

**CHAMBER OF THE BOARD OF CITY COMMISSIONERS
YANKTON, SOUTH DAKOTA
FEBRUARY 23, 2009**

Regular meeting of the Board of City Commissioners of the City of Yankton was called to order by Mayor Specht.

Roll Call: Present: Commissioners Carda, Gross, Knoff, Lowrie, Murphy, VanDerhule, and Wenande. City Attorney Goetz and City Manager Russell were also present. Absent: Commissioner Ellingson.

Quorum present.

Action 09-41

Moved by Commissioner Wenande, seconded by Commissioner Gross, to approve the Minutes of the regular meeting of February 9, 2009.

Roll Call: Members present voting "Aye:" Commissioners Carda, Gross, Knoff, Lowrie, Murphy, VanDerhule, and Wenande; voting "Nay:" None; Abstaining: Mayor Specht.

Motion adopted.

City Manager Russell submitted a written report giving an update on community projects and items of interest.

Commissioner Ellingson entered the meeting at this time.

It was the consensus of the Commission to reverse the order of New Business Items No. 13 and 14, considering New Business Item 14 before considering New Business Item 13.

Action 09-42

Moved by Commissioner Gross, seconded by Commissioner VanDerhule, that the following items on the consent agenda be approved.

1. Establish Public hearing for Malt Beverage License
Establish March 9, 2009, as the date for the public hearing on the application for a transfer of ownership of a Retail (on-off sale) Malt Beverage License for July 1, 2008, to June 30, 2009, from JR's Oasis, Inc. (Jae Koletzky, Pres.) d/b/a JR's Oasis to S.M.M. Desai. LLC (Manoj Desai, Pres.) d/b/a JR's Oasis, 2400 East Hwy 50, Yankton, South Dakota.
2. Establish Public hearing for Liquor License
Establish March 9, 2009, as the date for the public hearing on the application for a transfer of ownership of a Retail (on-sale) Liquor License for January 1, 2009, to December 31, 2009, from Steve Slowey d/b/a Slowey Management Company to Hanten, Inc. (Ben Hanten, President) d/b/a Ben's Brewing Company, 222 W 3rd Street, Yankton, South Dakota.

Roll Call: All members present voting "Aye;" voting "Nay:" None.

Motion adopted.

Action 09-43

This was the time and place for the public hearing on the application for a Special Events Retail (on-sale) Malt Beverage and a Special Retail (on-sale) Wine Dealers License for one day, February 24, 2009, from Chamber of Commerce (Lynn Peterson, President) d/b/a Chamber of Commerce, National Field Archery Association, 800 Archery Lane, Yankton, South Dakota. (Memorandum 09-39) No one was present to speak for or against approval of the license application. Moved by Commissioner Knoff, seconded by Commissioner Carda, to approve the license application.

Roll Call: All members present voting "Aye;" voting "Nay:" None.

Motion adopted.

Action 09-44

This was the time and place for the public hearing on the application for a transfer of location of a Retail (on-off sale) Malt Beverage License for July 1, 2008, to June 30, 2009, from Daniel L. Rupiper d/b/a The Cactus, 116 West 3rd Street to 2020 Elm Street, Suite 7, Yankton, South Dakota. (Memorandum 09-40) Dan Rupiper was present to speak in favor of approval of the application.

Moved by Commissioner Knoff, seconded by Commissioner Gross, to approve the license application.

Roll Call: All members present voting "Aye;" voting "Nay:" None.

Motion adopted.

Action 09-45

Adoption of Resolution 09-05, creating Tax Increment District Number Four in the City of Yankton,

was considered. Jeff Dozier, Vice President, and Matt Dennis from Kessinger-Hunter presented the proposed project and spoke in favor of adoption of the Resolution. Todd Meierhenry, Special Counsel for the Project, was also present and gave a brief explanation of the TID Number Four plan. Yankton citizen Dan Rupiper was present and voiced concerns about sales projections and the effect this project would have on other local businesses. Moved by Commissioner Ellingson, seconded by Commissioner Gross, to adopt Resolution 09-05 (Memorandum 09-31)

RESOLUTION 09-05

RESOLUTION PROVIDING FOR THE CREATION OF TAX INCREMENTAL DISTRICT NUMBER FOUR, CITY OF YANKTON AND APPROVAL OF TAX INCREMENT DISTRICT FOUR PROJECT PLAN

WHEREAS, the Planning Commission has recommended the creation of a tax increment district four and adoption of a project plan for said district.

WHEREAS, the City of Yankton has the power, pursuant to SDCL § 11-9-2, to create the Tax Incremental District Number Four, City of Yankton and define its boundaries and

WHEREAS, the City of Yankton pursuant to SDCL § 11-9-17 has the power to adopt a project plan for the district.

THEREFORE, IT IS HEREBY RESOLVED:

1. **Authority and Declaration of Necessity.** The City declares the necessity for the creation of the Tax Incremental District Number Four, City of Yankton pursuant to SDCL 11-9. Further, the City finds that the improvement of the area is likely to enhance significantly the value of substantially all of the other real property in the District and is necessary for economic development within the city.
2. **Findings of Blight.** The City Commission makes the following findings with regard to blight:
 - a. More than 25% of the property in the District is a blighted area;
 - b. Improvements to the District are likely to add thousands of dollars assessed valuation to the district and will significantly and substantially enhance the value of all property in the district;
 - c. There is a reasonable likelihood that there will be a national chain retail store will be built in the District.
 - d. The aggregate assessed value of the District plus the tax incremental base of all other existing districts in the City does not exceed ten percent of the total assessed valuation in the City.
 - e. The District is open bare land void of site improvements which impairs the sound growth of the City.
 - f. The District lacks adequate water connections which substantially impairs the sound growth of the District.
 - g. There exist inadequate street layouts which retards the provision of retail development.
 - h. The District lacks sewerage connections or treatment which substantially arrests the sound growth of the District.
 - i. The District constitutes a blighted area as defined in SDCL 11-9 as is also set out in the Blight Study made part of the tax increment project plan.
3. **Findings of Maximum Percentage of Tax Incremental Districts.** The aggregate assessed value of the taxable property in the District, plus all other tax incremental districts, does not exceed ten percent of the total assessed valuation of the City.
4. **Creation of District.** There is hereby created, pursuant to SDCL 11-9, the Tax Incremental District Number Four, City of Yankton (the "District"). The District is hereby created on the day this resolution becomes effective which shall be twenty days after publication.
5. **Designation of District Boundaries.** The District shall have boundaries which shall included the following described real property:
 - Government Lot 2 Except Parcels, Lots 4, 2A and 3A Airport Addition,
 - Lot H1 of Government Lot 2, Lot H1 of Government Lot 1, Lot H2 of
 - Government Lot 1 and Lot H1 of Lot 3 Airport Addition all in the SW

1/4, 31-94-55; and Lot 1A Airport Addition and Lot H1 in Government Lot 1 in the NW ¼, 31-94-55; and Wilson Road ROW in 31-94-55. (the "District").

6. **Creation of Tax Incremental Fund.** There is hereby created, pursuant to SDCL § 11-9-31, a City of Yankton Tax Incremental District Number Four Fund, a segregated asset account. All tax Increments collected pursuant to Tax Incremental District Number Four shall be deposited into the Tax Incremental District Number Four Fund. All funds in the Tax Incremental District Number Four Fund shall be used solely for those purposes expressly stated and reasonably inferred in SDCL 11-9.
7. **Adoption of project Plan.** The City does hereby approve the project plan as presented and finds that the plan is feasible and in conformity with the master plan of the City of Yankton.

Roll Call: All members present voting "Aye;" voting "Nay:" None.

Motion adopted.

Action 09-46

This was the time and place to award the three-year banking services contract. Five banks responded to the request for proposals: CorTrust Bank, Yankton; First National Bank, Yankton; First Dakota Bank, Yankton; Home Federal Bank, Yankton; and Wells Fargo Bank, Yankton. Moved by Commissioner Gross, seconded by Commissioner Carda, to award the three-year banking services contract to CorTrust Bank, Yankton, South Dakota, as outlined in Memorandum 09-29.

Roll Call: Members present voting "Aye:" Commissioners Carda, Ellingson, Gross, Lowrie, Murphy, VanDerhule, Wenande, and Mayor Specht; voting "Nay:" None; Abstaining: Commissioner Knoff.

Motion adopted.

Action 09-47

This was the time and place to award the bids for the Annual Supply of Bituminous Mix. One bid was received and opened on February 16, 2009: Concrete Materials, Sioux Falls, South Dakota (Mission Hill, South Dakota, plant) - \$58.81/ton. (Memorandum 09-41) Moved by Commissioner Murphy, seconded by Commissioner Lowrie, to award the bid to the only bidder, Concrete Materials, Sioux Falls, South Dakota (Mission Hill, South Dakota, plant) for the cost of \$58.81 per ton.

Roll Call: All members present voting "Aye;" voting "Nay:" None.

Motion adopted.

Action 09-48

This was the time and place to award the bids for the Annual Supply of Liquid Asphalt. One bid was received and opened on February 16, 2009: Jebro, Inc., Sioux City, Iowa – AC PG 58-28 Grade Cement-\$547.25/ton; MC 70 Grade Asphalt-\$2.8175/gal.; RC 800 Grade Asphalt-\$2.7225/gal.; Demurrage cost per hour over three hours-\$75.00/hr. (Memorandum 09-42) Moved by Commissioner Murphy, seconded by Commissioner Knoff, to award the bid to the only bidder Jebro, Inc., Sioux City, Iowa, for AC Grade Asphalt in the amount of \$547.25 per ton; RC Grade Asphalt in the amount of \$2.8175 per gallon; and RC Grade Asphalt in the amount of \$2.7225 per gallon; and demurrage cost per hour over three hours of \$75.00.

Roll Call: All members present voting "Aye;" voting "Nay:" None.

Motion adopted.

Action 09-49

Moved by Commissioner Knoff, seconded by Commissioner Gross, to approve the Permanent Easement for Drainage and Utility Purposes associated with the 23rd Street Fire Station No. 2 site, on City-owned property described as: "The West Fifteen Feet of the South 400 Feet, as now located and established, and extending over and across the following described tract and parcel of land, to wit: North Half of the Northwest Quarter of the Northwest Quarter (N½ NW¼ NW¼) and the North Sixteen Feet Three Inches (N16'3") of the South Half of the Northwest Quarter of the Northwest Quarter (S½ NW¼ NW¼), Section Seven (7), Township Ninety-three (93), Range Fifty-five (55), except Kingdom Hall Tract 1, as platted in Book S15, page 19, and excepting Lots One (1), Two (2), Three (3), Four (4), and Five (5), WGA Addition, as platted in Book S14, page 87, and further excepting Lots One (1), Two (2), Three (3), and Four (4), Block Three (3), North Elm's Addition, as platted in Book S13, page 1 10, all in the City and County of Yankton, South Dakota, less highways and roads." (Memorandum 09-30)

Roll Call: All members present voting "Aye;" voting "Nay:" None.

Motion adopted.

Action 09-50

The request from Lewis and Clark Behavioral Services, Inc., asking for a letter of support from the City for the Sir Charles Apartment Redevelopment project was considered. Dr. Thomas Stange was present and gave a brief explanation of the project and timeline. Moved by Commissioner Wenande, seconded by Commissioner Gross, to authorize the Mayor to sign a statement of support for the project. (Memorandum 09-38)

Roll Call: All members present voting "Aye;" voting "Nay:" None.
Motion adopted.

Action 09-51

Moved by Commissioner Ellingson, seconded by Commissioner Knoff, to adopt Resolution 09-06. (Memorandum 09-32)

RESOLUTION 09-06

Conditional Use

WHEREAS, the Yankton Public School District is the owner of Block 2, North Elm's Addition to the City of Yankton, South Dakota; and,

WHEREAS, the above described property is zoned A-1 Agricultural which allows conditional uses under the City of Yankton's Zoning Ordinance No. 711 as amended; and,

WHEREAS, this conditional use request is necessary for an expansion of the existing school facility on the site and such proposed expanded use has been reviewed and recommended for approval by a vote of the City Planning Commission.

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of the City of Yankton, South Dakota hereby approves a conditional use permit for the expansion of Stewart School as defined in the associated plans on file in the Community Development Department and accordance with all applicable ordinances and regulations on the above described property.

Roll Call: All members present voting "Aye;" voting "Nay:" None.
Motion adopted.

Action 09-52

Resolution 09-07, granting a Conditional Use Permit for an elementary school addition (Lincoln School) in an agricultural district on "Lincoln School Parcels"/Parcel in the NE ¼, NE ¼, 13-93-56, was considered. Moved by Commissioner Carda, seconded by Commissioner VanDerhule, to adopt Resolution 09-07. (Memorandum 09-33) Leyton Ferwerda, former owner of property adjacent to the school property, was present and expressed reservations about the school's ownership of a strip of land between the assumed grounds of the school and neighbors on the north end of the property. He also believed there was a dedicated right-of-way between the school and the neighbors to the north. Sean McGovern, current owner of the property immediately adjacent to the northeast corner of the school property, was also present and questioned whether the city actually owns a strip of land between the school and the north property owners. Chuck Turner, representing the Yankton School District, stated that the school district owns the property. The property was part of a deed transferred by the City to the school district. Following further discussion, the original motion was amended by Commission Carda, seconded by Commissioner VanDerhule, to clarify that the conditional use permit was on school district property only. Prior to a vote being taken on the amended motion, Commissioner Carda moved to table action on Resolution 09-07 at this time, seconded by Commissioner Murphy.

Roll Call: Members present voting "Aye:" Commissioners Carda, Ellingson, Gross, Lowrie, Murphy, and Wenande; voting "Nay:" Commissioners Knoff and VanDerhule, and Mayor Specht.
Motion adopted.

Action 09-53

Moved by Commissioner Ellingson, seconded by Commissioner Lowrie, to adopt Resolution 09-08. (Memorandum 09-34)

RESOLUTION 09-08

Conditional Use

WHEREAS, Robin Wagner is the owner of Lot 3, Block 7, Fox Run Subdivision in the City

of Yankton, South Dakota located at 2604 Mulligan Drive, and

WHEREAS, the above described property is zoned residential in the applicable Planned unit Development which allows conditional uses under the City of Yankton's Zoning Ordinance No. 711 as amended, and

WHEREAS, this conditional use request is necessary for the property to be used as a daycare facility has been reviewed and recommended for approval by a vote of the City Planning Commission with a seasonal waiver of the fencing requirement until June 1, 2009.

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of the City of Yankton, South Dakota hereby approves a conditional use permit for a daycare facility in accordance with all applicable ordinances and regulations on the above described property.

Roll Call: All members present voting "Aye;" voting "Nay:" None.
Motion adopted.

Action 09-54

Moved by Commissioner Wenande, seconded by Commissioner Carda, to adopt Resolution 09-09. (Memorandum 09-35)

RESOLUTION 09-09
Conditional Use

WHEREAS, Mary McHenry is the owner of S. 29' of Lot 3 and all of Lot 4, Block 74, Todd's Addition to the City of Yankton, South Dakota located at 710 Walnut Street, and

WHEREAS, the above described property is zoned R-4 multiple Family residential which allows conditional uses under the City of Yankton's Zoning Ordinance No. 711 as amended, and

WHEREAS, this conditional use request is necessary for the property to be used as a daycare facility has been reviewed and recommended for approval by a vote of the City Planning Commission.

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of the City of Yankton, South Dakota hereby approves a conditional use permit for a daycare facility in accordance with all applicable ordinances and regulations on the above described property.

Roll Call: All members present voting "Aye;" voting "Nay:" None.
Motion adopted.

Action 09-55

Moved by Commissioner Gross, seconded by Commissioner Wenande, to adopt Resolution 09-10. (Memorandum 09-36)

RESOLUTION 09-10

WHEREAS, it appears from an examination of the plat of Lots 1, 2, 3, 4, & 5, North Sliver Subdivision, Lot H1 and Lot H7, in the South Half of the Northeast Quarter of Section 17, Township 93 North, Range 56 West, of the 5th Principle Meridian, Yankton County, South Dakota prepared by Brett R. Kennedy of Eisenbraun and Associates a registered land surveyor in the state of South Dakota; and,

WHEREAS, such plat has been prepared according to law and is consistent with the City's overall Comprehensive Development Plan.

NOW, THEREFORE BE IT RESOLVED by the Board of City Commissioners of the City of Yankton, South Dakota, that the plat for the above described property is hereby approved.

Roll Call: All members present voting "Aye;" voting "Nay:" None.
Motion adopted.

Action 09-56

Moved by Commissioner VanDerhule, seconded by Commissioner Wenande, to adopt Resolution 09-11. (Memorandum 09-37)

RESOLUTION 09-11

WHEREAS, it appears from an examination of the plat of Tract 1 of River Ridge Subdivision, located in the West Half of the Southwest Quarter (W ½ SW ¼), Section 4 (4), Township Ninety-three (93) North, Range Fifty-five (55) West, of the 5th P.M., Yankton County, South Dakota prepared by Brett R. Kennedy of Eisenbraun and Associates a registered land surveyor in the state of South Dakota; and,

WHEREAS, such plat has been prepared according to law and is consistent with the City’s overall Comprehensive Development Plan.

NOW, THEREFORE BE IT RESOLVED by the Board of City Commissioners of the City of Yankton, South Dakota, that the plat for the above described property is hereby approved.

Roll Call: All members present voting “Aye;” voting “Nay:” None.
Motion adopted.

The issue regarding video lottery licenses and the current cap on licenses was discussed. Gary Boom appeared to voice his opinion not to lift the cap on video lottery licenses. Dan Rupiper was also present and expressed his opinion not to lift the cap on video lottery licenses. The City Commission took no action at this time.

Action 09-57

Adoption of Resolution 09-04 setting the fee for new on-sale liquor licenses for full-services restaurants was considered. Moved by Commissioner Knoff, seconded by Commissioner Gross, to adopt Resolution 09-04. (Memorandum 09-28)

Prior to a vote being taken, Commissioner Murphy moved, seconded by Commissioner Gross, to amend the motion to designate proceeds from the license fees for the new on-sale liquor licenses for full-service restaurants go into the BBB fund.

Roll Call: Members present voting “Aye:” Commissioners Carda, Gross, Knoff, Lowrie, Murphy, VanDerhule, and Mayor Specht; voting “Nay:” Commissioners Ellingson and Wenande.
Motion to amend, adopted.

**Resolution 09-04
Resolution Establishing Price for New
Full Service Restaurant On-Sale Liquor License**

WHEREAS, Ordinance No. 912 establishing new full service restaurant on-sale liquor licenses was adopted by the City Commission and became effective on December 22, 2008; and

WHEREAS, the Ordinance allows the Commission ninety days to establish the price by resolution for the new licenses and this procedure is also established by certain sections of Chapter 35 of the South Dakota Codified Law; and

WHEREAS, the City Commission is required to set the price at least as much as the current fair market value as established by the most recent sale of any on-sale liquor license occurring between January 1, 2003, and January 1, 2008; and

WHEREAS, the most recent sale of an on-sale liquor license occurring during that time period was for \$70,000.00;

NOW, THEREFORE, BE IT RESOLVED, that the City of Commission establishes the price for the new full service Restaurant on-sale liquor license at \$70,000.00.

Roll call was then taken on the original motion to adopt Resolution 09-04.

Roll Call: All members present voting “Aye;” voting “Nay:” None.
Motion adopted.

Action 09-58

Moved by Commissioner Gross, seconded by Commissioner Ellingson, to authorize the City Manager to accept the Federal Aviation Administration grant agreement for Phase III of the Chan Gurney Municipal Airport Apron Project and to approve the agreement with Kadrmas, Lee, and Jackson, Dickinson, North Dakota, to complete the engineering design work associated with the project for a cost of \$36,000.00 with the City’s share of the cost being three percent or \$1,080.00. (Memorandum 09-43)

Roll Call: All members present voting “Aye;” voting “Nay:” None.
Motion adopted.

A discussion was held regarding potential stimulus package funds.

Mayor Specht invited Yankton Mall tenants to a future meeting with the City to discuss the proposed Tax Increment District Number Three (Dial Properties) Yankton Mall Renovation Project.

Action 09-59

Moved by Commissioner Gross, seconded by Commissioner Wenande, to adjourn into Executive Session at 9:30, to discuss contractual and personnel matters (attorney search).

Roll Call: All members present voting “Aye;” voting “Nay:” None.
Motion adopted.

Regular meeting of the Board of City Commissioners of the City of Yankton was reconvened by Mayor Specht.

Roll Call: Present: Commissioners Carda, Ellingson, Gross, Knoff, Lowrie, Murphy, VanDerhule, and Wenande. City Attorney Goetz and City Manager Russell were also present. Absent: None. Quorum present.

Action 09-60

Moved by Commissioner Lowrie, seconded by Commissioner Wenande, to adjourn at 10:27 p.m.

Roll Call: All members present voting “Aye;” voting “Nay:” None.
Motion adopted.

Dan Specht
Mayor

ATTEST: _____
Al Viereck
Finance Officer