

**LOWELL TOWN COUNCIL
REGULAR MEETING
SEPTEMBER 22, 2014**

The regular meeting of the Lowell Town Council was called to order on Monday, September 22, 2014 at 7:00 P.M. by President Edgar Corns. The Pledge of Allegiance was recited followed by a moment of silence. Clerk-Treasurer Judith Walters called the roll. Members present were Craig Earley, Robert Philpot, Donald Parker, Phillip Kuiper, and Edgar Corns. Also present were Town Attorney David Westland, Public Works Director Greg Shook, Building Administrator Tom Trulley, Police Chief Erik Matson, Fire Chief Clint Gorbball, Financial Advisor Greg Guerrettaz, two members of the media, and eighteen citizens.

APPROVAL OF MINUTES

Councilman Earley made a motion to approve the September 8, 2014 regular meeting minutes, seconded by Councilman Parker. Councilman Philpot stated he had emailed Clerk-Treasurer Judith Walters and asked why his comments and questions to Mr. Hendrix were not included in the minutes. She had answered that the other two were important. Clerk-Treasurer Walters stated she did not say that. Councilman Philpot stated he agreed that the other comments were important, but believed that his were as well. He stated he had asked Mr. Hendrix if the parking lot in front of the Fire Department did not need to be milled and replaced, and Mr. Hendrix agreed with that statement. Mr. Hendrix had said that he would do the cracks and the seal coat on that lot. Councilman Philpot stated he also asked about the back apron because it is cracked, and that was not included in the minutes. This email resulted in an email from Councilman Earley that was sent to the Council members, attorneys, and Clerk-Treasurer Walters, which Councilman Philpot did not appreciate. Councilman Philpot made a motion that the minutes be amended to include his conversation with Mr. Hendrix about the mill and replacement. After some discussion between Councilman Philpot and Councilman Earley, Attorney David Westland stated, point of order, you have a motion to approve and a second. Councilman Philpot then made a motion to amend the minutes to include the comments he just suggested. Discussion on his amendment is out of order unless there is a second. President Corns asked if there was a second on Councilman Philpot's motion. Without a second, the motion died. President Corns called for a roll call vote for the first motion to approve the September 8, 2014 regular meeting minutes as they stand, which carried four to one with Councilman Philpot voting nay.

Councilman Parker made a motion to approve the September 15, 2014 special meeting minutes, seconded by Councilman Earley. Councilman Philpot made a motion to amend the minutes because when it started Mr. Hendrix came in and said, "I guess you guys want to mill and replace the Fire Department parking lot." He stated his understanding from the previous meeting was that it would be held over to decide if it would be a mill and replace or a crack seal coat. Mr. Hendrix passed out figures for only the mill and replace. Councilman Philpot then stated that at the end of the meeting he asked who had decided it would be a mill and replace, which he

believes he still has not gotten an answer to. He stated he was concerned that this decision was made in violation of the open door law because there were no figures out there for the crack and seal, only the mill and replace. President Corns stated we had said at the regular meeting that we would not make a determination on it until we got the paving contract for Lowell to see how much it would cost. Attorney Westland stated you again have a motion and a second on the floor to approve the minutes as stated, and a motion to amend the minutes to reflect Councilman Philpot's comments. Before discussion can take place regarding his amendment, you must have a second. President Corns asked if there was a second on Councilman Philpot's motion. Without a second, the motion died. President Corns called for a roll call vote for the motion to approve the September 15, 2014 special meeting minutes as they stand, which carried four to one with Councilman Philpot voting nay.

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APPROVAL OF VOUCHERS

President Corns stated he had reviewed White Vouchers #1910 - #1959, White-Police #4178 - #4190, Water #2644 - #2678, Waste Water #3508 - #3534, and Stormwater Utility #5096 - #5101, and recommended all of the vouchers for payment. Councilman Earley made a motion to approve the vouchers as listed, seconded by Councilman Parker and carried with five ayes.

PETITIONS, COMMUNICATIONS, REMONSTRANCES, PROCLAMATIONS

Presentation of Labor Day Parade Winners 2014 - Sue Peterson, Special Events Coordinator, presented the first through third place parade winners with their prizes. President Corns announced that third place was Miss Pat's School of Dance, second place was the Indiana Youth Ballet, and first place was Mi Ranchito. The audience applauded the participants present.

ORDINANCES & RESOLUTIONS

Resolution #2014-10 - adopt written fiscal plan for annexed area - Water Property
Resolution #2014-11 - adopt written fiscal plan for annexed area - Wastewater Treatment Plant -
Municipal Advisor Greg Guerrettaz stated Resolution #2014-10 adopts a written fiscal plan for the Water Treatment Plant, which allows the plant to be brought in to the community with no tax liability to the Town. Resolution #2014-11 is the written fiscal plan for the annexation area of the Wastewater Plant, which allows the plant to be brought in to the community with no tax liability as well. Councilman Kuiper made a motion to approve Resolution #2014-10, seconded by Councilman Earley and carried by roll call vote with five ayes. Councilman Kuiper made a motion to approve Resolution #2014-11, seconded by Councilman Earley and carried by roll call vote with five ayes.

Resolution #2014-12 - appealing 2015 maximum levy - Mr. Guerrettaz stated this is an appeal to the DLGF to allow our maximum levy to be increased by an estimate of \$20,000 as a result of

some of the annexations that have been done in the past. This is already built in to the budget, they just require a resolution affirming from the Council that myself and the Clerk-Treasurer are seeking an increase. Councilman Kuiper made a motion to approve Resolution #2014-12, seconded by Councilman Earley and carried by roll call vote with five ayes.

UNFINISHED BUSINESS

Public Works Department Update - Public Works Director Greg Shook stated that SEH Representative Craig Hendrix and himself would be meeting with the contractors tomorrow for pre-construction meetings for both Powell Ditch and the street paving. If they have their bonds in place, following the meetings we will issue a "Notice to Proceed" on both projects. We are also holding an informational meeting at 6:00 P.M. tomorrow night regarding the State Road 2 Curb and Sidewalk Project.

NEW BUSINESS

Act on Employment Contract - Greg Shook - Councilman Kuiper made a motion to approve Director Shook's employment contract thru December 31, 2015, seconded by Councilman Philpot and carried by roll call vote with five ayes.

Permission to use Recycling Funds for playground equipment upgrade at Evergreen Park - Councilman Kuiper made a motion to allow the use of recycling funds for the playground equipment upgrade at Evergreen Park, seconded by Councilman Philpot and carried by roll call vote with five ayes.

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Act on recommendations from Board of Zoning Appeals -

Unfavorable recommendation on Variance of Use - 301 E. Commercial - Councilman Parker made a motion to accept the unfavorable recommendation from the BZA and deny the variance request at 301 E. Commercial, seconded by Councilman Kuiper and carried by roll call vote with five ayes.

Favorable recommendation on Special Use - 119 Mill Street - Councilman Parker made a motion to deny the favorable recommendation from the BZA and deny the special use at 119 Mill Street, seconded by Councilman Earley. Attorney Westland read a letter from Town Planner, Jim Mandon, that stated; "The staff recommendation presented to the BZA was to deny the variance request. The ordinance does not anticipate turning a commercial building or portion of a commercial building into residential rentals. What it does anticipate in a Town Center Zoning Classification is permitting residences that already legally exist to continue as residences or even if multi-family buildings were to be erected or converted but not the combination of both. Approving this use variance would be legitimizing a conflicting land use with the buildings that surround it. The building in question was originally used for commercial storage many years ago and part of it was converted into a residential unit without the proper

approval from the Town. The staff is recommending that this request be denied primarily because of the conflicting land use that it would maintain, and the precedent it would create for future conversions. Town Center zoning anticipates residential units on the second floor which were originally built for that purpose. It does not anticipate part of a commercial building being converted into residential living space. The staff is recommending that you deny the request.” Edward Pedroza, Pedro Pedroza’s son, the owner of 119 Mill Street, stated th
Town had said that part of the building was being used for storage, which is conflicting with the residential use. Building Administrator Tom Trulley stated a long time ago that building was used for storage, and then it became a bakery. Edward Pedroza stated when his father bought the building twelve years ago, it was being used as residential, which he has utility bills that prove it was being used as such. Mr. Trulley stated the problem is that there is nothing on record proving that the Town approved it as residential. Councilman Earley stated it also conflicts with the current zoning classification ordinance and having residential on the first floor of any commercial building. Mr. Earley stated we understand the situation, and it is unfortunate that whoever sold the building told you it was residential, but it should not have been an understanding that it could continue. If we make an exception here, then we would be setting a precedents to the whole downtown area.

Carl Ferro, 1310 Harrison, stated at the time the bakery was there, the owner turned the back in to an apartment, illegally, about ten years ago. Since then, they have used it as a rental. Mr. Ferro stated he knew about the conversion and had brought it up to some people in town, but nothing was ever done about it. Councilman Parker thanked Mr. Pedroza and stated we understand, but according to the past and present ordinances it should not have been occupied as a residence, and our motion reflects that we will move forward with the zoning as it is. The motion to deny the special use carried by roll call vote with five ayes. A findings of fact will be prepared by Attorney Westland for the council to act on.

Agree to personal guaranty for Maintenance Bond - Beverly Estates, Donald Cripe - Attorney Westland stated there are two things here, a personal guaranty for the maintenance bond, which you typically do not do. A personal guaranty is just as strong as the financial backing of the person behind it. The second issue is that there is a cash bond to pay for the third lane on Burr Street, and he is requesting a \$100,000 release of that bond. The two should be taken one at a time, and it is the Council’s decision as far as the personal guaranty goes. Mr. Trulley stated he has asked Mr. Cripe for an as-built to have approved by the engineers, which he has yet to receive. Discussion followed. Clerk-Treasurer Walters stated what is in front of you now is if you would accept a personal guaranty for the maintenance bond, the performance bond is not yet being released.. Councilman Earley stated Mr. Cripe and his family have been in business here for as long he could remember, and he does not have a problem accepting a personal guaranty from Mr. Cripe. Councilman Earley made a motion to accept the personal guaranty for a Maintenance Bond, seconded by Councilman Kuiper and carried by roll call vote with five ayes. Clerk-Treasurer Walters stated the second part is that Mr. Cripe has a cash escrow with us in the amount of \$123,000 and he is asking for a partial release of \$100,000. Director Shook stated that is for the third lane that was added to Burr Street. Councilman Earley made a motion to release the \$100,000, seconded by Councilman Kuiper and carried by roll call vote with five ayes.

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Permission for temporary banner - Three Creeks Historical Association - Mr. Trulley stated he would like permission to allow the organizations in this town that would like to use banners for a

temporary use without them having to come in front of the Council. He stated he would approve the banners within reason. Councilman Parker made a motion to allow Mr. Trulley to decide on the temporary banners, and approving the request from Three Creeks Historical Association, seconded by Councilman Philpot and carried by roll call vote with five ayes.

Request for use of LOIT Public Safety funds for equipment upgrades - Chief Gorbali - Fire Chief Clint Gorbali stated last year with the creation of the LOIT Public Safety Fund, the Council so graciously decided to allow us to hire a full-time firefighter. That position was not filled until the end of August, meaning there is public safety money that was not spent on salary and benefits for that firefighter, totaling around \$30,000. He asked to use that \$30,000 for equipment upgrades and/or new equipment. Chief Gorbali gave examples of some upgrades that the money would be used for. Councilman Parker made a motion to approve Chief Gorbali's request, seconded by Councilman Philpot and carried by roll call vote. Clerk-Treasurer Judith Walters stated a resolution transferring the money from the 100-account personal services to 400-account capital outlays will be prepared for the next meeting.

ANNOUNCEMENTS

President Corns announced that the next regular meeting will be held Monday, October 13, 2014 at 7:00 P.M.

Councilman Parker stated there has been some discussion about hiring a police officer for the year 2015 and in order to do that, the Chief has to call and get a slot reserved in the academy. Councilman Parker made a motion to give the Police Chief the authority to hire someone around December 29, 2014 to get them enrolled in the January Northwest Indiana Law Enforcement Academy, seconded by Councilman Philpot and carried by roll call vote with five ayes.

Councilman Parker stated looking back at previous minutes, there has been discussions regarding the attorney contacting a party who has a parcel of land in town that is tied up in a trust that we would potentially like to use for a new town garage. The attorney has reached out to that party, but has not had any response. Councilman Parker made a motion to allow Director Shook to work with the town attorney to get two appraisals on that property so that we may have a line base to know what we may or may not be able to do in the future. Councilman Earley seconded the motion and asked if an attorney cannot find out who the land is in trust with, how can we? Councilman Parker stated the attorney knows who the land is in trust with. Discussion followed regarding contacting the party and the need for the two appraisals and acquiring the property. The motion carried by roll call vote with five ayes.

Councilman Parker stated he would like to extend his whole-hearted thanks to the Lowell Police and Fire Department, Director Shook, and the staff for the way they conducted themselves and the work they put in to the Nick Schultz funeral. The Council echoed Councilman Parker's comments.

Councilman Earley stated he would like to recognize the work of Reserve Officer Rex Ibarra, who had been with the Town for about five years. Police Chief Erik Matson stated he had joined us in about 2010 and when he came on to our department, he was already beyond the age of being

hired on full-time. He has been hired by the Lake County Sheriff's Department and will be greatly missed. He was one of the best officers we have had, reserve or otherwise, and we would like to wish him nothing but the best for his future.

Clerk-Treasurer Walters stated that early voting will again be held at the Town Hall beginning Tuesday, October 7th. It will run Monday through Friday from 9:00 AM - 3:00 PM, and two Saturdays, October 25th and November 1st, from 9:00 AM - 2:00 PM.

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MEDIA QUESTIONS/PUBLIC COMMENTS

Melanie Csepiga asked who the two petitioners were that were denied their variances. Councilman Parker stated the person who was here was from 119 Mill Street. Ms. Csepiga asked where 301 E. Commercial was located. President Corns stated it is the building just south of Davco Heating and Air on Route 2 and Nichols. Ms. Csepiga asked what they were wanting to put in there. President Corns stated a recycling center. Attorney Westland suggested that Ms. Csepiga could get with Mr. Trulley for more information, or she could read the findings of fact from the public hearing. Ms. Csepiga asked Councilman Parker where the land was that he was talking about purchasing for a town garage. Councilman Parker stated it is on the west side of town. Director Shook stated the land is currently being farmed and held in trust and is around seventeen acres.

ADJOURNMENT

Councilman Parker made a motion to adjourn at 7:50 P.M., seconded by Councilman Earley and carried with five ayes.

Edgar Corns, President

Attest:

Judith Walters, Clerk-Treasurer

