



CITY COUNCIL

January 4, 2016

A regular meeting of the City of Petoskey City Council was held in the City Hall City Council Chambers, Petoskey, Michigan, on Monday, January 4, 2016. This meeting was called to order at 7:00 P.M.; then, after a recitation of the Pledge of Allegiance to the Flag of the United States of America, as part of the City Council's annual organizational meeting, the City Clerk-Treasurer administered oaths of office to Mayor-elect William J. Fraser, and City Councilmembers-elect Kate Marshall and Grant Dittmar, following their elections to the City Council at the General Election of November 3, 2015. A roll call then determined that the following were

Present: William Fraser, Mayor
Kate Marshall, City Councilmember
John Murphy, City Councilmember
Grant Dittmar, City Councilmember
Jeremy Wills, City Councilmember

Absent: None

Also in attendance were City Manager Robert Straebel, Clerk-Treasurer Alan Terry, City Planner Amy Tweeten, Director of Public Safety John Calabrese and City Attorney James Murray.

Resolution No. 18927
Approve Consent Agenda Items

Following introduction of the consent agenda for this meeting of January 4, 2016, City Councilmember Murphy moved that, seconded by City Councilmember Dittmar adoption of the following resolution:

BE IT RESOLVED that the City Council does and hereby confirms that the draft minutes of the December 21, 2015 regular-session City Council meeting be and are hereby approved; and

BE IT RESOLVED that receipt by the City Council of a report concerning all checks that had been issued since December 7 for contract and vendor claims at \$701,076, intergovernmental claims at \$43,983.88, and the December 31 payroll at \$182,082.87, for a total of \$927,142.75 be and is hereby acknowledged.

Said resolution was adopted by the following vote:

AYES: Marshall, Murphy, Dittmar, Wills, Fraser (5)
NAYS: None (0)

Resolution No. 18928
Elect Mayor Protempore

Mayor Fraser next reported that, as required by City Charter provisions, the City Council was being asked to elect from its members a Mayor Protempore who would serve in the absence or incapacity of the Mayor, and then requested nominations for this position. Mayor Fraser then nominated, supported by City Councilmember Marshall, that City Councilmember Wills be appointed as Mayor Protempore and that the following resolution be adopted:

BE IT RESOLVED that the City Council does and hereby approves the appointment of City Councilmember Jeremy Wills as Mayor Protempore to the City Council for 2016.

Said resolution was adopted by the following vote:

AYES: Marshall, Murphy, Dittmar, Wills, Fraser (5)

NAYS: None (0)

Hear Public Comment

Mayor Fraser asked for public comments and there were no comments.

Hear City Manager Updates

The City Manager reported that the tunnel stairs will be unplowed, but the ramps cleared near Bayfront Park this winter; that the Winter Sports Park is open and staff is working on getting the ice rinks ready for use; that the run water order for certain customers has been delayed due to the warm weather; and that the City had very few outages and DPW staff did a nice job cleaning up trees and limbs after the storms over the holidays.

Resolution No. 18929 – Approve Ballot Proposal Requesting Millage for Long-Term DPS Fire Equipment

The City Manager reviewed that at the December 7, 2015 City Council meeting, Council further discussed a possible mill levy to pay for aging fire-fighting equipment. The City Manager reviewed that there is little research, but that anecdotal information from a handful of City Managers recommend that a lesser millage levy for no longer than five years has the most chance of being approved by voters. This approach minimizes the financial impacts to taxpayers while “sun setting” the tax increase for a finite amount of time, not to exceed five years.

In the short term, the City’s Public Safety Department is in need of two large capital equipment purchases: 1) 100’ Ladder Truck and 2) Pumper Truck. Costs of these two pieces of equipment are estimated at \$1.45M-\$1.65M. The City Manager reviewed the table of millage rates for funding, that long-term items should be funded through the Motorpool Fund and recommended 0.75 mills at five years which would generate an estimated \$1,687,000 in tax revenues.

City Councilmembers discussed possible millage rates and how the purchase of equipment would occur, along with the funding of other long term capital improvements for the Department of Public Safety and affects to other purchases if funded through the Motorpool Fund.

Mayor Fraser asked for public comments and heard a concern of the uncertainty on long-term capital funding options.

City Councilmember Wills then moved that, seconded by City Councilmember Marshall to direct City staff to prepare language for a ballot proposal requesting a 0.75 millage rate for 5 years, with said language to be placed on an election ballot in 2016.

Said motion was adopted by the following vote:

AYES: Marshall, Murphy, Dittmar, Wills, Fraser (5)

NAYS: None (0)

Discuss Potential Bay View Annexation to the City

The City Manager reviewed that on December 15, 2015 the City received a letter from Bay View President, Jon Chism, regarding the feasibility of annexing Bay View into the City of Petoskey. The letter requested the City partner with Bay View on hiring a consultant to study the feasibility of a future annexation. The City also received a memo dated September 4, 2015 from a Bay View attorney that described in general terms the process of annexation.

The City Manager reviewed that if City Council was interested in further discussing the potential annexation that the proposal be sent to the Planning Commission for their initial input. The City Manager further reviewed the lengthy process and that there were no commitments at this point.

Bay View Association Executive Director, Mike Spencer, gave a brief presentation on the possible annexation.

City Councilmembers discussed whether all Bay View members and Bear Creek Township officials had been notified; concerns with the City's good relationship with both Bay View Association and Bear Creek Township; the status of the tax appeal and when it may be finalized; concerns over annexation discussion with appeal still outstanding; hiring of joint or separate consultant; and potential negative impact of City acquiring a portion of property from the Township. The Mayor noted that Bay View Association approached the City on this potential annexation.

The Mayor asked for public comments and heard from those opposed to waiting to make decision until lawsuit is complete; if the only advantage is increasing the City's tax base and if study could be performed in-house; concerns over relationship with Bear Creek Township; and an inquiry if the City will have to increase services and costs.

City Councilmembers concurred to further discuss potential annexation after the Association's appeal of the Michigan Tax Tribunal case is completed.

Resolution No. 18930 - Approve
Public Participation Plan

The City Planner reviewed that as part of the Redevelopment Ready Communities Program into which City Council agreed to enter, there was a requirement for a plan detailing how a community actively engages its citizens in the decision-making process. The City Planner reviewed that there is always room for improvement and the plan details both passive and active outreach methods and when each type is appropriate; and that to emphasize the expectation that there is meaningful effort made at involving the public, City staff recommended the plan be adopted by the Planning Commission and City Council. The Planning Commission approved the plan at its November 12, 2015 meeting.

City Councilmembers discussed the plan and how participants in the process are determined to be City residents/property owners and if that could be tracked; that the plan codifies what the City is already doing to meet the requirement of this process; and discussed amending the language on page 12 within the "Downtown Strategic Plan" of the document to include additional language at end of sentence "Downtown Management Board and Downtown Development Authority...subject to public policy as determined by City Council."

City Councilmember Dittmar moved that, seconded by City Councilmember Marshall to adopt the language amendment to plan to read "The Downtown Management Board and Downtown Development Authority are the public bodies that represent downtown businesses, property owners and residents, subject to public policy as determined by City Council."

Said motion was adopted by the following vote:

AYES: Marshall, Murphy, Dittmar, Wills, Fraser (5)
NAYS: None (0)

City Councilmember Marshall then moved that, seconded by City Councilmember Murphy adoption of the following resolution:

WHEREAS, the City of Petoskey understands and values public involvement in the decision-making process; and

WHEREAS, the City is dedicated to maximizing opportunities for its residents and customers to provide input on policies, programs, and projects in order to reach the best decisions for the people of Petoskey; and

WHEREAS, the Petoskey Planning Commission has approved a plan to enhance and expand public participation processes:

NOW, THEREFORE BE IT RESOLVED, the Petoskey City Council hereby adopts the City of Petoskey Public Participation Plan.

Said resolution was adopted by the following vote:

AYES: Marshall, Murphy, Dittmar, Wills, Fraser (5)
NAYS: None (0)

Resolution No. 18931
Approve Non-motorized Facilities Plan

The City Planner reviewed that one of the strategies added to the 2014 Master Plan was to update the 2010 Sidewalk Plan to a non-motorized facilities plan to better address the needs of bicyclists as well as pedestrians.

The sidewalk plan had goals, objectives and strategies to focus attention on sidewalk construction, but did not discuss the miles of multi-use trails that the City has constructed and maintains, nor the use of public rights-of-way by bicycles. Therefore, to better implement the master plan goal of creating a multi-modal transportation system, these facilities were added. As noted in the plan, the City has been doing an excellent job of sidewalk and trail construction. In addition, working with MDOT, the City was able to leverage the focus on a multi-modal system to get sidewalks on the south side of Charlevoix Avenue and improved pedestrian crossings on West Mitchell Street.

To create a non-motorized transportation network, there is a need for on-street bike facilities such as marked routes, bike lanes or other pavement markings to reinforce the need for road rights-of-ways to be accessible for all users ("complete streets"). Of particular importance to the Planning Commission are areas that visitors frequent, such as the Little Traverse Wheelway (LTW) connection on West Lake Street and connections from the LTW or Downtown Greenway Corridor to downtown.

The Planning Commission adopted the Non-Motorized Facilities Plan at its November 19, 2015 meeting. The Plan recommends changes to road rights-of-way that would enhance use by bicyclists while restricting on-street parking in some areas. As this is a new direction for the City that would require pavement markings, signage, and enforcement the Commission believed the Plan should be reviewed and adopted by City Council as well.

Mayor Fraser asked for public comments and heard a comment concerning bicyclists that ignore stop signs on side streets and the safety hazards this creates.

City Councilmember Marshall moved that, seconded by City Councilmember Murphy adoption of the following resolution:

WHEREAS, the City of Petoskey values the importance of a multi-modal transportation system; and

WHEREAS, the City is dedicated to maximizing opportunities for its residents and visitors to use public sidewalks, multi-use trails, and public streets for transportation as well as recreation; and

WHEREAS, the Petoskey Planning Commission has adopted a Non-Motorized Facilities Plan to further the City's efforts to create an inter-connected non-motorized facilities system:

NOW, THEREFORE BE IT RESOLVED, the Petoskey City Council hereby adopts the City of Petoskey Non-Motorized Facilities Plan.

Said resolution was adopted by the following vote:

AYES: Marshall, Murphy, Dittmar, Wills, Fraser (5)
NAYS: None (0)

Resolution No. 18932 - Support
Passenger Railway Feasibility Study

The City Manager reviewed that the Groundwork Center for Resilient Communities (formerly the Michigan Land Use Institute) is working to obtain a grant for a feasibility study of passenger rail between Ann Arbor and Northern

Michigan. During recent workshops on the Downtown Greenway Corridor, the consensus was that because of the historic importance of the rail to downtown and Petoskey in general as a resort and tourist destination, the City should leave the rails in place for the potential of increased passenger rail in the future. The feasibility study, if funded, would only be the first step in increased rail use.

The Groundwork Center for Resilient Communities is looking for letters and resolutions of support from communities along the proposed route. The Downtown Management Board agreed to submit a letter as well as contribute \$2,000 from the Parking Fund as a local match should the grant be awarded.

City Councilmember Wills moved that, seconded by City Councilmember Murphy adoption of the following resolution:

WHEREAS, the City of Petoskey's economic history was closely integrated with passenger rail service; and

WHEREAS, the City of Petoskey acquired railroad property from the Michigan Department of Transportation for the Downtown Greenway Corridor; and

WHEREAS, recent discussions on the future development of the Downtown Greenway Corridor emphasized the interest in keeping the rail infrastructure in place for the possibility of future rail service to Petoskey; and

WHEREAS, the Groundwork Center for Resilient Communities is working with the Bay Area Transportation Authority, the Michigan Department of Transportation, and communities along the rail corridor on a grant application for a preliminary feasibility analysis on establishing passenger rail between Ann Arbor and Northern Michigan; and

WHEREAS, the Downtown Management Board has approved a letter of support for the grant application as well as committed \$2,000 from the Parking Fund toward a local match should the grant be awarded; and

NOW, THEREFORE, BE IT RESOLVED, that the Petoskey City Council supports the rail feasibility grant application:

BE IT FURTHER RESOLVED THAT, the City of Petoskey permits its name to be used on the project website as a supporter.

Said resolution was adopted by the following vote:

AYES: Marshall, Murphy, Dittmar, Wills, Fraser (5)

NAYS: None (0)

Resolution No. 18933 – Approve
Submission of a Grant Application for
Safe Routes to School Program

The City Manager reviewed that Michigan's Safe Routes to School program is managed by the Michigan Department of Transportation (MDOT), with training, logistical, administrative and technical support from the Michigan Fitness Foundation. The purposes of Safe

Routes to School programs are to enable and encourage children in grades K-8, including those with disabilities, to walk and bicycle to school; to make bicycling and walking to school a safer and more appealing transportation choice, thereby encouraging a healthy and active lifestyle from an early age; and to facilitate the planning, development, and implementation of projects and activities that will improve safety and reduce traffic, fuel consumption, and air pollution in the vicinity of elementary schools.

The Health Department of Northwest Michigan received a grant to initiate a Safe Routes to Schools grant with the Petoskey Middle School in early 2015, which was then expanded to also include Ottawa Elementary and Petoskey Montessori. As a local unit has to be the actual grant applicant, Susan Pulaski, from the Health Department, created a working group ("Safe Routes to Schools Team") that included representatives from the Petoskey Public Schools, Bear Creek Township, Emmet County Road Commission and Emmet County Planning and Zoning to develop priorities for a grant application. The Committee came up with three priorities for a 2017 funding request: the top priority street for sidewalks was East Mitchell, from the City limits to Hill Street and then continuing onto Hill Street to intersect the new sidewalk on Northmen Drive; second priority was Atkins Road from the intersection with the new McDougal extension to the City limits; third, Klondike, Krusel, and Jennings. As the Klondike and Krusel sections are already programmed for funding, the remaining sidewalk in the City is the north side of Jennings Avenue from Klondike to Kalamazoo.

The Safe Routes to Schools Program is a funding mechanism to assist the City in its primary sidewalk construction goal of sidewalks within a quarter mile of schools, particularly in the Township that does not have a dedicated sidewalk funding source. As the grant, if awarded, would be expended mostly in the Township, the Emmet County Road Commission has agreed to oversee the project construction. The City Manager reviewed that as a party that would benefit from the funding, a Council resolution was required. The Safe Routes to Schools program has a 20% local match, which may be funded by the Michigan Department of Transportation, but if not, the City could be responsible for the Jennings Avenue section match, estimated to be \$3,000.

City Councilmembers discussed the primary focus of plan to construct sidewalks.

City Councilmember Wills moved that, seconded by City Councilmember Marshall adoption of the following resolution:

WHEREAS, the Safe Routes to School program is a federally funded program administered in Michigan by the Michigan Department of Transportation (MDOT); and

WHEREAS, the City of Petoskey, in partnership with the Petoskey Public Schools and Bear Creek Township, is applying for funding from the Safe Routes to School program to construct sidewalks in 2017 in Bear Creek Township on East Mitchell Street from the Petoskey City Limit to Hill Street; Hill Street to its intersection with Northmen Drive; Atkins Road from McDougal Road to the Petoskey City Limit, and within the City of Petoskey on Jennings Avenue from Klondike Avenue to Kalamazoo Avenue to enable and encourage children to safely walk and bike to school; and

WHEREAS, MDOT requires a formal commitment from the public agency that will be receiving these funds and will be implementing and maintaining these infrastructure projects:

NOW, THEREFORE, BE IT RESOLVED THAT, the City has authorized the City Manager to act as agent on behalf of the City to request Safe Routes to School funding, to act as the applicant's agent during the project development, and to sign a project agreement upon receipt of a funding award for Jennings Avenue from Klondike Avenue to Kalamazoo Avenue; and

BE IT FURTHER RESOLVED THAT, the City attests to the existence of, and commits to, the funds necessary to carry out the project, including engineering for design and construction, permit fees, administration costs, and cost overruns; and

BE IT FURTHER RESOLVED THAT, the City commits to owning, operating, funding and implementing a maintenance program over the design life of the facilities constructed with Safe Routes to School funding.

Said resolution was adopted by the following vote:

AYES: Marshall, Murphy, Dittmar, Wills, Fraser (5)

NAYS: None (0)

Resolution No. 18934 – Authorize
City Manager to Execute Documents
for State & Tribal Litigation

The City Attorney reviewed the litigation and proposed participation by the City in the litigation as part of a coalition made up of other governmental entities and jointly funded. In late August, the Little Traverse Bay Bands of Odawa Indians (the “Tribe”) filed a Complaint for Declaratory Injunctive Relief against the Governor of the State of Michigan. The case was filed in the United States District Court, Western District, Southern Division under Court file No. 15-850 (the “Litigation”). The Governor’s office, through the Attorney General, filed an Answer to Complaint and Affirmative Defenses in mid-September. The District Court entered an Order on November 9, 2015 wherein the Court ordered that it would consider motions to intervene in the Litigation from any unit of local government if filed with the Court on or before January 29, 2016.

At the invitation of the Tribe, the Mayor, City Manager and City Attorney met with representatives of the Tribe on November 12, 2015 to discuss the Litigation. The Tribe also scheduled a reception for all units of local government on November 19, 2015.

The Petoskey City Attorney was also contacted by the Michigan Attorney General’s office with a request to meet on December 3, 2015 with the attorneys and a representative of Emmet County, Charlevoix County, City of Harbor Springs, City of Charlevoix and all affected Townships. During this meeting the Governor’s Tribal Liaison and Associate Legal Counsel, along with three members of the Attorney General’s office gave a presentation regarding the Litigation and its potential impact on the City of Petoskey and all other communities. The Attorney General also provided a map showing the area claimed to be Indian country.

In short, the Tribe is seeking a judgment declaring that an Indian reservation created by the 1855 Treaty of Detroit still exists today. In doing so, the Tribe makes claims that the reservation, as defined in the Complaint, encompasses 32 miles North to South from the Northern tip of Michigan’s lower peninsula along the eastern shore of Little Traverse Bay, including the City of Petoskey. The State, through the Attorney General, has disputed the allegations of the Tribe and opposes the Tribe’s request for a declaratory judgment.

According to the Attorney General and Governor’s office, significant potential impact would occur if the Tribe prevails and the District Court declares the boundary depicted on the map to be Indian country under federal law. These areas of concern involve the following taxes, zoning, environmental and construction permits, licensing, child welfare, criminal jurisdiction, traffic and roads, hunting, fishing, gathering and cemeteries and cultural resources.

Attorneys for the local units of government recently met and drafted a proposed Joint Defense and Common Interest Agreement (“Joint Defense Agreement”). Pursuant to the Joint Defense Agreement, the entities wishing to join would agree to retain the City of Petoskey’s law firm, Plunkett Cooney, to represent them in the “Litigation.” The parties wishing to join in the Motion for Intervention would engage the City’s law firm pursuant to the Fee Sharing Agreement attached to the Joint Defense Agreement. The terms and conditions of the Joint Defense Agreement and Fee Sharing Agreement, along with an engagement letter with Plunkett Cooney, are currently under negotiation between the various Counties, Cities and Townships. The City Attorney reviewed that currently Emmet County, Charlevoix County and Harbor Springs have shown interest in sharing the expenses for the litigation.

The City Attorney and City staff recommended that the City Council resolve to file a Motion for Intervention in the Litigation. The Motion for Intervention would be on the basis that:

1. The City of Petoskey has a substantial legal interest in the case;
2. The City of Petoskey’s interest would be impaired in the absence of intervention;

3. There is inadequate representation of the interests of the City of Petoskey and/or
4. Neither the Tribe nor the Governor would suffer undue prejudice from the intervention by the City since the City of Petoskey shares many of the same interests as the State of Michigan.

City Councilmember Wills then moved that, seconded by City Councilmember Marshall adoption of the following resolution:

WHEREAS, the City Council for the City of Petoskey finds:

- 1) The City of Petoskey has a substantial legal interest in the case of: *Little Traverse Bay Bands of Odawa Indians v Rick Snyder, Governor, United States District Court File No. 15-850* (the "Litigation");
- 2) The City of Petoskey's interest would be impaired in the absence of intervention in the Litigation;
- 3) There is inadequate representation of the interests of the City of Petoskey in the Litigation; and/or
- 4) Neither the Tribe nor the Governor would suffer undue prejudice from the intervention in the Litigation by the City since the City of Petoskey shares many of the same interests as the State of Michigan.

NOW THEREFORE, BE IT RESOLVED that the City Manager for the City of Petoskey is hereby authorized to retain the City's attorneys, Plunkett Cooney, in order to file a Motion for Intervention in the Litigation; and

BE IT FURTHER RESOLVED that the City Manager is authorized to negotiate and execute a Joint Defense and Common Interest Agreement by and between the City and other units of local government affected by the Litigation; and

BE IT FURTHER RESOLVED that the City Manager is authorized to negotiate and execute a Fee Sharing Agreement and engagement letter with Plunkett Cooney:

BE IT FURTHER RESOLVED that the City's attorneys, Plunkett Cooney, are authorized to protect the City's interest in the Litigation, as well as other affected local units of government pursuant to the Joint Defense Agreement, engagement letter and Fee Sharing Agreement as approved by the City Manager.

Said resolution was adopted by the following vote:

AYES: Marshall, Murphy, Dittmar, Wills, Fraser (5)

NAYS: None (0)

Hear Council Comments

Mayor Fraser asked for Council comments and City Councilmember Wills asked if a pedestrian crosswalk sign could be placed on the highway at the intersections of Charlevoix Avenue and Sheridan Street.

There being no further business to come before the City Council, this January 4, 2016, meeting of the City Council adjourned at 9:00 P.M.

W.J. Fraser, Mayor

Alan Terry, City Clerk-Treasurer