

June 24, 2013

ALLIANCE CITY COUNCIL

REGULAR MEETING, MONDAY, JUNE 24, 2013

STATE OF NEBRASKA)
)
 COUNTY OF BOX BUTTE) §
)
 CITY OF ALLIANCE)

The Alliance City Council met in a Regular Meeting, June 24, 2013 at 7:00 p.m. at the Alliance Learning Center, 1750 Sweetwater Avenue. A notice of meeting was published in the Alliance Times Herald on June 17, 2013. The notice stated the date, hour and place of the meeting, that the meeting was open to the public, 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 Council could modify the agenda at the meeting if it determined an emergency so required. A similar notice, together with a copy of the agenda, also had been delivered to each of the City Council Members. An agenda, kept continuously current, was available for public inspection at the office of the City Clerk during regular business hours from the publication of the notice to the time of the meeting.

Mayor Feldges opened the June 24, 2013 Regular Meeting of the Alliance, Nebraska City Council at 7:00 p.m. Present were Mayor Feldges, Council Members Benzel, Lewis, Yeager, and Seiler. Also present were City Manager Cox, City Attorney Olsen, and City Clerk Jines.

- Mayor Feldges read the Open Meetings Act Announcement.
- The first item on the agenda was the Consent Calendar. Councilman Benzel made a motion, which was seconded by Councilman Lewis to approve the Consent Calendar as follows:

CONSENT CALENDAR – JUNE 24, 2013

1. Approval: Minutes of the Regular Meeting, June 13, 2013.
2. Approval: Payroll and Employer Taxes for the period May 25, 2013 through June 7, 2013 inclusive: \$189,020.44 and \$13,404.80 respectively.
3. Approval: Claims against the following funds for the period June 6, 2013 through June 20, 2013: General, General Debt Service, Trust and Agency, Street, Electric, Refuse Collection and Disposal, Sanitary Sewer, Water, Golf Course, Downtown Improvement Districts, R.S.V.P., Keno, and Capital Improvement; \$636,000.34.
4. Acceptance: Alliance has received the *Thermie’s Award of Excellence* from the Nebraska Municipal Power Pool for outstanding achievement in market growth. This

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award is a result of the recent natural gas selection period and the City's promotion of ACE.

5. Approval: Update the roster of the Alliance Volunteer Fire Department by removing Jonah Matulka as a result of his recent resignation.
6. Approval: Entering into a Community Wayfinding Sign Agreement with the Nebraska Department of Roads.
7. Approval: Issuance of the following Contractor licenses:

General Contractor	Gary Hutzler dba Morton Buildings, Inc.
Master HVAC	Jesse Cross Jr., Northwestern Heating & Cooling
Gas Fitter	Jesse Cross Jr., Northwestern Heating & Cooling

NOTE: City Manager Cox has reviewed these expenditures and to the best of his knowledge confirms that they are within budgeted appropriations to this point in the fiscal year.

Roll call vote with the following results:

Voting Aye: Benzell, Lewis, Feldges, Seiler, Yeager.

Voting Nay: None.

Motion carried.

- City Manger J.D. Cox gave his City Manger's Report in outline form:
 - Dangerous Structure Process and Nuisance Abatement:
 - Last Council – Set Board of Health as Appellate
 - Toni Ravert is serving as Code Enforcement Officer
 - Troy Shoemaker is serving as Officer of Dangerous Structure
 - Established Priorities:
 - 105 Big Horn – City Parks Department
 - 123 Box Butte – Toad's
 - 716 Big Horn – White House/Leaning Garage
 - 416 Sweetwater – Josh Ritchie (Appeal)
 - 659 E. 9th – Dahlberg
 - Convene Board of Health week of July 8, 2013
 - Staffing:
 - Melinda Cullan resigning July 31

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- Internal Candidates being interviewed for vacant position
 - Advertised internally for Service Excellence Director
 -
 - Marlin Johnson will begin working full-time on October 1, 2013 in Scottsbluff as their on site Inspector.
- Wednesday is Big Rig Day at Summer Reading at the Alliance Public Library
 - City Clerk Jines reviewed the Garage Ordinance history
 - City Manager notified Council of scheduled vacation
- A Public Hearing and the first reading of Ordinance No. 2732 was the next agenda item before Council. This Public Hearing was for the consideration of the Preliminary Plat and Final Plat of Blocks 1 & 2, Blakeman Subdivision, City of Alliance, Box Butte County, Nebraska. The following background information was provided to Council:

[PROPOSAL: Virgil & Geraldine Blakeman are requesting approval of a Preliminary Plat and a Final Plat to subdivide property.

LOCATION: The property is west of Ramblin Road and north of the unconstructed stretch of 6th Street, located in the NW1/4NW1/4 of Section 35, T25N, R48W.

ANALYSIS: The request is to create a one acre parcel that is in the process of being rezoned to M-1, having passed the first reading, leaving a parcel of approximately 3.7 acres. The request cannot be processed as an administrative subdivision as it is currently unplatted and as all public improvements are not in place. The Comprehensive Plan does not particularly address this request but it is not contrary to the Plan.

FEEDBACK: There has been minimal public comment with no objections. No comments were received from City Departments.

PLANNING COMMISSION RECOMMENDATION (Preliminary Plat):
The Planning Commission met on June 11 to conduct a public hearing and to consider the matter. After hearing the testimony, the Planning Commission voted unanimously to recommend approval of the Preliminary Plat, including, waiving the requirements for: relation to established section lines or fractional section line, direction of surface water drainage and approximate gradient of streets.

FINDINGS OF FACT:

- Sufficient information has been submitted to approve the Preliminary Plat;
- City Departments have reviewed the request and noted no objections.

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FINAL PLAT ANALYSIS: Staff consensus is to recommend waiving the installation or bonding of infrastructure and to instead require an agreement whereby the subdivider and future successors waive any rights to protest with respect to construction and special assessments for the public improvements in the future.

The future 6th Street right-of-way is existing and necessary easements for future development and extensions of services are included on the Plat with a 20 foot wide utility easement along the east side of the properties and a 15 foot wide utility easement along the north side of the properties. The north easement can be expanded if and when the property to the north is proposed for development.

PLANNING COMMISSION RECOMMENDATION (Final Plat):

The Planning Commission met on June 11 to conduct a public hearing and to consider the matter. After hearing the testimony, the Planning Commission voted unanimously to recommend approval of the Final Plat, including, that a Contract waiving future protest rights be filed and waiving the requirement for park and/or recreation land.

FINDINGS OF FACT:

- Extension of future streets and utility easements have been considered and adequately addressed;
- Drainage concerns have been considered;
- Future public interest is secured via the Contract;
- Development of this area is highly likely.]

Mayor Feldges stated “now is the date, time, and place to conduct a Public Hearing to hear support, oppositions, criticism, suggestions, or observations of the taxpayers relating to the approval of the Preliminary Plat and Final Plat of Blocks 1 & 2, Blakeman Subdivision, City of Alliance, Box Butte County, Nebraska and opened the hearing at 7:14 p.m.

Virgil Blakeman, 6090 Rock Road, owner of the property was present to speak in favor of the Preliminary and Final Plats.

No further testimony was offered and the Public Hearing was closed at 7:15 p.m.

A motion was made by Councilman Benzel, seconded by Councilman Lewis to approve the first reading of Ordinance No. 2732. City Clerk Jines read the Ordinance by title which follows in its entirety:

ORDINANCE NO. 2732

AN ORDINANCE APPROVING THE PRELIMINARY AND FINAL PLATS OF BLOCKS 1 & 2, BLAKEMAN SUBDIVISION, A PART OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 25 NORTH, RANGE 48 WEST OF THE 6TH P.M., BOX BUTTE COUNTY, NEBRASKA.

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BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF ALLIANCE, NEBRASKA:

SECTION 1. The City of Alliance has received the application for approval of the Preliminary Plat and Final Plat of Blocks 1 & 2, Blakeman Subdivision to the City of Alliance, Box Butte County, Nebraska from Virgil and Geraldine Blakeman, as landowners.

SECTION 2. The Planning Commission held a public hearing June 11, 2013, and has recommended the approval of the Preliminary Plat waiving the requirements for: relation to established section lines or fractional section lines; direction of surface water drainage; and approximate gradient of streets.

SECTION 3. The Planning Commission met on June 11, 2013 and conducted a Public Hearing on the Final Plat of Blocks 1 & 2, Blakeman Subdivision o the City of Alliance, Box Butte County, Nebraska.

SECTION 4. The Planning Commission has recommended approval of the Final Plat, contingent upon the execution of an Agreement/Contract whereby the subdivider and future successors waive any rights to protest with respect to construction and special assessments for the installation of infrastructure; and the requirement for park and/or recreation land was recommended to be waived.

SECTION 5. The Preliminary Plat and the Final Plat of Blocks 1 & 2, Blakeman Subdivision to the City of Alliance, Box Butte County, Nebraska are hereby approved by the City of Alliance and shall be filed with the County Clerk as provided by City Code and State law within 30 days of this approval. The plat map which has been prepared is a part of these proceedings and is attached hereto and is incorporated herein and made a part hereof by reference.

SECTION 6. This ordinance shall be in full force and effect from and after its approval, passage, and publication according to law.

Roll call vote for the final reading of Ordinance No. 2732 with the following results:

Voting Aye: Benzel, Lewis, Seiler, Yeager, Feldges.

Voting Nay: None.

Motion carried.

- The next matter before Council was the second reading of Ordinance No. 2726. This ordinance will authorize the sale of Lots 1 through 11, Block 28, Original Town, City of Alliance, Box Butte County, Nebraska to Western Heritage Credit Union in the amount of \$75,000.00. The following background information was provided to Council:

[Introduction/Summary]

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An "Invitation To Bid" (ITB) was prepared and issued and responses received for the sale of City-owned property located in the 100 Block of Box Butte Avenue, west side, 280-feet in length x 140-feet in width, and more particularly described as Lots 1 through 11, Block 28, Original Town, to the City of Alliance, Box Butte County, Nebraska, according to the recorded plat thereof.

The City Council at their May 2, 2013 meeting approved the sale to Western Heritage Credit Union. Representatives of Western Heritage Credit Union made a presentation at the May 16, 2013 City Council meeting and stated they would be purchasing the land for the construction of a new facility which will serve as their headquarters. Due to Federal requirements, a credit union cannot borrow money for construction, it must be paid with funds on hand. As a result, the anticipated construction timeline for the new facility is between three and five years.

Subsequently, on June 13, Council approved the first reading of this Ordinance.

The sale of the aforementioned City-owned lots represents the continued efforts to reduce the City's vacant lot inventory and return property to the tax rolls. This sale will stimulate the economic status of the lower Box Butte Avenue area and augment the City's Streetscape and Historic Lighting project by adding an anchor business at the southernmost limits of the Streetscape project area.]

Mayor Fred Feldges excused himself as he has a conflict of interest in this matter.

A motion was made by Councilman Lewis, seconded by Councilman Benzel to approve the second reading of Ordinance No. 2726 which follows in its entirety:

ORDINANCE NO. 2726

AN ORDINANCE AUTHORIZING THE SALE OF LOTS 1 THROUGH 11, BLOCK 28, ORIGINAL TOWN, CITY OF ALLIANCE, BOX BUTTE COUNTY, NEBRASKA.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF ALLIANCE, NEBRASKA:

SECTION 1. The City of Alliance ("City") owns the following described real estate:

Lots 1 through 11, Block 28, Original Town, City of Alliance, Box Butte County, Nebraska.

SECTION 2. An offer has been made by Western Heritage Credit Union to purchase this real estate for \$75,000.00. The city is willing to accept this offer.

SECTION 3. The Mayor and City Clerk are authorized to sign a contract and deed to convey the above described real estate by Warranty Deed to Western Heritage Credit Union, on the following terms:

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- a. The purchase price shall be \$75,000.00, which shall be paid at closing.
- b. Closing of the sale is conditional upon no remonstrance against the sale being filed. Closing shall take place within 30 days after the expiration of the time for filing a remonstrance against the sale or August 15, 2013, whichever occurs first.
- c. All real estate taxes and special assessments shall be prorated to date of closing. The closing costs and owner's title insurance shall be equally divided.

SECTION 4. The Clerk shall, immediately after the passage and publication of this Ordinance, publish notice of the sale and its terms for three consecutive weeks in the Times-Herald.

SECTION 5. This Ordinance shall become effective upon its passage, approval and publication as provided by law.

Roll call vote for the second reading of Ordinance No. 2726 with the following results:

Voting Aye: Benzel, Lewis, Seiler.

Voting Nay: Yeager.

Motion carried.

Mayor Feldges returned to participate in the remainder of the meeting.

- The second reading of Ordinance No. 2722 was the next agenda item before Council. This ordinance will grant the request of Jeff & Mutt, LLC to vacate a platted portion of Burnham Drive lying west of Emerson Avenue. The following background information was provided to Council:

[UPDATE:

On April 4, Council approved the first reading of this Ordinance. Since that time, it has been on hold pending the outcome of research.

QUESTION:

At the heart of the issue was whether the property actually did belong to the City. Apparently, the property was first dedicated to the City in a plat. Later, the same property was transferred to the Church. A secondary question of whether the City needed an easement also was raised.

FINDING:

Since the dedication of the property to the City occurred before the apparent transfer, the dedication of public property remains in affect (as one cannot transfer public property).

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As to the second question, the City can still vacate and get an easement from either or both parties at a later date if necessary. At this time, a need for an easement is not anticipated.

ORIGINAL PROPOSAL:

Jeff & Mutt, LLC is requesting to vacate the platted portion of Burnham Drive lying west of Emerson Avenue.

LOCATION:

Burnham Drive is located on the south side of the St. John's United Lutheran Church property in the NE ¼ of Section 26, T25N, R48W.

ANALYSIS:

Jeff & Mutt, LLC desires to vacate this portion of Burnham Drive because they feel it goes nowhere, it will never go anywhere, it is not maintained and it has no purpose. They feel that by vacating Burnham Drive the City will eliminate property that is not used or needed and put it back on the tax rolls for a usable purpose. They feel it is possible that when assembled with the adjacent property, a buildable home site would be possible between the floodplain and the church, where not possible today. In addition, they have concerns about being solely responsible for building a future road to nowhere. The St. John's United Lutheran Church has submitted a letter agreeing to the vacation of the road and agreeing to give their portion of any vacated right-of-way to Jeff & Mutt, LLC.

This portion of Burnham Drive was dedicated to the public in 1981 when the Lands of Abegg Subdivision was platted. The rationale was likely to provide access for future development of the land south and west of said subdivision. Typically, one of three options should have been followed: 1) require that the street be constructed; 2) require bonding for future construction of the street; or, 3) require that an agreement be filed whereby the landowner, and future successors, waives their right to object to a future improvement assessment. Apparently, and to the best of my knowledge, none of the above was done. In addition, the City adopted a Special Flood Hazard Ordinance in 1986 and that may have altered the Abegg Subdivision as approved had it been in existence at that time.

Most of this portion of Burnham Drive is located in the floodplain, including the west end. The whole parcel of the applicant's property is approximately 114 acres, but the portion of the property lying between the floodplain and Emerson Avenue is approximately ¼ acre in size, with roughly half of that being required setback leaving a buildable area of approximately 7000 square feet.

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The Long Range Transportation Plan shows Emerson Avenue and Buchfinck Avenue as future North-South Urban Minor Arterials. Colorado Avenue is not marked, but probably should be noted as a future north-south connection. 10th Street and 25th Street are shown as East-West Urban Minor Arterials. Not marked, but probably should be, is 18th Street which would appear to be the next significant logical east-west connector for this part of town lying west of Emerson. The railroad limits how far any east-west connector would go in this area.

The only Staff comment received is from the Water and Sewer Superintendent who expresses generic reservations about this vacation. After more detailed discussion it seems reasonable and prudent to require that a utility easement be maintained along the north side of the right-of-way.

A width of 20 feet would be adequate for future water and sewer lines.

The applicant had originally brought this request to the City about a year ago. At that time City Departments had expressed general concerns about future development. The City Attorney had noted that all abutting property owners needed to sign the petition and that after review with department staff and consultation of the master plan the proper procedure was to follow the hearing process. The applicant had thought the matter was going to be placed on the May 2012 agenda, but formal concurrence from the Church was not received until January.

An east-west road through the floodplain might cause more harm than good and a cul-de-sac to serve one or two properties would not be necessary. North-south connectivity on this property would make more sense as it is a shorter traverse of the floodplain. Preserving the future Colorado Avenue right-of-way is of much greater importance. When this property is proposed for subdivision the City will have the opportunity to re-address future connectivity for roads and easements at that time. In addition, the floodplain in this area bodes for large lot development and/or open space requiring a lesser road density grid.

FEEDBACK:

The vast majority of the responses from the public were in favor of the request or disinterested.

PLANNING COMMISSION:

On March 12, the Planning Commission met to conduct a public hearing and to consider this matter. After hearing the testimony, the Planning Commission voted unanimously to recommend favorable approval to the City Council.

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FINDINGS OF FACT:

1. There is no constructed infrastructure in the platted right-of-way;
2. The Church concurs with the request and would not want to be party to construction of a road;
3. The flood hazard maps did not exist when this right-of-way was platted;
4. The platted road runs into and roughly parallel with the floodplain; the bulk of the property to the west can be accessed from the north and the south without going up the floodplain;
5. The Long Range Transportation Plan does not show this or any other road in the vicinity as an east-west connector in this area and such connector should not run up the floodplain;
6. The City will get to re-visit future connectivity of roads and easements when the property is proposed to be subdivided in the future;
7. A utility easement will be maintained to allow future development of sewer and water infrastructure; a more developable piece of property will be created.]

A motion was made by Councilman Seiler, seconded by Councilman Lewis to approve the second reading of Ordinance No. 2722 which follows in its entirety:

ORDINANCE NO. 2722

AN ORDINANCE OF THE CITY OF ALLIANCE, VACATING BURNHAM DRIVE WEST OF EMERSON AVENUE, A STRIP OF LAND APPROXIMATELY 60' BY 425' LOCATED THE NE 1/4 OF SECTION 26, TOWNSHIP 25 NORTH, RANGE 48 WEST OF THE 6TH P.M., IN THE CITY OF ALLIANCE, BOX BUTTE COUNTY, NEBRASKA.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF ALLIANCE, NEBRASKA:

SECTION 1. Jeff & Mutt LLC has made an application to the City of Alliance to vacate a portion of Burnham Drive located west of Emerson Avenue in the NE 1/4 of Section 26, Township 25 North, Range 48 West of the 6th P.M., Box Butte County, NE. The property is approximately 60' by 425'.

SECTION 2. The purpose of the vacation is to eliminate property that is not used or needed and put it back on the tax rolls for a usable purpose. The requesting party believes that when assembled with their adjacent property, a buildable home site would be possible between the floodplain and the adjacent property owned by others. The adjoining property owner has agreed to the vacation of the right-of-way and to give their portion to Jeff & Mutt, LLC.

SECTION 3. The City Council finds it is in the best interest of the City that the real estate described above is vacated and that the City of Alliance will not retain ownership.

SECTION 4. The above-described real estate is now vacated.

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SECTION 5. This Ordinance shall take effect and be in force following its passage, approval, and publication as required by law.

Earl Jones, 808 Cheyenne Avenue, informed Council that his church has a deed for the property indicating their ownership. City Attorney Olsen stated the property was platted for public purpose prior to the deed to the church. The City was not a party in the church's deed; therefore the City continues to control the property. Following additional discussion on this matter, Mr. Jones indicated his desire for additional time to get a legal opinion from the church's legal counsel prior to the City vacating the property.

Roll call vote for the second reading of Ordinance No. 2722 with the following results:

Voting Aye: Lewis.

Voting Nay: Benzel, Seiler, Feldges, Yeager.

Motion failed.

- The next agenda item was a request by Staff, requesting Council to consider establishing a date to conduct a Budget Workshop during the week of July 22, 2013.

By consensus, the Council selected Wednesday, July 24, 2013 at 4:00 p.m. to conduct the Budget Workshop.

- The final item on Council's agenda was a board appointment.

A motion was made by Councilman Seiler, which was seconded by Councilman Benzel to appoint Frances Bright to serve on the Community Garden Board for a term expiring November 30, 2013.

Roll call vote with the following results:

Voting Aye: Yeager, Lewis, Feldges, Seiler, Benzel.

Voting Nay: None.

Motion carried.

- Mayor Feldges stated, "there being no further business to come before the Alliance City Council, the meeting is adjourned at 8:25 p.m."

(SEAL)

Fred Feldges, Mayor

Linda Jines, City Clerk

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