

## CITY COUNCIL MEETING MINUTES FROM JANUARY 13, 2009

The Regular Meeting was called to order by Mayor Peter J. Strazdas at 7:30 p.m.

Mayor Strazdas asked that City Clerk James Hudson perform the duties of swearing in Ted W. Vliek as Councilman, and the City Clerk called the roll with the following members present: Councilmembers Elizabeth A. Campbell, Margaret E. O'Brien, Claudette S. Reid, Terry R. Urban and Ted W. Vliek, Mayor Pro Tem Edward J. Sackley and Mayor Peter J. Strazdas. Also in attendance were City Manager Maurice S. Evans, City Attorney Randy Brown and City Clerk James R. Hudson.

Mayor Strazdas introduced Pastor Steve Nichols of Berean Baptist Church of Portage, who gave the invocation and the City Council and the audience recited the Pledge of Allegiance.

**PROCLAMATION:** Mayor Strazdas issued a National Mentoring Month, January 2009, Proclamation.

**APPROVAL OF MINUTES:** Motion by Urban, seconded by Reid, to approve the December 16, 2008 Regular Meeting Minutes as presented. Upon a voice vote, motion carried 4 to 0 with Councilmembers Reid, Urban and Vliek abstaining.

\* **CONSENT AGENDA:** Mayor Strazdas asked Councilmember Reid to read the Consent Agenda. Councilmember Reid added Item K.1, Appointments to Various Boards and Commissions, and added two petition pages filed by property owners on Austin Lake on January 13, 2009, in support of Item E.2, Special Assessment Petition – Austin Lake South West Bay, to the Consent Agenda. Councilmember Urban asked that Item E.2, Special Assessment Petition – Austin Lake South West Bay, be removed from the Consent Agenda. Attorney Trudy Luedecking, representing McDonald's Towing & Rescue, Inc., asked that Item G.2, Communication from James Graham, Graham's Towing, 7060 South Westledge Avenue, dated January 1, 2009, be removed from the Consent Agenda. Motion by Urban, seconded by O'Brien, to approve the Consent Agenda motions as amended. Upon a roll call vote, motion carried 7 to 0.

\* **APPROVAL OF CHECK REGISTER OF JANUARY 13, 2009:** Motion by Urban, seconded by O'Brien, to approve the Check Register of January 13, 2009. Upon a roll call vote, motion carried 7 to 0.

### **PUBLIC HEARING:**

**REZONING APPLICATION #08-01: 8232-8726 PORTAGE ROAD AND 2250 CORSTANGE ROAD:** Mayor Strazdas introduced Community Development Director Jeffrey Erickson, who presented maps for reference and indicated that Rezoning Application #08-01 involves several properties located along the west side of Portage Road in the 8000 block and 2250 Corstange Road, that the applicants requested that the property be rezoned from R-1B, one family residential, and P-1, vehicular parking, to B-3, general business, in order to increase the depth of the business zoning and facilitate commercial redevelopment and/or expansion. Mr. Erickson also indicated after reviewing the application, existing development and the surrounding zoning pattern, the area to be rezoned was expanded to include a total of 23 parcels along the west side of Portage Road between Prosperity Drive and Forest Drive.

Mr. Erickson pointed out that the Community Development Department report of November 14, 2008, recommended that the property be rezoned B-3, general business, with the exception of the western 50 feet of the 22 Portage Road properties to remain R-1B, one family

residential, to allow for a buffer/transition area to protect the adjacent single-family neighborhood and 2250 Corstange Road and the Planning Commission concurred. He also pointed out that the Planning Commission recommended that the north 50 feet of 8232/8302 Portage Road, adjacent to 2255 Corstange Road, be retained as additional buffer areas and the City Administration concurred.

Discussion followed regarding building setback and parking area requirements, buffer zone, loading areas, district boundaries versus property lines and business development. In response to Mayor Pro Tem Sackley Mr. Erickson said that the owner asked that 2250 Corstange Road not be rezoned, that it was vacant, has a sewer lead, meets minimum requirements and is buildable, even though a variance for the rear and side yards would be necessary. Discussion followed.

Councilmember Vliek indicated opposition to buffer areas, especially with the properties on Oakside Street since some of those properties have a depth of 600 feet, and the request is to add another 50 feet. Mr. Vliek considers it an insidious form of eminent domain taking since the property owner still has to pay taxes on property with little or no use. Mr. Erickson indicated that the Planning Commission and City Council have carefully reviewed and discussed buffer areas on many occasions. He indicated that the Planning Commission can approve the use of the buffer area for some purposes (such as landscaping, fence, berm, water retention or transitional areas) and, even though there are some properties with 600 feet of depth, some residential property owners have built their homes quiet deeply into their parcels. He cited the petition circulated by residential property owners that requested 75 feet and pointed out that the 50 feet of buffer reflects a compromise. Discussion followed regarding prior buffers approved by City Council.

City Attorney Randy Brown indicated that the comment, “the 200 feet of buffer was being reduced to 50 feet of buffer” is not legally what was in effect happening. Mr. Brown advised City Council that once they consider rezoning these properties to B-3, the residential property owners have a right to 50 feet of buffer or to negotiate. Mr. Brown also advised City Council that they need to keep the buffer at the lowest restrictive number of feet possible to achieve the goal of providing a buffer to protect the properties. Discussion followed. Mayor Strazdas opened the public hearing.

There being no further comment, motion by Vliek, seconded by Campbell, to close the public hearing. Upon a voice vote, motion carried 7 to 0. Discussion followed.

Motion by Urban, seconded by Reid, to amend Article 4, Zoning of Chapter 42, Land Development Regulations, and rezone the 22 Portage Road properties to B-3, general business, with the following exceptions: the west 50 feet of the 22 properties; the north 50 feet of 8232/8302 Portage Road; the south 50 feet of 8502 Portage Road; 2250 Corstange Road; and the north 50 feet of 8620 Portage Road. Discussion followed regarding the addition of the north 50 feet of 8620 Portage Road, consistency in zoning and establishing buffers to protect residential properties and balancing the needs of residential and commercial properties. Upon a roll call vote, motion carried 5 to 2. Yeas: Councilmembers Campbell, Reid, Urban, Mayor Pro Tem Sackley and Mayor Strazdas. No: Councilmembers O’Brien and Vliek.

**PETITIONS AND STATEMENTS OF CITIZENS:** Fire Captain Rick Nason, President of the Portage Professional Firefighters Association, spoke in memory of Firefighter Brad Wilson, who recently passed away, and thanked Mayor and City Council, city administration and area fire departments from Texas, Oshtemo and Comstock Townships for their tribute and support. Mayor Strazdas called for a moment of silence and thanked Rick for coming out.

Attorney Trudy Luedeking, representing McDonald’s Towing & Rescue, Inc., P.O. Box 593, Kalamazoo, invited City Council and city staff to visit McDonald’s Towing on Interstate Parkway and review the operations there to satisfy themselves that Craig McDonald operates a reputable business and is in compliance with the towing contract. Mayor Strazdas asked her to come back when City Council addresses Item G.2, Communication from James Graham, Graham’s Towing, 7060 South Westnedge Avenue, dated January 1, 2009. She agreed.

\* **SPECIAL ASSESSMENT PETITION – SOUTH WESTNEDGE AVENUE FROM OSTERHOUT AVENUE TO SOUTHERN TERMINUS:** Motion by Urban, seconded by O’Brien, to defer action on the special assessment petition requesting establishment of a special assessment district on South Westnedge Avenue from Osterhout Avenue to the southern terminus of the roadway for the purpose of installing municipal water until owners of 60 percent of the frontage of property to be assessed register support of the petition. Upon a roll call vote, motion carried 7 to 0.

**SPECIAL ASSESSMENT PETITION – AUSTIN LAKE SOUTH WEST BAY:** Councilmember Urban reviewed the petition and City Council and City Attorney Brown discussed the existence of the Austin Lake Board. He asked for an investigation of the Austin Lake Board to determine whether the statutory governmental Austin Lake Board exists, the appropriateness of the CLEAN FLO aeration technology by Lake Savers, Inc., and the need for a special assessment to be linked proportionately to the added value of the properties. Discussion followed. Motion by Urban, seconded by Vlieg, to refer the special assessment petition in favor of creating a special assessment district on Austin Lake for the purpose of installing and maintaining aeration equipment in the Austin Lake South West Bay to the City Administration for review and report. Discussion followed. Upon a roll call vote, motion carried 7 to 0.

#### **REPORTS FROM THE ADMINISTRATION:**

\* **CITY COUNCIL CODE OF ETHICS AND VALUES POLICY:** Motion by Urban, seconded by O’Brien, to adopt the City of Portage City Council Code of Ethics and Values Policy. Upon a roll call vote, motion carried 7 to 0.

\* **SUBDIVISION SIGN IN THE PUBLIC RIGHT-OF-WAY:** Motion by Urban, seconded by O’Brien, to approve the installation of a Steeplechase Subdivision sign and associated improvements in the public right-of-way and authorize the City Manager to execute the Streetscape Enhancement Agreement on behalf of the city. Upon a roll call vote, motion carried 7 to 0.

\* **NONPROFIT ORGANIZATION RECOGNITION:** Motion by Urban, seconded by O’Brien, to adopt the Resolution for Charitable Gaming License recognizing the Portage Rotary as a nonprofit organization in the City of Portage. Upon a roll call vote, motion carried 7 to 0.

#### **COMMUNICATIONS:**

**DENISE CLEGG, ENVIRONMENTAL BOARD CHAIRPERSON:** At the request of Mayor Strazdas, City Manager Maurice Evans summarized the Environmental Board Purple Loosestrife Program 2008 Annual Report. Mr. Evans described Purple Loosestrife “PLS” as an invasive species native to Europe and Asia that has been found on the shores of Portage lakes, channels, wetlands and the banks of the Portage Creek. Mr. Evans explained the Environmental Board effort initiated in April 2001 utilizing the European species of the Galerucella beetle that has been purchased from an out-of-state source and shipped to Vicksburg High School where they were kept in a greenhouse until mid-June then sold to members of a consortium headed by Kalamazoo Nature Center. Mayor Strazdas referenced and described the photographs presented in the report that are taken every August to reflect visual changes in PLS density that reflected most sites are now at a “mild infestation” level. Motion by Sackley, seconded by Reid, to receive the communication from Denise Clegg, Chairperson of the Portage Environmental Board, and her submittal of the 2008 Purple Loosestrife Program Report as information only. Upon a roll call vote, motion carried 7 to 0.

**JAMES GRAHAM, GRAHAM'S TOWING, 7060 SOUTH WESTNEDGE AVENUE, DATED JANUARY 1, 2009:** Attorney Trudy Luedeking, representing McDonald' Towing & Rescue, Inc., P.O. Box 593, Kalamazoo, invited City Council and city staff to visit McDonald's Towing on Interstate Parkway to inspect the facilities, the records, the impound lot and review the operations there to satisfy themselves that Craig McDonald is in compliance with the towing contract.

At the request of Mayor Strazdas, City Attorney Brown advised that, regarding the question of what is to be done upon reading this material and hearing other citizens who may wish to speak, he concurred with the City Manager recommendation to refer the matter to the City Administration for review and report for January 27, 2009 City Council Meeting for several reasons. Mr. Brown indicated that it is the customary action of City Council to hear complaints, to read materials submitted in the agenda and to listen to those wishing to speak and before taking any position is taken to refer the matter to the City Manager for a report. He emphasized that this is especially true where the material and the claims are directly related to city action and complaining about city action. Finally, he pointed out that City Council did not approve this contract, nor do they administer this contract, so it is important that City Council review the City Manager report before taking any action.

James Graham, 7060 South Westnedge Avenue, availed himself to City Council for any questions they may have. There being none, he clarified that his communication called for a compliance audit and, if Mr. McDonald is in compliance, that was fine with him; however, if he was not in compliance, he asked that he be compelled to be in compliance.

Ms. Trudy Luedeking reemphasized her earlier offer and the following individuals spoke favorably about Craig McDonald as a person and as a businessman: Travis Reist, 7435 Kingston Drive; Eric Kausrud, 8342 Glenwood Drive, Kalamazoo; Amy Nordquist, 5141 E FG Avenue, Kalamazoo; Larry Schmidt, 3510 Woodhams Avenue; Bob Kuehl, Harold Ziegler Auto Group, 4201 Stadium Drive, Kalamazoo; Debbie Feaster, 3601 Stadium Drive, Kalamazoo; and Daryl Luedeking, 10769 E DE Avenue, Richland.

James Chamness, Terry's Road Service, Inc., 5701 East Cork Street, Kalamazoo, indicated that Attorney Trudy Luedeking offered the documents to the city and indicated he has asked for many documents under the Freedom of Information Act, but the City of Portage has not provided all of them. He asked that a full audit be done and that he be allowed to look at the audit.

Motion by Sackley, seconded by Campbell, to refer the communication from James Graham, owner of Graham's Towing, expressing concerns regarding the current towing contract between the City of Portage and McDonald's Towing, dated January 1, 2009, to the City Administration for review and report, with the report to be included on the January 27, 2009, City Council Agenda. Upon a roll call vote, motion carried 7 to 0.

- \* **MINUTES OF BOARDS AND COMMISSIONS:** City Council received the minutes of the:
  - Portage Board of Education Policy Development Minutes of October 23, 2008.
  - Portage Board of Education Committee of the Whole of November 10, 2008.
  - Portage Environmental Board of November 12, 2008.
  - Portage Park Board of December 3, 2008.
  - Kalamazoo County Board of Commissioners Committee of the Whole and Regular of December 16, 2008.

#### **NEW BUSINESS:**

- \* **APPOINTMENTS TO VARIOUS BOARDS AND COMMISSIONS:** Motion by Urban, seconded by O'Brien, to reappoint William Stannard with term ending January 31, 2012, to the Board of Review; to reappoint Robert Atkins, with term ending February 28, 2012, appoint Lowell Seyburn with term ending February 28, 2012, reappoint Lincoln Lewis with alternate term ending February 28, 2012, and appoint Marianna Singer with unfulfilled alternate term ending February 28, 2011, to the Zoning

Board of Appeals; to appoint Marc Meulman with unfulfilled term ending October 1, 2011, to the Human Services Board; to appoint Nicoara Oprescu with unfulfilled term ending October 1, 2009, and Diane Durian with unfulfilled alternate term ending October 1, 2010, to the Senior Citizens Advisory Board; to appoint Janet Luchies with unfulfilled term ending October 1, 2011, to the Park Board; to appoint Bill Schwartz with unfulfilled term ending October 1, 2011, to the Environmental Board; and to appoint Michelle Dunlap and Robert ElHenicky with terms ending December 31, 2011, to the Historic District Commission. Upon a roll call vote, motion carried 7 to 0.

### **BID TABULATIONS:**

\* **QUARTERLY BRUSH PICKUP PROGRAM:** Motion by Urban, seconded by O'Brien, to award a three-year contract to B&B Yardscape to provide quarterly brush pickup services in the annual not-to-exceed amount of \$83,600 for Fiscal Years 2009-10, 2010-11 and 2011-12 and authorize the City Manager to execute all documents related to this contract on behalf of the city. Upon a roll call vote, motion carried 7 to 0.

\* **OHIO AVENUE LIFT STATION RENOVATIONS:** Motion by Urban, seconded by O'Brien, to award an engineering services contract for the Ohio Avenue Lift Station Renovations to the low bidder, Kingscott Associates, Incorporated, in the not-to-exceed amount of \$23,390 and authorize the City Manager to execute all documents related to the contract on behalf of the city. Upon a roll call vote, motion carried 7 to 0.

\* **LEXINGTON GREEN DRAINAGE CHANNEL IMPROVEMENTS:** Motion by Urban, seconded by O'Brien, to award a construction contract for the Lexington Green Drainage Channel Improvements to the low bidder, JMB Demolition, LLC, in the amount of \$14,944 and authorize the City Manager to execute all documents related to the contract on behalf of the city. Upon a roll call vote, motion carried 7 to 0.

### **OTHER CITY MATTERS:**

**STATEMENTS OF CITY COUNCIL AND CITY MANAGER:** Mayor and City Council welcomed Councilmember Vliek back.

Councilmember Reid thanked Police Detective Matt Wolfe, city staff, and City Council for their support during a family emergency before the December 16, 2008 City Council Meeting. She announced the Park Board Four Season Photo Contest for pictures taken between January 1, 2009, through December 31, 2009, within the Portage Parks system. She indicated she was honored to accept the Promoting Active Communities Award, Gold Level (cities are those that provide outstanding achievements in making it easy for people to be active which is easily proven in Portage) on December 3, 2008, on behalf of the City of Portage from the Governor's Council on Physical Fitness, Health and Sports.

Councilmember Vliek commended Sean McBride, the City Council Ethics Policy Committee and the City Attorney for the City Council Code of Ethics and Values Policy. Mayor Strazdas concurred and thanked Councilmember Vliek for bringing it up.

Councilmember O'Brien thanked the applicants for City Council Boards and Commissions who attended the Special Meeting that began at 5:30 p.m. and she and Mayor pro Tem Sackley recognized Representative-elect Larry DeShazor in the audience.

City Manager Evans applauded the efforts of Chief Information Officer/Technology Director Devin Mackinder and Administrative Assistant Mary Beth Block for their work on the city log and for receiving the MarCom Gold Award for "Rebranding of Marketing Materials" initiative completed in 2008. Mr. Evans also reviewed the snowplow operation as outlined in the November 2008 *Portager*.

Mayor Pro Tem Sackley reminded everyone to clear the snow from their sidewalks and thanked City Attorney Brown for his assistance with the City Council Code of Ethics and Values Policy. Mayor Strazdas announced that Mayor and Council for the day will take place January 27, 2009, and listed some changes in the community and some ongoing engagements.

**ADJOURNMENT:** Mayor Strazdas adjourned the meeting at 9:44 p.m.

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James R. Hudson, City Clerk

**\*Indicates items included on the Consent Agenda.**