

**LOWELL TOWN COUNCIL
REGULAR MEETING
August 9, 2010**

The regular meeting of the Lowell Town Council was called to order on Monday, August 9, 2010 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. Council members present were Donald Huseman, Shane Tucker John Alessia, David Gard, and Phillip Kuiper. Also present were Town Attorney Gregory Sobkowski, Director of Public Works Greg Shook, Town Administrator Susan Peterson, Director of Community Development Wilbur Cox, Code Official Tom Trulley, Chief of Police John Shelhart, four members of the media, and seventy nine interested citizens.

APPROVAL OF MINUTES

Councilman Gard made a motion to approve the minutes from the July 26th regular meeting, seconded by Councilman Alessia. The motion carried by voice vote.

APPROVAL OF VOUCHERS

President Phillip Kuiper stated that he had reviewed White Vouchers #2004-2071 White Police Vouchers #4064-4081 Water Vouchers #2456-2494 and Waste Water Vouchers #3425-3454 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.

MONTHLY REPORTS

Councilman Alessia made a motion to accept the monthly reports from July 2010 as presented, seconded by Councilman Huseman. The motion carried by voice vote.

ORDINANCES & RESOLUTIONS

Public Hearing - Ordinance #2010-03 - an Ordinance to Establish Clean Air Standards for Workplaces and Public Places within the Town of Lowell. President Kuiper asked that everyone please limit their comment to three minutes. President Kuiper opened the Public Hearing.

Linda Gunning, 1249 Driftwood, stated she is against the smoking ban, but for different reasons, she thinks it is ashame that the government feels that it is necessary to become involved in the latest fad and political thinking instead of being grounded in a larger concept such as the Constitution. 5 Guys Restaurant uses peanut oil and peanut bags as decorations, using the same logic as the smoking ban they would have to change their decor and their receipts because some people are allergic to peanuts, even though no one forces them to go there.

Scott Pickering, 1608 Dewey Drive, stated he appreciates the Town for standing up for the

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smoking ban. He has heard a lot of people say let the State do a smoking ban, but he stated that the State will not do a smoking ban, the Governor has said that he will not support it, but he won't stand in the way of one. The majority of Senators and Representatives in Indianapolis will not support it. He found out today that his mom is going to need oxygen and he will have to take her to other places to eat and shop.

Kathy Blount, 229 Grant St, said she is in favor of the smoking ban, she gave birth to a child who was five weeks premature and had undeveloped lungs and could not be around smoke, because of that she could only go to places that did not allow smoking.

Roberta Burke, Cedar Lake, said being a bartender she thinks they have enough responsibility and cannot police the bathrooms and outside. She has grandchildren that live in this town and is more worried about the drugs in Lowell than smoking, people need to worry about getting the drugs off the streets and not if someone is smoking 15 feet away from a building. As a bartender who works 10 hour shifts she cannot walk away from the building and leave her job unattended to go out for a smoke break.

Jim Specier, 419 Joe Martin Road, stated twelve years ago his wife battled a life threatening pneumonia and now has late adult onset asthma. He says that everybody loves somebody and his definition of love is to choose to do good for another. He stated that there is an old saying that you can tell where a train has been because it has left it's track, but when someone smokes in a room and they leave it doesn't mean that the smoke and the affects leaves with them. He is not asking smokers to give anything up but he is asking them to give the gift of love to someone.

Greg Whitlock, Cedar Lake, said he has been to two or three meetings and said that this is a tough decision, he is asking for the bars to be exempt, or to let the owners make their own decision.

Lynn Vasko, 14660 Belshaw, said she is an asthma sufferer and would like to stay in the bar after a nice dinner but she leaves so she can go home and breath and not stink. She did some research and in 2003 New York City and California had the toughest bans in the United States. In a 2004 study the New York Department of Health found that air pollution in restaurants and bars had decreased six fold, the study also found that cities, bars and restaurants had prospered despite the smoking ban. The University of California research study showed that one year after a smoking ban went into effect there was a decrease in heart attacks by 17% and in three years that number went to 33%. Just like the seat belt law, these laws are for us and they are in place to help us and she would like to see the Town of Lowell go forward with the Ordinance.

Kevin Debrcol, St. Anthony Medical Center, stated St. Anthony's strongly supports the Ordinance to establish Clean Air Standards. Smoking is the leading cause of preventable death, exposure to second hand smoke is the third leading cause of preventable death in the United States. A smoke free work place ordinance will protect the workers much like the mandated laws that have removed asbestos in buildings. Public health laws on sanitation allows us to feel safe

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in the food we eat and the water we drink. Building codes and fire codes allow us to feel safe about our children when they are at school. Reducing health risks have contributed to the life expectancy for most people. The Town has demonstrated it's willingness to pass laws against inappropriate signage, grass clippings and junk cars. Health hazards are a far more serious issue and the safety of our citizens deserve at least as much attention.

Curtis Davis, 303 W. Commercial Ave, stated in the Pledge of Allegiance there is a place where they talk about liberty and justice for all, there have been thousands of soldiers who have given their lives for our liberties, he does not believe that the Town Council should not get in the middle of trying to take our liberties away from us. Being a smoker or a non smoker, when you start taking little by little away from the people it is getting out of hand. He believes that liberty is first.

Barb Benecki, 17587 Calhoun, said she believes that this is a no win situation because if the ordinance goes as it is, it takes away smokers rights to smoke, if you go the other way it is good for non smokers. She thinks we should look into San Francisco's laws, they have strict smoking laws and they do enforce them. She thinks it would bring more business to Lowell, she knows a lot of people who don't go to McVey's or Mi Ranchito because of the smoke. In San Francisco they walled up the smoking side and had ventilation in the room. She thinks it would be fine to smoke in the bars.

Lindsey Grace, American Lung Association of Indiana, said she is currently working with the smoking laws in Indianapolis and they have exemptions for bars and that is not working for them. The American Lung Association supports a Clean Air Ordinance for Lowell for the many health and economic benefits. When it comes to protecting public health there should be no debate, many states, 28 of them, have realized the necessity of the Clean Indoor Air laws. This ordinance would allow all workers, no matter where they work, to work in an environment where their health is not at risk.. People who work in a facility where smoking is allowed are putting their health at risk every time they go to work. Illnesses and death caused by exposure to smoke are preventable. Many said that government has no business regulating restaurants and bars but that is the purpose of government is to protect the citizens, they wouldn't allow a restaurant or bar to serve dirty water or ice, or not provide fire codes, so we should not allow this very preventable health issue to go on as well. Studies have shown that business owners have not lost revenue because of smoke free laws.

Dave Tipton, Grant Park, IL, said that the State of Illinois went smoke free almost three years ago and within the first year one establishment closed it's doors because it could not compete because of the no smoking. Harrah's in Joliet lost 30% of its funds because everyone came to Indiana because they could smoke here. He comes here because he has a choice in Indiana.

Martha Vasquez-Bozeman, Country Lanes Bowling, said she is a smoker and also has asthma, she choose to own and work in a bowling alley. If this law gets passed for some people it has nothing to do with being a smoker or a non smoker, but it has to do with income. She said 90%

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of her bowlers smoke and if this gets passed and the bowlers don't have a place to smoke Country Lanes will close down, it is the only entertainment that we have in this town. You can't compare big cities to a small town and we have closed businesses downtown. She has gotten e-mails that 29 bowling centers are closing, part of it is because of the economy and part of it is because of the smoking laws. Give them a choice, a room to smoke in, somewhere to go, but don't just take it away because we will have to close down.

Sue Tracy, American Cancer Society of Northwest Indiana, thanked the Council for allowing them to voice both sides of this issue. She would like to take the emotion out of the issue and just look at the facts and the fact is that smoke free work places save employers medical expenses, improve productivity and attendance of their employees. There is data that supports restaurants and bar owners would not loose business if there is a smoke free ordinance. Food service workers have a 50% chance of getting lung cancer because they are exposed to second hand smoke. The most important fact is that there are no safe levels of second hand smoke. Smoke free laws protect health, save lives and promote business, and studies show that they do not have a negative impact on restaurants and bars. The American Cancer Society supports a smoke free Lowell.

Karen Dejnowski, 296 Navajo Trail, said they ban smoking at the football games at the High School and didn't loose any attendance. The businesses downtown have always been coming and going, it has nothing to do with smoking what so ever. She is a non smoker and she might leave Lowell as well, to go to other places where there is no smoking. We should be looking at who we are hurting, she lost a daughter to cancer.

Tom Legacy, 16806 Parrish, said he is a non smoker but does not understand why they want to ban smoking. In the last fifteen years he has known four or five people who have died from cancer and have not smoked a day in their life. The police don't need to be worried about smokers, they need to be worried about the thieves in this Town. People are going to loose their jobs and their businesses over cigarettes. Look at the whole picture, the Town will loose tax dollars and revenue if this passes.

Lori Petralia, said her son is a cancer survivor and it has nothing to do with smoking. She is a bartender and a smoker and asked where are the smokers supposed to go. As a bartender it is hard enough to watch what is going on inside the business, they can't watch what is going on outside. She thinks people should have somewhere to go, let them smoke in bars.

Will Farrellbegg, 515 Illinois Ave, said most of the people want this ordinance to go in place, but as in most cases the minority feel that their rights are being violated and they shout the loudest. When people think about their rights being taken away they don't think about the people who don't smoke and go into a smoky environment and you leave with your clothes smelling of smoke and our rights have been violated in that sense. Businesses are used to change and a good business will adapt to change. He has seen this happen in other countries and the businesses have not closed, they have actually increased their business, because it is the non smokers who are the majority and will start to frequent these businesses.

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Barbara Starr, rural Lowell, said she does not believe that the Council has any right to tell people what to do in their businesses, it is up to them to let people smoke or not. The government should not be able to stop people from smoking and where they want to go and have drinks. For many years there has been a lot more dirty air in Gary then what you will find in a bar.

Bob Hill, Rock n Roll Italian Outpost, submitted a petition to the Council against the ordinance. He had a collection of facts from the internet about businesses closing in different states due to smoking bans. He is not in favor of smoking in restaurants at all, he would prefer his restaurant be fresh and clean, however seven out of ten people smoke in his bar. The restaurant customers come in and stay for about a half an hour to an hour and they leave, the bar customers will stay one to three hours. If this ordinance goes through he stands to loose about 70% of his business, if he is able to retain half of that it is 35% of his business lost. He asked if anyone would be willing to give up thirty-five cents out of every dollar they earn for clean air, if not he asked that the Council take them into consideration. It is a financial thing and a matter of choice, if you hang a sign up that says smoking is allowed it is a choice to go into a so called hazardous environment. He is in favor of smoking in a bar if it can be closed off from the dining area. He proposed a change to the ordinance that bars be exempt if it is closed off, and or businesses that are now in existence be grand fathered in because when they invested in their businesses this ordinance was not in existence.

Brent Williams, 5546 W. 173rd Place, said there is heroin and ruffies in Lowell and if girls leave their purses and drinks on the bar to go outside to smoke that leaves more people open to vulnerability, he thinks that is what the Town should be worried about.

Troy Laffoon, 116 Halsted St, said someone from Indianapolis can tell us about statics he can get just as many that tell different statics. He is not interested in advocate's, he is only interested in the people that are from Lowell and how they will be affected by this. He thinks that council should get off the backs of the people of Lowell and worry about things that are more important.

Hank Laninga, Town Pub, said 80% of his customers smoke and if they can't they will go to the VFW because it is out of town.

Maryann Hoffman, 763 Mohawk, said she does not smoke and can't stand the smell but if they want to smoke in the bars that is their business. She is in favor of this ordinance but she thinks that bars should have an exemption.

Martha Farrellbegg, 515 Illinois Avenue, said second hand smoke is a definite issue, she has personal knowledge of it in her own life, her mother died from second hand smoke and she never smoked but she worked in the restaurant environment. Smoking used to be cool, everybody did it, but now we have the knowledge of the dangers of second hand smoke. She feels it is our responsibility now that we have that knowledge to do the best we can with that.

Bill Carlson, 141 W. Commercial Avenue, said he understands some of the feelings that are being expressed, like going to a restaurant and having a meal with out smelling smoke, we have

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restaurants in this town that are smoke free. Those places made their choice and smokers should also be able to make a choice, that is the way it has always been and now the smokers are the bad boys, they can't go outside and smoke in the parking lot without getting ran over because of the 15 foot from the building rule. Atlantic City passed an ordinance on smoking and things have gotten so tough out there and they think a big part of it is the smoking law so they are talking about dropping it for a year to get the business back.

Jennifer Childress, 632 Red Bud Lane, said she is not a smoker, has three young children and wants what's best for them in life. She thinks her civil liberties are at stake and her children should have a right to choose what they want to do. If her children want to smoke in a business that they raised money to open that is their choice. Where is the line drawn, when the government starts coming into our homes. McDonald's is bad for us but you aren't going to shut down all the McDonald's. Her husband was a business owner with a heavy smoker and choose to go into work where he smelled like smoke.

Dianna Leflish, Lowell, said she does not believe that this is an ordinance for clean air, she thinks that the Council is getting a kick back from the government and will be hiring code enforcers and that it has nothing to do with clean air but has everything to do with revenue and control.

Diane Schoom, W. 153rd Avenue, said she wants to applaud the Council for this ordinance and she is in favor of it. She wants to be able to go somewhere and eat without smelling smoke.

Carl Ferro, 306 E. Commercial Avenue said he has employees that smoke and he told them that if this ordinance passes they are going to have a problem and they have threatened to quit. The Town is going to set off fireworks for the Labor Day Festival and that will also pollute the air, he thinks the Town is breaking their own rules by setting off the fireworks. He stated that the Council has no right to tell him what to do in his business, they are taking too many rights away from the people.

Joy Miller, 236 Idlewild, said she is a smoker and has also had a liver transplant. She enjoys smoking and thinks she should be able to smoke in a bar and have a good time with other people.

Don Kocher, rural Lowell, said thousands of cars and hundreds of diesel trucks drive down Route 2 every day, the minimal amount of smoke caused by smokers in the street is totally illogical. Any bar or restaurant that can completely segregate from it's non smoking area should be allowed to do so.

Gerry Vasko, rural Lowell, said there is a bar in Lake Dale under the P.O.A called Ricardo's, it is a non smoking bar, they are open six days a week and it is always wall to wall people.

Jerry Burke, Wheatfield, applauds the Council on their decision making process. He did not know if the electronic cigarettes are included in the ordinance, he has choose to try to eliminate his cigarette smoking by using them. He hopes that they are not part of the ordinance.

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President Kuiper said that the Council just received information on those and will look into it.

Rick Flores, 111 Winesap, said he is a smoker and twenty one years old. He believes that if the Council takes this away they are taking away choice and liberty. If someone does not like smoke then they have a choice to leave. The country is in an economic crisis right now so why make it harder for this small town.

No further public comments, President Kuiper closed the public hearing.

President Kuiper made a few personal comments, he said that this wasn't the Town Council mission and it did not start out that way. It started when George's went non smoking people started asking if the Town was going to do the same, that is when the survey went out and it was the biggest response that they have gotten back going out with utility bills and he choose to make that response valid. He had no hatred for smokers and he has none now, the man he most respected in life died from smoking cigarettes and he loves him no less, his mother died from the same thing Tom Felder died from and she never smoked, the doctors said it could be from second hand smoke. He does not want to ban cigarettes, he is not telling people to quit smoking. Some people are calling this a smoking ban, he is not, to him this is not a ban on smoking, it may be an ordinance that you can't smoke in certain places. He thinks the Council did a great job on this, they all have busy lives, other jobs, and they took the time and had two work sessions and four or five discussions about this. The thing that has struck him the most as of late is he has never, in the eight years he has been on the Council had as many phone calls about one subject as this, but up until two weeks ago all the calls, except one, were from people that are for this. There were no bar owners, restaurant owners or anyone else who called that did not want some kind of smoking ordinance, after a long conversation with Bill Carlson he said that maybe people did not know they could call him, to that he said shame on them, his number is in the phone book and he welcomes all phone calls as long as there is respect on both ends of the phone. Bill told some other people to do the same and then President Kuiper got phone calls from two bars and one restaurant. Robert Hill was one of the calls and everyone knows where he stands, the other was from a bar that he will not name because they asked him not to, they said that they called because they were asked to but they feel that they might get more customers if this does pass, then he got a call from a restaurant and got the same message. This is not the government taking away rights, this was put out to the people and someone said that the survey was not a very good response, shame on the people, they don't get much of a response when it is time to go vote either, shame on the people, he can't help that, they can only try to get to the people to hear the people. President Kuiper has really enjoyed this, some of it is insulting but it is passion on both sides and he did not take any of it personally.

Councilman Huseman stated that he has enjoyed listening to the pros and cons, but he still stands by his decision of freedom of choice.

Councilman Alessia stated that for him it is a public health issue. He respects Councilman Huseman's opinion that it is freedom of choice, but they also have duties as Council members and as citizens and part of those duties is making the society better for the future. He hopes that

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people understand that smoking is a bad thing, and like Mrs. Childress said about eating at McDonald's, if a person decides to overeat it does not affect anyone else, but a person smoking will affect other peoples health. It is a public health issue and he supports the clean air ordinance.

Councilman Gard stated that he found it interesting that one of the speakers referred to this as a fad, he was never aware that health was a fad. Listening to the gentleman talk about losing his wife, Councilman Gard knows all about that, he lost his wife of 35 years to cancer. Dying is not a fad, we may not know when we will die but we do know what can cause us to die. As a body they have a responsibility to the majority, the 77 to 78% of the people in our town that don't smoke, not to the minority that do smoke. Rights do go both ways, there are guys that died in Afghanistan today, some of them smoked and some of them don't, they died for their right to smoke or not smoke. You don't have the right to pollute my air just like I don't have the right to pollute yours, he went on to say that he has a right to go into a restaurant and spend his hard earned money and not have to breath your smoke. There is some credence to the bar issue, give the Council a proposal that makes sense and they will certainly consider it. Councilman Gard is in favor of this ordinance, he is in favor of protecting this community and in favor of protecting the little kids that go into restaurants where there is smoke and there is nothing they can do about it.

Councilman Tucker stated that nothing has changed his stance in the last few weeks, his number one goal is protecting the children and as long as there is no cigarette smoke where the children are, that is his main goal. In his opinion there can be some lee-way with the bars, when you are an adult you know exactly what you are getting into when you go into a bar. He is for the ordinance but he thinks there could be some concessions.

Councilman Gard stated that there were several comments made about fighting drugs in this Town and tobacco is also a drug.

Resolution #2010-10 - Transfer of Funds - Park & Freedom Park Budget - The Parks Department asked the Council if they could transfer \$2,000.00 from the Park Fund line 331 to line 221 gasoline, and \$1000.00 from Freedom Park line 243 to 301 professional services. Councilman Gard made a motion to approve Resolution #2010-10, seconded by Councilman Alessia. Clerk-Treasurer Judith Walters stated the transfer in Freedom Park is needed because we finally received our additional appropriation approval from the State. The motion carried by voice vote.

UNFINISHED BUSINESS

Public Works Update - Burr Street/Rt 2 Project - Approve Pay Request #14 to DLZ Engineering - \$4,934.17 and forward to INDOT for 80% reimbursement - \$3,947.34. Councilman Huseman made a motion to approve the pay request, seconded by Councilman Tucker. The motion carried by voice vote.

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Act on agreement with Commonwealth Engineers for Wellhead Protection Plan - Director of Public Works Greg Shook explained that there are three parts to the agreement the first part is estimated at \$2,100.00, the second part is estimated at \$10,300.00 and the third part is estimated at \$12,100.00. Task two is another delineation of the wellfield, they might get IDEM to go without a having to do a new delineation since we haven't changed the wellfield, if they can get by that way it will save \$10,000.00. The total cost is about \$24,500.00. The other part of the agreement is for professional services and that is billed at an hourly rate and Director of Public Works Greg Shook asked the Council to approve that as well. Councilman Alessia made a motion to approve the agreement, seconded by Councilman Gard. The motion carried by voice vote.

President Kuiper asked Director of Community Development Wilbur Cox to give them an update on Costas. Director Wilbur Cox stated that as of Friday the attorney for Costas sent him a copy of the letter that he sent to the attorney from Chase Bank. When Costas filed bankruptcy the bank took the mortgage but they have not gone through the Sheriff sale to get the title to the property, that leaves it in Costas name. There is an issue there with the weeds, glass etc., and they issued three citations to Costas that was received by their attorney. They will file liens for the work the Street Department did cleaning it up. Chase Bank has told him that even though they don't have title, they are having an environmental study done because that is what is required for a commercial building to be sold. Depending on the results of the study the bank may let it go up for tax sale. He will give all the information to the Town attorney and see what they can do. The Town is going through the same issue with vacant homes in the area, having to go to the lending institutions thinking that they own it but they haven't went through Sheriff sale.

Award bid and contract for Energy Grant for Mechanical Systems - Code Official Tom Trulley said the attorney reviewed the contract from Parkway Mechanical and everything is in order. There are three bids - Town Hall in the amount of \$47,960.00, Street Department in the amount of \$32,800.00 and the Water Treatment Plant in the amount of \$55,958.00. After bidding the jobs out twice this is the only bid that came in. Code Official Tom Trulley explained that he called several mechanical companies and the reason there were not more bids is because this is grant money and they have to follow the Davis Bacon Act and most companies do not have the man power nor do they want to pay the wages to do the work. He went on to say that this is 100% grant money. Councilman Alessia made a motion to approve the bids, seconded by Councilman Tucker. The motion carried by voice vote.

Discussion of rebidding for Doors, Windows & Frames - Town Attorney Gregory Sobkowski explained that they received bids on this the first time it went out but it did not comply with the specs so it was rejected and rebid and then there were no bids. Under the public construction law there is no procedure to enter into a contract with out a bid, the only option is to rebid again. Code Official Tom Trulley stated that we are the only one in the State to get this grant and he has called different vendors and could possibly have one that could do it. Councilman Gard made a motion to put it out for bid again, seconded by Councilman Tucker. The motion carried by voice vote.

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NEW BUSINESS

Approve Quarterly Park use fees for August October 2010 - Clerk Treasurer Judith Walters explained that they added a BMX camp and the cost is \$40.00 for residents and \$45.00 for non residents. Councilman Tucker made a motion to approve the fees, seconded by Councilman Gard. The motion carried by voice vote.

ANNOUNCEMENTS

President Phillip Kuiper announced the next regular meeting will be on Monday August 23, 2010 at 7:00 P.M.

MEDIA QUESTIONS/PUBLIC COMMENTS

A member from the media asked about a petition that Robert Hill had and if there were signatures and how many, she was told there are approximately eighty signatures and they are not all Lowell residents.

A member of the press asked what the bid in the amount of \$47,960.00 was for and she was told it is for the Town Hall.

Bill Carlson asked what happened to the fountain at Evergreen Park, he was told that it is broken and it is either in the motor or the wiring.

A member of the public asked when the Council was going to vote on the smoking ordinance, she was told that it will be advertised for the second reading.

Carl Ferro asked about the sewer at the new middle school. Director of Public Works Greg Shook said he sent a letter to Superintendent Alice Neal and Nate Klefisch, Director of Operations and he gave a copy of the letter to all the Council members. He has talked with Nate and Skillman and the town has been out there and done tv work inside the sewers and have found some mud and some castings that were not sealed and they are in the process of putting together a punch list they will give the school and Spillman. Carl Ferro stated that Councilman Huseman made a comment that the school drainage area should have a lift pump there and asked if Councilman Huseman could explain how the water is getting to the drain. Councilman Huseman stated that we got the easements from the two farmers and they bored under the road and come up at 3.4% and 1.8% difference, if it would have went by Phillips on VanDurens property they would not need a lift station. Director of Public Works Greg Shook stated there was talk between the engineers about the cost difference between a gravity sewer and a lift station and somewhere along the line it was decided to put in a lift station. Mr. Ferro responded that the school should pull their bond and re do it because it was not done right the first time.

Councilman Huseman stated that he had packets for the Council members that are answers to the Ordinance #2010-02, amend Chapter 150 Contractors License.

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Bob Hill asked if the proposal that Councilman Gard asked for should be in writing and he responded that yes that would be great.

Ed Bradbury asked if there were going to be stop lights at Commercial Ave and Nichols Street. President Kuiper said it is not likely at this time, the State said there is not enough traffic there.

There being no further business or discussion, Councilman Gard made a motion to adjourn, seconded by Councilman Alessia at 8:46 P.M.

Phillip Kuiper, President

Attest:

Judith Walters
Clerk-Treasurer