

I. CALL TO ORDER

President Scott Decker called the meeting to order at 4:30 PM

II. ROLL CALL

Present were: President Scott Decker, Vice President John Odermann,
Commissioners Jason Fridrich and Robert Baer

Telephone: None

Absent: Commissioner Suzi Sobolik

1. PLEDGE OF ALLEGIANCE**2. ORDER OF BUSINESS**

MOTION BY: John Odermann

SECONDED BY: Robert Baer

To approve the February 6, 2024 meeting as presented.

DISPOSITION: Roll call vote...Aye 4, Nay 0, Absent 1
Motion declared duly passed

3. CONSENT AGENDA

MOTION BY: Robert Baer

SECONDED BY: Jason Fridrich

A. Approval of Meeting Minutes dated January 23, 2023.

B. Approval of Accounts Payable, Commerce Bank and Checkbook

DISPOSITION: Roll call vote...Aye 4, Nay 0, Absent 1
Motion declared duly passed

4. ADMINISTRATION/FINANCE**A. Public Works Director Oath of Office – Aaron Praus**

President Scott Decker swears in Public Works Director Aaron Praus.

Public Works Director Aaron Praus thanks the Commission for trusting in him and giving him the opportunity to serve the City of Dickinson as the Public Works Director. He states that he has been with the City for 25 years and will try and do his best to uphold the position and represent the City of Dickinson.

B. Library Board Director

Deputy City Administrator Linda Carlson states on January 10, 2024 the Library Board met for their regular meeting held in the City Hall Commission to approve Ian Anguiano as the new Library Director for the Dickinson Area Public Library. With the approval and recommendation of the Library Board and behalf of City staff, we are recommending an approval of the new Library Director, Ian Anguiano.

Mr. Ian Anguiano states he is currently the McKenzie County Public Library Director. He states that he has been in library for the past 10 years and he is excited about rejoining the City of Dickinson team and charting the course forward.

Commissioner Robert Baer is asking for clarification on the hiring process for the Library Director. He is questioning why a City Commission was not on the interview committee.

Deputy City Administrator Linda Carlson states the process started when the previous library director gave her notice of termination. Then the city set out for applicants through HR. On the interview committee were 2 library board members, HR, interim library director and Ms. Carlson. An interview process was gone through and then a background check and a conditional offer letter was given to the candidate. The State statute states the library board makes the formal approval of the library director application and that approval comes forward before the Commission. In the past, the position interview of the library director does not have Commissioner on it. Ms. Carlson states executive positions interviews do have Commissioners sit on the interview panel but not on supervisory roles.

Commissioner Robert Baer states that any time a direct position comes up there has always been at least two Commissioners on the interview panel. He states then the Commissioners can see what the other Commissioners are thinking about the candidates. He states as an elected official they are responsible for determining if the City is choosing the right people. He feels the Commission was cut out of the process. He is questioning on how the interviewing committee was chosen. He states to Mr. Anguiano that he is not doubting his qualification but if the library board voted no on his employment would he still be employed. Commissioner Baer is concerned that he could see this as someone that could potentially stack the interview committee on certain applicants and the person would get the position automatically.

Deputy City Administrator Linda Carlson states specifically he would not be hired if the library board did not approve of his hiring. Ms. Carlson states she is not sure why this position is called a Director. She states there are Managers, Supervisor's and Director are all titles. There are managers called Clerk of Court. Ms. Carlson states she is still the department head over the Library Director. She states HR does get the interview panel together, interview questions and sets up the interviews. The only change is that start date was a needing to be changed as he was unable to start until a later date.

Commissioner Robert Baer is concerned about accountability. He thinks the Commission needs to have more involvement.

Deputy City Administrator Linda Carlson states the reason that the Commission is on committees that the City is using tax dollars and she is an ex officio and to support the staff when they come forward for their wishes for their budget and then have backup authorization.

HR Director Shelly Nameniuk states if you are looking for supervisors, because of the title this is not the same level as Chiefs, Public Work Directors, and Engineers. She states there would be a number of interviews that the Commissioner would be sitting on. Director Nameniuk states a conditional offer was made by phone and if accepted then a background check will be completed.

Commissioner John Odermann questions the conditional offer, was it before or after the background check. Was it a written conditional offer letter. He is questioning if the conditional offer letter was out before December meeting that we were going to make a recommendation of hiring Ian. Commissioner Odermann states they probably should have not known until he was presented or having library board members communications. Unfortunately, this muddled all of this hiring. Commissioner Odermann states they may need to have a level of employee to hiring process for a Commissioner. He states the Commission have to answer for these decisions of approving of these positions. Library Board is unique and interesting as it is structured. The City does not have much oversight over the library other than approving dollars and their director.

City Attorney Christina Wenko states she has had conversations with other city attorneys on how they handle the hiring process and the understanding is for Commissioners to be in interviews at a higher-level process. Interviewing for Leadership positions is operations that is generally not where we would see elected officials making the decisions. She would have to do a legal research and ramifications to that and which positions. Ms. Wenko feels this would have a negative impact on employees, in depth thought of ramification of that decision. She states again, that would be something that would be fully addressed before a decision would be made. She feels this is borderline operations. Of course, the Commission decision on executive positions. Ms. Wenko asks if they would like to sit on all interviews

Commissioners John Odermann states different levels it becomes very subjective which should have oversight of Commission or not.

Commissioner Robert Baer states the librarian position is a very unique because the librarian answers to a board unlike some of the other management positions. The City Commission has to approve their budget and basically everything else is rubber stamped

Chief Presnell states overall the response times have been pretty good. He also visits about the training hours and states the Fire Department is off to a good start in 2024.

B. Police Department

Reports:

1. None

7. **COMMUNITY DEVELOPMENT SERVICES**

A. ESRI GIS Software Contract Renewal

Engineering and Community Development Director Joshua Skluzacek presents a ESRI GIS Software Contract renewal. He states the contract is \$12,960 dollars and is within the budget. Director Skluzacek states this is a series of different licenses. City Attorney Wenko has reviewed the contract and staff approve the renewal.

MOTION BY: Jason Fridrich

SECONDED BY: Robert Baer

To approve the American Engineering Testing Task Order for the baler building.

DISPOSITION: Roll call vote...Aye 4, Nay 0, Absent 1
Motion declared duly passed

8. **PUBLIC HEARING AND PUBLIC COMMENTS NOT ON AGENDA – 5:00 P.M.**

A. Landfill Cell 3B5 Bid Approval

Public Works Director Aaron Praus states six bids were received on January 10, 2024 for the landfill Cell 3B5. He states staff recommends the lowest bid with Schwartz Construction which is \$16,000 less than the next highest bidder.

President Scott Decker opens the public hearing as there has been discussion on the process and concerns.

Houston Engineering Sherwin Wanner states the City has applied for a Clean Water SRF Loan and to apply for these funds there are funding requirements. Clean Water SRF staff did approach the city that there was grant funding available and this required additional documents during the bidding process. Houston Engineering had prepared the addendum to this bid to include the documents. He did make a reference error when preparing the addendum. This is the point of contention. The contention point is where the two forms were placed in the bid. He did not catch the error when opening up the bids. He states that they are only made sure those forms were with the bid. Houston Engineering did open all the bids and all bidders did include the forms, which one company had the information in a main envelop and the others had this information in a separate envelope. They did seek legal opinion on how to proceed.

City Attorney Christina Wenko states the City was asked to given an opinion in light of this issue. She states technically whether the two documents for the SRF Funding and Grant was in the physical envelop or a separate envelop. Century Code does not give a whole lot of guidance on this issue. She states the City can waive the irregularly if they chose. In determining that she consulted with other attorneys, the Attorney General and there is no particular code in this matter. Ms. Wenko states this is a minor informality and a form rather than substance and can be waived. This is a minor informality and Ms. Wenko based her opinion on the AG opinion and State Statue that this is an irregularity and that it can be waived if the City does choose to do so. There are two options for this bid. 1. Either accept the bid and waive the irregularly and proceed with awarding to the lowest bidder or 2. Reject all bids and rebid the process. Ms. Wenko states that all the bids were opened and since they were opened the city cannot unwring that bell.

Commissioner Robert Baer states there were procedures in which the bidders were asked to follow. The reason for that is to make sure they open the first envelop that the contractor is qualified to continue on with the bid. Then if all info is in the first envelope, then the second envelope should be opened.

City Attorney Christina Wenko states in a perfect world, but in this situation, this was not done. All bids were opened and considered. The bids should be thrown out and all bids

are processed and proceed with the lowest bid. The city is required to accept the lowest bid. If the city is not in favor of waiving, then the cleanest force of action is to reject all of the bids and due the process over. That would allow Schwartz to do it correctly and also have Baranko Brothers to have their bid considered. She states all the bidders that bid are responsible bidders. Ms. Wenko states every one of those contactors are responsible bidders. Ms. Wenko states the cleanest way is to reject them and proceed to rebid. She is not sure if the City is up against any timeline of the grants.

Mr. Sherwin Wanner states based on the conversation with the Clean Water grant there is no indication that there is a timeline that would restrict a rebid. He states the challenging of rebidding is that there is not a lot that the City can change with the scope of the project. This would be a remirroring of the project scope.

Mr. Joe Kessel, Baranko Brothers representative states that failing to include the bid forms as required in the addendum should be followed. He questions why Baranko Brothers should be penalized for following the rules. He states Baranko Brothers are the only responsible bidders. Mr. Kessel review the process of bidding and hands out the bidding papers. He states the City should not know anyone else's bids at this time. Baranko Brothers should be the only bid that was supposed to be open. The City has a process it does state that the City has to have proper paperwork and the lowest bid.

Mr. Joel Ficek of Schwartz Construction states this bid envelope is what is in question. He states the bid bond and contractor's license were in the envelope. He states as Houston Engineering has stated there was a mistake on their part. The whole bid formality was based on the lowest bidder and Schwartz Construction is a competent bidder. He states five of the six bidders did bid the traditional way it has been done. He states he hopes the Commission decide to take the lowest bid. Mr. Ficek states this new bid process it not the normal bidding process. He states anytime there are additional items there are not informality that is required upon a bid. Normally you don't have to have those items within your bid. Items were all there and they were in the envelope that was open.

City Attorney Christina Wenko states the Schwartz was the lowest bidder and all the bids were compiled with all bidding and past performance and advantages pricing. The only thing the Century Code outlines is the bidding process. She states what is needed is bid, bond and contractor's license in a secured envelope outside of the packet.

Mr. Sherwin Wanner states the grant funding requirements did require the two forms. The grant program does not require to be in a bid security envelope.

Commissioner Robert Baer states forms were to be in the first envelope. He states projects like this, the engineering firm could ask for those forms to be in the first envelope to make sure the company can perform before going forward.

City Attorney Wenko states reality is the way the statute is written. Each bid envelope is certain a certain envelope. The first one is bare necessitates first. She states based on her experience on opining bids rarely has it ever been seen anything outside of the outside envelope.

Commissioner Jason Fridrich states that if they would have forgot their license then the envelope would have not been opened.

Commissioner John Odermann state there are a lot of things that the city asks of people that does not have any statutory authority. Where is the credibility of the City? The City asks people to do things that we don't have statutory authorizing backing the City up.

City Attorney Christina Wenko states she completely understands both positions, empathize both positions and requirement was not made. She is not advocating for either party. She states the Commission has the legal right to waive the irregularity and if the Commission does not want to go in this direction, then the process would be to rebid and start over. The City is required to take the lowest bid. The best and cleanest course of action is to rebid and if you are not comfortable waiving.

Commissioner John Odermann states at one point in the bidding process Baranko Brothers has the information in their envelope and no one else does.

Sherwin Wanner states he does not recall the order of the which the bids were opened. The expectation was that the forms would be with the bid. He did not expect the forms to be in the outer bid envelope. Mr. Wanner state he understands this issue but he didn't connect that reference until after the bid was open.

Commissioner Robert Baer states only one company followed through with the paperwork requested and those are Baranko Brothers and the others should be disqualified. He states the fact is that all the bids were open and now the City is out of the advantage because everyone knows all the bids. He does not feel that it would be fair to rebid the project.

City Attorney Christina Wenko states the City has the right to rebid if that is in the best interest of the City. She states the City may see a bit more competitive bid as the City already knows the bids. This would not be unusual for the City to rebid a project. She is questioning whom will pay for the rebidding.

Mr. Wanner state there will certainly be an added cost that he would have to take back to his partners and decide on how to move forward.

President Scott Decker states the City continually contracts expertise and then the City gets left holding the ball and dumped onto the Commissioners laps. This is not good in our community the size that it is. Now the Commissioners have to be the judge in the jury. He states he hopes there is no more costs to the City. If the City has more costs this would not look favorably.

Commissioner Jason Fridrich states the City may not get another bid. All bids were open when they probably shouldn't have been opened and now everyone knows the bids.

City Attorney Christina Wenko states that the possibility that neither one of these two parties will be the lowest bidder. This is the unfortunate of the reality of the fact. The cleanest way is to reject all of them and rebid. Ms. Wenko states that required by State Statue the City has to go with the most responsible lowest bidder. She states there may ramification and the city would be in litigation.

Commissioner Robert Baer states why not Baranko Brothers and move on. Commissioner Baer states what if the City wants to throw out the lowest bid.

City Attorney Christina Wenko states State Statue says the City does have the right to reject any and all bids. Mistakes were made and this is unfortunate but she does not advise to accept option #3 of Baranko Brothers and to reject all bids and restart over.

MOTION BY: Jason Fridrich
SECONDED BY: John Odermann
To reject all bids and to rebid the project. He does not think awarding to Schwartz Construction will be a fair process.

DISPOSITION: Roll call vote...Aye 2, Nay 2, Absent 1
Motion died for lack of tie

MOTION BY: John Odermann
SECONDED BY: Robert Baer
To uphold specification as addendum #1 and award the bid to Baranko Brothers. Commissioners Odermann does not believe that the City should award something that was laid out by rejecting all bids except for the bid by Baranko Brothers.

DISPOSITION: Roll call vote...Aye 4, Nay 0, Absent 1
Motion declared duly passed

B. Public Comments not on Agenda

Mr. Jeff Ficek states the SW Patriots would like to remind all potential candidates that the SW Patriots meet once a month. The SW Patriots will provide a platform for all candidates

to spend 5 minutes to the public. The meetings are set for February 6, March 5, April 16 and May 14, 2024. These meetings start at 7:00 p.m. at the Dickinson Eagles Club.

Ms. Kimberly Ho visits about her personal experience of hiring the Public Library Director. Ms. Ho states in December Ian Anguiano was already hired per Ms. Linda Carlson. Ms. Ho states that she shared with the library board her concerns of hiring of the candidate. She sent an email to the library board and Ms. Carlson replied to the initial email reviewing the procedures of hiring an employee. Ms. Ho states two issues concern her. She is concerned about the hiring process and why are not all members of the library board on the interview board and she would like to have reviewed the questions and information in regards to the boards opening. She was completely left out of the hiring process. This issue does not seem right. She states the recent hiring of the library director process does not seem to fit the century code. She states how was this completed properly if some of the board members were left out of the process. She feels the process was completed poorly with flaws. She feels that his process should be redone.

Commissioner John Odermann thanks Ms. Ho for coming to the Commission meeting this evening and that they already had a good conversation about this issue and the library board meeting. Commissioner Odermann states he does not agree that all of the members need to be in the interview process but the way it was communicated was difficult. He states it was difficult to make an educated decision without resumes. He does echo Ms. Ho in saying this. He feels there was something with the process that could have been done better. This is an opportunity for the city to do a better job going forward.

President Scott Decker echoes Commissioner Odermann in that the City needs to look at all the processes and what expectations that the public has for the Commissioners. He states going forward there are many boards that need their policies and procedures reviews to make sure all is included in the hiring process.

Commissioner John Odermann states there are situations that the City has hired executive level positions that he was unable to attend but was asked to be on the interview committees.

9. **COMMISSION**

President Scott Decker asks that businesses in the City of Dickinson that butt up to residential areas by the best neighbors they can be. Neighbors should not infringe upon residents because of the different zonings the City has. He asks the neighbors try to be good neighbors as the City of Dickinson is a small community.

Commissioner John Odermann states the Commission had some tough decisions today. The Commission had some tough decisions and as Commissioners but he would not assign malice or ill intent that is as simple as a mistake. The City has had some mistakes the last couple of weeks/months but he thinks it is important for all to understand that everyone is human and to look at the opportunity to improve but without ill intent and just a simple mistake. He feels this is worth mentioning this evening with the conversations that were had.

ADJOURNMENT

MOTION BY: Jason Fridrich

SECONDED BY: John Odermann

Adjournment of the meeting was at 6:25 P.M.

DISPOSITION: Roll call vote... Aye 4, Nay 0, Absent 1
Motion declared duly passed.

OFFICIAL MINUTES PREPARED BY:

Rita Binstock, Assistant to City Administrator

APPROVED BY:

Dustin Dassinger, City Administrator

Scott Decker, President
Board of City Commissioners

Date: February 20, 2024