

MINUTES OF THE REGULAR MEETING OF THE AMES CITY COUNCIL

AMES, IOWA

AUGUST 25, 2009

JOINT MEETING OF AMES CITY COUNCIL AND ELECTRIC UTILITY OPERATIONS REVIEW & ADVISORY BOARD (EUORAB)

The joint meeting of the Ames City Council and the EUORAB was called to order by Mayor Campbell at 5:30 p.m. on August 25, 2009, in the City Council Chambers in City Hall, 515 Clark Avenue. Council Members present were Doll, Goodman, Larson, Mahayni, Popken, and Rice. *Ex officio* Member Keppy was also present. EUORAB members present were Johnson, Morris, and Nelson. Board Member Geis was absent.

PURCHASE POWER AGREEMENT WITH NEXT ERA d/b/a GARDEN WIND, LLC:

Finance Director Duane Pitcher recalled that on June 10, 2008, the City Council and the EUORAB met in joint session to discuss power supply options for the next 20 to 25 years. At that meeting, the Council established a goal for the City Electric Utility of providing 10% of electric power from renewable resources above the current refuse-derived fuel (RDF) amount by 2015; increasing to 15% by 2018, and 20% by 2021. Additionally, the City Council (in October 2008) directed staff to represent the City as a member participant of the Iowa Association of Municipal Utility's Ridgeport wind energy proposal as a possible method to achieve the first step of the renewable energy goal. On April 28, 2009, the City Council authorized staff to solicit proposals for alternative energy while continuing to work with IAMWind. This was to allow the City to determine if there were other viable options besides IAMWind and to provide the Council with the possibility of choices for the City's alternative energy purchase. Mr. Pitcher gave a summary of the terms of the Request for Proposal (RFP).

Mr. Pitcher advised that ten proposals were received. The proposals were primarily for wind energy; however, there was one for solar energy and one for methane gas generation. A review committee consisting of the Electric Services Director, Finance Director, Assistant Director of Utilities at Iowa State University (ISU), and Assistant City Manager Lundt analyzed and rated the proposals using eight weighted factors. Items included in the weighted factors were: completeness of proposal, cost, total cost of delivery of the service, transmission feasibility, experience and resources of the proposer, proposed terms, acceptable level of development risk, reliability, and operation and maintenance of the facility. After review, the committee unanimously recommended a proposal submitted by NEXT ERA Energy for a facility under construction in Story County. The proposal was then presented to the EUORAB. That Board is also recommending approval of NEXT ERA's proposal. The proposal submitted by NEXT ERA is for 36 megawatts (MW), six (6) of which would be sold on contract to ISU. Iowa State University was part of the process, and is also recommending approval of NEXT ERA's proposal.

It was reported by Mr. Pitcher that the City met with representatives of NEXT ERA and negotiated the terms of a contract. The contract has been signed by NEXT ERA. According to Mr. Pitcher, the contract will fulfill the Council's goal of providing 10% renewable energy well in advance of 2015.

Mr. Pitcher introduced Scott Hawken, Project Director with NEXT ERA Resources. Mr. Hawken stated that NEXT ERA Energy is a subsidiary of SPO Group, which is listed on the New York Stock Exchange. Its sister company is Florida Power and Light. NEXT ERA Energy is the largest generator of wind and solar in North America; it has approximately 90 facilities across 25 states and Canada. In total, it generates approximately 17,000 MW of capacity. The total portfolio comprises over 8,000 wind turbines with a total generating capacity of over 6,500 MW. It currently has 76 existing wind energy centers in Iowa.

Mr. Hawken explained how a wind turbine generates electricity. He listed the economic and environmental benefits of wind energy: income for landowners via long-term easements, fuel for wind energy is free, no air pollutants, no need for water, and there is no solid waste.

Specifics of the wind project, which will be built, owned, and operated by a subsidiary of NEXT ERA Energy (Garden Wind LLC) in Hardin and Story Counties, were presented by Mr. Hawken. It will consist of 100-1.5 MW GE turbines, which will produce enough electricity to power approximately 45,000 homes. Construction began in July 2009; that created over 200 jobs. Once complete, the site will be run by eight to ten technical employees. As of this date, 100% of the access roads have been sub-graded, 23 foundations for turbines have been completed, and turbine deliveries have started this week to the site at the rate of six/week. Additional turbines stored in one of NEXT ERA's facilities should be arriving on September 8, 2009. The turbines will begin to be erected on that date.

According to Mr. Hawken, the following items differentiate NEXT ERA from other wind energy companies:

1. Twenty (20) years of experience in designing, building, and operating wind facilities
2. NEXT ERA's approach is to become part of the community
3. Employee involvement
4. Operations and maintenance
5. Design standards
6. Construction process
7. Customer access to forecasting tools

Construction techniques used by NEXT ERA were explained in detail by Mr. Hawken.

Mr. Hawken told the City Council that NEXT ERA will have invested over \$2,000,000 in Iowa by the end of this year, which demonstrates its commitment to this area. Its operations center is located in Zearing, and its maintenance facility is being built in Story City.

Assistant City Manager Lundt stated that staff had recently visited the location to see how the operation worked and how responsive NEXT ERA would be if there were a problem with a turbine. She reported that staff was impressed by how the units are maintained, the maintenance schedule, and how downtime is minimized. Equally impressive were the statements of landowners who had turbines located on their land. The landowners said that NEXT ERA was a good neighbor and had kept every promise made to them. Continually praising the company for its integrity, the farmers emphatically stated that NEXT ERA had done everything that it said it would, and it had been a very beneficial experience for them. Board Member Johnson relayed that similar testimony had been given at a meeting of the Story County Supervisors, i.e., NEXT ERA had fulfilled all of its promises, and in some cases, had exceeded expectations.

Council Member Rice asked to know the exact location of the facility. Mr. Hawken stated that it is located in the northern portion of Story County and into Harden County (along Highway 65). Mr. Rice also inquired as to any office locations in the area. Mr. Hawken answered that the office location is in Story County (on 720th Avenue in Zearing), and its maintenance facility is being constructed in Story City.

Electric Services Director Kom reviewed the terms of the proposed Agreement with NEXT ERA. The key points and advantages given by Mr. Kom were as follows:

1. The location of its substation and delivery of power (10 miles away). The Story County substation is located right next to NEXT ERA's office site, and delivery of power is made directly to the City from that site. The City will receive 24% of the output of the Garden City Project; this equates to 36 MW of nameplate capacity.

Director Kom advised that on September 1, 2009, the City enters a market called Midwest Independent System Operator (MISO). The concept behind MISO is that energy is injected into the grid and pulled out in the City of Ames. Because the City is required to purchase transmission services for the next two years (until the 161 k-V Line is built), this would give firm transmission capabilities from NEXT ERA's substation site directly to the City of Ames.

2. Renewable Energy Credits. These would be owned by the City of Ames, and they may be used by the City, re-sold, or traded.
3. Some added capacity. The exact amount of capacity is unknown at this time, but it is estimated that it will equate to approximately 6 MW; it depends on what wind is available at the peak time.
4. Ability to sell excess power. In the situation where the City is burning a lot of coal to burn RDF and there is a lot of wind, the City may sell the wind energy to another municipality or another market. (Mr. Kom said this was actually a function of MISO.)
5. Transmission. The City has firm transmission in place starting September 1, 2009, to April 2011. It is in April 2011 when the City has to switch over to a different MISO transmission; however, according to Mr. Kom, the City is confident that it will have its 161-kV Line in place (down to Ankeny) by that time.
6. Access to NEXT ERA's computer software (that is used to project output). This is crucial to know how much power will be delivered to Ames; it is important to the schedulers.
7. Location of dispatch center/maintenance facility in Story City. The ability to make repairs expeditiously is very important to avoid potential damage to each turbine. Mr. Kom stressed that reliability is extremely important.

Mr. Kom stated that staff is recommending that the City Council approve a 20-year contract with NEXT ERA for 36 MW, which includes what is needed for Iowa State University. Iowa State University has committed to purchase six (6) MW. Mr. Kom indicated that he was also impressed by the testimony of farmers who had dealt with NEXT ERA. According to Mr. Kom, NEXT ERA is a top wind developer. He added that the two top responders to the City's RFP were the two top developers of wind in the country. In Mr. Kom's opinion, staff has chosen a "first-class, top-notch wind developer" with experience. Their wind farms are up and running and doing very, very well. Mr. Kom said that it came down to choosing the company "who does what it says it will do and get it done." If the Agreement is approved, the City will be taking power on or about January 1, 2010. City staff is committed to getting renewables into its portfolio at the right price as soon as possible; it is a goal of the Council to offset the carbon footprint.

Council Member Rice asked if it was wise to enter into a 20-year contract. Director Kom said that, at this time, it is; however, it is unknown what the future holds as far as emerging technology.

EUORAB Member Ron Nelson highly recommended that the City proceed with NEXT ERA because it is a "sure thing" and a "great option;" they other options are not as certain. He noted that

EUORAB had previously seen the presentation, but had not yet been privy to the price. Mr. Nelson advised that the EUORAB voted unanimously to support the recommendation to approve a contract with Garden Wind, LLC. Council Member Goodman asked how the EUORAB could unanimously make the recommendation to enter into the contract when it did not know the price to be charged for the energy. Board Member Johnson advised that the EUORAB has been told by City staff that NEXT ERA's proposal represented excellent value. Finance Director Pitcher explained that the EUORAB does not have the prerogative of going into closed session, and NEXT ERA's proposal contains proprietary information; that is why the Board members had not been informed of the price.

Board Member Dick Johnson said he believes that the City is very fortunate to have such a facility as NEXT ERA (Garden Wind) develop geographically so close to Ames. He agreed that NEXT ERA is a leader in wind energy in the United States and is pleased that Ames is being afforded the opportunity to enter into a contract with such an organization.

Jeff Witt, Assistant Director of Utilities at Iowa State University, stated that the proposal of NEXT ERA fits in well with the University's goals for renewable energy. He believes NEXT ERA's proposal is sound, and the University is eager to move forward with it. Ms. Lundt advised that Iowa State will be going to the Board of Regents in mid-September seeking approval of the modifications to its contract with the City.

Council Member Popken said it was his understanding that the City will be purchasing essentially 24% of what is produced at the Garden Wind facility. He asked if the City would have to pay more if more wind energy is produced than what would give the City its needed 36 MW. Director Kom replied that the City would be entering into a Power Purchase Agreement; the City would not have ownership. If the energy is not delivered, the City will not pay anything. If it is very windy on a particular day and a lot of energy is created, the City would be purchasing more energy; however, there would be no change in the price per MW hour. The City will be required to pay for 24% of the production; however, it has the ability to sell any excess if it wishes.

Alluding to the speed in which technology changes, Council Member Rice asked if NEXT ERA's proposal will continue to be a "good deal 20 years down the road." Director Kom said that, in terms of what is facing the industry, the federal government is looking towards a nationwide renewable portfolio standard, and the only way to meet that is through wind energy. He believes that it is likely that wind turbines will become more efficient, but the wind turbines at this site will be maintained and upgraded because NEXT ERA will want them to be producing the maximum number of megawatts. As to whether biofuels or solar panels will be developed within those 20 years, Mr. Kom was uncertain, but he noted that the City has a goal of increasing its renewables more than 10%, which is what this source will give it; other renewable resources will be looked at along with wind energy. Because the future of coal is unknown, Mr. Kom believes it can only help the City to have wind in its portfolio.

Council Member Popken asked to know the lifetime of the project. Director Kom stated that the lifetime of the proposed contract is 20 year. Council Member Goodman asked to know the lifetime of a turbine. Mr. Hawken stated that the life of a turbine is unknown because it is still an emerging technology; however, the lifetime of this project is 50-plus years.

Council Member Larson requested to know the average wind generation that the City could expect to happen. Director Kom said that it is based on approximately 33% availability; this site is probably a little bit better than that, and it could be closer to 37%. He said it is anticipated that the City will get approximately 87,600 MW hours per year.

Moved by Rice, seconded by Larson, to go into Closed Session for the purpose of discussing utility pricing and proprietary information, as provided in *Iowa Code* Section 388.9.
Roll Call Vote: 6-0. Motion declared carried unanimously.

Moved by Rice, seconded by Doll, to return to Regular Session.
Roll Call Vote: 6-0. Motion declared carried unanimously.

Moved by Popken, seconded by Goodman, to add approval of the Agreement with NEXT ERA to the September 8, 2009, Agenda.
Vote on Motion: 6-0. Motion declared carried unanimously.

Addressing the City's current membership with IAMWind, Assistant City Manager Lundt stated that, due to operational concerns, it is not possible at this time for the City to schedule 57 MW of wind in its portfolio. She recommended that the City give notice immediately to IAMWind of its intent to withdraw from the project at the end of Phase II.

Noting that the City has incurred substantial costs for Phases I and II, Council Member Larson asked if it were possible to request a return of some of those costs. Ms. Lundt stated that the City, year-to-date, has incurred \$197,600 for the first half payment of the Phase II Study. Previous to that, the City incurred approximately \$57,000 for Phase I. That equates to approximately \$256,000. It is anticipated that the City will be billed soon for Phase II, and there will be some debate about what the second payment from the City should be. She believes that what has already been paid for Phase I and the first half of Phase II is not recoverable. According to Ms. Lundt, the Phase II budget was built on an amount of \$1,366,345, which was based on 75 MW of participation in the project. The City now has 113.7 MW of participation with the same budget of \$1,366,345. Ms. Lundt said that it is the staff's contention that the City should not be obligated to the full \$197,000 second-half payment; it should be more in the range of \$63,000 or \$64,000. She indicated that staff will convey that to IAMWind with the expectation that, since the budget has not been amended, there is no reason to "over-collect." Per Ms. Lundt, all participants are still being billed at the \$18,218/MW hour that was originally set for the 75 MW. She recalled that Phase II had a set outline of tasks to be completed with a set fee. There has been no amendment to the budget or to the tasks to be performed; those tasks have not happened.

Council Member Larson expressed his disappointment in IAMWind. He feels that it has failed to fulfill its side of the Agreement. It was his understanding that the Bylaws and/or the 28E Agreement were going to be changed to reflect the requirement for unanimous approval of decisions, and he partly based his vote for the agreement on that change; however, that has not happened. Ms. Lundt acknowledged that it had not happened and said that it was not listed on the next agenda for IAMWind. Mr. Larson voiced his great dismay over expending in excess of \$250,000 of ratepayer money and strongly urged staff to attempt to get it back wherever possible due to IAMWind not honoring its side of the Agreement.

Regarding the agreement with IAMWind, Ms. Lundt pointed out that a private developer has not been identified and completion of Phase II Study has not occurred. She added that if the project does not move forward, there might be some opportunity for recovery of some costs. According to Ms. Lundt, easement acquisition continues and an RFP will be worked on to be sent to private developers. According to Ms. Lundt, the financing mechanisms have not been set.

Council Member Larson asked if the City would lose all rights to the easements if it withdrew from IAMWind. Ms. Lundt advised that there is a caveat in the 28E Agreement that if the project does not move forward, there might be an opportunity for some cost recovery on the Phase II portion.

Council Member Goodman also expressed his disappointment with the IAMWind project. The City felt that it was in its best interest to create its own power generation; it has served the ratepayers well with lower rates than its competitors for many years. He is concerned that the City will start to relinquish control over its electric utility; however, it appears that logistics and relationships have prevented the IAMWind project from moving forward.

Moved by Mahayni, seconded by Larson, to direct staff to provide notice to IAMWind that the City of Ames does not intend to continue its participation in IAMWind and the Ridgeport Project beyond the completion of Phase II.

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

The Joint Meeting of the Ames City Council and EUORAB adjourned at 7:26 p.m.

REGULAR CITY COUNCIL MEETING

The Regular City Council Meeting was called to order by Mayor Campbell at 7:32 p.m. on August 25, 2009, in the City Council Chambers in City Hall, 515 Clark Avenue. Council Members present were Doll, Goodman, Larson, Mahayni, Popken, and Rice. *Ex officio* Member Keppy was also present.

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

1. Motion approving payment of claims
2. Motion approving minutes of Regular Meeting of August 11, 2009
3. Motion approving renewal of the following beer permits, wine permits and liquor licenses:
 - a. Class C Liquor & Outdoor Service Privilege - SMG Food & Beverage, CY Stephens Auditorium
 - b. Class C Liquor & Outdoor Service Privilege - SMG Food & Beverage, Scheman Building
 - c. Special Class C Liquor- SMG Food & Beverage, Fisher Theater
 - d. Class E Liquor - Hy-Vee Drugstore, 500 Main Street
4. RESOLUTION NO. 09-395 approving Annual Street Finance Report
5. RESOLUTION NO. 09-396 approving Human Services Contract with Camp Fire USA
6. RESOLUTION NO. 09-397 approving funding contract with Ames International Partner Cities Association, Inc.
7. RESOLUTION NO. 09-398 awarding contract to United Truck & Equipment, Inc., of Phoenix, AZ, in the amount of \$99,500 for 4,000-gallon Water Truck for Coal Yard
8. RESOLUTION NO. 09-399 awarding contract to Baldwin Pole of Bay Minette, AL, in accordance with unit prices bid for Wood Transmission Poles for Electric Services Department
9. RESOLUTION NO. 09-400 approving contract with Gillig Corporation of Hayward, CA, for purchase of one 40' Heavy-Duty Transit Bus in an amount not to exceed \$384,000
10. RESOLUTION NO. 09-401 approving contract with Thomas Bus Sales of Iowa, Inc., of Des Moines, IA, for purchase of six Light-Duty Transit Buses in an amount not to exceed \$474,000
11. RESOLUTION NO. 09-402 awarding contract to Con-Struct, Inc., of Ames, Iowa, in the amount of \$83,750.00 for Neighborhood Infrastructure Improvements Program (Curb Replacement Program)
12. RESOLUTION NO. 09-403 approving contract and bond for Skunk River Recreational Trail (Carr Pool to South River Valley Park)

13. RESOLUTION NO. 09-404 approving contract and bond for Lincoln Way Rehabilitation (Hickory Drive to 475 Feet East of Marshall Avenue)
 14. RESOLUTION NO. 09-405 approving contract and bond for 2009/10 Downtown Street Pavement Improvements (Kellogg Avenue)
 15. RESOLUTION NO. 09-406 approving contract and bond for 2008/09 Asphalt Pavement Improvements Program (Arizona Avenue from Ross Road to Phoenix Street)
 16. RESOLUTION NO. 09-407 approving contract and bond for 2008/09 CyRide Route Pavement Improvements (Northwestern Avenue from Johnson Street to 30th Street)
 17. RESOLUTION NO. 09-408 approving Change Order No. 1 for professional services agreement for 161 k-V Electric Transmission Line Routing Selection Study
 18. RESOLUTION NO. 09-409 accepting completion of Resource Recovery Plant Magnet Installation Project
 19. RESOLUTION NO. 09-410 accepting completion of public improvements and releasing security held for Northridge Heights Subdivision, 11th Addition
- Roll Call Vote: 6-0. Resolutions declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

The Mayor recognized Jayne McGuire, Director of the Main Street Cultural District (MSCD), who asked to speak about an item on the Consent Agenda. She told the Council that the District wanted to add something to the contract pertaining to Downtown Street Pavement Improvements (Item No. 14). According to Ms. McGuire, the MSCD considers Kellogg Avenue to be one of the major entrances to Downtown Ames. Members of the District are asking that colored concrete and historic lights be extended from Main Street to Lincoln Way; those items are not part of the contract being considered for approval.

Moved by Doll, seconded by Popken to reconsider the Consent Agenda.
Vote on Motion: 6-0. Motion declared carried unanimously.

Moved by Doll, seconded by Goodman, to approve the Consent Agenda sans Item 14, which pertained to the 2009/10 Downtown Street Pavement improvements (Kellogg Avenue).
Roll Call Vote: 6-0. Resolutions declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

Ms. McGuire indicated that the MSCD would like additional street lights and colored concrete to match the previously renovated areas of the District included with the project.

2009/10 DOWNTOWN STREET PAVEMENT IMPROVEMENTS (KELLOGG AVENUE): City Manager Schainker said it was his understanding that the MSCD was requesting additional decorative street lights from the railroad tracks on Kellogg Avenue to Lincoln Way. He was not aware that decorative concrete was also being requested, but recommended that the MSCD come up with a plan for the entire area prior to decorative pavers being installed. Two more streets will be renovated in the future years' CIP. It was Mr. Schainker's suggestion that a small Change Order be approved so that conduit could be included under the concrete and decorative lighting be installed at some point in the future.

Mr. Schainker told the Council that the contract had already been approved for this project; approving the contract and bond is a Code requirement and the next step in the process. He advised that decorative lighting had been included in this project from Main Street to the railroad lights. No colored concrete was included, however. Public Works Director John Joiner pointed out that colored concrete or decorative lights could not be added at this time, as it was not part of the

specifications. A Change Order could be approved after approval of contract and bond. Mr. Joiner added that there would be no cost savings if the City would install decorative lighting all the way to Lincoln Way at this time. Mr. Joiner clarified that decorative lighting from Main Street to the railroad tracks on Kellogg Avenue would be included in the current contract as would the conduit from the railroad tracks to Lincoln Way; however, no decorative concrete had been included in the bid.

Mayor Campbell stated that the contract had to be approved first before any Change Orders could be approved. Director Joiner acknowledged that the Council first needed to approve the contract and bond. City Manager Schanker estimated that decorative lights could go in from the railroad tracks south to Lincoln Way at a cost of approximately \$20,000. He told Ms. McGuire to bring the complete plan for the MSCD to the City Council at the time of the Capital Improvements Plan discussion.

Council Member Goodman asked if the requested aesthetic improvements to the sidewalk should be done as part of this project. Director Joiner said that, after the contract and bond are approved, the contractor could be asked for a price to install a two-foot colored band like is presently installed on Fifth Street. The set-down pavers would not be used so there are no maintenance issues. Mr. Joiner confirmed that the colored concrete is not part of what is being considered on this Agenda.

Moved by Doll, seconded by Larson, to adopt RESOLUTION NO. 09-405 approving the contract and bond for 2009/10 Downtown Street Pavement Improvements (Kellogg Avenue).

Roll Call Vote: 6-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made portion of these minutes.

Moved by Popken, seconded by Rice, directing staff to get estimates from the contractor for installation of colored concrete from Main Street to Lincoln Way and additional decorative street lights from the railroad tracks to Lincoln Way.

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

PUBLIC FORUM: No one spoke during this time.

PAINTING OF STREET INTERSECTIONS: Assistant City Manager Bob Kindred, staff liaison to the Public Art Commission, recalled that the Council had received a request from Nitin Gadia, who asked that the intersection of West Street and Wilmoth Avenue be allowed to be painted by neighborhood residents. Mr. Gadia's request was ultimately referred to staff by the City Council.

According to Mr. Kindred, the proposed project would involve building consensus among a majority of the neighbors to paint a permanent artistic design in the street with the goal of fostering neighborhood-building. Mr. Kindred advised that staff met with members of the City's Public Art Commission to explore the concept. He shared issues that were raised as well as Mr. Gadia's responses to those issues.

Nitin Gadia, 3129 Maplewood Road, Ames, explained how similar projects in other communities have built social connectivity and also served as traffic-calming devices.

Council Member Mahayni thanked Mr. Gadia for his initiative. Council Member Popken commented that he would like the City to do something with its manhole covers.

Council Member Larson indicated that he likes the idea of public art; however, the “beauty of art is sometimes in the eye of the beholder,” and he wants to ensure that any policy or ordinance will include a provision that adjacent property owners must approve of the project. Mr. Larson is also concerned that “spin-off” graffiti will occur.

Moved by Goodman, seconded by Rice, to give conceptual approval for painting of local street intersections by groups of neighbors, based on a model set by Portland, Oregon.

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

AMES HISTORICAL SOCIETY: Moved by Goodman, seconded by Popken, to adopt RESOLUTION NO. 09-411 approving revisions to the 2008/09 and 2009/10 contracts to allow for the reimbursement of rent, mortgage, and related occupancy costs necessary to provide the facilities to house its collections.

Roll Call Vote: 6-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

Moved by Goodman, seconded by Popken, to adopt RESOLUTION NO. 09-412 increasing the 2008/09 contract amount to \$23,800 to allow for the reimbursement of expenses incurred during that fiscal year.

Roll Call Vote: 6-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

OCTAGON CENTER FOR THE ARTS FESTIVAL: Moved by Mahayni, seconded by Doll, to adopt RESOLUTION NO. 09-413 approving closure of portions of Main Street, Burnett Avenue, Kellogg Avenue, and Douglas Avenue from 6:00 a.m. to 6:00 p.m.

Roll Call Vote: 5-0-1. Voting aye: Doll, Larson, Mahayni, Popken, Rice. Voting nay: None. Abstaining: Goodman. Resolution declared adopted, signed by the Mayor, and hereby made a portion of these minutes.

Moved by Mahayni, seconded by Doll, to adopt RESOLUTION NO. 09-414 approving a waiver of fee for usage of electricity.

Roll Call Vote: 5-0-1. Voting aye: Doll, Larson, Mahayni, Popken, Rice. Voting nay: None. Abstaining: Goodman. Resolution declared adopted, signed by the Mayor, and hereby made a portion of these minutes.

Moved by Mahayni, seconded by Rice, to approve a Blanket Temporary Obstruction Permit for sidewalks adjacent to closed streets.

Vote on Motion: 5-0-1. Motion declared carried.

Moved by Mahayni, seconded by Rice, to approve a Blanket Vending License.

Vote on Motion: 5-0-1. Motion declared carried.

Moved by Mahayni, seconded by Doll, to adopt RESOLUTION NO. 09-415 approving a waiver of fee for Blanket Vending License.

Roll Call Vote: 5-0-1. Voting aye: Doll, Larson, Mahayni, Popken, Rice. Voting nay: None. Abstaining: Goodman. Resolution declared adopted, signed by the Mayor, and hereby made a portion of these minutes.

LIQUOR LICENSE FOR INDIAN DELIGHTS: Moved by Popken, seconded by Goodman, to approve a new Class C Liquor License & Outdoor Service for Indian Delights, 127 Dotson Drive.
Vote on Motion: 6-0. Motion declared carried unanimously.

LIQUOR LICENSE FOR CYCLONE LIQUORS: Moved by Popken, seconded by Goodman, to approve a new Class E Liquor, C Beer, & B Wine Liquor License for Cyclone Liquors, 626 Lincoln Way.
Vote on Motion: 6-0. Motion declared carried unanimously.

5-DAY LIQUOR LICENSES FOR GATEWAY HOTEL & CONFERENCE CENTER: Moved by Popken, seconded by Goodman, to approve a new five day (August 31-September 4) Special Class C Liquor License for Gateway Hotel & Conference Center at ISU Alumni Center, 420 Beach Avenue.
Vote on Motion: 6-0. Motion declared carried unanimously.

Moved by Popken, seconded by Larson, to approve a new five day (September 8-12) Special Class C Liquor License & Outdoor Service for Gateway Hotel & Conference Center at ISU Alumni Center, 420 Beach Avenue.
Vote on Motion: 6-0. Motion declared carried unanimously.

LIQUOR LICENSE FOR MICKEY'S IRISH PUB: Police Chief Chuck Cychosz advised that the applicant had submitted a plan for responding to concerns expressed by the Police Department.

Steve McFadden, Norwalk, Iowa, owner/President of Mickey's Irish Pub, and Kendall Owen, 4301 Lincoln Swing, Ames, Manager of Mickey's Irish Pub, were present.

Mr. McFadden advised that, in March 2009, Mickey's Irish Pub endured a 100% staff change in a short notice; 26 new employees were hired. Mr. Owen has been hired as the Manager, and the violations have been addressed and corrected. Mr. McFadden advised that 100% of his current staff has gone through the Police Department's training.

Council Member Mahayni asked for more information on the 31 nuisance calls reported at Mickey's. Lieutenant Brinkley gave an example of a "nuisance call" as someone calling in an incident that was generated by Mickey's, such as disorderly conduct, public intoxication, or a fight. Council Member Mahayni asked Mr. McFadden if the bar provides false IDs to the Police Department routinely. Addressing the question, Mr. McFadden said that false IDs could be provided to the Police Department whenever it wants them. He further advised that he provides a financial incentive to his employees to confiscate fake IDs.

Moved by Rice, seconded by Larson, to approve a new six-month Class C Liquor License & Outdoor Service for Mickey's Irish Pub, 109 Welch Avenue.

Council Member Goodman stated that he would be abstaining from the vote due to a conflict of interest.

Vote on Motion: 5-0-1. Voting aye: Doll, Larson, Mahayni, Popken, Rice. Voting nay: None. Abstaining: Goodman. Motion declared carried.

NORTHRIDGE HEIGHTS SUBDIVISION, 13TH ADDITION: Steve Osguthorpe, Director of the

Planning & Housing Department, advised that the developer is requesting approval of a Minor Final Plat, which establishes a two-lot residential subdivision. (This is a replat of Lot 1, Northridge Heights Subdivision, 13th Addition, into two lots.) He stated that the Land Use Police Plan (LUPP) Map designation for this proposed subdivision is a restricted Convenience Commercial Node (CCN), which was approved by the City Council on May 13, 2008. It includes exception criteria that allow a CCN to locate closer than two miles to a neighborhood commercial area, convenience commercial node, and/or village commercial development provided the exception criteria are met. According to Mr. Osguthorpe, the uses allowed would include a convenience store, grocery store, medical offices and clinics, and car washes, as long as the uses are not already present in the neighboring Village.

Discussion ensued on requiring sidewalks on both lots to be constructed even if one of the lots is still vacant. Director Osguthorpe advised that Section 23.403(14) allows deferment of sidewalks with financial security when installation is considered premature. He further stated that it has been the City's past practice to accept a signed written Agreement for Sidewalk and Street Trees from the owner specifying that occupancy of new structures will not be permitted by the City until the sidewalks and street trees are installed. Mr. Osguthorpe added that the City Council may waive this condition and allow sidewalks and street trees to be deferred until occupancy of structures on abutting sites. He said that staff is recommending that sidewalk installation be deferred based upon past practice.

Council Member Doll indicated that he had more concerns over what would be built on the fifth lot (since only four uses were approved), rather than when sidewalks are installed.

Council Member Popken said that he preferred that the City require financial security for sidewalks to be installed on Lots 1 and 2 within 18 months. Council Member Larson recommended that sidewalks be required on Lot 2 within 18 months of sidewalks being installed on Lot 1.

Chuck Winkleblack, 105 S. 16th Street, Ames, said that the developer would comply, but specifically asked that any new requirements for sidewalks and street trees be applied universally throughout the City. He noted that the "sidewalk issue" usually arises in developed areas where topography creates a problem.

Council Member Rice asked what type of use is being contemplated for the fifth lot. Mr. Winkleblack indicated that the fifth lot is not the topic on the agenda tonight; the Final Plat on the agenda meets all the requirements. Mr. Rice said it was important for him to know that information prior to approving the Final Plat in question. Mr. Winkleblack said that he believes what will happen is that the building and site plan for Lot 1 will be designed in such a way as to allow McFarland Clinic to expand at some point in the future. It was noted by Mr. Winkleblack that the developer has signed the Agreement for Sidewalk and Street Trees requiring the installation of those improvements prior to occupancy or within 24 months of issuance of a Building Permit.

Moved by Mahayni, seconded by Larson, to adopt RESOLUTION NO. 09-416 waiving the Subdivision Code requirement for financial security for sidewalks, accepting easements, and approving the Minor Final Plat for Northridge Heights Subdivision, 13th Addition.

Council Member Goodman advised that he would not be supporting the motion because waiving the requirement for financial security for sidewalks does not ensure consistent pedestrian access.

Council Member Larson stated that he agrees with Mr. Goodman in concept; however, believes that Mr. Winkleblack brought up a good point in that it is not fair to begin a new practice with this

project.

Council Member Mahayni alluded to the good working relationship that the City has with the developer and McFarland Clinic, which will be located there. He believes that sidewalks will be installed without the City requiring financial security.

Roll Call Vote: 4-2. Voting aye: Doll, Larson, Mahayni, Rice. Voting nay: Goodman, Popken. Resolution declared adopted, signed by the Mayor, and hereby made a portion of these minutes.

HEARING ON ORDINANCE GRANTING NATURAL GAS FRANCHISE: Mayor Campbell noted that this hearing had been continued from May 26, June 9, June 23, July 14, July 28, and August 11, 2009.

City Manager Schainker reminded the Council that the current 25-year Franchise Agreement with IPL expired this month; however, both parties had agreed to abide by the provisions of the previous Franchise Ordinance until the end of September in an effort to provide enough time to work out the details where there was an impasse. He noted that the City wanted to retain the language contained in the previous Ordinance. IPL officials, however, wanted to change the language pertaining to three issues, i.e., eminent domain, indemnification, and relocation, to make it more favorable to their company and be more in keeping with what has been accepted in other communities.

According to Mr. Schainker, on August 18, 2009, staff provided IPL officials a new proposal in an attempt to eliminate the impasse. A counterproposal from IPL was received by the City on August 24. Mr. Schainker noted that the City and IPL representatives have reached agreement on a proposed Franchise Ordinance; however, to accomplish that, significant modifications to the franchise language are being proposed. Mr. Schainker described the language being proposed pertaining to the three outstanding issues, as follows:

1. Relocation. The City will retain its authority to require IPL to remove, at its own expense, its gas equipment and facilities if they interfere with or obstruct the construction, reconstruction, or repair of any municipal facilities or public improvements. Language has been added that will require the City to attempt to give IPL as much advance notice of the removal requirement as the City deems possible.
2. Condemnation. The language included in this section grants to IPL the power of condemnation of property on a case-by-case basis only after: the franchisee has established the necessity for taking of private property, the City Council has approved the request for the granting of condemnation authority to IPL by resolution, and the owners of the property to be condemned have been provided at least ten days' notice prior to the Council taking action on the condemnation request.
3. Indemnification. The alteration of the indemnification language in the expired Franchise Ordinance was the top priority of IPL. Without significant changes, the Company indicated that it could not accept a franchise. In order to reach an Agreement, the indemnification language reflected in this section is in keeping with the language that is included in the Franchise Ordinances with other cities in which they do business.

While the new proposed indemnification language is typical of other franchise ordinances, Mr. Schainker emphasized that it is a major shift from the liability language that previously benefitted

the City. Mr. Schainker stated that a compromise has been reached that requires a separate agreement with IPL that will still absolve the City for any responsibility to pay for any damage done by City employees to IPL facilities. The Agreement will state that the City will be relieved of financial responsibility as long as the damage done was not intentional, the City complies with Iowa Code Chapter 480 (One Call), and the City promptly notifies IPL after any damage becomes apparent. According to Mr. Schainker, IPL was agreeable to the second agreement only due to the good relationship established with the City over the past 25 years. He noted, however, that the final proposal submitted to counsel for IPL was the City's "bottom line."

Scott Jones, Regional Director of IPL, 3519 Valley View Road, Ames, spoke. He acknowledged that late today, he had received approval of the Agreement from IPL's President. Mr. Jones reiterated that, because of the relationship IPL has had with the City of Ames for over 25 years, it is comfortable entering into this Agreement, even though it is different than what it has with other communities.

Concerning a franchise fee, which is allowed in the Agreement, Mr. Schainker stated that the City has not had to enact such a fee or to rely on same as a source of revenue. He advised that the proposed language in the new ordinance reflects a 0% franchise fee, but still allows the City to require IPL to collect a franchise fee for the City's benefit up to the maximum allowed by Iowa law (if a six-month notification is given). According to Mr. Schainker, the proposed ordinance also allows IPL to charge a .06% administration fee to cover the costs associated with collecting a franchise fee. Mr. Schainker noted that the City has not verified whether or not the proposed administration fee does cover actual costs.

The question was asked by Council Member Larson whether it was necessary to enter into another 25-year Franchise Agreement as other cities seem to function fine without one. City Attorney Marek said that the main advantage to having a Franchise Agreement is for contractual indemnity. The hearing was closed by the Mayor after no one else came forward to speak.

Moved by Larson, seconded by Rice, to pass on first reading an ordinance granting to Interstate Power and Light Company, its successors and assigns, the right to operate a natural gas distribution system in the City under a non-exclusive franchise with the understanding that a separate agreement relating to absolving the City from any costs to repair gas facilities if damaged by City employees be signed by the company and approved by the Council prior to the third reading of the Franchise Ordinance.

Noting that the Council saw the proposed Ordinance for the first time tonight, Council Member Doll asked for more time to review the proposed Franchise Ordinance.

Roll Call Vote: 5-1. Voting aye: Goodman, Larson, Mahayni, Popken, Rice. Voting nay: Doll. Motion declared carried.

HEARING ON TEXT AMENDMENTS TO FLOOD PLAIN ZONING REGULATIONS: Planner Charlie Kuester indicated that there are many small changes being proposed to the ordinance language that will correct typographical errors, rectify minor omissions or errors from previous amendments, remove unneeded or duplicated wording, and make stylistic changes to clarify meaning or remove ambiguity. According to Mr. Kuester, during the Council-directed review of the ordinance, staff noted a couple significant errors with the ordinance. He specified that there is an apparent inconsistency in the definition of "general flood plan," describing the area in terms of it being the "floodway fringe." This error in characterization has required all development in the

floodway fringe to be processed as if it were in the general flood plain; thus requiring approval of a Conditional Use Permit by the Zoning Board of Adjustment prior to the development being approved. Mr. Kuester noted that such a requirement is not mandated by the City's participation in the National Flood Insurance program or by the state model ordinance. He said that the proposed amendment also includes a policy change, i.e., the administration of the Flood Plain Ordinance will be within the Department of Planning & Housing, rather than the Inspections Division of the Fire Department.

The proposed amendments to the Ames flood plain regulations ensure the city's participation in the National Flood Insurance Program, which allows property owners to obtain subsidized flood insurance.

According to Planner Kuester, staff forwarded a copy of the proposed changes to the Iowa Department of Natural Resources (IDNR), which reviewed them and offered comments. The Council was also told that the Planning & Zoning Commission voted unanimously on August 5, 2009, to recommend adoption of the amendments.

The public hearing was opened by Mayor Campbell. No one wished to comment, and the Mayor closed the hearing.

Moved by Doll, seconded by Popken, to pass on first reading an ordinance making zoning text amendments to the flood plain regulations.

Roll Call Vote: 6-0. Motion declared carried unanimously.

HEARING ON ZONING AND SUBDIVISION TEXT AMENDMENTS PERTAINING TO SOURCE WATER PROTECTION: Christina Murphy, Assistant Director of Water and Pollution Control, showed the Council a map depicting the location of the City's four well fields.

According to Ms. Murphy, amendments are being proposed pertaining to source water protection primarily due to two things:

1. Research Done by Dr. Bill Simpkins on the City's Aquifers. The research has indicated that the Southeast Well Field and the Hunziker Youth Sports Complex Well Field are comprised of shallow wells which are covered with a small amount of dirt. As a result, they are more susceptible to contamination and are more vulnerable. The City receives 65% of its water from these two Well Fields.
2. Wording in the Iowa Administrative Code. Ms. Murphy noted that staff was not focusing on the Downtown Well Field because it is confined and protected. Also, because of the separation criteria that must be met via the *Iowa Administrative Code*, it would not be possible to build a new well in the Downtown Well Field

Ms. Murphy advised that, based on past correspondence regarding the Super WalMart site development and recent correspondence with the IDNR, any storm water detention or bioswale that is subject to contamination from storm water would be required to meet the same site separation distance as a lagoon. She explained that if an existing well were to fail, the City would not be allowed to re-drill a replacement well within 1,000 feet of a storm water detention basin. Ms. Murphy reported that Super Wal-Mart's bioswale is designed to only take rooftop water and is not considered a potential contaminant source.

According to Ms. Murphy, recently, a proposed development at 205 Southeast 5th Street came before the City's Development Review Committee, and staff determined that a Minor Site Plan was required. In order to waive storm water quantity requirements, the developer had to get a Variance approved by the Zoning Board of Adjustment (ZBA). However, because the development could actually meet storm water quantity requirements, the ZBA denied the Variance. Staff then realized that there was nothing in either the Zoning Code or Subdivision Code that addresses the ability to use storm water quality in lieu of storm water quantity; those are the requested amendments on the Agenda tonight.

Ms. Murphy pointed out that there is language in the City's Land Use Policy Plan (LUPP) that list the City's goals regarding stormwater protection. She advised that the three main goals of the proposed text amendment to Chapter 23 and 29 are as follows:

1. Put protective measures in place based on requirements in the *Iowa Administrative Code* that preserves the ability to re-drill a well in the same location in the Southeast and Youth Sports Complex Well Fields.
2. Allow coordination between Public Works, Planning & Housing, and Water & Pollution control to provide more clarification to developers on storm water requirements within the area of concern and to allow storm water quality-based treatment in lieu of storm water quantity-based treatment or some appropriate combination.
3. Allow development to occur along the South Duff Avenue commercial corridor without jeopardizing the long-term water supply for the community.

The Mayor opened the hearing and closed same after no one wished to speak.

Moved by Popken, seconded by Goodman, to pass on first reading an ordinance amending subdivision regulations pertaining to source water protection.

Roll Call Vote: 6-0. Motion declared carried unanimously.

Moved by Mahayni, seconded by Popken, to pass on first reading an ordinance amending zoning regulations pertaining to source water protection.

Roll Call Vote: 6-0. Motion declared carried unanimously.

HEARING ON GENERAL OBLIGATION BONDS, SERIES 2009B: The public hearing was opened by Mayor Campbell. No one came forward to speak, and the hearing was closed.

Moved by Mahayni, seconded by Doll, to adopt RESOLUTION NO. 09-417 approving issuance of General Obligation Bonds in an amount not to exceed \$11,165,000 and setting September 22, 2009, as the date of sale.

Roll Call Vote: 6-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

HEARING ON RESOURCE RECOVERY PLANT CONVEYOR BELT REPLACEMENT PROJECT: Mayor Campbell opened the hearing and closed same after no one asked to speak.

Moved by Popken, seconded by Rice, to adopt RESOLUTION NO. 09-418 approving final plans and specifications and awarding a contract to Precision Industries of Omaha, NE, in the amount of \$25,131.58.

Roll Call Vote: 6-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

HEARING ON FEDERAL STIMULUS PROGRAM PROJECT - GEORGE WASHINGTON CARVER AVENUE (STANGE ROAD TO BAYBERRY ROAD): The Mayor opened the public hearing. No one wished to speak, and the hearing was closed.

Moved by Goodman, seconded by Mahayni, to adopt RESOLUTION NO. 09-419 approving final plans and specifications and awarding a contract to Manatt's, Inc., of Brooklyn, Iowa, in the amount of \$717,794.26, subject to IDOT concurrence.

Council Member Larson asked about the possibility of widening George Washington Carver for a bike lane in conjunction with this project. Director Joiner reported that there are bike path connections already existing in this area. Staff did study the options; however, extension of the roadway for a bike path on the west side of Carver is not possible due to the topography (steep ditches). Mr. Joiner advised that five feet is the standard for safety reasons for a bike path, and they did not want to narrow the width and jeopardize safety.

Roll Call Vote: 6-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

HEARING ON SOUTHEAST ENTRYWAY PROJECT ASSESSMENT: The Mayor opened the hearing and closed same when no one came forward to speak.

Moved by Mahayni, seconded by Goodman, to adopt Final Resolution of Necessity No. 09-360.
Roll Call Vote: 6-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

ORDINANCE AMENDING *MUNICIPAL CODE* SECTION 31.13(29) PERTAINING TO DESIGN CRITERIA FOR 1915 CITY HALL LANDMARK (third reading and adoption requested). Moved by Popken, seconded by Larson, to pass on second reading an ordinance amending *Municipal Code* Section 31.13(29) pertaining to design criteria for 1915 City Hall Landmark.

Council Member Mahayni advised that he would be abstaining from the vote on this issue since he serves on the Board for Youth and Shelter Services, the requesting agency.

Roll Call Vote: 5-0-1. Voting aye: Doll, Goodman, Larson, Popken, Rice. Voting nay: None. Abstaining: Mahayni.

Moved by Doll, seconded by Goodman, to suspend the rules necessary for the passage of an ordinance.

Roll Call Vote: 5-0-1. Voting aye: Doll, Goodman, Larson, Popken, Rice. Voting nay: None. Abstaining: Mahayni. Motion declared carried.

Moved by Goodman, seconded by Popken, to pass on third reading and adopt ORDINANCE NO. 4005 amending *Municipal Code* Section 31.13(29) pertaining to design criteria for 1915 City Hall Landmark.

Roll Call Vote: 5-0-1. Voting aye: Doll, Goodman, Larson, Popken, Rice. Voting nay: None. Abstaining: Mahayni. Ordinance declared adopted, signed by the Mayor, and hereby made a portion of these minutes.

ORDINANCE REZONING PROPERTY LOCATED AT 601 SOUTH 16TH STREET: Moved by Doll, seconded by Popken, to pass on third reading and adopt ORDINANCE NO. 4004 rezoning property located at 601 South 16th Street from Planned Residence District (F-PRD) to Highway-Oriented Commercial (HOC).

Roll Call Vote: 6-0. Ordinance declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

COMMENTS: Moved by Popken, seconded by Goodman, to refer to staff the letter from The Richmond Center requesting to carry-over funding.

Council Member Doll stated that he would be abstaining from the vote on the motion because he serves on the Board for Community and Family Resources, which recently merged with The Richmond Center.

Vote on Motion: 5-0-1. Voting aye: Goodman, Larson, Mahayni, Popken, Rice. Voting nay: None. Abstaining: Doll. Motion declared carried.

ADJOURNMENT: Moved by Doll to adjourn the meeting at 9:26 p.m.

Diane R. Voss, City Clerk

Ann H. Campbell, Mayor