

UTILITY BOARD/COMMON COUNCIL

Tuesday, May 9, 2023

5:30 P.M.

The Common Council and Utility Board of the City of Huntingburg met in joint session on Tuesday, May 9, 2023 at the hour of 5:30 P.M. in the Council Chambers of the Huntingburg City Hall at 508 E. Fourth Street, Huntingburg, Indiana. Members McPherron, Kissling, Dubon, Bounds and Wehr were physically present. This meeting was opened to the public, and made available to members of the public and the media streamed through the City of Huntingburg's YouTube channel accessed via the City of Huntingburg's website. Also present were City Attorney Schneider and Clerk-Treasurer Dippel. Mayor Schwinghamer was absent.

Council President Pro Tem Wehr called the meeting to order.

A motion was made by Kissling, seconded by Bounds and carried to approve the minutes of the April 25, 2023 regular meeting.

A motion was made by McPherron, seconded by Dubon and carried to approve the claims as presented.

Attorney Schneider summarized the issue and proposed settlement agreement (Exhibit A) for the Kevin and Katrina Cox fence issue (purchase of a utility easement and waiving a \$1,500.00 fine for violation of a zoning order). He noted the Board of Public Works and Safety has already approved paying \$6,000.00 for the utility easement and the Council is the only Board that can waive this type of violation fine. It was noted that the Board of Zoning Appeals (BZA) will need to consider a variance for this fence.

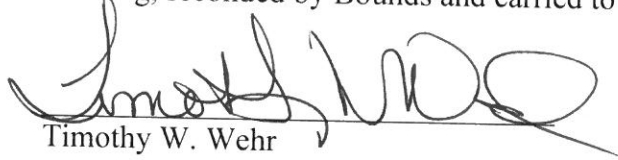
A motion was made by Bounds, seconded by Kissling and carried to approve the waiver of the \$1,500.00 fine.

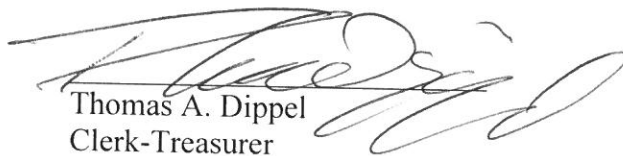
Wehr informed the Council that a facility tour of the current Senior Center will be held on May 18, 2023 at 11:00 A.M. in the Senior Center.

Planning Director Lake presented a Compliance with Statement of Benefits Real Estate Improvement for Wagon Works LP (Form CF-1/Real Property) for tax abatement for 2023 pay 2024 property taxes. Lake recommended finding the Wagon Works LP in substantial compliance with the Statement of Benefits originally submitted.

A motion was made by McPherron, seconded by Bounds to find Wagon Works LP in substantial compliance with their Statement of Benefits.

There being no further business before the Council, a motion was made by Kissling, seconded by Bounds and carried to adjourn the meeting at 5:43 o'clock P.M.


Timothy W. Wehr
Council President Pro Tem


Thomas A. Dippel
Clerk-Treasurer

Common Council 5/9/23 5:30pm
EXHIBIT A

SETTLEMENT AGREEMENT

THIS AGREEMENT made and entered into this ____ day of May, 2023 by and between the CITY OF HUNTINGBURG, INDIANA, herein after the "City", and KEVIN LEE COX and KATRINA MARIE COX, hereinafter "Cox";

WHEREAS, a dispute has arisen between the City and Cox regarding the application of the fence regulations of the City's Unified Development Ordinance ("UDO") to a fence constructed by Cox on their property at 107 W. Raider Court, Huntingburg, Indiana (the "Cox Property"), which dispute resulted in litigation and a judgment by the Circuit Court of Dubois County, Indiana under Cause No. 19C01-2201-PL-000027, whereby Cox was ordered to remove the fence from the City's utility easement, and pay a fine of \$1,500.00 for violation of a Zoning Order dated September 30, 2021; and

WHEREAS, subsequent to the entry of the Court's Judgment, and previously unknown to the City or Cox, it was discovered that the City's sanitary sewer forced main is located across the Cox property, outside the City's utility easements; and

WHEREAS, the parties hereto desire to settle and resolve the disputes that have arisen out of the foregoing.

NOW THEREFORE, in consideration of the mutual promises and agreements of the parties hereinafter set forth, the City and Cox agree as follows:

1. Cox will grant to the City an additional easement ten (10) feet in width immediately west of and adjacent to the existing fifteen (15) foot easement along the east side of the Cox Property, being Lot 74 of Hunters Crossing, Section 2 in the City of Huntingburg, Indiana, and the City will pay Cox the sum of \$6,000.00 for such additional easement.

2. The City, through its Planning Department, will sponsor and process an application for a development variance from the City's UDO to permit the Cox fence to remain at its current location within the City's utility easement, despite the strict application of the UDO prohibiting such encroachments; provided however, that the City shall be entitled to remove any section of the fence if necessary to access its easements for the repair, maintenance or replacement of utilities or the sanitary sewer across the Cox Property. It being acknowledged that a strict application of the UDO fence regulations would create a hardship to the Cox Property given that the expanded utility easement for the sanitary sewer would prevent the practical erection of a

fence in the backyard of the Cox Property.

3. The City will waive the enforcement of the \$1,500.00 fine levied by the Court in the Dubois Circuit Court litigation, and will file such agreed entry as may be necessary to vacate the Court's Order for removal of the disputed fence and the levy of the fine.

4. Each of the parties hereto shall pay their own costs and attorneys fees incurred in this matter.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and date first above written.

CITY OF HUNTINGBURG, INDIANA

By: _____
Steven Schwinghamer, Mayor

KEVIN LEE COX

Attest: _____
Thomas A. Dippel, Clerk-Treasurer

KATRINA MARIE COX

"CITY"

"COX"