

COUNCIL- MANAGER FORM

***Proceedings of the Council of the City of Joliet, Illinois
held on the 6th day of December, A.D. 2010***

PRE-COUNCIL MEETING of the Council of the City of Joliet, Illinois held on Monday, December 6, 2010 at 3:30 P.M. in the Council Chambers, Joliet Municipal Building, 150 W. Jefferson Street, Joliet, Illinois.

ROLL CALL

PRESENT: MAYOR ARTHUR SCHULTZ and DISTRICT 4 COUNCILWOMAN SUSIE BARBER, DISTRICT 2 COUNCILMAN TIMOTHY M. BROPHY, DISTRICT 5 COUNCILMAN WARREN C. DORRIS, DISTRICT 3 COUNCILMAN JOHN GERL, COUNCILMAN AT LARGE THOMAS C. GIARRANTE, COUNCILWOMAN AT LARGE JAN QUILLMAN, DISTRICT 1 COUNCILMAN JOSEPH R. SHETINA and COUNCILMAN AT LARGE MICHAEL F. TURK.

ABSENT: NONE.

ALSO PRESENT: CITY MANAGER THOMAS A. THANAS and CORPORATION COUNSEL JEFFREY S. PLYMAN.

The City Manager asked for the Mayor and Council's indulgence in moving several items up on the agenda due to the presence of interested individuals.

Deputy Liquor Commissioner Dan Campus explained Council Memo #981-10 dealing with the Issuance of a Class "D" Liquor License at 2901 Plainfield Road (Pizza Hut). He said this license is actually being downgraded; they currently have a "B" license which allows all types of liquor, and the new franchise group taking over just wants a beer and wine only license.

It was requested that this item be voted on today.

1. Issuance of a Class "D" Liquor License at 2901 Plainfield Road
(Council Memo #981-10)

A communication from the Liquor Commissioner regarding the application of Franchise Management Investors US, LLC d/b/a Pizza Hut for the issuance of a Class "D" Liquor License at 2901 Plainfield Road contained his recommendation that the issuance of this license is in the best interest of the City, and therefore, approval is recommended.

COUNCILMAN SHETINA moved that the recommendation of the Liquor Commissioner be concurred in.

Motion seconded by COUNCILMAN TURK.

Motion carried by the following vote:

AYES: COUNCILWOMAN BARBER, COUNCILMEN BROPHY, DORRIS, GERL, GIARRANTE, COUNCILWOMAN QUILLMAN, COUNCILMEN SHETINA, TURK and MAYOR SCHULTZ.

NAYS: NONE.

The City Manager then explained Council Memo #930-10 dealing with the Preliminary and Recording Plats of Ozinga Re-Subdivision located southeast of McDonough and Railroad Streets which will divide and consolidate the existing 7.5 acres of Ozinga holdings into three lots.

Mr. Barry Voorn of Ozinga Bros. Inc. was present on behalf of the petition.

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COUNCILMAN BROPHY asked why this is being redone since they haven't changed the boundaries of what they own.

Mr. Voorn stated that there are two reasons primarily for doing the resubdivision, one is to consolidate their holdings that are east of Railroad Street. He said they have acquired the property as various parcels and would like to consolidate those into two lots that Ozinga will own going forward. He said the other lot that contains the cement dome is going to be sold.

COUNCILWOMAN QUILLMAN asked if this will take care of nearby property owner Mr. Gordon's issues with flooding.

The City Manager stated that the previous approvals on this property dealt with the issue of the storm water and that is moving forward and waiting on permitting from the Army Corps of Engineers.

COUNCILMAN GIARRANTE stated that he met with representatives from Ozinga last week regarding Mr. Gordon's problems and Ozinga has done some work and plan on doing more to help him.

It was requested that these items be voted on today.

2. AN ORDINANCE Approving the Preliminary Plat of Ozinga Re-Subdivision as recommended by the Plan Commission was presented and read. (#P-4-10/Dist. #5)
(Council Memo #930-10)
(ORDINANCE NO. 16731)
3. AN ORDINANCE Approving the Recording Plat of Ozinga Re-Subdivision as recommended by the Administration was presented and read. (#RP-7-10/Dist. #5)
(Council Memo #930-10)
(ORDINANCE NO. 16732)

COUNCILMAN GIARRANTE moved that said Ordinances be adopted.

Motion seconded by COUNCILMAN TURK.

Motion carried by the following vote:

AYES: COUNCILMEN BROPHY, DORRIS, GERL, GIARRANTE,
COUNCILWOMAN QUILLMAN, COUNCILMEN SHETINA, TURK,
COUNCILWOMAN BARBER and MAYOR SCHULTZ.

NAYS: NONE.

The City Manager then explained Council Memo #931-10 dealing with the Recording Plat of Liberty Meadow Estates Subdivision Unit 2, a PUD, which is being requested by the Housing Authority of Joliet, owner and developer of the subject site.

It was requested that this item be voted on today.

4. AN ORDINANCE Approving the Recording Plat of Liberty Meadow Estates Subdivision Unit 2, a PUD as recommended by the Administration subject to receipt of the following fees and documentation within 60 days of

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approval was presented and read: a) A Letter of Credit or Performance Bond for public improvements in the amount of \$1,325,782.00; b) A 1 ¼% inspection fee for public improvements in the amount of \$16,572.00; and c) An Irrevocable Offer of Dedication for public improvements. (#RP-6-10/Dist. #4)
(Council Memo #931-10)

COUNCILMAN DORRIS moved that said Ordinance be adopted as recommended.

Motion seconded by COUNCILMAN TURK.

Motion carried by the following vote:

AYES: COUNCILMEN DORRIS, GERL, GIARRANTE, COUNCILWOMAN QUILLMAN, COUNCILMEN SHETINA, TURK, COUNCILMAN BROPHY and MAYOR SCHULTZ.

NAYS: NONE.

ABSTAIN: COUNCILWOMAN BARBER.

(ORDINANCE NO. 16733)

The City Manager then explained Council Memo #935-10 dealing with a Special Use Permit to Allow a Tire Repair and Installation Shop in an Existing Garage Structure Located at 428 E. Jackson Street. He stated that this was tabled at the last meeting to make sure that neighbors were aware that this was moving forward. He said that all of the notices that are sent in advance of Plan Commission and Zoning Board of Appeals hearings do include a sentence or two in Spanish giving directions as far as getting additional information. He said that after the last meeting, staff also posted a sign at the property informing nearby residents that this would be discussed by the City Council today and tomorrow. He said that this request is the same as what was presented to the Council previously for a tire repair and installation shop in an existing structure.

Mr. Hernando Del Toro, the owner, and Mr. Rudolfo Reyes, the applicant, were present on behalf of the petition.

COUNCILMAN SHETINA asked if the sign was up.

The City Manager stated that the sign was up before it was presented at the last meeting, and after the last meeting, staff went back and put up a sign in Spanish giving directions for anyone that wanted additional information to contact the City.

Mrs. Joan Pena of 420 E. Jackson Street stated that the shop that the applicant wants to open is in an alley. She said that since the business in the front of the property opened, they take up all of the street parking and are parking in her driveway. She said she has made complaints to the City of Joliet through the Police Department so it is on record that they are parking in her driveway and the owner argues with her regarding the matter. She said that they were running a mechanic shop in the rear this summer and she wasn't able to get her garbage to the alley. She said that there is not ample parking for the current tenant and if this is approved, the alley will be blocked with cars.

COUNCILMAN SHETINA stated that he has been in the building and the owner has made some great improvements from what it was. He said with respect to the garage itself, he hopes that the applicant understands how it is to be operated and that the staff makes certain that he follows the rules, but if the interior of the garage looks like the business does, the City should be honoring him for what he has done to the building. He said as far as parking is concerned,

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the owner has the vacant lot next door that he is renting and it is a nice operation.

Mr. Del Toro stated that he is unsure what Mrs. Pena is referring to because her driveway is in the front on Jackson Street. He said when he poured the concrete in the back, he spoke to her husband to see if it was OK and this is the first time he has heard of any problems.

Mrs. Pena stated that the problem is the parking. She said he does have the lot on the side but it is filled up with Herbalife Nutrition customers. She said he was running a business this summer out of the back and was blocking the alley.

COUNCILWOMAN QUILLMAN asked how many tenants are currently there.

Mrs. Pena stated that there is Herbalife which takes up all of the parking and the resale shop next door closed because there was no parking.

COUNCILWOMAN QUILLMAN asked how many employees work at Herbalife.

Mr. Del Toro stated that there are three or four employees at Herbalife and two apartments upstairs. He said he has 16 parking places and 12 parking places next to the building.

COUNCILWOMAN QUILLMAN asked if the customers know to park in the lot.

Mr. Del Toro said yes.

COUNCILWOMAN QUILLMAN stated that his neighbor is having issues with parking and customers blocking her driveway.

Mr. Del Toro stated that her driveway is in the front on Jackson Street and he has tried to keep the customers off of Jackson Street and get them to park in the lot.

COUNCILMAN GIARRANTE asked if "No Parking" signs could be placed in the alley to keep people from blocking the neighbors.

The City Manager stated that there is no parking in the alley but staff could look into some signage if the Council wishes.

Mrs. Pena asked if the signs could be placed in front of her house and for her driveway also.

COUNCILMAN GIARRANTE stated that if people are parking in her driveway, she can have them towed.

Mrs. Pena stated that she had called the Police Department after she had to drive through her yard to get her car out and the dispatcher wasn't very helpful.

COUNCILMAN GIARRANTE asked Police Chief Fred Hayes if he wanted to respond to that.

Chief Hayes stated that he would look into it, but this is the first he is hearing of it.

COUNCILMAN GERL asked if people are parking in the driveway or blocking the driveway.

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Mrs. Pena stated that the customers park in her driveway, block her driveway and park in front of her house and have broken her lawn decorations. She said now they want to put something in the back of the property that will block the alley.

The City Manager stated that maybe it would be more appropriate if the staff took a look at the parking situation between now and tomorrow night and see if they can get everyone at a comfort level that the parking is appropriate. He said there are six spots off street that are reserved for use in the back for the tire operation and there are other spots that are reserved for the HerbaLife operation in the front. He said staff will see if they can come up with a resolution for the Council and if there is not enough information, perhaps it could be tabled until there is enough information for the Council to feel comfortable voting on this.

Mr. Del Toro stated that he agrees with the City Manager and will do whatever needs to be done to fix the problem.

COUNCILMAN GIARRANTE said that we should get Mrs. Pena the police officer's name and number that is assigned to that area so if they are blocking her driveway she can call him directly.

Mrs. Pena stated that she has his name and number and she has called him numerous times. She said the officer has gone into the shop to ask them not to park in her driveway.

COUNCILMAN GIARRANTE stated that he needs to start towing the vehicles.

The City Manager stated that Chief Hayes will follow up on the parking enforcement issue. He said Director of Community and Economic Development Jim Haller will put a parking diagram together for tomorrow night and if the Council is ready to vote then they can take action, and if not, it could be tabled.

4. Citizens to be Heard

- a. James Foster on behalf of the Black Contractors Association re: Construction Jobs with the City of Joliet

Mr. Foster stated that he is here today to speak on behalf of the socially challenged and disadvantaged community and to ask the Council to put a stop to the work on the new fire station on Laraway Road because once again, the minority community has been left out. He said that there have been some discrepancies in the contract language, and the method set forth to achieve the minority participation goals on the project are the same failed policies that the City has from the past. He said one of those failed policies is that African American participation is absent on the project. He said also, the bids were not publicly opened and the method set forth to achieve the minority participation goals is outdated and not consistent with other cities that attempt to diversify their community. He said they would like to offer the City a solution that has been a proven tool that other municipalities have used in attempting to diversify their community, and he presented the Minority Participation Outreach Ordinance.

Mr. Foster continued that this ordinance deals with minority, disadvantaged and women-owned business participation on public projects as well as the certification letters to be produced by contractors that they are, in fact, certified minority businesses. He stated that also in this ordinance are letters of intent,

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joint venture opportunities, local subcontracting goals, award criteria and closeout documents. He said that they feel that this ordinance could assure minority participation on all future projects within the City, and that way everyone could contribute to building this great City. He asked the Council to evaluate the ordinance and make it part of future contract documents.

COUNCILWOMAN QUILLMAN asked if this was something that could be reviewed by the Legislative Committee.

COUNCILMAN DORRIS stated that the Public Safety Committee was told that there was activity with the fire station general contractor, R. Berti, to ensure that there was going to be minority participation on this project and now they are being told that that did not happen and he would like an explanation. He said that when the contract was awarded, there was a sheet attached to the Council Memo that gave specific guidelines as to who the minority participants were on the project.

COUNCILMAN GIARRANTE stated that the Public Safety Committee was assured that there would be minority participation and they were also told that these bids were opened publicly.

Fire Chief Joe Formhals stated that he was at the bid opening along with Mr. Rich Berti of R. Berti Construction.

The City Manager stated that the ordinance that was supplied by Mr. Foster will be reviewed. He said that he and the Corporation Counsel had a meeting last week with IDOT officials on the transportation center using the \$32 million IDOT grant made available to the City and there will be a MBE (Minority Owned Business Enterprise) and a WBE (Women's Business Enterprise) requirement as a condition of the grant funds that have been provided by the State of Illinois. He said that the Corporation Counsel will be developing a policy that is probably very consistent with the ordinance from Mr. Foster for those projects that will be part of the transportation center project. He said they think that there will be three main contracts that will be let as part of the project and there will be minority participation in that. He said that saying there will be minority participation does not mean that minority firms get the business, but it establishes a process for minority contractors to be participants so that is something that will certainly be done as part of that contract. He said they will look at the ordinance and meet with Mr. Foster to review it.

The City Manager continued that as far as the fire station project, staff worked with Mr. Berti to identify minority owned businesses and invited them specifically to bid. He said the construction management process isn't a process that opens bidding up to everybody like the other contracts do and part of that is because it was stimulus package money that focused on Joliet and Will County based businesses. He said they went through a process with Mr. Berti and identified several minority owned contractors and invited them to bid and several firms did bid, but there is still a low bid aspect to this where there is an outreach, that is the goal that is set in minority business plans, and they were certainly invited to bid and they did bid. He said that there were no objections prior to the bid opening as far as anything in the rules that were unfair or inappropriate, so it was assumed that those submitting bids were submitting them under the rules that had been established and accepted those rules. He said that is not to say that it can't be fine-tuned for future projects and it certainly will. He said he hopes that answers all of the questions that Mr. Foster has raised today.

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COUNCILMAN GIARRANTE stated that it has and that is what the Public Safety Committee was told. He said as far as the opening of the bids, was that advertised as to when the bids were going to be opened and who was there.

The City Manager stated that under the construction management process, the bids are controlled by the construction manager, it is not a City of Joliet bid that goes out to all of the subcontractors that are working on the project. He said it is similar to having a general contractor, the City has a contract with the construction manager and then the construction manager acquires multiple bids for the various trades that go into building the project. He said in this case, the City's agreement was with Mr. Berti and there was a guaranteed maximum bid, and his job then was to find 23 different subcontractors and he went through a process of inviting specific bidders to submit proposals for the various parts of these contracts. He said included in that were multiple, minority owned businesses. He said they made sure there was an outreach and that Mr. Berti did not limit the scope to non-minority firms and then everyone was informed of when that bid opening would take place. He said Mr. Berti controlled that bid opening but Chief Formhals was present for the opening along with architect Brett Mitchell and all of the bids were tabulated and the documentation was provided to the Mayor and Council before the vote. He said he met with Mr. Foster and Mr. Sellers last week and provided them with the same documentation that the Council received so they could see who the bidders were and what each bid amount was. He said he believes Mr. Foster was the second lowest bidder for the electrical portion so it was close, and he told Mr. Foster that the City's goal is to invite minorities to participate, but the City does not have a system that allows us to deviate from the low bid process. He said we are not there yet and he doesn't know if we will ever be able to allowed to disqualify a low bidder in favor of a minority owned business that has a higher bid, because obviously dollars and cents come into play too and for the fire station project there wasn't much of a cushion to get this project built.

COUNCILMAN GIARRANTE asked the City Manager if he was satisfied with everything the way it was done.

The City Manager stated that he is and he did ask Mr. Berti to summarize the minority participation part of this which included Champion Drywall, Conte Paving, C.R. Leonard and Jameson Sheet Metal. He said that it's not as if there is no minority participation in the project, it is just that none of the subcontractors that had submitted bids were low enough to have been awarded the subcontracts.

Mr. Foster stated that they are not asking the City to give them the bids because they are a higher bidder. He said he doesn't think that anyone here is familiar with the minority certification process because there are certain entities that license companies as being a certified minority and some of the contractors here that are claiming to be certified minorities are not approved minorities certified by IDOT. He said people are running around with a certification without any municipality seal on them. He said that the State of Illinois recognizes IDOT, the City of Chicago and Cook County, and he is talking about disadvantaged and socially challenged people. He said that there are contractors on here that exceed that threshold and they are not qualified. He said that there is no certification criteria in line here so therefore there are people running around with certifications which are not disadvantaged and socially challenged people.

COUNCILMAN GIARRANTE asked if there is a State certification.

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Mr. Foster stated yes, the only one is IDOT.

COUNCILMAN GIARRANTE asked if that included electric contractors and everything.

Mr. Foster stated that IDOT certifies for the Department of Transportation, and his electrical certification is through the City of Chicago. He said for example, Timm Electric is listed on Mr. Berti's list as a WBE which means that it is a woman owned business and the criteria for a woman owned business is not equivalent to that of a true minority owned business or MBE. He said it would do everyone all a great service if they familiarized themselves with the adequate rules for certifying what a true minority really is.

COUNCILMAN GIARRANTE asked if they differentiate.

Mr. Foster stated yes they do and he explained the qualifications and percentages allowed.

The City Manager stated that he doesn't disagree with anything that Mr. Foster has said and he thinks they had a pleasant and businesslike meeting the other day and he told Mr. Foster that the certification process is a two edged sword. He said it sounds very easy to say to only allow certified MBE and WBE submit bids, but if it got to that, we would be eliminating a lot of small businesses that aren't in a position to go through the process of becoming certified and it is a fairly complicated process. He said the other thing that ends up happening is it eliminates Joliet based businesses and it opens the door for a lot of Chicago based businesses; he has nothing against Chicago businesses, but he thinks it's important to remember that we don't want to close the door on a lot of Joliet based businesses that are minority owned, not only for this project, but for other projects.

Mr. Foster stated that's correct, and he is doing this to show preferential treatment to local minority businesses and that is included in the ordinance. He said they define local as a business that has an operating address in the City of Joliet limits, so that would rule out out-of-town contractors coming in and taking their work.

COUNCILWOMAN QUILLMAN asked if the ordinance is already in place in other municipalities.

Mr. Foster stated yes, the information that they have gathered is from Illinois and other states on tools that they have found to be useful to diversify their community.

COUNCILWOMAN QUILLMAN asked if there was confusion on the bid opening because they were due on Veteran's Day and maybe that got missed because it was a holiday and City Hall was closed.

Mr. Mike Carruthers, President of the Joliet Black Chamber of Commerce, stated that the misunderstanding comes from this being stimulus money that was allocated for the fire station. He handed out a packet that included all of his certifications and what requirements a minority owned company needs to have. He said that any entity or municipality that uses Federal or State money has to use a certified minority, not a workforce minority, company. He said there are only a few African-American companies in Joliet that have their certifications; they are not asking for a whole lot, they are just asking to be part of the equation.

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Mr. Foster distributed information on the definition of what a minority enterprise is, and said it defines a minority as a Black, American Indian, Hispanic, or Oriental. He said that's what a minority business consists of, and that is not consistent with what was awarded at the fire station.

COUNCILWOMAN QUILLMAN stated that she still wants to address this and said she thinks that it should go to the Legislative Committee because it is definitely worth looking into. She said if other municipalities are doing this she thinks that Joliet should do it as well.

COUNCILMAN DORRIS asked how soon this could be reviewed because it needs to be worked out with the transportation center project coming up.

COUNCILMAN SHETINA suggested that the Committee meet at 3:00 p.m. on Thursday and there were no objections.

COUNCILMAN SHETINA asked what the City believes a minority contractor is.

The City Manager stated that this has actually been discussed many times. He said this goes back 22 years when the NIP program started and there was a provision put in construction contracts.

COUNCILMAN DORRIS stated for anything over \$100,000, the minority provision kicked in.

The City Manager said yes and that we would require certified payrolls. He said that the focus back then of the Council was making sure that minorities living in the community had jobs on the City's projects. He said he thinks it was at a time when most of the contractors that bid for those jobs were not minority owned businesses so the reality was that the City forced those contractors to hire from the local community and it has worked very well. He said the City receives certified payrolls from each of the contractors verifying the status of each employee. He said from what Mr. Foster has been saying, the City needs to focus on the business itself and that is a difficult thing to do. He said there are not that many municipalities in Illinois that have adopted formal minority business goals and the City will be bringing something to the Council at the beginning of 2011 for the transportation center and he thinks that will address it in full at that point.

Mr. Willie Sellers, President of the Black Contractors Association of Will County, asked how can the City Manager claim that the provision has worked very well when they have been coming to the City for the last three or four years. He said that if it was working they wouldn't be at these meetings.

The City Manager stated that he and Mr. Sellers have had at least a dozen conversations on this topic and the contractors have cooperated by complying with the requirements in the City's contract and we have not had any situations of violations. He said what Mr. Sellers is referring to is changing the program which is something that the Mayor and Council would have to review.

COUNCILWOMAN QUILLMAN stated that if she recalls, not one of the contracts for the fire station was a local minority business.

The City Manager stated no he doesn't believe that there were any local, minority owned businesses.

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COUNCILMAN DORRIS stated that it was not perfect and part of Mr. Sellers frustration is part of his that he had with the previous administration. He said when we receive the payrolls they do meet the criteria, but they count the secretaries and everyone on the payroll as part of that job, so we didn't see the people working in the community, but the numbers looked right. He said that we have the opportunity to do something different and together come up with something that works for everybody.

The City Manager then went to the beginning of the agenda to explain the remaining items.

The City Manager explained Council Memo #927-10 dealing with amending the Regulations and Fees Associated with Vending Machines and Amusement Devices. He said that this is an opportunity to simplify the fee structure which was formerly based on the price of the item in the machine which got confusing as vendors wanted to change the pricing of the products, so this standardizes the fees and brings a little simpler regulation to that area.

COUNCILMAN SHETINA asked if the fee generated covers the City's expenses of administering the licenses.

The City Manager stated that with the reduction in staff from three to one and including overhead, it is at a point where it is very close to even and they are going to monitor that in 2011 and make sure that the revenue that is coming in funds the staff.

COUNCILMAN SHETINA asked about how many machines does the City license.

Business Services Manager Kristen Gundersen stated that about 1,000 vending machines and 980 coin operated amusement devices received licenses this year.

The City Manager stated that the back page of the Council Memo shows the revenue for 2010 and the projected revenue for 2011 and 2012. He said the revenue is going up but there are some vendors that will receive a reduction in fees.

COUNCILMAN SHETINA stated that the projected increase is from \$54,000 to \$86,000.

Ms. Gundersen stated that is correct.

COUNCILWOMAN QUILLMAN stated that anything over 50 cents to play has a \$50.00 license.

Ms. Gundersen stated that's correct.

COUNCILWOMAN QUILLMAN stated that a lot of VFWs and Veteran's Posts have machines and she asked if they are going to be charged or can they be exempt.

Ms. Gundersen stated that with most of those, a vendor takes care of the machines and it is the vendor that gets the sticker.

The Corporation Counsel explained Council Memo #932-10 dealing with

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Amending the Subdivision Regulations regarding the Renewal of Preliminary and Final Plats of Subdivision. He stated that this is in response to what the City is seeing with the economy. He said there are suspensions of development and subdivisions that have come in for renewal having very little development activity, and rather than ask those developers to bear the full expense of re-engineering the plat, staff has proposed to offer an opportunity to come in at the Council level instead of the Plan Commission level and make a basic summary request for an extension of up to three years.

The Corporation Counsel then explained Council Memo #933-10 dealing with Amending the Zoning Ordinance with respect to Residential Planned Unit Developments and other Residential Developments Exceeding Five Acres. He said that this is a little more difficult of an issue but deals with the same essential problems. He said what we are seeing with the economy is that there are numerous residential subdivisions where development has basically stopped, so there are cases of partially completed subdivisions where there are initial homebuyers who bought their homes based on the house plans that were offered by the original developer of the subdivision and approved by the Council. He said in many cases, due to bankruptcy or foreclosure, there is a change of ownership of these subdivisions and the new developers have different ideas about what they would like to market in terms of house plans and house styles and that causes a potential problem for the homebuyers who made the initial investment. He said they risk seeing a significant change in the quality of construction in the balance of the subdivision, and to protect those people and to make sure that the City will be able to defend their initial planning decisions made by the Council at the time of approval of the preliminary plat, they would like to introduce a new requirement in the zoning ordinance that when there is a change in control of a subdivision, or a resumption of the development, that what the Council initially approved for house plans still applies to that subdivision. He said so the people that bought in that subdivision will see the subdivision built out the way they were told it was going to be built out rather than have new developers come in and sell a different housing product that the Council didn't approve and that may have some adverse effect on taxable values and property values plus the quality of life of the homebuyers in the subdivision.

COUNCILMAN GIARRANTE stated that he thinks that this issue came up at one of the homeowners meetings that the developer was going to start building homes but they were not the same size as the ones that were originally built.

The Corporation Counsel stated that the City needs a process to entertain those types of requests, because developers have to react to changes in the marketplace just like the City does. He said he doesn't think the City has a unilateral right to not permit any changes in the housing product, but it has the right to review those proposals and approve what is reasonable and deny what is not reasonable. He said right now other than with the Planned Unit Development process, the City really doesn't have a formal, ordinance based process for reviewing what is actually going to be constructed. He said the City's policy during the housing boom was to include that provision in an annexation agreement which is enforceable, but not every annexation agreement had that provision, plus annexation agreements expire, so this would put in that requirement for house plan approval and provide a procedure for changing house plans that would come to the Council if a developer requests to make a change. He said then the City would have to notify the subdivision, advertise it and send it to the Plan Commission before it comes to the City Council.

COUNCILMAN SHETINA asked if the City is within its rights to do this.

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The Corporation Counsel stated yes it is. He said the Council is essentially recognizing the problem in the marketplace with market pressure to change the quality in proposed construction and recognizing a potential hardship to the tax base because if there is a lesser housing product, there will be a lesser tax base. He said the Council is also recognizing a consumer protection issue that there are people that reasonably relied on the City's plat approval process and what they were told by the home sellers at the time was that the subdivision would look like a certain product. He said under the Council's zoning authority and consumer protection authority this is allowed. He said now with any zoning process we have to allow for due process so any developer who wants to propose a change has the right to make that proposal, and then the Council would exercise their traditional zoning powers to make a fair decision based on the evidence.

COUNCILMAN SHETINA asked if it would be safe to say the Council has a fiduciary responsibility to maintain the assessed valuation of the City as well.

The Corporation Counsel stated that is exactly right; one of the primary legal foundations for this ordinance is to make sure that the Council can preserve the fair market value of properties because the Council levies a property tax which is needed to fund City operations.

COUNCILMAN GERL stated so basically any change to any of the product in any of the subdivisions is going to have to come back to the City Council. He said if a new developer acquires lots or purchases a subdivision, if they want to make any changes to the product that was being built by the previous developer, they will have to come back to the Council.

The Corporation Counsel stated that is correct unless the proposed new product is reasonably consistent with what the Council approved, and there is a list of criteria in the ordinance that the Building Department and Planning Department would look at and it is very similar to what the City looks at in the anti-monotony ordinance. He said so there are clear standards that are applied administratively.

COUNCILMAN BROPHY stated that the group they met with in Greywall Subdivision had a public hearing and they were able to get a look at the changes, but should they not hold such a public hearing and simply go directly to staff, then staff could in their judgment approve those changes without Plan Commission, Land Use or Council approval.

The Corporation Counsel stated that what the ordinance says is that the developer can always get a building permit for the house plans that were part of the plat approval process and then on the administrative level, if the developer proposed new house plans that are reasonably consistent with the original approval, then the permit officers and Planning Department will make the decision that the proposed plans are basically the same as what the Council already saw. He said it will be just like now when staff makes decisions regarding anti-monotony, code compliance or building code compliance. He said if the plans are very close to what was approved there is an administrative process, and that was a drafting decision that was made but the Council could decide to have all changes come before the Council.

COUNCILMAN BROPHY stated that he doesn't want to test every hypothetical but one that the group at Greywall Subdivision was suggesting was a plan that included square footage below grade when they were showing the size of the

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home, and he thinks that we need to agree on basic items like whether we would allow a developer to count the below grade portion of the home in the minimum square footage number that we will accept.

The Corporation Counsel stated that one of the criteria in the ordinance is gross floor area and that phrase is used because it currently exists in the zoning ordinance.

COUNCILMAN BROPHY asked if that speaks to gross floor area at an above grade.

The Corporation Counsel stated that it does not, but if the Council wishes, they can add additional criteria that deal with above and below grade issues.

COUNCILMAN BROPHY stated that he personally would not want the staff to make such a change without the Council's approval for below grade finished product.

The Corporation Counsel stated that we don't want monotony, but we don't want drastic changes in the quality of the construction which is measured by general architecture, exterior building materials and the bulk. He said those are the criteria that appeared the most obvious in terms of what staff should look at to see if something is reasonably consistent. He said with the Council's indulgence, he will modify the ordinance to include above and below grade and he could add roof pitch to that as well. He said again, this is just for the staff to look at a proposal from a developer and make a judgment about similarity and if there is a question, then it would be brought back to the Council for the final decision.

The City Manager then explained the remaining items on the agenda.

5. Waste Management – Curb and Alley Collection

COUNCILMAN BROPHY stated that he received a call today which he predicts will be the first of many regarding the change in the Waste Management collection from alleys to curbs. He said the City did a good job with the notices and information on the new cans that will be coming, but the gentleman that called stated his curb side collection starts the week of December 13th and the bins will not even be issued until about February or later.

The City Manager stated that the carts will be distributed starting in January on the far west side and they will work their way east with the distribution. He said there is a part to this that deals with moving a lot of the alley collections to the front of the house and part of that is because of the new contraption that is needed to dump these being on the side of the trucks, so there won't be room in the alley to handle that. He said Waste Management has mailed a letter to the 4,000 homes that are affected by this where the relocation of the point of pickup will be from the alley to the front, and this week Waste Management will start delivering door hangers to all of the homes letting them know and giving them a Waste Management number to contact. He said the first week through, no one will be penalized and if someone leaves their cans in the alley, Waste Management will go back into the alley, pick them up and put an orange sticker on the cans telling them to put their cans in the front yard next week, and they'll keep that process going.

COUNCILMAN BROPHY stated so we will start requiring the curbside collection even though residents don't have the carts with the wheels until later.

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The City Manager said yes.

COUNCILMAN BROPHY stated he thinks that is a mistake and it should be delayed. He said that a lot of these homes are in old neighborhoods where there is no pathway from the back to the front of the house for these carts to go, some houses are very close and others will be going through 12-15 inches of snow and then there are the seniors. He said he doesn't know how this is going to be feasible in some cases and the City is going to have a catastrophe on their hands. He said he thinks we should consider a spring implementation of this if at all. He said he knows this is important to the overall cost of the contract and getting everybody on equal footing so the trucks will work, but he doesn't think it is going to be feasible for a lot of the homes due to either the space and condition or simply the homeowner being unable to drag something that far.

The City Manager stated that he and Contract Administrator Meg McEvilly met with Mike Morley of Waste Management this afternoon to discuss implementation and this will be difficult and it has been difficult in other communities where Waste Management has gone through this, but it is a process that we need to go through and it is the trade off for having the cart system implemented on a City-wide basis. He said it is something that we know we will have to handle on a case by case basis and there will be some residents that will have some challenges and Mr. Morley and his crews will work with them. He said this might take awhile but the carts are being delivered in a few weeks and there is just not enough room in the alleys for the trucks with the arms to go through there. He said a day like today is a tough day because there was 4½ inches of snow and alleys don't get plowed or salted, and there are a lot of low hanging wires and garages right on top of the alley property line or even encroaching it, and this will reduce the City's maintenance responsibilities in the alleys and also help with Waste Management having to deal with claims for downed wires and hit garages and things like that. He said it really is something that is going to be difficult but staff and Waste Management is up to the task to handle it.

COUNCILWOMAN QUILLMAN asked if there was an extension because of the postcard mailing.

The City Manager stated that the extension was a separate issue dealing with changing to the 64-gallon cart as opposed to the 96-gallon cart, and a one week extension was granted last week because there were some residents that received their cards later than others.

COUNCILWOMAN QUILLMAN stated that she just received her notice today and she had received some complaints from people that just received the notice this weekend after the deadline.

The City Manager stated that some residents received their notices a few weeks ago and he is not certain what happened with the mailing because it was handled by Waste Management, but it was clear that an extension was needed. He said there have been people coming into City Hall to measure the carts to make sure they select the right size so it looks like people are listening and they are getting feedback from the show that is on Channel 6 and Channel 99 for the last couple of weeks. He said they are trying their best to get the word out; they have had questions at Homeowner's Association meetings so they have had a chance to spread the word. He said he knows it's not 100% saturation but they are trying their best to get the word out.

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6. 809 Mills Road – Sanitary Sewer

COUNCILMAN DORRIS stated that Ms. Ann Ojo was here a few weeks ago and she is back tonight regarding the house on Mills Road that needed a sanitary sewer or septic. He said the City paying for it was not an option because there is no money in the Neighborhood Improvement Program budget. He said his understanding is that the County has no objection to her putting in the septic system which she can afford to do right now. He said if that is an option, why can't the City allow that so she can use the home.

The City Manager stated that after the last meeting he had the chance to look at the records and it's a single family home that was purchased by Ms. Ojo about two years ago through a foreclosure process and it is a rental property for one family that was living there before the septic system went bad. He said he is not sure if they had a septic test done when the property was purchased and his responsibility to the Council is to bring to them what applies according to the ordinance, and the ordinance requires anybody within a certain number of feet of an existing sanitary sewer to connect, and that is the policy of the Council and the City and that is why the recommendation was to require connection. He said he knows that Ms. Ojo was able to purchase the home at a very reasonable price and it is a nice home, and he knows this is an expense they were not anticipating but he wanted the Council to be aware of those situations. He said it is a rental, it is not their personal residence, but if the Council would like to have some flexibility with situations like this he would defer to their judgment. He said any time there is a sanitary sewer that close to a property, the staff's recommendation would be to connect but if the Council's choice is to go the other direction and let the County issue the permit, staff is fine with that.

COUNCILMAN DORRIS stated that would be his recommendation. He asked Ms. Ojo if she has the ability to put the septic in now.

Ms. Ojo stated yes.

COUNCILMAN DORRIS stated that before the situation gets worse, he thinks the City should go ahead and allow the septic if there are no objections.

COUNCILMAN BROPHY stated that he doesn't have an objection but just so Ms. Ojo knows, if she were to sell the house, most people financing homes now are using FHA and an FHA lender will require the buyer to hook up to the sanitary sewer if it is within so many feet and available and this property would fall into that category. He said it's just a warning that if she decided to sell it, the expense being put into the septic will be wasted because they will force the buyer to hook up to the sewer line. He said he just wanted her to know that so it wasn't a surprise if she decided to sell it in a year or two.

COUNCILMAN GERL stated that he thinks it behooves the City to bring in as many people into the City and have them hook up to the sewer system as possible. He said he doesn't know if she has priced out what the septic system would cost, and he asked if it would be possible to work out some sort of accommodation to reduce the tap on fee which might be a better fit than putting in a septic system.

The City Manager stated his recommendation continues to be to connect to the sanitary sewer system. He said he knows it is a big investment but it is at least an investment that would make the property marketable and it helps eliminate

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some risk. He said septic systems are unpredictable and he isn't sure what happened with this system, whether it is the soil or whatever.

Ms. Ojo stated she did not even know they had a septic system.

The City Manager stated that usually in a sale like this the lender would have required a septic test to make sure that there is a functioning way to dispose of waste, but in this case it was done through a Sheriff's sale at a low cost and was probably a "buyer beware" situation and unfortunately she got stuck. He said the easy way is to allow a septic field to be put in but in the long term they will be revisiting this issue. He said it is not a monetary issue for the City and he has told Ms. Ojo that they would work with her on the connection fee and the City would rather see a connection because in the future there will be problems with the septic system.

Ms. Ojo asked if the City could make it affordable for residents because \$25,000 is not affordable.

Director of Public Works Jim Eggen stated that there are a couple of difficulties with this, the sewer is directly across the street but they are dealing with Mills Road which is a County road. He said there is land available if a septic was to go in and one of the problems is the cost of getting across the road. He said he has calls into the County Highway Department for their requirements and the sanitary sewer here is quite deep, and they were looking into the possibility of tying into the manhole so they are looking at other options to make it cheaper. He said also he had asked to see a copy of the estimate for the septic which was just to do a repair or extension on the leach field, but his understanding is that the septic box also needed to be replaced because it is under the back porch and the County is reluctant to issue any permit without a soil test being done to know if there is the capacity for the ground to take the water and for the size of the leach field. He said the County was inconclusive on whether or not they would approve this and it is the County's recommendation to connect to the sewer.

COUNCILMAN GERL asked if the \$25,000 included the tap on fees or if that was just the cost.

Ms. Ojo stated that it doesn't include the tap on fees.

COUNCILWOMAN QUILLMAN asked if there is any liability to the City if they allow her to put the septic in since she is renting the property. She said if something happens and the renters get ill, is there any liability on her part or the City's part.

The Corporation Counsel stated that there may be liability on her part but the City requires either connection to the public sewer or that a private wastewater system permit be obtained and that the construction comply with code requirements, so the City would not have any liability for the construction if the septic failed in the future, but the property owner may.

COUNCILMAN GIARRANTE asked if there were any hard numbers for a septic as opposed to hooking up to the sewer.

Mr. Eggen stated that there were proposals in the range of \$20,000. He said he hasn't had a chance to talk to any of the contractors to see if there is any cost savings that could be had with the work or to offer some suggestions for alternative contractors.

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COUNCILMAN GIARRANTE asked Ms. Ojo if she contacted a contractor to get an estimate or did she have several contractors bid the project.

Ms. Ojo stated that one of the names was given to her by the Public Utilities Department and they got two estimates.

Mr. Eggen stated he would like to continue working with Ms. Ojo on the situation and hopefully over the next two weeks have an update for the Council.

Ms. Ojo stated that the money they set aside to replace the septic tank is what they are having to use to pay the mortgage so the longer it takes, the more difficult it will be for them to keep the house.

COUNCILMAN BROPHY stated that has to be one of the solutions, to sell the property to someone that can afford to connect to the sewer system.

The City Manager stated that Mr. Eggen will schedule a meeting with Ms. Ojo for tomorrow morning and staff will report back to the Council before tomorrow night's meeting.

Mr. Eggen stated he will have one final discussion with the Health Department and try to make contact with the Highway Department again on what would be required.

The City Manager advised that there was a need for a closed session to discuss personnel, collective bargaining, land acquisition and pending or threatened litigation.

COUNCILMAN BROPHY moved that the Council recess to closed session at 5:10 p.m. to discuss personnel, collective bargaining, land acquisition and pending or threatened litigation after which the meeting will be adjourned.

Motion seconded by COUNCILWOMAN BARBER.

AYES: COUNCILMEN GERL, GIARRANTE, COUNCILWOMAN QUILLMAN,
COUNCILMEN SHETINA, TURK, COUNCILWOMAN BARBER,
COUNCILMEN BROPHY, DORRIS and MAYOR SCHULTZ.

NAYS: NONE.

ARTHUR SCHULTZ
Mayor

JANET K. TRAVEN
City Clerk

Recorded on Tape