

## January 12, 2009

The Ellettsville, Indiana, Town Council met for a Regular Meeting on Monday, January 12, 2009, at the Fire Department Training and Conference Room. Dan Swafford called the meeting to order at 7:30 p.m. leading the Pledge of Allegiance and Phillip Smith led in prayer.

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

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

### Election of Officers

**Dan Swafford** called for a nomination for President.

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

**Dianna Bastin** entertained a motion for Vice-President of the Council.

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

### Liaison Appointments

Police Department – Scott Oldham

Fire Department – David Drake

Street Department – Phillip Smith

Utility Department – Dan Swafford

Planning Department – Scott Oldham

Grievance Officer – Phillip Smith

### Board of Zoning Appeals

One Republican appointment by Council vote

Geraldine McIntyre – term ended 2008

Sandra Hash stated Geraldine McIntyre would like to retain the Parks Board seat but she did not mention the BZA. Geraldine McIntyre was not present at the meeting. Dianna Bastin reappointed Geraldine McIntyre; should she change her mind, the Council will bring it back up.

David Drake made the motion to appoint Geraldine McIntyre to the Board of Zoning Appeals. Dan Swafford seconded. Motion carried.

### Parks and Recreation Board

One Republican appointment by the President

Geraldine McIntyre – term ended 2008

Dianna Bastin reappointed Geraldine McIntyre to the Parks and Recreation Board, in her absence.

### Redevelopment Commission

No political party directions/annual appointments

5 appointments – 3 by the President and 2 by the Council

David Drake suggested the Council appoint two members this evening and allow Dianna to research her appointments.

David Drake made a motion for the Council to appoint Frank Buczolic and Phillip Rogers. Dan Swafford seconded. Motion carried.

Dianna Bastin reappointed Darby McCarty with the same stipulation, if she is not interested she can contact the Council.

### **Annual appointments by the Town Council**

Monroe County Ambulance Advisory Board – Jim Davis  
Monroe County Emergency Management Advisory – Jim Davis  
Monroe County Solid Waste Management Board – Dan Swafford  
Ellettsville Chamber of Commerce – Sandra Hash

Dianna Bastin reappointed all current appointments. David Drake made a motion that we adopt those appointments. Phillip Smith seconded. Motion carried.

### **Approval of Minutes**

Dianna Bastin entertained a motion for the approval of the minutes for the Regular Meeting December 22 and the Special Session December 31, 2008. Scott Oldham so moved. David Drake seconded. Motion carried.

### **Accounts Payable Vouchers**

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

### **Resolutions**

#### **Resolution 01-09 to enter into a lease with T-Mobile Central LLC – McNeely Street Tank**

**Mike Farmer** stated the Ellettsville Utilities Department would like to enter into an agreement with T-Mobile and allow them to place an antenna ray on the top of the McNeely Street water tank. The resolution authorizes the President to sign all documents that will affect this lease with T-Mobile. Mike Spencer has reviewed the contract. T-Mobile will pay \$1,500 a month with a rent adjustment of 3% every year. All the terms of the agreement are listed on the first page of the contract. The President will have to sign the contract and documents pertaining to the easement. T-Mobile has four original contracts that need to be signed. There will be several antennas, between five to seven feet tall, placed on the halo of the tank. Mike explained there are some lease documents that “prohibit” antennas or other communication devices to be put on the tank. When the Town purchased the property that was part of the original deal. The Town has entered into a deal, with the people who hold those documents, to split the monthly rent amount 50-50. The Town will receive \$1,500 and in turn pay the people who hold the documents (the Town has a separate contract with them). Mike Spencer explained they executed a release permitting this to occur in return for receiving half of the rent.

David Drake made a motion we adopt Resolution 01-09. Scott Oldham seconded. Roll call vote: Dan Swafford – yes; Dianna Bastin – yes; David Drake – yes; Scott Oldham – yes; Phillip Smith – yes. Motion carried 5-0.

### **Ordinances on First Reading**

#### **Ordinance 09-01 to amend the Ellettsville Town Code concerning shelter houses, roller skates, inline skates and skateboards**

**Sandra Hash** explained the existing code lists the sales tax amount of 6%, which is included in the shelter house rental. To avoid having to amend this ordinance in the future, the sales tax amount will be taken off and now say “amount includes Indiana Sales Tax”. The existing code talks about equipment needed for the Skate Park; since the Town no longer has the Skate Park, that section of the code will be removed.

### **Ordinances of Second Reading**

#### **Ordinance 08-12 to amend the Ellettsville Town Code concerning Sewer Rates and Charges**

**Dianna Bastin** stated a Public Hearing was just held before the Town Council meeting. There will be an increase in the “Treatment, Usage and Base Rates”. Mike Farmer summarized the increase. The rate increase will be 17% over the next two years. The numbers are based on an average user using 4,336 gallons. The current rate is \$37.00; the first year the increase will be \$3.83 and the second year \$3.79 (total of \$7.62 rate increase for an average user). Phillip Smith said H.J.Umbaugh analyzed everything and recommended an \$11.00 increase all at once. Mike said the Council had many concerns with that and after the many meetings; they came up with proposed increase. Dan asked Mike to outline how long before the increases are implemented. Mike explained after the Town Council passes this; the rates can immediately be implemented for the Ellettsville customers. A contract would need to be signed and approved by Northern and Eastern acknowledging the new rates. The Utilities Department will initiate billing all customers, including Northern and Eastern. The rate increase will probably be in the March billings because new software needs to be developed and installed. The rate increase will be 17% for all users including minimum usage customers. The minimum usage bill rate is based on what it takes to keep the sewer system running. Scott Oldham knows the Utilities Department has been supplementing and working in the “red” but asked how long they could continue if this rate increase was declined. Mike Farmer outlined and explained all that could be “cut” to “possibly” stay a float and all that needs to be updated; the Utilities Department needs the money to ensure there is a healthy infrastructure for future growth. This is not about running out of money and not being able to pay bills; it’s about the future of Ellettsville and the infrastructure. Sandra stated the Utilities Department expended \$120,000 more than they brought in last year and used \$100,000 from the cash reserves. There is still \$100,000 in reserve money so they would be good for about eight months. Mike said it is not unique that they are running “in the red” but it would be unique if they did not do anything about it. The last rate increase was in 1997. Dianna reiterated the rate increase is not because the Utilities Managers want the increase; it is their job to approach the Council when they are “in the red” and all entities come together for a solution. The Utilities Managers are not getting more money; they have a contract and they are making sure Ellettsville’s Sewer System runs.

**Jack Neal** asked if the increase is the same inside of Town as out. The rate increase will be 17% for all customers. Northern and Eastern are wholesale customers and will determine how they are going to raise their customers’ rates.

**David Drake** and the rest of Council pay the same rate. After ten years everyone should expect that costs are going to go up. In order to run the utilities successfully, the Town has to pass along some of those costs. In order to be responsible stewards of the utilities system, the Council needs to ensure there is enough money to operate the system or they are being irresponsible.

David Drake made a motion we adopt Ordinance 08-12. Phillip Smith seconded. Roll call vote: Dan Swafford – yes; Dianna Bastin – yes; David Drake – yes; Scott Oldham – yes; Phillip Smith – yes. Motion carried 5-0.

## **New Business**

### **Agreement with H. J. Umbaugh and Associates for financial advisory services – Valuation Analysis**

**Mike Farmer** presented an agreement with the Utilities Department’s accountants, H. J. Umbaugh. Information is needed; with the litigation with Northern Richland Sewer Corporation, and H. J. Umbaugh are the only ones who can supply that information. The agreement lists what H.J. Umbaugh will and will not do. The agreement is for \$4,500.

Dan Swafford made a motion we enter into an agreement with H.J. Umbaugh for financial advisory services. Phillip Smith seconded. Roll call vote: Dan Swafford – yes; Dianna Bastin – yes; David Drake – yes; Scott Oldham – yes; Phillip Smith – yes. Motion carried 5-0.

## **Supervisors Comments**

**Mike Farmer**, Ellettsville Utilities outlined the Utilities Department billing and shut off procedures. Bills are mailed out the first business day of the month and due in 17 days. If payments are not received, those customers are sent a disconnect notice within a day or two. The due day and disconnect date are listed on the notice which is usually in ten to fifteen days. If the bill is not paid the water is disconnected. The notices are not meant to be offensive; they are reminders to pay the bill.

**Sandra Hash** spoke with the new auditor and they expect the settlement checks to be available January 13<sup>th</sup>. The Town has some bonds payments due by the fifteenth. Sandra thanked Dan for signing and picking up the COIT check; she was able to get the check deposited the same day.

**Frank Nierzwicki** gave an update on Town grants. The money received on the I-69 Grant: Green-Space \$785.80 with 10% complete; Training Course \$100 with 10% completion and Capital Improvement Plan \$3,167.21 25% complete. Frank invited the Council to attend a Training Course Monday, March 23<sup>rd</sup> at McCormick's Creek from 10 a.m. until 4 p.m. There will be a consultant there to conduct the training class. Frank will present the consultants contract at the next Town Council meeting. The Town received three payments totaling \$5,710.75 (89% of the grant) from the 2008 MPO Funding. A voucher will be submitted for \$564.70 2009 MPO Funding (9% of the grant).

Frank announced Dan signed the Letter of Intent with SIDC (Southern Indiana Development Commission). This grant is for almost two million dollars.

Sidewalk Projects – The RFPs (Request for Proposals) were completed in November. INDOT sent them back in December. Five proposals have been received. Frank will meet with the School Corporation to review the proposals. A consultant will be selected by February.

Trail – Frank met with INDOT in the fall to decide what to do with the money that was received. They have met with Rick Coppock to get some costs on a bridge.

Frank received twenty applications and interviewed seven people for the Code Inspector position. He is recommending Dexter Luck for the position. Dexter Luck is a former Bloomington Police Officer; retired after twenty nine years. His background is in carpentry and other inspection issues. Phillip Smith was not involved in the interview process. Frank made it clear this position is “grant funded”. Dan asked how long the grant funding is for. Frank stated the funding will probably go through January 2010. There is some “laxed time” between the request being submitted and the reimbursement. Mr. Luck will be working twenty-four hours a week to start and possibly more during the summer. Frank would like for Mr. Luck to start January 16<sup>th</sup>.

Phillip Smith made a motion we hire Dexter Luck Jr., II, whatever, the older one for this position. David Drake seconded. Roll call vote: Dan Swafford – yes; Dianna Bastin – yes; David Drake – yes; Scott Oldham – yes; Phillip Smith – yes. Motion carried 5-0.

## **Council Comments**

**Scott Oldham** asked Town Attorney, Mike Spencer to define “town business”. Mike Spencer explained a definition to encompass everything is hard. “Town Business” is different in each department. Mike Spencer stated there is not a legislative or legislative drafting advantage to be general without being too specific. The way to approach the concern is not by defining “town business” but approach it a different way. Scott Oldham explained the question that came up is the use of police vehicles on authorized activity by the Marshal. This needs to be defined as to whether or not this is allowable under “town business”. Does the Marshal have the ability to authorize the use of the vehicle and does this become town business once the Marshal authorizes it? Mike Spencer can not answer “off the cuff”. There is a difference of agreement between Council Members and the way around it is to agree “yes they can use the vehicle for that purpose as long as they reimburse the Town for the use of the gas, the wear and the tear, the insurance for whatever fee we come up with”. Scott does not know if this is agreeable with the other members of the Council and does not want to tread on thin ground and list everything. Scott does not want it come down to “nothing is allowable”. On the issue that is being

spoken about, Mike Spencer stated there are some complicating factors, one being the IRS (Internal Revenue Service).

The Town has an ordinance that specifies what can be done with “take home cars”. Some of the specifics have been pushed down by the IRS. Mike Spencer thinks a W-9 might need to be issued to show the police officers are being compensated for use of the car. Scott asked about the option of funding going through the town or from an entity of the town. Mike Spencer explained there were OWI (Operating While Intoxicated) Funds the prosecutor had and they were paying Ellettsville police officers to run extra OWI patrols within the town. The money was coming from the prosecutor’s office and therefore the town did not run into FLSA (Fair Labor Standards Act) or overtime issues. Another issue is; cars are parked outside the jurisdiction of the entity. Mike Spencer is concerned a 1099 would be required indicating they are receiving extra money for using the car on a second job. Sandra explained the OWI money came back into the town and went through the payroll process. The town was required to pay the matching FICA.

Scott Oldham stated this question has come up and needs to be answered. Will the Council allow or disallow this and how. Mike Spencer said the Council will need to decide if they want this or not. Mike Spencer suggested entering into an inter-local agreement with the University to provide service.

**Tony Bowlen**, Town Marshal will check into an inter-local agreement. Dan Swafford stated the police officers working for the University are a definite violation of Town Code. Mike Spencer agreed that it is and clarified Scott is looking for clarification of “town business”. Mike Spencer, in his opinion, does not think this would be “town business”. Scott Oldham would like to clarify this issue and make a decision. Mike Spencer said if they decided to go with an inter-local agreement, the FLSA issue would need to be looked at. Dianna asked if it mattered if the agreement was with the Ellettsville Reserves, who own part of the cars. Mike Spencer said the Ellettsville Reserves is a different question. Scott stated the original question was regarding the regular police officers but there might be a defining line because the Ellettsville Reserves have hired some of the full-time officers to work in that capacity. Tony Bowlen explained when the Reserves can not fill the intersections they need; then they ask the paid officers for help. The paid officers use their vehicles. Dan asked about the officers not being allowed to “wear two badges”. Tony explained the officers are paid by Indiana University Athletics and not the police. David Drake explained the officers are not “holding two badges”; they are still working under the authority of the Ellettsville Police Department even if they are directing traffic for IU. Dan asked if they would be under Ellettsville jurisdiction if there was any type of accident. David said yes but IU would be liable to some extent because they are employing them but the town would still be responsible. Dan’s opinion is “why do we want to even put ourselves out there for litigation”. Tony stated if our officers are injured while working for IU, IU has procedures for treatment. Sandra asked if IU carries Workmen’s Compensation if an officer is incapacitated for a period of time. Another issue with the cars the Reserve Officers purchased is that the Town pays all the fuel, insurance and up keep on those cars. Mike asked does the Town want to support this certain function of the Ellettsville Police Officers and if you do, what is the effect on terms of FLSA and the IRS codes. The inter-local agreement should deal with those issues.

Scott asked Tony would the Town benefit from this with an inter-local agreement. Tony said yes in several ways. The first way being positive exposure; marketing itself in an aggressive way, the Town helping a State institution with staffing. The Town has gained in large ways, with them helping IU, they have been invited the police department to their training (which is State mandated) without having to pay for it. IU has offered to put on training for the police department such as Emergency Vehicle Operations which became a requirement the beginning of this year. The Ellettsville Police Department has never been accepted into trainings by other departments but since being exposed to the other officers and helping them they have been asked to participate in many training exercises. The combination of things is a positive impact not only for the department but also for our community.

David Drake feels the way around the FLSA problem is the Town figures out what IU will pay to have an officer and car there (regardless if it is regular or overtime).

Scott asked if there will be a problem with FLSA if they have not reached their set number of hours. David does not think the Town should refuse to do this. We are part of Monroe County as is IU Police, Bloomington Police and the Sheriffs Department. If they need help, we should be willing to help out. If our officers get some benefits, it is a worth while thing to do. There are some complications that need to be looked at and worked out. This is a positive thing for the Town to do.

Scott asked Tony if there are any other entities that pay for the services of the regular or Reserve Officers. Tony answered Monroe County Fall Festival pays the Reserves Officers. Sandra explained the Monroe County Fall Festival pays the Reserve Officers by check. The full-time officers also work the Fall Festival and incur overtime. Dan clarified the Fall Festival is in our community. The Reserve Officers are paid for the Hilly Hundred also. Mike Spencer will meet with the Marshal and look into some of the issues. Dan clarified the work has ceased. Tony spoke with each of the board members before football season ever started; it never went before a formal vote. He emailed each one, brought it up at a Supervisor’s meeting and received no negative feed back. There was no intent for any of the police officers to break any Town Codes. The police were not advised there was a problem and they didn’t view it as an issue.

David Drake stated “town business” is whatever the Town Council says “town business” is. If the Town Marshal tells his officers this is “town business” then it is “town business”. Unless the Council tells the Marshal it is not “town business” then he is within his authority to do that. When Tony was contacted and asked by the County Auxiliary and IU to help, he thought it was a good way to help out our community as a whole. He did not realize this would turn into an issue.

Phillip Smith clarified that our full-time officers are not on duty at the time. Phillip asked if our insurance covers them while working for another agency. Sandra stated our officers are covered anytime they are in uniform and in the vehicles. David said there would be some argument as to who would be the most responsible and who would end up paying the bill if they are working for IU. Sandra will check on the Worker’s Comp question and also the insurance.

Dianna Bastin asked Tony that “In the interim, you are not driving any police cars out there, correct? Not even the Reserves are driving theirs either but you still are helping”. Tony said they are still helping and will not turn their backs on them. They are still wearing Ellettsville uniforms. Mike Spencer asked if there is any Ellettsville Police Officers working security at the hospital. Tony said yes some of the Reserves Officer’s have primary jobs there and do not wear their uniforms. There are also some paid officers that work there too. David Drake stated the Sheriffs Department and Bloomington Police are allowed to work outside jobs in uniform with approval from their police department.

Dianna Bastin stated this issue is complaint driven. This is not the Council deciding that the Ellettsville Police Officers can not drive their cars to x, y or z. Scott Oldham could not confirm that it was complaint driven.

**Dianna Bastin** thanked the Utilities Department; she learned a lot and they helped her with the Christmas decorating. She thanked the Council for the vote of confidence.

**Adjournment**

Dianna Bastin entertained a motion we adjourn. David Drake so moved. Scott Oldham seconded. Motion carried. Dianna Bastin adjourned the meeting at 8:44 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