

A Regular Meeting of the Troy City Council was held Monday, October 24, 2005, at City Hall, 500 W. Big Beaver Road. Mayor Schilling called the Meeting to order at 7:34 PM

Mayor Pro Tem Beltramini gave the Invocation and the Pledge of Allegiance to the Flag was given.

ROLL CALL:

Mayor Louise E. Schilling
Robin Beltramini
Cristina Broomfield (Absent)
David Eisenbacher
Martin F. Howrylak
David A. Lambert
Jeanne M. Stine

Vote on Resolution to Excuse Council Member Broomfield

Resolution #2005-10-487
Moved by Eisenbacher
Seconded by Lambert

RESOLVED, That Council Member Broomfield's absence the Regular City Council meeting of October 24, 2005 is **EXCUSED** due to illness.

Yes: All-6
No: None
Absent: Broomfield

CERTIFICATES OF RECOGNITION:

A-1 Presentations: No Presentations

CARRYOVER ITEMS:

B-1 No Carryover Items

The meeting **RECESSED** at 9:12 PM.

The meeting **RECONVENED** at 9:23 PM.

PUBLIC HEARINGS:

C-1 Proposed Amendment to the Boundaries of the Downtown District of the Downtown Development Authority (DDA)

Resolution #2005-10-488

Moved by Stine
Seconded by Beltramini

RESOLVED, That Troy City Council hereby **RECOMMENDS** that the Downtown Development Authority (DDA) move forward as the district boundaries are currently drawn.

Yes: Beltramini, Stine, Schilling
No: Eisenbacher, Howrylak, Lambert
Absent: Broomfield

MOTION FAILED

Vote on Resolution to Continue the Public Hearing at a Future Date

Resolution #2005-10-489
Moved by Howrylak
Seconded by Eisenbacher

RESOLVED, That Troy City Council hereby **REQUESTS** that the public hearing for the *Proposed Amendment to the Boundaries of the Downtown District of the Downtown Development Authority (DDA)* be **CONTINUED** at the Regular City Council meeting scheduled for Monday, November 28, 2005.

Yes: Eisenbacher, Howrylak, Lambert
No: Stine, Schilling, Beltramini
Absent: Broomfield

MOTION FAILED

Vote on Resolution to Continue the Public Hearing at a Future Date

Resolution #2005-10-490
Moved by Lambert
Seconded by Eisenbacher

RESOLVED, That Troy City Council hereby **REQUESTS** that the public hearing for the *Proposed Amendment to the Boundaries of the Downtown District of the Downtown Development Authority (DDA)* be **CONTINUED** at the Regular City Council meeting scheduled for Monday, February 27, 2006.

Yes: Howrylak, Lambert, Stine, Beltramini, Eisenbacher
No: Schilling
Absent: Broomfield

MOTION CARRIED

D-1 Zoning Ordinance Text Amendment (ZOTA 216) – Additional Retail Along Major Thoroughfares in the M-1 (Light Industrial) Zoning District

Pending Resolution

Resolution

Moved by Beltramini

Seconded by Lambert

RESOLVED, That Article XXVIII (M-1 LIGHT INDUSTRIAL DISTRICT), of the Zoning Ordinance, Option A, be **ADOPTED**, as recommended by the Planning Commission, with the caveat that City Staff is **DIRECTED** to provide a report in six months on other areas where this retail use might be expanded and City Staff is further **DIRECTED** to provide a report by the end of this year listing the functional relationship as defined by the approvals from the Planning Commission.

Resolution to Amend by Substitution Amendment B – City Management Version

Resolution

Moved by Lambert

Seconded by Schilling

RESOLVED, That the pending Resolution to adopt Article XXVIII (M-1 LIGHT INDUSTRIAL DISTRICT), of the Zoning Ordinance, Option A be **STRICKEN** in its entirety and **SUBSTITUTED** by **INSERTING**, “RESOLVED, That Article XXVIII (M-1 LIGHT INDUSTRIAL DISTRICT), of the Zoning Ordinance, Version B, be **ADOPTED**, as recommended by City Management **SUBJECT** to a 6-month sunset period.”

Resolution to Amend Substitution Amendment B – City Management Version

Resolution

Moved by Lambert

Seconded by Howrylak

RESOLVED, That the proposed Resolution to amend by substitution Amendment B – City Management Version be **AMENDED** by **STRIKING** “SUBJECT to a 6-month sunset period.”

Vote on Resolution to Amend Substitution Amendment B – City Management Version

Resolution #2005-10-491

Moved by Eisenbacher

Seconded by Beltramini

RESOLVED, That the proposed Resolution to amend by substitution Amendment B – City Management Version be **AMENDED** by **INSERTING** “BE IT FURTHER RESOLVED, That Section 28.30.09 be AMENDED by INSERTING AFTER C., “For application B. ii above,” BEFORE “the industrial and retail uses shall have common ownership.” and by INSERTING AFTER D., “For application B. ii above,” BEFORE “the building shall front on a major thoroughfare as classified on the City of Troy Transportation Plan.”

Yes: Stine, Schilling, Beltramini, Eisenbacher, Howrylak
No: Lambert
Absent: Broomfield

MOTION CARRIED

Vote Resolution to Amend Substitution Amendment B – City Management Version

Resolution #2005-10-492
Moved by Lambert
Seconded by Howrylak

RESOLVED, That the proposed Resolution to amend by substitution Amendment B – City Management Version be **AMENDED** by **STRIKING** “SUBJECT to a 6-month sunset period.”

Yes: Stine, Schilling, Eisenbacher, Howrylak, Lambert
No: Beltramini
Absent: Broomfield

MOTION CARRIED

Vote on Resolution to Amend by Substitution Amendment B – City Management Version as Amended

Resolution #2005-10-493
Moved by Lambert
Seconded by Schilling

RESOLVED, That the pending Resolution to adopt Article XXVIII (M-1 LIGHT INDUSTRIAL DISTRICT), of the Zoning Ordinance, Option A be **STRICKEN** in its entirety and **SUBSTITUTED** by **INSERTING**, “RESOLVED, That Article XXVIII (M-1 LIGHT INDUSTRIAL DISTRICT), of the Zoning Ordinance, Version B, be **ADOPTED**, as recommended by City Management.”

Yes: Schilling, Eisenbacher, Howrylak, Lambert, Stine
No: Beltramini
Absent: Broomfield

MOTION CARRIED

Vote on Resolution as Amended by Substitution

Resolution #2005-10-494
Moved by Beltramini
Seconded by Lambert

RESOLVED, That Article XXVIII (M-1 LIGHT INDUSTRIAL DISTRICT), of the Zoning Ordinance, Version B, be **ADOPTED**, as recommended by City Management; and

BE IT FURTHER RESOLVED, That Section 28.30.09 be **AMENDED BY INSERTING AFTER** C., "For application B. ii above," **BEFORE** "the industrial and retail uses shall have common ownership." and by **INSERTING AFTER** D., "For application B. ii above," **BEFORE** "the building shall front on a major thoroughfare as classified on the City of Troy Transportation Plan.

Yes: Eisenbacher, Howrylak, Lambert, Stine, Schilling
No: Beltramini
Absent: Broomfield

MOTION CARRIED

D-2 Appointments to Boards and Committees: City Council Appointments: Ethnic Issues Advisory Board

(b) City Council Appointments

Resolution #2005-10-495
Moved by Beltramini
Seconded by Lambert

RESOLVED, That the following persons are hereby **APPOINTED BY THE CITY COUNCIL** to serve on the Boards and Committees as indicated:

Ethnic Issues Advisory Board

Appointed by Council (9) – (4) 3 year terms & (5) 2 year terms

Reuben T. Ellis Unexpired Term 09/30/07

Yes: All-6
No: None
Absent: Broomfield

CONSENT AGENDA:

E-1a Approval of "E" Items NOT Removed for Discussion

Resolution #2005-10-496
Moved by Beltramini
Seconded by Lambert

RESOLVED, That all items as presented on the Consent Agenda are hereby **APPROVED** as presented.

Yes: All-6
No: None
Absent: Broomfield

E-1b Address of "E" Items Removed for Discussion by City Council and/or the Public

E-2 Approval of City Council Minutes

Resolution #2005-10-496-E-2

RESOLVED, That the Minutes of the 6:00 PM Special-Joint DDA Meeting be **APPROVED** as corrected and the 7:30 PM Regular City Council Meeting of October 17, 2005 be **APPROVED** as submitted.

E-3 Proposed City of Troy Proclamations: None Submitted

E-4 Standard Purchasing Resolutions: None Submitted

PUBLIC COMMENT: Limited to Items Not on the Agenda

REGULAR BUSINESS:

F-1 Appointments to Boards and Committees: a) Mayoral Appointments: No Appointments Scheduled; b) City Council Appointments: No Appointments Scheduled

F-2 Marshall Field's Fireworks Permit Application

Resolution #2005-10-497

Moved by Eisenbacher

Seconded by Howrylak

RESOLVED, That a fireworks permit be **ISSUED** to Zambelli Fireworks, Inc., of New Castle, PA, for the display of fireworks at the Oakland Mall on November 11, 2005.

Yes: All-6

No: None

Absent: Broomfield

F-3 Resolution in Support of a Constitutional Amendment to Narrowly and Clearly Define the Term "Public Use"

Resolution #2005-10-498

Moved by Lambert

Seconded by Stine

WHEREAS, The right of an individual to own property without the threat that his/her government will take their property and give it to a private entity for a non-public use is fundamental to democracy in the United States; and

WHEREAS, Eminent domain is the power of a government to take private property for public use; the 5th Amendment of the US Constitution and articles in many state constitutions allow this practice provided that fair compensation is made; and

WHEREAS, Historically eminent domain has been used for public uses such as roads, parks, schools and other governmental functions; and

WHEREAS, In 1954, the United States Supreme Court began to erode individual property rights when it determined in *Berman vs. Parker* that government's power of eminent domain could be used to seize property in order to remove "blighted" areas; and

WHEREAS, The definition of a "blighted" area has become so expansive that in 1981 the Michigan Supreme Court allowed the City of Detroit to condemn a stable neighborhood called Poletown to make way for a General Motors plant; and

WHEREAS, In 2004, the Michigan Supreme Court overturned the "Poletown" decision when it ruled on *The County of Wayne v. Hathcock et al*, and noted that: "...if one's ownership of private property is forever subject to the government's determination that another private party would put one's land to better use, then the ownership of real property is perpetually threatened by the expansion plans of any large discount retailer, "megastore", or the like."; and

WHEREAS, The Michigan Supreme Court also noted in 2004 that: "...we must overrule *Poletown* in order to vindicate our Constitution, protect the people's property rights, and preserve the legitimacy of the judicial branch as the expositor – not creator – of fundamental law."; and

WHEREAS, On June 23, 2005, the United States Supreme Court, in a 5-4 decision, ruled in the case, *Kelo vs. City of New London, Connecticut*, that government may use eminent domain for the benefit of developers; and

WHEREAS, United States Supreme Court Justice Sandra Day O'Connor said in her dissent to the *Kelo* decision: "All private property is now vulnerable to being taken and transferred to another private owner, so long as it might be upgraded. The specter of condemnation hangs over all property. Nothing is to prevent (local governments) from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory."; and

WHEREAS, Even though the Michigan Supreme Court, through a strict constitutional interpretation, reversed the *Poletown* decision and placed Michigan property owners in a more secure position for the immediate future than property owners in many other states, a future Michigan Supreme Court could reverse the current ruling, once again allowing the condemnation of private property for private developers where no public use is involved; and

WHEREAS, During the 23 years the *Poletown* decision was the law of the land in the State of Michigan, many of Michigan's residential and small business property owners were let down by their government as it, with little thought or care for their long term interests, took their property and gave it to private developers for the sole purpose of increasing the government's tax base; and

WHEREAS, United States Supreme Court Justice John Paul Stevens, in writing for the majority on the *Kelo* decision, pointed out that the Constitution does not preclude individual states “from placing further restrictions (on) the exercise of the taking power”.

NOW, THEREFORE, BE IT RESOLVED, That Troy City Council **URGES** the Michigan Legislature to place an amendment to the State of Michigan Constitution on the ballot for the sole purpose of narrowly and clearly defining “public use” in a manner that is consistent with the 2004 Michigan Supreme Court ruling (*County of Wayne vs. Hathcock et al*) on eminent domain that overturned the 1981 *Poletown* decision; and

BE IT FURTHER RESOLVED, That the Troy City Council **COMMENDS** the Michigan Supreme Court for their just and bold ruling in 2004 (*County of Wayne vs. Hathcock et al*) that overturned the *Poletown* decision; and

BE IT FINALLY RESOLVED, That copies of this resolution **BE FORWARDED** to the Michigan Supreme Court, Governor Jennifer Granholm, the Oakland County legislative contingent in Lansing, and the Michigan Association of Counties.

Yes: All-6
 No: None
 Absent: Broomfield

MEMORANDUMS AND FUTURE COUNCIL AGENDA ITEMS:

G-1 Announcement of Public Hearings: None Submitted

G-2 Green Memorandums: None Submitted

COUNCIL REFERRALS: Items Advanced to the City Manager by Individual City Council Members for Placement on the Agenda

H-1 No Council Referrals

COUNCIL COMMENTS:

I-1 No Council Comments

Vote on Resolution to Suspend Rules of Procedure for the City Council, Rule #6 – Order of Business, Article 15 I.

Resolution #2005-10-499
 Moved by Eisenbacher
 Seconded by Stine

RESOLVED, That City Council **SUSPEND** Rules of Procedure for the City Council, Rule #6 Order of Business, Article 15-I. Council Comments and **AUTHORIZE** City Council to discuss and take action on an item that does not appear on the agenda.

Yes: All-6
No: None
Absent: Broomfield

Vote on Resolution to Refer Issue to Charter Revision Committee

Resolution #2005-10-500
Moved by Eisenbacher
Seconded by Stine

RESOLVED, That City Council **REFERS** *Resolution in Support of a Constitutional Amendment to Narrowly and Clearly Define the Term "Public Use"* to the Charter Revision Committee for placement on the agenda of their next regular meeting.

Yes: All-6
No: None
Absent: Broomfield

Vote on Resolution to Suspend Rules of Procedure for the City Council, Rule #6 – Order of Business, Article 15 I.

Resolution #2005-10-501
Moved by Howrylak
Seconded by Stine

RESOLVED, That City Council **SUSPEND** Rules of Procedure for the City Council, Rule #6 Order of Business, Article 15-I. Council Comments and **AUTHORIZE** City Council to discuss and take action on an item that does not appear on the agenda.

Yes: All-6
No: None
Absent: Broomfield

Vote on Resolution to Schedule a Special City Council Meeting

Resolution #2005-10-502
Moved by Howrylak
Seconded by Stine

RESOLVED, That City Council hereby **SCHEDULES** a Special Meeting on Monday, November 14, 2005 at 7:10 pm in the City Council Chamber for the purpose of recognizing Council Member David Eisenbacher's service to the community.

Yes: All-6
No: None
Absent: Broomfield

REPORTS:

J-1 Minutes – Boards and Committees: None Submitted

J-2 Department Reports:

- a) Report on Available Property for Sale at 1660 Square Lake Road
Noted and Filed
-

J-3 Letters of Appreciation: None Submitted

J-4 Proposed Proclamations/Resolutions from Other Organizations: None Submitted

J-5 Calendar

Noted and Filed

STUDY ITEMS:

K-1 No Study Items Submitted

PUBLIC COMMENT: Address of “K” Items

CLOSED SESSION: No Closed Session Requested

ADJOURNMENT

The meeting **ADJOURNED** at 11:33 PM.

Louise E. Schilling, Mayor

Tonni L. Bartholomew, City Clerk