

**THE COMMON COUNCIL OF THE CIVIL CITY OF NEW ALBANY, INDIANA,
HELD A REGULAR COUNCIL MEETING VIA ZOOM.COM ON MONDAY,
DECEMBER 7, 2020 AT 7:00 P.M.**

MEMBERS PRESENT: Council Members: Mrs. Collier, Mr. Phipps, Mr. McLaughlin, Mr. Turner, Mr. Blair, Mr. Aebersold, Mr. Applegate, Dr. Knable and President Caesar.

ALSO PRESENT: Ms. Stein, Mr. Gibson, Mr. Nash, Mr. Staten and Mrs. Glotzbach.

CALL TO ORDER:

President Caesar called the meeting to order at 7:00 p.m.

MOMENT OF REFLECTION:

Mr. Caesar asked everyone to take a moment to recognize the men and women who served and gave their lives at Pearl Harbor 79 years ago today, December 7, 1941.

PLEDGE OF ALLEGIANCE:

ROLL CALL:

APPROVAL OR CORRECTION OF THE FOLLOWING MINUTES:

Mr. Phipps moved to approve the Regular Meeting Minutes for November 19, 2020, **Mrs. Collier** second, all voted in favor.

COMMUNICATIONS – COUNCIL:

Dr. Knable stated that if Mr. Gibson is present tonight, he wanted to ask whether or not we ever made any advancement on getting the ultra violet sterilization on the HVACs at the new city hall. He said he did not hear anything so he will just give him a call on that. He then stated that he has had the opportunity to speak with seven or eight of our local merchants who are independent business owners primarily along the Charlestown Road and Grant Line Road corridors. He said that they are telling him that business is off in some cases up to 75% and a couple of those owners placed some banners on their buildings trying to get business from the road. He stated that our zoning folks enforced the law on them which he understands is their job to do, but he feels so strongly that we need to be helping these folks at this time because they are in survival mode. He said that he spoke with Ms. Stein about possibly having an ordinance that would supersede our existing ordinance at least through the duration of the pandemic to not enforce that as strongly. He also said that as long as someone has a banner that is limited to the side of their building and they feel that is helping their bottom line, he thinks we should help them. He stated that Ms. Stein came back to him after doing her due diligence and said that it would be difficult because it would have to go back to planning or the board of zoning itself and it would be timely and cumbersome to do that. He said that if people are like minded, they could have a resolution and if they are not like minded, whatever influence we can have individually with the administration and code enforcement to try to back off of that right now for those people in survival mode should be used. He stated that it is his opinion that it is better to have these banners there for the next few months than to have buildings boarded up at the first of the year and beyond and trying to look for tenants.

Mr. Caesar stated that he thinks Dr. Knable is absolutely right on this point and that we need to be helping our merchants in any way we possibly can. He added that we don't want to encourage too many businesses at one time and will want to watch that, but we

do want to make sure that people go in these businesses. He said that he would be in favor of a resolution.

Mr. Blair stated that he knows of one situation on Grant Line Road that banners were prohibited from the approval of the zoning ordinance and about two years ago that same company put the banner up in violation of the code and were asked to remove it. He said that they turned around and put it up again so it wasn't just during the pandemic that they violated the zoning code and thinks it is more a situation out of spite than it is out of necessity.

Mr. Turner stated that a lot of downtown businesses are also struggling and has asked Mr. Gibson about lightening up zoning so businesses can serve people safely potentially outdoors. He said he knows there is a lot of room on some sidewalks but some sidewalks don't have as much space with regards to the current code. He stated that he also asked Mr. Gibson about potential CARES money and maybe setting up an early fund just in the event that these businesses do need some help. He said that DNA has a relief fund going right now that people are pumping money into but DNA doesn't cover the entire city. He added that he doesn't know how the CARES money works and knows there are a ton of stipulations on it so he is waiting on a response from Mr. Gibson.

Mr. Gibson told Dr. Knable that he sent him a text on his question and apologized for running late. He stated that with respect to the banners, he talked to Mr. Wood and they are not just ramming ordinances down people's throats during COVID. He said if it is something specific that can be addressed internally in-house, then reach out to him with a call and he will see what can be done about those types of situations. He also said that Mr. Wood told him that they have not been overly aggressive in enforcing any particular sign or ordinances at this time, but he assured everyone that they will be once we get through all of this.

Dr. Knable told Mr. Gibson that he would call him tomorrow on this and give him specifics. He then stated that to acknowledge Mr. Blair's comments, he is not trying to read spite vs. not spite and would rather err on the side of trying to help someone stay open rather see someone shut down where we may have been able to make a difference for them.

Mr. Caesar suggested putting a committee together on this which would consist of Dr. Knable, Mr. Blair and Mr. Turner. He asked Dr. Knable to get with Mr. Gibson tomorrow and see if it looks like we need an ordinance or if it looks like we can work around it without an ordinance.

Mr. Gibson stated that he wouldn't jump into anything too much because we have ordinances in place and to be honest, it is enforcement at this point. He also stated that Ms. Stein is correct and there is a whole full-blown process in trying to change zoning codes. He said that if Dr. Knable can just give him a quick call tomorrow, they can discuss it and have a response back to the council by the next meeting easily.

Dr. Knable said he will start with that.

Mr. Caesar said that is the route they will take then.

Mr. Applegate stated that he wanted to start out with saying there is a Southern Indiana family that had a tragedy in Panama City and he just wanted to say that everyone's hearts go out to them and they are a great family and well deserving of everyone's sympathies during this time. He then stated that everyone needs to continue to be accountable for themselves regarding COVID and asked that people shop locally as much as possible during the holidays. He said that most, if not all, businesses are doing some sort of drive

up, pickup, order online, delivery, etc. He added that if you look online and a business does not offer any of those options, please call them because he has talked to quite a few businesses where the owners are out dropping off product themselves. He then stated that he has had a lot of people asking him what is going on with the decision that has been made with Dr. Harris and the health department. He explained that the vote was made by the commissioners and he doesn't have any further information, but would love to see more and find out what the next steps are in the process. He added that he knows there is some legal wording that is up in the air and it is just really tough right now because people are looking for guidance with the pandemic and we could be without guidance. He stated that it has bothered a lot of people in the community such as nurses, ER staff, EMS and other folks that are within the organization. He said that he wanted to publicly say that there should be more information out there or what the next steps are because he doesn't have any answers and we are a big part of Floyd County.

Mr. Aebersold stated that three times last week he saw people leaving New Albany on Spring Street and make a U-Turn right before going up the hill to Clarksville which is very dangerous and flat out dumb. He said that to see it three times last week means that it must be happening a lot. He explained that he thinks there is an entrance where if you're coming into New Albany you can turn left onto Beharrell Avenue going towards the flood wall. He stated that people going out of New Albany are stopping there and waiting for traffic to go by and then making a U-Turn to come back into New Albany. He said that this issue needs to go to the police department or board of works.

Mr. Caesar said that it will have to go to the board of works. He added that police are usually up there enforcing speeding. He then asked Mr. Aebersold what time of day this happened.

Mr. Aebersold stated that all three times were in the morning at about 9:30 a.m. or 10:00 a.m.

Mr. Gibson asked Mr. Aebersold to send him an email on that tomorrow and he will get it to the city engineer, the police chief and Mr. Thompson to take a look at it.

Mr. Blair stated that he shares Mr. Applegate's concern with the decision on the health department director and did take it upon himself to have a conversation with the two county commissioners that made the decision not to reappoint Dr. Harris. He said that they published a press release response to the media on their decision and why they did it. He stated that he didn't necessarily agree with them but that is a four-year term and there is more involved than just handling the pandemic. He said obviously the timing is really bad but you have to be concerned about the big picture of all they are responsible for and not just the pandemic. He stated that he is not going to speak for the commissioners but he did have a lengthy conversation with them and got a better understanding of the situation. He then stated that he had questions last meeting about the sewer department and Mrs. Moeller did get back with him. He said that one of them was the \$500,000.00 overage on an emergency repair which was the line on Silver Hills that goes down to Corydon Pike. He stated that there was also an overage on insurance and she told him that we will be within budget next year. He said that she said they had additional health insurance claims and they were able to draw from other line items to cover that expense in that item. He said that he is going to follow up with her for more detail. He then stated that he looked at the October budget to actual and there are a couple of line items in the EDIT budget that are overbudgeted. He said that contractual services is \$148,000.00 so far this year and we budget \$50,000.00. He said that we have spent \$109,000.00 in the street department versus \$50,000.00 budgeted and then on city hall we spent \$637,000.00 versus the budget of \$573,000.00. He said that if he can't get an answer tonight, he will just send an email to Mrs. Moeller but he would hope that the rest of the council would be interested in why the spending is much more than anticipated.

Mr. Gibson apologized for not being able to answer those tonight but asked him to send an email to Mrs. Moeller and he is sure that she will be able to answer his questions.

Mr. Turner stated that he has some budget questions too that Mr. Blair didn't ask so he will email his as well. He then stated that he does have a concern about Engine No. 4 breaking down this week and being towed. He asked if there is an update on replacing any of our fire apparatus since they had their budget meetings.

Mr. Gibson stated that he doesn't have anything on that because he was not involved in any of those meetings but he gave an update on Engine No. 4. He said that the engine is back up and in service as of today and after the fuel pump had gone out and been replaced, there was apparently some sort of electrical line that shorted out so it lost all power. He stated that it is back and running now and these situations are obviously why we have the two reserves.

Mr. Turner stated that he was talking about the regular budget meetings because they haven't had any fire meetings this year. He then stated that there was another post on McDonald Lane that was hit by a speeding car down the straightaway and last week there was a head-on collision right in front of his house. He said that even though there is a roundabout there and roundabouts should calm traffic, people really hit the gas hard when they get a straightaway. He said that traffic calming is really important.

Mr. McLaughlin stated that he wanted to concur with what Councilman Applegate was saying earlier because we are still in a pandemic and he thinks some people are taking it too lightly as well as some of the elected county officials. He then did some math and stated that we are at a higher pace than we were in 1918 and we have much more technology in terms of dealing with symptomatic situations and side effects. He stated that changing captains at this time is pretty much saying thank you but we will handle this just fine. He also stated that we haven't seen the effects of Thanksgiving yet and probably won't until Christmas and we won't see the effects of Christmas until after the new year. He said that he does represent the City of New Albany and he has people who have concerns and want to know what is going on but he can't tell them because he doesn't really know what is going on and is perplexed as well. He stated that he has researched and a lot of municipalities do have their own health departments and he doesn't know if that is something that we may have to utilize. He said that he is very disappointed in the commissioners' decision and he understands that going forward they mentioned that opiate abuse and homelessness need attention. He asked where they were when we were going through a lot of our conferences and committees on those things and stated that they were never around but now it has become an issue. He said that he looks at that as more of an excuse but that's his opinion. He then stated that he has noticed in his district that a lot of people are getting lax in where they park and how they park such as parking the wrong way and parking on sidewalks. He added that in one area, they have literally set their mailbox in the middle of the sidewalk which is a violation of ADA. He stated that when we get back to business as usual, he thinks they need to look at those kinds of situations because he doesn't want to use anymore money on sidewalks if people are going to use them as extended parking places.

Dr. Knable asked Mr. McLaughlin if the speed signs on Schell Lane got placed.

Mr. McLaughlin stated that he has kind of forgotten to look at that. He said that one of them was actually just covered by a tree and the owner was going to trim the tree to expose that one. He said that he will have to get with Mr. Thompson to see if the other signs were placed.

Mr. Phipps stated that he wanted to encourage people to wear masks, practice social distancing and avoid crowds. He said that if you look at the past trends,

recommendations and predictions from credible medical sources, this is going to get far worse. He said that we haven't felt the after effects of Thanksgiving and Christmas is going to be here quickly so we are likely to see infection rates increase, hospitalizations increase and unfortunately, deaths increase. He stated that is all the more reason that we have to do what we can to keep this pandemic under control. He then stated that he is outraged by the county commissioners firing Dr. Harris in the middle of a pandemic. He said the board didn't have a problem with him and recommended his reappointment and then all of a sudden after the fact, they come up with the idea that opiate addiction and health of the homeless is important. He asked why they haven't addressed these before. He stated that they are sitting on a ton of money from the hospital that they could use to put into programs for those things but they put it into the jails. He said that seems to be their way of treating people with addictions. He also said that this is like firing the fire chief while you are trying to fight a major fire or it is like criticizing the captain of the Titanic for the menu as the ship is going down. He stated that he knows there are issues other than the pandemic, but this is a life or death situation at this point. He said this is going to totally disrupt organization within the health department and it may even hamper our ability to distribute vaccines when we get those. He stated that they are putting the public health at risk. He also stated that if there is any indication on Facebook and social media of what people are saying, the ones that are cheering on this decision of firing Dr. Harris are saying that he was a tyrant and put too many restrictions and limitations on businesses and what people do in our community such as mandatory masks. He said he is doing what he should be doing and he can't help but to think that is not part of this decision. He stated one sure way to find out if politics is involved in this is to see who they appoint in his place. He asked if it could be the spouse of somebody, somebody that is an anti-masker or someone who doesn't follow the recommendations of the CDC. He asked if it is going to be someone who opens the schools wide open again or the businesses wide open again. He stated that if that happens, you are going to see that politics was at work here and he thinks it is just one more example of inept leadership that we see coming from the elected officials at the county level. He also stated that he would agree with Mr. McLaughlin in that maybe we should explore creating our own city health department with our own city health director. He said to look at how great our parks are now that we separated from the county and established our own park board. He said to look at the whole fiasco with the animal shelter. He stated that they don't have a very good track record with leadership in this community but New Albany has a very good track record and he thinks this may be an opportunity to create a health department that would be far superior. He then stated that he wanted to touch on Mr. Aebersold brought to light on Spring Street. He said that people also turn left onto Woodrow Avenue to avoid going into Clarksville and there are even signs there that say "No Left Turn" and "No U-Turn" so maybe those two issues at once need to be looked into at that very busy and dangerous area of Spring Street.

Dr. Knable stated that he wanted to preface his comment by saying that he was in support of maintaining Dr. Harris in that position as well, but it is his understanding that the next health commissioners can be chosen by the board of health and then would have to go through the certification process of the commissioners. He said that if we as a city and a council want to have some influence on that, he thinks we need to fill the spot that we have open on the board of health. He said he would encourage the mayor and the administration to please fill that spot so that the city has maximal voice on the board of health with regards to making sure that all applicants are screened fairly and minimize any political influence in that process.

Mr. McLaughlin stated that this does bring to mind one thing. He said the interpretation of the state ordinance to him is "shall" certify and asked if they have the ability to not certify or if that was ever clarified.

Ms. Stein stated that it does say “shall” certify and interestingly if the city were to create a health department, it is kind of the same process where the health board would appoint someone and it would be subject to approval of the city legislatures. She said that it doesn’t say subject to the approval of the county executives. She also said that it says “shall” and when it says “shall”, you usually do it without really having any discretion.

Dr. Knable asked if that would have to be adjudicated.

Ms. Stein stated that there has been no case law on it so she doesn’t see where the courts have interpreted it.

Dr. Knable stated that there is really no precedent that would be applicable to this case.

Ms. Stein stated that is correct and explained that there is no published decision where any court has been called on to interpret that.

Mr. Caesar suggested to Mr. Phipps to send an email to Mr. Gibson regarding people turning left onto Woodrow Avenue off of Spring Street so that he has both of them together for tomorrow’s meeting.

Mrs. Collier stated that she agrees with Mr. Phipps that we need to be very diligent about wearing our masks and social distancing. She said that from her own personal experience, it is very important right now and with our numbers going up, we just can’t be too safe. She also concurred with her other colleagues that now is not the time to not recertify Dr. Harris with the health department.

COMMUNICATIONS – MAYOR:

COMMUNICATIONS – OTHER CITY DEPARTMENTS OR CITY OFFICIALS:

REPORTS – COMMITTEES, BOARDS OR OTHER OFFICIALS AS REQUESTED BY A MAJORITY VOTE OF THE COUNCIL:

APPROVAL OF CF-1 FORMS:

INTRODUCTION OF ORDINANCES:

READING

COMMUNICATIONS PUBLIC: Z-20-05 Shiloh Place Vacation

COMMUNICATIONS PETITIONER: Z-20-05 Shiloh Place Vacation

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| Z-20-05 | An Ordinance for the Vacation of a Public Way Pursuant to a Petition filed by Brenda Scharlow and Reservation of Permanent Utility Easement | Applegate 1&2 |
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Mr. Applegate introduced **Bill Z-20-05** and moved to approve the first and second readings, **Dr. Knable** second, all voted in favor.

Mr. Applegate explained that Ms. Scharlow is going to build a permanent residence there and the easement itself is 20 ft. and she is asking that we would vacate a 10’X40’ area of that easement. He said there would still be 10 ft. of easement outside of the property.

Mr. Caesar asked if all of the neighbors have been notified of this.

Mr. Applegate stated that he would check on that.

Mr. Caesar stated that he knows there are very few neighbors down in that area.

Mr. Applegate stated that Shiloh Place is all owned by Ms. Scharlow.

Mr. McLaughlin stated that he did call storm water and sewer and there are no lines there. He said that he spoke with Mr. Gardner and Mr. Scott Wilkinson who does the mapping for the city.

COMMUNICATIONS PUBLIC: Z-20-02 Jollissaint Avenue Vacation

COMMUNICATIONS PETITIONER: Z-20-02 Jollissaint Avenue Vacation

Z-20-02 An Ordinance for the Vacation of a Public Way McLaughlin 3
Pursuant to a Petition Filed by Aletha Goodman
and Reservation of Permanent Utility Easement

Mr. McLaughlin introduced **Bill Z-20-02** for the third reading, **Dr. Knable** second, all voted no. **Bill Z-20-02** failed.

Mr. McLaughlin stated that when the departments looked a little deeper into this one, they found that there is a trunk line going through this easement so it can't be vacated. He said that Mr. Gibson did send Ms. Goodman an email indicating that we would not be able to grant this vacation. He stated that he is seeking a no vote on this ordinance.

Dr. Knable asked if they could just not second it or if Mr. McLaughlin would rather it go through and have a no vote.

Ms. Stein stated that she thinks the safer way to go is to get a second and vote nay.

INTRODUCTION OF RESOLUTIONS:

BOARD APPOINTMENTS:

COMMUNICATIONS – PUBLIC (NON-AGENDA ITEMS):

ADJOURN:

There being no further business before the board, the meeting adjourned at 7:58 p.m.

Bob Caesar, President

Vicki Glotzbach, City Clerk