

## CITY COUNCIL MEETING MINUTES FROM JANUARY 27, 2009

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

Mayor Strazdas provided a review of the Mayor and City Council for the Day Program and called forth the students who were voted Student Councilmembers for the Day, from Portage Northern High School: Becky Thomason, Alex Hicks and Bryce Maurer, and from Portage Central High School: Patrick Drabik, Chase Maser and Karina Pone, and City Clerk James R. Hudson administered the Oath of Office to those Student Councilmembers who were present. Mayor Strazdas then called forth the student who was voted Student Mayor for the Day, Julia Bragagnini, and Mr. Hudson administered the Oath of Office to her. The Student Mayor and Student Councilmembers took their seats at the dais.

Mayor Strazdas also introduced Portage Northern Student Advisor Rick Searing, Portage Central Student Advisor Mark Sutherland, Portage Public Schools Superintendent Marsha Wells and Board of Education President Shirley Johnston.

Student Mayor Bragagnini introduced Youth Pastor Bear Ryggs of the Centre Avenue Community Church of God of Portage, who gave the invocation and the City Council, the Student City Council and the audience recited the Pledge of Allegiance.

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 Randall Brown and City Clerk James R. Hudson.

The City Clerk called the Student Mayor and Student Councilmember roll with the following members present: Student Councilmembers Alex Hicks, Bryce Maurer and Karina Pone, and Student Mayor for the Day, Julia Bragagnini. Student Councilmembers for the Day Becky Thomason, Patrick Drabik and Chase Maser were absent with excuse.

**APPROVAL OF MINUTES:** Motion by O'Brien, seconded by Sackley, to approve the January 13, 2009 Special Meeting Minutes as presented. Upon a voice vote, motion carried with Councilmember Vliek abstaining. Motion by Sackley, seconded by Urban, to approve the January 13, 2009 Regular Meeting Minutes as presented. Upon a voice vote, motion carried 7 to 0.

\* **CONSENT AGENDA:** Student Mayor Bragagnini asked all of the Student Councilmembers to share in the reading of the Consent Agenda. Jim Pearson, 3004 East Shore Drive, asked that Item F.1, Austin Lake Special Assessment Petition, be removed from the Consent Agenda. James Graham, 2761 Burnock Drive, asked that Item F.7, Response to Graham's Towing Communication of January 1, 2009 – Information Only, be removed from the Consent Agenda. Motion by Urban, seconded by Reid, to approve the Consent Agenda motions as amended. Upon a roll call vote, motion carried 7 to 0.

\* **APPROVAL OF CHECK REGISTER OF JANUARY 27, 2009:** Motion by Urban, seconded by Reid, to approve the Check Register of January 27, 2009. Upon a roll call vote, motion carried 7 to 0.

**PETITIONS AND STATEMENTS OF CITIZENS:** Received an update from Amanda Matthews, 5631 Cheshire Street, of Goodwill Industries regarding Portage Public High School students who have benefitted from the Goodwill Industries Retail Work Experience Program. Discussion followed.

Bob Hassing, 1821 Milham Avenue, complained that he received a sidewalk snow-clearing notice, had made a reasonable effort to remove the snow, asked City Council to have his sidewalk cleared for him and to check on a Parks Department truck that drives on his sidewalk packing the snow. Discussion followed. Mayor Strazdas asked the Administration to review the complaint that city vehicles are packing down snow and to alter the process as necessary. Discussion followed. Councilmember Vliek indicated that he is vehemently opposed to the city position on snow removal on sidewalks since the city insists that the sidewalk be built, then dump snow on the sidewalk from the street, then insist that the property owner remove the snow. Mayor Strazdas indicated that the frustration was how to pay for sidewalk snow removal. Discussion followed.

Mayor Pro Tem Sackley indicated that he assisted Dorothy Marusek, 6439 Oakland Drive, with snow removal, who had made a reasonable effort to remove the snow, but was unable to complete the job with the recent heavy snowfalls.

In answer to Councilmember O'Brien, City Attorney Brown confirmed that the city is liable for injuries resulting from the neglect to remove snow on sidewalks, and she concurred with Councilmember Vliek. Discussion followed. Mayor Strazdas encouraged Mr. Hassing to have further discussions with the Community Development Department regarding the issue.

## **REPORTS FROM THE ADMINISTRATION:**

**AUSTIN LAKE SPECIAL ASSESSMENT PETITION:** Jim Pearson, 3004 East Shore Drive, and Don Mordas, 10505 Woodlawn Drive, representing the Austin Lake Riparian Board, spoke in favor of a bubble water solution, aeration, to the Southwest Bay of Austin Lake. Mr. Pearson summarized some of the history outlined in the City Manager communication dated January 23, 2009, the petition circulation process that he followed and the results of the petition as reported by the City Assessor. Discussion followed, including that the city incurs the responsibility, as well as the liability, for bidding and supervising public improvement projects, and the fact that the City Assessor must establish a reasonable relationship between the cost of the improvement and the increase in market value of the assessed property which is problematic for properties on a lake.

Mr. Pearson indicated he had just received some reports from staff that he had not yet had time to read; that he would like the City Council to give him time to send the petition back to the Austin Lake Riparian Board; that he would like time to work with city staff; and he asked that City Council not take action on the matter at this time. Discussion followed.

Councilmember Urban indicated that he was the City Council Representative on the Long Lake Board and Chairperson and outlined the benefits of having a statutory lake board instead of a riparian lake board. Discussion followed.

City manager Maurice Evans acknowledged that the Austin Lake Riparian Board is well intentioned, but past city involvement with a variety of lake improvement efforts leaves the City Administration with the opinion that the appropriate approach for addressing lake-related improvements is through the Lake Board as authorized in the Inland Lake Improvement Act. Discussion followed.

Mayor Pro Tem Sackley proposed the idea of setting up a private Limited Liability Corporation to accomplish the improvements taking the city out of the process. Discussion followed.

Motion by Urban, seconded by Reid, to reject the special assessment petition and direct future project requests for improving Austin Lake to the Statutory Lake Board for Austin Lake. Discussion followed. Upon a roll call vote, motion carried 7 to 0. Councilmember Urban offered his expertise and services to the Austin Lake Board.

\* **MICHIGAN DEPARTMENT OF TRANSPORTATION CONTRACT – WEST MILHAM AVENUE:** Motion by Urban, seconded by Reid, to approve Contract 08-5485 between the Michigan Department of Transportation (MDOT) and the City of Portage concerning funding for street and utility improvements on West Milham Avenue from Oakland Drive to west of Angling Road and adopt a resolution authorizing the City Manager to sign all documents on behalf of the city. Upon a roll call vote, motion carried 7 to 0. Resolution recorded on page 263 of City of Portage Resolution Book No. 43.

\* **KILGORE ROAD BRIDGE REPLACEMENT AND WEST MILHAM AVENUE - ANGLING ROAD TO 12<sup>TH</sup> STREET PROJECTS:** Motion by Urban, seconded by Reid, to approve the following change orders to Abonmarche Consultants, Incorporated, for design services related to the replacement of the Kilgore Road bridge structure for Portage Creek in the not-to-exceed amount of \$46,200; Driesenga and Associates, Incorporated, for design services related to street and utility improvements for West Milham Avenue from Angling Road to 12<sup>th</sup> Street in the not-to-exceed amount of \$85,584; and authorize the City Manager to execute all documents related to these change orders on behalf of the city. Upon a roll call vote, motion carried 7 to 0.

\* **CORE NETWORK SWITCH REPLACEMENT - EMERGENCY PURCHASE:** Motion by Urban, seconded by Reid, to approve the Emergency Purchase to replace the malfunctioning Cisco 4006 core network switch at a cost of \$40,976.60 and authorize the City Manager to execute all documents related to this action on behalf of the city. Upon a roll call vote, motion carried 7 to 0.

\* **2009 BOARD OF REVIEW RESOLUTION:** Motion by Urban, seconded by Reid, to adopt the resolution setting the dates and times for the March 2009 Board of Review sessions. Upon a roll call vote, motion carried 7 to 0. Resolution recorded on page 265 of City of Portage Resolution Book No. 43.

\* **SOUTH COUNTY SEWER AND WATER AUTHORITY REQUEST FOR A FLOW-THROUGH AGREEMENT:** Motion by Urban, seconded by Reid, to set a Special Meeting on Saturday, February 14, 2009, City Council Chambers, beginning at 9 a.m. to receive public comment and discuss the request from the South County Sewer and Water Authority for a sanitary sewer transportation flow-through agreement connection to the Portage Creek Trunk Sewer. Upon a roll call vote, motion carried 7 to 0.

**RESPONSE TO GRAHAM’S TOWING COMMUNICATION OF JANUARY 1, 2009 – INFORMATION ONLY:** James Graham, 2761 Burnock, Graham’s Towing, Wedway, Inc., 7060 South Westnedge Avenue, asked a series of over 80 questions of City Manager Evans regarding matters surrounding the McDonald’s Towing Contract with the city. City Manager Evans asked whether it is appropriate for Mr. Graham, as a competing vendor and because of the nature of the line of questioning, to ask these questions at this time. Discussion followed. City Attorney Randy Brown advised that Mr. Graham has the floor and can ask the questions; that it is appropriate not to answer his questions; that he received answers to questions in the response from the City Manager dated January 23, 2009; and, that it is inappropriate for any citizen to “cross examine” City Council or the City Manager. Discussion followed. Mr. Brown stressed that either the questions have already been answered; that there is no need to answer these questions; and that City Council could direct the City Manager to provide a response or not. Discussion followed.

Mayor Strazdas allowed Mr. Graham to ask the questions with the understanding that the City Manager would answer one or all of the questions deemed appropriate at the end of the questioning. Mr. Graham commenced asking over 80 questions and asked that City Council engage a third party to review the contract between McDonald’s Towing and the City of Portage. Discussion followed.

City Attorney Brown indicated that the city has complied with all topics regarding the Freedom of Information Act in every respect; that appeals have been heard and decided and those matters are over with Mr. Graham able to go to Circuit Court. Mr. Brown also indicated that the closed session was held appropriately; and, that the city had adhered to the Open Meetings Act. He also pointed out that no public funds are being expended for this contract; that the contract is being administered by staff; and that the report and response of the administration completely answers the first complaint submitted by Mr. Graham. He also admonished City Council that the questions from Mr. Graham are in the form of deposition questions in anticipation of a lawsuit instead of questions to get information, so the questions can be read and reviewed, and the Administration can respond internally by taking action with regard to administering the contract. It is appropriate for the Administration to take the information from Mr. Graham and respond by changing internal practices, if necessary, but this is not the proper forum for this kind of discussion, and, if Mr. Graham has these kinds of complaints, his recourse is litigation.

City Manager Evans indicated that, in light of the report dated January 23, 2009, the city has been responding to numerous requests from Mr. Graham, and it seems no matter what response is given, he is not satisfied with the answers. For the information of City Council and the public, regardless of what Mr. Graham stated tonight, when he did not get the contract, we had conversations, e-mail conversations, in regard to the contract itself and not adhering to the specifications. This was pre-Christmas and Mr. Graham called to indicate that he realized he was not going to get the contract, but he said, almost verbatim, that he is going to be the biggest pain in the butt the city has ever had. And because of that, the city has been going through literally hundreds of hours of staff time which is inappropriate, and to continue with answering questions is folly and inappropriate, because the contract is being administered appropriately; the vendor is doing an outstanding job; we have a seasoned contract administrator in this area. Mr. Graham is taking exception to contract administration; he is interpreting the contract; he wants to do it his way. The contract is being carried out and we have great contract administration.

Mayor Strazdas deferred to City Attorney Brown, who indicated that a complaint is generally submitted to the City Manager the first time, but not always. He used the example of a property interest in 2008 that was not referred to the City Administration at all. Mr. Brown also indicated that it was at the discretion of City Council to refer a matter to the City Administration; that the City Council does not have to refer matters to the City Manager; and, that matters can be submitted to the City Manager for review, but not necessarily for a response. Discussion followed.

Motion by Sackley, seconded by O'Brien, to receive the communication from the City Manager in response to a communication from James Graham, dated January 1, 2009, expressing his concerns regarding the current towing contract between the City of Portage and McDonald's Towing as information only. Upon a roll call vote, motion carried 7 to 0.

\* **DECEMBER 2008 SUMMARY ENVIRONMENTAL ACTIVITY REPORT – INFORMATION ONLY:** Motion by Urban, seconded by Reid, to receive the communication from the City Manager regarding the December 2008 Summary Environmental Activity Report as information only. Upon a roll call vote, motion carried 7 to 0.

\* **DEPARTMENT MONTHLY REPORTS:** Motion by Urban, seconded by Reid, to receive the Department Monthly Reports from the various city departments. Upon a roll call vote, motion carried 7 to 0.

**STATEMENTS OF STUDENT MAYOR AND STUDENT CITY COUNCIL FOR THE DAY:** At the request of Mayor Strazdas, the Student Councilmembers and the Student Mayor expressed their appreciation for the opportunity to participate in the Student Council and Mayor for the Day Program. Each of them indicated that the experience was rewarding and enlightening.

**COMMUNICATION:**

**MARK REILE, HISTORIC DISTRICT COMMISSION CHAIRPERSON:** City Council took no action or discussion on the communication from Mark Reile, Historic District Commission Chairperson, regarding the Historic District Commission meeting time.

- \* **MINUTES OF BOARDS AND COMMISSIONS:** City Council received the minutes of the:  
Portage Historic District Commission of November 5, 2008.  
Portage Senior Citizen Advisory Board of December 17, 2008.  
Kalamazoo County Board of Commissioners Organizational of January 6, 2009.

**OTHER CITY MATTERS:**

**STATEMENTS OF CITY COUNCIL AND CITY MANAGER:** Mayor, City Council and City Manager Maurice Evans expressed their appreciation to the students who participated in the Student Council and Mayor for the Day Program. Councilmember O'Brien and Mayor Pro Tem Sackley expressed appreciation to city staff for their efforts with regards to the Student Council and Mayor for the Day Program.

Councilmember Vlieg expressed concern regarding the increase in vehicular/deer accidents in the Police Department Monthly Report and City Manager Evans acknowledged it was a tough issue, that he has a report, but has not decided how to present it to City Council as yet. Mayor Pro Tem Sackley concurred.

City Manager Evans expressed appreciation to Tom Haroldson from the Gazette for his interest and efforts in the Student Council and Mayor for the Day Program.

Mayor Pro Tem Sackley asked to be excused from the next Regular City Council Meeting of February 10, 2009.

**ADJOURNMENT:** Mayor Strazdas adjourned the meeting at 9:57 p.m.

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James R. Hudson, City Clerk

\*Indicates items included on the Consent Agenda.