

CITY COUNCIL

February 16, 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 16, 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, Administrative Assistant Dianne DeWitt, and James Murray, Plunkett-Cooney, PC, Petoskey.

Resolution No. 18273
Approve Consent Agenda Items

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

Councilmember Johnson, adoption of the following resolution that would confirm that the minutes of the regular meeting of February 2, 2009, be approved as submitted, 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 February 2, 2009, for contract and vendor claims at \$1,143,077.65; intergovernmental claims at \$237,061.99, and the February 5 payroll at \$153,209.91:

BE IT RESOLVED that the City Council does and hereby confirms that the draft minutes of the February 2, 2009, regular meeting of the City Council, be and are hereby approved as submitted; and

BE IT FURTHER RESOLVED that receipt by the City Council of the report concerning all checks that had been issued since February 2, 2009, totaling \$1,533,349.55, be and is hereby acknowledged.

Said resolution was adopted by the following vote:

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

The Acting City Manager reported concerning

Resolution No. 18274
Pointe Project Matter

the Petoskey Pointe redevelopment project by Lake Street Petoskey Associates, L.L.C., Farmington Hills, that he had received no

documentation from Lake Street Petoskey Associates that noted their completion of provisions of a February 15, 2009, deadline listed within the Development Agreement between the City and Lake Street Petoskey Associates; that he was in receipt of a February 16, 2009, letter from Keith Mohr, Milford, a passive investor in the Petoskey Pointe redevelopment project, that stated Mr. Mohr's request that the City Council extend the Development Agreement for Lake Street Petoskey Associates and included a listing of passive investors in the project; reported that he also had received a February 16, 2009, letter from Gilles Herard, Jr., President, Capital Corp., Orlando, Florida, stating its receipt of a Formal Investment Proposal from Lake Street Petoskey Associates in the amount of \$67.2 million; that James Murray, Plunkett and Cooney, P.C, Petoskey, the City's Attorney, was in attendance at this City Council meeting and would report concerning this project; that the City Council could consider adopting a proposed resolution to adjourn to closed session to further review Mr. Murray's written attorney-client privileged communication if it so desired; and that David Jankowski, O.D., also was present at this meeting and could report to the City Council concerning the project.

Mr. Murray reported that the Acting City Manager had received a February 16, 2009, facsimile late that day from Cameron Piggott, Dykema Gossett PLLC, Detroit, Lake Street Petoskey Associates legal counsel, that stated that Lake Street Petoskey Associates had been unable to close on the bridge loan despite its best efforts; and that he believed that this information placed Lake Street Petoskey Associates in default of provisions of the Development Agreement with the City of Petoskey.

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

BE IT RESOLVED that the City of Petoskey City Council does and hereby directs that David Jankowski, Lake Street Petoskey Associates, L.L.C., Farmington Hills; National City Bank, Lansing; James L. Wilson, Grosse Pointe Farms; Dykema Gossett PLLC, Detroit; and Varnum Riddering Schmidt & Howlett, LLP, Kalamazoo, be notified that Lake Street Petoskey Associates, LLC, Farmington Hills, is in default of the Development Agreement as per the draft notice of default letter provided to the City Council for consideration by Plunkett and Cooney, Petoskey.

Dr. Jankowski next reported that at the time of the First Amendment to the Development Agreement, he had believed that a bridge loan would be completed by the February 15, 2009, deadline provision; that he believed that the national economic downturn, appraisal information, and misinformation concerning City permits at the site had led this bridge loan to be unsuccessful; that Lake Street Petoskey Associates now had a Canadian lender that had offered to fund an end loan of \$67.2 million for the project within a 60-day period that Lake Street Petoskey Associates would request an extension of time to complete; and that Lake Street Petoskey Associates could still strive for a bridge loan but that he did not believe that it would be cost effective to do so with an end loan completion just 60 days away.

Mayor Pall asked if the end loan lender would complete a bridge loan for Lake Street Petoskey Associates (Dr. Jankowski responded that it would not because it would be too costly to do so).

City Councilmember Johnson reported that he believed that the developer was in default; that he believed it was in error to make quick decisions at this February 16 City Council meeting concerning this matter; and that he believed that this matter should be discussed further.

City Councilmember Fraser reported that he supported City Councilmember Johnson's comments; that he believed that too much documentation had been submitted recently to review adequately; and that he believed that the matter needed additional discussion by the City Council.

City Councilmember Marshall asked if the City Council wished to go into closed session to discuss such matters (Mr. Murray responded that City Council could only adjourn to closed session to discuss his written attorney-client privileged communication).

City Councilmember Fraser reported that he had no questions concerning Mr. Murray's opinion letter.

City Councilmember Dittmar reported that he believed it was appropriate to take action on the notice of default to Lake Street Petoskey Associates; and that he believed that the City Attorney had concurred that Lake Street Petoskey Associates were in default.

City Councilmember Marshall reported that this matter had been before the prior City Council with much of the same discussion and response from the developer.

Mr. Murray reported that it was quite apparent that the developer had existing liens, unpaid taxes, no notification of loan completion; and that he believed there was no dispute that the developer was in default of the Development Agreement.

Mayor Pall reported that he believed that it was clear that the developer had not met conditions of the Development Agreement; that he believed that the past City Council had declared the notice of default and then had granted an extension to the developer; and that he did not believe that a notice of default determined any course of action by the City Council.

City Councilmember Johnson reported that he concurred that the developer was in default and a notice of default should be sent, but, that he wished to have additional discussion concerning this matter and that the notice of default be done in away that left options open for the City Council concerning the Development Agreement.

Mayor Pall asked for public comments and the following were heard:

Charles Scott, 1105 Tall Pines Court, asked if the City Council declared the developer in default, would it prevent the City Council from extending the deadline if the Developer showed completion of required provisions in the meantime (Mayor Pall responded that the recent information received from the developer's legal counsel at 5:30 P.M. prior to this meeting made it difficult to speak to the City Council's options in this matter because the City Council had received no legal counsel concerning this communication; and that he advised City Councilmembers to be cautious in their responses).

Charles Lindsley, 448 Grove Street, reported that he believed that, in the past, he had favored granting the developers time but that it now appeared that the developers were

saying that an end loan could be in place within 60 days beyond the deadline date but that there would be no bridge loan to pay liens prior to this end loan; that he believed that the City Council had given the developer ample opportunity; that he believed that it was now time to end such opportunities; and asked if it was possible for the City to pay off lien holders and outstanding debt of the project and receive the deed to Petoskey Pointe (the City Attorney responded that this was privately-owned property and that the City could not do so).

Cynthia Linn Robson, 606 Grove Street, reported that she supported City Councilmember Dittmar's motion to issue a notice of default; and that she believed that the developers consistently submitted last-minute documentation.

Dean Fleury, 108 Michigan Street, reported that he had been against this project from its beginning; that he believed that the developers continued to make promises that were not kept; that he believed that now was the time to say the City's involvement with this project was over, but, that he believed that the City could work out options if the developer achieved funding for this project, but that such options should not be granted until then.

Cynthia McWatters, 1047 Lindell Avenue, reported that she had served on the City Council from this project's beginnings to the end of 2008; that she believed there would be no other developers to take over this project, especially with the downturn of the economy; and that she believed that the City Council should be open to options for the developers to continue with the Development Agreement.

Ms. Robson reported that she believed that this project had been similar to the saying "insanity is doing the same thing over and over again and expecting a different result."

Said motion was then adopted by the following vote:

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

NAYS: Johnson (1)

Hear City Manager Position
Recruitment Report; and
Request Public Profile Session

The Acting City Manager reported that Tom Dority and Susan Gapter-Dority, The Mercer Group, Inc., Estes, Colorado, planned to be in Petoskey on Thursday and Friday, February 26 and 27, 2009, to conduct City Manager position

profile interviews with the City Council and the City's Department Heads; that each City Councilmember's interview with the Dority's would be scheduled for one hour; that the City's Department Heads would have 45-minute interviews with either Mr. or Ms. Dority; that these interviews had been scheduled for 9:00 A.M. to 7:00 P.M. on Thursday, February 26, and from 9:00 A.M. to 5:00 P.M. on Friday, February 27; that a questionnaire had been enclosed for the City Council's reference and discussion purposes during the interview process; and asked that City Councilmembers now schedule their times to meet with Mr. Dority.

The Acting City Manager also reported that, at its February 2 meeting, the City Council discussed the possibility of having members of the public participate in this interview process; that Mr. Dority had suggested, as possible public participants, Chairpersons of the

City's various boards and commissions, and/or large community organizations such as the Petoskey Regional Chamber of Commerce; and that the City Council was being asked to discuss and determine other interview participants, if any, from the public.

City Councilmember Marshall reported that he believed that the Petoskey Regional Chamber of Commerce, North Central Michigan College, Northern Michigan Regional Hospital, Petoskey Public Schools, and Rotarians should be involved in the interview process with The Mercer Group; asked if he should make motion for these organizations to be invited to the interview profiling process (the Acting City Manager responded that no formal motion was required).

City Councilmember Johnson reported that he believed that North Central Michigan College and Northern Michigan Regional Hospital were important to include in the profiling process.

Mayor Pall asked how these participants would be scheduled (the Acting City Manager responded that all public participants would be invited to attend a one-hour session with Mr. Dority on Thursday evening); and that he believed that the public would later become involved in the public interviews of final candidates.

Mayor Pall asked for public comments and the following were heard:

Stephen Brede, 314 Rush Street, reported that he believed that the organizations of Tip of the Mitt, Women's Resource Center, and Little Traverse Conservancy should also be invited to the profile interview sessions.

Kate Marshall, 1015 East Mitchell Street, reported that she believed that it was inappropriate to request that the Northern Michigan Regional Hospital, North Central Michigan College, or Public Schools of Petoskey be invited to participate in the profile interviews because she believed that the City had not participated in any of their executive interview processes.

Noah Marshall Rashid, 220 Park Avenue, reported that he believed that this meeting should be open to the general public as well.

Ms Robson reported that she was in agreement that the meeting should be open to the public and not just invited community leaders; that an open meeting process would be more transparent to the public; and that she believed that this meeting should be advertised for the public's information and attendance.

City Councilmember Johnson reported that he believed a public meeting was good, but that he believed that this meeting was intended to come up with a "process" to determine what type of individual should be recruited.

City Councilmember Marshall reported that he supported the public's involvement and if the City's meeting rooms could not accommodate such attendance, perhaps the North Central Michigan College Conference Center could be reserved for the interview profile process.

The Acting City Manager reported that this profile interview session had been intended for a one-hour session with the community's leaders determined by the City

Council and that he wished to check with Mr. Dority if this would be sufficient time to add public comment as well.

City Councilmember Fraser reported that he believed that this meeting should be open to the public as well as at the invitation of the community's leaders.

Mayor Pall reported that he, too, favored a public meeting and asked the Acting City Manager to confirm if Mr. Dority could facilitate such a meeting with invited community leaders as well as the general public; and asked that the Acting City Manager report back to the City Council if Mr. Dority had concerns with conducting such a public session.

Defer Ordinance 700 Re-Adoption
PILOT - Keystone Management

The Acting City Manager then reported that, at its meeting of March 3, 2008, the City Council adopted an ordinance that authorized implementation of a payment-in-lieu-of-taxes (PILOT) program as part of an overall financing package by Keystone Property Management, Inc., Mt. Pleasant, that would permit the acquisition and rehabilitation of the Traverse Woods Apartments complex at 201 and 203 Lafayette Avenue; and that this PILOT ordinance became effective March 17, 2008, and required construction to be commenced within one year.

The Acting City Manager also reported that Kenneth C. Bovee, President, Keystone Management Group, sent a January 26, 2009, letter requesting that the City Council amend the March 17, 2008, PILOT ordinance to require that construction be commenced by September 15, 2009; that this letter noted unanticipated delays resulting in construction being unable to commence by the March 17, 2009, deadline; and that Mr. Bovee was in attendance at this February 16 meeting to provide information to the City Council.

The Acting City Manager also reported that the City Council had been provided copies of the original ordinance, as prepared by James Murray of Plunkett and Cooney, PC, Petoskey, along with City Council agenda memos from the February 18 and March 3, 2008, meetings that included excerpts from the minutes related to this matter; and that this ordinance did not require an amendment to the text, only its re-adoption, that would initiate a new one-year time period for commencement of the rehabilitation project.

The Acting City Manager further reported that, following City Charter provisions, final action concerning this proposed ordinance would be deferred until the March 2, 2009, City Council meeting.

In response to questions from the City Council, Mr. Bovee then reviewed the rehabilitation project and explained the PILOT program as it pertained to the Traverse Woods development; that tenant use would remain at the current low to moderate-income group; that this program would permit deferred maintenance to take place as well as aesthetic updates; that the developer would be Ludwig and Company, Gurnee, Illinois, that had much experience in this type of rehab project; that a general contractor that had much experience in providing services to Ludwig and Company for approximately 40 other developments would be contracted to furnish the rehab services, but that Mr. Bovee would stress that local subcontractors be retained; that Keystone would strive to make minimal disruption to current residents; that improvements would affect rental rates but that those tenants with rental-subsidy assistance would see no change in their rental rates; and distributed to the City Council a report concerning this PILOT request.

Mr. Murray requested that Mr. Bovee meet with him to determine definitions that would be listed in the proposed ordinance prior to the second reading of this ordinance.

City Councilmember Johnson reported that he believed it important to provide housing for low and moderate income families; and that, while the use would not change, he believed that this ordinance would permit this low to moderate-income housing to be continued.

City Councilmember Fraser reported that he believed it important to use local contractors for this rehabilitation project and urged Mr. Bovee to relay this to Ludwig and Company.

Mayor Pall asked for public comment and the following was heard:

Carla Buckmaster, Resort Township, reported that she was pleased with City Councilmember Fraser's concern of displacing residents during the rehabilitation process; and that she believed it important that rental rates not be affected by this project.

Martin Scott, 406 West Lake Street, reported that he believed that this was a commendable project and asked that the developer use local contractors for this project; and asked if this provision could be placed in the PILOT ordinance (Mr. Murray responded that he did not believe that this would be permissible or enforceable as part of the funding process but that he would research this matter).

B. Jeremy Wills, D.D.S., 204 State Street, reported that as a former City Councilmember, he had voiced his support for Ordinance 700; and that he believed that with blight concerns that had been expressed by the current City Council, that he believed that this PILOT ordinance could enable a developer to rehabilitate existing buildings.

Mr. Lindsley reported that he questioned the correspondence from the City Assessor that had been included in Mr. Bovee's distributed report that stated that the rehabilitation of this property would not have a significant effect on the assessed or taxable values of the Traverse Woods Apartments complex (Mayor Pall and Mr. Bovee also reported their questioning of this correspondence).

Mr. Fleury reported that he believed that the developer had a good track record for rehabilitation projects and that he supported this ordinance readoption.

City Councilmember Dittmar reported that he had researched the development company and that he supported this rehabilitation project.

Mayor Pall then reported that, in accordance with City Charter provisions, further consideration of the proposed ordinance would be tabled until the March 2, 2009, meeting of the City Council.

Approve Land Exchange and Sale for the site of the new Petoskey Public Safety Station West; that a small portion of the southwest corner contained an encroachment from the adjoining neighbor George and Phyllis Kaven; and that a letter had been received as part of this purchase, from the Kavens, acknowledging this encroachment along with their desire to purchase a portion of the property from the City as a remedy.

The Acting City Manager also reported that, as a solution to this encroachment, the Kavens had agreed to acquire a 50-foot-wide by 200-foot-long (10,000 square feet) piece of property from the City; that the property was not necessary as part of the Public Safety Station project site nor was it necessary in the foreseeable future; that, in exchange, the City would receive property at the corner of US-31 and Mason Road (5,296 square feet); that the City Council had been provided maps that highlighted the purchase and exchange properties; and reviewed a conceptual design of the area.

The Acting City Manager also reported that the corner piece could be used in the future to reconfigure Mason Road into a single access point onto US-31, along with a driveway from the Public Safety Station and a future road from a potential new residential development located to the south and east; and that the Bay Harbor Company had expressed an interest in acquiring any property the City did not need and might combine it with additional property for a residential development.

The Acting City Manager also reported that the difference in acreage being exchanged was 4,711 square feet (10,000 square feet less 5,289 square feet) which would be sold to the Kavens at the same \$3.50 per square-footage price that the City recently paid for acquiring the property; that the purchase price for the property difference would total \$16,488.50; and that costs to survey these parcels for the exchange and lot split would be covered by the Kavens.

The Acting City Manager also reported that the City Council was being asked to authorize the Mayor and City Clerk to execute a purchase agreement as prepared by William Hoffman, Plunkett and Cooney, P.C., Petoskey, that would authorize this exchange and sale of property.

City Councilmembers discussed this proposal and noted that they believed this would assist to reduce traffic concerns in the area and that they were supportive of this request.

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

BE IT RESOLVED that the City Council does and hereby authorizes the execution of an agreement by the Mayor and City Clerk that would approve the sale of property along the Petoskey Public Safety Station West property site, as depicted by Benchmark Engineering, Inc., Charlevoix, Survey File No. R07363.GXD, to correct an encroachment of a neighboring property and that would transfer property to the City at US-31 and Mason Road.

Said resolution was adopted by the following vote:

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

NAYS: None (0)

Resolution No. 18276
Request Speed Survey for US-31

The Acting City Manager then reported that concern had been expressed by the Department of Public Safety staff, City Councilmembers, Resort Township officials, and the general public regarding the speed limit for US-31 South; that the high volume of traffic, combined with a large number of driveway entrances onto the highway, at posted speed limits of 55 miles per hour (mph) had raised discussion over traffic safety in this area; and that much of this focus had been in the area from Resort Pike Road west to Lake Grove Road.

The Acting City Manager also reported that, within the last several years, numerous traffic citations had been issued in this area and that several fatal accidents had occurred; that, in an effort to reduce the speed limit along this section of US-31, the City must request the Michigan Department of Transportation to perform a speed study; and that this study would be performed in cooperation with the Michigan State Police who would measure and analyze the speed of vehicles.

The Acting City Manager also reported that, while there were specific factors used to determine whether or not to reduce a current speed limit, the overriding factor tended to be results of the speed study; that the State's goal was to establish realistic speed limits and experience showed that 85% of drivers adhere to the posted speed limits which they feel were reasonable, comfortable, and safe; and that, when speeds were measured, an analysis would be performed to determine at what speed the lowest 85% of the vehicles were traveling and this would become the target speed for that section of the highway.

The Acting City Manager also reported that, as the first step in this process, the City Council was being asked to adopt a proposed resolution that would request the speed study; that the Michigan Department of Transportation then would schedule a speed study by the Michigan State Police; and that the scheduling of this speed study would depend on the availability of State Troopers and a determination of when the study should be performed.

Mayor Pall reported that he was disappointed with the basis of the speed study and reviewed the process; and asked if there were City costs involved in conducting this survey (the Acting City Manager responded that there would be no City costs involved).

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

WHEREAS, traffic on US-31 South from Resort Pike Road to Lake Grove Road has steadily increased over the past years due to the development and growth in the City of Petoskey and Township of Resort largely the result of the Bay Harbor development; and

WHEREAS, this development has significantly increased the number of access points to the State trunkline resulting in an increase in traffic congestion and the volume of turning traffic along the corridor; and

WHEREAS, it has become increasingly difficult for residents to negotiate left-hand turns, or move into and out of the flow of traffic safely due to the increased volume of traffic:

NOW, THEREFORE, BE IT RESOLVED that the City of Petoskey City Council formally does and hereby requests the Michigan Department of Transportation (MDOT) to conduct a speed study from Resort Pike Road to Lake Grove Road. It is understood that MDOT, in cooperation with the Michigan State Police (MSP), will use engineering data gathered in the speed study to make a decision which could lower, or maintain, the current speed limit. It is further understood that the City of Petoskey will abide by the decision made by MDOT and MSP as a result of this speed study.

City Councilmember Marshall reported that his business was located in this area; that he believed that left-hand turns could be difficult and dangerous with the amount of egress and access drives along the highway; that he believed that with addition of new business and developments in that area that these traffic concerns would continue to grow; that he planned to communicate to Michigan Department of Transportation officials and Representative Gary McDowell of his traffic concerns in this area at the current posted speed limit; and that he believed that if the speed limit was not reduced that he would request consideration of a traffic light at the US-31 South and Resort Pike Road intersection as an alternative.

City Councilmember Johnson asked who was responsible for enforcement of the speed limit in this area (the Acting City Manager responded that the City's Department of Public Safety and the Michigan Department of State Police enforced this area); and asked if this speed survey request had any connection to a proposed development that had been proposed in that area (the Acting City Manager responded that this request was initiated by the City from traffic concerns in the area and did not have any connection to proposed developments in the area).

Mayor Pall asked for public comment and the following were heard:

Mr. Lindsley asked if the City would be requesting the Michigan Department of Transportation or the Michigan Department of State Police to conduct this speed survey (the Acting City Manager responded that the request would be made to the Michigan Department of Transportation, who, in turn, would request the Michigan Department of State Police to conduct the speed survey).

Dr. Wills reported that he believed that traffic signal lights had been reported to increase incidents of traffic accidents but that these accidents usually were less severe in nature; and that he believed that an added traffic signal would not solve traffic concerns for this area.

Mr. Baird reported that he had attended a Resort Township Board of Trustees meeting and believed that he had heard a Michigan State Trooper report that the Michigan Department of State Police had conducted a one-day speed survey in this area; that the 86% of lowest motor vehicle speeds that the Acting City Manager had referred to had been between 49 mph and 56 mph; that he believed that with this information the speed limit probably would remain at its current 55 mph; and that he hoped that the City would not duplicate traffic study efforts of a joint Township and City area transportation group.

Said resolution was then adopted by the following vote:

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

Resolution No. 18277
Approve Response to Bay Harbor
Tax Relief Fund

The Acting City Manager next reported that, following Mayor Pall's request at the February 2, 2009, City Council meeting that the Bay Harbor Resident's Tax Committee request be placed on the February 16 City Council meeting agenda, the Mayor and City Attorney would report concerning this matter and possibly ask that the City Council adopt a proposed resolution that would authorize a closed session to review legal opinions by the City Attorney.

Mayor Pall then reported concerning the background of a request by the Bay Harbor Resident's Tax Committee and the Bay Harbor Tax Relief Legal Fund for the lowering of property tax millage rates within the Bay Harbor development; that he had received a January 26, 2009, letter from the Bay Harbor Tax Relief Legal Fund requesting resolution of this matter, and asked City Councilmembers if they desired to go into closed session to review the written attorney-client privileged communication from Mr. Murray or if Mr. Murray recommended that the attorney-client privileged communication be waived (Mr. Murray responded that he did not recommend a waiver of the attorney-client privilege at this time); and that the City Council had been provided with a draft response letter to the Fund for the City Council's consideration.

City Councilmembers responded that they understood the attorney-client privileged communication and did not believe that a closed session was necessary to review this communication.

City Councilmember Dittmar asked if the City's insurance carrier had been notified of possible litigation in this matter (the Acting City Manager responded that he had not notified the City's insurance carrier at this time).

City Councilmember Dittmar then moved that the following resolution be approved:

BE IT RESOLVED that the City Council does and hereby directs the Acting City Manager to send a response letter, as drafted by the City Attorney, to the Bay Harbor Tax Relief Legal Fund; and

BE IT FURTHER RESOLVED that the Acting City Manager is requested to notify the City's insurance carrier of possible litigation by the Bay Harbor Tax Relief Legal Fund.

City Councilmember Marshall asked for an explanation concerning the last part of City Councilmember Dittmar's resolution concerning notice to the City's insurance carrier (the City Attorney responded that the letter received from the Bay Harbor Tax Relief Legal Fund had threatened litigation and that City Councilmember Dittmar had requested that the City's insurance carrier be notified of such possible litigation in this matter).

City Councilmember Marshall then seconded the motion.

Mayor Pall asked for public comment and the following were heard:

Dr. Wills reported about his experience as a City Councilmember concerning this matter; that he believed consideration of services had been offered to Bay Harbor Company and its residents that had been refused; that he believed that Bay Harbor residents were paying twice for City-offered services in that they were paying a fee to the Bay Harbor Company for provision of services that the City provided as part of its property tax millage rates; and that he believed this issue could be resolved between Bay Harbor residents and the Bay Harbor Company for this service fee charged to its residents versus the City's property tax millage rates.

Mr. Baird asked if the public would be able to review Mr. Murray's drafted response letter to the Bay Harbor Tax Relief Legal Fund (Mr. Murray responded that once the drafted response letter was approved it then would become a public document).

Mr. Fleury asked if the January 26 Bay Harbor Tax Relief Fund letter to Mayor Pall could be read (Mr. Murray responded that this was a public document and Mayor Pall briefly summarized the letter).

M. Scott asked how the public could give input concerning the response letter to the Bay Harbor Tax Relief Fund if it was not made a public document (Mr. Murray responded that the response letter stated that the City agreed that it was not permissible to deviate taxes between Bay Harbor and the remainder of the City as a matter of law; and that, if the City Council approved this letter, it then would be a public document).

Mayor Pall reported that this draft letter was part of Mr. Murray's confidential attorney-client privileged communication; that he believed the City Attorney's summary of the draft letter was correct in stating that the City had no legal basis to change taxes for the Bay Harbor residents.

C. Scott asked if the January 26 letter received from the Bay Harbor Tax Relief Legal Fund was considered to be a public document (Mr. Murray responded that it was a public document); asked if it had mentioned a potential lawsuit against the City (Mr. Murray responded that it had not been specific but had threatened litigation); and that he was concerned that the public had not been made aware of this information (Mr. Murray responded that this information was available but had not been requested).

Mr. Baird asked if the draft response letter was sent to the Bay Harbor Tax Relief Legal Fund, then it became a public document at that time (the City Attorney responded that it then would be a public document).

Said resolution was then approved by the following vote:

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

NAYS: None (0)

Mayor Pall then reported that the City Council

Resolution No. 18278
Approve Mayor's Appointments

was being asked to concur with his recommended appointments to the Harbor-Petoskey Area Airport Authority Board, Library Commission, and Parks and Recreation Commission; and reviewed applications that had been submitted by John C. Smith, 815 Lindell Avenue, Christine Gebhard, 618 East Mitchell Street, John Hoffman, 1040 Hoffman Street, Chuck Cigrand, 536 Elizabeth Street, and Pete Wooters, 808 Howard Street.

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

BE IT RESOLVED that the City Council does and hereby approves the initial appointment of Director of Finance Alan Terry, to fill a vacated, unexpired term of December 1, 2011, on the Harbor-Petoskey Area Airport Authority Board, created by the retirement of the former City Manager, be approved; and

BE IT FURTHER RESOLVED that the City Council does and hereby approves the initial appointment of John C. Smith, 815 Lindell Avenue, to fill a vacated, unexpired term of December 31, 2011, on the Library Commission, created by the resignation of George Hopping; and the initial appointment of Christine Gebhard, 618 East Mitchell Street, to fill a position formerly filled by Joan Holec on the Library Commission, for a five-year term to expire December 31, 2013; and

BE IT FURTHER RESOLVED, that the City Council does and hereby approves the reappointment of John Hoffman, 1040 Hoffman Street, and the initial appointments of Chuck Cigrand, 536 Elizabeth Street, and Pete Wooters, 808 Howard Street, as replacements for John C. Smith who had requested appointment to the Library Commission and Kenneth J. Hebert who had requested replacement, for two-year-long terms on the Parks and Recreation Commission that will expire in January, 2011.

Said resolution was adopted by the following vote:

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

NAYS: None (0)

Hear Comments

Mr. Baird asked if the Director of Finance had been remunerated for his additional duties as Acting City Manager (Mayor Pall responded that he and the City Attorney were currently considering this and that it would be placed on the City Council's March 2, 2009, meeting agenda).

City Councilmember Dittmar reported that he was pleased that the City Council meeting agenda materials had been delivered in a timely manner; and asked if the codification of the City's ordinances had been resolved (the Acting City Manager responded that the Michigan Municipal Code, Tallahassee, Florida, had been contracted with to recodify the Code of Ordinances); and asked if the City Charter would be included in the recodification process (the Acting City Manager responded that he would check on this matter).

Mayor Pall asked the City Council if it wished to set a special-session meeting to receive a power point presentation concerning the Bear River Valley Recreation Area and,

following discussion by the City Council, Mayor Pall set a special-session meeting of the City Council for 7:30 P.M., Monday, February 23, 2009, to hear this presentation.

Gary Greenwell, 1048 Emmet Street, Planning Commission Chairperson reported that the Planning Commission would be receiving this presentation at its February 19, 2009, meeting if anyone wished to attend.

There being no further business to come before the City Council, the meeting was adjourned at 9:50 P.M.

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

Alan Terry, City Clerk-Treasurer