

**OPEN RECORDS AND MEETINGS OPINION
2014-O-03**

DATE ISSUED: February 3, 2014

ISSUED TO: Linton City Council

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Donavin L. Grenz asking whether the Linton City Council violated N.D.C.C. § 44-04-20 by failing to properly notice a special meeting.

FACTS PRESENTED

On November 13, 2013, the Linton City Council (Council) held a special meeting. The notice of the meeting provides:

LINTON CITY
COUNCIL SPECIAL
MEETING
WED., NOV. 13, 2013
5:00 PM
AT THE CITY HALL¹

In addition to the notice, an agenda was posted, which included, as an agenda item: "Decision for the request from Mike & Kristy Ryckman to raise deer on property adjacent to city limits – within the ½ mile jurisdiction of city."² The notice and agenda were posted the morning of November 13, 2013, at the same time Council members were notified.³ The notice and agenda were posted at City Hall, filed with the city auditor, and

¹ Notice, Linton City Council (Nov. 13, 2013).

² Id.

³ Email from Donald Becker, Linton City Att'y, to Sandra Voller, Asst. Att'y Gen. (Dec. 16, 2013, 11:42 a.m.) (on file with author).

provided to Linton's official newspaper, *The Emmons County Record*.⁴ At the meeting, the Council voted to deny the Ryckman's request to operate a deer farm on their property which bordered the city limits.⁵

After the November 13, 2013, special meeting, Donavin Grenz, attorney for the Ryckmans, discussed concerns he had with Linton City Attorney, Donald Becker, on whether the meeting violated the open meetings law.⁶ Based on these concerns, it was determined that the matter would again be placed as an agenda item on the next regular meeting, scheduled for December 2, 2013.⁷ At the December 2, 2013, regular meeting, the Ryckmans, along with their legal counsel, addressed the Council on their request for a conditional use permit.⁸ A motion passed granting the Ryckman's a conditional use permit for the purpose of raising deer on their property.⁹

The Ryckmans, through their attorney Donavin Grenz, request an opinion from this office on whether the November 13, 2013, special meeting, substantially complied with the notice requirements of N.D.C.C. § 44-04-20.

ISSUE

Whether the Linton City Council's notice and agenda for the November 13, 2013, special meeting substantially met the requirements of N.D.C.C. § 44-04-20.

ANALYSIS

All meetings of the Council, as governing body of a political subdivision,¹⁰ are required to be open to the public unless otherwise specifically provided by law and must be preceded by public notice in substantial compliance with N.D.C.C. § 44-04-20.¹¹ The

⁴ Letter from Donald Becker, Linton City Att'y, to Sandra Voller, Asst. Att'y Gen. (Dec. 5, 2013) (on file with author); see also Email from Donald Becker, Linton City Att'y, to Sandra Voller, Asst. Att'y Gen. (Dec. 16, 2013, 11:42 a.m.) (on file with author). The notice was also posted on the City of Linton's Facebook page.

⁵ See Minutes, Linton City Council Special Meeting (Nov. 13, 2013).

⁶ See Letter from Donald Becker, Linton City Att'y, to Sandra Voller, Asst. Att'y Gen. (Dec. 5, 2013) (on file with author).

⁷ Id.; see also Agenda, Linton City Council (Dec. 2, 2013).

⁸ Letter from Donald Becker, Linton City Att'y, to Sandra Voller, Asst. Att'y Gen. (Dec. 5, 2013) (on file with author); see also Minutes, Linton City Council (Dec. 2, 2013).

⁹ Letter from Donald Becker, Linton City Att'y, to Sandra Voller, Asst. Att'y Gen. (Dec. 5, 2013) (on file with author); see also Minutes, Linton City Council (Dec. 2, 2013).

¹⁰ N.D.C.C. § 44-04-17.1(6) (definition of "governing body"), (11) (definition of "political subdivision"), and (13) (definition of "public entity").

¹¹ N.D.C.C. §§ 44-04-19 and 44-04-20.

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meeting notice must include the “date, time, and location of the meeting and, if practicable, the topics to be considered.”¹² This list of topics is also referred to as an agenda.¹³ The notice must be posted at the public entity’s main office, if any; at the location of the meeting on the day of the meeting; in the case of a city, filed with the city auditor or posted on the city’s website; and provided to anyone requesting personal notice.¹⁴ Additionally, for special meetings, the city’s official newspaper must be given notice, but such notice is not required to be published.¹⁵ Notice should be given at the same time as members of the governing body are notified.¹⁶

Mr. Grenz first alleges the notice of the Council’s November 13, 2013, special meeting did not contain the requirements of N.D.C.C. § 44-04-20(2) because the notice’s lack of a street address failed to list the location of the meeting.¹⁷ Section 44-04-20(2), N.D.C.C., requires a meeting notice to contain the “location” of the meeting, but does not require a public entity to list a street address. This office has never required an entity to list a street address in a notice. Rather, as long as the notice contains a location that a member of the public could reasonably identify, substantial compliance with N.D.C.C. § 44-04-20(2) is met.¹⁸ I find, in the City of Linton, reference to a location of “city hall” reasonably identifies the location of the meeting. The meeting notice and

¹² N.D.C.C. § 44-04-20(2).

¹³ N.D.A.G. 2011-O-14; N.D.A.G. 2010-O-12; N.D.A.G. 2005-O-17.

¹⁴ N.D.C.C. § 44-04-20 (4) and (5).

¹⁵ N.D.C.C. § 44-04-20(6); N.D.A.G. 2011-O-16.

¹⁶ N.D.C.C. § 44-04-20(5).

¹⁷ See Letter from Donavin Grenz, Att’y at Law, to Att’y Gen.’s office (Nov. 20, 2013) (on file with author); Email from Donavin Grenz, Att’y at Law, to Sandra Voller, Asst. Att’y Gen. (Dec. 16, 2013, 3:06 p.m.) (on file with author).

¹⁸ See N.D.A.G. 2010-O-12 (location in notice of “Nome City Hall” was in substantial compliance with N.D.C.C. § 44-04-20); N.D.A.G. 2009-O-16 (although notice failed to provide agenda item, it did contain date, time and location, with location referenced as “City Hall”); N.D.A.G. 2009-O-09 (location in notice of “Mandan Community Center” was sufficient and the law does not require “a specific room number” to substantially comply with N.D.C.C. § 44-04-20); N.D.A.G. 2009-O-04 (notice of “Council Chambers” in notice did not violate N.D.C.C. § 44-04-20); N.D.A.G. 2006-O-09 (“Council Chambers” in notice “contains the . . . location of the meeting”); N.D.A.G. 2005-O-07 (“Rolla City Hall” location in notice did not violate N.D.C.C. § 44-04-20); N.D.A.G. 2003-O-20 (notice’s location of “commissioners room, Courthouse” was proper); N.D.A.G. 2003-O-13 (notice containing location of “auditor’s office” met requirements of N.D.C.C. § 44-04-20(2)); N.D.A.G. 2002-O-10 (notice of School Board meeting to be held “at the Sterling Lions Club” sufficiently contained location of the meeting)

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agenda also contained the date, time, and topics to be discussed, and therefore included all the requirements of N.D.C.C. § 44-04-20(2).¹⁹

Next, Mr. Grenz alleges the notice of the November 13, 2013, special meeting was not posted in substantial compliance with N.D.C.C. § 44-04-20, including failure to provide personal notice to the Ryckmans who requested such notice from the Mayor on October 7, 2013.²⁰

The notice and agenda were posted at City Hall the morning of November 13, 2013, at the same time the members of the Council were notified of the meeting.²¹ The notice and agenda were also filed with the city auditor and provided to the city's official newspaper, *The Emmons County Record*.²² No member of the Council, including the Mayor, remembers receiving a request for notice of any upcoming meeting from the Ryckmans.²³ In any opinion issued under N.D.C.C. § 44-04-21.1, the Attorney General must base the opinion on the facts given by the public entity. As such, I find the Council posted its notice and agenda for the November 13, 2013, special meeting in substantial compliance with N.D.C.C. § 44-04-20.

¹⁹ The Council posted both a notice and agenda for the November 13, 2013, special meeting. In Mr. Grenz's November 20, 2013, letter, he only refers to the agenda, which I note did not contain the location of the meeting. However, the Council provided this office with both a notice and agenda that together contained all the items required by N.D.C.C. § 44-04-20(2). The Council acknowledges both the notice and agenda were posted at the same time the morning of the meeting. Opinions issued under N.D.C.C. § 44-04-21.1 must be based on the facts of the public entity.

²⁰ Letter from Donavin Grenz, Att'y at Law, to Att'y Gen.'s office (Nov. 20, 2013) (on file with author).

²¹ Letter from Donald Becker, Linton City Att'y, to Sandra Voller, Asst. Att'y Gen. (Dec. 5, 2013) (on file with author); Email from Donald Becker, Linton City Att'y, to Sandra Voller, Asst. Att'y Gen. (Dec. 16, 2013; 11:42 a.m.) (on file with author). City Hall was the location of the meeting and also the Council's principal office. The notice was also posted on the city's Facebook page.

²² Letter from Donald Becker, Linton City Att'y., to Sandra Voller, Asst. Att'y Gen. (Dec. 5, 2013) (on file with author).

²³ Email from Donald Becker, Linton City Att'y, to Sandra Voller, Asst. Att'y Gen. (Dec. 16, 2013, 11:42 a.m.) (on file with author); Letter from Donald Becker Linton City Att'y, to Sandra Voller, Asst. Att'y Gen. (Dec. 5, 2013) (on file with author).

CONCLUSION

The November 13, 2013, special meeting of the Linton City Council was noticed in substantial compliance with N.D.C.C. § 44-04-20.

Wayne Stenehjem
Attorney General

slv/vkk