

July 26, 2010

The Ellettsville, Indiana, Town Council met for a Regular Meeting on Monday, July 26, 2010 at the Fire Department Training and Conference Room. Phillip Smith called the meeting to order at 7:30 p.m. with the Pledge of Allegiance. Phillip Smith led in prayer.

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

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

Approval of Minutes

Phillip Smith entertained a motion for the approval of the minutes for the Regular Meeting July 12, 2010.

Prior to the vote, Dianna Bastin noted she had asked a question at the last meeting regarding whether or not a resolution was needed in order to dispose of surplus property for a particular Town department. She added an answer was obtained, however, her question was not reflected in the minutes. She asked that the minutes reflect her question and the answer which was obtained. Sandra Hash noted she had also asked the question and the answer is stated in the minutes. She informed Council, although minutes are not verbatim, she would be glad to review the tape and insert the question into the minutes, if it so pleased the Council. Phillip Smith asked her to please do so. Darla Brown stated she believed they could approve the minutes with the stipulation they are amended to show that Dianna Bastin asked the Town attorney whether or not a resolution was always required to dispose of surplus Town property.

Dan Swafford so moved. David Drake seconded. Roll Call Vote: Phillip Smith – yes; Scott Oldham – yes; Dianna Bastin – yes; David Drake – yes; Dan Swafford – yes. Motion carried 5-0.

Accounts Payable Vouchers

Phillip Smith entertained a motion for action to pay Accounts Payable Vouchers. Scott Oldham so moved. Dan Swafford seconded. Roll Call Vote: Phillip Smith – yes; Scott Oldham – yes; Dianna Bastin – yes; David Drake – yes; Dan Swafford – yes. Motion carried 5-0.

Resolutions

Resolution 06-10 to dispose of surplus property - Jim Davis, as discussed at the last meeting

Jim Davis, Ellettsville Fire Chief - stated this is what he wanted done regarding the disposal of surplus radios which he spoke of at the last meeting. He asked Darla Brown to work up a resolution to allow disposal of these radios. She has done so and it's before you tonight for a vote. There are approximately 30 Minitor 3's, seven HT-1000 portables and 50 Plecctron radio receivers. Phillip Smith asked Jim Davis if he knew when this was going to take place. He answered as soon as Council approved it. Phillip Smith read Resolution 06-10 in its entirety. Dan Swafford made a motion to adopt Resolution 06-10 to dispose of surplus property. David Drake seconded. Roll Call Vote: Phillip Smith – yes; Scott Oldham – yes; Dianna Bastin – yes; David Drake – yes; Dan Swafford – yes. Motion carried 5-0.

Ordinances on First Reading

Ordinance 10-12 to amend various sections of Chapter 96 of the Ellettsville Town Code concerning animals

Sandra Hash stated this was something the Plan Commission had worked on some time ago and it had never been presented in ordinance form to the Council. Scott Oldham stated he had several questions for Connie Griffin and felt this probably needed to be tabled until they could forward the questions to her to be answered so they could make an appropriate judgment next go around. Phillip Smith asked if they should read the ordinance as written

and Darla Brown advised that given the concerns expressed, it might be best if someone makes a motion to table it so that it's not being amended later. If there are any issues or changes to be made, they can be made and presented next time in amended form. Scott Oldham made a motion to table Ordinance 10-12 to allow for questions and/or modifications. Dianna Bastin seconded. Roll Call Vote: Phillip Smith – yes; Scott Oldham – yes; Dianna Bastin – yes; David Drake – yes; Dan Swafford – yes. Motion carried 5-0.

Ordinance 10-13 to add a new section to Chapter 93 to the Ellettsville Town Code concerning Leaf, Tree and Brush Removal

Scott Oldham made a motion to table Ordinance 10-13 pending modification review. Dianna Bastin seconded. Roll Call Vote: Phillip Smith – yes; Scott Oldham – yes; Dianna Bastin – yes; David Drake – yes; Dan Swafford – yes. Motion carried 5-0.

New Business

Future Traffic Signal Covenant between the Town of Ellettsville and the State of Indiana Department of Transportation

Rick Coppock, Bynum Fanyo and Associates - reminded Council last meeting they discussed the Traffic Signal Covenant which is required by INDOT based on the fact that with the church going in next door, they will be putting in a new street connection to Harvest Lane which will then connect 46 to Harvest Lane. As part of any connection like this with INDOT, they always require whoever is responsible for the street to sign a Traffic Signal Covenant that states should, within the next ten years, a traffic signal be required, the responsible party would be responsible for that traffic signal. He stated he emailed everyone the traffic study that was done by Yarder Engineering in Indianapolis for this project. It states there is no warrant for a traffic signal at this time. INDOT does not look at Saturday and Sunday counts as part of the traffic warrants for a signal. David Drake asked if you could get a warrant just based on the number of accidents alone. Rick Coppock answered you could if its perhaps five accidents that could have been preventable with a traffic signal within a twelve month period. David Drake asked if, at some point in the future, a traffic signal was warranted, did they have the option of closing the road rather than putting up the signal. Rick Coppock stated you probably could. David Drake asked if there had been any public comment on the connection with Harvest Lane to 46. Rick Coppock stated there had been some discussion at the Plan Commission meeting about the connection and residents of Autumn Ridge were not too in favor of the traffic connection of the street. Dianna Bastin asked if they need a road that goes up through - what's the purpose? Rick Coppock stated it had been in the Town's thoroughfare plan for quite a while. Part of the Town's planning ordinances is connectivity and it's been on the books for a long time to make that connection. Originally, when it went to the Plan Commission the first time it was not shown as a connection to that. After the Development Plan Review Committee meeting with the department heads - police and fire, street, all - stated they would like to have that connection for safety and access reasons. Phillip Smith stated he knew this has been an ongoing problem about this road. It has been through Plan Commission. They have discussed it and talked it over with the residents. Like Rick said, it was decided, with the supervisors, that it was really needed for safety. Phillip Smith entertained a motion to sign the Future Traffic Signal Covenant between the Town of Ellettsville and the State of Indiana Department of Transportation. Dan Swafford so moved. David Drake seconded. Roll Call Vote: Phillip Smith – yes; Scott Oldham – no; Dianna Bastin – no; David Drake – yes; Dan Swafford – yes. Motion carried 3-2.

Memorandum of Understanding between the Town of Ellettsville and Bloomington Hospital

Jim Davis, Ellettsville Fire Chief - stated this Memorandum of Understanding has been in place for several years. He thinks the hospital is just tidying up some of its paperwork. It hasn't been renewed for a while. It actually mirrors the ones Fire Departments use for Memorandums of Understanding between departments which want to help each other in times of need and disasters and so on. About the only equipment, other than the fire trucks, that we could provide would be the medical equipment we've got on the trucks, which the hospital bought most of those to start. It's just a basic agreement that says we'll help them and they'll help us. Phillip Smith asked if this is something they do every year.

Jim Davis said it was something they were supposed to do every five years. He pointed out to Council that in "Responsibilities", it says the personnel, equipment and supplies only if they are available and not needed in our normal duties. It's nothing binding that requires us to go. Dan Swafford asked Darla Brown if she had looked the agreement over. She stated she had and didn't see any problems or issues with it. It has the same language used in its state statutes which discuss volunteer fire department's duties to one another. It's real similar to that. Phillip Smith entertained a motion. David Drake made a motion to approve the Memorandum of Understanding between the Town of Ellettsville and Bloomington Hospital. Scott Oldham seconded. Roll Call Vote: Phillip Smith – yes; Scott Oldham – yes; Dianna Bastin – yes; David Drake – yes; Dan Swafford – yes. Motion carried 5-0.

American Society of Composers, Authors, and Publishers (ASCAP) Licensing Agreement

Phillip Smith asked if this is something the Council does all the time. Sandra Hash responded it was a new request and she would refer it to Darla Brown since she has done the research on it. The Clerk's office got it in the mail and they've called the office several times. We got a copy of the contract in May, in June and in July. David Drake asked, aside from the Fall Festival and the Christmas parade, when do we play music? Scott Oldham stated it would not cover the Fall Festival - it would only cover Town events. Phillip Smith stated it's not like they play music every week. Why do they want us to sign this contract? Darla Brown answered she did not know. It was her understanding from Sandy this was unsolicited. It was sent to the Town by ASCAP. Sandra Hash did provide Darla Brown with some emails from other Town Clerks from all over the state. It appears ASCAP is sending this type of letter to municipalities and towns all over. So, her guess is they are beating the bushes. She did do a letter giving her opinion on the Town's liability if this isn't signed and the Town plays music from the repertoire listed here. If anyone has any questions she stated she would be happy to answer those if she could. Dianna Bastin asked if this counted if you had a radio station on. Darla Brown stated she had the same question because, if you look at the contract under the first page, subparagraph A, it does say under 2(c), the reception and communication at the premises of radio or television transmissions which originates outside the premises. But, if you look at the back, there's an attachment by ASCAP which discusses what's covered and what's not covered. At the bottom, it says "broadcast radio or TV, cable, satellite, or internet. So, the answer to your question is, I don't think it's clear. But, at least the contract itself, not the exhibit that ASCAP sent with it, does seem to indicate it would apply to those types of things. David Drake asked if anyone knew what these other communities are doing in regards to this. Darla Brown stated it appeared, from her review that most were signing. And, if you look at what's covered under the ASCAP fact sheet, it does talk about music on hold in municipal buildings. Obviously, it doesn't say whether or not that's radio music or music that the municipalities prepared. Dan Swafford says he has dealt with ASCAP before and they are relentless - they will not go away. It was his understanding, it is a copyright and we are going to have to pay it. Phillip Smith asked what they would have to pay. Dan Swafford answered it is a licensing fee for one year of licensing. Sandra Hash stated it was an annual fee of \$305. Darla Brown added it was a fee based on the population of the Town. The Town would also be required to provide 1% of gross revenue to ASCAP for all special events which are defined as musical events, concerts, shows, pageants, sporting events, festivals, competitions, and other events of limited duration for which the gross revenue exceeds \$25,000. She does not think the Town would have many of those. David Drake asked, if they sue us, where are they going to have to sue us at? Darla Brown stated if it's a copyright infringement, her best guess would be in Federal court. Dan Swafford added one suit could cost the Town millions. Dianna Bastin asked if the Town had one department or one desk that puts someone on hold and plays music then the Town is liable. Darla Brown stated the way she understood it, then yes, it's pretty broad. David Drake asked what about the next group that comes along - this is just legalized extortion. Phillip Smith stated he agreed with him, but how do we know the company that provides the music hasn't already paid ASCAP? Darla Brown stated that was a good question and she doesn't know. Phillip Smith asked if anyone in the Town plays music on hold on the phone. Jim Davis answered the Fire Department does. Dan Swafford reiterated this is something he has dealt with in his other business and it's something you just can't get around. It's been fought in court and cost millions and they always win. Scott Oldham

added they just had to look at it as insurance to play music. Phillip Smith entertained a motion. Dan Swafford made a motion to approve the American Society of Composers, Authors, and Publishers (ASCAP) Licensing Agreement. Scott Oldham seconded. Roll Call Vote: Phillip Smith – no; Scott Oldham – yes; Dianna Bastin – yes; David Drake – no; Dan Swafford – yes. Motion carried 3-2.

Supervisor Comments

Dan Swafford noted Connie Griffin, Planning Director could not make it to the meeting and, on her behalf; he would like to introduce the candidate for the administrative position opening for the Planning Department. Connie would like to offer her the position. Dan then introduced Nicole Brown to the Council. Nicole Brown stated she has lived in Ellettsville since 1990 and graduated Edgewood High School in 2001. She has been an administrative assistant at some other businesses for seven years all together. She attended Ivy Tech for 1 1/2 years for nursing and early childhood education but did not graduate. She has three children and still lives in Ellettsville. Dan Swafford made a motion to hire Nicole Brown for the administrative assistant in the Planning Department. Phillip Smith seconded. Roll Call Vote: Phillip Smith – yes; Scott Oldham – yes; Dianna Bastin – yes; David Drake – yes; Dan Swafford – yes. Motion carried 5-0.

Privilege of the Floor

No comments.

Adjournment

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

Phillip Smith, President

Scott Oldham, Vice-President

Dianna S. Bastin

David Drake

Dan Swafford

Sandra C. Hash, Clerk-Treasurer