

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

For the Regular Meeting of MONDAY, **MARCH 29, 2004**

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

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

Absent: None.

Also Present: City Manager Dave Pasquale, City Clerk Betty Morlock, Police Chief Jim Valentine, Public Works Director Dan DesJarden, Lowell Light and Power/Cable TV General Manager Tom Richards. Police Officer James Hinton and Intern Student Justin Peterson.

IT WAS MOVED BY PFALLER and seconded by HODGES that the minutes of the March 15, 2004 regular meeting be approved as corrected.

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

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

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

Councilmember Pfaller questioned the bill of \$27,000 to Fishbeck, Thompson, Carr and Huber (FTC&H) for the City Hall – Police Station project. Pfaller did not want any further payments made until the City is assured the roof leak is repaired as well as a resolution on the dumpster gates.

BILLS AND ACCOUNTS PAYABLE (03/29/04)

GENERAL FUND	\$83,542.92
MAJOR STREET FUND	538.26
LOCAL STREET FUND	99.76
DDA FUND	529.80
CITY HALL CONSTRUCTION FUND	27,000.00
AIRPORT FUND	1.00
WASTEWATER FUND	30,357.67
WATER FUND	4,573.54
DATA PROCESSING	1,045.00
EQUIPMENT FUND	437.85
CURRENT TAX FUND	169,271.90

Item #1. **REQUEST BY FIRST CONGREGATIONAL CHURCH TO CLOSE SPRING STREET AND UTILIZE RICHARDS PARK.** As petitioned in the past, the First Congregational Church requested that Spring Street between Hudson and Lincoln Lake be closed on Sunday, May 30 between 9 a.m. and 12 noon to have an outdoor cake and ice cream reception.

Also, the Church has asked for the use of Richards Park on Sunday, August 8 utilizing the northwest corner for an outdoor service for 9 a.m. to noon. In case of rain, a tent would be erected and Spring Street would be closed.

IT WAS MOVED BY PFALLER and seconded by MYERS to approve the requests of First Congregational Church to close Spring Street and utilize Richards Park on May 30, 2004 and August 8, 2004 from 9 a.m. to noon.

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

Item #2. **KING MILLING COMPANY – APPLICATION FOR AN INDUSTRIAL FACILITITES EXEMPTION CERTIFICATE UNDER P.A. 198 – ESTABLISH PUBLIC HEARING DATE (4/19).**

King Milling Company has recently added approximately 1800 square feet of building space to the mill. Also, new machinery has been purchased which increases milling capacity by 50%. King Milling has now applied for an Industrial Facilities Exemption Certificate to gain a 50% tax abatement on these improvements.

The total cost of the project is \$1,434,500. Under current City policy, this qualifies for 12 years of tax abatement under Public Act 198. A total of 38 jobs will be retained with 2 new positions added in the next two years.

IT WAS MOVED BY PFALLER and seconded by MYERS to set a public hearing for April 19, 2004 to consider the application from King Milling Company for an industrial facilities exemption certificate under P. A. 198.

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

Item #3. **ZONING BOARD OF APPEALS**

- A. 1270 Laurie Gail – Samuel and Bobbi Milton – side yard setback variance to accommodate an egress window – set public hearing. Sam Milton requested a two foot variance in order to place an egress window for a fire escape which would accommodate a third bedroom in the basement.

Zoning Board Chairman Pfaller asked if there was an existing window already there. Milton responded yes. However, there will be no egress. Pasquale noted the window is on the west side rather than the east.

Zoning Boardmember Shores stated she was present at the Planning Commission meeting

of March 22 when the recommendation was made. She noted a railing would be placed around the enclosure. Pasquale stated no enclosure or roof would be placed above the egress.

Zoning Boardmember Myers questioned if any written or verbal comments were received. City Clerk Morlock stated she received phone calls from Brenda Gillhespy at 1286 Laurie Gail, Shannon Groeneweg at 1252 Laurie Gail and Beverly Yellowley at 1255 Laurie Gail. All parties indicated support of the project.

IT WAS MOVED BY HODGES and seconded by SHORES to approve the side yard setback variance as presented at 1270 Laurie Gail submitted by Samuel and Bobbi Milton.

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

- B. 753 Grindle – Sundry Corporation – variance from 20% grade slope open space provisions for 16 unit single family residential cluster plan – public hearing. Sundry Corporation requested a variance regarding the grade of a slope under the open space provisions of the zoning ordinance. This is for a 16 unit single family cluster plan.

The variance would not affect the number of units being proposed on the acreage. The question concerns the grade slope which would allow for a cluster development. The ordinance has stated any area which has a greater than 20 percent slope does not count as open space. Therefore, it would be impossible for the developers to comply with the open space provisions. After review from the Planning Commission, there was a general consensus that 20 percent was probably too strict and 50 percent may be more appropriate. Most of the property lies on less than a 50 percent slope. By allowing the variance up to 50 percent, the developers could then development the property under the open space provisions. The Planning Commission has recommended this variance be granted up to the 50 percent at a special meeting held on March 3, 2004.

Sundry Representative Kevin Rude stated two different development scenarios could occur. The first involves State intentions as to why the ordinance was adopted. The other would not be as environmentally friendly and more disturbing to the surrounding neighbors with regards to tree removal and grading.

Rude noted the road layout and profile are identical to what was approved with the original plan.

Sundry wishes to receive the variance and then return to the Planning Commission regarding the rest of the requirements of the ordinance.

City Manager Pasquale questioned the topography of the area. Rude stated the highest grade found was approximately at a 35 percent slope. This was actually created by Sundry in the construction of the road.

Traci Mullins of 901 Grindle was concerned about the cluster development and the amount

of homes being built. She wanted the development to remain at eight homes. Pasquale explained 16 homes are allowed because the City Council and Planning Commission adopted a zoning ordinance amendment which provided a minimum lot size 23,000 square feet per unit within the SR District.

John VanderWilp of 1264 Fun was not supportive about having more units built. However, he wanted the Council to consider the request for the 50 percent slope.

Simon Rosenbaum of 1440 Pine Grove Trail questioned if anyone from the City was observing the property to make sure all work was being done properly. Public Works Director DesJarden explained the site has been watched since the earth moving began. The DEQ has also been observing the situation.

Zoning Boardmember Hodges asked if the Planning Commission recommended approval the request unanimously. Pasquale responded yes.

Zoning Boardmember Mathews questioned the area east side of the green space. Rude explained this is part of the utility easement space. Mathews stated he was not in favor of 16 houses. However, he served on the Planning Commission when the ordinance was changed allowing 16 units. Mathews stated he would rather have the houses clustered together, giving outside property owners more space.

Zoning Boardmember Myers inquired if the green area would be maintained by an association. Cole responded yes.

Zoning Boardmember Shores questioned the size of the lots. Rude stated the frontage will average approximately 75 feet. This is approximately 25 feet more than what was over in the Highland Hills area.

Pfaller asked regarding the smallest square footage on lot size. Rude stated Sundry made some of the lots larger to meet the cluster ordinance provisions.

Rude explained the ordinance, as it stands now, does not have any restrictions on grade. According to the ordinance, Sundry is allowed to create the plan as presented. The cluster ordinance is the only one which disallows the utilization of 20 percent or more grade. Rude explained most walkouts are on a 30 percent grade. Rude was unsure if a 20 percent grade could be utilized anywhere within the SR District.

Rude stated, by giving the variance, it allows them the opportunity to create a cluster ordinance close to the State Enabling Act. The whole mentality and spirit which was behind the law is what Sundry is trying to accomplish. But by placing the 20 percent slope limitation, it doesn't allow them to do this.

Shores questioned who came up with a 50 percent grade. Pasquale stated the Planning Commission.

Mathews stated previous Planning Commissioner Brubaker indicated a 20 percent slope was taken from a model ordinance.

Pfaller believed the slope should be less than the 50 percent, if the City wants to set aside and preserve land which is buildable.

Myers believed it would be the homeowners' desire to not disturb the natural beauty of the lot and place the home where the nature can be appreciated.

Myers felt the plan takes all the choices away from the property owner. Rude explained Sundry Corporation is the current property owner. The tax base is not created on the open space. Maintenance would occur in the open space only if Sundry decides with the Planning Commission to place amenities in those areas.

Pfaller asked if the development would exclude individual outbuildings. Rude stated Sundry intends to follow the same provisions which are in the Highland Hills project, other than allowing the existing ordinance which encompasses home sizes. Rude did not believe homeowners would be allowed to place any out buildings, due to space constraints. If the site plan could be created to fulfill the existing ordinances in place which would allow an out building which met the architecture review, then one could be placed. Rude believed most property owners would build a three stall garage. Pfaller questioned if one would have to present an outbuilding to an architectural committee for review and who was on this committee. Rude responded until a developer such as Sundry loses its majority interest, the responsibility lies on them. Once two thirds majority is lost, the association is turned over to the individual owners. At that time, an architecture review committee is assigned through the owners. The guidelines and provisions are very similar to what was approved by City Attorney Richard Wendt on the Highland Hills project. The same provisions will be followed.

Pfaller questioned if all of the SR zoning regulations, as far as set backs and construction, apply to these lots. Pasquale stated some differences are stated within the ordinance which allows for less lot width.

Myers inquired regarding the difference in tax base between the two plans. Rude explained if open space is not owned by the association, it is usually tax exempt, such as being owned by the DEQ or being donated to the municipality. Site condominiums are taxed based on the value of the lot. Rude stated the parallel plan and the cluster plan would create the same tax base.

Pfaller asked who would accept the liability on the open space. Rude stated there is a common association which carries a liability insurance. It not only covers the open space, but also the private road. The same insurance policy created for the Highland Hills project will be created for this project. Most associations lean toward a common policy rather than taking a rider on their individual homeowner's policy. Pfaller questioned if the homeowner would pay a fee toward the insurance policy. Rude responded yes, a maintenance budget is created. It spells out what the homeowner's assessed monthly dues.

Shores believed 50 percent slope was too much.

Myers did not want to see a cluster development. He would rather let the homeowner place the dwelling and do what they want with a full size lot.

Pfaller believed there would still be an association without a cluster development.

Mathews questioned the maximum grade one could build. VanderWilp stated he has been involved with building projects and has built on a 45 percent grade without much of a problem.

VanderWilp believed the maintenance cost would be more of a burden with less people.

Hodges had no problem approving the variance.

IT WAS MOVED BY HODGES to approve the variance allowing up to a 50% grade slope for the open space provision of the cluster housing development at 753 Grindle.

Motion died due to lack of support.

IT WAS MOVED BY SHORES and seconded by MATHEWS to allow a variance in the ordinance from 20 percent to a 40 percent grade slope for the open space provisions at 753 Grindle.

YEA: 3. (Zoning Boardmembers Hodges, Mathews and Shores)

NAY: 2. (Zoning Boardmembers Myers and Chairman Pfaller)

ABSENT: 0. MOTION CARRIED.

Item #4. **RESOLUTION ACCEPTING AND DIRECTING THE RECORDING OF A WATER MAIN AND SANITARY SEWER EASEMENT IN CONNECTION WITH THE HIGHLAND HILLS SITE CONDOMINIUM PROJECT – TABLED FROM LAST MEETING.** As part of the Planned Unit Development requirements for the Highland Hills Site Condominium Project, a water main easement must be provided by Sundry Corporation at no cost to permit the looping of the water main to the north of the project. At the March 15 meeting, the Council wanted to ensure the easement was sufficient enough for a sanitary sewer main.

A revised description and easement drawing for water and sanitary sewer has been provided and has been found satisfactory by Dave Austin of Williams and Works.

Austin wanted to clarify a question at the last meeting concerning “did the easement have room for sanitary sewer without regard for the need for it at this time”. It has been verified the width which is available for the easement would allow the sewer, if it were written this way. It is believed there is a portion of the easement which is only 40 feet wide. Two utilities can be placed if planned

properly.

Also, in the review, a clerical error was discovered in the dimensions, which was fortunate because of the position of the easement was incorrect. The easement copy provided by the attorney is termed a water main easement and does not address sanitary sewer as a utility.

Pfaller stated he would expect sanitary sewer to be a requirement for the project.

Austin stated as far as dimensions, everything has been reviewed and found to be satisfactory.

IT WAS MOVED BY PFALLER and seconded by MYERS to approve the resolution accepting the water main and sanitary sewer easements in the connection with the Highland Hills Site Condominium Project.

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

Item #5. **RESOLUTION AUTHORIZING NOTICE OF INTENT TO ISSUE MICHIGAN TRANSPORTATION FUND BONDS.** City Manager Pasquale noted the next step in providing bonding for Grindle and Sibley streets improvements would be a resolution advertising the intent to issue bonds. A 45 day waiting period is necessary. After, there is still another resolution necessary in order to initiate the bonds. Final approvals are made by Council.

IT WAS MOVED BY PFALLER and seconded by HODGES to issue the resolution with intent to issue Michigan Transportation Fund bonds not to exceed \$400,000.

Councilmember Mathews did not believe \$400,000 was enough, stating Sibley should be improved. City Manager Pasquale stated most of the proposed Sibley Street improvements would take place from Center to Valley Vista. The remaining part will not be creating as much work. Mathews suggested the west part of Sibley be milled.

Pfaller was concerned about other streets needing improvements with the Highland Hills project taking place. Mathews did not believe the Council should look into the future, but rather fix the roads which need to be taken care of now.

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

Item #6. **CENTER AND CLARKE STREET IMPROVEMENTS – RESOLUTION TO EXECUTE AN INFRASTRUCTURE AGREEMENT WITH WESTCLIFFE LLC AND SHARING OF CONSTRUCTION COSTS IN CONNECTION WITH RESIDENTIAL DEVELOPMENT.** An agreement has been prepared which assigns financial responsibility for development costs on Center and Clarke Streets involving a 12 unit (6 duplexes) residential development between the City and Westcliffe LLC. Specifically, the City will upgrade Center Street while the developer provides water and sanitary sewer on Center as well as Clarke Street with road improvements. Engineering costs are apportioned accordingly.

Documents have been prepared by City Attorney Richard Wendt and reviewed by Dave Austin, engineer from Williams and Works as well as the developers Dave Fasburg and Michael Doyle.

An issue arose concerning two undeveloped lots which are not part of the Westcliff Development. Since the developer is providing the funds for this and another developer will likely develop the vacant lots, there was no mechanism which would reimburse the developer for utility hook up costs. It has been recommended there be a payment of \$5,700 to the developers. At the time of the development, the City would take the responsibility of collecting these monies.

Austin stated the developer reminds the Council that fire hydrants will be available at the corner of Clark and Center.

IT WAS MOVED BY HODGES and seconded by MYERS to support the resolution to execute an infrastructure agreement with Westcliffe LLC regarding improvements to Center and Clarke Streets.

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

NAY: 2. (Councilmembers Mathews and Pfaller) ABSENT: 0. MOTION CARRIED.

Pfaller pointed out the City would not be issuing a credit if it were not for the need of the developer. He did not believe the Council should be issuing a credit for a need the developer created.

Item #7. **ACQUISITION OF A PORTION OF VACATED WEST STREET.** It has been determined there is a 25 X 25 foot section of vacated West Street which is necessary to be acquired so the City can bring Clarke Street to Stoney Lakeside Park. The property owners are Don and Kim Kosbar of 976 Bowes Road. The Kosbars have agreed to deed the property to the City for \$500.

Pasquale recommended this be approved to allow a full width road to the park.

IT WAS MOVED BY PFALLER and seconded by MATHEWS to acquire the 25 X 25 foot parcel of property of the vacated portion of West Street from Don and Kim Kosbar for \$500.

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

Item #8. **CREEKSIDE PARK PATH.** In order to facilitate school pedestrian traffic, an asphalt path through Creekside Park has been proposed. The eight foot wide path would extend from Carol Lynne Drive to the existing walk which traverses through the east side of the Lighthouse property to Foreman. At its meeting of March 13, 2004, the Parks and Recreation Commission unanimously recommended approval of this project.

The following three bids for asphalt were received:

- Snyder Asphalt, Inc. (Saranac) \$5,440.
- Great Lakes Paving (Lowell) \$5,770.
- Reith-Riley (Ada) \$7,200.

In addition, road gravel would be purchased for \$661 and equipment usage for \$835. Altogether, with the Snyder bid, the total cost of \$6,936 allocated from the Lee Fund.

IT WAS MOVED BY MYERS and seconded by MATHEWS to approve the bid from Snyder asphalt for \$5,440.

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

Item #9. **REPLACEMENT OF CITY HALL ALLEY DUMPSTER GATES.** Public Works Director DesJarden explained bids were sought to replace the gates around the six dumpsters behind City Hall. The enclosures are proposed as black vinyl, chain link, with slats.

The following bids were received:

- Grand Rapids Fence \$3,470.
- Rylee's Ace Hardware (Wyoming) \$4,124.
- Cedar Springs Fence \$6,159.

Councilmember Pfaller was concerned about approving the expenditure. The enclosures did not last five months. He also noted there is still a leak in the City Hall – Police Station entrance way. Pfaller believed the City ought to ask the responsible party for assistance in replacement of the gates. DesJarden responded discussion has been held with FTC&H. It is believed the merchants requested this type of dumpster.

Pfaller suggesting tabling the issue and check with the insurance company. He also suggested contacting FTC&H to see what portion they would contribute.

IT WAS MOVED BY HODGES and seconded by MATHEWS to purchase the gates from Grand Rapids Fence in the amount of \$3,470 with the condition that Fishbeck, Thompson, Carr and Huber be approached to contribute funds.

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

Item #10. **SANITARY SEWER IMPROVEMENT PROJECT.** Nine bids were received for a replacement of a sanitary sewer east of Ottawa behind Michigan Wire. The low bid was slightly over \$19,000 from Perrin Excavating. This was considerably below the engineer's estimate and other contractors bids.

The references of Perrin were contacted by Williams & Works and good experiences were expressed. The contractor was told no change order would be given for unforeseen conditions

related to dewatering.

Perrin asked to start work in June or July when groundwater levels are lower. DPW Director DesJarden had no problem with this and recommended Perrin be awarded the project.

Councilmember Mathews questioned the comment made by Perrin who indicated he did not provide much time into the bid and he did not include an allowance for dewatering. Mathews stated he would want it in writing there would be no dewatering costs or any other fees added.

IT WAS MOVED BY MATHEWS and seconded by HODGES to accept the bid from Perrin in the amount of \$19,142.53 for the Sanitary Sewer Improvement Project east of Ottawa behind Michigan Wire. No additional monies shall be provided for dewatering.

Austin explained companies bid on a set of documents which in turn become the contract. At this time, the contract does not state dewatering was not included. Austin stated the contract stands on its own and requires the contractor do what is necessary and come to the site and satisfy himself of all conditions prior to the contract. Austin recommended an amendment be added to the agreement to specifically address the dewatering issue.

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

Item #11. **CITIZEN COMMENTS**. John VanderWilp of 1264 Fun Street commented about the discussion held in the past concerning hard surfaced driveways. VanderWilp suggested the County be contacted to review the washout of roads which lie near City streets.

Item #12. **COUNCIL COMMENTS**. Councilmember Mathews referred to comments made by John VanderWilp. This was discussed between him and DesJarden. Mathews suggested the County Road Commission continue the asphalt Grindle north of the City over the hill which in turn would create water run off. Mathews believed the area was dangerous.

Councilmember Pfaller stated he had an enjoyable day in Lansing at the MML Conference. The most interesting seminar referred to the fresh water supply in the State of Michigan and the resource available.

Pfaller also stated the Wellhead Protection Committee has completed the plotting and the consulting firm has a program. It is developing the aquifer flow. The first meeting in June the committee will be presenting the Wellhead Protection Overlay or map of an area were the City needs to protect the ground water. One other issue which had been discussed at the meeting was wells within the City. Pfaller suggested staff get with the County on all wells that are registered with the City. Water Treatment Plant Superintendent George Regan said this is significant since this is a direct line to the aquifer where the City draws water. This is an easy way to get contamination to our water supply. There are some grant processes which can be taken to help cap and secure abandon wells.

Pfaller also had a conversation with Tom Richards. There is an issue in reference to the substation near Stoney Lakeside Park. When we agreed to install the new substation it was under the agreement that the substation in Stoney Lakeside Park would be removed. He was told this was going to be there for a year or two longer. This needs to be addressed with a time table provided.

Mayor Shores stated she enjoyed the Expo as well as the pancake breakfast.

Item #13. **MANAGER'S REPORT**. City Manager Dave Pasquale reported on the following:

1. The following Boards and Commissions meetings minutes were provided.
  - Parks and Recreation Commission meeting of February 14, 2004
  - Planning Commission meetings of February 23, and March 3, 2004
  - Downtown Development Authority meeting of February 26, 2004
  - Grand Valley Metro Council - Transportation Policy Committee meeting of February 16, 2004
2. In response to a Council inquiry, Building Inspector Doug Hopkins reviewed the building dimensions of 917 Bowes and found these to be in compliance. Councilmember Pfaller stated he reviewed the property again. Hopkins measured the exterior of the home which equal 1,056 square feet. By ordinance, usable floor space is what is determined and that is measured from the inside of the house and it does not include storage space or closets. Pfaller asked this be addressed. Pasquale stated this would be forwarded.
3. The City has initialed its own web site with more to come.
4. A meeting will be held on Wednesday, March 31, 7 p.m. to receive comments on applications for federal street improvement grants. The City will apply to reconstruct Bowes from Valley Vista to 1950' west. The Road Commission is seeking to resurface Vergennes from Lincoln Lake to Flat River Drive.
5. Regarding Highland Hills PUD stipulations, a copy of the ordinance which outlines conditions is enclosed.

IT WAS MOVED BY MYERS to adjourn at 9:17 p.m.

DATE:

APPROVED:

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C. Jeanne Shores, Mayor

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Betty R. Morlock, Clerk