

## CITY COUNCIL MEETING MINUTES FROM JUNE 12, 2012

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

At the request of Mayor Strazdas, Councilmember Urban gave the invocation and City Council and the audience recited the Pledge of Allegiance.

The Deputy City Clerk called the roll with the following members present: Councilmembers Elizabeth A. Campbell, Jim Pearson, Patricia M. Randall and Edward J. Sackley, Terry R. Urban, Mayor Pro Tem Claudette S. Reid and Mayor Peter J. Strazdas. Also in attendance were City Manager Maurice S. Evans, City Attorney Randy Brown and Deputy City Clerk Adam Herringa.

**APPROVAL OF MINUTES:** Motion by Reid, seconded by Campbell, to approve the May 22, 2012 Special Budget Work Session and Regular Meeting Minutes and May 31, 2012 Special Meeting Minutes. Upon a voice vote, motion carried 6 to 0 with Councilmember Urban abstaining.

\* **CONSENT AGENDA:** Mayor Strazdas asked Mayor Pro Tem Reid to read the Consent Agenda. Councilmember Sackley removed Item H.1, Greenspire Retail / Sewer Utility Connection Charges, from the Consent Agenda. Motion by Reid, seconded by Campbell, to approve the Consent Agenda motions as amended. Upon a roll call vote, motion carried 7 to 0.

\* **APPROVAL OF ACCOUNTS PAYABLE REGISTER OF JUNE 12, 2012:** Motion by Reid, seconded by Campbell, to approve the Accounts Payable Register of June 12, 2012. Upon a roll call vote, motion carried 7 to 0.

### **PUBLIC HEARING:**

**TENTATIVE PLAN AMENDMENT FOR OAKLAND HILLS AT CENTRE PLANNED DEVELOPMENT:** Mayor Strazdas opened the public hearing and introduced Community Development Director Vicki Georgeau, who provided a detailed overview of the proposed amendment and the overall history of the Oakland Hills at Centre Planned Development. Director Georgeau emphasized the proposed changes to the plan with a particular focus on the construction of a unique cell phone tower on the development property. She discussed the reason for the selected cell phone tower design, known as the “monopine,” as well as the reasons for its proposed location.

Mr. Greg Dobson of American Village Builders, AVB, spoke next and recognized representatives of the various parties involved in the Oakland Hills at Centre Planned Development that were present in the audience. Mr. Dobson reviewed the current status of the development and focused specifically on the monopine tower and why AVB is supportive of including it in their development. He also emphasized that AVB had been working with the property owner to the north, William Nuyen, and that the two parties had come to agreement on the issue of the cell phone tower as well as areas of mutual interest.

Terry Sherman, 4540 Wishing Well Court, spoke and thanked the developer and City for working to add and preserve trees in the development.

Motion by Sackley, seconded by Randall, to close the public hearing. Upon a voice vote, motion carried 7 to 0.

Motion by Sackley, seconded by Campbell, to approve the Tentative Plan Amendment for Oakland Hills at Centre Planned Development at 2275, 2301 and 2401 West Centre Avenue and 8080 Oakland Drive, subject to the conditions outlined in the April 13, 2012 Department of Community Development report.

Mayor Strazdas thanked the development team for their effort to grow the community with quality projects as well as the good communication between stakeholders in the project. He then briefly discussed the necessity, number, guidelines and maintenance necessary for cell phone towers in communities.

Attorney Brown reviewed the next steps prior to final approval of the plan amendment.

Councilmember Sackley discussed the need for communities to have widespread broadband access. He also stated that he appreciates developments that are created and implemented by those that live here and work here and strive to make their developments great assets to the community.

Mayor Pro Tem Reid recognized the overall efforts of the developer and complimented them on reaching out to the neighbor who had expressed concerns with the project.

Upon a roll call vote, motion carried 7 to 0.

**PETITIONS AND STATEMENTS OF CITIZENS:** Dr. Romeo Phillips, 1983 Brighton Lane, thanked Councilmember Sackley for interceding on his behalf to assist with closing the sale of his former home and being able to move into his new home in a timely manner. Dr. Phillips also thanked Daniel Foecking, City of Portage Finance Director, for taking his time on a lunch hour to personally visit Dr. Phillips in order to answer questions related to a tax matter.

Mayor Strazdas invited Nancy Vandenberg, 4646 Wishing Well Court, to come forward and address the City Council as the spokesperson for a large group of residents attending the meeting on a matter of mutual concern.

Ms. Vandenberg stated that she had contacted several City officials prior to the meeting including Mayor Strazdas, Mayor Pro Tem Reid and City Manager Evans and wondered if there was a representative of Midwest Energy present in the audience. She stated that the City and Midwest Energy were providing different stories as it relates to the cutting of trees in the Angling Road neighborhood she is representing. Ms. Vandenberg then reviewed the tree trimming practices of Consumers Energy and contrasted them with the practices of Midwest Energy which eliminated the trees in the energy company's right-of-way in her neighborhood. She emphasized that the trees that were cut provided protection from wind, snow, dirt, and especially noise pollution as a natural and beautiful barrier between their homes and U.S. 131. Her neighborhood, she stated, was changed in minutes when 150 trees were cut in a matter of minutes.

Ms. Vandenberg stated that she received a notice from the City last Friday of the impending tree cutting but woke up Monday morning to a knock on her door and the sound of chainsaws. She then reviewed a presentation, photos and brief video of the situation. In the presentation she reviewed the history of the tree plantings, emphasized the devastating effect of the cutting, the removal of a tree on Michigan Department of Transportation (MDOT) property, the removal of trees that were not located near the power lines and the future cutting plans of Midwest Energy. She also reviewed a series of questions the residents of her neighborhood would like answered. In reviewing the questions, she expressed concern about items such as differing information she said she received from Midwest Energy and the City of Portage, the planting of trees under power lines, whether Midwest Energy was following Michigan Public Service Commission (MPSC) guidelines, safety as it relates to stranded motorists seeking assistance and decreased property values. Ms. Vandenberg also expressed concern regarding gravel on the roadway, the width of the bikeway along Angling Road and potholes on the roadway. She then asked the City to protect residents from this devastating situation and continued by stating that she is deeply saddened and upset by the abrupt action taken by Midwest Energy and lack of notice.

Ms. Vandenberg then suggested that the City take steps to work with MDOT to plant new trees on the MDOT property. She requested that the City plant tall trees in this area.

Mayor Strazdas then asked if any other citizen would like to speak. Brett Vandenberg, 4646 Wishing Well Court, stated that the neighborhood has been taken back 20 years and would like an adequate replacement of the trees that were taken down.

Mr. Terry Sherman, 4550 Wishing Well Court, said he has been proud to be a Portage resident until yesterday, but the elimination of the trees changed everything. He believes the neighborhood could have come up with a better alternative than cutting the trees and expressed anger and frustration over the situation.

Mr. Leonard Vandenberg, 145 West Main, Mendon, spoke and stated that he helped to plant the trees and build the neighborhood. He emphasized that the neighborhood was simple and they created a beautiful place to live. He emphasized how devastating the situation is for residents and how much hard work it took to get the trees in place. He expressed extreme dismay at how quickly the neighborhood changed when the chainsaws started and that the neighborhood did not have a say on how to handle the situation. He closed by asking City Council for their help.

Ms. Tamara Russell, 4585 Wishing Well Court, stated that she moved to Wishing Well over 14 years ago and, prior to purchase, was concerned about the noise of the highway. She reviewed the changing value of her home in recent years and expressed concern about the value of her home now that the trees have been removed. She also expressed concerns about safety now that the natural barrier has been removed.

Mayor Strazdas informed the audience that City Council did not approve the actions of Midwest Energy and asked City Manager Evans to respond to as many questions that were raised as possible. Mr. Evans emphasized that the City and City Council really do care about residents and apologized for the situation. He stated that neither City Council nor City Administration approved of the actions by Midwest Energy. Mr. Evans then acknowledged the horrible nature of what had happened and provided a brief review of when conversations with Midwest Energy began and the nature of the conversations. He pointed out that Midwest Energy did not plan on notifying residents so the City assumed the responsibility because it was the right thing to do. He also pointed out that the action by Midwest happened faster than anyone in the City expected and that there was no collusion between the City and Midwest Energy.

Mr. Evans then said that he would plan on reviewing and answering the questions posed by residents and that he hoped to have conversations with Midwest Energy to help in getting answers. He also expressed the importance of figuring out what to do now. He emphasized the importance of having a plan in place as any action taken by the City would be precedent-setting and he is willing to work with residents on coming up with a plan.

Ms. Vandenberg expressed hope that the City would use their influence and put forth the effort to influence Midwest Energy and the Public Service Commission. She pointed out that she believes Midwest Energy is not following their own or the Michigan Public Service Commission guidelines.

Mayor Strazdas asked the City Manager to get the facts, meet with residents from the neighborhood and answer questions that have been raised. He continued by stating that various entities have responsibilities and asked City Attorney Brown which agency is responsible for overseeing or oversight of Midwest Energy. Mayor Strazdas also expressed that he would love to be able to tell a utility what to do. Attorney Brown stated that the Michigan Public Service Commission has responsibility over public utilities and asked for time to look into the situation. Mayor Strazdas then inquired what the City can do and asked the City Administration for alternatives. He stated that everyone is in agreement that this is a terrible situation and expressed optimism that there can be a good outcome. He pointed out that it is important for residents to contact their state representatives and stated that he would personally be in contact with Representative Margaret O'Brien and Senator Tonya Schuitmaker.

Councilmember Urban expressed how sorry he is for what happened and shared his own experience with a similar circumstance. He shared that nobody associated with the City made a decision to do this and that, in his experience, no other utility has used the "ground to sky" policy for utility management in the City of Portage. He regrets that things transpired as they did but pointed out that City Administration was trying to get Midwest to change their mind and took the step of informing

residents because Midwest was not going to do it. He stated that he believes the Public Service Commission is the best tool to get Midwest Energy to stop their practice and said he looks forward to receiving the report from the Administration on the matter.

Councilmember Sackley said there are three phases to consider in this situation. The first is to review the history so that we know what happened and why for context. The second is what to do today. He emphasized the importance of getting state legislators involved to deal with the Public Service Commission. He also emphasized the importance of using this as a teaching moment or as a best practice reference. The most important phase, he stated, is tomorrow. He continued by saying that we must take what knowledge is learned today, reflect on the history and use it for informing future developments and decisions. He stated that he looks forward to figuring out what happened so we can learn from the past, develop a plan and figure out what can be done to help restore the neighborhood.

Mayor Pro Tem Reid spoke next and empathized with residents, recognized how devastating this has been for residents and stated that City Council is still getting up to speed as far as what happened and what can be done. She emphasized the importance of contacting state legislators. She then asked the City to be as proactive as possible to make sure residents in upcoming Midwestern Energy trimming areas are aware of what is coming. She stated that while Midwest Energy probably does have a right to do this, it doesn't make it right.

Councilmember Pearson shared in the thoughts of other councilmembers and stated that this is a neighborhood disaster and should be treated as such. He stated that there would be a local level response and that he looked forward to coming to a town hall meeting and to the report by City Administration. He stated that he will work to figure out what can be done and emphasized that City Council is on their side.

Mayor Strazdas informed the audience that the City Manager and Council were in touch with Representative O'Brien. He continued by expressing frustration that the City can't do more to tell the utility company what to do.

Councilmember Randall stated that she is shocked and appalled and expressed heartfelt appreciation for the trees in the neighborhood. She continued by stating that a natural disaster would have been easier to deal with and expressed frustration with the powerlessness of things that are out of our control. She hoped that this would be a catalyst for positive change.

Councilmember Campbell echoed the sentiments of other Councilmembers and expressed hope that the residents know their voices have been heard.

City Manager Evans stated that he had just finished speaking with Councilmember O'Brien and that she would start looking into the matter immediately.

Ms. Vandenberg expressed gratitude for City Council listening to the concerns of the neighborhood and for their response.

Mayor Strazdas asked for a representative of the neighborhood to contact Representative O'Brien and for the City Manager to arrange a date and time for a town hall meeting. He then thanked the residents for coming out and reassured those present that they had the support of City Council. Discussion followed on notifying other residents that may be impacted by the efforts of Midwest Energy.

## **REPORTS FROM THE ADMINISTRATION:**

\* **REZONING APPLICATION 11-04:** Motion by Reid, seconded by Campbell, to accept Rezoning Application #11-04 for first reading and set a public hearing for July 10, 2012; and subsequent to the public hearing, consider approving Rezoning Application #11-04 and rezone 7932 Lakewood Drive, 707, 743, 775 and 903 East Centre Avenue, and the southern 264-feet of 801, 809, 815, 821 and 827 East Centre Avenue to OS-1, office service with the northern 198-feet of 801, 809,

815, 821 and 827 East Centre Avenue to remain zoned R-1A, one family residential. Upon a roll call vote, motion carried 7 to 0.

Although the item was approved on the Consent Agenda, some members of the audience expressed a desire to speak on the matter. Mayor Strazdas invited them to come forward. Thomas Rogers, 896 Treasure Island Drive, Texas Township, said he was the person who started the rezoning request and expressed concern with the rezoning as proposed by City Administration. Mr. Rogers discussed the votes of the Planning Commission and shared a letter with City Council regarding the rezoning matter. He expressed that the proposed rezoning would be an excessive taking of property and hopes that City Council takes this into consideration. Mayor Strazdas informed Mr. Rogers of the process for this request and that a public hearing has been set for July 10 to review the matter. Mayor Pro Tem Reid informed Mr. Rogers that information on the topic could be viewed online on the City Council website.

Leroy Butler, 821 E. Centre, spoke and said that the proposed rezoning looks like half of the property will be residential and half commercial. He expressed hope that other options would be considered. Mayor Strazdas assured Mr. Butler that he will be heard.

\* **REZONING APPLICATION 11-05:** Motion by Reid, seconded by Campbell, to accept the Rezoning Application #11-05 for first reading and set a public hearing for July 10, 2012; and subsequent to the public hearing, consider approving Rezoning Application #11-05 and rezone 7812, 7840 and 7842 Portage Road to B-3, general business and the portion of 7908 Portage Road (approximately 351 feet by 178-feet) located immediately south of 7842 Portage Road to P-1, vehicular parking. Upon a roll call vote, motion carried 7 to 0.

\* **NOTICE OF TRANSFER OF UNPAID WATER AND/OR SEWER CHARGES TO CITY TAX ROLL:** Motion by Reid, seconded by Campbell, to order notice to applicable property owners that all water and/or sewer charges remaining unpaid as of June 30, 2012, will be transferred to the 2012 city tax roll and assessed against the property for which the services were furnished. Upon a roll call vote, motion carried 7 to 0.

\* **3-YEAR CONTRACT RENEWAL FOR QUARTERLY BRUSH PICKUP:** Motion by Reid, seconded by Campbell, to award a three-year contract renewal to B&B Yardscape to provide quarterly brush pickup services in the amount not to exceed \$87,780 per year for Fiscal Years 2012-2013, 2013-2014 and 2014-2015; and authorize the City Manager to execute all documents related to this contract on behalf of the city. Upon a roll call vote, motion carried 7 to 0.

\* **3-YEAR LEASE EXTENSION FOR XEROX WORK CENTRE:** Motion by Reid, seconded by Campbell, to approve a three-year lease extension on the Xerox Work Centre 7665P multifunction system for copying, digital printing and scanning and authorize the City Manager to execute all documents related to this matter on behalf of the city. Upon a roll call vote, motion carried 7 to 0.

#### **UNFINISHED BUSINESS:**

**GREENSPIRE RETAIL / SEWER UTILITY CONNECTION CHARGES:** Mayor Strazdas moved item H.1 in advance of item G.1. Mayor Strazdas asked Councilmember Sackley to speak on the matter. Councilmember Sackley informed the audience that City Council had finished a Special Meeting from earlier in the evening in which unassessed sewer utility connection charges, the 1991 Special Assessment Policy and the application of charges to the Greenspire Retail Development at 3201 West Centre Avenue were discussed at length. Motion by Sackley, seconded by Campbell, that the Administration's application of the 1991 Special Assessment Policy to the Greenspire Retail

Development at 3201 W. Centre Avenue not be supported because: 1) the development is not an adjacent parcel but part of the original development; 2) the original developer installed facilities were never part of a special assessment district; 3) the application 37 years after construction is not fully supported by the 1991 policy; and, 4) the 1991 policy be reaffirmed but amended to include a sunset provision for parcels, single or contiguous, under continuous control by ownership with majority interest since adoption of the 1991 policy.

Councilmember Urban spoke and indicated that he did not support such a motion in the Special Meeting and that there were questions which he would still like to see answered. He then pointed out that the proposed motion raises questions regarding the sunset position and its effect and expressed discomfort in moving forward on voting until questions are answered.

Councilmember Sackley amended his motion that the sunset provision be a 20-year sunset provision for parcels that meet that criteria and asked to add a 20-year provision to the motion. Councilmember Campbell agreed to the amendment. Mayor Pro Tem Reid asked for clarification on the sunset provision and the 20 year provision. Councilmember Sackley stated that once 20 years have passed the provisions would no longer apply to properties that meet the ownership requirement. Motion by Urban, seconded by Reid, to “split the question between Mr. Gesmundo’s appeal and the issues involved with that and amending our current policy.” Attorney Brown indicated that there are separate issues in Councilmember Sackley’s motion and expressed support for not making a policy decision this evening. Mayor Strazdas expressed support in splitting the motion so that a policy change can be reviewed in more detail. Councilmember Sackley stated that he would support splitting the motion and Attorney Brown emphasized the importance of reaffirming the 1991 Special Assessment Policy. At the behest of the Mayor, the makers and supporters of each motion (the one to split and the original motion) withdrew their motions so that a new motion could be put forth. Motion by Sackley, seconded by Campbell, that the Portage City Council reaffirm the 1991 Special Assessment Policy and that the Administration’s application of that policy to Greenspire Retail Development at 3201 W. Centre Avenue not be supported because 1) the development is not an adjacent parcel but part of the original development; 2) the original developer installed facilities were never part of a special assessment district; and 3) the application 37 years after construction is not fully supported by the 1991 policy.

Mayor Pro Tem Reid asked for the functional implication of not supporting the application of the current policy. Discussion followed and Attorney Brown indicated that the \$8,000 charge would not be applied in this case. Councilmember Sackley stated that other factors for the motion include his belief that the parcel in question was always part of the development and that this parcel was never part of a special assessment district. Further discussion on the impact of motion continued. Attorney Brown emphasized the importance of making the motion as specific to the current situation as possible.

Mayor Strazdas called the question. On a roll call vote, motion carried 7 to 0. Councilmember Sackley emphasized the importance of receiving a report outlining how many other situations exist in the City that are similar to that of Greenspire. Mayor Strazdas agreed and asked the City Administration to pursue it.

## **COMMUNICATIONS:**

**COMMUNICATION FROM COUNCILMEMBER RANDALL REGARDING BEST PRACTICE DISCUSSION:** Mayor Strazdas stated that this topic is a continuation of the last City Council Workshop and there was debate on whether to discuss the material tonight at the regular meeting or at another special session. Councilmember Randall stated the matter in question deals with the formation of City Council Committees and identification of responsibilities. She continued by stating that “if any part of this discussion would impact the ability of elected officials to interact with the public that elected them to serve, that it be conducted at a regularly scheduled council meeting and not during an after-hour workshop.” She also stated that City Council prides itself on openness,

transparency and good governance and that it is only fair for discussions to occur in the most public of meetings.

Mayor Pro Tem Reid stated that this discussion is going to be significant and that it would best take place in a forum that allows easy and full dialogue. She continued by saying that the topic was originally part of an informal work session and that any action taken in an informal session could then be brought back to a regular meeting for formal action. She continued by saying that a draft has been completed but that there may be several edits that will take time to go through.

Councilmember Pearson stated that he has had the draft for two months and the whole topic is about how City Councilmembers are assigned to a committee and consists of a brief one page document. The document, he stated, sets the tone on how committees conduct their business and addresses the issue of transparency. He concluded by pointing out that while citizens can attend workshop sessions it is a rarity but a regular meeting is in full view and better attended by both Councilmembers and the public.

Councilmember Campbell agreed with Councilmember Pearson and said, in the interest of transparency, it should be discussed on camera at a regular meeting.

Councilmember Sackley stated that he is ready to address the matter tonight. Motion by Sackley, seconded by Urban, that “the City Council adopt the Best Practices on Formation of City Council Committees and Responsibilities as presented to us as a draft as a final version.”

Mayor Pro Tem Reid said that she has spent time reviewing and editing the document but has been holding her edits for the workshop. She then passed out copies of her edits as did Councilmember Pearson.

Councilmember Urban pointed out that there was a motion on the table and Councilmember Randall stated that she would not support the motion. Councilmember Sackley said that he was not aware there were so many edits but would like to have the matter settled. Councilmember Pearson pointed out the time of day and the extent of the edits and indicated he would prefer to talk about this at another meeting. Attorney Brown informed City Council that he had a few edits to the draft as well.

Councilmember Sackley withdrew the motion and Councilmember Urban agreed. Councilmember Sackley encouraged fellow Councilmembers to share their edits so that everyone can come prepared to discuss at the next meeting.

Mayor Strazdas stated that the planned workshop will be canceled and the matter included on the agenda for the next regular City Council meeting.

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

Portage Board of Education Special of April 11, Regular Business of April 16, Policy Governance of April 23, Special of April 25 and Special Meetings and Committee of the Whole Work Session of May 7, 2012.

Portage Senior Citizen Advisory Board of April 18, 2012.

Portage Park Board of May 2, 2012.

### **BID TABULATIONS:**

\* **CONTRACT FOR 2012 LOCAL STREET RECONSTRUCTION PROGRAM AND ASPHALT REPAIRS, CHANGE ORDER FOR ADDITIONAL REPAIRS AND CONSTRUCTION ADMINISTRATION AND MATERIALS TESTING:** Motion by Reid, seconded by Campbell to approve a contract with Michigan Paving & Materials Company for the 2012 Local Street Reconstruction Program and asphalt surface repairs to isolated sections of major streets in the not to exceed amount of \$750,784.77; a change order in the not to exceed amount of \$113,490.29

for additional street repairs at unit pricing within this contract; a contract with Jones & Henry Engineer, Ltd., for construction administration and material testing for the 2012 Local Street Reconstruction Program in the not to exceed amount of \$22,725.00; and authorize the City Manager to execute all documents related to this contract on behalf of the city. Upon a roll call vote, motion carried 7 to 0.

\* **CONTRACT FOR REPAIRS TO SELECTED MAJOR STREET BICYCLE LANES:** Motion by Reid, seconded by Campbell, to accept the low bid from J. Allen & Company to provide repairs to selected major street bicycle lanes in the amount not to exceed \$18,608.05 and authorize the City Manager to execute all documents related to this contract on behalf of the city. Upon a roll call vote, motion carried 7 to 0.

\* **PURCHASE OF MOTOROLA SWAT RADIOS:** Motion by Reid, seconded by Campbell, to approve the purchase of eight Motorola APX7000 SWAT Radios from the Van Buren County Region 5 Fiduciary in the amount of \$12,196 and authorize the City Manager to execute all documents related to this matter on behalf of the city. Upon a roll call vote, motion carried 7 to 0.

#### **OTHER CITY MATTERS:**

**STATEMENTS OF CITY COUNCIL AND CITY MANAGER:** Councilmember Pearson stated his appreciation for living in a small town and to the responsiveness of City Council to the neighborhood disaster discussed earlier in the meeting.

Mayor Pro Tem Reid stated that she was able to attend the opening of the second phase for the Heartland on behalf of the Mayor. She pointed out that, in 2010, City Council approved a Payment in Lieu of Taxes (PILOT) for this affordable housing project for seniors and commented on what a beautiful and functional development it was for people with a variety of challenges.

Mayor Strazdas stated the importance to him of attending Eagle Scout Courts of Honor, but unfortunately, he would be unable to make one this coming weekend and asked for a member of City Council to attend in his place. He also relayed that Portage responded to a fire earlier in the evening and that eight people were safely removed from the burning structure. He then offered kudos to the Department of Public Safety.

**ADJOURNMENT:** Mayor Strazdas adjourned the meeting at 10:38 p.m.

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Adam Herringa, Deputy City Clerk

\*Indicates items included on the Consent Agenda.