

**ELY CITY COUNCIL  
REGULAR MEETING  
FEBRUARY 9, 2009  
ELY CITY COUNCIL CHAMBERS**

Mayor Jim Doyle called the meeting to order at 7:00 p.m. Council members present: Tom Winkowski, Bill Grove, Mark Banowetz and Bob Ballantyne; Stephanie Mai arrived during the meeting. Also present: Shawn Webber, Jason Laird, Ron Andreatta, Marie Miller, Jim Miller, Chad Wiltz, Tom Tjelmeland, Jim & Millicent Cozzie, Dave Rasmussen, City Engineer Scott Pottorf and Clerk-Administrator Aaron Anderson.

Banowetz, second by Grove, moved to approve the Consent Agenda consisting of:

- Agenda.
- Minutes of the January 15, 2009 regular meeting.
- Minutes of the January 27 2009 special meeting and budget workshop.
- Minutes of the February 2, 2009 special meeting.
- Treasurers Report for the period ended January 31, 2009.
- Bills Payable for February 2009 totaling \$62,361.66.
- Appointment of Shawn Weber, 1525 North Drive, to the Ely Parks & Recreation Commission.

Motion carried – 4 to 0.

Treasurer’s Report (summary) for the period ended January 31, 2009

	Receipts	Disbursements	Transfers	Ending Balance
General	\$ 14,327.56	\$ 35,638.10		\$ 433,255.53
Road Use	6,614.34	28,868.18		-7,500.71
TIF Fund	1,782.07		-\$250,000.00	155,222.35
Debt Service	993.30			27,555.71
Other Projects	389.00			-85,574.85
Library Project				3,169.70
North End Infra		10,181.41	\$250,000.00	74,689.92
Water Utility	13,994.60	13,452.36		286,646.14
Water/Sewer Reserve				100,000.00
Sewer Utility	22,494.70	50,293.47		141,769.47
Sewer Debt Service				-46,066.89
Sanitary Utility	6,557.50	6,240.49		51,067.49
PR Clearing	12,385.41	20,953.80		1,907.27
Totals	79,538.52	\$ 165,627.81		\$ 1,136,048.24

**Communications:** Mayor Doyle reported receiving the following communications: minutes of the January 2009 Plan and Zoning Commission meeting, Public Works Director’s Monthly Report. Linn County Deputy LeMenze presented the Sheriff’s Office’s Monthly Activity Report.

**Citizen Requests.** None

**Presentation of Check to Ely for Installation of Energy Efficient Equipment at Wastewater Treatment Plant- Alliant Energy.** Chad Wiltz, Account Representative with Alliant Energy,

presented Mayor Doyle a check to the City of Ely for \$22,958.00 for Ely's participation in Alliant Energy's Energy Efficient Industrial Equipment program. Mr. Wiltz stated the installation of the aerator wheel system at the new wastewater treatment plant resulted in a more energy efficient method of wastewater treatment than traditional methods. Mr. Wiltz discussed other energy efficiency programs available through Alliant Energy and efficiency requirements of the Iowa Utilities Board.

### **Dangerous/Vicious Animal Ordinance.**

**Public Hearing re: Ordinance No. 212, "An Ordinance to Amend Dangerous and Vicious Animal Regulations".** Grove moved to open the public hearing at 7:11 p.m., second by Winkowski; motion carried 4-0. Mayor Doyle declared the public hearing open at 7:11 p.m. Clerk/Administrator Anderson reported notice was published as required by law, and no written comments had been received. Mayor Doyle reported the proposed ordinance would delete the portion of the dangerous animal definition that specifically lists the pit bull and related breeds of dog.

Mayor Doyle asked for comments from the public regarding the public hearing item. Jim Miller asked what would be different under the proposed ordinance. Jim Doyle stated the change would delete the breed specific language from the definition of dangerous animals. Mr. Doyle stated the ordinance would still have the language regarding dangerous dogs and other animals that says "Any dog or other animal which has a known propensity, tendency or disposition to attack human beings or domestic animals without provocation, as evidenced by its habitual or repeated chasing, snapping or barking at human beings or domestic animals so as to potentially cause injury to or to otherwise endanger their safety; or any dog or other animal that manifests a disposition to snap or bite."

Bill Grove stated he did some additional research and talked with a person in the small animal program at Kirkwood Community College who said the pit-bull is not necessarily more dangerous than other breeds of dog unless trained to be. He stated there are a lot of myths regarding the pit-bull breed like that their jaws lock and that the breed has a bad rap from those myths. Mr. Grove stated he is not in favor of any dangerous dogs for a lot of reasons, including that his granddaughter lives in Ely, and stated that he does not think we diminish protection from dangerous animals by getting rid of the breed specific language.

Ron Andreatta, 1635 North Drive, stated he is opposed to the proposed change to the ordinance. He stated the courts have found that cities with breed specific prohibitions do not violate constitutional rights of dog owners, and that statistics show that while a person is more likely to be bit by other breeds of dog, a person is more likely to be killed by a pit-bull. He stated 63 cities in Iowa have breed specific language that prohibits pit bulls, and only one Hiawatha has repealed it so there are 63 who have kept it. Mr. Andreatta stated he has seen yards in Ely with perimeter buried fences and has seen kids who go door-to-door run off by the dogs within the buried perimeter fence. He stated the dog didn't bite the kid, but the kids were scraped up from when they left the yard. He stated "badrap.org" describes the pit-bull breed of dog as an "escape artist", do you think an invisible fence will stop a pit-bull from a 3-year old? He stated it would not be good for Ely to put together a kid and a pit-bull they don't know. Mr. Andreatta stated we would not be doing our residential kids any favors by changing a well-drafted ordinance;

and that you guys don't do sloppy work, this ordinance was well crafted. He stated there is science and evidence on the side of stopping pit bulls even though they aren't all biters. Mr. Andreatta stated the burden should be higher if someone wants to own a pit-bull and that the City Council would be doing a disservice to make this change and that we are doing our citizens a favor by not allowing them.

Bill Grove stated Des Moines had a breed specific prohibition that was challenged in court and held unconstitutional. Mr. Andreatta stated Ely's ordinance is not affected by the Des Moines finding, that Ely is covered by the severability clause of the ordinance.

Tom Winkowski stated he has been bitten by 15 dogs and the pit-bull was the worst; when they bite, they usually don't let go. Ron Andreatta stated pit bulls were bred to provide farmers security in cattle lots around bulls by locking onto the bull's face. He stated pit bulls are escapists and can escape easily and that the onus should be put on the animal's owners. Mr. Andreatta stated it's a well crafted ordinance that is not broke so don't fix it.

Terry Caudil, 1605 Traer St., stated a vicious dog is a vicious dog regardless of the breed, and that a vicious dog will escape regardless of breed. Mr. Caudil stated a person can be hurt by any dog, and not all pit bulls are dangerous.

Michelle Caudil, 1605 Traer St., stated she sees lots of pit bulls as a volunteer at the humane society, that it takes a responsible owner to own a pit-bull and that people in Ely are responsible.

Ms Mai arrived.

Tom Tjelmeland stated he was mayor when we had a lot of trouble with dogs, not just pit bulls, several year ago. He stated he had to save two kids from dogs by hauling them into his car. Mr. Tjelmeland stated we had a pit-bull problem a few years ago. He noted a recent incident of a Linn County Sheriff's patrol dog biting the handler's child and noted this was done by a carefully and well trained animal. Mr. Tjelmeland stated he does not support changing ordinances without very good cause; the ordinance was in place before they moved to town and it is their job to be knowledgeable. He stated it is not right or fair to change it because somebody moved to town and now wants to own a pit-bull. Mr. Tjelmeland stated there are a lot of amendments to the City Code and you have to check the entire thing to see which provisions really apply. He stated he is not making an argument for or against pit bulls, just that it can be difficult to follow through the ordinances especially if they are amended and otherwise changed. Mr. Tjelmeland stated his argument is don't change the ordinance

Jim Doyle asked how the ordinance amendment process worked in regard to preparing a compiling ordinance that is fully up to date. Aaron Anderson stated he suggests ultimately compiling it into one place so it is as up to date as possible.

Bob Ballantyne stated the people who contacted him were opposed to changing the ordinance; the information is anecdotal so his thoughts come back to process. Mr. Ballantyne asked how a matter comes to Council attention for change and asked if a petition should be required. He stated a petition might give a clue on how people feel about a possible change. Mr. Ballantyne stated most people who have talked with him say don't change it, so we could end up in a never-ending loop of reviewing ordinances if we do that. He stated that even though one breed of dog might be getting a bad rap, what would happen if we had an incident after changing the law.

Jim Doyle stated people who are in favor of something usually don't participate in the process; the people who supported the annual garbage tag did not participate in the adoption process for that ordinance. Tom Winkowski asked how many annual garbage tags had been sold; Aaron Anderson stated he believes roughly 50 this year. Mr. Winkowski stated the annual tag isn't worth it.

Bob Ballantyne stated that we can put this kind of information on the city webpage and in the NoJoCo, etc.

Mark Banowetz stated Ely can't accommodate every person who wants something changed, and that he likes to think people moved to Ely because of the sex offender residency ordinance. He stated he is not in favor of putting items to reconsider recent work on the agenda because it tends to be a waste of the City Council's time and the Council represents the people of Ely. Mr. Banowetz stated the first dangerous animal ordinance was put in place because people wanted change. He stated he is not in favor of accommodating and does not like that one person asked for this and only one voice has been heard in favor. Jim Doyle stated three Council members voted to hold the public hearing. Bill Grove stated we can't get to the point where the City won't review an ordinance once it is in place.

Stephanie Mai stated we should establish a minimum process for people to follow to get something reviewed by the City Council. She stated she was in favor of getting rid of the breed specific language, but as Mr. Tjelmeland said it becomes tedious to keep changing and changing. Ms Mai stated a lot of research and work went into the base ordinance and there has not been any indication it doesn't achieve its goal.

Tom Tjelmeland stated we have had quite a few amendments over the last five years, and that the City Code is supposed to be updated every five years. He stated amendments should be very rare, and that they did major changes when re-codifying. Mr. Tjelmeland stated Ely spent a lot of time and effort in writing the original ordinance and fighting dog owners in court, it's possible the pit-bull breed got a bad rap at that time.

Mayor Doyle asked for additional comments from the public regarding the public hearing item, none were offered.

Mai moved to close the public hearing at 7:40 p.m., second by Ballantyne; motion carried 5 to 0; Mayor Doyle declared the public hearing closed at 7:40 p.m.

**First Reading of Ordinance No. 212, "An Ordinance to Amend Dangerous and Vicious Animal Regulations"**. Grove moved to introduce and approve the first reading of Ordinance No. 212, "An Ordinance to Amend Dangerous and Vicious Animal Regulations", a second to the motion was not offered. Mayor Doyle declared the motion dead for lack of a second.

**Second Reading Ordinance No. 211, "An Ordinance to Revise Sanitary Sewer Rental and Use Rates"**. Mayor Doyle summarized the changes to the sanitary sewer use and rental rates proposed in Ordinance No. 211, noting that the increase is needed to meet debt service costs stemming from the new mechanical wastewater treatment plant. Mai moved to approve the second reading of Ordinance No. 211, "An Ordinance to Revise Sanitary Sewer Rental and Use Rates," second by Ballantyne.

Aye: Ballantyne, Mai, Banowetz, Grove, Winkowski

Nay: None

Absent: None

Mayor Doyle declared the motion approved - 5 to 0

**Splendid Villa Subdivision, Sun Development, LLC.**

**Resolution No. 09-0209-07, Approving Preliminary Plat for Splendid Villa, Revised Version dated January 22, 2009.** Mayor Doyle reported Sun Development LLC submitted a request to revise the approved preliminary plat for Splendid Villa Addition to Ely, and that the City Engineer and Plan and Zoning Commission had reviewed the proposed preliminary plat. City Administrator Anderson stated the developer/applicant had responded to all requests and comments from City Engineer and Plan and Zoning Commission, and that the version for consideration, dated January 22, 2009, incorporates all the comments and changes requested. Mr. Anderson reported the proposed version complies with the Ely subdivision and zoning ordinances. Mayor Doyle and the City Council discussed the proposed preliminary plat, including: City Engineer's note for a storm sewer intake at the east end of Pond View Road, that sidewalks along Glendale should be able to also serve as bike/recreational trails, street grades that are steep but meet subdivision ordinance standards, and that parking would be allowed on only one side of the street per the Developer's request. Tom Tjelmeland, representing Sun Development, stated all streets will meet or be better than city specifications. The City Council noted the items discussed are addressed in a Developer's Agreement regarding this subdivision.

Banowetz moved to approve Resolution No. 09-0209-07, Approving Preliminary Plat for Splendid Villa, Revised Version dated January 22, 2009, second by Mai.

Aye: Ballantyne, Mai, Banowetz, Grove, Winkowski

Nay: None

Absent: None

Mayor Doyle declared the resolution approved - 5 to 0

**Resolution No. 09-0209-08, Approving Development Agreement with Sun Development, LLC.** Winkowski moved to approve Resolution No. 09-0209-08 Approving Development Agreement with Sun Development, LLC, second by Ballantyne.

Aye: Ballantyne, Mai, Banowetz, Grove, Winkowski

Nay: None

Absent: None

Mayor Doyle declared the resolution approved - 5 to 0

**Fringe Area Agreement with Johnson County.** Mayor Doyle reported Johnson County Planning and Development worked with the Ely Plan and Zoning Commission to prepare a Fringe Area Policy agreement that sets out policies and practices for reviewing land use applications in the portion of the area within 2-miles of Ely's city limits located in Johnson County. Mayor Doyle reported the terms of this agreement are very similar to the Fringe Area Agreement between Ely and Linn County.

**Resolution No. 09-0209-09, Approving Fringe Area Policy Agreement with Johnson County.** Grove moved to approve Resolution No. 09-0209-09, Resolution No. 09-0209-09, Approving Fringe Area Policy Agreement with Johnson County, second by Ballantyne.

Aye: Ballantyne, Mai, Banowetz, Grove, Winkowski

Nay: None

Absent: None

Mayor Doyle declared the resolution approved - 5 to 0

**Discussion re: March 3<sup>rd</sup> Local Option Sales and Services Tax Special Election.** The Mayor and City Council members discussed the March 3<sup>rd</sup> local 1% sales and services tax special election. Items discussed include, but are not limited to the importance of getting information to Ely residents about the pending election and details of how of sales tax money would be used in Ely:

- Streets – possibly including Dows Street Repair/Resurface
- Storm sewers/runoff management – Fuhmeister area project, retention pond at Ely Park
- Wastewater Treatment – to offset the higher cost of operating the mechanical WWTP to minimize sewer rate increases.
- Sewer & Water infrastructure improvements – possibly including cost of constructing water tower, or extending water and sewer trunk mains to the north west or north east.
- Park/Recreation Improvements – possibly including new Ely Park and also internal recreational trails.
- Reduction of Short Term Debt – Repay cash payments for any larger scale projects that were paid with cash on hand. Would include the Fuhmeister drainage project.
- Other Community Improvements projects

#### **Preparation of FY 2009-10 Budget.**

**Discuss Current Draft.** The Mayor and City Council discussed the draft FY 09-10 budget and City Administrator Anderson's report that the draft version of the budget reflects a roughly 4% decrease in property tax rate, and would use existing cash on hand to pay for the Fuhmeister Area Drainage project.

**Schedule Public Hearing re: Proposed Property Tax Levy and Budget for Fiscal Year 2009-10.** Ballantyne moved to schedule a public hearing regarding the proposed property tax levy and budget for fiscal year 2009-10 for 7:00 p.m. March 9 2009, second by Mai. Motion carried – 5 to 0.

**Discuss Removing Stops for East/West bound traffic on Banner Valley Road at Pacific Street and for North/South bound traffic on Main Street at Rowley Street.** City Council discussed removing stop signs on Banner Valley Road at Pacific Street for east/west bound traffic and on Main Street at Rowley Street for east/west bound traffic. Following discussion it was the general consensus to request the Sheriff's Office focus more patrol time on enforcing speed limits at various locations in Ely, including the Banner Valley Road at Pacific Street and Schulte Park, Jappa Road at Rogers Creek Dows Street, and Dows Street from Jappa Rd to State Street during morning and evening commute times. It was also the consensus to direct the City Administrator to have "Children Playing" signs installed on Banner Valley Rd by Schulte Park.

**Monetary Contribution to EDGE Economic Development Strategic Planning Event.** City Administrator Anderson reported a group of community volunteers is working on forming the Economic Development Group for Ely (EDGE), and host a community economic development strategic planning event in partnership with Alliant Energy. Mr. Anderson reported Alliant Energy pays roughly 75% of the \$6,000 total cost of the strategic planning event and requires the community to provide the balance. Mr. Anderson reported EDGE is requesting \$250 from the City. Bob Ballantyne stated the group is raising money to incorporate and for the local contribution to the strategic planning event.

Banowetz moved to contribute \$250.00 to the group being formed and known as the Economic Development Group for Ely, second by Mai. Motion carried 5-0.

**Water System Improvements Project.** City Administrator Anderson reported a meeting with Glen Buresh to discuss land purchase is scheduled for February 11, 2009.

Banowetz moved to adjourn, second by Mai. Motion carried – 5 to 0. The meeting adjourned at 8:24 p.m.

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James E. Doyle Jr., Mayor

Attest:

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Aaron Anderson, Clerk/Administrator