

**LOWELL TOWN COUNCIL
REGULAR MEETING
MAY 26, 2009**

The regular meeting of the Lowell Town Council was called to order on Tuesday, May 26, 2009 at 7:00 P.M. by Vice President John Alessia. 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, and David Gard. Council President Phillip Kuiper was absent. Also present were Town Attorney Greg Sobkowski, Town Administrator Susan Peterson, Community Development Director Wilbur Cox, Police Chief John Shelhart, three members of the media and ten interested citizens.

TREASURER'S REPORT

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

APPROVAL OF MINUTES

Councilman Huseman made a motion to approve the minutes from the May 11th regular meeting and the May 11th executive session, seconded by Councilman Tucker. The motion carried by voice vote.

APPROVAL OF VOUCHERS

Vice President Alessia stated that White Vouchers #1617-1681, Water Vouchers #2290-2321 and Waste Water Vouchers #3235-3262 had been reviewed and recommended for approval. Councilman Gard made a motion to approve the vouchers as listed, seconded by Councilman Huseman. The motion carried by voice vote.

PETITIONS, COMMUNICATIONS, REMONSTRANCES, PROCLAMATIONS

Letter of resignation from BZA & Plan Commission - Richard Kelley - Councilman Tucker made a motion to accept the letter of resignation from Richard Kelley from the BZA and Plan Commission, seconded by Councilman Gard.

Request waiving of sewer portion of utility bill for pool filling - J. Zwiers - Clerk-Treasurer Walters explained that the office received a phone call on the day that Mr. Zwiers was filling his pool requesting that the town come out to meter his pool. The town does not do that since it allows a summer sprinkling credit but Mr. Zwiers had his pool filled prior to when the credit starts. The pool was filled and according to him, he used 13,000 gallons. The bill was \$90 and the average sewer consumption would have been about \$40 so the amount that is requested to be waived is about \$51. She said she thought that by opening this up, there will be more people coming in to request the same thing. Technically, the town does not have a swimming pool adjustment, it has a summer sprinkling credit that is offered to everyone during the months of

June, July, August and September. How the customer chooses to use it is up to them. Councilman Gard asked if Mr. Zwiers was made aware of the policy and Clerk-Treasurer Walters stated that he was informed that the summer sprinkling credit would go into effect after his May billing. Councilman Gard commented that they have been down this road before and feel that they cannot set this kind of precedent. Councilman Gard made a motion to decline the request, seconded by Councilman Huseman. The motion carried by voice vote.

ORDINANCES & RESOLUTIONS

1st Reading - Ordinance #2009-07 - re-establishing the tax rate for CCD Fund - Vice President Alessia read Ordinance #2009-07. Councilman Gard made a motion to hold over Ordinance #2009-07 for second reading, seconded by Councilman Huseman. Attorney Sobkowski explained that the other action that needs to be taken before the Ordinance can be adopted is to hold a public hearing. He recommended including authorization to the Clerk-Treasurer to publish notice of the public hearing in the motion. Councilman Gard amended his motion to authorize the Clerk-Treasurer to publish notice of the public hearing. Councilman Huseman amended his second. The motion carried by voice vote.

1st Reading - Ordinance #2009-08 - amending Section 51.076(C) - Evaporation Credit to include boiler - Vice President Alessia read Ordinance #2009-08. Councilman Gard made a motion to hold over Ordinance #2009-08 for second reading, seconded by Councilman Tucker. The motion carried by voice vote.

Public Hearing - 1st & 2nd Reading - Ordinance #2009-09 - Additional Appropriation - MVH & Major Moves - Vice President Alessia read Ordinance #2009-09 for Additional Appropriations to the MVH Fund in the amount of \$100,000 and the Major Moves Fund in the amount of \$9,272.07. Vice President Alessia opened the public hearing regarding Ordinance #2009-09. There being no comments from the public, Vice President Alessia closed the public hearing. Councilman Gard made a motion to hold over Ordinance #2009-09 for second reading, seconded by Councilman Huseman. Clerk-Treasurer Walters explained that the town has an agreement with Lake County for them to purchase emulsion from the town. The amount being appropriated includes the amount the county plans to buy over the year and the appropriation allows the emulsion to be purchased through that line item with the county actually paying for it. The motion carried by voice vote. Councilman Gard made a motion to set the rules aside for the purpose of expediting a second reading, seconded by Councilman Tucker. The motion carried by voice vote. Councilman Gard made a motion to adopt Ordinance #2009-09 - Additional Appropriation by name and title only, seconded by Councilman Tucker. Roll call vote carried with four ayes. Councilman Tucker made a motion to set the rules back in order, seconded by Councilman Gard. The motion carried by voice vote.

Resolution #2009-12 - transfer of funds - Park Budget - Vice President Alessia read Resolution #2009-12 to transfer \$2,000 within the Park Fund. The transfer does not affect the balance in the Park Fund. Councilman Huseman made a motion to adopt Resolution #2009-12, 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 - 2009 Street Paving Project, Burr/Rt2 Project.

Appointment of Police Commission member - Councilman Gard made a motion to appoint Sharon A. Patterson to the Police Commission to fill a term vacated by Donald Cripe that expires on December 31, 2009, seconded by Councilman Tucker. The motion carried by voice vote.

Discussion of old grade school - Director Cox reported that he was asked to prepare a summary of what is going on next door with the old elementary school so that the public would be aware of what is happening. He said that actually, nothing is happening with it. The building is just deteriorating. He likened it to demolition by neglect and said that was what the architect had shared with him. In 2008, the town was granted a \$1,500 grant by the Indiana Historic Landmark Foundation to have a registered architect, whose profession is historic buildings, go through the building and give the town a renovation feasibility study and a building condition assessment. At the same time, the town had a summary appraisal report done by Kovacevich & Company, Inc., by Steven Kovacevich, IFAS, certified general real estate appraiser. After having all of these things done, the town found out that the building, although somewhat structurally sound, would need an infusion of approximately \$750,000 to \$1.105 million to rehab the building to sustain it for another 30 to 50 years, if it were kept and maintained in good condition. There is a feeling out there that some people would like to see the building saved, but the problem is money. The town has worked with the Indiana Historic Landmark Foundation to investigate the feasibility of getting money they call a FLIP. If there were some way that the town could get title to the building and then give the title to them, they would renovate the exterior of the building, bringing it up to structural conditions and then try to sell it to an investor of historic buildings. Because of the economic times, some of the FLIP buildings they have already done have not sold to replenish their funds so they do not have any funds available to do that project. There is a developer of historic buildings out of North Carolina that has taken somewhat of an interest in the building who needs a set of floor plans. They are trying to create the floor plans from memory in order to send them to the developer, but it isn't anything that they are sure they want to do. In the appraisal, the lot that the building sits on would be worth approximately \$90,000 in good economic times, but the demolition costs would be in excess of \$200,000, and there is asbestos in the building. The building has a contract owner by the name of Frank Legace, however, Maria Bodar is still the owner of record and as of today, taxes are in arrears in the amount of approximately \$40,000. Director Cox said he feels the town is in a no-win situation. If the town could get title, which he did not think they wanted to do, the building could be demolished at a cost in excess of \$200,000 with the hopes of maybe re-couping \$90,000 by selling the empty lot so it would cost the taxpayers about \$110,000. The owner is not agreeable to do anything except to have the contract owner mow the grass. Lake County has scheduled a tax sale for June or July. Councilman Huseman said he did not think the county would do anything with the building if they took it over. Vice President Alessia asked if it could be gone after as an unsafe building. Attorney Sobkowski said there are basically three options that the town can pursue. The first option is to allow it to be sold, or at least go through the process, for delinquent taxes. Economically, he did not think this sounded like a very good deal and he didn't know if a purchaser could be found at the tax sale. This means that the county would end up with it. He thought if the county ended up with it, they might be willing to transfer it to the town

for a nominal amount, assuming the town was interested in taking title. Another option is the town has an unsafe building ordinance and can issue a notice to the owner requiring that the building be demolished because demolition is less expensive than renovation and he didn't feel it is feasible to renovate it. He questioned the cost of demolition discussed by Director Cox and referenced a proposed cost of \$100,000 in the Kovacevich report on page 10. This option would require a hearing before the enforcement authority, which in Lowell is the Board of Zoning Appeals. If the board affirms the determination that the building should be demolished, the town could proceed with demolition of the building. The town would have to front the cost of the demolition and then has a couple of options. One is to pursue civil litigation against the owner to try to collect the demolition costs. Second is to certify the demolition costs to the County Auditor and ask the County Auditor to place that cost as a special assessment against the property to be collected like taxes. However, they are not paying the property taxes now and there seems to be little chance that the property owner is going to pay those demolition costs. That would make it even less attractive for anyone to purchase it at tax sale and it is questionable as to whether the town would ever get its money back. Councilman Gard asked if anyone had spent any time looking at the contents of the building to determine if there is any inherent value to the contents. Director Cox said that when they went into the building under the emergency access order, the boxes and totes that were open appeared to contain old toys, books and things like that. It appeared to be storage of junk, stacked from floor to ceiling, wall to wall, packed tight. He said he was not there for the first walk-through when all of the cats were discovered and he knew there were many products available to do clean-up, but nothing gets rid of the smell of feline urine. Vice President Alessia said that he thought it was President Kuiper's intention to let the community know the total cost. He summarized that if the town got the building free and clear, the minimum cost to knock the building down is \$100,000 and \$40,000 owed in back taxes for a property that is worth no more than \$90,000 on a good day. Councilman Huseman asked about allowing the local fire departments to use the building for practice. Discussion followed about the necessity of abating the asbestos before that could be done, which would be very costly. Attorney Sobkowski said that the third option is for the town to condemn the property and go through eminent domain, but the question there is whether or not the town wants to take title and own the property. He said it may be more of a liability than an asset. Vice President Alessia said he felt the town was going to end up with it eventually anyway. Councilman Gard said that ultimately, something is going to have to be done. It can't just sit there and continue to deteriorate. He said the town owes it to the citizens that keep up their property to deal with a situation that is an eye sore that affects their property values. Director Cox stated that Mr. Legace is the contract owner, or at least the owner of the contract that Maria Bodar signed, giving title to him. The problem that they have had is, even if they have people talk to Mr. Legace, the town doesn't know if the contract has been paid off or not. Theoretically, the town is still dealing with Maria Bodar and she won't appear anywhere, although they believe she was there last weekend helping to mow the grass. Vice President Alessia asked if the case would just be continued if the town goes after her in court. Attorney Sobkowski said that there was litigation pending for code violations and she was her own lawyer for a while and filed things. It is his experience that judges will bend over backwards to help a pro se litigant, someone that is representing themselves, and give them opportunities that you wouldn't give to someone with legal representation. It just becomes more difficult. Councilman Gard said that as long as this daisy chain has been in operation, isn't a judge somewhere going to finally say that we've danced around this fire long enough. Attorney Sobkowski said that he thought if the Council wants to solve the problem, they either have to go through the unsafe building process or the town has to,

in some fashion, obtain title to the property so something can be done with the property. Councilman Gard said he thought they should pursue a way to obtain title to the building. What they decide to do after that or where they can find funds to do anything with it after that is another matter entirely. He felt it was important for the town to get control of it first, and then decide what they are going to do with it. Someone is going to have to do something. They just cannot continue to ignore the monster next door. He cited safety issues that go back fifteen to eighteen years and charged the Council and staff to find a way to make something happen. He said he felt they need to talk to the attorney, determine what makes the most sense for the town at the lowest initial outlay and make it happen.

NEW BUSINESS

Act on Compliance with Statement of Benefits for Personal Property (3) - Midwest Accurate Grinding - Daniel Conley, representative of Midwest Accurate Grinding, was available to answer any questions from the Council. Councilman Tucker made a motion to approve the Compliance with Statement of Benefits for Personal Property for three separate manufacturing equipment for Midwest Accurate Grinding, seconded by Councilman Gard. The motion carried by voice vote.

Request to close Fremont Street for Chamber event on June 5th - Lowell Chamber - Carrie Austgen, President of the Lowell Chamber of Commerce addressed the Council. She said they would like to get permission to close Fremont Street from Commercial Avenue to Franklin Street. Z-107 is going to be broadcasting live there on June 5th and they are hoping to have a large crowd in attendance. Councilman Gard made a motion to grant permission to close Fremont Street from Commercial Avenue to Franklin Street on June 5th for the Chamber event, seconded by Councilman Huseman. The motion carried by voice vote.

ANNOUNCEMENTS

Vice President Alessia announced the next regular meeting to be held on Monday, June 8, 2009 at 7:00 P.M.

MEDIA QUESTIONS/PUBLIC COMMENTS

A member of the media asked if the new appointee to the Police Commission was the first female. She was informed that Polly Roberts and Dr. Kathy Pueschel both served on the Police Commission in years past. She asked for any biographical information available. Ms. Patterson was in attendance and said that she was a letter carrier in Crown Point.

Bob Philpot, 111 E. Main Street, commented about the bridge that crosses Cedar Creek on Main Street. He referenced an article that appeared in the Post Tribune about the bridge that basically said that it will be at least several months up to the end of the year before the project to replace the bridge will be completed. He suggested making some changes to street closed signs because a number of people disregard the signs and then have to turn around when they can't get through at the bridge. He thought placing two signs on posts in four locations would better inform the public that the bridge is not passable. The first sign would be Bridge Out, rather than Street Closed. The second sign would be a detour sign with arrows indicating the direction of travel for the detour. He thought the four locations where these signs should be placed would be Mill and

Main, Halsted, Liberty and Main and Nichols and Main. His other concern is the safety of pedestrians crossing the bridge. He felt like a letter should be sent to the engineer for the project insisting that sidewalks be placed on the new bridge. There are a number of people, including classes of school children that cross the bridge and there should be sidewalks on the new bridge. He said he felt like the guard rail that is there now is sub-standard. He also cited water piping issues that were a concern. He said he would also like to see wing walls installed to control erosion and to have some drainage pipe issues addressed. He said his main concern is that the Council contact the county and insist that sidewalks are put on the new bridge. Councilman Huseman asked Vice President Alessia to contact the School Board and request that they also write a letter regarding the school children that use the bridge for crossing. Mr. Philpot said he thought it was important to remind the county that there are only two streets in town that direct traffic flow from one side of town to the other and one of them is now closed. He also said he would like to see a copy of the correspondence that is sent to the county be sent to the papers so the public will know what is being done. Vice President Alessia said he will talk with Mr. Shook and President Kuiper, see if the Street Department can get the signage, get a letter drafted that can be signed that is in support of the suggestions made and possibly pursue the avenue of talking to the Central Office for the School Corporation, specifically Mr. Kleefisch, Director of Operations, to see if they will jump behind that.

Councilman Gard made a motion to adjourn, seconded by Councilman Tucker at 7:46 P.M.

ATTEST:

John Alessia, Vice President

Judith Walters, Clerk-Treasurer