

## CITY COUNCIL MEETING MINUTES FROM APRIL 14, 2009

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

The City Clerk called the roll with the following members present: Councilmembers Elizabeth A. Campbell, Margaret E. O'Brien, Terry R. Urban and Ted W. Vliek, Mayor Pro Tem Edward J. Sackley and Mayor Peter J. Strazdas. Councilmember Claudette S. Reid was absent with excuse. Also in attendance were Deputy City Manager Brian J. Bowling, City Attorney Randall Brown and City Clerk James R. Hudson.

**APPROVAL OF MINUTES:** Motion by O'Brien, seconded by Sackley, to approve the March 24, 2009 Special Meeting Minutes as presented and the March 24, 2009 Regular Meeting Minutes as amended. Upon a voice vote, motion carried 6 to 0.

\* **CONSENT AGENDA:** Mayor Strazdas asked Mayor Pro Tem Sackley to read the Consent Agenda. Lynn Elliott, 9724 East Shore Drive, and John Crago, 9728 East Shore Drive, Acting President of the Austin Lake Riparian Board, asked that Item F.3, Dissolution of the Lake Board of Austin Lake, be removed from the Consent Agenda. Motion by Vliek, seconded by Sackley, to approve the Consent Agenda motions as amended. Upon a roll call vote, motion carried 6 to 0.

\* **APPROVAL OF CHECK REGISTER OF APRIL 14, 2009:** Motion by Vliek, seconded by Sackley, to approve the Check Register of April 14, 2009. Upon a roll call vote, motion carried 6 to 0.

### **PUBLIC HEARING:**

#### **ORDINANCE AMENDMENT #08-B, LAND DEVELOPMENT REGULATIONS:**

Mayor Strazdas opened the public hearing and introduced Community Development Director Jeffrey Erickson, who provided an overview of the proposed amendments to the Land Development Regulations. Mr. Erickson explained the reasoning behind the new Public Acts 110 of 2006, 219 of 2007, 12 of 2008 and 33 of 2008, as outlined in City Manager Maurice Evans communication to City Council dated March 2, 2009. He indicated that these new zoning and planning statutes have necessitated amendments to the City of Portage Land Development Regulations, including Article 4, the Zoning Ordinance, and Article 5, the Subdivision and Land Division Ordinance, as prepared by the City Administration and the City Attorney and presented to City Council in the April 14, 2009 Agenda Packet. Mr. Erickson gave further information regarding the process followed by the Planning Commission as outlined in his letter to the City Manager dated March 2, 2009, and, as a result, minor changes were necessary to various other sections of the City of Portage Land Development Regulations.

With regards to Subdivision 3. R-1T Attached Residential District, Section 42-201, Principle Permitted Uses, Councilmember Urban expressed his surprise that a group childcare home was allowed in an attached residential property as it seemed at odds with the idea that it is a special use in a detached residential district and is a principle permitted use in an attached residential district, especially with private home facilities that are licensed as distinguished from apartment dwellings. Mr. Erickson explained. Discussion followed.

Mayor Strazdas opened the public hearing for discussion from the audience. There being no discussion, motion by Campbell, seconded by O'Brien, to close the public hearing. Upon a voice vote, motion carried 6 to 0. Motion by O'Brien, seconded by Campbell, to approve an Ordinance to amend the Code of Ordinances by amending Chapter 42, Land Development Regulations, Section 42, Subsections 31-34, 112, 181, 182, 201, 221, 545, 548, 623, 650, 651, 658 and 772. Upon a roll call vote, motion carried 6 to 0. Ordinance recorded on page 101 of City of Portage Ordinance Book No. 12.

## **REPORTS FROM THE ADMINISTRATION:**

**PRESENTATION OF THE FISCAL YEAR 2009-2010 PROPOSED BUDGET:** At the request of Mayor Strazdas, Deputy City Manager Brian Bowling presented the proposed 2009-2010 Fiscal Year Budget to City Council. He highlighted the City Manager Budget Letter dated April 15, 2009, as follows:

The fiscal year 2009-2010 proposed budget has been developed and is presented in accordance with the requirements of the Portage City Charter. Pursuant to the Goals and Objectives adopted by the Portage City Council, the fiscal year 2009-2010 proposed budget has been developed to: maintain a low overall city tax rate of 10.6598 mills; continue to direct an additional 0.20 percent of General Fund revenue to the support of human service programs, with a total of 0.75 percent of General Fund revenues being provided for this purpose in the fiscal year 2009-2010 proposed budget; continue the investment in infrastructure important for future economic expansion and quality of life aspects as outlined by participants in the Portage 2025 Community Visioning Project; position the city to sustain an ongoing period of economic recession through maintenance of the Council-prescribed 13 percent fund balance for the General Fund; and allow the City of Portage to continue in the lower 25 percent of all Michigan cities of greater than 25,000 population in terms of millage level.

With the continuing impact of the recession, expenditures have been aggressively managed over the past year to ensure the most appropriate application of resources. Of particular note: total full time staffing has been reduced an additional approximate 5 percent to 197 positions from 207 positions in fiscal year 2008-2009 (and from 213 positions in fiscal year 2007-2008); the city changed health insurance providers for non-union and International Association of Fire Fighter (IAFF) employees to avoid a 28 per cent increase in premiums by the former carrier; funding for landscaping and grounds maintenance was reduced in the areas of flowers, tree plantings, mowing services and holiday decorations; mid-year budget reductions were implemented across all city departments to offset revenue shortfalls being experienced in several areas; the size of the city vehicle fleet continues to be reduced; the Brush Pickup Program has been restructured to a quarterly pickup program from a monthly pickup program, (to begin July, 2009) to ensure more cost-effective service delivery.

Anticipated American Recovery and Reinvestment Act funding (i.e., Stimulus II) will provide for the next phase of the I-94 reconstruction project (Oakland Drive to Portage Road), redevelopment of the South Westnedge / I-94 interchange, improvements to Kilgore Road (South Westnedge Avenue to the Norfolk Southern Railroad crossing) and Centre Avenue (South Westnedge Avenue to Portage Road). This will relieve City of Portage taxpayers of some \$2.5 million of direct expenditures.

Underlying budgeting issues continue for the city: wastewater treatment charges from the City of Kalamazoo continue to increase as flows to the treatment facility decline; interest/investment income to the city has been substantially reduced as the city has shifted assets to very secure (but low interest bearing) investments; Act 51 revenue, utilized to address street related expenses, continues to decline; building permit revenue has been halved; property valuations are projected to continue to decline. The total millage levy recommended through the fiscal year 2009-2010 proposed budget is 10.6598 mills, a continuation of the fiscal year 2008-2009 millage level and the maintenance of a 13% ending fund balance as prescribed by City Council.

As directed by City Council, the expanded level of General Fund support for human service programs has been provided for the third and final consecutive year in the fiscal year 2009-2010 proposed budget. An appropriation of \$174,642, representing 0.75 percent of fiscal year 2009-2010 General Fund revenues, in addition to \$38,000 of Community Development Block Grant funds, is proposed for allocation to human service agencies. In the fiscal year 2009-2010 proposed budget, \$165,447 of this total amount of human service funding has been recommended by the City Administration for support of the Portage Community Center. Continued support through the General Fund of the Portage Senior Citizen Center has also been included at a subsidy of approximately \$142,000.

Infrastructure improvements outlined in the fiscal year 2009-2010 proposed Capital Improvement Budget address economic growth and infrastructure replacement needs. In total, the fiscal year 2009-2010 proposed Capital Improvement Budget supports approximately \$11.7 million in infrastructure improvements. Of this total, approximately \$3.4 million is directed to street related improvements and approximately \$2.2 million is recommended in utility infrastructure improvements.

With the water and sewer rate adjustments proposed for 2009-2010, the impact upon the typical residential customer having both municipal water and sewer utilities will be an increase of approximately \$6 per month.

In summary, the fiscal year 2009-2010 proposed budget supports continuation of service delivery and capital investments necessary for the city to achieve the future envisioned by residents participating in the Portage 2025 Community Visioning Project. The city has been able to adjust to significant revenue reductions over the past several years with minimal impact on service levels. However, it should be recognized that further revenue restrictions will impact upon service delivery as staffing levels are further reduced.

The fiscal year 2009-2010 proposed budget maintains the favorable position of the City of Portage being in the lower 25% of all Michigan cities of greater than 25,000 population in terms of millage level. This conservative financial plan is recommended to the City Council as a responsible and sound program for addressing community needs at this time.

Mr. Bowling invited the public to attend the Budget Work Sessions of April 21, 2009, and May 5, 2009, from 6 p.m. to 9 p.m. and the public hearing proposed for May 12, 2009. He also pointed out that the budget will be available on line at the close of business, April 16, 2009, at [www.portagemi.gov](http://www.portagemi.gov). Mayor Strazdas commented further on various budget issues.

\* **2009 UTILITY RATE FINANCIAL STUDY:** Motion by Vliek, seconded by Sackley, to establish a public hearing for April 28, 2009, to consider resolutions to adopt a sewer commodity rate increase from \$3.58 to \$3.95 per 1,000 gallons of metered water; adopt a water commodity rate increase from \$2.20 to \$2.60 per 1,000 gallons of metered water; adopt the recommendation that adjustments be made to both the sewer and water basic quarterly charges; and adopt the recommended water and sewer franchise area fees and other service fees and charges as outlined in the 2009 Utility Rate Financial Study. Upon a roll call vote, motion carried 6 to 0.

**DISSOLUTION OF THE LAKE BOARD OF AUSTIN LAKE:** Mayor Strazdas asked those who wished to speak to this item restrict their comments to whether or not the City Council should set a public hearing for the purpose of considering the dissolution of the Lake Board of Austin Lake. He then invited everyone to feel free to ask any questions, or present them to the Administration in order that they may be addressed at the April 28, 2009 Regular City Council Meeting when and if a public hearing is held.

Lynn Elliott indicated that she met with City Manager Maurice Evans, Deputy City Manager Brian Bowling, City Attorney Randy Brown and Acting President of the Austin Lake Riparian Board John Crago, and provided records to the City Administration as requested. Ms. Elliott asked what law requires a public hearing for something that was dissolved seven and one-half years ago and when did the law go into effect?

Mayor Strazdas sought and received agreement from Ms. Elliott that the governmental lake board was created and that the governmental lake board “at your level” (sic) voted to dissolve itself. Discussion followed. Mayor Strazdas then asked City Attorney Brown to explain what was the next step in the process and why was it necessary.

Mr. Brown explained that these issues were discussed at the meeting referenced by Ms. Elliott. He reiterated that the law that requires that City Council adopt a resolution is the Inland Lake Improvement Act, that the law is in effect and, as long as it is in effect and City Council is acting today, it applies. Mr. Brown indicated that it requires a motion and a resolution of City Council to dissolve a

lake board and that it also requires a motion and a resolution of the active lake board to dissolve the lake

board. Mr. Brown indicated that in 2001, the Austin Lake Board moved to dissolve itself, but that is not enough (for proper dissolution of the Austin Lake Board). Mr. Brown also indicated that it is not enough in 2009 because the law also requires a motion and a resolution of City Council to dissolve the Austin Lake Board. He then said that even if Ms. Elliott is correct and the law should not be applied as it is today, but the law as it was in 2001 should be applied, the law in 2001 did not have a requirement at all regarding how to dissolve a lake board or a procedure to dissolve a lake board.

Mr. Brown pointed out that in 1979, City Attorney John Peters wrote to Department of Natural Resources (DNR) asking how to dissolve a lake board since the law did not provide the procedure, and the DNR wrote back that a motion by City Council was appropriate and that is how the board was dissolved in 1982. He said that the DNR indicated that several other municipalities also did it this way because the issue was not solved by the Act. He then pointed out that the section that sets forth the requirements on how to dissolve a lake board was added to the Act. He concluded by saying that, because of all of those reasons, it has to be done by City Council; it has to be by resolution; and, it has to be at a public hearing. Discussion followed.

John Crago indicated that he provided proof that the “dredging lake board” was officially disbanded by the group itself and disagreed with the City Attorney that it still exists. Mr. Crago expressed his belief that the lake board was disbanded and read from a letter on City of Portage letterhead that read that the city would continue to assist the lake board with the communication mailings to the property owners and the related activities, including board dissolution. He further expressed his disagreement that City Council action was necessary to disband the governmental lake board, and expressed his opinion that the current law, if applied, would be applied retroactively. He felt that the board was disbanded properly and legally, and argued that the law is being applied retroactively and disagreed that the opinion of the Department of Natural Resources applied.

Councilmember O’Brien asked Mr. Crago if he feels that the decision whether or not to proceed is the same as dissolving the lake board since he believes that the law stated that only the lake board can proceed. He answered in the affirmative and indicated that if the board does not proceed, the board is disbanded.

Councilmember O’Brien sought and received agreement from Mr. Crago that whether or not the city proceeds on a lake project, we do not know if that means dissolution because the law did not talk about dissolution at that time. He agreed, but reiterated his opinion that the board does not exist.

Mayor Pro Tem Sackley asked Mr. Crago if he gives any weight to the opinion from the 1979 DNR letter. Discussion followed. Mr. Crago ultimately answered in the negative and concluded that, as an individual lake resident, not as a representative of the Austin Lake Riparian Board, the proper procedure for him would be to hire an attorney and to go to court. After Mr. Crago admitted that the letter from the city that indicated that the city would continue to assist the lake board with the communication mailings to the property owners and related activities, including board dissolution, came after the governmental lake board voted to dissolve itself, Mayor Pro Tem Sackley asked why would the city continue to agree to work with the lake board if the board was dissolved? Mr. Crago responded. Mayor Pro Tem Sackley pointed out that when the city wrote a letter to the lake board that had dissolved itself indicating that the city was going to continue to work with the board on matters of dissolution, that this meant that the city did not see the dissolution of the board as being final, *if* the city is communicating with the lake board in that manner (emphasis added). Discussion followed.

Vicki Locke, 2627 Romence Road, as a member at the time of the governmental Austin Lake Board, distinguished the Austin Lake Board and the Austin Lake Riparians Board. Discussion followed.

Jill Dudley, 9212 East Shore Drive, asked for a clarification and City Attorney Brown and Councilmember Urban explained that the dissolution of a governmental lake board requires action by both the governmental lake board and by the City Council in order to properly be dissolved. Discussion followed.

Sharon Kuruoglu, 9220 East Shore Drive, asked why this came up at this time, and Deputy City Manager Brian Bowling referred to the January 13, 2009 City Council Meeting wherein City Council received a petition for aeration. In that meeting, City Council and City Attorney Brown discussed the existence of the Austin Lake Board, and Councilmember Urban asked for an investigation

of the Austin Lake Board to determine whether the statutory governmental Austin Lake Board exists. Mr. Bowling indicated that a search of city records showed no action by City Council to dissolve the Austin Lake Board and, if the lake board is to be dissolved, an extra step is necessary. Ms. Kuruoglu objected to the existence of the board. Discussion followed. Councilmember Urban explained the purpose and function of lake boards for Ms. Kuruoglu. Discussion followed.

Councilmember O'Brien reiterated that the public hearing will only address whether the board will continue or be dissolved, not that City Council would approve aeration. Discussion followed.

Mayor Strazdas asked the City Attorney if City Council holds a public hearing, would the lake board have to take another vote or would the 2001 vote suffice, and City Attorney Brown answered that the 2001 vote would suffice. Discussion followed.

Motion by Vliek, seconded by Sackley, to establish a public hearing for April 28, 2009, at 7:30 p.m. or as soon thereafter as may be heard, for the purpose of considering the dissolution of the Lake Board of Austin Lake. Discussion followed. Upon a roll call vote, motion carried 6 to 0. Discussion followed.

\* **KILGORE ROAD BRIDGE REPLACEMENT - GRANT APPLICATION:** Motion by Vliek, seconded by Sackley, to adopt the Resolution Supporting Application for Local Bridge Program Funds for replacement of the Kilgore Road Bridge over Portage Creek. Upon a roll call vote, motion carried 6 to 0. Resolution recorded on page 287 of City of Portage Resolution Book No. 43.

\* **SCHURING DRAIN CHANNEL IMPROVEMENTS:** Motion by Vliek, seconded by Sackley, to approve a change order in the amount of \$8,925 for the cleaning and restoration of approximately 850' of the Schuring Drain and authorize the City Manager to sign the change order on behalf of the city. Upon a roll call vote, motion carried 6 to 0.

\* **MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY - NEIGHBORHOOD STABILIZATION PROGRAM GRANT APPLICATION:** Motion by Vliek, seconded by Sackley, to adopt the resolution to support the Michigan State Housing Development Authority grant application for the Neighborhood Stabilization Program and authorize the Mayor and City Manager to execute all documents related to the application. Upon a roll call vote, motion carried 6 to 0. Resolution recorded on page 291 of City of Portage Resolution Book No. 43.

\* **APPLICATION FOR SPECIAL LICENSE FOR SALE OF BEER AND WINE:** Motion by Vliek, seconded by Sackley, to resolve to submit an application to the Michigan Liquor Control Commission for a Special License for the sale of beer and wine for consumption on the premises at Portage Central Park, 7800 Shaver Road, for *The Taste of Portage* on June 27, 2009, and authorize the City Manager to execute all documents on behalf of the city. Upon a roll call vote, motion carried 6 to 0.

\* **PERMANENT TRAFFIC CONTROL ORDER NO. 195:** Motion by Vliek, seconded by Sackley, to rescind a portion of Permanent Traffic Control Order No. 195 and authorize the City Manager to remove the "Yield" sign on Shorbury Street at Tattersall Road. Upon a roll call vote, motion carried 6 to 0.

\* **SPECIAL MEETING BOARD AND COMMISSION APPLICANTS:** Motion by Vliek, seconded by Sackley, to set a Special Meeting on Tuesday, May 12, 2009, beginning at 5:45 p.m. to interview board and commission applicants. Upon a roll call vote, motion carried 6 to 0.

\* **ELECTION POLLING PLACES AND RATE OF COMPENSATION RESOLUTION:** Motion by Vliek, seconded by Sackley, to adopt the Resolution Designating Polling Places and Rate of Compensation for the May 5, 2009 Consolidated School Election. Upon a roll call vote, motion carried 6 to 0. Resolution recorded on page 293 of City of Portage Resolution Book No. 43.

**UNFINISHED BUSINESS:**

- \* **ORDINANCE AMENDMENT, CHAPTER 2, ADMINISTRATION, ARTICLE 7, BOARDS, COMMISSIONS AND AUTHORITIES, SECTION 2-272, PURPOSE:** Motion by Vliek, seconded by Sackley, to approve the proposed amendment to the City of Portage Code of Ordinances, Section 2-272, Purpose, of Chapter 2, Administration, Article 7, Boards, Commissions and Authorities. Upon a roll call vote, motion carried 6 to 0. Ordinance recorded on page 109 of City of Portage Ordinance Book No. 12.
  
- \* **PROPOSED AMENDMENT TO THE CODE OF ORDINANCES:** Motion by Vliek, seconded by Sackley, to approve the proposed amendment to the City of Portage Code of Ordinances, Chapter 34, Fire Prevention and Protection, Article 6, Outdoor Solid Fuel-Fired Furnaces, Section 154, Existing Outdoor Fuel-Fired Furnaces. Upon a roll call vote, motion carried 6 to 0. Ordinance recorded on page 111 of City of Portage Ordinance Book No. 12.
  
- \* **MINUTES OF BOARDS AND COMMISSIONS:** City Council received the minutes of the:
  - Portage Board of Education Policy Development of February 23, Regular of February 23 and Work Session of March 9, 2009.
  - Portage Historic District Commission of March 4, 2009.
  - Portage Park Board of March 5, 2009.
  - Portage Human Services Board of March 5, 2009.
  - Kalamazoo County Board of Commissioners Committee of the Whole and Regular of March 17, 2009.
  - Portage Planning Commission of March 19, 2009.

**OTHER CITY MATTERS:**

**STATEMENTS OF CITY COUNCIL AND CITY MANAGER:** Mayor Pro Tem Sackley attended the City of Kalamazoo 125<sup>th</sup> Anniversary kick-off and Councilmember Vliek indicated that the City of Portage has the opportunity to highlight its 50<sup>th</sup> Anniversary in a significant way in 2013. Mayor Pro Tem Sackley wished a speedy recovery for Councilmember Reid and indicated he spent time with former Kalamazoo Mayor, former Portage resident and State Representative Bob Jones, who is undergoing treatment for cancer and wished him well.

Councilmember Campbell asked everyone to vote for Matt Giraud, who is still in the competition on the American Idol television program.

Mayor Strazdas announced that President Barack Obama mentioned Portage, Michigan, at a Press Conference, April 13, 2009, as a recipient of Stimulus II funds and expressed his appreciation to the Administration and previous City Councils for their foresight and the tenacity of some of the members of the Southwest Michigan Alliance ultimately saving the City of Portage \$2 million.

**ADJOURNMENT:** Mayor Strazdas adjourned the meeting at 9:09 p.m.

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James R. Hudson, City Clerk

\*Indicates items included on the Consent Agenda.