

**LOWELL TOWN COUNCIL
REGULAR MEETING
JUNE 9, 2014**

The regular meeting of the Lowell Town Council was called to order on Monday, June 9, 2014 at 7:00 P.M. by President Edgar Corns. The Pledge of Allegiance was recited followed by a moment of silence. Deputy Clerk-Treasurer Gena Knapp called the roll. Members present were Craig Earley, Robert Philpot, Donald Parker, Phillip Kuiper, and Edgar Corns. Also present were Town Attorney Jack Kramer, Public Works Director Greg Shook, Building Administrator Tom Trulley, Police Chief Erik Matson, one member of the media, and twenty-eight citizens.

TREASURER'S REPORT - May 2014

Councilman Earley made a motion to approve the May 2014 Treasurer's Report, seconded by Councilman Parker and carried with five ayes.

APPROVAL OF MINUTES

Councilman Parker made a motion to approve the May 27, 2014 regular meeting minutes, seconded by Councilman Philpot and carried with five ayes.

APPROVAL OF VOUCHERS

President Corns stated he reviewed White Vouchers #1498 - #1535, White-Police #4108 - #4114, Water #2371 - #2401, Waste Water #3293 - #3321, Stormwater Utility #5059 - #5064, and recommended all of the vouchers for payment except Voucher #2387 which needed to be voided and would be re-listed at a later date. Councilman Parker made a motion to approve the vouchers as listed with the exception of Voucher #2387, seconded by Councilman Philpot and carried with five ayes.

MONTHLY REPORTS - May 2014

Councilman Kuiper made a motion to approve the May 2014 reports, seconded by Councilman Philpot and carried with five ayes.

ORDINANCES & RESOLUTIONS

2nd reading - Ordinance #2014-08 - an Ordinance for Water Conservation - Councilman Philpot made a motion to approve the second reading of Ordinance #2014-08 by name and title only, seconded by Councilman Earley and carried by roll call vote with five ayes.

UNFINISHED BUSINESS

Public Works Department Update - Public Works Director Greg Shook did not have any updates for the Council.

Rt. 2 Curb and Sidewalk Project - Approve amended Pay Request #5 to Commonwealth Engineers - \$58,178.00 and forward to INDOT for 80% reimbursement - Councilman Earley made a motion to approve Pay Request #5 in the amount of \$58,178.00, seconded by Councilman Parker and carried by roll call vote with five ayes.

Tabled from previous meetings:

5/27 - Carlson Farm/Hallmark annexation recommendation - Doug Niksch, Annexation Committee Chairman, stated he wanted to present this recommendation at the last meeting, but did not realize that it would be a continuation. He stated, "At the last meeting of the Annexation Committee, we voted unanimously to continue with the annexation of the property north of Belshaw, west of Nichols Street, and east of the railroad tracks. This property is known as the Carlson Farm and the Hallmark property. We have been talking about this annexation for the past four or five years and have a fiscal study that was done for this property a few years ago. This annexation was third on the list of annexations last year and as we proceed, the Committee recommended unanimously to annex this property under a no-impact annexation. There will be no tax increase, no change in zoning, and they will be able to continue with farming the property as they do now. The fiscal plan was actually made for a larger property, so it would need to be updated, but even in that old fiscal plan, it shows that we would not need any additional police or fire service. The basic reason for this annexation is to increase the boundaries of the Town. If this property were annexed in to the Town, it would become a much more desirable and valuable property. Whenever the land would be developed, whether it be residential or industrial, they would still have to come in for a zone change which would still have to go through the Council." He stated in his opinion and the opinion of the Annexation Committee, since it is no-impact, there is nothing undesirable about pursuing it. The Carlson family would obviously want to be involved in every step of the process, which would happen. Mr. Niksch stated he did not want to have to pay to do a fiscal plan again for this property, so if the Town went in with a basic no-impact annexation, the financial advisor could do a minimal fiscal plan that would cost less. Mr. Niksch also made the point that this property does follow the Land Use Plan.

Councilman Earley stated there have been discussions regarding annexing south of Lowell since before he was involved in the Council. He stated at the time, that reason was to annex our Town utilities so that they were within the corporate boundaries, but he believed that was the reason we needed to annex the Carlson Farms since that property would be contiguous to our utilities, which was required at that time. That particular reason has gone away since new legislation has passed that allows the Town to annex its utilities without having contiguous property. Councilman Earley stated he would like to extend his apologies to the Carlson family. He stated he was not sure how or why it was on the agenda for the last meeting without their

knowledge. After the meeting Mr. Niksch had told us that he was not aware that it would be on the agenda either. Councilman Earley stated the Carlson family should have been involved long before this recommendation came to the Council. He stated they have conditions that they are concerned about on the future use of that property, whether they get annexed in as agricultural or not. Councilman Earley stated that was something that the Annexation Committee should have heard from Mr. Niksch if he has had communications with the Carlson family. Mr. Niksch stated he has been speaking to Mr. Carlson for the past five years. He stated he has always been up-front with him and has kept him up to date with anything that has been done. In March Mr. Carlson was made aware that the Annexation Committee was going to proceed with the procedures for the annexation process. Mr. Niksch stated he was not aware that this article was going to be in the newspaper and that is how himself and Mr. Carlson found out about it. Councilman Earley stated he was not implying that Mr. Niksch was not up-front with Mr. Carlson.

Councilman Parker stated there is another piece of property that is involved in your recommendation. Mr. Niksch stated he has been informed that the Hallmark Properties are desirous for this annexation. Councilman Parker asked what the benefit of that property would be. Mr. Niksch stated it would be to grow the Town, that property is, along with the Carlson farm, joining the railroad all the way down. Councilman Parker asked if he believed the railroad was significant. Mr. Niksch stated when we began the Annexation Committee, we said one of the biggest assets we have in this town are the two railroads that run through it. He stated he has been in the business of material handling for a little over forty years and is very familiar with railroads and how they work. He said we are very affluent in the ports and the intermodal yards, there are opportunities to utilize these railroad tracks, and when you do that, it brings in businesses and revenue, which is our goal. Councilman Earley asked if the land by the railroad tracks and Cedar Creek has a large wetland area. Mr. Niksch stated he was not sure, but if you can build a railroad track, you can use that land. There may be some adjustments that need to be made, but we are not asking for that right now. Councilman Earley stated he had not heard of the Hallmark Properties being interested in annexing in to the Town. Mr. Niksch stated that was part of the original fiscal study, but at the time it was owned by the Cripe family, not Hallmark.

Carl Carlson, President of Carlson Farms, stated he has been speaking with Mr. Niksch for quite a few years. He stated, "Originally we had spoken with CSX regarding a possible intermodal. We have had meetings with CSX, Matt Reardon, and Jim Langen. A lot of things were discussed with the Board regarding annexation, and we did not feel that it was an advantage to us as long as we were operating as a farm. If we were to develop it, or someone else, we would insist that they annex in to the Town. That annexation would come at the time that we sell the property, which has been our position from the beginning. Over fifteen years we had worked with a developer creating a plan for our property, but after realizing the cost for the market analysis alone, we pushed it off." Mr. Carlson continued to explain how the restrictions would affect them. President Corns reminded Mr. Carlson that he had sat in on some of the Agricultural Advisory Board sessions. Mr. Carlson stated he had sat in on a few and the only thing he ever

heard from other farmers was how they were not going to sell their farms, which is not our situation. President Corns stated the object of the Board was to protect the farmers, you can farm twenty-four hours a day, there are no dust contingencies or noise contingencies on your land. Mr. Carlson stated he had not read the Ordinance, but believed there were some things that would still not be allowed. Councilman Kuiper asked if we were annexing any of the other farmer's properties that were a part of those meetings. President Corns stated no, but we wanted their input as to what to put in the Ordinance in order to protect them. Discussion followed. Councilman Earley stated when he had spoken previously with Mr. Carlson regarding his conditions, he was unaware that Mr. Carlson was okay with the annexation of this property whenever it sells. Mr. Carlson stated we will not develop it ourselves or join anyone in developing it, but we would sell the entire property with a plan in place of how it would be developed. He stated he believed it should be a residential area, but that Mr. Niksch disagreed and would like to see light industrial. This property is between two schools and would have traffic issues that would need to be resolved before anything would be developed there. Mr. Carlson stated, "We do not know when this would be developed. No one has ever come forward and offered to buy the property. During the meeting with CSX, they did not seem interested in just having a factory here and there. They wanted to bring a whole pile of cars in there at one time. This is a nice piece of property just south of Lowell, and one day it could be a great part of Lowell, but we do not see the advantage to being annexed right now."

Councilman Earley made a motion to table the annexation of the Carlson Farm indefinitely based on what Mr. Carlson had said. Councilman Kuiper stated we have to keep in mind that the Carlson's have been here for sixty-two years and have been great neighbors to the Town. Having said that, eventually something will happen, but at this time we need to table it and maybe sit down with the Carlson's and explain the Ordinances and see if we can partner up with them. The motion died due to lack of a second. Councilman Parker stated Town Planner Jim Mandon could not be here tonight, but he does have an opinion on the property that differs some from Mr. Niksch. He stated he believed we should table it until we speak with the staff and Jim Mandon. Councilman Kuiper stated the only thing he would ask is when there is a discussion about their property that the Carlson's be involved. Discussion followed. President Corns stated the annexation would be left alone.

Faulty Water Meter - Sidetrack Saloon - President Corns stated he was aware of a possible water meter issue at the Sidetrack Saloon, which was brought to his attention by the owner, Maureen Gardiner. He stated he had told her that he was not aware of what the Ordinances were, but asked for her to explain the situation. Maureen Gardiner, owner of the Sidetrack Saloon, and her attorney Robert Butcher introduced themselves. Attorney Butcher handed a letter to the Council that explained the recent changes in the water bill for the saloon. After the Council read the letter to themselves, Councilman Kuiper asked if Town Attorney Jack Kramer was comfortable discussing this in public with the attorney present. Attorney Kramer stated it is at the pleasure of the Council. He stated he presumed that Ms. Gardiner would make a presentation of some sort, and then the Council would act on it. Ms. Gardiner stated that Director Shook had told her that he turned the matter over to the Town Attorney, and that she felt the need to do the same. President Corns stated he also encouraged Ms. Gardiner to have an attorney. Discussion followed regarding moving the item to an executive session. Attorney Kramer stated Mr. Butcher and Ms. Gardiner are more than welcome to present the matter and at that time the Council can ask any questions and move forward from there. Mr. Butcher outlined the letter that was presented to the Council which explained that prior to a new water meter being installed at the saloon, the average bill was \$120.42 monthly. After the

installation of the new meter in May of 2011, the water bill had averaged \$299.43. After some complaints to the water department, one of the Town's employees went out to see if they could find a solution. After no findings by the personnel from the Department of Public Utilities, the saloon had their ice maker and other water systems inspected by Fetsch Refrigeration. The inspection revealed that the equipment was functioning properly. In October of 2013, a second water meter was installed. Following the installation of the second water meter, the saloon's water bills dropped to an average of \$150.64 per month. Due to the faulty water meter, Ms. Gardiner believed that she was owed an overpayment of \$4,314.91. Councilman Philpot asked if someone from the Town inspected the equipment. Mr. Butcher stated that was correct. After they could not find anything wrong with her equipment, they suggested she have an outside company look at it, which she did. Councilman Philpot stated so neither of them found anything wrong with her equipment. Mr. Butcher stated that was correct. Councilman Earley stated he agreed with Councilman Parker and believed that the matter should be moved to an executive session. Councilman Parker stated we have the information, but it is incumbent upon us to discuss this with our staff and figure out what we think may have happened. After that, we will decide on the matter of the overpayment. Ms. Gardiner stated the numbers speak for themselves. Councilman Parker stated he is willing to help if it is our fault, but he would like to first have an executive session to discuss the matter and look at all of the facts. Discussion followed. Councilman Earley stated he appreciated the letter and the facts, but we do need to do our fact finding as well. He asked Ms. Gardiner if there was any other information that the Council needed to know about the business, equipment, water bills, or anything related to the usage of water or our inspections that was not conveyed in this letter. Ms. Gardiner stated there is nothing that has changed.

NEW BUSINESS

Enter into annual agreement with Financial Solutions Group for annual disclosure filings and TIF report - Councilman Kuiper made a motion to enter into the annual agreement with Financial Solutions Group, seconded by Councilman Earley and carried by roll call vote with five ayes.

Permission to install banner in front of Tri-Creek Lumber - Grant Wedding - Grant Wedding, 7754 N. 500 W. Lake Village, IN, stated he had spoken with Building Administrator Tom Trulley about setting up a temporary sign at Tri-Creek Lumber to advertise the sweet corn stand. He stated he would ask that the sign be allowed for a time frame of about three months beginning July 1st.

Councilman Kuiper made a motion to approve the request for the temporary sign, seconded by Councilman Parker and carried by roll call vote with five ayes.

President Corns turned the gavel over to Vice-President Parker. President Corns made a motion to immediately remove Councilman Earley from the Ambulance Board and from the Fire Department Board, seconded by Councilman Philpot. Councilman Earley asked why. President Corns stated the other night when we asked you to vote to create a committee to hire the fireman, you were more than willing to give up your rights to the Fire Department. Councilman Earley asked what it meant when he said "gave up my rights". President Corns stated you did not want us to have a committee. Councilman Earley stated he did not want to have the committee as it was formed, which was said verbally. Councilman Kuiper stated he was actually representing the Fire Department because he kept saying they have this in place.

He was representing the Fire Department full force, the exact opposite of what you are saying, but that will be shown in the minutes. Councilman Philpot stated it was his understanding that we had reached a decision that this thing would not be pursued. You went to the ambulance committee and pursued it. Councilman Earley asked pursued what? Councilman Philpot stated the combination of the ambulance with the fire department and Lowell being over it. Mr. Philpot stated, not only that, but you left the meeting early before it was adjourned which should never be done by any Councilman. Councilman Earley stated he did not bring that to the agenda of the ambulance board, Cedar Creek Trustee Dahl did. He stated he was there and they were asking him questions about it, so your facts are wrong. President Corns stated he had his facts straight. He stated, "As a liaison you go to the meeting, you are not on the board, and you are not supposed to influence them." Councilman Earley stated that is false and that President Corns could check the by-laws. President Corns stated he spoke to the President of the ambulance board the other day, and he had told him what happened. Councilman Kuiper stated that he had voted against the committee as well because he felt that it would be similar to the layer that exists between the Town Council and the Police Department, which is the Police Commission. He stated he voted against it because we have nothing to do with the Police Commission because two of you, President Corns being one of them, refuse to work with them. You have appointed two Commissioners this year, and you still refuse to meet with them. If we are to do the same thing with the Fire Department, we will not have anything to do with that committee. Councilman Philpot stated he did not have any recollection of saying he did not want to meet with the Police Commission. Councilman Kuiper stated he did not say that Councilman Philpot did not want to. He stated he was well aware that he actually wanted to meet with them.

Councilman Parker stated he has not been happy with the Police Commission, but he has never been asked to a meeting or been told that there is a joint meeting. Regarding the fire committee, it has not been determined. As far as the ambulance service, they need to get their stuff straightened out because it is a mess. We should not have anything to do with the ambulance service at this time until they get straightened out. Discussion followed. The motion carried three to two with Councilman Earley and Councilman Kuiper voting nay. Councilman Earley asked who would be appointed. Councilman Parker stated if he had it his way, no one on the ambulance board. President Corns stated Councilman Philpot will be the liaison to the Fire Department this year. Councilman Earley stated no he will not. President Corns stated he would be. Councilman Earley stated he needed to look at the minutes. Councilman Philpot stated he agreed with Councilman Earley. He stated when nominations were made, his name was discussed, but he had turned it down.

ANNOUNCEMENTS

President Corns announced that the next regular meeting will be held Monday, June 23, 2014 at 7:00 P.M.

MEDIA QUESTIONS/PUBLIC COMMENTS

Melanie Csepiga asked if one of the Councilmen that voted Councilman Earley out would please give just a one sentence statement as to why. Councilman Philpot stated he believed

Councilman Earley pursued something after the Council had decided not to pursue it. When it came up at a meeting afterward, he should have declined any comments. President Corns agreed. Councilman Philpot stated he would like to point out that this was done once before. A person would not go along with the Council, so he was removed off of the committee.

Neil Fitzmaurice, 434 Dogwood Ln., stated he has served on a lot of boards, but it surprises him that the Council would surprise a board member with a motion to take some action that involves them without prior notification. That is beyond being impolite and it seems obvious that some people may have already discussed it, but the one person that was not involved in that discussion was the person affected. He stated he was disappointed in the entire board that they would consider doing that, and the rest of the Town should be disappointed as well. Councilman Philpot stated in his example, there was no previous discussion about it whatsoever either.

Dottie Gwyn Maas, 351 Joe Martin Rd., stated she is on the advisory board for Cedar Creek and she resents the comment that Councilman Parker made about the ambulance board. She stated, "If we had the money to hire more paramedics, we would do it tomorrow. You have done a disservice to the Fire Department and to the Ambulance. Councilman Earley is one person who's first concern is the Fire Department and the Ambulance." Councilman Parker stated it has nothing to do with firemen or ambulance personnel, it has to do with the record keeping of the corporation and who is in charge. He stated, "You have a township trustee who has a letter from her lawyer that says things were not registered or recorded and you are working off of a 1972 Ordinance. You on the board and other board members need to get those things straightened out." Ms. Gwyn Maas stated taking Councilman Earley off was not going to help.

Robert Baker, 1040 Woodland Ct., asked how the Powell Ditch was coming along. Councilman Parker stated they received the legal document today for the easement. Mr. Baker also asked for a list of streets that were going to be done this year. He stated his street has not been resurfaced since he has lived there. Building Administrator Trulley stated he could get him a list.

Carl Ferro, 1310 Harrison St., stated he believed that Mr. Austgen had the same problem with his water as the Sidetrack Saloon does and the Council made a vote that night and waived the fees for him. President Corns stated he did not recall that. Mr. Ferro stated Councilman Kuiper had brought it up that they were not aware about the meter and it was the same situation. President Corns stated he told Ms. Gardiner that he would like to try to work with her because we cannot afford to lose any more businesses downtown. Mr. Ferro agreed and said that the downtown merchants are not happy with how some inspections are going. He stated they are going to get together and have a session and invite the Council so you can hear what is going on, they are spending their money, myself included, to make improvements. Mr. Ferro mentioned that he is working on his building currently and is getting harassed. He stated if the Town expects him to spend his hard earned money, they better start backing off.

ADJOURNMENT

Councilman Parker made a motion to adjourn at 8:13 P.M., seconded by Councilman Philpot and carried with five ayes.

Attest:

Edgar Corns, President

Gena Knapp, Deputy Clerk-Treasurer