

**CITY OF OWOSSO
REGULAR MEETING OF CITY COUNCIL
MINUTES OF JULY 20, 2015
7:30 P.M.**

PRESIDING OFFICER: MAYOR BENJAMIN R. FREDERICK

OPENING PRAYER: MAYOR BENJAMIN R. FREDERICK

PLEDGE OF ALLEGIANCE: COUNCILMAN MICHAEL J. O'LEARY

PRESENT: Mayor Benjamin R. Frederick, Mayor Pro-Tem Christopher T. Eveleth, Councilpersons Loreen F. Bailey, Burton D. Fox, Elaine M. Greenway, Michael J. O'Leary, and Robert J. Teich, Jr.

ABSENT: None.

APPROVAL OF AGENDA

Motion by Mayor Pro-Tem Eveleth to approve the agenda as presented.

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

APPROVAL OF THE MINUTES OF REGULAR MEETING OF JULY 6, 2015

Motion by Councilperson Bailey to approve the Minutes of the Regular Meeting of July 6, 2015 as presented.

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

APPROVAL OF THE MINUTES OF SPECIAL MEETING OF JULY 9, 2015

Motion by Councilperson Fox to approve the Minutes of the Special Meeting of July 6, 2015 as presented.

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

PROCLAMATIONS / SPECIAL PRESENTATIONS

None.

PUBLIC HEARINGS

None.

CITIZEN COMMENTS AND QUESTIONS

Zack Rodriguez, 120 North Howell Street, said that he had received a violation notice for the swimming pool in his front yard and he was very unhappy as no one from the City measured his pool before issuing the violation notice and there was a possible \$500 fine. He asked that all violations issued by the Building Department be suspended until such time as the City can verify that the violations are legitimate. He said he thought the Building Official was bullying people.

City Manager Crawford responded to Mr. Rodriguez saying his property presented a unique problem in that it is located on a corner and the placement of the house at the back of the lot means there is no functional back yard. He asked where one draws the line as to what you can have in the front yard in such a situation. He went on to say that if Mr. Rodriguez empties the pool after each use there would be no issues that require enforcement, though he noted that the swing set in the front yard is a different matter.

Councilperson Fox indicated he thought the pool should be located in the side yard as determined by which street the house fronts. He said he had not heard of a corner lot having two front yards and City staff was unable to produce such an ordinance for his inspection. Lastly, he said that staff needs to at least visually inspect each potential violation before issuing a violation notice.

Councilperson O'Leary indicated it is common for zoning ordinances to declare a side yard on a corner as a front yard for setback purposes and that may be the source of the "two front yards" idea.

Councilperson Fox asked that the City define in writing where Mr. Rodriguez can place his pool. He also asked that staff look into the street parking and traffic control issues in that area.

City Manager Crawford noted that the Building Official had indeed made a visual inspection of the property before the violation notice was issued. The confusion lies in the fact that he did not measure the pool at that time.

Councilperson Bailey noted that the Friends of the Shiawassee Annual River Clean-up will be August 1st from 9:00am to noon starting at the Oakwood Bridge.

CITY MANAGER REPORT

The City Manager had nothing to report.

CONSENT AGENDA

Motion by Mayor Pro-Tem Eveleth to approve the Consent Agenda as follows:

Boards and Commissions Appointment. Approve the appointment of Michael O'Leary as the Council Representative to the Planning Commission for a term expiring November 14, 2016.

Chemical Bank Account Signatories. Consider resolution designating authorized signers on City accounts at Chemical Bank as follows:

RESOLUTION NO. 64-2015

NAMING THOSE AUTHORIZED TO SIGN ON BEHALF OF THE CITY OF OWOSSO FOR ACCOUNTS HELD AT CHEMICAL BANK

WHEREAS, the City of Owosso is required by law to declare an official depository for city funds; and

WHEREAS, the Code of Ordinances dictates the City Clerk, or the Clerk's Deputy, sign checks drawn on City accounts; and

WHEREAS, the City's auditors recommend a counter-signature on said checks as a means of further security; and

WHEREAS, from time to time the City must update the list of authorized signers to ensure it is current.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Owosso, Shiawassee County, Michigan that:

- FIRST: that Chemical Bank, 100 East Main Street, Owosso, Michigan 48867 be and is hereby designated as a depository of the funds of the City of Owosso, and that the said funds be subject to withdrawal upon checks, notes, drafts, bills of exchange, acceptances, undertakings or other orders for the payment of money when signed by the City Clerk and countersigned by any of the following: Finance Director, City Manager, and/or City Treasurer-in the case of the Retirement Fund Account only.
- SECOND: that the above named Chemical Bank is authorized to pay any such checks, notes, drafts, bills of exchange, acceptances, undertakings or other orders; and also to receive the same for the credit of or in payment from the payee or any other holder without injury as to the circumstances of issue of the disposition of the proceeds thereof, whether such instruments are payable, individually or otherwise, to the order of any person signing and/or counter-signing such instruments, or to the order of any of the other officers of the City, and whether such checks or other instruments are deposited to the individual credit of any person signing and/or counter-singing such instruments, or to the individual credit of any of the other officers of the City.
- THIRD: that any and all endorsements for or on behalf of the City of Owosso upon checks, drafts, notes or instruments for deposit or collection made with the said Chemical Bank may be written or stamped endorsements of the City of Owosso without any designation of the person making such endorsements.
- FOURTH: that said Chemical Bank be promptly notified in writing by the City Clerk of the City of Owosso of any change in this resolution and that until it has actually received such notice in writing said Chemical Bank is authorized to act in pursuance of this resolution.

FIFTH: that any of the above designated officers are hereby authorized to execute on behalf of the City signature cards, or other documents, containing the rules and regulations of the Bank and the conditions under which deposits are accepted, and to agree on behalf of this City to those rules, regulations, and conditions.

SIXTH: it is further certified that this resolution is within the power of the City as provided in the Charter and Ordinances of this City.

Owosso Bike Fest Permission. Approve application of Rick Morris on behalf of the Westtown Corridor Improvement Authority for use of the parking lot and alley on the north side of the 800 block of West Main Street (Lot# 11) from 9:00am to 3:00pm on Sunday, August 9, 2015 for Owosso Bike Fest, waive the insurance requirement, and authorize Traffic Control Order No. 1333 formalizing the request.

Gilbert Street Block Party Permission. Consider authorization of the application of Jaimi Redmond, on behalf of the Gilbert Street block party group, for use of Gilbert Street from Oliver Street to Queen Street on August 29, 2015 from 2:00 p.m. to 11:00 p.m. for a block party, waive the insurance requirement, and approve Traffic Control Order No. 1334 formalizing the action.

Bid Award – 2015 Double Chip Seal Program. Approve bid award to Highway Maintenance and Construction Company for the 2015 Double Chip Seal Program in the amount of \$121,719.68 and authorize payment up to the contract amount upon satisfactory completion of the work or portion thereof as follows:

RESOLUTION NO. 65-2015

AUTHORIZING THE EXECUTION OF A CONTRACT FOR THE 2015 DOUBLE CHIP SEAL PROGRAM WITH HIGHWAY MAINTENANCE AND CONSTRUCTION COMPANY

WHEREAS, the City of Owosso, Shiawassee County, Michigan, has determined that improvement to the surface quality of various streets is advisable, necessary and in the public interest; and

WHEREAS, the city of Owosso sought bids to improve the surface of various streets as part of the 2015 Double Chip Seal Program; a bid was received from Highway Maintenance and Construction Company; and it is hereby determined that Highway Maintenance and Construction Company is qualified to provide such services and that it has submitted the only responsible and responsive bid;

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Owosso, Shiawassee County, Michigan that:

FIRST: The City of Owosso has heretofore determined that it is advisable, necessary and in the public interest to employ Highway Maintenance and Construction Company for the surface improvement of various streets as part of the 2015 Double Chip Seal Program.

SECOND: The mayor and city clerk are instructed and authorized to sign the document substantially in the form attached as Exhibit A*, Contract for Services Between the City of Owosso, Michigan and Highway Maintenance and Construction Company in the amount of \$121,719.68.

THIRD: The accounts payable department is authorized to pay Highway Maintenance and Construction Company up to the contract amount upon satisfactory completion of the project or portion thereof.

FOURTH: The above expenses shall be paid from the Major and Local Street Maintenance Fund.

Bid Award - Quicklime. Accept low bid from Graymont Western Lime Corporation for Quicklime in the amount of \$144.00 per ton, with an estimated annual contract of \$115,200.00 and authorize payment based on the bid unit prices for actual quantities required for the fiscal year ending June 30, 2016 as follows:

RESOLUTION NO. 66-2015

RESOLUTION AUTHORIZING THE EXECUTION OF A PURCHASE ORDER FOR QUICKLIME FOR WATER TREATMENT FOR FY 2015/16 WITH GRAYMONT WESTERN LIME CORPORATION

WHEREAS, the City of Owosso, Shiawassee County, Michigan, requires quicklime in bulk deliveries for use in treating municipal drinking water; and

WHEREAS, the City of Owosso sought bids for quicklime; a bid was received from Graymont Western Lime Corporation; and it is hereby determined that Graymont Western Lime Corporation is qualified to provide such product and that it has submitted the lowest responsible and responsive bid.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Owosso, Shiawassee County, Michigan that:

- FIRST: The City of Owosso has heretofore determined that it is advisable, necessary and in the public interest to purchase quicklime from Graymont Western Lime Corporation in the amount of \$144 per ton for the city fiscal year 2015/2016 with an estimated total amount for the year of \$115,200.
- SECOND: The purchase agreement between the City and Graymont Western Lime Corporation shall be in the form of a City Purchase Order and bid documents.
- THIRD: The above expenses shall be paid from the Water Fund following delivery.

Bid Award – Class II Backfill Sand. Accept low bid of Fuoss Gravel Company for Class II Backfill Sand in the amount of \$4.49 per ton for fiscal year ending June 30, 2016 and authorize payment in accordance with unit prices up to 2100 tons as follows:

RESOLUTION NO. 67-2015

**AUTHORIZING THE EXECUTION OF A CONTRACT FOR
CLASS II BACKFILL SAND
WITH FUOSS GRAVEL COMPANY**

WHEREAS, the city of Owosso, Shiawassee County, Michigan requires backfill sand to fill underground trenches; and

WHEREAS, the city sought bids for Class II backfill sand for fiscal year 2015-2016 and two bids were received, with Fuoss Gravel Company being the lowest, and

WHEREAS, it is hereby determined that Fuoss Gravel Company is qualified to provide such product and that they have submitted the lowest responsible and responsive bid.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Owosso, Shiawassee County, Michigan that:

- FIRST: The City of Owosso has heretofore determined that it is advisable, necessary and in the public interest to award the 2015-2016 Sand Purchase bid to Fuoss Gravel Co. for \$4.49 per ton.
- SECOND: The purchase agreement between the City of Owosso, Michigan and Fuoss Gravel Company shall be in the form of a City Purchase Order and bid documents.
- THIRD: The accounts payable department is authorized to pay Fuoss Gravel Company in accordance with unit prices up to 2100 tons upon satisfactory delivery.
- FOURTH: The above expenses shall be paid from the Water Fund and Local and Major Street Fund.

Bid Award – 22A Gravel. Accept low bid of Fuoss Gravel Company for 22A gravel in the amount of \$8.49 per ton for the fiscal year ending June 30, 2016 and authorize payment in accordance with unit prices up to 1800 tons as follows:

RESOLUTION NO. 68-2015

**AUTHORIZING THE EXECUTION OF A CONTRACT FOR
22A GRAVEL
WITH FUOSS GRAVEL COMPANY**

WHEREAS, the city of Owosso, Shiawassee County, Michigan requires gravel to fill trenches and for alley maintenance, and

WHEREAS, the city sought bids for MDOT certified 22A gravel for fiscal year 2015-2016 and two bids were received, with Fuoss Gravel Company being the lowest, and

WHEREAS, it is hereby determined that Fuoss Gravel Company is qualified to provide such product and that they have submitted the lowest responsible and responsive bid; and

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Owosso, Shiawassee County, Michigan that:

- FIRST: The City of Owosso has heretofore determined that it is advisable, necessary and in the public interest to award the 2015-2016 Gravel Purchase bid to Fuoss Gravel Co. for \$8.49 per ton.
- SECOND: The purchase agreement between the City of Owosso, Michigan and Fuoss Gravel Company shall be in the form of a City Purchase Order and bid documents.
- THIRD: The accounts payable department is authorized to pay Fuoss Gravel Company in accordance with unit prices up to 1800 tons upon satisfactory delivery.
- FOURTH: The above expenses shall be paid from the Water Fund and Local and Major Street Fund.

Warrant No. 506. Authorize Warrant No. 506 as follows:

| Vendor | Description | Fund | Amount |
|------------------------|---|------------------|-------------|
| Logicalis, Inc. | Network engineering support- June 2015 | Various | \$10,192.00 |
| William C. Brown, P.C. | Professional services- June 9, 2015 – July13, 2015 | General | \$11,097.84 |
| Waste Management | Landfill charges - June 16, 2015 – June 30, 2015 | Streets/ WWTP | \$ 5,952.99 |

***Check Register - June 2015.** Affirm check disbursements totaling \$ 2,148,944.34 for the month of June 2015.

Motion supported by Councilperson Bailey.

Roll Call Vote.

AYES: Councilpersons Teich, Fox, Bailey, O'Leary, Mayor Pro-Tem Eveleth, Councilperson Greenway, and Mayor Frederick.

NAYS: None.

ITEMS OF BUSINESS

Property Return/Refund – 1281 Holly Court

The owner of the noted property had approached the City about repurchasing his lot after it was determined he could not place the home he desired on the lot he purchased. A provision of the Osburn Lakes Condominium Bylaws affords the developer (the City in this case) the opportunity to buy back lots in the development if a home is not constructed within 18 months of sale.

Council conducted significant debate on the matter including in the discussion the realtors for both the buyer and the seller as well as a representative of the Osburn Lakes Homeowners Association. The buyer felt he had been misled because the seller did not make specific mention of the wetlands on the property prior to his purchase and those wetlands are the reason he is unable to build the home he wants. It was noted that vacant land requires no seller's disclosure and the buyer had received a copy of the Master Deed which contained specific information regarding the wetlands in the development.

Councilperson O'Leary expressed caution saying the City is a developer in name only and unless a clear hardship is documented then the Council could be going down a slippery slope in accepting the property back.

Councilperson Fox said he felt that the wetlands should have specifically been mentioned prior to the sale, that being said he felt that the wetlands on the lot may be overstated. He expressed concern that if the City refused to buy back the lot that any prospective buyers might be chased away.

Motion by Councilperson Fox to approve the resolution authorizing the buy-back of the property and direct staff to identify all wetlands in the development.

Mayor Frederick expressed his concern that Councilperson Fox was asking the City for more than is required from a typical property sale. He said he felt confident the established processes were properly executed and the buyer had a responsibility to do due diligence prior to purchase.

Councilperson Bailey expressed concern that buying back the lot would set a precedent that could be exploited in the future. She asked if there was another property of interest to the buyer, that maybe a trade could be coordinated. The buyer's realtor noted that the lot in question was

the biggest lot available in the development and that the combination of two lots would still not provide enough depth for the home they wish to build.

The motion dies for lack of support.

Motion by Councilperson O'Leary to deny the return/refund of 1281 Holly Court and advise the owner to pursue a private sale.

Motion supported by Councilperson Teich.

Roll Call Vote.

AYES: Mayor Pro-Tem Eveleth, Councilpersons Teich, O'Leary, and Mayor Frederick.

NAYS: Councilpersons Fox, Bailey, and Greenway.

Mayor Frederick noted there may be other solutions for the situation and he welcomed further research into those options.

Future of Cable Access Channels

City Clerk Amy K. Kirkland gave a brief history of the issue at hand saying the cable service provider (Charter) has to this point provided the means by which the City uses to deliver the signal for cable access channel 187 to the head end for distribution to cable customers. Charter notified the City a number of years ago they desired to reclaim the bandwidth consumed by the return path but would allow the City to continue to use the return path until such time as the City's use of the path negatively affected internet speeds for their customers. That time has now come and the City must decide how it would like to proceed. Ms. Kirkland outlined three options for the Council as noted in her memo dated July 16, 2015:

1. Create a new return path and resume present operation
2. Leave the cable television market and provide video-on-demand on the internet
3. Leave the cable television market and provide audio-on-demand on the internet

Lastly she provided an explanation of the franchise fee and the PEG fee that the City is allowed to levy as a part of its franchise agreement. Ms. Kirkland fielded a number of questions from Councilperson Fox regarding the fees.

Mayor Frederick noted that with the release of the return path he would like to see audio recordings of the meetings placed on the website. He also noted his desire to see a community based web channel.

Mayor Pro-Tem Eveleth inquired as to how long audio recordings should be posted to the website. City Clerk Kirkland recommended 90 days.

Motion by Mayor Pro-Tem Eveleth to authorize releasing the return path for Charter Communications cable access channel no. 187, ceasing cablecast operations starting August 1, 2015, and directing staff to post audio files of each Council meeting to the City's website for a period of 90 days.

RESOLUTION NO. 69-2015

RELINQUISHING CABLE ACCESS RETURN PATH AND CEASING VIDEO OPERATIONS

WHEREAS, the City of Owosso has two local access channels provided by Charter Communications; and

WHEREAS, one of these channels, current Charter channel 187, carries video programming submitted by local individuals; and

WHEREAS, the City utilizes a return path belonging to Charter Communications to deliver the signal for channel 187 to the head end for distribution into the cable system; and

WHEREAS, Charter Communications has provided this return path free of charge for many, many years and now requests the City cease use of the path so they might utilize it to serve their local customers; and

WHEREAS, Charter Communications is under no legal obligation to continue providing this path; and

WHEREAS, the City will not be able to broadcast on the local cable networks without significant financial investment in the creation of a new return path; and

WHEREAS, the City has seen a dramatic reduction in participation on channel 187, both in those providing programming and in those watching the channel; and

WHEREAS, the difficult economic conditions in which the City operates necessitates careful scrutiny of any and all expenditures, sometimes leading to cuts that are distasteful or touch our emotions; and

WHEREAS, there are less expensive options available to allow citizens to listen to recordings of City Council meetings.

NOW THEREFORE BE IT RESOLVED, by the Council of the City of Owosso, Shiawassee County, Michigan that:

- FIRST: the return path currently utilized for Charter channel 187 will be vacated by the City of Owosso as of August 1, 2015.
- SECOND: the broadcast originating from the City on Charter channel 187 will cease on the date noted above.
- THIRD: the Mayor and City Clerk are hereby authorized to execute any documentation necessary to complete this transition.
- FOURTH: the Mayor and City Clerk are further authorized to execute an agreement with Charter Communications reserving the right to request the use of channel 187 (or its successor) for public, education, and governmental purposes at any point in the future.
- FIFTH: staff is directed to place an audio file of each City Council meeting on the City's website for a period of 90 days.

Motion supported by Councilperson O'Leary.

Councilperson Fox inquired whether the motion includes an agreement to re-establish the channel in the future if the City desires. It was indicated that the agreement in question is included in the resolution included in the packet. Councilperson Fox further inquired how much it would cost to re-establish the channel in the future. City Clerk Kirkland indicated that there was a cost analysis included in her memo. He had further questions regarding the current return path, replacement of the return path, the potential to stream video, and the purchase of video recording equipment.

Councilperson Bailey called the question.

Roll call vote to call the question.

AYES: Councilpersons Bailey, Greenway, Fox, Teich, O'Leary, Mayor Pro-Tem Eveleth, and Mayor Frederick.

NAYS: None.

Roll call vote on motion to approve resolution.

AYES: Councilpersons Bailey, Greenway, Fox, Teich, O'Leary, Mayor Pro-Tem Eveleth, and Mayor Frederick.

NAYS: None.

COMMUNICATIONS

Charles P. Rau, Building Official. June 2015 Building Department Report.

Charles P. Rau, Building Official. June 2015 Code Violations Report.

Kevin D. Lenkart, Public Safety Director. June 2015 Police Report.

Kevin D. Lenkart, Public Safety Director. June 2015 Fire Report.

CITIZEN COMMENTS AND QUESTIONS

Don Forster, 1221 Adams Street, asked all Council members to take the time to drive by Adams Park to view the new playscape installed as a part of Zak Matousek's Eagle Scout project. He said the park looks fantastic and the project was a great thing for the neighborhood. He also encouraged the City to facilitate more Eagle Scout projects.

Mike Rhode, local realtor, told Council that they were doing themselves an injustice by trying to function as developers for the Osburn Lakes condominium project.

Zack Rodriguez, 120 North Howell Street, said he felt that the zoning ordinance needed to be re-examined and clarified so that average folks can reference it and know what is expected of them.

Kori Shook, local realtor, took offense to an earlier comment alluding to the idea that she had been less than truthful in her sale of the property at 1281 Holly Court. She said she felt terrible that Mr. Rappuhn could not build the home he wants on the land that he purchased but it is neither her responsibility nor the City's to ensure the property meets the needs of the buyer.

Councilperson Teich sought clarification on the comment that characterized the lots at Osburn Lakes as being "unbuildable" due to their size. City Manager Crawford noted that the lots are buildable lots, they are just not large enough for the extra-large homes that people desire these days.

Councilperson O'Leary wanted to know if there was anything the City could do such as an auction or lottery to dispose of the vacant lots at Osburn Lakes and get out of the developer business.

Mayor Frederick noted that he does not like the idea of being the developer for the project but the City finds itself kind of stuck in the role.

Councilperson Fox said he was concerned about being able to sell the vacant lots in Osburn Lakes and said he wanted to explore the idea of amending the Master Deed at the next meeting.

Councilperson Greenway noted that several Historical Commission members and community members had recently teamed up to clean up the gardens at the Gould House.

NEXT MEETING

Monday, August 03, 2015

BOARDS AND COMMISSIONS OPENINGS

Historical Commission, term expires December 31, 2017
Planning Commission (2), both terms expire June 30, 2016

ADJOURNMENT

Motion by Mayor Pro-Tem Eveleth for adjournment at 8:43 p.m.

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

Benjamin R. Frederick, Mayor

Amy K. Kirkland, City Clerk

*Due to their length highlighted items are not included in the minutes. Complete copies of these documents can be found on file in the Clerk's Office.