

CITY COUNCIL PROCEEDINGS

City Council Chambers, Municipal Building, 123 South Lincoln, Aberdeen, South Dakota, February 28, 2011, 5:30 p.m., regular meeting of the Board of Council Members, Mayor Levsen presiding. Present at roll call were Council Members Tom Agnitsch, David Bunsness, Todd Campbell, Jim Kraft, Jeff Mitchell, Clint Rux, Jennifer Slaughter-Hansen, and Laure Swanson. City staff members present were Lynn Lander, Adam Altman, Robin Bobzien, Brett Bill, Karl Alberts, Chief Bill Winters, Chief Don Lanpher, Randy Meister, Karly Winters, and John Weaver.

Mayor Levsen led the Pledge of Allegiance.

MINUTES

Mitchell moved, Rux seconded to approve the minutes of February 14, 2011, as circulated. All voting aye, motion carried.

OPEN FORUM

No one was present.

OLD BUSINESS

CONTINUED – REVOCATION OF HOME DAY CARE LICENSE

Rux moved, Kraft seconded to approve to continue for one week the discussion of the possible revocation of Michelle Knebel's Home Day Care License. All voting aye, motion carried.

CONSENT CALENDAR

Agnitsch moved, Kraft seconded to approve the following items on the consent calendar:

2010 ANNUAL UNAUDITED FINANCIAL REPORT for the City of Aberdeen – receive and place on file.

ADVERTISEMENTS FOR BIDS – set bid date of March 15, 2011 at 2:00 p.m. for the following: 2011 Bituminous Oils; 2011 Seal Coat Aggregates; 2011 Asphaltic Concrete and Surfacing Repair Mix; Eighth Ave Street Improvements (N State Street to N Dakota Street).

SPECIAL ONE-DAY RETAIL ON-OFF SALE MALT BEVERAGE LICENSE on March 10, 2011 – set hearing date of March 7, 2011 at 5:30 p.m. for Aberdeen Area Chamber of Commerce dba Presentation College Strode Center, 1500 N. Main Street.

PACKAGE OFF-SALE LIQUOR LICENSE – set hearing date of March 14, 2011 at 5:30 p.m. for Wal-Mart Stores, Inc. dba Wal-Mart Supercenter #1520, 3820 7th Ave., SE.

LICENSES: Taxi Cab Driver – Mike Vining; Journeyman Plumber – Casey L. Hillman; Residential Building Contractors – Jim Franzen, Chad S. Klinkel, Jeremy Ahoe.

DEPARTMENT REPORTS – Aberdeen Regional Airport Board Minutes, Board of Zoning Adjustment Minutes, Park & Recreation Board Minutes – receive and place on file.

All voting aye, motion carried.

NEW BUSINESS

HEARING – PETITION TO REZONE

Mitchell moved, Bunsness seconded to approve to continue the hearing on petition to rezone property described as Derian Outlot 1, Block 35, Thomas Addition in the NW ¼ of Section 24, T123N, R64W of the 5th P.M., Aberdeen, Brown County, South Dakota to the March 21, 2011 City Council Meeting allowing the Planning Commission time to discuss the petition to rezone. All voting aye, motion carried.

ORDINANCE NO. 11-02-02

Ordinance No. 11-02-02 changing spending authority of Business Improvement District No. 2 funds by amending Section 23-413 of the Aberdeen, SD City Municipal Code was presented. Rux moved, Agnitsch seconded to approve first reading of Ordinance No. 11-02-02. Upon roll call, all voting aye, motion carried.

RESOLUTION NO. 11-02-01 R

Bunsness moved, Swanson seconded to approve the following resolution:

RESOLUTION APPOINTING A SPECIAL CITY ATTORNEY FOR THE
CITY OF ABERDEEN

WHEREAS the City Council of the City of Aberdeen finds it necessary to appoint a Special City Attorney to advise them during a license revocation hearing; and

WHEREAS City Attorney Adam Altman is unable to advise the City Council on the matters to be heard due to a conflict of interest; and

WHEREAS Attorney Rory King of Bantz, Gosch & Cremer, LLC is an experienced attorney with extensive knowledge of local government law.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the City Council of the City of Aberdeen, in accordance with SDCL §9-14-23, hereby contracts for legal services with, and appoints as the City Attorney for the sole and exclusive purpose of advising the City Council of all matters relating to the proposed revocation of the Home Day Care license of Michelle Knebel, Rory King of Bantz, Gosch & Cremer, LLC.,

BE IT FURTHER RESOLVED that Mr. King shall serve without bond or undertaking, and shall be paid at the hourly rate of Two Hundred Five Dollars (\$205.00) per hour.

All voting aye, motion carried.

RESOLUTIONS OF NECESSITY AND DECLARATIONS OF TAKING

Campbell moved, Rux seconded to approve the following resolutions:

RESOLUTION NO. 11-02-03 R

RESOLUTION OF NECESSITY FOR ACQUISITION OF REAL PROPERTY

BROWN COUNTY 19 RECONSTRUCTION

PROJECT NO. P2209(2)

WHEREAS, it is necessary for the City of Aberdeen, South Dakota to acquire certain

real property land for the purpose of constructing and reconstructing a public highway commonly known as County Road 19, which reconstruction is being undertaken by the City of Aberdeen as Project No. P2209(2), and

WHEREAS, the City of Aberdeen has been unable to negotiate the terms and conditions of an agreement to acquire necessary the real property; and

WHEREAS, SDCL §9-27-1 authorizes a municipality to acquire real property for any purpose authorized by law; and

WHEREAS SDCL §7-18-9 provides that a municipality must, prior to commencing condemnation proceedings, determine that such appropriation is necessary.

NOW THEREFORE BE IT HEREBY RESOLVED by the City Council for the City of Aberdeen that the appropriation of the following real property is necessary for the construction and improvement of a public street or roadway:

A permanent right-of-way easement across a portion of the SW $\frac{1}{4}$ of Section 16, T123N, R63W, Aberdeen, Brown County, South Dakota, to be designated Lot PE 1, containing 309 square feet more or less, as shown on Exhibit "A" attached hereto and incorporated herein by reference;

A permanent right-of-way easement across a portion of the SW $\frac{1}{4}$ of Section 16, T123N, R63W, Aberdeen, Brown County, South Dakota, to be designated Lot PE 2, containing 13 square feet more or less, as shown on Exhibit "A", attached hereto and incorporated herein by reference;

A permanent right-of-way easement across a portion of the NW $\frac{1}{4}$ of Section 16, T123N, R63W, Aberdeen, Brown County, South Dakota, to be designated Lot PE 2, containing 4 square feet more or less, as shown on Exhibit "A", attached hereto and incorporated herein by reference;

A temporary construction easement over, under, and across a portion of the W $\frac{1}{2}$ of Section 16, T123N, R63W, Aberdeen, Brown County, South Dakota, containing 3,147 square feet more or less, as shown on Exhibit "A", attached hereto and incorporated herein by reference;

BE IT FURTHER RESOLVED that the Mayor of the City of Aberdeen is hereby authorized to sign "Declaration of Taking" pursuant to SDCL §31-19-23, a copy of which is attached hereto and incorporated herein by reference; and

BE IT FURTHER RESOLVED that the City Attorney is hereby authorized and directed to file a proceeding in eminent domain pursuant to SDCL §9-27-1, §31-19-23 through §31-19-38, and SDCL Ch. 21.35, to acquire such highway and/or temporary construction easement rights to the subject properties as are needed to effectuate Project No. P2209(2), according to the plans on file with the City Engineer; and

BE IT FURTHER RESOLVED that the Finance Officer is hereby authorized and directed to deposit the sum of Five Thousand Five Hundred Dollars (\$5,500.00) with the

Clerk of Court for the Fifth Judicial Circuit, Brown County, South Dakota, in accordance with SDCL §31-19-28.

BE IT FURTHER RESOLVED that this Resolution shall be passed by a 2/3 majority of all the elected members of the Common Council prior to becoming effective.

RESOLUTION NO. 11-02-04 R

RESOLUTION OF NECESSITY FOR ACQUISITION OF REAL PROPERTY

BROWN COUNTY 19 RECONSTRUCTION PROJECT NO. P2209(2)

WHEREAS, it is necessary for the City of Aberdeen, South Dakota to acquire certain real property land for the purpose of constructing and reconstructing a public highway commonly known as County Road 19, which reconstruction is being undertaken by the City of Aberdeen as Project No. P2209(2), and

WHEREAS, the City of Aberdeen has been unable to negotiate the terms and conditions of an agreement to acquire necessary the real property; and

WHEREAS, SDCL §9-27-1 authorizes a municipality to acquire real property for any purpose authorized by law; and

WHEREAS SDCL §7-18-9 provides that a municipality must, prior to commencing condemnation proceedings, determine that such appropriation is necessary.

NOW THEREFORE BE IT HEREBY RESOLVED by the City Council for the City of Aberdeen that the appropriation of the following real property is necessary for the construction and improvement of a public street or roadway:

A permanent right-of-way easement across a portion of the Lot 2 and Lot 3, Miller Subdivision of Lot 1 of McIntyre's Subdivision in the SW ¼ of Section 16, T123N, R63W, Aberdeen, Brown County, South Dakota, to be designated Lot H4, containing 1,233 square feet more or less, as shown on Exhibit "A", attached hereto and incorporated herein by reference;

A temporary construction easement over, under, and across a portion of Lot 2 and Lot 3, Miller Subdivision of Lot 1 of McIntyre's Subdivision in the SW ¼ of Section 16, T123N, R63W, Aberdeen, Brown County, South Dakota, containing 187 square feet more or less, as shown on Exhibit "B", attached hereto and incorporated herein by reference;

BE IT FURTHER RESOLVED that the Mayor of the City of Aberdeen is hereby authorized to sign "Declaration of Taking" pursuant to SDCL §31-19-23, a copy of which is attached hereto and incorporated herein by reference; and

BE IT FURTHER RESOLVED that the City Attorney is hereby authorized and directed to file a proceeding in eminent domain pursuant to SDC L §9-27-1, §31-19-23 through §31-19-38, and SDCL Ch. 21.35, to acquire such highway and/or temporary construction easement rights to the subject properties as are needed to effectuate Project No. P2209(2), according to the plans on file with the City Engineer; and

BE IT FURTHER RESOLVED that the Finance Officer is hereby authorized and directed to deposit the sum of Five Thousand Dollars (\$5,000.00) with the Clerk of Court for the Fifth Judicial Circuit, Brown County, South Dakota, in accordance with SDCL §31-19-28.

BE IT FURTHER RESOLVED that this Resolution shall be passed by a 2/3 majority of all the elected members of the Common Council prior to becoming effective.

All voting aye, motion carried.

Campbell moved, Rux seconded to approve the Declarations of Taking associated with Resolutions No. 11-02-03 R and 11-02-04 R. All voting aye, motion carried.

RESOLUTION NO. 11-02-06 R

Mitchell moved, Kraft seconded to approve the following resolution:

A RESOLUTION AUTHORIZING THE MAYOR ACQUISITION OF RIGHT OF WAY FOR PROJECT NO. P2209(2), COUNTY 19 RECONSTRUCTION

WHEREAS the City of Aberdeen is reconstructing County Road 19 in 2011, which reconstruction is numbered P2209(2); and

WHEREAS the City finds it necessary to acquire certain real property interests in connection with the project.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Mayor and Finance Officer are authorized to sign the agreements necessary for the acquisition of the following properties, and that payment therefor is hereby authorized:

Parcel No.	Lot No.	Sq. Ft. Perm.	Price	Sq. Ft. Temp	Price	TOTAL payment	
1	H4	1233		187		\$0.00	Miller
2	H5	884		1320		\$0.00	Miller
3, 4	H6, H7	100	\$1,500.00	335	\$1,000.00	\$2,500.00	
5	H8	1322	\$1,500.00	0		\$1,500.00	
6	H9	1236	\$1,500.00	0		\$1,500.00	
7	H10	6413	\$1,500.00	2456	\$1,000.00	\$2,500.00	
8	H5	7636		0			Trust
9	H1	3657	\$1,500.00	0		\$1,500.00	
10	H2	3561	\$3,000.00	0		\$3,000.00	
11	H3	1425	\$1,500.00	0		\$1,500.00	
12	H4	1421	\$1,500.00	0		\$1,500.00	
13	H5	2840					PMM
14	H6	5703	\$1,500.00			\$1,500.00	
15	H1	19756	\$3,000.00	12845	\$1,000.00	\$4,000.00	
18, 19, 20	PE1, PE2, PE2	326	\$2,500.00				BNSF

All voting aye, motion carried.

OPTIONS FOR ANIMAL CONTROL ISSUES

Options for dealing with animal control issues were presented. Campbell moved, Rux seconded to approve to direct the City Manager to prepare and present an ordinance making changes to the animal control laws based on recommendations from city attorney staff. All voting aye, motion carried.

AGREEMENT FOR PROPERTY PURCHASE

Campbell moved, Slight-Hansen seconded to approve the agreement to purchase property described as Lot 3, Skywag Addition to the City of Aberdeen, Brown County, South Dakota (1121 Olive Drive) for \$20,000.00 from Ronald V. Wagner. All voting aye, motion carried.

ABERDEEN FIRE AND RESCUE

Bunsness moved, Rux seconded to approve the request to purchase equipment for the Aberdeen Fire and Rescue Department in the amount of \$100,160.00 with \$100,000.00 of these purchases coming from a Homeland Security Grant from the SD Department of Public Safety. All voting aye, motion carried.

Three bids were received for public sale of a surplused 1921 American LaFrance Fire Truck. A detailed list is on file in the Finance Office. Mitchell moved, Campbell seconded to approve the recommendation from the Fire Department to accept the highest bid offer of \$2,165.00 from Lloyd Jark for the Fire Truck. All voting aye, motion carried.

AMENDMENT – MAIN STREET RENOVATION DESIGN AGREEMENT

Campbell moved, Slight-Hansen seconded to approve the Amendment No. 1 to the Main Street Renovation Design Agreement increasing payment to Clark Engineering Corporation in the amount of \$31,278.89. All voting aye, motion carried.

RECOMMENDATION ON BIDS

Bids were opened and publicly read for 2011 Pavement Marking Paint for Public Works/Traffic Control Division. A detailed list is on file in the Finance Office. Bunsness moved, Swanson seconded to award the bid of items #1 and #2 to Sherwin-Williams Company in the amount of \$28,008.20 and item #3 to Flex-O-Lite in the amount of \$4,920.00 as lowest responsible bidders and authorize the City Manager and Finance Officer to sign the necessary documents after approval by the City Attorney. All voting aye, motion carried.

Bids were opened and publicly read for 2011 Annual Concrete Work. A detailed list is on file in the Finance Office. Bunsness moved, Agnitsch seconded to award the bid to Wright & Sudlow Inc. in the amount of \$585,291.00 and authorize the City Manager and Finance Officer to sign the necessary documents after approval by the City Attorney. All voting aye, motion carried.

Bids were opened and publicly read for 2011 Accessible Quadrant Improvements. A detailed list is on file in the Finance Office. Bunsness moved, Mitchell seconded to award the bid to Wright & Sudlow Inc. in the amount of \$84,189.65 and authorize the City Manager

and Finance Officer to sign the necessary documents after approval by the City Attorney. All voting aye, motion carried.

Bids were opened and publicly read for 2011 Concrete Street Rehabilitation. A detailed list is on file in the Finance Office. Bunsness moved, Kraft seconded to award the bid to B & B Contracting Inc. in the amount of \$129,642.50 and authorize the City Manager and Finance Officer to sign the necessary documents after approval by the City Attorney. All voting aye, motion carried.

BILLS

Rux moved, Bunsness seconded to approve the following audited claims for service, supplies, repairs and maintenance: United Parcel Service 74.92; Dakotacare Administrative Services 93,271.78; SD Public Assurance Alliance 276,972.77; Guardian 216.76; Sun Life 512.00; Flex One 200.00; Alltel 1,696.81; AE2S 320.00; Ringgenberg Electric Inc 1,836.74; HKG Architects, Inc 10,625.00; Clark Engineering 59,334.52. Upon roll call, all voting aye, motion carried.

PAYROLL

Mitchell moved, Bunsness seconded to approve payroll for the period February 13, 2011 through February 26, 2011 and city share of social security, old age & survivor's insurance, retirement and health/life insurance: Governing Body 3,192.28; City Manager 5,995.41; Attorney 4,369.60; Finance 12,923.20; HR 6,655.20; Building 190.49; Computer 3,400.80; Planning/Zoning 11,246.40; Engineer 9,893.63; Police 95,021.41; Fire 84,877.39, David Volek 1,535.93/bw; Fire Prevention 2,456.00; Housing/Building 4,812.00; Street 28,789.10; Traffic 4,656.05; Solid Waste 18,980.74; Transportation 12,717.33; Library 20,867.93; Parks, Recreation & Forestry 69,794.69, Donna Helm 8.00/hr; Airport 13,456.50; Pipe 21,043.69; Water Treatment 16,214.84; Meter 4,860.88; Wastewater 17,558.32; Pump 5,066.33; Wells Fargo 101,601.28; SD Retirement System 60,939.49. Upon roll call, all voting aye, motion carried.

There being no further business, Bunsness moved, Rux seconded that the meeting be adjourned. All voting aye, motion carried.

Prepared by Mary Campton for the Finance Office. /s/ Karl Alberts, Finance Officer.