

**PROCEEDINGS
OF
CITY COUNCIL
OF THE
CITY OF LOWELL**

For the Regular Meeting of **MONDAY, OCTOBER 17, 2005**

The Meeting was called to order at 7:30 p.m. by Mayor Shores and City Clerk Betty Morlock called Roll.

Present: Councilmembers Hodges, Mathews, Pfaller and Mayor Shores.

Absent: Mayor Pro Tem Myers.

Also Present: City Manager David Pasquale, City Clerk Betty Morlock, DPW Director Dan DesJarden, Chief of Police Jim Valentine, Planning Commissioners Maryalene LaPonsie and Mark Mundt, Police Officer James Hinton and Lowell Light and Power/Cable General Manager Tom Richards.

IT WAS MOVED BY HODGES and seconded by PFALLER to excuse the absence of Mayor Pro Tem Myers.

YEA: 4. NAY: 0. ABSENT: 1. MOTION CARRIED.

IT WAS MOVED BY PFALLER and seconded by MATHEWS to approve the minutes of the October 3, 2005 regular meeting minutes as written.

YEA: 4. NAY: 0. ABSENT: 1. MOTION CARRIED.

IT WAS MOVED BY HODGES and seconded by PFALLER that the bills and accounts payable be allowed and the warrants issued.

YEA: 4. NAY: 0. ABSENT: 1. MOTION CARRIED.

<u>BILLS AND ACCOUNTS PAYABLE (10/17/05)</u>	
GENERAL FUND	\$102,022.01
MAJOR STREET FUND	1,774.13
LOCAL STREET FUND	67,978.27
DDA FUND	639.75
WASTEWATER FUND	136.67
WATER FUND	8,004.52
DATA PROCESSING FUND	422.75
EQUIPMENT FUND	1,341.01
CURRENT TAX FUND	108,541.65
LOOK FUND	650.45

Item #1. **2005 SIDEWALKS PROJECT – CDBG FUNDING CLARIFICATION.** At the last meeting, the Council approved adding Federal Community Development Block Grant funds to complete the proposed sidewalk projects for Beech, Hunt, Lincoln Lake and Ridgeview. The funding was raised from \$45,799 to \$69,622 or full funding. The approval was based on the added monies coming from this year's allocations as administered by the Kent County Community Development Department.

After contacting Tom Tilma of the Kent County Community Development Department, he stated the added funds would come from next year's allocation, which there is no problem in doing so.

DPW Director Dan DesJarden and City Manager Pasquale recommended the Council allocate \$70,000 in CDBG funds to complete the entire sidewalk project, noting a portion coming from next year's revenues.

Councilmember Pfaller questioned if the staff knew the amount of next year's monies. Pasquale responded according to Tilma, it would be approximately \$46,000 to \$48,000.

IT WAS MOVED BY HODGES and seconded by MATHEWS to allocate \$70,000 of Community Development Block Grant funds to complete the 2005 Sidewalk Project and recognize a portion of these would be from next year's CDBG funds.

Councilmember Pfaller stated his position on spending these funds in the future and opposed doing this. He would rather shrink the scope of the project down to monies the City is receiving this year, instead of spending into the future.

YEA: 3. (Mathews, Hodges and Shores) Nay: 1. (Pfaller). ABSENT: 1. MOTION CARRIED.

Item #2. **REQUEST FOR WAIVER OF SIDEWALKS OF 885, 875 AND 855 NORTH JEFFERSON.** Kevin Katt from Holwerda Builders stated their request for a waiver of sidewalks involving 885, 875 and 855 North Jefferson was due to the grade of the property. He presented a picture showing that the sidewalk stopped just prior to 829 N. Jefferson, which is to the south of their property. Katt also noted the excavation for sidewalk at these locations would be very expensive.

Councilmember Pfaller was opposed to a waiver because it is a truck route.

Councilmember Mathews asked Police Chief Jim Valentine if this is a designated walk route for the school.

Chief Valentine responded south of 829 N. Jefferson on both sides is designated walking route for school, because there is sidewalk. But 829 N. Jefferson does not have sidewalk.

Mathews concurred with Pfaller because of the truck route and concern of the safety of pedestrians he would not support a waiver.

Katt noted in considering the grade and steepness of this property aside from being a truck route, one must contend with retaining walls, water, street water and adjusting the natural flow. At this point, the sidewalk waiver is very important to Holwerda Homes and the actual cost of said project. If a waiver could be obtained, Holwerda would be willing to develop just two homes instead of the proposed three.

Mayor Shores said the sidewalk would end with the Holwerda property, nothing would be developed further.

Katt questioned if sidewalk was required across his property, would the house to the south need to have sidewalk so it could be connected to the other sidewalk? Mayor Shores said 829 N. Jefferson would stay the same because sidewalk is required with new construction and it would be very difficult to install sidewalk there.

IT WAS MOVED BY MATHEWS and seconded by PFALLER to deny the waiver request for sidewalk at 885, 875 and 855 North Jefferson.

DPW Director Dan DesJarden asked the Council to take into consideration if Holwerda, in this section of the hills, bring the grade down to where it typically should be. The sidewalk would run into a wall at 829 N. Jefferson. Even if the City uses grant funds to place sidewalks at 829 N. Jefferson, the City would have to take the wall entirely down because there is need to handicap ramp the slope, which would be very difficult. Pfaller questioned if handicapped ramps would have to be maintained just at the corners? DesJarden responded no. Pfaller noted in front of 623 N. Jefferson, a retaining wall is located there and the sidewalk is elevated. DesJarden stated the sidewalk is gradually elevated from 623 N. Jefferson south and north. Pfaller asked why not maintain the grade to 829 N. Jefferson. DesJarden said from the north house, he could go up, but when getting to 829 N. Jefferson, what would you have? The ordinance states if there is sidewalk on either side of a residence, a path must be maintained. If this would be done at 892 N. Jefferson, at the north end of his path, there would be a four and one half foot drop into the driveway. This would create a problem for someone to walk across there and fall off a wall.

Councilmember Hodges felt in a perfect world it would make sense and he would agree that a sidewalk would be necessary. But, this is an appropriate exception and he would support the waiver.

Mayor Shores asked Chief Valentine if he felt this would be a safety problem without a sidewalk there for children walking. Chief Valentine responded their option would be to cross the street to the existing sidewalk. As DPW Director DesJarden stated, per current ordinance, if there is no sidewalk but are contiguous to property which has, the owner must maintain the path. There is no reasonable way for the property owners at 829 N. Jefferson to do so.

On the south side there is sidewalk, but it does not start until one house south of 829 N. Jefferson. Chief Valentine stated in an area where there is no sidewalk, the pedestrian should walk facing traffic until reaching sidewalk south of 829 N. Jefferson.

Councilmember Mathews said a waiver was given some time ago for sidewalk on North Street by the curve on Grindle. Pfaller responded it was given because there was sidewalk on the other side and the Council determined sidewalk was only needed on one side of the street.

YEA: 2. (Mathews and Pfaller) NAY: 2. (Hodges and Shores) ABSENT: 1. MOTION DENIED.

City Manager Pasquale explained when there is a tie, the motion would be denied. If the applicant wished, this could be reconsidered on the November 7, 2005 Council agenda, when a complete board should be present.

Item #3. **LOWELL AMATEUR RADIO CLUB, INC. – REQUEST FOR RECOGNITION AS A NON PROFIT ORGANIZATION TO OBTAIN A CHARITABLE GAMING LICENSE.** Al Eckman, on behalf of the adult organization of the Lowell Amateur Radio Club, had requested the Council to recognize them as a non profit organization in the community to obtain a charitable gaming license to be more self sufficient and earn monies for their club. The Club has a “top of the line” lap top computer to raffle, but needs to be recognized as a non profit group in order to do so. The Lowell Amateur Radio Club has 501 (c) 3 status.

Mayor Shores asked how many members are there. Eckman stated approximately 25 active, but the Club services thousands with their amateur radios and repeaters in the West Michigan area.

IT WAS MOVED BY HODGES and seconded by MATHEWS to recognize the Lowell Amateur Radio Club, Inc. as a non profit organization for purposes of obtaining a charitable gaming license.

YEA: 4. NAY: 0. ABSENT: 1. MOTION CARRIED.

Item #4. **P.A. 425 NEGOTIATIONS WITH VERGENNES TOWNSHIP – ZONING AUTHORITY ISSUE.** Mayor Shores, Councilmember Pfaller and City Manager Pasquale have met with Vergennes Supervisor Tim Wittenbach and Clerk Mari Stone several times to negotiate a 425 tax sharing agreement for the proposed annex property near the southeast corner of Alden Nash and Vergennes Road. Significant progress was accomplished on several issues, but the issue of zoning authority created an impasse. Vergennes Township felt with a 425 agreement, the township would have final zoning authority. This would include Planning Commission, which involves all site plan and zoning reviews, any Zoning Board of Appeals action as well as ultimately the Township Board approvals needed.

The City’s committee believed since the City is providing the services, the zoning authority should reside with the City. This would still allow the Township to have an advisory say throughout the entire process, but it should be under the City’s authority.

The Township felt this authority must be retained because the development will affect neighboring township property, traffic flow in the township as well as open space, designated natural area and nearby residences. They too offered an advisory role to the City.

Basically there was nothing more to compromise. It was either City or Township zoning and an impasse had been created. Both groups agreed this would be brought before the respective governing boards. Vergennes Township will be reviewing this issue at the same time.

Pasquale asked the Council for a consensus or motion stating they agree with the City's committee on the zoning authority be with the City.

If an agreement cannot be reached between the City and the Township, the State Boundary Commission would provide the final decision at their meeting on Thursday, October 20, 2005.

IT WAS MOVED BY HODGES and seconded by MATHEWS to support the Committee's stand of the City having the zoning authority for the P.A. 425 agreement with Vergennes Township on the 177 acres located near the southeast corner of Alden Nash and Vergennes.

Councilmember Mathews thanked Mayor Shores, Councilmember Pfaller and City Manager Pasquale for their time spent on this issue.

YEA: 4. NAY: 0. ABSENT: 1. MOTION CARRIED.

Item #5. **REFUSE COLLECTION – TRANSITION PERIOD.** City Clerk Morlock stated the orange trash bags ordered by Allied Waste would not be available for four to six weeks and the leaf bags would be much longer. Thus, the staff was requesting the Council approve an extension of refuse, recycling and yard waste services from Waste Management through December 1, 2005. For the month of November, Waste Management requested the company be paid their bid amount. This would enable Waste Management to finish out the leaf pickup program for this year and residences would be able to use the yellow bags which have already been purchased. Also, residents would have until November 14th to return refuse and yard waste bags not used for a refund.

The first full week of December, Allied Waste would be providing this service.

Councilmember Pfaller questioned does the City buy the bags or are these provided by the hauler. Morlock responded the hauler provides the bags and the City pays as the bags are sold to the residents. Pfaller suggested Allied Waste purchase the remaining supply of Waste Management bags. This had been discussed and both haulers felt there was not a feasible way to control proper payment.

IT WAS MOVED BY PFALLER and seconded by HODGES to approve the extension of Waste Management services of refuse, recycling and yard waste pickup for one month to allow the transition.

YEA: 4. NAY: 0. ABSENT: 1. MOTION CARRIED.

Item #6. **MONTHLY REPORTS.** No comments received from materials presented.

Item #7. **CITIZEN COMMENTS.** David Yomtoob, representing Airwave Computer Services, stated he is in the process of selling his business to All in One Wireless. To do so, a lease agreement utilizing the City's tower by reservoir hill off Shepard Drive is needed. The proposed lease would provide \$80 a month for five years with three additional terms of five years and a prepayment of \$1,920 covering the first 24 months would forgive the WIFNET debt. Yomtoob also presented several letters of support from current customers.

City Manager Pasquale stated Yomtoob owes the City \$8,925 in back lease payments with no insurance provided. The response has been the City wishes to pursue other options as reviewed by City Attorney Richard Wendt.

The Council felt they could not move forward until the issues of the past due monies and insurance are taken care of. Also, the Council requested Lowell Light and Power/Cable TV Manager Tom Richards examine rental fees and provide a reasonable lease amount.

Item #8. **COUNCIL COMMENTS.** Councilmember Hodges noted the lines on North Hudson look wonderful and thanked DPW Director DesJarden and Chief of Police Valentine for their efforts in having this accomplished. Also he felt there are too many "scarecrows" downtown. He understands the intent to create a spirit in the downtown area, but it is overdone.

Mayor Shores also thanked DPW Director DesJarden and Chief of Police Valentine on the lines on Hudson. It has really slowed down traffic.

Item #9. **MANAGER'S REPORT.** City Manager Pasquale reported on the following:

1. The following boards and commissions meetings minutes are provided:
 - Airport Board meeting of August 2, 2005
 - Parks and Recreation Commission meeting of September 10, 2005
 - Chamber of Commerce meeting of September 13, 2005
 - Merchants Committee meeting of October 12, 2005
2. The Lowell Area Community Fund will hold its annual meeting on Monday, November 7 at 6:30 p.m., in the City Council Chambers before the Council meeting. It has been requested the annual meeting be taped so it could be placed on Cable TV.

The Police Department has recently been awarded a \$12,501 grant through the Lowell Area Community Fund to assist in purchasing a Livescan Fingerprint Unit to meet the State compliance moratorium deadline to eliminate traditional fingerprint cards. Chief of Police Valentine stated as of September 6 the State will no longer receive traditional finger print cards. Everything must be submitted electronically. Last spring, the Lowell Police Department was informed the department was eligible to apply to the Byrne Memorial-Local Law Enforcement Block Grant for the remaining \$7,500 and were successful in receiving the grant.

3. A letter was received from the Michigan Department of Environmental Quality approving the City's Wellhead Protection Plan.
4. A memo from Police Chief Valentine recognizing Halloween Trick or Treating on Monday, October 31 from 5:30 p.m. to 8:00 p.m. was attached.

IT WAS MOVED BY MATHEWS to adjourn at 8:26 p.m.

DATE:

APPROVED:

C. Jeanne Shores, Mayor

Betty R. Morlock, Clerk