

REGULAR MEETING – July 21, 2009

The Common Council of the City of Michigan City, Indiana, met in regular session on Tuesday evening, July 21, 2009, at the hour of 6:30 p.m., local time, in the Common Council Chambers, located in the lower level of the City Hall Building, 100 East Michigan Boulevard, Michigan City, Indiana.

The meeting was called to order at 6:30 p.m. by Council President Bob McKee.

Roll call was authorized and the following were noted present and/or absent:

PRESENT: COUNCIL MEMBERS Patricia Boy, Phillip Jankowski, Marc Espar, Robert McKee, Richard Murphy, Joe Doyle, Angie Nelson, Ron Meer, and (8).

ABSENT: Willie Milsap (1).

A QUORUM WAS NOTED PRESENT.

ALSO PRESENT: Clerk – Thomas Fedder, Deputy Clerk – Gale Neulieb and Council Attorney – James Meyer.

APPROVAL OF MINUTES

President McKee inquired whether there were any corrections, deletions, or additions to the minutes of the regular Meeting of July 7, 2009.

Councilman Espar made a motion to approve the minutes as printed, second by Councilwoman Boy. The minutes were approved as printed.

REPORTS OF STANDING COMMITTEES

There were no reports of standing committees.

REPORTS OF SPECIAL OR SELECT COMMITTEES

Councilman Doyle invited everyone to attend August 3 & 4, 2009 the Quarter Finals for the World Championship of the Drum and Bugle Corp. Mr. Doyle also stated that August 7th thru 9th, the Super Boat Great Lakes Grand Prix will be taking place at Washington Park.

Councilman Jankowski stated the June 1, 2009 Utility Meeting minutes were distributed to Council members along with communications received regarding the treatment of storm water related issues of the Barker Ave. /Lafayette sewer project. Mr. Jankowski also distributed information regarding the Sanitary Districts Kayaking activities.

Councilman Jankowski requested copies from the Sanitary Districts response to IDEM, along with copies of the Water Department and Sanitary Districts six months financial

statements to present at the next Utility Meeting which will be scheduled in the next few weeks.

REPORTS of OTHER CITY OFFICERS and DEPARTMENTS

There were no reports of Other City Officers and Departments.

PETITIONS

There were no petitions.

COMMUNICATIONS

There were no communications

RESOLUTIONS

The Clerk read the Resolution by title only,

MICHIGAN CITY COMMON COUNCIL

RESOLUTION NO. 4429

APPROVING AN ORDER OF THE CITY OF MICHIGAN CITY PLAN COMMISSION APPROVING THE ACQUISITION OF CERTAIN REAL ESTATE WITHIN THE BOUNDARIES OF THE URBAN RENEWAL AREA BY THE CITY OF MICHIGAN CITY REDEVELOPMENT COMMISSION

WHEREAS, the Michigan City Redevelopment Commission (the "Commission") governing body of the City of Michigan City Department of Redevelopment (the "Department") and the Redevelopment District of the City of Michigan City, Indiana (the "Redevelopment District"), exists and operates under the provisions of the Redevelopment of Cities and Towns Act of 1953 which has been codified in I.C. 36-7-14, as amended from time to time (the "Act"); and

WHEREAS, on July 1, 1970, the Commission adopted a resolution declaring an area within the City of Michigan City, Indiana (the "City") to be a redevelopment area (the "Community Center No. 1, Urban Renewal Area"); and

WHEREAS, on December 15, 1986, the Commission adopted and approved a resolution (the "Declaratory Resolution of 1986") confirming that the Community Center No. 1, Urban Renewal Area (the "Initial Area") continued to be blighted and declaring that an additional area of the City is blighted within the meaning of the Act and the Commission designated the Initial Area and said additional area as the Community Center No. 1, Expanded Urban Renewal Area (referred to herein as the "Existing Area"), and determined that it would be of public utility and benefit to acquire the Existing Area and redevelop it pursuant to a redevelopment plan entitled Urban Renewal Plan, Community Center No. 1, Expanded Urban Renewal Area, Project No. Indiana R-46, Michigan City, Indiana (the "Uptown Improvement Project Plan"); and

WHEREAS, the Plan Commission of the City (the "Plan Commission"), which is the duly designated and acting planning body of the City, adopted and approved a resolution determining that said Declaratory Resolution of 1986 and Uptown Improvement Project Plan conformed to the plan of development for the City, and the Common Council of the City (the "Common Council") approved said resolution of the Plan Commission; and

WHEREAS, on February 10, 1987, after notice and a public hearing thereon, the Commission modified and confirmed the Declaratory Resolution of 1986 by the adoption of a confirmatory resolution; and

WHEREAS, the Commission on January 6, 1997, approved and adopted Resolution No. 1-97 entitled "Resolution of the Michigan City Redevelopment Commission Designating and Declaring an Additional Area to Be Blighted to Expand the Community Center No. 1, Expanded Urban Renewal Area and Amend the Existing Urban Renewal Plan for the Community Center No. 1, Expanded Urban Renewal Area" (the "Declaratory Resolution of 1997"), creating the "Expanded Area"; and

WHEREAS, on January 28, 1997, the Plan Commission approved and adopted Plan Commission Resolution 1-97 and issued an Order determining that said Declaratory Resolution of 1997 conformed to the plan for the City; and

WHEREAS, on April 15, 1997, the Common Council approved said Plan Commission Order by adopting its Resolution No. 3882 thereby authorizing the Commission to proceed with the redevelopment of the Expanded Area subject to the requirement that the Commission obtain approval of the Common Council of any and all redevelopment projects undertaken by the Commission subsequent to the date thereof; and

WHEREAS, on June 8, 2009, the Redevelopment Commission adopted its Resolution No.1-09 entitled “A RESOLUTION OF THE CITY OF MICHIGAN CITY REDEVELOPMENT COMMISSION AUTHORIZING THE ACQUISITION OF CERTAIN REAL ESTATE WITHIN THE BOUNDARIES OF THE URBAN RENEWAL AREA AS AMENDED”, (the “Resolution”) and

WHEREAS, on June 23 2009, the Plan Commission approved and adopted its Resolution No.2-09 entitled “A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MICHIGAN CITY, INDIANA APPROVING AN ORDER OF THE CITY OF MICHIGAN CITY REDEVELOPMENT COMMISSION APPROVING THE ACQUISITION OF CERTAIN REAL ESTATE WITHIN THE BOUNDARIES OF THE URBAN RENEWAL AREA BY THE CITY OF MICHIGAN CITY REDEVELOPMENT COMMISSION” (the “Plan Commission Resolution”) and

WHEREAS, the Commission’s Resolution No. 1-09 approves and authorizes an area to be acquired within the “Expanded Area”), which area proposed to be acquired is described in Exhibit A attached hereto and incorporated herein by reference.

WHEREAS, the Beachway Project Indiana R-46 Revised Land Use Plan, or any other names that this plan has been referred to in the various amendments over the years, has become outdated and behind the times and there exists a need to amend the plan to provide for a north end vision of a more open and accessible corridor connecting the end of Franklin Square with Washington Park; and

WHEREAS, it is the intent of the Common Council to form a special committee to work with the redevelopment commission and the City’s administration to amend the plan to reflect this vision

WHEREAS, it is the Common Council’s intent to avoid any development in the City’s Expanded Urban Renewal Area, that is inconsistent with the Council’s vision of Franklin Street being extended through that Area to provide an open corridor to the harbor, Lake Michigan, and Washington Park.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF MICHIGAN CITY, INDIANA AS FOLLOWS:

1. That the Plan Commission Order contained in its Resolution No. 2-09 is approved and the acquisition of certain real estate within the boundaries of the Community Center No. 1, Expanded Urban Renewal Area As Amended (the “Expanded Area”), as shown in Exhibit A attached hereto by the Redevelopment Commission of the City of Michigan City, Indiana, is hereby authorized and approved subject to the conditions contained in Council Resolution No. 3882. The Redevelopment Commission shall not develop or attempt to develop, dispose of or attempt to dispose of, any part of the City Expanded Urban Renewal Area, without obtaining the prior approval of the Common Council.
2. The Common Council will appoint a special committee to work with the Redevelopment Commission to amend the Beachway Project Indiana R-46 Revised Land Use Plan and all subsequent plan amendments to provide for a north end vision of a more open and accessible corridor connecting the north end of Franklin Square with Washington Park.
3. That this Resolution shall be in full force and effect from and upon compliance with the procedures required by law.

Introduced by: /s/Patricia Boy, member

Councilwoman Boy made a motion to adopt the resolution, second by Councilman Espar.

Councilwoman Boy submitted to the Clerk’s Office and presented copies of the resolution with Author’s amendments she made, making a motion to accept.

John Pugh, Planning and Inspection Director and Attorney Michael Bergerson addressed Councilman Espars’ questions and concerns regarding the resolution.

Council President McKee presented the following amendment,

Add a final “WHEREAS”:

WHEREAS, the Beachway Project Indiana R-46 Revised Land Use Plan, or any other names that This plan has been referred to in the various amendments over the years, has become outdated and Behind the times and there exists a need to amend the Plan to provide for a north end vision of a more Open and accessible corridor connecting the north end of Franklin Square with Washington Park; and

WHEREAS, it is the intent of the Common Council to form a special committee to work with the

Redevelopment commission and the City's administration to amend the plan to reflect this vision

Add to the "therefore be it resolved" under heading #2 – current #2 will become #3:

2. The common Council will appoint a special committee to work with the Redevelopment Commission to amend the Beachway Project Indiana R-46 Revised Land use Plan and all subsequent plan amendments to provide for a north end vision of a more open and accessible corridor connecting the north end of Franklin Square with Washington Park.

Council President McKee made a motion to adopt the amendment, second by Councilwomen Nelson and Boy.

Council President McKee asked if there were any comments on the amendment by the general public or Council and hearing none, the amendment was adopted by the following vote: **AYES: COUNCIL MEMBERS Murphy, Nelson, Boy, Doyle, Espar, Jankowski, McKee, and Meer (8). NAYS: None (0).**

Councilman Espar presented the following amendments,

Add

"WHEREAS, it is the Common Council's intent to avoid any development in the City's Expanded Urban Renewal Area, that is inconsistent with the Council's vision of Franklin Street being extended through that Area to provide an open corridor to the harbor, Lake Michigan, and Washington Park."

Add to "Now Therefore" section:

(End of paragraph 1). Further, the Redevelopment Commission shall not develop or attempt to develop, dispose of or attempt to dispose of, any part of the City's Expanded Urban Renewal Area, without obtaining the prior approval of the Common Council.

Councilman Espar made a motion to adopt the amendment, second by Councilman Meer.

Attorney Bergerson stated his concerns regarding the language of the amendment.

Councilwoman Boy agreed with Attorney Bergerson asking to add the amendment to section one (1) rather than making a separate section (4.).

Councilman Espar stated if the Council would like to add the amendment to Section one (1.) he didn't have any problems with that.

Councilwoman Boy made a motion to make an amendment to the amendment adding Councilman Espar's amendment to Section one (1.) rather than adding another section (4.) to the resolution, second by Councilwoman Nelson.

Council President McKee asked if there were any comments or questions on the amendment to the proposed amendment presented by Marc Espar and amended by Councilwoman Boy by the general public or Council and hearing none, the amended amendment was adopted by the following vote: **AYES: COUNCIL MEMBERS Nelson, Boy, Doyle, Espar, Jankowski, McKee, Meer, and Murphy (8). NAYS: None (0).**

Council President McKee asked if there were any comments or questions on the amended resolution by the general public or Council and hearing none, the amended resolution was adopted by the following vote: **AYES: COUNCIL MEMBERS Boy, Doyle, Espar, Jankowski, McKee, Meer, Murphy, and Nelson (8). NAYS: None (0).**

ORDINANCES

The Clerk read on third reading by title only,

MICHIGAN CITY COMMON COUNCIL**ORDINANCE NO. 4066****AMENDING ORDINANCE NO. 3943 SO AS TO REQUIRE SPENDING FROM THE RIVERBOAT FUND FOR CAPITAL EXPENDITURES**

WHEREAS, it is in the best interest of the citizens of Michigan City that the revenues from the casino boat be spent for capital improvements and development projects instead of operating expenses in order to improve the opportunities for economic development and the quality of life in Michigan City; and

WHEREAS, the Legislature's express purpose for authorizing casino gaming in Indiana was to provide funds for economically distressed municipalities, such as Michigan City, to use to fund capital improvements and development projects to promote economic development in those municipalities and not to subsidize operating expenditures of those municipalities; and

WHEREAS, the Common Council previously limited expenditures from the Riverboat Fund for "normal and routine operating expenses" to not more than 45% of the revenues for that Fund; and

WHEREAS, the Common Council believes that it is in the best interest of the citizens of Michigan City that the amount of Riverboat Fund revenue that should be reserved for capital improvements and development projects should be increased so as to more quickly accomplish the goal of supporting and causing economic development in Michigan City with those funds.

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Michigan City (City) that:

SECTION 1. Beginning with the revenues, including from investments, received by the Riverboat Fund in the year 2009, at least 55% shall be reserved for capital expenditures for capital improvements and development projects. That percentage shall be increased to 65% of funds received in 2010; 75% of funds received in 2011; and 80% of funds received in 2012 and each and every year thereafter. Those funds not reserved for capital expenditures may be used for any lawful purpose. Furthermore, in the event that any of the funds not reserved for capital improvements and development projects by the terms of this Ordinance are not spent in the calendar year they are received by the City, all of said funds, including income from investment thereof, shall be reserved for capital improvements and development projects to the extent they are not encumbered as of the beginning of the year succeeding the year they are received.

SECTION 2. For the purpose of this Ordinance, "capital expenditures" and "operating expenditures" shall be defined as stated in Exhibit 1 which is attached hereto and incorporated herein by reference.

INTRODUCED BY: /s/ Marc Espar
 /s/ Bob McKee
 /s/ Phil Jankowski
 /s/ Richard Murphy

EXHIBIT 1**DEFINITIONS APPLICABLE TO RIVERBOAT EXPENDITURE LIMITATIONS**

Capital expenditures are expenditures providing benefits extending for more than one year. A capital expenditure is incurred when the City spends money either to buy a fixed asset with a useful life that extend beyond the fiscal year in which it is purchased or to add to the value of an existing fixed asset with a useful life that extends beyond the fiscal year by repair or improvement which repair or improvement either increases the useful life of the fixed asset by a year or more or significantly increases the value of the fixed asset. Capital expenditures are used by the City to acquire or upgrade physical assets such as equipment, utility facilities, property, or buildings.

For Riverboat Fund expenditure purposes, capital expenditures are costs that cannot be deducted per IRS regulations in the year in which they are paid or incurred and must be capitalized. The general rule is that if the property acquired has a useful life longer than the fiscal year, the cost must be capitalized. As stated above, capital expenditures create or add basis to the asset or property.

Included in capital expenditures are amounts spent on:

1. acquiring fixed assets

2. fixing problems with an asset that existed prior to acquisition
3. preparing an asset to be used in business
4. legal costs of establishing or maintaining one's right of ownership in a piece of property
5. restoring property or adapting it to a new or different use

An **operating expense, operating expenditure, operational expense, operational expenditure** is an on-going cost for operating a product, business, or system. Its counterpart, a capital expenditure, is the cost of developing or providing non-consumable parts for the product or system. For example, the purchase of a photocopier is a capital expenditure, and the annual paper and toner cost is an operating expenditure. Operating expenditures also include the cost of workers and facility expenses such as rent and utilities.

An operating expense is a day-to-day expense. Operating expenses also include depreciation of equipment, property, and buildings.

Operating expenses are costs associated with the operation and maintenance of the City and departments. Operating expenses include:

- accounting expenses
- license fees
- corrective maintenance and repairs, such as snow removal, trash removal, janitorial service, pest control, and lawn care
- preventative and predictive maintenance such as lubrication, as oil changes, routine inspections, filter changes, meter calibrations, equipment adjustments
- advertising
- office expenses
- supplies
- attorney fees, consultant fees, and litigation expenses
- utilities, such as telephone
- insurance
- property management, including a resident manager
- travel and vehicle expenses
- leasing commissions
- salary and wages
- raw materials

Pursuant to Michigan City capitalization policies, capital expenditures do not include an expenditure that would otherwise meet the definition of being a capital expenditure if it is an expenditure of less than:

\$100,000 for Infrastructure

\$50,000 for Buildings and Structures

\$20,000 for Building or Land Improvements

\$5,000 for all other types of expenditures

These expenditures are deemed to be, and are accounted for as, operating expenditures in City records and reports and shall be considered such for the purposes of the definitions herein.

Mayor Oberlie addressed the Council regarding reasons he would not support the proposed Ordinance.

Glen Gerald, Michigan City, employee of Central Maintenance addressed the Council regarding the proposed Ordinance.

Marc Espar presented the following comments,

Mr. President, we are presently dangerously reliant on the riverboat for our day to day operations. This ordinance begins to bring some sensibility to how we run local government. It realigns our priorities by redirecting our efforts to economic development, which was the intent of the state legislature when it approved riverboat gambling in distressed areas in the state. Only by improving our economic structure can we begin to increase our tax base. This ordinance brings a sensible approach to reducing our reliance on the riverboat for operations, while redirecting the spending to infrastructure and capital improvements.

Councilman Espar made a motion to adopt the ordinance, second by Councilman Jankowski.

Discussion ensued among Council Members, Doyle, McKee, Meer, Boy, Murphy, Jankowski and Espar.

Council President McKee asked if there were any other comments or questions by the general public or Council and hearing none, the Ordinance was adopted by the following vote: **AYES: COUNCIL MEMBERS Doyle, Espar, Jankowski, McKee, Meer, Murphy, Nelson, and Boy (8). NAYS: None (0).**

UNFINISHED BUSINESS

Council President McKee stated at the last Council Meeting (July 7, 2009) Gerry Jones, representing H.O.P.E was nominated to serve on the Commission of the Social Status of African-American Males.

Council President McKee asked the Council if there were any comments on the nomination and hearing none, Gerry Jones, representing H.O.P.E. was nominated to serve on the Commission of the Social Status of African-American Males by the following vote: **AYES: COUNCIL MEMBERS Espar, Jankowski, McKee, Meer, Murphy, Nelson, Boy, and Doyle (8). NAYS: None (0).**

NEW BUSINESS

President McKee appointed Councilwoman Boy – Plan Commission, Councilman Murphy – Redevelopment Commission, and himself Councilman McKee – Oversight Committee Member to work with the Redevelopment Commission in amending the Beachway Project Indiana R-46 Revised Land Use Plan.

COMMENTS FROM THE PUBLIC

Tom Dunn, 117 Nevada Avenue, stated his comments and concerns regarding the Summer Festival Fire Works that take place every year.

Richard Harding, 510 Bies Street, thanked everyone that helped get the concession trailers moved from the beach walk at Washington Park.

COMMENTS FROM THE COUNCIL

Councilman Murphy invited everyone to a workshop being held on Wednesday, July 29, 2009 at 6:30 p.m. held in the Council Chamber at City Hall regarding the South Shore Line upgrade plan.

Councilwoman Boy requested that at this workshop mobile mikes be available for the citizens who wish to speak regarding their issues.

Councilman Doyle invited everyone to attend the Soul Steppers Drill Team/Drumline competition being held on July 25, 2009, 5:00 p.m. at the Michigan City High School.

Councilman Espar reminded everyone of the “Coffee with the Council” being held at the Fifth Ward Office, Saturday, July 25, 2009 at 10:00 a.m.

ADJOURNMENT

A motion by Councilman Meer, supported by Councilman Espar, and there being no further business to transact, President McKee declared the meeting ADJOURNED (approximately 7:12 p.m.).

Thomas F. Fedder, City Clerk