

MINUTES

Niles City Council held its regular meeting of September 3, 2008 at 6:00p.m. in Council Chambers, Safety-Service Complex in Niles, Ohio.

The meeting was called to order by President Robert Marino, Jr. and the Clerk: Linda Yuhasz called the roll:

Lastic-P; Papalas-P; Scarnecchia-P; McCormick-P; Stredney-P; Papas-P; Wilkerson-P; Marino-P

A motion was made by Councilman Stredney, seconded by Councilman Wilkerson to excuse the absence of Mayor Infante. Motion carried.

The President of Council did not occupy Mayor Infante's Chair and the President Pro-Tem maintained his position as a member.

A motion was made by Stredney, seconded by Papalas to accept the Minutes of the Regular Meeting of August 20, 2008 and place them on file. Motion carried.

REPORTS AND COMMUNICATIONS

FROM The Auditors Office

The Estimated Versus Actual Revenues thru August 2008

It was moved by Stredney, seconded by Lastic to accept the report and place it on file. Motion carried.

FROM The City Income Tax Office

The Monthly Receipts thru August 2008

It was moved by Stredney, seconded by Papas to accept the report and place it on file. Motion carried.

FROM Mr. Roberts of 419 Hartzell Ave.

A letter to President Marino concerning the music played on the exterior sound system at the First United Methodist Church.

It was moved by Stredney, seconded by Lastic to accept the letter and place it on file. Motion carried.

Councilman Papas: He called me about two or three weeks ago. I went down there to talk to them and things were going to be tuned down a little. I thought that they turned it down.

Councilman Stredney: I too have talked with Carmen and I don't know if we are going to get any where. I know that one or two people have approached them about turning down the music. I don't think that it is the bells they are playing music through a speaker going out to the public and as far as sending a letter, I made a phone call to them. I was going to send them a letter but we are going to be having a committee meeting next week that hopefully could address some of this as well.

Councilman Papalas: Mr. President I have spoken with a couple of people in that neighborhood and they have no problem with that. They are not members of the church I might add. I heard it and I think that it sounds fine. If we are going to start approaching churches on church music that they might be playing periodically, we better be prepared to visit every church in town. Do you want to get into something like that? Personally as a citizen and a councilman I think there

is nothing wrong with that, I have heard it. I am not a member of that church being objective with this and you can't please everybody I guess. I hope that it's not because of past history that we have this letter.

President Marino told council that he had this letter a week before the last council meeting but due to the death in his family he missed the last meeting.

Councilman Scarnecchia: Isn't there anything sacred any more?

MEMBERS OF THE AUDIENCE TO ADDRESS COUNCIL

Mr. Carmen Roberts of 419 Hartzell Avenue, Niles: I don't know what to tell everybody other than with my door shut, windows shut, six inch walls, and twelve inches of insulation at 8:15 Sunday morning I am awoken by the music. All I ask is that they turn it down. Did anybody hear it last year when they were playing Christmas Carols? That was seven days a week, it wasn't as loud last year as it is this year. I am asking for some peace and quiet, I am not asking them to turn it off just turn it down some.

Mr. Dave Anderson of 132 Gardenland Ave. Niles: I feel for you, I have been fighting this for four years about the city does not want to enforce the ordinance. We have a police chief here who does not enforce his ordinance and we have council who is trying to make another ordinance to protect this one on time. We are not after time we are after turn the volume down. You would have none of these problems, none of these complaints in this town if you would just turn the volume down. In Warren they have the amphitheater. The band that was up McMenemy's Friday was seventy decibels at my house and one hundred seven decibels at McMenemy's property line. That same band played at the Warren Amphitheater, I talked to people that live a block away from there and they barely heard it. I talked to a young man that was at that concert and he said that it was really noisy. They put the extra money out to build the proper thing instead of some cracker box band stand that blasts its music out over everybody. They have to make no effort what so ever to try to dampen the noise around it, to turn it down or nothing. Four years we have been fighting this. I would like to see the police chief start enforcing the laws that you pass. They are not being enforced. There are three ordinances that you are not enforcing. I understand that there is a special meeting coming up and what was said in the paper is that they are going to set a time limit. If they set a one o'clock time limit I have to listen to stuff blasting in my house.

President Marino: Dave I would like to think that you would afford Mr. Stredney and his committee and he has heard your concerns, that he and the members of that committee will take into consideration and the consideration of all the members of council your concerns and craft an ordinance that will address the issues that are affecting all the neighbors. So, out of deference to the Chair of the Safety Committee I would hope that you would provide him with time at least until next week so that he and our law department can craft an ordinance.

Mr. Anderson: I can wait one week after four years I don't mind. I am all for it except they are talking about time limiting not volume limit.

President Marino: Mr. Anderson, depending on how the Chair chooses to run the meeting you will have an opportunity at his committee meeting to express your opinion, if he so chooses to run it like that. I am quite certain Councilman Stredney is fully aware of the anger that you have and the inconvenience of that. Out of deference to him I would hope that you would give him an opportunity until next week to work on that.

Mr. Anderson: I am just hoping that people who are hired to do a job will start doing it.

Mr. David Neel, 55 Public Square, Cleveland, Ohio: I am an attorney and have been retained by Bob Ludt to address the noise problem at McMenemy's specifically. I take a look at the statute and it seems to me that it is not ambiguous at all. In fact it is enforced in the city except on a selected basis and there are police complaints to prove that. (Mr. Neel read ordinance 6-92 on playing radios and other sound devices.) While the quiet comfort or repose of my client Mr. Ludt is being disturbed and has been disturbed for about four years now, Mr. Anderson the same. The same is true about a hundred people that signed a petition last year that was presented and ignored. A reading at the Zoso Concert, Zoso played there on August 29th at McMenemy's, it is a Led Zeppelin Tribute Band. It is a great band but it is loud one hundred and seven decibels at the site. A loud rock concert of a major act is one hundred ten decibels. What you have got going on in a parking lot is a rock concert. This isn't a special event, it is not like the Rib Burn off which is a special event held by permit which doesn't occur throughout the entire season. What is happening is complaints about other loud music in other situations for example, a block party, the police are called and show up and the ordinance is enforced. (Mr. Neel read police report complaints on loud music.)

President Marino: Do you have a question? I think that everybody in the room is well versed in the case that you laid before us. Do you have a question?

Mr. Neel: My question is why is there selective enforcement of this ordinance? Why is McMenemy's receiving special treatment? I have sent a letter to Mr. Dull who you and I spoke last year about this and the beginning of this year. We were hoping that this would get resolved and it has come to the point where I have sent Mr. Dull a letter asking him to seek enforcement of this ordinance. By statute if Mr. Dull does not enforce the statute then any tax payer can file a law suit and that is where this is headed. So, the question is why is McMenemy's being treated more preferentially than everybody else in the City of Niles?

Law Director Dull: Since I have received Mr. Neel's letter it was my understanding that the committee and the police chief were working on looking at our ordinance. To be honest selective enforcement was not addressed. However, as you said earlier there is going to be a committee meeting next week to take a look at other things we can do with this ordinance. With respect to Mr. Neel's question all I can say at this point is that I just need to see where we are going with this ordinance (inaudible) and we will do our best to address your request.

Boy Scout Troop 31 was introduced to council. The troop is working on their Communication Merit Badge and asked council and the service director some questions.

COMMITTEE REPORTS

A Safety Committee Meeting was scheduled for September 17, 2008 at 3:00p.m. in the Conference Room 1 at City Hall. The purpose of this meeting is to discuss the gas aggregate program and the noise ordinance.

ORDINANCES AND RESOLUTIONS

RESOLUTION NO. ___ (Draft No. 67-08)

A RESOLUTION DESIGNATING THE WELLNESS CENTER PRESENTLY BEING CONSTRUCTED AS "THE MAYOR RALPH A INFANTE WELLNESS CENTER"

It was moved by Scarnecchia, seconded by Lastic to suspend the rule requiring three readings.

Councilman Scarnecchia: Mr. President, we know that this wellness center has been in the making for years and there have been many people who donated their time and efforts and intelligence to make this a reality. However, as you can see on the ordinance it was authorized by all members of council and not just one committee or person. This is not through the asking of the mayor and I think what we have to show our gratitude to him and his administration for under his guidance this will become a reality.

President Marino: I would add that fourteen years ago, I know Paul Martin, Frank Fuda and Tom Nicasastro had me go to Brecksville, Ohio to look at a wellness center. About seven or eight years ago Al Guarnieri, Mr. Hess, Mr. Vivolo, myself and some others met. I would agree that there have been many individuals far more than what I mentioned that are responsible for the construction of this wellness center. Most importantly the individuals responsible are the tax payers of the City of Niles. They are ultimately responsible for the funding of the wellness center.

YEAS: 7 NAYS: 0

Rules are suspended.

It was moved by Scarnecchia, seconded by Stredney that this Draft be adopted.

YEAS: 7 NAYS: 0

This Draft No. 67-08 has been adopted in the 3rd day of September, 2008.

RESOLUTION NO. __ (Draft No. 68-08)

A RESOLUTION AUTHORIZING THE TRANSFER OF FUNDS BETWEEN ACCOUNTS WITHIN THE BUILDING & ZONING, POLICE, PERMISSIVE TAX AND CEMETERY DEPARTMENTS; AND, DECLARING AN EMERGENCY

It was moved by Papalas, seconded by Lastic to suspend the rule requiring three readings.

YEAS: 7 NAYS: 0

Rules are suspended.

It was moved by Papalas, seconded by Wilkerson that this Draft be adopted.

YEAS: 7 NAYS: 0

This Draft No. 68-08 has been adopted on the 3rd day of September, 2008.

RESOLUTION NO. ____ (Draft No. 69-08)

A RESOLUTION AUTHORIZING THE APPROPRIATION OF FUNDS FROM THE UNAPPROPRIATED GENERAL FUND TO THE BUILDING DEPARTMENT DEMOLITION ACCOUNT; AND, DECLARING AN EMERGENCY

It was moved by Papas, seconded by Lastic to suspend the rule requiring three readings.

Councilman Stredney: Does this mean that there is another house coming down somewhere Tony?

Mr. Vigorito: We have one coming down on Smith Street right now, but that has already been appropriated. These sixty eight hundred dollars was reimbursements that I got from a mortgage company and an insurance company for two homes that we did tear down already. I would just like to put it back into the fund.

Councilman Scarnecchia: Tony, how many homes this year have we demolished?

Mr. Vigorito: I don't have the housing report in front of me but I think that it is well over fifty.

Councilman Papalas: Not this year, that is total. I think that it is over eighty total.

Mr. Vigorito: This year so far we have torn down pretty close to nine or ten homes.

YEAS: 7 NAYS: 0

Rules are suspended.

It was moved by Stredney, seconded by Papas that this Draft be adopted.

YEAS: 7 NAYS: 0

This Draft No. 69-08 has been adopted on the 3rd day of September, 2008.

RESOLUTION NO. __ (Draft No. 70-08)

A RESOLUTION AUTHORIZING THE EXTENSION OF THE "AGREEMENT FOR INDIGENT DEFENSE SERVICES IN MUNICIPAL COURT" CONTRACT; AND, DECLARING AN EMERGENCY

It was moved by Papalas, seconded by Papas to suspend the rule requiring three readings.

YEAS: 7 NAYS: 0

Rules are suspended.

It was moved by Papalas, seconded by Scarnecchia that this Draft be adopted.

YEAS: 7 NAYS: 0

This Draft No. 70-08 has been adopted on the 3rd day of September, 2008.

ORDINANCE NO. __ (Draft No. 71-08)

AN ORDINANCE AUTHORIZING THE DIRECTOR OF PUBLIC SERVICE TO ADVERTISE FOR BIDS TO SELL FOUR USED LIGHT DEPARTMENT TRANSFORMERS; AND, DECLARING AN EMERGENCY

It was moved by Papalás, seconded by Lastic to suspend the rule requiring three readings.

Councilman McCormick: I talked to Jim Newbrough about this and at one point we were paying people to take these away. Now there seems to be a value either to refurbish them and sell them or as a scrap value. For something that we paid to get rid of before now it has a value to us that is why we had to go with the bidding.

Councilman Papalás: Jim when you get a total on what we sell this for will you let me know?

Mr. Newbrough said yes and the rest was inaudible.

YEAS: 7 NAYS: 0

Rules are suspended.

It was moved by Stredney, seconded by Wilkerson that this Draft be adopted.

YEAS: 7 NAYS: 0

This Draft No. 71-08 has been adopted on the 3rd day of September, 2008.

ORDINANCE NO. __ (Draft No. 72-08)

AN ORDINANCE AUTHORIZING CONSENT TO THE OHIO DIRECTOR OF TRANSPORTATION TO RESURFACE A PORTION OF US 422; AND, DECLARING AN EMERGENCY

It was moved by Wilkerson, seconded by Papas to suspend the rule requiring three readings.

Councilman Papalás: Mr. Chairman, I see it is from Gypsy Lane but to what point?

Mr. Mark Hess: This is actually a two phase approach to resurface 422 from North Road all the way to a line mile 17.40. That would be the Ski Chalet, the last time that was paved it was done in 1994. With the winters we have been having it is starting to come apart now. We are starting to take a proactive approach to get it resurfaced. We just got a cost estimate for the entire section that I am talking about, from North Road to the Ski Chalet and it is one point five million dollars to grind the pavement. Based on the cost we have two projects, Phase 1 is going to be a project that goes from North Road to Gypsy Lane and we are going to do that as an Issue 1 project with an estimated cost of \$615,000.00. In exchange for that ODOT is going to come in the following year, 2010 and do the rest of it. We are thinking that we can have the whole thing paved within the next two years. If Phase 1 got approved we would do that as a 2009 project. Our share of Phase 1 will be thirty percent and our share of this twenty percent. ODOT is interested because that is \$615,000.00 that they don't have to worry about if they were to do the whole thing. They initially weren't going to come in and do any resurfacing around 422 until 2012, but because we agreed to do the first phase in-house they have agreed to push it up. If you have been out on 422 it is probably one of the worst streets in town.

YEAS: 7 NAYS: 0

Rules are suspended.

It was moved by Wilkerson, seconded by Papalas that this Draft be adopted.

YEAS: 7 NAYS: 0

This Draft No. 72-08 has been adopted on the 3rd day of September, 2008.

MISCELLANEOUS REMARKS

President Marino: Jim, how is the wireless electric meter program going and the progress on that?

Mr. Jim Newbrough: Mr. Telego can answer that. I am only involved in the meter part (inaudible).

President Marino: Where are we at with that?

Mr. Newbrough: Tomorrow morning a meter company is coming in with six meters (inaudible) and we will find out tomorrow how that looks. If the pilot program works out then we will be ready to go out for bids (inaudible).

Service Director Buccino: On behalf of the mayor I would like to thank council for their thoughts of naming the wellness center after him.

Mr. Vigorito: To answer your question, I didn't hear your question It is eight homes and three garages that we tore down this year and so far we have spent \$29, 500.00.

Mr. Randy Fabrizio: I received a call from Dave Wilkerson with questions and comments concerning the interceptor sewer project and he suggests that I present council with an update. Mr. Fabrizio gave council an update.

Councilman Wilkerson: I would like to thank Mr. Fabrizio for that update.

A motion was made by Papalas, seconded by Wilkerson to adjourn the meeting at 6:41p.m. Motion carried.

Linda A. Yuhasz, Clerk of Council

Robert Marino Jr., President of Council

