

**LOWELL TOWN COUNCIL  
REGULAR MEETING  
MAY 27, 2008**

The regular meeting of the Lowell Town Council was called to order on Tuesday, May 27, 2008 at 7:00 P.M. by President Phillip Kuiper. The Pledge of Allegiance was recited and a moment of silence was observed. Clerk-Treasurer Judith Walters called the roll. Present were Council Members Donald Huseman, Shane Tucker, John Alessia, Phillip Kuiper and David Gard. Also present were Town Attorney Greg Sobkowski, Town Administrator Susan Peterson, Police Chief John Shelhart, Community Development Director Wilbur Cox, two members of the media and nineteen interested citizens.

**TREASURER'S REPORT**

Councilman Tucker made a motion to approve the Treasurer's Report for April, 2008 as presented, seconded by Councilman Gard. The motion carried by voice vote.

**APPROVAL OF MINUTES**

Councilman Alessia made a motion to approve the minutes from the May 12<sup>th</sup> regular meeting and the May 12<sup>th</sup> and May 21<sup>st</sup> executive sessions, seconded by Councilman Tucker. The motion carried by voice vote.

**APPROVAL OF VOUCHERS**

President Kuiper stated that he had reviewed White Vouchers #1511-1556, Water Vouchers #2288-2319 and Waste Water Vouchers #3240-3263 and recommended them for approval. Councilman Gard made a motion to approve the vouchers as listed, seconded by Councilman Huseman. The motion carried by voice vote.

**SPECIAL COMMITTEES** - Annexation Committee - Clerk-Treasurer Walters reported that they received ten fiscal plans for the ten pockets on Friday afternoon from Financial Solutions. She has turned them over to Attorney Sobkowski to begin the Ordinance procedure.

**ORDINANCES & RESOLUTIONS**

1<sup>st</sup> Reading - Ordinance #2008-11 - amend Chapter 92 - animals - President Kuiper commented that these changes are the result of some suggestions made by Chief Shelhart. He said the ordinance is quite lengthy and asked Attorney Sobkowski to review the changes being made. Attorney Sobkowski stated there are changes being made throughout Chapter 92. Additions being made include definitions, a new section on animal care, a maximum number of animals being kept, an animal bites provision, a nuisance provision, an animal waste provision, all of which are new sections to address things that were not previously covered. Councilman Gard made a motion to hold over Ordinance #2008-11 for second reading, seconded by Councilman Huseman. The motion carried by voice vote.

1<sup>st</sup> Reading - Ordinance #2008-12 - amend Chapter 90 - junk vehicles - President Kuiper asked Chief Shelhart to explain the changes being made to Chapter 90. Chief Shelhart said that a lot of the material deals with matters such as out-of-state vehicles and vehicles with lights and other types of infractions. It is being added to the junk vehicle ordinance in order to be able to write town ordinance tickets versus state statutes. Councilman Huseman made a motion to hold over Ordinance #2008-12 for second reading, seconded by Councilman Gard. The motion carried by voice vote.

Public Hearing - President Kuiper opened the public hearing regarding the request to vacate the public right-of-way of Burr Street north of 175<sup>th</sup> Avenue. Marlin Michael, 17337 Michael Drive, said his house is adjacent to Burr Street and Burr Street is their back yard. He asked if Burr Street is vacated and the land goes along a person's property, can they move stuff to that area. He also asked who is liable for that as far as taxes. Attorney Sobkowski said that the general rule, which is not the case all of the time, is that the adjoining property owners will each pick up half of the right-of-way, but it really depends on how the lots were platted, whether the lot lines run to the center line of the road or stop at the edge. Director Cox explained that Mr. Michael's property line runs to the west of the existing right-of-way of Burr Street so he would theoretically be entitled to half. Mr. Michael said that there is a tree line that goes through there, but as you walk the tree line, you can see metal stakes. He was wondering, from his house, how far. In the past, he was told he could only build a deck out to a certain point, about fifteen feet, and he wondered if that could be extended. He also asked if they acquire that property and pay taxes on it. Attorney Sobkowski explained that the town does not control who gets the property or what happens to it. The only action the town takes is to give up the right to use the platted right-of-way to construct a public street. It is up to the individual property owners afterwards to figure out who gets what and what can be done with the property. Mr. Michael said that many of the people in that area have sheds right up next to their houses. He said they all were interested in knowing whether or not they can move their sheds out to the edge of the right-of-way once it is vacated. He said they did not want to move them to find out later that they couldn't do that. Director Cox responded in a general way. He said if title to the fifteen or thirty feet of property is acquired, there are easements platted along the rear of the property line. He said he did not want to confuse Mr. Michael but the new property line would be to the center of Burr Street. Nothing can be put in the easement with the possible exception of a fence. The new property line could be used as a measurement for rear yard improvements, but they still could not use the easement for any of those improvements until maybe the easements are vacated. Mr. Michael said he was going to have a shed built and Director Cox said that they would review the placement of the shed when Mr. Michael came in to get his building permit. Amber Millis, 17429 Michael Drive, asked what if they already had a permit and the shed is already up. Director Cox told her to come in to see him and they would go over where it could be moved. Doug Niksch, 5524 W. 173<sup>rd</sup> Place, commented that the reason the first question regarding the property line came up was because he and a couple of his neighbors are on the Dahl Estates side. There has already been some confusion as to maintenance of the property line. He asked if the developer would give them an indication of where the property lines were going to be prior to the first reading. He said after the readings go through and the vacation is either approved or disapproved, it's almost too late. He is looking to prevent neighbor arguments. Attorney Sobkowski said the only thing the town controls is whether the right-of-way is going to be used to build a road or not. The town does not control where the new property lines will be. That is an issue that can be worked out,

but the question that the town is addressing is whether the property is needed for a right-of-way or not and if not, should the town vacate it, which indicates it would not be developed as a road. The questions of who can use what and where the lines go is a separate issue. Mr. Niksch asked if the developer should already have that on his engineering plans when he comes to get his permits prior to the first reading. Director Cox said that the proposed developer of the property to the east was in attendance but had not proposed the subdivision yet until it was determined that the town did not want to keep the Burr Street right-of-way. He said he would ask the developer to address this matter before the second reading. Mr. Niksch asked if the proposed developer could be asked right then if he was present. Director Cox said it would just be a clarification of who gets what. Councilman Huseman said that Burr Street only goes north so far and asked if it was adjacent to the west side of Mr. Niksch's property. Mr. Niksch said it was and that a month ago, 173<sup>rd</sup> was vacated, which is the corner of his property. Once that was vacated, the family that lives to the west of him went from being a corner lot to a non-corner lot, so they gained additional footage on the north side. The easement of Burr Street went up to where 173<sup>rd</sup> Street would have been. There is still a utility easement where 173<sup>rd</sup> would have been because that is where the end of the water main is. One end of the water main is in Dahl Estates and the other end is in The Preserves and the plan is to connect those two to make a loop.

Director Cox said Mr. Grabinski is the adjacent property owner and it would be up to him as to whether he wanted to answer any questions. Jim Grabinski, 5600 W. 175<sup>th</sup> Avenue, said that they have a five acre parcel that is just to the east of the easement that was to be used for the extension of Burr Street. They own some lots in The Preserves and are looking to do some development in the back of their land to open it up and put some lots in. Before they have S&H Engineering continue with any of the engineering work, they wanted to make sure there was no possibility that Burr Street was ever going to go through. That is why the plat vacation was proposed to the town and Wilbur took it on to submit to the Council. At this point, no engineering is done. As far as the property that is adjacent to Dahl Estates, his property does not go back that far. It is 660 feet deep. Director Cox said their concern is, if the town decides to vacate, there is approximately sixty feet of right-of-way there total for Burr Street. He said he thought it was Mr. Grabinski's intention to use only half of that and the other half would go to the other property owners. Mr. Grabinski confirmed that was his intention. Director Cox asked Mr. Grabinski if he would be willing to include this in his engineering so that the property owners would rest assured that their half would be their half and his half would be his half. Mr. Grabinski said it would be up to the engineer, Doug Homeier of S&H Engineering, to answer to that, but he would be sure to bring it to Mr. Homeier's attention and ask him to make sure it is included. He said with regard to the subdivision plat for The Preserves Unit 4, he thought that the lots were 170 feet deep with a 33 foot easement on the back of it. The 33 feet is what is being vacated. As far as what runs along his land, it doesn't matter to him what goes either way. He said that in addition to the five acres, he also owns lots 115, 116 and 117 that are on Michael Drive so he is technically neighbors of these people, but it is vacant land right now. There being no further comments, President Kuiper closed the public hearing.

1<sup>st</sup> Reading - Ordinance #2008-13 - Vacating Public Right-of-Way - Councilman Gard made a motion to hold over Ordinance #2008-13 for second reading, seconded by Councilman Huseman. The motion carried by voice vote.

Resolution #2008-10 Transfer of funds - General-Police, Cumulative Sewer - President Kuiper read Resolution #2008-10 to transfer funds within the General Fund Police budget in the amount of \$20,000 and within the Cumulative Sewer Fund in the amount of \$20,000. The transfers do

not affect the balance in either fund. Councilman Huseman made a motion to adopt Resolution #2008-10, seconded by Councilman Tucker. The motion carried by voice vote.

### **UNFINISHED BUSINESS**

Lowell Utilities Update - Nothing was reported for any of the following items: WWTP JMOB Requests; Water Infrastructure Improvement Plan; East Side Sewer Project.

Appointment to Historic Preservation Board - Councilman Gard made a motion to appoint Ken Floyd to the Historic Preservation Board to a vacated term that expires 12-31-08, seconded by Councilman Tucker. The motion carried by voice vote.

### **NEW BUSINESS**

Permission to purchase mulching mowers from Recycling Fund - President Kuiper stated the mower would be used to mow abandoned properties and retention ponds and would be paid for out of the Recycling Fund. Director Cox commented that Street Superintendent Lovely had given him a message from Director Shook requesting he inform the Council that there is a \$1,400 difference between the two units they would like to have. The reason for this difference is that one is a three cylinder diesel that will last much longer for the mowing of retention areas. It is a much heavier piece of equipment. The equipment cost is \$9,667 from Don Bales Inc. Councilman Huseman asked if there was enough money available. Clerk-Treasurer Walters said there was and she received the annual distribution today in the amount of \$44,000. Councilman Gard made a motion to act on the staff recommendation to purchase the mowing equipment from Don Bales Inc., seconded by Councilman Huseman. President Kuiper said the plan is to have one of the part-time employees mow the abandoned properties. Last year it was put out to a private company, but the number of abandoned properties is increased this year. Clerk-Treasurer Walters reported that last year, there were nine and at the current time, there are nineteen. Last year, the town spent \$3,000 on mowing abandoned properties. Most of that was recovered through placing liens on the properties. Discussion followed regarding some of the retention ponds that are not being mowed by developers. The motion carried by voice vote.

Discussion of extension of garbage contract with Allied - President Kuiper stated that the current garbage contract expires on June 30<sup>th</sup>. He read a letter from Allied Waste with proposed extension options of \$14.44 per unit from July 1, 2008 to June 30, 2009 and \$15.16 per unit from July 1, 2009 to June 30, 2010. President Kuiper commented that he was surprised that it wasn't higher, considering the cost of fuel. Clerk-Treasurer Walters reported that currently, the citizens pay \$11.19 but the town is billed \$11.89. The town subsidizes .70 per month, per customer through the Recycling Fund. After calling surrounding communities today, they found that monthly, Schererville is paying \$14.43, Merrillville is paying \$15.50, Crown Point is \$9.75, St. John is \$14.35 and Cedar Lake is \$15.06. Councilman Gard said that Crown Point has a special deal going. They have a transfer station so they have a credit from that. President Kuiper commented that he thought the extension would be much better than putting it out for bid. Councilman Huseman made a motion to accept the extension of the garbage disposal contract from July 1, 2008 to June 30, 2010, seconded by Councilman Alessia. Clerk-Treasurer Walters asked if the Council wished to continue with the .70 subsidy. Council members stated they wished to continue it as long as they can. Clerk-Treasurer Walters stated the customer would

then be paying \$13.74 monthly. The motion carried by voice vote.

## **ANNOUNCEMENTS**

President Kuiper announced the next regular meeting on Monday, June 9, 2008 at 7:00 P.M.

## **MEDIA QUESTIONS/PUBLIC COMMENTS**

A member of the media asked for a copy of the animal ordinance so people will know what is going on.

Ed Bradbury, 5704 W. 171<sup>st</sup>, commented that a big mess has been created at 175<sup>th</sup> and Burr Street. He asked if stop signs were going to be placed there or if they were waiting for an accident. Councilman Huseman commented that Mr. Bradbury was referring to the fence. Director Cox reported that Director Shook is gone this week, but they were going to talk to Chief Shelhart and the town engineer and make a recommendation for stop signs at that intersection. Mr. Bradbury commented that it is almost impossible to make a left turn there.

Tom Johnson, 409 Dogwood Lane, gave a point of information for the Council and staff that the residents from Meadowbrook who are affected by the alley paving are having a meeting tomorrow evening at the library for informational purposes. While it is not a public meeting, they were inviting any of the Council members or staff who were interested in attending. The meeting is set for 7:00 P.M. He said it would be helpful for them at the meeting if they had some indication of the schedule, when bids would be going out and how long they would be out so they have some idea of how much time they have to get their portion together. Councilman Huseman commented that it would be nice if their spokesman could get together with the bidder so he could do their private stuff as he goes through there. Mr. Johnson said that was a very good possibility. Director Cox said he did not have anything written up, but he could probably draft something tomorrow. He said he would be able to provide an outline of when the specs are expected to be done and so on.

John Masepohl, 323 Spruce Court, said he had a question on the scope of the alleys. He asked how the alleys are going to be completed where they interface with the private streets. The two north south alleys are sixteen feet wide and they come up against the edge of the street, like Sycamore and Greenbrier. At the point where they hit the edge of the street, they are actually already on the private street property. The right-of-way for the private street might be fifty feet, the street is twenty some feet wide so he anticipates the alley is going to come sixteen feet and then fan out to the edge of the curb. He was trying to confirm that. Director Cox confirmed that the alley will not because the easement is only sixteen feet wide and the town cannot go on private property. Mr. Masepohl said that it is not private property, it is POA property, unless POA property is deemed private property. He said he does not know how the performance bond reads since he has not seen it. Councilman Huseman suggested that this be included when the POA talked to the contractor that gets the bid. Councilman Huseman said one of the alleys is on someone's lot. Mr. Masepohl used Sycamore as an example. He said that curb to curb, Sycamore is maybe twenty some odd feet wide but the actual right-of-way is wider and is grass or part of the alley. When the sixteen feet hits the outer edge before it gets to the asphalt, that is POA property, just like the alley is POA property. Mr. Masepohl said there is right-of-way past

the curb and you get to the edge of the right-of-way before you get to the curb and then you fan out to where the cut out is at the curb. The cut out is wider than sixteen feet at the curb line. Director Cox said he would have to take a look at it. Mr. Masepohl brought up the empty lots and how long the foreclosure procedures is taking, he encouraged the Council to pursue the citation of the developer to resolve te lot situation in time for this years' s West Nile season. Director Cox said the developer has been contacted and letters have been written but no response has been received. The town is going to get the lots cleaned up. Councilman Gard commented that one thing that happens many times in POA situations is often there is a situation of mutual need within the POA and sometimes special assessments are made to property owners and taking care of those lots is really beyond the purview of the town, as such, since they are not town property. Sometimes, there is only so much that can be done by the town. Mr. Masepohl said those lots do not belong to the POA either. They belong to the developer and if they were lots anywhere else in town, and they were a nuisance, they would be cited. He stated it was suggested to do that in the Council meeting on December 27<sup>th</sup> as a solution. Director Cox said the town is not waiting for Harris Bank. They are pursuing every avenue they have.

Councilman Gard made a motion to adjourn, seconded by Councilman Huseman at 7:40 P.M.

ATTEST:

Phillip Kuiper, President

Judith Walters, Clerk-Treasurer