

**ANNEXATION COMMITTEE MEETING
JANUARY 24, 2013**

President Nicksch called the meeting to order at 7:00 PM. The Pledge of Allegiance was recited. Recording Secretary Gena Knapp took Roll Call. Members answering the roll call were Doug Nicksch, Michael Mears, Randy Hall, and Richard Kelley. Edgar Corns and David Shilling were not present. Also present were Building Administrator Tom Trulley, Planning Consultant Jim Mandon, one press and one citizen.

APPROVAL OF MINUTES

Mr. Nicksch welcomed the two new members Randy Hall and Michael Mears. Michael Mears made a motion to approve the October 25, 2012 regular meeting minutes, seconded by Mr. Kelley and carried by voice vote.

OLD BUSINESS

None.

NEW BUSINESS

Election of Officers – At 6:04 PM Edgar Corns joined the meeting. Mr. Kelley made a motion for Doug Nicksch to remain President, seconded by Mr. Hall and carried by voice vote. Mr. Corns made a motion for Richard Kelley to remain Vice President, seconded by Mr. Mears and carried by voice vote. Mr. Mears made a motion for Randy Hall to become Secretary, seconded by Mr. Corns and carried by voice vote.

Jim Mandon with an update on the Agricultural Annexation Advisory Committee and the Annexation Plan – Mr. Mandon stated first off we are rewriting the Zoning Ordinance and we have it in a draft right now. A public hearing has been set for February's meeting of the Plan Commission to hear public input before the Zoning Ordinance is passed. This will replace the old code in its entirety. We have been meeting with the Agricultural Annexation Advisory Committee, which is made up of farmers who farm just on the outside of the Town borders. Usually these are the people who are involved most directly when annexation occurs. The groups of farmers that have come in have been very active and open and have participated in the process of discussing annexation. We have tried to discuss some of their concerns for annexation and address those in some of the issues that are part of the draft code. The "2.5 Annexation" has been added to the new code because there was nothing like this in the old code. In the old code, property that is annexed would come in as Single-Family Residential. This was one of the items that were mentioned at the meetings, and the farmers felt that it was not a good thing for them to be annexed in as Residential. It was a big concern for them. Number one addresses that issue by saying "Property annexed into the Town of Lowell will be placed in the Town Zoning District which most closely matches the permitted uses and regulations of the property's Lake County Zoning District at the time of annexation." Mr. Mandon stated

the least amount of change would occur as far as what they can do on their property. The zoning classifications do not always match exactly, but we will try to pick out the closest one.

Number two states, “Agriculturally zoned property shall be exempt from the requirement to connect to Town utilities, until there is a change of use, change in zoning, or the property is subdivided.” One of the things that were frightening to some of the people that are in the agricultural community was the fact that we have an Ordinance that states if you are within a certain amount of distance from a utility, you have to extend that utility and hook on. In most cases, people did not want to do that until there was a change in the property ownership, which at that point there will probably be a change in zoning. At that stage it would make sense for the utilities to be hooked up to because you would not want subdivisions on septic tanks. He stated to allow the existence of agricultural residential units that have been there for years and to keep them on their septic until a change actually occurs was something they were very concerned about. Mr. Niksch asked if that includes sewage and water. Mr. Mandon stated that was correct. Mr. Niksch stated currently we have the Ordinance that if you are within three hundred feet you have to hook on. Mr. Mandon stated that was correct. Mr. Niksch asked if that was just for new annexation. Mr. Mandon stated yes. Mr. Niksch asked about the process that has been started with the pocket annexations. Mr. Mandon stated it is not part of the code so the existing code, which is the old code, would control on the annexations that are taking place right now. When we get to the schedule, you will get some idea of when the Zoning Ordinance will be adopted.

Mr. Mandon stated the Agricultural Committee was concerned about some of the codes that relate to nuisances, noise, dust, and hours of operation that are different when you get in to a municipality. They did not want to have those severe limitations on the way they operate their farm. There may be times when the corn is dry and they may be out there at two in the morning working, and the Right to Farm Law in Indiana guarantees the right at a State Statute level that local municipalities cannot enforce certain restrictions against agricultural property so long as certain conditions are met. This means that the type of operation that takes place on the farm cannot be enlarged. It has to remain the same size as before it was annexed. What that means is if you are growing corn and you decide to raise hogs instead and you are three hundred feet away from a subdivision, the Indiana Right-To-Farm Law will not protect you against local codes that will prevent you from doing so because of the impact it will have on the people living in that subdivision. Also, if you are normally growing corn or beans over and over again and you normally harvest at a certain time of the year and you stay out until midnight doing so, the Right-To-Farm Law will not protect you if one day you decide to go out at three in the morning and start harvesting. It is the continuation of an existing operation without enlargement or major change that will be protected, even if laws exist locally. The farmers were very interested in the Town enforcing and accepting the Right-To-Farm Law.

Mr. Mandon stated number four states, “Agriculturally zoned property shall not be rezoned without the consent of the property owner.” Mr. Mandon stated that he could not think of a case where this would make sense to have the ability to rezone someone’s

property without the owner's consent, especially if it is coming in agriculturally. You do not have the authority to change someone's land use if they do not want to change it, and you do not have the power to make someone sell unless you are condemning the property, and then there are a lot of limitations on that. Number five states, "Agriculturally zoned property which is annexed is exempt from the minimum ten (10) acres size requirement." The code requires that there be a certain minimum size for what is considered a farm, but the types of farms that will be closer to municipalities are more than likely smaller parcels. If there is already an existing farm that is six or seven acres and it would require them to acquire more property to be considered a farm that would not make much sense. Number five sets up a system where if there is a parcel that is less than ten acres and it gets annexed, it can still operate as a farm. It is almost like a grandfathering and would be considered a legal non-conforming use. Mr. Mandon stated those are the five things that are changing in the Zoning Ordinance in accordance with annexation.

Mr. Mandon stated the Agricultural Committee was also inquiring about some of the fee structures that are different between the County and the Town. We will be bringing those in line with the fees of the County so they are not much different. He stated there are also some conditions about the maintenance and protection of storm water systems like field tile. If someone comes in and subdivides property that is down stream and they fill a ditch in or cut through the field tile that goes through someone's property and in to the creak, that person is responsible for making sure it is repaired or corrected. Currently the code has nothing about that in there.

Mr. Mandon stated the timing of the Zoning Ordinance is also laid out on the second page of the hand out. We hope we can go through the public hearing on February 14th and then send the recommendations, if there are no major changes by the public, to the Town Council within a matter of a few days. If there are major changes that need to be made, that throws a wrench in to the time line. Mr. Hall asked if this was coming from the Plan Commission. Mr. Mandon stated the way the Zoning ordinance is passed is the Plan Commission accepts the draft, they set a public hearing to hear from the public and, in the mean time, they also have had more time to look through the changes incase they come up with any questions or ideas, and they then vote on the draft to send to the Town Council with there recommendation for approval. Hopefully this can take place in February, if not, then March or April if any changes need to take place. Once it gets to the Town Council there is no need for a public hearing because it has already been held. They will have to pass this Ordinance in two readings, but they can suspend the rules if they feel comfortable doing so, and pass both readings at the same time, which requires a unanimous vote from the Council. On the schedule, it is assumed that it will go before the Council in two meetings and will hopefully pass in March. He stated this Code was good to start with, but there were some things in there that were very difficult to meet for the redevelopment of property. If you wanted to change the use or knock the building down and build something new, this code was a huge hindrance. In one case there was a development that came in and required eight variances from the BZA in order to do something the Town wanted them to do.

Mr. Niksch asked how the reaction was from the agricultural members. Mr. Corns stated the first meeting they only talked about how they did not want to be annexed, but we told them it was something they needed to get over and that we were trying to give them a chance to protect themselves when it does happen. After that, they started participating more. He stated we did learn from a gentleman from Illinois that he would not come in to Lowell to develop properties because he is worried about the water capacity. Mr. Mandon stated we first asked what the real issue was with not wanting to be annexed. We told them if you did have protection, you can continue doing what you are doing and your property would be more valuable because you will be within the Town. It would be much easier to develop property because there is less of a process when you are in Town. Anything you can do to provide for your property to be converted when you want it to and quickly will increase its value. He stated if it is part of the Town and we have the obligation to provide water and sewer once your property is developed, your property should be more valuable. The response we got was that maybe the Town does not have enough utilities to provide them. They asked how they would know that the Town has enough water and sewer capacity to provide to them when the time comes. Mr. Mandon stated that is a tough question to answer because we are talking about some time in the future that all of this will happen.

Mr. Mears asked how many parcels were in the various stages of annexation at this time. Mr. Trulley stated the pocket annexations have seven parcels, and then we have five parcels on the West side of Town and the 80 acres. Mr. Mears asked if the new parcels would be held by the new Ordinances or the old existing ones. Mr. Trulley stated once the fiscal study is done and they go through, they will more than likely be under the new codes. Mr. Niksch stated those parcels have not been approved yet for annexation. Mr. Mandon stated we are just in the stage of collecting data on those other parcels. Mr. Niksch asked if the question of pole barns ever came up. Mr. Mandon stated there were more questions about the fees than the actual ability to build the agricultural buildings. There is a provision in the zoning ordinance that permits larger accessory buildings and more of them on agricultural zoned properties, but because that provision is already in the ordinance, they had more questions on the fees. Most of the talk was that we do not really give them a break on fees for accessory building permits. Our fees would be a lot more expensive than what they are under right now in the County. Mr. Niksch asked if that has been corrected. Mr. Mandon stated our fees would reflect the County's fees once they pass.

Mr. Corns stated they also assumed that the Town was going to take their land, but we told them they own that land and there is no way that the Town could take it from them. He stated that he told the members he has farmed for thirty-eight years and has done many tax trades, and what if something has happened and they pass away and someone comes to offer their wife \$40,000 an acre. He asked would you really let her turn it down? He stated being annexed is not all that bad. The Town is not stealing your property, or changing your property, we are just trying to make it easier when the time comes to annex. Mr. Mandon stated two areas were not really addressed, hunting and open burning. We felt those were more police matters and as far as open burning goes, the State has limits on that and hunting is a public safety issue that should be brought to

the Police Commission. Mr. Mears stated there would be no verbiage that deals with that then in the Ordinance. Mr. Mandon stated that was correct.

Mr. Mandon stated the next item is on the Annexation Plan schedule. The first item that needs to be completed is the land use map, which will show how property is being utilized currently within the Town boundaries one lot at a time. The reason for doing this is to determine where deficiencies are and what we have an over-abundance of. Once we characterized different properties, we can then tell how the property should be utilized. Once this is finished, we can ask ourselves, if we go in a certain direction, is that property best suited by what is around it; the topography, the road system, the utility issues, is it best suited for residential, industrial, wetlands and open space, or whatever it may be. We hope to get this done by the middle of February. After that, we will look at what makes sense as far as groupings of properties to come in at one time such as properties that are similar in nature and that may be serviced by the same roadway. There has to be some rhyme or reason for drawing those boundaries and those will be put together hopefully by the end of February. We will then begin to collect detailed information on each of those zones such as how much of the property is wetland, what the road system looks like, and if there are utilities close by and do they have the size to be extended the way they are or does extra work have to be done. Then we will get in to tax issues as far as if they are used in the way the report intends they be used and what the potential may be once those properties are developed. That will hopefully be done by the end of March. He stated we would then determine a score for each zone, which we have been talking about. This way the properties that are best suited for annexation will rise to the top, and those that are more difficult to get to will be lower on the list. The properties that cost the least to service and have the potential for the most revenue for the Town will be at the top of the list and as a result you will be able to prioritize your annexations. It will also help support your decisions in the eyes of the public and when your recommendations go to the Town Council as well. After each zone is scored, the draft narrative is written which will be sometime in the middle of April. We will then present the report at the joint Annexation Committee/Town Council meeting and talk it out. Then we will advertise a public hearing where the people who are in Town and that are close by, where the properties may be effected by annexation the most, will give their opinions on the plan. This also affects the people in Town in regards to their property value, police protection, if taxes will be affected, and their transportation system. Annexation has to be worthwhile, from a financial standpoint, for you to actually do it. After listening to the public, any corrections or changes that have to be made will be made and from there we can send the recommendation to the Town Council from the Annexation Committee. If everything goes okay, it should be about the middle of June that the plan will be adopted. When this becomes the Town's plan, that is exactly what it has to be, the Town's plan. This cannot just be the draft that has been presented; you must make it your own.

Mr. Mears asked if this was a yearly plan, or if it is a five-year plan where target dates will be set. Mr. Mandon stated it could include that, but it does not have to. If you are going in a straight line and have a rectangular piece of property the law says that one-eighth has to be contiguous. If you are talking about areas that are far away from Town, it will take you a long time to get there. Mr. Mears asked if there is an end game in sight,

or if this plan will continue to evolve. Mr. Mandon stated there is no end game, but it depends in a lot of cases how quickly the plan develops. If you are about to run out of a certain piece of property, then you will need to bring the plan back out and figure out where you need to start going again. Mr. Niksch stated it is a living plan and a living guide. There will be opportunities that arise that may not follow the plan, but it would benefit the Town and we can go that direction. Mr. Mandon stated every plan will have certain assumptions made, but if those assumptions turn out not to be the case, then yes, you have to change with the conditions. Mr. Kelley stated assuming we go East towards I-65, how large of a chunk can you take at a time. Mr. Mandon stated if you only annex North of Route 2 and you annex the full depth currently and head east, it will take you fifty-two annexations. Mr. Kelley asked if you could cross Route 2. Mr. Mandon stated you could, but you will be taking in more property that you have to provide service to. If you go $\frac{1}{4}$ mile contiguous, then you can go $\frac{3}{4}$ of a mile down Route 2, it is a three to one ratio.

Mr. Niksch asked what happens if you do not provide utilities after one year for your police, fire, etc., and after three years for your infrastructure, water and sewer. Mr. Mandon stated those people have every right to dis-annex. Mr. Niksch asked how they do that. Mr. Mandon stated they have to hire an attorney and file legal action. Mr. Niksch stated if they do not file, then nothing happens. Mr. Mandon stated if they do file, you lose the property because it is automatic. It will take several months, but you will lose. Mr. Niksch stated in essence, you literally have three years to prove you can provide them those services. Mr. Mandon stated that was correct, but they can sue if you do not provide police protection in the thirteenth month. He stated if you do provide the utilities, you have to keep in mind the tremendous cost involved and whether or not it is worth it to do that prematurely. Mr. Niksch stated for the new members, when the Council approved the seven pockets, they all had the services being provided. Mr. Corns stated we are also being sued on two of the pockets.

Mr. Corns stated he attended a meeting with the Illiana Expressway Commission last Friday and they are in a fight over which roads should close. He stated originally there were only going to be three North/South roads open, but they are up to five or six now. Commissioner Schueb was very vocal about leaving those roads open. He stated he was not sure if the County could start a suit that states they have to build an overpass on every road. Mr. Corns stated there is a price for our inconvenience and if you say \$10 million per overpass and we need ten or eleven overpasses, it will be about \$100 million. When you are talking about a road that will cost \$1.4 billion, what is the difference with an extra \$100 million. He stated the fire department and ambulance service have also met with the Commission and there is now some discussion as to which roads will close. Mr. Corns stated I-65, I-55, and Route 41 will remain open for sure, and they originally wanted to close our ambulance route on Holtz Road. He stated Mississippi is on the bubble, but Cline, Marshall, and Broadway will be closed. The biggest concern is the school bus traffic. The Town Council agreed that this should have gone south of Town. He stated the Illiana Expressway Commission did point out that Cedar Lake will be going after the interchange on Route 41. Mr. Mears asked how far away our Town boundary is from that interchange and if we have property near there. Mr. Corns stated that is all

County right now, but Cedar Lake has annexed down to 153rd Avenue already. This interchange will be a great area for businesses because there will be much more traffic on Route 41. Mr. Mears stated he was sure it would be included in Mr. Mandon's plan. Mr. Mandon stated yes. Mr. Niksch stated the biggest thing is how difficult it would be for us to get all of the property that we talk about would be valuable. There is a lot on the table, but money will rule again. Mr. Corns stated it is a decision we have to make and live with it. The same thing happened in Merrillville and Hobart, Merrillville sat there too long and Hobart got the entire mall area.

Mr. Corns stated going west; Councilman Parker and himself have been working with the landfill that has been benefiting the County. He stated we met with the head guy and he said if we had agreed with the landfill when it originally started, we could have had it. We have lost \$3-4 million dollars from that landfill. We also wanted the piece of ground where the 80 acres is on the corner of Austin and Route 2 and the next piece west as an industrial buffer to the landfill. If we annex the landfill, they would want to expand on to the next farm east. There is a proposal to move Bruce Ditch that they already have permission to move over. He stated right now, they have between 11-12 years left where they are, and if they develop on the next farm they would have another 11-12 years. After that if they do not expand, or they can't, they will finish the land off and it will be deeded to the Town. When you talk to the owners of the landfill, this is the best construction landfill in the United States due to the rubber lining they installed when they originally thought it would be a garbage landfill. If we ask to run the sewer from Casey's to the railroad tracks, they could run any black water they had and run it through our sewer and pay the Town for it.

Mr. Niksch asked Mr. Trulley if we have a good map of the Town properties including the ones that have been annexed. Mr. Trulley stated we are working on it now, but Mr. White does not want to finish it until the seven pockets are added. Mr. Niksch stated we are fortunate to have the Town Council President on our Committee. He stated this Committee has no authoritative power. Everything we do is a suggestion to the Town Council. There will be times when we will have meetings or we won't have meetings, which you will be notified by e-mail, and please respond if you cannot attend so we know if we have a quorum. Mr. Trulley and Mr. Mandon will be at these meetings, and we will call the attorney if we feel one will be needed. We really want to start reviewing everything that is going on and start discussing the process of the 80 acres and the desires of what we want to do with that property. We will also discuss updates on the fiscal plans for properties, the 500 acres behind the American Legion, and acreage South of Belshaw to our Town wells, and also new developments with the Town wells will be brought forth. He stated we then would move forward with the suggestions from the Town Council. The Town Council does not have to wait for us to make a suggestion on where to go. If they have any questions for us, Mr. Corns can bring those to us to work on.

Mr. Corns stated he met with Rick Niemeyer, and he had proposed a bill before that will incorporate the sewer and water plant into the Town without having to annex the areas in between. Mr. Niemeyer does have the bill in the state legislature, but they will not vote

on anything until the first of March. This would allow us to get those two plants in to the Town without having to annex everything in between. He stated they did not take out a new bill, but they took the old bill that stated you could incorporate an airport or golf course and he added on to the end of that bill.

PUBLIC COMMENTS

Scott Kiechle, 19910 Colfax St, stated Lowell and Cedar Lake's closest points of boundary are within 1/10 to 1/4 of a mile. Both Towns are almost the same distance to the interchange on Route 41. Also, for newly annexed properties, the comment has always been made, three hundred feet distance for required sewer tie in, but he stated this is the first time he has heard that it is to the residence and not the property line. He asked for clarification. Mr. Mandon stated we could look it up, but Mr. Trulley believed it was to the property line. Mr. Kiechle stated a farm property could easily be 1/4 mile long, understanding the proposed zoning changes would eliminate that as a consideration, a clarification would be appreciated. Mr. Niksch asked if that was just the water and not sewer. Mr. Mandon stated it was both. Mr. Trulley stated Mr. Guerrettaz told him we would have to take it to the parcel within three hundred feet and then the owner takes it in.

ADJOURNMENT

With no further questions or comments, Mr. Mears made a motion to adjourn the meeting at 8:02 P.M., seconded by Mr. Hall and carried by voice vote.

Doug Niksch, Chairman

Randy Hall, Secretary

Note: The above-proposed minutes are submitted for review and approval as the official minutes by the Annexation Committee.

Gena Knapp – Recording Secretary