

**TOWN OF CEDAR LAKE, LAKE COUNTY, INDIANA**  
**MEMORANDA & MINUTES OF THE CEDAR LAKE TOWN COUNCIL**

**September 20, 2011**  
**Public Meeting 7:00 PM at the Cedar Lake Town Hall**  
**Pledge of Allegiance & Moment of Silence**

**Roll Call:**

Present	John Foreman	Ward 2	Present	Greg Parker	Ward 7
	Council Member			Vice-President	
Present	Dale Poston	Ward 3	Present	Robert H. Carnahan	Ward 1
	Council Member			President	
Present	Jerry Smith	Ward 4	Absent*	Amy J. Sund	
	Council Member			Clerk-Treasurer	
Present	Randell Niemeyer	Ward 5	Present	Ian Nicolini	
	Council Member			Town Administrator	
Present	William Landske	Ward 6	Present	David Austgen	
	Council Member			Town Attorney	

*\*Jill Murr, Chief Deputy, was in attendance*

**PUBLIC COMMENT:** There were no comments.

**CONSENT AGENDA**

- Minutes of the Regular Public Meeting Minutes of September 6, 2011.
- Docket: Town Claims – 69223 - 69320 for \$561,493.33; Wastewater Claims 26937 - 26983 for \$287,165.21; Wastewater Sinking Claim - 26942 for \$107,191.25; Storm Water Claims 69225, 69228 – 69229, and 69242 - 69247 for \$79,255.96; and Water Utility Claims 80795 - 80813 for \$52,309.51. Motion by Greg Parker and seconded by John Foreman to accept and waive the reading of the Minutes as amended, and to accept the Consent Agenda.

**Roll Call Vote: 7 to 0**

Foreman	Poston	Smith	Niemeyer	Landske	Parker	Carnahan
YES	YES	YES	YES	YES	YES	YES

**PUBLIC HEARING:**

- Resolution No. 1058 – Additional Appropriation in the General Fund**
  - Town Attorney’s Review of Legals:** Attorney David Austgen reviewed legal's which were published in the Cedar Lake - Lowell Star and Crown Point Star timely.
  - Clerk-Treasurer’s Comments:** Jill Murr read Resolution No. 1058 in its entirety which appropriates \$8,263.00 in the General Fund to 109-001-441 Equipment.
  - Remonstrators:** There were no remonstrators.
  - Council’s Comments:** Randy Niemeyer inquired on these funds; Jill Murr responded that this is the excess welfare funds which were approved on November 4, 2010 by Council for the opticom system.
  - Motion to Approve Resolution No. 1058:** Motion by Dale Poston and seconded by Randy Niemeyer to approve Resolution No. 1058.

**Roll Call Vote: 7 to 0**

Foreman	Poston	Smith	Niemeyer	Landske	Parker	Carnahan
YES	YES	YES	YES	YES	YES	YES

**PLANNING/ZONING & BZA**

- Variance of Use – Craig Porter, 9602 W. 142<sup>nd</sup> Place – Favorable Recommendation to allow an existing accessory structure without an existing residential structure**

The Board of Zoning Appeals sent a favorable recommendation by a vote of 4 in favor and 0 against for the requested variance of use with contingencies to allow an existing accessory structure for the use of storage without an existing residential structure to be used for indoor storage and that outdoor storage is prohibited, Ian Nicolini explained that this is to allow electric service to be established. Motion by Greg Parker and seconded by John Foreman to approve the variance of use with contingencies by the Board of Zoning Appeals.

**Roll Call Vote: 7 to 0**

Foreman	Poston	Smith	Niemeyer	Landske	Parker	Carnahan
YES	YES	YES	YES	YES	YES	YES

- Variance of Use – Dapan Investments, LLC, 11200 W. 129<sup>th</sup> Avenue - Favorable Recommendation from the Board of Zoning Appeals to allow an illuminated digital message sign with contingencies**

The Board of Zoning Appeals sent a favorable recommendation by a vote of 4 in favor and 0 against for the requested variance of use to allow an illuminated digital message sign with contingencies being that the message must remain on the screen for a minimum of six (6) seconds, messages may not scroll from side to side and messages may not flash. This is to replace the letter sign at Good Fellow's. John Foreman inquired of the petitioner if she was okay with contingencies; she responded yes. Motion by Greg Parker and seconded by Randy Niemeyer to approve the variance of use with contingencies from the Board of Zoning Appeals..

**Roll Call Vote: 7 to 0**

Foreman	Poston	Smith	Niemeyer	Landske	Parker	Carnahan
YES	YES	YES	YES	YES	YES	YES

- Variance of Use – Steve Govert, 13406 Wicker Avenue - Favorable Recommendation to allow a secondary use of above-ground storage and sale of propane gas in conjunction with an existing business**

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The Board of Zoning Appeals sent a favorable recommendation by a vote of 4 in favor and 0 against for the requested variance of use to allow a secondary use of above-ground storage and sale of propane gas in conjunction with an existing feed and garden center. This is for Leo's on Wicker. Nick from the fire department has checked on this. Motion by Greg Parker and seconded by Dale Poston to approve the variance of use.

**Roll Call Vote: 7 to 0**

Foreman	Poston	Smith	Niemeyer	Landske	Parker	Carnahan
YES	YES	YES	YES	YES	YES	YES

**TOWN BUSINESS:**

**New Business**

**1. Change Order – Cedar Point Park**

Ian Nicolini explained that there are two (2) change orders for Cedar Point Park. Change Order #1 includes the full reconstruction of Hilltop Avenue, including construction of additional storm sewer, the addition of storm sewer along 134<sup>th</sup> Court and Cedar Lake and miscellaneous storm sewer and paving improvements throughout the area in an amount of \$279,787.04. Change Order #2 pertains to additional work and materials necessary to construct the storm sewer along 134<sup>th</sup> Court due to the presence of peat and unsuitable materials at the subgrade of the proposed sewer in an amount of \$20,859.53. Motion by Jerry Smith and seconded by Dale Poston to approve the change order and authorize the Town Council President to sign.

**Roll Call Vote: 7 to 0**

Foreman	Poston	Smith	Niemeyer	Landske	Parker	Carnahan
YES	YES	YES	YES	YES	YES	YES

**2. Change Order –133<sup>rd</sup> Avenue Phase I**

Ian Nicolini stated that this is part of the project close out of the 1<sup>st</sup> phase of 133<sup>rd</sup>. Additional subgrade quantities were needed and there were utility conflicts. The change order is in the amount of \$235,296.00 and will be paid for out of TIF district bonds. Motion by Jerry Smith and seconded by Dale Poston to approve the change order and authorize the Town Council President to sign.

**Roll Call Vote: 7 to 0**

Foreman	Poston	Smith	Niemeyer	Landske	Parker	Carnahan
YES	YES	YES	YES	YES	YES	YES

**3. Tag Day Request – Fire Department – October 8, 2011**

The Fire Department requested the use of October 8<sup>th</sup> for a tag day. Robert Carnahan noted that they did not use their requested tag date of September 3<sup>rd</sup> nor the rain date on the following Saturday. They have made arrangements with the Boys & Girls Clubs to use their rain date if they do not need it. Motion by Dale Poston and seconded by Jerry Smith to approve the tag day request.

**Roll Call Vote: 7 to 0**

Foreman	Poston	Smith	Niemeyer	Landske	Parker	Carnahan
YES	YES	YES	YES	YES	YES	YES

**Old Business**

**1. Elimination of Sewer Utility Billing – 8611 W. 132<sup>nd</sup> Place**

This was continued to the next agenda.

**2. Facility/Shelter Rental Fees – Deferred from the September 6, 2011 meeting.**

At the last meeting Council directed cost information on rental fees to be reviewed by the park committee. The park committee is to meet to discuss the fees and analyze the costs for residents versus non-residents and have a full report in two weeks. This was continued to the next agenda.

**WRITTEN COMMUNICATIONS:** None

**Police:** Chief Patz reported that there is a Lake County Public Safety meeting on Thursday; however, he has not received an agenda yet. Friday, September 23<sup>rd</sup>, the sheriff will be at the 16 Plus Committee meeting to discuss consolidation. Hometown Fest is Saturday, September 24<sup>th</sup>. There will be a neighborhood watch meeting on September 28<sup>th</sup> at 7:30 pm following the Police Commission meeting at the Town Hall. Chief Patz invited the Fire Department and all to attend.

**Public Works:** Jim Cornett had no report.

**Parks & Recreation:** Ian Nicolini congratulated the Park Committee and the Public Works departments on the Robin's Nest Park project and the beach project.

**Clerk-Treasurer:** Chief Deputy Jill Murr had no report.

**Fire Department:** Todd Wilkening reported that the six month report was distributed. Their system was down and Council should see the reports more regular.

**Town Administrator:** Ian Nicolini reported on the grant received for the electric Think car. This opportunity was not extended to all towns. The purchase price of the car is \$10,000.00 and \$4,000.00 for a 5 year/ 75,000 mile warranty. Robert Carnahan explained the car. It will be used locally for things such as water meter readings, meetings and trainings. Discussions occurred on decommissioning the Crown Vic and the other squads that are being used as pool cars. Bill Landske expressed his opinion on the vehicle and questioned the type of systems used by the vehicle and the many unknowns. Motion by Randy Niemeyer and seconded by Dale Poston to accept the electric vehicle grant with a purchase price of

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\$10.00 and an extended warranty for \$4,000.00 for 5years/75,000 miles. The vehicles cost is in the mid \$30,000.00

**Roll Call Vote: 6 to 1**

Foreman	Poston	Smith	Niemeyer	Landske	Parker	Carnahan
YES	YES	YES	YES	NO	YES	YES

Action on the Crown Vic was continued to the next meeting. Ian Nicolini reported on the Lowell Wastewater Treatment Plant. His recommendation and memo to Council are included at the end of the minutes. David Austgen commented on the memo. Randy Niemeyer supported Ian Nicolini's memo. Motion by Randy Niemeyer and seconded by Dale Poston to have the memo written by Ian Nicolini be supported by Council and entered into the meeting record.

**Roll Call Vote: 7 to 0**

Foreman	Poston	Smith	Niemeyer	Landske	Parker	Carnahan
YES	YES	YES	YES	YES	YES	YES

A memo endorsed by Council and singed by the Town Council President will be communicated to Lowell tomorrow.

**Town Attorney:** Attorney David Austgen stated there will be an executive session after the meeting. There will be a joint Plan commission meeting to discuss the amendmments to the plan and zone laws that went into effect of July 1, 2011 tomorrow at 7:00 pm.

**Town Council:** The safety committed has discussed the modification to the 2012 Fire/EMS contract which is for a \$30,000.00 increase. Motion by John Foreman and seconded by Randy Niemeyer to have the contract drafted and brought back.

**Roll Call Vote: 6 to 1**

Foreman	Poston	Smith	Niemeyer	Landske	Parker	Carnahan
YES	YES	YES	YES	NO	YES	YES

Randy Niemeyer discussed the water utility agreement that was made regarding Robin's Nest water and the accounts that were still owed to the utility. David Austgen addressed Council on this and gave a history. Randy Niemeyer and John Foreman are to meet with the Sheehy's and confer with David Austgen. There were concerns on the language in the agreement; the interests of the taxpayers need to be protected.

**PUBLIC COMMENT:** There were no comments.

**Adjournment:** Motion by Dale Poston and seconded by Greg Parker to adjourn the meeting at approximately 8:30 pm.

**Roll Call Vote: 7 to 0**

Foreman	Poston	Smith	Niemeyer	Landske	Parker	Carnahan
YES	YES	YES	YES	YES	YES	YES

An Executive Session was advertised and conducted pursuant to IC 5-14-1.5-6.1(b) before and after the meeting with discussion consisting of litigation, acquisition and personnel issues. Those in attendance were Robert Carnahan, John Foreman, William Landske, Randy Niemeyer, Greg Parker, Dale Poston, Jerry Smith, Chief Deputy Clerk Jill Murr, Town Administrator Ian Nicolini, and Town Attorney David Austgen.

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

\_\_\_\_\_  
Robert H. Carnahan, President, Ward 1

\_\_\_\_\_  
Greg Parker, Vice-President, Ward 7

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John Foreman, Ward 2

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Dale Poston, Ward 3

\_\_\_\_\_  
Jerry Smith, Ward 4

\_\_\_\_\_  
Randell Niemeyer, Ward 5

ATTEST:

\_\_\_\_\_  
William Landske, Ward 6

\_\_\_\_\_  
Amy J. Sund, IAMC, CMC, 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.

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TOWN OF CEDAR LAKE

*Office of the Town Administrator*

7408 Constitution Avenue, P.O. Box 707, Cedar Lake, IN 46303

Tel: (219) 374-7400 Fax: (219) 374-8588

To: Cedar Lake Town Council Members  
From: Ian Nicolini, Town Administrator  
Date: September 19, 2011  
Re: Cedar Lake/Lowell Wastewater Treatment Plant Expansion & Commonwealth Engineering Contract Matters

Dear Council Members:

It has been brought to my attention that the Lowell Town Council recently and unilaterally approved a contract for engineering services with Commonwealth Engineering for design and construction inspection services for the proposed wet weather expansion to the wastewater treatment plant and the installation of a bar screen mechanism to protect the head-works from large debris.

After carefully reviewing the proposal and related document as well as meeting with Lowell officials to discuss the project, we can identify numerous areas of considerable concern for the town's utility customers. At this point in the process neither your professional consultants nor I can recommend that you enter into this contract as presented. This is not to say that the project overall does not provide value to the ratepayers. In fact, the project would provide considerable benefit to both Cedar Lake and Lowell in terms of recaptured biological capacity. The reason for my unfavorable recommendation stems from a lack of project scope, exorbitant professional charges, and a failure to provide even basic transparency for a project of this size. Specifically, my concerns are as follows:

1. **Exorbitant Professional Fees**—the proposal from Commonwealth Engineering shows professional engineering fees totaling \$907,500. This represents 12.9% of the project costs. Not only is this amount higher than what would be traditionally applied to a project of this size and complexity, this project is also a package plant expansion. In other words, the expansion consists of design elements which do not change from project to project and do not need to be completely developed from scratch. Therefore, the contract provides engineering fees higher than those typically associated with biological expansion projects, which are far more complex in nature, for a project whose design is already established and incorporated into several other locations. The numbers appear to be considerably higher than what would be appropriate for a project of this size and complexity. However, we are unable to confirm this because the project lacks a clear scope of work.
2. **Substandard Scope of Work**—Cedar Lake officials met with Lowell officials on July 13, 2011 and expressed concerns that the proposal lacked a clear and understandable scope of work. It was agreed upon that Commonwealth would provide a clear scope of work for the project. To date, this information has not been provided; it is unfortunate that Lowell opted to approve a contract for services prior to receiving a scope of work from their consultants. Commonwealth's proposal seems to be very heavy on allowances for additional fees, billing categories and rates, and reimbursable expenses, and light on specific details about the project.

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3. **Unacceptable Billing Terms**— The proposed contract calls for design engineering to be compensated on a lump sum basis. It is in the best interests of the ratepayers that the design engineering be performed on an hourly not to exceed basis. A lump sum provides considerably less accountability than an hourly not to exceed and offers no opportunity to create efficiencies and save time and money for the customer. I would never recommend that the Town Council enter into a lump sum contract for design engineering for a project this size. Frankly, I'm astonished that Lowell would accept a lump sum contract.

Perhaps even more troubling than the lump sum contract for design engineering is the method that Commonwealth proposes to bill for construction engineering and inspection. Construction engineering is proposed to be billed on a time and material basis with a not to exceed limit. Essentially, this would allow for Commonwealth to charge hourly rates to an upper-limit without regard for potential efficiency or cost-saving. The reason for proposing time and materials with a not to exceed is to ensure that delays or changes during the course of construction do not affect the engineer's ability to collect fees. I would recommend that this work be performed with a not to exceed amount and if changes or delays happen that are outside of the not to exceed amount, then the consultant can propose a contract addendum which could be negotiated and mutually agreed upon. By padding the not to exceed amount to account for potential changes or delays, the costs to the rate payers will increase regardless of whether or not changes or delays take place.

4. **Vast and Unexplained Increases in Project Cost Estimates**— On May 23, 2011, the Town was provided with an engineer's estimate of probable cost of \$5.170M. Then on July 28, 2011, the project cost was increased to \$7.013M—nearly a 36% increase in cost. While this increase is likely due to the addition work to install the bar screen at the head-works, this increase was never explained by Commonwealth
5. **Addition of the Bar Screen Component**— The wastewater treatment agreement between Cedar Lake and Lowell requires that the Joint Management Oversight Board to review and issue written recommendations for expansions to the wastewater treatment plant. To date, the additional work has not been presented to the JMOB for recommendation. Furthermore, the Cedar Lake Town Council has never been briefed on this component of the project. Although the project has numerous merits, it should still adhere to legal and ethical standards of transparencies.

I stress that the projects proposed are value-added to our utility customers. The expansion will allow for additional customers to connect to the utility at a much lower cost than a traditional biological expansion. However, the costs savings are not reflected in the proposed contract and undermine the economic efficiencies gained by using innovative technology to expand the plant's treatment capacity. Furthermore, I cannot in good faith recommend a project, regardless of the value-added, without understanding the scope of work involved.

In my opinion, there are a few simple steps that would both reduce costs and increase our understanding of the project and its various components.

1. Cedar Lake and Lowell should select an independent consultant to provide both towns with a value engineering assessment and recommendations about ways to achieve a reasonable amount for professional services as well as finding potential cost efficiencies within the design.
2. Commonwealth must provide Cedar Lake and Lowell with a clear and complete scope of work for the projects they propose as they stated that they would more than two months ago.

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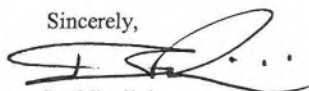
3. All billings for professional services should be on a not-to-exceed basis regardless of the level of ease or convenience that other billing methods provide the consultant.
4. Commonwealth should provide a clear explanation for the 36% increase in project cost.
5. The JMOB must review and recommend not only the bar screen component of the project, but all elements of the project and make written findings to the respective Town Councils as indicated in the wastewater treatment agreement between Lowell and Cedar Lake.

I recommend taking the above actions prior to considering entering into a contract for professional services for the wastewater treatment plant expansion.

It is unfortunate that a contract proposal that is so clearly deficient and one-sidedly in favor of a consultant rather than the rate payers who will ultimately pay for the engineering services and the construction alike. In my opinion, a contract of this size and magnitude should not have been unilaterally approved without the Joint Management Oversight Board and the respective Town Councils conferring and developing a strategy that would benefit the ratepayers first and consultants second.

If you have any questions please let me know.

Sincerely,



Ian Nicolini  
Town Administrator