

City of Scottsbluff, Nebraska

Monday, June 5, 2017

Regular Meeting

Item Consent1

Approve the minutes of the May 30, 2017, Regular Meeting.

Staff Contact: Cindy Dickinson, City Clerk

The Scottsbluff City Council met in a regular meeting on May 30, 2017 at 6:00 p.m. in the Council Chambers of City Hall, 2525 Circle Drive, Scottsbluff. A notice of the meeting had been published on May 26, 2017, in the Star Herald, a newspaper published and of general circulation in the City. The notice stated the date, hour and place of the meeting, that the meeting would be open to the public, that anyone with a disability desiring reasonable accommodations to attend the Council meeting should contact the City Clerk's Office, and that an agenda of the meeting kept continuously current was available for public inspection at the office of the City Clerk in City Hall; provided, the City Council could modify the agenda at the meeting if it determined that an emergency so required. A similar notice, together with a copy of the agenda, also had been emailed to each council member, made available to radio stations KNEB, KMOR, KOAQ, and television stations KSTF and NBC Nebraska, and the Star Herald. The notice was also available on the city's website on May 26, 2017.

Vice-President of the Council, Jordan Colwell presided and Deputy City Clerk Burbach recorded the proceedings. The Pledge of Allegiance was recited. Vice-President Colwell welcomed everyone in attendance and encouraged all citizens to participate in the council meeting asking those wishing to speak to come to the microphone and state their name and address for the record. Vice-President Colwell informed those in attendance that a copy of the Nebraska open meetings act is posted in the back of the room on the west wall for the public's review. The following Council Members were present: Scott Shaver, Mark McCarthy and Jordan Colwell. Also present was City Manager Johnson and City Attorney Kent Hadenfeldt. Absent: Randy Meininger, Raymond Gonzales. Vice-President Colwell asked if there were any changes to the agenda.

City Manager Johnson recommended tabling the Economic Development Plan Ordinance until there is a full council present. Moved by Council Member McCarthy, seconded by Vice-President Colwell, "to table item 8b. - Ordinance amending the Scottsbluff Economic Development Plan to provide for additional qualifying businesses (third reading)," "YEAS", Colwell, Shaver, and McCarthy, "NAYS" None. Absent: Meininger, Gonzales.

Mr. Johnson also suggested removing item 9b regarding the Manager for Cheema's Gas & Liquor as Ms. Singh is the sole proprietor of the Liquor License. Moved by Council Member Shaver, seconded by Council Member McCarthy, "to remove item 9b. - Council to make a recommendation to the Nebraska Liquor Control Commission naming Carol D. Singh as the Liquor License Manager of Cheema's Gas & Liquor," "YEAS", Colwell, Shaver, and McCarthy, "NAYS" None. Absent: Meininger, Gonzales.

Vice-President Colwell asked if any citizens with business not scheduled on the agenda wished to include an item providing the City Council determines the item requires emergency action. There were none. Moved by Council Member McCarthy seconded by Vice-President Colwell that:

1. "The minutes of the May 15, 2017, Regular Meeting, be approved,"
2. "A public hearing be set for June 5, 2017 at 6:05 p.m. for the Board of Equalization to assess payments for Paving District 313," "YEAS", Colwell, Shaver, and McCarthy, "NAYS" None. Absent: Meininger, Gonzales.

Council reviewed the April 2017 Financial Report. City Manager Johnson reported that we have paid off the City Hall bond payment and have made a payment for the bulb-out project downtown.

Mr. Johnson presented information regarding the Resolution authorizing budget authority to transfer funds from the Industrial Sites Fund to the Community Development Block Grant Fund to provide matching funds for Phase II of the East Overland Revitalization project, if we proceed with the application.

Council Member Shaver asked for a report on the findings of the East Overland Corridor study before we consider the transfer of funds. City Manager Johnson commented that there are requirements related to the grant that need to be taken into consideration before applying for Phase II. Moved by Council Member Shaver, seconded by Council Member McCarthy, to table the item regarding the Resolution authorizing the transfer of funds from the Industrial Sites Fund to the Community Development Block Grant Fund,” “YEAS”, Colwell, Shaver, and McCarthy, “NAYS” None. Absent: Meininger, Gonzales.

Vice-President Colwell opened the public hearing at 6:05 p.m. as scheduled for this date, to consider the Class D Liquor License application for Carol D. Singh, dba Cheema’a Gas & Liquor. Moved by Council Member Shaver, seconded by Council Member McCarthy, “that the following exhibits, presented on behalf of the City Council, be entered into the record: 1) Carol D. Singh, dba Cheema’a Gas & Liquor application; 2) City Council check list for section 53-132 Reissue 2010; 3) written statement of Police Chief Kevin Spencer dated May 24, 2017; 4) written statement of City Clerk dated May 30, 2017; 5) written statement of City Planner dated May 15, 2017; “YEAS”, Colwell, Shaver, and McCarthy, “NAYS” None. Absent: Meininger, Gonzales.

Carol D. Singh, applicant; Police Chief Kevin Spencer; Lynette Richards, Lauren Eckdahl, Victoria Eckerberg and Kamarah Stout were sworn in to testify on the liquor license. Mr. John Sorenson, 1620 Ave. A, attorney for the applicant, explained that Carol Singh has been in alcohol sales for 23 years, and in this time period, she has never personally had a liquor license violation. Her application contains all of the application requirements set forth by the Nebraska Liquor Control Commission. Specifically, statutory requirement 53-132 determines if the applicant meets the statutory requirements, which she does. This convenience store has been in this location for many years and has served as a valuable business in our community. Mr. Sorenson noted that public pressure should not be considered or anything that is arbitrary or has not been properly investigated. Ms. Singh is purchasing the convenience store out of the Cheema Capital LLC. He asked the Council to consider the statutory requirement of work experience with no violations. All qualifications and requirements have been met.

Council Member Shaver asked about her management experience. Mr. Sorenson noted that she was an employee under the previous management, with 23 years of experience in the sale of alcohol. They have a recent change to the operations, which is the purchase and installation of a scanning machine for this location.

City Attorney Hadenfeldt commented that the Nebraska Liquor Control Commission has her listed as Secretary and Registered Agent of Cheema Capital LLC. Mr. Sorenson, responded that he is not aware of her official title, however, she is a member of the LLC.

Carol Singh, owner, addressed the Council and explained that she has concerns also about liquor licenses, as she has children in high school and does not want them to have issues with alcohol. She runs a very different business than the previous owner, Kuldip Singh. If an employee sells alcohol to a minor, they are fired immediately. Every employee will have the training offered by the Liquor Control Commission and we have the scanner to use.

Council Member McCarthy asked if Kuldip Singh is still involved in the business. He also wanted to know how the business will be run differently if Mr. Singh is no longer managing the business. Ms. Singh informed the Council that he is stepping back from this business and working on his property management. She also noted that none of the employees currently employed have had liquor sales violations.

Chief Kevin Spencer explained that he conducts a very extensive background check, which includes many jurisdictions. He did find one additional conviction for Ms. Singh, which was included in his memo. Chief Spencer did not find any reason to disqualify Ms. Singh for a liquor license. He also looks at character and reputation, and found no reasons to disqualify the applicant. He did note that there have been three violations at Cheema’s Gas and Liquor on November 2015, April 2016, and March 2017. March 2017 was the third offense, which will carry a penalty of a five day mandatory closure and a 20 day suspension, of which the owner can pay \$100 per day to get out of the suspension.

Chief Spencer checked with the Nebraska Liquor Control Commission and since Ms. Singh was part of the company, the three convictions will follow with her. So, if there is another violation, it will be the fourth violation for Ms. Singh. With three violations, the City can only make recommendations suggesting stiffer penalties; the fourth violation, the City can ask for a cancellation and the License holder will be required to begin the application process again. Chief Spencer confirmed this with the Assistant Attorney General, reaffirming that since Ms. Singh is a member of Cheema Capital LLC, the violations will follow her.

Council Member Shaver asked if the identification scanner is a good step for the business. Chief Spencer commented that they can have issues with the scanners depending on the software, but it is a positive step for the business.

Chief Spencer added that the Liquor Commission will probably not do anything with Ms. Singh's application until the penalties have been dealt with. Chief Spencer thinks there may be a show of cause hearing for Ms. Singh's license; also, if Council makes a negative recommendation, there will most likely be a show of cause hearing. The Liquor License Investigatory board met on May 11, 2017 and gave a positive recommendation regarding the license.

Vice-President Colwell asked if there was anyone in the public with comments regarding the liquor license application. Lanette Richards, Coordinator for Monument Prevention Coalition spoke against the proposed liquor license application. The Coalition is concerned about the health and safety of our youth and what the youth are seeing. Ms. Richards opposes this new application because of the three violations within an 18 month period. In addition, she was concerned about the timing, as the most recent violation with the current Liquor License was on March 4, 2017; on March 23, 2017 Carol Singh filed a new liquor license application. Ms. Richards is also skeptical because the new license will be located in the same building as the home office for Cheema Capital LLC. She feels the previous violations show a disregard for the law and the privilege of holding a liquor license. Because of these issues, she is asking the City Council to forward a negative recommendation to the Nebraska Liquor Control Commission.

Reverend Lauren Eckdahl commented on the liquor license application, stating that he is concerned about the previous violations at this location. As a concerned citizen he is concerned about the safety and quality of life for our community, therefore he would like to request that the Council submit a negative recommendation to the Nebraska Liquor Control Commission.

Victoria Eckerberg and Kamarah Stout, student representatives on the Monument Prevention Coalition, spoke about the concerns of having the same staff at the store and the location of this business, next to Westmoor Pool. They are worried that youth will be tempted to make bad decisions when buying snacks at the store.

Mr. Sorenson, Attorney for Ms. Singh, commented that there has not been a disregard for the law, but a supreme effort to comply with the law. Despite training and efforts, owners are always vulnerable to the actions of an employee. The City Council needs to consider that Ms. Singh has been actively working in this type of business for 23 years and has never had a violation. No proprietor would knowingly want to have this type of violation. Procedures have been put in to place to prevent any future issues.

With no further comments from the public, Vice President Colwell closed the public hearing at 6:40 p.m.

Council Member McCarthy asked if this license is not approved will the existing license continue. City Attorney Hadenfeldt answered that it depends on what happens at the hearing for the March violation. Council Member Shaver expressed his concerns that the previous management will still be involved in the business; also, the manager cannot always control the actions of the employees.

Vice-President Colwell also expressed his concern about the timing of the application; however, he feels that Ms. Singh is fit, willing, and able to hold the license. Council Member McCarthy commented that the application is basically a name change on the license, and the history of the license carries through. Council Member Shaver commented that he's also concerned about the timing, as it appears to have happened to avoid a penalty. He's not convinced that any decision the Council makes will have any impact at the State level.

Moved by Council Member McCarthy, seconded by Council Member Shaver, “to forward a negative recommendation to the Nebraska Liquor Control Commission regarding the Liquor License application for Carol D. Singh, dba Cheema’s Gas & Liquor, 2002 Ave. I, Scottsbluff, NE for the purpose of triggering a show of cause hearing to assure a complete evaluation by the State,” “YEAS”, Colwell, Shaver, and McCarthy, “NAYS” None. Absent: Meininger, Gonzales.

RESOLUTION NO. 17-05-06

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

1. On May 30, 2017, the matter of the application of a Class D liquor license for Carol D. Singh dba Cheema’s Gas & Liquor, 2002 Ave. I, Scottsbluff, NE. came on for consideration by the Council. The following exhibits were offered and received:

Exhibit 1 - Application of Class I liquor license for Carol D. Singh, dba Cheema’s Gas and Liquor, 2002 Ave. I, Scottsbluff, NE 69361

Exhibit 2 - City Council Check List for Section 53-132 (Reissue 2010)

Exhibit 3 - Written statement of Police Chief dated May 24, 2017

Exhibit 4 - Written statement of City Clerk dated May 30, 2017

Exhibit 5 - Written statement of City Planner dated May 15, 2017

2. Witnesses were sworn and testimony was received in support of the application at the public hearing on this date from Carol D. Singh. Police Chief Kevin Spencer spoke on behalf of the City.
3. Upon consideration of the evidence and the criterion to be considered by the City Council pursuant to law, the City Council finds as follows:
 - a. Applicant has not demonstrated a fitness, willingness, and ability to properly serve or sell liquor in conformance to the rules and regulations of the Nebraska Liquor Control Act due to previous compliance failures.
 - b. Applicant has not met its burden with regard to the check list provided by Section 53-132 R.R.S. (2010) regarding a willingness and ability to properly serve or sell liquor in conformance to the rules and regulations of the Nebraska Liquor Control Act and its management and control does not appear to be sufficient to insure compliance with such rules and regulations.
 - c. Four citizens appeared at the public hearing to testify in protest to the issuance of the license.

4. By reason of the above, the Applicant has not met the burden of proof and persuasion in producing evidence pertaining to the criterion prescribed in the Nebraska Statutes.

Based on the above findings, the City Council denies the application and recommends to the Nebraska Liquor Control Commission that a Retail Class D liquor license not be issued to Carol D. Singh, dba Cheema’s Gas & Liquor, at the premises described in the application.

5. The City Clerk shall transmit a copy of this Resolution to the Commission.

6. Cost of publication: \$ 15.27.

Passed and approved this 30th day of May 2017.

Mayor

ATTEST:

City Clerk

“seal”

City Manager Johnson presented the following bids for the city hall security project: Anderson-Shaw Construction, Inc. - \$53,608.00; Rusch’s General Contracting, LLC - \$54,296.00. In addition to the base bid, there was also an alternate bid to provide for additional office space, however, we do not have the budget ability to complete the work in the alternate bid. Megan Hayward, architect for Hewgley and Associates, addressed the Council and explained that the construction timeline is similar and the bids were very close, with Anderson-Shaw having the lowest bid. Council Member Shaver asked for a list of sub-contractors prior to awarding the bid. Moved by Council Member Shaver, seconded by Council Member McCarthy, “to table the award of the bid for the city hall security project to the next meeting,” “YEAS”, Colwell, Shaver, and McCarthy, “NAYS” None. Absent: Meininger, Gonzales.

Mr. Johnson presented the final plat for the Fairacres Addition, Developers are Western Nebraska Housing Opportunities. This is currently one lot which will be subdivided into four lots for development. Dennis Sullivan with MC Schaff and Associates explained that this will be developed into four single family homes. The Planning Commission and staff are recommending approval. Moved by Council Member Shaver, seconded by Vice-President Colwell, “to approve the final plat for Lots 1-4 Fairacres Addition and approve Resolution No. 17-05-07,” “YEAS”, Colwell, Shaver, and McCarthy, “NAYS” None. Absent: Meininger, Gonzales.

RESOLUTION NO. 17-05-07

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SCOTTSBLUFF, NEBRASKA: That the final plat of Lots 1 through 4, Fairacres Addition, a Replat of Fairacres Addition, to the City of Scottsbluff, Scotts Bluff County, Nebraska, situated on part of the Northeast Quarter of the Northwest Quarter of Section 23, Township 22 North, Range 55 West of the 6th P.M., Scotts Bluff County, Nebraska, dated May 30, 2017, duly made, acknowledged and certified is now approved. Such plat is ordered filed and recorded in the office of the Register of Deeds, Scotts Bluff County, Nebraska and the Mayor is authorized to sign on behalf of the City of Scottsbluff for any acceptance or dedication. PASSED AND APPROVED this 30th day of May, 2017.

Mayor

ATTEST:

City Clerk (seal)

City Manager Johnson reported that as we work through some of the issues with the Menards subdivision, the first step is to complete the replat which will incorporate all of the utilities into the easements. Moved by Council Member Shaver, seconded by Council Member McCarthy, “to approve the final plat for Menards Subdivision and approve Resolution No. 17-05-08,” “YEAS”, Colwell, Shaver, and

McCarthy, "NAYS" None. Absent: Meininger, Gonzales.

RESOLUTION NO. 17-05-08

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

That the final plat of Lots 1-6, Menards Subdivision Replat No. 1, a Replat of Lots 1-6, Menards Subdivision, a Replat of Blocks 4,5,6 & 7, Ramada Addition to the City of Scottsbluff, Scotts Bluff County, Nebraska, except that part of Block 5 conveyed to the State of Nebraska, Department of Roads, in Deed Book 209, Page 363 and part of the Southwest Quarter of Section 19, Township 22 North, Range 54 West of the 6th P.M., Scotts Bluff County, Nebraska, dated May 30, 2017, duly made, acknowledged and certified is now approved.

Such plat is ordered filed and recorded in the office of the Register of Deeds, Scotts Bluff County, Nebraska. The Mayor is authorized to sign the final plat for recording and for acknowledgment of any dedicated rights of way involved in the plat.

PASSED AND APPROVED this 30th day of May, 2017.

Mayor

ATTEST:

City Clerk (seal)

Mr. Johnson presented the contract with Bluffs Broadcasting for advertising for summer recreation programs in the amount of \$2500.00. Moved by Council Member McCarthy, seconded by Vice-President Colwell, "to approve the contract with Bluffs Broadcasting for summer advertising and authorize the Mayor to execute the contract," "YEAS", Colwell, Shaver, and McCarthy, "NAYS" None. Absent: Meininger, Gonzales.

City Manager Johnson presented the one-year support agreement for the Fire Department software used to store reporting data. Scotts Bluff County is currently working with the Police Department on their CAD – Records Management System, so we are renewing the agreement for the Fire Department for one year, with the anticipation of joining with Scotts Bluff County on their system. Moved by Council Member Shaver, seconded by Vice-President Colwell, "to authorize the Mayor to sign the Firehouse Software quotation for the Fire Department," "YEAS", Colwell, Shaver, and McCarthy, "NAYS" None. Absent: Meininger, Gonzales.

City Manager Johnson reviewed his goals for May 2017 – May 2018 which include the following areas:

- Financial
- Economic Development
- Infrastructure
- Public Safety
- Business Corridors
- City Operations
- Community Relations

Under Council Reports, Mr. Johnson reported that there were approximately 1500 participants attend the Nebraska Children’s Museum.

Moved by Council Member McCarthy, seconded by Vice-President Colwell, “to adjourn the meeting at 7:10 p.m.,” “YEAS”, Colwell, Shaver, and McCarthy, “NAYS” None. Absent: Meininger, Gonzales.

Vice-President of the Council

Attest:

Deputy City Clerk

“SEAL”