

TOWN OF CEDAR LAKE, LAKE COUNTY, INDIANA  
MINUTES OF THE TOWN COUNCIL



June 26, 2017

Special Public Meeting Advertised for 6:00 PM  
Conducted at the Cedar Lake Town Hall  
Pledge of Allegiance & Moment of Silence

**Roll Call:**

Absent	Robert H. Carnahan Council Member	Ward 1	Present	Greg Parker Council Member	Ward 6
Present	John Foreman Council Member	Ward 2	Present	Richard Sharpe Council Member	Ward 7
Present	Julie Rivera Council Member	Ward 3	Absent*	Amy J. Gross, IAMC, MMC, CPM Clerk-Treasurer	
Present	Ralph Miller Council Member	Ward 4	Present	Jill Murr, CPM, IAMC, MMC Town Administrator	
Present	Randell Niemeyer Council Member	Ward 5	Present	David Austgen Town Attorney	

\*Chief Deputy Clerk Margo Nagy was present.

**PUBLIC COMMENT**

None

**NEW BUSINESS**

**1. South Shore Subdivision Construction Project Award**

Town Administrator Murr stated that six bids were opened for the South Shore Subdivision Project on June 20, 2017. Bids were received from LGS Plumbing for \$2,589,280, Walsh & Kelly for \$2,686,894.60, Grimmer Construction for \$2,674,781.70, Rieth-Riley for \$3,668,961, Dyer Construction for \$2,895,999, and Rex Construction for \$2,674,705.25. The bid tabulation was completed by Christopher B. Burke Engineering and has been reviewed by staff and the Town attorney. It was recommended to solicit a motion to award the contract to the lowest responsive and responsible bidder, LGS Plumbing in a total amount of \$2,589,280 subject to available financing and subject to the bidder holding prices for 60 days after bid opening or August 18, 2017.

A motion to approve the recommendation to award the South Shore Subdivision Construction Project to LGS Plumbing for \$2,589,280 was made by Greg Parker with second by Richard Sharpe. Council Member Foreman discussed a previous project where LGS Plumbing became the general contractor and subbed out the paving to another company. He asked if the bid specified who the paving contractor would be. Town Administrator Murr stated it didn't specify. Town Attorney Austgen recommended that the motion is made contingent upon the financing being completed, the notice of award not be made until then, and the bid amounts be held for the 60 days pursuant to the bid specifications. Mr. Parker and Mr. Sharpe concurred. Roll call: Foreman – Yes, Rivera – Yes, Miller – Yes, Sharpe – Yes, Parker – Yes, Niemeyer – Yes. Vote: 6 – 0.

**2. High Grove Subdivision Construction Project Award**

Town Administrator Murr stated that five bids were opened for the High Grove Subdivision Project on June 1, 2017. Bids were received from Rex Construction for \$3,645,093.82, Rieth-Riley for \$4,152,430.71, Walsh & Kelly for \$3,716,609.38, Grimmer Construction for \$3,605,447.51, and LGS Plumbing for \$3,393,886.39. The bid tabulation was completed by Christopher B. Burke Engineering and has been reviewed by staff and the Town attorney. It has been determined that the addenda issued for the High Grove Subdivision Project involved information that may influence project costs. Further, Subsection 19.1 of the instructions to bidder's states "that the owner also reserves the right to waive all informalities not including price, time, or changes in the work and to negotiate contract terms of the successful bidder." It was recommended to solicit a motion to reject the bid of LGS Plumbing as non-responsive due to not acknowledging receipt of two addenda issued for the project in article 3 subsection 3.01A of the bid form. It was further recommended to solicit a motion to award the contract for the High Grove Subdivision Project to the lowest responsive and responsible bidder, Grimmer Construction in a total amount of \$3,605,447.51 subject to available financing and subject to bidder holding prices for 60 days after bid opening or July 31, 2017.

A motion to reject the bid of LGS Plumbing as a non-responsive bidder for the High Grove Construction award for the reasons stated in the recommendation was made by John Foreman with second by Ralph Miller. Roll call: Foreman – Yes, Rivera – Yes, Miller – Yes, Sharpe – Yes, Parker – Yes, Niemeyer – Yes. Vote: 6 – 0.

A motion to approve the recommendation to award the High Grove Subdivision Construction Project Award to Grimmer Construction for \$3,605,447.51 contingent upon financing and bidder holding prices for 60 days was made by John Foreman with second by Richard Sharpe. Roll call: Foreman – Yes, Rivera – Yes, Miller – Yes, Sharpe – Yes, Parker – Yes, Niemeyer – Yes. Vote: 6 – 0.

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**3. Christopher B. Burke Engineering – South Shore Subdivision Construction Observation Proposal**

Town Administrator Murr stated this is the next step in the process of awarding the construction observation for each project. The direct total costs proposed for the South Shore Project is \$152,000. Should there be any extended hours needed, the total overall cost is a not to exceed \$205,700.

A motion to approve the Christopher B. Burke Engineering South Shore Subdivision Construction Observation Proposal of \$152,000 in direct costs, not to exceed \$205,700 was made by Julie Rivera with second by Richard Sharpe. President Niemeyer stated when the Parrish Avenue Project was engineered there was a pretty good discrepancy in the cost of engineering between Nies Engineering and Christopher B. Burke Engineering. He asked Mr. Oliphant if this was sharpened up as good as possible. Mr. Oliphant answered that is why it was written the way it was. Full-time is loose term. It's basically a differential of a 40 hour work week versus a 60 hour work week. It was written for more clarity in what is being provided. Roll call: Foreman – Yes, Rivera – Yes, Miller – Yes, Sharpe – Yes, Parker – Yes, Niemeyer – Yes. Vote: 6 – 0.

**4. Christopher B. Burke Engineering – High Grove Subdivision Construction Observation Proposal**

Town Administrator Murr stated that this is the same as the previous item but for High Grove. The direct total costs proposed for the High Grove Project is \$189,400. Should there be any extended hours needed, the total overall cost is a not to exceed \$261,000.

A motion to approve the Christopher B. Burke Engineering High Grove Subdivision Construction Observation Proposal of \$189,400 in direct costs, not to exceed \$261,000 was made by Ralph Miller with second by Julie Rivera. President Niemeyer asked if High Grove was just that much more streets to pave. It was answered yes. Town Administrator Murr stated it was also due to the layout of the overall project. Council Member Parker added that it goes into high wood as well. Roll call: Foreman – Yes, Rivera – Yes, Miller – Yes, Sharpe – Yes, Parker – Yes, Niemeyer – Yes. Vote: 6 – 0.

**5. Release and Vacation of Right of Way Easement**

Town Attorney Austgen stated there are two easement releases on the agenda related to the Anytime Fitness project in Lincoln Plaza. The easement releases clean up some of the property ownership related to the plat of the one lot subdivision upon which the new business will be built. As part of the consideration for the plat approval, the Plan Commission requires to clean up as much of the remaining encumbrances in Lincoln Plaza as possible. This will be cleaning up easements on the west side, a little on the south side, and a portion on Broadway itself. In return, the Town will have a public way 100ft from north to south, 133<sup>rd</sup> to the entrance of the Strack and Van Til parcel. He stated they didn't get it all but that was because they didn't have control of getting it all. President Niemeyer asked what some of the current encumbrances are. Mr. Austgen stated they are mostly on the west side of the Lincoln Plaza building. Most of what remains is there. Mr. Jack Halls, the project engineer, discussed utility easements and private property easements in relation to the project parcel. Mr. Austgen stated this is an incredible overlay of clean up that has occurred over the last few years. This last project took a tremendous step in getting closer.

A motion to approve the Release and Vacation Right of Way Easement as presented was made by John Foreman with second by Richard Sharpe. Council Member Miller asked about the possibility of a roadway connecting the Lincoln Plaza area to the Elmwood Funeral home. Council Member Foreman stated presently he believes it is all owned by one individual. He believes there would be a way. He stated the Town owns the easement but the owner of the land between the new Anytime Fitness and Burger King, would have to put the road in. He stated it could be connected but as of today it isn't platted that way. Mr. Miller asked if it was in the plans. Mr. Foreman stated it was the hope and he doubts the Plan Commission would allow anyone to develop anything there if there wasn't a connection. Roll call: Foreman – Yes, Rivera – Yes, Miller – Yes, Sharpe – Yes, Parker – Yes, Niemeyer – Yes. Vote: 6 – 0.

**6. Release and Vacation of Easements for Sewer and Water Lines**

Town Attorney Austgen stated this accompanies the last item. Mr. Mager was a utility owner and platted easements all over the Utopia and Lincoln Plaza property. Mr. Jack Halls discovered them in the course of the development of the project. They have worked out the release and vacation instruments. There will be a final document once all of the instruments are executed, notarized, and recorded. He stated they will see a fairly clean piece of property compared to what it is today that will allow the building to occur.

A motion to approve the Release and Vacation of Easements for Sewer and Water Lines as described was made by John Foreman with second by Julie Rivera. Roll call: Foreman – Yes, Rivera – Yes, Miller – Yes, Sharpe – Yes, Parker – Yes, Niemeyer – Yes. Vote: 6 – 0.

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**PUBLIC COMMENT**

Dave Uzelac, 8215 W. 126<sup>th</sup> Place, asked for clarification on the bids addenda and why one contractor didn't get the bid compared to the other. Mr. Austgen answered that the addenda were issued as a consequence of the pre-bid conference for clarity to the bidding activity and specs. It was advised orally in the pre-bid meeting that the addenda would be coming and it would have some impact. Six bidders or more were present at the meeting. When the addenda went out seeking the relevant data it came back marked none. He added that there was some protest related to the substance that the addenda meant or could have meant in the differentiation of price for bidding. As they know, there is a significant difference between the lowest and the next lowest, and that's what caused the action here to occur. Mr. Uzelac thanked Mr. Austgen for the clarification.

Larry Smith on behalf of LGS Plumbing, Crown Point, voiced concerns with the addenda issue. He stated it didn't really change or raise his price. He added the specifications said the Town could waive any and all informalities and reasonable inquiries would be taken. He suspects a reasonable inquiry would be contacting the low bidder because of the fact that the difference between the two bids was \$213,000. LGS did not have any problem with the bid in any way. LGS Plumbing was the plan holder. The plans were picked up and registered under LGS Plumbing. He stated the addenda were sent to Justin Glaser at LGS Plumbing. The bid was prepared in a different building and didn't go to the LGS Plumbing account. He added the bid didn't change and it would not change the price at all. Mr. Smith stated he didn't understand how or why they could do that or would spend more. President Niemeyer stated that the reason why was because of the non-responsiveness of meeting the criteria. Mr. Smith stated if it was sent to LGS Plumbing, that mistake would not have been made. Mr. Austgen added that the engineering consultants who reviewed the bids, all concurred that the addenda was substantive and its presentation or non-presentation was substantive, such that it made the bid non-responsive. Mr. Smith asked why a reasonable inquiry was not made. President Niemeyer answered that it was just stated. He stated analysis was done and the fact that it didn't get to your offices from one of your employee's is not our fault. Mr. Smith asked wouldn't LGS Plumbing have been contacted just to verify. Mr. Austgen answered that the engineering consultants gave a recommendation upon thorough review of the information. Had the Town gone to LGS Plumbing following the recommendation, you would have been negotiating a low bid against the protest that is on file and has been made substantively to the non-responsiveness of this bidder.

Evangeline Schmeltz, 14726 Bryan Street, asked for an estimate of when the work will begin and when it will complete. Town Administrator Murr stated the timeline will be determined when the financing is completed. She believes they are about 60 days out from signing any documents and getting a shovel in the ground. It is a 34 week project and they will be going over the winter months. Mr. Oliphant added he believes the final completion date for South Shore would be July 2018. The substantial completion would be September 2018.

Diane Jostes, Cedar Lake Chamber, explained she was there to represent the local businesses and discuss the recent storm water user fee increase. She stated when the fee increase was announced weeks ago, almost everyone thought the increase was \$5.00. No one expressed any concern about \$5.00. However, there was nothing to indicate the larger amounts for the businesses. When the figures came out with the next billing, everybody was overwhelmed. No one realized there was a difference on residential property and commercial property. No one understood the impervious area situation or heard of the E.R.U. No one realized the increase was based on the E.R.U. She stated according to the previous Town Council minutes, the increase was not only to help with current storm water projects but to implement an improvement fund. That was a mystery to many businesses and the overwhelming numbers they looked at were very serious. They are asking the Council to reconsider the large increase and to lower the cost to businesses. Possibly by adjusting the money put into the improvement fund or creating a cap for businesses. She briefly discussed businesses and their budgets. She discussed a petition the businesses put together with 48 signatures, asking the Council to reconsider the business amount. President Niemeyer asked if the organization had any ideas for them. She stated one person discussed a percentage or possibly a cap. She stated she knows an equation is put together whatever is needed to fund the projects along the lines of financial advisors and engineers but she thinks there may be some way to put a cap on this. She stated the businesses are concerned about the high price. Council Member Foreman stated that was a good suggestion. He stated that the rate fee doubled for everybody. He discussed the E.R.U. rates, calculations, and how the fee began. He stated a review of it is needed to see what can be done. Mrs. Jostes stated that the projects in the community are a plus but it is still a difficult economy for the smaller businesses in Town. She reiterated it's not that they don't want to pay but they felt the monthly figure was stiff. Council Member Parker stated in his first term when he looked at that and basically they were stuck with it at that time because the financing for a major road construction was already attached to it. He added there was nothing they could do at that time. He has always felt that it was too excessive on businesses. But once funding for financing projects is attached to it, you're basically on the hook for it. In order to move forward, something has to happen to generate revenue. He stated he doesn't want to put more impact on businesses but that is how this thing was designed to begin with. He believes Ms. Boyer didn't put enough effort into trying to tally what the long term toll would be on businesses. Mrs. Jostes stated many of the business owners are homeowners in Town as well. She stated everyone is willing to do their share but she doesn't think it would hurt to review it. Mr. Austgen stated Mr. Parker's comment about the rate increase being tied to the capital financing is accurate. That is exactly what has happened. He added Mrs. Jostes approach was very thoughtful and thanked her. He stated they can look at, particularly when they get on the backside of the bid awards, the financial advisors can take a look at what the exact need might be. They were working off of pro formas and the last two dollars of the rate increase was tied to a future operational budget and planning.

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When the last bid comes in for Parrish Avenue, the financial advisors can look at how the rate may be slimmed up. Given the conservative nature of financial advisors they may see some room but that's not a guarantee there is room. President Niemeyer added that he looked at this from the standpoint of a business owner and with all the different fees and taxes paid each year and increases, it's going to cost him an extra \$50,000 to do business. He doesn't like it as much as anyone else, but he understands there is a need to pay for infrastructure. He thinks what they are presenting is good. He added they had to look at options for funding improvements in a Town that was starting to look like a crater. They had limited abilities given by the State of Indiana to fund some of the projects. They looked at the storm water fees, the possibility of a wheel tax, and property tax increases. He added that this bond issuance will not increase property taxes. Looking at the options, the best option they saw to finance some of the underground stuff was to increase the storm water fees. This is a long term thing because Cedar Lake has been plagued with flooding issues for so long. He added the property tax back, they're really up against the cap and can go no further with that. He added that the wheel tax is a highly unpopular proposal as well. He stated there are limited ways to go about this. He added their proposal and getting the signatures is fantastic and he encourages the Chamber membership to give ideas. Mrs. Jostes reiterated that no one is against paying. It's just no one was prepared for the large amounts each month. Council Member Parker asked Mr. Austgen about the possibility of capping it for businesses moving forward. Mr. Austgen stated yes. The E.R.U. is a formula that was scientifically developed from research data and generated based on the impervious area a particular size of property would generate x amount of runoff. It was that basis that the E.R.U. rate was developed. That's how the ordinance was first developed with the rate. Going down the path, there can be adjustments but they need to be based upon non-discriminatory and non-arbitrary, objective criteria. He stated it would need to be equally scientific for meeting those statutory and constitutional imposition requirements. Mr. Parker stated it doesn't take too many increases like this before you have such a hardship on your local businesses, they can't pay, and they're gone. Mr. Austgen added there is no question about that and there is some movement in assessing an objective, non-discriminatory and non-arbitrary formula that can separate classes. He further discussed the state utility code and different rate classifications. He added that they can't forget that the bond issue that was just closed and the money sitting in the bank for these projects, was based upon the necessity of a rate increase. They couldn't have raised those monies without the increase. They wouldn't have sold the bond. He added they have the additional benefit of Standard and Poor's AA- rating. Mrs. Jostes stated they realized that it would cover the projects but it's perhaps the cushion of the extra. Mr. Austgen added they are getting a lot of pressure from consultants about shrinking and consolidating. President Niemeyer discussed municipalities going from being reliant on property taxes and moving towards a fee based business model. He stated they would all have to get creative with the revenue for not just the services but to support the infrastructure. He discussed finding some middle ground would be the best approach going forward. Council Member Foreman added to the folks in High Grove and South Shore that the roads will be done properly.

Mike Rice, 14738 Bryan Street, asked about the 60 day grace period and the financing. Mr. Austgen stated that they have three series of RDA lease rental revenue bonds for 2017. They waited for the numbers tonight so that they could report to the financial advisors what they were looking at so that the bonds can close. They expect in the week of July 10 the processing of bond financing closing. They use the 60 days because they put it into the bid specs so they hold the prices with the bidders. Mr. Rice asked if the funding will be there by then. Mr. Austgen stated they have the Standard and Poor's rating and every indication that they will get great rates for the financing. Mr. Rice added that Mike Toth has been in contact with the Town manager and engineers about the drainage in the park. He asked about the August 1 start date. Council Member Foreman stated theoretically if the bonds close in July, they may see movement. Mr. Oliphant added that it depends on how quickly they close. He stated the start would probably be some time in August.

Kelly York, 13445 White Oak Avenue, spoke on behalf of the Hanover Community School Corporation. She wanted to give them a number to understand the real dollar impact. She stated the school corporation's drainage bill alone is \$4,997. She stated that's a teacher or another opportunity for the kids in the community. She stated she researched other communities and their fees. She stated the \$10 fee is kind of in line with other communities. She tried to find the additional for non-residential. She added Lowell had the most digestible bit of information. They cap at 4 E.R.U.'s or \$28 for non-residential. She wanted to bring both to the Council's attention for consideration. Mr. Parker added he wishes that a lot more thought had gone into this at the time of implementation.

Steve Govert, 13406 Wicker Avenue, stated the increase for his store is \$1,200 a year. He doesn't think anyone considered the cost this would be to businesses. He didn't like Mr. Parker's answer. He doesn't understand why someone didn't consider this in the beginning. He thinks maybe the increase should be 20% at the most and maybe graduate it over several years. Mr. Parker stated his biggest problem with government is that government thinks businesses exist to fund government and it's a runaway train. The model for this storm water fee when it started was exactly that. He stated he wasn't here when it was formed but it is the model they have and that's where the funding comes from. He stated he doesn't disagree with Mr. Govert. Mr. Govert stated that this all got passed recently. Council Member Foreman stated he knew it was going to be doubling and at the prices businesses are paying, he finds it odd that no one has spoken up before. He knew they were doubling it and he knew there was a calculation but he had no idea some were paying such an enormous amount. Mr. Govert stated he was surprised no one had the best interest of the businesses when it was dealt with recently with the new bond issue. Mr. Parker stated the formula for the E.R.U. was established in 2007 and anytime you have to fund something and you have to go to that source to fund it, that's the way it is now. Unless something

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changes with the formulation, that's the way it will always be. He stated he doesn't like it either but that's what they have now. Mr. Govert stated he wasn't sure he grasped the answer. President Niemeyer stated they had a \$5.00 residential fee that increased 100% to \$10. Within that 100%, there is a breakdown of what it goes to cover. It was determined that \$5.78 was needed to cover current operations. The additional \$2.22 was needed to fund the current projects that were awarded for the storm water. The additional \$2.00 went to a fund, like the sewer sinking fund, where they will be able to self-fund projects going forward. He added when they had to replace lift stations recently those were replaced with cash money on hand from the sewer sinking fund. They didn't have to borrow or bond finance for that. It saves the Town hundreds of thousands of dollars and saves the taxpayer dollars. It's the same thing with this storm water rate development. Going to something that created a sinking fund like this is meant to sustain the utility going forward instead of always having to borrow. He thinks they may see a place where they have a little wiggle room is the sinking fund once they see the cash numbers come in. Mr. Govert stated that is more of something they can all wrap their minds around instead of someone telling him that's the way it is and the way it will be going forward. Mr. Parker added that it wasn't his idea it was just how the formulation was structured when it started. Mr. Govert stated it is left open ended. There's nothing to say that it won't double again. President Niemeyer stated there are minimal choices at their disposal to fund these types of things. He thinks what Mr. Parker is trying to say is that once you approve bond financing and the bank basis it upon revenue streams, which the pro forma was based upon revenue streams, the bank in turn says ok they have enough revenue to sell the bond. He discussed again looking for the wiggle room and taking into consideration the suggestions made this evening. Mr. Miller stated that conversations have been taking place about the impact on businesses. Mr. Govert discussed an area next to his business that he would like to asphalt but when you start thinking maybe that would double his storm water fee again. Council Member Foreman added it's almost like we're making you not want to improve there. Mr. Govert stated it's not going to drive him out of business but that space could increase his fee.

**ADJOURNMENT** President Niemeyer called the meeting to adjournment at 7:00 PM.

COUNCIL OF THE CIVIL TOWN OF CEDAR LAKE, LAKE COUNTY, INDIANA

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Randell Niemeyer, President, Ward 5

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Greg Parker, Vice President, Ward 6

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Robert H. Carnahan, Ward 1

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John Foreman, Ward 2

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Julie Rivera, Ward 3

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Ralph Miller, Ward 4

**ATTEST:**

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Richard Sharpe, Ward 7

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Amy J. Gross, IAMC, MMC, CPM  
Clerk-Treasurer

The Minutes of the Cedar Lake Town Council are transcribed pursuant to IC 5-14-1.5-4(b), which states:

- (b) As the meeting progresses, the following *memoranda* shall be kept:
- (1) The date, time and place of the meeting.
  - (2) The members of the governing body recorded as either present or absent.
  - (3) The general substance of all matters proposed, discussed, or decided.
  - (4) A record of all votes taken, by individual members if there is a roll call.
  - (5) Any additional information required under IC 5-1.5-2-2.5.