

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

For the Regular Meeting of **MONDAY, OCTOBER 5, 2009.**

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

Present: Councilmembers Altoft, Ellison, LaPonsie, Mayor Pro Tem Pfaller and Mayor Hodges.

Absent: None.

Also Present: City Manager David Pasquale, City Clerk Betty Morlock, DPW Director Dan DesJarden, Police Chief James Hinton, Arbor Boardmember and Lowell Light and Power Boardmember Jim Hall, Water Distribution Supervisor Bob Robinson, Planning Commissioner Andrew Schrauben and Downtown Development Authority Chair Jim Reagan.

Item #1. **APPROVAL OF AGENDA**. At the request of the DDA Chair Reagan, Mayor Pro Tem Pfaller requested Item #13 be moved to Item #5.5.

IT WAS MOVED BY PFALLER and seconded by ELLISON to approve the agenda as modified.

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

Item #2. **APPROVAL OF THE MINUTES OF THE SEPTEMBER 21, 2009 REGULAR MEETING**.

IT WAS MOVED BY PFALLER and seconded by ELLISON to approve the minutes of the September 21, 2009 regular meeting as corrected.

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

Item #3. **APPROVAL OF THE ACCOUNTS PAYABLE**.

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

YEA: Councilmembers Altoft, Ellison, LaPonsie, Mayor Pro Tem Pfaller and Mayor Hodges.

NAY: 0. ABSENT: 0. MOTION CARRIED.

| <u>BILLS AND ACCOUNTS PAYABLE (10/05/09)</u> | |
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| GENERAL FUND | \$57,868.06 |
| MAJOR STREET FUND | 2,944.81 |
| LOCAL STREET FUND | 605.56 |
| DDA FUND | 16,905.44 |
| AIRPORT FUND | 2,189.58 |
| WASTEWATER FUND | 35,880.62 |
| WATER FUND | 10,359.77 |
| DATA PROCESSING FUND | 208.95 |
| EQUIPMENT FUND | 1,518.27 |
| CURRENT TAX FUND | 67,547.23 |

Item #4. **CITIZENS COMMENTS FOR ITEMS NOT ON THE AGENDA.** DPW Director Dan DesJarden received additional information regarding the recent changes to the cemetery rules. He requested the issue be placed on the next agenda for further discussion. Mayor Hodges noted this could be arranged.

Item #5. **PURCHASE OF PARKING LOT AT THE SOUTHWEST CORNER OF WEST MAIN AND BROADWAY BY THE DOWNTOWN DEVELOPMENT AUTHORITY – CONCURRENCE OF COUNCIL.** The Downtown Development Authority reviewed and approved the purchase of the parking lot next to the Shell Gas Station at its October 1, 2009 meeting. Their approval was made subject to concurrence of the City Council.

The 33 space parking lot would be purchased in the amount of \$60,000. There is approximately \$1,690 in taxes owed, which will be paid prior or at the close by the present owner, Morningstar Properties.

The following was noted:

- Property taxes must be current or taken off the purchase price
- Parking gate remains as City property or may be disposed
- Subject to a Phase I Environmental review. The DDA will contract with Materials Testing Consultant to undertake this.
- The lot will be free of any parking agreements
- This is to be utilized as a public parking lot

DDA Chair Jim Reagan added the DDA was offered the property approximately 10 years ago from the Antique Mall. At the time, the asking price was twice as much as now.

Mayor Hodges believed this was a great idea.

Councilmember LaPonsie felt the Planning Commission approved the condo development based upon use of some of these spaces. City Manager Pasquale explained the zoning ordinance states the spaces from a public parking lot can be counted if it is within so many feet

of a business. Mayor Hodges added there are also six parking spaces on the south side of the building which belongs to the condo development.

Pfaller questioned if an appraisal had been done or what the SEV was. Pasquale responded the SEV was very close to the sale price of the parking lot.

Councilmember Ellison questioned the upkeep of the lot. Reagan noted there will be maintenance costs for this.

IT WAS MOVED BY ALTOFT and seconded by LAPONSIE to provide concurrence to purchase the parking lot at the southwest corner of West Main and Broadway to the Downtown Development Authority.

YEA: 4. NAY: 1. (Councilmember Ellison) ABSENT: 0. MOTION CARRIED.

Item #6. **UPDATED CROSS CONNECTION PLAN AND ORDINANCE - PUBLIC HEARING.** Water Distribution Supervisor Bob Robinson explained the previous ordinance was adopted in 1980 and should be updated.

Mayor Pro Tem Pfaller referred to Section 25.33 of the ordinance which states “the City Manager shall cause inspections to be made of all properties in the City served by the water system where cross connections are deemed possible”. Pfaller had previously questioned how and what is the plan to make this happen. Also, is there a time frame to make it happen? Robinson explained Hydro Design was hired to actually do the cross connection control inspections of all the commercial industrial sites. The City is currently in a three year contract with the firm. Approximately 100 inspections have been completed, with 96 percent passing.

Residential inspections are completed when the City visits a residence to change or repair the water meter. A visual inspection is done at that time and the homeowner is asked to correct the problem, if necessary. Pfaller confirmed residential properties would not be inspected unless there needs to be a meter changed. Robinson responded yes. Pfaller was concerned the City is requiring staff to do inspections. However, there is no set plan for inspections to be completed. Pfaller believed either all or none should be inspected.

Pfaller questioned the requirement from the Michigan Department of Environmental Quality (MDEQ) and what would happen if a resident’s home was not inspected, but caused a backflow. MDEQ District Engineer Mike Bolf stated this is unlikely. There is only one community in Kent County currently inspecting every single property. All commercial properties are inspected, while the residential inspections are done on a risk assessment basis. He explained residents with lawn sprinkling systems or any type of portable line should be inventoried as these are a concern.

Pfaller stated Section 25.35 of the ordinance states the “City Manager is authorized and directed to discontinue or cause the discontinuance of water service as after a reasonable notice”. Pfaller wanted “reasonable” defined. Robinson explained if it is an immediate threat,

the meter can be turned off at the time of discovery. Bolf read information from the enforcement policy which states if there is an immediate risk, service can be terminated.

Pfaller also noted it states "any water outlet which could be used for portable or domestic purposes, which is not supplied by a portable water system has to be labeled unsafe for drinking". He questioned how and who would enforce this. Robinson responded such water systems are labeled when discovered.

LaPonsie asked if a reference to the cross connection plan could be included in the ordinance. Bolf stated he would have to review more closely. He would support a simple change. Pfaller suggested it be placed in the section that refers to "As part of the City adopts by reference the water supply cross connection rules of the MDEQ as set forth by".

Barb Barber of 318 King Street asked if she needed to label her outside faucet even if it is not hooked up to City water. Bolf responded no.

Pfaller referred to #4 of the plan. He was concerned about the City passing an ordinance with the plan and the rules to follow but it states the "water connection and plumbing systems of all water customers or accounts shall be initially inspected for the presences of cross connections". The City is stating something will be done. However, the plan is not to do it. Robinson explained inspections are being done during meter installations.

Bolf stated the City has the means to write the program as it sees fit as long as it is approved by the MDEQ. The City needs the authority to go in and inspect any residence at any time. Documentation needs to be made that no risk has been posed. Bolf emphasized if there is any risk to the water system, the City needs the authority to be able to inspect.

LaPonsie asked if the MDEQ would have a problem switching all the "shall" in the ordinance to "may". Bolf would not state that across the board, but writing up a description he just described would be acceptable. Meaning you shall inspect any and all water customers who you suspect may be posing a risk to the water system. Pasquale noted it should also be stated the City has the authority to inspect any source.

Councilmember Altoft questioned the amount of meters replaced each year. Robinson estimated 70 to 100 meters. Altoft asked how many residential meters the City has. Robinson stated the total meters in the system is approximately 1300 with 1000 being residential. Altoft suggested wording the City would inspect 200 meters over four years. Robinson stated he could try and do 100 a year. Altoft stated the meters will all be inspected eventually. He also suggested the City asks its meter reader to record issues such as a faucet without a back flow.

Councilmember Ellison suggested wording such as "the City Manager reserves the authority to cause inspections at any time". Mayor Hodges and Pfaller believed this made more sense. Bolf understood what the Council wanted. However, the City still has the commercial and industrial customers and any others who have been designated as a high hazard. These customers need to have an annual or every other year regardless.

Pasquale reviewed the changes as follows:

- Reference cross connection control plan
- The City Manager reserves the authority to cause inspections at any time.
- LaPonsie also stated the same in the ordinance under 25.33. This should also be in the Plan as well as including a sentence for non residential customers shall be inspected every other year.

Pasquale confirmed there are currently two amendments to the ordinance itself. Council agreed. Pasquale noted the first is references the cross connection control plan in Section 25 - 31 and the other 25 - 33 the City Manager reserves the authority to cause inspections.

IT WAS MOVED BY LAPONSIE and seconded by ELLISON to update the Cross Connection Plan and Ordinance as amended.

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

Item #7. **NORTH EAST RESERVOIR CLEANING AND DRAIN IMPROVEMENTS.** Water Distribution Supervisor Bob Robinson stated he approached the Council approximately 3 months ago to have the water reservoir tanks inspected. The north west reservoir was built in 1994 and it is an 800,000 gallon tank. A small amount of dusting of accumulation was found on the floor. It is suggested the City clean and paint the exterior drain for the overflow which has been taken care of.

The Shepard Drive reservoir was built in 1938 and is a 500,000 gallon tank. In 1976 when the Water Treatment Plant was built, the City added a 12 inch water main up the hill to assist with filling the tank. In 1993, a new pump station was added and in 1998 the tank was inspected. This was found to be in good condition, except for a small amount of sediment in the bottom of the tank. Robinson noted the small amount was not causing any problem at that time.

The City received two bids as follows:

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| • Lee's Trenching Service (Byron Center) | \$53,439.40 |
| • Young's Environment Cleanup Inc. | \$72,962.90 |

The project proposed to pump out sledge from the tank and transport this to a landfill. Then, the tank would be chlorinated. The drainage structure and valve will be removed and replaced. An 8" drain line is to be upgraded.

Also, in reviewing the project there were a few other items which were missed for an additional \$4,200. Robinson requested the work be done at the North East Reservoir for a total of \$57,639.40.

Councilmember LaPonsie questioned how much was budgeted for it. Robinson responded \$65,000.

IT WAS MOVED BY PFALLER and seconded by ALTOFT to approve then cleaning and drain improvements at the north east reservoir tank at a total cost of \$57,639.40.

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

Item #8. **PROPOSAL AND CONTRACT AGREEMENT – PROVIDE SPECIFICATIONS FOR MAINTENANCE WORK ON THE WATER TREATMENT PLANT RESERVOIR.** Dixon Engineering of Lake Odessa has been proposed to provide services to prepare bid documents for the complete repainting of the 500,000 gallon reservoir tank behind the Water Treatment Plant. The interior will have cathodic protection (corrosion control) as well as spot painting.

Dixon is the only recognized local firm to carry out this work. The cost of \$2,500 has been allocated from the Water Fund. Plant Superintendent George Regan recommended this.

Mayor Pro Tem Pfaller asked if it was all interior painting. Pasquale responded interior and exterior. Pfaller asked when this was last done. It was noted it has been a while.

City Manager Pasquale noted a competitive bid process will be done.

Councilmember LaPonsie questioned why the City is paying this much to put together bid documents. She also inquired why an outside firm is needed. Pasquale explained there are certain technicalities, in terms of inspecting the tank to make sure the City is considering all the necessary areas which need to be upgraded. This firm does this as well.

IT WAS MOVED BY PFALLER and seconded by ALTOFT to approve Dixon Engineering of Lake Odessa at a cost of \$2,500 allocated from the Water Fund to provide specifications for maintenance work on the Water Treatment Plant reservoir.

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

Item #9. **AMENDING THE ZONING ORDINANCE TEXT TO INCLUDE GROUP AND COMMERCIAL DAY CARE HOMES AND FACILITIES AS A SPECIAL USE IN THE R-2 AND R-3 DISTRICTS – RECOMMENDATION FROM THE PLANNING COMMISSION – PUBLIC HEARING.** In the midst of reviewing a special use permit application for commercial day care (up to 12 children) for 529 Avery, the Planning Commission discovered that its zoning was incorrectly stated R-1 instead of R-2. In reviewing the ordinance text, only R-1 allows such uses.

As a proposal, the Commission provided a draft zoning ordinance amendment to include group and commercial day care homes and facilities as a special use in the R-2 and R-3 districts. After holding a public hearing on August 24, the Commission unanimously recommended the ordinance amendment be adopted by the City Council.

At its meeting of September 28, the Planning Commission approved a special use permit for 529 Avery, pending Council action.

Councilmember LaPonsie stated the Commission felt that Commercial Day Care should be an option in these districts. She noted the State has changed their requirements, forcing providers to make sure they are following zoning requirements.

It was noted the only public response received was from a neighbor regarding the shape of the driveway. It is difficult to see if the children are going to ride their bikes into the street or turn on the sidewalk. City Manager Pasquale noted the issue was not about the daycare but rather safety. Day care owner Julie Sheid has since bought safety cones to place at the end of the driveway.

IT WAS MOVED BY LAPONSIE and seconded by ALTOFT to amend the zoning ordinance text to include group and commercial day care homes and facilities as a special use in the R-2 and R-3 districts.

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

Item #10. **AMENDING ZONING ORDINANCE TEXT TO INCLUDE GROUP AND COMMERCIAL DAY CARE HOMES AND FACILITIES AS A SPECIAL USE IN THE SR DISTRICT – RECOMMENDATION FROM THE PLANNING COMMISSION – ADOPT OR SET PUBLIC HEARING (11/2).** The Planning Commission wishes to extend group day care as a special use to all residential districts. Thus, the amendment to include the SR Suburban Residential district has been proposed was recommended at the Commission's September 28 meeting.

IT WAS MOVED BY PFALLER and seconded by ALTOFT to adopt the ordinance to include group and commercial day care homes and facilities as a special use in the SR District.

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

Item #11. **CONTRACT WITH MICHIGAN WILDLIFE CENTERS FOR ANIMAL IMPOUNDMENT AND TRANSPORTATION SERVICES.** Police Chief Hinton explained the Lowell Police Department is responsible for enforcing laws pertaining to dogs and cats within the City. Unfortunately, the City does not have a facility to take these animals to if caught running at large.

As a solution, the Michigan Wildlife Centers (MWC), 12494 Vergennes, would be utilized for this purpose. Under this one year contract, the City would pay Sjana Gordon of the MWC \$100 per month for this service. The contract has been drawn by City Attorney Richard Wendt.

Chief Hinton and City Manager Pasquale both recommended the Council approve the agreement.

Councilmember LaPonsie inquired the number of animals picked up each year. Hinton responded it varies. There could be one to 25 dogs a month. LaPonsie asked how long an animal would stay at the center. Hinton responded this varies as well. Sometimes the Animal Control Facility is not open or will not come out on the weekend. Hinton explained Gordon would actually maintain a shelter for these animals. Each are fed and taken care of during its stay.

LaPonsie asked if an owner could pick the animal up at the center or would they have to wait until it goes to the shelter. Hinton stated by ordinance it states the owner could be fined by the LPD and pick their animal up at the center.

Mayor Pro Tem Pfaller questioned Section 5 of the Services Agreement. The City requires any organization or contractor to carry \$2,000,000 worth of insurance. Pfaller noted the agreement states \$200,000 is required from MWC. Hinton stated he spoke with City Attorney Wendt regarding liability insurance and noted the facility is actually off City property. Pfaller said he would have a problem supporting this without an explanation from Wendt. Gordon believed she had a \$1,000,000 policy on their property.

Hinton stated he would review her documents and make the proper changes. Pfaller stated he would approve this if the agreement stated there was \$2,000,000 for general liability.

IT WAS MOVED BY PFALLER and seconded by LAPONSIE to approve the contract with Michigan Wildlife Centers for animal impoundment and transportation services subject to the contract being changed to a \$2,000,000 general liability insurance.

YEA: Councilmembers Altoft, Ellison, LaPonsie, Mayor Pro Tem Pfaller and Mayor Hodges.

NAY: None. ABSENT: None. MOTION CARRIED.

Item #12. **UPDATING PENALTIES FOR PARKING OFFENSES**. Chief Hinton noted the penalty schedule to help prevent illegal parking was last updated in 1991. With the recent problems within the 300 block of West Main Street and throughout the City of Lowell, he was asked by the Chamber of Commerce to review the parking fees and fines in order to receive more voluntary compliance. Hinton also contacted smaller communities within the area regarding their current fees. However, these communities have not updated their fees either. After review, Hinton decided to add a \$5 increase to every penalty and fine there is for parking violations.

Mayor Pro Tem Pfaller did not believe this was an appropriate increase. He suggested a minimum fine of \$25 and any offense listed as a \$25 should be raised to \$50. Then doubles after 30 days if not paid.

Hinton was unsure of the amount of citations, but estimated between 200 and 300 citations annually.

Councilmember Ellison believed \$25 was too much and suggested \$15.

Councilmember LaPonsie noted Lansing provides a discounted rate if the ticket is paid on the same day or day after it was issued. Hinton said if payments are not received, letters are sent out before the fine is turned over to a collection agency.

Councilmember Altoft questioned "4A (parking on sidewalks)". Are there any residents in the City who do not have to abide by this ordinance? Hinton responded he has not written any citations for parking on a sidewalk but have issued warnings. Altoft stated there is a street near his home where three cars have parked on the sidewalk for years. Hinton noted there are some residences that have three cars in the driveway making it difficult to be compliant. Altoft wanted him to review this further.

Barb Barber of 318 King asked if these were repeat offenders. Hinton responded sometimes.

Pfaller liked LaPonsie's idea of setting the fine at \$25, but allowing the individual to pay \$15 if paid within five business days. If it is not paid within 30 days, the fine would double to \$50.

City Manager Pasquale suggested Hinton redraft the update with a starting penalty of \$25 which includes a discount if paid within a certain period of time.

LaPonsie questioned a bike parking violation. Hinton explained this pertains to a bike being parked on the sidewalk. However, he has never issued such a citation.

Hinton will provide an amended schedule for Council consideration.

Item #13. **COUNCIL COMMENTS**. Councilmember LaPonsie apologized for missing the last meeting. The death of her father was very sudden and unexpected. She appreciated all of the support received from the City during that time.

Councilmember Altoft inquired regarding the health status of Jim Marfia. City Manager Pasquale stated he is still at Spectrum Butterworth. He is progressing. Altoft asked if another individual was filling in for him. Pasquale stated not at this point. He has been in touch with the Kent County Equalization Director for guidance.

Mayor Hodges received a letter from Partners Green (a group for renewable energy efficient nation). There will be a tree planting ceremony at the Wege Wittenbach Center on Friday, October 9, 2009 at 9:30 a.m. He and Pasquale will be present to help plant some trees. Approximately 1000 trees will be planted by 100 elementary and 60 high school students.

Hodges also commented on the letters he received from Mrs. Mandel's and Mrs. Reeds Cherry Creek Elementary classes. The students celebrated constitution day by reviewing the

preamble and how the constitution helps us. The students brainstormed how the Council helps them.

Hodges read a letter into record as an example from student Riley Fraser:

Dear Mayor Hodges,

Thank you for being a great Mayor for Lowell and I hope you have a good year. Thanks to the fire department and ambulance for saving my Grandpa. Thank you for the good laws.

Sincerely,

Riley Fraser

Hodges noted there were many others that read similarly. Most all say thank you for being a great "Marer". Hodges thanked the teachers and the students.

Item #14. **MANAGER'S REPORT**. City Manager Pasquale reported on the following:

1. Any actions necessary with regards to the Assessor will be mentioned at the next meeting after talking with the Equalization Director.
2. The following boards and commissions meetings minutes are enclosed:
 - Fire and Emergency Services Authority meeting of June 1, 2009
 - Planning Commission meeting of August 24, 2009
 - Downtown Development Authority meetings of August 20 and September 3, 2009
 - Grand Valley Metro Council meeting of September 3, 2009
3. The Harvest Celebration is scheduled for Saturday, October 10.

Item #15. **APPOINTMENTS**. None.

IT WAS MOVED BY PFALLER to adjourn at 8:46 p.m.

DATE:

APPROVED:

James W. Hodges, Mayor

Betty R. Morlock, Clerk