

CITY COUNCIL

April 20, 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, April 20, 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 and City Attorney James Murray.

Resolution No. 18294
Approve Consent Agenda Items

Following the introduction of the consent agenda for the City Council meeting of April 20, 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 April 6, 2009, be approved as had been 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 April 6, 2009, for contract and vendor claims at \$637,336.14; intergovernmental claims at \$29,572.36, and the April 16 payroll at \$151,155.26:

BE IT RESOLVED that the City Council does and hereby confirms that the draft minutes of the April 6, 2009, regular-session 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 April 6, 2009, totaling \$818,063.76, be and is hereby acknowledged.

BE IT FURTHER RESOLVED that the City Council authorizes a contract with Walstrom Dock & Dredge, Inc., Harbor Springs, for seasonal repairs of facilities at Bayfront Park Marina for \$12,025.

Said resolution was adopted by the following vote:

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

Resolutions No. 18295-97
Industrial Development District
Tax Abatements

The Acting City Manager reported that, at its April 6, 2009, meeting Council continued discussions regarding the proposed tax abatement request from Kilwin's Chocolates Franchise, Inc., Petoskey, for anticipated new and real personal property investments at the former Oleson's Plaza site, 1050 Bay View Avenue; and that following these discussions, the City Council directed the Acting City Manager to again meet with representatives of Kilwin's to further discuss Council's concerns with the request.

The Acting City Manager also reported that he had met with Donald McCarty and Stephen Hooley of Kilwin's Chocolates Franchise, Inc. regarding Council's desire to place certain conditions on the abatement request; and that Mr. McCarty provided a letter, to be forwarded on to Council, stating their position on tax abatements, Kilwin's operations and their desire to have this matter resolved one way or the other at this meeting.

Mr. Hooley was present at the meeting and responded to several questions from the Council. Council discussed the pros and cons as they saw them with the request and received several comments from the public. Following discussion by City Council that included support of tax abatements for the industrial operations at the site and continued concern over a possible unfair retail advantage.

Establishing an Industrial Development District - Resolution 18295

City Councilmember Johnson moved that, seconded by City Councilmember Fraser, the following resolution be approved;

WHEREAS, pursuant to Act No. 198 of 1974, as amended, the Petoskey City Council has the authority to establish "Industrial Development Districts" within the City of Petoskey; and

WHEREAS, Kilwin's Quality Confections, Inc. has petitioned the Petoskey City Council to establish an Industrial Development District on property located in the City of Petoskey hereinafter described: and

WHEREAS, construction acquisitions, alterations or installation of a proposed facility has not commenced at the time of filing the request to establish this district; and

WHEREAS, written notice has been given by mail to all owners of real property located within the district, and to the public by newspaper advertisement in the Petoskey News Review and/or public posting of the hearing on the establishment of the proposed district; and

WHEREAS, a public hearing was held on March 16, 2009 at which all of the owners of real property within the proposed Industrial Development District and all residents and tax payers of City of Petoskey were afforded an opportunity to be heard thereon; and

WHEREAS, the Petoskey City Council deems it to be in the public interest of the City of Petoskey to establish the Industrial Development District as proposed;

NOW THEREFORE BE IT RESOLVED by the Petoskey City Council that the following described parcel of land situated in the City of Petoskey, Emmet County, and the State of Michigan, to wit:

Parcel #: 52-16-32-400-009

Description: COM AT A PT ON N'LY LINE OF BAYVIEW RD. FOUND BY COM AT SE COR OF LOT10 BLK 1 OF HIRAM O ROSE'S ADD, TH SW'LY ALG N'LY LINE OF S RD 524.8 FT TO POB. TH SW'LY ALG SD RD 400 FT, TH N24 DEGREES 35'42"W 350 FT M/L TO S'LY LN OF R/R/ R/W, TH E'LY ALG SD R/R ROW 350 M/L TO A PT N28 DEGREES 11'W 256 FT E FROM POB, TH S28 DEGREES 11'E 256 FT TO POB. SECTION 32, T35N, R5W.

be and here is established as an Industrial Development District pursuant to the provision of Act No. 198 of the Public Acts of 1974 to be known as Oleson Industrial Development District.

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

NAYS: Dittmar (1)

Industrial Facilities Exemption Certificate - Resolution 18296

City Councilmember Fraser moved that, seconded by City Councilmember Johnson, the following resolution be approved;

WHEREAS, at its meeting of March 2, 2009, the City Council scheduled a public hearing for March 16, 2009, to receive comments concerning the request of Kilwin's Quality Confections, Inc., for the proposed designation of facilities at 1050 Bay View Road, in Petoskey as an Industrial Development District, as permitted under provisions of Public Act 198 of the Public Acts of Michigan, 1974, as amended, and to receive comments concerning the application that had been submitted by the firm for issuance of an Industrial Facilities Tax Exemption Certificate as also is permitted under provisions of said Public Act 198 if 1974, as amended; and

WHEREAS, after providing notice of the public hearing as required by provisions of Public Act 198 of 1974, the City Council on March 16, 2009, conducted said public hearing and received comments concerning these requests of Kilwin's Quality Confections, Inc.; and

WHEREAS, following its consideration of the firm's request to establish an Industrial Development District called Olson Industrial Development District, the City Council determined that such a district should be designated, which the City Council then accomplished by its adoption of a Resolution on April 20, 2009; and

WHEREAS, following its consideration of the firm's application for an Industrial Facilities Tax Exemption Certificate, the City Council determined that such a certificate should be issued:

NOW, THEREFORE, BE IT RESOLVED that the City of Petoskey City Council does and hereby authorizes the issuance of an Industrial Facility Tax Exemption Certificate, under authority of provisions of Public Act 198 of the Public Acts of Michigan, 1974, as amended to Kilwin's Quality Confections, Inc. for facilities at 1050 Bay View Road, Petoskey, being Parcel No. 52-16-32-400-009, to wit:

Legal Property Description: COM AT A PT ON N'LY LINE OF BAYVIEW RD. FOUND BY COM AT SE COR OF LOT 10 BLK 1 OF HIRAM O ROSE'S ADD, TH SW'LY ALG N'LY LINE OF S RD 524.8 FT TO POB. TH SW'LY ALG SD RD 400 FT, TH N24 DEGREES 35'42"W 350 FT M/L TO S'LY LN OF R/R/ R/W, TH E'LY ALG SD R/R ROW 350 M/L TO A PT N28 DEGREES 11'W 256 FT E FROM POB, TH S28 DEGREES 11'E 256 FT TO POB. SECTION 32, T35N, R5W.

BE IT FURTHER RESOLVED that the Board finds and determines that the granting of the Industrial Facilities Exemption Certificate shall not have the effect of substantially impeding the operation of the City of Petoskey, or impairing the financial soundness of a taxing unit which levies ad valorem property taxes in the City of Petoskey.

BE IT FURTHER RESOLVED that such Industrial Facilities Tax Exemption Certificate be and is hereby issued for a period of 12 years.

BE IT FURTHER RESOLVED that the City Manager be and is hereby directed to develop an agreement between the City and Kilwin's Quality Confections, Inc., Petoskey, concerning requirements associated with compliance with certain conditions associated with the issuance of this Industrial Facilities Tax Exemption Certificate, and that the City Manager be and is hereby authorized to enter into said agreement with Kilwin's Quality Confections, Inc., Petoskey, on behalf of the City.

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

NAYS: Dittmar (1)

New Personal Property Exemption - Resolution 18297

City Councilmember Fraser moved that, seconded by City Councilmember Johnson, the following resolution be approved;

WHEREAS, pursuant to P.A. 328 of 1998, as amended, after a duly noticed public hearing held on March 16, 2009, the City Council of the City of Petoskey, an eligible distressed area as defined in Section 11 of the State Housing Development Authority Act of P.A. 346 of 1966, by Resolution, established an Industrial Development District called Oleson Industrial Development District on March 16, 2009; and

WHEREAS, the applicant (Kilwin's Quality Confections, Inc.), a manufacturing eligible business, has filed an application for Exemption of New Personal Property; and

WHEREAS, before acting on said application, the City Council of the City of Petoskey held a public hearing on March 16, 2009, at Petoskey City Hall, at 7:30 p.m., at which the Applicant, the City Assessor, and a representative of the effected taxing units were given written notice and were afforded an opportunity to be heard on said Application; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of City of Petoskey:

The City Council of the City of Petoskey finds and determines that the granting of the Exemption of New Personal Property currently in force under P.A. 328 of 1998, as amended, shall not have the effect of substantially impeding the operation, or impairing the financial soundness of the taxing unit which levies ad valorem property taxes in the City of Petoskey; and

The New Personal Property Exemption when issued shall be, and remain in force and effective for a period of seven (7) years, beginning April 20, 2009, and ending December 30, 2016; and

The Application submitted by Kilwin's Quality Confections, Inc., is for an Exemption of New Personal Property that will be located in the following described parcel of real estate situated within the City of Petoskey, in an Industrial Development District called Oleson Industrial Development District, established on April 20, 2009;

Parcel #: 52-16-32-400-009

Description: COM AT A PT ON N'LY LINE OF BAYVIEW RD. FOUND Y COM AT SE COR OF LOT 10 BLK 1 OF HIRAM O ROSE'S ADD, TH SW'LY ALG N'LY LINE OF S RD 524.8 FT TO POB. TH SW'LY ALG SD RD 400 FT, TH N24 DEGREES 35'42"W 350 FT M/L TO S'LY LN OF R/R/ R/W, TH E'LY ALG SD R/R ROW 350 M/L TO A PT N28 DEGREES 11'W 256 FT E FROM POB, TH S28 DEGREES 11'E 256 FT TO POB. SECTION 32, T35N, R5W.

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

NAYS: Dittmar (1)

Resolution No. 18298
Schedule Special-Session Meeting

The Acting City Manager next reported that the recruitment timeline with The Mercer Group, Inc., Estes, Colorado, includes a meeting with the City Council on Tuesday, May 12, 2009, to review leading candidates. A special-session City Council meeting will be necessary at which time the City Council may enter into a closed-session meeting to review and consider contents of the applications for employment, if the candidates have requested that their application remain confidential. Therefore, the City Council is being asked to schedule a special-session meeting for 7:30 P.M., Tuesday, May 12, 2009.

Council discussed the scheduled meeting date and due to conflicts discussed changing the meeting date to Wednesday, May 13, or Monday, May 11, as an alternate date in case The Mercer Group is unable to attend a meeting on May 13.

Following discussion City Councilmember Marshall moved that, seconded by City Councilmember Johnson, the following resolution be approved;

BE IT RESOLVED that a special-session City Council meeting be scheduled for 7:30 P.M. on Wednesday, May 13, 2009, for the purpose of reviewing applications of leading candidates for the position of City Manager as provided by The Mercer Group, Estes, Colorado, with an alternate date of Monday, May 11, 2009, in case The Mercer Group is unable to attend a May 13 meeting.

Said resolution was adopted by the following vote:

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

NAYS: None (0)

Resolution No. 18299
Terminate Development Agreement

The City Attorney reported that time had tolled on the 60-day time period connected with the Notice of Default issued in February to Lake Street Petoskey Associates, L.L.C., Farmington Hills, and noted that a legal opinion had been provided to Council regarding the status of the Petoskey Pointe Project. Council asked the City Attorney several questions regarding the City's Development Agreement with Lake Street Petoskey Associates, L.L.C.

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

BE IT RESOLVED that the City notify all necessary parties that the City has elected to terminate the Development Agreement with Lake Street Petoskey Associates L.L.C.; and

BE IT FURTHER RESOLVED that the City hereby demands immediate payment in full of the \$970,000 to the City pursuant to the Development Agreement from all responsible parties on the personal guarantee, said notice sent via certified mail.

Council discussed the motion and also received several public comments on the motion and the project.

Said resolution was adopted by the following vote;

AYES: Dittmar, Marshall, Pall (3)

NAYS: Fraser, Johnson (2)

Hear Comments

City Councilmember Marshall noted his water was discolored and contacted the City Department of Public Works, who informed him that fire hydrants were being flushed and anyone experiencing yellow water to run the tap for several minutes until it clears up.

City Councilmember Fraser noted that crosswalk signs had been installed in the downtown area.

City Councilmember Dittmar reported that the District Library Committee had met and is beginning work on preparing a District Library Agreement.

Mayor Pall provided information regarding an upcoming trip to Petoskey's Sister City in Japan and anyone interested in going should contact Meredith Richter. He also announced he will be making appointments to the City's Board of Review, Zoning Board of Appeals and the Tax Increment Finance Authority in the near future.

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

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

Alan Terry, City Clerk-Treasurer