

## June 24, 2013

The Ellettsville, Indiana, Town Council met for a regular meeting on Monday, June 24, 2013, at the Fire Department Training and Conference Room. Scott Oldham called the meeting to order at 6:30 p.m. Dianna Bastin led the Pledge of Allegiance followed with a prayer by Phillip SmithPhillip Smith.

**Roll Call:** Members present were Scott Oldham, – President; Dan Swafford, Vice President; Dianna Bastin, , David Drake and and Phillip Smith Dan SwaffordPhillip Smith. Darla Brown, Town Attorney, and Rick Coppock, Bynum Fanyo and Associates, Town Engineer, were also present. Amber Ragle-Wright, Deputy Clerk, stood in for Sandra Hash.

**Supervisors Present were:** Bill HeadleyJim Davis, Mike Cornman, Jim Ragle, Tony Bowlen, Jim Davis, Connie Griffin and Jeff Mike Farmer.

### Approval of Minutes

Scott Oldham entertained a motion for approval of the minutes for the regular meeting and Special Session on June 10, 2013. David Drake Dan Swafford so moved. Phillip Smith Phillip Smith seconded. Motion carried.

### Accounts Payable Vouchers

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

### Proclamation – Huntington’s DiseaseHuntington’s Disease Awareness Month

**Scott Oldham** explained the 2<sup>nd</sup> Annual Tammy Laird Carroll Memorial Walk for Huntington’s Disease will take place on May 18, 2013, at McCormick’s Creek State Park. The Proclamation for Huntington’s Disease Awareness Month was read as follows:

#### Proclamation

##### Town of Ellettsville, Monroe County, Indiana

**WHEREAS**, Huntington’s Disease is a strongly genetic, neurodegenerative disease that typically affects people in mid-life, and places each child of an affected parent at risk of inheriting the expanded gene responsible for causing the disease; and

**WHEREAS**, HD is a rare and orphan disease affecting 30,000 Americans while placing another 200,000 at-risk; and

**WHEREAS**, the average lifespan after onset of Huntington’s Disease is 10-20 years, and the younger the age of onset, the more rapid the progression of the disease, resulting in children who develop the juvenile form of the disease rarely living to adulthood; and

**WHEREAS**, Since 1993 when the gene that causes HD was discovered, research into the causes are currently exploring many new avenues and approaches including focus on way to delay onset of HD, development of effective therapies that may slow the progression of HD and ultimately, a cure for the disease; and

**WHEREAS**, there is at present no effective treatment or cure for Huntington’s disease, raising awareness about HD is critical to the advancement of vital research and support services; and

**WHEREAS**, Indiana has one of the highest incidences of Huntington's disease in the country:

**NOW, THEREFORE** be it Resolved, that the Ellettsville Town Council, Ellettsville, Indiana do hereby proclaim the month of May, 2013, as

**HUNTINGTON’S DISEASE AWARENESS MONTH**

**ADOPTED** this 13th day of May in the year of our Lord, Two Thousand Thirteen.

## Clerk-Treasurer's Report

### April 2013 Fund Balances

	April Beginning Balance	MTD Revenue	MTD Expenses	April Ending Balance
General	\$ 298,618.94	\$ 78,195.83	\$ 151,769.79	\$ 225,044.98
MVH	\$ 40,251.33	\$ 46,592.75	\$ 31,785.67	\$ 55,058.41
Water O&M	\$ 184,428.10	\$ 137,536.11	\$ 135,327.10	\$ 186,637.11
Waste Water O&M	\$ 317,786.66	\$ 101,769.07	\$ 149,113.39	\$ 270,442.34

### New Business

#### **Acceptance of Dedication/Greenbrier Meadows Phase II, Section II, Final Plan Lot 97 – Connie Griffin and Rick Coppock**

**Connie Griffin, Director of Planning**, explained the Plan Commission approved the final plat for Lot 97 in Greenbrier Meadows on June 6, 2013. The Petitioner is Robinson Construction. There will be 155.18 feet of roadway, sidewalks and pavement and 0.18 of dedicated right-of-way. The Greenbrier bonds are in the amount of \$21,423.13. This is a one lot subdivision because there is a family who needed a larger lot on a flatter area. A building permit has been issued. This is a dedication and acceptance.

Scott Oldham entertained a motion to accept the dedication for Greenbrier Meadows, Phase II, Section II, and Final Plan for Lot 97. David Drake made a motion to accept the dedication for Greenbrier Meadows, Phase II, Section II, and Final Plan for Lot 97. Dan Swafford seconded. Roll Call Vote: Scott Oldham – yes; Dan Swafford – yes; Dianna Bastin – yes; David Drake – yes and Phillip Smith - yes. Motion carried 5-0.

#### **Heritage Trail Project Discussion with Indiana Department of Transportation and the Schneider Corporation – Indiana Department of Transportation (“INDOT”) and Schneider Representatives**

**Darla Brown, Town Attorney**, provided background on the topic. The Town entered into a contract with Schneider Corporation to come up with plans for Phase I of the Heritage Trail. The plans were to be submitted to INDOT by a certain date. They weren't submitted. The information from INDOT in April of this year stated it was because the Town missed the funding window. There are no guaranteed funds at this particular point and time for the project. But, if the Town could get the project shelf ready and get it ready for letting by the next funding window, there is a chance the Town can still get those funds. The purpose of this meeting is to be informational to the Town Council and the public, to let everybody know how the Town got here, what the options are and to get some thoughts from the Town Council as to how they would like for the Town to proceed. The Town has five options.

1. Close out the project and not build the Trail. The Town will have to pay back the funds it has received to INDOT. If the Town decides it doesn't want to build the Trail, it will be audited and will have to pay back the funds.
2. If the Town continues to work on the Trail using the federal funds, it may hire its own contractors who have to be INDOT approved and go through a specific hiring process.

3. Whether or not the Town can complete the project using its own workforce. The Town can build a project with its own workforce if the project is \$150,000

or less. If the Town doesn't build the bridge and cut back on the some of the amenities, the project could be under \$150,000.

4. The Town could not accept the INDOT funds and build it but solicit bids from contractors.
5. The Town could do a hybrid process wherein the Town builds the basic trail with its own workforce but tries using the INDOT funds for Phase II which is the bridge. She asked INDOT about this prior to the meeting but they don't have an answer and will look into it.

**Tony McClellan, Seymour District Deputy Commissioner, Indiana Department of Transportation**, explained this project was in the fiscal year 2014 cycle. The contract stated that certain things had to be done by a certain date to make sure the funding remained available for the project. This project missed those deadlines. Fiscal year 2014 is full as far as funding with all the other projects in the state. This project was moved to fiscal year 2015. In 2015, it is not a guaranteed project. As a district they've prioritized it pretty high and there are two reasons for this. First, this is a relatively low amount. Second, they would like to see Ellettsville be successful in getting this done. This still does not guarantee it will occur next year.

**Scott Oldham** asked Mr. McClellan if he had any comments on the options outlined by Ms. Brown. Brandy Fischvogt of INDOT reviewed Section 5, Term and Schedule, of the contract, which states the first funding window was October 2011 through September 30, 2012. This period has passed and they're looking at the second window in the contract which is October 1, 2012 through September 30, 2014. They are fiscally constraining the program and have locked in projects for fiscal year 2014. Those are projects still within their funding window. Ms. Brown mentioned a force account. However, in order to do the work with the Town's own forces it has to be done at the very beginning of the project. The contract was not set up that way but they can look into it. Chris Wahlman of INDOT commented they don't generally do a lot of force work. Most of the projects they work with are larger construction projects. They will look into this.

**Darla Brown** asked if the Town decides not to accept further INDOT funds and the Town reimburses INDOT, can the Town build it with its own force. Ms. Fischvogt replied that is correct. Mr. Oldham asked if there is \$39,000 in reimbursable costs to INDOT. Ms. Brown replied it is \$39,378.01 so far. Mr. Oldham asked if the Town reimburses that amount, would it remove INDOT from the process and can they pursue it with the Town's own forces and funding. Ms. Fischvogt answered that is correct.

**Dianna Bastin** asked if theoretically the reimbursable amount could be sent to INDOT tomorrow and the Town wouldn't have to wait until the second window is up. Ms. Fischvogt replied federal funds is a reimbursement and not a grant. There are "x" amount of dollars in the LPA Consulting Contract they can submit it to INDOT for 80% reimbursement. The \$39,000 is what has been reimbursed to the Town of Ellettsville to date. Ms. Bastin asked if the Town has to wait until the second window is closed. Mr. Wahlman answered if they wanted to relinquish the federal funds and pay the reimbursement, it can be done at any time. Ms. Brown asked if an audit has to occur first. Ms. Fischvogt replied INDOT would start the process but she is uncertain as to the timeframe of when the Town would be required to pay it back. Mr. Oldham asked if the project could be segmented again into the Town removing itself from Phase I and doing the trail while leaving the bridge project still intact within the INDOT funding window. Mr. Wahlman answered Phase II is Metropolitan Planning Organization ("MPO") funding. There are MPO funds and then there are state-local funds. The Bloomington MPO distributes the funds they have guaranteed to the Town. He's uncertain if they're writing any kind of funding window for MPO funds. The MPO has dedicated funds for Phase II and he doesn't see that being affected by this funding. Mr. Oldham asked if the funds which are now in question can be shifted into Phase II as opposed to Phase I. Could they segment the project removing Phase I, leaving the Phase II bridge with the reimburseables already attached to it with the INDOT funding cycle, and wait for the build-out if the project is approved in fiscal year 2014? Ms. Fischvogt asked if he is wanting to take the federal funds awarded in

Phase I and transfer them to Phase II. INDOT would have to check because those are state Transportation Enhancement ("TE") funds that were awarded in 2003. She's

uncertain what the limitations are on that funding but they can check on it. Mr. Oldham stated originally the bridge was not involved and later became an addendum. Could they not shift everything into that since that bridge project was more or less suggested strongly or mandated by INDOT? Ms. Fischvogt advised the federal funds that have been reimbursed to the Town are for the design of the trail including the bridge. She doesn't know if the director would allow it but it is something they can ask. Mr. Oldham said if this was allowed it would give the Town option six. The Town could go with their own forces and build-out the trail portion while they're awaiting the status of fiscal funding 2014. If they don't get the funding it is still shelf ready whenever the funding does become available. Ms. Fischvogt stated in 2003, it was a competitive process for those TE funds and they want to see the final project for what the TE funds were awarded. If the Town of Ellettsville received funds to build a trail from point A to B, and that's what the federal award was for, she's hesitant to say if it would even be an option. That's what the money was for. It competed with other projects statewide and they're going to want to see a trail.

**Dan Swafford** asked if Phase II is with the local MPO, isn't it still with TE funds. Ms. Fischvogt replied that is correct. Mr. Swafford asked if Phase II would still be with INDOT. Ms. Fischvogt answered Phase II is solely funded by the Bloomington MPO. Phase I is funded by the state because it was a recipient of TE funds in 2003. Mr. Swafford disagrees because he sits on the local MPO board and TE funds were awarded for the local Transportation Enhancement Program for Phase II of Heritage Trail. He thinks Phases I and II are still with the TE funds that were awarded. Mr. Oldham asked if the Town can uncouple the two phases. Ms. Fischvogt replied the environmental document was for both projects combined. Back in the 2003 the state had a call for projects and that is when every TE project competed for the money. That's when the Trail was a recipient of those TE funds. In 2011/2012 it was decided to include a bridge in the project. Because the location of the project was now within the boundary of the MPO, the funding for the project had to come the Bloomington MPO. This is why there are two separate projects. One project was funded in 2003 with state TE money and then the MPO funds awarded in 2012. Mr. Oldham clarified the 2003 money was simply for the trail. Ms. Fischvogt said that was correct. Michael Krosschell of The Schneider Corporation was looking through the grant application and it describes a trail and bridge. The second grant application through the MPO was specific for the bridge.

**Scott Oldham** asked if most of the funds have been expended for deliverables for the bridge. Ms. Brown answered \$39,378 is for the design of the trail. Mr. Krosschell replied some of the \$39,378 is for the bridge but the bulk of it addressed the trail design. Mr. Swafford asked since this was bid in 2003 and costs have increased, is there any way to get additional funding. Ms. Fischvogt replied now that the project limits are within the boundary of the Bloomington MPO, funding would have to be sought through the Bloomington MPO. One of the questions asked was if there is a recent cost estimate so they can see if there are sufficient federal funds available or if there is a shortfall?

**Michael Krosschell, Project Manager, The Schneider Corporation ("Schneider")**, stated there are a couple of ways to approach this. The funding window was defined in the contract between INDOT and the Town. He feels remiss he didn't push enough to get a copy of the contract from the Town. The funding window slipped past the Town and Schneider. They prepared a schedule from now until they can let the project. They've also looked at the costs of the project which have gone up significantly since the first application. Their construction estimate as designed so far is \$626,000 for both the trail and the bridge. USI has been selected to do the land acquisition portion of the work for \$84,000. Schneider has estimated portions of twelve parcels that need to be acquired at \$10,000 each. They've put in a contingency of 10% for surprises. There is \$393,000 in federal funds between INDOT and MPO. Construction alone isn't the whole picture. Construction costs have gone up significantly but there are other factors to consider while deciding how to tackle this. If portions of the construction do not go through the federal process and do not use federal funds that can make the construction engineering and land acquisition numbers significantly smaller. Mr. Oldham

summarized the 200 yard trail and bridge will cost over \$1 Million. Mr. Krosschell confirmed the total cost between the Town and INDOT would be that high. Land

needs to be acquired, regardless, to build both the land and bridge. There are three processes happening at the same time: trail design, bridge design and land acquisition. They have started on the bridge design but need more survey information from the Town which has been requested. The first thing that needs to happen is survey information. Then they design the bridge so the land acquisition needs can be defined and USI can start acquiring parcels. Acquisition doesn't happen quickly. To enter into a right-of-way there has to be a contract. Final plans can't be submitted to INDOT until the right-of-way is secured in the federal process. Given the land acquisition has not started, Schneider doesn't think the project can get to INDOT in the second funding window. There is too much work to be done between now and the end of the second window. Ronald Nordmeyer of Schneider added their goal was to get a realistic schedule where they can actually set a hard funding date.

**Dan Swafford** asked what the percentage of work is they need to complete. Mr. Krosschell replied it's about 80%. The bridge design is largely complete, the environmental document for Phases I and II is complete and the only thing left to do is finish the bridge design. They are responsible for obtaining permits for that bridge. That work has yet to be done. Mr. Oldham asked if the trail is deliverable now. Mr. Krosschell answered to be federally funded it needs a bit of work. The submittal they make to INDOT for letting is more than just the plans. There are a lot of other documents that go in with it. The right-of-way would need to be in place. Mr. Oldham asked if the design is deliverable. Mr. Krosschell replied almost. They have not put a "bow" around it. If the Town wants to hire a contractor or build it themselves it is essentially ready. Mr. Oldham asked how long it would take to deliver it. Mr. Nordmeyer replied a couple of weeks. Mr. Oldham asked if the bridge design is 80% complete. Mr. Krosschell answered the bridge is not, but the overall project is. The bridge is not far along at all. The trail is 80% complete. Mr. Nordmeyer added the key part of the bridge that is missing is the hydraulic analysis of the bridge opening. This requires surveying cross sections along the stream and modeling of the stream with the bridge in place. Mr. Krosschell said the work Schneider needs to do is finish the bridge design but they also owe the Town the permits. They need to take the project through the Department of Natural Resources ("DNR") process because it is their responsibility but that work has not started yet. Mr. Oldham asked if the hydraulic survey would still be valid three years from now or would it have to be redone for another funding window. Mr. Wahlman of INDOT replied the hydraulic analysis is good for quite a while if nothing changes. Mr. Nordmeyer added the construction floodway permit does have a life span but it can be extended. They have to get a permit for Rule 5 which is for erosion control.

**Dianna Bastin** asked if the Town chooses to do its own work, does INDOT still have to approve the bridge design and the building of it. Do all bridges have to be approved by INDOT? Ms. Fischvogt replied if you're using local money, the answer is no.

**Rick Coppock, Bynum Fanyo and Associates, Town Engineer**, looked at some costs and different scenarios for the Town doing the work with their own crews. Construction costs would be approximately \$45,000 for an 8' wide trail. The costs for a 12' wide trail would be approximately \$60,000. Amenities are estimated at \$34,000. They think the land acquisition costs can be cheaper without going through the INDOT process. They had quite a bit of interest in the trail at one time with people donating land. One of the biggest landowners stated he would be willing to donate some land and materials and equipment for the construction of the project. Mr. Oldham asked if the Town was to build the trail how long would it take. Mr. Coppock answered it would take six weeks to get a basic trail with an asphalt pathway. The Town isn't in a position to build the bridge.

**Connie Griffin, Director of Planning**, presented a chart with the Schneider costs removed. Removing \$76,281 and using the land acquisition at \$12,000 brought the total down to \$90,600 excluding the bridge. The construction total remained the same as combining them brings the project up to \$340,600 with a bridge and an 8' wide trail.

**David Drake** thinks until they get answers from INDOT as to whether or not the Town can do some of the options mentioned, anything discussed at this meeting is speculation.

**Scott Oldham** disagrees. Assuming the Town would have to reimburse INDOT approximately \$39,000, there is \$69,000 in the Build Indiana Fund which is eligible to build the trail. This leaves approximately \$30,000 after the Town reimburses INDOT. This would negate all but approximately \$30,000 of the trail, aside from amenities to be built. There are two other funding streams within the Town they're currently investigating which would make up for the \$30,000. This leaves the General Fund with a hit of \$12,000 to \$14,000 in the end. He doesn't see the Town's match of \$680,000 ever being obtainable without an additional source of funding. This has stretched out way too long and the trail needs to be built. It would improve them being shelf ready with the bridge portion if the trail is already sitting there. This is doable for the Town with the money they have on hand. They have played with this for over 10 years. The money is there seven to ten weeks from now, including some time for land acquisition, and could be a reality. It is pure folly for the Town to continue this thing in any other path but this. This trail could be down and being used by the fall built by employees and paid for completely out of Town funds. Then they could seek funding and the uncoupling of the funds for the bridge and proceed from that point forward. If it isn't done this way then it's still another three to four years before they ever see any asphalt on the ground at all. The question is seven weeks paid for right now or four to five years questioning if it can ever be paid for. In that four to five years the construction costs may go up again astronomically. He challenges the Town Council in that they need to do this now and not wait. They have the funding sources available and INDOT is willing to investigate other sources of funding for bridge and help with the project. It is his understanding if the Town does the trail it does not separate us from INDOT and the bridge portion. He encourages the Council to move forward on this as soon as possible. If the bridge gets built, good but if not the Town still has a usable, buildable and enjoyable trail by the fall built by employees.

**David Drake** thinks this is a little optimistic in that all it takes is one person the Town has to get a right-of-way from to decide to fight. This means a lot more time and a lot more money.

**Dan Swafford** sees the worst case scenario which is \$166,000. Mr. Oldham noted removing the amenities brings the cost down. Mr. Swafford added the Town still has to come up with INDOT's fund and Schneider's part of it. There are too many unknown factors.

**Scott Oldham** asked INDOT if the Town is free at this time to uncouple the projects and build the trail even if the \$38,000 has to be reimbursed. Mr. Wahlman replied there are two projects with two DES numbers. The bridge is MPO funded. As long as there is a logical termini on either side of the bridge, he doesn't see why it would be a problem. INDOT has to check with Federal Highway to make sure they approve it. In the end it is their money, it's not INDOT's money. Phillip Smith asked if INDOT could give an estimate when they might receive answers to their questions. Mr. Wahlman answered it would be fairly quickly or two weeks. Mr. Oldham reiterated this should have been done in 2004 or the earliest available moment but it wasn't. Now, people are behind it, the Town is behind it, the community wants it and it needs to be built. The Town has a logical and affordable path and needs to start moving forward. We've seen what construction costs have done in the last 10 years. Add another five to seven years and that \$600,000 could very well grow to \$1 Million. Do you want to pay \$1 Million for a trail that runs 150 yards plus a bridge? That isn't fiscally responsible. Maybe we can agree to take some chances and get ourselves a little more money but it can be done now for a very reasonable cost. Hopefully, INDOT can find a way to help the Town with the bridge portion. Mr. Drake thinks the cost for a pedestrian bridge is expensive. Mr. Swafford wants to wait on answers from INDOT and Schneider. Ms. Bastin said the Town has tried for 10 years to build the trail. They owe it to Ellettsville to try it. Mr. Oldman added they have the employees with the expertise, availability and manpower to make this a reality. Even if it takes six months, it beats five years from now. The question is does the Town instruct the

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staff to begin making plans and give a better scope and timeline. At the next meeting, they need to make a decision.

**Darla Brown, Town Attorney**, commented one of the unknowns is the acquisition cost. It's her understanding if this is an INDOT funded project and they have to go through a specific procedure, as prescribed by INDOT, for acquiring the property, the

Town is not allowed to approach people before hand and ask about donating the property. The agent hired for the right-of-way is charged to do this. The unknown for the Town building is the right-of-way costs. If the Town approaches people now to find out whether or not they're willing to donate their land that's going to cause problems later if it is decided not to build it and go back to INDOT. Ms. Fischvogt stated they can't approach and discuss monetary value with property owners prior to approval of the environmental document. The Town has the environmental approval. It is okay to have those discussions.

**Ronald Nordmeyer, Schneider**, just went through a similar process where a city received donations. There are some documents you have to keep when you talk to landowners such as keeping track of every conversation you have with landowners and a buyers report if you approach landowners. The Federal Highway Administration ("FHWA") is very concerned about coercion. You have to prove you did not coerce the landowners into donating their property. You have to be very careful of how you approach them and make sure every communication is recorded in order to prove to INDOT's right-of-way section that they weren't coerced. For another client, they already had appraisals done so they knew how much they wanted to offer and asked the landowners if they wanted to donate the land. He suggests the Town contact INDOT's right-of-way people at the Seymour District and ask them how to go about approaching it since appraisals have not been done.

**Connie Griffin** doesn't know if Main Street had any comments but they are concerned about funding and reimbursement of donated money. She wanted to assure Main Street the Town will review all of these issues with them. There is funding available through the local MPO and they have combined fiscal years 2013 and 2014. It is a competitive process but they are transportation alternative funds. They will have a call for projects in the fall of 2013 for \$313,000. Ms. Bastin said the Town needs to find out what the amenities costs and looked at them very carefully. Ms. Griffin agrees with those comments. One way of saving money is to allow people on the trail only during daylight hours or not allowing dogs on trails. We need to look at multiple sources for the amenities.

**Chris Fisher, Treasurer of Ellettsville Main Street**, explained they are very frustrated with the process. She is anxious to move forward one way or the other. There have been a lot of deadlines that haven't been met. They're willing to work with whatever the Town Council decides. They have raised funds to support the trail and the amenities and will continue to do so. They appreciate it being discussed openly.

**Scott Oldham** confirmed in two weeks INDOT and Schneider will have answers concerning the bridge and restructure.

**Brandy Fischvogt** would like to request the Town have a list of questions that can be sent to them. A conference call can be arranged with the director of the MPO LPA program and possibly FHWA so they can get answers to their questions and attend the next Town Council program. Mr. Oldham replied Darla Brown, Town Attorney, will provide them with the questions.

**Scott Oldham** instructed Town staff to come up with a timeline and how they would proceed with the trail and to have it ready for the next Town Council meeting.

#### **Structure Lease Agreement between Town and Cingular Wireless**

**Darla Brown, Town Attorney**, explained this is a contract between the Town and Cingular Wireless/AT&T Mobility for a structure lease agreement. AT & T proposes to lease approximately 240 square feet on the McNeely Tank for their communications equipment. In exchange for its occupation on the premises AT & T agrees to pay the Town \$1,500 a month. The contract may be terminated without penalty upon 30 days written notice by either party. There are extension terms that can be put into place. The monthly rent will increase by 7½% over the rent paid during the previous term.

There are some other requirements with regard to insurance. There are two sections of the contract she found problematic and she made some suggestions to Cingular's representative but she has not heard back from him. One of the issues is a section in the contract that says the tenant has the right to assign or sublease the premises without the landlord's consent and upon notification to the landlord of such sublease or assignment, the tenant is relieved of all future performances, liabilities and obligations.

She thinks the Town should be included in that conversation if there is going to be a sublease or different tenant. The suggestion she made is that the language be changed to say "*the tenant shall have the right to assign or sublease the premises after notifying the landlord of the proposed assignment or sublease and the landlord shall not unreasonably withhold its consent.*" The other concern is with paragraph 22(C) which states "*the Town agrees not to sell, lease or use any of the property or surrounding property for the installation, operation or maintenance of other wireless or other wireless communication facilities.*" In other words, you can't allow another party to co-locate on the tower if such installation, operation or maintenance would interfere with the tenant's permitted use. The tenant would perform radio propagation tests in its sole discretion. The way the contract is currently written, if those radio propagation tests show that there's interference, the Town cannot allow another tenant to co-locate. Under the current language in the contract the tenant would be responsible for the costs of such testing. After she asked around, she found out those tests could cost thousands of dollars. She made a suggested change which would state "*the landlord agrees not to sell, lease or use any of the property such that it interferes with the tenant's use or communications equipment but the landlord has the opportunity to dispute the radio frequency propagation tests performed by or on behalf of the tenant.*" For example, if the Town wants a third party to co-locate and AT & T says it is going to interfere with their communications equipment, AT & T can do the radio propagation test at their own expense. If there is a disagreement between the Town and AT & T as to what those tests say, then the Town can insist upon having a third party engineering firm who specializes in this type of test to perform the test and the cost will be split between the parties.

**Phillip Smith** asked if the Town already has a tower on the top of the tank. Ms. Brown replied T-Mobile currently has their communications equipment on the Tower. Mr. Smith asked what happens if T-Mobile interferes with AT & T/Cingular. Ms. Brown answered they have no reason to believe that will happen. Mr. Farmer added he's pretty sure they've worked that out. They co-locate all of the time. Ms. Brown said the T-Mobile contract simply says the Town will not allow a third party to co-locate if it interferes with their communications equipment but it doesn't state how that's to be determined. Mr. Farmer said they've notified T-Mobile.

**Scott Oldham** asked if this would preclude the Town from putting something on the Tower. Ms. Brown replied the way the contract is written AT & T could say that if anybody interferes with their communications equipment, they would have the right to say to the Town there's an interference and it has to stop it or they're in default. Mr. Farmer commented they're interested in being a good tenant to the communications people but the Town doesn't want to relinquish all of its rights because there is a possibility they could put a third ball underneath the tank and that would be more revenue to the Town. Mr. Swafford asked if AT & T is also putting in a building. Mr. Farmer replied it is a 12' x 18' building and they've already found a footprint for it on the back side of the tank. Mr. Swafford asked if there will be outside lighting. Mr. Farmer answered there will be a warning light on top of the tank. Mr. Swafford asked if this is because of the height. Mr. Farmer said it will be 8' lower than the required 200' but because it's in a flight path they're taking a precautionary approach to it. Ms. Brown added the lease agreement states the tenant is leasing not only the 240 square feet on the tank but they're allowed to lease space that is required to support and house their equipment, conduit, cables and other necessary connections. Mr. Farmer said they prefer AT & T do it that way to not inhibit maintenance of the tank because the Town already has equipment for T-Mobile inside the tank and they don't want any more equipment in it.

Scott Oldham entertained a motion that the structure lease agreement be tabled between the Town and Cingular Wireless in order for their attorney to hear back about her suggestions. Dianna Bastin made a motion that the structure lease agreement be tabled between the Town and Cingular Wireless in order for their attorney to hear back about



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

### **Contract for Services with H.J. Umbaugh for Water Bond and Rate Study**

**Darla Brown, Town Attorney**, explained the Town Council conducted a Special Session on June 10, 2013, regarding a proposed water line extension. Mr. Baldessari from H.J. Umbaugh (“Umbaugh”) advised it would involve such items as increasing water rates, bonding to pay for it, how long it would take to get this rate increase through the Indiana Utilities Regulatory Commission (“IURC”) and other things that were discussed. The contract is between Umbaugh and the Town to pay for those types of things such as analyzing data, a detailed statistical study about outside Town customer billings, attending IURC hearings with the Town, answer questions from Town Council, meet with Town utility supervisors and to prepare a proposed bond issue. Umbaugh proposes to charge a standard hourly rates by job classification that’s going to vary from \$60 for support personal to \$350 for partners or principals.

**Mike Farmer** commented it’s the cost of doing business. It is in line with the 2009 costs for the rate study. If the Town doesn’t start now it will just be that much farther down the road before it can. It’s been four years since they’ve had a rate increase. It will be another year before they can get through the IURC and implement it. Mr. Swafford asked if he came up with a final number on the rate increase. Mr. Farmer replied that’s what the study is for.

Scott Oldham entertained a motion to approve the contract for services with H.J. Umbaugh for the water bond and rate study. David Drake made a motion to approve the contract for services with H.J. Umbaugh for the water bond and rate study. Dianna Bastin seconded. Roll Call Vote: Scott Oldham – yes; Dan Swafford – yes; Dianna Bastin – yes; David Drake – yes and Phillip Smith - yes. Motion carried 5-0.

### **Council Comments**

**David Drake** read a letter dated June 6, 2013, from Fire Chief Jim Davis:

*Dear Council Members,*

*Please accept this letter as notification that I wish to retire from my full time position with the Ellettsville Fire Department. I joined the Fire Department as a volunteer firefighter on November 4, 1971, and became a full time firefighter on February 24, 1975. I was voted in as Fire Chief on July 7, 1977. I have been in the fire service for 42 years and I have performed the role of Fire Chief for the last 36 years. But, I have decided the time has come for me to retire. Since being the Fire Chief, myself and the Town have seen many changes and we have made vast improvements over the years to help make the Town and the Fire Department what it is today. I would like to thank the Town of Ellettsville, its citizens, the Council members, and the firefighters I have worked with over the years. I am grateful to all of them for granting me the opportunity to serve in this capacity as Fire Chief. It has been a team effort, having good people to work with and a caring community. It has brought about these improvements including a new fire station, several new and improved fire trucks and improvement equipment. My last date of full time employment with the Fire Department will be August 29, 2013. However, I would still remain as a volunteer fighter on the Department after that. I wanted to give you early notice of my intentions to retire so myself and my replacement would have adequate time for a smooth transition for the Department. At this time, I would like to recommend that Michael Cornman be my successor as Fire Chief. Mike has been on the Department for 34 years and has excellent knowledge on government and the fire service issues. I would urge the Council to select Mike as my replacement at your earliest convenience and that he would take my place on August 30, 2013.*

*Sincerely,  
Jim Davis, Fire Chief*

**David Drake** recommends appointing Mike Cornman as the Fire Chief effective on August 30, 2013. He doesn’t personally see any reason to open it up to outside appointments. They could never find anyone that has his knowledge about the Ellettsville Fire Department. He has the proven ability to handle the position, has been an Ellettsville citizen his entire life and has an excellent reputation throughout the state and the fire service. He thinks it’s a no-brainer that he would be the one they promote to the position.

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**Dan Swafford** asked Darla Brown, Town Attorney, if it is legally okay for the Town to do this. Ms. Brown replied if they want to go ahead and appoint Mr. Cornman they can.

Scott Oldham entertained a motion to accept Jim Davis' letter of his intentions to retire on August 29, 2013, and to appoint Michael Cornman as the Ellettsville Fire

Department Fire Chief with an effective date of August 30, 2013. David Drake made a motion to accept Jim Davis' letter of his intentions to retire on August 29, 2013, and to appoint Michael Cornman as the Ellettsville Fire Department Fire Chief with an effective date of August 30, 2013. Dianna Bastin seconded the motion. Roll Call Vote: Scott Oldham – yes; Dan Swafford – yes; Dianna Bastin – yes; David Drake – yes and Phillip Smith - yes. Motion carried 5-0. **Scott Oldham** congratulated both Jim Davis and Mike Cornman.

**Dan Swafford** commended Chief Davis on doing a wonderful job. In the short time he has known him he's been a great person to be around, a hard worker and has done a lot for the community. They really appreciate everything he has done for the Town and is going to continue to do. Congratulations to Mike Cornman.

**Dan Swafford** noted there has been a lot of talk about the Friday after the July 4<sup>th</sup> holiday. Some of the employees would like to take that Friday off. There isn't any problem with employees doing this as long as they use their own paid time off ("PTO"). There is some concern employees don't want to use their own PTO and would like to work. Supervisors talk to their employees and if they don't want to take off make arrangements for them to work on July 5<sup>th</sup>.

**Town Marshal Tony Bowlen** is asking the Town Council's approval to hire two new people. They will be paid out of the part-time fund and the money is already appropriated. Mat Lewis will be taking Officer Michael's place in the front office as the desk officer. He will work approximately 28 hours a week. Bennett Anthony Dillon will be a part-time fill in officer to help with short shifts. They both recently graduated from Indiana University and are certified police officers in the State of Indiana.

**Dianna Bastin** is concerned they are giving a person less hours that it doesn't look like they didn't want to pay someone benefits. Ms. Brown replied it doesn't. Marshal Bowlen plans to keep the same office hours but he won't have office hours on Wednesday. The hours will be 9:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m. on Monday, Tuesday, Thursday and Friday.

Scott Oldham entertained a motion to hire the two regular part-time officers, Mat Lewis and Bennett Dillon. Phillip Smith made a motion to hire the two regular part-time officers, Mat Lewis and Bennett Dillon. David Drake seconded. Roll Call Vote: Scott Oldham – yes; Dianna Bastin – yes; David Drake – yes and Phillip Smith - yes. Motion carried 4-0.

**Sandra Hash** administered the oath of office to Mat Lewis and Bennett Dillon as Deputy Marshals.

**Sandra Hash** requested permission for Amber Ragle to travel with her to the state called meeting for Clerk-Treasurers from June 9, 2013 through June 13, 2013.

David Drake made a motion to approve Amber Ragle traveling to the Clerk-Treasurer's meeting from June 9 – 13, 2013. Phillip Smith seconded. Roll Call Vote: Scott Oldham – yes; Dianna Bastin – yes; David Drake – yes and Phillip Smith - yes. Motion carried 4-0.

#### **Supervisors Comments**

**Mike Farmer, Ellettsville Utilities**, congratulated Mike Cornman and Jim Davis. Since he started working for the Town in 1998, they have been mentors, friends and have guided him. Jim Davis is a local hero, Town father and like a big brother.

He needs to hire a seasonal full time employee for approximately eight to ten weeks. They're busy right now and have a lot of weed eating, mowing and pulling hose to clean sewers. They don't have enough people. They're two or three full time people

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shy and have been since the INDOT project went away. They lost someone last year and did not replace them. The employee is Curtis Stille and he will be making \$9.00 an hour.

**Scott Oldham** asked if this affects the Town's capture period. Ms. Brown replied it won't affect the capture period but it is one more person to look at during the time period of June 1<sup>st</sup> through November 30<sup>th</sup>. His hours will have to be tracked.

Scott Oldham entertained a motion to allow Utilities to hire Curtis Stille. Dianna Bastin made a motion to allow Utilities to hire Curtis Stille. Dan Swafford seconded the motion. Roll Call Vote: Scott Oldham – yes; Dan Swafford – yes; Dianna Bastin – yes; David Drake – yes and Phillip Smith - yes. Motion carried 5-0.

**Privilege of the Floor**

**Scott Oldham announced the annual meeting of the members of the Eastern Richland Sewer Corporation will be held at 7:00 p.m. on June 17, 2013, at the Ellettsville Fire Department.**

**Adjournment**

Scott Oldham entertained a motion to adjourn. Dianna Bastin made a motion to adjourn. Phillip Smith Dan Swafford seconded. Motion carried. Scott Oldham adjourned the meeting at 8:30504 p.m.

\_\_\_\_\_  
Scott Oldham, President

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Dan Swafford, Vice-President

\_\_\_\_\_  
Dianna S. Bastin

\_\_\_\_\_  
Phillip Smith

\_\_\_\_\_  
David Drake

\_\_\_\_\_  
Amber Ragle – Wright, Deputy Clerk