



August 15, 2023

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	John Foreman Vice-President	At Large
Present	Julie Rivera Council Member	Ward 2	Present	Richard Sharpe President	At Large
Present	Nick Recupito Council Member	Ward 3	Present	Jennifer N. Sandberg, IAMC, CMC, CPFIM Clerk-Treasurer	
Present	Ralph Miller Council Member	Ward 4	Absent*	Chris Salatas Town Manager	
Present	Colleen Schieben Council Member	Ward 5	Present	David Austgen Town Attorney	

*Margaret Abernathy, Administrative Assistant to the Town Manager, was present.

PUBLIC HEARINGS

1. Ordinance No. 1456, Public Way Vacation Continued Public Hearing – Rago

- a. **Review of Legals** – Mr. Austgen stated the legals are in order.
- b. **Opening Remarks** – Mr. Jim Wieser stated last time they were here they noticed there was a discrepancy in the legal they thought might have an impact on the position NIPSCO is taking about lack of access to his client’s property allegedly for the ten-foot easement for work they may have to do on the line. He stated since that time, NIPSCO’s engineers have told him they are tired of it and are not interested in talking about it before. He stated he has been given two or three reasons from NIPSCO on why they have a concern. He stated he was told it was between his client and the Town. He stated they have documentation before them that he thinks is relevant. He stated the first time they came there was no objection. He stated Tim voiced concerns with the lines and proximity. Mr. Wieser stated they took measurements, met with NIPSCO, provided the Town information, and showed they were in compliance with NIPSCO requirements on minimum height. He stated when they came back, they were told there was an issue from NIPSCO with access. He stated what he put before them today are several documents. He stated Mr. Mike Dolder will also speak as his testimony is relevant. He stated before them is the plat of survey. He discussed the ten-foot walkway easement. He stated in other instances it has been vacated. He stated it is not used anymore. He stated the proper owners to the north and south have properly vacated the walkway. He stated part of the confusion is also with Outlot C. He stated the path has been vacated. The only parcel that is not vacated is his clients. He stated the original response he got was regarding the utility service. Mr. Wieser stated in this instance his client is not serviced by the line. Only the two homes to the north are. He discussed a depiction shared with Council as well as a letter from Mr. Mike Dolder. He discussed the letter and the lakefront property owned by the HOA. The letter discusses access available to NIPSCO. Mr. Wieser stated there is no impediment to NIPSCO. He stated if the issue is access, that is not true. They have access. Mr. Wieser stated their belief is that the vacation of the ten-foot walkway easement has no utilities and does not impede NIPSCO at all. The walkway is right up on the house. He stated it is their belief they meet the criteria to vacate the walkway. He asked for Mr. Dolder to come up and highlight that as well. Mr. Michael Dolder, 8421 W. 139th Avenue, HOA President, stated he wrote his letter back on May 20, 2023. The reluctance has been access and he believes they provide enough access for NIPSCO. He stated as a neighbor, he owns the property to the south. He had the walkway easement vacated. He stated he does not think it is unreasonable. No one walks through there because the association owns the lakefront. He urged them to give the Rago’s unanimous approval. Mr. Wieser continued to discuss the walkway asking to be vacated and NIPSCO access.
- c. **Reading of Ordinance No. 1456** – Council Member Foreman read by title only.
- d. **Remonstrators** – Jerry Wilkening, 10826 W. 131st Avenue, stated most of what they have heard tonight is mostly accurate. He applauded the alternative access. He stated the fact remains that there are utility lines where they do not belong. He stated he spoke with NIPSCO and they found exactly what Mr. Wieser said. The utility lines that feed the two homes to the north have no right of access. It is not a utility easement. Mr. Wilkening voiced concerns with liability to taxpayers. He stated Mr. Kubiak has given his feeling on the matter. He stated he does not see how there is any hardship. Mr. Rago built right up to the walking path with a door to nowhere. He continued to discuss the issue. He stated if any of them are

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considering voting for the request that they create an indemnification document to relieve the taxpayers of any liability. He briefly continued. Mr. Kubiak stated the problem with NIPSCO is that it is an easement of sorts. The wires are currently in the path. In order to vacate the property, the power needs to be removed. He discussed moving the line to a proper utility easement. He briefly discussed the letter from Mr. Anderson at NIPSCO. He stated a lot of people have the walkway vacated but it is a utility easement servicing two other homes. If the walkway is vacated, they can call NIPSCO and have the lines removed. He voiced his concern for the other two homes. Mr. Wilkening stated vacating the walking path is not the issue it is the active utility line. Mr. Dan Collins, 13857 Huseman, stated he is the second house north. He understands what everyone is saying but the easement path cannot fit a truck. The grade is terrible. There is plenty of property that the association has. The easement cannot be used to fix anything. Mr. Kubiak stated the wire runs through the easement. He discussed the fact that if the walkway were to be vacated, the lines could be removed and the two homes to the north would no longer have service. Multiple conversations overlapped. Mr. Wilkening further discussed the issue. Mrs. Rivera asked about the possibility of a form of indemnification. Mr. Austgen stated they could come up with an agreement that would be recordable and run with the land. Mr. Wieser stated there have been words used that have legal consequences. He stated he appreciated Mr. Wilkening's comments but there is no demonstration of hardship. That is not a requirement as this is not a BZA petition. He stated there is no NIPSCO easement. Mr. Kubiak stated how could it not be active with the wire running through it. Mr. Wieser stated it is not an easement and does not apply. They are overhead wires and active lines but no active easement. Mr. Recupito asked about the legal description and asked if a new one was presented. Mr. Wieser stated the appropriate one was advertised. It was incorrect when it got on the agenda. Mr. Recupito discussed the public walkway to be vacated and discussed accessibility for NIPSCO. Mr. Wieser disagreed with Mr. Recupito's comments. Mr. Foreman made a motion to approve the vacation of the walkway and stated he would not make it contingent on an indemnification unless legal considers it important. Mr. Austgen stated that is not his call. Mr. Foreman stated he does not make it contingent on that. He made a motion to approve Ordinance No. 1456. A second was made by Colleen Schieben. Mr. Miller stated all he hears as a problem is the wires running through there. He asked about the cost to move the wires and if anyone has looked into that. Mr. Wieser stated no they have not because NIPSCO told them they do not have to move the wires as they are not in violation of the rules and regulations. He stated it is not an issue. Mr. Miller stated they could have solved this a long time ago if the wires were not there. Mr. Wieser stated they would not move them and they would not pay for it. Mr. Recupito continued to voice concerns about Exhibit A and a lack of information. Mr. Wieser stated he provided the information to the Clerk-Treasurer. Ms. Sandberg stated Mr. Wieser just handed it to her. Mr. Recupito continued to voice concerns with lack of information. Mr. Wieser stated the Town was also supposed to have the correct legal and they did not do it right. Discussion continued on the legal and if it was properly advertised. It was stated it was. Mr. Recupito stated the information before him was not correct. Mr. Wilkening briefly discussed the cost to move the lines. Mr. Wieser stated they never received anything from NIPSCO. Roll call on the motion made by Mr. Foreman. Roll Call: Carnahan – No, Rivera – No, Recupito – No, Miller – No, Schieben – Yes, Foreman – Yes, Sharpe – No. Vote: 2 – 5. Motion fails. Mr. Foreman made a motion to approve Ordinance No. 1456 contingent on proper legal jargon following the approval that a future homeowner would not be able to disconnect the toaster from the neighbors to the north. He stated he does not know what the proper legal is. Mr. Wieser asked for him to make his motion subject to David and him working on the language for an appropriate indemnification document, his clients are agreeable to that. Mr. Austgen stated he is not certain that is good enough. They all talked about indemnification and he needs to assess what that means to them. He stated this has to do with policy. Discussion continued on the possibility of an indemnification document. Mr. Foreman removed his motion. Mr. Foreman made a motion to approve Ordinance No. 1456 contingent on legal coming up with a solution that makes sense. Mr. Austgen suggested they continue in three weeks after the attorneys have gotten together. Discussion continued on the proper motion. Mr. Recupito asked if the petitioner covers the cost of this. Mr. Austgen stated yes. Mr. Foreman restated his motion. A motion to approve Ordinance No. 1456 with legal coming up with a plan to make sure the NIPSCO pole will not be allowed to cut off the two neighbors to the north. Discussion continued on the validity of the motion made. Mr. Foreman removed his motion. A motion to defer was made by John Foreman with second by Colleen Schieben. Mr. Kubiak asked during the deferral period if Mr. Rago could reach out to NIPSCO and talk to the property owner to the south about providing a proper area for the power to go. A heated discussion

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occurred. Roll Call: Carnahan – Yes, Rivera – Yes, Recupito – No, Miller – No, Schieben – Yes, Foreman – Yes, Sharpe – Yes. Vote: 5 – 2.

2. Ordinance No. 1437, Annexation Ordinance (*introductory reading on March 21, 2023*)

- a. **Review of Legals** – Mr. Austgen stated the legals are in order.
- b. **Reading of Ordinance No. 1437** – Council Member Foreman read by title only.
- c. **Reading of Resolution No. 1339** – Council Member Foreman read by title only.
- d. **Remonstrators** – None
- e. **Town Council Discussion** – Mr. Austgen explained this is the Town’s 58-acre parcel at 161st and Morse Street. The Town has the basins and flume at the location. They operate the Town’s part of the sewer utility from that location. There is a provision of Indiana Code that permits non-adjacent or non-contiguous parcels that are being used for this purpose to be annexed in to the Town. He stated this would permit flexibility in its use and permitting activities going forward. He stated he has drafted a fiscal plan to reflect that capital expenses on the property would be by the sewer utility and other non-capital services would be provided for by all Town funds related to whatever the need may be. Mr. Recupito asked about the fiscal plan and that stretch of road. He asked if the Town would be made to maintain the road. Mr. Austgen stated the road would remain the County’s responsibility. Mr. Carnahan briefly discussed the basins and flume property.
- f. **Town Council Decision on Resolution No. 1339**

A motion to approve Resolution No. 1339 was made by Julie Rivera with second by Ralph Miller. Roll Call: Carnahan – Yes, Rivera – Yes, Recupito – Yes, Miller – Yes, Foreman – Yes, Sharpe – Yes. Vote: 6 – 0. The adoptive reading of the ordinance will be on the September 5, 2023, agenda.

PUBLIC COMMENT

None

CONSENT AGENDA

1. **Claims:** All Town Funds: \$273,858.76; Wastewater Operating: \$66,488.56; Water Utility: \$53,757.65; Storm Water: \$12,621.55; Payroll: 8/3/2023 - \$378,446.15; and July Remittances \$210,867.16
2. **Manual Journal Entries:** July 1, 2023 – July 31, 2023
3. **Donations: Police Department Donation:** \$50, Walter Keilman. **K9 Program Donations:** \$1000 donations: FOP #125, FOP #173, and Richard Henn; \$150 donation: Law Office of Roy Dominguez; \$100 Donations: Yvonne Hogan-Foster and White Custom Concrete; \$50 donations: David Kubiszewski and Kimberly George; \$34.96 donation: Isabel Szymczak; and \$25 donation Natash Kubiszewski

A motion to accept the consent agenda as listed was made by Julie Rivera with second by Colleen Schieben. Roll Call: Carnahan – Yes, Rivera – Yes, Recupito – Yes, Miller – Yes, Schieben – Yes, Foreman – Yes, Sharpe – Yes. Vote: 7 – 0.

ORDINANCES

1. Ordinance No. 1448 – Building Department Escrow Fees

Council Member Foreman read Ordinance No. 1448 by title only. Mr. Sharpe stated the first reading was on August 1, 2023.

A motion to adopt Ordinance No. 1448 was made by Ralph Miller with second by Nick Recupito. Mr. Foreman voiced his disagreement with the ordinance. Mr. Kubiak stated the purpose of the ordinance is to streamline the process. They run into winter and are not able to get driveways in or not able to get as-builts. He discussed the different bonds and paperwork as well as lengthy processes. He stated the checklist of things to be accomplished is large. He stated everything must be complete for occupancy. This allows for temporary occupancy. He stated it makes the process better for all involved and closes the gap. Discussion continued on the purpose of the escrow fee. Roll Call: Carnahan – No, Rivera – Yes, Recupito – Yes, Miller – Yes, Schieben – Yes, Foreman – No, Sharpe – Yes. Vote: 5 – 2. Mr. Austgen noted this would need to be advertised.

2. Ordinance No. 1467 – Establishing Kiwanis Dog Park Activity Fees

Council Member Foreman read Ordinance No. 1467 by title only. Mr. Austgen explained he drafted this from the work of the Park Department. This is the schedule proposed for the activity usage of Kiwanis Dog Park. This seems to be in line with similar type facilities elsewhere. This will amend and add to the Park Activity Fee Ordinance. The

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ordinance will make effective for the first year, which will be combined with the balance of this year and next year. After that, it will be on a calendar year basis for the fees.

A motion to approve Ordinance No. 1467 was made by Colleen Schieben with second by Julie Rivera. Mr. Carnahan stated he did not see the fee in there. Mrs. Abernathy helped Mr. Carnahan navigate to the schedule in his new packet. Roll Call: Carnahan – Yes, Rivera – Yes, Recupito – Yes, Miller – Yes, Schieben – Yes, Foreman – Yes, Sharpe – Yes. Vote: 7 – 0.

A motion to suspend the rules and allow for a second reading was made by Julie Rivera with second by Colleen Schieben. Roll Call: Carnahan – Yes, Rivera – Yes, Recupito – Yes, Miller – Yes, Schieben – Yes, Foreman – Yes, Sharpe – Yes. Vote: 7 – 0.

Council Member Foreman read Ordinance No. 1467 by title only.

A motion to adopt Ordinance No. 1467 was made by Colleen Schieben with second by Ralph Miller. Roll Call: Carnahan – Yes, Rivera – Yes, Recupito – Yes, Miller – Yes, Schieben – Yes, Foreman – Yes, Sharpe – Yes. Vote: 7 – 0.

NEW BUSINESS

1. CBEL Construction Observation Agreement for the Morse Street and Shades Projects

Mr. Don Oliphant explained the construction observation agreement for the Shades Project north of 141st and east of Morse as well as the water main project on Morse to Constitution. For this calendar year, they are going to tag team it and do both projects with one inspector. The second phase of Shades will finish up next year and will include four more roads. This agreement is for the both of those. Mr. Sharpe stated the total amount is a not to exceed amount of \$210,100. The 2023 cost is \$99,500 and the 2024 cost is \$107,100. Mr. Recupito asked Ms. Sandberg about the source of funding for the contractor. Ms. Sandberg explained since it is for both the Morse Street and Shades Projects, there are multiple funds this will pull from for construction observation. Shades is a Community Crossing Grant project.

A motion to approve was made by Colleen Schieben with second by Ralph Miller. Roll Call: Carnahan – Yes, Rivera – Yes, Recupito – Yes, Miller – Yes, Schieben – Yes, Foreman – Yes, Sharpe – Yes. Vote: 7 – 0.

2. Disbursement Request No. 4 from 2022A Project Construction Fund No 1001031163 in the amount of \$4,020.74

Mr. Sharpe stated Pay Request No. 4 is for the Fire project. Ms. Sandberg stated A is the Police project.

A motion to approve was made by Julie Rivera with second by Colleen Schieben. Mr. Austgen presumed it was checked and approved by the consultants. Ms. Sandberg reported Mrs. Haase was online if anyone had any questions and that the disbursement requests were prepared by Mrs. Haase and checked by Ms. Sandberg. Mr. Foreman noted the pay request was payable to Veridus Group. Roll Call: Carnahan – Yes, Rivera – Yes, Recupito – Yes, Miller – Yes, Schieben – Yes, Foreman – Yes, Sharpe – Yes. Vote: 7 – 0.

3. Disbursement Request No. 3 from 2022B Project Construction Fund No 1001031164 in the amount of \$7,677.67

Mr. Sharpe stated Pay Request No. 3 is for the Fire project. Mr. Foreman noted it is payable to the Veridus Group.

A motion to approve was made by Colleen Schieben with second by John Foreman. Roll Call: Carnahan – Yes, Rivera – Yes, Recupito – Yes, Miller – Yes, Schieben – Yes, Foreman – Yes, Sharpe – Yes. Vote: 7 – 0.

REPORTS

- 1. Town Council** – Mr. Carnahan asked if Mr. Oliphant was still online. Ms. Sandberg stated Mr. Oliphant was still muted. Mr. Carnahan stated he wanted an update on Fairbanks and 129th. He was told cold patch was put in and Mr. Oliphant was supposed to get in contact with NIPSCO to discuss repairs. Mr. Kubiak stated they have had conversation through email. The NIPSCO guy is supposed to meet out there. He stated it is progressing. Mr. Carnahan reported the Chamber Golf Outing is full. They have 72 teams lined up. He stated it is at Minne Monnese. It is this Sunday at noon. Mrs. Schieben reported Labor Day Fest will occur on September 3rd from 2PM to 8PM. It is a free event to attend. They will have activities for the kids and bands playing.

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2. **Town Attorney** - None
3. **Clerk-Treasurer** - None
4. **Town Manager** - None
5. **Director of Operations** – Mr. Kubiak discussed reutilizing the flashing lights from crosswalks for the area around Dairy Belle. Mr. Kubiak and Mr. Wroe worked together well to repurpose the lights for safety.
6. **Police Department** – Chief Fisher reported on the monthly calls/activity report.
7. **Fire Department** – None

WRITTEN COMMUNICATION

1. **Christopher B. Burke Report** – Mr. Foreman discussed upcoming retaining wall work at the new police and fire stations.
2. **Building Department Report** – Mr. Carnahan discussed the monthly building report and the new construction permits. He discussed June being the largest month. Ms. Sandberg stated June is when they saw the two new commercial permits come in.

PUBLIC COMMENT

Gayle Brannon, 7014 W. 139th Place, stated she has prepared a statement. She stated a few months ago she came before the Town with concerns about the preservation of the four lakefront parks. She stated she was assured the parks spaces would be preserved. She stated after some digging, she has found a plan. She stated she is present as a voice for residents that are opposed to any further development of the four lakefront parks. She discussed putting them in a conservative land trust to prevent a future Council from disposing of them. She discussed a petition that was put together. She stated she has gathered hundreds of signatures. She stated a second petition was put online as well. She stated she brought the petition with her. She stated the residents gathered about 750 signatures. She offered them copies of the petition. She was told she could leave a copy with Mrs. Abernathy.

Cheryl Parker, 7227 W. 136th Court, stated in February and March she came in and requested they look at road impact fees. She stated she is happy to see it on the monthly report that there is a potential study. She asked if they could discuss what is involved with that and if there is a timeline. Mr. Recupito stated that is something he has been pushing to get evaluated. He stated they received a quote from Christopher B. Burke but they are trying to get another quote. He stated he does not have a timeline at this point. He stated there is a lot of work that has to happen before they can get something implemented. They will look at the impact not only on developers but homeowners, businesses coming in, etc. He stated he wants to see all the pros and cons of it. He stated when Chris comes back, he will get an update. Mrs. Parker discussed the length of time it took St. John to get there is implemented.

Mrs. Schieben stated she would address Mrs. Brannon's concerns. She discussed past talk about development. She stated there was never any talk for Potawatomi Park to be developed that the talk was for the area across the street. She stated she would never vote for that or approve of any parks to be taken from the people. She stated she talked with the Park Board and Potawatomi Park will be included in the five-year master plan for the parks. She briefly discussed future plans for the lakefront parks such as pavilions and bathrooms. A brief discussion continued on future planning.

ADJOURNMENT President Sharpe called the meeting to adjournment at approximately 8:51 PM.

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

Richard Sharpe, President

John Foreman, Vice President

Robert H. Carnahan

Julie Rivera

Nicholas Recupito

Ralph Miller

ATTEST:

Colleen Schieben

Jennifer N. Sandberg, IAMC, CMC, CPFIM
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 section 3.5 or 3.6 of this chapter or any other statute that authorizes a governing body to conduct a meeting using an electronic means of communication.