

CITY OF WEST LAFAYETTE
COMMON COUNCIL
MINUTES
MAY 1, 2017

The Common Council of the City of West Lafayette, Indiana, met in the Multi-Purpose Room at the Morton Community Center on May 1, 2017, at the hour of 6:30 p.m.

President Bunder called the meeting to order and presided.

The Pledge of Allegiance was recited.

Present: Peter Bunder, Nick DeBoer, Steve Dietrich, Aseem Jha, Gerry Keen, Larry Leverenz, David Sanders, and Norris Wang.

Absent: Gerald Thomas

Also present: Mayor John Dennis, Corporation Counsel Eric Burns, Clerk Sana Booker, Parks Assistant Superintendent Pennie Ainsworth, IT Director Brad Alexander, Street Commissioner Ben Anderson, Director of Development Erik Carlson, Facilities Director Tim Clark, Police Chief Jason Dombkowski, Human Resources Director Diane Foster, City Engineer Ed Garrison, City Controller Peter Gray, Fire Chief Tim Heath, WWTU Director David Henderson, and Building Commissioner Chad Spitznagle.

MINUTES

Councilor Keen moved for acceptance of the minutes of the March 30, 2017, Pre-Council Meeting, and the April 3, 2017, Common Council Meeting. Councilor DeBoer seconded the motion, and the motion passed by voice vote.

REPORTS OF CITY DEPARTMENTS ON FILE IN THE CLERK'S OFFICE

There were no comments.

REPORT OF THE APC REPRESENTATIVES

Councilor Leverenz reported that there are two items related to West Lafayette properties on the May 17, 2017, APC agenda. One is 9.62 acres located at the southwest corner of Sagamore Parkway West and Salisbury Street, extending southwest to West Navajo Street. The request is to rezone from Neighborhood Business (NB) to General Business (GB) zoning. The second item is the Sagamore Commons project, which is back on the agenda to request a rezone of 28.25 acres located on the west side of Sagamore Parkway West, north of the Cumberland Avenue intersection.

President Bunder asked for more information on which buildings are in these areas. Councilor Leverenz stated that the APC staff report is not available yet, but the first property is Ed-An Properties near McDonald's. Councilor Keen added that it includes the McDonald's, CVS, the strip mall where the doctor's office is, and the driver's license branch. He believes the bank on the corner will remain as the NB zone, and everything else will go to GB if the request goes through. There is a list of commitments that goes with it as well. Councilor Leverenz stated that the Sagamore Commons property is between Applebee's and Cook.

PUBLIC RELATIONS:

Beautification Award

Councilor Dietrich announced that the Beatification Award winners are Tom Smith and Mary Welch at 147 Pathway Lane. He provided a description and picture of their garden, and a certificate will be mailed to the winners.

Council Appointments

Mayoral Appointment to the Historic Preservation Commission

President Bunder stated that this appointment will be deferred to the June Council meeting.

Mayoral Appointment and Council Appointment to the Go Greener Commission

President Bunder explained that there is a bit of a clean-up for the appointments to the Go Greener Commission. He explained that all of the committee and commission have a certain amount of turnover, and the Go Greener Commission has appointments by the Council, the Mayor, and the Commission itself. By having a Mayoral appointment of Clayton Nevins and a Council appointment of Diane Damico, we will have the right people in the right slots.

Councilor Keen motioned to approve both of the aforementioned appointments. Councilor DeBoer seconded the motion, and the motion passed by voice vote.

FINANCIAL REPORT

City Controller Gray reported that we are 33% of the way through the year, and our year-to-day expenditures and the encumbrances are equaling just over 35%. If the encumbrances, which are basically open purchase orders, are removed, then the year-to-date expenditures are at 31%. We are tracking along with our budget, and we are in good shape for the construction season.

LEGAL REPORT

This report is on file.

SPECIAL REPORTS:

Joint Board Report

Councilor DeBoer reported that there was a Joint Board meeting this month that was productive, yet minimal. He explained that these are not the old Joint Board meetings that used to have a lot of differing opinions. This meeting was to pay for parts of State Street and to approve a variance. He stated that the Board looked through the numbers and verified the outgoing payments. The next meeting will be July 18, 2017.

UNFINISHED BUSINESS: None

NEW BUSINESS:

Ordinance No. 09-17 An Ordinance Amending Ordinance No. 32-97 Being The Unified Zoning Ordinance Of Tippecanoe County. (UZO Amendment #91) (Zoning Maps URL Change And R3W & R4W Height Variances) (Submitted by Area Plan Commission)

Councilor Keen read Ordinance No. 09-17 by title only.

Councilor Keen moved for passage of Ordinance No. 09-17 on first and only reading, and that the vote be by roll call. The motion was seconded by Councilor DeBoer.

Building Commissioner Spitznagle stated that this amendment is to clean up two issues. The first is to correct an invalid website link. The second issue is that the APC staff noticed, after they had allowed height variances in R3W and R4W zones, that there was a section in the UZO that denied

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the ability to apply for height variances in those two zones. This amendment makes a correction to allow those variances. He confirmed for President Bunder that we do have both of those zones within West Lafayette, and that this simply allows a variance to be granted to the owners of those properties. The current height limitation in those zones is 14 feet, which is pretty low, and that was due to capabilities of fire departments at the time that it was originally outlined. He noted that the APC is going through some improved R3W and R4W zoning, and he will be back to advise on that when it gets through the zoning ordinance.

There was no further discussion.

Clerk Booker called the roll call vote:

<u>Councilperson</u>	<u>Vote</u>
Bunder	Aye
DeBoer	Aye
Dietrich	Aye
Jha	Aye
Keen	Aye
Leverenz	Aye
Sanders	Aye
Thomas	Absent
Wang	Aye

Clerk Booker stated that the vote was 8 AYES and 0 NAYS.

President Bunder announced that Ordinance No. 09-17 passed on first and only reading.

Ordinance No. 10-17 An Ordinance Providing For Temporary Loans (MVH to Parks) (Presented by the Controller)

Councilor Keen read Ordinance No. 10-17 by title only.

Councilor Keen moved for passage of Ordinance No. 10-17 on first reading, and that the vote be by roll call. The motion was seconded by Councilor DeBoer.

Controller Gray stated that this ordinance is to cover the cash flow issues for the second half of the year as we await the levy from the County. This is the normal loan that has been done a number of times. This will ensure that there is cash in the Parks Department's account.

There was no further discussion.

Clerk Booker called the roll call vote:

<u>Councilperson</u>	<u>Vote</u>
Bunder	Aye
DeBoer	Aye
Dietrich	Aye
Jha	Aye
Keen	Aye
Leverenz	Aye
Sanders	Aye

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Councilperson	Vote
Thomas	Absent
Wang	Aye

Clerk Booker stated that the vote was 8 AYES and 0 NAYS.

President Bunder announced that Ordinance No. 10-17 passed on first reading.

Ordinance No. 11-17 An Ordinance Requesting An Additional Appropriation And Reduction To The 2017 Budget (Engineering, MVH) (Submitted by the Controller)

Resolution No. 06-17 A Resolution Requesting The Transfer Of Funds (Engineering) (Prepared by City Controller)

Councilor Keen read Ordinance No. 11-17 by title only.

Councilor Keen moved for passage of Ordinance No. 11-17 on first reading, and that the vote be by roll call. The motion was seconded by Councilor DeBoer.

Controller Gray stated that he will discuss Ordinance No. 11-17 and Resolution No. 06-17 at the same time. He explained that Resolution No. 06-17 is to cover the hire of temporary labor due to a person being on maternity leave in Engineering. It will move \$12,000 from the personnel category to the contract services category. Similarly, Ordinance No. 11-17 will allow us to save a lot of money on Engineering inspections for the State Street Project by doing them in-house as opposed to hiring from outside. Rather than paying for it through contract services or road construction in the Motor Vehicle Highway (MVH) Fund, this will transfer the budget to cover salaries for the Engineering Department to pay for the inspections to be done in-house.

There was no further discussion.

Clerk Booker called the roll call vote:

Councilperson	Vote
Bunder	Aye
DeBoer	Aye
Dietrich	Aye
Jha	Aye
Keen	Aye
Leverenz	Aye
Sanders	Aye
Thomas	Absent
Wang	Aye

Clerk Booker stated that the vote was 8 AYES and 0 NAYS.

President Bunder announced that Ordinance No. 11-17 passed on first reading.

Councilor Keen read Resolution No. 06-17 by title only.

Councilor Keen moved for passage of Resolution No. 06-17 on first and only reading, and that the vote be by roll call. The motion was seconded by Councilor DeBoer.

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There was no further discussion.

Clerk Booker called the roll call vote:

Councilperson	Vote
Bunder	Aye
DeBoer	Aye
Dietrich	Aye
Jha	Aye
Keen	Aye
Leverenz	Aye
Sanders	Aye
Thomas	Absent
Wang	Aye

Clerk Booker stated that the vote was 8 AYES and 0 NAYS.

President Bunder announced that Resolution No. 04-17 passed on first and only reading.

Resolution No. 05-17 A Resolution Authorizing The Filing Of An Application With The U.S. Department Of Housing And Urban Development, For Community Development Block Grant Funds, As Provided In Title I Of The Community Development Act Of 1974, As Amended (Submitted by Department of Development)

Councilor Keen read Resolution No. 05-17 by title only.

Councilor Keen moved for passage of Resolution No. 05-17 on first and only reading, and that the vote be by roll call. The motion was seconded by Councilor DeBoer.

Rental Housing Director Dale Dixon stated that this is to allow us to submit an application to U.S. Department of Housing and Urban Development (HUD) for the Community Development Block Grant (CDBG) funds again this year. The program year will start July 1, 2017. With the Council's approval, we will submit application later this month, and then will return hopefully next month to do the appropriations.

There was no further discussion.

Clerk Booker called the roll call vote:

Councilperson	Vote
Bunder	Aye
DeBoer	Aye
Dietrich	Aye
Jha	Aye
Keen	Aye
Leverenz	Aye
Sanders	Aye
Thomas	Absent
Wang	Aye

Clerk Booker stated that the vote was 8 AYES and 0 NAYS.

President Bunder announced that Resolution No. 05-17 passed on first and only reading.

Ordinance No. 12-17 An Ordinance Ratifying Actions Of The Board Of Public Works And Safety Designating Certain Areas As Strictly For Underground Or Buried Utilities And Delegating Authority Related Thereto (Sponsored by Mayor John Dennis)

Councilor DeBoer motioned to suspend the rules to allow a late filing. Councilor Keen seconded the motion, and the motion passed by voice vote.

Councilor Keen read Ordinance No. 12-17 by title only.

Councilor Keen moved for passage of Ordinance No. 12-17 on first reading, and that the vote be by roll call. The motion was seconded by Councilor DeBoer

City Engineer Garrison explained that there was a special Board of Works meeting on Saturday (April 29, 2017) to pass a resolution on this issue, and it did go through. He noted that there has been a lot of coverage on this matter on TV18, and it was discussed at Pre-Council. He stated that we are looking to protect the City, and to work with this Senate bill [Senate Enrolled Act (SEA) 213] and with the way the City has been working recently. We have put a lot of money and time into creating a better aesthetical feel to our roads, and we wanted to protect our interest by giving ourselves coverage. We created legislation that protected the City in several different ways to make sure that we do not have utilities going above ground without the City having a say with how it will look and feel.

Mayor John Dennis stated that the evolution of this is important to know. He explained that he and Lafayette Mayor Tony Roswarski were made aware of this change, while in Japan, by communication from Accelerate Indiana Municipalities (AIM), which was formerly known as the Indiana Association of Cities and Towns (IACT). He and Mayor Roswarski made sure that each city could hold a special Board of Works meeting to address the issue. He stated that we take great pride in the way that our community looks and feels to people who are visiting. The last thing that we want to do is turn over that aesthetic control to the private sector. That does not mean that we have any disrespect for technology. Obviously in a community that hosts a world-renown research university, we want to make sure that we have access to all available contemporary technology. This bill could have challenged that and possibly put us behind the eight ball when it came to those kind of decisions, so we felt that it was imperative that we get our Board activated. He expressed appreciation to Clerk Booker, Counsel Burns, and Director of Development Carlson for the work done to make that meeting happen. This ordinance is the validation of the existing legal position of the City, which gives us continued autonomy over circumstances involving the placement and look of these cell towers.

Counsel Burns stated that he wants to point out the specifics of the ordinance. It ratifies the action taken by the Board of Works. Ratification is a legal process that has substantial support in the case law that indicates that one governmental body, such as the Council in this case, can look backward and say that the Board did this two days ago and we hereby ratify it, thereby making it effective two days before. The Council can do that, and that is what the ordinance does. It also, as the Mayor indicated, gives an exclamation point to show that the entire City is involved in this, including signing by each elected position. The final importance to the ordinance is the fact that while the Board does have a lot of authority in this area, to the extent that there is a glimmer of light between their authority and what the law would say, this action by the Council completely closes that. So, there would not be any argument that could be made in the future if anyone were making an argument that somehow the Board did not have that authority. He stated that, for all of those reasons, he appreciates the Council considering this for two readings tonight.

Councilor Dietrich asked if this can be challenged, and if so, would it be the State or the private sector that might challenge our attempts. Counsel Burns responded that he suspects that if it got challenged it would be because some provider got turned down in some city. He would find it surprising, but it is possible that the Attorney General would say that something has been passed that should not be, but that is not generally the way it plays out until there is an actual controversy. We have complied with the State legislative enactment. It says that a city can designate areas, and that is what we are doing. We are purely in compliance with the State statute, so if there is a challenge it would tend to come from a provider.

Councilor DeBoer stated that he wants to thank City staff for helping the Council understand this issue during Pre-Council so that he was able to explain it to other people.

Councilor Leverenz also expressed appreciation. He stated that he wants to emphasize the fact that this is good legislation in the fact that we are also looking out for the Americans with Disabilities Act (ADA) needs of our community by putting as many structures underground and off the sidewalks as we possibly can. He noted that the wording of the ordinance does not specify who approves submitted waivers. Counsel Burns stated that the way the statute is structured, it gives us until before May 1, 2017, to make our designation, and then it indicates that the waiver procedure also needs to be implemented. Getting that waiver procedure in place will be a Board of Works function. Part of the reason that this ordinance is so broad in its delegation of power is to make sure that the Board has the full authority to do that, so that we are ready when someone comes forward.

City Engineer Garrison stated that we have recently been working on an ordinance for the UZO, before the State Senate bill went through, to create a waiver process. He believes everything is already in place to be operational, but he will review it with Counsel Burns' office, and thinks that it will be ready to present to the Board next week.

President Bunder asked if there is any part of the City that is not covered by this legislation. He asked why there are particular street designations instead of just saying "the City of West Lafayette." Counsel Burns responded that he believes that if there are challenges, they will be to the resolutions done by communities that specify their whole city. There is a fine line between the general rule and the exception, and when the legislation says to designate areas, there could be a compelling argument that if everything is designated, then no areas were designated. He thought that it was important that we are very specific so that it is clear that we put thought into it and that there was compliance with the statute in designating.

Jan Myers (1909 Indian Trail Drive) stated that most of the streets that are designated are Sagamore Parkway and south. She asked about the areas of University Farm or Blackbird Farms, and if there is a reason that we did not name anything north of Sagamore or west of the golf course. City Engineer Garrison responded that we did have our major arterial and collector roads north of Sagamore on there, including Yeager, Soldiers Home, and Kalberer Roads, and Salisbury Street. That was just one criteria on there; it also says that it cannot be in areas that are zoned as residential, as all of those communities would be zoned. We tried to protect it in several different fashions to make sure that we were all inclusive. He added that we have a Unified Subdivision Ordinance (USO), which stated that all new subdivisions have to have buried utilities, so it is covered in that as well.

Councilor Sanders stated that he sees Cumberland Avenue listed, but not Kalberer Road. City Engineer Garrison stated that he will check on that. Counsel Burns stated that it is intentionally a bit of a laundry list. His hope was that the beginning of the list would be the most easily defended and the most specific, but then the list gets more general and includes all right-of-ways. What

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happens in challenges is that the law directs the court to take out only those things that cause harm.

There was no further discussion.

Clerk Booker called the roll call vote:

Councilperson	Vote
Bunder	Aye
DeBoer	Aye
Dietrich	Aye
Jha	Aye
Keen	Aye
Leverenz	Aye
Sanders	Aye
Thomas	Absent
Wang	Aye

Clerk Booker stated that the vote was 8 AYES and 0 NAYS.

President Bunder announced that Ordinance No. 12-17 passed on first reading.

Councilor DeBoer motioned to suspend the rules to hold a second reading on Ordinance No. 12-17. Councilor Keen seconded the motion, and the motion passed by voice vote.

Councilor Keen read Ordinance No. 12-17 by title only.

Councilor Keen moved for passage of Ordinance No. 12-17 on second and final reading, and that the vote be by roll call. The motion was seconded by Councilor DeBoer

Councilor Sanders stated that a constituent wanted him to read an article into the record from the *Fort Wayne Reader*, titled "Pigs at the trough." This article can be found, at the time of this writing, on the website: <http://www.fortwaynereader.com>, and a printed copy will be kept on file in the Clerk's Office. He stated that it brings up a few points that he wanted to be sure that everybody is aware of. This bill has not, in fact, been signed by the Governor yet. He wants everybody to realize what is going on here. We have a Senate bill, which is rushing us into taking action by a date, and yet it has not actually been enacted into law yet, because the Governor has not signed it. This is not a way to operate a government. He thinks that we should make it clear how objectionable we find this. This whole bill is an imposition on local government. We have legislators who, in theory, believe in local control, and yet they are constantly imposing these rules on us. This is the worst example of that, for two reasons. One is what was just described in terms of the timing. The second reason, which is mentioned in the article, is that this State statute is corrupt. It is made in order to satisfy lobbyists and campaign donors. The fact that we have to deal with the aftermath of somebody ingratiating themselves to lobbyists and campaign donors is absolutely unacceptable. Councilor Sanders stated that he would like to say that the Governor should get the message that he should veto this bill; that is his message to Governor Holcomb right now. He would like to say that the fact that the Council and the Board of Works has unanimously opposed this should be a message to the Governor that he should veto this bill.

There was no further discussion.

Clerk Booker called the roll call vote:

COMMON COUNCIL MEETING MINUTES, May 1, 2017, CONTINUED

Councilperson	Vote
Bunder	Aye
DeBoer	Aye
Dietrich	Aye
Jha	Aye
Keen	Aye
Leverenz	Aye
Sanders	Aye
Thomas	Absent
Wang	Aye

Clerk Booker stated that the vote was 8 AYES and 0 NAYS.

President Bunder announced that Ordinance No. 12-17 passed on second and final reading.

REPORT BY THE MAYOR

Mayor Dennis reported that he had a great experience in Japan. The purpose of the trip was two-fold. First was to meet with some of the new leadership for some of the companies that have invested in Tippecanoe County, specifically Subaru and some of their subsidiaries and suppliers. The second reason was to meet some of the political leaders of the cities that host those companies. He stated that they got to do a bit more, and tour more sites, on this trip than what they have traditionally done when going to Japan. He stated that it makes you aware of how alike we all are, but then how extremely different we are. He spoke about traveling by bus in Tokyo and never seeing any trash on the street, and how efficient the public transportation is there. They are getting more involved with adding greenspace to their urban areas, and they have a beautiful, artistic approach to the greenspace. He also spoke of how polite the people are there, and how pedestrians absolutely have the right there. He stated that the Chamber of Commerce did an amazing job of planning the trip, and it was beneficial in making a lot of new friends and contacts. There are a lot of people interested in visiting West Lafayette because of our huge international population. He thinks that the trip was well worth the time.

COMMUNICATIONS

► Councilor DeBoer wished everyone a happy International Labor Day and May Day.

► Councilor Dietrich encouraged everyone to exercise their privilege to vote on the school tax referendum. He also reported that this Sunday (May 7, 2017) will be the day that spraying will be done to eradicate gypsy moths.

CITIZEN COMMENTS

► Ms. Myers stated that we have been putting up some new street lighting, including along the trail on Northwestern, from Walmart into town, but there is only one arm on it. It goes out over the cars, and none goes over the trail. This is true even downtown. She asked that when we install lighting that it covers the whole transportation world, including those on flat feet, roundfeet, bicycles, strollers, and joggers. She stated that she does not want another Delphi situation because we forget to put the other arm on the streetlights.

ADJOURNMENT

There being no further business at this time, Councilor DeBoer moved for adjournment, and President Bunder adjourned the meeting the time being 7:18 p.m.