August 16, 2022

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 | Ward 1 | Absent  | Colleen Schieben      | Ward 6    |
|---------|--------------------|--------|---------|-----------------------|-----------|
|         | Council Member     |        |         | Council Member        |           |
| Present | John Foreman       | Ward 2 | Present | Richard Sharpe        | Ward 7    |
|         | Council Member     |        |         | Council Member        |           |
| Present | Julie Rivera       | Ward 3 | Present | Jennifer N. Sandberg, | IAMC, CMC |
|         | Council Member     |        |         | Clerk-Treasurer       |           |
| Present | Ralph Miller       | Ward 4 | Present | Chris Salatas         |           |
|         | Council Member     |        |         | Town Manager          |           |
| Present | Randell Niemeyer   | Ward 5 | Present | David Austgen         |           |
|         | Council Member     |        |         | Town Attorney         |           |

## PRESENTATION - Indiana Fallen Heroes

George Tomaszewski Jr., Indiana Fallen Heroes, shared two veteran placards. He introduced Paul Rosenwinkle of the Indiana Patriot Guard. Mr. Tomaszewski discussed the Indiana Fallen Heroes initiative. He stated they were present to honor and acknowledge two individuals and the respect they've shown the community. He presented Police Chief, Bill Fisher, and Fire Chief, Todd Wilkening, with Indiana Patriot Guard coins in honor of their dedication and the respect they've shown the Town and to veteran families. Mr. Rosenwinkle shared information on an upcoming event for Indiana Fallen Heroes.

#### **PUBLIC HEARINGS**

- 1. Ordinance No. 1423 Town of Cedar Lake Ward Redistricting
  - **a.** Review of Legals Mr. Austgen stated the legals were in order.
  - **b.** Reading of Ordinance No. 1423 Council Member Sharpe read by title only.
  - **c. Remonstrators** Kevin Toth, 9725 W. 129<sup>th</sup> Place B, commented on the redistricting ordinance. He asked them to think about at-large votes and how they effect the wards and ward representation.
  - d. Town Council Discussion None
  - e. Town Council Decision

Mr. Austgen asked if they introduced this ordinance. It was stated yes. Mr. Austgen stated they could adopt tonight if they so choose. Mr. Salatas requested they hold adoption until the next meeting as they need to notify Lake County ten days before due to split precincts.

A motion to defer was made by Ralph Miller with second by Richard Sharpe. Roll Call: Carnahan – Yes, Foreman – Yes, Rivera – Yes, Miller – Yes, Sharpe – Yes, Niemeyer – Yes. Vote: 6-0.

## 2. Ordinance No. 1426 – Town of Cedar Lake 40-Acre Parcel Annexation

- **a. Review of Legals -** Mr. Austgen stated the legals were in order.
- **b.** Reading of Ordinance No. 1426 Council Member Sharpe read by title only.
- c. Reading of Resolution No. 1313 Council Member Sharpe read by title only.
- **d. Attorney Comments** Mr. Austgen stated this is the 40-acre parcel exchange with Diamond Peak related to the needs of the Town for the Lake Eco-System Restoration Project. This parcel is not in Town. This is to annex the Town-owned property.
- e. Remonstrators None
- f. Town Council Discussion None
- g. Town Council Decision

A motion to approve Resolution No. 1313 was made by Ralph Miller with second by John Foreman. Roll Call: Carnahan – Yes, Foreman – Yes, Rivera – Yes, Miller – Yes, Sharpe – Yes, Niemeyer – Yes. Vote: 6 – 0. Mr. Niemeyer asked about Ordinance No. 1426. Mr. Austgen stated it has been introduced and it will be on the next public meeting agenda.

## 3. Resolution No. 1315 – Additional Appropriation

- **a.** Review of Legals Clerk-Treasurer Sandberg stated the notices were made on August 5, 2022.
- **b.** Reading of Resolution No. 1315 Council Member Sharpe read by title only.
- **c. Clerk-Treasurer Comments -** Ms. Sandberg reported the additional appropriation is for a total of \$69,150.

- d. Remonstrators None
- e. Town Council Discussion None
- f. Town Council Decision

A motion to approve Resolution No. 1315 was made by Julie Rivera with second by Richard Sharpe. Roll Call: Carnahan - Yes, Foreman - Yes, Rivera - Yes, Miller - Yes, Sharpe - Yes, Niemeyer - Yes. Vote: 6-0.

#### **PUBLIC COMMENT**

Kevin Toth, 9725 W. 129<sup>th</sup> Place, questioned Item 3 under New Business, APEC Proposal. He asked if and when there would be public forums to explain the costs and financing. Mr. Niemeyer explained that is part of the process. There will be public hearings on bond issuances. They can't move forward with financing until they have done a site study so they know they can build it.

## **CONSENT AGENDA**

- **1. Minutes:** August 2, 2022
- **2. Claims:** All Town Funds: \$192,753.53; Wastewater Operating: \$237,403.55; Water Utility: \$57,665.87; Storm Water: \$1,241.34; Payroll: August 4, 2022 \$327,169.86; and July Remittances: \$187,502.97
- **3. Manual Journal Entries:** July 1, 2022 July 30, 2022
- **4. Donations:** Fraternal Order of Eagles, \$5000 to the Park & Recreation Non-Reverting Fund
- **5. Alcohol Waiver Request:** Megan Tilton, September 17, 2022

A motion to accept and waive the reading of the minutes and accept the consent agenda as listed was made by Julie Rivera with second by Richard Sharpe. Mr. Foreman asked if the alcohol waiver was for the clubhouse. It was stated yes. Roll Call: Carnahan – Yes, Foreman – Yes, Rivera – Yes, Miller – Yes, Sharpe – Yes, Niemeyer – Yes. Vote: 6 – 0.

#### **ORDINANCES**

## 1. Ordinance No. 1422 – Henn Holding Annexation of Kretz Farm

Introductory reading was on July 5, 2022 with public hearing on August 2, 2022. Council Member Sharpe read by title only.

A motion to adopt Ordinance No. 1422 was made by Ralph Miller with second by Julie Rivera. Roll Call: Carnahan – Yes, Foreman – Yes, Rivera – Yes, Miller – Yes, Sharpe – Yes, Niemeyer – Yes. Vote: 6-0.

## **BZA/PLAN COMMISSION**

## 1. Council Review of Board of Zoning Appeals (BZA) Action Item NyBy

Mr. Niemeyer stated this was an item he brought to the table. He stated he observed some things that happened in the process of approval for this particular item. He stated he had concerns regarding the procedure, legality, and jurisdiction of the BZA. He stated the BZA has full authority and final say on development variances and use variances go before the Council. In this case, there were several procedural items that made him seek review of this item. He discussed the July and August meetings. He stated he noticed a lack of one of the three findings of fact or conditions for developmental variance approval. He stated the petitioner never presented evidence of a hardship that would have even allowed the BZA to consider the variance. The only hardship presented was a legislative hardship. He discussed the timeline of events as it relates to zoning. The BZA application was submitted April 14, 2022. A second application was submitted June 22, 2022. He stated part of the variance process is a B-3 use on a parcel that is roughly 23,000 square feet. The zoning ordinance doesn't allow for that development under 40,000 square feet. That is why they sought a variance. He discussed the hardship that was presented. He stated the Town Council adopted a new set of zoning standards under the new zoning ordinance. That is the sole authority of the Council. It was adopted March 1, 2022. He understands the petitioner met with Town staff several times and started the concept process early on but the record shows the first application submitted was in April. He stated the presentation of legislation as hardship doesn't meet the criteria. He stated that is the first point where he believes the BZA action was improper. He stated the second point is regarding BZA members and comments made. He discussed conflicts of interest regarding advocacy comments made by Mr. Kiepura and Mr. Bunge during the August public meeting. He referenced Indiana Code 36-7-4-909. He stated the two board members created their own conflict of interest regarding their advocacy comments made. He stated in his own review of this, the vote of the BZA is a vote they couldn't have taken. He continued to discuss the action taken by the BZA. Mr. Niemeyer discussed the need for review of the zoning law for the 133<sup>rd</sup> Avenue corridor and lot sizes. Mr. Austgen discussed the zoning component of the item. He stated that is the strongest legal and planning position. He stated it was talked about in the BZA public hearing about the

change in the district and change in the community. He stated the hardship or practical difficulties is spot on. Mr. Niemeyer stated he waited to hear that presented by the petitioner but the only thing presented was legislative action. Mr. Foreman stated Mr. Kiepura would have never done anything purposefully. He's not gaining anything. A lengthy discussion continued on the developmental variance, hardship presented, and BZA action taken.

Mr. Niemeyer asked Mr. Austgen what would be a step they could take since the Town Council has no jurisdiction over developmental variances yet they have jurisdiction on whether or not the law is being followed. Mr. Austgen recommended they consider imposing a moratorium on development activities in the corridor so that staff has time to address and review the zoning district classifications. As well as the uses in the corridor, including this particular project property and for recommendation on the handling of same. Mr. Niemeyer asked if this would put a pause on B-3 development in the corridor or all development. Mr. Austgen stated all development. Mr. Niemeyer asked about the timeline for review. Mr. Austgen suggested sixty days. Mr. Niemeyer asked if there were any other pending applications that would be affected. It was asked if it would be a review of all B-3 or just the 133<sup>rd</sup> Avenue corridor. Discussion continued on the area of focus and the moratorium suggested.

David Lee, NyBy Development, stated he started the process well over a year ago. He discussed meetings with Jill Murr, Don Oliphant, and Mr. Lee's contractors. He discussed their process and timeline at length. Mr. Niemeyer stated they were working on the zoning ordinance for many years. He stated the timeline is unfortunate but legislative action was taken. There were procedural steps that were not taken. He stated during any of the public hearing meetings they could have presented their practical difficulty hardship. Instead, they presented a legislative practical difficulty. He stated it is their job to legislate locally. He stated the other part that was set off was the two BZA members that essentially served as advocates. That is not allowed under the law. Mr. Lee stated they've had multiple meetings with the Town. He stated there were no issues. He stated the June 1st meeting was when they were first notified of the lot size variance. A very lengthy discussion continued on the matter.

A motion to direct a temporary moratorium be enacted on commercial development within the  $133^{\rm rd}$  Avenue Corridor, pending review by legal and Town Building & Planning Staff as well as the Plan Commission, was made by John Foreman with second by Richard Sharpe. Mr. Niemeyer asked Mr. Austgen once the review is completed and depending on the end results, what does that mean for the petitioner. Mr. Austgen stated speculating on the review process, he would recommend they re-apply or come back and seek an audience with the BZA regarding the variance. A brief discussion continued on the matter. Roll Call: Carnahan – Yes, Foreman – Yes, Rivera – Yes, Miller – Yes, Sharpe – Yes, Niemeyer – Yes. Vote: 6-0.

#### **NEW BUSINESS**

## 1. Bid Award – Public Works Vehicle and Crane Equipment

Mr. Salatas reported there were no bids. He stated they would look into other options. A motion to allow public works to seek a special purchase was made by John Foreman with second by Richard Sharpe. Roll Call: Carnahan – Yes, Foreman – Yes, Rivera – Yes, Miller – Yes, Sharpe – Yes, Niemeyer – Yes. Vote: 6-0.

## 2. Peterson Consulting Services Agreement

Mr. Salatas reported this is the annual agreement with the Clerk's office for services. Clerk-Treasurer Sandberg stated this is specifically for capital asset reporting. The fee is approximately \$3,650. A motion to approve was made by Richard Sharpe with second by Julie Rivera. Roll Call: Carnahan – Yes, Foreman – Yes, Rivera – Yes, Miller – Yes, Sharpe – Yes, Niemeyer – Yes. Vote: 6-0.

## 3. Ratify Approval of APEC Proposal for Geotechnical Exploration

Mr. Salatas reported this was for geotechnical work. This was for six holes in the ground to see if the ground could support the public safety building and parking lot. The work was completed last Wednesday. This was a necessary step. The total is for \$6,900.

A motion to approve was made by Ralph Miller with second by Julie Rivera. Roll Call: Carnahan - Yes, Foreman - Yes, Rivera - Yes, Miller - Yes, Sharpe - Yes, Niemeyer - Yes. Vote: 6-0.

## 4. Northwest Indiana Cancer Kids (NICK) 2022 Sponsorship Request

Mr. Niemeyer stated the Town has a policy that mirrors state code as it relates to the expenditure of public funds on non-profit. He stated they don't typically donate to

charities. He shared the informational flyer for the NICK Foundation's upcoming event. A brief discussion occurred on the annual proclamation. Mr. Salatas reported they would have one at their next meeting for Childhood Cancer Awareness Month.

## 5. Consider Awarding SRF Grant Administration Contract

Mr. Salatas reported they received two proposals, one from Klinepeter Consulting and the other from KSM. They are both in the amount of \$15,000. This is specifically for the SRF funded projects. Part of receiving the funds is the compliance regulations. The Davis-Bacon Wage Act must be complied with. Mr. Salatas recommended they move forward with KSM. A brief discussion occurred on the compliance requirement.

A motion to approve the proposal from KSM was made by Richard Sharpe with second by Julie Rivera. Roll Call: Carnahan – Yes, Foreman – Yes, Rivera – Yes, Miller – Yes, Sharpe – Yes, Niemeyer – Yes. Vote: 6-0.

## 6. Authorization to Purchase a New Vehicle

Mr. Salatas stated he is utilizing the same exact quotes from the last Council meeting. They need another vehicle for the new Building Inspector. It will be outfitted similarly with the plow settings so they can help as needed. The price is \$50,700 and the company is Allen Brown Chevrolet. This would be split similar to the salary distribution of the new inspector.

A motion to approve was made by Ralph Miller with second by Richard Sharpe. Roll Call: Carnahan – Yes, Foreman – Yes, Rivera – Yes, Miller – Yes, Sharpe – Yes, Niemeyer – Yes. Vote: 6-0.

## 7. Consider Approving Use of Park Impact Fees for Decorative Lights

Mr. Salatas stated they are requesting use of the park impact fees for decorative lights at Kiwanis Park. These would be similar to the ones at Bartlett-Wahlberg Park. This would be conditional on the approval by the Park Board and review by Mr. Austgen. It is in the amount of \$23,290.

A motion to approve was made by John Foreman with second by Richard Sharpe. Mr. Kubiak stated that is just for the light poles. The sewer department is installing the wiring and the tubing. Roll Call: Carnahan - Yes, Foreman - Yes, Rivera - Yes, Miller - Yes, Sharpe - Yes, Niemeyer - Yes. Vote: 6-0.

## 8. Consider Letter of Agreement with the Cedar Lake Firefighters Association

Chief Wilkening stated this is in reference to an agreement between the Fire Association and the Town for labor and costs for use of the property. The Association has all of the tents. They would exchange use of the tents for the rental fee of the property.

A motion to approve was made by Julie Rivera with second by Ralph Miller. Roll Call: Carnahan - Yes, Foreman - Yes, Rivera - Yes, Miller - Yes, Sharpe - Yes, Niemeyer - Yes. Vote: 6-0.

## REPORTS

1. Town Council – Mr. Carnahan reported he's received many calls about people not getting mail and wondering if there's anything the Town Council can be do. He stated they don't have employees. Mr. Niemeyer stated he's heard the same thing. A brief discussion continued on the hardships occurring because of the lack of mail delivery. Mr. Niemeyer stated they need to commit themselves to training of boards and commissions. Whether that would be utilizing the Town Attorney or a consulting group, they need to commit to it. Mr. Foreman discussed items brought up with the BZA. He stated he knows he uses the word attorney. He briefly discussed the BZA item and the situation the petitioner is in. Mr. Niemeyer stated the point of training would be to look forward. Making sure folks serving the Town are equipped. A brief discussion continued on training.

A motion to amend the agenda and allow the consideration of an item to direct the Town Manager and the Town Attorney work together on finding a training solution for all boards and commissions was made by Ralph Miller with second by Richard Sharpe. Roll Call: Carnahan - Yes, Foreman - Yes, Rivera - Yes, Miller - Yes, Sharpe - Yes, Niemeyer - Yes. Vote: 6-0.

- 2. Town Attorney No report.
- **3.** Clerk-Treasurer Ms. Sandberg reported she recently attended the annual conference of the Association of Public Treasurers of the US & Canada. She was fortunate to receive a scholarship to attend. While in attendance, she took an extra course on public funds

investment management. She passed the test and has been designated a Certified Public Funds Investment Manager (CPFIM).

- 4. Town Manager Mr. Salatas reported Parrish Avenue is ongoing. Delays have occurred due to the utilities in the area. Milling has begun on 133<sup>rd</sup> Avenue. Rieth-Riley stated it should be two days of milling and two days of paving. The school was notified. They met with the school last week to discuss school safety and then discussed the road projects. The school notified them that they are updating their emergency response plan. The Town is as well. And both will reference one another. Vermillion will have a new guardrail and storm water infrastructure should be going in this week. New sidewalk infrastructure is being identified for NIRPC funding through the recently announced infrastructure bill. There is a lot of grant money now for sidewalks. The work continues at the site for the sediment dewatering facility (SDF). Vegetation is currently being removed. A brief discussion occurred on the work being completed with the SDF project. Building permits for July totaled 27. This is the same as July 2021. The estimated cost for those permits is \$6,061,650. Various Veridus projects are coming close to completion.
- **5. Director of Operations** Mr. Kubiak stated they completed 37 final inspections last week. A brief discussion continued on building. The sidewalk from the water tower property from Parrish to the Hanover property is poured and complete. They are waiting for Hanover to complete their portion. They have given a temporary occupancy to the school corporation for the new upper elementary school. They've been given the go ahead to use the building to begin school except for the gym. Tom Stevens retired at the end of July. Mr. Kubiak acknowledged his time served. Mr. Stevens didn't want any public recognition but appreciated the offer.
- 6. Police Department Chief Fisher briefly reported on the monthly calls report. He stated they have been working with the schools regarding traffic for the beginning of the school year. They will have extra officers out there to monitor. Mr. Niemeyer stated he received a report from a citizen traveling on 133<sup>rd</sup> Avenue. The citizen came across two police cars parked at Economy Well. Mr. Niemeyer asked if there is a reason for that. Chief Fisher stated yes. They could've been looking for a vehicle coming into Town or maybe they finished up a traffic stop. Mr. Niemeyer stated it was brought to his attention that there may be a need for increased patrols in the Cook Subdivision. More folks are cutting down Osborne and Schneider to avoid the left turn. A brief discussion occurred on the hardships occurring due to the increased traffic at 133<sup>rd</sup> Avenue and US 41 with Parrish being under construction.
- 7. Fire Department Chief Wilkening briefly reported on the monthly calls report. He stated they are up approximately 13%. Their trainings are almost doubled. This is due to the training of new people. The Fireman's Ball is coming up.

## WRITTEN COMMUNICATION

- 1. **Building Department Report** Previously reported.
- **2. Christopher B. Burke Report** Previously reported.

## PUBLIC COMMENT

Father John Kowalcyzk, 14338 Violet Circle, discussed the 45-minute discussion regarding the BZA and the action they should not have taken. He asked what the consequence to the BZA is. Mr. Niemeyer stated that would be discussed in Executive Session. Mr. Kowalcyzk discussed his role as Chaplain. He stated the Council should be proud of the first responders and they time they give both on and off duty. He stated they should be applauded.

**ADJOURNMENT** President Niemeyer called the meeting to adjournment at approximately 9:00 PM

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

| Randell Niemeyer, President, Ward 5           | Richard Sharpe, Vice President, Ward 7 |  |  |
|---|--|--|--|
| Robert H. Carnahan, Ward 1                    | John Foreman, Ward 2                   |  |  |
| Julie Rivera, Ward 3                          | Ralph Miller, Ward 4                   |  |  |
| ATTEST:                                       | Colleen Schieben, Ward 6               |  |  |
| Jennifer N. Sandberg, IAMC<br>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.