



CITY COUNCIL

December 7, 2009

A regular meeting of the City of Petoskey City Council was held in the City Hall City Council Chambers at Petoskey, Michigan, on Monday, December 7, 2009. The meeting was called to order at 7:30 P.M.; then, after a recitation of the Pledge of Allegiance to the Flag of the United States of America, a roll call determined that the following were

Present: H. Ted Pall, Jr., M.D., Mayor
James Dittmar, City Councilmember
William Fraser, City Councilmember
Robert Johnson, City Councilmember
Ronald C. Marshall, Ph.D., City Councilmember

Absent: None

Also in attendance were City Manager Dan Ralley, City Clerk-Treasurer Alan Terry, City Attorney James Murray, Director of Parks and Recreation Allen Hansen, Director of Public Works Michael Robbins, and Public Safety Officer Dan Smith.

Conduct 2010 Annual Budget and
Property-Tax-Rate Hearing;
Continue Budget Review

The City Manager reported that the City's proposed 2010 Annual Budget had been initially presented at the City Council's November 2 meeting, scheduled a public hearing for December 7, as required by City Charter and

State statute provisions, to receive comments about the recommended budget and property-tax-millage rates that had been proposed as part of the budget recommendation; and that actual millage rates would be set in 2010.

The City Manager also reported that City Charter provisions required the City Council to conduct public hearings each year to receive comments concerning annual budget proposals and provisions of the Michigan Truth-in-Taxation Act required governing boards of local units of government to conduct annual public hearings prior to establishing property-tax-millage rates, if estimated amounts of revenues that would be produced by property-tax levies are anticipated to exceed amounts in the new year that had been received from levies during the previous year.

The City Manager also reported that property-tax-millage rates that had been proposed for 2010 would total 13.6060, the same cumulative rate that had been approved for 2009; and, to achieve the proposed property tax revenue, the City's four levies had been proposed at 7.4449 mills for general purposes, with .4890 added for solid-waste programs, 3.8580 mills for maintenance operations and public improvements within street rights-of-way, and 1.8141 mills for the Library, which was the maximum amount allowed.

The City Manager also reported that, except for increases in certain Magnus Park and parks and recreation program fees, no other adjustments had been proposed, including those for water, sanitary-sewer, or electric services, though the City Manager recommended that the City Council's resolution that would confirm adoption of the 2010 Annual Budget again include direction that electric-rate analyses continue and that certain electric rates be adjusted administratively as necessary; and that water, sewer, and electric rates had been reviewed by consultants and adjustments might later be recommended.

The City Manager also reported that the December 7 public hearing would satisfy City Charter requirements and meet provisions of the Michigan Truth-in-Taxation Act that required opportunities for comments concerning proposed estimated amounts of property-tax-millage rates for the General, Right-of-Way, and Library Funds, though actual millage rates would be established by the City Council in May or June, following the State's equalization of values; and that the City Council could continue its review of the recommended 2010 Annual Budget following the public hearing, with final budget actions deferred until December 21.

Mayor Pall then declared the public hearing open and the following comments were received:

Joe Nachtrab, 6744 Preserve Drive, reported that he believed the City was blessed to have the financial status that it had in comparison to other municipalities throughout Michigan; that his primary focus for this meeting was to encourage completion of the Public Safety Station-West project; that he believed the public-safety project had funds already spent on it and should be completed before funding a brand new project such as the Bear River Valley and sidewalks, although he was not opposed to the Bear River Valley Recreation Area or Marina expansion projects; that he believed that elimination of the Public Safety Station-West project from the 2010 Annual Budget would further delay the project several years for what he believed was a much-needed service; that he believed that the Bay Harbor lawsuit, which had been explained as a reason for the construction delay, was in the appeals process that could continue for many years; that he believed the City could and should finance this project before starting new capital projects; and that he believed that this project should proceed.

Carol Cobb, Bay Harbor resident, reported that she concurred with Mr. Nachtrab's comments; and that she believed this public-safety issue was a community issue and not just an issue for Ward Three or Bay Harbor; and that she believed a past study had concluded that the current Lake Street Station did not adequately serve the retail corridor that included Bay Harbor due to its distance from these facilities.

There being no further comments received from persons who were in attendance at the December 7 City Council meeting, Mayor Pall then closed the public hearing.

The City Council then continued discussion of the proposed 2010 Annual Budget that began with a review of the Tax Increment Finance Authority (TIFA) Fund. The City Manager noted that the Director of Parks and Recreation and Director of Public Works were in attendance to answer questions that might arise as part of fund reviews; and that he believed that the TIFA Fund had the largest capital expenditures within the 2010 Annual Budget because of costs associated with the Bear River Valley Recreation Project.

City Councilmember Johnson asked that the tax-increment-financing method be explained to the audience because he believed that some might be unaware of this funding method for projects within the TIFA district. The City Manager and Director of Finance then reviewed the tax-increment financing method as it pertained to Petoskey and the number of projects that it had funded; how this fund could be used to finance Bear River Valley Recreation Area improvements and why it could not be used to fund the Public Safety Station-West project, which was located outside the TIFA District; and the Director of Finance reported about projects that bond proceeds would fund in the Bear River Valley Recreation Area that included parkland improvements, street reconstruction, sidewalk improvements, electric upgrades, and water and sewer main improvements and installations.

City Councilmember Marshall reported that the City awaited news if grant funding would be awarded to Petoskey that could fund construction of the Public Safety Station-West project; and that he hoped the issue of financing the project would be revisited if grant funding was unsuccessful.

City Councilmember Dittmar requested clarification of cost elements for construction of bathrooms within the Bear River Valley and the Director of Parks and Recreation and Director of Finance reviewed those listings.

In response to questions, the Director of Parks and Recreation reported that the Bear River Valley project would extend from West Lake Street to the Petoskey Football Stadium, and that the relocation of the City's Sheridan Street salt-storage shed was not included in this project because the City hoped that an alternate location for such operation would be available as part of the proposed joint Township-City park facilities on Howard Road.

The City Manager then briefly reviewed the Library Fund and Library Endowment Fund and reported that a future lease agreement would become necessary between the City and District Library when other entities eventually joined the Petoskey District Library, because, at that time, the Library would no longer be considered part of the City's annual budget, and instead would become its own entity.

The City Manager, Director of Finance, and Director of Parks and Recreation then reviewed the Downtown Management Fund and Downtown Parking Fund, that included projects that these Funds' carryover monies or cash reserves might fund and the special-assessment funding method for downtown programs and services.

Next reviewed was the Right-of-Way Fund that was funded through a voter-approved maximum five-mill limit, but that the City had not taxed the maximum, and had reduced such millage to 3.8580 mills in 2009; and explained transfers from the Right-of-Way Fund to other funds.

The Electric Fund was then reviewed and, in response to questions, the City Manager, Director of Finance, and Director of Public Works reported about rate analyses for electric services, redundancy, electric optimization and renewal programs, purchasing programs for electric power, and electric upgrade projects including the Bear River underground project, River Valley underground conduit system, Fulton Street underground, River Valley picnic shelter and restroom electric service, City Hall to Department of Public Works fiber optic system; Northern Michigan Regional Hospital laundry

building transformer replacement, substation meter logging replacement, Pine Bluff Condos transformer replacement; circuit fault indicators, Petoskey substation circuit 3, East Mitchell Road substation projects; system-wide upgrades, new growth projects; underground-versus-overhead conduit lifespan and cost comparisons; and reported that Petoskey's utility rates could not be compared to other Michigan municipalities, but rather consider Petoskey's individual and specific capital improvement needs, and that Petoskey's electric rates were lower than other area providers.

The Water and Sewer Fund was next reviewed and, in response to inquiries, the City Manager, Director of Finance, and Director of Public Works reported concerning rate changes that the City Council would be asked to review in early 2010; discussed wastewater treatment plant capital improvements that included replacement of the grit building and sewer lift station located behind the Lake Street Fire Station; water main and sewer main projects on Wachtel Avenue, Lone Street, and Fulton Street; costs covered by the Springvale-Bear Creek Sewage Authority contract; future territory system expansion; payments-in-lieu of taxes and a request by City Councilmember Dittmar for future discussion concerning their possible elimination; and how bond-debt payments for capital improvements have affected City water-and-sewer utility rates.

The Motor Pool Fund was then briefly reviewed and included proposed vehicle purchases for 2010, followed by a brief review of the Building Authority Downtown Parking Improvement Bond Fund; and the Building Authority Refunding Bond and Interest Redemption Fund that would be eliminated in 2010.

Public comment then was received from Ms. Cobb who thanked Councilmember Marshall for his comments concerning grant funding of the Public-Safety Station-West and his request to revisit financing of the station if grant funding was turned down; that she believed that this proposed station would service all of Ward Three and the community, and not just the Bay Harbor development; asked if a strategic plan was available to the public prior to the budget-review process (the City Manager responded that a January 8 and 9 strategic planning session had been set for the City Council with a February 6 follow-up session); and reviewed items that she believed the Bay Harbor community had contributed to the overall Petoskey community including removal of an eyesore property, cleanup of an environmental hazard, property-tax revenues to the City, increased social and cultural opportunities for the community, and an increase in tourism to the area; and asked the City Council to redistribute Act 425 revenues to provide additional services to the Bay Harbor residents, including the Public Safety Station-West project.

Mayor Pall asked if the City Council wished to schedule special-session meetings in addition to the regular December 21 City Council meeting to continue review of the proposed 2010 Annual Budget and the City Council concluded that, at this time, no special-session would be necessary.

City Councilmember Johnson reported concerning options for funding of the Public-Safety Station-West; asked if bonding of the station with litigation pending made it not possible to bond or if it meant that higher rates would result (the Director of Finance responded that it would be difficult to get buyers for the bonds when over half of your tax base is being challenged in the courts); asked if additional information concerning possible outcomes of a bond sale with litigation pending could be sought; that he believed that Bay Harbor deserved such a public-safety development; and that he was glad that Bay Harbor residents had attended this City Council meeting.

City Councilmember Marshall reported that he believed that the current City Council had worked hard to develop a public-safety station in the Bay Harbor development area and would continue to do so.

Resolution No. 18358
Approve Consent Agenda Items

Following the introduction of the consent agenda for the City Council meeting of November 16, 2009, City Councilmember Dittmar moved that, seconded by City Councilmember

Johnson, adoption of the following resolution:

BE IT RESOLVED that the City Council does and hereby confirms that the draft minutes of the November 16, 2009, regular meeting of the City Council, as corrected on page four, second full paragraph, fifth line, to read "...repayments being funded by Marina revenues..." instead of TIFA revenues, and the draft special-session November 21, 2009, City Council meeting minutes, be and are hereby approved as submitted; and

BE IT FURTHER RESOLVED that the City Council does and hereby acknowledges receipt of a report from the City Manager concerning all checks that had been issued since November 16 for contract and vendor claims at \$430,381.65, intergovernmental claims at \$112,211.85, and the November 12 payroll at \$159,678.88, for a total of \$702,272.38.

Said resolution was adopted by the following vote:

AYES: Dittmar, Fraser, Johnson, Marshall, Pall (5)

NAYS: None (0)

Conduct First Reading of 2009
International Fire Code Ordinance

The City Manager next reported that the Department of Public Safety had recommended the adoption of the 2009 edition of the International Fire Code, in its entirety, as a replacement for the current adopted 1987 edition of the BOCA National Fire Prevention Code; that the current BOCA code had been adopted in 1987 and amendments to it were adopted in 1988; and that no changes had been made to the current code since the 1988 City Council action.

The City Manager also reported that, in 1997, three of the four major code authorities culminated efforts to combine individual codes into a single comprehensive fire code - Building Officials and Code Administrators International (BOCA), International Conference of Building Officials (ICBO), and Southern Building Code Congress International (SBCCI) - and formed the International Code Council; that the first edition of the International Fire Code was published in 2000 and was updated every three years; that the International Code Council was also responsible for publication of the International Building Code, which was the adopted Michigan Building Code; that these two codes paralleled each other and were intended to work together; and that the current Michigan Building Code does make some references to the International Fire Code, however, only the specific section referenced in the code was enforceable, and not the entire code without its adoption.

The City Manager further reported that the Fire Code was used for maintenance and safe keeping of buildings following their construction; that, currently, the Emmet County Planning, Zoning and Construction Resources was responsible for code enforcement of all new construction and remodeling of buildings within the City; that, once a construction project was complete, and the building received a certificate of occupancy, it then became the Department of Public Safety's responsibility to ensure the building was properly maintained and the threat of fire was minimized; and that, in most cases, once the building department completed its final inspection, they never returned to the property.

The City Manager also reported that the purpose of the fire code was to establish minimum regulations for fire-prevention and fire-protection systems; that the code addressed commercial properties and multi-family housing only; that the code did not apply to single-family housing; that the current code and proposed code were used as base-line tools for fire- and life-safety issues; that, currently, only hotels, public assemblies, and schools received annual inspections to ensure occupant safety; that, because of limited resources, not all commercial properties received annual inspections, as is the case in many communities; and that the code was also used to address complaint-driven fire- and life-safety issues.

The City Manager further reported that using the current 21-year-old code consistently created issues because of its age and incompatibility with the International Building Code; that the referenced material in the current code was now outdated; that new construction materials and new system designs were not addressed in the current code; that significant changes in the construction of buildings had taken place in recent years and, with the current code, these changes could not be addressed; and that the International Fire Code was intended to protect public health, safety, and welfare without unnecessary cost ; and that the City Council was being asked to adopt the 2009 International Fire Code.

The City Manager introduced Public Safety Officer Dan Smith who reviewed the Department of Public Safety's request that the City Council adopt the 2009 International Fire Code to replace the current 1987 Code; and advised that this Code applied only to commercial buildings and multi-family apartment buildings such as Riverview Terrace or Lafayette Apartments, and did not apply to residential homes that had been converted to two units nor to single-family residential units; that single-family and multi-family homes fell under provisions of the Michigan Residential Building Code and not the proposed 2009 International Fire Code.

The Mayor reported that this was the first of two readings concerning this proposed ordinance and that no action would be taken at this December 7 meeting.

In response to inquiries, the City Attorney, City Manager, and Public Safety Officer Smith reported that this ordinance did not "reinvent the wheel", but instead adopted the 2009 International Fire Code as written, with the exception of offenses being decriminalized versus charged as misdemeanors; that the proposed ordinance articles were consistent with the International Fire Code model ordinance with blanks that the model ordinance provided filled in to be specific to the City of Petoskey; that some language had been changed to simplify the Code; that there was little difference between the past and new Code; that no summary had been prepared or was available to compare the current and proposed ordinance because of the enormity of the task in comparing more than 400 pages; that the proposed ordinance would enable the City to be up-to-date with current health-and-safety fire codes; and that the City staff also desired to have uniformity between the City's and Emmet County Fire Code.

Mayor Pall asked for public comment and heard the following:

Mark Thompson, Petoskey, asked if the proposed Code would pertain only to new construction (Public Safety Officer Smith responded that the Code would pertain to both new and existing buildings).

George Ramey, Little Traverse Township, reported how he believed that the proposed ordinance would negatively affect rental properties and enforcement of such provisions.

Judy Hills, 575 Hillcrest Avenue, reported that she believed that public-safety officials did not have the right to enter one's building at will, but instead would need a warrant to do so (the City Attorney responded that the ordinance did not propose language that suggested illegal activity and Officer Smith responded that he did not believe that this type of entry had been an issue in his experience); and that she encouraged the City Council to study and review the proposed ordinance, as well as the 2009 International Fire Code.

City Councilmember Johnson reported that he believed that the proposed ordinance and Fire Code was "boiler plate" in nature and that he had a certain level of trust in the staff's ability to recommend such proposed ordinance language, although he recognized that others might not share that same trust.

Then, in accordance with City Charter provisions, this matter was deferred for a second reading at the December 21, 2009, City Council meeting.

Resolution No. 18359
Table Southwoods Dance-
Entertainment Permit Request

The City Manager next reported that Steven B. Legato, Conway, had submitted application materials to the Michigan Department of Labor and Economic Growth's Liquor Control Commission for the addition of a Dance-

Entertainment Permit to be held in conjunction with the current Resort Class C liquor license for use at Southwoods Family Restaurant, Inc., 1007 Spring Street; and that, in 2006, Mr. Legato had asked that the existing dance permit that accompanied the approved transfer of a 2006 Resort Class C license to Southwoods be removed, but that he now was requesting that it be added.

The City Manager also reported that, under provisions of the Michigan Liquor Control Act, legislative bodies of local governmental units were requested to approve applications for dance-entertainment licenses; that, procedurally, license applications were submitted to the Michigan Department of Labor and Economic Growth, and its Liquor Control Commission staff forwarded such applications to the City for action by the City staff and the City Council; that, in cases of applications for transfers of certain licenses or dance-entertainment permits, the City's Department of Public Safety staff performed initial investigations and the City Council was required to consider approving such transfers; and that the action by the City Council was reported to the Liquor Control Commission.

The City Manager also reported that working with Liquor Control Commission officials, the City's Department of Public Safety staff was required to conduct an inspection of facilities and the Interim Director of Public Safety had reported that the City Manager could recommend approval of this application for dance-entertainment to be added to the Resort Class C license; and that the City Council had been provided a proposed resolution that would confirm the City Council's approval of a "Dance-Entertainment Permit" to be held in conjunction to the Southwoods "Resort Class C" licensed business.

The City Manager also reported that Mr. Legato was present to answer any inquiries concerning this matter and Mr. Legato briefly reviewed his request to add music, dancing, and contests at his restaurant after 9:00 P.M. and reported that approval of this permit was a requirement to add such activities, and that adult-entertainment would not be included as part of these proposed activities.

City Councilmember Fraser then moved that, seconded by City Councilmember Dittmar, to adopt the proposed resolution for approving such application for a dance-entertainment permit as part of a Class C liquor license for Southwoods Family Restaurant.

City Councilmember Johnson reported that he believed that, because of past inquiries concerning the Southwoods facility, he believed that the City Council should defer this matter to give neighboring property owners additional time to comment on this request.

City Councilmembers Fraser and Dittmar then withdrew their motion and City Councilmember Fraser, seconded by City Councilmember Dittmar, moved that adoption of the following resolution be approved:

RESOLVED that the adoption of a resolution approving an application for a dance-entertainment permit as part of a Class C liquor license for Southwoods Family Restaurant, 1007 Spring Street, be tabled until the December 21, 2009, City Council meeting, to allow its neighbors adequate time to provide input regarding this request.

Said resolution was adopted by the following vote:

AYES: Dittmar, Fraser, Johnson, Marshall, Pall (5)

NAYS: None (0)

Resolution No. 18360
Approve Contract of Lease - Bonding
Bear River Valley-Marina Expansion

16, 2009, had adopted a resolution that approved a Contract of Lease with its Building Authority Board of Commissioners and a Notice of Intent to enter into that agreement with the Building Authority.

The City Manager next reported that, as the next step in the process of moving forward with the Bear River Valley Recreation Area improvement project, and construction of the Public Safety Station-West, the City Council, on March

The City Manager also reported that, while the decision to bond for a new public-safety building had been put on hold, the City staff would like to proceed with the Bear River Valley Recreation Area improvement project as well as the Bayfront Park Marina expansion project, which did not receive final approval of building design specifications from the State of Michigan until recently.

The City Manager also reported that the City Council had been provided a proposed amendment to the contract of lease, as prepared by Joel Piell, Miller, Canfield, Paddock and Stone, P.L.C., Detroit, the City's special legal counsel for financial matters; and that this amendment to the contract of lease between the City Council and its Building Authority Board of Commissioners approved earlier this year, would amend sections 3 and 11 of the original agreement.

The City Manager also reported that Section 3 was revised to reflect a reduction in annual bond issue maturities that had totaled \$5,400,000 to \$3,900,000, along with a change in the annual principle maturity date from October 1 of each year to April 1; and that the only revision to Section 11 was the same revision as in Section 3 - a change in the annual principle maturity date from October 1 to April 1 of each year.

The City Manager also reported that the Building Authority would have the authority, per the contract of lease, to issue bonds, perform the designated projects, and lease them back to the City for the term of the bond issue; that the City would be obligated to remit a lease payment to the Building Authority in an amount equal to annual bond-debt requirements until the bond issue was completely paid off; and that the annual payment would be made from the Tax Increment Finance Authority Fund and the Marina account included within the General Fund.

The City Manager further reported that the Building Authority, which traditionally had been used by the City for projects that required bond financing, had a three-member Board consisting of the City Manager (Dan Ralley), the City Clerk-Treasurer (Alan Terry), and the City Assessor (John Gehres); and that the City staff was in the process of advertising for construction bids on these two projects and would schedule bids for the bonds to be received shortly after construction bids were received, which was anticipated to be February.

The City Manager also reported that the City Council and Building Authority were both required to approve a resolution approving the amendment to the lease agreement, which, if approved, would allow the Building Authority to proceed with the issuance of bonds and awarding of construction bids for these two projects; and that the City Council was being asked to consider adoption of the proposed resolution that would approve the Amendment to the Building Authority Contract.

City Councilmember Dittmar then moved that, seconded by City Councilmember Fraser, the following resolution be approved:

WHEREAS, the City of Petoskey (the "City") and the Building Authority of the City of Petoskey (the "Authority") have previously entered into a contract, dated as of May 1, 2009 (the "Contract") relating to the acquisition of certain building and recreational facilities together with all necessary appurtenances and attachments relating thereto (the "Project"); and

WHEREAS, the scope of the Project has changed resulting in a reduction of the estimate of cost of the Project consequently necessitating an amendment to the Contract; and

WHEREAS, an Amendment to the Contract between the City and the Authority providing for the acquisition, construction, and financing of said facilities and such matters as are deemed necessary thereto has been prepared:

NOW, THEREFORE, BE IT RESOLVED THAT

1. The City Council hereby determines it to be necessary for the public health, safety and welfare of the City to acquire the said facilities as set forth in the Contract attached to this resolution for the use of the City.
2. The City Council hereby approves the Amendment to the Contract as hereto attached.
3. The Mayor and City Clerk are authorized to execute immediately and deliver to the Authority the Amendment to Contract approved by this resolution.
4. All resolutions and part of resolution insofar as the same conflict with the provisions of this resolution be and the same hereby are rescinded.

Said resolution was adopted by the following vote:

AYES: Dittmar, Fraser, Johnson, Marshall, Pall (5)

NAYS: None (0)

Resolution No. 18361
Approve Appointments

The Mayor next reported that the City Council was being asked to concur in the reappointment of James Reid, owner, Reid Furniture Co., 307 East Mitchell Street, and Lawrence Rochon, owner, The Mitchell Street Pub, 426 East Mitchell Street, to the Downtown Management Board and Downtown Development Authority Board, both for four-year-long terms that would expire in 2013; and that the City Council had been provided with Mr. Reid's and Mr. Rochon's applications to serve.

City Councilmember Dittmar then moved that, seconded by City Councilmember Johnson, the following resolution be approved:

BE IT RESOLVED that the City Council does and hereby approves the reappointments of James Reid, owner, Reid Furniture Co., 307 East Mitchell Street, and Lawrence Rochon, owner, The Mitchell Street Pub, 426 East Mitchell Street, to the Downtown Management Board and Downtown Development Authority Board, for terms that would expire December 1, 2013.

Said resolution was adopted by the following vote:

AYES: Dittmar, Fraser, Johnson, Marshall, Pall (5)

NAYS: None (0)

Hear Comments

Mayor Pall then reported concerning the hiring of John Calabrese as the Director of Public Safety and that Mr. Calabrese would be starting his duties with the City in early February; and that he had received correspondence from the Demmer Corporation, Petoskey, thanking the City Council for its role in approving an industrial facility district and tax exemption that had permitted expansion of the facility as well as the hiring of additional employees.

There being no further business to come before the City Council, the meeting was adjourned at 10:30 P.M.

H. Ted Pall, Jr., M.D., Mayor

Alan Terry, City Clerk-Treasurer