

City of Scottsbluff, Nebraska

Monday, July 29, 2019

Regular Meeting

Item Consent2

Approve the minutes of the July 17, 2019 Special Meeting.

Staff Contact: City Council

Special Meeting
July 17, 2019

The Scottsbluff City Council met in a special meeting on July 17, 2019 at 6:00 p.m. in the Council Chambers of City Hall, 2525 Circle Drive, Scottsbluff. A notice of the meeting had been read four times, with the last reading completed at least six hours prior to the meeting on KNEB AM 960, KNEB FM 94.1 & The TRAIL 101.7. The notice stated the date, hour and place of the meeting, that the meeting would be open to the public, that anyone with a disability desiring reasonable accommodations to attend the Council meeting should contact the City Clerk's Office, and that an agenda of the meeting kept continuously current was available for public inspection at the office of the City Clerk in City Hall; provided, the City Council could modify the agenda at the meeting if it determined that an emergency so required. A similar notice, together with a copy of the agenda, also had been emailed to each council member, made available to radio stations KMOR, KOAQ, and television stations KSTF and NBC Nebraska. The notice was also available on the city's website July 16, 2019 and posted at City Hall, The Lied Scottsbluff Public Library and Public Safety Building. Notice of the meeting also appeared in a story on the front page of the Scottsbluff Star Herald for July 17, 2019. Vice Mayor McKerrigan presided and City Clerk Wright recorded the proceedings. The meeting was called to order and the Pledge of Allegiance was recited. Vice Mayor McKerrigan welcomed everyone in attendance and encouraged all citizens to participate in the Council meeting asking those wishing to speak to come to the microphone and state their name and who they are representing for the record. Vice Mayor McKerrigan informed those in attendance that a copy of the Nebraska open meetings act is posted in the back of the room on the west wall for the public's review. The following Council Members were present: Jeanne McKerrigan, Nathan Green and Scott Shaver. Also present were City Manager Johnson and City Attorney Kent Hadenfeldt. Absent: Raymond Gonzales and Terry Schaub.

Vice Mayor McKerrigan asked if there were any changes to the agenda. There were none. Vice Mayor McKerrigan asked if any citizens with business not scheduled on the agenda wished to include an item providing the City Council determines the item requires emergency action. There were none.

City Manager Johnson addressed Council, summarizing on Monday, July 15th, at the regular City Council Meeting an emergency agenda item was brought forward to add to the regular meeting agenda. The emergency agenda item would discuss options regarding the north section of the Monument Valley Pathway after the pedestrian bridge and an email was placed in the minutes showing the State required immediate action; however that failed to make the agenda. Mr. Johnson reported the State agreed to give the City until today (July 17) to respond whether or not the City Council would like to pursue the north section to the pathway. He explained there is a penalty, however, of an added payment of approximately \$50,000.00 to \$100,000.00, in addition to what the City already owes if the north section is eliminated. Mr. Johnson gave three options for the City Council to decide on. 1) Continue the project moving forward as it is currently presented; 2) Eliminate the north section of the pathway, but pay a fine between \$50,000.00 and \$100,000.00; 3) Eliminate the entire pathway project, but pay approximately one million dollars and get a set of blueprints.

Mr. Johnson explained the total project cost will be 5.3 million dollars, with 1.4 million being the City's share. He added the State and Federal government will pay the biggest portion of the project. He also reminded Council the City had budgeted over 2 million dollars for the pathway, which has been put in a savings account over several years. After receiving the final numbers and going into the budget workshop, the additional \$600,000.00 was allocated for 23 Club. If Council decides on option 2, the City will have to make a decision if they want to lower the amount allocated to 23 Club.

Council Member Green started discussion by stating he did not know the three proposals were the options. He was under the impression it was acceptable to eliminate the north leg from the project, stating as far as where the money needs to come from is new information to him. He feels we need to move forward in the direction of eliminating the north leg and look for a funding source.

Council Member Shaver commented he wants to discuss the whole thing because he is in

agreement that the north section is part of it, but he also doesn't feel like taking a person's land is appropriate for a project like this. If it was an emergency project, like a highway, and there was one tiny section, that is what eminent domain is used for; not a pathway. He is for the pathway if there is no private property taken; if there is private property taken, he is not for it. As far as he knows, the north leg is taking all people's property and he is absolutely fine with eliminating it.

Vice Mayor McKerrigan added even though we eliminate the north leg, we are not satisfying everyone in the room because, for example, the individuals who live in the Stoney Creek addition will still be impacted. The section that is being examined tonight is after the pedestrian bridge over Highway 26. In reality, there are only two people's properties in the north section that it affects. She is very much for the pathway project and does not know if it is fair to stop it in a section where it is already going, to be fair to the rest of the residents who are along the pathway.

Council Member Shaver asked Mr. Johnson what the time frame is to look at other options. Mr. Johnson answered the options are eliminating the north section or the entire project. Mr. Johnson also explained the right of way negotiations are ongoing with 23 of 48 tracts being signed, which is almost 50%. This includes the needed tracts to do the first season's construction work. If the whole project was eliminated, the City owns the tracts of land.

Council Member Green commented we want to minimize the impact on our citizens. If our only option right now is the north leg and giving direction to halt it, even if it has the caveat of the penalty, then that is what we are stuck with. Council Member Shaver expressed he is fine with halting the north section, but that is not the problem. He does not want to take anyone's land; forcing people to sell their land is ridiculous to put something on it. Mr. Johnson answered Council Member Shaver, stating the State is the responsible charge on this project; they are administering the right of way acquisitions and the engineering. We are not supposed to know who they acquired, what is ongoing; they want a central point of contact, which is why everything is being funneled through them.

Mr. Perry Mader, former Scottsbluff Parks and Recreation Director, approached Council to explain he was the person who helped write the grant and make the route for the pathway project. He stated around 2013 Carroll Mohrbutter approached him regarding a problem he was having, citing he could not get from Westmoor to Walmart in his wheelchair and asked about a pathway. Mr. Mader stated, at the time, they looked at a section from Riverside Park to Northwood Park and the grant was approved right away. Within a few weeks the State called, knowing the City had another section in mind, asking them to submit another grant because they may not receive the funding if they wait. Within a week the City received the grant with a match of approximately \$600,000.00. Mr. Mader explained the type of grant received was an alternative transportation grant, meaning the people who go to work or school have the means to get there by bike, running, or walking, without using a vehicle; the north section was earmarked to get people to and from the hospital. Mr. Mader also commented that writing grants from here on out will be an uphill battle for the City if they choose to eliminate part or the entire pathway because it will show they are not committed fully to completing the project.

Mr. Jerry Smith, owner of Torrington Townhomes, LLC, approached Council and explained he owns the property from the highway to Hilcrest Drive. He is disappointed with the City of Scottsbluff because there has been no communication regarding this subject. The first notification he received is when Gary Brandt called him to appraise his property. The property proposed is partially developed and the land will be very difficult to sell and will be devalued. He has no problem with the overpass due to nothing being developed on that section of land. He requests Council eliminate the north section of the pathway.

Mr. Mark Sitzman asked why the plat dated February of 2014 was approved if the City knew about the pathway project in 2013. Mr. Sitzman showed Council a copy of the plat and questioned why M.C. Schaff designed the lots in 2014. He does not have a problem with the overpass, but thinks there are better routes after it crosses the highway.

Ms. Brenda Anderson approached Council and explained she is the realtor that sold Kevin and Angie Figg their house on Hilcrest Drive. She showed the real estate transfer statement, which included the title insurance policy showing no public use of property or easements being noted on the paperwork.

Had she or the Figgs known about the easements, the house would not have been purchased by the Figgs.

Ms. Kristin Weibe asked that the area by Stoney Creek be addressed and more information be given regarding that section. She wonders about the space and what the issue is. Mr. Johnson stated M.C. Schaff has staked out the area with pink stakes representing the middle of the pathway. The width of the pathway is 10 feet, with the right of way being 14 feet.

Mr. Larry Russell commented the communication is not what it should be for a 5.2 million dollar project.

Mr. Ethan Sheers, owner of United Storage, stated his concern is with safety on Avenue I regarding the heavy commercial, agriculture, and recreation vehicles that turn onto it. Avenue I is a heavy traffic area and he would not feel comfortable walking on the sidewalk.

Mr. Kevin Stocker gave his comments, stating the constitution addresses property rights in the Fifth Amendment; going down a pathway of eminent domain is a dangerous and costly error. There were errors made when the property was platted. The grant was written after the fact; then the new plat was laid over it and wasn't addressed. He does not want his tax dollars entering in what could be a prolonged and expensive eminent domain lawsuit, stating this is a public want and not a public need. He asks to reconsider and negotiate with the State.

Ms. Katie Bradshaw understands people are speaking from a very heartfelt place because they are speaking of their homes. She asks, are we designing a community that is only built for people who can drive. Is this the type of community we want for our future?

Council Member Shaver commented again that he does not feel it is right to take people's property, but since he does not know who on the south side has signed over their property, does not want to kill the whole project. He does want to eliminate the north end because of taking people's property, but would like to have other options by working with the State to use City property only.

Ms. Megan Hayward argued the pathway is a need for our community, stating these types of amenities add great things for people who come to our community and if you lose the amenities you will not retain people. She stated there is no redoing the pathway alignment and the land was not platted because the project was not finalized. There were two years of environmental studies done and the State will not allow the alignment to be changed. She also added, the pathway was public knowledge as the Council before this one agreed to proceed with the project and commit Scottsbluff to the funding.

Mr. Jeff Bradshaw voiced his support for the pathway and stated there is no reason for division in the community. He is curious to know when the deadline was for the grant funds, stating we have a responsibility to the larger public that is providing funds through the grant.

Ms. Allison Furby stated they moved here from out of state and a pathway is something that they look for a community to have.

Vice Mayor McKerrigan explained she can see both sides, but she is not for giving up the whole pathway and feels it is a great idea. She stated accessibility is key and feels we should go forward with the whole project.

Council Member Green stated he does not think the north section of the pathway goes all the way to the hospital; there are sidewalks that give access as well. He is looking for a way to come together as a community and at least keep as much intact as possible with the least amount of impact. He feels the pathway is not set in stone and Mr. Johnson should negotiate. He is okay with sacrificing a small portion in order to maintain the benefits without penalizing, because if we lose it we are worried about \$50,000.00 to \$100,000.00 compared to one million and we can throw out any involvement with a zoo or pool. He asked Vice Mayor McKerrigan to reconsider to have a majority.

Ms. Joanne Phillips stated in 2014 there was a lot of talk about pathways. She feels then would have been the time to express concern about the pathway. She does not think it was a surprise or hidden from the public.

Ms. Angie Figg added the north side is easy to discontinue because it is a road from Grace Chapel to nowhere and would have to be maintained by the City. She stated there have been a lot of mistakes, feeling the pathway should have been addressed with the community at every change. She feels there is a better way to go with our tax dollars. She does not feel the need to pay for the mistakes of the lack of

communication made by the City.

Vice Mayor McKerrigan asked if we stopped at the bridge, if we had the opportunity to re-engineer and go a different route. Mr. Johnson stated the options ended at that portion and we would need a revenue source if we chose to change it. Vice Mayor McKerrigan also stated if we stop it, she does not feel taking money from the 23 Club is the right thing to do. Council Member Shaver commented that we can find another source for the money, that was an option, but we can find another source. Council Member Shaver made a motion, seconded by Council Member Green, "to eliminate the very north section of the Monument Valley Pathway," "YEAS," McKerrigan, Green, and Shaver. "NAYS," None. Absent: Gonzales and Schaub.

Council Member Shaver made the motion, seconded by Council Member Green, "to approve the minutes of the July 1, 2019 Regular Meeting," "YEAS," Green, Shaver, and McKerrigan. "NAYS," None. Absent: Gonzales and Schaub.

Regarding the Community Festival Permit for Sidewalk Sales, Council Member Shaver asked that in the future we have more advance notice, at least two weeks, for anyone applying for a Community Festival Permit in case there are items to be addressed. Council Member Shaver made the motion, seconded by Council Member Green, "to approve the Community Festival Permit for the Downtown Scottsbluff Association for "Sidewalk Sales" on Broadway from 14th St. to 20th St. on July 18, 19, & 20, 2019 from 7:00 a.m. to 7:00 p.m.," "YEAS," McKerrigan, Green, and Shaver. "NAYS," None. Absent: Gonzales and Schaub.

Council Member Shaver asked, regarding the Community Festival Permit for National Night Out, if everyone on Broadway had been notified due to the street closure, since that is what had been recommended in the past, making sure everyone was held to the same level. City Manager Johnson answered the City does not have an Ordinance addressing that and we could change it if Council directed. Mr. Johnson also stated that a good majority of the downtown businesses participate in National Night Out and added for the Bands on Broadway event signatures were obtained from the downtown merchants and it took approximately three days to do so.

Police Chief Spencer came forward and added this is the 26th or 27th event and he has never had a complaint. He stated anyone can get a permit without contacting the business owners because that is how the policy is now. Council Member Shaver commented the reason this was brought up is because a business owner downtown complained about the street and sidewalk closures. He asked that this item be put on a future agenda.

Ms. Katie Bradshaw commented the business owner that complained was representing multiple businesses and not just himself. She stated the business owners were not informed the streets and sidewalks would be closed for events. Council Member Shaver, seconded by Council Member Green made the motion, "to approve a Community Festival Permit for the Scottsbluff Police Department for National Night out on the 1400 to 1900 Blocks of Broadway, August 6, 2019 from 4:00 p.m. to 9:00 p.m. including street closures, vendors and noise permit," "YEAS," Green, McKerrigan, and Shaver. "NAYS," None. Absent: Gonzales and Schaub.

Regarding the Request for Qualifications for Professional Engineering Services for the Scottsbluff School Zone Safety Assessment, Mr. Johnson explained this would encompass all schools as we try to get an overall grasp of every school zone in the City. Because of an unfortunate accident of a pedestrian being hit, the City will administer the requests of the study. He added the school district agreed to pay half of the cost and the City will try to get someone on board before the beginning of the school year to do the implementations. Council Member Green made the motion, seconded by Council Member Shaver, "to approve the Request for Qualifications for Professional Engineering Services for the Scottsbluff School Zone Safety Assessment and authorize the City Clerk to advertise for proposals to be received until 2:00 p.m., August 6, 2019," "YEAS," Green, Shaver, and McKerrigan. "NAYS," None. Absent:

Gonzales and Schaub.

Ms. Katie Bradshaw approached Council and wholly applauds the City doing this study. She is a member of the Tri City Active Living Advisory Committee that is a group of people who are very committed and interested in this issue who have the ability to volunteer and provide grant resources to supplement what the schools and City can provide.

Under Council Reports Council Member Shaver stated at the 911 Committee meeting the tower was pushed back due to zoning issues. They will go to the City Council on Monday, July 22nd.

Council Member Shaver made the motion, seconded by Vice Mayor McKerrigan, “to adjourn the meeting at 7:38 p.m.,” “YEAS,” Shaver, McKerrigan, and Green. “NAYS,” None. Absent: Gonzales and Schaub.

Vice Mayor

Attest:

City Clerk “SEAL”