

**LOWELL TOWN COUNCIL  
REGULAR MEETING  
JANUARY 28, 2008**

The regular meeting of the Lowell Town Council was called to order on Monday, January 28, 2008 at 7:00 P.M. by President Phillip Kuiper. The Pledge of Allegiance was recited and a moment of silence was observed. Council members answering roll call were Donald Huseman, Shane Tucker, John Alessia, Phillip Kuiper, and David Gard. Also present were Town Attorney Ben Ballou, Director of Public Works Greg Shook, Town Administrator Susan Peterson, Director of Community Development Wilbur Cox, Park Superintendent Tom Sullivan, Police Chief John Shelhart, two members of the media and eleven interested citizens.

**TREASURER'S REPORT**

Councilman Gard made a motion to approve the Treasurer's Report for December, 2007 as presented, seconded by Councilman Tucker. The motion carried by voice vote.

**APPROVAL OF MINUTES**

Councilman Huseman made a motion to approve the minutes from the January 14<sup>h</sup> regular meeting and the January 23<sup>rd</sup> executive session, seconded by Councilman Tucker. The motion carried by voice vote.

**APPROVAL OF VOUCHERS**

President Kuiper stated that he had reviewed White Vouchers #1062-1108, Water Vouchers #2038-2068 and Waste Water Vouchers #3032-3052 and recommended them for approval. Councilman Tucker made a motion to approve the vouchers as listed, seconded by Councilman Alessia. The motion carried by voice vote.

**PETITIONS, COMMUNICATIONS, REMONSTRANCES, PROCLAMATIONS**

Proclamation - President Kuiper read a proclamation establishing the National Incident Management System (NIMS) as the standard for incident management in the Town of Lowell. Councilman Gard made a motion to accept the proclamation, seconded by Councilman Tucker. The motion carried by voice vote.

**ORDINANCES & RESOLUTIONS**

2<sup>nd</sup> Reading - Ordinance #2008-01 amend Chapter 74 & Chapter 75 Stop Intersections/No Parking - Councilman Gard made a motion to adopt Ordinance #2008-01, An Ordinance to Amend Chapters 74 and 75 of the Lowell Municipal Code- adding a stop intersection at Brookwood/Anne Avenue and prohibiting parking on either side of Southwood Drive, by name and title only, seconded by Councilman Huseman. Roll call vote carried with five ayes.

Resolution #2008-01 - temporary loan to General, MVH and Park Funds - President Kuiper read Resolution #2008-01, a temporary loan from the Gambling Revenue Fund to the General Fund in the amount of \$250,000, from the Gambling Revenue Fund to the MVH Fund in the amount of \$150,000 and from the Cumulative Sewer Fund to the Park Fund in the amount of \$75,000. Councilman Huseman made a motion to adopt Resolution #2008-01, seconded by Councilman Alessia. The motion carried by voice vote.

Resolution #2008-02 - annual transfer from Sewer Operation and Maintenance Fund to Sewer Improvement Fund - President Kuiper read Resolution #2008-02 to transfer \$800,000 from the Sewer Operation and Maintenance Fund to the Sewer Improvement Fund per the 1993 Bond Ordinance. Councilman Huseman made a motion to adopt Resolution #2008-02, seconded by Councilman Tucker. The motion carried by voice vote.

### **UNFINISHED BUSINESS**

Lowell Utilities Update - Nothing was reported for any of the following items: WWTP JMOB Requests; WWTP Phase II Project; Water Infrastructure Improvement Plan; Storm Sewers/Lift Station, East Side Sewer Project.

Storm Water Project - Public Works Director Greg Shook updated the Council on the storm water project they granted permission to have Commonwealth Engineers look into on Joe Martin Road and Hilltop. He met with an engineer from Commonwealth last week and walked the area. The engineer indicated that there are probably a couple of different alternatives and he is working on them. Director Shook stated that when he had to leave the engineer on site, it was the engineer's plan to go back into Hilltop and talk with Mr. and Mr. Cencion but he did not know if he was able to speak with them or not. Mr. and Mrs. Cencion were in attendance at the meeting and confirmed that the engineer was there. Director Shook said that he spoke with the engineer later in the week who asked him to talk with the County Surveyor's office and see if he could get another one of the topo tiles for him for the project. Director Shook reported that he is looking into that. Councilman Gard asked if this was related to the ponding of water on the east side of Joe Martin Road. Director Shook confirmed that it was along with the related water issues in the Hilltop area.

Permission to hire Commonwealth Engineers to do preliminary engineering and forward grant application for water infrastructure project to Congressman Visclosky - Community Development Director Wilbur Cox reported that they received a grant application from the congressman's office asking for projects the town would like to do. This is just the start of filling out the forms and getting some engineering criteria back to the congressman so he knows the scope of the project. Councilman Tucker made a motion to grant permission to hire Commonwealth Engineers to do preliminary engineering and forward the grant application for the water infrastructure project to Congressman Visclosky, seconded by Councilman Huseman. The motion carried by voice vote.

Tabled from previous meetings:

12/10/07 - Paving of street in Meadowbrook Subdivision - Director Cox reported that a certified letter was sent to the bank that holds the letter of credit and to Meadowbrook Partnership LLC informing them of the requirements in order to continue the letter of credit. He said he mentioned in the letter that it is to cover all improvements, including streets and alleyways. He has not gotten a return receipt back yet. President Kuiper read a letter from Courtyards of Meadowbrook POA regarding a letter of request dated September 15<sup>th</sup>. They noted that two items had been addressed by the Town of Lowell and asked for follow-up on several other items that had been referred to a traffic engineer. President Kuiper asked Director Cox if he had any response to the letter. Director Cox stated that he had no idea about the snow route. He thought Director Shook was working with the engineer on that item. As soon as they get it accepted, he did not think there would be a problem with giving it a designation of sorts, but at the current time, the town does not own the improvements because they have not been complied with. President Kuiper asked about the other items that would have been referred to a traffic engineer. Director Shook stated that he thought this had been handed over to Butler, Fairman & Seufert at one time. He gave updates on several items, reporting that the Street Department had gone out and painted the center line that was requested and they put up a 20 mph speed limit sign. The only item he is aware of that is outstanding is the snow route. He said that he thought there had been a request of no parking anytime on the outside perimeter of Meadowbrook Drive and then the inside would be a snow route. He said if the Council was interested in following through with that, even though the town does not own the street, since they are in the process of doing the paperwork he would add the snow route into what he and the Chief are working on now. He said they can also make the outside perimeter No Parking at any time if that is what everyone wants done. Director Shook reported that he has been in there when they are trying to plow snow and the inside perimeter of Meadowbrook Drive has a lot of parking which requires a great deal of weaving in and out of the snow plows. He said it was their intention to bring it to the Council with a recommendation of making it a snow route but it was his understanding that the POA would also like to have the outside perimeter designated no parking at any time. That can be done if the Council wishes. He said he can bring it when he brings the snow route list to the Council, which he hopes to do at the next regular Council meeting. He and the Chief are reviewing what was brought up at the last meeting that was tabled and will be bringing a designated list of snow route streets.

Councilman Huseman asked if a study could be done regarding the bus stop areas and marking them with white lines for crossings. Director Shook asked if they were talking about marking cross walks. President Kuiper said it would be cross walks for bus stops. Director Shook said he could look into that.

01/14/08 - No parking snow ordinance - President Kuiper stated that Director Shook and Chief Shelhart had asked him to keep this matter tabled, as Director Shook just reported, they are working on it and will possibly bring it to the next meeting.

### **NEW BUSINESS**

Accept annual Conflict of Interest Statements - President Kuiper stated there were several conflict of interest statements to be considered. Councilman Gard made a motion to accept

annual conflict of interest statements from Plan Commission Member Jim Konradi of Konradi Koncrete and Police Commission Member Donald Cripe of Big D Construction, seconded by Councilman Alessia. The motion carried by voice vote. Councilman Huseman asked for an explanation of the conflict of interest statements. Attorney Ballou explained that any time a person holds office and may potentially do business with the municipality, this disclosure form must be filled out in order to get everyone on the same page to let them know that the person may be doing business for the municipality with which the person holds office. That is the purpose of having these filled out and they have to be approved by the Council. The next statement to be considered is for Don Huseman, owner of Huseman Excavating, who is on the Lowell Town Council. Councilman Gard made a motion to accept the conflict of interest statement from Don Huseman, owner of Huseman Excavating, seconded by Councilman Tucker. The motion carried by voice vote, with Councilman Huseman abstaining from the vote. The next statement to be considered is for Shane Tucker, employee of the Lowell Police Department, who is also on the Lowell Town Council. Councilman Gard made a motion to accept the conflict of interest statement from Shane Tucker, employee of the Lowell Police Department, seconded by Councilman Alessia. The motion carried by voice vote, with Councilman Tucker abstaining from the vote.

Accept Letter of Credit No. 5172874 - \$45,000 - KM&N Properties, LLC - to guarantee payment for cost of engineering plans for Booster Station project - Cline/173rd Avenue - Councilman Huseman made a motion to accept the Letter of Credit No. 5172874 in the amount of \$45,000 for KM&N Properties, LLC to guarantee payment for the cost of engineering plans for the Booster Station project at Cline and 173<sup>rd</sup> Avenue, seconded by Councilman Tucker. The motion carried by voice vote.

Personnel Policy Changes - Clerk-Treasurer Walters stated that she had three items she would like the Council to consider. The first item falls under the section regarding paid vacation leave.

If a person is a full-time employee who worked for the town prior to that as a part-time employee, there is a section in the code that allows that person to get credit for the years of service worked as a part-time employee. It just came to her attention that an employee at the Town Hall never got those years of credit so she would like to grant her those years. The second item is the town has a sick bank, where each full-time employee that joins the sick bank gives one of their sick days to the bank each year. There has not been anyone draw on the sick bank in a couple of years and the bank is almost up to 500 sick days. She wondered if the Council would waive that this year and allow each employee to keep that sick day for themselves. The third item is that there are a lot of things in the personnel policy and the town code that need to be reviewed and updated. She asked for permission to review it with department heads and then take it to the Town Attorney for ordinance amendment. Councilman Gard made a motion to grant the requests from the Clerk-Treasurer regarding paid vacation leave, sick bank and personnel policy updates, seconded by Councilman Tucker. The motion carried by voice vote.

## **MEDIA QUESTIONS/PUBLIC COMMENTS**

Ed Bradbury, 5704 W. 171<sup>st</sup> Avenue, asked what area was being affected by Ordinance #2008-01

with the stop intersections. He was informed it was in Brookwood Subdivision at Anne Avenue and Brookwood Drive. Mr. Bradbury commented that it would be nice if that information was provided to avoid the questions being asked. President Kuiper apologized, saying that it was read at the previous meeting during first reading of the ordinance and was not repeated this meeting.

John Masepohl, 323 Spruce Court, said that he is the Courtyards of Meadowbrook POA President for 2008. He asked about the status of the paving in Meadowbrook and if the developer will be required to submit a copy of a signed contract to the Town of Lowell before the June 30<sup>th</sup> deadline, and at a time that will assure that the paving contractor's scheduled work will meet the deadline. This was suggested at a Town Council meeting on November 26<sup>th</sup> and was re-addressed when the POA sent a letter on December 12<sup>th</sup>. Director Cox stated the letter went out that the work had to be completed by June 30<sup>th</sup>, not a signed contract or anything else, but completed. If it is not done by June 30<sup>th</sup>, it was recommended by the town attorney to have the bond extended until September, which allows the town time to cash in the bond or letter of credit and then the town will bid out the work so the work can still be done this year. Director Cox paraphrased what Meadowbrook Partnership LLC was told by saying, "If your bond is going to be extended from February 28<sup>th</sup>, it must include increased costs, the work being done by June 30<sup>th</sup>, and if not, we'll be cashing it in right after that through legal means, and it is to include, as was stated earlier, roadways and alleyways." Mr. Masepohl re-addressed his request for a signed contract. He said his experience has been with contractors working with large projects through NIPSCO and generating stations. It is almost typical that the customer or client sees a signed contract, which has some kind of schedule in it, so that the client or customer, the Town, Meadowbrook, knows that this is the schedule. It is supposed to be done by June 30<sup>th</sup>. Councilman Huseman commented that is why there is a bond, they don't care if the developer does it or not. Mr. Masepohl said there has been a bond for six or seven years and it hasn't worked so it is his opinion that the bond is not necessarily the big hammer. He feels it is better to have a signed contract required that shows the work is really going to be done this time. Director Cox responded that he is not indifferent to what Mr. Masepohl had to say, but the developer has until February 14<sup>th</sup> or 15<sup>th</sup> to get the new bond or letter of credit in to the town. If he does not, by February 28<sup>th</sup>, the town attorney will have started the proceedings to go against the current letter of credit and a contract will not be needed. If the developer gets a new bond or letter of credit with the renewed amounts and so on, if the work is not done by June 30<sup>th</sup>, the town attorney will be cashing in the bond or letter of credit. He said he does not know what more assurance the town would need to make sure that is done. A signed contract is not going to do the town any good. President Kuiper spoke for the rest of the Council by saying that even if they saw a signed contract, at this point, they are going to follow right along with that path anyway. Mr. Masepohl commended the town for everything they are doing, but he felt that a signed contract would demonstrate that the developer is going to be doing the work and that would nudge him along. Councilman Gard said that there won't be any repeat of what the developer has done in the past because if he doesn't perform, the bond is the big hammer and the town will swing the big hammer. Mr. Masepohl asked if the bond has to be called in, who will do the work. He was informed that the town will find a paving firm. Mr. Masepohl asked if he heard correctly that the town does not own Meadowbrook Drive. Director Cox said he made that comment earlier in the meeting. He explained that Meadowbrook Drive has been dedicated, but Meadowbrook

Drive from west of the apartments to east of Nichols Street on the southern leg, those improvements have not been accepted by the town because they have never finished the final coat. It has been dedicated but the improvements have not been accepted yet. Mr. Masepohl said his final comment was about the snow route and parking, it was his recollection historically that the developer has always told people buying in Meadowbrook that parking is prohibited on the outer side. He said that parking is a problem there. The areas of Greenbrier, Dogwood and Sycamore have no guest parking. The area of Sweetbrier has about twenty spots for sixty one townhomes. The area of Briarwood has maybe six or eight for fifty one townhomes. He said he does not know what the percentage is for the apartments and all of the alley homes have two spots on their driveways. That is how it was approved by the town years ago when the developer proposed it. There is a big parking problem there and along the inner ring of Meadowbrook, those people who live there, park there. No one living on the outer rim of Meadowbrook parks there. They all park on their side streets.

Mrs. Cencion, 420 E. Hilltop, said she brought some pictures of the water damage that was done last year. She said she wanted to know when the progress was going to be made before her walls cave in. President Kuiper said that was what Director Shook reported on earlier in the meeting. He also said he wants it to be done as soon as possible. She was assured that it would be fixed.

Alberta Czekala, 5788 Arthur Avenue, commented about problems she has experienced with the lack of storm sewers and erosion in her neighborhood. She asked when something was going to be done. Councilman Huseman stated that he had gone to look at the situation and Director Shook was on top of it and something would be done as soon as the weather allowed. Mrs. Czekala said that Director Shook had been out there two years ago and told her that money was not available at that time.

There being no further business or discussion, Councilman Gard made a motion to adjourn, seconded by Councilman Alessia at 7:40 P.M.

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Phillip Kuiper, President  
Lowell Town Council

ATTEST:

Judith Walters, Clerk-Treasurer