

**CITY OF NILES
REGULAR CITY COUNCIL MEETING MINUTES
MONDAY, November 12, 2018**

The meeting was called to order by Mayor Shelton in the City Council Chambers, 1345 East Main Street, Niles, Michigan at 6:00 p.m., November 12, 2018. The Pledge of Allegiance was led by Mayor Shelton.

PRESENT: Gretchen Bertschy, Georgia Boggs John DiCostanzo, Robert Durm Charlie McAfee, Wm. Tim Skalla, Daniel VandenHeede William Weimer and Mayor Nick Shelton

ABSENT: None

STAFF: Barnett, Huff and Landgraf

CITIZEN PARTICIPATION:

Justin Flagel: approached the council and talked about small business Saturday scheduled for November 24th, 2018 pending approval from the council. He would like it to be a yearly tradition to kick off the holidays. There will be horse drawn carriage rides, a stationary sleigh, photos with Santa, a live Christmas tree sale, artisan market, music, and performers. The downtown tree will be lit at dusk. He hopes the council approves the event this evening.

Jessica Nelson: Thanked the council for approving the wonderland cinemas trunk or treat. It was a great success. There were 700 to 800 participants. She hopes the event will continue in the future.

Lisa Croteau: Christmas decorations cost update—The DDA is requesting \$2500 from the council for the cost of the new decorations. That includes the cost of them being put up as well as the purchase of materials needed to store them. That also includes the cost of rental trucks used to move the books from the plym park storage unit where the Christmas decorations will be stored in the future. She also spoke about the AMtrack volunteer host program at the Niles station. There was an open house this past weekend at the Niles station and 10 volunteers came. Since then she has gotten approximately eight more volunteers so there will be close to 20 volunteers to start the program.

APPOINTMENT OF MAYOR PRO-TEM:

Council Member Boggs moved, **Council Member Weimer** supported to elect Gretchen Bertschy as the Mayor Pro-Tem.

ROLL CALL:

AYE: Gretchen Bertschy, Georgia Boggs, John DiCostanzo, Robert Durm, Charlie McAfee, Wm. Tim Skalla, Daniel VandenHeede, and William Weimer

NAY: None **ABSENT:** None **ABSTAIN:** None

CONSENT AGENDA:

1. Approval of the Minutes of October 22, 2018.
2. Approval of the Bills dated November 7, 2018.
3. Consideration of accepting the bid of \$50,070.00 from Simmons Tree and Lawn of Niles for the Annual Tree and Stump Removal of dead, dying and dangerous trees.

Weimer moved, **DiCostanzo** supported, **MOTION CARRIED**, to approve the consent agenda with corrections to the minutes to add Jill Meuninck's comments under citizen's participation.

ROLL CALL:

AYE: Gretchen Bertschy, Georgia Boggs, John DiCostanzo, Robert Durm, Charlie McAfee, Wm. Tim Skalla, Daniel VandenHeede, and William Weimer

NAY: None **ABSENT:** None **ABSTAIN:** None

CITY ADMINISTRATOR'S REPORT:

Introduction of Items for Discussion

Items for Council Action

4. Consideration of authorizing the issuance of a Declaration of Taking for avigation easements and the Resolution of Necessity for Parcels E-16 and E18 and hold \$49,800 for payment. Payment shall be made temporarily from funds allocated to the Airport and ultimately be reimbursed at 95% by the State of Michigan at a later date once payment is actually made to the property owner and a grant is executed between the City and State of Michigan.

**NILES CITY COUNCIL
A RESOLUTION OF NECESSITY, AUTHORIZING THE ACQUISITION OF PROPERTY BY NEGOTIATION
OR EMINENT DOMAIN IF NECESSARY
RESOLUTION 2018/11-2070**

Council Member Bertschy offered the following resolution and moved for its adoption, seconded by **Council Member Weimer**:

RESOLVED BY: City Council, City of Niles, Michigan

WHEREAS, The City of Niles (the "City") is a Home Rule City pursuant to the Home Rule City Act, Act 279 of the Public Acts of 1909, possessing the authority to acquire property by eminent domain; and

WHEREAS, the City owns and operates the Jerry Tyler Memorial Airport (the "Airport"); and

WHEREAS, it is necessary for the safe and efficient use of the Airport for the City to eliminate objects exceeding certain heights in and around the Airport that may interfere with aircraft operations or present hazards to air navigation; and

WHEREAS, trees and vegetation upon private property around the Airport have grown into the airspace and become safety hazards requiring elimination (the "Project"); and

WHEREAS, in order to accomplish the Project, the City needs to acquire avigation easements over Parcel 1 (E-18) and Parcel 2 (E-16) on EXHIBIT A to this Resolution (the "Property Interests"); and

WHEREAS, the Uniform Condemnation Procedures Act, 1980 P.A. 87, as amended (the "Act"), MCL 213.51 *et seq.*, establishes certain procedures for the taking of property by eminent domain; and

WHEREAS, the owners of the parcels are aware of the City's intention to acquire the Property Interests even to the point of using its eminent domain powers, if necessary; and

WHEREAS, the City has been unable to acquire the Property Interests voluntarily on terms acceptable to it; and

WHEREAS, this Resolution corrects and replaces the Resolution adopted on September 24, 2018.

NOW THEREFORE, BE IT RESOLVED AS FOLLOWS:

The undertaking of the Project is necessary to protect and enhance the public health, safety, and welfare and is within the City's scope of powers. The City Council finds that there is immediate public need to acquire the Property Interests consisting of avigation easements to mitigate hazards to air navigation. The City Council further finds:

1. The Federal Aviation Administration (the "FAA") defines obstruction clearing requirements for the Airport under 14 C.F.R. Part 77 ("FAR Part77"); and
2. The City, as the Airport owner or "Sponsor" is responsible to maintain clear approach and departure surfaces, free of such hazards; and

3. The Sponsor's obligation to mitigate hazards to air navigation is derived from, *inter alia*, its airport license and conditions imposed by the federal government for the receipt of federal funds, including Grant Assurance 20 which provides:

[The City] will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

and

4. FAR Part 77 surface drawings determined the allowable heights of objects around the Airport and upon the parcels identified on EXHIBIT A to this Resolution; and
5. Trees were identified as obstructions to air navigation as penetrations into protected airspace through aerial surveying and on-site observations; and
6. It is necessary for the safe and efficient use of the Airport for the City to eliminate obstructions above the height limitations established for the parcels as further defined and identified on EXHIBIT B to this Resolution; and
7. The Property Interests to be acquired consist of avigation easements over the parcels identified on EXHIBIT A according to the terms and conditions for such easements as are contained in EXHIBIT B to this Resolution; and
8. The taking of the Property Interests is authorized by the Constitution and laws of the State of Michigan, Home Rule City Act, Act 279 of the Public Acts of 1909, Section 8.4 of the Niles City Charter, and the Aeronautics Code of the State of Michigan, Act 327 of the Public Acts of 1945, to and including the taking of property outside the Niles City limits; and
9. Appraisals and Review Appraisals of the Property Interests identified on EXHIBITS A and B were obtained to establish the amounts of just compensation; and
10. Good faith written offers were extended to the owners of the parcels identified on EXHIBIT A, the offers being rejected.

The City's Administrator, City Attorney, Public Works Director, Clerk, Treasurer, City staff, the City's engineers and consultants, and the City's special legal counsel, Varnum LLP, and their respective representatives and designees, are authorized and directed to take any and all steps necessary to conduct inspection and testing of the parcels and to acquire the Property Interests either by a negotiated acquisition or by eminent domain including, without limitation, establishing the amount of just compensation; making of good faith written offers; executing, completing, filing, and recording on behalf of the City deeds, declarations of taking, and other documents; filing of one or more complaints; engaging, as needed, appraisers, engineers, environmental consultants, title examiners and other experts; determining whether to reserve or waive rights to bring federal or state environmental cost recovery claims; undertaking litigation; and entering into agreements in lieu of litigation.

All resolutions or parts of resolutions are, to the extent of any conflict with this resolution, rescinded. This Resolution is to take effect immediately.

ROLL CALL:

AYE: Gretchen Bertschy, Georgia Boggs, John DiCostanzo, Robert Durm, Charlie McAfee, Wm. Tim Skalla, Daniel VandenHeede, and William Weimer

NAY: None

ABSENT: None

ABSTAIN: None

RESOLUTION DECLARED ADOPTED.

5. Consideration of accepting the bid of \$275,211.00 from Mihm Enterprises, Inc. for completion of the Chapin Mansion North Porch Accessibility Project and consideration of authorizing the mayor to execute the contract.

Council Member Skalla moved, **Council Member McAfee** supported to accept the bid of \$275,211.00 from Mihm Enterprises, Inc. for the completion of the Chapin Mansion North Porch Accessibility Project and consideration of authorizing the mayor to execute the contract.

6. Consideration of approving a five-year Airport Ground Lease Renewal for Roger Dash beginning January 1, 2019 and ending December 31, 2023.

RESOLUTION #2018-11/2069

Council Member Weimer offered the following resolution and moved for its adoption, supported by **Council Member DiCostanzo**.

WHEREAS, the City of Niles does own and maintain the Jerry Tyler Memorial Airport; and

WHEREAS, the City of Niles does let and lease portions of said premises in consideration of rents; and

WHEREAS, Roger Dash, 1718 Niles-Buchanan Road, Niles, MI 49120 desires a Ground Lease for the maintenance and storage of aircraft at said premises; and

WHEREAS, the City of Niles has drawn up said lease, to be signed by its Mayor and Clerk, by which Roger Dash may occupy said described premises for a period of five (5) years commencing on the 1st day of January 1, 2019 with renewal subject to provisions contained in said lease; and

WHEREAS, the lessee shall pay all rents and abide by all covenants and conditions of said lease for the prescribed term.

NOW, THEREFORE, BE IT RESOLVED that the City of Niles shall enter into a Ground Lease with Roger Dash for a term of five (5) years beginning January 1, 2019 and ending December 31, 2023; and

BE IT FURTHER RESOLVED that the Mayor and City Clerk be authorized and directed to execute the lease on behalf of the City of Niles.

ROLL CALL:

AYE: Gretchen Bertschy, Georgia Boggs, John DiCostanzo, Robert Durm, Charlie McAfee, Wm. Tim Skalla, Daniel VandenHeede, and William Weimer

NAY: None **ABSENT:** None **ABSTAIN:** None

RESOLUTION 2018-11/2069 DECLARED ADOPTED.

6A. Consideration of approving the request from the DDA to conduct the Small Business Saturday event.

Bertschy moved, **Weimer** supported, **MOTION CARRIED**, to conduct Small Business Saturday.

ROLL CALL:

AYE: Gretchen Bertschy, Georgia Boggs, John DiCostanzo, Robert Durm, Charlie McAfee, Wm. Tim Skalla, Daniel VandenHeede, and William Weimer

NAY: None **ABSENT:** None **ABSTAIN:** None

CITY ATTORNEY'S REPORT:

7. **First Reading and Introduction** of a proposed ordinance to prohibit the purchase, consumption, or possession of alcoholic liquor by a minor.

8. **Second Reading and Enactment** of a proposed ordinance 485 to grant SEMCO Energy Gas Company, a division of SEMCO Energy, Inc. the power and authority to lay, maintain and operate gas services and to conduct local gas business in the City of Niles.

Council Member DiCostanzo moved, **Council Member Weimer** supported, **MOTION CARRIED** to enact ordinance 485 to grant SEMCO Energy Gas Company, a division of SEMCO Energy, Inc. the power and

authority to lay, maintain and operate gas services and to conduct local gas business in the City of Niles.

ROLL CALL:

AYE: Gretchen Bertschy, Georgia Boggs, John DiCostanzo, Robert Durm, Charlie McAfee, Wm. Tim Skalla, Daniel VandenHeede, and William Weimer

NAY: **ABSENT:** None **ABSTAIN:** None

CLOSED SESSION: City Administrator's Evaluation

Mayor Shelton announced that he would like to discuss the City Administrator's evaluation. City Administrator Huff requested a closed session and gave his approval.

Council Member Bertschy moved, **Council Member VandenHeede** supported, **MOTION CARRIED** to go into closed session to discuss the City Administrator's evaluation.

ROLL CALL:

AYE: Gretchen Bertschy, Georgia Boggs, John DiCostanzo, Robert Durm, Charlie McAfee, Wm. Tim Skalla, Daniel VandenHeede, and William Weimer

NAY: **ABSENT:** None **ABSTAIN:** None

Closed Session at 6:21pm

Resumed at 6:40pm

Council Member DiCostanzo moved, **Council Member Bertschy** supported, **MOTION CARRIED**, to increase City Administrator Huff's salary 1%, and also increase the contribution to his retirement plan by an additional 1%, effective October 1, 2018.

ROLL CALL:

AYE: Gretchen Bertschy, Georgia Boggs, John DiCostanzo, Robert Durm, Charlie McAfee, Wm. Tim Skalla, Daniel VandenHeede, and William Weimer

NAY: **ABSENT:** None **ABSTAIN:** None

COUNCIL MEMBER'S REPORT:

Council Member Skalla: It has been a pleasure serving the community. Andy Wozniac's veterans project on the lawn of the Chapin Mansion turned out exceptional.

Council Member Skalla moved, **Council Member VandenHeede** seconded, **MOTION CARRIED** for a second reading and enactment of proposed ordinance 486 to completely prohibit marihuana establishments within the City of Niles, except those for which licenses are currently pending under the Medical Marihuana Facilities Licensing Act.

ROLL CALL:

AYE: Georgia Boggs, Robert Durm, Wm. Tim Skalla, Daniel VandenHeede, and William Weimer

NAY: Gretchen Bertschy, John Dicostanzo, Charlie McAfee **ABSENT:** None **ABSTAIN:** None

Council Member Bertschy: Votes like the one we just did are difficult. It's difficult to put a yes or a no to such a binary answer in an area where there is so much grey.

Council Member Bertschy moved, **Council Member Weimer** supported for the council to reimburse the DDA for \$2500 for the Christmas decorations.

AYE: Gretchen Bertschy, Georgia Boggs, John DiCostanzo, Robert Durm, Charlie McAfee, Wm. Tim Skalla, Daniel VandenHeede, and William Weimer

NAY: **ABSENT:** None **ABSTAIN:** None

Council Member Durm: Happy retirement Council Member Skalla. It has been a joy working with you. It was premature to select a Mayor Pro-Tem tonight, although Gretchen will make a great Mayor Pro-Tem. Should have waited until after the certification of the election. New council members may have wanted a say. This could be my last meeting. It has been a long run and there has been a lot done in the city. It has been a great pleasure working with Ric and all of the Staff.

Council Member McAfee: Thank you Ric for all you have done throughout the year. Thank you to our veterans. Thank you Lisa for the Christmas decorations.

Council Member Weimer: I hope people can see the democracy in action that happened tonight. I wish Council Member Skalla a farewell. I wish Council Member Durm a possible farewell.

Council Member Dicostanzo: I want to thank all of the veterans in the community. Andy Wozniac did a fantastic job on the memorials of the lawn of the Chapin Mansion. I'm going to miss working with Tim Skalla who went above and beyond with his work in the community.

MAYOR'S REPORT: Thank you to Council Member Skalla for serving our city. Thank you to all the veterans in our community. The Chapin Mansion cross display is a sight to behold. Thank you to those that went out and voted. Congratulations to the winners of the council election. Thank you to everyone who volunteered to work on Election Day. Thank you Lisa for the amazing decorations. Thank you to the street crew for leaf removal. Ric you do an incredible job and we are blessed to have you in the community. I want people to be aware that ordinances can be overturned.

ADJOURNMENT: Council Member Weimer motioned to adjourn at 7:19pm

Amanda Barnett
Niles Deputy Clerk

Date