

City of West Lafayette, Indiana
Board of Public Works and Safety
MINUTES

February 19, 2013
8:30 a.m.
City Hall Council Chambers

Members present were Sana G. Booker, Jonathan C. Speaker, and Elizabeth M. Stull. Bradley W. Marley presided in the absence of Mayor Dennis, who arrived at 9:15 a.m.

1. APPROVAL OF MINUTES

a. February 12, 2013, Meeting

Mr. Speaker moved to accept the minutes of the February 12, 2013, Board of Works meeting. Ms. Stull seconded the motion.

The motion was adopted.

2. NEW BUSINESS

a. Public Hearing: Sale of Surplus Real Estate – 2020 N. Salisbury Street – Parcel No. 164-05400-1342 – Mayor

City Attorney Associate Zach Williams requested confirmation from Clerk-Treasurer Rhodes that a sealed bid was received after the last Board of Works meeting.

Clerk-Treasurer Rhodes confirmed that a bid was received on February 12, 2013, at 11:39 a.m.

City Attorney Associate Williams advised the Board that the bid was received untimely, should not be opened, and should not be considered since it was received after the bidder had declined to bid twice at the previous meeting. The Board closed the bidding and took the highest and best bid under advisement. He repeated that he advises the Board not to open the sealed bid at this time.

Mr. Speaker moved to open a public hearing. Ms. Stull seconded the motion

The motion was adopted.

Mr. Marley opened the public hearing.

Vijay Bhatia (2016 N. Salisbury Street) stated, "Good morning, Madam Clerk-Treasurer, Mr. Mayor *pro tem*, members of the Board of the Works, and fellow citizens of the City of West Lafayette. My name is Vijay Bhatia, I reside at 2016 N. Salisbury Street on the side of the subject property of 2020 N. Salisbury, the proposed Metro FiberNet hut will abut. I have seen the footprint and plans for the hut, and believe me, it is like no hut that I've seen before. I've got here a statement I would like to add to the meeting, for all of the members of the Board of Works. It's quite long, I don't believe that you will give me enough time to read the whole thing. My main— I'm the number two bidder on this thing, and I find a lot of inconsistencies and things that have been overlooked, especially

by the City Attorney. Rules are made to be followed. And I assume that the people from the Metro FiberNet are educated enough to read, to be able to read what is put in the newspaper or what is required to meet the bid. I picked up on a lot of issues in this thing I want to turn in. But, basically, they have not met with the requirements that are printed in the paper for every bidder to meet. To mention just a couple of them, one, it requires a telephone number. They did not put their telephone number. They did not put their address. In the accompanying document, there was an address which was in Kansas City, and the company is saying they are from a Nevada corporation. Mr. Biggerstaff, who is representing the company, who turned in the bid, he has represented himself as a president of FiberNet in one place, in this one he says he is a contractor. Accompanying his bid there is no power of attorney or no authorization or him saying being an officer of the company, or even authorized to bid on their behalf. And the company has used many, many aliases in different representations. Opportunistically, they have called themselves an Indiana corporation, being from Evansville, Indiana. At the Area Plan Commissioners, Mr. Biggerstaff said he was a president of the company. So, who are we dealing with? And if they cannot even come out straight and tell us who they are, and who they represent. And Mr. Biggerstaff, who nobody seems to know, is an outside contractor, without a power of attorney or authorization to represent the company. He's got no *loco standi* or no standing as far as— His bid should not be entertained. The other problem I have is with the way the City Attorney has handled this. Every time something was pointed out to him, he said, 'No problem.' We are very fortunate to have a Mr. No Problem as an attorney for the City of West Lafayette. We should rejoice. At this point, I would just read my conclusion that is in the paper that you got for the benefit of everybody present over here. I have this to say to the Board of Works of the City of West Lafayette and the Council at a later date. You have been vested with a sacred trust to look to the interest of any and all citizens. Fiber optics, of course, is a welcome technology for the cities of Lafayette and West Lafayette. But, in Lafayette, Metro FiberNet is going to perform the same consolidation of the cable function out of the commercial or industrial space that they are going to rent for their office. Why can they do not the same in West Lafayette as well? Do we really need to go overboard and facilitate this otherwise profit-making enterprise to build their unseemly hut or shack on a choice spot in the most thorough-fare location of North Salisbury in the middle of an otherwise residential neighborhood, against the wishes of their most immediate neighbor who has lived there, and raised his family there, for the last 40 years? The whole request for bids, the advisements in the *Journal and Courier*, and the expense thereof, and the bidding process itself was handled autocratically and unilaterally hijacked by the City Attorney. It was a sham and a façade to cursorily comply with the tenants of Indiana Code 36-1-11-4. It became obvious the winner had already been picked in the back offices behind closed doors already, when I was told by the City Attorney that no matter what you bid, we may still choose to hand over the property to MetroNet at our discretion of being the best bid. Is this fair? Is this just? They say an honest administration should not even give the semblance of any impropriety, and this stinks to high-heaven. Do some introspection, members of the Board. Would you like something similar to come up next door to your residence? If the answer is not in the affirmative, then how can you foist this on the chest of some other citizen? Understand that I have bid \$20,500 for a property that cannot be built upon or reasonably sold to another, just to not have them sitting next door to me and affect my property value as well, which is a given. At the end of the day, under section, Indiana 36-1-11-4, you have the power and the option to reject any and all bids, notwithstanding what the City Attorney recommended to you under his advisement. If you are not a rubber-stamp Board, and have a conscience, you will reject this bid to get something

unseemly and absolutely out of place erected in the middle of our City of West Lafayette. With ever-changing technology, once you give away the property rights over on this lot, and we have no way of projecting what this may morph into at a future date. The best use of this property is to leave it alone, let it be as it is: a welcome eye-soothing patch of green in the middle of all the cement and concrete that surrounds it. Or give it to me for a dollar to build a play area for my grandkids. That would be a welcome and well-deserved gift from the City of West Lafayette for being a next-door neighbor of 40 years, wouldn't you say? I'll tell you, I am an immigrant. I came here at the age of 21 to go to graduate school. I came to West Lafayette at the age of 28, newly married, bought this little house, it was my first house. I remember distinctly, July 3, 1972, 40 years ago. I raised three wonderful children in this house. So, yes, there is a lot of sweet memories, and an emotional attachment to this house. I still live over there, and I want to continue living over there, but not with this so-called hut or shack next door to me, with their trucks going in and out. And tomorrow they might build a tower over there. Or they might bring 4,000 volts in there with the changing technology. From the day that I moved into that house, I have approached the City of West Lafayette many, many times to buy this lot, and I was categorically told that this property was bequeathed to the City of West Lafayette with the caveat that it could not be sold. Now, Metro FiberNet is coming to town, and lo and behold, all of the hurdles have disappeared. I have yet to understand that. I particularly fail to understand that you, or the City Attorney— In one week, I got \$7,000 more for the City of West Lafayette. Metro FiberNet was bidding \$20,000-some, now they're bidding \$27,000. If you had given me the 60 days that are allowed by the statute of Indiana Code, at \$7,000 a week, I would have gotten you a lot more money. And a lot more tax base for Tippecanoe County. When he jumped in and took us into corner, and cornered me and said you bid right now or forever keep your peace. That was very autocratic. And to take an individual like me, and put me with the mega corporation, and to force me to bid on the spot, was not only unjust, it was just totally unfair. The rest of what I have picked on is in the report that I have given you. I hope that you will read it before you make your decision, and give it your kind consideration, and do what you think is right. Thank you for your attention." (Mr. Bhatia's report is attached.)

Mr. Marley thanked Mr. Bhatia, and asked for other comments.

Thomas Kesler (479 Maple Street) stated, "I've seen this issue a couple of times in the local paper and was unable to get a sense for what this hut would look like. I kept seeing the word hut in quotes, and that kind of raised a red flag for me. So, this morning when I drove up here, I came up with a Yahoo map to locate where the property is, and someone was kind enough to give me an illustration of the property, the intended use of the property. I'm here to ask if this is the best use of the lot. If you can't build a house on it, would a pocket park be better? And could the intended use of this lot, go instead of—go not in this lot, but maybe in the current commercial property that exists, rather than putting it in a place that is surrounded by residential properties? So, I ask you to consider that idea, for that lot. I mean, it seems big enough for a house, but I'm hearing that you can't build on it. But, maybe a pocket park would be better, and the commercial activities be put into current retail space. Thank you."

Mr. Marley thanked Mr. Kesler, and asked for other comments.

Jan Myers (1909 Indian Trail Drive) stated, "Good morning. I'm Jan Myers. I live at 1909 Indian Trail Drive. That is the street that immediately abuts the east end of this lot.

Some of you may have received email from me, or seen the letter to the editor that is in today's *J & C*. I have a couple questions regarding this. How can West Lafayette, with all our vacant retail space, settle for a hut on green space, when it's in the middle of a residential area, and it's currently zoned R1, when West Lafayette has already been told the same equipment will be put inside a retail space? How can this be so? I have not seen, what was the third party independent appraisal value for this property? When I sell a house, I always make sure I have a third party independent appraisal. And how could this be sold if none is available, or what is that value? How can West Lafayette, which has been urging and supporting public parks, and has created several public parks, call this surplus real estate? I know nothing about the background that our first speaker referred to as to how the City came about to own this property, or if there was a conveyance on that deed, but all of that to me is open to question. This is surplus green space? I've never heard that before. I always think of green space as being in short supply. How can West Lafayette urge and support a Tree Fund, and have a property where we have no ash trees, and four very mature trees, that even in their best, if they're being driven on by construction equipment, driveways and such, will suffer. And I do know a little bit about that. I've planted, personally, over 14,000 trees in this township to reforest some of our property elsewhere. West Lafayette has urged and supported neighborhood planning, and the respect of neighborhoods, the idea that neighbors are to be involved in public meetings if a commercial property is moving in. In the many years that I've come before City Council, I repeatedly hear that. I got a newsletter from Wabash Shores, of which I'm— and this party is part of, just over the weekend. Not even a mention that this property was up for a different use. The neighbors have not been informed at all. And I ask, how can that be for a City that likes neighborhood planning? Spends a lot of time— And I see Ron [Wilkins, *Journal & Courier*] cover a lot of what's trying to be planned for New Chauncey. How can a City that has a Go Green Commission be giving up the opportunity for a park and some green space that is also very near a couple schools? Here in City Hall, with Council meetings, heard lengthy discussion and we've had a raise, or a pending implementation of a stormwater fee. And we're talking about reducing stormwater run-off. All this green space is nicely absorbing stormwater. We're going to put in driveways and buildings, so we're going to increase stormwater run-off. How can it be that we want to talk about—As a City, here in West Lafayette, we've been urging and supporting the idea of having gateway streets. Salisbury is one of our, some people say, one of three gateway streets. In the middle of a residential neighborhood in 2013, we're going to put a commercial property, which has been sometimes called a hut, sometimes called a shed. And at no point will enhance the neighborhood. How can that be here in West Lafayette? With no public meetings. And as best I can figure out, this public hearing only came about because the neighbor to the south, and our first speaker here this morning, brought in a second bid, or those of us in the neighborhood would have known nothing about it. It's not been mentioned at a City Council meeting, other than giving out the address. I've looked back through my notes very carefully. It has never been called surplus City-owned real estate that the City was planning to sell. How can this be? How much information do we really know about MetroNet? Well, some of you know, one of my former careers was as a commercial banker, when there used to be a real commercial banker, excuse me, on that little slide here this morning. So, I did some digging of my own. And, assuming my research is correct, MetroNet is a wholly-owned subsidiary of QCOM, which is a wholly-owned subsidiary of Windstream, which is traded on the NASDAQ. When I did commercial lending, it was to Wall Street traded firms of the big board, and not NASDAQ, so I'm not up to date on what needs to be in the filing of NASDAQ, but I did find it interesting that there is no address for Windstream in their website. But I did find,

in the MetroNet site, and I will quote to you as I read this, 'We are proud to have a local retail store in every city that we serve.' As best I've heard, they might have a retail store somewhere in Lafayette, which is where they're going to put the Lafayette equipment, but those of us in West Lafayette are not entitled to a retail store or a location to put these relays and servers and so forth. I can go through lots of things here about them, but what seems very strange is that I had to go all the way to the IRS filings. It's interesting when you dig, to find out that Windstream is headquartered in Overland Park, a suburb of Kansas City, which may be where our first speaker came up with something about Kansas. The question I leave you with right now, and I've asked you several how's to respond to, how can the City be calling this surplus property, selling what has the potential as a park, and at the same time give assurance to all West Lafayette residents, and especially those of us in Wabash Shores, that this will not be another Champs Center. And those of you who went through many of those meetings, and were so assured that they had everything in place to build Champs Center, which is now where is Faith West is currently constructing, please think very carefully. And I suggest that this is not surplus property, unless we have a park district that can't think of how to make that into a park at all. I can attend the next Park Board meeting and share those ideas. This isn't for the Board of Works. Please think very carefully before you sell a green spot in the middle of a neighborhood. Thank you."

Mr. Marley thanked Ms. Myers, and asked for other comments.

Steve Biggerstaff (435 Virginia Avenue, Indianapolis) stated, "Hi, my name is Steve Biggerstaff, I'm with MetroNet. Good morning Board members, and Clerk-Treasurer, and the City Attorney, and representing the Mayor, and Mr. Bhatia, and Ms. Myers, and Thomas. It's very good to be here today."

Mr. Marley stated, "One moment. Can you please give us your title and would you spell your name for the record?"

Mr. Biggerstaff stated, "I would be glad to. Last name is Biggerstaff. My address is 435 Virginia Avenue, Indianapolis, Indiana. My position is a consultant and independent contractor for MetroNet. I'm one of the original founders of MetroNet, and I was the first president of MetroNet, and then moved to a position of consultant, and then I was on the Board, Director. So, with regards to my position, a couple of points of clarification. First, from a corporate structure, MetroNet is a wholly-owned subsidiary of a company called QCOM, and there's been some restructuring under QCOM since December of 2012. QCOM is privately owned by a group of investors. The founder of QCOM is located in Overland Park, Kansas, and we have a few people from the corporate level that reside in Kansas City—the general counsel, the chief financial officer, some accounting people. Our operation center is in Evansville, Indiana. And our first and only city that we've ever served under MetroNet is in Indiana. We currently have facilities and serve 'fiber to the prem' projects very, very similar to this in cities such as Greencastle, Seymour, Vincennes—I'm going in the sequence of which we built them—North Vernon, Madison, Wabash, North Manchester, Huntington, Connersville, and New Castle. We completed Lebanon. We are currently building out Franklin, the City of Franklin, the towns of Whiteland, and towns of New Whiteland. And we're looking at a number of other cities. We have no operation outside of the State of Indiana. We have focused on Indiana, as we feel that bringing fiber to the prem—premise, let me be a little more, not throw around just words like that—by providing to the premise for Indiana communities, that we feel that this infrastructure can help be a significant economic development tool for our

communities, and be able to not only provide jobs in the commercial sense, but to bring entrepreneurship, and to bring to our homes, a facility that most businesses can't get around the world. It brings a world-class infrastructure, literally, to all of our homes. And this is what we've been trying to do, has been our focus. We've talked about other communities, we've talked about outside the State of Indiana, but we've committed, and our investors have made a commitment to the State of Indiana. And we've enjoyed the opportunity to work with the cities of West Lafayette, Lafayette, and Tippecanoe County. And we come into a community with this infrastructure. We come into the community not as a big corporation trying to bully out way around. We come in as a very small company, privately held, and I will get into the Windstream in just a moment. And to work with communities, when we put facilities in a community, we go to the community, and we try to find what would be the best locations. And then not only just find the good locations, but to find out how we do it so it's compatible with our neighbors, compatible with the community. And that's the way that we really like to come into a community. Before I get into that, I want to address the Windstream. A couple years ago, it was actually December, that would have been 2010, Windstream bought a sister company. With that, it bought QCOM. Later then, QCOM, the founder of QCOM, negotiated to pull that out from Windstream. Windstream is a publically traded company. It's a telecommunications company, and it's located in Little Rock, Arkansas. We have absolutely no affiliation with it. It bought two sister companies, it bought the parent company—worked its name back. So, the only company we have is MetroNet. And that's a DBA, or what we call a branding name. The actual name of the company is Metro FiberNet, LLC. And because of corporate laws being what they are, for incorporation, it is incorporated in Nevada. It has no operations in Nevada. We have a few people in Kansas City, Missouri, which are the parent company and investors. But, our operations are here, in the State of Indiana. Not knowing the number exactly, we probably have about 400 employees, and adding each time we would come into a community. We would be adding probably pretty close to 50 local jobs here in Lafayette/West Lafayette. But, really to me, that's an important factor in a community, but a more important factor is the infrastructure we're able to bring to the community. Now, I want to turn a little bit to the Salisbury location, and maybe try to address what I think are some misunderstandings in terms of the facility there. As I do, I'm going to start with Lafayette. We are planning a retail operation in Lafayette, on Earl Avenue. And we purchased a building just north of South Street, and it's what was the old Bee Window building, which is on the west side of the road. It's a fairly good-size lot. There's a garage in the back. And that retail store will house basically our people, and equipment, and material that we will use in Lafayette and West Lafayette. That building will not house the optronics by that. When we bring fiber into a community, it's—Fiber is light. But you also have equipment that you have to use that has electronics. So, we refer to it as optronics. All of the optronics will be in a separate stand-alone building. And that will be, at least today's plan, and plans have been changing, the majority of our facilities coming into the greater Lafayette area will come into there. We also look at a lot of things when we look at an area like this. It's not just Lafayette. But we've got to be able to be sure that we adequately serve West Lafayette with redundancy. I'm very much aware of what happened with some of the phone issues in this community not long ago. I'm sure there were a lot of folks that wish we had a little bit better redundancy in the community. What we will do is run alternate fiber loops from the Earl Avenue site, not from the retail store, the commercial facility, but from an equipment facilities building, comparable to the one that we're planning for West Lafayette. We will run two roots of fiber into West Lafayette, complete root diversity. They will come into the equipment facility from two different directions. From there, we will then build out. We will build a

ring of fiber, and that will be on a ring. So, there's redundancy within the ring. We will build redundancy into cabinets in neighborhoods, which we call LCPs, or Light Control Points. I'm not sure exactly what the name is. So, mostly the infrastructure that will have in West Lafayette is really glass, it's fiber. We will follow the power lines, so we will be very, very inconspicuous. Now, in order to provide the redundancy that we need for the City of West Lafayette, we have to have a facility, not a commercial facility, but a utility facility, where we bring these two different fibers into. Then what we will do is build hundreds, actually it's thousands, of fiber that will from there, mostly underground, to a handhole. Then it will jump up onto the Duke poles. We're working with Duke now to determine what it's going to take to attach to their poles. It's a relatively small fiber. You will see no, if you will, lines coming into this site. With regards to the voltage and the concern for this huge commercial facility, we will bring basically the same power into our equipment facilities building, the same as every house around us. It's 120/240, 200 amp. So, it's low-voltage stuff. It's served off of secondary. There's no transmission. There's no distribution. It's no different than the service that would provide— It's exactly the service that Mr. Bhatia has. It's identical to what comes into his house, and served in the same manner. Then we will bring the fiber out. The building is— I've referred to it as a hut, and I'm the one who will take the hit for that. It's— And I have to be careful with this, the sort of slang that I've used. And just in referring to it, maybe it's more of an industry thing that we talk about as a hut. But, really what it is, it's a utility equipment facilities building. It is not manned. There will be no one there. There's no running water. There is no sewer. It's a facility that we like to blend in to wherever we put it, whether it be commercial or whether it be residential. There will be no outside storage. And I don't know, Tom [Decker], if you have a list of those, we could distribute the site layout. Oh, you already have, I'm sorry. So, with that then, this facilities building will be 12' by 28'. And I've looked at some of the outbuildings throughout the neighborhood, and there are some outbuildings that get pretty close to that size. If you think of it, maybe in the terms of a park, to me it would be like a restroom in a small park. If you calculate it, which I just did a few moments ago, the square footage is like 338 square feet. It's not a livable space. We don't have anybody stationed there around the clock. There'd be no outdoor storage. Like the reels for fiber and fiber duct, they won't be stored on that site. We will keep no trucks overnight on the site. Trucks will visit the site, but only infrequently after we complete construction. Construction is pretty quick, takes a couple weeks. It's all modular. It comes in and we set it in. The other thing we did, when we first laid this out, and you can see it on your drawing, at the bottom, near the south property line, where I X'd out stuff. We had the driveway going on the south side of the lot, and it would have taken that one tree out. In looking at how we can be a good neighbor, what we did was readjust that drive. We can put that drive on that site without removing the first tree. And that's our proposal. We will remove no trees. Matter of fact, what I would propose we go a step further, and we add an equal number of trees to the site that's already there. So, we take the number of trees from four to eight. I'd be more than happy to sit down, as we've done in other communities, with the City. I'd be very willing to sit down with our neighbors and look at what else we might be able to do within reason. I mean we can't— Cost is important to us, those type of things are very important, but we also want to be a good neighbor. As we come in, we want to be a good neighbor. For everything we do in a community, we want to be a good neighbor there on that site. If it's something that we think would improve, I'm not sure what, but if it's something like we think would improve it, let's look at some shrubbery around that parking lot on the south side and on the west side. Let's take a look at something that— Because when we start laying this thing out, my thought was theme of a park. How do we make this look like a park? And as green as it is, we're using a very,

very small percentage of that site for the building and for a parking lot. And we have to have a parking lot by code. I mean, I'd rather not have a parking lot. But, I think we're required to have a parking lot. And it would be a minimal. I will commit to be the minimal parking lot that we have to have in order to put a facility like this. If you look at the northern portion of the site, you see a 15-foot line that goes to a storm sewer. We will commit that to the City, as part of an easement for the stormwater, and also for the sanitary sewer. So, the whole northern portion of that site will never be used for anything other than what the City wants to use it for, for utilities. We will maintain it, we will keep it green. We will also talk to the City, should there be a desire on their part, and the part of the neighbors, that if they would like to use this as a pocket park, that assuming we were able to work out the liability issues, if someone wants to put some park benches and picnic tables and give it a park theme, and we can work out the issues with the City, we'd be glad to do that. We want it to fit. We want it to look like it's part of the community. This is not really too different than anything we do when we come into a community. We've worked with every single community. We're into what, 14 towns now, cities. We work with every one of those cities, and we're able to make things, make adjustments, acknowledge certain things that we can. This building is unattended. People will be there only on occasion for maintenance purposes. There will be an emergency generator there in case of a power failure. Duke has pretty good facilities there, not likely to have a power failure. We will cycle that generator once a month for a few minutes to make sure it's working in case there would be a need, so that we have the redundancy to really to serve West Lafayette. One of the reasons we were looking at the site, is that to provide the redundancy that we want to provide, and to be able to serve the total community, looking at something sort of central is important. We will serve commercial, and businesses, and institutions, but we also have to serve every residence, and every home. And it's no different than other utilities looking at where they put their equipment facilities building in order to serve neighborhoods. We'll be serving those neighborhoods. And looking at central locations for that unmanned locations, where we work really closely with the community and the neighbors, to try to make it a good fit. But yet, we will have, I think in our terms, an obligation to serve, which makes it a little bit different. There will be no commercial operation out of there. There won't be sales people, there won't be any office. You won't be able to come get information about it. We just want to sort of quietly tuck ourselves away and look like we're part of a park, or part of the neighborhood, or part of whatever area we're in. So, we're committed to work with you, to work with the City, to make this as compatible as we can, and yet be able to meet our obligation to serve a redundant, high-quality, high-technology facilities to the City of West Lafayette. And I'm also prepared to answer any questions might have."

Mr. Bhatia asked, "Mr. Biggerstaff, may I ask you a question?"

Clerk-Treasurer Rhodes stated, "Could you—"

Mr. Bhatia stated, "I'm sorry, [inaudible] come to the mic to do [inaudible]."

Clerk-Treasurer Rhodes stated, "Well, I'd like to ask a question first. Mr. Biggerstaff, just for the record, to make it clear, is this property going to be taxable and is the assessed valuation of this property going to be included in the Metro FiberNet TIF that's been established?"

Mr. Biggerstaff stated, "It will be taxed, it will be in the TIF. And the improvements to this site is—will be up to \$2 million."

Mr. Marley thanked Mr. Biggerstaff and recognized Mr. Bhatia.

Mr. Bhatia stated, "I did pose this question to Mr. Biggerstaff earlier. A lot of people, including my sister who's in the telecomm industry—and the changing technology in the telecomm industry, can be totally different from what you're bringing in today. And people within the industry know that it's going to change. It could change rapidly; it could change a little bit at a time. And I did pose this question to him earlier in our conversation, and he said, 'I cannot guarantee you what will be there tomorrow, obviously.' But here we come in with, you know, 110/240 service, 200 amps, and tomorrow they might find it a little more convenient to bring in 4,000 amps and put a tower somewhere over there. And once they have the title to the lot, maybe they'll run it by the City of West Lafayette, but you know, we've got \$2 million worth of equipment over here, and this is what we've got to do to compete with competitors in the area. Then what are we going to do? We'll be at their beck and call, and the City already— I hate to use the word, pander, to their needs. And they'll continue to pander to their needs in the future. And we'll have this thing sitting right there, smack in the middle of a residential area, on the main thoroughfare of West Lafayette, looking uglier than hell, and bothering us all over there. Especially me living next door to that place, and reducing the value of my property to probably zero. Which is, again, condemnation without compensation. And this is the time to stop it if you're going to stop it, or forever keep our peace. Thank you."

Mr. Marley thanked Mr. Bhatia and recognized Ms. Myers.

Ms. Myers stated, "I understand. My point is, as I raised earlier, and Mayor [Mayor Dennis, who had arrived at the meeting], you missed several of the points that are important. How did the City decide that this was surplus property? And how did MetroNet links, fiber, Metro-whatever here, I've written down several names, decide that that was absolutely the only spot that they could use in West Lafayette? That's the thing I've not heard answered, because we're now having the supposed new owner tell us, well they will work with the neighbors, when they have never, in all the time, and some of the articles say they've been working for years, they've never even contacted the neighborhood association. How can we believe that now? Only after, and had it not been for the neighbor to the south, and I've never met the gentlemen, never even saw you, I go by your house often enough. But, I asked some real questions of the City, and of you as a Board of Works. How did we get to this situation that it had to be a public hearing before any neighbors were informed of this, of a company who we just heard said it's going to work with our neighbors? How did we have surplus property that could not be a small park is my initial question? Regardless of what we're getting as verbal promises right now, it's been serving that purpose for some time. Please think carefully before you sell it."

Mr. Marley thanked Ms. Myers.

Mayor Dennis asked that his presence be noted for the record, indicating that he was present.

Mr. Marley asked Mayor Dennis if he wanted to speak.

Mayor Dennis asked for clarification of where the Board is in the process.

Mr. Marley explained that the Board has listened to comments during the public hearing.

Mayor Dennis asked if the public hearing closed.

Mr. Marley responded that it is not closed yet, but they are at that point. He asked for a motion to close the public hearing.

Mayor Dennis motioned to close the public hearing. Mr. Speaker seconded the motion.

The motion was adopted.

Mr. Speaker motioned to continue the bids under advisement to the next Board of Works meeting on February 26, 2013. Mayor Dennis seconded the motion.

The motion was adopted.

b. Sale of Real Estate (Utility Easement) – In a Portion of Northwestern Avenue and Portions of Alleys Between Chauncey Avenue, Northwestern Avenue, and North Street (State Street Corner PD) – Engineering

Public Works Director Buck stated that the State Street Corner Planned Development is at the corner of Northwestern and State. It is right next to Brothers Bar, and between that location and the Northwestern intersection. He stated that while working with the developer, Duke Energy has determined the best way to serve that project with electric is to put their three-phase primary power underground. They would like an easement to do that, and have approached the City to go through the process necessary to get that easement, allowing the company to bury their utilities in the ground. The easement would go from the back of the library parking garage, in the alley where they are currently located on poles, and an underground utility easement to take them across to the west, underneath Northwestern to the corner of Gumball Alley. Public Works Director Buck stated that they have an easement from that property owner to locate some underground transformers. Their primary poles would then be taken out, so it would clean up the alley. It will be a safer situation, and a better long-term situation as this development goes forward. Public Works Director Buck requested approval of the advertisements necessary to begin that process. He stated that he understands from the City Attorney that it is very similar to one in the previous item.

Ms. Stull moved that the Real Estate (Utility Easement) advertisements be approved. Ms. Booker seconded the motion.

Clerk-Treasurer Rhodes stated that the advertisements would be February 22, and March 1, 2013, with the receiving of bid responses on March 19, 2013. The public hearing is also on March 19.

The motion was adopted.

c. Agreement: Susan Nelson – Communications Services - Development

Mayor Dennis moved to postpone consideration of the Susan Nelson agreement. Mr. Speaker seconded the motion.

The motion was adopted.

d. Request for Proposal: Animal Shelter Services - Police

Mr. Speaker moved to postpone consideration of the Request for Proposal: Animal Shelter Services. Mayor Dennis seconded the motion.

The motion was adopted.

e. Standard Operating Guidelines - Fire

Fire Chief Health requested approval for the West Lafayette Fire Department Standard Operating Guidelines document, stating that it has been approved by Legal and Human Resources. He explained that work has done on it for the last year, making sure that it fits our Department. He stated that it defines how we operate, how we respond on runs, and how we step off the truck and provide services to our community. It is also our personnel manual. It is an ever-changing document, with amendments in the near future and years to come, so this is a start.

Ms. Booker moved that the Standard Operating Guidelines for the Fire Department be approved. Ms. Stull seconded the motion.

The motion was adopted.

f. Agreement: Cardinal Copier Solutions – Maintenance with Supplies – Clerk-Treasurer

Clerk-Treasurer Rhodes requested approval for an agreement to put all of the City RICOH copiers under a maintenance agreement with Cardinal Copier Solutions. She stated that this would provide more local response of service. The rates are 0.06 cents higher on the WWTU copier. However, they are 0.02 cents lower on the City copier. With the large volume run on that copier, this will result in cost savings to the city. The agreement would benefit us in terms of cost as well as service.

Mr. Speaker moved that the agreement with Cardinal Copier Solutions be approved. Ms. Booker seconded the motion.

The motion was adopted.

g. Cancellation of the March 12, 2013 Meeting – Clerk-Treasurer

Mr. Marley noted the cancellation of the March 12, 2013 Board of Works meeting.

Mayor Dennis moved that the cancellation of the March 12, 2013 meeting be approved. Mr. Speaker seconded the motion.

The motion was adopted.

h. Claims

i. AP Docket \$295,132.91

A question raised about an individual claim by the Board was answered by Police Chief Dombkowski.

Mayor Dennis moved that the claims be approved. Ms. Stull seconded the motion.

The motion was adopted.

i. Informational Items

i. Project Payment List – WWTU

There were no questions or comments about the listing.

ii. Legal Budget & Expenses – Clerk-Treasurer

There were no questions or comments about the listing.

j. Other Items

There was no discussion.

3. ADJOURNMENT

There being no further business to come before the Board, Mayor Dennis moved that the meeting be adjourned, and Mayor Dennis adjourned the meeting.

Report from Vijay Bhatia

Tuesday, February 19, 2013

Mr Mayor, Madame Clerk-Treasurer, Members of The Board of Works, and fellow citizens of The City of West Lafayette: I consider it a proud privilege to be able to address this distinguished gathering here today.

My name is Vijay Bhatia, I reside at 2016 North Salisbury Street, on that side of the subject property, 2020 North Salisbury which the proposed Metro Fibernet "HUT" will abut. I have seen the footprint and plans of this "HUT" and believe me you, it is unlike any hut you or I have ever seen.

We bought this house on July 3, 1972, a young couple buying our first house 40 years ago and have raised three wonderful children here. So yes there are many sweet memories and an emotional attachment to this property. Over these years I have made numerous overtures to The City of West Lafayette to purchase this vacant lot next door but was repeatedly told "This lot was deeded to the city with the caveat that it cannot be sold" and hence was turned down. Now all of a sudden, Lo behold! Metro Fibernet is coming to town and all hurdles have been very conveniently cleared and the lot is up for sale, with them having been picked beforehand as the preferred buyer. I don't know what to think. It is obvious that their presence will be detrimental to my property value, its salability and my comfort level and desirability of living here, due to no fault of my own. Another case of condemnation without compensation.

It seems like in its eagerness to woo Metro Fibernet, The City of West Lafayette is going overboard to facilitate them by offering a choice site to house their cable junctions, on the main thoroughfare of North Salisbury Street, although it would be unsightly and out of character with the rest of the residential neighborhood surrounding it. The City of Lafayette next door has not deemed necessary to offer any such facility, and apparently, Metro Fibernet will be able to accomplish the same function very nicely, thank you, in the very same place where their offices will be located. Why can't the City of West Lafayette take the same stand instead of pandering to Metro Fibernet by literally somehow contriving to gift them a lot over a long term neighbor's objections is beyond my comprehension.

The City of West Lafayette (called The City hereafter) has placed advertisements in The Journal and Courier (called J & C hereafter) with a Request for Bids on the subject property as outlined in IC 36-1-11-4 and stated the requirements there-in to be met by all bids to be qualified. As I have pointed out with my last bid dated 02-12-2013, both of Metronet's bids dated 02-05-2013 and 02-12-2013 did not comply with the stated requirements of including an Address and Telephone number, moreover the bids were made by a Mr. Steve Biggerstaff designating himself "contractor" without A Power of Attorney or any supporting documents recognizing him as an officer of Metro Fibernet authorising him to tender a bid, or enter in to a contract on behalf of Metro fibernet. As such he has no 'loco standi" even to tender a bid on their behalf, and his bid has no validity and subject to not being of any account legally. The same Mr. Biggerstaff, has represented himself to be The President of a "Cinergy Metronet" (minutes of The Board of Commisioner's meeting March 11, 2011) and the company itself uses various aliases and addresses as needed opportunistically (represented itself as Cinergy Metronet, an Indiana corporation based in Evansville Indiana, to The City of Huntington on 08-27-2009 and now Metro Fibernet a Nevada LLC based in Overland Kansas.) leads one to wonder who are we really doing business with? But The W. L. City Attorney has opined all these to be inconsequential. There are many other instances where neither/either the letter or the spirit of

the statutes or normally accepted and expected practices were not adhered to, but when it comes to Metronet, in the opinion of our City Attorney they can do no wrong and his stand is one of all is forgiven even before it happens, leads one tends to ponder: who is this man really working for? And what other deals and promises were made behind closed doors in the dark away from the public view?

IC 36-1-11-5; Besides IC 36 -1-11-4 there is a sister statute IC 36-1-11-5 which pertains to dealing with property owners whose properties about a property to be sold by a governmental authority. It states that "If the assessed value of a property is less than \$15,000, the governmental authority may approach such property owners and negotiate to sell the property to them. Yes it says "May" and not "Must" but the mere fact that it was placed in the statute indicates that the legislators wanted to give the adjoining property owners a say so in the matter and may be a First Right of REFUSAL on such abutting properties. The assessed value of this property is \$ 0.00, and yet we were never approached or even informed about this property being offered for sale to Metro Fibernet.

AN APPRAISAL REplete WITH FLAWS: Way back on October 19, 2012 an appraisal was done on the subject property by a certified Indiana Appraiser Mr. Jim Malady from The Lux Agency at the instance of The City of W. L. wherein the foot-print of the Metro Fibernet "HUT" was provided to him by The City to be superimposed on the lot and it thus became a part and parcel of his appraisal. So the designated buyer had already been picked on 10-19-2012 and this request for bids was nothing but a sham and a facade? Moreover, it seems Mr Malady was aware or made aware of the significance of the \$15,000 value figure, for coincidentally the appraisal came to be just over this figure of \$15,000 i.e. \$16400. Two of the comps used by Mr Malady were from residential properties over 5 miles away on Munsee Drive with no relevance whatsoever to the subject property. He was comparing apples with oranges to meet the bogey of over \$15,000. The third comp of a property on Windsor drive just 200 yards away came to \$14800. The said appraisal is replete with many other inaccuracies and flaws including simple math errors and yet the City Engineer dutifully concurred with it without even a cursory Examination of the analysis by the appraiser. All this leads one to believe that the whole process was skewed to achieve a desired target value over \$15,000 to circumvent even the remotest chance of the provisions in IC 36-1-11-5 for abutting properties being brought up.

CHRONOLOGY: Another noteworthy issue pointing to Metro Fibernet having been already picked as the next owner of this property is the chronology of events and decisions. The Mayor declared the property open to bids on 01-11-2013 but Metro Fibernet had already completed a survey of the said property belonging to the city on 01-09-2013 once again showing intent of The City to have designated them the favored candidate. As pointed out above, The FOOT PRINT of Metro Fibernet's "Hut" was already on THE CITY's APPRAISAL as of 10-19-2012., pointing to the same.

HIGH-HANDED and AD HOC HIGH-JACKING OF THE BIDDING PROCESS:BY THE CITY ATTORNEY: It was rumored that The City was going to give the subject lot to Metro Fibernet for One Dollar and other considerations, whatever they might have been. On the opening day of bids 02-05-2013, instead of bidding a paltry Two Dollars, I chose to bid a respectable \$250, just to get my foot in the door, and Metro Fibernet bid \$20,066. We were both given one week to come up with our next bids to be opened at the next Board of Works on 02-12-2013 and this was the ground-rule laid down. On 02-12-2013, I bid \$20,500 and Metro Fibernet topped that with a bid of \$27,533. thereby guaranteeing that The City would garner an extra \$7,467 over their previous price and The County more taxes on that amount for all times to come. Now according to IC 36-1-11-4 this competing bidding could be continued on a day to day basis

(week to week in our case) for up to 60 days, and even if, at the end, I did not have the winning bid I could at least have gotten Metro Fibernet to pay a higher price to the benefit of The City and The County by my future bids, but it seems The City Attorney was not pleased but perturbed at this prospect and unilaterally and autocratically opted to change the bidding rules in the middle of the game to benefit Metro Fibernet. In essence, being cognizant of my inability to match the resources of a mega corporation as an individual at short notice he actually took us in to a corner during a break on 02-12-2013, and gave me an ultimatum to enter in to an on the spot oral bidding contest versus Metro Fibernet or forever keep my peace. My protests against this change in rules mid-game were brushed aside with a "I have the statutory authority to do this and I will exercise it." Since I refused to play the game by his new rules, at this point, he declared Metro Fibernet's bid to be the winning bid and advised the board to consider it as such, under advisement. I take serious objections to these high-handed and probably illegal tactics adopted by The City Attorney to benefit his favored bidder. Maybe it was a Valentine's Day gift to his favored candidate. In our earlier conversations he had already intimated his intent to me that no matter how high my bid was The City still held the option to turn over the said property to Metro Fibernet under its discretion of picking THE BEST BID even if it is not the HIGHEST BID. Seems like, there was no way I could win with him not only being bent on awarding the said property to his favored Metro Fibernet but also at a cheap price, lest I bid higher than them to the benefit of The City and The County. Once again the recurring thought entering my mind is does he work for The City or Metro Fibernet?

I have raised several pertinent issues over here and although some might tend to dismiss some or most of them as merely technical or minor, in this case the sum of the parts is greater than the whole. Taken together they point to a lack of honest and fair play and partiality towards a favorite, over the other to achieve a pre-determined goal of awarding the said property to Metro Fibernet at all costs. Such actions that may be within the letter of the law but construed to have been taken specifically to circumvent the intent of a statute, are not looked upon very favorably in the halls of justice or even the minds of the public at large. If a sense of fairness and justice does not prevail to undo the wrong that is about to happen in this matter and do the right, and there is going to be a fight, then I have just begun to fight.

IN CONCLUSION: I have this to say to The Board of Works or The West Lafayette City Council at a later date: You have been vested with a sacred trust to look to the interest of any and all citizens. Fiber Optics is of course a welcome technology for the cities of Lafayette and West Lafayette. In Lafayette Metro Fibernet is going to perform the same consolidation of cable net function out of the commercial or industrial space that they are going to build or rent. Why can they not do it the same way in West Lafayette as well? Do we really need to go overboard and facilitate this otherwise profit making enterprise to build their unseemly hut or shack on a choice spot on the most thorough-fare location of North Salisbury Street in the middle of an otherwise residential neighborhood, against the wishes of their most immediate neighbor who has lived there and raised his family there for the last 40 years? The whole request for bids, the advertisements in The Journal and Courier and the expense thereof, and the bidding process itself autocratically and unilaterally hijacked by the city attorney was a sham and a facade to cursorily comply with the tenets of IC 36-1-11-4. It became obvious the winner had already been hand picked in the back offices behind closed doors already, when I was told by the City attorney, that no matter what you bid, we may still choose to hand over the property to Metro net at our discretion of being the BEST bid. Is this fair? Is this just? They say an honest administration should not even give the semblance of any impropriety; and this stinks to high heaven. Do some introspection: would you like something similar to come up next to your residence? If the answer is not in the affirmative then how can you foist this on the chest of some other citizen? Understand that I have bid \$20,500 for a property that cannot be build upon

or reasonably sold to another just to not have them sitting next door to me and effect my property value as well, which is a given. At the end of the day under IC 36-1-11-4 you have the power and the option to reject any and all bids notwithstanding what The City Attorney recommended to you under advisement. If you are not a rubber stamp board and have a conscience, you will reject this bid to get something unseemly and absolutely out of place erected in the middle of our, City of West Lafayette. With ever changing technology, once you give away the property rights over this lot, and we have no way of projecting what this may morph in to, at a future date. The best use for this property is to leave it alone, let it be as it is: A welcome eye-soothing patch of green in the middle of all the cement and concrete that surrounds it. Or give it to me for a dollar to build a play area for my grand kids. That could be a welcome and well deserved gift from The City of West Lafayette for living next door for 40 years, wouldn't you say?

I thank you for your kind attention

Sincerely

Vijay Bhatia