

**LAPEER CITY COMMISSION
MINUTES OF A REGULAR MEETING
September 4, 2018**

A regular meeting of the Lapeer City Commission was held September 4, 2018 at Lapeer City Hall, 576 Liberty Park, Lapeer, Michigan. The meeting was called to order at 6:30 p.m.

ROLL CALL

Present: Mayor Sprague.

Commissioners Atwood, Bennett, Bostick-Tullius, Marquardt, Osentoski.

Absent: None.

City Manager: Dale Kerbyson, present.

City Attorney: Michael Nolan, present.

Mayor Sprague led the Pledge of Allegiance.

AGENDA APPROVAL

188 2018 09-04

Moved by Bostick-Tullius. Seconded by Marquardt.

Approve the Agenda for September 4, 2018 as presented.

Ayes: Atwood, Bennett, Bostick-Tullius, Marquardt, Osentoski.

Nays: None.

Absent: None.

MOTION CARRIED.

MINUTES

189 2018 09-04

Moved by Osentoski. Seconded by Atwood.

Approve the minutes of a Special Meeting held August 15, 2018 and a Regular Meeting held August 20, 2018 as presented.

Ayes: Atwood, Bennett, Bostick-Tullius, Marquardt, Osentoski.

Nays: None.

Absent: None.

MOTION CARRIED.

Minutes from various Boards and Commissions were received into record.

PUBLIC COMMENTS

Janet Adams, Baldwin Road, gave invocation.

CONSENT AGENDA

190 2018 09-04

Moved by Bostick-Tullius. Seconded by Osentoski.

Approve the Consent Agenda for September 4, 2018 resulting in the following.

1. Special Event Request from Friends of Lapeer Dog Park, Help Let the Dogs Out – Dog Park Expo, Sunday, September 30, 2018, 1:00PM-4:00PM, Rotary Park.
2. Special Event Request, Lapeer Community Schools, Homecoming Parade, Friday, September 28, 2018, 4:00PM-6:00PM, downtown area on Nepessing Street; contingent upon receipt of current insurance.
3. Special Event Request, Lapeer Community Schools, Swing Out, Thursday, June 6, 2019, 5:00PM-7:00PM, downtown area on Nepessing Street; contingent upon receipt of current insurance.
4. Special Event Request from Stone Soup Food Bank, Hunger Awareness Week, October 11-12, 2018, 9:00AM-4:00PM at various intersections throughout the City.

Ayes: Atwood, Bennett, Bostick-Tullius, Marquardt, Osentoski.

Nays: None.

Absent: None.

MOTION CARRIED.

BILL LISTING FOR SEPTEMBER 4, 2018

191 2018 09-04

Moved by Marquardt. Seconded by Atwood.

Approve the Bill Listing for September 4, 2018 in the amount of \$699,621.02.

Ayes: Atwood, Bennett, Bostick-Tullius, Marquardt, Osentoski.

Nays: None.

Absent: None.

MOTION CARRIED.

PROCLAMATIONS, RECOGNITIONS AND RESOLUTIONS

Proclamation: National Rail Safety Week

192 2018 09-04

Moved by Marquardt. Seconded by Atwood.

Approve a Proclamation for National Rail Safety Week.

CITY OF LAPEER
Proclamation
National Rail Safety Week

WHEREAS, 2,105 rail grade crossing collisions resulted in 807 personal injuries and were responsible for 274 fatalities in the United States during 2017; and

WHEREAS, 1,027 trespassing incidents have occurred in the United States resulting in 520 pedestrians being killed and another 507 injured while trespassing on railroad property rights of way during 2017; and

WHEREAS, educating and informing the public about rail safety, reminding the public that railroad rights of ways are private property, enhancing public awareness of the dangers associated with highway rail grade crossings, ensuring pedestrians and motorists are looking and listening while near railways, and obeying established traffic laws will reduce the number of fatalities and injuries; and

WHEREAS, the International Association of Chiefs of Police, National Operation Lifesaver, United States Department of Transportation, and all local, state, county, and railroad law enforcement officers, first responders, and railroad corporations commit to partnering together in an effort to educate at a national level all aspects of railroad safety, to enforce applicable laws in support of National Rail Safety Week;

NOW, THEREFORE, BE IT RESOLVED, that I, William J. Sprague, Mayor of the City of Lapeer, and the Lapeer City Commission do hereby proclaim the week of September 23 through 29, 2018 as National Rail Safety Week and encourage all citizens to recognize the importance of rail safety education.

Ayes: Atwood, Bennett, Bostick-Tullius, Marquardt, Osentoski.

Nays: None.

Absent: None.

MOTION CARRIED. PROCLAMATION DECLARED ADOPTED.

PUBLIC HEARINGS

None.

ADMINISTRATIVE REPORTS

Baldwin Road Reconstruction Project – Local Share Payment #1.

193 2018 09-04

Moved by Bostick-Tullius. Seconded by Osentoski.

Approve Local Share Payment #1 in the amount of \$24,366.62 to the State of Michigan for construction services on the Baldwin Road Reconstruction Project (MDOT Contract #18-5055).

Ayes: Atwood, Bennett, Bostick-Tullius, Marquardt, Osentoski.

Nays: None.

Absent: None.

MOTION CARRIED.

Ordinance Amendment

Amendment – Chapter 16 (Franchise Ordinance)

Commissioner Bostick-Tullius introduced the proposed amendments to Chapter 16 (Franchise Ordinance) of the General Ordinances of the City of Lapeer.

**CHAPTER 16
FRANCHISE ORDINANCES**

16.02 CONSUMERS ENERGY COMPANY.

THE CITY OF LAPEER ORDAINS:

(A) GRANT and TERM. The CITY OF LAPEER, LAPEER COUNTY, MICHIGAN, hereby grants to Consumers Energy Company, its successors and assigns, hereinafter called "Consumers" the right and authority to lay, maintain and commercially operate gas lines and facilities including but not limited to mains, pipes, services and valves on, under, along, and across public places including but not limited to highways, streets, alleys, bridges, and waterways, and to conduct a local gas business in the CITY OF LAPEER, LAPEER COUNTY, MICHIGAN, for a period of thirty years.

(B) CONDITIONS. No public place used by Consumers shall be obstructed longer than necessary during construction or repair, and shall be restored to the same order and condition as when work was commenced. All of Consumers' gas lines and related facilities shall be placed as not to unnecessarily interfere with the public's use of public places. Consumers shall have the right to trim or remove trees if necessary in the conducting of such business.

(C) HOLD HARMLESS. Consumers shall save the City free and harmless from all loss, costs and expense to which it may be subject by reason of the negligent construction and maintenance of the lines and related facilities hereby authorized. In case any action is commenced against the City on account of the permission herein given, Consumers shall, upon notice, defend the City and its representatives and hold them harmless from all loss, costs and damage arising out of such negligent construction and maintenance.

(D) EXTENSIONS. Consumers shall construct and extend its gas distribution system within said City, and shall furnish gas service to applicants residing therein in accordance with applicable laws, rules and regulations.

(E) FRANCHISE NOT EXCLUSIVE. The rights, power and authority herein granted, are not exclusive.

(F) RATES and CONDITIONS. Consumers shall be entitled to provide gas service to the inhabitants of the City at the rates and pursuant to the conditions as approved by the Michigan Public Service Commission. Such rates and conditions shall be subject to review and change upon petition to the Michigan Public Service Commission.

(G) REVOCATION. The franchise granted by this ordinance is subject to revocation upon sixty (60) days written notice by either party. Upon revocation this ordinance shall be considered repealed and of no effect past, present or future.

(H) MICHIGAN PUBLIC SERVICE COMMISSION JURISDICTION. Consumers remains subject to the reasonable rules and regulations of the Michigan Public Service Commission applicable to gas service in the City and those rules and regulations preempt any term of any ordinance of the City to the contrary.

(I) REPEALER. This ordinance, when enacted, shall repeal and supersede the provisions of any previous gas franchise ordinance adopted by the City including any amendments.

(J) EFFECTIVE DATE. This ordinance shall take effect on November 1, 2018.

2018 Local Street Rehabilitation Project
Changer Order #1 – L.J. Construction Incorporated

194 2018 09-04

Moved by Osentoski. Seconded by Bennett.

Approve Change Order #1 from L.J. Construction Incorporated for a net decrease of \$2,601.50 revising the contract amount to \$1,295,795.60 for the 2018 Local Street Rehabilitation Project.

Ayes: Atwood, Bennett, Bostick-Tullius, Marquardt, Osentoski.

Nays: None.

Absent: None.

MOTION CARRIED.

2018 Local Street Rehabilitation Project
L.J. Construction Incorporated – Payment Request #4

195 2018 09-04

Moved by Bostick-Tullius. Seconded by Bennett.

Approve Payment Request #4 to L.J. Construction Incorporated in the amount of \$343,247.87 for services completed on the 2018 Local Street Rehabilitation Project.

Ayes: Atwood, Bennett, Bostick-Tullius, Marquardt, Osentoski.

Nays: None.

Absent: None.

MOTION CARRIED.

CITY MANAGER'S REPORT

Real Estate Purchase Agreement – City of Lapeer and the Chatfield School

196 2018 09-04

Moved by Bostick-Tullius. Seconded by Marquardt.

Approve Real Estate Purchase Agreement between the City of Lapeer and the Chatfield School for real estate commonly known as vacant land on Lake Drive, 4.58 acres more or less (as described in Exhibit A of the Agreement) in the amount of \$82,440.00 and authorize the Mayor and/or City Manager to sign required documents.

Ayes: Atwood, Bennett, Bostick-Tullius, Marquardt, Osentoski.

Nays: None.

Absent: None.

MOTION CARRIED.

Real Estate Buy and Sell Agreement – City of Lapeer and Usmanoff, LLC

197 2018 09-04

Moved by Osentoski. Seconded by Marquardt.

Amend motion #113 2018 05-21, by striking the word 'Usmanov' and inserting the word 'Usmanoff'.

113 2018 05-21

Moved by Osentoski. Seconded by Marquardt.

Approve the Real Estate Buy and Sell Agreement with ~~Usmanov~~ Usmanoff LLC for vacant land on John Conley Drive, Lot #23 (part of parcel #L20-83-358-080-00) in the amount of \$200,000 and authorize the Mayor and/or City Manager to sign required documents.

Ayes: Atwood, Marquardt, Osentoski.

Nays: Bennett.

Absent: Bostick-Tullius.

MOTION CARRIED.

Ayes: Atwood, Bennett, Bostick-Tullius, Marquardt, Osentoski.

Nays: None.

Absent: None.

MOTION CARRIED.

198 2018 09-04

Moved by Bostick-Tullius. Seconded by Osentoski.

Approve Addendum No. 1 to Real Estate Buy and Sell Agreement for Vacant Land on John Conley Drive (Portion of Lot 23), Lapeer, Michigan with Usmanoff LLC and authorize the Mayor and/or City Manager to sign required documents.

Ayes: Atwood, Bostick-Tullius, Marquardt, Osentoski.

Nays: Bennett.

Absent: None.

MOTION CARRIED.

City Manager Kerbyson commented bids for the Teamwork project were opened today; Housing staff is reviewing bids and will ask MEDC for a 90 day extension; Commissioner Bostick-Tullius asked the reason for an extension; City Manager Kerbyson responded project details are not complete and time is needed to vet the bids; the bid has 3 parts – interior, roof and façade; fire suppression was not included in the bids; MEDC is only participating in the façade portion (50/50 grant); bid package was to indicate the bids be separated for each portion of the work but that was not done; bids need to be reviewed to determine which portion of the bid is for façade work.

CITY ATTORNEY'S REPORT

City Attorney Nolan requested a closed session to discuss pending litigation; new Court of Appeals decision states cases must be identified that will be discussed in closed session. They are as follows:

39 Genesee Inc. v. City of Lapeer

GS Lapeer, LLC and R & H Lapeer LLC v. City of Lapeer

FB Lapeer PRV LLC v. City of Lapeer

Genesee B LLC v. City of Lapeer

City of Lapeer v. Clearview Holdings LLC

UNFINISHED BUSINESS

None.

DEPARTMENTAL COMMUNICATIONS

The DDA Status Report dated August 16, 2018 was received into record.

PUBLIC COMMENTS

MAYOR/COMMISSIONER COMMENTS

Commissioner Atwood: None.

Commissioner Bostick-Tullius: None.

Commissioner Bennett: Thanked Ms. Adams for the prayer earlier in the meeting.

Commissioner Osentoski: Update on Pocket Park funding; \$31,000 has been raised so far; seventeen days left to donate; encouraged all to donate.

Commissioner Marquardt: Suncrest open house is September 16th from 1 PM – 3 PM; commented on federal ruling that allows political signs to be placed at any time on private property; expressed concerns regarding the Consumer's franchise ordinance; on July 9th Consumers worked on properties throughout the City, including three properties on Oregon Road, both on private property and in the right-of-way; her driveway was ripped up during this process and she was assured the area would be restored to her liking; does not feel Consumers did a good job repairing the damage; doesn't want the public thinking the Department of Public Works is doing the repairs; asked language be added to the ordinance to provide protection for residents and establish a time limit on repairs.

City Manager Kerbyson: None.

Mayor Sprague: Reviewed upcoming local events; reminded Commissioners a group photo will be taken October 1st; Commissioner Bostick-Tullius has done an outstanding job as president of the Michigan Municipal League (MML) this past year and thanked her for her service to MML and the City.

Closed Session: Pending Litigation

199 2018 09-04

Moved by Bennett. Seconded by Atwood.

Approve going into a Closed Session to discuss the following pending litigation:

39 Genesee Inc. v. City of Lapeer
GS Lapeer, LLC and R & H Lapeer LLC v. City of Lapeer
FB Lapeer PRV LLC v. City of Lapeer
Genesee B LLC v. City of Lapeer
City of Lapeer v. Clearview Holdings LLC

ON A ROLL CALL VOTE

Ayes: Marquardt, Bostick-Tullius, Bennett, Osentoski, Atwood.

Nays: None.

Absent: None.

MOTION CARRIED.

The City Commission convened to a Closed Session at 6:50 p.m. and returned to its regular meeting at 7:11 p.m.

ADJOURNMENT

200 2018 09-04

Moved by Bennett.

Adjourn the regular meeting.

Ayes: Atwood, Bennett, Bostick-Tullius, Marquardt, Osentoski.

Nays: None.

Absent: None.

MOTION CARRIED.

The regular meeting adjourned at 7:12 p.m.

Mayor William J. Sprague

Donna L. Cronce, MMC, City Clerk

Renee Bullen, Chief Deputy City Clerk