

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

For the Regular Meeting of **MONDAY, NOVEMBER 21, 2005**

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

Present: Councilmembers Hodges, Mathews, Pfaller, and Mayor Pro Tem Myers.

Absent: Mayor Shores.

Also Present: City Manager David Pasquale, City Clerk Betty Morlock, Chief of Police Jim Valentine, Planning Commission Chairman Clark Jahnke, Planning Commissioner Mark Mundt, Lowell Light and Power/Cable General Manager Tom Richards, Lowell Light and Power Boardmember Dave Austin and City Attorney Richard Wendt.

IT WAS MOVED BY HODGES and seconded by MATHEWS to excuse the absence of Mayor Shores.

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

IT WAS MOVED BY PFALLER and seconded by HODGES to approve the minutes of the November 7, 2005 regular meeting minutes as written.

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

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

Councilmember Pfaller questioned the bill to the General Fund in the amount of \$4,755 to Bieri Auto Body regarding work on a fire truck. City Manager Pasquale stated a report could be provided at the next meeting. Mark Mundt as a firefighter of the Lowell Area Fire Department later explained the bill is for fire truck #5. It is a 1988 pumper which was purchased through the County's revolving fund. The City has recently purchased its next fire vehicle through the County fund. Part of the negotiations for the truck included the repair of the 1988 truck.

YEA: Councilmembers Hodges, Mathews, Pfaller and Mayor ProTem Myers.

NAY: 0. ABSENT: 1. MOTION CARRIED.

<u>BILLS AND ACCOUNTS PAYABLE (11/21/05)</u>	
GENERAL FUND	\$98,700.96
MAJOR STREET FUND	987.31
LOCAL STREET FUND	527.82
HISTORIC DISTRICT FUND	10,000.00
DDA FUND	6,073.10

WASTEWATER FUND	13,812.35
WATER FUND	6,144.09
EQUIPMENT FUND	3,943.19
CURRENT TAX FUND	10,232.16

Item #1. **UNVEILING OF THE LOWELL AREA HISTORICAL MUSEUM TRAVELING EXHIBIT “FROM WHEAT TO FLOUR – LOWELL’S HISTORY IN MILLING.”** Executive Director of the Lowell Area Historical Museum Judy Straub explained she was pleased to unveil the second traveling exhibit. The first exhibit found its home on the second floor of City Hall. The second exhibit entitled “From Wheat to Flour – Lowell’s History in Milling” will be located at the City Hall main floor for about 2 ½ months. The exhibit was unveiled during the meeting.

Item #2. **REQUEST FROM LOWELL HIGH SCHOOL CREW TO UTILIZE RECREATION PARK SITE NEAR BOAT RAMP FOR ACCESS AND STORAGE FACILITY.** Mark Fryling of 3745 Iris, Grandville, Michigan and Kim Healy of 1306 Breton Road, East Grand Rapids, on behalf of the Lowell High School Crew Team wish to utilize an area at Recreation Park near the boat ramp for access and storage of the shells. A fence and dock would need to be erected.

Fryling noted the season is over at the end of the school year. The boats are currently being stored at the fairgrounds during the winter. City Manager Pasquale understood a location has been identified near the boat launch to the Grand River. Ron Wenger has no problem with the request. Fryling noted a summer program may be established for adults.

Mayor Pro Tem Myers questioned the number of boats being stored at the fairgrounds during the winter. Fryling stated there are two eight person boats, under 60 feet long and one four person boat, 40 feet long. There is also a 14 foot launch. The boats and launch are being stored on a 35 foot long trailer. The approximate size of the fence would be 50’ X 70’ long with 10 foot gates.

Myers asked if there was any financial cost to the organization. Fryling stated \$600 a season, consisting of a few months.

Councilmember Pfaller wanted this presented to Parks and Recreation Commission in order to review the location of the facility.

By general consensus, the Council believed this should be referred to the Parks and Recreation Commission.

No further information was reviewed.

Item #3. **REVIEW OF THE PROPOSED NORTH JEFFERSON STREET SIDEWALK PLACEMENT.** As directed by Council, DPW Director Dan DesJarden researched the placement of sidewalks which encompasses six properties: 905, 909, 915 and 923 N. Washington as well as 820 and 832 N. Jefferson in lieu of a walk on the east side for the Holwerda homes being built

across the street. The proposed walk would need four property easements, cut several trees and construct a 96 foot by 7 or 8 foot high retaining wall. The property owner at 820 N. Jefferson has objected to the walk. A call was received from the property owner at 832 N. Jefferson who indicated no objection to the sidewalk. However, the owner's wanted the sidewalk stopped short of his driveway.

Councilmember Hodges understood Holwerda was considering a sidewalk directly across from these three parcels of property. He was not in favor of this.

Councilmember Pfaller stated he would be willing to concede the sidewalk being on the west side of the road going from the south property line of 832 Jefferson to the north property line of 915 Washington. He would not be in favor of removing the tree at 820 Jefferson. There is an opportunity of extending the sidewalk. He wanted to ensure Holwerda does it.

Councilmember Mathews was not in favor of removal of the tree. Mathews agreed with Pfaller.

Mayor Pro Tem Myers objected to granting a variance to not have the sidewalk on the new building site. He believed the builder neglected the zoning ordinance. This is a safety factor and provides a safe place for children to play.

IT WAS MOVED BY MATHEWS and seconded by PFALLER that Holwerda Builders install sidewalk as required on the building sites for North Jefferson.

YEA: 3. NAY: 1. (Hodges) ABSENT: 1. MOTION CARRIED.

Item #4. **CONSIDERATION OF LEASE AGREEMENT WITH THE ROTARY CLUB OF LOWELL FOR SECOND FLOOR CITY HALL MEETING SPACE.** The Rotary Club of Lowell has utilized the second floor City Council Chambers for its meetings since last July. Usually needing the room between 11:30 a.m. and 2 p.m. on Wednesdays, the Council gave its approval by consensus pending a formal lease agreement.

The lease agreement outlines the terms such as:

- A one year lease from July 1, 2005 to June 30, 2006, allowing termination by either party with 60 days notice.
- Utilizing the Council Chambers, adjacent kitchenette and conference room as well as a small storage area.
- Pay \$75 per week payable quarterly in advance
- Rotary is responsible for any extraordinary or unusual maintenance such as additional carpet cleaning
- Rotary will provide liability insurance naming the City as an additional insured.

The Rotary Club Board of Directors has voted its approval of the lease agreement. City Manager Pasquale recommended this as well.

Jim White as a member of Lowell Rotary thanked the Council for allowing them to use this location.

Mayor Pro Tem Myers questioned where the money would be deposited. Pasquale noted the General Fund.

Pfaller questioned Section 5 of the agreement, which states the City agrees to set up and take down tables and chairs before and after meetings. He also asked who defines the maintenance required. City Clerk Morlock explained Rotary would pay for the cleaning of the carpet, if stains occur. The set up of tables and chairs is usually done by the DPW and takes approximately 20 minutes to set up and 20 minutes to take down.

IT WAS MOVED BY HODGES and seconded by MATHEWS to approve the lease agreement with the Rotary Club of Lowell for second floor City Hall meeting space.

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

Item #5. **CONSIDERATION OF GRINDLE PRIVATE STREET, GRANTING CERTAIN WAIVERS.** Dave Austin of Williams and Works Engineering commented on the issue in which City Manager Pasquale and City Attorney Wendt had asked the firm to review as built drawings for the proposed private drive off Grindle. Wendt has also asked him to review the four waivers which are proposed for the private drive.

Wendt stated the ordinance requires review and approval of private streets. A letter has been received from Imperial Municipal Services acting as Zoning Administrator, indicating they did waive the requirement that the application for the private road be prepared by a registered engineer. This is intended to serve fewer than five parcels. Wendt noted the application was filed with respect to the private street. One item which is required and is found in the second "Where As" of the resolution is when a private road is extended and dead ends, the ordinance states if this is extended beyond 800 feet, one must submit the extension to the Planning Commission for recommendation. This matter has been before the Planning Commission who approved the extension of a private street up to 1000 feet. The next "Where As" refers to two agreements which need to be in effect. The first is a road maintenance agreement, amongst all property owners to assume responsibility for the ongoing maintenance of the private road. This has been signed by all adjoining property owners. The second is an easement for public and private utilities. This easement is required to have been recorded, as indicated in the resolution, with the Kent County Register of Deeds. The City Engineer is required to review the plans and inspect the private street for compliance for the requirements of the ordinance and provide certain recommendations to the Council. Austin has completed this. Wendt noted the final plans, which were reviewed, were required to be sealed by a registered engineer. As of today, the engineers are still working on the certification. Wendt suggested this resolution be considered, contingent upon the receipt of the sealed plans.

The next requirement is the developer provides an indemnification agreement with respect to any

injury to persons or damage to property which may take place on the private street. Wendt noted he has a signed copy of such agreement.

Finally, there is a requirement by the ordinance to make certain findings with respect to the private street based on the information received, including the review that the City Engineer has taken. There were five findings which include the private street will not be detrimental to public health safety and welfare, will not adversely effect the use of land, is constructed to assure a safe and unimpeded route of traffic for motor vehicles, pedestrians and emergency vehicles, is constructed to protect against or minimize soil erosion and prevent damage to lakes, streams, wetlands and natural environment and finally the private street will conform with the requirements of the City's ordinance.

Subject to the waivers granted and the conditions imposed by this resolution, the private street is approved. There are certain waivers as the City Engineer indicated which have been requested with respect to the private street. The Council is required to make certain findings based on the recommendation of the City Engineer, the Planning Commission with respect to the length of the street.

The waivers were as follows:

- a. Waiver of the 800 foot length of the Private Street to a permitted length of at least 950 feet and not more than 1,000 feet.
- b. Waiver of the 66 foot right of way requirement for the first 424 feet of the Private Street beginning at Grindle Drive to a minimum 33 foot right of way.
- c. Waiver of the requirement that the paved portion of the Private Street have a width of 36 feet with curb and gutter and permitting paving no less than 16 feet with a one foot gravel shoulder on each side of the pavement.
- d. Waiver of the requirement of a valley gutter on each side of the paved portion of the Private Street.
- e. Waiver of the requirement of a 45 foot radius cul-de-sac at the eastern end of the Private Street.

That with respect to each of the Waivers, the City Council makes the following findings:

- a. Topography, soils and other significant natural features physically preclude or prevent compliance without substantial alteration of such natural features.
- b. Justification is not due solely to financial considerations which would provide a financial benefit to Anderson.
- c. No other reasonable private street design alternatives are available that would comply with the requirements of the Ordinance.

With respect to the cul-de-sac, after inspection of the property, the engineer presented an alternative which seems to suggest it is feasible to shorten the length of the road and not take out 950 feet. One of the requirements is that every parcel of property which is served by the private street must have 125 feet of frontage on the street. If in fact the cul-de-sac is done and the curve is counted, the private street can be shortened. The cul-de-sac can be installed and one would not

have to evade a mound or hill in order to extend the street 950 feet.

Wendt stated he prepared an alternative resolution, which simply removes the waiver of the cul-de-sac. If this is accepted, one would have to install a cul-de-sac at the end of the street.

Austin stated each of these waivers requires three criteria. One is topography, soils and other significant natural features physically preclude or prevent compliance. The reason the developers did not want to place a cul-de-sac is once the 125 feet of road frontage is extended onto the last property and then install a cul-de-sac, the base of what is a sloped area would be cut. This would be a more costly and more disruptive construction. Therefore, the developer was proposing a three point turn. However, it has been Austin's experience that the edge of the road be counted as road frontage. By taking the perimeter, the 125 feet can be achieved much earlier than proceeding along the road center line. In doing so, the cul-de-sac can be placed in the flatter area and not get into the hill. On this waiver, Austin could not justify having a T section, due to this option being available.

Wendt referred to paragraph five. In addition to the condition, the suggestion the City shall have received a sealed copy of the plans from a registered engineer, the additional condition would be the entire length of the street be paved to a width of 16 feet and a thickness of 3 inches. If the resolution is approved, it should be subject to compliance with those conditions.

Mayor Pro Tem Myers questioned the number of residents. Wendt stated there are three residences and in order to build on the fourth lot the developer would have to comply with the provisions of the Subdivision Control Act.

Councilmember Pfaller asked how the platting of this worked and subdividing it. Wendt explained one is allowed a certain number of divisions without going through the formal process of creating a plat. With the four divisions which have taken place, a fifth lot would have to comply with the requirements of the Subdivision Control Act or find an exception to the act in order to develop on this empty site. The last one can not be developed without further compliance.

Councilmember Mathews stated he was the one who originally received the variance from the Planning Commission on the lot width. However, he did not purchase the property. He originally was only going to build one or two homes. Mathews questioned how the development got to this point.

Councilmember Pfaller agreed with Mathews. He placed some of the blame on staff as well as some of the blame on the Building Inspector and Zoning Enforcement Officer.

Pasquale stated he does not want to see this happen again. He believed the problem was the City really never before went through the private street ordinance process. This was the first one which the City has experienced. There has been much work on this and many hours ensuring this road complies with the private street ordinance. In looking at how the road is to be completed, this makes the best of the situation.

Wendt commented initially the plan was to build only two homes. As long as there were only two

homes, the private street ordinance did not apply and it was considered a driveway. The problem came was when a building permit was issued for the third home. Then the requirements for the private road ordinance came into play.

Myers questioned if 16 feet was wide enough. Austin stated this is a private street. These are typically not designed to public street standards. He would not want to see anything less than 16 feet. Austin recommended it be made clear this private street is to serve these three existing and maybe one more potential and no more. It can not be allowed to be extended because at this width, he would not recommend this.

Myers questioned if there is still room to do a turn around at the end of the street. Austin stated the current plan does not actually show any turn around. It shows the road stopping at the existing house and then it shows a right of way (easement) continuing for a proposed turn around at some point. There is an additional 150 feet beyond where the road proceeds. If the 45 foot radius cul-de-sac is chosen, the easement which was just filed will have to be modified slightly to define the cul-de-sac as opposed to the rectangle which is currently provided.

Austin commented on the waiver regarding the elimination of the valley gutter. When this was first brought to his attention, the minutes from a previous Council meeting referred to a private street with valley gutters. This was an indication there would be a waiver from public street concrete curb and gutters. In this case, the way the road is planned a ditch is on the south and west side. The proposed cross section according to the engineer, a valley gutter would not be necessary. A ditch will drain going to a low area and continue down a natural drainage path. Austin recommended the previous waiver be modified to not require this. However, he suggested Council's approval be contingent upon receipt of the hydraulic calculations for the culverts which have been placed.

Wendt commented on the conditions of the road width and the thickness. The resolution provides currently that those tasks are to be completed on or before September 1, 2006. There is a deadline for completion of this work.

Wendt believed the second resolution would be more appropriate.

IT WAS MOVED BY PFALLER and seconded by HODGES to approve the resolution approving Grindle Place Private Street with a cul-de-sac as presented by the City Attorney Richard Wendt with the stipulation this is contingent upon the sealed engineered plans and the hydraulic report.

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

Item #6. **PROGRESS REPORT ON LOWELL CITY AIRPORT.** Airport Manager Jim Sowle of 770 Lincoln Lake updated the Council on Airport issues. He indicated all appraisals are in for all of the seven properties in which air easements are being sought. A negotiating team will review the process during a two to three month time frame. An additional \$110,000 has been received from the State for a total of \$160,000 of which the Airport share is \$16,000. The Airport Fund will receive back \$3,500 from the State. The net results is their cost being completely covered on the project. The appraisals for the air easements on the seven properties has totaled approximately

\$85,000. Because these are negotiable, the State at their November meeting, allocated an additional \$110,000 because the negotiators have some leeway in dealing with the property owners. They have the right to negotiate up to the appraised value without going back to the State.

Once the air easements are received, fences, outdoor telephone and additional lighting will be installed.

Sowle stated the lease in which the School of Missionary Aviation Technology holds expires in August of 2007. The current lease states negotiations must begin six months of the end of the agreement, but not earlier than one year prior. Mayor Pro Tem Myers questioned the length of a typical lease. Sowle responded ten years.

Sowle also noted there are two hangar vacancies.

Item #7. **MONTHLY REPORTS**. No comments were received.

Item #8. **CITIZEN COMMENTS**. John VanderWilp, 1264 Fun Street questioned if he would be allowed the same privileges and waivers as what was extended to the developer on the Grindle Private Street project. City Manager Pasquale suggested submitting an application. Waivers need to be reviewed on a case by case basis. He stated the entire property and private driveway is in violation of City ordinance and State law.

James Berk, 911 Grindle was concerned about where the water was draining at his residence. This water stops behind the third house in the development. Any water from Grindle Drive all comes down the hill and all through his yard.

Item #9. **COUNCIL COMMENTS**. Councilmember Mathews commented on the clock along Main Street. City Manager Pasquale stated the clock will be repaired soon.

Mathews referred to Berk's comment. He has spoken with the Assistant to the Kent Country Drain Commissioner. This has fallen under no one's jurisdiction.

Councilmember Pfaller commented on the public hunting which was done at Stoney Lakeside Park during the firearm dear season. This should not be allowed.

Pfaller commented on Officer Junewick no longer being on the force. Police Chief Valentine stated he took a position with the Manistee Tribal Police as lieutenant.

Mayor Pro Tem Myers has also received comments on the clock. He questioned if there was a maintenance agreement. Pasquale stated a call has been placed.

Item #10. **MANAGER'S REPORT**. City Manager Pasquale reported on the following:

1. For your information, the following boards and commissions meetings minutes are provided:
 - Chamber of Commerce meeting of October 11, 2005
 - Grand Valley Metro Council-Transportation Policy Committee meeting of October 19, 2005
2. A letter from David Yomtoob requesting a deadline extension to December 31, 2005 for removal of his wireless internet equipment from the Shepard Drive tower or settle his debt was received. Pfaller motioned to grant this. No second had been provided. The equipment must be removed by December 7.
3. A letter from the Merchants Committee, introducing the committee as well as providing its mission statement and list of accomplishments was provided.
4. A copy of the Michigan Department of Environmental Quality certificate approving the City's Wellhead Protection Program was received.
5. The City offices as well as Light and Power and Cable TV will be closed Thursday, November 24 and Friday, November 25 for Thanksgiving.

IT WAS MOVED BY PFALLER and seconded by MATHEWS to adjourn to closed session at 9:16 p.m. to review an opinion of the City Attorney.

YEA: Councilmembers Hodges, Mathews, Pfaller and Mayor ProTem Myers.

NAY: 0. ABSENT: 1. MOTION CARRIED.

IT WAS MOVED BY PFALLER and seconded by MATHEWS to return to open session at 9:53 p.m.

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

IT WAS MOVED BY PFALLER to adjourn at 9:54 p.m.

DATE:

APPROVED:

C. Jeanne Shores, Mayor

Betty R. Morlock, Clerk