

**Harbor Springs City Council Minutes  
March 5, 2007**

Mayor Jardine called the tenth meeting of the Harbor Springs City Council to order at 7:00 pm, in the City Council Chambers at 160 Zoll Street, Harbor Springs, Michigan.

1. Roll Call and Verification of Quorum

Present: Jean Jardine, Jim Grogan, Mick Heinz, Laura Kors and Dennis Wiggins

Absent: None

Also Present: City Attorney James Ramer, City Manager Fred Geuder, City Police Chief Dan Branson and City Clerk Ron McRae

2. City Clerk / Comptroller / Treasurer

A. Approval of Minutes

#7275 – Motion by Grogan, second by Heinz, to approve the February 19, 2007 regular City Council meeting minutes as read.

Ayes – 5

Nays – 0

B. Approval of Bills

I have examined the bills appearing on the vouchers below and recommend they be allowed and payment be made from the following funds:

#7359 – Payroll	P.P.E. 2/18/07	\$ 27,539.25 General Fund 3,307.85 Major Sts Fund 447.17 Local Sts Fund 422.40 Historical Fund 9,018.13 Electric Fund 5,404.51 W & S Fund 2,130.72 Waterfront Fd 3,310.55 Equipment Fd
#7360 – Trust	Payouts 2/14–2/28/07	\$ 410,433.57 Trust Fund
#7361 – A/P	Council 3/5/07	\$ 113,773.07 General Fund 357.51 Historical Fund 139,763.56 Electric Fund 126,954.94 W & S Fund 4,194.09 W.T. Water Fd 599.52 Waterfront Fd 15,599.49 Equipment Fd

#7276 – Motion by Grogan, second by Heinz, to approve the bills in the amount of \$863,256.33.

Ayes – 5

Nays – 0

THEREFORE, BE IT RESOLVED that claims on voucher numbers #7359, #7360, and #7361, checked by the Finance Committee, in the amount of \$863,256.33 be allowed for payment, and the City Manager and the Mayor are hereby authorized to execute warrants to be drawn on the following funds:

General Fund	\$141,312.32
Major Streets Fund	3,307.85
Local Streets Fund	447.17
Police Reserve	.00
Historical Fund	779.91
B. A. Construction Fund	.00
Electric Fund	148,781.69
Water & Sewer Fund	132,359.45
West Traverse Fund	4,194.09
Waterfront Fund	2,730.24
Equipment Fund	18,910.04
Trust Fund	410,433.57
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Total	\$ 863,256.33
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### 3. Citizen Comments

None.

### 4. Closed Session

Mayor Jardine asked City Manager Geuder to provide Council direction concerning the latest developments relative to the proposed rezoning on the Hotel parking area and consideration of the Planned Development. City Manager Geuder stated that the City received notice that a law suit was filed against the City relative to the proposed Hotel Project. Manager Geuder stated that it was the recommendation of the City Attorney to recess from "open session" to "closed session".

#7277 – Motion by Heinz, second by Grogan, to recess from open session to closed session, under Section 8(e) of Public Act No. 267 of 1976, as amended (the "Open Meetings Act"), to consult with the City Attorney regarding strategy in connection with a lawsuit filed by David and Mary Wood against the City of Harbor Springs, the City Council and the Planning Commission, on the ground that an open meeting would have a detrimental effect on the litigating strategy of the City.

Ayes – Jardine, Grogan, Heinz, Kors and Wiggins

Nays – None

Mayor Jardine recessed the open session of the meeting at 7:05 p.m. and Council retired to the small conference room for the closed session.

Mayor Jardine called the open session back to order at 7:29 p.m.

### 5. Public Hearing

Mayor Jardine called the Public Hearing on the proposed Conditional Rezoning of the existing Hotel Parking Area from TR-Transitional Residential to CBD-Central Business District and the Proposed Planned Development for the Proposed Hotel pursuant to Section 50.123 of the Zoning Code to order at 7:30 p.m. and asked for any public comment.

City Manager Fred Geuder noted that correspondence had been received from the following:

1. Carol Laenen In Support
2. Jill Van Alstyne In Support
3. Tom Gallagher In Support
4. Pam Pfeifle In Support
5. Michael Corcoran Opposed

Richard Schiller, 7276 M -119, spoke in favor of the project.

Pete Wallin, 7879 Lauer Lane, representing Richard Wallin, his father, stated that the family has several concerns regarding safety and noise being created by the proposed Hotel Project. They are:

1. Safety issues with the increased traffic and parking on Gardner Street, and;
2. Noise from gatherings and events on the green space and proposed roof deck.
3. Parking for employees of the hotel.

Bruce Ohmart, 302 E. Main Street, said he had the same issues as Wallin.

Michael Corcoran of Running, Wise and Ford, PLC, attorney representing David and Mary Wood, gave a background presentation on his firm's experience in Planning and Zoning issues. He then proceeded to inform Council that in the opinion of his firm, the City did not allow due process to his clients and discussed the reasons for that opinion. He stated that, based on a letter from a real estate agent, his clients stand to lose over \$160,000 in value between their home and the Graphic Building.

Steve Witte, 675 West Lake Road, stated that he was a Realtor and had sold the Graphic Building twice. Further, prior to each sale, he claimed he had approached the City concerning the further development of the Hotel Parking area. He claimed the City stated that the parking area could not be developed because it would have to be part of the hotel.

David Wood, 263 E. Bay Street, stated that he did not want to be in an adversarial position with the City, but did not believe that the Planning Commission considered their concerns. The view loss will have a significant negative impact on the value of their property.

Sandy Baker, 7480 Ridge Road, stated that thanks should be given to the Mossburg Family for making the changes that were expressed as concerns at the Planning Commission meetings. She also stated that the proposed hotel will help support the downtown business district. She supports the proposed Hotel Project.

Bill Prall, 3512 State Road, and 103 East Third Street, stated that the proposed hotel will provide more lodging for transients visiting Harbor Springs. He is also in favor of the piano bar proposed. He believes that the proposed Hotel Project is good for the downtown business district.

Rob Mossburg, 135 East Bay Street, the applicant, stated that he purchased the hotel in early January, 2007, and that he now owns the Hotel. He also stated that the proposed use of the condo-hotel is not a new use. Further, the City's master plan calls for the parking area to be commercial and zoned Central Business District. Lastly, the proposed Hotel Project has been changed to meet many of the concerns of the people expressed in the Planning Commission hearings.

With no further comments, Mayor Jardine closed the public hearing at 7:55 p.m.

## 6. Consideration of Planning Commission Recommendations

- A. Ordinance No. 366 to Rezone the Hotel Parking Area

City Manager Geuder stated that proposed Ordinance No. 366 authorizes the conditional rezoning of the current hotel parking area from TR-Transitional Residential to CBD-Central Business District. Manager Geuder requested City Attorney Ramer review proposed Ordinance No. 366 with Council.

City Attorney Ramer reviewed proposed Ordinance No. 366 with City Council. Attorney Ramer then addressed their questions and concerns.

Mayor Jardine asked if the proposed Ordinance No. 366 could be considered with the Resolution to Approve a Project as a Planned Development (CBD), hereinafter referred to as the "Resolution". Attorney Ramer stated that he believed that they should be considered separately.

Councilperson Grogan asked if the issues brought up tonight during the public hearing were covered in the Resolution and the Planned Development Conditional Rezoning Agreement, hereinafter referred to as the "Agreement". Attorney Ramer stated that the issues raised could be addressed by the Council, but only as part of consideration of the Planned Development application. New conditions could not be imposed on the rezoning of the parking lot because the Zoning Act does not permit the City to add new conditions beyond those proposed by the property owner in an offer of conditional rezoning.

Councilperson Kors asked if Council could change or tighten the conditions in the Special Land Use Permit as approved by the Planning Commission. Attorney Ramer stated that Council could do that, as part of the consideration of the Planned Development application.

Councilperson Wiggins stated that he would like to address some of the concerns expressed during the public hearing. Council has reviewed this process and taken a great deal of time in reviewing the process for this type of project. Further, Council has to look at this project as a whole, not just how it affects one individual. Also, as a developer, he has to look at what could be built in the area and consider what is proposed.

With no further comments or questions, the following motion was offered:

#7279 – Motion by Wiggins, second by Kors, to approve the following as Ordinance No. 366:

An ordinance to rezone Parcel 24-51-15-13-176-123 from the TR (Transitional Residential) District to the CBD (Central Business District) District, by amending Section 401 of Article 4 of Chapter 50 of Title V of the Code of the City of Harbor Springs and adding subsection (26).

WHEREAS, Mr. Robert E. Mossburg, III, Manager of the Cottage Company ("the Applicant") has submitted an application to rezone Parcel 24-51-15-13-176-123 (the "Subject Property"), from TR to CBD; and,

WHEREAS, the City Council finds that Harbor Springs Hotel, LLC (the "Company") is the owner of the Site and the Applicant is the Manager of the Company; and,

WHEREAS, the City Council finds that the application to rezone is made as a part of a proposal to construct a Condo Hotel (the "Project"), pursuant to a Site Plan dated January 30, 2007 (the "Site Plan") on the Subject Property and on adjacent property currently zoned CBD, pursuant to the Site Plan; and,

WHEREAS, the Project was permitted as a special land use by the Harbor Springs Planning Commission within the CBD regulations as provided in Article 12 of the Zoning Code, subject to the City Council's acceptance of the Company's offer of conditional rezoning of the Subject

Property to CBD and further subject to the City Council's approval of the Project as a Planned Development under the City Zoning Code; and,

WHEREAS, the City Council finds that Subject Property is currently being used as a parking lot for an existing condo-hotel on the property owned by the Company lying immediately north of the Subject Property, said adjacent property being Parcel 24-51-15-13-165-001; and,

WHEREAS, the City Council finds that although the Subject Property is presently located in a TR Zoning District, the City's Master Plan designates the desired future use of the area where the Subject Property is located to be "Commercial," consistent with the use proposed by the rezoning application; and,

WHEREAS, the City Council finds that an offer of conditional rezoning, as amended on January 30, 2007, has been voluntarily presented to the City by Mr. Robert E. Mossburg, III of the Cottage Company as Manager of Harbor Springs Hotel, LLC, in accord with Section 405, Public Act 110 of 2006, of the Michigan Zoning Enabling Act, as amended; and,

WHEREAS, the offer of conditional rezoning states that if the Subject Parcel is rezoned to CBD and if the applicant receives approval pursuant to a Special Land Use application to establish a Condo-Hotel on the Subject Parcel, and if the City Council approves the Project as a Planned Development (CBD), that the use of the Subject Parcel would be limited to that of a Condo-Hotel, and that no building or structure would be constructed or located above ground level within ten feet of the West property line of the Subject Parcel, and that the Condo-Hotel would be constructed, located and used on the Subject Parcel only in accordance with the site plan package, with a cover sheet revision date of January 30, 2007, and supplements submitted by the Applicant and applicable provisions of the City Zoning Code; and,

WHEREAS, the offer of conditional rezoning states that, upon a rezoning, the applicant will enter into a formal agreement with the City confirming the terms of the rezoning; and,

WHEREAS, the City Council finds that on January 30, 2007, the Planning Commission recommended that the Council rezone the Subject Property from TR to CBD, but expressly made its recommendation that the Council rezone the Subject Property contingent upon satisfaction of the following conditions:

1. That the Council would accept the Offer of Conditional Rezoning submitted by the Company; and,

2. That the City Council would approve the Project as a Planned Development subject to the conditions of the Special Land Use approval for the Project as established by the Planning Commission, which were incorporated into the Resolution of Approval adopted by the Planning Commission at its meeting of January 30, 2007; and,

WHEREAS, on March 5, 2007 at 7:00 p.m., the City Council held a public hearing on the Applicant's application for rezoning approval of the Subject Property from TR to CBD; and accepted comments from the public that the Council has duly considered, and acted upon, in this Ordinance; and,

WHEREAS, the City Council finds that if the conditional offer of rezoning is accepted, the rezoning would serve the public interest for the following reasons:

1. The present use of the Subject Property is commercial, as a parking lot for the Harborside Inn (also a condo hotel) and the rezoning would not change the effective zoning use of the Subject Property; and,

2. The City's Master Plan designates the desired future use of the area where the Subject Property is located as commercial; and,

3. The rezoning of the Subject Property, as proposed by the Applicant would achieve integration of the Subject Property with the characteristics of the surrounding area through innovation in land use, design, layout and type of structure to be constructed, through the use of underground parking, preservation of a substantial area of lawn space on the southeast corner of the Subject Property, and a concerted effort to reduce the impact of the Project on neighboring properties; and,

4. The rezoning of the Subject Property, as proposed by the Applicant would achieve economy and efficiency in the use of land, natural resources and energy, by placing parking underground, and preserving a substantial area of lawn space on the southeast corner of the Subject Property; and,

5. The rezoning of the Subject Property, as proposed by the Applicant will provide better employment and economic development and shopping opportunities particularly suited to the needs of the community, by the Applicant's construction of a quality facility that will be aesthetically pleasing that will have a façade similar to structures historically located on the Subject Property; and, that by rezoning the Subject Property, the Applicant will construct a substantially improved facility where the public can find lodging as hotel guests, and that such hotel guests that will shop and use the restaurants, retail and service establishments in the Downtown District, thereby promoting and enhancing economic activity in the Downtown District; and,

6. Facilities benefiting the public at large are to be provided on the Subject Property, and a rezoning of the Subject Property is appropriate under the circumstances, since the public at large will have the opportunity to stay at the Condo-Hotel as hotel guests under the restrictions imposed thereon by the Planning Commission in its Special Land Use approval, and as provided in the Condo-Hotel regulations in the Zoning Code, and that such hotel guests will shop and use the restaurants, retail and service establishments in the Downtown District, thereby promoting and enhancing economic activity in the Downtown District; and,

7. There are areas of open space within the Subject Property portion of the Project that make a better site development than if the conditional rezoning was not approved, because the green space planned for the southeast corner of the Subject Property is aesthetically pleasing, and promotes an environmentally preferable use of the Subject Property as compared to a building or above ground parking lot at such location, and will provide a respite area for guests and visitors and provide limited restricted opportunity for social functions, that will benefit the community and the public;

8. The rezoning of the Subject Project promotes desirable economic development in the community because the Council finds that additional retail and service space will be added to the downtown inventory, and that the Project will result in an increased tax base for the City; and, the Council finds that hotel guests staying at the hotel will shop and use the restaurants and retail and service establishments in the

Downtown District, thereby promoting and enhancing economic activity in the Downtown District, resulting in new jobs; and,

9. The rezoning of the Subject Property as a whole would promote the health, safety and welfare of the City of Harbor Springs because of the significant aesthetic improvement, additional green space, indoor parking, and internal trash and recycling containers, and enhanced economic activity in the City and an enhanced tax base for the City; and,

10. City Council finds that rezoning of the Subject Property will not cause the interests of adjacent property owners to be damaged or injured, because:

(a) The structures that could be legally built on the Subject Property under the current TR zoning could result in a greater limitation on the light, air and view of the of adjacent properties than the structures that are proposed as part of the conditional rezoning of the Subject Parcel; and,

(b) On January 30, 2007, the Applicant modified the Site Plan for the Project by increasing the above ground setback on the west side of the Applicant's property in the Subject Property from 3 feet to 10 feet, as an accommodation to the property owner on the west side of the Subject Property, limiting any impairment of the view, light and air of the adjacent property owner to no more than would be sustained from a conforming project in the TR Zone, if the Council did not approve the rezoning of the Subject Property; and,

WHEREAS, the Council finds that any action it takes to rezone the Subject Property should be conditioned upon the Applicant beginning construction of the Project in a timely fashion, and that if the Offer of Conditional Rezoning is to be accepted, it should be subject to the conditions herein added;

WHEREAS, the City Council finds that the adoption of the within Ordinance is necessary for the health, safety and welfare of the City of Harbor Springs,

NOW, THEREFORE, THE CITY OF HARBOR SPRINGS  
ORDAINS:

Section 1

A new Section 50.401(26) is added to Article 4, Chapter 50 of Title V of the Code of the City of Harbor Springs to read as follows:

(26) Parcel 24-51-15-13-176-123 (the "Subject Property") shall be rezoned from TR (Transitional Residential) District to the CBD (Central Business District) District, provided that the use of the Subject Property shall be limited to that of a Condo-Hotel, and that no building or structure will be constructed or located above ground level within ten feet of the West property line of the Subject Property, and that the Condo-Hotel shall be constructed, located and used on the Subject Property only in accordance with the site plan package, with a cover sheet revision date of January 30, 2007, and supplements submitted by the Applicant and applicable provisions of the City Zoning Code.

Section 2

That before this Ordinance is effective, the terms and conditions of the Offer of Conditional Rezoning shall be incorporated into an Agreement, in form and content satisfactory to the Council, specifying the terms and conditions of this Ordinance, and the scope and details of the Project, and such Agreement must be signed by the owner of the Subject Property, which agreement must be binding upon the owner of the Subject Property and shall be recorded in the Emmet County Register of Deeds, to run with the land of the Subject Property for the benefit of the City of Harbor Springs, and that shall bind successors in interest in the Subject Property and the Project, in perpetuity.

### Section 3

That this Ordinance is contingent upon the City Council granting zoning approval of the Project as a Planned Development under the PD (CBD) provisions of Section 50.2301(4) of the Zoning Code, subject to all of the conditions of the Special Land Use Approval as contained in the Resolution of Approval adopted by the Planning Commission at its meeting of January 30, 2007, and further subject to such conditions as may be established by the City Council in its approval of such Planned Development, and if such approval is not granted, this Ordinance shall be void, and not effective.

### Section 4

That if construction of the Project, as such term will be defined in the Agreement to be signed as referred to in Section 2 of this Ordinance, has not commenced prior to June 1, 2008, the zoning of the Subject Property shall be restored to TR; provided, such deadline date may be extended, but only upon application of the landowner, and by resolution of the City Council.

### Section 5

That a zoning permit shall not be issued for the Project unless and until the issuance of such a permit is approved by the Emmet County Circuit Court in the case of *Woods v. City of Harbor Springs*, File No. 07-9786-CE.

### Section 6

The provisions of this Ordinance are hereby declared to be severable, and if any clause, sentence, word, section or provision is declared void or unenforceable for any reason by a court of competent jurisdiction, the remaining portions of said ordinance shall remain in force.

### Section 7

This ordinance shall take effect ten days after the date of adoption and publication of this Ordinance, and after the conditions of Sections 2 and 3 of this Ordinance have been satisfied.

Ayes – Grogan, Heinz, Kors, Wiggins and Jardine  
Nays – None  
Ordinance No. 366 was declared adopted.

B. Resolution to Approve a Project as a Planned Development (CBD)

City Manager Geuder stated that City Attorney Ramer would review the Resolution with Council.

City Attorney Ramer reviewed a proposed Resolution with Council.

Councilperson Grogan stated that he would like to add a condition to the draft Resolution that would provide that the Resolution would not be effective until the following issues had been resolved to the City Council's satisfaction: (1) restrictions on parking and traffic direction on Gardner Street; (2) restrictions on outdoor activities on the green space at the southeast corner of the property at Gardner and Bay Streets; (3) restriction on the outdoor fireplace; and (4) restrictions on the use of the rooftop decks. He also indicated he would propose to add a condition to the Resolution that a zoning permit should not be issued by the City on the Hotel Project unless and until the issuance of a permit is approved by the Emmet County Circuit Court in the case of Woods v. City of Harbor Springs, File No. 07-9786-CE. Attorney Ramer stated that these conditions could be added to the Resolution.

Councilperson Kors stated that some of the concerns as to lighting and landscaping are currently being reviewed by the appropriate City Staff members. Further, the Planning Commission had considered the comments received when it approved the Special Land Use, by imposing conditions on the outside use of the green space and rooftop decks, and making the restrictions reviewable by the Planning Commission annually.

With no further comments, the following motion was offered:

#7280 – Motion by Grogan, second by Heinz, to approve the “Resolution to Approve a Project as a Planned Unit Development (CBD)”, as set forth below:

WHEREAS, Mr. Robert E. Mossburg, III of the Cottage Company (“the Applicant”) has submitted an application for zoning approval of a Condo-Hotel project (the “Project”) as a Planned Development under Section 50.2301 of the Harbor Springs Zoning Code to be located on parcels 24-51-15-13-165-001 and 24-51-15-13-176-123, commonly known as 266 East Main Street (the “Site”); and,

WHEREAS, the City Council finds that the Site is located within the area specified in Section 50.2301 of the Zoning Code; and,

WHEREAS, the City Council finds that Site is greater than one-half an acre in land area; and,

WHEREAS, the City Council finds that Harbor Springs Hotel, LLC (the “Company”) is the owner of the Site and the Applicant is the Manager of the Company, and that the Project will be developed and administered as an integral unit; and,

WHEREAS, the City Council finds that the Project was permitted as a special land use by the Harbor Springs Planning Commission within the CBD regulations as provided in Article 12 of the Zoning Code, subject to the City Council's rezoning of the TR parcel to CBD and further subject to the City Council's adoption of this Resolution; and,

WHEREAS, the City Council finds that the Applicant is proposing to construct a Condo-Hotel, portions of which are up to 39 feet and 3 stories in height;

WHEREAS, the City Council finds that on January 30, 2007, the Planning Commission recommended that the height and story limitations of Section 50.1203 of the Zoning Code be modified to allow the

construction of the Project, portions of which are proposed to extend 39 feet and 3 stories as depicted in the application; and,

WHEREAS, the Planning Commission found that the Project as proposed by the Applicant satisfies the provisions of Section 50.2301(4) of the Zoning Code, but expressly made its recommendation that the Council approve the Project as a Planned Development contingent upon satisfaction of the following conditions:

That the Council shall approve the rezoning of Parcel 24-51-15-13-176-123 from TR to CBD, pursuant to the Offer of Conditional Rezoning submitted by the Company; and,

That the City Council would approve the Project as a Planned Development subject to the conditions of the Special Land Use approval for the Project as established by the Planning Commission, which were incorporated into the Resolution of Approval adopted by the Planning Commission at its meeting of January 30, 2007; and,

WHEREAS, on March 5, 2007 at 7:00 p.m., the City Council held a public hearing on the Applicant's application for zoning approval of the Project as a Planned Development; and accepted comments from the public that the Council has duly considered, and acted upon, in this Resolution.

WHEREAS, the City Council finds that the Project as submitted by the Applicant achieves integration of the Project with the characteristics of the Central Business District through innovation in land use, design, layout and type of structure to be constructed, through the use of underground parking, preservation of a substantial area of lawn space on the southeast corner of the Site, and a concerted effort to reduce the impact of the Project on neighboring properties; and,

WHEREAS, the City Council finds that the Project as submitted by the Applicant achieves economy and efficiency in the use of land, natural resources and energy, by placing parking underground, and preserving a substantial area of lawn space on the southeast corner of the Site; and,

WHEREAS, the City Council finds that the Project will provide better employment and economic development and shopping opportunities particularly suited to the needs of the community and the Central Business District, by constructing a quality facility that will be aesthetically pleasing and that will have a façade similar to structures historically located on the Site; and, that by being a facility where the public can find lodging, the Project will attract hotel guests that will shop and use the restaurants, retail and service establishments in the Downtown District, thereby promoting and enhancing economic activity in the Downtown District; and,

WHEREAS, the City Council finds that facilities benefiting the public at large, or the general Downtown District are to be provided within the Project, such that a variation from the strict application of the height and story limitations is appropriate under the circumstances, since the public at large will have the opportunity to stay at the Condo-Hotel under the restrictions imposed thereon by the Planning Commission in its Special Land Use approval, and as provided in the Condo-Hotel regulations in the Zoning Code, and that such hotel guests will shop and use the restaurants, retail and service establishments in the Downtown District, thereby promoting and enhancing economic activity in the Downtown District; and,

WHEREAS, the City Council finds that there are areas of open space within the Project that make a better site development than if the strict application of the height and story limitations were adhered to, because the green space planned for the southeast corner of the property is aesthetically pleasing, and promotes an environmentally preferable use of the Site as compared to a building or above ground parking lot at such location, and will provide a respite area for guests and visitors and provide limited restricted opportunity for social functions, that will benefit the community; and,

WHEREAS, the City Council finds that the Project as a whole promotes desirable economic development in the Central Business District to such an extent, and the economics of the project are such that a variation from a strict application of the height and story limitations is appropriate under the circumstances because it does not appear likely that a condo-hotel at this Site will be economically feasible without approving the Project as a Planned Development, and the Council finds that additional retail and service space will be added to the downtown inventory, and an increased tax base for the City will result, and the Council finds that hotel guests staying at the hotel will shop and use the restaurants and retail and service establishments in the Downtown District, thereby promoting and enhancing economic activity in the Downtown District, resulting in new jobs; and,

WHEREAS, the City Council finds that the Project as a whole promotes the health, safety and welfare of the City of Harbor Springs because of the significant aesthetic improvement, additional green space, indoor parking, and internal trash and recycling containers, and enhanced economic activity and an enhanced tax base; and,

WHEREAS, City Council finds that Project will not cause the interests of adjacent property owners to be damaged or injured, because:

The structures that could be built in the TR zone would result in a greater limitation on the light, air and view of the of adjacent properties than the structures that are proposed as part of the Project; and,

On January 30, 2007, the Applicant modified the Site Plan for the Project by increasing the above ground setback on the west side of the Applicant's property in the TR zone from 3 feet to 10 feet, as an accommodation to the property owner on the west side of the Site, limiting any impairment of the view, light and air of the adjacent property owner to no more than would have been sustained from a conforming project in the TR Zone, if the Council did not approve the Project as a Planned Development.

NOW, THEREFORE, in consideration of the foregoing findings, the City Council resolves as follows:

RESOLVED, that the Project, but only to the extent as provided in the Site Plan, is granted zoning approval as a Planned Development under the PD (CBD) provisions of Section 50.2301(4) of the Zoning Code, subject to all of the conditions of the Special Land Use Approval as contained in the Resolution of Approval adopted by the Planning Commission at its meeting of January 30, 2007, and further subject to all of the conditions of the Ordinance of this Council dated March 5, 2007, approving a rezoning of Parcel 24-51-15-13-176-123 from TR to CBD; and,

FURTHER RESOLVED, that before this Resolution is effective, a Planned Development Agreement, in form and content satisfactory to the Council, specifying the terms and conditions of this approval, and the

scope and details of the Project, shall be entered into in writing with the Applicant, which agreement shall be binding upon the Applicant and shall be recorded in the Emmet County Register of Deeds, to run with the land of the Project for the benefit of the City of Harbor Springs, and that shall bind successors in interest in the Project, in perpetuity; and,

FURTHER RESOLVED, that this Resolution shall not be effective until all the conditions of this Council's Ordinance approving the rezoning of Parcel 24-51-15-13-176-123 from TR to CBD have been satisfied; and,

FURTHER RESOLVED, that this Resolution shall not be effective until the following issues have been resolved to the City Council's satisfaction:

- (1) Restrictions on parking and traffic direction on Gardner Street;
- (2) Restrictions on outdoor activities on the green space at the southeast corner of the property at Gardner and Bay Streets;
- (3) Restrictions on the outdoor fireplace;
- (4) Restrictions on the use of the rooftop decks.

FURTHER RESOLVED, that a zoning permit shall not be issued by the City on the Hotel Project unless and until the issuance of such permit is approved by the Emmet County Circuit Court in the case of *Woods v. City of Harbor Springs, File No. 07-9786-CE*.

Ayes – Heinz, Kors, Wiggins, Jardine and Grogan

Nays – None

Motion to Adopt Resolution declared adopted.

#### C. Planned Development Conditional Rezoning Agreement

City Attorney Ramer stated that it would be premature to consider the comprehensive agreement this evening, and Council should consider this issue at a later date.

### 7. Boards and Commissions

#### A. Planning Commission (PC)

Mayor Jardine announced that the next regular PC Meeting is scheduled for 6:00 p.m., Thursday, March 15, 2007.

#### B. Zoning Board of Appeals (ZBA)

Mayor Jardine announced that the next ZBA meeting was scheduled for 5:30 p.m. on Wednesday, March 14, 2007 in the City Council Chambers.

#### C. Next City Council Meeting

Mayor Jardine noted that the next regular City Council meeting is scheduled for 7:00 p.m., Monday, March 19, 2007 in the Harbor Springs City Council Chambers.

### 8. Old and New Business

None.

### 9. Adjournment

With no further business, Mayor Jardine adjourned the meeting at 8:42 pm.

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Ronald B. McRae, City Clerk

Approved: March 19, 2007

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Jean Jardine, Mayor