

MINUTES OF THE  
REGULAR MEETING  
OF THE  
ST. JOSEPH COUNTY COUNCIL  
April 13, 2010

The regular meeting of the St. Joseph County Council was called to order at 6:43 p.m., on April 13, 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. Daniel G. Herbster  
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. Herbster moved to nominate Viola Woods to be nominated to serve on the Lakeville Economic Development Commission and Mr. Lee Morton to be nominated to serve on the Walkerton Economic Development Commission. Mr. Herbster's motion was seconded by Mr. Hamann. No other nominations were heard and Ms. Woods and Mr. Morton were nominated by a voice vote of 9-0.

Mr. Catanzarite moved and was seconded by Mr. Kruk to approve the minutes of March 9, 2010. The motion passed by a voice vote; 9-0. 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. 22-10:** AN ORDINANCE APPROPRIATING THE SUM OF \$6,838.00 OUT OF THE ST. JOSEPH COUNTY SEX OR VIOLENT OFFENDER REGISTRATION FEE FUND - 135 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR, 2010. (Dept. 005 - County Police) - Assigned to the Human Services/Criminal Justice Committee

**BILL NO. 23-10:** AN ORDINANCE APPROPRIATING THE SUM OF \$5,000.00 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. 018 - Prosecutor) - Assigned to the Human Services/Criminal Justice Committee

**BILL NO. 24-10:** AN ORDINANCE APPROPRIATING THE SUM OF \$9,900.00 OUT OF THE ST. JOSEPH COUNTY GENERAL FUND - 001 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR, 2010. (Dept. 005 - County Police) - Assigned to the Human Services/Criminal Justice Committee

**BILL NO. 25-10:** AN ORDINANCE APPROPRIATING THE SUM OF \$21,000.00 OUT OF THE ST. JOSEPH COUNTY GENERAL FUND - 001 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR, 2010. (Dept. 056 - Court Substance Abuse Program) - Assigned to the Human Services/Criminal Justice Committee

**BILL NO. 26-10:** AN ORDINANCE AMENDING ORDINANCE 28-10 AS PASSED BY THE ST. JOSEPH COUNTY COUNCIL DUE TO A SCRIVENER'S ERROR. - Assigned to the Rules Committee

**BILL NO. 27-10:** AN ORDINANCE APPROVING THE PETITION FOR SPECIAL USE FILED BY CARL KRATHWOHL AND DRYER CONSTRUCTION CO., INC. FOR THE PROPERTY LOCATED AT 60724 LOCUST RD., SOUTH BEND, IN 46614. - Assigned to the Land Use Planning Committee

**BILL NO. 28-10:** ST. JOSEPH COUNTY, INDIANA AN ORDINANCE AMENDING TITLE 4, ANIMALS CHAPTER "ANIMAL CONTROL AND LICENSING," 4.10.273 "Licenses" OF THE ST. JOSEPH COUNTY CODE BY AMENDING THE FOLLOWING IN ITS ENTIRETY. - Assigned to the Human Services/Criminal Justice Committee

**BILL NO. 29-10:** AN ORDINANCE TO REDUCE THE 2010 BUDGET OF ST. JOSEPH COUNTY, DEPT. 034 - COMMISSIONERS - FUND 001 & DEPT. 062 - HIGHWAY MAINTENANCE - FUND 002. (Auditor - Budget Reduction) - Assigned to the Budget and Administration Committee

**BILL NO. 30-10:** AN ORDINANCE APPROPRIATING THE SUM OF \$27,365.00 OUT OF THE ST. JOSEPH COUNTY GENERAL FUND - 001 & \$87,568.00 OUT OF THE ST. JOSEPH COUNTY HIGHWAY FUND - 002 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR, 2010. (Auditor - Budget Reduction Appropriation) - Assigned to the Budget and Administration Committee

**BILL NO. 31-10:** AN ORDINANCE OF THE ST. JOSEPH COUNTY COUNCIL OF ST. JOSEPH COUNTY, INDIANA, ADOPTING THE RE-CODIFIED VERSION OF THE ST. JOSEPH COUNTY CODE - 2010. - Assigned to the Rules Committee.

**BILL NO. 32-10:** AN ORDINANCE TRANSFERRING THE SUM OF \$13,000.00 FROM VARIOUS ACCOUNTS TO VARIOUS ACCOUNTS ALL BEING WITHIN THE 2010 BUDGET OF ST. JOSEPH COUNTY. (Dept. 012 - County Assessor) - Assigned to the Budget and Administration Committee

**BILL NO. 33-10:** AN ORDINANCE AUTHORIZING THE BUILDING DEPARTMENT OF ST. JOSEPH COUNTY TO ENFORCE CODE & ZONING LAWS. - Assigned to the Land Use Planning Committee

**BILL NO. 34-10:** AN ORDINANCE AMENDING AND SUPPLEMENTING TITLE 26, ZONING, OF THE ST. JOSEPH COUNTY CODE, AS AMENDED, FOR PROPERTY LOCATED AT THE SOUTH/EAST CORNER OF DOUGLAS ROAD AND FIR ROAD, FROM R-SINGLE FAMILY DISTRICT TO C-COMMERCIAL DISTRICT. (Petitioner: SEC Investments, LLC) - Assigned to the Land Use Planning Committee

**BILL NO. 35-10:** AN ORDINANCE APPROPRIATING THE SUM OF \$600,000.00 OUT OF THE ST. JOSEPH COUNTY MAJOR CUMULATIVE BRIDGE FUND - 023 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. 36-10:** AN ORDINANCE APPROPRIATING THE SUM OF \$9,037,680.00 OUT OF THE ST. JOSEPH COUNTY C.E.D.I.T. FUND - 009 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR, 2010. (Commissioners/Auditor) - Assigned to the Budget & Administration Committee

**BILL NO. 37-10:** AN ORDINANCE APPROPRIATING THE SUM OF \$80,000.00 OUT OF THE ST. JOSEPH COUNTY CLERKS RECORD PERPETUATION FUND - 083 AND THE COUNTY GENERAL FUND - 001 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR 2010. (Dept. 049 - Juvenile Justice Center) {increase/decrease appropriation} - Assigned to the Budget and Administration Committee

**Public Hearings:**

Mr. Morton announced that there would be a combined Public Hearing on Bill Nos. 17-10 and 18-10 but would be voted on separately.

**BILL NO. 17-10:** AN ORDINANCE APPROPRIATING THE SUM OF \$25,000.00 OUT OF THE ST. JOSEPH COUNTY HEALTH S.T.D. GRANT FUND - 405 AND \$25,000.00 OUT OF THE ST. JOSEPH COUNTY AIDS GRANT FUND - 605 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. 18-10:** AN ORDINANCE APPROPRIATING THE SUM OF \$4,247.00 OUT OF THE ST. JOSEPH COUNTY - COUNTY HEALTH FUND - 005 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR, 2010. (Dept. 055 - Health) {increase/decrease appropriation ordinance} - Assigned to the Human Services/Criminal Justice Committee

Mr. Hamann reported that Bill No. 17-10 and 18-10 come with a favorable recommendations.

Nick Molchan, Health Administrator, that Bill No. 17-10 is the appropriation for the 2010 grants. These two grants will pay for salary, benefits and operating costs for a lung disease intervention specialist. These funds come from the Indiana Department of Health. Bill No. 18-10 is basically a transfer of funds to correct an under estimated retirement benefit calculation to close out that HUD Grant cycle and to cover the cost of a copier.

Motion to pass was made by Mr. Hamann and seconded by Mr. Noland. Bill No. 17-10 passed to-wit; 9-0.

Motion to pass was made by Mr. Kruk and seconded by Mr. Weaver. Bill No. 18-10 passed to-wit; 9-0.

**BILL NO. 19-10:** AN ORDINANCE TRANSFERRING THE SUM OF \$1,961.00 FROM VARIOUS ACCOUNTS TO VARIOUS ACCOUNTS ALL BEING WITHIN THE 2010 BUDGET OF ST. JOSEPH COUNTY. (Dept. 055 - Health) - Assigned to the Human Services/Criminal Justice Committee

Mr. Hamann reported that Bill No. 19-10 comes with a favorable recommendation.

Nick Molchan, Health Administrator, explained that this bill was to transfer funds in order to close out the grant cycle of 2009. This was a final paycheck to an employee who resigned at the end of 2009 that was paid in the first pay day of 2010. The grant did not have funds in salary and benefits and other funds were used to make this payment.

Motion to pass was made by Mr. Kruk and seconded by Mr. Catanzarite. Bill No. 19-10 passed to-wit; 9-0.

**BILL NO. 15-10:** AN ORDINANCE TO AMEND TITLE 6 OF THE ST. JOSEPH COUNTY CODE ENTITLED "BUILDING AND CONSTRUCTION" (By amending Section 6.12.050 Electrical Licenses) - Assigned to the Land Use Planning Committee

Mr. DeVon reported that Bill No. 15-10 comes with a favorable recommendation.

Mark Lyons, Building Department, stated that this ordinance was to correct an error in the latest version of Electrical Licenses. The ordinance will now state that any apprentice or employees can do the work. This change will then mirror the City of South Bend's version.

Motion to pass was made by Mr. Noland and seconded by Mr. Kruk. Bill No. 15-10 passed to-wit; 9-0.

**BILL NO. 16-10:** AN ORDINANCE TO AMEND THE ST. JOSEPH COUNTY CODE, TITLE 16, CHAPTER 16.40.010, MAINTENANCE OF PETTY CASH FUNDS BY CERTAIN DEPARTMENT OF ST. JOSEPH COUNTY. (Parks and Recreation) - Assigned to the Land Use Planning Committee

Mr. DeVon reported that Bill No. 16-10 comes with a favorable recommendation.

Evelyn Kirkwood, Director, reported that this ordinance will establish Petty Cash Funds at a level that we will be able to sustain multiple points of purchase at multiple locations. The current level does not allow them to do this.

Motion to pass was made by Mr. Kruk and seconded by Mr. DeVon. Bill No. 16-10 passed to-wit; 9-0.

**BILL NO. 20-10:** AN ORDINANCE ESTABLISHING THE ST. JOSEPH COUNTY DOMESTIC VIOLENCE FATALITY REVIEW TEAM. - Assigned to the Human Services/Criminal Justice Committee

Mr. Hamann reported that Bill No. 20-10 comes with a favorable recommendation.

Mike Dvorak, Prosecutor, thanked Corey Noland for authoring this ordinance. The purpose of the Domestic Violence Fatality Review Team would be to review the deaths involving crimes of domestic violence and to make recommendations for improvements to the Criminal Justice System, Legal System, etc.

In Favor:

Linda Baechl, YWCA Executive Director, 1102 South Fellows Street

Supported this team since St. Joseph County has four (4) deaths in the last twelve (12) months due to domestic violence. This is an important step forward for the community.

Motion to pass was made by Mr. Herbster and seconded by Mr. Kruk. Bill No. 20-10 passed to-wit; 9-0.

**BILL NO. 13-10:** AN ORDINANCE APPROVING THE PETITION FOR SPECIAL USE FOR GROUP RESIDENCE FILED BY: PAUL VANDEWALLE, STEVE KUBSCH & PAT RUSZKOWSKI FOR THE PROPERTY LOCATED AT: 54550 WILLIS ST., SOUTH BEND, IN 46637. PARCEL ID 002-1106-5354, LOT 36 VANESS PLAT, CLAY TOWNSHIP, ST. JOSEPH COUNTY. THE SAME BEING PETITION NO. 03-03-10-08 FILED WITH THE AREA BOARD OF ZONING APPEALS. - Assigned to the Land Use Planning Committee

Mr. De Von reported that Bill No. 13-10 comes with a favorable recommendation.

The Clerk read the amendment stating that in the second paragraph, added to the last line is *limited to the occupancy of five (5) unrelated people*.

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

Mark Lyons, Building Department, stated that this petition received a Public Hearing at the March 3, 2010 Area Board of Zoning Appeals and was sent with a favorable recommendation, subject to three (3) unrelated people.

Mr. Kruk asked what the recommendation was based on? Mr. Lyons stated that it was balancing the number of people versus what is allowed for similar uses in the area and the fact that the Health Department has concerns with the septic system. This system was originally designed for a three-bedroom home. If more than three (3) unrelated people were living there, the Health Department might require possibly a new septic system.

Mr. Morton asked the petitioner if he agreed with the proposed amendment? His response was yes.

Paul Vandewalle, owner, stated that one of the issues when this was voted on was that this property was listed as a three (3) bedroom home. Since that time, Mark and Chuck from the Building Department have been to the home and they inspected the basement and agreed that the two (2) bedrooms in the basement, that were not listed originally, were up to code with all the necessary egress windows, etc. Now it is inspected and approved as a five (5) bedroom home. He stated that they also agreed, from the very beginning, that they would do whatever was necessary to bring up the septic up to code. The area that is being discussed, if you would use Ivy Road to the West and Martin's Supermarket to the East, Dunn Road to the North and Vaness Road to the South is 80 percent student housing at this time. He stated that they are not able to rent this house residentially. The only people they have interested are students.

Mr. Kruk asked if the bill was amended also to say that if we pass this that you would be required to upgrade the septic system. Would you have an issue with that? Mr. Vandewalle stated not at all. They plan to do that anyway.

Mr. DeVon asked how many single family residences that are rentals around this property? Mr. Vandewalle stated that on Willis Street, from Dunn Road to Vaness, there are four (4). On the other side is all student housing and behind this property is student housing. One house to the North and three (3) to the South. Other than that it is entirely student housing for apartments and townhouses.

Mr. Noland asked what was on the sides of this property, residential or...? Mr. Vandewalle stated that to the West of them was Irish Commons. The only residential on Willis from Dunn to Vaness are the four (4) homes. Behind them is Clover Ridge which is also student housing. This is also a double lot and therefore the septic will not be a problem.

In Favor:

Kevin Sandar - 54650 Willis Street

With the way that property values have gone down, this will help in terms of what we are looking for.

In Opposition:

Judith Lindzy - 18340 Bulla Road, SB

Janet Stephens - 19356 Darden Road, SB speaking for her father at 18409 Burger Street, SB

Ruth Anne Brown - 18411 Warrick, SB

Mary Kubsch - 18264 Warrick, SB

Rita Kopala - 66559 Ivy Road, Lakeville

This is not the first time we have been here to speak against this development for this property. The petitioners do not live in this neighborhood and do not understand the problems that come with this use. Others will follow and this will add to the deterioration of the neighborhood. This goes against the County Code that states that you can rent to only two (2) unrelated people. These petitioners sold all their other properties in the area to the University of Notre Dame, except for this one, due to the poor condition of this one. Granting this request would be a huge step backward. A petition was submitted by Ruth Anne Brown. This home was built and zoned as a single family home. We are back fighting the same landlords who turned this neighborhood into party central before. What we are asking the Council to do benefits the whole neighborhood not just the three (3) absentee landlords. They are asking \$2,500 a month and that is why they need five (5) students in the house. There is no reason that they should get wealthy on the neighbors back. These are our homes. We have lived there since 1963. If this passes, there will be more landlords here. You wouldn't want this in your neighborhood. The other meetings that have been attended say that they are trying to get rid of septic systems. How can this property improve on this?

Mr. Vandewalle rebutted that this area has totally changed from residential to student housing in the area. They could not get any interest in renting or selling the home as a residential property. It is totally untrue that this property is an eyesore. The house is kept up and is not in bad shape.

Mr. Kruk stated that the Board of Zoning Appeals recommended, with the existing septic, that they would recommend up to three (3) residents. How would you feel about that? Mr. Vandewalle stated that three (3) residents does not do them any good. The fact that they are willing to take septic, as it is, and the fact that he thought if they would have had it originally .....

*Secretary's Note: Mr. Vandewalle could not be understood for the rest of his answer.*

He is understood, as picked up later, there are buildings half the size of ours that allow for six (6) students. He stated that Irish Housing was just passed recently by the Council.

Mr. Kruk stated that Irish Housing was not individual housing units. Mr. Vandewalle stated that Notre Dame had no interest in buying the property South of Dunn Road because of giving up for any more residential South of Dunn. Our request is for five (5).

The amendment passed by a voice of 6-3. Three (3) negatives were heard.

Mr. Noland moved to deny and was seconded by Mr. Kruk.

Mr. Hamann asked if this was denied, can the petitioners come back and renegotiate the number of people?  
Mr. DeVon stated ... in six (6) months.

Mr. Kruk asked the attorney if at this point could the petitioner ask the Council to withdraw the amendment?

Mr. Trippel stated that there is no final vote yet, so yes.

Mr. Hamann stated that is what he would recommend to the petitioner. Gentlemen, you might want to do that. Otherwise, it is going to go down. Mr. Hamann stated to the petitioner, right now the bill is amended for a limit of five (5) students. He stated that doesn't seem to be acceptable (by Council). To keep this bill alive, would you ask us to absolve that amendment and try to reach a compromise and reconsider your and having three (3) students.

Mr. Vandewalle asked to speak to his partner and Mr. Hamann stated, make it quick.

*Secretary's note: Mr. Vandewalle started back to the podium and stated that was fine.*

Mr. Noland stated that he did agree that the property was not an eyesore and had talked some of the people in the neighborhood and he would be willing to make a motion to amend for three (3) as a compromise.

Mr. Vandewalle stated that they are asking for one student per bedroom. At Irish Crossings they are putting four (4) students in a two (2) bedroom unit. Mr. DeVon stated that the difference is the zoning is multi-family.

Mr. Vandewalle stated that he has a problem understanding that because it is also residential and you (Council) passed it to multi-family which is what they are requesting.

Mr. DeVon stated that there is a difference between a Special Use and a Multi-Family Zoning.

Mr. Vandewalle asked if the Irish Crossing property wasn't residential until you (Council) made it Multi-Family? Mr. Hamann stated, as a whole parcel, yes. Your request is slightly different.

Mr. Vandewalle stated that he agreed to do as you (Mr. Hamann) suggested then.

Mr. Hamann, that is to say that you withdraw the amendment that has passed to keep this alive.

Mr. Trippel, if the petitioner has asked to withdraw the amendment, is that what you are asking for?

Mr. Hamann, I guess what they're telling me... Mr. Trippel stated that it needs to come from the petitioner. If he is asking the Council to withdraw the amendment and reconsider it, you could withdraw.

Mr. Hamann asked what do we need to do next and what we can do.

Mr. Trippel, you need to ask the petitioner to withdraw the amendment that has been approved.

Mr. Hamann, I think the whole process here is to keep the bill from dying and having to wait six (6) months.

Mr. Noland moved to withdraw the amendment to the bill that stated the Special Use was "limited to occupancy of five (5) unrelated people." This motion was seconded by Mr. Hamann and passed by a voice vote; 9-0.

Mr. Hamann made a motion to table the bill and was..... This was withdrawn since there was a motion on the floor to deny.

Mr. Noland moved to withdraw his motion to deny and was seconded by Mr. Hamann. The motion passed by a voice vote; 9-0.

Mr. Hamann moved to table Bill No. 13-10 and was seconded by Mr. DeVon. The motion passed by a voice vote; 9-0.

**Unfinished Business:**

**New Business:**

**Privilege of the Floor:**

Spoke with regard to the County having some kind of Code Enforcement. She stated that the City Council had a meeting and there were about fifteen (15) people there who were very upset because they have been trying to fix up the properties and other people come in have been dumping, etc. Why do we have to have more laws when it is selective? People are not doing their jobs the way they should.

Mr. Hamann responded that there was a First Reading on that bill that take care of properties where people are out of compliance, but want to make sure not to do any harm. Councilman Herbster is going to be talking to Mr. Schafer to make sure that the agricultural community isn't damaged by this. There are some properties within the residential areas that need to be addressed.

Mrs. Kopala went on to say that those people at that meeting were angry enough and said they system is broke.

**Adjournment:**

Mr. Morton stated that the meeting was adjourned at 7:56 p.m.

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Auditor, St. Joseph County

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President, St. Joseph County Council