

CITY OF WEST LAFAYETTE
COMMON COUNCIL
PRE-COUNCIL MINUTES
MAY 2, 2013

The Common Council of the City of West Lafayette, Indiana, met in Council Chambers at City Hall on May 2, 2013, at the hour of 4:30 p.m.

Mayor Dennis called the meeting to order and presided.

Present: Bunder, Burch, Dietrich, Hunt, Keen, and VanBogaert (arrived at 4:37 p.m.).

Absent: Thomas

Also present were City Attorney Burns, Clerk-Treasurer Rhodes, Parks Assistant Superintendent Ainsworth, Public Works Director Buck, Police Chief Dombkowski, Street Commissioner Downey, Fire Chief Heath, WWTU Director Henderson, Director of Development Poole, and IT Systems Administrator Wheeler.

Mayor Dennis opened the meeting by making an explanatory comment about the Pre-Council meeting, saying that it serves as an administrative process to review the agenda and to make sure questions from the Council are addressed. He added that we have a very hefty agenda, one of the largest ever seen, and one thing he feels strongly about is that Council meetings are not only well attended, but also efficient. He asked the Council if they would be willing to split the agenda into two separate Council meetings. Copies of the proposed agendas were provided to the Council. Mayor Dennis stated that the first would be as scheduled on May 6, and would include regular Council business and include the trash ordinance, the bicycle ordinance, the public hearing for the library, and the Area Plan Commission (APC) issues. The second agenda would be on May 20, and that would deal specifically with issues involving annexation and additional appropriations. Mayor Dennis asked for a motion to that effect.

Councilor Burch motioned to split the agenda into two meetings as described by Mayor Dennis. The motion was seconded by Councilor Hunt.

City Attorney Burns clarified that the motion is to postpone definitely to the May 20 meeting from the May 6 meeting, and the items to be postponed definitely to the May 20 meeting are Ordinance No. 13-13, Ordinance No. 14-13, Ordinance No. 15-13, and Resolution No. 06-13.

The motion passed by unanimous voice vote.

Mayor Dennis requested that those in attendance hold discussion on topics related to annexation until the May 20, 2013 Council meeting at 6:30 p.m.

Mayor Dennis reviewed the agenda and asked for comments and questions.

UNFINISHED BUSINESS:

Ordinance No. 07-13 An Ordinance Repealing And Replacing Chapter 67 (Refuse, Garbage And Weeds) Of The West Lafayette City Code (Sponsored by Councilor Ann Hunt and Mayor John Dennis)

Mayor Dennis read Ordinance No. 07-13 by title only.

Councilor Hunt stated that she was presenting two amendments. The first is an amendment to Section 67.09 paragraph a., amending the waste container rules. She explained that the original version had the requirement of permanent lids, and some residents have told her that they would have to buy a new trash can. She did not envision all this awful recycling of trash cans, so she has taken out the "firmly attached lid" requirement. It now reads: "Section 67.09. a. Waste Containers. Suitable containers for waste shall be of a galvanized metal, rigid plastic or suitable material that is leak-proof, has tow handles, includes a bale, is watertight, has a capacity of no more than ninety-six (96) gallons, and shall be kept in a sanitary condition. All containers under this chapter must be equipped with tight fitting lids that cover the container. Bags may be approved if they are of significant strength to prevent leakage and to prevent scavenging by animals." Councilor Hunt stated that the second amendment is at the very end of the ordinance. She said that after speaking with Clerk-Treasurer Rhodes this afternoon, a statement is needed that this ordinance will go into effect July 1, 2013. As this ordinance has to be advertised, June is a little early to give people the new bill.

[Councilor VanBogaert arrived at 4:37 p.m.]

City Attorney Burns responded that July 1 date is fine but of course the publication is still required.

Councilor Dietrich stated he would provide language before Monday evening for an amendment he intends to offer. He stated he still feels that it is the wrong thing to do to include the yard waste in the time table.

Mayor Dennis asked whether the Council wishes to take action on the two amendments offered by Councilor Hunt now or save it for the Council meeting.

Councilor Hunt responded that she had no preference but noted that there are some people who would prefer that we do the amendments at the formal meeting, but she wanted to be sure that the Council had a copy before the meeting.

Clerk-Treasurer Rhodes asked if she should prepare a document which would contain all of the amendments proposed by Councilor Hunt and by Councilor Dietrich, if he provides that. She also asked City Attorney Burns if she should include the scrivener's errors list he was preparing.

City Attorney Burns indicated he intends to wait until all the dust has settled to make the final scrivener's error check when we have the final language on the ordinance, and present the scrivener's error list to the Council.

Councilor VanBogaert expressed his preference to handle the amendments on Monday.

Councilor Burch asked for clarification on Section 67.24 paragraph a. Unoccupied Premises. She asked if this would just be a residential unit, and how many households in the City would it be affecting.

Clerk-Treasurer Rhodes said that this section refers to a couple of classes of residences which would be subject to the trash fee. One group includes individuals who reside outside the community for a variety of reasons, for example, on sabbatical, snowbirds, or people whose homes are on the open market but have not sold for many months. The other group is people with homes that are under construction. The total number of unoccupied residences varies, but it is quite small, much less than 30 at any time.

Councilor Hunt said that it allows documentation of a premise being unoccupied by having minimal water services, and that is a nice check on that.

There was no further discussion.

NEW BUSINESS

Ordinance No. 08-13 To Amend Certain Portions Of The Unified Zoning Ordinance Of Tippecanoe County, Indiana, Designating The Time When The Same Shall Take Effect (UZO Amendment #75 Zoning Commitments) (Submitted by the Area Plan Commission)

Mayor Dennis read Ordinance No. 08-13 by title only.

Councilor Keen explained that APC has been working on this for some time. In the past there have been persons who wanted to rezone a particular property, which fits within the rules of the rezone; however, there have been some people who do not like what is being proposed. With a commitment, it would allow a petitioner to add verbiage to the rezone to allow them to do certain things or to limit certain things that they otherwise would be able to do in order to get the rezone to pass.

Mayor Dennis asked if that commitment would go through the Council.

Councilor Keen responded that the commitment would be part of the APC process. If a rezone in our jurisdiction came to the Council, the commitment would be part of that.

Mayor Dennis asked what would happen if somebody wanted to change that commitment down the line.

Councilor Keen stated that it would be like planned development rules, if you wanted to change it you would have to start over.

Mayor Dennis asked if the Council would still have a voice.

Councilor Keen responded yes and he explained that the commitments are all more restrictive than what the ordinance would otherwise allow. If someone wanted to rezone something, they could add a commitment that would make it more restrictive for them to do the rezone, but not less restrictive.

Mayor Dennis asked what would happen if that property changed hands.

Councilor Keen responded that the commitment would go right along with the property.

Mayor Dennis asked for clarification that if they chose to try to alter that commitment, it would go back to APC and then the Council, or just to APC.

Councilor Keen said they would go back to APC and start over again on a whole new rezone.

Mayor Dennis stated that he wanted to make sure that if a commitment goes on something, that it stays. If the commitment goes on something for the duration of that particular ownership, and then the property is transferred to someone who wants to do something different with it, that it stills go through Council for final approval.

Public Works Director Buck stated that he asked that same question. When this was being discussed at the Ordinance Committee at the Administrative Officers' level, we wanted to know if it went through steps A, B and C to become a commitment in a particular rezone case, if they wanted to alter the commitment or even remove the commitment, would it go back through steps C, B & A. It is his understanding that the APC's attorney said that it is State statute that the rezoning with the commitment would come through the normal process. It would have a recommendation from the APC and would go to the legislative body with that recommendation, which would be the City Council. The Council would then decide yes or no to that rezone with whatever commitments were on it. If, in the future, they wanted to amend them, they would go back to the APC and make a petition. The APC would then make the final decision on whether or not to leave, remove, or modify that commitment.

Mayor Dennis asked if it would go to Council once the APC makes that decision.

Public Works Director Buck responded no, it is done. That issue is directly in the State code, and that is why we asked about that issue in the policies and procedures that are created locally to develop that application to modify or remove a commitment. He stated that we requested at least a step in there where they notify the local government, legislative body, or Administrative Officer that they are going to propose a change to the commitment. This would allow us to at least attend the APC meeting and voice opinion on the proposed modification. He stated that his understanding is that is exactly how it is in the statute, and he offered to provide that statute from his notes from the Ordinance Committee

City Attorney Burns asked if Public Works Director Buck knows if Jay Seeger, the APC Attorney, may have issued a letter directly on that.

Public Works Director Buck responded yes, it is in his files.

City Attorney Burns suggested that Public Works Director Buck provide that letter to the Council since he was aware of some back and forth on that, and whether or not State law was some kind of pre-emptive power on that, which would make it exactly as Public Works Director Buck just stated. City Attorney Burns said he understood, too, that that is how it would go, because of State law. He had not seen a letter from Mr. Seeger yet.

Public Works Director Buck stated he would be able to get a letter or it is in the meeting minutes from the discussion of the Ordinance Committee as well as he full APC. It was going to go forward without the notification back to the local legislative body that it would under their jurisdiction

City Attorney Burns stated that obviously, that being the case, the Council would take that into consideration when voting initially on the rezone.

Mayor Dennis asked if this legislative body said no on this ordinance, what does that do.

Public Works Director Buck said he would have to check with Mr. Seeger and the APC on whether that means we would not allow commitments in West Lafayette or if we would always have the option to just say no to a petition. We could have a policy that if you bring a rezoning petition with a commitment, we are not going to accept it because we have no control of what will happen in the future to that commitment. Because there could be a creative and serious commitment, but it is a potentially simple process to modify or remove that commitment. Public Works Director Buck said he would track down the emails and correspondence and get that distributed.

Dan Teder (Reiling Teder & Schrier, LLC) stated that the reason for that commitment is that he and Joe Bumbleburg (Ball Eggleston PC) were adding a lot of things to the commitment and they were coming at the very last moment many times to the APC. He stated that it was not really our design, but it was partially because of the clients. He does think that the commitment is a really important tool to use because a planned development is not needed every time in West Lafayette. There are times when a commitment that says, "This one particular use is all that you ever want here," may be appropriate for that commitment. For example, in the case of one of the fraternities that was in a residential R1 and was grandfathered, that might be an opportunity to use the existing structure, rezone it, but have a commitment that says that it can only be used for that fraternity and for nothing else. Mr. Teder stated that he thinks there may be limited occasions where it would be good as part of the planning process.

Mayor Dennis said he did think it was good, and was okay with the concept, but the only thing that bothers him is that all of sudden there is a commitment there and –

Mr. Teder said he does not disagree with that and will take a look at it again.

Mayor Dennis stated that he just does not want to put us out there, that if we have something that we agree with and it is going to be something we believe will stay that way indefinitely, but all of sudden someone decides to put a strip club there, and then we do not have recourse for that.

Councilor Hunt asked if we have some businesses that want to extend to a lot next door, that this is not this. There is one that is postponed to June on Salisbury. It is a business and it wants to take a lot and make parking lot. She stated that she needs to know if that a part of this not coming through us. Councilor Hunt asked for confirmation that this is not related to this, and that it will come to us. She wants that to come through Council.

Mayor Dennis said it will.

Public Works Director Buck said that that example, while it may be an opposed rezoning case that would have a commitment on it, whether you take this or not, is not deciding yes or no to that in the future. That would stand alone by itself and follow whatever rules are in place at the time for it to be heard before you.

Councilor Hunt asked what about a fraternity house that might want to get the lot next door for a parking lot.

Public Works Director Buck said they would have to potentially rezone that if it is not zoned for that to be used that way currently. He confirmed for Councilor Hunt that it would have to come through Council. If you allow commitments, they may say they are willing to make a

commitment that this will only be a parking lot for our fraternity, which would allow it to not to be anything else that an R3W zone would allow, like an apartment building.

Councilor VanBogaert asked if using that more expansively with the conditions, would there be any potential that beginning to use many conditions would have some sort of negative micro-zoning drawback where properties in a lot of parcels are wound up in conditions, and if that is that something we need to be aware of, in encouraging or discouraging conditions as a zoning tool.

Public Works Director Buck stated it would be his opinion that it would become something that could evolve over time, or even very quickly, to be a complicated spider web of various conditions that are going to be specific to each parcel that has its own zoning. Basically, planned developments are already that way, but it is at least usually a larger development that is a standalone and more obvious. But with commitments, there could be things next to each other that are technically zoned the same zoning class, but they would have individual conditions. There would be another level, another layer, more variances and special exceptions. It would be another thing to get lost.

Councilor VanBogaert stated that he was little worried that we could potentially use conditions, or expansively use planned development, as a way to procrastinate on making the necessary changes to the zones that we have.

Public Works Director Buck stated that he cannot improve upon that and could not agree more.

Mr. Bumbleburg stated that they had just participated a little in this issue. A question that he cannot remember is—if a commitment is passed at the APC, and then it comes to Council, does the Council have the authority to fine tune that commitment if it wishes, or must the petitioner start over and go back? The question is, how do you want that? He stated that the other thing that gets lost in the shuffle is that when commitments are placed on the property, it becomes an enforcement issue for Public Works Director Buck.

Mayor Dennis stated that it is an enforcement issue for the City.

Mr. Bumbleburg responded to Councilor VanBogaert's earlier question by stating that it can get complicated to have too many commitments.

The ensuing discussion between Mr. Teder and Mayor Dennis was unintelligible.

Mr. Teder stated that an example would be to put in a commitment for only market-rate apartments. He can see how the enforcement of that, how it is done and defined, would be extremely difficult from the City's standpoint. Mr. Teder explained the Mr. Seeger addressed that by taking all of those types of things out and narrowing the focus to uses, such as with green space issues. This is a much better approach from the City's standpoint for enforcement. He stated that Public Works Director Buck is again investigating if this is perhaps statutory and cannot come back, so the Council may really want to narrow. He does think there are some very narrow situations, especially in uses where there is an existing building and the Council does not want to put the person through the planned development process and further micromanage it. If there is a narrow focus of a use, it is still somewhat micromanagement, but not as much as on a planned development.

Councilor VanBogaert stated that we will work on that.

Mayor Dennis stated that his biggest concern is that he does not want to have something that changes radically without our legislative body having a say in it.

Councilor Burch asked how this discussion got started on this ordinance.

Mr. Teder explained that lawyers are supposed to find loopholes, and the State just passed commitments a year or so ago. He stated that he and Mr. Bumbleburg spoke and realized that they could do commitments now where use zoning could not be done before. As a result, they proposed it to some of their clients in cases where it could save them money to have commitments instead of planned developments. He stated that it got a bit out of hand when the City started to question enforcement, and that is when the APC stepped in.

There was no further discussion.

Ordinance No. 09-13 To Amend Certain Portions Of The Unified Zoning Ordinance Of Tippecanoe County, Indiana, Designating The Time When The Same Shall Take Effect (UZO Amendment #76 Agricultural Rental Halls) (Submitted by the Area Plan Commission)

Mayor Dennis read Ordinance No. 09-13 by title only.

Councilor Keen explained that this ordinance affects anything that is in agricultural or agricultural wooded zoning. It is to allow wedding reception rental halls in the agricultural setting. At the same time, it does not allow the use of a commercial kitchen in that reception hall. So, catered food can be brought on, but food could not be prepared on site for health code reasons. The hall could be used for other purposes, but the main point is to prevent preparing food on site. In response to an inquiry from Councilor Hunt, Councilor Keen stated that it is his understanding that carry-ins to churches are still allowed.

There was no further discussion.

Ordinance No. 10-13 To Amend Certain Portions Of The Unified Zoning Ordinance Of Tippecanoe County, Indiana, Designating The Time When The Same Shall Take Effect (Morris Rentals, LLC, Morris Rentals PD) (R3W to PDRS) (Submitted by the Area Plan Commission)

Mayor Dennis read Ordinance No. 10-13 by title only.

Mr. Bumbleburg stated that this rezone is for a three-story building with 14 units and 28 bedrooms at 202/208 West Fowler Avenue. It had an excellent staff report from the APC. He stated that the best point he can make is to quote from the staff report, "Showing an architectural sensitivity to the historic context the project finds itself in, the Morris Rentals Planned Development is a significant contribution to establishing the urban form specified by the draft New Chauncey Neighborhood Plan." Mr. Bumbleburg stated that the baseline of this is that the planning crew complied with that plan as closely as possible at the time that it was done.

Councilor Bunder stated that when fighting over the Land Use Plan for the last four years, that it is the resident's Plan and could not possibly be good for anybody else. Now, with this proposal it becomes the Neighborhood Plan. He thinks it is much improved by using the Land Use Plan as a benchmark. He expressed his thanks to Mr. Bumbleburg and his client.

There was no further discussion.

Ordinance No. 11-13 To Rezone Certain Real Estate Within The City Of West Lafayette, Indiana And Designating The Time When The Same Shall Take Effect (Timberstone Development, LLC) (PDRS to R1) (Submitted by the Area Plan Commission)

Mayor Dennis read Ordinance No. 11-13 by title only.

Mr. Teder stated that the reason for this rezone is that it has been abandoned and they can do nothing with that site unless it is rezoned. The number of lots will decrease from the original planned development. He explained that the planned development process does not work for this because it will take too long to ever complete. It will be just like Arbor Chase which has been very successful. It was discussed with the APC that there would be no substantial changes to the streets or the green space.

There was no further discussion.

Ordinance No. 12-13 An Ordinance Establishing A Safe Passing Distance Between Motor Vehicles And Bicycles (Sponsored by Councilor VanBogaert)

Mayor Dennis read Ordinance No. 12-13 by title only.

Councilor VanBogaert stated that was put in contact with a group of people in Lafayette who do bicycle related events and policy through the Community of Choice project. He stated that this is something that is in place in 22 different states, including some cities in Indiana. It is a clarification that since we require bicycles to be on the road and not the sidewalk, to keep pedestrians safe, it sets an expectation and raises awareness about how motorists should interact with bicycles in those situations. We try to promote bicycle usage, but we should set clear rules and making people aware of how to share the road is a good start. He stated that the idea is to introduce the idea this month, then speak with the Traffic Commission on May 21, and then look at it again for a second reading in June.

Councilor Bunder stated that May is Bike Month.

There was no further discussion.

Ordinance No. 16-13 An Ordinance Providing For Temporary Loans (Prepared by the Clerk-Treasurer)

Mayor Dennis read Ordinance No. 16-13 by title only.

Clerk-Treasurer Rhodes stated that these loans are necessary for pension payments for the old public safety funds. It may not all need to be used if we get our State distribution before we make the June pension payment. The loans will be repaid by December 31, 2013.

There was no further discussion.

Resolution No. 05-13 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. 05-13 by title only.

Nick Schenkel (West Lafayette Public Library Director) explained that we do this every year, and they are not asking for any increase. After 90 years, they are busier than ever. This Fund is a significant part of what they do for the parking garage and computer services, and beginning this year includes building maintenance and Americans with Disabilities Act (ADA) modifications.

There was no further discussion.

Resolution No. 07-13 A Resolution To Amend The Comprehensive Plan For Tippecanoe County To Include The New Chauncey Neighborhood Plan As A Land Use Element (Submitted by the Area Plan Commission)

Mayor Dennis read Resolution No. 07-13 by title only. He stated that this has been around his whole political life.

Councilor Bunder stated that he will have appropriate thanks for everyone on Monday night, and here we are finally.

There was no further discussion.

Resolution No. 08-13 A Resolution Authorizing The Filing Of An Application With The U.S. Department Of Housing And Urban Development, For Community Development Block Grant Funds, As Provided In Title I Of The Community Development Act Of 1974, As Amended (Submitted by Department of Development)

Mayor Dennis read Resolution No. 08-13 by title only.

There was no discussion.

Resolution No. 09-13 A Resolution Appropriating Insurance Recovery Received For Damage To City Property (Prepared by the Clerk-Treasurer)

Mayor Dennis read Resolution No. 09-13 by title only. He confirmed with Clerk-Treasurer Rhodes that this is for a police vehicle.

There was no further discussion.

ADJOURNMENT

There being no further business at this time, Councilor Burch moved for adjournment. Mayor Dennis adjourned the meeting, the time being 5:10 p.m.