



City of Vermillion Council Agenda

5:15 p.m. Special Meeting
Monday, June 11, 2012
City Council Chambers
25 Center Street
Vermillion, South Dakota 57069

1. **Roll Call**
2. **Pledge of Allegiance**
3. **Adoption of the Agenda**
4. **Old Business**
 - a. Continuation of Public Hearing on Appeal to Demolition Order for a dangerous building at 23 N. Harvard.
5. **New Business**
 - a. Canvass of June 5, 2012 municipal election results.
6. **Executive Session– Personnel Matters**
7. **Adjourn**

Access the City Council Agenda on the web – www.vermillion.us

Addressing the Council: Persons addressing the Council shall use the microphone at the podium. Please raise your hand to be recognized, go to the podium and state your name and address.

a. Agenda Items: Public testimony will be taken at the beginning of each agenda item, after the subject has been announced by the Mayor and explained by staff. Any citizen who wishes may speak one time for 5 minutes on each agenda item. Public testimony will then be closed and the topic will be given to the governing body for possible action. At this point, only City Council members and staff may discuss the current agenda item unless a Council member moves to allow another person to speak and there is unanimous consent from the Council. Questions from Council members, however, may be directed to staff or a member of the public through the presiding officer at any time.

b. Items Not on the Agenda: Members of the public may speak under Visitors to Be Heard on any topic NOT on the agenda. Remarks are limited to 5 minutes and no decision will be made at this time.

Meeting Assistance: The City of Vermillion fully subscribes to the provisions of the Americans with Disabilities Act of 1990. If you desire to attend this public meeting and are in need of special accommodations, please notify the City Manager's Office at 677-7050 at least 3 working days prior to the meeting so appropriate auxiliary aids and services can be made available.

Council Meetings: City Council regular meetings are held the first and third Monday of each month at 7:00 p.m. If a meeting falls on a City holiday, the meeting will be scheduled for the following Tuesday.

Live Broadcasts of Council Meetings on Cable Channel: Regular City Council meetings are broadcast live on Cable Channel 3.

As a courtesy to others, we ask that cellular phones and pagers be turned off during the meeting.

Vermillion City Council's Values and Vision

This community values its people, its services, its vitality and growth, and its quality of life and sees itself reinforcing and promoting these ideals to a consistently increasing populace.



Council Agenda Memo

From: Farrel Christensen, Building Official

Meeting: June 11, 2012

Subject: Appeal of Demolition Order

Presenter: Farrel Christensen

Background: On October 5, 2010, a building permit was issued to the Apostolic Faith Church to move an existing house located at 214 E. Main Street to 23 N. Harvard Street. The building was moved to the site but no foundation was installed. On March 8, 2011, Code Enforcement sent a letter warning the owners that unless a foundation was installed, and the house placed on the foundation, it would be declared a dangerous building. Code officials worked with the owners until, finally, on July 1, 2011, the foundation was poured. Foundation walls were constructed later that year but no windows were installed and the foundation was not back filled. Construction debris and dirt piles were left on the site that obstructed the sidewalk and visibility at the intersection of Harvard Street and National Street. The exterior of the structure was unfinished and left open. Code Enforcement attempted to work with the owners to move the project along, improve site conditions and clear the sidewalk. The owners removed some construction debris and installed a very poorly constructed fence, but failed to clear the sidewalk. On November 2, 2011, Code Enforcement hired Walker Construction to remove the remaining debris and clear the sidewalk. The bill was \$164.30.

On November 9, 2011, the City issued a letter declaring the structure as unsafe and required work to be done to render the structure temporarily safe. No work was done by the owners and the City had to perform the required work to make the structure and site safe. Total cost, including city fees, was \$1,218.35. Of these fees, there was an outstanding balance of \$1,129.83 as of Monday, June 4, 2012. On Tuesday, June 5, 2012 a \$100 payment was made which reduced the outstanding balance to \$1,029.83.

As of Friday, June 8, 2012 the property taxes on the property were not current. The current amount due was approximately \$1,700.

Since the November 2011 unsafe building declaration, Code Enforcement has continued to work with the owners to finish work on the project to no avail. On April 9, 2012, the Code Enforcement Office revoked the building permit due to inactivity, declared the structure a dangerous building and required it to be demolished. On April 27, 2012, the owners filed an appeal to the demolition order.

After the appeal was filed, Code Enforcement tried to work out an agreement that would allow the owners a final opportunity to complete the project. An agreement was prepared and given to the owners that included very strict time lines and provided for bonding to pay for demolition if the owners failed to meet the requirements of the agreement. The agreement was signed by the owners and returned to the City but, later, the owners decided not to agree to the conditions of the agreement sighting problems with obtaining a bond and the inability to pay for fees incurred by the City prior to obtaining a new building permit.

At the June 4, 2012 City Council meeting, a public hearing on the demolition appeal was held. As there was uncertainty about a Contract for Deed between the Church and Dennis Klein, the previous owner, and how demolition might impact that arrangement, the item was continued to the previously scheduled Special Meeting on June 11, 2012.

Discussion: Since the June 4, 2012 City Council meeting the City Attorney has been in contact with the attorney for the Contract for Deed holder and the Church. The Contract for Deed holder does not want the property back. Apparently, an agreement has been worked out between the church and Mr. Klein for missing the balloon payment called for in the Contract for Deed.

As noted at the June 4, 2012 City Council meeting, the Church does not have a disagreement with most of the terms in the agreement proposed by the City. The Church did not address financial responsibility in their proposal and cited the \$10,000 bond as the reason why they withdrew from the earlier agreement they initially signed with the City. Financial viability of the project appears to be the biggest uncertainty. Given that this project will take a fair amount of funding for materials to complete and that current bills are outstanding, financing is a legitimate and major concern. The attached Contract for Deed, in the amount of \$25,000, between the church and Mr. Klein, was entered into in February 2008. The Contract for Deed called for a \$2,500 payment at contract signing, twenty-three (23) monthly payments of \$188.20 and a balloon payment on February 1, 2010 for any unpaid principal and interest. The deed is not yet satisfied.

There is no question that the building, as it is now, is a dangerous structure as defined by ordinance. The question is, if a new permit is issued, will the building be finished. The owners past inactivity and financial uncertainty would suggest that it might not. If the Council desires to give the owners another chance, the best safeguard to the neighborhood and City may be to bind them to the agreement first signed and then revoked by the owners. Another option may be a 30 day agreement that would require demonstrated construction progress in this timeframe. Staff would suggest that payment of amounts due to the City be made prior to a building permit being issued and that at least \$8,000 (estimated minimum demolition cost) be deposited with the City in an escrow account. If one of these two avenues is pursued, a timeline to enter into the agreement should also be part of the proposal. Nevertheless, the demolition of the structure is the surest way to put an end to a building that still needs a great deal of time and money to be finished.

Financial Consideration: The cost to the City could be significant to demolish the structure. Based on past demolitions, a reasonable estimate of the cost would be in the neighborhood of \$8,000 to \$12,000.

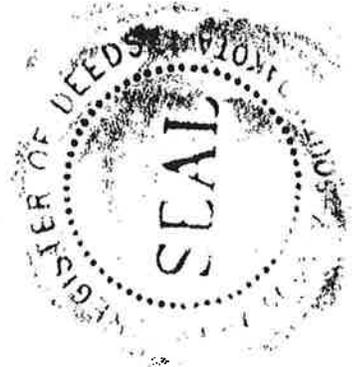
Conclusion/Recommendations: The surest remedy to the dangerous building is to require demolition. However, if an agreement is signed and bonded with short time construction time frames and a forfeited appeal, the cost of demolition could be avoided and the structure would be completed.

Attached are: Contract for Deed, agreement proposed by the City, construction schedule proposed by the Church, and Adams Construction quote

116960

Prepared by:
Margaret Crew
121 Kidder St #104
Vermillion SD 57069
605-624-2068

STATE OF SOUTH DAKOTA, County of Clay, ss
 Filed for record this 13th day of February 2008
 At 9 o'clock AM and Recorded in Book 47
 of Miss on Page 476
Betty Mc Cambridge Registrar of Deeds
 Deputy Jane A Olson
 Fee: \$14.00 pd check

**CONTRACT FOR DEED**

This Agreement, made and entered into this 1st day of February, 2008, by and between Dennis A. Klein, a single person, hereafter Seller, and Apostolic Faith Church, a South Dakota non-profit corporation of PO Box 88 Vermillion SD 57069 PO, hereafter Buyer, witnesseth:

If the Buyer shall first make the payments and perform the covenants hereinafter mentioned on its part to be made and performed, the said Seller hereby covenants and agrees to convey and assure to the Buyer, in fee simple, clear of all encumbrances, by a good and sufficient Warranty Deed, the real property in Clay County, South Dakota, described as:

THE WEST 71 FEET OF THE N $\frac{1}{2}$ OF LOT 8 AND THE WEST 71 FEET OF LOT 9, BLOCK 62, BIGELOW'S ADDITION TO THE CITY OF VERMILLION, CLAY COUNTY, SOUTH DAKOTA (23 N Harvard)

And as consideration therefor, the Buyer hereby covenants and agrees to pay the Seller the sum of Twenty-five thousand dollars (\$25,000.00) in the manner following: the sum of \$2,500.00 at execution of this contract, and the balance of \$22,500.00 in 23 monthly amortized payments of \$188.20 beginning March 1, 2008 and \$188.20 on the first day of each month thereafter with interest at the rate of 8% per annum (with interest applied first to interest and then to principal), with a balloon payment of all unpaid principal and interest due on February 1, 2010. For any month in which the Seller receives his monthly payment after the 10th day of the month, the Buyer agrees to pay a \$25.00 late fee.

In consideration of receiving a pro-rated tax credit for the 2008 real estate tax at closing, Buyer will pay all 2008 real estate tax and subsequent real estate taxes on or before their due dates. Buyer will provide copies of tax receipts upon request of Seller.

The monthly payment will be mailed by Buyer to Seller at 3101 Deep Valley Tr, Plano TX 75075 unless a different address is provided to the Buyer.

In case of the failure of the Buyer to make either the payments or interest thereon or

any part thereof, or perform any of the covenants on its part hereby made and entered into, then the whole of said payments and interest shall at the election of the Seller become immediately due and payable, and this Contract shall at the option of the Seller be forfeited by giving to said Buyer thirty days notice in writing of the intention of the Seller to cancel this Contract, setting forth in said notice the amount due upon said Contract and the time and place, when and where, payment can be made by the Buyer.

It is mutually understood and agreed by and between the parties to this Contract that thirty days is a reasonable and sufficient notice to be so given to the Buyer in case of failure to perform any of the covenants on its part hereby made and entered into, and shall be sufficient to cancel all obligations hereunto on the part of the Seller and fully reinvest him with all right, title and interest hereby agreed to be conveyed, and the Buyer shall forfeit all payments made by it on this Contract, and its right, title and interest in all buildings and other improvements whatsoever, and such payments and improvements shall be retained by the Seller in full satisfaction and in liquidation of all damages by him sustained, and he shall have the right to re-enter and take possession of the premises aforesaid.

The right of Seller to forfeit and determine this Contract, and be reinvested with all right, title and interest in the real property and improvements thereto, shall not be an exclusive remedy, nor in lieu of any other remedy available to Seller, and it is agreed that Seller shall retain all other remedies, at law or in equity, otherwise available for breach of the Contract.

Seller will provide Buyer with a title insurance commitment for an Owner's Policy in the amount of \$25,000.00 before final payment on the contract; the cost of the title insurance policy will be split equally between Seller and Buyer. Upon receiving full payment under this Contract, Seller will provide Buyer with a Warranty Deed.

The Buyer shall have possession of said property and the rents, issues and profits thereof from February 1, 2008.. The Buyer agrees that it will maintain the property in good condition and permit no waste upon it; Buyer further agrees to maintain and mow the lawn and shovel the sidewalk during the winter months.

Buyer shall insure the buildings and contents for no less than \$22,500.00 in a special multi-peril policy in a company satisfactory to the Seller and list the Seller as the insured. Buyer will provide Seller with proof of insurance at the signing of the contract and at such future times as the Seller may request.

There shall be no penalty for pre-payment.

Buyer cannot assign its interest in this Contract without the prior written consent of the Seller, which consent shall not be unreasonably withheld.

Apostolic Faith Church **23 Harvard Construction Schedule**

Week 1 **6/4 – 6/10**

- Backfill foundation

Week 2 **6/11 – 6/17**

- Frame NW corner
- Frame / install windows NW corner

Week 3 **6/18 – 6/24**

- Frame E side wall
- Frame E side roof
- Frame front entry way
- Frame / install front stoop

Week 4 **6/25 – 7/1**

- Repair missing and damaged siding

Week 5 **7/2 – 7/8**

- Replace shingling on main structure

Week 6 **7/9 – 7/15**

- Prime and paint
- Hook up water
- Hook up sewer
- Hook up electrical
- Hook up gas

Week 7 **7/16 – 7/22**

- Sidewalks
- Concrete parking pad

Week 8 **7/23 – 7/29**

- Landscaping

- Weekly progress report given to Farrell every Friday by 5pm
- Property will be kept secured at all times and fence kept up until siding/windows/doors are installed.

Prepared by: The City of Vermillion
 25 Center Street
 Vermillion, SD 57069
 605-677-7050

AGREEMENT FOR BUILDING PERMIT AND SUSPENSION OF DANGEROUS BUILDING NOTICE AND ORDER

IT IS HEREBY AGREED between the City of Vermillion, hereinafter referred to as the City, and the Apostolic Faith Church, hereinafter referred to as the Church, as follows:

The City agrees:

1. To suspend the dangerous building order for one year.
2. To issue a one-year building permit to finish the construction, repair and alteration of the house located at 23 N. Harvard Street, Vermillion, South Dakota 57069.

The Church agrees:

1. To apply for a building permit within one week of signing this agreement and start work within two weeks after its issuance and continue with no inactivity of more than two weeks until all exterior repairs, alterations and additions, including any siding, roofing, windows, doors, final grading, off street parking and landscaping are completed to meet current code and ordinance requirements.
2. To continue work with no inactivity of more than two weeks until the project is completed, including but not limited to all interior structural, electrical and plumbing improvements, and the house is ready for occupancy.
3. To provide weekly written progress reports to the Building Official by 5:00 pm each Thursday.
4. To pay any and all outstanding fees owed to the City related to the house located at 23 N. Harvard Street prior to the issuance of the building permit.
5. To escrow \$10,000.00 cash deposit with the City. From this deposit, incremental payments will be made by the City to the contractor or contractors upon proof of completion of required work.
6. Church agrees to waive any rights to any future appeal.
7. To indemnify and hold the City, its officers, agents and employees harmless from and against any and all actions, suits, damages, liability or other proceedings of any kind or nature brought because of any injuries or damage received or sustained by any person or property on account of the building permit issuance or conditions at the site of 23 N. Harvard Street.

IT IS FURTHER AGREED that this agreement and the performance requirements herein shall be deemed to be incorporated into the building permit and should the Church fail to comply with any part of this agreement, it shall be void and the City may without further notice or hearings either repair or demolish the 23 N. Harvard Street house at its discretion and assess costs thereof against the real property.

Dated this _____ day of _____.

FOR THE APOSTOLIC FAITH CHURCH

FOR THE CITY OF VERMILLION

John E. (Jack) Powell, Mayor

STATE OF)

:SS

COUNTY OF)

On the _____ day of _____, before me, the undersigned Officer, personally appeared _____ known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

STATE OF SOUTH DAKOTA)

:SS

COUNTY OF CLAY)

On the _____ day of _____, before me, the undersigned Officer, personally appeared John E. (Jack) Powell, who acknowledged himself as Mayor of the City of Vermillion, and that he as Mayor being authorized so to do executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as Mayor.

In witness whereof I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____



Council Agenda Memo

From: Mike Carlson, Finance Officer
Meeting: June 11, 2012 Special Meeting
Subject: Canvass of June 5, 2012 Election
Presenter: Mike Carlson

Background: State law requires the canvass of the election results, by the governing body, within seven days of the election.

9-13-24. Return and canvass of votes.

The election returns shall be reported as soon as possible to the finance officer, and within seven days of the election, the governing body shall canvass the election returns, declare the result, and enter the result on its journal.

Discussion: The Administrative Rules list the duties of the board of canvassers as follows:

5:02:17:12. Duties of official board of canvassers for local jurisdiction

The duties of the official board of canvassers for a local jurisdiction are as follows:

- (1) Open the returns from each precinct which are found in each poll book;
- (2) Satisfy itself that the returns are genuine and not forged;
- (3) Tabulate the returns from the precincts and the certification of provisional ballot count;
- (4) Declare the result; and
- (5) Make an abstract of the results of the votes cast for each of the candidates and each of the issues. The abstract must be signed and certified by the canvassers under the seal of the business manager or finance officer of the local jurisdiction.

The total number of voters in the poll book should be compared to the total ballots counted from the tabulation machine printout. There were no provisional ballots in the Central Ward as referred to in (3) above.

Unless there are changes to be made, I have completed an abstract of the results from the unofficial election results sheets, which will need to be signed.

Financial Consideration: None

Conclusion/Recommendations: A motion will need to be made to certify the election results and all members will need to sign the abstract.

1906 Vermillion Central Ward 1 Node 2 Page 1
 20:16:00 5-Jun-2012

CLAY COUNTY, SOUTH DAKOTA
 PRIMARY ELECTION
 JUNE 5, 2012

	Total	Percent
BALLOTS COUNTED - TOTAL	177	
BALLOTS COUNTED - REPUBLICAN PARTY	44	
BALLOTS COUNTED - DEMOCRATIC PARTY	124	
BALLOTS COUNTED - NONPARTISAN	9	
BALLOTS COUNTED - BLANK	0	

REP - Presidential Delegates and Alternate
 CLAY COUNTY

You may vote for up to 1
 to be Uncommitted 6 13.55
 Ron Paul 8 18.60
 Mitt Romney 26 60.47
 Rick Santorum 1 2.33
 Newt Gingrich 2 4.65

DEM - United States Representative
 CLAY COUNTY

You may vote for up to 1
 Jeff Barth 36 31.03
 Matt Varilek 80 68.97

School Board Member
 VERMILLION SCHOOL DISTRICT 13-1

You may vote for up to 2
 Mark Bettelofson 67 26.80
 Tim Schwasinger 95 38.00
 Dave Stanmer 98 35.20

Alderman
 CENTRAL WARD

You may vote for up to 1
 Kelsey Collier-Wise 90 53.25
 Jenny French 79 46.75

WE, THE UNDERSIGNED, DO HEREBY CERTIFY
 THAT THE ABOVE RESULTS ARE A TRUE AND
 ACCURATE ACCOUNT OF ALL BALLOTS COUNTED
 AND THAT THE COUNTER WAS SET TO ZERO
 FOLLOWING THE TEST OF THE COUNTER.

 ELECTION JUDGE
