

REGULAR MEETING – MARION COMMON COUNCIL – MARCH 19, 2019 – 7:00 P.M., CITY HALL

The Common Council of the City of Marion, Indiana met in regular session on Tuesday, the 19th day of March, 2019 at the hour of 7:00 pm in the Council Chambers, City Hall.

On the call of the roll the following members were shown to be absent or present as follows:

Present: Henderson, Brunner, Smith, Batchelor, Cain, Homer, Johnson, Luzadder and Miller.

Absent: None.

The minutes of the previous regular meeting of March 5, 2019 were presented. On a motion by Councilman Brad Luzadder, 2nd by Councilwoman Deb Cain, the minutes were approved as presented by the following vote. Aye: Henderson, Smith, Batchelor, Cain, Homer, Johnson, Luzadder and Miller. Nay: None. Abstain: Brunner.

COMMITTEE REPORTS: Councilman Steve Henderson told the Council they will be conducting a meeting of the Compliance Committee in about two weeks as the abatements roll in. They will need to get started on those to approve those. So, within the next couple of weeks, they will have a meeting. Councilman Miller asked, no specific date yet? Henderson told Miller no.

Councilwoman Deb Cain said the airport is receiving an award for their work with the school, their airport school, and they've received an award from the state so they would like to come and present that award the 16th of April. Council President Miller told Cain, very well, tell them to be here at 7:00 pm and they'll do that up front.

Council President Alan Miller told the Council, before they begin their business, the agenda's a little bit out of order from what it normally is. Normally, when they have old business, which they have one item of old business, they usually do that first and then move to the New Business, which they have two new ordinances this evening. However this evening, the one item of old business is going to be acted on last because it is related to the two ordinances dealing with the New Business. So, they're a little out of sequence but it's not a big deal.

NEW BUSINESS

RESOLUTION NO. 3-2019

The City Clerk read Resolution No. 3-2019 by title only. A Resolution of the Marion Common Council regarding approval of expansion of Economic Development Area and Allocation Area. City Clerk Kathleen Kiley told the Council that Tom Hunt would like to introduce everyone tonight that'll be speaking. City Attorney Tom Hunt told the Council it's his privilege to introduce to them tonight a project involving one of their locally homegrown businesses that they should all be proud of and willing to support. That's CIE, Central Indiana Ethanol, out west of town. They have on behalf of the company tonight Ryan Drook, Steve Berry and Jeff Harts, their attorney, Jim Beaman, is present and he (Hunt) has with him the city's bond counsel, Buddy Downs from Ice Miller, and from the city's financial advisor, Andy Mowser (sp?) from, they all remember, Umbaugh and Associates but they now have been rebranded as Baker Tilly. What he'd like to suggest they do first is ask Ryan Drook to come up and give them a very brief overview of the project, the need for this bond issue and then he's going to ask for Buddy and Andy to come up and take any questions they might have about the financing of this. And there's an interesting twist on this financing, something that's never been done here before that he's sure Buddy will cover with them, that gives them significant guarantees and he thinks they'll all be interested in hearing about that. So, let's start off with Ryan giving them a brief introduction of the project, Hunt said. Ryan Drook told the Council he appreciates the opportunity to speak, and for the public's knowledge and for many of them, just to be transparent, he's had the opportunity over the last two or three weeks to meet with many of the folks on the Council since their last meeting. He was not able to attend, travelling for this business. Steve Berry, their Chairman, and Jeff Harts attended and tried to answer some of those questions. He thinks this process has been a little bit eye-opening but they've been through it before. He thinks there were a lot of great questions brought forward. He said he asked President Miller to pass out to them a placard which kind of grew out of some of those conversations, both at the county and city levels, to try to lay out some of the facts because it's clear, as they tell their story privately, they don't tell it very often publicly, many of them said they should get down on

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paper, for the Council's benefit, some of the things that they have promised as they've come before them, going all the way back to, he thinks, 2005 when they first entertained bringing a new business here to Grant County and specific to be annexed into the City of Marion. There were promises made then, there were promises that they made today (inaudible) this project and where it takes them and he thinks that what they tried to do with the placard is answer any questions that one of them asked them, not to put them on the spot but (inaudible) steward of your capital. The same question gets asked of them by those who would be banks, leasing companies or original equity holders would ask of them. He thinks that they treat the capital they would use from this TIF (inaudible) the same way they would treat any capital as a good corporate steward and he thinks some of the returns that they see on the paper, some are not. They try to articulate there. They'll see, if he's got the colors right, what they've promised in red, what they've delivered in terms of employment. That is direct employment, that is not indirect or temporary employment. As has been noted to him recently, studies have been done in their industry as it's grown so quickly. There are both direct and indirect jobs that economists always kind of surmise and predict when a new business like theirs comes to town that will be generated. If they look at their employment today of 64, (inaudible) has done a review of their industry broadly across this country and has found that there's probably upwards of 4-1/2 to 5 jobs indirectly created. So, (inaudible), if you think about some of the trucks you've seen driving around, like Jet Star or Strange Trucking, those are businesses that did not exist in the Marion area prior to them encouraging them to come. Jet Star is one of their trucking partners out of Zionsville, Indiana and they said if they want to be a partner to them, they need to be a partner to this community and they need to bring, obviously, their business here, hire locally and they'll see their trucks here on the west side of town. They want them close to them, obviously for service, promises they make to their customers, they want them to be close to them. There's a lot of (inaudible) that they support, both direct and indirectly. He said at their last Economic Development meeting, as small as pest control at their facility all the way through the Bowman's, the (inaudible), the Shambaugh's (?), the larger construction companies. They have projects seemingly going on all the time, especially at their shut-downs. He means, they run the facility very hard. They ran last year at 24/7 about 359 days last year and they keep a lot of these folks on call and have built great partnerships with them over the years. So when they see that employment on the paper, he thinks their reach as a company in this community is much farther than that and hopefully the support they provide back, not just in employment or in relationships with contractors and other service providers but also just giving back and being part of this community year in and year out, in good times and bad and when the times are good, they'll see they try to be more generous than in other years and obviously they focus their efforts, it's very important to them they focus on the schools and they (inaudible) closer to \$370,000 that they've given back, not only to Marion High School but all the other Grant County schools as well, without any strings attached other than please don't use it for salaries but to fill in their budgets as they see necessary to provide the best local education. They get a lot of their workforce, 80% or so, from Grant and surrounding counties. They continue and plan to continue to grow. And they want (inaudible) there's homes for them here. They don't have to move to Indianapolis or Kokomo or Chicago. So, they're very proud of some of the things they've accomplished together. He thinks the last time he stood here they talked about some of the inflection points that businesses like theirs go through as a commodity business. He wants them to know they don't come back every time they do projects. They've spent over \$25,000,000 since their second TIF (inaudible) and not approached the city for support in those instances. They find themselves at a time, economically, in their industry, it is difficult to say the least. There's a lot of public records out there that they can all avail themselves of (inaudible) companies like Pacific Ethanol, that's publicly traded, competes in their industry nationally, lost \$60,000,000 last year. They manage and run over 660,000,000 gallons. Their facility is closer to 70. So, they hire locally, they compete globally in this commodity business and when times get tough like this, they are not fortunate enough to (inaudible) their own TIF Fund. They had to go out, like everybody else in a normal credit process when you go buy a home or invest in a business and get somebody to check off on the veracity of your financials, your projections, what you plan to do with this capital in order for somebody to want to step in those shoes. Obviously, they're financing the balance of that themselves for what will not be financed with the TIF Fund itself. Obviously, they're here today to keep that transparency going, keep a dialogue going and ask not just easy questions but the tough questions of them and what they plan to do with this capital, Drook said. Council President Alan Miller said, very well, why don't they hear the other two gentlemen that Mr. Hunt referred to and then they can collectively ask all three of them questions. Buddy Downs told the Council the resolution they have before them tonight is the sixth and final step

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under the Redevelopment Statute, creating or amending or expanding the area. The Redevelopment Commission has taken action, starting this process. The Plan Commission took action. On March 5th, this Council approved the Plan Commission Order. After that, the Grant County Commissioners granted jurisdiction over some of the area that will be part of the expansion area. Then, this afternoon, the Redevelopment Commission adopted, they had a public hearing and they adopted a final, confirming resolution of the expansion of the area. Then the last statutory step is coming to the legislative and fiscal body of the city and asking for this approval, which is embodied in this very short resolution that they have before them. He'd be happy to answer any questions about the process, Downs said. Mr. Miller said, yeah, let them listen to the third gentleman then they can collectively ask them. Or is he not going to.....? Downs said he doesn't think he was going to address the resolution itself. Miller said, he might mention, joking about him not being Heather James, Heather did send him a note at the beginning of the week that she had another commitment tonight and Mr. Downs would be coming. All right, very well, what questions have they for Mr. Downs and/or Mr. Drook? Councilwoman Deb Cain said she knows there's been a lot of discussion and questions about what is the city responsible for, like the assessments, and is their property tax, what does that include and where does that fall into in this contract of this bond? Mr. Downs said, if he might, might he go ahead, Mr. President, and speak about the ordinance then? Miller told Downs, oh yeah, certainly. Downs said, so the ordinance they have in front of them, basically is under a different statute, the Economic Development Statute, and as they know, the city's had an EDC, an Economic Development Commission, for many, many years and that ordinance is required by that statute and it approves a set of documents, a loan agreement, a trust indenture, bond purchase agreement, that were also the subject of an earlier meeting today of the Economic Development Commission where they also had a public hearing and they approved those documents plus this form of ordinance to send forward to them (Council) as is required by the statute. Now those documents, the ordinance itself and the documents that are attached, he's going to summarize some of the things they do, which he thinks is responsive to the question. First, from the very beginning, they've said in consultation with the Administration and Tom Hunt, there would be no guarantee by the city of these bonds. The only city skin in the game would be a certain amount of tax increment. He has marked in the documents eight different places, in the documents that are before them or the other bodies, that say the only pledge of the city is of a certain tax increment to come from these bonds. If that tax increment isn't there, then the company must make a loan repayment so they are at risk of making that loan repayment. Now he knows in the past that Marion has had a number of different bond issues and they have had a lot of different security and credits. Some he understands which they did not work on, their firm. Some may have had a property tax backup, some of them may have had income tax backup, other mechanisms, under the law. These documents, he'll say it again, only a certain amount of tax increment is pledged and there is no backup from the city. If that tax increment doesn't exist then the company pays the bonds. The next point he'd make, and he hopes that he's being responsive here, the next point he'd make is this transaction is pretty unique. Unique is an overused word. It's rare because usually debt service is paid from tax increment and if there's not enough tax increment there, the company repays the bonds in a deal like this. And if there's any leftover assessed value tax increment, it goes to the city and the city may not get any immediate benefit from that until the bonds are paid off and then the assessed value rolls in to the assessed value for all the communities in Grant County to utilize. But in this transaction, they negotiated something different, and Andy can speak to the numbers, but in this transaction, they negotiated with the company, trying to look for a win-win situation for the company and for the city, that the assessed value is broken into two parts. The first assessed value which is defined in the documents as the retained assessed value goes to the city first then the next tranch, the next portion of the assessed value to pay debt service, the debt service assessed value is used to pay off the bonds and if it is not sufficient to pay off the bonds, the company pays. The unusual part of that is that the city gets the advantage of assessed value that is projected, from the company's projections, gets the advantage of getting that assessed value before any debt service is paid. And he can think of four or five times he's done this across the state but it takes willing negotiators to get this done. So that assessed value, then the Redevelopment Commission, every year, and of course the Council can have input into that as they choose, the Redevelopment Commission every year has choices to make. They may pass through on an annual basis that assessed value to the other civil taxing units. They may apply the tax rate toward that and use it as TIF for other projects that are eligible for the use of TIF. Or, they can balance that. They can do some pass through and some use the TIF. So if there were another project that was then serving or benefitting the area, that could pay for that project. TIF cannot be

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used under existing statutes, and this goes back to 1977, cannot be used for operating expenses so mainly it's used for capital improvements, although there's some more detailed uses of TIF, for example to help school corporations, if you follow the statute. So those provisions are quite unusual, as he said. In addition to that, in order to protect the city, the company has agreed to no abatement during the life of the bonds, no request for abatement and they have agreed that if for any reason these projections are wrong, and remember, under these documents, the city gets the first AV so they'd have to be really wrong to not get that retained AV, but if for any reason they are wrong and that retained AV is not available, the documents require that the company pay that amount to the city in, it's not really damages but it's just a contractual payment so that that provides an additional level of assurance that money will be there to give the city the benefit of this bargain. And it will be there, the company will pay the debt service if bad things happen, no matter what. It's an unconditional agreement that the company, under these documents, and they will pay the amount equal to the amount that would have been generated by the retained assessed value under these documents under any circumstances, whether or not there was a glitch in the assessment. In other words, they have a monetary obligation regardless of what the assessment is and he knows he said this earlier but he's going to repeat himself, the projections of the assessments are based upon the company's numbers. Did he fully address that, Downs asked Cain. Mrs. Cain replied, yeah. Miller said, excuse him just a minute, if he might interrupt him, probably because he misunderstood his question, he thinks he asked if he could move on and talk about the bond, they need to backtrack just momentarily. They really need to deal with Resolution No. 3-2019, expanding the TIF area, and then come back so he's going to ask that they hold their questions relating to the bond issue itself. Like he said, he thinks he misunderstood. Mr. Downs apologized and Mr. Miller told him, no apology needed but they do need to backtrack, at least momentarily. Are there any questions directly related to the expansion of the TIF District, Miller asked? Miller told Mr. Downs he has one. He thinks he made reference to this being the final step in the process for expanding the TIF District. He was lead to believe that the County Council now has to act on that and that they are meeting tomorrow to do that. Downs replied, no sir, they are meeting tomorrow to take action but that is not under this statute. This statute is 36-7-14 and that's the Redevelopment Statute. The Economic Development Statute, which the ordinance is under, that's what they're meeting about and he'll be happy to explain that at any time. Miller said, okay, so do they have questions directly related to Resolution No. 3-2019 to expand the economic development area? And if they do not, let them clear that off their agenda and then they will move on to the more important issue of the bond issue. Miller said, seeing no questions or concerns, he would entertain a motion that they approve Resolution No. 3-2019. That is just one vote required, counselor? Very well, Miller said. Motion was made by Councilman Brad Luzadder, 2nd by Councilwoman Lynn Johnson to approve Resolution No. 3-2019 and carried by the following vote. Aye: Brunner, Smith, Batchelor, Cain, Homer, Johnson, Luzadder and Miller. Nay: Henderson.

GENERAL ORDINANCE NO. 5-2019 1ST READING

An Ordinance authorizing the City of Marion, Indiana to issue its "Taxable Economic Development Revenue Bonds of 2019" and approving and authorizing other actions in respect thereto. Council President Alan Miller said, okay, the floor is now open for questions relating to General Ordinance No. 5-2019. Councilwoman Deb Cain asked, do property tax caps fall into this at all? Mr. Downs said he's going to let the financial advisor answer that because it's an incredibly complex question about property tax administration but what he was trying to say earlier is that, even if there is a property tax cap, the two points that he made were that the company has promised to pay the bonds, regardless of whether or not they are paying property taxes, both in terms of their what he'll call the guarantee of the bonds, that is under the loan agreement, and also in terms of them saying, if that retained assessed value isn't there for any reason, they will write a check throughout the life of the bonds for the money that would have been created. So those two contractual obligations are not related to any property tax caps, Downs said. Andy Mowser (sp?) told the Council he is with Baker Tilly, formerly Umbaugh. As far as property tax caps on CIE's property taxes, their real and personal property are both subject to the 3% cap on commercial industrial property. So the circuit breaker tax caps put in place a 1% cap on the gross assessed value for residential property and the primary homesteads, 2% for farmland, secondary residences like apartments, really any amount of homestead residential property, and then 3% on any commercial industrial property. So they are subject to those 3% caps and with their current tax rate up around \$5.00, there will certainly be some circuit breaker reductions in the total taxes they will pay but any commercial property citywide is

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subject to those sitting caps. There's nothing unique to CIE's property taxes. Their personal property equipment is all subject to the 30% floor so that actually limits their taxes from dropping below a certain point so as their equipment depreciates, it can never depreciate below that 30% on the aggregate of all their equipment that's in place. So, that's kind of something that works, he guessed, in the opposite direction of the tax caps but, again, none of that is anything unique to CIE. That's any commercial industrial property citywide would be subject to those same limitations, Mowser said. Councilwoman Lynn Johnson asked, would he please explain to her and tell her the statute where a commercial property, personal property is capped and utilizing the caps (inaudible). What statute is that referring to? Mr. Downs told Johnson, he's not a state tax lawyer. He does know that there is a statute, he doesn't know it off the top of his head. It's also in the Constitution, the caps. Johnson said, well she tried to find it and she couldn't find it herself so she just thought maybe he knew. Downs stated, when the General Assembly or when the constitutional amendment was enacted then the General Assembly did enact a mirror, essentially, legislatively of that. He'll be happy, while they're going through this, to text his state tax lawyer and see if she can give him the answer before they're done. Johnson told Downs, that's great because it means a lot to her. She also has another question about the financing on this bond. She's trying to understand why there's a sinking fund and if he could explain that to the rest of the Councilmen what that sinking fund means. Mr. Mowser said, so the sinking fund would just be when TIF is distributed to the Redevelopment Commission, that would be placed in the Redevelopment Commission's allocation fund where all their general TIF dollars for that TIF area would go. Semi-annually, when you're making bond payments, the amount of money to make the bond payments would be transferred into the sinking fund so that your general TIF dollars that aren't used for debt service would remain in the allocation fund for other purposes and then those dollars would be transferred to the sinking fund and then used to make the bond payments directly. So it's just really an account that's used to make bond payments and contractual payments separately from the general TIF allocation fund. Mrs. Johnson said, so basically it keeps two payments in reserve or reserve payments basically. Mowser said they wouldn't necessarily be in reserve. They would just be moved semi-annually as payments are needed to be made. Johnson stated, right and then they're replenished. Mowser replied, correct, at the next distribution for the next payment. Councilwoman Johnson said she thinks she understands that but she wanted to make sure her fellow Councilmen understood that too because now you have reserve equivalent to two payments. Mowser said, well there's no reserve set aside so the tax dollars that would be collected in June would then be used to make the August payment so there's no money set aside. Johnson asked, so he's saying that the sinking fund goes to zero at a point in time during the year? Mowser responded, essentially it could be zeroed out because your tax dollars would be moved to the sinking fund in June and then used to make bond payments in August. Mrs. Johnson said she does have one more question, if they'll excuse her. But he is referring to an assessed valuation that's not going to change or move and could he explain to her how that refers to and how that compares to the base assessed valuation that could be zeroed out. Can he explain that to her as well? Mr. Downs told Johnson, well, he'll let Andy talk about the (inaudible) but the assessed value here is, as he said earlier, let him take a step back. He doesn't know of transactions that have been zeroed out past a base assessed value other than issues that arose with the assessment itself and he doesn't know of any that have been.... There is a provision for neutralization of taxes. He doesn't know of any that have been zeroed out. Does he, Downs asked Mowser. Mr. Mowser said that they have worked with the city to correct, he knows the Mall TIF area and General Motors where basically, he thinks in the case of the mall (inaudible) been zeroed out or in General Motors' case, had been lowered. They worked with the city previously to revise those, correct the bases back to where they should be. The base value of this area will just be the Omnisource site and the current value on that is about \$376,000. In an annual neutralization process, you just adjust that base but it should remain right around \$376,000 going forward. You should never see that base zeroed out. Johnson said, okay, so that's what he's referring to is maintaining assessed valuation. Is that what he's saying? Mowser told Johnson, correct, (inaudible) will remain in the tax base of all the overlapping taxing units. Johnson said, okay, so however the property, personal property will continue to increase as they add personal property to the assessed valuation of the personal property. Is she not correct? Mowser said, correct. Council President Miller said, final call for questions from others. He told the Council, before he calls for a motion, he needs to tell them that he received a message midweek from Mr. Downs via Mrs. Kiley that Ice Miller would like to request that they suspend the rules on first reading. He would just remind both Mr. Downs and members of the Council to do that requires a unanimous vote of the City Council, as they may know. So, with that caveat, he would entertain a

GENERAL ORDINANCE NO. 5-2019 Continued

motion regarding General Ordinance No. 5-2019. Mr. Downs said he honestly doesn't know where that request came from but they don't have an interest in rushing anything and if the Council needs more time, etc., he personally did not make that request. Deputy Clerk Debbie Goodman said it was from Heather. Miller stated, oh, he apologizes, she said it came from Heather. He was starting to think that he imagined that he received the message. Well, that is not the request, he stands corrected. Councilman Brad Luzadder said, since there is no rush on it, then he has no problem going ahead with General Ordinance No. 5-2019 and move it on to 2nd reading. Motion was seconded by Cain and carried by the following vote. Aye: Brunner, Smith, Batchelor, Cain, Homer, Johnson, Luzadder and Miller. Nay: Henderson. Council President Miller said, again the ordinance is passed on by an 8 to 1 vote. He's still a bit confused. Does this require a public hearing now that they've advanced it to 2nd reading? Council attorney Phil Stephenson said Mr. Downs could answer that better than he can. He would know more about what's required. Miller stated, he's had conflicting information on whether it does or does not require they have a public hearing. Downs said he can't speak to their local rules, he's sure Phil can, but in terms of the statutes, the two public hearings have already been had and been noticed. Both were today, the Redevelopment Commission and the Economic Development Commission. Neither of those statutes require a public hearing of this ordinance. Mr. Stephenson added that their local rules do not require it either.

GENERAL ORDINANCE NO. 12-2018 3RD READING (WAS PASSED TO 3RD READING ON 8/7/18)

The City Clerk read General Ordinance No. 12-2018 by title only. An Ordinance of the Common Council of the City of Marion, Indiana, annexing certain real estate to the City of Marion, Indiana, and matters pertaining thereto. Jim Beaman, attorney for petitioner, told the Council as they'll recall, going back to last summer, Marion Land Company LLC is actually the entity that owns the real estate itself. Marion Land Company is fully-owned by the holding company that owns CIE so it's all under the same investors and the same people. As they'll recall, last summer, they had presented their petition for voluntary annexation to the City of Marion for this property and went through the first hearing and the second and public hearing and it was passed on unanimously to the third hearing. They delayed or asked that the third hearing be delayed until the project itself became more viable and more pronounced, along with the bond procedure becoming more defined. It took a little longer than what they had anticipated or expected and the problem with that was that they ran into 2019 and there's a state statute that says that if any annexation ordinance is approved in the year before a census, it doesn't become effective until January 1 of the year of the census. So, they're asking that they adopt the ordinance tonight, although it won't become effective because of a census next year until January 1. He thinks this was part of the reason that the process had to go through the County Commissioners and they gave up jurisdiction. Had they had this in place, they wouldn't have had to do that at all in his understanding. In addition, they're apparently not really required to be annexed now because of the proposed county action and the existing county action but CIE wants to go ahead, obviously, and be a part of the city. They've always partnered with the city and they want to continue that. So they're asking that they adopt the ordinance at this time, even though it won't become effective until January 1. There's still quite a bit that Kathi (Kiley, City Clerk) and Debbie (Goodman, Deputy Clerk) have to do with an annexation ordinance that takes some time anyway. If anybody has any questions on the annexation itself, he'd be glad to respond, Beaman said. Councilman Jim Brunner told Mr. Beaman, so he's asking them to pass it this evening, even though it will not become in effect until..... Beaman said, January 1 of 2020. And the law provides for that. It just merely says the passing of the ordinance or the adopting of the ordinance is fine. It just doesn't become effective because of the census. It makes absolutely no sense to him, quite frankly, on a one owner, voluntary petition for annexation but he doesn't believe there was a way around it. Council President Alan Miller told the Council, just to refresh their memories, as Mr. Beaman had to refresh his. They actually approved this on 2nd reading in July of last year, moved it on to 3rd reading. That was not their decision, they were not trying to delay anything. That was Mr. Beaman at the request of CIE. So he mainly just wanted to clear the record that they were not the roadblock back then that delayed this. Beaman said, that's exactly correct, it was his request. In fact, he thinks the Council was ready to suspend the rules and pass it at the time and he requested that they did not. Miller said, okay, this is 3rd reading so he would entertain a motion. Motion was made by Councilman Brad Luzadder to pass General Ordinance No. 12-2018. Motion was seconded by Brunner and carried by the following vote. Aye: Henderson, Brunner, Smith, Batchelor, Cain, Homer, Johnson, Luzadder and Miller. Nay: None.

Being no further business to come before the Council, on a motion by Luzadder, 2nd by Councilman Henry Smith, the meeting adjourned. Time being 7:44 p.m.