

## **March 14, 2011**

The Ellettsville, Indiana, Town Council met for a Regular Meeting on Monday, March 14, 2011, at the Fire Department Training and Conference Room. David Drake called the meeting to order at 7:00 p.m. Dianna Bastin led the Pledge of Allegiance followed by a prayer led by Phillip Smith.

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

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

### **Approval of Minutes**

David Drake entertained a motion for the approval of the minutes for the Regular Meeting on February 28, 2011 and the Executive Session on February 24, 2011. Dianna Bastin so moved. Phillip Smith seconded. Motion carried.

### **Accounts Payable Vouchers**

David Drake entertained a motion for action to pay Accounts Payable Vouchers. Scott Oldham made a motion to pay the vouchers. Dan Swafford seconded. Motion carried.

### **Resolutions**

#### **Resolution 08-11, Temporary Loan**

**Sandra Hash, Clerk Treasurer** – The MVH cash balance is down. Therefore, \$50,000 needs to be borrowed from the Rainy Day Fund. MVH gets monthly payouts but they are not enough to meet the payroll.

David Drake entertained a motion to approve Resolution 08-11. Phillip Smith made a motion to pass Resolution 08-11, Temporary Loan. Dan Swafford seconded. Roll Call Vote: David Drake – yes; Scott Oldham – yes; Dianna Bastin – yes; Phillip Smith – yes; and Dan Swafford - yes. Motion carried 5-0.

### **New Business**

#### **Smithville Water Connection at 7640 West State Road 46**

**Connie Griffin, Director of Planning** – The Smithville project was first discussed back in November 2010. It appeared at that point in time an agreement had been reached with Smithville and Ellettsville Utilities to provide the new project area with a water and sewer connection. This project was introduced and approved at the Plan Commission meeting on December 2, 2010. On January 5, 2011, during the monthly supervisor's meeting, it was discussed there might be a possible change with the Smithville project plans. It was determined to send Smithville a letter to ask if there had been any changes to the project. In response, Smithville advised they had chosen to connect to Bean Blossom Patricksburg Water instead of the Town's water supply. The project had been approved with the Town's water and sewer connection. Any type of project plan amendment requires it to come back before the Plan Commission. The Smithville project returned to the Plan Commission on February 3, 2011, and the amendment was passed by a vote of 4-1. The Town met with Bean Blossom Patricksburg Water Corp. on February 25, 2011. This meeting is one of the first discussions due to a Town Code requirement under §153.100(b)(1). Basically, §153.100(b)(1) discusses whenever there is a different connection, there are water standards that need to be met by the Town and agreed upon by the suppliers. The Planning Department and the Plan Commission have met their role for the project approval and amendment. At this time, it is the decision of the Town Council for approval. The Fire Chief has asked for clarification of hydrant locations and that they can be flow tested, that the Fire Department does not have to pay for water usage and that the hydrants are always turned on above ground unless defective. Dan Swafford confirmed the Plan Commission did vote for the amendment with a favorable recommendation of 4-1.

**Phil Bastin, General Manager of BBP Water Corp. (“BBP”)** - BBP has had water lines in the Smithville project area for approximately 35 years. In their master plan, the strategic plan was to upgrade lines along State Road 46 and they are in the process of doing so. They have already done this in Owen County and are doing some more west of the County Line. Smithville is included in a portion of this upgrade as well. BBP has met with Smithville Telephone representatives, the contractor and subcontractors and they can meet their specifications.

**David Drake** - Is concerned he has not seen an official document that declares the service area for BBP. He understands the concept under federal law that gave BBP the original loan that other companies are not allowed to encroach in their service area. Mr. Drake asked Mr. Bastin what their service area included at the time the loan was established. Mr. Bastin responded their service area is anywhere they have existing water lines. Mr. Drake asked if this means BBP can place their water lines inside another utilities' area or within the Town limits. Mr. Bastin answered the Indiana Utility Regulatory Commission (“IURC”) defines those areas and basically it is on a first come first serve basis. If you have water lines in an area it is basically your territory unless you are an entity that describes your territory. BBP is a public entity and a cooperative. They have had water lines in the Smithville project area for 35 years, and they feel it is their responsibility to serve Smithville Telephone Company. Mr. Drake commented he does not want to put Smithville in the middle of the dispute. However, he feels the Town Council is being pushed to do this because it is Smithville. They appreciate that Smithville is in Ellettsville and do not want to upset them. This issue should have been resolved a long time ago and shouldn't have come up at the last minute. Then, the Town Council would have had sufficient time to determine BBP's service area and whether or not they still have the original loan. Mr. Bastin stated BBP has several loans with the federal government. Mr. Drake stated he has looked at several maps of the area and they are confusing. His main concerns are how the service areas are defined, whether or not BBP has the original loan and if it makes any difference. Mr. Drake asked Mr. Bastin if BBP was wanting to charge for reading the meter and then giving the Town the information so it could be used to bill for the sewer. Mr. Bastin responded this is pretty common and it is very reasonable. BBP charges 50¢ to read meters because there is a cost to them for reading the meters. BBP also services four other wastewaters as well and they are all charged accordingly. David Drake stated he is further concerned that this will set a precedent that the Town of Ellettsville goes no farther than it is at this time. Mr. Bastin said BBP has no problem with the Town annexing wherever it wants to go and they're glad to work with them. However, they feel it is BBP's duties to service that territory.

**Dan Swafford** – Asked Mr. Bastin if he brought a copy of his lines. Mr. Bastin stated he didn't bring copies of the lines but they have provided maps. Sandra Hash provided the map BBP had given to the Plan Commission. Mr. Swafford stated they had a meeting with BBP and Smithville. Dianna Bastin, Connie Griffin and Darla Brown, Town Attorney, were also present. In his opinion because Smithville is in a hurry to build and the area surrounding the project is completely BBP's lines the Town Council should approve the Smithville project and meet later to establish boundaries.

**Dianna Bastin** - Stated she was late to the meeting with BBP and missed most of the discussion. Ms. Bastin asked Darla Brown, Town Attorney, if a local business has the right to choose their water service. Ms. Brown responded she is not convinced that this is the case. If it is true that the loan under §1926 is in effect and that BBP was servicing the area at the time they got the loan, she is not certain that the customer has a choice. She believes the loan overrides the customer's preference.

**David Drake** – Asked Mr. Bastin if BBP would abide by the requirements of the Town Code. Mr. Bastin responded BBP has agreed to do so. Dan Swafford stated this was a big concern in December when the Town met with Smithville because at that time BBP couldn't meet their needs. Since that time, BBP agreed to put in bigger lines. David Drake stated the annexation resolution states the area will be served by Ellettsville water and sewer. Darla Brown stated that is correct.

**Scott Oldham** – Stated the Town Council needs to get themselves in order with the surrounding entities before they literally go to war and prevent someone from doing

their course of business. Should the Town choose to take action against BBP or any other entity, it could result in years of legal action, in which Smithville, a homeowner or a startup would be left with nothing. This would cost money and development in the long run. At this point, the Smithville project should be approved with the caveat and understanding that this is a continuing issue with the Town that needs to be resolved and potentially resolved through the court system at some point. The Town cannot simply say “everybody stop” because we didn’t realize what was happening. This project needs to be allowed to go forward and then the Town can fight it through the court system at some point. David Drake stated this is something that should have been dealt with years ago. The Town is faced with the problem of having to make a decision at this time because they do not want to hurt Smithville Telephone by preventing them to develop their property. Scott Oldham said 30 years ago no one thought this far down the pike and the process hasn’t occurred to any one. It is time the Town move forward with some type of future plan with agreements so Smithville or anyone else doesn’t have to go through this process. Then, the Town will not continually be nickel and dimed with small and big lawsuits, and more time of the Town Council to continually fight this issue.

**Darby McCarty, President of Smithville Telephone Co.** – Some of this issue was partially her fault in the very beginning. When she first met with the Town concerning water she was told BBP could not supply what she needed. Instead of doing her own due diligence and talking to Mr. Bastin she went with what the Town had told her. This was her mistake. She owed Mr. Bastin the respect to talk to him about whether or not BBP could supply what Smithville needed. As far as working with other utilities it is no different than what Smithville does on a daily basis and they are called interconnection agreements. Smithville partners with AT & T, Verizon and Windstream and has interconnection agreements with them. She was told in the 1990s it was suggested that Ellettsville have a utilities board and she doesn’t believe it ever came about. Perhaps, this would be a good time to consider a utilities board. Whether it’s BBP or someone else, such as Comcast coming in and supplying television service, it isn’t any different because they are deregulated. Anybody can come in to provide services. These are the things that growing towns suffer with and they are the challenges. Her concern was that it was getting into the same problems as in 1998 when some of the documents were formed and signed. Ms. McCarty does not think there needs to be any victims in this at all. The Town opted out of the IURC. Ms. McCarty debated to have Smithville’s annexation reversed, if necessary. She has been upset with the non-professionalism as to how this has been handled. Ms. McCarty has never asked anything of the Town and Smithville pays more than their fair share of work they have done by the Town. This goes back to the fire hydrant that was put back on their property when the new warehouse was added. Smithville has always been a good citizen and she doesn’t necessarily appreciate the appearance that this issue is due to Smithville. Smithville is a good employer and pays a good tax base to the Town. It would be good for the Town if they could work out interconnection agreements with other utilities.

**David Drake** – Clarified it is difficult because he doesn’t want to do anything to hurt Smithville because it has been a great company. If the Town takes the time to resolve this issue then it will hurt Smithville Telephone. He doesn’t want this to happen. Darby McCarty commented that Ellettsville has been blessed in the past years with several good employers such as Cook and Bybee Stone. Mr. Drake requested to hear from Ellettsville Utilities as to how this issue will affect the water service in the west side of Ellettsville.

**Mike Farmer, Ellettsville Utilities** – Their master plan includes S.R. 46 which includes a 12” main. It will be necessary for any industry they may serve in that area along S.R. 46. They are involved in taking care of new and existing utility customers. Ellettsville Utilities thought this was an opportunity when the property was annexed to serve not only the sewer in that area but the water as well. They had worked with Smithville Telephone before managing their fire protection needs. Smithville paid for the construction and Ellettsville Utilities paid for the labor. It would be good for the Town to have both utilities in the area. Ellettsville Utilities will not fail if they do not serve that area. As he has stated earlier, he believes the customer has a right to choose

between the two water companies. In this case, Smithville Telephone chose BBP and Ellettsville Utilities made a recommendation to permit the sewer to be hooked up. As Ms. McCarty stated, as towns grow we are entering into new considerations as to where existing utilities lie. The Smithville Telephone project should not be slowed down due to this issue.

**Scott Oldham** - Asked if some time in the near future, could Bynum Fanyo Utilities look ten years down the road and provide the Town with any conflicts they may anticipate. The Town needs to get some agreements in place now so the Town Council is not continuing to have to contend with this issue. Mike Farmer said they have a clear path for water expansion in the future. The Town is surrounded by the City of Bloomington and BBP on two sides. On the west side of Ellettsville is where they originally obtained their water. BBP crossed their path early on and they got through it okay. As utilities cross in the future, there needs to be a plan and meetings with BBP. Mr. Oldham prefers these issues be known at this time and, if necessary, have the IURC explain the rules, so the Town knows what it's facing in the future. Mr. Farmer advised Ellettsville Utilities is under the control of the IURC.

**Dan Swafford** – Asked Mike Farmer if BBP is serving the Town's plant. Mr. Farmer responded this was correct. Bybee Stone's building on Maple Grove has a water meter from BBP and on the other end is a water meter for Ellettsville Utilities. Mr. Swafford said it is just going to take planning and working together to find a solution to this issue.

**Phillip Smith** – Asked Mike Farmer if Ellettsville Utilities has a master plan. Mr. Farmers stated yes. Mr. Smith requested a copy of the master plan.

David Drake entertained a motion to agree to the Smithville Telephone plan. Dan Swafford made a motion to approve the Smithville Telephone amended plan under §153.100 of the Ellettsville Town Code. Phillip Smith seconded. Roll Call Vote: David Drake – yes; Scott Oldham – yes; Dianna Bastin – yes; Phillip Smith – yes; and Dan Swafford - yes. Motion carried 5-0.

#### **Agreement Between the Town of Ellettsville and Smithville Security, LLC**

**Sandra Hash** – The Town contracted with Koorsen three years ago for security at Town Hall. Koorsen has been a good provider until a couple of months ago when a code on the system stated there was a line failure. It reoccurred for about three days and the alarm went off. Koorsen was contacted to come and check the line. Two employees were at Town Hall for 30 minutes and they charged \$187 to reset the alarm. Ms. Hash called Koorsen and asked if they offered a maintenance agreement to avoid a big charge. The fee for their service is \$25 a month. Koorsen advised they did not have a maintenance plan. Ms. Hash requested Smithville Security come in and look at the system. Smithville can use the existing equipment so there will not be equipment costs. Smithville will monitor the system for \$19.99 a month and they offer a maintenance plan for \$4.95. It is the same monthly cost but there will be a maintenance plan. Phillip Smith asked if the Town owns the current equipment. Ms. Hash responded that was correct. The Town paid approximately \$1,400 for the equipment. The agreement with Koorsen expires on May 22, 2011. Koorsen requires a letter terminating the agreement 60 days prior to the May 22, 2011 expiration date. Scott Oldham advised the Town Attorney had sent an email requesting to review the contract. David Drake stated, whenever possible, the Town should always try to use a business in Ellettsville. Sandra Hash stated Town Hall also has surveillance purchased and installed from Smithville.

**Darby McCarty** – Asked if Koorsen will go on a month-to-month basis until the Town Attorney has had an opportunity to review the agreement. David Drake responded the Town Council could approve the agreement with Smithville pending the approval of the Town Attorney.

**Dianna Bastin** – The Town Council has questions but will pass it. She understands both sides and agrees with all the arguments. However, if the Town Attorney has questions then she doesn't think they should pass the agreement. Ms. Bastin also agrees with doing as much business locally as possible. If the Town Attorney has

advised she has questions then the Town Council needs to wait on making its decision. In the meantime, the Clerk-Treasurer could check with the other business to see if they will continue on a month-to-month basis until the Town Attorney has had an opportunity to review the agreement. David Drake commented Town Hall could end up with no security company at all or another one year contract with Koorsen. Scott Oldham asked what happens if within 60 days the contract hasn't been reviewed. Phillip Smith advised the letter to Koorsen would not be sent until the contract has been reviewed by the Town Attorney. If the Town Attorney has not had an opportunity to review the contract within the time the letter needs to be sent to Koorsen, the Clerk-Treasurer will not send it. Dan Swafford asked Darla Brown to send the Town Council an email if review of the contract will take more than one week.

Dan Swafford made a motion to approve the agreement between the Town of Ellettsville and Smithville Security, LLC pending the attorney is happy with the wording. Phillip Smith seconded. Roll Call Vote: David Drake – yes; Scott Oldham – no; Dianna Bastin – no; Phillip Smith – yes; and Dan Swafford - yes. Motion carried 3-2.

### **Supervisor Comments**

**Town Marshal Tony Bowlen** – Is seeking approval of Jeremiah Rice as a Reserve Deputy Marshal. Mr. Rice was formerly with the Monroe County Auxiliary Police and has met all of the requirements to become a reserve officer.

David Drake entertained a motion to approve Jeremiah Rice as an Ellettsville Reserve Deputy Marshal. Scott Oldham made a motion to approve Jeremiah Rice as an Ellettsville Reserve Deputy Marshal. Dianna Bastin seconded. Roll Call Vote: David Drake – yes; Scott Oldham – yes; Dianna Bastin – yes; Phillip Smith – yes; and Dan Swafford - yes. Motion carried 5-0.

Jeremiah Rice was sworn in as an Ellettsville Reserve Deputy Marshal by Sandra Hash, Clerk-Treasurer.

**Sandra Hash** – Previously sent an email to Town Council regarding the Chamber of Commerce concerns about the new Monroe County Comprehensive Plan. The Chamber is requesting that Town Council make a statement on what they feel the impact of the proposed plan is on the Town. David Drake is concerned with commenting on another governmental body's responsibilities. Dan Swafford stated the comprehensive plan will not affect Ellettsville at all. When someone annexes into Ellettsville they will not be under the Monroe County Comprehensive Plan. Ms. Hash explained the Chamber is worried the Monroe County Comprehensive Plan will stymie the growth of the Town west of Ellettsville. Monroe County has proposed it to be farm land and homes.

**Mike Farmer and Jeff Farmer, Ellettsville Utilities** – Provided photographs of the overflows in the system during the last few rain events at the following locations:

- Maple Grove
- West Brook Downs
- Northern Richland Sewer Corporation's man hole
- Swampy area in Northern Richland Sewer Corporation's area – this has been repaired
- Eastern Richland's sanitary sewer over flow
- Lenzy Hayes – "Old Faithful"
- Pat Mitchell – "Urban Legend"
- Behind Bowman's

There is really nothing that can be done after it overflows because it has to do with the infiltration and inflow. There needs to be a beginning to solving these problems. Dan Swafford asked if Northern and Eastern were notified of the events and the times they occurred. Mike Farmer responded they are being notified right now. A video of the events was also presented. David Drake asked if there was a regulatory agency for reporting the events. Mike Farmer said yes and they have made contacts with the local

inspector. Ellettsville Utilities would really like to work with Northern and Eastern to resolve these problems. Jeff Farmer stated four days after the last rain event the flow meter was calibrated on Eastern, Northern and one of the Town’s lines to help reduce I & I. It was flowing at over 300 gallons per minute. This is 500,000 gallons in one day after the rain event.

**Council Comments**

**Dianna Bastin** – The supervisors are ready meet and review the Personnel Policy. They need a council representative and Ms. Bastin volunteered for this position. David Drake appointed Ms. Bastin as the council representative for the review of the Personnel Policy.

**Privilege of the Floor**

**Adjournment**

Phillip Smith made a motion to adjourn. Dan Swafford seconded. Motion carried. David Drake adjourned the meeting at 8:15 p.m.

After the meeting was adjourned, Barbara Davidson requested that Mike Farmer make a correct reply to the IURC complaint she filed regarding water failure two times in two weeks.

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David Drake, President

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Scott Oldham, Vice-President

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Dianna S. Bastin

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Phillip Smith

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Dan Swafford

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Sandra C. Hash, MMC  
Clerk-Treasurer