

**AGENDA**  
Regular Meeting  
March 18, 2014 - 7:30 p.m.

**CALL TO ORDER**

Mayor Achziger called the meeting to order at 7:30 p.m.

**PLEDGE**

**ROLL CALL**

Present: Mayor Achziger, Mayor Pro-Tem Morris, Council Members: Brown, Clark, Neibauer, Rudy, and Schaffer

**PROCLAMATIONS**

**A. Americanism Day Proclamation**

Mayor Achziger read the Americanism Day Proclamation, discussed the importance of Americanism Day, and explained that the proclamation will be presented to VFW Post #6624 at their upcoming Americanism event in Evans.

**B. National Flood Awareness Week Proclamation**

Mayor Achziger read the Flood Awareness Week Proclamation and presented the proclamation to the Members of the Evans Flood Recovery and Redevelopment Task Force.

**i. City Flood Video**

City staff presented the “Evans Flood Story” video to City Council and members of the public. Following the video, Mayor Achziger talked about the resiliency and strength of the community during the Evans Flood Disaster of 2013. Mayor Achziger thanked everyone that helped work on the video project.

**ii. Recognition of Judy and Seth Johnston**

Mayor Achziger presented a plaque to Judy and Seth Johnston and thanked them for their musical contribution to the City Flood Video.

**APPOINTMENTS**

**A. Flood Recovery Task Force Appointments**

Mayor Achziger discussed the importance of the Flood Recovery Task Force and discussed the recent appointments to the Task Force.

Council Member Clark made the motion, seconded by Mayor Pro-Tem Morris, to appoint Gail Ford and Eddie Maxwell to the Flood Recovery Task Force. The motion

passed with all voting in favor thereof.

Mayor Achziger presented certificates to Gail Ford, Eddie Maxwell, and Jason Boren for their appointment to the Task Force.

### **AUDIENCE PARTICIPATION**

Amy Blake, from 2502 Hawk Drive, Evans, spoke to City Council concerning an incident at her residence involving the Evans Police Department and a representative from Atmos Energy. According to Ms. Blake, the Atmos Energy representative was escorted by Evans Police to install a Smart Reader for measuring electricity used at the residence. She talked about being frightened and intimidated into allowing the installation of a Smart Meter by the Atmos Energy Representative.

Mayor Achziger thanked Ms. Blake for her comments.

Kevin Blake, from 2502 Hawk Drive, Evans, addressed City Council to talk about the harmful effects of electro-magnetic frequencies emitted by the Smart Meters. Mr. Blake submitted a notice and demand for banning the use of Smart Meters in the City of Evans. Mr. Blake entered his testimony concerning the harmful effects of Smart Meters and submitted a packet of information concerning the harmful effects of Smart Readers to the City Manager.

Mayor Achziger thanked Mr. Blake for his comments.

Markay Vallario, from 2331 West 1<sup>st</sup> Street, Greeley, also commented on the harmful effects of Smart Meters being installed in the City of Greeley and asked the City Council Member to research the harmful effects of Smart Meters.

Mayor Achziger thanked Ms. Vallario for her comments.

Mary Tuneberg, from 8661 Norwhich Street, Westminster, addressed City Council to explain the harmful effects of electromagnetic frequencies emitted by electronic devices, like Smart Readers for measuring electric and gas utilities. She cited the International Agency on Research for Cancer, under the World Health Organization, classifies microwave radiation as a class 2B carcinogen. She asked the City Council Member to research the risks of frequencies emitted by Smart Readers. She talked about the implementation of smart readers by utility companies and explained that individuals should have the right to opt-out for citizens that are concerned about this issue.

Mayor Achziger thanked Ms. Tuneberg for her comments.

### **APPROVAL OF AGENDA**

Council Member Schaffer made the motion, seconded by Council Member Rudy, to approve the agenda. The motion passed with all voting in favor thereof.

### **CONSENT AGENDA**

- A. Approval of Minutes of the Regular Meeting of March 4, 2014**
- B. Ordinance No. 589-14 – Changes to Evans Municipal Code Concerning City Animal Code (2<sup>nd</sup> Reading)**

Council Member Schaffer made the motion, seconded by Council Member Clark, to approve the Consent Agenda. The motion passed with all voting in favor thereof.

### **NEW BUSINESS**

- A. Public Hearing – Resolution No.09-2014 – Revoking a Use by Special Review to Allow Outdoor Storage at 4650 Industrial Parkway, Evans, Colorado (DeJohn Outdoor Storage)**

Mayor Achziger opened the public hearing at 8:07 p.m.

Zach Ratkai, City Building and Community Development Manager, explained that the Resolution was being brought before City Council to revoke a Use by Special Review (USR) to allow outdoor storage at 4650 Industrial Parkway, Evans, Colorado (DeJohn Outdoor Storage). Mr. Ratkai talked about a Court Order from November 18, 2013, which required fencing on the property and mitigation of the outdoor storage according to the original terms of the USR adopted under Resolution 40-2013.

Mr. Ratkai talked about the conclusions from the findings of fact, with regard to the original approval, and the criteria in Sections 19.44 of the Evans Municipal Code that have not been sufficiently met. Specifically, he explained that the applicant has not complied with the court order to fence the property, removed the outdoor storage on the property, and therefore may not be compliant with neighboring zoning.

Mr. Ratkai discussed the importance of the zoning in this part of the City and explained why staff is recommending revocation of the USR that was approved in November, 2013.

Mayor Pro-Tem Morris asked about the recommendation of the Planning Commission to approve the USR revocation and clarified that a super majority of five council members was necessary to override the recommendation of the Planning Commission.

Mr. Ratkai explained that the Planning Commission recommended adopting the Resolution to revoke the USR and that five votes were necessary to override the Planning Commission's recommendation.

Mayor Achziger clarified that the applicant was not present and has not been present for other meetings requested by City staff.

Mr. Ratkai clarified that the applicant has not been available to attend recent meetings requested by City staff to discuss the USR or a variance for this property.

Mayor Achziger asked for any other public comment. No one spoke in support or in opposition to the Resolution.

Mayor Achziger closed the public hearing 8:15 p.m.

Mayor Pro-Tem explained that the conditions of the original USR have not been met and discussed his support for the Resolution.

Scott Krob, City Attorney, explained that City Council needed to specify which specific USR conditions the applicant did not comply with. He clarified that Conditions 4, removal of the outdoor storage; and Condition 6, the installation of fencing, were not satisfied.

Mayor Achziger discussed his support for the recommendation for the Resolution.

Council Member Clark made the motion, seconded by Council Member Rudy, to adopt Resolution 09-2014 based on Conditions 4 and 6 of the original USR not being met. The motion passed with all voting in favor thereof.

**B. Resolution No. 12-2014 – A Resolution of the City Council of The City of Evans, Colorado, Authorizing the Acquisition of Certain Real Property for Recreation and Stormwater Control Purposes and Authorizing the City Manager to Negotiate the Acquisition of Said Property and Authorizing the Exercise of the City's Power of Eminent Domain if Negotiations are Unsuccessful**

Sheryl Trent, City Economic Development Director, and Malcom Murray, from Murray Dahl Kuechenmeister & Renaud LLP, addressed City Council to present Resolution 12-2014. Ms. Trent explained that an amended version of the staff report and Resolution were distributed to City Council. She explained that the Resolution concerned the possible acquisition of two modular home parks in the City, Bella Vista and Eastwood Village.

She talked about the need to mitigate the flood damage in these two modular home parks. Specifically, she talked about the ongoing issue of getting the vacant modular homes removed from Bella Vista and Eastwood Village. Ms. Trent talked about the current hazards on the properties and explained why this action was not supported by FEMA, since the debris was on private property. She talked about how the Resolution authorizes the City to acquire the property and explained some of the potential public uses for the property such as: open space, parking lots, or large retention ponds for storm water mitigation.

Mr. Murray explained the process for acquiring the property for public use, which can be achieved either through voluntary acquisition or through condemnation for immediate possession of the property. He also talked about the City's right to use condemnation to acquire the property, if necessary and explained how the value of the property is established.

Mayor Achziger discussed the litigation initiated against one of the property owners and asked about what can be discussed in a public setting.

Malcolm referred legal questions to City Attorney Scott Krob.

Mr. Krob, City Attorney, explained what matters were able to be disclosed in a public meeting, but reminded City Council that matters discussed with legal counsel should be kept confidential until they are made public.

Mayor Achziger asked for public comments concerning the Resolution.

Jim Feehan, Bella Vista property owner, addressed City Council and clarified that he was not in any litigation with the City. He talked about being a small-business owner and his recent purchase of the property. Mr. Feehan talked about the issues surrounding the Bella Vista following the 2013 Evans Flood Disaster. He spoke about the abandoned mobile homes on his property and the difficulty to fund the clean-up for the debris removal. Mr. Feehan explained why he opposed the Resolution and discussed his plans to redevelop the property. He also talked about being frustrated after just receiving notice that his property could possibly be condemned by the City.

Mr. Kevin Blake, 2502 Hawk Drive, addressed City Council regarding the Resolution. Mr. Blake discussed United Nations (UN) Agenda #21, talked about the importance of private property rights to a Constitutional Republic, and warned that seizing private property resembled Communism. He also discussed the importance for Government to protect its citizens and explained that citizens should be protected according to Article II, Section 1, of the Colorado Constitution. Mr. Blake warned the City Council Members to be careful about seizing private property and urged

them to become informed about UN Agenda #21.

Richard Eisele, 3727 Belmont Avenue, talked about his experience on the Evans Planning Commission and the challenges of the City to adopt a new flood plain map and prepare for more regulations. Mr. Eisele discussed the recent flooding which rerouted the Platte River and voiced his support for potential public in the flood plain areas that will not be as harmed by cyclical flooding.

Mayor Pro-Tem Morris asked about receiving development plans from the property owners of the mobile home parks and how receiving plans would impact the condemnation process.

Mr. Murray explained that the City could abandon the condemnation process up until final assessment and compensation for the property.

Mayor Pro-Tem Morris clarified that the Resolution was not an irrevocable decision to condemn the properties and asked that City Council remain apprised of any progress for each of these properties.

Mr. Murray explained that the City Council will remain informed about these properties and that the Resolution would only provide the option of utilizing condemnation if the City Council decides to pursue that option.

Mayor Achziger clarified that the Resolution was not for the condemnation of the modular home parks, but works as a tool for the City to negotiate with the property owners and better serve and protect the citizens.

Mayor Pro Tem-Morris discussed his support for the Resolution and clarified that the option for condemnation could lead to voluntary negotiations with the property owners for private development on each of these properties.

Mark Clark clarified that he supported the Resolution, but wanted to see redevelopment plans from the property owners to move forward with private development on the property.

Mayor Achziger discussed the need to balance the issues of property rights and public safety in order to create a better City. He explained that he sympathizes with property owners who lost their mobile homes during the flood, but discussed the need to move forward with the debris removal on these properties. Mayor Achziger also warned about the upcoming spring runoff and talked about the need for some private or public development on the properties.

Council Member Clark made the motion, seconded by Council Mayor Pro-Tem

Morris, to approve the Resolution. The motion passed with all voting in favor thereof.

**REPORTS**

**A. City Manager**

Aden Hogan, the City Manager, distributed a handout to the City Council. Chief Brandt spoke to the handout concerning the early release of parolees from the State Department of Corrections.

Mayor Achziger asked Chief Brant to advocate,

**B. City Attorney**

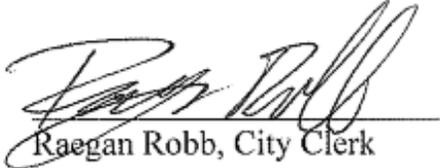
The City Attorney had no reports.

**AUDIENCE PARTICIPATION**

There was not audience participation.

**ADJOURNMENT**

The meeting adjourned at 8:57 p.m.

  
Raegan Robb, City Clerk