

**THE COMMON COUNCIL OF THE CIVIL CITY OF NEW ALBANY,
INDIANA, HELD A SPECIAL COUNCIL MEETING IN THE COUNCIL
CHAMBERS AT NEW ALBANY CITY HALL ON TUESDAY, NOVEMBER 15,
2022 AT 5:30 P.M.**

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

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

CALL TO ORDER:

President Applegate called the meeting to order at 5:30 p.m.

MOMENT OF REFLECTION:

PLEDGE OF ALLEGIANCE:

ROLL CALL:

APPROVAL OR CORRECTION OF THE FOLLOWING MINUTES:

COMMUNICATIONS – COUNCIL:

Dr. Knable stated that in his seven years on the council, he has never attended a special session and after reviewing the ordinance he wanted to make sure that everything had been covered procedurally with regards to who called the meeting and if all requirements were followed.

Ms. Stein stated that as long as five members join in the motion to call for the meeting it is a valid meeting. She asked if the five members that called for the meeting would like to identify themselves for the record they can.

Mr. Turner stated that it says there has to be confirmed electronic communication for these meetings and wants to make sure that this was done.

Ms. Stein stated that they did get it in writing when the agendas were sent out.

Mr. Turner stated that the notification has to be addressed to the clerk before the agendas go out.

Mr. Blair stated that the way he reads the ordinance is that each of those members have to submit their request in writing.

Ms. Stein stated that she does not read it that way. She explained that they are notifying the clerk in writing and the way that this was handled was that one member of that group notified the clerk as it would be absurd to have five people sending five separate correspondences to the clerk asking for the same thing.

Mr. Turner stated that the law reads that “it shall be the duty of the city executive or five common council members calling the same to duly notify the city clerk thereof, in writing, including confirmed electronic communication prior to the city clerk sending out notice for the special meeting and in time to reasonably permit the city clerk to prepare and serve notice on all members in time for all them to be present at the meeting. It shall be the duty of the clerk to cause notice of the meetings to be served in writing upon each member, either in-person or by notice left at his/her place of residence”

Ms. Stein stated that she believes that the point of this is that five people join in a request for a special meeting and she doesn't read it as there has to be five signatures on anything or five separate emails sent by five different people. She explained that there was notification made to the clerk in-writing that was sent by one person who was being joined by four others.

Mr. Turner asked if it has all five members on the communication or did it just have one member making the notice.

Mrs. Glotzbach stated that the request came from President Applegate and he said that he had five members in agreement to call for the meeting.

Mr. Blair asked if he names the members.

Mrs. Glotzbach replied no.

Mr. Blair stated that he doesn't think they have a valid meeting.

Ms. Stein disagreed and stated that that the ordinance does not require five separate emails to be sent to the clerk and it is reasonable to assume that one person can speak on behalf of the group.

Mr. Turner asked if five members were listed on the communication.

Ms. Stein stated that the ordinance doesn't say that they have to be listed nor does it require them to sign. She reiterated that if he wants to ask them to recognize themselves tonight before the meeting that would be fine.

Mr. Blair stated that it says they are to provide notice prior to the meeting.

Ms. Stein stated that notification was provided prior to the meeting.

Mr. Blair stated that all five didn't notify her.

Mrs. Stein stated that she would interpret the ordinance to mean that five members have to agree to the meeting and one member on behalf of that group can notify the clerk.

Dr. Knable stated that he personally doesn't think they need to be pedantic about it this evening as they have hired Mrs. Stein as their counsel and she has given her opinion on the matter. He added that it could have been handled a little cleaner and unless there is some way to declare this an illegal meeting, he is ready to move on.

Mr. Dickey stated that the spirit of the requirement is to make sure that the public and the council members had notice, which did occur. He added that this is to ensure that there is ample time to receive information and be prepared and he believes that has occurred as well. He stated that if they want to hand this off to the rules committee to refine the process that would be a valid request. He added that these special sessions don't occur very often and it was mentioned that the last time one was held was 2012.

Ms. Stein recommend that the five individuals that joined in calling this meeting be identified.

Mr. Applegate stated that at the last meeting he did mention that since they didn't have the vote they would have an ad-hoc committee and potentially call a special meeting. He explained that after the committee met, he reached out to the members and actually had a total of six people in agreement to hold the special meeting. He added that he then reached out to Mrs. Stein and Mrs. Glotzbach regarding what needed to be done to make sure everything got out on time with proper notice.

Dr. Knable asked for the record to see the hands of the six members that agreed to the meeting. Mrs. Collier, Mr. Dickey, Mr. Phipps, Mrs. McLaughlin, Mr. Applegate and Mr. Aebersold raised their hands.

Mr. Applegate recognized the recent observation of Veterans Day and thanked everyone that has served.

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

INTRODUCTION OF RESOLUTIONS:

COMMUNICATIONS PUBLIC: R-22-12 Resolution to consider all options before removal of Historic Glenwood Dam

Mr. Dale Bagshaw, 85 Galt Street, went on record in support of Origin Park in its entirety.

COMMUNICATIONS PETITIONER: R-22-12 Resolution to consider all options before removal of Historic Glenwood Dam

R-22-12 Resolution Recommending Mediation to Consider All Options Before Removal of Historic Glenwood Dam **McLaughlin**

Mrs. McLaughlin introduced R-22-12 and moved to approve, **Mrs. Collier** second,

Dr. Knable moved to remove all wording save for the final line with the addition of the Department of Natural Resources as one of the interested parties and correcting “Glenmill” to “Glenwood Park Inc.” as well as “Ecosystems” to “EcoSystems Connections Institute” **Mr. Blair** second, all voted in favor.

Mrs. McLaughlin introduced R-22-12 as amended and moved to approve, **Mrs. Collier** second, all voted in favor.

Mrs. McLaughlin stated that the people overseeing this has recommended that it go to remediation to explore all of their options. She explained that there has been a permit filed, which the city has appealed, and added that they want to have a discussion before anything is done.

Mr. Applegate clarified that this is a resolution for the line item to consider all options before the removal of the dam. He stated that this isn’t asking for a yes or no vote for Origin Park or the dam, it is purely a request to have the two sides meet to have a conversation about all the options, and he would like to keep the discussions tonight centered on that.

Dr. Knable stated that the two primary options are leaving it up or taking it down.

Mr. Applegate stated that part of the resolution mentioned a rock arch dam which could make the dam safer and that is why they want to have the discussion to see if any other options are available or have been explored.

Mr. Blair stated that he requested information regarding the cost that the city has incurred so far with the lawsuit as well as what the city projects to incur for mediation or for not having the dam removed.

Mr. Applegate stated that he did forward that request to Mr. Gibson.

Mr. Gibson stated that to answer Dr. Knable's question, there are numerous options of what alternatives they could explore. He explained that Silver Creek Landing started in 2014/2015 when the city first took steps to initialize what is there now and in conjunction with that there was a master plan that the city had done for the parks. He stated that in October of 2016 the plans went to the Board of Public Works and Safety and the funding was through the council for the first phase, which was to allow parking. He added that River Heritage wasn't formed until November of 2016 so the city had already started plans with respect to phase 1 before anyone else had thought about doing anything on Silver Creek. He explained that there were meetings between the parties that included Mr. Martin, Mayor Gahan, Mr. Staten and himself, and they met numerous times. He stated that he doesn't want anyone to think this is simply the administration having an issue with Origin Park because that is not the case, they have an issue with the removal of a dam. He added that they are happy to see the expansion the park's system and it has never been an issue despite what people want to convey. He stated that there is a talking relationship with various aspects of how the two communities can work together, but the breakdown has been when it comes to the dam. He added that there is no further communication from River Heritage at this time with respect to the dam. He stated that right now they are dealing with a company from Denver, IN who is the main partner and they have no interest in this community or at least it is not the same interest as the city would have or Origin Park would have. He reported that in 2010 attorney fees ran about \$10,862.00 which was outside counsel and to-date for this year they have spent \$13,670.00.

Mr. Blair asked what the estimate is from this point moving forward to go on to mediations.

Mr. Gibson stated that conduction mediation is relatively inexpensive at a couple thousand on each side for the mediation. He added that full hearings/trials are significantly more.

Mr. Blair asked what he would anticipate the city's cost would be.

Mr. Gibson stated ~\$2,500.00

Dr. Knable asked for an estimated time frame.

Mr. Gibson stated that this would be left for the parties to negotiate. He explained that Ecosystems currently has a permit to tear out the dam.

Dr. Knable stated that it is effected June 27, 2021-June 9, 2023 with an appeal that is holding it up.

Mr. Gibson stated that outside of a current motion there is nothing stopping them coming out to tear out the dam.

Dr. Knable stated that he received an amendment to the permit in the mail two days ago regarding an access road which would lead him to believe that they are eminently wanting to begin.

Mr. Gibson stated that they would have liked to have started months ago.

Dr. Knable asked if the appeal was filed immediately after the permit became affective.

Mr. Gibson stated that he doesn't know the exact date but it would have been relatively quick.

Dr. Knable stated that he would like to get a feel for what attempts at commutation were made between all of the parties. He asked if there was a time when the city couldn't talk with them.

Mr. Gibson stated that the executive director of River Heritage has met at least twice and before that he had met with Mr. Martin at least once. He added that he also met with Mr. Martin at least once voicing their concerns with the process of removing the dam.

Dr. Knable stated that reference has been made in the written resolution regarding DNR suggesting mediation and asked if there are any documentation of that.

Mr. Gibson stated that it was a verbal statement by the DNR attorney at a status conference ~ one month ago. He added that they filed several weeks ago with a motion for mediation which was objected to by Ecosystems and it was indicated that River Heritage did not want to participate in the mediation.

Mr. Aebersold asked if anyone has presented the results of what will happen when the dam is removed along with any possible affects or other solutions to removing the dam.

Mr. Gibson stated that the Ecosystem expert filed a report several weeks ago to fulfill the requirements of the flood control. He explained that they have looked from a city standpoint for what other alternatives are available verses just removal.

Mr. Turner stated that he used to be in support of removing the dam but after speaking to his constituency he does want to look further into the process. He stated that everyone that lives on the creek is in his district and because of that he has some insight regarding the resolution because the way it is worded seems very divisive. He added that if this is the olive branch they want to extend he thinks it will cause more damage than good. He stated that he is all for mediation but this is a state-owned dam and calling out River Heritage might not be warranted.

Mr. Gibson stated that ownership has not been determined.

Mr. Turner stated that the resolution makes no mention of the time that River Heritage came to speak, that Mr. Gibson and Mr. Staten were having monthly meetings with them and that the city presented their own plans with everything from Origin Park cut out. He added that the resolution states that in February 2021 River Heritage amounted plans to remove the dam but it doesn't mention that a year prior all council members were invited to see the plan nor does it mention that DNR gave Ecosystems \$75,000.00 to remove the dam. He stated that the title of the resolution is also concerning because when the city is fighting another estate the lawyers are the ones that win and the taxpayers will lose. He added that he is not in favor of the city putting any money towards a dam if it is state owned because they will not have any say in it. He explained that Indiana has 140 low head dams and in the last ten years ten dams have been removed, seven of which have been removed by Ecosystems Connections Institute. He stated that they are the ones being most often used because they are the experts. He added that he would rather see them form a committee to talk to River Heritage to mend some wounds because the city has a track record having issue with communications and working with other people.

Mr. Gibson stated that they have been meeting with River Heritage and there is a misconstrued conception of some fight, which just isn't the case. He explained that there is an issue with the removal of the dam and River Heritage is hiding behind Ecosystems saying that they can't have anything to do with it. He stated the Mayor has met with them, he has met with them and just like any other partnership there might be points that they disagree on and the dam is one of them. He explained that River Heritage has met with the police department and the fire department about providing assistance with safety and swift water rescue of which they will be working out final details to help provide

assistance. He reiterated that there is not this big blown out issue that is being conveyed. He added that they would like a chance to sit down with the true interested parties which is the City of New Albany and River Heritage to discuss the potential alternatives, and while they aren't forcing any decision on them the city has put a lot of investment into this area and would like the opportunity to have a final conversation. He stated that if language is an issue tweak it, that is irrelevant to him, but what he doesn't like is this perception of a bad relationship that is being conveyed because it isn't true nor is it fair.

Mr. Turner stated that if River Heritage has no say in the dam why they would be named?

Mr. Gibson stated that it is his understanding that the grant was given to River Heritage and Ecosystems. He added that Mr. Turner mentioned that Ecosystems goes around doing this type of work in other communities and he is correct, but they did not reach out to the city at all.

Mr. Turner asked if it is possible that with the state completely supporting Origin Park through Ready Grants and with the 140 dams on the list to come down that the state would prioritize this dam.

Mr. Gibson stated that Ready Grant is public funds so River Heritage is now getting public funds so it isn't a true private entity from that perspective. He explained that this low head dam wasn't even on the registry nor was DNR even aware of it until this came up and a permit was filed. He added that if they look up north they have utilized various options such as portages so there are other alternatives that DNR has accepted.

Mr. Turner stated that he is completely okay with different ways of doing this but he is asking if River Heritage has any say in this and why would they commit money to the dam, or the city for that matter if it is a state owned dam. He added that he isn't sure that River Heritage is the one that needs to come to the table and that is his biggest concern. He stated that they have a chance to build a relationship and he feels like this resolution could pull them apart.

Mr. Applegate stated that the resolution says "be it resolved by the Common Council of the City of New Albany that the council wishes to recommend that all parties, including the City of New Albany, Ecosystems Inc. and River Heritage Conservancy meet to mediate a solution and consider alternative options before the removal of the historic Glenwood dam" and this is what they need to focus on. He added that the resolution is simply asking for a conversation and it shouldn't be about a tit for tat or what has happened in the past.

Mr. Gibson stated that they can strike all the extra verbiage in the resolution if it makes them more comfortable because it ultimately doesn't matter and amounts to the conversation they had here tonight, but the big picture is to ask for all parties to come to the table.

Dr. Knable stated that he would be willing to further consider the resolution favorable if they killed everything down to the last line and included the DNR. He added that the appeal took place over 15 months ago so he is concerned that if they haven't managed to get all the parties to the table by now that mediation will only drag it on.

Mr. Tuner stated that they would also have to correct Ecosystems Connection Institute because that is how it shows on the permit.

Mr. Aebersold asked what makes them think River Heritage will come to the table after this.

Mr. Gibson stated that they may not but they would hope that a recommendation from this body may carry a little weight to at least have a discussion.

Mr. Blair asked how the other communities ended up with the alternative solutions?

Mr. Gibson stated that he doesn't have the complete details of the process and the permits are first-come first-served. He added that he would assume they talked with the community a little more on what worked better for them.

Mr. Blair stated that he would just think that DNR would have already looked at other alternatives and found this to be the best solution.

Mr. Gibson stated that DNR doesn't proactively go out and do this as they are an administrative agency who acts when someone comes to them.

Mr. Blair stated that they did approve the alternatives to those dams that weren't removed.

Mr. Dickey stated that they did so as a function of the permit process which is very different than saying they reviewed the options and found it to be the best solution.

Mr. Blair asked if the city has submitted other alternatives?

Mr. Gibson stated that this is one of the issues with the process. He explained that a permit was granted by DNR and they are looking at what is put in front of them not for alternatives.

Mr. Blair stated that he has a hard time believing that DNR hasn't heard about this situation and that the city wants to explore other options.

Dr. Knable stated that he thinks the removal of the dam is the best way to go but if they are willing to amend it to the final paragraph, he would be happy to put this before others that may have more to say.

Mr. Aebersold asked if the information that was provided to get approval of the permit came from Ecosystems.

Mr. Gibson replied yes.

Mr. Dickey asked if it makes sense to provide a very brief "whereas" to at least give context on what the issue is?

Mr. Blair stated that the title remains and he thinks that provides context.

Mr. Tuner stated that he is still hesitate to call out entities that may not have any dog in this hunt or the ability to mediate.

Mr. Blair stated that he is typically not in favor of non-binding resolutions or spending money he doesn't think they will get a return on, but it seems to be minimal cost and they worked through a great compromise to get to this.

BOARD APPOINTMENTS:

COMMUNICATIONS – PUBLIC (NON-AGENDA ITEMS):

ADJOURN:

There being no further business before the board, the meeting adjourned at 6:35 p.m.

Jason Applegate, President

Vicki Glotzbach, City Clerk