

CITY COUNCIL

June 1, 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, June 1, 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 Administrative Assistant Dianne DeWitt.

Resolution No. 18309
Conduct Public Hearing and
Adopt Ordinance 708 - Fencing
and Corner Clearances

As the first item of business, the Acting City Manager reported that, at its May 13, 2009, meeting, the City Council conducted the first of two meetings required to act upon a proposed ordinance that would revise City Code zoning provisions relating to fences and corner

clearances; that the City Council had been provided a revised proposed ordinance as recommended by the City Council at its May 13 meeting; that this proposed ordinance had been approved as to form by the City Attorney; and that a notice of the public hearing concerning these proposed revisions had been publicized May 15.

The Acting City Manager also reported that, following the public hearing, the City Council could act upon the proposed ordinance concerning fences and corner clearances that would become effective fourteen days following its adoption by the City Council.

Mayor Pall then opened the public hearing and the following comments were heard from those persons in attendance at the meeting:

Sherry Loar-Trudell, 801 East Sheridan Street, reported about several criminal and nuisance incidents that she believed had occurred in and near the front-yard of her corner-lot residence; that she objected to the City Council's proposed prohibition of front-yard fences; that she requested the City Council to consider her rights to protect her property with fencing, as well as her Fourth Amendment rights; that she believed that the City staff had installed retaining walls in front-yard corner-lot areas; and that she did not currently have a fence in her front yard, but that she planned to install a front-yard fence when she was financially able to do so.

Jim Harrington, 1226 Hill Street, reported that the proposed zoning ordinance would permit him to install a fence on his property where the current zoning ordinance would not; and that he supported this proposed ordinance concerning fencing and corner clearances.

B. Jeremy Wills, D.D.S., 204 State Street, reported that his corner-lot residence was exposed on three sides to public rights-of-way because of an alley that ran parallel on one side yard and public streets on his front and second side-yard area; asked if an alley would determine that his side yard was also a front-yard area (Mayor Pall stated that while he did not have a legal opinion concerning alleys, he believed that a side yard alley would not be defined as a street in determining a front-yard definition); that he believed that front-yard fencing would prohibit pedestrians and cyclists from trespassing on his lawn; that he believed that fencing improved the aesthetics of some homes; that he did not consider corner-lot side yards as front-yard areas; and that he did not believe that corner-lot properties should be restricted from installing fences.

There being no further receipt of public comments, Mayor Pall closed the public hearing at this time.

Following discussion by City Councilmembers concerning these public comments, City Councilmember Fraser moved that, seconded by City Councilmember Johnson, that the following ordinance be adopted as written:

ORDINANCE NO. 708

AN ORDINANCE TO AMEND APPENDIX A OF THE CITY OF PETOSKEY CODE, ZONING ORDINANCE (Fences and Corner Clearances).

Said ordinance was adopted by the following vote:

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

NAYS: None (0)

City Councilmember Dittmar reported that some proposed ordinances were coming to Council with rationale and many were not; that he believed it should be made standard policy that proposed ordinances or ordinance revisions should always be accompanied by rationale, as well as a table that listed and compared the changes in rules, and supporting background data and analysis; that he believed otherwise it was very difficult to get a handle on what was changing and what the impacts were; and that in this case, a comparison would have been helpful and that it would also have clarified some matters of interpretation; and City Councilmember Marshall requested that the City Council address enforcement of ordinance provisions at future meetings.

[Hear Annual Audit Presentation](#)

The Acting City Manager reported that Partner Robert Thompson and Field Manager Trina Edwards, of Dennis, Gartland & Niegarth,

Traverse City, were in attendance at the meeting to provide information and respond to questions concerning the Financial Statements and Report of Independent Certified Public Accountants as the annual audit of the City's fiscal year ended December 31, 2008. Mr. Thompson and Ms. Edwards then described the firm's auditing procedures; reviewed the audit-related communications letter; reported that representatives of the firm had concluded that the City's financial condition was sound, and responded to questions from City Councilmembers concerning several recommendations that the firm had made. The Acting City Manager then reported concerning his response to those recommendations.

Resolution No. 18310
Approve Consent Agenda Items

Following the introduction of the consent agenda for the City Council meeting of June 1, 2009, City Councilmember Marshall moved that, seconded by City Councilmember

Dittmar, adoption of the following resolution that would confirm that the minutes of the regular meeting of May 4, 2009, and the special-session meeting of May 13, 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 May 4, 2009, for contract and vendor claims at \$1,347,330.51; intergovernmental claims at \$466,465.91, and the May 14 and 28 payrolls at \$322,509.37:

BE IT RESOLVED that the City Council does and hereby confirms that the draft minutes of the May 4, 2009, regular-session and May 13, 2009 special-session meetings 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 May 4, 2009, totaling \$2,136,305.79, be and is hereby acknowledged.

Said resolution was adopted by the following vote:

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

Resolution No. 18311
Approve 2009 Tax Millage Rates

The Acting City Manager reported that the City Council had approved the City's 2009 Annual Budget at its December 15, 2008, meeting that had included a provision for property-tax

millage rates to remain the same as in 2008; that the City Council was now being asked to formally establish the millage rates necessary to produce the budgeted property-tax revenue approved in the 2009 Annual Budget for the General Fund, the Library Fund, and the Right-of-Way Improvements Fund.

The Acting City Manager also reported that property tax revenue budgeted for 2009 included \$3,702,000 for the General Fund, that consisted of \$3,475,000 for general-operating purposes and \$227,000 for solid-waste programs, which was permitted by State law; that the Library Fund budgeted \$830,000 in revenues for two combined voter-approved and Council-approved millage rates; and that the Right-of-Way Improvements Fund budgeted tax revenues totaled \$1,789,200.

The Acting City Manager also reported that millage rates were authorized by State law, City Charter, and voter approval; that the total of all four City millages was 19 mills, with the City Charter setting the general-operating millage at ten mills and the right-of-way millage at five mills; that State law allowed up to two mills for solid-waste programs and one mill for library purposes; that voters had approved a second mill for library purposes; and that all rates were subject to rollback by the "Headlee Amendment".

The Acting City Manager also reported that the 2009 Annual Budget property-tax revenues had been based on the same millage rates established for the last three years and an estimated taxable value of \$527,455,590; and that the actual taxable value for 2009 had now been established at \$538,225,953, for a difference of \$10,770,363, with the majority of the difference due to an increase in new construction of \$7,442,700.

The Acting City Manager also reported that the City Council had been provided with a Tax Revenue Analysis that listed revenues that would be derived by each fund based on the millage rates included in the approved 2009 Annual Budget resolution; and that the net tax revenues were slightly more than the budgeted amounts, but would allow for additional downward adjustments in taxable values that occurred each year to taxable values by the July and December Board of Review and the Michigan Tax Tribunal court consent decrees.

Purpose	Budgeted Millage	Gross Tax Revenues	Less		Net Tax Revenues
			TIFA Captures	Township Act 425	
General operating	7.4940	\$4,033,465	\$99,649	\$393,600	\$3,540,216
Solid waste	0.4890	263,192	6,502	25,683	231,007
Library	1.7650	949,969	11,436	92,701	845,832
Right-of-Way	3.8580	2,076,476	51,301	202,630	1,822,545

The Acting City Manager also reported that the City Council was being asked to approve a proposed resolution that would establish property-tax-millage rates for 2009 at the same level as the previous year and that would authorize appropriations from such levies to the General Fund, Right-of-Way Improvements Fund, and Library Fund.

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

Christine Gephard, Library Commission member, read a prepared statement that summarized the Public Library's request for the maximum millage rate permitted by law; reported that she believed that without a maximum levy for the Library Fund, the Library could not maintain its goal of a \$50,000 reserve and replacement of the Carnegie Building windows could not be accomplished; that the Library currently was operating at a reduced level in comparison to surrounding communities; and that she believed that the City Council's continued reduction of Library millage did not respond to the increased usage of Library facilities during economic downturns.

The Library Director responded that a maximum millage rate for the Library would not increase Library operating hours, but would resolve the Library's goal of \$50,000 for Library reserve funds; and that the District Library Study Committee continued to pursue a District Library for additional funding from all Library users in the region.

Joseph Baird, 923 State Street, reported that he believed that, because of the additional tax revenue received from increased taxable value over what had been estimated and approved for the 2009 Annual Budget, that he believed this additional revenue could be used to fund the Library's maximum millage request without the need to increase City tax millages.

Dean Fleury, 108 Michigan Street, reported that he believed that the City Council should support a maximum levy for the Library Fund as he believed it would not adversely affect taxpayers at such a minimal amount; and that he believed Library usage had and would increase with the current economy.

A Petoskey High School government student who was in attendance at the meeting reported that she believed that any financial assistance to the Public Library would benefit students utilizing the facilities and asked for an explanation of a district library (Mayor Pall responded by briefly explaining the City's study for a district library).

Skip Keys, 824 East Mitchell Street, reported that it concerned him that City taxpayers paid far more for use of the Library than the majority of its users, those being out-of-City taxpayers; and that while he supported Library operations, he also believed that out-of-City users should pay increased amounts for use of the Library to assist in operation and maintenance of the Library (Mayor Pall responded that Township contributions had been adjusted but that the City was actively pursuing a District Library system).

Ms. Gephard reported that she believed that the City Council should consider the request for maximum Library millage as a separate issue from the proposed District Library issue at this time because she believed it important to maintain current Library facilities.

City Councilmembers then discussed establishing 2009 property-tax-millage rates in response to comments from persons who were in attendance at the meeting who urged that the millage levy that would benefit the Library Fund be increased to its maximum amount. The Acting City Manager recommended that, if the City Council wished to increase the Library Fund millage to the maximum level, he would recommend transferring the additional revenue received by the General Fund than had been estimated during the 2009 Annual Budget preparation process, to the Library Fund, to maintain the 13.6060 millage levy.

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

WHEREAS, as required by City Charter provisions, the City Manager on November 3, 2008, presented to the City Council the City's then-proposed annual budget for the 2009 fiscal year; and

WHEREAS, as also required by City Charter provisions, the City Council on December 1, 2008, conducted a public hearing to receive comments concerning the then-proposed budget, including rates of property-tax millages that had been recommended for levies during 2009; and

WHEREAS, following its review of the then-proposed 2009 Annual Budget, and after conducting a public hearing to receive comments concerning the proposed budget and recommended tax levies, the City Council on December 15, 2008, approved the 2009 Annual Budget:

NOW, THEREFORE, BE IT RESOLVED that the City of Petoskey City Council does and hereby directs that there shall be raised through a general tax upon the taxable real and personal property within the City during the next general tax levy for the year commencing January 1, 2009, millages in the amount of 7.4449 for general operating purposes, 0.4890 for solid-waste purposes, 1.8141 for library purposes, and 3.8580 for right-of-way improvements purposes; and, when collected, proceeds from such levy are hereby appropriated to the General Fund, Library Fund, and Right-of-Way Improvements Fund; and

BE IT FURTHER RESOLVED that the total aggregated amount of all such authorized millages shall total 13.6060 mills; and

BE IT FURTHER RESOLVED that these various millages so ordered to be levied shall be certified by the City Clerk-Treasurer to the City Assessor and shall be levied and collected upon the taxable value of all taxable property within the City.

Said resolution was adopted by the following vote:

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

NAYS: Johnson (1)

City Councilmember Johnson reported that he did not support increasing one fund's millage over others and City Councilmember Marshall reported that he wished to see performance-based budgeting as part of future budget discussions.

Resolution No. 18312
Defer Capital Improvement Review

The Acting City Manager reported that the City's 2010-2015 Capital Improvements Plan had been issued to the Planning Commission April 16, 2009; that the Plan had listed potential projects and purchases during the next six years totaling \$86,350,950 within eight service-type, facility-type, and function-type categories that included building and grounds, downtown area, electric distribution, motor pool, parks and special facilities, streets and drainage, wastewater collection-treatment, and water production-distribution-storage; and that, although capital improvements plans were adopted by the City Council, public hearings concerning annual updates of capital improvements plans were not necessary.

The Acting City Manager also reported that the Planning Commission heard an April 16 presentation concerning the proposed six-year capital plan update and voted May 21 to recommend that the City Council adopt the proposed plan; and, therefore, the City Council could acknowledge the Planning Commission's recommendation and could adopt a proposed resolution that would formally accept the plan, or the City Council could defer action concerning the proposed plan until a future meeting.

The Acting City Manager also reported that the plan merely served as a guide for capital planning; that projects could only proceed when funding became available and with City Council approval of projects; and that some projects, such as the \$7,000,000 Department of Public Works building project, would not proceed as listed because funding would not be available for such projects.

City Councilmembers discussion of the proposed Capital Improvements Plan included: reporting that the Plan was merely a "wish list" and individual projects would need study and approval by the City Council; that project consultant studies should be discussed by the City Council before they are conducted; that some projects might have options that could lower estimated costs if justified, such as the \$7,000,000 Department of Public Works building and overhead-versus-underground electric installation; study of increased recreation participation fees by out-of-City resident users; the priority of projects listed; the preparation process of the proposed Plan by City staff; and that additional time was needed to further study the proposed plan.

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

BE IT RESOLVED that the City Council submit written questions to the Acting City Manager by June 15, 2009, concerning the 2010-2015 Capital Improvements Plan for response; and

BE IT FURTHER RESOLVED that action concerning the proposed 2010-2015 Capital Improvements Plan be deferred until July, 2009.

Said resolution was adopted by the following vote:

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

NAYS: None (0)

Resolution No. 18313
Authorize DMB Services Contract

The Acting City Manager reported that under provisions of Act 197 of Public Acts of Michigan of 1975, as amended, known as the "Downtown Development Authority Act," the City Council on October 4, 1993, established a Downtown Development Authority and under the provisions of 1992 Act 120 of the Public Acts of Michigan of 1961, as amended, known as the "Redevelopment of Principal Shopping Centers Act," the City Council on February 7, 1994, established the Downtown Management Board with the same eight members serving as both Boards.

The Acting City Manager also reported that, beginning in 1994, the City Council, at the request of the Downtown Management Board, began special assessing downtown business properties to cover costs of programs and services performed in the downtown district as determined by the Board; and that, in 1999, the City Council authorized the Downtown Management Board to operate and maintain the City's downtown-area parking system, and with the City Council's approval, the Downtown Management Board then contracted with the Petoskey Regional Chamber of Commerce to administer these services.

The Acting City Manager also reported that the Downtown Management Board and Petoskey Regional Chamber of Commerce desired to revise the original agreement to update language for additional office space necessary for staffing and operations and to provide a new monthly rate; that the Downtown Management Board was requesting that the City Council authorize the Downtown Management Board to enter into the proposed new agreement with the Petoskey Regional Chamber of Commerce; and that the February, 1999, resolution that turned parking operations over to the Downtown Management Board required that the contract be approved by the City Council.

The Acting City Manager also reported that the City Council had been provided with a proposed resolution that would authorize the Downtown Management Board, through and on behalf of the City, to contract with the Petoskey Regional Chamber of Commerce to provide necessary administrative support services for downtown-parking operations and special-assessment programs and services; and that Carlin Smith, President, Petoskey Regional Chamber of Commerce, was present to provide information to the City Council.

Mayor Pall reported that the Downtown Management Board had approved this contract at its May 19, 2009, meeting; that he believed the original 1999 City Council resolution language accompanying the current contract had conflicting language concerning the responsibility of City Council to approve acquisitions and proposals versus the City Manager, but that he believed the City Council could act on the contract as submitted at this time. Mr. Smith responded to questions concerning the use of downtown parking revenues by the Downtown Management Board.

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

WHEREAS, under provisions of Act 197 of the Public Acts of Michigan of 1975, as amended, known as the "Downtown Development Authority Act," the City of Petoskey City Council on October 4, 1993, established a Downtown Development Authority; and

WHEREAS, under provisions of 1992 amendments to Act 120 of Public Acts of Michigan of 1961, known as the "Redevelopment of Shopping Centers Act," the City Council on February 7, 1994, established the "Downtown Management Board," with the members of the Downtown Development Authority Board serving as its members; and

WHEREAS, the City Council on February 1, 1999, authorized and designated the Downtown Management Board to operate and maintain the City's downtown area parking system and facilities, including parking enforcement activities; and

WHEREAS, the City Council also on February 1, 1999 approved the Downtown Management Board to contract with the Petoskey Regional Chamber of Commerce for administrative support and staff services necessary to carry out the responsibilities involved with the program and services and parking operation services; and

WHEREAS, the Downtown Management Board and Petoskey Regional Chamber of Commerce desire to amend the original agreement so as to continue providing such administrative services;

NOW, THEREFORE, BE IT RESOLVED that the Downtown Management Board, through and in behalf of the City, be and is hereby authorized to contract with the Petoskey Regional Chamber of Commerce and the City for administrative support and staff services and/or other services that might be necessary to carry out the various responsibilities of programs and services and downtown-parking operations.

Said resolution was adopted by the following vote:

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

NAYS: None (0)

Hear Comments

Audience comments included support for the City Council to request all boards and commissions to prepare statements of justification for recommendations to the City Council; requested consistent inspection of newly-planted street trees prior to their one-year warranty expiration; and that street trees on West Sheridan Street had not survived plantings and should be replaced.

City Councilmembers reported information that included: a request that Connable Avenue near the Northern Michigan Regional Hospital be included in parking studies by the City's consultant; additional speed signs were needed in the Willis Avenue and Clarion Street areas; requested further discussion concerning a speed study request for the US-31 and Bay Harbor area; asked that the Acting City Manager relay to Department of Public Safety staff City Councilmember Johnson's gratitude for the Department's impressive work at a recent vehicle incident on Charlevoix Avenue; that City Councilmember Fraser had represented the City Council at Kilwin's Chocolate Franchise, Inc., Petoskey, at a hearing before the Michigan Economic Development Corporation in Lansing, and that Kilwin's had successfully obtained grant funding; that City Councilmember Dittmar had previewed Kilwin's site plan for Bay View Road and believed it to be a nice plan; reviewed a recent memorandum from the Acting City Manager that included traffic studies in the State Street at Central School area and the extension of Atkins Street to Howard Street; and Arlington Park and Lewis Street parking and street reconfigurations; City Council discussion of improvement projects before engaging project consultants; and an update concerning the Petoskey Pointe matter.

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

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

Alan Terry, City Clerk-Treasurer