

## CITY COUNCIL

February 2, 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, February 2, 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 was Acting City Manager Alan Terry, City Planner Amy Tweeten, and James Murray, Plunkett-Cooney, PC, Petoskey.

Resolution No. 18267  
Approve Consent Agenda Items

Following the introduction of the consent agenda for the City Council meeting of February 2, 2009, City Councilmember Dittmar moved that, seconded by City Councilmember

Fraser, adoption of the following resolution that would confirm that the minutes of the regular meeting of January 19, 2009, be approved as submitted and noted that the City Council had received a correction to the first draft minutes that replaced page 8, and that would confirm the City Council's acknowledgement of a report by the Acting City Manager concerning all checks that had been issued since January 19 for contract and vendor claims at \$1,027,162.09; intergovernmental claims at \$36,137.09, and the January 22 payroll at \$189,154.49:

BE IT RESOLVED that the City Council does and hereby confirms that the draft minutes of the January 19, 2009, regular meeting of the City Council, be and are hereby approved as submitted with replacement page 8; and

BE IT FURTHER RESOLVED that receipt by the City Council of the report concerning all checks that had been issued since January 19, 2009, totaling \$1,252,453.67, be and is hereby acknowledged.

Said resolution was adopted by the following vote:

AYES: Dittmar, Fraser, Johnson, Marshall, Pall (5)  
NAYS: None (0)

Following a request by Mayor Pall to amend

Resolution No. 18268  
Amend Meeting Agenda

the February 2 City Council meeting agenda to move item 5(d), discussion concerning the City's Development Agreement with Lake Street Petoskey Associates, L.L.C., Farmington Hills, associated with the Petoskey Pointe redevelopment project, with a representative of Miller, Canfield, Paddock and Stone, P.L.C., Detroit, the City's special legal counsel for the Petoskey Pointe matter, and a representative of Plunkett Cooney, P.C., Petoskey, the City's legal counsel, and the possible consideration of a proposed resolution that would authorize adjournment to a closed session that would permit the City Council to review written, attorney-client privileged communications, as the next item of business, City Councilmember Dittmar moved that, seconded by City Councilmember Marshall, that the following resolution be approved:

BE IT RESOLVED that item 5(d) of the February 2 City Council meeting agenda be amended to be discussed following item 4, Consent Agenda.

Said resolution was adopted by the following vote:

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

NAYS: None (0)

Resolution No. 18269  
Appoint Lead Counsel for Petoskey  
Pointe Project Matter

The Acting City Manager reported that, following action by the City Council on January 19 concerning the status of the Petoskey Pointe redevelopment project, the City Council decided to schedule discussion of the Development Agreement and First Amendment to the Development Agreement with a representative of Miller, Canfield, Paddock and Stone, P.L.C., Detroit, the City's special legal counsel concerning Petoskey Pointe, and Plunkett Cooney, P.C., Petoskey, the City Attorney, to receive a review of provisions of the Development Agreement between the City and Lake Street Petoskey Associates, L.L.C., Farmington Hills, and the City Council contemplated that a portion of this special-session meeting might be conducted as a closed session to review written legal opinions; that Anthony J. Mavrincac of Miller, Canfield, Paddock and Stone, P.L.C., Detroit, the City's special legal counsel for this matter, was available to meet with the City Council via telephone, and James Murray, Plunkett and Cooney, P.C., Petoskey, was present at this February 2 meeting.

The Acting City Manager also reported that City Councilmember questions concerning the First Amendment to the Development Agreement had been received by the Acting City Manager who forwarded such questions to Mr. Mavrincac for response; that Mr. Mavrincac's responses were delivered to the City Council on January 30; that the City Council had reviewed such questions and responses in preparation for this February 2 meeting; and that the City Council could now determine if it wished to adjourn to a closed session to discuss written attorney-client opinions concerning this matter.

The City Council then reported that they believed that their questions had been adequately answered by Mr. Mavrincac and that City Councilmembers did not have additional questions for Mr. Mavrincac at this time.

Mayor Pall then reported that he believed that the First Amendment to the Development Agreement had listed a February 15, 2009, deadline for Lake Street Petoskey

Associates to obtain a bridge loan and asked the Acting City Manager if information had been received concerning a bridge loan from Lake Street Petoskey Associates (the Acting City Manager responded that he had received no information concerning this matter); that he believed that City Councilmembers had been updated concerning the First Amendment to the Development Agreement through Mr. Mavrinac's responses to City Councilmembers questions; and that he did not believe that action would be required at this February 2 City Council meeting, but that City Council could discuss this matter if it so wished.

Following questions by City Councilmembers concerning recent invoices paid by the City on December 31, 2008, to Miller, Canfield for its services concerning this matter that covered a period of several years, the Acting City Manager responded that the invoices had been received mid- to late December and had been paid December 31, 2008; that the former City Manager had an understanding with Miller-Canfield that Miller, Canfield would invoice the City at the end of the project; that, at the beginning of the Petoskey Pointe project it had been believed that it would be of a routine nature with bonding to follow and that, at the project's completion, a full invoice would be received from Miller, Canfield to be paid by the City with bond proceeds; that, with several years' delay of the project, Miller, Canfield had decided to submit pending invoices in late December, 2008; and that, current bills now would be received on a monthly basis).

Mayor Pall reported that he would ask that the City Council consider the City's Attorney, Plunkett and Cooney, P.C., to assume the role of lead counsel in the Petoskey Pointe matter and asked Mr. Murray if he believed that Plunkett and Cooney could assume this responsibility (Mr. Murray responded that he believed that Plunkett and Cooney could assume such responsibilities).

Following discussion, City Councilmember Marshall moved that, seconded by City Councilmember Dittmar, the following resolution be approved:

BE IT RESOLVED that the City Council does and hereby appoints Plunkett and Cooney, P.C., Petoskey, the City's Attorney, to confer with Miller, Canfield, Paddock and Stone, P.L.C., Detroit, and become the lead counsel for the City of Petoskey concerning the Petoskey Pointe project matter.

Mayor Pall asked for comment from those persons who were in attendance and heard the following:

B. Jeremy Wills, D.D.S., 204 State Street, asked why the City Council would consider transferring this matter from Miller, Canfield to Plunkett and Cooney (Mayor Pall responded that he believed that Plunkett and Cooney were qualified to handle this matter; that he believed that the City Council had a good working relationship with Plunkett and Cooney; that he believed that local legal counsel could better handle legal matters concerning this local project; and that he believed that there would be a cost differential in legal fees); and asked what the current billing amount had been from Miller, Canfield concerning this matter (Mayor Pall responded that the City on December 31, 2008, had paid to Miller, Canfield approximately \$136,000 for legal fees associated with the Petoskey Pointe project matter).

Dean Fleury, 108 Michigan Street, asked if the City Council intended that Miller, Canfield would continue as the City's bond counsel in this matter (Mayor Pall responded that he also had asked Mr. Murray this question and would let Mr. Murray respond to Mr. Fleury;

and Mr. Murray responded that bonding would still be handled with the City's special legal counsel for bonding matters which, in this case, was Miller, Canfield).

Said resolution was adopted by the following vote:

AYES: Dittmar, Fraser, Marshall, Pall (4)

NAYS: Johnson (1)

Mayor Pall called a five-minute recess so that Mr. Mavrinac could be notified that his participation would not be required at this February 2 City Council Meeting.

Resolution No. 18270  
Support District Library Efforts

The Acting City Manager reported that the City had actively pursued establishment of a District Library since 1995 without success; that previous discussions had been held with a number of surrounding Townships and the City of Harbor Springs; that recent discussions with these same local units had resulted in little or no support for the creation of a District Library; that it was the Library staff's and Library Commission's desire to create a stand-alone District Library that initially would include the City of Petoskey as its district; and that, once established, the newly-formed District Library could accept additional members that might request to become a participant.

The Acting City Manager also reported that a proposed letter to the State Librarian Nancy Robertson stating the City Council's support of the Library Commission's efforts to form a District Library of one had been enclosed with February 2 City Council meeting-agenda materials; that the District Library Establishment Act of 1989 allowed for a single municipality to establish a district library with the approval of the State Librarian based upon several requirements - with one important requirement being the City's attempt to create a district library with at least one additional governmental unit within the last three years, which had already been met.

The Acting City Manager also reported that the City Council was now being asked to discuss its support for the proposed letter from Mayor Pall to the State Librarian, as well as background information concerning the City's history in its quest to create a District Library.

Mayor Pall reported that he had been requested by the Library Commission to send such letter of support for a district library; reviewed the City's history for the proposed creation of a district library and the current efforts associated with the creation of a single municipality district library; that he was asking City Council for its support of this letter to the State Librarian; reviewed the process that would follow submission of such a letter; and that the Library Director and Library Commission President were in attendance at this February 2 City Council meeting to respond to questions.

Following discussion, City Councilmember Dittmar moved that, seconded by City Councilmember Marshall, the following resolution be approved:

BE IT RESOLVED that the City Council does and hereby supports a letter from the Mayor to the State Librarian, indicating the City Council's awareness and support of the ongoing efforts of the Library Commission to form a District Library.

Mayor Pall asked for comments from those in attendance at this February 2 meeting and heard the following:

Kate Marshall, 1115 East Mitchell Street, asked what would the status of penal fines to the City become if a district library were created (the Library Director reported that currently, penal fines were distributed according to agreements with the different townships and municipalities that the Library served, however, if a district library were created, the townships and municipalities would be asked to join with the City in this district library and, if they decided not to participate, their penal fines would not go toward the district library).

Anne Srigley, 510 Harvey Street, asked how millage rates would be affected if Bear Creek Township participated with the district library (Mayor Pall responded that district library millage rates would be the same for each entity that participated).

Mr. Fleury inquired as to the additional revenue that a district library could create (the Library Director responded that she did not have exact costs but reviewed examples of expanded services that the Library could undertake if one mill was levied to all participating units of a district library).

Following discussion, said resolution was then adopted by the following vote:

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

NAYS: None (0)

Review City Manager  
Position Recruitment

Mayor Pall reported that, at its January 29 meeting, the City Council retained The Mercer Group, Inc., Estes, Colorado, for consulting services for the City Manager position recruitment process; that Thomas Dority, representing The Mercer Group, planned to visit Petoskey the third week of February to continue with this process; and that this item had been placed on the February 2 meeting agenda in the event that the City Council had not yet acted on the retention of consultant services at its January 29 special-session meeting.

City Councilmember Marshall reported that he desired public involvement in the City Manager position recruitment process (Mayor Pall responded that Mr. Dority would meet individually with City Councilmembers during his February visit to determine their wishes for the recruitment process and that City Council also could continue such a discussion at the February 16 City Council meeting).

Resolution No. 18271  
Adopt Ordinance 706 - Zoning Text  
Amendment to B-3 General Business

The Acting City Manager next reported that, at its January 19 meeting, the City Council had considered a proposed ordinance that had been recommended by the Planning Commission that would amend City Code zoning-text provisions to add a new special-condition use to the B-3 General Business District zone, specifically the production, processing, and packaging of bakery, confectionary, and dairy goods.

The Acting City Manager also reported that, on January 19, discussion by the Planning Commission concerning this proposed text amendment had begun in response to a request from Kilwin's Chocolates, Petoskey, for possible use of the former Oleson's Plaza

for its production operations, however, this proposed amendment would pertain to all areas within a B-3 General Business District zone.

The Acting City Manager also reported that, because City Charter provisions generally prohibited the City Council from adopting ordinances at the same meetings at which they were introduced, action concerning the proposed ordinance had been deferred on January 19 until the City Council meeting of February 2; that the City staff had received no comments or correspondence concerning this proposed ordinance since the matter was introduced to the City Council at its last meeting; and that, the City Council could now act upon this recommended ordinance.

City Councilmember Marshall reported that he had concerns with amending the zoning text if Kilwin's Chocolates use of this site did not proceed; and asked if this text amendment could be rescinded if the project did not proceed (the City Attorney responded that this text amendment would permit this special condition use in any B-3 General Business District and was not site specific).

Mayor Pall reported that he believed that this use was compatible in the B-3 General Business District zone and that he had an opportunity to tour the current location of the Kilwin's Chocolates factory; and asked if conceptual plans should be reviewed when considering text amendments that affected a site's use (the City Planner responded that a concept plan could be used to better understand a use that could be permitted in a zoned district but that it should be noted that such text amendments would affect a zoned district Citywide and are recommended by the Planning Commission if found to be compatible for a particular zoned district and are not site specific).

City Councilmember Dittmar then moved that, seconded by City Councilmember Fraser, the following ordinance be adopted:

Ordinance No. 706

AN ORDINANCE TO AMEND APPENDIX A OF THE CITY OF PETOSKEY CODE,  
ZONING ORDINANCE

Said ordinance was adopted by the following vote:

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

NAYS: None (0)

Resolution No. 18272  
Adopt Blueprint Petoskey Master Plan

The Acting City Manager then reported that, at its January 19 meeting, the City Council had received the Blueprint Petoskey Master Plan as adopted by the Planning Commission on January 15; that, because the City Council had reserved the right for final consideration of the Blueprint Petoskey Master Plan by resolution at its July 7, 2008, City Council meeting, the plan was not being submitted to the City Council for its approval.

In response to questions from the City Council, the City Planner reviewed form-based zoning and its effects, and goals of the Blueprint Petoskey Master Plan.

The City Council thanked the City Planner and Planning Commission for their efforts in compiling the Blueprint Petoskey Master Plan.

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

BE IT RESOLVED that the City Council does and hereby approves the Blueprint Petoskey Master Plan as the final step in the adoption process; and

BE IT FURTHER RESOLVED that, per State law, a statement recording the City Council's approval of the Blueprint Petoskey Master Plan, signed by the Clerk of the legislative body (the City Council), be included on the inside of the front or back cover of the Blueprint Petoskey Master Plan.

Mayor Pall asked for public comment and heard John Murphy, 911 Lockwood Avenue, report that he believed that manpower support for enforcement of such a plan should be reviewed.

Said resolution was adopted by the following vote:

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

NAYS: None (0)

The Acting City Manager next reported that, at Discuss Codification of City Ordinances the City Council's January 19 meeting, City Councilmember Dittmar had asked to have the codification of City ordinances placed on the February 2 meeting agenda; that, as a matter of procedure, the City annually sends ordinances adopted during the year to the Municipal Code Corporation, Kalamazoo, and Tallahassee, Florida, for incorporation into the existing City Code of Ordinances; and that The Municipal Code Corporation then would provide supplemental pages for insertion into the Code book, replacing the various sections with new or amended provisions.

The Acting City Manager also reported that several years ago, the City began a complete re-codification of all ordinances with the exception of the Zoning Ordinance; that this re-codification had been intended to update ordinances to current language and laws and to remove outdated provisions; that this process had been expected to last two years' that during this process, the annual codification process was suspended; and that the re-codification had not been completed due to several reasons, one of which was how the new civil-infractions law would be applied to ordinances.

The Acting City Manager also reported that, in the mean time, there have been several ordinances adopted by the City Council that affected City Code provisions and made working with the current Code book difficult because the Code had not incorporated these updated provisions; that to correct this matter, the Municipal Code was contacted and would be submitting a proposal to the City to codify the ordinances adopted since the last supplement was produced - Ordinances 645 through 705; and that The Municipal Code could also place the City's Code of Ordinances on their website via a link from the City's website, where it could be viewed or purchased.

Following discussion, the Acting City Manager reported that he would return to the City Council concerning this matter once fees were received from The Municipal Code Corporation for updating the City's Code of Ordinance book.

City Councilmember Dittmar asked if there was a similar compilation of City Council resolutions (the Acting City Manager responded that he would check with the City staff if such a list was available from the City).

Discuss American Recovery and Reinvestment Act of 2009

Mayor Pall reported that he had been contacted by Senator Jason Allen who had inquired if the City of Petoskey would be submitting a list of proposed projects that could potentially receive funding through a proposed United States Senate and House bill; that the Michigan Municipal League, Ann Arbor, had been working with municipalities to advise them of the bill and to list possible projects that could be funded; and asked the Acting City Manager to report concerning this matter..

The Acting City Manager then reported that The American Recovery and Reinvestment Act of 2009 (HR 1) had been introduced in Congress and was the topic of much discussion nationwide; that the City was also receiving communications from the Michigan Municipal League (MML), Northeast Michigan Council of Governments (NEMCOG), Northern Lakes Economic Alliance (NLEA), Miller, Canfield, Paddock and Stone, and various other City consultants; and that funding for this Bill had increased from \$725 billion to over \$900 billion in one week's time and was sure to continue to change while the Bill was debated.

The Acting City Manager also reported that there had been a push from the State government, through these agencies, to involve local units of governments in requests for project funding by asking local units of government to complete a list of projects that could be commenced within the next 120 days and completed within one year; that a template to list projects had been circulated by the Governor's office to be completed and returned as soon as possible; and that all of this activity had created a frenzy for information from local units with very little information available from either the Federal or State governments on what specifically would be available for projects and where to submit the information.

The Acting City Manager also reported that for transportation purposes – over \$30 billion had been allocated for highway and bridge construction projects with over half that amount being disbursed directly to State Departments of Transportation for their use; that the remaining portion apparently would be distributed to State Departments of Transportation program funds for transportation-enhancement projects; that these projects would be required to follow established, Federal-funding guidelines and would be awarded through local rural task forces - much like the City's recent grant for the East Mitchell Street improvement project; and that this group met regularly to list area road projects and prioritize them, which had been attended by City staff.

The Acting City Manager also reported that nearly \$10 billion would be allocated to finance water and wastewater infrastructure improvements through the State's revolving loan fund; that the revolving loan fund provided low-interest loans to qualified applicants; that these loans were awarded through the State by a point system similar to grant awards; that the application requirements, along with additional construction and continuing operation requirements as part of the loan, made this option costly to apply for with no guarantee of success, and would tend to increase project costs by an estimated 25% to 30%.

The Acting City Manager also reported that the City was involved with the State and Rural Development for a loan through its revolving loan fund for the water project that involved the acquisition of the Bay Harbor wells and construction of a water main to the Ingalls Avenue well; that there had been a considerable amount of information that had

been prepared by outside consultants required for this application, along with numerous meetings with various State agencies; and that, in the end, the City did not rank high enough compared to other large-ticket projects downstate, and Petoskey had been considered to be too affluent to receive these funds.

The Acting City Manager also reported that there was a considerable amount of funding available in other areas, such as law enforcement, and while it appeared funding for new public buildings may not be eligible, the City's proposed Bay Harbor public-safety facility may have potential because it is public-safety related; that this project would be set to go within the 120 days of enactment of the Bill and should be completed within the one-year time period as required; and that, as details of this stimulus bill were worked out, it would become clearer whether this project had viability.

The Acting City Manager also reported that the City staff was working with the various agencies in submitting projects that may be eligible for funding from the State through the ARRA of 2009; that there were ongoing lobbying efforts encouraging law makers to provide funding through grants and not loans; that grants would make the prospect of funding water and sewer projects much more viable since a loan would also require a method of repayment - probably through a utility-rate increase; and that, while there was a sense of urgency to provide information, which was being done, there were many questions to be answered at Federal and State levels before such funding would be awarded.

The Acting City Manager also reported that information had been provided to the City Council as part of the February 2 meeting-agenda materials concerning the proposed economic recovery bill that was currently available from the Michigan Municipal League website ([www.mml.org](http://www.mml.org)); that the information included basic as well as more in-depth summaries of the Act; that the House had approved the Bill and it now was being taken up by the Senate; that the provided information was prior to any final changes that may have been made when it was passed on January 29, 2009; and that the City's consultants now believed that money available to local units would come through additional funds given to existing State programs and would follow normal channels.

City Councilmembers discussed various projects that they believed could be eligible for funding that included acquisition and development of the railroad corridor; replacement windows at the Library Carnegie Building; to encourage State funding for repair and maintenance of the Bear River Bridge at East Mitchell Street and for protection of bridge pedestrian traffic; and Mayor Pall reported that City Councilmembers should report to the Acting City Manager projects that they believed might be included as potential grant projects through this stimulus package.

#### Hear Comments

Mr. Fleury reported that he believed that the City's intersections had been well maintained during the winter season and, following an inquiry, the Acting City Manager reviewed sidewalk snow-removal procedures.

Dr. Wills reported that, as a Fourth Ward resident, he would be interested in serving on a City board or commission.

City Councilmember Marshall reported that he had concerns about blight and rental inspections within the City and that he was pleased that the Blueprint Petoskey Master Plan would be a beginning to address these concerns.

City Councilmember Marshall reported that he wished to commend the City staff and Planning Commission for the compilation of the Blueprint Petoskey Master Plan.

Mayor Pall reported that he hoped to have discussion concerning the Bay Harbor tax matter at the February 16 City Council meeting; that he had requested additional information from the City Attorney concerning this matter; that the City had obtained several attorney-client privileged legal opinions several years ago concerning this matter; and that a closed-session meeting could be requested if additional legal opinions were received concerning the Bay Harbor tax matter.

There being no further business to come before the City Council, the meeting was adjourned at 9:10 P.M.

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

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Alan Terry, City Clerk-Treasurer