

July 28, 2008

The Ellettsville, Indiana, Town Council met in Regular Session on Monday, July 28, 2008, at the Fire Department Training and Conference Room. Dan Swafford called the meeting to order at 7:30 p.m. David Drake led 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, 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.

Approval of the Minutes

Phillip Smith made the motion we approve the minutes of the regular meeting July 14, 2008. David Drake seconded. Motion carried.

Action to Pay Accounts Payable Vouchers

Dan Swafford entertained a motion to approve the Accounts Payable Vouchers. Dianna Bastin made the motion. Scott Oldham seconded. Motion carried.

Water and Sewer rate Study presented by H.J. Umbaugh

Christine Horan and Doug Baldessari, H.J. Umbaugh presented the Council with the water and sewer rate studies using a power point presentation.

Water

- Revenue Requirement is \$1,527,600. This is what the Utility Department needs to operate and meet requirements. The largest “piece of the pie” (\$1,221,700) is for operating expenses including fuel, salary and regular maintenance. \$184,200 will be needed for water tank replacement, water line upgrades and money required to keep the system running at the optimal levels. \$121,700 is the Debt Service and Reserves needed to make payments on the bonds.
- Revenues projected for 2008 is \$1,208,100. Water sales will bring in \$1,064,600; \$95,100 will be from Fire Protection and \$48,400 from other revenue including penalties and miscellaneous
- Additional Revenue needed will be is \$319,500
- Cash Balances comparison chart showed a decline from 2005 until 2007. The 2007 cash balance was \$466,234. The bond ordinance requires \$436,691.

The summary of the charts show there is a rate increase requirement of 27.55%. Some examples listed were:

Inside City Rates

- 3,000 gallons (minimum usage): Present \$9.24 and Proposed \$11.79
- 5,000 gallons: Present \$14.68 and Proposed \$18.73

The next chart showed where Ellettsville compares to local and similar sized Indiana communities. Ellettsville’s rates are relatively low.

Their conclusion is:

- Current rates and charges are not sufficient to support revenue requirements
- Last rate increase was in 1998
- The Town’s water utility is regulated by the IURC (Indiana Utility Regulatory Commission) meaning the Town Council can not pass an ordinance to raise rates tomorrow. The Town Council will need to adopt a “Rate Ordinance” and submit a “small utility” filing to the IURC. This process takes 6-9 months from the time it is filed.
- The current Average Water User rate (4,000 gallons) will increase \$3.30 a month.

Sewer

- Revenues Requirement is \$2,075,300. Operating expenses are \$1,135,100; \$225,800 is needed for Replacements and Improvements and \$714,400 will be needed for outstanding 1998 bonds.
- Annual Revenues projected for 2008 is \$1,918,700. Collections will bring in \$933,700; \$796,500 from Wholesale users; \$120,700 will be wholesale adjustments and \$157,800 from miscellaneous collections.
- Additional Revenue needed will be \$156,600

The summary of the charts show there is a rate increase requirement of 17%. Some examples listed were:

Inside City Rates:

- 1,000 gallons (minimum): Present \$27.15 and Proposed \$31.80
- Ellettsville customers = 44.5% of the billed flow
- Eastern Richland and Northern Richland: Present \$1.98 per 1,000 gallons and Proposed \$2.71

Summary for the Wholesale Users

- Wholesale customers = 55.5% of the billed flow
- Additional annual revenue from the wholesale rate and fixed adjustments are \$120,700
- Treatment and disposal expenses, debt service and replacements and improvements allocated based on percentage of flow
- Customer accounts and administrative expense allocated based on percentage of annual bills

Ellettsville's rates compared to local and similar sized Indiana communities were on the higher end but not "out of line".

Their conclusion of the sewer study is:

- Current rates and charges are not sufficient to support revenue requirements
- Last rate increase took place in January 1998
- Process to adjust rates and charges would need to be adopted by an amendment to the rate ordinance and the wholesale agreement; not the IURC like the water. Rates can be phased-in over a two to three year period.

Dianna Bastin stated Umbaugh represents the Town and asked if they represent the Utilities Department. Doug Baldessari answered they work for and the agreement is for the Town only.

Dan Swafford asked about the cash balance in the water; why did the cash balance greatly decrease between 2005 and 2006 but the decrease was half from 2006 to 2007. Umbaugh will look into it because they did not do a detail analysis for 2005. Umbaugh used 2007 as a test year and adjusted that for 2008 projected expenses. Dan asked about the \$714,400 in the Sewer Debt Service account; "when will that start dropping". Mr. Baldessari stated the Debt Service payment will be made until January 2017.

Bill Schneider, Ellettsville resident asked why the Northern Richland Wholesale rate for sewer will decrease from \$6,490 to \$4,525. Mr. Baldessari explained the calculation is based on billed flow and their billed flow is a percentage of the total flow which has decreased. Mr. Schneider asked what makes Ellettsville more expensive in sewer bills than other states he has lived in (Connecticut, Minnesota). Mr. Baldessari replied each system has its own set of circumstances and requirements.

Max Dixon, Autumn Grove resident asked if a rate increase in water would automatically increase sewer revenue. Is the sewer a percentage of the water usage? Mr. Baldessari explained the rates are both based on the same flow but they are independent rates.

Jerri Dixon asked what percentage of Ellettsville residents are using septic systems and wells as opposed to using Town utilities. Umbaugh does not keep those figures. Dianna Bastin stated there will be meetings scheduled with the Utilities Managers to answer those types of questions. Ms. Dixon feels there has been so much growth in town where the rates should be lowered. Are people choosing to use wells and septic instead of paying the Town rates?

Doug Baldessari stated the water and sewer rates had not been increased because of growth.

Max Dixon understands the sewer rate is based on usage. He feels this is not true because all the water that is used does not go through the sewer. He still believes the rates are based on water usage and not sewer usage. Watering the lawn does not go through the sewer system. Dan Swafford understands there used to be special meters for watering lawns and filling swimming pools. Dianna Bastin added the previous Council changed the way the water meters were handled on the best advice of their managers. Doug Baldessari clarified water and sewer rates are based on water usage.

Ron Wayt, Chester Drive resident stated the Town gets the water from Bloomington. If there is an increase of 40% or more from Bloomington, is that included in these numbers? Mr. Baldessari said “no” and the rates will be higher. Dan Swafford stated if Bloomington raises their rates, there is nothing Ellettsville can do. Ron clarified that “if” Bloomington raises their water rates, they have to go through the same six to nine month process with IURC. If they do this, will Umbaugh be recalculating all these figures after nine months? Mr. Baldessari stated an increase tracker process with the IURC can be done in 30 – 45 days. Bloomington can start billing for the higher rate the next month.

Dan Swafford asked what action needs to be done tonight. Doug Baldessari stated an ordinance needs to be adopted to prove to the IURC the Council is in favor of the proposed increase and Umbaugh would move forward with the Small Utility filing. It can take up to nine months to go through.

Dianna Bastin moved the Council move to adopt a rate ordinance and submit a small utility filing with the IURC. Dianna is not saying to raise the rates today; we just need to adopt an ordinance. Mike Spencer stated there is not ordinance before you at the moment; one needs to be prepared. Dianna Bastin is asking that we ask for an ordinance. David Drake seconded. Dan Swafford clarified the Council is proceeding to put an ordinance in place for the next meeting on the rate increase on what Umbaugh proposed to the Council today. Dianna stated it is important to note at the next meeting when this ordinance comes before the Council, which is the time to ask the Utility Managers questions. Roll call vote: Dan Swafford – yes; Dianna Bastin – yes; David Drake – yes; Scott Oldham – yes; Phillip Smith – yes. Motion passed 5-0.

Dianna Bastin made a motion that we move forward and have a rate ordinance and wholesale agreement process started for those documents. Dan Swafford clarified “sewer”. David Drake seconded. Roll call vote: Dan Swafford – yes; Dianna Bastin – yes; David Drake – yes; Scott Oldham – yes; Phillip Smith – yes. Motion passed 5-0.

Doug Baldessari will get with Mike on preparing the ordinances.

Resolutions

Resolution 15-08 to amend Resolution 12-08 Temporary Loan

Sandra Hash explained when the transfers were being made for the temporary loans; the calculation was incorrect and she would like to reduce the amount from \$90,000 to \$60,000 from the Police Debt Service to the General Fund. The total loan will now be \$289,950.76. Sandra reviewed an answer she gave David Drake at the last meeting and feels her answer was incorrect. David Drake asked Sandra if we were sure we would get enough tax revenue back in to pay the loan and the answer to that is yes.

Dan Swafford asked for a motion for Resolution 15-08 to amend Resolution 12-08 Temporary Loans. Scott Oldham moved. Phillip Smith seconded. Roll call vote: Dan Swafford – yes; Dianna Bastin – yes; David Drake – yes; Scott Oldham – yes; Phillip Smith – yes. Motion passed 5-0.

Ordinances on First Reading

Ordinance 08-06 to rezone 101 Poplar Drive from R-1 to C-2

Frank Nierzwicki, Director of Planning Services presented the R-1 to C-2 rezone request at 101 Poplar Drive. The property is located on the corner of Poplar and Temperance. The Plan Commission approved this. Sandra asked if this rezone includes various lot numbers (6, 7 and 8). Frank said yes. David Drake clarified a small triangle parcel belongs to the State highway. There is no action required on this tonight. Dan Swafford asked why owners are requesting the rezone. Frank stated there are no plans at this time. The corner is consistent with the downtown plans of professional office space. The adjacent properties are all R-1. Frank further explained the change between R-1 and C-2 will require a double setback. Dan Swafford asked if the road has 24’ entrance for commercial usage. Frank said it is a 22’ to 24’ street. There was a group discussion about the type of usage on this property will determine the entrance on to the State Road 46. This property is located close to Temperance and Indiana Street. Scott Oldham asked about some traffic concerns. Frank reiterated the access points into and out of this property will depend on

the usage. This property can stay a single family residential with a C-2 zone. This was brought before and passed by the Plan Commission.

New Business

MPO Grant Agreement for 2009

Frank Nierzwicki presented an annual agreement between the Bloomington Metropolitan Planning Organization and the Town of Ellettsville. There are preformed services we are reimbursed at 80/20. There are no out of pocket expenses to the Town. Frank gave some examples of work that was completed last year; updated Thoroughfare Plan and making the Town eligible for Federal funding in the future. The Town will receive \$6,400. Frank is requesting permission to enter into this agreement. Sandra announced a check for over \$800 was received, this week, under the current agreement.

Phillip Smith made a motion that we go into agreement with the MPO Grant for 2009. David Drake seconded. Roll call vote: Dan Swafford – yes; Dianna Bastin – yes; David Drake – yes; Scott Oldham – yes; Phillip Smith – yes. Motion passed 5-0.

Presentation from the Homeowners of Autumn Ridge

Bruce Frey, spokesperson for Autumn Ridge presented a summary of issues with the subdivision. He outlined the following points:

Deterioration of subdivision streets: There was a deadline for repairing the streets, which was extended a few times. The final deadline was July 8, 2008 resulting in a partial repair. The Street Department marked 12 to 14 spot in need of repair and only three were repaired. It is the understanding of the residents the developer was given an indefinite deadline to complete the repairs to the streets. Six inches of concrete is required to be poured into the holes on the street to repair them properly. When the rest of the repairs are made, the Autumn Ridge residents are requesting the Town make sure everything is done according to Code. They would like to be notified of what is going to be repaired and if the results match up with the plans. The residents are trying to provide motivation to the developers to get the whole project finished. Can the Town require completion of the balance of the required repairs by a certain date? Can the Town require completion of the subdivision by a certain date since the project was approved before the existence of the five year completion requirement?

Original Subdivision Plat: There are several things missing. What will it take to comply with the original plat? The original development plan shows two storm water retention areas; neither has been constructed.

Violation of IDEM and MS4 regulations regarding erosion and sediment control: Mr. Frey referred to the attached “On-site Evaluation for Erosion and Sediment Control” form from IDEM. He went on to present photos of the problems. How can the Town enforce the requirements for compliance and remedy the situation? The erosion, mud and water is collecting and running down from the structures. Can the developer’s bond be further increased to cover the potential cost of compliance with IDEM? The evaluation showed three out of nine items being “marginal” and the other six items being “unsatisfactory”.

Street lights and trees: The original plat shows street light and trees. Since there is no five year deadline; can the Town impose, on the developer, a deadline for construction of the street lights and the planting of the trees using existing bond money? Are there “layers or tiers” as to how the bond money can be applied? Is it a “blanket bond”?

Mr. Frey reviewed the “Nuisance Abatement” list and showed photos:

- (1) A large “pit” in the middle of the subdivision, full of water, which attracts mosquitoes, snakes, etc. This proposes a substantial risk of bodily harm to any who goes near it with the steep sides and soft muddy bottom. It is a few feet from the condos.
- (2) There is a partially constructed condo on Lots 40 and 41 which appear to have been abandoned and is now deteriorating. It has been in its present condition since May 26, 2007.
- (3) There is an abandoned construction trailer and portable potty. This could be remedied in a few minutes.
- 4) Broken mailboxes being held up by two-by-fours.

5) Numerous large, dead trees, on the north edge of the subdivision, close to the condos. They have been dead since the beginning of the construction.

As property owners, they feel the developers are subject to being disciplined for maintaining the nuisances. What extent is the Town able and willing to exercise its powers to accomplish the removal of any of these nuisances? The more information given to the Town Council, the more the Town Council can do for the subdivision.

Mr. Frey presented and explained more photos. He wanted to give the Council an idea of what they are living with and what they are trying to abate. The residents believe they have a substantial investment and they do not know how the project is going to be completed. They would like the help of the Council to bring this into compliance with IDEM and protect their total investment of five million dollars.

Bill Schneider approached the podium and pointed out in Phase One of the plan, the lot with the "pit" was not supposed to have a home. In Phase Two, the condo was approved on the location of the northern water retention area. He was "disturbed" when he reviewed the site-plan and there were areas required by the contractor that were not there. There are rock dams missing too. The area has not been inspected nor properly approved. It is a "crime" the developer failed in 7 of the 8 areas evaluated by IDEM. This gentleman understands the Town could possibly "fine" the developer. The developer has not done any work in over a year. It is a crime what Mr. Walls, the developer, has done to the community and the residents. Phillip Smith asked how many units are empty. The plan was to build 44 condos and there are presently 29 residents; two thirds complete.

There was discussion between the residents and Town Council members pointing out different items on the different plats. Dan Swafford had his computer and they were viewing the neighborhood using Google Earth. Dan Swafford asked when this went through Planning and Zoning. It was answered 2003. Dan Swafford asked Frank Nierzwicki and Rick Coppock to comment.

Rick Coppock stated the residents have given a "pretty good picture" of what the developer has done. The developer has been sited numerous times for the erosion problems, through inspections, and has completed minimal work. With another storm, it returns to the original condition. Rick spoke with Mr. Walls last week concerning the erosion control and his response was his excavator would take care of the issues. Rick informed Mr. Walls, if the items were not completed, the Town ordinance states he could be fined \$1,000 per day. Rick will know by the next Town Council meeting, August 11th, where Mr. Walls is with his project. The Town can fine Mr. Walls for the erosion and the "pit". Dan Swafford asked if this is the same area where the street needed repaired. Rick stated the streets were marked where repairs were needed. Jim Ragle and his department have made some repairs on the worst sections. The developer's bond was raised for additional street repairs. The current bond of \$58,900 (expiring May 2009) covers the road surface, street trees, sidewalks and retention pond construction. Frank Nierzwicki spoke with Jason Walls, who knew about the meeting, the residents attending and what is going on. Major work needs to be completed before the next meeting. Dianna asked if this presentation was given to the Plan Commission. Frank said it was not. Dianna, personally feels, since we have a Plan Commission, recommendation should be given from them. Frank reiterated the fines need to be implemented from the Town Council.

Connie Schneider stated an "informal" presentation was made to the Plan Commission on June 10th using a detail book with all the pictures. Dianna would like an official recommendation from the Plan Commission. A gentleman from the audience stated they did not have the site plans available for the June 10th meeting.

Dan Swafford asked how much expense has the Town incurred in patching the streets. Rick Coppock said the Town has not "patched" any roads; they have marked some areas identified as problems and spoke with the developer, in person, in April. A gentleman from the audience stated the work needs to be done the correct way. He also spoke with Jim Ragle, while he was patrolling the area and brought it to his attention that someone needs to watch the repairs in progress to insure proper installation.

Brooke Winders, whose mother is a homeowner in this subdivision, has lived with her for a year and has witnessed some things going on in this area. He spoke about the holes in the area that are damaged from concrete trucks. Mr. Winders drove a concrete truck for

two years and knows ten yards of concrete is forty thousand pounds. There was never a time when he drove into various Indianapolis neighborhoods and worried about the pavement peeling up “like a pancake”. It should not happen. Mr. Winders asked if there is a violation code for mailboxes. He requested the Town “tag” the trailer and portable potty and haul it off in two days. Can you patch with concrete and leave it for months without putting a layer of asphalt down? Mr. Winders is requesting Indiana State Codes and Town Ordinances that Jason Walls has violated, the exact statutes that have been violated, the penalties that have been imposed and the extensions that have been given. Mr. Winders wants to know the situation, “technically”.

Max Dixon has a background in legal enforcement and regulation. He does not understand why due dates are given and then ignored. The idea of mandates is to get things done. There needs to be stronger resolutions or don't make them if they are not going to be enforced. The Town Council can handle the issues of infrastructures, hazards to public health and environmental problems. The residents have many other issues with the developer the Council can not resolve.

David Drake agrees with what has been said. The Town tries to get compliance before levying fines. If developers are fined \$1,000 a day, they usually file bankruptcy and everyone is out of luck. A gentleman from the audience understands everyone needs a break and under “normal circumstances” work to get things done but when you are dealing with someone who is purposely evading and using the system to get their own means accomplished is being deceptive.

Dianna Bastin agrees with “why have mandates if you are not going to enforce them”. She sympathizes and admires everyone's patience. Dianna would like the opportunity to look at the neighborhood before making any comments since she just received all the information this evening. Dan Swafford thanked the residents for “opening the eyes” of the Council and showing them what is going on. They will meet with the supervisors, Rick and Frank to review the issues. The Council can not give the residents any answers tonight.

Russ Ryle, Reeves Road resident announced this is the sixteenth construction season he has lived next to the Mustang Drive/Edgewood Heights development. He has been going through the same process, as the Autumn Ridge residents are starting, twelve years ago and five Town Councils. The Plan Commission passed a recommendation, on a unanimous vote, asking the Town Council to take action against the developer. The Town Council refused to put it on the agenda. This happened at the last meeting of 2006. Russ addressed Dianna and stated it is “an excuse” to say the Plan Commission needs to review this. Dianna needs the time to do her own research and the Town Council will deal with it on August 11th. Russ Ryle gave a Mustang Drive update and listed all the “animals” he has captured the last four weeks. He feels the animals are being attracted to uncompleted development on Mustang Drive. It is his understanding the Council has let part of the performance bonds drop due to the lack of enforcement. Dan Swafford asked Russ Ryle to continue under “Privilege of the Floor”. Dan would like to continue the Autumn Ridge section.

Scott Oldham asked Rick or Frank a realistic expectation time line to take care of the problems; starting tonight? Frank said within a week. Rick added considerable progress could be made in a week. Scott Oldham clarified Mr. Walls did know this would be discussed tonight. Brooke Winders stated there is enough “fill” on site to make improvements to the “pit”. Dan appreciates this evening's presentation; it was very informative and they will see something happens very quickly.

Supervisor Comments

Jim Davis, Ellettsville Fire Department requested an increase in salary for five part-time employees hired six months ago. He listed the employees. They were hired in at \$8.75 an hour and the max is \$9.25. These are extremely good employees and fit in real well. Dianna asked if this was the probationary period. Jim answered there is no such thing as a probationary period. Jim clarified this is standard procedure to increase salaries after six months and this money was already in the budget.

David Drake made a motion that we raise the five part-time fire fighters mentioned previously to the \$9.25 an hour rate. 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.

Sandra Hash explained it is an annual requirement of the bonding process to complete “Disclosure Statements”. These statements are financial documents that are prepared and reported to all financial institutions (that do bonding) to maintain our ratings for bonds. The Town has an agreement, from 1997 and 2003, with Umbaugh; in the agreement is a section stating they have the ability to adjust their rates periodically. The rates were increased this year with the “Disclosure Statements” and an “Exhibit A” was sent along with their invoice to the Town to accept the rate changes. Sandra is asking the Council to accept the changes in the rates. This was tabled at the last meeting and since then an email and explanation has been sent from the Town Attorney. Dan Swafford would like future rate increases to be sent before work is done. Mike Spencer suggested to “just ask” Umbaugh to let the Town know before there are any increases. The rate increase has already gone into effect. Mike Spencer stated there have not been any increases in over ten years. It was clarified the “rate study” that was just completed is different and not related to the fact there are bonds outstanding. Dan’s concern was the increase had doubled. Sandra stated the rate went from \$300 to \$750 for the Police and Fire Bonds and the Utilities Bonds increased from \$800 to \$1,250. Sandra will send a letter requesting rate increases be known before services are provided. The money is appropriated every year to take care of the requirements and trustee fees.

Dianna Bastin made the motion we pay the bills from Umbaugh with the said increase. 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 stated Umbaugh did a good job with the rate study they presented. There were many meetings and there will be more meetings. She thanked everyone who helped her understand the rate increases. Dan Swafford encouraged everyone to attend the next meeting who has questions about utility bills.

Privilege of the Floor

Russ Ryle stated very little has been done on Mustang Drive during the last year. Information has been passed on to Frank. Russ Ryle will refer to W.R. Dunn or his successor as “developer”. There is a sidewalk missing, draining and pavement issues. A bond had been extended and he believes it may now be expired. The Plan Commission voted on enforcement issues in December 2006 and the Council would not put it on the agenda. Russ Ryle would like Sandra to research the following: the Town is responsible for the cost of an incomplete development much like what Autumn Ridge is beginning to face. The Town will not enforce any issue. Russ Ryle reiterated animals are being drawn to unfinished construction area. There are areas not being maintained and people are dumping trash. The PUD states 50 plus, senior, disabled housing; there is housing with children. There are semi and dump trucks parked on Mustang Drive where the PUD states “no parking”. Russ Ryle is concerned an emergency vehicle will not be able to get through. He has very little faith in the Council, functionally, with enforcement.

Public Comment

Adjournment

Dianna Bastin made a motion we adjourn. David Drake seconded. Motion carried. Dan Swafford adjourned the meeting at 9:31 p.m.

Daniel Swafford, President

Dianna S. Bastin, Vice-President

David Drake

Scott Oldham

Phillip Smith

Sandra C. Hash, Clerk-Treasurer