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MINUTES OF THE PROCEEDINGS
OF THE BURLINGTON, IOWA CITY COUNCIL

Meeting No. 21
November 3, 2008

The Burlington City Council met in regular session at 7:00 p.m. in the Thomas J. Smith Council Chambers, City Hall with Mayor Ell, Council Members Davidson, Murray, Scott and Thomas present.

BURLINGTON CITY COUNCIL

CONSENT AGENDA: To the Public:

All matters listed under Item I., Consent Agenda, having been discussed were considered to be routine by the City Council and were enacted by one motion. There was no separate discussion of these items. If discussion was desired, that item was removed from the Consent Agenda and was considered separately.

Introduced By: Murray Seconded By: Davidson

MOTION: To approve all items listed under Item I., Consent Agenda.

DISCUSSION: Leon Shahan of 1821 Mt. Pleasant Street requested the removal of the

Resolution of the City of Burlington, Iowa Authorizing the City Council to Execute Applications and Agreements Related to State Programs to Assist Federal Mogul Ignition Company in the Modernization of Their Burlington, Iowa Plant from

the consent agenda for discussion at the close of the meeting. Council Member Scott requested the removal of the Resolution Approving a Grant Application to the Iowa Finance Authority for Residential Redevelopment at 511 Jefferson Street

in Downtown Burlington from the consent agenda for discussion at the close of the meeting. All present had opportunity to speak and nothing additional was filed in the office of the City Clerk.

(VOTES: 5 - AYES)

CARRIED

HEARINGS:

1. Statement: Consideration of an Amendment to Ordinance No. 3220, an Ordinance Creating the Sunrise West Planned Unit Development Overlay District, by Making Changes to Section 4. Land Use Requirements and Section 11. Pedestrian Sidewalks

COMMENTS: The City Manager stated that the proposed Amendment to Ordinance No. 3220, an Ordinance Creating the Sunrise West Planned Unit Development Overlay District, by Making Changes to Section 4. Land Use Requirements and Section 11. Pedestrian Sidewalks would allow for the construction of religious institution uses. He stated that the developer has requested Council to waive sidewalks to only one side of the street. He stated that the Plan Commission voted 4-0 to recommend denial of an amendment to Section 11. Pedestrian Sidewalks to required sidewalks on only one side of the street. The Development Director presented an aerial view of Sunrise West PUD Overlay District to the Council and the viewing

audience. He stated that the Plan Commission feels it is in the best interest of the City to require sidewalks on both sides of the street. Noble Boyd of 2913 Lawn Avenue stated that when the PUD was created they had agreed to place sidewalks on both sides of the street. He presented to Council which areas they

were willing to have sidewalks constructed. He further questioned the City Council if they could use Tax Increment Financing (TIF) for the area. The City Manager stated that since the project has already been started it would be too late under State Code to allow TIF. Council Member Scott suggested that possibly a park could be added so that they could make the area a TIF district.

John Fenton of 1332 Griswold Street suggested a bridge with railing be built over the retention pond. Council Member Scott stated that the terrain was steep

and the sidewalk would be constructed beside the retention pond. All present had opportunity to speak and nothing additional was filed in the office of the City Clerk.

Introduced By: Murray Seconded By: Thomas
Motion to Close

CARRIED

Introduced By: Scott Seconded By: Thomas
Motion to Amend Section 11. Pedestrian Sidewalks of the Proposed Ordinance

DISCUSSION: Council Member Scott made a motion that sidewalks required to be constructed in Lot 2 of Sunrise West Subdivision shall be constructed within 5 years from the date of adoption of this ordinance, except those sidewalks along the south side of Gilbert Street, the west side of Erickson Lane, and the east side of Messiah Drive shall be required to be constructed within 10 years from the date of the adoption of the original ordinance. Council Member Thomas seconded the motion. Upon roll call vote the motion to amend the Ordinance was approved. All present had opportunity to speak and nothing additional was filed

in the office of the City Clerk.

(VOTE: 5 - AYES)

CARRIED

Introduced By: Murray Seconded By: Davidson
Motion for Preliminary Adoption of the First Reading of an Amendment to Ordinance No. 3220, an Ordinance Creating the Sunrise West Planned Unit Development Overlay District, by Making Changes to Section 4. Land Use Requirements and Section 11. Pedestrian Sidewalks

DISCUSSION: None.

(VOTE: 5 - AYES)

CARRIED

2. Statement: Consideration of Sale of a Portion of 7th Street Right-of-Way, between Washington Street and Columbia Street, City of Burlington, Des Moines County, Iowa

COMMENTS: The City Manager stated that the proposed Resolution provides for the sale of a portion of 7th Street right-of-way, between Washington Street and Columbia Street to the Art Guild of Burlington, Inc. He stated that the area was currently being used as a wooden handicapped ramp. He stated that staff recommends the sale of the property. The Development Director reviewed the conditions of the sale to the Council and the viewing audience. Council Member Thomas questioned the sale price of the property. The Development Director stated that the Art Guild of Burlington, Inc. offered the City \$200.00 for the property. All present had opportunity to speak and nothing additional was filed

in the office of the City Clerk.

Introduced By: Davidson Seconded By: Murray
Motion to Close

CARRIED

Introduced By: Davidson Seconded By: Thomas
Resolution Approving Sale of a Portion of 7th Street Right-of-Way, between
Washington Street and Columbia Street, City of Burlington, Des Moines County, Iowa

DISCUSSION: None.
(VOTE: 5 - AYES)

ADOPTED

ORDINANCE:

Introduced By: Ell Seconded By: Scott
1. Motion for Preliminary Adoption of the Second Reading of an Ordinance
Amending Section 34.04 Powers and Duties of Chapter 34 Human Rights Commission

DISCUSSION: The City Manager stated that the City's legal counsel has given an

opinion on the proposed Ordinance Amending Section 34.04 Powers and Duties of Chapter 34 Human Rights Commission. It stated that the proposed amendment to Section 34.04 was the proper and appropriate way to change the existing Human Rights Commission Ordinance to comply with State law, both now and in the future. The opinion also stated that because the City refers all complaints to the State of Iowa, it does not take any action for which it can be held liable.

He further stated that Section 380.10.3 of the State Code explains that if you have an Ordinance it is automatically amended through State legislation. Kurt Machholz urged the City Council not to adopt the proposed Ordinance, as he was concerned with law suits. Brad Cranston of 501 South Garfield Avenue stated that if this was such a moot issue then the Council should not have wasted people's time. Pastor Morris Hurd of the West Hill United Methodist Church and

Charles Stevens of 1529 Grove Street stated that Christians needed protection as

well. Pastor John Herring of 125 Cottonwood Court stated that he took offense to the word "all" as it was too generic and felt it was an insult to him to remove the word "race" from the list of protected classes. Leon Shahan of 1821

Mt. Pleasant Street stated that he was equally opposed to the word "all" due to

his Jewish heritage. Jim Ritters of 209 Curran Street urged the Council to amend the Ordinance and go back to the original request. Corey Cox of 611 Denmark Street, Kathleen Harris of 1820 Highland Avenue and Richard Johnson of 1800 North 3rd Street, Apt. 2 all were in favor of listing the protected classes

and the separation of church and State. Council Member Scott stated that he would oppose the amendment due to the word "all" as he still felt concern for

the liability issue. Mayor Ell stated that he was starting to have a problem with the word "all" and that he would also be voting against the proposed Ordinance. Council Member Davidson stated that he did not have a problem with the word "all" and would support the proposed Ordinance as previously amended.

All present had opportunity to speak and nothing additional was filed in the office of the City Clerk.

(VOTE: 1 - AYE DAVIDSON
4 - NAYS SCOTT, THOMAS, ELL AND MURRAY)

FAILED

RESOLUTIONS:

Introduced By: Scott

Seconded By: Thomas

1. Resolution Requesting Establishment of a 5-Mile Per Hour Speed Zone Adjacent to the North Boat Docks and Adjacent to the Southern Most Boat Ramps

DISCUSSION: The City Manager stated that the proposed Resolution establishes a 5-mile per hour speed zone adjacent to the north boat docks and adjacent to the southern most boat ramps at the request of the Department of Natural Resources (DNR). He stated that in February 2008 the City had approved a Resolution providing for a no wake zone for the same area. He stated that the DNR will now

enforce the Ordinance, although the Police can still enforce it also. All present had opportunity to speak and nothing additional was filed in the office of the City Clerk.

(VOTE: 5 - â AYESâ)

ADOPTED

Introduced By: Thomas Seconded By: Scott

2. Resolution Approving a Supplemental Agreement Between the City of Burlington and SRF Consulting Group, Inc. for Additional Engineering Services for the Design and Implementation of a Railroad Quiet Zone Through Downtown Burlington

DISCUSSION: The City Manager stated that the proposed Resolution approves a supplemental agreement between the City of Burlington and SRF Consulting Group, Inc. for additional engineering services for the design and implementation of a railroad quiet zone through downtown Burlington. He stated that on January 22, 2008 the City Council approved an engineering services agreement with SRF Consulting Group, Inc. for the design and implementation of a railroad quiet zone through downtown Burlington. He stated that because of an additional \$88,000.00 of funding provided by BNSF and the Iowa DOT, the City is now able to

include safety improvements in phase I of project construction at the three crossings that were not going to be addressed until phase II in 2010. All present had opportunity to speak and nothing additional was filed in the office of the City Clerk.

(VOTE: 5 - â AYESâ)

ADOPTED

Introduced By: Thomas Seconded By: Scott

3. Resolution Approving First Amendment to the Amended and Restated Agreement Relating to the Community Aquatic Center

DISCUSSION: The City Manager reviewed with the City Council and the viewing audience the history of the community aquatic center at Fun City. He stated that under an agreement with Randy Winegard the City Council had until November 15, 2008 to take back their \$1,800,000.00 that they had invested in the aquatic center. He stated that Randy Winegard has offered another year extension to the

agreement which would extend it to November 15, 2009. Gary Hoyer, CEO of Great River Entertainment, presented a power point presentation which reviewed the following: history (the options that were available); pros of partnership; financials; trends; attendance; impact; tourism and the extension deadline of the \$1,800,000.00. Rod Kellogg of 722 South Garfield Avenue stated that even if

the water park doesn't make any money, it is still nice to have a water park.

He urged Council to stay with it indefinitely. Mary Baker stated that she was never against the aquatic center and felt it was a nice place for children and teens to go to. She urged the Council to vote favorably in extending it for another year. Leon Shahan of 1821 Mt. Pleasant Street stated that he was opposed to the project from the beginning and stated that government should not be an investment banker. Dennis Hinkle of 610 North 4th Street stated that it was an outstanding example of public-private partnership and urged Council to vote in favor of the extension. John Fenton of 1332 Griswold Street stated that

the City Council should eliminate the debt they have for the water park. Mike Campbell of 834 South Leebrick Street stated that the City was only receiving 2.7% total return on their money and they were not seeing the full benefit of the hotel/motel tax. Council Member Thomas, Council Member Scott, Council Member Murray and Mayor Ell felt it was still a good deal for the City of Burlington and that they should extend the agreement for one more year. Council

Member Davidson stated that it was his philosophy that private enterprise should

be running the water park and they should be receiving all the profits and taking all the risks. Randy Winegard stated that the City ended up spending \$1,800,000.00 verses \$5,000,000.00 it could have spent for a water park. He stated that due to the water park the City has received an increase in hotel/motel tax monies. He commended the past and current Councils for their leadership and felt all risks even Flint Hills Manor will pay off in time.

(VOTE: 4 - AYES SCOTT, THOMAS, ELL AND MURRAY

1 - NAY DAVIDSON)

ADOPTED

Introduced By: Scott

Seconded By: Thomas

4. Resolution of the City of Burlington, Iowa Authorizing the City Council to Execute Applications and Agreements Related to State Programs to Assist Federal Mogul Ignition Company in the Modernization of Their Burlington, Iowa Plant

DISCUSSION: The City Manager stated that the City Council had originally approved an application for Federal Mogul Ignition Company for tax credit withholding and a CEBA grant with a local match. He stated Federal Mogul has dropped the CEBA grant and will keep the targeted jobs withholding tax credit program agreement. Leon Shahan of 1821 Mt. Pleasant Street stated Federal Mogul

supplies spark plugs to Chrysler and questioned what was the City's risk. Mayor

Ell stated that Federal Mogul had told the City that their contracts were good for ten years and they have guaranteed the City that they will repay the \$2,100,000.00 with tax withholding monies. Mary Baker of 320 South 6th Street

stated that she felt that Federal Mogul will do what they say they will do in repaying the monies. All present had opportunity to speak and nothing additional was filed in the office of the City Clerk.

(VOTE: 5 - â AYESâ)

ADOPTED

Introduced By: Scott

Seconded By: Thomas

5. Resolution Approving a Grant Application to the Iowa Finance Authority for Residential Redevelopment at 511 Jefferson Street in Downtown Burlington

DISCUSSION: The City Manager stated that the proposed Resolution provides for the approval of a grant application to the Iowa Finance Authority for residential redevelopment at 511 Jefferson Street. He stated that the grantee has requested that the City Council amend the Resolution to provide that the grant application amount be changed from \$40,000.00 to \$50,000.00 due to higher construction cost. All present had opportunity to speak and nothing additional was filed in the office of the City Clerk.

(VOTE: 5 - â AYESâ)

ADOPTED

Introduced By: Scott

Seconded By: Davidson

6. Motion to Amend the Resolution Approving a Grant Application to the Iowa Finance Authority for Residential Redevelopment at 511 Jefferson Street in Downtown Burlington from \$40,000.00 to \$50,000.00

DISCUSSION: None.

(VOTE: 5 - â AYESâ)

CARRIED

COMMENTS FROM AUDIENCE: Brad Cranston of 501 South Garfield Avenue stated that he had taken offense to Council Member Murray's comments at the October 20, 2008

City Council meeting which were historically inaccurate. He stated that Council

Member Murray has not publicly apologized to him. Council Member Murray stated that he did apologize to the Baptist Churches. He stated that his heart was sincere and he sincerely apologized to Brad Cranston and any others that he may have offended. He stated that he would like to shake Brad Cranston's hand after

the meeting. Nancy Schulte of 2556 Surrey Road stated that it was so much easier to be wrong than it was easier to be right. She stated that Council Member Murray has a kind heart and meant well. All present had opportunity to speak and nothing additional was filed in the office of the City Clerk.

Adjournment: 9:40 p.m.

Approved: November 17, 2008

Kathleen P. Salisbury, MMC
City Clerk

William L. Ell
Mayor

(See tapes on file in the office of the City Clerk for complete discussion and documentation.)

ITEM I.

Consent Agenda

FINANCES AND MISCELLANEOUS

Minutes of Previous Meetings

Payroll and City Claims

BEER, LIQUOR, WINE AND CIGARETTES

REPORTS AND BONDS

RESOLUTIONS:

1. Resolution Approving Demolition/Nuisance Abatements for Various Properties

2. Resolution Approving Refund of Beer/Wine License for Weaver's Italian, Inc.

dba/Sarducci's

3. Resolution Approving Final Acceptance, Final Payment and Release of Retention

Monies for the 2008 Grimes Elementary Intersection Improvements

4. Resolution Authorizing the Filing of an Application for the City of Burlington, Iowa Project Based Housing Trust Fund Grant (\$90,000)

5. Resolution Authorizing the Filing of an Application for the City of Burlington, Iowa Project Based Housing Trust Fund Grant (\$60,000)

SET DATE FOR PUBLIC HEARING: December 1, 2008

1. Consideration of a Voluntary Annexation of Territory (9295 Koestner Street)

APPOINTMENTS:

Human Rights Commission: Ann Distelhorst

Environmental Protection Board: Meghanne Thompson

Renewable Energy Committee: Jerry Parks, Jon Hazell, Keith Jacobs, David Hay, Jerry Rigdon, Jared Hanel, Dan Johnson, Kjrsten Bobb, Roger Gard, Chris Ryner, John Roth, Garry Thomas