

CITY COUNCIL

July 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, July 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; James Murray, Plunkett & Cooney, P.C.; and Administrative Assistant Dianne DeWitt.

Resolution No. 18326
Approve Consent Agenda Items

Following the introduction of the consent agenda for the City Council meeting of July 20, 2009, the Acting City Manager reported that he had changed page 15, paragraph 5, of the draft July 6, 2009, City Council meeting minutes to reflect that City Councilmember Dittmar had requested that the City Council review convention procedures at its July 20, 2009, City Council meeting rather than at the July 6, 2009, City Council meeting.

City Councilmember Dittmar then moved that, seconded by City Councilmember Fraser, adoption of the following resolution that would confirm that the minutes of the special-session meeting of July 1, 2009, and the regular-session meeting of July 6, 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 July 6, 2009, for contract and vendor claims at \$856,812.23; intergovernmental claims at \$37,726.29, and the July 9 payroll at \$192,468.41:

BE IT RESOLVED that the City Council does and hereby confirms that the draft minutes of the July 1, 2009, special meeting, and July 6, 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 July 6, 2009, totaling \$1,087,006.93, be and is hereby acknowledged.

Said resolution was adopted by the following vote:

AYES: Dittmar, Fraser, Marshall, Pall (4)
NAYS: None (0)
ABSTAIN: Johnson (1)

Discuss Use of City Property Procedures;
Review City Attorney Opinion

The Acting City Manager then reported that, at its July 6, 2009, meeting, the City Council heard comments from Justin Rashid, 1015 East Mitchell Street, concerning the use of Pennsylvania Park on June 27, for an event that had been more commercial than Mr. Rashid believed should be permitted; and that the City Council also heard the Acting City Manager comment regarding City approval procedures for park use.

The Acting City Manager also reported that the City Council had discussed the event in question, current park ordinances and approval process, and had requested a legal opinion from the City Attorney concerning City ordinances pertaining to parks and the City's ability to schedule and use City-owned parks for various community events under these current ordinances and resolution; and that a legal opinion had been rendered from the City Attorney that had been provided to the City Council for its review.

In response to questions from the City Council, Mr. Murray reported that his firm believed that no conflict existed between park approval procedures and the City's current zoning ordinances and Resolution 14610 concerning park use; that zoning ordinances were not viewed as deed restrictions; that he believed that the June 27 event had met conditions of the City staff advisory memo for approval of such park use; that he, too, believed that it appeared that the June 27 event had been more commercial in nature than anticipated and would be reviewed by the City staff prior to granting future use for such event; that the advisory memo was a staff function and was periodically updated as needed by the City staff; that Resolution 14610 had delegated authority to the City staff for park use approval; that this resolution could not be altered; and that adoption of a new resolution would be necessary for any changes that the City Council wished to make in the park-approval process.

The City Council discussed the creation of an application form with regulations for use of City parkland included on such form and the Acting City Manager reported that he believed that the City staff could develop such a form for park-use approval.

Mayor Pall asked for public comments and the following were heard: Gary Hunter, 616 Lockwood Avenue, reported that he believed that the City staff had clearly stated regulations for his company's use of parkland for kayak demonstrations; that he believed sponsorship displays for such events were not consistent and that the retailer should police such displays for meeting City staff regulations; cautioned the City Council in being too specific in restrictions of parkland use; and that he believed no changes were necessary to City staff's procedures in approving parkland use; and Mike Teska, 313 East Lake Street, reported that he believed that sponsors needed to demonstrate their products; that such demonstrations were retail in nature; that he believed that City staff had done well in approving such uses for parks; and that he did not believe that any changes should be made to park-use approval procedures.

The City Council then concurred that no action would be necessary concerning this item, but asked that the Acting City Manager discuss with City staff the creation of an application form that included regulations for use of City-owned parkland.

Resolution No. 18327
Approve Convention Procedures

The Acting City Manager next reported that, at its July 6, 2009, meeting, the City Council had received information from City Councilmember Dittmar that included Ward and City Convention procedures in a new format, along with revisions to existing procedures; and that the current procedures had been prepared by the City Attorney in 2005 at the request of the City Council due to confusion over how the Ward and City Conventions should operate.

The Acting City Manager also reported that the City Council had discussed the possibility of revising Ward and City Convention procedures at its July 6 meeting and had decided to defer this matter until July 20 to afford the City Council and interested citizens more time to review City Councilmember Dittmar's proposed procedures, and to request that the City Attorney provide information regarding the City's ability to establish procedures for the Ward and City Conventions.

The Acting City Manager also reported that a legal opinion had been provided to the City Council from the City Attorney, and also had been provided correspondence from City Councilmember Dittmar that included a revised proposal for City and Ward Convention procedures that reflected comments made at the July 6 City Council meeting.

Mayor Pall then asked the City Attorney if the City Charter could be interpreted in allowing City Councilmember Dittmar's proposed convention procedures and if the City Council could approve such procedures. The City Attorney responded that the City Council was permitted under law to adopt City Councilmember Dittmar's proposed procedures, or any other convention procedures it chose, provided that such procedures did not violate any laws, which the City Attorney reported that the proposed procedures did not.

The City Attorney also reported that the City Council could do nothing; adopt the current procedures as set forth in 2005; adopt City Councilmember Dittmar's proposed procedures; or adopt any other procedures.

City Councilmember Dittmar then reviewed his proposed changes that included consolidation of separate Ward procedures; equal opportunity in the selection of delegates; clarification of procedures that added a statement of purpose, meeting agenda, and itemized eligibility criteria; and reported that his proposed changes had stemmed from comments he had received since the 2005 procedures had been used to conduct conventions.

City Councilmember Johnson reported that he did not believe a change in the ward and city convention procedures were necessary.

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

Gordon Bourland, 121 West Lake Street, reported that he believed that the City's Ward system was good, but, that he believed the convention proceedings were archaic because petitions could still be filed to run for City Councilmember or Mayor following such convention proceedings; that he believed the election process at conventions should be made a fair process for all to participate in; and that if ward conventions continued, he believed that procedures to conduct such proceedings should be spelled out very clearly.

Mr. Teska reported that he believed that the Ward system for City Councilmember positions was good; that he believed "selecting delegates" should not be defined as a

random drawing of delegate names; quoted from a dictionary the definition of the word select; and encouraged the City Council to not amend convention procedures because he believed that such proposed amendments would take away his ability to "select" his delegate that he wished to represent him at the City Convention.

B. Jeremy Wills, D.D.S., 204 State Street, reported that he concurred with Mr. Teska's comments; that he believed that a random drawing of delegates would not represent the choice of the people; and that he believed it was wrong to change the convention procedures as had been proposed.

Charles Scott, 1105 Tall Pines Court, that he was concerned with the selection of delegates to fill the total 15 delegate and 5 alternate delegate positions from persons who were not in attendance at the convention; asked for clarification on the process of selecting non-attendees to fill required delegate positions; and that he believed the proposed convention procedures were not well defined for balance and fairness.

Herbert Carlson, 601 Kalamazoo Avenue, reported that he did not understand any reasons to change convention procedures that had put the current City Council in office.

Carolyn Bourland, 121 West Lake Street, reported that she believed the nomination process must be spelled out; that it must be an open and fair process; and that all delegate nominations should be received by the Chairperson until all ward participants had voiced their nominations.

Joseph Baird, 923 State Street, reported that he objected to a random drawing to select his delegate representatives to the City Convention; that he believed the position of delegate to be an important one; that he wanted the ability to have the opportunity to weigh in on who represented him; and that he believed these proposed procedures eliminated his opportunity to have a voice at the Convention.

Dr. Wills reported that he believed one or two issues with convention procedures in an 80-year-period did not warrant a change in the procedures; that he believed the current convention process allowed individuals to voice their delegate choices; that he had, as past Chairperson of Fourth Ward Conventions, gone out of his way to be fair to all Ward participants; that he believed that a week before 2009 conventions was not a proper time to make what he believed were drastic changes; and that he believed the past secret ballot had worked when the number of delegate nominations were more than needed to fill the 15 delegate and 5 alternate delegate positions.

Mr. Teska reported that he believed that all nominations for delegates and alternate delegates should be received and then a selection made from that full listing by secret ballot if more nominations were received than needed; and urged the City Council to not change convention procedures.

Cynthia Linn Robson, 606 Grove Street, reported that she believed if persons were concerned about their right to vote, then she believed that the ward conventions should be disbanded and have petition turn-ins as the only way to run for Mayor or City Councilmember; that she believed this would represent a fair and equitable system; that she believed that this system would protect special-interest groups from dominating a ward convention delegate selection; that she believed these proposed changes were a "patch" and not a solution; and that she believed that Charter revision should be studied to abandon convention proceedings for selection of councilmember and mayoral candidates.

George Robson, 606 Grove Street, reported that he believed that all delegate nominations should be permitted to be heard and that he believed the proposed changes were an improvement to convention proceedings.

City Councilmember Marshall reported that he appreciated the ward convention process; that he believed the process had been an easy one; that he had not experienced peer pressure in Ward Four convention proceedings but that he was concerned if other Ward proceedings had experienced such pressure.

City Councilmember Fraser reported that he preferred the ward system; that he enjoyed representing his neighbors; that perhaps change was needed but that he did not believe it was the proper time to do so; that perhaps a Charter review commission could address such changes; and that he believed that more resident participation in ward and city convention procedures could overcome such conflict.

City Councilmember Johnson reported that he believed this issue affected every voter; that he believed that changing the convention procedures would affect how the Charter had intended the proceedings to be conducted; and that he did not agree with the timing of these changes.

City Councilmember Dittmar reported that he believed that larger turnouts at ward conventions could create such conflicts under current procedures; that he was concerned that the 2005 procedures had not been ratified by the City Council; and that he believed that his proposed procedures would better address equal opportunity for ward participants and community spirit.

Mayor Pall reported that he believed there had been good discussion concerning this matter; that he believed it was clear that bad feelings had existed at past conventions; that he believed that the proposed procedures would make for less conflict at convention proceedings; and that he had no problems with the proposed changes.

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 approves the draft procedures for conducting Ward and City Conventions as had been included with July 20, 2009, meeting agenda materials and as prepared by City Councilmember Dittmar.

Said resolution was adopted by the following vote:

AYES: Dittmar, Marshall, Pall (3)

NAYS: Fraser, Johnson (2)

Approve Trunkline Contract contracted with cities, villages, and county road commissions to maintain State-owned highway within the jurisdictions of these local governmental units; that, in Petoskey's case, State-owned trunkline portions that were maintained by the City under Department of Transportation guidelines included US-31 from Eppler Road to the north City Limit and US-131 from its junction with US-31 to the south City Limit; and that maintenance costs were reimbursed to the City by the Department of Transportation based on budgets provided by the State, which for 2009, was \$100,000.

The Acting City Manager also reported that the proposed renewal contract that had been provided to the City by the Department of Transportation had been reviewed by the City Attorney, Director of Public Works, and the Director of Finance, who determined that the proposed contract, other than minor language changes, was the same as those that had been approved by the City Council in the past; that the proposed contract would be effective from the date of signing by all parties and would expire September 30, 2014; and that the City Council had been provided a proposed resolution that would authorize the renewal of this proposed contract and that would re-designate the Director of Public Works as the City's "Transportation Maintenance Superintendent."

The City Attorney reported that he had reviewed the contract as to legal form only.

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

WHEREAS, the City of Petoskey wishes to continue the State Trunkline Maintenance Contract with the Michigan Department of Transportation:

NOW, THEREFORE, BE IT RESOLVED by the City of Petoskey City Council that the State Transportation Maintenance Contract between the Michigan Department of Transportation and the City of Petoskey for the period October 1, 2009, through September 30, 2014, be and is hereby accepted; and

BE IT FURTHER RESOLVED that the City's Director of Public Works be and is hereby designated as Transportation Maintenance Superintendent on sections of State Trunkline Highways as shown on the Maintenance Route Section Map and Budget Sheets; and

BE IT FURTHER RESOVLED that the Mayor and City Clerk be and are hereby authorized to sign said Maintenance Contract.

Said resolution was adopted by the following vote:

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

NAYS: None (0)

Authorize DNR Grant Agreement -
Skyline Trail Property Purchase

of municipal forest property titled "Skyline Forest Property" located in Bear Creek Township, which had been given to the City in 1935 and 1942, with the stipulation that it be managed for forestry and recreational purposes; and that, all but 160 acres of this property was adjoining, connected through easements, or was property owned by the County of Emmet or the Michigan Department of Natural Resources.

The Acting City Manager also reported that, during the 1990's, the City had applied for a Michigan Natural Resource Trust Fund Grant and had received an acquisition grant to purchase a connector parcel from Douglas Boor; that negotiations for the property eventually ended when Mr. Boor decided not to sell the property and the grant was canceled; and that the City continued to express its interest in acquiring the property to enhance and interconnect the trail system which had long been an intergovernmental effort.

The Acting City Manager also reported that, in 2006, Mr. Boor had approached the Little Traverse Conservancy again expressing an interest in selling the property; that the Conservancy had agreed to assist the City in the land acquisition that included providing matching funds to help in securing grant funding through the State; and that, given the past history, the Conservancy proceeded to obtain a purchase option on the land from the owner and, on May 23, 2008, purchased the property while the grant was in the review process.

The Acting City Manager also reported that the City, in May, 2007, began pursuing a grant with the City Council's approval of a resolution that expressed the City's intent to submit a grant application through the Michigan Natural Resources Trust Fund's Small Acquisition Grants Initiative program; and that a formal grant application had been submitted March 20, 2008, to the Department of Natural Resources and, in December, 2008, the Trust Fund Board recommended that the project be funded, which the Governor approved May 7, 2009.

The Acting City Manager also reported that the Trust Fund grant would provide funding for up to 34% of land-acquisition costs, or \$99,000, with the City providing the remaining 66%, or \$192,200; and that the City's matching portion would be provided through the following sources: City of Petoskey, \$70,000; City of Petoskey (in-kind services), \$7,995; North Country Trails Association, \$5,000; and The Little Traverse Conservancy, \$109,205, for a total match of \$192,200.

The Acting City Manager also reported that in-kind services would include City staff time, along with miscellaneous expenses incurred on the land-acquisition project; that the City would purchase the property from the Little Traverse Conservancy in the amount of \$169,000 - \$99,000 grant funding and \$70,000 City share; and that the Conservancy would donate \$114,205 of the property's value which included the North Country Trails Association's donation.

The Acting City Manager also reported that the 2004 Open Space Task Force Plan and the 2009 Blueprint Petoskey City Master Plan highlighted the importance of retaining, acquiring, and protecting open space and view sheds in and around the City of Petoskey and its adjoining Townships; and that the Skyline Forest Property and adjoining lands provided valuable outdoor recreation opportunities such as hiking, cross-country skiing, snowshoeing, hunting, snowmobiling, and horseback riding, while protecting wildlife and forest habitat.

The Acting City Manager also reported that the City's 2009 Annual Budget had included \$169,000 within the parks division of the General Fund for the purchase of this

property from The Little Traverse Conservancy; and that the City Council had been provided a proposed resolution prepared from a sample form provided by the Michigan Natural Resources Trust Fund, and a copy of the Land Acquisition Project Agreement and map that depicted the Skyline Trail Addition's location.

The Acting City Manager then reported that a May, 2008, property appraisal, for this parcel had been conducted but that another appraisal would be conducted as part of closing documents.

Mayor Pall asked for public comment and the following were heard: Mr. Bourland asked for clarification of the property's location and its purpose; Dr. Wills reported on the Skyline Trail history that included the use of volunteers that recently installed trail portions, that he believed this to be a very scenic trail, and that he believed this acquisition would serve to link these properties.

City Councilmember Marshall reported that he supported this property acquisition because of the participation in this project by the Little Traverse Conservancy and the adjoining properties of the County and State that served to create the Skyline Trail that demonstrated joint participation in this endeavor.

Mayor Pall reported that he had voiced concerns in the past regarding out-of-City projects that were solely funded by the City and yet also used by residents within the surrounding Townships; that he believed that participation by Little Traverse Conservancy in this project was good; and that he hoped that the City would endeavor to receive joint participation from the surrounding Townships on City projects that were utilized by residents of those Township areas.

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

WHEREAS, the City owns 800 acres of forest land properties located in Bear Creek Township that are used primarily for recreational purposes; and

WHEREAS, these City-owned properties are adjacent to or in proximity of other properties that are owned by the State of Michigan and other local units of government: and

WHEREAS, the City has worked with State and local government officials over the years, as well as representatives of the Little Traverse Conservancy and North Country Trails Association, to link these various properties; and

WHEREAS, the City Council adopted a resolution March 3, 2008, to submit a grant application to the Michigan Natural Resources Trust Fund Small Acquisition Grants Initiative to partially offset costs of acquiring a 65-acre parcel owned at that time by Douglas Boor that fronts Krause Road in Bear Creek Township; and

WHEREAS, the City Council within that same resolution committed to providing \$70,000 towards this property purchase as part of the local match:

NOW, THEREFORE, BE IT RESOLVED that the City of Petoskey City Council does and hereby accepts the terms of the Agreement as received from the Michigan

Department of Natural Resources, and that the City does hereby agree, but not by way of limitation to:

Appropriate the necessary funds to complete the project during the project period and to provide \$192,200 to match the grant authorized by the Department of Natural Resources, of which \$114,200 will be the value of land donated by the Little Traverse Conservancy; and

Maintain satisfactory accounts, documents, and records and make them available to the Department for auditing at reasonable times; and

Regulate the use of the property acquired and reserved under this Agreement to assure the use thereof by the public on equal and reasonable terms; and

Comply with any and all terms of said agreement including all terms not specifically set forth in the foregoing portions of this Resolution.

Said resolution was adopted by the following vote:

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

NAYS: None (0)

Hear Comments

Mr. Bourland updated the City Council on endeavors to replace the Petoskey Breakwall's existing lighthouse with a replica of a pagoda-style lighthouse that was originally installed at the site in 1902 and washed away in 1924; that following the receipt of approval for the project from the U. S. Coast Guard and cost estimates, his group would return to the City Council with a presentation of the project and possible funding assistance.

Mr. Scott reported that the size of the City's on-line agenda packets created slower downloads and requested that the agenda page only be made available online separately from the entire packet.

Mr. Teska reported that he believed that the convention procedures that had been approved did not consistently address the selection process by having a random drawing process for ward delegate selection and a different selection process of voice or ballot votes for other councilmember or mayoral selection processes.

Ms. Bourland reported that she believed a letter of clarification should be added to the convention procedures that all nominations from the floor must be heard before nominations were closed.

Judy Hills, 575 Hillcrest Avenue, reported that she believed that the selection process should be consistent throughout all ward and city convention procedures and that not being consistent with the process could cause confusion.

The City Attorney reported that the City Charter gave the City Council the authority to establish convention procedures as it saw fit provided that it did not violate law.

Dr. Wills reported that he was saddened by the City Council's adoption of the new convention procedures that he believed would not encourage additional public participation in the convention process; that he believed the convention process should not be abandoned because it gave residents the chance to be heard at a forum other than formal City Council proceedings; and that he believed many capital projects had been started from comments made at ward conventions.

City Councilmember Johnson reported that he believed that the convention proceedings resolution had deserved additional debate.

Mayor Pall reported that the Director of Public Safety was retiring effective July 31, 2009, and wished to thank him for his many years of service to the community both as the Director of Public Safety and as a community member.

There being no further business to come before the City Council, the meeting was adjourned at 9:28 P.M.

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

Alan Terry, City Clerk-Treasurer