

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

October 6, 2011

**Cedar Lake – Lowell Joint Town Council Public Meeting
7:30 pm at the Cedar Lake Town Hall
Pledge of Allegiance & Moment of Silence**

Roll Call:

Those in attendance for the Town of Cedar Lake included Council Members William Landske, Randell Niemeyer, Greg Parker, Dale Poston, and Robert Carnahan; Town Administrator Ian Nicolini, Town Attorney David Austgen and Clerk-Treasurer Amy Sund. Those in attendance from the Town of Lowell included Council Members John Alessia, Donald Huseman, Robert Philpot, Phillip Kuiper, Don Huseman, and David Gard. Also in attendance were Town of Lowell, Operations Director, Greg Shook and Mark Downey, Commonwealth Engineering.

*Jerry Smith arrived after roll call and John Foreman arrived at 8:30 pm

Wastewater Treatment Plant Expansion Matters

Randy Niemeyer discussed the purpose of the meeting. We are here to represent the interest of our mutual rate payers as this is a partnership in the operations of the wastewater facility. The lines of communication need to be reestablished; the Town of Cedar Lake feels these lines of communication have been broken. The Town of Cedar Lake does not object to the project; it is a necessary and valuable project for the users and ratepayers. The Town of Cedar Lake would like to gain a better understanding of the scope of the project and the various elements; express our concerns about the engineering and the contract with Commonwealth Engineering in hopes to gain a consensus to move forward in the mutual best interests of our rate payers.

John Alessia stated that both towns met during the summer noting that Mr. Landske and Mr. Carnahan were in attendance. He stated that Mr. Shook tried to schedule a meeting several times after Labor Day with no response. At that time, it was the Town of Lowell's understanding that the project could be in jeopardy from a timing standpoint; the project is 10th out of 10 in line for SRF (State Revolving Fund) funding. The Town of Lowell did not want to lose the interest rate; that would not be prudent for rate payers or taxpayers.

The Joint Management Oversight Board (JMOB) is a procedural contract between the two Towns. They should meet to evaluate the contract. As the Town of Cedar Lake is responsible for a percentage of the contract there should have been input on the construction and process. The Town of Cedar Lake noted that it is not opposed to the project. The August JMOB meeting was cancelled for lack of business.

Mark Downey gave a background on the project which began in 2009. The Town of Lowell applied for stimulus funding with a very detailed explanation of all of the components in the Preliminary Engineer's Report (PER). Unfortunately, the funding applied for was not received. A public hearing was held with public comments received. The scope of work and prices were discussed with Council and management represented. At the end of 2010, Lowell was contacted to see if they were still interested in obtaining funding. Indiana Department of Environmental Management (IDEM) pulled out the PER report and reviewed it. Approvals were received back and discussed at the JMOB meeting. Meetings and information flow was discussed. The JMOB documents report that the project was approved. There were concerns with large debris so an automatic cleaning screening was added to the bar rack of the project. This is a safety component to eliminate operator and confined space risk. This component is a separate price in the contract. The Town of Cedar Lake addressed concerns that they read about their approval in the newspaper; there was no communication. Cedar Lake noted the necessity and importance of the project; they are not opposed to it. The Town of Lowell was notified about a month ago that if they can get it in; it can be funded. The deadline for filing is December 15, 2011 or the Town of Lowell will have to re-file.

Robert Carnahan inquired of Mark Downey as to why he couldn't use on the projects like this that he already has noting the Town's concern of the \$900,000.00+ engineering costs. This is a lump sum contract versus hourly and not to exceed rates. The Town of Lowell noted that they are comfortable with the engineering costs and Mr. Downey's work; they have had a partnership with Commonwealth Engineering for over nine years. The Town of Lowell noted that they were under the gun and acted to obtain financing. They received the letter from Robert Carnahan; noting they perceived it to be Mr. Austgen's words. Randy Niemeyer objected to that statement. Randy Niemeyer requested that there be transparency; the JMOB meeting should not have been cancelled for a lack of business if there was business to address. This is a \$7,100,000.00 (\$7.1 million) project; meetings should have been had as to the progress of the project. Population and request for services have grown. The partnership needs to be reestablished between the Towns. It was noted that the JMOB was specifically set up to avoid issues. The Town of Lowell noted that it was wrong in the past; they will not handle things that way again.

Ian Nicolini noted that the Town of Lowell's representative on the JMOB is the same person presenting the contract (referring to Mark Downey). Cedar Lake's Council's point is that there has not been the opportunity to meet to discuss the proposed contract when it is done between JMOB meeting dates. There was a JMOB meeting in May, the August meeting was cancelled, Lowell Town Council took action on the contract in September and it will not go back to the JMOB until after it was approved. The track record of Commonwealth is not being questioned; it is the areas of the contract that are not to the public's benefit such as itemized billing at an hourly rate and mileage at 15% over the Federal rate. The letter sent to Lowell Town Council from Mr. Carnahan was to outline issues with the contract and opportunities for cost savings; not an attack on Commonwealth Engineering. Cedar Lake should have had the opportunity to evaluate and report on the most important step in the process. Cedar Lake's Council generally does not act at a meeting without documentation. Engineering services costs were discussed in regards to hourly items, portions that are not-to-exceed and lump sum items. The bid date for this project will be November 29th. The bid and pre-closing documents need to be submitted by December 1st. There is over a half-million dollars for inspection fees; the engineering fees are less than 10% of the contract. This falls below the 20% allowed for non-construction costs submitted to IDEM. Mark Downey stated that savings could come in at the construction phase. Greg

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Parker inquired if the contract could come in lower; Mark Downey responded no, it is a lump sum. User rates were discussed; each Town is different based upon their share and overall impact. Each community has its own option on how it pays for the project. Ian Nicolini clarified financing and rate studies. The Town of Cedar Lake is not eligible for its own SRF financing; the Town of Lowell is as they are the owner. The rate study commissioned by the Town of Lowell in July is still being worked on; if Cedar Lake needs a rate study it will take time as well. This has not been coordinated with both towns financial consultants. In July, the Town of Lowell directed Greg Guerrettaz to coordinate the financing with the financial consultants. If Cedar Lake has to provide a rate study or financial information; the Town of Cedar Lake is already down. The Town of Lowell acted upon the estimated costs of the project. The estimate for the project is seven million dollars; just over three million five hundred thousand dollars for each Town. When bids are received actual costs will be known. Rates and rate structures were discussed. The PER was completed without the cost of the screening component. The PER does not need to be rewritten; it needs to be acknowledged at a public meeting that the screening would be included with the project. Randy Niemeyer inquired of John Alessia if zoning approval from the Lake County Plan Commission has been sought; John Alessia responded that there is a special exception and paperwork involved as the project is being done on existing property. The plans for the project need to be completed by November 1st. Greg Parker noted concerns with the nearly \$1,000,000.00 for engineering costs. It was clarified that the part of the number is engineering and part is inspections. Randy Niemeyer inquired when the engineering contract presented to the JMOB as the August meeting was cancelled. Cedar Lakes concern is the engineering costs, not the screening or the project. The opportunity to weigh in on the costs did not present itself. The contract was approved before there was opportunity to talk about the specifics of the contract. It would be similar to making a recommendation on an action item that that was already taken.

Mark Downey agreed that there is a conflict of interest having the engineers review the contracts and recommended getting the engineers off of the JMOB and putting the Town Managers/Administrators on there. Discussions occurred on the August meeting cancellation in regards to lack of business, scheduling conflict or lack of quorum.

Information and pictures of the project and screening were reviewed. There were multiple conversations. Bill Landske inquired if there is a warranty; Mark Downey responded that there is a one year unconditional warranty beginning twelve months after substantial completion. The life span of the screening is twenty years. Maintenance is involved; there are mechanical and electrical components.

The action to replace engineers with Town Managers/Town Administrators was unanimously agreed upon by both Councils. The engineers will still attend the JMOB meetings. Cedar Lake will draft the contract amendment resolution for the change and forward it to Lowell.

Mark Downey stated that Rich Zumba, SRF Financing, would need documentation that both Council's met and the screening was discussed as part of the wet weather treatment project so that an amended PER does not need to be filed. The deadline for all pre-closing documents is December 1st for a December 15th closing. Randy Niemeyer stated that Cedar Lake will have this as an agenda item for its October 18, 2011 Town Council Meeting. Clerk-Treasurer Amy Sund will forward the excerpt from the minutes to Mark Downey.

Public Comment

Carrie Napoleon questioned how much of the cost was for the engineering and how much for inspections; and who does the inspections. Mark Downey responded that every step in the project is inspected which is done by the engineering firm. There are general percentages used and all are within the requirements.

Tonight's meeting resulted in the project going forward, discussions of the screening and re-establishing the partnership between the Towns.

The next JMOB meeting is supposed to be November 8, 2011, which is Election Day. It was recommended to move the meeting to November 1, 2011 at 1:00 pm at the Cedar Lake Town Hall. Ian Nicolini will send out meeting notices.

Adjournment

President Robert Carnahan adjourned the meeting at approximately 8:50 pm.

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

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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.

DRAFT