

# MINUTES

Lowell City Council

Regular Meeting

Tuesday, March 9, 2021, 7:00 P.M.

## I. CALL TO ORDER – Mayor Sandy Railey

Mayor Sandy Railey called the meeting to order at 7:00 p.m. Those attending in-person were Councilmember Phil Bonham, Councilmember Ken Ervin, Councilmember Candy Funderburk, Councilmember Thomas Gillespie, Councilmember Shane Robinson, City Manager Scott Attaway, City Attorney John Russell Jr, Finance Officer Jared Pyles, Planning Director Alex Blackburn, Police Chief Scott Bates, and City Clerk Beverly Harris. The meeting was teleconferenced to the public and the agenda and meeting materials were made available prior on the city's website due to COVID-19 restrictions. Several members of the public were also present in the Council Chambers.

## II. INVOCATION / PLEDGE OF ALLEGIANCE

Councilmember Gillespie gave the invocation and led everyone in the pledge of allegiance.

## III. ADOPTION OF AGENDA FOR THIS MEETING

Mayor Railey stated the agenda needed to be amended to add under Section VI New Business two items as E & F. Both items were regarding the CDBG-NR and CDBG-I grants.

Councilmember Robinson made a motion to adopt the amended agenda as stated for the meeting, followed by a second from Councilmember Gillespie. The vote was unanimously in favor.

## IV. PUBLIC COMMENTS

There were no public comments.

## V. APPROVAL OF MINUTES

### A. Minutes from Council Meeting Held February 9, 2021

Councilmember Ervin made a motion to approve the minutes from the February 9, 2021 Council meeting, followed by a second from Councilmember Funderburk. The vote was unanimously in favor.

## VI. NEW BUSINESS

### A. Evidentiary Hearing to Consider Special Use Permit SUP21-01 regarding a Solid Waste & Septic Tank Vehicle Storage Facility

Scott Attaway and John Russell Jr gave an overview of the quasi-judicial process. The City Attorney John Russell Jr asked the Council for any conflicts of interest during the quasi-judicial procedure started. Attorney John Russell Jr stated members of the Council must make their decision solely on the written and oral evidence presented and cannot consider information obtained through independent research or undisclosed ex parte communications. Determinations for an impartial board was performed by the City Attorney. See questions asked below and responses from Council:

1. *Question:* Does anyone have a close familial, business or other relationship with the applicant or other affected person?  
*Answer:* All Council members state no.
2. *Question:* Does anyone have a fixed opinion that is not susceptible to change based on what they learn at the hearing?  
*Answer:* All Council members stated no.
3. *Question:* Has any member participated in ex parte communications?  
*Answer:* All Council members stated no. However, Councilmembers Robinson and Funderburk disclosed some citizens have reached out to them with concerns already but they told the citizens that they are not able to respond or form an opinion or decision at that time.

The City Clerk Beverly Harris swore in the all guests, applicant, and staff members for truth in their testimony.

Councilmember Funderburk made a motion to go into the public Evidentiary Hearing, followed by a motion by Councilmember Ervin. The vote was unanimous.

Scott Attaway stated an application for a Special Use Permit has been filed with the Planning Department regarding the property located at 518 Oakland Drive (PID #220488). Mr. Attaway stated Table 7.1-1 of the Lowell Unified Development Ordinance states that the land use of a solid waste and septic tank vehicle storage facility cannot be issued without first conducting a quasi-judicial hearing following the conditional use/special use permit process.

Alex Blackburn, Planning Director, stated staff posted a zoning sign on the subject property prior to the evidentiary hearing in accordance with the Lowell UDO on February 25, 2021. Also, notices of adjoining property owners were sent prior to the hearing. Mr. Blackburn also stated the Planning Board met to consider and review the CUP/SUP21-01 on February 2, 2021 and March 2, 2021. He further stated the Planning Board voted 3-2 in favor of the permit at their March 2, 2021 meeting.

Mr. Attaway stated the parcel is zoned I-2 and per the Lowell UDO 8.3.16 regarding solid waste & septic tank vehicle storage facility, there were already supplemental conditions in place. Mr. Attaway discussed those conditions.

Mr. Attaway stated the site plan was approved by the Planning Board.

The staff report (EXHIBIT 1) was presented to Council and the City Clerk for the record and review.

The applicant (Steed Story, SCS Disposal, LLC, 3929 Northerly Island Court, Gastonia, NC 28056 came forward to present his request to Council. Mr. Story stated he was seeking a conditional permit for 518 Oakland Drive. He stated he has held a conditional use permit at 400 A Oakland Dr since 2014. Mr. Story stated he has upheld all conditions and requirements with the City of Lowell at the 400A Oakland Dr location. Mr. Steed stated he was wanting to acquire the business at the end of the road and move his existing business there.

Scott Attaway gave Council an overview of the landscape buffers required per the UDO, existing buffering on site, and proposed drawing submitted.

Councilmember Funderburk asked the applicant to confirm why he was wanting to move to new location and if it was to add more services or trucks. The applicant stated he was not adding more trucks or services but wanted to utilize the larger parking lot for logistical purposes while moving trucks. Councilmember Funderburk asked the applicant where they cleaned trucks and porta-jons. The applicant stated the tanks are cleaned on construction sites where they are rented and the only thing cleaned at the Oakland Drive site was pressure washing mud off of the equipment when they are brought back.

Councilmember Gillespie asked the applicant about solid waste being on site over 24 hours. The applicant stated the solid waste is clean out waste not household garbage. Mr. Story stated it would not be on the property for 24 hours because it's hauled to the landfill. The only case where it's on site overnight would be if the landfill has closed before the driver can empty.

Councilmember Robinson asked the applicant if he was planning on enclosing between the two properties with a fence and the applicant stated yes.

Scott Attaway disclosed that he has received calls about this business at City Hall. The calls came in on October 7 2019 regarding some dumpsters being painted on property. Mr. Attaway stated where the dumpsters were being painted was not on the applicants' parcel/property. (EXHIBIT 2)

Councilmember Ervin asked the applicant if there was an odor that goes into the surrounding neighborhood. Mr. Story stated no, the only odor is in the field on job sites.

The applicant did not have any witnesses to present at meeting.

Public Hearing Comments:

Mimi Lark of 509 Oakland Drive stated she lives across the street. Ms. Lark stated there is an on-going problem with mud on the road and the odors. Ms. Lark stated there is an environmental and health problem with the area. She asked Council to consider not approving and to think about the kids and families living in the area.

Thomas Knight of 509 Oakland Drive stated he has had issues with the applicant. Mr. Knight stated he has spoken with him personally about the mud on the street and the problems with his rude drivers. He stated his concerns about the extremely loud noises of the dumpsters being off loaded from the trucks daily. Mr. Knight also told the Council about the applicant painting dumpsters on site and that he had to call City Hall. Mr. Knight was concerned about the small road with families and children and stated the road can't handle more traffic or trucks. He stated the applicant needs to move somewhere that can handle the capacity of big vehicles. He asked Council to not approve.

Sharline Radford of 214 Oakland Street stated she doesn't live in front of the business but has to pass vehicles coming from the business. Ms. Radford stated the trucks drive too fast and will not move over for citizens. She stated it's a small residential family community and her grandkids play in the neighborhood. She was worried about the business growing and placing more vehicles on the road. Ms. Radford asked the Council if they would want big trucks in their neighborhoods.

Jerry Messick of 501 Birch Street stated his property backs up to Oakland Drive and he can hear the loud noises from his house. Mr. Messick stated the street is tore all to pieces due to the heavy traffic of the trucks.

Robert Beaver of 511 Birch Street stated the trees are not enough of a buffer in the winter time because when the leaves fall, he can see the entire facility. Mr. Beaver told the Council about the very loud noises of the off-loading of dumpsters. He asked Council to not let more trucks and noise into the area.

There was further review and discussion by Council. They reviewed the finding of facts presented from the applicant.

Councilmember Funderburk asked the applicant if he was moving to expand his business. Mr. Story stated he is not looking to grow the business much more. He also confirmed the working hours and truck traffic hours to Councilmember Funderburk.

Councilmember Funderburk asked for clarity from the applicant on one of the homeowners' testimony of smells of waste. Mr. Story stated there are no smells on his property.

Mr. Story stated only one dumpster was painted on site due to a fire on a job site.

Councilmember Ervin asked for clarity on two issues testified by citizens (lack of courtesy by drivers and sound of dropped dumpsters). Councilmember Ervin asked the applicant how he intended to address those issues. Mr. Story stated with further training of drivers for both issues.

Councilmember Robinson inquired about the current conditional use permit at the current site. Councilmember Robinson wanted to know if the conditional use permit goes with the owner or the site.

Councilmember Gillespie asked for clarity between household and construction debris.

Councilmember Robinson asked for clarity on where the dumpsters or porta-jons are stored on site.

Councilmember Bonham asked the applicant how he was planning on addressing the drivers speeding and manners to local residents. Mr. Story stated he was in the process of having dash cams installed in the trucks.

The Council began discussions for the Findings of Facts and began actions.

Fact #1: The use will not materially endanger the public health or safety if located where proposed and developed according to the plan.

Councilmember Bonham made a motion the use will not materially endanger the public health or safety if located where proposed and developed according to the plan, followed by a second from Councilmember Ervin.

There was further discussion between Councilmembers. Councilmember Ervin stated the applicant will be located in the area by conditional use right now so it makes sense he be moved to the end of the road to where he has more of a buffer there from residents. Councilmember Funderburk stated there due to citizen testimony presented there was a safety issue and felt it would endanger the public health or safety. Councilmember Gillespie stated he agreed with Councilmember Funderburk and that due to citizen testimony he had concerns with the sludge and leaks from trucks. Councilmember Robinson stated there could be increased traffic because the site will allow more trucks on site. Councilmember Bonham felt due to testimony from citizens there would be safety concerns for trucks traveling a further distance on a narrow road. He was also concerned about the leaks from testimony.

The Council voted on the motion on the floor for Fact #1. There were none in favor, and unanimously opposed.

Fact #2: The use meets all required conditions and specifications of the Land Use Plan.

Councilmember Robinson made the motion the use meets all required conditions and specifications, followed by a second from Councilmember Bonham.

There was further discussion between Councilmembers. Councilmember Robinson stated by looking at the zoning and site plans it meets the requirements and conditions.

The Council voted on the motion on the floor for Fact #2. There votes were unanimously in favor, none opposed.

Fact #3: The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity.

Councilmember Robinson made the motion the use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity, followed by a second from Councilmember Bonham.

There was further discussion between Councilmembers. Councilmember Robinson stated due to testimony he felt it would impact the property values.

The Council voted on the motion on the floor for Fact #3. There were none in favor, and unanimously opposed.

Fact #4: The location and character of the use, if developed according to the plan as submitted and approved will be in harmony with the area in which it is located and will be in general conformity with the adopted Lowell UDO / Land Use Plan and other plans for physical development of the City as adopted by the City Council.

Councilmember Bonham made the motion the location and character of the use, if developed according to the plan as submitted and approved will be in harmony with the area in which it is located and will be in general conformity with the adopted Lowell UDO / Land Use Plan and other plans for physical development of the City as adopted by the City Council, followed by a second from Councilmember Funderburk.

The Council voted on the motion on the floor for Fact #4. There were none in favor, and unanimously opposed.

Councilmember Bonham made a motion to close the public evidentiary hearing, followed by a second from Councilmember Gillespie. The vote was unanimously in favor.

Councilmember Robinson made a motion to not approve the special use permit SUP21-01 based on findings of facts discussed, followed by a second from Councilmember Funderburk. The vote was unanimously in favor.

B. Public Hearing for Proposed Amendment to Lowell City Council Rules of Procedure

Councilmember Bonham made a motion to go into public hearing, followed by a second from Councilmember Ervin. The vote was unanimously in favor.

Scott Attaway presented a proposed change to the Lowell City Council Rules of Procedure (Rule 1. Regular Meeting). The proposed change would be to change the starting meeting time from 7:00 pm to 6:00 pm.

There were no public comments during the public hearing.

Councilmember Funderburk made a motion to go out of public hearing, followed by a second from Councilmember Gillespie. The vote was unanimously in favor.

Councilmember Gillespie made a motion to approve the amendment as presented to the Lowell City Council Rules of Procedure, followed by a second from Councilmember Funderburk. The vote was unanimously in favor.

C. Consideration of Amendment to Section 9.1 of the City of Lowell Utility Billing Policy

Scott Attaway presented a proposed amendment to the City of Lowell Utility Billing Policy. The amendment would be in Section 9.1 Adjustment Procedure. The addition of the last paragraph would read as follows:

“Adjustments for assessed delinquent fees will only occur after thorough review of the customer’s account by the City of Lowell Water Department. To qualify for a delinquent fee adjustment, the customer’s account must not have been assessed a late fee, delinquent fee, returned check fee, or returned ACH fee in the previous 12 months. Only one delinquent fee adjustment is allowed per year (12 months).”

Councilmember Ervin made a motion to approve the amendment as noted to Section 9.1 of the City of Lowell Utility Billing Policy, followed by a second from Councilmember Funderburk. The vote was unanimously in favor.

D. Pavement Condition Survey (PCS)

Scott Attaway stated in order for the City of Lowell to better manage the investment it has in its street system. Staff recommends conducting a Pavement Condition Survey (PCS) to identify a methodical way to manage the maintenance and prioritization of future projects.

Councilmember Ervin made a motion to approve the Pavement Condition Survey (PCS), followed by a second from Councilmember Bonham. The vote was three in favor, and two opposed. The motion carried with the majority being in favor.

E. CDBG-Infrastructure Grant

Scott Attaway stated the two items needing consideration by Council tonight have already been approved previously. Mr. Attaway stated during a monitoring visit by the state they noticed a typo on the Project ID number and this needs to be fixed for future audit purposes. Also, verbiage regarding virtual meetings as an option for citizens has been added to the Citizen Participation Plan.

Councilmember Robinson made a motion to approve the amended CDBG-I budget ordinance and Citizen Participation Plan as presented, followed by a second from Councilmember Funderburk. The vote was unanimously in favor.

## F. CDBG-Neighborhood Revitalization Grant

Scott Attaway stated staff opened received bids for the Environmental Services of asbestos/lead testing services for the CDBG-NR grant on March 8, 2021. Three bids were received as follows:

- The EI Group, \$4413.75 total cost
- Terracon Consultants Inc, \$8500.00 total cost
- Roy Consulting Group, \$4450.00 total cost

Mr. Attaway stated the bid selection “recommendation” to Council is based on the “average” cost per unit for all services. The EI Group submitted the lowest average cost per unit, therefore staff recommends awarding the contract to the EI Group for the completion of the required services.

Councilmember Funderburk made a motion to accept the bid from the EI Group for \$4413.75, followed by a second from Councilmember Gillespie. The vote was unanimously in favor.

## VII. STAFF REPORTS

Scott Attaway gave departmental updates on the following:

### Planning Department:

- Stormwater Notice of Violation Update (SWMP Permit).
- Lowell Planning Board has recommended approval of the Lowell Development Ordinance and the Future Land Use Plan (FLUP).

### Public Works Department:

- Bulk policy update
- WWTP maintenance
- Water main leaks
- Radar signs permanently installed

### Police Department:

- Call volumes

### Finance:

- Budget to actual monthly report

### Parks & Recreation:

- COVID testing event
- Youth sports sign-ups
- Dick Sporting Goods sponsorship
- LCC met at Cemetery
- CaroMont Freedom Festival sponsorship
- Easter event “You Got Egged”
- Arbor Day event
- Live concert series in summer



## VIII. CITY ATTORNEY REPORT

The City Attorney John Russell Jr had nothing new to report.

## IX. CITY MANAGER REPORT

Scott Attaway gave updates on the following items:

- COVID vaccination update
- Work Session March 24, 2021. Council determined the meeting would start at 1:00 pm and be at City Hall.
- Fire Department Contract
- WaterSmart App for Customers FY22
- McAdenville Rd bicycle lane/white line
- Audit update presentation for April council meeting
- Fund Balance

## X. MAYOR AND CITY COUNCIL GENERAL DISCUSSION

Councilmember Gillespie wished Cristy Cummings a happy birthday and stated he would like to see something presented to Jim Windham for his years of service to Lowell as the City Attorney  
Councilmember Funderburk stated she was excited about all that has been accomplished in Lowell over the past several years and what's to come.

## XI. CLOSED SESSION

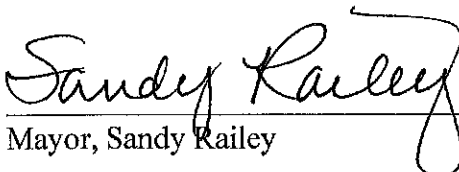
A motion was made at 10:00 pm by Councilmember Ervin to go into Closed Session in accordance with provisions of NCGS 143-318.11(a)(5) to discuss the acquisition of real property, followed by a second from Councilmember Gillespie. The vote was unanimous.

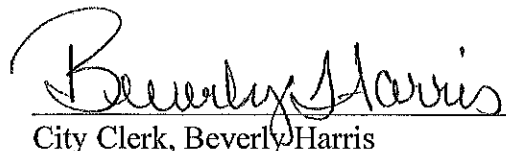
The Council reconvened from Closed Session at 10:15 pm.

## XII. ADJOURN

Councilmember Bonham made a motion to adjourn the meeting, followed by a second from Councilmember Funderburk. The vote was unanimously in favor. The meeting ended at 10:15 pm.

ATTEST:

  
\_\_\_\_\_  
Mayor, Sandy Railey

  
\_\_\_\_\_  
City Clerk, Beverly Harris