

## May 26, 2009

The Ellettsville, Indiana, Town Council met for a Regular Meeting on Tuesday, May 26, 2009, at the Fire Department Training and Conference Room. Dianna Bastin called the meeting to order at 7:30 p.m. Dan Swafford led the Pledge of Allegiance and Sandra Hash led in prayer.

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

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

### Approval of Minutes

Dianna Bastin entertained a motion for the approval of the minutes for the Regular Meeting May 11, 2009. David Drake so moved. Dan Swafford seconded. Motion carried.

### Accounts Payable Vouchers

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

### Resolutions

#### **Resolution 12-09 to adopt a written fiscal plan and to establish a policy for the provision of town services to an annexed area for the House of Prayer/Mitchell 1-2009 Annexation**

**Frank Nierzwicki** presented a voluntary annexation of 68 acres located in the southern part of Town. It is adjacent on the southern border by Woodyard Road, Hartstrait Road on the western border and Harbison Road on the northern border. Frank met with Town Supervisors and the Plan Commission Vice President in a development review meeting at which time they reviewed the request. There is no extra cost in this area. The House of Prayer is very interested in becoming part of Ellettsville. Dianna clarified this property is also known as 4100 N. Hartstrait Road and 5401 W. Woodyard Road. Mike Spencer asked if the “track issue” has been taken care of. Frank stated “I believe we did”.

David Drake made a motion we adopt Resolution 12-09. Dan Swafford seconded. Roll call vote: Dianna Bastin – yes; David Drake – yes; Scott Oldham – yes; Phillip Smith – absent; Dan Swafford – yes. Motion carried 4-0.

### Ordinances of First Reading

#### **Ordinance 09-07 to amend Sections 52.006 and 52.023 of the Ellettsville Town Code concerning Private Sewage Disposal Restricted**

**Connie Griffin** explained the wording “Sanitary Vault Privy” was added for clarification. Sanitary Sewage and Sanitary Sewer were defined but not “Sanitary Vault Privy” (septic tank). A “Sanitary Vault Privy” was commonly known as an “outhouse” and this ordinance will make sure they are kept clean if there is one. Connie stated there are no septic tanks in the corporate limits. There was some question on that. Connie will research it and have an answer at the next meeting.

#### **Ordinance 09-08 to amend Section 92.01 of the Ellettsville Town Code concerning Streets and Sidewalks**

**Dianna Bastin** stated this ordinance covers snow and ice removal on the sidewalks. The ordinance states “twenty four hours after snow or ice has ceased to fall or in anyway accumulate so far as is practicable and reasonable”. Dianna clarified the Town will not be out as soon as the first snow falls to make residents clear their sidewalks. The Street Department will clear the roads in the Town before the sidewalks. David Drake asked Mike Spencer about the section stating “upon failure of any occupant.... It shall be the duty of the Street Commissioner of the Town to remove or cause to be removed that snow and ice”. Does this create a liability for the Town if it is not done since we are creating a duty for the Street Department? Mike Spencer did not know if the Town has the liability or not if we did not have this ordinance; he could not answer the question. David Drake

read an Appeals Court case and he feels this creates liability; we did not have before, by stating it this way. Changing the words would take care of this. Mike Spencer and David Drake discussed the different options. Mike Spencer stated this needs more discussion and the Council needs to think about what they want to do about it; create this type of obligation or not. Dan Swafford stated the sidewalks along the highway are not the property of the owners. Mike Spencer said the property owner has the obligation to keep the sidewalk repaired; it is a “muddled” situation. Dianna asked if this ordinance would include the sidewalks down State Road 46. Connie said “no, we do not have the proper equipment for that”.

**Ordinance 09-09 to amend various Sections of Chapter 93 of the Ellettsville Town Code concerning Health, Sanitation and Nuisances**

**Dianna Bastin** spoke with Connie Griffin before the meeting and Connie requested this ordinance to be tabled. Connie would like to consult with Marshal Bowlen to rework the wording.

**Ordinance 09-10 to amend various Sections of Chapter 94 of the Ellettsville Town Code concerning Abandoned, Salvaged and Scrap Vehicles**

**Dianna Bastin** stated the Town Marshal and the Department of Planning Services are the agencies responsible for the removal, storage and disposal of abandoned vehicles. Connie said the Town of Ellettsville does not set the fees for towing or storage. The fees are assessed by local companies. The Town does not have a storage facility. Dianna asked if the Town will be towing off private property. Connie stated police officers do not go onto private property for that purpose. They will tow off the streets and illegal parking areas. David Drake went on to say there is a whole other section of State Laws that deal with towing abandoned vehicles off of private property. The State Laws will take precedence over Town Codes. Sandra stated Dexter Luck was the advocate for this while he was employed with the Planning Department. Dianna does not want it to be Ellettsville responsibility to go to a business and clean up their lot for them. David gave an example of what procedures the State statute deals with. The Town ordinance covers a different situation; an abandoned junk vehicle on the property of the owner of the vehicle which is a completely different situation. There has to be some provision for citing the person or something. The State statute talks about leaving vehicles on a public street or someone else’s property. Scott Oldham pointed out in Section 94.03 (A) The Code Enforcement Officer shall be responsible for the removal/towing from private property, all abandoned/salvage vehicles, with the same powers, restrictions and guidelines, as the Town Marshal. This empowers the Planning Department to exercise the same provisions that the Town Marshal uses under Indiana Code to remove vehicles. Dianna apologized for not looking up the Indiana Codes.

**Ordinance 09-11 to amend Section 152.220 and 152.228 of the Ellettsville Town Code concerning Parking, Loading and Driveways, Fees, Fines and Enforcement**

**Connie Griffin** stated recreational vehicles and watercrafts were added to the onsite storage of motor vehicles in Section 1 (B). Section (C) (6) fourteen consecutive days are allowed for minor vehicle repairs. Section 4 152.228 Fees, Fines and Enforcement (A) The permit fee for a residential driveway shall be \$25. Dianna asked if recreational vehicles can be parked in residential driveways. Connie said they can not be parked on the lawn.

**Ordinance 09-12 to amend various sections of Chapter 152 of the Ellettsville Town Code concerning Planning and Zoning**

**Connie Griffin** explained these codes were originally in the Town Code but were somehow eliminated at one time or another. 152.336 (A) Conditional Use, (B) Special Exception, (C) Variance definitions and 152.35 Filing Fees (A) Petitions for all conditional uses and special exceptions \$150.

**Ordinance 09-17 to amend Section 152.143 of the Ellettsville Town Code concerning Grading and Erosion Control Applicability**

**Connie Griffin** explained this code is being introduced because parking on the grass has been an ongoing situation and issue within the community. In older subdivisions there is

not a lot of room for extra parking for cars; if parking on the grass becomes a “land disturbing erosion” activity, this ordinance will require them to repair the situation. It is very difficult to continually enforce no parking on the grass.

Dianna Bastin stated the various ordinances carry a Class E Ordinance Violations that cost \$25 and subject to a fine each day.

#### **Ordinance 09-15 1-2009 House of Prayer/Mitchell annexation**

**Frank Nierzwicki** explained this ordinance (in its first reading) goes along with the Fiscal Plan approved earlier in this meeting.

#### **Ordinance 09-16 to rezone the west corner of W State Road 46 and Deer Park Drive from R-1 to R-2**

**Frank Nierzwicki** stated this was presented to the Council back in December. There has been a change on the request since last presented. The lots, on the cul-de-sac, are requesting the rezone but the lot located on Deer Run between the current duplex and a residential home will remain R-1. Dianna explained she voted no on this ordinance the last time it was presented because the neighbors had questions and asked if all the questions have been answered. Frank stated he has been out there numerous times, with them, and believes the questions have been answered. Frank, at this point, can only talk about the rezone. He can not say “what the future development plan will exactly be because that has not been submitted”. Frank has visited the site numerous times in the last few weeks, with Council members, speaking with adjacent neighbors.

#### **Supervisors Comments**

**Frank Nierzwicki** has been working on the Heritage Trail situation. He presented a map showing three phases with the first phase starting near the Village Inn, across the creek going to the northwest and ending near the creek at Main Street. The funding for Phase One comes from \$170,000 grant received in 2003. Phase Two will be the bridge crossing at the creek next to Town Hall. Phase Three will be from Main Street going north to McNeely. The funding for the first two phases are grants that we currently have. Frank has spoken with the adjacent property owners to fund Phase Three. There are a number of contributions. Frank would like to proceed with some of the preliminary and survey work for the trail. \$30,000 is needed for a local match or in-kind services for the grant and \$25,000 has already been collected. David Drake thanked all the people who have donated. This trail has been a long time coming. Scott Oldham clarified there are sufficient monies in hand to complete Phase One of this project with some of town employees doing some of the work. Frank is confident the remaining \$5,000, still needed, will be raised very shortly by several outstanding contributors. Scott stated he spoke with Rick Coppock who feels the cost has gone down on some of the items and the \$25,000 is a sufficient match to complete Phase One and start Phase Two. The bridge is the most costly item on the entire project. Frank stated the original design was made in 2000 by a Ball State student with some ideas of bridges over the highway. The Town could not afford a pedestrian bridge over the highway with the requirements needed. Frank stated the funding from the Federal Stimulus package is 100%. Dianna understood the Town could not contribute the labor and now we can? Scott Oldham explained under the first grant some of the money can be “in-kind”. Frank stated the Town can not do all the “in-kind”. There is a guide from 2000 on where to start. Scott said Frank is making this announcement tonight and moving forward because the comfort level is more than there and sufficient funds are in hand even if there were no more contributions coming in for this project to be completed. The Town is well within legalities of what the grant allows us to do. As the Council has discussed before, it has always been our intention to complete this project. Frank stated the trail will connect in other phases to Bloomington. There could be a connection from Bloomington to Ellettsville (by bike). The landowners agree with this. Frank has had some problems finding ownership to some of the tracks. Some of the tracks go back to the 1800’s. A survey needs to be completed to find out exactly what needs to be done on the area for the trail. Dianna reiterated all the plans are in a book that was put together by Ball State University student Barry Fisher. Dan asked who should people call to make a donation. Frank said donations can be left at the Planning Department and are tax deductible. Dianna is excited about the trail but reminded the public the Council

welcomes their input and comments. Frank Nierzwicki asked if there needs to be Council approval concerning work on the trail.

Dianna Bastin entertained a motion that we approve the beginnings of the work on the trail as mentioned by Frank. Frank stated we are spending donation money to prepare for spending the grant money. David Drake stated the work would include surveying, preliminary engineering and environmental assessment for trail Phases One & Two. Dan Swafford so moved. Roll call vote: Dianna Bastin – yes; David Drake – yes; Scott Oldham – yes; Phillip Smith – absent; Dan Swafford – yes. Motion carried 4-0.

**Sandra Hash** asked about the rezone on the corner of Deer Park and W State Road 46; when it came before Plan Commission there was a legal advertisement and all the property owners were notified that the Public Hearing would be with the Plan Commission and again with the Town Council at the May 11<sup>th</sup> meeting. The Public Hearing did not get on the May 11<sup>th</sup> Council agenda. Sandra spoke with Rick Coppock who stated he would advertise it again. The people attending tonight's meeting want to speak about the rezone. Sandra asked Mike Spencer if one Public Hearing with the Plan Commission is sufficient or should there be also be one with the Town Council. Mike Spencer asked what the Public Hearing is regarding. Sandra said the rezone of the property. Mike Spencer stated the Plan Commission provides the notice and the Plan Commission certifies it to the Town Council within ten business days after the Plan Commission determines its recommendation. The Town Council has to consider it but he thinks their notice is the normal meeting notice (48 hour notice). Sandra clarified when a rezone is advertised it only needs one Public Hearing advertised by legal notice with the Plan Commission. Within the ordinance it states "the Plan Commission recommended it so that covers the notice to the Council". Frank stated there are some developers that would like to rush things along but he is reluctant to go from a Thursday night meeting and have it published on the next Monday's Town Council agenda. There have been times that dictate a "rush through" but Frank prefers not to do that in order to allow enough time to make sure the paper work is reviewed by the Town Council first. Mike Spencer stated it is correct the Town Council needs to post a 48 hour notice of intention to consider a proposal at the meeting. The Plan Commission's obligation is to certify a proposal within 10 days and the Town Council must vote on the proposal within 90 days after the certification. The residents have received a second certified notification that their issue will be considered before the Council this evening.

Dianna Bastin asked any person who would like to address the matter of the corner of W State Road 46 and Deer Park Drive to approach the podium.

**Doug Curry**, registered land surveyor with Bynum Fanyo and Associates, has been working on this project so the owners can get their rezone request. The current owners are Randy Cassady and John Seeber and they are requesting four of their lots be rezoned from R-1 to R-2. The four lots are the lots facing the road stub. The reasoning for the zoning change is the presence of the existing duplex. The remaining lot will stay R-1 because the lot faces Deer Park Drive and is nestled among existing single family houses. The duplexes will be physically segregated from the single family houses because they will face the road stub. Two other matters have been brought up at the Plan Commission meetings; stormwater control and runoff. The primary rule is that a development can not increase the runoff from the site. This is measured in cubic feet per second (CFS). Mr. Curry's engineer has taken a deeper look at this site due to concerns raised at the Plan Commission. The engineer stated in the final plan and final construction of this site, the CFS going off of the site will be less than the current unconstructed site. Another stormwater concern that was brought to the Plan Commission was "won't duplexes cause more roof runoff to control than a single house?" Mr. Curry said "probably not". Due to the size of the lots, any dwelling that is built on these lots will go from side yard setback line to side yard setback line. This will not reduce roof surfaces. Mr. Curry has worked on subdivisions where the drainage was controlled when the lot was 120 feet wide and the side yard setbacks are 15 feet then the house ends up being 90 feet wide. The duplexes will allow rain runoff to be controlled because there will be a grade break and the entire frontage will drain into the cul-de-sac that will be controlled by running into a storm pipe that runs into a retention pond. There is storm drainage no matter what; the approval of the rezone will stimulate construction and any problems the site is causing now will be

eliminated. With consideration, the duplexes facing the road stub, the single family lot facing Deer Park Drive and stormwater will be seriously analyzed. The owners and Mr. Curry are requesting approval of this proposal to go on to the next meeting and final rezone.

**Joe Sanders**, resident of 4355 Deer Park Drive, has attended every meeting concerning this piece of property over the last several years. Mr. Sanders has received “lip service” from some people employed by the town. The only time he is contacted is when he calls them. Mr. Sanders called a couple of weeks ago during a big storm and Frank came out with Dan Swafford. They looked around and noticed the drainage ditch was running full. Mr. Sanders stated Dan Swafford pointed out several times all the problems were coming from the west end (water from Ashbrook Lane). Mr. Sanders stated when he moved in to his house seventeen years ago there was only one house on Ashbrook Lane and there was no drainage issues. When the rest of the development was constructed on Ashbrook Lane, is when all the water started coming down the street. He agrees there is currently no drainage issue coming from the south but he is concerned he will have drainage issues once grade changes are started on the property. He pointed out lot #2 is currently a down hill slope and when the grade is changed, there is no guarantee what will happen. Currently there is no drainage issue from the property. Mr. Sanders stated “if the builder would come to me and say you don’t have a drainage issue now when we are done if you have a drainage issue I’ll take care of your problem” he would sit back and be happy. He knows this will not happen because it will cost the builder money. There are people who do not live in the neighborhood wanting to do a development. He is not concerned about sidewalks or what they look like; his concern is the drainage issues.

**Rob Hood**, resident 4345 Deer Park Drive, adjacent to the property asking to be rezoned. His primary concern is drainage. A required retention pond was brought up at the last Planning meeting. This retention pond would be between the structure and Mr. Hood’s house in order to control the water. He is totally dependent on the developers and builders to do what is right. What will the current residents do if the design does not work according to plan? There is a tremendous amount of water that currently flows through there and it has increased with additional developments. Mr. Hood’s concern with rezoning from R-1 to R-2; R-2 will be duplexes which are more conducive to rental property. Being immediately adjacent to that, Mr. Hood has a concern about what that will do to his property value. Since purchasing his home, a gas station has been built behind him that has done nothing to increase his property value. The existing duplex has a long rental history and is currently owner occupied.

**Jennifer Gunderman** currently lives in one of the existing duplex (condo). There is a natural spring on the property. She slips on it every time she mows (the last twelve years). She does not own the land she mows but the current owners do not take care of it. She does not know what will happen to the natural spring when the grade is changed. The spring is not consistent running water but there is a decent size wet spot.

**Randy Cassady** is one of the developers and will address a couple of neighbors’ concerns after the rezone to make sure the particular aspects of drainage or any water concerns are taken care of. He is a property owner in the Town of Ellettsville and during the last flood he had twelve inches of water in one of his buildings so flooding concerns him greatly. He has invested in this community. The type of people he wants in the proposed owner occupied units are just like Ms. Gunderman. If there is a problem, after the development is complete, he wants the gentlemen to call him. Mr. Cassady is from the community and takes pride in Ellettsville. Ellettsville is one of the best small towns there has ever been. After the last Plan Commission meeting, Mr. Cassady made it a point to meet with Mr. Hood to discuss his drainage concerns.

**Dan Swafford** visited the area during the heavy rains. He almost lost his truck which was parked at the Street Department. The Town Council is trying to get actively involved with the developments in the community and they will stay on top of things. The problem he saw came from Woodgate Subdivision; this was not “under our watch”. If this new development goes through, Dan Swafford stated “you have my word that we will stay on top of it to make sure that you do not have to put up with something like that”.

## **Council Comments**

**Dianna Bastin** offered the Town’s sincere condolences to Phillip Smith and Dan Swafford. They lost a family member this weekend and our hearts are with Phillip at this time.

**Dianna Bastin** congratulated the Edgewood High School graduating class of 2009.

**Sandra Hash** clarified the Council voted to start spending the donated money for the trails. The Town Treasury has not received any of that money. Frank stated a dedicated fund will need to be established. Sandra will have one created for the next meeting. Dianna said “what we are side stepping here is we simply don’t have the money to do this. Frank is aware of it, Ellettsville is going through some adjustments and we are doing that but we just don’t have the money for the trail”.

**Public Comments**

**Chris Fisher** thanked the Council for working with Main Street on making the trail a reality. Main Street has talked about this for eight years and will offer their services to the Town. This will be a real asset for the Town. The money will come. Dianna stated that as the trail progresses, they would like to invite Barry back and thank him.

**Adjournment**

Dianna Bastin entertained a motion we adjourn. David Drake so moved. Dan Swafford seconded. Motion carried. Dianna Bastin adjourned the meeting at 8:45 p.m.

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Dianna S. Bastin, President

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David Drake, Vice-President

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Scott Oldham

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Phillip Smith

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Dan Swafford

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Sandra C. Hash, Clerk-Treasurer