

CITY COUNCIL MEETING MINUTES FROM MARCH 9, 2010

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

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

Mayor Strazdas introduced Associate Pastor Bill Vande Giessen of the Cherry Creek Community 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 Reid, to approve the February 23, 2010 Special and Regular Meeting Minutes as presented. Upon a voice vote, motion carried 7 to 0.

* **CONSENT AGENDA:** Mayor Strazdas asked Councilmember O'Brien to read the Consent Agenda. Motion by O'Brien, seconded by Sackley, to approve the Consent Agenda motions as presented. Upon a roll call vote, motion carried 7 to 0.

* **APPROVAL OF CHECK REGISTER OF MARCH 9, 2010:** Motion by O'Brien, seconded by Sackley, to approve the Check Register of March 9, 2010. Upon a roll call vote, motion carried 7 to 0.

PUBLIC HEARINGS:

WEST LAKE MANAGEMENT PROGRAM SPECIAL ASSESSMENT DISTRICT NO. 011-Q – RESOLUTION NO. 5: Mayor Strazdas opened the public hearing and introduced City Engineer Christopher Barnes, who provided an overview of the request from the West Lake Board. He indicated that the West Lake Board currently has \$85,273 in the weed remediation fund, that the cost of the improvement is \$159,335, that the share of the Special Assessment District is \$59,250 and that the share of the City-at-Large is \$14,812. Mr. Barnes indicated that the assessment was figured on a per parcel basis as each lake owner recognizes that they each have equal access and use of the lake. The assessment per parcel is \$250 for a five-year period or \$50 per year.

Mayor Strazdas opened the public hearing to comments from the public and Bob Erickson, 619 South Shore Drive, thanked City Council for their support and Chris Barnes and Dallas Williams for getting all of the information together on the matter. Mayor Strazdas reciprocated with an expression of his appreciation for his leadership and stewardship of the lake and recognized Mr. Barnes and the Administration for their assistance in the matter.

Motion by O'Brien, seconded by Reid, to close the public hearing. Upon a voice vote, motion carried 7 to 0. Motion by Campbell, seconded by O'Brien, to adopt Resolution No. 5, confirming the Special Assessment Roll for the West Lake Management Program Special Assessment District No. 011-Q. City Attorney Randy Brown interjected that he wanted City Council to understand that this action does not preclude the use of other methods of special assessment with any future assessments that may come before City Council. Upon a roll call vote, motion carried 7 to 0. Resolution recorded on page 489 of City of Portage Resolution Book No. 43.

ORDINANCE AMENDMENT #09-C, HOME OCCUPATION REGULATIONS: Mayor Strazdas indicated that this proposed ordinance was in response to some of the findings of the Portage 2025 Visioning Project and the 2009 City Council retreat that resulted in a work topic sent to the Planning Commission, who independently focused on this topic. Mayor Strazdas opened the public hearing and introduced Jeff Erickson, Director of Community Development, who reviewed the process and some of the language of the proposed ordinance. Mr. Erickson distinguished between passive home

occupations and active home occupations and indicated that passive home occupations have been a part of the city since its inception. Discussion followed. Mayor Strazdas summarized that the passive home occupations ordinance has been on the books since the 1980's and there is no proposed change, and the only change is with active home occupations. Mr. Erickson indicated that the city has only received eleven applications for home occupation permits since July 2007 and all have been approved. Discussion followed.

At the request of Mayor Pro Tem Sackley, Mr. Erickson distinguished section 42-129.B.3 saying that the Home Occupation Ordinance expands where home occupation based activities would be best placed. Mr. Erickson further explained that if one of the desires is to expand activity, then protecting the neighborhood is critical, so a set of standards is important and this standard along with the rest of the standards, the fifteen conditions in section 42-129.B, have to be considered by the Planning Commission before an active home occupation is allowed. Discussion followed. Mr. Erickson pointed out that it was important that active home occupations not be situated in the interior of a neighborhood as there can be a certain amount of angst associated with some home businesses in the neighborhoods, and there are a limited number of back lots in Portage.

In response to Councilmember Reid, Mr. Erickson discussed enforcement, complaints, adding one or more employees to an active home occupation business, business signs and types of vehicles in the neighborhood and the importance of protecting the neighborhood.

In response to the concerns of Councilmember Urban, Mr. Erickson indicated that staff attempts to adhere to the standards in the Code of Ordinances and based on the review by the Administration of other municipal ordinances and tools available, overlay zoning and distance separation, as with day care centers, were not considered as alternatives. Discussion followed.

Mr. Erickson assured Councilmembers Randall and O'Brien that all fifteen standards would be considered by the Planning Commission when granting active home occupations, not just section 42-129.B.3. Discussion followed regarding fees, the amount of square footage in the home devoted to the business and hours of operation.

John Zull, 416 Barberry Street, spoke in opposition to the ordinance as presented as there is a process for reevaluating property through the rezoning process. He spoke in support of protecting neighborhoods, to only allow passive home occupations in Portage neighborhoods and to expend more effort to enforce the blight ordinance.

Philip Stinchcomb, 1607 Bellaire Avenue, viewed the proposed active home occupations portion of the ordinance as pitting "neighbor against neighbor" and objected to allowing the government to tell him that he cannot do something in his neighborhood saying that he sees nothing wrong with placing a sign in the yard advertising a business, that it is okay to bring more business into the neighborhood and viewed the ordinance as an attempt to dissect/micromanage all of the households in the city. Discussion followed.

Planning Commissioner Jim Pearson, 3004 East Shore Drive, indicated that the Planning Commission first considered the property line language in section 42-129.B.3, agreed that the economy is changing and businesses may need a better accommodation in neighborhood settings and addressed the cul-de-sac issue, but had not thought of the cul-de-sac next to a thoroughfare. He then compared the proposed ordinance to the wind turbine ordinance saying that this ordinance represents a compromise as it allows the homeowner to gradually bring businesses into the neighborhood, and if things (sic) do not improve, then it (sic) can be changed. He agreed that, after a review by City Council and the City Attorney, the "shall" can be change to "must" and suggested the distance and density issue be treated much like day care centers are with an application for a waiver as an option in order to allow another business in the neighborhood. Discussion followed.

Andrea Stork, 1515 Dogwood Drive, indicated that a passive home occupation business immediately becomes active when the business owner hires an individual, so the goal envisioned by the Portage 2025 Visioning Project becomes difficult to accomplish. Discussion followed.

Dave Norris, 3683 Bellflower Drive, concurred with Councilmember Randall and her concern for the survival of businesses in today's failing economy and objected to full transparency by a business

owner in front of the Planning Commission. Mayor Strazdas asked for input from anyone regarding the number of employees it would take to change a home occupation from passive to active in the neighborhood.

Seth Giem, 10234 East Shore Drive, owner of the Train Barn, described his business, explained that he rarely had a lot of cars on the property and complained about the boats in the water in Austin Lake in the front of his house. Discussion followed.

In answer to Andrea Stork, Mr. Erickson explained that the process for applying for a home occupation permit requires consistency with the established ordinance and administrative approval where possible. He indicated that a passive home occupation becomes active once the Planning Commission finds that the standards have been met. Discussion followed.

City Attorney Randy Brown opined that deciding where the passive home occupation becomes active is basically a policy issue for City Council; because of the zoning, people are supposed to live at the residence and home occupation is an accessory use of the property. He explained that “accessory” is defined as passive in the current ordinance, so the question is how much should the ordinance change to accommodate an “active” classification; if “no employee” is considered accessory, then “one employee” changes the character, so one employee is enough to make it active. Also, he said that the whole area of the home could be a business; therefore, a guideline had to be established, so 25% was selected. Discussion followed.

Councilmember O’Brien determined that the controlling factor should be “jobs.” She indicated that people work differently today than in the past, and the impact on the neighborhood could actually decrease. She cited webmasters and independent contractors as possible examples and argued that the Planning Commission should be able to look for the uniqueness of a business and the amount of impact on the neighborhood in their determinations.

Mayor Strazdas summed up and Mayor Pro Tem Sackley asked that the ordinance not address active versus passive, but should address the limits and the number of people is irrelevant because they could walk, bike or be dropped off at the residence. Discussion followed.

Councilmember Urban disagreed that it was about jobs because it is about protecting the neighborhood and spoke in favor of the current ordinance in its present form. Discussion followed.

Councilmember Reid spoke in support of using impact on the neighborhood as a standard, to allow people to work in their homes without providing a burden on the neighbors, and recommended that the Neighborhood Revitalization/Engagement Committee review and provide a recommendation to City Council.

Councilmember Campbell likened home occupation use to a day care operation, disagreed with section 42-129.B.3 and suggested a special meeting between City Council and the Planning Commission.

Councilmember Randall mentioned the principle resident state tax exemption for home-based businesses. Discussion followed.

Motion by Reid, seconded by Campbell, to close the public hearing. Upon a voice vote, motion carried 7 to 0. Motion by Urban, seconded by Reid, to deny the proposed Ordinance to amend the Code of Ordinances of the City of Portage by amending Section 42-112, Definitions, and 42-129, Home occupations, of Chapter 42, Land Development Regulations. Discussion followed. Upon a roll call vote, motion carried 7 to 0.

Motion by Urban, seconded by Sackley, to ask the Neighborhood Revitalization/Engagement Committee to either amend the Home Occupation Ordinance or refer it to the Planning Commission and to recommend the next step to be taken in the process. Discussion followed. Upon a roll call vote, motion carried 7 to 0.

REPORTS FROM THE ADMINISTRATION:

* **ORDINANCE AMENDMENT #09-B, SIGN REGULATIONS:** Motion by O’Brien, seconded by Sackley, to accept Ordinance Amendment #09-B, sign regulations, for first reading and

establish a public hearing on April 13, 2010, at 7:30 p.m. or as soon thereafter as may be heard and, subsequent to the public hearing, consider approval of Ordinance Amendment #09-B. Upon a roll call vote, motion carried 7 to 0.

* **BROWNFIELD REDEVELOPMENT INCENTIVE POLICY, TREYSTAR HOLDINGS, LLC:** Motion by O'Brien, seconded by Sackley, to approve a local-only tax increment financing incentive for the Treystar Holdings, LLC, CentrePort Commons brownfield project, 8019 Portage Road, without a Michigan Business Tax credit and without State of Michigan tax increment participation as specified in the City of Portage Brownfield Redevelopment Incentive Policy. Upon a roll call vote, motion carried 7 to 0.

* **2010 UTILITY RATE COMMITTEE:** Motion by O'Brien, seconded by Sackley, to appoint Mayor Pro Tem Sackley, Councilmember Campbell and Councilmember O'Brien as the three Council representatives and Jeff Breneman and Ted W. Vliek, Sr. as the two citizen-at-large representatives to the 2010 Utility Rate Committee and reconvene the committee. Upon a roll call vote, motion carried 7 to 0.

* **STATE TAX COMMISSION 14-POINT REVIEW:** Motion by O'Brien, seconded by Sackley, to receive the State Tax Commission Review of Local Unit Assessment Administration Practices, Procedures and Records (14-Point Review); an Interpretation Report prepared by Joyce Foondle, Southwest Michigan Governmental Consultants; and refer both items to the City Council Assessing Issues Task Force for review and report to the City Council. Upon a roll call vote, motion carried 7 to 0.

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

Portage Historic District Commission of January 6 and February 3, 2010.
Portage Board of Education Regular of January 25, 2010, and Committee of the Whole Work Session of February 8, 2010.
Portage Park Board of February 3, 2010.
Portage Human Services Board of February 4 and 11, 2010.
Portage Planning Commission of February 18, 2010.

BID TABULATIONS:

* **STORM DRAINAGE IMPROVEMENTS - OAKLAND DRIVE PARK STORMWATER BASIN:** Motion by O'Brien, seconded by Sackley, to award a contract to the low bidder, Robert Bailey Contractors, Incorporated, for the construction of the Oakland Drive Park Stormwater Basin Improvements in the not-to-exceed amount of \$123,058.58; amend a construction engineering services contract with Paradigm Design, Incorporated, in the not-to-exceed amount of \$14,500; and authorize the City Manager to execute all documents on behalf of the city. Upon a roll call vote, motion carried 7 to 0.

* **WESTFIELD WELL #1 PUMP AND MOTOR REHABILITATION:** Motion by O'Brien, seconded by Sackley, to award a service contract for the Westfield Well #1 Pump and Motor Rehabilitation to Peerless-Midwest, Incorporated, at a total price of \$24,820 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 7 to 0.

PETITIONS AND STATEMENTS OF CITIZENS: Tim Keck, 7551 Montego Bay, spoke in support of the Shamrock that was painted on the roof of the Montessori School on Oakland Drive; expressed his disapproval of the Zoning Board of Appeals decision, Monday, March 10, 2010; asked that City Council override them; and, expressed concern over the attitude of the Board and their treatment of the petitioners. Discussion followed.

Larry Provancher, 7414 Starbrook Street, concurred with Mr. Keck. Discussion followed.

OTHER CITY MATTERS:

STATEMENTS OF CITY COUNCIL AND CITY MANAGER: Councilmember Randall thanked Zoning Board of Appeals Member Doug Rhodes for his request to place all City Council Special and Committee Meetings on the website to complement the legal posting on the City of Portage Bulletin Board.

Councilmember O'Brien encouraged everyone to contribute to the YMCA fundraiser for programs for at-risk youth.

Councilmember Campbell announced that the 35th annual Kalamazoo Living History Show will take place March 21 and 22, 2010, at the Kalamazoo County Fairgrounds and will focus on and explore the rich and varied cultural traditions of the Great Lakes region from earliest European contact up to the late 19th century.

Councilmember Reid indicated that the Assessor's Office passed the State Tax Commission 14-Point Review with 173 out of 200 possible points and 35% of the municipalities in the state do not pass the review.

City Manager Evans announced that the Michigan Department of Transportation will be closing South Westnedge Avenue from April 24 at 10 p.m. until April 25 at 11 a.m. and from June 20 at 10 p.m. until 11 a.m. on June 21 to allow for construction of the I-94 bridge improvements.

Mayor Pro Tem Sackley thanked Councilmember Campbell for getting him involved in Junior Achievement.

Mayor Strazdas invited everyone to attend the Home Expo, March 17 through March 20 at the former Sam's Club building, 665 Mall Drive. Mayor Strazdas expressed his respect for his fellow City Councilmembers for their ability to discuss matters in a respectful way and their diversity of ideas.

ADJOURNMENT: Mayor Strazdas adjourned the meeting at 10:24 p.m.

James R. Hudson, City Clerk

*Indicates items included on the Consent Agenda.