February 17, 2020

The Board of Public Works & Safety met on Monday, February 17, 2020, at 10:00 a.m. in the City Council Chambers. Present were, Cindy Cunningham, Dana Gault, Brian Flynn, Alex Huskey, Linda Wilk, and secretary to the board.

Motion to approve the February 3, 2020 minutes- Linda Wilk; seconded Dana Gault. **Alex Huskey abstained.**

MARION FIRE DEPARTMENT-Swearing in

Chief Paul David: Good morning Mr. President and Board of Works members. Today we bring before you Adam Trexler for a swearing in and as you can tell Adam has a lot of friends and family out here supporting this honorable moment. I had the pleasure of working with Mr. Trexler at Station 2 shortly after he was hired on. He a diligent worker. He completed fire fighter 1 and 2, his emergency medical technician, as well as hazardous materials ops and awareness. At this time we would like to swear him in under the Firefighter's oath. Genie if you would like to come forward please. This is Genie Trexler, Adam's wife and they are using Adam's father's bible. Mr. Trexler's father was well known in the community and thought it was very honorable for him to bring his father's bible in here and do his swearing in on it. So at this time Mr. Trexler can you place your hand on the Bible and raise your right hand.

Chief Paul David swore in Adam Trexler on the Marion Fire Department.

Building Department-2911 S. Boots St.

Jerry Foustnight: Good morning. We are here today on a couple of different things. One was to discuss the new ordinances that are in place and then the other would be concerning the request for a demo. If I could at this time I have some additional information I would like to give to the board if that is permissible.
Brian Flynn: Yes.
Jerry Foustnight: What I am giving you today is a letter from the attorney concerning the structure at 2911 S. Boots St. The letter was received on I believe the 12th and there here are pictures that are not in you pamphlet that were taken today. (Inaudible)
Brian Flynn: For the record. Jerry has distributed additional photographs that were taken just today of the property as well as an attorney's letter. This is from the homeowner's representative.
Jerry Foustnight: Okay as we get started this address of this structure that is unsafe is 2911 S. Boots Street. The pictures that were given to you today also there are pictures in the, in your informational packet that shows the condition of this structure. I thought I would just give you a little background here if I could. There are certain things that make a structure unsafe. These are codes that are within the state codes that we follow. It is Indiana Code 36-7-9-4 is what it is and I do have a copy of those available for each of you if you would like that. Would you like a copy of those?
Dana Gault: Yes please.
Brian Flynn: Thanks.
Jerry Foustnight: What I done was I highlighted the area (inaudible) as far as unsafe structure. What some people consider unsafe structures may not be unsafe concerning the codes that are present. If you look at the purposes of an unsafe structure number 1 in an imperishable condition makes it unsafe to the person or property, a fire hazard, a hazard to the public health or public nuisance, dangerous to the person, the property because their violation is a statute or ordinance concerning building conditions or maintenance or vacant and not maintained in a manner that will allow human habitation, occupancy or use under the requirements of this statute or this ordinance. Well as we go and we look at structures as far as do we deem them safe or unsafe we use these as guidelines. These are the guidelines that we must follow. And if you will see that this structure does meet those qualifications or those guidelines. So, I just wanted to give you a little background as to, I don't think I have ever given you an outline as far as what we consider to be unsafe and this may give you a little heads up on the condition or why we do this. As you can see in the packet you received we did do our, what's required by the statute, the first thing you would have is the facts and finding sheets, it gives you the times and the dates to when we started the process. Also, within that we have a list of the complaints for that address, we also have the ten day notice that was sent out to the occupant or the owner of the property. Also, there is pictures from 11-15- 19 concerning this structure there is also title work that we took before we can bring this before the body we are required to do title work for that structure, it also gives the Board of Works notice as to when the hearing is going to be. We are required to take and record that we are having a hearing today, we record that with the recorder's office showing that we have notified the individuals required, again those pictures in there and there is an example of the recorded Board of Works that we took before the recorder's office. Also, after this hearing we are required to take and record the findings of this body with the recorder's office. That way that protects any individual that may be purchasing that property or anybody that has an interest within that property. So it is pretty intense as far as how we have to go through, how we have to follow procedures. If you will look at the letter from the law office received, we received it February 12th of this year, they were asking for a ninety day extension. We felt that the property owners have owned this property since 2010 we felt that was ample time to bring this property up to the standards that need to be made. Within that ten years there has been no efforts to improve this property so we contacted the attorney representing the property

owner and stated that we were going to move forward with this today and that they had the right to be here to appeal or give what they thought they wanted to give as far as the status. Having said all of this we would ask that the Board of Works would confirm our order for demo not only is the condition of the property but we have had several complaints from neighbors, adjoining neighbors and stuff about the condition of the property. We have had individuals say that they don't even go down Boots Street in that area anymore because of the condition of that property and the conditions of other properties that were there. Within the last year and a half I believe we have actually demoed two properties adjoining this property because one was involved in a fire and the other one was unsafe structure that you approved us to do. So anyway what we are here today we are asking that you would approve and confirm that 2912 or 2911 South Boots would be approved for a demo. Also, there is a waiting period, we have a waiting period of ten days of a minimum of ten days before we can even do a demo if we wanted to do that because they would have a right to appeal your decision. So I will entertain any questions you might have about this structure. As you can see in the pictures that we gave you today the condition of the foundation, on the previous pictures that we have presented to you, you can see that on the inside the holes in the floor and the condition of the inside. We weren't able to get in there today because it is boarded up so we could not get in there today to provide additional pictures. But again no work has been done so we would ask that you would approve this request.
Alex Huskey: Mr. Chairman…so Mr. Foustnight since this notification has been received by the city there has not been any work done structurally that you can tell. I know you couldn't get in, right?
Jerry Foustnight: No.
Alex Huskey: Okay thank you. I will also say thank you for your diligence in moving the efforts south now and getting some of those structures torn down. So thank you so much.
Jerry Foustnight: You're welcome sir.
Linda Wilk: I have a question too. There was a letter sent to the gentleman September 20, 2019, did he respond to that letter at all? In our packet, this isn't new is what I am trying to say. You sent him a letter in September and no response at that point.
Jerry Foustnight: Well, I might say that the gentleman did call me wanting to know if he could wrap like Tyvek you know the material around the house, if he did that was that considered structurally secure and everything and we said no that you can't just wrap that material around there. So that is the only correspondence I had with him concerning that.
Linda Wilk: Do you know how long ago that was?
Jerry Foustnight: Pardon me.
Linda Wilk: How long ago was that?
Jerry Foustnight: That was after he received that letter.
Linda Wilk: After the September letter/
Jerry Foustnight: Yes, yes.
Linda Wilk: Okay.
Brian Flynn: One of the things I want to know is in his representatives letter it talks about the owner has purchased windows, doors, flooring, installation, wiring, and if we grant the ninety days that the owner will complete the renovation within ninety days. Just from my personal experience and from looking at the photos doors, and windows and wiring won't make that a sound structure and even with a ninety day window after ten years seems like a very insurmountable feat. Not saying it is in impossible, improbable would be my recommendation on this. Do we have any other comments, questions from the board? I am ready for a motion please

I make a motion that we affirm the demolition order of 2911 S. Boots St. Linda Wilk; seconded Alex Huskey. Motion carried.

Brian Flynn: Okay Jerry we also have you up for reviewing of the ordinances.
Jerry Foustnight: Yes.

BUILDING DEPARTMENT- REVIEW OF ORDINANCES

Jerry Foustnight: Do each of you have a copy of the ordinance?
Alex Huskey: No
Cindy Cunningham: No
Aisha Richard: You should have it, it is attached. It is attached to the manual.
Jerry Foustnight: Is each of them, is both of them?
Aisha Richard: I only have…they asked me for 12. They asked me for the Neighborhood Preservation Ordinance so that's…
Jerry Foustnight: Okay but also I was asked about the vacant and abandoned one also.
Linda Wilk: I just wanted to clarify if we had any role with that. I am understanding that we don't and that just goes straight to court.
Jerry Foustnight: Mr. President if I might. I have copies of the Vacant and Abandoned Real Property Ordinance if you would like copies of that also.
Brian Flynn: Yes please.
Jerry Foustnight: Okay are we ready. Let's talk about General Ordinance 12. That is the Neighborhood Preservation Ordinance. A little background on this ordinance and why it became essential that we did this. This

was composed by a group of individuals to try to better the living conditions and the properties and structures throughout the city. We as a committee was composed of individuals from the city council is also composed of citizens in the community, it was composed of the building department and at one time I believe we had a realtor set in on it, a little bit of it. So what we wanted to do was when we were trying to work on this ordinance we wanted to involve different entities throughout the city. We just didn't want to have the city council and the building department coming up with an ordinance that would affect many, many people throughout the city. So what we did was we drew ordinances similar to this throughout the state basically we used a lot of language and everything from Fort Wayne we used the language from other communities and also what we wanted within this ordinance. As we were moving forward on this ordinance we basically within the ordinance we wrote everything that we wanted within the ordinance and the codes we referred to the, we wrote the codes out to try to make it easier for individuals such as you are the public would be able to take look at this ordinance and be able to read what constitutes a first class structure, what is a second class structure those kinds of things. When we wrote those all in within this ordinance and after many discussions, many, many, many meetings, I believe we went on for what Linda eight months probably.

Linda Wilk: A long time.

Jerry Foustnight: As least once a week having meetings, discussing what we wanted to put in here, what was important, what wasn't important and some of the areas of concern. Being the building department, representing the building department I guess I was one that was wanting to be pretty precise on what this ordinance contains. So as we move forward on this ordinance we had everything we thought in place, we presented this ordinance to the council, the council after the readings, after it went through the first and second reading they passed this ordinance. At that time it is required by state code that we submit this ordinance to the state where they review it to see and make sure that it is not in any conflict of law or conflict of their guidelines basically. So we did submit this. After it was submitted they rejected the ordinance in theory it was good but they would not allow us to have an ordinance that actually wrote everything out, you know they wanted to use, refer to Indiana Code in the ordinance. Debbie, Deb Cain over here she was instrumental she is the one that talked to the commission for what Deb 8 months, 7 months without getting any results. Finally after some conversations and everything she was able to get a conference call where we sat down with an attorney and went over what the or the problems were within our ordinance was. Again in theory it was right but they wanted to put their addition within this structure or this ordinance. So we ended up the only things that we had to do was we had to insert on the first page if you see it refers to like class one structure and it refers to the Indiana Code. As you go down through there structure, what is the meaning of a structure in the first and second class. We had to take and refer to those by code so that they would approve it. That was not as easy to us because what we referred to previously was exactly what the code was but they wanted it to be in code. And then after Deb and I, Mr. Stephenson we had a conversation in his office after we had the meeting or the conference call and we said well basically what makes a difference if it is in there by code or if it is in there it is still in there. We were trying to be more explicit we wanted people to be able to take this and read it and know exactly what a first class structure was, what a second class structure was, or whatever. So, now what is going to be required is those individuals are going to be required that if they want to know what a first class structure is they have to options. One is to call our office and I can explain to them what a first class structure is or what a second class is or whatever the circumstances are or they will be able to go on the internet and pull it up and read it for themselves what a first class, second class or whatever the issue would be. Another advantage to putting this in that way is the fact that as we move forward the state of Indiana on December 26th of this year has implemented a new code book. We were in the 2012 now we move to the 2020 code book. So once they have adapted this, the prime example of what this ordinance is going to do is by referring to code this will change. Every time the state of Indiana makes any amendments or anything to the code this will automatically change meaning that we won't have to go back and forth to city council and get amendment after amendment, after amendment, after amendment and we feel this is very beneficial to us as a building department, that we will be able to move forward and not have to take and say well the Indiana Code says this and this our ordinance says this. Of course we would go with the Indiana Code because it overrides your local but at the same time individuals out here may not understand why one thing says one thing and why one says the other. And so that is a little bit we thought was good for us or for the city as a whole. One of the big issues within this ordinance is you go through here it again explains about unsafe structures, it explains about who has the authority to make decisions, about issuing building permits, how building permits are issued, how we can revoke building permits if they don't follow what the codes are, stop work orders, how we can issue stop work orders, the right of appeal if we were to put a stop work order on somebody they have the right to appeal. This is where your body would come into place in this ordinance on page number 5 down toward the bottom it says number to appeal to establish local administrative body or court. We have used you guys for a number of years apparently as the local administrative authority within issues that concern any appealing process so you would be the one that if we do something and somebody wants to appeal it then it would come before you or your body. There's different things within this ordinance one of them use of engineer trusses, and floor joists that something that really doesn't affect you guys but it is in here to protect individual property owners from when construction is being done on properties. The biggest part of this ordinance I feel don't you Deb is the registration. The application for registration, we have found and we thought about this for a long period of time and we went back and forth and different things but this or the application for registration we thought was a very important step within this ordinance because we thought this was for the safety of fire and police personnel. Many, many times we have issues with properties rather it is an electrical fire or whatever and we are not able to get a hold of anybody that owns that property. A lot of times property owners are LLC's that live out of state they live, they don't care about Marion, Indiana they buy this

property with speculation that oh we buy it for a little bit of money and some day that is going to be worth more money and we are going to make a profit. In the mean time they allow that property to sit (inaudible) and you know it is just falling apart, and so we really have no way to get a hold of these property owners we can send out notices to them, letters to them no response we try the telephone numbers that we had, you know you look it up on the internet and Joe Blows whatever and we call that number and we have no response, you know the number is disconnected or whatever the circumstances. So, we thought about this for quite a while and so one of the biggest advantages to this application process is that it is going to be required that if the property owner lives outside the state of Indiana that they are going to be required to have a property maintenance individual located within thirty miles of the city of Marion, they must be 21 years of age, and they must have a current telephone number where we can contact those individuals. Therefor if for instance if there is a issue with a fire they will be able, we have it in our system that we can pull up the name of the property manager and they will be able to contact that property manager and say look we have an issue we had a fire at this structure or we have electrical problems, whatever we will be able to contact that property manager and he will be able to relate that information to the owner of the property or whatever, and so we thought that was a very important and part of this ordinance that is before you. If an owner of a property lives out of state and he does not get a property manager then he can be fines up to $500 for failure to do that. Are we here to make money or try to collect, no no that is not the purpose of this at all. But as we all know in life if you don't have penalties for certain things then nothing is accomplished. So anyway, the code enforcement along with everybody in my department basically code enforcement, building department we have been working very, very hard on trying to get all of applications sent out to individuals that own at least one rental property or a number of properties. We started out with roughly thirty-six hundred letters that we had to send out to notices to different individuals for different properties they own. So it has been a very long and tedious process trying, first we had to get all of the information as to the names of the property or the landlord, the number of properties they own and so we weren't able to just say okay we are going to send out to Mr. Huskey for example he has thirty properties so we are going send him one letter and list all of those properties, we had to send individual letters for each one of those properties because one property may be here at this address, this address so we had to send out all of these notice so it has been a very tedious process. Those, my staff up there, their hands are tired from folding and stuffing envelopes. Anyway but we should be finished with that process by the end of this week or the first of next week we will have been able to send out all those notices. So I applaud my team for the effort that they have done to try to get this in place. This ordinance will become effective on April 1st. April 1st is the date that we will start the process of enforcing it. We have a lot of good landlords within the city of Marion a lot of these landlord's we will never hear from because the inspections that we do are going to be complaint generated inspections. Having said that, that will be individuals that for instance Mr. Huskey is renting a property off of Aisha here, your, you've contacted her because your heating is not working properly and you have no results. Then we have a form upstairs that you as a renter you will be able to and we have had this in place but you can fill out a form that says you know I have no heat…at that time that is when we will send inspectors out to check and make sure that that property is you know the furnace you do have electric or that the furnace is operating properly or whatever the case may be. That is when we do that along with that we had kind of partnership with the fire department and also Grant County Health Department. When we go out on complaints like these we usually take those other entities with us at that time they are able to help us do an inspection whether it is issues with the smoke detector because once we go into that structure just because it has to do with an issue of Mr. Huskey's heat we can also look and say oh there's no smoke detectors within this building and there is a lack of water or sewage and that is where the health department comes in on the water, the sewage, the building department doesn't do that but as long as we take them with us they are able to put a placard on their that says you can't inhabit that structure because of these conditions or whatever. So we have formed a pretty good working relationship with other entities within the county or city and county to be able to do these. Again when we do inspections and we do those inspection we have to give the property owner seventy-two hours' notice that we are going to go and do an inspection. Unless we deem it as an emergency and then we go in right away. Again the enforcement part will be the building part and we will enforce the ordinance as presented. Again, you as a Board of Works you would be the hearing authority for any appeals or reviews you guys would be the ones that would be the committee for that. So that is pretty much a condensed version of the ordinance and why we did it. Deb is here and like I said she was instrumental in this if you have any questions for myself or Deb I am sure we could ask. Deb did I forget anything? Again this is kind of a condensed version of it you know you can go over it an read it, I have went over it many, many times and I still every time I go through there I see something I still see something I forgot about but again this, this ordinance is not going to protect individuals that own property but it is also to protect individuals that rent property. It is just another way that we are able to make sure that the public health and safety of individuals is achieved and maintained. I would be happy to answer any questions that you may have. Sorry about that. If you would like to I invite everybody, if you would like to come to my office and have a discussion on any ordinance or anything or if you would like to come and discuss anything my door is always open. We can discuss the ordinances that have been passed that refers to you as the authority of or those ordinances. Herb is back here he may be able to answer you legal questions if you have any legal questions. But everything is pretty much within this ordinance that tells you exactly how things have to be.

Brian Flynn: I know we do have some questions for you Jerry.

Jerry Foustnight: Sure.

Brian Flynn: Cindy do you have anything?

Cindy Cunningham: First of all good job I am all for this. There is going to be a $500 fee if they don't register or if they don't have the manager. How do you…will you take them to small claims I mean how are you going to collect because people that aren't paying are not going to pay.
Jerry Foustnight: Yes, we can actually take them to court for that amount of money. Correct Herb?
Herb Spitzer: Yes.
Brian Flynn: I think the follow upon that is that is $500 for each property that they would have and how
Jerry Foustnight: Yes.
Brian Flynn: and what is the frequency in that does that regenerate every, annually?
Jerry Foustnight: Yes.
Brian Flynn: Okay, annual fine if they don't comply.
Jerry Foustnight: Yes, yes, yes. There is also a fine in here. We had quite a concern about how are we going to make you as a property owner or a landlord how are we going to make sure that you actually register your properties. Yes we send out notices to you saying here's the property that you own, here's the $5, which is the $5 is mandated by the state that is the most we can charge so that is why there is a $5 fee. There is not much of a fee, but that so if you take and you elect not to register your properties then there is a $500 fee after April 1st there will be a $500 fee per property that you don't register. Again that is put in place to make Mr. Huskey register his properties or make Cindy do her properties. I would hope that individuals that have properties that rent them out I hope that they would be responsible enough to follow the ordinance and follow the procedures that need to be in place.
Cindy Cunningham: How's the response been so far on the letters you have sent out?
Jerry Foustnight: The response has been pretty good. Individuals that own properties that take care of the properties, that we never, ever, ever have problems, we never hear anything from them whatever, you know they have been very supportive of it you know they come in and they say you know what, this is good because as a landlord I would much rather pay $5 and know that it is registered and know that I am doing what I am supposed to compared to landlords that is not. They feel like this may force some of the landlords that's not taking care of property and everything maybe step up to the plate and say hey you know what now we are going to have even be more involved in our properties and make sure that those properties are taken care of. It's I guess, it's kind of a learning curve for everybody involved not only property owners but for us as a building department, as a code enforcement division. We know what the ordinance says we know what the state code say but how, when we start implementing we are going to have to be on a trial basis for probably the first thirty days or so to make sure that what we're doing is going to benefit everybody and not just the city or the building department but it is going to also help to benefit those property owners out here.
Cindy Cunningham: That is all I had.
Dana Gault: Is this process, number one is this online where people can read this?
Jerry Foustnight: Yes, it is yes.
Dana Gault: Okay. And will….
Jerry Foustnight: We will, excuse me and we will have copies of this well we do have right now. We have copies of this available up in our office so if an individual would want a copy of this they are more than welcome we are more than will to distribute these to anybody that would want a copy of them. And we do tell individuals we do have calls saying well we don't even know what the ordinance says whatever we explain to them that you know within that letter we specify why, why the registration is required and also we do tell them that these are available for them. Cindy back to your question about response I am sorry I was just setting thinking, we have had individuals that are opposed to this of course that it is an invasion of their rights, or it is an invasion of their privacy that we shouldn't have to have something like this in place and we try to explain to them that it is an ordinance that will eventually help everybody.
Cindy Cunningham: Thank you Jerry.
Brian Flynn: Anything else Dana?
Dana Gault: No.
Brian Flynn: Alex
Alex Huskey: So I have three questions, you know me I am full of questions. The first one is more of a request than a question and because this is a public document for the Indiana Department of Homeland Security for their markups and whatever they submitter back to the city I am requesting personally a copy of anything that they submitted back in writing along with this because what happens is not everybody trusts government, we are just going to be very transparent here and what I want to be able to do when if people bring questions to me is to look at that and say okay I know how this was formulated because I wasn't a part of the original committee but I know how we came to this point and that will just help solidify that. So I would just request a copy of all of the markup documents that came back from the Indiana Department of Homeland Security. The other thing that I had a question about how did you determine who is a landlord because I know of an entity and I had planned on visiting your office today that received one of these letters. They are not a landlord they are a governing body of a church. It just so happened that their headquarters is not here in Marion but since it is a small church the property has to be deeded to the governing body of the church because the governing body takes care of a lot of the bills when this church can't afford to.
Jerry Foustnight: Well, on that Mr. Huskey even though it may be out of state you…
Alex Husky: they are still in state but they got a letter
Jerry Foustnight: Okay…

Alex Huskey: And the governing body of the church is really local but the state organization has to have the property deeded to them because if the church ever fails or goes defunct then the state organization is helping to pay those bill, the state organization has to have property that they can recoup their dollars from.
Jerry Foustnight: But you would still have individuals local that…
Alex Huskey: Yea but it is not a landlord deal. That is my concern that is why I…
Jerry Foustnight: Well we have had some of those issues and what we have had to do is, is we go back and if it is not like you are renting that property or whatever then we remove you from the system.
Alex Huskey: Okay.
Jerry Foustnight: We have had that Mr. Huskey we've had that a few times where individuals say well it was a rental property I've just given this my son , my daughter whatever they live in their now so it is not a rental property, so we just basically remove that from the system showing that it is not a rental.
Alex Huskey: Okay. So I will talk to you about that more when we are off like.
Jerry Foustnight: Sure.
Alex Huskey: And then third, I really like the spirit of the ordinance and what we are trying to accomplish. The third question comes up basically when you get a tenant for example that files a complaint right and you go in and you find that there are discrepancies or issues that need to be addressed my only concern then becomes what is the city prepared to do if you go and find out that this property cannot be inhabited and now you have individuals who are going to be displaced and have no money and no place to go but we have made the determination based on this ordinance that they can't stay there. So what is the city prepared for in that instance?
Jerry Foustnight: Well we sympathize with individuals that rent properties. We have landlords out here that will take and on windows of property I have seen where the put plastic around there so individuals that want and need to rent a property they can't look inside to see condition of the property. I have seen where individuals can be a single Mon for instance with children that needs some place to live. So she can't see inside this property so she has to have some where they can't live on the street so she will give X amount of dollars as a deposit and X amount of dollars as the first month's rent and they go got get in this property and issues of the floors falling in or the roof is coming or whatever they go back to try to redeem their money stating we cannot live in this situation, guess what you have already signed a contract, they lose that money. So what it does is it forces those individuals to go live in substandard structures so we, we, we understand exactly what you're saying but on the other hand we look at it from a safety issue. I would much rather take and say because of this, this and this you can't inhabit this building and have somebody go and have to live somewhere else then for us to say oh well we are just hear to look at this and we see there is electrical issues or we see this and then that person would end up being in a fire and die or whatever. This ordinance is about safety, it is not about is the city able or is the city going to try to help them find a place to live or whatever. This is concerning the safety issues, that is what we deal with and we do Mr. Huskey when we go out here and we take and have issues within a structure or whatever and we have to take and say ok we're going to take and put where you can't be in, it's an unsafe structure or the health department puts a placard that says you can't inhabit that building. We do try to assist them. We give them information as far as you can go talk to these people, you can talk to these people maybe they can assist you in finding a place to stay or whatever. It is never easy to take and make somebody leave where they are living. You know we deal with this on a pretty much a daily basis where we have structures within the city out here that squatters or individuals stay in those. We get calls from the Police Department daily it seems like saying we have a individual squatting in this house we need to get them out of there. So we go out there and board that up so they can't stay there and then they go to another structure, another structure, and it is very hard for me as a Building Commissioner or even as an individual to take when it is twenty degrees out here and people's trying to stay in a house in a corner trying to stay warm or they are going to be on the streets. It is very, very hard for me to say board it up and get them out of there. So we want to try to work with individuals there is only so much space within the city where individuals can go and stay and we realize that. And so we (how do I want to say it) we try to when it is really cold, we try to respond to those calls we get and other calls we don't try to respond to because if I don't know you're staying in that structure I don't want to know you are staying in there. Now is that right or wrong, it is probably wrong but human nature says you know what we all have to live somewhere.
Alex Huskey: My only suggestion is before the ordinance goes live that we also develop a set of resources that are available to individuals that when we, because if the individual is making the complaint, that is the one I am really concerned about. They are making the complaint on their landlord who is not fixing something and their now finding themselves, now I am on the short end of the stick because I want this fixed, I made the complaint now I have to move out of my place and I have no place to go. I think we just need to be prepared to have a list of resources available to those individuals and that and we have discussions with those resources that we let them know these may be those times especially with our trustees or whomever these maybe emergency situations that we are going to have to have some consideration on. That is all I am asking.
Jerry Foustnight: Right and we do try to provide information to them you know as far as you know who they can contact. We have found a lot times that individuals we will say well you can contact example the Rescue Mission over here. They have certain rules every organization has rules and we tell them. Well we won't go there because we have to be in at 10 o'clock at night or we won't go here because of this or you understand what I am saying.
Alex Huskey: I do but I also understand the cultural poverty and those individuals that are in that cultural poverty sometimes they won't report because of the fear of what is going to happen to them and so what I am trying to say is that if we are going to make this better, if it is really going to be better than we have to look at

that cultural poverty and put resources available to those individuals so that they don't mind reporting. Because that is the only way we are really going to get these landlords to take responsibility for the properties and if people just said oh I am not going to report then they continue to do what they do and so then the ordinance becomes ineffective.
Jerry Foustnight: And we also see a lot Mr. Huskey too, we see a lot of individuals that file complaints because they are being evicted out of a structure. Well let's get back at the landlord, let's do this or that so we do see a lot of that also.
Alex Huskey: Or let's file a report where we have been living for months that he didn't fix or she didn't fix and we feel vindicated now and yea.
Jerry Foustnight: Yes. So but we, we are very hopeful that this ordinance of the intent of it. We are very hopeful that those landlords will be responsible, that we will be able to hold them more to a standard, that if they don't comply that we have a source here that we can use to make sure that they either comply or that action can be taken. Hopefully this ordinance will make the quality of life for the individuals that rent more acceptable than some of the issues we have today.
Alex Huskey: Thank you.
Jerry Foustnight: Thank you.
Linda Wilk: So Jerry page 15 number h: "The Marion Board of Public Works and Safety, after having given notice of the time and place of public hearing by publication in accordance with Indiana Code 5-3-1, shall adopt a schedule setting forth the maximum amount of performance bonds applicable to the various types of ordered action. So I guess I am unclear, it sounds like that is our responsibility.
Jerry Foustnight: Where are you at?
Linda Wilk: Page 15 number H.
Jerry Foustnight: About the Marion Board of Public Works after having given notice of the time, place, is that what you are…
Linda Wilk: Mm yeah.
Jerry Foustnight: Again when we take and we send out letters to individuals those letters refer to the Board of Public Works and Safety.
Linda Wilk: Right.
Jerry Foustnight: It says that you will have or there is a meeting for the Board of Works and Public Safety this issue or whatever. It will also, it won't be your responsibility to send out notices we do that.
Linda Wilk: No I am not saying that. It says that we shall adopt a schedule setting forth the maximum amount of performance bonds applicable to the various types of ordered actions. That is what I want to know.
Jerry Foustnight: Right, and the performance bonds and everything that is only if we were to come before you and ask that a performance bond be put in place.
Linda Wilk: Well then I guess what I am still questioning is it is saying that we are setting the maximum amount of performance bonds and how do we know what the maximum amount of performance bonds applicable to the various types of ordered action is?
Jerry Foustnight: I am going to refer this to Herb.
Brian Flynn: I think we are looking for guidance on what the schedule, it sounds like we either create it or adopt one and if we are adopting one where are we adopting it from.
Herb Spitzer: To my knowledge we have never done that. We have never adopted a schedule but we have never had to I don't believe because we have never been confronted with that issue, but I would say if that, I am not sure in what context that is going to come up.
Linda Wilk: Well it goes back to F and F says the hearing shall be held on a business day no earlier than ten days after notice of hearing of order is given. The Board of Works shall grant a continuance of scheduled hearing if requested in writing by a person holding a substantial property interest in the affected real estate if such request is received not later than five (5) days after the notice is given. Such continuance shall be for a period of not more than fourteen (14) days past the original date of the hearing. So that is really talking about the hearing itself but I am just concerned about the, I guess it goes on to say okay so it goes on to say "however as a condition for allowing the Board of Works and Safety… it goes on to say however as a condition for allowing the additional period the Board of Works may require that the person post a performance bond to be forfeited if the action required by the order is not completed within the additional period." So it sounds like to me if we give them, if we say okay you have ninety days to do what you say you are going to do they have to put up a performance bond to assure they are going to do that.
Herb Spitzer: Correct.
Linda Wilk: Okay so then that goes back to it appears to me that we have to set some sort of a fee to know what they would be having to pay, correct.
Herb Spitzer: Correct.
Linda Wilk: So how do we know what would be appropriate to set for that.
Herb Spitzer: It is going to be fact sensitive…
Linda Wilk: Okay… so it will be dependent upon the case, the individual case?
Herb Spitzer: Case to case and if…
Linda Wilk: So if today let me use this, if today if this gentleman had said I want ninety days and we had said okay we are going to give you ninety days would we have attached a performance bond fee to that extension?
Herb Spitzer: If the enforcement officer building commissioner request that.
Linda Wilk: So only if he requests it, if he doesn't request it we have no role in setting anything. I mean if, so he would have to request a performance bond be attached to the ninety days?

Herb Spitzer: That is the way it would normally be yes, I think that is the way it would normally come up. You could say okay if they want ninety days then we want some assurance that it is going to happen.
Linda Wilk: Right.
Herb Spitzer: And then you would set the bond at that time. Depending on again what the circumstances are.
Linda Wilk: Right. Deb can you clarify?
Deb Cain: If I am allowed to. So I had that conversation with the Homeland Security and I asked them what that was and the example he gave me he asked me if there was any property that you have fought for years about. So I brought up that nice beautiful, brown decaying structure and how many times that they have promised to do what they were required to do. How many times you guys issued to them, okay you guys need to get this done, he would do just enough to squeak by for a couple of more years. And he said that, those are the situations where the department, the building department would say okay we are now at a point we have been dealing with you for ten years, we have given you five extensions, you've not done anything this is how much it is going to cost you to have that structure completed and this is your bond.
Linda Wilk: Okay.
Alex Huskey: If I may ask, is that also and that is one of the reasons why I wanted their notes because I kind of figured they would have something in there like that; but also is that one of those situations where the bond could be set at what we know it will cost to demolish the building should they not comply?
Deb Cain: Yes.
Alex Huskey: That is what I thought.
Deb Cain: And that was just verbal, I don't have written notes from them. I just wanted to understand that.
Linda Wilk: So that something that is paid within that ninety days or whatever the time frame is?
Deb Cain: It is your schedule. Then you determine if you want it. I mean if it is going to take him, well you know for that structure it is going to take a whole lot longer than ninety days. For this Boots, he could probably do enough, you know get the floor in, get some of those walls you know closed in enough to safely make that structure but then you, but then after that he gets it done he could have a second phase and say now that you have done this, this is your next step. So that is kind of what the intentions of that is.
Linda Wilk: And during that time frame that they are doing this work they have already paid that fee to the building department. And then they forfeit that fee if they don't get done within that time frame that they are supposed to.
Deb Cain: Absolutely.
Jerry Foustnight: And also I might add that that, that fee would returned if he does what's required then that performance bond or that fee would be returned to him if no then that fee would be kept and put into the non-reverting fund or unsafe structure fund.
Alex Huskey: But the way that can be structured though is if we set the bond for the completed work and then that schedule says at this level of completion this is the amount that will be returned to you at this level so that there is always…you can start with the highest amount and then stair step it down if you would to the point where they get the whole project completed because that way if they don't complete a small portion of the project it is still allows us to have that performance bond. I have seen that happen.
Jerry Foustnight: I have seen that put in there just to try to protect the city for the expenses that will be incurred or from, to insure that individual or that corporation or whatever will make sure that the repairs were made.
Linda Wilk: I just want to make sure that if that was our responsibility we knew what our responsibility was and we had a fee schedule but if it is not.
Jerry Foustnight: The way I believe it is, is the way I understand it is that the building department would come before you and request a bond be set at so much money.
Deb Cain: In the schedule.
Brian Flynn: So when it, again this is kind of a sticking point for because it says that we shall adopt, we the board shall adopt a schedule that sets forth the maximum amount of performance bonds for various types of ordered actions. When I see that I am expecting to see a sheet of paper that says in this instance it is this much, whether it is a percentage or whether it is a set dollar amount but if we are going to adopt a schedule I don't think it can be something that is arbitrary and presented as needed. I think it needs to be a schedule that we are saying this what we accept, this is what we have adopted. Can you kind of speak with that language for me?
Herb Spitzer: Well again the problem is trying to develop something in the abstract.
Brian Flynn: Exactly.
Herb Spitzer: And we've to my knowledge we have never done anything like that and of course I don't think we have ever really dealt with anybody having to post a bond or requesting that a bond be determined so that they've got the additional time to do the work. I can't answer that question.
Brian Flynn: I would agree that we probably haven't done that but with this document and the example that Deb gave of that one that took forever. Years, and years, and years, and years, that would be a situation had this been in place we would have done that.
Alex Huskey: I don't want to bring up a sore spot because we kind of did do that with that place that had been there forever and then we withdrew that at a meeting when they came and presented that they were going to do some work so I think we had typically had done kind of, it wasn't called a performance bond but we had set a schedule of payment and then that was later withdrawn. I think there is a precedence there and I think really to Mr. Spitzer's comment, I think that's where the code enforcement gets the figures for how these things are going to cost and they set that, they make a recommendation for us and then we adopt that as the schedule for that particular incident, because for example it may cost $10,000 to tear down the house but it may take $30,000 to tear down a commercial structure so you can't have the same schedule and if we do develop a schedule Mr.

Foustnight is that I would ask, Fort Wayne and some of the other cities that have done this can we get a copy of their performance bond schedules.
Herb Spitzer: That is what I was going to suggest. I have been communicating with people in Fort Wayne and the procedures that they follow in the past we have not adopted the formality that they had done. Of course they are a larger city and larger communities can do that but the suggestion if you want this to be pursued I would say that we would contact, see if they have adopted such a schedule and if so we will get a copy of it.
Brian Flynn: I think that is a worthy endeavor.
Jerry Foustnight: And I don't mean to, I don't know if you are interpreting that correctly because it says "the Marion Public Board of Works and Safety, after giving notice of a time and place, of public hearing by publication in the ordinance with Indiana Code shall adopt a schedule setting forth the maximum amount of performance bonds applicable to the various types of ordered action." So everyone, that saying, the way I read that it's saying that if I come before you and somebody wants and extension and I am saying okay we will give them a ninety day extension but because it could be electrical and we could say on electrical on this instance here we only want ex amount of dollar bond. I don't think that is saying that we have to set, it is saying for each individual one would be where we would set the performance bond.
Linda Wilk: It is talking about the maximum amount…
Herb Spitzer: I think it depends upon the nature of the order that you are dealing with.
Jerry Foustnight: Yes.
Linda Wilk: But if you look at this it talks about the maximum amount so if you went high with the amount then you still have that flexibility to go lower with what you determine the performance bond depending upon the project.
Herb Spitzer: Right
Linda Wilk: And the situation. I would really like to see though Fort Wayne or you know another somewhere and what they have done.
Alex Huskey: Fort Wayne, South Bend
Linda Wilk: Wasn't it South Bend that we looked at Deb?
Deb Cain: Yeah, and so what we had to end up doing because of like Mr. Foustnight said we wrote out the codes. So that it was right there in front of you. After submitting revisions and Mr. Huskey that would be like four hundred pages.
Alex Huskey: I am good with that.
Deb Cain: So after submitting revisions they would just mark out a thing and say please follow this code. Please follow this code, they didn't write anything. They didn't re-word anything, they don't, they wouldn't re-word anything. Anything I asked, I said can you give me an idea of what to write. They said well we don't give you the wording. So what we ended and the final conference call after I said okay we are going to have to get legal counsel if you don't help us. I had a call that very next day and said alright we have a meeting set for you for tomorrow morning and in that meeting they said what we want you to do take our template, adopt our template and then these sections are the ones that pertain to your city only. So in that template is that, is that section that you are talking about. So after I read all of that I called their legal department back and said okay this is new, this was not in our regular, this was not in our other ordinance so explain it to me and that is how I got that explanation. It's on particular each situation is where you set the schedule and the bond for how much you for how much it is going to take to repair or tear it down. If that helps.
Linda Wilk: I can see that but the fact that is says a maximum amount of performance bond still leaves me to believe that they want a schedule and you put so high that it should cover evert scenario and then you during would say okay I understand this max is one hundred thousand but this property only needs twenty thousand dollars of performance bond insurance. We've got that scheduled cause then I think it avoids someone coming in and saying you're being arbitrary there is nothing here. We can say yes there is the maximum and Jerry who is the expert can determine that the maximum isn't needed but this amount is in order to get the work done in time.
Brian Flynn: Well, let's see if we can get some further information.
Herb Spitzer: I am sure that question can be answered fairly simple. I mean this section of the ordinance is taken right from the unsafe building law. Which is state wide.
Linda Wilk: Okay. Yeah. Then it should be…
Herb Spitzer: So every community across the state of Indiana has to follow basically the same statute or same law.
Linda Wilk: Yeah…Okay.
Alex Huskey: And I will provide five 16 gig flash drives so that we can load that document.
Deb Cain: Well when I think, I think it would be just beneficial if I just send you the one that we had originally sent to city council because then you will see this is what we took out.
Alex Huskey: Yea but I also want to see what, if the state had a meeting on it they should have record of that meeting and they should be able to provide that to us and I can get it if it is a problem I just want to make sure that I have all of that as well.
Brian Flynn: Any other questions? Thank you very much.
Jerry Foustnight: Thank you.

Review of the Board of Works Manual

Linda Wilk: Just for clarification because I have asked about the vacant and real property ordinance that is also, should be included in our manual because on the front page that the hearing authority is the Marion Board of Public Works.
Deb Cain: And that is my fault that I had the copy I did not have the original on my phone and we changed that just before we submitted it and had it so you are it is your report.
Linda Wilk: Okay so this also needs to be part of the manual.
Deb Cain: Yes.
Linda Wilk: And this basically Jerry can you briefly this is similar to the Neighborhood Preservation except this is for abandoned and vacant properties correct.
Jerry Foustnight: Right. And if you look on page one under 152.2 it explains you what is considered to be abandoned building. You can read those yourself and also when we go on page 2 up there it defines what vacant buildings are this is just another tool that we will have to make sure that property owners have buildings or structures out here that has been left for ever and ever that we want to be able to use this to make sure that they follow the code as far as they are registered, making sure that if they are abandoned like the, have they been abandoned for over ninety days, is it subject to our unsafe structure the order for the thirty days without remedy then we can take action on it so this is pretty much like the unsafe structure that we use because when a structure is out here and it has been abandoned for a period of time that we have the right to go in there and say this is an unsafe structure and move forward. There are structures I think in Linda's neighborhood association well throughout the city but I am using Linda's example because they have sent me some information concerning properties that are abandoned, properties that are vacant again this ordinance is in effect it is just the idea that we are starting to get ready to enforce this. And it is, I believe if you go through here and you read this abandoned or vacant and abandoned ordinance it is much easier to understand then the Neighborhood Preservation Ordinance I think it is a easy, easier to understand. I might suggest to you that you take this ordinance and you read it if you have any questions or anything let us at the next board meeting if you like bring those questions forward I will be happy to answer them but to sit here right now and try to answer and go over them without you guys actually being able to see it or read it I think you know it is not productive for us to do it like that.
Linda Wilk: I agree I just wanted to make sure that if we are going to talk about the manual that this needs to be included in the manual. Thank you Jerry.
Jerry Foustnight: Again I thank each of you for your patience on what we are trying to do to improve the city and why we are trying to move forward. Sometimes it is not pleasant, sometimes it not easy to make those decisions but we appreciate the fact that you had and input on what we do and what we try to accomplish. Thank you.
Brian Flynn: Moving to payment of the bills.
Linda Wilk: Wait a minute what are we doing with the manual? Sorry it is a little near and dear to my heart.
Brian Flynn: As well it should be.
Deb Cain: Mr. Huskey…
Alex Huskey: Yes
Deb Cain: You should have a link to the folder.
Alex Huskey: Is it a Google doc?
Deb Cain: No, it is Dropbox.
Alex Huskey: Okay. So can I have that sent to, is it sent to the city email address?
Deb Cain: No, your Gmail.
Alex Huskey: Okay thank you. Thank you.
Brian Flynn: Okay let's finish the Board of Works Manual. Is there any other discussion, do we need understanding what we are going to adopt as part of that manual?
Linda Wilk: The two ordinances because they were not originally in the manual.
Brian Flynn: I believe so, I would call for a motion to do that actually.

Motion that we add the two ordinances, the Neighborhood Preservation Ordinance and the Vacant and Abandoned Building Ordinance to the Board of Works Manual- Linda Wilk; seconded Cindy Cunningham.
Motion carried.

Brian Flynn: I think we have had some edits, we came to Aisha and she has incorporated those. Once specific one being clarifying president and vice president and chairperson language could have been a little confusing and I think Dana brought that up and we have got that identified. I found one piece that had a missing language in it about meeting outside our meeting. So with that being said I would ask for a motion to approve.

I make a motion we approve the Board of Works Manual- Linda Wilk; seconded Cindy Cunningham.
Motion carried.

Brian Flynn: Alright payment of the bills.
Deb Cain: Can I say something about your appendix. You need to add on your appendix the Abandoned and Vacant Building.
Linda Wilk: Yeah. Yep
Brian Flynn: Good catch.
Linda Wilk: Well I thought that was…

Deb Cain: Yeah, you do need to add that.
Linda Wilk: Yes
Deb Cain: Sorry
Brian Flynn: No thank you.
Linda Wilk: I just assumed that they knew that.
Alex Huskey: Isn't that what your motion said.
Linda Wilk: I thought my motion did say that.
Alex Huskey: Add them both.
Linda Wilk: My motion was to add them both to the manual. But then if it needs to be clarified that it is also the appendix then yeah.
Brian Flynn: Okay for the third time.

Motion that the Neighborhood Preservation Ordinance and the Vacant and Abandoned Building both be added to the appendix as well as to the manual- Linda Wilk; seconded Dana Gault.
Motion carried.

Brian Flynn: Let's pay the bills.

PAYMENT OF THE BILLS

Motion to pay the bills for February 17, 2020- Cindy Cunningham; seconded Alex Huskey **Motion carried**

ADJOURNMENT

Motion to adjourn Linda Wilk; seconded Alex Huskey.

Meeting adjourned

Brian Flynn-President
Board of Public Works & Safety

ATTEST:

Aisha Richard- Secretary
Board of Public Works & Safety