

**MINUTES OF THE SPECIAL WORKSHOP WITH
THE INTERNATIONAL ASSOCIATION OF PLUMBING
AND MECHANICAL OFFICIALS AND
REGULAR MEETING OF THE AMES CITY COUNCIL**

AMES, IOWA

DECEMBER 14, 2010

**SPECIAL WORKSHOP WITH INTERNATIONAL ASSOCIATION
OF PLUMBING AND MECHANICAL OFFICIALS**

The workshop was called to order at 6:00 p.m. on December 14, 2010, in the City Council Chambers in City Hall, 515 Clark Avenue, pursuant to law with Mayor Campbell presiding and the following Council members present: Davis, Goodman, Larson, and Orazem. Council Members Mahayni and Wacha and *Ex officio* Member England were absent.

Also in attendance were Bruce Kinkade, Building Inspections Supervisor; Pat Brown, member of the Building Code Board of Appeals; Clint Petersen, Fire Chief; Lad Grove, Ames Rental Association Board Member; Doug Marek, City Attorney, David Keller, Ames Rental Association Board Member; Jim Gunning, Ames Rental Association Board Member; and Burt Schroeder, Property Maintenance Appeals Board Member.

Mayor Campbell recalled that, at their meeting of November 23, Council members had directed that staff bring in an expert on the Uniform Plumbing Code (UPC) to discuss the applicability of different dates that relate to its adoption and other technical issues. She introduced Bill Schweitzer, North Central Regional Manager for the International Association of Plumbing and Mechanical Officials (IAPMO).

The Mayor noted that Mr. Schweitzer had been briefed by City staff as to the pending technical issues.

Mr. Schweitzer provided the Mayor and Council with various sections of the UPC as well as diagrams explaining different kinds of plumbing traps and venting systems. According to Mr. Schweitzer, the “heartbeat of a plumbing system” is the vent. He stated that the Uniform Plumbing Code has never allowed S-traps and does not allow traps without vents. Mr. Schweitzer gave examples of incidents that had happened throughout the country when plumbing had been improperly installed. He talked about the dangers of methane gas backing up and bacteria forming in improperly installed traps.

According to Jim Gunning, the first edition of the UPC was in 1945; however, it was not adopted in Ames until 1992. He stated that there are hundreds, if not thousands, of S-traps currently existing in Ames buildings, and it appeared from documentation provided by the City’s Inspections Division that S-traps were allowed by the Ames Plumbing Code until the 1960s. Mr. Gunning believes that at some point, the Code would have stated that all S-traps had to be removed if they are so dangerous. Bruce Kinkade advised that Ames’ Code is prescriptive, meaning that it states how it has to be done, but does not necessarily specify everything that is not allowed. According to Mr. Kinkade, there is no way that an S-trap could be installed and have it meet the Code. Mr. Schweitzer pointed out that a lot of plumbing fixtures that were allowed 30 years ago are not allowed today. He again noted that S-traps were never allowed by the UPC.

Council Member Larson stated that the Council wanted an interpretation of dates pertaining to what was allowed when. He said that the Code followed by Ames basically states that, if something had been lawfully installed, it would be grandfathered or allowed until the time there was a major

remodeling or when it needed to be replaced. Mr. Schweitzer noted the “Existing Conditions” section of the UPC documentation that he had given the Council. Mr. Larson pointed out that the City of Ames, prior to the adoption of the UPC, never specified a certain type of trap; it just required a trap system that was properly ventilated.

Mayor Campbell asked City Attorney Marek to comment on the current Plumbing Code and its relationship to plumbing regulations previously in effect in the City of Ames. Mr. Marek noted that the history is significant because the current Code allows non-compliant plumbing systems on existing buildings to remain in place when such work was installed and maintained in accordance with law in effect at that time. According to information provided by Mr. Marek, Ordinance No. 179 was enacted as the first Plumbing Ordinance on May 16, 1907. Specifically noted was that Section 12 of that Ordinance required that every fixture be “separately and effectually trapped.” Ordinances No. 269 (in 1914), 313 (in 1919), 386 (in 1928), and 542 (in 1941) were summarized by Mr. Marek. The entire Plumbing Code was updated in 1956 as Chapter 52, and in 1971, the *Ames Municipal Code* included a separate Plumbing Code at Chapter 28.

Mr. Marek said that he had also been asked to contact other cities to inquire how the “existing buildings” provisions of the *Uniform Plumbing Code* (UPC) were being interpreted and applied. He advised that he had received a comprehensive response from the Des Moines City Attorney; however, did not get responses from the other three cities. According to Mr. Marek, the City of Des Moines adopted its first plumbing code some time in the 20's; Ames adopted its first code in 1907. The 1907 Code provided rules and regulations for plumbing fixtures in all structures, and it specifically provided that every fixture be trapped. The traps had to have at least 2-1/2" inches of water seal, and the traps had to be prevented from syphonage by being ventilated by special air pipe taken out of the crown of the trap. Any anti-syphon devices had to be approved by the City Sewer Committee or City Engineer. S-traps with the crown vent would have been allowed at that time; however, that changed in 1928 when the mechanical alternative was specifically prohibited. In 1941, there was a major Code update, and ventilation for every individual trap on every fixture was required. The 1956 Code was prescriptive; however, there were four kinds of traps that were specifically prohibited, including S-traps. According to City Attorney Marek, the plumbing provisions of the *Municipal Code* have been regularly updated since that time. The state adopted its Plumbing Code in 1983, and at that point, Ames adopted the State Plumbing Code. He noted that one of the important state code provisions to keep in mind is that the City may not set standards or requirements that are lower or less stringent than those imposed by state law. The City may impose standards that are more stringent, however.

City Attorney Marek said that the current state law is the 2009 Uniform Plumbing Code, and it does allow for lawfully installed and maintained fixtures that do not comply with the current Code, but did comply at the time they were installed, to continue unless they pose a health and/or safety risk.

Discussion ensued over the City of Des Moines' interpretation. Mr. Marek noted that, according to the Des Moines City Attorney, any non-compliant trap, even if it complied at the time when it was installed, is required to be updated immediately. City Attorney Marek noted one major difference between Des Moines' interpretation and what was passed by the Ames City Council on November 9: Des Moines does not require showers and wash tubs to be trapped separately and run into a floor drain. In Ames, since 1907, every fixture is required to be separately trapped.

Chief Petersen stated that if it is unknown whether a fixture met the requirement when it was installed, the City must assume that it did. It would then come down to having to meet the criteria as to if it were a health hazard or unsanitary. Mr. Petersen believes that that judgment could be made

by the Inspections staff on a case-by-case basis. If the property owner is aggrieved by the decision, it could be appealed to the Appeal Board. He, however, does not feel that the City has that option on unvented S-traps as they are much more limited by state requirements.

Pat Brown expressed her disappointment in the debate over whether S-traps should be allowed. She said that it amounts to a basic health and safety code, yet it appears that people are more concerned about the financial investment. Ms. Brown pointed out that renters make up 50% of the City, and the Code is in place to protect that 50%.

Mr. Schweitzer explained how the Uniform Plumbing Code is created versus how the International Plumbing Code is written. Council Member Orazem acknowledged that those Codes differ as to whether auto vents are allowed. He asked Mr. Schweitzer if he was stating that the International Plumbing Code was allowing an unsafe device because it does allow auto vents. Mr. Schweitzer explained that those associated with the *Uniform Plumbing Code* have found that those are mechanical devices that only allow negative pressure. As the waste moves through, there is no place for the positive pressure to go. Since it has to go somewhere, it could blow a trap out, and after that has been done a few times, the seal in the trap is lost and free air would be blown through. Some of those meet the standards for which they were built, but do not meet the Code.

Council Member Larson asked Mr. Schweitzer to comment on the other four issues other than S-Traps. Mr. Larson noted that the Ames Rental Association had requested that a time frame be allowed for changes to be made or for the device to stay in place until remodeling was done. It was stated by Mr. Kinkade that the unvented trap is the most dangerous as far as health and safety. Mr. Schweitzer said that any unvented trap is a problem. Mr. Larson asked Mr. Schweitzer to prioritize the five issues from the most to the least dangerous. Mr. Schweitzer said that S-traps would be the No.1 priority due to airborne bacteria and methane gas, followed by the rest.

City Attorney Marek advised that, at the November 9, 2010, meeting of the City Council, discussion was held on issues pertaining to the current Plumbing Code and its relationship to plumbing regulations previously in effect in the City. Those issues were significant because the current Code allows non-compliant plumbing systems on existing buildings to remain in place when installed and maintained in accordance with law in effect prior to the effective date of the new Code except when it is determined to be dangerous, unsafe, insanitary, or a nuisance and menace to life, health, or property. Mr. Kinkade advised that unvented S-traps are considered unsanitary, and unsanitary conditions must be corrected.

Chief Petersen noted that it must be determined as to what the degree of the hazardous is. Part of his concern in the administration of the Code is the length of time that the hazard would be allowed to exist before being addressed. He pointed out that the Council, at a previous meeting, was considering a period of up to five years. He asked Mr. Schweitzer to comment. Mr. Schweitzer reiterated that S-traps are very hazardous because of the bacteria and methane gas. He suggested that S-traps be corrected within a week's time.

Mr. Keller noted that the UPC allows for certain items, if they are properly installed at the time and continually maintained, to exist indefinitely. Mr. Schweitzer said that the UPC is very specific about existing conditions: if they are not life safety issues, they are allowed; however, S-traps have never been allowed.

Council Member Larson pointed out that there are a lot of differing opinions as to what was lawful prior to the adoption of the UPC by the City of Ames.

Dan Craig, 1612 Reagan Drive, Ames, said that he is a Board Member of the Ames Rental Association; however, the questions he posed tonight would be coming from him personally. He asked how many illnesses or deaths had occurred in the last 50 years due to S-traps. Mr. Kinkade said that the City does not collect that data. Mr. Craig asked Mr. Schweitzer to comment on the illnesses and deaths from the SARS Epidemic. Referring to the aftermath of Hurricane Katrina, Mr. Schweitzer noted that many of the illnesses and diseases were caused by water-borne diseases from human waste. Mr. Craig said that hours of time had been spent on these issues; however, there has been no evidence that there even is a problem in Ames. He said that he was confused how the epidemics occurring in China, India, and other countries due to unsafe plumbing conditions given by Mr. Schweitzer were applicable to Ames, Iowa..

Council Member Goodman said that there had been much discussion over safety; that is a core piece of what is being done; however, the “Code is still where it ends up.” The safety debate is to inform how the City decides to enforce that Code, i.e., how aggressive it will be enforced and how long the City will tolerate the issues. He defended why he suggested that legally installed and properly maintained S-traps be allowed to remain for five years. Mr. Goodman based that suggestion on how S-traps have existed in Ames; “five more years in the last hundred years seems reasonable” to him.

Pat Brown reiterated that she was very disappointed that the renters were so under-represented.

Council Member Davis asked whether owner-occupied dwellings would eventually fall under the same criteria as rental units. City Attorney Marek stated that whether it is in a private home or rental home, an illegally installed fixture is illegal. The issue is that rental units come to the attention of inspectors during the course of requesting a Letter of Compliance. Mr. Gunning again stated that there are hundreds of existing S-traps, and the UPC does not specifically state that S-traps should be immediately removed; the costs to do so would be significant. The Code does allow for the inspectors to find problems and require them to be corrected, but if there is no problem, nothing should be required. Mr. Marek stated that it is clear that S-traps were specifically prohibited since at least the 1956 Code. He advised that the City, at this point, can decide what the appropriate time frame is for those to be remedied.

Council Member Orazem asked if an existing properly functioning auto vent is unsafe. Mr. Schweitzer stated that he cannot say whether it is safe or unsafe; he has never installed one and they have never been allowed by the UPC.

Mr. Orazem noted that the City cannot adopt lower standards. He asked if allowing existing properly installed S-traps would be an alternative standard or a lower standard. Mr. Schweitzer said he could only address what was allowed by the UPC. Mr. Kinkade shared information that he had received from the state of Wisconsin, which is the only governmental jurisdiction that is known to have required testing of air-admittance valves as they are installed. He had talked to a representative from the State Department of Health in Wisconsin who collects the testing data. The gentlemen told Mr. Kinkade that the valves had been failing at a rate approaching 30%; they are not functioning as designed. That person also told Mr. Kinkade that his jurisdiction regrets ever allowing them.

Lad Grove asked Mr. Schweitzer if there were any jurisdictions that are requiring S-traps to be removed. Mr. Schweitzer explained what had occurred in Topeka, Kansas; they are required to be removed. He said that he cannot speak for all jurisdictions, but as far as the cities that he represents, the majority make them be replaced or repaired. Mr. Kinkade that the City of Des Moines requires correction of unvented traps.

City Attorney Marek reviewed the most-recent requests of the ARA. He said the first one was for the Council to take action that would bring unvented S-traps into compliance with the Code, have it considered a technical violation in the Plumbing Code, and allowed to continue as long as they are noted and the technology is maintained in a non-unsafe manner. Mr. Marek advised that S-traps are not compliant with the *Iowa Code* unless there had been an approved mechanical anti-syphoned feature on it and it continued to be maintained. He said that his review of the Municipal Code indicates that they were not ever lawfully installed; therefore, the UPC would not allow them.

In response, Mr. Grove said the important thing to look at is whether the unvented S-trap is unsanitary or unsafe; that is the standard. He noted that the UPC has conditions that existing conditions may continue: (1) the device was lawfully installed under a previous Code and (2) it is not unsafe or hazardous. In his opinion, the critical standard is that it is not unsafe. Mr. Marek said that the UPC requires both of those.

Addressing the second request of the ARA at change requested to 13.600(3) [to substitute the words “repaired or replaced” and add the word “new,” Mr. Marek said that the current Code provides that plumbing items repaired or replaced shall comply with current Code. He again noted that if there are things that were lawfully installed at the time, they would be allowed to remain as long as they are not creating an unsafe condition. Mr. Grove responded that the UPC provides for the item to be replaced with a “like kind.”

The third proposal by the ARA is for Section 13.400(4) to have the word “plumbing” removed in two places to make it consistent with the change requested to 13.600(3). Mr. Marek said that this is the basically the same issue, but is at a different location in the Code.

According to Mr. Marek, the fourth and fifth proposals are very similar, but at two different chapters of the Code. He reported that, currently, the Rental Housing Code and the Building Code provide for the Building Official to have the authority to enter Code modifications in very specific circumstances. If the relief is not granted, the case may be appealed to the Building Code Board of Appeals or to the Rental Property Board of Appeals. Mr. Grove summarized his interpretation of the appeal process. He asked that language be added, as follows: “or grant a Code modification when strict compliance with the Code is impractical.” That would make it clear to the Building Board or the PMAB that they have the power to do “what the Building Official should have done.” The Boards currently have the authority to reverse, nullify, or affirm, but do not have the power to grant a Code modification. City Manager Schainker advised that the Building Board and PMAB currently have that power; perhaps the City Attorney needs to provide instruction to the members of the Boards.

Council Member Larson said the purpose of this meeting was precisely to find the interpretation of the date issue. He believes that the issues have been resolved.

Moved by Larson, seconded by Goodman, to direct the City Attorney to prepare the Ordinance in

accordance with the motion that was made at the November 9, 2010, meeting.

Vote on Motion: 4-0. Motion declared carried.

The workshop adjourned at 7:42 p.m.

MINUTES OF THE REGULAR MEETING OF THE AMES CITY COUNCIL

The Regular Meeting of the Ames City Council was called to order at 7:52 p.m. on December 14, 2010, in the City Council Chambers in City Hall, 515 Clark Avenue, pursuant to law with Mayor Campbell presiding and the following Council members present: Davis, Goodman, Larson, and Orazem. Council Members Mahayni and Wacha and *Ex officio* Member England were absent.

Mayor Campbell announced that two items had been pulled from the Agenda by City staff: (1) Item #15: plans and specifications for City Hall Heat Pump Replacement Project and (2) Item 23: a new Class B Native Wine Permit for Finesse Spa Salon.

CONSENT AGENDA: Council Member Orazem requested to pull Item #14 (Agreement with Wellmark Blue Cross and Blue Shield for the purchase of weight room equipment for the Community Center). Council Member Larson asked to pull Item #12 (request of ICAP for reimbursement of processed liability claim).

Moved by Davis, seconded by Goodman, to approve the following items on the Consent Agenda:

1. Motion approving payment of claims
2. Motion approving minutes of Special Meetings of November 16, 2010, and November 30, 2010, and Regular Meeting of November 23, 2010
3. Motion approving Report of Contract Change Orders for November 16-30, 2010
4. Motion approving renewal of the following beer permits, wine permits, and liquor licenses:
 - a. Class C Liquor & Outdoor Service – The Café, 2616 Northridge Parkway
 - b. Class C Beer – Swift Stop #7, 2700 Lincoln Way
 - c. Class C Liquor & Outdoor Service – Aunt Maude’s, 543-547 Main Street
 - d. Class C Beer – Swift Stop #6, 125 6th Street
 - e. Class C Liquor – Tip Top Lounge, 201 East Lincoln Way
 - f. Class C Beer – Casey’s General Store #2298, 428 Lincoln Way
 - g. Class C Liquor & Outdoor Service – Mangostino’s Bar & Grill, 604 East Lincoln Way
 - h. Class B Beer – Pizza Pit, 207 Welch Avenue, Suite 201
 - i. Class C Beer – Casey’s General Store #2560, 3020 South Duff Avenue
 - j. Class B Liquor – Quality Inn & Suites Starlite, 2601 East 13th Street
5. RESOLUTION NO. 10-544 approving appointment of Council Member Matthew Goodman to ACVB Board of Directors
6. RESOLUTION NO. 10-545 approving designation of City representatives to Central Iowa Regional Transportation Planning Alliance (CIRTPA)
7. RESOLUTION NO. 10-546 establishing new reimbursement fees for Police Department
8. RESOLUTION NO. 10-547 approving agreement with Youth & Shelter Services for Police overtime to enforce underage drinking laws
9. RESOLUTION NO. 10-548 approving 2011 Agreement with Wellmark Blue Cross Blue Shield for flexible benefits administration
10. RESOLUTION NO. 10-549 approving COTA Spring Mini-Grants
11. Staff report on City Wi-Fi services
12. RESOLUTION NO. 10-551 approving a contract to RSM McGladrey for the implementation

of the mandatory and optional backup server virtualization and storage area network at a cost of \$99,189

13. RESOLUTION NO. 10-553 approving preliminary plans and specifications for City Hall Heat Pump Replacement Project; setting January 26, 2011, as bid due date and February 8, 2011, as date of public hearing
 14. RESOLUTION NO. 10-554 approving Change Order Nos. 1-4 for 2008/09 Arterial Street Pavement Improvements (North Dakota Avenue)
 15. RESOLUTION NO. 10-555 approving Change Order Nos. 1-3 for 2008/10 Storm Sewer Outlet Erosion Control Program (College Creek)
 16. RESOLUTION NO. 10-556 approving Change Order Nos. 1-5 for 2008/09 Airport Improvements (Rehabilitation of Runway 13/31) and accepting completion
 17. RESOLUTION NO. 10-557 approving Change Order Nos. 1-3 for 2008/09 and 2009/10 Collector Street Pavement Improvements and accepting completion
 18. RESOLUTION NO. 10-558 approving change in guaranteed buy-back amount for Wheel Loader used at Power Plant Coal Yard
 19. RESOLUTION NO. 10-559 approving Plat of Survey for 311 Pearson Avenue
- Roll Call Vote: 4-0. Resolutions declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

REQUEST OF ICAP FOR REIMBURSEMENT OF PROCESSED LIABILITY CLAIM:

Council Member Larson asked for an explanation of this liability claim. City Attorney Marek advised that Agenda Item #12 related to reimbursement to ICAP (shared-risk pool) for a claim filed against the City. For different types of losses, there are different deductibles. In this case, for general liability, the City's deductible is up to \$100,000. The City's policy with ICAP gives them authorization to settle cases on the City's behalf. The case in question was a slip on the ice at Ada Hayden Heritage Park during the winter before last. It resulted in a fairly serious injury at a time when there was ice packed on the trail. The case proceeded through deposition and discovery, after which ICAP recommended settlement in an amount that was less than the City's deductible. The City has the prerogative to decline that; however, if it does, the City would assume all risk, including the risk of going to trial. In this case, a settlement was reached in the amount of \$75,000 with the City not admitting to any liability.

Mr. Larson noted that the ICAP representatives had nothing to lose in settling the case as long as it was under \$100,000. He wondered how well the City was being represented by ICAP. Also, Mr. Larson is very concerned about the precedent being set by this case. He is unsure how many times the City is being sued on slip-and-fall cases; however, he is concerned that the multi-use trails are being kept open for the public's use in very adverse weather and are creating a huge liability. According to Mr. Larson, the Council may have to start discussing whether the trails should be closed. City Manager Schainker advised that the City can clear a trail and within minutes, it can be iced-over. He said this might lead to a discussion between the City Council and ICAP as to whether the trails and bike paths should be closed under those conditions; it might lead to a decrease in the level of service to protect the City from this type of liability. Mr. Larson said that it would be sad if the City would have to close areas such as Ada Hayden due to a person suing the City after choosing to go there under adverse conditions.

Council Member Larson said that he was not even aware of this case. The Council is accustomed to being briefed on cases before they reach the settlement mode. Mr. Schainker said that the City has authorized insurance carriers to settle on the City's behalf.

Council Member Davis stated that this was a substantial concern to him due to the amount of the settlement for a slip-and-fall case. He feels it is setting a very dangerous precedent. In his opinion, common sense should have been used when choosing to walk on a multi-use trail during the winter in Iowa in an ice and snow environment.

Council Member Larson noted that the City is obligated to reimburse ICAP. He asked if the Council needed to provide staff with future direction.

Mr. Marek stated that ICAP enlisted the services of a different law firm than the one used in the past on the City's cases. It is Mr. Marek's opinion that the work was very high quality; however, periodic briefings were not provided to the City Council until the conclusion of discovery. He stated that he will speak to the lawfirm about receiving updates on future cases. Mr. Marek offered to provide more details on the terms of the settlement to the City Council in a closed session. The terms of the settlement are confidential with the exception of the reimbursement of \$75,000 to ICAP with a denial of liability. According to Mr. Marek, there is no question that this is a good settlement for the City.

Council Member Larson reiterated that this settlement was a "done deal" since the Assurance Pool has paid it, and the City is now obligated to reimburse the Assurance Pool. However, he would like to have more information on settlements being proposed on claims against the City in the future. Council Member Davis wants more communication upfront whenever there is a proposed settlement that is going to exceed the \$25,000 threshold.

Moved by Larson, seconded by Goodman, to adopt RESOLUTION NO. 10-550 accepting the request of ICAP for reimbursement of processed liability claim.

Council Member Davis said that he was not going to vote for the motion as a matter of principle.

Vote on Motion: 3-1. Voting aye: Goodman, Larson, Orazem. Voting nay: Davis. Motion failed.

It was noted by the Mayor that the case had been settled by ICAP, and the City had the obligation to pay the deductible.

Moved by Davis, seconded by Goodman, to reconsider.

Vote on Motion: 4-0. Motion declared carried unanimously.

Moved by Goodman, seconded by Orazem, to adopt RESOLUTION NO. 10-550 accepting the request of ICAP for reimbursement of a processed liability claim.

Roll Call Vote: 4-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

Moved by Larson, seconded by Davis, to direct staff to provide Council a recommendation related to the effects of this liability settlement on the City's multi-use public trail systems, including bike paths.

Vote on Motion: 4-0. Motion declared carried unanimously.

Moved by Larson, seconded by Davis, to direct staff to develop a procedure for advanced notification of any pending liability action that would be in excess of \$25,000.

Vote on Motion: 4-0. Motion declared carried unanimously.

AGREEMENT WITH WELLMARK BLUE CROSS AND BLUE SHIELD FOR PURCHASE OF WEIGHT ROOM EQUIPMENT FOR COMMUNITY CENTER:

Council Member Orazem explained that Wellmark has agreed to contribute \$500 to Ames Parks and Recreation Department for every field goal made by Iowa State and \$30 for each three-point shot for ISU Men's and Women's Basketball Team. Wellmark's only request is that the City community how the monies would be used. Mr. Orazem asked staff to communicate how the money would be used. Parks and Recreation Director Nancy Carroll stated that the money would be used to provide cardiovascular equipment for the Community Center's weight room. It is anticipated that the amount will be approximately \$15,000/year. Wellmark has committed to continue this program for at least two years.

Moved by Orazem, seconded by Larson, to adopt RESOLUTION NO. 10-552 approving an agreement with Wellmark Blue Cross and Blue Shield for the purchase of weight room equipment for the Community Center contingent on available funding in 2011/12.

Roll Call Vote: 4-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

PUBLIC FORUM: Richard Deyo, 505 Eighth Street, #2, Ames, asked to defer his comments until the end of the meeting. Mayor Campbell advised Mr. Deyo that Public Forum is the time for him to speak. Mr. Deyo stated that he hoped that the City Council members would not be treated as he had been by the police.

CLASS C LIQUOR & OUTDOOR SERVICE FOR THUMBS BAR: Moved by Goodman, seconded by Davis, to approve a new Class C Liquor & Outdoor Service for Thumbs Bar, 2816 West Street.

Vote on Motion: 4-0. Motion declared carried unanimously.

CLASS C BEER PERMIT FOR SWIFT STOP #8: Moved by Davis, seconded by Goodman, to approve a new Class C Beer Permit for Swift Stop #8, 705-24th Street.

Vote on Motion: 4-0. Motion declared carried unanimously.

STORM SEWER CONCERNS IN NORTHRIDGE PARKWAY SUBDIVISION: Public Works Director John Joiner stated that there was record flooding in August 2010 that impacted much of Story County. It ranked as the second wettest summer among 138 years of records, second only to 1993. Extensive flooding and flash flooding was experienced throughout Ames. One of the areas that went through flash flooding was Northridge Parkway Subdivision. After several Northridge residents spoke at the Town Budget Meeting in October, staff was directed to brief the Council on the results of meetings on this topic since 1994.

Mr. Joiner presented a chronological summary of the actions taken by the City Council since 1993. The issue of upgrading the storm sewer system in Northridge Parkway was considered by the City Council five times over a 22-month period. However, after working with the residents and developing a number of options to mitigate the situation, no alternative was found to be acceptable to the residents or the City Council.

George Covert, 3000 Northridge Parkway, Ames, stated that the flash-flooding in August 2010 went up to Valley View Road; at one intersection, it was three-feet-high. He said that water also

filled up at the terminus at the open pit. Mr. Covert said that the climate appears to be changing and the flash-flooding is happening more frequently. He advised that at the north end of Valley View, there were six houses that had water in basements; all were in proximity to the detaining ponds. Mr. Covert quoted specific comments originally made by Carolyn Bolinger and Suresh Kothari at the January 25, 1994, Council meeting. Mr. Covert again asked the City Council to address the flooding concerns at Ridgetop Circle and the north end of Valley View Drive.

Jim Cannon, 2406 Ridgetop Circle, Ames, stated that he owns the house at the "terminus." The basement of his home filled with approximately five feet of water while he and his family were out of state last August. Mr. Cannon paid tribute to the 30 people who had stepped in and salvaged as many of his family's belongings as possible. He said that he needs to feel some sense of security that the same situation will not occur every few years. Mr. Cannon urged the City Council to take the steps necessary to increase the capacity of the storm sewer system in question.

Carroll Marty, 2802 Ridgetop Road, Ames, recalled that he had spoken on this same subject in 1993. He said that he had stated many of the same things that he will be saying tonight. According to Mr. Marty, there is an existing 54" pipe that goes into three pipes. Mr. Marty contended that the center pipe of the three is filled with mud and dirt so that there are only four inches of clearance. One problem is that the City does not keep its pipes clean. Another problem is that when the parking lot was installed in Moore Park, it was made to drain towards the homes. Holes need to be drilled in the parking lot, so that it drains to the southwest. He also suggested that the three pipes be replaced with another 54" pipe.

Scott Jones, 3519 Valley View Road, Ames, noted that the information goes back to 1993; however, the one thing that has changed since then has been all the development to the north. There has been significant development from Aspen to GW Carver. Mr. Jones requested that the City Council expand the scope of its study on this issue to G. W. Carver.

Mayor Campbell noted that there have been areas all over the City with similar issues. She hopes that all areas will be considered when the Capital Improvements Plan (CIP) is discussed in January. City Manager Schainker pointed out that no costs have been determined for CIP projects to correct this problem.

Council Member Goodman said that he hopes that these issues will cease to appear in new developments.

WOODVIEW DRIVE UTILITIES: Operations Manager Corey Mellies recalled that, on September 8, 2009, the City Council requested that staff do a study on the potential costs to serve the Woodview Drive area with City sanitary sewer and water services for those properties that currently do not have City utilities. He advised that Woodview Subdivision currently consists of 15 lots on Woodview Drive, which were originally developed in the County. In 2004, a portion of the Woodview Subdivision was involuntarily brought into the City when the Ringgenberg Farm was annexed under the state's "80/20 Rule." The other properties were annexed earlier in 1976. Currently, four lots are on City water and ten are served by private

wells. Three lots are connected to the City's sanitary sewer system, and 11 have private septic systems.

According to Mr. Mellies, Public Works staff met with Woodview residents to provide cost estimates and to answer questions regarding serving the properties with sanitary sewer and water main. The following options were presented to the property owners on how they could be provided with these City services:

Option 1: Set up a connection district for the services whereby the property owners would pay a connection fee at the time they are connected to the services. This option would require the City to up-front the cost of the project, likely through the issuance of bonds.

Option 2. Set up a special assessment for all benefited properties. This option would follow regulations outlined in State Code, which requires that the fees be based on “equitable cost of extending the utilities.” For a developed area such as Woodview Drive, this would mean using the area of the lot, front footage of the lot, or a combination of both to assign costs. With a special assessment, the costs could also be equally assigned providing that all properties agree to those amounts. This option would also require the City to upfront the cost of the project, likely through the issuance of bonds.

Option 3. Have the neighborhood itself act as a developer to directly design and contract for the installation of the utilities according to City standards.

Option 4. Have no utilities installed, and the properties would continue to use septic systems and private wells for service.

Mr. Mellies advised that the feedback staff received from attendees during and after the meeting leaned toward a preference for the special assessment option, since it would allow them to pay back the costs over time and would not require all property owners to agree. They also asked staff to re-evaluate the estimated cost as they felt it was very high. Staff did look at bid tabulations received near that time, and refined the costs based on actual bid prices.

According to Mr. Mellies, on September 29, 2010, the City Council referred a request to City staff from residents of Woodview Drive requesting utilities be installed through special assessment to the benefited properties. That request was signed by all but two of the affected properties. However, since that time, letters have been received indicating that the other two property owners are now willing parties, which means there is 100% voluntary participation in the project.

City Manager Schainker advised that should the Council choose to move ahead with this project, the improvements could be programmed into the FY 2011-12 budget with design to occur in FY 2010-11. He stated that General Obligation Bonds would be issued to cover the costs of the project.

Moved by Goodman, seconded Larson, to proceed with the special assessment option.
Vote on Motion: 4-0. Motion declared carried unanimously.

REZONING PROPERTY LOCATED AT 1013 AND 1025 ADAMS STREET TO ESTABLISH HISTORIC OVERLAY DISTRICT (O-H) AND DESIGNATE PROPERTY AS LOCAL HISTORIC LANDMARK (deferred from September 28, 2010): Planning and Housing

Director Steve Osguthorpe noted that, on September 28, 2010, the City Council conducted a public hearing for this rezoning proposal. The first reading of the ordinance was delayed until the

Design Criteria for the proposed Local Landmark could be revised and brought back to the City Council for further consideration.

Gloria Betcher, 531 Hayward Avenue, Ames, spoke as the Chair of the Ames Historic Preservation Commission. She noted an error in the Council Action Form. She asked that the record reflect that the house was constructed over a period of nine years, from 1949 to 1958, and represents design principals that were very unique at that time.

Peggy Baer, 1810 Waterbury Circle, Ames, spoke as president of the Ames Historical Society. She urged that the Council vote to establish the O-H District. She said that the house has been vacant for five years, and action needs to be taken.

According to Mr. Osguthorpe, the proposed rezoning to “O-H” with the associated Design Criteria has been revised in accordance with direction provided by the City Council and is now ready for further consideration. Analysis by City staff leads to the conclusion that the rezoning is consistent with adopted laws and policies.

Moved by Goodman, seconded by Orazem, to pass on first reading an ordinance rezoning property known as proposed Lot 1 (1013 Adams Street) and proposed Lot 2 (1025 Adams Street), of the Mary Adams Subdivision, to establish the O-H (Historic Preservation Overlay) District and designate the property as a Local Historic Landmark, with the following conditions:

- a. That the proposed rezoning adopting the Overlay be approved only in conjunction with the approval of the Final Plat of Mary Adams Subdivision.
- b. The rezoning adopting the Overlay shall not be effective until the recording of the Final Plat of Mary Adams Subdivision.
- c. That Design Criteria for this property be approved concurrently with the approval of the rezoning.

Roll Call Vote: 4-0. Motion declared carried unanimously.

KELLOGG/CLARK CORRIDOR LUPP AND REZONING: Staff Planner Jeff Benson reported that, on August 24, 2010, City Council reviewed a staff report on changing the land use policies and zoning standards for the properties on both sides of Kellogg Avenue between the Union Pacific Railroad and Lincoln Way. The land use policies and zoning standards for this area are for Highway-Oriented Commercial development, as on Lincoln Way and South Duff Avenue. However, most of the existing development along this one block is more similar to the buildings on Main Street, which is zoned Downtown Services Center. Although current zoning standards no longer allow this type of development, the size of the lots and existing buildings make it difficult to redevelop these sites in a manner consistent with the current policies and standards.

Mr. Benson stated that the City Council had been considering making the properties on Kellogg Avenue eligible for the Downtown Façade Improvement Program. Because the design guidelines for the Program are based on the characteristics of Main Street buildings, if the Downtown

Façade Improvement Program is to be extended south of the Union Pacific Railroad, the Land Use Policy Plan Map and the zoning should first be changed to the designations that apply on Main Street: Downtown Services Center.

It was recalled by Mr. Benson that the City Council had directed staff to find out what Kellogg Avenue property owners thought about changing the City's policies and standards. Of 11 property owners, staff has spoken with seven, plus one tenant. Of the seven owners, five also owned the business in the building. The other three property owners have not responded to letters, e-mails, and/or phone messages. Mr. Benson summarized the results of the discussions with the property owners.

According to Mr. Benson, zoning non-conformities will be present on this block with either of the zoning options. Current non-conformities include lack of adequate parking, lack of setbacks, lack of landscaping, and floor area ratio and building coverage larger than permitted. Only one property appears to meet the current standards. If the zoning is changed to Downtown Services Center, only two buildings will conform to the requirement that all buildings have at least two stories and the minimum floor area ratio of one. However, in the downtown area north of the railroad, with Downtown Services Center zoning, many buildings exist that do not meet these standards. Such nonconforming buildings can be maintained, remodeled, enlarged, and even rebuilt, unless they are destroyed resulting in loss of more than 70% of value. It is possible to amend the zoning text to allow one-story buildings and buildings that do not meet minimum floor area ratio and building coverage requirements if built before the date the ordinance was enacted. This technique permits pre-existing duplexes in the City's Residential Low-Density zoning districts.

Mr. Benson presented the following options:

Option 1: Maintain current Highway-Oriented Commercial Zoning. Currently the zoning map follows the railroad as the logical boundary line between the zoning of pedestrian-oriented commercial area along Main Street and a vehicle-oriented commercial area along Lincoln Way. Properties along Kellogg Avenue can be consolidated and then redevelopment can occur that will provide more viable retail uses, oriented toward Lincoln Way and providing their own adequate off-street parking. This process has been the pattern on Lincoln Way and South Duff Avenue.

Option 2: Change to Downtown Services Center Zoning. The properties along Kellogg Avenue are not suited for vehicle-oriented commercial development due to lack of exposure to Lincoln Way and lower traffic counts. This is why these properties have not already been purchased, consolidated, and redeveloped. The existing pattern of buildings is already similar to the Main Street streetscape, and Kellogg Avenue serves as a vehicle and pedestrian entrance to the downtown area from the major arterial street in Ames. The Downtown Services Center zoning will help preserve these characteristics and, with the Downtown Façade Improvement Program, provide an incentive for redevelopment that improves Kellogg Avenue as a traditional retail block and as an entrance to the downtown.

Option 3: Apply Downtown Services Center Land Use designation to the Larger Area. One block of Kellogg Avenue, separated from the Main Street Cultural District and its off-street parking by distance and the railroad, can never be a viable pedestrian-oriented commercial district on its own. It is questionable whether any redevelopment and infill in this one block will be sufficient in scale to draw traffic off of Lincoln Way. However, the larger area between the railroad and Lincoln

Way is well-situated to serve as an expansion area for downtown and as a transition between the Main Street district and the South Lincoln Neighborhood, a pedestrian-oriented mix of commercial and residential uses. The redevelopment of a larger area north of Lincoln Way could provide the mass and scale for a viable commercial area to make this transition, and the visual impact needed to connect the Main Street environment to the commercial corridor and the neighborhood to the south.

Mr. Benson recalled that the Main Street Cultural District (MSCD) originally proposed that the Kellogg Avenue corridor be included in the downtown façade improvement program. At the MSCD's request, the Council also expanded the Kellogg Avenue street reconstruction project to include sidewalk and lighting features that tie into the downtown area. Reaction from existing property and business owners was mixed. It also appears that, should the façade improvement program be expanded to the area, there are currently no further building improvement projects imminent. While rezoning of this corridor may have adverse impacts on those property owners who desire to remain under HOC zoning, it may benefit other property owners who may prefer to make incremental improvements to single parcels. It would also be consistent with the streetscape improvements recently completed by the City that visually tied this corridor to the downtown.

Moved by Larson, seconded by Orazem, to direct that the Planning and Zoning Commission to hold a public hearing on a change to the Land Use Policy Plan designation for properties on both sides of Kellogg Avenue between the Union Pacific Railroad and Lincoln Way from Highway-Oriented Commercial to Downtown Services Center.

Council Member Davis stated his desire for the Planning & Zoning Commission to hold a public hearing to determine the public sentiment concerning the prospect of rezoning the area. It is his opinion that if there are strong objections, then the rezoning should not move forward.

Vote on Motion: 4-0. Motion declared carried unanimously.

INTERMODAL FACILITY: The bidding schedule was reviewed by Transit Director Sheri Kyras. She described the three bid alternates. Ms. Kyras noted that the land lease agreement and the operating agreement are being negotiated by the City Manager with University officials. Mr. Schainker reiterated that there is some risk that there will be a deficit in the operating costs; those issues will need to be negotiated.

Director Kyras stated that the City was not awarded any funds through its Tiger2 Grant application. She noted that the grant application for \$300,000 to Heartland has been recommended for approval.

Council Member Orazem asked if the bike path would continue on to College Creek. Ms. Kyras said that it would not; it is to extend from Sheldon to Hayward.

Moved by Larson, seconded by Davis, to adopt RESOLUTION NO. 10-560 approving preliminary plans and specifications for the Intermodal Facility; setting January 18, 2011, as bid due date and February 8, 2011, as date of public hearing.

Roll Call Vote: 4-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

CYRIDE BUS PURCHASE: Transit Director Kyras advised that the buses would be purchased through an existing bid award with Gillig Corporation as a result of an RFP completed by the Akron, Ohio, Transit System. CyRide was named in that RFP and can purchase vehicles under that bid per Federal Transit Administration regulations.

Ms. Kyras noted that seven buses will be requested in the 2011/12 budget.

Moved by Davis, seconded by Goodman, to adopt RESOLUTION NO. 10-561 approving CyRide bus purchase for six buses to Gillig Corporation in an amount not to exceed \$2,344,000. Roll Call Vote: 4-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

HEARING ON AMENDMENT TO SECTION 31.13 OF MUNICIPAL CODE ESTABLISHING DESIGN CRITERIA FOR LOCAL HISTORIC LANDMARK FOR PROPERTY AT 1013 AND 1025 ADAMS STREET: Director Osguthorpe reported that this issue was referred back to staff to look at the design criteria for the landmark designation, particularly as it pertained to landscaping on an historic landmark and the site as a whole. The Council was concerned that the proposed criteria were too broad and did not provide enough information to potential buyers on what types of vegetation would be acceptable.

Council Member Orazem asked if a fence could be erected since there is public access along the side of the property. Mr. Osguthorpe said that it would be allowed; preservation of the knoll was the main thing.

Mayor Campbell opened the public hearing.

Gloria Betcher, 531 Hayward Avenue, Ames, advised that there had been a lot of testimony at the Historic Preservation Commission meeting when this issue was discussed. After reviewing pictures and the testimony, it was evident that there was no intent to keep the landscaping of the property in any certain manner.

Peggy Baer, 1810 Waterbury Circle, Ames, concurred with Ms. Betcher.

There being no one else wishing to speak, the Mayor closed the hearing.

Moved by Davis, seconded by Goodman, to pass on first reading an ordinance making an amendment to Section 31.13 of *Municipal Code* establishing design criteria for local historic landmark for property at 1013 and 1025 Adams Street. Roll Call Vote: 4-0. Motion declared carried unanimously.

HEARING ON AGREEMENT WITH CITY OF NEVADA TO ESTABLISH ANNEXATION MORATORIUM AND DIVISION LINE BETWEEN CORPORATE BOUNDARY LINES:

The hearing was opened by the Mayor. Rick Brehm, representing Lincoln Way Energy, 59511 West Lincoln Way, Nevada, asked that the City Council amend the Moratorium Agreement to exclude the property that lies between 590th Street and 580th Street. Lincoln Way Energy owns property at that location and wishes to maintain the property within the current city limits of Nevada.

Jerry Gull, Mayor of the City of Nevada, stated that the Moratorium Agreement had been unanimously approved by the Nevada City Council at its meeting held December 13, 2010.

The Mayor closed same after no one came forward to speak.

Council Member Larson asked the City Manager to explain how the moratorium would work if a new boundary needed to be established. Mr. Schainker stated that the boundaries could be modified if both parties (City of Ames and City of Nevada) agreed. He said that there would be three options: (1) The City of Ames would agree to annex the property and extend utilities to that area. (2) The boundaries of the Moratorium could be modified to allow Nevada to provide services. (3) The City of Ames could deny annexation.

City Attorney Doug Marek advised that the Moratorium Agreement in question would prevent the City Development Board from approving an annexation that does not conform to the Moratorium. By joint resolution of the Cities of Ames and Nevada, the boundaries could be modified. Mr. Marek reiterated that State Code allows for the Agreement to be modified if both cities agree. Once approved by the two cities, the City Development Board must accept the modified Agreement.

At the inquiry of Council Member Orazem as to why Lincoln Way Energy would prefer to have its land annexed to Nevada, instead of Ames, Mr. Brehm said the City of Ames would have quite a distance to bring its services for what might be a \$10 million project. It would be very expensive and could possibly be delayed.

Moved by Davis, seconded by Orazem, to adopt RESOLUTION NO. 10-562 approving an Agreement with the City of Nevada to establish an Annexation Moratorium and division line between corporate boundary lines and for joint exercise of governmental powers.

Roll Call Vote: 4-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

HEARING ON AMENDMENT TO CAMPUSTOWN URBAN REVITALIZATION PLAN TO ALLOW FOR FIRE SPRINKLER RETROFITTING: The public hearing was opened by the Mayor.

Carleen Brewer, Manhattan, Kansas, representing the University Towers at 111 Lynn, said that nearly \$1 million will have been invested in that property to install sprinklers.

The Mayor closed the hearing when no one else asked to speak.

Moved by Davis, seconded by Larson, to adopt RESOLUTION NO. 10-563 approving Amendment to Campustown Urban Revitalization Plan to allow for fire sprinkler retrofitting.

Roll Call Vote: 4-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

HEARING ON ZONING TEXT AMENDMENT RELATED TO PARKING AREA AND PERIMETER LANDSCAPING REQUIREMENTS: Director Osguthorpe explained that the issue is that when someone proposes to divide land across an existing parking lot, such a division creates a landscaping nonconformity because there would not be the required perimeter

landscaping along the new property line. Currently, the only way to address that is to either remove pavement to facilitate required landscaping or to divide ownership of the property through a horizontal property regime.

Mayor Campbell opened the hearing and closed same after no one came forward to speak.

Moved by Davis, seconded by Orazem, to pass on first reading an ordinance making a zoning text amendment related to parking area and perimeter landscaping requirements.

Roll Call Vote: 4-0. Motion declared carried unanimously.

HEARING ON 2009-10 CONSOLIDATED ANNUAL PERFORMANCE AND EVALUATION REPORT (CAPER): Housing Coordinator Vanessa Baker-Latimer explained that

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Ms. Baker-Latimer stated that the CAPER reports accomplishments in relation to the goals and objectives identified in the City's 2009-2014 Consolidated Plan requirements for the use of CDBG funding and in the Annual Action Plan. According to Ms. Baker-Latimer, HUD regulations require that the CAPER be available for a 15-day public review and comment period, which occurred November 30, 2010, through December 14, 2010. No comments were received.

The Mayor opened the hearing. No one requested to speak, and the hearing was closed.

Moved by Orazem, seconded by Larson, to adopt RESOLUTION NO. 10-564 approving the 2009-10 Consolidated Annual Performance and Evaluation Report (CAPER).

Roll Call Vote: 4-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

HEARING ON NUISANCE ASSESSMENT: The public hearing was opened by Mayor Campbell. She closed same after no one asked to speak.

Moved by Larson, seconded by Goodman, to adopt RESOLUTION NO. 10-565 assessing the costs of mowing and weed removal and certifying assessment to Story County Treasurer.
Roll Call Vote: 4-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

ORDINANCE ESTABLISHING PARKING REGULATIONS ON NORTH 4TH STREET:

Moved by Goodman, seconded by Davis, to pass on first reading an ordinance pertaining to parking regulations on North 4th Street from North Riverside Avenue to North Maple Avenue.
Roll Call Vote: 4-0. Motion declared carried unanimously.

ORDINANCE MAKING A ZONING TEXT AMENDMENT PERTAINING TO FENCE REGULATIONS: Moved by Goodman, seconded by Davis, to adopt ORDINANCE NO. 4052 making a zoning text amendment pertaining to fence regulations.

Roll Call Vote: 4-0. Ordinance declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

COUNCIL COMMENTS: Mayor Campbell announced that the City Council will not meet on December 28, 2010.

City Manager Schainker noted the letter dated December 14, 2010, that had been placed around the dais from G K Development asking for a six-month extension of time to meet the terms of its Adaptive Reuse Agreement for the Streets of North Grand.

Council Member Goodman noted that Roy Cakerice had been speaking at Council meetings for years private monies could be leveraged for a private/public partnership to keep Carr Pool open for limited hours during next summer. Mr. Goodman noted that once the Pool would be demolished, the City could not get it back. He feels from conversations that he has had with citizens, there is an appreciable difference between the Furman Aquatics Center and Carr Pool.

Moved by Goodman to place the Carr Pool issue and the leveraging of private monies towards its operation on an upcoming meeting.
Motion died for lack of a second.

ADJOURNMENT: Moved by Larson to adjourn the meeting at 10:21 p.m.

Diane R. Voss, City Clerk

Ann H. Campbell, Mayor