

CITY OF WEST LAFAYETTE
COMMON COUNCIL
PRE-COUNCIL MINUTES
JUNE 30, 2011

The Common Council of the City of West Lafayette, Indiana, met in the Lower Level Conference Room at City Hall on June 30, 2011, at the hour of 4:30 p.m.

Mayor Dennis called the meeting to order and presided.

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

Absent: Dietrich, Keen.

Also present were City Attorney Burns, Clerk-Treasurer Rhodes, City Engineer Buck, Police Chief Dombkowski, Street Commissioner Downey, Fire Chief Drew, Human Resources Director Foster, WWTU Director Henderson, Parks Superintendent Payne, and Director of Development Poole.

Mayor Dennis reviewed the agenda. Councilor Hunt will present the Beautification Award to the Franzmeiers of 1535 Summit Drive.

UNFINISHED BUSINESS

Ordinance No. 14-11 An Ordinance To Ratify And Adopt Corrections To Chapters 10 Through 67 Of The "West Lafayette City Code" (Submitted by City Attorney)

Mayor Dennis read Ordinance No. 14-11 by title and asked for comments or questions.

There was no discussion.

NEW BUSINESS

Ordinance No. 15-11 To Amend Certain Portions Of The Unified Zoning Ordinance Of Tippecanoe County, Indiana, Designating The Time When The Same Shall Take Effect (UZO Amendment #73, special exception for large wind systems and wind farms) (Submitted by Area Plan Commission)

Mayor Dennis read Ordinance No. 15-11 by title and asked for comments or questions.

Councilor VanBogaert asked what the objections to this ordinance were at the APC meeting, since the vote was 8-2. City Engineer Buck answered that this is a change to permit special exceptions to the time for large wind conversion systems from 12 months to 18 months. Two years had been requested, and the 18-month limit was a compromise. Mr. Buck said that he had not followed this item too closely, as it is not germane to West Lafayette.

There was no further discussion.

Resolution No. 09-11 A Resolution To Update The City Of West Lafayette Investment Policy (Prepared by the Clerk-Treasurer)

Mayor Dennis read Resolution No. 09-11 by title and asked for comments or questions.

Clerk-Treasurer Rhodes explained that the City's investment policy will be updated, which was last revised in 2001. There have been numerous changes to the statute since that time. The Clerk-Treasurer provided a draft of the policy for review. The changes are to include background information and procedures from the statute, to make the document better stand on its own. The Investment Policy provides for the City to use the options allowed under Indiana law. This resolution is tied to the next resolution, which allows the City to use one of the options in Indiana statute, the CDARS option, for investments. It is necessary that the City's policy be updated, as well as a resolution specifically enabling that option. The two resolutions are tied together.

There was no further discussion.

Resolution No. 10-11 A Resolution Authorizing Investment of Public Funds In Certificates of Deposit (Prepared by the Clerk-Treasurer)

Mayor Dennis read Resolution No. 10-11 by title and asked for comments or questions.

Clerk-Treasurer Rhodes clarified that this is the CDARS Program. She stated that she reviewed the CDARS rates earlier today; they would benefit the City, as compared to current earnings using existing products. She strongly recommended the Council support of this resolution. There are 31 public entities which have invested \$1.5 billion dollars in the CDARS Program.

Councilor Hunt said that Clerk-Treasurer Rhodes had discussed this in a Budget and Finance Committee meeting.

Councilor VanBogaert observed that the CDARS Program is serviced by a company in Virginia. Earlier he questioned whether money would be taken from Indiana banks for this program, but, with the information provided subsequently, he understands that is not the case. Clerk-Treasurer Rhodes answered that Promontory Financial Network is headquartered in Virginia, but the only type of transaction allowed by Indiana law is reciprocal.

There was no further discussion.

Presentation by Cinergy MetroNet

Mr. Steve Biggerstaff, president of Cinergy MetroNet, with headquarters in Evansville, said that Cinergy MetroNet is considering a project that would supply fiber optic services to homes and businesses in West Lafayette. Unlike other networks, MetroNet takes fiber to the side of the house or business, with unlimited bandwidth. The company has built in Greencastle, Seymour, Vincennes, North Vernon, Madison, Wabash, Huntington, North Manchester, Connersville, and New Castle. These communities' fiber was financed through a Rural Building Services Loan from the USDA Rural Broadband Program. MetroNet received \$106 million loan to build those. Now, the company will seek private financing, as the USDA program is no longer available, and was only for communities of 20,000 or less. Construction has begun in Lebanon. Cinergy MetroNet is seeking private investors. It has a private equity firm, which is financing the Lebanon project and looking at clusters of about six other areas in the State of Indiana, southwest Ohio, and southeast Missouri to look at investment opportunities. MetroNet has been in Lafayette for seven or eight years, talking to the TOC [Telecommunications Oversight Committee] and with various people. MetroNet staff have met with the Tippecanoe County Commissioners and City of Lafayette. Mr. Biggerstaff said the company's product set is high speed internet; fiber to the home allows for unlimited speed through the house; telephones with 18 features and more; and cable television, plus IPTD and interactive software-based television

service, which is very state-of-the-art technology. Fiber technology makes it more possible for people to telecommute; telemedicine, transmitting medical records and x-rays; and distance learning. Mr. Biggerstaff said fiber is an economic development tool to attract jobs and investment, as well as important to homes. The "first build" in West Lafayette, Lafayette, and Tippecanoe County would be \$40 million to \$50 million, and after three years would be \$60 million, and employ about 40 people who would be hired locally. There would be a local retail office. One component to the investors that is critical is a different type of TIF, not based on geography, but a creative approach that would not use taxpayer dollars. MetroNet would assume the entire risk.

Mr. Richard Starkey [Barnes & Thornburg] said that they have met with the City of Lafayette and with Tippecanoe County to discuss the concept. He reported that they were on board with the idea. He reported that the thought would be, to minimize costs for the issuance of bonds, the City of Lafayette, the City of West Lafayette, and Tippecanoe County join together and have the City of Lafayette be the lead entity, using their Redevelopment Commission, to issue TIF bonds. The property would be taxed as real property on a per-foot basis for the line and would become TIF dollars, and those TIF dollars would pay back the bonds. This would give MetroNet incentive to go ahead with the project. There would be no money up-front to MetroNet and their investors, but it would give them tax dollars that they would pay in the future. Mr. Starkey asked the Council to consider joining with the City of Lafayette and Tippecanoe County to have a large TIF that would fund the build-out. In August, MetroNet will ask formally if West Lafayette would join the group and have the West Lafayette Redevelopment Commission cede the authority for the TIF that would be captured to the Lafayette Redevelopment Commission.

City Attorney Burns asked if this is real property or personal property. Mr. Starkey answered that it would be personal property, and only the lines on the telephone poles or underground.

Mayor Dennis asked if this approach had been done before. Mr. Starkey responded that it was done in Wabash, in Huntington, and they are looking at Lebanon.

Clerk-Treasurer Rhodes asked what the term of the bonds would be. Mr. Starkey said it would probably be 25 years.

Councilor VanBogaert stated that the large amount of the risk associated with the investment would be in implementing the initial tethered infrastructure of the fiber network. He stated that he has seen a significant expansion in speeds and fidelity on non-tethered networks in the last five or ten years. Because of the 25-year term, Councilor VanBogaert asked Mr. Starkey to address why the tethered option is superior to WiMAX or 3G-4G speeds, given the potential for development in that mobile system over two or three decades. Mr. Biggerstaff acknowledged that the question is a good one, and that it is a great fit with fiber. 3G-4G and other networks can provide high bandwidth, but it does not approach the bandwidth offered by fiber. MetroNet would put an optical network device on the side of a house. The current devices handle up to 10 gigabytes, and none of the other services provides that. Councilor VanBogaert said that 4G handles about 3 gigabytes maximum. Over a 5-year term, it has gone from 3G to 4G, and Councilor VanBogaert said he would be cautious about a 25-year term, because mobile technology might engage faster, and the City would be locked in to a tethered option. Mr. Biggerstaff responded that fiber, in terms of being able to move to speed, is flexible. Currently, they are at 50 megs to the home, with 100 megs under discussion. He said that fiber gives the greatest option. Councilor VanBogaert asked, once the fiber is in the ground, what would be the option for scalability, as far as upgrading customers. Mr. Biggerstaff answered that the

upgrades could be done without replacing infrastructure. He said that fiber is far ahead of other technologies.

City Attorney Burns asked, if the technology became obsolete, where the risk is. Mr. Biggerstaff said that MetroNet has the risk. The company assumes the technology risk,

Councilor VanBogaert asked if MetroNet is the service provider. Mr. Biggerstaff said that MetroNet is the service provider. Mr. Starkey added that MetroNet is buying the bonds, so if the company does not perform, they will not be paid back, so the risk is solely with the company. Mayor Dennis said this is a similar level of risk to the Westminster.

Councilor Burch asked if there would be an increase in personal property taxes. City Attorney Burns said that the property taxes that MetroNet would pay would be used to service the debt. Councilor Burch asked how this relates to Comcast cable. Mr. Biggerstaff answered that Comcast is a competitor.

Clerk-Treasurer Rhodes asked if this installation forestalls competition from other providers or forestalls the availability of other technologies. She asked for clarification of the business model, and whether any other company would be prevented from offering similar services. Mr. Biggerstaff answered that this would not be exclusive. The business model has been proven in ten other locations, and it is tracked every day. He said that MetroNet is very competitively priced. They provide exceptional customer service, exceptional value, and, being small, the company is nimble and can adjust to competition and to technology faster than most, because the company is constantly reinvesting in the network. Clerk-Treasurer Rhodes asked if there were a business model that goes with the proposal, whether the financial information is available. Mr. Biggerstaff answered that the financial information is not available, that the company is privately held.

Mr. Jim Higgins [London Witte Group] said that MetroNet is talking about \$50 million or \$60 million. The property would be taxed as business personal property and is not like real property, in that business personal property is subject to depreciation. It falls into an eight-year pool life, so that, over the course of time, the value of the tax on the \$1 million of investment would drop because of depreciation, down to about 20%. However, business personal property tax has a floor, 30%, so the cost factor is put in, versus what the depreciable value is, versus the 30% floor. After as few as eight years, the \$1 million of investment is only going to be taxed at a \$300,000 level. If you look at a \$60 million investment over 20 to 25 years, about 9% comes back over time. To the extent that you have an initial build-out, based on a \$70 million bond, and the bond amount would vary, because the tax rates will vary between the cities and the unincorporated areas of the County. If the bond debt is originally \$7 million, as MetroNet grows and adds new fiber, it will not ask for new financing. To the extent that the company continually updates technology, that will generate more TIF for it, paying down the bond faster. Mr. Higgins estimated that the company might pay off a 20-year term bond in 15 years. He said it was not possible for him to know the rate of return, but they are trying to capture 80% over 20 to 25 years.

Clerk-Treasurer Rhodes asked how the fact that West Lafayette has the highest tax rate in the County figure in. West Lafayette will generate more tax per foot than any other entity. Mr. Higgins said you would look at the investment per area, how much fiber or taxable personal property would be installed in West Lafayette, versus how much taxable personal property is installed in the other areas, and then work off a cash-flow model, what that generates each year in taxes, to derive what that will amortize for debt service. You work backwards, when the

rollout is complete, how much cash will be generated. Clerk-Treasurer Rhodes stated that West Lafayette would generate more per foot than anyone else in the County would, because West Lafayette has the highest tax rate. Mr. Higgins said that Lafayette might have a higher investment than West Lafayette. Mr. Biggerstaff said they probably would, because it is based on miles of fiber. Clerk-Treasurer Rhodes said there might be more miles in Lafayette than in West Lafayette, but she asked the per-foot generated revenue. Mr. Higgins said that the per-foot income would be higher in West Lafayette.

City Attorney Burns asked when the build-out would begin. Mr. Biggerstaff said that, if there were an indication that this would be a "go," there would be a \$500,000 field engineering effort, which would start in the fall. That would take about a month, and then the business model would be finalized. Construction would begin in 2012.

City Attorney Burns asked what MetroNet's estimate of the time for coverage in West Lafayette is. Mr. Biggerstaff said 100% should be covered within the first year or year and a half.

Councilor Bunder asked City Attorney Burns what the nature of the City's relationship with Comcast is, what the City owes that company or *vice versa*. City Attorney Burns responded that the law changed, and there is no longer a monopoly. That is why there is some activity now. The City does not have a relationship with Comcast. Clerk-Treasurer Rhodes reported that the City receives about \$169,000 per year in franchise fees from Comcast. Ms. Rhodes asked what kind of revenue sharing options MetroNet would offer. Mr. Biggerstaff responded that the State handles franchise agreements, and MetroNet has applied for State franchise agreements for this area, as well as several others throughout the State. The State fixes the maximum rate at the FCC rate of 5% of the gross revenues of the basic cable. He stated that the franchise fees would not go down at all, unless MetroNet's prices are that much cheaper than Comcast's. Mr. Biggerstaff said that MetroNet takes business from the satellite companies, which pay no franchise fees, so it is possible that the revenue to West Lafayette should not decrease. Councilor VanBogaert stated that Comcast's participation for broadband service is less than 70%.

Councilor Hunt asked if there would be the capability of transmitting Council meetings, as Insight used to do. Mr. Biggerstaff said that there could be live Council meeting broadcasts, as is done in Connersville, Greencastle, Vincennes, and Madison. MetroNet would work with the City, as the feed would be provided via fiber into the building, but the company does not do the actual filming. Mayor Dennis asked if MetroNet would provide a station. Mr. Biggerstaff said that they would.

Councilor Hunt asked for clarification that residential boxes carried a lower number of gigabytes, but now they carry more. Mr. Biggerstaff said that the boxes are the same; they just crank up the amount of service they provide. Councilor Hunt asked, if the service increases, would there automatically be an increase of rates. Mr. Biggerstaff responded that Greencastle has increased the gigabytes, but that there was no rate increase. There is a rate of \$2 additional for 50 megs.

Councilor Thomas asked what criteria were used to select the first twelve cities. Mr. Biggerstaff said that they looked for a population of under 20,000 to be eligible for the Rural Building Services Loan from the USDA Rural Broadband Program. Duke made a significant investment in Cinergy, the parent of MetroNet, and part of the agreement was to go to Cinergy towns. Mr. Starkey said they would provide names of other communities where MetroNet has built.

Mayor Dennis asked if the presenters had business cards. None of them did, but they offered to send them.

Councilor Bunder said that homeowners might ask several service providers for bids, and asked how this might work for a city. Would bids be sought or companies asked for proposals? City Attorney Burns said that the Telecommunications Oversight Committee (TOC) has been meeting regularly for 12 or 15 years with representatives from West Lafayette and Lafayette, and have considered many different options. City Engineer Buck said that it seemed like picking a telephone long-distance service provider.

COMMUNICATIONS

► Councilor Hunt provided sheets that show recycling symbols that can be used to create stencils for recycling containers, so that the Sanitation Department employees know which containers are recycling and which are trash. These were from Street Commissioner Downey.

► Mayor Dennis said that Wastewater Utility Director Henderson has been involved in a program to develop a campaign to encourage citizens to clean up after their animals. Mr. Henderson said that signs would be distributed at the Farmers Market. The Tippecanoe County Partnership for Water Quality owns the artwork. This is a part of the public outreach and education for stormwater improvement. Councilor Bunder asked what the fine was for people who do not pick up their animal's waste. Clerk-Treasurer Rhodes answered that the fine is \$25.00.

► City Engineer Buck introduced Michael Susong, the new Assistant City Engineer.

CITIZEN COMMENTS

► Jan Myers (1909 Indian Trail) said that the grass on the site of the former Burtfield School is used as for dog walking. She asked if there could be a dispenser and a waste bin at that site. Mayor Dennis said those have been used before and it was expensive, but the price of bags has gone down and they will look again at this.

ADJOURNMENT

There being no further business at this time, Councilor Burch moved for adjournment, and Mayor Dennis adjourned the meeting, the time being 5:16 p.m.