

**LOWELL TOWN COUNCIL
REGULAR MEETING
FEBRUARY 23, 2009**

The regular meeting of the Lowell Town Council was called to order on Monday, February 23, 2009 at 7:30 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, Public Works Director Greg Shook, Town Administrator Susan Peterson, Police Chief John Shelhart, Community Development Director Wilbur Cox, two members of the media and fifteen interested citizens.

TREASURER'S REPORT

Councilman Gard made a motion to approve the Treasurer's Report for January, 2009 as presented, seconded by Councilman Alessia. The motion carried by voice vote.

APPROVAL OF MINUTES

Councilman Alessia made a motion to approve the minutes from the February 9th regular meeting, seconded by Councilman Gard. The motion carried by voice vote.

APPROVAL OF VOUCHERS

President Kuiper stated that he had reviewed White Vouchers #1208-1266, Water Vouchers #2088-2115 and Waste Water Vouchers #3071-3092 and recommended them for approval. Councilman Huseman made a motion to approve the vouchers as listed, seconded by Councilman Tucker. The motion carried by voice vote.

PETITIONS, COMMUNICATIONS, REMONSTRANCES, PROCLAMATIONS

Letter of Resignation - President Kuiper read a letter of resignation from Donald Cripe from the Lowell Police Commission. Councilman Gard made a motion to accept the letter of resignation with regret, seconded by Councilman Alessia. Councilman Huseman commented that Mr. Cripe has been a role model for fifty-plus years in Lowell. While he was at Tri-Creek Lumber, he patronized all school functions, donated giving time and money. When a fence was needed around one of the water towers, he donated half of the cost of the fencing. He donated \$10,000 worth of materials to the town upon his retirement. He was instrumental in implementing a service schedule for police vehicles. Councilman Huseman asked for a meeting so he could vent about the way this resignation came about, commenting that he knew Mr. Cripe had been asked four times to resign. Councilman Huseman stated he was very displeased about it. President Kuiper said that Don Cripe is a man of his word and he is taking the letter for how it is written. He said that Councilman Huseman is correct in all the good things Mr. Cripe has done for the community, but a few things were left out that he would not go into detail about. He said he knew that Mr. Cripe has done a lot of things personally for people that he did not care to

have brought up in public. He thanked Mr. Cripe for those things as well because he knew of several instances and knew it was much appreciated by those people. The motion carried by voice vote.

ORDINANCES & RESOLUTIONS

1st & 2nd Reading - Public Hearing - Ordinance #2009-03 - Additional Appropriation - Freedom Park - President Kuiper read Ordinance #2009-03 for an additional appropriation in the Freedom Park Fund in the amount of \$21,300. Councilman Gard made a motion to hold over Ordinance #2009-03 for second reading, seconded by Councilman Huseman. The motion carried by voice vote. President Kuiper opened the public hearing regarding Ordinance #2009-03. There being no comment in favor of or against the ordinance, President Kuiper closed the public hearing. Councilman Gard made a motion to set the rules aside, seconded by Councilman Tucker. The motion carried by voice vote. Councilman Gard made a motion to adopt Ordinance #2009-03 by name and title only, seconded by Councilman Alessia. Roll call vote carried with five ayes.

1st & 2nd Reading - Ordinance #2009-04 - Amend Chapter 36 - delete Section 36.117 Reference Park Board - President Kuiper read Ordinance #2009-04 to amend Chapter 36 and delete Section 36.117 Reference Park Board. Councilman Gard made a motion to hold over Ordinance #2009-04 for second reading, seconded by Councilman Huseman. The motion carried by voice vote. Councilman Gard made a motion to adopt Ordinance #2009-04 by name and title only, seconded by Councilman Alessia. Roll call vote carried with five ayes. Councilman Gard made a motion to set the rules back in order, seconded by Councilman Tucker. The motion carried by voice vote.

UNFINISHED BUSINESS

Public Works Department Update - Nothing was reported for any of the following items: WWTP JMOB Requests, Water Infrastructure Improvement Plan, East Side Sewer Project, Streets/Sidewalks.

NEW BUSINESS

Acting as Board of Finance - cancel outstanding warrants over two years old - President Kuiper read a list of old, outstanding warrants over two years old that have never been cashed and can be put back into the appropriate fund once they are cancelled. If the people inquire about their checks within the time period allowed by state statute, a new check will be issued. Councilman Alessia made a motion to cancel the outstanding warrants over two years old, seconded by Councilman Gard. The motion carried by voice vote.

Accept 2008 Water Annual Report and forward to Rural Development - Clerk-Treasurer Walters explained that as part of the Rural Development loan requirements, an annual budget must be submitted along with a report showing annual expenses. Back in November, 2008, the 2009 budget was submitted. This report is the 2008 actual expenses. She pointed out that the actual operating income in 2008 was \$1,631,700 and the operating expenses, less depreciation was \$1,532,206. At the end of the year, there is a surplus in the amount of \$152,323 in operating. Councilman Alessia made a motion to accept the 2008 Water Annual Report and forward it to

Rural Development, seconded by Councilman Tucker. The motion carried by voice vote.

Act on favorable recommendation from Plat Committee: Meadows of Cedar Creek Phase V - accept Maintenance Bond, release Performance Bond; Meadows of Cedar Creek Phase III - deny release of Maintenance Bond - President Kuiper read a letter of recommendation from the Lowell Plat Committee to accept Maintenance Bond No. 621 in the amount of \$106,212 for Meadows of Cedar Creek Phase V, release Performance Bond No. 610 in the amount of \$424,846.80 and deny the release of Maintenance Bond No. 565 in the amount of \$56,688 for Meadows of Cedar Creek Phase III and notify Mr. Mason to extend this bond until all deficiencies are addressed and completed. Councilman Tucker made a motion to act on the favorable recommendations from the Lowell Plat Committee, seconded by Councilman Alessia. The motion carried by voice vote.

President Kuiper stated that he had received a phone call over the weekend about a vacant house that had a water leak over a period of 48 hours from a broken water pipe. The bill is \$730. They have contacted the utility office and found that ordinance allows \$400 to be taken off the bill. Clerk-Treasurer Walters explained that the ordinance allows \$400 to be adjusted off of the sewer portion of the bill. President Kuiper stated that the phone call he got was to request more money be taken off of the bill. Councilman Alessia asked what past practice was. Clerk-Treasurer Walters stated past practice was to stay with the ordinance. There are many people that apply for adjustments and accept the \$400. Late fees are waived from the large bill and payment plan arrangements are available. Councilman Alessia asked if this was typically something that could be claimed on insurance. Clerk-Treasurer Walters responded that it was. Councilman Gard commented that he felt they should stay with the ordinance, making sure late fees are waived.

ANNOUNCEMENTS

President Kuiper announced the next regular Council meeting will be held on Monday, March 9, 2009 at 7:30 P.M. He thanked the Council members for changing the time.

President Kuiper announced the Lowell Business Expo to be held on Saturday, February 28, 2009 from 3:00 to 8:00 P.M. at the Lowell Middle School.

President Kuiper announced a Retirement Open House for Dwight "Ike" Rench on Sunday, March 15, 2009 from 1:00 to 5:00 P.M. at the Lowell Community Center. Ike Rench is retiring from the Lowell Fire Department and from the position of Chief.

MEDIA QUESTIONS/PUBLIC COMMENTS

Carrie Napoleon, Post Tribune, asked what the deficiencies were at Meadows of Cedar Creek that the \$56,000 bond is being held for. Community Development Director Cox explained that there is a manhole that needs to be raised, some paving that was stretched and a water leak. Connie Schrombeck, Lowell Tribune, asked the Council if they would comment on Councilman Huseman's remarks that Mr. Cripe was coerced into retiring. President Kuiper said he believed he did comment that he would take Mr. Cripe at his word. He said he had no reason to comment about Councilman Huseman's remarks. Councilman Alessia said that for him to comment would lend credence to it and he refused to do so.

Neil Wingate, Lowell, commented that he had previously spoken with several Council members and was anticipating having a discussion at the meeting pertaining to the occupancy ordinance and a ticket that was issued to a house in Brookwood Subdivision for an open house and the occupancy ordinance was cited. He stated that they could not find anything in the occupancy ordinance that indicates any reason that an open house cannot be held without an occupancy permit. Director Cox stated that the Indiana Residential Code addresses occupancies for the State of Indiana. It says no building will be used or occupied until a Certificate of Occupancy has been issued. Their contention is that an open house was held before the certificate of occupancy was issued and Code Official Tom Trulley issued a citation. The local ordinance says that if there are appeals to the ordinance to be asked for, it should go before the Board of Zoning Appeals. That has not been done. The case is now in the court system. James Thorn stated he was the one that was issued the citation. He said he asked if there was another place to take this matter other than the court because he felt the law is vague. He argued terminology that appears in the statute and claimed that this was an attempt to control the property owner's rights. President Kuiper asked Mr. Wingate if this was the first open house he had held in Lowell and Mr. Wingate said it was. Councilman Huseman commented that he did not see anything wrong with inviting someone into a house, even if it is under construction, to see the house. Councilman Alessia commented that inviting one person in to see a house is different from holding an open house where the general public is invited. Councilman Huseman said the contractor has liability insurance. Councilman Alessia said he spoke with Director Cox, Director Shook and Code Official Trulley and all informed him that Lowell's policy is consistent with what is done in other communities. Discussion followed among Council members regarding consistency of policy and liability issues. Town Attorney Sobkowski commented that this was the first he had heard about this issue. With regard to someone at an open house who falls, it would be the property owner's liability if they were injured in the course of the open house. Dan Durochik, General Manager of McColly Real Estate, commented that they deal with new construction homes in several surrounding counties as well as Lake County. He felt the policy was not consistent with the policies of the towns of Schererville and St. John. Deana Sutton, Century 21 Destiny commented that Cedar Lake also had an agreement with their builders about open houses. She stated she would provide letters from area builders so the Council would know how they feel about the matter. She commented that she felt it made it difficult for builders to sell their properties if a certificate of occupancy was required before an open house can be held. Rick Zunica, Lowell suggested that the building department could back off right now until the matter could be further looked into and allow everyone some input. Councilman Gard commented they should wait and do research. Councilman Alessia commented that he felt the same way since there is an obvious contradiction. President Kuiper said that was what they had requested anyway. Councilman Huseman commented that he thought they should back off, do some research and start being builder and developer friendly. President Kuiper said that was what they asked for on Friday and that is what they shall do. Carrie Napoleon, Post Tribune, asked how many tickets had been issued for open houses that have not had the certificate of occupancy. Director Cox said in the last four years, two tickets had been issued. He also commented that the building department is not builder and developer unfriendly and anyone that has ever worked with him knows that the opposite is the case. He also cited several developers and builders that were in the audience that had multiple homes in developments that had never received tickets and complied with all of the rules and regulations, even if they were difficult to follow in the current market. He said he does not at all believe the general terminology that no

one can comply. He said he would be glad to look into the matter and help resolve the problem. Mr. Thorn commented that the citation was issued to him as the builder. The homeowner was the one that requested and promoted the open house, which was held when Mr. Thorn was out of state. He also commented that the court case comes up on Wednesday.

No further business or discussion, Councilman Gard made a motion to adjourn, seconded by Councilman Alessia at 8:02 P.M.

ATTEST:

Phillip Kuiper, President

Judith Walters, Clerk-Treasurer