

**MINUTES OF REGULAR SESSION
GALESBURG CITY COUNCIL
JANUARY 5, 2009; 7:00 P.M.
COUNCIL CHAMBERS,
GALESBURG CITY HALL
200 E. MICHIGAN AVE.
GALESBURG, MI**

GALESBURG

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The Galesburg City Council met in regular session at 7:00 P.M. in Council Chambers at 200 E. Michigan Ave., Galesburg, MI 49053.

I. CALL TO ORDER

The meeting was called to order by City Clerk Miner at 7:00 P.M.

PRESENT: Councilmembers Garrett, Jackson, Kissinger, Nicolow, VanNess, Yingling, Allen

ABSENT: None

II. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by City Clerk Miner.

The Oath of Office was administered to Mayor Elect Allen and Councilmembers Elect Garrett, VanNess and Yingling by City Clerk Miner.

Motion by Councilmember Kissinger, and supported by Councilmember Nicolow to amend the agenda by replacing the resolution of appointment of Richard Butler to the Galesburg Charleston Joint Fire Authority with a resolution for appointments to City Boards and Authorities.

Motion approved by the following vote:

YEAS: Councilmembers Garrett, Jackson, Kissinger, Nicolow, VanNess, Yingling, Allen

NAYS: None

III. COMMUNITY COMMENT

Kay Walker, Chair of the Galesburg Memorial Library Board spoke regarding an article that appeared in the Kalamazoo Weekly edition of December 31, 2008, and was mailed out to Galesburg residents over the weekend. She demanded to know why misinformation was printed in this publication. This information was presented to the newspaper by City Clerk Miner and it is

their claim that the information given to the newspaper would potentially damage their district library initiative, particularly, the headlines that were used. She objected to the statement in the article that the City would be required to rehire district library employees at rates approved by the district library board and said this is not a true statement.

Councilmember Nicolow said that there was discussion at the meeting on December 15th regarding a provision that the city be required to rehire district library employees, in the event that the district library once established was later abolished. This was a topic of discussion and one of the provisions the City wanted to see amended.

City Clerk Miner said that the City is not at all responsible for the headlines the newspaper chose to print. As for the content of the article; reading the article from beginning to end will demonstrate to the reader that the article itself contradicts the headline. The information given to the Kalamazoo Weekly is what was discussed at the December 15th meeting. The text of the article accurately reflects the concerns expressed by the Council and Administration and the article closes by stating that the City is pursuing amendments to the agreement so that it can be adopted by the council.

Shirley Kasson, Galesburg Memorial Library Board Member read a letter of complaint about City Clerk Miner and the freedom she was given to cite her opinions about the district library agreement. She (Kasson) demands that City Councilmembers speak for themselves in answering why the Clerk was allowed to address the Library Board at the December 15, 2008 City Council Meeting with regard to the objections to the proposed agreement. She remonstrated that the Clerk is not even a resident, just a hired employee and should not have been allowed to speak for the Council. She again demanded that Council answer to these criticisms.

Councilmember Yingling said that the City Clerk advises the Council. The City has not refused the agreement. She believes the article is poorly written and does not believe the quote that is attributed to the Clerk. This is not something the Clerk would have said.

Councilmember Jackson said that the City Council has requested changes to the agreement, that's all. They are all in support of a District Library, but did ask for the agreement, as it was presented to them, to be amended.

Marian Doxey of 201 Parklane, a former member of the Galesburg City Council, and the Mayor's appointee to the Library Board in 2008, said that she, along with City Clerk Miner, served on the District Library Interest Committee. The Clerk has attended many meetings about the formation of a District Library. She (Doxey) has attended many meetings about the formation of a district library. Councilmembers have not been silent on this matter; they have made many comments about the District Library. In large part, they support the concept of the District Library, but have reservations about some of the provisions of the proposed agreement submitted to them.

Councilmember Garrett stated that she spoke with regard to the District Library Agreement at the meeting on December 15th. Specifically, when the Council was accused of trying to make money off of the District Library, she commented that the City has supported the Library for all these years and is not trying to make money off of it now. She asked the Library Board why it should matter so much who owns the building and grounds. It was not just the City Clerk who spoke with regard to the agreement.

Kay Walker asked why the tone of the article is so negative.

City Clerk Miner said that she has no quarrel with the contents of this article, beyond perhaps the headline. If the article seems negative to some maybe it's because the nature of the discussion was negative. The Council was setting forth language contained in the agreement that was proposed to them that they did not agree with. They were requesting that the language be modified so that they could support it. Everyone on Council supports the concept of a District Library and that was made very clear.

Mayor Allen repeated that everyone on the Council supports the district library in concept.

Shirley Kasson said that since this article may have done so much to damage their initiative, they think that future meetings should be held in closed session.

City Attorney Soltis said that planning meetings for the District Library cannot be held in closed session. Closed sessions are reserved for very specific purposes such as personnel related discussions where the employee has asked for privacy, negotiations relative to the settlement of lawsuits-with approval of a settlement taking place in open session. The type of discussion that would involve district library arrangements must be done in open session.

Anne Nieuwenhuis, Kalamazoo County Commissioner said that when she was canvassing in Kalamazoo County last year, she found out three things about County Government. One is that people do not know about the availability of the Household Hazardous Waste program operated by the County. She is aware that the City has opted not to pay in to the program again this year, because of a lack of use by its residents. She has arranged for a group of speakers to address her Kiwanis Club meetings and would like to have Councilmembers from Galesburg present to hear those presentations. On January 16, 2009 Tom Dewhurst will be there from the Kalamazoo County Household Hazardous Waste program. On January 30, 2009 Judge Lipsey will be there to discuss the corrections system and the 65.7% of the County's \$68,000,000 budget that is spent on it each year. On January 23, the Director of a County Juvenile Home will outline new treatment programs.

Annalee Henning of 6710 W. U Ave. in Schoolcraft said she is here with the intention of being a good neighbor. Her family lived and worked here in Galesburg for 40 years. She served as a volunteer on the Galesburg Fire Department for many years. Since planning her attendance here tonight, she has spoken with her attorney. He advised her that a developer does not have the right to block access to the driveway to her family's business. She is entitled to the full use of the driveway because her family has been using it since 1967, with full and openly acknowledged use.

Councilmember Nicolow said it is his understanding of Michigan Real Estate Law that if you have an easement that is used openly for 10 years or more you have standing for continued use of the property.

Wrifton Graham of 4960 S. 36th St. in Climax said that tonight, the City Council has in front of it a resolution for site plan approval. The other issue is a property dispute between two property owners. Does the City really want to get involved in this dispute?

Councilmember Yingling said that Mr. Graham is asking the Council to approve his site plan with concessions. He is asking that the City approve the plan with two less parking spaces than are required by City Code. Is it not the right thing then, for the City to ask him to work this other parking issue out with the property owner next door?

Wrifton Graham stated that he does not want to have to 'go legal' on this thing, but neither does he want to be made to give access to another property owner across his own property.

James Henning of 6710 W. U Ave. in Schoolcraft said that his Father In-Law's building has a loading dock for trucks on the back side of the building. Without access from the neighboring property, he cannot turn his SUV around back there let alone a delivery truck. They have

put this property up for sale and currently have two offers on it. One of the bidders would operate a machine shop there, the other a printing business. He has not been given access to view this site plan, but would appreciate having an opportunity to do so. Mayor Allen offered a copy of the site plan to Mr. Henning for his inspection.

City Attorney Soltis stated that this is a property dispute between two property owners. The term 'adverse possession' has been used with regard to this issue. This is a legal concept that says that someone who uses someone else's property for 15 years or more has standing in court to take possession of said property. There are other legal tenets that could be applicable to this situation where property owners could gain ingress and egress over a particular piece of property. There are prescriptive easements, easements of deed, etc. It is his understanding that these two properties were jointly owned at one time and that later on one of them was sold to Mr. Phillips who is Mrs. Henning's Father. The previous owner of the property could have provided an assigned easement for access to the loading dock and the parking at Kal Gale when he originally sold it, but did not do so. He cannot tell Council tonight which way is the right way. The City's site plan review ordinance talks about looking at the subject property for site plan review, not looking at the neighbor's property to make a site plan review determination. City Council does have, on the other hand, the right to refuse to accept the Planning Commission's recommendation for approving the Site Plan. In his opinion it is a shame that two neighbors cannot get along with each other long enough to work something out.

Mr. Henning said that this is a property law issue. The fact is that Mr. Adams sold this property to his father in-law back in the 1960's and this drive has been used on a daily basis since then.

City Attorney Soltis said that this is an area of law that is very fact specific. A judge will need testimony giving the full details of who had what use of the property, when and where.

Wrifton Graham said that the actions taken by He and His Family have been done to maximize the use of their own property.

Councilmember VanNess asked if the two parties could take a few minutes and go into the office and work this matter out.

Wrifton Graham stated that this is a property dispute, not a person dispute.

City Clerk Miner asked Mr. and Mrs. Henning about placing the property up for sale and what value their real estate agent has assigned to the parking lot and loading dock.

Mrs. Henning answered that they have placed the property for sale by owner. No assessment of the value of the property loss has been done.

Linda Carlton asked about the Roeloff property. When Roeloff's put the fence around the old parking lot it was detrimental to all downtown businesses. She asked what happens if this property is sold after they have observed 15 years of continuous and obvious use of the property.

Councilmember Kissinger expressed his opinion; City Council should not get involved in this property dispute.

James Henning stated that if the City Council approves this site plan tonight, they will have no choice but to file an injunction against any further development of the property first thing tomorrow to stop construction. This will hold construction of this site up for a year or more.

Linda Carlton asked the Attorney to address her question relative to the status of an adverse possession claim if the property is sold. Attorney Soltis answered; this is a complicated matter and depends on specifics about the use; generally, adverse possession is proven in a court of law and once adjudicated it is legally binding on future owners.

Randy Phillips, brother to Mrs. Henning, said that Dorothy Adams told him that the Grahams promised her they would honor the parking arrangement that has been in place all of these years.

IV. READING AND APPROVAL OF COUNCIL MINUTES

Motion by Councilmember Kissinger, and supported by Councilmember VanNess to approve the minutes of December 15, 2008 as submitted.

Motion approved by the following vote:

YEAS: Councilmembers Garrett, Jackson, Kissinger, Nicolow, VanNess, Yingling, Allen.

NAYS: None.

V. CORRESPONDENCE

1. Grant Application from the Fire Department for a Polaris Ranger ATV Rescue Vehicle

RECEIVED AND PLACED ON FILE

2. Letter from Paul Townsend requesting that the Council Approval granted to Sylvia Townsend on October 6, 2008 for the burial of the cremains of the son of her friend be transferred to him as the burial plots in her name are all occupied.

Motion by Councilmember Kissinger, and supported by Councilmember VanNess to approve the request from Mr. Townsend for burial of the son of their friends (the Hyucks).

Motion approved by the following vote:

YEAS: Councilmembers Garrett, Jackson, Kissinger, Nicolow, VanNess, Yingling, Allen

NAYS: None

3. Letter from Comcast Cable providing information regarding the availability of high definition channels effective January 23, 2009.

RECEIVED AND PLACED ON FILE

4. Letter from the State of Michigan Office of Management and Budget regarding audit requirements for FY 2008 for recipients who have spent \$500,000 or more in Federal Funds in the Fiscal Year.

REFERRED TO CITY AUDITORS SIEGFRIED & CRANDALL

5. Proposal from Brad Carpenter of Michigan Dream relative to the City of Galesburg Web Site recommending upgrades and setting forth service fees for 2009.

REFERRED TO THE CITY CLERK

6. Letter from Mrs. Analee Henning of 6710 W. U Ave. in Schoolcraft regarding property belonging to her family at 88 W. Battle Creek and the proposed construction of a restaurant next door impacting their parking arrangement.

RECEIVED AND PLACED ON FILE

7. Letter from the US Postal Service agreeing to modification of the City Mail Delivery Route along Burgess Dr. and Battle Creek St.

RECEIVED AND PLACED ON FILE

8. Advisory memorandum from the South County Sewer & Water Authority regarding a request by the City of Portage for a Wastewater Flow-through Agreement.

RECEIVED AND PLACED ON FILE

9. Letter from Attorney Soltis providing notice of a Show Cause and Judicial Foreclosure on the Blank Property.

RECEIVED AND PLACED ON FILE

10. Letter from Comcast regarding new service offerings for High Definition programming.

RECEIVED AND PLACED ON FILE

11. Letter from the State of Michigan Department of Environmental Quality regarding the City of Galesburg NPDES Separate Storm Sewer System Permit MIG619000.

REFERRED TO ENGINEERS PREIN & NEWHOF

12. Audited Financial Statements and Independent Auditors Report for Fiscal Year ended June 30, 2008

RECEIVED AND PLACED ON FILE

13. Letter from the State of Michigan Department of Environmental Quality regarding the DWRP Fund final payments

REFERRED TO ENGINEERS PREIN & NEWHOF

14. Letter from the DDA stating that they have voted to take on the chairmanship of the Greater Galesburg Days.

RECEIVED AND PLACED ON FILE

VI. PUBLIC HEARINGS

There were no scheduled public hearings.

VII. ACTION ITEMS

A. Resolutions for Action

1. Resolution approving the appointments to City Boards.

**RESOLUTION #010509-01
RESOLUTION OF APPOINTMENT
RESOLVED BY THE CITY COUNCIL
CITY OF GALESBURG, COUNTY OF KALAMAZOO,
MICHIGAN**

At a regularly scheduled meeting of the Galesburg City Council held on Monday, January 5, 2009 at 7:00 P.M. with Councilmembers Garrett, Jackson, Kissinger, Nicolow, VanNess, Yingling and Allen present, and none absent, the following resolution was offered by Councilmember Nicolow, and supported by Councilmember Jackson.

Whereas, the City has the following vacancies: Parks Board, Library Board, Planning Commission, Museum Board, Police Commissioner, Personnel Policies Committee, and DPW Commissioner, and has applicants interested in filling those positions;

Now therefore be it resolved, that the Galesburg City Council hereby approves appointments to the vacancies as follows:

- Parks Board (3 year terms) – Susan Graham and Councilmember Kissinger
- Library board (5 year terms, except Councilmember which is annual)– Kim Murray, Kay Walker and Councilmember Nicolow
- Planning Commission (3 year terms) – Jeremy Spencer, Richard Butler, Rosalie Emmons, Richard VanCleave, Clara Srackangast
- Museum Board – Councilmember Yingling (annual)
- Police Commissioner – Councilmember Jackson (annual)
- Personnel Policies Committee – Councilmembers Allen, Kissinger, VanNess (annual)
- DPW Commissioner – Allen (annual)

Motion by Councilmember Nicolow, and supported by Councilmember Jackson to place an affirmative roll call vote on the resolution.

Motion approved by the following vote:

YEAS: Councilmembers Garrett, Jackson, Kissinger, Nicolow, VanNess, Yingling, Allen

NAYS: None

2. Resolution authorizing Payment of \$250 for Crime Scene Investigation Classes for Part Time Officer Jamie Swickley

**RESOLUTION #010509-02
RESOLVED BY THE GALESBURG CITY COUNCIL
RESOLUTION AUTHORIZING APPROPRIATION OF FUNDS**

Whereas, the City of Galesburg has approved a budget for Fiscal Year 2008/2009; and

Whereas, the Police Department identified funding for training in account #101-301-960-000; and

Whereas, The Police Department has requested an appropriation from this account to pay for Crime Scene Investigation Classes attended by Part Time Police Officer Jamie Swickley;

Now therefore be it resolved, that the Galesburg City Council hereby authorizes the payment of \$250.00 for costs associated with the attendance of crime scene investigation classes for Officer Swickley.

Motion by Councilmember Kissinger, and supported by Councilmember Jackson to place an affirmative roll call vote on the resolution.

Motion approved by the following vote:

YEAS: Councilmembers Garrett, Jackson, Kissinger, Nicolow, VanNess, Yingling, Allen

NAYS: None

ABSENT: None

3. Resolution approving the recommendations of the Planning Commission for approval of a Site Plan Review Application filed by William and Wrifton Graham of 4960 S. 36th St., Climax for property located at 66 W. Battle Creek St., Galesburg

**RESOLUTION #010509-03
SITE PLAN APPROVAL
RESOLVED BY THE CITY COUNCIL
CITY OF GALESBURG,
COUNTY OF KALAMAZOO, MICHIGAN**

At a regularly scheduled meeting of the Galesburg City Council held on Monday, January 5, 2009, at 7:00 P.M. with Councilmembers Allen, Garrett, Jackson, Kissinger, Nicolow, VanNess and Yingling present, and None Absent, the following resolution was offered by Councilmember Nicolow, and supported by Councilmember Jackson:

Whereas, William Graham and Wrifton Graham of 4960 S. 36th St. of Climax have petitioned the City of Galesburg for permission for site plan approval for a project involving the construction of a restaurant on lots 72 and 71 of the Assessor's Plat of the City of Galesburg commonly known as 66 Battle Creek St.; and

Whereas, the Galesburg Planning Commission took up the application for site plan approval at their regular meeting held on December 18, 2008 and unanimously recommended approval of the attached site plan with the following modifications;

- waiving in it's entirety the requirements of Galesburg's City Code Section 82-129;
- waiving the requirements of 82-130(a), insofar as Mr. Graham will be allowed to supply a detailed lighting plan following the close of the 12/18.08 PC Meeting.
- allowing MDOT to provide the specifications for number 11 on punch list supplied by Engineers Prein & Newhof
- waiver of 2 of the required parking spaces
- with the requirement that all spaces around existing lights on the plan be green space

Now therefore be it resolved, that the Galesburg City Council hereby affirms the action taken by the Planning Commission and approves the site plan as submitted with the modifications approved by the planning commission at their meeting of December 18, 2008.

Motion by Councilmember Nicolow, and supported by Councilmember Jackson to place an affirmative roll call vote on the resolution of site plan approval.

Motion approved by the following vote:

YEAS: Councilmembers Garrett, Jackson, Kissinger, Nicolow, VanNess, Yingling, Allen

NAYS: None

I, Debbie Miner, Galesburg City Clerk, do hereby certify that the foregoing City of Galesburg Resolution was adopted by the Galesburg City Council at a regularly scheduled meeting held on January 5, 2009, and that the following is a record of the vote of the members of said City Council on said Resolution:

AYES: Councilmembers Garrett, Jackson, Kissinger, Nicolow, VanNess, Yingling, Allen

NAYS: None

ABSTENTIONS: None

ABSENT: None

VIII. REPORTS OF OFFICERS & BOARDS

a. Accounts Payable

Motion by Councilmember Kissinger, supported by Councilmember Nicolow to approve the accounts payable report and authorize payment of the bills in the amount of \$5,723.25.

Motion approved by the following vote:

YEAS: Councilmembers Garrett, Jackson, Kissinger, Nicolow, VanNess, Yingling, Allen

NAYS: None

b. Department of Public Works

Supervisor Wilson said that the department needs to restock its inventory of water meters. They should purchase about 12 meters. The cost is approximately \$100 per meter. One half of the cost will be paid by the Water Fund and the second half will be paid by the sewer fund.

They also need a new heater for the well house. This is an unbudgeted item that is projected to cost \$250. This is an emergency need item

Motion by Councilmember Nicolow, and supported by Councilmember Garrett to authorize the purchase of 12 new water meters and 1 new heater for the well house.

Motion approved by the following vote:

YEAS: Councilmembers Garrett, Jackson, Kissinger, Nicolow, VanNess, Yingling, Allen

Mr. Wilson reported that they are getting ready to reinstall the mail boxes on Burgess Dr. They should be back up by the end of the week. They were notified today of the permission of the U.S. Postmaster to modify the postal route to allow the boxes to be placed on the west side of the street. He called Miss Dig today about it and the stakes are already out marking the spots for placement. He has already informed home owners of the status of this project.

DPW Part time employee Art Green is back to work and they are calling him in as they need him.

Councilmember Nicolow asked if the plow is broken. Mr. Wilson answered, no, but the broom is broken. He stated that they did have a new person come in to help out for a few days while Mr. Green was off sick. They would like to keep using this person if future need arises.

c. Police Department

Chief Mau said that the first page of the report lists the total complaints for the month, the second page is a detail of each officers responses, the third page is the E Ticket report, fourth is the warnings report followed by a report of the qualifications of officers.

d. Minutes of City Boards & Commissions;

- Galesburg Memorial Library meeting of November 25, 2008
- Galesburg Historical Museum meeting of November 19, 2008
- Galesburg DDA meeting of November 26, 2008

IX. NEW BUSINESS

There was no new business.

X. OLD BUSINESS

There was no old business.

XI. COUNCIL COMMENT

Mayor Allen said that he knows he speaks for the entire Council when he says that they do want to see a District Library Agreement passed. They do not control what got put in the newspaper, but this Council supports the

library and the idea of a district library. The Librarians and volunteers of the Galesburg Memorial Library do a great job over there. The Library is one to be proud of and they are very proud and appreciative of the work done for Galesburg citizens.

Councilmember Nicolow said that he would like something added as an agenda item for the next meeting. He is unsure if he needs to make a motion, or just a request to the City Clerk.

Clerk Miner advised Councilmember Nicolow that if the item is just for discussion it is a request to the clerk. If it is to be voted on, then he needs to make a motion and get the approval of his colleagues.

Councilmember Nicolow said he would like to add a resolution to the next agenda approving a change in Insurance Agents. We would keep the same policy, just change agents. Our current agent, who writes our insurance policy is also a beneficiary of that policy. This is a conflict of interest and should be changed.

Motion by Councilmember Nicolow, and supported by Councilmember Garrett to place a resolution on the next City Council Agenda authorizing a change in insurance agents.

Motion approved by the following vote:

YEAS: Councilmembers Garrett, Jackson, Kissinger, Nicolow, VanNess, Yingling, Allen

NAYS: None

Mayor Allen welcomed Councilmember Garrett to the City Council.

Councilmember Yingling said the City needs to take appropriate steps to let families with kids know that there is a sledding hill in Community Park now.

Councilmember Jackson asked why the City DPW doesn't plow farther back in the parking lot so people can drive closer to the sledding hill to park. We should be plowing back to the first parking space in the gravel area.

Councilmember Kissinger said that at the corner of Battle Creek and Fullerton, a tree is leaning into the path of vision. This tree is in the City right-of-way and needs to be taken down. It is the second to the last tree on the corner.

XII. ADJOURNMENT

Motion by Councilmember Kissinger, and supported by Councilmember Jackson to adjourn:

Motion approved unanimously

MEETING ADJOURNED AT 9:05 P.M.

Respectfully submitted,

Debbie Miner, CMC
City Clerk, CFO