

## CITY COUNCIL MEETING MINUTES FROM JANUARY 11, 2011

The Regular Meeting was called to order by Mayor Strazdas at 8:15 p.m.

At the request of Mayor Strazdas, Pastor Bill Abernathy of the Berean Baptist Church of Portage gave the invocation and the City Council and the audience recited the Pledge of Allegiance.

The City Clerk called the roll with the following members present: Councilmembers Cory A. Bailes, Elizabeth A. Campbell, Patricia M. Randall, Claudette S. Reid and Terry R. Urban, 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.

**APPROVAL OF MINUTES:** Motion by Reid, seconded by Campbell, to approve the December 21, 2010 Regular Meeting Minutes as presented. Upon a voice vote, motion carried 6 to 0 with Councilmember Urban abstaining.

\* **CONSENT AGENDA:** Mayor Strazdas asked Mayor Pro Tem Sackley to read the Consent Agenda with Item H.1, Initiated Law 1 of 2008, Michigan Medical Marihuana Act – Proposed Ordinance, that was removed from the Consent Agenda at the request of the Administration, and with the addition of Item K.1, Appointments to Various Boards and Commissions, to the Consent Agenda. Motion by Sackley, seconded by Reid, to approve the Consent Agenda motions as amended. Upon a roll call vote, motion carried 7 to 0. Mayor Strazdas added H.3, Setting of the Size and Composition of the Board of Review, to the Agenda.

\* **APPROVAL OF ACCOUNTS PAYABLE REGISTER OF JANUARY 11, 2011:** Motion by Sackley, seconded by Reid, to approve the Accounts Payable Register of January 11, 2011. Upon a roll call vote, motion carried 7 to 0.

### REPORTS FROM THE ADMINISTRATION:

\* **AMENDMENT TO THE CODE OF ORDINANCES:** Motion by Sackley, seconded by Reid, to accept for first reading the proposed amendment to the City of Portage Code of Ordinances, Chapter 34, Fire Prevention and Protection, reflecting changes in the 2009 edition of the International Fire Code and to consider final adoption on January 25, 2011.

\* **VEHICLE PURCHASES:** Motion by Sackley, seconded by Reid, to approve the purchase of one 2-ton, 4-wheel drive, medium-duty service truck; six marked Police patrol vehicles; three unmarked Police sedans; and two 4-wheel drive service utility vehicles through the State of Michigan Purchasing Program (MiDEAL) at a cost not-to-exceed \$354,566, and authorize the City Manager to execute all documents related to these purchases. Upon a roll call vote, motion carried 7 to 0.

\* **WEST MILHAM AVENUE/12<sup>TH</sup> STREET/TEXAS DRIVE INTERSECTION IMPROVEMENTS:** Motion by Sackley, seconded by Reid, to approve acquisition of the right-of-way, sidewalk easement and temporary grading easement for 4815 West Milham Avenue in the amount of \$86,400 and authorize the City Manager to execute all applicable documents related to this matter on behalf of the city. Upon a roll call vote, motion carried 7 to 0.

## COMMUNICATION:

**COMMUNICATION FROM COUNCILMEMBER PATRICIA RANDALL:** At the request of Mayor Strazdas, Councilmember Randall provided her presentation regarding the City of Portage property assessment practices and read from her letter to City Council dated January 14, 2011, that was received by City Council January 7, 2011. She then introduced Alan Sawyer, 6714 Bunchberry Drive, who, at her request, analyzed the data for City Council that she received from the City Assessor's Office as a citizen under the Freedom of Information Act (FOIA) (since the matter of assessing practices was concluded by unanimous vote at the Special Council Meeting dated April 27, 2010). Mr. Sawyer explained and discussed his understanding of his graphs that were presented to City Council as part of the materials provided to City Council by Councilmember Randall. He questioned the accuracy of the data because of the trends that resulted from his findings and recommended that City Council adopt the next steps that will be offered by Councilmember Randall. Discussion followed.

Councilmember Randall thanked Mr. Sawyer and recognized that trends found in the past were being phased out and applauded the Administration for this success. She indicated that she plans to continue to observe and monitor this situation to ensure this continues. She asked for City Council support of the four recommendations proposed by Attorney Richard Reed in his letter dated January 4, 2011.

Mayor Pro Tem Sackley asked whether photo pictometry would be acceptable; the cost of the assessment review; the breakdown of the cost; what period of time the cost would be absorbed; if there are increases in the assessments, would that be an acceptable result; and, what is the goal of the assessment review of all residential properties because other jurisdictions have done this and it has resulted in an increase in assessments.

Councilmember Randall responded that Joyce Foondle indicated that in her experience, in a down market, assessments have gone down and that she was relying on Joyce, but did not know what she charges, although \$40 per property was a figure used in other discussions. She acknowledged that she did not know if photo pictometry was acceptable by the State as she is not an assessor, but she contended that never leaving one's desk and changing assessments based on class, age, etc., leaves a lot of room for doubt.

City Manager Evans asked Alan Sawyer to return to the podium, thanked him for his efforts and reviewed each graph that he had presented earlier. Discussion ensued. Mr. Evans explained what happened over the ten years in question by using the response letter from Joyce Foondle and the communication from City Assessor James Bush both dated January 10, 2011, to Councilmember Randall's letter dated January 14, 2011. Discussion followed. He also responded to the Attorney Richard Reed letter dated January 4, 2011, and referred again to the response by Joyce Foondle dated January 10, 2011. He pointed out that the data supports what the Administration has been saying all along and what was presented to City Council at the Special Meeting dated April 27, 2010.

Mr. Evans took exception to the grey box and arrow that appears on graphs in Attachments B, C, D, F and G provided by Councilmember Randall since this implies that there was inappropriate corresponding action taken by the Assessor when the Pfizer tax settlement took place. He contended that this grey box and arrow suggests that the fact that there was an increase in changes in class of construction, a reduction in Effective Age for properties that sold significantly outpaced the reduction in Effective Age for properties that did not sell, and a reduction in Effective Age for low ratio sale properties significantly outpaced the reduction in Effective Age for high ration sale properties all happened as a response to the Pfizer tax settlement. He pointed out that this would be illegal, that this was not the case and, if someone has the names of any people involved in such a scheme, that their names should be brought forward to the Prosecutor. He pointed out that according to the graphs, reports and analyses, the Assessor's Office has exceptional assessing practices now. He then asked what City Council wants the Administration to do in the future. Discussion followed.

Mayor Pro Tem Sackley pointed out that the City Assessor's Office received the Distinguished Assessment Jurisdiction Award in 2007 over Grand Rapids and Oakland County, passed the 14-Point Review by the State Tax Commission and fewer people attended the Board of Review in 2010 than in 2009. Councilmember Urban read the criteria for the Award and pointed out that what Councilmember Randall has called for, has already been done. Discussion followed.

Councilmember Reid reminded everyone that the City of Portage Assessor's Office is already planning to do a pilot project of reassessing a neighborhood, but questioned how a market analysis today compares with one that is performed five years from now when the last neighborhood is reassessed. Discussion followed. Mayor Strazdas asked for a motion.

Motion by Reid, seconded by Campbell, to receive the communication from Councilmember Patricia Randall regarding the Portage Property Tax Database for years 2000-2010. Discussion followed. Mayor Pro Tem Sackley offered an amendment to the motion: to reaffirm the action taken by City Council at the April 27, 2010 Special City Council Meeting, and conclude City Council investigation of Assessment Practices of the City of Portage Assessor's Office and Councilmembers Reid and Campbell agreed. Discussion followed. When Councilmember Randall asked if the motion could be split, City Attorney Brown advised in the affirmative. Discussion followed. Mayor Pro Tem Sackley called for the question. Motion carried, 6 to 1. Ayes: Councilmembers Bailes, Campbell, Reid and Urban, Mayor Pro Tem Sackley and Mayor Strazdas. No: Councilmember Randall. Discussion followed.

## **UNFINISHED BUSINESS:**

### **INITIATED LAW 1 OF 2008, MICHIGAN MEDICAL MARIHUANA ACT**

**(MMMA) – PROPOSED ORDINANCE:** Mayor Strazdas introduced this agenda item, complimented Tom Haroldson for his fine article on this matter and chastised the *Gazette* person who indicated that the City of Portage would be “outlawing marihuana” at the meeting tonight in the newspaper headline. Mayor Strazdas indicated that there is no indication anywhere that that would take place and that it would not happen unless there was a motion passed independent of the ordinance before City Council for second reading and consideration. At the request of Mayor Strazdas, City Manager Maurice Evans characterized the 180 day moratorium as a prudent response to actions being taken around the State against municipalities that are being sued because of their attempts to implement the Michigan Medical Marihuana Act of 2008 (MMMA). He pointed out that this would allow time for State Legislators to provide clarity and for staff and the City Attorney to obtain the information to formulate an ordinance that would provide the protections necessary going forward on this issue. Discussion followed.

Mayor Pro Tem Sackley asked for a summarization of the types of issues the municipality needs to address and gave examples: facilities development, zoning, code enforcement, protecting facilities against breaking and entering, etc. City Attorney Randy Brown indicated that there are a lot of consequences and problems with the MMMA making it ambiguous, that Mayor Pro Tem Sackley mentioned most of them, and projected that the Courts and the Legislature may address these issues to give municipalities and their attorneys some guidance. He indicated that across the State, there are dispensaries where people can buy marihuana and maybe this is within the purview of the Act and maybe it is not; but, in the meantime, the moratorium allows time for study and to look into it to determine compliance guidelines. He summarized that the Portage Temporary Moratorium Ordinance carves out the exceptions allowed by the MMMA: qualifying patients under the MMMA who receive a registration card from the State of Michigan can have 2.5 ounces of marihuana and up to twelve marihuana plants, and a primary caregiver, who must also be registered with the State of Michigan, can have up to five qualifying patients and have 2.5 ounces of medical marihuana for each qualifying patient, as well as cultivate up to twelve marihuana plants for each qualifying patient, as long as there is only one qualifying caregiver per structure.

City Manager Evans emphasized that the majority of the voters of the State of Michigan, Kalamazoo County and the City of Portage decisively approved the MMMA; that the fundamental intent of the MMMA is to create a private and confidential patient/caregiver relationship and to facilitate the lawful cultivation, distribution and use - strictly for medical purposes. However, he pointed out that MMMA does not define how to carry out that fundamental intent and that is where the difficulty begins. He cited Judge Turner who said, "... this is one of the worse pieces of legislation he has ever seen in his life." Mr. Evans recognized that the voters voted and communities want to carry out the law, but he acknowledged that there is a need for clarification.

In response to Councilmember Reid's question about what happens after the six-month moratorium, Mr. Brown indicated that he will continue to meet and discuss this issue with the administrative team and present an ordinance for City Council consideration for approval within the six month time period. He indicated that City Council does not have to pass an ordinance; other communities are taking various paths regarding how to regulate medical marihuana; and, the administrative team will continue to scrutinize this activity and formulate an ordinance based on best practices. He said that if the ordinance passes, the moratorium ends and regulation of medical marihuana in Portage will be under the ordinance; and, if no ordinance is passed by City Council, the moratorium ends in 180 days and the regulation of medical marihuana is limited to interpretation of the statute instead of a City of Portage ordinance.

Councilmember Urban read Section 2-317, (a) and (b)(i), (b)(ii) and (b)(iii), Prohibition of use of property and structures for medical marihuana, that is a part of the Moratorium Ordinance that was presented for first reading and is under consideration for approval by City Council. Discussion followed.

The following citizens spoke in favor of medical marihuana: Chris Altman, 5813 Stratford; Thomas Lavigne, 2930 East Jefferson, Detroit; Christopher Chiles, 1611 West Centre Avenue, Suite #100; Ralph Wrick, 6045 Mallard; Luis Hernandez, 100 Peach Tree Drive; and, Michael Alexander, 1601 Greenview Avenue. Discussion followed.

Motion by Sackley, seconded by Reid, to amend the Code of Ordinances of the City of Portage, Michigan, by adding Article 8, Temporary Moratorium on the Use of Property and Structures for Dispensing and Cultivating Medical Marihuana. Upon a roll call vote, motion carried 7 to 0. Ordinance recorded on page 143 of City of Portage Ordinance Book No. 12.

\* **2011 FEE SCHEDULE – COMMUNITY DEVELOPMENT FEE:** Motion by Sackley, seconded by Reid, to approve the Community Development Planning and Zoning Site Re-inspection Fee and adopt the accompanying resolution. Upon a roll call vote, motion carried 7 to 0. Resolution recorded on page 121 of City of Portage Resolution Book No. 44.

**SETTING OF THE SIZE AND COMPOSITION OF THE BOARD OF REVIEW:** Mayor Strazdas introduced this item and asked for input from each Councilmember. Councilmembers Randall, Campbell and Reid and Mayor Strazdas advocated two Boards of Review with three members in each and Councilmembers Bailes and Urban and Mayor Pro Tem Sackley advocated one Board of Review with three members and two Alternate Members. Discussion followed.

Motion by Reid, seconded by Campbell, for the year 2011, to appoint six persons that will fill two Boards of Review with three members each. Upon a roll call vote, motion carried 7 to 0. Discussion followed.

Motion by Urban, seconded by Reid, to reappoint Wes Mazurek and appoint Bill Fries, Theodore Varas and Michael Simon with terms ending January 31, 2012. Upon a roll call vote, motion carried 7 to 0. Discussion followed.

Motion by Urban, seconded by Sackley, to set one Board of Review to be comprised of Wes Mazurek, Bill Fries and Michael Simon and the other Board of Review to be comprised of William Stannard, Jay Olweean and Theodore Varas. Upon a roll call vote, motion carried 7 to 0. Discussion followed.

\* **MINUTES OF BOARDS AND COMMISSIONS:** City Council received the minutes for the following boards and commissions:

Portage Park Board of December 1, 2010.

Portage Human Services Board of December 2, 2010.

Kalamazoo County Board of Commissioners Regular of December 7, 2010.

**NEW BUSINESS:**

\* **APPOINTMENTS TO VARIOUS BOARDS AND COMMISSIONS:** Motion by Sackley, seconded by Reid, to reappoint David Felicijan and Marianna Singer and appoint Timothy Bunch with terms ending February 28, 2014, and appoint Jeff Bright as Alternate with term ending February 28, 2014, to the Zoning Board of Appeals; to appoint Christine Broberg and Tiffany Raynes with terms ending December 31, 2013, to the Historic District Commission; to appoint Allan Reiff with term ending May 31, 2011, to the Planning Commission; and to appoint Alexis Georgoff, Kelcie McGowan, Kasia Mietusiewicz, Fatima Mirza and Carly Siko with unfulfilled terms ending June 30, 2011, to the Youth Advisory Committee. Upon a roll call vote, motion carried 7 to 0.

**OTHER CITY MATTERS:**

**STATEMENTS OF CITIZENS:** Jim Pearson, 3004 East Shore Drive, did not think that City Council addressed the “following sales” issue well enough during the response by the Administration to the presentation and follow-up discussion regarding the Portage Property Tax Database for years 2000-2010.

Michael Leinwand, 6677 Oleander, complimented the efforts of Councilmember Randall with regard to tax assessments.

Michael Alexander, 1601 Greenview, expressed his appreciation for the openness of City Council with regard to tax assessments.

Ken Smott, said he invited Joyce Foondle and Christine Biddle to his home because there were six or seven changes, so felt a need for a new baseline, and wants to pay his fair share of taxes, but felt there was too much haste in deciding to do nothing and asked the Administration to follow up.

Alan Sawyer, 6714 Bunchberry Drive, questioned the accuracy of the data he received via Councilmember Randall from the City Assessor’s Office that he analyzed and presented after Councilmember Randall’s opening statement regarding the Portage Property Tax Database for years 2000-2010, asked the City Assessor to look at it and advocated “going forward.”

Nancy Sawyer, 6714 Bunchberry Drive, concurred with Ken Smott that City Council acted with too much haste in deciding to do nothing and asked for further analysis of the data.

Greg Engle, 8336 Brookwood, indicated that he purchased his home in 2004, the effective age dropped, the taxes went up in 2009, and it caused him a hardship owing to his low escrow account.

**STATEMENTS OF CITY COUNCIL AND CITY MANAGER:** Councilmember Randall thanked those in the audience for staying late, and expressed her condolences to former public officials, Ted Vlieg for the passing of his wife, Mike Quinn for the passing of his father and Jamie Graham for the passing of his mother.

Councilmember Bailes thanked the Administration for an enlightening orientation of the responsibilities of the various city departments.

Councilmember Reid thanked all of the citizens who attended the meeting and observed that people complained about how complicated taxes are, suggested they contact the Assessor, thanked Councilmember Randall for her work but, because the Assessor can not enter property unless invited, suggested that citizens request an on-site inspection.

Councilmember Urban indicated that the Assessor's Office data from the Portage Property Tax Database for years 2000-2010 is both correct and incorrect as it was collected before computerization, using the windshield assessment method, but the variables should not change three or four times. He indicated that the efforts over the last ten years to correct the data have been successful and that the customer service issues have been addressed.

City Manager Evans asked citizens to ignore the solicitation circulating in the mails for homeowners to purchase "pipe insurance" coverage from the home to the street.

Mayor Pro Tem Sackley said that he was encouraged by the rhetoric regarding the Portage Property Tax Database for years 2000-2010 since there was no mention of fraud, corruption or conspiracy as in the past, except by himself, and made the point that Portage assessment practices have been honest, that any issues that have arisen have been addressed and there is a consensus of City Council to conclude City Council investigation of Assessment Practices of the City of Portage Assessor's Office.

Mayor Strazdas encouraged attendance at "Stepping Out," a fundraiser for Portage Public Schools, February 12, 2011, at the State Theater, Kalamazoo, and called for City Council Committees to convene and get to work in preparation for the budget process.

**ADJOURNMENT:** Mayor Strazdas adjourned the meeting at 11:45 p.m.

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James R. Hudson, City Clerk

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