

Mayor Brown called the twelfth meeting of the eighty-fourth Harbor Springs City Council to order at 7:00 p.m. in the City Council Chambers at City Hall, 160 Zoll Street, Harbor Springs, Michigan.

1. Roll Call and Verification of Quorum

City Council:

Present: William M. Brown Jr., Matthew Bugera, John L. Cupps, Jeffrey V. James, Pringle Pfeifer

Absent: none

City Clerk Whitaker stated that a quorum was present.

Also Present: City Manager Thomas C. Richards, City Attorney James T. Ramer, Police Chief Dan Branson, Department of Public Works Director Lucas VanderZee, Assessor & Zoning Administrator C. Jeffrey Grimm, and City Clerk Nick Whitaker

2. City Clerk / Comptroller / Treasurer

A. Approval of Minutes

#8471 – Motion by James second by Cupps, to approve the minutes of the May 1, 2017 regular City Council Meeting as read.

Ayes – 5

Nays – 0

Motion carried.

B. Approval of Bills

The bills on the following vouchers, as listed below, have been examined. It has been recommended that they be approved for payment from the following funds:

<u>Voucher number</u>	<u>Description</u>	<u>Payment to or for</u>	<u>Fund</u>	<u>Amount</u>
8495	Payroll	P.P.E. 4/30/17	General	\$38,971.33
			Major St.	\$631.34
			Local St.	\$327.17
			Historical	\$560.88
			Electric	\$11,649.84
			Water/Sewer	\$5,108.74
			Waterfront	\$5,382.60
			Equipment	\$1,194.33
8496	Wire	MPPA 5/3/17	Electric	\$24,853.74
8497	Wire	Sales Tax 4/30/17	General	\$4,961.57
			Electric	\$16,271.86
8498	Wire	MPPA 5/9/17	Electric	\$45,909.93
8499	Council	Accounts Payable 5/15/2017	General	\$40,435.26
			Major St.	\$170.66
			Local St.	\$1,120.66
			Historical	\$71.90
			DDA	\$1,734.10
			Electric	\$89,596.61
			Water/Sewer	\$232,419.42

Waterfront	\$6,829.16
Equipment	\$50,522.37

BE IT RESOLVED that claims on vouchers 8495 through, and including, voucher number 8499, as checked by the Finance Committee, in the amount of \$578,723.47, be allowed for payment, and the Mayor and the City Manager are hereby authorized to execute warrants to be drawn on the following funds:

General	\$84,368.16
Major St.	\$802.00
Local St.	\$1,447.83
Historical	\$632.78
DDA	\$1,734.10
Electric	\$188,281.98
Water/Sewer	\$237,528.16
Waterfront	\$12,211.76
Equipment	\$51,716.70
Totals	<u>\$578,723.47</u>

#8472 – Motion by Bugera, second by Pfeifer, to approve the bills in the amount of \$578,723.47

Ayes – 5
Nays – 0

Motion carried.

3. Citizen Comments

Mike Naturkas, downtown business owner, addressed Council on his concerns about being asked to move furniture from his outdoor seating area inside each night. Naturkas explained that this is quite labor intensive, and is intrusive to the customer. Naturkas stated that he was under the understanding that it was allowable to keep the furniture out for the entire season and is concerned that he will be ticketed during this time. City Manager Richards briefly explained the Ordinance as well as the application and permit agreement that the business owner signs. Discussion followed about food establishments, non-food establishments, and the different rules associated with these types of businesses. City Manager Richards recommended that the Planning Commission further explore the issue. Planning & Zoning Administrator Grimm explained that in order to make a change to the code a Public Hearing would need to be held and then a recommendation made to Council for approval. City Attorney Ramer stated that Council could impose a temporary moratorium on enforcement of the code until the Planning Commission addresses the issue. Mayor Brown motioned to authorize the moratorium on the fines until June 19, 2017. No objections were made by Council. The motion was approved by consensus.

Beverly Wemigwase of 803 Harrison St. addressed council on the matter of the necessary repairs and related costs for a sewer line obstruction that occurred last October. Wemigwase further described actions she took after the sewer line obstruction and conversations she had with City staff. Wemigwase further explained that in April she had another issue related to the sewer back up and quoted her conversation with the technician from Great Lakes Plumbing. She stated that due to damage from tree roots, which she believes to be City property, the City should assist financially with the cost associated with the needed repairs. City Manager Richards explained that it is the responsibility of the homeowner to maintain and repair the sewer connection from the home to where it enters the City's sewer main and cited Section 22 of City Code. DPW Director VanderZee discussed jetting of the sewer, tree removal, and who is responsible for what section of the sewer lines. Wemigwase stated that she feels the City Code should be changed. Discussion continued about the removal of trees and root damage to the sewer lines.

Cynthia Shafer of 348 Glenn Drive stated that Washington Street is marked as Public Access and feels that it is an "attractive nuisance" and that she is concerned it could be dangerous.

4. City Manager's Section

A. Introduction of Police Chief Kyle Knight

City Manager Richards explained the hiring process for selecting the best candidate to fill the Chief of Police position to replace retiring Chief Branson. City Manager Richards stated that Chief Kyle Knight, who is the current Police Chief in St. John's Michigan, was offered and has accepted the position and the City is now conducting all of the necessary background checks to complete the hiring process. Chief Knight introduced himself and his family, and stated that this was his dream job and he is honored to have been chosen for the role. Chief Knight further stated that he believes in community policing, taking good care of the students, seniors, and residents, and he looks forward to becoming involved in the community. City Manager Richards stated that incoming Chief Knight will officially start in mid-June and will work alongside retiring Chief Branson during a transitional period.

B. DDA/PSD Board By-laws

City Manager Richards explained that the proposed amendment to the DDA/PSD by-laws, as written, conflicts with State law. City Attorney Ramer explained the State law associated with the removal of any appointed DDA member, and that any further proposed changes would need to be reconsidered.

C. City Assessor's Report

Assessor Grimm presented his annual briefing and briefly explained the changes over the past year including property value changes and the cost of living increase. Discussion followed about how property values are assessed and what factors determine any increases or decreases. Mayor Brown asked about TIF, Assessor Grimm explained how TIF captures are determined by the increase of taxable values of the property within the downtown district.

D. Replacement of Well Pump Control – Consideration of Approval

City Manager Richards stated that the Peffer well soft start system on the well pump motor has not been working properly and is causing some deterioration of the motor windings, further explaining that soft start systems are becoming obsolete and the recommended replacement is a variable frequency drive. City Manager Richards reviewed the bids that were received and recommended the contract with UIS (Utilities Instrumentation Services) for \$10,555.00, further stating that an approximately \$4,400.00 in energy efficiency credits will come back to the City reducing the overall cost. Mayor Brown asked about the soft start controls on the other three City well systems. DPW Director VanderZee briefly explained the type of equipment at the other wells, with only one other having a soft start system, further explaining that the replacement of that system could be budgeted for in the future.

#8473 – Motion by Cupps, second by Pfeifer, to authorize City Manager Richards to accept the contract with Utilities Instrumentation Services for the purchase and installation of pump control equipment at the Peffer well in the amount of \$10,555.00

Ayes – 5

Nays – 0

Motion carried.

E. Proposed Lease Agreement with HSPS - Consideration of Approval

City Manager Richards stated that the proposed lease agreement between the City and the Harbor Springs School District for the district's use of the City owned baseball field property has been placed on hold for this meeting. City Manager Richards explained that Superintendent Tompkins informed him just prior to the meeting that the district wanted to take the proposal off the table for now so that the language in the proposed agreement could be further explored. City Attorney Ramer explained that the issue with the agreement is related to the specific language about how much control the school would have over the use the property and that the lease agreement is still a work in progress.

Superintendent Tompkins provided updates about the status of the district's athletic master plan, stating that that the district has held seven community meetings and has received a 94% positive response rate. Tompkins reviewed the revised master plan and explained the additions and changes that have been made. Tompkins continued with discussion about the proposed funding collaboration between the City and the District and asked the City to consider contributing approximately 4.6% of the overall cost of the plan, stating that those costs would be mostly for three target areas of improvement; paved parking and drainage at Ottawa Stadium, paved parking at the baseball fields, and one tennis court. The estimated cost of the three areas is approximately \$230,000.00 and the areas all have shared use with the City and its community members. Tompkins stated that he simply would like to see these areas brought up to the Harbor Springs standards and for the athletic fields to be as good as the teams that play on them. Tompkins explained that the expenditure would be contingent on the successful passing of a bond in November, and that the bond would not result in any increase of taxes.

F. Odawa Legal Dispute – Update from Attorney David Otis

City Manager Richards introduced David Otis, the Attorney representing the City in its intervention in the legal dispute between the Tribe and the State. Attorney Otis explained the Court's process for allowing groups to file motions to intervene and that many groups have filed motions including the group he is representing, which consists of the City of Harbor Springs, City of Petoskey, Emmet County, and Charlevoix County. There are now a group of defendants in the case, including the groups of interveners and the Governor, adding that the Federal Government chose not to intervene. The State of Michigan now takes the lead for the defense in the case through its Office of the Attorney General, and the Attorneys representing the other intervening groups have agreed to a joint defense agreement. The case is still in the discovery phase which will be a lengthy process leading into the deposition phase and will extend into the middle of next year. Attorney Otis further explained that the courts bifurcated the case into two phases. Phase one will determine whether or not a reservation was established by the two treaties in 1836 and 1855. If it is ruled that a reservation was established, then the case will proceed into phase two, where the courts will then consider the disputed equitable defenses. The determination of phase two, Otis explained, is the portion of the case that raises concerns over what changes could come from the potential remedies of those equitable defenses. Attorney Otis explained the timeline of the trial schedule and that phase one could extend into early 2019. Discussion followed about the lack of intervention by the US Government, how the number of intervening groups affects the defense of the case, what the Tribe is asking for, media coverage of the case, and previous Claims Commission proceedings in the 1940's.

Mayor Brown opened the discussion to public comment. John Wayman, City resident and retired trial lawyer addressed council and presented his opinions about the case, quoted a variety of sources, expressed concerns about the Attorney representing one of the other intervening groups, and asked questions relating to truth or validity of the information. Attorney Otis explained that the quotes Wayman referenced are media positions, not legal positions being taken, that Wayman's concerns about potential outcomes would fall under phase two of the case, and that he would not comment on the Attorney or speculate on the Tribe's potential strategy.

Attorney Otis responded to questions from Chuck Glass and other members of the public and discussion followed about the original treaties, the outcomes of similar court cases, potential expert witnesses, and what should or should not be communicated to the public.

Gary Rentrob, President of the Lakeshore Association, presented findings on research he and his group have done, and he went on to quote from the Tribe's constitution. Discussion continued about the potential for any community involvement in the case. Attorney Otis explained that there is a very clear focus on the defense of the case and that the actual purpose of the joint defense agreement is to effectuate that focus, and he further assured those that have expressed concern that there is a complete commitment to the coordination of defense as a whole.

City Attorney Ramer stated that recessing to closed session for further discussion would be up to the Members of Council at this point. Mayor Brown stated that there is additional business on the agenda to attend to before the closed session.

5. Manager's Report

City Manager Richards reviewed his Manager's Report and briefed Council in the following areas:

- Action taken by the newly formed subcommittee with representatives from the DDA, Planning Commission, and City Council, regarding parking management regulation.
- Plantings that were completed around the downtown trees with a coordinated effort by the DPW staff, Garden Club, and a number of volunteers who completed the job quickly.
- The purchase of an Electric Assist Bicycle with donated funds for the Police Department to assist officer's response time and decrease fatigue on hills.
- Delivery of the DPW's newly purchased wood chipper which is parked outside for anyone to take a look at.

Upcoming Boards and Commissions Meetings: City Manager Richards stated that the following upcoming meetings will be held in Council Chambers;

- Planning Commission – Thursday, May 18, 2017 at 6:00 p.m.
- DDA/PSD Board – Thursday, June 1, 2017 at 8:00 a.m.
- Harbor Commission – Wednesday, June 7, 2017 at 4:00 p.m.
- Zoning Board of Appeals – Wednesday, June 14, 2017 at 5:30 p.m.
- Next Regular City Council Meeting – Monday, June 5, 2017 at 7:00 p.m.

6. Boards and Commissions - Appointments

Mayor Brown stated that he would like to appoint Tim Knapp to the DDA/PSD Board. Knapp also serves as the Third Street Committee Chairperson. By consensus, Council approved the appointment.

City Manager Richards stated that he would like to recommend appointment of City Clerk Nick Whitaker as the City's alternate representative on the Michigan Public Power Agency, which is the City's power supply organization; the appointment replaces retired City Clerk Ron McRae. City Manager Richards explained that the alternate would serve as the representative in the event of his absence.

#8474 – Motion by Cupps, second by Pfeifer, to appoint Clerk Whitaker as the City's alternate representative on the Michigan Public Power Agency

Ayes – 5
Nays – 0

Motion carried.

7. Closed Session

#8475 - Motion by Cupps, second by James, to enter into Closed Session under Section 8(e) of the Open Meetings Act, as amended, for consultation with Attorney David Otis on the matter of the LTBB of Odawa Indians vs Snyder regarding trial or settlement strategy on the ground that an open meeting would have a detrimental effect on the litigating strategy of the City.

Roll Call Vote:

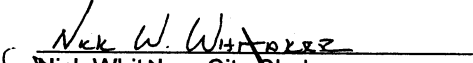
Ayes: Bugera, James, Pfeifer, Brown, Cupps
Nays: None
Absent: None

Motion carried.

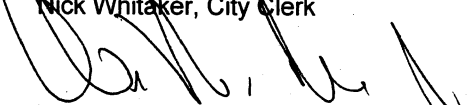
8. Adjournment

With no further business, Mayor Brown adjourned the meeting at 9:30 p.m.

Approved: June 5, 2017



Nick Whitaker, City Clerk



William M. Brown Jr., Mayor