

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

February 19, 2019

**Public Meeting Advertised for 7:00 PM
Conducted at the Cedar Lake Town Hall
Pledge of Allegiance & Moment of Silence**



Roll Call:

Present	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	Present	Jennifer N. Sandberg 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	

INTRODUCTION: CEDAR LAKE POLICE DEPARTMENT PASTOR KEN PUENT

Police Chief Coulson stated Father John has been the primary Police Chaplain. The Cedar Lake Police Department has added an additional Chaplain to assist Father John. Chief Coulson introduced Pastor Ken Puent.

PUBLIC COMMENT (*on agenda items*): None.

CONSENT AGENDA:

Minutes: February 5, 2019

Claims: All Town Funds: \$252,597.28, Wastewater Operating: \$245,425.77, Water Utility: \$67,276.04, Storm Water: \$36,275.09, 2017 RDA B Construction: \$3,776.37

Payroll: February 7, 2019 - \$247,223.79

January 1-31, 2019 Manual Entries

Donations: Casey's In-kind contribution: 2, 25# boxes of candy

Tag Day Requests: April 6 - October 26, 2019. It was noted there are 5 open spots.

A motion to approve the request was made by Ralph Miller with second by Richard Sharpe. Council Member Carnahan stated on the claims we paid GMI a little over \$65,000 for the month. He stated a six year contract was signed and asked if Town Administrator Murr or Clerk Treasurer Sandberg knew when the contract expired. Clerk Treasurer Sandberg stated the contract was signed in 2015 and it expired in 2021. Carnahan stated the Town saved a lot of money and the Town charges \$20 instead of \$15. Roll call vote: Carnahan – Yes, Parker – Yes, Miller – Yes, Niemeyer – Yes, Sharpe – Yes, Rivera – Yes, Foreman – Yes. Vote: 7 to 0.

ORDINANCES

1. Ordinance No. 1315 – Fire Pension Board – (first reading February 5, 2019)

Council Vice-President Rivera read Ordinance 1315 by title only.

A motion to adopt Ordinance No. 1315 was made by Randy Niemeyer with second by Julie Rivera. Roll call vote: Carnahan – Yes, Parker – Yes, Miller – Yes, Niemeyer – Yes, Sharpe – Yes, Rivera – Yes, Foreman – Yes. Vote: 7 to 0.

2. Ordinance No. 1317- Rago Public Way Vacation – (first reading February 5, 2019)

Council Vice-President Rivera read Ordinance 1317 by title only.

A motion to adopt Ordinance No. 1317 was made by Julie Rivera with second by Richard Sharpe. Council Member Carnahan asked for explanation. Town Attorney Austgen stated it was an older subdivision with a walk way easement. It is on an old plat and does not go to the Lake. Roll call vote: Carnahan – Yes, Parker – Yes, Miller – Yes, Niemeyer – Yes, Sharpe – Yes, Rivera – Yes, Foreman – Yes. Vote: 7 to 0.

PLAN

1. Ordinance No. 1318 – Olthof-Birchwood Farms PUD

Council Vice-President Rivera read Ordinance 1318 by title only. Town Attorney Austgen confirmed to Council President Foreman that Public Hearing was held at the Plan Commission meeting. Jeff Yatsko with Olthof Homes provided highlights of the PUD, noting approximately 68 acres located west of 41 and north of 126th. This was given a favorable recommendation by the Plan Commission. It includes 137 total homes; 2.0 units/acre; 78 single family homes and 79 single family villa homes; 20 acres of open space; 13 acres wooded area with trails which is in a conservation area; playground for ages 5-12; gathering space for villa area. Town Attorney Austgen confirmed the process

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has been followed according to Town code and law and recommendation from Plan Commission was favorable and conditional upon compliance with the appended contract agreement. Austgen recommended that the first motion be to consider and approve that agreement. The second item to consider would be the adoption of the ordinance. Austgen noted for the record there were conditions for the zoning classification approval: 1) Birchwood Farms Planned Unit Development contract dated tonight, if approved, that the contract be a condition and compliance by developer and property owner; 2) Copies of the approved Plan Commission meeting minutes be appended and the developer be required to comply with those conditions; 3) Zoning District Classification Amendment be contingent upon compliance by the owner/petitioner with all other rules, regulations, requirements, ordinances of the Town and State law; and 4) Consideration be contingent upon payment by the petitioner/owner of all fees, costs and charges incurred by the Town related to the application including all engineering, legal and related. Austgen stated it would be his recommendation to include these items on the ordinance itself.

A motion to approve the PUD contract with contingencies recommended was made by Randy Niemeyer with second by Richard Sharpe. Roll call vote: Carnahan – Yes, Parker – Yes, Miller – Yes, Niemeyer – Yes, Sharpe – Yes, Rivera – Yes, Foreman – Yes. Vote: 7 to 0.

A motion to approve Ordinance No. 1318 with the contingencies made as part of the public record by Town Attorney Austgen was made by Randy Niemeyer with second by Julie Rivera. Roll call vote: Carnahan – Yes, Parker – Yes, Miller – Yes, Niemeyer – Yes, Sharpe – Yes, Rivera – Yes, Foreman – Yes. Vote: 7 to 0.

Since this only required one reading, Town Attorney Austgen recommended to Council President Foreman that staff look over thoroughly all attachments, documents, etc. making sure that all dates and information were included.

Council Member Niemeyer asked Jeff Yatsko two questions: 1) Is there some sort of traffic mitigation being looked into in regards to cars pulling out onto 41 with the location of a hill noted and 2) Olthof has had a history in Cedar Lake of not having quality product and wanted to make sure the quality met the standards of what was being seen. Yatsko stated there have been conversations with INDOT regarding the two main entrances. He stated the main entrance in and out would be at the south side of the subdivision towards the top of the hill. A second entrance is available at the north entrance with right in/right out. He stated INDOT has a center turn lane project that is coming to be constructed in 2020. With Olthof's planned timeframe, their north entrance would tie into the center turn lane construction, which would provide an added layer of security. Yatsko also stated he hoped that the Cedar Lake was satisfied with the quality of homes. Council President Foreman added that Yatsko works closely with the Building Department and worked well with the department keeping in contact with them.

2. Ordinance No. 1319 – Lennar-Rose Garden Estates PUD

Scott Guerard introduced himself as representing Lennar along with noting the members of his team present in the audience and available for questions. Guerard thanked staff for being great, working with them, and their communication. Guerard stated Lennar was here tonight to seek approval for the Fritz Farms/Rose Garden Estates PUD which would be 352 units located adjacent to Hanover Central Middle School off of 141st Street; 121 single family homes, 85 ranch villas, 74 side-load duplex homes/paired villas, and 72 town homes.

Council Vice-President Rivera read Ordinance 1319 by title only. Council President Foreman stated this has been given to Town Council from the Plan Commission with favorable recommendation with various contingencies. Council President Foreman asked Town Attorney Austgen to go over those contingencies. Town Attorney Austgen stated this was a planned unit development proposal and the process has been followed according to Town code and law. Public Hearing was held January 16, 2019, continued to February 6, 2019, and at the conclusion of the Public Hearing, it was decided with a favorable recommendation with a vote of 4 in favor and 3 opposed for the action. The contingencies of approval are recommended to be considered. Austgen noted for the record the contingencies were as follows: 1) The developer conform to and comply with the approved Planned Unit Development Project Contract presented by the petitioner/owner for the project and a copy of same be attached; 2) Compliance by the developer/owner with all terms and conditions of the Town's Subdivision Plat Approval process, which has not yet been completed; 3) Compliance with all conditions of the Plan Commission for its Favorable Recommendation Certification for this Zoning District Classification, all of which is identified in detail within the Plan Commission meeting minutes of January 16, 2019 and February 6, 2019. Austgen noted the record should

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reflect the Plan Commission had very detailed contingencies in the February 6, 2019 recommendation action which are incorporated. Austgen recommended that the meeting minutes once approved by the Plan Commission be appended to this ordinance; 4) Compliance by the owner/petitioner with all rules, regulations, requirements, ordinances of the Town and State law; and 5) Consideration be contingent upon payment by the petitioner/owner of all fees, costs and charges incurred by the Town related to the application including all engineering, legal and related.

Geurard highlighted a couple of items. He stated Lennar voluntarily suggested an option to the Town of fee payment upfront at \$1000 per unit totaling \$352,000 that could be utilized for whatever the Town sees fit from an infrastructure standpoint. Geurard clarified the fees would be in relation to sewer and water specifically that Lennar wanted to incorporate into their business plan.

Council Member Niemeyer addressed Town Attorney Austgen asking for clarification if the Council needed to consider the PUD as its own consideration item and the recommendations would be considered as part of the Ordinance. Austgen confirmed the inquiry. Council President Foreman asked for Town Attorney Austgen to confirm that the packet included tonight was the most current packet to be included for consideration. Austgen stated the document has been evolving over the past weeks and this was the most current packet. Foreman asked Geurard about proposed timeline. Geurard stated he would be back in May at the earliest for plat approval.

A motion to approve the PUD contract with contingencies recommended was made by Randy Niemeyer with second by Greg Parker. Council Member Niemeyer stated this was the first time a developer has come voluntarily to add to the investment in the community, noting appreciation, and the hope that other developers in the future might follow in their footsteps with this type of investment. Geurard thanked Niemeyer for his kind words and expressed his hope this would be the start of many projects to come in the area. Roll call vote: Carnahan – No, Parker – Yes, Miller – Yes, Niemeyer – Yes, Sharpe – Yes, Rivera – Yes, Foreman – No. Vote: 5 to 2.

A motion to approve Ordinance No. 1319 inclusive of the recommendations read into the public record by Town Attorney Austgen was made by Randy Niemeyer with second by Richard Sharpe. Council Member Niemeyer confirmed from Scott Geurard that Lennar was a nation-wide builder. Niemeyer stated there had been rumor and was seeking clarification on it being said that once Lennar obtains approval they build to the lowest possible standard allowable under the code. Geurard stated that was not true, stating the proposed starting price points for each model, also stating that the side-load units are a newer item and not cheap to build. Roll call vote: Carnahan – No, Parker – Yes, Miller – Yes, Niemeyer – Yes, Sharpe – Yes, Rivera – Yes, Foreman – No. Vote: 5 to 2.

BZA

1. Nancy Healy – 13125 Lake Shore Drive – Use Variance

Council President Foreman read the Board of Zoning Appeals certifies a Favorable Recommendation to the Town Council for the requested **Use Variance** to allow the Petitioner, Nancy Healy, to have four (4) tables and sixteen (16) chairs for outdoor dining and alcohol contingent an additional ten (10) parking spaces be secured off-site for employee parking only or outdoor dining privileges will be revoked. By a vote of 4 in favor and 1 against, upon motion duly made and seconded at the public meeting held on February 14, 2019. Council Member Carnahan inquired as to who voted against and why. It was noted Jeff Bunge voted against but there was not a note as to why.

A motion to approve the Use Variance with conditions set forth by the BZA was made by Randy Niemeyer with second by Greg Parker. Council Member Niemeyer stated outdoor dining was consistent with resort-like destinations. Council President Foreman asked members if they felt the number of parking was too steep. Town Attorney Austgen confirmed the parking was heavily addressed at the meetings and felt the parking was necessary. Council Member Carnahan noted a personal experience in that area waiting on delivery trucks before he could pick up his food. Roll call vote: Carnahan – Yes, Parker – Yes, Miller – Yes, Niemeyer – Yes, Sharpe – Yes, Rivera – Yes, Foreman – Yes. Vote: 7 to 0.

2. Frank Ponziano, Owner; Petitioner, Joseph Siwinski – 10800 W. 133rd Ave – Use Variance

Council President Foreman read the Board of Zoning Appeals certifies a Favorable Recommendation to the Town Council for the requested **Use Variance** to allow the Petitioner, Joseph Siwinski to operate two (2) businesses: a real estate office and mortgage lending office on a lot in a B-1 Zoning District contingent parking lot

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improvements completed within six (6) months. By a vote of 5 in favor and 0 against, upon motion duly made and seconded at the public meeting held on February 14, 2019. Mr. Siwinski came to the podium for questions. Siwinski confirmed for Council Member Niemeyer inquiring if this was the building next to LaGaviota and if improvements would be made, like to the façade. Siwinski noted he would like to be able to get into the building and make improvements over the course of time. Siwinski stated he operates a mortgage and real estate company in Mokena, IL and was wanting to open a branch in Cedar Lake considering his like for the area and the increased developments in the Town. Niemeyer asked Town Attorney Austgen to go over the parking lot concerns addressed by the BZA. Austgen stated there would be parking spaces on the west side of the building improved in compliance with Town Code over the course of six months; discussion about having circular traffic pattern around the north side of the building for safe ingress/egress onto or off of 133rd; discussion about parking on the east side of the building facing the building southbound so that there was not blind access to 133rd. Council Member Carnahan stated he was under the impression the parking lot was owned by LaGaviota. Siwinski stated there was a 13 feet section where 2 employees would park in the area, noting separate customer parking not utilizing LaGaviota's parking lot in the grassy area to accommodate 3-5 spaces.

A motion to approve the Use Variance with stipulations set forth by the BZA was made by Julie Rivera with second by Ralph Miller. Roll call vote: Carnahan – Yes, Parker – Yes, Miller – Yes, Niemeyer – Yes, Sharpe – Yes, Rivera – Yes, Foreman – Yes. Vote: 7 to 0.

3. Kubiak Development – 13135 Lake Shore Drive – Special Use Variance

Council President Foreman read the Board of Zoning Appeals certifies a Favorable Recommendation to the Town Council for the requested **Special Use Variance** to allow the Petitioner: Kubiak Development to operate a General Contractor's Office with indoor storage only for a construction business. By a vote of 5 in favor and 0 against, upon motion duly made and seconded at the public meeting held on February 14, 2019.

A motion to approve the Special Use Variance with the conditions set forth by the BZA was made by Greg Parker with second by Julie Rivera. Council Member Niemeyer asked Director of Operations Tim Kubiak if he owned this building. Kubiak stated he owned 50% and the building would be utilized for indoor storage. Council Member Carnahan noted Kubiak had signed a Conflict of Interest Statement at the beginning of the year. Roll call vote: Carnahan – Yes, Parker – Yes, Miller – Yes, Niemeyer – Yes, Sharpe – Yes, Rivera – Yes, Foreman – Yes. Vote: 7 to 0.

NEW BUSINESS

1. Contract Agreement – Christopher B. Burke Engineering LTD

Town Administrator Murr gave a synopsis of the contract, stating it was the annual contract agreement with Christopher B. Burke Engineering who provide a multitude of services, other than water and waste water services. Council President Foreman confirmed for Council Member Carnahan that fees for services were maintained at the same rate as last year.

A motion to approve the contract agreement was made by Richard Sharpe with second by Julie Rivera. Roll call vote: Carnahan – Yes, Parker – Yes, Miller – Yes, Niemeyer – Yes, Sharpe – Yes, Rivera – Yes, Foreman – Yes. Vote: 7 to 0.

2. Contract Agreement – Nies Engineering

Town Administrator Murr gave a synopsis of the contract, stating it was the annual contract agreement with Nies Engineering who provide primarily services related to sanitary and water services, but not limited to as directed by Town and Plan Commission review. Murr noted the rates remained the same as last year.

A motion to deny the contract agreement with Nies Engineering was made by Randy Niemeyer pending the first action and seating of the Utility Board, which is in the process of being created, stating he felt the Board should be able to act upon the action of the utility engineering firm. Multiple discussions took place including the Town Attorney Austgen regarding terminology of denial, deferment and continuation of the services currently provided. Second was made by Greg Parker. Council Member Miller asked for clarification on the motion. Council President Foreman stated it meant the one year contract would not begin; Council Member Niemeyer clarified Nies Engineering is called upon for tasks ala carte and billed accordingly, stating he felt vetting this issue was an important concern for the Town development with utility infrastructure. Niemeyer felt there had been slow movement with the current consultant and the performance improvement has been less than stellar. Roll call vote: Carnahan – Yes, Parker – No,

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Miller – No, Niemeyer – Yes, Sharpe – No, Rivera – No, Foreman – No. Motion failed to pass with Vote: 5 to 2.

A second motion to allow the contract for a six (6) month term from today (February 19, 2019) with Nies Engineering in order to review activity was made by Greg Parker with second by Julie Rivera. Council Member Niemeyer felt that utility items have not been acted upon in a prompt timeframe by this consultant. He felt performance should be expected when utilizing the tax payers' money, noting Wicker Meadows as an example. Roll call vote: Carnahan – No, Parker – Yes, Miller – Yes, Niemeyer – No, Sharpe – Yes, Rivera – Yes, Foreman – Yes. Motion carries with Vote: 5 to 2.

3. CBEL Proposal – Highland Subdivision Improvements

Town Administrator Murr provided a quick history, stating a section to the north had been left off projects previously done. Christopher B. Burke Engineering was enlisted for surveying services and this is the result of that work.

Council Member Carnahan stated residents were concerned with road work being done but that area was excluded. Carnahan stated it was looked at and determined the area had been left out. Council Member Niemeyer congratulated Christopher Burke on their work, noting roads were not their specialty, and stated the product was good quality. Town Administrator Murr stated the cost for the project was \$59,950.00 and project would take up to 12 weeks.

A motion to approve the improvements as recommended was made by Robert Carnahan with second by Greg Parker. Roll call vote: Carnahan – Yes, Parker – Yes, Miller – Yes, Niemeyer – Yes, Sharpe – Yes, Rivera – Yes, Foreman – Yes. Vote: 7 to 0.

REPORTS

1. **Town Council** – Council Member Carnahan wanted to let everyone know Bob's Auto Group on HWY 41 will be having an Open House this Friday at 6 pm. They will have food and give away items. They are raffling off a van and proceeds going to Project Love Food Pantry.

Council Member Parker asked Town Attorney Austgen and foresight from Council Member Carnahan about Morse St project back in 2007. Carnahan elaborated 4 miles of roads being heat scarified and widening of Lake Shore Drive by 2 foot with a top coat being placed afterwards. The cost of the project was \$800,000. Parker wanted to know if it was a bond financing the repair. Austgen stated Redevelopment Authority issued the financing. Parker asked if there was any way to create a policy that when a project is paid off the funds available would be put into a fund for other such projects to make road funding more consistent. Town Attorney Austgen stated he represents other communities who do exactly as Parker was proposing. Austgen stated VS Engineering has a check off of priority for roads, stated engineering would need to be obtained, and financing against the list to see what would be available for funding. Austgen suggested utilizing TIF funds for Morse Street. Members also talked about Community Crossings funds or other funding options for improvements. Council Member Carnahan commended Tim Kubiak for obtaining a crack sealer and repairing roads to help maintain them. Town Administrator Murr stated reports were due from VS Engineering soon and would include cost estimates that could be made available at the next meeting.

Council Member Niemeyer attended the Lake County Election Board meeting today, where it was decided that due to lack of contested races within Cedar Lake and four other communities, that there will not be a Primary in Cedar Lake. Clerk Treasurer Sandberg stated savings for hard costs estimated at \$9000 but noted costs of early voting and personnel total would have been closer to \$15,000. Niemeyer clarified however that the Board of Elections approved questions for the Hanover Community School Corporation for consideration of the property tax referendum that would be held on the Primary Election date within the Hanover Township voting district. Niemeyer stated the funding of this would be the responsibility of the Hanover School Corporation. Council Member asked why the school would not have waited until November to avoid the additional cost. Niemeyer was not certain but felt it may have dealt with budget cycles and felt with capturing a smaller voting audience, it would be easier to pass. Niemeyer stated there was a Public Forum being held at Hanover Central tomorrow night at 6:30 pm in the Auditorium and invited anyone wanting to know more information or wanting to voice an opinion to attend. Niemeyer confirmed Council Vice-President Rivera inquiry on the polling places within the township remaining the same, as determined by the Board of Elections.

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Council Member Niemeyer was part of a conference call with the OUCC regarding system development charge for water utility improvements. He brought this to the attention of the Council because he felt parts of the call were left unprepared by utility and financial consultants and suggested not only looking at the utility consultant's contract but also that of the financial consultant. Council President Foreman noted several of the subdivision approved and the options to limit or reduce density. Council Member Parker asked Town Attorney Austgen if there was a mechanism of expiration date in place for PUDs approved 10 years ago if the Town would be in a better position and if that could be an option to consider moving forward. Austgen stated that during the annexation process, there is a fiscal plan approved by resolution of the legislative body/Town that makes affirmative statements that generally have to do with the utilities. Unless there are professional engineering consultation or advice to the contrary, the Town cannot assume the utility capacity exists. Zoning was noted as another avenue of gatekeeping for non-compliance. Multiple discussions occurred regarding development, surety bonds, expiration date language within the codes, and Plan Commission.

Council Member Carnahan announced the 16+ meeting at the Town of Schererville this Friday at 9 am where Janet Romano Executive Director of Lake County Solid Waste explaining what they do and cuts she has made. Carnahan commended Romano on her direction she's taking with Solid Waste.

2. **Town Attorney** – No report.
3. **Clerk-Treasurer** – Clerk Treasurer Sandberg stated she and her staff were working on gathering the ordinances for the supplement to the Town Code, done annually.
4. **Town Administrator/Staff** – Nothing noted.

WRITTEN COMMUNICATION

1. **2018 Building Department Report** – Town Administrator Murr noted 5 new home permits with a residential value at a little over \$1,048,150 and 17 alteration permits with a value at \$238,618.
2. **Christopher B. Burke Engineering Report** – Town Administrator Murr stated Don Oliphant has been working diligently on applying for applications with NIRPC. One meeting he attended last week was for the intersection of Hanover Central High School and Armani/Summer Winds residential development, which the project will be funded at 90% by the TIP. Oliphant stated the TIP would look at approving this project in the May meeting in the amount of \$548,540.30 with local share of \$78,000. Oliphant clarified for Police Chief Coulson that the funds included the optic cam. Oliphant explained American StructurePoint did a traffic study with current and anticipated growth in the area. The signalized light, decorative in nature, and a cheaper project for TIP funding. Oliphant stated the Lake Shore Drive and Founder's Creek projects were not approved for funding, noting Founder's Creek was going to be looked at by a Next Levels proposal for grant funding.

PUBLIC COMMENT

Jonathan Lotton requested a vote to withdraw the grievance with the DNR. The consensus of the group was to have Oliphant obtain the necessary paperwork and then Mr. Lotton attend Plan Commission meeting. Council Member Niemeyer addressed Lotton with notation that Town Attorney Austgen and the Town were awaiting written communication from the DNR. Lotton stated he would provide the Town with the documentation he had.

Father John Kowalczyk, 10717 W 134th Place, Cedar Lake, IN, noted the proposed figures related to residential development and his concerns for public safety, specifically noting if there are more people, there will be more calls. He hopes the Town Council for budgetary considerations and future consideration of how to fund future events will keep in mind the development and possibly proposals like that mentioned of Lennar tonight for additional funding to be used for such addressed concerns. Council Member Niemeyer stated that the Town had seen budget growth in both the Police and Fire Department this year and it was the first year noted in quite some time that money did not need to be borrowed to start the year. He predicted good results in the future and acknowledged Father John's noted concerns.

ADJOURNMENT President Foreman called the meeting to adjournment at approximately 8:52 PM

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

John Foreman, President

Julie Rivera, Vice President

Robert H. Carnahan

Ralph Miller

Randell Niemeyer

Greg Parker

ATTEST:

Richard Sharpe

Jennifer N. Sandberg
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.