

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

For the Regular Meeting of MONDAY, **FEBRUARY 5, 2007.**

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

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

Absent: Mayor Pro Tem Mathews.

Also Present: City Manager David Pasquale, City Clerk Betty Morlock, DPW Director Dan DesJarden, Lowell Light and Power/Cable TV General Manager Tom Richards, Lowell Light and Power/Cable TV Boardmember Dave Austin and Planning Commission Chair Maryalene LaPonsie.

IT WAS MOVED BY SHORES and seconded by HODGES to approve the minutes of the January 16, 2007 regular as corrected.

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

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

YEA: Councilmembers Hodges, Pfaller, Shores, and Mayor Myers.

NAY: None. ABSENT: Mayor Pro Tem Mathews. MOTION CARRIED.

<u>BILLS AND ACCOUNTS PAYABLE (02/05/07)</u>	
GENERAL FUND	\$104,943.38
MAJOR STREET FUND	2,545.34
LOCAL STREET FUND	767.68
HISTORIC DISTRICT FUND	3,240.00
DDA FUND	2,887.60
CITY HALL CONSTRUCTION FUND	300.00
AIRPORT FUND	82.59
WASTEWATER FUND	4,665.83
WATER FUND	7,983.92
DATA PROCESSING FUND	423.39
EQUIPMENT FUND	25.98
CURRENT TAX FUND	1,190.19

Item #1. **LOWELL LIGHT AND POWER.**

A. Tree trimming – funding request from the City – tabled from last meeting. As discussed at the January 16, 2007 meeting, Light and Power has determined that 12 trees within the City's right of way must be trimmed to avoid contact with power lines. DPW Director Dan

DesJarden noted the trimming would significantly cut into the lives of the trees and recommended total removal. The City's share is \$260 per tree totaling \$3,120.

After discussion of the issue, the Council decided to table any action until after the January 25 neighborhood meeting held by Lowell Light and Power. As noted in Boardmember Dave Austin's memo, approximately 20 neighbors were in attendance, along with four Council members, where tree trimming standards were presented.

B. Tree Proposals. At its January 25, 2007 meeting, the Light and Power Board recommended the creation and funding of a City Tree Planting Fund contingent on Council approval. The following is a motion to recommend creation and funding of a "City Tree Planting Fund":

1. That the Lowell Board of Light & Power recommends to the City Council the City establish a separate "City Tree Planting Fund" for the sole use by the City to purchase and plant new trees within the City of Lowell.
2. Lowell Board to establish a policy to contribute an amount \$250 to the City Tree Planting Fund" for each tree removed during powerline maintenance activities beginning with the work planned for the west side of the City on Amity, Elizabeth, Hudson, Howard, Hunt, Lincoln Lake, West Main, Riverside and Suffolk Streets.
3. That the Lowell Board of Light and Power and the City of Lowell work cooperatively to establish in writing mutual acceptable guidelines for defining what constitutes a "tree" to be funded through these policies.
4. That the City of Lowell be solely responsible for the purchase and planting of all trees and for establishing the guidelines as to where and when these trees will be planted, type of tree, etc.
5. That the Board's contribution is contingent upon the City of Lowell adopting a policy to contribute \$250 to the "City Tree Planting Fund" for each tree removed by any City of Lowell activity such as road, water, sewer, sidewalk projects.

In addition, Councilmember Pfaller provided a tree trimming and removal policy. He recommended suspension of all tree trimming and removal until a definitive policy is adopted.

After attending the neighborhood meeting and reviewing the information provided by DesJarden on the county proposal, Pfaller compiled what he thought would be an acceptable determination of what is and is not a tree.

Pasquale stated there was also an issue raised by Pfaller concerning trees removed along Bowes Road in the right of way with regard to the compensation issue. Pfaller explained the issue was brought because these trees were taken without permission. He believed Lowell Light and Power should compensate the City and/or replace the trees elsewhere in a suitable location.

Mayor Myers questioned the Council's feeling regarding the proposal of \$3,120. There was more focus at the last meeting regarding the number of trees which were to be cut and how each would be trimmed. No decision was made with regard to sharing the cost of the tree cutting.

Myers envisioned a committee whereby there would be a member or two from the Light and Power Board, a member or two from City staff and a citizen.

Pfaller noted Dr. Jim Reagan dropped off information regarding Arbor Day and what it takes to become a Tree City.

Councilmember Hodges stated the question at hand involves \$3,120. As he remembers, Pfaller had indicated if the life of the tree is in jeopardy, the party which cuts the tree (in this case being Lowell Light and Power) would take care of the entire removal. Hodges noted he would support this idea.

IT WAS MOVED BY PFALLER and seconded by HODGES to deny the request for \$3,120 to assist in the removal of the 12 right of way trees by Lowell Light and Power.

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

Myers stated he would rather see the City start a tree fund with \$3,120 in order to begin the replacement program. Hodges stated this follows the proposal brought forth by Dave Austin. This is an excellent idea.

IT WAS MOVED BY PFALLER and seconded by HODGES to suspend all tree trimming and removal until a definitive tree policy can be determined.

Councilmember Shores asked if there was a written tree policy available from previous years. Lowell Light and Power General Manager Tom Richards stated the policy followed is in accordance to national standards. Instead of continually debating the issue, it was the understanding of the board this was resolved when the Board met with the Council in a worksession last August. At that time, the Council and Board agreed moving forward with any tree trimming or removal in the road right of way would be carried out with the approval of DPW Director Dan DesJarden or City Manager Pasquale. Richards noted this is exactly how Light and Power has proceeded. Clearly, the Board understands the Council's resistance to seeing some of the City's treasured trees being cut back or removed. However, Light & Power has looked high and low and have been unable to find any authoritative source which indicates there is any safe clearance for high voltage electric lines and trees which are less than the 10 feet. This is the minimum standard that Light & Power has been holding to for at least the last three years. However, for trees in the right of way, it has been agreed that the decision is no longer Lowell Light and Power's, but is now the decision of City staff. It is probably reasonable since the decision affects not only the reliability of the electric system, but also public safety. Richards believed City staff respects the national standards used by Light and Power and are valid and defensible in court. However, if the Council believes these standards are radical or extreme, it certainly has the

power to direct staff to use any other standard it chooses. Having the power to set such standards also means the responsibility for any of the possible outcomes.

Richards recommended the Council consult with City's legal counsel as well as reviewing the City's insurance coverage.

Richards stated Light and Power will continue to trim and remove trees within the road right of way, as agreed in August, with the approval from DPW Director DesJarden and City Manager Pasquale.

Richards encouraged an end to the ongoing debate. He wanted to continue the work of protecting its citizens as a responsible municipal utility with the support of the City's elected officials.

Shores questioned how the trees got to this point. Has there not been trimming diligently throughout the previous years? Richards did not believe trimming was being done on a continual basis. Shores asked if Richards had a plan in place to correct this situation and do periodic trimming. Richards indicated there has been recognition to do some trimming every few years. Shores suggested a policy be established to trim trees more aggressively so trees do not need to be cut down.

Myers questioned the amount of time, since August, has been spent reviewing and determining which trees are a problem. He also asked if there has been cooperation with the citizens as well as Light and Power. DesJarden explained the property owners seem to understand the issue. However, it appears the neighbors are not in agreement with the trees coming down. DesJarden noted the DPW budgets for at least eight trees to be taken down throughout the year.

Myers questioned if the City and Light and Power were trying to solve this problem too quickly. He believed this was similar to the sidewalk issue and involves public safety. Myers stated the public meeting went well and the community got involved. He wanted to find a compromise for the homeowners as well as the public safety for the Light and Power staff and general public.

Shores inquired if a homeowner states they do not want a tree trimmed, does Lowell Light and Power have the authority to trim the tree away from the wires anyway? Richards stated according to the agreement made in August, if a tree is overhanging in the right of way, Light & Power would consult with City staff before the trimming took place. If it is on private easement or not in the road right of way, they would do what is necessary for safety.

Shores stated she attended the meeting regarding tree trimming. The neighbors seemed to understand the issues and presented good ideas. Shores also noted it appeared that individuals who are unhappy with the tree trimming issue did not attend the meeting. She stated the meeting was beneficial and handled well.

Pfaller explained the reason he made the motion to suspend tree trimming was due to the indecision. He believed a standard was being followed and not a policy. In fairness to the citizens and staff, a policy needs to be set and move forward.

Myers stated he received a call from a local arborist who offered his services.

Myers agreed with Pfaller, noting there should be a written policy. However, he did not believe the trimming needed to be stopped at this point if there is direction it will proceed at a reasonably cautious pace. He did not want to stop the safety issue. Myers also agreed a tree board or group was a good idea.

Hodges stated it may be wise to have the tree board develop and recommend a policy. Myers believed the policy should cover all of the trees as well as a replacement program.

Shores felt DesJarden and an elected official should serve on the tree board. She was also in favor of having the arborist involved.

Hodges also suggested the development of criteria in having a City arborist.

YEA: 3. (Councilmember Hodges, Pfaller and Shores) NAY: 1. (Mayor Myers)

ABSENT: 1. MOTION CARRIED.

Shores encouraged the formation of the committee. She suggested a Light and Power representative serve on the committee as well. Shores felt the City should move forward as rapidly as possible. Myers believed the committee needs to be composed of 5 to 7 people. It should consist of City staff, representative of Light and Power, at least two City residents and an arborist. Hodges believed the committee could consist of three citizens, an arborist as a member at large who does not vote.

DesJarden questioned if this also tables the tree removal request from property owners which is currently in place. Shores did not believe so. This already has been made a policy.

IT WAS MOVED BY SHORES and seconded by MYERS to allow the existing City removal policy to remain effective.

YEA: 3. (Councilmembers Hodges, Shores and Mayor Myers)

NAY: 1. (Councilmember Pfaller) ABSENT: 1. MOTION CARRIED.

C. Trees removed from Bowes Road right of way, compensation issue.

IT WAS MOVED BY PFALLER and seconded by SHORES to create a tree fund for the replacement of any trees which are removed from City property or right of way.

Myers wanted \$3,120 added to the motion. DesJarden inquired from where this money would be allocated. Pasquale stated it would have to come from DPW budget. DesJarden stated this would take all the funds available for tree removal and there is six months left in the budget. Myers questioned how the City could have \$3,120 to support Light and Power's request, but do not have it to fund for the purpose of starting a tree fund. DesJarden explained this is a request from Lowell Light and Power.

Shores believed it was too late in the year to take this amount of money from a particular budget. She proposed an amount be budgeted in next year's budget for a tree fund. DesJarden suggested allocated funds not used for tree removal be placed into another fund.

Hodges was in favor of the original proposal regarding \$250 being placed in a tree planting fund for the replacement of trees removed. Shores agreed. Myers stated his suggestion of \$3,120 comes from a standpoint of trying to put some teeth into a program. This states the City understands but is trying to compromise. This is how we plan to do it.

Pfaller amended the motion to include \$250 per tree removed. Myers stated he would rather deal with the money separately, because he is certainly in favor of a tree fund which is funded, not unfunded.

YEA: 3. (Councilmembers Hodges, Pfaller, Shores) NAY: 1. (Mayor Myers)

ABSENT: 1. MOTION CARRIED.

Pfaller moved on to his request for compensation from Light and Power for the trees which were removed without permission from Bowes Road. He wanted Light and Power to place \$250 into a fund for each tree removed from the right of way on Bowes Road without permission. Hodges agreed with the idea, but wanted to know the amount before voting. Pasquale stated this can be tabled and brought forth at the next meeting.

Pasquale confirmed tree trimming and cutting is suspended. The 12 trees have not been cut yet and will not be undertaken according to the decision made.

Item #2. **LIGHT AND POWER PAYMENT IN LIEU OF TAXES – REVIEW AND CONSIDERATION.** As adopted on May 21, 2001, a resolution provided a payment in lieu of taxes amounting to 4.5% of monthly gross operating revenues by Light and Power. Also, the City as required by Charter would pay for all its electrical costs. The resolution provides a five year review to determine whether any adjustments should be made.

Light and Power has proposed and requested a consideration for mowing and snowplowing in terms of services.

City Manager Pasquale mentioned the DPW provides snow removal for the other plants such as the Water Plant and Wastewater Treatment Plant. However, the mowing is undertaken by each of

those plants. DPW Director DesJarden explained every department is charged individually for mowing and on an hourly rate if plowing is necessary.

Mayor Myers inquired what the recommendation was from staff. DesJarden responded currently there are 30 locations which are being plowed by two plow trucks. The DPW has been asked to provide budget cuts and present ideas in which the City can save money and time. Currently, his staff is strapped.

Councilmember Pfaller inquired if the Water or Wastewater Treatment Plants put money back into the General Fund at 4.5 percent. DesJarden responded no. DesJarden commented Light and Power has access to four wheel drive trucks and should be capable of plowing their parking lot. Pfaller stated we are all the City of Lowell. Why should Light and Power buy a plow when the DPW already has two four wheel drive pickup trucks with two plows? DesJarden inquired how he should charge for these man hours and equipment time.

Myers questioned if Light and Power was being treated the same as the other entities in the City. He believed it seemed fair and reasonable to provide this service.

Lowell Light and Power Boardmember Dave Austin stated he has had experience with payment "in lieu of taxes". The situation DesJarden is referring to is even though the 4.5 percent received goes into the General Fund, it is not allocated to the DPW. DesJarden is being asked to provide a service which is not in the budget. It also sounds as if there are physical manpower limitations. Austin stated the intent is not to cause strain on a City department.

Pfaller questioned if the Parks budget is charged for plowing the parking lots at Creekside and Stoney Lakeside Parks. DesJarden explained equipment is billed to the Parks budget. Every month, equipment rental sheets are given to the City Treasurer Suzanne Olin who provides money to the Equipment Fund. Pfaller believed Light and Power needed to be treated as all other utilities. This pertains to snow plowing only because this is all that is being provided to the other utilities.

There was no further discussion.

Item #3. **ORDINANCE INVOLVING FOWL, RABBITS OR SIMILAR ANIMALS – REQUEST FOR COUNCIL REVIEW OF PROPOSAL BY THE PLANNING COMMISSION.** Planning Commission Chairman Maryalene LaPonsie explained a committee has been developing an ordinance involving fowl, rabbits or similar animals for several months. There has also been consideration of adding text to the ordinance regarding exotic animals. The current ordinance seems to be silent on this issue.

The Planning Commission reviewed the ordinance last month and voted 5 to 4 in favor of the fowl section of the ordinance and were similarly split regarding the exotic animals. This raised many questions and input from the Council was requested.

Pfaller was in favor of the way the ordinance was written. It shows respect for a property owner who has a lot large enough to provide space and protects the neighborhoods where lots are much smaller.

Councilmember Shores wanted the ordinance to include cats running at large. LaPonsie explained the ordinance refers to all animals being under control when outside. Dogs and cats need to be contained. Shores did not understand why cats do not have to be licensed. Pfaller noted there is an ordinance regarding cats. The term leashed means keeping a cat on a suitable, restraint no more than 8 feet in length. It also states the owner shall be subject to penalties provided by this code for any cat running at large. Pfaller read the following: "a cat is in violation of the following restrictions; no cat shall be unrestricted unless it is leashed and no female cat shall be unconfined when it is in heat". Shores questioned why the ordinance did not refer to the licensing of cats. LaPonsie stated she would contact the County regarding such licensing.

No other comments were provided.

Item #4. **APPROVAL OF CONTRACT BETWEEN CITY, KENT COUNTY, AND HOPE NETWORK WEST MICHIGAN FOR TRANSIT RIDERSHIP.** As authorized on an annual basis, a contract is proposed between the City, Kent County and Hope Network West Michigan (North Kent Transit) to provide transit services for senior citizens and handicapped riders. The ridership is subsidized through the Federal Community Development Block Grant. The contract runs from July 1, 2006 to June 30, 2007.

IT WAS MOVED BY SHORES and seconded by PFALLER to approve the contract between the City, Kent County, and Hope Network West Michigan for transit ridership from July 1, 2006 to June 30, 2007.

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

Item #5. **RESOLUTION FOR ADOPTION OF PRE-HAZARD MITIGATION PLAN.** In order to qualify for FEMA pre and post disaster grant assistance, the Council must approve a resolution adopting the pre-hazard mitigation plan covering Kent and Ottawa Counties as well as the City of Grand Rapids.

IT WAS MOVED BY HODGES and seconded by PFALLER to adopt the resolution for the pre-hazard mitigation plan.

YEA: Councilmembers Hodges, Pfaller, Shores and Mayor Myers

NAY: 0. ABSENT: 1. (Mayor Pro Tem Mathews) MOTION CARRIED.

Item #6. **CITIZEN COMMENTS.** Sharon Ellison, 407 W. Division thanked the Council regarding the discussion of trees. She was in favor of forming a committee. As a citizen, she appreciated the efforts of the Council.

Dr. Jim Reagan, 680 Bowes Road commented he plants trees on his property annually and belongs to the National Arbor Day Foundation. The foundation has developed a program for cities called Tree City USA. The concern for trees is not only unique to Lowell, but in cities across the country. It is his hope the City of Lowell can become a "Tree City USA". The Tree City National Arbor Day Foundation Program has standards and guidelines to become a participating City. There are four standards as follows; develop a tree board or department, community tree ordinance, community forestry program with an annual budget of at least \$2 per capita and an Arbor Day Observance and proclamation. Reagan stated he would be willing to pursue the establishment of such a day and report back to the City Council. He wanted to be able to work with City Hall, Light and Power and City residents to maintain trees on public property in the right of way.

Reagan thanked the City Council for all the work they do. He also noted City Manager Pasquale recently sat down with him to discuss concerns he may have. He thanked Pasquale for all the work he has done over the years.

Dave Austin, 908 Lincoln Lake applauded the Council for taking positive action toward the trees, planting of the trees and forming a committee. He requested the City review the perimeters available from the insurance company and the legal standpoint. He did not want to spend much time with the committee identifying things which can not be supported.

Austin also indicated he would be donating \$100 of the money he receives for volunteering to the tree fund. He encouraged all others who volunteer for the City to consider this as well. Austin believed those who volunteer in the community are also seen as leaders in the community.

Mayor Myers acknowledged a letter received from Peggy Covert in regard to the North Washington letter. Copies are available to review.

Item #7. **COUNCIL COMMENTS**. No comments were received.

Item #8. **MANAGER'S REPORT**. City Manager Pasquale reported on the following:

1. The following boards and commissions meetings minutes were provided:

- Planning Commission meeting of November 27, 2006
- Grand Valley Metro Council – Transportation Policy Committee meeting of November 15, 2006
- Parks and Recreation Commission meeting of December 16, 2006
- Downtown Development Authority meeting of December 7, 2006
- Look Memorial Committee meeting of October 25, 2006
- Lowell Light and Power/Cable TV Board meetings of December 28, 2006

The City has been awarded a 2010 Small Urban Transportation Grant for reconstructing Bowes

Road from Valley Vista Drive to 1950 feet west.

2. City Attorney Richard Wendt is preparing the City Charter amendments resolution for the next Council meeting in addition to the ordinance reducing Planning Commission membership from 9 to 7. A question arises as to how this reduction will be accomplished.
3. In observance of Presidents Day, the next City Council meeting is scheduled for Tuesday, February 20.

Item #9. **APPOINTMENTS**. Mayor Myers stated there is a slight issue with the Airport Board. He has two volunteers who reside in the township. At least one individual must live within the City limits in order for the board to be in compliance. He suggested the opening be advertised with the City for a City resident.

IT WAS MOVED BY PFALLER to adjourn at 9:04 p.m.

DATE:

APPROVED:

Charles R. Myers, Mayor

Betty R. Morlock, Clerk