

**AGENDA
CITY COUNCIL MEMBERS' "NOON" MEETING
MONDAY, JULY 10, 2006
COUNTY/CITY BUILDING
CONFERENCE ROOM 113**

I. MINUTES

- *1. Minutes from Directors' Meeting of June 19, 2006.
- *2. Minutes from Council Members' "Noon" Meeting of June 19, 2006.
- **3. Pre-Council Meeting Minutes - RE: Watershed Management Sediment & Erosion Control - June 12, 2006.
- 4. Pre-Council Meeting Minutes - Executive Session - RE: Litigation - DSN v. City - June 26, 2006.

II. COUNCIL REPORTS ON BOARDS, COMMITTEES, COMMISSIONS AND CONFERENCES -

- *1. Public Building Commission (Camp/Cook)
- **2. Internal Liquor Committee (Marvin/McRoy/Svoboda) - CANCELLED

OTHER MEETINGS REPORTS:

III. APPOINTMENTS/REAPPOINTMENTS - To Be Announced

IV. REQUESTS OF COUNCIL FROM MAYOR - To Be Announced

V. MISCELLANEOUS - NONE

VI. CITY COUNCIL MEMBERS

VII. MEETINGS/INVITATIONS -

- 1. Public Meeting for Peterson Park Water Quality Improvement Pond (Open house format) on Thursday, July 13, 2006 from 5:30 p.m. to 7:00 p.m. at Hill Elementary School, 5230 Tipperary Trail - (See Invitation)

VIII. ADJOURNMENT

***HELD OVER FROM JUNE 26, 2006.**

****HELD OVER FROM JULY 3, 2006.**

MINUTES
CITY COUNCIL MEMBERS' "NOON" MEETING
MONDAY, JULY 10, 2006
COUNTY/CITY BUILDING
CONFERENCE ROOM 113

Council Members Present: Patte Newman, Chair; Jon Camp, Ken Svoboda, Annette McRoy.
Council Members Absent: Dan Marvin, Vice-Chair; Jonathan Cook, Robin Eschliman

Others Present: Mark Bowen, Rick Hoppe, Mayor's Office; Tammy Grammer, City Council Staff; Dana Roper, City Attorney; Don Taute, Personnel Director; Police Chief Tom Casady; Don Herz, Deena Winter, Lincoln Journal Star Representative, and Coby Mach, LIBA.

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Chair Patte Newman, by acclamation of the Chair, approved the minutes. No objections were offered.

II. COUNCIL REPORTS ON BOARDS, COMMITTEES, COMMISSIONS AND CONFERENCES -

- *1. **Public Building Commission (Camp/Cook)** — Camp reported discussions included the Health Department, District Energy Corporation and the planned expansion of Court House Plaza. Camp commented the DEC may have to explain the proposals as what is in place now won't be sufficient for the next generation. On security Camp stated the 911 Door/Corridor situation will be the thumb print. The Commission is working on the Art Work-Policy & Display policy for the building. Work has been ongoing on the 233 Building, the old police building, with resurfacing needed. Camp continued saying they're protesting an assessment with the County Assessor on the Northeast Service Center and regarding 'K' Street, the PBC believes Dana Roper will be checking with the County Attorney on ownership as the City and County Board were interested in the common ownership.

McRoy said she read an Omaha World Herald article about the Public Building Commission, which included the topic of the third floor, costs, etc. Camp responded the article had figures he corrected on the cost and is part of the overall master plan to look at how this would be phased in with the Court House Plaza. If enough interest Camp said possibly the PBC could do a space study. McRoy said she has the Master Plan, and reviews regularly, but the article was eye opening. She stated if the numbers are added up it seems to make sense to do with the Court House Plaza and green space saying in the Haymarket, when we had the third floor, we combined and we might be able to open this space up.

Newman added they had also talked about “P” Street and if DEC is expanding facilities. Had talked about offices there as well. Newman stated she believes it is part of the same thing.

Camp said the article didn’t address the Public Works project. McRoy stated it was awkward to see how much space there is, stating she didn’t know if worth doing a pre-council on, but at some point to review the Master Plan, possibly joining with the PBC. McRoy stated she wants to acknowledge where we are in this area.

Svoboda asked regarding art work, is the Public Building Commission going to set standards for public art? Camp responded Roper did have a draft document and the PBC is trying to get a policy as we get a number of requests. A couple of years ago we had a sub-committee on public art, and have had some Robert Duncan items, and so forth.

****2. Internal Liquor Committee (Marvin/McRoy/Svoboda) - MEETING CANCELLED**

OTHER MEETINGS REPORTS: - NONE

III. APPOINTMENTS/REAPPOINTMENTS -

RICK HOPPE - Hoppe stated there is Community Forestry, Lincoln Housing Authority, and Personnel Awards, and hope to have something soon on the Cable Advisory Board.

IV. REQUESTS OF COUNCIL FROM MAYOR -

MARK BOWEN - None

ANN HARRELL - None

DANA ROPER, City Attorney - None

V. MISCELLANEOUS - NONE

VI. CITY COUNCIL MEMBERS

JON CAMP - Camp stated as they have heard from the Fire Chief and suggested taking action at Council’s level, using the charter of authority on investigation. He said the Mayor outlined the meeting Taute (Personnel), and LPD, would have with EDM and asked if Council members had received calls and emails as he has. He stated he heard from dozens of fire fighters with concerns, and the sense they want something done. Camp said the Council owes the citizens of Lincoln, and the fire fighters, a response in a positive way, and to have the facts. Hoppe asked if the Personnel Department and the Police investigation can’t come to this conclusion? Camp responded it would be better to have a broad base investigation and isn’t a matter of not having faith in Chief Casady and the Police Department. Camp continued saying, stepping back there’s a lot of misinformation, and lack of information, and they do have a seven year history of things which have gone on. He

stated in the recent fire truck situation, the late charges, he thought Hoppe had made up excuses for the Fire Chief and doesn't want him on the investigation. Hoppe said he thought others would have a different opinion on a man openly running for Mayor and with that kind of effort, and would really think calling a question Camp responded that Hoppe is the political campaign manager... Camp stated he told Hoppe, in the Mayor's office, 3 to 4 months ago regarding the ambulance committee to quit bringing politics in. Camp stated Hoppe is writing the Mayor's speeches, he's doing the politics. Camp said, let's have a very unbiased review. Hoppe stated cooperation is needed.

Newman asked Chief Casady if he could tell what he has planned and done? Newman stated she is comfortable with him and the Personnel Director investigating but would like to hear the plans. Chief Casady responded his role is to investigate and determine if laws have been violated, and to collect evidence which might lead to a prosecution if laws were violated. Casady said the Technical Investigations Unit will conduct the investigation. The Unit has been in existence for 22 years and have done all sensitive investigations, many of which led to public figures being charged with crimes, and they are very capable. Casady said his role is not to investigate the management of the fire department, or any personnel matters. The Personnel Director, Don Taute, has the role to investigate personnel matters which might, or might not, lead to discipline of employees. Two distinctly separate investigations. Casady said there is case law revolving the independence of criminals in personnel investigations and we intend to file, having lot of experience in filing of police investigations. Casady said he is perfectly comfortable in conducting the investigation, but understand there will be perceptions regardless of who investigates. Casady stated ultimately it's his obligation to investigate the crimes which occur in the City. He said he could assure everyone this would not be fast enough, as it never is. Casady stated the Council could recall a recent high profile investigation concerning financial mismanagement at the Malone Community Center. For months people expressed concern over the length of the investigation, but we cannot do this type of investigation overnight, with the Council having his assurance it will be thorough, impartial, and won't be colored by any kind of other considerations, whatsoever.

Newman asked if Casady feels this investigation is like any other criminal investigation with the investigators giving their best? Casady answered his part is a relatively straight forward investigation to determine if any crimes have been committed in connection with the fire trucks, the bids, the acquisition, and the items surrounding these topics. He stated he does not intend to go on a fishing expedition, and this investigation is a narrowly focused investigation. Right at the moment Casady said he knows basically what he read in the paper and he thinks there's enough information there to look into and determine if any crimes have been committed.

Svoboda stated he assumes Casady has the ability to pass the case to the State Patrol, or other outside agency, if he feels there is going to be a public perception it's just an internal investigation? Casady responded they could if they felt the need, adding if he felt a need to have another law enforcement agency involved along with, or instead of his department, he would discuss with the Mayor. He stated he has gone over the pros and cons, as he's sure the Council has, and will be subjected to criticism, referring to the City of Lincoln, either way. Casady reiterated he's comfortable with the course chosen and thinks having this investigation gauged by people who are competent is a wise move. Casady said this is not saying a crime has been committed, do not know and do not want to pre-judge. Will leave to the investigators but stated he is confident that the case will be handled like any criminal investigation. The Department has a long track record of doing this with some very high profile cases, and involving some highly placed officials in our community and our government.

Svoboda said in order to reduce, or eliminate, the public's perception of just an internal investigation is there the chance to have a State Patrol investigator work along side police investigators, so there's an outside oversight as well? Casady said they could ask, but thinks it's too soon to say whether they will or not. Casady stated he scheduled a meeting with staff, criminal investigators, to discuss roles and what is expected. Casady thinks it's a little preliminary to make these decisions, but assured everyone when investigations are done they share all investigative reports with the Lancaster County Attorney, who is the person responsible for prosecuting. He added other than review by the Police Department, the work will be investigative, conducting interviews, researching documents, testimonial evidence, and physical evidence. The results found, and reports produced, will be delivered to the Lancaster County Attorney's office, as they always are for a case.

Camp said he thought, as he brings it to his colleagues, not so much to focus on criminal acts, but for example fire captains who didn't want their names used, and thought an environment where fire fighters and others can, on a confidential basis, talk to a third party and in that way facts can be gained. Camp stated he's afraid if this isn't employed there would be a hesitancy for some people to talk to other City employees. Camp said he wants to get the facts out, letting individuals come forward on a private basis, so we can look at the management of our Fire Department.

Newman said she doesn't think it's proper for the Council to speculate, and wants to be very cautious in talking about any personnel issue, unless it is in executive session. Taute agreed stating he has asked for a taped copy of Camp's show as he didn't know about the show and what was said until this morning, with some comments totally unrelated to the matter of the fire trucks. Taute continued saying he's charged with the administrative enforcement of the personnel code. Chapter 228, the Charter Article 9 Section Four, and 276030 of the Personnel Code. He stated he was given the responsibility of dealing with conduct relating to an individual's performance in the capacity as a Lincoln City employee. Taute stated he's not sure how far it will go as there are numerous people to talk with to determine the exact involvement. Taute said Camp may be one of them as Camp stated he received calls from some employees regarding issues related to the fire trucks. Taute said he would be asking Camp for names of people who have talked to him over the course of the last two years, if it goes that far. He stated to have the names, when the conversations took place, and to have conversations with them to find out what they knew about individuals who were involved. Taute said this matter is aside from what Chief Casady is looking at from a criminal standpoint. We often times have employees charged with a crime, but they don't need to be convicted before we can take personnel action against them. Taute said now, we're talking about two different issues. He gave example of an individual who was charged with theft by deception and before there was ever a trial we terminated his employment. Taute said he ultimately was acquitted of the charges but still doesn't have a City job. Taute stated he believes he can conduct the investigation appropriately and he is not going to be throwing names out right and left. If individuals have asked for confidential protection will see to it when possible. He stated if it gets to the point of personnel action against an employee, or employees, they will be required to be a witness, and at some point in time their identity is going to come out. Taute said he can't do anything about this as this is how the process works. Taute stated he doesn't intend to let Mr. Max's confidence taint this whatsoever because it's totally unrelated to what his position is, and if he cares to impugn Taute's integrity would deal with that on another basis, another forum.

Svoboda stated the police department has the ability to go to the State Patrol, and asked if there's an understanding it was an internal perception, investigation, what outside agency does Personnel have as doing an alternate investigation or being a co-investigator? Taute said he really doesn't have the ability as Casady does. Really isn't anything comparable but would look, perhaps, to another governmental entity. Taute stated he is the City and the County Personnel Department, so can't go to the County, but have used private investigators on Workmen's Comp, potential fraud, but that's not involved in this investigation.

Camp said he appreciates Taute's distinctions but his concern is individuals who approached him and concerned they remain anonymous. Camp stated he wants to see that however this is reviewed, and he includes management as this is a good point in time when we have the ambulance system, the fire trucks, and other situations over the last seven years. He stated these individuals need a forum, or situation, where they can speak anonymously, otherwise they'll not come forward, as they haven't in the past. Camp said he wants the facts out and if we don't have an environment that is conducive, without a fear of retribution, and not saying Taute would have retribution, but trying to put himself in their shoes, what they communicated, and their concerns.

Taute replied it sounds as if Camp's focus is getting much broader than what the focus of this investigation would be. Taute stated they would be looking at allegations with regard to matters relating to the representation of whether fire trucks meet specifications and whether certain people received certain directions regarding the trucks. Taute said Camp seems to be going back seven years, and having issues regarding the entire EMS operation. Taute stated he's not going down that road, but if the captains have issues with the specs, and have heard things, this would be his focus. Taute would suggest it is Chief Casady's focus as well with respect to this contract, and any violations of criminal statutes. Camp asked as of now are we in any investigation, looking into the internal affairs of the Fire Department and how it's been managed? Taute replied as it would relate to specifications and certain representations made with regard to whether those were, or were not, complied with, there may be some but it's not going to go to whether or not there was mismanagement at any point prior. Camp asked Taute if he was just focusing on anything related to the fire truck purchases? Taute said he's not going to engage in a performance audit, if that's being asked, or an audit of the management of the department. Bowman asked Camp if he would like to review the entire Fire Department over the last seven years, or anything and everything?

Camp said he thinks there's two things beyond what's been described. Number one is immediate investigation, looking into how management practices have gone on. Secondly, to do a performance audit for the Fire Department with the idea of operating more efficiently. Camp said with the investigation presently he believes the fire truck specifications, late penalties, those are the tip of the iceberg.

Bowman said he would suggest Camp take an opportunity and visit with the Mayor directly. Camp replied he tried last month but you (Bowman) sat in on the meeting. Bowman reiterated Camp should take the opportunity to visit with her, as things are different. Camp thought possibly an executive session would be needed and said for his colleagues would think we need to do more in-depth.

Newman said the case in point is the fire trucks and thinks Bowman is correct, Camp needs to talk to the Mayor if he thinks it should be more in-depth. Camp asked Svoboda and McRoy for their thoughts. Svoboda said he wants to see where personnel and the criminal investigations go and can discuss at some time as to whether this Council feels a need to do a more in-depth investigation. Svoboda said he knows what Camp is looking, and asking, for. On the performance audit Svoboda said he would want one, as it has been proposed for the last couple of years, but would like one on

a system wide basis, identifying the biggest concerns. Svoboda said if the Fire Department is our biggest concern we have a performance auditor on staff, if that is the direction we would go. If it happened to be another department having the largest need for performance auditing, then that's where we should focus our efforts. Svoboda said he didn't know if he wants to make a commitment now that performance auditing in the Fire Department is the first and only place we would go.

Newman stated she thinks we're too short handed now to be discussing. McRoy stated the first step was to wait and see what Taute and Casady come up with and then incorporate the second step. The first step is the most important item on people's minds and we need to restore the credibility first regarding the fire truck issue.

Svoboda said he thinks the frustration probably sensed from a number of Council members is due to the Mayor's press conference last Friday, and Council not knowing. He stated there were three Mayoral staff people in and out of Council budget meetings, and Council saw some of the Mayor's staff around lunch, and also members could have been taken individually aside and told the Mayor was going to have a press conference. At the conference information was released that the Fire Chief would be asked for his resignation, an internal investigation was announced, etc. Svoboda said Council would have appreciated communication as opposed to the Mayor coming into our executive session to say she had a press conference and now was telling the Council. Svoboda said people called after viewing on TV saying it was announced the Mayor said she was going, at that time, to tell the City Council. Svoboda said people asked if he knew before the media heard. He believes this was Council's frustration, and is not the first time Council has heard through the media.

Bowman said as the Mayor said to Council, if she, or anyone had known there would be a break between your budget and executive sessions, believes the Mayor would have come down. Svoboda thought this was a major issue, when the Mayor enters and requests an executive session, or, as Newman was pulled out in the morning to rearrange a schedule, even then if someone said to the chair there was something very important to discuss. Newman said she received information fire was coming at the end of the afternoon, and then at lunch heard fire would be rescheduled.

Bowman said on Friday meetings begin to evolve up until 2:00 o'clock. Svoboda understood but reiterated his opinion there would have been time to break into the Council's session or if Bowman, or anyone, would have told Council what would happen within the next hour, so we would have heard it first. Bowman said it's after the fact but if there would have been a break on Friday they would have done this.

Newman said the Council is unified on this issue, and were frustrated. Camp said he heard about it around press conference time and the Mayor's office had ample time to announce. Newman said by the same token, two Council members knew a fire truck was broken in St. Louis, with others not knowing, so there's some lack of communication on all fronts, and it is a problem. She stated everyone has to communicate with one another and not leave people out in vacuums.

JONATHAN COOK - Absent

ROBIN ESCHLIMAN - No comments

DAN MARVIN - No comments

ANNETTE McROY - No comments

PATTE NEWMAN - Stated she felt dismay upon receiving an email from Public Works regarding site distance problems, with legal saying 400 different reported addresses have to be checked. Newman said Cook and she had met with Public Works about the right-of-way, public property, private property issue and stated there is the need to work this out as she fears we'll have another sidewalk issue, with the City pushing so hard the taxpayers revolt and say, okay. Newman said she didn't know how it worked with public right-of-way plants.

KEN SVOBODA - No comments

VII. MEETINGS/INVITATIONS - Listed on the Attend Sheet for July 10th.

VIII. MEETING ADJOURNED - Approximately at 12:47 p.m.

***HELD OVER FROM JUNE 26, 2006.**

****HELD OVER FROM JULY 3, 2006.**