

**LOWELL TOWN COUNCIL
REGULAR MEETING
NOVEMBER 9, 2015**

The regular meeting of the Lowell Town Council was called to order on Monday, November 9, 2015 at 7:00 P.M. by President Christopher Salatas. The Pledge of Allegiance was recited followed by a moment of silence. Clerk-Treasurer Judith Walters called the roll. Members present were Craig Earley, LeAnn Angerman, Christopher Salatas, and Edgar Corns. Donald Parker was not in attendance. Also present were Town Attorney David Westland, Police Chief Erik Matson, Public Works Director Greg Shook, Building Administrator Tom Trulley, SEH Representative Craig Hendrix, Financial Advisor Greg Guerrettaz, one member of the media, and thirty citizens.

TREASURER'S REPORT - October 2015

Councilman Corns made a motion to approve the October 2015 Treasurer's Report, seconded by Councilman Earley and carried with four ayes.

APPROVAL OF MINUTES

Councilman Corns made a motion to approve the October 26, 2015 regular meeting and executive session minutes, seconded by Councilwoman Angerman and carried with four ayes.

APPROVAL OF VOUCHERS

President Salatas stated he had reviewed White Vouchers #2110 - #2162, White-Police #4246 - #4258, Water #2741 - #2789, Waste Water #3598 - #3625, and Stormwater Utility #5143 - #5147. Councilman Earley made a motion to approve the vouchers as listed, seconded by Councilman Corns and carried with four ayes.

PETITIONS, COMMUNICATIONS, REMONSTRANCES, PROCLAMATIONS

State Representative Mike Aylesworth - Mr. Aylesworth introduced himself to the Council and staff and stated that he had been making his way around the district to touch base with each Council, and would be doing so throughout the year, because he believed it was important for people to actually see who their State Representative is. He also mentioned that there would be an organization day for the legislature next Tuesday, which would be a ceremonial day, and then the legislative session will begin right after the first of the year. He stated they plan out the sessions with a focus or two on the agenda, and this time we will be focusing on transportation since there has not been a raise in the portion of gas tax and registration fees that you get in quite some time. Councilman Corns mentioned two potholes on Route 2 that have been there for at least a year and a half that have not been taken care of. Mr. Aylesworth stated that he would take care of those, and asked if anyone had contacted someone at the State previously about those. Public Works Director Greg Shook stated he had contacted a gentleman previously. Mr. Aylesworth stated he would move the issue up a couple of layers to take care of it.

MONTHLY REPORTS - October 2015

Councilman Corns made a motion to approve the October 2015 Monthly Reports, seconded by Councilwoman Angerman and carried with four ayes.

ORDINANCES & RESOLUTIONS

PUBLIC HEARING -

Ordinance #2015-28 - Water Rate Ordinance - 2nd reading - President Salatas opened the public hearing. Frank Kaminski, 401 E. Commercial Ave., stated the water is undrinkable and so chlorinated that you can actually smell it. He stated, as part of his business at NWI Chaircovers, he rents out chaircovers and is going

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through them left and right because when he washes them the chlorine tears them apart. He said it does not make sense to raise the water rates when it is undrinkable and unsuitable to wash clothes in. Councilman Corns asked Mr. Kaminski if he would like to have sulfur water. President Saltas reminded Mr. Corns that this was a public hearing. Mr. Kaminski stated he lived in Demotte and that his water was cleaner down there with the filters he uses than it is up here.

Ray Briscoe, 708 Longwood Dr., asked if he could be educated as to why the rates were being raised. He also asked that once whatever is paid for that the raise is going towards, if the rates would then be knocked back down or if they would continue to go up. President Salatas stated after the public hearing he would give an answer, but unfortunately the public hearing was already open. Mr. Briscoe asked what the average cost per person was. President Salatas asked if that was the final comment, and hearing no other comments he closed the public hearing.

President Salatas explained the increases, not to exceed 27% as follows: 2,000 gallons - \$5.15 increase, 3,000 gallons - \$6.18 increase, 4,000 gallons - \$8.24 increase, 5,000 gallons - \$10.30 increase, 6,000 gallons - \$12.28 increase, 7,000 gallons - \$14.26 increase, and 8,000 gallons - \$16.24 increase. He stated his personal household, which has six adults, uses 7,270 gallons of water which would equal a \$14.50 increase. He stated, "We are increasing these rates because we are doing a \$4.5 million water tower project that also includes water mains, an aerator at our water plant, pump upgrades, and a new well. This raise will also cover the next \$1.25 million of improvements including water lines throughout town that will eliminate a lot of the dead ends, and increase fire flows as well as water pressure throughout town. These projects will also increase the water quality given the aerator and lack of dead ends, which will decrease stopped and stale water. This project was supposed to have been completed fourteen years ago, but was not. It would have been cheaper to construct fourteen years ago had the Council seen it that way. We now also have a five-year water plan that does not include any more increases." President Salatas stated we tried to keep our water rates down as much as possible and did bring it down from a 35% increase to a 27% increase, which maximizes the investment of the increase to improve our water system.

Councilman Earley stated he has opposed this from the beginning. He stated he believed there were other avenues that could have been searched to avoid the size of the increase, but that we do need a project and plan like this in place. Fourteen years ago we were not as big as we are now. Councilman Earley stated in his opinion this is a bit much right now and plans should have been made to improve the infrastructure before building a million gallon tank. He stated he did not completely oppose what is going on here, just the increase and the money that is being spent right now. It will be detrimental to future business as well as small business owners. The increases sound minimal, but they do add up. President Salatas asked Director Shook if fourteen years ago Commonwealth suggested a million gallon tank. Director Shook stated he did not believe it was a million gallons, but that everything was completed from that study fourteen years ago except for the elevated tank. President Salatas stated, although this is not a reason to raise the rates, the water rates have not been raised in fourteen years. Clerk-Treasurer Judith Walters stated that is not true. In 2008 we increased our water rates 30%, but decreased our sewer rates by 30%. President Salatas stated he was told differently. Clerk-Treasurer Walters stated there was also an increase in 2011 when the citizens had to start paying a private hydrant fee. President Salatas stated again, we are looking at doing major improvements to our water system given the fact that a lot of the complaints in town are regarding the water, we are trying to rectify those problems. Councilman Corns made a motion to adopt Ordinance #2015-28, seconded by Councilwoman Angerman and carried three to one by roll call vote with Councilman Earley voting nay.

PUBLIC HEARING-

Ordinance #2015-29 Water Tap Charges - 2nd reading - President Salatas stated he would like to clarify that the tap charges are only for new water customers entering the water system. President Salatas opened the public hearing. With no one to speak for or against the ordinance, President Salatas closed the public hearing. Councilman Corns made a motion to adopt Ordinance #2015-29, seconded by Councilwoman Angerman and carried three to one by roll call vote with Councilman Earley voting nay.

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1st reading - Ordinance #2015-33 - amend Subdivision Regulations Ordinance #2013-02 - Councilman Corns made a motion to approve the first reading of Ordinance #2015-33 by name and title only, seconded by Councilwoman Angerman. Councilman Earley asked if a brief description could be given so that the public knows what they are voting on. Attorney David Westland stated previously a developer who was coming in to town was required to donate a part of the subdivision to the town for green space or park space. This amendment allows the developer to make a cash contribution in lieu of the land computed on a \$15,000 per acre basis. Councilman Earley made a motion to approve the first reading of Ordinance #2015-33, seconded by Councilman Corns and carried by roll call vote with four ayes.

1st reading - Ordinance #2015-34 - Additional Appropriation - PO Grant Hours - Councilwoman Angerman made a motion to approve the first reading of Ordinance #2015-34 by name and title only, seconded by Councilman Corns. Clerk-Treasurer Walters stated this is for hours that the officers have worked off duty for a grant. We pay them up front, and then the town of St. John administrates that, and then we are given back the money and we appropriate it in to the General Fund. The motion carried by roll call vote with four ayes.

Resolution #2015-17 - Taxpayers' Petition Resolution - Clerk-Treasurer Walters stated this item needed to be tabled because all of the petitions were not back yet. Councilwoman Angerman made a motion to table Resolution #2015-17, seconded by Councilman Corns and carried by roll call vote with four ayes. Attorney Westland stated you will need to pass on this petition at your next meeting in order to keep things moving with the timeline you have set.

PUBLIC HEARING - Proposed Lease to enter into agreement with Lowell Building Corporation to construct new street garage - President Salatas opened the public hearing. With no one to speak for or against the public hearing, President Salatas closed the public hearing.

1st reading - Ordinance #2015-35 - Approve Lease Financing - Councilman Corns made a motion to approve the first reading of Ordinance #2015-35 by name and title only, seconded by Councilwoman Angerman and carried by roll call vote with four ayes.

PUBLIC HEARING -

1st reading - Ordinance #2015-36 - Additional Appropriation - \$240,000 - Acquisition of Real Estate - President Salatas opened the public hearing. Andrea Olchawa, 2305 Hillcrest Ln., asked how she was supposed to know what they were talking about when it is not in the paper and it is not discussed before it is voted on. She stated she came to understand, but all the Council is doing is voting rather than explaining what is happening and then opening it for discussion. President Salatas stated this is a public comment at this time and that he would answer questions afterwards. Ms. Olchawa stated she has to know what they are talking about before she can make a comment. We need to be able to comment after you explain what you are doing because you know what you are doing, we do not. President Salatas thanked her for her comment, and seeing no further comment he closed the public hearing. He stated this has been in the planning stages for well over the better half of this year and has been in the Lowell Tribune many times. This is for purchasing real estate near Indian Heights in order to build a new street garage. Discussion followed. Councilman Corns made a motion to approve the first reading of Ordinance #2015-36 by name and title only, seconded by Councilwoman Angerman. Councilman Earley stated the President is correct in what he is saying regarding the publication of the meetings, and hopefully this will get more people to come to these meetings because this is your local government. Councilman Earley suggested that in future meetings it may be possible to give a brief description of what is being voted on. The motion carried by roll call vote with four ayes.

UNFINISHED BUSINESS

Public Works Department Update - There were no updates given.

NEW BUSINESS

Enforcement of Town Ordinances - Dennis & Sandra Opiela, 2329 Hillcrest Lane - Mr. Opiela handed out some pictures and a survey of his property to the Council. He stated that the survey shows a fifteen foot utility and drainage easement at the rear of the lot and a five foot utility and drainage easement on each side of the lot. Mr. Opiela went on to quote Ordinance 156.16 regarding storm drainage and explained that due to his neighbor behind him taking out her swale and building up a raised garden, along with the six gutters that are three to four feet off of the property line, his backyard has been flooding. Mrs. Opiela explained that they had

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tried to talk to the neighbor to rectify the situation and ended up spending \$9,000 in order to landscape the area and try to create a place for drainage, which is now eroding. She stated that per John Lotton, "There is supposed to be a swale on both sides. The swale is supposed to meet on the property line." Mr. Opiela stated he just wanted the town to enforce the ordinance. Discussion followed. Mr. Opiela stated if nothing is going to be done, he will refer to the Common Enemy Law and build up his property to match hers. Councilman Earley stated the photograph taken of the water was from 2013, but the new pictures show a landscaped area with no puddling. If you are claiming that water puddles there, then that is what we need to see. Mr. Opiela stated he was more concerned about enforcing the ordinance that would prevent the neighbor's water from draining on to his property. Councilwoman Angerman stated after she visited the Opiela's home, she came back and asked MS4 Coordinator Greg White for a detailed report on what has happened with this situation. The report from Mr. White shows that there is not a violation of a specific ordinance. She stated she had asked if the landscaping and decoration were in violation of any ordinance, but they are not. Attorney Westland stated that you have a very detailed report from Mr. White that goes back to the beginning of the complaint and includes an email to the homeowners explaining his findings. Discussion followed.

Mr. White stated he had been out to the property for a number of situations and did not see any evidence other than two well manicured lawns. He stated he waited for some rain to fall and revisited the home on November 1st, 2015 since there had been about 3/4" of rain the night before. Mr. White pointed out the photo that was taken that day which shows his foot standing in the area of the complaint, but that there was no standing water and the ground was solid. He also stated that he went out there last Thursday less than two hours after an accumulation of 1/3" of rain and again the ground was dry. Mr. White went on to explain the rest of the report showing pictures from 2013 until now, and stated that each time he went out he did not see an ordinance violation to pursue. Mrs. Opiela asked about the sump pump that drains and if that could be moved. Mr. White stated he did measure where the sump pump and gutters drain and they are within the specs that he normally follows, which is at least two feet away from the property line. These are also not causing any puddling. Mrs. Opiela stated she had asked Mr. White multiple times where the ordinance is that states the two foot rule, and he has not been able to show her. Mr. Trulley stated three years ago the Plan Commission re-wrote the Subdivision Ordinance and when it was re-written by Ball State, they removed the part about being two feet from the property line. We are working on getting that part back in, but it is a guideline that we follow. Mr. Opiela stated he had asked Mr. White about that Common Enemy Law and he had never heard back from him. Attorney Westland stated Mr. White cannot give that legal advice. Discussion followed.

Councilman Corns stated when he built his garden building, he had to stay twelve feet off of the property line due to the easement. This homeowner has completely closed the easement off and filled it in with flower gardens, which is not right. Mr. White stated there are landscaping structures on both sides of the property line in the swale. Councilman Corns stated he is speaking about the fifteen foot easement on the back of the lot. Mr. White stated he would investigate it further. Andrea Olchawa, 2305 Hillcrest Ln., stated she did not build up the ground on the side of the house. Phillippe Builders did not give you any dirt, they only left the clay that was there. The Opiela's home is all clay minus the dirt that they placed around the tree in front. She explained how her lot drains and the fact that the town has only been called out when there has been 2"-3" of rain. With the ground being clay, it is going to take a while anyway to drain. President Salatas asked Attorney Westland what his opinion was. Attorney Westland stated you have to go with the report from Mr. White in regards to the swale, and as far as the Common Enemy Law and the other disputes, that is an issue between homeowners. He stated, his advice is that you investigate the complaints, which is what you have done, and as a town that is what you are supposed to be doing. Other than that, you can only point them in the direction of a productive way to resolve their dispute.

President Salatas stated since there is a lot of confusion as to why we are raising the water rates, he would like permission to get together with Craig Hendrix to create a newsletter that includes information about the water project and the five-year water plan. Councilwoman Angerman made a motion to allow President Salatas to work with Mr. Hendrix on a newsletter, seconded by Councilman Corns. Councilwoman Angerman stated she appreciated that because there is a lot of misinformation out there. This would help combat that and let our citizens know what we are doing. These raises are not something that we take lightly or want to do if we felt there were any other options.

Andrea Olchawa, 2305 Hillcrest Ln., asked if something could be put in the water bills telling the citizens

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what each siren means. She stated she was not sure the difference between all of the sirens that are set off in town and that it would be nice to inform people as to which siren means what so they are informed.

Councilman Corns stated the town uses roughly 850,000 gallons of water per day, with a 1.1 million gallon maximum output., and when we had the Rieter Automotive fire, the town ran out of water. If we do not do anything about it, one day you will turn on your faucet and have nothing. The motion to allow President Salatas and Craig Hendrix to work on a newsletter carried by roll call vote with four ayes.

ANNOUNCEMENTS

President Salatas announced that the next regular meeting would be Monday, November 23, 2015 at 7:00 P.M.

MEDIA QUESTIONS/PUBLIC COMMENTS

Dan Blankenship, 1837 W. 172nd Ln., stated that the fire hydrant fee used to be picked up by the Town of Lowell. What year did that change and why did it change? Clerk-Treasurer Walters stated it changed in 2011. We started charging the rate payer instead of the property tax payer because we had it as part of our General Fund, but when the State froze our levy and put a freeze on how much you could increase your budget over the following year, they chose to switch it over to the rate payer. Most other towns in the State did the same thing.

Dawn Johansen, 303 Woodland Ct., stated she had called the police a few times regarding her neighbor who has built a motor cross track in their backyard, but believed that they had more important issues than hers. She stated it has become annoying due to the noise and dust from the track, and asked what she could do as a homeowner to put forth an ordinance for not driving motor vehicles in your yard. Councilwoman Angerman asked Mr. Trulley if the information could be passed to Code Enforcement. Mr. Trulley stated that the Code Enforcement Officer had been over there several times, but unfortunately they have not been using the track during the day while she has been there. Councilwoman Angerman stated when it is a violation of a noise ordinance, please do not feel that it is something petty for the police officers to deal with. This is what they are there for. After some discussion, Councilwoman Angerman stated they would look in to creating an ordinance regarding driving vehicles in the yard.

Don Cripe, 17430 McKinley Pl., asked what the amount per acre was that would go to the park according to the new subdivision ordinance. Attorney Westland stated \$15,000 per acre. Councilwoman Angerman stated that is the estimated value per acre. Mr. Cripe stated he was planning a new subdivision that was roughly thirty-eight acres and asked if he would have to pay \$15,000 times thirty-eight. Director Shook stated no, the \$15,000 is part of the calculation that they use. For your subdivision the total cost will be somewhere around \$17,000.

ADJOURNMENT

Councilwoman Angerman made a motion to adjourn at 8:17 P.M., seconded by Councilman Corns and carried with four ayes.

Christopher Salatas, President

Attest:

Judith Walters, Clerk-Treasurer

