

**THE OFFICIAL PROCEEDINGS OF THE SPECIAL MEETING OF THE GERING CITY COUNCIL, June 29, 2015**

A special meeting of the City Council of Gering, Nebraska was held in open session on June 29, 2015 at 6:00 p.m. at Gering City Hall at 1025 P Street, Gering, NE. Present were Mayor Kaufman, and Councilmembers Smith, Christensen, Gibbs, Holliday, Morrison, O'Neal and Cowan. Absent was Councilmember Allred. Also present were City Administrator Lane Danielzuk, City Clerk Kathy Welfl and City Attorney Jim Ellison. Notice of the meeting was given in advance by publication in the Star-Herald. All proceedings hereafter were taken while the meeting was open to the attendance of the public except as otherwise indicated.

**CALL TO ORDER**

Mayor Kaufman called the meeting to order at 6:00 p.m. The Mayor noted that there was a quorum of the Council and City business could be conducted.

1. Recital of the Pledge of Allegiance and Prayer
2. Roll Call
3. Excuse councilmember absence

**Motion by Councilmember Smith to excuse the absence of Councilmembers Gibbs, Holliday and O'Neal from the June 22, 2015 Regular City Council meeting. Seconded by Councilmember Cowan. There was no discussion. The Mayor called the vote. "AYES": Smith, Christensen, Gibbs, Holliday, O'Neal, Morrison, Cowan. "NAYS": None. Absent: Allred. Abstaining: None. Motion carried.**

**OPEN MEETINGS ACT - NEB.REV.STAT. CHAPTER 84, ARTICLE 14**

Mayor Kaufman stated as required by State Law, public bodies shall make available at least one current copy of the Open Meetings Act posted in the meeting room. Agenda items may be moved up or down on the agenda at the discretion of the Mayor. As required by State Law, additions may not be made to this agenda less than 24 hours before the beginning of the meeting unless they are considered under this section of the agenda and Council determines that the matter requires emergency action.

**CONSENT AGENDA:**

(Items under the Consent Agenda are proposed for adoption by one action for all items unless any member of Council requests that an item be considered separately.)

1. Approve SDL, Kozy Keno – Concert at Amphitheater, July 19, 2015, 1 p.m. -11:59 p.m.

The Mayor noted that the Amended agenda changed the date of the Consent Agenda item for an SDL application to July 19 instead of July 18.

**Motion by Councilmember Morrison to approve the Consent Agenda, second by Councilmember O'Neal. There was no discussion. The Mayor called the vote. "AYES": Smith, Christensen, Gibbs, Holliday, O'Neal, Morrison, Cowan. "NAYS": None. Absent: Allred. Abstaining: None. Motion carried.**

**PUBLIC HEARINGS:**

**1. Public hearing to consider a Re-Development Agreement using Tax Increment Financing (TIF) for Troy and Lisa Weborg owners of Warehouse 21 and will include major renovation and construction of an existing building including improvements to the lot area with new and/or upgraded utilities, lot improvements including concrete surfacing, right-of-way improvements consisting of utilities, ADA design and construction, curb & gutter, sidewalk, and landscaping. A Re-Development Plan was submitted by the owner's along with improvement drawings for the project and approved November 11, 2014.**

Mayor Kaufman opened the Public Hearing at 6:03 p.m.

City Engineer Paul Snarr addressed the Council: Mr. Mayor and City Council Members this is a Public Hearing to consider a Re-Development Agreement using Tax Increment Financing (TIF) for Troy and Lisa

Weborg owners of Warehouse 21 and will include major renovation and construction of an existing building including improvements to the lot area with new and/or upgraded utilities, lot improvements including concrete surfacing, right-of-way improvements consisting of utilities, ADA design and construction, curb & gutter, sidewalk, and landscaping. A Re-Development Plan was submitted by the owner's along with improvement drawings for the project and approved November 11, 2014.

A Re-Development Plan and Agreement, Tax Increment Development Revenue Bond, and a Resolution have been prepared for this Tax Increment Financing (TIF) Project. The TIF financing would come from real property including Tax Lot 24 and part of Tax Lot 25 and Unplatted Land (full legal description available at the City of Gering Administration Office). This project will not be financed by the City of Gering; rather the owners must either sell the bond to a bank or investor or use it as collateral for a loan at the bank. The City will manage/receive the TIF proceeds from the County on this project as they come in yearly and then forward said TIF proceeds (only to the extent they are received) to the holder of the bond at that time (whether it be the redeveloper, bank, or other investor).

The Public Hearing Notice was published in the paper May 21, 2015, June 4, 2015, and June 11, 2015 and notice was sent per State Statute 18-2115 to Scotts Bluff County, Gering School District, Community College(s), Educational Service Unit, and Natural Resource District. The site was also signed per State Statute.

Mr. Mayor and City Council Members, I have completed my entry regarding the Public Hearing for this Re-Development Agreement using Tax Increment Financing (TIF) for Troy and Lisa Weborg, owners of Warehouse 21, and ask that you please keep this hearing open until all entries are put into this record. Mayor Kaufman then entertained questions.

Councilmember Gibbs stated that in reading the Re-Development agreement under 3c, it says "The project would not be economically feasible without the use of Tax Increment Financing. Project would not have occurred on the re-development project site without TIF." He asked since the project is 90% done why are they coming for Tax Increment Financing now to fund a project that wasn't feasible before? Mr. Snarr said he thinks they planned on this from the beginning. This was brought to our attention months and months ago, however the tax increment financing wouldn't be available; everything has to be recorded by the end of July. So when they approached us a little bit less than a year ago nothing could be recorded for this; it's on a yearly basis that it has to be recorded. The notice to divide, the agreements have to be recorded by the end of July. He said this will really help them with the project. Councilmember Gibbs said if you can't do it without this wouldn't you want this before you did it? He doesn't think Council is going to reject it but if they did would the project then be feasible? Councilmember Christensen said he would have to agree. Mr. Snarr said he doesn't think it would be unfeasible he just thinks they counted on this for almost 8-10 months and knew that this would be going through the process. However, even if we had recorded it months ago there would have been no action taken because it has to go off the tax year 2015 and then it starts in 2016; the tax increase will come about in the year 2016. Mr. Snarr said he really can't answer that question; it would have to come from the owner.

Councilmember Christensen said his concern is it says the project would not have occurred on the site without tax increment financing, but there it is. Mr. Snarr said all he can say to that is that he thinks they've known all along that they were going to try to get tax increment financing, that this project did indeed go through the blighted and substandard process and he knows that the owners were counting on it and it was a feasible project for TIF. He thinks they knew that this was a project that would be a valid project for this type of financing and again it will be bonded through the bank.

Councilmember Smith said they used the data for that for their financing so they knew they'd get that. Mr. Snarr said they knew that this area went through a study to determine if it was blighted and substandard and this is a very valid project for TIF. Councilmember Smith said he's glad they didn't wait until now to start because that warehouse sat empty for 20 years. Mr. Snarr said when they first approached the City it was quite a while ago and this was a very valid project for this type of financing and they knew this was

something that could come about. They started this before the weather turned cold and tried to get as much done before the weather turned cold.

Councilmember Gibbs said he doesn't question the validity of the project; he thinks it's a good project. But it just looks like the cart is in front of the horse. You're saying that this project can't happen without the tax increment financing, the Council has not made any previous commitment to that TIF, and yet if we were to reject it now what would happen? Councilmember Gibbs said he thinks in the future we need to get the commitment before people think they're going to get it rather than expect that they're going to get it before we commit it. Mr. Snarr said we could have approached Council back in August or September but we didn't have the paperwork; it takes quite a while to put these development agreements together. Even if we had put it together in August or September it wouldn't take effect until July 31. We're just barely getting the paperwork completed on this.

Mayor Kaufman said he thinks the other component here is he doesn't know that it's the Council's responsibility to micromanage the business decisions of our business community. It was an eligible project based on the data and they made a business decision to move forward without Council approval on the TIF standing and that's just a calculated risk, but he doesn't know if it's our job to police that. The matter at hand is the TIF financing piece. Is the project eligible? The data shows that it is. Timing is individual business decisions by the owners. Mr. Snarr said all projects we've done tax increment financing on the construction has started, has just barely started or is getting ready to start but we get these recorded about the same date every year.

Councilmember Morrison asked about the July 31st date. Mr. Snarr said that's just the Assessor's deadline to have the notice to divide to be recorded. Councilmember Christensen asked if these TIF funds will be used solely for the construction or is something else planned. Mr. Snarr replied that TIF funds can be used for a building like this where it's a remodel; you could probably use it for the whole building but we have different policies for different conditions. A building like this you could look at TIF for the whole project.

Mayor Kaufman asked if anyone had anything else. Finance Director, John Mejia, stated in regards to this in the near future we're going to have another one where the buildings already exist but the critical thing is the Notice to Divide that needs to be filed by August 1st. And so you're going to have that same situation here in the real near future. The key part is we have to file within the time frame in order to get that base where you'll have that affect for the next 15 years.

Attorney John Selzer stated that he's present on behalf of Lisa and Troy Weborg and Lisa is present as well. He thanked the City staff and Mr. Ellison for the work they've put in on this project. It's a project that is 3.2 million dollars in private funds going into the 10th Street corridor which we know has been deemed blighted and substandard back in December. He said he believes it will help beautify the 10th Street Corridor and not only increase property values but increase employment, sales tax, personal property and could lead to further development there as well. He thinks that's all in line with why you use Tax Increment Financing. This project, with that in mind, we had to take a little bit of a leap in faith knowing that Council hadn't approved it yet but we felt that the Council had blighted and made it substandard so we knew that the Council intended that TIF funds be available and used in this area. We think the project itself is right in line with that purpose. Again there is nothing in the statute that requires how Council is going to make that determination but what he has seen is that they make it based on the statements of the Redeveloper themselves and they've made that statement in this case. He thanked the Council and staff for their work and consideration and on behalf of the Weborgs he requested this be approved by Council.

Mayor Kaufman asked if anyone else wished to speak on this, seeing none the Mayor asked if Council wished to have the Administrative Record read aloud. Seeing none he closed the Administrative record and the public hearing closed at 6:17 p.m.

Councilmember Christensen stated that he has one more question. He asked the results of the Planning Commission meeting. Mr. Snarr said they recommended to move it forward to the Council and they approved it to come before you tonight.

**Motion by Councilmember Smith to enter the Administrative Record including the Re-Development plan into the Public Record. Second by Councilmember Morrison. There was no discussion. The Mayor called the vote. "AYES": Smith, Christensen, Gibbs, Holliday, O'Neal, Morrison, Cowan. "NAYS": None. Absent: Allred. Abstaining: None. Motion carried.**

**1a. Approve or deny Re-Development Agreement using Tax Increment Financing (TIF) for Troy and Lisa Weborg owners of Warehouse 21. (Will include major renovation and construction of an existing building including improvements to the lot area with new and/or upgraded utilities, lot improvements including concrete surfacing, right-of-way improvements consisting of utilities, ADA design and construction, curb & gutter, sidewalk, and landscaping).**

**Motion by Councilmember Smith to approve the Re-Development Agreement using Tax Increment Financing (TIF) for Troy and Lisa Weborg owners of Warehouse 21. (Will include major renovation and construction of an existing building including improvements to the lot area with new and/or upgraded utilities, lot improvements including concrete surfacing, right-of-way improvements consisting of utilities, ADA design and construction, curb & gutter, sidewalk, and landscaping). Second by Councilmember Morrison. There was no discussion. The Mayor called the vote. "AYES": Smith, Gibbs, Holliday, O'Neal, Morrison, Cowan. "NAYS": Christensen. Absent: Allred. Abstaining: None. Motion carried.**

**1b. Approve and authorize the Mayor to sign Re-Development Agreement using Tax Increment Financing (TIF) for Troy and Lisa Weborg owners of Warehouse 21.**

**Motion by Councilmember Holliday to approve and authorize the Mayor to sign Re-Development Agreement using Tax Increment Financing (TIF) for Troy and Lisa Weborg owners of Warehouse 21. Second by Councilmember O'Neal. There was no discussion. The Mayor called the vote. "AYES": Smith, Christensen, Gibbs, Holliday, O'Neal, Morrison, Cowan. "NAYS": None. Absent: Allred. Abstaining: None. Motion carried.**

**1c. Approve and authorize the Mayor to sign Tax Increment Development Revenue Bond.**

**Motion by Councilmember Morison to approve and authorize the Mayor to sign Tax Increment Development Revenue Bond. Second by Councilmember Christensen. There was no discussion. The Mayor called the vote. "AYES": Smith, Christensen, Gibbs, Holliday, O'Neal, Morrison, Cowan. "NAYS": None. Absent: Allred. Abstaining: None. Motion carried.**

**1d. Approve Resolution 15-6-1**

**RESOLUTION NO. 15-6-1**

**BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF GERING, NEBRASKA:**

**Recitals:**

- a. The City of Gering, Nebraska, a municipal corporation and city of the first class (the "City"), has determined it to be desirable to undertake and carry out urban redevelopment projects in certain areas of the City that are determined to be blighted and substandard and in need of redevelopment;
- b. The Community Development Law, Chapter 18, Article 21, Reissue Revised Statutes of Nebraska, as amended (the "Act"), prescribes the requirements and procedures for the planning and implementation of redevelopment projects;
- c. The City has previously declared an area which includes an area legally described in Exhibit A (the "Redevelopment Area" or "Project Area") to be blighted and substandard and in need of redevelopment pursuant to the Act;
- d. The City has received a Redevelopment Plan (the "Redevelopment Plan") prepared by Troy and Lisa Weborg (the "Redeveloper") for the redevelopment of the Redevelopment Area;
- e. The Planning Commission of the City has reviewed the Redevelopment Plan on June 23, 2015 and recommended its approval by the Mayor and Council of the City;

f. The City published and mailed notices of a public hearing regarding the consideration of the approval of the Redevelopment Plan pursuant to Section 18-2115 of the Act, and has on the date of this Resolution held a public hearing on the proposal to approve the Redevelopment Plan; and

**Resolved that:**

1. The Redevelopment Plan has been reviewed and approved in form as presented.
2. The City has determined that the proposed land uses and building requirements described in the Redevelopment Plan are designed with the general purpose of accomplishing a coordinated, adjusted, and harmonious development of the City and its environs which will, in accordance with present and future needs, promote health, safety, morals, order, convenience, prosperity and the general welfare, as well as efficiency in economy in the process of development.
3. In compliance with section 18-2114 of the Act, the City finds and determines as follows: (a) the Redevelopment Area constituting the redevelopment project will not be acquired by the City and the City will receive no proceeds from disposal to the Redeveloper; (b) the Redeveloper has already acquired the Project Area on or about June 25, 2013 for \$320,000.00 in a private sale which was not a part of the Plan, and was not by condemnation; (c) the estimated cost of preparing the project site and related costs are \$3,176,874.00; (d) the method of financing the Redevelopment Project shall be by (i) private funds from the Redeveloper in the estimated amount of \$2,440,874.00 and (ii) the issuance of a tax increment revenue bond in the amount of \$768,000.00; and (e) no families or businesses will be displaced as a result of the project.
4. The Redevelopment Plan is determined to be feasible and in conformity with the general plan for the development of the City as a whole, the Redevelopment Plan is in conformity with the legislative declarations and determinations set forth in the Act, the redevelopment project described in the Redevelopment Plan would not be economically feasible and would not have occurred within the Project Area without the use of tax-increment financing, and the costs and benefits of the redevelopment project, including costs and benefits to other affected political subdivisions, the economy of the City, and the demand for public and private services have been analyzed by the City and have been found to be in the long-term best interest of the community impacted by the redevelopment project.
5. The Redevelopment Contract between the City acting as the City of Gering Community Development Agency and the Redeveloper in the form negotiated between City staff and Redeveloper, as presented is approved and incorporated herein. This Resolution shall be construed consistently with the Redevelopment Contract.
6. A tax increment revenue bond in the aggregate principal amount of \$768,000.00 is ordered issued in accordance with Neb. Rev. Stat. § 18-2125 by the City and shall be designated as its "Tax Increment Development Revenue Bond (Warehouse 21), Series 2015" (the "Bond"). The Bond shall be in substantially the form of the attached "Exhibit B" and shall be subject to the terms and conditions as set forth in the Redevelopment Contract.
7. The Mayor and Clerk are authorized and directed to execute such documents and take such further actions as are necessary to carry out the purposes and intent of this Resolution, Redevelopment Plan, and Redevelopment Contract on behalf of the City of Gering acting by and through its authority as the Community Development Agency.

8. This Resolution shall become effective immediately upon its adoption.

**PASSED and APPROVED** on June 29, 2015.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk (Seal)

**Note:** Exhibit A, B and the Provision for Registration are made part of this official record by reference.

**Motion by Councilmember Holliday to approve and authorize the Mayor to sign Resolution 15-6-1. Second by Councilmember Morrison. There was no discussion. The Mayor called the vote. "AYES": Smith, Christensen, Gibbs, Holliday, O'Neal, Morrison, Cowan. "NAYS": None. Absent: Allred. Abstaining: None. Motion carried.**

**2. Public hearing to consider an application to change zoning requested by Danielle Self, owner of a former Day Care Business at 1200 11<sup>th</sup> Street. The rezone would include Tax Lot 32 (Unplatted Land) located in the NW1/4 of the SE1/4 of Section 2, Township 21 North, Range 55 West of the 6<sup>th</sup> Principal Meridian from RM (Residential Medium Density District) to BCB (Central Business District).**

Mayor Kaufman opened the Public Hearing at 6:22 p.m.

Rod Sterkel, Building Inspector, presented the Administrative Record: Mr. Mayor and City Council Members this is the public hearing to consider an application to change zoning requested by Danielle Self, owner of a Day Care Business at 1200 11<sup>th</sup> Street. The rezone would include Tax Lot 32 (Unplatted Land) located in the NW1/4 of the SE1/4 of Section 2, Township 21 North, Range 55 West of the 6<sup>th</sup>

Principal Meridian from RM (Residential Medium Density District) to BCB (Central Business District). The owner has requested this re-zone in order to sell the property in which the new purchaser would like to keep this Day Care Business in operation. This rezone will also require an Exception/Conditional Use Permit in order to meet zoning requirements (next Public Hearing).

The surrounding boundary consists of RM to the North – RM to the South & West – BCB to the East (adjoining).

**Administrative Record:**

**Mr. Mayor and City Council Members, you have been provided with the administrative record in your packets and I would ask for this Council's approval that I not read through the record unless you would like this read and that it be made a part of the official proceedings of this Public Hearing.**

- Application for a Change in Zoning by Danielle Self owner of the Daycare Business, May 26, 2015.
- City of Gering Current Subdivision and Zoning Regulations dated March 1984.
- City of Gering 1995 Comprehensive Plan (Amendment No. 1 dated November 2001).
- Publication Notice and written notice regarding this zoning change was completed and sent to all owners of land within 300 feet per the requirements of the City's Zoning and Subdivision Regulations Section 15.2 and are incorporated by reference in this Administrative Record. Signs were also posted on site for the proposed change in zoning per zoning regulations.
- Public Hearing Notice Re-published due to no Planning Commission Quorum on the regularly scheduled meeting date of June 9, 2015 - 6/12/15, 6/19/15, and 7/2/15.
- Planning Commission Public Hearing and approval to move forward for the City Council Public Hearing 6/23/2015.
- City Engineer/Director of Engineering & Community Planning Administrative Record as shown herein.

Mayor Kaufman asked if Council wished to have the Administrative Record read aloud. Seeing none he asked if anyone wished to speak in favor or opposition of the application.

Patricia Deines, 2430 Chateau Way in Gering, spoke in favor of the application and zone change. She stated there are a few things she needs to do to it to bring it up to a little better standard after she purchases it including a privacy fence in the backyard, painting the exterior and upgrading a few things inside and outside. She thanked Council.

Mr. Mayor and City Council Members, I have completed my entry regarding this Public Hearing to consider this application for a change in zoning requested by Danielle Self, owner of a Day Care Business at 1200 11<sup>th</sup> Street from RM (Residential Medium Density District) to BCB (Central Business District) and ask that you please keep this hearing open until all entries are put into this record.

Councilmember Gibbs asked if the property to the north is BCB now. Mr. Snarr stated the only property that is BCB that is adjoining is the property to the east, everything else around it is RM. Mr. Snarr said he doesn't see any problems with it; it's adjoining. He sees no problems with this.

Pat Heath said he knows we followed it as a day care back into the mid 80's so it has been a day care for quite some time there. Councilmember Smith asked Mr. Ellison if he agrees with it. Mr. Ellison said because it's adjoining he doesn't see a problem. It fits the area and the intent of the Comprehensive Plan.

With no further comments the Mayor closed the Administrative Record and the Public Hearing closed at 6:29 p.m.

Motion by Councilmember Gibbs to enter the Administrative Record into the Public Record. Seconded by Councilmember Christensen. There was no discussion. The Mayor called the vote. "AYES": Smith, Christensen, Gibbs, Holliday, O'Neal, Morrison, Cowan. "NAYS": None. Absent: Allred. Abstaining: None. Motion carried.

2a. Approve or deny application to change zoning requested by Danielle Self, owner of a Day Care Business at 1200 11<sup>th</sup> Street. The rezone would include Tax Lot 32 (Unplatted Land) located in the NW1/4 of the SE1/4 of Section 2, Township 21 North, Range 55 West of the 6<sup>th</sup> Principal Meridian from RM (Residential Medium Density District) to BCB (Central Business District).

Motion by Councilmember Morrison to approve application to change zoning requested by Danielle Self, owner of a Day Care Business at 1200 11<sup>th</sup> Street. The rezone would include Tax Lot 32 (Unplatted Land) located in the NW1/4 of the SE1/4 of Section 2, Township 21 North, Range 55 West of the 6<sup>th</sup> Principal Meridian from RM (Residential Medium Density District) to BCB (Central Business District). Seconded by Councilmember Smith. There was no discussion. The Mayor called the vote. "AYES": Smith, Christensen, Gibbs, Holliday, O'Neal, Morrison, Cowan. "NAYS": None. Absent: Allred. Abstaining: None. Motion carried.

2b. Approve Ordinance 2001 – AN ORDINANCE OF THE CITY OF GERING TO RECLASSIFY AND CHANGE ZONING FOR TAX LOT 32 (UNPLATTED LAND) LOCATED IN THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 21 NORTH, RANGE 55 WEST OF THE 6<sup>TH</sup> PRINCIPAL MERIDIAN, CITY OF GERING, SCOTTS BLUFF COUNTY, NEBRASKA, FROM RESIDENTIAL MEDIUM DENSITY DISTRICT (RM) TO CENTRAL BUSINESS DISTRICT (BCB) AND PROVIDING FOR AN EFFECTIVE DATE HEREOF.

Councilmember Gibbs made a motion to introduce Ordinance No. 2001: AN ORDINANCE OF THE CITY OF GERING TO RECLASSIFY AND CHANGE ZONING FOR TAX LOT 32 (UNPLATTED LAND) LOCATED IN THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 21 NORTH, RANGE 55 WEST OF THE 6<sup>TH</sup> PRINCIPAL MERIDIAN, CITY OF GERING, SCOTTS BLUFF COUNTY, NEBRASKA, FROM RESIDENTIAL MEDIUM DENSITY DISTRICT (RM) TO CENTRAL BUSINESS DISTRICT (BCB) AND PROVIDING FOR AN EFFECTIVE DATE HEREOF. Seconded by Council member Holliday. There was no discussion. The Mayor called the vote. "AYES": Smith, Christensen, Gibbs, Holliday, O'Neal, Morrison, Cowan. "NAYS": None. Absent: Allred. Abstaining: None. Motion carried.

Councilmember O'Neal moved that the Ordinance be designated as Ordinance No. 2001 and the title thereof approved, and that the Statutory Rule requiring Ordinances to be fully and distinctly read on three different days be dispensed with, which motion was seconded by Councilmember Morrison. There was no discussion. The Clerk called the roll. "AYES": Smith, Christensen, Gibbs, Holliday, O'Neal, Morrison, Cowan. "NAYS": None. Absent: Allred. Abstaining: None. Motion carried.

The motion to suspend the statutory rule having been concurred in by three-fourths of all members elected to the Council, was, by the Mayor declared to have carried.

Whereupon Ordinance No. 2001 was read by title only, Councilmember Cowan moved that the Ordinance be passed as read, which motion was seconded by Councilmember Smith. The question is shall Ordinance No. 2001 be passed? There was no discussion. The Mayor called the vote. "AYES": Smith, Christensen, Gibbs, Holliday, O'Neal, Morrison, Cowan. "NAYS": None. Absent: Allred. Abstaining: None. Motion carried.

The Clerk stated: The passage and adoption of the Ordinance having been concurred in by a majority of all members elected to the Council was by the Mayor declared passed.

3. This is the public hearing to consider an application for an Exception/Conditional Use Permit requested by Danielle Self to allow a Day Care Business which was previously operated at 1200 11<sup>th</sup> Street contingent on the approval of the zoning change to BCB (per the previous Public Hearing). The property is located on Tax Lot 32 (Unplatted Land) in the NW1/4 of the SE1/4 of Section 2, Township 21 North, Range 55 West of the 6<sup>th</sup> Principal Meridian.

The Mayor opened the Public Hearing at 6:32 p.m.

Rod Sterkel addressed the Mayor and Council: Mr. Mayor and City Council Members this is the public hearing to consider an application for an Exception/Conditional Use Permit requested by Danielle Self to allow a Day Care Business currently being operated at 1200 11<sup>th</sup> Street contingent on the approval of the zoning change to BCB (per the previous Public Hearing). The property is located on Tax Lot 32 (Unplatted Land) in the NW1/4 of the SE1/4 of Section 2, Township 21 North, Range 55 West of the 6<sup>th</sup> Principal Meridian.

The owner applied for this Exception/Conditional Use Permit in order to sell the property in which the new purchaser would like to keep this Day Care Business in operation.

**Administrative Record:**

**Mr. Mayor and City Council Members, you have been provided with the administrative record in your packets and I would ask for this Council's approval that I not read through the record unless you would like this read and that it be made a part of the official proceedings of this Public Hearing.**

- Application for an Exception/Conditional Use Permit by Danielle Self owner of the Daycare Business, May 26, 2015.
- City of Gering Current Subdivision and Zoning Regulations dated March 1984.
- City of Gering 1995 Comprehensive Plan (Amendment No. 1 dated November 2001).
- Publication Notice and written notice regarding this zoning change was completed and sent to all owners of land within 300 feet per the requirements of the City's Zoning and Subdivision Regulations Section 15.2 and are incorporated by reference in this Administrative Record. Signs were also posted on site for the proposed change in zoning per zoning regulations.
- Public Hearing Notice Re-published due to no Planning Commission Quorum on the regularly scheduled meeting date of June 9, 2015 - 6/12/15, 6/19/15, and 7/2/15.
- Planning Commission Public Hearing approval to move forward for the City Council Public Hearing 6/23/2015.
- City Engineer/Director of Engineering & Community Planning Administrative Record as shown herein.

Mayor Kaufman asked if Council wished to have the Administrative Record read aloud. Seeing none he asked if anyone wished to speak in favor or opposition of the application. Seeing none Mr. Sterkel completed his entry.

Mr. Sterkel stated: Mr. Mayor and City Council Members, I have completed my entry regarding this Public Hearing to consider this application for an Exception/Conditional Use Permit requested by Danielle Self to allow a Day Care Business at 1200 11<sup>th</sup> Street within BCB Zoning and ask that you please keep this hearing open until all entries are put into this record.

With no further comments the Mayor closed the Administrative Record and the Public Hearing closed at 6:35 p.m.

**Motion by Councilmember Smith to enter the Administrative Record into the Public Record. Seconded by Councilmember Smith. There was no discussion. The Mayor called the vote. "AYES": Smith, Christensen, Gibbs, Holliday, O'Neal, Morrison, Cowan. "NAYS": None. Absent: Allred. Abstaining: None. Motion carried.**

3a. Approve or deny application for an Exception/Conditional Use Permit requested by Danielle Self to allow a Day Care Business previously operated at 1200 11<sup>th</sup> Street contingent on the approval of the zoning change to BCB (per the previous Public Hearing). The property is located on Tax Lot 32 (Unplatted Land) in the NW1/4 of the SE1/4 of Section 2, Township 21 North, Range 55 West of the 6<sup>th</sup> Principal Meridian.

Motion by Councilmember Morrison to approve the application for an Exception/Conditional Use Permit requested by Danielle Self to allow a Day Care Business previously operated at 1200 11<sup>th</sup> Street contingent on the approval of the zoning change to BCB (per the previous Public Hearing). The property is located on Tax Lot 32 (Unplatted Land) in the NW1/4 of the SE1/4 of Section 2, Township 21 North, Range 55 West of the 6<sup>th</sup> Principal Meridian. Seconded by Councilmember Smith. There was no discussion. The Mayor called the vote. "AYES": Smith, Christensen, Gibbs, Holliday, O'Neal, Morrison, Cowan. "NAYS": None. Absent: Allred. Abstaining: None. Motion carried.

#### **CURRENT BUSINESS:**

1. Third Reading and approval of Ordinance 1999 - ORDINANCE 1999 - AN ORDINANCE OF THE CITY OF GERING, NEBRASKA, VACATING A PORTION OF PATHFINDER SUBDIVISION PER AN APPROVED VACATION PLAT BY COUNCIL OF LOTS 1-12, BLOCK 2 OF PATHFINDER SUBDIVISION & JAN DRIVE, ORIGINALLY RECORDED UNDER INSTRUMENT NO. 4036 DATED AUGUST 18, 1976 BEING A PART OF THE NORTHWEST QUARTER OF SECTION 12, TOWNSHIP 21 NORTH, RANGE 55 WEST OF THE 6<sup>TH</sup> P.M., CITY OF GERING, SCOTTS BLUFF COUNTY, NEBRASKA.

Mayor Kaufman noted that this will be the third reading of this ordinance; the first reading took place on June 8 and the second reading took place on June 22.

Councilmember O'Neal moved that the Ordinance be designated as Ordinance No. 1999 and the title thereof approved as the third reading, which motion was seconded by Councilmember Morrison. There was no discussion. The Clerk called the roll. "AYES": Smith, Christensen, Gibbs, Holliday, O'Neal, Morrison, Cowan. "NAYS": None. Absent: Allred. Abstaining: None. Motion carried.

The motion to designate the Ordinance as No. 1999 and the title thereof approved having been concurred in by a majority of all members elected to the Council, was, by the Mayor declared to have carried.

Whereupon Ordinance No. 1999 was read by title only, Councilmember Cowan moved that the Ordinance be passed as read, which motion was seconded by Councilmember Smith. The question is shall Ordinance No. 1999 be passed? The Mayor called the vote. "AYES": Smith, Christensen, Gibbs, Holliday, O'Neal, Morrison, Cowan. "NAYS": None. Absent: Allred. Abstaining: None. Motion carried.

The passage and adoption of the Ordinance having been concurred in by a majority of all members elected to the Council was by the Mayor declared passed.

2. Third Reading and approval of Ordinance 1997 - AN ORDINANCE TO AMEND ORDINANCE 1712 USE OF CITY PROPERTY OR FACILITIES FOR SPECIAL EVENTS, OF THE GERING MUNICIPAL CODE, GERING NEBRASKA: REPEALING THE EXISTING ORDINANCE 1712 AND PROVIDING FOR AN EFFECTIVE DATE THEREOF.

Mayor Kaufman noted that this will be the third reading of this ordinance regarding the use of city property; the first reading took place on June 8 and the second reading took place on June 22.

**Councilmember O'Neal moved that the Ordinance be designated as Ordinance No. 1997 and the title thereof approved as the third reading, which motion was seconded by Councilmember Morrison.**

**Discussion:** Councilmember Cowan asked why this is being brought forth. He knows it's the third reading but asked if it could be explained.

Public Works Director, Pat Heath, addressed Council and stated that regarding the block parties, it was brought up at a staff meeting that there was considerable liability the way we were issuing barricades out. It was brought up by another staff member but Mr. Heath did bring up when he worked for a City 20 some years ago that they quit issuing barricades to customers or residents so they could have block parties because there was considerable liability on the City. Barricades are not put up by City staff, they're put up by residents. There is no signing put up with the barricades so he thinks that leaves a lot of liability on the City. We were also checking out barricades that didn't meet highway standards or Federal standards and we don't have the type 3 barricades to give out to people; we have enough for the work we do but we don't have enough to be putting out type 3 barricades all over the City or six different places when people have block parties. We did contact LARM and they strongly urged that we not issue barricades or allow residents to block our streets for block parties because it is a huge liability on the City. Councilmember Smith said so LARM didn't come to us and say we don't want you to have that, we went to them and said what do you think about block parties. Mr. Heath said we contacted LARM. We decided in a staff meeting to contact LARM and get their opinion on it. Mr. Heath said he kind of knew where the opinion would come from from previous experience years ago. Their comments didn't surprise him a bit. He believes there was some checking into other cities and he believes that most other cities do not allow or issue barricades or allow block parties in the roads.

Councilmember O'Neal said she was there for the first reading and this is the third reading but she doesn't believe there was any public opposition at that time; she asked if there was public comment against doing this. Mayor Kaufman replied no.

Councilmember Holliday asked what Scottsbluff does. City Clerk Weiff stated that the City of Scottsbluff recently changed their ordinance. They have roughly 17 provisions that have to be met for block parties, some relate to people using types of barricades including cones. She said it's all done through their Police Department. She did talk to LARM about that as well and in spite of that they are still very much not in favor of it. Councilmember Holliday said he has some concerns. One, we already own the Civic Center and that is a huge liability that we expose ourselves to constantly. We're talking about putting in a splash pad which is right in front of the civic center as well which in his eyes has got to be a huge liability. The other thing he has found is that there is always somebody that will tell you that no matter what you are doing you are opening yourself up to a liability. He said he doesn't think we have a whole lot of these in a year. From his understanding if this passes tonight if you were planning on having one this weekend you can't have one now. From what he understands there is no grandfather clause and so if you're on the docket and this passes tonight that kind of shoots your party this weekend. To him that's not really being fair to our citizens.

Mayor Kaufman stated that he was at the standing committee meeting and it was a spirited debate. While he sees Councilmember Holliday's point of view he thinks in his last comment he hit the nail on the head; and that is if they are planning a party this weekend...We as a City provide a lot of public spaces for the public to use free which is parks; unfortunately you cannot have alcohol. He said he thinks a lot of this issue boils down to the consumption of alcohol and blocking a street off. The tough one is do we take on the liability for the City for those types of activities going on. He's not saying that every block party does that activity but a lot of them do and when barricades are moved and someone's not there fully staffing it by the City to make sure that that happens, there is added risk for us. He added that Councilmember Holliday is correct, there are not very many a year. The most we've had in the last three-year period is six; on average it looks like it's two or three a year. So no, it's not a big deal until it's a deal.

City Engineer Paul Snarr added that when someone wants a street closed or when you barricade a street, the barricades have to meet a certain retro-reflectivity, they have to have the stripes going the right

ways. If we just hand them out to people to put them up we don't know which way they're directing traffic, closing it totally or... signs have to be placed depending on which street you're closing and calculations are done by speed zones to meet Federal standards stating that the road is closed ahead of you. He added that there's a lot more to it than people think; it's more than just throwing cones or barricades out.

Mayor Kaufman stated that the committee looked at what Scottsbluff does and their list is long and lengthy and we even talked about maybe increasing to a fee-oriented system but we thought we might be creating an elitist type of activity by imposing those types of fee sanctions on that type of activity. It was debated on all sides and nobody likes to tell the community that you can't do a certain activity anymore but based on LARM's recommendations and staff's recommendations it did come out of committee with a recommendation to make the change.

Councilmember Cowan stated that he has been a fireman for 22 years and he has never had to go to an incident. It could happen tomorrow, who knows, but we've never had an incident before. He understands both sides but he feels that this is taking away from the citizens and doing whatever they want to do. He said for six of them being taken out, this is not an ordinance that needs to be done. If there were a hundred of them maybe we ought to have a look at it but there's only six of them.

Mr. Heath stated that he respects Councilmember Holliday's comments about the liability insurance. He added that a water park or ball field or anything that the City has constructed and the public uses we are insured under that. There's recreational insurance that we have and it covers us. He doesn't think it's staff's intention... no one's against block parties, we're just looking out for the liability of the City because all it does is take one person to drive through those barricades and run into people out on that street and that's our concern is the liability of the City. Mayor Kaufman added that he understood that LARM, once they learned that we still allowed block parties, that piece would not be covered on those activities going forward. Clerk Welfl stated that we are covered, however if there were an issue, if something catastrophic happened, we don't have a layer of protection from the home owner, from the public. That's what we get when we allow Special Events and those kinds of things, the applicant adds us (the City) as additional insured on their policy so we have an extra blanket of liability coverage that we do not have with block parties. If something did happen, LARM would probably take care of it, but they could come back and say we won't cover this anymore. They do discourage it for that reason; they are risk management. They are who we look to for risk management; that is why we lean heavily on their opinions. Mr. Heath said he does agree with Troy, he doesn't think it has ever happened in Gering but you do hear on the news every once in a while something does happen in some city. That's why staff brought it up; we felt there was a concern and we wanted to make sure we went the right direction.

Administrator Danielzuk stated to answer Councilmember Holliday's question: This ordinance shall take effect and be in full force from and after the date of its passage, approval and publication according to law. He added that all three of those conditions have to be met. He's not sure when the ordinance would actually get published but it would be after that date that the ordinance becomes effective. Clerk Welfl added that we did have one application and it came in by the ten business day period prior to the block party. We are going to allow that because this ordinance, even it is passed tonight, it still has to be published before it truly is a law, so we are going to allow the one block party request. Councilmember Morrison asked if we're going to allow this block party, is staff going to go out and set up the barricades and all the things that need to be set up to protect us in case something should happen. The Clerk replied yes, she talked to Casey Dahlgren, Street Superintendent, about it when it came in. It will be the 4<sup>th</sup> of July and it will be overtime for his guys but they will go out and take care of it.

**The Clerk called the roll. "AYES": Christensen, Gibbs, O'Neal, Morrison. "NAYS": Smith Holliday, Cowan. Mayor Kaufman voted "YES" creating the majority vote. Absent: Allred. Abstaining: None. Motion carried.**

The motion to designate the Ordinance as No. 1997 and the title thereof approved having been concurred in by a majority of all members elected to the Council, was, by the Mayor declared to have carried.

**Whereupon Ordinance No. 1997 was read by title only, Councilmember Cowan moved that the Ordinance be passed as read, which motion was seconded by Councilmember Smith. The question is shall Ordinance No. 1997 be passed? There was no discussion. The Mayor called the vote. "AYES": Smith, Christensen, Gibbs, O'Neal, Morrison, Cowan. "NAYS": Holliday. Absent: Allred. Abstaining: None. Motion carried.**

The passage and adoption of the Ordinance having been concurred in by a majority of all members elected to the Council was by the Mayor declared passed.

**3. Second reading of Ordinance 1998 - AN ORDINANCE OF THE CITY OF GERING, NEBRASKA, VACATING DEBRA DRIVE OF RUSURE SUBDIVISION LOTS 1, 2, 3, & 4, BLOCK 1, FINAL PLAT RECORDED UNDER INSTRUMENT NO. 2005-3423 SITUATED IN A PORTION OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 21 NORTH, RANGE 54 WEST OF THE 6<sup>TH</sup> P.M., CITY OF GERING, SCOTTS BLUFF COUNTY, NEBRASKA.**

The Mayor stated that the first reading of Ordinance 1998 regarding the vacation of Debra Drive took place on June 22. This will be the second reading of this ordinance.

**Councilmember O'Neal moved that the Ordinance be designated as Ordinance No. 1998 and the title thereof approved as the second reading, which motion was seconded by Councilmember Morrison. There was no discussion. The Clerk called the roll. "AYES": Smith, Christensen, Gibbs, Holliday, O'Neal, Morrison, Cowan. "NAYS": None. Absent: Allred. Abstaining: None. Motion carried.**

Jerry Higel addressed Council and stated that he lives on Lockwood Road. His concern is that where Debra Drive is right now, you opted to eliminate or vacate Debra Drive and make a 20 foot wide utility easement and an access for that house and shop buildings to the south side of Debra Drive. His concern is he doesn't feel that a 20 foot easement is wide enough. By the time you take the grass area off it only leaves a 10 or 12 foot area of drive to get into that place. What is the use of vacating Debra Drive and making an access and utility easement there? Why not just leave Debra Drive right where it's at? Also there is an issue of where to put the fence with this easement and also where it goes in reference to the property line and the easement. What is the purpose of vacating Debra Drive and creating an access? He added that the proposal he heard was to put a fence along the easement right off Lockwood Road up to or on the east side of the drive-way and jog down to the property line and go east which would make it pretty hard for that land owner to maintain the property there. Those trees virtually take all the room that you can drive anything in there if you wanted to take a piece of equipment in there. He said he just doesn't see why we're doing all that and have a dispute of where to put the fence. Mr. Higel thanked the Council.

Mr. Snarr replied that the reason this is being done and Debra Drive is being vacated is the original plat had four or five lots to it so there was a dedicated street required. Not knowing who was going to own which lot West Plains now has all of the property, they have re-platted the lot. They've taken four lots and made one lot out of it. They own the whole thing so there is no reason for a dedicated street that the City would have to maintain nor would have any need to maintain. In all reality the developer with just one lot could come off Lockwood with just an access. The developer is willing to put in, due to the dust and problems and complaints, the developer has agreed to hard surface a roadway coming in and it's on the plat and we've gone through this, to keep the dust down with the trucks coming in. Yes, Debra Drive is being vacated, the owner of West Plains is willing to put a fence up to accommodate access issues for the house on the north and that's putting fence 20 foot into his property; the old roadway (Debra Drive) was totally on his property. So he's willing to put a fence up, 20 foot, that's the width of a drive-way. The property owners on the north... we were out today looking at that and they do have a fence built and grass that goes into West Plains property so there is ample room there for a drive-way, they would just have to construct it. Right now everything is kind of encroached into West Plains, part of the fence and grass, and they do maintain it and it looks good. But the owner is willing to put that fence up on the easement line so they have that access. Within all reason it should be because they did have access of Debra Drive when it was there. And yes once the fence gets past the drive-way, what you see on the

north, the owner will jog the fence to the property line and go a little further east to the corner and then put a solid wall or fence up on the west side of his property adjoining the subdivision. Again he's going beyond putting in a hard surface road to mitigate the dust issues. This plat has been on-going on for quite some time.

Rose Greckel addressed the Council. She stated that she lives at the property on the north side. She said after visiting with West Plains today their concern is that he's wanting to vacate Debra Drive giving a 20 foot easement; the 20 feet includes a drainage ditch which you can't do away with. By the time you take the drainage ditch out of there it gives them about 10 feet for access into their property. They too have a business that they work part-time which is construction. They need to get in and out of there with trucks and equipment and that's not enough room to make that corner. She said they're talking putting the fence on the property line, if they do that then that means there's a gate right at their entrance and again they run into a problem with getting trailers and pick-ups and trucks in and out of there. If they run the fence down the center of Debra Drive and then jog it over to their existing little corner fence which is just beyond their drive-way, they will not have enough access to maintain their business building. You may have five foot to get in there but if they have trouble with the roof or anything they have no way to get in there with equipment. Their question too is why are we vacating Debra Drive? Can they not go ahead and put their truck entrance where he wants it and leave Debra Drive where it is? She said that's their main concern because they too have a business and they'd like to have access to their shops back there and that's the only access. She said when they bought the property they told us we'd always have access; it may not be recorded but it was verbal. They've owned that property for over 40 years so they would ask that Council reconsider that.

Paul stated that again this has been going on for months. Some of the earlier comments from the neighbors, Greckels and property owners is that they wanted the road moved as far north as possible. The developer has spent a lot of money putting this plat together. He (the developer) has moved the road a little bit to the north but again the need for Debra Drive was there for the four lots that were within that property. Yes Greckels did use it, and he (West Plains) is willing to give up the 20 feet and move the fence to the easement line, grant an access utility easement; yes there is a drainage ditch there but it's right on the edge so there is room; he said they went out and measured it today.

Councilmember Smith asked if the property line runs through the middle of the building. Mr. Snarr replied no and showed on the screen where it's actually at. Councilmember Smith asked about the east property line. Mr. Snarr said the lines are off, there are some trees and fences already installed which are very close he believes; everything fits fairly well. Mayor Kaufman stated the reality is it happened a long time ago because that other area wasn't developed. Councilmember Smith asked City Attorney Ellison if somebody has entered property from a road that wasn't owned by the City, it was just there, do they have a right to that forever even if property ownership changes because they're entering from Debra Drive and that property is owned by West Plains now? Mr. Ellison replied when property is transferred you normally can't transfer property and have it landlocked; you've got to have access to that property. Mr. Ellison asked Mr. Snarr if that is the only access or not through Debra Drive. Mr. Snarr said they do have access off Lockwood Road. They will have approximately 15" to drive in. Mayor Kaufman said so the property isn't going to be landlocked, it's going to have access from Lockwood Drive and based on the plat changes described earlier, by moving the fence or moving the easement, it's not as much room as they had previous but... Mr. Snarr said the property owner could take some of that grass out and put some gravel in. Again, that's encroached into the West Plains property.

Mayor Kaufman noted for the record that this discussion pertained to item 3. We've already voted and passed on the second reading; there will be a third reading which will be the third and final reading.

**4. Approve Ordinance 2000 – AN ORDINANCE PROVIDING FOR THE CONVEYANCE OF PROPERTY FROM THE CITY OF GERING, A MUNICIPAL CORPORATION; TO THE UNITED STATES OF AMERICA PROVIDING FOR THE TERMS OF SAID CONVEYANCE AND FOR PUBLICATION AND AN EFFECTIVE DATE HEREOF.**

Mayor Kaufman entertained a motion to Introduce Ordinance No. 2000; this ordinance is in reference to the parcel near the Monument pathway that was purchased from NPPD; a portion of the pathway is being deeded to the US Department of the Interior for the National Park Service.

**Councilmember Gibbs made a motion to introduce Ordinance No. 2000: AN ORDINANCE PROVIDING FOR THE CONVEYANCE OF PROPERTY FROM THE CITY OF GERING, A MUNICIPAL CORPORATION; TO THE UNITED STATES OF AMERICA PROVIDING FOR THE TERMS OF SAID CONVEYANCE AND FOR PUBLICATION AND AN EFFECTIVE DATE HEREOF. Seconded by Council member Christensen. There was no discussion. The Mayor called the vote. "AYES": Smith, Christensen, Gibbs, Holliday, O'Neal, Morrison, Cowan. "NAYS": None. Absent: Allred. Abstaining: None. Motion carried.**

**Councilmember Gibbs moved that the Ordinance be designated as Ordinance No. 2000 and the title thereof approved, and that the Statutory Rule requiring Ordinances to be fully and distinctly read on three different days be dispensed with, which motion was seconded by Councilmember Holliday. There was no discussion. The Clerk called the Roll. "AYES": Smith, Christensen, Gibbs, Holliday, O'Neal, Morrison, Cowan. "NAYS": None. Absent: Allred. Abstaining: None. Motion carried.**

**The motion to suspend the statutory rule having been concurred in by three-fourths of all members elected to the Council, was, by the Mayor declared to have carried. There was no discussion. The Mayor called the vote. "AYES": Smith, Christensen, Gibbs, Holliday, O'Neal, Morrison, Cowan. "NAYS": None. Absent: Allred. Abstaining: None. Motion carried.**

**Whereupon Ordinance No. 2000 was read by title only, Councilmember O'Neal moved that the Ordinance be passed as read, which motion was seconded by Councilmember Morison. The question is shall Ordinance No. 2000 be passed? There was no discussion. The Mayor called the vote. "AYES": Smith, Christensen, Gibbs, Holliday, O'Neal, Morrison, Cowan. "NAYS": None. Absent: Allred. Abstaining: None. Motion carried.**

The passage and adoption of the Ordinance having been concurred in by a majority of all members elected to the Council was by the Mayor declared passed.

#### **CLOSED SESSION:**

(Council reserves the right to enter into closed session if deemed necessary.)

#### **REPORTS:**

##### **Mayor's Report:**

- Oregon Trail Days BBQ, July 9, 2015  
Mayor Kaufman strongly encouraged Council participation with the July 9<sup>th</sup> BBQ for Oregon Trail Days.

#### **OPEN COMMENT SECTION:**

Discussion or action by Council regarding unscheduled business will not take place. This section is for citizen comment only. There were no comments by the public.

#### **ADJOURN**

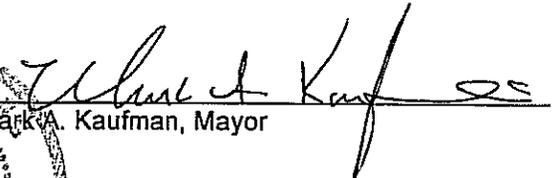
**Motion to adjourn by Councilmember Holliday, second by Councilmember Cowan. There was no discussion. The Mayor called the vote. "AYES": Smith, Christensen, Gibbs, Holliday, O'Neal, Morrison, Cowan. "NAYS": None. Absent: Allred. Abstaining: None. Motion carried.**

Meeting adjourned at 7:14 p.m.

ATTEST

  
Kathleen J. Welfl, City Clerk



  
Mark A. Kaufman, Mayor