

**LOWELL TOWN COUNCIL MEETING
REGULAR MEETING
AUGUST 27, 2012**

The regular meeting of the Lowell Town Council was called to order on Monday, August 27, 2012 at 7:00 P.M. by President Phillip Kuiper. The Pledge of Allegiance was recited followed by a moment of silence. Clerk-Treasurer Judith Walters called the roll. Members present were Craig Earley, Robert Philpot, Phillip Kuiper, Edgar Corns and Donald Parker. Also present were Town Attorney Greg Sobkowski, Director of Public Works Greg Shook, Police Chief John Shelhart, Town Administrator Susan Peterson, Building Official Tom Trulley, Financial Solutions Consultant Greg Guerrettaz, Fire Chief Clint Gorbball, two members of the media and twenty-five citizens.

TREASURER'S REPORT

Councilman Earley made a motion to approve the July 2012 Treasurer's Report, seconded by Councilman Corns and carried by voice vote.

APPROVAL OF MINUTES

Councilman Corns made a motion to approve the August 13th regular meeting and the August 13th work session, seconded by Councilman Philpot and carried by voice vote.

APPROVAL OF VOUCHERS

President Kuiper stated he reviewed White Vouchers #1936 - #2006, White-Police #4140 - #4151, Water #2494 - #2516, and Waste Water #3436 - #3457. Councilman Earley made a motion to approve the vouchers as listed, seconded by Councilman Parker and carried by voice vote.

PETITIONS, COMMUNICATIONS, REMONSTRANCES, PROCLAMATIONS

Close Facility - Ashland Hardware Systems - President Kuiper read the letter received by the Council from Ashland Hardware Systems stating the closing of the manufacturing companies plant in Lowell.

Proclamation - Childhood Cancer Awareness Month - September - Councilman Philpot made a motion to approve the proclamation, seconded by Councilman Corns and carried by voice vote.

Proclamation - Constitution Week - September 17-23 - Councilman Corns made a motion to approve the proclamation, seconded by Councilman Philpot and carried by voice vote.

LTC REGULAR MEETING 8/27/12 - Page 2 of 9

ORDINANCES & RESOLUTIONS

Public Hearing -

Ordinance #2012-09 - Annexing Real Estate - Area #1 - North Nichols; Ordinance #2012-10 -

Annexing Real Estate - Area #2 - Nammari; Ordinance #2012-11 - Annexing Real Estate - Area

#5 - W. 175th Avenue; Ordinance #2012-12 - Annexing Real Estate - Area #6 - Holtz Road -

Novak; Ordinance #2012-13 - Annexing Real Estate - Area #7 - Holtz Road - Pendoski; Ordinance #2012-14 - Annexing Real Estate - Area #8 - Holtz Road - Nichols; Ordinance #2012-

15 - Annexing Real Estate - Area #9 - Holtz Road - Pratt; Ordinance #2012-16 - Annexing Real

Estate - Area #10 - Holtz Road - Heiser - Mr. Sobkowski stated annexation is a process which is

governed by state law. One of the things required by state law in order to consider an annexation is a fiscal plan for each area being annexed. These have been prepared for each area under consideration, which were adopted and approved by the Town Council this past May. There was a first reading on the annexation ordinances in June, and now we are here for the public hearing and for final consideration on the ordinances to annex the eight areas. Mr. Guerrettaz added the fiscal plan has several important points to it. It shows the basic data of the annexation area, which is set out with the jurisdictional requirements of that area and the different municipal services. It is also broken up between the capital and non-capital. In each plan we put together a fiscal plan summary which are all laid out the same. Each of those summaries include up to seven tables which show the expected revenue and how we arrive at that, expected expenses, any type of non-capital or capital, and a final summary for each area. In some reports there are negative numbers in the summary which mean that specific expenses will be funded by property taxes of the area and the General fund and MVH fund cash balances. Also, it is not required, but we have included the circuit breaker credit which shows you have to be cognizant of the homestead and non-homestead parcel portion of each parcel. This means there is a different circuit breaker on the homestead versus the non-homestead. Technically you can have one piece of a property that could have three tax caps. One parcel could have that as a result of the utilization of that parcel. Behind that is attachment "B", which shows the fund balances of the various funds supporting the annexation which would be available if the annexation would have a negative number on the summary. On attachment "C" we set for the current values and some

of the demographics that were used for each of the parcels included in the plan. Mr. Sobkowski added that the fiscal plans that were approved in May have been on file to view at the Clerk-Treasurer's office and still are. Mr. Kuiper stated the public hearing was now open.

Gary Heiser, 17705 Holtz Rd., stated he had a petition against the forced or involuntary annexation that he would like to read in to the record. He stated "The following home, land and/or parcel owners located along Holtz Road in Lowell, Indiana and referred to by the Town of Lowell as a pocket for annexation purposes hereby all, and as an association, protest and remonstrate by way of this signed petition against forced or involuntary annexation in to the Town of Lowell, Indiana. One hundred percent of the parcel owners located on the Holtz Road pocket have signed this petition as indicated below. A copy of all transcripts pertinent to the annexation of the Holtz Road pocket should be furnished to the following parcel owners at no charge for purposes of potential litigation in the event that the Lowell Town Council moves

LTC REGULAR MEETING - 8/27/12 - Page 3 of 9

ahead with annexation following upcoming hearings on the matter. The Town of Lowell and their notices of the hearing for annexation did not provide important and pertinent information about their reasons for the annexation necessary to the parcel owners they are purposing to annex. However, at an unofficial meeting because there was not enough people for a forum of the Annexation Committee, when asked for the reason for the annexation the response was given as, 'I guess for continuity.' The Holtz Road pocket of parcel owners will provide several pertinent reasons for petitioning against annexation at the Public Hearing of August 27th, 2012. Parcel owners addresses and signatures are listed below: Ken Novak, 18007 Holtz Road;

James
and Joan Pendorski, 17997 Holtz Road; Gregg and April Nichols, 17725 Holtz Road;
Wesley
Pratt, 17707 Holtz Road; and Gary and Nancy Heiser, 17705 Holtz Road. We will provide
the
reasons for it after we hear a little more about the annexation.”

Mr. Sobkowski stated if anyone has comments they want to make about the property
not being
annexed, now is the time to make them. Once the public hearing is closed, the Council
will
consider the ordinances and take final action. Mr. Heiser asked how they are supposed
to
properly oppose the annexation if the information has not been provided to us. Our
reasons are
laid out and signed, but we would still like to hear a good reason for it other than
continuity or
contiguity. Mr. Guerrettaz stated generally when a municipality is annexing a pocket it is
for the
fact of the services that are provided to that pocket, of all kinds, and there is no property
tax
coming to the Town for those services. Those services are documented in the fiscal plan,
but it is
common if you have a municipality completely around an area that the area does
consume the
services. The second reason, usually, is to be able to plan and conform to the ordinances
surrounding the entire area.

Wesley Pratt, 17707 Holtz Road, stated he does not utilize the sewer, water, garbage or
police
protection, so what advantage would it be for him to be annexed in. The only thing that
was
mentioned was the road, but there is a piece of road that is about fifteen feet long that
has big
holes in it that the Town has not come out to look at and it has been this way since they
put in the
Spring Run subdivision. Mr. Sobkowski stated specifically on the road, you are not just
talking
about the piece of road right in front of your house. Usually you have to come out of

the area to go through the Town. Specifically on the police, you would want your Chief to respond how he provides aid. Police Chief Shelhart stated we do patrol through that area. The County is spread thin and they often call us to respond to calls. Technically the County is responsible for providing police services for him, however we do patrol by there constantly and provide protection to that area. If the Sheriff's Department did get a call from Mr. Pratt's house, it would not be unusual for them to call us to respond. Mr. Earley asked if it would be fair to say that we could respond quicker than County could. Police Chief Shelhart stated unless a County car was passing by, yes. Mr. Philpot stated a police officer, to my understanding, has arrest authorities no matter where he is in the state. Police Chief Shelhart stated that was correct. Mr. Philpot stated if something does take place in these communities, the Lowell police does have the authority to arrest someone in that area and possibly quicker than the County could respond. Mr. Kuiper stated we do patrol outside of our Town borders now. Police Chief Shelhart stated we do answer calls weekly from the County since they are spread so thin and it could be quite a distance for

LTC REGULAR MEETING - 8/27/12 - Page 4 of 9

them to respond to a call. That is not just in Lowell, it is in any community that is in an outline area.

Doug Schmal, 555 N. Nichols St., stated he opposed the annexation simply because in the past thirteen years the Town has not done anything for him. When the snow plows go down the road, they pick up their plow and we have to wait for the County to come out. He stated he did not feel that he owed the Town anything, and he is not asking anything from the Town. There are officers that drive by there because there are other officers that live in the surrounding

neighborhoods. When an officer does drive by they are normally speeding and just trying to get home. Mr. Schmal stated he has called the police station about this issue, and nothing has been done about it. He stated they do catch other speeders there, but as far as getting anything from this annexation, he does not feel that he would benefit from it.

Ken Novak, 18007 Holtz Road, stated he did not know what this annexation would do for him.

Currently he is running a business there and has no problem, but he asked if the ordinances would effect the way that he does business right now, or if he could continue to even run the business. Mr. Kuiper asked what business he runs. Mr. Novak responded he runs a tree service.

Mr. Kuiper stated to his knowledge, the way he does business would not change. Mr. Trulley

stated there is no zoning for that right now since he is not in Town. Mr. Novak asked what the

requirements would be to stay where he is. Mr. Trulley asked Mr. Guerrettaz if we could annex

him as the business. Mr. Guerrettaz stated to the terms of the fiscal plans and the zoning ordinances, all of these properties are coming in as residential initially. That is not to say that it

can not change. Mr. Earley stated to Mr. Novak we have talked before and we discussed myself

going to bat for you and the business. We are not trying to run you out. Mr. Novak stated that he

felt that he is an asset to this community. Mr. Earley agreed and stated he would work with Mr.

Novak to make sure that his business could run as a business where it is. He stated there may be

some things that you may have to do to continue your business after the annexation.

Mr. Novak

stated he is worried about the additional expenses that may be involved during the annexation.

Mr. Earley stated he did not want Mr. Novak to lose the desire to be a business owner in Lowell

and he would do everything he could to make sure that he stayed.

Mr. Parker asked if these are issues that need to be addressed now or as we are going through the annexation process. Mr. Guerrettaz stated the water and sewer tap is up to the Town's ordinance.

All of the property owners who have septic right now are not required to hook up to the Town

sewer until their septic fails. Mr. Novak asked about water. Mr. Guerrettaz stated water is voluntary. Mr. Novak asked if we hook up to the sewer and not the water, how is the bill determined. Mr. Kuiper stated currently sewer and water is separate any way. Mr. Earley stated

they would meter the well water and charge you a sewage rate by the water usage. Mr. Parker

stated the fiscal plan is available at the Town Hall, but it is my understanding you can remain on

your septic until that fails and then hook up to the Town sewer. As far as the business, is there a

way to grandfather him in to the zoning. Mr. Guerrettaz stated the zoning needs to be addressed

after the annexation. Everyone will come in residential, and then in Mr. Novak's case, it can be

changed. Mr. Corns asked Mr. Novak if he approves of the septic system he has right now. Mr.

LTC REGULAR MEETING - 8/27/12 - Page 5 of 9

Novak stated no, he has had to have his septic pumped three times. A discussion followed about

where the septic tiles are for that property and some issues that they had in the past with that

system. Mr. Parker stated to Mr. Novak he would do everything that he could to make sure that

Mr. Novak stays in business where he currently is and that he is somehow grandfathered in to

the zoning ordinances. Mr. Kuiper agreed. Mr. Novak stated he is most worried about the

expenses that will occur. Mr. Kuiper stated by the Town ordinance, you do not need to hook up

to the sewer until the septic fails and the water is voluntary. As far as the business, no one wants you to shut down, everyone wants you in Town.

Mr. Heiser, 17705 Holtz Road, stated he would like to finish the reasons why the pockets are against the annexation. He stated, "The following is a list of some of the reasons the 'Holtz Road' pocket of five parcel owners (as an association) are firmly against annexation of their properties in to the Town of Lowell, Indiana. Additional reasons may be provided at the public hearing. Fire and Police protection and street and road maintenance are adequately covered by an entity other than the town, for some of the parcels in the Holtz Road pocket. The annexation will have a significant financial impact on the parcel owners. The annexation is not in the best interests of the property owners. The annexation is opposed by at least 75% of the property owners. At least one of the parcels has no annexed houses on two sides with one side having over three hundred feet of farm land before connecting to the nearest house to the North. At least one of the parcels has no annexed houses/parcels on one side of their property, which would be Mr. Pratt that spoke earlier. The Town has only provided the reason for annexation as for continuity, which falls short of a clear legitimate purpose for annexation of this 'Holtz Road' pocket. Each parcel owner as individuals may provide additional and unique reasons for their petition against annexation of their parcels. These are the same names that I called out earlier that has signed this."

Mr. Heiser continued, "My own individual reasons, our property is the one that is the furthest North on Holtz Road. We all have costly investments in both our septic systems and in our

wells. We want to continue to maintain and control our costs for these utilities. We want to have unlimited supplies of water for use on our acreage, we do not have small lots, we have ample land most of which exceeds an acre and a half. Some of us have swimming pools and lots of grass to water when needed. Not small parcels, as is the case in the Spring Run subdivision which was annexed in to Lowell and is adjacent to these parcels known as the Holtz Road pocket, which was done a decade ago. There should be no tap in fee for forced or involuntary annexed parcel owners. The Town should take up such a matter of adopting an ordinance exempting residential parcel owners from paying the tap in fees. Isn't the tap in fee \$1800?"

Mrs. Walters stated the sewer tap is \$2015 and the water tap is \$750. Mr. Heiser continued, "Since each parcel owner, once hooked up to the Town utilities pays the Town for such services at an ongoing profitable basis, the Town more than makes up for its utility investments over and over again. Parcel owners should be considered the same difference as businesses that generate revenue for the Town. We should all be welcomed in to the Town the same as you would do for a new business. The tap in fee, as I have been lead to believe, only provides the land owner with the right to connect in to the sewage and the utilities, and does not provide any excavating or

LTC REGULAR MEETING - 8/27/12 - Page 6 of 9

plumbing. We do not want to go 24/7/365 on a utility clock to pay for these services. Once we are annexed and hook up to these services, our costs go on forever at rates which exceed our own ability to obtain homeowner installed septic and water. We are also able to utilize all the water we want to without increasing our cost to do so if we were hooked up to the Town

water and
sewers. Our property, meaning myself and my wife, located at 17705 Holtz Road, is the
northern
most parcel on Holtz Road. There are no properties/parcels annexed in to the Town on
two sides
of us, both to the North and to the South. The property to the North is farmland with a
creek
running through it. That property has no homes located on it for over 700-800 feet. It is
all
farmland and is all property along Holtz Road to the North of us and then the county
along with
the parcel immediately to our South. Unless there is a development being planned and
seeking
Town utilities, there is no legitimate reason for annexing our property. If there was a
development in the works, often times the developer would pay for our costs to connect
to the
utilities in order to get our cooperation to be annexed. My wife and I have an acre and a
half
with a large swimming pool requiring lots of water for pool and watering the grass when
needed.
If we tapped in to the sewers we would have to install a pump up system along the
Holtz Road
frontage, which would not be practical giving all of the plumbing and where it is in our
house.
The most practical would be across our backyard across the East fence, ordering Phase II
of the
Spring Run subdivision since there are no utilities back there. That would be the most
practical
way since it would be gravity fed. There is at least 170 feet from our septic tank to that
fence
line, another costly venture. However, in order to eliminate a pump up system, it would
be more
practical to tie in to the existing sewer lines along our Eastern fence line. Please do not
take
these examples as any desire to be annexed in to the Town. We do not want to be
annexed, these
examples are what looks to be logical options to tapping in to the sewers and is offered
to this
Council as additional reasons supporting our stated reasons for petitioning against

annexation.”

Mr. Heiser then passed out a copy of his letter to the Council.

Mr. Pratt stated his septic is on the East side of his home as well and he is a plumbing contractor and knows that if he would have to run that sewer around, he would have to make three ninety degree bends to come to the West to tap in to the sewer which would not be able to be done in through his basement since it is finished. In the future if it did run, it would run East to the Spring Run subdivision, which we do not know if there is sewer and water running to the North from the existing Phase One property. It would be very costly beyond the \$2015 tap fee for us to get our sanitary sewers around to the front of the property where the main is. Mr. Kuiper asked if Mr. Shook had any comment. Mr. Shook stated he did not since he did not know where the sewer is located in comparison to where the septic is. With no further questions or comments, Mr. Kuiper closed the public hearing portion.

Mr. Sobkowski stated with the public hearing closed, now it would be appropriate to consider the annexation ordinances for the eight areas. Mr. Guerrettaz stated on the significant financial impact, everyone should take a look at the fiscal plan. Because of the circuit breaker, number ten, it goes up \$115 a year roughly. That is probably not deemed to be significant according to the court system. Most of these, if not all, are not significant. Mr. Sobkowski stated going back to Mr. Novak and his situation, the Council has the ability under the statute to make provisions in

LTC REGULAR MEETING - 8/27/12 - Page 7 of 9

the ordinance. If you wanted to do something to grand father his business in for a certain period

of time in order for the zoning to get straightened out, you can do that. Mr. Guerrettaz stated the planning department and the homeowner meet and they agree on the specifics and those are incorporated in to the ordinances. Mr. Kuiper asked how do we proceed on that tonight. Mr.

Sobkowski stated if you are going to make adjustments, you should not adopt in those specific ordinances. Mr. Parker asked if it would be unreasonable to table these and have the building department meet with each property owner to make sure that we have covered their concerns.

Mr. Philpot stated personally he would like to table Mr. Novak's ordinance until things are straightened out. Councilman Philpot made a motion to table Ordinance #2012-12 Area #6 -

Holtz Road - Novak, seconded by Councilman Earley and carried by voice vote.

Councilman

Corns made a motion to proceed with Ordinance #2012-09 Area #1 - North Nichols, #2012-10

Area #2 - Nammari, #2012-11 Area #5 - W. 175th Avenue, #2012-13 Area #7 - Holtz Road -

Pendoski, #2012-14 Area #8 - Holtz Road - Nichols, #2012-15 Area #9 - Holtz Road - Pratt, and

#2012-16 Area #10 - Holtz Road - Heiser seconded by Councilman Earley and approved by roll call vote.

Resolution #2012-21 - reduce 2012 budget line items - Councilman Corns made a motion to approve Ordinance #2012-21, seconded by Councilman Parker and carried by voice vote.

UNFINISHED BUSINESS

Public Works Department Update - WWTP JMOB Requests - Water Infrastructure Improvement

Plan - Streets/Sidewalks - Mr. Shook stated he did not have an update.

WWTP Improvement Project - Approve Pay Request #17 to Commonwealth Engineers for engineering services - \$28,838.29 - and forward to SRF for payment - Councilman Earley made a motion to approve, seconded by Councilman Corns and carried by voice vote.

Storm Water Utility Fee - Mr. Parker stated he spoke to Mr. Guerrettaz about other alternatives that we should allow him to look at. Councilman Parker made a motion to table the Storm Water Utility Fee until next month, seconded by Councilman Philpot and carried by voice vote.

Re-issue Executive Order for 30-day Water Sprinkling Ban - Mr. Kuiper read the Notice of the 30-day Water Sprinkling Ban and signed the public notice to re-issue.

Permission to help remove debris - Rebuilding Together - Mrs. Peterson stated Rebuilding Together will be in town September 15th and will be working on eleven homes. There is a property where we will be removing a tree on a resident's property, which C & E Tree Services has offered to take down, but they do not want to haul away the tree. She stated we would like to use two of the Street Department employees along with a back-hoe and a truck on September 14th to take away the tree. Councilman Parker made a motion to approve the work, seconded by Councilman Corns. Mr. Philpot asked if there was any way we could advertise the wood for residents to come and use. Mrs. Peterson stated because it is pine, it has to site for a while. A

LTC REGULAR MEETING -8/27/12 - Page 8 of 9

discussion followed on how the tree was going to be disposed of. The motion carried by voice vote.

Tabled from 8/13 meeting - Discuss need for upgrade of federal weather warning systems - Fire

Chief Clint Gorball stated they received a quote from Dewayne's Electric out of Crown Point for some work on the two weather warning sirens. The first part of the quote is to bring them up to the FCC compliance in regards to the narrow band receivers which would cost \$6,136.00 for both of them. The second option is to provide battery back up to the siren at Maintenance Products, which would cost \$8,760.00. He stated he spoke with Clerk-Treasurer Walters about this, and she asked if we would use the Fire Department Cum Fund, which currently sits at around \$150,000. The Town owned aerial fire truck is about 18 years old. Over the last twelve months, we have put a lot of money in to that vehicle. We were hoping within the next couple of years to replace that vehicle and with us having to continually borrow money from that Cum Fund, that money may not be available. He stated the Cum Fun does get money every year, but the replacement cost of the aerial truck will be around \$600,000 - \$750,000. Mr. Earley asked if both of the options take care of everything. Fire Chief Gorball stated it does. Mr. Kuiper stated we do have the money in our Cum Fund. Mrs. Walters stated that money is also to help for trucks and a new street sweeper for the Street Department. Mr. Corns asked if the siren at Maintenance Products is the only one that does not have a battery back up. Fire Chief Gorball stated that is correct. He added that through County 911 funds, we have been approved to have a fourth weather warning siren installed at the High School property, which will be FCC compliant with the battery back up. Also we spent about \$5,000 to update the siren by the fire station this year. Mr. Earley asked who owned the sirens. Fire Chief Gorball stated all three sirens have insurance that are paid by the Lowell Fire Department so we would assume that we own it. Mr. Earley asked if these will need maintenance continually now. Fire Chief Gorball stated

they would. The new siren will require less, but we have already used some money out of the EMA budget for some small repairs on the other three sirens. Mr. Kuiper asked if we could possibly split the cost between the two Cum Funds. Mr. Parker stated he would like to make a motion to approve the two options on the sirens and asked that Mr. Kuiper and Mrs. Walters sit down and plan out where the money should come from. The motion was seconded by Councilman Earley and carried by voice vote.

ANNOUNCEMENTS

93rd Annual Labor Day Parade will be held on Monday, September 3rd. Mr. Kuiper announced the next regular meeting will be Monday, September 10th at 7:00 P.M.

MEDIA QUESTIONS/PUBLIC COMMENTS

Mr. Philpot stated last week he had asked if we were going to proceed with the fire territory and the next steps, but he did not get an adequate answer. A couple of days later, Councilman Earley

LTC REGULAR MEETING - 8/27/12 - Page 9 of 9

had a conversation with myself and Councilman Corns stating that he will be using last year's budget and there will be no bid put out for these services. Removing this bid process really bothered me. Also in the meeting about the fire territory with the lawyer, he has asked the other entities to put together a forum and come to him so that it can be ironed out. He stated he believed Mr. Earley has already made up his mind that this fire territory will go forward and is

getting too far ahead of himself. With that, Mr. Philpot wanted to change his vote from yes to no and not move forward with the fire territory. Mr. Kuiper stated he would like to address some of the issues that Mr. Philpot has. He stated he did not know what all was said to Mr. Philpot, but no one has that authority individually to create this fire territory or say where the funds will be coming from. Mr. Philpot stated his argument to that is he is indicating a pre-disposed position. We gave him a blessing a couple of months ago to sit on this board and attend the meetings and it hasn't even been convened yet. It also seems that this board should have been convened and brought in the attorney. Mr. Kuiper stated the only meetings that he knows of is the one that he was sitting in. A discussion followed about when a board for the fire territory should be or should have been created. Mr. Earley stated there is no board, it is a group of entities trying to create a fire territory. The board that will be created will have someone from each entity.

ADJOURNMENT

With no further comments or questions Councilman Parker made a motion to adjourn, seconded by Councilman Earley and carried by voice vote at 8:18 P.M.

Phillip Kuiper, President
Attest:

Judith Walters

Clerk-Treasurer.