

COUNCIL CHAMBERS, MONDAY, JULY 8, 2013 AT 7:00 P.M.

The meeting was called to order in regular session by Mayor Powers with the following members present: Harrington, Peterson, Odom, Niemeyer, Krings, Oatman, Goebel. Absent: None.

Moved by Niemeyer, seconded by Krings that the Open Meetings Act is posted on the southeast wall of the City Council Chambers and that prior to this meeting a notice was placed in the Hastings Tribune on July 5, 2013, that notice was posted in three public places, that each Councilmember and Mayor received a copy of the proposed agenda and that an agenda for such meeting, kept continuously current, is available for public inspection and that said meeting is held in open session. Roll Call: Ayes: Harrington, Peterson, Odom, Niemeyer, Krings, Oatman, Goebel. Nays: None. The motion carried.

CITIZEN COMMUNICATIONS: None.

REPORTS OF LIAISONS: Councilman Goebel reported on the June 26th Board of Public Works Meeting. There was discussion, but no action, on rates for waste haulers to the Sanitary Sewer Plant; they will study it further and make a recommendation later. They also will look at the Sewer Rate Ordinance and the Sewer Use Ordinance at the July 11th Board of Public Works Meeting. There was a recommendation from staff to award contract for upgrade on the DCS Operating System for WEC-1 in the amount of approximately \$669,000. Some of this will be paid for by PPGA because it does coordinate the two plants, WEC-1 and WEC-2. The amount that will be paid is yet to be negotiated. This sounds like a lot of money for a software upgrade, but the way he understands it is that the old DCS was based on the Windows XP format and it isn't being supported any longer and things that are computer controlled go out of date and have to be updated. Councilman Goebel stated he wanted to make sure the public understands that when they see on the Board of Public Works agenda "Write Off of Uncollectible Accounts" it doesn't mean that anyone is off the hook for an old utility bill that has been neglected to be paid; it is only for accounting purposes. Those uncollected accounts are turned over to a collection agency. There was also discussion on the procedure for the Manager's Evaluation. The next meeting is July 11th at 9:00 A.M. in the Hastings Utilities Board Room.

The Mayor asked if there has been any talk about any of the new government regulations that President Obama put forward a few weeks ago.

Marvin Schultes, Utilities Manager, stated we are current on Unit 2 and we have done some work on Unit 1. There are still a lot of regulations potentially coming down and we will continue to monitor those.

Councilman Krings thanked the Fire Department and the Parks Department on another successful 4th of July event, this is a great event for the community.

The Mayor stated the Hastings Utilities Parade around Fisher Fountain was probably the biggest

they have had. A lot of people have commented about how great that event is for children to participate in.

MAYOR'S COMMUNICATIONS: None.

Moved by Harrington, seconded by Niemeyer that the following items on the Consent Agenda be approved:

1(a) Minutes of the Council Meeting of June 24, 2013.

1(b) Minutes of the Worksession of June 18, 2013.

2(a) Request of Caribbean Bar & Grill LLC dba "Caribbean Bar & Grill" for an addition to liquor license area to add outdoor sidewalk café at 1426 West 2nd Street.

4(a) Payroll for the period ending July 6, 2013, paid July 12, 2013.

4(b) Authorizing the City Clerk to issue checks against the various funds for payment of claims. (Claims attached to and made a part of these minutes).

4(c) Authorizing the City Clerk to issue checks against the various funds for payment of pre-paid claims. (Prepaid claims included in list of claims attached).

5(a) Department Monthly Reports received and placed on file.

Roll Call: Ayes: Harrington, Peterson, Odom, Niemeyer, Krings, Oatman, Goebel. Nays: None. The motion carried.

At this time a public hearing was held on the request of Jeffrey McCoy to rezone Lots 1, 2 & 3 of JG McCoy Sub from R-1 Urban Single Family Residential to R-3 Multiple Family Residential.

No one appeared to speak in favor.

No one appeared to speak in opposition.

The City Clerk advised that her office had received no written objections.

The Mayor declared the hearing closed.

ORDINANCE NO. 4356

**AN ORDINANCE OF THE CITY OF HASTINGS, NEBRASKA, FOR THE
PURPOSE OF AMENDING THE ZONING DISTRICT MAP AS DESIGNATED**

AND DESCRIBED IN SECTION 34-105 OF THE HASTINGS CITY CODE; TO REDESIGNATE THE DISTRICT CLASSIFICATION AFFECTING THE PROPERTY DESCRIBED IN SECTION ONE OF THIS ORDINANCE; AND TO REVISE THE ORIGINAL DESIGNATIONS (Rezoning Lots 1, 2 & 3 of JG McCoy Sub from R-1 Urban Single Family Residential to R-3 Multiple Family Residential)

Said Ordinance was read by title and thereafter Councilman Goebel moved for passage of the ordinance, which motion was seconded by Councilman Oatman.

Councilman Niemeyer moved that the statutory rule requiring reading on three different days be suspended; Councilman Odom seconded the motion to suspend the rules and upon roll call vote the following Councilmen voted YEA: Harrington, Peterson, Odom, Niemeyer, Krings, Oatman, Goebel. NAY: None. The motion to suspend the rules was adopted by three fourths vote of the Council and the statutory rule was declared suspended for consideration of said Ordinance.

The Mayor then stated the question was "Shall Ordinance No. 4356 be passed and adopted?" Upon roll call vote the following Councilmen voted YEA: Harrington, Peterson, Odom, Niemeyer, Krings, Oatman, Goebel. NAY: None. The passage and adoption of said ordinance having been concurred in by a majority of all members of the Council, the Mayor declared the ordinance adopted and the Mayor signed and approved the ordinance and the City Clerk attested the passage approval of the same and affixed her signature thereto. Effective date of the ordinance is July 24, 2013.

At this time a public hearing was held on the request of Brad Moncrief to rezone property at 1239 North Burlington from R-3 Multiple Family Residential and C-PO Commercial Office Planned District to C-PO Commercial Office Planned District, to rezone property at 1247 North Burlington Avenue from R-3 Multiple Family Residential and C-O Commercial Office to C-O Commercial Office and to reduce the size of the R-3 Multiple Family Residential District for 1236, 1238, 1240, 1242 and 1244 North Lexington Avenue.

Brad Moncrief of 1239 North Burlington, appeared to speak on behalf of his request to rezone. Mr. Moncrief stated it was over 10 years ago that he thought the zoning issue had been handled, there was a fence erected in the back, but it appears there was an omission, whether it was by the City or himself, where the fence was standing there is 28 feet missing off that original deal. The fence has never moved and the property has stayed the same, it is a Planned District that his office primarily sits on. Mr. Moncrief stated he believes that the area has been improved by his building being there and believes his neighbor to the south of his property has a nice looking property as well; the entire neighborhood looks very nice.

Bruce Schreiner of Grand Island, Nebraska appeared to speak in opposition to the request for rezoning. Mr. Schreiner stated he has as personal and financial interest in the property just south of the property that is the subject of this process. Mr. Schreiner handed out to the Council a

history of information on this property. The issue he wants to visit with the Council about deals with water drainage from the Moncrief property though the City Administrator's comments indicate that we have issues with Mr. Moncrief. The fact is we have issues foremost with the City's actions with regard to this property. We presented information at the Planning Commission meeting and the members of the Commission seemed sympathetic to us, but concluded they were not empowered to deal with this issue, therefore, we are going to briefly cover what we communicated to them last week and then add some information for the Council to consider tonight. The Administrative Plat documents are copied in the handout (Pages 6 thru 13) and he would appreciate the Council noting Pg. 7 under "Analysis and Comments" it indicates that the requirement remain unchanged since being approved. We would like to point out to you that that does not mention that there was no drainage plan whatsoever submitted on this project back then or now and he will later communicate to the Mayor and Council why he thinks that is a necessary requirement then and now for such a process. Mr. Schreiner stated his comment very simply is that if there was never a plan submitted, how could it have been approved in the past. Also in the handouts are pictures and copies of the deeds, and he wanted to note that the deeds were filed in 2003 and 2005. Pages 35 through 40 are pictures of the subject property and you will note on Page 35, the bottom right picture and the top right picture show a faint rust coloration on the concrete that depicts the flow of water which clearly funnels to a location along that path. Page 36, mainly the bottom two pictures, the top right, top left and bottom picture all show you the area on that expansive concrete lot where all of that water drains to that funneled location for disbursement into the neighboring property. Page 39 shows the expanse of the concrete that has been constructed on that property, all of which drains to that location. Mr. Schreiner stated our argument has been that the administrative platting process should not be allowed for this property, the normal course for platting and rezoning process should be what is utilized for this because you have an interested party adjacent to this property that suggests that the water drainage issue is one that should have been dealt with and should still now be dealt with in the overall process. Pages 14 and 15 is a copy of our attorney's letter, Art Langvardt, to the City Engineer which indicates that the administrative plat process should not be utilized in this particular instance and the legal reasons why. Yet that is what is happening with this process inclusive of tonight's rezoning request. Mr. Moncrief developed the parcels in 2003, he acquired the subject lots a bit later to make the commercial parking qualify. He significantly elevated the grade of the land, further significantly modified the slope, Pages 35 through 40 all depict a significant expanse of concrete and a pretty good slope, again all to one direction. That was his drainage system, all created as he went. The concrete was installed on the subject land and as a result of these construction activities and the location of the parcel, the integrity and function of the natural water course has been breached by that parking lot structure. The definition of that structure, for purposes of what you would be interested in in terms of the City Code, is on Page 19 and water course protection standards are identified on Page 21. For the past 10 years excessive amounts of water has affected the adjacent property and also the property directly west. There should be no more water crossing property lines after construction than there was before. One very notable attempt at our efforts to communicate with the City as to our interest in the City acting to identify issues with regard to its City Code and other statutes is depicted on Page 22. Mr. Schreiner stated his brother actually went to see Bob Sullivan, and you will see his e-mail communicating back to personnel in the City about that meeting and then

also we had a significant meeting depicted on Pages 23 through 32 where we attempted to set up a meeting with appropriate people in the City and the letter which basically communicated the City's position regarding this, a copy of letter is on Page 25. Mr. Schreiner stated that is a bit of a background of the documents relative to this. Our basic belief is that due to the expansive size of this parking lot, we believe an independent civil engineer should conduct a study of the water drainage and make a recommendation to the City as to what should happen with regard to it because it is a significant redesign of what was there. The key points that we would ask the Mayor and Council to consider is, first of all, is it not the normal that a property that gets rezoned has to be platted. Platting by definition in the City Code is one that requires that the actual plat of that property be recorded. This particular property, even in the information from the City, is that it is not platted yet because they want to rezone it prior to qualifying the plat. We checked at 4:55 P.M. tonight, the plat is not duly recorded, can't be and so his basic question is "can unplatted property be rezoned". I would want to know the answer to that question before I vote to rezone property that is not properly and legally platted according to your own definition. The documents indicate the City is still reviewing the plat, doesn't know what there is to review, but they say they need to do that and I assume likely because they need to allow the rezone to occur first. In addition, City Code 38-201 says you can't have a plat of instruments effecting the subdivision of real property that has not yet been approved by the City Council and that is kind of why this is all happening the way it is tonight, at least from their outside perspective. Mr. Schreiner stated we think it is because the City is attempting to use the administrative platting process rather the normal course of platting and rezoning. Mr. Schreiner referred the Council back to Art Langvardt's letter to the City regarding his legal interpretation of that process. We want the Council to know that we have been attempting to get the City to intervene and the water drainage issue on this property for over 10 years from when we first visually observed how the parking lot got physically installed. It was at that moment that we shockingly learned that there was never a site plan inclusive of a drainage plan developed for this project at that time, never existed and still doesn't. There are thousands of square feet of nonporous concrete all sloping, funneling and draining to about a 1½ feet or so wide drain location on that parking lot with no absorption potential as did exist before the large area was hard surfaced. This all empties to the adjacent residential properties and obviously creates significant water pooling even with slight to moderate rainfall, not to mention the vehicle contaminants that wash down with the water flows. Again, take a look at all those pictures for that summary of the amount of slope and drainage location that all this expanse funnels toward. Notwithstanding our efforts over 10 years to engage the City and requiring compliance with pertinent city codes that would have precluded this from happening in the first place, it has done nothing and further in its seeming effort to avoid requiring compliance, it is now utilizing this administrative plat process to rezone the property when it has been put on notice, via Art Langvardt's letter, that an interested party would like to be heard regarding rezoning as a process of the subject parcels. Mr. Schreiner stated we believe that contrary to the department comments, "no structural changes to any of these new lots is occurring", there are in fact changes occurring, the request to rezone the property from residential to a planned district designation should encompass the facts that this property has had its slope, elevation and surface changed as part of its new utilization. No site plan nor drainage plan exists with respect to these parcels, neither existed with respect to these parcels as well in the past and no drainage plan ever existed

with respect to any of the site development. City Code 34-215(6) dealing with planned district regulations which is the provisions under which this development occurred requires a site plan inclusive of drainage for proper evaluation. The department's comments indicate no new site plan is needed for this minor change to the district size. Mr. Schreiner stated we point out that these parcels are highly instrumental by themselves in the existing water drainage system for this property. This is because they collect water from thousands of square feet of concrete to funnel it into a small drain point, so they both collect their own water as well as run off from adjacent parcels and eliminate all that water in a way that the adjacent property owner believes simply should be evaluated. It is required by City Code and most importantly, it appears to also be required by State Statute 18-3001 which identifies required components of any City or Village Planned Unit Development Zoning Ordinances. What that means is for any City to be able to design its own Planned Development Ordinances, it has to do it under that State Statute and that State Statute has certain minimal requirements that have to be included in the City's ordinances. Here is an excerpt from that law "As used in this Section, Planned Unit Development includes any development of a parcel of land or an aggregation of contiguous parcels of land to be developed as a single project which proposes density transfers, density increases and mixing of land uses or any combination thereof, based upon the application of site planning criteria". That means State Statute requires site planning, you can't do site planning without a site plan. In summary, City Code and State Statute each appear to require a site plan. These parcels stand alone from any prior approvals that may or may not have been given on this development because they are key by themselves and how the drainage works on this development site that impacts the adjacent properties. No drainage plan for these or any parcels in development ever existed. City Code 34-215(6) IV requires the site plan to cover parking areas and drainage. City Code 34-215(4) requires the parking requirements to be the equivalent to those in commercial district applications. City Code 34-308(c), the provision dealing with parking lots specifically states you must ensure the appropriate site location and design features that mitigate the impact of parking lots on other land uses and urban design goals for surrounding districts and (e) of that same section states promote parking designs that minimize run off and incorporate infiltration of stormwater into the ground. State Statute 18-301 Section 3 appears to require that such City Code provisions, as adopted, to be utilized. Mr. Schreiner stated in conclusion the Planned District provisions were chosen for the Moncrief development, this was done so that relaxing of setbacks and other accommodations at that time could occur. State Statute allows for a City to adopt such Plan Unit Development provisions based upon site planning criteria being utilized. City Code requires such a site plan inclusive of a drainage plan, the subject parcels need a site plan as stand alone parcels are developed to be utilized differently from their current residential designation. We believe the City should discontinue trying to find ways to avoid utilizing the normal course replatting and rezoning procedures which would allow for these issues to be evaluated according to existing State Statute and City Code, rather the City should embrace the normal process rules as set out for the purpose of obtaining the optimal results for all parties. In our simplistic view, your decision is either to do the right thing and allow for the normal replatting and rezoning process to occur here or to perpetuate ignoring the State Statute and City Code provisions that were created in part to ensure situations like we find ourselves in right now don't happen in the first place.

Art Langvardt, Attorney representing Bruce and Walt Schreiner, owners of the property to the south of the Moncrief property, appeared to speak in opposition to the proposed rezoning . Mr. Langvardt stated this project started with two properties on North Burlington Avenue, 1239 North Burlington and 1247 North Burlington. 1239 North Burlington had a house which was converted into offices with parking behind it and subsequently added property at 1247 North Burlington. As Mr. Schreiner pointed out, almost everything, except the little bit fronting Burlington Avenue, are continuous properties up to the corner of 13th and Burlington is paved and outside of a little in the driveways and maybe a little in the front yards, it is all running to the corner, the southwest corner of what is now a parking lot. It started off with an application for 1239 North Burlington as a Planned District to convert the residential zoning to commercial planned office; that was approved in the Spring of 2003. As Mr. Schreiner mentioned, there was never a drainage plan provided as part of that planned district process and it is required. That is probably part of why the subject was never dealt with, although looking through minutes, you will see where it does pop up occasionally that there was concern about drainage. But more interestingly, nothing ever filed, discussed or considered in Planning and Zoning nor the Council when that Planned District was approved ever had any part of the 28 feet from the lots to the west, the lots which front on North Lexington and that paving is on those. In other words, there is 28 feet taken off of lots or proposed to be taken off lots to the west of these which front on Lexington Avenue and make them part of these lots. The Council is being asked to rezone that east 28 feet of those Lexington fronting lots that as of yet are not part of the Burlington fronting lots to their east. Mr. Langvardt stated the Planning staff report treats it as being done in conjunction with an Administrative Plat or replat. That is what is needed to add those 28 feet to the west side of the Moncrief lots. As Mr. Schreiner mentioned, he sent a letter pointing out that he didn't really think the Administrative Plat procedure, especially given what all hadn't really been considered much in the first place, is what should be used for this. They want to include that property as part of the Moncrief property, especially since 1239 North Burlington is a Planned District and something more than an Administrative Plat should be used. The reason platting would be considered at all is because under both State and Local law, any document purporting to subdividing existing lots or cut up existing lots is defined as a subdivision and there is a subdivision process and as you well know is somewhat complicated. Consequently, we have developed the Administrative Platting which is what each of you would use when your next door neighbor says "hey I just found out my new garage is a foot onto your property, would you sell me that foot of your property". That is what it is about, the Code says Administrative Plat procedures are intended to provide expedited review and approval for minor adjustments to the legal boundaries and the title of public property for public reporting. That is not what is going on here and you aren't considering the plat tonight obviously, you are presented with a rezoning. The trouble is unless this east 28 feet of those Lexington fronting lots is part of the Moncrief lots running on Burlington, you can't rezone it. If you don't rezone it then you certainly couldn't use an administrative plat because right now what Mr. Moncrief is using, less the 28 feet of his parking lot, is zoned for residential use. Mr. Langvardt stated even though you are not formally facing the question of approving a subdivision, we are hoping to the extent you can, after all this time has passed and all these problems and all the things that weren't considered previously, you will try to straighten this out. Any rezoning should be put off to the extent we are going to add a substantial amount of property, 28 feet along the west side of the Moncrief parking lot is

draining into this same corner that then ends up running into the Schreiner property. Mr. Langvardt stated he doesn't know why none of that came up, there is a major elevation change that you can see from the photographs; the properties were originally pretty much level with each other. The City seems to want to treat this as a routine little matter just to bring it in in accordance with what is done; you are acting as if 28 feet is part of a Planned District that was never part of the plan for that Planned District; somebody needs to start over to the extent that can be done. Mr. Langvardt stated Mr. Moncrief stated that he has been using this and there was an oversight, that 28 feet he has paved and is using as part of his parking lot was acquired in deeds that were signed in November of 2003 and June of 2005, both of which were recorded with the Register of Deeds in 2011; he didn't even own them at the time this development was approved, but then it probably didn't occur to anyone that it mattered that he didn't own them since that 28 feet wasn't part of his proposal on what he filed with the City. Mr. Langvardt stated this has been kind of a sloppy and make it up as we go along process all through the development originally, it was somewhat controversial then and apparently is still going on. Mr. Langvardt stated he doesn't think this is a routine matter of bringing things in line, you are being asked to rezone property that is not part of these lots. Elsewhere, apparently without the involvement of Planning and Zoning or the Council, it is being contemplated that they will just make it part of this property administratively. Mr. Langvardt stated he thinks the Council needs to say "let's go back to the drawing board, you can't do it all over, you can't get rid of the property, can't get rid of the use being made of it and can't get rid of the rezoning, but you can still correct things that weren't done that should have been and the drainage is a major problem. Mr. Langvardt stated he would challenge anyone to show him when this project was proposed that the inclusion of 28 feet off those lots to the west was included in the project. Mr. Langvardt stated that is what he is questioning, maybe it seems a little confusing because you weren't looking at an agenda item for replatting, you can't rezone without the plat and doesn't know how you plat without the rezoning because how can you have a lot with two different zones on it. Mr. Langvardt stated again that to the extent the Council can, you ought to revisit this, believes the City owes it to the neighbors to look into what corrections can be made before we start approving these changes with some provisions required to be made as to that drainage.

The City Clerk advised that her office had received no written objections.

There being no other persons wishing to speak, the Mayor declared the hearing closed.

ORDINANCE NO. 4357

AN ORDINANCE OF THE CITY OF HASTINGS, NEBRASKA, FOR THE PURPOSE OF AMENDING THE ZONING DISTRICT MAP AS DESIGNATED AND DESCRIBED IN SECTION 34-105 OF THE HASTINGS CITY CODE; TO REDESIGNATE THE DISTRICT CLASSIFICATION AFFECTING THE THE PROPERTY DESCRIBED IN SECTION ONE OF THIS ORDINANCE; AND TO REVISE THE ORIGINAL DESIGNATIONS (Rezoning 1239 North Burlington from R-3 Multiple Family Residential and C-PO Commercial Office Planned District to C-PO Commercial Office Planned District, rezoning 1247 North

Burlington from R-3 Multiple Family Residential and C-O Commercial Office to C-O Commercial Office and reducing the size of the R-3 Multiple Family Residential District for 1236, 1238, 1240, 1242 and 1244 North Lexington Avenue)

Said Ordinance was read by title and thereafter Councilman Krings moved for passage of the ordinance, which motion was seconded by Councilman Oatman.

Councilman Niemeyer stated apparently we have two separate issues here, we have a drainage problem because of a large parking lot draining large volumes of water to one corner and then we have the zoning issue. After listening to Mr. Langvardt, Mr. Schreiner and others, it appears to him that if there wasn't this drainage problem, there probably wouldn't be much interest in this zoning issue. Councilman Niemeyer stated when he looks at this and hears the comments made, he feels like it is one of those beg for forgiveness instead of ask for permission type of situations. Councilman Niemeyer asked the City Attorney if he could answer some of the comments that were made about whether this has to be platted before we can rezone it and taking all that aside, is there anything that can be done with the drainage at all, does the City have any power to effect some authority to look at the drainage issue and if there is a problem, see that it is corrected or is this something that once it is there, there isn't a whole lot you can do about it.

Mike Sullivan, City Attorney, stated to answer the first question regarding the parallel actions of an Administrative Replat and a rezone, they just can't happen at the same time. As was mentioned this is a chicken and an egg and you just move forward. One thing you should note in the ordinance, it uses as the legal description the new Administrative Replat legal description. One is not going to happen without the other, in other words, if you pass an ordinance rezoning five new lots that don't ever get replatted, the ordinance doesn't mean anything. Or if they replat it and this ordinance isn't passed then they are still in violation. We have met with City staff, met with the Schreiners and met with Mr. Moncrief and we determined that it appears that about 10 years ago or so, people thought this 28 feet of land was included in what was part of the district and it obviously was never zoned that way. We also determined that this could not be corrected administratively, in other words, City staff could not just simply go change the map and say "yeah it is really zoned C-PO" as opposed to R-3 and that it had to come to the Council. City staff also determined that the Administrative Replat, replatting of the property, does fit all the criteria of having it done administratively as opposed to going through the entire plat process. The City Attorney stated we felt, and we could be wrong, that the Schreiners wanted to have their day in front of the Council which is happening now and whether it happened on one of the issues or both, all the arguments were going to be the same. The City Attorney stated it appears to us that the Administrative Replat can go forward and that is really the City Engineer's decision. He looks at the statute and the City Code and determines whether this particular plat meets the criteria for an Administrative Replat. The City Attorney stated he and the City Engineer have talked and the City Engineer feels it does, but we also felt that this matter did have to come before the Council on the rezoning to correct the record to what apparently was not. The City Attorney stated he has not gone back and read what the record was 10 or 11 years ago and hasn't studied it, he is looking more at where we are today. The City Attorney stated he sees that we have an R-3 strip of ground 28 feet in width that is being used in a C-PO

development. The City Attorney stated you can do one of two things, you either correct that with a rezone or you don't, and then we are all left with this kind of odd situation where the Council approved something 10 or 11 years ago and would now turn around and say no. The City Attorney stated the fact of the matter, in his view, is a private action, Mr. Schreiner could have challenged this in court 10 or 11 years ago, he could have brought suit privately against Mr. Moncrief or the development. Now, even though they say they have been working on this for 10 or 11 years, it is really, in his mind, a private matter and they want you to try to remedy something they want 10 years after the fact and believes that is tough to do. The City Attorney stated you can't go back and revisit every zoning decision the Council made 10, 20 or 30 years ago, you will go crazy trying to review everything in that regard. The City Attorney stated he believes too much time has passed for the Council to have any authority to do anything. The City Attorney stated the drainage he knows is very irritating to the Schreiners, but he can't think of anything that the Council can do to resolve that.

Councilman Niemeyer stated it doesn't matter what we do here today, whether we approve this zoning or not, the drainage issue still is going to be there and there is no way for the City or this Council to have any effect on getting that changed at all.

The City Attorney stated he can't think of any way that the Council could have any bearing on the drainage.

Councilmember Peterson stated we probably would not be here tonight if there wasn't a drainage problem so obviously the drainage problem is significant and has been going on for 10 years. There never was a site plan or drainage plan isn't that correct.

The City Attorney stated he hasn't gone back and checked on that.

Councilmember Peterson stated if in fact there was no site plan or drainage plan submitted, how do you remedy this. Is it the City or is it the owner of the property, how do you remedy the drainage problem that is occurring at this point. Maybe it isn't our issue, but doesn't believe we would be here trying to decide planning versus zoning and chicken and the egg and she doesn't see us saying just sue each other, maybe that is the answer; but there was never a site plan in the first place.

Joe Patterson, City Administrator, stated in regard to the property in question to be rezoned, Mr. Moncrief needed to purchase in order to meet the parking requirements of the Planned District so the City required him to do that 10 years ago. The City Administrator stated Mr. Schreiner has a number of issues with the development, this issue brings it to the Council and that was his goal. He wanted to get it here and he stated that to the City Attorney "I want to get it before the Council so I have my day before the Council". The thing that was missing 10 years ago which we didn't find out until later was a drainage study, there was a site plan and the Council approved it. The City Administrator stated when he was contacted by Mr. Schreiner he visited Mr. Moncrief's property twice, with his permission both times. One was during a dry condition and the other was following a heavy rain and he could see no indication of damage to Mr.

Schreiner's property. Most of it drains into a garden to the west of Mr. Schreiner's property and he hasn't gotten a complaint from that property owner. The City Administrator stated he isn't an attorney or a judge, but he doesn't really see where the Schreiner property is damaged by the drainage. That doesn't mean a study shouldn't have been done 10 years ago and wasn't included in that original Planned District, but believes that is a hard case to make if you are going to say "I am damaged by these waters", none of the flow may have increased by the fact that it was a concrete lot versus ground, but the flow line, the drainage direction that the water was taking, wasn't changed by the parking lot. The City Administrator stated he looked over at the Schreiner's back yard, the garage is elevated and he could see no place where water began to erode the turf and where there was an area where it was washing out, nor could I see it in the garden to the west.

Councilmember Peterson questioned if somebody, other than just us going out using our eyes, should go out there and find out if there is actually damage occurring or not.

Councilman Odom stated he agrees with some of the comments that have been said, but most of this, if he is understanding this correctly, is that it doesn't matter what we do with the rezoning, the issue of the drainage which apparently is a problem for a neighbor, is going to be there anyway.

The City Attorney stated that that is correct.

Councilman Odom stated there are two issues and he can tell you that there have been other situations where staff has or Council has decided to let two neighbors work out a problem and most of the time they are done through the Courts or through some type of negotiation process. If we have left something out and the zoning is incorrect, he has no problem with fixing that part. If we want to do other things and spend money for a consultant and those kinds of things to go look at someone's property and decide if damage has been done, will that put us into a legal process; doesn't know why we would want to get into the middle of that even though some things weren't done on the original plat and those kinds of things. Councilman Odom stated he has no trouble tabling this, but doesn't know what we would be able to accomplish because the problem seems to be not a zoning problem, but a drainage problem and the zoning is not going to cure the drainage problem no matter how we approach this.

Councilman Krings questioned if a Drainage Plan is required during the planning process.

The City Attorney stated there are a number of requirements for a Planned District and what they are saying is that one of the pieces was left out 10 years ago.

Councilman Krings questioned if the City is at fault or are we open for any sort of civil action because we, as a governing body, did not require that 10 years ago.

The City Attorney stated yes, but the time for bringing a petition to challenge a governing body's action is 30 days after the action and so that 30 days ran out 10 years ago. The City Attorney

stated he doesn't know of any process where you could be compelled today, but he just doesn't know. There is that process of where a suit could have been brought in District Court to challenge what the Council did, but that didn't happen.

Councilman Krings stated this is an ordinance so we potentially are looking at three readings.

Councilmember Peterson questioned if we have people on staff that could look at the drainage and provide us with some information within the next two to four weeks.

The City Administrator stated the City Engineer can take a look at it, but believes that will put you in the middle of a neighbor to neighbor issue. Understands what Councilmember Peterson is trying to accomplish, but to put the City in the middle of deciding whether or not there is a drainage issue or not isn't something he would recommend.

Councilmember Peterson stated it makes it difficult for her without that information to be able to vote, either one way or the other; it just complicates it even more, we wouldn't have this issue if there wasn't a drainage problem and it would be nice to know if there actually is a drainage problem or not because you have different people saying different things. Councilmember Peterson stated she is extremely confused about this and she doesn't want the City to be in the middle of this and heard the City Attorney say the 30 days passed 10 years ago, but she would like a little bit more information on what she actually is going to be voting on; doesn't have the information to make a decision at this point.

The Mayor stated we have three readings to do this and anytime during those three readings it can be tabled or postponed. It would probably be important for all the Councilmembers not to suspend the rules since Mr. Schreiner did give us a handout to look at.

Councilman Goebel asked the City Attorney if in his opinion this ordinance is the best way to resolve the zoning and platting issue and will get it in a clear cut form.

The City Attorney stated today the western 28 feet of what is being used for a C-PO business use is actually zoned R-3 which is contrary to our Code and this ordinance would bring that into compliance so that the entire parcel that has been used for 10 years for business purposes is all zoned the same, C-PO. The only thing you have in front of the Council this evening is that ordinance, you either vote up or down, but the only issue in front of the Council is whether this should be zoned C-PO or remain as R-3. Leaving it as R-3 is kind of a peculiar thing, it shouldn't be R-3, it appears to him to be an oversight because from what he understands, Mr. Moncrief did have to buy this property to get enough parking to have this use.

There was no motion to suspend the rules.

The Mayor then stated the question was "Shall Ordinance No. 4357 be passed and adopted on first reading only?" Upon roll call vote the following Councilmen voted YEA: Harrington, Odom, Niemeyer, Krings, Oatman, Goebel. NAY: Peterson. Ordinance No. 4357 passes on 1st

reading only.

At this time a public hearing was held on the request of the Family Medical Center to rezone property from R-2 Two Family Residential to C-1 Local Business Commercial (Lot 16A Hillcrest Sub, a replat of Lots 16-28, Block 2, Hillcrest Sub).

Dr. Kevin Wycoff of 1244 Heritage Drive and a physician at the Family Medical Center appeared to speak on behalf of the application to rezone. Dr. Wycoff stated we are obviously a medical practice and have been, in some form, at that location (1021 West 14th Street) for over 50 years. Dr. Wycoff stated we have grown which is a good problem to have, we now have six physician providers, a nurse practitioner and all the employees that go with an operation like we have. We have just outgrown our existing space and we have been fortunate enough to acquire the residence on the corner directly south of our building. Our plans are still in the discussion mode, we are talking with an architect and we hope to enlarge our physical facility in some way to better accommodate patients and physicians who take care of these patients. Dr. Wycoff stated we are well aware of our neighbors on Hill Street who have always been good neighbors to the Family Medical Center and we hope to continue to be good neighbors to them. We are wanting to be very sensitive to their street and the traffic. Dr. Wycoff stated we have a pharmacy in our facility and will probably still be on the premises, but we are taking into consideration the need to really look at the traffic pattern and not impact Hill Street in any negative way. We may need to access our property from Hill Street, but we hope that it is mostly parking for employees.

No one appeared to speak in opposition.

The City Clerk advised that her office had received no written objections.

There being no other persons wishing to speak, the Mayor declared the hearing closed

ORDINANCE NO. 4358

AN ORDINANCE OF THE CITY OF HASTINGS, NEBRASKA, FOR THE PURPOSE OF AMENDING THE ZONING DISTRICT MAP AS DESIGNATED AND DESCRIBED IN SECTION 34-105 OF THE HASTINGS CITY CODE; TO REDESIGNATE THE DISTRICT CLASSIFICATION AFFECTING THE PROPERTY DESCRIBED IN SECTION ONE OF THIS ORDINANCE; AND TO REVISE THE ORIGINAL DESIGNATIONS (Rezoning Lot 16, Hillcrest Sub, a replat of Lots 16-18, Block 1, Hillcrest Sub from R-2 Two Family Residential to C-1 Local Business Commercial)

Said Ordinance was read by title and thereafter Councilman Harrington moved for passage of the ordinance, which motion was seconded by Councilmember Peterson.

Councilman Odom moved that the statutory rule requiring reading on three different days be

suspended; Councilman Niemeyer seconded the motion to suspend the rules and upon roll call vote the following Councilmen voted YEA: Harrington, Peterson, Odom, Niemeyer, Krings, Oatman, Goebel. NAY: None. The motion to suspend the rules was adopted by three fourths vote of the Council and the statutory rule was declared suspended for consideration of said Ordinance.

The Mayor then stated the question was “Shall Ordinance No. 4358 be passed and adopted?” Upon roll call vote the following Councilmen voted YEA: Harrington, Peterson, Odom, Niemeyer, Krings, Oatman, Goebel. NAY: None. The passage and adoption of said ordinance having been concurred in by a majority of all members of the Council, the Mayor declared the ordinance adopted and the Mayor signed and approved the ordinance and the City Clerk attested the passage approval of the same and affixed her signature thereto. Effective date of the ordinance is July 24, 2013.

At this time a public hearing was held on the request of the City of Hastings Development Services Department to amend Chapter 34, Sections 34-104.3 and 34-200 of the Hastings City Code to address halfway houses.

No one appeared to speak in favor.

No one appeared to speak in opposition.

The City Clerk advised that her office had received no written objections.

The Mayor declared the hearing closed.

ORDINANCE NO. 4354

AN ORDINANCE OF THE CITY OF HASTINGS, NEBRASKA, AMENDING HASTINGS CITY CODE CHAPTER 34; ESTABLISHING AN EFFECTIVE DATE; AND REPEALING ANY ORDINANCES OR OTHER PROVISIONS IN CONFLICT HEREWITH

Said Ordinance was read by title and thereafter Councilman Goebel moved for passage of the ordinance, which motion was seconded by Councilman Niemeyer.

Rich Cartier, City Planner, stated in the past we have been relying on Adult Care Facilities which better fits places like Crossroads or other places where adults are housed and not for people coming out of correctional facilities. We decided we needed to have a definition specific to a place like the Bristol Station and so we added this definition for a halfway house and/or Quasi-Institutional Use. If this ordinance passes we would allow those halfway houses in the Industrial District with a Conditional Use Permit. Bristol Station has a Conditional Use Permit, but they are located in a commercial zone, but they will be grand fathered. Mr. Cartier stated he has spoken with Mr. Hultine and he indicated that he would probably rezone his lot Industrial if this

ordinance passes and he then would be in compliance. Mr. Cartier stated basically what is happening is that we are clarifying what a halfway house is and it is an institution for transitional living for inmates coming out of Federal or State Facilities.

Councilman Odom questioned it at this point, are halfway houses not permitted in residential district.

Mr. Cartier stated no, they are permitted in commercial district.

Councilman Krings asked Mr. Hultine if he is ok with this.

Mr. Hultine indicated he was ok with this amendment.

Councilman Krings stated the thing to note is that these halfway houses will be located in I-1 and I-2 Districts with a Conditional Use Permit. Any type of facility like this will need to come before the Council, and that is important for us to know because it is important for the City to know where these types of places are going to be placed because of perceived concerns from the community and actual concerns that they might have.

The City Administrator stated this is for people who are transitioning back from being incarcerated.

Councilman Goebel moved that the statutory rule requiring reading on three different days be suspended; Councilman Oatman seconded the motion to suspend the rules and upon roll call vote the following Councilmen voted YEA: Harrington, Peterson, Odom, Niemeyer, Krings, Oatman, Goebel. NAY: None. The motion to suspend the rules was adopted by three fourths vote of the Council and the statutory rule was declared suspended for consideration of said Ordinance.

The Mayor then stated the question was "Shall Ordinance No. 4354 be passed and adopted?" Upon roll call vote the following Councilmen voted YEA: Harrington, Peterson, Odom, Niemeyer, Krings, Oatman, Goebel. NAY: None. The passage and adoption of said ordinance having been concurred in by a majority of all members of the Council, the Mayor declared the ordinance adopted and the Mayor signed and approved the ordinance and the City Clerk attested the passage approval of the same and affixed her signature thereto. Effective date of the ordinance is July 24, 2013.

Moved by Oatman, seconded by Goebel that the Mayor and Council approve awarding contract for WEC-1 DCS Operating System Upgrade to Emerson Process Management in the amount of \$668,948.07, including sales tax, subject to successful negotiations with PPGA on shared facilities amount of \$118,151.56 for optional EDS Package.

Marvin Schultes, Utilities Manager, stated this is software upgrade to power plant Unit 1. PPGA did a similar thing for Unit 2 and then there are some joint facilities between Unit 1 and Unit 2

that is approximately \$118,000 subject to acceptable negotiations.

Roll Call: Ayes: Harrington, Peterson, Odom, Niemeyer, Krings, Oatman, Goebel. Nays: None. The motion carried.

Moved by Harrington, seconded by Odom that the Mayor and City Clerk be authorized to execute the Hastings Police Amended and Restated Money Purchase Pension Plan based upon all amendments through July 8, 2013. Roll Call: Ayes: Harrington, Peterson, Odom, Niemeyer, Krings, Oatman, Goebel. Nays: None. The motion carried.

Moved by Harrington, seconded by Odom that the Mayor and City Clerk be authorized to execute the Hastings Firefighters and Restated Money Purchase Pension Plan based upon all amendments through July 8, 2013. Roll Call: Ayes: Harrington, Peterson, Odom, Niemeyer, Krings, Oatman, Goebel. Nays: None. The motion carried.

ORDINANCE NO. 4361

AN ORDINANCE OF THE CITY OF HASTINGS, NEBRASKA, CREATING AN ALLEY IMPROVEMENT DISTRICT WITHIN THE CITY OF HASTINGS TO BE KNOWN AS ALLEY IMPROVEMENT DISTRICT NO. 2013-1; DEFINING THE BOUNDARIES OF SAID DISTRICT AND PROPERTY CONTAINED THEREIN; AND, PROVIDING FOR THE CONSTRUCTION OF IMPROVEMENTS THEREIN (Alley from North Kansas to North St. Joseph Avenues between 1st Street and 2nd Streets, including the intersections at North Kansas and North St. Joseph Avenues)

Said Ordinance was read by title and thereafter Councilman Oatman moved for passage of the ordinance, which motion was seconded by Councilman Peterson.

Councilman Niemeyer moved that the statutory rule requiring reading on three different days be suspended; Councilman Krings seconded the motion to suspend the rules and upon roll call vote the following Councilmen voted YEA: Harrington, Peterson, Odom, Niemeyer, Krings, Oatman, Goebel. NAY: None. The motion to suspend the rules was adopted by three fourths vote of the Council and the statutory rule was declared suspended for consideration of said Ordinance.

The Mayor then stated the question was "Shall Ordinance No. 4361 be passed and adopted?" Upon roll call vote the following Councilmen voted YEA: Harrington, Peterson, Odom, Niemeyer, Krings, Oatman, Goebel. NAY: None. The passage and adoption of said ordinance having been concurred in by a majority of all members of the Council, the Mayor declared the ordinance adopted and the Mayor signed and approved the ordinance and the City Clerk attested the passage approval of the same and affixed her signature thereto. Effective date of the ordinance is July 24, 2013.

RESOLUTION NO. 2013-30

WHEREAS, City of Hastings is developing a transportation project for which it intends to obtain Federal funds;

WHEREAS, City of Hastings as a sub-recipient of Federal-Aid funding is charged with the responsibility of expending said funds in accordance with Federal, State and local laws, rules, regulations, policies and guidelines applicable to the funding of the Federal-aid project;

WHEREAS, City of Hastings and Nebraska Department of Roads, wish to enter into a Construction Engineering Services Agreement to provide construction engineering services for the Federal-aid project.

BE IT RESOLVED by the City Council of the City of Hastings, Nebraska that:

Vern Powers, Mayor of the City of Hastings, is hereby authorized to sign the attached construction engineering services agreement between the City of Hastings, Nebraska and Nebraska Department of Roads.

NDOR Project Number: URB-5514(4)

NDOR Control Number: 42705

NDOR Project Description: 9th Street - Burlington Avenue to Elm Avenue

Moved by Odom, seconded by Niemeyer that Resolution No. 2013-30 be passed and approved.

Councilman Krings told the City Engineer that it was amazing that he continues to find projects that we are able to get support on from the State and he appreciates the work the City Engineer has done on getting the funding from the State and the Federal Government on these.

Vote on the motion. Roll Call: Ayes: Harrington, Peterson, Odom, Niemeyer, Krings, Oatman, Goebel. Nays: None. The motion carried.

RESOLUTION NO. 2013-31

WHEREAS, the City of Hastings, Nebraska, has received approval from the Department of Economic Development for a CDBG Phase II Downtown Revitalization Grant in the amount of \$350,000; and

WHEREAS, the City of Hastings desires to execute CDBG Grant Contract #12-DTR-107 with the Department of Economic Development; and

WHEREAS, one of the Special Conditions of said contract is adopting Guidelines for the use of a Facade Improvement Program; and

WHEREAS, the Business Improvement Districts Downtown Revitalization Committee has prepared guidelines for the Downtown Revitalization Grant program;

NOW THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Hastings, Nebraska, that:

- (1) The Hastings CDBG Downtown Revitalization Facade Program Guidelines, a copy of which is attached hereto marked Exhibit "A" and incorporated herein by this reference is hereby approved; and
- (2) The Downtown Revitalization Committee of the City of Hastings, Nebraska, is hereby authorized to take such actions as are necessary to implement the DTR Facade Program and begin receiving applications for grant funding; and
- (3) The Hastings CDBG Downtown Revitalization Facade Program Guidelines are approved in all respects.

Moved by Niemeyer, seconded by Krings that Resolution No. 2013-31 be passed and approved. Roll Call: Ayes: Harrington, Peterson, Odom, Niemeyer, Krings, Oatman, Goebel. Nays: None. The motion carried.

Moved by Niemeyer, seconded by Odom there being no further business to come before the Council, the meeting adjourn at 8:15 P.M. Roll Call: Ayes: Harrington, Peterson, Odom, Niemeyer, Krings, Oatman, Goebel. Nays: None. The motion carried.

APPROVED:

Mayor

ATTEST:

7-8-2013

City Clerk

(SEAL)