

MINUTES OF THE REGULAR MEETING OF THE AMES CITY COUNCIL

AMES, IOWA

MARCH 2, 2010

The regular meeting of the Ames City Council was called to order by Mayor Campbell at 7:00 p.m. on March 2, 2010, in the City Council Chambers in City Hall, 515 Clark Avenue. Present from the Ames City Council were Davis, Goodman, Larson, Mahayni, Orazem, and Wacha. *Ex officio* Member Keppy was also present.

PROCLAMATION FOR ISU MARTIAL ARTS DAY: Mayor Campbell proclaimed March 6, 2010, as ISU Martial Arts Day. Accepting the Proclamation was Master Yong Chin Pak.

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

1. Motion approving payment of claims
 2. Motion approving minutes of the Special Meeting of February 16, 2010, and Regular Meeting of February 23, 2010
 3. Motion approving certification of civil service applicants
 4. Motion approving renewal of the following beer permits, wine permits and liquor licenses:
 - a. Class C Liquor - Headliner's, 2430 Lincoln Way
 - b. Class C Liquor - Puerto Vallarta, 716 Duff Avenue
 - c. Class C Liquor & Outdoor Service - Coldwater Golf Links, 615 S. 16th Street
 - d. Class A Liquor & Outdoor Service - Elk's Lodge #1626, 522 Douglas Avenue
 - e. Class C Beer & B Wine - Swift Stop #5, 3218 Orion Street
 - f. Class E Liquor, C Beer, & B Wine - Sam's Club #6568, 305 Airport Road
 - g. Class C Liquor - Carlos O'Kelley's Mexican Café, 631 Lincoln Way
 - h. Special Class C Liquor - Valentino's, 823 Wheeler Street, Suite 1
 - i. Special Class C Liquor - The Spice Thai Cuisine, 402 Main Street
 - j. Class C Beer - Swift Stop #4, 1118 S. Duff Avenue
 5. RESOLUTION NO. 10-078 approving appointments to City's various boards and commissions
 6. RESOLUTION NO. 10-079 approving preliminary plans and specifications for 2007/08 Sanitary Sewer Rehabilitation – Contract #2; setting April 7, 2010, as bid due date and April 13, 2010, as date of public hearing
 7. RESOLUTION NO. 10-080 approving contract and bond for Bloomington Road Elevated Tank Repainting Project
 8. RESOLUTION NO. 10-081 accepting completion of public improvements and releasing financial security for Walnut Ridge, 2nd Addition
 9. RESOLUTION NO. 10-082 accepting completion of public improvements and releasing financial security for Estates West, 2nd Addition
 10. RESOLUTION NO. 10-083 accepting completion of public improvements and releasing financial security for Dayton Park Subdivision, 5th Addition
- Roll Call Vote: 6-0. Resolutions declared adopted unanimously, signed by the Mayor, and hereby made a portion of these minutes.

PUBLIC FORUM: Catherine Scott, 1510 Roosevelt, Ames, requested that when an item is moved to a future agenda, it be put at the beginning of the agenda. She feels that is only fair to people who have sat through a long meeting only to find out that the item they were interested in got postponed to the next meeting.

LIQUOR LICENSE FOR ANGIE'S CANTINA: Moved by Davis, seconded by Mahayni, to approve

a new Special Class C Liquor License for Angie's Cantina, 2416 Lincoln Way.

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

BEER PERMIT/OUTDOOR SERVICE FOR HOMEWOOD GOLF COURSE: Moved by Davis, seconded by Mahayni, to approve a new 8-Month Class B Beer Permit & Outdoor Service for Homewood Golf Course, 401 E. 20th Street.

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

HEARING ON ADOPTION OF 2010/11 BUDGET: Mayor Campbell opened the public hearing. No one asked to speak, and the hearing was closed.

Moved by Mahayni, seconded by Larson, to adopt RESOLUTION NO. 10-084 approving the 2010/11 budget.

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

HEARING ON AMENDMENTS TO FISCAL YEAR 2009/10 BUDGET: The public hearing was opened by the Mayor. No one asked to speak, and Mayor Campbell closed the hearing.

Moved by Davis, seconded by Wacha, to adopt RESOLUTION NO. 10-085 amending the budget for the current fiscal year ending June 30, 2010.

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

HEARING ON TEXT AMENDMENT TO CREATE CONVENIENCE GENERAL SERVICE (CGS) DISTRICT: Planning and Housing Director Steve Osguthorpe recalled that on January 26, 2010, the City Council had directed staff to draft an ordinance that would be specific to the Convenience Commercial Node (CVCN) location at Stange and Bloomington Roads that would:

1. Eliminate the requirements for a Special Use Permit for car washes and convenience stores
2. Exempt gas station canopies from CVCN design standards
3. Allow increased building signage and incidental signage to no more than 70 square feet
4. Increase the number of gas pumping stations from eight to ten

It was emphasized by Mr. Osguthorpe that adoption of the ordinances would not be applicable to the site until an application for rezoning to CGS had been submitted and approved. Once the CGS Zoning District has been created by ordinance, an application to rezone may be filed. According to Mr. Osguthorpe, the City Council could also direct staff to initiate the rezoning. He also said that the rezoning to CGS could be accomplished without amending the Land Use Policy Plan (LUPP), as language had been added to the purpose statement of the Ordinance that provides a "bridge" to the LUPP. It was Mr. Osguthorpe's recommendation that the Council consider adding language to the LUPP at its next update to specifically address the CGS Zoning District.

Mr. Osguthorpe noted that the Planning and Zoning Commission, after lengthy discussion at its February 17, 2010, meeting voted 6-0 to recommend approval of the draft language for the zoning of Convenience General Service with the changes proposed by staff.

Noting that there are five different ordinances presented for approval by the City Council, Mr. Osguthorpe explained that the standards that apply to the CVCN zone, and thus, the CGS zone, are

not all located in one section of the *Code*.

Mayor Campbell opened the public hearing.

Council Member Orazem said that he was sensitive to the concern about the City engaging in “spot zoning.” It is his intent for the City to treat all areas symmetrically and asked if the Council should look at the other Convenience Commercial Nodes to see if similar situations are going to arise there. He felt there was some value in being proactive rather than waiting for the same types of concerns to be raised in the other three Nodes. Director Osguthorpe pointed out that the Council had felt the site in question was unique, e.g., bordered by railroad tracks and a water tower. City Attorney Doug Marek noted that adoption of the ordinance would create the new CGS Zoning District; however, it would not be applied until a rezoning application is filed. He advised that when such an application is filed, the Council will need to determine if there are reasons to distinguish the site as falling within the guidelines of the CGS District.

At the request of Council Member Goodman, Mr. Osguthorpe explained that there had been two requests to rezone the area in question to CVCN that had been denied because of inconsistency with the LUPP. The LUPP was ultimately amended to include some exception criteria to the two-mile separation requirement. The separation requirement (from any other commercial area) was reduced to one-half mile subject to certain criteria. City Attorney Marek added that the Council also imposed, through a Developer’s Agreement, Restrictive Covenants that further limited the uses at this particular site.

Council Member Mahayni pointed out that the table in the Ordinance specifies that medical centers are not allowed. He asked if staff was making a distinction between medical centers and medical offices. Mr. Osguthorpe clarified that medical offices are allowed at the site in question.

Wally Pelds, Pelds Engineering Co., 2323 Dixon Street, Des Moines, Iowa, stated that he represented Casey’s General Stores. He thanked the staff for working out a solution that will allow Casey’s to locate at this site. He noted that one of the main problems was that CVCN zoning does not take into consideration the size of the lot, e.g., only four gas pumps would be allowed no matter what size lot the store was built on. Mr. Pelds offered to show pictures of what the proposed building will look like. Mr. Pelds reported that the new design will have recessed lights, which was a change that was requested by staff.

Joe Rippetoe, 419 Pearson, Ames, commented that when the City Council directed staff to draft an ordinance that exempted Casey’s from long-standing operational and design standards, it ignored the most basic issue. In his opinion, that issue is that the proposal is so flawed that the Council would need to spot zone the same piece of property twice. Mr. Rippetoe referenced a 2008 meeting when he had spoken against commercial development at this location. He said that after “tortured discussion,” the Council fashioned a rezoning compromise that would allow four specific uses. On first reading of the ordinance (May 2008), developer Chuck Winkleblack was asked specifically if he could live with those limitations, and answered that he could. Mr. Rippetoe is dismayed that this issue is again before the Council and more changes are being requested by the developer. He asked if this was a question of competence of Casey’s to plan a new store or if Casey’s was just “angling for more concessions.” It is Mr. Rippetoe’s opinion that Casey threatened staff that it would go away if it didn’t get its way. He acknowledged that some residents do want this store, but doesn’t believe that they are telling staff to give up everything to get the deal done. Mr. Rippetoe sees this as the abandonment of good design standards, an emasculation of the Zoning Board of Adjustment, and angst by the Planning & Zoning Commission. He said that what bothered him most were the “fake

explanations of this mess coming up everywhere – from Council members, P & Z members, Letters to the Editor...” etc. According to Mr. Rippetoe, it’s not about the Ames business climate, the LUPP, the Zoning Code, or the staff’s interpretation; it’s about Casey’s either failing to be competent or failing to be reasonable. He said this sends a message that anything can be built because the City is throwing out the rules.

Catherine Scott, 1510 Roosevelt, Ames, expressed her disfavor of the proposed ordinance. Ms. Scott said that she had spent a lot of time at meetings when the CVCN standards were being discussed, and she felt that a good compromise had been reached. She is dismayed that a more liberal ordinance will allow stores to skirt around the design standards, and she sees this as doing a disservice to neighborhoods. It is her belief that if stores really want to locate in a specific area, they will adhere to stricter design standards.

Chuck Winkleblack, 105 S. 16th Street, Ames, responded that when the CVCN was first created, he was very clear that it was a new zone and it was likely that there would have to be amendments. He said things often look good in theory, but look much different when put into practice. According to Mr. Winkleblack, very modest changes are being requested after Casey’s has made numerous changes. He said that the allegation that they are asking for the rules to be thrown out is not true. Answering an inquiry by Council Member Mahayni, Mr. Winkleblack referenced the Minutes of the Zoning Board of Adjustment that indicated the members were in favor of most of the changes that were being requested; however, could not approve them because they had no proof of meeting some of the criteria. In Mr. Winkleblack’s opinion, meeting those criteria is next to impossible for anyone to do. He noted that he had been a part of the group who recommended the initial design guidelines and had stated at that time that many of the items were being suggested without knowing if they would work when put into practice. The practical application of building something when you actually have a site versus sitting in a room brainstorming what it might look like are two very different processes.

City Attorney Marek clarified that the financial standard for the granting of a variance is not a staff interpretation or a *City Code* matter; it is a *State Code* matter. The City does not have the authority to reach a different decision. Under Chapter 414, if there is a zoning requirement and a possibility for a variance, the standard applied is that a reasonable return on the investment cannot be obtained. The only option to meet that standard is for the City Council to change the zoning. Director Osguthorpe advised that the Zoning Board of Adjustment (ZBA) had voted on three of the four variances. They postponed action on one variance pertaining to canopy design and requested that they come back with alternative canopy designs to see if a certain style would look good or not. According to Mr. Osguthorpe, the ZBA also postponed a decision on the Special Use Permit until the canopy issue was resolved. After that, the application was withdrawn.

Mr. Rippetoe reiterated that, in May 2008, the Council authorized four uses at the site in question. Three of those uses are built or in process without any special circumstances; however, this one (Casey’s convenience store) has asked for a plethora of changes, which have finally resulted in the creation of a new Zoning District in order for a gas station to be built. It is his opinion that “something is desperately wrong with this picture.”

Council Member Mahayni recalled that the design guidelines were adopted in May 2005 as an outcome of a process involving a committee that included the development community. He is quite concerned that this Council has given the staff direction to create a way to make this work, and by so doing, it is ignoring the process that has been an integral part of how the City Council has

operated for many years. It is his opinion that the Council that adopted the CVCN design guidelines in 2005 was as concerned as present-day Council members about the business climate. Mr. Mahayni referenced a case that he had heard as a Planning & Zoning Commission member where a specific business had threatened to leave Ames if it was not allowed to build what it wanted where it wanted. The City did not back down, and the applicant built its store in another location in Ames and is a successful business today.

At issue, according to Mr. Mahayni, are design guidelines that are impacting residential areas. He advised that he had received plans for a Casey's store that had been constructed on Mills Parkway, which is a major arterial in West Des Moines. He noted that that store had to meet design guidelines similar to the ones in place for the CVCN. It was reported by Mr. Mahayni that a Casey's store in the Amana Colonies also had to meet architectural guidelines. Mr. Mahayni said that if the ordinances in question are adopted, the Council would be reacting to every request by spot-zoning. He feels that it would result in the creation of very unattractive areas that would ultimately have negative results on business.

Council Member Orazem said that he did not run for the City Council to go along with all the past decisions of past Councils. He believes that, if there is a commercial requirement that might be hindering commercial activity, it should be reviewed by Council. Mr. Orazem would like to look at the other Convenience Commercial Nodes to see if the changes being requested for this area should be applied more generally. He does not want Council to be put in this position repeatedly. Council Member Mahayni responded that he was not suggesting that this Council needed to follow the dictates of previous Councils; however, he is questioning the process that has been followed. Mr. Mahayni explained that if this issue is truly a serious problem for more than this applicant, the Council should review it; however, there are other stakeholders who have not been consulted. It has been the practice of the City Council to involve all stakeholders in the input process. If the changes being requested for this area are not applied to all the CVCNs, Mr. Mahayni thinks that would be a very regressive move. If the Ordinances being proposed are adopted, he sees that as saying that Ames does not need design guidelines whatsoever. Council Member Orazem does not believe that there will be no design guidelines for this area. He said that the question is what are the appropriate design guidelines.

Council Member Larson offered that he, too, has a problem with spot-zoning. He acknowledged that staff had done its best to come up with what Council had directed: to come up with some way to make this project happen. Mr. Larson said that he would like to find a way to make the existing CVCNs be more flexible in terms of allowing staff and/or Council to make decisions based on specific issues for a project. He asked if it were possible, when amending the Zoning Ordinance, to put in some amount of flexibility to allow for Council discretion to create a variance, rather than having it go to the Zoning Board of Adjustment where financial hardship would have to be proven. In doing so, the City Council would be able to address a piece of land that is different than other pieces of land, but similarly zoned. City Attorney Marek said that the general guidelines are set out in the *State Code*. Chapter 414 provides that the Council designates the zoning districts, and application of those districts must be uniform within the district. The *State Code* also designates authority to the Zoning Board of Adjustment to grant variances and special exceptions. There is a provision in the *State Code* that the City of Ames does not use that would allow the enactment of an ordinance that would allow the Council to review grants of variances from the Zoning Board of Adjustment and refer those back for further study. There is no provision, however, for the Council

to act in place of the ZBA. In floating zones, Master Plans are required, which allows individualized consideration of the site plan. Mr. Larson pointed out that the City continues to add new zones and

overlays, instead of adding flexibility. He noted that the City could go back to Planned Commercial and Planned Unit Development concepts, where flexibility was actually allowed. It is his desire that the City review its entire planning process at some time in the future.

It was also stated by Mr. Larson that he believed all the stakeholders had had an opportunity to weigh in on this issue, and with the exception of a few people, all were in favor of the new Zoning District.

Council Member Wacha expressed his frustration about having to change or add a zone because of a particular request. In Mr. Wacha's opinion, even with the changes in question, the convenience store is still going to be complimentary to the neighborhood. He feels it is reasonable. It was also his feeling that the Council is not throwing the rules out; sometimes it takes an applicant to walk through the process to see if it works.

Council Member Mahayni noted that this proposed convenience store will be located in a residential neighborhood. He thinks that design guidelines are being compromised.

Council Member Goodman said he believes that flexibility works for those with "big muscles." He is comfortable with the changes in question because he believes they are small changes, and they do not go against the intent of the CVCN. Mr. Goodman said that the idea of more flexibility works for those who have capital interests, but usually not for the residents.

No one else asked to speak, and the Mayor closed the hearing.

Moved by Larson, seconded by Wacha, to pass on first reading an ordinance creating a new CGS District.

Roll Call Vote: 5-1. Voting aye: Davis, Goodman, Larson, Orazem, Wacha. Voting nay: Mahayni. Motion declared carried.

Moved by Larson, seconded by Davis, to pass on first reading an ordinance adding CGS to the Landscaping and Screening section.

Roll Call Vote: 5-1. Voting aye: Davis, Goodman, Larson, Orazem, Wacha. Voting nay: Mahayni. Motion declared carried.

Moved by Goodman, seconded by Wacha, to pass on first reading an ordinance adding CGS to the Off-Street Parking section.

Roll Call Vote: 5-1. Voting aye: Davis, Goodman, Larson, Orazem, Wacha. Voting nay: Mahayni. Motion declared carried.

Moved by Goodman, seconded by Wacha, to pass on first reading an ordinance adding CGS to the Base Zone listing.

Roll Call Vote: 5-1. Voting aye: Davis, Goodman, Larson, Orazem, Wacha. Voting nay: Mahayni. Motion declared carried.

Moved by Goodman, seconded by Davis, to pass on first reading an ordinance adding CGS to the Commercial Base Zones.

Roll Call Vote: 5-1. Voting aye: Davis, Goodman, Larson, Orazem, Wacha. Voting nay: Mahayni. Motion declared carried.

RENTAL AND PRIVATE PROPERTY MAINTENANCE CODES: City Manager Schainker explained that the prospect of residential maintenance codes has occupied over three years of work by the Council, staff, and community members. The next scheduled step will occur at a Council workshop scheduled for March 30. In preparation for that workshop, Chief Petersen showed pictures of some of the property maintenance issues that staff had been working on for the past three years.

Chief Petersen provided historical background on property maintenance issues since 1977. He noted that there had been 23 *Code* amendments since that time. Specifics were given of actions taken surrounding property maintenance issues since March 2007. Actions focused first on rental housing and have moved now to owner-occupied property maintenance. It was pointed out by Chief Petersen that, of the 256 *Code* violations, 71% were located on private residences and 29% were located on rental properties. A summary of public education and outreach efforts was given. Data from 2009 were also given.

The Council's attention was brought to the staff report entitled "Ames Repair & Care Program." This was created after the City Council identified the need for assistance for those who are unable to do required maintenance due to age, disability, or lack of financial resources.

Council Member Orazem asked to receive a copy of the 2006 *International Property Maintenance Code*, which had been referenced in the previous staff reports. Chief Petersen indicated that he would provide copies of that *Code* for the Mayor and Council members.

"SANDWICH BOARD" SIGNS: City Manager Steve Schainker said that *Municipal Code* Sections 5.714 and 5.722 prohibit the use of ground signs known as "sandwich board" signs. Staff has felt that violation of those laws is most often the result of ignorance of the law and not a willful intent to violate it. Staff notified businesses of the law recently by sending a letter to business owners where a violation had been observed and also asked the Chamber of Commerce and Main Street Cultural District to share the information with their members.

Despite those efforts, Mr. Schainker said that staff expects that enforcement actions will be required and may elicit strong negative feelings about City government from some of the business owners. Mr. Schainker noted the City Council members' philosophy to promote a positive business climate and asked if they supported the prohibition or wanted to take action to legalize the signs. He gave a number of arguments both for and against continuing the prohibition.

Inspector Natalie Harrington showed examples of signs that had recently been placed in public rights-of-way. She noted that she had contacted Iowa City and Cedar Falls, and both cities regulate sandwich board signs. Ed Gillott, Rental Housing Supervisor, said that the City receives a few complaints annually from the public about these types of signs. Ms. Harrington said that there are approximately 20 businesses that put out sandwich board signs.

City Attorney Marek said that the City could not discriminate based on content, and uniformity of enforcement is extremely important.

Tim Coble, owner of Temptations on Main, 309 Main Street, indicated that he and his wife are in favor of a review of the *Code* as it relates to sandwich board signs. He noted that they rely heavily on those types of signs as a means to draw attention to their store. Mr. Coble also noted that these

signs were discussed at the Main Street Cultural District meeting held this morning.

Catherine Scott, 1510 Roosevelt, Ames, urged the City Council to find a way to allow these types of signs.

Terry Stark, 319 J Avenue, Nevada, owner of Chocolaterie Stam on Main Street in Ames, said that he had attended some business seminars where the experts had stated that sandwich board signs are good for business. He would like them to be allowed.

Council Member Larson recommended that a permitting process be created. He suggested that the process be limited first to the Main Street and Campustown areas.

Council Member Wacha suggested that businesses first be surveyed to see if there is a desire to allow sandwich board signs.

Moved by Larson, seconded by Goodman, to direct staff to meet with the MSCD to explore a possible permitting process to allow temporary signs in that area.

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

PRELIMINARY PLAT FOR SPECK SUBDIVISION, 2ND ADDITION: Director Osguthorpe stated that the proposed Subdivision would create lots for three new homes within a rural area adjacent to Ames. Specifically, it is located in the unincorporated area across from Ada Hayden Heritage Park and north of West Riverside Road. This area already contains several hundred residences. Although the area would present significant challenges for annexation into the City, the addition of three homes would not change the situation.

Moved by Mahayni, seconded by Davis, to adopt RESOLUTION NO. 10-086 approving the Preliminary Plat for Speck Subdivision, 2nd Addition.

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

EMERGENCY MEDICAL DISPATCH AND JOINT SERVICES AGREEMENT WITH MARY GREELEY MEDICAL CENTER: Chief Chuck Cychosz explained that consolidation of the dispatching of all emergency services from the Ames Police Department would bring an improved level of service to all Ames citizens.

Moved by Davis, seconded by Mahayni, to adopt RESOLUTION NO. 10-087 approving implementation of the Emergency Medical Dispatch and Joint Services Agreement with Mary Greeley Medical Center.

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

ORDINANCE RELATED TO TURNAROUNDS FOR FIRE TRUCKS IN SUBDIVISIONS:

Moved by Mahayni, seconded by Davis, to pass on second reading an ordinance related to turnarounds for fire trucks in subdivisions.

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

ORDINANCE AMENDING TERMS OF OFFICE, POWERS, AND DUTIES OF LIBRARY BOARD OF TRUSTEES MEMBERS: Moved by Goodman, seconded by Davis, to pass on third reading and adopt ORDINANCE NO. 4024 amending terms of office, powers, and duties of Library Board of Trustees members.

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

ORDINANCE TO CORRECT SCRIVENER'S ERRORS IN *MUNICIPAL CODE* SECTION 23.102(2)(A) PERTAINING TO SUBDIVISIONS: Moved by Davis, seconded by Wacha, to pass on third reading and adopt ORDINANCE NO. 4025 to correct scrivener's errors in *Municipal Code* Section 23.102(2)(a) pertaining to subdivisions.

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

COMMENTS: Moved by Orazem, seconded by Larson, to direct staff to provide an update on deer control within the City and options for expanding the program.

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

City Manager Schainker brought the City Council's attention to the tentative Workshop Schedule that was placed around the dais.

ADJOURNMENT: Moved by Davis to adjourn the meeting at 9:23 p.m.

Diane R. Voss, City Clerk

Ann H. Campbell, Mayor