

REGULAR MEETING OF THE COMMON COUNCIL (FEBRUARY 20, 2007)
111 EAST JEFFERSON STREET, GOSHEN, INDIANA

The Common Council of the City of Goshen, Indiana, met in the Council Chambers for a regular session on February 20, 2007 at 7:00 P.M. Presiding Officer was Mayor Kauffman with members of the Council present as follows:

PRESENT: COUNCILMAN BLOSS, PURO, SCOTT, THOMAS,
COUNCILWOMAN GAUTSCHE

ABSENT: COUNCILMAN GRIMES, LANTZ

PRIVILEGE OF FLOOR

Councilman Scott chose to address Glen Null regarding a previous discussion of a natatorium at the January 16 Joint School Board Meeting where it was revealed the Utilities Administrative Engineer created a preliminary design for the facility on the property. Councilman Scott responded to Mr. Null's questions that were presented at the February 6 meeting of the Common Council, stating all work in question performed by Mr. Sailor was done on his own time and he did not charge the City or Utilities.

Mr. Null responded, stating as a citizen he had a right to question if the work was billed to the City or Utilities.

Councilman Scott agreed but noted that it would be nice for Mr. Null to let Mr. Sailor know he appreciates the services given to the City.

CHANGES TO AGENDA

Council President Thomas moved to remove Resolution Numbers 2007-05 and 2007-06 and Ordinance Number 4413 from the Agenda. Motion seconded by Councilman Scott and motion passed unanimously.

Mayor Kauffman noted in regards to Resolution Numbers 2007-05 and 2007-06, if the companies involved choose to withdraw their application with the City, it may be appropriate to refund their application fees.

Mayor Kauffman further noted that Resolution Number 2007-03 on the Agenda should be numbered as Resolution Number 2007-07.

RESOLUTION NUMBER 2007-07

Council President Thomas introduced Resolution Number 2007-07 entitled "AMENDMENT TO INTERLOCAL AGREEMENT BETWEEN CITY OF GOSHEN AND GOSHEN REDEVELOPMENT COMMISSION TO LOAN FUNDS FROM THE LOCAL MAJOR MOVES CONSTRUCTION FUND."

Council President Thomas asked the Third-Deputy Clerk-Treasurer to read the Resolution by title only and moved its passage by roll call vote. Motion seconded by Councilwoman Gautsche.

City Attorney Larry Barkes stated the City Council had previously granted authorization for the Redevelopment Commission to borrow funds from the Local Major Moves Fund for property acquisition. Mr. Barkes continued, stating the Resolution is a request for provisions of the original loan to be expanded to include payment for engineering studies to identify improvements and repairs that need to be made to the Mill Race Canal.

Councilman Scott questioned if the study had already been completed.

Attorney Barkes stated the study has been contracted and started, but the study has not been completed as the Commission has not received the results as of yet.

Council President Thomas questioned where the funds would come from for the payments towards the loan.

Attorney Barkes stated the loan payments will be made from the River Race Operating Fund.

Council President Thomas stated the rebuilding of the canal is important, noting Park and Recreation Superintendent Sheri Howland had proposed the idea to the Council approximately six months prior. Council President Thomas further questioned the original amount to be borrowed from the Major Moves fund.

Attorney Barkes stated the original authorization was to loan 2.75 million of the Major Moves funds, with approximately 1.8 million remaining.

By 4-1 vote of the Council, Resolution Number 2007-07 was passed.

The Council roll call vote was as follows:

AYES: GAUTSCHE: PURO: SCOTT: THOMAS

NAYS: BLOSS

RESOLUTION NUMBER 2007-04

Council President Thomas introduced Resolution Number 2007-04 entitled "A RESOLUTION APPROVING THE ENLARGEMENT OF THE BOUNDARIES OF THE KEYSTONE I ECONOMIC DEVELOPMENT AREA AND THE DETERMINATION THAT THE ADDITIONAL AREA IS AN ECONOMIC DEVELOPMENT AREA."

Council President Thomas asked the Third-Deputy Clerk-Treasurer to read the Resolution by title only and moved its passage by roll call vote. Motion seconded by Councilwoman Gautsche.

Legal Compliance Administrator Shannon Marks informed the Council and public the Resolution had been revised to include a third item to be resolved as follows:

- “The Comprehensive Plan for the City of Goshen has been considered by the Common Council in granting these approvals.”

Council President Thomas stated his son-in-law is a minority owner in Nappanee Windows and although the Legal Department assured him that his vote would not be a conflict of interest, he is choosing not to vote on the Resolution to avoid any appearance of impropriety.

Mrs. Marks reassured Council President Thomas the current Resolution has nothing to do with Nappanee Windows, rather the TIF district enlargement of sixty acres to Keystone I and approving the findings of the Redevelopment Commission.

Mayor Kauffman stated the Resolution will provide more funds for traffic improvements on the south side of the City as the Keystone I area is experiencing an increase in development.

Glen Null, 319 Dewey Avenue questioned if the property in the Resolution is the same area of land previously discussed in which many residents, primarily from Broadmore Sub-division, attended the meeting citing complaints about a nearby business.

Mayor Kauffman affirmed the 60 acres is the same property Mr. Null is referring to.

Mr. Null questioned if the residents are aware of the discussion and Resolution and further asked if this Resolution had to be passed tonight.

City Attorney Larry Barkes responded, stating the property in question was part of the original agreement and discussion, and further the City is following statutory requirements to acquire the land.

By 4-0-1 vote of the Council, Resolution Number 2007-04 was passed.

The Council roll call vote was as follows:

AYES: BLOSS: GAUTSCHE: PURO: SCOTT:

NAYS: NONE

ABSTAIN: THOMAS

ITEMS OF DISCUSSION

Refund of Tax Phase-In Applications Fees:

Mayor Kauffman stated in regard to Tax Phase-In applications, conversations need to be taking place between the companies and either the City or the Elkhart County

Economic Development Commission explaining the City's point system and application process. Mayor Kauffman continued, stating the first two businesses that filed Tax Phase-In applications being Lippert Components and Nappanee Windows have expenses of not only the application fees, but also attorney and consultants' fees. Mayor Kauffman asked the Council to make a motion to refund the application fees to the businesses if they withdraw their application even though the Tax Phase-In Ordinance states "non-refundable".

Councilman Scott questioned how much time of the Council's has been invested in these phase-ins and how much is sensible to offer back.

Councilwoman Gautsche stated the refund is unusual but it is true the companies did not receive much guidance.

Mayor Kauffman stated the refund would be a gesture of good faith.

Councilman Scott questioned if the companies had consulted with Elkhart County Economic Development Director Bill Bradley.

Mayor Kauffman stated he was not aware that they had consulted with Mr. Bradley. Mayor Kauffman further stated Evan Bontrager from Nappanee Windows stated to the Mayor the idea of applying was learned of late and they were not aware of some of the language in the statute regarding a depressed area and/or ceased growth and also the hurdles of the process regarding such items as the retroactive issue of the equipment already being in place. Mayor Kauffman continued stating from this point on Redevelopment Director Mike Puro is willing to hold a pre-consultation with any company looking into applying to make the process cleaner by explaining the grading system without a lot of time, consultants' fees and the application fee being expended by the applicant.

Councilwoman Gautsche stated she would guess this situation would not happen again and if either company decides to re-apply they would have to pay the application fee again.

Redevelopment Commissioner Mike Puro stated there is another company currently interested in applying for a tax phase-in with the City and he had told them he would sit and talk with their representatives for a pre-application consultation. Further this will allow the company applying to have a better idea of the process and if it would be worthwhile to seek a phase-in with the City.

Council President Thomas stated the only problem with giving the money back to the companies is it also costs the City time and labor when processing a tax phase-in and further questioning if the amounts charged for the application fee were reasonable.

Mr. Puro stated he feels the amounts are reasonable as the City's time invested does not stop after the application process itself and in the future he will explain the non-

refundable application fee and the system to the applicant. Mr. Puro further stated he does not feel it is an unreasonable action to take an exception with these applicants.

Councilman Scott stated he is not happy about refunding the money but understands the process is new and everyone is learning.

Councilman Puro stated that the City should offer a pre-consultation and screening from here on out to companies inquiring about a tax phase-in and that the Council should make an exception as the parties involved went into the situation blind; further stating it would be a gesture of good-will to offer their fees returned.

Mayor Kauffman questioned Councilman Bloss as to how he felt about the refund offer for the companies involved, to which Councilman Bloss stated that the City should refund the fee if the companies request.

Councilman Bloss moved to refund the application fees to Nappanee Window and Lippert Components for Tax Phase-In applications, should the parties in question formally request their fees be returned. Second by Councilman Puro.

Council President Thomas stated he would like to see a formal request of a refund from the companies involved.

Glen Null, 319 Dewey Avenue addressed the Council stating that small words in Ordinances and Resolutions mean a lot, stating if the document reads you apply for this process with a non-refundable fee, then the City keeps the fees, no matter what. Mr. Null continued, stating if the lawyers and corporations couldn't understand that, there must be something wrong with the system. Mr. Null also noted that even though it's not a lot of money that would be returned, he feels the City would be opening a Pandora's Box by refunding the fees, and that doing business is doing business. Mr. Null also stated he feels the City should keep the money as it is for part of the City's costs of the phase-in process.

Mayor Kauffman appreciated Mr. Null's point of view but stated returning the fees would not be opening a Pandora's Box as when future applicants apply the companies will be better informed before filing for the phase-in application. Mayor Kauffman further stated he likes to think the City is a better communicator than has been shown with the first two applicants and stated the refund will not be repeated on a regular basis.

Councilman Scott asked Mayor Kauffman if he promised the fees would be refunded, to which Mayor Kauffman stated that he told the applicants he would make a recommendation to the Council to refund the fees if the applications are withdrawn.

By 4-0-1 vote of the Council, the motion to refund the tax phase-in application fees for Lippert and Nappanee Window was passed.

The Council roll call vote was as follows:

AYES: BLOSS: GAUTSCHE: PURO: SCOTT:

NAYS: NONE

ABSTAIN: THOMAS

Link Road Eminent Doman

Mayor Kauffman stated the City had filed eminent domain proceedings to obtain the land for the south link road that would extend from S.R. 15 to C.R. 27 and the court appointed three appraisers to determine the value of the land and the damage caused to the remaining land the City does not want to purchase.

Mayor Kauffman stated the City was notified that \$3.4 million dollars would need to be paid to the property owners to cover the cost of the value of the property and damage to the land as \$532,558 is the cost of the land that the City desires to purchase and \$2,932,000 is the damage cost to the remaining land. Mayor Kauffman further stated he is disappointed in the outcome of the decision and he and City Attorney Barkes will be meeting with the developers to discuss any options and to attempt to reach a compromise.

Council President Thomas stated part of the reason he ran for Council was because he was upset with the terms of the PUD for 5,000 residents. Council President Thomas questioned Attorney Larry Barkes if it was possible to change the PUD without the owners of the property requesting it be changed.

Attorney Barkes responded stating that the City can change the PUD but current properties are grandfathered therefore imposing restrictions would not be enforceable.

Councilwoman Gautsche questioned if there was a way to get a second set of assessments from court appointees who are not bias, further questioning if there was any way to change the process.

Attorney Barkes stated we can present the case to the court for final determination and attest the amount of damages although there are significant penalties if the City continues to attest and is not successful. Further should the City choose to appeal the Court, it could take 30 to 60 days for a trial in which judgments in favor of the City are not seen often.

Councilman Puro stated the State Legislature sets the amount per acre based on the type of property, which farm land is normally assessed at \$800.00 per acre.

Mayor Kauffman stated the principal use for the land in question is for farming and if it were sold off; the property owners could get a rate of between \$20,000 and \$50,000 per acre.

Council President Thomas moved to adjourn. Motion seconded by Councilwoman Gautsche and the meeting adjourned at 7:52 P.M.

APPROVED: _____
Mayor, Allan Kauffman
Goshen, Indiana

ATTEST: _____
Tina M. Bontrager
City Clerk-Treasurer