

**THE OFFICIAL PROCEEDINGS OF THE REGULAR MEETING OF THE GERING CITY COUNCIL,
AUGUST 14, 2017**

A regular meeting of the City Council of Gering, Nebraska was held in open session on August 14, 2017 at 6:00 p.m. at Gering City Hall, 1025 P Street, Gering, NE. Present were Mayor Kaufman and Councilmembers Smith, Gillen, Backus, Wiedeman, O'Neal, Morrison and Cowan. Also present were City Administrator Lane Danielzuk, City Clerk Kathy Welfl and City Attorney Jim Ellison. Absent was Councilmember Holliday. Notice of the meeting was given in advance by publication in the Star-Herald, the designated method of giving notice. 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 stated 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 (There were no absences to excuse from the last meeting)

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:

1. Approve minutes of the July 24, 2017 Regular City Council meeting
2. Approve Claims
3. Approve July 19, 2017 Administrative Committee meeting minutes

Claims:

7-15-17 to 8-4-17

24/7 FITNESS \$130.00 WELLNESS, ACCELERATED RECEIVABLES \$327.98 GARNISHMENT 2, ACTION COMM INC \$325.00 WORK - RADIO, ADVANCED SRV INC \$1,307.20 TEMP LABOR - K MADISON, AHLER'S BAKING INC \$13.99 LB840 MTG, AMAZON \$192.07 FRAUDULENT CHRG REIMBURSED/JD IGNITOR/TAX REFUND/SUPPLIES FOR SRP/13 BOOKS/2 DIGITAL SONGS FOR ST, AMERICAN WATER WORKS ASSOC \$75.00 AWWA MEMBERSHIP DUES, ANIMAL CARE EQUIP ONLINE \$84.62 CAT TONGS/JAW COVERS, ARROW HOTEL \$86.00 LODGING - LANE NCMA CONF, B & C STEEL \$143.49 FLAT BAR/STEEL - BALL PARK SUB, BAKER & ASSOC \$6,720.00 DOWNTOWN REVITALIZATION GRANT/STRCTRL REV NEW BALL STADIUM, BASHLIN INDUSTRIES \$691.78 GLOVE BAGS/TOOL BUCKET, BEST WESTERN \$91.00 FIREARMS TRAINING - J JACKSON, BEVERIDGE WELL DRILLING \$900.00 SRV LINE BORE FEE, BKD RENTALS LLC \$2,154.20 AUG RENT SUBSIDY PRAIRIE PINES, BLUFFS SANITARY SUPPLY \$1,097.73 TRSH LNRS/URNL MATS/TP/PPR TWL/RR SUPPLIES/GUM REMOVER FOR CARPET/DE POWDER/ACID/GLASS CLEANER/CHLORINE, BOMGAARS \$84.61 WATER SYSTEM SUPPLIES/WATER HOSE, BROADWAY OFFICE CENTRE \$128.95 OFFICE SUPPLIES, BUMPER TO BUMPER \$150.00 TOW SRV, C & M GOLF & GROUNDS \$26.27 BALL JOINT, CASEY'S GENERAL STORE #27 \$29.38 GAS TO NLETC - STICKELS, CENTER POINT LARGE PRINT BOOKS \$46.74 2 LARGE PRINT BOOKS, CENTURYLINK \$2,651.24 MONTHLY TELEPHONE ALLOWCATION, CITY INSURANCE FUND \$141,789.41 HEALTH PREM 125, CITY OF GERING - GENERAL AC \$130,000.00 ACH PAYROLL TRANSFER, CITY OF SCOTTSBLUFF \$2,678.63 EMERGENCY MGMT APR - JUNE 2017, CITY PAYROLL TRUST \$9,348.19 FSA MEDICAL 125/DISABILITY INSURANCE, COMPANION CORP \$899.00 RENEW COMPANION SUBS (ILS), CONSOLIDATED MANAGEMENT \$135.15 STICKELS MEALS - NLETC, CONTRACTORS MATERIALS \$327.73 BOLT CUTTERS/TRENCH LADDER, COOLEY TAMMY \$345.76 MEAN MTG TRAVEL EXP, COSMOPOLITAN \$34.97 1 YR SUB, COWAN TROY \$210.00 OT DAYS WORK, CREATIVE SIGNS DIVISION \$285.00 NEON LIGHT ON BUILDING, CRESCENT ELECTRIC \$425.27 RR FAN/OT DAYS SUPPLIES/TOOLS, DART CUSTOM IMPRINTING \$1,453.24 LAPEL PINS CONVENTION/MKTG SRV, DE NORA WATER TECHNOLOGIES \$1,788.41 CHLORINE FEED PUMP RPR, DEMCO \$396.65 PRIZES FOR SRP, 8 PACKAGES OF BK CVRS/DATE DUE, DENNIS SUPPLY CO \$56.40 12 AC FILTERS, DETER DYNASTY \$88.90 REIMB FEES GOLF SCRAMBLE FDRSR, DIETRICH DISTRIBUTING CO \$427.52 OT DAYS REFRESHMENTS, DOLLAR GENERAL STORE #077 \$5.85 GLUE/MARSHMALLOW FOR SRP, DOOLEY OIL INC \$116.27 PARTS, DUTTON - LAINSON CO \$606.42 GROUND ROD/BOLTS/FUSES/SPOOL, ECOLAB \$255.78 PEST CONTROL, ELECTRONIC CONTRACTING CO \$2,874.90 TROUBLESHOOT CNCL CHMBR STATIC, ELLIOTT EQUIPMENT CO \$197.98 SEWER JET RPR, ENERGY LABORATORIES INC \$456.00 WATER LAB, ENLOW TRAVIS \$228.00 MEAL ALLOWANCE - TRAINING, ENVIRO SRV INC \$1,072.00 WWW/WATER LAB, EPSON STORE \$74.89 PRINTER INK, EREPLACEMENTPARTS.COM \$25.27 TRIMMER RPR, ESC ENGINEERING \$16,584.87 D STREET SUBSTATION/U STREET SUBSTATION, FAMILY DOLLAR \$8.00 BUG SPRAY/TABLE, FASTENAL CO \$607.72 EARPLUGS/GLOVES/BATTERIES/WWTP RPR/SAFETY BIBS/PARTS, FAT BOYS TIRE & AUTO \$637.52 MAINTENANCE & 4 TIRES, FEDEX \$484.35 SHIPPING - WATER LAB, FIRST STATE BANK \$654.93 IBEW UNION

DUES, FLOYD'S SALES & SRV \$325.08 WORK - GB/PARTS - G9, G10, FOREMOST MEDICAL EQUIP \$305.41 BATTERIES - AED, FRANK PARTS CO \$359.31 CLUTCH BEARING/BACKHOE RPR/PARTS/SHOP/VEHICLE RPR/FUEL PUMP/4 OIL FILTERS/EQUIPMENT RPR/RECEIVER PINTLE/FUEL FILTER/ADAPTER/TRAILER PLUG/HEADLIGHT BULB, FREMONT MOTOR SCOTTSBLUFF \$201.24 4 CAR BULBS, GALE \$239.16 9 LARGE PRINT BOOKS, GALLS INC \$818.90 3 DUTY BELTS/2 UNIFORMS (TOPS/BOTTOMS)/UNIFORM PANTS/3 CUFF CASES, GANNON CHARLIE \$50.00 OT DAYS WORK, GARY'S CLEANING & RESTORATION \$3,000.00 SHAMPOO CARPETS, GERING COURIER \$35.00 ADVERTISING, GERING GARDEN CENTER \$336.00 FLOWERS, GERING U SAVE PHARMACY \$105.16 GLUCOSE TEST STRIPS, GERING VALLEY PLUMBING \$200.00 RPR HOLE IN WATER LINE, GLEIM ROBERT \$228.00 MEAL ALLOWANCE - EVO INSTR TRN, HAWKINS INC \$5,037.27 CHLORINE/SODIUM FLOURIDE, HD SUPPLY WATERWORKS LTD \$3,004.31 METER PURCHASES, HENNINGS CONSTRUCTION \$3,710.00 WATER LINE RPR'S, HIGH PLAINS AUTO CLUB \$500.00 FIVE ROCKS DEPOSIT REFUND, HI - TEX FLAGS \$1,500.00 PARKING FLAGS - OT DAYS, HOBBY LOBBY \$19.76 CRAFT SUPPLIES FOR SRP, HOME DEPOT \$119.92 PAINT, HONEY WAGON EXPRESS \$140.00 CLEAN GREASE TRAPS, HULLINGER GLASS & LOCKS, \$544.00 DOOR RPR - COOLER, HY - VEE \$27.01 GAS TO TRAINING, ICMA ELECTRONIC RETIREMENT \$1,104.28 ICMA CITY ADMIN, IDEAL LINEN SUPPLY INC \$316.49 EXCHANGE MATS/MOPS/DISPENSERS/CREDITS FOR INVOICING ERROR/TOILET PAPER, INDEPENDENT PLUMBING & HEATING \$195.50 SPRINKLERS & FITTINGS, INDOFF INCORPORATED \$141.42 SHARPIES - ACCOUNTING/STENO PADS/OFFICE SUPPLIES/SHOP SUPPLIES, INFINITY CONSTRUCTION INC \$1,625.00 STRM SWR INLET/ALLEY APPROACH, INGRAM LIBRARY SRV \$1,087.81 72 BOOKS, INTERNAL REVENUE SRV \$106,991.40 FED/FICA TAX, INTERSTATE BATTERIE/RAPID \$74.95 BATTERY, IRBY TOOL & SAFETY \$1,780.59 CUT OUTS, JIRDON \$1,194.00 FERTILIZER, JOHN HANCOCK USA \$29,530.90 JH RETIRE 1-10%, JOHNSON CASHWAY CO \$98.41 SCREWS FOR 20/HVAC MATERIALS/RPR'S AT CENTRAL PLANT, KEMBEL SAND & GRAVEL CO \$414.25 SAND/PEA GRAVEL, KNEB \$1,717.05 DEPOSIT REFUNDS - OTD CONCERT, 5-27-17 CONCERT/RADIO ADVERTISING, KOIS BROTHERS EQUIPMENT \$34,767.56 7 NEW BOXES - 30 YD ROLL OFFS, KRIZ - DAVIS CO \$297.41 FUSES/LUBE/TERMINAL LUGS, LL JOHNSON DISTRIBUTING \$17,206.60 5 SPRINKLER CONTROLLERS, LA POLICE GEAR INC \$148.86 UNIFORM SUSPENDERS - MASSIE/2 SUSPENDERS, LEHR ANDREW \$150.00 OT DAYS WORK, LIBRARY JOURNAL \$157.99 1 YEAR SUBSCRIPTION, LOAF N JUG \$13.57 GAS TO NLETC - STICKELS, LOGIN/IACP NET \$525.00 IACP SUBSCRIPTION RENEWAL, LOGOZ LLC \$698.00 COUNCIL NAME TAGS - OT DAYS/1/2 VOLUNTEER SHIRTS - ECLIPSE, MASEK GOLF CAR CO \$1,069.00 GOLF CART RENTALS FOR OT DAYS/GOLF CART RENTAL, MATHESON TRI - GAS INC \$292.07 METAL BLADE/OXYGEN/TOOL, MAVERIK ADVENTURES \$29.00 FUEL - KARLA TAP CONFERENCE, MEAT SHOPPE \$23,013.45 MANAGEMENT CONTRACT/CATERING COSTS, MENARDS \$904.19 BUILDING MATERIALS/SHOP/NET & LIGHT BULBS/SUPPLIES/CEDAR FENCE/SPRAYER/ROOF COATING/TRUCK WASH SUPPLIES/IRRIGATION CONTROLLER/HITCH FOR KUBOTA, MERRICK & CO \$635.00 WATER SYSTEM MODEL ENGINEERING/WWTP ENGINEERING, MG TRUST CO LLC \$13,972.70 MG T - FIRE, MIDWEST LABORATORIES INC \$10.75 WW LAB, MODENA THOMAS W \$150.00 OT DAYS WORK, MONEY WISE OFFICE SUPPLY \$399.15 BNRD CLIPS/PENS/INK CRTRDGS/BINDER - ACCOUNTING/INK CARTRIDGES/CARD STOCK/POST IT NOTES/TONER CARTRIDGE - ACCOUNTING/TONER CARTRIDGE RETURNED - ACCOUNTING/TASKBOOK SUPPLIES/MEMO BOOKS/MESSAGE PADS, MONUMENT GRILL \$1,119.90 REIMB FOR FEES CLCTD DETER DYN, MONUMENT INN & SUITES \$89.00 DAN GLOMSKI - 1 NIGHT ROOM, MONUMENT SHADOWS MENS ASSOC \$100.00 REIMB FEES GHS BOOSTER/DETER, MUGGLI JONATHAN & SHELLY \$392.06 OVERPAID UTILITY BILL ONLINE, MUNICIPAL ENERGY AGENCY \$303,544.99 POWER BILL/MEAN DUES, MURDOCH'S RANCH & HOME \$178.91 PLASTIC CREATURES FOR SRP/WINCH FOR BIG PAINT MACHINE, NATIONAL INS SRV \$1,058.52 VISION INSURANCE, NDOR - LODGING \$1,037.25 JUNE LODGING TAX, NDOR - LOTTERY \$7,331.98 APR - JUNE 2017 LOTTERY TAXES, NE CHILD SUPPORT PYMT \$1,589.28 CHILD SUPPORT 1, NE DEPARTMENT OF REV (PR) \$14,725.78 STATE TAX, NE PUBLIC POWER DISTRICT \$5,277.13 UTILITIES - PHEASANT DRIVE, NE SAFETY/FIRE EQUIPMENT \$615.00 FIRE SAFETY - HYDRO TEST/FIRE SAFETY - BATTERIES/FIRE ALARM ANNUAL INSPECTION, NEBRASKA ENVIRONMENTAL PR \$605.94 WINDOW - STREET SWEEPER, NEBRASKA LAW ENFORCEMENT \$50.00 CERT FEE FOR OFFICER BROWN, NEBRASKA MACHINERY CO \$63.56 BELTS 914G, NEBRASKA POWER REVIEW BOARD \$1,175.86 ASSESSMENT, NEBRASKALAND MAGAZINE \$18.00 2 YR SUBSCRIPTION, NEBRASKALAND TIRE \$694.12 TIRES - TRENCHER, NEFSMA \$100.00 STORMWATER TRAINING, NEOFUNDS BY NEOPOST \$1,600.00 POSTAGE, NEUWIRTH CRAIG \$320.00 REFUND BURIAL COSTS WEST LAWN, NORTHWEST PIPE FITTINGS \$308.14 CRESCENT ST LIFTSTATION RPR/PVC PIPE/SPRINKLER RPR'S/LIFT STATION RPR'S/2 1" VALVES - CIVIC CENTER/BALL VALVES & FITTINGS, OCLC INC \$144.21 \$144.21 JULY ILL & CAT SUBS, OFFICE WORLD \$67.58 MINUTE BOOK PAPER, ONE CALL CONCEPTS INC \$108.84 LOCATE FEES, O'REILLY AUTOMOTIVE STORE \$31.98 2 WIPER BLADES, PANHANDLE COOP ASSOC \$14,375.57 FUEL, PAUL L REED CONSTRUCTION \$12,891.87 5TH ST STORM SEWER PROJECT, PAYROLL CHECKS \$150,568.92 PAYROLL CHECKS ON 7-21-17, PAYROLL CHECKS \$141,519.09 PAYROLL CHECKS ON 8-4-17, PEASRON VUE \$398.00 CERTIFICATION TEST, PIPE WORKS PLUMBING LLC \$201.84 WORK FOR SEWER, POSTMASTER \$23.75 SHIP EVIDENCE, POWER SCREENING LLC \$7,574.62 BELT 8000 SHREDDER, POWERPLAN OIB \$679.47 WORK - JD 762B/PARTS/PARTS - 180G, PRAISE WINDOWS INC \$240.00 WINDOW CLEANING, PRINT BROKER \$480.00 ECLIPSE RACK CARDS, PROGRESSIVE BUSINESS PUB \$299.00 HR SUBSCRIPTION, PT HOSE & BEARING \$455.35 HYDRAULIC POWER UNIT RPR, PUMP & PANTRY \$53.75 GAS TO NLETC - STICKELS, RADISON \$564.79 MEAL/LODGING - KARLA TAP CONF, RANDY RAINES \$1,275.00 DIRECT CITY BAND, RECREATION SUPPLY CO \$152.98 POOL LIFT COVER, REGIONAL WEST MEDICAL CENT \$38.96 BANDAGES, ROBINSON ELECTRIC \$8,826.67 CENTRAL PLANT RPR/WORK - BUILDING/RPR FOUNTAIN/NEW CIRCUIT FOR SLIDE PUMP/ELECTRIC FOR SLIDE PUMP/AC UNIT IN THE WEST SIDE BSMNT, ROBINSON JERI \$175.00 TREE PLANTING REBATES, ROYLE DAN \$27.00 LEFT RV PARK EARLY, RWPC MULTISPECIALTY \$207.00 PRE - TRAINING CENTER PHYSICAL - PD, SANDBERG IMPLEMENT INC \$265.91 CHAINSAW PART/PARTS, SAPP BROS \$25.52 GAS TO NLETC - STICKELS, SARGENT DRILLING CO \$5,309.56 PUMP 5 RPR - CENTRAL PLANT, SCB COUNTY REGISTER OF DEEDS \$30.00 OLIVER/SCHNELL/BARTELLA DEEDS, SCOTTS BLUFF COUNTY COURT \$68.00 COURT COSTS, SCOTTSBLUFF - GERING UNITED \$233.50 UNITED WAY CTRB, SHERWIN WILLIAMS \$985.00 PAINT, SIMMONS OLSEN LAW FIRM P \$1,508.00 CITY PROSECUTOR BILL, SIMON CONTRACTORS \$354.50 WWTP CONCRETE RPR/1.5 YD CONCRETE, SOLUTIONS EAP \$244.55 JULY COUNSELING SRV'S, STAPLES CREDIT PLAN \$184.96 CVB OFFICE SUPPLIES, STAR HERALD \$45.60 ADVERTISING, STERKEL RYAN \$80.00 OT DAYS WORK, SUGAR VALLEY FEDERAL CREDIT \$1,356.74 CREDIT UNION, SYSCO DENVER INC \$328.41 GLASSES, TEAM CHEVROLET \$375.00 WING VEHICLE LEASE, TERRACON \$19,201.46 PHS II EPA BROWNSFIELD HSA, THE MEAT SHOPPE

\$9.41 JACKSON MEAL – COURT IN COLORADO, THE ROCK PILE \$391.63 CONCRETE SUPPLIES/MANHOLE RPR/11.47 TON CRUSHED CONCRETE, TWIN CITY DEVELOPMENT \$25,000.00 QRTRLY DUES JAN THRU MAR 2017/QRTRLY DUES APRIL THRU JUNE 2017, UNANIMOUS \$90.00 JUNE WEB SUPPORT, UNITED AIRLINES \$25.00 CHECKED BAG FEE – KARLA TAP CONFERENCE, UNITED WAY OF WESTERN NE \$500.00 FIVE ROCKS DEPOSIT REFUND, US AIRPORT PARKING \$71.28 PARKING – KARLA TAP CONFERENCE, US WEEKLY \$84.95 1 YR SUBSCRIPTION, VAN DIEST SUPPLY CO \$1,209.50 FERTILIZER, VANCE JEFFREY \$210.00 OT DAYS WORK, WALMART \$203.95 TAX REFUND/SNACKS FOR TEEN SRP/CREDIT FOR POOL SUPP/HEADLIGHTS/POOL SUPPLIES/SUPPLIES FOR SRP/VOL TREATS, WAREHOUSE FITNESS CENTER \$90.00 WELLNESS, WESTCO \$7,784.32 GAS/DIESEL/PRESSURE GAUGE/FITTING/GASKET, WESTERN PLAINS BUSINESS \$129.53 COPIER MAINT, WESTERN STATES BANK \$11,895.85 HSA CTRB 125, WESTERN STATES BANK – POL \$680.00 PO UNION DUES, WHITE JULIE \$105.00 OT DAYS WORK, WILLOW CREEK ASSOC \$693.00 GLOBAL LEDRSHIP – LANE/KATHY/JOHN/TAMMY/J ROGERS/D DOWNER, WINCHELL CLEANING SRV \$830.00 CLEAN HALLS, BATHS & OFFICES, YMCA OF SCOTTSBLUFF \$506.08 WELLNESS

Motion by Councilmember Gillen to approve the Consent Agenda. Second by Councilmember Cowan. There was no discussion. The Mayor called the vote. "AYES": Smith, Gillen, Backus, Wiedeman, O'Neal, Morrison, Cowan. "NAYS": None. Abstaining: None. Absent: Holliday. Motion Carried.

BIDS:

1. Street Department Shop & Office building bid

Paul Snarr, City Engineer, stated that this is for the new street department shop and office building. We received four bids. It's basically a shell. We're not going to put the offices inside of it yet, but it will have all the doors and firewall. They'll be able to park their equipment inside of it. Staff recommends awarding the bid to Anderson-Shaw Construction in the amount of \$421,093.24.

Councilmember Wiedeman asked if part of this will come from this year's budget and part from the next year's. Mr. Snarr said he thinks it has been carried over so that part of it will come out of this year and part out of next year. It won't be completed until December or January. Councilmember Wiedeman said it is a building that is very much needed.

Councilmember Smith asked if it is insulated and heated. Mr. Snarr replied it will be insulated, we didn't include the heater this time; this is the second time this has been bid. The first time we had a very large heater in the shop. We will work on the office area and heating at a later date. Councilmember Wiedeman clarified that we will be doing some of the finish work ourselves. Mr. Snarr replied correct.

Motion by Councilmember Wiedeman to award the Street Department Shop and Office building bid to Anderson - Shaw in the amount of \$421,093.24. Second by Councilmember Morrison. There was no discussion. The Mayor called the vote. "AYES": Smith, Gillen, Backus, Wiedeman, O'Neal, Morrison, Cowan. "NAYS": None. Abstaining: None. Absent: Holliday. Motion Carried.

2. Street Department Water Truck Chassis bid

Mr. Snarr said he doesn't know a lot about this bid, but he believes they only received one bid from Floyd's truck Center. They had a limit as far as service area. The bid they did get was \$79,960. Staff recommends awarding the bid to Floyd's Truck Center for that amount.

Motion by Councilmember O'Neal to award the Street Department water truck chassis bid to Floyd's Truck Center in the amount of \$79,960. Second by Councilmember Wiedeman. There was no discussion. The Mayor called the vote. "AYES": Smith, Gillen, Backus, Wiedeman, O'Neal, Morrison, Cowan. "NAYS": None. Abstaining: None. Absent: Holliday. Motion Carried.

CURRENT BUSINESS:

1. Consider approving Economic Development Assistance Agreement for Goonies Sports Bar & Grill

Councilmember Morrison asked Mr. Guhn if he is expanding or needs more help. Mr. Guhn replied that they put on a new expansion on the west side of the building. They've added three fourths of a patio roof on the patio. They're still working on putting in a corn hole stadium. They need to add on to their kitchen with more help. With football season it's that time to start hiring more people. He's the one doing about

80% of the cooking. He has some signage changes he needs to do and the parking lot needs fixed. Councilmember Wiedeman asked if his hours will expand. Mr. Guhn replied yes, once football season begins they expand their kitchen hours to 11 instead of closing down at nine. Sunday night the kitchen hours will expand also because of Sunday night football.

Motion by Councilmember Morrison to approve and authorize the Mayor to sign an Economic Development Assistance Agreement for Goonies Sports Bar & Grill. Second by Councilmember Wiedeman. There was no discussion. The Mayor called the vote. "AYES": Smith, Gillen, Backus, Wiedeman, O'Neal, Morrison, Cowan. "NAYS": None. Abstaining: None. Absent: Holliday. Motion Carried.

2. Request for Recreation Committee meeting – Agenda items: (1) Update on Expedition League/lease agreement (2) Review fee schedules for Parks, Pool, Golf Course, RV Park and Cemetery and review fees charged for mowing services

Motion by Councilmember Morrison to approve a request for Recreation Committee meeting – Agenda items: (1) Update on Expedition League/lease agreement (2) Review fee schedules for Parks, Pool, Golf Course, RV Park and Cemetery and review fees charged for mowing services. Second by Councilmember Smith. There was no discussion. The Mayor called the vote. "AYES": Smith, Gillen, Backus, Wiedeman, O'Neal, Morrison, Cowan. "NAYS": None. Abstaining: None. Absent: Holliday. Motion Carried.

3. Request for Administrative Committee meeting – Agenda item: (1) Discussion of sale price for lots 4, 5 and the East ½ of Lot 6, Block 20, Gardner's Addition to the City of Gering, Scotts Bluff County, Nebraska, and the South 17 acres near the by-pass

Motion by Councilmember Gillen to approve a request for an Administrative Committee meeting – Agenda item: (1) Discussion of sale price for lots 4, 5 and the East ½ of Lot 6, Block 20, Gardner's Addition to the City of Gering, Scotts Bluff County, Nebraska, and the South 17 acres near the by-pass. Second by Councilmember Smith. There was no discussion. The Mayor called the vote. "AYES": Smith, Gillen, Backus, Wiedeman, O'Neal, Morrison, Cowan. "NAYS": None. Abstaining: None. Absent: Holliday. Motion Carried.

4. Approve LARM Resolution 8-17-1

Motion by Councilmember Morrison to approve LARM Renewal Resolution 8-17-1. Second by Councilmember Wiedeman.

Discussion: Councilmember O'Neal asked if we decided to do the three years because of the savings involved in that. Clerk Welfl replied yes, it is a fairly considerable savings. We're actually only up about 4.78% from last year and LARM did not take an increase. The increases that were applied were just standard increases for added property, etc. She said it was actually a very low increase overall.

The Mayor called the vote. "AYES": Smith, Gillen, Backus, Wiedeman, O'Neal, Morrison, Cowan. "NAYS": None. Abstaining: None. Absent: Holliday. Motion Carried.

PUBLIC HEARINGS:

1. Public Hearing to amend Zoning and Sub Division Regulations District BCB (Central Business District), Section 7.204 Exceptions adding Sub Section (13) to include Tattoo Parlors as an exception and meet conditions per Ordinance 1930 dated 12/10

Mayor Kaufman opened the public hearing to amend Zoning and Sub Division Regulations District BCB (Central Business District), Section 7.204 Exceptions adding Sub Section (13) to include Tattoo Parlors as an exception and meet conditions per Ordinance 1930 dated 12/10 at 6:16 p.m. Paul Snarr, City Engineer, presented the Administrative Record.

**CITY OF GERING
CITY COUNCIL PUBLIC HEARING
ADMINISTRATIVE RECORD**

To:	City Council	Date:	8-14-2017
From:	Planning & Community Development	Zoning:	BCB
Subject:	Public Hearing: Exception/Conditional Use Permit Requested to allow a Tattoo Parlor in BCB Zoning - Amendment to the Zoning & Subdivision Regulations to add Tattoo Parlors as an Exception	Property Size:	75x140
Location:	1040 O Street	#Lots/Parcels:	1
Owner:	EEL Investments Ron Erickson	Planning Commission:	7-18-2017

Procedure

1. Open Public Hearing
2. Overview of petition by City Staff
3. Presentation by Applicant
4. Solicitation of Public comments
5. Questions from the City Council
6. Close the Public Hearing
7. Render a decision
8. Public Process: City Council determines final approval

Public Notice: This hearing was noticed in the paper and notice was posted on the property

Hearing

Mr. Mayor and City Council Members,

This is a Public Hearing to consider an application to amend the Zoning and Subdivision Regulations Section 7.2 BCB (Central Business District) Specifically Section 7.204 Exceptions with the addition of Subsection (13) Tattoo Parlor.

An application for an Exception/Conditional Use Permit was submitted by the applicants, Nicholas and Dezy Natale requesting to open a tattoo parlor/studio addressed as 1040 O Street in a building located as part of the Final Plat of the West ½ of Lot 11 and all of Lot 12, Block 30 First Addition Gering, Scotts Bluff County Nebraska.

The property is zoned BCB (Central Business District) and a tattoo Parlor/studio is not allowed as a permitted use or as an exception. The applicants indicated in the application that they had looked for a site in BHC (Highway Commercial District) where a tattoo parlor is allowed as an exception (with conditions) and could not find a suitable location.

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 Nicholas and Dezy Natale on June 9, 2017.
- City of Gering Subdivision and Zoning Regulations dated March 1984, specifically Section 7.2 BCB (C-2) Central Business District. BCB does not allow Tattoo Parlors/Studios as a Permitted Use nor as an Exception. Zoning District Section 7.3 BHC (C-3) Highway Commercial District does allow as an Exception provided numerous conditions are met including, but not limited to: compliance with all federal, state, and local laws, inspections, sterilization of instruments, etc...
- 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, Article 15 Amendment, Section 15.2 Submission to Planning Commission, and are incorporated by reference in this Administrative Record.
- Public Hearing Notice was published July 7, 2017 and sign notices were placed on the property meeting City regulations.

- Planning Commission Public Hearing July 18, 2017 made motion for a positive recommendation to amend the Zoning and Subdivision Regulations Section 7.2 BCB (Central Business District) Specifically Section 7.204 Exceptions with the addition of Subsection (13) Tattoo Parlor and to move this Public Hearing forward to City Council.
- City Engineer/Director of Engineering & Community Planning Administrative Record as shown herein.

Councilmember Morrison called point of order. She stated that Jim Prohs is her landlord. She read what he had said going into the Planning Commission Public Hearing regarding this. She has not had a conversation with Mr. Prohs concerning this issue; she wanted it known for the record that she also rents from Mr. Prohs. Mr. Snarr clarified this public hearing is regarding amending BCB zoning adding a subsection under exceptions. Mayor Kaufman noted that he still thinks it's relevant; point of order taken.

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

In Favor:

Nicholas Natale, 300028 Lacy Drive, Minatare, NE, addressed Council. He thanked Council for hearing this. He said the original reason he applied for this conditional use and exception is that he noticed that the tattoo industry is subject to the Commercial Highway District. When he went to look for any type of buildings or business fronts that would be available out there or suitable for a tattoo business, there are none. It's mostly auto shops and wreckage yards; things that are not very conducive for a tattoo business. As he read through the Central Business District intent it's in exact harmony to what his business is, they rely on foot traffic. They are a service that serves peoples' wants and needs for art on their body if they so choose. He said they are licensed through the Department of Health and Human Services in the State of Nebraska, which he is licensed. They're very strict in their regulations being a sterile environment. They have inspectors come through and check everything out and make sure it's up to code. It's the same inspector that inspects hair and nail salons which he'd be surrounded by hair and nail salons where he would be at on O Street. He said it would make sense for somebody who follows the same regulations as a beauty and hair salon to also be allowed in the same area. Art, hobby and supply stores are also allowed in the Central Business District. The Central Business District is for retail and services. People are talking about wanting more retail in their area which would be nice; he said he will also be applying for a retail permit because he will be selling after-care products and apparel. The City of Gering will receive sales tax from that.

Mr. Natale said he has a ruling from the United States Court of Appeals for the 11th circuit. Tattooing is a protected industry under the Freedom of Speech First Amendment. There was a case in the City of Key West, Florida that barred a person from opening a tattoo establishment in the city's designated historic district, pursuant to ordinance strictly limiting the number of tattoo shops to operate there. This is similar to what he has been going through because they were told they had to be in the commercial district as well. Basically what it outlines is that tattooing is an artistic expression and the First and 14th Amendments prohibit states from making any law abridging freedom of speech. This protection does not stop at the spoken and written word but extends to various forms of artistic expression. The Ninth Circuit encountered this issue in Anderson vs. the City of Hermosa Beach where it held that tattooing is protected speech and that Hermosa Beach could not constitutionally ban establishments from operating in the city. He said they join the Ninth Circuit in upholding that the act of tattooing is sheltered by the First Amendment in large part because they define tattooing to be virtually indistinguishable from other protected forms of artistic expression such as painting whether it's on canvas, pens, even movies. So to kind of push tattooing to the outer limits of the city, they feel, is unconstitutional and infringing on his right to open a business that is constitutionally protected. He said people ask how can the guy open a tattoo shop in Gering. That's a personal bias, it's not for everybody, but there are people that want it. A lot of his clientele come out of Gering. A lot of them come out of Scottsbluff and Torrington. They'd be bringing in all these people from surrounding areas to a business district where frankly he didn't even know some of these businesses existed until he came to a City Planning Commission meeting. The Planning Commission at least voted 5 to 1 in favor recommending the zoning modification. He said he would ask that Council also vote in favor of this to bring new business into Gering and to bring business from other areas into this area. He asked if council had any questions.

Councilmember Smith said that Mr. Natale said he cannot find a suitable place; what would he deem as suitable? Mr. Natale said by suitable he means there aren't any business fronts in the Highway Commercial District that would be sterile or that would not be next to a wrecking yard or diesel repair shop. They would need a sterile environment for their patrons to come in. Yes they keep the inside of it sterile but as soon as they walk out they're going to walk into diesel, dirt and all that other stuff that comes in your Commercial Highway District. The intent of the Highway Commercial District is for those traveling on the highway, for their cars trucks or whatever, but tattooing is definitely not for a Commercial Highway District. He doesn't tattoo too many hitchhikers or truck drivers that are just passing through. When he looked they need a place that has forced air, basically anything that you would find in a hair or nail salon; that is the kind of place that is suitable for tattooing.

Councilmember Morrison asked how Mr. Armstrong has gotten away with having his in a com shop. Mr. Natale said he doesn't know; he cannot speak for Ty Armstrong. He said he has a six-month waiting list. He has been out in the com shops for however long, he doesn't know. He had the ability to move into the downtown area once; that was also overturned in Scottsbluff. He was actually part of getting Scottsbluff to modify their zoning from Industrial into the Central Business District and if that's what he wants to be that's his choice.

Councilmember Smith asked if Mr. Natale would really expect a lot of walk in traffic for tattoos. Mr. Natale said absolutely. Councilmember Smith asked: Isn't that something people make up their mind they want to do prior to? Mr. Natale said they do take walk-ins and they also take appointments. But a lot of people that want a tattoo they'll Google it, what's close and who's doing it. And if there's one here in Gering they're not going to Scottsbluff to spend their money they'll stay in Gering. He said so yes they do a lot of walk-ins and that creates repeat customers. They thrive on repeat customers. It's not usually just a one stop shop. Tattoos take quite a while, a lot of numbers of hours of work. He charges \$100 per hour and even then some people have to come in and get four or five sittings at three or four hours apiece. It's a lot of work and a lot of hours spent on people.

Councilmember Morrison asked if he had ever worked at a tattoo parlor before. Mr. Natale replied that he has. He has worked in tattoo shops in Denver and he's currently working at Handsome Devil Tattoos in Scottsbluff until this issue is resolved. He also worked at Signature Ink; they started Signature Ink on Broadway in Scottsbluff.

Councilmember Backus asked if there are any tattoo shops in Gering already. His concern is that if there was they'd be stuck out in an industrial area. Mr. Natale said there are no current tattoo shops in Gering. What he applied for was an exception and conditional use. So if this is granted you're not going to have a flood of tattoo shops. If anybody else wanted to come in and open they would have to go through the same process he went through – through the Planning Commission and the Council to vote them in as well.

Shawn Natale, 2020 Char Ave., #6, Scottsbluff, NE stated he is obviously pro for this. He himself would just walk in and get tattoos. He has a family - a wife and two daughters. He'd like to have this tattoo shop in Gering, he'd like to come to Gering. Scottsbluff seems a little more busy; he likes Gering. What he'd like to do is be able to come down here and schedule a session with Nick and have his wife and two daughters go out and get lunch and maybe get their hair done as well or maybe walk around and see what other shops are here. They would be spending money in Gering and then afterwards they'd go out and get dinner. They'd be bringing business to Gering and he knows many other people that would do the same thing so he's highly in favor this.

Michael Harden, 17 Heather Rd. in Gering, stated he wanted to address the question about walk-in traffic. He owns Handsome Devil Tattoos in Scottsbluff and he picks up walk in traffic all the time. It is very common. A lot of people will drive or walk by and stop in and see what's going on and decide to get a tattoo.

Mayor Kaufman asked if anyone wished to speak in opposition of the application.

Opposition:

Stacy Hanley stated that she has the business at 1034 O Street, next door to the proposed business. It was her understanding that the vision for the Central Business District in Gering was to revamp the businesses that are there and those that can currently move in and make them more family orientated and kid friendly. She feels having a business next-door, it would be effected by having a tattoo shop and those bring up safety concerns for her as well.

Tiffany Schank, 1119 E. 19th St. in Scottsbluff, stated that she has a business at 1028 O Street. She agrees with Stacy. He doesn't know that it really matters where the business is, you're still going to get business just like Councilmember Morrison said. It could be in the corn shops or wherever, if people enjoy your business they're going to go there. It doesn't necessarily have to be downtown.

With no further comments Mr. Snarr stated: Mr. Mayor and City Council Members, I have completed my entry regarding this Public Hearing to consider amending the Zoning and Subdivision Regulations Section 7.2 BCB (Central Business District) Specifically Section 7.204 Exceptions, with the addition of Subsection (13) Tattoo Parlor as requested through the application process for an Exception/Conditional Use Permit submitted by the applicants, Nicholas and Dezy Natale If this amendment is approved, a public hearing would still be required for the Exception/Conditional Use Permit as submitted by the applicants Nicholas and Dezy Natale requesting to open a tattoo parlor/studio located at 1040 O Street.

I would ask this Council to keep this hearing open until all entries are put into this record and ask for your recommendation to approve, deny, or continue as stated in the record before you.

Recommendation

Approve

Make a POSITIVE RECOMMENDATION to the City Council to amend the Zoning and Subdivision Regulations Section 7.2 BCB (Central Business District) Specifically Section 7.204 Exceptions, with the addition of Subsection (13) Tattoo Parlor as requested through the application process for an Exception/Conditional Use Permit submitted by the applicants, Nicholas and Dezy Natale. This consideration would require the following minimum conditions:

Requirements set forth in Section 7.3 BHC (C-3) Highway Commercial District, specifically Section 7.304, Subsection (8) Tattoo Parlor Meeting the following conditions: (Ordinance 1930, 12/10)

Deny

Make a NEGATIVE RECOMMENDATION to the City Council to amend the Zoning and Subdivision Regulations Section 7.2 BCB (Central Business District) Specifically Section 7.204 Exceptions, with the addition of Subsection (13) Tattoo Parlor as requested through the application process for an Exception/Conditional Use Permit submitted by the applicants, Nicholas and Dezy Natale for the following reason(s):

Continue

Make a motion to CONTINUE the Public Hearing to amend the Zoning and Subdivision Regulations Section 7.2 BCB (Central Business District) Specifically Section 7.204 Exceptions, with the addition of Subsection (13) Tattoo Parlor as requested through the application process for an Exception/Conditional Use Permit submitted by the applicants, Nicholas and Dezy Natale for the following reason(s):

Administrator Danielzuk stated that he's sure that all of the sitting City Council Members here this evening have had an opportunity to go through the Planning Commission meeting minutes from July 18, 2017. He said he wants to remind Council that it is discriminatory if they use zoning law to affect a certain use or business. Having two zoning districts in the City already that allow for tattoo parlors, one is a permitted use and the other is a use by special exception, is not discriminatory. For this public hearing it's not about where you can find a location. He explained the difference between an exception and a conditional use permit. They are not one in the same, although our zoning code treats them pretty much as one in the same. Exception by our definition in the zoning code is a use, like a tattoo parlor or beauty shop or anything like that, it's a use. It would not be appropriate generally, or without restriction through the zoning district, but which are controlled as to number, area, location or relation to the neighborhood and would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity or general welfare. Such uses may be permitted in such zoning districts as exceptions. Conditional use permit is a conditional use permit for permission under certain conditions to make certain conditional uses of land. There's a big difference; they are not one in the same. One deals with land, one deals with use. When you go back through our regulations and take a look at those things, most of our

regulations are set up in order to deal with conditional use permit. Rules governing individual exceptions, access, parking, service, utilities, screening, signs, yards, compatibility - they're all land-use issues. They're not use issues. There's a big difference. He said we go back to the special exception, it says in the definition it's a use that would be appropriate if it's controlled as to the number, location, relation to a neighborhood and would promote the public health, safety, welfare, morals, order, comfort, convenience, prosperity or general welfare. He said that's not what he just read a minute ago. As part of the Planning Commission public hearing he did enter into the record the Planning Commission meeting of April 18, 2006 which in part says City Administrator Remington commented that the City cannot tell tattoo parlor proprietors that they cannot locate in town but the City can tell them where they can locate. It's a permitted use in the Industrial Zone, Heavy Industrial Zone, in our city; that was done in 2006. He said in December, 2010 it went through the Planning Commission and the Council and was approved for Business Highway Commercial as a use by special exception. Does the City Council have to approve this (application)? Absolutely not. And it wouldn't be discriminatory. He said Mr. Natale is right about the discriminatory aspects of it but it would be hard to prove discrimination when it's authorized in two different zoning districts in the City.

Mr. Snarr stated that he needs to make a correction in the Administrative Record. The bullet item "Planning Commission Public Hearing on June 18, 2017, made motion for positive recommendation..." the date needs to be changed to July 18, 2017. With no further comments the Mayor closed the Administrative Record and the Public Hearing closed at 6:42 p.m.

Motion by Councilmember Morrison to enter the Administrative Record for this public hearing into the public record. Second by Councilmember Smith. There was no discussion. The Mayor called the vote. "AYES": Smith, Gillen, Backus, Wiedeman, O'Neal, Morrison, Cowan. "NAYS": None. Abstaining: None. Absent: Holliday. Motion Carried.

1a. Approve or deny amending zoning and Sub Division Regulations District BCB (Central Business District), Section 7.204 Exceptions adding Sub Section (13) to include Tattoo Parlors as an exception and meet conditions per Ordinance 1930 dated 12/10

Councilmember Morrison said if she may address the Council as a body she thinks we have gone to great links to put together a Comprehensive Plan as to what we want our downtown to be like and we have just gone through this before where we've not allowed a business because of the zoning issue. She said she thinks we need to be mindful of this as we consider this application.

Motion by Councilmember Smith to deny amending zoning and Sub Division Regulations District BCB (Central Business District), Section 7.204 Exceptions adding Sub Section (13) to include Tattoo Parlors as an exception and meet conditions per Ordinance 1930 dated 12/10. Second by Councilmember O'Neal. There was no discussion. The Mayor called the vote. "AYES": Smith, Wiedeman, O'Neal, Morrison. "NAYS": Gillen, Backus, Cowan. Abstaining: None. Absent: Holliday. Motion failed.

Mayor Kaufman stated that Council would take a five minute recess. After the recess Mayor Kaufman said we have four yeses for denial and three votes for no, so the motion fails for lack of a majority. He asked if there's another motion before Council. Councilmember Morrison made a motion to deny. There was in audible talking among some of the Council Members. Councilmember Smith asked if the Mayor could explain that. Mayor Kaufman said in this case a yes vote is denial; the motion was to deny. Councilmember Smith said and there was a majority, Mayor Kaufman said there was four; five creates the majority. City Attorney Ellison said in affect no action was taken, either way. Mayor Kaufman said so it brings us back to square one. We can entertain another motion or the motion will die for lack of action. Councilmember Backus said that Julie has made a motion, Mayor Kaufman said yes but there is no second. Councilmember Smith asked if that would be the exact same motion. Mayor Kaufman replied yes. Councilmember Smith asked if they're just doing a revote. Mayor Kaufman asked City Attorney Ellison if we can do that. Mr. Ellison said if you want to entertain it again with additional comments you're welcome to do that. Mayor Kaufman said as it stands right now we have another motion from Councilmember Morrison. Councilmember Morrison rescinded her motion.

Motion by Councilmember Backus to approve amending zoning and Sub Division Regulations District BCB (Central Business District), Section 7.204 Exceptions adding Sub Section (13) to include Tattoo Parlors as an exception and meet conditions per Ordinance 1930 dated 12/10. Second by Councilmember Cowan.

Discussion: Administrator Danielzuk called point of order; he said this is not to approve the application, this is to change the zoning law. Mayor Kaufman replied correct. Mr. Ellison said just so everybody understands a vote yes is to change the zoning to allow by exception. Mayor Kaufman replied correct, we have a motion and a second for a zoning change as presented.

The Mayor called the vote. "AYES": Gillen, Backus, Cowan. "NAYS": Smith, Wiedeman, O'Neal, Morrison. Abstaining: None. Absent: Holliday. The Mayor stated that the motion failed for a lack of a majority.

1b. Approve Ordinance 2049

2. Public hearing to consider an Exception/Conditional Use application to allow a Tattoo Parlor to operate at 1040 O Street on the W ½ of Lot 11 & Lot 12, Block 30 First Addition to the City of Gering, Scotts Bluff County, Nebraska

2a. Approve or deny an Exception/Conditional Use application to allow a Tattoo Parlor to operate at 1040 O Street on the W ½ of Lot 11 & Lot 12, Block 30 First Addition to the City of Gering, Scotts Bluff County, Nebraska

NOTE: Items 1b, 2 and 2a were not addressed by Council due to the zoning not being amended.

3. Public hearing regarding: Annexation the following tract of land - Northeast Quarter of Section 1, Township 21 North, Range 55 West of the 6th Principal Meridian, Scotts Bluff County, Nebraska lying North of the UPPR Right-of-Way, excepting a tract of land as described in Instrument Number 2016-2173 of Scotts Bluff County Register of Deed records and also excepting Lot 1, Block 1, Bar-T Ranch Subdivision as platted and recorded in Instrument Number 2017-3022 of Scotts Bluff County Register of Deed records AND Annexation the following tract of land - Government Lots 4 and 5 located in the Northeast Quarter Section 36, Township 22 North, Range 55 West of the 6th Principal Meridian, Scotts Bluff County, Nebraska and the accreted lands thereto and the Southeast Quarter of Section 36, Township 22 North, Range 55 West of the 6th Principal Meridian, Scotts Bluff County, Nebraska. EXCEPTING a part of the E1/2SE1/4 of Section 36, Township 22 North, Range 55 West of the 6th P.M., Scotts Bluff County, Nebraska, more particularly described as follows: Beginning at a point on the South Line of said E1/2SE1/4; said point being 56.05 feet east of the Southwest corner of said E1/2SE1/4; thence North at right angles to the South Line of said E1/2SE1/4, a distance of 265.95 feet; thence a deflection angle right of 90°25', a distance of 395.05 feet; thence a deflection angle right 89°35', a distance of 263.5 feet to the South Line of said E1/2SE1/4; thence West on the South line of said E1/2SE1/4, a distance of 395.0 feet to the point of beginning, containing an area of 2.401 acres, more or less; AND EXCEPT that part conveyed to Scotts Bluff County, Nebraska as disclosed by Deed filed in Book 195 at Page 188.

Mayor Kaufman opened the public hearing at 6:51 p.m. Mr. Snarr presented the Administrative Record.

**CITY OF GERING
CITY COUNCIL ADMINISTRATIVE RECORD**

To:	City Council	Date:	8-14-2017
From:	Planning & Community Development	Zoning:	AGG & MH
Subject:	Public Hearing - Petition to Annex (City Property and Henkel Property)	Property Size:	± 340 acres
Location:	NE ¼ Section 1, T21N, R55W of the 6 th PM, Government Lots 4 & 5 in the NE ¼ Section 36, T22N, R55W of the 6 th PM & Accreted Grounds, and the SE ¼ Section 36, T22N, R55W of the 6 th PM (with exceptions)	#Lots/Parcels/Area:	±340 Acres

	as shown in the Administrative Record)		
Owner:	City of Gering and Henry and Wanda Henkel	Planning Commission:	7-18-2017

Procedure

1. Open Public Hearing
2. Overview of petition by City Staff
3. Presentation by Applicant
4. Solicitation of Public comments
5. Questions from the City Council
6. Close the Public Hearing
7. Render a decision
8. Public Process: City Council determines final approval

Public Notice: This hearing was noticed in the paper and notice was posted on the property

Public Hearing

Mr. Mayor and City Council Members,

This is a Public Hearing to consider a petition to annex property owned by Henry and Wanda Henkel located in part of Section 1, Township 21 North, Range 55 West of the 6th Principal Meridian, Scotts Bluff County, Nebraska. The owners submitted a voluntary request petition to annex their property by letter dated July 7, 2017. Also as part of this annexation is property owned by the City of Gering located in part of Section 36, Township 22 North, Range 55 West of the 6th Principal Meridian, Scotts Bluff County, Nebraska. The properties requested to be annexed are described as follows:

Henkel Property:

Northeast Quarter of Section 1, Township 21 North, Range 55 West of the 6th Principal Meridian, Scotts Bluff County, Nebraska lying North of the UPRR Right-of-Way, excepting a tract of land as described in Instrument Number 2016-2173 of Scotts Bluff Register of Deed records and also excepting Lot 1, Block 1, Bar-T-Ranch Subdivision as platted and recorded in Instrument Number 2017-3022 of Scotts Bluff County Register of Deed records.

The above description includes two parcels owned by Henry and Wanda Henkel and described as follows as recorded with the Scotts Bluff County Register of Deeds:

1. Deed Instrument Number 2000-05364 recorded September 18, 2000 with the Scotts Bluff County Register of Deeds: A tract of land situated in part of Government Lot 2 of Section 1, Township 21 North, Range 55 West of the 6th P.M. in Scotts Bluff County, Nebraska, containing approximately 19 acres.
2. Part of Lots 1 and 2 of Section 1, Township 21 North, Range 55 West of the 6th Principal Meridian, Scotts Bluff County, Nebraska containing approximately 87 acres.

City Property:

Government Lots 4 and 5 located in the Northeast Quarter Section 36, Township 22 North, Range 55 West of the 6th Principal Meridian, Scotts Bluff County, Nebraska and the accreted lands thereto and the Southeast Quarter of Section 36, Township 22 North, Range 55 West of the 6th Principal Meridian, Scotts Bluff County, Nebraska. EXCEPTING a part of the E1/2SE1/4 of Section 36, Township 22 North, Range 55 West of the 6th P.M., Scotts Bluff County, Nebraska, more particularly described as follows: Beginning at a point on the South Line of said E1/2SE1/4; said point being 56.05 feet east of the Southwest corner of said E1/2SE1/4; thence North at right angles to the South Line of said E1/2SE1/4, a distance of 265.95 feet; thence a deflection angle right of 90°25', a distance of 395.05 feet; thence a deflection angle right 89°35', a distance of 263.5 feet to the South Line of said E1/2SE1/4; thence West on the South line of said E1/2SE1/4, a distance of 395.0 feet to the point of beginning, containing an area of 2.401 acres, more or less; AND EXCEPT that part conveyed to Scotts Bluff County, Nebraska as disclosed by Deed filed in Book 195, Page 188.

Annexation of Henkel Property contains approximately 19 acres and 87 acres.

Annexation of City property located in the E1/2 SE1/4 and Government Lot 5 of said Section 36 as described above contains approximately 93 acres. Annexation of existing City Property in the West 1/2 SE ¼ of said Section 36 and Government Lot 4 located in the W1/2 NE1/4 contains approximately 140 acres. Total annexation consists of approximately 340 acres.

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.

- Voluntary petition request to annex letter submitted to the City on July 7, 2017 by the Owners, Henry and Wanda Henkel.

- Henry and Wanda Henkel property Deed Instrument Number 2000-05364 recorded September 18, 2000 with the Scotts Bluff County Register of Deeds, containing approximately 19 acres.
- Part of Lots 1 and 2 of Section 1, Township 21 North, Range 55 West of the 6th Principal Meridian, Scotts Bluff County, Nebraska containing approximately 90.72 acres as shown with the Scotts Bluff County Assessor's Office as Parcel 010247254.
- Exception of the property to be annexed located in Section 1, Township 21 North, Range 55 West of the 6th Principal Meridian, Scotts Bluff County, Nebraska lying North of the UPRR Right-of-Way is described in Instrument Number 2016-2173 of Scotts Bluff Register of Deed records.
- Exception of the property to be annexed located in Section 1, Township 21 North, Range 55 West of the 6th Principal Meridian, Scotts Bluff County, Nebraska lying North of the UPRR Right-of-Way is Lot 1, Block 1, Bar-T-Ranch Subdivision as platted and recorded as Instrument Number 2017-3022 of the Scotts Bluff County Register of Deed records.
- Warranty Deed Instrument Number 2016-6953 from Grantor Leo Hoehn to the City of Gering dated 12-22-2016 of Government Lot 5 located in the Northeast Quarter Section 36, Township 22 North, Range 55 West of the 6th Principal Meridian, Scotts Bluff County, Nebraska and the accreted lands thereto and the East Half of the Southeast Quarter of Section 36, Township 22 North, Range 55 West of the 6th Principal Meridian, Scotts Bluff County, Nebraska as recorded with the Scotts Bluff County Register of Deed records.
- Government Lot 4 located in the Northeast Quarter Section 36, Township 22 North, Range 55 West of the 6th Principal Meridian, Scotts Bluff County, Nebraska and the accreted lands thereto and the West Half of the Southeast Quarter of Section 36, Township 22 North, Range 55 West of the 6th Principal Meridian, Scotts Bluff County, Nebraska as recorded with the Scotts Bluff County Register of Deed records and shown as Parcel Number 010228489 with the Scotts Bluff County Assessor (Legal on Assessors Site: LT 4, W1/2 SE Quarter Island containing approximately 127.5 acres).
- Accustar Surveying submittal of the legal descriptions received July 7, 2017 and listed as "Exhibit A" for the Hoehn and Henkel Property which is included in the Planning Commission and City Council documents for the public hearing.
- City of Gering Subdivision and Zoning Regulations dated March 1984.
- City of Gering Official Zoning Map
- City of Gering Official City Limits Map.
- 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, Article 15 Amendment, Section 15.2 Submission to Planning Commission, and are incorporated by reference in this Administrative Record. Signs were also posted on site for the proposed annexation meeting zoning regulations.
- Planning Commission Public Hearing July 18, 2017 made motion for a positive recommendation to consider the petition to annex property owned by Henry and Wanda Henkel as described above and positive recommendation to annex property owned by the City of Gering as described above and to move this Public Hearing forward to City Council.
- City Engineer/Director of Engineering & Community Planning Administrative Record as shown herein.

Mayor Kaufman asked if anybody wanted to speak in favor of this application. Councilmember Backus said he has a question. State statute says that on an annexation you need to have a cost to provide services, plans to provide future services and a timetable for those services. He asked if this has been addressed. Mr. Snarr said it has been a while but we have put together plans for extending water and sewer out and preliminary drawings for future subdivisions but we haven't put plans and costs together for utilities. Councilmember Backus asked if it is a lot of work to have it included in the annexation part of the packet. Mr. Snarr replied no, he could do that. Administrator Danielzuk said he would ask the City Attorney to speak to that issue. Mr. Ellison said those types of requirements where the plans and that sort of thing are a part of this, those are required when the City of Gering takes action to annex property without the property owner making an application, but when the property owner makes the application all those issues are waived. In other words you don't have to provide for those plans at this point in time. So it's different depending upon who's making the application or whether the property is being annexed without the consent of the owner. Councilmember Backus said he thinks it would be good information to have though if we're annexing something; that we know how much we're going to spend to annex it at an annexation meeting.

Mayor Kaufman replied that he hears what Councilmember Backus is saying, but if the owner is the applicant that may or may not be relevant if they're making petition to the City to be annexed in. In a case where the applicant is not willfully annexing into the city then that's where statute comes in. Councilmember Backus asked if this is a policy decision, having that added would be a policy decision?

Mayor Kaufman said he didn't know about that and he hears what Councilmember Backus is saying but it's technically not required since the applicant is the one putting it in. Service to those sites may or may not be relevant at this particular juncture but would definitely be relevant to the future owner.

Mr. Snarr said he would like to add that on the costs it's very hard to... there would be quite a range in running sewer and water out not knowing exactly how it's going to be developed. There is quite a range on the costs. Councilmember Backus said his whole concern is that you get stuck with a goose egg for services somewhere when we annex it; he would like to avoid that. Mayor Kaufman said good question.

Mayor Kaufman asked again if anybody wanted to speak in favor of the application. Seeing none he asked if anybody wanted to speak in opposition of the application.

With no further comments Mr. Snarr stated: Mr. Mayor and City Council Members, I have completed my entry regarding this Public Hearing to consider a petition to annex property owned by Henry and Wanda Henkel located in part of the Northeast Quarter of Section 1, Township 21 North, Range 55 West of the 6th Principal Meridian and property owned by the City of Gering located in part of the Northeast Quarter and Southeast Quarter of Section 36, Township 22 North, Range 55 West of the 6th Principal Meridian, Scotts Bluff County, Nebraska.

I would ask this Council to keep this hearing open until all entries are put into this record and ask for your recommendation to approve, deny, or continue as stated in the record before you.

Recommendation

Approve

Make a POSITIVE RECOMMENDATION to the City Council to move forward with a Public Hearing to consider a petition to annex property owned by Henry and Wanda Henkel located in part of the Northeast Quarter of Section 1, Township 21 North, Range 55 West of the 6th Principal Meridian and property owned by the City of Gering located in part of the Northeast Quarter and Southeast Quarter of Section 36, Township 22 North, Range 55 West of the 6th Principal Meridian, Scotts Bluff County, Nebraska with the following conditions:

Deny

Make a NEGATIVE RECOMMENDATION to the City Council to move forward with a Public Hearing to consider a petition to annex property owned by Henry and Wanda Henkel located in part of the Northeast Quarter of Section 1, Township 21 North, Range 55 West of the 6th Principal Meridian and property owned by the City of Gering located in part of the Northeast Quarter and Southeast Quarter of Section 36, Township 22 North, Range 55 West of the 6th Principal Meridian, Scotts Bluff County, Nebraska) for the following reason(s):

Continue

Make a motion to CONTINUE the Public Hearing to consider a petition to annex property owned by Henry and Wanda Henkel located in part of the Northeast Quarter of Section 1, Township 21 North, Range 55 West of the 6th Principal Meridian and property owned by the City of Gering located in part of the Northeast Quarter and Southeast Quarter of Section 36, Township 22 North, Range 55 West of the 6th Principal Meridian, Scotts Bluff County, Nebraska for the following reason(s):

Mayor Kaufman asked if there were any additional entries. Administrator Danielzuk stated that he wanted to clarify some information that was given at another Council meeting and provide a correction. Under the annexation statutes municipalities must exercise annexation powers in strict accord with prevailing applicable statutes. Annexing of adjacent land is a statewide concern therefore state statutes, not city ordinances, are controlling. Additionally a municipality may only annex land which is urban or suburban in nature as opposed to rural. Cities may not annex rural land and courts must determine whether the land is urban or suburban or rural in nature if it goes that far. The City of Hastings argued that even though land is agricultural it may still be considered urban or suburban in nature. The court agreed that just because land is agricultural does not necessarily classify it as rural citing Omaha Country Club vs. the City of Omaha – a 1983 citation. The court held that in determining whether land is agricultural the court must look at the nature of the use of the land in addition to its location – Sullivan vs. the City of Omaha – 1968 citation.

Administrator Danielzuk stated with respect to some of our parcels of land referring specifically to the July 20, 2004 City Planning Commission Official Proceedings. In part it states as it relates to the Henkel property: "Chairman Ross Chairman Ross declared the public hearing open for the application for rezoning of Tax Lots 1, 2, and 3, located in Section 1, Township 21 North, Range 55 West from Heavy

Industrial and Manufacturing (MH) to General Agricultural District (AGG) submitted by Henry Henkel. Discussion was held on the long-range use plan and it was indicated that the plan for this area is Heavy Industrial and Manufacturing (MH). If the Planning Commission recommends rezoning, the proposed use should be listed on the zoning map as MH. The MH zoning was established in 1984. Mr. and Mrs. Henkel were present and Mr. Henkel indicated he did not know this parcel was zoned MH until last year when he received his tax statement. His taxes doubled this year. Mr. Henkel indicated he farms this land and he would like the property rezoned to AGG.” Mr. Danielzuk stated: That went on approval to the City Council in the July 26, 2004 official proceedings of the City Council meeting. Ordinance 1767 came into place and was approved on the 26th day of July; that changed and reclassified the Henkel property from Heavy Industrial to AGG.

With no further comments the Mayor closed the Administrative Record and the Public Hearing closed at 7:06 p.m.

Motion by Councilmember Wiedeman to enter the Administrative Record for this public hearing into the public record. Second by Councilmember Gillen. There was no discussion. The Mayor called the vote. “AYES”: Smith, Gillen, Backus, Wiedeman, O’Neal, Morrison, Cowan. “NAYS”: None. Abstaining: None. Absent: Holliday. Motion Carried.

3a. Approve or deny annexing the Northeast Quarter of Section 1, Township 21 North, Range 55 West of the 6th Principal Meridian, Scotts Bluff County, Nebraska lying North of the UPPR Right-of-Way, excepting a tract of land as described in Instrument Number 2016-2173 of Scotts Bluff County Register of Deed records and also excepting Lot 1, Block 1, Bar-T Ranch Subdivision as platted and recorded in Instrument Number 2017-3022 of Scotts Bluff County Register of Deed records AND annexing Government Lots 4 and 5 located in the Northeast Quarter Section 36, Township 22 North, Range 55 West of the 6th Principal Meridian, Scotts Bluff County, Nebraska and the accreted lands thereto and the Southeast Quarter of Section 36, Township 22 North, Range 55 West of the 6th Principal Meridian, Scotts Bluff County, Nebraska. EXCEPTING a part of the E1/2SE1/4 of Section 36, Township 22 North, Range 55 West of the 6th P.M., Scotts Bluff County, Nebraska, more particularly described as follows: Beginning at a point on the South Line of said E1/2SE1/4; said point being 56.05 feet east of the Southwest corner of said E1/2SE1/4; thence North at right angles to the South Line of said E1/2SE1/4, a distance of 265.95 feet; thence a deflection angle right of 90°25’, a distance of 395.05 feet; thence a deflection angle right 89°35’, a distance of 263.5 feet to the South Line of said E1/2SE1/4; thence West on the South line of said E1/2SE1/4, a distance of 395.0 feet to the point of beginning, containing an area of 2.401 acres, more or less; AND EXCEPT that part conveyed to Scotts Bluff County, Nebraska as disclosed by Deed filed in Book 195 at Page 188.

Motion by Councilmember Gillen to approve annexing the Northeast Quarter of Section 1, Township 21 North, Range 55 West of the 6th Principal Meridian, Scotts Bluff County, Nebraska lying North of the UPPR Right-of-Way, excepting a tract of land as described in Instrument Number 2016-2173 of Scotts Bluff County Register of Deed records and also excepting Lot 1, Block 1, Bar-T Ranch Subdivision as platted and recorded in Instrument Number 2017-3022 of Scotts Bluff County Register of Deed records AND annexing Government Lots 4 and 5 located in the Northeast Quarter Section 36, Township 22 North, Range 55 West of the 6th Principal Meridian, Scotts Bluff County, Nebraska and the accreted lands thereto and the Southeast Quarter of Section 36, Township 22 North, Range 55 West of the 6th Principal Meridian, Scotts Bluff County, Nebraska. EXCEPTING a part of the E1/2SE1/4 of Section 36, Township 22 North, Range 55 West of the 6th P.M., Scotts Bluff County, Nebraska, more particularly described as follows: Beginning at a point on the South Line of said E1/2SE1/4; said point being 56.05 feet east of the Southwest corner of said E1/2SE1/4; thence North at right angles to the South Line of said E1/2SE1/4, a distance of 265.95 feet; thence a deflection angle right of 90°25’, a distance of 395.05 feet; thence a deflection angle right 89°35’, a distance of 263.5 feet to the South Line of said E1/2SE1/4; thence West on the South line of said E1/2SE1/4, a distance of 395.0 feet to the point of beginning, containing an area of 2.401 acres, more or less; AND EXCEPT that part

conveyed to Scotts Bluff County, Nebraska as disclosed by Deed filed in Book 195 at Page 188. Second by Councilmember Wiedeman. There was no discussion. The Mayor called the vote. "AYES": Smith, Gillen, Wiedeman, O'Neal, Morrison, Cowan. "NAYS": Backus. Abstaining: None. Absent: Holliday. Motion Carried.

3b. Approve Ordinance 2050 – First reading

Councilmember Wiedeman made a motion to introduce Ordinance No. 2050 as a first reading - AN ORDINANCE OF THE CITY OF GERING, NEBRASKA FINDING THAT CERTAIN LANDS, LOTS, TRACTS, STREETS AND HIGHWAYS SITUATED IN A PORTION OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 21 NORTH, RANGE 55 WEST OF THE 6TH PRINCIPAL MERIDIAN AND A PORTION OF THE EAST HALF OF SECTION 36, TOWNSHIP 22 NORTH, RANGE 55 WEST OF THE 6TH PRINCIPAL MERIDIAN, SCOTTS BLUFF COUNTY, NEBRASKA AS DESCRIBED HEREIN, AND ARE SUBJECT TO ANNEXATION TO AND INCLUSION WITHIN THE CORPORATE LIMITS OF THE CITY; ANNEXING TO AND INCLUDING WITHIN THE CORPORATE LIMITS OF THE CITY SUCH LANDS, LOTS, TRACTS, STREETS, AND HIGHWAYS; PROVIDING THAT THE INHABITANTS THEREOF SHALL BE ENTITLED TO THE RIGHTS AND PRIVILEGES AND SUBJECT TO THE LAWS, ORDINANCES, RULES AND REGULATIONS OF THE CITY, AND RECEIVE SUBSTANTIALLY THE BENEFITS OF OTHER INHABITANTS THEREOF; REPEALING CONFLICTING ORDINANCES AND PARTS OF ORDINANCES; AND, PROVIDING FOR RECORDING AND PUBLICATION OF THE ORDINANCE AND FOR ITS EFFECTIVE DATE. Seconded by Councilmember O'Neal. There was no discussion. The Mayor called the vote. "AYES": Smith, Gillen, Wiedeman, O'Neal, Morrison, Cowan. "NAYS": Backus. Abstaining: None. Absent: Holliday. Motion Carried.

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

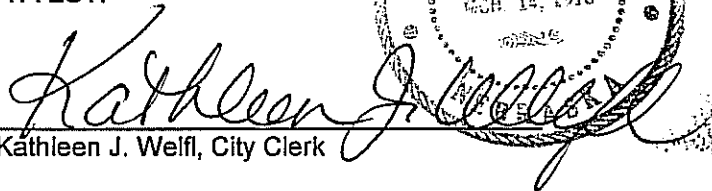
REPORTS: None

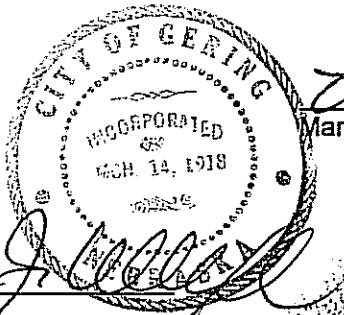
ADJOURN:

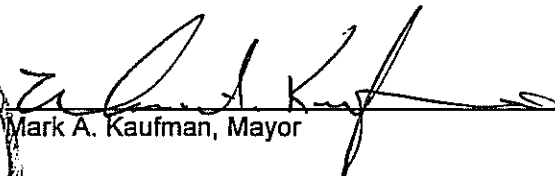
Motion by Councilmember Gillen to adjourn. Second by Councilmember Wiedeman. There was no discussion. The Mayor called the vote. "AYES": Smith, Gillen, Backus, Wiedeman, O'Neal, Morrison, Cowan. "NAYS": None. Abstaining: None. Absent: Holliday. Motion Carried.

Meeting adjourned at 7:12 p.m.

ATTEST:


Kathleen J. Welfl, City Clerk




Mark A. Kaufman, Mayor