

OWOSSO CITY COUNCIL

APRIL 6, 2009

7:30 P.M.

PRESIDING OFFICER: MAYOR PRO-TEM MARK D. OWEN

OPENING PRAYER: PASTOR JOHN DOWNING
UNITED CHURCH OF CHRIST

PLEDGE OF ALLEGIANCE: COUNCILPERSON MICHAEL N. CLINE

PRESENT: Mayor Pro-Tem Mark D. Owen, Councilpersons Michael N. Cline, Joni M. Forster, Benjamin R. Frederick, and Gary W. Martenis.

ABSENT: Mayor Michael E. Bruff and Councilperson Jason D. Simmons.

APPROVE AGENDA

Motion by Councilperson Forster to approve the agenda as presented with the removal of Item of Business 2. Cable Programming Rules, and moving Consent Item 2. Conduct First Reading and Set Public Hearing – Rezoning Request (South Street) to Item of Business 3.

Motion supported by Councilperson Cline and concurred in by unanimous vote.

APPROVAL OF THE MINUTES OF REGULAR MEETING OF MARCH 16, 2009

Motion by Councilperson Cline to approve the Minutes of the Regular Meeting of March 16, 2009 as presented.

Motion supported by Councilperson Forster and concurred in by unanimous vote.

PUBLIC HEARINGS

ORDINANCE AMENDMENT – SOIL EROSION AND SEDIMENTATION CONTROL

A public hearing was held to receive citizen comment regarding proposed ordinance amendment to Chapter 27, *Soil Erosion and Sedimentation Control*, Sections 27-1 through 27-40 of the Code of Ordinances of the City of Owosso, Michigan.

There were no citizen comments.

It was noted the proposed changes would bring the ordinance into compliance with changes made at the state level.

Whereas, the Council, after due and legal notice, has met and there being no one to be heard, motion by Councilperson Frederick that the following ordinance be adopted:

ORDINANCE NO. 705

AN ORDINANCE TO AMEND CHAPTER 27, *SOIL EROSION AND SEDIMENTATION CONTROL*, SECTIONS 27-1 THROUGH 27-40 OF THE CODE OF ORDINANCES OF THE CITY OF OWOSSO, MICHIGAN TO BRING IT INTO COMPLIANCE WITH UPDATES IN STATE LAW.

THE CITY OF OWOSSO ORDAINS:

SECTION 1. THE CITY OF OWOSSO ORDAINS: That Sections 27-1 through 27-40 of Chapter 27, *Soil Erosion and Sedimentation Control*, is hereby amended to read as follows:

Sec. 27-1. Purpose.

The purpose of this chapter is to prevent soil erosion and off-site sedimentation from earth changes within the city by requiring proper provisions of water disposal and the protection of soil surfaces during and after construction.

Sec. 27-2. Designation of the municipal enforcing agency and adoption of the statute and rules by reference.

- (a) The City Engineering Department shall be the municipal enforcing agency responsible for administering and enforcing this ordinance.
- (b) Part 91, Soil Erosion and Sedimentation Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended and the administrative rules promulgated under Part 91 are incorporated into this ordinance by reference.

Sec 27-3 Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accelerated soil erosion means the increased loss of the land surface that occurs as a result of human activities.

Certification of completion means a signed written statement by the city engineer that specific earthwork has been inspected and found to comply with all soil erosion and sedimentation control plans and specifications.

City Engineer means the engineer of the city of Owosso or his/her representative.

Earth change means a human-made change in the natural cover or topography of land, including cut and fill activities, which may result in or contribute to soil erosion or sedimentation of the waters of the state.

Erosion means the process by which the ground surface is worn away by action of wind, water, gravity or a combination thereof.

Excavation or *cut* means any act by which soil or rock is cut into, dug, quarried, uncovered, removed, displaced or relocated and shall include the conditions resulting therefrom.

Flood plain means that area which would be inundated by storm runoff or flood water equivalent to that which would occur with a rainfall or flood of one hundred (100) year recurrence frequency after total development of the watershed.

Grading means any stripping, excavating, filling, stockpiling or any combination thereof, and shall include the land in its excavated or filled condition.

Soil erosion and sedimentation control permit means a permit issued to authorize work to be performed under this chapter.

Permanent soil erosion and sedimentation control measure means those control measures which are installed or constructed to control soil erosion and/or sedimentation and which are maintained after project completion.

Permittee means a person to whom has been issued a permit under the provisions of this chapter.

Stripping means any activity which removes or significantly disturbs the vegetative surface cover including clearing and grubbing operations.

Temporary soil erosion and sedimentation control measures means interim control measures which are installed or constructed for the control of soil erosion and sedimentation and which are not maintained after project completion.

Waterway means a permanent non-enclosed channel that is designed to convey storm water runoff.

Sec. 27-4. Compliance with chapter required for site plan plat approval.

No site plan, plot plan or plat shall be approved under chapter 38 unless the site plan, plot plan or plat shall include soil erosion and sediment control measures consistent with the requirements of this chapter and related land development regulations.

Sec. 27-5. Compliance with chapter required for occupancy.

No certificate of occupancy for any building will be issued under chapter 8 unless the applicant for such certificate shall have obtained a certification of completion indicating compliance with all soil erosion and sedimentation control plans and specifications and completion of all permanent soil erosion control measures.

Sec. 27-6. Responsibility of permittee.

When undertaking earth change activities the permittee shall be responsible for:

- (1) The prevention of damage to any public utility or services within the limits of the earth change and along any routes of travel of the equipment;
- (2) The prevention of damage to adjacent property. No person shall deposit sediment on adjacent property or grade on land so close to the property line as to endanger any adjoining public street, sidewalk, alley or any public or private

property without supporting and protecting such property from settling, cracking or other damage which might result;

- (3) Carrying out the proposed work in accordance with the approved plans and in compliance with all the requirements of the permit and this chapter;
- (4) The prompt removal of all soil, miscellaneous debris or other materials applied, dumped or otherwise deposited on public streets, highways, sidewalks, or other public thoroughfares during transit to and from the construction.

Sec. 27-7. General requirements.

(a) All earth changes shall be conducted in such a manner which will effectively reduce accelerated soil erosion and resulting off-site sedimentation.

(b) All persons engaged in earth changes shall design, implement and maintain acceptable soil erosion and sedimentation control measures, in conformance with this chapter and Part 91.

(c) All earth changes shall be designed, constructed and completed in such a manner which shall limit the exposed area of any disturbed land for the shortest possible period of time.

(d) Sediment caused by accelerated soil erosion shall be removed from runoff water before it leaves the site of the earth change.

(e) Any temporary or permanent soil erosion and sedimentation control measures constructed for the conveyance of water around, through or from the earth change area shall be designed to limit the water flow to a nonerosive velocity.

(f) A person shall install temporary soil erosion and sedimentation control measures before or upon commencement of the earth change activity and shall maintain the measures on a daily basis. A person shall remove temporary soil erosion and sedimentation control measures after permanent soil erosion measures are in place and the area is stabilized. A person shall stabilize the area with permanent soil erosion control measures under approved standards and specifications as prescribed by Rule 323.1710.

(g) A person shall complete permanent soil erosion control measures for all slopes, channels, ditches or any disturbed land area within five (5) calendar days after final grading or the final earth change has been completed. If it is not possible to permanently stabilize a disturbed area after an earth change has been completed or if significant earth change activity ceases, then a person shall maintain temporary soil erosion and sedimentation control measures until permanent soil erosion control measures are in place and the area is stabilized.

Sec 27-8. Maintenance requirements.

Persons carrying out soil erosion and sediment control measures under this chapter, and all subsequent owners of property shall maintain all permanent soil erosion and sedimentation control measures.

Section 27-9. Minimum design standards for erosion and sediment control.

All soil erosion and sedimentation control plans and specifications including extensions of previously approved plans shall include provisions for erosion and sediment control in accordance with, but not limited to, the standards contained in the "Standards and Specifications for Erosion Control" published by the county conservation district. Copies of such standards shall be available for inspection in the office of the city engineer.

Sec. 27-10. Variances.

Where it is alleged that there is error or misinterpretation in any order, requirements, decisions, grant or refusal made by the city engineer, the board of zoning appeals shall have the power to hear specific applications and may amend or change such order, requirements, decisions, grant or refusal so that it is in harmony with the general purpose and intent of the requirements as long as those actions comply with Part 91. The procedural requirements for appeals under sections 38-503 and 38-504 shall be applicable to appeals under this chapter.

Sec 27-11. Inspection.

(a) The requirements of this chapter shall be enforced by the city engineer or his/her representative. The city engineer shall inspect the work and shall require adequate inspection of compaction by a soil engineer or by a soil testing agency, approved by the city engineer, unless the engineer determines that such inspection requirements may be waived due to the non-hazardous nature of the earth change.

(b) Upon satisfactory execution of all approved soil erosion and sedimentation control plans and other requirements, the city engineer shall issue a certification of completion. If the city engineer finds any existing conditions not as stated in any application, soil erosion and sedimentation control permit or approved plan, he or she may refuse to approve further work until approval of a revised soil erosion and sedimentation control plan which will conform to the existing conditions.

Sec. 27-12. Enforcement.

(a) Notwithstanding the existence or pursuit of any other remedy, the city may maintain an action in its own name in any court of competent jurisdiction for an injunction or other process against any person to restrain or prevent violations of this chapter.

(b) The city engineer, or his/her duly authorized agents may enter at all reasonable times in, or upon any private or public property for the purpose of inspecting and investigating conditions and practices which may be a violation of this chapter, Part 91, or the rules promulgated pursuant to Part 91.

Secs. 27-13--27-30. Reserved.

ARTICLE II.

PERMIT

Sec. 27-31. Required.

Except as exempted by sections of this chapter, Part 91, or the Rules no person shall do any grading, stripping, excavating or filling nor undertake any earth change unless he or she has a valid soil erosion and sedimentation control permit issued by the city engineer.

Sec. 27-32. Application--Generally.

A separate application shall be required for each soil erosion and sedimentation control permit. Plans, specifications and timing schedules shall be submitted with each application for a soil erosion and sedimentation control permit. The plans shall be prepared or approved and signed by a professional engineer or by an architect. The city engineer may waive the preparation or approval and signature by the professional engineer or architect when the work entails little hazard to the adjacent property and does not include the construction of a fill upon which a structure may be erected.

Sec. 27-33. Same--Data required.

The plans and specifications accompanying the soil erosion and sedimentation control permit application shall contain the following data:

- (1) A map or maps at a scale of not more than 200 feet to the inch or as otherwise determined by the county or local enforcing agency. A map shall include a legal description and site location sketch that includes the proximity of any proposed earth change to lakes or streams, or both; predominant land features, and contour intervals or slope description.
- (2) A soils survey or a written description of the soil types of the exposed land area contemplated for the earth change.
- (3) Details for proposed earth changes including all of the following:
 - (a) A description and the location of the physical limits of each proposed earth change.
 - (b) A description and the location of all existing and proposed on-site drainage and dewatering facilities.
 - (c) The timing and sequence of each proposed earth change.
 - (d) A description and the location of all proposed temporary soil erosion and sedimentation control measures.
 - (e) The location and description for installing and removing all proposed permanent soil erosion and sedimentation control measures.
 - (f) A program proposal for the continued maintenance of all permanent soil erosion and sedimentation control measures that remain after project completion, including the designation of the person responsible for the maintenance. Maintenance responsibilities shall become a part of any sales or exchange agreement for the land on which the permanent soil erosion and sedimentation control measures are located.

Sec. 27-34. Fees.

At the time of filing an application for a soil erosion and sedimentation control permit, a

nonrefundable filing fee as prescribed by resolution of the council shall be paid to the city treasurer.

Sec. 27-35. Bond requirement.

(a) A soil erosion and sedimentation control permit shall not be issued unless the permittee shall first post with the city engineer a bond executed by the owner and a corporate surety with authority to do business in this state as a surety only for projects with soil erosion and sedimentation control costs of more than \$1000.

(b) The bond shall be in a form approved by the city attorney, payable to the city, and in the amount of the estimated total cost of all temporary or permanent soil erosion control measures. The total cost shall be estimated by the city engineer. The bond shall include penalty provisions for failure to complete the work on schedule as specified on the soil erosion and sedimentation control permit. In lieu of a surety bond, the applicant may file with the city a cash bond or an instrument of credit approved by the city attorney in the amount equal to that which would be required for the surety bond.

(c) Every bond and instrument of credit shall include and every cash deposit shall be made on the conditions that the permittee shall comply with all of the provisions of this chapter and all of the terms and conditions of the soil erosion and sedimentation control permit, and shall complete all of the work contemplated under the soil erosion and sedimentation control permit within the time limit specified in the soil erosion and sedimentation control permit, or if no time limit is specified, within one hundred eighty (180) days after the date of the issuance of the soil erosion and sedimentation control permit.

Sec. 27-36. Extension of time.

If the permittee is unable to complete the work within the specified time, he or she may, at least ten (10) days prior to the expiration of the permit, present in writing to the city engineer and building inspector a request for an extension of time setting forth the reasons for the requested extension. If an extension is warranted, the city engineer may grant additional time for the completion of the work, but no such extension shall release the owner or the surety on the bond or the person furnishing the instrument of credit or cash bond. If the permittee does not request an extension and the original permit expires prior to the site being stabilized, he or she must apply for a new permit.

Sec. 27-37. Failure to complete work.

In the event of failure to complete the work or failure to comply with all the requirements, conditions, and terms of the permit issued under the provisions of this article, the city engineer may order such work as is necessary to eliminate any danger to persons or property and to leave the site in a safe condition and he or she may authorize completion of all necessary temporary or permanent soil erosion control measures. The permittee and the surety executing the bond or person issuing the instrument of credit or making the cash deposit shall continue to be firmly bound under a continuing obligation for the payment of all necessary costs and expenses that may be insured or expended by the city in causing any and all such work to be done. In the case of a cash deposit, any unused portion thereof shall be refunded to the permittee.

Sec. 27-38. Denial of permit.

Soil erosion and sedimentation control permits shall not be issued where:

- (1) The proposed work would cause hazards to the public safety and welfare; or
- (2) The work as proposed by the applicant will damage any public or private property or interfere with any existing drainage course in such a manner as to cause damage to any adjacent property or result in the deposition of debris or sediment on any public way or into any waterway or create an unreasonable hazard to persons or property; or
- (3) The land area for which grading is proposed is subject to geological hazard to the extent that no reasonable amount of corrective work can eliminate or sufficiently reduce settlement, slope instability or any other such hazard to persons or property; or
- (4) The land area for which the grading is proposed may lie within the floodplain of any stream or watercourse (not specifically designated and delineated by the city as an area subject to flood hazard), unless a hydrologic report, prepared by a professional engineer, is submitted to certify that the proposed grading will have, in his or her opinion, no detrimental influence on the public welfare or upon the total development of the watershed.

Sec. 27-39. Modifications of approved plans.

All modifications of the approved soil erosion and sedimentation control plans must be submitted and approved by the city engineer. All necessary substantiating reports shall be submitted with any proposal to modify the approved soil erosion and sedimentation control plan. No soil erosion and sedimentation control work in connection with any proposed modification shall be permitted without the approval of the city engineer.

Sec. 27-40. Exceptions.

(a) In addition to the exceptions identified in Sec. 27-31, no permits shall be required by the provisions of this article for the following:

- (1) Grading or an excavation below finished grade for basements, footings retaining walls, or other structures or plots zoned R-1, R-2, RM-1 and RM-2 of less than twenty thousand (20,000) square feet and more than five hundred (500) feet from any lake or stream;

(b) Although no permits are required for earth changes identified under subsection (a), the earth change activities exempted from obtaining permits must comply with the rules and regulations of this chapter.

Section 2. This ordinance shall become effective April 26, 2009.

Section 3. This Ordinance may be purchased or inspected in the City Clerk’s Office Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m.

Motion supported by Councilperson Cline.

Roll Call Vote.

AYES: Councilpersons Forster, Martenis, Mayor Pro-Tem Owen, Councilpersons Cline, and Frederick.

NAYS: None.

ABSENT: Mayor Bruff and Councilperson Simmons.

ORDINANCE AMENDMENT – UTILITIES AND SERVICES

A public hearing was held to receive citizen comment regarding proposed ordinance amendment to Chapter 34, Utilities and Services, Article IV, *Sewer Service*, Section 34-102 of the Code of Ordinances of the City of Owosso, Michigan as follows:

AN ORDINANCE TO ADD THE DEFINITIONS OF “*BEST MANAGEMENT PRACTICES (BMPs)*”, “*INSTANTANEOUS LIMIT*” AND “*PRETREATMENT REQUIREMENT*” AND TO REPLACE THE DEFINITION OF “*SIGNIFICANT NONCOMPLIANCE*” IN SECTION 34-102 OF THE CODE OF ORDINANCES OF THE CITY OF OWOSSO, MICHIGAN, IN ORDER TO BE CONSISTENT AND COMPLIANT WITH FEDERAL REGULATIONS AS CONTAINED IN 40 CFR 403.8 REGARDING INDUSTRIAL PRETREATMENT PROGRAM REQUIREMENTS FOR PUBLICLY OWNED WASTEWATER TREATMENT PLANTS

SECTION 1. THE CITY OF OWOSSO ORDAINS: That Section 34-102 of Chapter 34 Utilities and Services of the Code of Ordinances of the City of Owosso, Michigan shall be amended by adding the definitions of “*Best management practices or BMPs*”, “*Instantaneous limit*”, and “*Pretreatment requirement*” and by replacing the definition of “*Significant noncompliance (SNC)*” as follows:

Best management practices or BMPs means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in Section 34-168. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

Instantaneous limit means the maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.

Pretreatment requirement means any substantive or procedural requirement related to pretreatment imposed on a User, other than a Pretreatment Standard.

Significant noncompliance (SNC) means the noncompliance status of an industrial user with a violation or pattern of violations that meets one or more of the following criteria:

- (1) Chronic violations of wastewater discharge limits, defined here as those in which

66 percent or more of all of the measurements taken for the same pollutant parameter during a 6 month period exceed (by any magnitude) a numeric pretreatment standard or requirement, including an instantaneous limit, as defined in Section 34-102;

- (2) Technical review criteria (TRC) violations, defined here as those in which 33 percent or more of all of the measurements taken for the same pollutant parameter during a 6 month period equal or exceed the product of the numeric pretreatment standard or requirement including an instantaneous limit, as defined in Section 34-102, multiplied by the applicable TRC (TRC=1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);
- (3) Any other violation of a pretreatment standard or requirement as defined in Section 34-102(daily maximum, long-term average, instantaneous limit, or narrative standard) that the public services director determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health and safety of city personnel or the general public);
- (4) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in an emergency suspension of service to halt or prevent such a discharge;
- (5) Failure to meet, within ninety (90) days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;
- (6) Failure to provide, within 30 days after the due date, required reports such as baseline monitoring reports, ninety-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- (7) Failure to accurately report noncompliance;
- (8) Any other violation or group of violations, which may include a violation of Best management Practices, which the public services director determines will adversely affect the operation or implementation of the local pretreatment program.

Section 2. This ordinance shall become effective 20 days after adoption.

Section 3. This Ordinance may be purchased or inspected in the City Clerk's Office Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m.

There were no citizen comments.

Utilities Director Gary M. Burk detailed the two ordinance amendments proposed to bring the City up to date with recent federal requirements. The changes included new definitions and enforcement language. He also noted that as the City has agreements with other municipalities he would be asking those communities to consider the same changes to match. No action is required until the EPA holds hearings later this month.

ORDINANCE AMENDMENT – UTILITIES AND SERVICES

A public hearing was held to receive citizen comment regarding proposed ordinance amendment to Chapter 34, Utilities and Services, Article IV, Sewer Service, Division 7, Enforcement, Sections 34-221 through 34-235 of the Code of Ordinances of the City of Owosso, Michigan as follows:

AN ORDINANCE TO AMEND CHAPTER 34, UTILITIES AND SERVICES, ARTICLE IV, SEWER SERVICE, DIVISION 7, ENFORCEMENT, SECTIONS 34-221 THROUGH 34-235 OF THE CODE OF ORDINANCES OF THE CITY OF OWOSSO, MICHIGAN.

SECTION 1. THE CITY OF OWOSSO ORDAINS: That Chapter 34, Utilities and Services, Article IV, Sewer Service, Division 7, Enforcement, Sections 34-221 through 34-235 of the Code of Ordinances of the City of Owosso, Michigan shall be amended as follows:

DIVISION 7. ENFORCEMENT

Sec. 34-221. Violations.

(a) Any person found to be violating any provision of this article may be served by the public services director with a written notice stating the nature of the violation and either providing a reasonable time limit for the satisfactory correction thereof, or requiring the user to submit an action plan for the correction and prevention of such violation(s). Within the period of time stated in such notice, or in conformance with a compliance schedule in a subsequent Order

to implement a corrective action plan, the person shall permanently cease all violations. Nothing in this section shall limit the authority of the public services director to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

(b) A violation of the provisions of this article shall be considered a public nuisance per se and any action authorized or permitted by law for the abatement of public nuisances may be instituted by the city in regard to such violation.

(c) Whenever a person has violated any provision of this article, the city may take any legal action necessary to recover damages sustained by the city as a result thereof. Such damages shall include, but are not limited to, lost revenues from the federal or state government and any fines or other penalties which are the result of the violation.

Sec. 34-222. Emergency suspension of service.

(a) In the case of discharges which present or may present an imminent or substantial endangerment to the health or welfare of persons, to the environment, or cause interference with the operation of the sewage works, or otherwise constitutes a public nuisance or emergency, the city sewer service of any person causing or threatening to cause such discharge may be terminated by order of the public services director, pending further investigation and hearing under section 34-223.

(b) Any person so notified of the suspension of the city's sewer service shall, within the time specified in such notice, cease all discharges.

(c) In the event of failure of the person to voluntarily comply with the suspension order within the specified time, the city may commence an action or proceeding in any court of competent jurisdiction to compel the person's compliance with such order.

(d) The city shall reinstate the sewer service and terminate any judicial proceedings upon proof by the user to the satisfaction of the public services director of the elimination of the noncomplying discharge or conditions creating the threat of imminent or substantial danger as set forth above.

Sec. 34-223. Termination of service.

(a) *Authority to terminate.* The public services director shall have the authority to terminate wastewater service to any user who attempts to violate or violates any provision of this article, or who in any way attempts to avoid, delay, prevent, or interfere with the execution or enforcement of any provision of this article, or who fails to pay any charges, levied against the user, whether regulator or extraordinary, under this article, or who attempts to violate or violates or attempts to avoid, delay, prevent or interfere with the execution or enforcement of any order, rule or regulation promulgated by the director for compliance with or in execution of this article, or who fails to appear at a hearing to meet a charge against him, her or it under this article.

(b) *Hearing procedures.*

(1) In addition to any remedies provided elsewhere in this article, whenever the public services director has reason to believe that any user has committed or is committing an offense covered by subsection (a) he or she may serve upon the user a written notice stating the nature of the alleged violation and describing the time for and the nature of required correction.

(2) If the violation is not corrected as prescribed in the notice, the director may issue an order to the user to appear for a hearing and show cause why service should not be terminated.

(3) The notice and order to show cause shall be served upon the user by personal service, or in lieu thereof by certified mail, return receipt requested, to the user's last known address.

(4) The hearing shall be conducted by the city manager or a hearing officer appointed by him or her, who shall render a written decision determining whether the user's service shall be terminated and stating reasons therefor. Admissibility of evidence at the hearing shall be within the discretion of the city manager or hearing officer.

(5) The user shall be entitled to be represented at the hearing in person or by an attorney at his or her own expense and shall be entitled to examine witnesses for the city and present evidence on his or her own behalf. A record shall be made of the proceedings, but such record need not be verbatim.

(6) The user whose service is terminated without prior hearing may request such a hearing as described in subsections (b)(4) and (5), to permit him to show why his or her service should not have been terminated and should be resumed. Such

requests shall be granted but service will not be resumed unless so ordered by the city manager or hearing officer.

Sec. 34-224. Publication of enforcement actions.

The public services director shall publish, at least annually in the largest daily newspaper published in the service area of the wastewater system, a public notification of industrial users which are found to be in significant noncompliance, as defined in section 34-102, with applicable pretreatment requirements during the period since the previous publication.

Sec. 34-225. Right of appeal.

Any discharger or any interested party shall have the right to request in writing an interpretation or ruling by the city on any matter covered by this article, and shall be entitled to a prompt written reply. If such inquiry is by a discharger and deals with matters of performance or compliance with this article for which enforcement activity relating to an alleged violation which is the subject, receipt of a discharger's request, shall stay all enforcement proceedings pending receipt of the written reply. Appeal of any final judicial order entered pursuant to this article may be taken in accordance with local and state law.

Sec. 34-226. Temporary noncompliance; upset provisions.

(a) For the purposes of this section, "upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(b) An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of paragraph (c) are met.

(c) An industrial user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- (1) An upset occurred and the industrial user can identify the cause(s) of the upset;
- (2) The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures.
- (3) The industrial user has submitted the following information to the public services director within twenty-four (24) hours of becoming aware of the upset (if this information is provided orally, a written submission must be provided within five (5) days):
 - a. A description of the discharge and cause of noncompliance;
 - b. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue;
 - c. Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance.

(d) In any enforcement proceeding the industrial user seeking to establish the occurrence of an upset shall have the burden of proof.

(e) The industrial user shall control production or all discharges to the extent necessary to maintain compliance with pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.

Sec. 34-227. Recovery of costs incurred by city.

Any user violating any of the provisions of this article, or who discharges or causes a discharge producing a deposit or obstruction, or causes damage to or interference with city's wastewater system shall be liable to the city for any expense, loss, or damage caused by such violation or discharge. The city shall bill the user for the costs incurred by the city for any cleaning, repair, or replacement work caused by the violation or discharge. Refusal to pay the assessed costs shall constitute a violation of this article enforceable under the provisions of this division.

Sec. 34-228. Administrative fines.

(a) Notwithstanding any other section of this Article, any user who is found to have violated any provision under this Article, or orders issued under this Article, may be fined up to an amount of five hundred (\$500) per day per violation, or the maximum allowable under state law per violation. A schedule of fines may be established and adopted as a rule in accordance with Section 34-203.

(b) Such assessments shall be added to user's next scheduled sewer service charge, and subject to other collection rights and remedies as designated by law and this ordinance to collect said service charges. Unpaid charges, fines, and penalties shall constitute a lien against the individual user's property. Users desiring to appeal such fines must comply with Section 34-225.

Sec. 34-229. Consent orders.

The public services director is hereby empowered to enter into consent orders establishing an agreement with an industrial user which is subject to enforcement action for noncompliance with this article. Consent orders may include compliance schedules, stipulated fines or penalties, remedial actions, other provisions agreed to by the parties, and signatures of the public services director and an authorized representative of the industrial user. Consent orders shall be considered a part of this article for the specific user and shall be enforceable in the same manner as this article.

Sec. 34-230. Show cause order.

In the event of a proposed enforcement action, other than termination of wastewater service under section 34-223, the public services director may order any user which causes or contributes to violation of this article to appear and show cause at a meeting with the director why the proposed enforcement action should not be taken. The notice of the meeting shall be served on the user personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the meeting. Whether or not a duly notified industrial user appears as noticed, enforcement action may be pursued as appropriate.

Sec. 34-231. Misdemeanor.

(a) A person who violates any provision of this chapter that is listed in subsection (b) below shall, upon conviction, be guilty of a misdemeanor. Such misdemeanors are subject to a fine of not more than five hundred dollars (\$500) or the maximum allowable under state law, plus costs and other sanctions, or by imprisonment for a period not to exceed ninety (90) days, or both.

(b) Misdemeanor violations include:

- (1) Intentional unpermitted discharge, including but not limited to intentional unpermitted dumping of wastes or wastewater to any manhole, any sewer, drain or natural outlet,
- (2) Making any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this article, or falsification, tampering with, or rendering inaccurate any monitoring device or analytical test method required under this article,
- (3) Improper sampling, with evidence of intent to falsify or mislead,
- (4) Intentional introduction of any substances into the wastewater system that causes personal injury or property damage,
- (5) Any recurring violation that results in a determination of significant noncompliance that continues after application of administrative enforcement remedies, and
- (6) Illegal discharge when the discharge causes interference with the wastewater system and there is evidence of intent.

Sec. 34-232. Municipal civil infraction.

(a) Except for a violation which is specifically designated in this Article as a misdemeanor subject to criminal prosecution, any person, firm or corporation who violates or fails to comply with any provision of this Article, or Order issued hereunder, or any other Pretreatment Standard or Requirement is responsible for a municipal civil infraction and is subject to the civil fines set forth below and costs and other sanctions that may be imposed by the Court. Each act of violation and each day upon which such violation occurs shall constitute a separate violation.

(b) The public services director, utilities director and industrial pretreatment coordinator are hereby designated as authorized city officials to issue municipal civil infraction citations and notices under this Article.

(c) The penalty for a violation of this Article that is a municipal civil infraction is a civil fine in accordance with the schedule that follows, plus costs, damages, expenses and other sanctions that may be imposed by the Court. A Category I violation is a major violation by any person or firm that causes interference with the wastewater system, or endangers the health and safety of City personnel or the general public, or otherwise necessitates an emergency termination of wastewater service to halt or prevent such a discharge. A Category II violation is any non-Category I violation, by any person or firm classified as a Significant Industrial User pursuant to Section 34-201. A Category III violation is any non-Category I violation by a person or firm other than a Significant Industrial User.

Violation Type	First Offense	First Repeat Offense	Subsequent Repeat Offense
Category I	\$1,000	\$2,500	\$5,000
Category II	\$250	\$500	\$1,000
Category III	\$100	\$250	\$500

Sec. 34-233. Injunctive relief.

At the request of the public services director, the city attorney may petition any court of competent jurisdiction for the abatement of any nuisance, and to seek relief for any violations of this Article, or Order issued under this Article. The city attorney may seek, and the court may impose, temporary or permanent injunctive relief, damages, civil penalties as provided in Section 34-234, costs and such other relief as the court may order.

Sec. 34-234. Judicial civil penalties.

In an action brought by the city against a person for violation of this Article, or Order issued under this Article, a court of competent jurisdiction may impose a civil penalty of up to \$5,000 per day per violation. In calculating the amount of the penalty, the court may consider the frequency, magnitude and duration of violation(s) by the person, the impact of the violation(s) on public health and the environment, the economic benefit to the person gained by the violation(s), the compliance history of the person, and other factors deemed appropriate by the court.

Sec. 34-235. Remedies nonexclusive.

The remedies provided for in this division are not exclusive. The director may take any, all, or any combination of these actions against a noncompliant person. Prosecution of a criminal offense against a person shall not be dependent upon or held in abeyance during any civil proceeding regarding such person.

Secs. 34-236--34-245. Reserved.

Section 2. This ordinance shall become effective twenty days after adoption.

Section 3. This Ordinance may be purchased or inspected in the City Clerk’s Office Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m.

There were no citizen comments.

BROWNFIELD PLAN AMENDMENT – DISTRICT NO. 12 WOODARD STATION LOFTS, LLC

Community Development Director Brent Morgan indicated he had been approached by the owner of the property regarding the possibility of amending the plan to separately identify two distinct development areas for the purpose of obtaining two separate Michigan Business Tax Credits.

Councilperson Frederick noted the Brownfield Commission had met and unanimously supported the amendment.

Motion by Councilperson Frederick to authorize the following resolution:

RESOLUTION NO. 18-2009

**RESOLUTION APPROVING A BROWNFIELD PLAN—
“District #12, Amended Brownfield Plan – Woodard Station Lofts, LLC”,
FOR THE CITY OF OWOSSO
PURSUANT TO AND IN ACCORDANCE WITH
THE PROVISIONS OF ACT 381 OF
THE PUBLIC ACTS OF THE STATE OF MICHIGAN OF 1996, AS AMENDED**

WHEREAS, the Brownfield Redevelopment Authority (the “Authority”) of the City of Owosso, pursuant to and in accordance with the provisions of the Brownfield Redevelopment Financing Act, being Act 381 of the Public Acts of the State of Michigan of 1996, as amended (the “Act”),

has prepared and recommended for approval by the City of Owosso Council an Addendum to the Brownfield Plan entitled "District #12, Amended Brownfield Redevelopment Plan – Woodard Station Lofts, LLC" (the "Plan"), pursuant to and in accordance with Section 13 of the Act; and

WHEREAS, the Authority has, at least twenty (20) days before the meeting of the City Council at which this resolution has been considered, provided two public hearing notifications given in the paper on the 19th day of March 2009 and on the 20th day of March 2009.

WHEREAS, the Council supports the following Addendum to the plan which creates two separate development parcels for the purpose of obtaining two MBT credits permitted by the Michigan Economic Development Authority.

**ADDENDUM TO
CITY OF OWOSSO BROWNFIELD REDEVELOPMENT AUTHORITY DISTRICT #12
BROWNFIELD REDEVELOPMENT PLAN
TO IDENTIFY PARCELS FOR MICHIGAN BUSINESS TAX PURPOSES**

"Woodard Station Lofts LLC"

This is an Addendum to the District #12 Woodard Station Lofts LLC Brownfield project approved by the Owosso City Council on September 18, 2006. The purpose of this Addendum is to separately identify two distinct development areas for the purpose of obtaining two separate Michigan Business Tax (MBT) credits and to increase the amount of total MBT credit requested by Woodard Station Lofts LLC, Woodard Lofts LLC and Woodard Lofts II LLC.

The approved Brownfield Plan identified property at 317 South Elm Street (see Exhibit A for the approved Brownfield plan and legal description of the property). Separate development projects are now being carried out on the property. The initial development project area, known as Area A, includes the renovation of the east half of the former Woodard Furniture manufacturing building as well as the former Owosso Casket building into mixed use commercial/retail and residential space. The second project development area, known as Area B, includes the renovation of the west half of the former Woodard Furniture manufacturing building into mixed use commercial/retail and residential condominium lofts. The legal descriptions of the two development areas are attached at Exhibit B. (Note that subsequent to approval of the Brownfield Plan, a Master Deed was recorded for the property and the property is now known as the Woodard Station condominium project.)

The entire former Woodard Furniture building has been determined to be "functionally obsolete" by a Level III Assessor (see Attachment 3 of the approved Brownfield Plan) and therefore both development areas are eligible pursuant to Act 381 of 1996, as amended.

**Exhibit B
Property Description**

Development Area A

Legal Description:

City of Owosso, Shiawassee County, Michigan
Units 1, 2 and 4 through 51, Woodard Station, a Condominium according to the Master Deed recorded in Liber 1106, Page 597, First Amendment to Master Deed recorded in Liber 1109, Page 43, Second Amendment to Master Deed recorded in Liber 1112, Page 79, Shiawassee County Register of Deeds Office and designated as Shiawassee County Condominium Subdivision Plan No. 16, together with rights in general common elements and limited common elements as set forth in the said Master Deed and described in Act 59 of the Public Acts of 1978, as amended.

Development Area B

Legal Description:

City of Owosso, Shiawassee County, Michigan
Units 3 and 52, Woodard Station, a Condominium according to the Master Deed recorded in Liber 1106, Page 597, First Amendment to Master Deed recorded in Liber 1109, Page 43, Second Amendment to Master Deed recorded in Liber 1112, Page 79, Shiawassee County Register of Deeds Office and designated as Shiawassee County Condominium Subdivision Plan No. 16, together with rights in general common elements and limited common elements as set forth in the said Master Deed and described in Act 59 of the Public Acts of 1978, as amended.

WHEREAS, the Council has made the following determinations and findings:

- A. The Plan and Addendum constitute a public purpose under the Act;
- B. The Plan and Addendum meet all of the requirements for a Brownfield Plan set forth in Section 13 of the Act;

- C. The proposed method of financing the costs of the eligible activities, as described in the Plan is feasible and the Authority has the ability to arrange the financing;
- D. The costs of the eligible activities proposed in the Plan are reasonable and necessary to carry out the purposes of the Act;
- E. The amount of captured taxable value estimated to result from the adoption of the Plan is reasonable; and

WHEREAS, as a result of its review of the Addendum to the Plan and upon consideration of their views and recommendations, the Council desires to proceed with approval of the Plan.

NOW THEREFORE, BE IT RESOLVED THAT:

1. **Plan Addendum Approved.** Pursuant to the authority vested in the Council by the Act, and pursuant to and in accordance with the provisions of Section 14 of the Act, the Plan Addendum is hereby approved in the form considered by the Council on April 6, 2009 and maintained on file in the office of the City Clerk.
2. **Severability.** Should any section, clause or phrase of this Resolution be declared by the Courts to be invalid, the same shall not affect the validity of this Resolution as a whole nor any part thereof other than the part so declared to be invalid.
3. **Repeals.** All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

Motion supported by Councilperson Forster.

Roll Call Vote.

AYES: Councilperson Frederick, Mayor Pro-Tem Owen, Councilpersons Cline, Martenis, and Forster.

NAYS: None.

ABSENT: Mayor Bruff and Councilperson Simmons.

SPECIAL ASSESSMENT DISTRICT NO. 2009-02

BALL STREET FROM JENNETT STREET TO GALUSHA STREET

The public hearing was conducted for the proposed project.

The following people addressed the City Council regarding the proposed special assessment:

Katie Heid, 1008 North Ball Street, inquired whether any stimulus money could be used to help cover the cost of reconstruction. It was noted stimulus money could only be used for streets eligible for federal funding, with Ball and Water Streets having no eligibility.

Amy Labert, 202 Jennett Street, inquired how much the City will pay and how much will be specially assessed. She also asked why the reconstruction was proposed to continue all the way down the block, she felt her section of the street did not need reconstruction. It was noted the City would be paying approximately half of the cost with Ball Street residents being assessed the other half. It was also noted the City tries to reconstruct entire blocks rather than portions of them.

Motion by Councilperson Martenis to adopt the following resolution:

RESOLUTION NO. 19-2009

WHEREAS, the City Council, after due and legal notice, has met and heard all persons affected by the proposed public improvement more particularly hereinafter described; and

WHEREAS, the City Council deems it advisable and necessary to proceed with said public improvement as more particularly hereinafter described.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The City Council hereby determines to make and proceed with the following described public improvement and to defray a part or the whole cost, as more particularly hereinafter provided, by special assessment upon the property specially benefited: Ball Street from Jennett Street to Galusha Street.
2. The City Council hereby approves the plans for the aforesaid public improvement as prepared and presented by the City Manager and determines the estimated cost of said

public improvement to be \$35,000 and approves said estimated cost and determines that the estimated life of said public improvement is twenty (20) years.

3. The City Council determines that of said total estimated cost, the sum of \$18,419.64 be paid by special assessment upon the property specially benefited, as more particularly hereinafter described.
4. The City Council hereby designates the following described property as the special assessment district upon which the special assessment shall be levied: Ball Street from Jennett Street to Galusha Street for street reconstruction.
5. The City Assessor shall prepare a special assessment roll including all lots and parcels of land within the special assessment district herein designated, and the Assessor shall assess to each such lot or parcel of land such relative portion of the whole sum to be levied against all lands in the special assessment district as the benefit to such lot or parcel of land bears to the total benefits to all lands in such district.

When the Assessor shall have completed the assessment roll, he shall file the special assessment roll with the City Clerk for presentation to the City Council.

Motion supported by Councilperson Forster.

Roll Call Vote.

AYES: Mayor Pro-Tem Owen, Councilpersons Martenis, Cline, Forster, and Frederick.

NAYS: None.

ABSENT: Mayor Bruff and Councilperson Simmons.

SPECIAL ASSESSMENT DISTRICT NO. 2009-06 2009-03* *Amended 04-20-2009

WATER STREET FROM GALUSHA STREET TO NORTH STREET

The public hearing was conducted for the proposed project.

The following people addressed the City Council regarding the proposed special assessment:

Carol Fountain, 1206 North Water Street, inquired who had received the bids to do the reconstruction, she also inquired about what qualifies as low income and how long the project will take. It was noted no bids had been solicited as the Council had yet to decide if the project would move forward. It was also noted there were established hardship provisions that could be looked into and the project would take some time as water main is scheduled for abandonment and this work would have to be performed prior to the reconstruction of the street.

Councilperson Martenis expressed his appreciation for those that came to address the Council this evening.

There was a brief discussion regarding the interest rate charged on special assessment balances and how the interest rate could be changed.

Motion by Councilperson Forster to adopt the following resolution:

RESOLUTION NO. 20-2009

WHEREAS, the City Council, after due and legal notice, has met and heard all persons affected by the proposed public improvement more particularly hereinafter described; and

WHEREAS, the City Council deems it advisable and necessary to proceed with said public improvement as more particularly hereinafter described.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The City Council hereby determines to make and proceed with the following described public improvement and to defray a part or the whole cost, as more particularly hereinafter provided, by special assessment upon the property specially benefited: Water Street from Galusha Street to North Street.
2. The City Council hereby approves the plans for the aforesaid public improvement as prepared and presented by the City Manager and determines the estimated cost of said public improvement to be \$108,700 and approves said estimated cost and determines that the estimated life of said public improvement is twenty (20) years.

3. The City Council determines that of said total estimated cost, the sum of \$42,739.62 be paid by special assessment upon the property specially benefited, as more particularly hereinafter described.
4. The City Council hereby designates the following described property as the special assessment district upon which the special assessment shall be levied: Water Street from Galusha Street to North Street for street reconstruction.
5. The City Assessor shall prepare a special assessment roll including all lots and parcels of land within the special assessment district herein designated, and the Assessor shall assess to each such lot or parcel of land such relative portion of the whole sum to be levied against all lands in the special assessment district as the benefit to such lot or parcel of land bears to the total benefits to all lands in such district.

When the Assessor shall have completed the assessment roll, he shall file the special assessment roll with the City Clerk for presentation to the City Council.

Motion supported by Councilperson Martenis.

Roll Call Vote.

AYES: Councilpersons Cline, Frederick, Forster, Martenis, and Mayor Pro-Tem Owen.

NAYS: None.

ABSENT: Mayor Bruff and Councilperson Simmons.

CITIZEN COMMENTS AND QUESTIONS

Burton Fox, 216 East Oliver Street, commented on alleged site plan violations at the American Waste site on South Street. Staff will contact the owner of the property to inquire about the status of the project.

Eddie Urban, 601 Glenwood Avenue, thanked the Mayor for attending a recent disabled veteran's conference. He also commented on garbage service and burning permits.

CITY MANAGER REPORT

City Manager Fivas updated Council on the status of Holman Pool indicating no one had stepped forward to privately fund the opening of the pool for 2009. He further indicated monies left over from the last levy of the pool millage will be used for insurance and safety and security measures at the pool site. He went on to clarify that monies collected for the pool can only be used for the pool and will not be allocated for general fund expenses. In response to an inquiry he noted money for the loop trail could not be diverted to the pool as it came from an MDOT Enhancement grant and had to be used for the project indicated at the time the grant was applied for a number of years ago. He went on to say that no general funds were being used to complete the loop trail and further funding for the project was being provided by the DDA and DEQ.

CONSENT AGENDA

Motion by Councilperson Frederick to approve the Consent Agenda as follows:

First Reading and Set Public Hearing - Ordinance Amendment.

The First Reading on the proposed ordinance amendment was held.

A public hearing was scheduled for April 20, 2009 to receive citizen comment regarding the proposed ordinance to amend Chapter 9, Cable Television, Article III, *Owosso Community Television*, Sections 9-105 through 9-107 of the Code of Ordinances of the City of Owosso, Michigan as follows:

AN ORDINANCE TO AMEND CHAPTER 9, CABLE TELEVISION, ARTICLE III, *OWOSSO COMMUNITY TELEVISION*, SECTIONS 9-105 THROUGH 9-107 OF THE CODE OF ORDINANCES OF THE CITY OF OWOSSO, MICHIGAN TO ADJUST THE MEMBERSHIP OF THE CABLE COMMISSION.

THE CITY OF OWOSSO ORDAINS:

SECTION 1. THE CITY OF OWOSSO ORDAINS: That Sections 9-105 through 9-107 of Chapter 9, Cable Television, Article III, *Owosso Community Television*, is hereby amended to read as follows:

Sec. 9-105. Same--Membership.

Membership of the commission shall consist of seven (7) citizen at large voting members

possessing the qualifications to hold appointed office as stated in Charter Sections 4.2 and 4.3. Whenever possible, members shall be cable subscribers.

The person from the administrative staff of the city who has been designated by the city manager as the OCTV coordinator shall be an ex officio member of the commission but without the right to vote.

Sec. 9-106. Same--Term of members.

Each at large member of the commission shall be appointed for a term of three (3) years commencing on July 1 except that the members at the time of this reorganization shall begin their terms immediately with two (2) of said members being appointed for term ending June 30, 2009, two (2) said members being appointed for terms ending June 30, 2010, and three (3) said member being appointed for terms ending June 30, 2011. Terms for current members previously appointed annually will be determined by drawing. Seats originally assigned to members representing local organizations will convert to citizen at large positions upon the expiration of their assigned term.

Sec. 9-107. Same--Internal administration.

The commission shall select one of its voting members as chair and shall designate the ex-officio member as secretary. The commission may adopt such rules as it deems necessary for the transaction of its business. Any decision of the commission shall require the concurrence of four (4) members. The commission shall meet as often as necessary with at least one (1) meeting each calendar quarter and all of its meetings shall comply with the open meetings act.

Section 2. This ordinance shall become effective twenty days after adoption.

Section 3. This Ordinance may be purchased or inspected in the City Clerk's Office Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m.

Conduct First Reading and Set Public Hearing-Rezoning Request.

The First Reading on the proposed Ordinance Amendment was held.

A Public Hearing was scheduled for April 20, 2009 to receive citizen comment regarding the proposed amendment to Section 38-27, Chapter 38, Article II, District Boundaries, of the Code of the City of Owosso, as follows:

AN ORDINANCE TO AMEND SECTION 38-27 OF CHAPTER 38 OF THE CODE OF ORDINANCES OF THE CITY OF OWOSSO, MICHIGAN.

THE CITY OF OWOSSO ORDAINS:

SECTION 1. THE CITY OF OWOSSO ORDAINS: That Section 38-27 of Article II of the Owosso City Code, District Boundaries, is hereby amended by changing the designation of the following lots and parcels of land designated in a zoning map of the City of Owosso, and referred to in said Section and made a part thereof, which said lots and parcels hereby intended to be redesignated are not described in body of said Section as in certain zone districts; said designation being as follows:

APPLICANT:	ProVisions, LLC		
PROPERTY ADDRESSES:	310 North Gould Street		
PROPOSED REZONING:	FROM	RM-1	Multiple Family Residential District (low rise)
	TO	OS-1	Office Service District
PROPERTY DESCRIPTION:	SEC 18 T7N R3E BEG 33' E & N00*00'00"E 779.70' OF S 1/4 POST SAID SEC TH N00*00'00"E 142.92', S87*34'47"E 283.00', N00*00'00"E 140.00', S87*34'47"E 568.42', S00*00'00"W 515.11, S89*12'00"W 497.74', N00*00'00"E 280.00', S89*12'00"W 353' TO POB. CONT 7.384 AC M/L		

SECTION 2. The changes made in the zoning in the lots and parcels of land hereinbefore described are hereby ordered to be redesignated on said map in accordance with this Ordinance.

SECTION 3. This Ordinance shall take effect twenty (20) days after passage.

Conduct First Reading and Set Public Hearing-Rezoning Request.

The First Reading on the proposed Ordinance Amendment was held.

A Public Hearing was scheduled for April 20, 2009 to receive citizen comment regarding the proposed amendment to Section 38-27, Chapter 38, Article II, District Boundaries, of the Code of the City of Owosso, as follows:

AN ORDINANCE TO AMEND SECTION 38-27 OF CHAPTER 38 OF THE CODE OF ORDINANCES OF THE CITY OF OWOSSO, MICHIGAN.

THE CITY OF OWOSSO ORDAINS:

SECTION 1. THE CITY OF OWOSSO ORDAINS: That Section 38-27 of Article II of the Owosso City Code, District Boundaries, is hereby amended by changing the designation of the following lots and parcels of land designated in a zoning map of the City of Owosso, and referred to in said Section and made a part thereof, which said lots and parcels hereby intended to be redesignated are not described in body of said Section as in certain zone districts; said designation being as follows:

APPLICANT: ProVisions, LLC

PROPERTY ADDRESSES: 314 North Gould Street

PROPOSED REZONING: FROM RM-1 Multiple Family Residential District (low rise)
TO OS-1 Office Service District

PROPERTY DESCRIPTION: SEC 18 T7N R3E BEG 33' E & N 0*00'00" E 922.62' OF S 1/4 POST SAID SEC, TH N00* 00'00"E 140.00', N 89*12'00"E 283.00', S00*00'00"W 140.00', S89*12'00"W 283.00' TO POB; CONT .909 AC M/L

SECTION 2. The changes made in the zoning in the lots and parcels of land hereinbefore described are hereby ordered to be redesignated on said map in accordance with this Ordinance.

SECTION 3. This Ordinance shall take effect twenty (20) days after passage.

Special Assessment District No. 2009-02.

Authorized Resolution No. 4 setting a public hearing for May 18, 2009 to receive citizen comment regarding Special Assessment District No. 2009-02 for Ball Street from Jennett Street to Galusha Street for street reconstruction as follows:

RESOLUTION NO. 21-2009

WHEREAS, the Assessor has prepared a special assessment roll for the purpose of specially assessing that portion of the cost of the public improvements more particularly hereinafter described to the properties specially benefited by said public improvement, and the same has been presented to the Council by the City Clerk.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. Said special assessment roll is hereby accepted and shall be filed in the office of the City Clerk for public examination.
2. The Council shall meet at the Owosso City Hall, Owosso, Michigan at 7:30 o'clock p.m., on Monday, May 18, 2009 for the purpose of hearing all persons interested in said special assessment roll and reviewing the same.
3. The City Clerk is directed to publish the notice of said hearings once in the *Argus Press*, the official newspaper of the City of Owosso, not less than ten (10) days prior to said hearing and shall further cause notice of said hearing to be sent by first class mail to each owner of the property subject to assessment, as indicated by the records in the City Assessor's office as shown on the general tax rolls of the City, at least ten (10) days before the time of said hearing, said notice to be mailed to the addresses shown on said general tax rolls of the City.
4. The notice of said hearing to be published and mailed shall be in substantially the following form:

NOTICE OF HEARING TO REVIEW
SPECIAL ASSESSMENT ROLL
CITY OF OWOSSO
COUNTY OF SHIAWASSEE, MICHIGAN

TO THE OWNERS OF THE OF THE FOLLOWING DESCRIBED PROPERTY:

BALL STREET FROM JENNETT STREET TO GALUSHA STREET

TAKE NOTICE that a Special Assessment roll has been prepared for the purpose of defraying the Special Assessment district's share of the cost of the following described public improvements: Street Reconstruction.

The said Special Assessment roll is on file for public examination with the City Clerk and any objections to said Special Assessment roll must be filed in writing with the City Clerk prior to the close of the hearing to review said Special Assessment roll.

TAKE FURTHER NOTICE that appearance and protest at this hearing is required in order to appeal the amount of the special assessment to the State Tax Tribunal if an appeal should be desired. A property owner or party in interest, his or her agent, may appear in person at the hearing to protest the special assessment or may file his or her appearance by letter and his or her personal appearance shall not be required. The property owner or any person having an interest in the property subject to the proposed special assessments may file a written appeal of the special assessment with the State Tax Tribunal within thirty days after confirmation of the special assessment roll if that special assessment was protested at this hearing.

TAKE FURTHER NOTICE that the City Council will meet at the Owosso City Hall, Owosso, Michigan at 7:30 p.m. on Monday, May 18, 2009 for the purpose of reviewing said special assessment roll and for the purpose of considering all objections to said roll submitted in writing.

Special Assessment District No. ~~2009-06~~ 2009-03*

*Amended 04-20-2009

Authorized Resolution No. 4 setting a public hearing for May 18, 2009 to receive citizen comment regarding Special Assessment District No. 2009-06 for Water Street from Galusha Street to North Street for street reconstruction as follows:

RESOLUTION NO. 22-2009

WHEREAS, the Assessor has prepared a special assessment roll for the purpose of specially assessing that portion of the cost of the public improvements more particularly hereinafter described to the properties specially benefited by said public improvement, and the same has been presented to the Council by the City Clerk.

NOW, THEREFORE, BE IT RESOLVED THAT:

5. Said special assessment roll is hereby accepted and shall be filed in the office of the City Clerk for public examination.
6. The Council shall meet at the Owosso City Hall, Owosso, Michigan at 7:30 o'clock p.m., on Monday, May 18, 2009 for the purpose of hearing all persons interested in said special assessment roll and reviewing the same.
7. The City Clerk is directed to publish the notice of said hearings once in the *Argus Press*, the official newspaper of the City of Owosso, not less than ten (10) days prior to said hearing and shall further cause notice of said hearing to be sent by first class mail to each owner of the property subject to assessment, as indicated by the records in the City Assessor's office as shown on the general tax rolls of the City, at least ten (10) days before the time of said hearing, said notice to be mailed to the addresses shown on said general tax rolls of the City.
8. The notice of said hearing to be published and mailed shall be in substantially the following form:

NOTICE OF HEARING TO REVIEW
SPECIAL ASSESSMENT ROLL
CITY OF OWOSSO
COUNTY OF SHIAWASSEE, MICHIGAN

TO THE OWNERS OF THE OF THE FOLLOWING DESCRIBED PROPERTY:

WATER STREET FROM GALUSHA STREET TO NORTH STREET

TAKE NOTICE that a Special Assessment roll has been prepared for the purpose of defraying the Special Assessment district's share of the cost of the following described public improvements: Street Reconstruction.

The said Special Assessment roll is on file for public examination with the City Clerk and any objections to said Special Assessment roll must be filed in writing with the City Clerk prior to the close of the hearing to review said Special Assessment roll.

TAKE FURTHER NOTICE that appearance and protest at this hearing is required in order to appeal the amount of the special assessment to the State Tax Tribunal if an appeal should be desired. A property owner or party in interest, his or her agent, may appear in person at the hearing to protest the special assessment or may file his or her appearance by letter and his or her personal appearance shall not be required. The property owner or any person having an interest in the property subject to the proposed special assessments may file a written appeal of the special assessment with the State Tax Tribunal within thirty days after confirmation of the special assessment roll if that special assessment was protested at this hearing.

TAKE FURTHER NOTICE that the City Council will meet at the Owosso City Hall, Owosso, Michigan at 7:30 p.m. on Monday, May 18, 2009 for the purpose of reviewing said special assessment roll and for the purpose of considering all objections to said roll submitted in writing.

Warrant No. 382. Accepted Warrant No. 382 as follows:

Vendor	Description	Fund	Amount
CalFirst Leasing Corporation	Annual payment for HME Tower/Ladder Fire Truck	General	\$121,717.50
Caledonia Charter Township	Caledonia Utility Fund Payment	Water	\$12,999.84

Motion supported by Councilperson Forster.

Roll Call Vote.

AYES: Councilpersons Martenis, Forster, Frederick, Mayor Pro-Tem Owen, and Councilperson Cline.

NAYS: None.

ABSENT: Mayor Bruff and Councilperson Simmons.

ITEMS OF BUSINESS

UNPAID UTILITY CHARGES

There was discussion regarding how Seed America (the owner of the former AO Smith building) was allowed to get such a large water bill. It was noted a large portion of the bill was incurred prior to Seed America acquiring the building. The previous owner of the building refused the city access to the grounds to read meters and check for leakage problems. There was also discussion regarding how the City will collect the amount due as Seed America is threatening bankruptcy. City Manager Fivas noted the building is for sale on the open market. He hoped a lien could be placed before the company filed. He further expressed his hope that a viable operator would acquire the site before it would come back to the city.

Motion by Councilperson Frederick to authorize the Annual Notice for the collection of unpaid utility charges and the intent to lien therefore in compliance with Chapter 15, Section 15.4(c) of the Owosso City Charter.

Motion supported by Councilperson Forster.

Roll Call Vote.

AYES: Councilpersons Forster, Frederick, Mayor Pro-Tem Owen, Councilpersons Cline, and Martenis.

NAYS: None.

ABSENT: Mayor Bruff and Councilperson Simmons.

AMPHITHEATER CONTRACT

Motion by Councilperson Frederick to approve the contract for operation of the Amphitheater as follows:

AGREEMENT FOR OPERATION OF THE OWOSSO AMPHITHEATER

THIS AGREEMENT, made this 1st day of **May 1, 2009**, between the City of Owosso, a Michigan Municipal Corporation (hereinafter called "City") and the Owosso Area Amphitheater Performing Arts Association, a Michigan non-profit corporation (hereinafter called "Association"):

WHEREAS, the City owns and controls an Amphitheater, more commonly known as the Don and Metta Mitchell Performing Arts Center, in the City of Owosso, County of Shiawassee, and State of Michigan, and;

WHEREAS, the purpose of the Amphitheater and Grounds will be to provide outdoor forums for the presentation of concerts, plays, displays, exhibits and other events of merit to the community, and;

WHEREAS, the City is desirous of delegating, and the Association is desirous of undertaking the administrative responsibilities for scheduling events for said Amphitheater and Grounds;

NOW, THEREFORE, in consideration of the respective agreements, undertakings and mutual covenants herein contained, the parties agree as follows:

- PURPOSE AND DESCRIPTION.** The City hereby engages the Association to schedule events at the Amphitheater and Grounds, more precisely described in lease agreements

between the City of Owosso and the Owosso Public Schools.

2. **OWNERSHIP.** The Amphitheater and all permanent fixtures attached thereto is and shall remain at all times the property of the City. The grounds and land on which the Amphitheater rests are and shall remain the property of the Owosso Public Schools. The use of the property is permitted in lease agreements between the City and the Owosso Public Schools. Provisions within those lease agreements are controlling with respect to all provisions of this agreement. The Association is considered an independent contractor engaged to perform the duties as presented herein.
3. **SCHEDULING.** The Association shall submit to the City, at least four weeks in advance, the plays, concerts, and other events which it has scheduled for the Amphitheater during the summer season as defined in the lease agreement between the City and Owosso Public Schools. Any scheduled events during the calendar school year shall be submitted to the City at least forty-five (45) days before the scheduled event so that authorization can be obtained by the City from the Owosso Public Schools, as provided in the lease agreements. The City reserves the right to evaluate and alter the intensity of use of the Grounds.
 - A. The Association shall have the first priority, with proper notice, to schedule any concerts, plays, displays, exhibits, and other events to be held at the Amphitheater and Grounds during the summer season as defined in the lease agreement between the City and Owosso Public Schools. The Association shall adopt written criteria, which it shall use in determining whether their proposed concerts, plays, and other activities are of sufficient merit to be held at the Amphitheater and Grounds. The decision as to whether any particular concert, play, or other event shall rest with the City. The Association shall not engage the services of promoters for any events conducted in the Amphitheater and Grounds and shall not permit or allow any other person or party granted the use of the Amphitheater to engage the services of a promoter. Promoter is defined as any person who promotes, arranges and sponsors an event for profit.
4. **MAINTENANCE.** The City shall be responsible for repairing and keeping in working condition the Amphitheater and Grounds. The City shall bear the costs, including materials and labor for said maintenance. The City agrees to tailor its maintenance schedule with the schedule of events at the Amphitheater and/or Grounds so as to not interfere with presentation of events.
 - A. Notwithstanding the preceding paragraph, the Association, shall be responsible for setting up facilities prior to an event, such as seating, special facilities such as lighting and sound equipment requirements, musical equipment, extra sanitary facilities and the like, and shall also be responsible for the removal of such facilities and cleaning the area of trash and debris after the event; provided, however, that the Association shall charge the costs incurred in the performance of the aforementioned duties to the "Association Fund" hereinafter described.
 - B. The City shall be responsible for crowd control and general security, including material and labor, at no cost to the Association; provided, however, that the Association shall assist in crowd control to the best of its ability.
 - C. The Amphitheater and Grounds include areas which are flood prone. If by reason of a flood or other Act of God not within the control of the City, the Amphitheater and Grounds shall be unusable or the Association shall determine in its discretion to declare a flood event and a scheduled event for the Amphitheater and Grounds must be cancelled and/or postponed, then the Association will defend and indemnify and hold the City harmless from all claims or damages of any kind, nature or type resulting from the cancellation or postponement of the scheduled event.
5. **THE PERFORMING ARTS ASSOCIATION FUND.** The Association shall establish a "Performing Arts Association Fund". The City may appropriate City monies to be placed in said fund specifically earmarked for public costs and expenses by the Association in Amphitheater events.
 - A. The "Performing Arts Association Fund" shall be a separate bank account. Expenses incurred by the Association are limited to those obligations owed for the provision of services outlined under the terms of this Agreement and shall be paid from the "Fund".
 - B. The Association shall administer the "Fund" and shall keep full and accurate records to show completely, all receipts and expenditures from the "Fund", which records shall be available to the City for inspection upon request.
6. **ADMISSION CHARGES.** Should the Association charge admission to the public for any event, the proceeds from said admission charges will be applied to defer any professional

fees charged the Association by performers, artists, or exhibitors performing at said event. The profits remaining from any such admission charges, if any, shall be deposited in the "Fund".

A. Any fees charged concessionaires, exhibitors, performers, or artists for use of the grounds, shall be deposited in the "Fund".

7. **DONATIONS.** It is contemplated by the Parties that no admission will be charged to the public for most events held at the Amphitheater. The Association may accept voluntary donations from the public and performance sponsorships to defer the professional fees charged by any artist, performer, or exhibitor at any event at which no admission is charged to the public. All such donations or sponsor payments shall be the property of the Association and are to be paid into the Association "Fund".
8. Professional fees charged for any event by artists, performers, or exhibitors, shall be paid from contributions raised by the Association or groups working in concert with the Association. Contributions will be deemed, for purposes of this agreement, to include admissions charged to the public as described in paragraph 6.
9. **UTILITIES.** The City shall pay all the utility cost, including, but not limited to, electricity, water, and gas, arising out of the use of the Amphitheater and Grounds.
10. **INSURANCE REQUIREMENTS.** The Association shall effect and maintain general liability insurance in the amount of Five Hundred Thousand (\$500,000.00) Dollars. The City and the Owosso Public Schools shall each be named insured on the policy of insurance, which will be owned by the Association. The Association shall obtain personal property insurance for movable fixtures and other personal property owned by the Association that is used or stored at the Amphitheater and Grounds.
11. **CONDITIONS.** This agreement shall be subject to all applicable federal, state and local laws. The Association shall not discriminate against any person on the basis of race, creed, color, age, handicap, religion, sex or national origin as defined by federal and state law. Violation of this paragraph shall be cause for termination.
12. **DURATION AND TERMINATION.** This agreement shall be in full force and effect for three (3) years from the date of execution of this agreement; provided, however, it may be terminated by either party without liability in the event it is found to contravene applicable law or by the will of either party for violation of the covenants contained herein or for good cause.

IN WITNESS HEREOF, the parties hereto have caused these presents to be executed and their corporate seals duly attested to be hereunto affixed as of the day and year first above written.

Motion supported by Councilperson Forster.

Roll Call Vote.

AYES: Councilpersons Martenis, Cline, Frederick, Mayor Pro-Tem Owen, and Councilperson Forster.

NAYS: None.

ABSENT: Mayor Bruff and Councilperson Simmons.

CONDUCT FIRST READING AND SET PUBLIC HEARING-REZONING REQUEST

There was significant discussion regarding whether the development on this site was in compliance with the approved site plan. It was noted construction/improvement at the site may not have been possible during the winter months. It was also noted rezoning of the parcel may be required for construction to take place. Staff agreed to contact the owner of the property to inquire about the status of the project.

Motion by Councilperson Cline to table the issue until the April 20, 2009 meeting.

Motion supported by Councilperson Martenis.

Roll Call Vote.

AYES: Councilpersons Martenis, Cline, and Mayor Pro-Tem Owen.

NAYS: Councilpersons Forster and Frederick.

ABSENT: Mayor Bruff and Councilperson Simmons.

Mayor Pro-Tem Owen declared the vote failed due to lack of a super majority.

There was discussion regarding whether there were any formal complaints filed on the site. It was noted there were no formal complaints filed at this time. Councilperson Frederick indicated he was reluctant to block the public hearing based on hearsay.

Motion by Councilperson Frederick to set the public hearing for April 20, 2009.

Motion supported by Councilperson Forster.

Roll Call Vote.

AYES: Mayor Pro-Tem Owen, Councilpersons Frederick and Forster.

NAYS: Councilpersons Cline and Martenis.

ABSENT: Mayor Bruff and Councilperson Simmons.

Mayor Pro-Tem Owen declared the vote failed due to a lack of a super majority.

There was a brief discussion whether it would be better to schedule the public hearing for April 20th or to bring the item back for discussion only.

Motion by Councilperson Cline to reconsider the table motion and place the item on the agenda as an Item of Business.

Mayor Pro-Tem Owen expressed his desire to keep the setting of the public hearing on the agenda as a Consent Item.

Councilperson Cline withdrew his motion.

Motion by Councilperson Frederick to reconsider the table motion.

Motion supported by Councilperson Forster.

Roll Call Vote.

AYES: Councilpersons Cline, Frederick, Martenis, Forster, and Mayor Pro-Tem Owen.

NAYS: None.

ABSENT: Mayor Bruff and Councilperson Simmons.

The vote was declared invalid as the motion was not introduced by the prevailing party of the vote being reconsidered.

Motion by Councilperson Martenis to conduct the first reading and set a public hearing for April 20, 2009 to receive citizen comment regarding request to rezone the parcel(s) commonly known as 1901 West South Street, and described as follows: ALL THE PART OF THE NE ¼ AND NW ¼, SEC 26, T7N - R2E, IN MI LYING NW'LY OF THE RR R/W & BEING A TRIANGULAR SHAPED PIECE CONTAINING 0.6 A MORE OR LESS from C-OS, Conservation, Open Space to I-2, General Industrial District.

The First Reading on the proposed Ordinance Amendment was held.

A Public Hearing was scheduled for April 20, 2009 to receive citizen comment regarding the proposed amendment to Section 38-27, Chapter 38, Article II, District Boundaries, of the Code of the City of Owosso, as follows:

AN ORDINANCE TO AMEND SECTION 38-27 OF CHAPTER 38 OF THE CODE OF ORDINANCES OF THE CITY OF OWOSSO, MICHIGAN.

THE CITY OF OWOSSO ORDAINS:

SECTION 1. THE CITY OF OWOSSO ORDAINS: That Section 38-27 of Article II of the Owosso City Code, District Boundaries, is hereby amended by changing the designation of the following lots and parcels of land designated in a zoning map of the City of Owosso, and referred to in said Section and made a part thereof, which said lots and parcels hereby intended to be redesignated are not described in body of said Section as in certain zone districts; said designation being as follows:

APPLICANT: American Waste

PROPERTY ADDRESSES: 1901 West South Street

PROPOSED REZONING: FROM C-OS Conservation, Open Space
TO I-2 General Industrial District

PROPERTY DESCRIPTION: ALL THE PART OF THE NE ¼ AND NW ¼, SEC 26, T7N - R2E, IN MI LYING NW'LY OF THE RR R/W & BEING A TRIANGULAR SHAPED PIECE CONTAINING 0.6 A MORE OR LESS

SECTION 2. The changes made in the zoning in the lots and parcels of land hereinbefore described are hereby ordered to be redesignated on said map in accordance with this Ordinance.

SECTION 3. This Ordinance shall take effect twenty (20) days after passage.

Motion supported by Councilperson Forster.

Roll Call Vote.

AYES: Councilpersons Cline, Frederick, Martenis, Forster, and Mayor Pro-Tem Owen.

NAYS: None.

ABSENT: Mayor Bruff and Councilperson Simmons.

COMMUNICATIONS

William C. Brown, City Attorney. Memo regarding Charter Communications bankruptcy filing.

Tracy Butcher. Letter of resignation from the Planning Commission.

Richard C. Williams, Finance Director. Transmittal of 2009-2010 City of Owosso Proposed Budget. (*To be distributed at Council meeting.*)

Richard C. Williams, Finance Director. February 2009 Revenue & Expenditure Report.

Downtown Development Authority. Minutes of Meeting of March 4, 2009.

Owosso Zoning Board of Appeals. Minutes of Meeting of March 17, 2009.

Owosso Historical Commission. Minutes of Meeting of March 17, 2009.

Westown Corridor Improvement Authority. Minutes of Meeting of March 11, 2009.

CITIZEN COMMENTS AND QUESTIONS

Burton Fox, 216 East Oliver Street, inquired whether the Mayor Pro-Tem could have directed staff to investigate alleged site plan violations by American Waste instead of requiring Council to vote on the issue. It was noted no vote was required and staff would investigate the issue without further instruction.

Eddie Urban, 601 Glenwood Avenue, further commented on the service provided by trash haulers. He also commented about a future interview for his cable television program.

Amy Labert, 202 Jennett Street, inquired about the purpose of the next public hearing for the street program. It was noted the next public hearing would allow citizens to comment on the amount of their assessment.

Carol Fountain, 1206 North Water Street, asked who would pay for the maintenance costs of the pool when the money in the pool fund is exhausted. It was noted the money would come out of the general fund at that point. It was also noted, there was hope there would be direction on the future of the pool before that point is reached.

Councilperson Forster indicated she had received an invitation from the Corunna Mayor's wife to participate in grooming of the James Miner walkway prior to the Memorial Day Owosso-Corunna bridge walk. The event will be held April 18th at the McCurdy Bridge beginning at 8:00 a.m.

Councilperson Cline inquired as to the deadline for making a decision on the opening of the pool for the 2009 season. City Manager Fivas noted staff would need at least 25 days to prepare the pool for opening, placing the deadline in mid May for an opening the second week of June.

NEXT MEETING

April 20, 2009

BOARDS AND COMMISSIONS OPENINGS

Planning Commission – term expires 06-30-2009

Zoning Board of Appeals – Alternate, term expires 06-30-2009

Historical Commission, term expires 12-31-2010

Parks and Recreation Commission, term expires 06-30-2010

ADJOURNMENT

Motion by Forster for adjournment at 8:57 p.m.

Motion supported by Councilperson Cline and concurred in by unanimous vote.

Mark D. Owen, Mayor Pro-Tem

Amy K. Kohagen, City Clerk