

**MINUTES OF A REGULAR MEETING
OF THE
LAPEER CITY COMMISSION**

November 20, 2006

A regular meeting of the Lapeer City Commission was held on November 20, 2006 at Lapeer City Hall, 576 Liberty Park, Lapeer, Michigan. The meeting was called to order at 6:30 p.m.

Present: Mayor Sprague
Commissioners Turkelson, Marquardt, Robinet, Farrington, and Ogden.
City Attorney Ron Shamblin
City Manager Dale Kerbyson

Absent: None.

Mayor Sprague led the Pledge of Allegiance.

AGENDA APPROVAL

256 2006 11-20

Moved by Robinet. Seconded by Ogden.
To approve the Agenda for November 20, 2006.
MOTION CARRIED.

MINUTES

257 2006 11-20

Moved by Marquardt. Seconded by Ogden.
To approve the minutes of the Regular Meeting held on November 6, 2006 as presented.
MOTION CARRIED.

Minutes from Various Boards and Commissions received through November 16, 2006 were received into record.

CONSENT AGENDA

258 2006 11-20

Moved by Robinet. Seconded by Farrington.
To approve the Consent Agenda for November 20, 2006 with correction to Item B-3 Budget Adjustment to replace City Hall Air Conditioner resulting in the following:

1. Approval of Special Event Request from the Lapeer Chamber of Commerce for Holly Jolly Christmas Parade to be held December 2, 2006.
2. Approval of Budget Adjustment for Kohl's Development Improvements.
3. Approval of Budget Adjustment to replace City Hall Air Conditioner.
4. Approval of Change Order #1 from O'Laughlin Construction Company in the amount of \$1,072.52 for the Flow Meter Construction Project.
5. Approval of Pay Request #7 to Professional Pool Techs, LLC in the amount of \$16,920.00 for the Lapeer Spray Park Project.
6. Approval of Change Order #1 in the amount of \$4,707.85 for the Soccer Field Expansion Project.
7. Approval of Pay Request #5 to Castles Brothers, Inc. in the amount of \$126,525.45 for the Soccer Field Expansion Project.
8. Approval of the Rowe Incorporated Engineering Agreement in an amount not to exceed \$26,200 for the Linear Path Extension Project and authorize the Director of Parks, Recreation and Cemetery to execute the required documents.
9. Approval of the Purchase Agreement between the City of Lapeer and Sandra Cochran-Fritz on parcel L20-86-602-040-00 for easement purposes in the amount of \$4,000 and authorize the Mayor and City Manager to execute the required documents.

MOTION CARRIED.

BILL LISTING FOR NOVEMBER 6, 2006

259 2006 11-20

Moved by Turkelson. Seconded by Robinet.

To approve the Bill Listing for November 20, 2006 in the amount of \$402,570.28.

MOTION CARRIED.

PUBLIC COMMENTS

None.

PUBLIC PROCLAMATIONS, RECOGNITIONS AND RESOLUTIONS

None.

PUBLIC HEARINGS

None

ADMINISTRATIVE REPORTS

Audit Report for Year Ending June 30, 2006

Accounting and Data Processing Manager Harry Green introduced Rick Richardson and Shannon Rodriguez from the auditing firm of Layton and Richardson.

Rick Richardson, with the firm of Layton and Richardson, provided an overview of the audit, GASB34 module, government-wide statements, plans for elimination of deficit funds, audit recommendations, and that overall the City's financial health is strong.

Discussion was held regarding fixed assets. Shannon Rodriguez, with the firm of Layton and Richardson, provided a review of fixed assets and recording procedures. Brief discussion was held on credit card reduction and prior year's audit recommendations within the current audit report.

260 2006 11-20

Moved by Robinet. Seconded by Farrington.

To approve the Audit Report for Year Ending June 30, 2006.

MOTION CARRIED.

Audit Recommendations for Year Ending June 30, 2006.

261 2006 11-20

Moved by Robinet. Seconded by Marquardt.

To approve the Audit Recommendations for Year Ending June 30, 2006.

MOTIN CARRIED.

Chapter 7 (Zoning Ordinance) Amendments

262 2006 11-20

Moved by Turkelson. Seconded by Robinet.

To adopt the amendments to Chapter 7 (Zoning Ordinance) of the General Ordinances of the City of Lapeer.

THE CITY OF LAPEER ORDAINS:

7.08 – OS-1 OFFICE SERVICE DISTRICT

B. Principal Uses Permitted

4. Banks, credit unions, saving and loan association, and similar uses; drive-thru facilities as an accessory use only.

C. Principal Uses Permitted Subject to Special Conditions

1. An accessory use customarily related to a principal use authorized under this section, such as but not limited to: a pharmacy or apothecary shop, including drive-thru pharmacy service, stores limited to corrective garments or bandages, or optical services, may be permitted.

7.09 – B-1 NEIGHBORHOOD BUSINESS DISTRICT

B. Principal Uses Permitted

5. Banks, credit unions, savings and loan association, and similar uses; drive-thru facilities as an accessory use only.

D. Principal Uses Permitted Subject to Special Conditions

3. Drive-thru pharmacy as an accessory use only, when customarily incident to a principal use permitted in the B-1 district.

7.10 – CBD CENTRAL BUSINESS DISTRICT

B. Principal Uses Permitted

7. Banks, credit unions, savings and loan association, with drive-thru facilities permitted when said drive-thru facilities are incidental to the principal function.

C. Principal Uses Permitted Subject to Special Conditions

3. Drive-thru pharmacy as an accessory use only, when customarily incident to a principal use permitted in the B-1 district.

7.11 – B-2 GENERAL BUSINESS DISTRICT

C. Principal Uses Permitted Subject to Special Conditions

3. Business in the character of a drive-thru.

7.11.5 – B-4 REGIONAL BUSINESS DISTRICT

D. Principal Uses Permitted Subject to Special Conditions

5. Drive-thru pharmacy as an accessory use to a main pharmacy located in the interior of the retail establishment.

7.17 – GENERAL PROVISIONS

E. Off-Street Parking Requirements

16. Minimum number of spaces
 - c. Business and Commercial
 - (7) Drive-thru restaurant
 - d. Offices
 - (2) Drive-thru banks

ON A ROLL CALL VOTE:

Ayes: Commissioners Ogden, Farrington, Robinet, Marquardt, and Turkelson.

Nays: None.
Abstain: None.
Absent: None.

MOTION CARRIED. AMENDMENTS TO CHAPTER 7 ADOPTED.

Rezoning Request – Portion of Kroger Parcel from OS-1 to B-2

263 2006 11-20

Moved by Robinet. Seconded by Farrington.

To adopt the amendment to Chapter 7 (Zoning Ordinance), Section 7.03, G., Number 79 of the General Ordinances of the City of Lapeer.

THE CITY OF LAPEER ORDAINS:

7.03 ZONING DISTRICTS AND MAP

G. ZONING DISTRICT AMENDMENTS:

79. The following property, formerly zoned Office Service District (OS-1), is hereby rezoned to General Business District (B-2):

Part of L20-83-290-040-00

City of Lapeer Original Plat SW 1/4 Div South 150 feet of West 333.32 feet of Section 5. T7N, R10E.

ON A ROLL CALL VOTE:

Ayes: Commissioners Marquardt, Turkelson, Farrington, Ogden, and Robinet.

Nays: None.

Abstain: None.

Absent: None.

MOTION CARRIED. AMENDMENTS TO CHAPTER 7 ADOPTED.

Annual Permit – MDOT Right of Way Operations

264 2006 11-20

Moved by Marquardt. Seconded by Turkelson.

To approve the Performance Resolution For Governmental Bodies regarding the Annual permit for MDOT Right of Way Operations.

Michigan Department
Of Transportation
2207B (03/04)

PERFORMANCE
RESOLUTION FOR GOVERNMENTAL BODIES

This Performance Resolution is required by the Michigan Department of Transportation for purposes of issuing to a municipal utility an "Individual Permit for Use of State Trunkline Right of Way" (form 2205), or an "Annual Application and Permit for Miscellaneous Operations Within State Trunkline Right of Way" (form 2205B).

Resolved whereas, the _____ City of Lapeer
(city, village, township, etc.)

hereinafter referred to as the "GOVERNMENTAL BODY," periodically applies to the Michigan Department of Transportation, hereinafter referred to as the "DEPARTMENT," for permits, referred to as "PERMIT," to construct, operate, use and/or maintain utility or other facilities, or to conduct other activities, on, over, and under state trunkline right of way at various locations within and adjacent to its corporate limits.

NOW THEREFORE, in consideration of the DEPARTMENT granting such PERMIT, the GOVERNMENTAL BODY agrees that:

Each party to this Agreement shall remain responsibility for any claims arising out of their own acts and /or omissions during the performance of this Agreement, as provided by law.

This Agreement is not intended to increase either party's liability for, or immunity from tort claims.

This Agreement is not intended nor shall it be interpreted, as giving either party hereto a right of indemnification, either by Agreement or at law, for claims arising out of the performance of this Agreement.

1. Any work performed for the GOVERNMENTAL BODY by a contractor or subcontractor will be solely as a contractor for the GOVERNMENTAL BODY and not as a contractor or agent of the DEPARTMENT. Any claims by any contractor or subcontractor will be the sole responsibility of the GOVERNMENTAL BODY. The DEPARTMENT shall not be subject to any obligations or liabilities by vendors and contractors of the GOVERNMENTAL BODY, or their subcontractors or any other person not a party to the PERMIT without its specific prior written consent and notwithstanding the issuance of the PERMIT.

2. The GOVERNMENTAL BODY shall take no unlawful action or conduct, which arises either directly or indirectly out of its obligations, responsibilities, and duties under the PERMIT which results in claims being asserted against or judgment being imposed against the State of Michigan, the Michigan Transportation Commission, the DEPARTMENT, and all officers, agents and employees thereof and those contracting governmental bodies performing permit activities for the DEPARTMENT and all officers, agents, and employees thereof, pursuant to a maintenance contract. In the event that the same occurs, for the purposes of the PERMIT, it will be considered as a breach of the PERMIT thereby giving the State of Michigan, the DEPARTMENT, and/or the Michigan Transportation Commission a right to seek and obtain any necessary relief or remedy, including, but not by way of limitation, a judgment for money damages.

3. It will, by its own volition and/or request by the DEPARTMENT, promptly restore and/or correct physical or operating damages to any State trunkline right of way resulting from the installation construction, operation and/or maintenance of the GOVERNMENTAL BODY'S facilities according to a PERMIT issued by the DEPARTMENT.

4. With respect to any activities authorized by PERMIT, when the GOVERNMENTAL BODY requires insurance on its own or its contractor's behalf it shall also require that such policy include as named insured the State of Michigan, the Transportation Commission, the DEPARTMENT, and all officers, agents, and employees thereof and those governmental bodies performing permit activities for the DEPARTMENT and all officers, agents, and employees thereof, pursuant to a maintenance contract.

5. The incorporation by the DEPARTMENT of this resolution as part of a PERMIT does not prevent the DEPARTMENT from requiring additional performance security or insurance before issuance of a PERMIT.

6. This resolution shall continue in force from this date until cancelled by the GOVERNMENTAL BODY or the DEPARTMENT with no less than thirty (30) days prior written notice to the other party. It will not be cancelled or otherwise terminated by the GOVERNMENTAL BODY with regard to any PERMIT which has already been issued or activity which has already been undertaken.

BE IT FURTHER RESOLVED, that the following positions(s) are authorized to apply to the Michigan Department of Transportation for the necessary permit to work within state trunkline right of way on behalf of the GOVERNMENTAL BODY.

NAME	And/or	Title
John Lyons		Director of Public Works
Dale Kerbyson		City Manager

MOTION CARRIED. RESOLUTION DECLARED ADOPTED.

Project Summary Report – Department of Parks, Recreation and Cemetery

Director of Parks, Recreation and Cemetery Ray Turczyn, provided a project summary report on the Optimist Community Soccer Field, Community Center Spray Park, Audubon Park Improvements, Water Tower Travel Trailer Park, Lapeer Depot, Skate Park Study, Community Center Treadmill and Entertainment System, Linear Path Extension, Cramton Park Improvements, and Cemetery Improvements.

Discussion was held regarding irrigation system, lighting, and school agreement on the soccer field project; water recirculation system, testing of water, DEQ process for permit, and capacity number on the Spray Park project; cable access and statistics of use on the Water Tower Travel Trailer Park project; ATM booth for tickets on the Lapeer Depot project; use of, costs and grants, location on the Skate Park project; and fence replacement and Commission understanding that wrought iron fencing would be placed along the public street portions on the Cemetery Improvements.

CITY MANAGER'S REPORT

City Manager Dale Kerbyson commented on placing the Director of Parks, Recreation and Cemetery Project Summary Report on the website, the 25th Anniversary of LDC luncheon, the Christmas Parade to be held December 2nd at 11:00 a.m., application for trail way extension, to resubmit the DEQ application for Brownfield Assessment, and thanked Harry Green for filing in for Finance Director Paul Boucher.

City Manager Kerbyson requested an executive session to discuss the Soumi Land Company lawsuit.

265 2006 11-20

Moved by Turkelson. Seconded by Robinet.

To approve an executive session to discuss the Soumi Land Company lawsuit at the end of the regular meeting.

ON A ROLL CALL VOTE.

Ayes: Commissioners Ogden, Farrington, Marquardt, Robinet, and Turkelson.

Nays: None.

Abstain: None.

Absent: None.

MOTION CARRIED.

CITY ATTORNEY'S REPORT

No report provided.

UNFINISHED BUSINESS

266 2006 11-20

Mayor Sprague appointed. Moved by Robinet. Seconded by Turkelson.

To appoint the following:

Alan Grossbauer EDC/TIFA/Brownfield for a term ending March 1, 2012.

Becky Sharkey Lapeer Center For The Arts Council as the Gallery Representative.

MOTION CARRIED.

DEPARTMENTAL COMMUNICATIONS

Departmental Monthly Reports, Monthly Financial Report for July 2006, Monthly Financial Report for August 2006, Monthly Financial Report for September 2006, and the Investment Report for the Quarter Ending September 30, 2006 were received into record.

MAYOR/COMMISSIONER COMMENTS

Brief comments were made regarding ZBA appeal process, to wish employees a Happy Thanksgiving, to review the Cemetery Department more closely during Goals and Objectives, Charter Communication issues and complaint process through City's Cable Board, and that the Leonard property will be turned back over to the City and potential uses.

The Lapeer City Commission convened to an Executive Session at 7:50 p.m. to discuss the Soumi Land Company lawsuit and returned to a regular session at 8:34 p.m.

ADJOURNMENT

267 2006 11-20

Moved by Turkelson. Seconded by Ogden.
To adjourn the meeting. MOTION CARRIED.

The meeting adjourned at 8:34 p.m.

William J. Sprague, Mayor

Donna L. Cronce, CMC, City Clerk