CITY OF PORTAGE **COMMUNICATION**

TO: Honorable Mayor and City Council **DATE:** March 10, 2010

FROM: Maurice S. Evans, City Manager

SUBJECT: Rezoning Application #09-01, Greenspire Planned Development

ACTION RECOMMENDED: That City Council:

a. accept Rezoning Application #09-01 for first reading and set a public hearing for April 13, 2010; and
b. subsequent to the public hearing, consider approving Rezoning Application #09-01 from RM-1, multi-family residential and R-1C, one-family residential to PD, planned development per the tentative plan dated March 4, 2010, written narrative dated February 23, 2010 and seven conditions contained in the Department of Community Development report dated February 26, 2010.

Attached are the Greenspire Planned Development rezoning application materials including the required tentative plan narrative and map as submitted by American Village Builders and the Hinman Company. Nearly 95 acres of land is requested to be rezoned from RM-1, multiple family and R-1C, one family residential that will incorporate the existing 384 apartment units within the 46 acre Greenspire Apartments on West Centre Avenue together with 48 acres of adjacent land to facilitate additional development. The Greenspire Planned Development proposes a creative mixture of existing and new multiple-family residential units, natural open space, new retail and office uses along West Centre Avenue adjacent to the Gourdneck State Game Area, Hampton Lake and several existing single family homes along the private streets of Tozer and Shirley Court. A report from the Community Development Director is also attached that explains the proposed rezoning request in further detail.

In the PD, planned development chapter, a two-part review and approval process is established for rezoning the property and for subsequent development. The applicant is first required to submit a tentative plan that outlines the development concept of the entire project for review. Although conceptual in nature, specific statements, proposals, plans and schedule for the ultimate development of the site are required. The tentative plan is submitted for administrative review, scheduled for Planning Commission review and a public hearing, after which the Planning Commission recommendation is provided to City Council. After another public hearing before the City Council, the tentative plan may be accepted, modified or rejected by City Council. Approval of the tentative plan by City Council constitutes rezoning of the land. In the second part of the process, the applicant can submit final plans for Planning Commission review and for City Council approval. A final plan for a development project is submitted in detailed form and is subject to a review process similar to a site plan. Specific site development standards and other requirements must be fulfilled. Essentially, while the applicant for the PD, planned development district is afforded flexibility by the ordinance to develop the property, greater control over the proposed overall development and each final plan within the PD district is available to the city. Under the terms of the PD, planned development chapter any change to the tentative plan, such

as modifying an approved land use class or adding a land use class, requires formal review and approval, with public hearings, in a manner similar to a rezoning procedure.

As submitted by the applicant, the Greenspire Planned Development will include a total of three new multi-family residential phases along the east, southeast and west perimeters of the site for new three-story, 40-foot tall apartment buildings involving 324 apartment units on approximately 37 acres. The north approximate 11 acres along West Centre Avenue will be developed with two, two-story, 40-foot high retail/office buildings incorporating a total of 60,800 square feet of space and three, one-story, 25-foot high retail buildings between 6,000–25,000 square feet each. The development schedule would begin this year and extend to 2015, when the last phase would be submitted. Also, the applicant has carefully considered the several existing single family residences located on the adjacent private streets and has again emphasized sensitivity to Hampton Lake, Gourdneck State Game Area and adjacent natural features and open spaces. While more high density residential units could be constructed in the existing RM-1, multiple family zone, the applicant is seeking a mixed development concept. As referenced in the rezoning application, one modification is being requested to allow an overall residential density of 8.45 units per acre. The PD, planned development district specifies a maximum 12 units per acre density for each phase, which will be met, however, the overall residential density of seven units per acre would be exceeded with the requested modification.

In a report dated February 26, 2010, the Department of Community Development recommended that the property be rezoned to PD, planned development subject to seven conditions. Subsequently, the Planning Commission convened the necessary public hearing and voted 5-2 to also recommend that Rezoning Application #09-1, Greenspire Planned Development, be approved subject to the following seven conditions:

1. The development standards specified in the application for approval (submitted tentative plan and written narrative dated March 4, and February 23, 2010, respectively);
2. The modification to the overall residential density of 8.45 units, with the further condition of approval that the total residential development not exceed 708 units on 83.74 acres;
3. No beach facility, additional boat docks or other access to Hampton Lake;
4. Screening/landscaping enhancements between Phase V apartments and adjacent Shirely and Tozer Courts single family residences finalized with submittal of the final plan for this phase of the project;
5. Design/configuration of proposed access drives and interconnection, including any changes to Shirley Court and Tozer Court and possible signalization of the West Centre Avenue/Cooley Drive intersection finalized with submittal of final plans;
6. MDNRE approvals/permits involving the wetland or other environmentally sensitive areas submitted with the final plans, if required; and
7. If no final plan is submitted for acceptance within two years following the change in zoning, the process to rezone, or extend the PD district classification, for the several properties shall be initiated pursuant to the process established in the ordinance.

The City Administration recommends that Rezoning Application #09-01 be accepted for first reading, and subsequent to the public hearing, that City Council consider approving the rezoning application, which would rezone several West Centre Avenue, Greenspire Drive, Fawn Cove Lane and Tozer Court properties from RM-1, multiple family and R-1C, one family to PD, planned development.

Attachment: Communication from the Department of Community Development

CITY OF PORTAGE **COMMUNICATION**

TO: Maurice S. Evans, City Manager **DATE:** March 10, 2010

FROM: Jeffrey M. Erickson, Director of Community Development

SUBJECT: Rezoning Application #09-01, Greenspire Planned Development (West Centre Avenue and Greenspire Drive)

A rezoning application has been received from American Village Builders Companies and The Hinman Company for a tract of land located along the south side of West Centre Avenue, opposite Cooley Drive. The applicants are requesting that the RM-1, multi-family residential and R-1C, one-family residential districts be changed to PD, planned development. The change in zoning is being requested to facilitate three additional Greenspire apartment phases (324 total units) on approximately 37 acres and designate 11 more acres for retail/office land use adjacent to West Centre Avenue (up to 103,800 square feet). The existing three phases of the Greenspire Apartments (384 units on 46.6 acres) are included in the rezoning application and were initiated in the 1970s and 1980s. The Greenspire Planned Development represents a creative mixture of multiple-family residential apartments and retail/office uses and represents appropriate development between West Centre Avenue and the Gourdneck State Game Area, Hampton Lake, associated wetlands/natural areas and existing land uses.

Attached please find the Planning Commission transmittal and the February 26, 2010 final report from the Department of Community Development to the Planning Commission in which a recommendation is presented that the rezoning application be approved and the property rezoned from RM-1, multiple family and R-1C, one family residential to PD, planned development, subject to seven conditions. The Community Development report to the Planning Commission is very detailed and provides important information concerning the rezoning application, the PD, planned development zoning district, existing uses on the subject property, existing uses on adjacent properties, the Comprehensive Plan and the review of traffic, neighborhood and environmental considerations.

As summary information about several important development issues related to the tentative plan, the following highlights are provided:

- Greenspire Planned Development. The Greenspire Planned Development involves 95 acres and proposes a mixture of existing and new multiple-family residential units, natural open space, new retail and office uses along West Centre Avenue. The applicant has given emphasis to developing the property in a manner that is sensitive to the adjacent Hampton Lake and the Gourdneck State Game Area. The several existing single family homes along the private streets of Tozer and Shirley Courts have also been carefully considered.
- Density Modification. The applicant has requested one modification: A density modification is requested to allow an overall multiple-family residential development density of 8.45 units/acre, which is recommended for approval. The proposed density is 1.45 units/acre greater than allowed in the PD district, but is a lesser density than allowed under the existing RM-1 zoning district. While a total of 708 units are planned by the applicant, a total of 786 units could be constructed under the RM-1 zone. The proposed density is consistent with the development intensity of the existing three phases of Greenspire Apartments (8.23 units/acre) and is not inconsistent with the interests of the city, per Section 42-375(L) of the PD, planned development chapter, which allows City Council to waive or modify specifications.
- Phase IV Peripheral Transition Area. A 15-foot peripheral transition area is proposed for the two apartment buildings located in the next development phase planned by the applicant for this year that is identified as

Phase IV. With this phase, the peripheral transition area referenced in the ordinance is proposed to be 15-feet, which is appropriate and is recommended, given the location of the existing buildings to the north and south, the planned building/fire protection measures and the planned natural character and use of the adjacent land.

- Phase V Building Layout/Design. In an effort to minimize potential impacts on the adjacent Shirley/Tozer Courts residents, the applicant has incorporated several building layout/design elements into the tentative plan. These elements include a combination of increased building setbacks, building orientation and substantial screening/landscaping treatments. The layout/design elements will be finalized with the review and approval of final plans that will be submitted for development approval.
- Retail/Office Project Component. The retail/office component of the proposed Greenspire Planned Development will not exceed 20% of the total project area, consistent with ordinance, and will be concentrated along the West Centre Avenue frontage. The requested PD rezoning would also eliminate the non-conforming status of the existing three-story apartment buildings in the Greenspire Apartment complex.
- 1980 General Agreement. Following a rezoning application that was submitted to the city in 1979-1980 that involved the initial Greenspire Apartments, an agreement was reached between the developer (Gesmundo and Hinman) and several area residents concerning measures to protect Hampton Lake and surrounding sensitive environmental areas. Although this agreement was apparently never signed by the parties, the applicant has agreed to continue to honor the spirit and intent in the provisions of the agreement and has incorporated the applicable provisions in the tentative plan narrative at Item #11.

The Planning Commission convened a public hearing during the February 18 and March 4, 2010 meetings. Several residents were in attendance during the two public hearings and offered comments related to the rezoning application and tentative plan. In addition, two e-mail communications were received from the Michigan Department of Natural Resources and Environment on March 4, 2010. An additional communication to the Planning Commission that was in response to the e-mail communications was prepared by the Department of Community Development.

Following extended discussion and careful review, the Planning Commission subsequently voted 5-2 to recommend to City Council that Rezoning Application #09-01 be approved subject to the conditions outlined in the February 26, 2010 Department of Community Development staff report, including the amended tentative plan submitted by the applicant on March 4, 2010, with the finding that the requested development density modification of 8.45 units/acre is consistent with the existing Greenspire development.

Attachments: Planning Commission transmittal dated March 10, 2010
Planning Commission Minutes dated February 18 and March 4, 2010
Department of Community Development report dated February 26, 2010
Communication from Ms. Carol Long dated March 3, 2010
Department of Community Development report dated March 4, 2010

TO: Honorable Mayor and City Council

FROM: Planning Commission

DATE: March 10, 2010

SUBJECT: Rezoning Application #09-01: Rezoning Application #09-01, Greenspire Planned Development (West Centre Avenue and Greenspire Drive)

The Planning Commission convened a public hearing during the February 18, 2010 meeting. Mr. Greg Dobson, American Village Builders, was present to explain the request including the history of land acquisition and development, project density, 1980 development agreement, among others. Four citizens also spoke about the proposed PD rezoning: 1) Ms. Betty Ongley (8620 Tozer Court), 2) Mr. Terry Hall (8621 Shirley Court), 3) Dr. Russell Mohney (3500 Vanderbilt Avenue) and 4) Ms. Carol Long (2208 Quincy Avenue). Comments from the residents included possible trespassing, signalization of the West Centre Avenue/Cooley Drive, impact on Shirley Court and Tozer Court single family residences, among others.

The Planning Commission reconvened the public hearing during the March 4, 2010 meeting. The applicant, Mr. Greg Dobson of American Village Builders, was again present to explain and support the project. Mr. Dobson provided a summary of changes that have been made since the February 18th meeting. Mr. Terry Hall (8621 Shirley Court), 2) Dr. Russell Mohney (3500 Vanderbilt Avenue) and 3) Ms. Gloria Olson (3411 Fawn Cove) were also present to comment of the rezoning application. Comments included impact on Tozer/Shirley Court residents, notice provided to the MDNRE, Phase IV building setbacks and discharging firearms within the safety zone.

The Commission discussed at length comments made by the applicant, citizens and the information contained in the staff report. With regard to the density modification request, the majority of the Commission believes the overall development density of 8.45 units/acre is consistent with the existing Greenspire density of 8.23 units/acre. The Commission also believes the applicant has designed the layout of Phase V to minimize impacts on the adjacent Tozer/Shirley Court residents. The applicant's proposal to install landscaping and screening will further minimize any potential impacts. The proposed Phase IV building setbacks was also considered acceptable given the location of existing buildings to the north and south, required building fire protection measures and the vacant nature and ownership of the adjacent land.

After additional discussion, a motion was made by Commissioner Bailes, seconded by Commissioner Cheesebro, to recommend to City Council that Rezoning Application #09-01, Greenspire Planned Development be approved subject to the conditions outlined in the February 26, 2010 Department of Community Development staff report, including the amended tentative plan submitted by the applicant on March 4, 2010, with the finding that the requested development density modification of 8.45 units/acre is consistent with the existing Greenspire development. Upon a roll call vote: Welch (yes), Stoffer (no), Dargitz (no), Cheesebro (yes), Fox (yes), Bailes (yes) and Patterson (yes), the motion was approved 5-2. Commissioners Stoffer and Dargitz stated they could not support an overall development density that exceeds the existing Greenspire density of 8.23 units/acre.

Sincerely,

Thomas A. Fox

Thomas A. Fox
Chairman, City of Portage Planning Commission

s:\department files\memos\manager\2008 12 05 mcc rez 08-01pc (8232-8726 portage road) doc

PLANNING COMMISSION

February 18, 2010

The City of Portage Planning Commission meeting of February 18, 2010 was called to order by Chairman Fox at 7:00 p.m. in Council Chambers of Portage City Hall, 7900 South Westnedge Avenue. Approximately ten citizens were in attendance.

MEMBERS PRESENT:

Jim Pearson, Rick Bosch, Cory Bailes, James Cheesebro, Miko Dargitz, Paul Welch, Wayne Stoffer, Bill Patterson and Chairman Thomas Fox.

MEMBERS ABSENT:

None.

MEMBERS EXCUSED:

None.

IN ATTENDANCE:

Christopher Forth, Deputy Director of Planning and Development Services; Michael West, Assistant City Planner; and Randall Brown, City Attorney.

PLEDGE OF ALLEGIANCE:

The Planning Commission and staff recited the Pledge of Allegiance.

APPROVAL OF MINUTES:

Chairman Fox referred the Commission to the February 4, 2010 meeting minutes. A motion was made by Commissioner Cheesebro, seconded by Commissioner Bailes, to approve the minutes as submitted. The motion was unanimously approved.

SITE/FINAL PLANS:

1. Site Plan: Portage Animal Hospital, 8037 Portage Road. Chairman Fox referred the Commission to a February 12, 2010 correspondence from Attorney Nelson Karre, representing the Portage Animal Hospital, requesting the Planning Commission adjourn the site plan until the March 4, 2010 meeting. A motion was made by Commissioner Pearson, seconded by Commissioner Welch, to adjourn the Site Plan for the Portage Animal Hospital, 8037 Portage Road, until the March 4, 2010 meeting. The motion was made at the request of the applicant and was unanimously approved.

PUBLIC HEARINGS:

1. Final Report: Ordinance Amendment 09-B, Sign Ordinance Regulations. Mr. Forth summarized the staff report dated February 12, 2010 regarding proposed changes to the sign regulations. Following the January 21, 2010 Planning Commission meeting, Mr. Forth indicated Section 42-546(D), RM-1 and RM-2 districts, should have also been included in Ordinance Amendment 09-B since it addresses freestanding and wall signs for non-residential uses in the multi-family residential zoning districts. The changes proposed for Section 42-545(B) are also applicable to Section 42-546(D) and the staff report has been revised to include the proposed changes to Section 42-546(D).

The public hearing was convened by Chairman Fox. No citizens spoke regarding the proposed ordinance amendment. A motion was then offered by Commissioner Cheesebro, seconded by Commissioner Welch, to close the public hearing. The motion was unanimously approved. A motion was then made by Commissioner Cheesebro, seconded by Commissioner Welch, to recommend to City Council that Ordinance Amendment 09-B, Sign Ordinance Regulations, be approved. The motion was unanimously approved.

2. Preliminary Report: Rezoning Application 09-01, Greenspire Planned Development (West Centre Avenue and Greenspire Drive). Mr. Forth summarized the revised preliminary staff report dated February 18, 2010 that was provided to the Commission in the final agenda packet and includes an updated narrative and tentative plan provided by the applicant on February 17th. Mr. Forth stated the PD, planned development rezoning application involving an approximate 95 acre tract of land was submitted by American Village Builders and The Hinman Company to facilitate additional multiple family residential development and retail/office land use along West Centre Avenue. Mr. Forth provided background information and summarized existing conditions and Zoning Code regulations and procedures for development in the PD district. Mr. Forth reviewed the PD project as proposed by the applicant and summarized the preliminary analysis contained in the staff report.

Mr. Greg Dobson of American Village Builders was present to explain and support the project. Mr. Dobson briefly summarized the history of land acquisition and development of the Greenspire Apartments, discussed the 1980 Kalamazoo Gazette article provided by Dr. Russell Mohney and stated the commitments referenced in the article would be written into the project narrative. Mr. Dobson reviewed the proposed apartment building layout in Phase IV and the Zoning Board of Appeals (ZBA) consideration of the setback variance request in October 2009. Since the ZBA meeting, Mr. Dobson stated the two apartment buildings have been shifted slightly and will now include a 15-foot setback from the eastern property line, will be fully sprinkled and will meet all Building Code/Fire Code requirements. The layout and setback for these two buildings in Phase IV was desired to retain the overall look and feel of Greenspire. Mr. Dobson also discussed the apartment building layout, orientation, setbacks and efforts to minimize Phase V impacts on Shirley Court/Tozer Court residents. Also discussed was the planned access arrangement, retail/office uses proposed along West Centre Avenue, building construction materials and elevations. The overall density of the apartment portion of the development under the proposed PD zone would be 8.54 units/acre, compared to approximately 9.5 units/acre, which would be allowed under the existing RM-1 district.

The Commission, staff and applicant discussed various aspects of the planned development including the ZBA setback variance request, property ownership, inclusion of affordable housing units and signalization of the Cooley Drive intersection. The public hearing was convened by Chairman Fox. Four citizens spoke during the public hearing: 1) Ms. Betty Ongley (8620 Tozer Court), 2) Mr. Terry Hall (8621 Shirley Court), 3) Dr. Russell Mohney (3500 Vanderbilt Avenue) and 4) Ms. Carol Long (2208 Quincy Avenue). Ms. Ongley expressed concerns regarding possible trespassing from apartment tenants, construction vehicle access, lack of a deceleration lane on West Centre Avenue, timing for signalization of the West Centre Avenue/Cooley Drive access, condition of Shirley Court and suggested slight adjustments in Phase V apartment buildings to lessen impact on adjacent single family residences located on Shirley Court and Tozer Court. Mr. Hall expressed concerns regarding the proposed height of apartment buildings in Phase V, grade differences between these apartment buildings and his residence and the lack of mature trees in this portion of the development. Dr. Mohney thanked Mr. Dobson for volunteering to incorporate the major provisions of the 1980 agreement into the project narrative. Dr. Mohney discussed Building/Fire Code issues associated with the previous ZBA variance consideration, public notice to the State of Michigan and the condition of Shirley Court and the need for improvements. Ms. Long expressed concerns regarding traffic safety at the West Centre Avenue/Cooley Drive intersection and the need to install a traffic signal at this intersection immediately.

The Commission, staff and the applicant discussed how development density was calculated, the PD review process and ordinance provisions, the condition of Shirley Court (a private street with deeded access), signalization of the West Centre Avenue/Cooley Drive intersection and the potential impacts on the Tozer/Shirley Court residents associated with Phase V of the development. Mr. Dobson stated there are no plans to improve Shirley Court to accommodate construction traffic. Mr. Dobson did indicate the proposed drive opposite Cooley Drive would be installed at the time the Phase IV apartment buildings are constructed. No additional citizens

spoke in regards to the proposed planned development rezoning application. A motion was then offered by Commissioner Welch, seconded by Commissioner Dargitz, to adjourn the public hearing for Rezoning Application 09-01, Greenspire Planned Development (West Centre Avenue and Greenspire Drive), to the March 4, 2010 meeting. The motion was unanimously approved.

PLATS/RESIDENTIAL CONDOS:

None.

OLD BUSINESS:

None.

NEW BUSINESS:

None.

STATEMENT OF CITIZENS:

None.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 8:50 p.m.

Respectfully submitted,

Christopher T. Forth, AICP
Deputy Director of Planning and Development Services

s:\commdev\department files\board files\planning commission\fy 2009-10 minutes\pcmin021810.doc

DRAFT

PLANNING COMMISSION

March 4, 2010

The City of Portage Planning Commission meeting of March 4, 2010 was called to order by Chairman Fox at 7:00 p.m. in Council Chambers of Portage City Hall, 7900 South Westnedge Avenue. Approximately ten citizens were in attendance.

MEMBERS PRESENT:

Cory Bailes, James Cheesebro, Miko Dargitz, Paul Welch, Wayne Stoffer, Bill Patterson and Chairman Thomas Fox.

MEMBERS ABSENT:

None.

MEMBERS EXCUSED:

Jim Pearson and Rick Bosch.

IN ATTENDANCE:

Christopher Forth, Deputy Director of Planning and Development Services; Michael West, Assistant City Planner; and Randall Brown, City Attorney.

PLEDGE OF ALLEGIANCE:

The Planning Commission, staff and the audience recited the Pledge of Allegiance.

APPROVAL OF MINUTES:

Chairman Fox referred the Commission to the February 18, 2010 meeting minutes. A motion was made by Commissioner Cheesebro, seconded by Commissioner Bailes, to approve the minutes as submitted. The motion was unanimously approved.

SITE/FINAL PLANS:

1. Site Plan: Portage Animal Hospital, 8037 Portage Road. Mr. West summarized the staff report dated March 4, 2010 involving a site plan submitted by Portage Road Investments LLC to construct a new, approximate 5,700 square foot veterinary hospital building and associated site improvements at 8037 Portage Road. Mr. West stated representatives of Portage Road Investments and Treystar Holdings have agreed on a shared/cross access arrangement consistent with the City of Portage Access Management Ordinance and previously approved CentrePort Commons site plan. Mr. West indicated access for the Portage Animal Hospital site is planned to connect at two locations to the CentrePort Commons "B" Drive located to the north with direct access to Portage Road through a right-in/right-out driveway. Mr. West stated connection to "B" Drive would also provide customers and employees of the Portage Animal Hospital access to the CentrePort Commons full service driveway further south on Portage Road and a right-in/right-out driveway and a full service driveway on East Centre Avenue.

Dr. Andrew Helmholdt and Mr. Steve DeBold of Chester, Inc. (applicant's architect) were present to support the site plan. Dr. Helmholdt confirmed that a shared/cross access agreement had been reached with Treystar Holdings. After a brief discussion, a motion was made by Commissioner Welch, seconded by Commissioner Bailes, to approve the site plan for Portage Animal Hospital, 8037 Portage Road, subject to closure of the northernmost driveway with the final phase of construction and demolition of the existing

DRAFT

veterinary hospital building and closure of the southernmost driveway when "B" Drive and other common drives located within the adjacent CentrePort Commons project have been constructed in accordance with the approved site plan. The motion was unanimously approved.

PUBLIC HEARINGS:

1. Final Report: Rezoning Application 09-01, Greenspire Planned Development (West Centre Avenue and Greenspire Drive). Mr. Forth summarized the final report dated February 26, 2010 regarding the PD, planned development rezoning application submitted by American Village Builders and The Hinman Company to facilitate additional multiple family residential development and retail/office land use along West Centre Avenue. Mr. Forth summarized the tentative plan, overall development density modification request and Zoning Code requirements in the PD district. Mr. Forth also reviewed with the Commission Phase IV building setbacks, Phase V building setbacks/orientation and screening adjacent to the single family residences along Shirley Court/Tozer Court, inclusionary zoning and neighborhood/environmental considerations. Mr. Forth indicated staff was recommending approval of the PD rezoning and tentative plan subject to the seven conditions identified in the February 26th staff report. Additionally, Mr. Forth referred the Commission to the final agenda material and e-mail communications received earlier in the day from Mr. Bill Schmidt, Michigan Department of Natural Resources and Environment (MDNR-E), responses from staff and the applicant and a March 3, 2010 letter from Ms. Carol Long of Bronson Properties regarding signalization of the West Centre Avenue/Cooley Drive intersection.

Mr. Greg Dobson of American Village Builders was present to explain and support the project. Mr. Dobson provided a summary of changes that have been made since the February 18th meeting. Mr. Dobson distributed a revised tentative plan that provided additional screening/landscaping adjacent to the single family residences on Shirley Court/Tozer Court within Phase V. Mr. Dobson summarized recent meetings with adjacent Shirley Court/Tozer Court residents regarding Phase V of the apartment development and also a recent meeting with Ms. Carol Long regarding signalization of the West Centre Avenue/Cooley Drive intersection. Mr. Dobson reviewed ownership, easement and maintenance issues associated with Shirley Court and indicated all new apartment buildings will be sprinkled and will meet applicable Fire Code and Building Code requirements. Finally, Mr. Dobson briefly discussed the e-mail communications from Mr. Bill Schmidt, MDNR-E and stated the 450-foot safety zone was a State law intended to protect adjacent private property owners from hunting activities and discharge of firearms. The safety zone is not intended to establish larger setback requirements that reduce private property values.

The Commission, staff and applicant discussed various issues including the enhanced screening proposal for Phase V apartments, Phase IV apartment building setbacks, the MDNR-E e-mails, 450-foot safety zone, and PD ordinance requirements. The public hearing was reconvened by Chairman Fox. Three citizens spoke during the public hearing: 1) Mr. Terry Hall (8621 Shirley Court), 2) Dr. Russell Mohney (3500 Vanderbilt Avenue) and 3) Ms. Gloria Olson (3411 Fawn Cove). Mr. Hall thanked the applicant for meeting with him and providing additional screening between his residence and the Phase V apartments but was still concerned with the height and proximity of the apartment buildings. Mr. Hall indicated that he was the closest house to the proposed apartments and asked that consideration be given to reducing the building height. Dr. Mohney expressed concern regarding the notice provided to the State of Michigan and stated he believes the largest neighbor to the development should be given the opportunity to provide comments and guidelines regarding the project. Dr. Mohney also expressed concern regarding the proposed 15-foot setback for the apartment buildings in Phase IV and impacts on the adjacent State land. Ms. Olson expressed concerns regarding the loss of habitat and wildlife disturbance with the proposed Phase V apartments and hunters on the adjacent State Game Area discharging firearms within the safety zone. Mr. Forth restated that public notice was provided to the State of Michigan, along with supplemental telephone conversations with representatives of the MDNR-E. Mr. Forth reaffirmed that proper notice was provided and the MDNR-E has had sufficient time to comment and respond. Mr. Forth also indicated that signing of safety zones on State property was the responsibility of the MDNR-E. No additional citizens spoke during the public hearing. A motion was then made by Commissioner Bailes, seconded by Commissioner Cheesebro, to close the public hearing. The motion was unanimously approved.

DRAFT

Based on the information presented, the Commission, staff and the applicant further discussed impacts of the Phase V apartments on the adjacent single family residences, MDNR-E notice and e-mail communications received, hunting on the adjacent State Game Area property and the 450-foot safety zone, the PD ordinance standard of 7.0 units/acre overall development density standard and the requested modification to allow 8.45 units/acre. Commissioner Dargitz and Commissioner Stoffer expressed concern with the overall development density of 8.45 units/acre proposed by the developer and the PD ordinance criteria for issuance of modifications from this standard. Commissioner Dargitz also suggested the developer reduce the height of the two apartment buildings located closest to Mr. Hall's property to two-stories, instead of the proposed three-stories. Mr. Forth stated the proposed apartment development density is consistent with the existing three phases of Greenspire. Mr. Forth also discussed the existing RM-1 zoning and corresponding development densities that are allowed under this designation. Mr. West discussed the benefits of the PD district and the flexibility that is afforded both the developer and the city when reviewing the rezoning/tentative plan. Mr. West stated the proposed Greenspire PD results in a more desirable development layout, than the existing RM-1 district, with increased building setbacks and enhanced screening provisions adjacent the single family residences along Shirley Court and Tozer Court. Mr. West also indicated the proposed Greenspire PD is consistent with Comprehensive Plan and Future Land Use Map designations.

After additional discussion of the PD ordinance criteria for the modification of a development standard, a motion was made by Commissioner Bailes, seconded by Commissioner Cheesebro, to recommend to City Council that Rezoning Application #09-01, Greenspire Planned Development (West Centre Avenue and Greenspire Drive) be approved subject to the following conditions

1. Development standards such as density, open space, building setbacks, building orientation, screening/landscaping, etc. be established as indicated in the tentative plan received on March 4, 2010 and written narrative dated February 23, 2010.
2. The modification from the 7.0 units/acre density standard be approved, with the further requirement that development density of the apartment portion of the project be a maximum of 8.45 units/acre (708 units on 83.74 acres).
3. No beach facility, additional boat docks or other accesses to Hampton Lake be permitted.
4. Details regarding screening/landscaping enhancements between Phase V of the apartment portion of the development and adjacent single family residences located along Shirley Court and Tozer Court be finalized with submittal of the final plan for this phase of the project.
5. Design and configuration of proposed access drives and interconnection, including any changes to Shirley Court and Tozer Court and possible signalization of the West Centre Avenue/Cooley Drive intersection, be finalized with submittal of the final plan for the applicable phase of the project.
6. MDNRE approvals/permits involving the wetland or other environmentally sensitive areas be submitted with the final plan for the applicable phase of the project, if required.
7. If no final plan is submitted for acceptance within two years following the change in zoning, the process to rezone (or extend the PD classification) be initiated pursuant to the ordinance.

After a brief discussion of the motion, a subsequent motion was made by Commissioner Dargitz, seconded by Commissioner Stoffer, to postpone further consideration of the motion involving Rezoning Application #09-01 until the March 18, 2010 meeting. Upon a roll call vote: Patterson (no), Bailes (no), Fox (no), Cheesebro (no), Dargitz (yes), Stoffer (yes) and Welch (no). The motion failed 2-5. The Commission discussed an amendment to the original motion that would provide a rationale for the requested development density modification. An amendment to the original motion was then offered by Commissioner Bailes, seconded by Commissioner Cheesebro, to include a finding that the requested development density modification of 8.45 units/acre is coherent with the existing Greenspire development. Upon a roll call vote: Welch (yes), Stoffer (no), Dargitz (no), Cheesebro (yes), Fox (yes), Bailes (yes) and Patterson (yes), the amendment to the original motion was approved 5-2. Commissioner Stoffer stated he would not be supporting the original motion, as amended, and does not believe the Planning Commission can recommend to City Council an overall development density that exceeds the 8.23 units/acre density present on the existing Greenspire Development. Commissioner Dargitz concurred. After a brief discussion, the original motion (as amended) offered by Commissioner Bailes, seconded by Commissioner Cheesebro, was voted upon by the Commission. Upon a roll call vote: Cheesebro (yes), Dargitz (no), Stoffer (no), Welch (yes), Patterson (yes), Bailes (yes) and Fox (yes), the motion was approved 5-2.

DRAFT

PLATS/RESIDENTIAL CONDOS:

None.

OLD BUSINESS:

None.

NEW BUSINESS:

1. FY 2010-2020 City of Portage Capital Improvement Program. Mr. Forth referred the Commission to the 2010-2020 Capital Improvement Program (CIP) document that was provided to each Commissioner prior to the meeting. Mr. Forth briefly reviewed the March 4, 2010 transmittal memo from City Manager Evans and asked the Commission to review the document for further discussion during the March 18, 2010 meeting. Over the course of the next two weeks, Mr. Forth asked the Commission to contact him with any questions or clarifications regarding individual CIP projects so he could research and provide answers prior to, or at the March 18th meeting.

STATEMENT OF CITIZENS:

None.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 10:05 p.m.

Respectfully submitted,

Christopher T. Forth, AICP
Deputy Director of Planning and Development Services

s:\commdev\department files\board files\planning commission\fy 2009-10 minutes\pcmin030410.doc

CITY OF
PORTAGE
A Place for Opportunities to Grow

Department of Community Development

TO: Planning Commission

DATE: February 26, 2010

FROM: Jeffrey M. Erickson, Director of Community Development

SUBJECT: Final Report: Rezoning Application #09-01, Greenspire Planned Development (West Centre Avenue and Greenspire Drive)

I. INTRODUCTION

A PD, planned development rezoning application has been received from American Village Builders Companies and The Hinman Company for a tract of land located along the south side of West Centre Avenue, opposite Cooley Drive. Mr. Joseph Gesmundo and Mr. Roger Hinman own and/or control the properties requested for rezoning.

Property Address	Owner of Record	Parcel Number	Zoning	
			Existing	Proposed
3201 West Centre Avenue	Lakewood Management	00020-131-O	RM-1	PD
3317 West Centre Avenue	Lakewood Management	00019-105-O	RM-1	PD
3413 West Centre Avenue	Lakewood Management	00019-095-O	RM-1	PD
3423 West Centre Avenue	Lakewood Management	00019-096-O	RM-1	PD
3145 Greenspire Drive	Greenspire II Apartments	00020-135-O	RM-1	PD
8380 Greenspire Drive	Greenspire Equity I	00020-130-O	RM-1/R-1C	PD
8401 Greenspire Drive	Greenspire	00020-136-O	RM-1	PD
3413 Fawn Cove Lane	Greenspire II Apartments	00019-100-O	RM-1	PD
8615 Tozer Court	Lakewood Management	00020-140-O	RM-1	PD
Total: Nine parcels (94.64 acres)* * exclude 14.77 acres which is part of Hampton Lake				

The change in zoning is being requested to facilitate additional multiple family development, and retail/office uses along West Centre Avenue, now zoned RM-1, multi-family residential but planned for general business per the 2008 Comprehensive Plan. A portion of the land in the rezoning is occupied by Phases I, II and III of the Greenspire Apartments (384 units on 46.6 acres) approved in 1974, 1977 and 1980, respectively, and constructed. The planned development proposes three additional apartment phases of the Greenspire Apartments (Phases IV, V and VI) on approximately 37 acres along with 11 acres of retail/office land use along the northern portion of the site, adjacent to West Centre Avenue.

Also, six single-family zoned and developed properties abut the rezoning site and are situated on Tozer Court and Shirley Court, which are private streets. The northerly two dwellings are served by city water and the northerly three dwellings are served by city sewer. Careful consideration of these properties, as well as Hampton Lake and adjacent wetland/natural areas, is necessary and appropriate as part of this rezoning consideration.

II. EXISTING CONDITIONS

Land Use/Zoning	Rezoning Site: Phases I, II, and III of the Greenspire Apartments, plus vacant properties, which are zoned RM-1, multiple family residential and R-1C, one family residential (extreme northeast corner of rezoning site). A single family residence is also located on a portion of the 8615 Tozer Court parcel, which is zoned RM-1. North: Across West Centre Avenue, various office developments zoned OS-1, office service and PD, planned development. East, West, South: Vacant land owned by the State of Michigan (Gourdneck State Game Area) zoned R-1C, one family residential. An MDNRE public access from West Centre Avenue is located immediately west of the rezoning site. This public access provides access

Land Use/Zoning (cont.)	to the Gourdneck State Game Area and Hampton Lake. Additionally, six single family residences located on Shirley Court and Tozer Court, also border the rezoning site to the south.
Zoning/Development History	• The existing RM-1 and R-1C Greenspire zoning pattern was established through three separate rezoning applications in 1970, 1973 and 1980. • Rezoning of nearby properties has occurred over the past several years: Rezoning Application #05-05 (2301 West Centre Avenue and 8080 Oakland Drive). In July 2006, City Council rezoned this 48 acre tract of land located near the southwest corner of Oakland Drive and West Centre Avenue from OTR, office, technology and research to PD, planned development for the Oakland Hills at Centre Planned Development. This planned development project includes office land use along the West Centre Avenue frontage and attached single-family residential condominiums within the remainder of the property. Rezoning Application #04-04 (8706, 8716, 8948 and 9000 Oakland Drive). In February 2005, City Council rezoned this 82 acre tract of land located along the west side of Oakland Drive, north of Vanderbilt Avenue, from R-1C, one family residential to PD, planned development for the Oakland Hills Planned Development with attached single-family residential condominiums. • On October 12, 2009, the Zoning Board of Appeals (ZBA) denied a variance request from Greenspire to construct three 12-unit apartment buildings at 8401 Greenspire Drive 10-feet from the east property line, where 30-feet is required in the RM-1 zoning district. The portion of the Greenspire property involved in this ZBA consideration is referenced as Phase IV, Apartments in the PD rezoning and tentative plan/narrative application.
Public Streets	West Centre Avenue is a designated four-five lane major arterial with a posted 45 mph speed limit and approximately 24,500 vehicles per day (2009); capacity of 32,500 vehicles per day (level of service "D").
Historic District/ Structures	The subject site is not located within a historic district and does not contain any historic structures.
Public Utilities	Municipal water and sewer have been installed (and will be extended with new phases).
Environmental	The City of Portage Sensitive Land Use Map identifies areas of high sensitivity wetlands within the northwest and southeast portions of the rezoning site. The rezoning site borders on Hampton Lake which has a surface area nearly 1 million square feet (or 22 acres), and, also, Portage Creek with associated regulated floodplain areas.

III. ZONING CODE/PLANNED DEVELOPMENT PROCEDURES-REGULATIONS

The PD, planned development chapter establishes a two-part review and approval process: Tentative plan review and final plan review for each phase of the development. The applicant is required to submit a tentative plan which outlines the development concept (phases) for the entire project. Although conceptual in nature, specific statements, proposals, plans and schedule for the ultimate development of the site are required. The tentative plan is submitted for administrative review and scheduled for Planning Commission review and a public hearing. The submission of both written and graphic information constitutes a tentative plan.

The Planning Commission will provide a recommendation to City Council regarding the tentative plan. If approved, the planned development must proceed in accordance with the tentative plan. Approval of the tentative plan by Council constitutes rezoning of the land to PD and allows the submission of a final plan for Administrative, Planning Commission and City Council review. A final plan is submitted in detailed form and is subject to a review process similar to a site plan. If no final plan for development is submitted within two years from the date of approval of the tentative plan, Council may either extend the approval for a period not to exceed two years or immediately initiate rezoning proceedings to re-designate the property to a more suitable zoning classification. Under the terms of the ordinance, any change to the tentative plan, such as modifying an approved land use class or adding a land use class, will require formal review and approval, with public hearings, in a manner similar to a rezoning procedure.

Section 42-374 of the Land Development Regulations contains the PD district development design standards. This section provides flexibility in the types of land uses and up to 20% of the total land area can be utilized for nonresidential uses. The planned development applicant is required to provide public

water, public sanitary sewer and a pedestrian system. The applicant must demonstrate that the plan cannot be developed under other sections of the Zoning Code or must provide a mixture of housing types. The overall density of the project may not exceed seven units per acre and density in any one phase may not exceed 12 units per acre. Building setbacks, building height, open space and screening are also regulated under this ordinance section. Additionally, Section 42-375.C of the Land Development Regulations includes 15 required elements that must be addressed in the tentative plan/narrative.

The PD district and the tentative plan/narrative, which is required to be submitted with the rezoning application, allows the Planning Commission and City Council to examine the overall development plan layout including building placement, setbacks, height, etc., prior to acting on the PD rezoning request. Essentially, while the applicant is afforded development flexibility, greater control over the proposed planned development is available to the city.

IV. PROPOSED TENTATIVE PLAN

The Greenspire PD will include a total of six multi-family residential phases. The first three Greenspire Apartment phases including 384 apartment units plus the clubhouse, pool and tennis courts on approximately 47 acres have already been constructed under the current RM-1 zoning classification. The remainder of the multiple family residential portion of the planned development will occur in three additional phases (Phases IV, V and VI) and include three-story, 40-foot tall apartment buildings with 324 apartment units on approximately 37 acres. These three additional phases occur along the east, southeast and west perimeters of the overall project site. The north approximate 11 acres along West Centre Avenue will be developed with two, two-story, 40-foot tall retail/office buildings each 30,400 square feet (60,800 square feet total) and three, one-story, 25-foot tall retail buildings between 6,000–25,000 square feet each. The retail/office portion of the overall development (10.9 acres) will not exceed 20% of the total land area, as required by ordinance.

The overall density of the multiple-family residential portion of the development including adjacent wetland areas, but excluding the Hampton Lake area, will be 8.45 units/per acre (708 units on 83.74 acres) which exceeds the 7.0 units/acre standard set forth in the PD ordinance. In conjunction with the PD rezoning application, a modification from this ordinance provision is being requested by the developer. Other aspects of the proposed planned development project include:

- Pedestrian Walkway – An internal pedestrian circulation network of sidewalks exists within the existing Greenspire Apartments and will continue with future phases of apartment development. Additionally, the applicant has also committed to construct internal sidewalks within the first phase of the retail portion of the development (Phase IV-R), which will link with the apartment complex and provide pedestrian access to the new access drive proposed at the West Centre Avenue/Cooley Drive intersection.
- Open Space Features – Approximately 30 acres (36%) of the overall site will be maintained as open space area for the enjoyment of residents/employees of the planned development. Planned open space areas include woods, marsh and wetlands situated along the southeast and northwest portions of the site and adjacent to Hampton Lake in the southwest portion of the site.
- Storm Water Management - Storm water runoff is proposed to be collected and conveyed to natural open space areas situated across the development site, as well as around individual office sites, in accordance with City of Portage requirements. Storm water discharge locations will utilize natural appearing rain basins and existing wetland areas.
- Vehicular Access – Access to the Greenspire Planned Development is proposed through the existing Greenspire Drive from West Centre Avenue. With construction of Phase IV of the apartments, a second full-service driveway from West Centre Avenue, opposite Cooley Drive, is proposed. Future signalization of this West Centre Avenue/Cooley Drive is also being contemplated and has been studied. When future retail and office development occurs to the west, construction of a right-in/right-out driveway at Shirley Court is also proposed.
- Setbacks – Apartment and office/retail buildings will maintain a minimum 30-foot perimeter setback from outer property lines with the exception of the two apartment buildings proposed in Phase IV of the

development, which are proposed to be setback 15-feet from the eastern property line (10-feet for horizontal projections such as decks, balconies and porches), where adjacent to the Gourdneck State Game Area. A minimum 25-foot setback will be maintained from all interior private streets. Minimum 30-foot building separations will be maintained. Apartment buildings within Phase V of the Greenspire PD are proposed to maintain a minimum 80-foot perimeter setback from adjacent single-family property lines located along Tozer Court/Shirley Court and, furthermore, will be setback between 100-250 feet from individual single-family residences.

- Phasing – The development project is planned to be phased beginning in Spring 2010 and extending to 2015 and beyond as indicated in Item 3 of the attached narrative.

V. PUBLIC REVIEW/COMMENT

The Planning Commission convened a public hearing during the February 18, 2010 meeting. Mr. Greg Dobson of American Village Builders was present to explain the planned development; the history of land acquisition and development; 1980 development agreement with area residents and offered to include commitments into the written project narrative; October 2009 Zoning Board of Appeals variance consideration involving Phase IV apartment buildings; Phase V apartment building layout, orientation and setbacks and efforts made to minimize impacts on Shirley Court/Tozer Court residents; retail/office uses, building construction materials/elevations; and development density proposed for the PD project compared to the RM-1 zone.

Four citizens spoke in regards to the proposed PD rezoning: 1) Ms. Betty Ongley (8620 Tozer Court), 2) Mr. Terry Hall (8621 Shirley Court), 3) Dr. Russell Mohney (3500 Vanderbilt Avenue) and 4) Ms. Carol Long (2208 Quincy Avenue). Ms. Ongley expressed concerns regarding possible trespassing from apartment tenants, construction vehicle access, signalization of the West Centre Avenue/Cooley Drive access, condition of Shirley Court and suggested slight adjustments in Phase V apartment buildings to lessen impact on adjacent single family residences located on Shirley Court and Tozer Court. Mr. Hall expressed concerns regarding the proposed height of apartment buildings in Phase V, grade differences between these apartment buildings and his residence and the lack of mature trees in this portion of the development. Dr. Mohney discussed the 1980 agreement between the developer and residents and thanked the applicant for volunteering to incorporate the major provisions of the agreement into the project narrative. Dr. Mohney discussed Building/Fire Code issues associated with the previous ZBA variance consideration, public notice to the State of Michigan and the condition of Shirley Court and the need for improvements. Ms. Long expressed concerns regarding traffic safety at the West Centre Avenue/Cooley Drive intersection and the need to install a traffic signal at this intersection immediately.

The Commission, staff and applicant discussed various aspects of the planned development including past ZBA setback variance consideration; property ownership; inclusion of affordable housing units; impact of Phase V apartments on adjacent residences; development density calculations; PD review process and ordinance provisions; condition of Shirley Court (a private street with deeded access); and timing of second access construction and possible signalization of West Centre Avenue/Cooley Drive intersection.

VI. FINAL ANALYSIS

The following analysis has been prepared based on general land use considerations, the Comprehensive Plan, traffic conditions and surrounding development patterns. Issues to be considered are consistency with the Future Land Use Plan Map and Development Guidelines, suitability of the existing zoning classification and the impacts of the proposed zoning classification, particularly involving zoning suitability, traffic considerations, neighborhood considerations and environmental considerations.

Comprehensive Plan

Prior to recommending a zoning amendment, a determination that the proposed change is consistent with the Comprehensive Plan is appropriate. In the case of a rezoning, consistency is evaluated based on the Future Land Use Plan Map and also the Development Guidelines.

Future Land Use Plan Map -- The Future Land Use Plan Map component of the Comprehensive Plan designates the properties being considered for rezoning as appropriate for high density residential with general business within a primary commercial node along West Centre Avenue. The Comprehensive Plan identifies four primary commercial nodes across the city "..where both local and general business uses (i.e., grocery, pharmacy, hardware store, restaurant, personal services, business services, etc) are encouraged." The proposed PD rezoning and associated tentative plan/narrative are consistent with these designations.

Development Guidelines -- The Development Guidelines are intended to be used by the Commission and staff when reviewing private development projects, infrastructure improvement programs (i.e. public expenditures on streets, sewers, water mains and others that influence the location, intensity and timing of development) and public programs that affect the physical environment. The guidelines also provide direction and underpinning for regulations that affect land use (e.g. zoning, subdivision, parking, landscaping and others), may suggest incentives to influence community development and preservation and may suggest adjustments to other policies which influence the use of land for consistency with community development and preservation objectives. The proposed PD rezoning and associated tentative plan/narrative is consistent with applicable development guidelines contained in the Comprehensive Plan. Attached for Commission review is the completed Guideline Table.

Suitability of Existing RM-1 and R-1C Zones/Impacts of Proposed PD Zone

The proposed PD planned development zone is appropriate and can be effectively used to facilitate additional Greenspire apartment development phases and the retail/office uses along the West Centre Avenue.

Residential development density is calculated differently in the RM-1 zoning district than in the PD, planned development zoning district. In the RM-1 zone, maximum permitted development density is calculated as specified in Section 42-350.B.(7). Developable land area and wetland/floodplain area is "factored" resulting in allowable "rooms" for density purposes. The PD zone and the ordinance establishes an overall development density of 7 units/acre, with no individual phase exceeding 12 units/acre, which can be modified by City Council as part of the PD rezoning and tentative plan/narrative consideration.

A comparison development plan that shows the 83.74 acres of the land planned for multiple family residential developed under the RM-1 zone has been provided by the applicant. The results of this comparison plan indicates that approximately 78 additional apartment units could be constructed under the existing RM-1 zoning (786 units total, 9.38 units/acre), as compared to the proposed PD zoning (708 units total, 8.45 units/acre). A cursory review of allowable density under the current RM-1 zoning, using the formula in Section 42-350.B.(7) was completed by the Department of Community Development. With the assumption that approximately 23 acres (northwest and southeast portion of site) of the 84 acres is designated wetlands, a total of 2,074 rooms would be allowed under the current RM-1 zoning. Depending upon the mixture of apartments, 2,074 rooms would be available under the following scenarios:

- 1,037 one-bedroom units at 12.3 units/acre; or
- 830 one-bedroom and two-bedroom units (equal mix) at 9.9 units/acre; or
- 691 two-bedroom units at 8.3 units/acre; or
- 415 three-bedroom units at 5 units/acre.

Building setback and height are also determined differently in the RM-1 and PD zones. In the RM-1 zone, minimum 30-foot building setbacks are required from all property lines per Section 42-350.A. The PD district requires a "peripheral transition area". The RM-1 zone establishes a building height at 25-feet and two-stories when abutting a single family residential zoning district (or 30 feet and three stories when not abutting a single family district), which can be increased by the Planning Commission/City Council upon a determination that topography, natural features or other land use characteristics, including the distance of the proposed structure from the residential district/structures, will adequately mitigate adverse impacts. For Commission information, the existing three-story, 35-40 foot tall buildings are considered non-conforming

since the two-story and 25-foot height standard was not adopted until after the existing buildings were constructed (1990). The actual height and number of stories in the PD zone is not specifically established. Section 42-374.E and F states "...any structure in excess of 45 feet shall be designed to be consistent with the reasonable enjoyment of neighboring property, the entire planned development and the efficiency of existing public services."

With regard to the two apartment buildings in Phase IV, the proposed 15-foot building setback (10-feet for horizontal projections such as balconies and decks) is appropriate and will allow the developer to retain the desired "feel" of the Greenspire Apartments, as referenced by the applicant. The apartment buildings will be fully sprinkled. As information, Building Services and the Fire Department have reviewed the preliminary layout for Phase IV and the proposed setbacks are acceptable: Applicable building and fire protection requirements will be reviewed and fulfilled as final plans are submitted.

The applicant has considered the single family residences located on Shirley Court and Tozer Court. After three meetings and various discussions with neighboring residences, the applicant has shifted the apartment buildings proposed in Phase V further east, away from these adjacent residences. The two apartment buildings situated nearest the existing residences are proposed to be located approximately 80 feet and 120, respectively, from the west property line and between 100-250 feet from the nearest single family residential dwellings. While the existing RM-1 district establishes a building height of 25-feet and two-stories, the RM-1 district allows placement of these apartment buildings 30-feet from the property line. The applicant has also incorporated building design considerations including off-set building orientation and positioning to minimize the building mass viewed by the adjacent residents. Finally and as discussed in the written narrative, the applicant has also committed to "...develop and execute a screening plan for these homes taking advantage of transplanted white pine trees." According to the applicant, the screening/berming plan would be prepared prior to/concurrently with the final plan for Phase V and be subject "...to the preferences of our neighbors". Additional consideration of screening/landscaping details such as retention of existing trees, installation of berms, landforms, trees, decorative fences or walls, between the apartment development (buildings and parking lot) and the adjacent single-family residences, will be further reviewed and finalized with approval of a final plan for this phase of development.

TRAFFIC CONSIDERATIONS

Based on this planned development and the ITE Trip Generation Manual, Sixth Edition, the proposed additional multiple family residential apartment buildings and retail/office buildings can be expected to generate approximately 5,800 vehicle trips on an average weekday, upon full build-out over at least a five year period (Spring 2010 through Spring 2015 and beyond). West Centre Avenue carries approximately 24,500 vehicles per day (2009). This four-five lane boulevard is a major arterial with a capacity of 32,500 vehicles per day at a level of service "D", which is acceptable in an urban area.

While anticipated traffic generation associated with the planned development can be accommodated by the adjacent public roadway, a further review of traffic, access and possible signalization of the West Centre Avenue/Cooley Drive intersection will occur with individual final plan submittals for the various phases of the project. As information for the Commission, a Signal Warrant Study for the proposed development project was prepared by CESO, Inc. (applicant's engineer) and reviewed by the City Administration in 2008-2009. The West Centre Avenue/Cooley Drive intersection currently does not meet engineering warrants for signalization, however, continued traffic monitoring will occur with future development.

NEIGHBORHOOD CONSIDERATIONS

During the 1979-1980 rezoning to accommodate an additional phase of the Greenspire Apartment project, there was organized opposition expressed by Hampton Lake area residents and local environmental groups regarding potential impacts on Hampton Lake including initial building locations and development of a beach on Hampton Lake for Greenspire Apartment residents. Attached is a February 1980 Kalamazoo Gazette article provided by a Hampton Lake resident that provides general, reported information about the

issues and an agreement reached between the developer and residents. With regard to the agreement, a review of city records including Planning Commission/City Council meeting minutes indicates a copy was not provided and it appears that the city was not a formal party to the agreement. According to discussions with the applicant and an area resident, this agreement was never signed and recorded by either party. A copy of the agreement has been requested from the applicant and area resident, however, has not yet been provided. Deeds on file at the city involving the property subject to the 1979-80 rezoning were also reviewed. The deeds indicate the land conveyance is "Subject to any and all conditions, restrictions, limitations and easements of record."

The applicant has agreed to continue to honor the spirit and provisions of the agreement. In Item #11 of the revised project narrative dated February 23, 2010, the applicant agrees to the following:

"(a) the Tentative Plan does not incorporate a beach facility or apartments within 250 feet of the existing shoreline of Hampton Lake;
(b) the future phases of the Tentative Plan do not incorporate any new apartment buildings any closer to Hampton Lake than the current apartment buildings to the north of Hampton Lake and the current homes to the east of Hampton Lake;
(c) easements for future phases of Greenspire will be provided for utilities as required by the utility companies for gas, water, electric, street lights, sanitary sewer, cable television and phone service-most utilities are already available throughout the site;
(d) the Tentative Plan does not include any new water wells on the property;
(e) a single boat dock has already been constructed and we limit its use to no more than eight watercraft, none with internal combustive engines;
(f) Greenspire will abide by Michigan Department of Natural Resources and Environmental rules and regulations relative to both wetlands and endangered species."

Combined with increased building setbacks, building/site design considerations, retention of existing trees/natural vegetation and screening/landscaping treatments, these added commitments will minimize impacts on the adjacent single family residences. Any changes to Tozer Court and/or Shirley Court will be reviewed with final plan submissions to ensure access is maintained for these single-family residences.

In regards to affordable housing units and inclusionary zoning that was discussed by the Commissioners, the City Attorney provided a 2005 legal opinion about inclusionary zoning. In instances where communities in other states have adopted inclusionary zoning ordinances, the following legal challenges resulted: 1) violation of the equal protection clause of the Constitution; 2) taking of property without just compensation; 3) lack of legislative authority. Given the lack of state enabling legislation and local ordinance regulations, the requirement to include affordable housing units in the Greenspire PD is not supportable from a legal perspective.

As additional information, in June 2009, legislation was introduced in the Michigan House of Representatives that would grant local governments the power to impose inclusionary zoning and require developers to construct affordable dwelling units with proposed housing developments. House Bill 5136 has been referred to the House Intergovernmental, Urban and Regional Affairs Committee for consideration. Also, in 1981, Greenspire Phase III apartments was financed through the U.S. Department of Housing and Urban Development (HUD). As part of the HUD financing, at least 20% of the total apartment units were required to meet low income/subsidized rental criteria. Between 1981 and 2001, a total of 48 subsidized apartment units existed at Greenspire: Participation in this program expired in 2001.

ENVIRONMENTAL CONSIDERATIONS

Recognizing the importance of protecting and preserving sensitive land areas, and in particular the Hampton Lake area, several studies have been reviewed including A Water and Land Resource Plan for the Kalamazoo-Black-Macatawa-Paw Paw River Basins (1977), Natural Features Inventory of the Portage Creek Basin (1995) and Portage Creek Assessment, Hampton Lake to Central Park (1998). The inventory and the assessment were contracted and funded by the city. These documents provide useful information to preserve sensitive land areas, including Hampton Lake and Portage Creek.

Protection of wetlands and other environmentally sensitive areas are planned by the applicant. Importantly, no further development proximate to Hampton Lake is proposed with the PD project. A preliminary review performed by Mr. Tim Bureau (environmental consultant for the applicant) along with soil borings performed by the applicant have confirmed that development activities will not encroach within designated wetland and floodplain areas. A detailed wetland/floodplain delineation and analysis will be provided by the applicant, as applicable, with final plan submittals.

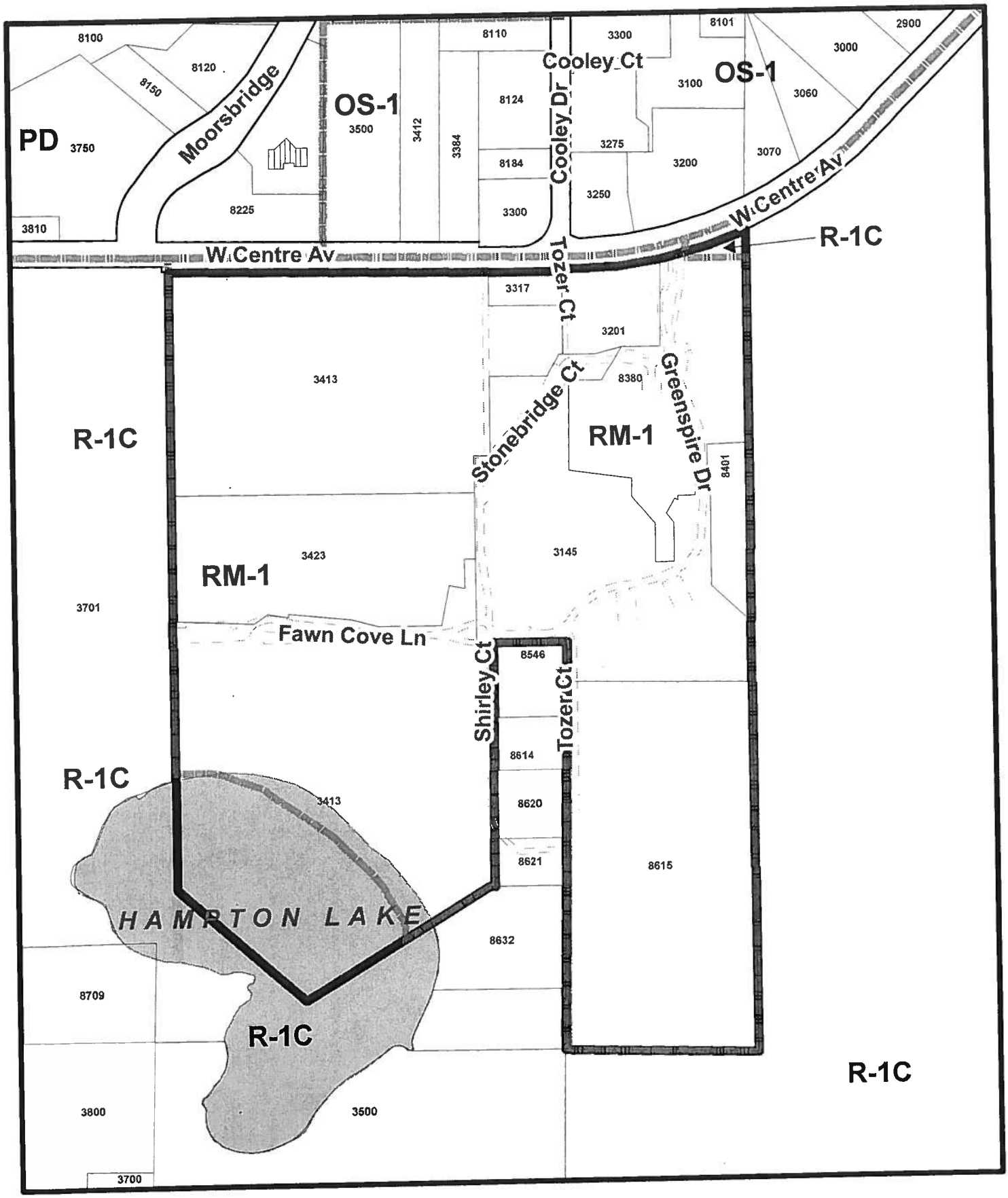
VII. RECOMMENDATION

The Greenspire PD is a creative mixture of multiple-family residential apartments and retail/office uses and represents appropriate development between West Centre Avenue and the Gourdneck State Game Area, Hampton Lake, associated wetlands/natural areas and existing land uses. The requested modification to allow an overall multiple-family residential development density of 8.45 units/acre is less than is currently allowed under the existing RM-1 zoning. A combination of increased building setbacks, building orientation and substantial screening/landscaping treatments will help mitigate potential impacts from the Phase V apartments and the adjacent single family residences located along Shirley Court and Tozer Court. The retail/office component of the development project will not exceed 20% of the total project area, consistent with ordinance standards, and will be concentrated along the West Centre Avenue frontage. The PD rezoning would also eliminate the non-conforming status of the existing 3-story apartment buildings.

Based on the above analysis, staff advises that the Planning Commission recommend to City Council that Rezoning Application #09-01, Greenspire Planned Development (West Centre Avenue and Greenspire Drive) be approved subject to the following conditions:

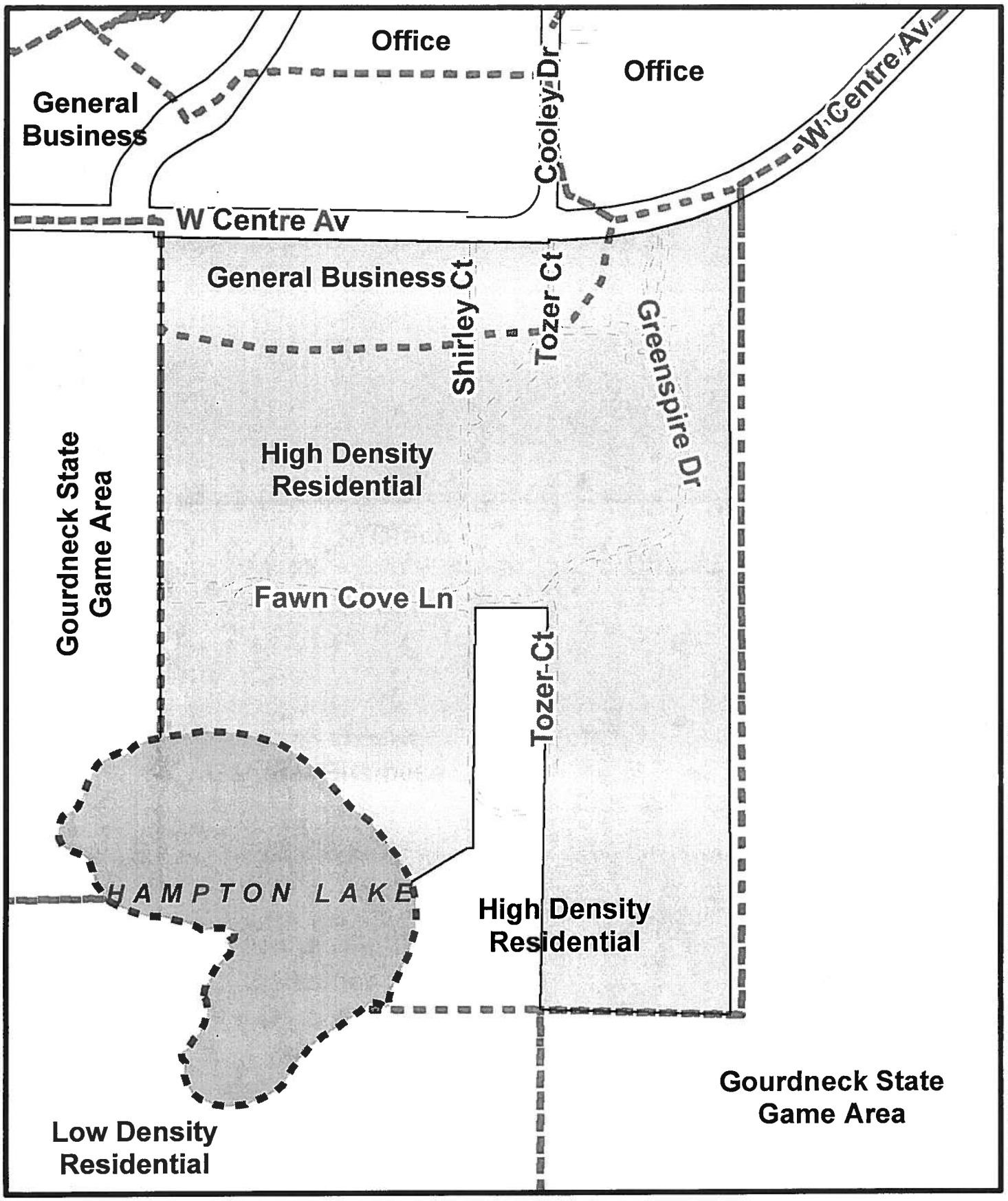
1. Development standards such as density, open space, building setbacks, building orientation, screening/landscaping, etc. be established as indicated in the tentative plan and written narrative dated February 23, 2010.
2. The modification from the 7.0 units/acre density standard be approved, with the further requirement that development density of the apartment portion of the project be a maximum of 8.45 units/acre (708 units on 83.74 acres).
3. No beach facility, additional boat docks or other accesses to Hampton Lake be permitted.
4. Details regarding screening/landscaping enhancements between Phase V of the apartment portion of the development and adjacent single family residences located along Shirley Court and Tozer Court be finalized with submittal of the final plan for this phase of the project.
5. Design and configuration of proposed access drives and interconnection, including any changes to Shirley Court and Tozer Court and possible signalization of the West Centre Avenue/Cooley Drive intersection, be finalized with submittal of the final plan for the applicable phase of the project.
6. MDNRE approvals/permits involving the wetland or other environmentally sensitive areas be submitted with the final plan for the applicable phase of the project, if required.
7. If no final plan is submitted for acceptance within two years following the change in zoning, the process to rezone (or extend the PD classification) be initiated pursuant to the ordinance.

Attachments:
- Rezoning/Vicinity Map
- Future Land Use Map
- Oblique Aerial Photograph of Greenspire and vicinity
- Development Guidelines Table
- Rezoning Application and Revised Narrative and Tentative Plan (received February 23, 2010)
- Building Elevations (commercial and multi-family)
- RM-1 Comparison Plan and Apartment designs
- February 1980 Kalamazoo Gazette article
- City Council and Planning Commission meeting minutes (Greenspire rezoning and site plans)
- February 18, 2010 letter from Dr. William Hanover (Gastroenterology of SW Michigan)



Rezoning #09-01
3145-8401 Greenspire Dr, 8615 Tozer Ct, 3201- 3423 W Centre Av, 3413 Fawn Cove Ln

1 inch = 439 feet



0 110 220 Feet

Future Land Use Map
3145-8401 Greenspire Dr, 8615 Tozer Ct,
3201- 3423 W Centre Av, 3413 Fawn Cove Ln

Future Land Use
Subject Properties

Vicinity Map
Greenspire Apartments

Printing Date: 3/5/2009 12:06:35 PM File: R:\GISADMIN\kurt\projects\comdev\pictometry\greenspire.mxd

DEVELOPMENT GUIDELINES
Rezoning Application #09-01
(Planned Development, PD)

Guideline	Description	Consistent	Comments
Rezoning – 1	Rezoning Request	**Yes**	Future Land Use Plan designates rezoning site as appropriate for high density residential and general business land use within a primary commercial node along West Centre Avenue. Proposed Greenspire Planned Development is consistent with these Comprehensive Plan designations.
Residential – 1	Protection of Residential Neighborhoods	**Yes**	Greenspire Planned Development establishes a retail/office land use pattern along West Centre Avenue and continues the multiple family apartment land use within the interior of the subject property. Design considerations have been included to minimize impacts on single family residences located along Shirley Court and Tozer Court.
Residential – 2	Residential Development along Arterial Roadway	**Yes**	Access to the planned development will be provided from West Centre Avenue, a major thoroughfare. Interconnections between the apartment and retail/office land uses will occur, where appropriate. The interior street network will be private and owned/maintained by the developer.
Residential – 3c	Locational Criteria for Residential Uses	**Yes**	Rezoning site has locational criteria consistent with the high density category: Overall development density for the apartment portion of the project is proposed at 8.45 units/acre; access to/from an arterial roadway; municipal water/sanitary sewer available and development will avoid identified wetland areas.
Residential – 4	Compatibility with Adjacent Land Use	**Yes**	Greenspire Planned Development provides a creative mixture of apartment development and retail/office land uses that is consistent and compatible with the surrounding land use/zoning pattern. The project creates an effective transition between West Centre Avenue and interior areas including single family residences along Shirley Court/Tozer Court, Gourdneck State Game Area, Hampton Lake and natural wetlands and lowlands.
Residential – 5	Open Space and Natural Resource Protection	**Yes**	Greenspire Planned Development will preserve approximately 30 acres (36%) of the overall site in open space: natural wooded areas and wetlands. Continued protection of Hampton Lake will also occur with development project.
Residential – 6	Streets and Pedestrian Systems	**Yes**	Access to both apartments and retail/office uses will be provided from West Centre Avenue. Interior private street network and pedestrian circulation network will be maintained and extended within the planned development.
Residential – 9	Residential Planned Unit Development	**Yes**	Planned development will facilitate additional multiple family residential development (Phases IV, V and VI of Greenspire Apartments) and retail/office land uses. Non-residential (retail/office) portion of development will not exceed 20% of the total land area and will be concentrated along the West Centre Avenue consistent with Comprehensive Plan.

Guideline	Description	Consistent	Comments
Natural & Historic Resources – 1	Environmental Protection	**Yes**	Designated wetland areas are located along the northwest and southeast portions of the site while Hampton Lake and floodplain areas border the southwest portion of the site. Planned development activities will avoid these areas and preserved environmentally sensitive areas as open space.
Natural & Historic Resources – 2	Floodplain	**Yes**	See Natural & Historic Resources – 1 above.
Natural & Historic Resources – 3	Water Quality	**Yes**	Storm water from planned development will collected, treated and conveyed to natural open space and wetland areas, as opposed to typical graded/ fenced retention basins.
Natural & Historic Resources - 4	Noise	**Yes**	Retail/office land uses will be concentrated along West Centre Avenue and appropriate separations and buffers will be established to minimize noise related issues.
Natural & Historic Resources - 5	Historic Resource Preservation	**N/A**	Rezoning site is not situated within a historic district and does not contain and historic structures.
Natural & Historic Resources – 6	Open Space Preservation	**Yes**	Planned Development will preserve approximately 30 acres (36%) of the overall site in open space: natural wooded areas and wetlands. Wooded areas and wetlands/marsh will be preserved for the enjoyment by the residents of the development and will provide habitat for area wildlife.
Transportation – 1	Transportation Systems	**Yes**	West Centre Avenue is a major arterial street with 24,500 vehicles per day (2009) and a capacity of 32,500 vehicles per day. Anticipated traffic generation from planned development can be accommodated.
Transportation – 2	Street Design	**Yes**	Access to the development will be provided through the existing Greenspire Drive, from West Centre Avenue. With construction of Phase IV of the apartments, a second full service driveway will be provided from West Centre Avenue, opposite Cooley Drive. When future retail/office development occur to the west, construction of a right-in/right-out driveway at Shirley Court is proposed. Final design and any related roadway improvements (i.e., traffic signal, acceleration/deceleration lanes) will be further evaluated with the final plan submittal.
Transportation – 3	Access Management	**Yes**	See Transportation – 1 and Transportation – 2 above.
Transportation – 4	Non Motorized Travel	**Yes**	See Residential – 6 above.
Municipal Facilities & Services – 1	Sound Fiscal Growth	**Yes**	Existing and proposed public infrastructure is adequate to accommodate planned development.
Municipal Facilities & Services – 2	Sanitary Service	**Yes**	Sanitary sewer is available and will serve the planned development.
Municipal Facilities & Services – 3	Underground Utilities	**Yes**	Underground utilities will serve the planned development.

CITY OF
PORTAGE
A Place for Opportunities to Grow

Department of Community Development

RECEIVED
JAN 15 2010
COMMUNITY DEVELOPMENT

APPLICATION FOR ZONING AMENDMENT

Application number 09-01

Date 1/15/2010

APPLICATION INFORMATION:

Meetings of the Portage Planning Commission are held on the first and third Thursday of each month at 7:00 p.m. in the Council Chambers of Portage City Hall, 7900 South Westnedge Avenue, Portage, Michigan. All zoning amendment applications must be properly filled out and submitted to the Department of Community Development and the zoning amendment fee paid at least 15 working days prior to the meeting at which the public hearing is held. The applicant will be notified in writing of all such public hearing/meetings.

For more detailed information about the zoning amendment process, please refer to Portage Land Development Regulations, Article 4, Division 2, Subdivision 2.

TO THE PLANNING COMMISSION:

I (WE), the undersigned, do hereby respectfully make application and petition the Portage Planning Commission to amend the Zoning Ordinance and/or change the Zoning Map as hereinafter requested. In support of this application, the following is submitted:

ZONING MAP AMENDMENT

1. a. Platted Land:

The property is part of the recorded plat: The property sought to be rezoned is located at _____ between _____ Street and _____ Street on the _____ side of the street, and is known as Lot Number(s) _____ of _____ Plat (Subdivision). It has a frontage of _____ feet and a depth of _____ feet.

b. Unplatted Land:

The property is in acreage, and is not therefore a part of a recorded plat. The property sought to be rezoned is located and described as follows: (Indicate total acreage and parcel number).

109.41 ACRES - #1- 00019095 0, 00019096 0, 00019105 0, 00020131 0
#2- 00020135 0, #3 - 00019100 0, #4 00020130 0, #5 00020140 0
#6 - 00020136 0

2. a. Do you own the property to be rezoned? Yes X No _____

b. Name of the owner of the property to be rezoned: Lakewood Management Co., Greenspire II Apartments, LLC
Greenspire Equity I, Greenspire

Address 4200 W. Centre Ave, Portage, MI 49024

3. My (our) interest in the property and purpose for submitting the proposed Zoning Amendment: Owner and General / Managing Partner for Greenspire with a goal to provide / allow for the uses within PD Zoning.

4. CURRENT ZONING: RM 1 PROPOSED ZONING: PD

ZONING TEXT AMENDMENT N/A

1. The proposed language to be considered is (attach additional sheets as necessary):

2. The Zoning Code Chapter and Section wherein the proposed text would be modified/inserted.

3. My (our) interest in and purpose for submitting the proposed Zoning Ordinance Amendment.

We attach a statement hereto indicating why, in our opinion, the change requested is necessary for the preservation and enjoyment of substantial property rights, and why such amendment will advance the public health, safety and welfare. An assessment of the impact of the proposal on the community and property of other persons in the vicinity of the amendment or affected by the amendment is also attached.

(Signature of Applicant)	(Signature of Applicant)
4200 W. Centre Ave - Portage, MI 49024	
(Address)	(Address)
269 - 329 - 3636	
(Phone)	(Phone)

A copy of all actions taken regarding this application shall be attached and shall be considered a part of this application.

American Village Builders, Inc.

RECEIVED
FEB 2 4 2010
COMMUNITY DEVELOPMENT

February 23, 2010

Mr. Christopher Forth
Deputy Director of Planning and Community Development
City of Portage
2900 S. Westnedge Ave.
Portage, MI 49002

RE: Greenspire Planned Development "PD" Tentative Plan

AVB Companies and The Hinman Company are pleased to submit to you a plan for rezoning our property on the south side of West Centre Avenue as depicted on the attached site plan. The majority of the property is zoned RM–1 Multiple Family Residential and the extreme northeast corner of the property is zoned R–1C One Family Residential. We are requesting a rezoning to PD - Planned Development. The following tentative plan (the "Tentative Plan") is consistent with the City of Portage Land Development regulations. The Tentative Plan provides for an excellent development for the City of Portage and allows this property to achieve its highest and best use while remaining true to the development principles that have been established at Greenspire over the last 35 years.

We are requesting this rezoning for several reasons which may be of interest to you, a few of which are worthy of specific note. First, this rezoning is consistent with the City of Portage Future Land Use Plan. The areas that we suggest as multi-family are shown that way on the Future Land Use Plan and the same is true for the non-residential uses. Further, our companies have individually and together had a great deal of experience developing within the PD framework both in the City of Portage and in other municipalities. Some of our very best developments have been the fruits of the PD ordinance and working through the PD process with the City of Portage. We think this development is suited very well to benefit from the PD ordinance and the PD process in general.

What follows are the answers to the 15 required questions that are provided in Section 42-375 of the City of Portage Land Development Regulations.

4200 W. Centre Ave. • Portage, MI 49024
(269) 323-2022 • Fax (269) 323-2484 • www.avbinc.com

1. The PD area will be designed to integrate the existing residential uses with new multi-family residential uses while also seamlessly integrating the planned addition of office and retail uses to the property.

2. The proposed PD development area is on all of the approximately 109 acres identified as Greenspire, on the property that is commonly referred to as Greenspire Apartments. In the proposed PD area we plan to develop a combination of multi-family, retail and office uses. The next phase to be constructed, Phase IV, would commence construction in the spring of 2010 (Phase IV) and consist of two multi-family apartment buildings containing 36 apartment units. Following Phase IV, construction on approximately 12,000 square feet of retail space would commence in the fall of 2010. Future developments would include multi-family expansion (Phase V and Phase VI) that would consist of approximately 324 (36 Phase IV, 168 Phase V, 120 Phase VI) new multi-family apartment units. Additional office and retail uses would be expanded as shown on the attached site plan as demand allows.

   Using a cluster development allows us to provide in excess of 30.64 acres of open space (15.22, 7.54, and 7.54 acres +/- as shown on the attached site plan) within the development. The same care that has gone into the existing development of Greenspire to harness the natural beauty of this special land will continue in the PD area with first-rate landscaping and natural screening where appropriate. Additionally we will take advantage of the natural features and topography of this site by site planning to allow views of the beautiful forests, waterways, wetlands and sensitive areas that border this property.

3. The Greenspire Apartments development started in the early 1970's when Roger Hinman and Joe Gesmundo first began acquiring the property now known as Greenspire Apartments. Phase I began construction in 1976 on 8.015 acres and included the boulevard entrance from Centre Avenue, four apartment buildings, the clubhouse, the pool and the first tennis court. In 1978 Phase II was constructed and included seven additional apartment buildings and an additional tennis court on 14.96 acres. In 1981 Phase III was constructed and included six new buildings on 23.68 acres. In total Phase I through Phase III included 17 buildings, 384 units (187 one beds, 144 two beds, and 53 three beds) over 46.655 acres. For density purposes the 384 units over 46.655 acres equals 8.23 units/acre.

   Greenspire Phases IV through VI will be developed in at least seven sub-phases beginning the Spring of 2010.

   a. Spring 2010. Phase IV of the multi-family residential development will commence. This phase will include 36 units.
   b. Fall 2010. The first 12,000-square foot retail building (shown as Phase IV R on the site plan) is planned to commence construction.

c. Spring 2011. The first three buildings of the Phase V multi-family residential development is planned to commence construction.
d. Spring 2013. Two more buildings of the Phase V multi-family residential development is planned to commence construction.
e. Fall 2014. The second retail building (shown as Phase V R on the site plan) is scheduled to commence construction.
f. Spring 2015. The last two buildings of the Phase V multi-family residential development is planned to commence construction.
g. The timeline for construction of the multi-family buildings (Phase VI) and the office and retail buildings west of Shirley Court is unknown at this time. It is expected that construction would take place after the Spring 2015 anticipated start of construction of the last two buildings in Phase V.

4. The time schedule is proposed in #3 above.

5. The site plan and its associated phasing lines show how each stage of the development is independent, yet designed to integrate well into the development as well as the existing development pattern. Importantly, each phase of the Greenspire plan has been meticulously designed to integrate into the existing Greenspire Apartments master plan. Phase IV contemplates initially using the existing Greenspire Drive entrance during construction. Before Phase IV receives an occupancy permit, the Cooley Drive entrance drive will be completed to provide an additional means of ingress and egress into the development. When the area west of Cooley is developed, this area will be benefited by the right in/right out drive, at Shirley Court.

   To assess the potential impact of traffic due to future phases at Greenspire, a traffic study was performed by CESO (Traffic Engineers and Surveyors). According to the traffic study, upon completion of all future phases contemplated by the Greenspire master plan, the following new trips would be generated: 259 weekday A.M. peak hour (in and out), 560 weekday P.M. peak hour (in and out), and 5,810 total daily 24 hour (in and out). Preliminarily, the traffic study indicates possible future signalization at the West Centre Avenue/Cooley Avenue intersection. Traffic impacts will continue to be monitored as construction activities and future phases proceed.

   As we plan for pedestrian circulation throughout the site, we are leveraging miles of existing sidewalks through the existing Phase I through Phase III of Greenspire. As we construct the new entry drive from Centre Avenue past the planned 12,000-square foot commercial building, we have included a sidewalk to provide entrance into the existing phases of Greenspire. We are also providing, as we construct the 12,000-square foot shopping center, a sidewalk from the existing boulevard drive to the Cooley/Centre Avenue intersection. By providing access to Centre Avenue to the entire PD via these new sidewalks, we are able to

get pedestrians to the proposed future signaled intersection at Cooley/Centre. From this point, pedestrians can cross to the north side of Centre Avenue where sidewalks connect the full distance of Centre Avenue east and west. Phases IV, V and VI all include additional sidewalks and pedestrian circulation as well. Additionally, we have planned sidewalk connections to Phase V when that phase is constructed.

Shirley Court presently provides legal access, via access easements recorded in 1953, 1962, and 1974, to the homes between Tozer Ct. and Shirley Ct. This access is presently a dirt two-track over the northern most 500'+/- and most of its distance south of Fawn Cove Lane. Improvement of the northern 500' +/- section of Shirley Court is not necessary for proper development of Greenspire through Phase V and Phase VR. Additionally, improving this section of Shirley Court is not required or necessary to provide access to the Greenspire development, nor is it required by the City of Portage Fire Department. Therefore we do not plan to substantially improve the northernmost 500'+/- of Shirley Court until the construction of Phase VI. However, portions of Shirley Court may be improved depending on the final plan site locations of the building labeled Phase V-R.

It should be further noted that the access agreements, originally recorded in 1953, 1962, and 1974, do not place any burden of maintenance or upkeep on Greenspire.

With the construction of Phase V, we will install a new way-finding system throughout Greenspire Apartments. This updated and clarified signage will help allow the residents of Greenspire and their guests to get to their intended locations, on the first attempt. As a part of this package and the development of the proposed screening on the west side of Phase V, we would be willing to include some "private property" signs to remind our residents of the difference between Greenspire Property and the privately owned properties between Tozer Ct. and Shirley Ct.

6. The Tentative Plan land is located on the south side of Centre Avenue, east of Moorsbridge Road and west of Oakland Drive. The parcel is 109.41 acres in total. This 109.41 acres includes 14.77 of which a portion is Hampton Lake and a portion is beautiful high ground in the very southwest corner of our property. Entities owned and controlled by Joseph Gesmundo and Roger Hinman presently own all of this property under a variety of entity names and is commonly referred to as Greenspire Apartments.

   It should be noted that we have done a fair amount of due diligence recently in regards to the property, in addition to our over 30 years of experience in owning the land. Specifically, the south end of Phase V is near some low-lying land. We

have had this property evaluated recently in three manners. First, Tim Bureau of Tim Bureau Consulting, LLC, a former long-time MDEQ staffer, reviewed the area in person to assure us that our buildings were not in any wetlands. Mr. Bureau has assured us that none of our buildings are in a wetland. Additionally, PSI was hired to conduct soil borings in the area of the southernmost building footprints in Phase V. The PSI borings show an abundance of sand, down the full 25' of the borings' depth. Finally, our civil engineers have confirmed that these buildings are not within the floodplain.

7. The chart below demonstrates the land use and density for each phase. Please note that at final build out, our plan exceeds the 7.0 units per acre by 1.45 units per acre. If one were to maintain the existing RM-1 zoning, our density would allow 78 more units than we are requesting under this rezoning. In other words, RM-1 zoning would allow 786 units and we are only requesting 708 in this PD application. Owing to a portion of the property being Hampton Lake, and a portion of our property being dedicated to commercial use, our calculations use 83.74 acres to calculate residential density though the property being rezoned is 109.41 acres. For density comparison purposes the existing 384 units (Phase I through III) over 46.655 acres equals 8.23 units/acre. We are requesting a modification to allow for the overall 8.45 units per acre that we have shown throughout this document, which is the combined density of Phase I through VI.

Phases	Proposed Units	Density Units/Acre Not Including Hampton Lake or Commercial Area		Phase Acreage	Total Acreage
		RM 1 Calc	PD Calc		
Existing Buildings:					
Phase I	96		11.98	8.015	
Phase II	168		11.23	14.960	22.975
Phase III	120		5.07	23.680	46.655
Combined Phase I-III	384		8.23	46.655	
Proposed Buildings:					
Phase IV	36		11.80	3.050	49.705
Phase V	168		9.88	17.000	66.705
Phase VI	120		7.04	17.035	83.740
Phase I, II, III, IV, V, & VI Combined	708	**786**	8.45	83.740	

Retail/Office	10.9 acres
	It should be noted that the allowable non-residential acreage is 19 acres at 20% of 94.64 acres.
	73,400 sq. ft. of retail and 30,400 sq. ft. of office
	103,800 sq. ft./10.9 acres = 9,522 sq. ft./acre

8. The roads, storm areas and entry statement areas as shown on the attached site plan, will be owned by the Gesmundo & Hinman entities reference herein and maintained by Lakewood Management Company as they have since the first building was constructed at Greenspire Apartments. Joe Gesmundo and Roger Hinman both hold ownership in and are the General Partners for Phase I which is owned by Greenspire Equity I.

9. The residential development units will consist of the following types of units:

   Multi-family buildings – three-story buildings, approximately 40' feet high with each building being approximately 40,000 sq. ft.

   The commercial portion of the development will consist of the following types of buildings:
   Two - Two-story retail/office buildings, 40' high, 30,400 sq. ft. each
   Three - One-story retail buildings, 25' high, between 6,000 sq. ft. and 25,000 sq. ft. each

   The office and retail buildings will be designed to integrate with the residential buildings while maintaining some of the general character of office buildings. The final product at Greenspire will take advantage of excellent colors, textures and materials to make every building look and feel great. We have attached an example of our first retail building elevation and apartment building elevation for your review.

   The Phase IV buildings have been designed to LEED standards. It is our intention to design all the multi-family buildings within Greenspire to comply with the current standard for LEED certification.

   The proposed 3-story multi-family buildings are required by current code to be fully protected by a wet-sprinkler system. As such we expect that all the new 3-story multi-family buildings within Greenspire to be fully sprinkled.

   We have used a 30' set back around the entire perimeter of the property except for the two buildings in Phase IV of the Multi-Family development where a 15'

set back is necessary in order to facilitate our site plan. The proposed 15' set back, only for these two buildings (36 units of Phase IV), allows us to set the buildings back an appropriate distance from Greenspire Drive. We need to push these buildings close to the property line, adjacent to the State of Michigan property, in order to: a) fit our buildings in the land area available between Greenspire Drive and the property line without placing the buildings too close to Greenspire Drive, b) to allow adequate parking a reasonable distance from the buildings, and to c) preserve the maximum amount of green space possible consistent with the overall feel of Greenspire. The 15' set back shown on these drawings pushes the buildings 5' further west, away from the State of Michigan property, than we had shown in our 2009 ZBA request. For clarification purposes the decks/patios are now set at 10' from the property line in Phase IV and the building face will be 15' from the property line. In addition we have maintained 30' between each building and a 25' front setback from the edge of road.

The commercial/retail building heights will not exceed those which are allowed within the PD zoning district. The multi-family buildings are designed at approximately 40'. Please see our attached elevations which illustrate the beauty of these elevations.

Through the three meetings that we held with the residential neighbors of Greenspire we learned that a primary concern with our proposed development was the Phase V buildings and their height and proximity to the residences between Shirley Ct. and Tozer Ct. As such, before submission of this Tentative Plan, and at the request of the residents, we moved these buildings as far as practicable away from the residences. The Tentantive Plan now shows the nearest buildings are actually further away from the living portion of the residences than the now existing buildings in Phase III. For example, 8620 Tozer Ct. is 233' from our proposed Phase V building while it is presently 172' from the existing Phase III, 3411 building off of Fawn Cove. The residence at 8614 Tozer Ct. is 257' from our proposed Phase V building while it is presently 209' from the existing Phase III, 3404 building off of Fawn Cove. The residence at 8546 Shirley Ct. is over 275' from our proposed Phase V building while it is presently 132' from the existing Phase III, 3404 building off of Fawn Cove.

In addition, we have offered, at our expense, to develop and execute a screening plan for these homes taking advantage of transplanted white pine trees, to further shield their residences and associated view lines from our proposed development. As recently as today we have followed up on this offer to work with these neighbors and our landscape architect to finalize a screening and/or berming plan for Phase V. We are also willing to wait and finalized a screening and/or berming plan prior to or concurrently with our final plan for Phase V-subject only to the preferences of our neighbors.

10. Storm water will be treated and piped via underground structures to the most appropriate common open space area in accordance with City of Portage requirements. In addition, some storm water capacity may be integrated into the design of the office sites. Storm water will be pre-treated according to City of Portage regulations and then released for infiltration into the previously mentioned lowland. These low-lying areas within the development provide plenty of space for this purpose and this plan will be developed to allow for natural looking rain basins/wetlands as opposed to typical, fenced off, deep and unsightly storm systems. Sanitary sewer will be connected to the available City of Portage sanitary sewer system which is available at Centre Avenue and at the Fawn Cove lift station.

11. At the February 18, 2010 Planning Commission meeting, an undated newspaper article written by Tom Haroldson was presented to the Planning Commission. The article, from some 30 +/- years ago, discussed a peace pact between Greenspire and Russell Mohney and identified several bulleted items. Russell Mohney inquired as to our intent with respect to those items. In response, Greenspire submits the following which it believes addresses the bulleted points from the article as well as some other required items for the PD narrative. It should be noted that the bulleted items were part of a "proposed agreement", the spirit of which we feel Greenspire has followed since the time of this article. The "proposed agreement" also included requirements of Mohney and others that have not been fully complied with to date. Despite this inequity, we propose the following in the spirit of Greenspire's side of the "proposed agreement": (a) the Tentative Plan does not incorporate a beach facility or apartments within 250 feet of the existing shoreline of Hampton Lake (b) the future phases of the Tentative Plan do not incorporate any new apartment buildings any closer to Hampton Lake than the current apartment buildings to the north of Hampton Lake and the current homes to the east of Hampton Lake, (c) easements for future phases of Greenspire will be provided for utilities as required by the utility companies for gas, water, electric, street lights, sanitary sewer, cable television and phone service-most utilities are already available throughout the site, (d) the Tentative Plan does not include any new water wells on the property. (e) a single boat dock has already been constructed and we limit its use to no more than eight watercraft, none with internal combustive engines. (f) Greenspire will abide by Michigan Department of Natural Resources and Environment rules and regulations relative to both wetlands and endangered species.

12. Parking will be provided according to the City Ordinance. If feasible, we will try to bank some of the retail parking as typically the City requirements exceed those of our tenants. We expect to build out all of the required spaces for the residential multi-family units. The existing and proposed road widths are

included and dimensioned on the attached site plan. Single story pitched roof garages and/or carports may be implemented into the site plan. The quantity of garages / carports shall not exceed 50% of total number of bedrooms. The construction finishes / materials will be complimentary to that of the phase 4 apartment building conceptual elevation submitted with this narrative. The specific quantity, location, and materials of the garages / carports will be detailed on the final site plan.

13. The only modification we are requesting is in regards to our density calculations as outlined in paragraph 7. We do not anticipate the need for any other modifications to allow the subject property to be developed as presented herein.

14. As noted in #4 above, we intend to make our final submittal for the last planned phase in 2015.

15. Since the successful implementation of the plan is required both by the ordinance and by our own standards, we do not feel that any performance bonds are necessary. We have a long-standing reputation for successful completion of our projects and the meticulous management of our developments after build-out.

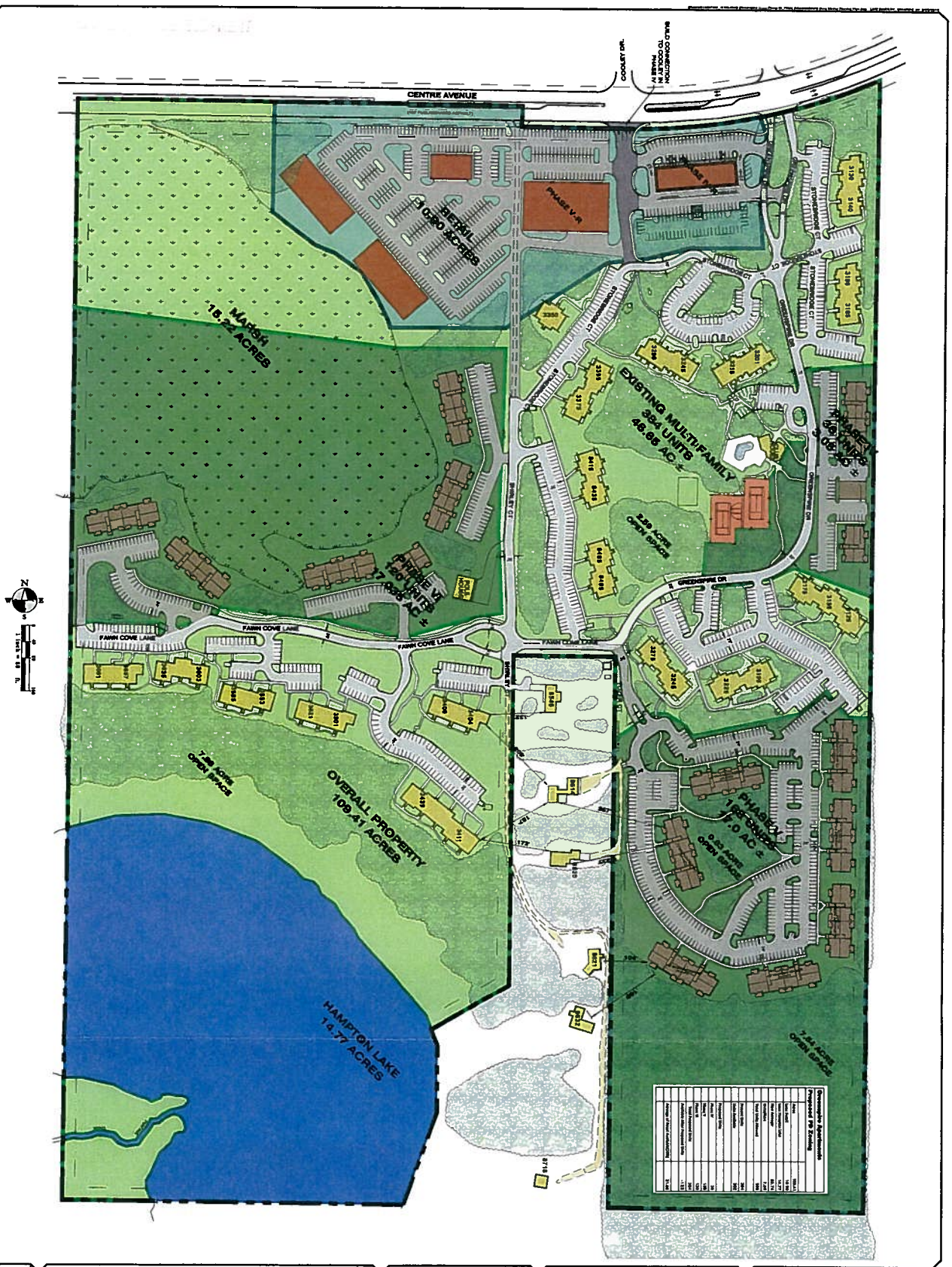
We look forward to the opportunity to discuss this plan with City Staff, Planning Commission and City Council. We feel this can be another first-class development for the City of Portage, The Hinman Company and AVB Companies.

Sincerely,

Greg Dobson

cc: Joe Gesmundo, Rich MacDonald, Roger Hinman

RECEIVED
FEB 23 2010



Sheet Title:	PD ZONE MASTER PHASING PLAN
Project:	GREENSPIRE COMPLEX
Client:	AMERICAN VILLAGE BUILDERS, INC.

Job No.: 09-0042D P.M.: TBD Dir. 30 DA/QC: 2/12/10

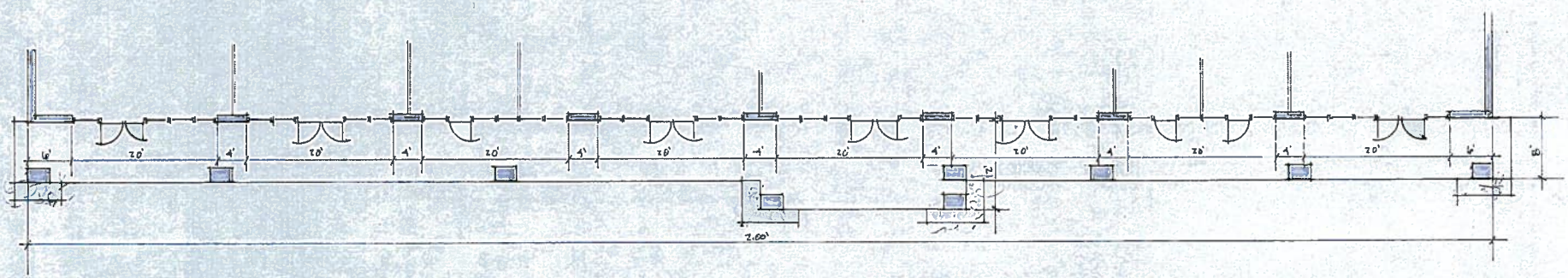
ISSUED FOR REVISIONS:

1 FINAL CITY SUBMITTAL 2/12/10

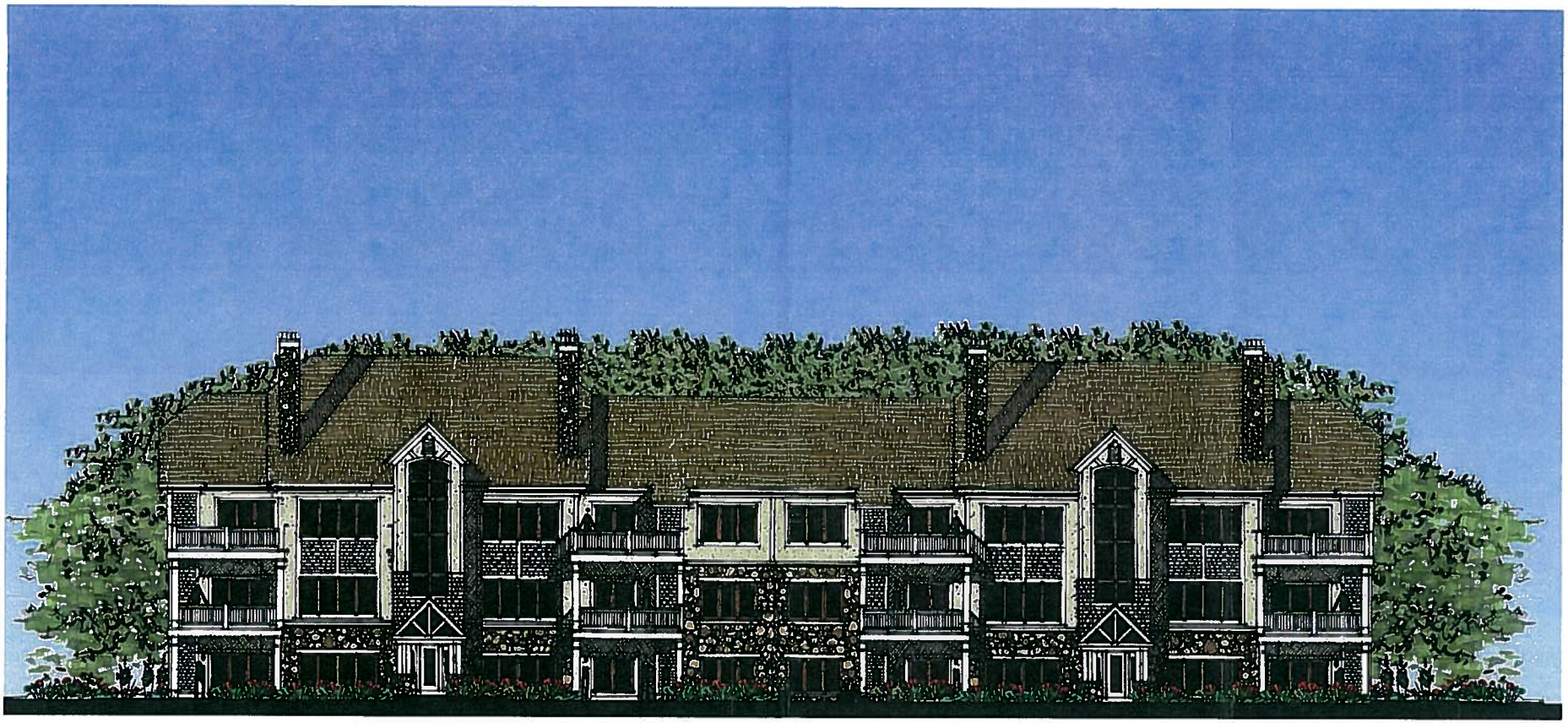
COPYRIGHT © of Hurley & Stewart, LLC

hurley & stewart
hurley & stewart, llc
2800 south 11th street
kalamazoo, michigan 49009
269.552.4960 fax 269.552.4961
www.hurleystewart.com

AVB CONSTRUCTION



greenspire village centre

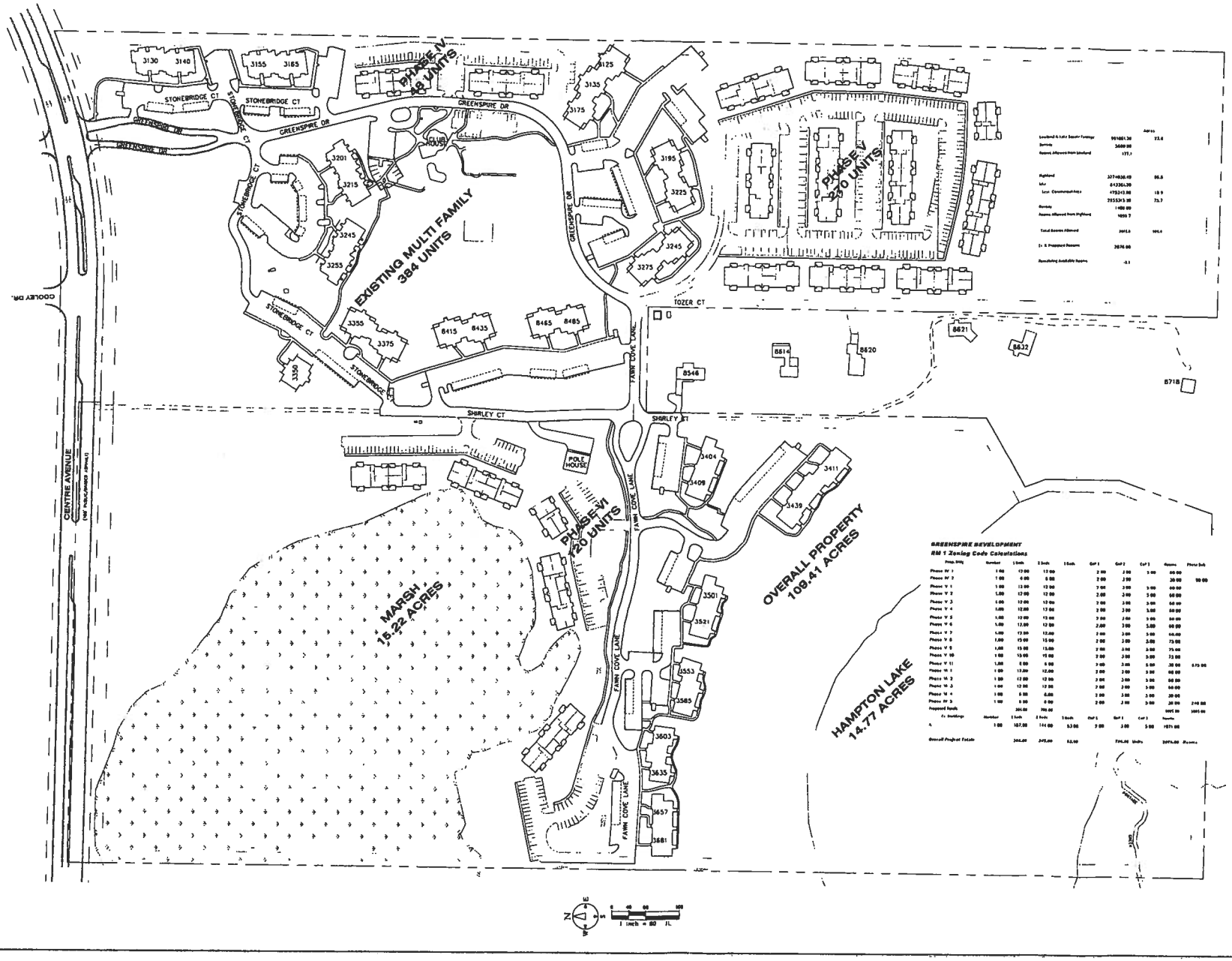


AVB CONSTRUCTION

HINMAN
DEVELOPMENT • MANAGEMENT • LEASING

Greenspire Apartments
Revised Front Elevation of 1221

Design+
11.12.09 • #08078



1 inch = 80 ft.

AVB
design/construction

hurley & stewart, llc
2800 south 11th street
kalamazoo, michigan 49009
269.552.4960 fax 269.552.4961
www.hurleystewart.com

hurley & stewart

Job No. 09-049 P.B. 1789 Dr. MC Ck. DC 11/20/09
ISSUED FOR/REVISIONS

COPYRIGHT © 2009 Hurley & Stewart, LLC

Sheet Title: RM-1 ZONE MASTER PHASING PLAN
Project: GREENSPIRE COMPLEX
Client: AMERICAN VILLAGE BUILDERS, INC.

11/18/09
Sheet
1
of 1

'Peace pact' ends Hampton Lake battle

A disagreement over velopments on Hampton Lake in rtage that began with clenched ts and scowls has ended with firm ndshakes and smiles.

The change in attitudes is the sult of an agreement between velopers of a $7 million eenspire Apartments expansion oposal and several lake residents.

The peace pact, which basically its future use of Hampton by eenspire, has been lauded by th sides as "innovative" and arsighted."

It also heads off what could have en a long fight, and possible law t, involving the 22-acre lake, the adwaters of Portage Creek.

For the developers, Joseph smundo and Roger Hinman, it o clears the way for city council proval of a request to rezone ree parcels of property at eenspire.

The council will conduct a public aring at 7:30 p.m. Tuesday on oning requests for two of the rcels from single family to multi- family. The third parcel rezon- request will be taken up in a b. 19 public hearing.

As part of the agreement, sidents and environmental oups have agreed not to fight the oning requests.

The storm was over a proposal m Greenspire to build an addi- nal 230 apartments on its 120- e site off of West Centre enue, northwest of the lake.

Included in that plan was velopment of a beach on Hamp- n that could be used by eenspire residents for swimm- , sail boating and fishing. smundo said the size and type of ach had not been decided.

Led by lake resident Dr. Russell hney, of 3500 Vanderbilt, some te residents protested the ach's development, stating it uld damage the "fragile" nature the lake, especially since it could used by a potential 1,000-plus eenspire residents.

By
Tom Haroldson
Gazette Staff Writer

Mohney and others also opposed building any apartments close to the lake shore, primarily for aesthetic reasons, and the drilling of water wells.

Joining the residents in the battle were the Department of Natural Resources, which has a public access site on the lake, and a drove of environmental groups.

The protestors asked for an environmental assessment study on the development's effects on the lake prior to any consideration of the rezoning requests.

The Portage Planning Commission, after hearing from the residents, DNR and environmental groups, thought otherwise and approved the rezoning, setting the stage for city council consideration.

Persistently, Mohney invited city council members, Gesmundo and environmental advocates to his home for an on-site view of the targeted area and further discussions.

It was after a Saturday morning meeting earlier this month that Gesmundo and Mohney began their negotiations to settle the dispute and eventually hammered out the agreement.

"Our attitude toward the environment is identical to that of was wrong. But there were enough state. We agreed with that.

"By this agreement, I am not suggesting that the original idea was wrong. But there was enough people with the attitude that the lake shore be kept in a pristine state We agree with that."

Mohney, who put in long hours to organize the resistance and research his arguments, could scarcely hide his enthusiasm for the settlement.

"This is one of the most significant environmental agreements ever made," Mohney, a Kalamazoo neurologist, said. "I know of no remaining environmental conflict over this issue."

Key points of the agreement call for:

- The Hampton Lake shoreline will be left in its natural state, which prohibits any beach facility or apartments within 250 feet of the shoreline.
- Apartments will be located so as to protect the pristine nature of the lake.
- No water wells will be permitted and no person will be permitted to occupy any new Greenspire apartment until municipal services are available.
- A single boat dock will be permitted that can be used by no more than eight watercraft, none with internal combustive engines.
- The DNR must be consulted before any alteration of a nearby bog or other land where there may be unique wildlife or identified endangered species.
- The restrictions will be attached to the Greenspire land title after a building permit is issued, insuring the agreement will be followed by all future owners of the property.

"I consider this agreement not only farsighted," Mohney said, "but broad in scope to insure the future enjoyment of the water for subsequent generations.

"Keeping this lake free from harm is vital not only to the lake but to all residents along Portage Creek and those who enjoy its environment.

"I want to thank Joe for agreeing with us on that. Not every developer would agree to sit down and settle this. To his credit, he did."

Mohney said the dispute also had a secondary, but important benefit because it united several local and state environmental groups.

Some of the groups who worked with Mohney on the issue were the Michigan Lakes & Streams Association, the Southcentral Michigan Planning Commission, the DNR, Institute of Public Affairs at Western Michigan University and the Audubon Society.

It also featured the emergence of the Portage Environmental Board, a citizens group that had been inactive on environmental issues facing the city.

The environmental board called for an environmental assessment report on the lake developments and became involved in the dispute, the first major action taken by the board in recent years.

"I hope the environmental board will continue to be active in environmental affairs of the city," Mohney said. "It could have a positive impact on future environmental questions facing Portage."

HAMPTON LAKE BATTLE ENDS WITH HANDSHAKE, SMILES
Developer Joseph Gesmundo (left) and Russell Mohney
—Gazette photo

MINUTES OF THE PORTAGE CITY COUNCIL MEETING OF FEBRUARY 19, 1980

Meeting was called to order by Mayor Corstange at 7:30 p.m.

The Invocation was given by Rev. Roland Gani, Centre Avenue Community Church of God.

The Pledge of Allegiance was given by the Council and the Audience.

The Clerk called the roll with all members present except Councilman Overlander. Also in attendance were City Manager Donald Ziemke, City Attorney John Peters and City Clerk Lois Johnson.

Motion was made by VandeMaele supported by Hinga to approve the minutes of February 12, 1980 as presented. Upon a roll call vote all members present voted in favor.

Motion was made by VandeMaele supported by Bieberle to approve the Check Register and Payrolls of February 19, 1980 as presented. Councilwoman Hinga questioned two bills to outside printers. She asked what is being done by our in-house printing department. The Manager explained ours is a part time person and that we don't have all the equipment as yet but he is printing a lot of forms, permits etc. Upon a roll call vote of the motion all members present voted in favor.

PRESENTATION REGARDING AIRPORT PROPOSAL: Mayor Corstange stated that Kalamazoo Mayor Annen and the Deputy City Manager Ms. Sculley were present with us to speak on the Airport proposal. He introduced Mayor Annen. Mayor Annen stated he would like to thank the administration for their help and consideration in the planning of the joint Policy Board and with the appointment of three members of the Council to serve on this Board. He stated he was here mainly to answer any questions the Council or audience might have regarding the proposed Multijurisdicitional Kalamazoo Municipal Airport Policy Board which would serve for a period of 18 to 24 months, with the membership consisting of five members appointed by the Kalamazoo City Commission, three members appointed by the City of Portage City Council and three members appointed by the Kalamazoo County Board of Commissioners, with the Mayors of Kalamazoo and Portage and the Chairman of the County Board of Commissioners automatically being one of the members. Councilmembers asked him several questions to which he gave the answers. It was stated they hoped to have the first meeting of the newly created board by April 1st or possibly mid-March. Mayor Corstange thanked him for attending the meeting.

PUBLIC HEARINGS:

REZONING APPLICATION #79-13 (PARCEL C) GREENSPIRE: Mayor Corstange stated this was a request to rezone Parcel C only from R-1C, single family residential to RM-1, multiple family residential. He then opened the public hearing. Speaking in favor of the request was Mr. Joe Gesmundo, representing Greenspire Developers. Mr. Gesmundo explained the request and showed a drawing as to the location of the property

in conjunction with the other properties of Greenspire. Dr. Mohney asked a couple questions of Mr. Gesmundo which were answered. Mr. Gesmundo explained the agreement with the neighbors. Motion was made by Stern supported by VandeMaele to close the public hearing. Motion carried on an unanimous voice vote. Motion was made by Stern supported by Hinga that an Ordinance to amend the Zoning Code be adopted on second reading amending the Official Zoning Map for Application #79-13 (Parcel C) from R-1C, single family residential to RM-1, multiple family residential to be effective 15 days after publication. Upon a roll call vote all members present voted in favor. Ordinance filed on Page 207 of Ordinance Book #5 of the City of Portage.

CITY MANAGER'S REPORTS:

BUDGET CONTROL EXCEPTION REPORT: Council received the Budget Control Exception Report for the seven month period ending January 31, 1980.

APPOINTMENT OF ACTING DIRECTOR OF PARKS, RECREATION, CEMETERIES AND PROPERTY MANAGEMENT: Council received a recommendation from the City Manager to appoint Mr. Michael R. Collins. Motion was made by VandeMaele supported by Jameyson that Michael R. Collins be apointed as Acting Director of Parks, Recreation, Cemeteries and Property Management at the salary of $19,360 to become effective March 8, 1980. Upon a roll call vote all members present voted in favor.

PETITIONS: None

STATEMENTS OF CITIZENS: None

COMMUNICATIONS:

FROM CITY ATTORNEY JOHN PETERS: Council received suggested wording for the ballot question regarding the sale of the triangle. Motion was made by Jameyson supported by Bieberle the wording be left as suggested by Councilman Jameyson but to add the location or description of the land. The question will read as follows: "Shall the City retain the land in the so-called triangle, (land bounded by South Westnedge Avenue, Centre Street, and the Conrail Railroad Tracks)?"

FROM MRS. HAROLD PAPE: Council received a letter regarding the necessity of sanitary sewers on Dolphin Street. Councilman Stern acknowledged this was the same situation as Larkspur Avenue. Motion was made by Stern supported by Bieberle to refer the matter to the City Manager and Engineering Staff to give a cost estimate for additional cost if done this year. Motion carried on an unanimous voice vote.

PCOC: Council received a letter from the Portage Community Outreach Center informing us they do not have the money to pay their half of the repair of the roof. Also they requested a lease agreement be drawn up between PCOC and the City for the use of the former VanderRoest Building on West Centre Avenue. There was discussion. Motion was made by VandeMaele supported by Bieberle that we go ahead with the repairs with the money coming from the Contingency Reserve Account if not available in Block

CITY OF PORTAGE PLANNING COMMISSION

Minutes of Meeting - Thursday - May 15, 1980

City of Portage Planning Commission Meeting of May 15, 1980 was called to order by Chairman Manske at 7:30 p.m. in the community room of the Portage Public Library, 300 Library Lane.

MEMBERS PRESENT:

Nancy Jean; Georgia Vavra; George Ray; Burdell Standish; Hagop Khatchikian; Peggy Hamilton; Paul Manske, Chairman.

MEMBERS EXCUSED:

Wendell Buckland had been excused through action taken at the past Planning Commission meeting. Chairman Manske requested to be excused from the June 5, 1980 Planning Commission meeting. Motion was made by Standish seconded by Babra, that Commissioner Schroeder be excused from the May 15, 1980 Planning Commission meeting and that Chairman Manske be excused from the June 5, 1980 Planning Commission Meeting. Motion was approved 7-0.

MEMBERS ABSENT:

None.

IN ATTENDANCE:

Patrick L. Loeprich, Director of Planning & Community Development; Brian Bowling, Assistant City Planner; Lowell Seyburn, Assistant City Attorney; Norm Smith, Director of Inspections and Code Enforcement.

APPROVAL OF MINUTES:

The minutes of May 1, 1980 were introduced for approval. A motion was made by Ray, seconded by Vavra, that the minutes of May 1, 1980 be approved as written. Motion was approved 7-0.

The minutes of the special meeting of May 8, 1980 were introduced for approval. A motion was made by Vavra, seconded by Ray, that the minutes of the special meeting of May 8, 1980 be approved as written. Motion was approved 7-0.

SITE PLANS:

1. Greenspire III, Apartments. Conditions placed upon this site plan through the administrative review process are as follows:

1. Shirley Court to be graded and maintained so as to function as an emergency access.
2. Sewers and lift stations to be designed, constructed and inspected in accordance with City and State Health Department specifications and are to be dedicated to the City upon completion along with a 20' easement for maintenance purposes and as built drawings.
3. Soil erosion and sedimentation permit is required.
4. Sewer Use Permit is required.

Mr. Loeprich explained that this was a phased development which consisted of 120 units in Phase III and approximately 114 units in Phase IV. Mr. Gesmundo explained that although they have received commitment for funding on the Phase III portion of the project, he would like the Planning Commission to consider approving both phases on this site plan as he believes the balance of the project will receive approval in a short time. Mr. Loeprich explained that the staff had reviewed the project in its entirety and would have no problem with the granting of approval for both Phase III and Phase IV.

Chairman Manske explained that a communication had been received from the Environmental Board requesting that the Planning Commission request an environmental assessment on this project. Mr. Loeprich indicated that the developers had prepared an environmental assessment which had briefly been reviewed by

Staff. It is believed that the primary environmental concerns outlined in the assessment have been addressed through the site design or through deed restrictions imposed on the parcel by the developer. It is therefore believed that the Plan meets adequate environmental standards as presented. A motion was made by Ray, seconded by Standish, that, based upon the staff approval of this plan and acceptance of the environmental assessment, this site plan be approved subject to the above specified conditions being required. Motion was approved 7-0.

2. Wilson Air Equipment, 5080 Meredith Drive. Conditions placed upon this site plan through the administrative review process were as follows:

1. Thirty-five foot radii are required on the drive entrance.
2. A soil erosion and sedimentation permit is required.
3. Sewer Use Permit is required.
4. Water and sewer lines must be 10' apart.
5. Automatic sprinklers are required.

After some limited discussion, a motion was made by Hamilton, seconded by Jean, that this site plan be approved subject to the above specified conditions being required. Motion was approved 7-0.

PUBLIC HEARINGS:

1. Preliminary Plat, Swan Creek Estates, Phase I (Stage I). Speaking in favor of the proposed plat was Charles Glasner of Gove Associates, engineer for the project. Mr. Glasner commented that the proposed plat conforms to City and State regulations for subdivisions and, therefore, it is requested that Phase I be approved.

Speaking in opposition to the proposed plat were the following: Mr. and Mrs. Larry Smith, 3907 Wedgewood and Mrs. Erich, 3828 Wedgewood. Concerns expressed related to the extension of Tamworth into the proposed development in later phases of the plat and the development of a lift station in the western portion of the plat in a later phase. Mr. Loeprich explained that Tamworth was a stub street which was originally intended to go through to the north and is recommended for future connection, however, it is not a part of the first phase of the development. Mr. Glasner indicated that the lift station must be installed because of the grades in the area. Commissioner Vavna questioned if the Planning Commission was dealing with the first 14 lots or the total 55 lots at this time. If was explained that the first 14 lots are the only lots of concern presently. Mr. Glasner pointed out that the first 14 lots would not involve the construction of the lift station as the sewers in this area would operate on a gravity system. Mr. Smith commented that he believed the dead end nature of Wedgewood Street should be maintained and no tie-in should be provided to the north through Tamworth. Other residents from the area questioned the potential future development and the possibility of multiple family structures being instituted in the area. It was indicated that the land was presently zoned for single family purposed only. At this time the public hearing was declared closed. This item will appear on the next Planning Commission Agenda for action.

2. 12 month review for Conditional Use Permit for Eugene Pifer, 10028 Shaver Road, to opperate a car sales lot at 10028 Shaver Road.

Mr. Carl Erickson, an attorney representing Mr. Pifer, addressed the Commission. It was explained by staff that through review of the site plan and conditional use permit previously approved for this use three elements have gone unaddressed. These are:

a. appropriate radii (approximately 25') are needed on the drives. Improving the drives as such will necessitate the extension of the existing culverts.
b. A barrier installed at the ingress/egress point orginating at the Shaver/Oakland intersection.
c. The lot or lot area shall be provided with a permanent, durable and dustless surface, and shall be graded so as to dispose of all surface water accumulated within the area.

CITY OF PORTAGE PLANNING COMMISSION

Minutes of Meeting - Thursday, May 5, 1977

MEMBERS PRESENT:

Wendell Buckland; George Ray; Victor Schroeder; Ted Vliek; Burdell Standish; Paul Manske, Chairman. Margaret Gailey arrived after the approval of the minutes.

MEMBERS ABSENT: Excused.

Don DeSmit; Georgia Vavra.

IN ATTENDANCE:

Patrick L. Loeprich, Director of Planning; Brian Bowling, Assistant City Planner; Lowell Seyburn, Assistant City Attorney; Norman Smith, Director of Inspections; John Hodges, Block Grant Administrator.

The meeting was called to order at 7:35 p.m. by Chairman Manske in the Community Room of the Portage Public Library.

The minutes of April 21, 1977 were introduced for approval. A motion was made by Ray, seconded by Schroeder, to approve the minutes of April 21, 1977 as written. Motion was approved 5-0, with Vliek abstaining since he was absent at the last meeting.

SITE PLANS:

1. 2375 E. Milham - Beacon Park - Behrens Construction. This was an amended site plan. The original site plan for the proposed structure was approved June 17, 1976. A sidewalk waiver had been granted on June 17, 1976. The only condition attached to the approval of this site plan was that signs must meet City Zoning and Sign Code specifications with a permit to be issued by the Department of Inspections. A motion was made by Gailey, seconded by Standish, to approve this site plan with the above-identified condition. Motion was approved 7-0.

2. 6133 S. Westnedge - Burger Chef Addition - Ron Palmer. Director Loeprich explained that the center ingress and egress drive to this site will be eliminated as indicated on the site plan. One point which failed to appear on the Departmental Checklist as a condition for approval was that parking spaces no. 1, 16, 17 and 58, as identified on the site plan, are to be removed to provide an adequate maneuvering lane. A motion was made by Vliek, seconded by Standish, to approve this site plan with the above-identified condition. Motion was approved 7-0.

3. W. Centre Street - Greenspire, Phase II. Commissioner Buckland questioned whether school children within the development would have to walk in the access drive to reach the school bus which stops on Centre. Mr. Joseph Gesmundo indicated that a sidewalk system will be provided.

Several conditions were attached to the approval of this site plan. These are:

a. Conformance to building height regulations will be determined when building specs are submitted. If above 30 ft. requirement, will be necessary to obtain a variance from the Zoning Board of Appeals prior to the issuance of building permit.

b. All maneuvering lanes must be 22 ft. in width.

c. Shirley Ct. to be double seal upon the completion of Phase II or provide (begin construction) on ultimate drive access as part of Phase III.

d. Grade storm drainage retention area in accordance with soil erosion and sedimentation permit.

e. Sewers are to be designed, constructed and inspected in accordance with City and State Health Dept. specifications and are to be dedicated to the City upon completion along with a 20' easement for maintenance purposes and as-built drawings. A 20' easement will also be provided to the City running from a point along Phase II Building IV sanitary sewer line to the adjacent properties to the south and west.

f. Signs must meet City Zoning and Sign Code specifications with a permit to be issued by the Dept. of Inspections.

g. Add one fire hydrant between buildings IV and V.

A motion was made by Standish, seconded by Vliek to approve this site plan with the above-identified conditions. Motion was approved 7-0.

4. Garden Lane - Barrington Woods Quadplex - Martz. Two conditions were attached to the approval of this site plan. These are:

a. Signs must meet City Zoning and Sign Code specifications with a permit to be issued by the Dept. of Inspections.

b. Extend 6" water line to Upper Darby and provide a 20' easement along the length of the water main.

Mr. Martz was present and explained that he believed the requirement of extending the water main to Upper Darby was unfair. Director Loeprich explained that if this was not done Mr. Martz would be required to provide an 8" rather than a 6" main to the interior of his property. This would be to ensure adequate pressure levels for fire protection. Mr. Martz then agreed to the 6" main extension to Upper Darby.

A motion was made by Ray, seconded by Standish, to approve this site plan with the above-identified conditions. Motion was approved 7-0.

5. 6415 S. Westnedge - Burger King Addition - Phil Renuart. All conditions were met on this site plan. A motion was made by Vliek, seconded by Schroeder, to approve this site plan. Motion was approved 7-0.

HOME OCCUPATION:

Duane and Evelyn Soderquist - 719 Shumway. Duane and Evelyn Soderquist have applied to the Portage Planning Commission seeking a home occupation permit for the utilization of a hand operated printing press and the subsequent sale of small business cards at 719 Shumway Street. The total actual floor area of the story on which the home occupation will take place is 1,200 sq. ft. Eighty sq. ft. will be utilized for the home occupation. No sign will be utilized. A motion was made by Ray, seconded by Gailey, to grant Duane and Evelyn Soderquist of 719 Shumway a home occupation permit to operate a hand printing press. Motion was approved 7-0.

OLD BUSINESS:

Split uses within particular zoning districts. Mr. Seyburn explained he was seeking Planning Commission input on allowing split uses to exist within particular zoning districts. Commissioner Gailey suggested an owner-occupant requirement would be basic to this type of arrangement. After some further discussion, Chairman Manske directed Mr. Seyburn to develop a recommendation and present it to the Planning Commission.

NEW BUSINESS:

1. Set for Public Hearing Appl. #77-6, Howard S. Brown, Van Oak Corporation, 1913 Vanderbilt Road, from R-1C, single family residential to I-1,

CITY OF PORTAGE PLANNING COMMISSION

Minutes of Meeting - Thursday, May 2, 1974

MEMBERS PRESENT:

Paul Manske; Georgia Vavra; Burr Standish; Don DeSmit; George Ray; Ted Vliek, Chairman.

MEMBERS ABSENT: EXCUSED

Margaret Gailey

IN ATTENDANCE:

Ronald Carlson, Building Inspector; Jim Smith, Dept. of Public Works; Martin McDaniel, Assist. Dept. of Public Works; Dennis Stuckey, Admins. Assist; Lowell Seyburn, Assist. City Attorney.

The meeting was called to order at 7:30 P.M. by Chairman Vliek.

A motion was made by DeSmit, seconded by Manske, to approve the minutes of April 18, 1974, as written. Motion was approved 6-0.

SITE PLANS:

600 block on south side of Schuring - Cedar Crest - Apartment Development. It was explained by Mr. Stuckey that maneuvering lanes in the parking area should be 22 feet wide instead of the 20 feet provided; the drive approaches onto Schuring Road should allow for 30 foot turning radii; both water and sewer should be provided as well as storm drainage to Portage Creek; approval of the site plan should be subject to approval of plans for these utilities by the Engineering Department; a sidewalk along Schuring Road would be beneficial. There was discussion of a four-foot six-inch obscuring wall to be provided along the east and south sides of the proposed development. It was suggested that the developer meet with the adjacent property owners and submit a plan to provide adequate screening inasmuch as the industrial development should have had an obscuring wall at the time they built. Mr. Ray asked if sidewalk construction could be deferred until such time as the water and sewer lines were built and the street improvement made. Mr. Smith said it could be figured so that the sidewalk would not have to be torn up in the future. Mr. Arnold Zomber, Mr. Field, and Mr. Demetrius Economidis, developers, explained the project. They stated that an easement would be required to the south in order to connect into existing sanitary sewer and storm sewers. A motion was made by DeSmit, seconded by Manske, to approve this site plan subject to the above recommendations by Mr. Stuckey except those regarding the obscuring wall. The matter of the obscuring wall was tabled for further study. Motion was approved 6-0.

302 E. Centre - Centre Street Shops - small shopping center. Mr. Stuckey explained that the projections on the southern portion of the proposed drive with the four-foot radii should be eliminated; the site plan proposes to connect to the municipal sanitary sewer system which will have to be extended to serve this property; a 4'6" obscuring wall is required along the south boundary of the property; sidewalks should be installed. There was discussion concerning the possibility of having the 4'6" obscuring wall waived by the Zoning Board of Appeals. It was noted that the Portage Public Schools would be the party of primary concern with respect to this fence. Ted Vliek stated that the school would probably be amendable to having the fence waived along the portion of the school's bus barn that abutts this property. Mr. Shave, representing the developer, explained the proposed plan. He stated they were agreeable to putting up the fence but probably would seek a variance for the portion adjacent to the bus barn. A motion was made by Ray, seconded by Standish, to approve this site plan subject to the above recommendations. Motion was approved 6-0.

3400 Block of W. Centre - Greenspire - apartment development (Phase I). It was explained by Mr. Stuckey that the maneuvering lanes in the parking area are required to be 22 feet in width instead of the 20 feet provided; city water and sewer must be installed to meet the Ordinance density standards; approval of the Kalamazoo County Road Commission for the drive onto Centre Street should be submitted; sidewalks should be installed along Centre Street. No screening is required under the Ordinance and does not seem necessary in this case because the adjoining property is owned by the Department of Natural Resources and is undeveloped. Tozer Lane is owned by the developers and may be closed when a new road through the project is built. A request is before the Zoning Board of Appeals to construct the apartment buildings and Phase I with basements which are less than 50% below ground level. Motion was made by Manske, seconded by Ray, to approve the site plan subject to the recommendations stated above and also subject to the approval of the Zoning Board of Appeals. Motion was approved 6-0.

CITY OF PORTAGE PLANNING COMMISSION

Minutes of Meeting - Thursday, February 6, 1975

MEMBERS PRESENT:

Paul Manske; Georgia Vavra; Victor Schroeder; Don DeSmit; George Ray; Margaret Gailey; Ted Vliek, Chairman.

MEMBERS ABSENT: Excused.

Wendell Buckland; Burr Standish.

IN ATTENDANCE:

Jim Smith, Department of Public Works; Richard Leland, Admin. Assist. Engineering Dept; Glen Hagen, Assist. City Attorney.

The meeting was called to order at 7:30 P.M. by Chairman Vliek in Council Chambers in the Police Building.

A motion was made by Schroeder, seconded by Vavra, to approve the minutes of January 16 and January 20, 1975, as written. Motion was approved 7-0.

SITE PLANS:

3400 block West Centre - Greenspire - apartments - revised. This site plan had previously been approved but a few changes were made in placement of buildings in order to save more trees. The parking spaces meet the minimum requirement, set back exceeds the minimum 30 feet and all surface water will be held and absorbed on the site. Sidewalks are planned adjacent to buildings and parking areas. A motion was made by DeSmit, seconded by Ray, to approve this site plan. Motion was approved 7-0.

5830 S. Westnedge - Wendy's - Restaurant. Surface water will be taken into 3 catch basins, all connected by 12" perforated pipe. A 12" overflow to the existing storm sewer is provided. Enter only on Wedstnedge. Exit only from the eastern-most drive on Van Hoesen. Enter/Exit through the western-most drive on VanHoesen. Parking spaces exceed the minimum requirement, set backs are in accordance with the Ordinance and a 10 foot green strip is provided. A motion was made by Manske, seconded by DeSmit, to approve this site plan. Motion was approved 7-0.

OLD BUSINESS:

APPL. #74-23 - Don Probasco - 619 Romence - 5.85 acres on south side of Romence - from R-1B, one family residential to I-1, light industry or any other zoning allowed by the Portage Zoning Ordinance. The request was read by the Chairman. Mr. Robert Travis, attorney representing Mr. and Mrs. Andrew Gregor, 805 Romence, said the residents in the area would be agreeable to multiple family zoning but felt that light industry was too much. Mr. Steve Early, representing the petitioner, said he had a talk with the Vilican-Leman consultant and Mr. Ambrose had said because the property was scared up, two sides border on I-1 zone already and because of the topography of the land, this parcel would probably never go single family. The property is 197 feet wide and 1129 feet deep. It could be developed multiple family by putting a road down one side. Tom Tobin said he was representing the people in Winter Forest Plat and that they were objecting to light industry zoning but would be favorable to multiple family. A motion was made by Gailey, seconded by Ray, to recommend to Council that Appl. #74-23 be changed to RM-1, multiple family, rather than the I-1, light industry as requested. Motion was approved 7-0.

NEW BUSINESS:

APPL, #75-1 - Oswalt, Sanderson Sewing Machine Co., Mr. Jim's of Kalamazoo, and Wm. McVeigh, Jr.; 1204, 1210, 1224, and 1302 W. Milham; Lots 1, 2, 3, 5, and 6 of Homeacres Plat; from OS-1, office service to B-1, local business or any other zoning allowed by the Portage Zoning Ordinance. A motion was made by Ray, seconded by Manske, to set this for Public Hearing on February 20, 1975. Motion was approved 7-0.

APPL. #75-2 - Meyle & Coash, Lot 328, Lakewood Homesites; from R-2, duplex to RM-1, multiple family or any other zoning allowed by the Portage Zoning Ordinance. A motion was made by DeSmit, seconded by Vavra, to set Appl. #75-2 for Public Hearing on February 20, 1975. Motion was approved 7-0.

APPL. #75-3 - Cities Service, 6012 S. Westnedge; southwest corner of Milham and Westnedge, from B-2, community business to B-3, general business or any other zoning allowed by the Portage Zoning Ordinance. A motion was made by Manske, seconded by Vavra, to set Appl. #75-3 for Public Hearing on February 20, 1975. Motion was approved 7-0.

Robert D. Brouwer, MD
William F. Hanavan, MD
Thomas P. Gushurst, MD
Heidi S. Gjersoe, MD
William W. Webb, Ph.D, MD
Kim T. Nguyen, MD

RECEIVED
COMMUNITY DEVELOPMENT

February 18, 2010

To: City of Portage
Department of Community Development

We are business owners of Gastroenterology of Southwest Michigan, and Kalamazoo Endo Center. Our property is across Centre Street from the proposed Hinman Development. Aside from the loss of more green space, we have other major concerns with the proposed changes to our area:

1) Cooley Street and Centre Street is already an extremely dangerous intersection due to poor visibility in all directions, poor signage on both sides of Centre indicating Cooley Streets location and a high rate of speed being posted in both directions. Serious accidents are inevitable since many of our patients are older and/or unfamiliar with the area which places them at serious risk.

2) Should the proposed development come to fruition, this increase in population will bring even more traffic to this busy intersection and we will strongly object to any further development.

We respectfully propose that should further development be decided upon, that no further action is taken in the area **without first installing a traffic signal** at this critical intersection.

Sincerely,

William Hanavan, M.D., President
Robert Brouwer, M.D.
Thomas Gushurst, M.D.
Heidi Gjersoe, M.D.
William Webb, M.D.

269-349-2266 phone
269-349-0792 fax
3304 Cooley Ct.
Portage, MI 49024
www.gsm-ket.com

BRONSON

RECEIVED
MAR 03 2010
COMMUNITY DEVELOPMENT

March 3, 2010

City of Portage
Department of Community Development
Faxed to 269 329 4506

Bronson Properties Corporation owns the medical office building at the northwest corner of Cooley Drive and Centre Street, it is a valuable asset to our organization and very convenient for our patients.

One consistent problem we have not been able to overcome is a traffic concern. We regularly receive complaints from our patients, physicians and staff about their inability to navigate the Cooley Drive / Centre Street intersection. Bronson has requested a traffic signal at this intersection many times in the past, but the City responds that it is not warranted. Other suggested alternatives (ie lowering speed limit, improving visibility) have not been implemented.

I attended the February 18, 2010 Public Hearing at the City of Portage Planning Commission Meeting and voiced support for the installation of a traffic signal at the Cooley / Centre intersection before the Greenspire Planned Development construction activity begins.

As stated by other commercial neighbors, Bronson respectfully proposes that should further development be decided upon, no further action is taken in the area without first installing a traffic signal at this critical intersection. We consider this a public safety concern, thank you for your consideration.

Regards,

Carol Long
Facility Planning / Property Manager
269 341 6813

601 John Street
Kalamazoo, MI 49007
269.341.6000

bronsonhealth.com

CITY OF
PORTAGE
A Place for Opportunities to Grow

Department of Community Development

TO: Planning Commission **DATE:** March 4, 2010

FROM: Jeffrey M. Erickson, Director of Community Development

SUBJECT: Rezoning Application #09-01, Greenspire Planned Development, Michigan Department of Natural Resources & Environment Response

Two e-mail communications were received today from Mr. Bill Schmidt, Michigan Department of Natural Resources & Environment (MDNRE) that identified several issues related to the Greenspire Planned Development project. The first e-mail was received in the morning and the second in the afternoon. In addition to the e-mail communications, telephone conversation with Mr. Schmidt also occurred this afternoon. The following is a summary of the issues and a response from staff.

Land Survey. At the request of Mr. Schmidt, the applicant, Mr. Greg Dobson, provided an ALTA property survey prepared by LANDTECH to the MDNRE on February 22, 2010. Mr. Schmidt indicated in his March 4, 2010 morning e-mail communication that the survey "doesn't appear to be a formal survey" and "could be considered incomplete." Attached is an e-mail communication provided by Mr. Dobson that includes a response from the president of LANDTECH, Mr. Matthew Mokanyk, who indicates the survey is legally binding.

Notice of Public Hearing. The morning e-mail communication from Mr. Schmidt indicates the MDNRE has not been made "completely informed" regarding the development proposal. As was stated to the Commission during the February 18, 2010 meeting, notice was provided to the address of record for MDNRE. In addition to the notice and to ensure the MDNRE was aware of the proposed project, staff also contacted the MDNRE staff member responsible for managing the Gourdneck State Game Area, Mr. David Brauer, on February 11, 2010. The Greenspire Planned Development was explained to Mr. Brauer and a copy of the official public notice was emailed to Mr. Brauer that same day. No further contact was received from the MDNRE until the e-mail communications were received from Mr. Schmidt earlier today. As indicated in Mr. Schmidt's afternoon e-mail communication, he confirmed today that Department staff had been in contact with MDNRE staff (Mr. Brauer).

Mr. Schmidt also refers to "later arriving information" as a reason why the MDNRE will not have a representative at the Planning Commission meeting tonight. The late arriving information that Mr. Schmidt refers to is the ALTA survey provided by the applicant on February 22, 2010.

The MDNRE was provided notice in accordance with statutory requirements to a property address provided by the MDNRE. In addition to the "official" notice, the MDNRE was also contacted by staff, the applicant and a Hampton Lake area resident. There was sufficient time for MDNRE staff members to become familiar with the project and comment on any potential impacts prior to the final Planning Commission meeting date.

450-foot Safety Zone. The State of Michigan has established a safety zone of 450-feet from an "occupied house, cabin, or any barn or other building used in a farm operation." No person can hunt, including archery and crossbow hunters, within the safety zone without the written permission of the property owner or occupant. Mr. Schmidt is concerned about the impact the proposed buildings will have on the state-owned land with respect to the 450-foot safety zone.

As the Commission is aware, there are three existing apartment buildings along the east property line and one along the west property line adjacent to the state-owned land that are setback 30 feet. As proposed by the applicant, five additional buildings are proposed along the east property line and one along the west property line. These buildings will also be setback 30 feet with the exception of the buildings located in Phase IV, which are proposed to be setback 15 feet (balconies would have a 10 foot setback). As a result of the existing buildings, the placement of the proposed buildings, including those located in Phase IV, will have little impact on the 450-foot safety zone. The most impacted area is Phase V. However, the proposed 30-foot setback under the PD, planned development zoning request is the same as the current RM-1, multi-family zoning.

From a property owner's perspective, they have a right to develop their property within the local ordinances applicable at the time of filing. Mr. Schmidt is suggesting the 450-foot safety zone extend onto private property and affect the placement of future buildings. This type application unnecessarily restricts property owner's right to design and locate buildings on the property even though consistent with local ordinances.

Staff is prepared to further discuss this matter during the March 4, 2010 meeting.

Attachments: E-mail communications dated March 4, 2010 from Bill Schmidt
E-mail communications dated March 4, 2010 from Greg Dobson

From: "Bill Schmidt" <schmidtw@michigan.gov>
To: <ericksoj@portagemi.gov>
CC: "Steve Chadwick" <ChadwickS@michigan.gov>, "Earl Flegler" <FLEGLERE@mich...
Date: 3/4/2010 9:07 AM
Subject: Proposed "Greenspire" Development - T3S, R11W, Part of Sec. 19and Sec. 20 - Portage Twp.

Jeff: I work in the Office of Land and Facilities with the Michigan Department of Natural Resources and Environment. My job duties are focused on land, rights in land, and to help in the monitoring and safeguard of the lands that have been purchased by the Department and are used for various recreational uses throughout Michigan.

I have become aware of a proposed development ("Greenspire") that is situated adjacent to State-owned land as noted above and managed as part of the Gourdneck State Game Area.

The information I've come across appears to be a engineering drawing/sketch/mapping prepared by 'LANDTECH' and/or 'Hurley & Stewart' and provides a rendering of what looks like an apartment/condominium proposed development. The drawing makes note of section lines but really doesn't appear to be a formal land survey. The proposal looks to be high density.

My concern is this: Records indicate that the Department owns and manages land on both the easterly and westerly boundaries of this development proposal. The information I have does not appear to be a formalized survey and, from that standpoint, could be considered incomplete. As stated before, my concern is to alert you to the fact that there is land owned and managed by the Department in this immediate area and we want to make sure that the proposed development does not impinge upon these State-owned lands, neither by trespass, and that proper set-back requirements are established and implemented with respect to these boundaries.

I understand that you are the Director of Community Development and that there is a Planning Commission meeting tonight relative to this proposal.....and because of the late-arriving information, the Department probably will not have a representative present. However, this note serves as notice that as an adjacent landowner, we feel we need to be completely informed about this proposal.....and I'm not aware that this has happened to this point. Back in October, 2009, I answered a question about land rights in this area that was brought to me by Vicki Georgeau. That discussion was pertinent to better understanding of a specific legal description for a portion of DNRE land, but there was no mention of the reason behind the request.....other than a clarification of a specific legal description.

For the time being, you can use my name and address, that follows, in order to provide complete and detailed information.

Mr. Bill Schmidt
DNR - OLAF
P.O. Box 30448
Lansing, Michigan 48909

I appreciate the opportunity to make our concern known and please feel free to call or write if you need additional information or wish to discuss this matter in more detail.

Schmidt

Bill Schmidt

Office of Land and Facilities
Phone: (517) 335-3257
e-mail: schmidtw@michigan.gov
Fax: (517) 335-1880

From: "Bill Schmidt" <schmidtw@michigan.gov>
To: <ericksoj@portagemi.gov>
CC: "Steve Chadwick" <ChadwickS@michigan.gov>, "Earl Flegler" <FLEGLERE@mich...
Date: 3/4/2010 2:49 PM
Subject: "Greenspire"

Jeff: Thank you for the opportunity for continued discussion.

Here are some comments relative to my earlier e-mail and our discussion that ensued:

1. It appears that your office has notified Department personnel who directly manage the Gourdneck State Game Area. I confirmed with DNRE personnel this morning that Chris Forth has been in contact with our people.

2. We are always concerned about trespass on State land. Improper placement of buildings, construction activities, storing materials, mowing, or similar activities, are considered trespass on State land. Boundary lines are important and we seek to protect the integrity of the boundary line and prevent trespass.

3. Any reduction in building set-back requirements from property lines would have an impact on the adjacent State-owned land with respect to the Department's hunting 'safety-zone' of 450 feet. For example, if you reduce the setback requirement by 15 feet, you bring buildings closer to the property line and thereby increase the amount of State land impacted by the 'safety zone' beyond that which is applicable at the present time. We would prefer that set-back requirements are not reduced in situations where such reduction would impact adjoining State-owned land.

Thank you for your time and attention in this matter and should you have questions, please feel free to call or write.

Schmidt

Bill Schmidt
Office of Land and Facilities
Phone: (517) 335-3257
e-mail: schmidtw@michigan.gov
Fax: (517) 335-1880

Christopher Forth - Greenspire - Portage Michigan

From: "Greg Dobson" <gdobson@avbinc.com>
To: "Christopher Forth" <forthc@portagemi.gov>, <ericksoj@portagemi.gov>, "Mike West" <westm@portagemi.gov>
Date: 3/4/2010 4:32 PM
Subject: Greenspire - Portage Michigan
CC: "Rich MacDonald" <Richm@hinmancompany.com>
Attachments: Greenspire Alta Rough Draft 2009 10 23 1 and 2.pdf

Gentlemen,

For your information. Please see the statement from the President of LandTech.

Thanks!

AVB Companies
Greg Dobson
4200 W. Centre Avenue
Portage, MI 49024
Cell 269.217.5477/ Office 269.329.3636
Fax 269.327.3172
www.avbconstruction.com
www.avbhomes.com

From: Matthew Mokanyk [mailto:mattm@landtechps.com]
Sent: Thursday, March 04, 2010 1:39 PM
To: Todd Hurley; Pete Prokop
Cc: Greg Dobson; schmidtw@michigan.gov
Subject: RE: Testing RE: Portage Michigan

Yes, this is a "real" survey conducted under my direct supervision and adheres to ALTA standards. This is the preliminary draft but it is a legally binding survey.

Matthew Mokanyk, PS, PE, CFedS
President
Licensed Engineer / Licensed Land Surveyor
AL, AR, AZ, CO, FL, GA, IL, IA, IN, KS, KY, MI, MN, MO, NE, NC, ND, NJ, NM, NY, OH, OK, PA, SC, SD, TN, TX, VA, WV, WI
Agent for United States Dept. of the Interior

LANDTECH
6000 sites, 30 states, 0 missed deadlines.
www.landtechps.com & www.towersurveyors.com
231-943-0050 x-103 office 231-218-5927 mobile
231-943-0051 fax 231-943-4639 fax2

IF YOU RELY ON ANY MATERIAL AVAILABLE THROUGH THIS EMAIL, YOU DO SO AT YOUR OWN RISK. THIS EMAIL AND ANY ATTACHMENTS ARE INTENDED FOR CONCEPTUAL PURPOSES ONLY AND SHOULD NOT BE RELIED UPON FOR ANY PURPOSES WHATSOEVER. NOW GET BACK TO WORK BEFORE MY WIFE KICKS YOUR ASSIGN. ANY ACTION AGAINST LANDTECH, ITS AGENTS, SUCCESSORS AND ITS LICENSORS, IF ANY, ARISING OUT OF ANY KIND OF LEGAL CLAIM, PERSONAL INJURY OR ASSAULT IN ANY WAY CONNECTED TO THIS EMAIL WILL NOT EXCEED $1.00 (U.S. currency).

From: Todd Hurley [mailto:thurley@hurleystewart.com]
Sent: Thursday, March 04, 2010 1:21 PM

To: Matthew Mokanyk; Pete Prokop
Subject: Fwd: Testing RE: Portage Michigan

The Alta uyou sent was good for this correct

Todd
269-806-0170

Begin forwarded message:

> **From:** "Greg Dobson" <gdobson@avbinc.com>
> **Date:** March 4, 2010 10:55:45 AM MST
> **To:** "Todd Hurley" <thurley@hurleystewart.com>, "Bryan Gillespie" <bgillespie@hurleystewart.com>
> **Subject: FW: Testing RE: Portage Michigan**
>
> Gents:
>
> This Bill Schmidt below has indicated to the City of Portage that what I sent him isn't "real" survey. For our Planning Commission meeting tonight, does LandTech have a response?
>
> AVB Companies
> Greg Dobson
> 4200 W. Centre Avenue
> Portage, MI 49024
> Cell 269.217.5477/ Office 269.329.3636
> Fax 269.327.3172
> www.avbconstruction.com
> www.avbhomes.com
>
> -----Original Message-----
> From: Greg Dobson
> Sent: Monday, February 22, 2010 8:44 AM
> To: Bill Schmidt
> Subject: RE: Testing RE: Portage Michigan
>
> Bill,
>
> Attached please find a copy of our most recent survey for Greenspire.
>
> AVB Companies
> Greg Dobson
> 4200 W. Centre Avenue
> Portage, MI 49024
> Cell 269.217.5477/ Office 269.329.3636
> Fax 269.327.3172
> www.avbconstruction.com
> www.avbhomes.com
>
> -----Original Message-----
> From: Bill Schmidt [mailto:schmidtw@michigan.gov]
> Sent: Monday, February 22, 2010 8:13 AM
> To: Greg Dobson
> Subject: Testing RE: Portage Michigan
>
> Greg: Here's my address:
>
> Mr. Bill Schmidt

DNR - OLAF
P.O. Box 30448
Lansing, Michigan 48909

Bill Schmidt
Office of Land and Facilities
Phone: (517) 335-3257
e-mail: schmidtw@michigan.gov
Fax: (517) 335-1880

"Greg Dobson" <gdobson@avbinc.com> 02/19/2010 4:02 PM >>>

Dear Bill,

Dr. Mohney, copied herein, requested that I forward you a copy of our survey. I am happy to do so but wanted to ensure I had written down your address properly. When you respond, I'll email you a copy right away.

Have a great weekend.

AVB Companies

Greg Dobson

4200 W. Centre Avenue

Portage, MI 49024

Cell 269.217.5477/ Office 269.329.3636

Fax 269.327.3172

www.avbconstruction.com

www.avbhomes.com

FIRST READING
CITY OF PORTAGE, MICHIGAN
NOTICE

TO THE RESIDENTS AND PROPERTY OWNERS OF THE CITY OF PORTAGE AND ALL OTHER INTERESTED PERSONS.

NOTICE IS HEREBY GIVEN, that an Ordinance to amend Article 4 (Zoning) of Chapter 42 of the Codified Ordinances of Portage, Michigan, was introduced for first reading at a regular meeting of the City Council held on _____, 2010, and that the Council will hold a public hearing on the proposed amendment at the Portage City Hall in said City on _____, 2010, at 7:30 p.m. or as soon thereafter as may be heard.

NOTICE IS FURTHER GIVEN that the proposed amendment to Article 4 (Zoning) of Chapter 42, of the Codified Ordinances of Portage, Michigan reads as follows:

THE CITY OF PORTAGE ORDAINS:

That Article 4 (Zoning) of Chapter 42, of the Codified Ordinances of Portage, Michigan, Official Zoning Map, be amended as follows:

Parcel of land described as follows:

Tract of land located in Sections 19 and 20, Township 3 South, Range 11 West, City of Portage, County of Kalamazoo, State of Michigan, and further described as follows:

Street Address	Parcel ID Numbers
3201 West Centre Avenue	00020-131-O
3317 West Centre Avenue	00019-105-O
3413 West Centre Avenue	00019-095-O
3423 West Centre Avenue	00019-096-O
3145 Greenspire Drive	00020-135-O
8380 Greenspire Drive	00020-130-O
8401 Greenspire Drive	00020-136-O
3413 Fawn Cove Lane	00019-100-O
8615 Tozer Court	00020-140-O

From RM-1, multiple family residential and R1-C, one family residential to PD, planned development, or any other classification allowed by law.

PLEASE TAKE FURTHER NOTICE that if the owners of at least twenty percent (20%) of the area of land included in the proposed zoning change, or if the owners of at least twenty percent (20%) of the area of land included within an area extending outward one hundred feet (100') from any point on the boundary of the land included in the proposed change, excluding public right-of-way or other publicly owned land, file a written protest petition against the proposed amendment presented to the City Council before final legislative action on the amendment, a two-thirds vote of the City Council will be required to pass the amendment.

Dated: _____

_____
James R. Hudson, City Clerk

(App #09-01)
Z:\Jody\PORTAGE\ORD\REZONE\FORM.wpd

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF THE CITY OF PORTAGE, MICHIGAN BY AMENDING ARTICLE 4 OF CHAPTER 42, LAND DEVELOPMENT REGULATIONS OF THE CODIFIED ORDINANCES OF PORTAGE, MICHIGAN

THE CITY OF PORTAGE ORDAINS:

That Article 4 (Zoning) of Chapter 42, of the Codified Ordinances of Portage, Michigan, Official Zoning Map, be amended as follows:

Parcel of land described as follows:

Tract of land located in Sections 19 and 20, Township 3 South, Range 11 West, City of Portage, County of Kalamazoo, State of Michigan, and further described as follows:

Street Address	Parcel ID Numbers
3201 West Centre Avenue	00020-131-O
3317 West Centre Avenue	00019-105-O
3413 West Centre Avenue	00019-095-O
3423 West Centre Avenue	00019-096-O
3145 Greenspire Drive	00020-135-O
8380 Greenspire Drive	00020-130-O
8401 Greenspire Drive	00020-136-O
3413 Fawn Cove Lane	00019-100-O
8615 Tozer Court	00020-140-O

From RM-1, multiple family residential and R1-C, one family residential to PD, planned development.

FIRST READING:
SECOND READING:
EFFECTIVE DATE:

_____
Peter J. Strazdas, Mayor

STATE OF MICHIGAN)
) SS
COUNTY OF KALAMAZOO)

I do hereby certify that I am the duly appointed and acting City Clerk of the City of Portage and that the foregoing Ordinance was adopted by the City of Portage on the _____ day of _____, 2010.

_____
James R. Hudson, City Clerk

(App #09-01)

Approved as to Form:
Date: 3/23/10
By: LCJ
City Attorney

ADOPTION OF ZONING ORDINANCE
CITY OF PORTAGE, MICHIGAN
NOTICE

TO THE RESIDENTS AND PROPERTY OWNERS OF THE CITY OF PORTAGE AND ALL OTHER INTERESTED PERSONS.

NOTICE IS HEREBY GIVEN, that an Ordinance to amend Article 4 (Zoning) of Chapter 42 of the Codified Ordinances of Portage, Michigan, was adopted by the City Council at a regular meeting held on the _____ day of _____, 2010, and will become effective _____, 2010.

NOTICE IS FURTHER GIVEN that Article 4 (Zoning) of Chapter 42, Land Development Regulations, of the Codified Ordinance of Portage, Michigan, has been amended as follows:

THE CITY OF PORTAGE ORDAINS:

That Article 4 (Zoning) of Chapter 42, of the Codified Ordinances of Portage, Michigan, Official Zoning Map, be amended as follows:

Parcel of land described as follows:

Tract of land located in Sections 19 and 20, Township 3 South, Range 11 West, City of Portage, County of Kalamazoo, State of Michigan, and further described as follows:

Street Address	Parcel ID Numbers
3201 West Centre Avenue	00020-131-O
3317 West Centre Avenue	00019-105-O
3413 West Centre Avenue	00019-095-O
3423 West Centre Avenue	00019-096-O
3145 Greenspire Drive	00020-135-O
8380 Greenspire Drive	00020-130-O
8401 Greenspire Drive	00020-136-O
3413 Fawn Cove Lane	00019-100-O
8615 Tozer Court	00020-140-O

From RM-1, multiple family residential and R1-C, one family residential to PD, planned development.

PLEASE TAKE NOTICE that a copy of the Ordinance as amended may be purchased or inspected at City Hall on any business day except public and legal holidays from and after publication of this Notice from 8:00 a.m. to 5:00 p.m. local time. Further, a copy of a map showing the property rezoned is also available at the time and days noted above.

Dated: _____

_____
James R. Hudson, City Clerk

(App #09-01)

CITY OF PORTAGE **COMMUNICATION**

TO: Honorable Mayor and City Council **DATE:** March 18, 2010

FROM: Maurice S. Evans, City Manager

SUBJECT: Hazardous Materials Response Mutual Aid Agreement

ACTION RECOMMENDED: That City Council adopt the Resolution for Intergovernmental Hazardous Materials Incident Response Agreement and authorize the City Manager to sign the agreement on behalf of the city.

A hazardous materials incident may occur at any location and at any time. However, with major transportation corridors and several businesses that either manufacture or use hazardous materials, there is a greater likelihood that such an incident may occur in the City of Portage. It is therefore beneficial to have available the services of a trained Hazardous Materials Response Team that can respond to contain and stop these incidents.

The number of persons required, the amount of training necessary and the specialized equipment that must be purchased and maintained makes it impractical for any one area municipality to operate a hazardous materials response team, particularly given the limited number of responses anticipated. Therefore, a number of Kalamazoo County fire departments jointly formed the Kalamazoo County Haz Mat Response Team (KCHMT) in 2004. Since its inception, the KCHMT has deployed to numerous incidents including two in the City of Portage.

Subsequent to the most recent hazardous materials incident response, it became evident to the City Administration that a written agreement between participating units would greatly facilitate resolution of responsibilities for equipment replacement used during responses and other responsibilities associated with the utilization of hazardous response services. As a result, an intergovernmental hazardous materials incident response agreement was developed. Key elements of this agreement include:

- Identification of participating municipalities and their responsibilities under the agreement;
- Formal establishment of KCHMT and the associated team management structure
- KCHMT response procedures;
- KCHMT dues assessment (necessary to maintain and calibrate team equipment, replace items expended in training, etc.);
- Designation of Kalamazoo County (through the Office of Emergency Management) as the custodian of KCHMT funds;

- Geographical area of coverage;
- Personnel and equipment standards;
- Liability and mutual release of the signatories;
- Reimbursement of costs of response activity as permitted under NREPA.

Currently three members of the Portage Fire Department are KCHMT team members and Fire Chief, Randolph Lawton, is a member of the executive board.

Section 20126a of PA 451 of 1994, the Michigan Natural Resources and Environmental Protection Act (NREPA), details the conditions under which local units of government may be reimbursed for the costs associated with responding to a hazardous materials incident. The City Attorney has opined that NREPA supersedes Section 26-63 of the City of Portage Code of Ordinances as it relates to cost recovery for hazardous materials incidents. Any civil action to recover costs must, therefore, be made in accordance with the provisions of NREPA. Both the agreement and supporting resolution address the need for, and the intention of, the City Administration to pursue any future cost recovery via this route.

Adoption of the Resolution will ensure that the citizens of Portage receive the services of a well equipped and trained hazardous materials incident response team at a fraction of the cost of independently operating such a team. Adoption of the Resolution will also confirm the intention to recover costs of response activities as permitted by law. It is, therefore, recommended that City Council adopt the Resolution for Intergovernmental Hazardous Materials Incident Response Agreement and authorize the City Manager to sign the agreement on behalf of the city.

CITY OF PORTAGE, MICHIGAN
RESOLUTION FOR INTERGOVERNMENTAL HAZARDOUS MATERIALS INCIDENT RESPONSE AGREEMENT

Minutes of a regular meeting of the City Council for the City of Portage, Michigan held on _____, 2010 at 7:30 p.m. local time at City Hall in the City of Portage, Michigan.

PRESENT:

ABSENT:

The following resolution was offered by:

COUNCILMEMBER: _____ and supported by

COUNCILMEMBER:

WHEREAS, hazardous materials incidents are often widespread and not confined to municipal boundaries; and

WHEREAS, the provision of trained personnel, equipment and materials necessary to respond to a hazardous materials incident exceeds the resources of any single municipality within Kalamazoo County; and

WHEREAS, the specialized services of a hazardous materials response team are above and beyond the normal response services provided on a reciprocal basis under the provisions of the Mutual Aid Fire Agreement entered into by municipalities within the County of Kalamazoo; and

WHEREAS, 1951 P.A. 35, as amended, being MCL 124.1 *et seq.*, provides that municipalities may enter into cooperative agreements to provide services to and for each other; and,

WHEREAS, timely and efficient responses to hazardous materials incidents within Kalamazoo County will be greatly enhanced by interjurisdictional mutual assistance; and

WHEREAS, there is a need to recover the costs of response activity to hazardous materials incidents from those businesses or persons responsible for such incidents as

permitted pursuant to Section 20126a (M.C.L. 324.20126a) of the Michigan Natural Resources and Environmental Protection Act, (NREPA) Public Act 451 of 1994; and

WHEREAS, interjurisdictional mutual assistance in responding to hazardous materials incidents will be greatly enhanced by facilitation and coordination of the recovery of the cost of response activity to hazardous materials incidents as permitted by Section 20126a (M.C.L. 324.20126a) of the Michigan Natural Resources and Environmental Protection Act, (NREPA) Public Act 451 of 1994;

NOW, THEREFORE, be it resolved by the City Council of the City of Portage, that in order to maximize the prompt, full and effective use of resources of all participating governments in the event of a hazardous materials incident and to facilitate and coordinate the recovery of costs of response activity to hazardous materials incidents from those responsible for such incidents by said governments hereby authorized the City Manager to enter into the Intergovernmental Hazardous Materials Incident Response Agreement attached hereto and incorporated by reference.

AYES: Councilmember _____

NAYS: Councilmember _____

ABSENT: Councilmember_____

RESOLUTION DECLARED ADOPTED:_____

_____
James R. Hudson, City Clerk

STATE OF MICHIGAN)
)
COUNTY OF KALAMAZOO)

I, the undersigned, the duly qualified City Clerk of the City of Portage, Kalamazoo County, Michigan, do hereby certify that the foregoing is a true and complete copy of a resolution adopted at a regular meeting of the City Council of said City, held on the ___ day of _____, 2010, the original of which resolution is on file in my office.

IN WITNESS WHEREOF, I have hereunto affixed my official signature this ____ day of _____, 2010.

_____
JAMES R. HUDSON, City Clerk

APPROVED AS TO FORM
DATE 3-19-10
CRB
CITY ATTORNEY

INTERGOVERNMENTAL FIRE PROTECTION
HAZARDOUS MATERIALS INCIDENT RESPONSE AGREEMENT

This Intergovernmental Fire Protection Hazardous Materials Incident Response Agreement, dated the ____ day of _____, 2010, between the undersigned municipalities, is as follows:

WHEREAS, the specialized services of a hazardous materials response team are above and beyond the normal response services provided on a reciprocal basis under the provisions of the Mutual Aid Fire Agreement entered into by the parties; and

WHEREAS, there is a need to facilitate and coordinate the recovery of the cost of response activity to hazardous materials incidents as permitted by Section 20126a (M.C.L. 324.20126a) of the Michigan Natural Resources and Environmental Protection Act, (NREPA) Public Act 451 of 1994; and,

WHEREAS, each party desires to enhance and improve responses to hazardous materials incidents occurring within Kalamazoo County, and,

WHEREAS, 1951 P.A. 35, as amended, being MCL 124.1 *et seq.*, provides that municipalities may enter into cooperative agreements to provide services to and for each other; and,

WHEREAS, this Hazardous Materials Incident Response Agreement is intended to assist the undersigned municipalities in providing timely and efficient responses to hazardous materials incidents within Kalamazoo County.

NOW, THEREFORE, in consideration of the mutual undertakings of the parties hereto, IT IS AGREED:

1. Definitions

   A. **Financial Custodian** means the custodian of response activity costs and annual dues as provided in paragraph 4 of this agreement.

   B. **Fire Chief** includes the fire chief, the fire chief's designated representative or such member of the fire department as is in charge of the fire department emergency and technical response personnel, or the chief of a public safety department or that official's designated representative.

   C. **Incident Management System**: The National Incident Management System (NIMS) required for managing a hazardous materials incident by state and federal regulation.

   D. Member in Good Standing means a municipality that has entered into this agreement and is current in the payment of dues and compliant with the obligations specified in this agreement.

E. **KCHMT member** means an employee of a participating municipality who becomes a member of the Kalamazoo County Hazardous Materials Response Team, (KCHMT) as established pursuant to this agreement.

F. **Participating Municipality** means a municipality that has entered into this agreement and is a member in good standing.

G. **Recovery Costs** mean the costs associated with recovery of response activity costs as defined by this Agreement, including, but not limited to attorney fees, court filing fees, witness fees and other costs of litigation and collection.

H. **Requesting Department**: The fire department serving a participating municipality in which the hazardous materials incident exists and that requests aid under this Agreement.

I. **Responding Department**: Any and all fire departments serving a participating municipality that provide personnel (including personnel who respond as a member of the Kalamazoo County Hazardous Materials Response Team) or equipment under this Agreement. The Kalamazoo County Office of Emergency Management and responding EMS providers are included in this definition.

J. **Response Activity** means evaluation, interim response activity, remedial action, demolition, or the taking of other actions necessary to protect the public health, safety, or welfare, or the environment or the natural resources consistent with the rules relating to the selection and implementation of response activity promulgated under the Michigan Natural Resources and Environmental Protection Act.

K. **Response Activity Costs** or **Costs of Response Activity** means all costs incurred by the requesting department and all responding departments, including the KCHMT, in taking or conducting a response activity, including all costs, that a municipality may recover pursuant to Section 20126a of the Michigan Natural Resources and Environmental Protection Act, MCL 324.20126a. These costs may include, but not be limited to, administrative fees assessed by the financial custodian to services provided relative to the collection of response activity costs, wages and/or salaries except for those employees who are already on duty and being paid; costs of vehicles responding at either the MEMAC reimbursement rate or another verified manner of calculating operating costs; costs of replacing equipment and supplies that are expended and not reusable; costs of decontaminating or cleaning equipment or other costs necessary to put that equipment back in service; costs of personnel support including, but not necessarily limited to, food, lodging, portable rest room facilities, or transportation; costs to rent, purchase or otherwise obtain equipment, supplies, or other material necessary to mitigate the incident; costs to contract with specialized response personnel or organizations.

L. **MEMAC Reimbursement Rate** means the reimbursement rates for apparatus and other equipment used to mitigate incidents contained in the Michigan Emergency Management Assistance Compact.

2. Kalamazoo County Hazardous Materials Response Team

A. Participating municipalities agree to form and jointly operate the Kalamazoo County Hazardous Materials Response Team, (KCHMT) the purpose of which is to assist local fire departments by providing a trained, equipped team of on-scene support to the incident commander of the requesting department for the provision of response activity to a hazardous materials incident.

B. The KCHMT shall be managed by an executive board as provided for in the by-laws.

C. The executive board shall set all operating standards, policies and procedures and shall establish criteria for individual membership on the team.

D. The executive board shall elect one member to serve as chair of the board and other such officers as may be required. Elected officers will serve a one-year term of office, corresponding to the fiscal year, and may serve consecutive terms.

E. The KCHMT shall maintain By-laws, an Operations Manual and a listing of equipment owned by the team. An updated copy of each, along with a report of annual KCHMT activity shall be provided to any requesting municipality annually, by March 1.

F. Response Procedures

1. A Requesting Department may request the services of the KCHMT following dispatch and response procedures as outlined in the KCHMT Operations Manual.

2. The KCHMT, when responding to an incident, shall operate within the Incident Management System put in place by the Requesting Department. Command of the incident shall remain with the Requesting Department.

3. If a Responding Department's personnel arrive prior to the Requesting Department's units or personnel, the assisting personnel will establish "Incident Command" as prescribed in NIMS and proceed with emergency operations. Upon arrival of a command officer from the Requesting Department, "Incident Command" will be passed to the Requesting Department.

4. Assisting personnel and units will be released and returned to their jurisdiction as soon as practical.

3. Membership Dues

Each municipal fire department serving a participating municipality or municipalities will be required to pay annual dues in the amount of $600.00 per fiscal year.

A. The municipal fire departments will be invoiced not later than October 1 for dues for the next calendar year. The department will be in arrears if the dues are not received by January 1.

4. Custodian of Dues and Recovered Costs

A. The County of Kalamazoo will be the custodian of all dues and costs recovered pursuant to paragraph 9 of this agreement. The dues and recovered costs shall be placed in separate accounts and maintained in accordance with standard municipal accounting procedures.

5. Geographical Area of Coverage

The KCHMT shall provide assistance to any Requesting Department within Kalamazoo County.

6. Personnel and Equipment Standards

KCHMT members and equipment shall meet the following minimal levels of training or recognized industry standards:

A. KCHMT members shall be certified to the Hazardous Materials Technician level by a representative of the municipality employing the member. However, the executive board of the KCHMT may approve team membership for individuals certified to the Hazardous Materials Operations level if such membership has been determined to provide a benefit to the team.

B. Equipment used shall comply with all applicable rules and regulations including, but not limited to, CFR 1910.120, MIOSHA Part 432, and standards adopted by the executive board.

7. Training and Medical Examinations

A. KCHMT members shall meet all statutory and training requirements applicable to the team position being filled.

1. The KCHMT will conduct regular training as approved by the Executive Board to allow KCHMT members to remain competent in necessary skills. KCHMT members are expected to comply with training requirements.

2. KCHMT members who fail to maintain training requirements or required certifications, as established by the executive board of the KCHMT, may be

removed from KCHMT membership by action of the executive board. Such action is not subject to appeal by the participating municipalities.

3. Employees of the participating municipalities who are KCHMT members shall attend monthly training sessions of the team as part of their employment by the participating municipality that employs them.

B. It is the responsibility of the participating member that is an employer of a KCHMT member to provide periodic physical examinations that meet the requirements of 29 CFR 1910.120. The frequency of these examinations may range from twelve to twenty-four months based on the recommendation of the physician. Prior to joining the KCHMT, KCHMT member applicants shall undergo a physical examination to identify any pre-existing medical conditions and to record baseline measurements that may change over time.

8. Liability and Mutual Release

A. Each participating municipality providing KCHMT members to KCHMT shall be solely responsible for all costs and expenses associated with its employees who are KCHMT members and equipment utilized by its employees who are KCHMT members in responding to emergencies or participating in training under this Agreement, including without limitations, wages and fringe benefits, workers' compensation, disability or pension contributions, and the purchase, repair or maintenance of equipment and fire apparatus.

B. Each participating municipality shall only be responsible for claims, demands, costs (including attorney fees) and damages, for death, bodily injury, or property damage arising directly from the acts or omissions of its individual personnel.

C. Each participating municipality shall defend, indemnify and hold all other participating municipalities including the elected officials, agents and employees (hereinafter collectively as "Indemnitee") of the other participating municipalities harmless from all claims, demands, costs (including attorney's fees) and damages for death, bodily injury, or property damage arising directly from the acts or omissions of its individual personnel, employees or agents. Provided, however, that if such death, injury or damage is caused by personnel, employees or agents of multiple participating municipalities, each participating municipality shall then be responsible for its percentage of responsibility, and shall indemnify the other participating municipalities so that each pays in proportion to its responsibility.

D. In providing the indemnification set forth above, the Indemnitor is not waiving any defense as is otherwise available to it by law, provided such defenses are also available and asserted by the Indemnitor for the benefit of the Indemnitee. The Indemnitor shall not be responsible for the indemnification obligation set forth above with respect to the Indemnitee to the extent that the Indemnitee has waived a defense that was otherwise available to it by law. The Indemnitor shall have the option to settle any claim, demand or liability on such terms as it shall determine.

E. No fire fighter or emergency medical personnel from any Department shall be considered a drafted person of another Department when performing services in furtherance of this Agreement under MCL 123.401 through MCL 123.403.

9. Recovery or Reimbursement of Response Activity Costs

A. As soon as practicable after providing response activity to a particular hazardous materials incident:

1. The KCHMT executive board will submit an itemized statement of all response activity costs (excluding labor costs) incurred by the KCHMT in response to the particular incident to the Requesting Department, and provide a copy of such statement to each Responding Department and the County of Kalamazoo.

2. Each Responding Department will submit an itemized statement of all response activity costs (including labor costs) incurred by the Responding Department in response to the particular incident to the Requesting Department, and provide a copy to all other Responding Departments, the KCHMT, and the County of Kalamazoo.

3. The Requesting Department will submit an itemized statement of all response activity costs incurred by the Requesting Department pursuant to paragraph 9(C) below to all Responding Departments and the KCHMT prior to distribution of recovered costs pursuant to paragraph 9 (D) below.

B. The Requesting Department will pay the response activity costs of the KCHMT with respect to materials owned and used by the KCHMT in connection with providing response activity to a particular hazardous materials incident within 30 days of receipt of the itemized statement from KCHMT or on a payment schedule agreed to by the Executive Board. The Requesting Department will be responsible for the payment of these costs irrespective of any recovery of response activity costs as provided in paragraph 9(C) below. The KCHMT will provide an accounting of all response activity costs paid to it by the Requesting Department pursuant to this paragraph to all Responding Departments and the County of Kalamazoo prior to distribution of recovered costs pursuant to paragraph 9 (D) below.

C. Recovery of all response activity costs incurred by the Requesting Department, the KCHMT, and any Responding Department as provided by the Michigan Natural Resources and Environmental Protection Act (NREPA) will be the responsibility of the Requesting Department. The Requesting Department will be responsible for all recovery costs associated with recovery of the response activity costs. The obligation of the Requesting Department to recover response activity costs may be waived by a vote of at least two thirds of the executive board of the KCHMT upon a determination that the expense

of cost recovery would not be cost effective. In that event, each participating municipality may elect to recover its own costs.

D. All costs recovered by the Requesting Department as provided in paragraph C, will be deposited with the County of Kalamazoo as the custodian of such funds. Response activity costs will then be paid first to the KCHMT in accordance with its itemized statement, to the extent response activity costs of KCHMT have not been fully reimbursed by the Requesting Department as shown on the accounting for payment of same pursuant to paragraph 9 (B), above. The response activity costs of the Requesting Department and each Responding Departmental will then be paid from the remaining funds recovered. If the remaining funds recovered will not fully reimburse the Requesting Department and each Responding Department, then the remaining funds will be distributed to the Requesting Department and each Responding Department proportionate to the itemized statement prepared by each Department and each Department will be solely responsible for its un-reimbursed costs.

10. Multiple Demands For Service

If any participating municipality is confronted with a simultaneous demand to assist a fire department of another governmental unit or respond to a fire/rescue call within that municipality's jurisdictional boundaries, the command officer in charge of that municipality's responding fire/rescue equipment and personnel shall have the discretion to deploy that equipment and personnel for their best utilization in the interest of public health, safety and welfare and with the recognition of that municipality's primary obligation to respond within its own jurisdiction.

11. Effect Upon Other Agreements

The participating municipalities have also entered into a Mutual Fire Protection Contract, dated March 6, 1987. That contract shall remain in effect and shall not be changed by this agreement.

12. Effective Date, Term, Dissolution, and Termination of Membership

This Agreement is effective as of _____, 2010, and shall continue in force until dissolved by a majority vote of the governing bodies of the participating members. A participating member may terminate its membership with or without cause, upon thirty (30) days written notice to the other participating members. Such termination of membership shall not effectuate the dissolution of this agreement or the KCHMT.

IN WITNESS THEREOF, those parties hereto have executed this Agreement on the date indicated above.

CITY OF PORTAGE

By _____

Its _____

CITY OF KALAMAZOO

By _____

Its _____

CHARTER TOWNSHIP OF KALAMAZOO

By _____

Its _____

CHARTER TOWNSHIP OF OSHTEMO

By _____

Its _____

CHARTER TOWNSHIP OF COMSTOCK

By _____

Its _____

CHARTER TOWNSHIP OF TEXAS

By _____

Its _____

SOUTH KALAMAZOO COUNTY FIRE AUTHORITY

By _____

Its _____

CHARTER TOWNSHIP OF COOPER

By _____

Its _____

CHARLESTON TOWNSHIP

By _____

Its _____

CITY OF GALESBURG

By _____

Its _____

PAVILION TOWNSHIP

By _____

Its _____

ROSS TOWNSHIP

By _____

Its _____

CLIMAX TOWNSHIP

By _____

Its _____

CITY OF PARCHMENT

By _____

Its _____

RICHLAND TOWNSHIP

By _____

Its _____

ALAMO TOWNSHIP

By _____

Its _____

VILLAGE OF AUGUSTA

By _____

Its _____

VILLAGE OF CLIMAX

By _____

Its _____

VILLAGE OF RICHLAND

By _____

Its _____

COUNTY OF KALAMAZOO

By _____

Its _____

APPROVED AS TO FORM
DATE 3-19-10
CRB
CITY ATTORNEY

CITY OF PORTAGE **COMMUNICATION**

TO: Honorable Mayor & City Council **DATE:** March 15, 2010

FROM: Maurice S. Evans, City Manager

SUBJECT: Application for Special License for Sale of Beer, Wine and Spirits

ACTION RECOMMENDED: That City Council 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 26, 2010 and authorize the City Manager to execute all documents on behalf of the city.

The City of Portage Summer Entertainment Series (SES) has for many years been a self-funded program, relying on grants, donations and event revenue to offset program costs. In order for the SES to be self-sustaining, fees have been established for most events and alternative revenue sources are continually utilized where appropriate.

In an effort to generate critical revenue necessary for continuing a vibrant SES, it is proposed that the sale of beer and wine be approved for one event in 2010. The fifth annual *Taste of Portage* will be held in Central Park on June 26, 2010. The sale of alcohol has been recommended by city staff, volunteers, participating restaurants and past patrons as important to making the *Taste of Portage* the regional draw envisioned. Alcohol was provided in 2009 without incident and generated over $1,250 for the event.

The Parks and Police departments have worked cooperatively to develop controls in order to ensure safe and successful events where alcohol is served. Wristbands will be issued to participants over 21 years of age, drink tickets will be sold separately and only one drink per person at a time will be allowed. Park Rangers and Cultural Event staff members will monitor and patrol the perimeter, limiting access to the main event entrances at each location. Police patrol officers will be put on notice to make periodic visits during the event. Park Board and other adult volunteers will provide the identification checking and serving functions. A combination of fencing and Portage Creek will be used for crowd containment. All these effective controls have proven very successful for past alcohol sales at city events and at no time have patrons been problematic.

As a requirement for the city to undertake the sale of alcohol at the *Taste of Portage*, City Council must resolve to make an application to the Michigan Liquor Control Commission (MLCC), after which the completed application will be forwarded to the MLCC for review and approval.

It is recommended that City Council resolve to submit an application to the MLCC for a Special License for the sale of beer and wine for consumption on the premises at Portage Central Park, 7800 Shaver Road on June 26, 2010 and authorize the City Manager to execute all documents on behalf of the city.

CITY OF PORTAGE **COMMUNICATION**

TO: Honorable Mayor and City Council **DATE:** March 17, 2010

FROM: Maurice S. Evans, City Manager

SUBJECT: Class Action Lawsuit – National Pollution Discharge Elimination System Permit

ACTION RECOMMENDED: That City Council authorize the City of Portage to remain a party to the following class action lawsuit: *The City of Riverview vs. State of Michigan Case No. 09-712-CZ.*

In 1972, Congress adopted pollution control legislation known as the "Clean Water Act." The act originally regulated large industry pollution discharges. In 1987, Congress amended this act to include smaller discharges and certain municipal storm sewer systems. The program known as the National Pollution Discharge Elimination System (NPDES) is administered at the state level by the State of Michigan, which issues NPDES Stormwater Discharge Permits to authorize the discharge of stormwater into a stream, lake or river (i.e, surface water).

The City of Portage received its first NPDES permit in 2001 and received its latest discharge permit in October 2009. In addition to the Portage permit, other NPDES permits held by local governments and educational institutions include the City of Kalamazoo, Parchment, Vicksburg, Galesburg, Western Michigan University, Kalamazoo Valley Community College and Kalamazoo County. The permit requires the city to perform various activities such as inspections, testing, training, public education and outreach. The goals of the program are reasonable, but there have been ongoing concerns in Michigan regarding the methods used to fund the permit requirements. A class action lawsuit has been filed with the 30th Circuit Court by the City of Riverview, Michigan on behalf of all other Michigan municipalities, counties, road commissions, etc., alleging that the State of Michigan has failed to honor their funding obligation under Article 9 of the State Constitution (Headlee Amendment). In total, two hundred and thirty-three localities are currently included in the lawsuit. Article 9 states:

> *"The state is hereby prohibited from reducing the state financed proportion of the necessary costs of any existing activity or service required of units of Local Government by state law. A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the legislature or any state agency of units of Local Government, unless state appropriation is made and disbursed to pay the unit."*

The class action suit alleges that the NPDES permit issued required a new service level without providing any appropriation for the implementation. The lawsuit is seeking relief from certain aspects of the permit requirements. No fees will be sought from the class parties and they have no responsibility for any expenses, fees or costs associated with the litigation. The case addresses a classic "unfunded mandate" example.

The city has received notice (attached) and has the option to remain part of the class action lawsuit or elect to be excluded. It is recommended that the City of Portage remain a party to the subject class action lawsuit. The case is scheduled for hearing on March 28, 2011.

Attachment

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

THE CITY OF RIVERVIEW,
individually and on behalf of all
other Municipalities, Counties,
and Road Commissions, similarly situated,

Plaintiffs,

v.

Case No. 09-712-CZ
Hon. Paula J.M. Manderfield

THE STATE OF MICHIGAN and
THE MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY,

Defendants.

PENTIUK, COUVREUR & KOBILJAK, P.C. Randall A. Pentiuk (P32556) Kerry L. Morgan (P32645) Attorneys for Plaintiffs and Class 2915 Biddle Avenue, Suite 200 Wyandotte, MI 48192 (734) 281-7100	MICHAEL A. COX Attorney General Tonatzin M. Alfaro Maiz (P36542) Assistant Attorney General Environmental, Natural Resources, Agriculture Division Attorneys for Defendants P.O. Box 30755 Lansing, MI 48909 (517) 373-7540

OFFICIAL NOTICE OF CLASS ACTION

THIS IS AN IMPORTANT NOTICE ISSUED TO YOU BY THE 30TH JUDICIAL CIRCUIT COURT OF INGHAM COUNTY, STATE OF MICHIGAN

THIS NOTICE CONTAINS IMPORTANT INFORMATION TO ALLOW YOU TO PROTECT YOUR LEGAL RIGHTS

YOU SHOULD READ THIS ENTIRE NOTICE IMMEDIATELY. DO NOT DISCARD. FORWARD TO YOUR MAYOR, SUPERVISOR, COUNTY EXECUTIVE AND LEGAL COUNSEL.

To: City of Riverview, and all similarly situated Michigan counties, Michigan municipalities and Michigan road commissions who have: 1) been issued a Watershed Permit and/or Jurisdictional Permit by the Michigan Department of Environmental Quality (MDEQ) (whether certified or not) on or about May 22, 2008; 2) who are bound as a matter of law to conform their conduct thereto, (excluding those who voluntarily comply); 3) without regard as to whether they have also filed a contested case petition with the State Office of Administrative Hearings; and 4) who are not otherwise interveners or represented by separate non-class counsel in case number 09-712-CZ. The class also includes those entities listed on Appendix A, as attached hereto.

You have been identified as a member of a class of similarly situated Michigan counties, Michigan municipalities, and Michigan road commissions in a class action lawsuit filed against the State of Michigan and the MDEQ, in the circuit court in Lansing, Michigan that *may be eligible for coverage* under the National Pollutant Discharge Elimination System (NPDES) General Watershed Permit No. MIG610000, or the NPDES General Jurisdictional Permit No. MIS049000 issued May 22, 2008 by the MDEQ; or *received coverage* (Certificate of Coverage) under the NPDES General Watershed Permit No. MIG610000, or the NPDES General Jurisdictional Permit No. MIS049000.

The title of the class action is *The City of Riverview, individually and on behalf of all other Municipalities, Counties, and Road Commissions, similarly situated,* (Plaintiffs) v. *The State of Michigan and The Michigan Department of Environmental Quality (State Defendants),* Ingham County Circuit Court Case No. 09-712-CZ. By Order dated November 18, 2009, the Court determined that this lawsuit should be maintained as a class action pursuant to Rule 3.501 of the Michigan Rules of Court. **You do not need to take any action at this time if you wish**

to remain part of the class action. You will automatically be included and your interests will be represented by class counsel.

You have a right to exclude yourself from this lawsuit as explained in more detail below. The deadline to exclude yourself from this lawsuit is March 31, 2010. If you do not exclude yourself by that date, you will not be permitted to exclude yourself later.

You also have a right to intervene in this lawsuit as explained in more detail below. The deadline to intervene in this lawsuit is March 31, 2010. If you do not intervene by that date, you will not be permitted to intervene later.

Description of the Class and the Representative Party

The Class is defined as:

> The City of Riverview, and all similarly situated Michigan counties, Michigan municipalities and Michigan road commissions who have: 1) been issued a Watershed Permit and/or Jurisdictional Permit by the Michigan Department of Environmental Quality (MDEQ) (whether certified or not) on or about May 22, 2008; 2) who are bound as a matter of law to conform their conduct thereto (excluding those who voluntarily comply); 3) without regard as to whether they have also filed a contested case petition with the State Office of Administrative Hearings; and 4) who are not otherwise interveners or represented by separate non-class counsel in case number 09-712-CZ. The class also includes those entities listed on Appendix A, as attached hereto (the "Class").

A copy of the Class Action Order, including Appendix A is attached.

The Class Representative is the City of Riverview (Plaintiff), 14100 Civic Park Drive, Riverview, Michigan 48193-7600, and is pursuing this lawsuit on behalf of itself and the Class as defined above. Plaintiff City of Riverview brings this action on behalf of all similarly situated counties, municipalities, and road commissions who *may be eligible for coverage* or have

received coverage (Certificate of Coverage) under the NPDES General Watershed Permit or the NPDES General Jurisdictional Permit issued by MDEQ on May 22, 2008.

Description of the Lawsuit and the Relief Sought

The class action lawsuit alleges that the State Defendants have failed to honor their funding obligations under Const. 1963, art 9, § 29 ("Headlee Amendment") with regard to certain MDEQ 2008 Phase II Storm Water Permit activities and services which Defendant MDEQ asserts Plaintiff and Class members, who own or operate a Municipal Separate Storm Sewer System (MS4), are obligated to provide. Article 9, § 29 states that:

> The state is hereby prohibited from reducing the state financed proportion of the necessary costs of any existing activity or service required of units of Local Government by state law. A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the legislature or any state agency of units of Local Government, unless a state appropriation is made and disbursed to pay the unit.

The class action complaint also alleged that the 2008 NPDES General Permits exceeded the scope of the MDEQ's statutory authority, was contrary to its rules, violated the legislatures' ban on certain agency rule making, and was arbitrary and capricious.

The Class is seeking declaratory and injunctive relief. Specifically, the Class seeks a declaratory judgment that the State Defendants have failed to honor their funding obligations under Const. 1963, art 9, § 29 with respect to the 2008 NPDES General Watershed Permit No. MIG610000, and the 2008 NPDES General Jurisdictional Permit No. MIS049000.

On January 20, 2010, in *City of Novi, et al* v. *State of Michigan, et al,* No. 09-1569-CZ,[1] the Court entered an Order Granting an Injunction to Stay the Contested Case Proceedings challenging the 2008 NPDES General Watershed Permit No. MIG610000, and the 2008 NPDES

General Jurisdictional Permit No. MIS049000. The Injunction applies to the entire Class in *City of Riverview, et al*, No. 09-712-CZ.

The *City of Novi, et al* case has been consolidated with the *City of Riverview, et al.*, class action, by order dated January 27, 2010.

Class Counsel for Plaintiff Class Representative and the Class

The lawyers representing the Plaintiff Class Representative (City of Riverview) and the Class are Randall A. Pentiuk and Kerry L. Morgan of Pentiuk, Couvreur & Kobiljak, P.C., 2915 Biddle Avenue, Suite 200, Wyandotte, Michigan 48192 (734)281-7100.

You can contact class counsel, and are free to communicate with class counsel directly.

NOTICE

You are receiving this Notice because the Plaintiff has information that you are a member of the class according to the class definition.

The Court has determined pursuant to MCR 3.501(C)(4) that mailing this written Notice to the address of the county, municipality, or road commission that owns or operates an MS4, on file with the MDEQ is reasonably calculated to reach the members of the Class, and that utilization of the Defendant MDEQ's MS4 contact list is reasonably calculated to identify all members of the Class.

Right of a Member of the Class to Be Excluded

Each member of the class has **the right to be excluded** from the action by submitting a dated Opt-Out Notice (Election of Exclusion), stating the name of the municipality opting out and signed by an authorized official or agent. The Notice should be a stand alone document

[1] The *City of Novi, et al*, is a separate and independent lawsuit initiated by class members in *City of Riverview, et al.*,

which is captioned: ELECTION OF EXCLUSION, OPT-OUT NOTICE, and contain the following information:

A statement by the [agent or authorized official – indicate which] for [entity], that the [entity name] is exercising their Election of Exclusion and opting out of the class. Signature of authorized official/agent w/date.

Any and all Notices must be received by the Plaintiff's Class Action Counsel **on or before March 31, 2010,** at the following address:

Kerry Lee Morgan, Esq.
Pentiuk, Couvreur & Kobiljak, P.C.
2915 Biddle Avenue, Suite 200
Wyandotte, MI 48192

And, Defendant's Counsel should also receive a copy of the ELECTION OF EXCLUSION, OPT-OUT NOTICE, at the following address:

Tonatzin M. Alfaro Maiz
Assistant Attorney General
Environment, Natural Resources and Agriculture Division
P.O. Box 30755
Lansing, MI 48909

No particular form of the Notice is required. Any and all Notices must be received by the Plaintiff's Class Action Counsel **on or before March 31, 2010**, at the following address:

Kerry Lee Morgan, Esq.
Pentiuk, Couvreur & Kobiljak, P.C.
2915 Biddle Avenue, Suite 200
Wyandotte, MI 48192

Each member of the class also has the right to file their own civil action.

Any Member of the Class May Intervene in the Action

Any member of the class may **move to intervene** in the instant action, *The City of Riverview, individually and on behalf of all other Municipalities, Counties, and Road Commissions, similarly situated,* v. *The State of Michigan and The Michigan Department of Environmental Quality,* Ingham County Circuit Court Case No. 09-712-CZ. You have a right to have your own attorney file an appearance on your behalf as an intervener. Your attorney will be able to participate and represent your position. The Court requires that **any such Motion to Intervene be filed on or before March 31, 2010.**

Possible Financial Consequences for the Class

The scope of the action certified as a class to date seeks Declaratory and Injunctive Relief. No class has been certified for money damages. Among the relief sought is: 1) a declaratory judgment declaring certain revised portions of the NPDES permits unenforceable; 2) an award to Plaintiff of its costs, interest and attorneys' fees so wrongfully incurred because of Defendants' conduct; 3) a declaratory judgment that Defendants have exceeded their jurisdiction; 4) a declaratory judgment that any MDEQ permit revisions, or conforming rule or regulation requiring or obligating Plaintiff to expend or allocate any funds, or which dilutes funds currently allocated, is contrary to Article IX, section 29 of the Michigan Constitution; 5) declare that same are contrary to 2 USC §§ 1533, 1534, and 1535 of the Unfunded Mandates Reform Act of 1995; and 6) permanently enjoin the application of the terms and conditions of NPDES Permit No. MIG610000 and MPDES Permit No. M1S049000, or in the alternative, stay and suspend the application of the revised terms and conditions of NPDES Permit No. MIG610000 and MPDES Permit No. M1S049000 until the administrative proceedings and all appeals therefrom to any

court of competent jurisdiction have been finally concluded. If the Court grants Plaintiff such relief, the State will have the opportunity to determine and take other action necessary to protect the waters of the State.

No fees or costs will be sought from the class. No member of the class is responsible for any expenses, fees or costs associated with the litigation. No member of the class is entitled to recover any expenses, fees, costs or award, other than declaratory and injunctive relief.

Final Declaratory or Injunctive Relief, whether favorable or not, whether granted or denied, in whole or part, **will bind all members of the class** who are not excluded from the action. Any judgment, whether favorable or not, **will bind all members** of the class who are not excluded from the action.

This matter is scheduled for a Non Jury Trial on March 28, 2011, at 8:30 a.m.

Counterclaims

No counterclaim has been filed. The Plaintiff has no notice of any counterclaim or notice of intent to assert a counterclaim by or against members of the class.

YOUR RIGHTS AND OPTIONS

THIS NOTICE DOES NOT REQUIRE YOU TO DO ANYTHING TO REMAIN IN THE CLASS. If you wish to remain a member of the class, you do not need to take any further action at this time. Your interests are being represented by the class representative and class counsel.

IF YOU DO NOT WISH TO REMAIN IN THE CLASS, YOU MUST OPT OUT AS DESCRIBED IN THIS NOTICE ON OR BEFORE March 31, 2010. YOUR NOTICE MUST BE POSTMARKED ON OR BEFORE March 31, 2010.

IF YOU WISH TO INTERVENE IN THIS MATTER, YOU MUST FILE A MOTION TO INTERVENE IN THIS MATTER, WITH THE COURT, BY MARCH 31, 2010. You have a right to have your own attorney file an appearance on your behalf as an intervener. Your attorney will be able to participate and represent your position.

DO NOT CONTACT THE COURT OR JUDGE MANDERFIELD.

DO NOT CONTACT THE PLAINTIFF CITY OF RIVERVIEW.

THIS NOTICE HAS BEEN APPROVED BY THE COURT.

Address of Class Counsel

All inquiries may be directed to Class Counsel at the following address:

Kerry Lee Morgan, Esq.
Pentiuk, Couvreur & Kobiljak, P.C.
2915 Biddle Avenue, Suite 200
Wyandotte, MI 48192
(734) 281-7100, ext 103
kmorgan@pck-law.com

NOTHING IN THIS NOTICE SHOULD BE UNDERSTOOD TO BE AN EXPRESSION OF ANY OPINION BY THE COURT ABOUT THE MERITS OF THE PARTIES; CLAIMS OR DEFENSES. THE COURT HAS NO OPINION ON THAT SUBJECT.

NOTHING IN THIS NOTICE SHOULD BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION BY THE COURT ABOUT WHETHER OR NOT YOU OR ANY OTHER CLASS MEMBER SHOULD OR SHOULD NOT REMAIN PART OF THE CLASS. THE COURT HAS NO OPINION ON THAT SUBJECT.

DATED: 2/19/10

JUDGE PAULA J. M. MANDERFIELD

Honorable Paula M. Manderfield

Z:\4-R-Z Clients\RVW\NPDES\Notice of Class Action.wpd

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

THE CITY OF RIVERVIEW,
individually and on behalf of all
other Municipalities, Counties,
and Road Commissions, similarly situated,

Plaintiffs,

v.

Case No. 09-712-CZ
Hon. Paula J.M. Manderfield

THE STATE OF MICHIGAN and
THE MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY,

Defendants.

PENTIUK, COUVREUR & KOBILJAK, P.C. Randall A. Pentiuk (P32556) Kerry L. Morgan (P32645) Attorneys for Plaintiffs and Proposed Class 2915 Biddle Avenue, Suite 200 Wyandotte, MI 48192 (734) 281-7100	MICHAEL A. COX Attorney General Tonatzin M. Alfaro Maiz (P36542) Assistant Attorney General Environmental, Natural Resources, Agriculture Division Attorneys for Defendants P.O. Box 30755 Lansing, MI 48909 (517) 373-7540

ORDER GRANTING PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

At a session of said Court, held in the City of Lansing,
County of Ingham, State of Michigan on November 18, 2009

PRESENT: THE HONORABLE PAULA J.M. MANDERFIELD
Circuit Court Judge

Plaintiffs' Motion for Class Certification pursuant to MCR 3.501 having come to be heard before this Court on October 28, 2009, and this Court having reviewed the Briefs of the parties

PENTIUK, COUVREUR & KOBILJAK, P.C. • ATTORNEYS AND COUNSELLORS AT LAW • EDELSON BUILDING, SUITE 200 • 2915 BIDDLE AVENUE, WYANDOTTE, MICHIGAN 48192 • (734) 281-7100

and having heard oral argument in open court and the Court being otherwise fully advised in the premises, Now, Therefore,

IT IS HEREBY ORDERED, that Plaintiffs' Motion for Class Certification is hereby GRANTED and the class is certified for the reasons stated on the record. As per MCR 3.501(B)(3)(c) the class is defined as follows:

> The class shall consist of all similarly situated Michigan counties, Michigan municipalities and Michigan road commissions who have: 1) been issued a Watershed Permit and/or Jurisdictional Permit by the MDEQ (whether certified or not) on or about May 22, 2008; 2) who are bound as a matter of law to conform their conduct thereto, (excluding those who voluntarily comply); 3) without regard as to whether they have also filed a contested case petition with the State Office of Administrative Hearings; and 4) who are not otherwise interveners or represented by separate non-class counsel in case number 09-712 CZ. The class also includes those entities listed on Appendix A, as attached hereto.

IT IS SO ORDERED.

(P3431

Circuit Court Judge

Order Prepared by and Return to:
Kerry L. Morgan (P32645)
Pentiuk, Couvreur & Kobiljak, P.C.
Attorneys for Plaintiffs and Class
2915 Biddle Avenue, Suite 200
Wyandotte, MI 48192
(734) 281-7100

Z:\4-R-Z\Clients\RVWA\PDES\OrderGrantingPlaintiffsMotionforClassCertification.wpd

PENTIUK, COUVREUR & KOBILJAK, P.C. • ATTORNEYS AND COUNSELLORS AT LAW • EDELSON BUILDING, SUITE 200 • 2915 BIDDLE AVENUE, WYANDOTTE, MICHIGAN 48192 • (734) 281-7100

APPENDIX A

Permit No.	Type	Designated Facility Name
MIS049000	General Permit (New GP)	GP-MS4 Jurisdiction
MIS040002	COC	Grand Ledge PS MS4-Eaton
MIS040004	COC	Waverly PS MS4-Ingham
MIS040005	COC	Saline MS4-Washtenaw
MIS040006	COC	North Muskegon MS4-Muskegon
MIS040009	COC	Northfield Twp MS4-Washtenaw
MIS040011	COC	Van Buren PS MS4-Wayne
MIS040012	COC	Dearborn PS MS4-Wayne
MIS040014	COC	West Bloomfield PS MS4-Oakland
MIS040015	COC	Ypsilanti MS4-Washtenaw
MIS040016	COC	Ann Arbor PS MS4-Washtenaw
MIS040018	COC	Bedford Twp MS4-Monroe
MIS040019	COC	Okemos PS MS4-Ingham
MIS040020	COC	LaSalle Twp MS4-Monroe
MIS040021	COC	Pittsfield Twp MS4-Washtenaw
MIS040022	COC	Dexter MS4-Washtenaw
MIS040023	COC	Haslett PS MS4-Ingham
MIS040025	COC	Barton Hills MS4-Washtenaw
MIS040029	COC	Monroe MS4-Monroe
MIS040033	COC	Erie Twp MS4-Monroe
MIS040043	COC	Selfridge ANGB MS4-Macomb
MIS040044	COC	Monroe CDC MS4
MIS040045	COC	South Lyon PS MS4-Oakland
MIS040047	COC	Farmington Hill PS MS4-Oakland
MIS040048	COC	Bloomfield Hill PS MS4-Oakland
MIS040049	COC	Clarkston PS MS4-Oakland
MIS040051	COC	South Lyon MS4-Oakland
MIS040054	COC	Livonia PS MS4-Wayne
MIS040055	COC	Gibraltar PS MS4-Wayne
MIS040057	COC	Huron-Clinton MPA MS4
MIS040060	COC	Wayne-Westland PS MS4-Wayne
MIS040064	COC	Howell MS4-Livingston
MIS040066	COC	Detroit MS4-Wayne
MIS040067	COC	Henry Ford Comm Coll MS4-Wayne
MIS040070	COC	VA Medical Center MS4-Calhoun
MIS040071	COC	VA Hosp MS4-Washtenaw
MIS040072	COC	Birmingham PS MS4-Oakland
MIS040073	COC	Livingston ESA PS MS4
MIS040074	COC	Southfield PS MS4-Oakland
MIS040076	COC	Novi PS MS4-Oakland
MIS040078	COC	Northville PS MS4-Wayne
MIS040079	COC	River Rouge MS4-Wayne
MIS040080	COC	Walled Lake PS MS4-Oakland
MIS040081	COC	USPS-Pontiac Processing Center
MIS040083	COC	Grand Beach MS4-Berrien
MIS040084	COC	MDMB-Lansing MS4
MIS040085	COC	Sterling Heights MS4
MIS040086	COC	MDMVA-Lansing MS4
MIS040087	COC	Lexington Village MS4-Sanilac
MIS040088	COC	Warren MS4

MIS040089	COC	
MIS040090	COC	Fruitport MS4-Muskegon
MIS040091	COC	UM MS4
MIS040092	COC	Grand Blanc Twp MS4-Genesee
MIS040093	COC	Plymouth-Canton PS MS4-Wayne
MIS040094	COC	Sanilac CRC MS4-Sanilac
MIS040095	COC	Dimondale MS4-Eaton
MIS040096	COC	Washtenaw Comm College MS4
		Willow Run Sch MS4-Washtenaw

3

Updated 10/22/2009

Permit No.	Type	Designated Facility Name GP-MS4 Watershed
MIG610000	General Permit (New GP)	
MIG610003	COC	Superior Twp MS4-Washtenaw
MIG610013	COC	Lathrup Village MS4-Oakland
MIG610020	COC	Allen Park MS4-Wayne
MIG610022	COC	W Bloomfield Twp MS4-Oakland
MIG610035	COC	Wixom MS4-Oakland
MIG610037	COC	Ypsilanti Twp MS4-Washtenaw
MIG610039	COC	Washtenaw CDC MS4
MIG610041	COC	Franklin MS4-Oakland
MIG610044	COC	Birmingham MS4-Oakland
MIG610045	COC	Battle Creek MS4-Calhoun
MIG610046	COC	Calhoun CRC MS4
MIG610049	COC	Springfield MS4-Calhoun
MIG610051	COC	Portage MS4-Kalamazoo
MIG610055	COC	St Clair County MS4
MIG610056	COC	WMU MS4-Kalamazoo
MIG610060	COC	Burton MS4-Genesee
MIG610061	COC	Clio MS4-Genesee
MIG610063	COC	Davison MS4-Genesee
MIG610064	COC	Fenton Twp MS4-Genesee
MIG610065	COC	Fenton MS4-Genesee
MIG610066	COC	Flint Twp MS4-Genesee
MIG610067	COC	Flushing MS4-Genesee
MIG610068	COC	Flushing Twp MS4-Genesee
MIG610072	COC	Genesee Co MS4
MIG610073	COC	Genesee Twp MS4-Genesee
MIG610075	COC	Grand Blanc MS4-Genesee
MIG610078	COC	Linden MS4-Genesee
MIG610081	COC	Mount Morris MS4-Genesee
MIG610082	COC	Mount Morris Twp MS4-Genesee
MIG610083	COC	Mundy Twp MS4-Genesee
MIG610086	COC	Swartz Creek MS4-Genesee
MIG610088	COC	Vienna Twp MS4-Genesee
MIG610089	COC	Davison Twp MS4-Genesee
MIG610090	COC	East Lansing MS4-Ingham
MIG610093	COC	DeWitt Twp MS4-Clinton
MIG610094	COC	Delta Twp MS4-Eaton
MIG610095	COC	Meridian Twp MS4-Ingham
MIG610096	COC	Delhi Twp MS4-Ingham
MIG610097	COC	Lansing Twp MS4-Ingham
MIG610101	COC	Lansing MS4-Ingham
MIG610102	COC	Mason MS4-Ingham
MIG610103	COC	Grand Ledge MS4-Eaton
MIG610107	COC	MSU MS4-Ingham
MIG610109	COC	Ingham CDC MS4
MIG610110	COC	Eaton Co MS4-Eaton
MIG610111	COC	Clinton Co Dr Com MS4-Clinton
MIG610112	COC	Clinton CRC MS4-Clinton
MIG610115	COC	Shelby Twp MS4-Macomb

MIG610116	COC	Cascade Twp MS4-Kent
MIG610117	COC	Ottawa CRC MS4
MIG610120	COC	Allendale Twp MS4-Ottawa
MIG610123	COC	Grandville MS4-Kent
MIG610126	COC	East Grand Rapids MS4-Kent
MIG610128	COC	Grand Rapids Twp MS4-Kent
MIG610130	COC	Kent CDC MS4
MIG610131	COC	Kentwood MS4-Kent
MIG610133	COC	Plainfield Twp MS4-Kent
MIG610134	COC	Rockford MS4-Kent
MIG610136	COC	Sparta MS4-Kent
MIG610137	COC	Walker MS4-Kent
MIG610138	COC	Wyoming MS4-Kent
MIG610140	COC	Allegan CDC MS4
MIG610141	COC	Allegan CRC MS4
MIG610146	COC	Roosevelt Park MS4-Muskegon
MIG610147	COC	Norton Shores MS4-Muskegon
MIG610149	COC	Muskegon Heights MS4-Muskegon
MIG610150	COC	Muskegon CRC MS4
MIG610151	COC	Muskegon CDC MS4
MIG610152	COC	Muskegon MS4-Muskegon
MIG610159	COC	Zilwaukee MS4-Saginaw
MIG610161	COC	Saginaw City MS4-Saginaw
MIG610162	COC	Kochville Twp MS4-Saginaw
MIG610163	COC	Pinckney MS4-Livingston
MIG610165	COC	Carrollton Twp MS4-Saginaw
MIG610166	COC	Saginaw Twp MS4-Saginaw
MIG610167	COC	Buena Vista Twp MS4-Saginaw
MIG610171	COC	Saginaw Co MS4
MIG610172	COC	Tittabawassee Twp MS4-Saginaw
MIG610173	COC	Brighton MS4-Livingston
MIG610174	COC	Thomas Twp MS4-Saginaw
MIG610175	COC	Swan Valley PS MS4-Saginaw
MIG610176	COC	Sag Twp Com Sch MS4-Saginaw
MIG610177	COC	Brighton Twp MS4-Livingston
MIG610178	COC	Saginaw CRC MS4-Saginaw
MIG610179	COC	SVSU MS4-Saginaw
MIG610180	COC	Bridgeport-Spauld Sch MS4-Sag
MIG610181	COC	Bridgeport Twp MS4-Saginaw
MIG610183	COC	Saginaw ISD MS4-Saginaw
MIG610187	COC	Bangor Twp MS4-Bay
MIG610188	COC	Kawkawlin Twp MS4-Bay
MIG610189	COC	Monitor Twp MS4-Bay
MIG610191	COC	Hampton Twp MS4-Bay
MIG610193	COC	Bay City MS4-Bay
MIG610194	COC	Essexville MS4-Bay
MIG610195	COC	Bay CDC MS4-Bay
MIG610196	COC	Bay CRC MS4-Bay
MIG610197	COC	Hartland Twp MS4-Livingston
MIG610201	COC	Livingston CRC MS4
MIG610202	COC	Livingston CDC MS4
MIG610203	COC	Ottawa CDC MS4

MIG610208	COC	Grand Haven MS4-Ottawa
MIG610209	COC	Georgetown Twp MS4-Ottawa
MIG610211	COC	Hudsonville MS4-Ottawa
MIG610212	COC	Ferrysburg MS4-Ottawa
MIG610214	COC	Zeeland MS4-Ottawa
MIG610218	COC	Holland MS4-Ottawa
MIG610224	COC	Stevensville MS4-Berrien
MIG610227	COC	St Joseph Twp MS4-Berrien
MIG610228	COC	Berrien CRC MS4
MIG610229	COC	Berrien CDC MS4
MIG610233	COC	Cass CRC MS4
MIG610236	COC	Edwardsburg MS4-Cass
MIG610241	COC	Lincoln Twp MS4-Berrien
MIG610242	COC	Bridgman MS4-Berrien
MIG610243	COC	Benton Harbor MS4-Berrien
MIG610244	COC	Buchanan MS4-Berrien
MIG610245	COC	St Joseph MS4-Berrien
MIG610246	COC	Niles MS4-Berrien
MIG610249	COC	Kalamazoo CRC MS4
MIG610250	COC	Rochester PS MS4-Oakland
MIG610252	COC	Port Huron Twp MS4-St Clair
MIG610253	COC	Ira Twp MS4-St Clair
MIG610254	COC	Clay Twp MS4-St Clair
MIG610255	COC	Algonac MS4-St Clair
MIG610264	COC	Orion Twp MS4-Oakland
MIG610265	COC	Fort Gratiot Twp MS4-St Clair
MIG610266	COC	Clyde Twp MS4-St Clair
MIG610267	COC	Clarkston MS4-Oakland
MIG610268	COC	Kimball Twp MS4-St Clair
MIG610271	COC	Marysville MS4-St Clair
MIG610272	COC	Oakland University MS4-Oakland
MIG610273	COC	Keego Harbor MS4-Oakland
MIG610274	COC	Port Huron MS4-St Clair
MIG610275	COC	Niles Twp MS4-Berrien
MIG610277	COC	Highland Twp MS4-Oakland
MIG610278	COC	White Lake Twp MS4-Oakland
MIG610279	COC	Huron Valley PS MS4-Oakland
MIG610282	COC	Milford MS4-Oakland
MIG610284	COC	Bloomfield Hills MS4-Oakland
MIG610285	COC	Oak Park MS4-Oakland
MIG610287	COC	Leoni Twp MS4-Jackson
MIG610289	COC	Blackman Twp MS4-Jackson
MIG610293	COC	Spring Lake MS4-Ottawa
MIG610294	COC	Avondale PS MS4-Oakland
MIG610300	COC	Jackson MS4-Jackson
MIG610302	COC	New Haven MS4-Macomb
MIG610305	COC	Washington Twp MS4-Macomb
MIG610306	COC	Utica MS4-Macomb
MIG610309	COC	Romeo MS4-Macomb
MIG610310	COC	Chesterfield Twp MS4-Macomb
MIG610311	COC	Mount Clemens MS4-Macomb
MIG610312	COC	Macomb Twp MS4-Macomb

MIG610315	COC	KVCC MS4-Kalamazoo
MIG610316	COC	Grosse Pointe MS4-Wayne
MIG610317	COC	Grosse Pointe Farms MS4-Wayne
MIG610318	COC	Grosse Pointe Shores MS4-Wayne
MIG610319	COC	Grosse Pointe Park MS4-Wayne
MIG610320	COC	Eastpointe MS4-Macomb
MIG610321	COC	Jackson Co MS4
MIG610327	COC	Galesburg MS4-Kalamazoo
MIG610330	COC	Vicksburg MS4-Kalamazoo
MIG610331	COC	Parchment MS4-Kalamazoo
MIG610336	COC	Kalamazoo MS4-Kalamazoo
MIG610341	COC	Calhoun CDC MS4
MIG610358	COC	South Rockwood MS4-Monroe
MIG610363	COC	Oxford MS4-Oakland
MIG610365	COC	Marine City MS4-St Clair
MIG610366	COC	St Clair MS4-St Clair
MIG610367	COC	Oxford PS MS4-Oakland
MIG610369	COC	East China Twp MS4-St Clair
MIG610371	COC	Grand Rapids MS4
MIG610374	COC	DeWitt PS MS4-Clinton
MIG610375	COC	Belleville MS4-Wayne
MIG610376	COC	Lansing PS MS4-Ingham
MIG610377	COC	Forest Hills PS MS4-Kent
MIG610379	COC	Ann Arbor MS4

CITY OF PORTAGE **COMMUNICATION**

TO: Honorable Mayor and City Council **DATE:** March 15, 2010

FROM: Maurice S. Evans, City Manager

SUBJECT: Fiscal Year 2010-11 Proposed Budget Review Schedule

ACTION RECOMMENDED: That City Council establish April 20 and May 4 from 6-9 p.m. as the dates for review of the proposed Fiscal Year 2010-11 Budget.

Council will receive the proposed Fiscal Year 2010-11 Budget at the regular meeting of April 13, 2010. The budget review schedule has been developed to permit review of all budget aspects. Budget review sessions are proposed for April 20 and May 4 and a tentative schedule of 2010-11 budget review activity is attached.

Budget review sessions will be scheduled to begin at 6 p.m. on each of the proposed dates in Conference Room #1 of Portage City Hall. Further, a public hearing on the proposed budget will be held during the May 11, 2010 regular meeting of City Council, with formal adoption scheduled for May 25, 2010. As in the past, the review sessions, the public hearing and other Council meetings will provide ample opportunity for public comment on and analysis of the proposed budget.

Attachment

TENTATIVE

FISCAL YEAR 2010-11 BUDGET REVIEW ACTIVITY SCHEUDULE

Tuesday, April 20

Budget Overview	6:00 – 6:15 p.m.
Benefit Services	6:15 – 6:30
Purchasing	6:30 – 6:45
City Assessor	6:45 – 7:00
Information/Technology Services	7:00 – 7:15
Streets & Equipment	7:15 – 7:30
Parks & Recreation	7:30 – 7:45
Police	7:45 – 8:15
Fire Department	8:15 – 8:45

Tuesday, May 4

Legislative / Human Services	6:00 – 6:30 p.m.
Employee Development	6:30 – 6:45
City Clerk	6:45 – 7:00
Transportation & Utilities	7:00 – 7:15
Community Development	7:15 – 7:30
City Manager	7:30 – 7:45
Finance and Other Fund Activities	7:45 – 8:00
Capital Improvement Program	8:00 – 9:00

CITY OF PORTAGE **COMMUNICATION**

TO: Honorable Mayor and City Council **DATE:** March 18, 2010

FROM: Maurice S. Evans, City Manager

SUBJECT: Closed Session

ACTION RECOMMENDED: That City Council hold a closed session immediately following the regularly scheduled City Council Meeting of March 23, 2010, to discuss an attorney/client communication.

A closed session is requested immediately following the regularly scheduled City Council meeting of March 23, 2010, to discuss an attorney/client communication. City Council will reconvene in public session subsequent to completion of the closed session.

CITY OF PORTAGE **COMMUNICATION**

TO: Honorable Mayor and City Council **DATE:** March 5, 2010

FROM: Maurice S. Evans, City Manager

SUBJECT: February 2010 Summary Environmental Activity Report – Information Only

Attached please find the February 2010 Summary Environmental Activity Report from the Department of Transportation and Utilities Director, Dallas Williams. New material, or material of specific interest to City Council is presented in italics.

These items serve to update the Council on environmental affairs.

c: Dallas Williams, Director, Department of Transportation and Utilities
Planning Commission
Portage Environmental Board

SUMMARY ENVIRONMENTAL ACTIVITY REPORT
February 2010 (*updates in italics*)

Project/Activity	**Description**	**Status**
Portage City Landfill	Ongoing groundwater monitoring of former municipal landfill.	*-City Council awarded a 3 year contract to American Hydrogeologic Corporation on February 23, 2010 to perform annual groundwater sampling. The site groundwater data will continue to be monitored to confirm continuation of the natural attenuation process.* Sampling shows continued improvement in groundwater quality. Sampling performed in May 2009. Annual report submitted in June 2009. *General groundwater quality continues to improve, but site will require monitoring for the foreseeable future.*
Site Inspection/Development Project Review	Review of existing business & industries and review of proposed business and industrial development projects for environmental protection purposes and/or building plans completed.	-Coordination with property owners and City or State agencies ongoing. *-Review of 2 site/building plans and/or plats completed in February 2010.*
Sewer Connection Program	Groundwater protection program requiring residential/business hookup to the sanitary sewer where available.	*-Sanitary sewer hookup permits issued in February 2010*: 3 *residential, 1 commercial.*
West Lake Management Program	Special assessment district designed to maintain/improve lake conditions.	-Five Year Lake Management Assessment District process initiated (Resolution #1) on December 7, 2004. Resolution #3 was approved by City Council on January 11, 2005. Resolution #5 was adopted by City Council on February 8, 2005. On March 22, 2005, City Council approved a contract with Aquatic Services, Goodrich, MI, to perform annual weed treatment. West Lake currently working with the Kalamazoo County Drain Commissioner to create a filtration system on the Austin Lake Drain. On July 10, 2007, City Council authorized the Administration to submit a grant application in the amount of $5,000 to the Kalamazoo Foundation to assist funding the filtration system. Construction bids received by the Drain Commissioner on November 14, 2006. Construction began on the Austin Dam reconstruction in December 2006 and new structure completed in March 2007. Filtration system construction was substantially completed in July 2008 . On July 8, 2008, City Council awarded contracts to Aquatic Services, Inc. for the 2008 Weed Treatment Program and awarded a contract to ASI Environmental to perform watershed and vegetation

		survey. Weed treatment completed in July 2008. Fall weed and fish survey began in September and was completed in October. The Lake Association used Lake Shore Environmental, LLC. Spring 2009 weed control application was completed in June 2009. Lake Association currently working on new 5 year improvement plan and special assessment process through City Council.
Retention Basin Sampling Program	Investigation regarding potential impact of retention basins on groundwater.	-Historical monitoring continues to show minor impacts at most basins. From 1993 through 2005 the monitoring program showed stable groundwater impacts due to stormwater infiltration. Alternative road salt practices continue to be considered and evaluated. On April 11, 2006, City Council awarded contract to Kieser & Associates. 2008 semi-annual sampling complete. City staff has initiated a compilation of all city retention basin groundwater levels. 2008 annual report received with consistent water quality results. June 2009 sampling complete. *Winter sampling performed in early December 2009 with results submitted. Report under staff review.*
Wellhead Protection Program (WHPP)	Development of program to protect City well fields and surrounding area from contamination resulting from improper land use.	-Wellhead Protection Grant award received from MDEQ on August 30, 1999 and Council accepted the grant on October 5, 1999. Council also awarded contract to Earth Tech to complete WHPP. Earth Tech completed the final wellhead protection plan and MDEQ submittal was made on October 14, 2000. Plan was reviewed by MDEQ with written approval received in March, 2001. City staff made a presentation to the American Water Works Association at their April 25, 2008 meeting to highlight current city initiatives. Plan implementation is ongoing.
Leaf Compost Monitoring Program	Monitoring and analysis of groundwater at the new Oakland Drive Leaf Compost site.	-City Council awarded contract on August 21, 2001 to Soil & Materials Engineers for monitoring and analysis of groundwater impact of the new compost operation. Drilling was completed in October 2001 and first sampling cycle was completed in February 2002. Semi annual sampling was performed from 2002 to 2008 in June and January. Sampling and analysis results continue to show no groundwater impacts from the leaf composting. Sampling schedule reduced to annual sampling with results showing continued minor impact on groundwater quality. Sampling completed in July 2008 with minimal groundwater impacts noted. Sampling completed in July 2009 with minimal impacts.
National Pollution Discharge Elimination System (NPDES) permit implementation	Five year plan to implement the current NPDES stormwater permit.	-Received NPDES general permit on August 15, 2001. Renewal Application submission was made to MDEQ on March 7, 2003. Permit implementation is ongoing. New permit received in 2004 mandates involvement in several county watershed groups. City staff completed the submission of a Stormwater Pollution Prevention Initiative (SWPPI) as required by NPDES permit. SWPPI submitted

		on October 21, 2005. Revised SWPPI to incorporate watershed management plans. Annual report was submitted December 29, 2006. SWIPPI comments received from the MDEQ and revisions resubmitted. Public education plan submitted to MDEQ on October 31, 2007. Additional NPDES SWIPPI data and public education plan submitted on November 6, 2007. Annual report was submitted December 31, 2007. The MDEQ approved the revised public education plan and SWIPPI on January 15, 2008. Re-application for permit extension was submitted on March 24, 2008. New permit applications are due August 1, 2008 for a 5 year permit cycle. The permit application for the city was submitted to MDEQ on July 31, 2008. Annual permit report submitted in December 31, 2008. Next five year permit expected in fall 2009. New certificate of coverage permit was issued by MDEQ on September 30, 2009. New permit covers a 5 year time frame with first work item (updating the Public Participation Plan) due December 11, 2009. Plan update completed with other local governments and submitted November 24, 2009. *City staff to work with other agencies at the 2010 Home Expo in March.*
National Pollution Discharge Elimination System (NPDES) permit implementation	Kalamazoo River Mainstem Watershed Management Plan	First meeting was held September 17, 2004. The public participation plan for the Watershed was submitted on November 22, 2004. The Public Education Plan was submitted December 31, 2004. Proposals for completing the watershed plan were received by Kalamazoo County on September 15, 2005 and a contract awarded to Kieser & Associates in November 2005. Watershed Committee meeting held November 22, 2005. Watershed planning focused on threatened uses and potential correction of water quality. Draft watershed plan submitted to MDEQ on December 30, 2005. Review comments received from MDEQ and revised watershed plan due in December 2006. Public information meeting was held at County Fairgrounds on October 24, 2006. Revised Watershed Plan submitted November 30, 2006. A letter not to revise the Watershed Plan was submitted to the MDEQ on March 17, 2008. Public participation plan update submitted to MDEQ on November 24, 2009.
	Portage River Watershed Management Plan	Public participation plan submitted June 28, 2004. The Public Education Plan was submitted December 31, 2004. Proposals for a Watershed Management Plan were received by the Kalamazoo County Road Commission and a contract awarded to the Kalamazoo County Conservation Service in November 2005. First watershed meeting was held November 29, 2005. Meeting focused on water quality in the watershed and identification of pollution sources. Draft watershed plan submitted to MDEQ on December 30, 2005. Follow-up meetings are held monthly to facilitate an implementation schedule. Portage River Watershed public meeting held in Vicksburg on April 11, 2006. Review

		comments received from MDEQ and revised watershed plan due November 2006. Revised Watershed Plan submitted November 30, 2006, follow up meetings to be held as necessary. A letter not to revise the Watershed Plan was submitted to the MDEQ on March 17, 2008. Public participation plan update submitted to MDEQ on November 24, 2009. Based upon MDEQ comments, the plan was revised and resubmitted on December 21, 2009.
	Five year plan to implement an Illicit Discharge Elimination Plan (IDEP).	-On October 21, 2001, City Council awarded a contract to Fishbeck, Thompson, Carr and Huber for the Portage Creek element of the IDEP, which was completed in July 2002. On February 19, 2002, City Council approved a new ordinance as required by the NPDES permit titled "Storm Water Illicit Discharges and Connections". On May 27, 2003, City Council awarded a contract to Fishbeck, Thompson, Carr and Huber for the West Fork element of the IDEP. On April 28, 2004, City Council accepted a grant from the State of Michigan in the amount of $152,264 and awarded a contract to Fishbeck, Thompson, Carr and Huber in the amount of $184,264 for the remainder of the IDEP for the entire city. Due to a less than anticipated number of illicit connections, city staff asked MDEQ to expand mapping activities under the grant program. Program implementation is ongoing as funding allows. Continued outfall sampling is required by permit and will be budgeted accordingly.
Garden Lane Arsenic Removal Facility	Construction of a water treatment facility at the Garden Lane Wellfield to remove arsenic, iron and manganese from the groundwater.	City Council approved an agreement with Fishbeck, Thompson, Carr & Huber, Inc. on January 10, 2006 to prepare a feasibility study to meet new USEPA arsenic standards for drinking water. Feasibility study completed in August 2006. Feasibility study recommended construction of a filter system using various filter media materials. Small scale pilot studies began in spring 2007. Pilot studies completed with generally favorable results. Geotechnical soils report completed in April 2007 and wetlands delineation received in May. Operating plants visited in May to familiarize staff with various arsenic removal processes. City staff currently evaluating three possible treatment vendors to make a final equipment selection. Engineering proposals for the project were received August 14, 2007. Project engineering awarded to Earth Tech by City Council on September 11, 2007. Project design to include Leadership in Energy and Environmental Design (LEED) criteria. Project construction bids were bids received on November 25, 2008. Contract awarded by City Council on December16, 2008 to Adams Building Contractors, Inc., Jackson, Michigan. Preconstruction meeting was held January 29, 2009. Construction underway with clearing and earth work complete. Underground piping and foundation work complete. Concrete floors and wall construction complete. Outside

		piping and inside plumbing complete. Building interior and exterior site work complete. Interior painting ongoing. Garden Lane Well #4 drilling is complete and well building is underway. *Anticipated project start up in March 2010, with final completion in spring 2010.*
Environmental Incident/Spill Clean Up Notification	Environmental Protection Program to assist Portage Police/Fire Departments with spill containment and spill cleanup.	*The number of environmental incident/spill investigations performed in January 2010-0. The number of incidents requiring city forces/contractor emergency cleanups–0. Close out of gasoline spill on Sprinkle Road near Zylman Road due to a vehicle crash is complete.*
Localized Groundwater Table Investigation	Hydrogeologic study of the Portage area, especially in the Sprinkle Woods plat area, to determine causes of increase in groundwater elevation.	On April 29, 2008, City Council awarded a contract to American Hydrogeology Corporation to investigate the reason and extent of seasonally high groundwater elevation. Special emphasis will be placed on the Black Forest plat area to suggest possible solutions to the basement leaking problems experienced in the area. Study was transmitted to City Council on July 22, 2008. Current activities are focused on assisting the affected property owners with possible solutions. A storm drainage line extension project has been designed with a bid opening set for September 18, 2008. City Council awarded a contract to Peters Construction Company on September 23, 2008. Construction began in mid October. Project was extended to serve 3 additional properties. Work was completed on October 31, 2008. City staff continues to investigate other remedies for local groundwater table issues. Work underway on compiling a history of local groundwater table elevations at 19 city-owned retention basins with data from 1994 to 2009. Data from the analysis shows a general upward trend through the Portage area from 2005 to present. Five monitoring wells were installed in the Jamaica Lane area as a result of a number of citizen concerns. *Analysis of the Jamaica Lane wells shows that seasonal groundwater table levels have dropped approximately 18" from spring 2009 levels and level has stabilized through February 2010. Sampling will continue through the spring and summer months.*
Hampton Wetland Area Water Level	*Assistance with the Inverness Condominium Association to Review Surface Water Levels*	*Ongoing assistance with the Condominium Association to develop appropriate measures to regulate the rising water level in Hampton Wetlands Area located on the north side of West Centre Avenue and east of Angling Road. Current activity has centered on meeting with MDNRE staff to determine feasible method to lower water levels.*

t:\t & u monthly reports\envrpt 2010.doc

CITY OF PORTAGE **COMMUNICATION**

TO: Honorable Mayor and City Council **DATE:** March 17, 2010

FROM: Legal Services Evaluation Committee*

SUBJECT: Legal Services Contracts

ACTION RECOMMENDED: That City Council instruct the City Administration to solicit proposals for city attorney and bond counsel legal services.

A meeting of the Legal Services Evaluation Committee was held on March 11, 2010 for the purpose of determining a course of action with regard to city attorney and bond counsel legal services contracts, which both expire on June 30, 2010. After reviewing proposals from Randall Brown & Associates and Axe & Ecklund, PC (existing City Attorney and Bond Counsel) for the continuation of current contracts to provide legal services to the city, by a vote of 2 to 1, the Legal Services Evaluation Committee recommends that proposals for these services be solicited.

* Councilmember Randall (Chair)
Councilmember Campbell
Councilmember Urban

CITY OF PORTAGE **COMMUNICATION**

TO: Honorable Mayor and City Council **DATE:** March 15, 2010

FROM: City Council K-9 Officer Committee*

SUBJECT: K9 Unit

ACTION RECOMMENDED: That City Council not pursue the creation of a K-9 unit as part of the Portage Police Department and refer the matter of drug checks using K-9s at public schools in the greater Kalamazoo area to the City Council School Committee for review and report.

A meeting of the City Council K-9 Officer Committee was held on March 8, 2010 for the purpose of investigating the need for a K-9 unit as part of the Portage Police Department and the associated costs. As there is an intergovernmental cooperative approach of utilizing K-9s available from the City of Kalamazoo and more recently from the Kalamazoo County Sheriff's Department, and due to the costs associated with establishing and maintaining a K-9 program, the Committee recommends that Council not pursue the creation of a K-9 unit as part of the Portage Police Department at this time. The Committee emphasized that its recommendation does not preclude the consideration of a K-9 unit at a future time. The Committee also discussed its desire to have the law enforcement community work with public schools in the greater Kalamazoo area to have K-9s perform drug checks in the schools and recommends that this matter be referred to the City Council School Committee (Reid, Campbell, O'Brien) for review and report.

* Mayor Pro Tem Sackley (Chair)
Mayor Strazdas
Councilmember Campbell

CITY OF PORTAGE **COMMUNICATION**

TO: Honorable Mayor and City Council **DATE:** March 17, 2010

FROM: Maurice S. Evans, City Manager

SUBJECT: Traffic Signal Improvements

ACTION RECOMMENDED: That City Council award a construction contract to the low bidder, Severance Electric, Incorporated, in the not-to-exceed amount of $180,140.67 for the installation of new traffic signals at the East Centre Avenue/Currier Drive/Mustang Boulevard intersection and authorize the City Manager to execute all documents related to the contract on behalf of the city.

At the request of Portage Public Schools, on November 3, 2009, City Council amended the Fiscal Year 2009-2010 Capital Improvement Budget to advance the installation of new traffic signals at the East Centre Avenue/Currier Drive/Mustang Boulevard intersection. Portage Public Schools felt that it was imperative to have the new signals operational by start of the new school year in September 2010. An additional traffic signal will be installed at the South Westnedge Avenue/Portage Central High School entrance intersection and is anticipated to be operational by start of the new school year in September 2011. On November 27, 2009, City Council awarded an engineering contract to Abonmarche Consultants for the design of the two new traffic signal improvements.

Traffic signal design for the East Centre Avenue/Currier Drive/Mustang Boulevard intersection has been completed and bids were received on March 11, 2010. Four bids were received with the low bid in the amount of $180,140.67 submitted by Severence Electric, Incorporated, of Kalamazoo, Michigan. Severence Electric, Incorporated, has successfully completed many signal installations for the city and is the current traffic signal maintenance vendor.

With amendment of the Fiscal Year 2009-2010 Capital Improvement Program Budget to include the signalization improvements, sufficient funds are available in the project account to cover the cost of the contract. Construction cost of the new traffic signals at the South Westnedge Avenue/Portage Central High School entrance intersection has been included in the Fiscal Year 2010-2011 of the City Manager's Recommended 2010-2020 Capital Improvement Program. It is recommended that City Council award a construction contract to the low bidder, Severence Electric, Incorporated, in the not-to-exceed amount of $180,140.67 for the installation of new traffic signals at East Centre Avenue/Currier Drive/Mustang Boulevard intersection and authorize the City Manager to execute all documents related to the contract on behalf of the city. A complete bid tabulation is attached for the information of City Council.

Attachment

Traffic Signal Improvements
(East Centre Avenue @ Currier Drive)
Bid Tabulation

Severance Electric, Inc. 4140 Rollridge Avenue Kalamazoo, MI 49004	$180,140.67
Rauhorn Electric 17171-23 Mile Road Macomb, MI 48042	$188,727.30
DVT Electric 5151 South Division Ave., SW Wyoming, MI 49548	$216,492.00
J.R. Howell Airport Lighting 6320 N. State Road Luther, MI 49656	$230,697.30

CITY OF PORTAGE **COMMUNICATION**

TO: Honorable Mayor and City Council **DATE:** March 18, 2010

FROM: Maurice S. Evans, City Manager

SUBJECT: DPS Lighting Improvement Contract Recommendation

ACTION RECOMMENDED: That City Council approve a contract with Elders Electric of Grandville, Michigan, to replace 140 light fixtures in the Department of Public Service (DPS) with T-6 light fixtures in the not-to-exceed amount of $25,186 and authorize the City Manager to execute all documents related to this contract on behalf of the city.

The City of Portage received the Energy Efficiency and Conservation Block Grant (EECBG) from the Federal Government. The EECBG is designed to help municipalities improve energy conservation by providing funding upgrades in lighting, heating and air conditioning, window replacement, insulation and building weather proofing. With this grant, the Department of Public Service (DPS) requested funding for lighting improvements within the facility. The lighting improvements will replace 140 metal halide light fixtures with energy efficient T-6 lighting fixtures.

The installation of the new T-6 lighting fixtures at the DPS facility will provide for a reduction in energy consumption from 458 watts to 228 watts per light fixture. This will be a 50% reduction in electrical energy for the maintenance facility, which is estimated to equal $22,102 in energy use savings. In addition, the new T-6 light fixtures will increase illumination over the metal halide light fixtures.

On Thursday, March 4, 2010, sealed bids were received from 12 area electrical contractors for this lighting project with the low bid being presented by Elders Electric. Therefore, it is recommended that a contract for the DPS lighting improvements be awarded to Elders Electric of Grandville, Michigan, in the not-to-exceed amount of $25,186 and authorize the City Manager to execute all documents related to this contract on behalf of the city. Funds for this project are available through the EECBG. A bid tabulation is attached for the information of Council.

Attachment

BID TABULATION
DPS FACILITY LIGHTING IMPROVEMENTS

Bidder	Base Bid: 3-Pront Cord Sets Unit Cost	Base Bid: 3-Pront Cord Sets 47 Units	Base Bid: Hard Wired Units Unit Cost	Base Bid: Hard Wired Units 93 Units	Base Bid Total	Motion Sensors - Alternate #1 Unit Cost	Motion Sensors - Alternate #1 99 Units	Motion Sensors - Alternate #1 Total	GRAND TOTAL
Elders Electric 4051 Chicago Drive Grandville, MI 49418	$126.95	$5,966.65	$128.95	$11,992.35	$17,959.00	$73.00	$7,227.00	$7,227.00	$25,186.00
Hi-Tech Electric 839 Lenox Ave. Portage, MI 49024	$144.00	$6,768.00	$142.00	$13,206.00	$19,974.00	$57.00	$5,643.00	$5,643.00	$25,617.00
J & L Electric, Inc. 300 Custer Drive Battle Creek, MI 49037	$145.00	$6,815.00	$150.00	$13,950.00	$20,765.00	$63.50	$6,286.50	$6,286.50	$27,051.50
T. Morgan Electric, Inc. PO Box 2561 Kalamazoo, MI 49003-2561	$161.88	$7,608.36	$161.88	$15,054.84	$22,663.20	$66.50	$6,583.50	$6,583.50	$29,246.70
Webster Electric, Inc. 2222 Glendenning Rd., Suite 12 Kalamazoo, MI 49001	$160.00	$7,520.00	$160.00	$14,880.00	$22,400.00	$74.00	$7,326.00	$7,326.00	$29,726.00
Edison Electrical Services 31180 - 56th Ave. Paw Paw, MI 49079	$179.50	$8,436.50	$171.00	$15,903.00	$24,339.50	$62.00	$6,138.00	$6,138.00	$30,477.50
Alternative Energy Services, LLC 4170 Navarra Ct. White Lake, MI 48383	$182.15	$8,561.05	$156.36	$14,541.48	$23,102.53	$74.61	$7,386.39	$7,386.39	$30,488.92
DVT Electric, Inc. 5151 S. Division Ave. Wyoming, MI 49548	$184.82	$8,686.54	$189.95	$17,665.35	$26,351.89	$92.35	$9,142.65	$9,142.65	$35,494.54
Lakestate Electric, Inc. 2147 Martindale Wyoming, MI 49509	$190.00	$8,930.00	$205.00	$19,065.00	$27,995.00	$77.50	$7,672.50	$7,672.50	$35,667.50
Aladdin Electric, Inc. 4809 James McDivitt Jackson, MI 49201	$196.00	$9,212.00	$200.00	$18,600.00	$27,812.00	$95.00	$9,405.00	$9,405.00	$37,217.00
Bodey Electric LLC 2925 4th Street Wayland, MI 49348	$195.18	$9,173.46	$236.56	$22,000.08	$31,173.54	$141.41	$13,999.59	$13,999.59	$45,173.13
W. A. Wilcox Electric LLC PO Box 481 Paw Paw, MI 49079	$177.00	$8,319.00	$177.00	$16,461.00	$24,780.00	$236.00	$23,364.00	$23,364.00	$48,144.00

CITY OF PORTAGE **COMMUNICATION**

TO: Honorable Mayor and City Council **DATE:** March 18, 2010

FROM: Maurice S. Evans, City Manager

SUBJECT: Stormwater Retention Basin and Stormwater Outfall Testing and Monitoring Program

ACTION RECOMMENDED: That City Council award a four-year contract to Wightman Environmental, Incorporated, of Sodus, Michigan in the not-to-exceed amount of $19,850 for Stormwater Retention Basin and Stormwater Outfall Testing and Monitoring and authorize the City Manager to execute all documents related to this contract on behalf of the city.

Beginning in 1993, the city has been monitoring stormwater retention basins throughout the city for adverse environmental impacts. Results have generally shown only minimum impact from stormwater disposal primarily due to road deicing activities. As part of the 1987 amendment to the Clean Water Act of 1972, cities in urban areas are required to obtain and implement stormwater discharge permits through the National Pollution Discharge Elimination System (NPDES) program.

Portage received its first NPDES Stormwater Permit in 2001 and received its latest permit renewal in October 2009. The permit requires stormwater effluent sampling of all storm sewer pipes with a diameter of 30 inches or greater that outfall into a lake, stream or river.

On March 11, 2010, bids were received to perform both stormwater basin monitoring and storm sewer outfall testing. Eight bids were received with the low bid being submitted by Wightman Environmental, Incorporated, of Sodus, Michigan in the amount of $19,850. Wightman Environmental, Incorporated, has satisfactorily performed similar work for the city and is capable of performing both sampling procedures.

It is recommended that City Council award a four-year contact to Wightman Environmental, Incorporated, in the not-to-exceed amount of $19,850 for Stormwater Retention Basin and Stormwater Outfall Testing and Monitoring and authorize the City Manager to execute all documents related to the contract on behalf of the city. Funds are allocated in the water utility budget for this project. A bid tabulation is attached for the information of City Council.

Attachment

TABULATION OF PROPOSALS
STORM WATER RETENTION BASIN AND STORM WATER OUTFALL MONITORING PROGRAM

FIRM	2010	2011	2012	2013	4 Year Total	Estimated Project Hours	Prorated Hourly Rate
Wightman Envorinmental, Inc. 4050 King Drive PO Box 95 Sodus, MI 49126	$6,350.00	$4,500.00	$4,500.00	$4,500.00	$19,850.00	47	$422.34
Kieser & Associates, LLC 536 E. Michigan Ave., Suite 300 Kalamazoo, MI 49007	$8,748.00	$4,798.00	$4,798.00	$4,798.00	$23,142.00	59.5	$388.94
Professional Service Industries, Inc. 45749 Helm Street Plymouth, MI 48170	$7,400.00	$5,450.00	$5,450.00	$5,450.00	$23,750.00	250	$95.00
DLZ Michigan, Inc. 535 S. Burdick Street, Suite 160 Kalamazoo, MI 49007	$10,980.00	$5,935.00	$6,085.00	$6,240.00	$29,240.00	305	$95.87
Prein&Newhof 7123 Stadium Dr. Kalamazoo, MI 49009	$11,698.25	$6,458.25	$6,458.25	$6,458.25	$31,073.00	256	$121.38
American Hydrogeology Corp. 6869 S. Sprinkle Rd. Portage, MI 49002	$11,230.00	$8,730.00	$8,730.00	$8,730.00	$37,420.00	105	$356.38
Horizon Environmental 4771 - 50th St. SE, Ste. #1 Grand Rapids, MI 49512	$11,200.00	$11,500.00	$11,850.00	$12,200.00	$46,750.00	98	$477.04
AKT Peerless 22725 Orchard Lake Rd. Farmington, MI 48336	$15,495.00	$11,665.00	$11,442.00	$11,223.00	$49,825.00	120	$415.21

Proposals Opened 3/11/2010

CITY OF
PORTAGE
A Place for Opportunities to Grow

MATERIALS TRANSMITTED

Friday, March 5, 2010

1. Communication from the City Manager regarding the Disposition of Legal Matters – Information Only.

2. Communication from the City Manager regarding the Posting of City Council Committee Meetings.

3. Communication from the City Manager regarding the Citizen Comment Summary for February 2010 – Information Only.

Maurice S. Evans, City Manager

cc: Brian J. Bowling, Deputy City Manager

7900 South Westnedge Avenue ▪ Portage, Michigan 49002 ▪ (269) 329-4400
www.portagemi.gov

CITY OF
PORTAGE
A Place for Opportunities to Grow

MATERIALS TRANSMITTED

Tuesday, March 09, 2010

1. **To be replaced in Item D.2 of the March 9, 2010 Agenda:** Ordinance Amendment #09-C, Home Occupation Regulations.

Maurice S. Evans, City Manager

cc: Brian J. Bowling, Deputy City Manager

7900 South Westnedge Avenue ▪ Portage, Michigan 49002 ▪ (269) 329-4400
www.portagemi.gov

CITY OF
PORTAGE
A Place for Opportunities to Grow

MATERIALS TRANSMITTED

Friday, March 12, 2010

1. Communication from the City Manager regarding the Zoning Board of Appeals meeting of March 8, 2010 – Information Only.

Maurice S. Evans, City Manager

cc: Brian J. Bowling, Deputy City Manager

7900 South Westnedge Avenue ▪ Portage, Michigan 49002 ▪ (269) 329-4400
www.portagemi.gov