

**LOWELL TOWN COUNCIL
REGULAR MEETING
APRIL 14, 2008**

The regular meeting of the Lowell Town Council was called to order on Monday, April 14, 2008 at 7:00 P.M. by President Phillip Kuiper. The Pledge of Allegiance was recited and a moment of silence was observed remembering the Talarek family for the loss of a family member and the Smith family since Mr. Smith was injured at work. Clerk-Treasurer Judith Walters called the roll. Members present were Donald Huseman, John Alessia, Phillip Kuiper and David Gard. Councilman Shane Tucker was absent. Also present were Town Attorney Greg Sobkowski, Director of Public Works Greg Shook, Director of Community Development Wilbur Cox, Police Chief John Shelhart, Greg Guerrettaz of Financial Solutions Group and two members of the media and forty five interested citizens.

APPROVAL OF MINUTES

Councilman Gard made a motion to approve the minutes from the March 24th regular meeting and the March 31st and April 7th executive sessions, seconded by Councilman Huseman. The motion carried by voice vote.

APPROVAL OF VOUCHERS

President Kuiper stated that he had reviewed White Vouchers #1325-1409, White Police Vouchers #4029-4036, Water Vouchers #2184-2224 and Waste Water Vouchers #3147-3186 and recommended them for approval. Councilman Huseman made a motion to approve the vouchers as listed, seconded by Councilman Alessia. The motion carried by voice vote.

PETITIONS, COMMUNICATIONS, REMONSTRANCES, PROCLAMATIONS

Proclamations - State Champions - Lowell High School Devlins Dance Team - President Kuiper recognized the large group representing the Lowell High School Devlins Dance Team who are the new state champions. He read a proclamation recognizing and commending the accomplishments of the dance team and called them forward for a group photograph. He then asked someone from the group to explain how the competition works. Coach Bridget Hoffman explained that there are two different divisions, the Hip Hop Division and the Pom Division. They took State in the Hip Hop Division. She explained that the girls learned two different Hip Hop routines at a summer camp last year that just didn't work and the girls came up with their own routine which is the one that won the competition. They competed against eight other teams in Hip Hop and six other teams in Poms. They will now move up a level to Intermediate next year. This is the first state championship for the Lowell Dance Team and they said it would not be the last.

Letter of Resignation - President Kuiper read a letter of resignation from Kari Wasserott from the Lowell Historic Preservation Board. Councilman Gard made a motion to accept the letter of resignation, seconded by Councilman Alessia. The motion carried by voice vote. Discussion

followed and it was decided to take applications to the end of the month.

Recognize Outstanding Law Enforcement Officers - President Kuiper stated they are very honored to have two officers from Lowell that were recognized as Outstanding Law Enforcement Officers. Officer Nicholas Schuyler was present and was called forward. President Kuiper read a brief description of his actions that saved a choking victim in her home. He also read a brief description of the actions of Officer James Woestman who responded to a domestic disturbance call and followed up with investigations that resulted in charges being filed. Officer Woestman was not present at the meeting. Officer Schuyler explained that they were nominated for recognition by their supervisor and were honored at an awards banquet.

MONTHLY REPORTS

Councilman Huseman made a motion to approve the monthly reports from March, 2008 as submitted, seconded by Councilman Gard. The motion carried by voice vote.

STANDING COMMITTEES

Annexation Committee - Mr. Guerrettaz of Financial Solutions Group reported that they have all of the necessary information from the different department heads. They are now proceeding on finalizing the ten fiscal plans for the ten different areas. He said he hopes to be able to have the paperwork to the Council in the next couple of weeks and reported that Attorney Sobkowski is working on the ordinances that will be attached to the fiscal plans, at which time they will be complete documents.

ORDINANCES & RESOLUTIONS

1st & 2nd Reading - Ordinance #2008-07 - amend Salary Ordinance #2007-17 Code Enforcement Official - President Kuiper read Ordinance #2008-07 to amend the Salary Ordinance #2007-17 regarding the Code Enforcement Official. Councilman Huseman made a motion to hold over Ordinance #2008-07 for second reading, seconded by Councilman Gard. The motion carried by voice vote. Councilman Gard made a motion to set the rules aside, seconded by Councilman Huseman. The motion carried by voice vote. Councilman Gard made a motion to adopt Ordinance #2008-07, an amendment to the Salary Ordinance #2007-17, by name and title only, seconded by Councilman Alessia. Roll call vote carried with four ayes. Councilman Huseman made a motion to set the rules back in order, seconded by Councilman Gard. The motion carried by voice vote.

Resolution #2008-07 - transfer of funds - Local Road & Street - President Kuiper read Resolution #2008-07 to transfer funds in the amount of \$20,000 within the Local Road & Street Fund. The transfer does not affect the balance in the fund. Councilman Huseman made a motion to adopt Resolution #2008-07, seconded by Councilman Gard. The motion carried by voice vote.

UNFINISHED BUSINESS

Lowell Utilities Update - Nothing was reported for any of the following items: WWTP JMOB Requests, WWTP Phase II Project, Water Infrastructure Improvement Plan, Storm Sewers/Lift Stations, East Side Sewer Easements.

Hilltop Stormwater Project - Director Greg Shook reported that all of the pipe is in. They plan to start moving pipe over to East Hilltop Court on Wednesday and the project will probably start next week.

Northwest Water Improvement Project - Director Shook reported that they have received the construction permit from IDEM. Listed under New Business on the agenda is an agreement with CSX for a rail road crossing. Engineering drawings and specifications have already been given to prospective contractors. They are hoping to get this project going around the first of May.

HES Grant for the Intersection of Burr Street and State Road 2 - Director Shook reported that they are waiting on one right-of-way acquisition. There were five that were needed and they have four of them. Once the final is in, it is his understanding that INDOT will allow it to be taken out for bid. President Kuiper asked Director Shook what he thought the time frame was on this project. Director Shook said the last conversation he had with Butler, Fairman & Seufert was that they thought some time in July, but with the delay in right-of-way acquisitions, he will have to find out if they think that will significantly affect that schedule.

Total Patcher - Director Shook stated that he had mentioned the Total Patcher at the last meeting which is a process that many cities and towns are going to instead of doing cold patching. He provided a packet of information regarding the Total Patcher, which is one of those type of machines. He reported that he and Street Superintendent Frank Lovely visited Cedar Lake since they have one and have been using it for the past year. Cedar Lake is very pleased with the machine and said they have not had to go back over any of the holes that they have patched with it. The process holds up much better than cold patch. He reported that the City of Crown Point has one and the Lake County Highway Department has one and is considering purchasing a couple more. The total costs for the Total Patcher equipment itself, along with the 6,000 gallon elevated tank, the concrete containment area surrounding the tank and the electric service to hook it up is estimated to be somewhere around \$104,000. The materials to get started would run somewhere around \$4,000 for the oil emulsion and stone. Director Shook estimated that they use somewhere between \$15,000 and \$20,000 for cold patch. He stated the information packet provided a comparison that cold patch runs somewhere around \$75 to \$80 per ton and this process runs somewhere around \$20 to \$30 per ton. There is savings in the process, but the biggest savings is that you don't have to go back every week or so patching the same hole. They did a demo almost two years ago behind the fire station on a road cut they made for a storm sewer installation. They went back today to check on it and it is still holding up. It needs to have a little more added to it from settling but there is no cracking, chipping or peeling. He asked if the Council was interested in pursuing this, could the Clerk-Treasurer and financial consultant look into seeing if there is a way to make the purchase. President Kuiper commented that he would like to pursue this since cold patch doesn't last and the town doesn't know what it is going to get as far as the availability of future funds for re-paving. Councilman Gard made a motion to

allow the Clerk-Treasurer to look into the matter, seconded by Councilman Huseman. Councilman Alessia asked if there were any limitations to the use of the machine, such as certain times of the year. Director Shook explained that there are limitations, but you can use it longer than you can cold patch. The machine can be used when temperatures are down around 20 degrees, whereas with cold patch, it won't stick when it's that cold. Also, if there has been some rain, with the Total Patcher, you only have to blow the water out of the hole and it sticks. It can be used more often in different types of weather situations than you can cold patch. The motion carried by voice vote.

President Kuiper commented to Director Shook that the reason he asked about Burr Street and Route 2 was because of the rough spot in front of Kentucky Fried Chicken where there is a patch from a water main repair. Director Shook reported that Street Superintendent Lovely had a call about that spot earlier in the day and he was going to take a look at it. Since he had not spoken with him since then, he did not know what Superintendent Lovely determined.

Rates & Charges & Miscellaneous Revenue - Greg Guerrettaz of Financial Solutions Group addressed the Council regarding the financial status of the Water and Waste Water Utilities and the General Fund, in which he includes the General and Town Funds. He said he would not be looking for any decisions right away but was hoping to enlighten them on a few things. He referred to three documents provided for the meeting. One was a Water Report in draft form, second was a Waste Water Report in draft form and the third was something he has been calling Operation Stay Ahead which is kind of a document on how to stay ahead in certain things by exploring new revenue and cutting expenses. The town has done very well over a period of years in keeping expenses in check. The water and waste water reports go back to 1998 and 2004 to show the history. The General Fund is experiencing continuing pressures as a result of HB1001 and he said he would spend a little time on this later in his presentation. At this time, he went to the board to discuss the Water Utility report. He said that there are over \$8.8 million of capital improvement projects needed over the next four years and he has coded some of those amounts to indicate where developers are paying and where some of them lie on the priority list. It is a fact that the utility needs more revenue. Two significant projects make up a large part of the \$8.8 million. One of them is a source of supply costing an estimated \$1.8 million in 2008 which has two possible options. One option is more cost effective at around \$30,000 to \$50,000 and the engineer is looking into this. Another option is buying quarry water or drilling more wells, costing \$1.8 million. The next project on the five-year capital improvement plan, once source of supply is added, capacity will be added to the treatment plant at an approximate cost of \$3.8 million. There is approximately \$400,000 in the Improvement Fund, which is not very strong, because rates have not been adjusted since 2000. There is a need to develop a System Development Charge (SDC) to most likely be charged to new development since most of the \$8.8 million in improvements is to develop capacity for growth and new development. He compared and contrasted the Water Utility to the Waste Water Utility which is a stronger utility on a revenue basis. Upon review, based on a revenue standpoint, the preliminary numbers show it could possibly bear a 12% to 15% decrease, which would yield approximately \$300,000 per year. In looking at the five-year capital improvement plan, there are two major projects. One is an activated control project that ranges in estimated cost from \$1.2 to \$2.5, depending on the sharing with Cedar Lake. The second major project is interceptor improvements of

approximately \$1.5. Over the next four-year period, he estimates \$2.7 million in improvements. If Cedar Lake were not to share in the project, there would be approximately \$4 million to be spent over the next four years. The utility has really been saving its money and because the debt from the new project took some time to phase in, there is approximately \$4.7 million in the bank, due in part to a much higher connection charge which has helped build for the future. There is also a \$1.8 million East Side Sewer Interceptor that a developer is getting recapturement on and it is his understanding that the utility will buy that over some period of time. There is also a pretty high debt load for the Waste Water Utility. Between now and 2026, there is approximately \$17 million principal and interest to be paid back. This is not so bad when looking at the life of the plant because the life of the plant was built over the next twenty years, but it still requires about \$1.1 million payment. Some possible goals have been discussed for the future. One is a possible rate decrease in the Waste Water Utility and since the Water Utility needs additional revenue, a possible solution would be to take the rate decrease from Waste Water and make a rate increase to Water to offset the decrease. Some other goals include starting to reduce the liability of the buy back of the East Side Sewer and one option is to buy back approximately 55%. They can't buy back all of it but he would like to start making some headway toward buying it back. This would be about \$1 million or slightly less. Another short term/long term goal is to buy down some of the debt. The 1993 Revenue Bond issue is still outstanding at about \$500,000 at 6.15% interest. This would save up front about \$30,000 to \$40,000 due to the low interest income rates. Plus, overall, the long term health of the utility would be to get rid of as much debt as possible. The other debt is at much lower interest rates and even though there is a fairly high debt burden, the cost of maintaining it is fairly low.

Mr. Guerrettaz moved to the General Fund. As a result of HB1001, the town will see reduced revenues. The Legislative Services Agency (LSA) put out a very large book backing up the 805 pages that made up HB1001 and the projection of the final version appears to be a little less than was first anticipated. Property tax revenues cannot be grown in 2008 because they are still frozen and 2009 and 2010 do not look much better. He believes the Council needs to focus some time on the document he calls Operation Stay Ahead where there are thirteen things to think about. Some of them may be long term over the next year or two but they impact where the revenues go in the General Fund. One thing he pointed out is there is a hydrant rental fee in the General Fund as an expense that a lot of utilities have now transferred over to the Water Utility. This public hydrant rental is paid out of the General Fund to the Water Utility to maintain the water hydrants. What is normally done is it is transferred to the Water Utility and to make up for the loss of revenue stream, a charge of some kind would need to be established. This amounts to approximately \$180,000 per year. Other things that are going on across the state is that people are creating what they call Payment in Lieu of Tax. This would be re-created in Lowell because the Water Utility sent a payment over to the General Fund for payment in lieu of tax years ago. This basically says that the water and waste water utilities would be taxed as if they are private. Mr. Guerrettaz explained that there has been a state statute on the books for well over thirty years that is even an IURC allowed expense and is paid to the General Fund for tax dollars equal to if these were owned by Indiana American. In communities where the water and waste water utilities are owned by Indiana American, these are being paid by Indiana American. This does put operating expense pressure on each of the utilities. One suggestion is to possibly have Waste Water make a payment since they did not back when Water made the payment. He will

need to review the ordinances and history to make sure that is allowed, but that is one possible additional source of revenue for the General Fund. The dividing walls between the utilities and the General Fund can only be crossed when there is legislative authority. Another thing that is being done across the state is the creation of a storm water fee because they have been using MVH funds for cleaning roadways and taking care of storm water issues. Lowell has a Cumulative Sewer Fund that is receiving money and is taking care of some of that need, but that will be affected by the Circuit Breaker. A storm water fee is normally about \$5 per home and the larger the business, the higher the fee. This is just another suggestion to be considered for additional revenue. He said now that he had reviewed the financial condition of the Water, Waste Water and General/MVH Funds, it would be time to be looking at the 2009 budget in about three months. In his discussions with Clerk-Treasurer Walters and President Kuiper, he has suggested doing a three-year budget from here on out instead of a one-year budget because what is going on with the Circuit Breaker impacts from 2008 to 2010 and beyond. He is recommending the three-year budget plan to all of his clients from large counties to very small towns. He pointed out several other items in the Operation Stay Ahead document that the Council may want to think about. One community outside of Indianapolis implemented an \$1,800 Park Impact fee and a \$900 Road Impact fee for new housing coming in. He reminded them that in order to implement these kind of fees, a comprehensive and detailed traffic impact analysis must be done by an engineering firm or park master planning firm, but these kind of fees are on the rise throughout the state. The caveat to these fees is the cost for the engineering firm in the neighborhood of about \$50,000 and for the park firm in the neighborhood of about \$25,000 to prepare these kind of studies. He said two years ago, the Council wanted to wait to consider increasing building permit fees. Review of building permit fees has indicated that the Town of Lowell is anywhere from 25% to 50% less than most surrounding communities at the current time. Storm water permit and user fees are another consideration. A storm water permit fee is a one time fee for new homes and a user fee is a reoccurring fee that he already spoke about. A Waiver of Subdivision fee is something that staff has been recommending. A Tax Abatement fee is something that is used by Crown Point that also has a renewal fee. Allen County charges 20% that is used for future economic development. Another staff recommendation is a Street Vacate fee. Other items include a voluntary annexation fee and a business license fee. A business license fee would help keep track of businesses in town. Each of his suggestions would have to be put together by ordinance and each has pros and cons. He reviewed alarm permit fees, public hydrant rental fees and payment in lieu of tax fees. In summary, he reviewed decreasing waste water rate charges and increasing water rate charges. President Kuiper asked if they would just transfer the 15% decrease from waste water and increase water rates by 15%. He also asked if a payment in lieu of tax should be considered for water. Mr. Guerrettaz said at this time, the water utility really could not afford the payment in lieu of tax. He also explained that water rates are about 50% of waste water rates when using an example of 5,000 gallons used so a decrease in one and an increase in another is not exact. He said a cost of service analysis or consumer study would need to be done, using data from the software vendor. They have also looked at lowering the minimum charge for many communities since usage patterns have changed quite a bit over the years. The minimum gallonage for the utility has not been looked at in a long time but they now have the data they can use to do an analysis. He said that he would love to see the hydrant fee switched from the General Fund to the Water Utility, but that would almost be the same as Payment in Lieu of Tax and it would be too much of a burden on the Water Utility without an

increase in rates to offset the expense. Something to be kept in mind is that what is done in one utility or area can sometimes impact another. He said with direction from the Council he would go ahead and do the mathematical analysis and look at the minimum charge on water, the calculation of payment in lieu of tax on waste water and come back with the longer term goals on Operation Stay Ahead. President Kuiper said he thought it would also be a good idea to meet with Cedar Lake and see where they stand with the future of the WWTP. Discussion followed regarding the lack of confirmation of the 2008 budget, the need to look farther ahead than just one year as far as planning for future growth and the needs that come from that development and growth.

Tabled from previous meetings:

12/10/07 - Paving of street in Meadowbrook Subdivision - John Masepohl, 323 Spruce Court, member of POA Board of Directors, questioned the scope of work for the paving of alleys to be done in Meadowbrook. He said right now the paving extends from fence to fence in two alleys between Meadowbrook Drive and Sycamore and the alley behind and to the east of Greenbrier. Those two alleys are in pretty good shape. He said it was their understanding that it was a plan of the developer to do the two remaining alleys which would be the alley between Meadowbrook Drive and Dogwood and Dogwood Lane and Greenbrier. He asked if fence to fence paving method was going to be included in the paving specs or if not, how is it going to be done. He said he understands there are some mitigating factors that make it not an easy thing to accomplish. He said he may be a little premature, but he thought they would be working on the pavement specs for the bid documents. Director Cox reported that in researching the records, there are sixteen foot easements that are called easements for drainage and access. He said they do not have the authority to pave on private property so the maximum width of the alleyway will be sixteen feet. Mr. Masepohl asked how the transition will be made from the sixteen foot alley and the aprons for the existing garages or the long aprons that go down to the curb on the north-south alleys. The aprons are very long and when you have a sixteen foot strip that is now paved between eighteen and twenty feet, when you go back in and re-pave it, how do you make the transition between new and existing. Councilman Huseman said they would grind it down and make a butt-joint.

01/14/08 - No parking snow ordinance - Director Shook said he has other pressing issues to deal with and has kind of placed this item on the back burner. He requested this be taken off of the agenda for now and he will bring it back in the fall. Councilman Gard made a motion to remove the item from the agenda, seconded by Councilman Alessia. The motion carried by voice vote.

03/24/08 - Approve Zone change for A-1 to R-2 subject to receipt and execution of recorded zoning commitment (1st reading of Ordinance #2008-08 zone change) - Panagakis, 173rd Avenue - Councilman Gard made a motion to adopt Ordinance #2008-08 with Zoning Commitment, seconded by Councilman Huseman. The motion carried by voice vote.

NEW BUSINESS

Enter into agreement with CSX - pipeline crossing for Northwest Water System Improvements - Director Shook requested approval from the Council to enter into the agreement with CSX Rail Road. There are fees that need to be paid and it is like a lease agreement for a pipeline crossing for the Northwest Water System Improvement project. The fees are a total of \$5,125 and are

similar to the fees paid for water and sewer crossings on other projects. Councilman Huseman made a motion to enter into the agreement with CSX, seconded by Councilman Alessia. The motion carried by voice vote.

Accept bond for Police Commission Secretary Richard Neal - Councilman Gard made a motion to accept the bond for Police Commission Secretary Richard Neal, seconded by Councilman Alessia. The motion carried by voice vote.

Standing water, grading and health and safety issues - Adam Gutjahr, 420 Greenbrier, addressed the Council and thanked them for allowing him time to speak. He referenced a diagram to illustrate what he was talking about. He said the problem arises from two vacant lots in Meadowbrook on the west side of Greenbrier Lane that have not been sold by the developer, James Prange of Meadowbrook LLP. The lots are between 402 and 414 Greenbrier. There is an existing problem with standing water on these lots that attracts mosquitos, the carriers of West Nile Virus and this is definitely a health hazard. The developer refuses to fill in the basins that collect the water. He provided photographs that went back to 2004 when his house at 420 Greenbrier was put in. He said that if the town is considering calling in the bond because of non-compliance of the final paving of roads and alleys, they need to consider that a channel of water runs under the alley between Dogwood Lane and Greenbrier Lane and that hydrostatic heads of water are in the center of the alley, causing the center of the alley's current surface to break up when the water freezes. Mr. Gutjahr gave an example of water running by citing the fact that when Lot 427 was built, a sump pump system was put in and ran continuously. He also said that Mr. Prange's wife, who is the secretary in the office, called him back in 2003 when he requested that the lots be filled after his house was completed and he had moved in. She informed him that the lots would never be filled in because they would just have to be dug out again when the lots were sold and construction began. It is now five years later and he has not seen any recent advertisements listing those vacant lots in any real estate magazines. He wondered if anything would ever be done with the lots. He also noted on his diagram an area in the middle of Greenbrier Lane that has water coming up through the asphalt that would just cause a new surface to break up as the old surface is doing now. He said he thought the Council would want to consider that, not only for the benefit of the residents but also for the benefit of the dollars the town will be putting out. He said once the home was built on 414, the water running at 427 pretty much subsided. He also reported that the homeowner at 419 has mold growing on the inside of her garage walls. He said all of his attempts to talk to James Prange and Joe Rehling have resulted in nothing be done. He then continued by saying that the grade elevation of the alley in relation to the grade elevation of garage floors should be looked at because the current level causes the cars to drag the edge of their stone shield when coming and going from the garages. He also noted that there are some residents who need to use motorized scooters that cannot access or exit their garages because the surface of the garage floor and the surface of the alley is not within a tolerable amount for the wheels of the motorized scooter to roll over without the possibility of causing the scooter to roll over. In places there is a three inch drop. He said he has been in to talk to Director Shook about the standing water and there is a terrible stench in the summer time. President Kuiper asked if Mr. Gutjahr had any suggestions for solutions. Mr. Gutjahr said he is not a professional, but it was his opinion that the alleys were laid out wrong and at the very least, the manhole needs to be raised up. Councilman Huseman reminded Mr.

Gutjahr that the bonds are only liable for the paving of sixteen foot of alley and the paving of two streets. Mr. Gutjahr was asked if the POA's attorney had been notified of the problem. Mr. Gutjahr stated he had not presented this to the POA yet. He brought it before the town because of the paving work that was being planned. Director Cox reported that in his last conversation with Harris Bank when dealing with the bonds, he was informed that Harris Bank is foreclosing on the rest of the property in Meadowbrook. He said he did not know if any of the people in Meadowbrook had been notified of that and his thoughts are that they will be dealing with Harris Bank on these problems, not Mr. Prange and anything that is undeveloped out there will soon become Harris Bank's. With regard to the easements, he wanted to make something perfectly clear that he has never swayed from, he has included the re-paving of the alleyways, even though they are absolutely private property. They are part of the POA, they are not public right-of-ways. The town is going to do the paving in there, but once the paving is completed, it is no longer the town's and the town will not touch them ever again. That is part of whatever was set up with Prange and Rehling and the rest of them. He does not have the slightest idea of how it goes because he has not seen how it was broken down. Those are not the town's alleyways, they are the project's alleyways. The town will do as much as they can with the money they have to make sure the stuff is put in sufficiently. When he and Councilman Huseman went out there, they saw the drainage problems. They even saw where water was running into people's garages because of the very bad grading and paving. The town did not create that, but they are going to try to do what they can to fix it, but once it is fixed, it is done and it is not the town's. No one can come back to the town to say they have to do something for them because it is not the town's. It is absolutely private property. The only thing that is the town's is Meadowbrook Drive. Mr. Gutjahr said that when Mr. Prange began the apartment phase of the project, they were taking truck loads of dirt out. He said he begged them to put some of that dirt in the vacant lots at that time and they refused. He said he is very glad that Harris Bank is taking over because even though he loves Lowell, he would never recommend any of his friends to build in Meadowbrook with Mr. Prange.

Use of town right-of-way - Jeff Paciorek, 399 Clark Street, addressed the Council. He has purchased the property that used to be known as the Mermaid Café and he is opening up a deli there. There is a screened-in area there where he would like to put a couple of tables and benches for people to sit down while they wait for their food. The deli will be strictly carry-out service. He said he was informed that there is an easement that runs through the screened-in porch and that he needed to ask for permission to put some benches and tables in that area. Director Cox reported that the building was used and had outside dining in what he calls the 'bird cage'. Once the owners left and they were trying to sell the building, he was provided with a copy of a location survey that indicates that the east two foot of the building and the 'bird cage' sit in the road right-of-way. He said he did not know how that happened in the past and a lot of time could be spent looking up history. Mr. Paciorek was there to formally ask if he could use the area, even though it is the same use it had before, because it sits in the town right-of-way. He said he does not know what the proper resolve is, but he knows it was used for not only waiting for food because it was not only take-out, it was a dine-in restaurant. He said if Mr. Paciorek wanted to continue to use the area as it was used before, it is certainly fine with him. The proper way to use a public right-of-way is to come before the Council to request the use. He said he did not know if there was some kind of easement required. The building has existed for some time as it is and

he said he is hoping that Mr. Paciorek will take his advice when he gets open and gets a little money in his pocket to have a proper survey done so they will know exactly what is out there. He said as a matter of fact, part of the parking lot is in the public right-of-way but he would rather see an occupied building than a vacant building. Attorney Sobkowski said he has dealt with this issue before in other communities and assuming the Council is willing to grant approval, what they have done in that instance is to draft a short, one-page encroachment agreement where the property owner acknowledges that his private improvement encroaches into the right-of-way and if that right-of-way ever becomes necessary for town purposes, that the owner will move out so that the town is protected if the right-of-way ever needs to be used. He recommended if they grant approval, it be subject to the owner signing something to that effect. Councilman Huseman made a motion to grant the use of the town right-of-way by Jeff Paciorek at 399 Clark Street, subject to signing an encroachment agreement, seconded by Councilman Gard. Mr. Paciorek was asked what kind of deli he was going to be opening. He explained it would have sausage and lunch meat that could be bought by the pound, along with carry-out pizza, roast beef, meatballs, spaghetti, ravioli, etc. The motion carried by voice vote.

ANNOUNCEMENTS

President Kuiper announced that the library had a museum on Saturday for World War II POW vets that was very good. They had a very good turnout with people standing in line waiting to get in.

President Kuiper announced the next regular meeting will be held on Monday, April 28, 2008 at 7:00 P.M.

MEDIA QUESTIONS/PUBLIC COMMENTS

John Masepohl, 323 Spruce Court, commented on the West Nile Virus issue brought up by Mr. Gutjahr. He asked if there was any ordinance in place that kept people from creating such a situation since the town spends a great deal of money spraying for mosquitos. Director Cox stated that once they begin dealing with Harris Bank, he will inform them that the lots need to be filled in, leveled out and seeded as a requirement of the property maintenance code. He said it is just a matter of getting the right people to deal with since he has not heard anything from Mr. Prange or Mr. Rehling since the apartments were completed.

Elaine Zacky, 405 Dogwood Lane, said she lives behind the pool of water and asked who would be liable if a small child drowned in the water. Attorney Sobkowski stated the property owner, the owner of the lots, would be responsible. Ms. Zacky asked if the residents in Meadowbrook could also be sued. Attorney Sobkowski explained that for a filing fee, anyone can file a lawsuit against whoever they want. He said if there is a POA and the person who was injured thinks the POA had some responsibility, the POA may be sued. He didn't think individual residents would get sued but anything can happen.

John Smith, 1325 Driftwood Drive, asked what has happened with the school next door to the Town Hall. Director Cox explained that the town attorney gave them some good advice that

they should be pursuing this under the unsafe building ordinance rather than the property maintenance ordinance like they were trying to do before. By doing that, it got them into the building much quicker. On Tuesday the judge gave them an emergency access warrant to enter into the building on Wednesday morning at 9:00 a.m. to do an assessment of the building. They contracted with an architect who is familiar with historic buildings and an appraiser because they need to know what the building is worth today. The town's Code Official, the Fire Inspector and President Kuiper also went in to do the assessment. He expects to have the architect's report back within two weeks giving the condition of the building along with his estimates of what it would cost to make the building occupyable. They will also be getting an appraisal report from the appraiser giving the worth of the building when he went into it but the appraiser will need some of the information from the architect's report to complete his report. Mr. Smith then asked what was going on with the quarry water. President Kuiper reported that they have requested a meeting at which time they will begin negotiations to reach a contract agreement.

There being no further questions or comments from the media or public and no further business or discussion, Councilman Gard made a motion to adjourn, seconded by Councilman Huseman at 8:40 P.M.

Attest:

Phillip Kuiper, President

Judith Walters, Clerk-Treasurer