

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

For the Regular Meeting of Monday, **DECEMBER 20, 2004**

The Meeting was called to order at 7:30 p.m. by Mayor Pro Tem Myers and the City Clerk 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, Police Chief Jim Valentine, DPW Director Dan DesJarden and Water Treatment Superintendent George Regan.

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 December 6, 2004 regular meeting 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.

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

<u>BILLS AND ACCOUNTS PAYABLE (12/20/04)</u>	
GENERAL FUND	\$210,610.48
MAJOR STREET FUND	593.98
LOCAL STREET FUND	105.24
DDA FUND	1153.13
CITY HALL CONSTRUCTION FUND	60,960.00
WASTEWATER FUND	4,073.40
WATER FUND	5,116.76
EQUIPMENT FUND	2,720.12
CURRENT TAX FUND	10,616.68

Item #1. **ASSESSOR EMPLOYMENT AGREEMENT – TABLED FROM THE PREVIOUS MEETING.** As noted at the last meeting, there was a question regarding how the salary of City Assessor Jim Marfia compares with other communities. Staff contacted ten West Michigan communities and reviewed salary, hours and benefits as well as additional staff this person may have. The salary provided by the City of Lowell is very comparable. Several communities employ an assessor full time with benefits. Another 50% in compensation would be added. Marfia has agreed to a 1% increase over the next two years. In 2005, the salary would be \$32,100 per year (from the present \$31,775). This would increase to \$32,425 per year in 2006.

City Manager Pasquale recommended approval of the agreement.

Mayor Pro Tem Myers questioned the other entity Marfia works for. Pasquale stated Grattan Township.

IT WAS MOVED BY PFALLER and seconded by HODGES to approve the assessor's employment agreement expiring December 31, 2006.

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

Item #2. **KENT INTERMEDIATE SCHOOL DISTRICT – COLLECTION OF SUMMER PROPERTY TAXES FOR 2005.** As in previous years, the Kent Intermediate School District has requested that the City collect the summer property taxes for the district (4.5333 mills last year). As part of a continuing resolution, the City collects the KIDS property taxes at no fee but is able to keep the interest earned during the bank deposit before distributing these monies.

Thus, City Manager Pasquale recommended the current policy for collecting summer taxes be maintained and a resolution passed.

IT WAS MOVED BY HODGES and seconded by MATHEWS to approve the collection of summer property taxes for 2005 for Kent Intermediate School District.

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

Item #3. **WATER TREATMENT PLANT CLARIFIER REPAINTING – AWARD OF BIDS.** At its June 7, 2004 meeting, the City Council approved a contract to utilize Dixon Engineering to prepare bid specifications for the repainting the Water Treatment Plant clarifier. The work would include: (1) clarifier and substructure steel repaint (2) deck hand and deck support overcoat (3) masonry walls overcoat (4) masonry wall void fill (5) concrete walls repaint (6) floor and sump overcoat.

A low bid of \$67,700 was received from Dave Cole Decorators of Sparta on December 7, 2004.

Water Superintendent George Regan stated this is a reputable firm. They have done previous work on the outside of the plant. He noted additional work may need to be done once the project begins. The steel is nearly 30 years old.

Councilmember Pfaller questioned the length of time the plant would be shut down. Regan estimated approximately 40 days. This involves just the interior of the clarifier.

Regan believed Dixon Engineering were the best engineers for this type of work. They will be on site an average of three hours a day.

Myers asked if this would inhibit the service of the water during these days. Regan stated the community would be receiving hard water during these days. There would be no fluoride or soft water.

Pfaller asked if Dave Cole had experience with this type of work. Regan responded yes. This company is currently painting the reservoir for Portland.

IT WAS MOVED BY PFALLER and seconded by MATHEWS to approve the bid of \$67,700 from Dave Cole Decorators to paint the Water Treatment Plant clarifier.

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

Item #4. **CENTER AND CLARKE STREET IMPROVEMENTS – FINAL PAY REQUEST AND CHANGE ORDER.** Dave Austin from Williams and Works referred to a December 16, 2004 letter which outlines the final pay and change order for the Center and Clarke Street improvements.

The following is a list of five miscellaneous items, which occurred during the contract and caused additional work:

- Additional concrete work – encountered when trying to find the existing water main.
- Conduits were placed under Center and Clarke Street to accommodate electrical and gas service to the new housing units.
- Additional watermain fittings – one additional tee and four bends were added to the project to accommodate connection to the existing watermain.
- Adjust guardrail height – the original installation of the guardrail was too low based on measurements provided their inspector. The guardrail was raised to the correct height. Williams and Works will reimburse the City for this change order item.

Change Order #2 involves the removal of unsuitable material and providing suitable material. In preparation of the plans and specifications, Williams and Works took soil borings by an independent lab every 500 feet in order to provide a general indication of what the soil conditions are. The results indicated there were sand and gravel in the area. In these two instances, there was no stone or large rock material. Austin confirmed the records did not show a rejection.

The contractor indicated there was more coble material found than originally planned, in particular

around the installation of the utilities. It is not allowed to have any rock greater than one inch in diameter within the trench area surrounding new utilities. This is to allow proper compaction of the material and to keep the stones away from the plastic pipe, which may cause long term damage. Therefore, sand must be brought in to provide suitable sand material, while also removing the unsuitable material from the site totals \$17,314.50.

Austin reviewed the contract. It refers to the soil borings and indicates, while the contractor should not rely solely on the soil borings and if he does encounter material which is believed to be unsuitable, Williams and Works is to be notified.

As a unit price contract, the Change Order #3 adjusts the contract amount up or down to correspond with the actual quantity of each item constructed. The actual amount was \$147,436.59 so a deduct of \$4,441.31 based on the amount which was actually installed had been provided.

In summary the total Change Order No. 1 and the resulting final payment is as follows:

Original Awarded Amount	\$151,877.90
Change Order Item 1 – Misc. Additional Items	5,014.75
Change Order Item 2 – Unsuitable Materials	17,314.50
Change Order Item 3 – Final Quantity Adjustment	(4,441.31)
Final adjusted contract amount	169,765.84
Less Previous Payment 1	(77,725.42)
Less Previous Payment 2	(66,762.44)
Final Payment Due	\$25,277.98

The final contract amount is approximately 11.8% greater than the as-bid amount. The pre-bid budget for this project was \$249,662, which included contingencies.

This project is being paid through a cost sharing agreement with the developer. Much of the cost being presented is the developers' share as it relates to the utilities. The developers were responsible for approximately 85% of the utility work.

Councilmember Mathews believed the prices on the sand, loading and hauling were all very fair.

Councilmember Pfaller questioned if the developer would pay 100% of the cost of the conduits. Austin stated the contractor is asking for clarification on one of the crossings. One of the crossings were requested by Consumers Energy.

Mayor Pro-Tem Myers questioned the amount the contractor pays with regard to the utilities. Austin responded the contractor will pay 85% relating to utilities. Austin explained \$25,000 is the final which includes payment for several items. Austin projected approximately 75% to 80% of the \$17,000 is the developers' responsibility. This is an issue which is related to the utilities. The original agreement stated the developers would provide for all utilities, with the exception of water was extended on West Street. The developers also paid for the sanitary sewer as well as the

storm sewer while the City paid for Center Street. Austin stated he would provide a report once

the final numbers are figured.

IT WAS MOVED BY PFALLER and seconded by HODGES to accept Change Order No. 1 with the developer paying all of the \$2,100.00 for the conduits.

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

IT WAS MOVED BY PFALLER and seconded by MATHEWS to accept Change Order No. 2 in the amount of \$17,314.50 noting the developers will be responsible for 75 to 80 percent of the cost, but not holding to an exact figure.

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

IT WAS MOVED BY HODGES and seconded by MATHEWS to accept Change Order No. 3. which results in a net gain of \$4,441.31.

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

Item #5. **COPIER QUOTATIONS/REQUEST TO PURCHASE-LEASE FOR THE POLICE DEPARTMENT.** Police Chief Jim Valentine stated the department solicited bids for used or demonstrator copier machines. Bids were received from six vendors. Valentine recommended the Council approve Digital Office Machines for a Ricoh. This produces 55 copies per minute which is faster than any other copier bid. Digital Office Machine will carry a no interest lease agreement for 24 months. There is no penalty, if the department decides to purchase the copier prior to the end of the rental/purchase time period. The monthly lease would be provided from the Equipment Fund.

Mayor Pro Tem Myers questioned the bid from Adams Remco. This bid was less, although it produces fewer copies per minute. Valentine explained on a lease option of 24 months would cost \$4,000. The initial bid to buy the machine outright is \$2,995.

IT WAS MOVED BY HODGES and seconded by PFALLER to enter into an agreement for a rental/purchase agreement with Digital Office Machines for a Ricoh copier.

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

Item #6. **APPROVAL OF 2005 CITY COUNCIL MEETING DATES.** The following Council meeting dates were presented for consideration:

JANUARY	3 18	(TUESDAY)	JULY	5 18	(TUESDAY)
FEBRUARY	7 22	(TUESDAY)	AUGUST	1 15	

MARCH	7 21	SEPTEMBER	6 19	(TUESDAY)
APRIL	4 18	OCTOBER	3 17	
MAY	2 16	NOVEMBER	7 21	
JUNE	6 20	DECEMBER	5 19	

IT WAS MOVED BY MATHEWS and seconded by PFALLER to approve the meeting dates for 2005 including a meeting to be held on Monday, April 4, 2005.

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

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

Item #8. **CITIZEN COMMENTS**. John VanderWilp 1264 Fun Street wanted to discuss the original property which was owned by Tracy Mullins, 901 Grindle. This involves the activity of a City Councilmember, City Manager, City Assessor, and Fire Chief who also serves as Wastewater Treatment Operator. VanderWilp believed it would be interesting to see how many hours he is expected to serve when the compensation is the same. But he would save that one for another day.

He harbors no ill will or malice for anyone involved. This is not the intent. His intent is for things to be done correctly and legally. When he served on the Planning Commission, Al Mathews and his wife requested a variance on the property for a private drive so they pursue interest of buying the five acres, which was for sale by Tracy Mullins, and begin planning their new home. The Mathews' were granted a variance, but chose not to buy the property. The property was later sold to another party. This party began to develop this property with every intent to maximize a return without going through proper procedures believing they could get around everything which may stand in another person's way. VanderWilp believes they believe this because of the relationships they have developed with the City insiders and the position one may know hold as well as the position another relative now holds in the City.

When the variance was given to make the property usable for another building site, the Planning Commission recommended approval based on one or two new homes being served by a private drive. Since the time the private drive had been installed, three new homes have been built. When the third home was built, the owners did this in violation of City ordinances and the driveway become illegal as well as the entire property. There is now an illegal driveway, illegal activities as

well as a non-complicate parcel. The parcel should have been brought into compliance rather than

waiving a magic stick as was done by the Council on June 7. It took a variance to get a private road and only took a magic stick to change it to a private street. The agenda from the June 7th, 2004, reads "Consideration of a Private Street serving 911, 925 and 951 Grindle". This alone shows the property out of compliance and they are trying to do something after the fact. This was not a private street and should not have been considered as it was not compliant to the ordinance.

At the meeting of July 19, 2004, VanderWilp questioned how a driveway can magically become a private street. No answer was given. Then he was assured it would be forthcoming. To date, he has not received an answer.

He questioned the status. The third house has now sold and this piece has also been split. This was the fifth split and according to the City Assessor, this was not legal. The City is violating their own ordinance and State law as well as being involved in illegal activity.

VanderWilp believed the developer had every intent to fly under the radar. He believed they could get away with this because of the positions they hold. The property must conform to State and local laws before any other changes can occur.

VanderWilp questioned how the Council will deal with this.

City Manager Pasquale stated he would make sure VanderWilp receives a letter from the office of City Attorney Richard Wendt's office explaining the procedure. Pasquale believed the procedure will show this was a legal process.

Item #9. **COUNCIL COMMENTS.** Councilmember Pfaller questioned the response time on the sewer backup and Canfield's service. Public Works Director DesJarden stated the City has not had an opportunity to use Canfield.

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

1. The following boards and commissions meetings minutes are provided:
  - Look Memorial Committee meetings of April 21 and June 21, 2004
  - Lowell Board of Light and Power meeting of October 28, 2004
  - Lowell Board of Cable Television meeting of October 28, 2004
  - Airport Board meeting of November 2, 2004
  - Parks and Recreation Commission meeting of November 13, 2004
  - Chamber of Commerce meeting of November 9, 2004
2. In a meeting between Vergennes Township Supervisor Tim Wittenbach, Mayor Shores and Pasquale, a meeting between the City Council and Vergennes Township Board is scheduled (subject to the respective Boards' approval) on Monday, January 10, 2005 at 7 p.m. in the City

Hall Second Floor Conference Room to discuss a possible 425 agreement involving the 177 acre property near the intersection of Vergennes and Alden Nash.

Councilmember Pfaller referred to the position Vergennes Township took several years ago when they chose not to purchase a portion of the sewer treatment plant and the water treatment plant. In his opinion, the City should allow the annexation process to go through. If this does not go through then it may be time to discuss a 425. As long as the annexation process has been started by the developer, he sees no reason to meet with Vergennes Township until the process fails. Other Councilmembers expressed an interest to meet.

3. City Clerk Morlock explained with the Consolidation of Elections taking effect January 1, 2005, the dates to conduct all federal, state, county, city, township, village and school elections are restricted to four dates each year. The fourth Tuesday in February, the first Tuesday after the first Monday in May, August and November. The City of Lowell Primary will be held in August instead of September of the odd year and the General Election in November. The August date would be less confusing for the voters and if another issue by the federal, state or county is placed on the ballot, many of the expenses would be cover by them. The filing petition dates for Council election will change.
4. The City offices will be closed for Christmas on Friday, December 24 and Monday, December 27. Also, the offices will be closed Friday, December 31 for New Year's Day.

## ***MERRY CHRISTMAS AND HAPPY NEW YEAR!***

Item #11. **APPOINTMENTS**. No appointments were made

Councilmember Pfaller asked if there has been anything done with the home on Bowes Road, which is in violation of the setback. City Manager Pasquale questioned what Pfaller would expect from this. Pfaller believed this issue should be addressed. He suggested the City Attorney review.

IT WAS MOVED BY HODGES to adjourn at 8:25 p.m.

DATE:

APPROVED:

---

C. Jeanne Shores, Mayor

---

Betty R. Morlock, Clerk