

March 31, 2014

The Ellettsville, Indiana, Town Council met for a work session on Monday, March 31, 2014, at the Fire Department Training and Conference Room. Scott Oldham called the meeting to order at 5:30 p.m.

Roll Call: Members present were Scott Oldham – President; David Drake, Vice President; Dianna Bastin and Scott Thomas. Dan Swafford was absent. Sandra Hash, Clerk-Treasurer, Rick Coppock, Bynum and Fanyo Utilities, Town Engineer, and Darla Brown, Town Attorney, were also present.

Supervisors present were: Jim Ragle, Connie Griffin, Mike Farmer and Jeff Farmer.

Ellettsville Main Street Inc., Board Members present were: Jeana Kapczynski, Chris Fisher and Brenda Wampler

Darla Brown explained the Town has proposed to take perpetual easements across properties which will be very restrictive. Homeowners can't build on the properties, plant trees and so forth. Indiana Department of Transportation ("INDOT") wants appraisers to value it at 95% of the fee simple value. The appraisals are so high because INDOT wants the Town to look at the whole parcel and not only the easement. They're ready to send letters to homeowners stating the Town is ready to approach them. She checked with the Monroe County Auditor's office and if they give easements homeowners won't get a property tax break. The statute which states the Town can't exceed the average of two appraisals still applies. The way to skirt this is to do a condemnation which will not be a popular decision. Bonding for the project is a possibility. A suggestion is to do a lend-lease agreement such as with the Fire and Police Stations but it may not be practical with the trail. The Parks Board has its own separate debt limit and perhaps they could bond for it. There will only be recording costs for the property and title searches will have to be done. The INDOT Real Estate Manager advised when the Town approaches homeowners it's okay for other people to go. He further advised to be careful discussing tax write-offs with property owners.

Sandra Hash, Clerk-Treasurer, provided a worksheet on a payment option for Phase I & II of the Heritage Trail. Scott Oldham advised the grant of \$165,000 went back to INDOT. Ms. Hash said it is her understanding what has already been spent doesn't have to be reimbursed but when the Town said they would build the trail they lost the grant. On March 12, 2014, Connie Griffin came up with expenses of \$168,000 for both phases. Ms. Brown noted that was assuming the Town got certain grant monies

Scott Oldham asked Ms. Brown if she thinks they will have to put out \$80,000 to purchase the properties. Ms. Brown has been told some of the homeowners would like to donate their properties. However, other attorneys have advised this does not often happen. Businesses will donate because they want visibility, people crossing their properties and tax write-offs. Mr. Oldham asked if the \$552,000 included the bridge. Ms. Hash replied yes and Ms. Griffin's printout includes everything for Phases 1 and 2 as well as grants and Main Street's money. Ms. Brown advised she and Connie Griffin received an email on March 5, 2014, from Josh Desmond of the MPO which states he is developing a fiscal plan that covers 2015 through 2019. If the Town wants money for those years the Town needs to submit project proposals now. Mr. Oldham asked if the Town wants to pay \$80,000 for six-tenths of a mile which is \$10,000 for every tenth of a mile. Scott Thomas advised this is his concern with all the expenses the Town is facing at this time. Mr. Oldham said it has been suggested to take the money and go north and use the sidewalks and center portion of Town and build a running trail to connect with Monroe County on the property the Town is considering purchasing.

David Drake asked what they expected the appraisals to be. Connie Griffin replied in 2004 they were estimated to be around \$18,000. Mr. Drake asked if the appraisals were inflated. Ms. Brown replied INDOT and the City of Bloomington has worked with the appraiser before and he has a good reputation. Mr. Drake said the Town has been committed to this project for some time and if they can find a way to pay for it responsibly then they need to do so. To back out over \$60,000 would be irresponsible on the part of the Town. Mr. Oldham asked how certain the bridge money is. Ms. Griffin replied if the Town doesn't lock it in with the Fiscal Management Information System ("FMIS") by June, it is not available.

Mr. Oldham asked how sure she is they will get it. Ms. Griffin replied she's sure they'll get it if everything is done on time because it has been set aside. Ms. Brown advised Josh Desmond told her there may be some room because if it looks like the Town is working on it they might cut the Town some slack. Chris Fisher asked if the Town offers to purchase or lease and there are one or two holdouts do they still have to purchase or lease to those who have accepted. Ms. Brown replied that may be a problem. Mr. Coppock advised condemnation will take the Town past the FEMA deadline. Jeana Kapczynski asked if the Town doesn't do the rest of the project will it have to pay \$60,000 back to INDOT. Ms. Brown answered if the Town declares a no-build or finishes the trail it doesn't have to pay it back. Mr. Drake asked what happens if the Town builds the trail without the bridge. If they build the trail then they could go for funding in the future for the bridge. Ms. Kapczynski advised the deadline for accepting \$25,000 from the Community Foundation is June 30, 2014. Ms. Brown noted INDOT advised if the Town exercises the no-build option the Town can still use MPO funds but can't use federal funds.

Scott Thomas stated the Town has been talking about this for 14 years. He thinks the Town should move forward with the trail but doesn't think Phases 1 and 2 are the way to start it because of the timing and cost. If the Town purchased the pasture property and tied it into where the trail is going to come in there would be more for the citizens than the half mile section. He is concerned about people crossing State Road 46. Mr. Drake asked if they went to a different phase would they not have to start all over again with designs, appraisals and funding. Mr. Oldham asked Ms. Brown if it's on a piece of property the Town owns do they have to deal with INDOT. Ms. Brown answered if the Town decides not to build the trail but build something totally different the \$60,000 would have to be paid back.

Dianna Bastin asked which deadline was missed that resulted in the loss of \$163,000. Ms. Brown thinks it was in September 2012, when Schneider Corporation was to get the contracts to INDOT. Ms. Bastin is for the trail and thinks the Town should keep its word but doesn't think the Town will be ready. Why are they down to the wire when they have been talking about the trail for years? Allegedly Schneider Corporation was responsible for the \$163,000 but she looks at it as Ellettsville was responsible and should have known. The Town has to share in the blame. Is the Town going to do all of this work for nothing and have to pay \$60,000 back to the state? Ms. Hash asked Ms. Brown about INDOT changing their rules. Ms. Brown answered INDOT advised they had been letting contract deadlines slide, then started enforcing them and the Town got caught in the middle.

Scott Oldham asked once the property is acquired, how long it will take and how much will it cost to get the trail moving with just asphalt down. Mr. Coppock thinks it will be around \$50,000. Ms. Hash advised Connie Griffin's estimate was \$41,000 for materials and \$53,000 for labor and equipment. If the Utility Department builds the trail they expenses could not be paid with utility money. Ms. Brown noted the problem is the Town has accepted INDOT money and the property acquisitions have to be according to the INDOT manual. Mr. Oldham said the Town is on the hook for \$60,000 no matter what the decision is. Does the Town pay \$80,000 and be done with it? They have \$45,000 in Build Indiana, approximately \$30,000 in Parks and Ms. Hash's plan has funding for phase I & II. Ms. Brown asked if they want her to talk to Umbaugh about bonding for the trail. Ms. Hash asked that they don't bond for the trail. It cost substantially more than a bank loan. Mr. Coppock suggested if they ever bond for a new Town Hall the five year loan could be wrapped in with it. He explained the high dollar easements and the bulk of the \$85,000 in appraisals are the commercial properties. Mark Peters has the only property that is on the same side as the creek. One of the reasons for the easement is that it doesn't hurt his setbacks or use of the property. Easements can be within the setback. If the property is purchased fee simple there may be damages to the property where nothing can be built on it. Then the Town would have to purchase the whole property if he can't do anything on it. The Town is looking to buy the Stewart property for the flood issues. Ms. Hash said if the bridge wasn't built the trail will end on to the Peters property. Pedestrians would have to cross the Peters property to go to the road where there is no sidewalk. INDOT won't allow a crosswalk on Main Street and Chandler Drive.

Rick Coppock, Bynum Fanyo and Associates, Town Engineer, commented they haven't discussed what the trail will do for the Town. The trail could bring people to downtown and generate foot traffic for businesses. Mr. Thomas thinks the trail is worthwhile but they'll be building this half mile section when there is nothing on either side of it. Ms. Hash noted when the trail originated the Town didn't have the highway pair or nice sidewalks. It is walkable now but it hasn't increased the foot traffic to downtown. Mr. Oldham asked Ms. Brown if they need to do anything else because they've already voted to build the trail. Ms. Brown needs a consensus of whether or not to start approaching homeowners. The appraisals also need to be signed by Mr. Oldham so Ms. Griffin can forward them to INDOT.

Scott Oldham advised the Town is trying to buy the pasture but the appraisals averaged \$78,500 but the gentleman who owns the property wants \$80,000 which the Town cannot pay according to state law. Mr. Oldham asked if Main Street would buy the portion of the trail on the property that will connect to the Monroe County trail for \$1,500. Ms. Kapczynski advised Main Street's board will have to discuss it and it's not their territory. Ms. Brown has asked the State Board of Accounts ("SBA") if someone can donate \$1,500 to purchase the property but has not yet received a response. Ms. Hash cautioned entering into multiple promissory notes over the next few years could affect the Town's bonding ability.

Scott Oldham asked the Council's thoughts on building the trail. Mr. Thomas' agrees on building it if they can build Phase 4 at the same time as Phase 1 and if they don't have to pay the money back. Ms. Bastin is okay with building both phases at once and is worried about the next deadline. Ms. Hash asked the time frame for going out and purchasing the property. Ms. Griffin answered the property owners have to be given 30 days to consider the options. Ms. Brown added INDOT's suggestion was to go ahead and send letters telling homeowners they want to contact them then Ms. Griffin, Mr. Coppock and whomever else will make contact with them. If their answer is no, then they send a letter giving them 30 days to look at it. Ms. Bastin asked if people knew their property was being appraised for the trail, wouldn't they have an inclination the Town was looking to buy it. Ms. Brown said the appraiser sent a letter to the property owners stating they would be looking at their properties for purposes of the appraisal. When Ms. Griffin and Mr. Coppock have their first meeting with the property owners they can ask if they're interested in donating their land at that time. If the property owner requests a full appraisal then the Town will have to do one. The waiver evaluations done by the appraiser may not be sufficient. Mr. Oldham asked the cost of the waiver evaluations. Ms. Hash replied they cost \$10,724. Ms. Hash asked Ms. Griffin if the letters are ready to be sent out on April 1, 2014. Ms. Griffin replied the letter is to request their contact information. The property owner has a choice of having their packet sent to them or meet with her to get the information. Once they receive the full evaluation packet they have 30 days to review it.

Scott Oldham asked if they're buying easements or the property. Ms. Brown replied they're purchasing a perpetual easement across their property. It is 95% of the fee simple value because it is restrictive. There will be a strip across their property they cannot do anything with and it runs with the land. This is why it is so expensive. Ms. Hash asked if it relieves the property owner of liability. Ms. Brown answered there is a Recreational Users Act which provides some protection to the Town. If a governmental entity has a fee interest or is in control of a tract of land and a person who goes through the premises with or without permission for swimming, camping, hiking, sightseeing or any other purpose, the owner of the premises does not assume responsibility or incur liability for an injury to a person or property caused by an act or failure to act if another person is using the premises. Mr. Farmer asked if a person could sell the property for the appraisal value. Ms. Brown said that would be fine. Mr. Drake has the same concerns as Ms. Bastin but the Town is in it too far to back out now.

Rick Coppock asked if sending the contact letter was a requirement. Ms. Griffin replied it's all in documentation and it was a suggestion. She did find the contact information on the appraisals. She is the buyer and was selected as the ERC. She can't have people going with

her which she has been warned about by very important people. There won't be any coercion or ganging up on them. You have to follow protocol. There's a lot of pressure to do it right. She and Rick Coppock will go out because he has the experience. Mr. Oldham said when they referred to the Town they meant her. Ms. Brown thinks they could send the letter with the appraisal and say "here's the offer and you have 30 days to accept or reject it." But her thoughts are this is a cold way to approach it if they're interested in getting people to donate. It should be an introductory letter. Jeff Farmer isn't trying to do anybody's job but the letter could be very simple such as, "the Town is willing to purchase your property and if you would like to donate it that would be great." For most of these people, it's on the back side of the property, on the other side of the creek and he imagines they would be interested in getting money or donating their property. Ms. Bastin added if she lived there she would want all the information up front. Mr. Oldham agrees. Ms. Griffin advised after they reach an agreement with the property owners they have to send it to INDOT for approval. Ms. Brown added it is because INDOT gets audited by the federal government. Mr. Oldham asked if it would be two years before they put anything down. Ms. Brown replied no. It would be that long before they would have to pay INDOT back any money because they did it wrong. Mr. Oldham asked if the process goes quickly and they know what they're purchasing the properties for can the Town go ahead and cut checks. Ms. Brown answered the Town can go ahead and appropriate the money and cut the checks. It will take some time to record the easements.

Rick Coppock advised Schneider will still have submittals to the Department of Natural Resources ("DNR"). It doesn't look like DNR received the model and he doesn't know what Schneider gave to INDOT. Apparently, INDOT's reviewed the model. Maybe there's some miscommunication as to what was submitted to the DNR.

Scott Oldham asked Ms. Brown if the Town could ask one of the appraisers to reconsider the pasture property. Ms. Brown replied they should be careful about it because the statute says two independent appraisals. Mr. Oldham asked how they get the property bought. Ms. Brown will check with the SBA. Mr. Oldham asked if they could condemn the property and pay the \$78,500. Ms. Brown answered if they condemn it and a complaint is filed the court will appoint two appraisers. They could enter into an agreement before they get to trial. The expenses to get it that way and the fee for the appraisers could be high. Jeff Farmer asked how long before the property can be re-appraised. Ms. Brown doesn't know if the statute speaks to that.

Chris Fisher confirmed the Town is going to go with Phases 1 and 4 if they get the \$1,500. What about the MPO money? Ms. Oldham replied they will try to make the deadline or get it extended.

Adjournment

The meeting was adjourned at 7:00 p.m.

Scott Oldham, President

David Drake, Vice-President

Dianna S. Bastin

Dan Swafford

Scott Thomas

Sandra C. Hash, Clerk-Treasurer, IAMC, MMC