

CITY COUNCIL MEETING MINUTES FROM JULY 10, 2012

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

At the request of Mayor Pro Tem Reid, Pastor Paul Nuechterlein of the Prince of Peace Lutheran Church of Portage gave the invocation and City Council and the audience recited the Pledge of Allegiance.

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

APPROVAL OF MINUTES: Motion by Sackley, seconded by Urban, to approve the June 26, 2012 Regular Meeting and June 27, 2012 Special Meeting Minutes. Upon a voice vote, motion carried 5 to 0 with Councilmember Campbell abstaining.

* **CONSENT AGENDA:** Mayor Pro Tem Reid asked Councilmember Urban to read the Consent Agenda. Motion by Urban, seconded by Campbell, to approve the Consent Agenda motions as presented. Upon a roll call vote, motion carried 6 to 0.

* **APPROVAL OF ACCOUNTS PAYABLE REGISTER OF JULY 10, 2012:** Motion by Urban, seconded by Campbell, to approve the Accounts Payable Register of July 10, 2012. Upon a roll call vote, motion carried 6 to 0.

PUBLIC HEARINGS:

PUBLIC HEARING FOR REZONING APPLICATION #11-05, 7812, 7840 AND 7842 PORTAGE ROAD: Mayor Pro Tem Reid opened the public hearing and introduced Community Development Director Vicki Georgeau, who noted that Rezoning Application #11-05 is a request to 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. She outlined the location of the request, provided some history of the process and indicated that the application was originally initiated by Mike Stoddard, who plans to construct a micro-brewery/restaurant with the requisite parking as part of his plan. Discussion followed. Mayor Pro Tem Reid opened the public hearing for comment from the interested parties and citizens. There being no discussion, motion by Sackley, seconded by Urban, to close the public hearing. Upon a voice vote, motion carried 6 to 0.

Motion by Sackley, seconded by Urban, to approve 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 6 to 0. Ordinance recorded on page 231 of City of Portage Ordinance Book No. 12.

PUBLIC HEARING FOR REZONING APPLICATION #11-04, EAST CENTRE AVENUE BETWEEN LAKE WOOD DRIVE AND GARDEN LANE: Mayor Pro Tem Reid opened the public hearing and Ms. Georgeau reviewed the history of the Rezoning Application #11-04 request to rezone various properties on East Centre Avenue between Lake Wood Drive and Garden Lane. She indicated that the Rezoning Application #11-04 is a request to 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. She outlined the history of the process, the Planning Commission discussion of the options and the zoning uses of the surrounding properties and the properties assembled as a result of the request. She explained the reasoning behind each of the alternatives discussed in her communication to the Planning Commission dated May 11, 2012, and disclosed that another alternative has since been offered by the applicant, Thomas Rogers, 895 Treasure Island Drive, Mattawan, and an alternative by local residential property owners. She indicated that the staff recommendation is still Alternative 3 as stated above. Discussion followed regarding access to utilities with the use of Alternative 3, the extension of Bye Street, the proposed 50' buffer, possible compromises, the idea of having a full Planning Commission deliberation on the matter for recommendation and residential buffers as being developable.

In response to Mayor Pro Tem Reid, City Attorney Randy Brown indicated that it is his understanding that all of the properties can be developed by having access off of Centre Avenue or the other two side streets, but he hypothesized that if they could not be accessed, then he agreed that the assembly of the properties in order to make them developable is not appropriate, and he said he did not recall a time in the city's history when that was a reason to assemble properties and cause certain properties to not be developed because sometime in the future, property owners could assemble properties in order to make them developable. Councilmember Urban asked for a clarification from City Attorney Brown and Ms. Georgeau explained that residential property could access their property from the commercial property as there is no prohibition to do this even though there is a prohibition to access commercial property from a residential property, so the northern portion of the five deep lots of 801, 809, 815, 821 and 827 East Centre Avenue would not be land-locked. Discussion followed.

Councilmember Sackley pointed out that there is new information that should be placed before a full Planning Commission for discussion; that buffers on top of set backs required for a zoning district can be considered a "taking;" and, City Attorney Brown agreed that City Council could return this matter to the Planning Commission. Councilmember Pearson concurred with Councilmember Sackley to return the matter to the full Planning Commission and indicated that it is awkward to take the staff recommendation when the Planning Commission had some other ideas.

Mayor Pro Tem Reid opened the public hearing to comment from the audience and the applicant, Thomas Rogers, 895 Treasure Island Drive, Mattawan, who explained that at the behest of Mike West, he sent letters to the property owners on East Centre Avenue between Lake Wood Drive and Garden Lane asking them if they wished to join in the rezoning application. He also indicated that the owner of 903 East Center Avenue across Garden Lane found out by word of mouth and asked to join in and the Community Development Department joined four other properties in the rezoning application. Discussion followed. He spoke in favor of the request as he reviewed his progress with the process since he first placed application in February 2012 and argued for consistency in zoning. Discussion followed regarding the options available to City Council when considering rezoning one, some or all of these properties to be rezoned. City Attorney Brown answered some of the concerns by indicating that the Planning Commission can add a rezoning to an application; an applicant can request to be separated from the assembly, but it is not a right; withdrawal is an option; and sending the matter back to the Planning Commission could solve some of these issues as it will be back to City Council in a different form. Discussion followed. City Attorney Brown said that the City Council could rezone the parcels owned by Mr. Rogers, but he expressed his concern that if City Council denies the other requests, there should be a real clear basis why one applicant is being granted and the others are being denied. Discussion followed.

Bryan Mohney, 7911 Lake Wood Drive, filed a Petition in Partial Opposition to Rezoning Application #11-04, asked for protection of the neighborhood, spoke in favor of the 50' buffer and Alternative 3.

Leroy Butler, 821 East Centre Avenue, spoke in opposition to splitting the properties and spoke in favor of the application as presented.

Craig Binder, 743 East Centre Avenue, is neutral with respect to the application and expressed an interest in keeping residential access on Bye Street and a concern for any increase in traffic that would follow a rezoning.

Lucinda Owen, 826 East Centre Avenue, asked whether a fence could be placed to separate the property zoned office from the property zoned residential and, in answer to Councilmember Urban, she indicated that she is still interested in her property being rezoned, but only if her property value would increase.

There being no more discussion, motion by Sackley, seconded by Campbell, to close the public hearing. Upon a voice vote, motion carried 6 to 0.

In response to Mayor Pro Tem Reid, Ms. Georgeau indicated that a 10 foot buffer is required to separate residential property from commercial uses with 6 feet of opaque screening that can be a fence, a wall or landscaping or a combination and is addressed during site plan review. In answer to her question regarding whether rezoning from residential to office increases or decreases the value of property, Ms. Georgeau deferred to the City Assessor for the best answer, but did indicate that generally, depending upon the facts and circumstances, rezoning from residential to office probably increases the value of property. Finally, Ms. Georgeau responded that there is nothing to preclude some type of assembly of properties as it may be necessary to develop a site, but each of the properties could still nevertheless be developed as individual entities and stand alone. She also indicated that the largest building on these 5.8 acres is 63,000 square feet, but the probability is that several smaller buildings of 2,000 to 5000 square feet would be built. In answer to Mayor Pro Tem Reid's question of whether the Planning Commission was considering these properties for the development of a large office complex or for individual offices, Ms. Georgeau answered they appeared to be considering both of these options. Discussion followed regarding the depth of the properties on East Centre Avenue.

Councilmember Sackley asked Ms. Georgeau whether she had a sense of whether the Planning Commission might be in a better position to re-engage in this discussion with all of the additional information and whether it would be a good use of Planning Commission time and staff time. Ms. Georgeau answered that it is hard to determine what they might do with the additional information. Discussion followed regarding the 50 foot buffer.

Councilmember Urban indicated that he is not supportive and is prepared to have the discussion now and Councilmember Randall concurred. Discussion followed regarding the amount of extra time it would take and Ms. Georgeau indicated that it could be handled in one meeting instead of two meetings, so it would take 30 to 45 days or less.

At the request of Mayor Pro Tem Reid, City Clerk James Hudson referred to the Petition in Partial Opposition to Rezoning Application #11-04, and indicated that the six property owners of the neighborhood affected by the rezoning request in opposition to the rezoning of 801, 809, 815, 821 and 827 East Centre Avenue constituted nine percent (9%) of the owners of the area of land included in the proposed zoning change and seventeen percent (17%) of land included within an area extending outward one hundred feet (100') from any point on the boundary of land included in the proposed change, excluding right-of-way or other publicly owned land. He concluded that a two-thirds vote of City Council is not required to pass the amendment. Discussion followed.

Motion by Sackley, seconded by Campbell, to refer Rezoning Application #11-04 and the Petition in Partial Opposition to Rezoning Application #11-04 received by the City Clerk on July 9, 2012, back to the Planning Commission for discussion and recommendation. Discussion followed. Upon a roll call vote, motion carried 4 to 2. Yeas: Councilmembers Sackley, Campbell and Pearson and mayor Pro Tem Reid. No: Councilmembers Urban and Randall.

REPORTS FROM THE ADMINISTRATION:

* **2012 LOCAL STREET PAVING RECONSTRUCTION – ADDITIONAL STREET RECOMMENDATIONS:** Motion by Urban, seconded by Campbell, to approve a change order in the not to exceed amount of \$431,600 for additional street reconstruction at extended unit pricing with Michigan Paving & Materials Company for the 2012 Local Street Reconstruction Program; a contract amendment with Jones & Henry Engineer, Ltd, for construction administration and material testing for the streets added to the 2012 Local Street Reconstruction Program in the not to exceed amount of \$16,000; 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 6 to 0.

* **UPGRADE OF EMERGENCY WARNING SIREN SYSTEM:** Motion by Urban, seconded by Campbell, to approve the acquisition and installation of equipment necessary to upgrade the emergency warning siren system through West Shore Services in the amount of \$30,483 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 6 to 0.

* **VERIZON WIRELESS MOBILE PHONE/DATA SERVICE AGREEMENT:** Motion by Urban, seconded by Campbell, to approve the cancellation of the current Sprint Solutions contract for mobile phone/data service; approve the Verizon Wireless mobile phone/data service agreement; and authorize the City Manager to execute all documents related to this action on behalf of the city. Upon a roll call vote, motion carried 6 to 0.

UNFINISHED BUSINESS:

* **AMENDMENT TO CODE OF ORDINANCES - PURCHASING:** Motion by Urban, seconded by Campbell, to adopt the amendment to Article 5, Finance, Division 2, Purchases and Sales, Section 2-171, Purchasing procedures; bids generally; 2-173, Change orders to construction contracts; and 2-175, Sale of personal property in the City of Portage Code of Ordinances. Upon a roll call vote, motion carried 6 to 0. Ordinance recorded on page 231 of City of Portage Ordinance Book No. 12.

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

Portage Youth Advisory Committee of May 21, 2012.

Portage Planning Commission of June 21, 2012.

BID TABULATIONS:

* **CURBSIDE RECYCLING CONTRACT - RECOMMENDATION:** Motion by Urban, seconded by Campbell, to award a three-year contract for the provision of weekly curbside recycling services to the low bidder, City Star Services, LLC, dba Republic Services of West Michigan, in the not to exceed amount of \$1,563,413.88 and authorize the City Manager to execute all documents related to this agreement on behalf of the city. Upon a roll call vote, motion carried 6 to 0.

* **POLICE FACILITY CONCRETE SIDEWALK AND STAIR REPLACEMENT:**

Motion by Urban, seconded by Campbell, to approve the expenditure for repairs to a portion of the concrete sidewalk and stairs along the northwest corner of the police facility to Schoolcraft Concrete Construction, LLC, of Schoolcraft, Michigan, in the amount of \$18,000 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 6 to 0.

OTHER CITY MATTERS:

STATEMENTS OF CITY COUNCIL AND CITY MANAGER: Councilmember Campbell thanked those who attended and worked the July 4th Fireworks Display, especially Councilmember Pearson, Mayor Pro Tem Reid, Dick Wilson and John Beebe for their hard work.

Councilmember Sackley touted the Portage Walking, Running Bike Trail System since he was home from the July 4th Fireworks Display in less than five minutes using his bicycle.

Councilmember Urban admitted that the automobile traffic at the July 4th Fireworks Display was tough, but biking was not an option for him and his two young daughters. He expressed pride in representing Mayor Strazdas at the Boy Scout Court of Honor for five Eagle Scouts from Troop 244.

Councilmember Sackley warned of a planned solicitation disclosed in a letter from the Vice President and General Manager of American Water Resources of Michigan for water and sewer line protection coverage and his e-mail discussing protection coverage for water lines only and implored Tom Haroldson from mLIVE and John McNeal from WKZO to provide information to the public on this and asked the City Administration to look into this matter on behalf of Portage citizens as to whether a third party is legally able to notify our residents of their legal responsibilities with respect to utilities that pass across their property and are connected to the city system.

Councilmember Pearson indicated that Councilmember Campbell understated what she did to make the July 4th Fireworks Display a success and that the Portage Rotary sponsors the July 4th Fireworks Display and the City of Portage does not pay for the fireworks and expressed his appreciation to the Portage businesses who contributed to the effort.

City Manager Evans asked that Portage citizens be cautious if being solicited by the American Water Resources of Michigan Company, announced the Open House on the Angling Road tree plan, Wednesday, July 25, 2012, from 6:30 to 8:30 p.m. in City Council Chambers and announced that Devin Mackinder, Director of Technology Services and Community Marketing, be recognized for receiving the International Academy of Communication Arts Award for the City of Portage website.

Mayor Pro Tem Reid stated that she realized how very good the website of the City of Portage is when looking at another city for a house in Northern Michigan where her daughter's husband recently accepted employment and expressed her appreciation for the July 4th Fireworks Display.

ADJOURNMENT: Mayor Pro Tem Reid adjourned the meeting at 9:31 p.m.

James R. Hudson, City Clerk

*Indicates items included on the Consent Agenda.