

## February 9, 2009

The Ellettsville, Indiana, Town Council met for a Regular Meeting on Monday, February 9, 2009, at the Fire Department Training and Conference Room. Dianna Bastin called the meeting to order at 7:30 p.m. with the Pledge of Allegiance and Phillip Smith led in prayer.

**Roll Call:** Members present were Dianna Bastin, President; David Drake, Vice-President; Scott Oldham, Phillip Smith and Dan Swafford. Sandra Hash, Clerk-Treasurer and Mike Spencer, Town Attorney were also present.

**Supervisors Present:** Jim Davis, Jim Ragle, Tony Bowlen, Mike Farmer, Jeff Farmer and Frank Nierzwicki were present.

### Approval of Minutes

Dianna Bastin entertained a motion for the approval of the minutes for the regular meeting January 26, 2009. Dan Swafford made the motion. Phillip Smith seconded. Motion carried.

### Accounts Payable Vouchers

Dianna Bastin entertained a motion to pay Accounts Payable Vouchers. David Drake so moved. Scott Oldham seconded. Motion carried.

### Resolutions

#### **Resolution 03-09 to enlarge participation in the Public Employees' Retirement Fund (PERF) by adding Administrative Assistant and Assistant Planning Director**

**Sandra Hash** explained this resolution is to enlarge participation in PERF by adding the titles "Administrative Assistant and Assistant Planning Director". The resolution has been amended, by request, from the last meeting.

Scott Oldham made a motion to approve Resolution 03-09. David Drake seconded. Roll call vote: Dianna Bastin – yes; David Drake – yes; Scott Oldham – yes, Phillip Smith – yes; Dan Swafford – yes. Motion carried 5-0.

Scott Oldham asked, in regards to amending Resolution 03-09, does there need to be a motion to change Connie Griffin's job title to Assistant Planning Director? Sandra stated that is a separate issue but she will be addressed as the Assistant Planning Director in this resolution. The salary ordinance will also need to be amended.

Scott Oldham moved that we declare or name Connie Griffin the Assistant Plan Director for the Town of Ellettsville. David Drake seconded. The motion was withdrawn.

*The following discussion took place before the vote*

Dan Swafford asked if this will affect her job description or pay in any way. Dan feels there will be more duties going from an Administrative Assistant to Assistant Planning Director. Mike Spencer agreed and asked what the job description was for the Assistant Planning Director. There is currently no job description for this position. Scott Oldham stated Connie Griffin will continue the duties she has been assigned until a new job description is completed and there will be no increase in salary or benefits. It was clarified the job duties, in the Planning Department, will be divided to ease the stress of everyone involved. Dan asked Mike Spencer if Connie's job title can be changed to include more duties without giving her extra pay. Mike Spencer said yes but the question should be "should you change a title without a job description"? Mike Spencer asked why the job title is being changed. Scott Oldham explained Connie is performing more jobs of an Assistant Planner as opposed to an Administrative Assistant with no change in money or benefits. Mike Spencer recommended preparing a job description before changing the job title. Scott Oldham stated Connie Griffin is aware of all of this. It has been an ongoing discussion with the Planning Department.

### Ordinances on First Reading

**Ordinance 09-03 to change the zoning of lot #1 and #4 in the Richardson Subdivision on West State Road 46 from R-1 to C-3**

**Frank Nierzwicki** explained this has been recommended by the Plan Commission. The petitioner has requested first and second reading be made this evening. There have been some issues regarding addresses and legal descriptions. Dianna Bastin and the Council have been given documentation to read and they are prepared to pass this tonight.

Dianna Bastin explained this property is located next to the lumber yard. Looking at the old Wick's Lumber look to your right, over one driveway and it is the green building that sits back.

David Drake moved that Ordinance 09-03 be submitted for First Reading. Scott Oldham seconded. Roll call vote: Dianna Bastin – yes; David Drake – yes; Scott Oldham – yes; Phillip Smith – yes; Dan Swafford – yes. Motion carried 5-0.

David Drake moved that Ordinance 09-03 be adopted on the same day as which it is introduced. Dan Swafford seconded. Roll call vote: Dianna Bastin – yes; David Drake – yes; Scott Oldham – yes; Phillip Smith – yes; Dan Swafford – yes. Motion carried 5-0.

David Drake moved that Ordinance 09-03 be adopted. Phillip Smith seconded. Roll call vote: Dianna Bastin – yes; David Drake – yes; Scott Oldham – yes; Phillip Smith – yes; Dan Swafford – yes. Motion carried 5-0.

## **Ordinances on Second Reading**

### **Ordinance 09-02 to change the zoning on the west corner of West State Road 46 and Deer Park Drive from R-1 to R-2**

**Frank Nierzwicki** explained this is a request for a rezone of a four lot subdivision at Deer Park Drive and West State Road 46. This ordinance will change the zoning from an R-1 to an R-2; not to approve any development on the lots. Frank explained the difference between R-1 and R-2; R-1 is a single family residential and R-2 is a duplex. There is currently a duplex on site. The petitioner will later propose a five lot subdivision. The Council reviewed pictures of the area and the proposed plans.

**Jeff Fanyo**, Bynum Fanyo and Associates explained the drawings are a proposal on how the five lots can be created on the two acre tract of land. Dan stated there was a concern about the driveway on the lot behind the existing unit; looking at the proposed plans, will there be two drives? Jeff Fanyo explained the building is a duplex and will have separate driveways. His company reviewed the site distance, according to American Association of State and Highway Transportation Officials, the requirement is 115 feet of site distance and there is 158 feet of site distance. Dan asked if they looked into the concerns with drainage affecting the existing homes. Jeff Fanyo has not designed a system. Town Ordinance has a very stringent policy and requires the “post development 100 event” is retained down to the “predevelopment 10 year event” and the “post development 10 year event” is retained back to the “two year predevelopment”. This will help the situation “down stream”. Jeff Fanyo gave an example of another development where the design improved water runoff. He anticipated an improvement with the storm water management.

Frank stated all concerns would need to be addressed before there is any development on these lots. A rezone from R-1 to R-2 is what is being addressed this evening and that decision will decide the way the developer designs the development.

Joe Sanders, resident 4355 Deer Park Drive feels his time, talking to the Council, has been misspent because he feels decisions have already been made. Mr. Sanders was told at the last meeting that someone from the Town and Bynum Fanyo would be out to look at the property but no one came out until the afternoon of February 8<sup>th</sup>; when Frank was told to. No one from Bynum Fanyo has been in touch with Mr. Sanders. His main concern is with drainage. He presently does not have a problem but when the construction starts he feels a problem will develop. His property is not contingent to the property they want to develop but it is on the “tail end”. Mr. Sanders built his home 16 years ago and currently has no drainage problems.

David Drake asked Frank if he has heard from the surrounding neighbors. Frank has not but Mr. Stevens has attended the Plan Commission meeting. Dan Swafford looked at the property and noticed there was a sink hole. He felt as though the water would collect

there. Mr. Sanders stated there is a natural spring that runs from the south end of the “sink hole” underground and comes up in the back of his property. Dan asked if the developer would put houses on the property if it is not rezoned R-2. Frank does not know. Dan feels there is a problem between the lot and the gas station with the retaining wall. He does not know how the gas station was able to put in; it is a hazard and asked if it will be taken care of. Frank stated there is a property fence between the property and the gas station. There is not a fence on top of the wall. David Drake is not opposed to rezoning this property. It would be better to have a single family residence behind the existing duplex instead of another duplex.

Jeff Fanyo stated the plans, that were presented tonight, are not the final plans and adjustments can be made. He was representing his client this evening for a rezone and presenting a schematic site design of “what could be done”. David Drake stated the Town Council can only approve or deny the Plan Commissions recommendation. The Town Council can not make changes to it at this time.

Mike Spencer stated the Town Board must consider the proposal, certified by the Plan Commission before acting on the proposal. They must pay reasonable regard to the following: Comprehensive Plan, current conditions and the character, current structures and uses, the most desirable use for which the land in each district is adapted, conservation of property value throughout the jurisdiction, responsible development and growth.

David Drake asked if the Plan Commission will have any authority to say “we would rather have a single family house there”. Frank stated because it is zoned R-2 it could still be built as an R-1. The Plan Commission, with reason, could say a property is not suitable for a “duplex” even though it was zoned R-2.

Scott Oldham asked if the duplexes are anticipated to be rentals or owner occupied. Jeff Fanyo understands they are going to be owner occupied. Scott asked Frank if this rezone is declined, would the developer want to put single family residents in the same plat. In Frank’s opinion, they are trying to maximize their revenue on this property. The way it is zoned will make a difference on how the land will be developed. R-1 is not as evasive as R-2.

Dianna Bastin asked Frank; when this comes before Plan Commission, no matter what they end up with or what they build that he take a close look at it. She suggested he bring the neighbors in on some of the discussions and keep them informed.

David Drake made a motion we adopt Ordinance 09-02. Dan Swafford seconded. Roll call vote: Dianna Bastin – no; David Drake – yes; Scott Oldham – abstain; Phillip Smith – no; Dan Swafford – yes. Vote 2 yes, 2 no and one abstention.

*The following discussion took place after the vote; before the final motion*

David Drake suggested guidance for the petitioner as to what will be needed to pass. Phillip Smith is worried about the drainage issue. He told of his own experience where he was in the same situation as Mr. Sanders. Dan Swafford is confident Bynum Fanyo would handle any drainage problems that come up during and after construction. Scott Oldham explained his abstention; he has been friends with Mr. Sanders for over twenty years and he did not feel it was fair. He would have voted no because he does not think the duplexes are the appropriate use for the property. Dianna is concerned about the drainage issues also.

Jeff Fanyo asked is this tabled or no action. Mike Spencer stated there was “no action”. David Drake stated when there is “no action” it will go into affect after a certain period of time since the Plan Commission approved it. Mike Spencer explained no passage of an ordinance and no rejection of an ordinance. The result of “no action” is passage. Mike Spencer researched the voting. Sandra Hash stated that when this came before the Plan Commission, she voted no. She explained this property has been an issue a few times over the years. The last time it came before the Plan Commission, they were requesting a commercial zoning and it was turned down. The Plan Commission reviewed the “East Ellettsville Plans” and it states properties with large lawns should be maintained in order to show the difference between Bloomington and Ellettsville. David Drake feels the property is appropriate for R-2 having State Road 46, the gas station and a duplex all around it.

Mike Spencer stated when there is a tie, under Section 36-5-2-a the Town Clerk casts the deciding vote to break a tie.

Dianna Bastin called for Sandra Hash's vote on this issue, as the Town Clerk. Sandra Hash said this is a difficult decision to make but since she voted no at the Plan Commission, she feels that she should continue with that vote and voted no. The rezoning request failed.

## **New Business**

**Dianna Bastin** explained on January 28, 2009, 12-14 inches of snow accumulated. Dianna called, under Indiana Code 10-14-3-22, a Snow Emergency. She read the "Declaration of Local Disaster Emergency" in its entirety. Dianna called the emergency at 6:30 a.m. and had it lifted at 4 p.m. giving the Street, Utilities, Police and other employees' time to clear the town. A copy of this declaration will be mailed to the Emergency Board and County Commissioners. Dianna thanked the employees of Ellettsville for a great job.

## **Privilege of the Floor**

**Mr. Richardson** asked if the Town has a code regarding keeping sidewalks cleared. Frank Nierzwicki is researching it. The Town Council has always urged people to clean their sidewalks. The Town is working on updates and will include sidewalks.

**Joe Sanders** apologized to Phillip, Dianna and Sandra for the assumptions he made earlier addressing the Board.

**Mike Spencer** stated the sidewalk issue is in the Town Code 92.01; it is the duty of each and every owner of real estate in the Town to remove snow and ice from the sidewalk or sidewalks adjacent to his/her real estate within 24 hours after the snow is deposited or the ice is formed.

**Russ Ryle** suggested putting something in the Town Code on what to do with 12 to 14 inches of snow. The street plows the snow back onto the sidewalks. Dan asked if the Street Department has any equipment that would clear thick snow off the sidewalks. Jim Ragle said they did not have any equipment like that. Dianna stated the Town did the best they could with what they were up against. Dan stated the Street Department did a wonderful job. Dianna commended the Marshal and his Second in Command.

**Sandra Hash** asked for verification for employee payment on the "snow day". Dianna Bastin explained since the "snow day" was called at 6:30 a.m. and there were some employees already working and most had to be there, Dianna proposed a vote that the people who did make it are paid as a normal day. The people that were scheduled to work that day and could not make it (did not call in sick or have a prearranged leave time) be given eight hours to take between now and the end of the year; according to the guidelines their supervisors provide. The State Board of Accounts allows for the action as long as it is fair and across the board which would include Police, Fire and Street. Dan asked about the Fire Department working 24 hour shifts instead of an 8 hour shift. Dianna answered the State Board of Accounts states she has to be fair across the board and she drew the line at 8 hours. Jim Davis clarified when the Personnel Policy was written; all holidays are paid in 8 hour shifts and this is the way the "snow day" hours will be handled. Dianna would like to address this in the next Supervisor's meeting. This has not happened for a number of years. There were some people who could not make it to work and Dianna's personal thoughts were "it is not fair to make them use their PTO time". Sandra stated "snow days", dealing with emergencies or the term "essential personnel" are not covered in the Personnel Policy. Dianna said all employees are essential but there are guidelines for State of Emergency and clarified she is not asking we "always do this" she is asking we do this for this particular situation.

Dianna Bastin is asking for a motion. Scott Oldham so moved. Dianna Bastin seconded. Dianna Bastin added "to the employees that could not make it to work, they are paid for a regular day. For the employees that did come to work, with my apologies, with the exception of Elected Officials, they get eight hours off". We are not setting policies; this is just for the 28<sup>th</sup>. Part-time employees will be under the discretion of the Supervisor of that

Department. Roll call vote: Dianna Bastin – yes; David Drake – yes; Scott Oldham – yes; Phillip Smith – yes; Dan Swafford – yes. Motion carried 5-0.

**Adjournment**

Dianna Bastin called for a motion we adjourn. Scott Oldham so moved. Phillip Smith seconded. Motion carried. Dianna Bastin adjourned the meeting at 8:33 p.m.

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Dianna S. Bastin, President

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David Drake, Vice-President

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Scott Oldham

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Phillip Smith

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Dan Swafford

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Sandra C. Hash, Clerk-Treasurer