

## May 29, 2012

The Ellettsville, Indiana, Town Council met for a Regular Meeting on Tuesday, May 29, 2012, at the Fire Department Training and Conference Room. Scott Oldham called the meeting to order at 7:07 p.m. Dianna Bastin led the Pledge of Allegiance followed with a prayer by Phillip Smith.

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

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

### Approval of Minutes

Scott Oldham entertained a motion for the approval of the minutes for the regular meeting on May 14, 2012. Phillip Smith so moved. Dan Swafford seconded. Motion carried.

### Accounts Payable Vouchers

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

### Resolutions

#### Resolution 05-2012 Transfer of Funds

**Sandra Hash** – This is a minor transfer request by the Planning Department. They are requesting to move \$200 from Computer Software to Printing, \$200 from Computer Software to Advertising and \$1,000 from Computer Software to Training.

**Dianna Bastin** – Asked why \$1,000 is needed for training. Connie Griffin replied Denise Line is attending an ADA conference in Indianapolis. They are doing the ADA Transition Plan which requires the Planning Department to increase their knowledge of the Act. She attends a stormwater conference once a year as well as other meetings. She is seeking AICP certification and needs training materials. Scott Oldham asked what AICP training is. Ms. Griffin answered it is the American Planning Certification she was asked to pursue.

Scott Oldham entertained a motion to adopt Resolution 05-2012 Transfer of Funds. David Drake made a motion to adopt Resolution 05-2012. Phillip Smith seconded. Roll Call Vote: Scott Oldham – yes; Dan Swafford – yes; Dianna Bastin – yes; David Drake – yes and Phillip Smith – yes. Motion carried 5-0.

### Ordinances on First Reading

#### Ordinance 2012-12 to Amend Chapter 73, Schedule 1 of the Ellettsville Town Code Concerning the Speed Limit on Sale Street

**Dan Swafford** – He initiated the Ordinance because of several complaints he has received from citizens stating they had received tickets and the speed limit was set too low. Upon further investigation, Sale Street is one of the main arteries or a collection point in the Town of Ellettsville. The speed limit is 20 miles per hour (“mph”). He received information from a citizen stating when he went to court last week three people were there for the same location and all three tickets were thrown out of court. The judge agreed it was too slow. It is one of the main collectors and it should be 30 mph.

**Phillip Smith** – The biggest problem in raising it to 30 mph is people will end up driving 35 to 40 mph. It will be like State Road 46 at the one way pair. The speed limit is 35 mph and people drive 45 mph to 50 mph. Kids go up and down that road to go to school. Mr. Swafford commented from Thomas to the School, the speed limit has been increased to 30 mph. Mr. Smith stated from Thomas to the School the children have

more places to get off of the road. There is very little sidewalk, if any, on that part of Sale Street and the banks go almost straight up.

**Town Marshal Tony Bowlen** – The officers receive subpoenas to attend court on the day before the hearing. The day before the court was to occur when the tickets were dismissed they received notice of cancellation. He is not certain which court the person was to attend but his officers were not invited. Mr. Swafford asked if a pretrial is before an actual hearing. Darla Brown, Town Attorney, answered no. Marshal Bowlen said they can take a pretrial diversion. Mr. Swafford said the person showed him where it was dismissed. Marshal Bowlen said he wasn't saying it wasn't dismissed he's just saying it didn't go to court. Mr. Swafford said the person said it didn't go to court the judge stopped it. He saw dismissed on the traffic ticket.

**Dan Swafford** – A lot of the other street collectors are 30 mph. He traveled the road himself and it was almost impossible to do 20 mph without laying on the brake. He understands what Councilman Phillip Smith is saying about people increasing the speed limit. Hopefully, no one will ever notice it changes to 30 mph. Ms. Brown asked how recently the tickets were dismissed by the judge. Mr. Swafford replied it was last week. He will find out which judge dismissed the tickets.

## **Ordinances on Second Reading**

### **Ordinance 2012-09 to Amend Various Sections of Chapter 152 of the Ellettsville Town Code Concerning Planning and Zoning; Planned Unit Developments**

**Connie Griffin, Director of Planning** – Initially the Plan Commission wanted to incorporate words into the code that would benefit the Town of Ellettsville. They wanted to use words such as new, improved, advantages, enhanced, conserving, compatible, protect, suitable and public benefit. The vast majority of the code changes occurred with the addition of the District Intent section. Under General Regulations, Section 152.277, Permitted Uses and Development Standards are subject to the discretion and approval of the Plan Commission and Town Council. Therefore, continuing to give them the control and power of a Planned Unit Development. Another important element of the code is under §152.283, Limitation of Revisions to the Ellettsville Municipal Code and Ellettsville Comprehensive Plan. Under this section any changes that directly affect public health and safety such as Chapters 93 and 152 may require a Planned Unit Development to adhere to those codes that are newly implemented. The main purpose of this code is to make it more stringent but give the Town Council the power to waive certain elements and require additional conditions be placed. If changes and amendments are made to the application of the Planned United Development it can force it to go back for a new review.

**Dianna Bastin** – Asked if these are for new Planned Unit Developments. Ms. Griffin replied yes. Ms. Bastin asked if she's not going to go back into the neighborhoods and look at peoples' lots. Ms. Griffin responded she doesn't believe there is any reason to do so at this time.

**Phillip Smith** – Commented we live and learn. Ms. Griffin stated that's what all code does. It's subject to change based on many things. Mr. Smith asked Ms. Brown if she has reviewed the ordinance. Ms. Brown replied she wrote the ordinance.

Scott Oldham entertained a motion to approve Ordinance 2012-09 to amend various sections of Chapter 152 of the Ellettsville Town Code concerning Planning and Zoning; Planned Unit Developments. Dan Swafford made a motion to adopt Ordinance 2012-09. David Drake seconded. Roll Call Vote: Scott Oldham – yes; Dan Swafford – yes; Dianna Bastin – yes; David Drake – yes and Phillip Smith – yes. Motion carried 5-0.

### **Ordinance 2012-11 to Adopt Supplement 2012 S-8 to the Ellettsville Code of Ordinances**

**Sandra Hash** – The Fire Chief called and said they had reviewed the personnel changes that had been made. There was a repeated section that was not deleted but other than that there wasn't anything else they didn't agree was correct.

Scott Oldham entertained a motion to approve Ordinance 2012-11 to adopt supplement 2012 S-8 to the Ellettsville Code of Ordinances. Dianna Bastin made a motion to adopt Ordinance 2012-11 to adopt supplemental 2012 S-8 to the Ellettsville Code of Ordinances. Phillip Smith seconded. Roll Call Vote: Scott Oldham – yes; Dan Swafford – yes; Dianna Bastin – yes; David Drake – yes and Phillip Smith – yes. Motion carried 5-0.

## **Old Business**

### **Greenbrier Meadows Phase Two Section One – Final Plat**

**Rick Coppock, Bynum Fanyo and Associates, Representing the Petitioner** – Greenbrier Meadows Subdivision, Phase II, Section 1, consists of Lots 46, 47, 48, 59 and 60. The bond amount for improvements not completed to date is \$117,625. This includes the cost of the improvements plus an additional 25%. They are requesting final plat approval for Greenbrier Meadows Subdivision, Phase II, Section 1.

**Dan Swafford** – Asked Darla Brown, Town Attorney, if there is anyway to state “this bond does not expire until the completion of the project.” In the past, due to some of the housekeeping efforts bonds have expired and the Town has had to pay to finish the project. Ms. Brown replied the Town Code says “*The amount of the guarantee provided by the developer shall be approved by the Planning Department. The bond, irrevocable letter of credit or certificate of deposit shall be kept current. Any lapse of such financial guarantee shall be considered as a violation of this subchapter.*” They are already to keep it current. Mr. Swafford commented that's the code but it has happened and it's fallen through. Scott Oldham asked how long Mr. Swafford wants to keep it current. Mr. Swafford responded to the completion of the project. Ms. Brown said that's the way she interprets it. Mr. Swafford asked if the bond was just for this phase. Mr. Coppock replied bonds are per phase if they want final plat approval. As certain elements of the project or phase are completed, a lot of times the developer will ask for a reduction in the bond amount. Mr. Swafford stated he is trying to avoid the bond lapsing and no one catching it. Then the contractor is out of business and the Town has to pay for it. He is asking for a stronger guarantee. He's not saying this will ever happen again but it has in the past.

**Darla Brown** – The financial guarantee of performance will not be released until the project is in compliance. The financial guarantees may be cashed by the Town to provide for the payment of any costs or penalties imposed due to violations. Mr. Swafford stated usually the letters of credit are dated for one year. Ms. Brown asked what the length of this bond is. Mr. Coppock replied they're usually always one year. There is a cost associated with the bond so the bonds are always set for one year. Mr. Swafford asked if he couldn't put a time limit on the completion of the project. They did that for a PUD one time.

**David Drake** - The simplest way because of all of the computer technology would be whenever there's a plat approval with a bond is to enter it into a calendar on the computer with a reminder that the bond is set to expire. Mr. Swafford said it is technologically possible. Connie Griffin is now taking care of this but he wants to know from a legal standpoint if there was a way of including it in case something happens such as staff moving on and someone forgets about it which is what happened in the last situation. He is trying to keep the Town out of the construction business.

**Darla Brown, Town Attorney** – The developer obviously makes their own arrangements with regard to securities and probably wouldn't be happy to be asked to keep it in place forever. Maybe there is a happy median they can come up with. Mr. Swafford said he's not saying forever, but just until completion of that phase. Instead of putting a one year expiration can they put an expiration on the completion and not a year letter of credit? They may not be able to it, is just something he would like to see.

**Sandra Hash** – Has seen some through the May Agency that did not expire until the Town released them. Robinsons have had that type in the past. The letters of credit all

have a date. Whatever instrument they got through the May Agency, they would call before they released the bond to make sure the project was complete and ready to be released. That may be an actual bond versus letter of credit. They had one developer who put his whole amount in a savings account and the Town held it until the project was complete.

**Dan Swafford** – Asked how the rest of the Town Council feels about this. Ms. Hash asked if there is a way, if the bond does expire, or some action they could take to get their attention a little better other than a phone call or a letter. Could they actually cease any new building permits for that subdivision until the bond is renewed? Ms. Brown replied she thinks they can in certain circumstances. Mr. Swafford said they can do that. He's thinking if a contractor went belly-up what could they do. The Town would be on the hook to pave the streets and put sidewalks in. There are a couple of projects right now that have expired bonds if something happens to the developer the Town will be on the hook to finish the project.

**Dianna Bastin** – Thinks it's a good idea and something to look into. She's not exactly comfortable they're talking about Greenbrier and all of these things are coming up. She doesn't want it to be construed they don't think Greenbrier is going to do the job. They're just doing them in small sections. She drives by there all the time and they seem to be flowing. Mr. Swafford stated at no time did he insinuate Greenbrier would not complete the project. He is asking from now on can they do this for bonds or letters of credit? Ms. Brown asked if he was thinking about changing the code section or the language they have now. Mr. Swafford said he is asking for advice on how they could do it. He thinks something definitely needs to be in place to protect the Town for literally being on the hook if something happens.

**Rick Coppock** – He thinks they would probably have to do some research or talk to a bonding company to see what the ramifications are for extending it to a certain period of time. Mr. Swafford says he has no problem with approving this and asked Ms. Brown to check into it because something needs to be done. There needs to be a fail-safe system in place.

**Russ Ryle** – One thing he has seen in other town planning ordinances is when they issue a final plat there is a time certain after which that final plat turns into a pumpkin if it's not completed. This gives you a time certain at some point in the future to say there needs to be a bond or letter of credit until a certain date. Another thing they could do, as a practical matter with what they have now, is if the project isn't done in one year and the bond is going to expire they may not renew and call the bond. That's an option they have right now. If 60 days before the end of the bond period you notify them to renew the bond and if they haven't done anything one week before it expires pull the bond and that protects the Town. He would like to see something that requires all plats to come back for a re-review and reprocessing after a time certain. This has been aggravated due to the economy. They've never before had projects dragging on four, five, six and ten years. There's a project behind him that's 16 years old and has no hope in the future of being done. Changing the code would be something he would entertain looking at. There would be a hypothetical time it has to be done, reviewed, either they pull the money or they go back and then they have to tell them what they're doing and they have to be reapproved.

Scott Oldham entertained a motion to approve Greenbrier Meadows Phase Two Section One – Final Plat. David Drake made a motion to approve the final plat for Greenbrier Meadows, Phase II, Section 1. 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.

## **New Business**

### **§93.01 of the Ellettsville Town Code Concerning Mosquito Control**

**Warren Hoobyar, Assistant Code Enforcement Officer** – §93.01 is basically a health ordinance that covers protection of diseases in the Town. They have put together public information for homes and businesses. In the 1980s tires were more of a nuisance than they were an environmental problem. The Asian Tiger Mosquito was introduced in 1985, and it has been proven to carry 30 different diseases. The favorite

breeding place for these mosquitoes are tires because they accumulate water, leaves and grass. They can lay eggs in less than an inch of water. These mosquitoes are prevalent in 23 states. They're proposing public information, including businesses, which states what areas the mosquitoes can breed in and abatement. Tires should be stored in an environment that isn't going to accumulate water or waste. Tires are being out in the environment and if they're not mounted they become a breeding ground for mosquitoes. This is a breeding ground and can be an epidemic problem. This should be introduced to the public either in the Journal or some other paper so they can expose people to the problem with mosquitoes. He's not proposing anything to get after businesses. He is proposing a public announcement to find out whether or not they're going to comply. A little bit of sugar goes a long way in letting them know it can be a health problem to the community. An overlay of the breeding ground and a copy of the notice for the newspaper were provided to the Town Council.

### **Supervisor Comments**

**Mike Farmer, Ellettsville Utilities** – Previously, he had sent an email to the Town Council regarding his request to hire a laborer, temporary full time ("TFT"), for Utilities. This is a replacement for someone who decided not to work for them this year. The gentleman's name is Michael Jay Crouch and he will work 40 hours a week and his employment will end on December 31, 2012. There are no benefits and he will be making \$14.50 an hour. Mr. Crouch has a Class B CDL which they usually don't get with their laborers TFT. David Drake asked if this is in their budget. Mr. Farmer replied it is. Ms. Bastin asked if it was business as usual. Mr. Farmer responded it is.

Dianna Bastin made a motion to hire Michael Jay Crouch to be a temporary full time laborer for Utilities. David Drake seconded. Roll Call Vote: Scott Oldham – yes; Dan Swafford – yes; Dianna Bastin – yes; David Drake – yes and Phillip Smith – yes. Motion carried 5-0.

**Michael Farmer, Ellettsville Utilities** – They are beginning work on Sale Street from Ritter to Thomas Road beginning June 11, 2012. The road will be closed and open to local traffic. There will be no through traffic during construction. They are replacing the floor and 6" cast iron mains with 8" ductile iron mains. This is part of their master plan regarding water main improvements for the next 10 years. It will last four to five weeks. Ms. Bastin asked if residents will have access to their driveways. Mr. Farmer replied that's correct. It will improve water quality and fire protection in the area. It will connect two of the larger mains from the west side into Town. Mr. Swafford asked if it's affecting just the street or do they have to tear up any sidewalk. Mr. Farmer answered they will go down the edge of the west side of the road so there's no sidewalks in the area. Ms. Bastin commented there was no damage to sidewalks during the first phase. Mr. Farmer stated it's pretty tight with all the other utilities. Smithville Telephone has a large bank of cables and there are gas and sewer lines. Their path was pre-determined. Mr. Swafford asked if Smithville had completed that area. Mr. Farmer replied they have not and they're about a year away from going through there. They couldn't work together on the project because of the logistics and how their infrastructure would be placed. Mr. Smith asked if they will repave the whole road or patch it. Mr. Farmer responded they will do a patch.

**Connie Griffin, Director of Planning** – They were concerned with soil leaving the site of the First Assembly development site adjacent to the Fire Department as well as construction traffic getting soil on State Road 46. There were areas that needed backfill and the establishment of vegetative cover. There was some regular maintenance needed on the detention pond, silt fencing repair and slopes being stabilized. There was some trespassing going on. Photographs of the site were shown. Ken Cook and Justin White did an amazing job in overseeing the repairs. For two gentlemen who didn't know a lot about the project they quickly rose to the occasion. The only thing left is to wait on the grass to come up and establish the vegetative cover. Various photographs before and after repairs were shown to the Town Council. They donated some excess dirt to the Fire Department.

**Connie Griffin, Director of Planning** – Has been approached by a SPEA student, Amber Gress, to do free work for the Planning Department. An email about the SPEA student was previously sent to the Town Council. She is still willing to receive additional comments by email before a final decision is made. Her available hours are limited because she is attending classes. On Town meeting nights, Ms. Gress would work until she left the office for meetings. She would like to start working an hour over once in awhile to accommodate Ms. Gress. She’s basically looking to do some work on the Comprehensive Plan which they have discussed revising and the Strategic Plan. She is proposing Ms. Gress do the research on other communities.

**Dianna Bastin** – Asked if Ms. Griffin was going to work overtime, and the intern is going to be free help, won’t it still cost the Town money. Ms. Griffin responded she works quite a bit of overtime so it’s not anything that would be changing. Her hours consistently run around 46 to 48 hours a week. They are a very busy department. Ms. Bastin commented she said she wanted to start staying over. Ms. Griffin stated she has been trying to stay over to keep her head above water. The daily requirements of the Department are overwhelming.

**Phillip Smith** – Thinks it’s a good idea. They can use the help, especially free help. Mr. Oldham confirmed she would like the comments within the next week. Ms. Griffin replied if possible, before the intern changes her mind and moves on down the road.

**Connie Griffin, Director of Planning**

- There are ADA forms that will be disbursed to the supervisors. They’re ready to start the self-evaluations. She would like to present them to Town Council prior to giving them to the supervisors. They’re looking at June 11, 2011, to provide them to Town Council.
- Richard’s Small Engines is looking for an amended plat. He needs to acquire more property from the property he is buying on contract from Fred Purdy.
- They’re working on a chicken ordinance. Phillip Smith is assisting with preparation of the ordinance.
- They still have the inoperable vehicle code they’ve been looking at and some possible land use violations. She has previously submitted letters to the Town Council of the violations they will be inspecting soon.

**Council Comments**

**Dan Swafford** – Thanked the Police and Fire Departments for attending the Memorial Day tribute at Memorial Park, Deputy Fire Chief Mike Cornman and Deputy Town Marshal Bill Benningfield for standing up with them and Jim Ragle for setting up the chairs on his own time. He also thanked everyone for showing support for veterans. It was a very nice ceremony.

**Adjournment**

Dianna Bastin made a motion to adjourn. Dan Swafford seconded. Motion carried. Scott Oldham adjourned the meeting at 7:55 p.m.

<hr/> Scott Oldham, President	<hr/> Dan Swafford, Vice-President
<hr/> Dianna S. Bastin	<hr/> Phillip Smith
<hr/> David Drake	<hr/> Sandra Hash, Clerk Treasurer, IAMC, MMC