

Newburgh Town Council Meeting

Date: Wednesday, June 24, 2015

The Newburgh Town Council met in Committee and Regular Session on Wednesday, June 24, 2015, at 4:30 p.m. at Newburgh Town Hall, 23 W. Jennings, Newburgh, Indiana. Those present at the meeting were District I William F. Kavanaugh, District II Leanna K. Hughes, District III Alonzo B. Moore, Jr., District IV Anne Rust Aurand, Council-at-Large Tonya R. McGuire, Clerk-Treasurer Jon E. Lybarger, Town Manager Lori Buehlman and Town Attorney Christopher Wischer. The purpose of the meeting was discussion of personnel matters and pending litigation.

CALL TO ORDER

Council President William F. Kavanaugh called the Regular Session to order at 5:33 p.m.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by the Newburgh Town Council. A moment of silence was held to remember Nichole Williams, Mindy who was the Newburgh Elementary School custodian, our troops, police officers and members of "Mother Emanuel", Emanuel African Methodist Episcopal Church in Charleston, South Carolina.

ROLL CALL

Those present at the meeting:

District I - William F. Kavanaugh

District II - Leanna K. Hughes

District III - Alonzo B. Moore, Jr.

District IV - Anne Rust Aurand

Council-at-Large - Tonya R. McGuire

Clerk-Treasurer - Jon E. Lybarger

Town Manager - Lori S. Buehlman

Town Attorney - Christopher Wischer

APPROVAL OF MINUTES

1. May 27, 2015 ~ Executive & Regular Session...tabled June 10, 2015

MOTION by Mrs. McGuire to remove from table the May 27, 2015 Town Council minutes.

SECOND by Mr. Moore.

MOTION carried: ayes 5, nays 0.

MOTION by Mrs. Hughes to approve the May 27, 2015 Town Council minutes.

SECOND by Mrs. McGuire.

MOTION carried: ayes 5, nays 0.

2. June 10, 2015 ~ Executive & Regular Session

MOTION by Mr. Moore to approve the June 10 Town Council minutes.

SECOND by Mrs. Hughes.

MOTION carried: ayes 3, nays 0, abstain 2 (Kavanaugh and McGuire).

SCHEDULED REQUESTS & APPEARANCES

None requested.

PUBLIC HEARING & ORDINANCE 2015-04

Rezoning of West SR 662, Part of Parcel 87-12-33-400-068.000-019 from C-4/A-1 to C-2

MOTION by Mrs. Hughes to open the public hearing for Ordinance 2015-04.

SECOND by Mr. Moore.

MOTION carried: ayes 5, nays 0.

MOTION by Mr. Moore for the first reading of Ordinance 2015-04, Rezoning of West SR 662, Part of Parcel 87-12-33-400-068.000-019 from C-4/A-1 to C-2.

SECOND by Mrs. McGuire.

MOTION carried: ayes 5, nays 0.

Mr. Wischer read Ordinance 2015-04, an ordinance rezoning property in the Town of Newburgh.

MOTION by Mrs. Hughes for the acceptance of the first reading of Ordinance 2015-04.

SECOND by Mr. Moore.

DISCUSSION: Mr. Kavanaugh requested the council hear from legal attendees.

Joseph D. Calderon, attorney with Bose McKinney & Evans, 111 Monument Circle, Suite 2700, Indianapolis, IN representing Wal-Mart, requested the rezoning of a 10-acre parcel and presented a PowerPoint of the landscaping and site plan, traffic analysis, economic impact and use and development commitment. Several Wal-Mart representatives attended to answer questions and some further detailed specific aspects of the Wal-Mart plan.

Krista Lockyear, attorney with Jackson Kelley Attorneys At Law, 221 NW Fifth Street, Evansville, IN, representing property owners Helen and Ned Williams, spoke of their generosity to the Town's needs by donating a right of way sewer easement for the Windsor Pointe subdivision development. They also donated a parcel of land for the expansion of Highway 662, assisted with storm drainage in the area whenever requested and voluntarily allowed the area to be annexed into the Town. If the rezoning is approved, the Williams and Wal-Mart will donate the land to extend the Rivertown Trail. Ms. Lockyear stated the Williams have been contacted regarding the development of an apartment complex on the same site; however, the Williams and neighbors have expressed concerns with the multi-family option. Ms. Lockyear presented to council a private covenant that will not allow future apartments or multi-family complexes on the remaining 20 acres at the site still owned by the Williams. Ms. Lockyear stated the two land parcels to the east and west of Ellerbush Road north of Hwy 66 are currently zoned commercial.

Mr. Kavanaugh requested the council hear from those in favor of the rezoning. Those coming forward were: Tammy Timmel, 1008 W Phelps Drive; and, Tod Bischoff, 8165 Covington Court. Favorable reasons include: the need for economic growth; a business that would not be in competition with the downtown businesses; the rezoning will not affect the quaintness of Newburgh; growth is needed for the downtown business to exist; a grocery store is needed in this area; the creation of new jobs; and, additional tax revenue to Newburgh.

Mr. Kavanaugh requested the council hear from those opposing the rezoning. Those coming forward were: Bill Hanson, 600 E Jennings St.; Laura Terhune, 216 Fairfax Dr.; Sue Morrison, 5000 Bell Rd.; Melanie McDowell, 7422 Capri Ct.; Melinda Mitchell, 101 Yorkshire Dr.; Kris Setzekorn, 200 W Main St.; Willard Whitehead, 200 W Jennings St.; Phillip Field, 201 W Jennings St.; Barbara Stanley, 300 W Water St.; Karen Knauff, 224 W Water St.; and, Jean McCutchan, 106 W Main St. Unfavorable reasons include: a high-traffic business; safety and traffic hazard; management of traffic across Rivertown Trail; additional gas station not needed; possible vacant building if Wal-Mart closes the location; unknown

businesses in the out lots; damage to the Town image; loss of employment; and, the plan to focus on residential growth to preserve the small town atmosphere and quality of life will not be met. Mike Biggerstaff, 4988 Eau Claire, expressed both positive and negative comments which have been included in the above categories. There was an additional option to utilize grant funds for the land purchase and convert the area to a park.

Mr. Calderon stated the plan presented this evening was reasonable and all trail safety issues will be met. The traffic analysis was reiterated. Melinda Mitchell disagreed with Mr. Calderon's statements and felt traffic will be a major issue and strongly urged the area be converted to a green space to conserve the wildlife, trees, plants and our legacy. Jim Moore, 310 W Water Street, a member of the Plan Commission and Newburgh resident for approximately 30 years, stated the commission voted no to the rezoning on two occasions with safety as the major concern.

Ms. Aurand, the plan commission liaison, stated the council, by way of the town manager, received a certified letter of the rezoning vote, a unanimous unfavorable recommendation, 7-0 vote at the first meeting and 5-0 vote at the second meeting.

Mrs. McGuire, representing the site review committee, stated traffic and access, drainage, architectural integrity, the Rivertown Trail, maintenance of existing trees, landscaping, and screening from nearby residential districts were assessed. The site review advisory committee concluded that the proposed site plan, written use and development commitment, traffic study, building renderings and other information adequately addressed site specific concerns raised by the committee and satisfied the committee's obligation as set forth in the zoning code.

COUNCIL DISCUSSION: Mrs. Hughes requested Mr. Calderon further explain the traffic study. Mr. Woodward with KLOA (Kenig, Lindgren, O'Hara, Aboona, Inc., a premier traffic and transportation planning and engineering firm) explained the traffic study supplement and intersection delays with conditions as though the area was fully commercially developed. The study found delays would not increase by a significant amount.

Mr. Moore inquired what measures will be taken to assure Rivertown Trail safety where the trail crosses the property's entrance and exit. Mr. Calderon stated as part of the use and development commitment, there will be a combination of signs and striping to make the area as safe as possible.

Mrs. McGuire asked Wal-Mart's intention with the property that will not be developed behind the store. Tracy Richard with Manhard Consulting Ltd. (a civil engineering and surveying firm), stated there will be an 80 foot distance from the building to the tree line. Trees that will be removed along Hwy 662 will be replaced with 2.5 inch caliper deciduous native species trees. Mr. Calderon stated regarding access to Hwy 662, there will be a dedicated vehicle exit access for east and westbound traffic. The left turn lane from Hwy 662 will be large enough for seven vehicles. Ms. Aurand stated she was impressed with the covenant, restrictions and time frame. Wal-Mart will purchase the wetland and it will be preserved; these two acres will be added to the covenant. She stated if the area housed an apartment complex or multi-family units, these new residents would be welcomed. Regarding safety, our police and volunteer fire department will be responsible for a large building and group of people. When these departments are responding to a Wal-Mart call, they will not be patrolling the Newburgh streets, neighborhoods and trail. Chief Sprinkle stated he is satisfied with the traffic plan. If an officer is called to the Wal-Mart center, there will be another office patrolling Newburgh. Rivertown Trail safety issues are addressed as an ongoing process. Mr. Wischer stated the trail may be reconfigured if the rezoning is approved as the right-of-way has not been purchased. Mr. Hynes added safety is paramount and all issues will be addressed. Mr. Kavanaugh stated correspondence has been received from Mike Biggerstaff and Jason Brown. The meeting reconvened following a five minute recess. Mr. Kavanaugh thanked the members of the Plan Commission and those in attendance. Mr. Wischer explained the vote process: to accept the

first reading is not a vote for or against the rezoning, it is to approve the first reading which allows it to go to the second reading. There will be a vote on the second reading followed by a vote for the adoption of the ordinance. A roll call vote on the acceptance of the first reading of Ordinance 2015-04 was taken. District I - William F. Kavanaugh, yes; District II - Leanna K. Hughes, yes; District III - Alonzo B. Moore, Jr., yes; District IV - Anne Rust Aurand, yes; Council-at-Large - Tonya R. McGuire, yes.
MOTION carried: ayes 5, nays 0.

MOTION by Mrs. Hughes for the second reading of Ordinance 2015-04.

SECOND by Mrs. McGuire.

MOTION carried: ayes 5, nays 0.

Mr. Wischer read Ordinance 2015-04, an ordinance rezoning property in the Town of Newburgh.

MOTION by Mrs. Hughes for adoption of Ordinance 2015-04.

SECOND by Mr. Moore.

DISCUSSION: None

A roll call vote on the adoption of Ordinance 2015-04 was taken. District I - William F. Kavanaugh, yes; District II - Leanna K. Hughes stated she does not believe the addition of a grocery will affect the downtown businesses. The landscape and architectural design will retain the town's character. All aspects of safety have been researched and reviewed. Because all issues had been addressed, she is in favor and voted yes; District III - Alonzo B. Moore, Jr. stated he is not voting for himself but is voting for what he feels is best for Newburgh. He stated he is a Newburgh native with his family dating back to 1863 and voted yes; District IV - Anne Rust Aurand, no; Council-at-Large - Tonya R. McGuire stated she choose to live in Newburgh, resides in the historic district and that will not change. Wal-Mart has been very responsive with all requests made by council and voted yes.

MOTION carried: ayes 4, nays 1.

A five minute recess was called.

MOTION by Mrs. McGuire to close the Public Hearing for Ordinance 2015-04, Rezoning of West SR 662, was closed.

SECOND by Mr. Moore.

MOTION carried: ayes 5, nays 0.

PUBLIC HEARING & ORDINANCE 2015-07

Rezoning of 2 Gray Street, Parcels 87-15-03-202-181.000-014 and 87-15-03-202-033.000-014 from C-3 to R-1

MOTION by Mrs. Hughes to open the public hearing for Ordinance 2015-07, rezoning of 2 Gray Street.

SECOND by Mrs. McGuire.

MOTION carried: ayes 5, nays 0.

MOTION by Mrs. Hughes for the first reading of Ordinance 2015-07 the rezoning of 2 Gray Street.

SECOND by Mrs. McGuire.

MOTION carried: ayes 5, nays 0.

Mr. Wischer read Ordinance 2015-07, an ordinance rezoning property in the Town of Newburgh.

MOTION by Mrs. Hughes for the acceptance of the first reading of Ordinance 2015-07 the rezoning of 2 Gray Street.

SECOND by Mrs. McGuire.

DISCUSSION: None

MOTION carried: ayes 5, nays 0.

MOTION by Mr. Moore for the second reading of Ordinance 2015-07 the rezoning of 2 Gray Street.

SECOND by Mrs. Hughes.

DISCUSSION: None

MOTION carried: ayes 5, nays 0.

Mr. Wischer read Ordinance 2015-07, an ordinance rezoning property in the Town of Newburgh.

MOTION by Mrs. Hughes to approve Ordinance 2015-07, the rezoning of 2 Gray Street.

SECOND by Mr. Moore.

DISCUSSION: Ms. Aurand stated the Plan Commission unanimously recommended the rezoning.

MOTION carried: ayes 5, nays 0.

MOTION by Mr. Moore to close the Public Hearing for Ordinance 2015-07.

SECOND by Mrs. Hughes.

MOTION carried: ayes 5, nays 0.

PETITIONS & COMMENTS FROM CITIZENS PRESENT

None presented.

UNFINISHED BUSINESS

1. Town of Newburgh Rivertown Trail / Event Policy, tabled December 10, 2014

Continue to table.

2. Mystic Development, Country Place Drive, Encroachment Agreement, tabled January 28, 2015

Continue to table.

3. State Street Public Parking Lot Suggestions, Erin Morrison-Flutter, tabled May 13, 2015

Continue to table.

4. Museum use of the Monroe Street House, tabled May 13, 2015

Continue to table.

5. Street Light Request, tabled May 13, 2015

Mr. Lybarger stated he did speak with the resident requesting the street light and informed her of council's decision.

MOTION by Mrs. Hughes to remove from table the Street Light Request.

SECOND by Mr. Moore.

DISCUSSION: None

MOTION carried: ayes 5, nays 0.

MOTION by Mr. Moore to remove the item from the agenda.

SECOND by Mrs. Hughes.

DISCUSSION: None

MOTION carried: ayes 5, nays 0.

NEW BUSINESS

1. Jennings and State Street Sidewalk Improvements, River Town Construction LLC, Change Order #1

Mr. Hynes stated there are five additions to the change order: 1-add a curb to the corner of Jefferson and Jennings extending from the alley to the east at a cost of \$11,187.50; 2-improve southeast corner

of Gray and State by pushing back the radius and adding pavement at a cost of \$4,516.20; 3-replace a collapsed 12" storm sewer on State Street's east side near Second at a cost of \$3,040.00; 4-work added to the Carol Demas property in the amount of \$2,686.20; and, 5-remove an existing concrete pad to meet ADA requirements at a cost of \$800.00 with a total cost of \$22,229.90 bringing the total contract price to \$517,012.15.

MOTION by Mr. Moore to approve the Jennings and State Street Sidewalk Improvements Project Change Order #1 in the amount of \$22,229.90 bringing the total contract price to \$517,012.15.

SECOND by Mrs. Hughes.

DISCUSSION: None

MOTION carried: ayes 5, nays 0.

2. 2015 Municipal Separate Storm Sewer System (MS4) Audit Preparation, Commonwealth Engineering Inc. (CEI) Contract

Mr. Hynes stated preparations are underway for an audit and work is needed at several facilities where chemicals are stored. This contract is to assist the town with five tasks including a storm water pollution plan to remain MS4 compliant with a contract cost of \$36,050.00.

MOTION by Mrs. Hughes to approve the 2015 MS4 Audit Preparation Contract with Commonwealth Engineering Inc. in the amount of \$36,050.00.

SECOND by Mr. Moore.

DISCUSSION: The project is to be paid from the Storm Water budget.

MOTION carried: ayes 5, nays 0.

3. Jennings Street Culvert Study, Commonwealth Engineering Inc. Contract

Mr. Hynes stated many sewer pipes are in need of repair. The sewer department will videotape the sewers on Jennings from Washington to State. CEI will review the tapes, prioritize the repairs and prepare an estimate. The study and report will cost \$7,200.00.

MOTION by Mrs. McGuire to approve the Jennings Street Culvert Study Contract with Commonwealth Engineering Inc. in the amount of \$7,200.00.

SECOND by Mr. Moore.

DISCUSSION: The study is necessary to determine the pipe's condition.

MOTION carried: ayes 5, nays 0.

Ms. Aurand stated that water pooled on the north side of Jennings during the recent heavy rains. Mr. Hynes stated some of the roadway has been removed from the area and the drainage is being modified in the area. Ms. Aurand stated her driveway is full of mud and gravel that washed down the alley behind her home.

COMMISSION REPORTS

AIR AUTHORITY - Ms. Aurand

No report.

BOARD OF ZONING APPEALS – Ms. Aurand

Ms. Buehlman stated BZA met to address the John and Gai Griese conditional use application; however, representation was not present. The council's decision to revise the sign permit fee was discussed.

FIRE - Mr. Moore

Mr. Moore stated the fire truck dedication open house and press conference for the will be this Sunday.

HISTORIC PRESERVATION COMMITTEE (HPC) - Mrs. McGuire

Ms. Aurand stated HPC met on June 11, 2015 with three Certificate of Appropriateness (COA) applications on the agenda. COA #03 was approved for C. Larry and Debbie Rhodes at 224 W Jennings. COA #04 for Rebecca Edwards at 126 W Jennings for the addition of a deck and door was approved. COA #05 for Amy and Ed Schraf at 25 Main Street for replacement windows was approved.

PARK – Mrs. Hughes

Mrs. Hughes stated the Park Board will meet on July 2, 2015.

PLAN – Ms. Aurand

No report.

POLICE – Mrs. McGuire

No report.

STORM WATER – Mr. Kavanaugh and Mr. Moore

Ms. Buehlman stated the street department is working on storm water projects including ditch work on Cypress and St. Catherine. Ms. Buehlman is working with Debbie Bennett-Steersman on a grant opportunity.

STREETS – Mr. Moore

Mr. Moore stated several welcome flags were replaced. Bamboo was cleared around Preservation Hall. Washouts were repaired on Clark Street, Cypress and Locust. The boat dock was repaired with assistance from Mulzer's. Rock and debris were cleared from the alley on State Street and on State at Water and Madison. A fallen tree was cleared at the Indian Hill Overlook Park. Bricks were installed at the park next to the Edgewater and the crew continues to mow and trim.

UTILITY – Mrs. Hughes

Mrs. Hughes stated the next meeting will held on July 1, 2015.

STANDING COMMITTEES

FINANCE – Mrs. Hughes

Mrs. Hughes stated the committee met to discuss budget concerns. State funding is expected to arrive by the end of the month.

PERSONNEL – Mrs. Hughes

MOTION by Mrs. McGuire to accept the resignation of Michelle Conklin effective July 10, 2015; Michelle leaves in good standing and is entitled to accrued but unused personal time off.

SECOND by Mrs. Hughes.

DISCUSSION: None

MOTION carried: ayes 5, nays 0.

SPECIAL BOARDS/COMMITTEE REPORTS

SIDEWALK – Mrs. Hughes

No report.

ARTS COMMISSION – Mrs. Hughes

No report.

ZONING ADMINISTRATOR – Commissioner Ms. Aurand

No report.

CLERK-TREASURER – Mr. Lybarger

No report.

TOWN ATTORNEY – Mr. Wischer

Mr. Wischer stated the council previously approved the Meijer Department Store sanitary sewer plan contract and Indiana Department of Environmental Management (IDEM) Permit. Meijer has requested a sewer agreement and the town agreed to an extension of two to three years.

MOTION by Mrs. Hughes, on legal recommendation, to approve the sewer agreement with Meijer with an extension of two to three years.

SECOND by Mrs. McGuire.

DISCUSSION: None

MOTION carried: ayes 5, nays 0.

TOWN ENGINEER – Mr. Hynes

Mr. Hynes presented a traffic control plan for the sewer work on State Street. The intersection of State and Jennings will be closed for a three day period beginning July 8, 2015.

MOTION by Mr. Moore to approve the intersection closing at State and Jennings for a three day period beginning July 8, 2015.

SECOND by Mrs. McGuire.

DISCUSSION: None

MOTION carried: ayes 4, nays 1 (Hughes).

TOWN ADMINISTRATIVE MANAGER – Ms. Buehlman

MOTION by Mrs. McGuire to approve the Verizon annual contract.

SECOND by Mr. Moore.

DISCUSSION: None

MOTION carried: ayes 5, nays 0.

MISCELLANEOUS BUSINESS

Mrs. McGuire inquired about the 50/50 sidewalk agreement. Ms. Buehlman stated she will email the agreement to the council tomorrow.

Mr. Moore stated the remaining street department truck decal is on order.

Ms. Aurand inquired about the construction work near 300 E Main Street; the Street Department is completing a drainage project.

Ms. Aurand stated the town's zoning ordinance needs revisions. A site review committee needs to be established and maintained. Regarding the Williams rezoning, the Plan Commission felt Wal-Mart made numerous last minute plan revisions without notification and felt disenfranchised.

APPROVAL OF CLAIMS

MOTION by Mr. Moore moved that all claims be paid in the following amounts including any sewer adjustments:

Civil Town – \$231,493.30

Sewer – \$243,373.05

State Revolving Fund (SRF) \$339,351.30

SECOND by Mrs. Hughes.

DISCUSSION: None

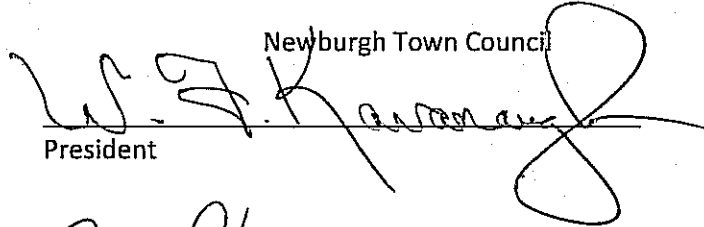
MOTION carried: ayes 5, nays 0.

ADJOURNMENT

Mr. Kavanaugh adjourned the meeting at 9:28 p.m.

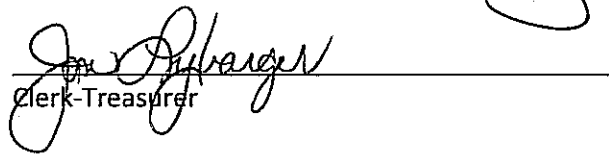
APPROVED this 22 day of July, 2015.

Newburgh Town Council



President

ATTEST:



Clerk-Treasurer



Lori S. Buehlman
Town Manager

June 2, 2015

RE: 2015-NPC-01

To whom it may concern,

On June 1, 2015, the Newburgh Plan Commission conducted a public hearing on a proposed change in the zoning for the Southeast corner of State Road 662 and Ellerbusch Road Parcel 87-12-33-400-068.000-019 from A1/C4 Agricultural-District/Highway Large Scale District to C2 General Commercial District. This is to certify pursuant to IC 32-36-7-4-605 that the proposed rezoning goes forward to the Newburgh Town Council with an unfavorable recommendation having received five (5) negative votes. Five (5) members of the Newburgh Plan Commission were present for the public hearing.

A handwritten signature in black ink, appearing to be "Lori S. Buehlman", with a long horizontal line extending to the right.

Lori S. Buehlman



Lori S. Buehlman
Town Manager

June 2, 2015

RE: 2015-NPC-02

To whom it may concern,

On June 1, 2015, the Newburgh Plan Commission conducted a public hearing on a proposed change in the zoning of 2 Gray Street containing two parcels: 87-15-03-202-181.000-014 and 87-15-03-202-033.000-014 from C3 Neighborhood Commercial to R1 Single Household Residential. This is to certify pursuant to IC 32-36-7-4-605 that the proposed rezoning goes forward to the Newburgh Town Council with a favorable recommendation having received five (5) affirmative votes. Five (5) members of the Newburgh Plan Commission were present for the public hearing.

A handwritten signature in black ink, appearing to be "L.S. Buehlman", with a long horizontal line extending to the right.

Lori S. Buehlman