

ST. JOHN TOWN COUNCIL REGULAR MEETING
ST. JOHN MUNICIPAL BUILDING MAIN MEETING ROOM
10955 W. 93RD AVENUE, ST. JOHN, INDIANA
AUGUST 16, 2007 - 7:00 P.M.

Mr. Fryzel called the meeting to order at 7:12 P.M. and led the Pledge of Allegiance. Roll call was taken with the following members present: Michael Fryzel, President; Jerri Teibel, Vice-President; Gregory Volk, Member; Mark Barenie, Member; David Austgen, Attorney; Steve Kil, Town Manager and Sherry Sury, Clerk-Treasurer. Also present was Fred Frego, Police Chief; Fred Willman, Fire Chief and John Mainwaring, Code Enforcement Officer. Absent were Charles Pearson, Member; Bob Pharazyn, Public Works Director and Chip Sobek, Parks & Recreation Superintendent.

Public Hearing - Ordinance #1453, annexation of real property commonly known as 13800 West 93rd Avenue (Jehovah-Nissi, Inc. – Mausoleum)

Mr. Austgen stated that the publishers affidavit of **The Times** and **Post Tribune** indicate publication one time in each newspaper July 27th that meets the advance notice special advertising requirements for annexation and is in evidence.

Mr. Austgen stated that he is looking for, however, the verification of ownership or the authority of the petitioner. There is a petition for annexation; it is difficult to read. It is hard to tell if it is by the owner or not. Although it does reference Madeline M. Lee with a dating of June 20, 2007, but he is not certain if Madeline M. Lee is Jehovah-Nissi, Incorporated. So some verification of petitioner/owner status would be required.

Finally, he was handed an affidavit by Michael Muenich, who is a well known attorney in the community, related to this matter and specifically with regard to this affidavit, Mr. Muenich acknowledges, under oath, the personal information he has related to this application and subject property.

First, that he is personally familiar with the property immediately south of the intersection of Schillton Drive and West 93rd Avenue in St. John. Two, that he personally observed a notice of public hearing posted immediately south of the intersection of Schillton and West 93rd. He photographed same on August 13th and he provided a copy of same attached to the affidavit. And finally, he indicates in his affidavit that the signs are placed on property owned by Lake County Trust Company as Trustee under Trust 4609 which consists of 47 acres and was previously annexed into the Town of St. John more than 10 years ago.

Mr. Austgen stated that it appears that the subject parcel represented in the petition for annexation is represented to be 27 acres of land. It appears that key numbers are provided with a generic meets and bounds description. None of which has been able to be verified as we sit here. Although it does represent in the petition for annexation that 100% of the owners of the parcel represented are the subject of the petition for annexation. So it appears that some verification of ownership of petitioner status is required; and two, that there is some defect presented by the affidavit of Attorney Muenich with regard to the placement of the notice of public hearing which is, we know, a very substantial notice requirement here in town and is a longstanding legal notice requirement for these type matters and public hearings; and finally, some public hearing

documentation, at a minimum, would be required. So facially, there may be some issues.

Mr. Fryzel asked for a show of hands of how many people were at the meeting specifically for the public hearing. Mr. Fryzel asked if the petitioner was present or a representative for the petitioner present. No response was provided and Mr. Fryzel requested that the record reflect that the petitioner or a representative of the petitioner was not present for the public hearing.

Mr. Kil stated that they prepared, as they typically do, a proposed form of ordinance for any petitioner who comes with a 100% consenting petition to the town. For clarification, he did speak with the individual who petitioned for the annexation, she indicated she is not the property owner. Mr. Kil stated that he indicated to her at that time that you couldn't simply annex property you do not own, you must have Power of Attorney or some other document or evidence of your ability to do that. To the best of his knowledge he does not have that, she never presented that to him. Mr. Austgen asked if Mr. Kil ever received any letter of authorization, power of direction, anything other than what is contained in the file. Mr. Kil stated that he did not possess any other information but that she did speak with him and stated that she wanted to be removed from the agenda. He told her that was not the case; there was an advertised public hearing, that she put a sign out, apparently in the wrong location. Pursuant with any direction from the Town Council, the public hearing would have to proceed.

Mr. Fryzel stated they would first have the town council comments and then the public comment since several people came out tonight for the hearing.

Town Council Comments

Mr. Fryzel referenced the Comprehensive Plan that clearly shows the area in question. It shows the proposed zoning as single family residential, that's what they will push for in that area. He stated that he spoke today with a board member from the State Board of Cemeteries and Funeral Directors who advised of him that pursuant to IC 23-14-33-1, a mausoleum is considered a cemetery and a mausoleum must adhere to the same requirements as a cemetery. This board member advised him that he would not recommend this high traffic use be approved for any residential area. Further, the town will make sure all aspects of the state law are being followed.

Ms. Teibel stated she would like to stay with the Comprehensive Master Plan. Mr. Barenie and Mr. Volk agreed.

Open to the Floor for Public Comment

Mr. Steve Crabtree, 9451 West 89th – stated that he wanted to ask Kim Woods, the contact for the company, why she did not want the project publicized until the land was annexed and approved by the town. He also asked if the mausoleum would be non-profit and tax exempt. Mr. Austgen said they would not know that until the petitioner brought forth the entity organization documents that identify actually how the land and/or the business is going to be operated.

Mr. Kil mentioned that in their conversations with the individual from the State Board of Cemeteries and Funeral Directors, this question was posed to them. It was indicated to

him that any governmental assistance or not for profit for a use for something like this is simply unheard of in the industry, the only ones they are aware of are in conjunction with the Catholic Church to the best of their knowledge. These are all for profit entities. He does not know what this company's intention is.

Mr. Crabtree stated that there is a similar company listed on taxexemptroll.com as a tax-exempt non-profit organization. He asked, if they are tax exempt, what advantage would this have for the Town of St. John. None replied Mr. Fryzel and Ms. Teibel. Mr. Crabtree also asked if the town could buy and annex the property for future park site and to add green space. Mr. Fryzel stated that when this property is annexed sometime in the future it would be as R-1, single family residence, they will follow the Comprehensive Plan. Mr. Austgen added that if a residential development is proposed and approved on that parcel there is a park line dedication requirement in the town code. Discussion ensued regarding green space. Mr. Crabtree asked if the mausoleum would be approved and then fail, would the area then turn into a retail district. Mr. Fryzel confirmed that the area would come in as R-1 residential.

Mr. Dale Andres, 9505 Julia Drive in Bramblewood – asked if there are a lot of wetlands and if they are buildable. Mr. Fryzel stated that there are a lot of wetlands and asked Mr. Kil to respond as to the percentage of the wetland area that is not buildable. Mr. Kil stated that a lot of developers have looked at the property and there is a substantial amount of the property that lies in either the wetland or the designated flood way because it lies adjacent to Bull Run Ditch. Mr. Andres commended the board for staying with their Comprehensive Plan.

Ms. Sheryl Ford, 9423 Hilltop Drive – stated that she was very upset when she heard that a 60,000 square foot cement block would be going up along 93rd Avenue she does not think it would be appropriate for 93rd Avenue. She is tired of all of the new homes coming in; she would like to see the property as open green space with no residents and requested that they reconsider that property even becoming residential.

Mr. Michael Nees, 13411 Randall Drive – asked what is the Town Council's vision if they are willing to accept a mausoleum. He wanted to express his pleasure that it would always be zoned or come into the town as R-1. He believes the City of St. John has done an excellent job in the growth and in maintaining a very nice community. They have lived here seven years and have enjoyed the growth and are happy it is not going to be a commercial site.

Mr. Fryzel stated that the Comprehensive Plan is a 25-year plan; if a developer comes into town and buys property that is R-1 they cannot stop that developer from building by law. The reason they annex the property is they can control what goes into that area. If the petitioner goes to the county, where the property is currently located, the town has no control over what goes on that property. Discussion ensued.

Close the Floor for Public Comment

Mr. Barenie motioned to deny Ordinance #1453 based upon the lack of compliance and completion of proper public notice requirements. Seconded by Ms. Teibel. Motion passed with a vote of 4 - 0.

Mr. Austgen stated that if the petitioners (land owners) come back and followed the proper procedures; there could be another public hearing.

New Business

Consider Letter of Credit for Meadows of St. John – Unit II in the amount of \$403,370.55 (favorable recommendation from Plan Commission) – Ms. Teibel motioned to accept the letter of credit in the amount of \$403,370.55. Seconded by Mr. Barenie. Motion passed with a vote of 4 - 0.

Proclamation for “Constitution Week” in St. John – Mr. Fryzel read the proclamation. Ms. Teibel motioned to proclaim the week of September 17 to 23, 2007, as Constitution Week. Seconded by Mr. Barenie. Motion passed with a vote of 4 - 0.

Resolution #07-08-16, transfer and loan of funds of the Town (Park Operating Fund) – Mr. Barenie motioned to adopt Resolution #07-08-16. Seconded by Ms. Teibel. Motion passed with a vote of 4 - 0.

Resolution #07-08-16A, transfer of appropriations for various funds of the Town (LRS/Street Salt) – Ms. Teibel motioned to adopt Resolution #07-08-16A. Seconded by Mr. Barenie. Motion passed with a vote of 4 - 0.

Consider special exception application for Aldi Corporation (Petitioner: Todd Leeth) (unfavorable recommendation from B.Z.A. – continued from June 21, 2007 Town Council meeting) – Mr. Fryzel stated that when the developer was met referencing this location, the developer had promised the council and the town that they would look for a type of business that would be in the area of what they were looking for in town. At no time did they ever say that it would be anything like this as is in the petition to the town. He asked if any other council members remembered the conversation with the developer, what the promises were to the community and what would be in this location. Ms. Teibel stated that she felt they were dishonest with us. **Ms. Teibel motioned to deny the special exception based on the recommendations from the Board of Zoning Appeals in the Findings of Fact. Seconded by Mr. Barenie. Motion passed with a vote of 4 - 0.**

Reports & Correspondence

Town Council – None

Clerk-Treasurer – None

Staff -

Mr. Kil stated that he wanted to make sure everyone noticed the new sidewalk that has been placed on 93rd Avenue in the area of Sierra Pointe subdivision. The Plan Commission, after working with the developer for years, has finally been successful in getting that installed. The School Corporation is working on a grant to install sidewalks on Schafer Drive to enable the kids to walk to the new middle school.

Payment of Bills for the Corporation - #8469 - #8645 in the amount of \$1,185,490.05 – Ms. Teibel motioned to accept vouchers 8469 – 8645 in the amount of

\$1,185,490.05 paying the bills for the Corporation. Seconded by Mr. Barenie. Motion passed with a vote of 4 - 0.

Public Comment

Ms. Cheryl Ford, 9423 Hilltop Drive – asked if the bills that were approved were for a one month time period. Mr. Fryzel stated that the bills were for the month. Ms. Ford asked how many days before the board meeting does the agenda have to be posted. Ms. Sury stated that the agenda can be posted up until the time of the meeting. Ms. Ford inquired as to the time frame for the posting of meeting notices and why public comment is at the end of the meeting as opposed to prior to the regular business. Ms. Sury, Mr. Kil and Mr. Austgen answered her questions as to the posting/publication of the notices, special meeting notices, agendas and Mr. Fryzel stated that the placement of public comment on the agenda is always near the end of a meeting except during a public hearing.

Mr. Bill Dravesky, 9038 Howard Court – asked the Town Council if they ever considered passing a resolution banning the use of a cell phone in a motor vehicle that is moving. Discussion ensued.

Mr. Tom Malsh, 9745 Julia Drive – stated that he was the co-chairman of the Chamber/Rotary Corn Roast last Friday and wanted to thank the town for helping and appreciates their support.

Adjournment – Ms. Teibel motioned to adjourn the meeting. Seconded by Mr. Barenie. Motion passed with a vote of 4 - 0. Meeting adjourned at 7:56 P.M.

Attest:

Sherry P. Sury, Clerk-Treasurer