

CITY COUNCIL MEETING MINUTES FROM DECEMBER 1, 2015

The Regular Meeting was called to order by Mayor Pro Tem Ansari at 7:30 p.m.

At the request of Mayor Pro Tem Ansari, Pastor Matt Munson of the Valley Family Church gave the invocation and City Council and the audience recited the Pledge of Allegiance.

The City Clerk called the roll with the following members present: Councilmembers Richard Ford, Jim Pearson, Patricia Randall, Claudette Reid and Terry Urban and Mayor Pro Tem Nasim Ansari. Mayor Peter Strazdas was absent with notice. Also in attendance were City Manager Laurence Shaffer, City Attorney Randy Brown and City Clerk James Hudson.

APPROVAL OF MINUTES: Motion by Reid, seconded by Ford, to approve the Regular Meeting Minutes of November 17, 2015, as presented. Upon a voice vote, motion carried 6 to 0.

* **CONSENT AGENDA:** Mayor Pro Tem Ansari asked Councilmember Reid to read the Consent Agenda. Councilmember Urban asked that Item F.5, 2016 Pre-Council Meetings, and Councilmember Ford asked that Item F.7, Board and Commission Interviews, be removed from the Consent Agenda. Motion by Reid, seconded by Pearson, to approve the Consent Agenda motions as amended. Upon a roll call vote, motion carried 6 to 0.

* **APPROVAL OF ACCOUNTS PAYABLE REGISTER OF DECEMBER 1, 2015:** Motion by Reid, seconded by Pearson, to approve the Accounts Payable Register of December 1, 2015, as presented. Upon a roll call vote, motion carried 6 to 0.

PETITIONS AND STATEMENTS OF CITIZENS: Paul Schmidt, 9862 Fort Myers Parkway, reflected on a recent deer survey and mentioned that on November 5, 2015, on a vote of 10 to 1, the City of Ann Arbor agreed to have the United States Department of Agriculture, Animal and Plant Health Services cull the local deer herd by 100, and cited other Michigan cities that have done the same thing, including Big Rapids, Mt. Pleasant, Manistee and Grand Haven. City Manager Shaffer received the Ann Arbor News Articles on the matter offered by Mr. Schmidt.

REPORTS FROM THE ADMINISTRATION:

2016 FEE SCHEDULES: City Manager Shaffer explained that this item contains various proposed fees as charges for Department activities and was originally on the Consent Agenda. However, he did not get to answer all of the questions posed by some Councilmembers, and asked that the item be postponed until December 15, 2015. Discussion followed.

Motion by Reid, seconded by Ford, to postpone item F.1, the adoption of the proposed 2016 Charges for Documents (FOIA Fees); recommended 2016 Recreation Program Fee Revisions; Resolutions for Community Development Fees, Electrical Permits, Building Permits, Plumbing Permits and Mechanical Permits; and 2016 Special Assessment Rate Resolution, until December 15, 2015. Upon a roll call vote, motion carried 6 to 0. Discussion followed.

* **TENTATIVE AMENDMENT FOR THE OAKLAND HILLS AT CENTRE PLANNED DEVELOPMENT:** Motion by Reid, seconded by Pearson, to accept the Tentative Amendment for the Oakland Hills at Centre Planned Development and set a public hearing for January 12, 2016, at 7:30 p.m. or as soon thereafter as may be heard and, subsequent to the public hearing, approve the Tentative Plan Amendment for the Oakland Hills at Centre Planned Development subject to the two conditions cited in the October 30, 2015 Department of Community Development staff report. Upon a roll call vote, motion carried 6 to 0.

* **SOUTH SHORE DRIVE SANITARY SEWER PROJECT #416-S:** Motion by Reid, seconded by Pearson, to adopt Resolution No. 2 for the South Shore Drive Sanitary Sewer Project #416-S, setting a public hearing of necessity on December 15, 2015, at 7:30 p.m. or as soon thereafter as may be heard. Upon a roll call vote, motion carried 6 to 0. Resolution recorded on page 77 of Resolution Book No. 46.

* **RESOLUTION FOR MOWING MDOT PROPERTIES:** Motion by Reid, seconded by Pearson, to adopt a Performance Resolution for Governmental Agencies for required permits to mow three Michigan Department of Transportation (MDOT) properties in the City of Portage. Upon a roll call vote, motion carried 6 to 0. Resolution recorded on page 75 of City of Portage Resolution Book No. 46.

2016 PRE-COUNCIL MEETINGS: Upon the request of Mayor Pro Tem Ansari, City Manager Larry Shaffer deferred to Councilmember Urban, who asked that this item be removed from the Consent Agenda. Motion by Urban, seconded by Reid, to waive Attorney/Client Privilege for the Opinion of City Attorney Randy Brown dated November 24, 2015, concerning this issue. Discussion followed. Upon a roll call vote, motion carried 4 to 2. Yeas: Councilmembers Reid, Urban and Ford and Mayor Pro Tem Ansari. No: Councilmembers Pearson and Randall.

Councilmember Urban indicated that he had concerns with this business item and read the two main paragraphs of the Opinion of City Attorney Randy Brown dated November 24, 2015, without citing the subparagraphs. He pointed out that City Attorney Brown had concerns with the Open Meetings Act (OMA) and the strict rules that would therefore be necessary. He stressed that the Opinion reads such that there would be so many constraints on discussion at the meeting that it would be of little use. He reminded Council that each Councilmember can always call Mr. Shaffer with questions; and he could continue to supply everyone with the answers as he has done in the past. He cited a couple of the limitations cited in the subparagraphs of the Opinion: Council could not discuss the answers received from questions at the meeting with one another, and not being able to answer the questions of a citizen who might show up. As a result, he indicated that he does not believe such a meeting serves any useful purpose since, in order to be in compliance with the Open Meetings Act, and the Public Notice required for a Special Meeting of City Council, to set these meetings up makes no sense at all. Without listing them, he noted that Council has commented to him that they have a multitude of ways to contact Mr. Shaffer with questions that he can then disseminate to the rest of Council in order to protect against Open Meetings Act violations. Finally, he questioned why the proposed time for a Pre-Council meeting was not one that was indicated on the Doodle Survey of Council that was conducted to determine a mutually convenient time to meet.

Councilmember Pearson commented that he contacted City Attorney Brown ostensibly because he objected to his Opinion since he thought it squelched transparency; and, what he wanted was extensive City Council discussion (at the Pre-Council Meetings). He recommended that Council take this matter up at the Council Retreat for an in depth analysis, line by line, in order to open up (Pre-Council Meetings) to full transparency. He said that Councilmember Urban used this document against having Pre-Council Meetings; and, that he has gone on record saying that, when he was elected to Council, his only commitment was to show up twice a month for City Council Meetings (as determined by *City Charter*). He indicated that Council has had Pre-Council Meetings in the past; Pre-Council Meetings do open up transparency; he is fully in favor of having Pre-Council Meetings; and, he is sure Council can get a mutually convenient time on their schedules as evidenced by the results of the Doodle Survey. Also, since there is no voting at these Pre-Council Meetings, the consensus, or the majority, of this Council is to be able to call in and use modern technology, and he said he asked Mr. Brown why this was not addressed in his Opinion, as he felt it should be since it should be a part of the discussion of full Council.

Councilmember Reid objected to the characterization that Councilmember Urban only signed on for two meetings a month as it is really not accurate since all Councilmembers have responsibilities beyond the Regular City Council Meetings such as serving on external/community committees, on-going committees, task groups and boards. She stressed that this is a regularly scheduled special meeting of City Council that has to meet at a time that is universally acceptable. She pointed out that Council did not get the results of the Doodle Survey, and she said she was interested in the results of the survey as she wanted to know what the time options were. She recognized from Mr. Brown's Opinion that the Pre-Council Meetings were not going to have discussion and be very constrained. She recognized that the current procedure is also somewhat constrained, but it allows Council to ask questions and get information as needed and cited item F.1, 2016 Fee Schedules, as a good example that explains how the current method works and works well for decision-making. She emphasized the effectiveness of the use of e-mails, the need to follow the Open Meetings Act guidelines to protect against legal issues as articulated by Attorney Brown, and the importance of still getting questions answered. She pointed out that if there is an interest in discussion, that is a different type of meeting than the Pre-Council Meetings being considered here; that is a different type of meeting; and, Council is not considering the type of Pre-Council Meetings that have happened in the past because that was a sub-quorum group and a different "animal."

Councilmember Reid also addressed the requirement that City Council had to have very clear rules for these Pre-Council Meetings according to Attorney Brown, and mentioned that Council cannot have Pre-Council Meetings until those rules have been developed and passed by Council. For these reasons, she said she is not in favor of approving the schedule as presented until Council has these matters solved.

Councilmember Randall expressed dissatisfaction with the Opinion of City Attorney Brown dated November 24, 2015, but did not have a chance to call him. She thought the objective was that Council would work together as a team, and that was Mayor Strazdas' intent because each Councilmember comes to a meeting with a different set of information that was verbally conveyed. She said she was virtually excluded from this information during the first four years on Council, and the scheduling of Pre-Council Meetings was meant to be a way of bringing everyone along, all on the same page, at the same time, everyone hears it together, and create some good will among the Councilmembers. She expressed her opinion that it is the job of Council to set the Agenda on how to run these meetings as a policy. She outlined how Kalamazoo County Meetings are run, and indicated that she would be speaking with a couple of individuals in order to find out how to honor transparency and still adhere to the Open Meetings Act.

Councilmember Urban indicated that the City Council has already implemented the Committee of the Whole (COW) which is what the County does for the meetings to which she referred. However, the Pre-Council Meetings are different from the COW; people have gone to jail for violating the Open Meetings Act, and he does not intend to violate the Act. He said that he has always valued the legal opinion of Mr. Brown and, as Councilmember Pearson indicated, Council needs to discuss this at the Council Retreat, so setting a schedule, starting these meetings, before the discussion of the rules and setting the rules is inappropriate.

Councilmember Ford indicated that he does not plan to attend very many of these Pre-Council Meetings; that any Special Meetings regarding the Agenda can easily be properly noticed; questions at these meetings should be limited to the Agenda items; no one on Council intends to discuss items outside the Agenda; and, he sees this as a way for Council to get information face to face, if preferred, and explained. He referenced the sub-quorum meeting format with only three Councilmembers: the Mayor, the Mayor Pro Tem and the Consent reader, as was used in the past. He said that not many or no citizens showed up at City Hall owing to the 7:30 a.m. time of the meeting, and spoke in support of the meeting as a question and answer session for the exchange of information.

City Attorney Brown interjected that the intent of his Opinion may have become somewhat exaggerated. He indicated that at the last meeting, he understood that the Council would be setting a Regular Special Meeting of Council where a quorum could be present that would be restricted to questions from City Council to the City Manager and only the answers would be provided. He indicated

that he did not talk to any Councilmember afterwards, but it occurred to him that there were some issues that needed to be resolved; and, they are not insurmountable, but they need to be resolved. He explained that his Opinion was written to clarify so there was no ambiguity and no violations later, and Mr. Shaffer agreed that it is important that Council be aware of some of these issues and how to handle them.

Mayor Pro Tem Ansari concurred. City Attorney Brown indicated that the crux of the Opinion is the Special Meeting Notice and the rules that need to be set up to determine the limit of the discourse at this meeting or how to proceed and explained. In response to Mayor Pro Tem Ansari and the request from Councilmember Reid, Mr. Shaffer said from the Doodle Survey, he understood a consensus developed around the 9:00 a.m. time, so that is the time reflected on the proposed Pre-Council Meetings Schedule.

Councilmember Reid indicated that her reason for asking about the Doodle Survey was because she felt a consensus was not adequate because the time needs to be a time that is available to all of Council.

In answer to Councilmember Pearson, Councilmember Urban pointed out that the 9:00 a.m. time was not one of the survey options, but he and the rest of Council confirmed that they were available at that time. Councilmember Pearson indicated that he went to a lot of Pre-Council Meetings when it was not his turn, and found that he had more information than the other Councilmembers. Therefore, he asked to bring Pre-Council Meetings back, but saw that it was important that all Councilmembers had the same information, so he suggested that it be open to all Councilmembers, record it, take minutes, and whatever else is necessary. He stated he agreed with Councilmember Urban that this matter needs to be discussed further at the Council Retreat.

Motion by Pearson, seconded by Randall, to set the Pre-Council Meetings for the 2016 Calendar Year to start on February 8, 2016, to give City Council time to have a full discussion at the January 22, 2016 City Council Retreat.

Councilmember Ford referred to the Councilmember training for the electronic agenda on SuiteOne coming up which may be useful as a means to notify the City Manager of questions, and stressed the importance of setting some ground rules: questions only, an answer by the City Manager and possible follow-up questions and explained.

Councilmember Urban concurred with Councilmember Ford which is a reason not to schedule Pre-Council Meetings because the questions can be asked via e-mail and the answers can be disseminated to all Councilmembers by e-mail, even if the questions are asked over the phone or in person. He questioned the reasonableness of scheduling a Special Meeting and to tie staff up producing minutes for all of Council, which would have to be done fairly quickly in order to be useful in notifying Councilmembers who did not attend of what went on at the meeting. He noted that he was the one who asked that someone be allowed to fill in when there was a Councilmember who could not attend one of the Pre-Council Meetings in the past, and that he would still advocate that position if that procedure was still in place. He contrasted the proposed Pre-Council Meetings with the Pre-Council Meetings of the past because it means setting an Agenda which limits what can be discussed and questions that go beyond the Agenda of the Regular Meeting cannot be asked. He said that making Pre-Council Meetings formal is not going to add transparency to anything; no citizens are going to show up; and, quite likely most citizens will not know about the meetings. He said it makes no sense when Council can ask the same question by e-mail, by phone or by visiting the City Manager face to face as is currently the case. Discussion followed. Upon a roll call vote, motion carried 5 to 1. Yeas: Councilmembers Ford, Pearson, Randall and Reid, and Mayor Pro Tem Ansari. No: Councilmember Urban.

AUSTIN LAKE GOVERNMENTAL LAKE BOARD – APPOINT NEW MEMBER:

Councilmember Pearson provided an explanation and perspective of the necessity to appoint a member to the Austin Lake Governmental Lake Board with the vacancy created by the leaving of former Mayor Pro Tem Ed Sackley, who is leaving his position on the Board. City Clerk James Hudson confirmed that the string of e-mails with Mr. Sackley confirms his intent and no formal resignation letter is necessary. Councilmember Pearson related that Mr. Sackley will act as Chair of the Board on December 9, 2015; there will be a vote for new officers; the lake scientists will give preliminary report in January 2016, and he reflected on the wisdom of selecting a Councilmember to serve prior to the Council Retreat effective

January 1, 2016, in order to receive the report from the lake scientists and be fully on board for the first meeting in January 2016. Discussion followed. Motion by Pearson, seconded by Reid, to appoint Mayor Pro Tem Ansari to the Austin Lake Governmental Lake Board. Discussion followed. Upon a roll call vote, motion carried 6 to 0.

BOARD AND COMMISSION INTERVIEWS: Councilmember Ford expressed his agreement with City Council Policy to reappoint Board members in good standing, but questioned the procedure of not informing applicants of this Policy who are interested in a Board or Commission where each of the members with expiring terms wish to be reappointed. He indicated that this would allow the applicant to choose whether or not to “waste” his or her Tuesday night or not come to the interviews.

Councilmember Reid responded that there have been times when an applicant came to interview for one position, and while at the interview session found out about other positions and, if the applicant does not come at all, that opportunity is lost. She pointed out that this is a Policy that is not only based upon attendance, but also on how the applicant has worked and that is not something that can be determined ahead of time. She spoke in opposition to the idea of not inviting the applicant because she did not wish to reduce the number of people who are coming to volunteer for Boards and Commissions and explained that Council is usually able to find a good fit for the applicants who are interested and did not wish to reduce those numbers because of this. Discussion followed.

Councilmember Urban indicated that perseverance and a showing of interest has served many applicants in the past as it was deemed by Council that it was time to place an applicant on a Board who consistently showed up for the interviews, Council got to know the person and a proper fit could be found. Discussion followed.

Motion by Randall, seconded by Reid, to set a Special Meeting on Tuesday, January 12, 2016, at 5:30 p.m., to interview Board and Commission applicants. Upon a roll call vote, motion carried 6 to 0.

* **LDA REFUNDING BONDS SAVINGS – ANALYSIS REPORT:** Motion by Reid, seconded by Pearson, to receive the communication from the City Manager regarding the refunding of Local Development Finance Authority Bonds, Series 2004, as information only. Upon a roll call vote, motion carried 6 to 0.

UNFINISHED BUSINESS:

* **HARRIS DRIVE VACATION REQUEST:** Motion by Reid, seconded by Pearson, to adopt the Resolution to vacate the south approximate 57 feet of Harris Drive. Upon a roll call vote, motion carried 6 to 0.

* **MINUTES OF BOARDS AND COMMISSIONS MEETINGS:** City Council received the minutes of the Portage Public Schools District Advisory Council of October 15, 2015.

OTHER CITY MATTERS:

STATEMENTS OF CITY COUNCIL: Councilmember Urban referenced the discussions by Councilmembers Ford, Reid and himself of the essays from Portage Public School Children entitled, “Why I Love Portage” to determine the winning pair of students who will be given the opportunity to turn on the Christmas lights in Portage and that he was looking forward to the Annual Tree Lighting Ceremony on December 5, 2015, at 7 p.m.

Councilmember Reid mentioned the upcoming Council of Governments (COG) Meeting, December 2, 2015, 3:30 p.m. at the Kalamazoo County Road Commission, 3801 East Kilgore Road, where they will discuss the structuring of the upcoming Countywide Public Transit for the Demand Service and the County Sheriff millage campaigns. She also noted that the COG would be reviewing a recent survey to help determine how to best serve each of the municipal members within COG.

Councilmember Randall highlighted the Annual Tree Lighting Ceremony as a wonderful family event and acknowledged the passing of Communication Services Employee Janet Hughes and extended her condolences to her family.

Councilmember Ford congratulated the MSU Spartans for winning the Big 10 East Football Championship, concurred that the Annual Tree Lighting Ceremony is a great event, and shared that he recently was able to enjoy the new snow with his family on the sledding hill at Oakland Park.

Councilmember Pearson thanked Mayor Pro Tem Ansari for stepping in at the very next meeting after his appointment to run the meeting this evening.

City Manager Shaffer reflected on the comment by Councilmember Randall regarding the tragic loss of Janet Hughes, and noted that she always dreamt of traveling to Israel; she was a woman of deep faith; she made it to Israel where she passed away. He noted that many of her Church group were at the memorial service and shared some of her experiences in Israel. He said that in some ways, it was a great tragedy, but in other ways a great joy to hear that one of our own achieved something that was so high on her list of wishes.

Mayor Pro Tem Ansari indicated that he has had citizens express concern about the unknown impact of the potential merger of Pfizer, Inc., and Allergan that would create the largest pharmaceutical company in the world with a deal worth about \$250 billion. He said that the importance of Pfizer to the local economy cannot be overstated. He noted that Pfizer employs over 1,800 employees at the Portage manufacturing facility, has a taxable value of just over \$300 million and contributes more than \$2.9 million in taxes to Portage. He indicated that Pfizer has applied for a variance to the Zoning Board of Appeals for the construction of a 100,000 square foot facility on its Portage campus. He indicated that future construction has also been discussed and the goal of the City of Portage is to remain an open and credible partner to ensure that the pharmaceutical giant continues to support and enhance its largest manufacturing facility within the City of Portage.

ADJOURNMENT: Mayor Pro Tem Ansari adjourned the meeting at 8:40 p.m.

James R. Hudson, City Clerk

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