

**MINUTES OF REGULAR SESSION
HIGHLAND CITY COUNCIL
MONDAY, JULY 17, 2017**

Mayor Michaelis called the Regular Session to order at 7:02pm. Council members Schwarz, Frey, Bellm and Nicolaides were present. Others in attendance were City Manager Mark Latham, Asst. City Manager Peck, City Attorney McGinley; Directors Bell, Cook, Gillespie, Korte, Schoeck, and Rosen, Treasurer Foehner, Deputy City Clerk Hediger, and City Clerk Bellm; Steve Kyle & David Oates of Oates Associates, 9 citizens and one member of the news media.

MINUTES

Councilman Schwarz made a motion to approve the minutes of the July 3, 2017 Regular Session as attached; seconded by Councilwoman Bellm. Roll Call Vote: Schwarz, Frey, Bellm and Nicolaides voted aye, none nay. Motion carried.

PUBLIC FORUM

Citizens' Requests and Comments:

Tom Hill, 1733 Broadway, stated there is an ordinance proposed bill for ordinance, declaring the Korte Rec Center (KRC) a place of non-public forum and prohibiting public speech. This room is a public forum, because it lends itself to public business. I do not see the KRC as a place for that. I don't think that we want to limit anyone's right to freedom of speech. I think that it is so broad and it could be used misused. It is so broad and so vague. If my friend and I are playing basketball and a discussion of politics comes up between us, I could be cited for violation of this ordinance. If the council wants to say political rallies cannot be held there; that is another thing. However, I think political speech should be defined, so that it does not prohibit one from having a conversation between friends and expressing their thoughts and views. This council has the right to speak about politics. With some changes, it could lend itself to holding of political meetings. City Attorney Michael McGinley stated, in no way, shape, or form is this bill intended to deny people the most precious rights for us as citizens. There is First Amendment Law that has been ruled upon by the U.S. Supreme Court. This particular ordinance does nothing but codify 100-years of Supreme Court precedence. City Hall, The Weinheimer Community Center, and Korte Rec Center are all public facilities that the local government has a choice as to whether a political speech or rally may be held there, and this has been ruled upon within the scope of the Supreme Court, federal courts and district courts, and is already law. We were asked to put this together so Director Rosen would have something to go to should someone want to use the KRC or a portion of it, to hold a political partisan speech or rally. If you allow for one side, you have to allow for the other side of the position to hold such activity. There is about 100-years' worth of rulings that this is based upon, which has set precedence that local governments could ban speeches of a political part or nature within public facilities. Councilman Schwarz asked if this something that would prohibit someone from posting a flyer. City Attorney McGinley explained First Amendment rights protects the rights of people to hand out flyers on streets, sidewalks and stalks; however, within the confines of government buildings, those buildings

cannot be used within to advance an agenda. Councilwoman Bellm inquired they can stand outside to hand out a flyer, but it cannot be done inside. City Attorney McGinley concurred, because on the material included in it, as it stands and with the rulings on the language. Councilwoman Bellm asked if we could have, it in plain English versus legalize, so people understand this is not an ordinance taking away their First Amendment rights. Attorney McGinley explained the reason it is stated the way it is, is so that it directs to this body of law that the courts have ruled on. If you want to add a “whereas”, it is fine; however, I do not want to put too much in it, because it would open it up for legal reviews. Councilman Nicolaides asked who would regulate this. Attorney McGinley explained department directors would have this to assist with requests from groups wanting to hold events within the public facilities.

Hal Klaus, 70 Trout Drive, stated he was not able to get a hold of the ordinance until this morning. While the agenda is posted online, I was not able to get the bill until this morning. I would hope you do not vote on this today. A lot of us have not had time to review and provide input on it. The definition of “political speech” is ‘a statement or comment that is made by the action of the government as opposed to actions or statements of private person.’ So, if I criticize the KRC in the KRC, I could be arrested for it. I would like to have some time for public to review and for the public to voice their opinion.

Tom Hill offered as a solution that the city could simply demonstrate that there are certain places within the City of Highland where public forums are prohibited and declare you cannot have public forums within them. Then you would not be creating ambiguity. I do not want to say anything to violate the law, but I do want to be able to speak and voice my opinion.

Councilwoman Bellm inquired isn’t there a statement that public buildings are not for public forums. City Attorney McGinley stated it is not that cut or dry. This has only to do with promoting partisan politics and prohibiting that from occurring within the KRC. This has over 100-years of court precedence on it. Councilwoman Bellm expressed it seems this item should be tabled, to figure out if something should be added or if we are in favor of it or not. Councilman Frey expressed we all want the same thing. We want to be able to have conversations. We want to protect the rights of free speech, but we want to protect the City of Highland from lawsuits. Mayor Michaelis explained this item may be tabled at such a time it comes up on the agenda.

Louis Dunning, 20A Auburn Court, stated, since your last bit of wisdom, we now have four “For Sale” signs in our subdivision. He asked has any work been done on the zoning law to create a law for required time-period between requests for zoning changes. City Attorney Mike McGinley responded I have not had a request from the council requesting something to be developed.

Mr. Dunning asked has anything been done to create term limits on Planning & Zoning Commission. I listened as three zoning members bragging ‘I have 25 years’; ‘I have 28 years;’ and, another said, ‘Well, I go you all beat with over 42 years’. That is over ninety years, combined, that these people sit on these boards so long, they think they own the City of Highland and they can do whatever they want. I heard a story today and assume it was true. When it was propositioned to build SuperValu, there was a lot of controversy over it, but the council approved it. Now what do you have? You have a 2.5M building sitting there. But, because you wanted to make a dollar, you passed it. You are not in the business of making money; you are in the business of listening to the citizens of Highland. I will continue to come before the council every month until you start listening.

Mayor Michaelis responded to Mr. Dunning stating, with respect to the term limits on boards. Those committee members are not paid. It is gratis. There are many times when we do not have citizens willing to serve on the boards and commissions. Deputy City Clerk Lana Hediger stated we do not have

open positions on Planning & Zoning at this time. Mr. Dunning asked have you put a notice in the paper that there is an opening. Deputy City Clerk Hediger reported we put a mention in the paper at least twice a year, that there are openings on various boards. Mr. Dunning stated he has yet to see that.

Hal Klaus, 70 Trout Drive, stated I think the space across the street would make a wonderful City Hall property and it would be an opportune time for a wonderful city facility.

Councilwoman Bellm told Mr. Dunning you are welcome to come every month. I like seeing people. Mr. Dunning responded no one listens. This gentleman just came up with an idea and you will just go about your business. You want to spend \$41,000 to see if it is feasible to put an additional tax on us. You will never have someone come in after doing these studies and say, 'no I don't think this is a feasible idea.' Councilman Schwarz responded to Mr. Dunning by stated, not agreeing with you is not listening to you. I agree it is a good idea. We will investigate it. We talk about any purchase and project and evaluate project downtime, loss of man-hours, etc. They can speak for themselves, but I feel are all doing the best we can. We may not agree, but we have to balance the means of 10,000 people versus 200 people. I explained why I changed my vote on the development that you oppose. I know you do not like it because it is in your backyard. I feel for you guys, but I feel it is the best for the city overall.

Don Rommerskirchen noted all the ordinances, for discussion, are not included with the agenda online and the attachments do not come up online. It would be nice to see what you are talking about before the meeting rather than. Deputy City Clerk Hediger reported we post the agenda online as required. The associated documents are all available upon request. It is possible to attach links to associated documents; however, it is a time-consuming process. Mr. Klaus had the attachment in his email before he got off the phone with me, this morning. It is extremely rare to get a request about any items on the agenda. City Attorney Mike McGinley explained one reason the agenda items have lengthy titles is so that people can get the most information on what the topic is about.

Requests of Council:

No comments or requests were presented.

Staff Reports:

David Oates, Former President of Oates Associates, Inc. and Steve Kyle, Principal of Oates Associates presented findings of their evaluation review of the recently released FEMA Flood Insurance Rate Maps: In a timeline, June 2016, FEMA new drafts came out. The maps have been on hold since, 2008. These changes originated from issues due to Mississippi River levees and projects within Madison and St. Clair Counties. The revised maps are expected to come out in 2018. The maps show a significantly larger floodplain along the Lindenthal Creek and Laurel Branch areas, particularly north of the CSX railroad and US-40. Based on hydraulic study (detailed), a much higher flood evaluations are shown in these areas. In doing our review, we looked at hydraulic model verification, which is how they assembled that information and verified structure sizes within the area. You can see the light ring around there that shows Frank Watson Parkway. The darker blue lines bordering near Troxler, Poplar Street, Iberg Road South in the former (existing area) map. Mr. Oates explained a 100-year floodplain actually means there is a 1% annual chance that such a rainfall could occur. It means you have a 1% chance of having an equal or exceeded event in any given year. FEMA does not regulate what you do with it. Information from the reports are used to update local hazard mitigation plans, update community comprehensive plans, and emergency planning.

Mr. Oates showed the current paper floodplain maps, with some information on elevations in the current (1986) maps. He also pointed out the maps stop showing the floodplain areas once it reaches the city's limits. The draft floodplain map, as it came out last year, comes out colored on an aerial view. They would come out digitally, allowing for quicker updates. Maps generally define a floodplain that matches the model and the current Madison County LiDAR (an accurate aerial map that show elevations).

Floodplain maps should be corrected to better illustrate changes to the floodplain, which do not match elevations of the old map as they are today. We believe aerial images should be updated to the 2015 East-West Gateway Council image. FEMA is using 2008 maps, which is a considerable difference in several instances. He pointed to examples where two arrows shown on the old map does not show the floodplain laid over the proper areas. Additionally, we have a problem with the color shading on the maps, because it makes it difficult to read.

Analysis results show drainage basin delineation. The amount of water that drains through and the rates of water flows were fairly close. Our rates and FEMA flood elevation rates were similar. Elevations north of CSX have gone up. The old model underestimated the flow of water and flood elevations between Iberg Road to Sycamore Street. The flood evaluation along this area is consistent. Downstream of Poplar Street, US Route 40 and Sycamore, there is a lower elevation than actually shown in the maps. It is 6-7 feet higher in their floodplain elevation. The railroad culvert is upstream of that. The railroad is much higher than the flow line, representing a large amount of water that could backup. The floodplain, as defined, is shrinking from 1998 to the 2016 map on the south side. On the north side, upstream, it is expanding. In 1986, there was eight buildings in that area upstream of Lindenthal Creek, in comparison to 60 in 2017.

Options being considered are to do nothing, which would impact property values and flood insurance costs, plus limit of potential development. Regulate existing storage with flood easements, which limits future development and with minimal flood reduction. There is also the option of construction of a retention pond, north of US-40, with a 15-acre pond, at a cost of over \$5M for minimal flood reductions. You could try to regulate storage; however, you have to continually commit to allowing that area to be available for storage. Construction of the pond comes at a pretty high price, and it does not fix the problem, it only minimally reduces the problem. Another option is to reduce the constriction. The railroad culvert, under the tracks, is a stone structure, which are two-barrels, 6.5 feet by 4.5 feet. Downstream there are two 4.5'x 6'3" and a 300-foot long by 6-foot diameter metal pipes, which were old railroad tanker cars. The new culvert under Poplar Street is two barrel 9x6 culverts. We are proposing replacing the culvert entirely, likening to a new crossing. It would have be a double twelve-foot wide by ten-foot tall culvert, and over \$1M construction cost, plus cost to maintain rail traffic during construction time. The other option is to create overflow culverts made of six forty-eight inch pipes. That would be a size we believe could be bored under the railroad and above the existing culverts.

Mr. Oates pointed out that we are dealing with the slowest bureaucracies – FEMA (federal government) and the railroad. The city has to sign an agreement to have the railroad's engineer work with us. That agreement should be here next week. With that agreement, their engineer will agree to talk with us. FEMA has hired engineers to work on the map, but there is really no one in place to coordinate that with right now. The goal is to get FEMA to be more reasonable in what they are going to show on the maps. FEMA will not recognize any changes until they are fully complete for FEMA to incorporate into their studies and maps. Once we have spoken and worked with the railroad's engineers we will have a better idea of the options and costs. We did shoot elevations, but our staff did not speak with any property owners with respect to flooding incidents. City Manager Latham asked if they were able to find out when CSX downsized the culverts. Mr. Oates replied no, but we estimate the mid-1980s. The old culvert is big enough to span the rail bed, but there is a side extension. If they can do away with that and take it out, it would give us more options for flow.

Councilwoman Bellm noted you stated there is no one working on the maps right now, which would delay it or they could go with what they have. Mr. Oates replied no, they cannot go with what they have. It is good news they are not working on it, because it gives us more time. Our hope would be to get modeling in their hands. It is their model, we are working with, and so they cannot argue with their model.

NEW BUSINESS

Approve Mayor's Reappointments to the Parks & Recreation Advisory Commission – Councilman Schwarz made a motion to approve the mayor's reappointments of John Hispskind and Denise Berolatti to the Parks & Recreation Advisory Commission for three-year terms, to expire July 31, 2020 as attached; seconded by Councilwoman Bellm. Roll Call Vote: Schwarz, Frey, Bellm and Nicolaides voted aye, none nay. Motion carried.

Bill #17-68/ORDINANCE Declaring the Korte Recreation Center to be a Non-Public Forum and Prohibiting Any Political Speech from Occurring Therein – Mayor Michaelis explained there are three directions the council can take at this point. The city attorney did not draft this on their own. Staff requested this and he drafted this off what the US Supreme Court has stated. We had a situation, not too long ago, where two people wanted to use the facility for a political rally. Our directors felt they needed something to go to. Mayor Michaelis asked the directors in attendance, 'Would you be confident in operating without an ordinance and go only with US Supreme?' Is there any director that would know what to do if approached? Directors Gillespie, Cook and Schoeck nodded yes. Director Rosen was the only one stating no. Mayor Michaelis asked are we trying to solve something that is not a problem, since we have only had one request. He asked the directors, 'However, as explained and with US Supreme Court direction are you confident with what you can and cannot do?' Directors Gillespie, Schoeck, Cook and Rosen all replied yes. Mayor Michaelis stated therefore, you can table and have the council revise it with additional language; you can vote on this and pass it; or, you can vote on it, turn it down, and operate under the guidelines of what the US Supreme Court has stated already. Councilwoman Bellm made a motion to approve Bill #17-68/Ordinance #2798 declaring the Korte Recreation Center to be a non-public forum and prohibiting any political speech from occurring therein as attached; seconded by Councilman Schwarz. Councilman Schwarz stated he plans on voting of this, since this is just clarifying US Supreme Court, what harm is there to put this into an ordinance, just to have something formalized for our staff. Councilwoman Bellm stated I will be voting against it, because I do not feel we need something that the US Supreme Court has already stated. As long as you are aware and it is already on the books, I don't see the need to add more layers. Councilman Frey stated I always tell my kids and grandkids that free speech should exist and we should protect that right and listen to both sides. If the directors have a problem, but I think they should asked for clarification. I think it is going to be tough to draft something with additional language, which could change the meaning and intent of what US Supreme Court has ruled. Mayor Michaelis pointed out the directors have stated they understand what the US Supreme Court has stated on this and know how to handle any requests. Councilman Nicolaides expressed if three or four people are talking that is one thing. Guidelines is what we are talking about. We do not want any more guidelines established that could potentially conflict with the statement of the US Supreme Court. Councilman Schwarz stated even though current directors understand, it puts something there for in the future. Mayor Michaelis stated I received calls this proposed bill from people that felt we were looking to limit their freedom of speech with it, and we have others that have come forward. Roll Call Vote: Schwarz, Frey, Bellm and Nicolaides voted nay, none aye. Motion fails.

Bill #17-69/ORDINANCE Approving Rezoning of Real Estate Located at 12310 Sportsman Road From "R1C" Single Family Residential to "MX" Mixed-Use District – Councilman Schwarz made a motion to approve Bill #17-69/Ordinance #2798 approving rezoning of real estate located at 12310 Sportsman Road from "R1C" Single Family Residential to "MX" Mixed-Use District as attached; seconded by Councilwoman Bellm. Councilwoman Bellm inquired there have been no objections against this. Asst. City Manager Peck replied none. Roll Call Vote: Schwarz, Frey, Bellm and Nicolaides voted aye, none nay. Motion carried.

Bill #17-70/RESOLUTION Approving Final Plat of Schmitt Carriage Park Subdivision – Councilwoman Bellm made a motion to approve Bill #17-70/Resolution #17-07-2461 approving Final Plat of Schmitt Carriage Park Subdivision as attached; seconded by Councilman Schwarz. Roll Call Vote: Schwarz, Frey, Bellm and Nicolaides voted aye, none nay. Motion carried.

Bill #17-71/RESOLUTION Authorizing the City Manager to Seek Permission from the Illinois Department of Transportation to Signalize the Intersection of Hemlock Street, Frank Watson Parkway, and U.S. Highway 40 – Councilman Schwarz made a motion to approve Bill #17-71/Resolution #17-07-2462 authorizing the city manager to seek permission from the Illinois Department of Transportation to signalize the intersection of Hemlock Street, Frank Watson Parkway, and U.S. Highway 40 as attached; seconded by Councilwoman Bellm. Councilwoman Bellm expressed this needs to be done. Councilman Schwarz asked is this something the state would typically pay for. City Manager Latham replied maybe. We have been asking for a signal there before Frank Watson Parkway was there. IDOT widened US-40 there, but refused to signalize. Councilman Schwarz asked how many accidents have we had there. City Manager Latham replied several. We took IDOT the accident reports and they lowered the speed limit; however, we still we have had pretty severe accidents out there on June 25 and July 1, since that time. Councilman Schwarz asked about a roundabout there. City Manager Latham explained it is too close to the railroad tracks, plus it would cost more. We are hoping with this resolution will lead to getting some movement. Mayor Michaelis stated we have had people at the microphone there, with concern over that intersection. Mark has made it a priority to get something done with this intersection to protect people. Roll Call Vote: Schwarz, Frey, Bellm and Nicolaides voted aye, none nay. Motion carried.

Bill #17-72/RESOLUTION Approving Creation of a New Employment Position Within the City's Human Resources Department Entitled Human Resources Generalist – Councilwoman Bellm made a motion to approve Bill #17-72/Resolution #17-07-2463 approving creation of a new employment position within the City's Human Resources Department entitled Human Resources Generalist as attached; seconded by Councilman Schwarz. Mayor Michaelis asked this is a part-time position. Director Schoeck stated yes, it would be approximately 20-25 hours per week. Councilwoman Bellm and Councilman Frey stated they have seen the amount of work that goes through that office and it is needed. Roll Call Vote: Schwarz, Frey, Bellm and Nicolaides voted aye, none nay. Motion carried.

Bill #17-73/RESOLUTION Waiving Normal and Customary Bidding Procedures and Authorizing Purchase of an Altec Bucket Truck for the Light and Power Department – Councilman Schwarz made a motion to approve Bill #17-73/Resolution #17-07-2464 waiving normal and customary bidding procedures and authorizing purchase of an Altec Bucket Truck for the Light and Power Department from Altec in the amount of \$131,356.00 as attached; seconded by Councilwoman Bellm. Councilman Frey noted this is through the state bid, so I am confident this is a good price. Director Cook stated it is a national defined list and in the purchasing program. These are emergency use vehicles. We want our bucket operating equipment all the same for each truck so that as personnel moves from one piece of equipment to the other, they all operate in the same manner to prevent accidents. Roll Call Vote: Schwarz, Frey, Bellm, and Nicolaides voted aye, none nay. Motion carried.

Award Bid #PW-09-17 for Purchase of Three New Ford F-150 Super Crew 4x4 Pickup Trucks - Councilwoman Bellm made a motion to award Bid #PW-09-17 for purchase of three new Ford F-150 Super Crew 4x4 Pickup Trucks to Tri-Ford, Inc., in the amount of \$92,970 with trade-ins, as attached; seconded by Councilman Schwarz. Councilwoman Bellm asked these are all in the budget. The Water Treatment Plant is replacing a 1995 Chevrolet pickup and Water Distribution/Sewer Collection replaces a 1994 Chevrolet, which is going to Parks & Rec. A 2008 Blazer is going to Streets and Alley, and the supervisor will have his own vehicle. Councilman Frey expressed that we really need to update to get the maintenance cost down; \$30,000 for 4x4 trucks is a good price. Roll Call Vote: Schwarz, Frey, Bellm and Nicolaides voted aye, none nay. Motion carried.

Award Bid #PW-10-17 for Purchase of One New Ford F-550 Truck Cab and Chassis –
Councilman Schwarz made a motion to approve Bid #PW-10-17 for Purchase of One New Ford F-550 Truck Cab and Chassis to Tri-Ford, Inc., in the amount of \$26,530 with trade-in, as attached; seconded by Councilwoman Bellm. Director Gillespie reported this will replace a 1985 Chevrolet that was received from the Water Department. We will be coming to the council to for the purchase of a bed and crane to service our lift stations with this unit. Councilwoman Bellm asked is this budgeted. Director Gillespie replied yes. Roll Call Vote: Schwarz, Frey, Bellm and Nicolaides voted aye, none nay. Motion carried.

REPORTS

Approve Warrants #1062 & #1064 – Councilwoman Bellm made a motion to approve Warrants #1062 & #1064 as attached; seconded by Councilman Schwarz. Roll Call Vote: Schwarz, Frey and Bellm voted aye, none nay. Councilman Nicolaides abstained. Motion carried.

Councilwoman Bellm made a motion to adjourn; seconded by Councilman Schwarz. All council members voted aye, none nay. Motion carried and meeting adjourned at 8:45pm.

Joseph Michaelis, Mayor

Barbara Bellm, City Clerk