

City of Selah
Council Minutes
July 8, 2014

Regular Meeting
Selah Council Chambers
115 West Naches Avenue
Selah, WA 98942

A. Call to Order Mayor Gawlik called the meeting to order at 4:00pm.

B. Roll Call

Members Present: Paul Overby; John Tierney; Allen Schmid; Roy Sample; Jane Williams

Members Excused: Dave Smeback; Brooke Finch

Staff Present: David Kelly, City Administrator; Bob Noe, City Attorney; Dale Novobielski, Clerk/Treasurer; Eric Steen, Deputy Police Chief; Gary Hanna, Fire Chief; Joe Henne, Public Works Director; Dennis Davison, Community Planner; Charlie Brown, Recreation Manager; Monica Lake, Executive Assistant

C. Pledge of Allegiance

Council Member Tierney led the Pledge of Allegiance. Pastor Mark Flippin led the opening prayer.

D. Agenda Changes

Remove from Agenda:

1. Getting to Know Our Businesses F – 1: Love Lola – Denoya Gomez, owner

2. New Business K – 2: Bowers Subdivision Variance

E. Public Appearances/Introductions/ Presentations **None**

F. Getting To Know Our Businesses **None**

G. Communications

1. Oral

Mayor Gawlik opened the meeting. Seeing no one rise to speak, he then closed the meeting.

2. Written **None**

H. Proclamations/Announcements **None**

I. Consent Agenda

Council Member Williams moved, and Council Member Overby seconded, to add Resolutions M – 1 and M – 2 to the Consent Agenda. By voice vote, approval was unanimous.

Council Member Overby moved, and Council Member Tierney seconded, to add Ordinance N – 2 to the Consent Agenda. By voice vote, approval was unanimous.

Executive Assistant Lake read the Consent Agenda.

All items listed with an asterisk (*) were considered as part of the Consent Agenda.

* 1. Approval of Minutes: June 10, 2014 Study Session & Council Meeting

* 2. Approval of Claims & Payroll:

Payroll Checks Nos. 77548 – 77585 for a total of \$167,184.40

Payroll Checks Nos. 77586 – 77635 for a total of \$221,523.44

Claim Checks Nos. 64060 – 64062 for a total of \$247,961.46

Claim Checks Nos. 64063 – 64132 for a total of \$311,036.82

Claim Checks Nos. 64133 – 64213 for a total of \$322,088.41

* 3. Resolution M – 1: Resolution Authorizing the Mayor to Sign an Agreement for Certified Acceptance Services with Yakima County, Washington – Transportation Improvement Project (TAP) Wernex Loop, a Sidewalk Improvement Project

* 4. Resolution M – 2: Resolution authorizing the selection of Huibregtse, Louman Associates, Inc. for Professional Municipal Engineering Services for the Wernex Loop, Transportation Alternatives Program (TAP), Sidewalk Project

* 5. Ordinance N – 2: Ordinance Amending the 2014 Budget for Miscellaneous Adjustments

Council Member Tierney moved, and Council Member Williams seconded, to approve the Consent Agenda as read. By voice vote, approval of the Consent Agenda was unanimous.

J. Public Hearing **None**

K. New Business

1. Closed Record Meeting to consider Planning Commission Recommendation to Amend Selah Municipal Code, Title 10, Chapter 10.28.010, 10.28.020 and 10.28 Table A

Community Planner Davison addressed K – 1. He said that this will be a closed record hearing.

City Attorney Noe stated that it is not a closed record hearing since it is dealing with legislation.

Mayor Gawlik noted that, because this is a legislative action, Council will accept statements or evidence presented to them.

Community Planner Davison said that this is a proposed amendment to the Selah Municipal Code, which would prohibit the production, processing, or dispensing of cannabis or cannabis products within the City limits. He commented that it will not affect medical marijuana, which is regulated by the State. He referred Council to the numerous exhibits provided in their packets, noting that the Planning Commission adopted their Findings on June 19th and sent their recommendation to the City Council to prohibit the production, processing, or dispensing of cannabis or cannabis products within the City limits. He remarked that, if Council approves the proposal from the Planning Commission, then will have the opportunity to vote on the Ordinance later in the meeting. He asked City Attorney Noe if he wished to add anything.

City Attorney Noe responded in the negative.

Mayor Gawlik opened the meeting for public comment, stating that there will be a time limit of three minutes per speaker.

Jedidiah Haney, Executive Director of Cause M, approached the podium and addressed the Council. He thanked the Council for allowing him to address them again. He said that he provided the Planning Commission with a lot of information to review, and hoped that the Council Members had read the information provided to them in the packet. He agreed that there are legitimate safety concerns and provided some printouts on the subject from a variety of sources. He discussed the banking issues and included documentation on the subject for Council to review.

Tony Sandoval approached the podium and addressed the Council. He said that he is in favor of the City banning pot, and has been impressed with how Selah is handling the matter. He commented that marijuana does alter people's actions; he has known people who smoked pot, and he doesn't want this to be an issue where the taxpayers end up paying for someone's health. He hoped that the Federal Government would not loosen the regulations regarding the banking industry.

Council Member Overby pointed out that the issue at hand is only about the retail sale of marijuana, and has nothing to do with recriminalizing marijuana.

City Attorney Noe remarked that the Ordinance covers the production, processing, and dispensing of cannabis or cannabis products within the City limits.

Council Member Overby asked him to confirm that it does not deal with possession of the substance.

City Attorney Noe responded in the affirmative.

Council Member Overby restated that possession will still be legal.

City Attorney Noe agreed with his statement.

~~Council Member Overby stated that he is against the potential ban, saying that with any interested party would have to go through a vetting process to get into the industry and that the Liquor Control Board has created a better structured licensing practice. He said that the Council needed to be sure they weren't creating policies that would create unfair business practices, and that whatever the decision they needed to ensure they weren't creating disparities or opening themselves up for potential litigation.~~ STRICKEN PER COUNCIL VOTE

Norma Smith approached the podium and addressed the Council. She reminded Council that she was a member of the Selah School Board in addition to being an advocate for the ban of marijuana. She listed her reasons for

the ban, such as it still being banned by the Federal Government and that allowing it would contribute to usage by minors and adults who shouldn't use it. She asked that Council please ban it, as that is what is best for the community.

Jedidiah Haney addressed Council a second time. He clarified that the same law has been in place for 18 months now, and the fear mongering is unjustified. He noted that I-502 is intended to oust the black market.

Seeing no else rise to speak, Mayor Gawlik closed the meeting.

L. Old Business **None**

M. Resolutions

- * 1. Resolution Authorizing the Mayor to Sign an Agreement for Certified Acceptance Services with Yakima County, Washington – Transportation Improvement Project (TAP) Wernex Loop, a Sidewalk Improvement Project
- * 2. Resolution authorizing the selection of Huibregtse, Louman Associates, Inc. for Professional Municipal Engineering Services for the Wernex Loop, Transportation Alternatives Program (TAP), Sidewalk Project
- 3. Resolution authorizing the Mayor to sign an Amendment to Interlocal Agreement with the Selah Park and Recreation Service Area (SPRSA) related to the operation and maintenance of the swimming pool at Wixson Park

City Administrator Kelly addressed M – 3. He said that this change is to clarify what the SPRSA can do with the money they have; the previous agreement stated that the monies were to be used only for operation and maintenance and this clarifies that any extra monies can be used to pay for information to educate the public.

Council Member Williams commented that the funds in question belong to the City, not the SPRSA; those funds can be used educate the public and investigate the future use of the pool.

Clerk/Treasurer Novobielski clarified that the SPRSA has the annual levy amount of \$120,000 collected by County Treasurer, and that the other locally collected money is placed into Fund 190, which is identified as SPRSA pool funds. He said that the City has more control and legal right to the money in Fund 190 than the SPRSA Board.

Council Member Williams asked, if the City does use those monies, does use of those funds need the consent of the SPRSA.

Clerk/Treasurer Novobielski responded that the City's perspective is that the money would be used per the direction of the SPRSA Board, as the City got out of pool business.

City Administrator Kelly noted that the City owns the facility, but the revenues and expenditures are SPRSA obligations. He agreed that the City would only use those funds with the prior consent of the SPRSA Board.

Council Member Schmid expressed his concern regarding the need to have a small reserve fund if the expenses happened to exceed the revenues any given year. He felt that the money should be placed in a dedicated fund for that purpose.

Clerk/Treasurer Novobielski noted that this is a partnership between two different entities, and he wants to ensure compliance with the assessment levy requirements. He commented that the intention of this amendment is to clarify that if local gate receipts are in excess that the money can be used beyond maintenance and operation of the pool.

Council Member Schmid moved, and Council Member Overby seconded, to approve the Resolution authorizing the Mayor to sign an Amendment to Interlocal Agreement with the Selah Park and Recreation Service Area related to the operation and maintenance of the swimming pool at Wixson Park. Roll was called: Council Member Overby – yes; Council Member Tierney – yes; Council Member Schmid – yes; Council Member Sample – yes; Council Member Williams – yes. By voice vote, approval was unanimous.

4. Resolution Authorizing the Mayor to enter into an Agreement with the Washington State Department of Enterprise Services (DES) for an Audit Agreement

Public Works Director Henne addressed M – 4. He reminded Council that they approved the preliminary audit on May 13, and that, based on what they found, he is requesting approval of an agreement with the Department of Energy Services that would allow them to move forward with a final audit. He talked briefly about the energy savings that the City could receive, and outlined the funding sources and expenses.

Council Member Tierney wondered why it was necessary to do an efficiency study on the new Public Works facility.

Public Works Director Henne replied that the building complied with Washington State energy codes, but not every component was a Star efficient component. He pointed out that LEDs have come light years ahead of where they were three years ago, adding that he wants the crew to have good lighting conditions.

City Administrator Kelly remarked that Public Works Director Henne did a good job explaining, saying that this project will save the City the amount of the loan in energy costs over that same period of time.

Council Member Tierney speculated that the power company will raise rates to compensate for less usage.

Public Works Director Henne commented that the energy that is saved is sold to other states at a premium.

Council Member Tierney expressed concern that the City would lose money in the long run.

Council Member Overby remarked that, if they do nothing, they aren't saving any money either.

Public Works Director Henne stated that they will guarantee that the improvements will pay for themselves.

Ted Pooler, Huibregtse, Louman Associates, Inc., approached the podium and addressed the Council. He said that the investment grade audit will provide estimated costs, guaranteed construction costs & energy savings, but the project is not considered viable unless the loan can be paid back with energy savings. He went on to say that, when they come back to Council in September, they will have already reviewed a list of energy savings and will be able to pick and choose projects that will make the grant application stronger. He noted that, if the audit shows that there won't be enough savings to pay for the costs of the project, then they will not be done. He felt that there are some good things that they are trying to do, such as using grant money for things at the Wastewater Treatment Plant that need to be replaced.

Murray Greenwood, from Ameresco, approached the podium and addressed the Council. He said that the audit is to study and understand what the actual costs would be, and that they guarantee that it will not exceed the maximum project costs. He noted that his company has a great track record and a lot of very satisfied clients, and that this program through the Department of Commerce has been very successful in helping cities achieve facility improvement projects.

Council Member Tierney asked who would provide the guarantee.

Mr. Greenwood responded that his company does; it is required by the Department of Commerce.

City Administrator Kelly remarked that the \$250,000 grant is actually a grant application, and that there is a possibility they may not get it. He note that they have picked a good firm to help with it.

Mr. Pooler commented that the \$1 million project in the packet is just an example, as they don't have hard numbers yet. He said that the analysis includes a successful grant application; if it's not successful then they stop project at that point.

Council Member Tierney moved, and Council Member Overby seconded, to approve the Resolution Authorizing the Mayor to enter into an Agreement with the Washington State Department of Enterprise Services (DES) for an Audit Agreement. Roll was called: Council Member Overby – yes; Council Member Tierney – yes; Council Member Schmid – yes; Council Member Sample – yes; Council Member Williams – yes. By voice vote, approval was unanimous.

N. Ordinances

1. Ordinance of the City of Selah, Washington, amending sections of Selah Municipal Code prohibiting the cultivation, production, processing or retail sales of recreational marijuana within the City of Selah

Community Planner Davison addressed N – 1. He said that the Ordinance before them was recommended for approval by the Planning Commission to regulate the cultivation, production, processing and retail sales of recreational marijuana within the City boundaries. He briefly outlined the process used by the Planning Commission and recommended that Council adopt their findings and the Ordinance.

Council Member Tierney expressed his concern about use of the word shall in section 5 of the proposed amendment, saying that it should be replaced with the word may.

City Attorney Noe responded that the decision to do so is up to the Council, although the Planning Commission thought that provision should be included as they had some concerns regarding the ability of retailers to use financial institutions and recommend that Council reconsider it if there is a change.

Council Member Tierney asked if it would require a motion to make the change.

Mayor Gawlik remarked that the verbiage in total was recommended.

City Attorney Noe said that, while the language of the Ordinance was recommended by the Planning Commission. Council can opt to change it any way they choose. He suggested a poll of the Council to see if they are interested in going forward with the document in its current form.

Mayor Gawlik asked Council Member Overby for his opinion.

Council Member Overby wanted to have a conversation on the matter prior to polling the Council.

Council Member Williams agreed.

Council Member Overby recommended a discussion first, and then a revisit of the matter afterwards.

City Attorney Noe stated that it is up to the Council how they want to address it.

Council Member Tierney moved to approve the Ordinance of the City of Selah, Washington, amending sections of Selah Municipal Code prohibiting the cultivation, production, processing or retail sales of recreational marijuana within the City of Selah.

Mayor Gawlik noted that the motion failed for lack of 2nd, adding that there should be a motion and second to get to the discussion phase.

Council Member Overby asked if he could second the motion if he doesn't approve of it.

Mayor Gawlik responded in the affirmative.

Council Member Overby seconded the motion.

Mayor Gawlik opened the floor for discussion.

Council Member Williams expressed her appreciation for what Community Planner Davison does for city. She said that she was unable to locate the June 17th Planning Commission minutes where the Commission discussed the Ordinance.

Community Planner Davison replied that, if she referred to page seven of the documents in the packet, she would see that the third entry down asks for a consensus on the matter.

City Attorney Noe noted that she is referencing the June 17th meeting, and that those minutes aren't in the packet.

Council Member Williams asked if the Ordinance was presented to the Planning Commission on June 17th for them to vote on.

City Attorney Noe replied in the affirmative.

Council Member Williams felt that Council needed the missing minutes to make a totally informed decision.

Mayor Gawlik inquired if she felt that there are other issues from the June 17th meeting that would assist in making an informed decision.

Council Member Williams responded in the affirmative.

Community Planner Davison remarked that they reviewed the draft Ordinance and City Attorney Noe's findings on the 17th, but he doesn't remember anything else discussed before they moved on to the Bower matter.

Council Member Overby said that, while he understands their concerns, he feels that they have enough information in what was presented to them. He wondered if there was anything substantive discussed at the June 17th meeting.

Community Planner Davison replied that they reviewed the draft Ordinance and the findings, and then moved to recommend that Council adopt both.

Council Member Tierney inquired if it would jeopardize anything to act on the matter without a record of that meeting.

City Attorney Noe replied in the negative, saying that this is a legislative matter.

Council Member Sample wondered if there were other considerations for adoption of the proposed Ordinance aside from the financial ones.

Community Planner Davison responded in the affirmative, saying that it would have an impact on the police department and other listed in the packet. He noted that the Planning Commission indicated that they would like to review the Ordinance if banking laws change.

Mayor Gawlik asked if that was discussed on June 17th.

Community Planner Davison replied in the negative, adding that it was discussed during the hearing.

Council Member Overby said that he would like his fellow Council Members to consider the negative interpretation of this Ordinance, as a lot of the discussion is about the fact that the citizens of Selah voted against initiative when it first went through but there is no legal mechanism to regulate who is selling within the City limits. He expressed his desire for a heavily regulated operation rather than criminals who will sell to anyone, anywhere, at any time.

Council Member Sample felt that this was a very difficult issue, adding that he personally didn't vote for legalization as he didn't feel the need to foist more ills onto society.

Council Member Overby expressed appreciation to the Planning Commission for the very unique angle they took on the matter, as there is a big issue regarding banking and having a large amount of cash on-site.

Council Member Williams commented that the banking issue is due to federal law that states that a financial institution can't deposit funds into an account if they have been received by illegal means, and the Federal government still considers marijuana an illegal substance.

Council Member Schmid wondered what the motion was that had been made.

Mayor Gawlik reiterated the motion.

Council Member Overby clarified that a no vote would be to approve the cultivation, production, processing and retail sales of recreational marijuana within the City.

Council Member Tierney noted that another issue is that the State has not had any license approval requests for the Selah area.

Mayor Gawlik responded that it doesn't matter.

Council Member Tierney remarked that no license makes it a moot issue. He said that the second thing to consider is that the Federal still prohibits cannabis, which makes it a potential danger for the community to have Federal funds withheld by approving this. He didn't want to jeopardize the community's access to Federal funds, saying that Council has the right to protect the citizens' interests and be a safe avenue for Federal dollars.

City Administrator Kelly noted that the current moratorium runs through October 8th.

Council Member Overby said that, while he understands where Council Member Tierney is coming from, the Justice Department has taken the stance of 'leave it alone and see what happens'. He understands the concern but don't see any negative repercussions so long as they keep things under control.

Council Member Tierney commented that they could have a change in Federal administration in another eighteen months and the new administration could opt to seize everything.

Mayor Gawlik inquired if Council was ready to vote on the matter.

Council Member Sample wondered if a vote either way would remove the moratorium.

Community Planner Davison responded that he assumes that the moratorium was created to give Council opportunity to create regulations, so if they adopt the Ordinance the moratorium expires.

Council Member Sample asked him how it would be effected if they voted against it.

Community Planner Davison stated that he assumes it would still be in effect.

Council Member Overby remarked that the moratorium was put in place to give Council time to decide how to act on the matter ,and that they could keep the moratorium in place to create restrictions and requirements.

Council Member Williams wanted to know if they could ask City Attorney Noe to prepare different Ordinance than what was presented to them.

City Attorney Noe replied that he would do so if directed to by the Council.

Council Member Schmid moved, and Council Member Overby seconded, to approve the Ordinance of the City of Selah, Washington, amending sections of Selah Municipal Code prohibiting the cultivation, production, processing or retail sales of recreational marijuana within the City of Selah. Roll was called: Council Member Overby – no; Council Member Tierney – yes; Council Member Schmid – yes; Council Member Sample – no; Council Member Williams – yes. Motion passed with three yes votes and two no votes.

Mayor Gawlik noted that the Council has accepted the Planning Commission's recommendation to ban recreational marijuana cultivation, production, processing or retail sales within the city limits of Selah.

Council Member Tierney moved to amend section 5 of Chapter 10.28 to change 'shall' to 'may'.

Mayor Gawlik stated that the motion failed for lack of a second.

Council Member Williams moved to have City Attorney Noe review the Yakima County Commissioners' Ordinance 20-14 and consider amending the City's Ordinance to adopt a portion of their wording as our own in this issue.

Mayor Gawlik asked that she clarify what she is proposing. He wondered if it was a change of verbiage on the Ordinance that had just been passed.

Council Member Williams responded in the affirmative, saying that the County's Ordinance is simpler, and could possibly protect the City more.

City Attorney Noe noted that Council can do what it wishes, adding that the reason why the Ordinance is the way it is was due to testimony provided to the Planning Commission, and that the changes are specific to the City's code.

Council Member Williams stated that she was bothered by the reference to medical marijuana, as she didn't think that needed to be included.

City Attorney Noe replied that the reference was specifically recommended by the Planning Commission.

Mayor Gawlik stated that there is a motion on the table to have City Attorney Noe draft a new Ordinance more in line with the verbiage of the Ordinance passed by Yakima County, and asked if there was a second. He noted that the motion failed for lack of a second.

* 2. Ordinance Amending the 2014 Budget for Miscellaneous Adjustments

O. Communications

1. Oral

Mayor Gawlik opened the meeting. Seeing no one rise to speak, he then closed the meeting.

P. Reports/Announcements

1. Mayor

Mayor Gawlik said that Council would be presented with a proposal for the next step in the Civic Center renovation at the next Council Meeting.

2. Council Members

Council Member Overby had no report.

Council Member Sample had no report.

Council Member Tierney had no report.

Council Member Williams had no report.

Council Member Schmid had no report.

3. Departmental

Deputy Police Chief Steen had no report.

Fire Chief Hanna had no report, but reminded everyone that it is hot and dry out, and to stay well hydrated and out of the sun as much as possible.

Recreation Manager Brown said that they closed the pool this week to make some necessary repairs, as they found 3 large cracks that needed to be dealt with. He noted that the crew is working on it and that the pool should reopen Friday. He commented that the July 3rd event had 2500 people partake in the festivities, and was a very successful event.

Council Member Tierney remarked that he attended the event, and felt that they had one of the most outstanding fireworks displays he'd encountered. He was pleased to see so many things available for families to do and commended Recreation Manager Brown on a job well done.

City Administrator Kelly commented that Les Schwab sponsored and paid for the fireworks, and have indicated their willingness to do so again next year.

Mayor Gawlik added that Pingrey Ford sponsored the entertainment.

Recreation Manager Brown responded that it sounds like they will sponsor the entertainment again.

Council Member Williams felt that it was a great parade and pancake breakfast on the Fourth.

Mayor Gawlik remarked that the consensus of those attending the event was that it should be held on the Fourth next year.

Clerk/Treasurer Novobielski said that he is in the process of closing the June books. He gave a revenue update, noting that property taxes are at 54% of budget, sales taxes are at 45% of budget, water revenues at 43%, sewer at 50%, and garbage at 49%. He felt that, all in all, things were looking healthy in the revenue area.

Community Planner Davison thanked the Council for adopting the Ordinance. He stated that the Bower project would be presented at the next meeting and recommended that Council read the verbatim minutes prior to the meeting. He noted that the legal notice regarding the Comprehensive Plan amendment deadline has been published, and listed a few other projects in the works, including Mr. Harris's proposed commercial development project.

Council Member Tierney asked for the location of the Harris project.

Community Planner Davison responded that it is the old mobile home park & truck sales lot. He noted that the Planning Commission has received one Comprehensive Plan amendment to date.

Mayor Gawlik recognized Chairman Quinnell and the members of the Planning Commission for their hard work on the marijuana issue.

Public Works Director Henne gave a brief explanation of the repairs done on the pool, noting that it will take forty-eight hours to cure and another sixteen hours to fill it back up.

Mayor Gawlik wondered if the hotter temperatures would have an effect on the curing process.

Public Works Director Henne replied that the can says forty-eight hours to cure. He said there may be late swim on Friday, but if not it will re-open Saturday morning. He gave an update on the progress of the Drinking Water State Revolving Fund project, noting they have relocated meters to the right of way and replaced lines to where the meters are now located.

City Administrator Kelly talked briefly about his recent meeting with the SPRSA board and their desire to begin the process to put together proposals with city as the lead. He asked if Council would agree with having proposals for a potential new city pool at Wixson Park, instead of relocating it to another area, as the location makes a lot of sense.

Mayor Gawlik polled the Council. Consensus was unanimous to begin the process for putting together pool proposals.

City Attorney Noe had no report. He informed the Council that the Bowers matter is different from the marijuana issue, being quasi-judicial rather than legislation, and that the same rules apply regarding no appearance of bias, no ex parte communications, and the matter being a closed record consideration. He cautioned them that the only thing to consider is the record that comes before them, including the transcription and exhibits presented to the Planning Commission.

Council took a ten minute recess.

4. Boards **None**

Q. Executive Session

1. 20 Minute Session – Potential Litigation RCW 42.30.110(1)(i)

Council went into Executive Session at 6:10pm. At 6:30pm, Council went back on the record. Mayor Gawlik stated that they would be extending the Executive Session for an additional 15 minutes.

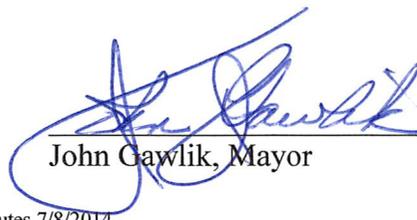
Council went back into Executive Session at 6:30pm. At 6:47pm, Council went back on the record. Mayor Gawlik stated that they would be extending the Executive Session for an additional 15 minutes.

Council went back into Executive Session at 6:47pm. At 7:02pm, Council went back on the record. Mayor Gawlik stated that no action was taken during the Executive Session.

R. Adjournment

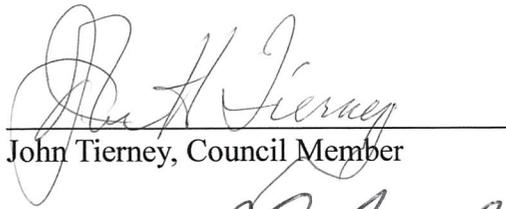
Council Member Overby moved, and Council Member Tierney seconded, that the meeting be adjourned. By voice vote, approval was unanimous.

The meeting adjourned at 7:03pm.



John Gawlik, Mayor


Paul Overby, Council Member


John Tierney, Council Member

EXCUSED ✓
Dave Smeback, Council Member

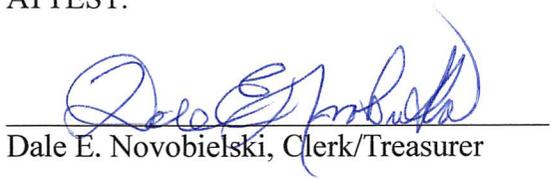

Allen Schmid, Council Member

EXCUSED
Brooke Finch, Council Member


Roy Sample, Council Member


Jane Williams, Council Member

ATTEST:


Dale E. Novobielski, Clerk/Treasurer