

DOWAGIAC CITY COUNCIL MEETING

Monday September 23, 2013

A regular meeting of the Dowagiac City Council was called to order by Mayor Donald D. Lyons at 7:00 p.m.

Mayor Lyons led the Pledge of Allegiance to the flag.

PRESENT: Mayor Donald D. Lyons, Mayor Pro-Tem Leon D. Laylin; Councilmembers Charles K. Burling, James B. Dodd and Randall G. Gross, Sr.

ABSENT: Lori A. Hunt and Bob B. Schuur.

STAFF: City Manager Kevin P. Anderson and City Clerk James E. Snow.

Councilmember Laylin moved and Councilmember Gross seconded that the minutes of the September 9, 2013 meeting be approved.

Approved unanimously.

COMMUNICATION

1. Homecoming Parade, September 27, 2013

Councilmember Dodd moved and Councilmember Laylin seconded to grant the request.

Approved unanimously.

2. Borgess Tree of Love Lighting Ceremony, December 4, 2013

Councilmember Laylin moved and Councilmember Burling seconded to grant the request.

Approved unanimously.

PUBLIC HEARING

1. Public hearing to receive comments on a proposed 2013 Biennial Energy Optimization Plan.

City Manager Kevin P. Anderson gave brief comments on the plan.

Mayor Lyons opened a public hearing to receive comments from the public on the above mentioned plan at 7:05 p.m.

There being no public comment, Mayor Lyons closed the public hearing at 7:05 p.m.

APPOINTMENT

1. Zoning Board of Appeals- Recommended by Mayor and offered by Mayor Pro Tem:

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Re-appoint Edward Booth for a term expiring October 2016.

Re-appoint James Sayer for a term expiring October 2016.

Councilmember Burling moved and Councilmember Dodd seconded to approve the Mayor's appointment.

Approved unanimously.

RESOLUTIONS

1. Resolution to authorize submission of the 2013 Biennial Energy Optimization Plan.

Councilmember Laylin offered and moved the adoption of the following resolution; seconded by Councilmember Gross.

WHEREAS, pursuant to Public Act 295 of 2008, the State of Michigan requires that electric and gas utility providers develop a Renewable Energy Plan; and

WHEREAS, the City of Dowagiac developed the initial Renewable Energy Plan in May 2009; and

WHEREAS, Public Act 295 of 2008 requires that the plans be periodically updated; and

WHEREAS, City Council held a public hearing on September 23, 2013 to gather input into the proposed updated plan.

NOW, THEREFORE, BE IT RESOLVED that the City of Dowagiac does hereby authorize the updated Renewable Energy Plan as presented by staff.

ADOPTED unanimously.

2. Resolution to approve an agreement for the conditional transfer of land in Pokagon Township to the City of Dowagiac in accordance with P.A. 425 of 1984.

Councilmember Laylin offered and moved the adoption of the following resolution; seconded by Councilmember Dodd.

WHEREAS, in keeping with the provisions of Act No. 425 of the Public Acts of Michigan of 1984, the City of Dowagiac and Pokagon Township wish to jointly enter into and adopt a contract for the Conditional Transfer of Property currently in Pokagon Township for the purposes of an "Economic Development Project"; and

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WHEREAS, said contract, as attached herewith, fully describes the terms and conditions under which the property transferred, as described in Appendix A, shall be governed and provided services; and

WHEREAS, following the completion of a public hearing on August 26, 2013 in complete compliance with Public Act 425 of 1984, the City Council of the City of Dowagiac now wishes to approve and enter into such contract with the following conditions:

a. That said approval be contingent upon the like approval of an identical document by the Township Board of Pokagon Township.

b. That said contract become effective thirty (30) days following the latter of the public hearings to be held by both the City and Pokagon Township, and only in the event that during such thirty (30) day period, no petitions are filed, nor resolutions adopted, by either local unit involved, in accordance with Article 124.25, Section 5, of Public Act 425 (1984) as amended.

NOW, THEREFORE, BE IT RESOLVED that the City of Dowagiac, by the majority vote of those members elected and serving on the City Council, does hereby adopt and enter into a contract with Pokagon Township for the Conditional Transfer of Property, as attached hereto and by reference made a part hereof for the purposes of an "Economic Development Project" in compliance with Public Act 425 of the Public Acts of Michigan of 1984.

BE IT FURTHER RESOLVED that the contract shall not take full force and effect until and unless:

a. It is first considered before a public hearing of each of the Legislative bodies of the local units affected.

b. That no-less-than thirty (30) days following the last-occurring public hearing, as referenced above, shall elapse.

c. That at no time during the thirty (30) day period, referenced above, shall any petition be filed, or resolution adopted, in accordance with Article 124.25, Section 5, of Public Act 425 (1984), which would require a referendum on such contract or preclude either local unit from entering into such contract.

BE IT FURTHER RESOLVED that the Mayor and City Clerk of the City of Dowagiac be authorized and directed to act as signatories for the execution of said contract upon final adoption in accordance with the provisions and conditions set forth herein.

ADOPTED unanimously.

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3. Resolution to authorize an installment purchase agreement for the Front and Main Building Condominium Project.

CITY OF DOWAGIAC

**COUNTY OF CASS
STATE OF MICHIGAN**

**RESOLUTION AUTHORIZING
CONDOMINIUM PURCHASE AGREEMENT AND
INSTALLMENT PURCHASE AGREEMENT
(FRONT AND MAIN BUILDING CONDOMINIUM PROJECT)**

At a regular meeting of the City Council of the City of Dowagiac, Michigan (the “City”), Cass County, Michigan, held in the City Council Chambers, 241 South Front Street, Dowagiac, Michigan, on Monday, September 23, 2013, at 7:00 p.m., Michigan time, there were

Present: Councilmembers Burling, Dodd, Gross and Laylin

Absent: Councilmembers Hunt and Schuur

The following preamble and resolution were offered by Councilmember Dodd and seconded by Councilmember Laylin:

RECITALS

WHEREAS, the City of Dowagiac, Michigan (the “City”) is authorized, pursuant to Act No. 99 of the Michigan Public Acts of 1933, as amended (“Act 99”), to enter into contracts for the purchase of lands, property or equipment for public purposes, to be paid for in installments over a period of not to exceed 15 years or the useful life of the property acquired, whichever is less; and

WHEREAS, the City Council has determined that it is necessary and appropriate to acquire from Van Buren Cass Community Health Properties, a Michigan nonprofit corporation (the “Seller”), an approximately 5,571 square foot business condominium unit (or two or more contiguous condominium units comprising that amount of space) within the City, to be located at 302 South Front Street, to be used by the City for public purposes (the “Project”); and

WHEREAS, the Project will be the entire first floor of a two-floor building to be constructed upon all or a portion of Lots 170 and 171, original Plat of the Village (now City) of Dowagiac, according to the plat thereof, pursuant to a construction contract to be entered into between the Seller, as developer, and Pegasus Holdings & Land Development Co., LLC, as builder (the “Builder”); and

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WHEREAS, the second floor of such building will be a separate condominium unit to be owned upon completion by the Seller and leased in its entirety to the Van Buren/Cass District Health Department for the purpose of providing essential public health services to residents of Van Buren and Cass Counties; and

WHEREAS, the City Council has further determined that it is necessary and appropriate to enter into an agreement to purchase the Project for a purchase price not exceeding \$890,000 (the "Purchase Price"), of which up to \$580,000 will be funded by the City from available moneys upon the closing of such purchase, and of which the balance of the purchase price is to be paid on an installment purchase basis pursuant to Act 99 at a cost (exclusive of interest) not exceeding \$310,000 (the "Financed Amount"); and

WHEREAS, for purposes of the limitations set forth in Act 99, the useful life of the Project has been determined to exceed fifteen (15) years, and the aggregate outstanding balance, exclusive of interest, of all installment contracts or agreements for purchases by the City of lands, property or equipment for public purposes, including the Financed Amount, does not exceed 1.25% of the taxable value of all real and personal property in the City; and

WHEREAS, PNC Bank, National Association (the "Bank") has proposed to finance the Financed Amount by acquiring the rights of the Seller under such installment purchase agreement and by receiving an assignment of the Seller's rights in said agreement; and

WHEREAS, a form of Condominium Purchase Agreement (the "Condominium Purchase Agreement"), attached hereto as Exhibit A, with respect to the City's acquisition of the Project has been presented to the City Council and is before this meeting; and

WHEREAS, it is proposed that in connection with the City's execution of the Condominium Purchase Agreement that the City further enter into an Installment Purchase Agreement with the Seller and the Bank for the City's financing of a portion of the purchase price of the Project, which will provide: (i) for a purchase price not exceeding \$890,000; (ii) for the City to make a payment of not more than \$580,000 upon the execution and delivery of the Agreement, to be deposited into the Construction Fund established under the Agreement and disbursed as provided therein (the "Construction Fund"); (iii) for the installment purchase financing of the balance of the Purchase Price in a principal amount not exceeding \$310,000 over a period of not to exceed fifteen (15) years, bearing interest based on the Bank's prevailing daily or monthly variable interest rate index, with an initial rate not exceeding 3.5% per annum, with interest and principal payable monthly, subject to prepayment by the City in whole or in part at any time, without premium or penalty; and (iv) for the assignment of the Seller's interest in the Agreement to the Bank (subject to certain exceptions) in consideration for the Bank's funding of the Financed Amount, to be deposited in the Construction Fund, and the City's promise to pay the Seller the Purchase Price from the moneys deposited by the City and the Bank in the Construction Fund (the "Installment Purchase Agreement").

RESOLUTIONS

NOW, THEREFORE, BE IT RESOLVED as follows:

1. An immediate need exists for the acquisition of the Project, which acquisition is hereby approved subject to the further provisions of this resolution.
2. The Agreement is in the best interests of the City, and the acquisition and use of the Project constitute essential public purposes.
3. The form of the Condominium Purchase Agreement which is attached at Exhibit A and incorporated herein by reference is hereby approved in substantially the form submitted to this meeting, and the Mayor and the City Clerk are hereby authorized and directed to execute and deliver the Condominium Purchase Agreement, with such changes therein as shall be necessary or desirable, within the parameters of this Resolution, permitted by law and not materially adverse to the City. The financial terms of the City's acquisition of the Project, substantially in accordance with those described in the Recitals above and as set forth in the Condominium Purchase Agreement, are also approved.
4. The Mayor and the City Clerk are hereby further authorized and directed to execute and deliver the Installment Purchase Agreement pursuant to Act 99 in a form consistent with the terms thereof as set forth in the foregoing Recitals, with such changes therein as shall be necessary or desirable, within the parameters of this Resolution, permitted by law and not materially adverse to the City.
5. The Project has a useful life extending beyond fifteen (15) years, the maximum term of the Installment Purchase Agreement, and the aggregate principal amount of the Agreement and of all outstanding installment purchase obligations of the City under Act 99 does not exceed 1.25% of the taxable value of all real and personal property in the City.
6. The City hereby agrees to include in its budget for each fiscal year during the term of the Installment Purchase Agreement an amount sufficient to pay when due the principal of and interest coming due under the Installment Purchase Agreement during such fiscal year. In addition, the City hereby pledges to levy in each fiscal year ad valorem taxes on all taxable property in the City in an amount which, together with other funds available for such purpose, shall be sufficient for the payments required under the Agreement in such fiscal year, provided that any such tax levy is subject to existing charter, statutory and constitutional tax limitations.
7. The City covenants that, to the extent permitted by law, it shall take all actions within its control necessary to maintain the exclusion of the interest component of the payments due under the Agreement from the adjusted gross income of the

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recipient for federal income tax purposes under the Internal Revenue Code of 1986, as amended (the "Code").

8. The Mayor is hereby authorized to negotiate and determine the final terms of the Condominium Purchase Agreement and the Installment Purchase Agreement with the Bank and the Seller, including the final Purchase Price and financing terms, subject to the parameters set forth herein. The Mayor, the City Clerk and the City Treasurer, severally, are authorized to act on behalf of the City in executing and delivering all agreements, documents, certificates, instruments of title, financing statements and other documents as may be necessary to consummate the transactions contemplated by the Condominium Purchase Agreement and the Installment Purchase Agreement, including all condominium forms and agreements relative to the purchase of the Project, and to pay costs incidental to the financing of the acquisition of the Project, including Bank fees, bond counsel fees and expenses, Bank counsel fees and expenses, Seller counsel fees and expenses, and other incidental costs necessary to accomplish the financing and acquisition of the Project.
9. The obligation of the City to make the payments required under the Installment Purchase Agreement is a full faith and credit general obligation of the City, subject to applicable constitutional, statutory and charter limitations, and said installment purchase obligation is hereby designated as a "qualified tax exempt obligation" for purposes of the deduction of interest expense by financial institutions pursuant to Section 265(b)(3)(B)(ii) of the Code.
10. The law firm of Dykema Gossett PLLC, of Bloomfield Hills, Michigan, is hereby retained to act as nationally recognized bond counsel for the City in connection with the execution and delivery of the Installment Purchase Agreement to the Bank.
11. This Resolution shall be effective immediately upon its adoption.
12. All resolutions and parts of resolutions, insofar as they conflict with the provisions of this resolution, are hereby rescinded.

A roll call vote on the foregoing resolution was taken, the result of which is as follows:

YES: Councilmembers - Burling, Dodd, Gross and Laylin

NO: Councilmembers - None

ABSENT: Councilmembers - Hunt and Schuur

ABSTAIN: Councilmembers - None

THE RESOLUTION WAS THEREUPON DECLARED ADOPTED.

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4. Resolution to set a public hearing on October 28, 2013 at 7:00 p.m. to receive public comment on the proposed Wastewater Treatment Plant improvements project.

Councilmember Burling offered and moved the adoption of the following resolution; seconded by Councilmember Dodd.

WHEREAS, the MDEQ requires all municipalities who are applying for an SRF or SWQIF loan to hold a formal public hearing prior to the adoption and submittal of a final project plan; and

WHEREAS, a it is required that the notice of the public hearing be advertised at least 30 days prior to the hearing in a newspaper of general circulation in the communities affected by the proposed project.

NOW, THEREFORE, BE IT RESOLVED that the City of Dowagiac, by the affirmative vote of its City Council, does hereby declare and establish that a public hearing will be conducted on Monday, October 28, 2013, at 7:00 p.m. in the Council Chambers of City Hall, at a regularly scheduled Council meeting, for the purposes of receiving public input on the proposed Wastewater Treatment Plant improvements project.

BE IT FURTHER RESOLVED that notice of said hearing shall be published at least once in the *Dowagiac Daily News* in a manner in compliance with the Open Meetings Act, being Public Act 267 of 1976, and that said notice shall be published by posting at the Dowagiac City Hall, 241 South Front Street, Dowagiac, Michigan, provided such is allowed by Public Act 425 (1984).

ADOPTED unanimously.

5. Resolution authorizing an interfund loan from the Electric Fund to the Solid Waste Fund.

Councilmember Dodd offered and moved the adoption of the following resolution; seconded by Councilmember Burling.

WHEREAS, the Solid Waste Fund has experienced unusual non-recurring expenditures in FY 2012-13; and

WHEREAS, City Council desires to balance the impact of said expenditures over multiple funds; and

WHEREAS, the Electric Fund has sufficient cash reserves for a loan to this fund at a fair and reasonable interest rate.

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NOW, THEREFORE, BE IT RESOLVED that City Council does hereby authorize a loan from the Electric Fund to the Solid Waste Fund in the amount of \$160,000 to be repaid in equal installments over a ten-year period at an interest rate of 3%.

ADOPTED unanimously.

6. Resolution authorizing an amendment to the City's Classification and Compensation System.

Councilmember Laylin offered and moved the adoption of the following resolution; seconded by Councilmember Gross.

WHEREAS, Section 7.7 of the Dowagiac City Charter sets forth the duties of the City Manager, and;

WHEREAS, the City Manager shall see that all laws, ordinances, rules and regulations adopted by the City Council and provisions of the Charter are properly enforced, and;

WHEREAS, the City Manager shall recommend to the Council for consideration such measures as he may deem necessary and expedient, and;

WHEREAS, the City Manager recommends to Council the approval of an annual fiscal year adjustment of 1.50% to the Classification and Compensation System as attached hereto.

NOW, THEREFORE, BE IT RESOLVED that the City of Dowagiac, by the affirmative vote of its City Council, does hereby approve and adopt the annual fiscal year adjustment of 1.50% to the Classification and Compensation System attached hereto effective October 1, 2013.

ADOPTED unanimously.

7. Resolution to authorize budget amendments for FY 2012-13 through the period September 30, 2013.

Councilmember Laylin offered and moved the adoption of the following resolution; seconded by Councilmember Burling.

WHEREAS, the City administration has reviewed the attached budgets for the 2012-13 fiscal year and the actual revenues and expenditures through September 30, 2013; and

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WHEREAS, the City administration recommends revision of the attached budgets in accordance with the latest projections available; and

WHEREAS, the attached report for these funds indicates the current budget and the recommended budget revisions.

NOW, THEREFORE, BE IT RESOLVED that the City of Dowagiac, by the affirmative vote of its City Council, does hereby adopt the attached, recommended revised budgets.

ADOPTED unanimously.

8. Resolution to establish the official date and time for “Trick or Treat” activities within the City of Dowagiac.

Councilmember Laylin offered and moved the adoption of the following resolution; seconded by Councilmember Burling.

WHEREAS, traditionally the City Council has designated a specific day and time in which Halloween Trick or Treat activities will be conducted in the City of Dowagiac, and;

WHEREAS, this year Halloween falls on Thursday, October 31, 2013, and;

WHEREAS, the Dowagiac City Administration and Police Department have recommended that the Trick or Treat hours for 2013 be established as 6:00 p.m. to 7:00 p.m. on Thursday, October 31st.

NOW, THEREFORE, BE IT RESOLVED that the City of Dowagiac, by the affirmative vote of its City Council, does hereby authorize and designate that Trick or Treat activities be conducted in the City of Dowagiac for 2013 on Thursday, October 31, between the hours of 6:00 p.m. and 7:00 p.m.

BE IT FURTHER RESOLVED, that those that go out on Trick or Treat activities limit their solicitations to homes with porch lights on.

ADOPTED unanimously.

9. Resolution to authorize and direct the City Treasurer to pay the following bills and payrolls due:

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Councilmember Burling offered and moved the adoption of the following resolution; seconded by Councilmember Laylin.

WHEREAS, the following information has been reviewed by the City Manager and City Treasurer and is being presented to City Council with a recommendation to approve invoices and payroll #26 for the period ending 9/19/13:

Invoices: 719,733.38
Payroll: 171,462.26
Total: \$891,195.64

BE IT RESOLVED that the City Manager and City Treasurer are hereby authorized and directed to pay the following bills and payroll due:

<u>Invoices</u>	<u>Payroll</u>	<u>Total</u>
\$719,733.38	\$171,462.26	\$891,195.64

ADOPTED on a roll call vote.

Ayes: Four (4) Burling, Dodd, Gross and Laylin

Nays: None (0)

Absent: Two (2) Hunt and Schuur

Abstain: None (0)

Upon motion by Councilmember Dodd and seconded by Councilmember Laylin, the Dowagiac City Council adjourned at 7:24 p.m.

Donald D. Lyons, Mayor

James E. Snow, City Clerk