

**THE COMMON COUNCIL OF THE CIVIL CITY OF NEW ALBANY, INDIANA,
HELD A REGULAR COUNCIL MEETING IN THE THIRD FLOOR ASSEMBLY
ROOM IN THE CITY/COUNTY BUILDING ON THURSDAY, DECEMBER 20,
2018 AT 7:00 P.M.**

MEMBERS PRESENT: Council Members Mr. Coffey, Mr. Caesar, Mr. Phipps, Mr. McLaughlin, Mr. Nash, Mr. Blair, Mr. Aebersold, Mr. Barksdale and President Knable.

ALSO PRESENT: Ms. Stein, Police Chief Bailey, Police Officer Schultz, Mr. Thompson, Mrs. Moeller, Mr. Staten, Mr. Summers, Mr. Rosenbarger, Mr. Gibson and Mrs. Glotzbach

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

MOMENT OF REFLECTION:

Dr. Knable stated that the community is still at a lost with the passing of Charlestown Police Officer Benton Bertram who was killed in the line of duty so he would like to stand for a moment of reflection tonight.

PLEDGE OF ALLEGIANCE:

ROLL CALL:

APPROVAL OR CORRECTION OF THE FOLLOWING MINUTES:

Mr. Phipps moved to approve the Regular Meeting Minutes for December 3, 2018, **Mr. Barksdale** second, all voted in favor.

COMMUNICATIONS – COUNCIL:

Dr. Knable stated that a combined audit was done this year for 2016 and 2017 and he sat in on the opening and closing meetings on them and we had very favorable results from each of those. He then read a letter into the minutes that he received from SBOA stating that the city has enjoyed a streak of very good or excellent reports and that the years 2016 and 2017 are no exception and we continue to enjoy exemplary status. Said letter is on file in the city clerk's office. He said that one note from SBOA suggests that the city council view a video before the end of the year and sign an acknowledgment of having done that. He said that there is a link to the video that will be passed out and the run time is about 45 minutes.

Mrs. Moeller stated that the purpose of the video is internal controls and about two years ago legislature passed a lot of things in relation to internal controls which is basically checks and balances. She gave the example that in her office she checks deposits before they are taken to the bank and initials paperwork and when it is brought back, she checks it again. She said the video is about all of the personnel in departments that deal with finances and the way the statute reads, it includes elected officials as well as department heads and personnel in departments that handle money or process reports, etc. She stated that watching the video is the minimum standard for the statute and then we will be in compliance. She then passed out acknowledgment forms for the council.

Ms. Stein asked if she should take one.

Mrs. Moeller replied that it wouldn't hurt and she would rather have it than not.

Dr. Knable asked what the deadline is on it.

Mrs. Moeller said that she would like them by January 1st so that we can say we are in compliance in 2018.

Mr. Nash asked if they have ever skipped a year before.

Mrs. Moeller replied not since she has been here.

Dr. Knable stated that they were very complimentary of the organization of the information.

Mr. Blair gave Mrs. Moeller his sincere gratitude for the great job she is doing.

Mrs. Moeller stated that she has a great staff that works really hard and cares about what they do so she is very appreciative of them.

Mr. Blair stated that the opinion that the attorney rendered on the zoning ordinance is under confidentiality and they can't talk about a lot of the detail but the attorney focused a lot on the legality of it versus state and federal law. He asked Ms. Stein if he ran out of time or if everything else is okay because he did not comment on any of the other issues that the council wanted done.

Ms. Stein asked Mr. Blair to give her an example.

Mr. Blair stated that there were certain uses that we were trying to isolate into an industrial park area.

Ms. Stein stated that she knows that he did say that there were certain areas that he didn't have enough time to delve more into but he didn't appear to be waiving any red flags as to what is in there now. She added that he didn't go into Mr. Blair's proposed changes because he would've needed more time to do that.

Mr. Blair stated that one of the things he asked about was that the property maintenance code is included in the zoning code and asked if that should be in the zoning code or building code. He said that he didn't see in the document where the attorney reviewed that.

Ms. Stein stated that she would ask him about that and clarify.

Mr. Blair stated that he would like to have our plan commission and the people that he engaged take the opinion letter and address each item. He said in order to do that, the council would have to make a motion and vote to give them permission to use the document.

Ms. Stein stated that the privilege belongs to the council so privilege should be waived by the group.

Mr. Caesar stated that he thinks it makes perfect sense to have the planning and zoning office review it.

Dr. Knable asked if he is clear that the client confidentiality is waived by extending that.

Ms. Stein stated that the council can authorize Mr. Wood to view it and use it.

Mr. Coffey stated that he is questioning the confidentiality of this because he has spoken with another attorney on it. He said that he brought the Indiana Code in and asked Ms. Stein to show him where it states that. He said that he doesn't believe that it is confidential.

Dr. Knable stated that the way he understands it, it has to be unanimous to maintain the confidentiality so therefore, it must be unanimous to convey it someone else so it would only take one person to vote no.

Mr. Coffey said that he is going to do that because he doesn't agree with the opinion based on what other attorneys have looked at.

Ms. Stein asked Mr. Coffey if he is saying that he doesn't want to maintain the confidentiality or he doesn't Mr. Wood to see it.

Mr. Coffey stated that he doesn't mind if Mr. Wood sees it but he doesn't believe in the confidentiality of it.

Ms. Stein stated that that council has her and the attorney that reviewed it opinions and Mr. Coffey has an opinion from another attorney, but she just wanted the group as a whole to have the chance to have a say in what happens with it.

Mr. Coffey asked if it falls under confidentiality.

Ms. Stein stated that she believes it does.

Dr. Knable asked if they, as a group, agree that they should maintain client/attorney privilege on the letter. He also asked if that has to be unanimous.

Ms. Stein stated that she thinks that it is already privileged and if someone shares it then that breaks it.

Dr. Knable asked the council if there is anyone uncomfortable with maintaining client/attorney privilege and conveying the same privilege on to Mr. Wood based upon their attorney's recommendation.

Mr. Coffey stated that he does not have a problem with Mr. Wood having it but you can't maintain confidentiality and extend it out further.

Dr. Knable stated that if that is the case then it is no longer privileged information and becomes public record and can be conveyed to Mr. Wood as such.

Ms. Stein stated that is correct. She also stated that if the group is in favor of Mr. Wood having it then she will send it on to him.

Mr. Blair asked Ms. Stein what could happen if the confidentiality is waived.

Ms. Stein stated that she would rather not get into that right now and would be happy to discuss it with him personally with just the two of them.

Mr. Coffey stated that this board cannot enter into confidentiality with this attorney because the state statute says so. It can only be done if it falls under the state guidelines.

Ms. Stein stated that from the moment she started on this council, she has been very conscientious of the Open-Door Law and has not told the board that they can do an

executive session on anything but attorneys do have privilege to discuss things privately with them. She added that the Open-Door Law applies to meetings of public entities.

Mr. Blair asked if they gave it to Mr. Wood on a confidential basis, how Mr. Wood would communicate back to the council.

Ms. Stein stated that she just envisioned that he would receive the letter and consider it with his experts then recommend amendments to the council or not.

Mr. Blair stated he would like for Mr. Wood to take the letter and explain to the council if he is going to act on it or not act on it.

Ms. Stein stated that she feels the council members are free to meet with him or to question him on these things.

Mr. Blair stated that if Mr. Wood adapted and made some changes based on this opinion letter, it becomes public at that point.

Ms. Stein stated that his changes do, but not the attorney's opinion word for word.

Mr. Coffey stated that attorney/client privilege does exist but it changes when you are using public funds and this is paid for by public funds.

Ms. Stein stated that she thinks there are lots of lawyers being paid with public funds that have privileged communications with their clients.

Dr. Knable stated that it is clear to him that Mr. Coffey is not comfortable with that so privilege is a moot point and there needs to be no further discussion on that.

Mr. Nash motioned to approve to send the letter on to Mr. Wood for consideration for amendments, all voted in favor with the exception of Mr. Caesar who voted no.

Mr. McLaughlin stated that the New Albany/Floyd County Public Library is no longer the New Albany/Floyd County Public Library but is now the Floyd County Public Library. He said that he is going to look into it further and asked Mr. Phipps and Mr. Barksdale if they would possibly look into it as well and find out why this took place. He gave a short history of the library and stated that it was bonded once or twice through the City of New Albany.

Mr. Blair asked who owns the library.

Mr. McLaughlin stated that they are their own entity.

COMMUNICATIONS – MAYOR:

COMMUNICATIONS – OTHER CITY DEPARTMENTS OR CITY OFFICIALS:

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

REDEVELOPMENT COMMISSION – Mr. Barksdale

Mr. Barksdale stated that the commission only had one meeting in December with one item of business which was the approval of an emergency repair for a furnace for a resident on Oak Street.

PLAN COMMISSION – Mr. Phipps

Mr. Phipps stated that they approved an addition on Unruh Court for MAC Construction because they are expanding their building there. He also stated that there was a weird PUDD on E. 12th Street that consisted of one address from back in the early 2000s and basically the guy just wanted to live in the building there that is currently like a garage. He said that required the plan commission's approval because it is a standalone PUDD on one lot at the dead end of the alley behind Seabrook Naville Funeral Home so the commission approved it.

BUILDING & DEVELOPMENT ASSOCIATION OF SOUTHERN INDIANA – Mr. Charlie Smith, CEO

Mr. Charlie Smith stated they went through and did a review of the zoning ordinance and got some feedback from mostly engineers who do work here in this region and two items of concern came out of that. He said one was the traffic study and explained that these have become more common usually at the cost of the applicant and are usually relatively expensive. He stated that there is nothing that really states in the ordinance what you do with the traffic study once you get it back so it might be wise to add some criteria on the backend of having the traffic study done. He suggested adding to the ordinance that if you lower the grade score by one grade level, it is that applicant's responsibility to bring that back up to the standard of what it was. He also said that the other topic was the development design review committee and it states now that Mr. Wood would basically make the recommendations to the city council as to appointments to the board and its goal gets into reviewing and evaluating items A, B, C, D and E. He stated that those items talk about the compatibility of neighborhood and the architecture for proposed buildings, landscape designs, signage and accessory features for just about every project. He gave the example of the MAC Construction project as well as the small PUDD mentioned earlier and said they would have had to have gone before the design review board per the ordinance and that starts adding another layer of government in there and is very subject as it is written. He stated that some of the neighboring communities have started doing overlay districts which put concrete building standards in place and passed out examples of what overlay districts do and reviewed them with the council. He said that everyone wants continued investment in the city but it can't be a blanket standard across the city because what we want downtown is going to be different than what we want out Grant Line Road and he thinks an overlay district with concrete standards may be a wiser route to look at. He said that something else that the design review board oversees is landscaping standards.

Ms. Stein stated that it is just for the bigger developments.

Mr. Smith stated that you want to have your zoning ordinance and code to include options for developers or applicants because you don't want to use PUDDs on a regular basis. He said that if you are seeing PUDDs on a regular basis then you need to update your zoning code, but stated that in certain circumstances, PUDDs allow for out-of-the-box concepts and new designs. He also said that this subjective board has the potential to add a lot of unnecessary expenses, not necessarily intentionally. He stated that overall the ordinance is good and Mr. Wood and his team did a really great job but he thinks it would be better to have a technical review board which could include the fire inspector, the city engineer, the drainage director, the wastewater director, etc. so that it would be more of an infrastructure situation.

Mr. Coffey stated that he thought this was really well thought out and covers a lot of areas in such a way that is clear.

Mr. Smith stated that it is his goal to give everyone the same playbook to play out of and level the playing field overall.

Mr. McLaughlin asked Mr. Smith if he read the entire ordinance.

Mr. Smith replied yes.

Mr. McLaughlin stated that when Mr. Smith defined the technical board it is almost our board of works.

Mr. Smith stated that Clarksville does this already and once or twice a month they meet so anyone can come in with a plan and everyone around the table is going to get a look at it.

Mr. Blair stated that we have a technical advisory board and the proposed amendments that he passed out at the second meeting in November just expands it and makes it more formal as far as who will be on the board. He also stated that he obviously wants to remove the design review board and move more toward the technical advisory board. He explained that there will still be design review but it will not be done by a formal board because we have staff in planning that will do that.

Dr. Knable asked Mr. Blair if Mr. Wood has seen and reviewed the information that the council received this evening.

Mr. Blair replied no.

Dr. Knable asked if anyone was opposed to having Mr. Wood look over the information.

Mr. Barksdale stated that he wanted to get Mr. Wood's opinion on this too.

Mr. Smith stated that by all means, he would like to give Mr. Wood the information and does not want to step on anyone's toes.

Mr. McLaughlin thanked Dr. Knable for taking the time to serve as council president for this past year.

Dr. Knable said that he appreciated that and that is has been a fun year on the whole.

APPROVAL OF CF-1 FORMS:

INTRODUCTION OF ORDINANCES:

READING

INTRODUCTION OF RESOLUTIONS:

BOARD APPOINTMENTS:

COMMUNICATIONS – PUBLIC (NON-AGENDA ITEMS):

ADJOURN:

There being no further business before the board, the meeting adjourned at 7:55 p.m.

Al Knable, President

Vicki Glotzbach, City Clerk