

MINUTES OF THE
REGULAR MEETING
OF THE
ST. JOSEPH COUNTY COUNCIL
January 12, 2010

The regular meeting of the St. Joseph County Council was called to order at 7:02 p.m., on January 12, 2010, by the President, Rafael Morton, in the Council Chambers, fourth floor, County-City Building, South Bend, Indiana.

Members in attendance were:

Mr. Mark Catanzarite
Mr. Dale DeVon
Mr. Michael J. Hamann
Mr. Michael J. Kruk
Mr. Rafael Morton
Mr. Corey D. Noland
Mr. Mark Root
Mr. Heath O. Weaver

Present from the Auditor's office was Mr. Peter H. Mullen, Auditor and Cindy Bodle, Chief Deputy Auditor.

Council staff present were Mr. Michael A. Trippel, Attorney and Ms. Joan M. Pawlowski, Executive Secretary

Petitions, Communications & Miscellaneous Matters:

Mr. DeVon motioned to reappoint the following and was seconded by Mr. Kruk with no other nominations made.

David H. Eckrich to the Water Resources Advisory Board
Dorothy Wayne to the County Redevelopment Commission

Mr. Catanzarite moved to approve the minutes of 12/1/09, 12/15/09 and 1/5/10. His motion was seconded by Mr. Hamann. The motion passed by a voice vote; 8-0. No negatives were heard.

Mr. Hamann moved to have Rules Waived for First Reading and Public Hearing this evening on Bill No. 160-09 and 161-09. His motion was seconded by Mr. Noland and passed by a voice vote; 8-0. No negatives were heard.

No report from the County Auditor.

No report from the Board of Commissioners.

Report from any Special Committees.

First Readings:

BILL NO. 153-09: AN ORDINANCE ESTABLISHING COLLECTION FEE FOR RETURNED OR UNCOLLECTIBLE NEGOTIABLE INSTRUMENTS RECEIVED BY ST. JOSEPH COUNTY AUDITOR'S OFFICE. (Dept. 002 - Auditor) - Assigned to the Budget & Administration Committee

BILL NO. 154-09: AN ORDINANCE ESTABLISHING COLLECTION FEE FOR RETURNED OR UNCOLLECTIBLE NEGOTIABLE INSTRUMENTS RECEIVED BY ST. JOSEPH COUNTY CLERK'S OFFICE. (Dept. 001 - Clerk) - Assigned to the Budget & Administration Committee

BILL NO. 155-09: AN ORDINANCE ESTABLISHING COLLECTION FEE FOR RETURNED OR UNCOLLECTIBLE NEGOTIABLE INSTRUMENTS RECEIVED BY ST. JOSEPH COUNTY RECORDER'S OFFICE. (Dept. 004 - Recorder) - Assigned to the Budget & Administration Committee

BILL NO. 156-09: AN ORDINANCE APPROPRIATING THE SUM OF \$136,000.00 OUT OF THE ST. JOSEPH COUNTY DRUG FREE FUND - 067 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR, 2010. (Dept. 019 - Circuit Court) - Assigned to the Human Services/Criminal Justice Committee

BILL NO. 157-09: AN ORDINANCE APPROPRIATING THE SUM OF \$31,200.00 OUT OF THE ST. JOSEPH COUNTY PUBLIC DEFENDER FEE FUND - 059 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR - 2010. (Dept. 019 - Circuit Court) - Assigned to the Human Services/Criminal Justice Committee

BILL NO. 158-09: AN ORDINANCE APPROPRIATING THE SUM OF \$31,000.00 OUT OF THE ST. JOSEPH COUNTY PUBLIC DEFENDERS FEE - 059 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR, 2010. (Dept. 019 - Circuit Court - Public Defender) - Assigned to the Human Services/Criminal Justice Committee

BILL NO. 159-09: AN ORDINANCE APPROPRIATING THE SUM OF \$20,000.00 OUT OF THE ST. JOSEPH COUNTY HEALTH FUND - 005 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR, 2010. (Dept. 055 - Health) - Assigned to the Human Services/Criminal Justice Committee

BILL NO. 159-09: AN ORDINANCE APPROPRIATING THE SUM OF \$20,000.00 OUT OF THE ST. JOSEPH COUNTY HEALTH FUND - 005 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR, 2010. (Dept. 055 - Health) - Assigned to the Human Services/Criminal Justice Committee

BILL NO. 160-09: AN ORDINANCE APPROPRIATING THE SUM OF \$33,000.00 OUT OF THE ST. JOSEPH COUNTY GENERAL FUND - 001 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR, 2010. (Dept. 018 - Prosecutor) For Public Hearing this evening.

BILL NO. 161-09: AN ORDINANCE AMENDING ORDINANCE 86-09, THE SAME BEING AN ORDINANCE ESTABLISHING SALARIES AND FIXING THE NUMBERS OF EMPLOYEES OF ST. JOSEPH COUNTY FOR THE YEAR 2010. (Dept. 018 - Prosecutor) For Public Hearing this evening.

BILL NO. 1-10: AN ORDINANCE APPROPRIATING THE SUM OF \$15,211.00 OUT OF THE ST. JOSEPH COUNTY ANIMAL LICENSE FEE FUND - 068 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR, 2010. (Commissioners/Auditor) Assigned to the Budget and Administration Committee

BILL NO. 2-10: AN ORDINANCE APPROPRIATING THE SUM OF \$99,695.00 OUT OF THE ST. JOSEPH COUNTY HEALTH FUND - 005 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR, 2010. (Dept. 055 - Health) - Assigned to the Human Services/Criminal Justice Committee

BILL NO. 3-10: AN ORDINANCE APPROPRIATING THE SUM OF \$72,672.00 OUT OF THE ST. JOSEPH COUNTY HEALTH LOCAL HLTH SERVICES GRT FUND - 505 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR 2010. (Dept. 055 - Health) - Assigned to the Human Services/Criminal Justice Committee

BILL NO. 4-10: AN ORDINANCE APPROPRIATING THE SUM OF \$1,400,000.00 OUT OF THE ST. JOSEPH COUNTY LOCAL ROADS & STREETS FUND - 026 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR 2010. (Dept. 060 - Roads and Highways) - Assigned to the Engineering and Transportation Committee

BILL NO. 5-10: AN ORDINANCE APPROPRIATING THE SUM OF \$2,700,000.00 OUT OF THE ST. JOSEPH COUNTY LOCAL HWY. USER TAX PROJECTS FUND - 012 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR 2010. (Dept. 023 - Engineer) - Assigned to the Engineering and Transportation Committee

BILL NO. 6-10: AN ORDINANCE APPROPRIATING THE SUM OF \$3,200,000.00 OUT OF THE ST. JOSEPH COUNTY LOCAL MAJOR MOVES CONSTRUCTION FUND - 112 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR 2010. (Dept. 023 - County Engineer) - Assigned to the Engineering and Transportation Committee

BILL NO. 7-10: AN ORDINANCE TO REDUCE THE 2010 ST. JOSEPH COUNTY REASSESSMENT FUND - 028 BUDGET. (Budget Reduction) - Assigned to the Budget and Administration Committee

Public Hearings:

BILL NO. 148-09: AN ORDINANCE APPROPRIATING THE SUM OF \$6,776.00 OUT OF THE ST. JOSEPH COUNTY USER FEES FUND - 058 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR, 2010. (Dept. 005 - Sheriff) - Assigned to the Human Services/Criminal Justice Committee

Mr. Ha mann reported that Bill No.148-09 comes with a favorable recommendation.

Tom Nowicki, Finance Manager, stated that this appropriation was for Instruction and Training. These funds are generated from traffic citations.

Motion to pass was made by Mr. Noland and seconded by Mr. DeVon. Bill No. 148-09 passed to-wit; 8-0.

BILL NO. 149-09: AN ORDINANCE APPROPRIATING THE SUM OF \$11,500.00 OUT OF THE ST. JOSEPH COUNTY HEALTH LEAD ELIMINATION GRANT FUND - 515 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR, 2010. (Dept. 055 - Health) - Assigned to the Human Services/Criminal Justice Committee

Mr. Ha mann reported that Bill No.149-09 comes with a favorable recommendation.

Nick Molchan, Health Administrator, explained that these grant funds were received from Indiana State Department of Health and will be used outreach to the Hispanic Community with regard to preventing lead poisoning.

Motion to pass was made by Mr. Kruk and seconded by Mr. Catanzarite. Bill No. 149-09 passed to-wit; 8-0.

BILL NO. 151-09: AN ORDINANCE AMENDING ORDINANCE 86-09 THE SAME BEING AN ORDINANCE ESTABLISHING SALARIES AND FIXING THE NUMBERS OF EMPLOYEES OF ST. JOSEPH COUNTY FOR THE YEAR 2010. (Dept 005 - County Police) - Assigned to the Human Services/Criminal Justice Committee

Mr. Ha mann reported that Bill No.151-09 comes with a favorable recommendation.

Tom Nowicki, Finance Manager, requested the changes to the Salary Ordinance stating that they will be eliminating one Clerk position of \$25,217 and add one Clerk position at \$21,848. The Clerk position that has been eliminated was funded by a grant that they are no longer receiving.

Motion to pass was made by Mr. Kruk and seconded by Mr. Noland. Bill No. 151-09 passed to-wit; 8-0.

Mr. Morton announced that there would be a combined public hearing on Bill No. 160-09 and 161-09 but would be voted on separately. There was no Committee Report since Rules were waived for a public hearing this evening.

BILL NO. 160-09: AN ORDINANCE APPROPRIATING THE SUM OF \$33,000.00 OUT OF THE ST. JOSEPH COUNTY GENERAL FUND - 001 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR, 2010. (Dept. 018 - Prosecutor)

BILL NO. 161-09: AN ORDINANCE AMENDING ORDINANCE 86-09, THE SAME BEING AN ORDINANCE ESTABLISHING SALARIES AND FIXING THE NUMBERS OF EMPLOYEES OF ST. JOSEPH COUNTY FOR THE YEAR 2010. (Dept. 018 - Prosecutor)

Michael Dvorak, Prosecutor, explained that these funds come from a STOP Recovery Grant. This grant is a reimbursement that goes back to the County for various positions. The award letter and vouchers were late in arriving.

Motion to pass was made by Mr. DeVon and seconded by Mr. Hamann. Bill No. 160-09 passed to-wit; 8-0.
Motion to pass was made by Mr. Kruk and seconded by Mr. Noland. Bill No. 161-09 passed to-wit; 8-0.

BILL NO. 123-09: AN ORDINANCE APPROVING THE PETITION FOR SPECIAL USE FILED BY HEARTLAND FARMS LLC FOR THE PROPERTY LOCATED AT 52682 CURRANT ROAD, GRANGER, INDIANA THE SAME BEING PETITION NO. 11-04-09-13 FILED WITH THE AREA BOARD OF ZONING APPEALS. - Assigned to the Land Use Planning Committee

Mr. De Von reported that Bill No.123 -09 comes with a favorable recommendation.

Mark Lyons, Building Department, stated that this request is for recreational use for soccer and equestrian sports. At the November 4, 2009 meeting of the Area Board of Zoning Appeals this petition was sent with a favorable recommendation.

Paul Blum, 2501 Miami Street, stated that there was a stable and the Notre Dame's equestrian team is housed there currently.

Motion to pass was made by Mr. Hamann and seconded by Mr. Kruk. Bill No. 123 -09 passed to-wit; 8-0.

BILL NO. 152-09: AN ORDINANCE DESIGNATING AND ESTABLISHING A HISTORIC LANDMARK UNDER ORDINANCE NO. 154A-73 AMENDING ZONING ORDINANCE NO. 6, AS AMENDED, COMMONLY KNOWN AS THE ZONING ORDINANCE OF ST. JOSEPH COUNTY, INDIANA. (The St. Paul Lutheran Church Cemetery, 15697 New Road) - Assigned to the Land Use Planning Committee

Mr. De Von reported that Bill No.123 -09 comes with a favorable recommendation.

Catherine Hostetler, Director of the Historic Preservation, explained how this land fits and qualifies as a Historic Site.

Motion to pass was made by Mr. Root and seconded by Mr. Weaver. Bill No. 123-09 passed to-wit; 8-0.

BILL NO. 145-09: AN ORDINANCE TO VACATE A PUBLIC WAY OR PUBLIC PLACE, LOCATED WHOLLY WITHIN THE UNINCORPORATED PORTION OF ST. JOSEPH COUNTY, TO-WIT: A SIXTY FOOT WIDE SECTION OF LAND RUNNING NORTH AND SOUTH STARTING AT THE SOUTH SIDE OF TOLEDO AVENUE AND ENDING AT THE NORTH SIDE OF MCKINLEY HWY, IN BETWEEN LOTS 201 AND 280 ON THE WEST SIDE AND LOTS 200 AND 281 ON THE EAST SIDE KNOWN AS WOODLAWN AVENUE. - Assigned to the Land Use Planning Committee

Mr. De Von reported that Bill No.123 -09 comes with an unfavorable recommendation.

Christa Nader, Area Plan Commission, reported that this petition originally came with a favorable recommendation. However, there is a garage that has its access from Woodlawn and if this vacation is granted a right-of-way would need to be granted. There is also a school bus that uses Woodlawn in its route. If this street is closed, the bus would need to be rerouted. There was a letter from NIPSCO that there is a two-inch gas main extending 289 feet south from the right-of-way of Toledo Avenue, approximately five feet west of the east right-of-way line of Woodlawn Avenue. The vacation is recommended by the staff subject to the following: 1) the following addition to the legal description: "excepting therefrom the east-west alleyway across Woodlawn Avenue" and 2) an easement acceptable to any utility easement.

Secretary's Note: The petitioner was not at the meeting. Mr. Morton stated that this bill will be continued to next month's agenda.

BILL NO. 101-09: AN ORDINANCE AMENDING AND SUPPLEMENTING TITLE 26, ZONING, OF THE ST. JOSEPH COUNTY CODE, AS AMENDED, FOR PROPERTY LOCATED AT 11825 EAST MCKINLEY HIGHWAY, MISHAWAKA, IN FROM RESIDENTIAL DISTRICT TO COMMERCIAL DISTRICT. (Petitioner: Rodney and Jenifer Daniel) - Assigned to the Land Use Planning Committee

Mr. DeVon reported that Bill No.101-09 comes without a recommendation.

The Clerk read the amendment that the bill is subject to written commitments and accepting a new legal description which includes a right-of-way acquisition.

Motion to amend was made by Mr. Catanzarite and seconded by Mr. Kruk.

Christa Nader, Area Plan Commission, stated that this request was to rezone for a pet store focusing on wholesale and internet sales of aquatic plants and animals. There must be room for a total of six cars in a paved parking area. The septic tank might have to be a further distance from the building. The Health Department will have to approve this placement. The Indiana State Department of Health will determine if the existing septic system meets the requirements for this proposed commercial establishment. The City of Mishawaka utilities are located 400 feet east of the intersection of Bittersweet and McKinley. This property will not be able to bring the water and sewer to it. This comes with an unfavorable recommendation from the Area Plan Commission. This would place the residential areas at risk.

Mr. Morton asked the petitioner if they agreed with the proposed amendment. The response was yes.

Jenifer and Rodney Daniel, 30293 Quail Pointe, Granger, explained how the change in zoning will allow for a small business on the property. This will be primarily wholesale of aquatic plants and animals. They see the entire area, both east and west changing as commercial enterprises continue to spread. This property is not of interest to residential buyers. This property has been on the market for two and one half years. *Secretary Note: Mr. Daniel was very hard to understand. He spoke with regard to the septic design.* He stated that he had a septic design and soil samples. He pointed out the various commercial properties around this area.

The amendment passed by a voice vote; 8-0. No negatives were heard.

Mr. Root moved to deny and was seconded by Mr. DeVon.

Mr. Root stated that at one time it was stated that Cedar Trail was the western boundary of where there would be commercial development in this corridor. There are still constituents complaining about the greenhouse that was passed a few years ago in this area. This is still a heavily residential area.

The motion failed by a vote of 5-3. (Against: Kruk, Noland, Weaver, Hamann and Morton)

Motion to pass was made by Mr. Kruk and seconded by Mr. Noland. Bill No. 101-09 passed, as amended, by a vote 5-3. (Against: Mr. Catanzarite, Root, and Mr. DeVon)

BILL NO. 119-09: AN ORDINANCE AMENDING AND SUPPLEMENTING TITLE 26, ZONING, OF THE ST. JOSEPH COUNTY CODE, AS AMENDED, FOR THE PROPERTY LOCATED AT 16021 AND 16045 CLEVELAND ROAD, INCLUDING VACANT LAND LYING NORTH AND ADJACENT TO SAID PROPERTIES, FROM R SINGLE FAMILY DISTRICT AND C COMMERCIAL DISTRICT TO PUD PLANNED UNIT DEVELOPMENT DISTRICT. (Petitioner: B. Patrick Bauer) - Assigned to the Land Use Development Committee

Mr. DeVon reported that Bill No. 119-09 comes with a favorable recommendation.

Christa Nader, Area Plan Commission, reported that this petition was to allow for multiple business sites and a future single family development. The historical home that sits at the corner of Gumwood and Cleveland is going to be moved to the far north portion of the property. One of the sites will be filled with a proposed drug store. Signs will fall under the requirements of the City of Mishawaka Code. The City of Mishawaka will require connection to their water and sewer and have requested additional right-of-way on Gumwood Road for those purposes. This comes with a favorable recommendation from the Area Plan Commission subject to following changes made to the final site plan that the signs reflect the City of Mishawaka Code and the street in the single family area will stub to west rather than to the north. This property will eventually be annexed into the City of Mishawaka.

Bernard Feeney, Land Surveyor, 715 South Michigan Street, representing the petitioner explained that the development will consist of drug store, restaurants, the placement of the historical home and a single family residential subdivision. Since this property will be annexed into the City of Mishawaka, they are making every effort to meet the requirements

of the City of Mishawaka.

Motion to pass was made by Mr. Hamann and seconded by Mr. Kruk. Bill No. 119-09 passed to-wit; 8-0.

Unfinished Business:

Bill No. 103-09 / Ordinance No. 99-09 was vetoed by the Board of Commissioners on 11/17/09.

BILL NO. 103-09 ORDINANCE NO. 99-09

AN ORDINANCE AMENDING AND SUPPLEMENTING TITLE 26, ZONING, OF THE ST. JOSEPH COUNTY CODE, AS AMENDED, FOR PROPERTY LOCATED AT 14154 CLEVELAND ROAD, FROM C COMMERCIAL DISTRICT TO C COMMERCIAL DISTRICT. (Petitioner: Randy Miller)

Motion to override the Commissioners veto was made by Mr. Hamann and seconded by Mr. DeVon. Bill No. 103-09 - Ordinance No. 99-09 was overridden by a vote of 6-2. (Against Root and Morton)

Bill No. 106-09 / Ordinance No. 101-09 was vetoed by the Board of Commissioners on 12/8/09.

BILL NO. 106-09: ORDINANCE NO. 101-09

AN ORDINANCE APPROPRIATING THE SUM OF \$67,671.00 OUT OF THE ST. JOSEPH COUNTY JUVENILE PROBATION FEES FUND - 056 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE YEAR 2009.

(Dept. 025 - Juvenile & Probate Court)

Motion to override was made by Mr. DeVon and seconded by Mr. Weaver.

Mr. Hamann believes strongly that there needs to be cooperation between the Council and the Commissioners. He did not want to show disrespect to the Commissioners with the pending lawsuit but he voiced his concern that if this was not overridden that it will cost the County more in the long run. If we act now, these funds will come from User Fees and not from the County General Fund.

Bill No. 106-09 - Ordinance No. 101-09 was overridden by a vote of 7-1. (Against: Morton)

New Business:

Mr. Weaver wanted to be on record congratulating the City of South Bend on being named the Number One place in America for budget homes. He also wanted to congratulate St. Joseph County for their median home prices as a whole.

Privilege of the Floor:

Adjournment:

Mr. Morton stated that the meeting was adjourned at 8:01 p.m.

Auditor, St. Joseph County

President, St. Joseph County Council