

**PROCEEDINGS  
OF  
CITY COUNCIL  
OF THE  
CITY OF LOWELL**

For the Regular Meeting of Monday, **DECEMBER 6, 2004**

The Meeting was called to order at 7:30 p.m. by Mayor Shores and the City Clerk called Roll.

Present: Councilmembers Hodges, Mathews, Myers, Pfaller and Mayor Shores.

Absent: None.

Also Present: City Manager David Pasquale, City Clerk Betty Morlock, Police Chief Jim Valentine, DPW Director Dan DesJarden, Police Officer James Hinton and Planning Commission Chairman Clark Jahnke.

IT WAS MOVED BY PFALLER and seconded by HODGES to approve the minutes of the November 15, 2004 regular meeting as corrected.

YEA: 5. NAY: 0. ABSENT: 0. MOTION CARRIED.

IT WAS MOVED BY MYERS and seconded by MATHEWS that the bills and accounts payable be allowed and the warrants issued.

YEA: 5. NAY: 0. ABSENT: 0. MOTION CARRIED.

<u>BILLS AND ACCOUNTS PAYABLE (12/06/04)</u>	
GENERAL FUND	\$180,657.38
MAJOR STREET FUND	2,085.35
LOCAL STREET FUND	697.80
DDA FUND	88,779.37
CITY HALL CONSTRUCTION FUND	114,142.50
AIRPORT FUND	37.69
WASTEWATER FUND	48,640.83
WATER FUND	16,628.82
DATA PROCESSING	2,204.00
EQUIPMENT FUND	3,323.50
CURRENT TAX FUND	5,804.75

Councilmember Pfaller verified the bill from Weather Shield to reroof the Wastewater Treatment Plant was allocated from the Waste Water Plant fund. City Manager Pasquale responded yes.

Item #1. **ASSESSOR EMPLOYMENT AGREEMENT.** Jim Marfia has served as City Assessor since January, 1988 under an employment agreement. It is proposed such an agreement be extended two years with a change in the compensation schedule. In 2005 Jim's salary would be \$32,100 per year (from the present \$31,775). This will increase to \$32,425 per year in 2006. The raises amount to approximately 1% per year. Mileage for business travel will be provided at the current IRS rate (presently 37.5 cents a mile).

The remainder of the contract stays the same. Marfia will continue to have office hours all day on Wednesday and Thursday of each week.

City Manager Pasquale has been pleased with Marfia's performance and recommended the Council approve the agreement.

Councilmember Myers questioned if this position was one which goes out for bid. Pasquale explained this is an appointment made by him. This is an employment agreement rather than a contract similar to the City Attorney. The Charter specifically provides the City Manager to appoint the City Assessor whereas the City Attorney is appointed by the Council directly.

Myers asked if federal taxes were set aside for Marfia. Pasquale stated yes.

Mayor Shores stated Marfia has been with the City of Lowell for some time. He is familiar with the City, which is a benefit.

Councilmember Pfaller stated Marfia is probably the highest paid employee for someone who is expected in the office two days a week. He questioned the standard compensation rate for a level 3 assessor. Is the rate comparable to a similar size City? Pasquale responded yes.

Myers wanted the pay scale investigated. Pasquale stated rates can be provided from other cities within Kent County.

IT WAS MOVED BY PFALLER and seconded by MYERS to table the Assessor Employment Agreement until the December 20, 2004 meeting at which time staff can provide backup and comparables of salaries from similar cities.

YEA: 5. NAY: 0. ABSENT: 0. MOTION CARRIED.

Item #2. **ADOPTION OF COMPUTER, INTERNET AND E-MAIL POLICIES.** As requested by Council, a policy which covers the usage of personal computers in City facilities including the internet and e-mail was provided to the Council. This has been reviewed by the department heads and is recommended for approval by the Council.

Councilmember Pfaller believed any programs installed on a City computer should be licensed by the City. He also commented on the Section "Internet Use #2". Pfaller did not believe internet should be used as a benefit for the employees, but rather a business tool for the employees. Pfaller suggested #3 be omitted regarding limited personal use. Inappropriate or unlawful use of

the Internet should also include termination.

### E-Mail Use

Pfaller believed the issue of employees checking their e-mail on a regular basis should be defined.

Councilmember Myers raised concerns on the same issues. However, he was also concerned about brief e-mail messages being allowed.

Mayor Shores did not have a problem with brief personal e-mail messages. Everyone receives personal messages on computers at work at one time or another. Pfaller believed the entire statement should be eliminated. Myers agreed.

By general consensus the Council agreed to eliminate #2 under "E-Mail Use", #2 under "Internet Use" should state "Access to the Internet is provided as a business tool" as well as eliminating #3.

General Computer Use #4 should include copyright and licensing laws apply.

IT WAS MOVED BY HODGES and seconded by MYERS to adopt the Computer, Internet and E-Mail policy as amended.

YEA: 5. NAY: 0. ABSENT: 0. MOTION CARRIED.

### **Item #3. DISCUSSION – REQUEST FOR CURB CUT OFF BOWES RD TO THE SOUTHWEST CORNER LOT OF BOWES RD TO THE SOUTHWEST CORNER LOT OF BOWES AND M-21.**

Jim Karris representing FSK Limited requested a curb cut off Bowes Road providing ingress and egress to the commercial site at the southwest corner of Bowes and M-21. In particular, the access proposed for the development from Bowes is within the City, while the majority of the property encompasses Lowell Charter Township. It is the City's option to grant an access for this property. The access for this parcel off of M21 is right turn in and right turn out. In order to make the development worthwhile, a Bowes Road access would be needed. The issue has been discussed with Lowell Township regarding a 425 agreement, where there could be some tax sharing involved. Also, being reviewed is an access road, which would be parallel to M21 and provide an alternate street route, similar to 29<sup>th</sup> Street. The reactions from the township have not been positive.

The developer is requesting a curb cut. The governing boards can meet concerning an agreement or the City could review a situation where the developer would be charged. This would be negotiable between the City and the developer.

Councilmember Hodges verified Lowell Township did not want to get involved with Act 425. Mayor Shores stated no. However, she suggested the issue be discussed together. She was not ready to hand over a curb cut. The City spent much on Bowes Road improvements.

Hodges commented on the years between 1993 and 1995 when the City wanted a traffic light at

the intersection due to the construction of the new high school, Lowell Township had no interest in helping the City improve Bowes Road. Hodges did not want to give away a curb cut. Shores agreed.

Shores believed Public Act 425 would be a good situation for both the township and the city. Councilmember Mathews agreed. Councilmember Pfaller stated a 425 should be a minimum. Councilmember Myers also agreed.

By general consensus, the Council agreed to have the developer meet with the township board and indicate the City Council wishes to meet for discussion concerning the Public Act 425.

Developer Jim Karris stated he has had several meetings with the township as well as Pasquale. He was unsure which direction to take. The township has turned down every request made. He can not develop the property without splitting it off in the rear. Big Boy Restaurant wishes to have the option to purchase the rear property. However, this can not be granted until it is split. The township does not want it split, unless a road is created. Karris is having a difficult time facilitating a mutual arrangement. He is at risk of losing the client, if he does not have construction started by the first of the year.

Shores was sympathetic. However, the City has invested a great amount of funds into the road and she was not willing to give it away without getting something back.

Myers stated he would entertain a special assessment, if all other avenues were closed. Pasquale stated the amount of improvements would have to be estimated and then spread out over a number of years or a one time cash payout.

Pasquale explained the City Council wishes Karris to propose a 425 whereby representatives of the entire township board and the City Council will meet to discuss the issue. If for some reason the board indicates they do not want to meet, then a special assessment may be considered.

Pasquale will prepare a letter for Karris explaining the City's position when discussing this with the township.

Item #4. **SEWER JETTING TRAILER PURCHASE – TABLED FROM THE PREVIOUS MEETING.** Public Works Director Dan DesJarden explained Greg Canfield from Canfield Plumbing and Heating has offered a rental of his sewer jetter. Rental for the first two hours would be \$375 while an additional 50% would be added after hours. If City employees were to run the machine, an amount of \$150 would be charged. If the City decides to purchase a machine an amount of \$137 per hour can be used for comparison.

DesJarden stated Canfield has indicated the City would receive priority if the jetter is being used. Since Public Act 222 went into effect, townships and cities have to do much maintenance of the sewer systems themselves. The larger companies with jet vacs and jetters are very busy which cause response times to be two to three hours. DesJarden believes response would be between 15 to 30 minutes, if a jetter was available at the DPW.

DesJarden was concerned with liability issues regarding entering into another business to obtain the jetter. He also raised concerns regarding the machine needing repair. If the City were to buy a jetter from DeHeny, they would provide a rental when repair work on the jetter was needed.

DesJarden proposed the City purchase its own machine

Councilmember Pfaller questioned how often this equipment is used. DesJarden stated within the last 21 months, jettors have been called in 17 times for a total of 57 hours or work at a cost of just over \$9,000.

Pfaller inquired regarding the status on the maintenance of the sanitary sewers. DesJarden stated the City is in its third year. The City will be starting on the east side of the Flat River in the spring. DesJarden believed a new machine would last 20 to 25 years.

Canfield believed the response time from his company would be 15 to 30 minutes. The machine is 10 years old and in good condition. Canfield suggested trying his company for a few months to see how it progresses. He believed the rates were less than half of what Ryan's or PCS charged. He also felt the machine would be able to clean the lines out that particular night.

Myers questioned the usage of the machine. Canfield responded the machine has been used 4 to 5 times within the last 6 to 8 weeks. Canfield stated he would provide priority to the City, in writing.

Myers questioned liability. Canfield stated a jetting machine is dangerous. The City should check with its insurance company. Canfield stated his employees have much experience running such a machine.

Councilmember Mathews commented on the 1993 machine. It can be difficult to maintain older equipment. Mathews stated he would lean toward the City purchasing its own machine.

Myers was unsure how urgent such a purchase was. He would be in favor of giving Canfield Plumbing the opportunity to perform such a service for a period of time.

Pfaller believed the frequency of such a machine has decreased and will continue to decrease due the preventative maintenance being done on the system. He did not want to spend a great amount of funds on a machine which may sit for long periods of time. Pfaller indicated he would be in favor of giving Canfield Plumbing and Heating an opportunity for a defined period of time.

Mayor Shores questioned the amount of training necessary if the DPW employees were to run such a machine. DesJarden responded training is needed as well as classes if available. This has to be documented for insurance purposes.

IT WAS MOVED BY MYERS and seconded by HODGES to employ Canfield Plumbing and Heating as a source for handling sewer backups in the rental of their jetter equipment for a period of 6 months.

YEA: 5. NAY: 0. ABSENT: 0. MOTION CARRIED.

Item #5. **RESOLUTION APPROVING HIGH STREET REPAIR AND TIMBER REPLACEMENT AGREEMENT BETWEEN HIGHLAND HILLS SITE CONDOMINIUM ASSOICATION, SUNDRY COPORATION, KEVIN RUDE AND THE CITY RELATED TO THE HIGHLAND HILLS SITE CONDOMINIUMS.** Dave Austin of Williams and Works explained during the construction of the Highland Hills project and also improvements to High Street, Sundry Development had an area located near the entrance which included a steep embankment. During the Site Plan Review it showed it would be graded from the road down to the property line. During construction, it was believed Sundry could install the grading as it was designed. However, they were unable to negotiate a grading easement. Therefore, on their own and without permission from the City, a timber retaining wall was installed. This wall was placed within the City right of way. Therefore, the City now owns this wall and will be held liable for the wall. Williams and Works has suggested corrections be made to the wall or an agreement be developed with the City where a financial guarantee can be provided.

Sundry Development's attorney provided an agreement. This was reviewed by City Attorney Richard Wendt and Austin. Substantial changes were made to the developers version agreement.

Councilmember Pfaller questioned the typical life expectancy of wolmanized lumber. Austin stated such lumber comes in various grades. Depending on its environment, it can vary. The lumber used for the wall appears to be a standard grade. Pfaller was not confident in the way it was constructed. Pfaller wanted an ongoing agreement in order to support the wall.

Councilmember Mathews believed Sundry should have followed the City specifications and be held responsible.

Councilmember Myers questioned the materials which should have been used as well as the difference in cost. Austin stated the structural engineers have indicated this type of wall is typically used in temporary conditions. These are seen in urbanized areas when there will be a deep excavation. These are called soldier pile walls and are meant to be easily removed. Sundry chose to build such a wall in order to protect vegetation in the right of way. The design also allowed Sundry to stay within the right of way and not obtain any easements. Austin did not believe there was any immediate danger. The concern involves long term deterioration of the timber.

Austin explained the purpose of the agreement is for the City to have money to be able to make these corrections.

Mathews commented on the small dam on the north side of the road. It is full at this time. If for some reason the pond let loose, there would be much water. Austin stated the design was made for this water to be retained. There should not be any concern about it coming across the road.

Mayor Shores reviewed the issue and stated Sundry installed a retaining wall which was not approved by the City or by the engineers. She believed the wall was destined to fail sooner or later.

Austin stated the wall will not fail in the foreseeable future. However, the point of concern involves the issue this wall was built within the City right of way. The City should have had input to its design.

Pfaller believed the association should accept the maintenance of the wall.

Austin recommended he and City Attorney try and negotiate with the developer, language which would carry it to a longer term or change how it is. Currently, the agreement is designed to have an escrow fund. It is important to have the money when it is needed.

Pfaller questioned if the City was limited to enter into an agreement for more than 10 years. Pasquale stated the City holds an agreement with Lowell Township for more than that for selling water. This can be discussed with the City Attorney.

Myers commented on the water flowing into his garage. It appears the amount of water flowing can not be handled?

The issue was tabled until further review regarding the duration of the agreement.

Austin questioned the time frame or simply as long as the wall exists the fund will be maintained. By general consensus, the Council agreed.

Item #6. **CITIZEN COMMENTS**. Dave Austin from Williams and Works referred to the 425 plan for the Bowes – M-21 property discussed earlier. He recommended the curb cut be reviewed from a geometry stand point and traffic loading. If it becomes a 29<sup>th</sup> Street issue, it needs to be reviewed regarding the number of cars and the angles of the vehicles entering.

Item #7. **COUNCIL COMMENTS**. Councilmember Pfaller stated it appears the property adjacent to the habitat home is in violation of setback requirements. It was noted City Manager Pasquale and Planning Commission Chairman Clark Jahnke would review the issue to see what action can take place.

Mayor Shores stated the Santa Claus parade was a success. Everyone involved should be commended.

Item #8. **MANAGER'S REPORT**. City Manager Pasquale reported on the following:

1. The following boards and commissions meetings minutes were provided:

- Downtown Development Authority meeting of October 21, 2004
- Planning Commission meeting of October 25, 2004
- Grand Valley Metro Council-Transportation Policy Committee meeting of October 20, 2004

With regard to the Habitat home as discussed at the last meeting under construction on Bowes, Pasquale provided a survey of the property. The matter will be forwarded to City Attorney for review.

Item #9. **APPOINTMENTS**. No appointments were made

IT WAS MOVED BY MYERS to adjourn at 9:08 p.m.

DATE:

APPROVED:

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C. Jeanne Shores, Mayor

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Betty R. Morlock, Clerk