

**ELY CITY COUNCIL
REGULAR MEETING
SEPTEMBER 14, 2015
ELY CITY COUNCIL CHAMBERS**

Mayor Jim Doyle called the meeting to order at 7:00 p.m. Council members present: Stephanie Mehmen, Bill Grove, Judy Wery and Bob Ballantyne; Kay Hale absent – excused. Also present: Rachel Hendrickson, Tammy Bryant, Jim Miller, William Tuthill, Chet Hendrickson, Sam Gray, Marilyn Grover, Fran Buresh, Glenn Buresh, Alan Wery, Kathleen Banowetz, Terry Swick, Jim Angstman, Lincoln Austad, Eldy Miller, Sarah Sellon, Mark Banowetz, Mike Brain, Jeff Hilleman, Stephanie Mai, City Engineer Scott Pottorff and Clerk-Administrator Aaron Anderson.

Mayor Doyle led the City Council and others attending in the Pledge of Allegiance.

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

- Agenda, as presented.
- Minutes of the September 14, 2015 regular meeting.
- Treasurers Report for the period ended August 31, 2015.
- Bills Payable for September 2015 totaling \$212,672.49.
- Resignation of Jeremy Elkin from Plan and Zoning Commission with appreciation for his service to Ely.

Motion carried – 5 to 0.

Communications. Linn County Deputy Steffens reported on Sheriff's Office activity during the previous month. Librarian Sarah Sellon reported she and Madeline Jarvis were presenters at the Iowa Library Association conference.

Citizen Requests.

Chet Hendrickson stated he requests the request to re-zone 1920 State St. be sent back to the Plan and Zoning Commission (P&Z) due to procedural issues he believes were not properly followed. Mr. Hendrickson stated the proper way is for an applicant to go to City Council first, then for the City Council to refer the matter to P&Z; then P&Z holds the public hearing.

Mark Banowetz advised people to be on the lookout, the wooden chainsaw bear was stolen from the front porch of their coffee house The Retreat around two weeks ago. Mr. Banowetz advised people to call the Sheriff if they see questionable people or behavior. Mr. Banowetz asked if Fall Fest will have a street dance, and whether it will close at 11:30 p.m. Mayor Doyle replied Fall Fest will have a street dance; Mayor and City Council discussed the street dance end time Council member Ballantyne noting his motion was based on written material from City Administrator which stated the music would end at 11:30 p.m. Clerk-Administrator was directed to research the matter and report to Mayor and City Council.

Jim Miller stated he heard a city employee got hurt and wondered how he is doing. Clerk-Administrator Anderson reported Steve Bunn injured his right shoulder while performing work duties, is under medical care and will not return to work any sooner than the end of September.

Request to Re-Zone Parcels at 1920 State Street from R-1 Single Family Residential and M-2 Heavy Industrial to M-1 Light Industrial - Swick Cable Contractors, Inc. & Joe T. Lawrence

Public Hearing re: Request to Re-Zone Two Parcels at 1920 Currently Designated R-1 Single Family Residential and M-2 Heavy Industrial to M-1 Light Industrial. Mayor Doyle reported this request is to rezone the property at 1920 State Street from R-1 Single Family and M-2 Heavy Industrial to M-1 Light Industrial. Mayor Doyle asked City Clerk-Administrator for information regarding public hearing procedures. Clerk-Administrator Anderson reported attorney Randy Scholer, of Simmons, Perrine Moyer Bergman, advises as follows: A public hearing by Plan and Zoning Commission is required to establish the initial set of zoning ordinances. Changes, supplements, amendments and so forth after the initial set of ordinances are adopted do not require a public hearing by the Plan and Zoning Commission. The P&Z must consider the possible change, amendment or update at a public meeting, and present a report to the City Council regarding same.” Mr. Anderson noted state code does not require the P&Z to hold a formal public hearing on a zoning request, though they may. Mayor, City Council, Mr. Anderson, Mr. Hendrickson and Rachel Hendrickson discussed the matter; topics include but are not limited to interpretation of state code, P&Z establishing a policy to hold public hearings and other matters.

Mehmen moved to open a public hearing regarding a request to re-zone the property that comprises 1920 State Street to M-1 Light Industrial at 7:29 p.m., second by Wery. Motion carried – 5 to 0. Mayor Doyle declared the public hearing open at 7:29 p.m.

Jim Angstman stated there were several stipulations put on the recommendation to re-zone by the P&Z when P&Z reviewed the request in July, and that they met all of them, and gave the related information to Mr. Anderson including information regarding . Mayor Doyle asked if this happened at one meeting or more than one. Mr. Angstman stated there was one meeting.

Mayor Doyle asked Aaron Anderson to explain the pieces of the land and what would be re-zoned from and to. Mr. Anderson stated the request is to re-zone all the property at 1920 State Street, there are two identified parcels under common ownership that comprise the property. One parcel is on the south and zoned R-1 Single Family Residential. Mr. Doyle asked if that is the property south of the building; Mr. Anderson replied the roughly south 20 or 30 feet of the buildings is on the parcel that is zoned R-1. The south approximately one-half of the next parcel is zoned M-2 on the zoning map that was in place since before he started in Ely. The rest of the northerly parcel is zoned R-1. Mr. Anderson reported Tom Lawrence, the owner of the property, and Terry Swick request all of the property be re-zoned as M-1 Light Industrial.

Rachel Hendrickson stated she has written comments that she offered to Mr. Anderson and the City Council. Ms Hendrickson provided copies of her written comments to Mayor and City Council, and a document stating objections to the requested re-zone signed by 44 people who own property or live nearby. Ms Hendrickson read her written comments; Ms Hendrickson’s written comments follow:

September 12, 2015

Dear Members of the City Council:

My name is Rachel Hendrickson and I am an Ely resident and homeowner at 1910 State Street. My husband and I also own the home at 1916 State St. which is just north of our home. I would like to voice my objection to the rezoning of the parcels of land totaling 6.33+/- acres that comprise 1920 State Street, and are currently owned by Joe and Sandra Lawrence. The request for rezoning has been made by Swick Cable Contractors, Inc. in anticipation of a purchase of this property.

This is the third request for the rezoning of this property. In 1997, this area existed in three distinct parcels. The property at 1920 State Street was 2.36 acres which is zoned M-

This parcel was rezoned from C-1 (commercial) to M-1 (Light industrial) by Ordinance No. 115 on September 11, 1989. Although a "coloring" error exists on the city zoning map, there is no evidence from the City of Ely or Linn County to support a change from M-1 to M-2. It would certainly seem appropriate for the City to correct this mistake going forward. The zoning request in 1997 was denied. By 2001, Mr. Emig (who was the previous owner) had re-platted the property so that rather than two separate lots, it was now one parcel of 5.23 acres, 2/3 of which is zoned M-1 Industrial and the other half Zoned R-1 Residential. Mr. Emig also owned the 1.93 acre parcel immediately south of this property (GPN 18303-78001-0000) which is also zoned R-1. Again in 2001, Mr. Emig applied for rezoning of the 5.23 acre site. That request was also denied. I have included my comments to both Planning and Zoning and the City Council from 2001. It is important to note, that although the zoning request was denied, Mr. Emig continued to violate the zoning ordinance and the Flood Plain Ordinance without consequence until its sale to Joe and Sandra Lawrence in July of 2008.

Since 2008, the property as described above, has been continuously out of compliance. Although the city had approached the owners informally to resolve the compliance issues, the violations have continued. By Fall of 2010, portions of the entire 6.33 acre site (excluding roadway) had become a repository for heavy industrial vehicles, equipment and loose materials from his tenant ITC. The city was notified in September of 2010 that fill material was being added and spread on land located in the 100 year flood plain, which is not permitted without an application to the City of Ely and also the Department of Natural Resources (DNR). The city administrator notified Mr. Lawrence in writing on September 15, 2010 of the requirements, and the City received an incomplete application to "replace grass area with gravel surface" for the purpose of "parking and storage of electrical poles". The owner describes an area of 15,000 square feet although there is photographic evidence which appears to show a much larger area. The DNR does not show that they received an application to change the elevation of this property.

On March 10, 2011 I sent an email regarding the Zoning/Flood Plain Violations on this property and on April 13, the City Administrator sent a certified letter to the owner making him aware of the violations and the potential civil penalties. Mr. Lawrence has continuously violated these ordinances with disregard to the City, DNR

and the residents of Ely with impunity. I recently requested all correspondence from the city to this property owner and there is no evidence that there has been any additional communication or enforcement effort.

So here we are, again. The arguments for denial of this change in zoning are even greater than in 1997 and 2001.

These are the things we know for sure...

1. There is nothing about this zoning request that enhances the City of Ely. I have contacted the Linn County Assessor's Office and the use as described will not increase revenue to the city unless the property is improved significantly (ie. New buildings which does not appear in the proposal from Swick Cable Contractors, Inc.) The net tax on the entire property is approximately \$7,227 which means that the payment to Ely is 26% or \$1,879. Of note: My taxes for the residential properties across the street, when combined and the acreage, are \$8,034 with the same 26% benefit to Ely (\$2089).
2. This property is located within 200' of multiple existing residential properties. This proposed rezoning triples this industrial area with reasonably certain negative consequences to the value of nearby residential properties.
3. Additional truck and industrial equipment traffic compounds the problems of enforcing speed limits, increases noise levels and damages roadways. There are additional safety concerns when large vehicles enter and leave the roadway from this property. State Street is heavily traveled and needs major upgrades. The Comprehensive Plan which was just approved in May of 2015 identifies the need for turn lanes to help promote the flow of traffic through the community. The considerable cost of road improvements made necessary by the expansion of this industrial use should surely be born by the developer of this property.
4. The proposed use is unsightly, not appropriate this close to the center of town. Screening, which is required in nearby communities, would be ineffective because the roadway is so much higher than the grade of the property. A six acre panorama of industrial equipment and supplies, large and small, harms the desired aesthetic in our community.
5. The proposed expansion of this industrial property is still inconsistent with the Ely Comprehensive Plan, 2015 Update which was just passed in May of this year. The approved Land Use Map shows the parcel to the south remaining R-1 Residential and properties north to the city limits appropriate for commercial expansion, not industrial.
6. Much of the property in the zoning request is located within the 100 year flood plain. Brain Engineering, nc has prepared a preliminary site development plan for the purposes of rezoning and has indicated from their own survey of the property that some areas in the floodway fringe may be slightly higher than previously reported. For those of us

who have observed and reported the illegal use of fill on this property, this is of little surprise. I have spoken with DNR and have been assured that future development of this property will require their participation. The 2010 FIRM Map serves as the official flood plain zoning map for our community. Enforcement of the City Flood Plain Management Ordinance is critical if the city wishes to participate in the National Flood Insurance Program. Although this program is voluntary, If a community doesn't uphold its floodplain management regulations, FEMA can suspend Ely from the program. (Flood insurance will not be available; no federal disaster assistance; no federal mortgage insurance or Joan guarantees in identified flood hazard areas, etc.) The city is well served by taking this matter seriously and working with DNR to assure that property owners are in compliance. Those of us who are aware of past flooding (1993) remember water that remained elevated for months. It is also reasonable to note that even heavy rainfall of short duration creates shallow ponding on this property.

7. Last, and certainly not least, the procedure for considering this rezoning request was not followed as prescribed by the City of Ely Zoning Ordinance. Under 6-13-17 Changes and Amendments, the Planning and Zoning Commission should report within 30 days "**from the date of passage of the Council's motion referring the matter to the Planning and Zoning Commission**". The Iowa Code 414.6 Zoning Commission - powers and duties states **Such commission shall, with due diligence, prepare a preliminary report and hold public hearings thereon before submitting its final report; and such council shall not hold its public hearings or take action until it has received the final report of such commission.** Since the Council did not pass a motion referring the matter to P&Z and since the Planning and Zoning Commission did not hold a public hearing, I respectfully request that this zoning application be referred back to Planning and Zoning so that the public has the opportunity to speak as required by Jaw. Although this may seem redundant, the profound impact of zoning changes to a community warrants the multiple opportunities for the public to share comment which may or may not influence outcomes.

Finally, I have enclosed a list of residents and property owners who object to the proposed rezoning request by Swick Cable Contractors, Inc and Joe and Sandra Lawrence (current property owners) of the parcels of land generally located at 1920 State Street.

The number of signatures was limited only by the time I had to research the proposal, prepare information for interested residents and walk door to door to make the public aware. Only three individuals expressed hesitation...one, because he doesn't sign anything, one who planned to attend the hearing at the city council meeting and a third that was so angry with the city

regarding a recent decision, that he "did not want to have anything to do with them".

I would like to make clear that I do not object to the M-1 zoning on the original 2.36 acres which was "grand-fathered" at the time our zoning ordinances were implemented. I also do not object to future commercial development in Ely. I think that each request needs careful thought with input from residents. I believe that future projects should enhance the City of Ely and improve the quality of life for the community. I do not believe that this rezoning accomplishes either.

Thank you for your consideration.

Sincerely,

Rachel Hendrickson, 1910 State Street, Ely

Ms Hendrickson stated the finding that Ely followed the rules regarding process should be reviewed by a different law firm because Ely has a history of not following the rules and having it come back and bite the city. She stated only around six letters were sent to property owners within 200 feet, and if they did not live within 200-feet they would not have known, nor would anyone else. Ms Hendrickson stated of the signatures she collected only three people hesitated; one because he doesn't sign anything, another because he intended to attend the public hearing and the third because he was so frustrated with the city about a recent decision he doesn't want anything to do with it. She repeated her thoughts re: the originally "grand-fathered" M-1 status, and that she does not object to future commercial development but each request requires careful thought with input from the community. Ms Hendrickson stated each future project should enhance the City of Ely and enhance the quality of life for the community and this request does not do that.

Rachel Hendrickson stated she went to figure out exactly just what they plan to put in there. She said she does not know Mr. Swick and she is not making a judgment based on who she likes or does not like; but she looked at a property and took pictures of a property at 32nd Ave SW, and even went on several different days to be fair. She said she is panicked that we would put this use on 6.33 acres along State Street; it just not an appropriate use. This is just not the right thing and does nothing for the community. She stated Mr. Swick is not from the community and the business does not serve the needs of our community. It is not about a barbershop or a small grocery store that might provide a place for people to buy thing that live in the community. This has nothing to do with our community, it is someone who is coming in from the outside and wants to consolidate three properties in one spot and doesn't this look grand all because it was in treated like this before even though it was out of compliance with our zoning ordinance. Ms Hendrickson stated she really wants you to give this some careful thought, you may need to table this go to the property and decide if this is how we want to use this piece of use land in Ely. Mr. Swick probably runs a great business, and there are probably a number of industrial sites in Cedar Rapids. He even plans to have an open storage yard for the accoutrement that goes with this kind of business.

Rachel Hendrickson continued: This is not the kind of business would make people go 'Oh I'm so glad I'm in Ely'. I do not want directions to my house to be 'past the large

industrial site on the right the speed limit changes to 35 I'm the first house on the right. That is not appropriate for a residential area in Ely.

Rachel Hendrickson stated she just wants you to think about it; if you think there needs to be more public discourse send it back to planning and zoning. All the planning and zoning discussed was the flood plain, they didn't discuss lighting. If you have all this equipment and material you will want to light the yard so it will be like a baseball park at night because you want lighting to protect what you own. The traffic noise, trucks greet each other by honking. If you live down there you know all the "greeting" that goes on, I do because I'm an early riser. I really want you guys to give some serious thought to this. This is not just about me, we have a whole new generation who will move into Ely who will stand in front of this site and think 'what the hell were they thinking about?'

Mayor Doyle stated he knows she mentioned what was discussed at the Plan and Zoning meeting; and noted that the meeting notes include that there was a motion and vote to recommend re-zoning and that more was discussed than flood plain and that all voted in favor. Rachel Hendrickson stated you have to have information to get to the point where you can make that decision, if you don't have a public hearing and only have four days notice you can't possibly gather enough information to make an informed decision. There are people from Planning and Zoning who know how much information there was, and where it came from. The information came from the City, the City sets the agenda, people don't have an opportunity to give any input it took me two weeks to investigate into this further. Jim Doyle reported this kind of thing comes up all the time. He stated Planning and Zoning meetings are public meetings anyone can go there as are City Council meetings. Ms Hendrickson stated how many people have time to drop everything they do and gather information so they can make an informed decision, that is the whole point of public hearings as a way to bring everyone together. She stated the city doesn't have to operate that way, but I promise you the comments you receive to your face will not be pleasant; and I know that this will come up two more times and if I had more than two days I will have a much longer list of names and I will make it my business to make sure everyone in the community understands what the project is about. I am assuming you will just do as Planning and Zoning suggests, or maybe you will table and investigate further. I hope you will send it back to Planning and Zoning for another hearing.

Mark Banowetz stated we have approximately 300 homes that could be built in subdivisions that have been approved; as we look at this we have had to fight with extending water and sewer to the north and south especially to the north we can't because of the last estimated cost would be \$3 million dollars. So what we have for commercial right now, and as we get more people coming in, is we have a very limited commercial area where we can put anything in. Mr. Banowetz stated we started this comprehensive plan fifteen years ago, projecting where new commercial would go when growth comes. He stated we need to have commercial areas; when we put in a several million dollar sewer plant several years ago we looked at commercial growth. He stated we need to have commercial services for people to move here and our space is so limited on where we can actually develop right now that what we have is what we're going to get because of the \$3 million cost to extend water to the north and south. Also, the sewer expansion would allow for commercial growth to increase the tax base to help pay for the expansion needed at the state of the art sewer plant to support residential growth because commercial property pays higher taxes than residential. When we start looking at whatever it's going to be, is it going to provide what we set out looking at

fifteen years ago, what our goal and vision for Ely as fifteen years ago, or are we going to settle for something. As a business owner in town we continue to think we will have more commercial moving in to town.

Chet Hendrickson stated he wants to remind the City Council that you have a comprehensive plan, and all that land is designated as commercial and not industrial. One of the big things with changing zoning is following the comprehensive plan, it is your safeguard. He stated that like Mr. Hatala said it is the basis of zoning decisions, you need to keep in mind what the comprehensive plan designates for that area.

Terry Swick stated she presented a picture and asks that decision not be made on a picture taken over two days. He stated the property she looked at is too small for us which is why we are investing in a larger location. Mr. Swick stated the good thing about us for Ely is that he has a place he will be at on a daily basis, all my employees are small town people and want to live where they work and this is an attractive site for us. Rachel Hendrickson asked if they are planning on hiring, at the meeting at the planning and zoning they said "no". Mr. Swick stated this is the first meeting he has attended. Ms Hendrickson stated the person representing him said "no" at the P&Z meeting.

Judy Wery asked if they plan to have outdoor storage or will most equipment be in the building. Terry Swick replied the goal is to have as much equipment inside the building as they can, it is safer for them and the equipment is expensive. He stated he does not want a "baseball field" down there so that every thief in the area can see what is available to steal. He stated he has talked with various landscape contractors and there are screening options he plans to pursue. Mr. Swick stated the property needs cleaned up, it needs to look better. Rachel Hendrickson stated your plan shows a designated area you plan for outdoor storage; are you thinking you might build a building so you can keep it indoors. Mr. Swick stated there are all sorts of thoughts that could be done at this point. Could we build another building some day, up until a few weeks ago we did not know what was truly in the flood plain our goal is to expand our operation. He stated I don't think any business owner wants people to drive past their business and go 'oh, what an eyesore.' Mr. Swick stated he and his employees do not want to look or be seen poorly; our existing site is too small. Ms Hendrickson stated she is more concerned about the little junk that litters the property now, someone could make it really nice if they want to.

Rachel Hendrickson stated she only has her own experience to judge on, that no one has been watching the property saying 'you can't do that, you can't do that'; I have twenty years worth of pictures of everything that has gone on that property. She stated that if anything could raise her blood pressure it would be to triple the mess that has been there for twenty years. She stated that if you have a very solid plan to make the property attractive to the community then I would get used to that. Ms Hendrickson stated what has been presented so far does not do that. Mr. Swick stated some of that is investment capital, you're not going to throw \$100,000, or whatever the number is at a plan you don't know is going to proceed. Mr. Swick stated my firm is the one that gets called when the power or phone go out. Ms Hendrickson asked their firms accomplishments in the Ely area. Mr. Swick stated they do not do much work with Southslope, we do a lot of work with power, water and sewer lines. He stated I can give you other city managers names we do all the municipal work for their cities and they would be happy to sit down and tell you what we do for their communities. Mr. Swick stated it is ridiculous to base the decision on two days worth of pictures. He stated he does not have a storage location at his parents farm, his parents do not have a farm

but he has a storage area on his personal farm. Ms Hendrickson stated she is not saying Mr. Swick does not run a good company, she asks the City Council to stand on the property and look at the scope and size of the property. She stated she does not see a legitimate reason to change the zoning of the small vacant parcel on the south end. Mr. Swick stated the property line runs through the existing building, Ms Hendrickson stated she has been here twenty years she doesn't think anyone will give difficulty about that.

Mr. Swick stated they are trying to do things the proper way as well. Mike Brain stated it is normal for one property to have one zoning. There was general discussion about where the trees are, and cleaning up where the trees are for the long term.

Mayor Doyle asked if there was anything else for public hearing. Stephanie Mehmen asked about the March 10, 2011 complaint that property owner was in violation and nothing was done. Aaron Anderson stated he contacted the owner, and they ceased activity. Ms Mehmen asked what they were in violation of, Mr. Anderson stated of bringing in fill. Rachel Hendrickson stated there have been several instances, they never contacted DNR and not sure they were ever told to. Ms Hendrickson stated she contacted DNR and they were only contacted about this property once about a 50' by 60' building. This comes in gradually, a load of fill at a time. It is not that they can't they just need the proper permit from the DNR and the City.

Jerry Strong stated he works for Tom Lawrence and was involved in the 2010 notice about grading; all we were doing was grading the lot so water would drain, we brought in some fill so there would be a good base for the trucks to drive on. He stated we were not doing any filling we were just grading so the lot would drain. Ms Hendrickson stated your application says you were putting it there so you could store phone poles. Not only that, it was not phone poles, it was the big equipment the booms, railroad ties. Mr. Strong stated all we were doing when we got the notice was grading the property so it would drain.

Stephanie Mehmen asked Chet Hendrickson how long he has been on the P&Z. Mr. Hendrickson stated twenty years. Ms Mehmen asked if he unanimously voted in favor the change, Mr. Hendrickson replied yes. Ms Mehmen asked Mr. Hendrickson why he changed his mind now. Mr. Hendrickson stated he did more research and found that we did not take into account the new comprehensive plan. Jim Doyle asked why they didn't have a copy of the comprehensive plan. Mr. Hendrickson stated we forwarded a draft to City Council but had not received final version. Aaron Anderson stated the City Council approved the version submitted and recommended by P&Z, and that he would have told them that if asked. Mr. Hendrickson said we should have gotten a formalized copy of the plan. Mr. Anderson acknowledged this, and noted the P&Z had the plan as presented.

Bob Ballantyne asked about the flood plain relative to the property, if you look at the map it looks like it runs through the building. Jim Doyle noted that is why they are requesting the rezone. Mr. Ballantyne asked if DNR has jurisdiction inside the city, or does the city; and based on I hear you can get a permit to add fill as long as it is not for where the water flows. Aaron Anderson stated, in short as long as the fill is not in the flood plain fill can be added. Mr. Ballantyne asked if the 2010 incident was legal, Mr. Anderson replied based on what we knew then it was illegal. Mr. Ballantyne asked if you are filling in a flood plain you can back water up by bringing in fill. Mr. Anderson stated there appears to be a discrepancy in perception of fact. He stated Ely administers and manages the flood plain ordinance. Mr. Ballantyne asked about the FEMA issue and flood insurance. Mr. Anderson stated he would be stunned if this would damage Ely's flood insurance, any violation would

have to be much more egregious. Ms Hendrickson stated DNR told her they can raise the elevation of land outside the flood way fringe if they have proper permit and DNR review. Ms Hendrickson stated there is also the issue of all the little stuff on the lot that floats onto other people's property in a flood. All she is asking the city to do is to actively participate in the flood plain ordinance.

Chet Hendrickson stated when Brain Engineering prepared their report they said the area is two feet above the FIRM map after their survey, just a little bit of fill is enough to bring it up two feet. The really needs to be active in flood plain management. Judy Wery asked what flooding was like in 2008. Ms Hendrickson stated the water flowed from a different direction and was not as impactful in 2008.

Mark Banowetz stated the north is zoned R-1 right now, City is not looking to change this and asked what the City has done about the cable spools and trucks there, was there a temporary variance. Aaron Anderson stated he spent a lot of time on the phone. Mr. Banowetz stated but nothing happened, is this being changed over because this is easier and we can't get people to do something. He asked why the City Council is not enforcing what is in place now.

Mike Brain stated he is the engineer for this project. FEMA came out with a FIRM map in 2010 that shows the majority of the site is in the 100-year flood. Based on the contours the county has, plus they went out and shot contours, they found the majority of the ground is higher than they said and it is higher than the 100-year flood. He stated the procedure through FEMA they can take that ground out of the 100-year flood, there is a procedure that the city has to sign a letter saying fill was brought in. Mr. Brain stated he will not state if fill was brought in or not, but the ground above the 100-year flood. He stated the stream is made up of two parts, the flood way and the floodplain; you cannot disturb the floodway, no fill may go in the floodway, by not allowing fill in the floodway you can build the floodplain up as high as you want. He continued the process for that is to get a permit from the city, there is no requirement to contact Des Moines or any other body at this point. Mr. Brain stated the areas that do not have the 100-year flood elevation we have to contact Des Moines, and stated we have started process to have the property taken out of the FEMA 100-year flood. Bob Ballantyne asked how the flood plain is determined. Mr. Brain stated they do studies, research; and noted that the flood plains are wider in the 2010 FIRMs than before, but the stream remains narrower. Rachel Hendrickson stated the entire property is not out of the 100-year flood, DNR would require participation in determining the entire parcel is out of the 100-year flood; and she disputes kind of what Mr. Brain is saying. She stated she can get more information from DNR if needed to understand better. Mr. Brain stated you do not have to raise the entire property, you only have to raise the specific section. He stated under FEMA law all of a property is in the 100-year flood until you file a Letter of Map Amendment (LOMA) to take a portion of the property out, like just the structure. He stated they would only remove this portion from the 100-year flood. Ms Hendrickson stated it is the city's job to make sure they can use the land in the way they intend. Mr. Brain stated this is the reason we provided the site plan, and the northwest corner will likely remain in the flood zone; it would not be used for storage if it is still in the flood plain. General discussion among people regarding zoning the entire property and spot zoning.

Mayor Doyle stated the matter could be tabled, sent back to P&Z, get more research by staff.

Ballantyne moved to close the public hearing at 8:29 p.m., second by Hale. Motion carried – 5 to 0. Mayor Doyle declared the motion carried, public hearing closed and meeting in regular session at 8:29 p.m.

First Reading of Ordinance No. 242, Amending Zoning Map. Ballantyne moved to table first reading of Ordinance No. 242 and refer the matter back to Plan and Zoning Commission; second by Mehmen. Motion carried – 5 to 0.

Fall Fest – October 2 & 3, 2015

Authorize No Parking Locations and Temporary Street Closings for Fall Fest 5K & 1-Mile Events. Ballantyne moved to approve the following temporary no-parking locations and street closings on Friday October 2, 2015 for Fall Fest 2015:

- Temporary close of Hillcrest St., North Dr., and Highland Rd, to traffic during the 5K & 1-Mile runs from 7:15 p.m. to 8:30 p.m. or until the final participant has cleared the area;
- Temporary no parking on the north side of Dows Street between Hillcrest and Plainview from 2:00 to 8:30 p.m. both on Friday October 2, 2015.

Motion was seconded by Grove. Motion carried – 5 to 0.

Buresh Estates Third Addition

Resolution No. 15-0914-26, Approving Developer/Subdividers Agreement - Buresh Estates Third Addition. Mayor Doyle reported all items related to the developers agreement for Buresh Estates Third addition have been worked out and that Glenn and Frances Buresh signed the agreement on behalf of Buresh Estates 3rd Addition LLC. Kay Hale stated her recusal on this matter due to a conflict of interest. Ballantyne moved to approve Resolution No. 15-0914-26, Approving Developer/Subdividers Agreement – Buresh Estates Third Addition, second by Mehmen.

Aye: Mehmen, Grove, Wery, Ballantyne

Nay: None

Absent: Hale - abstain

Mayor Doyle declared the motion passed and resolution approved 4-0; Hale abstaining.

Ely Business Promotion Signs

Discuss General Design, Location and Financials re: Ely Businesses Signs. Mayor and City Council discussed installation of business identification signs and other options to help encourage business in Ely. Consensus is to form a committee of city council, business owners and residents to work on this and for Clerk-Administrator Anderson to facilitate. Council members Stephanie Mai and Judy Wery volunteered, along with Tammy Bryant.

Hoover Trail to Community Center Project

Resolution No. 15-0914-30, Approving Change Order #2. Mayor Doyle reported this resolution approves Change Order #2 under the contract with Peterson Contractors Inc. (PCI) to correct grade and install new sidewalk at 1680 Rowley St, and increases the cost of contract \$750. He noted the amount of the change order is eligible for federal aid participation. Mehmen moved to approve Resolution No. 15-0914-30, Approving Change Order #2, second by Hale.

Aye: Mehmen, Grove, Hale, Wery, Ballantyne

Nay: None

Absent: None

Mayor Doyle declared the motion passed and resolution approved 5-0.

Resolution No. 15-0914-31, Approving Change Order #3. Clerk/Administrator Anderson reported this change order is for additional work and materials to relocate underground electrical lines and an access “handhole” for the segment of Hoover Trail parallel to Main Street. These items were moved to avoid conflicting with the new trail pavement. He noted the change order increases contract cost \$3,773.00, and that the additional work is included in the federal grant for the project. Hale moved to approve Resolution No. 15-0914-31, Approving Change Order #3; second by Grove.

Aye: Mehmen, Grove, Hale, Wery, Ballantyne

Nay: None

Absent: None

Mayor Doyle declared the motion passed and resolution approved 5-0.

Resolution No. 15-0914-32, Approving Change Order #4. City Engineer Scott Pottorff reported this change order is for additional work to core out unstable soils for a roughly 75 section of the trail by the community center, and replace with modified subbase. He noted the change order increases contract cost \$2,210.00, and the additional work is included under the federal grant for the project. Hale moved to approve Resolution No. 15-0914-32, Approving Change Order #4, second by Grove.

Aye: Mehmen, Grove, Hale, Wery, Ballantyne

Nay: None

Absent: None

Mayor Doyle declared the motion passed and resolution approved 5-0.

Construction Progress Payment Request No. 2, Peterson Contractors, Inc. Mehmen moved to approve Construction Progress Payment No. 2 for \$116,080.02 to Peterson Contractors, Inc., under the Hoover Trail to Community Center contract; second by Hale. Motion carried – 5 to 0.

Highland Road Project

Transition Between City Park Parking Lot and Hoover Trail. City Engineer Scott Pottorff reported the “new” surface of the parking lot at City Park is several inches higher than the Hoover Trail; the transition between the two was not caught during project design. He recommended removing a small portion of the existing sidewalk and 2009 trail, and replacing with a 5” deep sidewalk ramp from the existing curb cut opening in the parking lot curb and the Hoover Trail. He reported estimated cost \$3,364.00. Mr. Pottorff discussed the matter with Mayor and City Council, including other possible options, why this was not anticipated during design, and whether MMS would participate in the cost of the additional work. Mr. Pottorff stated it is possible MMS might be willing to pay some of the additional cost.

Mehmen moved to proceed to correct the elevation transition between the Hoover Trail and City Park Parking Lot per City Engineer Scott Pottorff’s recommendation,

reserving the option and right to discuss payment with MMS for some or all of the work; second by Hale. Motion carried – 5 to 0.

Resolution No. 15-0914-33, Approving Change Order #1. City Engineer Scott Pottorff reported this change order is for additional work to excavate and remove bedrock in the project area. Plans anticipated some bedrock in the project area, the bedrock was present to a greater extent and actually in the street bed area, which was not anticipated in the plans. He reported the change order increases contract cost \$8,379.00. Hale moved to approve Resolution No. 15-0914-33, Approving Change Order #1; second by Wery.

Aye: Mehmen, Grove, Hale, Wery, Ballantyne

Nay: None

Absent: None

Mayor Doyle declared the motion passed and resolution approved 5-0.

Resolution No. 15-0914-34, Approving Change Order #2. City Engineer Pottorff reported this change order is for an additional “major” manhole adjustment and flat-top, rather than the minor adjustment and standard lid anticipated in project plans for the location. He reported this change order increases contract cost \$2,727.23.00. Hale moved to approve Resolution No. 15-0914-34, Approving Change Order #2; second by Grove.

Aye: Mehmen, Grove, Hale, Wery, Ballantyne

Nay: None

Absent: None

Mayor Doyle declared the motion passed and resolution approved 5-0.

Resolution No. 15-0914-35, Approving Change Order #3. City Engineer Pottorff reported this change order is for additional work to remove and replace more concrete street surface when connecting the new water main at Hillcrest Street than anticipated in project plans. He reported the change order increases contract cost \$1,272.35. Grove moved to approve Resolution No. 15-0914-35, Approving Change Order #3; second by Hale.

Aye: Mehmen, Grove, Hale, Wery, Ballantyne

Nay: None

Absent: None

Mayor Doyle declared the motion passed and resolution approved 5-0.

Resolution No. 15-0914-36, Approving Change Order #4. Clerk-Administrator Anderson reported this change order is for additional work to repair a water service line at 1615 Hillcrest St that was damaged during construction of the water main on Highland Road; the service line is located in an unusual location and Ricklef’s Excavating seeks Ely to pay one-half the cost. He reported this change order would increase contract cost \$937.83. Hale moved to approve Resolution No. 15-0914-36.. Motion died for lack of second.

Construction Progress Payment Request No. 2, Ricklefs Excavating. Mehmen moved to approve Construction Progress Payment No. 2 for \$161,485.21 to Ricklefs Excavating for the Highland Road/City Park Parking Lot project, second by Grove. Motion carried – 5 to 0.

Rogers Creek/Kunkel Addition Sanitary Sewer Expansion

Resolution No. 15-0914-37, Approving Change Order #1. Clerk-Administrator Anderson reported this change order is for additional work for the contractor to move a shed, fence and other items located within an existing utility easement from the project construction area. He reported the change order would increase contract cost \$1,618.44. Hale moved to approve Resolution No. 15-0914-37, Approving Change Order #1; second by Ballantyne.

Aye: Mehmen, Grove, Hale, Wery, Ballantyne – all reluctantly
Nay: None
Absent: None

Mayor Doyle declared the motion passed and resolution approved 5-0.

Resolution No. 15-0914-38, Approving Change Order #2. City Engineer Pottorff reported this change order is for additional work and materials to connect the new 12” diameter sanitary sewer main to a 10” diameter connection, rather than 12” diameter as shown and anticipated in the project plans. Mr. Pottorff stated all existing city records show the sanitary sewer main at this location as 12” diameter; the contractor Zinser Excavating found it was 10” diameter. Mr. Pottorff reported the change order would increase contract cost \$595.00. Hale moved to approve Resolution No. 15-0914-38, Approving Change Order #2; second by Wery.

Aye: Mehmen, Grove, Hale, Wery, Ballantyne
Nay: None
Absent: None

Mayor Doyle declared the motion passed and resolution approved 5-0.

Construction Progress Payment No. 1, Zinser Grading & Excavating, Inc. Hale moved to approve Construction Progress Payment No. 1 for \$60,519.19 to Zinser Excavating, Inc., for the Rogers Creek/Kunkel Addition Sanitary Sewer Expansion; second by Mehmen. Motion carried – 5 to 0.

Discuss Recreation Commission Enabling Ordinance, Title V, Chapter 2, Ely City Code.

Council member Ballantyne distributed a memorandum regarding updating Ely’s ordinances and a recommended update of Section 5-2 of the City Code; and discussed need to review and consider updating many city ordinances especially zoning and the parks commission ordinance. Mayor and City Council discussed the matter, including some specific suggestions to revise the parks commission ordinance. No action taken, Mayor and City Council will discuss further at the October 12, 2015 meeting.

Public Works – Streets, Water, Sewer & Equipment

Report re: Retaining Wall on South East Side of E. Pacific St Culvert. Clerk-Administrator Anderson reported the retaining wall can be temporarily reinforced and held together in a manner that will allow Ely to prepare a detailed long term repair.

Administrative, Personnel and Staffing

Resolution No. 15-0914-39, Approving FY 2014-15 City Street Financial Report. Hale moved to approve Resolution No. 15-0914-39, Approving FY 2014-15 City Street Financial Report; second by Wery.

Aye: Mehmen, Grove, Hale, Wery, Ballantyne
Nay: None
Absent: None

Mayor Doyle declared the motion passed and resolution approved 5-0.

Authorize Capital Improvements Planning with Jeff Schott of Iowa Institute of Public Affairs. Mayor and City Council discussed capital improvements planning, and utilizing Jeff Schott of the Iowa Institute of Public Affairs to facilitate the process. Hale moved to authorize utilizing Jeff Schott of the Iowa Institute of Public Affairs to facilitate capital improvements planning in January, 2016; second by Mehmen. Motion carried – 5 to 0.

Social Media Policy. Clerk-Administrator Anderson reported he intends to present a social media policy for the October, 2015 meeting.

Discuss Possible Purchase of Land. Hale moved to enter closed session as allowed by Section 21.5(j) of the Code of Iowa to discuss the possible purchase of land for a community, cultural, recreational, educational facility at 9:58 p.m.; second by Mehmen. Motion carried – 5 to 0.

Hale moved to end the closed session at 10:15 p.m., second by Mehmen. Motion carried – 5 to 0. Mayor Doyle declared the meeting in regular session at 10:15 p.m. No action was taken regarding the closed session item.

Discussion Items.

Mehmen moved to adjourn, second by Hale; motion carried – 5 to 0. The meeting adjourned at 10:15 p.m.

James E. Doyle Jr., Mayor

Attest:

Aaron Anderson, Clerk/Administrator