

**MAY 27, 2014
REGULAR MEETING**

RECORD OF THE PROCEEDINGS OF THE REGULAR BOYNE CITY COMMISSION MEETING DULY CALLED AND HELD AT BOYNE CITY HALL, 319 NORTH LAKE STREET, ON TUESDAY MAY 27, 2014

CALL TO ORDER

Mayor Ron Grunch called the meeting to order at noon pm followed by the Pledge of Allegiance.

Present: Mayor Ron Grunch, Mayor Pro-Tem Gene Towne, Commissioners Derek Gaylord, Laura Sansom and Tom Neidhamer

Staff: Michael Cain, Cindy Grice, Scott McPherson, Jeff Gaither, Barb Brooks, Dennis Amesbury, Annie Doyle, Andy Kovolski and Hugh Conklin

Others: There were 8 citizens in attendance including representatives from the Petoskey News Review and Charlevoix County News

**CONSENT AGENDA
MOTION**

2014-05 073

Moved by Gaylord
Second by Towne

2014-05 073A

To approve of the recommendation from the Planning Commission to reappoint Jim Kozlowski to the Planning Commission for a three year term expiring May 31, 2017

2014-05 073B

To approve of the recommendation from the Planning Commission to reappoint Jane MacKenzie to the Planning Commission for a three year term expiring May 31, 2017

2014-05 073C

To approve of the recommendation from the Planning Commission to reappoint Jason Biskner to the Planning Commission for a three year term expiring May 31, 2017

2014-05 073D

To approve of the Planning and Zoning Service contracts for Evangeline Township in the amount of \$26,088.15 and Wilson Township in the amount of \$37,669.74 and authorize the City Manager to execute the documents

Ayes: 5

Nays: 0

Absent: 0

Motion carried

Commissioners Gaylord and Sansom discussed corrections to the May 13, 2014 draft minutes which were pulled from this agenda. The draft minutes will be presented at the next meeting.

CITIZENS COMMENTS

Ron Crozier said it was a good Memorial Day. He thanked the Police Chief for their assistance and also thanked the marina staff for their mowing of the Veteran's Memorial. It is Boyne City's memorial and we need to keep it clean, in order, and remember those who gave their lives. There have been more dog droppings in the memorial.

Bob Foit said he read the paper and was shocked to see that fluoride has been taken out of the water. He is concerned about what it says

about our community. Every major health organization is essentially for fluoride in the water. It is appalling for a community, and the face it's going to put out for us, is not the as progressive community he thinks we would like to be seen. He is expressing his dismay and hoping there's a way to overcome it. There's always some type of opposing view. Are we going to ask our physicians to not inoculate for polio because of outlying position that has some other views.. He added he doesn't think this is the place to remake science. He added he believes it does make us look bad.

Howard Newkirk said the fluoride removal is a regrettable decision. His understanding that fluoride was put into use by public referendum. Can we get a legal opinion whether or not we can overcome the vote? He asked what it is that the public has to do to overturn this terrible decision? Is that something for the City Manager to do? Mayor Grunch said the Commission would have to act on that as a whole.

Arch Wright said he has been told the charter said nothing about the action the City took. He said he has spoken to three attorneys. All 3 were of the mind that the removal of the fluoride is an illegal action on the part of the Commission. He spoke with the Mayor of another community who is an attorney who felt the action taken was not legal. He added the failure to get an opinion from the City Attorney is derelict to the City. Its not going to cost that much and certainly it's going to cost less than litigation.

Dr. Tom Veryser said since the City Commission has acted on this, he's been contacted by the American Dental Association and the Michigan Dental Association all wondering what's going on. He added he can tell us the disease they will start to see in the next 3 – 5 years will be amazing. This is absolutely wrong. The cost to society in addition to the pain and suffering to children and families is just horrendous. I wish you would think again.

Mayor Grunch said we have been questioned as a Commission regarding the legality of what took place, whether they have the right to overturn the public referendum. He asked for a motion to direct the City Manager for clarity and to consult our legal firm Plunkett & Cooney. Commissioner Neidhamer said he agrees and thinks we need to address the legality of the issue. We need to consult our legal firm. Commissioner Gaylord asked do you have any information other than what was provided via email. Mayor Pro-Tem Towne said he is not changing his mind about what he said about choice, but it would be ok to see if this is legal and to check with the attorney.

2014-05 074

Moved by Grunch

Second by Gaylord

MOTION

To direct the City Manager to consult with our legal firm to look into the legality issue of whether the City Commission can override a vote of the people and provide clarity

Ayes: 5

Nays: 0

Absent: 0

Motion carried

CORRESPONDENCE

Correspondence from the State of Michigan Department of Community Health regarding fluoride and the May 13, 2014 Resolution Recognizing the 200th Anniversary of the National Anthem of the United States of America were received and filed.

CITY MANAGERS REPORT

City Manager Cain reported:

- Boyne City was well represented at last week's national Main Street meeting in Detroit.
- The new and extended shoppers dock is ready for use.
- Three of our fixed docks at the marina have been removed and are being replaced with new adjustable height docks.
- The last of the marina dredging spoils have been removed from the parking area west of the Little League field and the area is again open to the public
- Work on the Pleasant and Division Street improvement project continues to make progress. Work on the new storm sewer lead o Division Street to drain the wet area east of the Parkview Apartments is scheduled to begin Wednesday.
- Much of the pavement marking around town has been completed with mainly the parking space lines yet to be done.
- Our three weeks of spring household rubbish collection begins this week.

**RECOGNIZE ORAL
SUTLIFF FOR 52 YEARS
OF SERVICE TO THE
BOYNE CITY FIRE
DEPARTMENT**

Mayor Grunch and the City Commissioners presented a certificate of appreciation to Oral Sutliff for his 52 years of dedication to safety of the Citizens of Boyne City and the Boyne City Fire Department. Oral and his wife Eleanor Sutliff shared stories with the Commissioners and audience.

None

**REPORTS OF OFFICERS,
BOARDS AND STANDING
COMMITTEES**

Discussion and possible consideration to direct staff to develop a noise ordinance for the City of Boyne City.

Noise Ordinance Report

Planning Director Scott McPherson discussed the noise ordinance. For many years the City has had a noise ordinance in effect. In 2009, in response to complaints stemming from music being played at what was then 220 Lake Street, a citation was issued to their operator for violation of the noise ordinance. A hearing on the matter was held in the Charlevoix County District Court in September of 2009. In the Court's opinion, the noise ordinance was unconstitutionally vague due to the subjective nature of violations and the Court dismissed the City's claims against the operator. Given this opinion, the Boyne City Police Department has not issued any subsequent citations for violation of Section 31.141 Noise, Article V, Offenses Involving Public Peace and Order. The Boyne City Police Department does receive noise complaints on a regular basis. A compilation of those complaints were presented.

Since the district court decision, the City Commission has received requests from the public for the City to adopt a new noise ordinance. Given the statistics provided by the police department, it appears there is a need for some type of noise ordinance that can be applied to these types of complaints. City Staff has researched and reviewed a variety of noise ordinances and types can be classified into two general categories: ordinances that establish specific decibel limits for various districts, and ordinance that identify the violations by types of activities and rely on

Officer's discretion to determine a violation. The typical type of ordinance found in northern Michigan communities relies on the discretion of the office. It stipulates that it is a violation to make continued excessive or unusually loud noise that annoys, disturbs or injures others and lists various types of activities and noises that would be in violation. Staff recommends the City Commission direct staff to develop a draft ordinance based on the City of Mason model, which does not use decibel limits.

Staff Comments: Chief Gaither concurs with the recommendation.

Citizens Comments: None

Board Discussion: Commissioner Sansom inquired of the complaints filed, how many were repeat offenders. Does this direction cover annoying noises other than decibel levels, and is subject to interpretation. Commissioner Gaylord said he is not sure why it's before them at this point. Only two issues have been brought before the board since he's been on the Commission. The vast majority comes from music from the Central Business District. Are we going to create an ordinance and let the judge figure it out? It's foolish thinking, let's go back to the facts. How many were fireworks related complaints. He needs that data. The ordinance presented seems ridiculous. Commissioner Gaylord added that he predicts if this model was adopted that bars and restaurants that have entertainment as part of their livelihood would ask for waivers. If we reject that, we are affecting the monetary business. Are we going to shut Stroll the Streets down? Is that what we want? I don't think so. He added it appears this is a feel good response to one individual who has been approaching the Commission. The decibel one eliminates all subjectivity. The evidence speaks for itself. He is absolutely against the subjective thing. Is a judge going to uphold this?

Mayor Pro-Tem Towne said he agrees with fellow commissioners. He is okay with developing an ordinance and have it come back. Commissioner Neidhamer said Commissioners Sansom and Gaylord brought up good points. Any ordinance will take care of 90% of the complaints. That would be common sense. He thinks every police action has subjectivity to it.

Police Chief Gaither said he would not be happy with adopting the Mason Ordinance, but could add or subtract to work for Boyne City. The Police Department is responsible for keeping peace in the community.

Commissioner Neidhamer said he does agree that two big issues are the ones we lost in court, but we need a tool that will help in 90% of the situations.

Mayor Grunch said do we not have a disturbance of the peace ordinance that could be amended rather than create a new ordinance?

City Manager Cain said the City Attorney was involved in this. As options show, we gave staff recommendations. We want to let the Commissioners know, based on what we've heard in the community.

Commissioner Neidhamer said the Police Chief is asking for a tool. The lawyer is asking for a tool. He would like to proceed and it be brought back to them. Mayor Pro-Tem Towne agrees.

Commissioner Gaylord said he is requesting we tread extremely lightly in moving forward.

2014-05 075

Moved by Neidhamer
Second by Towne

MOTION

To direct staff to work on a draft noise ordinance for the City based on the City of Mason model, not the decibel mode.

Ayes: 4

Nays: 1, Commissioner Gaylord

Absent: 0

Motion carried

Consideration to approve a contract for beach testing at Peninsula Beach only with the Health Department of Northwest Michigan for 2014 and authorize the City Manager to sign the required documents.

**Beach Water Quality
Monitoring Program**

Public Works Superintendent Andy Kovolski discussed the proposal received from the Health Department of Northwest Michigan to provide seasonal testing of the water at beaches at the cost of \$1,000 per beach. It is being recommended that we test the water at Peninsula Beach, the city's only official beach.

Staff Comments: None

Citizens Comments: None

Board Discussion: Commissioner Gaylord said it is a worthwhile matter. We need to improve the actual sand area. Clearly people need to know the water is safe. Perhaps the Lake Charlevoix Association could kick in funds. All other Commissioners support the recommendation

2014-05 076

Moved by Neidhamer
Second by Towne

MOTION

To approve a contract for beach testing at Peninsula Beach only with the Health Department of Northwest Michigan for 2014 and authorize the City Manager to sign the required documents.

Ayes: 5

Nays: 0

Absent: 0

Motion carried

Discussion and direction for the disposition of City properties, identifying any parcels that should be disposed of and direct staff to proceed with completing the transactions for the sale of any identified properties.

**Sale of Excess City
Property**

Planning Director Scott McPherson discussed the request we received from the property owner of 427 Lewis in regards to purchasing the City owned lot adjacent to her. The parcel is located near the corner of Lincoln and Lewis Street and located in the traditional residential zoning district and is approximately 8,600 square feet with 130 feet of frontage on Lewis Street. It is irregularly shaped but meets ordinance criteria for lot area and frontage. Water service is available but sanitary sewer is not. It does not have a current assessed value as it is owned by the City. Scott also provided the City with a map showing other city owned lots that staff has reviewed and determined they are suitable for future development. It is recommended that the City Commission identify any parcels that should be disposed of and direct staff to proceed with completing the transactions for the sale of any identified parcels.

Staff Comments: None

Citizens Comments: None

Board Discussion: Mayor Pro-Tem Towne said he is okay with selling lot 7 and ok with putting others on the market and back on the tax rolls. Commissioner Neidhamer said some lots may not be worth much. Commissioner Sansom inquired how we acquired that in the first place. Commissioner Gaylord is in favor of putting the Lewis Avenue lot for bid. Mayor Grunch agrees.

2014-05 077

Moved by Gaylord

Second by Sansom

MOTION

To direct staff to obtain fair market value pricing and put the parcel located on Lewis, near the corner of Lincoln out for bid.

Ayes: 5

Nays: 0

Absent: 0

Motion carried

Consideration to proclaim June 2 – 5, 2014 Smart Commute Week in the City of Boyne City

**Smart Commute Week
Proclamation**

Assistant Planner Annie Doyle discussed the Smart Commute Charlevoix County Week. This is a weeklong event designed to increase awareness of and demonstrate the ability to use alternative methods of commuting that provide health, economic and environmental benefits. It is organized by a volunteer steering committee and is partners with the Top of Michigan Trails Council to bring this event to Charlevoix County. It's a friendly competition to encourage co-workers and friends to bike, walk, car-pool or use public transit to get to work. Participants track their preferred method and a trophy will be presented to the team with the highest percentage of employees commuting within their division.

Staff Comments: None

Citizens Comments: Jim Baumann, is on the Smart Commute

committee said he would appreciate the support of the proclamation.

Board Discussion: Commissioners Sansom and Neidhamer are in full support. Commissioner Gaylord said it seems like a good idea, who could be against smart commuting. He recommended that the City and Main Street could pick up the tab for those who choose to use the County Transit during that time for City residents. Jim Baumann said the Transit has already thought of it. Maybe the City could donate \$100 to be a sponsor of the program. Mayor Pro-Tem Towne said it would be great to offer free transit rides on the County Transit.

2014-05 078

Moved by Neidhamer
Second by Towne

MOTION

To proclaim June 2 – 5, 2014 Smart Commute Week in the City of Boyne City

Ayes: 5
Nays: 0
Absent: 0
Motion carried

2014-05 079

Moved by Gaylord
Second by Neidhamer

MOTION

To provide a sponsorship on behalf of the citizens of Boyne City for an up-to cap of \$200 to the Charlevoix County Transit usage for the Citizens of Boyne City for the Smart Commute Week of June 2 – 5, 2014 for all forms of alternative transportation

Ayes: 5
Nays: 0
Absent: 0
Motion carried

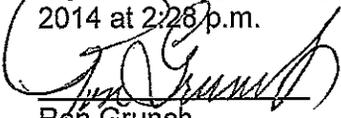
Mayor Pro-Tem Towne asked if a dead end sign could be installed on Second Street. He also inquired if donations to Stroll the Streets are down since food trucks have been discussed. Hugh Conklin said they will be pretty equal to what they were last year.

Good of the Order

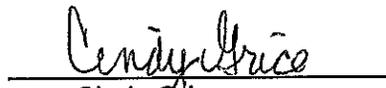
Commissioner Gaylord inquired about the drainage issue on Jefferson Street. He also inquired about language on e-mail content from the City Manager to Brian Thurston of the MDEQ regarding Boyne City's water fluoridation, specifically about the word "suggestions" and what did it mean?

Moved by Mayor Grunch, seconded by Commissioner Gaylord to
adjourn the regular City Commission meeting of Tuesday, May 27,
2014 at 2:26 p.m.

ADJOURNMENT
MOTION



Ron Grunch
Mayor



Cindy Gijce
Clerk / Treasurer