

JACKSON CITY COUNCIL  
Regular Session  
May 19, 2008  
7:00 p.m.

Call to Order..... President Speakman  
Pledge of Allegiance..... Mr. Adams  
Opening Prayer..... Mr. Wiggins

Roll Call

Approval of Minutes

May 12, 2008

VISITORS:

COMMITTEE REPORTS:

- Utility
- Budget & Finance
- Police, Fire & Traffic
- Service
- Railroad
- Building/Recreation
- City Auditor
- Law Director
- Mayor
- Service/Safety Director

ORDINANCES AND RESOLUTIONS

CORRESPONDENCE

OLD BUSINESS

NEW BUSINESS

ADJOURN

## JACKSON CITY COUNCIL

*Minutes from*

May 12, 2008

7:00 p.m.

Regular Session

Jackson City Council met in regular session on Monday, May 12, 2008 at 7:00 p.m. at the Jackson City Council chambers. President Ron Speakman called the meeting to order. The Pledge of Allegiance was given, led by Mr. Evans. The Prayer was given, led by Mr. Wiggins.

A roll call was taken as follows:

- Mr. Evans – present
- Mr. Adams – present
- Mr. Eric Brown – present
- Mr. Smith – present
- Mr. Cary Brown – absent
- Mr. Elliott - present
- Mr. Wiggins – present

Mr. Smith made a motion to approve the minutes of April 28, 2008 regular session seconded by Mr. Evans. In a voice vote, all Council agreed.

Mr. Wiggins made a motion to go into executive session to discuss Uribe vs. City, personnel matters with possible litigation and EPA matters, seconded by Mr. Evans. In a roll call vote, all Council agreed. Council went into executive session at 7:05 p.m.

Mr. Smith made a motion to return to regular session, seconded by Mr. Evans. In a voice vote, all Council agreed. Council returned to regular session at 8:20 p.m.

**VISITORS - None**

### **COMMITTEE REPORTS**

#### UTILITY

Mr. Eric Brown stated a meeting was held on April 30, 2008 at 6:30, see attached minutes. A joint meeting with the Budget & Finance Committee will be held on Wednesday at 6:00 to discuss the water rate study; a representative from Jones & Henry will be in attendance to answer any questions.

#### BUDGET & FINANCE

Mr. Adams stated that the committee will meet jointly with the Utility Committee on Wednesday at 6:00 to discuss the water rate study.

#### POLICE, FIRE & TRAFFIC

Mr. Evans stated the committee met on April 30, 2008, see attached minutes. He stated that j-turns were discussed and the committee decided to let the administration address the police, and possibly erect signs. Mr. Evans stated that he has still received no response from the asst. chief on matters discussed at the February 2<sup>nd</sup> meeting; he feels there is not enough emphasis on enforcement.

#### SERVICE

Mr. Smith reported there was no meeting and no new business. Mr. Cary Brown and Mr. Detty are working on a scrap metal dealer ordinance.

RAILROAD - No report

## BUILDING/RECREATION

Mr. Smith stated there had been a request to update the zoning at Hammertown; he would like Mr. Detty to review.

## CITY AUDITOR

Mr. Humphreys reported that the auditors will be here in the next week or so. Mr. Heath asked who. Mr. Humphreys stated the same as last year.

## LAW DIRECTOR

Mr. Detty stated that Ordinance No. 46-08 passed out tonight, should be 47-08. The Ohio Supreme Court ruled in favor of the City of Jackson in Kida Newell case, see attached.

## MAYOR

Mayor Heath was pleased to announce that curb side recycling will begin on August 1<sup>st</sup>, this will be done without adding an employee, and one will be utilized from the utility office. Recyclables will be picked up every other week. This employee will also be used to promote recycling in our community. We will be receiving help from the Solid Waste District; they will provide the trailer and bins. Mayor Heath noted that after meeting with the ORDC last Thursday, the loan/grant application had been approved, this is important to our future; all monies will flow through the Auditor's office. He stated that high grass complaints are flowing in, this was addressed on the 10<sup>th</sup>; the city is looking for additional help. The summer recreation program started last week, we off to a good start. There are issues with the umpire pay; an ordinance will be presented at the next meeting. The skate park has opened, no bicycles are allowed, and the police will open and close the facility. He noted it has been four months since taking office; he would like to thank all the city workers for doing a fine job and being very sincere. The administration is doing its best to keep up. He would also like to thank Mr. Sheward and the Council and the citizens for being very helpful.

## SAFETY/SERVICE DIRECTOR

Mr. Sheward stated that the curb side recycling will require no vehicle purchase, further noting that the city will receive payment for items recycled. Our goal is to break even. He will be working on an ordinance to stop trash pickers from taking recyclables from the containers once they are set to the curb. Mr. Sheward stated that there is the possibility of a cellular company renting space atop the apple water tower to place antennas, this would generate income to maintain the tower since is it not used for water storage. He has copies if members want to review. Mr. Wiggins stated that the ordinance for trash pickers should include sealed containers, has noticed bags being ripped open. Mr. Sheward stated that an individual was arrested last week for littering. Mr. Cary Brown asked if we would receive grant funding for the recycling. Mr. Sheward stated this will be a stand alone operation. Mayor Heath stated we will receive help from the Solid Waste District. Mr. Humphreys asked if there had been an ordinance in regards to placing antennas on the tower. Mr. Eric Brown stated that Council gave the administration authorization to approve.

## ORDINANCES AND RESOLUTIONS

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### ORDINANCE NO. 47-08

AN ORDINANCE FINDING THE HIGHEST RESPONSIBLE AND RESPONSIVE BID, AWARDED THE CONTRACT FOR THE SALE OF REAL PROPERTY TO THE LIBERTY TOWNSHIP BOARD OF TRUSTEES, AND DECLARING AN EMERGENCY.

First Reading

Mr. Eric Brown made a motion to adopt the ordinance, seconded by Mr. Cary Brown. In a voice vote, all Council agreed.

Mr. Eric Brown asked if they were going to pay for the surveying and deed transfers. Mr. Detty stated the surveying will be done at no cost, and they will pay for the transfer, all expensed will be covered.

Mr. Adams made a motion to suspend the rules, seconded by Mr. Eric Brown. In a roll call vote, Council voted as follows:

Mr. Evans – yes  
Mr. Adams – yes  
Mr. Eric Brown – yes  
Mr. Smith – yes  
Mr. Cary Brown – yes  
Mr. Elliott – yes  
Mr. Wiggins – yes

In a roll call vote to adopt the ordinance, Council voted as follows:

Mr. Evans – yes  
Mr. Adams – yes  
Mr. Eric Brown – yes  
Mr. Smith – yes  
Mr. Cary Brown – yes  
Mr. Elliott – yes  
Mr. Wiggins – yes

ORDINANCE NO. 47-08 DULY ADOPTED

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## CORRESPONDENCE

The clerk read a letter from the Ohio Valley Regional Development Commission, see attached.

## OLD BUSINESS


Mr. Speakman stated that citizens have stated they have trouble hearing some of the members, please speak louder and into the microphones.

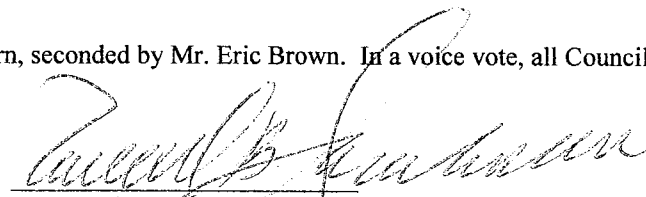
## NEW BUSINESS

Mr. Evans made a motion to have a regular meeting on May 19, 2008 to replace the May 26, 2008, seconded by Mr. Eric Brown. In a voice vote, all Council agreed.

## ADJOURN

Mr. Smith made a motion to adjourn, seconded by Mr. Eric Brown. In a voice vote, all Council agreed. Council adjourned at 9:00 p.m.

  
Tera Brown  
Clerk  
Date 5-19-08

  
Ron Speakman  
Council President  
Date 5/19/08

# The Supreme Court of Ohio

FILED

APR 30 2008

CLERK OF COURT  
SUPREME COURT OF OHIO

State ex rel. Kida Newell

Case No. 2007-1925

v.

JUDGMENT ENTRY

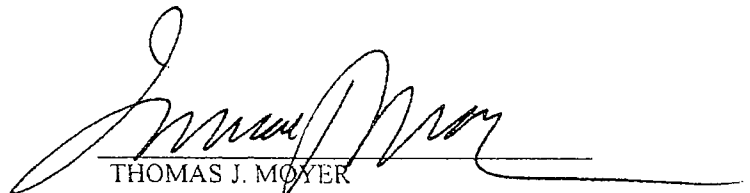
City of Jackson, Ohio, et al.

APPEAL FROM THE  
COURT OF APPEALS

This cause, here on appeal from the Court of Appeals for Jackson County, was considered in the manner prescribed by law. On consideration thereof, the judgment of the court of appeals is affirmed consistent with the opinion rendered herein.

It is further ordered that a mandate be sent to the Court of Appeals for Jackson County by certifying a copy of this judgment entry and filing it with the Clerk of the Court of Appeals for Jackson County.

(Jackson County Court of Appeals; No. 06CA20)



THOMAS J. MOYER  
Chief Justice

to compete for that office as provided by law. Because Newell failed to establish that the office is being unlawfully held and exercised by Reed and that she is entitled to the office, we affirm.

Appointment of Reed as Fire Chief

{¶ 2} In June 2004, the office of Chief of the Jackson Fire Department became vacant. On December 8, 2004, appellee Jackson Civil Service Commission scheduled a promotional examination for the office of fire chief for February 7, 2005. Appellee Douglas Reed was one of five people who took the examination. On February 15, 2005, the chairman of the civil service commission notified the mayor that Reed was the only applicant who had received a passing score. On February 24, 2005, Reed was appointed fire chief. Reed was not informed of a specific probation period, but he has never received notification from any city official that he has not satisfactorily performed his duties.

Action for Declaratory and Injunctive Relief

{¶ 3} Nearly eight months after Reed's appointment as fire chief, in October 2005, appellant, Kida Newell, challenged it by filing a complaint for declaratory judgment and injunctive relief in the Jackson County Court of Common Pleas. In April 2006, Newell amended her complaint to include Reed as a defendant. Newell claimed that the civil service commission's failure to follow the requirements of the Open Meetings Act, R.C. 121.22, in scheduling the examination, grading it, and certifying the results rendered the city's appointment of Reed as fire chief void and required that a new examination be given and that Newell be permitted to take it. The common pleas court characterized Newell's case as one seeking relief in quo warranto and dismissed it for lack of subject-matter jurisdiction. The court of appeals affirmed the dismissal. *Newell v. Jackson*, Jackson App. No. 06 CA 19, 2007-Ohio-4729.

Action for Quo Warranto

*State ex rel. Myers v. Brown* (2000), 87 Ohio St.3d 545, 547, 721 N.E.2d 1053; see also *State ex rel. Ethell v. Hendricks* (1956), 165 Ohio St. 217, 226-227, 59 O.O. 298, 135 N.E.2d 362. Thus, if Newell established that Reed is unlawfully holding the office of fire chief, she would be entitled to the writ to oust him.

{¶ 9} But Newell is not entitled to the ouster of Reed from the office of fire chief. “[I]rregularities in the appointment procedure will not divest a classified government employee of his statutory rights, at least where those irregularities are the result of a mistake or a dereliction of duty on the part of the civil service commission.” *State ex rel. Alford v. Willoughby Civ. Serv. Comm.* (1979), 58 Ohio St.2d 221, 227-228, 12 O.O.3d 229, 390 N.E.2d 782, overruled in part on other grounds, *State ex rel. Shine v. Garofalo* (1982), 69 Ohio St.2d 253, 23 O.O.3d 251, 431 N.E.2d 680; *Lewis v. Fairborn* (1997), 124 Ohio App.3d 292, 295, 706 N.E.2d 24.

{¶ 10} More specifically, “where an appointee in the classified service has completed his probationary period, he cannot be ousted by quo warranto even though testing or grading procedures were fraudulent and efficiency credits were not counted.” *State ex rel. Hanley v. Roberts* (1985), 17 Ohio St.3d 1, 6, 17 OBR 1, 476 N.E.2d 1019, fn. 7; see also *State ex rel. Polen v. Wymer* (1973), 36 Ohio St.2d 24, 65 O.O.2d 96, 302 N.E.2d 889, syllabus (“Where a candidate is certified as having the highest grade in a promotional civil service examination that was not graded in full conformity with civil service law, and where it does not appear that the candidate so certified knew of or participated in the irregular grading, he will not be replaced by one bringing an action in quo warranto who failed to take affirmative action to prevent the certification and permanent appointment”).

{¶ 11} To be entitled to a writ of quo warranto to oust a good-faith appointee, a relator must take affirmative action by either filing a quo warranto action or an injunction challenging the appointment before the appointee completes the probationary period and becomes a permanent employee. See *State*

claimed irregularity involved a violation of the open-meeting provisions of R.C. 121.22. *Delph*, 44 Ohio St.3d 77, 541 N.E.2d 59.

{¶ 15} Therefore, the court of appeals properly held that Newell is not entitled to a writ of quo warranto to oust Reed from the office of fire chief, because she failed to take affirmative action to challenge the appointment before Reed's probationary period expired, after which he could be removed only for cause. R.C. 124.34. Accordingly, we affirm the judgment of the court of appeals.

Judgment affirmed.

MOYER, C.J., and PFEIFER, LUNDBERG STRATTON, O'CONNOR, O'DONNELL, LANZINGER, and CUPP, JJ., concur.

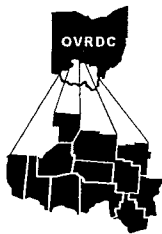
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Biddlestone, Winkelmann, Bradford & Baer, David J. Winkelmann, and William R. Biddlestone, for appellant.

Shoemaker & Howarth, L.L.P., and Kevin L. Shoemaker, for appellees.

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# Ohio Valley Regional Development Commission

9329 SR 220 East, Suite A, Waverly, Ohio 45690-9012 USA

(740) 947-2853; (800) 223-7491 (Ohio only); (740) 947-3468 (Fax)

[www.ovrdc.org](http://www.ovrdc.org)

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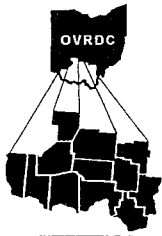
## Memorandum

To: Jackson County Caucus Members and Community Leaders  
From: Jeff Spencer, Executive Director  
Date: May 5, 2008  
Subject: Second Round County Caucus Meeting

Please plan to attend a meeting of the Jackson County Second Round Caucus on:

**May 19, 2008**  
**1:30 p.m.**  
**Commissioners Office**  
**County Annex Building, 275 Portsmouth St.**  
**Jackson, Ohio**

A copy of the preliminary agenda and list of projects are attached. Please call me at (800) 223-7491 if you have questions about the agenda.



# Ohio Valley Regional Development Commission

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**JACKSON COUNTY CAUCUS**  
**2008 Second Round Meeting**  
**May 19, 2008 at 1:30 p.m.**  
**Commissioners Office**  
**County Annex Building, 275 Portsmouth St.**  
**Jackson, Ohio**  
**AGENDA**

1. Welcome and Call to Order.....Rick McNelly, Caucus Chair
2. FY2009 ARC/EDA Appropriations Outlook .....Mr. John Hemmings, Assistant Director
  - a. *ARC Reauthorization*
3. ARC/EDA Pre-Application Process .....Michele Throckmorton  
OVRDC Economic Development Coordinator
  - a. *Submission Deadline: June 27, 2008 at 4:30 p.m.*
  - b. *District Project Review Committee Meeting:  
July 31, 2008 at 10:00 a.m., OVRDC – Waverly*
4. Presentation & Review of County Project Package .....Kara Willis, Project Review Member
5. FY2009 ARC Project Ranking & Approval.....Ms. Throckmorton
  - a. *Area Development Projects*
  - b. *Access Road Projects*
  - c. *Regional Initiative Projects*
6. FY2009 EDA Project Ranking and Approval .....Ms. Throckmorton
  - a. *Public Works and Economic Development Projects*
7. Other Business.....Mr. Hemmings
8. Adjourn.....Mr. Hemmings

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Serving the counties of:

Adams Brown Clermont Fayette Gallia Highland Jackson Lawrence Pike Ross Scioto Vinton

Jackson County Project Package

3/31/2008

Number	Date Added	Subdivision	Project Name	Total Cost	ARC Funds	EDA Funds	Contact
1	4/13/07	City of Jackson	Veterans Drive ext. to S.R. 93 South	\$1,800,000.00	\$500,000.00	\$0.00	Steve Benson
2	4/13/07	Jackson County Commissioners	Jackson County Public Broadband Initiative	\$0.00	\$0.00	\$0.00	Bob Lawson
3	4/20/06	Jackson County Commissioners	CR 9-McCarty Lane/U.S. 35 Grade Separation Project	\$3,800,000.00	\$500,000.00	\$0.00	Brian McPherson
4	2/2/06	Village of Coalton	Coalton WWTP Upgrade	\$2,550,000.00	\$250,000.00	\$0.00	

**DRAFT**

**JACKSON CITY COUNCIL  
UTILITY COMMITTEE**

**April 30, 2008**

**6:30 p.m.**

The Utility Committee met in the Jackson City Council Chambers on April 30, 2008 at 6:30 p.m. Those in attendance were Eric Brown, Chairman, Troy Adams, Curt Wiggins, Tom Evans, Cary Brown, and Mr. Sheward.

Mr. Eric Brown opened the meeting; this meeting was called to discuss possible utility rate adjustments after receiving the rate study. The Budget & Finance committee was invited to attend. Mr. Sheward stated he had read and understood the study, he briefly discussed the breakdowns and which method would be best for the city to use and noting that either method would just maintain the fund balances. Mr. Eric Brown stated that in 2006 the EPA required the city to pass new rates, the ordinance did not take effect until March 2007, council repealed the ordinance before it took effect, and right now the city is in default and could possibly lose grants. Mr. Sheward stated there had been no increase in 5 years. Mr. Eric Brown stated that county water is higher than the city; he has no problem with raising the water rates, but questioned the sewer rates. Mr. Humphreys stated that the sewer rate is based on the number of gallons used. Mr. Eric Brown asked if he had talked to Mr. Heath about the 29% increase on industrial customers. Mr. Evans stated there are only eight industrial customers, they need to pay their share, but if we raise rates too high they will find ways to cut consumption. Mr. Eric Brown asked the status on the water plant project. Mr. Sheward stated it was near completion, back flush needs completed. Mr. Eric Brown asked about a list of customers. Mr. Adams asked about the average residential use. Mr. Eric Brown stated 25% residential, 43% commercial, with the remainder being industrial. Mr. Sheward stated that Jones & Henry are willing to come and discuss this rate study and answer any questions. Mr. Eric Brown suggested having another meeting for them to attend. Mr. Sheward stated that recommendations can be made to prevent declining fund balances. Mr. Adams stated this needs to be a self-sufficient fund. Mr. Eric Brown noted that we do not want to be harsh on the minimum users. Mr. Evans stated the automatic 3% increase is good, we can forgo in years when it is not needed. Mr. Eric Brown stated this was removed during the audit, it was frowned upon. Mr. Evans stated it was originally based on cost of living increases and inflation. Mr. Eric Brown scheduled a meeting for May 15, 2008 at 7:00, if possible to meet on May 14; the meeting will be at 6:00.

Mr. Eric Brown stated we need to figure where we stand on sewer, electric and garbage. Mr. Sheward suggested a garbage increase to offset the cost of fuel. Mr. Evans suggested adding a fuel surcharge, and review it yearly. Mr. Humphreys stated that we currently break even on the garbage fund. Mr. Evans asked if we currently had a fund for the purchase of new trucks. Mr. Humphreys stated no, but we will look at this. Mr. Eric Brown suggested a \$1.00 charge on residential, but questioned the industrial users. Mr. Humphreys stated we have priced ourselves out of the dumpster business. Mr. Adams asked about sewer. Mr. Eric Brown suggested a 3% increase. Mr. Adams suggested a 3% increase on all funds. Mr. Sheward stated we need to use our best judgment, do them all at once; there will be plenty of hard feelings. Mr. Eric Brown suggested raising them 1 ½% in June, and implement the automatic 3% increase in January 2009. Mr. Sheward stated he will need figures from Wendy. Mr. Humphreys stated that large sums are being lost each year in funds; we are already \$16 million in debt to keep the EPA happy. Mr. Sheward stated that the city has been directed to start in other areas after the downtown sewer lining project is complete. Mr. Evans stated we will never be done with the EPA. Mr. Eric Brown suggested doing away with the electric rate adjustment in December. Mr. Evans explained the deregulation process. Mr. Humphreys stated that Karen had suggested doing away with the decrease and not have an increase. Mr. Eric Brown asked if it needed to be raised more than 3%. Mr. Sheward stated he was not sure without figures. Mr. Adams suggested leave electric alone this year. Mr. Evans suggested checking with AMP Ohio to see if the decrease could be removed.

Mr. Sheward stated they are investigating automatic reading devices for the water and electric. The system they are looking at can be read from the garbage trucks. This is a GPS system, gives meter locations, and detects leaks. This is very expensive technology, cost vs. manually reading vs. computerized. This could not be done all at once, will be broken down into quarters. We are looking at the long term benefits. The only way the city can save money is on personnel. We would like to have somehow not to layoff employees. Mr. Evans asked if it could detect a bad meter. Mr. Eric Brown asked Mr. Sheward to contact Mr. Babst about dumpster rates. Mr. Evans stated the problem with our dumpsters is repair and maintenance, this is very expensive and we did not maintain our stock. Mr. Eric Brown asked if we eliminated the \$20 fee for appliance pickup. Mr. Sheward stated he was not sure.

Meeting adjourned at 7:47 p.m.

APPROVAL:

Tera Brown  
Tera Brown  
Council Clerk

5-12-08  
Date

Eric Brown  
Eric Brown  
Chairman, Utility Committee

5-12-08  
Date

JACKSON CITY COUNCIL  
POLICE, FIRE & TRAFFIC COMMITTEE

April 30, 2008

6:00 p.m.

The Police, Fire & Traffic Committee met in the Jackson City Council Chambers on April 30, 2008 at 6:00 p.m. Those in attendance were John T. Evans, Chairman, Troy Adams, Eric Brown, Cary Brown, and Bill Sheward.

Mr. Evans called the meeting to order, the first order of business was to discuss j-turns. Mr. Evans stated this is a problem, but not sure how to deal with it. Mr. Eric Brown suggested putting up signs to notify the public. Mr. Sheward stated he witnessed three vehicles doing j-turns at the post office today around 4:00. Mr. Adams suggested attaching the signs to the light poles. Mr. Evans stated this needs to be city wide, and the police need to enforce. Ms. Uribe has never reported on the issues discussed at the last meeting, he feels they are turning a blind eye to minor traffic violations, including the 2 hour parking. Mr. Sheward stated the signs are in place, not sure of the status. Mr. Evans stated he would like to see a list of the traffic citations issued in the past 60 days, maybe even a monthly report. Mr. Eric Brown asked if she could be written up for not giving the reports. Mr. Evans stated he would have Mr. Sheward look into purchasing signs, and get the newspapers to do a story. Mr. Sheward stated he will ask for the reports. Mr. Eric Brown stated we could ask the sheriff to request that the State Patrol only patrol the state routes in our community.

Mr. Evans reported that the next order of business was making Chestnut Street, from Tropic Street to Huron Street one way. The residents of this area would like it to be one-way; it is not wide enough to handle two way traffic. As of now, there is no opposition, but they have requested that we wait until school is out for the season. The committee was in agreement to recommend. Mr. Evans stated that Mr. Sheward could do this with no ordinance. Mr. Eric Brown noted that we would be extending the one way that currently runs from South Street to Tropic Street.

Mr. Evans stated that this committee was requested to review enacting a policy in regards to drive off's at local filling stations. Mr. Eric Brown stated he did not feel the committee or council needed to be involved in this. Mr. Evans stated that an owner wanted an ordinance requiring prepayment on fuel. The committee was in agreement not become involved.

Mr. Cary Brown had a complaint in regards to an issue involving his son and nephew at their Putnam Street address, stating that the police had failed to arrest a disorderly female who had broken windows and personal property. Mr. Evans stated that the residents would need to make a formal complaint against the department and forward it to Mr. Sheward.

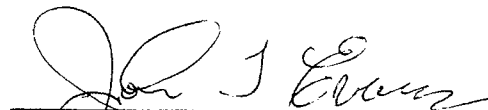
Meeting adjourned at 6:30 p.m.

APPROVAL:



Tera Brown  
Council Clerk

5-12-08  
Date



John T. Evans  
Chairman, Police, Fire & Traffic Committee

5-12-08  
Date