

## CITY COUNCIL MEETING MINUTES FROM FEBRUARY 9, 2010

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

The Deputy City Clerk called the roll with the following members present: Councilmembers Elizabeth A. Campbell, Margaret E. O'Brien, Patricia M. Randall, Claudette S. Reid, Terry R. Urban and Mayor Pro Tem Edward J. Sackley. Mayor Peter J. Strazdas was absent with excuse. Also in attendance were City Manager Maurice S. Evans, City Attorney Randall Brown and Deputy City Clerk Adam D. Herringa.

Mayor Pro Tem Sackley introduced Pastor Jeff Jones of the Kalamazoo Valley Family Church, who gave the invocation and the City Council and the audience recited the Pledge of Allegiance.

**APPROVAL OF MINUTES:** Motion by O'Brien, seconded by Campbell, to approve the January 26, 2010 Regular Meeting Minutes as presented. Upon a voice vote, motion carried 5 to 0 with Councilmember Urban abstaining.

\* **CONSENT AGENDA:** Mayor Pro Tem Sackley asked Councilmember Urban to read the Consent Agenda. Councilmember Urban asked that Item F.2, Ordinance Amendment #09-C, Home Occupation Regulations, be removed from the Consent Agenda. Motion by Urban, seconded by Reid, to approve the Consent Agenda motions as amended. Upon a roll call vote, motion carried 6 to 0.

\* **APPROVAL OF CHECK REGISTER OF FEBRUARY 9, 2010:** Motion by Urban seconded by Reid, to approve the Check Register of February 9, 2010. Upon a roll call vote, motion carried 6 to 0.

### **PUBLIC HEARINGS:**

**APPROVAL OF ORDINANCE AMENDMENT #09-A:** Mayor Pro Tem Sackley opened the public hearing and asked Jeff Erickson, Director of Community Development, to review the proposed ordinance amendment. Mr. Erickson reviewed the Flood Insurance Rate Map provided by the Federal Emergency Management Agency (FEMA) and provided background information on the National Flood Insurance Program. He indicated that each community in the nation must ensure that their flood plain regulations are consistent with national standards. The goal of national, state and local flood plain regulations is to minimize loss of life and property in flood hazard areas. Mr. Erickson then reviewed the proposed ordinance changes in more detail and indicated that the Planning Commission had reviewed the proposed regulations and recommended approval.

Councilmember O'Brien inquired how many properties in Portage were considered to be in the floodplain and stated that the primary concern of the regulations is new construction in flood prone areas. She also mentioned that the City of Portage qualifies for a "Class 8 rating" from FEMA meaning that residents receive a 10% discount on flood insurance premiums. Mr. Erickson indicated that there are numerous properties in Portage that are in a flood plain.

Mayor Pro Tem Sackley discussed the efforts of FEMA to revise floodplain maps all across the country. He stressed the importance of accurately determining floodplains and making sure citizens understand what the FEMA efforts mean.

Mayor Pro Tem Sackley opened the public hearing for discussion from the audience. There being no discussion, motion by Campbell, seconded by Reid, to close the public hearing. Upon a roll call vote, motion carried 6 to 0. Motion by Urban, seconded by O'Brien to approve Ordinance Amendment #09-A, and

- a. adopt Appendix G of the 2006 State of Michigan Construction Code, 2009 Flood Insurance Study and 2009 Flood Insurance Rate Maps, which updates Section 42-991 and inserts Section 42-995, Floodplain Management Regulations, designating the city as the enforcing agency;
- b. repeal Zoning Code Sections 42-320 to 42-330, Flood Hazard Areas;

- c. repeal Zoning Code Section 42-162(D)(1)(2), Flood Boundaries; and
- d. adopt the Resolution to Manage Floodplain Development for the National Flood Insurance Program, required by the Federal Emergency Management Agency.

Upon a roll call vote motion carried 6 to 0. Ordinances recorded on pages 121, 123 and 125 of City of Portage Ordinance Book No. 12.

**RESOLUTION NO. 3 FOR THE WEST LAKE MANAGEMENT PROGRAM**

**SPECIAL ASSESSMENT DISTRICT NO. 011-Q:** Mayor Pro Tem Sackley opened the public hearing and asked City Engineer Christopher Barnes to introduce the item. Mr. Barnes discussed the necessity of creating the 5-year lake management program and the desire of the West Lake Improvement Association to control nuisance aquatic plants. Mr. Barnes then reviewed the program and its history. He then reviewed the costs of the project and how it will be funded. He also explained why the assessment would be applied on a per parcel basis.

Councilmember Reid inquired as to why the project is being managed via the West Lake Improvement Association and not a formal governmental lake board. Mr. Barnes explained that this is largely due to past practice with this project and the lack of controversy among involved property owners. Councilmember O'Brien agreed that this project has not been controversial and that there is a broad consensus regarding the weed abatement program. Councilmember Urban explained why there is a governmental lake board for Long Lake and that the project in question is relatively simple as compared to lake improvement efforts that have been discussed for Austin Lake. Mayor Pro Tem Sackley stated that the scope of the West Lake project is rather simple but that more complex projects can best be served by a formal lake board. Mr. Barnes then reviewed efforts of the City of Portage to support the weed abatement program.

Mayor Pro Tem Sackley opened the public hearing for discussion from the audience. There being no discussion, motion by O'Brien, seconded by Campbell, to close the public hearing. Upon a roll call vote, motion carried 6 to 0. Motion by O'Brien, seconded by Reid, to adopt Resolution No. 3 for the West Lake Management Program Special Assessment District No. 011-Q, directing the preparation of the special assessment roll. Upon a roll call vote, motion carried 6 to 0. Resolution recorded on page 467 of City of Portage Resolution Book No. 43.

**REPORTS FROM THE ADMINISTRATION:**

\* **TRANSPORTATION FUND REFUNDING BONDS, SERIES 2010:** Motion by Urban, seconded by Reid, to adopt the Resolution awarding the bid for the City of Portage Michigan Transportation Fund Refunding Bonds, Series 2010, in the amount of \$6,725,000 to Stifel, Nicolaus & Co., Inc., at 2.752054 percent. Upon a roll call vote motion carried 6 to 0. Resolution recorded on page 471 of City of Portage Resolution Book No. 43.

**ORDINANCE AMENDMENT #09-C, HOME OCCUPATION REGULATIONS:** Mayor Pro Tem Sackley asked Councilmember Urban to begin discussion on this topic. Councilmember Urban began by indicating that the ordinance amendment is up for "first reading" and that no final action can be taken tonight. He explained that the ordinance expands the current home occupation ordinance and land development regulations by adding a second class of home occupation. He then reviewed several aspects of the new home occupation class and read B.6 of the proposed ordinance. He indicated that he believed the language to be awkward and asked if, should the language be clarified, the first reading would be nullified. City Attorney Randall Brown indicated that the First Reading would remain valid. Councilmember Urban inquired as to why the decision was made to expand home occupation permits and why a property must abut a major thoroughfare to even be considered for a permit.

Mr. Erickson explained that the ordinance would allow for more home business occupation opportunities but, at the same time, tightly regulate them. He then stated that the genesis of this revised

ordinance was Portage 2025 and City Council Goals and Objectives. Mr. Erickson reviewed the requirements for the permit and the role of the Planning Commission in granting one.

Councilmember Reid stated that anyone can have a passive business in their home but, if they wanted to hire an employee, it would be allowed under the proposed ordinance only if the property involved abutted a major thoroughfare. She then asked if this proposed ordinance would restrict a business from growing. Mr. Erickson responded in the affirmative and indicated that this is designed to limit the impact of a home-based business on a neighborhood.

Mayor Pro Tem Sackley expressed concerns with the Planning Commission being able to uniformly and equitably review and grant permits. He also stated that he saw no distinction between a parcel that abuts a major thoroughfare and one located in a neighborhood interior. Mr. Erickson explained that the Planning Commission deliberated these and other matters at length and also stated that streets are designed to carry traffic and promote flow. He does support allowing home-based businesses to open up additional access points on major thoroughfares.

Mayor Pro Tem Sackley inquired as to the details of what type of structure could be used as a location for a home-based business under the proposed ordinance and cited an example of someone opening up an auto repair shop in their garage. Mr. Erickson explained why it is unlikely that an individual would be able to meet the requirements of the proposed ordinance and open an auto repair shop in his garage. He also explained that there is a public hearing aspect of the ordinance allowing neighbors to voice any concerns or support to a permit request.

Councilmember Urban explained that he remembers significant controversy in the early 1980s when changes to the ordinance were proposed. He then indicated that the subjective nature of the review by the Planning Commission and potential inequity of allowing a permit for properties that abut a major thoroughfare and not others is of concern to him. He asked that a history of past changes to the ordinance in question be provided to City Council in advance of any public hearing. Discussion followed.

Councilmember Reid inquired as to whether anyone had inquired about opening a home business as outlined in the proposed ordinance and asked that the ordinance better define what qualifies as a home occupation. Mr. Erickson replied that no one had asked about obtaining a home-based permit since the Planning Commission began deliberating the ordinance and Attorney Brown opined that providing a listing of allowable businesses is not possible. He continued by stating that it is more appropriate to set more universal standards that must be followed and met. Councilmember O'Brien stated that it is important to clarify for residents and entrepreneurs what requires a permit. Attorney Brown stated that there should be an education component but that enforcement would likely be driven by complaints.

Mayor Pro Tem Sackley stated that he was pleased that the Planning Commission, Administration and City Council were looking at this matter and that it may expand opportunities for people to work at home. Councilmember Urban indicated that he had a home occupation permit for a long time and inquired whether activities related to fine arts can be regulated by a locality. Attorney Brown responded in the affirmative. Discussion followed.

Motion by Urban, seconded by O'Brien, to accept Ordinance Amendment #09-C, Home Occupation Regulations, for first reading and establish a public hearing on March 9, 2010. Upon a roll call vote, motion carried 6 to 0.

\* **SANITARY SEWER SERVICE REPAIR CALL-IN CONTRACT:** Motion by Urban, seconded by Reid, to approve a one-year renewal with Peters Construction Company for the Sanitary Sewer Service Repair Call-in Contract at the original not-to-exceed amount of \$26,212.87 and authorize the City Manager to execute all documents related to the contract on behalf of the city. Upon a roll call vote, motion carried 6 to 0.

\* **EMERGENCY PURCHASE OF HP PROLIANT VIRTUAL SERVER AND RELATED HARDWARE COMPONENTS:** Motion by Urban, seconded by Reid, to authorize payment for the

emergency purchase of one HP Proliant virtual server and related hardware components at a cost of \$12,381 and authorize the City Manager to execute all documents related to this purchase on behalf of the city. Upon a roll call vote, motion carried 6 to 0.

\* **TRANSFER OWNERSHIP OF THE 2009 CLASS C LICENSED BUSINESS, LOCATED AT 5690 SOUTH WESTNEDGE:** Motion by Urban, seconded by Reid, to grant the request from Carrabba's/Birchwood, Limited Partnership (A Florida Limited Partnership), to transfer ownership of the 2009 Class C licensed business, located at 5690 South Westnedge, Portage, to Carrabba's Italian Grill, LLC (A Florida Limited Liability Company). Upon a roll call vote, motion carried 6 to 0. Resolution recorded on page 475 of City of Portage Resolution Book No. 43.

**MINUTES OF BOARDS AND COMMISSIONS:** City Council received the minutes of the following Boards and Commissions:

Portage Board of Education Regular of December 14, 2009, and Committee of the Whole Work Session of January 11, 2010.  
Portage Park Board of January 6, 2010.  
Portage Planning Commission of January 7, 2010.

**AD-HOC COMMITTEE REPORTS:** Mayor Pro Tem Sackley asked if a member of the City Council Assessing Issues Task Force would like to speak to this item. Councilmember O'Brien expressed satisfaction with the deliberative process that led to the proposed resolution allowing property owners to appeal their assessment via letter. She emphasized the importance of treating every property owner fairly and equitably. Councilmember Randall stated that the proposed resolution will benefit property owners that are out-of-town, have difficult work schedules, are dealing with a medical condition, etc., by allowing them to appeal their assessment via a letter as opposed to exclusively in person. She also indicated that the committee will be looking at other methods of appeal, such as via electronic transmission in the future.

Councilmember Reid expressed concern as to what would happen to a person who appeals via letter but, for whatever reason, the information provided is incomplete and how the Board of Review would handle such a circumstance. She stated that she believed the Board of Review would likely let the stated property value stand and asked if the committee had discussed this. Councilmember O'Brien responded by stating there are limits when somebody appeals via letter and extolled the importance of providing tools so that property owners understand the appeals process. She then explained that detailed information on how to appeal will be available online and at the Office of the City Assessor.

Councilmember Reid then asked about the role of an agent in the appeals process. Councilmember Randall said that Michigan law allows for an agent or personal representative in the appeals process. She continued that a written authorization, such as a simple letter, is all that is needed to designate an agent. Discussion followed regarding the role of an agent.

Councilmember Reid asked what would happen if somebody submitted a written appeal and designated an agent to attend the Board of Review on his or her behalf. Councilmember O'Brien responded that a person must choose how to appeal as he or she has one opportunity to be heard. Attorney Brown explained that the Board of Review would look at all information presented, whether it is an appeal by letter, in-person or somebody who sends both a letter and appeals in person. He continued that the burden of proof lies with the taxpayer and any inconsistencies among information would be for the Board of Review to determine.

Councilmember Urban expressed confusion between the proposed resolution and in-person appeals and Councilmember O'Brien clarified that the resolution applies exclusively to appeals that are made in writing.

Mayor Pro Tem Sackley thanked everyone for a healthy discussion and complimented Councilmember Randall on her efforts to raise awareness of the appeals process. He continued by

stating that neither the City Council nor Administration will be able to answer every question that may arise regarding an appeal. It is up to the Board of Review to make a determination.

Motion by O'Brien, seconded by Campbell, to adopt the Resolution Permitting Protest of Assessed Valuation to the Board of Review by Letter. Upon a roll call vote, motion carried 6 to 0. Resolution recorded on page 477 of City of Portage Resolution Book No. 43.

### **BID TABULATIONS:**

\* **AWARD AN ENGINEERING PROFESSIONAL SERVICES CONTRACT TO PREIN & NEWHOF, INCORPORATED:** Motion by Urban, seconded by Reid, to award an engineering professional services contract to Prein & Newhof, Incorporated, for the South Westnedge Avenue/Trade Centre Way Realignment in the not-to-exceed amount of \$56,072 and authorize the City Manager to execute all documents related to the contract on behalf of the city. Upon a roll call vote, motion carried 6 to 0.

### **OTHER CITY MATTERS:**

**STATEMENTS OF CITY COUNCIL AND CITY MANAGER:** Councilmember Campbell congratulated the Boy Scouts of America on their 100<sup>th</sup> anniversary and reminded everyone of the planned community fireworks on July 3<sup>rd</sup>.

Councilmember Reid discussed the Community Action Agency program to assist those who earned \$45,000 or less in 2009 with their taxes. Sessions will be held at the Portage Community Center and Portage Senior Center. She also encouraged the community to come out and support the annual Walk-for-Warmth to be held on February 27<sup>th</sup> in Kalamazoo.

Councilmember Urban thanked City Council for indulging him by debating the proposed changes to the Home Occupation Regulations in advance of the public hearing.

Councilmember Randall thanked City Council for approving the resolution allowing property owners to appeal their assessments in writing so quickly. She then discussed a successful fundraiser she attended for the Portage Athletic Foundation and thanked all those who support this foundation.

Councilmember O'Brien shared news that Mr. Grady Biby, former Kalamazoo County Commissioner who represented a portion of Portage, passed away last week. She stated that the thoughts and prayers of the Portage City Council are with his family. She then thanked City Manager Evans for his report on the costs associated with giving residents the option of receiving the Portager electronically. She then expressed interest in City Council adopting a resolution regarding unfunded mandates at their next meeting.

City Manager Evans discussed the Transportation Fund Refunding Bonds that were approved by Council on the Consent Agenda and indicated that the action will save \$476,805 over several years. This is an example of City Administration working diligently to find savings and he complimented Financial Services Director Robert Luders and Finance Director Daniel Foecking on their efforts.

Mayor Pro Tem Sackley informed the public that he started with another third grade class in support of the Junior Achievement program. He then discussed the Kalamazoo Valley Community College (KVCC) Wind Energy Center in which students are trained to install, operate and repair large wind turbines. He continued by stating that the program is unique in the United States and the only one qualified under internationally recognized BZEE standards. The entire community should be proud of KVCC and of the support it receives.

**ADJOURNMENT:** Mayor Pro Tem Sackley adjourned the meeting at 9:17 p.m.

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Adam D. Herringa, Deputy City Clerk

\*Indicates items included on the Consent Agenda.