

CITY OF WEST LAFAYETTE
COMMON COUNCIL
PRE-COUNCIL MINUTES
May 3, 2012

The Common Council of the City of West Lafayette, Indiana, met in Council Chambers at City Hall on May 3, 2012, at the hour of 4:30 p.m.

Mayor Dennis called the meeting to order and presided.

Present: Bunder, Hunt, Keen, Thomas, and VanBogaert.

Absent: Burch and Dietrich

Also present were City Attorney Burns, Clerk-Treasurer Rhodes, Public Works Director Buck, Police Chief Dombkowski, Street Commissioner Downey, Fire Chief Heath, WWTU Director Henderson, Parks Superintendent Payne, Information Technology Manager Newman and Director of Development Poole.

REPORT OF APC REPRESENTATIVE

Councilor Keen noted there would be two items on the May 16, 2012 APC Agenda: The John Basham project rezone from RW3 to RW4 and the Gary Schroeder Development on Northwestern Avenue.

PUBLIC RELATIONS

- a. West Lafayette Community Beautification Award
Steve Dietrich will present the award for this meeting.

NEW BUSINESS

Ordinance No. 10-12 An Ordinance Providing For Temporary Loans From A Fund Having Sufficient Balance To A Depleted Fund (Prepared by the Clerk-Treasurer)

Mayor Dennis read Ordinance No. 10-12 by title and asked for comments or questions.

Clerk-Treasurer Rhodes noted this is the second request for temporary loans for the Parks & Recreation Department this year. We have already granted \$300,000 in authority. They need additional authority until such time as the City receives its tax draw. The loans are all to be paid back by December 31, 2012.

There was no further discussion.

Ordinance No. 11-12 An Ordinance Authorizing The City Of West Lafayette, Indiana To Issue Its "Economic Development Revenue Bond, Series 2012 (Faith West Project)" And Approving Other Actions In Respect Thereto (Sponsored By Mayor Dennis)

Mayor Dennis read Ordinance No. 11-12 by title and asked for comments or questions.

Councilor Hunt said that she feels everyone worries about signing up for someone else's loans.

Mayor Dennis responded that the easiest way to explain the Faith West Bond plan is that this plan is like the Westminster plan. No loss, no worries.

Tom Brooks, Jr, Attorney for the Economic Development Commission, confirmed that the Mayor is correct. There is no liability for these bonds. The City is merely backing them. He informed the Council that Steve Viars, Pastor of Faith Church, and Todd Ponder, Bond Counsel from Ice Miller, were present to address any questions as well.

Councilor Hunt asked for clarification there is no liability. Attorney Brooks and Mayor Dennis confirmed there is no City liability related to the bond.

Councilor Bunder said he wasn't sure this is like Westminster. The application Faith West presented to the Economic Development Commission for the revenue bond takes the time to differentiate between those services which will be funded by the Economic Development Revenue Bond (EDRB) and those which will not. He said he felt those distinctions are impractical. He said he felt the funds are going to build a church. He said there are other aspects to the project which are nice things, but at the heart of the project is a church development. There was no Presbyterian seminary built in relationship to the Westminster, or campus ministries, or Presbyterian missionaries, or Presbyterian dormitories. He said he felt it would be impossible after the Faith West project is built to separate what is religious and what is not religious. He said we are not going to paint the driveway stripes a different color, partition the dumpster, or segregate the H: Drive.

Attorney Brooks responded that Faith Church has made an application, and we are going through the process which the Council has final approval of. He noted that the reason Pastor Viars and Attorney Ponder were there was to answer those types of questions.

Attorney Ponder said he felt there was no First Amendment issue in the first place. What is being conveyed is that there is no direct subsidy being provided by the City, there are no tax revenues at stake by the City, and the City is really just serving as a conduit bond issuer because tax-exempt bonds have to be issued by a governmental issuer, even if they are going to be used by a not-for-profit organization. The governmental entity is required to issue the bonds but there are no tax dollars at stake, or subsidies being provided, and really no governmental benefit being provided at all, other than serving as the issuer for the bond. At the very most, you could make an argument that there is an indirect governmental benefit of sorts, in that the entity which buys the bond, which in this case will be JPMorgan Chase, will not owe federal income tax on the interest income they receive. However, there is a lot of case law related to this issue. The courts have consistently indicated that unless there is a direct governmental appropriation or subsidy in favor of a religious institution, there is no First Amendment issue in the first place.

Attorney Ponder went on to say that in his view, this is really "belt, suspenders, and duck-tape" because the project is doing the "carve out." Probably forty percent of the project will be funded directly by Faith West. In point of fact, it will be possible to provide a clear allocation of the monies with a paper trail indicating that the bond monies are going to certain aspects of the facilities and the out of pocket monies are going toward other parts of the facility. That will be carefully managed. He doesn't believe it is even necessary to do, but they plan to anyway, just as an extra layer of precaution. The First Amendment issue is not a viable concern here. There

have been a number of projects done nationwide for institutions that do have a religious affiliation.

Councilor VanBogaert asked for clarification if JPMorgan Chase will be the only beneficiary of the project.

Attorney Ponder further explained that Faith West will benefit marginally, because JPMorgan Chase, not having to pay income tax on their interest income, might facilitate a lower interest rate being offered to Faith West on the loan. It is a very indirect benefit and case law nationwide makes it clear the courts are quite comfortable with this type of arrangement and not concerned by it.

Councilor Bunder expressed again his interest in finding out what will be paid in taxes or in lieu of taxes by Faith West. Attorney Ponder said he has no knowledge of where the process stands with regard to taxes and deferred to Pastor Viars.

Pastor Viars said the church had not yet filed an application for tax-exempt consideration by the Assessor, and even when they do, they have no guarantee from them when the answer to the question will come. Faith West has no control over that. He said he thinks the beauty of this situation is that Faith Church is its own test case. They went through the exact same situation about six years ago. He said he felt it is a very valid question. He said he did not understand the tax situation six years ago either when he started the project for Faith East and had to do a lot of investigation regarding how the project would be possible. He went on to clarify that he did not feel that anyone looking at what is going on at Faith East could say that there is some inappropriate mix of government and religion. Faith East is serving people in the community every day. When he went in to work out at the fitness center the other day, there were dozens of police cars in the parking lot, because policemen from all over the state were coming to a training event being held at Faith East Community Center. They hold it there because it is convenient, a great size room, and its free. Faith East does those kind of things day after day, and he thinks that is why people were more than happy to participate in the tax-exempt bond on Faith East. It isn't necessary to look at a project that took place out of state when the same type project took place across town. He believes that the project at Faith East has been a very collegial, beneficial relationship with the community.

Pastor Bunder asked who issued the bonds for Faith East. Pastor Viars responded that Tippecanoe County did. He further iterated that the County has indicated they will be willing to issue the bonds again, but since the project is being built in West Lafayette, the process needs to begin here.

Councilor Hunt asked about the Property Tax Assessment Board of Appeals (PTABOA) deadline. Pastor Viars clarified that there is a deadline for submission of application for tax-exempt status in the middle of May, but as he understands it, there is a difference of deadline for submission and when they might meet to discuss it, or when they might determine an answer. His understanding is that Faith Church is very early in the submission process, and therefore it would be inappropriate for him to speak for PTABOA as to what their decision will be or when.

Councilor Hunt asked if Faith Church would submit their application before the building was done. Pastor Viars responded, they would, however it would not obligate PTABOA any more as to when they will answer.

Attorney Ponder added that the two processes are really unrelated to one another.

Attorney Brooks noted that the Economic Development Commission has scheduled a meeting for May 24, 2012 at 12:00 noon, which will be the public hearing for the public to ask questions or raise concerns to the Economic Development Commission. The second reading of the Council will occur at the June 4, 2012 Common Council meeting.

Councilor Thomas noted that the second paragraph of the ordinance references the public hearing of May 24, 2012 as the decision date. Attorney Burns clarified that the second paragraph notes that the first reading has no legal import and is only effective upon the second reading. He noted that the language was pretty standard and is intended to indicate, when the ordinance is finally passed, what exactly occurred up to that meeting, and deferred to Attorney Ponder to further comment.

Attorney Ponder agreed that anything referenced in the ordinance that hasn't happened yet would actually have to happen before it could be voted upon for final reading. He said it was a "chicken and an egg" problem, and noted that this comes up routinely in these types of matters.

Attorney Burns further clarified that it was a situation which occurs because of the way the State law is structured in relationship to the local ordinance process, which calls for two readings. He said he had no concern about the language as far as its enforceability, nor would he have any problem advising the Council that is completely appropriate and proper for the Council to vote on in its current form.

Councilor VanBogaert asked about Section 8 which notes the ability for the bond to be modified without Council approval, and asked what the specific limitations are.

Attorney Ponder responded that you cannot change certain fundamental terms of the deal without having to come back to the Council. The fact of the matter is that the governing document is typically 80 pages and single-spaced, and there is invariably tweaking done to that document between the time it gets approved, hopefully, on June 4th and when the deal is finished on June 25th. He said he had never been involved in a deal in his career that there weren't some changes made to the document. The changes are typically more technical in nature, and more "clean-up" type items.

There was no further discussion.

Ordinance No. 12-12 An Ordinance To Establish The Cumulative Capital Development Fund And Readopt West Lafayette City Code Provisions Concerning The Fund (Submitted by the Clerk-Treasurer)

Mayor Dennis read Ordinance No. 12-12 by title and asked for comments or questions.

Clerk-Treasurer Rhodes explained that the Cumulative Capital Development Fund (CCD) was first established by the Council in 1984. On a fairly regular basis following general reassessment, the Council readopted the CCD in order to maintain the rate that had been originally set at \$0.05 per \$100.00 assessed valuation. That, in fact, was the process until the time in which trending began. The impact on the CCD rate that used to recur every four years and trigger Council action, certainly throughout the term of Mayor Margerum, became an annual impact which would require an annual re-adoption. In the first three years of trending, it was not

clear how the DLGF was going to be adjusting the CCD rate based on how assessed valuations were fluctuating. It turned out to be a detriment to the purposes of the fund and the intent of the Council to levy a rate of \$0.05 per \$100.00 assessed valuation. This is a flat rate. The CCD rate is now at \$0.0261 per \$100.00 assessed valuation. The proposal is to restore the rate as originally adopted. To do that we need to go through the same procedure we used to establish the Cumulative Capital Development Fund. There is only one small change in that we don't phase in the rate. We simply adopt the rate back to the original \$0.05 per \$100.00 assessed valuation and that continues. However, we will still be affected by adjustments to lower the rate every year, based on trending. Clerk-Treasurer Rhodes said the Council needs to consider as part of their annual budget procedure to renew this rate. She noted that the City of West Lafayette has been lagging other municipalities who recognized the negative impact of trending and have been annually addressing the rate. She noted that it is absolutely a critical rate for funding the City's infrastructure. She was asked to prepare the ordinance and provide some of the history and the Mayor and the City Engineer will address the issue as well, and describe why now is the time to address the shortfall in the rate for the Cumulative Capital Development Fund. She added that West Lafayette Public Library is present to have the Council approve their Capital Project Fund Rate and noted that they are readopting, as they do every year, the same rate that they initially adopted before the impact of trending. She said the Council's approval was being requested to approve the rate adoption to allow the municipality to carry out its operations.

Mayor Dennis explained that the reason for this ordinance is because the City is moving ahead very quickly with their road projects and a lot of work has been done, but much more work needs to be done and the CCD Fund is the fuel for those projects.

Clerk-Treasurer Rhodes noted that should the ordinance pass first reading, there will be a second reading on June 4th and that would include a public hearing, as required by law. There also must be a submission to the Department of Local Government Finance (DLGF), publication of the submission notice, and a remonstrance period. The submission must be completed by August 1, 2012 for the DLGF. The entire process must be completed prior to the Council's work on the 2013 Budget.

Councilor Hunt inquired as to the use of the money generated. Mayor Dennis responded that the purpose is not to arbitrarily generate money, but it is a focused request specifically for infrastructure work and related projects.

There was no further discussion.

Resolution No. 06-12 A Resolution Authorizing The Filing Of An Application With The US 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 the Clerk-Treasurer)

Mayor Dennis read Resolution No. 06-12 by title and asked for comments or questions.

Director of Development Poole explained that this was basically the annual application for Community Development Block Grant (CDBG) Funds.

Councilor Hunt asked if this was for social service agencies. Director Poole responded that this was the total allotment of \$382,000. It will be split between social service agencies, New Chauncey Housing, and American Disabilities Act (ADA) and sidewalk work.

Councilor Hunt asked if the ADA work will include projects at Morton Community Center and the pool. Director Poole responded that the pool ADA project is being funded out of previous years' CDBG allocations. He said ADA work also includes sidewalk projects and things of that nature. David Meihls (ADA Consultants of Indiana, LLC) should have the full list on his project sheet.

Councilor Hunt asked if the money would go to social services, New Chauncey Housing, and ramps, or if it would include anything else. Director Poole responded that the allocations for spending have pretty much been the same for the last five years.

There was no further discussion.

Resolution No. 07-12 A Resolution To Approve The West Lafayette Public Library Capital Projects Fund Plan (Prepared by the Clerk-Treasurer) PUBLIC HEARING

Mayor Dennis read Resolution No. 07-12 by title and asked for comments or questions.

Nick Schenkel, Director of the West Lafayette Public Library, addressed the Council on three points:

1. The rate the library is requesting is the same as the prior year, which is \$0.0133/\$100.00 assessed valuation. The DLGF will adjust that based on what the actual assessed valuation is for the library district.
2. In the plan they are adding a small budget line for building repairs. The library will be eight years old in 2013 and it is time to start doing some regular repair work to the building.
3. The building repair budget line item will be funded by a slight reduction in the parking garage repair budget and a small reduction in the computer services budget. He further explained that they have reduced the level of need in computer services due to the Evergreen program.

Mayor Dennis encouraged Director Schenkel to maintain enough funds in the budget to keep up the garage maintenance. Director Schenkel responded that he would do so and that the library was very grateful to have received money for that purpose from the Redevelopment Commission. That allowed the library to catch things up so they could move some items within the budget.

Councilor VanBogaert asked what got moved in computer services. Director Schenkel answered that because the library is part of Evergreen Indiana, with 99 libraries across the state, they are seeing increased savings on general computer services, so they were able to reduce that budget slightly. However, there will be several computer services expenditures coming up in later this year and in 2013, but they will pay for those with some of this money, general operating money and some grant money the library has obtained.

There was no further discussion.

Resolution No. 08-12 A Resolution Appropriating Insurance Recovery Received For Damage To City Property (Prepared By The Clerk-Treasurer)

Mayor Dennis read Resolution No. 08-12 by title and asked for comments or questions.

PRE-COUNCIL MINUTES, May 3, 2012, CONTINUED

Clerk-Treasurer Rhodes explained that the City has received \$734.85 in insurance claims for damage related to a police car and an additional line item for insurance recovery for lightning strike damage which was pretty severe, in the amount of \$24,314.90. She requested that the resolution be amended to include the insurance claim amount of \$24,314.90.

Councilor Van Bogaert moved to amend Resolution No. 08-12 by substitution to include the appropriation of \$24,314.90 for the lightning strike insurance recovery. Councilor Keen seconded the motion.

The motion was approved.

There was no further discussion.

COMMUNICATIONS

► Councilor Hunt reported that as part of the Campus Bar Coalition she and a few others toured some of the campus bars for ideas for safety improvements. Two weekends ago they were invited to attend Breakfast Club as well. A week ago there was an Alcohol Summit put on by Purdue and the Dean of Students and many West Lafayette residents were there. She noted that it is very impressive what is being done through the Dean of Students, the Campus Bar Coalition, the Office of Wellness, Health Promotion, and Purdue Student Government to promote alcohol-free entertainment and promote safety related to drinking for students. She said our Police and Fire Departments are actively involved as well.

ADJOURNMENT

There being no further business at this time, Councilor Keen moved for adjournment. Mayor Dennis adjourned the meeting, the time being 5:05 p.m.