REGULAR MEETING
ROSEVILLE CITY COUNCIL

CIVIC CENTER COUNCIL CHAMBERS
29777 GRATIOT AVENUE
ROSEVILLE, MI 48066
(586) 445-5440

TUESDAY, SEPTEMBER 23, 2008
7 P.M.

ROLL CALL

PRESENT:

Mayor	Harold Haugh
Councilpersons	Salvatore Aiuto
	John Chirkun
	Jan Haggerty
	Colleen McCartney
	Bill Shoemaker
	Robert Taylor

ABSENT: None

OTHERS PRESENT:

City Manager	Stephen Truman
City Clerk	Richard Steenland
City Attorney	Tim Tomlinson

Mayor Harold Haugh called the meeting to order at 7 p.m. with the Pledge of Allegiance led by the Roseville Junior Sports Bronco Cheerleaders and Boy Scout Ryan Souillard.

COUNCILMAN JOHN CHIRKUN moved, COUNCILMAN ROBERT TAYLOR seconded to add the request from Holy Innocents to conduct a Hoedown on the church grounds October 3-4, 2008 under New Business, Agenda Item #6.
MOTION CARRIED UNANIMOUSLY

PRESENTATIONS AND PROCLAMATIONS

a. Swearing in of new Police Officer.

Police Chief Michael Pachla was present as City Clerk Richard Steenland administered the Oath of Office to Police Officer Thomas Bender.

Officer Bender introduced his family in attendance this evening.

b. Presentation of Proclamation to Leonard Haggerty for his many years of service to the City of Roseville and its residents.

Mayor Harold Haugh introduced Jere Diebold who spoke about Leonard Haggerty and his service to the community.

School Board President Joseph Steenland, Assistant Superintendent Rebecca Vasil, School Board Member Judy Hartwell and Gregg Scott presented Mr. Haggerty with a proclamation from the Roseville School Board.

Mayor Haugh presented Mr. Haggerty with a proclamation on behalf of the City for his many years of service to the City and its residents.

Mr. Haggerty thanked the Mayor, Council and the residents of Roseville for the proclamation and introduced his wife Jan and other family members and friends in attendance this evening.

c. Presentation of Certificates to the families highlighted in the 2008 City Calendar.

Mayor and Council presented the Chownyk, Buchanan, Wooten and Marentette-Bojarczyk families with certificates in honor of their appearance in the 2008 City Calendar.

I. ROUTINE MATTERS

1. Approval of minutes of the Regular Meeting held September 9, 2008.

COUNCILWOMAN JAN HAGGERTY moved, COUNCILMAN SALVATORE AIUTO seconded to approve minutes of the Regular Meeting held September 9, 2008.
MOTION CARRIED UNANIMOUSLY

2. Approval of minutes of the Special Meeting held September 16, 2008.

COUNCILMAN SALVATORE AIUTO moved, COUNCILWOMAN COLLEEN MCCARTNEY seconded to approve minutes of the Special Meeting held September 16, 2008.
MOTION CARRIED UNANIMOUSLY

3. Approval of Disbursement List.

COUNCILMAN BILL SHOEMAKER moved, COUNCILWOMAN JAN HAGGERTY seconded to approve Disbursement List #10 dated September 11 and September 23.
MOTION CARRIED UNANIMOUSLY

II. CORRESPONDENCE

City Clerk Richard Steenland advised the residents that political candidates and parties are mailing absentee ballot applications to registered voters. If residents have questions or concerns about this they may contact the Clerk's Office.

Mr. Steenland reminded everyone that October 6 is the last day to register to vote for the November 4 General Election and stated that the State of Michigan is predicting a large voter turn out; Mr. Steenland encouraged anyone who is eligible to vote absentee to do so.

III. HEARING OF THE PUBLIC

No one from the public wished to be heard.

IV. NEW BUSINESS

1. Request from the Roseville Lions Club to solicit donations on City streets, September 26 through 28, 2008 with proceeds to benefit community service programs, Bob Bartlett, petitioner.

   Bob Bartlett, 24418 Berry, Warren, appeared and explained this request to Council.

COUNCILWOMAN JAN HAGGERTY moved, COUNCILWOMAN COLLEEN MCCARTNEY seconded to approve the request from the Roseville Lions Club to solicit donations on city streets, September 26 through 28, 2008 with proceeds to benefit community service programs.
MOTION CARRIED UNANIMOUSLY

2. Request from Roseville Goodfellows to conduct the "No Kiddie Without a Christmas" campaign on the City streets November 28 and 29, with inclement weather dates of December 5 and 6, 2008, Ed Young, petitioner.

   Ed Young, Sr., PO Box 202, Roseville, appeared on behalf of this request. Mr. Young explained that the Goodfellows helped 146 families, 354 children and 12 senior citizens with the funds raised last year and stated that the advertisements placed in the newspaper pay for the publication of the newspaper so that any money collected during the campaign goes directly to helping the community.

   Councilman John Chirkun asked City Manager Stephen Truman to pass the information about the need for paper sellers to the Police and Fire Departments.

COUNCILMAN JOHN CHIRKUN moved, COUNCILMAN BILL SHOEMAKER seconded to approve the request from the Roseville Goodfellows to conduct the "No Kiddie Without a Christmas" campaign on the City streets November 28 and 29, with inclement weather dates of December 5 and 6, 2008.
MOTION CARRIED UNANIMOUSLY

3. Request adoption of Resolution adopting the National Incident Management System (NIMS) for use in the City of Roseville, Michigan.

   City Manager Stephen Truman explained that Fire Marshal Craig Robertson informed the Manager's Office that this resolution is required so that the City may continue to receive grant monies from the Federal Government.

COUNCILMAN ROBERT TAYLOR moved, COUNCILMAN SALVATORE AIUTO seconded to adopt the Resolution adopting the National Incident Management System (NIMS) for use in the City of Roseville, Michigan as follows:

WHEREAS, the Mayor and City Council of the City of Roseville, Michigan, do hereby find as follows:

WHEREAS, In Homeland Security Directive (HSPD)-5, the President directed the Secretary of the Department of Homeland Security to develop and administer a National Incident Management System (NIMS), which would provide a consistent nationwide approach for federal state and local governments to work together more effectively and efficiently to prevent, prepare for, respond to and recover from domestic incidents, regardless of cause, size or complexity;

WHEREAS, the collective input and guidance from all federal, state and local homeland security partners has been, and will continue to be, vital to the development, effective implementation and utilization of a comprehensive NIMS; and

WHEREAS, it is necessary that all federal, state and local emergency management agencies and personnel coordinate their efforts to effectively and efficiently provide the highest levels of incident management; and

WHEREAS, to facilitate the most efficient and effective incident management it is critical that federal, state and local organizations utilize standardized terminology, standardized organizational structures, interoperable communications, consolidated action plans, unified command structures, uniform personnel qualification standards, uniform standards for planning, training and exercising, comprehensive resource management and designated incident first responder safety and streamline incident management process; and

WHEREAS, the NIMS standardized procedures for managing personnel, communications, facilities and resources will improve the City of Roseville's ability to utilize federal funding to enhance local and state agency readiness, maintain first responder safety and streamline incident management process; and

WHEREAS, the Incident Command System components of NIMS are already an integral part of various incident management activities throughout Roseville, including all public safety and emergency response organizations training programs;

WHEREAS, the National Commission of Terrorists Attacks (9-11 Commission) recommended adoption of a standardized Incident Command System;

NOW THEREFORE BE IT RESOLVED by the City of Roseville, Michigan that we, the members of the Roseville City Council endorse and do hereby establish the National Incident Management System (NIMS) as a standard for incident management by the City of Roseville.

MOTION CARRIED UNANIMOUSLY

4. Request adoption of Ordinance to amend the Code of Ordinances for the City of Roseville by revising and amending Chapter 304, by amending the heading of Section 304-3 to provide for "full or partial" hardship exemptions, amend the procedures and minimum standards for the determination of poverty hardship exemptions, to provide for repealer, severability, and effective date.

   City Attorney Tim Tomlinson explained to Council that the proposed Ordinance will clarify the full or partial hardship provisions and will also include the provision which will require all property owners incomes in the determination of an exemption application. Mr. Tomlinson asked that this ordinance be adopted as presented.

COUNCILWOMAN COLLEEN MCCARTNEY moved, COUNCILMAN JOHN CHIRKUN seconded to adopt Ordinance No. 1215 to amend the Code of Ordinances for the City of Roseville by revising and amending Chapter 304, by amending the heading of Section 304-3 to provide for "full or partial' hardship exemptions, amend the procedures and minimum standards for the determination of poverty hardship exemptions, to provide for repealer, severability and effective date as follows:

An Ordinance to amend the Code of Ordinances for the City of Roseville by revising and amending Chapter 304, by amending the heading of Section 304-3 to provide for full or partial hardship exemptions, amend the procedures and minimum standards for the determination of poverty hardship exemptions, to provide for repealer, severability, and effective date.

THE CITY OF ROSEVILLE ORDAINS:

Section 1. Chapter 304, Section 304-3 heading is amended to provide as follows:

304-3. Determination of Poverty Level for Granting Full or Partial Hardship Exemptions and/or for Arrangements for Payment of Obligations.

Section 2. Chapter 304, Section 304-3 B (2) is revised to provide as follows:

(2) the applicant must timely file a claim with the Board of Review on a form provided by the City Assessor's Office. Federal and State Returns for the immediately preceding year shall be submitted for all owners and all persons residing in the household.

Section 3. Chapter 304, Section 304-3 B (5) is amended to provide as follows:

(5) income of all property owners, including that of each householder as defined by P.A. 390 of 1994, must not be more than that amount set by the Federal Government in its poverty level standards.

Section 4. Chapter 304, Section 304-3 B (6) shall be amended to provide as follows:

(6) the valuation of assets owned by all property owners and any householder must not be greater than $75,000.00. In determining the value of assets, any equity in the residence under appeal shall not be included.

Section 5. Chapter 304, Section 304-3 B (8) shall be added to provide as follows:

(8) based on the information provided the Board of Review will make a determination whether a full or partial exemption will be granted.

Section 6. **Repealer.** All ordinances or parts of ordinances in conflict herewith are repealed only to the extent necessary to give this ordinance full force and effect.

Section 7. **Severability.** If any article, section, subsection, sentence, clause, phrase, or portion of this ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of remaining portions of the ordinance, being the intent of the City that this ordinance shall be fully severable.

Section 8. **Effective Date.** Provisions of this Ordinance shall become effective twenty (20) days following adoption.

MOTION CARRIED UNANIMOUSLY

5. Request awarding of bid for dirt and broken concrete removal.

City Manager Stephen Truman explained to Council that this is an annual bid. Bid specifications were written for the removal of 5,000 yards of dirt and broken concrete from the Water Department yard. Invitations to Bid were sent to 30 companies; 10 companies responded including one Roseville business. The Roseville business exceeded the 5% allowance provided to Roseville businesses. Dean Marine & Excavating, Inc. submitted the low bid meeting specifications for removal at $5.50 per yard for a total of $27,500, an increase of .30 per yard from 2005. Mr. Truman recommended that the Bid be awarded to Dean Marine & Excavating, Inc. in the amount of $27,500.

COUNCILMAN BILL SHOEMAKER moved, COUNCILWOMAN JAN HAGGERTY seconded to award the bid for dirt and broken concrete removal to Dean Marine & Excavating, Inc. in the amount of $27,500.
MOTION CARRIED UNANIMOUSLY

6. Request from Holy Innocents to conduct a Hoedown on the church grounds October 3 and 4, with waiver of fees, Michelle Glandon or Beth Aiuto petitioner.

   The petitioners failed to appear; however, Councilman Aiuto explained to Council that this is the 3rd annual request and described the activities that will take place at the Hoe down.

   Mayor Haugh stated that the Police Department completed a background check and found no reason for Council to deny this request.

COUNCILWOMAN JAN HAGGERTY moved, COUNCILMAN ROBERT TAYLOR seconded to approve the request from Holy Innocents to conduct a Hoedown on the church grounds October 3 and 4 with waiver of fees.
MOTION CARRIED UNANIMOUSLY

7. Request closed-door session to discuss contract negotiations.

COUNCILMAN SALVATORE AIUTO moved, COUNCILMAN ROBERT TAYLOR seconded to approve the request to enter into closed-door session to discuss contract negotiations after agenda item VI, Items for Discussion by City Council.

ROLL CALL:

Councilman Taylor	Yes
Councilman Shoemaker	Yes
Councilwoman McCartney	Yes
Councilwoman Haggerty	Yes
Councilman Aiuto	Yes
Councilman Chirkun	Yes
Mayor Haugh	Yes

MOTION CARRIED UNANIMOUSLY

8. Appointments.

   Mayor Harold Haugh had no appointments.

9. Reports of City Manager.

   City Manager Stephen Truman reported the following:

   a. Martin Road will remain westbound traffic only for the duration of the project. The barricades on the side streets will indicate how many days the street will be closed at Martin Road and not all of the side streets off of Martin Road will be closed as was done on the last section completed on Martin Road. Mr. Truman hopes that this project will be done by the end of October.
   b. The VFW Post will host a "Meat and Miscellaneous Raffle" on Saturday, September 27.
   c. The Fire Department Open House is scheduled for Sunday, September 28 from 1 to 5 p.m. In honor of the City's 50th Anniversary, the Fire Department Headquarters will be renamed to honor retired Mayor Jeanne Riesterer and her late husband Sergeant Joseph Riesterer; the dedication will take place at 2 p.m.
   d. The City will host a community meeting about the Master Plan on Monday, September 29 at the Recreation Center from 6 p.m. to 8:30 p.m. facilitated by Vilican Leman and the Planning Commission.
   e. Parks and Recreation will host a "Mom-Son All Star Dance" on Saturday, October 3 from 7 to 9 p.m. and the Monster Mash on Friday, October 24 from 7 to 9 p.m. Tickets are available at the Recreation Center.

f. Project Art in Roseville (PAIR) will host their 2nd annual fall fundraiser; a Sock Hop in honor of the City's 50th Anniversary will take place on Saturday, October 19 at St. Donald's Church.
g. The 50th Anniversary Dinner Dance will take place Tuesday, December 30 from 6:30 p.m. until 12:30 a.m. at Athena Hall. Tickets are available in the Manager's Office.
h. The Roseville Public Library will be closed on Saturday, October 4 due to the installation of an emergency generator at City Hall.
i. Mr. Truman congratulated and thanked Leonard Haggerty for everything he has done for the community.

10. Reports of City Attorney.

Mayor Harold Haugh instructed City Clerk Richard Steenland to include the following transcript and time-line of events for the last eight years in the Stross case into the meeting minutes.

The following is a transcript of the Zoning Board of Appeals meeting on July 15, 1997, agenda item #4.

Mayor Alsip read agenda item #4 as follows:

4. Public Hearing and Board consideration for variance to erect a 23' by 48', 1,104 square foot painted mural (sign) on the south side of the building at 28305 Gratiot (Gonzo Airbrush), Edward Stross, petitioner.

Mayor Alsip: Is the petitioner present?

Stross: Edward Stross, 28305 Gratiot, Roseville, Michigan.

Mayor Alsip: Sir, do you have a statement you wish to make to the Board?

Stross: Well, basically I want to keep it real simple. I'd like to have permission to paint a sign/mural. I wanted to go through this route. I didn't want to have any misunderstanding or interpretation of what exactly square footage is. I just didn't want to raise any trouble in that sense in creating something and through my interpretation of what it is and someone else's. What I had planned would be quite extensive and would actually take me a lot of labor time to do. I didn't necessarily sketch exactly what I wanted because I didn't know what restrictions are going to be put onto me, and I didn't feel like putting in 40 hours into drawing something and find out I can't do it. What I have is a simple sketch on canvas of a single angel, adult, fully clothed (laugh). But, first of all I have a picture of my building right here. We have windows here that take up a lot of square footage. Most of the best spots to do any work on are in the top proportions. The bottom proportions, it's a little bit rough, but I would still possibly like the opportunity to paint something on there. I have no sign in front; I don't want to have a sign in front. I think that with quick explanations to my customers over the phone I can help them locate the business. What I am doing here isn't to hurt the city's image, but to make it look nice. I've never meant to cause the confusion that people have thought that the city has been holding me back, and basically it is all my fault

because of my ignorance of the ordinances in this town. If you'd like to I can show you the other canvas piece.

Silence as Board Members review the canvasses.

Mayor Alsip: Now, sir, you indicated this is one picture. Its…

Stross: Yes.

Mayor Alsip: You didn't want to, without knowing if we were going to grant approval or not, you didn't want to go into the in-depth that you were looking at.

Stross: Exactly.

Mayor Alsip: How does this fit into the scheme of the whole project that you…

Stross: Well um…if you notice she has a rose in her hand and um…I plan to put cherubs basically behind her. I don't necessarily…it's going to be the pose… I've come up with a lot of options. Every moment I'm thinking of something else is popping into my mind. I understand what obscenity is, I don't plan to put any genitals or anything that is showing. No obscene gestures; Sacred Heart Church is right across the street from me and I would never do anything to insult the beautiful church we have across there. I do study a lot of the art and I didn't go to school, but I went to the Roseville library. It's all there, you know, Michelangelo, Raphael, some of their stuff is…there is stuff showing, but I don't plan to do that, there's just ways you can pose things that's tasteful.

Mayor Alsip: Now, if I could ask…you have a picture of your building on the side and you are pointing out the areas that you could…where exactly do you plan on this being?

Stross: Actually, I had several ideas, but a good point would be to…right in the front right here, the adult figure and behind it the cherubs right there.

Mayor Alsip: And when you point down…the cherubs down the rest of the building between the windows or…

Stross: Yes, yes and actually there is a proportion behind the building. What I have been told is that when I was seeking 150 square feet that I could possibly take 150 12" x 12" little signs and place them all over. You know I plan to have a little blue in there, someone might say well that's part of the square footage. I don't want to make the building look gaudy, I'd like to complement the building. I'm not trying to change the building structurally, it's an old building. And if anyone has a problem I'm open minded about it, I'd love to satisfy 100% of the people. That's another reason I didn't do anything too is because if someone has a problem with it…do I have to change it…do I have to eliminate it or whatever…I'd like to work with anyone that has a problem with it.

Mayor Alsip: Does the Board have any questions? Yes, Mr. Chirkun.

Councilman Chirkun: Mr. Stross, the notice we got from Mr. Truman…he's stating in here that you want 1,104 square foot…is that what you want?

Stross: Yes.

Councilman Chirkun: OK, so in that area there, you think you can make whatever you want to paint there.

Stross: Oh definitely, I mean that's the excess. I just asked for that so that…just to cover all bases… chances are I probably won't use all that. I sort of like to…

Councilman Chirkun: So you are asking for this Board to approve up to 1,104 square feet.

Stross: Yes, so it can be just like a closed sort of thing.

Councilman Chirkun: That's all I have.

Mayor Alsip: There's some other questions, Mr. Haugh?

Councilman Haugh: Could you put that picture back up there for a second?

Stross: Sure.

Councilman Haugh: Now you were talking…I'm not an art critic by any stretch of the imagination, and you had indicated if people here, I was assuming, found what you were doing offensive or something you would change it. As long as it is not obscene, I really don't think…that's what the focus was or has ever been. You readily admitted that it was the lack of understanding of the ordinances and policies.

Stross: Yes. Yes.

Councilman Haugh: I'm finally glad we've got that cleared up.

Stross: Well I've, from day one, I've always been stating that I've never…I mean the city's never told me that they were…I mean originally they said it wasn't offense, it wasn't obscene…it didn't.

Councilman Haugh: So there's a lot of people in the city that have hearing impediments because the phone calls that I received was why were we so opposed to the cherubs that you had put up on the wall, and that was never the issue.

Stross: I understand.

Councilman Haugh: But back to your sign there, your building. You were talking about the angel going where now?

Stross: Well, angels. That's an archangel, and that one…chances are…will be in the front. This is the best space right here for it. And, there's some optical illusions that you can do with painting. Basically, I want to show off my art.

Councilman Haugh: OK.

Stross: It's what I studied and when you look into it, it will look…there will be depth there. And it isn't going to be cheesy, I'm going to spend a lot of time into it. I see other things in the area that have been put up and they're…they really didn't put their heart and soul into it, and if you look closely there's absolutely no…really…effort put into it. What's going to be planned and put up there is…a… expressions on the different faces showing care.

Councilman Haugh: So, conceptionally, you are looking at moving down the wall.

Stross: Yes. Yes.

Councilman Haugh: And the entire space on the left side there, above the window or below the windows.

Stross: Up here?

Councilman Haugh: Right.

Stross: Yea, these aren't really ideal spaces to paint. They're not perfectly smooth, but I would like to have the option if I had to…there's just the option if…to put something if necessary.

Councilman Haugh: But, without it curtailing your artistic ability, if we were to approve this, could you put a rendering together before we…we've only seen this.

Stross: Oh yeah, yeah. Oh definitely yeah.

Councilman Haugh: Because as far as I'm concerned, you can go put that on the wall right now. That's fine with me.

Stross: Well…again the description of…I'll draw something up and if I've…pretty much, you know, permission to go ahead and do this then I will feel that all my work and effort isn't going to go in vain. I fully understand what is obscene.

Councilman Haugh: I really don't even want to get into that.

Stross: I don't either, and basically it's personal point of view. But I…all I want is to satisfy everybody. I mean I'm not an artist that likes to build controversy. I thought I'd pick angels that would be…that would be the least controversial piece. I mean…there's just a lot of stuff that I could do that would be offensive, but it's just…that's just not my style.

Councilman Haugh: Well, other than the signage issue, which was always our primary issue we do want to protect against, assuring that nothing offensive does go up on any of the walls.

Stross: Yes, that makes good sense.

Councilman Haugh: Thank you, that's all I have Mayor.

Mayor Alsip: Is there any other question? Mr. Zelmanski.

Councilman Zelmanski: Sir, do you own this building?

Stross: Land contract.

Councilman Zelmanski: Land contract…for how long?

Stross: Not this January, but the January before.

Councilman Zelmanski: That's all I have.

Mayor Alsip: Mr. Chirkun.

Councilman Chirkun: This is for Mr. Dolan. Can we…if Mr. Stross doesn't have the possession of the building or anything, can we…when we pass the variance can we tie it to him owning the building if the mural was approved? I mean if he moves out of his business and some other owners come in, and they want to decide they don't want the angels and they want to put something else up, that might not be conducive to the city.

City Attorney Dolan: Well, the variance that you would grant, I presume if you allow this artwork, would be just for that artwork. I would suggest that rather than…any new artwork would have to be approved as an additional variance. The one issue you probably would want to have some concern with is over time, if it's not maintained, that it be removed. Meaning that five, ten years down the road if he still occupies the building, if it starts to all flake off so that it's no longer maintained, that you might consider having it removed at that point in time.

Mayor Alsip: Is that all Mr. Chirkun?

Councilman Chirkun: That's all.

Attorney Dolan: The biggest problem with the signs usually is of this nature and that sort of thing is if they are painted on a building, unless they are maintained over time, they can fall into disrepair and then become an eyesore.

Councilman Zelmanski: Mr. Dolan, Councilman Haugh alluded to the fact that…right up there that is an accepted…alluded to the fact that this is acceptable. Can we also put a condition in this variance for him to come back with a sketch so we can see the rest?

Attorney Dolan: If council saw fit that he could approve the concept of the variance subject to an approval of a final rendition. But at least let the petitioner know that you approve the concept so that he can go forward with his rendition as he has indicated.

Councilman Zelmanski: That's all I have.

Attorney Dolan: I think that's what he is asking for, I'm not sure, but it seems to be that is what he is asking for.

Stross: Basically, I'm asking you to trust me. I'm not a bad person. If I do anything bad, I think I would be putting my foot in my mouth. The issue of the paint coming off…actually that is an old building, and I painted it last year. I spent a lot of time scraping the paint, scraping off of that and there's parts on there cracking. It would almost have to be on a yearly basis touching that thing up. Just cause I'm out there making sure the paint is holding up, will I be responsible to get another permit to maintain?

Attorney Dolan: Possibly not.

Building Director Steve Truman: No.
Stross: OK.

Mayor Alsip: Mr. Steenland.

Councilman Steenland: One quick question for Mr. Dolan. By approving this tonight, if in fact that's what we are going to do, and as indicated it is a form of artwork and again it is going to be open to a matter of interpretation, are we now…are we opening any can of potential problem indicating that if, for example, another business comes into town and they want to put devil worshiping type… I mean is this something we have the authority to approve on a case by case basis? I just want to make sure I have the understanding.

Attorney Dolan: I think that once we get into measuring the content of this type of image that we can begin to run into some constitutional issues. But there are some zoning considerations here and I believe you can impose reasonable conditions. If you want to give him the artistic liberty I would certainly recommend that you, at minimum, include the two stipulations that he has somewhat referred to, and the one is no exposure of genitalia and the second one is no sign, no lettering.

Councilman Steenland: That's all I have.

Mayor Alsip: Any other questions? Miss Gorecki.

Councilwoman Gorecki: Mr. Truman, do you know, to the best of your knowledge, has the Board ever approved sign variances where they haven't seen a rendering of what the new sign would look like?

Director Truman: That's a good question, Miss Gorecki. Not that I can recall I guess is how I'd have to answer.

Councilwoman Gorecki: So generally when they come to us for a variance they have it drawn up as to what they are requesting.

Director Truman: Yeah, but normally it's not this type of sign, for example, the ProGolf sign that you approved. This is the only other mural that recently we approved and that you had in front of you what was going to be on it.

Councilwoman Gorecki: He brought an exact copy of what it was going to look like. That's all I have right now.

Mayor Alsip: Any other questions? Mr. Truman I have one, in square footage that we're approving here tonight, do you have any concerns? As he indicated, and he brought it up about breaking it up in all different little segments. Do you have some concerns or any feelings whether or not we should restrict it to certain portions? I mean, he mentioned primarily the top portion is what he is looking for anyway. Is there any concern for the lower or bottom?

Director Truman: Frankly, Mr. Mayor, that's all I'm concerned with, the façade, the entire façade size is why we used that number of eleven hundred feet. And that's fine if the Board desires to approve that. My only concern is the one you brought up regarding artwork in the future is…you may be setting…it's fine to set the precedent for murals, I think we've done that and I think we have looked at it on a case by case basis. My bigger concern is the size that we are going to look at and that's, to me, that's more where the issue is here is how it's going to be proportioned to the building. I think what you've been given in regards to what it's going to look like is satisfactory, but I think you need a larger…bigger handle on the amount you are going to allow in case you get future requests for similar sizes.

Mayor Alsip: Sir (Stross) a question for you. It's been asked somewhat or discussed here this evening, do you plan on drawing up a rendering of exacting what's going on there before you go ahead and do it?

Stross: Yes, it would be a definite study. It's something that I might spend…50 to 100 hours on. Right now I'm not in a financial ability to just stop and just, you know, do something like that knowing that it might not ever come to… If you, if I'm getting some cooperation where say like it looks good and everything like that you can go ahead with it, I'd feel very confident that what I would do, that you would be happy with.

Mayor Alsip: Thank you. Any other questions? Yes, Mr. Chirkun.

Councilman Chirkun: Mr. Truman, in the letter he says he wants 1,104 square feet, is that too much in your…

Director Truman: Well we use the precedent that you set on the ProGolf, the 433 (square feet). That's why the recommendation reads that. When Mr. Stross and I talked last week he had a valid point, he was concerned about the first floor and the possible graffiti and such. And so we kind of looked, I thought at that time he was talking about the second floor, so that's why it was written in a fashion I thought easily he could come within that amount on everything above that. It's not a brick ledge, but there's a definite break in the building there that kind of frames everything nicely. Tonight I'm hearing Ed say that he may go below that, is that right Ed?

Stross: I may, I just…would like the option that's all. I wouldn't put nothing down major. There's just some three dimensional pieces that basically would be just a rose or something, but not a lot of detail or anything like that. The ProGolf, they have signs, I hate using this as someone else's

business, but it looks good on the side of his building, it really does. But he does have signs out in front and he has signs on the side. If you add up all of the square footage its well over eleven hundred square feet.

Director Truman: 433.

Stross: 433?

Director Truman: Yes, that's correct.

Stross: Well, I'm not going to argue that, but it sure appears…

Director Truman: That's how it was presented to the Board and that's the numbers that were in front, and that's why the recommendation was written in that fashion. The size of the mural itself, I don't have here now, but I have all of that back at the office. To be honest with you Ed, your façade is almost the same size on the large side, and that is how it's measured now.

Mayor Alsip: Steve, what you're saying is if we looked at the top portion, that would add up to about 400 square feet.

Director Truman: Well, there's windows in there, so I kind of deleted that. Half of that 1,100 is 550 square feet, so that's the number. I don't think it's as critical the location, for future requests you get, as it is the amount.

Mayor Alsip. OK, thank you. Any other questions by the Board? Any other questions? Is there anyone from the public that wishes to be heard on this item?

This section is not word for word.

The following appeared from the public:

Bill Carver, 19741 Shadowoods, Apt. 12, is in favor.

Grace D'Anna, 26611 Parkington, is in favor.

Joe LaBlanc, 28916 Essex, is in favor.

Mike Moritz, 28120 Asmus, suggested not blocking the sidewalk with a scaffold for an extended period.

Frank Prezzato, 21620 Hoffman, S.C.S., is in favor.

This section is transcribed.

Mayor Alsip: Anyone else from the public? Anyone else from the public? If not, I'm looking for a motion to close the public hearing.

BOARD MEMBER CHRISTINE GORECKI moved, BOARD MEMBER JOHN CHIRKUN seconded, to close the public hearing.
MOTION CARRIED UNANIMOUSLY

City Clerk Mac Kool: Just for the record I have two letters with three signatures in favor of the sign.

Mayor Alsip: Thank you.

Councilman Young: Mayor.

Mayor Alsip: Mr. Young.

Councilman Young: Based on the gentleman's previous artistic rendition on that building, I think we should give him the benefit of the doubt and not be in a position where we are going to have him draw up the drawing and come to us for final approval so that we can sit here and speculate whether there might be one hypersensitive lunatic in a hundred thousand out there who might be offended by his mural. If that was allowed to have any sway in this country where we are supposed to have freedom of expression then none of us would get to see anything. I believe that in his benefit as a rational businessman, he is going to put something up there that makes that building attractive and as pleasing to his customers and the rest of the city. With that in mind, I move this request be granted with the two stipulations mentioned by the city attorney.

BOARD MEMBER ART YOUNG moved, BOARD MEMBER JOHN CHIRKUN seconded.

Mayor Alsip: We have a motion by Mr. Young, supported by Mr. Chirkun, to approve with the two stipulations, and those being… Mr. Dolan do you recall?

Attorney Dolan: That no genitalia be exposed or any… the breasts of any post-pubescent females. And the second one would be that for the area where you are granting the variance there would be no signage, no lettering.

Mayor Alsip: Mr. Young is that for the 1,104 square feet?

Councilman Young: As requested, I'm going to trust his judgement that it is going to be appealing and…

Mayor Alsip: We have a motion and a support…

City Clerk Mac Kool: Mayor, just for the record, during your conversation, you did mention the fact that you wanted the building maintained.

Mayor Alsip: I was just going to ask if there were any more… Mr. Chirkun.

Councilman Chirkun: Mr. Young, included in the motion is the upkeep of the sign also, correct?

Councilman Young: OK.

Mayor Alsip: OK, also the stipulation that the sign must be kept up. Any other discussion by Board? If not, all those in favor say aye. Everyone said aye. Those opposed? No opposed. It has been approved sir.

MOTION CARRIED UNANIMOUSLY

Conclusion of the Transcript

People v Edward Stross-Sign Violation
CHRONOLOGICAL ORDER OF EVENTS

11/1996	Complaint received from resident regarding "nude angels" being painted on the side of Stross' building. Stross advised that a sign permit was required and that wall signs could not exceed 150 sq. ft.
1997	Stross decides that he wants to paint a mural on the entire south side of the building. He is advised by the Building Department that he must apply for a variance, which he does. The ZBA approves a request for 1,104 sq. ft. with conditions as approved in the minutes as follows: 1. No private parts (genitalia) are exposed. 2. No lettering is included. 3. The sign is maintained.
2003	Stross attempts to paint a replication of Michelangelo's painting in the Sistine Chapel on the side of the building which includes the exposure of a breast. That in reviewing the complaint, is recognized that the word "LOVE" is also on the sign. Stross is advised that the painting violates the variance conditions and is advised to remove same.
10/2003	Stross is once again given the opportunity to correct the violations, including eliminating the exposed breast within the painting and the word "LOVE." Although repeatedly advised that any modifications to the variance conditions require him to go before the ZBA, Stross refuses to comply with the request to comply with the variance conditions.
11/2003	Opinion from the City Attorney regarding violations in compliance with the variance conditions.
11/18/2003	Letter sent to Mr. Stross regarding City Attorney opinion regarding violations.
3/02/04	Letter sent to Mr. Stross regarding time extension for compliance.
7/22/04	Citation issued and served on Mr. Stross for violation of sign ordinance.
1/21/2005	Mr. Stross is convicted by a jury of his peers.
2/2005	Claim of Appeal is filed with the Macomb County Circuit Court by Mr. Stross.
6/2005	Macomb County Circuit Court affirms Mr. Stross' conviction and sentence.
7/2006	Application for Leave to Appeal to the Court of Appeals is filed by Mr. Stross. The Application for Leave to Appeal is granted August 23, 2006.

2/2008	The Court of Appeals in a 2-1 decision reverses the decision of the Circuit Court and Trial Court.
4/2008	The City filed its Application for Leave to Appeal to the Michigan Supreme Court.
9/10/2008	The Michigan Supreme Court by way of order reverses the judgment of the court of Appeals holding that Mr. Stross failed to challenge the conditions of the variance in accordance with the procedure under MCL 125.585, and therefore, precluded him from raising his constitutional challenge eight years later. The Supreme Court remands back to the Court of Appeals for purposes of addressing the remainder of Defendant's issues on appeals.

The above timeline is a highlight of the major filings and decisions in this case. Throughout the course of this matter, there have been numerous motions filed before the courts delineated herein.

City Attorney Tim Tomlinson reported that the last decision Council made, after an unfruitful resolution, discussions with Mr. Stross and his attorneys, was to proceed to the Supreme Court. This case was not an issue of the "love", the type of letter or what was said. The issue with this case is the City's ability to govern its variance conditions and whether or not the conditions are enforced. This is an important issue for any municipality because if the ordinances are not enforced the standards should not be set as a variance condition.

The Court of Appeals ruled that the City's variance conditions were unconstitutional and the determination was to present an application for leave to appeal to the Michigan Supreme Court. The Supreme Court may do one of three things: 1. Reject the application for leave to appeal; the case would then be finished, 2. Grant the application for leave to appeal and additional briefing would be submitted and oral arguments made and then the Supreme Court would make a ruling with response from the other party and 3. Order issued by the Supreme Court either reversing the Court of Appeals decision and adopting a decision of their own or the Court of Appeals decision may be reversed and the Supreme Court may write its own decision.

In the City's case, instead of the Supreme Court issuing Leave to Appeal, the Court entered an order stating that the Court of Appeals decision was wrong. The City's zoning ordinance was not unconstitutional and the Supreme Court's holding is that Mr. Stross, after gaining the benefit of this variance and these conditions for eight years, waived his right to challenge the constitutionality of those conditions. The Supreme Court determined and held that the City was correct in its determination and enforcement of those conditions after Mr. Stross had gained a benefit for eight years. Mr. Tomlinson explained that essentially this ruling is stating that when a benefit is gained, a person cannot complain about an issue eight years later because they don't like it. The Court determined that the provisions or conditions imposed: 1. no post pubescent breasts, 2. no lettering and 3. maintenance of the sign are valid conditions. Mr. Tomlinson stated that The Supreme Court remanded the case back to the Court of Appeals, as often occurs, the Court of Appeals when they make a decision often focus on one issue versus answering all of the issues that were presented. The last two issues deal with more procedural issues in regard to sentencing and the jury verdict. The most important issues to the City, as far as the variance conditions, were the constitutionality and whether the enforcement was the appropriate method to follow and the Supreme Court has held these issues.

Mr. Tomlinson discussed the issues remaining and stated that the issues have been argued and briefed and he doesn't anticipate any additional work involved with those particular matters, but that is the status of the case today. The case is not completed, but the main issues have been addressed by the Supreme Court and the decision was favorable on behalf of the City.

Councilman John Chirkun asked Mr. Tomlinson if the Supreme Court upheld the variance. Mr. Tomlinson responded that the Court upheld the conditions placed on the variance.

V. HEARING OF THE PUBLIC

Roger Windemuth, 26811 Wenfield, discussed the conduct of residents speaking at the podium during the Hearing of the Public.

Mayor Harold Haugh commented on the behavior of individuals who attend Council meetings.

James Goldwater, 19346 Brandt, discussed behavior at the podium during the Hearing of the Public, Handicapped Parking spaces and a variance request recently before the Zoning Board of Appeals.

Mayor Harold Haugh responded to comments made by Mr. Goldwater at the Public Hearing.

Edward Stross appeared and was disrespectful at the podium; Mayor Haugh called Mr. Stross out of order. After Mr. Stross continued to be disruptive at the podium Mayor Haugh ordered him to be removed from the building by the Chief of Police.

Steve Chilcutt, 29129 Elmwood, announced a few fundraisers that will be held in the area and congratulated Leonard Haggerty on his certificate this evening.

Mike Clover, 16279 12 Mile, announced the Sacred Heart Knights of Columbus fundraiser on Sunday, September 28 from 4-7 p.m.

VI. ITEMS FOR DISCUSSION BY CITY COUNCIL

Councilman Robert Taylor congratulated the Roseville Junior Sports and the Boy Scouts for leading the Pledge of Allegiance this evening, congratulated the families recognized this year, new Police Officer Tom Bender and Leonard Haggerty for their recognition this evening. Councilman Taylor commented on the American House Open House he attended this past week, discussed Handicapped Parking requirements and congratulated the Mayor for removing Edward Stross

Councilman Salvatore Aiuto thanked the groups who led the Pledge of Allegiance this evening, congratulated the families recognized this evening, Leonard Haggerty on his retirement and Police Officer Thomas Bender. Councilman Aiuto reminded everyone about the VFW Meat & Miscellaneous Raffle, the Fire Department Open House, the Parks and Recreation Dances and commented on the behavior of individuals who attend Council meetings.

Councilman Bill Shoemaker thanked the Mayor Haugh for stopping the nonsense at the podium, congratulated the families recognized this evening, Leonard Haggerty on his retirement and commented on a student prayer service at various schools in the area.

Councilwoman Jan Haggerty thanked Mayor Haugh for taking command of the meeting, congratulated newly hired Police Officer Thomas Bender, the families who were recognized this evening and her husband Leonard on his retirement. Councilwoman Haggerty wished all of the upcoming fundraisers luck and commented on the City's Anniversary insert from the *Macomb Daily*.

Councilwoman Colleen McCartney thanked the groups who led the Pledge of Allegiance this evening, congratulated Police Officer Thomas Bender and Leonard Haggerty on his retirement. Councilwoman McCartney thanked all of the families included in the 2008 City Calendar and offered Councilman Taylor get well wishes.

Councilman John Chirkun welcomed Officer Bender to Roseville, offered his condolences to the family of Tom Raymus, thanked Leonard Haggerty for his service to the community, asked for volunteers to help sell the Goodfellows papers, commented on the Stross legal issue and discussed various comments made during the public hearing this evening.

Mayor Harold Haugh discussed the reasons behind appealing the People v Edward Stross matter, commented on the positive aspects of the meeting, thanked the families who were included in the Calendar, congratulated Leonard Haggerty on his retirement, spoke about the commitment of the community volunteers and discussed comments made during public hearings.

Leave Regular Meeting at	8:33 p.m.
Enter closed-door at	8:40 p.m.
Leave closed-door at	9:29 p.m.
Return to Regular Meeting at	9:30 p.m.

VII. ADJOURNMENT

COUNCILWOMAN JAN HAGGERTY moved, COUNCILWOMAN COLLEEN MCCARTNEY seconded that the agenda having been acted upon; the meeting is hereby adjourned at 9:31 p.m.
MOTION CARRIED UNANIMOUSLY

Respectfully submitted,

RICHARD M. STEENLAND, City Clerk

Please note: A cassette tape of this meeting is on file with the City Clerk's Office for further information