

**MINUTES
FORT MADISON CITY COUNCIL
Tuesday, January 20, 2015**

The Fort Madison City Council met in regular session at 6:00 P.M. on Tuesday, January 20, 2015, at City Hall, 811 Avenue E, Fort Madison. Mayor Randolph presided with Council Members Chris Greenwald, Kevin Rink, Rusty Andrews, Travis Seidel, Jason Huppert and Chad Cangas. Council Member Brian Wright was absent.

EXEMPT SESSION

At 6:02 P.M. Cangas MOVED and Rink SECONDED to enter into Exempt Session pursuant to Section 20.17(3) of the Iowa Code, Union Negotiations.

MOTION PASSED 6-0

Council Member Brian Wright arrived at 6:47 P.M.

At 6:55 P.M., Cangas MOVED and Seidel SECONDED to leave Exempt Session.

MOTION PASSED 7-0

Following a five minute recess, Randolph called the meeting to order at 7:00 P.M. with Council Members Chris Greenwald, Brian Wright, Kevin Rink, Rusty Andrews, Travis Seidel, Jason Huppert and Chad Cangas present.

VISITORS AND APPEARANCE REQUESTS

There were none.

AGENDA

Seidel MOVED and Wright SECONDED to approve the agenda, as written.

MOTION PASSED 7-0

CONSENT AGENDA

Rink MOVED and Seidel SECONDED to approve:

- ♦ Minutes of January 6, 2015, as written;
- ♦ New Liquor License: Pen City Aerie #1287, 4821 Ave. O, Ste. 4, effective January 31, 2015 – Class C Liquor w/Outdoor Service & Sunday Sales;

- ♦ Liquor License Renewal: Pizza Hut, 1123 – 24th Street, effective March 18, 2015 – Class C w/Sunday Sales;
- ♦ Liquor License Renewal: Hy-Vee Food Store, 2606 Avenue L, effective March 19, 2015 – Class E Liquor, Class B Wine, Class C Beer & Sunday Sales; and
- ♦ Payment of Claims.

MOTION PASSED 7-0

PUBLIC HEARING

Concerning Rezoning Property located at 1311 – 18th Street from I-1, Limited Industrial District, to I-2, General Industrial District

Mayor Randolph opened the public hearing at 7:04 p.m. Ron Welder, 2220 Avenue A, Chairman of the Planning & Zoning Commission, said the Commission failed to advance this rezoning request with a recommendation to the Council on a tie vote. He urged Council not to approve this request. If history is any teacher, it is that this has been an ongoing problem. For the 10 years he has been on this Commission, this (Feinbergs) has been an agenda item for approximately five of them. Every promise made to us was broken. Every time this issue came to us we tried to get it corrected and we were unable to do so.

Nick Colbert, 1329 Avenue C, was on the Planning & Zoning Commission for in excess of 20 years. During that time, he saw issues come up with this business repeatedly. Many promises were made and not followed through. He is in favor of business within the City of Fort Madison, but not this business. He did not believe a progressive City would have a scrapyard in the middle of the town.

Marty Feinberg, (representing Betty Feinberg, the owner of the property), said most cities have scrapyards in the middle of them. Before he would even move there he would have a fence put up and have it done the way everybody wants it to be done. He would not just move up there, but wants to do this properly and try to work with the City. Most of the previous complaints were about the business encroaching on city property. He brings a lot of business to this town. Everyone who comes gets money and will get gas, get everything they need. He added it is not like he's trying to do anything bad or anything against the City. This is a City and we are here to help and make everything work right for the people who are in it. He did not understand why it's that difficult to make it work. He said it is not like he is going out there and saying I don't care what I do, that's not what I'm doing at all. He wants to move because the location he is at is going to get flooded out every year for at least a month.

Seidel questioned what makes this time different than the previous times. Feinberg said a lot of what happened was before him. That was why he was putting up a fence, to take care of the problem with city encroachment. He said you live and learn and want to do

things right. It was his dad and whatever happened back then, there is no use in arguing with the City and that it was a waste of time and money. It is easier to work with the City than not.

There were no written comments.

Wright MOVED and Seidel SECONDED to close the public hearing.

MOTION PASSED 7-0

FIRST READING, REZONE 1311-18TH STREET: Huppert MOVED and Wright SECONDED to approve the first reading of an ordinance rezoning property located at 1311 - 18th Street from I-1, Limited Industrial District, to I-2, General Industrial District.

Feinberg had 30-40 people bringing items to the scrapyards everyday. Some are scraping because they need money for gas and food which they buy in town. At a question from Huppert, Feinberg said his mother, Betty Feinberg, operated the business from 2000-2006. He just took over the last two years.

During a discussion regarding fire department calls to the properties owned by the Feinbergs, Huppert noticed a trend of improvement in the number of fire calls between 2006-2015. About 35% were outside rubbish or dumpster fires. Fire Chief Herren said there were some long term fires and some "All Calls" when the Fire Department had to be on scene for quite a few hours. Most of the calls were from people calling the fires in. Feinberg said the reason for the fires was the use of cutting torches and said most of the fires were out when the Fire Department arrived.

One of the bigger fires, according to Herren, was when a pile of tires caught fire a few years ago at their current location. The Fire Chief said there were propane tanks in the pile. Feinberg said these are now completely separated and he doesn't take propane tanks unless they have holes cut into them or their tops are off.

Feinberg said since he took over the business one of the changes he has made is moving the materials so it doesn't set there all the time. There is no use of keeping it, the faster you move it the better off you are. No one holds material anymore. He would install a 12 foot metal fence if allowed.

At a question from Cangas what the penalties would be for non-compliance for the Special Use Permit to operate a scrapyard in an I-2 District, Planning Director Doug Krogmeier said the Planning & Zoning Commission would hear and give recommendations to the Board of Adjustment to approve or deny the Special Use Permit. Conditions can be recommended for the special use. The Commission can try to revoke the Special Use Permit but that can take time. His concern was how long it would take to resolve an issue.

Feinberg said it is not worth it (to fight), he would rather spend his money on something else than an attorney. He said he is done that, it is ludicrous, it's not worth it.

Feinberg said that was half the reason he was moving was flooding. Randolph said based upon the City's history with the business, he is not sold this is the best use for that property.

Feinberg said the current location is too big and he has other ventures also. He said if he was going to act like he used to he would just move to the lot and say let's start attorneys fighting over it. He doesn't have the time or the money and will put up a fence. Randolph asked if Feinberg was denied would he just do it. Feinberg said he would come back and try it at a different angle. There are always different ways of doing things.

Wright said former City Council Member Bob Manka spoke in favor of the request at the Planning & Zoning Commission meeting.

Feinberg said if this doesn't work, to tell him to leave and he would be done with it. Greenwald pointed out that has not worked in the past. Feinberg said scrapping has changed and businesses don't hold on to materials anymore. Back in the past your material was your bank. That is not done anymore. He added that as soon as he gets material it is gone within 2-3 days.

Wright asked if this was about aesthetics, stepping over the boundaries, not following the code? Randolph said yes (all). Wright felt the place he wants to move to couldn't be seen. Feinberg said he will be installing a new \$50,000 fence and asked why would he want to piss away a \$50,000 fence?

Because Council is talking about redoing Highway 61 through town and this business will be one block off of the highway, Cangas said this will be noticed. Feinberg said he would install a new metal fence and it would be maintained.

Greenwald was concerned regarding the money this business has cost the city. If Feinberg does break a rule, and the City tells him it's been broken, in the past Greenwald hasn't seen it being fixed. Even though Feinberg's has been required to post performance bonds in the past, there have been legal battles regarding them. Feinberg said he would have no problem putting something up.

Wright asked what type of other business can go there. Greenwald said the One of the more recent problems, according to Greenwald, was the weeds on the property after the business moved to the new location. Feinberg said that was taken care of. Randolph said it's the ongoing maintenance that is the crux of the argument. It's just doing enough to satisfy and then no ongoing maintenance. Someone (with the City) has got to go after somebody and get them to do it. Feinberg said if he's there he will care of it. Greenwald's example is was that you do what you have to do and then once you are there we haven't seen a lot of willing cooperation.

Larry Wright, Planning and Zoning Commission, was a "yes" vote at the Commission's vote, he has changed his mind. He was concerned regarding the City resources that would have to be used in order to deal with any potential issues.

Feinberg said his mother wouldn't let him do anything as she felt a lot of it made his dad sick and he died early. My mother used to say "screw it, I don't care." He was here to make a change and make a difference and do it right.

Cangas asked what Council's options are one year from now if this is not working out. Randolph said court is the City's only recourse. Greenwald said and that would involve cost on the City's behalf. Feinberg said "you just tell me to fix it and that will be it". Randolph said if Feinberg has an active business he is probably not going to quit. Feinberg said what he is here for is to move back to that location. He did not want to ramrod around like he did before.

Randolph pointed out Feinberg kept saying it wasn't him before, but then said he was ramrodding around. Randolph thought Marty was a party and in part with some of the history. Feinberg said he was there but 95% of that was there before he even started. As it concerns the right-of-way, half the time the City would say something about it and then they (the City) would just go away.

At Huppert's question if a special use permit can be issued for a year-by-year basis, Krogmeier said it can be and the Planning & Zoning Commission can stipulate conditions.

Greenwald questioned if the City had been beaten on that before. Randolph said yes, on a recycling versus scrapyards issue. Greenwald asked if stringent guidelines can be put in so that the City doesn't have to spend \$50,000 in attorney fees to enforce them.

City Manager David Varley said this is a request for a rezoning, not a special use permit. The rezoning will stay with the property once Council approves it and there are no conditions to a rezone. Following the rezoning, a business can apply for a special use permit and conditions can be placed on that.

At Cangas' question, Krogmeier said the I-2 District is the most liberal zoning with some restrictions. The I-1 zone is a limited industrial district. A junkyard is restricted in I-2 and requires a special use permit. Across the street from this property is a residential district. When the zoning layout of the City was designed, I-1 was placed between I-2 and residential as a buffer zone.

ROLL CALL: AYES: Wright, Rink, Andrews, Seidel, Huppert
 NAYES: Greenwald, Cangas

MOTION PASSED 5-2

The Mayor then declared said Ordinance PASSED AND APPROVED on it's first reading this 20th day of January, 2015.

ORDINANCES AND RESOLUTIONS

ORDINANCE NO. D-024, AMEND 10-19-2(A)(2), 3(G)(2), 5(H): Cangas MOVED and Wright SECONDED to approve the third reading of an ordinance amending Title 10, Zoning, Chapter 19, Off Street Parking and Loading, Section 2(A)(2), Section 3(G)(2) and Section 5(H) to amend surfacing requirements for parking spaces.

ROLL CALL: AYES: Greenwald, Wright, Rink, Andrews, Seidel, Huppert, Cangas
 NAYES: None

MOTION PASSED 7-0

The Mayor then declared said Ordinance PASSED AND APPROVED on it's third reading this 20th day of January, 2015.

RESOLUTION NO. 2015-03, SET PUBLIC HEARING TO SELL PROPERTY: Wright MOVED and Cangas SECONDED to approve a resolution setting public hearing for February 3, 2015, at 7:00 P.M. on the sale of City-owned property at 1333-35 Avenue E/414 – 14th Street to Habitat for Humanity.

Varley said the City has working on abating these nuisance properties for some time. Habitat for Humanity would like to have the property donated to them for their next project. The City has spent approximately \$20,000 on the nuisances during a long, drawn out process. Habitat has agreed to demolish the 14th Street property at their own expense.

ROLL CALL: AYES: Greenwald, Wright, Rink, Andrews, Seidel, Huppert, Cangas
 NAYES: None

MOTION PASSED 7-0

The Mayor then declared said Resolution ADOPTED AND ENACTED on this 20th day of January, 2015.

OTHER

SLUDGE HAULING EXTENSION: Rink MOVED and Seidel SECONDED to approve the Mayor's signature on a 70-day extension of the sludge hauling contract with S. H. Enterprises, Limited.

Public Works Director Driscoll said he has put this contract out for bid but will need a 70-day extension before bringing the new bid to Council.

MOTION PASSED 7-0

DISCUSSION ITEMS

There were no discussion items.

ADJOURNMENT

At 7:59 P.M., Cargas MOVED and Wright SECONDED to adjourn until Tuesday, February 3, 2015 at 7:00 P.M.

VOICE VOTE APPROVAL

MANUAL CLAIMS AND WARRANTS: See Manuals dated December 31, 2014, in the amount of \$211,849.15; Claims dated January 15, 2015, in the amount of \$304,366.42 and Library Claims dated January 13, 2015 in the amount of \$8,894.07.

<u>PAYROLL</u>	<u>1/9/2015</u>
General	\$180,703.69
RSVP	784.29
Old Fort	2,428.51
Road Use	19,467.72
Hotel/Motel	1,344.87
Water	25,982.74
Sewer	35,631.65
Solid Waste	17,680.94
Storm Water	689.78
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	\$284,714.19

Mayor Bradley A. Randolph
City of Fort Madison

ATTEST:

Melinda L. Blind, City Clerk