

October 26, 2009

Regular meeting of the Ludington City Council held in the Council Chambers of the Municipal Building on Monday, October 26, 2009, at 6:30 o'clock p.m.

Present: His Honor Mayor John Henderson and Councilors Kaye Holman, Paul Peterson, Greg Dykstra, Dave Weston, Pete Engblade, and Gary Castonia.

Absent: Councilor Scott who was excused.

Also present were City Manager John Shay, City Attorney Roger Anderson, Police Chief Mark Barnett, Fire Chief Jerry Funk, City Treasurer Mary Reeds-Mortensen, and City Clerk Deborah Luskin.

Invocation was pronounced by Councilor Engblade.

Pledge to the Flag was given.

His Honor Mayor Henderson added item b under Communication as Presentation by the Mayor. Moved by Councilor Castonia, seconded by Councilor Holman, that the agenda be approved as corrected. Motion Carried.

The meeting was opened for public comments.

Chris Raven, Raven's MensWear, located on the north side of Ludington Ave. between Harrison St. and James St. thanked the Council for allowing him to express his viewpoint on the closure of James St. He explained that his view was that James St. should never have been changed from a two-way street to a one way street and certainly not permanently closed. He prepared his own survey in these two blocks which resulted in eleven out of thirteen businesses wanting James Street open in the winter, six businesses wanting James Street open year round, and only two businesses wanting it closed year round. When convenience is taken away from the customer it is very detrimental to retail sales. This is the most important street coming off of Ludington Avenue and there is no good reason to block this street off. Because James Street is closed, the alley has become a road and cars and delivery trucks travel between Harrison Street and Rath Ave using this alley. It is dangerous for customers leaving his business out the back entrance, and several have almost been hit. There was talk of doing events and a winter ice skating rink in this area, but the positives cannot override the negative impact of the closing. He expressed appreciation of the City's efforts downtown and the new signage.

John Riedl, 202 N. Robert St., thought the closing of the plaza has been one of the finer things that the City has done in a long time. This has brought a lot of people downtown, brought events downtown, and gave people the ability to stop, sit down, and chat. With the location of the Farmers Market there it has given him, as a crafter, the ability to talk to the people who seemed happy to have these events in this location.

Gail Lyons, Mariellens' Hallmark, 116 E. Ludington Ave., spoke favorably on the closing of James Street. The Farmers Market brought a lot of people to her store and for her business it was a benefit. She has received a lot positive comments.

Terry Murphy, 321 N. Rath Ave., also spoke in favor of keeping the James St. Plaza closed all year. It has been a beautiful addition to Ludington. It has created some greenscape with a place for people to gather and brought people together with the Farmers' Market. She stated that she thought this has been a great thing for downtown and all downtown businesses.

Lyla McClelland, 309 N. Harrison, was an instigator of the original Downtown Development Authority years ago and the closure of the James St. Plaza finally came to completion after having been proposed almost identically in 1998 to what it ended up with. She stated that businesses need people and having all of the people come down for the events in this plaza is a plus for the City and for businesses. The Plaza has created more people downtown than any other thing. It can only improve and every year there will be an opportunity to add more things and events. She also stated she would like to see the back parking lot available for other events. It is a center of attraction.

Natalie Wroble, owner of the Cedar Chest, located on the corner of Ludington Ave. and James St. commented that she does love the plaza being closed in the summer, but because most of her merchandise for this store comes from the elderly, it is hard for the people to walk from the back parking lot to her store with merchandise especially in the winter. She would like to have the five parking lots, especially in the winter. She favors this street closed in the summer and open in the winter.

Vicki Raven, owner of Raven's Men'sWear, asked if the closure is in the right place, could the plaza be located in a different area, possibly South James Street. This is the main access to the Harrison and Rath parking lots. She expressed concern over closing the major thoroughfare for the twenty four stores located in the two blocks.

Tom McKenna, 110 N. James, the Plaza Café, commented that he had the most impact with this closure, having one winter with this street open and one winter with it closed. He stated that he wholeheartedly went into it with it closed, and the numbers last winter went down 50% from the winter before. It is a real struggle to be noticed by anyone who does not know where his business is located. However, everything that the City has done in this plaza has been a huge success. This past summer was the busiest summer for the downtown. He favors the plaza area being closed. He also complimented the City for a good job in bringing people downtown.

Aleksy Urick, 108 Threads and Smiling Lotus Yoga, also spoke in favor of having the road closed and would like to see the speed in the back alley controlled with possible speed bumps.

Heather Venzke, Community Development Director, explained that she spoke with the business owners and encouraged them to come to the City Council meeting tonight to voice their opinions on the closure of this block. She explained that she heard comment from Jill Snyder, Snyder Shoes, who wanted it known that she was in favor of the closure but was concerned about the loss of a handicap parking lot. Heather explained that she will work with the Mayor and the DPW Superintendent regarding the replacement or compensation of the handicap spot. There has been talk about the speed in the alley and how can this be addressed. She referred to a letter from Shawn Shelton and Doreen Shreiber of Bones & Butts BBQ located in the Plaza who were in favor of the closure and also provided some constructive improvements to the Plaza. There was an issue about the potential seasonal closure of this Plaza. Shawn McDonald, DPW Superintendent, informed Heather that the State of Michigan has a problem with a seasonal closure of this road, because they would have to come out and change the turn or no turn signs that are part of the light, and the big orange barricade would have to go up for eight weeks every time the sign is changed. This needs to be done to break people of the habit of turning. Heather commented that there are 43 businesses who will participate in a downtown trick or treat on Saturday from 1 to 3 p.m.

After no additional comments were received, the regular order of business was resumed.

Moved by Councilor Dykstra, seconded by Councilor Weston, to approve the minutes of the regular meeting on 10/12/09. Motion Carried.

The meeting was then opened for the scheduled public hearing to hear comments on the application for PA 328 Personal Property Tax Relief filed by FloraCraft.

Julie VanDyke, Mason County Growth Alliance, explained that the reason for the PA 328 tax abatement was to retain jobs in Ludington at FloraCraft. FloraCraft could have chosen any of their offices in the United States but they chose to invest in the new machinery here in Ludington.

Jim Scatena, President of FloraCraft Corporation, explained that their company has five facilities in North America and the most difficult to get to is Ludington. They would be much better off logistically to increase size of Arkansas, where there is a significant customer, or to the east or west part of the country, where there are ports of entry. However, this company is committed to the City of Ludington. Many of the other states have significant incentives to have businesses expand and these incentives at times do not exist here. He was appreciative of the City of Ludington looking to approve the PA 328 plan.

After no comments were received the regular order of business was resumed.

RESOLUTION TO APPROVE THE APPLICATION OF FLORACRAFT CORPORATION FOR AN EXEMPTION OF NEW PERSONAL PROPERTY CERTIFICATE

WHEREAS, Act No. 328 of the Michigan Public Acts of 1998, as amended, authorizes the City of Ludington, an eligible local assessing district, to approve applications for Exemption of New Personal Property certificates for personal property owned or leased by an eligible business located in an eligible district; and

WHEREAS, pursuant to Act No. 198 of Michigan Public Acts of 1974, and after a duly noticed public hearing held, the Ludington City Commission, by resolution adopted on March 14, 1985, created a Plant Rehabilitation District for FloraCraft Corporation; and

WHEREAS, FloraCraft Corporation, a business engaged primarily in manufacturing and, therefore, an eligible business under Act 328, did on October 13, 2009, file an application with the City of Ludington for an Exemption of New Personal Property Certificate for new machinery and equipment; and

WHEREAS, the estimated cost of the new machinery and equipment to be added as set forth in its application exceeds \$300,000, and this project is estimated to create or retain 5 jobs.

WHEREAS, before acting on said application, the Ludington City Council held a hearing on October 26, 2009, at the City Municipal Building, 400 South Harrison Street, Ludington, Michigan 49431 at 6:30 p.m., at which hearing the applicant, the assessor, and a representative of the effected taxing units, who were given previous written notice, were afforded an opportunity to be heard on said application; and

WHEREAS, this City Council also finds as follows:

(a) The application covers the installation of new machinery and equipment at FloraCraft Corporation's existing facility at 1001 North Rowe Street (One Longfellow Place) in the City of Ludington. This project qualifies as new personal property within the meaning of Act 328 and is situated within a Plant Rehabilitation District duly established by the City of Ludington.

(b) That the addition of this new equipment is calculated to have the reasonable likelihood to create employment, retain employment or prevent a loss of employment in the City.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the application of FloraCraft Corporation for an Exemption of New Personal Property Certificate for this new machinery and equipment be and is hereby approved, subject to the following condition:

That the exemption for the personal property included in this application shall remain in force and effect for a period of four (4) years, unless otherwise modified or revoked pursuant to the provisions of Act 328 of 1998, as amended.

Moved by Councilor Castonia, seconded by Councilor Holman, to adopt the foregoing resolution. Motion Carried.

The meeting was opened for the scheduled public hearing to hear comments on the Proposed Water Well Restriction Ordinance No. 202-09. It was noted that this was the third session for public comment.

All people affiliated with the ordinance were reintroduced. Duane Tyndall, General Manager, Straits Steel and Wire, 902 N. Rowe, read a letter of support of the City of Ludington's proposed Ordinance No. 202-09. Mike Varenhorst, Human Resource Manager with Straits Steel and Wire was also introduced.

Bob Tushek, 1007 N. William St, commented that when he entered this meeting he had the impression that the well ordinance was still open for discussion. However, when he looked at the agenda he noted that this ordinance was ready for adoption. He then questioned Mr. Peterson and Mr. Weston on how many wells are contaminated in the First Ward. He then asked if Fourth Ward has wells and if any of these have been tested for contamination. These areas should also be taken into consideration before Council takes a vote on the wells on the north side. He then asked if any of the area south and west of the plumes has been tested to determine if there is contamination. He stated that he resents the fact that he is below 100 feet deep, this is not groundwater. He is wondering why 50 years after Ludington Plating and Straits Steel and Wire were dumping contaminants in the soil there is a crisis now. He explained that his well is deep enough to not be considered in this ordinance, his is deep enough. He then asked why the City would not consider using a filter on those wells that are contaminated until they are corrected.

Bob Williams, 711 N. James St., agreed with Bob Tushek. He stated that Steve Cunningham from DEQ informed them earlier that the water from these wells shows no harmful effects for watering lawns and gardens and should not be used for drinking. The test wells are 125 feet deep, shallow wells are 20-25 feet deep. No one knows that any of these wells, including Bob Tushek's are contaminated. The homeowner should have the right to do what they want to.

Larry Bentz, 1038 N. Ferry, questioned the City building which handles the sewer treatment on Sixth Street. He said there is a faucet out there which says "Not Safe For Drinking" will this be capped also.

After no further comments were received, Ordinance No. 202-09 was moved to the Council for discussion.

ORDINANCE NO: 202-09

CITY OF LUDINGTON

MASON COUNTY, MICHIGAN

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF THE CITY OF LUDINGTON BY ADDING ARTICLE VI OF CHAPTER 18 TO REGULATE THE USE OF GROUNDWATER IN CERTAIN AREAS OF THE CITY.

THE CITY OF LUDINGTON ORDAINS:

Section 1: Amendment. The Code of Ordinances of the City of Ludington, Michigan is hereby amended by adding Article VI of Chapter 18, entitled "Water Well Restriction Ordinance" to read as follows:

ARTICLE VI. WATER WELL RESTRICTION ORDINANCE.

SEC. 18-161. FINDINGS. The City Council has been informed and hereby finds that an aquifer in certain areas of the City has been contaminated or otherwise adversely impacted by hazardous substances and that identified public health, safety and welfare risks may affect drinking water drawn from certain areas of such impacted aquifers. The City Council has determined that it is necessary and appropriate to prohibit and/or otherwise restrict the use of wells to supply water in and from the affected areas in order to protect City residents by minimizing the health, safety and welfare risks and minimizing the potential for migration of contaminated groundwater into presently unaffected groundwater.

SEC. 18-162. DEFINITIONS. The following definitions shall apply to terms used in this Article:

- (1) "Affected Parcel" means a parcel of land, any part of which is located within a Restricted Zone.
- (2) "Applicant" means a person who applies or applied for the establishment of a Restricted Zone pursuant to this Article.
- (3) "City" means the City of Ludington.
- (4) "City Property" means any interest in real property owned or held by the City and shall include but not be limited to the following: (i) Real property owned by the City; (ii) Real property leased by the City as Lessee; and (iii) City streets, alleys or other City rights-of-way or easements.
- (5) "Contaminated Groundwater" means groundwater in which there is present concentrations of materials that exceed drinking water criteria under the Safe Drinking Water Act, 1976 PA 399, as amended, or the residential drinking water criteria established by the MDEQ in operational memoranda or rules promulgated pursuant to Part 201, Environmental Remediation (MCL 324.20101 *et seq.*).
- (6) "Domestic Use" means the use of water by humans for drinking, cooking, food preparation and other food-related services, cleaning, washing, bathing and similar household-type water uses in any dwelling, or in any building in which commercial/business, governmental/public or industrial activities are conducted. The term does not include water used solely for closed-loop heat pumps, non-contact cooling, or production and/or processing purposes of commercial or industrial enterprises.
- (7) "Irrigation Use" means the use of water for lawn, garden, or landscaping irrigation on a residential parcel of land. The term does not include water used for commercial, agricultural or farm irrigation, except as specifically directed by the MDEQ.
- (8) "MDEQ" means the Michigan Department of Environmental Quality, or its successor agency.
- (9) "Owner" means the holder of record title for a parcel of land and also the occupant of a parcel of land in possession under a land contract or lease.
- (10) "Person" means any individual, partnership, corporation, association, club, joint venture, estate, trust, and any other group or combination acting as a unit, and the individuals constituting such group or unit.
- (11) "Restricted Zone" means an area or areas described within Section 3 of this Ordinance for which the prohibition of Wells and the use of groundwater applies and includes parcels of land that are legally described on the attached Schedule 1 and that are depicted in the map(s) attached as Schedule 2, as amended from time to time as provided in this Ordinance.
- (12) "WB" means the Water Bureau of the MDEQ, or its successor agency.
- (13) "Well" means an opening in the surface of the earth for the purpose of removing fresh water through non-mechanical or mechanical means for any purpose other than a public emergency or conducting response actions that are consistent with the Michigan Natural Resources and Environmental Protection Act, 1994 PA 451, as amended ("NREPA"), the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, or other applicable statute.

SEC. 18-163. RESTRICTED ZONE. The following described areas in the City shall be Restricted Zones under this Article. They may be referred to by reference to the names provided in the caption preceding their descriptions. Additional Restricted Zones, along with a map illustrating the Restricted Zone, may be added by amending the Ordinance in accordance with Sections 11 and 12 and all other applicable laws.

- (1) Whittier/Delia Restricted Zone – legally described on the attached Schedule 1 and depicted in the map attached as Schedule 2.

SEC. 18-164. PROHIBITION. Except as provided in Section 5, no person shall install or utilize, or allow, permit, or provide for the installation or utilization of a Well on any Affected Parcel. Any existing Well at the time of the enactment of a Restricted Zone on any Affected Parcel within that Restricted Zone shall be plugged/abandoned at the expense of the Applicant for that particular Restricted Zone and as provided for in Section 6 and in accordance with applicable laws, regulations and ordinances, unless such existing Well falls within one of the exceptions listed in Section 5. Except as provided in Section 5, no person shall use any groundwater from an Affected Parcel.

SEC. 18-165. EXCEPTIONS. A person may install or utilize, or allow, permit, or provide for the installation or utilization of a Well in any Restricted Zone if any of the following exceptions applies and the requirements of the exception are complied with. The party proposing an exception to the Well prohibition shall conduct all appropriate inquiry and prepare a due care analysis pursuant to Part 201 of NREPA.

- (1) *Proof of No Influence.* If the MDEQ determines based on information provided to it by the person seeking this exception that the use of a Well in a Restricted Zone will not exacerbate existing groundwater contamination, and that water from the proposed Well will not be affected by Contaminated Groundwater, and proof of those determinations is delivered to the City, the Well may be so used.
- (2) *Groundwater Monitoring/Remediation.* A Well may be used for groundwater monitoring and/or remediation as part of a response activity approved by the MDEQ or the United States Environmental Protection Agency.
- (3) *Construction Dewatering.* A Well may be used for construction dewatering if the following conditions are satisfied: (i) the use of the dewatering Well will not result in unacceptable exposure to Contaminated Groundwater, possible cross-contamination between saturated zones, or exacerbation of Contaminated Groundwater, as defined in Part 201 of NREPA; and (ii) the water generated by that activity is properly handled and disposed of in compliance with all applicable laws, rules, regulations, permit and license requirements, orders and directives of any governmental entity or agency of competent jurisdiction. Any exacerbation caused by the use of the Well under this exception shall be the responsibility of the person operating the de-watering Well, as provided in Part 201 of NREPA.
- (4) *Processing Activities.* If the MDEQ determines that the use of a Well for non-contact heating, cooling, production, or processing involved in industrial or commercial activities will not cause migration or exacerbation of Contaminated Groundwater, and proof of that determination is delivered to the City, such use of the Well under terms and conditions specified by the MDEQ will be allowed. All information necessary for the MDEQ determination described in this subsection shall be provided by the person seeking this exception.
- (5) *Public Emergencies.* A Well may be used in the event of a public emergency. Notice of such use shall be provided to the MDEQ within a reasonable time thereafter.

SEC. 18-166. SOURCES OF WATER SUPPLIED FOR DOMESTIC USE AND IRRIGATION USE.

- (1) For Affected Parcels that are not already connected to the City water system on the day of enactment of a Restricted Zone, the Applicant of the Restricted Zone shall be responsible for the costs to connect those Affected Parcels within that Restricted Zone to the City water system. Furthermore, for Affected Parcels that have a Well on the day of enactment of a Restricted Zone which is used primarily for Irrigation Uses, the Applicant of the Restricted Zone shall be responsible for the costs to connect the irrigation system on the Affected Parcel within that Restricted Zone to the City water system.
- (2) This Section shall not be deemed as affecting the rights and remedies of an Owner, or any other person or entity and/or of any federal, state or local government that may exist under any law, regulation, rule, ordinance, order, agreement and or/remedial action plan addressing groundwater within the City.
- (3) In no event shall the City be required to incur any expense or cost under this Ordinance, except as may otherwise be approved by the City Council for a public works project or by a separate agreement with the Applicant, Owner, other person or entity, or a governmental body or agency.

SEC. 18-167 ENFORCEMENT. The City Manager, or his/her designee, shall be the official having the authority to enforce this Ordinance. After the Effective Date of this Ordinance, the enforcement official shall contact all Owners of Affected Parcels, which from the information available to the City, appear to have Wells prohibited under this Ordinance, giving written notice of the need to cease using such Wells and of the need for establishment of a Domestic Use water source as prescribed under Section 6, or to obtain approval or acknowledgment of an exception under Section 5. The Owner shall immediately take steps so as to comply with the provisions of this Ordinance with regard to provision of Domestic Use water within sixty (60) days from the date of such notice. Any existing Well in violation of this Ordinance shall then be plugged or abandoned in conformance with applicable legal requirements. Where, upon information available to the enforcement official, it is suspected that a Well is being used on an Affected Parcel in violation of this Ordinance, the enforcement official may inspect such Affected Parcel and serve an appropriate notice and order of such violation requiring that action be taken promptly by the Owner to bring the Affected Parcel into compliance. If the Owner fails to act in accordance with such order, the enforcement official may seek remedies and penalties as provided in Section 8.

SEC. 18-168. PENALTY. Any person who violates any provision of this Ordinance shall be liable for a municipal civil infraction under the provisions of City Code Sec. 1-7. In addition, the City may seek an order from a court of appropriate jurisdiction requiring compliance with this Ordinance and may also seek collection of costs and attorney fees associated with such enforcement action. Any violation of this Ordinance is a public nuisance, subject to abatement, and any Well in violation of this Ordinance shall be immediately taken out of service and lawfully abandoned in compliance with applicable legal requirements. A court of competent jurisdiction may order any person violating any provision of this Ordinance to properly and lawfully remove or abandon a Well.

SEC. 18-169. BUILDING AND ZONING PERMITS. No permit for the construction or alteration of a building or structure nor any permit for any zoning approval shall be issued by the City Building and Zoning

Administrator for any improvement on an Affected Parcel which has, or proposes, a water supply from a Well in violation of this Ordinance.

SEC. 18-170. ADMINISTRATIVE LIABILITY. No officer, agent or employee of the City or member of the City Council shall render himself or herself personally liable for any damage which may occur to any person or entity as the result of any act or decision performed in the discharge of his or her duties and responsibilities pursuant to the Ordinance.

SEC. 18-171. AMENDMENT; REPEAL. The MDEQ, an Applicant, an Owner, an entity involved in a RAP or other interested party may request in writing to add parcels to or delete parcels from a Restricted Zone or to establish an additional Restricted Zone or to otherwise amend or repeal this Ordinance, and shall provide advance notice to the MDEQ and any Applicant for such Restricted Zone of any proposed change hereunder, including the reasons supporting such request. The City on its own motion and upon advance notice to the MDEQ and any Applicant for such Restricted Zone, may also take action to amend or repeal this Ordinance as it deems appropriate. The amendment or repeal of this Ordinance shall be by an appropriate ordinance adopted in the same manner as this Ordinance, and any such action shall be in the sole legislative discretion of the City Council.

SEC. 18-172. NOTIFICATION OF LAPSE, OR INTENT TO AMEND OR REPEAL. At least thirty (30) days prior to any action regarding a proposed amendment or repeal in whole or in part of this Ordinance, the City shall notify the MDEQ and any Applicant of its intent to so act. The City shall also notify the MDEQ and any Applicant that this Ordinance may lapse at least thirty (30) days prior to the Ordinance being allowed to lapse.

SEC. 18-173. SEVERABILITY AND CAPTIONS. If any article, section, subsection, sentence, clause, phrase, or portion of this Ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of remaining portions of the Ordinance, it being the intent of the City that this Ordinance shall be fully severable. The City shall promptly notify the MDEQ and any Applicant upon the occurrence of any event described in this section. The captions included at the beginning of each section are for convenience only and shall not be considered a part of this Ordinance.

SEC. 18-174. REPEAL. All resolutions, ordinances, orders or parts thereof in conflict in whole or in part with any of the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

SEC. 18-175. REIMBURSEMENT OF ADDITIONAL CITY CONSTRUCTION COSTS. The Applicant of a Restricted Zone shall reimburse the City for the reasonable additional costs the City incurs for dewatering Contaminated Groundwater or disposing of soils impacted by Contaminated Groundwater in connection with construction activity undertaken by the City on City property in that Restricted Zone, provided that the City supplies the Applicant with documentation confirming the amount and necessity of such additional costs, including the extent to which they exceeded the cost of dewatering or disposing of materials not impacted by Contaminated Groundwater.

SEC 18-176. EFFECTIVE DATE. This Ordinance shall take effect upon November 15, 2009.

Legal Description of Restricted Area

ASSESSORS PLAT OF SIXTH ADDITION:

Lots 14-33, Block 3

Lots 7-36, Block 4

Lots 1-40, Block 5

Lots 1-40, Block 6

Lots 1-42, block 7

QUEVILLION'S ADDITION:

Lots 4&5, Block 12

Lots 1-3, Block 13

MANUFACTURER'S ADDITION TO THE CITY OF LUDINGTON:

Lots 1-28, Block 11

Lots 1-28, Block 12

Lots 1-28, Block 13

Lots 5-25, Block 14

Lots 1-28, Block 15

Lots 1-28, Block 16

Lots 1-28, Block 17

Lots 1-28, Block 18

THE NW ¼ OF SECTION 10, T18N, R18W

His Honor Mayor Henderson attempted to answer Mr. Tushek's questions regarding the number of wells tested in the Fourth Ward and explained that these wells have not been tested as this is not the issue. The City has not nor are they willing to test the wells. Mr. Tushek's well is located at 100 feet southeast and some of the wells tested at 100-105 feet do show contamination. No one is aware of anyone who has been sick. He attempted to answer Mr. Bentz's question regarding the faucet at Sixth Street. City Manager Shay explained that he would get an answer to that question.

Councilor Engblade asked what committee reviewed this ordinance. City Manager Shay explained that it was addressed at the Public Safety Public Utilities Committee and it was the Committee's recommendation to adopt this ordinance. He then commented that this ordinance addresses 12 wells and these wells have been in operation for 60-65 years and there have been no reported instances of anyone falling ill. He believes that the City is tying the hands of the property owners who have the wells now. No one can say that these wells cause a threat to anyone, unless they drank from the well. He then stated that is the City going to penalize the 12 property owners that have wells but there is nothing documented in sixty years. DEQ stated that the contamination has dropped, the center plume is stagnant. He stated that he does not like to pass an ordinance to outlaw something that the City has not seen an effect on anyone. Councilor Engblade stated that this is an injustice if we pass this ordinance because now these residents will have to pay for the use of the City's water and he will vote no.

Councilor Peterson stated that he knows that there was a dump on Madison St. and a dump on James St., why is the ordinance not inclusive, to include the entire City rather than just this area. He asked if the City would have to come back with these types of ordinances for other areas in town in the future. His Honor Mayor Henderson explained that the reason the north, northwest area is being targeted is because the industries have come forward to propose the capping of the wells. He stated that he is aware of another industry outside the City which has approached the City with a similar ordinance but has not taken further action yet.

Councilor Weston asked if there could be a waiver whereby the residents could sign so if they do get sick from the well water they would not sue the City, possibly grandfather these well owners in. City Attorney Roger Anderson recommended that they do not have the owners sign a waiver. The issue is that these companies are trying to achieve closure and get approval for closure from the MDEQ. It has been a policy of the City to work with industry without significantly adversely affecting the neighborhood. The DEQ is making the requirement of the closure to maintain monitoring wells and purge wells but it will be up to 40 or 50 years before the water wells will be good for drinking water. The capping of the wells is so that when property changes hands the new owners will not be unaware of the contamination of the water.

Councilor Engblade disagreed with the City Attorney and stated that this is not an economic issue but rather a rights issue to the property owners. He is a firm believer that individual rights come before economic issues. He stated he goes along with Councilor Weston and would like to see the City grandfather these wells in. Then make it a requirement when they transfer their property that these wells be capped at that time.

After no further comments were received the regular order of business was resumed.

Councilor Engblade asked to make an amendment to this ordinance. Councilor Holman explained that there was not a motion on the ordinance yet.

Moved by Councilor Holman, seconded by Councilor Peterson to refer the Water Well Restriction Ordinance No. 202-09 back to Committee.

Roll Call: Ayes: Councilors Engblade, Peterson, and Holman.

Nays: Councilors Weston, Castonia, and Dykstra. His Honor Mayor Henderson voted against this motion. Motion Failed.

Moved by Councilor Castonia, seconded by Councilor Dykstra, to adopt Ordinance No. 202-09, Water Well Restriction Ordinance. Moved by Councilor Engblade, seconded by Councilor Weston, to amend this Ordinance to reflect a grandfather in clause for the existing wells and that these wells be capped at the transfer or sale of property. City Attorney Roger Anderson questioned whether this grandfather in clause would satisfy the requirement of the MDEQ for the remedial action plan or whether Straits Steel and Wire and Northrop Grumman would have to do some other type of remediation to try to address it. The DEQ is requiring a blanket restriction on water wells because their experience has been in areas where they have adopted a well water ordinance which restricted only drinking when they have come back 10 to 15 years later, they have found people have forgotten about the ordinance and had used the water wells. So now the DEQ only accepts either a deed restriction on all the properties which is almost impossible or a water well restriction ordinance. He is unsure if DEQ would approve a grandfather in clause and does not think that they will accept this as an institutional control.

The motion to amend this Ordinance to reflect the grandfather in clause was then brought to roll call.

Roll Call: Ayes: Councilors Holman, Weston, and Dykstra.

Nays: Councilors Castonia, Dykstra, and Peterson. His Honor Mayor Henderson voted against this motion. Motion Failed.

The original motion to adopt Ordinance No. 202-09, Water Well Restriction Ordinance was then brought to roll call.

Roll Call: Ayes: Councilors Weston, Dykstra, and Castonia.

Nays: Councilors Peterson, Engblade, and Holman. His Honor Mayor Henderson voted in favor of the adoption of Ordinance No. 202-09, Water Well Restriction Ordinance. Motion Carried.

Moved by Councilor Holman, seconded by Councilor Dykstra, to approve the Lakestride Running Club Halloween Hustle on October 29th in Cartier Park at 4:00 p.m. Councilor Holman commented that she liked the idea of all participating in this event receiving finishing ribbons. Motion Carried.

Moved by Councilor Holman, seconded by Councilor Peterson, that the finance report with total expenditures in the amount of \$318, 670.46 for this period be approved and orders drawn according to the City Charter. Motion Carried.

Moved by Councilor Holman, seconded by Councilor Weston, to approve the 2010 Seasonal and Transient Rates for the Marina. It was noted that there were no increases in rates over the 2009 rates and these rates are set by the DNR Waterways Commission. Motion Carried.

RESOLUTION TO CONTINUE THE CLOSURE OF THE NORTH JAMES STREET PLAZA TO VEHICULAR TRAFFIC

WHEREAS, the Ludington City Council closed the 100 block of North James Street to vehicular traffic on a trial basis in October of 2008; and

WHEREAS, the Ludington City Council asked to review the effects of that closure and to determine whether or not to continue a closure to vehicular traffic on the 100 block of North James Street; and

WHEREAS, the Downtown Ludington Board has received comments from businesses located on the plaza and is formally recommending the continued closure of the 100 block of North James Street to vehicular traffic.

NOW THEREFORE BE IT RESOLVED, that the Ludington City Council supports the continued closure to vehicular traffic of the 100 block of North James Street.

Moved by Councilor Castonia, seconded by Councilor Weston, that the foregoing resolution be adopted. Councilor Engblade commented about the survey from Chris Raven which summarized that 11 people liked the road closed in the winter and 8 people liked the road closed in the summer. He stated that he was against the closure initially and during holiday time it does get busy. He honors the business owners in that area and is against the closure unless the City can work out some hours for keeping the road open for part of the year. Councilor Holman stated that MDOT is going to make things very hard to close for part of the year and keep it open for part of the year. She stated that she would vote for the closure as it is the best way to work things out. Councilor Engblade then asked who rules the City, MDOT or MDEQ, do they dictate what we do or do we just rubber stamp this. The City is the one that has to regulate the City and they make the rules. If we do not stand up for the City then we do not belong here. Councilor Holman stated that closing this street is the right thing to do. Councilors Weston and Peterson agreed with Councilor Holman. Councilor Engblade opposed the motion. Motion Carried.

RESOLUTION

WHEREAS, the State of Michigan Department of Transportation (MDOT) requires the governmental body to adopt a Resolution naming the officials who are authorized to sign the ARRA Preliminary Engineering Modified Part II Contract.

NOW, THEREFORE, BE IT RESOLVED that the Resolution of Authorized Signatures required by MDOT be adopted, and the John E. Shay and Deborah L. Luskin are authorized to sign the Michigan Department of Transportation ARRA Preliminary Engineering Modified Part II Contract.

Moved by Councilor Castonia, seconded by Councilor Engblade, to approve the foregoing resolution to designate authorized signatures to sign the contract between the City of Ludington and the Michigan Department of Transportation for the reimbursement to the City of \$13,748 in design engineering fees on the South William Street road project. Motion Carried.

The September building zoning and enforcement report was provided by Councilor Engblade.

Moved by Councilor Dykstra, seconded by Councilor Peterson, to approve the 3 year Concession Agreement between the City of Ludington and Stacy Sutton for the operation of both concession stands at Stearns Park. The City retains the ability to terminate the agreement at any time. Councilor Dykstra stated that Stacy Sutton has done a remarkable job in the concessions, there have been no complaints, and she has kept it clean and presentable to the people who have come to the City. Motion Carried.

Moved by Councilor Weston, seconded by Councilor Holman, to approve His Honor Mayor John Henderson's recommendation to appoint Gockerman, Wilson, Saylor, and Hesslin, PC as the new City Attorney for civil matters to be effective October 27, 2009, until December 31, 2009, at a monthly retainer rate of \$2,350 and a special project rate of \$135 per hour, as outlined in the City Attorney Agreement. Richard Wilson, a principal of this firm introduced himself as well as his partner George Saylor, Kate Glancy, a City of Ludington resident, and Sara Alden. Motion Carried.

**RESOLUTION OF APPRECIATION
ROGER H. ANDERSON**

WHEREAS, the firm of Gavigan, Anderson and Andrews was engaged by the City of Ludington, Michigan, to serve as legal Counsel to the City in January, 1991; and

WHEREAS, Roger H. Anderson of the firm of Gavigan, Anderson and Andrews has served as the primary Counsel from January 1, 1991 to October 26, 2009; and

WHEREAS, Roger H. Anderson has been a dedicated and faithful servant of the Ludington City Council for over eighteen years; and

WHEREAS, Roger H. Anderson has performed the duties with loyalty, dedication and in a most conscientious judiciousness; and

WHEREAS, Roger H. Anderson leaves those in the City of Ludington proud to have known him and to have served with him. His guidance, support as a friend, and mentor will be missed.

NOW, THEREFORE, BE IT RESOLVED, that I, Mayor John Henderson, and the Ludington City Council take this opportunity on behalf of the people of the City of Ludington to express official gratitude and deep appreciation to Roger H. Anderson for his lifelong efforts and devotion to public service; and

BE IT FURTHER RESOLVED, that this resolution become a permanent part of the records of the Ludington City Council.

Moved by Councilor Weston, seconded by Councilor Dykstra, to adopt the foregoing Resolution. Motion Carried.

His Honor Mayor Henderson presented several gifts including the Resolution of Appreciation and expressed his gratitude for his service as well as a City of Ludington mug, a City of Ludington pin, and a key to the City of Ludington. City Attorney Roger Anderson expressed his appreciation to be the City Attorney and to represent the City. He thanked all in the City as well as the Council for working with him over the years.

Councilor Peterson recognized a letter from John Gregory Burton who has asked for a Muni WiFi network be installed within the City and asked that this communication to be forwarded to the Tech Committee. His Honor Mayor Henderson moved this correspondence to the Technology Committee.

City Manager Shay publicly thanked City Attorney Roger Anderson for the wise counsel that he has given him over the years.

Moved by Councilor Engblade, seconded by Councilor Holman, that the meeting be adjourned. So carried at 7:50p.m.

Deborah L. Luskin, CMC
City Clerk