

**AMENDED MINUTES OF A REGULAR CITY COUNCIL MEETING HELD  
WEDNESDAY, DECEMBER 17, 2008 - 6:00 P.M. – ROCKVILLE CITY HALL.**

The meeting was called to order by Mayor Brian Herberg. Roll Call was taken and the following members were found to be present: Council Members Vern Ahles, Bill Becker, John Koerber, Susan Palmer, Don Simon & Randy Volkmuth. Absent: None.

Staff members present were: Administrator/Clerk Rena Weber, Finance Director Amy Goerger, Public Works Director Rick Hansen, 1<sup>st</sup> Assistant Fire Chief Ralph Walz, Planning Commission Chair Toni Honer, Engineer Scott Hedlund and Attorney Jim Mogen.

Others present were: Aaron Cheeley, Jon Lentz, Tудie Hermanutz, Dave Volkmuth, Bonnie Ring, Joel Sponheim, Jean, Joseph & Stephen Walz, Jerry Schmitt, Mike Hofmann, Gene Merten, Jeff Hagen, Mike Nistler, Doug Ruhland, Kathleen Stanger, Joyce Hansen, Gene Merten, John Wicker, Corky Scandinato, Jan Neyssen, Clarence Bloch & George Bechtold.

**ADDITIONS TO THE AGENDA – Motion by Member Ahles, second by Member Palmer, to approve the additions to the agenda for discussion purposes.**

**AYES: Ahles, Becker, Herberg, Koerber, Palmer, Simon & Volkmuth**  
**Motion passed on a 7 to 0 vote.**

**CONSENT AGENDA: Motion by Member Palmer, second by Member Simon, to approve the consent agenda as presented:**

- a) **Approve minutes of 12/3/08 & 12/10/08**
- b) **Approve Treasurer’s Report of 12/17/08**
- c) **Approve List of Bills and Additions of 12/17/08**

<b>Accounts Payable CK #010816 to 010860</b>	<b>\$708,127.88</b>
<b>Payroll CK #003283 to 003290</b>	<b>5,766.16</b>
<b>EFT CK 000164 to 000167</b>	<b>3,449.10</b>

**AYES: Ahles, Becker, Herberg, Koerber, Palmer, Simon & Volkmuth**  
**Motion passed on a 7 to 0 vote.**

**BOARD/STAFF REPORT**

**POLICE REPORT –** Lt. Jon Lentz reported that 40.5 contract hours were billed for the month of November. Lt. Lentz cited the activity.

**OLD BUSINESS**

**MAINE PRAIRIE TOWNSHIP BOARD MAINTENANCE AGREEMENT–** Maine Prairie Township Board Member John Wicker was present to voice his concern on what he read in the Cold Spring Record – *“The entire council was miffed that the township has ignored their promise to negotiate with the city negotiating team.”* Member Volkmuth indicated that the city did not write that article. John Wicker asked when did they fail to show up:

- 11/11 - Don Simon showed up at their meeting to discuss road maintenance
- 11/13 – They were here to negotiate
- 12/1 or thereabouts – Mr. Wicker talked to the Administrator and was asked to meet on 12/2 – not enough notice
- 12/3 contacted by Administrator to meet on 12/9 and was asked to meet prior to their regular meeting. If two of them are present for a meeting it is a quorum. If it isn’t published they are in violation of the open meeting law
- 12/9 e-mail –Sent to Randy Volkmuth explaining why they could not meet separately.
- 4 attempts were made and this is grossly insulting to the township

City minutes of 12/3/08 state that Rena reported *“first one board member decided they did not want to meet with the negotiating team; then another indicated that they do.”* Mr. Wicker agreed that this was a true statement and there was confusion between him and Dennis Lowen.

Going on: *“Member Palmer indicated that we made the offer to continue plowing snow until 12/31/08. They can come to the table or they can meet with the negotiating team.”*

When did they not come to the table?

*"Member Volkmuth indicated they are finding out that it wasn't such a good deal. This does not preclude us from taking over the maintenance, but they should meet with us.*

*We are making a good faith effort by offering to provide them snow plowing until the end of the year. They need to come back to us."*

This is not something they pursued or fought for. Mr. Wicker feels that the council resents Maine Prairie because of the request from the petitioners.

*"Member Volkmuth stated that they have pulled out of what we agreed to."*

Yes, that is true; we did ask to extend the agreement until January 15<sup>th</sup>.

*"Mayor Herberg indicated that when we annexed from St. Joseph Township there was a progression of taxes. This is not the case with detachment and he felt we need to go with the ALJ ruling."*

The Township did give the city what they wanted in regards to Grand Lake Road. Last spring if we had negotiated we could have saved money in attorney fees there would have been a progression of taxes.

Member Volkmuth stated that there was a lack of information at the last council meeting and he understands the quorum issue and why they could not negotiate.

John Wicker stated the detachment became effective 11/5/08 and the Township would not receive any revenue until 2010. The Township would like the city to take care of the roads through 5/31/09. The city will receive the taxes for 2009 amounting to about \$62,000 and it was estimated they would only be spending \$5,000 on maintenance for the detached area. The Township is asking the city to spend ½ of the \$5,000 even though they are not obligated to do any of it. We could look at orderly annexation if there is cooperation here tonight. They want to work with us. They feel it is fair.

Mayor Herberg questioned open meeting on the twp. side and if you take two different bodies and they come to a meeting here would they have to notice it? Jim Mogen indicated that it has to be posted.

Member Palmer stated potentially the city would be taking care of all the snowy months. John Wicker indicated that it could.

Member Becker asked what the chances of a fire contract are. John Wicker stated they need to provide fire service to this area. John Wicker agreed to a fire contract as it would remain the same and it is quicker for us to get there.

***Motion by Member Volkmuth, second by Member Becker, that in the spirit of cooperation to work through this, the city will provide road maintenance for the detached area until 5/31/09, with the understanding a fire contract would be signed to include the additional area, and further that orderly annexation would be discussed.***

Member Palmer asked about the Shoreland and how that would be handled. Jim Mogen stated that the orderly annexation agreement would be the proper way.

Mayor Herberg questioned the fire contract. The percentage of coverage area will change and how is this figured in the formula. It was reported that the formula would not change in that the city will use the valuation and the numbers of calls. It was discussed that a meeting of the fire board be held in the spring for a summer contract renewal.

John Wicker reported that a special fire district will be set up for the city/fire hall building paybacks as that expense will not be spread over the rest of the township.

Jim Mogen explained that the expense of the fire hall and city hall are carried by the petitioners as a property owner. The operating expense of the fire hall, however, is not directly associated to them as it is applied to the township as is the other property in the city and its fire protection. This hasn't been already addressed in the tax statements the property owner will receive. At this point the contract payment that you are currently getting is based on a smaller area so the City needs to make a determination at this meeting as well as to whether or not you are okay with covering the property based on your previous responsibility as the jurisdiction, whether you are going to be billing calls on a per call basis. You have the format for that, or will you retroactively charge back to the township accordingly for the area when you negotiate in June or July. Right now the township is not getting paid.

Member Volkmuth indicated that this should be done retroactive through the contract negotiations.

Mayor Herberg voiced concern that we would provide road maintenance and continue to provide fire protection under the same contract exactly the same way without the revenue.

Member Palmer indicated that she took this to mean that the city would provide the road maintenance and that Maine Prairie Township agreed to pay the cost of fire service with a larger portion.

John Wicker asked what the difference would be. David Drown reported an estimated cost of \$7200. It was determined that the contract numbers would be worked out shortly.

**AYES: Ahles, Becker, Herberg, Koerber, Palmer, Simon & Volkmuth**

**Motion passed on a 7 to 0 vote.**

John Wicker reported there is a part of Rausch Lake Road where it meets CR 141 that is in city limits. Maine Prairie Township would like to swap Rausch Lake road for the roadway east of Agate Beach Road. It was determined that Members Volkmuth, Palmer, & Becker would meet with Maine Prairie Township on the 2<sup>nd</sup> Tuesday of January at Kimball.

**DAN HANSEN/JACK TAMBLE INTERIM USE PERMIT** – Joyce Hansen was present representing the family and stated they are trying to sell the gravel off and then they can establish the wetland. The letter of credit is intact.

Mayor Herberg stated he has not heard any issues such as truck traffic.

Member Simon reported that what they have been doing is okay with him.

**Motion by Member Simon, second by Member Ahles, to continue the Interim Use Permit as agreed to.**

**AYES: Ahles, Becker, Herberg, Koerber, Palmer, Simon & Volkmuth**

**Motion passed on a 7 to 0 vote.**

**PUBLIC HEARING** – Mayor Herberg announced that a public hearing would now be held regarding ordinance No. 2008-53 An Ordinance Providing for Event Centers in the Agricultural Zoning District.

Rena Weber read the notice of public hearing.

Planning Commission Chair Toni Honer reported that the Planning Commission started this process in May of 2008, several people went out to the site, and further the Planning Commission recommends approval.

Doug Ruhland – attorney for Mike Nistler, urged the council to approve the ordinance based on the joint Planning and Zoning Commission recommendation. He urged the council to be open minded and that this will suit the needs of the entire city. He was pleased with the changes that were made, particularly the setback changes they agreed to make. Mr. Ruhland asked the council to allow it as a permitted use.

**Motion by Member Palmer, second by Member Simon, to close the public hearing at 6:41 p.m.**

**AYES: Ahles, Becker, Herberg, Koerber, Palmer, Simon & Volkmuth**

**Motion passed on a 7 to 0 vote.**

Member Becker questioned what the neighbors think about this?

Jerome Karls – 12113 260<sup>th</sup> Street stated they were not notified of this happening and were concerned. It was reported that they did not have to be notified as this is an ordinance which affected the entire city. Rena Weber reported that Cold Spring, St. Augusta, Wakefield Township, and St. Joseph Township were notified out of courtesy.

Member Palmer asked how we could prevent a strip club from going into this. Jim Mogen indicated there are two areas of the ordinance where we are protected:

- a) Adult use is not allowed in A-40, but rather limited to one Industrial area
- b) The criminal code does not allow it.

Member Palmer asked if the property owner has to get annual approvals once the CUP is granted. Jim Mogen explained the Conditional Use Permit is where you can impose additional standards/restrictions and lessen the impact on a neighbor. Once granted and if the property owner remains in good standing they continue to keep the permit.

Mayor Herberg asked if a liquor license can be granted referring to Section 1. E. Jim Mogen stated there is nothing prohibiting the liquor license. The city would be asked to allow a license for the purposes of an event center, not a bar which is opposed to an event center. The owner would need to apply for a liquor license which is sporadic as opposed to year round.

Member Volkmuth asked how you discern between the event center and a bar. Jim Mogen stated this will be covered in the definitions that are being developed. The difference is that attendance at these events is by invitation only. It is a specific use, organization or family. This is not common use or open to the public.

Member Volkmuth was concerned that we would allow like this something in agricultural especially when we want to preserve agricultural land. He is not saying it is a good or bad use, but he feels we will blur the boundaries.

Member Koerber questioned if someone wanted to have a stag party from 9 p.m. to 1a.m. and they would be served liquor. Who has the responsibility if they are over served? There could be loud music, dancers who could eventually lose their tops. These are all situations where it is not looking at the owner and unless a person rents it or signs an agreement – who has the responsibility? The sheriff dept. barely covers that area.

How about the building – is it new or is it a barn?

Jim Mogen cautioned the council to analyze this as an ordinance which would be for the whole city. If the condition of the structure is important to you, we need include that in the ordinance.

Mayor Herberg stated it is not the intent to allow renting it and not having an owner/operator there to watch it. This is a business where the owner has a license and it is not a free for all.

Member Koerber stated he saw where someone in Eden Valley started something like this. Does the barn meet the code? Jim Mogen stated it would have to meet code.

Toni Honer stated this is not site specific – this is an ordinance. We had the building inspector at the site when it was toured.

Member Becker stated this affects the whole city – is this what we want to take on?

Member Volkmuth stated he agrees – basically you could have one of these every mile.

Member Palmer indicated there would have to be a call for this type of business or there would not be enough business.

Member Volkmuth indicated he still thinks this is blurring the agriculture/commercial/residential lines. It does not conform to the long range plans.

Mayor Herberg stated that if the market is there things will change. We have other issues with agriculture.

Member Volkmuth stated that on this we are adopting a pretty liberal structure and the Shoreland Ordinance was very restrictive which does not mesh with the city. Which way are we going to go?

Member Becker questioned how is this advantageous to us?

Member Palmer stated it brings a business to the city.

Member Volkmuth asked if the structure would be taxed as commercial use. Mayor Herberg stated yes it would.

Member Koerber stated this is not a complete ordinance.

Member Volkmuth stated that if this creates jobs then all development should do the same. This ordinance is far reaching to all parts of the city and does not prevent anybody else in the city from doing it.

Member Palmer stated it may make sense to do this in this one area of the city. Member Palmer asked can we allow this in this area instead of the whole city.

Mayor Herberg asked how does this match or overlap with the character of area.

Member Palmer indicated that we do allow pole buildings in the agriculture area.

Jim Mogen stated that there are more intense restrictions on business and in agriculture land we have very few aesthetic controls. The Planning Commission did weigh 3 options:

1. Create a new district
2. Zone this property as commercial
3. Allow for such use through an ordinance

Member Volkmuth asked is that our intent to allow business to operate in agriculture area? This is precedent setting.

Member Ahles stated that you need to bring business to the city.

Member Volkmuth indicated we should throw the comp plan out.

Member Ahles stated if people are willing to bring in more business – more power to them.

**Member Ahles introduced the following Ordinance and moved for its adoption:  
ORDINANCE NO. 2008-53**

**AN ORDINANCE PROVIDING FOR EVENT CENTERS IN THE AGRICULTURAL ZONING DISTRICTS**

**(A complete copy of the ordinance is hereby attached and marked Exhibit A).**

**The motion for the foregoing ordinance was duly seconded by Member Simon with the following vote being taken:**

Member Simon reported that he toured the facility and for what is being planned it fits. This is where this ordinance would apply. Anybody else would have to come before the city same as they do. It is unique to the property

Member Palmer state she prefers that we look at it in a different way.

Member Koerber asked who has the responsibility of monitoring this operation. Jim Mogen stated the property owner has ultimate responsibility. The city would monitor for zoning code and a liquor violation would be the property owner responsibility.

Member Koerber questioned the cost to have an officer out there during the event. Jim Mogen indicated there will be more people out there so if it requires more officers to cruise there then that would need to occur. The ordinance does not require them to hire an officer or the city to provide more officers.

**AYES: Ahles, Becker, Herberg & Simon**

**NAYS: Koerber, Palmer & Volkmuth**

**Motion passed on a 4 to 3 vote.**

**NEW BUSINESS**

**2009 FINAL TAX LEVY AND BUDGET** – Mayor Herberg reported that he talked to Sen. Tarryl Clark and the state will take away some of the monies they promised to the cities. Mayor Herberg recommends we keep the budget and levy where it was proposed to be as there are more cuts coming.

**Motion by Member Volkmuth, second by Member Palmer, to approve the 2009 proposed tax levy and budget including the 2% COLA (Personnel Committee to give recommendation on granting the COLA)**

<b>CITY OF ROCKVILLE</b>	<b>SUPPLEMENT TO REGULAR</b>
<b>2009</b>	<b>LEVY FORM</b>
<b>CERTIFIED LEVY</b>	<b>LEVY AMOUNT</b>
<b>LEVY PURPOSE</b>	<b>(PLEASE ROUND TO WHOLE DOLLARS)</b>
Revenue-Fund 101-41000	656,489
Certif of Indebtedness-Pumper 21, 644 & 1 Ton Cert 3,994=25,638	
<b>(Part of Gen Fund Prop Tax but allowed as Special Levy)</b>	
Fire Protection-Fund 101-42200	110,500
Economic Development- Fund 209	10,000
Road & Bridge Maintenance-Fund 215	3,000
Rock Fest-Fund 408	4,500
<b>Special Levies Outside of Levy Limits:</b>	
1997 Sewer Disposal Imp. Bond-Fund 301	9,575

1998 Sewer Disposal Imp. Bond-Fund 302	7,788
2004 Prairie Ind. Park Imp. Bond-Fund 305	2,800
City Facilities-City Hall/Fire Hall-Fund 304	222,291
CR 82 Imp (& SJ Louis) Bond Fund 308	10,065
Lake Improvement District-Fund 221	14,500
<b>TOTAL NET TAX CAPACITY BASED LEVIES</b>	
<b>TOTAL CERTIFIED LEVY</b>	<b>\$1,051,508</b>

Rena Weber cited the changes from the 9/15/08 original submittal in that Rock Fest was reduced from \$5430 to \$4500. There were other reductions for the wages, health insurance and interest is booked differently.

**AYES: Ahles, Becker, Herberg, Koerber, Palmer, Simon & Volkmuth**  
**Motion passed on a 7 to 0 vote.**

**2008 BUDGET AMENDMENTS – Motion by Member Volkmuth, second by Member Becker, to approve the Budget Amendments for 2008 as presented.**

*(A copy is hereby attached and marked Exhibit B)*

**AYES: Ahles, Becker, Herberg, Koerber, Palmer, Simon & Volkmuth**  
**Motion passed on a 7 to 0 vote.**

**2008 DESIGNATED FUNDS – Motion by Member Palmer, second by Member Ahles, to approve the 2008 Designated Funds as presented.**

*(A copy is hereby attached and marked Exhibit C)*

**AYES: Ahles, Becker, Herberg, Koerber, Palmer, Simon & Volkmuth**  
**Motion passed on a 7 to 0 vote.**

#### **ADDITIONS TO THE AGENDA**

CORKY SCANDINATO– Corky Scandinato, owner of Corky's Gas & Bait stated he is just here to ask a question and also give some history.

- 2001 He bought the business.
- 2003 The by-pass went around the city.
- 2003 the Rockville Business Association fought to save the businesses in Rockville because MNDOT would not open the ends of the roads at County Road 47 & County Road 8. They got Bauerly's to put base down at each end so people could get in there.
- Last fall road closed signs were put up stating the road will be closed 7/23/08. Knife River delayed construction for a week, the signs were still up.
- I asked one of the councilmen if the road is still open. Do we have to scare people away? A couple of days later the sign was down.
- During the time the road was closed he knew about it, but felt like he was on an island. They had the bridge torn down and then the drainage ditch was done on both sides of him. They put up barriers at the Rail Road tracks.
- 7/1/06 to 12/31/06 - \$848,800.67 gross
- 7/1/07 to 12/31/07 - \$791,454.65 gross
- During that time nobody could get to my place. (Labor Day up through deer hunting season) He took a \$57,346 hit in the business. My wife did not know how to get to the business, nor the church to go to my manager's husbands funeral. How could I expect other people to get to my business, when my wife could not get here?
- He got to know a lot of people in this town and is not bad mouthing anybody in this town. He has an open charge account and carried \$20,000+ per month for businesses or individuals. Now he is financially in trouble.

- Corky heard of a program that when there is road construction there may be some money for business that has lost revenue; he wanted to know if that was true.
- People are going other places for gas, but they are paying for it.
- He is doing everything he can to stay open. He has been here 7 ½ years and until that happened he was carrying his own. Was it stupidity on his part to charge that much, yes. I guess that is a thing of the past where he could carry that much on accounts.

Mayor Herberg stated that he talked to Jodi Teich, Assistant County Engineer who checked and said there is nothing available, He also talked to Sen. Clark and she checking to see if there is anything there. He will let Corky know as soon as anything comes back.

Rena Weber reported that the EDA is looking at this, but whatever is available is not a quick fix. Rena suggested the blue highway signs should be looked at.

Member Volkmuth asked if the city can buy the gas from him. Yes.

Member Simon agreed that the blue signs would be helpful. The cost is not that great. It could help George at the Granite Edge, the bars, etc. This is where the council could help.

**APPOINTMENT OF FIRE CHIEF FOR INTERIM PERIOD** – Mayor Herberg reported that a letter was received from Jeff Howe asking for a formal military leave of absence for his deployment to Iraq. The request is to appoint Ralph Walz as Fire Chief for the interim period.

Member Becker cited the capabilities of Ralph Walz and further that this is okay by him.

Member Palmer stated the Personnel Committee knew about this.

Member Volkmuth asked if we knew how long this would be. At least a year.

***Motion by Member Palmer, second by Member Backer, to grant military leave to Jeff Howe and further appoint Ralph Walz to fill the Fire Chief position in the interim.***

Member Simon reported that 6 new individuals were hired this summer which should improve the department. He is close to retiring sees the light at the end of the tunnel and this will make them a better department. Ralph needs the support of the council and it will work.

***AYES: Ahles, Becker, Herberg, Koerber, Palmer, Simon & Volkmuth***

***Motion passed on a 7 to 0 vote.***

**BONESTROO LETTER** – Mayor Herberg reported the city received a letter from Mike Nelsen, office manager for Bonestroo. The letter states they will not pay their half of the court settlement to replace the driveway as part of the sewer project, in the amount of \$1289.00. Mayor Herberg explained the history that prior to the small claims court hearing they wanted to split the cost and now are citing a \$300,000 loss on the sewer project.

Mayor Herberg stated that he can't understand how a reputable engineering firm would back up on \$1200 bill when their name is hanging out there.

Member Volkmuth asked if they were involved in the small claims court hearing and if they were on it they are responsible. Have we paid the bill? Yes

Mayor Herberg is to contact them and tell them they are down \$301,289.

Jim Mogen asked if this has been turned into the insurance company. No it has not and we have a \$500 deductible.

#### **COMMITTEE REPORTS**

**PERSONNEL COMMITTEE** – Chair Volkmuth reported the committee reviewed the Administrator's evaluation, made some recommendations and the evaluation came back for the most part very good. We discussed some changes such as the language in the employee policy manual and that this needs to be changed to "at will" employment for fire, administration and other employees. Employees now can only be let go for just cause or misconduct. It is the recommendation of the Personnel Committee to change the policy to allow for "at will" employment and asked for council approval to authorize the attorney to make those changes. Rena Weber reported that we would be doing this internally and the League will review it.

#### **ADMINISTRATOR'S REPORT**

**TRANSFER OF LOCAL BOARD OF REVIEW DUTIES** – Rena Weber reported that every year the council is asked if they wish to transfer the Board of Review duties to Stearns County. Rena

reported that Member Volkmuth and Mayor elect Hagen have both taken the training and therefore the city can keep the responsibility.

***Motion by Member Palmer, second by Member Simon, to approve keeping the duties of Board of Review.***

***AYES: Ahles, Becker, Herberg, Koerber, Palmer, Simon & Volkmuth***

***Motion passed on a 7 to 0 vote.***

**ATTORNEY FEES FOR 2009** – Rena Weber reported the city has received Rinke Noonan's 2009 rates. Rena reported that the rates will include the \$200 per meeting attendance rate as has been the past practice.

***Motion by Member Volkmuth, second by Member Koerber, to table action on this until the next meeting with the new council.***

Member Palmer asked if we are going to do an RFP, then we may as well start the process now.

Member Volkmuth stated there has to be a certain comfort level. From his perspective he is okay, but wants to wait for the new council.

***AYES: Ahles, Becker, Herberg, Koerber, Palmer, Simon & Volkmuth***

***Motion passed on a 7 to 0 vote.***

**LMC PLANNING COMMITTEE** - Rena Weber reported that she serves on the LMC Planning Committee for the June conference. The committee was to include a portion on detachment issues, but in light of the current economy the main theme will be how to survive in the distressed economy.

**NEWLY ELECTED AND EXPERIENCED OFFICIALS SEMINARS** – Rena Weber reminded the incoming council and present council that the League of MN Cities is holding seminars for newly elected officials as well as experienced officials in January. Please contact city hall to reserve a spot.

**MAYOR REPORT** - Mayor Herberg gave his end of term report citing expected cuts in LGA. He attended the LMC hearing last week and as expected LGA has taken the biggest hit. Mayor Herberg went on to thank all the council members he has worked with during his term.

Rena Weber presented plaques to:

Julie Zimmerman – 11+ years of service to the City

Vern Ahles – 11+ years of service to Rockville Township and the City

Brian Herberg – 10+ years of service to the city.

Member Simon gave his farewell speech and told people to look for him to be the voice of the people.

#### **OPEN FORUM**

Scott Palmer – 21108 Fowler Road, stated that he came here specifically to thank the Mayor Herberg and two outgoing members for all the work they have done over the years to improve the city with the sewer system, adopting ordinances that improved the quality of life. Scott is proud of Rockville now.

Bonnie Ring – 316 East Broadway Street – stated that she is here to ask the council/public for any brainstorming to help Corky.

***ADJOURNMENT – Motion by Member Simon, second by Member Ahles, to adjourn the meeting at 7:54 p.m. Motion carried unanimously.***

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**VERENA M. WEBER-CMC  
ADMINISTRATOR/CLERK**

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**BRIAN HERBERG  
MAYOR**