not annex this business.

Roll Call: Yea: Catlin, Langdale, Parde, Tiemann, Mayor Schuster  
Nay : Carey, Cook, Fairbanks  
Abstain: Moore

Motion carried.

Mayor Schuster read Ordinance Number 13-021 by title:

“An ordinance to extend the boundaries and include within the corporate limits of, and to annex to, the City of Beatrice, Nebraska parcels of land owned by The Toro Company, Exmark Manufacturing Company, and the County of Gage, Nebraska, located in or near Gage County Industrial Park, a Subdivision in Section 28, Township 4 North, Range 6 East of the 6<sup>th</sup> P.M., Gage County, Nebraska; to provide service benefits thereto; to repeal conflicting ordinances; and to provide for publication in pamphlet form and effective date of this ordinance.”

Moved by Catlin, seconded by Langdale, that Ordinance Number 13-021 be passed and approved.

Discussion was again held regarding promises made in the past that these businesses would not be annexed and the long-term affect the annexation may have on businesses, was the tax income worth it. Patty Kaufmann, representing Exmark Mfg., appeared and read a statement from Exmark in opposition to the annexation. Bill Demuth, Executive Director for NGage, appeared and read a statement from the NGage Board regarding their position that this will not benefit economic development efforts. Kathleen Setzer, of Setzer Manufacturing, spoke in opposition to the annexation as it applies to all of the Industrial Park. Discussion held, also including City services provided and the treatment of all taxpayers equally.

Roll Call: Yea: Catlin, Langdale, Parde, Tiemann, Mayor Schuster  
Nay : Carey, Cook, Fairbanks  
Abstain: Moore

Motion carried.

Ordinance Number 13-021 has been passed and adopted.

**e. Ordinance Number 13-022 on the proposed annexation of properties owned by Accuma Corp, Gage County Industrial LLC, J & J Wood & Wire, Mark W & Kathleen A Setzer, Neapco LLC, Naska Corp (UPS),**

**Worldlawn Power Equip, and the County of Gage, located in the Gage Co Industrial Park. (final reading)**

Mayor Schuster introduced consideration of Ordinance Number 13-022 annexing properties owned by Accuma Corp, Gage County Industrial LLC, J & J Wood & Wire, Mark W & Kathleen A Setzer, Neapco LLC, Naska Corp (UPS), Worldlawn Power Equip, and the County of Gage, located in the Gage Co Industrial Park for the final reading.

Moved by Catlin, seconded by Langdale, that said Ordinance Number 13-022, the title thereof be approved, and said ordinance be read by title only the third and final time tonight.

Rob Schafer, Attorney for Worldlawn Power Equip., appeared to express their opposition to the annexation and expressed concern that it will create an unfavorable business climate. Mark Setzer, owner of Setzer Manufacturing, spoke against the annexation and asked to consider if the income is worth the risk of businesses leaving. Discussion followed regarding this effort to broaden the tax base and economic competition.

Roll Call:        Yea: Catlin, Langdale, Moore, Parde, Mayor Schuster  
                      Nay : Carey, Cook, Fairbanks  
                      Abstain: Tiemann

Motion carried.

Mayor Schuster read Ordinance Number 13-022 by title:

“An ordinance to extend the boundaries and include within the corporate limits of, and to annex to, the City of Beatrice, Nebraska parcels of land owned by the Accuma Corporation, Gage Industrial LLC, J & J Wood & Wire, Inc., Mark W. & Kathleen A. Setzer, Neapco, LLC, Naska Corporation (UPS), Worldlawn Power Equipment, Inc., and the County of Gage, Nebraska, located in or near Gage County Industrial Park, a Subdivision in Section 28, Township 4 North, Range 6 East of the 6<sup>th</sup> P.M., Gage County, Nebraska; to provide service benefits thereto; to repeal conflicting ordinances; and to provide for publication in pamphlet form and effective date of this ordinance.”

Moved by Catlin, seconded by Langdale, that Ordinance Number 13-022 be passed and approved.

Roll Call:        Yea: Catlin, Langdale, Moore, Parde, Mayor Schuster  
                      Nay : Carey, Cook, Fairbanks  
                      Abstain: Tiemann

Motion carried.

Rob Schafer questioned that Tiemann abstained. Councilmember Tiemann responded that he rented a building on one of the properties and felt he should abstain.

Ordinance Number 13-022 has been passed and approved.

- f. Ordinance Number 13-023 on the proposed annexation of properties owned by Beatrice Country Club, Burlington Northern Santa Fe Railroad, Dennis D. Day, Timothy & Kelly Fralin, Marvin & Lisa Goossen, Hoyle Farms LLC, Max L. & Michelle R. Manes, Natural Gas Pipeline, Nebraska Public Power District, Provident Trust Co, Trustee of the Herbert T Weston Jr Testamentary Trust U/A restated July 1, 1999, Southeast Nebraska Cooperative, Vaughn M. & Valentina A. Wright, the City of Beatrice, and the County of Gage, at various locations adjacent to the City. (final reading)**

Mayor Schuster introduced consideration of Ordinance Number 13-023 annexing properties owned by Beatrice Country Club, Burlington Northern Santa Fe Railroad, Dennis D. Day, Timothy & Kelly Fralin, Marvin & Lisa Goossen, Hoyle Farms LLC, Max L. & Michelle R. Manes, Natural Gas Pipeline, Nebraska Public Power District, Provident Trust Co., Trustee of the Herbert T. Weston, Jr. Testamentary Trust U/A restated July 1, 1999, Southeast Nebraska Cooperative, Vaughn M. & Valentina A. Wright, the City of Beatrice, and the County of Gage, at various locations adjacent to the City, for final reading.

Moved by Catlin, seconded by Langdale, that said Ordinance Number 13-023, the title thereof be approved, and said ordinance be read by title only the third and final time tonight.

Roll Call: Yea: Carey, Catlin, Cook, Fairbanks, Langdale, Moore, Parde, Tiemann  
Nay : None

Motion carried.

Moved by Cook, seconded by Fairbanks, to amend the Ordinance to remove Tracts 1 and 2 in Section 2, which is the Beatrice Country Club property.

Discussion held whether annexation of the Country Club property was appropriate to annex or was it just to generate dollars. Police Captain, Jerry Lamkin, spoke that there has always been a conflict of jurisdiction in this area and it would be good to resolve the problem of whether to dispatch City or County. Fire Chief, Brian Daake, spoke regarding fire services to the structures covered by Rural Fire; that the Rural uses a 2 ½" water supply line and that the City has a 5" water supply line, which would respond with more force. Ing Maurstad and Nate Clabaugh, representing the Beatrice Country Club (BCC), and Rob Schafer, Attorney for BCC, appeared to request that the council not annex the property as the increased tax dollars would take a toll on their finances and noted that the BCC brings in golfers from outside the community and provides a recreational opportunity for the community and is used by the school and college. Discussed annexing when surrounding property is more developed.

Vote on amendment:

Roll Call: Yea: Carey, Cook, Fairbanks, Parde, Tiemann  
Nay : Catlin, Langdale, Moore

Motion carried.

Rob Schafer, Attorney representing Grant Hoyle and the Weston Trust, appeared to question including the annexation of the farm land on both of these properties; stated that farm operations should not be annexed.

Mayor Schuster read Ordinance Number 13-023, as amended, by title:

"An ordinance to extend the boundaries and include within the corporate limits of, and to annex to, the City of Beatrice, Nebraska parcels of land owned by the Burlington Northern Santa Fe Railroad, Dennis D. Day, Timothy & Kelly Fralin, Marvin & Lisa Goossen, Hoyle Farms, LLC, Max L. & Michelle R. Manes, Natural Gas Pipeline, Co. of America, Nebraska Public Power District, the Provident Trust Company, Trustee of the Herbert T. Weston, Jr. Testamentary Trust U/A, restated July 1, 1999, the Southeast Nebraska Cooperative Co., Vaughn M. & Valentina A. Wright, the City of Beatrice, Gage County, Nebraska, and the County of Gage, Nebraska, which are adjacent, contiguous, and located in or near the City of Beatrice, Gage County, Nebraska; to provide service benefits thereto; to repeal conflicting ordinances; and to provide for publication in pamphlet form and effective date of this ordinance."

Moved by Catlin, seconded by Langdale, that Ordinance Number 13-023, as amended, be passed and approved.

Roll Call: Yea: Carey, Catlin, Cook, Fairbanks, Langdale, Moore, Parde, Tiemann  
Nay : None

Motion carried.

Ordinance Number 13-023 has been passed and approved.

**g. Ordinance Number 13-025 on the proposed annexation of a parcel of land property owned by the Beatrice Country Club, Inc. (second reading)**

Mayor Schuster introduced consideration of Ordinance Number 13-025 on the proposed annexation of a parcel of land property owned by the Beatrice Country Club, Inc. for the second reading.

Moved by Catlin that said Ordinance Number 13-025, the title thereof be approved, and said ordinance be read by title only the second time tonight.

Motion died for lack of a second.

**h. Ordinance on the proposed annexation of certain properties owned by Max L & Michelle R Manes, and Worldlawn Power Equipment. (first reading)**

Moved by Catlin, seconded by Langdale, that said ordinance be given number 13-029, the title thereof be approved, and said ordinance be read by title only one time tonight.

Mayor Schuster explained that said that this clarifies a conflicting legal description.

Rob Schafer, Attorney representing Worldlawn Power Equipment, appeared to ask that the Council reconsider this annexation.

Roll Call:           Yea: Carey, Catlin, Langdale, Moore, Parde, Tiemann  
                      Nay : Cook, Fairbanks

Motion carried.

Mayor Schuster read Ordinance Number 13-029 by title the first time:

“An ordinance to extend the boundaries and include within the corporate limits of, and to annex to, the City of Beatrice, Nebraska parcels of land owned by Max L. & Michelle R. Manes, and Worldlawn Power Equipment, Inc., which are adjacent, contiguous, and located in or near the City of Beatrice, Gage County, Nebraska; to provide service benefits thereto; to repeal conflicting ordinances; and to provide for publication in pamphlet form and effective date of this ordinance.”

**6 – Public Forum:**

No one appeared at public forum.

**7 – Discussions/Reports:**

**a. Monthly City Administrator’s Report**

City Administrator Tempelmeyer presented the Monthly City Administrator’s report; expenditures are \$414,000 over the revenues; cash reserves are at \$358,000; he reported on sales tax revenue projections and that real estate tax collections will be forwarded from the County in June and the Public Safety Debt Service bond proceeds will be received in July. The budget process for next fiscal year is in progress.

Councilmember Fairbanks left at 8:55 p.m.

**8 – Miscellaneous:**

The next regular council meeting is July 1, 2013 at 7:00 p.m. in the BPS Admin Bldg Meeting Room, and a Worksession will be June 24, 2013 at 7:00 p.m. in the Beatrice Public Library Sargent Room.

Moved by Catlin, seconded by Langdale, that the meeting be adjourned at 9:04 p.m.

Roll Call:           Yea: Carey, Catlin, Cook, Langdale, Moore, Parde, Tiemann  
                      Nay: None

Motion carried.

**Cathy Roever, Deputy City Clerk**

**Mayor Dennis Schuster**