

**ELY CITY COUNCIL
REGULAR MEETING
SEPTEMBER 8, 2008
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, Stephanie Mai, and Bob Ballantyne. Guests included: Jim Miller, Sam Shannon, Christy Frese, Kathleen Matthews, Elmer & Helen Smyth, Anna Prohaska, Jay Fiala, Sue Feyeraband, Les Feyeraband, Bob & Darlene Wermager, Donn & Marie Haase, Carrie Kimm, Randy Rohner, Anna McAtee, Barb & Ozzie Berry, Dave Rasmussen, Lorraine Spidle, Adam Smith, Jeff Frese, Jeff Hilleman, James & Laura Serbousek, Jack Stewart, Jim & Millicent Cozzie, Keith Schulte, Aaron Cooper, Susan Forinash, Marie Miller, Jim Miller, Tom Rohner, Chet Hendrickson, an Andrea Falt. Also present: City Engineer Cary Solberg and Clerk-Administrator Aaron Anderson.

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

- Agenda.
- Minutes of the August 11, 2008 regular meeting.
- Minutes of the August 19, 2008 workshop meeting with the Park & Recreation Commission.
- Treasurers Report for the period ended August 31, 2008.
- Bills Payable for August 2008 totaling \$66,201.78.
- Renewal of the Class C (Off Premise) Beer Permit for Casey's General Store #2566 at 1495 State Street.
- The following appointments to City Boards and Commissions:
 - Aaron Cooper, 1210 Pacific St., to Board of Adjustment through September 1, 2013.
 - Dan Jacobi, 1620 North Drive, to Plan and Zoning Commission, through September 1, 2013
 - Dave Rasmussen, 2070 Dows St., to Park & Recreation Commission through September 1 2010.

Motion carried – 5 to 0.

Treasurer's Report (summary) for the period ended August 31, 2008

	Receipts	Disbursements	Transfers	Ending Balance
General	\$ 5,975.22	\$ 36,649.77		\$ 358,611.65
Road Use	7,873.73	6,937.59		23,196.71
TIF Fund	317.15			308,614.90
Debt Service	73.78			6,160.49
Other Projects		41,200.06		-107,115.27
Library Project				3,169.70
North End Infra		5,281.05		-5,281.05
Water Utility	16,029.25	3,458.04		265,014.61
Water/Sewer Reserve				100,000.00
Sewer Utility	18,807.02	8,093.00		111,504.72
Sewer Debt Service				-255.40
Sanitary Utility	5,440.69	5,654.80		52,033.75

PR Clearing	7,561.56	17,188.09		2,417.08
Totals	\$ 62,141.40	\$ 126,462.40		\$ 1,118,071.89

Communications: Mayor Doyle reported receiving the following communications: Plan and Zoning Commission minutes of July 16, 2008, Public Works Director's Monthly Report. Linn County Deputy reported a Sheriff's Office's Monthly Activity Report was not available due to flooding at the Sheriff's facility in Cedar Rapids.

Citizen Requests. Jim Miller asked when the streets and road projects would be complete. Mayor Doyle stated work will be completed as soon as possible when weather allows work to proceed.

Marie Haase, 1840 Comiskey Court, stated they have an ongoing problem with drainage; there is a 12" pipe behind her house that flows into a storm sewer that flows to the area by Fuhrmeister. Mrs. Haase stated additional development in this area is likely to result in more runoff than the storm sewer system can handle, the water soaks into soil on the vacant lot. Additional development on these lots is likely to cause additional drainage problems. There was considerable discussion regarding this topic including:

- Adam Smith, 1505 Fuhrmeister St., asked what the plan is to do something to fix the drainage problem in the area.
- Carrie Kimm, 1515 Fuhrmeister, asked if there are drainage tiles on her property.
- Keith Schulte, 1100 Glendale Lane, discussed a minimally used intake on the north side of northeast corner of Fuhrmeister and State and an 18" storm sewer line that runs parallel to State. Mr. Schulte also stated the existing surface drainage was put in at the request of the previous owner of several properties on the north side of Fuhrmeister. He reported the swale, ditch and surface drainage was installed to provide positive drainage for properties on the north side of Fuhrmeister and to meet drainage needs for the apartments and other development on Northgate Drive. Mr. Schulte stated the surface drainage was designed to collect water from Northgate and Fuhrmeister, flow through open ditches or swales through the lot Ms Kimm owns, under Fuhrmeister and ultimately to a culvert under State Street. He stated the design was for excess water to flow into the intake at Fuhrmeister and State and then through the 18" line adjacent to State Street.

Mayor Doyle asked for any other comments or discussion related to the public hearing regarding the proposed rezone of lots from R-2 to R-3 or R-4 to be made during the public hearing regarding that matter.

Designating Certain Identified Properties as R-3 or R-4 Residential Zoning Districts

Public Hearing re: Ordinance No. 207. At 7:34 p.m. Banowetz, second by Winkowski, moved to open a public hearing regarding proposed Ordinance No. 207 "Amending the Zoning Map by Designating Specific Lots and Parcels R-3 Multi-Family and R-4 Multi-Family Residential Districts"; motion carried 5-0. Mayor Doyle declared the public hearing open at 7:34 p.m.

Mayor Doyle asked for comments regarding the public hearing item. Keith Schulte, 1100 Glendale Lane representing Schulte Development, stated they proposed to build 4-plex town

home style units that would have a lesser footprint than the existing 8-plex and duplex units in the area. Tom Winkowski asked Mr. Schulte if there is anything he can do to help people with drainage problems. Mr. Schulte stated the problem is from water uphill, and that there's nothing he can do for the upstream problem.

Chet Hendrickson, 1910 State St., stated the city is getting a lot of runoff from uphill where the railroad lines used to be because the now absent rail lines blocked water from flowing down hill through the area. Mr. Hendrickson stated with the rails out, there is nothing to block water from flowing into the area over the former rail tracks. Donn Haase asked where the water is flowing over the former railroad tracks. Chet Hendrickson stated it flows over north of the duplexes, you can see erosion north of the duplexes. Mr. Haase stated he has never seen water come in from the park area. Mr. Haase stated water may be flowing in from the north and that there has already been a lawsuit against Mr. Schulte when he and his wife purchased their duplex, and that they won the suit.

Donn Haase asked if Mr. Schulte plans on to connect the 4-plex units to the 12" tile that the condo's drain into. Mark Banowetz stated that if took into account everything in the area and then raise everything one-foot there wouldn't be more water. Mr. Haase stated that if the 4-plex units get built and tied into the 12" drainage tile, there would not be enough drainage for the area. Mr. Banowetz stated that if Mr. Schulte develops the 4-plex units there would not be more water in the area. Tom Winkowski stated that runoff and based on time, volume and concentration; if all are tied together the runoff will be more concentrated.

Donn Haase stated there will be less absorption if the lots are developed. Keith Schulte stated the five lots where 4-plexes would be located are below the townhouses and have no more footprint than the duplexes. Tom Winkowski asked if the 4-plexes would be rental units. Mr. Schulte stated the 4-plexes would be in townhouse forms with fee-simple ownership for each unit. He stated that if he develops the parcel to the north it will need retention ponds, a site plan and meet all other requirements for a preliminary plat; any additional apartment buildings would be on newly platted lands that would require storm water retention areas, etc., just like any other new subdivision. Mark Banowetz asked if the 4-plexes would drain into the 12" tile Mr. Haase referred to. Mr. Schulte stated most of the 4-plex structures would drain overland, though some of them might flow into the 12" tile which is sized for a 500 year flood event.

Mark Banowetz stated his recommendation would be to turn the matter over to City engineering to review and analyze drainage in the area. Bob Ballantyne stated that the former rail lines might block runoff and drainage if they were being maintained.

Adam Smith asked why they didn't connect to the City's storm sewer system first thing. Keith Schulte stated the 18" line along State Street was intended to handle overflow at the time.

Sue Feyerabend stated it all comes back to the improvement of State Street, which was promised years ago, we need to go back and improve State Street. Ms Feyerabend stated she's not opposed to more families in the community as long as the city's infrastructure is adequate.

Jim Doyle stated he is playing devil's advocate and that the proposed rezoning would just return the zoning for these lots to what was there before. Bob Ballantyne stated trying to balance all sorts of things with this request. Mr. Ballantyne asked if it's possible to find a way to take care of the drainage problem along with the other projects the city is trying to achieve.

Lorraine Spidle, 1670 State St., stated her husband thought drainage should have gone under ground to State Street; she asked if it was done this way because it cost less. Mark Banowetz suggested having City Engineer Cary Solberg investigate the situation. Bob Ballantyne stated it might be as simple as using a backhoe to build up the rail right of way.

A gentleman (first gentleman) asked if the 4-plexes would be rental or owner-occupied. Keith Schulte stated they would be in fee-simple owner occupied units, not rentals.

Chet Hendrickson stated the discussion is getting off point, the city is trying to correct a mistake it made when correcting the zoning regulations a few years back. Mr. Hendrickson stated the proposed rezone does not affect drainage or other physical considerations. Aaron Anderson stated the city would be required to issue a building permit if the application meets all zoning and other relevant standards. Tom Winkowski asked if final plats expire. Mr. Anderson stated final plats do not expire though preliminary plats expire after two years; and that a building permit would have to be issued if the application is consistent with zoning and other relevant regulations. Keith Schulte stated he is frustrated with trying to return to zoning rights that existed when he initially platted the land. Mr. Schulte stated the Ely Plan and Zoning Commission developed a good zoning base for the R-3 and R-4 districts and that he would like to see the rezone move forward.

Another gentleman (second gentleman) asked how you are going to take care of Mrs. Spidle's property. Jim Doyle stated the City would work with the City Engineer to take care of that situation. The first gentleman stated they looked around for a new extensively for a new home before moving here, and decided on this place because it's a nice small town that is located well, and that they were led to believe that by 2007 the 5 lots would have condominiums built on them; he did not expect there to be apartments on these lots instead of condos once the water difficulty was resolved. The gentleman stated there are 9 apartment buildings and 5 condominium duplexes, he really has the feeling that the rezone would lower the property values to have that percentage of rental apartments in this area; he stated there is no guarantee the units will look good ten years from now.

Jim Doyle asked if we know what the final plat allowed for these 5 lots. Aaron Anderson stated the preliminary plat shows utility connections for 4 units on each of the lots, the final plat as approved shows 4 separate street addresses on each of the lots. Mark Banowetz stated he would be concerned the developer might sue; he stated the city needs to resolve the drainage problem. Mr. Banowetz stated that if Mr. Schulte sued the City Ely would be liable for negligence; he stated he is asking for another 30 days. Mr. Doyle asked Mr. Schulte what his plans are regarding timing for construction on the 5 lots. Keith Schulte stated he came in for a building permit in February and he is ready to begin construction now if a permit can be issued.

Bill Grove stated the two items are separate, and that the drainage situation could be taken care of separately from the zoning matter. Keith Schulte stated he agrees the two are separate issues. Jim Doyle stated other people see them as related matters.

Donna Haase asked what the setbacks would be for these lots, if anybody knew. Aaron Anderson stated the setbacks would be the same as for the current R-2 district with front setback at 25', 30' rear setback and the slight difference that side setbacks are 8' for one story buildings, 10' for 2-story buildings and 12' for 3-story buildings. The second gentleman stated an 8' side setback would be a problem because dirt has built up along the side of his lot and he would likely have more water on his property. Tom Winkowski stated

drainage between two lots is usually between the property owners and something the city may not be able to solve.

Mayor Doyle asked for further comments from the public regarding the public hearing item; none were offered or received. Ballantyne, second by Grove, moved to close the public hearing at 8:20 p.m.; motion carried – 5 to 0. Mayor Doyle declared the public hearing closed and meeting in regular session at 8:20 p.m.

Ballantyne, second by Grove, moved to commission Cary Solberg of MMS to investigate the drainage situation in the area from Lorraine Spidle's property at 1670 State Street north to include Fuhrmeister St., Northgate Drive and Comisky and Wrigley Courts, and report his findings and any options back to the City Council at the October 13, 2008 meeting; motion carried – 5 to 0.

First Reading Ordinance No. 207, “Amending the Zoning Map by Designating Specific Lots and Parcels R-3 Multi-Family and R-4 Multi-Family Residential Districts”. Ballantyne, second by Grove, moved to introduce and approve first reading of proposed Ordinance No. 207 “Amending the Zoning Map by Designating Specific Lots and Parcels R-3 Multi-Family and R-4 Multi-Family Residential Districts”

Aye: Ballantyne, Mai, Banowetz, Grove, Winkowski

Nay: None

Absent: None

Mayor Doyle declared the motion carried – 5 to 0.

Request for Annexation and R-1 Zoning, Serbousek Second Addition - James Serbousek

Public Hearing re: Request for Annexation and Zoning. At 8:24 p.m. Ballantyne, second by Grove, moved to open a public hearing regarding a request for voluntary annexation and designation as an R-1 Single Family Zoning designation submitted by James Serbousek for a roughly 5.62+/- acre parcel on the north side of Vista Road immediately west of current city limits”; motion carried 5-0. Mayor Doyle declared the public hearing open at 8:24 p.m.

Mayor Doyle asked for comments regarding the public hearing item. Jeff Frese, 4323 Vista Rd, stated he and Christy live across the street from the proposed annexation, and they have no problem or concerns with it. James Serbousek, the applicant at 4500 Vista Rd., state the city already maintains the street in this area and the annexation would square off the city limits. Jim Miller, 1200 Vista Rd, stated he voluntarily annexed and they have never had city water or sanitary sewer for their property.

Mayor Doyle asked for further comments from the public regarding the public hearing item; none were offered or received. Ballantyne, second by Mai, moved to close the public hearing at 8:26 p.m.; motion carried – 5 to 0. Mayor Doyle declared the public hearing closed and meeting in regular session at 8:26 p.m.

Resolution No. 08-0908-32, Approving Request for Annexation. Ballantyne, second by Mai, moved to approve Resolution No. 08-0908-32, “Approving Request for Annexation”.

Aye: Ballantyne, Mai, Banowetz, Grove, Winkowski

Nay: None

Absent: None

Mayor Doyle declared the motion carried – 5 to 0.

First Reading Ordinance No. 210, “Amending the Zoning Map by Designating a Specific Parcel as an R-1 Single Family Residential District.” Ordinance No. 210 would designate the 5.62+/- acre parcel that is the subject of the request for annexation and zoning from James Serbousek as an R-1 Single Family Residential district. Ballantyne, second by Grove, moved to introduce and approve first reading of Ordinance No. 210 “Amending the Zoning Map by Designating a Specific Parcel as an R-1 Single Family Residential District”.

Aye: Ballantyne, Mai, Banowetz, Grove, Winkowski

Nay: None

Absent: None

Mayor Doyle declared the motion carried – 5 to 0.

Resolution No. 08-0908-33, Approving Preliminary Plat, Serbousek Second Addition to Ely Iowa. It was the City Council’s general consensus that consideration of this matter is moot because the zoning designation for the subject property was not adopted at this time.

Dows Street Restoration Project

Designate Preferred Option and Direct Administrator to Initiate Planning & Design.

City Engineer Cary Solberg summarized an updated report on this project, Clerk-Administrator Anderson summarized a financial and tax rate impact analysis for the options presented in Mr. Solberg’s report. City Council discussed the options presented, including expected useful life for each of the options, cost-effectiveness of the options presented and other matters. Council member Grove was temporarily absent during the discussion. Ballantyne, second by Mai, moved to table until the October City Council meeting; motion carried - 4 to 0, Grove temporarily absent.

Ely Fall Fest Grove, second by Ballantyne, moved to approve the following:

Temporary closure of Dows Street from Walker to Main on Saturday October 4th from 4:30 p.m. through 9:00 a.m. for the Ely Fall Fest street dance;

Temporary closure of Rowley Street from State Street to Walker on Saturday October 4th from 6:00 a.m. through 6:00 p.m. for Ely Fall Fest;

Temporary Out-Door Service Permit for Odie’s Bar and Grill to allow the sale and consumption of alcoholic beverages on the designated area until 11:30 p.m. Saturday October 4th, 2008 for the Ely Fall Fest street dance.

Motion carried – 5 to 0.

Resolution No. 08-0908-34, Accepting Proposal to Repair Library Roof. Clerk/Administrator Anderson reported the Library Board recommends the roof be repaired before Thanksgiving of 2008, and accepting the proposal from Tom Winkowski to perform the work for \$13,250 if he can complete the work in that time frame. Mr. Anderson reported that Tom Winkowski cannot perform the work until spring, and has offered to repair any water damage that might occur at the Library until he is able to complete the work due to the roof not being repaired if his proposal is accepted. Banowetz, second by Ballantyne, moved to Approve Resolution No. 08-0908-34, accepting the proposal from Tom Winkowski to repair the roof of

the Ely Library Building by removing the existing layer of shingles and re-shingling at a cost of \$13,250.00 with the provision that the Library Board may seek alternate arrangements without using city money to pay any increased costs.

Aye: Ballantyne, Mai, Banowetz, Grove,

Nay: None

Absent/Abstain: Winkowski

Mayor Doyle declared the motion carried – 4 to 0; Winkowski abstaining due to a conflict of interest.

Public Works Projects Clerk/Administrator Anderson reported proposals were received from Earls Backhoe & Sewer Service, Cedar Rapids; Shearer Trucking & Excavating, Baldwin IA; Brown Well Pump Service, Ely; and Brecke Mechanical Contractors, Cedar Rapids; to perform the work for each of the projects discussed below.

Water Main Improvement – Vavra Drive. Council discussed the proposed project and proposals received; topics include whether all properties would need new connections to the 4” water line in Vavra Drive, the condition and composition of the 4” water line, and possibility of replacing the existing 2” line in place. Council directed Mr. Anderson to research the matter further.

Storm Sewer Repairs – Hillcrest Drive. Mai, second by Grove, moved to accept the proposal from Brown Well Pump Service of Ely, Iowa, to perform storm sewer repairs and renovations on Hillcrest Drive at a proposed cost of \$8,620.00; motion carried – 5 to 0.

Storm Sewer Intake, West side of State Street at Casey’s. Ballantyne, second by Mai, moved to accept the proposal from Shear Trucking & Excavating of Baldwin Iowa to install a storm sewer intake on the west side of State Street and north side of Casey’s drive at a proposed cost of \$6,910.00; motion carried – 5 to 0.

2007WWTP Improvements Project

Payment Request No. 15, Miron Construction. - 2007 WWTP Project. City Engineer Solberg reported Miron Construction forwarded a revised payment request that he had not had opportunity to review. Banowetz, second by Mai, moved to table; motion carried – 5 to 0.

2007 Rogers Creek Trunk Project

Payment Request No. 8, Maxwell Construction - 2007 Rogers Creek Trunk Project. City Engineer Solberg reported payment request from Maxwell Construction for work completed to date for the Rogers Creek Trunk project totals \$11,220.25 and that the payment amount is accurate and he recommends payment. Banowetz Second by Ballantyne, moved to approve Payment Request/Invoice No. 8 for the Rogers Creek Trunk Project totaling \$11,220.25; motion carried – 5 to 0.

Resolution No. 08-0908-35 Approving Annual City Street Financial Report. Banowetz, second by Ballantyne, moved to approve Resolution No. 08-0908-35, “Approving Annual City Street Financial Report” for FY 2006-07.

Aye: Ballantyne, Mai, Banowetz, Grove, Winkowski
Nay: None
Absent: None
Mayor Doyle declared the motion carried – 5 to 0.

Resolution No. 08-0908-36, Assessing Delinquent Service Charges to Taxes. Resolution No. 08-0908-36 would authorize unpaid costs totaling \$75.00 for services performed by the city at 1460 Walker Street to be assessed to the property taxes paid by that property. Ballantyne, second by Grove, moved to approve Resolution No. 08-0908-36.

Aye: Ballantyne, Mai, Banowetz, Grove, Winkowski
Nay: None
Absent: None
Mayor Doyle declared the motion carried – 5 to 0.

Water System Improvements Project

Resolution No. 08-0908-37, Approving and Accepting Contract for Preliminary Engineering Services with MMS Consultants of Iowa City, Iowa. Clerk-Administrator Anderson reported MMS Consultants Inc., of Iowa City, Iowa, has prepared a proposed agreement for preliminary engineering services for the Water Systems Improvements Project to provide engineering services for a water tower construction project from initial concept through award of construction of bid. He reported MMS proposes to perform the identified scope of services for the lump sum of \$118,600.00. Mr. Anderson reported the resolution would accept the agreement with MMS for a lump sum fee of \$118,600.00. Grove, second by Mai, moved to approve Resolution No 08-0908-37, “Approving and Accepting Contract for Preliminary Engineering Services with MMS Consultants of Iowa City, Iowa”.

Aye: Ballantyne, Mai, Banowetz, Grove, Winkowski
Nay: None
Absent: None
Mayor Doyle declared the motion carried

Discuss Potential Purchase of Real Estate for the Site of a New Water Tower. Clerk-Administrator Anderson reported City Attorney Hatala advises State Code would allow the City Council to go into closed session to discuss the potential purchase of real estate if premature disclosure of the amount the City might be willing to pay would be detrimental. Grove moved to go into closed session to discuss the possible purchase of specific real estate as allowed under §21.5(j) Code of Iowa. Council discussed the matter; Mr. Grove withdrew the motion.

Mayor and City Council discussed the possible purchase of a specific parcel of land to serve as the location of a new water tower and possibly other city facilities. Items discussed include but are not limited to: review of the appraisal of the property the City Council commissioned, possible additional uses for the land, amount of land needed immediately and in the future, and reasonable compensation to purchase the entire parcel.

Resolution No. 08-0908-38, Authorizing Proposal to Purchase Real Estate as Water Tower Site. This resolution would authorize the Clerk/Administrator to forward a proposal

to the Lenore Buresh estate to purchase a 27.96+/- acre parcel specifically identified as GPN 183017600100000 per the records of the Linn County Auditor's office at a cash price of \$185,000.00. Mai, second by Banowetz, moved to approve Resolution No. 08-0908-38, Authorizing Proposal to Purchase Real Estate as Water Tower Site.

Aye: Ballantyne, Mai, Banowetz, Grove, Winkowski

Nay: None

Absent: None

Mayor Doyle declared the motion carried

Discussion Items.

Winkowski, second by Mai, moved to adjourn. Motion carried – 5 to 0. The meeting adjourned at 10:24 p.m.

James E. Doyle Jr., Mayor

Attest:

Aaron Anderson, Clerk/Administrator