



City Council

City Council Chambers ♦ 524 West Stephenson Street ♦ Freeport, IL 61032

MINUTES REGULAR MEETING Monday, November 2, 2015

CALL TO ORDER

The regular meeting of the Freeport, Illinois, City Council was called to order in council chambers by Mayor James L. Gitz with a quorum being present at 6:54 p.m. on November 2, 2015.

ROLL CALL

Present on roll call: Mayor Gitz and council members Tom Klemm, Peter McClanathan, Art Ross, Jodi Miller, Patrick Busker, Sally Brashaw, Michael Koester and Andrew Chesney (8). Representing the City of Freeport as special counsel was Michael Phillips, Attorney At Law.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Alderperson Brashaw.

APPROVAL OF AGENDA

Alderperson Koester moved for approval of the agenda, seconded by Alderperson Ross. Motion prevailed by voice vote without dissent.

MINUTES

The minutes from the meeting held on October 19, 2015 were presented. Alderperson Busker moved for approval, seconded by Alderperson Brashaw. Motion prevailed by voice vote without dissent.

PUBLIC COMMENTS – AGENDA ITEMS

The following public commenters were signed on the sheet and Mayor Gitz requested leave of council to hear from non-agenda items as well as agenda items. Leave of council was granted.

Lynn Folgate, 3551 Stephenson Street, Freeport, Illinois, provided a summary of the fundraising efforts of the Fraternal Order of the Moose including running a camp for youth located on 150 acres in Mt. Morris Illinois called Camp Ross.

CONSENT AGENDA

The following items were presented on the Consent Agenda in the council packet and Mayor Gitz read the listed items into the record. [Consent Agenda PDF](#)

A. Approval to receive and place on file:

- 1) Fire Department Report of Activities for September 2015
- B. Approval of Motor Fuel Tax Fund Register #0071 --- \$226,407.00
- C. Approval of Water and Sewer Bills Payable (Registers #430, 432, 434) --- \$206,672.64
- D. Approval of Payroll for pay period ending October 17, 2015 --- \$408,216.84
- E. Approval of Special Payroll issued October 26, 2015 AFSCME insurance stipend --- \$117,000

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F. Approval of Finance Bills Payable (Registers #428, 429, 431, 433) --- \$322,847.65

Alderson Brashaw moved for approval of the consent agenda as presented, seconded by Alderson Busker. The motion prevailed by a roll call vote of;

Yeas: Klemm, McClanathan, Ross, Miller, Busker, Brashaw, Koester and Chesney (8)

Nays: none

APPOINTMENTS

Alderson Chesney asked to have the name of Sarah Griffin stricken from consideration of the Freedom of Information appointments. This motion was seconded by Alderson Miller.

Deputy City Clerk

An appointment of Diane Kahly as Deputy City Clerk and memorandum by City Clerk Zuravel dated November 2, 2015 was read into the record. It was explained that job duties and responsibilities pertaining to the Legal Administrative Assistant and the Deputy Clerk have been combined on the job description and there is no additional compensation or stipend for Ms. Kahly as she performs the Deputy Clerk job duties.

Alderson Brashaw moved for approval of acceptance of an appointment of Diane Kahly as Deputy City Clerk, seconded by Alderson Koester.

Alderson Klemm asked if there was a stipend that went along with these duties. Mayor Gitz stated that it is part of the duties of that position and was discussed in the appropriation ordinance process. He then clarified those duties were assigned to the Mayor's Administrative Assistant and this position was created to serve both the City Clerk and the Legal Counsel and that was discussed that this is the proper designation for the position. Alderson Miller asked if this position has been budgeted for and Mayor Gitz answered yes. Upon no further discussion, the motion prevailed by a roll call vote of;

Yeas: Klemm, McClanathan, Ross, Miller, Busker, Brashaw, Koester and Chesney (8)

Nays: none

Open Meetings Act Designations

Included in the packet was a memorandum by Mayor James Gitz dated November 2, 2015, which stated, "Effective immediately Mayor Gitz designates the following individuals as the employees, officers or members of the municipality to receive training in compliance with the Open Meetings Act and their names will be forwarded by his office to the Public Access Counselor: Martha E. Zuravel, City Clerk and Diane Kahly, Deputy City Clerk.

"In addition, based on the duties and responsibilities of their positions, the following individuals as employees or officers of the municipality will be required to receive training in compliance with the Open Meetings Act:

- Lola Oppenheimer, Administrative Assistant to Police Department
- Denise Scudder, Administrative Assistant to Fire Department
- Alex Mills, Community Development Director
- Nick Jupin, Grants Coordinator

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- Denise Sorn, Administrative Assistant to Mayor/Community Development
- Christine Klipping, Administrative Assistant to Water and Sewer Department

The applicable electronic training curriculum developed by the Attorney General's Office shall be completed within 30 days of this designation."

Aldersperson Brashaw moved for approval, seconded by Aldersperson Ross. Aldersperson Klemm asked if there was additional stipend for the Open Meetings Act designees. Mayor Gitz explained that it is part of their job duties and there is no stipend. City Clerk Zuravel stated both she and Ms. Kahly have completed their training and obtained certificates for this year. The motion prevailed by a roll call vote of;

Yeas: Klemm, McClanathan, Ross, Miller, Busker, Brashaw, Koester and Chesney (8)

Nays: none

Freedom of Information Act Officer

Included in the packet was a memorandum by Mayor James Gitz dated November 2, 2015, which stated pursuant to the Illinois Freedom of Information Act, the following individuals have been designated as the Freedom of Information Officers of the City of Freeport: (first name stricken per request motion by Aldersperson Chesney and Miller) Martha E. Zuravel, City Clerk; Diane Kahly, Legal Administrative Assistant/Deputy City Clerk; Matthew Summers, Deputy Chief of Police and Albert Marney, Lieutenant Police Department.

Aldersperson Koester moved for approval, seconded by Aldersperson Klemm. Aldersperson McClanathan asked if there was additional stipend for Freedom of Information Officer designees. Mayor Gitz stated no that they perform this as part of their job duties. The motion prevailed by a roll call vote of;

Yeas: Klemm, McClanathan, Ross, Miller, Busker, Brashaw, Koester and Chesney (8)

Nays: none

ORDINANCES – FIRST READING

1ST READING OF ORDINANCE #2015-60:

AN ORDINANCE AMENDING CHAPTER 608 "ALCOHOLIC LIQUOR", SECTION 608.02 (OFFENSES BY LICENSEES); CHAPTER 806 "ALCOHOLIC LIQUOR SALES", SECTION 806.03 CLASSIFICATION OF LICENSES AND CORRECTING A TYPOGRAPHICAL ERROR IN SECTION 608.04 (POSSESSION OR CONSUMPTION IN PUBLIC PLACES), OF THE CODIFIED ORDINANCES OF THE CITY OF FREEPORT

Mayor Gitz presented the ordinance and stated that this was endorsed by the Liquor Commission in their meeting held last month after hearing testimony by various parties requesting such change. He explained this ordinance would adopt provisions of ILCS 235 5/6-31 which provides that there may be exception to the traditional prohibition for sampling. This would allow product samplings license holders A, A-R, B-1, B-2, C, M, P, R, W excepting licenses which have on-site motor fuel pumps to offer product sampling on their licensed premises in compliance with amounts allowed through the state statutes. Mayor Gitz explained most of this tastings are done with third party retailers and if done by someone other than the licensee there will be notice to the City that is required. This would allow for wine tastings, beer tastings or they will be able to do alcoholic liquor tasting and there is no charge for a product sampling event.

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Aldersperson Koester made a motion to move forward the ordinance, seconded by Aldersperson Miller. The ordinance was automatically laid over to the next meeting.
The ordinance as written provided the following:

ORDINANCE NO. 2015-60

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FREEPORT, ILLINOIS as follows:

Section 1. That Chapter 608 “ALCOHOLIC LIQUOR”, Section 608.02 (Offenses by Licensees), Subsection (i) is hereby amended to read as follows:

608.02 OFFENSES BY LICENSEES.

No licensee under the provisions of this chapter or Chapter 806 of the Business Regulation and Taxation Code shall, either individually or through his or her agents or employees:

“(i) Permit any person to consume any alcoholic liquor on the licensed premises unless such alcoholic liquor has been purchased on the premises or is in an amount and manner consistent with 235 ILCS 5/6-31 when in relation to a Class A, AR, B-1, B-2, C, M, P, R, W license, excepting licenses which have on-site motor fuel pumps, and with five (5) days written notice to the City Clerk, if such product sampling is done by someone other than the licensee.”

Section 2. That Chapter 608 “ALCOHOLIC LIQUOR”, Section 608.05 (Consumption on Licensed Premises), is hereby amended to read as follows:

“608.05 CONSUMPTION ON LICENSED PREMISES.

It shall be unlawful for any person to consume any alcoholic liquor on any licensed premises unless such alcoholic liquor has been purchased from the licensee or is a product sampling under 235 ILCS 5/6-31 and Section 608.02 (i).

Section 3. That Chapter 806 “ALCOHOLIC LIQUOR SALES”, Section 806.03 (Classification of Licenses), Subsections (c) and (d) are hereby amended to read as follows:

806.03 CLASSIFICATION OF LICENSES.

“(c) Class B-1 Licenses. Class B-1 Licenses shall authorize the sale of beer and wine only by any market in original packages for consumption off the premises only. For B-1 licenses, product samplings under 235 ILCS 5/6-31 and Section 608.02 (i) shall not be considered on-premises consumption.”; A Class B-1 License may be changed to a Class B-2 through application to and approval by the Liquor Commission, upon payment of a fifty dollar (\$50.00) administrative fee. and

“(d) Class B-2 Licenses. Class B-2 Licenses shall authorize the sale by package goods stores of alcoholic liquor in original packages only for consumption off the premises. For B-2 licenses, product samplings under 235 ILCS 5/6-31 and Section 608.02 (i) shall not be considered on-premises consumption. No Class B-2 License shall be issued to an establishment which operates on-site motor fuel pumps. A Class B-2 License may be changed to a Class B-1 License through application to and approval by the Liquor Commission, upon payment of a fifty dollar (\$50.00) administrative fee.”

Section 4. That Chapter 608 “ALCOHOLIC LIQUOR”, Section 608.04 (Possession or Consumption in Public Places), is hereby amended to correct a typographical error to read as follows:

“608.04 POSSESSION OR CONSUMPTION IN PUBLIC PLACES.

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It shall be unlawful for any person to carry or possess any alcoholic beverage, other than in the original package and with the seal unbroken, or to consume any alcoholic beverage upon any public street in the City, or in any theater or in or upon any other public place in the City, except by any person possessing and engaged in the performance of services under a Class C caterer license, or a sidewalk café permit utilized in conjunction with Chapter 806.”

The remainder of the ordinance was standard wording.

1ST READING OF ORDINANCE #2015-61:

AN ORDINANCE TO SUPPLEMENT THE APPROPRIATION ORDINANCE FISCAL YEAR 2015-2016 FOR THE CITY OF FREEPORT, ILLINOIS (THIRD SUPPLEMENT)

The ordinance as written provided the following:

ORDINANCE NO. 2015-61

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FREEPORT, ILLINOIS as follows:

Section 1. That the below listed Appropriations in the Annual Appropriation Ordinance of the City of Freeport for Fiscal Year beginning on May 1, 2015 and ending on April 30, 2016, commonly known as City of Freeport Ordinance No. 2015-33 and further supplemented by City of Freeport Ordinance Numbers 2015-56 and 2015-58 is hereby further supplemented as follows:

- A. Fire Capital Fund “Fire Improvement Fund”– Line Item 32-00-599, Contractual Services, is increased \$4,000 from \$118,600 to \$122,600. The increase is due to fire station #2 roof replacement cost exceeding original estimate of \$20,000 by \$4,000; the total to replace the roof is \$24,000. The increase is funded by a fund balance available when the annual appropriation ordinance was adopted but was not appropriated at that time.
- B. General Fund – Line Item 01-32-599, Contractual Services, is increased \$375 from \$1,716 to \$2,091. The increase is due to certification training for Illinois Municipal Treasurer’s Association Institute in Bloomington (November). The increase is funded by a fund balance available when the annual appropriation ordinance was adopted but was not appropriated at that time.

Section 2. That all other provisions of City of Freeport Ordinance Numbers 2015-33, 2015-56, and 2015-58 shall remain in full force and effect without change.

Section 3. This Ordinance shall be effective immediately upon its passage by the City Council, its approval by the Mayor, and its publication as provided by law.

Section 4. This Ordinance is expressly adopted pursuant to the Home Rule Powers of the City of Freeport under Section 6 of Article VII of the Illinois Constitution of 1970.

Section 5. All ordinances or parts of ordinances in conflict with this Ordinance are repealed insofar as they conflict.

Section 6. If any section, clause or provision of this Ordinance is declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the Ordinance as a

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whole or any part thereof, other than the part so declared to be invalid, and this City Council hereby expressly declares that it would have enacted this Ordinance even with the invalid portion deleted.

Fire Chief Miller explained this ordinance will supplement the appropriation ordinance FY 2015-2016 for cost of the the Fire Station #2 roof budgeted in the Fire Capital Fund "Fire Improvement Fund" line item 32-00-599. The amount budgeted for this item was \$20,000 and the bid recently came in at \$24,000 so the supplemental amount appropriated is \$4,000.

City Treasurer Buss explained this supplemental ordinance adds money dedicated to Contractual Services and specifically the line item for Education, Training and Travel (01-32-599) of the City Treasurer in order to fulfill certification training requirement. The amount budgeted for education training and travel within the line item for Contractual Services was \$1,350. This increases the overall line item by \$375.

Aldersperson Klemm made a motion to move forward this ordinance for approval, seconded by Aldersperson Koester. It was asked if City Treasurer Buss thought there was a need to expedite this ordinance. She stated there is no hurry and it can go through two readings. The ordinance was automatically laid over to the next meeting.

1ST READING OF ORDINANCE #2015-62:

AN ORDINANCE AMENDING CHAPTER 220 (COUNCIL) TO ADD SECTION 220.12 (COUNCIL ACCESS) AND AMENDING CHAPTER 288 (OFFICERS AND EMPLOYEES GENERALLY), SECTION 288.10 (INSPECTION OF RECORDS) OF THE CODIFIED ORDINANCES OF THE CITY OF FREEPORT

Aldersperson Koester stated after several phone calls this week regarding this ordinance he recommends the Attorney Pirages version. He stated several department heads have called voicing their concerns regarding access by city council and apparently there have been times in the past where council members have gotten information by making demands and other things that were inappropriate. Aldersperson Koester explained he would like to before this is passed add wording something to the effect that this is not to be interpreted as being able to instruct department heads in their duties.

Aldersperson Klemm stated he sees the need for the ordinance but sees both sides of it and he would like to make a motion to move it to the Committee of the Whole meeting.

Aldersperson Klemm moved to recommend the ordinance to the Committee of the Whole meeting, seconded by Aldersperson Koester.

Aldersperson Chesney stated it is important to discuss why this ordinance is necessary and the process having an ordinance drafted and the time it takes to see the draft. He spoke about the drafts and revisions and the number of emails that he sent regarding this ordinance and noted his disappointment of not having a hyperlink until about 4:00 of the day of the meeting. His instructions to corporation counsel regarding this particular ordinance wasn't even what he says that he recommended. He noted the version labeled as Aldersperson Chesney version was not his suggestions. He stated the City Council learned in Executive Session that there is actually a gag order placed on many of the department heads. He stated we are being asked to take action on item relating to City business under our authority. In order to get access to certain department heads they don't feel comfortable that they are able to get access to the council without a fear

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of being reprimanded. He explained that is why this ordinance came forward and we need to be a City of transparency and smart government and that is why this particular ordinance was put forward. He stated his version said, "and as such, access to and copies of records under this section may only be within the parameters of statutory and regulatory restrictions regarding privacy." He explained then after consultation with Alderperson McClanathan he asked that it read as follows: "and as such, access to and copies of records under this section are subject to statutory and regulatory restrictions regarding privacy" and he asked Mayor Gitz to comment on this wording and why it was not in there.

Mayor Gitz explained he just learned of the ordinance over the weekend and that the ordinance was referred to Attorney Pirages. He explained Attorney Pirages is probably the most prominent employment lawyer on these issues in Illinois. Mayor Gitz stated the council does not have a right to barge in and just get anybody's records and yet that is just what this seems to pretend. Attorney Pirages put provisions in there in order to protect the City from liability and he was told Alderperson Chesney objected to them. He stated this has gone out to the council without a version that has been approved and the reason ordinances are drafted by the corporation counsel is for a very good reason. There is also a provision in here about council access and it says, "alderman will have reasonable access to any agent, employee or officer of the City regarding matters under their authority." This doesn't say department directors – this says anybody. Mayor Gitz asked Michael Phillips, Special Counsel to comment about the implications about being able to for example to talk to a fireman while they are at a fire scene asking why you did that or asking for copies of reports. Mayor Gitz stated this an incredibly powerful ordinance which goes beyond the law and messes with federal legislation, state legislation and you are messing with private issues and there isn't a lawyer that he knows that knows anything about municipal law that this isn't fraught with all kinds of issues. Mayor Gitz asked for the opinion of the special counsel, Attorney Mike Phillips. Alderperson Chesney objected. Mayor Gitz stated he is entitled to ask the corporation counsel for the City of Freeport to share information with the council. Alderperson Chesney objected. Mayor Gitz asked again for the legal opinion of the special counsel. Alderperson Chesney appealed to the council and stated he feels the council should be able to speak on this prior to the special counsel speaks and renders an opinion and he spoke about concerns about the hiring of the special counsel.

Attorney Phillips stated under the Roberts Rule of Order you are entitled to appeal a decision by the mayor, however, he is asking me to give a legal opinion and we are not talking about policy, the corporation counsel and attorneys that work for you do not answer policy questions, they answer legal questions. The question that he was asked was if he has a concern with this and of course he said he has a concern with this. Attorney Phillips explained as a general rule, municipal attorneys do not represent individual alderman. They do not say, "I want you to write this ordinance". The answer is "go to the city council." Then if council requests, he will be happy to do it. As the attorney, they have to represent the entity, not individual aldermen or alderwomen. He is aware that caused a problem in 1989 and it is probably going to cause a problem again today. Attorney Phillips explained if you look at the rules of professional conduct for attorneys under rule 1.13 as we represent an organizations we have to have rules for the entire organization and urge them to comply with the necessary laws. He explained the council can make the policies but from a legal standpoint this has a lot of problems. Attorney Phillips reminded the council that there was a motion made to send this to the Committee to look at and at this time it is appropriate to discuss that. He stated he just was called today and the expressed that the legal concerns that we have is to urge caution.

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Aldersperson McClanathan asked about the concerns Attorney Phillips had with the different sections of the ordinance. Attorney Phillips stated he has two versions one says it is the version of Aldersperson Chesney. Aldersperson Chesney stated that is not true it is not his version. Aldersperson Koester corrected the record and stated that it is his version. Attorney Phillips referred to the version as recommended by Attorney Pirages and he understands why he wanted that in there under section 220.12, Council Access

Ordinance #2015-62 version recommended by Attorney Pirages which provided the following:

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FREEPORT, ILLINOIS as follows:

Section 1. That Section 220.12 entitled "COUNCIL ACCESS" of Chapter 220 "Council" is hereby created as follows:

CHAPTER 220 COUNCIL.

"220.12 COUNCIL ACCESS.

Alderspersons shall have reasonable access to any agent, employee or officer of the City regarding matters under their authority."

Attorney Phillips explained his concerns as to whether you are talking about the matters of authority of the aldersperson or that of the city employee. He explained there are a lot of things that are confidential by State and Federal Laws. He provided examples of the Police Department working with the Federal Bureau of Investigation and you would not be able to talk to them about an investigation they are running with the FBI. He provided examples of confidential information coming out of Federal court. He spoke about the inspection of records and Attorney Pirages added the wording that he felt was necessary in order to protect the City from liability, such as HIPAA, as stated in the Illinois Freedom of Information Act and various Federal and State Laws.

Ordinance #2015-62 version recommended by Attorney Pirages provided the following:

Section 2. That CHAPTER 288 entitled "Officers and Employees Generally", Section 288.10 (INSPECTION OF RECORDS) is hereby amended to read as follows:

CHAPTER 288 OFFICERS AND EMPLOYEES GENERALLY.

"288.10 INSPECTION OF RECORDS.

All records of any office shall be open to inspection by the Mayor, or any member of Council, at all reasonable times, whether or not such records are required to be kept by statute or ordinance. All records kept by any officer or employee shall be and remain the property of the City and, as such, access to and/or copies of records under this section may be available only to the extent specifically allowed by applicable Federal and/or State statutory and regulatory restrictions (including, but not limited to, those applicable to the privacy of such records and/or applicable to records pertaining to employment, health, credit, background, etc.).

Attorney Phillips stated his experience with Attorney Pirages and knows him as an excellent attorney and his wording is what the City needs to protect the City. He explained there are certain rules in government of who does what and in this case the first proposal seems to go over the rules and it is the council's

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decision as to whether you want to have more discussion on it, you are the policy-makers – not the attorneys.

Aldersperson McClanathan referred to Section 288.10 and noted that the wording that is not underlined is how the ordinance currently stands and then asked Attorney Phillips whether his opinion is that the wording as has been written for thirty years is problematic. Attorney Phillips answered that it is problematic and there needs to be restrictions put on it, such as under the housing code if you are looking at confidential files of the applicant for public housing and if the housing authority wanted to look at then then you need to stop them and say you can't look at that you don't need to be privy to that information. He stated it is not in compliance with the restrictions that are currently imposed on the City by Federal and State law.

Aldersperson Chesney spoke on the balancing of the powers of the city council. He spoke about how the process was circumvented and the special council was hired without the knowledge of the council. He stated Mr. Pirages worked for Mr. Gitz and he does not work for the city council and he will assure you that he will come up with 1000 reasons why the council can't have access to the employees. He spoke about having access to Director Haggard.

Aldersperson Koester stated when he asked to have this drafted he had no resistance from the corporation counsel and he had nothing but cooperation on this from her and he disagreed with Aldersperson Chesney's interpretation of the corporation counsel stone walled on this. He recommended the version written by Attorney Pirages and that it is an improvement. He provided the history of why he asked to have this brought forward and it was because he had heard of gag orders, noting whether they happened or not is irrelevant. He would like an ordinance put into place which will help transparency and make access to the information. If we can come up with a better version that will cover what we want it to do that effectively follows the legalities then he is in support of it. He recommended referring it to the Committee of the Whole. He agreed they should only have access to items not covered by HIPAA or other laws.

Aldersperson Klemm stated he spoke about the issues in the drafted versions and they need to be looked into further and, if necessary, this ordinance can be placed on a first reading prior to sending to Committee of the Whole. Aldersperson Klemm asked how the council members should go about having an ordinance drafted. Mayor Gitz stated Attorney Phillips is the fill-in counsel while the given corporation counsel is on leave as pursuant to code.

Aldersperson Miller spoke about the first part of the drafted wording and stated it is not on there so the council can ask about a fire and if there wasn't a gag order to begin with there would not need to be the council access part of it and recommended that if an alderman had reasonable access to the department heads regarding matters under the department heads authority and if they had time to spend with them, it would certainly cut these meetings down considerably.

Chief Barkalow explained his concerns with Section 220.12, Council Access which states "Alderspersons shall have reasonable access to any agent, employee or officer of the City regarding matters under their authority" and he agreed with special counsel Phillips that he is not sure what that means and referred to what Aldersperson Miller spoke that he does not think that was the intent of that but it has unintended

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consequences because is he going to have Officer Smith working a DUI accident and then have someone that wants to know what is going on in regard to the investigation. He recommended that it states to have reasonable access to the department head. He does not want it to put his officers into a trick bag situation.

Aldersperson Koester recommended moving this ordinance to the Committee of the Whole about the timing of its passage.

Aldersperson Chesney read an email from Mayor Gitz at 3:41 p.m. and stated it is going to be exactly the answer you are not looking for when you let one person pick the lawyers you are only going to get one answer and at \$200 to \$300 per hour; it won't be the answer you are looking for.

Mayor Gitz stated there is a motion to send the ordinance to the Committee of the Whole meeting prevailed by a roll call vote of;

Yeas: Klemm, McClanathan, Ross, Miller, Busker, Brashaw, Koester and Chesney (8)

Nays: none

Aldersperson Koester requested to be able to meet with Attorney Phillips to get this into the form that he had intended and for it to be legal. Mayor Gitz agreed with the request.

RESOLUTION R-2015-63:

RESOLUTION TO AUTHORIZE JANE ADDAMS TRAIL JULY 1 – JUNE 30, 2015 - 16; 2016 - 17; 2017 – 18 THREE YEAR OPERATING BUDGET

The resolution provided the following:

WHEREAS, an Intergovernmental Agreement establishing the Jane Addams Trail Commission for the development and operation of the Trail has been approved and entered into by the City of Freeport, Stephenson County, the Freeport Park District, and the Village of Orangeville; and

WHEREAS, The City of Freeport is a Member of and sends representatives to the Jane Addams Trail Commission; and

WHEREAS, said Intergovernmental Agreement provides for the establishment of a Three-Year Budget for the operation of the Trail; and

WHEREAS, the Jane Addams Trail Commission has developed an Operating Budget for the Jane Addams Trail for the three-year fiscal period, July 1 to June 30 for FY 2015-16, 2016-17, and 2017-18 as outlined in Attachment A; and

WHEREAS, the Jane Addams Trail Commission has submitted the FY 2015-16, 2016-17, and 2017-18 Operating Budget to each of the governmental units represented on the commission for review and adoption; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FREEPORT, ILLINOIS hereby adopts the 2015-16, 2016-17, and 2017-18 three-year Operating Budget for the Jane Addams Trail, as provided in Attachment A.

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City Engineer Gallagher provided a memorandum which explained since the completion of the first sections of the Jane Addams Trail, the City of Freeport, Freeport Park District, Stephenson County, and the Village of Orangeville have shared in the costs of operations and maintenance of the trail. For the most part, the Freeport Park District has organized or implemented all maintenance operations, which are then reimbursed by the Commission from the operation and maintenance fund. Over the last few years, a formal budget was not necessary, due to limited maintenance expenses, which resulted in a healthy fund balance. Now that the Jane Addams Trail has been completed from Freeport to Orangeville, the Commission is looking to reinstate this funding agreement. This past year, the Commission approved various mowing and tree trimming expenses, along with assistance in the grand opening events this summer, which has resulted in the need to reestablish a three-year operating budget. At this time, the Jane Addams Trail Commission requests the support of \$9,030 from the City of Freeport, each of the next three years. Now that the Jane Addams Trail is completed, this funding formula will need to be reviewed in the coming years, to ensure that the trails are properly maintained, while being fiscally responsible to our supporters during uncertain economic times.

City Engineer Gallagher asked to continue the budget as shown on the exhibit for the next three years. He explained there is an additional portion of the trail for 2.50 miles that was constructed that will need to be maintained and the goal is to not overreach for funding at this time but this portion will need to be maintained.

Aldersperson Brashaw asked if the City budgeted for this. City Engineer Gallagher stated that he budgeted at \$9,500. She then asked about the operation budget and the timing for a period of three years. City Engineer Gallagher explained that this is typical, that at this time next year another resolution will be brought forth asking for another rolling budget to include fiscal year 2018-2019 and it will be for three years of funding. Aldersperson Brashaw asked if the other three entities are contributing the exact same amount. City Engineer Gallagher stated the way the trail commission has been funded in the past is 2/7 to the City of Freeport, 2/7 to the Freeport Park District, 2/7 to the Stephenson County, and 1/7 to the Village of Orangeville.

Aldersperson Chesney asked City Engineer Gallagher how the deal was brokered with respect to the County owing the City \$75,000 and whether we are charging them interest. He asked if there is an agreement with the County how they are using us as a free line of credit. City Engineer Gallagher stated he believes they are paying off based on age and they had a \$100,000 debt to Freeport Park District for the Tutty's Crossing Bridge and they have spent the last three years paying that down. They did enter an agreement with the other two entities in regard to the Pecatonica Prairie Trail in which two years ago we applied for the ITEP grant and they also have this agreement for the new construction (he thought it was 2006) which is the construction of the Phase B which was to take place and it didn't. He thinks for several years it was left unfunded. They did push to get the grant and the original ITEP grant was going to expire this year if the trail was not completed so he believes the other three entities have been paying into this as a responsibility to the trail and they will sort it out with the bodies later so the trail could be completed.

Aldersperson Chesney asked about where it states that the county owes us money or when that will be coming in. He stated he does see an invoice dated February 12, 2015 relating to it. He asked are the residents of the City of Freeport footing the bill for the residents of Stephenson County with no interest rate. City Engineer Gallagher stated because we are the lead agency for these trails we fund upfront and

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he believes there is not a provision in the ordinance that indicates if an entity who chooses not to pay so that is definitely a discussion that should be added for the council, mayor, the county. As far as the Jane Addams Trail Commission, they are a pass through entity when it comes to maintenance they do not fully approve design that is approved by the entities. He explained that is similar to what we are doing on the Pec Path. He does not have a sound answer other than the invoices have been passed along and although approved in their own committee the checks were never received. Alderperson Chesney asked why it is not in the budget as far as what the county owes the city. City Engineer Gallagher stated it is shown as a deficit in the budget for the corporate fund in the trail fund and he has discussed it with the City Treasurer that those invoices are outstanding and so that is a matter of record. He explained that is what he needed for the design of the Pecatonica Prairie Path.

Alderperson Koester moved for approval of the resolution as presented. This motion was seconded by Alderperson Brashaw. Alderperson Brashaw stated the city will have a challenge budgeting \$9,500 for the next two years as the State of Illinois does not move on funding from their budget. The motion for adoption of Resolution R-2015-63 prevailed by a roll call vote of;

Yeas: Klemm, McClanathan, Ross, Miller, Busker, Brashaw, Koester and Chesney (8)

Nays: none

OTHER

REPORTS OF DEPARTMENT HEADS

Finance Department

There was no one present representing the Finance Department. Included in the packet was a memorandum regarding bond refunding of the Series 2006. It is provided that Series 2006 was refunded by Series 2015A

- Par Value: \$9,530,000
- Rate range improved from 3.75% - 4.20% to 2.0% - 4.0%
- Dollar Savings \$675,252.02

Part of the total savings was attributed to bond insurance. In an attempt to increase our savings in refunding the Series 2006 Bond, we opted for bond insurance for the Series 2015A Bond to raise the Bond Rating from A to AA. Please see the chart below depicting the benefit of the insurance over the cost of the insurance. Cost/Benefit Analysis:

Description	2015A
Dollar Savings as AA	\$ 675,252.02
Dollar Savings as A	519,000.00
Gross Savings	156,252.02
Cost of Insurance	(33,190.29)
Benefit over Cost	<u>\$ 123,061.73</u>

Alderperson Koester asked if the bonds have been sold. Mayor Gitz stated yes they were sold because there would not be a savings if they had not been sold and the sale for the Carnegie Library will take place this coming week or two. Alderperson Chesney asked who is running the Finance Department. Mayor Gitz stated Ms. Haggard submitted her resignation on Friday and so he is working on that and the people

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who work in that department are supporting the activities on a day to day operation. Alderperson Chesney asked who the point of contact is. Mayor Gitz stated that would be me.

Alderperson McClanathan referred to memorandum and the savings on the bond refunding and obtaining insurance was a good and appropriate measure to lower the bond rating saving the City money. Mayor Gitz stated he will be compiling a report of bond sales since 2013 and he summarized savings to be about \$2.3 million.

Alderperson Miller asked if Mayor Gitz accepted the resignation of Cynthia Haggard. He stated it was not accepted that it was announced. Alderperson Miller stated she knows there are so many deadlines approaching with TIF reports, the audit reports, revolving loan report, and they have already been extended and if they are not completed they will result in penalties and fines. There is also a tax levy, the library levy and the bond levy and she asked Mayor Gitz if he has a plan for those.

Alderperson Chesney recommended review of the City Accountant's salary at \$35,000 and spoke about his concern for the work load of the Finance Department and he asked if this should be discussed further at the Committee of the Whole. Alderperson Chesney stated he discussed it with Alderperson Klemm and they recommend that you hire an independent firm to do a complete overview of our finances with \$20 million dollars' worth of fund liability. Mayor Gitz stated there will be decision done on the Finance and those will be reported to the council. He asked since he found out on this on Friday that he be accorded appropriate time to make decisions about it. He stated per State law and this code the mayor is given the power as chief executive officer and director of the staff to make decisions and he is aware of the financial decisions that we have before us. He asked the council to give him the opportunity to get this accomplished.

Community Development

Director Mills provided an update on the funding for the public transportation program and stated that IDOT requested the city submit funding request so that when the funding has been freed and passed at the committee and we may now get paid. Alderperson McClanathan asked if the legislators have passed funding or if it could be released by a governor order. Director Mills stated it may occur under a court order but he is not completely clear on that.

Public Works

Director Dole stated he provided a written activity report.

Director Dole referred to an draft ordinance he was provided today regarding picking up leaves in private parks. He explained that as long as he has worked for the City, there has never been a policy set. He asked that he is hoping the intent is to have a policy set and if he is told to pick up leaves in the private parks and recommended a policy. He stated in years past they did pick up leaves in Knollwood, Ray's Mobile Home Park and Woodridge. He spoke about his concern that it does not include patching pot holes, street sweeping, or snow plowing.

Alderperson Koester requested that an ordinance be brought forth to the Committee of the Whole to provide leaf pickup on private streets such as a mobile home park. In lieu of the ordinance being brought

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forth at the Committee of the Whole, he stated he had a conversation with Mayor Gitz and they agreed that there should be a motion on the floor to continue with this practice.

Aldersperson Koester made a motion that the council direct Director Dole to pick up leaves in trailer parks at this time as he has in the past until such time that we pass this ordinance. This motion was seconded by Aldersperson Miller. Aldersperson Klemm stated that is some good points not to include snow plowing based on the size of our plow trucks. Motion prevailed by voice vote without dissent.

Aldersperson McClanathan asked if there were any updates on the city's distribution of the Motor Fuel Tax funds being released by the State and City Engineer Gallagher stated he has not heard anything from IDOT for this calendar year and he has a report upcoming on this tonight. He stated that the legislators have it pending a budget. He explained that the motor fuel tax dollars are allocated by a formula calculated on the basis by the population of a municipality. We receive about \$600,000 per year. The last payment we received was a partial payment in June.

Library

Freeport Public Library Director Carole Dickerson was not present at this time.

Fire

Fire Chief Scott Miller provided a report about three incidents the Fire Department responded. On early Friday morning there was an explosion of a house on the 600 block of Youngs Lane, the department responded to a multi-vehicle accident on Route 20 and Yellow Creek Road and there was a structural fire on Elk and noted they had no working smoke alarms. Chief Miller spoke about the importance of having working smoke detectors. He stated it is a good idea when you set back your clocks for the day-light savings to automatically change the batteries in the smoke detectors and alarms. Chief Miller spoke about the importance of having furnaces checked by qualified contractors. Chief Miller reminded everyone that they should also have a working carbon monoxide detector in their house and recommended placement of one on each floor.

Chief Miller stated October was Fire Prevention month and the Fire personnel visited area schools to deliver a fire safety message to children. They visited with 2,000 students this past month to communicate the importance of fire safety.

Police

Chief of Police Todd Barkalow reported no incidences on Halloween. He thanked the Public Works and Fire Department for their assistance with Halloween safety on Stephenson and Lincoln. He reported overall it was a good quiet weekend. Chief Barkalow stated on October 20th he attended a Special Olympics award ceremony recognizing athletes and he congratulated participants.

Aldersperson Brashaw stated she was told by a couple of residents that there were 900 trick-or-treaters out in the area of Stephenson Street on Halloween.

Water and Sewer

Water and Sewer Executive Director Tom Glendenning provided that after several years of hard work the Water & Sewer Commission was the recipient of the award letter of the Phase B funding through the

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Illinois Environmental Protection Agency for the water main improvements. As everyone knows, shovels went in to the ground on Monday on Harlem Street. He stated we received our authorization for \$8,587,963.00. With that it activates the ordinance that this council passed. As of this week the November bills will realize the capital improvement charge set with that ordinance. He explained that \$5.00 of that is going to secure the principal and interest payments for this loan. We are starting now for several reasons first to get a year's worth of payments on hand prior to the fiscal year repayment which looks like it is going to be all the way into 2018 before we will be asked to have any repayment. The other part is as we get this authorized money coming in so that we can fulfill the final documents so that we can receive and turn in pay requests to the agency for the design construction fees that we have already expended out of our capital improvement funds. That amount is just over \$500,000. He will need to get the pay requests down before the funds will be reimbursed to replenish the capital improvement funds. Director Glendenning explained that in addition to the \$5.00 it includes another \$1.00 to go towards the energy efficiency projects of the Waste Water Treatment Plant. He stated this will be visited at the Committee of the Whole meeting next week. Director Glendenning stated at the next Committee of the Whole he will give a presentation on the energy efficiency and request for financing of the aerator for the Waste Water Treatment Plant.

Director Glendenning explained that because of the annual maintenance procedure on the Well #8 they must allow the water to run until it runs with a zero chloroform test on that well. He explained that is why you see the water being run along South Street. Samples were taken last week twice with the count of one so we are close to the mark and they are hoping that the sample taken today will turn to zero tomorrow.

Aldersperson Miller thanked Director Glendenning for his work and asked if he could ask the Water & Sewer Commission what the best route to be enforce the shut off policy for past due amounts. She recommended the commission investigate how other municipalities handle their late bills and the enforcement part of it. Perhaps they can make a recommendation back to council as far as what we can do to change an ordinance so there is power behind the enforcement. Director Glendenning explained we do have an ordinance that addresses past due and it has been utilized a lot better in the last couple of years. Recently, the commission has been reviewing the rate structures and that is a component of the rate structure and that is the "non-pays" and it is not only going to be the non-pays as an issue but also the vacancies. He explained that those items make the fund fall short of where it is and there is reference to other municipalities and it is an educational document at this point.

Aldersperson Miller asked for further clarification on the procedure if you do not pay your water bill and notices for a shut off. Director Glendenning stated if you do not pay your water bill you will receive a notice 30 days that your water will be shut off in 60 days. Aldersperson Miller asked if this is being enforced. Director Glendenning stated yes we are. Discussion was held on the enforcement of the policy for delinquent account. Director Glendenning stated the extension is printed on the bills. The change was adopted two months ago when Aldersperson Chesney requested it. The late fees are carried out from that point in time. Aldersperson Chesney clarified that if someone is late 60 days what is the procedure and on the 61, 62nd or 63rd day it is going off. Director Glendenning stated within staffing yes that is correct. Aldersperson Chesney asked no later than 90 days. Director Glendenning stated only if there is special payment plan, conditions where names are switching, hardship cases, and we are getting our first few that are not receiving state funding and they can't afford to pay their bills and they may be set up on a payment plan. He explained we do take that into some extent and we have to have documentation before

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we enter that arena. Alderperson Chesney clarified if Director Glendenning had someone who did not pay after 60 days they would typically be shut off. Director Glendenning agreed. Alderperson Brashaw spoke about the water bills and Director Glendenning stated that because of the mailing time there have been delays to get payment so that is why it was extended because the bills are now mailed from Carol Stream.

City Engineer

Motor Fuel Tax Funding

City Engineer Gallagher provided a report on Motor Fuel Tax Funding. He stated last fiscal year the City of Freeport received \$615,949.55 in motor fuel tax funding from our monthly allotments. To date the City has received \$151,954.96 in funding this fiscal year, receiving whole payments in May and June and a partial payment in July. Due to the timing of construction season, all of our construction projects for FY 2016 were bid and awarded prior to the July freeze in state funding. Additional funds have also been expended for the City's patch program and the jurisdictional transfer of Forest Road, Pearl City Road, and Fairgrounds Road with the County. City Engineer Gallagher's memo stated should we receive no additional revenues during the remainder of FY 2016, I have projected a negative balance of \$466,617.98 to the motor fuel tax account. These expenses would need to be covered by the corporate fund and new projects for FY 2017 would be eliminated. This negative balance does take into account various outstanding reimbursements from other departments, our intergovernmental agreements, and a projected \$200,000 local match to our federal street program. This deficit is considered to be the worst case scenario, since these projects are either complete or currently under construction. However, it is unlikely that we would be billed by the State for our portion of the federal street program within the remainder of FY 2016 or while our revenues are being held.

Former City Hall Building – Department of Labor

City Engineer Gallagher provided a proposal by Prairie Forge. He explained the intent of the proposal is to review and implement a plan to abate the various fall hazards at Old City Hall in order to seek approval from the Illinois Department of Labor for the removal of the surrounding chain link fence. As outlined in prior inspections of Old City Hall, there is not only a concern of loose façade near the top of the structure, but the potential fall hazard created by the deterioration of the existing dormers. The deterioration of the dormers has created separation within the roof system, allowing for water to penetrate the building envelope and damage the second floor ceilings and walls. He stated the proposal intends to quantify the damage to the upper exterior of the building, design a low-cost solution to abate any hazards, and document the historical aspects of the dormers prior to their removal. During this process, City staff will work with the Department of Labor to finalize an acceptable plan of action that may result in immediate abatement of all significant hazards while outlining an extensive follow-up inspection process, if renovation is not anticipated for several years. Information gathered in this proposal will not only be beneficial to the task of removing the fence, but also the long-term renovation of the exterior of the building, should the building be renovated. In order to have bid documents prepared for award next spring, it is important that a thorough review of the exterior be done prior to winter. Formal cost estimates shall be prepared prior to bidding any repairs to the building, with the approval of the City Council.

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Council members spoke about their concerns for the cost and asked to have this referred to the Committee of the Whole for further discussion. Alderperson Miller made a motion to refer this item to the Committee of the Whole. Mayor Gitz stated we will have this on the agenda for the Committee of the Whole. City Engineer Gallagher referred council members to look at the Department of Labor report that is included with all the documents regarding the former City Hall building that were placed on the website for the survey and are still available for viewing.

MAYOR'S REPORT

Mayor Gitz provided an update on the bond financing and reported that Bernardi Securities still find the market favorable so he is hopeful to obtain a favorable interest rate. Mayor Gitz provided an update on the Harlem project and hopefully with weather permitting it will be completed before winter and they may also be able to work on a small street such as Prairie as well.

Mayor Gitz stated he would like to answer the question about the corporation counsel. He stated for a long time Corporation Counsel had indicated that she will have a major medical procedure. In the past when he has looked for someone to fill in for counsel, Mike Phillips has been a counsel that is familiar with the City. He is also former corporation counsel with the City. The statement that the mayor has chosen counsel that is somehow a mayor's player. The corporation counsel is not the mayor attorney, it is the City's attorney. Our code affords the mayor the right to choose our special counsel and Mike Phillips is, in his opinion, one of the most logical choices because of his familiarity with the code, his familiarity with a lot of the issues, because of his historic knowledge about the previous administration having served as special counsel and he is the logical person to step in. If the council has a real problem, he would like to know that. He spoke about his opinion that Mr. Phillips will tell you what you need to know not necessarily what you want to know.

COUNCIL ANNOUNCEMENTS/NEW BUSINESS

Alderperson Brashaw stated she appreciated the marked parking spaces on Lincoln and welcomed Attorney Mike Phillips.

Alderperson Chesney stated he noticed that a resignation letter was recently posted just now on the Journal Standard website and he has obtained permission from Cynthia Haggard to read it. Alderperson Chesney read aloud the resignation letter of Cynthia Haggard.

Alderperson Chesney asked that the council look at the whistle blower protection put in place by the school board and the reporting process when internal investigations are reported to council. He asked for consideration that when special counsel is hired that we don't circumvent the process and the council has a say in who is hired.

Alderperson McClanathan stated that he intended to thank Director Haggard and City Treasurer Buss at the last meeting that he appreciated them bringing forth the pay-off of the loan.

Alderperson Ross spoke about a meeting that was held about three weeks ago regarding Hooker and Johanna. The Public Works crew will be working on a short term fix to get the section filled at this time and in the future will be looking at a long term fix in the spring. Director Dole noted he had the JULIE done in the area but because the permit expired with the State then they could not proceed. Alderperson

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Ross asked about filling pot holes on East Pleasant, Adams and Float and Director Dole asked him to call his office so that the addresses can be reported on the spreadsheet for follow up.

Aldersperson Miller asked Mayor Gitz to explain the administrative leave of the corporation counsel. Mayor Gitz stated she has asked to be placed on administrative leave for the next six days and that request has been granted. Aldersperson Miller asked what an administrative leave is. Mayor Gitz explained that an administrative leave means that in our code she can be granted leave with pay under special circumstances. Aldersperson Miller asked Mayor Gitz if he could allude as to the special circumstances to have a leave with pay. Mayor Gitz stated he thinks that everything that has transpired here indicates that there are issues hanging in the air and yet the investigation is not finished.

Aldersperson Miller asked about the deadlines of the finance director's position and she is concerned that the City does not get hit with penalties and fines and she asked if the mayor would consider not accepting the resignation of Cynthia Haggard and consider calling her back. Mayor Gitz stated he does not have the authority to call someone back and undo the resignation. Her resignation was clear and it was final. Aldersperson Miller asked again if he would consider it. Mayor Gitz stated he does not feel comfortable answering that question.

Aldersperson Miller stated because we are obligated to the tax payers and according to one of the allegations that she read that they are criminal in nature and so she would like to know what outside law enforcement agency is investigating. Mayor Gitz stated first of all there is not at this time any evidence to support the outside investigation agency by a law enforcement. Mayor Gitz stated what is disturbing about this whole conversation through this entire meeting is that you have heard one side of the story and you heard it in an executive session and the confidentiality of the executive session has been violated by someone in this body or by someone who had this information and that has been spread all over the newspaper without any of the countervailing evidence or issues aired. This is like having a trial in the Soviet Union and the prosecution presents its case and no one has ever heard from the defense. He explained that there is a special person, Mr. Pirages who has a long history of employment law and investigations in personnel matters who has been assigned to the task to sort through all of these options. He noted what is alleged here is that this person is not entitled to any salary increases because there were outside the regular salary schedule but our handbook says something different and all other department directors over the last sixteen years have gotten increases, and yet it is alleged here that somehow because past councils have approved salaries, have approved budgets, and corporations counsel's stated salary has been public knowledge that this somehow constitutes fraud. He has listened to this and the council is not interested in hearing what the report is and they are not interested in hearing both sides of the matter, they have already made up their minds what the situation is and that is appalling. He explained the code on the chief executive's power and on the council's power. He asked the council to let the investigation get finished and accord him the respect to cover the bases for the position that is now open. Aldersperson Chesney asked when we will be paying the bill of Mr. Prorock. Mayor Gitz stated Mr. Prorock has never been retained by the City. Aldersperson Chesney asked if we owe him money. Mayor Gitz stated as far as he is concerned we do not owe him money. Aldersperson Chesney asked if we were to continue what would be the appropriate forum to discuss this. Mayor Gitz stated the appropriate forum has been suggested by your own colleagues to let Mr. Pirages do his job and let him finish and let him report. Aldersperson Chesney spoke about the timing of hiring a replacement and the concerns he has on the

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timing it took for the investigation. Mayor Gitz stated that some council members are using this as a game of “gotcha” and a lot of our directors feel the same way.

Aldersperson Busker stated the 5th Ward will have a Neighborhood Watch Meeting on the third Tuesday of the month at 6:00 p.m. at the First Church of the Nazarene. He spoke about the adoption of his daughter that took place today.

PUBLIC COMMENTS – AGENDA OR NON-AGENDA ITEMS

Tom Teich, Freeport Illinois showed the council the award he received for the Special Olympics. He asked about the Okey Dokey and Mayor Gitz stated he wished there was a way to speed up the process. He thanked Chief Barkalow for attending the award ceremony.

Upon motion duly made and seconded, the meeting was adjourned at 9:25 p.m.

s/ Meg Zuravel

Meg Zuravel
City Clerk