

**MINUTES OF THE MEETING OF THE BOARD OF PUBLIC WORKS & SAFETY
VALPARAISO, INDIANA
May 27, 2022**

The Board of Public Works & Safety of Valparaiso, Indiana met May 27, 2022, at 3:00 p.m. in City Hall. Present were Holly Howe and Mayor Murphy. Steve Poulos was absent. Mayor Murphy called the meeting to order and led the Pledge of Allegiance.

Motion: Holly Howe moved that the minutes of the May 13, 2022 meeting be approved. Seconded by Mayor Murphy and so approved.

Motion: Holly Howe moved that the claims be approved for payment and subject to appropriation balances. Seconded by Mayor Murphy and so approved.

Sidewalk Bids Received May 13, 2022

Mike Jabo requested this matter be continued to the June 10, 2022 meeting. Attorney Lyp added they received one valid bid and one bid came in late. He feels they have this wrapped up where it will be appropriate for all sides.

Bid Solicitation to Sell a Fire Truck

John Daly requested approval to sell a fire truck they have replaced. Attorney Lyp explained the Fire Department can donate a truck or sell a truck to in state fire departments. In this case they are selling to a broker. Indiana law requires they solicit bids.

Motion: Holly Howe moved to approve soliciting for bids to sell a fire truck. Seconded by Mayor Murphy and so approved.

Façade Grant – 157 Lincolnway

Beth Shrader requested approval of a Façade Grant for 157 Lincolnway. This was applied for last year for LeBon restaurant. That project has gone away. They have revised the application, adjusted the scope of work, and reapplied for a new business coming in which is Rocket Fizz. Tom Kruger presented illustrations of the work to be done. Beth Shrader explained the eligible amount is \$25,000 for the front façade. This is assuming there is at least \$50,000 of reimbursable work being done. The rear max is \$10,000.

Motion: Holly Howe moved to approve the façade grant for 157 Lincolnway. Seconded by Mayor Murphy and so approved.

Unsafe Building Hearing – 1050 Horse Prairie Avenue (Zao Island)

Attorney Estrada presented an Order of Demolition regarding the green house on the property at 1050 Horse Prairie Avenue (Zao Island). He has submitted his Pre-Hearing Submission of Evidence and served counsel Todd Leeth with the same. He asked that it be entered into evidence for today's hearing. Mayor

Murphy approved the submission. An Order of Demolition was sent on April 13, 2022. Todd Leeth appeared on behalf of Wright Group, the property owners.

Attorney Estrada presented Bill Laird, Deputy Engineer, and Flood Plain Administrator for the City of Valparaiso. He oversees construction and development within the flood plain within the City.

Q – Are you familiar with 1050 Horse Prairie?

A – Yes.

Q – Are you aware of the green house on the property?

A – Yes.

Q – Can you describe what is going on with the property?

A – A structure was constructed within the special flood hazard area of the flood plain of Salt Creek. The base flood elevation for the Creek is 689. We have an elevation certificate that shows the building was constructed at elevation 685.

Q – What is base flood elevation?

A – Base flood elevation is where in a flood event, the water level will rise within the flood way and the flood plain of the creek.

Q – So where does the green house sit?

A - The green house is at 685.

Q – And where does it need to be?

A – It needs to be at or above 689.

Q – So what does that mean?

A – This means the house is below where the water would rise in a flood event so the building would become flooded.

Q – So if there was a flood what would occur?

A - There would likely be property damage. There is the potential for storm water to get into the plumbing system and sent down to the sanitary treatment plant which would have ramifications.

Q – Are you aware of the plans submitted in 2017 for the green house?

A – I am.

Q – What type of structure was supposed to sit on it?

A - The plan was represented as an open gazebo or pavilion type structure. It was elevated 4'-5'. Essentially it was some posts and a roof. There were no floors, no walls, no HVAC, or plumbing.

Q – As the building sits now, was it raised as the plan identified?

A – No

Q – As it sits now was it constructed as identified in the plan?

A – No. The building that was constructed has walls, bathroom, and HVAC.

Q – So it is an enclosed green house at this point?

A – Yes.

Q - Attorney Estrada presented the Floodplain Permit. It shows the Regulatory Flood Profile Grade to be 689 and the Flood Protection Grade to be 691.0.

A - FEMA determines the Flood Profile Grade. The Flood Protection Grade is 2' above the flood elevation.

Q – Are you aware of the Federal program that allows cities to become part of their program in case of flood disaster?

A – Yes. It is the National Flood Insurance Program.

Q – Can you explain the program?

A - This is a program administered by FEMA which allows the residents of municipalities to partake in a flood insurance program as long as the municipality adopts a flood plain ordinance and follows guidelines of FEMA.

Q – Has the City of Valparaiso applied for this?

A – They have.

Q – How does Zao Island and the green house affect the City of Valparaiso's participation in this program?

A – We received a letter from FEMA questioning the City allowing the green house to be constructed. According to FEMA it is in violation.

Q – As far as you know are FEMA's thoughts about the violations of the green house similar to the City's thoughts?

A – Yes.

Q – The Program lets residents of Valparaiso get flood insurance?

A – Yes

Q – And if there was a huge flood in the City what would be the result of the City of Valparaiso not being a part of that program?

A - The flood insurance policies would be voided. No residents or commercial businesses would be able to get flood insurance. If we had a flood event that raised to a natural disaster level the City of Valparaiso would not be allowed to get Federal disaster relief from the Federal Government.

Q – Are you aware of a flood of that nature in 2008?

A - I am.

Q – If that were to occur today and the City were not a part of that program, what would happen?

A – All damages would be the responsibility of the individual property owner. They would receive no assistance. And if it should be declared a Federal Disaster Area, we would not receive any assistance from the Federal Government.

Q – So Joe, a City of Valparaiso resident, gets 6’ of water in his basement. He needs help repairing his home. Will he be entitled to FEMA?

A – No. There would be zero assistance available.

Q – In regard to the green house as it is constructed right now. Is there a creek nearby?

A – Yes there is.

Q – Is there any threat to that creek or the pumping of water in case of a flood?

A – For construction within the flood plain there is potential to raise that studied base elevation higher than what was studied by FEMA which could create additional flooding damages both upstream and downstream of the structure.

Todd Leeth questioned Bill Laird

Q – The green house was originally constructed as an open-air pavilion?

A – It was constructed prior to my time with the City.

Q – Here is a Flood Plain Permit issued September 22, 2017. It is in the City’s evidence package. This was issued to Ryan Wright as the principal of Zao Island. To your knowledge was this issued by the City to allow for the construction of the open-air pavilion?

A – Yes.

Q – Is it your opinion that the open-air pavilion was compliant with the Flood Plain Ordinance of the City of Valparaiso?

A – If it was constructed as an open-air pavilion then I would believe it is in compliance.

Attorney Estrada resumed questioning.

Q – If this was constructed as an open-air pavilion but not raised would it be in compliance?

A – I believe it would be in compliance as an open-air pavilion.

Q – Explain to the Board why.

A – Because even though it would be below the base elevation it would allow the flood waters to flow unobstructed through the structure and not create an issue where we would potentially raise flood water elevations and create damages upstream and downstream.

Q – As it sits here today is it an open-air pavilion?

A – No.

Attorney Estrada called on Building Commissioner Vicki Thrasher

Q – Ms. Thrasher are you aware of the issues at Zao Island, the green house specifically?

A – Yes

Q – Do you believe this property to be an unsafe building?

A – Yes

Q – Do you believe this building to be a nuisance to the City of Valparaiso?

A – Yes

Q – Do you believe this to be in violation of City ordinance?

A – Yes.

Q – Do you believe this property to be a public health issue?

A – Yes

Q – Can you explain why?

A – In a flood event the impact it would have on the property and surrounding property. Also the impact to the City's flood insurance program.

Q – Is it your recommendation to the Board that they enter an Order for Demolition?

A – Yes.

Attorney Todd Leeth questioned Vicki Thrasher

Q – Would your answer to those questions be the same if it were an open-air pavilion?

A – No.

Attorney Estrada submitted a proposed Order for Demolition. He asked that the green house structure be found in violation of its own application to the Board of Public Works in 2017 and that this Board order it to be demolished. This Board has the discretion to do that. If the Board wants to take it under advisement, he understands.

Holly Howe asked if there is a way to go back to an open-air pavilion. Attorney Leeth replied Wright Group as Zao Island has been in business for 40 years in Valparaiso. In 2017 they constructed this green house. It was originally constructed and permitted as an open-air pavilion. Since that time Ryan saw to enclose it and make improvements without a permit. They think they can return it to an open-air pavilion. What makes it different than what was permitted is doors, HVAC system, and bathrooms. They would like to see if they can reach an understanding with the City to save some of the investment they have made and still be compliant with the flood plain ordinance. Mr. Laird testified the reason why the enclosed walls with the doors on each side make it noncompliant and violating the flood plain ordinance is that flood waters cannot move through the building. They have suggested to the City, in writing, that they be allowed to remove the doors and replace them with a track vinyl wall. If the wall went all the way to the floor, it still would violate the flood plain ordinance because it would extend below the flood plain elevation. But if the track system stops at the flood plain elevation there is no way they could lower the walls to below the flood plain. The HVAC system is very close to the flood plain elevation, but it does fall below it. It could possibly be raised or protection put around it. He has asked the City to consider this. Before he asks his client to spend a lot of money, he wants to know if this is something the City will approve. The Flood Plain Ordinance is a complicated document to interpret. He wants to get everyone on the same page. His three attempts to set up a meeting have been rebuffed. If the City tells Mr. Wright no, you can't have the vinyl track walls, if they say the HVAC cannot be raised, if they say the bathrooms are not allowed, then so be it. They will return it back to the open-air pavilion which cross examination shows will return it to a compliant flood plain ordinance. They would ask that they have the opportunity to work with City staff in order to take the temperature on the alternatives. If they can reach some agreement, then they will put together a permit ready application and then they can pass muster on that.

Mayor Murphy asked how FEMA got involved in this. Attorney Patrick Lyp explained in early 2020 he received an email. He believes it was an insurance company on behalf of a property owner. They were asking questions and it ultimately found its way to a gentleman at FEMA. He then went on GIS. At that point he sent a very direct letter. The City saw this as a very serious matter that needed to be addressed. What was presented in 2017 was not what was out there. Vicki's office has been frustrated in terms of not asking for a building permit and at this point not even having a certificate of occupancy. When the City is not able to get matters resolved, they ask Attorney Estrada to put more pressure on the matter.

Attorney Estrada added that Attorney Leeth did ask for meetings. But the letter he sent was very direct. He asked him to bring solutions, not hypotheticals. It is not the City's job to review hypotheticals. He spent thousands of dollars to make this property non-compliant with the flood plain ordinance and is now saying he doesn't want to spend more making it compliant. They have been speaking to him for over two years. They are at a point where meetings should not be had unless they come with engineering. Money is an issue. But it wasn't when they enclosed it. It wasn't when they added the HVAC. He admits he is not compliant. Being here today without a witness, an engineer with prospective plans to show how to fix this is very telling. Today's hearing is a Demolition Order. It is very serious. Attorney Estrada did not meet with him because he does not feel the City should entertain hypotheticals.

Mayor Murphy asked if they agree to continue this today, what is a reasonable timetable to come up with engineering plans and will that get us out of hot water with FEMA?

Holly Howe stated this is her concern also. What happens if there is a flood between now and then? Attorney Lyp stated as of today FEMA has not taken any action other than asking for every document in existence. Attorney Leeth said he would like to have a meeting with the Building Commissioner, Mr. Laird and who ever the City feels is appropriate. He will bring his client and an engineer. Brent Wagner and Abonmarche have both been involved in the design. The Notice of Violation states his client must repair or in the alternative demolition. All they have talked about today is demolition. The question he has today and has had since he began asking for a meeting, is "repair how"? His client has the obligation to submit a permit with the engineering detail. Just help guide his client so it is done right. They don't want FEMA breathing down the city's neck. Attorney Leeth called the person who wrote the initial email from FEMA. He does not believe he is employed by FEMA anymore. He does not feel there is any follow up or eminent action by FEMA. He is not suggesting they wait six months to resolve this. He is suggesting they have 30-60 days to have a meeting and with that they can turn around and if need be, they take all of the component building parts out and return it to what it was in 2017 as an open-air pavilion. He would like to see if there is an opportunity to save some of the investment.

Mayor Murphy asked if the City has any objections to walking them through how to remedy this problem that they created by not getting permits? Attorney Lyp replied it is a two-edge sword. It is not on the City Engineer to engineer this for them. However, there is the grey area where there are four or five different options. Which one would the City prefer? He would like to keep this on a very short leash regarding time. The next BOW meeting is June 10th. He would like to have a "productive" meeting between now and the next meeting. This meeting would have an engineer present and concepts that if the City said yes that makes sense, can then practically be done in a period of time. That would be a good use of everyone's time. It is a 40-year small business in the community. Let's see if we can attempt to assist them to get that building into compliance so the City does not have to worry about getting another letter from FEMA. It is his recommendation to set this over to June 10th and have an update as to where they are at that time.

Holly Howe said she is good with that, but she is looking at a letter sent to Mr. Wright dated December 29th. She wonders why it had to come to this. There has not been a lot of response on his side as well as

being out of compliance with getting permits. He knew when he originally filed what he could build, and he completely went against it. He is not showing trustworthiness on his part.

Motion: Holly Howe moved to continue this hearing to the June 10, 2022 meeting. Seconded by Mayor Murphy and so approved.

Property Maintenance/Rental Housing Code Violation Matters

Attorney Estrada stated this was the most productive day they have had with property maintenance/rental housing code violation matters. The process is working. They have seen progress where the owners can fit it into their life and financial abilities. All the matters were continued to either 30 or 60 days. Properties continued were located at: 401 Oak Street, 804 Union Street, 202 Jefferson Street, 602 Calumet Avenue, 808 Napoleon Street, 8 Lafayette Street, 707 Center Street, 803 Brown Street, 957 Joliet Road, 856 Cyrus Street, 503 Institute Street, 955 Bond Avenue, 2001 Crockett Avenue, 2005 Valparaiso Street, 303 Indiana Avenue, 306 Greenwich Street.

Motion: Holly Howe moved to continue the above listed cases for 30 to 60 days as indicated in the Orders presented to the Mayor. Seconded by Mayor Murphy and so approved.

1425 Glendale

Attorney Lyp advised the Building Department has received numerous complaints about the fencing around this property. Attorney Estrada reported he has entered his appearance on the foreclosure action. The City has a lien filed due to the daily fines incurred on the property at \$50 per day. The total amount due right now, with attorney fees, is approximately \$14,100. Recently the temporary fence was removed. The receiver, Paul Chael, has been advised that is a safety issue. Attorney Estrada advised Paul Chael the city is looking to continue and increasing fines. The City might want to look at fencing this in and adding it to the amount owed in the foreclosure. There are some interested buyers that would cover the amount of the liens. The issue is the covenants placed on the building.

Public Assembly Form, - Northwest Indiana NOW and Porter County Right to Life

Attorney Lyp presented two Public Assembly Forms. They are from Northwest Indiana NOW and Porter County Right to Life. About 7-8 months ago the Board granted a blanket approval for assembly on a weekly basis on Tuesdays. Assistant Chief DeHaven has indicated there are no concerns with Northwest Indiana NOW. Porter County Right to Life occasionally had some voice enhancement equipment. This will be worked out with the applicant. It is his recommendation that the Board approve both the Northwest Indiana NOW and Porter County Right to Life requests with the same terms as previously given and the public assembly form go through December 31, 2022.

Motion: Holly Howe moved to approve the Public Assembly Forms of Northwest Indiana NOW and Porter County Right to Life. Seconded by Mayor Murphy and so approved.

Request for Street Closures

- Valpo Parks Touch a Truck, Indiana Avenue, June 12, 2022

This has been reviewed and approved by all impacted departments.

Motion: Holly Howe moved to approve the Request for Street Closures as presented. Seconded by Mayor Murphy and so approved.

Appeal of Refusal to Issue Rental Registration Certificate for 307 Washington

Attorney Lyp gave the Board a brief history of this matter. The City has a Rental Registration program that was adopted in 2011. An owner of a building with rental units must register each unit with the City. On May 31, 2011, the owner of 307 Washington Street filed an application to register 4 dwelling units. Based on the application, certificate R11-0204 was issued reflecting 4 dwelling units. The initial 4 dwelling units are deemed legal nonconforming uses. On August 25, 2020, the Property Owner submitted a "revised" application to include a 5th & 6th dwelling unit. In speaking with the owner, it appears he added a unit in the basement and may have converted one of the units from his law office back to a dwelling unit. No certificate was issued to increase the number of units. On April 22, 2022, the Property Owner re-submitted an application to revise his rental application to include a 5th & 6th dwelling unit. Similar to the 2020 request, no certificate was issued. On May 12, 2022, a letter was sent to the Property Owner explaining that 4 residential dwelling units are allowed for 307 Washington Street and that the added units and previous personal office would not be considered legal non-conforming. At this point there are two options. One, the property owner can appeal the decision of the Building Commissioner and say the Building Commissioner is wrong and a certificate should be issued. Or the property owner can seek a variance from the Board of Zoning Appeals.

Attorney Gordon Etzler addressed the Board. The property in question has been legal non-conforming for 40-50 years. He bought the property in 1999. He hopes to sell the property. The problem he has is the financing companies are now asking for the certificate of registration. If they do not have that in their portfolio, then he will not get the financing. All he needs is to have a certification of registration for four units.

Attorney Patrick Lyp stated Attorney Etzler mentioned if he had a certificate saying he had four units, that would work. In June of 2011 he received a certificate for four. So if four will work for financing, he already has that. Attorney Etzler replied it is not a current one. Building Commissioner, Vicki Thrasher, stated his certificate was never revoked. It is current. Attorney Etzler stated it is out of date and there are claims against it. Attorney Lyp stated if Attorney Etzler can do what he needs to do based on the June 2011 certification, they will write a letter stating it is still good. That is something he can do for apartments A, B, C and D. There is no issue there. The issue comes in on units 5 and 6. Units 5 and 6 without a BZA approval would be non-compliant. If having a certification for 4 units is what you need, we can get you going today. If you need 5 and 6, you will need to ask the Board to overrule its Building Commissioner or get a variance from the BZA. Attorney Etzler replied what he needs is a certification of those units that is up to date. Attorney Lyp clarified that certificate R11-0204 was issued June 7, 2011.

If the concern is the potential lender says the certificate is 10+ years and they are not sure that is valid, he can confirm that rental registration certificate is still valid today. Attorney Etzler asked if withdrawing the issue of him closing his practice, would also be available for him as number 5. Attorney Lyp replied he is not sure what number 5 was when the certificate was issued. Right now the City can certify he has 4 dwelling units. He can ask the Board to overrule the Building Commissioner. He can apply for a variance with the BZA.

ACE Pyro Service Contract

Mike Jessen requested approval of a Service Contract with ACE Pyro for 4th of July fireworks. This contract covers the next three years. (2023-2025)

Urschel Development – Real Estate Rental Agreement

Mike Jessen requested approval of a Real Estate Rental Agreement with Urschel Development for the use of property on Vale Park Road for the 4th of July event. This covers from 7:30 am on Friday, July 1, 2022 through 1:30 pm on Tuesday July 5th.

Head Honchos – Engagement Contract

Mike Jessen requested approval of an Engagement Contract with Head Honchos for entertainment/music for the 4th of July event. This contract covers two 75-minute sets between 6:15 and 9:15 pm and is in the amount of \$2,000.

Motion: Holly Howe moved to approve the Service Contract with ACE Pyro, Real Estate Rental Agreement with Urschel Development, and Engagement Contract with Head Honchos. Seconded by Mayor Murphy and so approved.

Public Comment

Richard Stith - 812 Brown Street. He advised that in regard to Porter County Right to Life public assembly, the only use of a microphone was someone he never met. That person was across the street. He gave a history of the German Court and abortion. At their public assemblies they hand out a brochure entitled My Guide to Free and Money-saving Help.

There was no further business, and the meeting was adjourned.