

## June 23, 2008

The Ellettsville, Indiana, Town Council met in regular session on Monday, June 23, 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 Dianna Bastin led in prayer.

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

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

### Approval of the minutes

David Drake made a motion we approve the June 9<sup>th</sup> minutes. Dianna Bastin seconded. Motion carried.

### Action to Pay Accounts Payable Vouchers

Dan Swafford called for a motion to approve Accounts Payable Vouchers. Dianna Bastin made the motion. David Drake seconded. Motion carried.

### Resolutions

#### **Resolution 11-08 to adopt a written Fiscal Plan and to establish a Policy for the Provision of Town Services to an annexed area known as Hearne 1-2008 Annexation at 9371 West State Road 46**

**Frank Nierzwicki** explained this annexation is 3.63 acres adjacent to Town on the west side, next to Litten Estates and across the street from Westside General. Frank summarized the Fiscal Plan. Water, sewer, police and fire protection are already in the area. The assessed valuation of this parcel is approximately \$125,000 and has been approved by the Plan Commission. This property is zoned C-3 in Ward 1.

David Drake made a motion we adopt Resolution 11-08. Dianna Bastin seconded. Roll call vote: Dan Swafford – yes; Dianna Bastin – yes; David Drake – yes. Motion carried 3-0.

*The following comments were made before the vote was taken*

Dan Swafford clarified this property is outside of the proposed Redevelopment area. David Drake lives adjacent to this development and during his many years of experience with the planning and zoning said “this is probably one of the best developments that I have seen and it’s exceeded the expectations of my neighborhood as to how the property was developed.” Frank stated it has been easy working with Brian Hearne.

### Ordinances on First Reading

#### **Ordinance 08-05 to annex 7391 West State Road 46 – Hearne 1-2008 Annexation**

**Frank Nierzwicki** explained this ordinance is on first reading tonight with no action necessary and is the follow-up to the Resolution 11-08.

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

**Sandra Hash** stated the paperwork was not received. Frank Nierzwicki asked this to be tabled until the next meeting.

Dianna Bastin made a motion to table Ordinance 08-06 to rezone 101 Poplar Drive from R-1 to C-2. David Drake seconded. Motion carried.

### New Business

#### **Capitol Avenue Update**

**Frank Nierzwicki** presented the packet outlining the updates to Capitol Avenue. There have been numerous interactions with the developer in the last month and a half. Rick Coppock has inspected the area twice. The first item in the packet was dated May 30<sup>th</sup> addressing 13 points. The second item was the response from Chris Sims of the Capitol

Avenue Apartments. The next item was a copy of the minutes of a meeting held June 19, 2008 attended by Chris Sims, Phillip Smith, Frank Nierzwicki, Rick Coppock and Connie Griffin. All the issues needing to be resolved were discussed. There were a number of points that are needed to be bonded: tree planting, emergency exits, cleaning the road and Rule 13 runoff issues. A bond letter is needed before they can move forward. There are two items the Town has control of in this situation: the final plat and occupancy permits. The Town Council decides and issues the fines up to a \$1,000 a day. Dianna asked who determines how much the fines are. Frank answered "Council with legal input". Dan asked if there are ordinances in place for this and why does it need to go to the Council? Frank stated "that is what the ordinance says". Frank read, from a letter from Rick Coppock to Chris Sims, "in accordance with section 152.77 of the Ellettsville Town Code the above items shall be corrected within 10 days of receipt or be subject to a fine up to \$1,000 per day as determined by Town Council. The Town may also issue a Stop-Work order on your project until the above items are corrected".

Dan Swafford stated he will have to abstain from voting on this and it will have to be tabled until there are four Council members to vote. Frank announced he will start going to Capitol Avenue twice a day, starting tomorrow, to check the listed offenses. Dianna Bastin has been involved with this for the last two years and feels there needs to be some sort of fine but \$1,000 a day is too high. Some of the issues are important. Frank and Rick Coppock are available for any questions. David Drake would like to see bills showing the expense incurred by the Town due to the listed problems. Frank asked if he wants "out-of-pocket" expenses and/or hours used. David clarified money the Town is actually paying the engineer to survey the issues of the property. Frank will work with Rick to get an estimate and have it submitted to the Council the Thursday before the next Council meeting.

Dan Swafford asked Rick Coppock, as a citizen, what he determined after seeing how the water was running after the last rain. Can storm drains be put in? Rick Coppock stated with normal rain water, without looking at erosion control, he talked to Chris Sims about moving the inlet from the parking lot of the two new buildings out to the road.

Dianna asked Frank if we held the occupancy permits, it looks as though people are moving into the buildings as he builds them. Frank has not seen that but will check on it. There is a "stop occupancy permit" with Monroe County Building Department and there is a hold on that. Chris Sims told Frank the project will be completed in thirty days.

### **Interrogatories to Defendant**

**Mike Spencer**, Town Attorney asked the Council to pass a Resolution authorizing Town Council President to sign the response Interrogatories he has provided. As you know, the Town is in litigations with Northern Richland Sewer Corporation; they have filed their request and sent the Town an Interrogatory, which are questions they want us to answer. Under "rules of discovery" we are obligated to answer those questions. Mike Spencer has spent a lot of time with Mike Farmer, Jeff Farmer, Rick Coppock and Sandra Hash gathering the information with which to answer those questions. The affidavit states Dan Swafford has talked with those individuals and to the best of his knowledge, what they represent is true to the best of their knowledge but Dan Swafford has no actual knowledge and was not part of answering the interrogatories. Mike Spencer has sent interrogatories to Northern Richland to be answered and is waiting for them to respond.

Dianna Bastin made a motion that we have the Council President sign the Interrogatories to the Defendant. David Drake seconded. Roll call vote: Dan Swafford – yes; Dianna Bastin – yes; David Drake – yes. Motion carried 3-0.

### **Supervisor Comments**

**Frank Nierzwicki** met with Linda Smith, owner of the Jack and Jill Daycare, her attorney Michael Ellis, Phillip Smith and Connie Griffin. They went over items that need to be worked out concerning the scrolling sign. As things come up, he will keep the Council involved. Dan asked if Ms. Smith agreed with the proposal of allowing the sign to "flash" and not "scroll". Frank is working on the "language" and issues of when the sign could be off in the evening. Frank needs to get some information in writing. Dianna Bastin understood the entire sign is in violation of Town Code. Frank explained there are a

number of issues with the sign; scrolling is illegal by Town Code, the sign was denied by the BZA and does not have a sign permit.

**Frank Nierzwicki** was asked by Dan Swafford to provide information on the Sale Street appraisals that were completed during December 2007 and January 2008. The Town is looking into purchasing the “old Kenny’s Tavern”, apartments 215/217 on North Sale Street. The Town’s Parking Lot on Vine was also appraised. He presented the estimates of the appraisals and asked what to do next. Dan clarified there has not been any contact with Mr. Mobley since December and does not know if he is still willing to sell or buy property. Dan suggested setting up a meeting with Mr. Mobley to go over it with him. Dan asked how long the appraisals are good for. David Drake read “it is considered valid for one year from December 2007”. Frank would like to document a few options to review the Thursday before the next meeting. Dan clarified the parking lot behind Town Hall is not included in this appraisal. When Dan spoke with Mr. Kenny Mobley a year ago, he was including it. Frank spoke with Barry Mobley. Dan asked Frank to speak with Mr. Mobley and bring a new packet to the next meeting.

**Dan Swafford** asked for the update on Vine Street house. Frank said it has been boarded up. The cost the Planning and Street Department has generated has been taken care of. The issue that has not been addressed is the fines up to \$5,000 a day. Dan asked Frank to prepare this information.

Dan Swafford listened in on a FEMA conference and understands Frank Nierzwicki has been in direct contact with the DNR; anyone in town that incurred flood damage is encouraged to contact FEMA on the website or contact Frank directly. Frank met with DNR, Monroe County, Bloomington and Stinesville Planning Departments; there are two items, if you have personal damage, they need to know. Frank had to do a survey of homes damaged in the flood plains. Frank then had to look at damage to the Town; pavement, culverts, buildings and water damage. DNR and Emergency Management recommend submitting all amounts of damage no matter how small because this will help the County when they look at the level of damage in the whole County for damage. Ellettsville was somewhat minor compared to previous years. Dianna asked if this includes the time our employees worked. Frank said yes and the Governor’s order goes back to May 29, 2008. Dan added this includes small businesses.

**Jim Ragle**, Ellettsville Street Department would like to purchase a small pick-up for his department due to the cost of gas. Their current 1995 and 1998 trucks are gas guzzlers. He has looked into a new Ford Ranger for \$15,000 but it would be \$10,600 with a government discount. There is enough money in the Equipment line of the budget. It is a four cylinder, stick shift that gets 21-26 mpg. The small truck would be used for local running. The current trucks are using 25 gallons per week.

David Drake made a motion we approve the purchase of a Ford Ranger truck for the Street Department. Dianna Bastin seconded. Motion carried.

**Jim Ragle** has been keeping track of the brush they haul out of town. The Street Department took three days to clean up brush last week and there are piles already. He can not set a fee without doing more research on it. Jim would like to set the first two days of every month be “brush day” unless there is a natural disaster. This is something the Street Department has always done. The Street Department would like to chip all they can but would rather burn it. They are looking into building some burners. The Town Code does not have an ordinance stating when brush is to be picked up; it has been something the Street Department has always done.

Dan Swafford entertained a motion to pick up brush on the first Monday and Tuesday of every month. Dianna Bastin made the motion. David Drake seconded. Roll call vote: Dan Swafford – yes; Dianna Bastin – yes; David Drake – yes. Motion carried 3-0.

*The following discussion took place before the vote*

Dianna Bastin stated people are trimming trees and there is an extra fee to have the brush taken away. Is there anything we can do? Jim Ragle said this has been going on for years and does not have an answer. Jim would like to see a fee. Dan wants to try the Monday and Tuesday pick-up first. The Street Department takes down the trees in the right of ways. Dan asked if two days a month will be enough. Jim hopes so. Dianna asked the people of Ellettsville to place the brush at the edge of their property and not in the storm

drains. The Street Department will not pick up grass clippings. Sandra Hash stated that the Bloomington website lists a place to haul brush to on Empire Road.

**Public Comment**

**Chris Easton Jr.**, resident on Ritter Street is having a problem with the noise ordinance. He has lived in Ellettsville area for ten years and the number of motorists with the loud music is getting worse. Ritter Street runs parallel to State Road 46 and is a thoroughfare for people going to Hartstrait. He thanked Tony Bowlen for the help he has been able to give. Mr. Easton suggests looking at the noise ordinance a little more. He understands there are more pressing issues in town that need to be taken care of by the civil servants. He feels there is an issue with Central Dispatch and the Ellettsville Police Department. There is an 11 p.m. to 6 a.m. time frame for these types of noises coming from cars. He read the ordinance 93.45, 93.46, 93.47 in its entirety. Section 93.47 states *whenever a violation of this subchapter occurs or is alleged to have occurred; any person may file a written complaint.* Mr. Easton was encouraged by officers to call Central Dispatch. Dianna informed Mr. Easton that is considered a written document. Mr. Easton has filed a written complaint with the Ellettsville Police Department. He continued to read Sections 93.47, 93.48 and 93.49. The constant reply he has received from the Town Police is “we have to hear them”. His father was a Bloomington Police Officer and it was hard to pursue those cases. Mr. Easton feels this is a problem and wants to address it. He spoke with different offices that stated to him perhaps the issue is with the Town of Ellettsville being able to prosecute these infractions even if they could enforce them. He was told it had something to do with compiling a big number of these citations, taking them to the Monroe County Prosecutor and running them all at one time. He spoke with a receptionist at the prosecutor’s office who assured Mr. Easton they do not deal with Ellettsville’s misdemeanor citations. Mr. Easton wants to know who the authority is. Dianna stated there is a difference between a misdemeanor citation and a Town Ordinance ticket. A misdemeanor citation is considered an arrest. Dianna has spoken with Marshal Bowlen about this and what could be done. There is a decibel measuring device that the town can not afford to buy. Mr. Easton suggested having an enforcement zone like they have with seat belt check points; have an officer sit and listen. Dianna recommended to Mr. Easton to email Marshal Bowlen with his suggestions. Mr. Easton said everything he brought to the Council tonight is “pretty much between me and Tony”. Dan stated the police have to catch them. Marshal Bowlen has extra patrols with his reserve force. Maybe we will try to be a little more aware of it. Mr. Easton would like the Town Marshal, Police Department and the City Council try to acknowledge and improve when and where it can be. Mr. Easton thanked the Police Department for their help. There are websites from Towns that have this problem. There have been studies that show this is not a healthy type of noise. Mr. Easton spoke of the intensity becoming greater and the equipment becoming more affordable. A few slogans he found on-line said “We either love bass or hate your neighbors”, “All new ways to offend”, “Performance they will hear a mile away”, “Shake the living Raise the dead”. Dan Swafford will speak with Marshal Bowlen. David Drake said the ordinance was written quite some time ago and there may be a way to make it more enforceable. From what the ordinance says it seems a citation can not be written for that type of noise unless you have already asked them to turn it down and they don’t.

**Adjournment**

David Drake made a motion we adjourn. Dianna Bastin seconded. Motion carried. Dan Swafford adjourned the meeting at 8:36 p.m.

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Daniel Swafford, President

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Dianna S. Bastin, Vice-President

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David Drake

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Phillip Smith

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Sandra C. Hash, Clerk-Treasurer