

Special Session of the Clear Lake Town Council  
111 Gecowets Drive, Clear Lake, IN  
December 4th, 2017 at 8:00 p.m.

President, Christopher Folland called the meeting to order at 8:00 p.m. Council members present were Roger Dammeier, Darin Thorp and Bruce Spangler. Council member Jill Powers was absent. Also present were Clerk/Treasurer, Kay Kummer and Town attorney, David Hawk. There was one property owner who signed the guest register.

COUNCIL ACTIONS:

1. Approval of minutes from the regular Council meeting held on November 13<sup>th</sup>, 2017. President Folland asked for any additions or corrections to the minutes as presented. There being none a motion was made by Bruce Spangler to approve the minutes as presented, seconded by Darin Thorp. All were in favor.
2. Resolution 10-2017: A resolution requesting additional appropriations for the Local Option Income Tax Fund and Cumulative Capital Development Fund. A motion was made by Bruce Spangler to approve the additional appropriation request, seconded by Roger Dammeier. All were in favor.
3. Resolution 11-2017: A resolution approving contract with Town Attorney. The resolution was read by Roger Dammeier and motion made to continue and approve the contract for employment of Attorney Hawk, Haynie, Kammeyer & Smith, LLP for calendar year 2018. The motion was seconded by Bruce Spangler. All were in favor.
4. Service Agreement with Steuben County Economic Development Corporation for 2018 and appointment of Town of Clear Lake representative. Council Members voted unanimously to have President Folland continue to represent the Town with the Steuben County Economic Development Corporation for the term expiring on December 31, 2018. Council also accepted the service agreement for that period.
5. New Focus HR: A proposal/agreement for services from HR consulting was presented by council member Darin Thorp. The agreement would engage New Focus HR to develop an Employee Handbook for the employees of Clear Lake. A motion was made to accept the agreement with Darin Thorp being the contact person.

NEW BUSINESS: Applications for Hoagland Family Limited Partnership Sewer Connections at 804 South Clear Lake Drive, 1114 South Clear Lake Drive and 1121 South Clear Lake Drive.

The Town's attorney, David Hawk noted that the "Sanitary Sewer Connection Permits" were not submitted on the application for New Sewer Connection form which is currently available on the Town's website. They were not submitted with the application fee to the council as required by ordinance. Each permit contains the following statement: "this permit is submitted under protest, all objections and reservations attached hereto on a separate page apply" and that each permit was attached to a separate document filed in the Steuben Circuit Court on November 29, 2017 in Cause NO. 76C01-1006-PL-0425 captioned: "NOTICE OF SUBMISSION OF APPLICATION FOR SEWER CONNECTION AND REQUEST FOR TOWN TO INITIATE EMINENT DOMAIN PROCEEDINGS." Notwithstanding these shortcomings, the attorney requested that the

council consider and respond to these requests in the hope of expediting the connections to the sewer collection system.

Upon review of the permits and attachments, it was determined that none of the permits comply with the provisions of CLC 51.51(C) and 51.59(C), nor do the attachments reference requirements in the current Wastewater Standards and Specifications. For example, each grinder pump location is greater than 30 feet from the edge of pavement of the adjacent street, and one permit locates the proposed easement on land belonging to the adjoining property owner.

The council discussed the request that the town “Immediately initiate eminent domain proceedings,” which referenced the decision in Town of Clear Lake v Hoagland Family Limited Partnership, 75 N.C.3d 1081 (Ind. Ct App. 2017). The council was advised that eminent domain proceedings are only required if the town requires land from HFLP for easements for grinder pump stations and sewer lines. Those proceedings would require additional time, legal expense for the town (including the legal expenses incurred by HFLP), and the potential additional expense of a jury trial.

The council discussed the fact that the matter has been pending in the court for more than 7 years, and the town has already incurred significant legal expense. In addition, the Court of Appeals remanded the case to the trial court with instructions to award partial summary judgment to the town, and that would include an order to connect to the town’s sewer system. The council also reviewed suggested locations of the grinder pump stations for each property which was proposed for connection, as illustrated on the Steuben County GIS maps.

A motion was made by Council Member, Roger Dammeier, that, contingent upon HFLP’s compliance with CLC 51.51 New Connections, including the payment of all fees required (Application Fee of \$200, Tap Fee of \$7,500 and Inspection Fee of \$100, totaling \$7,800 for each property) the council will issue a connection permit for each property. The motion was seconded by Council Member, Darin Thorp. The motion carried; all voted in favor.

A further motion was made by Council Member Roger Dammeier, that the council decline to initiate eminent domain proceedings, but will have grinder pump stations and appurtenances installed in right-of-ways and/or existing wastewater utility easements as permitted by CLC 51.59 as depicted on the illustrations, thereby eliminating any requirement to acquire land from HFLP by eminent domain. The motion was seconded by Council Member, Darin Thorp. The motion carried; all members voted in favor.

Council requested that the Town’s attorney advise the court of the results of this meeting.

There being no further business, the meeting was adjourned at 8:45 p.m.

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Christopher Folland, President

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Attest: Kay A. Kummer  
Clerk-Treasurer