

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

**September 27, 2011**  
**Special Public Meeting 6:00 PM at the Cedar Lake Town Hall**  
**Pledge of Allegiance & Moment of Silence**

**Roll Call:**

Present	John Foreman	Ward 2	Absent	Greg Parker	Ward 7
	Council Member			Vice-President	
Present	Dale Poston	Ward 3	Present	Robert H. Carnahan	Ward 1
	Council Member			President	
Absent	Jerry Smith	Ward 4	Present	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	

**TOWN BUSINESS:**

**New Business**

**1. Cedar Lake Ventures I, LLC – Settlement Resolution #1059**

Attorney David Austgen read Resolution No. 1059 in its entirety.

**TOWN OF CEDAR LAKE, LAKE COUNTY, INDIANA**  
**RESOLUTION NO. 1059**

**A RESOLUTION AUTHORIZING A LITIGATION SETTLEMENT AGREEMENT, AND ALL RELATED MATTERS**

**WHEREAS**, the Town Council of Cedar Lake, Lake County, Indiana, is aware of the pending litigation between the Town of Cedar Lake and Cedar Lake Ventures I, LLC, in the cause entitled Cedar Lake Ventures I, LLC, v. Town of Cedar Lake, Indiana, bearing Cause No. 45D10-0709-PL-00154, which is currently pending in the Lake Superior Court, Crown Point, Indiana, the Honorable Judge John Pera presiding; and

**WHEREAS**, the Town Council of Cedar Lake, Lake County, Indiana, has authorized settlement and resolution of the litigation proceeding pertaining to real estate involved in and required for the Town's 133<sup>rd</sup> Avenue Improvement Project, which settlement and resolution is acceptable to the Plaintiff; and

**WHEREAS**, the Town Council of Cedar Lake, Lake County, Indiana, having reviewed the circumstances and considered all recommendations, and being duly advised, now concurs that it is advisable and appropriate to authorize the settlement and resolution of the above-referenced lawsuit for the land acquisition completed thereby, and to authorize the execution into any and all instruments which will effectuate the dismissal of the above-referenced matter.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF CEDAR LAKE, LAKE COUNTY, INDIANA:

**SECTION ONE:** That the Town of Cedar Lake, Lake County, Indiana, by and through its Town Council, hereby authorizes the entry into the Stipulated Settlement Agreement and Dismissal, in such form and content of Agreement as is finalized between the Parties without additional substantive change of terms, which is attached hereto as *Exhibit A*, and whereby the Town Attorney is authorized to execute the Stipulated Settlement Agreement on behalf of the Town, and whereby the Town Attorney, Town Administrator, and Clerk-Treasurer are further authorized to take any and all further actions required to effectuate the Stipulated Settlement Agreement and Dismissal.

**SECTION TWO:** That this Resolution shall be in full force and effect from and after its passage and approval.

**ALL OF WHICH IS RESOLVED THIS 27<sup>th</sup> DAY OF SEPTEMBER, 2011, BY THE TOWN COUNCIL OF THE TOWN OF CEDAR LAKE, LAKE COUNTY, INDIANA.**

David Austgen gave a history of the lawsuit which began over four (4) years ago. A lawsuit was filed against the Town by a business property owner, the developer of a commercial property of approximately 12.5 acres. The lawsuit contended that the Town took a portion of the property of the commercial property owner's; this is known by lawyers as an inverse condemnation lawsuit. The lawsuit was litigated extensively including all issues related to the land including platting, dedication of easements and parcels which are reflected in the documents of the Town's as approved by the Plan Commission in 2001 & 2002, issues of taking, the date of taking, the amount of taking and various items. The case went to the Indiana Court of Appeals on the issue of the take itself; at the conclusion of the appeals the case was determined to be a take. The parcel is a nearly three (3) acres which is a storm facility. It is storm pond which drains over fifty-five (55) acres of storm water shed including a substantial portion 133<sup>rd</sup> Avenue Phase I; which was two-thirds of a mile long and had complete reconstruction. This storm facility is important to the Town as it drains the north of 133<sup>rd</sup> Avenue which was part of the storm drainage reconstruction. This case had been fully litigated to the point of discovery being completed and scheduled mediation. The settlement presented is a result of mediation which occurred on September 20, 2011. The partial amount paid of \$73,441.21 was the initial deposit based upon the orders of the court. This amount is based upon the appraisal reports from three (3) appraisers assigned by the court and report an amount of value to the court; which is \$55,000.00 plus accrued interest from the date of the take which was construed as September 2007 at a judgment interest rate of eight (8%) percent. This amount has been tendered to the court and the Town owns the property which is a 2.97 acre pond facility and a portion of a twenty (20) foot by 400 (four hundred) feet in length with a utility easement running through it. As a consequence of the mediation last week in addition to the \$73,441.21 the additional amount negotiated and authorized by the Council subject to public meeting action was \$350,000.00; the total is \$423,441.21 in full and complete payment including all elements of damages which includes fees, costs, interest, fee taking and easements. This is an item contemplated through the financing by the Redevelopment Commission with its TIF bonds. It is an amount that has been contemplated for land acquisition if payment was to be made. The question

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of the timing has only to do with the lawsuit; this could have been done at another time during the course of the land acquisition but ended up not being done in that fashion by virtue of court rulings and lawsuit filings. You have the settlement amount, history of the lawsuit and the cause number. It was noted that the Town is not admitting any guilt and a release has been prepared by Attorney Austgen awaiting Council's decision before tender of any funds. This action will not drag this out any further; this is a mediation agreement. Cedar Lake Ventures I LLC is the plaintiff with Mr. Douglas VanDerNoord being the authorized representative whose attorney is Michael Meunich which is public record. Motion by Randy Niemeyer and seconded by John Foreman to approve Resolution No.1059 Cedar Lake Ventures I LLC, Settlement Resolution.

Roll Call Vote: 5 to 0

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

David Austgen requested Council consider authorizing the payment to Steven Kovachevich, the Town's appraiser, in the amount of \$3,200.00. Motion by Dale Poston and seconded by Randy Niemeyer to pay appraiser in an amount of \$3,200.00.

Roll Call Vote: 5 to 0

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

**PUBLIC COMMENT:** Mike DeFrancesco of Fawn Court distributed information to Council and spoke on a proposal for use of the Monastery Clubhouse which included physical fitness classes including programs for adults and seniors. He gave a history on the physical fitness classes his wife has instructed. He referred to the proposal and hand-outs noting that he and his wife would work to get volunteers to get the building ready. He stated that they would rather see the building being used than just collecting dust. Discussions occurred on working on behalf of the Town or for the Town. Amy Sund noted that the Fraternal Order of Police expressed interest to utilize the facility as their lodge. She noted that the building has been sitting there since December 2007. Robert Carnahan stated that the Park Committee which includes Dale Poston, Bill Landske and Greg Parker will be meeting to discuss this. David Austgen noted that park committee has work to do and recommended that the park committee have bi-weekly reports on the agendas. Robert Carnahan noted programs for seniors in the community. Volunteers could be used to do repairs to the building. Flooring was discussed. Information is in the handout. Keith Piszro of Broadway questioned the lawsuit is that all the fees that were negotiated; is this the settlement fee. Council responded that this is the total fee. He questioned if this will end all of the stuff; Council advised not to answer. It was noted that this was being paid for from TIF funds. Important parcels were acquired for future. The settlement was reviewed and is all inclusive. Terry McDermott of Broadway stated that he thought there was going to be discussion about the plaza. It was noted that it is just the settlement. It was inquired if the Town is taking over the road; Council noted that this would be an executive session item that would not be able to be discussed publicly.

**Adjournment:** Motion by Dale Poston and seconded by John Foreman to adjourn the meeting at approximately 6:40 pm.

Roll Call Vote: 5 to 0

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

An Executive Session was advertised and conducted pursuant to IC 5-14-1.5-6.1(b) after the meeting with discussion consisting of litigation, acquisition and personnel issues. Those in attendance were Robert Carnahan, John Foreman, William Landske, Randy Niemeyer, Dale Poston, Clerk-Treasurer Amy Sund, 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

John Foreman, Ward 2

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.