

The Common Council of the City of LaPorte

August 17, 2009

Convene

The Common Council of the City of LaPorte met in regular session in the Council Chambers on August 17, 2009 at 7:00 p.m. Attendance: Councilman Logwood, Present: Councilwoman Renner, Present: Councilwoman Hammons, Present: Councilman Heichel, Present: Councilman Schmitt, Present: Councilman Luscomb, Present: Councilman Pressler, Present.

Pledge

The Pledge of Allegiance was led by Councilman Logwood.

Minutes

As each Council member received an advance copy of the minutes from the previous meeting, the Mayor stated they would dispense with the reading of same and asked if there were any corrections or additions.

Approval of Minutes

Councilwoman Hammons noted in the last paragraph the minutes reflect Councilman Heichel making the motion and the second to adjourn the meeting. It should read Councilman Pressler made the motion and Councilman Heichel made the second. Councilwoman Hammons moved to approve the minutes as corrected; motion seconded by Councilman Heichel and unanimously carried.

Petitions & Comments

Lee Mumaw, 3077 North 525 West, was present to address the Council regarding the System Development Fees for the Whispering Meadows Subdivision, owned by Mitch Feikes. He stated they are once again before the Council asking that those fees be relieved. Mr. Mumaw reported Mr. Feikes has put in thousands of dollars worth of pipe in the ground to help the City grow and has already built over 70 homes with the potential of building an additional 150. He stated he does not believe it is fair to charge additional fees when someone has already spent this type of money to install pipes which in the end is given to the City. He stated basically with the System Development Fees the City is charging Mr. Feikes tapping fees for the pipe he paid to have installed. Mr. Mumaw stated the System Development Fees will increase the price of their homes by approximately \$2,000.00 and in this economy the real estate market is horrible. He reported Feikes Construction has been able to keep their heads above water in this economy by offering nice homes at affordable prices. Mr. Mumaw stated any help the Council would be willing to give would be greatly appreciated.

Mike Seitz, President of the LaPorte Chamber of Commerce, came forward to address the Council regarding Ordinances 15-2005 and 16-2005. Mr. Seitz read a Resolution passed by the Chamber of Commerce Board of Directors Executive Committee on July 31, 2009. The Resolution recommended the City Council take one of the following actions:

1. Repeal Ordinance No. 15-2005 and Ordinance No. 16-2005 or
2. Suspend requirements of Ordinance No. 15-2005 and No. 16-2005 during the economic recession (like tax abatements performance appeals), or

3. Amend and clarify both Ordinances, (no definitions of new and existing customers lead to ambiguity and leave too much room for interpretation)

Mr. Seitz presented a copy of the Resolution to the Council for their review.

The following people were present in support of Mr. Feikes: Tim Konowitz, LaPorte Seamless Gutter; Matt Siebert and Matt Kirk, S&K Concrete; Eric Keller, Keller Excavating; Troy Suttan, Select Electric; Ray Bennett, DC Garage Door; Dwayne Buell, Big C Lumber of LaPorte; Jeff Nowak, Nowak, Inc.; Curt Catterlin, City Supply of Michigan City and Yvonne Ruth, 4235 N. Blue Ridge Drive.

Sierra Sue Jesch, 701 Maple Avenue, and Bob Pointon, Pine Lake Avenue, both spoke in opposition of waiving the fees for Mr. Feikes or anyone else as the purpose of the Ordinances were to shift fees for the cost of new development onto the developer and off current residents. Mr. Pointon noted Mr. Feikes has been a builder in this community for many years and he knew what the requirements would be for a new subdivision as far as installing streets, curbs, gutters, sewer and water lines.

Mitch Feikes, 4532 W. Burgundy Court, thanked those who were present to support him, especially the Chamber of Commerce. Mr. Feikes stated these people are not only here to support him, but also the idea that LaPorte can grow and be prosperous and to do that you have to encourage development. He reported the previous administration passed the Ordinances in question and he was hoping this new administration would see it is important to let housing be affordable and to encourage development in this community. Mr. Feikes reported when each phase of Whispering Meadows was started, new roads, sewers and water lines were installed at his cost. Since the last phase was done, these new Ordinances were passed implementing System Development Fees. Mr. Feikes stated cities will be hit hard with the tax caps imposed by House Bill 1001 and the City of LaPorte will be included. However, the value of the homes he is building will all be under the tax caps. He stated we need to promote growth within the City. Mr. Feikes noted several years ago when the City wanted to hire a full time inspector, they did so by increasing building permit fees, which he totally supported. Mr. Feikes stated he understands the philosophy behind the System Development fees, however, he does not agree with it, not only for himself but for any new development. He asked the Council to make a decision tonight, one way or the other, so that he can move on and do the things that he needs to do in order to keep his development going.

Councilman Logwood inquired of those contractors and suppliers who were present how many employ more than five employees and more than ten employees.

Standing Committee Reports

NewPorte Landing: Mayor Chroback stated she believes there is a meeting scheduled for this week.

Park & Recreation: Councilman Pressler reported at last week's Park Board meeting, the American Legion requested permission to move the World War I cannon encased in stone and concrete up on top of the hill near the beach house to a more fitting site, something a little more visible in order to honor our World War I Veterans. The cost to move the cannon will be at the expense of the American Legion and will not cost the City any money. The Park Board approved the request. Also, there was a smaller cannon that has disappeared which the American Legion would like to get back and put in the same location.

Redevelopment Commission: Councilwoman Hammons reported the Redevelopment Commission will meet August 26, 2009, at 5:30 p.m.

Sewer Committee: Councilwoman Renner reported she and Councilman Luscomb will be meeting very shortly after which time a meeting will be set for all Council to attend.

School Board Liaison: Councilman Pressler reported the School Board will be meeting tomorrow evening, August 18th at 6:30 at the Educational Services Center.

Joint Ordinance Steering Committee: Councilman Heichel reported the committee will meet this Thursday, August 20th, he believes at 6:30 p.m. at the County Complex Building.

Finance Committee: Mayor Chrobak reported the Finance Committee will meet next Monday evening to review the 2010 budgets one last time before it is sent to the County Council. She stated a time has not yet been set and she will notify them once that is done.

Other Business

Motion/Vote – Introduction of an Ordinance

Councilman Heichel moved to introduce an Ordinance; motion seconded by Councilman Logwood and unanimously carried. As Councilman Heichel did not have an actual Ordinance to present, the following discussion took place:

Don Baugher, City Attorney, explained when setting utility rates, whether they be increased or decreased, there are State Laws that need to be followed. The process would include an Ordinance being introduced after which time the Council would set a public hearing which has to be advertised and heard before action is taken. He informed the Council there are certain guidelines which the law requires you to follow in setting rates. He provided a copy to the Council for their review. Councilman Logwood stated they are not proposing an increase. Mr. Baugher reported any change in rates would need to follow the same procedures. Councilman Heichel inquired if it is possible for the Council to repeal Section 1 of the Ordinances in question. The City Attorney advised that would be considered changing rates and the process he just stated would need to be followed. Mr. Baugher informed the Council an Ordinance cannot be amended by a motion. An actual Ordinance to amend the Ordinances would need to be drafted and introduced by the Council.

Councilman Schmitt suggested the Council follow the proper procedures and an Ordinance be drafted, introduced and published for public hearing according to State Law.

Discussion was held with regard to an Ordinance being submitted for Council review. The City Attorney explained what has happened in the past is a study is done of the rates within the City's utilities to determine whether those rates support the activity of the utility as required by State Statute. He read the following from the handout he gave to the Council: "Item (d) - It is the intent of this section that the rates and charges produce an income sufficient to maintain the utility property in a sound physical and financial condition to render adequate and efficient service. Rates and charges too low to meet these requirements are unlawful". Mr. Baugher advised the Council their job is to determine what resources are necessary to operate the utilities. He stated in the past, rate adjustments or increases have always been supported by a study completed by a consulting firm such as Umbaugh and Associates.

Councilman Heichel stated he understands the rate study done by H.J. Umbaugh when these Ordinances were passed, however, with the current condition of the economy he believes at this time it is not appropriate to streamline or put up barriers that would hamper economic development. He stated he believes suspending the fees for a period of two years would help economic development within the City.

Councilman Logwood prepared the following Ordinance which was read by Councilman Heichel:

ORDINANCE TO SUSPEND 15-2005 AND 16-2006

Whereas the economic conditions are such that the fees are and will infringe upon economic growth.

Therefore, be it ordained that this Council ask that the Ordinance 15-2005 and 16-2006 be suspended for a period of two years from the second reading of this Ordinance following a public hearing.

Mr. Baugher stated the way the Ordinance was read, the Council is asking someone to suspend the Ordinances and it can't be done that way. Either the Council has to suspend the Ordinances or not.

Councilman Logwood stated this is a problem that has lingered on for more than a month and in the construction business a month is a long time, especially when you are getting closer to the winter months. He stated time is of the essence and if this is not workable, then he asked that whatever means are necessary to make it workable be done, so that the Council can get this issue moving forward.

Mayor Chrobak stated she understands the Ordinances in question were presented to the Council in 2005 by an Infrastructure Committee along with a study from Umbaugh and Associates and significant input from both utilities. Because of that, she is not comfortable pushing any changes through prior to input from the committee and the Directors of Wastewater and Water Departments. The Mayor stated she is aware these are difficult times for many businesses; however, the City is also experiencing financial difficulties. Councilman Logwood stated he has had discussions with both departments and at this time they are at an impasse. Councilman Logwood stated he believes the administration was aware this matter would be brought before the Council tonight and sending it back to committee is not in the best interest of everyone involved. The City Attorney informed the Council if someone had requested an Ordinance be drafted for introduction at tonight's meeting, he would have done so. Councilman Heichel stated that is his fault, he was under the assumption an Ordinance could be introduced without having it on paper.

Councilman Schmitt inquired how much the City has collected in the System Development Fees since the Ordinances were passed. The City Attorney stated if the Council is going to ultimately comply with the State Statute that question and several others need to be answered.

Councilman Heichel stated these Ordinances bring forth a philosophy of economic growth in our City and the long term effects will have much more residual impact on our businesses, especially small businesses.

Councilman Logwood moved to amend the Ordinance by removing the word "ask"; motion seconded by Councilman Heichel.

Mayor Chrobak informed the Council she is sending this matter back to committee in order for both departments to have input on how this will effect their departments and the projects the proposed fees were earmarked for. She stated these Ordinances have been in place for four years and you cannot suspend the fees without some type of consequences for both departments. Also, it isn't fair to sideswipe both departments when they haven't had a chance to voice their concerns. Councilman Logwood stated the departments will have their say at the public hearing. He stated it has been a long standing history with this administration when anything goes against your wishes you want to drag it out in committee. The Mayor stated if the administration had been aware an Ordinance was going to be presented at tonight's meeting, then maybe something could have been worked out, but unfortunately the administration was not informed. She stated the City, including both utility departments, are feeling the effects of these current economic times like everyone else and by suspending these fees the Council could be jeopardizing future projects within the City.

Discussion was held with regard to how the Ordinance was presented, the amendment to change the Ordinance and whether the Ordinance can be amended again prior to the public hearing. The City Attorney advised the Council if the Ordinance is changed after it has been advertised for public hearing, it would have to be advertised a second time for a public hearing as the provisions of the Ordinance have been changed.

Councilman Heichel stated he would like due process to be served with the Utility Directors and the Ordinance to be drafted correctly so there is no confusion. Because of that, Councilman Heichel moved to withdraw the Ordinance; motion seconded by Councilman Schmitt. Councilman Logwood withdrew his motion to amend the Ordinance and Councilman Heichel withdrew his second to the motion.

The motion to withdraw the Ordinance was carried by the following roll call vote:

Ayes: Hammons, Renner, Luscomb, Schmitt, Heichel and Pressler

Nays: Logwood

Councilman Heichel asked the City Attorney for his assistance in drafting an acceptable Ordinance. Mr. Baugher directed Councilman Heichel to e-mail him tomorrow and he would be happy to assist.

Councilman Pressler informed the Council he has spent a good amount of time meeting with Mr. Feikes, Mr. Mumaw, Mr. Jackson, Mr. Taylor and Mr. Clingerman to discuss these Ordinances. He stated although he appreciates the work and quality of life Mr. Feikes and the other contractors bring to the City of LaPorte, in his opinion this is about how the people he is elected to represent are going to pay for the improvements to the system everybody uses. The System Development Fees was put in place as a funding mechanism to enhance future capital improvements. Councilman Pressler pointed out the water tower in the area of Mr. Feikes' subdivision was done on a \$1.6 million dollar bond which is being paid for by the users of the system. Councilman Pressler stated he understands these are tough economic times however the people he represents are going through the same thing. He stated there are a number of things to be considered and in his mind this is about the most responsible way to finance future capital improvements. Councilman Pressler stated if there is a better method to fund the future without having to take out another bond or increase rates for the taxpayers he would be more than happy to consider it. He reported in talking with Jerry Jackson he learned the System Development Fees would not have to be paid all at one time, even though the Ordinance states they are to be paid when the tap fee is paid. The current practice being utilized by the departments is for the System Development Fees to be charged at the time the house or structure is actually being built and sold. So there is a mechanism in place to help alleviate the burden of paying the System Development Fees all at one time.

Councilman Logwood stated he hopes the Mayor is not planning on introducing the 2010 budget before the four other Council member have had a chance to review same. Mayor Chrobak reiterated to Councilman Logwood and the three other Council members who are not on the Finance Committee, as she stated earlier in the meeting, the Finance Committee will meet one more time prior to forwarding their recommendations to the entire Council for their review. A work session for the entire Council will be scheduled once the Finance Committee has had the opportunity to review the budgets one more time.

Councilman Heichel inquired how many utility users are outside the City limits and asked if Mr. Jackson and Mr. Taylor could provide that information to the Council. The City Attorney stated he believes there are at least two conservancy districts the City has a contract with for service.

Mayor Chrobak provided to the Council a notice of "Creating Tomorrow Today-Creating the Plan" which is the 2040 Plan from NIRPC. The notice was published last week announcing the cluster workshops within the area. The workshop for LaPorte County will be held on Tuesday, September 22, 2009, at 6:00 p.m. at Purdue North Central. She encouraged the Council to attend.

Councilman Pressler reminded everyone due to the Labor Day Holiday; the Council will not be meeting on Monday, September 7, 2009 and will instead meet the following day, September 8th at 7:00 p.m.

Adjourn

There being no further business, Councilman Pressler moved to adjourn; motion seconded by Councilman Heichel and unanimously carried.

Signatures

APPROVED: _____
Kathleen A. Chroback, Mayor

ATTEST: _____
Teresa L. Ludlow, Clerk-Treasurer

Approved: September 8, 2009