

**LOWELL TOWN COUNCIL  
REGULAR MEETING  
MARCH 9, 2009**

The regular meeting of the Lowell Town Council was called to order on Monday, March 9, 2009 at 7:30 P.M. by President Phillip Kuiper. The Pledge of Allegiance was recited and a moment of silence was observed. President Kuiper asked the audience to remember the Barry Means family and all of the town employees, especially the Street Department. Clerk-Treasurer Judith Walters called the roll. Members present were Donald Huseman, Shane Tucker, John Alessia, Phillip Kuiper and David Gard. Also present were Town Attorney Greg Sobkowski, Director of Public Works Greg Shook, Town Administrator Susan Peterson, Community Development Director Wilbur Cox, Police Chief John Shelhart, two members of the media, and eleven interested citizens.

**APPROVAL OF MINUTES**

Councilman Gard made a motion to approve the minutes from the February 23<sup>rd</sup> regular meeting and the February 17<sup>th</sup> joint meeting, seconded by Councilman Alessia. The motion carried by voice vote.

**APPROVAL OF VOUCHERS**

President Kuiper stated that he had reviewed White Vouchers #1269-1335, White Police Vouchers #4023-4033, Water Vouchers #2116-2147 and Waste Water Vouchers #3093-3117 and recommended them for approval. Councilman Alessia made a motion to approve the vouchers as listed, seconded by Councilman Huseman. The motion carried by voice vote.

**MONTHLY REPORTS**

Councilman Huseman made a motion to accept the monthly reports from February, 2009 as presented, seconded by Councilman Tucker. The motion carried by voice vote.

**UNFINISHED BUSINESS**

Lowell Utilities Update - Nothing was reported for the following: WWTP JMOB Requests, Water Infrastructure Improvement Plan, East Side Sewer, Streets/Sidewalks.

24-inch Storm Sewer - Public Works Director Greg Shook requested approval for an expenditure not to exceed \$30,000 for the replacement of a storm sewer on the east side of town. He explained that this includes the pond on south Burr Street and the pond by Three Creeks School that runs through Beverly Estates Subdivision into a field tile that goes under the Reel Produce Farm. There is about 1,300 feet of field tile that is about ten inches in diameter and has butt to butt joints. All of the water that is going through the field tile is blowing holes up out of the ground across Mr. Reel's fields. There have been problems along there in the past. After discussing the matter with Commonwealth Engineers, it has been determined that a twenty four

inch pipe is needed from the east side of Beverly Estates to Clark Road. He has gathered estimates on the pipe, which will run approximately \$18,000. The installation will be done in-house but they will need to rent an excavator. He estimates the cost to be about \$25,000, but asked the Council to approve not to exceed \$30,000 in case they run into some problems. Councilman Gard made a motion to approve the request pending approval from the Clerk-Treasurer regarding funding, seconded by Councilman Huseman. Councilman Alessia asked about the funding source. Clerk-Treasurer Walters stated it would be paid for out of the Cum Sewer Fund as money is appropriated in that fund for such projects. Councilman Huseman thanked Director Shook for the work that has been done on 171<sup>st</sup> Street to seal the cracks in the road. He explained that even though there is little base there, keeping the water out of the cracks will prolong the surface of the road. The motion carried by voice vote.

Director Shook stated that they are in the process of building a new garage on Liberty Street. At the time he made the presentation to do that project, he recommended selling the old water plant across the street from the location of the new garage. He has received two appraisals for the property that range from \$73,000 to \$80,000. During discussion with Attorney Sobkowski, he learned that the next step would be to set a public hearing and authorize Clerk-Treasurer Walters to advertise the meeting. Councilman Alessia made a motion to set a public hearing regarding the sale of the old water plant on Liberty Street and authorize Clerk-Treasurer Walters to advertise, seconded by Councilman Tucker. The motion carried by voice vote.

## **NEW BUSINESS**

Permission to close Mill Street for monthly car shows - Chamber of Commerce - Rich Meadows requested permission to again hold monthly car shows on Mill Street. They would like to hold the car shows on the first Saturday of the month so they line up with Labor Day, as they did last year with one exception. They would like to hold an extra car show on July 25<sup>th</sup> to run along with the Taste of Lowell. Deanna Sutton, representing the Chamber of Commerce, explained that the proposed schedule would be from 6 to 10 P.M., with Mill Street closing at approximately 4:30 to allow for the cars to start lining up. They also requested the use of barricades and garbage cans as was done last year. Ms. Sutton said it was her understanding that Mr. Meadows stored the barricades and garbage cans and used them each month for the event. The dates were be May 2, June 6, July 4, July 25, August 1, and September 5<sup>th</sup>. President Kuiper commented that he felt the car shows were a great success last year. He also asked if they were requesting to close the street all the way to Main Street this year. Mr. Meadows said that last year, they asked for permission to close Mill Street from Commercial Avenue to Jefferson Street, but would like to close to Main Street. Their turn-out kept growing each month and they kept moving further along Mill Street to accommodate the additional cars. The only person they had any trouble with was the Mobil station and since then, he has spoken with the owner and they have worked things out. The owner said he actually makes more money from the product inside than gas anyway and he has a car for the show. Ms. Sutton said that this year, they have been contacted by several local organizations about the ability to have food at the car shows. She said they have instructed them to contact the town for permitting to make sure that is appropriately covered. Clerk-Treasurer Walters explained that they would have to get a solicitor's permit and a Board of Health certificate. It would be up to the Town Council if they wanted to waive the permit fee.

President Kuiper stated he would have no problem with waiving the fees for local organizations. Councilman Gard made a motion to approve the requests, seconded by Councilman Tucker. The motion carried by voice vote.

President Kuiper stated that they need to put the Police Commission vacancy out for accepting applications. Following discussion, a deadline for the end of the month was set. Clerk-Treasurer Walters explained that the next Police Commission meeting is set for April 2<sup>nd</sup>.

Councilman Huseman asked if there was a possibility of having any money to do curbs and sidewalks this year, particularly in the older areas of town. Director Shook reported that the town applied for funds through the stimulus program for curbs and sidewalks along Commercial Avenue from Burr Street to the downtown area. The estimated cost is \$1 million. President Kuiper asked if Clerk-Treasurer Walters knew of anything that might be available since last year they did not have any funds to even do roads. Clerk-Treasurer Walters explained that it was the same this year. The town does not have an approved budget yet and won't get one until the end of the year. She said there is CDBG funding that could be used this year, if people qualify. Councilman Huseman asked about the Powell Ditch. Director Shook reported that they had a meeting scheduled for Friday, March 13<sup>th</sup> that is going to be postponed because he has an INDOT meeting he has to attend regarding more stimulus programs. The Powell Ditch meeting has been re-scheduled for March 20<sup>th</sup>.

### **ANNOUNCEMENTS**

President Kuiper announced the next regular meeting will be held on Monday, March 23<sup>rd</sup>. He stated the time will be changed back to 7:00 P.M.

### **MEDIA QUESTIONS/PUBLIC COMMENTS**

Neil Wingate, Lowell, said that at the last meeting, they brought up the occupancy ordinance and the Town Council said they would look into it. He asked where that stands. President Kuiper reported that he, Director Cox and Code Official Trulley met with the town's law firm last week. The issue is not just the lack of a Certificate of Occupancy, there were also no final inspections done and there was a red tag that was not taken care of. Based on those facts, the recommendation was to continue on with the citation. Mr. Wingate and the builder said they were not aware of a red tag and asked what the red tag was for. Director Cox said it was for no final inspections being done. The builder attempted to argue the matter and Director Cox deferred to Attorney Sobkowski since the matter is being litigated. Attorney Sobkowski stated that the issue is before they let the public at large into the property, they want to make sure the final inspections are done and everything is passed so the building is safe. President Kuiper said the Certificate of Occupancy is not a problem at all if the final inspections are take care of. The C of O is just a piece of paper. The builder again attempted to argue the matter of definitions and who held the open house. He said there are no red tags on the house. President Kuiper apologized for misunderstanding the issue of the red tag and he and Attorney Sobkowski said they had nothing further to say. Deanna Sutton, Lowell, asked if the town was considering re-wording the ordinance because there is some confusion, as a realtor, as to when a showing or

open house can take place. President Kuiper said that the main issue for the town is the public safety issue. Ms. Sutton commented about the wording of the ordinance regarding the issue of a Certificate of Occupancy for the purpose of closing if an escrow account is established for certain items including stairways, sidewalks and yards. She asked for clarification since the term open house appears to mean one thing to realtors and builders and another to the town. She asked if she was understanding it correctly that there is to be no public through the property until a Certificate of Occupancy is issued. Director Cox explained that the town's concern is that the final inspections are done and if there are items that are specifically covered under the ordinance that can be escrowed, that can be done. All of the final inspections have to be done before the public can be brought through. The town is not saying that if the builder or developer has someone interested in the building during construction they cannot bring them in to show it to them. Before the public is invited in with an open house, that building has to have all of its final inspections done and any escrows posted. An open house means the building is ready to go for the public.

Beth Bradford, East Hilltop Court, said she and her husband have recently spoken with Director Shook about the issue of the whole square of Hilltop Drive and Hilltop Court. Something needs to be done since the problem has been going on and on. There are elderly and sick people that cannot be baling out their basements every time it rains. She said it is not during a heavy rainfall, it is every time there is any rain. She said she and her husband have lived in their home since 1995 and for ten years, never had any water in their basements until their neighbors across the street filled in the culverts. Ever since then, the water comes across the road, onto her driveway and into her yard and her next door neighbors' yard. She said her yard is sinking, tree roots are being exposed, the driveway is sinking and now she has water in her basement. Director Shook reported that the house Ms. Bradford lives in does sit below the road and there is no doubt the water runs there. They can dig a ditch across the road but they will have to make sure there are rights of way before any digging can be done. He said when he gets the clearance and manpower, they will dig the ditch across the road, but he does not think that will correct the problem. When they originally looked at the drainage issues in the Hilltop area, they determined that a lot of water was coming from the east side of Joe Martin Road and he feels something will need to be done there to divert storm water from Joe Martin Road away from the Hilltop area. Ms. Bradford asked why they could not have storm sewers like every other subdivision. Director Shook explained that the subdivision was built as a street and ditch subdivision. Ms. Bradford said the original plan was for water to drain west between her house and Cencion's house as a natural drain into a pond and no houses were intended to be built there. Instead, houses were built there that interrupt the natural drain plan of the original plan and the water doesn't go anywhere, it just sits there. The new pipe that the town put in was necessary because the old pipe was bad but the water goes through the pipe and just sits there in the yard. Director Shook said if you go over to Hilltop, between Hilltop Drive and East Hilltop Court and West Hilltop Court, there is a big gully that holds water. Ms. Bradford said it is getting worse because of erosion. President Kuiper asked Director Shook what his thoughts were with regard to Joe Martin Road. Director Shook reminded the Council that they originally talked about running a large storm sewer along the east side of Joe Martin Road, picking up water and taking it down to Evergreen. That would then involve running a new discharge from Evergreen over to the ditch behind the library. When they looked into that further, they found a lot of utilities along the east side so if

they do anything, it will have to be along the west side of Joe Martin Road. He went back to Commonwealth Engineers to discuss it further and he knows it will be very expensive. Councilman Huseman asked if they could extend the twelve inch PVC pipe. Director Shook said he didn't think they had enough ground cover but they do have the preliminary engineering for the work on the east side of Joe Martin Road. They know they will have to go from a few houses south of Southview north along the east side of Joe Martin Road to Evergreen. President Kuiper asked Director Shook to remain in contact with the Bradfords about the progress that is being made. Ms. Bradford informed Director Shook that Mr. Cencion has the original drawings for drainage of the subdivision. She also said that a year ago, she was told something would be done and she felt they cannot wait any longer. Director Shook said he would be in touch with the people in the neighborhood to discuss the matter further.

There being no further business or discussion, Councilman Gard made a motion to adjourn, seconded by Councilman Alessia at 8:00 P.M.

Attest:

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Phillip Kuiper, President

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Judith Walters, Clerk-Treasurer