

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

For the Regular Meeting of Monday, **APRIL 16, 2007.**

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

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

Absent: None.

Also Present: City Manager David Pasquale, City Clerk Betty Morlock, DPW Director Dan DesJarden, Police Sergeant James Hinton, City Attorney Richard Wendt, Lowell Light and Power/Cable TV Manager Tom Richards, Lowell Light and Power/Cable TV employees Mary Sawka, Chris Simmons, Amanda Geiger, Debbie Amos, Larry Dyer, Tom Russo and Jeff Mullins, Lowell Light and Power/Cable TV Boardmembers Greg Canfield and Perry Beachum, Planning Commission Chair Maryalene LaPonsie and Planning Commissioner Mark Mundt.

IT WAS MOVED BY SHORES and seconded by PFALLER to approve the minutes of the April 2, 2007 regular meeting as corrected.

YEA: 5. NAY: 0. ABSENT: 0. MOTION CARRIED.

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

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

NAY: None. ABSENT: 0. MOTION CARRIED.

<u>BILLS AND ACCOUNTS PAYABLE (04/16/07)</u>	
GENERAL FUND	\$77,661.64
MAJOR STREET FUND	566.47
LOCAL STREET FUND	557.98
DDA FUND	18,644.94
WATER FUND	703.22
DATA PROCESSING FUND	275.46
EQUIPMENT FUND	2,086.47
CURRENT TAX FUND	8,944.60

Item #1. **GEE DRIVE RECONSTRUCTION PROJECT.** The City received a federal grant award of \$339,200 involving 80% of costs to reconstruct Gee Drive from Alden Nash to 1780 feet east completing the road work. Since this grant is within the 2007 – 2008 Federal fiscal year, an advance construction project is proposed whereby the Michigan Department of Transportation

loans the federal proceeds (at 4% per annum) so that the roadwork can be completed in a timely manner (planned for June, 2007).

This construction work is in conjunction with the Local Jobs Today Program where the State will grant the remaining \$84,800 in road construction funds, subject to the implementation of the project during this fiscal year.

Thus, the Council needs to adopt two resolutions as follows: (a) approving the advanced construction contract and (b) Local Jobs Today Program Loan Contract.

Councilmember Pfaller asked if there was any chance the federal funds could be postponed. City Manager Pasquale responded every indication has been provided the monies will be there. The City has been through this program several times. He noted the first phase of the Gee Drive project as well as Foreman Road reconstruction work.

Mayor Myers referred to the language which states "contingent upon availability of federal funds and federal approval". Myers questioned what would happen if the City does not pay the State. City Attorney Richard Wendt stated the gas and wage tax revenue will be intercepted. Pasquale said the project has been totally engineered and it is out for bid. The State has already spent some time on this already.

Myers asked if there was a delay, could the City afford the interest on the amount of \$339,200. Pasquale explained the City would have to spend almost \$85,000 in local share funds instead of the State. He noted the interest on the State loan would be \$1,300 per year.

IT WAS MOVED BY HODGES and seconded by SHORES to pass a resolution to approve the advanced construction contract for the Gee Drive project.

YEA: Councilmember Hodges, Pfaller, Shores, Mayor Pro Tem Mathews and Mayor Myers.

NAY: None. ABSENT: None. MOTION CARRIED.

IT WAS MOVED BY PFALLER and seconded by MATHEWS to approve the resolution authorizing the Local Jobs Today Program loan contract involving Gee Drive.

YEA: Councilmember Hodges, Pfaller, Shores, Mayor Pro Tem Mathews and Mayor Myers.

NAY: None. ABSENT: None. MOTION CARRIED.

Item #2. **RESOLUTION APPROVING FIRST AMENDMENT TO AMBUALNCE SERVICE AGREEMENT BETWEEN THE CITY AND ROCKFORD AMBULANCE, INC.** The amended agreement with Rockford Ambulance involved the incorporation of the term sheet related to the construction of the ambulance addition to the Fire Station, noting responsibilities for utilities and extending the agreement five years (to September 30, 2012) with an option for five more.

IT WAS MOVED BY SHORES and seconded by PFALLER to approve the first amendment to the Ambulance Service Agreement between the City and Rockford Ambulance, Inc.

YEA: Councilmember Hodges, Pfaller, Shores, Mayor Pro Tem Mathews and Mayor Myers.

NAY: None. ABSENT: None. MOTION CARRIED.

Mayor Myers noted this could possibly extend the relationship with Rockford Ambulance through the year of 2017, if a five year additional term is requested. The project cost \$303,000 and is in cooperation with the City, Lowell and Vergennes townships as well as Rockford Ambulance and will be funded in part through the Lowell Area Community Fund and Look Memorial Fund. The project will only cost the City taxpayers \$16,000 of the \$303,000 and will be paid over five years.

Item #3. **RESOLUTION PROVIDING FOR THE CONTINUATION OF THE PAYMENT IN LIEU OF TAXES BY THE CITY'S BOARD OF LIGHT AND POWER AND FOR AN ADJUSTMENT THEREOF.** As discussed on several occasions, the current resolution with Light and Power continues as noted: (a) keep the present 4.5% of L & P gross revenues as payment (b) allow the five year review of the PILOT to remain (c) provide a reduction in the payment rate to allow for contracted snow plowing (Chatham Street Building and Bowes Road Substation) and mowing (office and Bowes Road Substation).

IT WAS MOVED BY SHORES and seconded by HODGES to approve the resolution providing for the continuation of the payment in lieu of taxes by the City's Board of Light and Power and for an adjustment thereof.

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

NAY: None. ABSENT: None. MOTION CARRIED.

Item #4. **PROPOSED SALE OF LOWELL CABLE TELEVISION.** Over the past two years, the City has been reviewing a proposal from Comcast to purchase Lowell Cable Television. Much staff and City Attorney time has been spent regarding the proposed purchase. A Fact Sheet detailing the particulars regarding the sale was provided.

The resolution to be considered authorizes the sale of Cable TV as well as the execution of an asset purchase agreement, pole attachment agreement, cable equipment room lease and uniform video service local franchise agreement with Comcast.

City Attorney Richard Wendt explained the process of reviewing the proposed sale of the assets from the cable system has been a process which has been ongoing for approximately two years. Wendt provided an overview of the four agreements in which the Council was asked to approve. The most important involved the Asset Purchase Agreement. By entering into the Asset Purchase Agreement, Comcast would agree to purchase the assets subject to all terms, conditions and contingencies which are contained in the Asset Purchase Agreement. Based on the Facts Sheet

of the current subscribers, it is estimated the purchasing of the assets is \$3,522,000. All but 10% or \$352,000 would be paid at closing. The Asset Purchase Agreement is a document between the two parties to buy and sell the assets. It does not cause the assets to transfer until the closing actually occurs.

Wendt explained there are two contingencies which need to be addressed. The first involved the additional cable pole location. There needs to be a pole separating the cable lines from the rest of the lines. It is estimated this will be completed near the end of this month. The second contingency involved a short letter of agreement between the City and Lowell Area Schools with respect to the fiber system which leads to the high school. Wendt noted the agreement suggested closing occur on or before June 30, 2007.

The next agreement to consider for approval is the Pole Attachment Agreement. Most of the poles in the City of Lowell are owned by the City and the Board of Light and Power. Therefore, any user of those poles needs to enter into a Pole Attachment Agreement for which the user will pay a fee based on the fee approved by the Michigan Public Service Commission. The Fact Sheet estimates that Lowell Light and Power would receive, on an annual basis, approximately \$3,780 a year for attachment to over 1000 poles.

There also needed to be an agreement with regard to the Cable Equipment Room Lease. This will net the City \$800 a month. Comcast needs to do this until they undertake improvements and connect the Lowell system to their larger system. The company will be responsible for all utilities used and will lease a portion of the building. The back of the agreement indicated it is not the entire building, but approximately 1400 square feet, plus the towers and dishes.

Wendt explained what is not purchased by Comcast through the asset purchase agreement or through the lease is the right the City has for other users to use the tower. The fact sheet indicates the monthly revenues the City currently receives from the tower lease is \$2,400. The right to these funds and the leases will belong to the City.

The next agreement is the result of a recently adopted State Cable legislation. It is a uniform video service local franchise agreement. The first of this year there was a significant legislation adopted in the State which opens competition to all cable providers and those of other services related to cable, such as internet service. The agreement to approve is for 10 years. It is a non exclusive agreement in which a competitor can enter into a similar agreement and offer competitive services in the future. The agreement would provide five percent of the gross revenues to the City. Depending on the number of users, the Fact Sheet estimates it could be between \$20,000 and \$25,000 a year. The agreement also requires Comcast to continue to provide the community channel. Such an agreement also provides a means and method for resolving differences or disputes which may exist between a customer and the cable provider.

All four of these agreements come as a package. Each were subject of much discussion and negotiation over the last two years.

Wendt recommended approval of these agreements.

Comcast Director of Government Affairs Western Michigan Area, Leslie Brogan, stated Lowell is an important City. She explained Comcast has been in business for some time. Comcast is the largest provider for cable services in the nation. The company is growing as an employer and has hired several employees over the last few years in the State of Michigan.

The long term goal is to bring the cable system up to the service and standards of the Grand Rapids communities. The first part of the plan is to provide for a billing conversion. This would tie the City of Lowell in with their call center. Work will also begin on a fiber interconnection with the Grand Rapids infrastructure. They hope for this to be complete in late 2007. With the completion of the interconnection, Comcast could deliver the high speed internet product. The digital video recorder service can also be provided. After the interconnection is completed, there can be an increase of the band with capacity on the system.

In order for Comcast to tie in with Grand Rapids and the other areas, there needs to be significant infrastructure improvements. This is planned after the interconnection is completed and would allow them to deliver all of their services.

Mayor Myers commented on the billing process and asked when this portion would be completed. Brogan was unsure. It depends on when the closing is.

Councilmember Pfaller requested a forecast of the cable rates. Brogan was unable to answer at this time.

Councilmember Hodges asked if Comcast would be absorbing some of the City's employees into the system. Brogan was unsure. Wendt commented there is a provision in the asset purchase agreement where Comcast has agreed to interview up to 5 technical employees of the City who are engaged currently in operating the system for the City. However, there is no requirement that these employees must be hired.

Myers questioned the Schedule of Assets and the roll up of those numbers. The grand total page shows a total of \$2,328,000 of book value and \$583,000 of net book value. Lowell Light and Power/Cable TV General Manager Tom Richards explained this reflects most of the assets are from when the plant first opened with most of the assets being fully depreciated. The depreciated value is \$500,000.

Wendt noted from the proceeds of the sale there is an outstanding balance owed of \$485,000. This would be an offset against the purchase price.

Myers explained the cable company began in 1983. It has always been the philosophy of the cable company to provide high quality local service to the residents and as well as service rates at a lesser fee. Over time technology has changed all lives and brought many different things one may not have been able to anticipate. Because of the size of the cable system, it is difficult to maintain it and keep up with technology. We also have been a victim to dish satellite. The issue is the ability to stay up with technology and being affordable.

Hodges stated he also served on the Cable TV Board. The department has spent hours negotiating contracts with other cable channels. It is very difficult, as a small player, to negotiate a good price.

Shores believed Lowell Cable has served the community well and one should be proud. However, it is difficult to keep up with the times.

Myers suggested the money received from the sale go into an endowment type fund which would allow for improvements. He suggested not spending the principal amount, but rather use the investment amount. There may be projects which can be done within the community. Mayor Pro Tem Mathews agreed.

IT WAS MOVED BY HODGES and seconded by PFALLER to approve the resolution for the sale of the Lowell Cable Television System and authorizing the execution of an asset purchase agreement pole attachment agreement, cable equipment room lease and uniform video service local franchise agreement with Comcast of California/Massachusetts/Michigan/Utah Inc. and other matters related thereto.

YEA: Councilmember Hodges, Pfaller, Shores, Mayor Pro Tem Mathews and Mayor

Myers. NAY: None. ABSENT: 0. MOTION CARRIED.

Item #5. **MONTHLY REPORTS**. No comments were received.

Item #6. **CITIZEN COMMENTS**. No comments were received.

Item #7. **COUNCIL COMMENTS**. Mayor Myers received a request for a proclamation which would identify May 20 through May 26, 2007 as "Emergency Medical Service Week". He suggested this be placed on the May 7, 2007 agenda for adoption.

Myers also noted the decorative trash containers throughout the City are in bad shape and should be repaired.

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

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

- Lowell Light and Power and Cable TV Board meetings of March 1, 2007
- Downtown Development Authority meeting of March 1, 2007
- Airport Board meeting of March 6, 2007
- Chamber of Commerce meeting of March 13, 2007
- Wege property donation committee meeting of March 29, 2007

2. The filing deadline of City Councilmember petitions is Tuesday, May 15. Three Councilmember positions are slated for election.
3. The Mayor Exchange Dates with the City of Portland are:

Thursday, May 10 here
Tuesday, May 15 in Portland
4. As part of the proceeds of the Lowell Cable, Pasquale will provide recommendations over the next few meetings.

Item #9. **APPOINTMENTS**. Mayor Myers stated there has been a desire to have a City resident fill the remaining vacancy on the Airport Board. Because no individual has been found, Myers suggested Vergennes Township resident, Eric Nelson be appointed. By general consensus, the Council agreed.

By general consensus, the Council agreed to the appointment of Ray Zandstra, made by the Schneider Manor Board of Directors, as the new City Representative.

IT WAS MOVED BY MATHEWS to adjourn at 8:23 p.m.

DATE:

APPROVED:

Charles R. Myers, Mayor

Betty R. Morlock, Clerk