

**June 25, 2001**

The Ellettsville, Indiana, Town Council met in regular session at 7:30 PM, Monday, June 25, 2001. Members present were Jerry Pittsford, President; David Sorokoty, Vice President; Geraldine McIntyre, Mike Cornman and David Drake. Sandra Hash, Clerk-Treasurer and Mike Spencer, Town Attorney was also in attendance. Jerry Pittsford called the meeting to order. Geraldine McIntyre led the Pledge of Allegiance. Jerry Pittsford gave the prayer.

**Geraldine McIntyre** made a motion to move Mike Farmer above public comments regarding the Standard Highway Agreement for reimbursement. David Drake seconded, motion carried.

#### **Standard Highway Agreement for reimbursement**

**Michael Farmer** this is a utility agreement to bury the cables underground. It portrays the original agreement between Ellettsville Utilities, Insight and Cinergy.

**Mike Cornman** moved to approve the highway agreement for reimbursement. Geraldine McIntyre seconded. Jerry Pittsford read from a letter concerning the agreement from Mike Spencer as follows:

Rick Coppock asked me to review the Indiana Department of Transportation Highway utility Agreement. I have, in fact, reviewed the Agreement, the Non-collusion Affidavit and the State of Indiana Drug-Free Workplace Certification. I have not reviewed Exhibit A as no exhibit was attached, nor have I reviewed title 12 of the United States Code and acts amendatory thereof or supplementary thereto, nor the Federal Aid Police Guide, which has been referred to in the Agreement. I, therefore, make no representation concerning the effect that those documents, acts or guides may have on this agreement.

This agreement provides that INDOT will pay the Town of Ellettsville the sum of up to \$620,000.00 for the services provided by the Town of Ellettsville relating to the construction administration for re-locating the utilities.

According to this agreement, when Cinergy and Insight have incurred expenses of \$250,000.00 and \$50,000.00 respectively, INDOT shall begin making monthly payments to the Town of Ellettsville not to exceed \$620,000. The Town will be required to submit invoices on vouchers. Generally, these invoices will be paid within thirty-five (35) days after receipt and approval by INDOT.

It is important to keep in mind that accounts and records of the utility and any contractor or subcontractor shall be kept readily available so that they may be audited by either INDOT or the Federal Highway Administration. These documents must be kept for not less than three (3) years from the date of final payment appeals of these disputes have expired.

If there is a dispute, the State of Indiana will not pay penalties, liquidated damages, interest and/or attorney's fees, except as required by Indiana law.

It is important to realize that if the Director of the State Budget Agency makes a written determination that funds are not appropriated, the multi-term contract shall be cancelled and this determination is final.

As previously indicated, I review the Drug-Free Workplace certification. This is an important document in that it mandates that certain affirmative actions be taken by the Town in regards to its employees. This Certification should be carefully examined and steps should be taken to fulfill the mandates contained in this Certification.

There was some discussion on the Drug-Free Workplace certification. The town's Drug Free Workplace Policy (Chapter 390 of the Ellettsville Town Code) was put in

place in order to comply with the requirements for the Department of Commerce Grant for the Endwright Center and has been developed further with the addition of the Commercial Drivers License requirements.

The motion carried with all members voting in favor of the Standard Highway Agreement for reimbursement.

**Mike Farmer** informed the Council utility work would start June 26, 2001 on Sale, Main, and Matthew Streets. This will create detours.

The annual consumer confidence (water quality) report will be mailed this week. This is an annual requirement from the Indiana Department of Environmental Management.

## **PUBLIC COMMENTS**

### **Edgewood Village**

**John Litten** explained to the Council that he owned a home in Edgewood Village, living there for about one year. When he purchased the home he was told it was a retirement community for 50 years and above. In April of this year there were new signs erected removing the age requirement. Buyers Choice Reality markets the homes. There are approximately 40 people in the apartments and three families in the homes who all thought they were living in a retirement community. We are not against young people or their children, but they do bring skateboards and bicycles. We are older people and we didn't buy this property for that purpose. His question to the Council was if the changes came back before them? He presented pictures of the original sign and the new sign on the property. One saying you must be 50 years old or older and the other saying there is no age requirement. John went on to say in the covenants and restrictions there is a clause that says Mr. Voils (the developer) has the right to change this any way he wishes. He stated the Council and Plan Commission have the final word on what is put in their town. He then showed the Council a copy of his covenants and restrictions; it states there will be 28 retirement homes. Rex Voils now says there will be 40 non-retirement homes.

**Geraldine McIntyre** replied the whole section was done under the direction of the Plan Commission with a PUD. Any changes made have to come back to the Planning Board.

Mr. Litten went on to say if these changes are allowed to happen then any developer in Ellettsville will be able to make changes as they see fit. What system does the town have in place to prevent a problem like this? You need someone to check these houses and people. This needs taken care of very soon. If these lots have been sold they are in the retirement area and he needs to return the money to the buyers. John feels he should not have to go any further than the Council to get the problem taken care of.

**David Drake** has talked with John Litten concerning the situation. David said it appears to him that the developer is in violation of what they presented and what was approved as a PUD. David was not a Council member when this all took place, but he had attended some of the meetings as a citizen when this was being done. Geraldine held off signing the final plat on this project for quite a while, until it was assured the restriction of 50 and above would be met. He believes some of the reasons why the development was allowed there with the PUD was because of the age requirement. There were concerns about the traffic coming out on Mustang Drive from the Junior High and High Schools with the senior facility not creating very much traffic. It was also allowed to be a very long cul-de-sac with only one entrance for this reason. He was unable to contact Mr. Voils or his attorney. He did speak with a representative from Buyers Reality. He explained the argument

from the attorney was since they put that little clause in the covenants and restrictions it allowed the majority of the property owners to change the covenants and restrictions. Mr. Drake's conclusion was the developer seems to be forgetting the town is not just concerned with the covenants and restrictions; we are concerned with commitment they made to the Plan Commission and Council through the PUD process. Things we can enforce legally separate from the covenants and restrictions. Mike Spencer, Town Attorney agreed. David interprets Indiana Law to allow the town to deny a building permit to any land that is not in compliance with our zoning ordinance. The PUD placed on this development is part of the zoning and they are out of compliance. He recommends the council direct the building inspector to not issue building permits for this subdivision until this matter is resolved. Mike Spencer said he sent a letter several months ago informing the developer he was out of compliance. He received no response. David said a complaint should be filed with them of an ordinance violation, which carries a fine of 10 to 300 dollars per day for each violation. There is also a new Indiana law passed in 1999 that allows the Town Council to revoke a PUD ordinance if they believe there was a material misrepresentation or omission of facts during the rezone process.

**Jerry Pittsford** reviewed information. He said the original age was 55 and older. They requested it be amended to 50 years because they were not selling quickly. They also expressed concerns that the way it was written could prohibit overnight stays of grand children. The covenants and restriction were not completed the night the rezone was voted on. Geraldine waited until the covenants and restrictions were completed and attached to the plat before it was signed. They have also failed to maintain their silt fencing creating clay runoff into the road, which is a violation of the agreement.

Mr. Litten added when he spoke to their attorney he said they could do anything they damn well please and hung up.

David Drake said they are advertising pretty heavily. The ad in the Home Finder states Edgewood Village is no longer a retirement community. It also says they have already sold 17 lots.

**David Sorokoty** said as Health Officer he has been called to the property 3 times for violations on how the property was being kept during the construction stage. We have sent a letter and the Plan Commission as a group met on the property to look at violations. David asked Mr. Litten as a property owner were you contacted on the changes. Mr. Litten replied no; it was probably before he purchased his home.

There was more discussion on the lots, traffic, and other concerns. Four building permits have been applied for.

Jerry Pittsford asked Mike Spencer if a letter should be sent to Mr. Voils and Buyers Only and inform them we will not be issuing building permits if they do not comply with the PUD. Mike, if that is what they want to do.

Mr. Litten said the builder has left unfinished items in each sold home.

There were questions on what is covered by the building permit.

**Mike Cornman** asked if the re-plat affected the PUD. Mike Spencer replied the only change was the age and the understanding that it was a retirement community. The PUD requires a review by the Plan Commission for any changes.

Geraldine reiterated the concern for traffic at that location from the very beginning, which added to the need for a PUD.

David Drake moved to instruct the Building Inspector not to issue any building permits for Edgewood Village Subdivision until further notice from the Town Council. David Sorokoty seconded.

For clarification Jerry asked if someone in compliance with the age requirement apply would that also be denied. Mike Cornman and David Drake responded it should apply to all building permits to avoid complications.

**Jean Walters**, the original Realtor for the development, added she fully supports everything John had said. She went on to say there was a demand for these houses and there continues to be a demand for houses 50 to 55 and older. She is under contract to sell the homes. From the beginning Voils Construction felt it would be better to sell the homes to anyone. The town issued a stop work order after the first house was built because the final plat was not signed and they had started two additional homes. The three finished homes are sold. No other homes have been finished to sell. Jean consulted with a friend who is a lawyer about the provision allowing changes to the covenants and restrictions. He said it was put there in case some time in the future the residents want to make changes. She gave the example of the homeowners Association who for 50 dollars per month would provide lawn mowing and snow removal services. If a majority of the homeowners 10 years down the road wanted to change this requirement they could do so. It is not the spirit of the agreement for the developer to change before the properties are even sold.

Ms. Walters went on to say Buyers Choice is selling the new elementary school and the financing, which is based on free money through mortgage credit certificates. They are selling the financing instead of the homes. Voils doesn't want to build. They are working in Morgan Town. They want out of it and this is their way of doing that by selling every body out. She discussed her agreement with the developer through May 2002. The Endwright Center makes it a wonderful place for a retirement community. The buyers are there, unfortunately Voils has not supported the promotion to sell the properties by providing homes to sale.

Jerry asked all those in favor of issuing notice for the Building Inspector to not issue building permits for Edgewood Village Retirement Community until further notice by this Council signify by saying aye. All vote aye. Motion carried.

### **Complaint**

**Bob O'Nourke** who resides on Rodeo Drive stated the County, State, and Federal Government is spending a lot of money on 46. All of us are trying to improve Ellettsville. He would like to know when the Board is going to do something about the property on Highway 46 with all the cars. From the alley he could see that 3 of the vehicles were not tagged. He moved here from Marion County and their vehicles had to be plated and run. David Drake said he feels that only applies if the parked vehicle is on the street. Jay Humphrey, Ellettsville Police Department, said the Ordinance states the vehicles have to be operable they have to move forward and backward. They do not have to be plated. Several months ago they were all tested and passed. Mr. O'Nourke requests it be done again. David Sorokoty said we have tried to clean up the property without success.

**Sandra Hash** shared with the Council information concerning the parking of a car in the alley at that address. After a few tickets she has agreed to not park in the alley, but she removed one of the vehicles from the yard and now parks it on the highway in front of the house. There have been 2 complaints made on the truck about it impeding the flow of traffic during busy times. Bigger vehicles have to pull slightly into the other lane to get around the truck. It was suggested it could be made a no parking zone.

### **Richland Bean Blossom School Corporation**

**Steve Kain** clarified to the Council a headline in the Herald-Times concerning the School Resource Officer. The headline said the school was susceptible about the officer. The reporter contacted me before I had any information on the proposed application on the grant program. She wanted me to respond from her information she had gathered at the meeting. I would not do that. We are not susceptible this was dropped on us next to the last day of school, two weeks before the application deadline. After the story in the paper within just a few hours we had a petition of 100 people opposed to the program. Of course they had no idea what the program was about. We felt this kind of thing need input from the community, the board, as well as staff of the school corporation. It just so happened the day after that the Indianapolis Star had an editorial against the program based on a Heritage Foundation Study. If you read the study they were really not opposed to the programs that were entered into. It was that they were entered into without a lot of preplanning and understanding on what the program was going to do. Consequently the money really was not used well in the early months of the program. So our comment is, let's sit down and figure out the way the program could be operated to the advantage of both the town and the school corporation and make a grant application that is very professional, well thought out and not done in a rush. The problem is everyone believes what he or she read in the paper. If you just read the headline that day you got a totally opposite picture of what the facts were as well as what the story really said. He wants to assure the Council that they are interested in setting down and talking about this and perhaps working out a program that will benefit both of us.

**Jerry Pittsford** said he and Mr. Kain have talked about this and based on their conversation has not cooled our interest nor is there any point right now that the school corporation is biased on the program. Our zeal for pursuing the grant and the deadline pushed us beyond a point of reason where we needed to step back. Mr. Kain said it would be up again in 6 months. We have the time to do this. Jerry expressed his appreciation that it has been assigned to a small committee of administrators so that we can accomplish something with this. If done properly it will be advantageous to the whole community in terms of the Police force and the safety of the school.

**David Drake** added open government is really a good thing but sometimes it creates side effects. Unfortunately when Ron McGlocklin presented this to the Council this was the first they had heard about it. He asked for permission to present this to the school. We granted that permission and before it could get to the school it came out in the newspaper.

Jerry Pittsford said the program was not to put a uniformed officer into the school with metal detectors and a marshal law atmosphere.

### **NEW BUSINESS**

#### **Property at the corner of Sale and Vine sewer base rate**

**Richard Hartung** said he was accompanied by his wife Rebecca and they own the apartment complex on the corner of Sale and Vine. They believe they have the only fire sprinkler system apartments in town. They have no problem paying a fair rate with the water and sewer being used. We have found there is a base rate, which is based on the meter size. Because of the sprinkler system they have a two-inch meter otherwise a one-inch meter would be sufficient. The water in the sprinkler system even if activated would not go into the sewer. We are requesting a one-inch

base rate. The base rate for a one-inch is \$55.20 per month. The base rate for a two-inch is \$211.65 a difference of \$156.34 per month or \$1,877.00 per year. We are paying a real heavy premium for the fire protection. We could change the meter, but this would inhibit the sprinkler system. Both Mr. and Mrs. Hartung requested fair treatment. They have made improvements to the property that has been good for the tenants and good for the town. They do not feel it is fair to pay so much extra for water that is just sitting in the pipes and not going down the sewer.

**Mike Cornman** requested a meeting between himself, Geraldine, Mike Farmer, and Mr. and Mrs. Hartung to review this and come up with a plan of action. We may have to make some ordinance changes and check with the IURC. When this fee was put into place we did not have any sprinkler residences in town. This is one of the growing pains we go through.

#### **Deer Run Subdivision complaint**

**Lisa Combs-Creech**, a resident at 853 Deer Run presented complaints about some problems in her addition. There are three main issues. The first is the speeding traffic, two is the lack of water diversion and drainage, and three is the building problems. She feels the speed problem is very bad. There are several speeding teenagers and she only sees it getting worse with the expansion of the highway. She requested speed bumps. The water run off is starting to wash away the road. She has not been able to grow grass due to the rock washing down from the hill into her yard. She built her new home with special features to help minimize the health problems her family has. Between the dust from the dryness and the mosquitoes in the standing water that pools they are not benefiting from the special features. A friend in the neighborhood has a degree in landscape management and he knows exactly the problems that are going on. The land and water consultant from the health department said if this was not fixed that her house is going to take on water and they will not be able to live in it one day. She went on to say she has issues with the building inspector. She has a list of 21 things that are wrong with her house. She moved into her house in October. For two weeks they had no heat because they tried to put a gas water heater and furnace into an all electric home. She has both carpet and linoleum coming up. She has lights that are not wired in. She spoke of several problems with both her home and her neighbor's home. Robinson's construction has not always been nice about the complaints. Her mother also has problems with her house in Ridge Springs. When the Building Inspector came to her house he said he was there to see if the hot water came out the hot faucet and cold water came out the cold faucet. She replied that is exactly what is wrong with my faucets. The hot comes out of the cold and the cold comes out of the hot. His next remark was "well in the State of Indiana by law you can't come against me". What are we suppose to do if this man is not held responsible. She feels the inspector should be replaced because he is suppose to be our failsafe to make sure these mistakes are not made. She previously owned a trailer in Owen County and the Building Inspector there came into her home and made sure all the electrical outlets worked and that the water faucets were correct.

**Jerry Pittsford** will forward the information on to Rick Coppock. They will also check with the Building Inspector to see if there were any problems that he identified that maybe were not corrected. We cannot take care of any problems with the developer. We do not do speed bumps; they interfere with the snow plowing.

Lisa said there is also a port a john left of the property. The children could possibly get locked in side.

**David Sorokoty** called last Thursday to request the removal of the port a john. He also said the traffic has slowed down on Chandler Drive due to Police patrolling the area. Jerry requested the speed limit signage be put in place on Deer Run. Mike

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Cornman requested extra Police patrol. Jerry also suggested they form a neighborhood association.

#### **Fall Festival request use of Town lots for use during the Festival**

**Geraldine McIntyre** moved to approve permission to use town lots September 20, 21, and 22 for the Monroe County Fall Festival. David Drake seconded, motion carried.

#### **MINUTES AND ACCOUNTS PAYABLE VOUCHERS**

**David Sorokoty** made a correction to the minutes, removing his name from those in attendance. He was on vacation. Geraldine McIntyre moved to approve the minutes and accounts payable vouchers as amended. David Drake seconded, motion carried.

#### **SUPERVISORS**

**Jay Humphrey** assured Mr. Kain they would work with them on the COPS grant.

**Jim Ragle** requested permission to investigate purchasing a backhoe and a street sweeper.

**Mike Spencer** informed the Council he had been in contact with Mr. Petrangelo concerning the dog suit. There has been no movement. Their attorney representing the dog trainers said they have placed the dog we had rejected. Mike inquired how much they were paid for the dog. If they have been paid for the dog we should not have to pay for it again. Mr. Petrangelo will check into that it would give him a reason to call the opposing council and see what the status of negotiations are. The new trail date is August 6<sup>th</sup>.

**Sandra Hash** said we received the one time COIT payment of \$59,789.00.

**Darlyne Sowder**, Park and Recreation Board President thanked Jim Ragle for repairing the 2 shelter houses at Campbell's Park. They are still waiting on a legal description for the park across the street.

**David Drake** said in response to a complaint about a home daycare in Kelli Heights he was doing some research on childcare homes. It appears that our town ordinance may be in violation of state statute. According to state law, zoning laws can't discriminate against a daycare home in a residential zone. Our code defines a daycare as three or more children under the age of 16 except their own children. In other words anyone who watches more than three children in addition to their own under the age of 16 can not do that in a residential zone. They can get a variance in an R-2 or R-3 zone to do that. State law says basically you can't set the limit below 16 excluding their own children for a daycare home. The state statute was amended in 1994, which probably came after our code was in place. The City of Bloomington uses that same limit. They must comply with the building code in that zone.

**Mike Cornman** said he thought home rule could make it more restrictive we just can't make them any less restrictive.

**David Drake** quoted "the zoning ordinance may not exclude a childcare home from a residential area solely because the childcare home is a business. It cannot impose limits on the number of children that may be serviced by a childcare home or vary from the limits set forth".

**Mike Spencer** was requested to look into this matter.

**Geraldine McIntyre** requested a meeting of the lighting committee. She requested Jim Ragle and Darlyne give Sandy a date they would be available.

**David Sorokoty** received the report from the Forester. The pin oak is not the largest in the state, but it is the biggest in the county. He also forwarded a possible grant to help preserve the 20-acre well site property.

**Mike Cornman** discussed the accident at Second and Ritter and requested an investigation of the possibility of 4-way stops at that corner and the corner of First and Ritter. Mike is making this an official request,

**Jerry Pittsford** gave a tip of the hat to Monroe County and Bill Williams for the new bridge on McNeely Street. The local officials attended the ribbon cutting.

**PUBLIC COMMENTS**

**Ed Bitner** requested repair of a pot hoe on Highway 46 in front of Joe G's. That is a state highway and Jim Ragle will call and request repair.

**ADJOURNMENT**

**David Sorokoty** moved to adjourn. Geraldine McIntyre seconded, motion carried. Meeting adjourned at 9:40 PM.

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Jerry Pittsford, President

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David Sorokoty, Vice President

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Mike Cornman

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David Drake

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Geraldine McIntyre

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Sandra C. Hash  
Clerk-Treasurer