

OWOSSO CITY COUNCIL

FEBRUARY 6, 2012

7:30 P.M.

- PRESIDING OFFICER:** MAYOR BENJAMIN R. FREDERICK
- OPENING PRAYER:** MAJOR KEITH BAILEY
SALVATION ARMY
- PLEDGE OF ALLEGIANCE:** MAYOR BENJAMIN R. FREDERICK
- PRESENT:** Mayor Benjamin R. Frederick, Mayor Pro-Tem Cindy S. Popovitch, Councilpersons Loreen F. Bailey, Thomas B. Cook, Michael J. Erfourth, Christopher T. Eveleth and Burton D. Fox.
- ABSENT:** None.

A moment of silence was held in memory of former Councilman Mark C. Anderson on the occasion of his passing.

APPROVE AGENDA

Motion by Councilperson Eveleth to approve the agenda with the removal of the following Special Presentation:

2. Introduction of new Veterans Affairs Director. Introduction of the new Shiawassee County Veterans Affairs Director Jerilyn Strein.

And the addition of the following to the Consent Agenda:

5. Boards and Commissions Appointment. Confirm the Mayoral appointment of Joni Forster to the Historical Commission for a term expiring December 31, 2014.

Motion supported by Councilperson Cook and concurred in by unanimous vote.

APPROVAL OF THE MINUTES OF REGULAR MEETING OF JANUARY 17, 2012

Motion by Councilperson Cook to approve the Minutes of the Regular Meeting of January 17, 2012 as presented.

Motion supported by Mayor Pro-Tem Popovitch and concurred in by unanimous vote.

APPROVAL OF THE MINUTES OF REGULAR MEETING OF JANUARY 30, 2012

Motion by Councilperson Cook to approve the Minutes of the Regular Meeting of January 30, 2012 as presented.

Motion supported by Councilperson Fox and concurred in by unanimous vote.

SPECIAL PRESENTATIONS

PROCLAMATION – CYSTIC FIBROSIS AWARENESS

Cystic Fibrosis Foundation representative Adrian Laux, local CF parent Erika Tyrell and State Representative Ben Glardon were one hand to receive the proclamation.

Mayor Frederick read aloud the following Mayoral Proclamation recognizing the financial contribution made by the Annual Cystic Fibrosis dinner on the occasion of its 25th Anniversary and proclaiming February 8, 2012 as Cystic Fibrosis Awareness Day in the City of Owosso.

**A PROCLAMATION
OF THE MAYOR'S OFFICE OF THE CITY OF OWOSSO, MICHIGAN
PROCLAIMING FEBRUARY 8, 2012 AS
CYSTIC FIBROSIS AWARENESS DAY IN THE CITY OF OWOSSO**

- Whereas, Cystic Fibrosis is an inherited chronic disease that affects the lungs and digestive system of about 30,000 children and adults in the United States; and
- Whereas, a significant commitment of time and financial resources is required each day to effectively treat the symptoms of the disease and to help prolong the life of those with it; and
- Whereas, research is the key to the continued development of new treatments to help and possibly someday cure patients with Cystic Fibrosis; and

Whereas, for 25 years a group of local families and volunteers has dedicated themselves to raising funds for CF research through their annual Cystic Fibrosis Dinner which has resulted in raising over \$160,000; and

Whereas, because of efforts like theirs researchers have been able to develop exciting new therapies which target the root of the problem and not simply the symptoms, one of which was approved for use by the FDA February 2, 2012; and

Whereas, it is fitting to honor those living with CF and to recognize the achievements made by the local families, volunteers and organizations fighting to cure it here in Shiawassee County on the 25th anniversary of the Cystic Fibrosis Dinner.

NOW, THEREFORE, I, Benjamin R. Frederick, Mayor of the City of Owosso, Michigan, do hereby proclaim February 8, 2012 as "Cystic Fibrosis Awareness Day" in the City of Owosso, Michigan and do hereby encourage all citizens of this community to acknowledge and support the Cystic Fibrosis Foundation along with our local volunteers in their efforts to inform and serve the citizens of our community. We as a community proudly stand with those whose lives have been affected by Cystic Fibrosis – bonded by the shared goal of working toward a cure.

Proclaimed this 6th day of February, 2012.

INTRODUCTION OF NEW VETERANS AFFAIRS DIRECTOR (This item was removed from the agenda.)

PUBLIC HEARINGS

ORDINANCE AMENDMENT – CHAPTER 8, BUILDINGS AND BUILDING REGULATIONS

The proposed amendment would remove potentially burdensome requirements that may affect home sales.

Assistant City Manager Adam Zettel indicated further talks with local real estate related groups had taken place and all groups agreed on the language before Council this evening.

Mayor Pro-Tem Popovitch indicated she had heard concerns that this ordinance could affect rental properties. Assistant City Manager Zettel indicated that it is not intended to affect rental properties in the normal course of business.

A public hearing was conducted to receive citizen comment regarding the proposed amendment to Chapter 8, Buildings and Building Regulations, Sections 8-162, 8-163, 8-168 and 8-174 of the Code of Ordinances of the City of Owosso, Michigan.

The following people commented regarding the proposed amendment:

Jeff McIntyre, president of the Shiawassee Association of Realtors, indicated that if the City felt such an ordinance must be put in place the organization could support the wording proposed this evening. He further indicated the group would like to continue to keep the lines of communication open regarding this ordinance and any other potential ordinances targeting real estate.

Jerry Meyer, representative of the Home Builders of Shiawassee County, thanked all the groups involved for working together to create a fair ordinance. He said that the organization supported the ordinance as written and he hoped the City would keep the lines of communication open as the ordinance is implemented.

Councilperson Bailey inquired how local realtors would be informed of the ordinance. Mr. McIntyre indicated he would distribute the information at the next realtors meeting.

Councilperson Erfourth expressed numerous concerns with the ordinance including whether it would affect snow birds, noting that vacancy was required for 180 consecutive days to trigger the ordinance, the cost to potential buyers, consequences for non-compliance, and his feeling the ordinance would not catch land contract deals.

Motion by Councilperson Erfourth to note that vacancy would be required for 180 consecutive days to trigger the ordinance.

Motion supported by Councilperson Fox.

City Attorney William C. Brown noted the amendment was not necessary as the definitions defined days as consecutive days.

There was discussion regarding Councilperson Erfourth's concerns. Members noted that while the ordinance was not perfect it would provide the City with another tool to prevent the deterioration of the housing stock. **Further it was noted that the ordinance would not apply to snow birds and that maintenance of vacant/abandoned homes was required.** There was

The bold text was added at the behest of Council upon approval of the minutes at the February 21, 2012 meeting.

indication that there was support for some of Councilperson Erfourth's concerns and feedback from local real estate organizations was desired in order to better fight blight within the City.

Whereas, the Council, after due and legal notice, has met and having heard all interested parties, motion by Councilperson Fox that the following ordinance be adopted:

ORDINANCE NO. 727

AN ORDINANCE TO REQUIRE ABANDONED OR FORECLOSED PROPERTY REGISTRATION AND MAINTENANCE

AN ORDINANCE to amend Sections 8-162, 8-163, 8-168 and 8-174 of Chapter 8, Buildings and Building Regulations, to remove potentially burdensome requirements that may affect home sales.

WHEREAS, the City of Owosso has adopted an ordinance requiring the registration and inspection of abandoned and foreclosed homes; and

WHEREAS, it has come to light that some requirements put forth by this ordinance may have the unintended consequence of squelching home sales; and

WHEREAS, the City is desirous of a solution that does not obstruct home sales but captures the intent of the original ordinance.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Owosso, Michigan that all foreclosed and abandoned homes in the City of Owosso be registered in accordance with Article VIII, *Registering Abandoned and Foreclosed Homes*, of Chapter 8, Buildings and Building Regulations, as follows:

THE CITY OF OWOSSO ORDAINS:

SECTION 1. Short Title.

This Ordinance shall be known and cited as the *City of Owosso Abandoned or Foreclosed Property Registration and Maintenance Ordinance*.

SECTION 2. Secs 8-160 through 8-176 shall read as follows:

Sec. 8-160. Purpose.

It is the purpose and intent of the city of Owosso, through the adoption of this article, to establish an abandoned residential property registration program as a mechanism to protect residential neighborhoods from becoming blighted through the lack of adequate maintenance and security of abandoned properties.

Sec. 8-161. Definitions.

For the purpose of this article, certain words and phrases are defined as follows:

Abandoned means a property that is vacant and is under a current complaint for foreclosure or notice of foreclosure and/or notice of trustee's sale, pending tax sale, and/or properties that have been the subject of a foreclosure sale where the title was retained by the beneficiary of a mortgage involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure/sale.

Accessible property means a property that is accessible through a compromised/breached gate, fence, wall, etc.

Accessible structure means a structure/building that is unsecured and/or breached in such a way as to allow access to the interior space by unauthorized persons.

Agreement means any agreement or written instrument which provides that title to residential property shall be transferred or conveyed from one owner to another owner after the sale, trade, transfer, or exchange.

Assignment of rents means an instrument that transfers the beneficial interest under a mortgage from one lender/entity to another.

Beneficiary means a lender under a note secured by a mortgage.

Buyer means any person, co-partnership, association, corporation, or fiduciary who agrees to transfer anything of value in consideration for property described in an agreement of sale, as defined in this section.

Dangerous building means any building/structure that is in violation of any condition referenced in chapter 8 of this Code.

Days means consecutive calendar days.

Deed in lieu of foreclosure/sale means a recorded document that transfers ownership of a property from the trustor to the holder of a mortgage upon consent of the beneficiary of the mortgage of a deed from mortgagor to mortgagee.

Default means the failure to fulfill a contractual obligation, monetary, or conditional.

Distressed means a property that is under a current notice of default and/or notice of trustee's sale and/or pending tax assessor's lien sale or has been foreclosed upon by the trustee or has been conveyed to the beneficiary/trustee via a deed in lieu of foreclosure/sale.

Evidence of vacancy means any condition that on its own or combined with other conditions present would lead a reasonable person to believe that the property is vacant. Such conditions include, but are not limited to, overgrown and/or dead vegetation, accumulation of newspapers, circulars, flyers and/or mail, past due utility notices and/or disconnected utilities, accumulation of trash, junk and/or debris, the absence of window coverings such as curtains, blinds and/or shutters, the absence of furnishings and/or personal items consistent with residential habitation, statements by neighbors, passersby, delivery agents, government employees that the property is vacant.

Foreclosure means the process by which a property, placed as security for a real estate loan, is sold at auction to satisfy the debt if the trustor or mortgagor (borrower) defaults.

Local means within forty (40) road/driving miles distance of the subject property.

Mortgage means an instrument by which title to real estate is transferred to a third party trustee as security for a real estate loan or by which a mortgagor grants mortgagee a lien on real estate.

Mortgagee means a lender that has taken a lien on real property to secure a loan.

Mortgagor means an owner of real property that has granted a lien on real property to secure a loan.

Neighborhood standard means those conditions that are present on a simple majority of properties within a three-hundred-foot radius of an individual property. A property that is the subject of a neighborhood standard comparison, and any other abandoned property within the three-hundred-foot radius, shall not be counted toward the simple majority.

Out-of-area means in excess of forty (40) road/driving miles distance of the subject property.

Owner means any person, co-partnership, association, corporation, or fiduciary having a legal or equitable title or any interest in any real property excluding governmental agencies.

Owner of record means the person having recorded title to the property.

Property means any unimproved or improved real property, or portion thereof, situated in the city and includes the buildings or structures located on the property regardless of condition.

Residential building means any improved real property, or portion thereof, situated in the city, designed, or permitted to be used for dwelling purposes, and shall include the buildings or structures located on such improved real property. This includes any real property being offered for sale, trade, transfer, or exchange as residential whether or not it is legally permitted and/or zoned for such use.

Secure or secured means such measures as may be directed by the city of Owosso building official or his or her designee that render the property inaccessible to unauthorized persons, including but not limited to the repairing of fences and walls, chaining/padlocking of gates, and the repair or boarding of doors, broken windows and/or other openings. In the case of broken windows, securing means the reglazing or boarding of the window. Boarding shall be completed or required. In addition, secure or secured means closing and locking windows, doors (walk-through, sliding and garage), gates and any other opening of such size that it may allow a person to access the interior of a property and/or structure(s).

Trustee means the person, firm, or corporation holding a mortgage on a property.

Trustor means a borrower under a mortgage, who deeds property to a trustee as security for the payment of a debt.

Vacant means a building/structure that is not legally occupied.

Sec. 8-162. Registration.

Any beneficiary/trustee or mortgagee, who holds a mortgage on a property located within the city, shall perform an examination, to the extent permitted by law or under the mortgage, of the property that is the security for the mortgage, upon default by the trustor or mortgagor, within five (5) days after either filing a complaint for foreclosure (if foreclosure is by judicial action) or publishing a notice of foreclosure (if foreclosure is by advertisement). If the property is found to be vacant or shows evidence of vacancy, it is, by this article, deemed abandoned and the beneficiary/trustee or mortgagee shall, within ten (10) days of the examination, register the property with the city of Owosso building official or his or her designee on forms provided by the city.

If the property is occupied but remains in default, it shall be examined, to the extent permitted by law and the mortgage, by the beneficiary/trustee or mortgagee, or his designee, monthly until (1) the trustor, mortgagor or other party remedies the default or (2) it is found to be vacant or shows evidence of vacancy at which time it is deemed abandoned, and the trustee shall, within ten (10) days of that examination, register the property with the city of Owosso building official or his or her designee on forms provided by the city.

In either case the registration shall contain the name of the beneficiary/trustee or mortgagee (corporation or individual), the direct street/office mailing address of the beneficiary/trustee or mortgagee (no P.O. boxes), a direct contact name and phone number for the beneficiary/trustee or mortgagee and, in the case of a corporation or out-of-area beneficiary/trustee or mortgagee, the local property management company responsible for the security, maintenance, and marketing of the property. Registration fees will not be prorated.

An annual registration fee shall accompany the registration form. The fee and registration shall be valid for the calendar year, or remaining portion of the calendar year, in which the registration was initially required. Subsequent registrations and fees are due January 1 of each year and must be received no later than January 31 of the year due.

This section shall also apply to properties that have been the subject of a foreclosure sale where the title was transferred to the beneficiary of a mortgage or mortgagee involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure/sale. Such properties shall be registered with the city in accordance with the terms of this section upon transfer even if occupied at the time of transfer.

Properties subject to this article shall remain under the annual registration requirement, security, and maintenance standards of this section as long as they remain vacant.

A person, firm, or corporation that has registered a property under this article must report any change of information contained in the registration to the city of Owosso building official within ten (10) days of the change.

Sec. 8-163. Maintenance requirements.

Vacant and abandoned properties subject to this section shall be, in comparison to the neighborhood standard, kept free of weeds, dry bush, dead vegetation, trash, junk, debris, building materials, any accumulation of newspapers, circular, flyers, notices, except those required by federal, state, or local law, discarded personal items including but not limited to furniture, clothing, large and small appliances, printed material or any other items that give the appearance that the property is abandoned.

The property shall be maintained free of graffiti, tagging, or similar markings by removal or painting over with an exterior grade paint that matches the color of the exterior of the structure.

Visible front and side yards shall be landscaped and maintained to the neighborhood standard at the time registration was required. Landscape includes, but is not limited to, grass, ground covers, bushes, shrubs, hedges or similar plantings, decorative rock or bark or artificial turf/sod designed specifically for residential installation. Landscape does not include weeds, gravel, broken concrete, asphalt, decomposed granite, plastic sheeting, indoor-outdoor carpet or any similar material.

Maintenance includes but is not limited to regular watering, irrigation, cutting, pruning, and moving of required landscape and removal of all trimmings.

Pools and spas shall be either kept in working order so the water remains clear and free of pollutants and debris or drained and kept dry or drained and covered. In either case properties with pools and/or spas must comply with the minimum security fencing requirements of the state of Michigan.

Adherence to this section does not relieve the beneficiary/trustee or property owner of any obligations set forth in any covenants, conditions, and restrictions and/or homeowners' association rules and regulations which may apply to the property.

Sec. 8-164. Security requirements.

Properties subject to this section shall be secured so as not to be accessible to unauthorized persons. If the property is owned by a corporation and/or out-of-area beneficiary/trustee/ owner/mortgagee, a local property management company shall be contracted to perform weekly inspections to verify that the requirements of this section, and any other applicable laws, are being met.

The local property management company shall inspect the property on a weekly basis to determine if the property is in compliance with the requirements of this article.

Sec. 8-165. Additional authority.

In addition to the enforcement remedies established in this article or other chapters of the *Code of Ordinances*, the city of Owosso building official or his or her designee shall have the authority to require the beneficiary/trustee/owner/mortgagor/mortgagee and/or owner of record of any property affected by this section to implement additional maintenance and/or security measures including but not limited to securing any/all door, window, or other openings, installing additional security lighting, increasing on-site inspection frequency, employment of an on-site security guard or other measures as may be reasonably required to arrest the decline of the property.

Sec. 8-166. Fees.

The fee for registering an abandoned residential property shall be set by resolution of the city of Owosso.

Sec. 8-167. Failure to secure and maintain.

If a property has not been maintained or secured, the city and/or its contracted agent may maintain and/or secure the property and assess costs to the owner, beneficiary or trustee.

Sec. 8-168. Re-occupancy.

A registered property may not be occupied until all outstanding costs, assessments and/or liens owed to the city have been paid in full.

An abandoned and/or vacant residential structure registered under this ordinance shall not be re-occupied until a copy of a home inspection report by a certified building official in the State of Michigan, a registered building inspector in the state of Michigan, or a home inspection company of the buyers choice that is certified by MAHI, ASHI, AHIT, NAHI, or NACHI has been signed by the buyer and a copy delivered to the city.

Sec. 8-169. Violation/abatement.

Violations of this article shall be treated as a strict liability offense regardless of intent. Violations of this article may be enforced as allowed in this chapter. Alternatively, at the sole discretion of the city, the city may issue to the beneficiary/trustee/owner/mortgagor/mortgagee and/or owner of record a notice to abate. The notice to abate shall include:

- (1) The nature and location of the violation;
- (2) The time within which the violation must be abated;
- (3) Notice that the city may act to abate the violation if it is not abated by the owner within a reasonable time stated in the notice, but which may not exceed fifteen (15) days for identified hazards;
- (4) Notice that the cost of such action by the city, plus an administrative fee, shall be a personal debt of the owner, which may be assessed as a lien against the property until paid; and
- (5) Notice that any refusal to allow the city to abate an uncorrected violation shall be a separate violation under this Code.

Sec. 8-170. Authorization for city abatement.

Upon failure of a beneficiary/trustee/owner/mortgagor/mortgagee and/or owner of record to abate a violation as ordered in a notice to abate, the city may abate the nuisance. This abatement may be performed by the city, by a contract vendor, or by other means determined by the city.

Sec. 8-171. Administrative fees.

The fees necessary for the administration of this article shall be established from time to time by resolution of the city council. Such administrative fees shall include the following:

- (1) Notice to abate;
- (2) Search warrant;
- (3) Contact request or warning of abatement action;

- (4) Warning letter;
- (5) Civil infraction preparation;
- (6) Additional inspections;
- (7) Vending;
- (8) Second and subsequent vending;
- (9) Vehicle removal;
- (10) Second and subsequent vehicle removal; and
- (11) Denied entry.

Sec. 8-172. Charge for costs.

When the city has abated a cited nuisance, the cost of abatement, plus any applicable administrative charges as established by city council resolution, shall be billed to the property owner or beneficiary/trustee/mortgagor/mortgagee. Such billing shall be a personal debt of the owner to the city, which may be assessed as a lien against the property, including interest thereon, until paid.

Sec. 8-173. Appeals.

Any person aggrieved by any of the requirements of this section may appeal to the Owosso Building Board of Appeals, provided that a written application for appeal is filed within twenty (20) days after the day the decision, notice, or order was served. An application for appeal shall be based on a claim that the true intent of this Code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this Code do not fully apply, the requirements of this Code are adequately satisfied by other means, or the strict application of any requirement of this Code would cause an undue hardship.

Sec. 8-174. Owner, unoccupied premises.

If a property is not in foreclosure but is otherwise vacant for a period of more than 180 days, the owner shall comply with all of the following:

- (1) Maintain the property in accordance with section 8-163 herein and article VI of this chapter.
- (2) Register the property in accordance with section 8-162
- (3) Responsible for the fee identified pursuant to section 8-166 herein.
- (4) Keep the property secure in accordance with sections 8-164 and 8-165 herein.
- (5) Not permit re-occupancy until all outstanding costs, assessments and/or liens owed to the city are paid in full.
- (6) If the owner leases or lets the property, the owner shall comply with article VII of this chapter in addition to the requirements herein.
- (7) Inspect the property in accordance with section 8-168.

Sec. 8-175. Exempt properties.

Properties currently registered with the City as a rental dwelling unit in accordance with Section VII of this Chapter are exempt from the *City of Owosso Abandoned or Foreclosed Property Registration and Maintenance Ordinance*.

Sec. 8-176. Penalty.

Violation of this article is a civil infraction wherein a fine of up to five hundred dollars (\$500.00) may be assessed for each violation.

Section 2: Severability.

If any section, subsection, sentence, clause or phrase of this article is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this article. The city hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one (1) or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

Section 3: Effective Date.

This ordinance shall take effect February 26, 2012.

Section 4: Inspection.

This Ordinance may be purchased or inspected in the City Clerk's Office Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m.

Motion supported by Councilperson Cook.

Roll Call Vote.

AYES: Councilpersons Eveleth, Fox, Bailey, Mayor Pro-Tem Popovitch, Councilperson Cook and Mayor Frederick.

NAYS: Councilperson Erfourth.

ORDINANCE AMENDMENT – WIND ENERGY CONVERSION SYSTEMS

The ordinance would establish procedures and standards to ensure that the location and function of wind energy conversion systems are compatible with the protection of the public health, safety and welfare.

Assistant City Manager Zettel indicated the intent of the ordinance was to provide guidelines for small wind energy systems that could be used to supplement or replace traditional electrical supplies. The ordinance would be self regulating in that many residential parcels in the City would not be able to meet the requirements.

He provide a brief history of the ordinance saying the version before Council this evening was a significantly simplified version as compared to previous proposed ordinances and was unanimously recommended by the Planning Commission.

A public hearing was conducted to receive citizen comment regarding proposed ordinance amendment to amend Chapter 38, Zoning, Sections 38-5 and 38-379 of the Code of Ordinances of the City of Owosso, Michigan.

There were no citizen comments.

Whereas, the Council, after due and legal notice, has met and there being no one to be heard, motion by Councilperson Eveleth that the following ordinance be adopted:

AN ORDINANCE AMENDING CHAPTER 38 ZONING OF THE CODE OF ORDINANCES TO REGULATE WIND ENERGY CONVERSION SYSTEMS

Whereas, the city council of the city of Owosso realizes the benefits of wind energy turbines for the entire community that includes:

- Reduced pressure on the local electrical grid
- Increased security that can provide back-up power to essential and public services
- Increased local energy independence
- Enhanced reliability and power quality of the electrical grid
- Diversified energy supply portfolio
- Reduced pollutants
- Increased market competition
- Reduced utility costs

Whereas, Owosso has sufficient wind energy to support a variety of small and potentially medium sized wind energy conversion systems;

Whereas, the city council wants to establish procedures and standards to ensure that the location and function of wind energy conversion systems including generation, transmission, and potential distribution are compatible with the protection of the public health, safety and welfare;

THE CITY OF OWOSSO ORDAINS that the City of Owosso Zoning Ordinance Sections 38-5 et seq. shall be amended as follows:

Section 1. That Chapter 38, Zoning Code of the City of Owosso Sec. 38-5. Definitions be amended by adding in the appropriate place:

Small Tower-Mounted Wind Energy System (STWES) is a tower-mounted small wind energy system that converts wind energy into electricity by using equipment that includes any base, blade, foundation, generator, nacelle, rotor, tower, transformers, vane, wire, inverter, batteries, or other components ancillary to such use in the system. The SWES is an accessory building that does not exceed 50 kilowatts or 120 feet.

Small Structure-Mounted Wind Energy System (SSWES) is a structure-mounted small wind energy system that converts wind energy into electricity by using equipment that includes any base, blade, foundation, generator, nacelle, rotor, tower, transformers, vane, wire, inverter, batteries, or other components ancillary to such use in the system. This structure an accessory building that is permanently affixed to a structure's roof, walls, or other elevated surface. The SSWES does not exceed 10 kilowatts or 15 in height as measured from the highest point of the roof, excluding chimneys, antennae, and similar protuberances.

Small Wind Energy System (SWES) represent all SSWES and STWES systems.

Shadow Flicker is the moving shadow, created by the sun or other permanent light source shining through the rotating blades of a wind energy system (WES). The amount or degree of shadow flicker is calculated and quantified by computer models.

Section 2. That Chapter 38, Zoning Code of the City of Owosso Sec. 38-379 (2). Accessory buildings be amended to read as follows:

Accessory buildings, except as otherwise permitted in this chapter, shall be subject to the following regulations:

- (2) Accessory buildings shall not be located in any required yard, except a rear yard.

Section 3. That Chapter 38, Zoning Code of the City of Owosso Sec. 38-379 (7). Accessory buildings be amended to read as follows:

- (7) On residential lots of less than seventeen thousand five hundred (17,500) square feet, only two (2) accessory buildings shall be permitted. On residential lots seventeen thousand five hundred (17,500) square feet or greater, only three (3) accessory buildings shall be permitted. These limits shall not apply to wind energy systems, satellite dishes, or dog pens.

Section 4. That Chapter 38, Zoning Code of the City of Owosso Sec. 38-379. Accessory buildings be amended by adding (10) as follows:

- (10) A small wind energy system shall be an accessory building in all zoning districts subject to the following requirements:
 - a. Setbacks and location, as measured from the furthest outward extension of all moving parts.
 1. A STWES shall be set back a distance equal to its total height plus an additional five feet from any occupied building, street or highway right-of-way; any overhead utility lines; all property lines; and any existing guy wire, anchor or small wind energy tower on the property.
 2. A SSWES shall be a minimum of fifteen (15) feet from the property line, public right-of-way, public easement, or overhead utility lines if mounted directly on a roof or other elevated surface of a structure.
 3. A SSWES shall not be affixed to the roof or wall of a structure facing a street.
 4. A STWES shall not be located in any front yard except for properties zoned and used for industrial purposes.
 5. The lowest extension of any blade or other exposed moving component of a WES shall be a least fifteen (15) feet above the ground as well as any outdoor surface intended for human use.
 6. Setbacks may be reduced to not less than twenty (20) feet if the applicant provides a registered engineer's certification that the WES is designed to collapse within a zone smaller than the height of the tower, yet still remain within the owner's property or the applicant acquires an easement to meet the required setback distance.
 - b. Access.
 1. All ground mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.
 2. The tower shall be designed and installed so as to not provide step bolts or a ladder readily accessible to the public for a minimum height of 8 feet above the ground.
 - c. Electrical wires. All electrical wires associated with a small wind energy system, other than wires necessary to connect the wind generator to the wind tower wiring, the wind tower wiring to the disconnect junction box, and the grounding wires shall be located underground.
 - d. Lighting. A wind tower and generator shall not be artificially lighted unless such lighting is required by the Federal Aviation Administration (FAA). Lighting of other parts of the small wind energy systems, such as appurtenant structures, shall be limited to that required for safety purposes, and shall be reasonably shielded from abutting properties.

- e. Appearance, color, and finish. The wind generator and wind tower shall remain painted or finished the color or finish that was originally applied by the manufacturer.
- f. Signs. All signs, other than the manufacturer's or installer's identification, appropriate warning signs, or owner identification on a wind generator, wind tower, building, or other structure associated with a small wind energy system visible from any public road shall be prohibited.
- g. Code compliance. A small wind energy system including wind tower shall comply with all applicable construction and electrical codes.
- h. Utility notification and interconnection. Small wind energy systems that connect to the electric utility shall comply with the Public Service Commission regulations.
- i. Small wind energy systems may be attached to any building, including guy wires, provided the city approves the submittal of documentation sealed by an engineer licensed by the state of Michigan showing the proposed connection of the system to the structure and whether any additional reinforcing is required. The city may not be found liable for damage caused by noise or vibration created by the system.
- j. Meteorological towers shall be permitted under the same standards, permit requirements, restoration requirements, and permit procedures as a small wind energy system.
- k. Each property is eligible for two small wind energy systems only, except properties of at least one contiguous acre may be allowed one additional system for each additional one-half acre or portion thereof
- l. A small wind energy system that is out-of-service for a continuous six-month period will be deemed to have been abandoned. The zoning administrator may issue a notice of abandonment to the owner of a small wind energy system that is deemed to have been abandoned. The owner shall have the right to respond in writing to the notice of abandonment setting forth the reasons for operational difficulty and providing a reasonable timetable for corrective action, within 30 days from the date of the notice. The administrator shall withdraw the notice of abandonment and notify the owner that the notice has been withdrawn if the owner provides information that demonstrates the wind energy system has not been abandoned.
- m. If the small wind energy system is determined to be abandoned, the owner of a small wind energy system shall remove the wind generator from the wind tower at the owner's sole expense within 90 days of the date of the notice of abandonment. If the owner fails to remove the wind generator from the wind tower, the administrator may pursue a legal action to have the wind generator removed at the owner's expense.
- o. Noise emanating from a small wind energy system shall not exceed 50 dB(A) as measured from any offsite habitable structure or 55dB(A) to any lot line.
- p. Wind energy systems shall not interfere with communication systems such as radio, telephone, television, satellite, emergency communications, or Wi-Fi.
- q. Shadow Flicker created by a STWES shall not exceed thirty (30) hours per year as observed on the windows or outdoor spaces (such as porches, patios, and decks) of any offsite building intended for human habitation or occupation. The zoning administrator may request a study to demonstrate the impact of a WES proposal.
- r. Public inquires and complaints by an aggrieved property owner that alleges that a STWES or SSWES does not meet noise or shadow flicker requirements shall be processed as follows:
 - 1. The property owner shall notify the city in writing regarding the concerns related to noise and/or shadow flicker.
 - 2. If the city zoning administrator or engineer deem the complaint sufficient to warrant an investigation, the city will request the aggrieved party to deposit funds in an amount sufficient to pay for a noise level test conducted by a certified acoustic technician and/or a shadow flicker study as performed by a professional.

3. If the tests(s) show that the WES does not exceed the noise or shadow flicker requirements of this chapter, the city will use the deposit to pay for the test.
4. If the WES is violating this chapter's noise requirements, the owner(s) shall reimburse the city for the testing and take immediate action to bring the WES into compliance, include ceasing operation of the WES till the violations are corrected. The city will refund the deposit to the aggrieved property owner.

Section 5. This amendment shall become effective February 26, 2012.

Section 6. This ordinance may be purchased or inspected in the city clerks' office, Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m.

Motion supported by Councilperson Cook.

Roll Call Vote.

AYES: Councilpersons Erfourth, Fox, Bailey, Cook, Mayor Pro-Tem Popovitch, Councilperson Eveleth and Mayor Frederick.

NAYS: None.

ORDINANCE AMENDMENT – RESIDENTIAL STRUCTURES IN NON-RESIDENTIAL ZONING AREAS

The purpose of the amendment would be to grandfather current residential structures in non-residential zoning areas be permitted to be rebuilt in the event that they are destroyed.

Assistant City Manager Zettel noted that owners of such properties are finding it difficult to get mortgages and loans on their homes for improvements because of the current zoning stipulations.

A public hearing was conducted to receive citizen comment regarding proposed ordinance amendment to amend Chapter 38, Zoning, Sections 38-172, 38-197, 38-217, 38-242, 38-267 and 38-292 of the Code of Ordinances of the City of Owosso, Michigan.

There were no citizen comments.

Whereas, the Council, after due and legal notice, has met and there being no one to be heard, motion by Councilperson Eveleth that the following ordinance be adopted:

ORDINANCE NO. 729

AN ORDINANCE AMENDING CHAPTER 38 ZONING OF THE CODE OF ORDINANCES TO PERMIT THE CONTINUANCE OF RESIDENTIAL USES IN NON-RESIDENTIAL ZONES

AN ORDINANCE to amend Chapter 38, Zoning, of the Code of the City of Owosso, Sections 38-172, 38-197, 38-217, 38-242, 38-267, and 38-292 to formally allow continued residential use in non-residential areas to ensure homeowners of such properties are able to obtain mortgages and home loans and have assurances they will be allowed to rebuild should their home be catastrophically damaged.

Whereas, the city council of the city of Owosso realizes that there are numerous housing structures existing in non-residential zones in the city that are still viable.

Whereas, these residential uses may not be able to be placed to a higher and better use due to the condition of the economy;

Whereas, these home owners are finding it very difficult to secure lending for improvements and for purchase due to the non-conformance of the existing use;

Whereas, rezoning all such parcels would be very impractical and problematic.

Now, Therefore, Be It Resolved, by the City Council of the City of Owosso, Michigan that the following amendments be made to Chapter 38, Zoning Code of the City of Owosso to allow continued used of residential structures in non-residential zoning areas.

THE CITY OF OWOSSO ORDAINS:

Section 1. That Chapter 38, Zoning, of the Code of the City of Owosso, Sections 38-172, 38-197, 38-217, 38-242, 38-267, and 38-292 *Principal uses permitted* be amended by adding, in the appropriate place, the following language to the list of permitted uses:

Residential structures existing as of January 1, 2012.

Section 2. This amendment shall become effective February 26, 2012.

Section 3. This ordinance may be purchased or inspected in the city clerks' office, Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m.

Motion supported by Mayor Pro-Tem Popovitch.

Roll Call Vote.

AYES: Councilperson Eveleth, Mayor Pro-Tem Popovitch, Councilpersons Cook, Fox, Erfourth, Bailey and Mayor Frederick.

NAYS: None.

CITIZEN COMMENTS AND QUESTIONS

Carl Rossman, owner of the business at 111 North Hickory Street, thanked the City for improving the alley behind his insurance office. He also thanked the Council for their recognition of the Cystic Fibrosis Dinner. Lastly he announced the annual CROP Walk will be held May 6, 2012.

Eddie Urban, 601 Glenwood Avenue, indicated he had hoped to introduce the Veterans Affairs Administrative Assistant to the Council but would have to do so at a later time. He also expressed his concern that any windmills installed in the City be marked with lights for airplane pilots.

County Commissioner Ronald Elder was on hand to update the Council on recent events at the County level. He indicated the County is pursuing an option to keep a State Police post in the County. He also indicated the Commission would be addressing the need for a Veterans Affairs director in the coming months.

Councilperson Cook noted the three Leadership Shiawassee candidates present at the meeting this evening. He went on to announce two meetings: The Chamber of Commerce release of their sub regional planning process document on February 21st at 8:30 am and the Friends of the Shiawassee River annual meeting on February 21st at 7:00. A presenter will be on hand to talk about the experience of communities that have removed a dam.

Councilperson Fox indicated the Fireman's Memorial fund was up to \$440. He also asked about the new certifications required for wreckers. Public Safety Director Compeau indicated he would look into Councilperson Fox's question.

CITY MANAGER REPORT

Project status report – This item was removed from the agenda.

City Manager Donald D. Crawford noted that the library roof was over one-half completed and there had been no surprises so far.

He went on to say that he was working on plans for the joint parks meeting to discuss potential regional parks ideas.

CONSENT AGENDA

Motion by Councilperson Eveleth to approve the Consent Agenda as follows:

Designation of Street Administrator. Authorize resolution designating Public Works Director Mark Sedlak as Street Administrator to represent the City in transactions with the State Transportation Department pursuant to Act 51 as follows:

RESOLUTION NO. 07-2012

FOR DESIGNATION OF STREET ADMINISTRATOR FOR THE CITY OF OWOSSO PURSUANT TO SECTION 13(9) OF ACT 51, PUBLIC ACTS OF 1951

WHEREAS, Section 13(9) of Act 51, Public Acts of 1951 requires that the city council by resolution designate one person as the street administrator;

WHEREAS, the Michigan Department of Transportation has provided the following resolution;

WHEREAS, Section 13(7) Act 51 provided that each incorporated city or village to which funds are returned under the provisions of this section, that, "the responsibility for street improvements, maintenance, and traffic operations work, and the development, construction, or repair of off-street parking facilities and construction or repair of street lighting shall be coordinated by a single administrator to be designated by the governing body who shall be responsible for and shall represent the municipality in transactions, with the State Transportation Department pursuant to this act."

NOW, THEREFORE, BE IT RESOLVED, that this Honorable Body designates Mark Sedlak as the single street administrator for the city of Owosso in all transactions with the State Transportation Department as provided in Section 13 of the Act.

BE IT FURTHER RESOLVED, that the city clerk prepare, certify and submit a copy of the resolution on the form provided by the Michigan Department of Transportation to the Michigan Department of Transportation.

Website Reconstruction Contract. Approve contract with Atriage Software LLC, dba Web Ascender, authorizing reconstruction of the City's website in an amount not to exceed \$15,000 and authorize payment up to that amount as follows:

RESOLUTION NO. 08-2012

**RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT
FOR WEBSITE DESIGN, DEVELOPMENT AND HOSTING SERVICES
WITH ATRIAGE SOFTWARE, LLC D/B/A WEB ASCENDER**

WHEREAS, the city of Owosso, Michigan, has determined that it is advisable, necessary and in the public interest to obtain professional design and development services for modifying the city's website; and

WHEREAS, The city of Owosso has determined that it is necessary to have a host for the city's website; and

WHEREAS, it is necessary to obtain professional design and development services and it is hereby determined that the firm of Atriage Software LLC d/b/a Web Ascender is qualified to provide such services;

NOW THEREFORE BE IT RESOLVED by the city of Owosso, county of Shiawassee, state of Michigan:

- FIRST: that the city of Owosso has heretofore determined that it is advisable, necessary and in the public interest to employ the firm of Atriage Software LLC d/b/a Web Ascender for professional design and development services for modifying the city's website; and
- SECOND: that the mayor of the city of Owosso is hereby instructed and authorized to sign the document attached as Exhibit A, Agreement Between the City of Owosso and Atriage Software, LLC for Website Design, Development and Hosting Services, on behalf of the city of Owosso; and
- THIRD: that the payment for the services shall come from the General Fund in an amount to not exceed \$15,000.

Warrant No. 436. Accept Warrant No. 436 as follows:

Vendor	Description	Fund	Amount
TJ Smith Sand & Gravel Inc	Demolition of 117 S Shiawassee-\$250 retainer to be held for seeding	General	\$6,245.00
Netarx	Network Engineering – December 2011	General	\$6,664.00

*Revenue & Expenditure Report. Accept the December 2011 Revenue & Expenditure Report.

Boards and Commissions Appointment. Confirm the Mayoral appointment of Joni Forster to the Historical Commission for a term expiring December 31, 2014.

Motion supported by Councilperson Fox.

Roll Call Vote.

AYES: Councilperson Bailey, Mayor Pro-Tem Popovitch, Councilpersons Fox, Erfourth, Cook, Eveleth and Mayor Frederick.

NAYS: None.

*Full text of the Revenue & Expenditure Report is available in the Clerk's Office.

ITEMS OF BUSINESS

None.

COMMUNICATIONS

Richard C. Williams, Finance Director. 2nd Quarter 2011 Cash and Investments Position Report.
Owosso Historical Commission. Minutes of January 17, 2012.
Owosso Downtown Historic District Commission. Minutes of January 18, 2012.
Owosso Planning Commission. Minutes of January 23, 2012.
Owosso Parks & Recreation Commission. Minutes of January 23, 2012.

CITIZEN COMMENTS AND QUESTIONS

There were no citizen comments.

NEXT MEETING

Tuesday, February 21, 2012

BOARDS AND COMMISSIONS OPENINGS

Zoning Board of Appeals – Alternate, term expiring June 30, 2013

ADJOURNMENT

Motion by Councilperson Fox for adjournment at 8:37 p.m.

Motion supported by Councilperson Erfourth and concurred in by unanimous vote.

Benjamin R. Frederick, Mayor

Amy K. Kirkland, City Clerk