

ST. CLOUD CITY COUNCIL REGULAR MEETING

**Thursday, February 24, 2011**

**City Hall ? Council Chambers**

**1300 9th Street**

**6:30 p.m.**

**Minutes**

- I. Mayor Borders called the meeting to order at 6:30 p.m.
- II. Invocation given by Pastor Jay McCaig with Crossroads Baptist Church and chaplain with St. Cloud Regional Medical Center
- III. Pledge of Allegiance
- IV. Roll Call
  - ◆ Mayor Rebecca Borders City Manager, Thomas H. Hurt
  - ◆ Deputy Mayor Mickey Hopper City Attorney, Daniel Mantzaris
  - ◆ Council Member Russell Holmes Linda P. Jaworski, City Clerk
  - ◆ Council Member Tom Griffin Ivy De La Cruz, Deputy City Clerk
  - ◆ Council Member Jarom Fertic Members of the Press

All members present.

V. Presentations

- Presentation of Employee of the Month Award

Mike Turner, Finance Director presented Larry Cassidy with the Employee of the Month Award.

- Proclamation in recognition of Invasive Species Awareness Week

Mayor Borders presented Stacia Hetrick, Aquatics/Osceola Extension Services, a proclamation declaring February 28, 2011 through March 4, 2011 Invasive Species Awareness Week.

Ms. Stacia Hetrick thanked the Mayor and Council for adopting this important proclamation and bringing awareness to the problem of invasive plants in our local lakes and ponds.

**VI.** First Citizen's Forum - Any person who desires to comment on any item not on this agenda is provided this opportunity to address the City Council. Each person is requested to complete a sign-in form to be provided to the City Clerk prior to addressing the Council.

Chad Ansbaugh, 3650 South Indian Avenue, Athletic Director for St. Cloud High School, stated their grant application for the wrestling team was overlooked by their department this year and asked Council to reconsider giving them a grant to help their team. Council directed staff to find out how much money is left from the funds Council set aside in case any groups came forward asking for assistance and bring back to Council to make a decision.

Bertha Chase, 623 Adams Road, St. Cloud, and Randy Law, 1512 Kelby Road, Kissimmee asked Council to co-sponsor the National Day of Prayer on May 5<sup>th</sup> with use of the band shell at Veterans Park from 3:00 p.m. to 8:00 p.m. Tents, chairs and insurance.

City Attorney Mantzaris, stated the City could not provide insurance for this event without purchasing an additional policy. He said the City could look into all the requirements needed for this event. Any employee involved would be covered by the City's insurance. He explained that insurance for the event would be up to the organization. Veteran's Park is classified as a "public expressions park" which does not need a special permit.

Commander John Lasky, VFW 915 New York Avenue, would like to extend an invitation to the Memorial Day event. He also stated he would like to know the result of the flow test that was conducted in the parking lot of the VFW.

Todd Swingle, Public Services Administrator, stated staff was looking into what are the possible options to correct the drainage problem.

Council Member Fertic asked if just a larger pipe might alleviate the problem.

Mr. Swingle explained the problem is the grade, it is only four (4) inches below the sidewalk and it would create a "bubble up" structure. He would like to look for a more permanent solution like re-grading the parking area.

David Lane, 1200 New York Avenue, St. Cloud Chamber of Commerce, came to invite the community to St. Cloud Life on March 5, 2011. From 10:00 a.m. until 6:30 p.m. several events will be taking place; A Taste of St. Cloud for \$8.00, The Golden Crane Award (video contest), a Beer Fest, a dance party for the young and old, and the Miss St. Cloud presentation.

## **VII. Public Hearings**

1. **SECOND AND FINAL PUBLIC HEARING FOR ORDINANCE NO. 2011-01**, an ordinance of the City Council of the City of St. Cloud, Florida, amending Ordinance 2006-02, an ordinance which assigned a zoning designation of Planned Unit Development (PUD) to Q & S Industrial Park located in Section 10, Township 26 South, Range 30 East and described further herein; providing for approval of the amendment to the Master Plan; providing for filing of the Planning Board recommendation and proof of publication, severability, conflicts and effective date. (Above is full title) **ACTION ON ORDINANCE 2011-01**

City Clerk, Linda Jaworski read Ordinance No. 2011-01 into the record by title.

Dale Cozeck, Planning and Zoning, reviewed the proposed ordinance.

Mayor Borders announced the second and final public hearing for Ordinance No. 2011-01 with no response from the audience.

Council Member Fertic made a motion to adopt Ordinance No. 2011-01. Deputy Mayor Hopper seconded the motion and all members voted aye. (Vote 5-0)

2. **SECOND AND FINAL PUBLIC HEARING FOR ORDINANCE NO. 2011-02**, an ordinance of the City Council of the City of St. Cloud, Florida, amending Ordinance 2003-65, an ordinance which assigned a zoning designation of Planned Unit Development (PUD) to East St. Cloud Commerce Center located in Section 12, Township 26 South, Range 30 East; providing for filing of the planning board recommendation and proof of publication, severability, conflicts and effective date. (Above is full title) **ACTION ON ORDINANCE NO. 2011-02**

City Clerk, Linda Jaworski read Ordinance No. 2011-02 into the record by title.

Jennifer Giannuzzi, Planning and Zoning, reviewed the proposed ordinance. This is an amendment to the East St. Cloud Commerce Park PUD. The applicant is requesting to amend the permitted uses; staff has aligned the permitted list of uses to better match the highway zoning district. Body piercing has been removed per Council request.

Mayor Borders announced the second and final public hearing for Ordinance No. 2011-02 with no response from the audience.

Council Member Fertic made a motion to adopt Ordinance No. 2011-02 removing the body piercing condition. Deputy Mayor Hopper seconded the motion and all members voted aye. (Vote 5-0)

3. **SECOND AND FINAL PUBLIC HEARING FOR ORDINANCE NO. 2011-03**, an ordinance of the City Council of the City of St. Cloud, Florida, pertaining to enforcement of codes, amending Section 2-282 ?Applicable Codes and Ordinances? of the City Code, by adopting a new Exhibit ?A?, providing for severability, conflict, codification and an effective date. (Above is full title) **ACTION ON ORDINANCE NO. 2011-03**

City Clerk, Linda Jaworski read Ordinance No. 2011-03 into the record by title.

Dale Cozeck, Planning and Zoning, reviewed the proposed ordinance.

Mayor Borders announced the second and final public hearing for Ordinance No. 2011-03 with no response from the audience.

Council Member Griffin made a motion to adopt Ordinance No. 2011-03. Council Member Holmes seconded the motion and all members voted aye. (Vote 5-0)

4. **SECOND AND FINAL PUBLIC HEARING FOR ORDINANCE NO. 2011-04**, an ordinance of the City Council of City of St. Cloud, Florida, related to the adoption of updates to the Transportation Impact Fees by resolution, providing for a payment plan for commercial properties, and providing for an effective date. (Above is full title) **ACTION ON ORDINANCE 2011-04**

City Clerk, Linda Jaworski read Ordinance No. 2011-04 into the record by title.

Todd Swingle, Public Services Administrator, reviewed the proposed ordinance.

Mayor Borders announced the second and final public hearing for Ordinance No. 2011-04.

Joseph Volpe, 227 Stratmore Circle, Kissimmee stated this ordinance was a step in the right direction and asked Council to mirror the County's ordinance regarding commercial business impact fees. Also suggested Council review how Orange County handles their impact fees for businesses.

David Lane, 1200 New York Avenue, states the Chamber supported the County's moratorium and thought it would be advantageous for the City to look into it.

Council Member Fertic asked if the City could do the same as the County from a legal perspective.

City Attorney Mantzaris stated from a legal perspective that could cause to have all impact fees thrown out in a court of law. Mr. Mantzaris stated that discussion with other attorneys associated with government laws have determined that a governmental entity cannot separate residential and commercial classifications.

Discussion followed to include the change in impact fees similar to the County and if there would be any ramifications from a legal perspective.

City Manager Hurt stated that Council had recently reduced impact fees to 75% percent and by adopting Council Action a resolution will reduce them further. Mr. Hurt cautioned Council against doing a moratorium and not collecting any impact fees as the County has.

Council Member Holmes stated he was glad impact fees are being reduced, but if a moratorium is passed and we have an influx of businesses, who will pay for the infrastructure? There is no extra monies in the budget and would like to find a balance, but believes a complete moratorium would not be beneficial. Stated he is not comfortable with a moratorium at this time.

Council Member Fertic made a motion to adopt Ordinance No. 2011-04. Council Member Holmes seconded the motion and all members voted aye. (Vote 5-0)

5. **SECOND AND FINAL PUBLIC HEARING FOR ORDINANCE NO. 2011-05**, an ordinance of the City Council of the City of St. Cloud, Florida relating to the sale of food, services or merchandise from temporary or mobile structures; adopting findings of fact; providing definitions; imposing a temporary moratorium on the opening of new temporary or mobile structures as defined herein; directing staff to develop regulations and restrictions related to temporary and mobile structures as defined herein; providing for expiration of the temporary moratorium, severability, conflict, and an effective date. (Above is full title) **ACTION ON ORDINANCE NO. 2011-05**

City Clerk, Linda Jaworski read Ordinance No. 2011-05 into the record by title.

Dale Cozeck, Planning and Zoning, reviewed the proposed ordinance. Mr. Cozeck explained that this moratorium would prohibit the issuance of new temporary mobile vendor approvals. It would be in effect until December 31, 2011 or until an effective Ordinance that would repeal it and the City adopting subsequent regulations. Staff has held two workshops for the mobile and restaurant communities as a follow up to the January 20, 2011 workshop with approximately 30 people total in attendance.

Mayor Borders announced the second and final public hearing for Ordinance No. 2011-05 with no response from the audience.

Council Member Fertic asked if the meetings were well attended.

Mr. Cozeck said that each meeting had 15 to 20 citizens in attendance; holding one meeting in the morning and the second meeting in the afternoon to accommodate everyone's schedules.

Deputy Mayor Hopper expressed concerns that the City may be held responsible for a child hurt due to allowing a mobile vendor at the lakefront and would like to address that issue.

City Attorney, Dan Mantzaris advised Council that staff has a separate plan to address the lakefront and public areas; the moratorium is for mobile vendors on private property only.

Council Member Griffin asked what the difference of liability was between the ice cream vendor at the lakefront and the ice cream vendor driving down the city streets.

Mr. Mantzaris stated the distinction is that the lakefront is a focal point of the community that the City invested in improving to attract individuals; therefore the City's liability and responsibility is greater there.

Council Member Griffin asked if the private vendors could obtain their own insurance to absolve the City from any liability.

Mr. Mantzaris said they could, but right now there is no regulation regarding insurance. Regulations could be set for insurance as part of the permitting requirements.

Council Member Fertic made a motion to adopt Ordinance No. 2011-05. Council Member Griffin seconded the motion and all members voted aye. (Vote 5-0)

Mayor Borders asked what direction Council would like staff to take regarding the vendor parking at the lakefront.

Deputy Mayor Hopper just wanted to go on record that the issue of mobile vendor parking and the City's liability needed to be addressed; asked staff to come back to Council with further information.

Council's consensus was to have Mr. Mantzaris look into the legalities and how to clear the City of any liability.

## VIII. Consent Agenda

Council Member Fertic asked to pull item C for discussion.

A. Warrant List # 7

B. Minutes: January 13, 2011 / Regular Meeting and January 20, 2011 / Workshop

C. Resolution No. 2011-021R, a resolution of the City Council of the City of St. Cloud, Florida, authorizing the Mayor to enter into an agreement with Wharton-Smith, Inc. for Construction Manager at Risk (CMAR) services for the Lakeshore Stormwater Augmentation Facility project, establishing a guaranteed maximum price, establishing an Owner's contingency, authorizing the City Manager to approve change orders without increasing the approved budget, and providing an effective date.

**COST:** \$1,512,000.00 / **CONTINGENCY:** \$151,200.00

Council Member Fertic asked when was the CMAR for the project decided.

Todd Swingle, Public Services Administration, stated when this project was approved and the grant was accepted, it was noted on the project summary that it would be done with a CMAR.

Council Member Fertic stated that if we do a straight bid on upcoming projects, could we get a lower cost with the CMAR.

Mr. Swingle stated it depends on the project and this project's schedule is being driven by grant requirements.

Council Member Fertic asked Mr. Swingle for a detailed explanation on the lakefront project.

Mr. Swingle said the majority of the work is between the west end pond and the small parking lot. The main pump house will be located there, including bathrooms. Around the Dakota ditch area will be a smaller pump house that will pipe into the larger pump house and on to the waste water plant for filtration. This will be a traditional water pipe installation.

Discussion followed to include the specifics of the project, bidding process and cost.

Council Member Fertic asked what guidelines were given to CMAR here for local contractors being used.

Mr. Swingle explained the City has approval authority on the sub contract list and we have required through the contract for them to apply the City's local purchase preference policy on their selection.

Council Member Fertic stated he would also like to have a Council Member present when bids are opened to be better informed and involved.

Deputy Mayor Hopper said we have staff attending the bidding and as Council we need to be careful to not violate the charter and to differentiate between running the City and the duties of Council.

Council Member Fertic stated Council hires the CM not staff, so we are running our end of the business.

- D. Resolution No. 2011-024R, a resolution of the City Council of the City of St. Cloud, Florida, authorizing and directing the City Manager to declare items as obsolete, damaged, and/or surplus property and otherwise in the best interest of the City of St. Cloud.

**COST:** No cost associated with this item.

- E. Resolution No. 2011-025R, a resolution of the City Council of the City of St. Cloud, Florida authorizing and directing the Mayor to enter into a continuing agreement with Wachs Valve and Hydrant Services, LLC, in accordance with RFQ No. 2010-059 for Water Main Leak Detection Services, on an as needed basis for the City of St. Cloud.

**COST:** \$48,000.00 (Estimated in FY 2011 Budget)

Deputy Mayor Hopper made a motion to approve the consent agenda as presented. Council Member Griffin seconded the motion and all members voted. (Vote 4-1) Council Member Fertic voted nay.

## **IX.** Council Action

1. Resolution No. 2011-010R, a resolution of the City Council of the City of St. Cloud authorizing declarations of official intent under U.S. Treasury regulations for purposes of sections 103 and 141 to 150 of the Internal Revenue Code of 1986, as amended, with respect to reimbursements from note and/or debt proceeds for temporary advances made for payments prior to issuance of debt, and related matters in anticipation of issuing debt to fund the upgrade of Water Plants #1 and #2, including enlarging the plant footprints, upgrading associated system mechanisms, distribution system alterations, and roadway realignments authorizing the City Manager to act as agent for the City, and establishing an effective date.

City Clerk, Linda Jaworski read Resolution No. 2011-010R into the record by title.

Mike Turner, Finance Director, reviewed the proposed resolution. He stated this is an administrative action to use cash on hand for beginning construction of water plants #1 and #2, and then borrow monies as needed with the ability to pay ourselves back for money spent on engineering and materials prior to issuing bonds. IRS requires this statement of intent prior to issuance of debt.

Discussion followed on the process, loan vs bonds and different project funding.

Council Member Griffin asked how the bond reference in this Resolution related to what Mr. Mantzaris read regarding the \$250,000 improvement bonds.

Mayor Borders asked if anyone in the audience would like to speak in reference to Resolution No. 2011-010R, with no response from the audience.

Deputy Mayor Hopper made a motion to approve Resolution No. 2011-010R. Council Member Holmes seconded the motion and all members voted aye. (Vote 5-0)

City Attorney, Dan Mantzaris asked Mayor for permission to return to the Consent Agenda. He stated that Council Member Fertic asked for item C to be pulled for discussion and then voted nay on all items in the Consent Agenda; asked if that was his intent.

Council Member Fertic stated that all items passed and that was the goal and thanked Mr. Mantzaris for his attention to the process.

2. Resolution No. 2011-023R, a resolution of the City Council of the City of St. Cloud, Florida, amending the transportation impact fee schedule established in the Tindale Oliver and Associates, Inc.'s "City of St. Cloud 2006 Transportation Impact Fee Update Study Report", adopting current and future discount percentages, providing for conflict, and providing for an effective date.

City Clerk, Linda Jaworski read Resolution No. 2011-023R into the record by title.

Todd Swingle, Public Services Administrator, reviewed the proposed resolution and updates to our transportation impact fees, which include two stages. First phase being a usage consolidation to simplify our use programs and to consolidate down some higher commercial areas. By general categorizing we are able to lower impact fees substantially. Second phase is a study on commercial development incentives focusing on neighborhood accessibility.

Mayor Borders asked if anyone in the audience would like to speak in reference to Resolution No. 2011-023R.

Joseph Volpe, 227 Strathmore Circle, Kissimmee agreed with City Attorney, Dan Mantzaris on the advice given to Council. He stated that while some of the impact fees have gone up and others have gone down; State Statute 163 is very clear on how to administer impact fees. When a fee goes up you need 90 days before an enactment; so Council would not be able to enact the Ordinance without clarification. Mr. Volpe suggested that though an impact fee pays for infrastructure, the City take into account that when a business goes into an existing building the infrastructure is already there; the building will go on the tax roll; it's an ad valorem base. This puts people to work and they add money back into the community; he feels this is the real value.

Mayor Borders asked for discussion from Council.

City Attorney, Dan Mantzaris stated that Mr. Volpe is correct regarding the 90 day stipulation which would make the effective date June 1, 2011.

Council Member Griffin made a motion to approve Resolution No. 2011-023R.

Council Member Griffin agreed with Mr. Volpe regarding changing the effective date due to the fact it does not go into effect until half way through the year.

Todd Swingle, Public Service Administrator informed Council that the discount rates have only been restated from the prior Ordinance that adopted those rates and they are already in effect. The 75% discount has been in effect since the beginning of January, 2010 with a one year extension. Mr. Swingle explained that this is restated so that it is a "complete fee" Resolution that shows staff all the documentation including use categories and discount rates.

City Attorney, Dan Mantzaris clarified that the 90 day rule is for the effective date for this Resolution.

Deputy Mayor Hopper questioned that if the 75% reduction fee is already in effect; then the "partial year" is not affected.

Mr. Swingle stated that this Resolution is purely a restatement and the only change is to the use classifications.

Mayor Borders asked Council Member Griffin if he would like to continue with his motion.

Council Member Griffin withdrew his previous motion.

Council Member Fertic made a motion to approve Resolution No. 2011-023R with an effective date of June 1<sup>st</sup>, 2011. Council Member Griffin seconded the motion and all members voted aye. (Vote 5-0)

## **X. City Attorney**

City Attorney Mantzaris stated he had nothing at the time.

## **XI. City Manager**

City Manager Hurt stated the following:

- Council Retreat is scheduled for Saturday, February 26, 2011 at 9:30 a.m. on the Bridge
- Budget Workshops for City Council are scheduled for August 1, 2, & 3, 2011
- The City's new Website will be launched March 11, 2011
- Clarified an issue referring to a grant for St. Cloud High School.

Deputy Mayor Hopper asked if there were grant money funds available.

City Manager, Tom Hurt thought that there was \$10,000 in the contingency fund, but not positive.

Deputy Mayor Hopper stated she was concerned that year to year programs are not meeting the time lines for submitting grant applications and the need to address this in the future.

Council Member Fertic and Mr. Hurt both verified that Mr. Ansbaugn had been notified by phone and email more than once about submitting an application.

Discussion followed regarding how to handle these situations with Mayor Border suggesting they discuss this matter at the Retreat.

Council Member Griffin stated that the decision had already been made by Council not to sponsor any new request for the remainder of the year. Other organizations have asked for sponsorship in the past few months and have been turned down due to the decision that was made.

## **XII. Mayor and Council Members**

**Council Member Fertic** stated he would like to follow in the footsteps of Osceola County and the School Board. If contributing to a non-profit organization, we should not be allowed to sit on the Board and the City needs to look at and implement an Ordinance to avoid conflict when there is a shortfall in our economy.

Council Member Fertic stated he has seen pictures of water sitting on the temporary spray field at Gramercy Farms and asked what the water level was, about the water restriction and how long will the "temporary" field be in Gramercy.

Todd Swingle, Public Services Administrator stated usage is based on need. Watering is done on a rotation basis, also adding additional properties, and working with the golf course. He would like to look at the pictures for a better perspective on infiltration in that area.

Council Member Fertic asked where the additional property was located.

Mr. Swingle stated that some of the water will go on Ms. Steven's pasture on her north property and also have a funded project that will convert Rothstein Park over from potable irrigation to reclaimed irrigation.

Council Member Fertic stated that he approved of the water being opened to the public rather than just wasting it by letting it pond.

Mr. Swingle stated that staff is very open to that type of agreement as long as the lines are in place. The only qualification is accessibility to place lines when needed. Another issue is that the demand does not always meet the need to conserve water for paying customers.

**Council Member Griffin** inquired about the estimated cost of removing median mounds on West New Nolte Road and the cost effectiveness of bidding out the work versus City employees doing the job.

Mr. Swingle stated he provided Mr. Mantzaris with the cost estimates for discussion with the engineer of record. Evaluating whether to use an outside contractor, safety was an issue and he feels confident that in terms of a lower cash outlay.

Deputy Mayor Hopper asked for clarification regarding the trees removed from the West New Nolte Road.

Mr. Swingle stated that several crepe myrtles have been removed and stored, they are being irrigated and maintained. The magnolias and some of the larger crepe myrtles that were beyond our capabilities to move and have any reasonable expectation of survival were cut down. The trees that were moved will go back to Nolte Road when feasible. FDOT site lines require that trees have a mature diameter of less than 12 inches and placed at 30 foot spacing along the center line of the median. Staff will be looking at Florida Avenue, per Council Member Fertic's request, for placement of any extra crepe myrtles.

City Attorney, Dan Mantzaris stated he had the figures that Council Member Griffin had inquired about the removal of median mounds project. Out of pocket is a total of \$10,000; sod priced at \$9,180 and \$820 for irrigation. Mr. Swingle's office also provided reasonable costs for rental of City equipment and using City employees to do the labor, which brought the total cost of the project to \$46,751.14. The out of pocket expenses do not include the \$5,000 engineering costs associated with the redesigning of the medians; bringing total out of pocket to \$15,000.

**Mayor Borders** recognized members of Eagle Scout Troop #9 and asked for a spokes person to come forward.

Alex Grieves, Boy Scout Troop #9, stated they were working towards their Eagle merit badge for citizenship. The Troop is attending the Council meeting to learn about the process of how our City Government is run in order to better understand and help the community.

Mayor Borders offered to answer any questions the Scouts might have after the Council meeting.

**Council Member Holmes** stated on February 17, 2011 Council was invited to several luncheons to which he attended the one at the Food Pantry. He gave Council a breakdown of expenses from the Food Pantry to each Council member showing they had provided individuals with food valued at \$295,290. Council Member Holmes was amazed at the over 100 volunteers that are involved with the Food Pantry.

Council Member Holmes stated he gave out appreciation gifts to the Code Enforcement Board; he recognized and thanked the other Boards for their service.

Council Member Holmes stated on Saturday, February 19, 2011 he attended the "Tip-a-Cop" event at the Koffee Kup Café and enjoyed watching the interaction between officers and the community.

Council Member Holmes was also able to attend the Community Unity Day event on Saturday, February 19, 2011

Council Member Holmes stated that Council on Aging was having a short 5k walk at the lakefront for "March on Meals" on Saturday, March 12, 2011 and invited everyone to attend.

**XIII.** Second Citizen's Forum - Any person who desires to comment on any item not on this agenda is provided this opportunity to address

the City Council. Each person is requested to complete a sign-in form to be provided to the City Clerk prior to addressing the Council.

No one came forward at this time.

**XIV.** Information Section

Mayor Borders read the following:

- Saturday, February 26, 2011 ? City Council Retreat ? 9:30 ? 2:30 p.m. @ City Hall Bridge
- Thursday, March 10, 2011 ? City Council Meeting ? 6:30 p.m. @ City Hall
- Friday, March 11, 2011-Purchasing 5<sup>th</sup> Annual Open House-9:00-11:00 a.m. City Warehouse@ 3100 Communications Road.
- Thursday, March 17, 2011 ? Community Redevelopment Agency Meeting ? 6:00 p.m. @ City Hall
- Thursday, March 17, 2011 ? City Council Workshop ? 6:30 p.m. or immediately following the CRA Meeting @ City Hall
- Friday, Saturday and Sunday, March 18, 19 and 20, 2011 ? Institute for Elected Officials @ Gainesville
- Friday, March 25, 2011 - Osceola County Cooperative Vendor Appreciation Day - 9:00 a.m. @ Heritage Park

**XV.** The meeting was adjourned at 8:35 p.m.

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Mayor, Rebecca Borders

ATTEST:

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City Clerk, Linda P. Jaworski

Minutes Approved: \_\_\_\_\_