

**MINUTES OF REGULAR SESSION  
HIGHLAND CITY COUNCIL  
MONDAY, JULY 20, 2009**

Mayor Michaelis called the Regular Session to order at 7:00pm. Councilmembers present were Rickher, Bellm and Zobrist. Councilman Bardill was absent. Others in attendance were City Manager Mark Latham, City Attorney John P. Long, Directors Gillespie, Rosen, and Rusteberg, Police Chief Bell, Supervisors Stram and Limestall, EMS Captain Crosby, Deputy City Clerk Hediger, City Clerk Bellm, 47 citizens, and 1 member of the news media.

**MINUTES**

Councilwoman Bellm made a motion to approve the minutes of the July 6, 2009 Regular Session as attached; seconded by Councilwoman Zobrist. Roll Call Vote: Rickher, Bellm and Zobrist voted aye, none nay. Motion carried.

**PUBLIC FORUM**

Citizens' Requests and Comments:

*Premiere Soccer Club – Three-on-Three Tournament Request* – Steve Ferguson, tournament director for Premiere Soccer Club, requested for permission to hold a Three-on-Three Soccer Tournament at Glik Park on Saturday, August 15, 2009 on the fields south of the Korte Recreation Center. He stated, as you may recall, we previously had chosen a weekend in May; however, with graduations and baseball tournaments, we were not able to get the support needed. We have check with the Parks and Receptions Department to confirm availability of the facilities for this date. Councilwoman Bellm made a motion to approve the request of Premiere Soccer Club to hold a three-on-three soccer tournament on Saturday, August 15, 2009 as attached; seconded by Councilman Rickher. Roll Call Vote: Rickher, Bellm and Zobrist voted aye, none nay. Motion carried.

Brad Korte, 2309 Park Hill Drive, requested permission on behalf of his neighbors, Paul and Jane Koenig, to request temporary street closure for a block party on August 1, 2009, 3:00pm -9:00pm. Mr. Korte explained my part in this is that they are going to place the band on my driveway, which is across the street from their property. I am representing them tonight, as they are out of town on vacation. Mayor Michaelis advised that the council cannot vote on the request tonight, because it was not on the agenda.

Susie Pfister, owner of Hirsch's Tavern, inquired if anything has been done to address outdoor seating, as discussed at the last council meeting. She presented a copy of Belleville's ordinance to City Attorney John Long. Mayor Michaelis reported the council will discuss this under Requests of Council. Each council member has been given a copy of two draft ordinances. Attorney Long is looking for feedback from the council on these drafts.

Duane Clarke, Attorney, representing some landowners of Liberty Hills, addressed the council regarding the rezoning request and proposed development before the council this evening. He stated when reviewing the zoning codes, I see the city is attempting to rezone this area C-3 Commercial Business Strip Center. I am wondering why not Industrial, which seems to be a better fit, as we are talking about a pretty intense use of the property to have it C-3, in particular with the large equipment operating at the site. A lot of arguments were made at Planning & Zoning. I would like to hit on a few of the points: The proposed intense use is entirely inappropriate for the area, which would be adjacent to residential area. The old land use map shows the area as residential. You can say the size does not determine this as spot zoning; however, in my opinion is that it is spot zoning, as there is nothing around it zoned similar. Residents relied on the zoning when they purchased their properties. I don't think you would like to see 120-ft. cranes sticking above the trees from your back window. The trees are only in bloom six months out of the year. Liberty Hills was built as a subdivision with beautiful homes and views of Silver Lake. There is hardship imbalance here. If the benefit of the general welfare of the public is improved somehow by the development, we do not see it. From what I read, they say there will be shopping, dining, and overnight stays created from this development. I worked forty-five minutes from home, in Belleville, until recently. I did not shop and dine there; I came home and went to Wal-Mart, Ace Hardware, and local restaurants with my family.

Showing aerial photos of the current facility, Mr. Clarke pointed out where the training facility is now, is a forty-five-acre facility. It is surrounded by dorms, which are temporary residences, and baseball and soccer fields. The Marine location was a temporary use situation. Yes, they dug a beautiful lake for them, in that time; however, they were there only a short time. We are talking about a more permanent facility. In the paper, it stated they have two large pieces of equipment. Aerial pictures of their current facility show seven large pieces of equipments and several large cranes. They are going from a 45-acre lot to 150-acre lot, for some reason. It is not that we feel a training facility or vocational school is inappropriate. If it were a classroom setting that is one thing; this is a different situation.

Joe & Janet Wetmore, 55 Liberty Lane. Mr. Wetmore stated we purchased the home in August 2008 with the intent to stay there the rest of our lives. We agree with everything Mr. Clarke stated. I work from home and have my office located in the home. Janet Wetmore stated since I am visually impaired, I use my hearing for insight. My hearing sensory is heighten to compensate for my vision. As I walk, I use sound to hear the noise of vehicles approaching. This would definitely affect my quality of life. I listen to the birds and wildlife, as I can not see them as others do. With the noise from the equipment, I would not be able to hear these noises and make those distinctions.

Brad Scott, 80 Liberty Lane, explained my family lives in the house at the end of the cul-de-sac. I want to thank the council members that have reached out to us. What we call this "buffer" is practically non-existent. Sound amplifies off of water. There is not a true comparison between where they are at in Edwardsville and this area. Leaves do fall; and, for six months of the year, there are no leaves. Control of the property: Do we want to lose the control of property downstream from the lake? Look ten years out. If we give this up now, what will that property be developed as and look like? We moved here 20 years ago. That was the gateway we saw as we entered Highland. If this gateway was commercialized, Highland would have been just another town. I am still struggling with how the town would benefit from this development. One house will generate the same revenue over a ten-year period. Does any organization or individual benefit from this development? Just as we do not want this in our backyard, we cannot image there are many individuals that want it as their front door to the community.

Steve & Kathy Genczo, 35 Silver Fox Court. Mr. Genczo stated when we built on the property, three-years ago, it was zoned residential all around it. This is our residence. Our property borders the floodplain that is adjacent to this property. We are restricted, under our homeowners' covenant, from touching that green space. Kathy Genczo expressed this is a little more emotional for me, as I have lived in the area my whole life. I cannot believe I have to come and do this. We saved

all of our life times for this home in the country. We are the only immediate neighbor and we did not receive notification. We go out of our way to save the green space and trees in this area. Would you want a 120-ft. crane out your back window? They actually got the lime truck stuck in there this year when they tried to farm the floodplain and it was noisy; however, I knew the noise was temporary. I don't know why the city is doing this to us. Mr. Genczo added we know that some day the area will develop. We always expected to see houses there. We did not expect to see large equipment.

Mayor Michaelis explained this council is faced almost every meeting with requests by businesses and citizens. That is a person and businesses' right to ask for those changes. The council does not bring the requests up. On behalf of the council, we have not acted on this yet, so please do not lose faith in us.

Ronald Shownez, resides at 2734 Vulliet Road and owns property on Glory Lane, stated I have worked with over 200 municipalities in my career. We chose Highland for several reasons. We picked the area we live at, because it was zoned residential. By changing it from residential, you will ruin the rest of my life. I called the police at SIUE to check if any noise complaints filed against the operation. The response I received was, 'Why? The kids are in school during the day.' The trees will not have leaves on them six months of the years. Why did they bring up the buffer zone if noise is not an issue?

#### Council's Requests and Comments:

City Attorney Long reported, based upon existing ordinances in Seattle, WA and Paducah, KY, I have two different versions of a café ordinance prepared. One governs the sale, possession, and consumption of alcohol in a sidewalk café area and the other would not address liquor. There are details about fencing around the café area, based upon the American's with Disabilities Act (ADA). It is a rather complicated ordinance and I have waited to make any further revisions until I receive guidance from the council. Councilwoman Zobrist expressed, having just received these before the meeting, I would like to review before I comment on it. Attorney Long stated this is not a simple matter. If we are going to do this, there is the possibility of liability for violating ADA. If we allow blocking off sidewalk area, we could be liable under the statue. If we allow the sale of alcohol on the sidewalk, I am somewhat concerned the city could be liable under the dram shop statue. Another possibility is if someone stumbles and hurts themselves, we are liable. It is difficult to address this fairly for all businesses.

Councilwoman Bellm stated after the last meeting, I was not sure that we had approved the idea of a sidewalk café. I am concerned about the length of this ordinance and how we are going to enforce this. I like the idea of outdoor cafés. I like the idea of sitting and watching people go by. I am concerned about how we are going to draft this for fairness across the board. If we cannot make it clear and concise for the police to enforce, then we should not even do this. Where do we draw the line on who can have the cafés and where is alcohol allowed and not? Let's face it, people in Highland like to have a beer. This needs to be handled fair. Yes, I like the idea of outdoor seating, with or without food served. The difficulty I have is with enforcement. If you have a business that has tables out front where people are sitting have food and drinking beers, and next door there are people outside drinking at tables but not eating, then who is going to say that is not right? How do you tell an establishment that is not right? If we are going to allow outside seating, then we should allow with it or without food, as long as they a delineated area and complying with dram shop requirements as established by the city.

Councilwoman Zobrist stated I thought we were going to have the ordinance from Collinsville and/or Edwardsville. I would like to review the drafts and those of Collinsville and Edwardsville prior to making comment. Councilman Rickher expressed my main concern is liability. My concern is not only that we are in Madison County, but that a person is drinking outside. What if that person had an accident after leaving this area? Attorney Long acknowledged those are legitimate concerns. I have not found any specific case law; however, a landlord can be dragged into a lawsuit of this type. When we allow it on the sidewalk, the city could be considered a landlord. However, the City of Chicago does not too concerned, as they do not require the establishment to list the city as an additional insured.

My concern is, if someone becomes intoxicated at a sidewalk café, then drives away and “t-bones” a vehicle with 4-6 people in it, then the city could be brought into the lawsuit. Councilwoman Bellm asked City Attorney Long would you be able to see how Edwardsville and/or Collinsville handle that. Susie Pfister presented a copy of a hold harmless agreement that Edwardsville uses. Attorney Long advised that hold harmless agreements are only as strong as the establishment is solvent. After going through legal fees of a court case and lawsuit, the establishment may no longer be solvent and the city would be left on the hook to pay. Councilwoman Zobrist inquired, without the alcohol, would we not be liable should someone trip over the tables or chairs. Attorney Long responded it does not hold as much risk and the level of liability. We could still require being listed as additional insured. Councilwoman Zobrist pointed out some benches have been sitting outside of stores for as long as I have been around. Fortunately, the benches have been updated for everyone’s safety. Are we saying those will be covered under this? Councilwoman Bellm agreed; I feel we should provide some direction on whether to allow anything out on the street. Councilwoman Zobrist expressed I need a bench out there for when I am walking uptown. Councilwoman Bellm agreed, I like the table and chairs and benches out there. The questions are: Do we want any food out there? Do we want to allow alcohol?

Mayor Michaelis asked for input from Chief Bell. Chief Bell explained the overall problem and issue began with the State of Illinois enacting an indoor smoking ban. That is out of our control. However, it drove smokers outside. From an enforcement standpoint we want it to be fair. As far as alcohol or not, we will enforce it either way. Alcohol does bring more risks in any situation. However, that does not mean it should be shut down. We will enforce whatever ordinance the council enacts. Does it violate any statute if there are someone is smoking next to someone who does not? The issues web out from there. Attorney Long noted, if the sidewalk café ordinance is passed with alcohol allowed, there will be, at some point, people standing and drinking outside the delineate area. People are going to incredulous that the person three-feet away from them are in violation, because they are outside of the fenced in area. Chief Bell stated I’ve faced those issues in Collinsville. I agree with the question of whether someone is just drinking or waiting for their food order. As far as I am concerned, we are not going to go up there, unless we receive other complaints. Councilwoman Bellm ask Attorney Long to draw up an ordinance that allows for a café ordinance, regardless of food, on the city’s right of way, very similar to Edwardsville, as long as it meets ADA requirements, has a fenced in area, adding the city as additional insured, and complying with dram shop liability. Attorney Long explained as a procedural matter, if an establishment is issued a permit, we need to look at who should handle the permitting process and any complaints that arise. I feel the Combined Planning and Zoning Commission may be best to handle that. Councilwoman Zobrist and Councilman Rickher requested to review the ordinances and discuss it at the next meeting.

Councilwoman Zobrist noted that, at the last meeting, there was discussion about Sportsman Road and the speed limit was brought up as an issue. The speed limit for the area is set at 45mph up to Vulliet Road. Police Chief Terry Bell stated, hopefully, the residents have noticed the department has increased patrol and monitoring of traffic in that area. I would recommend reducing the speed at Autumn Crest Subdivision to 35mph, to coincide with the city limit. Another thing we need to look at is pedestrian access, with the park and recreation center nearby. We are waiting for the road construction to be complete before requesting new signage and lowering the speed limit.

#### Staff Reports:

*National Night Out* – Chief Terry Bell reported National Night Out will be held on the Square from 7-9pm, on August 4, 2009, as part of a national effort to bring communities and neighbors together. There will be some refreshments provided. It will be a time for police to meet citizens and citizens to meet one another. Councilwoman Bellm added it is a “going away party” for crime and drugs. Councilwoman Bellm made a motion to approve holding National Night Out on the Square, on August 4, 2009, from 7:00pm – 9:00pm; seconded by Councilman Rickher. Roll Call Vote: Rickher, Bellm and Zobrist voted aye, none nay. Motion carried.

## NEW BUSINESS

Approve Mayor's Appointments to the Tree Commission and the Parks and Recreation Advisory Commission – Councilwoman Bellm made a motion to approve the mayor's re-appointments of Barb Stallard, William Peck, and Jean Korte to Tree Commission and Linda Montayne and Diane Nagel to the Parks and Recreation Advisory Commission for additional three-year terms as attached; seconded by Councilwoman Zobrist. Roll Call Vote: Rickher, Bellm and Zobrist voted aye, none nay. Motion carried.

Bill #09-75/ORDINANCE Amending Zoning Classification of Property—IUOE Training Facility - Councilwoman Bellm made a motion to refer this issue back to the Combined Planning & Zoning Board under Section 90-89 and request Planning and Zoning further review and deliberate on the items listed; seconded by Councilman Rickher. Councilwoman Zobrist expressed there are a lot of issues that come up to the council, which are discussed at length at these Planning & Zoning meetings. If you are unable to attend the meeting, it is difficult to know what was said. I have the unapproved minutes from the last meeting, which I received today. Unfortunately, we do not get those earlier for review. I'd also like to see more about what was said to understand why the members may have voted as they did. City Manager Latham explained hearings happen on the first Wednesday of each month. We could wait for items to come to the council for approval until the minutes have been approved. However, sometimes that would be over thirty days. Supervisor Limestall explained, a lot of times, people do not want to wait for that long of a period of time. City Manager Latham will have staff look into what can be done to get the minutes to the council sooner. It should be able to give them the minutes quicker. Roll Call Vote: Rickher, Bellm and Zobrist voted aye, none nay. Motion carried.

Bill #09-76/ORDINANCE Amending the City's Future Land Use - Councilwoman Bellm made a motion to approve Bill #09-76/Ordinance #2369 amending Future Land Use Map for the Comprehensive Plan of the City of Highland as attached; seconded by Councilwoman Zobrist. Councilwoman Zobrist stated I asked City Manager Latham today, if since we were asking the previous item back to Planning and Zoning, wouldn't it be wise to send this back, as this addresses that property. Attorney Long stated the ordinance stated the council was going to review and approve the map prior to placement into the Comprehensive Plan, that is the reason for this item. Councilwoman Zobrist made a motion to table and refer back to Planning and Zoning; seconded by Councilman Rickher. Roll Call Vote: Rickher, Bellm and Zobrist voted aye, none nay. Item tabled.

Bill #09-77/RESOLUTION Approving Petition for Special Use Permit – Childerson - 714 Pine St. – Councilwoman Bellm made a motion to approve Bill #09-77/Resolution #09-07-1794 approving a petition for Special Use Permit at 714 Pine Street as attached; seconded by Councilman Rickher. Councilwoman Zobrist stated I have some issues with this permit. We are giving the property owner until October 31, 2009 to address outstanding items. I do not believe in giving a Special Use Permit when issues are outstanding. Supervisor Limestall reported staff has been out there. The dirt pile in back is from the sewer replacement. Weather conditions have not permitted this to be leveled out. The ladders and weeds, which were also issues, have been removed. Councilwoman Zobrist inquired all Special Use Permits expire December 31, 2009. Supervisor Limestall responded yes. Mr. Childerson will have to have the request on the agenda in December. Councilwoman Zobrist asked if neighbors will be able to come forward and address issues at that time. Supervisor Limestall replied yes. There was one objection from a neighbor on this item. Roll Call Vote: Rickher and Bellm voted aye, Zobrist voted nay. Mayor Michaelis voted aye. Motion carried.

Bill #09-78/ORDINANCE Granting Special Use Permit – Childerson - 714 Pine Street – Councilwoman Bellm made a motion to approve Bill #09-78/Ordinance #2369 granting Special Use Permit to Kenneth Childerson, for property owned at 714 Pine Street, allowing for a two-family dwelling

in R1D Single Family Zoned District as attached; seconded by Councilman Rickher. Mayor Michaelis inquired how many meters are required in a situation like this. Supervisor Limestall stated the city has had a lot of issues with meters in the past, when everything is under one meter. In particular, should the party responsible for paying the bill default. The city's policy is to have the meters separated. Electric has been separated at this property; the water meter has not. Mayor Michaelis asked it is not required under ordinance. Supervisor Limestall responded it is not. Roll Call Vote: Rickher and Bellm voted aye, Councilwoman Zobrist voted nay. Mayor Michaelis voted aye. Motion carried.

Bill #09-79/RESOLUTION Granting Request for Variance to Land Development Code - Augusta Estates - First Addition for Curb and Gutter and Monolithic Pour – Councilwoman Bellm made a motion to approve Bill #09-79/Resolution #09-07-1795 granting a request for variance to the Land Development Code for Augusta Estates - First Addition, to allow for modified curb and gutter design and monolithic pour for street construction as attached; seconded by Councilwoman Zobrist. Roll Call Vote: Rickher, Bellm and Zobrist voted aye, none nay. Motion carried.

Bill #09-80/RESOLUTION Approving Revised Preliminary Plat – Augusta Estates - First Addition – Councilwoman Bellm made a motion to approve Bill #09-80/Resolution #09-07-1796 approving Revised Preliminary Plat of Augusta Estates - First Addition as attached; seconded by Councilwoman Zobrist. Roll Call Vote: Rickher, Bellm and Zobrist voted aye, none nay. Motion carried.

Bill #09-81/ORDINANCE Directing the Purchase of Real Estate – Hemker Revised – Councilwoman Bellm made a motion to approve Bill #09-81/Ordinance #2370 directing the purchase of real estate from Bernell H. Hemker and Betty J. Hemker as revised and attached; seconded by Councilman Rickher. Roll Call Vote: Rickher, Bellm and Zobrist voted aye, none nay. Motion carried.

Bill #09-82/RESOLUTION Approving Contract with Spectrum Engineering for Services Related to the Fiber-to-the-Premises Project - Councilwoman Bellm made a motion to approve Bill#09-82/Resolution #09-07-1797 approving contracts with Spectrum Engineering for services related to engineering design and construction, grant writing, and business planning related to the Fiber-to-the-Premises project, for a total amount not to exceed \$249,636 as attached; seconded by Councilwoman Zobrist. Roll Call Vote: Rickher, Bellm and Zobrist voted aye, none nay. Motion carried.

Bill #09-83/RESOLUTION Approving Financial Advisory Agreement with WM Financial Strategies Concerning Services for the Issuance and Sale of Revenue Bonds with Respect to the Fiber-to-the-Premises Project - Councilwoman Bellm made a motion to approve Bill #09-83/Resolution #09-07-1798 a Financial Advisory Agreement with WM Financial Strategies, in the amount of \$10,000, for services related to issuance and sale of revenue bonds with respect to the Fiber-to-the-Premises project as attached; seconded by Councilwoman Zobrist. Roll Call Vote: Rickher, Bellm and Zobrist voted aye, none nay. Motion carried.

Approve Notice of Municipal Letting Bid #PW-07-09 WRF Clarifier Repairs – Councilwoman Bellm made a motion to approve Notice of Municipal Letting (NOML) Bid# PW-07-09 Water Reclamation Facility Clarifier Repairs as attached; seconded by Councilwoman Zobrist. Roll Call Vote: Rickher, Bellm and Zobrist voted aye, none nay. Motion carried.

Approve Change Order No. 1 for PW-09-07 Falcon and Quail Connections - Councilwoman Bellm made a motion to approve Change Order No. 1 for PW-09-07 Falcon and Quail Connections project in the amount of \$590.35 to Korte and Luitjohan Contractors, Inc. as attached; seconded by Councilwoman Zobrist. Mayor Michaelis asked what exactly does this entail. Public Works Director Joe Gillespie explained field measurements are matched to awarded quantities. There are some items associated to the job they completed and some they did not. The Change Order balances out those costs. Roll Call Vote: Bellm and Zobrist voted aye, none nay. Councilman Rickher abstained. Mayor Michaelis voted aye. Motion carried.

Approve Change Order No. 1 for PW-04-09 Renovation of Streets & Alleys Facility – Councilwoman Bellm made a motion to approve Change Order No. 1 for PW-04-09 Renovations of Streets & Alleys Facility in the amount of \$805.50 to Korte and Luitjohan Contractors, Inc. as attached; seconded by Councilman Rickher. Roll Call Vote: Bellm and Zobrist voted aye, none nay. Councilman Rickher abstained. Mayor Michaelis voted aye. Motion carried.

Approve Purchase and Installation of Pool Drains to Bring KRC into Compliance with the Virginia Graeme Baker Pool and Spa Safety Act - Councilwoman Bellm made a motion to approve the purchase and installation of pool drains, in the amount of \$16,795.00 to Westport Pools as attached, to bring Korte Recreation Center into compliance with the Virginia Graeme Baker Pool and Spa Safety Act; seconded by Councilwoman Zobrist. Roll Call Vote: Rickher, Bellm and Zobrist voted aye, none nay. Motion carried.

## **REPORTS**

Approve Warrant #776 – Councilwoman Bellm made a motion to approve Warrant #776 as attached; seconded by Councilwoman Zobrist. Roll Call Vote: Rickher, Bellm and Zobrist voted aye, none nay. Motion carried.

Councilwoman Bellm made a motion to temporarily adjourn this Regular Session to conduct an Executive Session under the Illinois Open Meetings Act under Section 2(c)(21) for discussion of executive session minutes and 2(c)(5) to discuss property acquisition; seconded by Councilwoman Zobrist. Roll Call Vote: Rickher, Bellm and Zobrist voted aye, none nay. Motion carried. 8:23pm.

Mayor Michaelis reconvened the Regular Session at 9:00pm. Council members Rickher, Bellm and Zobrist were present. Councilman Bardill was absent. Others in attendance were City Manager Latham, City Attorney Long, Director Gillespie, Deputy City Clerk Hediger and City Clerk Bellm.

Mayor Michaelis announced there would be no action taken this evening on anything discussed in Executive Session tonight.

Councilwoman Bellm made a motion to adjourn; seconded by Councilwoman Zobrist. All council members voted aye, none nay. Motion carried. Meeting adjourned at 9:00pm.

Joseph Michaelis, Mayor

Barbara Bellm, City Clerk