

THE OFFICIAL PROCEEDINGS OF THE REGULAR MEETING OF THE GERING CITY COUNCIL, OCTOBER 25, 2021

A regular meeting of the City Council of Gering, Nebraska was held in open session on October 25, 2021, at 6:00 p.m. at Gering City Hall, 1025 P Street, Gering, NE. Present were Mayor Kaufman and Councilmembers Gillen, Backus, Wiedeman, O'Neal, Morrison, Cowan. Also present were City Administrator Pat Heath, City Clerk Kathy Welfl and City Attorney Matt Turman. Absent were Councilmembers Smith and Bohl. 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. and stated that there was a quorum of the Council present 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 Gillen to approve the absence of Mayor Kaufman from the October 11, 2021 regular City Council meeting. Second by Councilmember Wiedeman. There was no discussion. Mayor Kaufman called the vote. "AYES": Gillen, Backus, Wiedeman, O'Neal, Morrison, Cowan. "NAYS": None. Abstaining: None. Absent: Smith, Bohl. 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 the 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 minutes of the October 11, 2021 regular Council meeting
2. Approve Claims

Claims 10-12-21 to 10-25-21

21ST CENTURY EQUIPMENT \$235.16; 24/7 FITNESS \$195.00; A & A PORTA POTTIES \$270.00; ACE HARDWARE \$494.14; ACUSHNET COMPANY \$711.91; ADVANCED WEIGHING SYSTEMS, INC \$2,360.00; AMAZON CAPITAL SERVICES \$396.83; AMERICA PARRA \$300.00; AMERICAN BUS ASSOCIATION \$620.00; AMERITAS LIFE INSURANCE COPR. \$578.78; AMPRIDE \$69.81; ARIAT INTERNATIONAL \$1,064.16; AT&T MOBILITY \$256.49; AUTO ZONE 1657 \$19.39; BARB JENSEN \$75.00; BENZEL PEST CONTROL \$206.71; BH MEDIA GROUP HOLDING, INC. \$4,950.03; BIG MACK HEATING & COOLING \$95.00; BLUFFS FACILITY SOLUTIONS \$463.03; BOUND TREE MEDICAL \$993.94; BRIMAR INDUSTRIES \$531.94; BULLER FIXTURE COMPANY \$8,700.00; BUSHNELL OUTDOOR PRODUCTS \$433.62; CASEY'S GENERAL STORE \$44.67; CENGAGE LEARNING/GAGE \$208.90; CITY INSURANCE FUND \$80,914.36; CITY OF GERING \$952.10; CITY OF LINCOLN \$22.50; CITY PAYROLL TRUST \$2,743.27; CLARK PRINTING LLC \$907.95; CONNECTING POINT \$398.48; CONSTANT CONTACT \$45.00; COOK'S COUNTRY \$29.95; CROELL, INC \$6,957.50; CROSSCOUNTRY COURIER INC \$113.29; DANIELLE FITZKE \$75.00; DESIGN AND MARKETING SOLUTIONS \$64.95; DIANE SCHANEMAN \$75.00; DIRT STIX NURSERY \$320.78; DOMINO'S PIZZA \$32.07; DOOLEY OIL \$292.84; DUNGAREES \$497.50; DUTTON-LAINSON COMPANY \$2,808.11; DYKES OIL INC. \$55.45; EAKES INC \$14.50; ELGIN ONE STOP \$42.29; ELITE TOTAL FITNESS \$48.50; ELLISON, KOVARIK & TURMAN LAW \$9,437.08; ENERGY LABORATORIES INC. \$579.00; ENVIRON.COMPLIANCE SOLUTIONS, \$1,175.00; FASTENAL COMPANY \$10.54; FIRST STATE BANK \$365.40; FLOYD'S TRUCK CENTER, INC. \$4,945.99; FRANK PARTS COMPANY \$1,323.63; FREE CONFERENCE CALL.COM \$4.00; FRESH FOODS INC. \$5.10; FULL SOURCE \$316.66; FYR-TEK, INC. \$50.00; GERING VALLEY PLUMBING & HTG. \$68.00; GERING VOLUNTEER FIRE DEPT. \$356.50; GREGORY'S LOCK SHOP LLC \$160.00; GT MART \$50.98; HACH COMPANY \$432.56; HENNING BROTHERS \$83.00; HILTON DES MOINES DOWNTOWN \$297.24; HOME DEPOT CREDIT SERVICES \$114.30; HOT ROD MAGAZINE \$19.97; HYVEE \$40.00; IDEAL LAUNDRY AND CLEANERS, IN \$172.65; INDOFF INCORPORATED \$281.60; INGRAM LIBRARY SERVICES \$344.81; INTERNAL REVENUE SERVICE \$41,245.05; INTERSTATE BATTERIE/RAPID CITY \$521.80; IRBY TOOL & SAFETY \$346.68; JACK'S UNIFORMS & EQUIPMENT \$4,081.54; JERRY HIGEL \$2,244.00; JOHN HANCOCK USA \$13,644.38; JOHN HANCOCK USA FIRE \$597.18; JOHN HANCOCK USA POLICE \$6,656.40; JOHNSON CASHWAY CO. \$11.18; JONES & BARTLETT LEARNING \$837.33; KANSAS GOLF & TURF INC \$707.40; KING BUFFET \$12.69; KS STATEBANK \$27,148.05; LEAGUE ASSOC./RISK MANAGEMENT \$24.97; LEAGUE OF NE. MUNICIPALITIES \$422.00; LOGOZ LLC \$337.00; LUSILA MORALES \$98.03; MARED INDUSTRIES, INC. \$3,309.85; MARIA PEREZ \$75.00; MATHESON TRI-GAS INC \$120.27; MCDONALD'S \$9.13; MEAT SHOPPE \$13,281.75; MEDLINE INDUSTRIES \$389.70; MENARDS \$809.88; MICHAEL TODD & COMPANY, INC. \$413.11; MIZUNO USA, INC. \$224.76; MOTOR FUELS DIVISION \$2,093.00; MSC 410526/DOLLAR GENERAL CORP \$14.75; MUNICIPAL ENERGY AGENCY OF NE \$291,640.14; MUNICIPAL SUPPLY, INC. OF NE. \$329.50; MURDOCH'S RANCH & HOME \$79.99; NE CHILD SUPPORT PAYMENT CENTE \$462.93; NE DEPARTMENT OF REV (PR) \$6,714.30; NE DEPT OF REVENUE \$1,206.77; NE DEPT. OF REVENUE \$76,236.54; NE PUBLIC HEALTH ENVIRO LAB \$352.00; NEAL SMITH \$180.00; NEBRASKA PUBLIC POWER DIS \$3,973.95; NEBRASKA

RURAL RADIO ASSOC. \$583.18; NEBRASKA RURAL WATER ASSOC. \$1,075.00; NEBRASKA SECRETARY OF STATE \$25.00; NKC TIRE \$3,460.32; NORTHWEST PIPE FITTINGS, INC \$1,822.48; PANHANDLE COOP ASSOCIATION \$355.00; PANHANDLE ENVIRONMENTAL SERVIC \$1,232.00; PANHANDLE HUMANE SOCIETY \$3,168.50; PANHANDLE REGIONAL DEVELOPMENT \$50.00; PARADISE \$11.00; PAYROLL \$129,910.94; PING INC \$191.11; PLATTE RIVER GLASS RODNEY L FL \$661.00; POWERPLAN OIB \$2,264.11; QUICK STOP \$15.07; SANDBERG IMPLEMENT, INC. \$3,118.15; SANDRY FIRE SUPPLY \$340.10; SAPP BROS \$36.33; SCB CO. VEHICLE REGISTRATION \$11.00; SCB. COUNTY AMBULANCE SERVICE \$316.23; SCB. COUNTY REGISTER OF DEEDS \$40.00; SCB. COUNTY SHERIFF OFFICE \$166.96; SCOTTS BLUFF CO BUILDING & ZON \$55.00; SCOTTS BLUFF COUNTY COURT \$87.00; SCOTTSBLUFF-GERING UNITED WAY \$128.75; SENIOR CITIZENS CENTER \$525.00; SHARON LEMLEY \$32.16; SHAWNA WINCHELL \$595.00; SIMMONS OLSEN LAW FIRM, P.C. \$1,885.00; SIMON CONTRACTORS \$390.00; SIRCHIE ACQUISITION CO., LLC \$499.57; SLATE ROCK SAFETY \$406.10; SMART APPLE MEDIA \$366.26; SOLUTIONS EAP \$489.11; SOURCE ONE ENVIRONMENTAL LLC \$258.45; SOUTHWESTERN EQUIPMENT COMPANY \$676.52; SPECTRUM \$10.09; SPEEDEE MART \$41.31; SUGAR VALLEY FEDERAL CREDIT \$528.37; TAYLOR MADE GOLF COMPANY \$483.85; TEAM CHEVROLET \$375.00; TERRY CARPENTER, INC. \$650.00; THE CREATIVE COMPANY \$285.40; THE ROCK PILE \$909.76; THE TORO COMPANY \$155.00; TRANSUNION RISK AND ALTERNATIV \$75.00; TRIHYDRO CORPORATION \$20,856.96; TWIN CITY DEVELOPMENT ASSOC \$12,500.00; TYNDALE \$1,250.90; UNANIMOUS, INC. \$30.00; UNITED STATES POSTAL SERVICE \$95.70; US WEEKLY \$63.69; U-STOP \$71.06; VALLEY AUTO LOCATORS LLC \$128.58; VERIZON CONNECT \$38.38; WALMART COMMUNITY/SYNCB \$533.20; WAREHOUSE FITNESS CENTER \$58.00; WATCH GUARD VIDEO \$5,600.50; WESTERN COOPERATIVE COMPANY \$18,923.18; WESTERN PATHOLOGY CONSULTANTS \$463.75; WESTERN STATES BANK \$6,522.58; WESTERN STATES BANK - POLICE \$550.00; WESTERN TRAVEL TERMINAL \$44.04; WYOMING BEARING & SUPPLY \$903.84; YMCA OF SCOTTSBLUFF \$255.00; ZOOM VIDEO COMMUNICATIONS \$14.99

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

BIDS: None.

CURRENT BUSINESS:

1. Consider approval of Keno Fund Requests

- Scottsbluff/Gering Lions Clubs – Up to \$12,000.00
- Gering Merchants - \$6,000.00
- Warrior Run - \$4,000.00
- Gering Senior Center - \$3,848.00
- Girls State Golf - \$5,500.00

Darrell Bentley, Keno Committee Chairman, addressed Council. Councilmember Wiedeman asked Mr. Bentley if the Lions Club asked for anything specific. Chairman Bentley stated that this was an unusual one. They asked for "up to" \$12,000. The Keno Committee explained to them that it's more feasible for them to accumulate several expenditures, at least a few months at a time, before they turn them in for reimbursement. They are set up to where they will pay up to \$250 for a needy person's eye exam and glasses; that's what this is for. It's not for their budget or dues or things of that nature. They have to bring the City receipts from an eye doctor or clinic that shows they've helped somebody, up to \$250 per person. Mr. Bentley added that the Lions Club were not able to do their usual basketball hoop shoot fund raiser this last year; they're hoping to do it next March if everything goes the way it should. If they make the money they need from that, they won't be needing this Keno money. That's why it's worded "up to". Councilmember Gillen asked that Council receive an update on this request so they know where we're sitting on this item (instead of trying to find it on the claims). Chairman Bentley replied that he'll ask that a running tab be kept on that at the next quarterly Keno Committee meeting. Mayor Kaufman expressed his and the Council's appreciation to Mr. Bentley and the Keno Committee for all their time and service.

Motion by Councilmember Morrison to approve the Keno Fund requests as presented which is 'up to' \$12,000 for the Scottsbluff/Gering Lions Club, \$6000 for the Gering Merchants, \$4000 for the Warrior Run, \$3848 for the Gering Senior Center and \$5500 for Girls State Golf. Second by Councilmember Gillen. There was no discussion. Mayor Kaufman called the vote. "AYES": Gillen, Backus, Wiedeman, O'Neal, Morrison, Cowan. "NAYS": None. Abstaining: None. Absent: Smith, Bohl. Motion carried.

2. Review of Fiscal Year 2019-2020 Financial Audit

Kevin Sylvester, CPA with Dana F. Cole & Co., reviewed the FY20 Audited Financial Statements with the Council. The Audit is available for public inspection at the City Clerk's office and on the City's website: www.gering.org

Motion by Councilmember Gillen to accept and approve the FY20 Audited Financial Statement prepared by Dana F. Cole & Co. Second by Councilmember Cowan. There was no discussion. Mayor Kaufman called the vote. "AYES": Gillen, Backus, Wiedeman, O'Neal, Morrison, Cowan. "NAYS": None. Abstaining: None. Absent: Smith, Bohl. Motion Carried.

PUBLIC HEARING:

1. Public hearing to consider the annexation of real estate, described in Resolution 9-21-5, located within the extraterritorial zoning jurisdiction of the City of Gering, in Scotts Bluff County, Nebraska

Mayor Kaufman opened a public hearing to consider the annexation of real estate, described in Resolution 9-21-5, located within the extraterritorial zoning jurisdiction of the City of Gering, in Scotts Bluff County, Nebraska at 6:32 p.m. City Engineer, Annie Folck, presented the Administrative Record.

**CITY OF GERING
CITY COUNCIL RECOMMENDATION AND REPORT**

To:	City Council	Date:	10/22/21
From:	Planning & Community Development	Zoning:	
Subject:	Recommendation & Report – Annexation of Properties Described in Resolution 9-21-5	Property Size:	
Location:	See attached map	#Lots/Parcels:	
Owner:		City Council Public Hearing:	10/25/21

This Public Hearing was noticed in accordance with state statutes.

Public Hearing

This is a recommendation and report to consider the annexation of the properties described in Resolution 9-21-5, which was passed by City Council at their September 9th meeting. The full list of properties and a map depicting their locations is attached.

One of the recommendations in the Comprehensive Plan was the immediate annexation of all areas that are currently served by City services. Currently there are many pockets of areas throughout the City that are not actually in City limits. This causes confusion for first responders, as well as higher utility bills for those who are on City utilities but outside of City limits. In certain situations, like Rundell Road, there is confusion as to which entity is responsible for maintenance. Rundell Road was developed by the City, yet is technically outside of City limits, so by statute City Street funds cannot be spent to maintain it. The annexation of all of these properties will clarify responsibilities for public safety and street maintenance and ensure that all who benefit from City services are being treated equitably.

In order to annex a property, Cities of the First Class must provide an annexation plan that provides a timetable for extending all City Services to a property (water, sewer, etc). Alternatively, the property owner can waive their right to those services. If you reference the attached map, almost all of the privately owned properties currently have access to all City services. There are a few properties that do not currently have all City services that are referenced in the attached annexation plan, along with a description of how City services could be provided to those properties. In addition, two City owned properties, the Grasslands and the Cemetery, have been added to the areas to be annexed. These properties are not served by City services, but as the property owner, the City can waive our right to those services. This will ensure that the Gering Police Department will be the responding agency for any incidents in either location.

When this annexation was first approached, there were some questions about whether properties that are used for agricultural purposes can be annexed. State of Nebraska case law clarifies that even if a property is being actively farmed, it can still be considered "urban or suburban in character" based on its location and proximity to developed areas. Staff and legal counsel are in agreement that all of the properties that are listed in the resolution are appropriate for annexation.

Planning Commission made a recommendation to City Council to approve the annexation at their October 5, 2021 meeting. Staff also recommends approval of the annexation of these properties.

Police Chief Holthus addressed the Council and stated from a law enforcement standpoint, annexation equates to jurisdiction. There is an interlocal agreement in Scotts Bluff County that gives them the ability to take law enforcement actions in areas that are outside of our area, but as with any interlocal agreement, that's depending on political personalities and circumstances within our community. There is also a possibility that a judge could interpret that interlocal agreement as being not appropriate for the circumstances. It also causes our department a lot of time and energy in the field-training officer program. They spend a lot of time telling new officers which areas are, and which areas are not, in our jurisdiction. It would make it cleaner and more advantageous for the Police Department to clean up some of those areas. From a dispatching standpoint, it would make it a lot easier for the dispatchers that are sending our officers to these calls. Our officers have repeatedly been dispatched to locations, such as CS Precision, the Sugar Factory, alarms and burglaries on Rundell Road and other places (that aren't our jurisdiction). Since he has been here, our Police Department has been enforcing Gering ordinances at West Lawn Cemetery and it's not officially in our city limits. There are some state statutes that say if it's City property, you are responsible for it, but it makes sense from a standpoint of clarification, that some of these issues get corrected.

City Engineer Folck added that another advantage to this proposed annexation is being able to use TIF in these areas. The TIF process typically can't wait for the time it takes to annex property.

Ms. Folck stated that there have been questions for people who have existing wells and septic systems. What has been discussed with legal, and Mr. Turman can expound on this more, is that anyone with an existing well or septic would be allowed to use those until the life of those assets is over, until those assets fail. At the point where those would fail, rather than replacing those systems, they would be required to tie into the City's utilities if they're within the distance required in City Code. This would ensure the City is not taking anything of value from them.

She stated that another question that has been raised is why are we doing this now. A lot of the reason is things that came forward in the Comp Plan, but ultimately, it's an issue of fairness. Property owners that are benefitting from City streets and utilities are not paying the same property taxes as their neighbor next door. They *do* pay additional utility costs. For a lot of these property owners, the amount they're paying to the City will be off-set in some way. It's different for everyone based on how much they pay in utilities and on what their valuation is. It's not always going to be a one for one off-set; it's going to be different for everyone. Ultimately, even though it may not make a difference to the property owner whether they're paying a higher utility bill or a higher property tax, it does make a difference to the City. As Council is aware, we cannot necessarily use utility funds to help with some of those costs. When our Police are providing service to a lot of these areas, they're not getting the benefit of having them in the city limits. Ultimately, it's an issue of fairness and making sure everyone is being treated equally all across the city.

Ms. Folck went on to say that there have been questions about some of the undeveloped properties; there has been some confusion with regard to zoning. This process will *not* affect zoning at all. If anyone is currently farming a property, they will be able to continue farming that property. Because all of these properties are in our extraterritorial zoning jurisdiction, zoning will not be affected by any of these. Also, it's all in-fill; there are no properties on the outskirts of the City that we're including in this, so it's not going to push our zoning boundary out any farther either. The only place that is actually on the edge is the City's own cemetery, but our zoning jurisdiction already goes up to the base of the Monument.

Regarding the "urban or suburban in character", staff got an outside legal opinion when this process was first looked at. Legal felt that they were comfortable saying that we could lawfully go forward with this. Since then, there has been case law that clarifies that even more. City Attorney, Matt Turman, elaborated. Mr. Turman stated that there's always some gray area when trying to describe what property is or isn't, particularly when dealing with mixed-use property (where there may be three or four different types of uses on one parcel). We are benefactors of some of the rapid annexation on the eastern side of the state where the State Supreme Court has had to step in and arbitrate what is, and what is not, acceptable. There has been some recent case law that clarifies whether or not a First Class City can annex mixed-use parcels, like some of the ones we're dealing with here. In that particular case, that property had been farmed for almost 70 years; nothing but farming prior to that case. It also had some industrial use, it had some forested use, some mixed-use and even some residential on it. It was a perfect example of a mixed-use parcel. Mr. Turman said he thinks it's a good analogue for what we're dealing with here. In

that case, the Court was very clear in that the character of the property, not necessarily how it's being used... you look at where it is in relation to the other industry and in relation to other residential. What is it surrounded by, if there's going to be expansion, what's it likely to develop into in the future. In looking at those types of things, the Court in that case found that the annexation was totally proper. City legal think that's a good template for Gering, in this particular annexation. Additionally, from a legal standpoint, it seems to staff and legal that the annexation is proper. It is legal in as far as Council is authorized under state statute to proceed. It's essentially a policy decision for the City whether or not Council would like to proceed with it.

Councilmember Backus asked, regarding numbers 39 and 40, is 39 the northern block? City Engineer Folck showed Council on the overhead screens exactly where #39 and #40 were located on the map. #40 was the right-of-way. The larger one is #38.

Ms. Folck stated that the proposed annexation did go to the Planning Commission and the Commission did recommend approval of the ordinance as written.

Mayor Kaufman then asked if there was anyone in the Council Chambers wishing to speak in favor of the proposed annexation. He asked again if anyone wished to speak in favor. He stated that comments would be limited to three minutes to anyone wishing to address Council. With no comments, Mayor Kaufman asked if there was anyone wishing to speak in opposition of the proposed annexation.

Robert Brenner, 1915 10th Street, addressed the Council and stated that he's representing George Nazarenus. Mr. Nazarenus has two of the parcels that are being mentioned – legal description #19 and #23. Mr. Nazarenus asked Mr. Brenner's Law Office to look into this matter for a couple reasons. One, the legal descriptions on both parcels, as advertised, are not correct. It doesn't even match a lease Mr. Nazarenus has with the City, on one of those pieces of property. Further, as has been addressed, he also has a septic system of his own already on the property and a well, totally operating and has been operating with no problem. He said that Council would say that Ms. Folck addressed that and the City will take care of that. He then stated, here's the problem. The plan, that has been given to Council, the plan for the extension of services, it doesn't list Mr. Nazarenus' properties. Mr. Brenner said he thinks that makes a bit of difference because they feel that then you're (the City of Gering) is taking his land and his services, by other case law. They suggest that the plan, because it doesn't cover their particular two properties, therefore should be something that would be a concern for the City Council. They are asking that the Council does not annex number 19 and 23 (on the list). Mr. Brenner stated that Mr. Nazarenus couldn't be present tonight, he is ill, so he asked Mr. Brenner to do this for him.

Mayor Kaufman stated that the mic is still open if anyone else wished to speak in opposition of the proposed annexation.

With no further public comments, Mayor Kaufman asked if there were any other comments from staff. Administrator Heath stated that Mr. Nazarenus' lots 19 and 23 do have access to water and sewer. When the City paved that portion of D Street, the City stubbed the water service to both lots and also stubbed sewer service to both lots underneath D Street. They come out right about where his property line is. Mr. Brenner interjected and stated right at the northeast corner of his property; he was there yesterday. Administrator Heath replied, correct. Mr. Brenner asked if he knew where the well and septic systems go into his house. Administrator Heath replied, we do not. Mr. Brenner stated, on the west side, and the well and the current systems are all located to the south of the actual house. He said their measurements, which are rough... but to connect to the City water and sewer is going to be about 130 feet. That's a lot of expense, any way you look at it, from the standpoint of a property owner when he has a system that operates totally. Administrator Heath stated that he just wanted to clarify for the record that there was sewer and water service, both.

Mayor Kaufman asked once again if there was anyone wishing to speak in opposition to the annexation that is proposed. With no further comments, the administrative record was closed and the public hearing closed at 6:50 p.m.

1a. First reading of Ordinance # 2108 - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GERING, NEBRASKA TO ANNEX TO THE CITY OF GERING CERTAIN LANDS DESCRIBED HEREIN WHICH ARE LOCATED WITHIN SCOTTS BLUFF COUNTY, NEBRASKA, REPEALING ALL

ORDINANCES IN CONFLICT HEREWITH; AND TO PROVIDE THAT THIS ORDINANCE SHALL BE PUBLISHED IN PAMPHLET FORM

Mayor Kaufman entertained a motion to introduce Ordinance No. 2108 as the first reading. Councilmember Backus stated that he'd like to propose an amendment to remove number 38, and if he gets a second, he'd like to speak to it - that would go for Resolution 9-21-5 and by association, Ordinance 2108. Councilmember Cowan stated that he would add on number 39, also. Councilmember Backus stated that he was okay with that. Mayor Kaufman stated, we have a motion and a second to exclude property numbers 38 and 39. Councilmember Backus asked the Mayor if he could speak on this. Mayor Kaufman replied, yes. Councilmember Backus thanked the staff for their work on this. He also thanked the Planning Commission, and he agrees that they were right to send a positive recommendation to Council. He agrees that Paul Reed benefits from City services at his house and his businesses, he agrees that taking those properties into the City would not cause a financial hardship to Mr. Reed, but once it comes to City Council, looking at the thousand-foot level that Planning Commission isn't required to or expected to, he has some concerns that popped up. Listening to Mr. Reed, Councilmember Backus was concerned when Mr. Reed would say *"Here is where I hunt on my property, here is where I hunt geese, here is where I hunt turkey, here's where I bow hunt deer."* Councilmember Backus stated that he couldn't reconcile taking away how Mr. Reed is able to express his Second Amendment rights on his property. Councilmember Backus stated that he's a bit of gun nut, and if it was him, and that was happening to him, he would not be happy about it. He said when Mr. Reed was riding around with Annie, him and Pam, Mr. Reed commented that the City of Scottsbluff wanted to run him out of town, but Gering wanted to bring him in. Councilmember Backus thinks that's correct that Gering wants to be business friendly; we want to be fair about it too, though. He doesn't think that at this time, taking all that property would be the right thing to do. He thanked Council for their consideration of this amendment.

Councilmember Gillen stated we're not "taking" anybody's property. We're adjusting our city limits and properties that are potentially going to be actually within city limits instead of the extraterritorial. He fully understands that people should have a right to use their property, but he also understands that the City must be fair to all property owners within the City of Gering, and certain property owners are benefitting from City services, City streets, City sanitation and those other services that we provide, and not having to pay their fair share of that. Unfortunately, within our extraterritorial (having sat on the Planning Commission himself before joining the Council) that was one of the complaints that he had as a Planning Commissioner, was why do we have so many holes in the city. It doesn't make sense for us to not have those holes filled in and become part of the city. Yes, some uses may be changed a little bit, he thinks the only one that there may truly be some differences in, is the hunting. Obviously, you cannot discharge weapons within city limits, but there's still going to be hunting available on land that Mr. Reed owns next to the river. He's still going to be able to hunt, just not on his entire property. He understands where Councilmember Backus is coming from, but he also feels that everyone in the community should pay their fair share of what it takes to run the city that we all enjoy living in.

Councilmember Morrison stated if somebody has moved here thinking and wanting to live in the country, and do what they do in the country, that's where she has a problem with somebody all the sudden saying you can't live on your property the way you want to live on your property. She thinks that's a little bit of an over reach. She understands the limb of the City of Gering too, to get all these things in, but there's people from Mitchell, Scottsbluff and everywhere else that come in and drive on our roads and they do all of these things and pay no city taxes; that's where she struggles.

Mayor Kaufman stated he can appreciate that; the reality is, a property like this, the City landlocks it on three sides. Regarding the example just given, people do pay in sales tax and they pay their fair share when they come into our communities and buy gas; they pay their gas taxes and we get that collected. The staff has worked over a year on this project. It is a complicated issue and he can appreciate all sides. The reality is, communities grow. We've been working hard over the last several years, working with our Comp Plan to move our community forward and put the building blocks in place so we can position ourself for growth and prosperity as we go forward. Unfortunately, there are decisions we are challenged with from time to time that are challenging and unpopular for some, but we have to move forward as a community.

Mayor Kaufman stated there is a motion and a second and asked for any additional comments. Clerk Welfl clarified with City Attorney Turman that when the first reading is read, it would exclude #38 and #39; Mr. Turman confirmed, yes.

The Clerk stated: Councilmember Backus made a motion to introduce Ordinance No. 2108, removing #38 and #39 on the proposed property list for annexation, as the first reading – AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GERING, NEBRASKA TO ANNEX TO THE CITY OF GERING CERTAIN LANDS DESCRIBED HEREIN WHICH ARE LOCATED WITHIN SCOTTS BLUFF COUNTY, NEBRASKA, REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; AND TO PROVIDE THAT THIS ORDINANCE SHALL BE PUBLISHED IN PAMPHLET FORM: Seconded by Councilmember Cowan.

Discussion: Councilmember O'Neal stated that she needs to understand what exactly the vote means. Mayor Kaufman stated if she votes in favor, as it's proposed, it excludes just those two properties. The rest of the properties are included. If there is a no vote, the Council will go back and ask for another motion to be made, assuming a motion would be made for all properties. Council would go through the same process and have discussion, and then vote, but this first one would have to fail. Right now, for clarification, Council is voting for annexation of all properties with the exception of property number 38 and 39 – both properties.

Mayor Kaufman called the vote. "AYES": Backus, Morrison, Cowan. "NAYS": Gillen, Wiedeman, O'Neal. Abstaining: None. Absent: Smith, Bohl. Motion failed.

Mayor Kaufman entertained another motion. Councilmember Gillen moved that Council approve the original ordinance as proposed by City staff. Mayor Kaufman clarified that that would be the full slate of properties; Councilmember Gillen replied, that is correct. Councilmember O'Neal clarified that if Council votes yes, that would annex all of them; if they vote no, then they're saying no, don't annex any of it. Mayor Kaufman replied, correct.

The Clerk stated: Councilmember Gillen made a motion to introduce Ordinance No. 2108, as the first reading – AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GERING, NEBRASKA TO ANNEX TO THE CITY OF GERING CERTAIN LANDS DESCRIBED HEREIN WHICH ARE LOCATED WITHIN SCOTTS BLUFF COUNTY, NEBRASKA, REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; AND TO PROVIDE THAT THIS ORDINANCE SHALL BE PUBLISHED IN PAMPHLET FORM. Seconded by Councilmember Wiedeman.

Discussion: Mayor Kaufman stated he appreciates Council; decisions like this are not made lightly. Staff puts in a lot of hard work and effort to bring this type of information forward. Council is challenged with tough decisions from time to time. It's easy to be the Mayor from time to time, but he appreciates each and every Council Member and their diligence and the effort they took to education themselves on this particular issue. This isn't a light, easy decision.

Mayor Kaufman called the vote. "AYES": Gillen, Backus, Wiedeman. "NAYS": O'Neal, Morrison, Cowan. Abstaining: None. Absent: Smith, Bohl. Motion failed.

Mayor Kaufman stated they would technically need four, in one fashion or the other, before a tie vote cast could be made. City Attorney Turman agreed, they need four affirmative votes before they can have a fifth by the Mayor.

Mayor Kaufman stated Council can go through the process again, someone would have to make a motion, some Council would have to change their decision, or it would have to be tabled until the next meeting - until we have more Council Members. City Attorney Turman stated that statute does allow the Council to recess the hearing to a future date and time, if that's the route Council wants to go – if they can agree to that. Otherwise, they would need to continue to entertain other motions, or combinations of motions, that might eventually come to resolution. Mayor Kaufman stated he would propose entertaining another motion, and then if it's still at a deadlock, he would propose they move it to a continuation to the next meeting.

Councilmember Backus asked if they could have discussion from the no voters. Mayor Kaufman replied, absolutely. Councilmember O'Neal stated she thinks to just pull one piece of property out, she doesn't agree with that. If you're going to do it for one property, you should do it for all of them, or none of them. Councilmember Gillen stated that the last motion was to annex all the properties as written, and it was still a no vote. Mayor Kaufman added, with the Council we have tonight.

Darrell Bentley asked if he could make a comment from the floor. Mayor Kaufman stated no, they couldn't re-open the public hearing.

Councilmember Morrison asked if they could move to table. Mayor Kaufman stated they could move for a continuation or they can have one more round of voting and see if anyone has had a reconsideration. Councilmember Cowan asked if they can make an addition to the Reed property. Mayor Kaufman replied, Council can make any motion they see fit.

Councilmember Cowan made a motion to adjust the Reed's property to allow him to hunt on his property within the City limits. He said there's got to be a negotiation way to make that work. Mayor Kaufman replied that unfortunately he doesn't know that there is any negotiation with that. The property is annexed in within the City limits and it's bound by the code. Councilmember Backus stated they'd have to amend the ordinance relating to shooting, amending the shooting for grandfathered ag properties. Councilmember Wiedeman asked City Engineer Folck is she can show the property, on which Mr. Reed hunts, bigger on the screen. Ms. Folck stated she believes he does deer hunting more along the river and goose hunting on the fields (she showed the area on the map). Councilmember Backus noted where Mr. Reed's shooting range was, north of the pond on the right. He stated that he doesn't know if it was intentional or not, but Mr. Reed has made it difficult by not portioning off any of his businesses; it's all or nothing. Mayor Kaufman noted that there is a lot of commercial activities that take place on the properties. Councilmember Morrison asked why there's an imaginary line that puts his farm ground into two separate parcels. Ms. Folck replied, that is how the County has it – as two separate parcels. That's based on the section line. Councilmember Morrison clarified that where he hunts is in one parcel and where he doesn't hunt is in another parcel. Ms. Folck replied that she believes he does some sort of hunting on both.

Mayor Kaufman entertained a motion for another run or a motion for a continuation.

Councilmember Backus made a motion to continue to the next meeting. Seconded by Councilmember Morrison. There was no discussion. Mayor Kaufman called the vote. "AYES": Gillen, Backus, Wiedeman, O'Neal, Morrison, Cowan. "NAYS": None. Abstaining: None. Absent: Smith, Bohl. Motion carried.

CLOSED SESSION: (Council reserves the right to enter into closed session if deemed necessary.) None.

OPEN COMMENT SECTION: Discussion or action by Council regarding unscheduled business will not take place. This section is for citizen comment only.

Darrell Bentley addressed the Council and stated that he can understand where Mr. Nazareus is coming from, but if you take the time to figure out how deep the water is (where he is), if his well goes bad, he will be the first one down here to get a permit. The City had the foresight enough to stub in the sewer and the water. It would be cheaper to put in 150 feet of waterline, than it would for the casing and to drill a 180-foot well. He has a right to use the water now, until it goes bad.

ADJOURN:

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

Meeting adjourned at 7:10 p.m.

ATTEST:


Kathleen J. Welfl, City Clerk




Mark A. Kaufman, Mayor