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## PROCEEDINGS OF THE MANISTEE CITY COUNCIL – March 17, 2015

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A regular meeting of the Manistee City Council was called to order by her honor, Mayor Colleen Kenny on Tuesday, March 17, 2015 at 7:00 p.m. in the City Hall Council Chambers, 70 Maple Street, followed by the Pledge of Allegiance.

PRESENT: Colleen Kenny, Edward Cote, Roger Zielinski, Robert Goodspeed, James Smith, Mark Wittlieff, and Eric Gustad.

ALSO PRESENT: City Manager – Mitch Deisch, City Attorney – George Saylor, City Clerk – Michelle Wright, DPW Director – Jeff Mikula, Finance Director – Ed Bradford, Planning & Zoning Administrator - Denise Blakeslee, Public Safety Director – Dave Bachman, and City Engineer – Shawn Middleton/Spicer Group.

### **PUBLIC HEARING ON THE CLOSEOUT OF THE MICHIGAN COMMUNITY DEVELOPMENT BLOCK GRANT, 312 RIVER STREET.**

The City of Manistee will conduct a public hearing on Tuesday, March 17, 2015 at 7 p.m. for the purpose of affording citizens an opportunity to examine and submit comments on the proposed closeout of the \$330,000 CDBG grant.

The grant has been successfully completed and was used for acquisition and rehabilitation of the “Winkler Block” building at 312 River Street. CDBG funds were used to accomplish the renovation of a historical building that was vacant and had fallen into serious disrepair into a successful restaurant where at least 51% of the beneficiaries (in the form of job creation) from the project were low and moderate income persons while establishing itself as an anchor business in Historic Downtown Manistee.

The public was invited to speak on the closeout of the Michigan Community Development Block Grant (CDBG) funding for 312 River Street Signature Building Project.

Patrick Kay, MSDDA director, gave a background of the grant and the funding eligibility; stated that the Blue Fish Kitchen & Bar fulfilled all necessary requirements; they had to spend \$585,000 to renovate the property in order to receive the \$330,000 grant.

No other comments were received. Public Hearing closed at 7:07 p.m.

### **CITIZEN COMMENTS ON AGENDA RELATED ITEMS.**

Francis O’Donnell, attorney representing Ed Seng and the various Seng businesses, commented on the request to amend the Development Agreement regarding 200 River Street; their goals are to amend the agreement and amend the Zoning Ordinance to allow the type of use; agreement was signed assuming no recession, but we did fall into a recession; does not want the City to waste the resource we have; estimated 54 job opportunities; knows Reith-Riley will object, stating they are a third party beneficiary; asking that the City Attorney will work with them.

Gary Shank, associated general counsel for Reith-Riley (RR), also commented on the Development

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Agreement; stated that RR, the City, and Seng participated in intense negotiations to develop the Memorandum of Understanding (MOU); the MOU was intended to be binding on all parties; the deep water port was given up by Seng; the Development Agreement was signed and is binding; RR has significant compact rights out of the MOU; that property was to remain restricted; they would view authorization to amend the agreement a significant interference of the RR contract which could result in claims and damages.

Lynda Beaton – 256 Hughes Street commented on the water department billing issues and variances; asked who is responsible; who should be auditing the process; are the new billing rates flawed; conflicting reports are being received.

Carol Pasco – 610 Spruce Street commented on the City Manager, impressed and happy with his honesty and job performance; doesn't always agree with him but need to look at the whole picture, there has been a lot of progress in the last 14 years; what is this new perspective the Smith is talking about; encouraged them to look at his record, an honest record, none of us are perfect.

Cyndy Fuller – 18 Cottage Lane commented on the potential replacement of the City Manager and rumors circulating regarding the removal of the City Manager; this is disturbing behavior to come to a consensus prior to the meeting, this is considered a violation under the Open Meetings Act; he and his family are citizens of Manistee and deserve to be dealt with fairly; Council should be concerned with public perception; Council should voluntarily fully disclose their notes, conversations, and e-mails up thru today to show no violation of the OMA has taken place; sincerely hope they would meet the requirements of the OMA and could reinstate community trust in you and the office in which you serve; for any violations found, penalties imposed should be paid personally and resignation from office.

Chris Shilts – 500 Second Street has had issues resolved by the City Manager satisfactorily and wanted to issue his public vote of confidence.

Sam H. Miller – 713 Cedar Street has been acquainted with Deisch thru the Rotary Club; has led high school students to the Dominican Republic on humanitarian projects for the past several years; excellent city manager; concerned about the estimated cost of \$125,000 to replace the city manager; commends Deisch for what he has done and encouraged him to continue on.

Jeannie Lewis – 305 Care Center Drive stated her late husband was a former City Manager, tough job, not easy; hope he has had a chance to reconcile anything.

### CONSENT AGENDA.

- Minutes - March 3, 2015 - Regular Meeting  
- March 10, 2015 - Work Session
- Payroll - March 2 – 15, 2015 - \$ 111,113.95

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- Monthly Bills - February 10, 2015 - \$ 484,619.73  
- February 23, 2015 - \$ 972,188.75

- Consideration of Adopting Ordinance 15-02, Chapter 1420, Building Inspections.  
The former Building Inspector retired on August 29, 2014. Administration reviewed options for providing building inspection services which included hiring a fulltime building inspector, contracting out building inspection services, or turning building inspections back over to the State Bureau of Construction Codes.

Based upon the amount of revenue being generated through building inspection permits and the fact that no Requests for Proposals were received in December 2014 to contract out building inspection services; administration determined that the best option was to return building inspection services back to the State Bureau of Construction Codes.

This ordinance has been reviewed and supported by the Council Ordinance Committee. As an ordinance two separate readings are required. This ordinance was first introduced at the regular meeting of March 3, 2015 and could be adopted at this time.

- Consideration of Adopting Ordinance 15-03, Amendments to Chapter 1482, Residential Rental Properties.

With the retirement of the former City Building Inspector in August 2014, City administration explored options to continue this service. Based upon research it was clear that contracting out rental inspections made the most financial sense. The ordinance amendments create a new definition of designated city official and allow greater flexibility for city personnel or contracted employees to perform rental inspections.

This ordinance has been reviewed and supported by the Council Ordinance Committee. As an ordinance two separate readings are required. This ordinance was first introduced at the regular meeting of March 3, 2015 and could be adopted at this time.

- Notification Regarding Next Work Session – April 14, 2015  
A discussion will be conducted on the 2015-2016 Budget; and such business as may come before the Council. No action is required on this item.

- Consideration of Proclaiming April as Parkinson’s Disease Awareness Month.  
The Manistee County Parkinson’s Support Group has requested that the City of Manistee proclaim the month of April as Parkinson’s Disease Awareness Month.

- Consideration of Authorizing LOVE INC. Fundraiser.  
Love INC. would like to hold a collection exchange from March 18 through April 3, 2015 at the following locations: Oleson’s, the Post Office, and the Love INC office at 390 River Street; with bell ringing from 9 a.m. until 6 p.m. Monday through Saturday. Funds raised will be used to support the Family Life Center programs and summer Family Camp.

MOTION by Cote, second by Goodspeed to approve the Consent Agenda as presented.

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With a roll call vote this motion passed unanimously.

AYES: Kenny, Cote, Zielinski, Goodspeed, Smith, Wittlieff, and Gustad

NAYS: None

### **CONSIDERATION OF THE REQUEST BY MR. ED SENG TO AMEND THE 2008 DEVELOPMENT AGREEMENT REGARDING THE PROPERTY AT 200 RIVER STREET, PARCEL #51-448-735-01.**

During the February 18, 2014 Council meeting a motion to amend the 2008 Development Agreement between the City of Manistee and Mr. Ed Seng failed by a two to three vote.

At the meeting of July 1, 2014 Mayor Pro-Tem Zaring requested, supported by a majority of Council, that this item be placed on an upcoming Council agenda for reconsideration. The request was placed on the July 15, 2014 agenda; at which time the item was tabled to allow the Planning Commission's review of the Zoning Ordinance regarding the Peninsula District.

Presentation of the Planning Commission's Report of Findings was given to City Council at the January 20, 2015 meeting. Council went into Executive Session on February 17, 2015 to discuss a written opinion by the City Attorney regarding the Memorandum of Understanding between the City, Seng Dock & Trucking, Inc. Seng Properties, LLC, Edward Seng and Reith-Riley Constructions, Co., Inc.; a Development Agreement between the City and Seng Dock & Trucking, Inc., Seng Properties, LLC, Edward Seng; a Brownfield Development and Reimbursement Agreement between the City and American Materials, LLC; and the legal issues surrounding those documents.

MOTION by Smith, second by Goodspeed to take action on the request by Mr. Ed Seng to amend the 2008 Development Agreement regarding the property at 200 River Street, parcel #51-448-735-01. Discussion and requests for clarification of the motion followed.

MOTION by Smith, second by Gustad to AMEND the original motion to include the requirement that Mr. Seng obtain a declaratory judgment that Reith-Riley's consent is not required before we amend the development agreement.

With a roll call vote this motion failed, 1-6.

AYES: Smith

NAYS: Kenny, Cote, Zielinski, Goodspeed, Wittlieff, and Gustad

Roll call vote was then taken on the original motion. Motion failed, 0-7.

AYES: None

NAYS: Kenny, Cote, Zielinski, Goodspeed, Smith, Wittlieff, and Gustad

### **CONSIDERATION OF A RESOLUTION OF SUPPORT, COUNTY-WIDE PARK AND RECREATION PLAN.**

The Manistee County Planning Department and Alliance for Economic Success are leading a planning

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process to develop a Manistee County-Wide Park and Recreation Plan. They have requested a resolution of support from the City of Manistee.

MOTION by Gustad, second by Goodspeed to adopt a resolution of support for the development of a Manistee County-Wide Park and Recreation Plan.

With a roll call vote this motion passed unanimously.

AYES: Kenny, Cote, Zielinski, Goodspeed, Smith, Wittlieff, and Gustad

NAYS: None

### **A REPORT FROM THE CHAMBER OF COMMERCE.**

Ms. Stacie Bytwork reported on the activities of the Chamber of Commerce and responded to questions the Council had regarding their activities.

### **CITIZEN COMMENT.**

Comments were received from:

- Dennis Skiera – Filer Township / complemented Council on the Seng decision.
- Gary Niesen – 296 Tenth Street / mother’s frozen water line, no water for almost one month.

### **OFFICIALS AND STAFF.**

*None received.*

### **COUNCILMEMBERS.**

*None received.*

### **CONSIDERATION OF A CLOSED SESSION TO DISCUSS THE POTENTIAL REPLACEMENT OF THE CITY MANAGER.**

City Manager Mitchell D. Deisch has requested a Closed Session this evening as permitted by the Open meetings Act Section 8 (a) for a discussion on the City Council’s potential replacement of the City Manager.

MOTION by Smith, second by Zielinski to honor Deisch’s request to proceed to a Closed Session under Section 8 (a) of the Michigan Open Meetings Act. Time: 8:06 p.m.

With a roll call vote this motion passed unanimously.

AYES: Kenny, Cote, Zielinski, Goodspeed, Smith, Wittlieff, and Gustad

NAYS: None

MOTION by Smith, second by Cote to return to Regular Session. Time: 8:42 p.m.

With a roll call vote this motion passed unanimously.

AYES: Kenny, Cote, Zielinski, Goodspeed, Smith, Wittlieff, and Gustad

NAYS: None

**CONSIDERATION OF THE POTENTIAL REPLACEMENT OF THE CITY MANAGER.**

MOTION by Smith, second by Goodspeed to accept the separation agreement as proposed by the City Manager with the effective date of April 3, 2015 and authorize the Mayor and City Clerk to sign the document. City Attorney Saylor outlined the items listed in the separation agreement.

With a roll call vote this motion passed, 5-2.

AYES: Cote, Zielinski, Goodspeed, Smith, and Wittlieff

NAYS: Kenny and Gustad

**ADJOURN.**

MOTION to adjourn was made by Gustad, second by Goodspeed. Meeting adjourned at 8:50 p.m.

Michelle Wright MMC / CPFA, MiCPT  
City Clerk/Deputy Treasurer