

# CITY OF MUSKEGON

## CITY COMMISSION MEETING

**OCTOBER 13, 2009**

**CITY COMMISSION CHAMBERS @ 5:30 P.M.**

### MINUTES

The Regular Commission Meeting of the City of Muskegon was held at City Hall, 933 Terrace Street, Muskegon, Michigan at 5:30 p.m., Tuesday, October 13, 2009.

Mayor Warmington opened the meeting with a prayer from Pastor Jonathan Phillips, Jr. from the Love Fellowship Baptist Church after which the Commission and public recited the Pledge of Allegiance to the Flag.

#### **ROLL CALL FOR THE REGULAR COMMISSION MEETING:**

Present: Mayor Stephen Warmington, Vice Mayor Stephen Gawron, Commissioners Lawrence Spataro, Sue Wierengo, Chris Carter, and Clara Shepherd, City Manager Bryon Mazade, City Attorney John Schrier, and City Clerk Ann Marie Becker.

Absent: Commissioner Steve Wisneski (excused).

#### **2009-83 CONSENT AGENDA:**

##### **A. Approval of Minutes. CITY CLERK**

SUMMARY OF REQUEST: To approve the minutes of the Regular Commission Meeting that was held on Tuesday, September 22, 2009.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

##### **B. SECOND READING: Amendment to the Zoning Ordinance – Wind Turbines. PLANNING & ECONOMIC DEVELOPMENT**

SUMMARY OF REQUEST: Request to amend Section 2311, #10 (Accessory Structures and Buildings) of Article XXIII (General Provisions) to include "Wind Turbines" as permitted accessory structures.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Staff recommends amendment of the Zoning Ordinance to include "Wind Turbines" as permitted accessory structures.

COMMITTEE RECOMMENDATION: The Planning Commission recommended approval of the request at their September 10<sup>th</sup> meeting. The vote was unanimous.

**C. SECOND READING: Amendment to the Zoning Ordinance – Wind Turbine Facilities.** PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Request to amend Section 2310 of Article XXIII (General Provisions) to add “Wind Turbine Facilities (WTF)”.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Staff recommends amendment of the Zoning Ordinance to include “Wind Turbine Facilities (WTF)”.

COMMITTEE RECOMMENDATION: The Planning Commission recommended approval of the request at their September 10<sup>th</sup> meeting. The vote was unanimous.

**D. SECOND READING: Amendment to the Zoning Ordinance – Definitions.** PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Request to amend Article II (Definitions) to add definitions for “Wind Turbine” and “Wind Turbine Facilities”.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Staff recommends amendment of the Zoning Ordinance to include definitions for “Wind Turbine” and “Wind Turbine Facilities”.

COMMITTEE RECOMMENDATION: The Planning Commission recommended approval of the request at their September 10<sup>th</sup> meeting. The vote was unanimous.

**E. Liquor License Request for PCJ Enterprises, LLC, 435 & 441 W. Western.** CITY CLERK

SUMMARY OF REQUEST: The Liquor Control Commission is seeking local recommendation on a request from PCJ Enterprises, LLC, to transfer ownership of the 2008 Class C-SDM Licensed Business with Dance-Entertainment Permit located in escrow at 435 & 441 W. Western Avenue from D&L of Michigan, LLC.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: All departments are recommending approval.

**F. Marshall Street Elevated Storage Tank Control Panel Relocation and Electrical Service Upgrade.** WATER FILTRATION

SUMMARY OF REQUEST: To relocate the remote site control and communications equipment in a larger above-ground panel and upgrade the electrical power circuit breaker panel.

FINANCIAL IMPACT: The total project cost is \$12,805.

BUDGET ACTION REQUIRED: The project is budgeted for this year.

STAFF RECOMMENDATION: Authorize staff to enter into an agreement with Windemuller Electric for the relocation of the control panel and upgrade of the electrical service at the Marshall Street elevated water storage tank.

**G. Request to Amend Encroachment Agreement #2000-112(j).**  
ENGINEERING

SUMMARY OF REQUEST: AMEC/CSXT is requesting your permission to amend agreement #2000-112(j) to install five additional monitoring wells in the public R-O-W of E. Western and Marquette bringing the total to ten wells at that location. The request was made through the encroachment agreement form.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the encroachment agreement subject to the supplemental conditions.

**H. Amendment to the Commercial Rehabilitation Certificate Resolution for 971 Washington.** PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Pursuant to Public Act 210 of 2005, as amended, the business at 971 Washington Avenue was approved for a commercial rehabilitation certificate on July 28, 2009. The State Tax Commission has requested additional language be put in the resolution.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the revised resolution.

**I. Sale of Buildable Vacant Lot at 323 Catawba.** PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: To approve the sale of a vacant buildable lot at 323 Catawba to Michael Harman of 315 Catawba, Muskegon, MI. The lot is 66 x 132 ft. and is being offered to Michael Harman for \$1,000 plus the fee to register the deed. Michael Harman will be combining this property with his existing property, which would be considered unbuildable should his home be destroyed over 75%. His property is 52 x 66 ft. The True Cash Value for the property listed in the Assessor's office is \$4,000, and our price is set at \$2,200 which is 55% of that amount. The City has owned the property since 2003 and there have been no

inquiries for potential construction. The Land Reutilization Committee is recommending approval of the sale at a lesser price due to the size of Michael Harman's current property.

FINANCIAL IMPACT: The sale of this lot will generate additional tax revenue for the City and will place the property back on the City's tax rolls thus relieving the City of continued maintenance costs.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the resolution and to authorize both the Mayor and the Clerk to sign said resolution and deed.

COMMITTEE RECOMMENDATION: The Land Reutilization Committee recommends approval of the sale with the condition that the property be combined with the owner's original parcel.

**J. Sale of Buildable Vacant Lot at 1130 1<sup>st</sup>.** PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: To approve the sale of a vacant buildable lot at 1130 1<sup>st</sup> Street to Charles Wolters, 8745 146<sup>th</sup> Avenue, West Olive, MI (owner of 1124 1<sup>st</sup> Street). The lot is 92 x 66 ft. and is being offered to Charles Wolters for \$1,000 plus the fee to register the deed. Charles Wolters will be combining this property with his existing property, which would be considered unbuildable should his home be destroyed over 75%. His property is 46 x 66 ft. The True Cash Value for the property listed in the Assessor's office is \$10,000, and our price is set at \$2,500 which is 25% of that amount. The City has owned the property since 2006 and there have been no inquiries for potential construction. The Land Reutilization Committee is recommending approval of the sale at a lesser price due to the size of Charles Wolters' current property.

FINANCIAL IMPACT: The sale of this lot will generate additional tax revenue for the City and will place the property back on the City's tax rolls thus relieving the City of continued maintenance costs.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the resolution and to authorize both the Mayor and the Clerk to sign said resolution and deed.

COMMITTEE RECOMMENDATION: The Land Reutilization Committee recommends approval of the sale with the condition that the property be combined with the owner's original parcel.

**K. West Michigan Metropolitan Transportation Plan (WestPlan) Dues, October 1, 2009 – September 30, 2010.** CITY MANAGER

SUMMARY OF REQUEST: To approve the City of Muskegon's portion of the WestPlan dues, payable to West Michigan Shoreline Regional Development Commission. This agency determines projects and distributes federal

transportation funds.

FINANCIAL IMPACT: \$16,040.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve this request.

**L. Emergency Purchase – Sewer Lift Station Pump Replacement.** PUBLIC WORKS

SUMMARY OF REQUEST: Approval to purchase a new pump from Kennedy Industries for the Beach Street Lift Station at the quoted price of \$11,597.

FINANCIAL IMPACT: Expenditures for the purchase would come from the Sewer Fund.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To purchase the pump from Kennedy Industries.

**M. Purchase of Microfilm Scanner.** PUBLIC SAFETY

SUMMARY OF REQUEST: The Director of Public Safety is requesting Commission approval to purchase a microfilm scanner for the Police Department. Thousands of records are currently stored on microfilm. The microfilm is beginning to deteriorate. This scanner will allow us to transfer these documents onto a computer hard drive and thus ensure more reliable long-term storage.

Bids were solicited and we received the following:

Hasselbring/Clark, Lansing	\$9,800.00
Michigan Office Solutions, Grand Rapids	\$8,462.00

Based upon the bids received, staff is recommending Michigan Office Solutions.

FINANCIAL IMPACT: Funding for this scanner is part of Byrne/Justice Assistance Grant which was approved by the Department of Justice earlier this year. No general fund monies will be expended.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the purchase.

**O. Appraisal Services.** FINANCE

SUMMARY OF REQUEST: In an effort to avoid a lengthy and costly property tax appeal, the new owner/developer of the Shoreline Inn properties has approached the City with the concept of mutually selecting an independent appraiser to set the value for the property. The property owner and City would share appraisal costs and agree to the independently determined value. Staff believes this is a cost-effective approach and will save attorney fees, interest charges, and other costs associated with a lengthy appeal. Moreover, if a traditional appeal were pursued, the City would still have to hire an appraiser due to the complexity of the properties (i.e. hotel, marina, restaurant).

FINANCIAL IMPACT: City's share is not to exceed \$12,500. Costs will be paid from the DDA fund since taxes on this property are collected as DDA tax increments.

BUDGET ACTION REQUIRED: None at this time.

STAFF RECOMMENDATION: Approval.

**Motion by Commissioner Carter, second by Commissioner Spataro to approve the Consent Agenda as read minus items N, P, and Q.**

**ROLL VOTE: Ayes: Warmington, Wierengo, Carter, Gawron, Shepherd, and Spataro**

**Nays: None**

***MOTION PASSES***

**2009-84 ITEMS REMOVED FROM THE CONSENT AGENDA:**

**N. Hackley Park Former Fence Usage. PLANNING & ECONOMIC DEVELOPMENT**

SUMMARY OF REQUEST: The McLaughlin Neighborhood Association would like approval to use the former wrought iron fence around the Hackley Park statue. The fence is in the process of being replaced and has already been taken down and put in storage. The fence would be installed at the McLaughlin Pocket Park along Isabella Street and Terrace Street.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval to use the fence at the McLaughlin Pocket Park.

**Motion by Commissioner Spataro, second by Vice Mayor Gawron to approve the request to donate the fence to the McLaughlin Pocket Park.**

**ROLL VOTE: Ayes: Wierengo, Carter, Gawron, Shepherd, Spataro, and Warmington**

**Nays: None**

***MOTION PASSES***

**P. Special Event Liquor License Request – The Pelto Initiative. LEISURE SERVICES**

SUMMARY OF REQUEST: The Pelto Initiative, 1937 Lakeshore Drive is requesting a temporary liquor license to serve spirits on October 31, 2009, during their Scarefest 2009 film festival with movie premiere event (Muskegon Athletic Club, LLC holds the first license for October 30 thru October 31, 2009).

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

COMMITTEE RECOMMENDATION: The Leisure Services Board approved this event at their September 21<sup>st</sup> meeting.

**Motion by Commissioner Spataro, second by Vice Mayor Gawron to approve the special event liquor license request for The Pelto Initiative at the Harbour Theater.**

**ROLL VOTE: Ayes: Carter, Gawron, Shepherd, Spataro, and Wierengo**

**Nays: Warmington**

***MOTION PASSES***

**Q. Accept Resignation and Make Appointment to Various Boards and Committees. CITY CLERK**

SUMMARY OF REQUEST: To accept the resignation of Jason Bolton from the Local Development Finance Authority and appoint Tiffany Seals to the Historic District Commission.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the resignation and the appointment.

COMMITTEE RECOMMENDATION: The Community Relations Committee approved this request at their October 12<sup>th</sup> meeting.

**Motion by Commissioner Spataro, second by Vice Mayor Gawron to accept the resignation of Jason Bolton from the Local Development Finance Authority and appoint Tiffany Seals to the Historic District Commission.**

**ROLL VOTE: Ayes: Carter, Gawron, Shepherd, Spataro, Warmington, and Wierengo**

**Nays: None**

***MOTION PASSES***

**2009-85 PUBLIC HEARINGS:**

**A. Public Hearing to Review 2008-2009 Consolidated Annual performance Evaluation Report (CAPER). COMMUNITY & NEIGHBORHOOD SERVICES**

SUMMARY OF REQUEST: To conduct a public hearing on October 13, 2009, to review accomplishments and receive comments from the public concerning the 2008-2009 Consolidated Annual Performance Evaluation Report (CAPER) developed by the Community and Neighborhood Services department.

After the public hearing has been conducted and all the comments have been documented; the Community and Neighborhood Services office requests that the Commission direct the staff to submit the required documents to the U. S.

Department of Housing and Urban Development (HUD) in compliance with 24 CFR 91.520, by no sooner than October 29, 2009.

FINANCIAL IMPACT: The City is required to submit the CAPER report in order to continue receiving Community Development Block Grant and HOME funding.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To direct staff to gather comments from the public and to submit the CAPER to HUD after the public comment period has elapsed.

COMMITTEE RECOMMENDATION: The document was reviewed by the Citizen District Council.

The Public Hearing was opened to hear and consider any comments from the public. No comments were made.

**Motion by Commissioner Carter, second by Commissioner Wierengo to close the Public Hearing and approve the Consolidated Annual Performance Evaluation Report.**

**ROLL VOTE: Ayes: Gawron, Shepherd, Spataro, Warmington, Wierengo, and Carter**

**Nays: None**

***MOTION PASSES***

**2009-86 NEW BUSINESS:**

**A. Consideration of Bids for B-238 Smith Ryerson Park Improvements.**  
ENGINEERING

SUMMARY OF REQUEST: Authorize staff to negotiate with Lakewood Construction out of Holland, Michigan on the Smith Ryerson Park Improvements project.

FINANCIAL IMPACT: None at this time.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Authorize staff to negotiate with Lakewood Construction.

**Motion by Commissioner Spataro, second by Commissioner Wierengo to reject all bids because of computational errors and the fact that it was over bid.**

**ROLL VOTE: Ayes: Shepherd, Spataro, Warmington, Wierengo, Carter, and Gawron**

**Nays: None**

***MOTION PASSES***

**Motion by Commissioner Spataro, second by Commissioner Shepherd to rebid**

**the Smith Ryerson Park Improvement project with certain items removed and other items listed as alternative bids.**

**ROLL VOTE: Ayes: Spataro, Warmington, Wierengo, Carter, Gawron, and Shepherd**

**Nays: None**

***MOTION PASSES***

**B. Sewer Rate Adjustment. FINANCE**

SUMMARY OF REQUEST: The City last adjusted sewer rates on January 1, 2009 (a 12% increase). Since then, Sappi Paper has announced it is permanently closing the Muskegon mill operation and the state has announced closing of the Muskegon Correctional facility. In response, Muskegon County has announced it will raise wholesale sewer rates to municipal customers (including the City), by an initial 15%. It is certain that another substantial wholesale rate increase will follow within the next year. City staff is recommending a 25% retail rate increase to be effective 1/1/10.

The proposed retail increase is greater than 15% for two reasons: 1) the cash position of the sewer fund is very poor and needs to be addressed quickly and, 2) within the year, we anticipate a second County rate increase that will be equal to or larger than the announced 15%. We are hopeful that increasing retail rates more substantially now will mitigate the level of increase needed later.

We continue to work with the County on metering issues. Some progress has been made as shown on the accompanying chart. Monthly flows have decreased with use of the new "C" station meter as the basis for computing City flows. Also, the new County leadership appears to recognize the importance of fully metering City flows.

However, even as monthly flows have fallen, the City's share of the total system has grown dramatically with the downsizing and eventual closing of Sappi. The 40-year intergovernmental sewage treatment agreement expires in 2010. There are many issues impacting the City that will need to be worked out in a new agreement.

FINANCIAL IMPACT: The proposed sewer rate adjustment will generate \$1,225,000 additional annual revenue for the City's sewer fund. The financial impact for a typical City residential user (15,000 gal/month) will be \$118.20 annually (\$9.85 monthly). The City will start monthly utility billing in the next few weeks which will help residents budget for these costs and avoid the buildup of extraordinarily large bills.

BUDGET ACTION REQUIRED: None at this time. If the rate increase is approved, it

will be incorporated into the quarterly budget reforecast together with the higher anticipated County treatment costs.

STAFF RECOMMENDATION: Adoption of the fee adjustment resolution.

**Motion by Vice Mayor Gawron, second by Commissioner Shepherd to adopt the fee adjustment resolution for the sewer rates.**

**ROLL VOTE: Ayes: Warmington, Wierengo, Carter, Gawron, Shepherd, and Spataro**

**Nays: None**

***MOTION PASSES***

**C. Concurrence with the Housing Board of Appeals Notice and Order to Demolish the Following: PUBLIC SAFETY**

**60 E. Walton Avenue**

**1409 Nolan Avenue**

**1478 Hoyt Street (Area 13)**

**1968 Howden Street**

**1969 Wood Street – Removed per staff request**

SUMMARY OF REQUEST: This is to request that the City Commission concur with the findings of the Housing Board of Appeals that the structures are unsafe, substandard, a public nuisance and that they be demolished within 30 days. It is further requested that administration be directed to obtain bids for the demolition of the structures and that the Mayor and City Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder.

FINANCIAL IMPACT: CDBG Funds.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To concur with the Housing Board of Appeals decision to demolish.

**Motion by Commissioner Spataro, second by Commissioner Shepherd to concur with the Housing Board of Appeals notice and order to demolish 60 E. Walton, 1478 Hoyt, and 1968 Howden.**

**ROLL VOTE: Ayes: Wierengo, Carter, Gawron, Shepherd, Spataro, and Warmington**

**Nays: None**

***MOTION PASSES***

**Motion by Commissioner Spataro, second by Vice Mayor Gawron to concur with**

the Housing Board of Appeals notice and order to demolish 1409 Nolan.

**ROLL VOTE:** Ayes: Carter, Gawron, Shepherd, Spataro, Warmington, and Wierengo

Nays: None

***MOTION PASSES***

**ANY OTHER BUSINESS:** Mayor Warmington introduced State Representative Jeff Hansen. Commissioner Shepherd shared plaques that were presented to the Michigan Black Caucus – Local Elected Officials.

**PUBLIC PARTICIPATION:** Various comments were heard.

**ADJOURNMENT:** The City Commission Meeting adjourned at 6:30 p.m.

Respectfully submitted,

Ann Marie Becker, MMC  
City Clerk