

**ELY CITY COUNCIL
REGULAR MEETING
SEPTEMBER 10, 2007
ELY CITY COUNCIL CHAMBERS**

Mayor Dale Stanek called the meeting to order at 7:00 p.m. Council members present: Kevin Meskimen, Mark Banowetz, Bob Ballantyne and John Smith; Tom Winkowski absent - excused. Guests included: Luanne & Jim Miller, Aaron Cooper, Lori Wilcoxson, Tom Tjelmeland, Lauraine Harding, Fred Trow, Chet Hendrickson, and Jim Miller.

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

- Agenda.
- Minutes of the August 10, 2007 regular meeting.
- Treasurers Report for the period ended August 31, 2007
- Bills Payable totaling \$62,564.04 for September 2007.
- Renewal of Class C Off Premise Beer and Wine Permit with Sunday Sales, Casey's Marketing Co. dba Casey's General Store, 1495 State Street.
- Participation in "Full Address List Review" of the 2010 Census LUCA program.

Motion carried – 4 to 0.

Treasurer's Report (summary) for the period ended August 31, 2007

	Receipts	Disbursements	Ending Balance
General	\$ 3,843.33	\$ 22,145.51	\$ 267,424.61
Road Use	8,412.40	6,919.59	12,159.42
TIF Fund			247,205.69
Debt Service			3,787.31
Other Projects		12,973.28	98,661.19
Library Project			3,169.70
Water Utility	16,821.70	7,177.12	166,532.08
Water/Sewer Reserve			100,000.00
Sewer Utility	336,950.02	329,354.18	210,734.89
Sanitary Utility	5,349.65	5,677.03	58,800.07
PR Clearing	9,599.23	8,729.24	-347.72
Totals	\$ 380,976.33	392,975.95	\$1,168,127.60

Communications: Sheriff's Deputy presented the Sheriff Office's Monthly Activity Report. City Council received monthly report from Public Works Director Ron Stark.

Citizen Requests. Tom Tjelmeland asked to be recognized to comment on agenda items D1, D5 and D8; Mayor Stanek stated he would recognize Mr. Tjelmeland for comment on those items.

State Street Bridge Replacement Project. Jeff Streitz, Project Engineer with Shive-Hattery, reported on this project's progress, including: Peterson Contractors Inc. (PCI) is currently non-compliant with the contract specifications and requirements related to traffic control and erosion control. Mr. Streitz also reported work is behind schedule and is not expected to be complete before contract working days expire, and that PCI has had coordination failures with the manufacturer of the pre-cast concrete components.

Discussion followed Mr. Streitz' report, including: the City has the option of declaring PCI in default on the terms of the contract after contract working days expire; recourse for businesses in Ely affected by the bridge closure; and that the City Council sees no reason to negotiate on the contract's liquidated damages clause.

Tom Tjelmeland stated the following: PCI had ample time to have their ducks in a row before construction began, and recommended the City Council hold them accountable through the liquidated damages clause of the contract. Mr. Tjelmeland stated he knows businesses that have suffered because of the bridge being closed, including one that has closed and one that is suffering. He proposed the City Council collect the \$750/day liquidated damages and distribute \$700/day to affected businesses and retain \$50/day for administrative purposes. Council discussed this matter; noting that Ely would realize 20% of the amount of liquidated damages assessed, and that the City Council sees no reason to negotiate away liquidated damages.

Payment Request No. 1, Peterson Contractors, Inc. – State Street Bridge Project. Ballantyne, second by Smith, moved to approve Payment Request No. 1 to Peterson Contractors Inc. (PCI), in the amount of \$51,576.84, contingent upon PCI achieving compliance with contract requirements, payment not to be released until the project engineer provides written verification of same. Motion carried – 4 to 0.

Vacate of Unused Alleys Adjacent to 1475 Poplar Street.

Public Hearing re: Proposed Vacating of Unused Alley – 7:00 p.m. Meskimen, second by Ballantyne, moved to open a public hearing regarding a proposal to vacate unused alley adjacent to the lot at 1475 Poplar Street, owned by Jim and Katie Miller; motion carried – 4 to 0. Mayor Stanek opened the public hearing at 7:35 p.m. Clerk-Administrator Anderson summarized the proposed alley vacate; reported notice had been published and parcel specific notices mailed as required by state Code and that Southslope Telecommunications reports no conflicts.

Mayor Stanek asked for comments from the public. General discussion ensued: noting the request is related to the City's request for an easement from Mr. and Mrs. Miller for the Rogers Creek Trunk project, that the proposal would vacate all alleys adjacent to the property, and that the proposed vacation would not negatively affect utilities for that or neighboring properties. Jim Miller asked if the City would find the survey pins for the property and alleys to be vacated.

Mayor Stanek asked for further comments, none were offered. Smith, second by Meskimen, moved to close the public hearing; motion carried – 4 to 0. Mayor Stanek closed the public hearing at 7:45 p.m.

Resolution No. 07-0910-40, Vacating Unused Alley and Transferring Property. Mark Banowetz noted that vacating these unused alleys would be done in exchange for a water and sanitary sewer easement needed for the Rogers Creek Trunk project, which the City Council considers to be of value to the City. Meskimen, second by Ballantyne, moved to approve Resolution No. 07-0910-40, Vacating Unused Alley and Transferring Property".

Aye: Meskimen, Banowetz, Winkowski, Ballantyne, Smith

Nay: none.

Absent: Winkowski

Motion carried – 4 to 0.

Banowetz, second by Smith, moved to authorize MMS Consultants to locate property pins to identify the boundaries of the vacated alleys. Motion carried – 4 to 0.

Proposed Ordinance No. 200, An Ordinance to Require Installation of Sidewalks When Building Permit Requested for Work Estimated to Value \$10,000 or More. Mayor Stanek suggested the proposed version of the ordinance be revised to delete the condition that the affected property must have sidewalk within 100 feet by deleting paragraph 6-1-4(3). It was the consensus of the City Council to accept the suggestion after discussing the topic.

Public Hearing re: Proposed Ordinance No. 200. – 7:00 p.m. Meskimen, second by Smith, moved to open a public hearing regarding proposed Ordinance No. 200, “An Ordinance to Require Installation of Sidewalks When Building Permit Requested for Work Estimated to Value \$10,000 or More”; motion carried 4-0. Mayor Stanek opened the public hearing at 7:45 p.m. Clerk-Administrator Anderson reported notice had been published as required. Mayor Stanek summarized the proposed ordinance; then asked for comments from the public regarding the public hearing item.

Chet Hendrickson stated he has a big problem with this ordinance because if he wants to build a garage he would then have to put in a sidewalk even if it’s not physically feasible to. Dale Stanek stated there are already places in town where there are gaps in sidewalk over 300 feet or more. Mr. Hendrickson stated he would have to install four-acres frontage worth of sidewalk and curb & gutter, that he doesn’t understand the theory behind this ordinance and that there will never be sidewalk from the apartments to his place. He stated according to this ordinance he would have to put sidewalk in the middle of no-man’s land where there isn’t even curb & gutter. Mr. Stanek stated there are places in town where the nearest curb is over 300 feet away, which leaves gaps in sidewalks, and the intent of this ordinance is to get rid of such gaps.

Tom Tjelmeland stated most gaps are in the R1-A zoning district or newer developments where lots have not been built; and that sidewalk is not feasible for lots like his or Mr. Hendrickson’s. Mr. Tjelmeland stated he would be restricted from putting up a larger accessory building, and that new buildings and construction add value to the town and the town’s tax base. Mr. Tjelmeland stated the ordinance should say “if sidewalk within a certain distance”, or “if lot has curb and gutter”. He suggested the City should consider planning to install curb and gutter on Walker Street. Chet Hendrickson stated the Sweets would have had to put a sidewalk at the end of the city under this ordinance, and that there would never be a connecting walk.

Tom Tjelmeland stated the ordinance is unnecessary, the City can install sidewalk by order and special assessment. Mr. Tjelmeland stated Cedar Rapids has the same crazy idea and other costly requirements for developing land and asked if Ely is heading to the point where the city is making people install things that will never get used. Dale Stanek stated there are many places in Ely where sidewalks do not connect and this ordinance would be part of a program to correct that. Mr. Tjelmeland stated he may want to put a new garage on his property and this ordinance would almost keep him from doing so. Mr. Stanek replied by asking whether the best time to bring everything up to code might be when renovating.

Lori Wilcoxson stated she wants to know who owns the sidewalks and why she would put sidewalk in if she doesn't own it. Ms Wilcoxson also asked if this ordinance would apply to Duane Kunkel. Dale Stanek stated the ordinance would apply to anyone seeking a building permit for work valued at over \$10,000, and noted that there is curb and gutter in the North Drive area that was developed by Mr. Kunkel.

Tom Tjelmeland stated the city will still have vacant spots, and this ordinance would not solve that problem. Mark Banowetz stated the reason for the proposed ordinance is to address a problem with a solution that works. This is not an attempt to go after anyone in specific; the City Council is trying to take care of a situation the taxpayers have asked the Council to take care of. Chet Hendrickson stated he understands that; please make sure the solution is logical and feasible. Mr. Hendrickson stated the situation would also be taken care of with new development.

Mayor Stanek asked for additional comments from the public, none were offered. Ballantyne, second by Smith, moved to close the public hearing; motion carried – 4 to 0. Mayor Stanek closed the public hearing at 8:00 p.m.

First Reading of Ordinance No. 200. Ballantyne, second by Smith, moved to introduce and approve first reading of Ordinance No. 200, “An Ordinance to Require Installation of Sidewalks When Building Permit Requested for Work Estimated to Value \$10,000 or More” with the following revision addition at the end of section 6-1-4-1(1): “where curb and gutter exists”.

Aye: Meskimen, Banowetz, Ballantyne, Smith.

Nay: none.

Absent: Winkowski

Motion carried – 4 to 0

Installation of Sidewalks along Jappa Road. Mayor Stanek reported Residential Solutions LLC had complied with the cities request to install sidewalks and therefore there is no need for a public hearing on this matter.

Ely City Park Development.

Park Survey Responses. Clerk/Administrator Anderson reported results of the Park Survey that was mailed to all utility customers, and available online at the Ely website. Mr. Anderson reported 519 surveys were mailed out; 110 written responses received and 21 online responses. The Mayor and City Council reviewed survey and responses; items discussed include: level of support for the park with and without including the aquatic center, responses from people willing to pay higher taxes, and the written comments received as part of the survey.

Tom Tjelmeland asked if the City Council would have concerns with people putting in a ball diamond in a decent location within the park immediately. Mr. Tjelmeland asked why the dollar cost impacts were not presented for business owners also. The City Council directed the City Administrator to schedule a public open house, with refreshments, to further the engage the community on this matter.

2007 Wastewater Treatment Plant Improvements Project.

Payment Application #7, Miron Construction Inc. – 2007 WWTP Project. Meskimen, second by Smith, moved to approve payment of Payment Application #7 in the amount of \$444,514.50 to Miron Construction for the 2007 Wastewater Treatment Plant Improvements Project. Motion carried – 4 to 0.

Resolution No. 07-0910-41, Approving Change Order #4 to Contract with Miron Construction, Inc. and Resolution No. 07-0910-41a, Approving Change Order #5 to Contract with Miron Construction, Inc. Ballantyne, second by Smith, moved to approve Resolutions No. 07-0910-41 and 07-0910-41a, which would approve Change Orders Number 4 and 5 to the Contract with Miron Construction for the 2007 Wastewater Treatment Improvements Project.

Aye: Meskimen, Banowetz, Ballantyne, Smith.

Nay: none.

Absent: Winkowski

Motion carried – 4 to 0

Rogers Creek Trunk Project.

Status of Easements. Clerk-Administrator Anderson reported on progress of gaining the necessary easements, noting that signed easements have not been received from all property owners. Ballantyne, second by Meskimen, moved to table Resolution No. 07-0910-42; Form of Tax Exemption Certificate; and Resolution No. 07-0910-43 until the affected property owners have granted the necessary easements. Motion carried – 4 to 0.

Dows Street East Subgrade Improvements

Project Status Report. Clerk-Administrator Anderson reported work on the Dows Street East Subgrade project was mainly complete, and reported the excavated area has settled. Council discussed this matter, items discussed include: concern of small gaps between previous and new asphalt applications, the viability of creating a “step-joint” over the excavated area; compaction of the excavated area and that this project is a “design build” project. Tom Tjelmeland stated since this is a design build job the contractor should fix the situation.

Payment Request. Ballantyne, second by Smith, moved to approve payment request in the amount of \$34,840.00 reflecting contract amount plus the addition of an additional 10’ by 10’ street cut and repair, less 3% as retainage to be released upon Council approval. Motion carried – 3 to 0; Meskimen abstained due to personal financial interest in the contract.

Dows Street - Discussion

General Condition of Dows Street from Main to Jappa Rd, & Options to Improve. The Mayor and City Council discussed the general condition of Dows Street from Main to Jappa Road; items discussed include: observed thickness of asphalt in some locations; likelihood of need to add or improve subgrade and install thicker asphalt surface; a suggestion that Ely coordinate with Linn County for improvements to Mabie Road prior to a project that would close Dows Street for any extended period of time, and likely cost of such a project.

Dows Street Gateway Project – Funding Options and Schedule. The Mayor and City Council discussed this project with Clerk/Administrator Anderson; including cost, possibility of outside funding sources and the complexity of the project.

State Street Improvements

Discussion as Capital Improvements project, Funding Options. The Mayor and City Council discussed this matter, including: possible scope of work to upgrade State street through Ely; benefits of thorough planning; that the project is on the Capital Improvements Plan for 2008; and possibility of outside sources of funding.

Resolution No. 07-0910-44, Authorizing Application to Living Roadways Program & Committing \$1,000 Matching Funds Contingent Upon Award. Ballantyne, second by Meskimen, moved to approve Resolution No. 07-0910-44, Authorizing Application to Living Roadways Program & Committing \$1,000 Matching Funds Contingent Upon Award.

Aye: Meskimen, Banowetz, Ballantyne, Smith.

Nay: none.

Absent: Winkowski

Motion carried – 4 to 0

Ordinance No. 199 – Compensation of City Council Members and Mayor

Second Reading of Ordinance No. 199 – Compensation of City Council Members and Mayor. Smith, second by Ballantyne, moved to approve the second reading of Ordinance No. 199 – “Compensation of City Council Members and Mayor”.

Aye: Meskimen, Banowetz, Ballantyne, Smith.

Nay: none.

Absent: Winkowski

Motion carried – 4 to 0

Workplace Policies. Clerk-Administrator Anderson reported he had not completed review of the proposals received and that additional information is still needed.

Resolution No. 07-0910-45, Accepting Proposal and Designating Healthcare Provider. Ballantyne, second by Smith, moved to table Resolution No. 07-0910-45.

Aye: Meskimen, Banowetz, Ballantyne, Smith.

Nay: none.

Absent: Winkowski

Motion carried – 4 to 0

Discussion Items – none.

Banowetz, second by Meskimen, moved to adjourn. Motion carried – 4 to 0. The meeting adjourned at 9:28 p.m.

Dale Stanek, Mayor

Attest: _____
Aaron Anderson, Clerk/Administrator