

**MINUTES OF SPECIAL SESSION
HIGHLAND CITY COUNCIL
THURSDAY, MAY 30, 2013**

Mayor Michaelis called the Regular Session to order at 7:00pm. Council members Schwarz, Frey, Bellm and Nicolaides were present. Others in attendance were City Manager Mark Latham, City Attorney John Long; Directors Gillespie and Schoeck; Officer Conrad, Supervisors Russ Parker and Bill Zimmer, Deputy City Clerk Hediger, City Clerk Bellm; John Schaberg, of Roberts Perryman, Attorneys & Counselors, P.C. and Stephanie Christensen, Sr. P&C Adjuster, with Insurance Program Managers Group (IPMG); 21 citizens, and one member of the news media.

PRESENTATIONS

Director of Public Works, Joe Gillespie explained how sewer backup calls are handled. There are two ways to notify the city: During regular business hours, you can call the city office. After hours, people can call the police department; they will dispatch staff to that location. Our staff will check connection points, both up- and down-stream. If there is no flow or limited flow in the line, due to a blockage, they will jet-vac the line to clear the main. If the flow is there, from the beginning, they may still jet the line. Often cameras are put into the line to check the line. City crews may work with the homeowner to determine the cause of the backup. At each backup, staff will hand to the resident a letter explaining the city's policy and insurance claim procedure.

Mayor Michaelis noted Lisa Schoeck, Director of Personnel, files of all the insurance claims for the city and she will explain how claims are handled. Director Schoeck explained after each backup, Water & Sewer employees create a report, which includes the resident's name, address of the incident, what the situation was, actions taken, and the crews' findings. If the homeowner wishes to file a claim, they submit their information, including their homeowner's insurance information. On April 13, we knew there was going to be multiple claims, so I took basic information over the phone. Once the resident states they want to file a claim, we go online to file a report with our carrier. Within 24-48 hours, an adjuster is assigned to the claim. If the insurance adjuster needs additional information, we put them in contact with Director Joe Gillespie or Supervisor Russ Parker. It is the insurance carrier's responsibility to investigate and make a determination on the claims.

Stephanie Christensen, with IPMG Claims Management Services, explained once we receive the claim an adjuster is assigned. We investigate the claim, often sending an adjuster to view the property and damages. All properties, filing claims for April 13, have been visited.

Police Officer Chris Conrad notified everyone there was severe weather in the area and requested that every move to designated areas of the building for safety. Councilwoman Bellm made a motion to recess; seconded by Councilman Frey. All council members voted aye, none nay. Motion carried and meeting recessed at 7:08pm.

Mayor Michaelis reconvened the meeting at 7:25pm. Council members Schwarz, Frey, Bellm and Nicolaides were present. Others in attendance were City Manager Mark Latham, City Attorney

John Long; Directors Gillespie and Schoeck; Officer Conrad, Supervisors Russ Parker and Bill Zimmer, Deputy City Clerk Hediger, City Clerk Bellm; John Schaberg, of Roberts Perryman, and Stephanie Christensen, IPMG; 20citizens, and one member of the news media.

PRESENTATIONS - Continued

Ms. Christensen continued by stating we investigate any and all claims, and apply all applicable legal statutes and laws. Every claim is different. Disposition is based upon facts and evidences.

John Schaberg, Attorney with Roberts Perryman, stated we have been working with IPMG Claims Processing, which does claims processing for a variety of municipalities and organizations within Illinois. He stated, I do not represent anyone, work for the insurance company, or for IPMG. I am here to explain insurance, tort immunity, and the city's responsibility. I do not know anything about any of the claims. This (council) is obviously a city body sitting here; they deal with politics. I do not do politics. I am here simply to explain the laws.

As a homeowner, you have property insurance and the insurance company is obligated to pay you for the claims should you sustain a loss, based upon your coverage and terms stated in your policy. That is called "first-party insurance", because you have a contract with the insurance company. What we are dealing with here and the incidents, is third-party insurance. A lot of you have third-party insurance. Most of you will have on your insurance policy a type of coverage in case someone is injured on your property. If negligence is involved, they will pay for legal representation. For example: here comes the UPS guy, walking down the sidewalk and falls. If you had a roller skate or something on the sidewalk or had a hole, your insurance company would have to pay the claim. If the UPS guy is running down the sidewalk, wearing sunglasses at 7:30 at night, talking on a cell phone with packages in the other hand, then your insurance will not – and should not – be paying the claim. What IPMG does is manage third-party insurance for the city. IPMG does not manage for the city, it manages funds in a trust fund supported by premiums paid in by townships, counties and various municipalities. Each year, the losses are assessed and that is what determines premiums for all participates for the next year. The city does not owe claims unless negligent, so IPMG works in the same way that your insurance company would work for you in a third-party case.

Talking about sewers, there is sanitary and rain sewer. Everything is underground, so it becomes hard to think about and consider how it works. You have to find out the nature of incidents. What caused the backup? Was there blockage or something slowing down the flow? What are the visible damages? Where is the backup occurring? What does it smell like or look like? We need to know chronology of events, including weather conditions, when backups occurred, when there was notification, and what the response by city staff was. The basic goal is to eliminate the guesswork, so you are not paying for additional claims. If you do not think you are at fault for the claim, then you do not want your insurance to pay.

Municipalities have a responsibility to design, build and operate with reasonable care. Is it reasonable to have a system that handles up to a 500-year event? Is it more reasonable to pay to build a 100-year event system, or, as IDOT does, build a ten-year storm system? Does the city have periodic inspection? Do they respond immediately to claims or notifications of issues? Illinois has a whole series of statues that provides immunity for municipalities and governing public bodies. There are always resources that have to be allocated to various projects. The city is immune for discretionary decisions. If the city had built a system for a five-year event, 100 years ago, then today, the city cannot be held liable for that. Unless they have actual notice of a condition that caused a backup or overflow and did not act upon it prior to prevent this event, then they are not liable.

There is also the issue with what insurance will pay. People think, 'I had a damaged basement and it is going to cost me \$30,000 to restore it.' However, what you get is actual damages or cost of

replacement. The ten-year old couch is only worth \$20 under a claim. If the claim is denied and it goes to court, both sides pay legal and court fees, so no one wins, except for us attorneys.

PUBLIC FORUM

At 7:42pm, Mayor Michaelis stated people may ask questions of anyone of the speakers or make comment at this time.

Jay Kuhner, 917 Cedar Street, reported he had water come in through the basement window. I had 9-feet of water in my basement. My neighbor's culvert was clogged and the water was overflowing the alley. The alley was redone last summer. In the process of doing the alley was completely scraped down and repaved, the culvert got blocked, and a new riser was put in; however, it was sitting up higher, so water would not drain towards it. Mayor Michaelis asked Mr. Kuhner if he had spoke with anyone at the city about this. Mr. Kuhner stated his wife called up to City Hall, but he did not know whom she spoke with. She also spoke with the crew doing the work on the alley. I spoke with someone the week after the storm. When I called the Street and Alley Department, right away, they knew where I was at and stated they know they need to get out there and get it taken care of. I explained to the insurance company that I have no drains in the basement; it was not a backup from any drain. Ms. Christensen, with IPMG, came forward and stated I actual spoke with you. I emailed Lisa for additional information and provided the notes to the adjuster. Ms. Christensen stated she would follow up on the status of the claim with the adjuster tomorrow.

Julia Lackey, 1900 Main Street, reported we had our first backup in 2007. As new homeowners, we did not know any better. My father, John Schmitt, talked to city staff and we assumed it was just creek water. At that time, we had no flood insurance. In 2010, it happened again, when the vented manhole by the creek did not drain. Our insurance told us it was sewer back up. We asked that the city replace the vented cover with a solid cover. We were appalled to learn that we had a vented cover at such a low-lying spot. We were told it was put on, because Mr. Amman was complaining of a sewer smell in his home, and this alleviated the issue. I will point out that for years we could not sit outside our home, because of the sewer smell. After changing the cover, they did not do further investigation of why there was a sewer line and manhole running along a creek, or the condition of the line. Manhole covers will not keep water out if water is going over the top of it. The only thing the solid cover solved was the nauseating smell. We tried to stay positive that the new manhole would keep sewer and water out of basement. However, it did not. As soon as the creek water went over the manhole, the water came in again. When city staff arrived this last time, they told us there was nothing they could do and offered, 'At least the manhole was not vented or it would have been worst.' We have had too many backups. Lisa did not report the claim as it was told. The insurance company had no record of any pass claims at this property. It appears they were trying to cover up an issue. Mark and Joe have come to our property and discussed raising the manhole. In all reality, we should be asking for damages times three. We were also told there was an investigation of our line; however, there has been no I&I investigation of our line. It seems there was this blanket statement sent out. I am asking for the city to pay me back for lost property. This is not an "act of God" when it is occurring every three years. We pay \$1100 for flood insurance, because we live in a floodplain; yet, it has never been a flood issue. We feel it is related to the manhole. This needs to be addressed immediately and properly.

Director Gillespie reported he and City Manager Latham did meet with Ian Lackey. He did not know if the manhole had been raised, yet. Mrs. Lackey stated nothing has been done. Director Gillespie stated it is on the list of things to do. I don't know that I can say this is going to solve the problem. Mrs. Lackey reported, as soon as the creek water comes over the manhole, the water comes into our home. The sewer runs out to the front of the property, so I do not know what can be done. City Manager Latham added, they are at the bottom of Main Street. The creek runs on one side of the home and there is drainage on the other side of the home. If raising the manhole is going to be good

for another ten years, I do not know. Director Gillespie reported there are a multitude of manholes that run along that main. Often there are clean-outs and gutters tied into the sanitary system, as well as other vented manholes, which contribute to I&I in situations like this. Mrs. Lackey expressed it frustrates me that every time the water comes over the manhole, we have water coming into our home. To find out the insurance denied our claims when there has been prior issues, frustrates me. Why was this was not in the file, when this was the third time it has happened? Director Schoeck stated I did not recall exactly what was submitted for each claim. I would have to go back in and look at that information. I was doing the claims on line; there is very small notes box. After we got the first dozen claims, the carrier called and asked us to stop doing them through the online system. They asked that we put everything in more details as an email to the carrier. I would have to go back and look at the emails or online claim. If I have a past file, I make note of that. Mrs. Lackey stated I was very clear on the phone that this was not the first incident; however, the insurance company stated they had no record of prior incidents.

Anthony Moore stated we did not have any sewer backups; however, we have had water in our basement. Is the city under the 2006 National Building Code? Mr. Moore requested the amendments showing the building codes that the city uses. City Attorney Long stated he was unsure at what standard the codes are. Building and Code Supervisor Kevin Limestall takes care of that; he is not here tonight. He asked if there was a particular section that Mr. Moore was interested in seeing. Mr. Moore requested "Group R – Residential", Section 600, dealing with drainage, is the section he is most interested in seeing. City Attorney Long recommended Mr. Moore contact Supervisor Limestall and schedule some time for review of the codes and amendments with him. Mr. Moore noted that the building codes require a certain level of certifications and education for engineers and those overseeing code. Is it possible to get a list of those individuals and the degrees and certifications? City Attorney Long advised Mr. Moore that he could make a FOIA (Freedom of Information Act) request for some of that information. Mr. Moore stated this person back here states he is not knowledgeable of conversations with us, too; however, we use emails to document our communications with the city.

Danielle Moore explained, we live in the Prairie Trails Subdivision. We were one of the first homes in the subdivision constructed and we are lowest lot, because everyone seems to build higher than the next. We have about six other yards that drain into our backyard. In September, I was in the basement with our kids, sheltering from a storm, when the basement window well flooded and pushed the window in. We cannot go into our basement anymore, during a storm, for fear of drowning. City Attorney Long inquired, Joe Brown consulted for you? Mrs. Moore stated we no longer have him on retainer, because we did not feel comfortable with the decision. Attorney Long recalled the plan shows two swales in the area of both sides of their lot. Mrs. Moore stated why would I have to give up my yard. We are not sure it would resolve the problem. This is a community problem. Multiple neighbors have pulled out of the sump line. Our neighbors realized the sump pump lines are not working because contractors crushed the lines when building other homes. Attorney Long stated sump pump lines do not involve the city's lines and what the city has done. Mrs. Moore asked is it not the city's job to maintain those lines. Attorney Long stated not unless the city accepted them. I believe this is something between the homeowner and the developer. He will check the records and get back to Mrs. Moore. Attorney Long pointed out the city is not responsible for every drainage issue. Mrs. Moore stated we have flooded twice in the last six months. If it is the developer's issue, then I need something in writing so that I can go to the developer with that. Mrs. Moore reported I asked Joe to specifically meet with our engineer, to tell us if this would resolve our problems, but he has not done that. Attorney Long stated I spoke with Joe Brown about this. Mrs. Moore contended we decided we did not like the idea of putting in swales on our property. Attorney Long pointed out the city offered to help you and you decided not to take our suggestions. This meeting tonight is to address other issues. Mrs. Moore provided City Attorney Long with her contact information.

Kathy Becker, 1501 8th Street, stated she has seen a lot of issues with flooding in Highland. I had two feet of water, toilet paper and BM floating in our basement. If it was an "act of God", why were only a small percentage of us affected? We do not have the money to replace everything. We

lost our furnace, washer and dryer. The sewer system is inadequate. Why are we waiting to do something? City Manager Latham responded, in the older section of town, most lines are clay tile lines, which deteriorates and allows for infiltration over time. There are people that have put their drain spots directly into the sewer drain lines, which increase the flow during a rain event. Mrs. Becker responded mine do not; mine drain right out into the yard. City Manager Latham reported we do have a comprehensive sewer plan put together. We will be bringing the plan to the council for approval this next month. We were looking at doing it over a fifteen-year period to allow for payment through the system and in-house resources. Mrs. Becker expressed the sewer should be the city's number one priority, rather than spending money on roundabouts and whatever. We do not need the other things. We do not have money to replace everything. I don't know how we are going to have a furnace by the time winter comes around.

Andy Becker came forward. He added when I stepped into my basement it was over my boots. We pumped from 1:00pm to 4:00am to keep the water down. There was water coming in from the drain. It was sewage – BM - not rainwater. Mrs. Becker noted we had all kinds of construction materials down there to fix out the basement that we had to throw out. Mr. Becker reported when the insurance adjuster came she took about three pictures, but she did not want to see the list of things we lost or the pictures that we had taken. Mrs. Becker reported we have a three-car parking spot area that we filled with personal property that we had to throw out because it was covered with feces. That is unsanitary. It is a health issue. If you already know you are not going to pay, then why bother investigating the claims. Mr. Becker expressed when it comes in from above or through the walls, it may be an “act of God”; it is not an “act of God” when it comes up through the sewer.

Michael Kinsman, 1316 Laurel Street, stated all I have to say is the employees have been professional and courteous. They have been helpful. When they were there for a previous issue, they pointed out that the sewer company that put in a new line used “shoddy” materials. The company came back and agreed to do it correctly, while they were there I was going to pay extra to have a backflow valve installed, which did not get done yet. I think the city employees do an outstanding job. The fact remains that I did have water in the basement. I lost the rugs and some of the furniture, when it flooded my basement. What I am hearing is there is no liability; we are up a creek without a paddle, and it is on us. I am not happy about that.

Pam Kernan, 618 Pine Street, reported she had the same issue with sewage coming out of our drains and toilets. Do we each have to come up and state the same thing? Why did it only happen to a few of us? My neighbors did not have any issues. I felt that if I did not come up here to state something then we would be disregarded and nothing would get done to address this. I spoke with an attorney. The City of Highland is in violation to have rainwater and sewage going in the same spot.

Kris and Bill Dempsey, 1518 Washington Street, came forward. Mr. Dempsey stated they have addressed the council before. Since we were here last time, it seems we have found that for every one person here, there are several that do not come to complain. I agree the city workers are great. Joe has spoken, others have spoken, and insurance company was here. The attorney stated, it was bad for you, but I get work out of it. IPMG, the city and attorneys are getting work out of this. When Julie can see water running into their home – they can see what is coming. What we are dealing with is the mystery of what is underground. What we each keeping hearing is the question, ‘Who did you speak with?’ Do we need to come to each council meeting to document things? Here are things we keep hearing that we don't need to hear: ‘You live in an older area of town.’ Yes, we do, but we have a newer home. ‘If you have a sump pump, it would solve the problem.’ Stop saying that, because it is coming out of my drain. The other thing is, ‘You are the only one.’ Every community hides behind lawyers. I do not want this in this community. That is why I chose Highland to live in. If a home is effected every two to three years, figure out what their problems are and address them. I think we live in better community than to hide behind lawyers and statues. Mrs. Dempsey noted we had a claim in 2008; however, it too was not in the insurance company's records. Mr. Dempsey stated that is just

denial. Mayor Michaelis explained the reason I ask who people talk to, is I will follow up with that person as to what they did or did not do.

Mr. Dempsey expressed it is not that the system is inadequate. If you look at what the system takes in on a normal day and compare it to the increased level of water during a rain, then there is a lot of infiltration into the system. That is what has to be investigated.

Deb McGrath, 1901 Cypress St., stated she just lives down the street, in a house built in 1924. I did not have water in my house. My mom, Mary Jacober, lives at 901 Cedar Street; that is why I am here. My dad did a study on the sewer line there, crawling down into the storm sewer years ago. There are some problems hanging out there. I did not know about the tort immunity, and that the city must be aware of the issues prior to an incident. I know there have been four backups at the home in my lifetime. My mom lost a lot of stuff this last time. Some of it was some of the papers on the study my dad did on the sewer. She asked that the city look at the areas where the claims were and address those areas. She added we have always had courteous city employees.

Councilwoman Bellm inquired why these individuals' homeowners insurance does not cover it, if they city's does not. Mr. Schaberg stated he does not know a lot about personal homeowner insurance policies. You have to be very specific about the type of coverage that you want. Often the insurance company will look for another insurance or party to be responsible so they do not have to pay. It depends on the policy. Councilwoman Bellm stated I put sewer backup specifically on my homeowner's policy as a rider, for such incidents if the city is not negligent and if it is not something that we could have prevented. She asked Director Schoeck for some explanation on how that works. Director Schoeck explained you have to have the sewer backup rider; however, it is only for a specific amount. Some people I spoke with have flood insurance, but not the sewer rider. Typically, the sewer rider is for a specific amount, such as, \$5,000, or \$10,000; however, their clean up costs and losses were more.

Mrs. Dempsey stated she spoke with her insurance agent, Willis Insurance. You can tell them how much you want to carry; however, with two claims, our rates are going up and we are concerned about being dropped. Julia Lackey reported their insurance is through Allstate, and their maximum coverage is \$10,000. Our damages were \$30,000. Our neighbor tried to get the sewer backup rider; however, they have had a backup, so it is a prior existing condition. We have flood, because we live in a floodplain; however, this was sewer. Mr. Kinsman stated I have the rider; however, there is this thing called depreciation. This is my second claim. I am concerned about my insurance rates.

Mayor Michaelis stated this council meeting was scheduled by the council for you. Mr. Torbit will tell you that I owe him a substantial amount of money for carpet that I had to replace, as well. Mayor Michaelis thanked everyone for the comments, so that we can learn from you. City Manager Latham reported we will be presenting the sewer improvement plan to the council in the next thirty days and look at bonding to pay for the plan. All it is going to take is for one of the main sewer lines to collapse and we are going to have a lot more people here. Citizens in attendance asked when that meeting would take place, so that they could attend. At the mayor's request, Director Schoeck will send out a notice to all those that received a notice about this meeting. Councilwoman Bellm explained, that at the meeting, staff will present to us the plan and how funding for the project will be provided.

Councilwoman Bellm made a motion to adjourn; seconded by Councilman Schwarz. All council members voted aye, none nay. Motion carried and meeting adjourned at 8:52pm.

Joseph Michaelis, Mayor

Barbara Bellm, City Clerk