

MINUTES OF THE REGULAR MEETING OF THE  
COMMON COUNCIL OF THE CITY OF AUBURN  
HELD ON JULY 7, 2009

The Common Council of the City of Auburn met in regular session in the City Hall Council Chambers at 210 East Ninth Street on this 7th day of July, 2009, at the hour of 6:00 P.M. It was noted that proper legal notice had been given to the media as required by Indiana statute.

The meeting was called to order by Mayor Norman E. Yoder who presided.

MOMENT OF SILENT MEDITATION OR REFLECTION

Mayor Yoder asked all to stand for a moment of silent meditation or reflection.

PLEDGE OF ALLEGIANCE

Mayor Yoder led the group in the Pledge of Allegiance to the flag of the United States of America.

ROLL CALL

On call of the roll, members of the Council present were Mike Walter, Dick Stahly, Keith Schrimshaw, Marilyn Gearhart, Dave Painter, Jim Finchum, and Greg Kenner. Also present were City Attorney Erik Weber and Clerk-Treasurer Patricia Miller.

READING OF THE JOURNAL

**After review of the minutes, Councilwoman Gearhart moved to approve the minutes of the June 16th regular meeting of the Common Council.** The motion was seconded by Councilman Stahly and was carried by the following vote of the Council: Walter, aye; Stahly, aye; Schrimshaw, aye; Gearhart, aye; and Kenner, aye. Finchum and Painter abstained. Nays, none.

RECOGNITION OF VISITORS

Greg Haynes, Michelle Haynes, Galen Eberhart, Doris Blickenstaff, Hubert & Jennifer Shaffer, Tamara Williams, David Bowles, Ron Kalie, Stuart Tuttle, Philip Speer, Linda Speer, Bill & Barbara Davis, Meg Zenk, Den Olson, Mildred & Herman Lemper, Sunny Liddell, Jack Randinelli, Jim Covell, Jeff Bassett, Chris & Erica Shafer, Bill Spohn, Dan Bonkoski, Madeline Chaffins, Marilyn Myers, Danny McAfee, Rick Ring, Vivian Likes, Todd Miller, Larry Lind, Dave Myers, Chris Thatcher, Michelle Lassiter, Diane Manon, Taylor Brooks with **Froggy Radio**, and Dave Kurtz with **The Star** were present.

COMMUNICATIONS

Meg Zenk with the DeKalb County Council on Aging presented Council with an update of "DART" DeKalb Area Rural Transit. The system provides affordable transportation throughout DeKalb County for employment, medical appointments, shopping trips, etc. In addition to DART, the agency provides food assistance, telephone reassurance for persons living alone, and a homemaker program which consists of light housekeeping and shopping services for seniors, disabled and homebound citizens. Zenk requested Council members consider

increasing the City's donation to The DeKalb County Council on Aging to \$10,000.00 for the 2010 budget year.

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**Councilman Walter moved to amend the agenda by placing the Market Based Wholesale Power Agreement presentation after the Ordinances and Resolutions.** Walter stated that most of the visitors were in attendance for the Extra Territorial Jurisdiction Ordinance.

The motion died for lack of a second.

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Dave Bowles with Spectrum Engineering explained the proposed contract between the City of Auburn and Indiana Michigan Power. Bowles explained that the City will begin buying blocks of electricity on the open market in order to take advantage of lower prices. The City will use power purchased on the open market for 42 months during a period between the City's current fixed-rate contract with Indiana Michigan Power which expires in November and a 23 year formula based contract that will begin May 2013. Originally it was thought that the City would see an 18 percent rate increase, however, it may only be 5 percent if anything. To keep costs as low as possible, Bowles recommended removing the electric utility from the control of the Indiana Utility Regulatory Commission stating that it costs too much and takes too long to get approvals through that organization.

Councilman Walter objected to leaving the Commission stating that it is a check and balance. Walter went on to say that this should be placed on a referendum.

Mayor Yoder recommended that the Finance Committee conduct a meeting to discuss this topic.

#### CLERK-TREASURER

Clerk-Treasurer Patricia Miller presented payroll and general vouchers in the amount of \$3,591,372.96.

**Councilman Painter moved to approve the vouchers in the amount of \$3,591,372.96.** The motion was seconded by Councilman Kenner.

Councilman Walter stated he would abstain from voting on voucher #20272 to Kroger in the amount of \$197.18 as he is employed by that company. Walter questioned voucher #20285 to Monarch Media in the amount of \$289.99.

Clerk-Treasurer Miller explained that this resulted from a telephone solicitation. Miller stated that she thought she was just verifying information for an order placed by another department.

**Councilman Walter moved to postpone payment of the invoice until after the City Attorney investigates the issue.** The motion was seconded by Councilman Finchum and carried by the following vote of the Council: Walter, aye; Stahly, aye; Schrimshaw, aye; Gearhart, aye; Painter, aye; Finchum, aye; and Kenner, aye. Nays, none.

The motion to approve the vouchers as presented was carried by the following vote of the Council: Walter, aye with the exception of voucher #20272 to Kroger in the amount of \$197.18 on which he abstains and voucher #20285 to Monarch Media in the amount of \$289.99 on which he votes nay; Stahly, aye with the exception of voucher #20285 on which he votes nay;

Schrimshaw, aye with the exception of voucher #20285 on which he votes nay; Kenner, aye with the exception of voucher #20285 on which he votes nay; Gearhart, aye with the exception of voucher #20285 on which she votes nay; Painter, aye with the exception of voucher #20285 on which he votes nay; and Finchum aye with the exception of voucher #20285 on which he votes nay. Nays, none.

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Mayor Yoder asked if Guardian Industry had contacted the City Attorney with regards to the CF-1 forms.

City Attorney Weber stated that the City had not received any further information from the company and nobody from the company was in attendance. Weber recommended a motion removing the CF-1 from the table and denying their compliance. A resolution would be drafted for Council approval and submittal to the County Auditor's Office.

**Councilman Painter moved to remove the CF-1 forms from the table.** The motion was seconded by Councilman Finchum and was carried by the following vote of the Council: Walter, aye; Stahly, aye; Schrimshaw, aye; Gearhart, aye; Painter, aye; Finchum, aye; and Kenner, aye. Nays, none.

**Councilman Painter moved to deny the Guardian appeal.** The motion was seconded by Councilwoman Gearhart and was carried by the following vote of the Council: Walter, aye; Stahly, aye; Schrimshaw, aye; Gearhart, aye; Painter, aye; Finchum, aye; and Kenner, aye. Nays, none.

#### ORDINANCES AND RESOLUTIONS

**Councilman Finchum read ORDINANCE NO. 2009-07 AN ORDINANCE TO AMEND THE ZONING MAP REGARDING EXTRA TERRITORIAL JURISDICTION OF THE CITY OF AUBURN**

**Summary:** This ordinance proposes to amend a portion of the zoning map of the City of Auburn to incorporate those areas outside of the City of Auburn corporate boundaries, but within the City of Auburn's Extra Territorial Jurisdiction (ETJ). The City of Auburn Plan Commission by certification recommends this change. These areas are described in the exhibit attached as Exhibit "A". The areas within the ETJ are to be part of the City of Auburn's Zoning Jurisdiction. The ETJ areas were given City of Auburn zoning classifications that were similar to the DeKalb County zoning districts or changed to reflect the land uses shown on the 2005 Future Land Use Map of the City of Auburn's Comprehensive Master Plan and moved said Ordinance be passed on first reading. The motion was seconded by Councilwoman Gearhart.

Building, Planning and Development Administrator Bill Spohn explained that on November 1, 2007 the Inter-local Cooperation Agreement between DeKalb County and the City of Auburn with regards to planning, zoning, subdivision control, permitting and enforcement jurisdiction, (aka Extra-Territorial Jurisdiction –ETJ areas) went into effect. The map had not been amended to include the ETJ area zoning classifications. This Ordinance is the written zoning classifications comparison table for the County zoning classifications for territory taken into the Plan Commission's jurisdiction.

Councilman Walter cited IC 36-7-4-701 paragraph C which states that the municipal plan commission has exclusive control over approval of plats and re-plats involving unincorporated land within its jurisdiction unless the County legislative body has adopted a subdivision control

ordinance covering these lands, which they have. In this case, the County Plan Commission would have exclusive control over the approval. Walter went on to say that the inter-local agreement states that the City shall have subdivision control over the unincorporated areas. This agreement contradicts the statute and is probably a “get into court free” ticket for anyone with the resources to sue.

Residents along the far southwestern edge of the extra zoning territory as well as those living on County Road 50 between County Road 427 and County Road 23 argued that the land around them should remain zoned for residential use. The Plan Commission originally agreed and changed a map that would have zoned those areas for light industrial use.

Mayor Yoder argued that those areas should be zoned for light industrial use to encourage future industrial growth for the City.

Galen Eberhart stated that today’s companies want land that is zoned for industry in advance in order to avoid controversial public hearings. DeKalb County does not have any “shovel ready” sites available and he would like to see that changed. There are plenty of places to build homes but very few for commercial business.

Citizens disagreed stating that there is plenty of room to grow on I-69 near State Road 8.

Following a lengthy discussion, the motion to pass Ordinance 2009-07 failed by the following vote of the Council: Walter, nay; Stahly, nay; Schrimshaw, nay; Gearhart, aye; Painter, nay; Finchum, nay; and Kenner, nay.

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**Councilman Finchum read ORDINANCE NO. 2009-08 AN ORDINANCE REESTABLISHING TRANSFERS TO THE AUBURN RAINY DAY FUND**

**Summary: This Ordinance reestablishes the ability to make transfers of funds to the Rainy Day Fund as previously allowed under Ordinance 2001-21. These funds may be transferred at any time prior to December 31 of each year and moved said Ordinance be passed on first reading.** The motion was seconded by Councilman Kenner and carried by the following vote of the Council: Walter, aye; Stahly, aye; Schrimshaw, aye; Gearhart, aye; Painter, aye; Finchum, aye; and Kenner, aye. Nays, none.

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**Councilman Finchum read RESOLUTION 13-2009 A RESOLUTION AUTHORIZING THE DONATION OF MEMBERSHIPS AND PASSES TO THE AUBURN COMMUNITY POOL**

**Summary: This resolution authorizes the City of Auburn Department of Parks and Recreation to donate family memberships and daily passes to the Auburn Community Pool to non-profit and or charitable organizations and moved said Resolution be passed on first reading.** The motion was seconded by Councilwoman Gearhart.

City Attorney Weber stated that passes are currently donated to Relay for Life and the Library. Weber stated that this has been done for years but needs to be authorized by Ordinance or Resolution of the legislative body.

Councilman Walter objected on the grounds that this is an improper delegation of legislative authority. Walter further stated that this violates the equal privileges and immunity clause in Article 1 Section 23 of the Indiana State Constitution. Walter suggested that maybe it should specify 501-C3 organizations, instead of “not for profit”. Walter stated that this is just a “bad resolution; a bad bill”.

The motion to pass Resolution 13-2009 on first reading was carried by the following vote of the Council: Stahly, aye; Schrimshaw, aye; Gearhart, aye; Painter aye; Finchum, aye; and Kenner, aye. Walter, nay.

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#### REPORT OF MAYOR

Mayor Yoder announced that the City has been awarded a 7.5 million dollar grant through the American Recovery and Reinvestment Act of 2009 for the wastewater treatment project. The City will be able to borrow the remaining 16.3 million dollars at low interest from the State Revolving Fund. This funding should help reduce the size of a sewer rate increase.

#### NEW BUSINESS

#### MISCELLANEOUS

#### ANNOUNCEMENTS

The next Council meeting will be held Tuesday, July 21, 2009 at 6:00 P.M. in the City Hall Council Chambers.

#### ADJOURNMENT

There being no further business to come before the Council, Councilman Finchum moved the meeting be adjourned. The motion was seconded by Councilwoman Gearhart and was carried by the following vote of the Council: Walter, aye; Stahly, aye; Schrimshaw, aye; Gearhart, aye; Painter, aye; Finchum, aye; and Kenner, aye. Nays, none.

#### APPROVED BY THE COMMON COUNCIL

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Norman E. Yoder, Mayor

ATTEST:

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Patricia M. Miller, Clerk-Treasurer