

CITY COUNCIL MEETING MINUTES FROM SEPTEMBER 26, 2017

The Regular Meeting was called to order by Mayor Strazdas at 7:30 p.m.

At the request of Mayor Strazdas, Monica Lee of Radiant Church of Portage gave an invocation and City Council and the audience recited the Pledge of Allegiance.

The City Clerk called the roll with the following members present: Councilmembers Richard Ford, Jim Pearson, Patricia M. Randall, Claudette Reid and Terry Urban, Mayor Pro Tem Nasim Ansari and Mayor Peter Strazdas. Also in attendance were City Manager Laurence Shaffer, City Attorney Randy Brown and City Clerk James R. Hudson.

PROCLAMATION: Mayor Strazdas issued a National Community Planning Month Proclamation that was read by Planning Commission Chair Wayne Stoffer. At the request of Mayor Strazdas, Wayne Stoffer introduced Planning Commissioners Bill Patterson, Sarah Joshi, Betty Schimmel, Secretary, and Deputy Director of Planning, and Development & Neighborhood Services Chris Forth. Discussion followed.

APPROVAL OF MINUTES: Motion by Ansari, seconded by Reid, to approve the Committee of the Whole Meeting Minutes of September 12, 2017, as presented. Upon a voice vote, motion carried 7 to 0.

Motion by Randall, seconded by Ford, to approve the Regular Meeting Minutes of September 12, 2017, as presented. Upon a voice vote, motion carried 7 to 0.

Motion by Reid, seconded by Ansari, to approve the Pre-Council Meeting Minutes of September 25, 2017. Upon a voice vote, motion carried 6 to 0 with Councilmember Urban abstaining.

* **CONSENT AGENDA:** Mayor Strazdas asked Councilmember Randall to read the Consent Agenda. Councilmember Urban asked that Item F.5, Preliminary Condominium Subdivision for Copperleaf Phase III, be removed from the Consent Agenda. Motion by Randall, seconded by Ansari, to approve the Consent Agenda as presented excluding F.5. Upon a roll call vote, motion carried 7 to 0.

PETITIONS AND STATEMENTS OF CITIZENS: Janet Chupka, 5132 Woodmont Drive, welcomed the new streets planned for 2018, but spoke in opposition to sidewalks. She indicated that she walks in the neighborhood approximately 125 miles per month; that the streets are wide; that there are only two entrances into the neighborhood; that there is very little through traffic and no church or school; and, that she only sees two to five cars per day. She asked that the part of the plan that considers sidewalks should be eliminated.

Tim Chupka, 5132 Woodmont Drive, concurred and indicated he is an avid biker, walker and runner. He noted that he and his wife have lived in the neighborhood for about four years; that they selected the neighborhood based on its characteristics; and he indicated that it is a quiet, family neighborhood where everyone knows one another. He advocated spending the funds on something that would be more beneficial for the whole community.

City Manager Larry Shaffer indicated that he always appreciates comments from our citizens and indicated that the City is not in the business of building sidewalks, but in the business of building communities. He stressed that as a builder of the community, we have to listen to our citizens and take their recommendations to heart and come back to City Council with staff recommendations. He personally thanked Janet and Tim Chupka for coming before City Council and that he hopes to have a conversation with the balance of the neighborhood soon.

Councilmember Reid disclosed that this is her neighborhood and there has been a lot of discussion among the neighbors of whether to have sidewalks. She indicated that this is related to the City Council Complete Streets approach where we are trying to provide a non-motorized opportunity. She recognized that each neighborhood may have a different way of looking at this. She referenced the

discussion by the neighbors that took place on line, noted their appreciation for the opportunity to get their information and concern out, and thanked Janet and Tim Chupka for coming.

In response to Mayor Strazdas, Mr. Shaffer acknowledged the City Council Complete Streets Program and indicated that when the City preliminarily designs a new work, the design includes sidewalks, but the City is always willing to have a conversation with the neighborhood. He emphasized that staff would review this request and bring back a recommendation to City Council. He emphasized that City Council will take in consideration both the policy on sidewalks and the concerns of the people who will be affected.

* **APPROVAL OF ACCOUNTS PAYABLE REGISTER OF SEPTEMBER 26, 2017:** Motion by Randall, seconded by Ansari, to approve the Accounts Payable Register of June 27, 2017, as presented. Upon a roll call vote, motion carried 7 to 0.

REPORTS FROM THE ADMINISTRATION:

* **MAJOR & LOCAL STREET PAVING INCREASE:** Motion by Randall, seconded by Ansari, to approve a budget transfer of \$1,650,000 from the Major Streets Fund to the Capital Improvement Fund to increase the 2018 pavement applications and authorize the City Manager to sign all documents on behalf of the city. Upon a roll call vote, motion carried 7 to 0.

* **ELIASON TRAILHEAD STATION:** Motion by Randall, seconded by Ansari, to approve the purchase of an ICON Shelter from Penchura, LLC, of Brighton, Michigan, to be constructed at the Eliason Trailhead at a cost not to exceed \$82,784 and authorize the City Manager to sign all other documents related to these projects on behalf of the city. Upon a roll call vote, motion carried 7 to 0.

* **FINAL PLAN FOR GREENSPIRE APARTMENTS PHASE V(B), (8615 TOZER COURT):** Motion by Randall, seconded by Ansari, to approve the Final Plan for Greenspire Apartments Phase V(b) at 8615 Tozer Court. Upon a roll call vote, motion carried 7 to 0.

* **PLANNING COMMISSION WORK PROGRAM / ANALYSIS OF ZONING CONSISTENCY UPDATE:** Motion by Randall, seconded by Ansari, to accept the FY 2016-17 Planning Commission Work Program Final Update, Proposed FY 2017-18 Work Program, FY 2016-2017 Analysis of Zoning Consistency Update. Upon a roll call vote, motion carried 7 to 0.

PRELIMINARY CONDOMINIUM SUBDIVISION FOR COPPERLEAF PHASE III: Councilmember Urban indicated that he had this item removed because he was opposed to the negotiated aspects of this plan. At the request of Mayor Strazdas, he reminded Council that he did not approve of the lot size, the sidewalk configuration and the configuration of the whole project initially; so, he is choosing to be consistent as Council works through the Phases of the Project. At the request of Mayor Strazdas, Mr. Shaffer indicated he had no response to the position taken by Councilmember Urban; that he understands the Council position on the proposed project as being clear all along; and that he anticipated the response from Councilmember Urban. He confirmed that the staff recommendation still stands.

Motion by Ford, seconded by Pearson, to approve the Preliminary Condominium Subdivision for Copperleaf Phase III at 3800 West Milham Avenue and 5710 Angling Road, subject to submittal of detailed engineering plans for streets, utilities and storm water as outlined in the August 31, 2017 Department of Community Development staff report. Upon a roll call vote, motion carried 6 to 1. Yeas: Councilmembers Ford, Pearson, Randall, Reid and, Mayor Pro Tem Nasim Ansari and Mayor Peter Strazdas. No: Councilmember Urban. Mayor Strazdas told Councilmember Urban that he still respects his opinion.

* **BLUE CARE NETWORK ADVANTAGE PLAN:** Motion by Randall, seconded by Ansari, to approve a one-year contract renewal, with the option for two additional one-year renewals, with Blue Care Network for the Blue Care Network Advantage Plan for retiree health insurance and authorize the City Manager to execute all documents related to the contract renewal on behalf of the city. Upon a roll call vote, motion carried 7 to 0.

* **2018 CITY COUNCIL MEETING AND PRE-COUNCIL MEETING SCHEDULES:** Motion by Randall, seconded by Ansari, to establish the 2018 schedule of Regular City Council Meetings, and 2018 schedule of Pre-Council Meetings. Upon a roll call vote, motion carried 7 to 0.

* **AUGUST ENVIRONMENTAL REPORT:** Motion by Randall, seconded by Ansari, to receive the communication from the City Manager regarding the August Environmental Report as information only. Upon a roll call vote, motion carried 7 to 0.

* **COMMITTEE OF THE WHOLE MEETING REGARDING MEDICAL MARIJUANA:** Motion by Randall, seconded by Ansari, to reschedule the November 14, 2017 Committee of the Whole meeting regarding Medical Marijuana to December 19, 2017. Upon a roll call vote, motion carried 7 to 0.

* **MINUTES OF BOARDS AND COMMISSIONS:** City Council received the minutes of the following Boards and Commissions:

Portage Human Services Board of July 6, 2017.
Portage Youth Advisory Committee of August 1, 2017.
Portage Historic District Commission of August 2, 2017.
Portage Zoning Board of Appeals of August 14 and 28, 2017.
Portage Planning Commission of August 17 and September 7, 2017.

NEW BUSINESS:

PRESENTATION FROM COUNCILMEMBER PEARSON REGARDING CITY OF PORTAGE PERSONNEL RULES AND REGULATIONS AND THE ENDORSEMENT OF POLITICAL CANDIDATES BY EMPLOYEES: Councilmember Pearson thanked Mayor Strazdas for allowing a couple of minutes for his presentation before he refers to City Manager Shaffer and City Attorney Randy Brown for comment. He referenced the campaign for Mayor and City Council, for the City General Election, November 7, 2017, noted that there are ten candidates, a record number, and he commented that there are some misleading campaign materials that bothered him. He indicated his first comments are on something that is humorous. He displayed a letter from a candidate that got an endorsement letter from a realtor group signed by the CEO on August 30, 2017. He masked who it was from and mentioned that a candidate who did not get the letter posted a misleading posted letter on Facebook that he got the endorsement, so he asked all to beware of what you read on the internet. Secondly, he indicated that he also received a postcard in the mail which contained misleading information about a City employee. He mentioned that the employee who made the endorsement is a private citizen, which is a First Amendment Right, and there is nothing wrong with that; however, the candidate decided to add without permission that this is a union official which inferred that Public Safety endorses this candidate, and this is wrong. He stated that it is customary in the City of Portage that our Police and Fire Unions and our City staff do not endorse candidates unlike in the big cities. With that, he raised the question that comes from the other ten candidates who are asking should they go out and get Police and Fire endorsements since one candidate has done this. He said he cannot speak for the City Policy on this subject, but he indicated that the City needs to stop this kind of candidate behavior. He asked the City Manager to give his perspective on union and city employee endorsements

because a reading of the rules is unclear to him, and he wants all of the candidates to have some clarity on this.

Mr. Shaffer responded that the City Council adopts the rules and regulations that all City personnel have to abide by with the exception of union employees with a collective bargaining agreement (CBA). He read the following Rule from the Personnel Rules and Regulations:

XI. MISCELLANEOUS, Section 11.1 (B), Prohibitions.

No City employee may seek nomination or election to any elective office of the City government, nor may any City employee use influence resulting from his job or position publicly in any way for or against any candidate for elective office in the City government.

Mr. Shaffer further explained that by virtue of being an ordinance, the law of this community is that City employees may not participate in ways of endorsing, advocating or speaking against a particular candidate. He indicated that he has discussed this topic at length with the City Attorney, and he paraphrased the City Attorney by saying that the language in the ordinance and in the Personnel Rules and Regulations has some very serious Constitutional issues and has to be considered as a nuance issue, so it is a matter of degree. He said by law it is prohibited, by ordinance; by Constitution there are certainly circumstances by which it is allowed; but, certainly by tradition, it has not been the way the City has approached this. Discussion followed.

At the request of Mayor Strazdas, City Attorney Randy Brown, after concurring with most of what Mr. Shaffer shared, added that public employees have First Amendment Rights; and, as a result, State Law says that a public employee has a right to participate in and endorse candidates for public office. He said that more broadly, the State Law says the public employees may do other things to participate and involve themselves in elections, whether it is a ballot proposal or for a candidate. He emphasized that this section is very broad, but that same Act in State Law states that this does not apply to the public employee during working hours when he or she is being compensated. He indicated that the first question is, is it being done during working hours while the employee is being compensated because clearly the right does not exist. Further, he stated if it is not during working hours, and the employee is participating, the test would be is that employee a public employee, and he said he is saying “public” intentionally because this is not applicable to a private employees; it applies to an employee working for some kind of government. He indicated if it is off working hours, then the employee has to show that he or she is acting as a private citizen on a topic of public concern and acknowledged that working on elections, endorsing candidates are of public concern. He said that the questions is, “Is it as a private citizen?” So, he determined that it is considered on a case by case basis as Mr. Shaffer indicated because you have to look at each circumstance: what was said, what was done, how it was said, when it was done, so there is no black and white rule that applies to everything. More specifically, he drew the distinction by giving the example that if a person says he or she is a City employee and says what he or she does for the City or whatever his or her job title is, that would indicate that whatever he or she is doing is as his or her position as a City employee, not as a private citizen. Moreover, he said if that person does not give any information about his or her public position or title, then doing it as a private citizen, it would be very difficult to have a restriction that would discipline that person, or to say to that person that he or she cannot do such a thing. He reminded Council that restrictions on the First Amendment are read very narrowly by the Courts, and explained that it is very difficult to get around something like that, but not impossible because there are situations where it can happen because the person is saying something that is so detrimental to the operation of the City that even though there is a private way of saying it, that’s the balance the Courts look at. He said it balances the right of the City as an employer to have an operating government in an efficient way, but it really has to be a problem which generally that’s not going to happen, and with a simple endorsement that’s not going to happen. Mayor Strazdas thanked Mr. Shaffer and Mr. Brown for their input. Discussion followed.

Mayor Pro Tem Ansari responded to Councilmember Pearson by saying he could only guess at his intentions, and expressed his disappointment as it seems he is attacking his candidacy. He stated that

since the Council has been elected to serve Portage citizens, it is sad that he brought forth this discussion because it takes away focus on those issues that enhance the lives of our citizens. He stressed that he can honestly say that the gentleman who supported his candidacy did not do so while on duty; that he was simply exercising his Constitutional Right. He said this is how he integrates the City's Policy. He challenged Council to stick to matters of the Council and not politics.

Councilmember Reid expressed her disappointment that this was brought forward in this way because for those of us who have been candidates for this election thus far have received information notices from the Office of the City Clerk about how to run a candidacy, such as yard signs and when the absentee ballots go out, which allowed all candidates to get the information. She emphasized if the intent is to provide information to candidates, using that vehicle would have made a whole lot of sense, and that she felt that this is not the proper venue to have this discussion.

Councilmember Pearson pointed out that he did not name any candidates by name; he wanted to keep this generic; he saw an example where he thought it was important for the City Manager and the City Attorney to discuss this; and, when other candidates asked if they should get police and fire employee endorsements, he felt it was not appropriate for him to answer, rather to ask the City Manager and the City Attorney to respond. From the City Attorney response, he acknowledged it is complicated, case by case; and, from the City Manager, he acknowledged it is a tradition that City employees do not get involved in this manner. He thanked Mr. Shaffer and Mr. Brown for their time spent on the subject.

Councilmember Reid said that the idea that this is a tradition, that citizens who are employees of the City are expected not to actively participate in the election process, is not in alignment with the rules that City Attorney Brown explained. She stressed that this policy that Council is reading is not something that City Council has approved; it is something the Administration developed; and it is appropriate because the City Manager manages all of the employees within the City. She suggested to the City Manager that he look at having some language that is very clear about the fact that employees who are citizens have the right to participate; they just cannot do it as part of their job or during their business hours since we need to be clear about what they can do. She commented that because there is this tradition, they have not endorsed and they have not been actively involved. She said the employees do not know if they can have a lawn sign or if they can sign a petition to get somebody on a ballot; and, employees are concerned about what they can do as well as not do, so the policy can be improved by making that clearer.

Mayor Strazdas confirmed his belief that everyone understands what the law is on this issue, but acknowledged the point made by Councilmember Reid that perhaps there is something in that document that needs to be cleaned up, and that might be appropriate for the new City Council, maybe not in an emergency session of Council now. He encouraged the incoming members of City Council to take that up with the City Manager, who can offer some language in the manual for the new Council to consider.

City Attorney Brown followed up by pointing out that the Personnel Rules address what an employee can and cannot do, and that is the discussion; also, he does not want anybody listening to him in terms of giving advice to Council about this particular rule or candidate to think that he is giving any advice to the candidate of what he or she can or cannot do. He stressed that this is between the City and its employees.

BID TABULATION:

* **2018 STORM DRAINAGE IMPROVEMENT PROJECTS – TABULATION OF PROPOSALS:** Motion by Randall, seconded by Ansari, to award a contract to Hurley & Stewart, LLC, in the amount not to exceed \$130,546 to perform design and construction engineering services for the 2018 Storm Drainage Improvement Projects and authorize the City Manager to execute all documents related to the contract on behalf of the city.

OTHER CITY MATTERS:

STATEMENTS OF CITY COUNCIL: For the benefit of those who might have seen the earlier Agenda, and not the amended Agenda, Councilmember Urban indicated that the Hill ‘an’ Brook Special Assessment Petition was withdrawn due to an issue with the evaluation of the signatures on the curb and gutter special assessment. He said this item has been pulled from the September 26, 2017 City Council Agenda and will be considered for resubmission to Council in the near future. He expressed his understanding that because there is an underlying problem with the Petition, the Administration wants to clarify a couple of things, and he mentioned he let several citizens know that the Petition was pulled as he was walking in so they did not spend time waiting for it. Discussion followed. He stressed that it was not because of a substantive issue and it would be coming back to Council. Mr. Shaffer indicated that the Petition was pulled because the Administration had not validated that 50% of the property owners had signed, it and the process calls for the City Assessor to go through and look at all of the signatures and align them with property owners. Since he could not ascertain that percentage with any real sense, he has directed that the work be done in advance to determine the percentage, or go back to the property owners to give them the opportunity to obtain the necessary signatures.

Councilmember Reid announced the two candidate forums coming up: Thursday, September 28, 2017, 6:00 p.m., at the Portage Senior Center, sponsored by the League of Women Voters; and Wednesday October 4, 2017, 6:30 p.m., sponsored by Western Institute for Government and Politics and WMUK, in the lower level of the Portage Public Library. Discussion followed.

Councilmember Randall indicated that the *League of Women Voters Guide* will soon be available for the 2017 General City Election. She surmised that it contains very good information on the two Mayoral Candidates and the eight Council Candidates, who are all asked the same questions. She also referenced the forums mentioned by Councilmember Reid as great opportunities to ask questions of the candidates and encouraged citizens to attend. She recognized Friday, September 29 at sunset as Yom Kippur in honor of our Jewish neighbors who will begin observance until sunset, Saturday, September 30 as a day of communal and personal atonement.

Councilmember Ford wished a Happy Anniversary to his wife.

Councilmember Pearson indicated that the *League of Women Voters Guide* is online, so there is no need to wait for a printed copy, and it has all of the same questions as the printed version.

City Manager Shaffer congratulated the City staff, especially Vicki Georgeau, for conducting a successful Capital Improvement Program (CIP) Open House from 4 p.m. until 7 p.m. last evening in Council Chambers that was attended by over 100 people who asked questions about a variety of different projects being considered for the CIP, and who also made suggestions relative to what they would like to see in their particular neighborhood.

Mayor Pro Tem Ansari indicated that it was an honor to attend the Blue Mass at St. Catherine’s of Siena Catholic Church on September 17th to recognize our law enforcement officers.

Mayor Strazdas said he had hoped to attend the Blue Mass, but ended up in St. Louis where there was much unrest between the police and protestors. He reflected that City Hall was two blocks away, but he could not leave the hotel most nights. He compared that experience with returning to Portage and the relationship we have with our Police and recognized that we are not a big city with complex issues. He made the observation that our youth and our citizens respect our law enforcement and spoke highly of their professionalism.

MATERIALS TRANSMITTED:

* **DEPARTMENTAL MONTHLY REPORTS:** Motion by Randall, seconded by Ansari, to receive the Departmental Monthly Reports of August. Upon a roll call vote, motion carried 7 to 0.

ADJOURNMENT: Mayor Strazdas adjourned the meeting at 8:16 p.m.

James R. Hudson, City Clerk

* **Indicates items included on the Consent Agenda.**