

February 28, 2011

The Ellettsville, Indiana, Town Council met for a Regular Meeting on Monday, February 28, 2011, at the Fire Department Training and Conference Room. David Drake called the meeting to order at 7:00 p.m. Scott Oldham led the Pledge of Allegiance and Phillip Smith led the prayer.

Roll Call: Members present were David Drake, President; Scott Oldham, Vice President; Dianna Bastin, Phillip Smith and Dan Swafford. Sandra Hash, Clerk-Treasurer, Darla Brown, Town Attorney and Rick Coppock Town Engineer were also present.

Supervisors Present were: Jim Davis, Jim Ragle, Tony Bowlen, Connie Griffin, Mike Farmer and Jeff Farmer.

Approval of Minutes

David Drake entertained a motion for the approval of the minutes. Phillip Smith made a motion to approve the minutes of the regular meeting on February 14, 2011. Scott Oldham seconded. Motion carried.

Accounts Payable Vouchers

David Drake entertained a motion for action to pay Accounts Payable Vouchers. Dianna Bastin so moved. Dan Swafford seconded. Motion carried.

Vacancy on the Parks Board

Sandra Hash - Received a call this past week but doesn't think the person qualified.

Dan Swafford - Spoke with Phil Rogers and he would like the appointment if no one else was interested.

David Drake - Appointed Phil Rogers to the Parks Board.

Resolutions

Resolution 06-11, Local Additional Appropriation Due to a Grant Reimbursement

Sandra Hash – Explained this was a grant the Police Department received titled “Operation Pull Over.” This is a reimbursement grant and will be added back into the salary appropriation to reimburse the wages paid under the grant.

David Drake entertained a motion to approve Resolution 06-11. Scott Oldham made a motion to approve Resolution 06-11 Local Additional Appropriation Due to a Grant Reimbursement. Dan Swafford seconded. Roll Call Vote: David Drake – yes; Scott Oldham – yes; Dianna Bastin – yes; Phillip Smith – yes and Dan Swafford - yes. Motion carried 5-0.

Resolution 07-11 regarding Northern Richland Sewer Corporation

Darla Brown, Town Attorney – This is a resolution that simply expresses the Town's resolve to move forward with regard to appropriation and condemnation of the real and personal property of the Northern Richland Sewer Corporation (“Northern Richland”). The Town filed a complaint for Declaratory Judgment against Northern Richland asking the court to issue an order allowing the Town to survey and inspect Northern Richland's property. There was a four hour hearing on this last week. The judge is expected to rule shortly and how she rules will determine which path the Town takes. This resolution is before the Town Council and it expresses the Town's resolve to move forward.

Dan Swafford – It is his understanding that the Town has not thoroughly inspected Northern Richland's system. Mr. Swafford asked if it was correct that no matter what comes back from the court the Town is filing condemnation on the sewer corporation. Darla Brown said her intent through the resolution is to express the Town's resolve to move forward. This is not an actual condemnation ordinance or condemnation complaint. This would have to be drafted depending on how the judge rules. Whether or not the Town is allowed to inspect the system depends on how the Town proceeds. Mr. Swafford asked if this is premature and should the Town wait on the ruling before

the Town commits to the resolution. Ms. Brown responded she doesn't think so because the Town sent a letter to Northern Richland last April with a good faith offer based on fair market value as determined by the CPA. In this letter, Northern Richland was told if the offer wasn't accepted, the Town intended to move forward with condemnation. A similar letter was sent to Northern Richland in June. The Town has intervened at the IURC proceedings and at the merger. The Town intervened in the merger petition between Northern Richland and Eastern Richland Sewer Corporation ("Eastern Richland") on the basis that the merger was not in the best interest of the rate payers in their districts. She doesn't think this is premature but another step in the process. Mr. Swafford asked, for clarification purposes, if the Resolution is passed at this meeting and the judge rules that the Town is allowed to inspect their infrastructure, the Town will then make a judgment on whether to proceed with condemnation. Or, by signing the resolution the Town is already committed, no matter the findings, to start the condemnation. Ms. Brown reiterated that this is not a condemnation complaint or an ordinance as they still need to be completed. Mr. Swafford asked if the condemnation complaint and ordinance would still have to come before the Town Council. Ms. Brown responded this was correct. Mr. Swafford asked if it was correct that there was no way to start proceedings on the condemnation without coming back to the Town Council. Ms. Brown stated that was correct because the Town Council will have to select the procedure to follow. This is dependent upon how the judge rules and whether or not the Town is allowed to conduct an inspection.

David Drake – Asked if it ends up being considerably more expensive than anticipated, the Town still has the ability to make the determination they don't want to do this. Ms. Brown responded that was correct, the resolution could be withdrawn.

Phillip Smith – Asked how long it will take the judge to rule. Ms. Brown responded the judge did not commit herself. Ms. Brown estimates it will take two to three weeks to get a ruling.

Dan Swafford – Read a line from the resolution stating, ". . . *the Ellettsville Town Council has determined that it is beneficial to proceed with said condemnation and appropriation; and, WHEREAS, the Town, to ensure that any purchase price paid to, or award of damages to . . .*" This is the line in which he has a problem. Ms. Brown responded her intent through the resolution is for the Town Council to authorize her to take whatever procedures she deems necessary to finish due diligence subject to approval. This may include hiring other experts, asking the expert already hired to proceed, having the engineer sit down and start putting together a report or whatever is necessary to move this along. Scott Oldham said, with all due respect, this is the exact kind of hesitance that has caused this issue to drag on for at least four years. The Town Council continues to repeatedly threaten and pull back. It is time to vote, the Town is either in or it is out. This action is needed to not only protect the plant but the Town of Ellettsville. The Town has paid tens of thousand of dollars in the last four years attempting to make these problems go away. It is time to do this. David Drake said it's important to move forward. It is also important to understand, with this resolution, the Town still has the ability to make the decision of whether or not to do the condemnation once they receive the information from the inspections and cost evaluations. This is a good next step in order to proceed further. Mr. Swafford stated he thinks the resolution is premature until there is a report on the entire infrastructure before a decision is made.

Phillip Smith – Asked Ms. Brown if it would make a difference one way or another if it was passed at this meeting or at the next meeting. Ms. Brown responded, if at all possible, she thinks the Town Council should vote on it at this meeting. She thinks it is important, one way or another, to move things along. Dan Swafford asked what it would hurt to wait on the court's ruling. Ms. Brown stated she doesn't know for sure when the judge is going to rule. Mr. Smith asked what is stopping them from doing the inspection if the court rule in the Town's favor and the resolution wasn't passed. Ms. Brown stated the inspection could still be completed. Dan Swafford commented he doesn't see the urgency in passing the resolution at this meeting.

David Drake – Asked if this resolution serves as additional evidence to show the Town is serious and if this is the reason it needs to be in resolution form. Ms. Brown responded this was correct.

Dan Swafford – Asked if the Town was waiting on anything else other than the court's ruling. Ms. Brown responded on the Complaint for Declaratory Judgment they are awaiting the judge's ruling. Phillip Smith asked once we get the court's ruling and, if it is in the Town's favor, can they begin with the inspection. Ms. Brown said that was correct. Mr. Swafford asked if it stated in the contract, that if the Town does find the infrastructure is failing the Town can start repairs immediately and charge Northern Richland accordingly? Ms. Brown responded that is a different issue. It is a breach of contract claim also filed because Northern Richland suggested the Town does not have the right to do so. This claim has not been heard before the court. Scott Oldham asked if it is state law that the Town is to first appraise their system which has been denied and is the subject of a court hearing. Ms. Brown responded this is how she interprets the statutes. It doesn't matter what condemnation procedure the Town elects to follow. The Town has the right to inspect the property before hand.

Dan Swafford – Asked Mike Farmer of Ellettsville Utilities if there have been any attempts to repair the sewer problem next to the Cook facility he approached Town Council about last year. Mr. Farmer responded there has not been a repair made at this time. That area washes out during heavy rain events such as on February 21, 2011. There were multiple sewer discharges throughout both of the rural customer systems. Specifically, Northern Richland had two manholes discharge near Jack Defeat's Creek, along Maple Grove Road. Northern Richland called Ellettsville Utilities to assist but there was just too much water coming down the system. It has not been repaired. Northern Richland has a backhoe parked in the vicinity of where they're going to make the repair. It has almost been a year and the repairs have not been made. We went through a drought season when the repairs could have been made. The rain event on February 21st stressed the sewer plant and there were multiple overflows throughout their systems. Ellettsville Utilities would appreciate any kind of pressure to resolve these issues. Mr. Swafford asked if there was any documentation of these events. Mr. Farmer responded they had the documentation. Mr. Swafford asked if he had notified either Northern Richland or Eastern Richland of the situation. Mr. Farmer stated they have had Eastern Richland and Northern Richland customers call them when they have a problem because they think they're customers of Ellettsville Utilities. They did receive telephone calls when there were discharges from the manholes. Ellettsville Utilities takes care of customer actions and goes out on the calls. If there is a problem, they call Northern Richland and ask if they want Ellettsville Utilities to do the repairs. Because these problems have been prevalent during the rainy season for many years, Ellettsville Utilities monitors all of their discharge points. It helps them to learn where all of the water is coming from. There are at least a dozen throughout the system that are routinely discharged during heavy rain events. The discharge points aren't the problem points; they're just an indicator that there are problems further upstream. They recently monitored discharges from about noon to 7:00 p.m. Mr. Swafford asked when there is an overflow is either Eastern Richland or Northern Richland notified? Do you then repair the system or do you have to ask and wait for approval. Mr. Farmer responded they always ask and wait for their approval. Northern Richland and Eastern Richland are billed for the repairs and they pay their invoices. Scott Oldham understands there are still some billing issues wherein the Town is underwriting some of the bills for postage and such other things. These bills vary between what occurs to Town residents versus Northern Richland. Mr. Farmer responded this is correct. Mr. Oldham asked if every month Ellettsville Utilities sends out bills with the Town subsidizing Northern Richland for a given amount of money based on postage and bills. Mr. Farmers said yes and on the backs of their own customers. Mr. Oldham asked if the Town's residents are sharing, in Mr. Farmer's opinion, a disproportionate load compared to those in Northern Richland. Mr. Farmer stated this is correct. David Drake asked when they make repairs, are they just a band-aid. Clarifying, Northern Richland isn't having Ellettsville Utilities fix the real problem, they're just putting a band-aid on the emergency. Mr. Farmer responded that was correct. Some of the overflows are caused when the rains become heavy and actually overflow the capacity of the sewers if there are root balls or partial or total blockages. The problem is alleviated by breaking the blockages. More than not, it is just the heavy influx of infiltration and inflow that causes the surcharges. For example, on February 21st they tried for several hours to alleviate the problem along Maple Grove but there was too much water. Mr. Drake asked if the overflows also did some

damage to the sewer plant. Mr. Farmer answered grease and debris was so high in the wet well, that serves the head waters of the plant, they had to remove it with their vacuum instead of letting it go into the plant. This was preventive maintenance. They ran four pumps for many hours. Mr. Swafford asked what percentage Northern Richland is in comparison to the complete system. Mr. Farmer responded Northern Richland is a very small portion of the system. It is 25,000 feet of pipe, basically a lot of pipes and manholes. Northern Richland has one connecting point at Maple Grove and Matthews. They have 140 customers and the other two entities have approximately 3,000 customers. It's about 8%. Mr. Oldham asked if the time they spend repairing and/or addressing band-aid fixed disproportionate to the 8%. Mr. Farmer stated the only time something is done to Northern Richland's system is when they try to dislodge a choke point in the sewer. Ellettsville Utilities does not spend that much time on it and Northern Richland doesn't call them for normal routine maintenance. For example, the Town cleans almost all of their sewers every year. After that, they will cut root balls and root cut portions of the system that needs it and maybe an additional 30,000 to 60,000 feet. They will televise the lines during the rainy season to discover some of the inflow and infiltration problems. This is how they prioritize the repairs. Ellettsville Utilities is working with a group that wants to be a utility but their inaction to do preventive maintenance is stressing the entire system and everyone else has to pay for it.

David Drake entertained a motion to approve Resolution 07-11. Dianna Bastin made a motion to approve Resolution 07-11 Regarding Northern Richland Sewer Corporation. Scott Oldham seconded. Roll Call Vote: David Drake – yes; Scott Oldham – yes; Dianna Bastin – yes; Phillip Smith – yes and Dan Swafford - no. Motion carried 4-1.

Ordinances on Second Reading

Ordinance 11-03 to Amend Chapter 50 of the Ellettsville Town Code Concerning Billing Services Fees

Darla Brown, Town Attorney – This is an agreement between the Town and Eastern Richland that didn't quite match the ordinance. Therefore, minor changes were made to the ordinance. In Sections A, B and C regarding the charges there was some language that suggested they should be based on the base charge for the prior year plus some percentage of the Consumer Price Index. This was not the agreement the Town has with Eastern Richland. The ordinance now matches the agreement.

David Drake entertained a motion to pass Ordinance 11-03. Dianna Bastin made a motion to pass Ordinance 11-03 to Amend Chapter 50 of the Ellettsville Town Code Concerning Billing Service Fees. Scott Oldham seconded. Roll Call Vote: David Drake – yes; Scott Oldham – yes; Dianna Bastin – yes; Phillip Smith – yes and Dan Swafford - yes. Motion carried 5-0.

New Business

An Agreement between the Town of Ellettsville and the Monroe County Health Department to use the Ellettsville Fire Station No. 7, Training and Conference Room for Mass Clinics for Disease Prevention and Control Activities

Dennis Williamson, Monroe County Health Department – Is seeking approval of an agreement between the Town and Monroe County Health Department to use the Training and Conference Room in Ellettsville Fire Station No. 7 for a training exercise. Each year the Monroe County Health Department is required to do some type of training in order to keep their grant money from the state and Homeland Security. They are doing an operation based clinic and are focusing on first responders. This year they are concentrating on firefighters, police officers, government officials, public works people and those considered essential personnel, as well as their household members, in case there is a large scale emergency. They are conducting a drill in the Training and Conference Room. The Monroe County Health Department will be evaluated on the setup and operation of the clinic.

David Drake entertained a motion to approve the agreement between the Town of Ellettsville and the Monroe County Health Department. Scott Oldham made a motion to approve the agreement between the Town of Ellettsville and the Monroe County

Health Department to use the Ellettsville Fire Station No. 7. Dianna Bastin seconded. Roll Call Vote: David Drake – yes; Scott Oldham – yes; Dianna Bastin – yes; Phillip Smith – yes and Dan Swafford - yes. Motion carried 5-0.

Supervisor Comments

Fire Chief Jim Davis – Presented a copy of the Fire Department’s year end report to Town Council. The run volume increases year after year. This last year, there were 1,936 calls for service. They responded to approximately 11 structure fires with significant damage. Of particular note, is the total worth of the volunteer firefighter services which would have been \$53,525 if they were paid by the Town on an hourly wage of a second class firefighter. The firefighter’s contractual agreement for a twelve month period is \$5,000, which is also required by state law.

Jeff Farmer, Ellettsville Utilities – Thanked their crews for coming in and working on the February 21, 2011 holiday. The Town received 1.9” of rain on February 21st. When the Town was going through their drought, the average flows were between 750,000 to 800,000 gallons. During a normal period of rain events, they average 1.1 million through the plant because of growth. On February 21st, they peaked at 10 million which is the maximum of the pumps. The wet well was flooded and they lost a \$500 motor that turns the grit machine. Currently, they do not have a mechanical bar screen. When the flows first came in, it looked like creek water. So, there is a major problem somewhere whether it’s in their system, Northern Richland or Eastern Richland’s system. They have photographs of multiple manholes that are in back yards and by creeks. When the flows go back down, it isn’t just rain water, its raw sewage. It’s in the backyards where kids play and it’s in the waterways. They treated 15 million gallons of extra flow in three days. On February 27th, the Town received a half inch of rain and there was a problem in the Smithville Lift Station when lightening struck a transformer and blew out three fuses. They tried to pump and stay ahead of it but the Town had a sanitary sewer overflow in a manhole of 3,000 to 5,000 gallons. Since 1995, he has been saying the problems need fixed. At some point, if everyone can’t come together the state will tell everyone how to fix the problems and the rate payer will suffer. There is an offer to combine systems and reduce the rates by 9% and refund money to Eastern rate payers. They will file a report regarding the sewer overflow with the Indiana Department of Environmental Management (“IDEM”). Dan Swafford asked if they reported the overflows that occurred last week to IDEM. Mr. Farmer responded the overflows were not for him to report. It is the responsibility of the other utilities to report their overflows to IDEM. Ellettsville Utilities provides water to customers of all three utilities and there are no complaints. Mr. Swafford asked for flow meters to be explained, if the Town has them and if they are in place. Mr. Farmer stated there has been a flow meter on Eastern’s line for years and over three million gallons comes through their system. Flow is going into the storm sewers, creeks and backyards and this cannot be calculated. Mr. Swafford asked if there is any way to separate all three entities and put flow meters on each system. Mr. Farmer said this can be done. Scott Oldham commented the flow meters won’t monitor the over flow. Mr. Farmer commented Eastern pipes are at capacity. David Drake commented the only benefit to a flow meter would be if Eastern was actually charged for what comes through their lines. Mr. Swafford stated if we are renegotiating perhaps this needs written into the contract. Mr. Oldham noted only a certain amount of water is going to go through Eastern Richland’s 8” pipes and the rest of it has to go some place. Mr. Drake said he thinks the difference is Eastern Richland’s system should not be maximizing the ability of their pipe. Eastern would not be able to afford to pay for everything Ellettsville Utilities would have to charge without fixing their problems. Eastern has no incentive to repair their problems because it is not costing them anything. Mr. Farmer reminded everyone that no one did anything prior to 1995. The state stepped in and told them that until the problems were fixed no one else could hook on. This required a new sewer plant and a new 36” line. This cost almost \$10 million. If the problems continue to be ignored, the same thing will happen again. The rates will double, keep people from wanting to move into the community and hurt the school system. Mr. Oldham asked if there was a major industry that wanted to locate in Ellettsville could the utilities physically handle it. Mr. Farmer stated they have the capacity except when it rains. Mr. Swafford stated it seems more logical to find out

where the problems are located with the use of flow meters. Mr. Farmer stated this problem has been going on for a long time and he has the proof from flow meters previously placed on the systems. Mr. Oldham said this is a multifaceted issue with ongoing problems in the system, billing, lawsuit and the other things that have been going on. These problems will continue to take tax payers in the Town of Ellettsville down a road which will cost hundreds of thousands of dollars. As these problems go on it is going to cost more. The cost of these problems has doubled in four years. Mike Farmer wanted to remind everyone that there is a proposal from the Town of Ellettsville to consolidate with both entities. Included in that offer is a refund of \$850 to Eastern members, a reduction in the rates by 9% for all three entities and consolidation of the sewer system so all problems can be prioritized. Mr. Swafford had previously discussed a unified sewer corporation at a Town Council meeting and was told the Town will not allow a service utility board. Mr. Swafford asked if this was correct. Mr. Oldham said this is an issue for Town Council. Mike Farmer commented they are dealing with Northern Richland who only has 240 customers and has no money to fix their problems. Eastern Richland is sitting on a ton of money and has not been doing much more than Northern Richland about their problems. They have as many customers as Ellettsville Utilities and as many problems but they are doing nothing. They don't have any employees, only boards. Mr. Swafford isn't aware of any offer made to Northern Richland or Eastern Richland proposing a service utility board. Darla Brown responded there was a notice published in the paper. Mr. Oldham reiterated there has been no response from Eastern or Northern as to a service utility board. There are some fantastic people on both boards who are doing what they believe is correct. If something goes wrong outside the Town's jurisdiction, they still send utility workers. The service doesn't differentiate between customers of the three utilities.

Council Comments

Dianna Bastin – Thanked the utility workers who gave up their holiday and came out to assist the community and the Town. She heard from a few people that utility employees were eager to answer questions and help. Ms. Bastin did not receive any complaints.

Phillip Smith – There will not be a Plan Commission meeting in March.

Adjournment

Dianna Bastin made a motion to adjourn. Dan Swafford seconded. Motion carried. David Drake adjourned the meeting at 8:03 p.m.

David Drake, President

Scott Oldham, Vice-President

Dianna S. Bastin

Phillip Smith

Dan Swafford

Sandra C. Hash, MMC,
Clerk-Treasurer