

November 07, 2022

The Board of Public Works & Safety met on Monday, November 7, 2022 at 10:00 a.m. in the Marion City Council Chambers. Present were Alex Huskey, Cindy Cunningham, Brian Flynn, and secretary to the board.

Motion to approve the minutes for October 17, 2022- tabled to next meeting.

Marion Fire Department- Fire Marshall Promotion

Assistant Fire Chief Brandon Eckstein told the board that there was one person who put in for the Fire Marshall position and his name is Hayden Oliver. He has been with the department since 2019. He has all of the required training and beyond for this position. Alex Huskey asked if there were other firefighters that had the qualifications but did not apply. Assistant Chief Eckstein said yes several of the firemen have the required training.

Motion to approve Hayden Oliver for Fire Marshall Promotion- Brian Flynn; seconded Cindy Cunningham

Marion Utilities

Attorney Mike Conner explained to the board that these three properties are three properties that Marion Utilities is trying to get solely in their name. The properties are at 115 S. Race, 2010 S. Clark and 2002 S. Clark. There are two resolutions because all three properties have been through the process of getting the tax deed. Judge Todd has entered orders in all three that but only two of them have been drafted and recorded by the auditor. The form has not been completed or recorded by the company that does the tax sales. One of the resolutions states that the two deeds that have already been recorded are accepted and you recommend to the Mayor that he quit claim those over to the utility, and then the third one is for 115 S. Race and that is basically saying as soon as that deed is prepared and recorded by the auditor the same thing. Assuming you enter this resolution we will take the deeds to the mayor and ask him to quit claim them over. The properties will then be in the name of the utility and a quiet title action will be done. We have done this before with other properties and these properties will be used for various projects for Marion Utilities and their long term control plan. They will be nice green spaces. Alex Huskey stated that since the deed has not been recorded and he has just received the documents that this is tabled to the next meeting.

Motion to table to the Marion Utilities Resolution to next meeting- Brian Flynn; seconded Cindy Cunningham. **Motion carried.**

Building Department-

Jerry Foustnight: Good morning, Mr. President and members. I here for the demolition of properties within the city. Uh, first I would like to pull the second one. The 1629 W. Jeffras Avenue. There was a situation. The individuals were going to be here to uh basically to contest this uh demo and they had an issue come up where they were not able to be here today. So, after speaking to legal, the legal department we can go ahead and table this. We don't have to proceed with sending out new notices and everything and we would like to table this to our next meeting on the 21st uh with your approval. Uh our next one that we have is 1726 W. 9th Street. This is a

garage that is in disrepair. It needs a new roof, uh it is kind of falling in and everything. Uh we have went through all of the uh, uh procedures as far as the paperwork and everything. I did have a meeting with the individual up in my office and he assured me that he would take care of this and uh again this hasn't occurred so uh we would like to move forward with approval to do the demo on this property. Again it is located at 1726 W. 9th Street. You can see by the pictures that we have attached the condition of the roof and everything on this structure. I did grant him additional time from when we were going to originally going to bring this before you and uh again uh we had a meeting up in my office and uh he uh never fulfilled his part of what was going to be done so again we are asking that you would affirm this order for demo please.

Alex Huskey: Thank you Mr. Foustnight. Are there questions?

Brian Flynn: Yeah, I do have a question on this one. Um on this property is the garage the only structure or is the garage and house on the same lot.

Jerry Foustnight: The garage. It is just the garage area, yes.

Alex Huskey: So, Mr. Foustnight it looks like this process started in March of this year. Is that correct?

Jerry Foustnight: Uh no actually uh we started the process uh uh I actually had a meeting in February 26th of this year with the individual and uh if you see on the evidence that we provided it shows that we sent the letter and we extended the grace period to may 30th and uh it is written on the bottom of that letter.

Alex Huskey: Okay, I see it now.

Jerry Foustnight: And if you, and we said that if it wasn't completed then we would take further action on that.

Alex Huskey: So, but this is a project that started this year?

Jerry Foustnight: Yes.

Alex Huskey: Is it, is it moving at a faster pace than normal because of the size of this structure and the cost related or we have had some that have taken a lot longer than this so I am just trying to (inaudible)

Jerry Foustnight: No, no uh what we done Mr. Huskey is uh uh we have been uh the ones that you have approved in the past that we have had on our list to do and everything. We have been trying to uh complete those projects. Get those taken care of and no this isn't moving any faster than the other. Um from uh when we first started on the the February the 15th of 2022 is when we started that. So it has been you know eight months or so, so no we are not moving any faster than any other project that we do. And as you are aware that once we take and we get the approval from the board we will take these properties and put on our list and as we get to them that is when we demo those properties. But we don't want to take and get to a point where we have completed the process and then we don't have a list to complete. And also, once we start this Mr. Huskey once we get approval from you then we have to notify the utilities to terminate the uh the utilities and that can take anywhere from two to three weeks to get those utilities vacated. So, even though you approve it today it is still going to be another period of time before we can move forward on those.

Alex Huskey: Yeah, and the the reason why I am asking is because you know of course all of us receive complaints from individuals that say reported properties that they feel like they have been ignored and I, I wanted the record to reflect that, that this was not expedited in any way. So okay.

Jerry Foustnight: No.

Alex Huskey: Any additional questions for Mr. Foustnight? Okay I will entertain a motion.

Motion to approve the demolition at 1726 W. 9th Street- Cindy Cunningham; seconded Brian Flynn. Motion carried.

Jerry Foustnight: Thank you. Our next uh one that we bringing before you would be 1010 N. Branson and also with that is kind of a companion would be 1020 N. Branson. These properties are properties that uh the Redevelopment Commission has been generous to our department and they've uh uh given us money to tear down properties within that CReED District. And uh we have done seven previously within this area and these are two additional ones we would like to do. There is a little background, let me give you a little background on this. On the 1010 uh North Washington or North Branson and 1020 we asked for bids from different contractors. Uh we got a bid from Dave's Excavating which was the cheapest one so as we took this bid uh we had conversations with uh Dave's concerning uh the process and all this. However, we never signed a contract with them to tear any of these buildings down yet without the approval of you, your board. And uh in the meantime uh Dave's Excavating also had a contract with the utilities department to tear down two homes. They already signed a contract on those two homes or structures but they never signed with us. What they did was they went in and actually tore down an individual's garage on his private property that wasn't even part of this. And then they also took and tore down the church. And, so here we are before you with a property that they church has already been demoed, the property next door the garage that wasn't involved was torn down. Uh, through conversations with the contractor uh they have uh resolved the issue on the property that they tore down that wasn't even listed. So, that that part has been taken care of but we still have the issue where the property at 1010 which was called Good Shephard Church has been demoed and is no longer there. Uh the one at 1020 North Branson that is unsafe is still remains standing. And uh hasn't been demolished yet. So as I come before you today this is kind of a strange request. There is no parties that uh the parties that owned these properties are deceased. There is no none available to have any conversation with or anything. Which is uh, uh uh fortunate as far as what has happened as far as the building being demolished. However, it still is an issue that it was done before we come before you guys to get uh uh approval for this. So, I, I am not sure, quite sure how we want to move forward on this uh and Herb may have some ideas for me or whatever. But we have already gone and taken the church has been demolished. I went by there of course I have been off on sick leave and that is an issue for me but uh I went by there and I saw it after I was informed that it happened we went down by there. Uh, Aisha had an individual come up that the garage was tore down and had conversations with him and uh uh so as we move forward I, we went through all the paperwork because there was no body that we could contact as far as the owner of the property. We couldn't get in touch with anybody. So what we did through the legal staff that we needed to advertise these properties in the newspaper. We advertised the properties so that if anybody had an interest within those properties that we legally notified them that uh they were going to be demolished. So, we we done uh the paperwork. We we've done everything that was required. Uh it was a oversight on the contractor as far as doing the work without having a contract from uh our department or the city on doing these so I hope I have explained to you what has transpired within this short period of time. Uh so again we would ask that uh the 1010 North Branson would be approved for or continued for the demo. Uh in the pictures you will see where the excavator is sitting on the property along with the uh remains of the property. Uh also there is a picture that shows what the property looked like prior to the demolition.

Alex Huskey: So, let me get this straight. The property was demolished without a contract, without coming to this board and no what? The company that did the demolition wants the city to be responsible for the fees?

Jerry Foustnight: For the uh for the fee? No, uh what they did was we had you know a no contract was signed with them yet so so by mistake or unintentionally doing this because they had he said that they had two properties that were approved for the utilities department to uh remove two structures that uh when they got ready to do it they were under the impression that the orders were for these two properties and not for the other as a contract. And so that is why they went ahead and started the process and so

Alex Huskey: Did they not have the contract that would have shown the properties that were to be demolished?

Alex Huskey: Uh, I I would I would assume so. I would assume they would have that in their office. Uh you know I I don't know their procedures what they do in their office but I would assume that uh when we sign a contract with anybody we have a copy of that contract but uh all we have available with us today is a contract that is not signed and uh so uh they went forward on this and went ahead and did the demo. We would if we were here and this hadn't been demoed we would still ask for your approval to do the demo and we would still be paying out the money for that.

Alex Huskey: Right.

Jerry Foustnight: But uh they uh

Alex Huskey: Here is my concern ok. Here's my and I know this is probably as hypothetical as hypothetical can be and I am that guy right. I'll own it. But what if the third cousin twice removed shows up and says that was my family's church, I had history here. I was planning on doing something with that building and structure at one time. Are we then absorbing this company from their negligence?

Jerry Foustnight: I wouldn't believe so. This would be a legal question. Because we.

Alex Huskey: Because we are approving it after the fact so it is already done.

Jerry Foustnight: Right. But we went through the proper steps as far as notification in the paper uh we, we've done.

Alex Huskey: After the fact or

Jerry Foustnight: Before.

Alex Huskey: Okay.

Jerry Foustnight: We notified before. We took and we advertised in the paper prior to this because when we couldn't make contact with anybody and we found out they were deceased then we had to go to the legal part and advertise it in the paper so that if anybody had any interest within this that they would have the opportunity to do us.

Alex Huskey: So did we do it, did we do research on the board of trustees of the church? Or all of that is why, I mean the property may have been in individuals names but also you know with the if it was an incorporated body was there a board of trustees that would say hey. You know we did not know that this was going on. I, I am just a little concerned.

Attorney Herb Spitzer: What Jerry just said is what I learned so uh my comments will be based on what Jerry has just told us. But I am assuming based on what Jerry has just said is that his department has followed the statute that requires that the last owner of record in the county records, tax records party that needs to be notified and uh if uh the notification comes back and they don't actually get service there is a means to remedy that by publication and I think he has said that that has been done. So we are here today on the notice that has been given to demolish

the property. It is a public hearing so uh unless somebody is here to uh object, uh I think you can go ahead with the order of demolition. If somebody comes in later uh then and raises an issue it will have to be dealt with at that time. But I think that the department has done everything that they are required to do under the law in terms of notification. Um as to what you do with the contract that is another issue um which I guess we don't need to address right now.

Brian Flynn: I think my concern is um moving forward how do we prevent this from happening again? Are there any kind of (inaudible) measures that will require the contract to communicate before they actually tear something down?

Jerry Foustnight: Well this since we have been here in 16 this is the first time anything like this has ever happened and uh uh I think it was an error on their part assuming that the contract was already signed and uh they moved forward on it and uh uh I don't believe it is going to happen anymore. I mean we are very, very careful on how we move forward and this because this was monies that was given from the Redevelopment Commission

Aisha Richard: CREeD

Jerry Foustnight: I mean CREeD board not the Redevelopment Commission. But from the CREeD board this money was given to us uh and that is when we uh use that money and used an outside contractor. On most every property we bring before you we do ourselves. Uh with the exception of the last seven for the CREeD board and these last two here. So I I don't believe that we have that issue. We haven't had the issue in the past. We have the issue now because the contractor assumed that we had already signed the contract.

Alex Huskey: Is, I understand there are dollars paid for this but why, why would we bring in an outside contractor just because the dollars were paid instead of using that to reimburse the city for the manpower hours that the city

Jerry Foustnight: Why did we bring in outside contractors? Because uh we are really busy, we're busy on doing other demos within the city. Uh this money, we wanted to use this money before the end of the year and there for that is why if we did the properties ourselves we would have the seven properties plus these two additional properties we wouldn't be able to get them done before the end of the year. So we wanted to move forward it on it and use outside contractors to alleviate the mess or the delays that we would have.

Brian Flynn: Jerry, have we used the outside contractor for all of the CREeD demolitions?

Jerry Foustnight: Yes.

Brian Flynn: Okay, so this consistent with the way we have done things.

Jerry Foustnight: Yes.

Brian Flynn: With the way we have been handling this type of property?

Jerry Foustnight: Yes.

Brian Flynn: Okay.

Jerry Foustnight: And, and I am sure that as we set here and speak next year when we start our process on our budget for next year uh we're going to have some bigger properties that we are going to have to utilize maybe the use of a contractor that has larger machines than what we do to do what would need to be done.

Alex Huskey: So, my issues still have not been resolved in my mind. I have to be very transparent and I don't know that they will be resolved today with this one particular property. Um the demolition having already been taken place without a contract being signed um I, I understand that we were in the process but there is a lot to be considered here, costs that could be associated now and later, um the fact that due diligence was not done to to ensure that the proper

structure was taken care of. And then I understand then a private individual's property was also demolished. There are a lot of things about that particular demolition.

Jerry Foustnight: I, I

Alex Huskey: You said a private individual's garage was demolished?

Jerry Foustnight: No, no, no it this the church has been but the other structure that we had no it hasn't been demolished.

Cindy Cunningham: There was a church and there was a garage.

Jerry Foustnight: Well, the garage yes the garage uh but that has nothing to do with us or the city.

Alex Huskey: But it has to do with the work that was done at the same time, right?

Jerry Foustnight: Uh yeah.

Alex Huskey: I am really uncomfortable with approving that based on that because I, I heard what Mr. Spitzer said and I agree that we did our due diligence but the fact that all of that kind of took place at the same time I see some litigations coming down the road that could be potentially problematic and I am real uncomfortable.

Jerry Foustnight: Well I don't know what litigation would come because we

Alex Huskey: If this company demolished somebody's

Jerry Foustnight: They have already settled on it. The company has already settled with the individual they tore the garage up. They paid him "X" amount of dollars.

Alex Huskey: Then I want to see all of that in writing before I approve this property. I want to make sure that this board is doing its due diligence because I just, I am willing to approve 1020 but I am really concerned still about all this that has taken place with 1010 and its entirety.

Jerry Foustnight: Uh well...

Alex Huskey: I mean

Jerry Foustnight: I, I don't know

Alex Huskey: I am not in the habit of taking responsibilities for somebody else's bad behavior or their mistakes. And I understand that it was a legitimate mistake for the company but but if let me put it to you like this. If I were still in law enforcement and I had a warrant in my hand to serve at a particular location and I said oh I think this is the location. I don't check the warrant, and I went to that other house there is a whole lot that is going to come my way that is not going to be friendly to me or my family if I execute that warrant in justly. And that is kind of what this company did. They didn't do their due diligence. I am a little bit concerned about taking that responsibility (inaudible).

Jerry Foustnight: Uh

Alex Huskey: And I may in the minority on this and I am okay so I would rather table it so that others can speak on it as well or we have additional information that may give you the results you need. Because if I voted today my vote would be no.

Jerry Foustnight: Uh well uh

Alex Huskey: So I would say we should

Jerry Foustnight: Well first, I don't know if a contractor is going to give me the information as to what they have settled on. I mean that you know if I say I need a copy of what, what or an outline of what you settled on, (inaudible)

Alex Huskey: I don't need to know the dollar amount. All I just need to know is there has been an order issued just like we talked about we know that it has been publicized. The order issued that there has been a judgement issued should be public knowledge. The dollar amount does not

have to be public knowledge. I just need that. I need to feel like that issue is resolved so that we are not bringing the two together.

Cindy Cunningham: We have not paid for these yet, correct?

Jerry Foustnight: No.

Cindy Cunningham: Okay.

Alex Huskey: So I like I said

Jerry Foustnight: I don't know where

Alex Huskey: 1020 I am willing to vote on that one today because I think that one follows the right process. But cleaning up after the fact just always causes me a little bit of a pause.

Jerry Foustnight: And again I will say that we did follow the correct procedures. Our office followed the procedures. We did notifications. We did everything that was required. We published in the newspaper. Uh I don't know what more we can do as far as notifying or trying to notify whoever would have an interest within that building. I don't know what else we can do as far as moving forward. Maybe Herb may have some ideas

Alex Huskey: I am going to tell you Mr. Foustnight he is not going to change my mind today. So that is why I said I am willing to table it today. Not deny. If I voted today it would be for denial. So I am saying I am willing to table it so that we can have additional discussion on it because today is not going to change my mind.

Jerry Foustnight: Right.

Brian Flynn: Well I do take a little different position then Alex. I think the city has done everything that it is required to do. The only thing that has happened is the contractor acted without a contract. Right? If we remove that if we came today and the building was still standing, nothing had been done, all of the documents lined up, we would be voting to demolish it or not to demolish it. Um, I don't see how the city has any further liability um we have posted notice. A public notice in the newspaper, there were opportunities for anyone that wanted to contest it to come and contest it. Um that has not happened. Um, I don't like it that it happened. It wasn't something that, I don't think it is something that we can control as the Board of Works at this point that's a private entity who acted without a contract. Um and I think they are responsible obviously they have taken care of the one private property that they that they um demolished. But um I I don't know what else can be provided at least from my prospective. I don't know what else can be provided that would

Alex Huskey: The issue that I see is the one that you just pointed out. They acted on a property without a contract that we are responsible for voting on. Right?

Brian Flynn: Right.

Alex Huskey: And, and I am just saying we have done our due diligence as I said that before. We done our due diligence as the city, I am just concerned moving forward then back awarding a contract for something they have already taken action on.

Brian Flynn: What would the option be? What would the alternative be?

Alex Huskey: We don't own it because there was no contract in place. I took my car to a dealership to get it repaired. They fixed something that I did not ask them to fix. I did not own that. We had a contractual agreement for what I had taken it to the shop for but I did not give them permission to work on my brakes.

Herb Spitzer: I am not sure I understand what is before you this morning. Is the request to approve the demolition of the building or is it a request to approve the contract?

Jerry Foustnight: The building.

Herb Spitzer: Just the building.

Brian Flynn: The demolition of the building.

Alex Huskey: That has already been demolished.

Herb Spitzer: Just to, okay. And I think the other matter is a matter between the city and the contractor as to whether or not they are going to get paid anything for what they did. They may come in and try to argue well you know

Alex Huskey: Here is what I am saying. I am not willing to vote on it today. It is as simple as that. So we can table it and vote on it later and then somebody else may feel differently than I do.

Herb Spitzer: I was just trying to figure out what you were asking.

Alex Huskey: I am not trying to be difficult. I am just saying I am not willing to vote on it today. It is not that big of a deal that we table it and bring it back.

Cindy Cunningham: Has the contractor or you have you guys talked about payment because of the error.

Jerry Foustnight: No.

Cindy Cunningham: Do you feel like they should be paid in full for it.

Jerry Foustnight: Yes. I believe that it again was an error on their part. If they wouldn't have removed it to this point. I am sure that if I would have come in here hopefully you would have approved it and they would have went ahead and did it so. And I will do what the board asks. I will be more than happy to do. If you want more additional information I would request that you give me something in writing or something saying we request this, this, and this so I can move forward because like I said before I don't know what else to do as far as what we did as far as making sure that individuals were contacted or whatever. I do understand Mr. Huskey saying they took upon themselves to tear this down thinking they had the contract and they didn't so you know I will do the pleasure of the board. Whatever you suggest we do I will do, okay.

Alex Huskey: My pleasure is that we bring it back and let the rest of the board decide because my vote would not give you the desired result today.

Brian Flynn: If two voted yes and you voted no would it pass.

Unknown: No, it has to have three.

Brian Flynn: It has to have three? I guess that is our only option then at this point. Our only option is to table this and uh bring it back until there are sufficient answers or there is a sufficient number to have a vote to either pass it or deny it.

Alex Huskey: So I am willing to entertain a motion for 1020 North Branson.

Motion approve the demolition of 1020 North Branson- Brian Flynn; seconded Cindy Cunningham. Motion passed.

Alex Huskey: And for 1010

Motion to table 1010 for further information and uh so the full board has the opportunity to review and discuss- Brian Flynn-seconded Cindy Cunningham. Motion passed.

Jerry Foustnight: And again uh please notify me or whatever as to what, what, what you are requesting so that I can move forward on that, okay. And thank you for uh your time today and your understanding and uh hopefully we will move forward next meeting.

Brian Flynn: (inaudible) in all the years that we have had this situation.

Jerry Foustnight: Yeah, well.

Brian Flynn: My concern is how do we keep for it happening again.

Jerry Foustnight: Right.

Brian Flynn: If it happened once it can happen twice.

Jerry Foustnight: Right, right. And you know uh uh again we're pretty particular on how we do the process and everything. As you can see by the information we give to you we make sure that everything is in place prior to uh coming before you for the the approval. I do have

Cindy Cunningham: I know that this contractor has never done anything underhanded (inaudible) but I also understand what Alex is saying. If I take my car in and they fix it without me telling them to fix it do I have to pay for it?

Jerry Foustnight: Right.

Alex Huskey: And I and my comments are not intended (inaudible) the contractor at all because I know him as well and I know them to be very good people. I just you know I I just I think we can move on from that.

Public Comment

Robin Fouce: Hello, thank you for what you do.

The board in unison: thank you.

PAYMENT OF THE BILLS- November 7, 2022

Alex Huskey: So we have two sets of vouchers. I will start with the first. I will incorporate by reference the vouchers number 49606-49762 in the amount of \$541,461.40 for payment. Are there any questions about this set of vouchers? I would also incorporate by reference uh vouchers numbers 49767-49776 in the amount of \$11,150 for payment. Are there any questions about this set of vouchers?

Motion to approve payment of the vouchers for November 7, 2022- Cindy Cunningham; seconded Brian Flynn. **Motion passed.**

Motion to adjourn- Brian Flynn; seconded Cindy Cunningham

Meeting adjourned.

Alex Huskey- President
Board of Public Works & Safety

ATTEST:

Aisha Richard- Secretary
Board of Public Works & Safety