

April 12, 2010

Regular meeting of the Ludington City Council held in the Council Chambers of the Municipal Building on Monday, April 12, 2010, at 6:30 o'clock p.m.

Present: His Honor Mayor John Henderson, and Councilors Kaye Holman, Paul Peterson, Wally Taranko, Brent Scott, Wanda Marrison, Pete Engblade, and Gary Castonia.

Absent: None.

Also present were City Manager John Shay, City Attorney Richard Wilson, Police Chief Mark Barnett, Fire Chief Jerry Funk, Interim City Treasurer Linda Rogers, and City Clerk Deborah Luskin.

Invocation was pronounced by Councilor Engblade.

Pledge to the Flag was given.

His Honor Mayor Henderson asked that Item 3 under Building and Licenses Committee be deleted from the agenda and moved to the next meeting. Moved by Councilor Castonia, seconded by Councilor Engblade, that the Agenda be approved as corrected. Motion Carried.

The meeting was opened for public comments.

Bruce Fletcher, 306 S. Ferry, Unit 13, questioned whether the marina changes for the transient dock were on target for completion. His Honor Mayor Henderson confirmed that the completion date would be May 25. City Manager Shay also noted that the sidewalk would be repaired and the contractor will try to save as many of the trees as possible. Mr. Fletcher asked for an update on the old Coast Guard Station. City Manager Shay stated that he has spoken with the General Services Administration on the status of this project. Last year the Coast Guard had to clean up contamination from lead based paint which was the paint that had come off of the building and fell to the ground and last summer they had removed the contamination. The Coast Guard then had to send a report to federal agencies and the General Services Administration indicated that they are just about complete with the disseminating of the report. Once this is complete, the City will receive title to this building. There is a concession agreement between the City of Ludington and the Mason County Historical Society whereby the Historical Society will operate the Coast Guard station as a maritime museum and would be responsible for the operating and maintenance costs of the building.

After no further comments were received, the regular order of business was resumed.

Moved by Councilor Peterson, seconded by Councilor Holman, to approve the minutes of the regular meeting 03/15/10. Motion Carried.

Moved by Councilor Holman, seconded by Councilor Scott, to approve the request received from the Ludington Area Jaycees to hold the Freedom Festival events as requested, which include the Children & Pet Parade on July 3<sup>rd</sup>, and the Grand Parade and the Fireworks on July 4<sup>th</sup>. City Attorney Richard Wilson asked that the Ludington Jaycees include the City of Ludington on the insurance certificate as an insured. Jaycees Member Lexi Alvesteffer was available to answer questions. Motion Carried.

Moved by Councilor Castonia, seconded by Councilor Taranko, that the request by the Downtown Ludington Board to hold the Farmers Market (5/7-10/1/2010), Sail into Summer SS Badger Maiden Voyage Celebration (5/28), Friday Night Live Events (7/16, 7/23, 7/30, 8/6), Sidewalk Sale Days (8/6-8/8), Oktoberfest (10/2), Downtown Trick-or-Treat (10/30), and the 2<sup>nd</sup> Annual Light Up the Lake New Year's Eve Celebration (12/31/10). Councilor Holman questioned whether everything was the same as in year's past and Community Development Director Heather Venzke confirmed that everything was the same. Motion Carried.

Moved by Councilor Scott, seconded by Councilor Marrison, that the Sable Dunes Audubon Society hold its 2<sup>nd</sup> Annual West Michigan Birding Festival on Friday May 14 to Sunday, May 16 at the Ludington Area Center for the Arts. and to place 3 signs giving directions to the bird festival be approved. The signs will be placed one on the northwest corner of Ludington Ave. and Row St., one on the northwest corner of Harrison and Ludington Ave. and the third in front of the Ludington Area Center for the Arts. Motion Carried.

Moved by Councilor Castonia, seconded by Councilor Holman, that the United Way Request to Change the Date for Suds on the Shore from August 28 to August 21 be approved. His Honor Mayor Henderson commended Curt VanderWall and Lynne Russell for a great job on this event. Motion Carried.

Moved by Councilor Holman, seconded by Councilor Peterson, that the Finance Report with total expenditures in the amount of \$954,555.08 for this period be approved and orders drawn according to the City Charter. Motion Carried.

Moved by Councilor Holman, seconded by Councilor Peterson, that the Agreement for Professional Assessor Services for the term April 1, 2010 – March 31, 2011, be approved. The assessor hours will change from 16 hours per week to 24 hours every two weeks. The City will pay the Assessor \$36,000 per year which is a reduction from \$4,000 per month in last year's contract to reflect the reduced office hours during the year. His Honor Mayor Henderson commented that this has been a good win win relationship with the City Assessor and he has been fulfilling all of the City's needs. Motion Carried.

Moved by Councilor Holman, seconded by Councilor Taranko, that the City Attorney Agreement between the City of Ludington and Gockerman, Wilson, Saylor & Hesslin be approved. The Finance Committee is recommending that the contracted monthly retainer be increased to \$4,000 per month. The hourly rates for special projects will be increased to \$185 per hour. Councilor Holman explained that the Finance Committee and the Council are very happy with the services provided by Gockerman, Wilson, Saylor & Hesslin. Motion Carried.

Moved by Councilor Holman, seconded by Councilor Peterson, to affirm the decision of the FOIA coordinator. City Attorney Richard Wilson referred to a memorandum prepared by City Manager John Shay outlying the background to this appeal and Mr. Wilson explained that under the Freedom of Information Act (FOIA) if a party is dissatisfied with the decision of the FOIA Coordinator to release documents or to charge a fee, the appeal lies to the governing body of the municipality for which the FOIA Coordinator works. The applicant is not appealing the decision to deny some of his request. The request is covered by the attorney client privilege. In order to segregate part of the materials which are exempt from attorney client privilege and those materials which are not exempt, the City Manager has estimated that it would take 3 hours for him as well as the City Attorney to pull out the information that can be provided to the party asking for the information. The City cannot charge the applicant the Attorney's time for this work, it will be the City's cost. The applicant has been asked to give the City ½ of the cost associated with pulling the necessary information together to provide for his FOIA request as an upfront fee. The fee is reasonable and justifiable and is a good faith estimate of the costs to comply with this request. The applicant did not like the decision to pay ½ of the upfront costs and so is asking that Council reverse the decision to charge ½ of the upfront costs before any work can be completed to comply with the FOIA request. Councilor Englade asked if you had to have a purpose to FOIA materials or if you could do it as a general idea. City Attorney Wilson explained that a person could FOIA materials as a general idea. It is illegal of the City to inquire into the purpose or intent of a FOIA request. Councilor Englade then asked if we could put the nonpublic information into a separate file from the public information and would this be a good idea. City Attorney Wilson explained that the better solution would be to segregate out the exempt material as soon as the case is over with. Councilor Englade then asked what would be the applicant's next step if City Council were to affirm the FOIA Coordinator's decision. City Attorney Wilson explained that the applicant would then be able to appeal the City's decision to the Circuit Court. Councilor Castonia asked what the charge was for. City Attorney Wilson explained that the charge would be to segregate out the exempt materials only and if there were copies needed the City would charge \$0.15 per page. Councilor Holman questioned if the City were any farther ahead to segregate out the materials after a case is finished or to spend the time when or if a request were to come in. Motion Carried.

#### PROPOSED NEW PARAGRAPH FOR MUNICIPAL SERVICES AGREEMENT

13. In the event of a foreclosure of any Michigan State Housing Development Authority ("Authority") mortgage loans held on the Development or transfer of ownership to the Authority by means of a deed-in-lieu of foreclosure, the City agrees that this Agreement shall be immediately terminated as all ownership interests belong to the Authority.

Moved by Councilor Holman, seconded by Councilor Peterson, that the foregoing proposed new paragraph for the Municipal Services Agreement with Longfellow Towers be approved. Motion Carried.

Moved by Councilor Castonia, seconded by Councilor Scott, to approve the Easement Agreement between the City and Dip Can Real Estate, LLC, Snyder Shoes, whereby the City will grant an easement for handicap ramp to permit easier access into the business for people with disabilities. This ramp will be constructed within the City's right-of-way in the North James Street plaza. Councilor Castonia stated that if the City decided to open the road back up then the easement would go away. City Attorney Wilson explained that the City cannot grant permanent private rights in a public street. Councilor Englade asked if we are setting a past practice by doing this and City Attorney Wilson explained that it would be the municipality's decision on a case by case basis. Councilor Scott asked the Community Development Director Heather Venzke if the planters were within the City's right-of-way and it was confirmed that they are and will be removed for this ramp. Motion Carried.

Councilor Castonia presented the Monthly Police Activity Report.

ORDINANCE NO. 210-10

AN ORDINANCE TO AMEND CHAPTER 50 OF THE LUDINGTON CITY CODE TO ESTABLISH PROECDURES FOR THE DIVISION OF PLATTED LOTS, AND TO REPEAL ALL ORDINANCES IN CONFLICT HEREWITH

THE CITY OF LUDINGTON ORDAINS:

Section 1. Chapter 50 of the Ludington City Code is hereby amended by the addition of a new Article VI. Division of Platted Lots which reads in its entirety as follows:

Article VI. Division of Platted Lots

Sec. 50-191. Lot Division:

No lot in a recorded subdivision, which encompasses lands located in City, shall be further partitioned or divided unless such partition is conducted in accordance with the provisions of this Article. As used in this Article, the term "partition" or "division" with respect to a platted lot means to divide or split the lot into two or more smaller parcels without an amendment to the plat. When an owner desires to partition a lot, that owner shall file an application with the Zoning Administrator. The application shall contain the following:

1. The exact legal description of the lot to be partitioned.
2. A description of all improvements located on said lot.
3. In the event that there are improvements of any nature, the owner shall submit with the application a survey of the lot. The survey shall be to scale and all improvements located thereon, including measurements between all improvements or between improvements and the boundary lines of the lot, as then constituted, shall also be shown. An accurate mortgage survey containing the required measurements is acceptable to comply with this section.
4. All proposed new boundary lines, which will be effective if the lot is partitioned.
5. A statement of the reasons for requesting approval to partition such lot.

Sec. 50-192. Planning Commission Review and Standards:

Upon receipt of a complete application, the Zoning Administrator shall forward the application to the Planning Commission, which shall proceed to review it. In conducting its review, the Planning Commission shall give consideration to the following:

1. The width, depth and area of each of the lots resulting from the proposed partition if the partition is approved, according to the following standard: Except as set forth in Sec. 50-195 below, no partition of a lot shall be approved, unless the lots which will result after the partitioning of the lot comply fully with the set-back, side yard, width, depth and area requirements of the Land Division Act (1967 PA 288, as amended) and the City Code.
2. The existence of adequate public sewer and water facilities for the two resulting lots, according to the following standard: If public sewer and/or public water are not available, then partition shall not be permitted unless the Mason County Health Department shall first approve all of the resulting parcels for the establishment of on-site waste water disposal and on-site water acquisition; if public sewer and water facilities are available, then each resulting lot following the division shall be provided with its own, separate, public sewer and water connections.
3. Whether each resulting lot abuts a public road or approved access.
4. Whether any resulting lot will violate the State Construction Code as adopted in the City as the result of the partition.
5. Any relevant factors of density, topography, or physical conditions with respect to the resulting lots which might affect the compatibility of the resulting lots, outlots or other parcels of land with surrounding lands.
6. Any factors which may have caused the governmental officials who approved the original subdivision to require that the original lot contain a greater than usual area, width or depth.
7. Any other relevant factors in keeping with the spirit and intent of the Land Division Act and the City Code.

Sec. 50-193. Planning Commission Action:

The Planning Commission shall submit a report containing its findings, conclusions and recommendations to the City Council addressing all the factors in Section 50-192, within forty (40) days following receipt of the completed application filed by the property owner. The completed application shall be deemed received by the Planning Commission on the date of its first regular meeting following the date the Zoning Administrator determines the application to be complete.

Sec. 50-194 City Council Action:

Within thirty (30) days of its receipt of the Planning Commission's report, the City Council shall either approve or disapprove the proposed partition of the lot, giving consideration to the recommendations of the Planning Commission. The City Council shall not approve a partition unless it makes a finding that all of the standards contained above have been resolved favorably.

Sec. 50-195. Recording:

If the City Council approves partition of the lot described in the application, then it shall cause a resolution of approval, with a statement of all conditions of approval, to be recorded with the Mason County Register of Deeds. The owner of the original lot shall be responsible for the cost of recording.

Sec. 50-196. Approval of Fractional Lots:

If a proposed partition fails to comply with the provisions contained in Sec. 50-192 above, the partition may nevertheless be permitted, if any resulting lot which does not meet the requirements of Sec. 50-192(1), is permanently attached to another platted lot under common ownership and if the resulting parcel complies with the requirements of Sec. 50-192(1) above. In the event that a partition of a lot is approved based upon this Section, then the resolution of approval adopted by the City Council shall set forth the lot(s) to which any parcel(s) not complying with Sec. 50-192(1) will be attached, and the City Council, as a condition to its granting approval to partition the lot, may require the owner(s) of the parcel(s) to which the fractional lot(s) is(are) being attached to execute a covenant that such owner(s) will, in the future, convey such fractional lot(s) only in association with the lot to which it is being attached.

Section 2. Validity: Should any section, clause or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the Ordinance as a whole or any part thereof, other than the part so declared to be invalid.

Section 3. Conflicting Provisions Repealed: Any ordinances or parts of ordinances or any sections of the Code in conflict with any of the provisions of this Ordinance are hereby repealed to the extent of the conflict.

Section 4. Effective Date: This ordinance shall take effect twenty (20) days following its introduction, adoption and publication in the manner required by law.

Moved by Councilor Enblade, seconded by Councilor Holman, that the foregoing Ordinance No. 210-10 be adopted. Councilor Enblade summarized the ordinance which would allow a lot to be split if it meets specific criteria, including that each lot complies with the Building Code and the Zoning Ordinance's setback and other size requirements for a lot, and assurances that each lot has its own water and sewer connections. The applicant would submit the application to the Zoning Administrator and then to the Planning Commission prior to being approved or disapproved by the City Council. His Honor Mayor Henderson stated that this ordinance is not specifically for the Elks' Lodge which has recently made a request to split their property, but that it is to update the City's Zoning Ordinance to allow lot splitting any where in the City. Councilor Holman explained that this ordinance did come before the Planning Commission and they also approved it.

Roll Call: Ayes: Councilors Marrison, Castonia, Scott, Peterson, Holman, Taranko, and Enblade.

Nays: None. Motion Carried.

The date of 4/26/10 was set to hear comments on the Obsolete Property Rehabilitation Application for KDMAC Ventures, LLC, 102 W. Ludington Ave. The applicant purchased the building and they are looking to renovate the 2<sup>nd</sup> floor and turn the property into 4 residential units. The tax break would be on the renovated properties.

City Manager Shay explained that there was some soil boring in front of Whitehall Industries and one of the soil borings punctured the force main, and the City was able to put one sleeve over the hole. It has been repaired and back filled. The City will have to pave a portion of the lot.

Councilor Enblade questioned whether a City patrolman is responsible for cleaning up glass after an accident. Police Chief Mark Barnett thought it was the tow truck driver's responsibility but would research this question.

Councilor Enblade asked whether residents can put the leaves out in the road in the spring. City Manager Shay explained that this past winter they have picked up all leaves so there would be no leaf pickup this spring. Residents are able to utilize the leaf corral or to purchase lawn bags or the yard waste cart if they wish the leaves to be picked up.

Councilor Castonia commented that the Mason County Road Commission has coordinated the stop sign on Bryant and Washington.

Moved by Councilor Enblade, seconded by Councilor Holman, that the meeting be adjourned. So carried at 7:15 p.m.

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Deborah L. Luskin, CMC  
City Clerk