

**MINUTES OF THE REGULAR MEETING  
OF THE AMES CITY COUNCIL**

**AMES, IOWA**

**MAY 27, 2008**

The regular meeting of the Ames City Council was called to order by Mayor Campbell at 7:00 p.m. on May 27, 2008, in the City Council Chambers in City Hall, 515 Clark Avenue. Present from the Ames City Council were Doll, Goodman, Mahayni, Popken, and Rice. Council Member Larson and *Ex officio* Member Beals were absent.

**CONSENT AGENDA:** Moved by Goodman, seconded by Doll, to approve the following items on the Consent Agenda:

1. Motion approving payment of claims
  2. Motion approving minutes of the regular meeting of May 13, 2008, and special meeting of May 20, 2008
  3. Motion approving certification of civil service applicants
  4. Motion accepting Report of Contract Change Orders for May 1-15, 2008
  5. Motion approving renewal of the following beer permits and liquor licenses:
    - a. Class B Beer - Pizza Hut #4303, 436 S. Duff Avenue
    - b. Class C Liquor - Dangerous Curves 2, 122 Welch Avenue - lower level
    - c. Class C Liquor - Old Chicago, 1610 S. Kellogg Avenue
  6. Motion approving expanded outdoor service area at The Meeting House, 823 Wheeler Street, Ste. 4, on June 9, 2008
  7. Motion approving new Class B Beer Permit for Jeff's Pizza Shop, 2402 Lincoln Way
  8. RESOLUTION NO. 08-197 approving appointments of Rachel Sorenson, JoEllen Zmolek Nyquist, and Irina Bassis to fill vacancies on Public Art Commission
  9. RESOLUTION NO. 08-198 approving revisions and additions to Personnel Policies and Procedures Manual regarding Health Promotions and FMLA Military Leave
  10. RESOLUTION NO. 08-199 approving purchase of two Freightliner chassis from Truck Country of Cedar Rapids, Iowa, in the total amount of \$125,246.00
  11. RESOLUTION NO. 08-200 approving renewal of contract with Dakota Supply Group to furnish water meters and related parts/services for Water & Pollution Control Department through June 30, 2009
  12. RESOLUTION NO. 08-201 approving renewal of contract with WS Industrial Services, Inc., of Council Bluffs, Iowa, in the amount of \$238,500.00 for Specialized Boiler Cleaning Services for Power Plant
  13. RESOLUTION NO. 08-202 approving revision to Contract with Mid-Iowa Community Action
- Roll Call Vote: 5-0. Resolutions declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

**PUBLIC FORUM:** Joe Rippetoe, 419 Pearson Avenue, Ames, spoke about the City's relationship with Wolford Development. He said that Wolford Development has failed to meet a key contract deadline. It has not met the conditions of a legally binding agreement with the City; it is nearly six months late. Mr. Rippetoe noted that the Ames City Council had taken no action, even though the City Attorney had advised it more than once to take some type of action relatively soon. Mr. Rippetoe referenced an article in the Tribune written by Dick Haws, which indicated that the City's integrity is at stake. According to Mr. Rippetoe, when a contract deadline is missed and there is no reassessment or renegotiation, then there is no longer any deadline. In Mr. Rippetoe's opinion, by taking no action, the City Council is sending the message that contract terms do not matter, performance failures will not be challenged, and Wolford Development now has unlimited time at its disposal. He encouraged the Council to state what its policy is when deadlines are not met on legally binding agreements. Mr. Rippetoe sees Mr. Wolford's performance failure in December

2007 as a significant milestone, and he believes that, on any other City project, it would have called for review and reassessment. He told the Council members that each one of them needs to go on record stating his own viewpoint of the situation. It is alarming to Mr. Rippetoe that City staff members are spending a lot of time reviewing Wolford's plans for infrastructure when Wolford's status is one of non-performance. He asked if the City would trust its infrastructure to a company that is chronically late, continually scales back its plans and promises, and does not honor its commitment. Mr. Rippetoe questioned if it were even legal for the City to use a contractor who has failed to perform on a current agreement.

Matt Randall, 420 S. 17<sup>th</sup> Street, Ames, raised the issue of a gentleman being killed on City-owned land south of the IDOT last week. Mr. Randall explained that he owns property near that area, i.e., Coldwater Golf Links off of S. 16<sup>th</sup> Street. He advised that there has been a long history of homeless people living in that area, which has become known as "Squaw Park." Mr. Randall asked the City Council to direct that this wooded area be cleaned up to make it more visible.

**ARTWORK FOR NEIGHBORHOOD ART PROGRAM:** Darla James, Secretary of the Ames Public Art Commission, advised that *Air Bass Guitar* by Jaak Kindberg was installed in Tom Evans Plaza as a 2007/08 Art Around the Corner exhibit. The Main Street Cultural District has submitted a Neighborhood Sculpture application requesting that the artwork remain in that location because of the many music concerts and festivals that are held there. Ms. James said that the Public Art Commission, at its meeting of April 7, 2008, recommended that the City purchase the artwork for \$1,200 for permanent placement in Tom Evans Plaza.

Council Member Rice noted that if the requested artwork is placed permanently in Tom Evans Plaza, that location would no longer be on the rotating schedule for future artwork.

Moved by Mahayni, seconded by Rice, to adopt RESOLUTION NO. 08-203 approving the purchase of *Air Bass Guitar* by Jaak Kindberg for the Neighborhood Art Program and place it permanently in Tom Evans Plaza.

Roll Call Vote: 5-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

**REQUEST FROM AMOS ENVIRONMENTAL RESEARCH TEAM:** Mary Jean Baker, Secretary of A Mid-Iowa Organizing Strategy (AMOS), and Ken Shaw, Coordinator of AMOS, referred to the letter sent to the City Council on May 13, 2008. The letter, requesting \$5,000 to be spent on a forum to educate the public on global warming and pollution reduction, was referred to staff by the City Council on May 20, 2008. AMOS representatives are requesting that the City be responsible for directly paying for all costs associated with the proposed forum. AMOS members would assume the responsibility for handling the logistics (e.g., food, meeting space, speakers, advertising, etc.) related to conducting the forum.

Moved by Mahayni, seconded by Popken, to adopt RESOLUTION NO. 08-204 approving the request from AMOS Environmental Research Team for an allocation of up to \$5,000 for a public educational forum regarding reducing global warming and pollution, with AMOS members handling the logistics (e.g., food, meeting space, speakers, advertising, etc.).

Roll Call Vote: 5-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby

made a portion of these minutes.

**SOMERSET URBAN REVITALIZATION AREAS:** Planning and Housing Director Steve Osguthorpe reported that the City Council had approved Urban Revitalization Area (URA) #7 in September 1997 to allow tax abatement to be used as an incentive to develop three specific uses in the central part of Somerset Village:

1. Sit-down restaurants
2. Grocery stores
3. Commercial buildings with residential on the upper floors

Mr. Osguthorpe outlined subsequent actions by the City Council taken in 2001, 2004, and 2005, which extended tax abatement for buildings used for single-family residential and retail sales of goods and services. He advised that, without further action by the Council by July 1, 2008, the only new tax abatement in Somerset would be for buildings constructed for the original three uses.

The current tax abatement status for properties in Somerset was given by Mr. Osguthorpe. He further explained that, although there might be eligibility deadlines for tax abatement, once those are past, the Urban Revitalization Areas is not automatically eliminated. Mr. Osguthorpe told the Council that if it intended to eliminate any of the URAs in Somerset, an ordinance repealing the Area would need to be passed. According to Mr. Osguthorpe, it appears that the tax abatement incentive available in Somerset is generally accomplishing what the City Council had intended. However, at that time, grocery stores and commercial buildings with affordable residential units on the upper floors were not envisioned for the Village. It was emphasized by Mr. Osguthorpe that the existing approved tax abatements for completed projects will not be affected. Mr. Osguthorpe advised that, if it is the intention of the Council to continue the tax abatement past July 1, 2008, a public hearing would need to be held. Mr. Osguthorpe told the Council that it should opt for that alternative if it is believed that: (1) the tax incentive is accelerating the successful build-out of the City's first village; (2) the tax incentive is needed to complete the successful build-out of the City's first village; (3) it is only fair that all property owners in the City's first village have a tax incentive available to them until the area is totally developed.

Council Member Popken asked what was currently left to be built out. Chuck Winkleblack, 105 S. 16<sup>th</sup> Street, Ames, representing the developers of Somerset Village, advised that, in the commercial areas, there is 22,000 - 25,000 square feet yet to be built on the west side of Stange Road. On the east side, there is a lot available at the southeast corner of the intersection (approximately 14,000 square feet). There is also an available building clear to the east that is about 5,000 - 6,000 square feet.

Council Member Goodman stated his belief that tax abatement needs to yield a result, and, in this case, he thinks that it has in some areas; however, he does not believe that the abatement should continue into perpetuity. In terms of fairness, he thinks that the first people to invest in the development took a risk and were given abatement as an incentive to take that risk. Mr. Goodman added that he would prefer not to eliminate the deadlines. Council Member Popken concurred.

Council Member Rice pointed out that the ordinance approving the abatement may be repealed at

any time.

It was also noted by Council Member Goodman that, initially, there was not going to be commercial development west of Stange; however, it has been allowed to expand. It was Mr. Goodman's opinion that Somerset Village had been adequately abated.

Moved by Mahayni, seconded by Doll, to adopt RESOLUTION NO. 08-205 setting July 8, 2008, as the date of public hearing to amend each of the plans for Urban Revitalization Areas in Somerset, as follows:

1. Terminate Urban Revitalization Area #7, effective immediately.
2. Amend the Somerset Urban Revitalization Area to allow tax abatement for buildings constructed for retail sale of goods or services, as defined in Table 29.501(4)3 of the Ames Municipal Code, with a deadline of July 1, 2011, for construction.
3. Amend the Town Center West Urban Revitalization Area with a July 1, 2011, deadline for construction of buildings for retail sale of goods or services, as defined in Table 29.501(4)3 of the Ames Municipal Code.

Roll Call Vote: 4-1. Voting aye: Doll, Mahayni, Popken, Rice. Voting nay: Goodman. Resolution declared adopted, signed by the Mayor, and hereby made a portion of these minutes.

**REQUEST FOR WAIVER OF SIDEWALK REQUIREMENT AT 615-715 EAST LINCOLN WAY:** Director Osguthorpe stated that a property owner is asking to convert an office space in an existing commercial building to a restaurant space for a prospective tenant. A subdivision plat is required because the structure is non-conforming; it overlaps eight individual lots and the tenant space also overlaps a lot line. Mr. Osguthorpe reviewed the criteria that would allow for a waiver of sidewalk installation.

According to Mr. Osguthorpe, the subdivision regulations, in Section 23.403(14)(a) require that sidewalks be installed on both sides of the street in commercially zoned areas. The subject property is zoned Highway-Oriented Commercial (HOC). The property owner is requesting a waiver of the subdivision regulations, which in this case, only involves the construction of approximately 400 feet of four-foot-wide sidewalk along the north side of Lincoln Way. Mr. Osguthorpe advised that a new sidewalk had been installed by the City across the street from this property in order to infill and provide connectivity with the shared use path, which runs east and crosses the South Skunk River approximately 0.3 miles to the east. The nearest signaled pedestrian crossing point from the north side to the south side of East Lincoln Way is at South Duff Avenue (approximately 0.4 miles to the west).

Applicant Bob Friedrich, Jr., 619 E. Lincoln Way, Ames, gave the history of the property in question. He said that it had been subdivided into ten individual lots many years ago. The building in question is approximately 20,000 square feet; 15,000 square feet of that building is proposed to be occupied by the House of Chen restaurant. Mr. Friedrich showed pictures of the area, indicating a six-foot-wide sidewalk already in place in front of the building. In addition, there is a bike

path/sidewalk on the south side of Lincoln Way. There is no sidewalk to the east of the property in question. There is existing sidewalk to the west, but it is not continuous to Duff Avenue. Mr. Friedrich said that he did not believe that the City has any plans to place a pedestrian bridge on the north side of Lincoln Way. The City Council was asked by Mr. Friedrich to defer the requirement for construction of a sidewalk on the north side of Lincoln Way in the area in question. He added that he would provide whatever form of security the City requires until such a time when they are directed by the City to install the sidewalk.

Council Member Popken expressed his opinion that a precedent had been set when the City Council had denied approval of previous requests for waivers and/or deferments. Council Members Rice and Goodman concurred, citing the need for the area to be pedestrian-friendly.

Moved by Popken, seconded by Rice, to deny the request to waive the requirement to install a sidewalk along Lincoln Way.

Council Member Mahayni pointed out that there is a sidewalk on the south side of Lincoln Way. He feels that deferring the requirement would be the best solution; when there is continuity on the south side, the sidewalk would be constructed.

Vote on Motion: 4-1. Voting aye: Doll, Goodman, Popken, Rice. Voting nay: Mahayni. Motion declared carried.

**HEARING ON FINAL AMENDMENTS TO FISCAL YEAR 2007/08 BUDGET:** Finance Director Duane Pitcher explained that there were not a lot of changes to the 2007/08 budget to report. He highlighted the most significant amendments to expenses as well as revenues.

Mayor Campbell opened the public hearing. No one wished to speak, and the hearing was closed.

Moved by Mahayni, seconded by Goodman, to adopt RESOLUTION NO. 08-207 amending the current budget for Fiscal Year ending June 30, 2008.

Roll Call Vote: 5-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

**HEARING ON 2007/08 WATER SYSTEM IMPROVEMENTS (WATER MAIN REPLACEMENT):** The public hearing was opened by the Mayor. She closed same after no one wished to speak.

Moved by Goodman, seconded by Mahayni, to adopt RESOLUTION NO. 08-208 approving final plans and specifications and awarding a contract to CE Contracting LTD of Hampton, Iowa, in the amount of \$433,894.08.

Roll Call Vote: 5-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

**HEARING ON 2008/09 NEIGHBORHOOD CURB REPLACEMENT PROGRAM:** The Mayor opened the public hearing and closed it when no one asked to speak.

Moved by Goodman, seconded by Rice, to adopt RESOLUTION NO. 08-209 approving final plans and specifications and awarding contract to TK Concrete, Inc., of Pella, Iowa, in the amount of \$110,924.00.

Roll Call Vote: 5-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

**HEARING ON POWER PLANT BOILER MAINTENANCE AND REPAIR:** Mayor Campbell opened the public hearing. No one wished to speak, and the hearing was closed.

Moved by Goodman, seconded by Mahayni, to accept the report of bids and delay award of the contract.

Vote on Motion: 5-0. Motion declared carried unanimously.

**HEARINGS ON REZONING PROPERTY GENERALLY LOCATED AT THE INTERSECTION OF STANGE ROAD AND BLOOMINGTON ROAD AND A REVISED MASTER PLAN FOR NORTHRIDGE HEIGHTS SUBDIVISION:** Mayor Campbell opened the hearings on:

1. Rezoning property from Suburban Residential Medium Density (FS-RM) to Convenience Commercial Node (CVCN);
2. Rezoning property from Suburban Residential Low Density (FS-RL) to Suburban Residential Medium Density (FS-RM);
3. A revised Master Plan for Northridge Heights Subdivision.

No one wished to speak, and the Mayor closed the hearing.

Director Steve Osguthorpe explained that two separate tracts located on the north side of Bloomington Road are proposed for rezoning: (1) four proposed lots, currently zoned FS-RM and comprising the area intended for commercial development, to be rezoned to CVCN, and (2) a sliver of land currently zoned FS-RL to be rezoned to FS-RM. He added that the land proposed to be rezoned to FS-RM is less than two-thirds of an acre and resulted due to the proposed changes in the alignment of Stange Road and the desire of the developer to reduce the size of an outlot. The developer wishes to place the proposed public utilities and shared pathway within an easement rather than an outlot.

According to Director Osguthorpe, the Planning and Zoning Commission, at its meeting of May 21, 2008, unanimously recommended approval of the rezonings.

Mr. Osguthorpe advised that the rezonings would be part of a Developer's Agreement. If the rezonings are approved, the Agreement will be presented to the City Council prior to the third readings of the ordinances. City Attorney Marek added that there is already a Developer's Agreement in place for the larger subdivision; a subsequent Developer's Agreement will only address the change in uses that were approved by the City Council on May 13, 2008.

Moved by Goodman, seconded by Mahayni, to pass on first reading an ordinance rezoning property generally located at the intersection of Stange Road and Bloomington Road from Suburban Residential Medium Density (FS-RM) to Convenience Commercial Node (CVCN).

Council Member Rice advised that he will have a difficult time supporting the motion because the Master Plan was approved approximately two years ago, but now shows substantial changes. He pointed out that people purchased property in the area in question based on the Master Plan that had been approved.

Referencing the Developer's Agreement that will be approved prior to the final reading of the rezoning ordinances, Council Member Popken asked Mr. Winkleblack if the developers were willing to "live with" the risks and limitations that would be placed on uses for the approximately ten acres in question. Mr. Winkleblack confirmed that the developers were willing to take that risk.

Roll Call Vote: 4-1. Voting aye: Doll, Goodman, Mahayni, Popken. Voting nay: Rice. Motion declared carried.

Moved by Goodman, seconded by Mahayni, to pass on first reading an ordinance rezoning property generally located at the intersection of Stange Road and Bloomington Road from Suburban Residential Low Density (FS-RL) to Suburban Residential Medium Density (FS-RM).

Roll Call Vote: 4-1. Voting aye: Doll, Goodman, Mahayni, Popken. Voting nay: Rice. Motion declared carried.

Moved by Mahayni, seconded by Goodman, to adopt RESOLUTION NO. 08-210 approving the revised Master Plan for Northridge Heights Subdivision, subject to the following conditions:

1. Approval of the revised Preliminary Plat for Northridge Heights Subdivision;
2. Approval of the proposed rezoning of property in Northridge Heights Subdivision from "FS-RM" (Residential Medium Density) to "CVCN" (Convenience Commercial Node), and the proposed rezoning of property in Northridge Heights Subdivision from "FS-RL" (Residential Low Density) to "FM-RM" (Residential Medium Density); and,
3. That the conditions and requirements of the previously approved Development Agreement for Northridge Heights Subdivision still apply.

Roll Call Vote: 5-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

Moved by Mahayni, seconded by Goodman, to adopt RESOLUTION NO. 08-211 approving the revised Preliminary Plat for Northridge Heights Subdivision, subject to the following conditions:

1. Civil drawings of all public improvements shall be submitted to the Public Works Department for review and approval prior to installation and prior to Final Plat approval.

2. All public improvements shall be installed prior to Final Plat approval unless deferment of installation is approved by the City Council, in which case the Council shall require the applicant to execute an Improvement Agreement and provide security in the form of an Improvement Guarantee as set forth in Section 23.409 of the Ames Municipal Code.
3. The street, bike path, and any other improvements, described in Section V(B)(3,7,8 & 10) of the Development Agreement for Northridge Heights Subdivision dated November 14, 2000, and approved by the City Council shall be required at the time of approval of the Final Plat for any or all of Lots 400, 401, 402, or 403.

Roll Call Vote: 5-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

**SANITARY SEWER UTILITY RATE ORDINANCE:** Moved by Mahayni, seconded by Doll, to pass on second reading a sanitary sewer utility rate ordinance to increase metered revenue by 8.0%. Roll Call Vote: 4-1. Voting aye: Goodman, Mahayni, Popken, Rice. Voting nay: Doll. Motion declared carried.

Moved by Mahayni, seconded by Popken, to suspend the rules necessary for the adoption of an ordinance.

City Attorney Marek explained that if the ordinance does not get adopted at this meeting, some residents might not have advanced notice of the rate increase prior to using water that would be affected by the increase. Mr. Pitcher advised that the ordinance would need to be effective before bills go out in July.

Roll Call Vote: 3-2. Voting aye: Mahayni, Popken, Rice. Voting nay: Doll, Goodman. Motion failed.

**ORDINANCE SETTING PARKING REGULATIONS ON TIMBER RIDGE DRIVE:** Moved by Popken, seconded by Rice, to pass on second reading an ordinance prohibiting parking on Timber Ridge Drive. Roll Call Vote: 5-0. Motion declared carried unanimously.

**ORDINANCE REGARDING ELECTRIC UTILITY RATE:** Moved by Mahayni, seconded by Goodman, to pass on third reading and adopt ORDINANCE NO. 3955 regarding the electric utility rate. Roll Call Vote: 5-0. Ordinance declared carried unanimously, signed by the Mayor, and hereby made a portion of these minutes.

**COMMENTS:** Moved by Goodman, seconded by Mahayni, to refer to staff the request from the Community Conversations on Diversity Committee. Vote on Motion: 5-0. Motion declared carried unanimously.

Moved by Goodman, seconded by Popken, to direct staff to set a Special Meeting on May 29, 2008, at Noon to discuss the request for additional funding from the Richmond Center.



Vote on Motion: 4-0-1. Voting aye: Goodman, Mahayni, Popken, Rice. Voting nay: None. Abstaining: Doll. Motion declared carried.

Moved by Goodman, seconded by Mahayni, to refer to staff for a report on the safety of the area described as “Squaw Park” as it relates to its isolated location.

Vote on Motion: 5-0. Motion declared carried unanimously.

**CLOSED SESSION:** Moved by Doll, seconded by Goodman, to hold a closed session as provided by Section 21.5(1)c, Code of Iowa, to discuss strategy with counsel on pending litigation.

Vote on Motion: 6-0. Motion declared carried unanimously.

**REGULAR SESSION:** Moved by Goodman, seconded by Doll, to reconvene in Regular Session.

Vote on Motion: 5-0. Motion declared carried unanimously.

**REPORT ON STATUS OF CLAIMS FROM COTTER TURBINE SERVICES, LLC:** City Attorney Marek advised that there are still outstanding claims from Cotter Turbine for the Turbine Generator Overhaul to Unit #7. Mediation was attempted, but was not successful. Mr. Marek indicated that he will report back to the City Council on the status of any pending litigation.

**ADJOURNMENT:** Moved by Doll, seconded by Goodman, to adjourn the meeting at 8:40 p.m.

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Diane R. Voss, City Clerk

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Ann H. Campbell, Mayor