

MINUTES OF THE
REGULAR MEETING
OF THE
ST. JOSEPH COUNTY COUNCIL
August 11, 2009

The regular meeting of the St. Joseph County Council was called to order at 7:01 p.m., on August 11, 2009, 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. Corey D. Noland
Mr. Dale DeVon	Mr. W. Randall Przybysz
Mr. Michael J. Kruk	Mr. Mark Root
Mr. Rafael Morton	Mr. Dennis R. Schafer
	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. Przybysz motioned to Suspend Rules to allow for First Reading of Bill No. 94-09. The motion was seconded and 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. 84-09: AN ORDINANCE APPROPRIATING THE SUM OF \$1,653,284.00 OUT OF THE ST. JOSEPH COUNTY EM. TEL. SYS. FUND - 075 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR, 2009. (E-911/Auditor) - Assigned to the Human Services/Criminal Justice Committee

BILL NO. 85-09: AN ORDINANCE ESTABLISHING SALARIES AND FIXING THE NUMBERS OF EMPLOYEES OF ST. JOSEPH COUNTY, INDIANA FOR THE YEAR 2010. - Assigned to the Budget and Administration Committee

BILL NO. 86-09: AN ORDINANCE APPROPRIATING MONEYS FOR THE PURPOSE OF DEFRAYING THE EXPENSES OF THE SEVERAL DEPARTMENTS OF THE COUNTY GOVERNMENT OF ST. JOSEPH COUNTY, INDIANA, FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2010, AND ENDING DECEMBER 31, 2010, INCLUDING ALL OUTSTANDING CLAIMS AND OBLIGATIONS, AND FIXING A TIME WHEN THE SAME SHALL TAKE EFFECT. - Assigned to the Budget and Administration Committee

BILL NO. 87-09: AN ORDINANCE LEVYING TAXES AND FIXING THE RATE OF TAXATION FOR THE PURPOSE OF RAISING REVENUE TO MEET THE NECESSARY EXPENSE FOR THE FISCAL YEAR ENDING DECEMBER 31, 2010 FOR THE COUNTY OF ST. JOSEPH, INDIANA. - Assigned to the Budget and Administration Committee

BILL NO. 88-09: AN ORDINANCE APPROPRIATING THE SUM OF \$1,525.00 OUT OF THE 2007 - S.H.S.P. RACES GRANT FUND - 107 AND \$14,739.00 OUT OF THE ST. JOSEPH COUNTY 2007 - L.E.T.P.P. - G.I.S. GRANT FUND - 108 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR, 2009. (Dept. 009 - Emergency Management Agency) - Assigned to the Human Services/Criminal Justice Committee

BILL NO. 89-09: AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 2.20, AREA PLANNING DEPARTMENT, OF THE ST. JOSEPH COUNTY CODE, AS AMENDED, AUTHORIZING THE AREA PLAN COMMISSION AND AREA BOARD OF ZONING APPEALS TO ESTABLISH AND COLLECT FEES. (Petitioner: Area Plan) - Assigned to the Land Use Planning Committee

BILL NO. 90-09: AN ORDINANCE ESTABLISHING FEES TO BE COLLECTED BY THE AREA PLAN COMMISSION. - Assigned to the Land Use Planning Committee

BILL NO. 91-09: AN ORDINANCE APPROPRIATING THE SUM OF \$200,000.00 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, 2009. (Dept. 021 - County-City Bldg.) - Assigned to the Budget and Administration Committee

BILL NO. 92-09: AN ORDINANCE TRANSFERRING THE SUM OF \$324.00 FROM VARIOUS ACCOUNTS TO VARIOUS ACCOUNTS ALL BEING WITHIN THE 2009 BUDGET OF ST. JOSEPH COUNTY. (Dept. 055 - Health) - Assigned to the Human Services/Criminal Justice Committee

BILL NO. 94-09: AN ORDINANCE APPROPRIATING THE SUM OF \$129,393.00 OUT OF THE ST. JOSEPH COUNTY HEALTH H1N1 FLU VIRUS FUND - 705 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR 2009. (Dept. 055 - Health) - Assigned to the Human Services/Criminal Justice Committee

Resolutions

BILL NO. 93-09: A RESOLUTION OF THE ST. JOSEPH COUNTY COUNCIL HONORING AND CONGRATULATING THE JOHN ADAMS HIGH SCHOOL INDIANA MOCK TRIAL TEAM, THE USUAL SUSPECTS, FOR WINNING THE 2009 MOCK TRIAL NATIONAL CHAMPIONSHIP.

Motion to pass was made by Mr. Weaver and seconded by Mr. Catanzarite. Bill No. 93-09 passed by a voice vote; 9-0. No Negatives were heard.

The Mayor was on hand to pass out keys to the city.

Public Hearings:

BILL NO. 72-09: AN ORDINANCE APPROPRIATING THE SUM OF \$1,320.00 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, 2009. (Dept. 005 - County Police) - Assigned to the Human Services/Criminal Justice Committee

Mr. Przybysz reported that Bill No. 72-09 comes with a favorable recommendation.

Tom Nowicki, Finance Manager, stated that the funds would be used for the purchase of ink pens that can be used for video and audio surveillance. Also, two additional external ballistic panel carriers for the officers will be purchased.

Motion to pass was made by Mr. Weaver and seconded by Mr. Catanzarite. Bill No. 72-09 passed to-wit; 9-0.

BILL NO. 73-09: AN ORDINANCE APPROPRIATING THE SUM OF \$445.00 OUT OF THE D.R.C.B. FEE FUND - 117 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR, 2009. (Dept. 054 - Domestic Relations) - Assigned to the Human Services/Criminal Justice Committee

Mr. Przybysz reported that Bill No. 73-09 comes with a favorable recommendation.

Beth Kerns, Director, stated that they were requesting these funds to purchase a new desk.

Motion to pass was made by Mr. Kruk and seconded by Mr. Noland. Bill No. 73-09 passed to-wit; 9-0.

BILL NO. 74-09: AN ORDINANCE APPROPRIATING THE SUM OF \$7,200.00 OUT OF THE ST. JOSEPH COUNTY GENERAL FUND - 001 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR, 2009. (Dept. 056 - Court Substance Abuse Program) - Assigned to the Human Services/Criminal Justice Committee

Mr. Przybysz reported that Bill No. 74-09 comes with a favorable recommendation.

Eric Ivory, Drug Court Coordinator, stated that these funds will support three areas of their program. This grant money will be used for bus passes, certificates and graduation ceremonies.

Motion to pass was made by Mr. Weaver and seconded by Mr. Kruk. Bill No. 74-09 passed to-wit; 9-0.

BILL NO. 75-09: AN ORDINANCE AMENDING AND SUPPLEMENTING TITLE 26, ZONING, OF THE ST. JOSEPH COUNTY CODE, AS AMENDED: TO CLARIFY THE CONDITIONAL USE SECTIONS IN ARTICLE 1, DIVISION 1 AND ARTICLE 10, DIVISION 3; TO UPDATE REQUIREMENTS FOR NONCONFORMING BUILDABLE LOTS; TO CLARIFY CERTAIN USES AND TO ADD CONCENTRATED ANIMAL FEEDING OPERATION TO THE A - AGRICULTURAL AND R - SINGLE FAMILY DISTRICTS; TO CORRECT A SCRIVENER ERROR IN ARTICLE 4, DIVISION 3 - BUSINESS DISTRICT; TO REMOVE SECONDARY APPROVAL TIME LIMITS ON PLANNED UNIT DEVELOPMENTS IN ARTICLE 6, DIVISION 1 - PLANNED UNIT DEVELOPMENTS; TO RESTRICT THE LOCATION OF ADULT BUSINESSES IN ARTICLE 9, DIVISION 2 - ADULT BUSINESS USE; TO ADD SUBDIVISION CONTROL ORDINANCE TO DUTIES IN ARTICLE 10, DIVISION 1; AND TO ADD AND REVISE DEFINITIONS IN ARTICLE 12 - DEFINITIONS. (Petitioner: Area Plan Commission) - Assigned to the Land Use Planning Committee

Mr. DeVon reported that Bill No. 75-09 comes with a favorable recommendation.

Christa Nader, Area Plan Commission, stated that she would focus on the parts of the bill that were more than just a typo. Some sections have been combined. The Subdivision Ordinance was updated with new dates. CAFO - Concentrated Animal Feeding Operation and needed to add Concentrated Animal Feeding Operations and Confined Feeding Operation. Concentrated Animal Feeding Operation was added as a Special Use in the R Residential Family District. Time limits were changed in the PUD Planned Unit Developments. Criteria was changed for the Site Plan of PUD. These various changes come with a favorable recommendation from the Area Plan Commission.

Motion to pass was made by Mr. Kruk and seconded by Mr. Przybysz. Bill No. 75-09 passed to-wit; 9-0.

BILL NO. 76-09: AN ORDINANCE AMENDING AND SUPPLEMENTING TITLE 26, ZONING, OF THE ST. JOSEPH COUNTY CODE, AS AMENDED: TO ADD A NEW DIVISION 4 WITHIN ARTICLE 9 – SPECIAL REGULATIONS, REGULATING THE INSTALLATION AND USE OF WIND ENERGY CONVERSION SYSTEMS; AMENDING VARIOUS ARTICLES TO INCLUDE THE PLACEMENT OF WIND ENERGY CONVERSION SYSTEMS IN ALL ZONING DISTRICTS; TO ADD RELATED DEFINITIONS TO ARTICLE 12 – DEFINITIONS. (Petitioner: Area Plan Commission) - Assigned to the Land Use Planning Committee

Mr. DeVon reported that Bill No. 76-09 comes with a favorable recommendation.

The Clerk read various amendments regarding acreage.

Motion to amend was made by Mr. DeVon and seconded by Mr. Przybysz.

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

Larry Magliozzi, Area Plan Commission, over the past year there has been considerable interest from property owners to install sources of energy such as wind turbines. There already have been a number of residential installations in the Agricultural Districts. There has been a commercial installation in the City of Mishawaka. The Ordinance differentiates between two types of wind turbines. The small wind energy conversion system and a wind farm. He then gave a presentation on the small, Residential type, turbine. Wind farms will go through a Special Use.

These turbines are a significant investment, from \$12,000 on up. They can have a potential affect on adjacent properties. The noise levels are going down and the efficiency is going up. The Building Department will issue an

affidavit. The only thing that cannot be protected is the esthetics. A pole is a pole with a propeller on top. You won't be able to paint them bright colors or put signs or lights on them. There is a 60 foot maximum height or 80 feet is there is a lot more acreage and zoned commercial. The lot size is a minimum of one (1) acre. This comes with a favorable recommendation for the Area Plan Commission.

In Favor:

Glen Smith, Windwire, stated that they are a wind energy company. He stated that he has been involved in a variety of ordinances in Indiana and this falls right into suit with the rest. This will stop people from building these out of their garages. He stated that they would like lenience from Board when it comes to variances do to the fact that we don't want people tearing down every tree on their lot.

In Opposition:

Thomas Burnett, 18907 Cleveland Road, this bill does not have nearly enough restrictions. He stated that he was in favor of wind energy. There should be a minimum of five (5) acres and should never impact your neighbor. These are noisy things just like running an air conditioners all night. These poles are located in marinas and it is hard to sleep because these things are making noise all night long. The larger the blade the noisier they are. The fall zone should be cited to a reasonable formula, the height of the pole plus the radius of the blade plus ten feet. These are light weight and will be knocked down by trees. They will get old and there is nothing in the ordinance about maintenance or inspection as they age.

The amendment passed by a voice vote; 9-0. No negatives were heard.

Motion to pass was made by Mr. Kruk and seconded by Mr. Noland. Bill No. 76-09 passed as amended; 9-0.

BILL NO. 82-09: AN ORDINANCE TO VACATE A PUBLIC WAY OR PUBLIC PLACE, LOCATED WHOLLY WITHIN THE UNINCORPORATED PORTION OF ST. JOSEPH COUNTY, TO-WIT: A PORTION OF HURON STREET BETWEEN PEAR TRAIL AND WINDSOR AVENUE. (Petitioner: Lucille Grohowski) - Assigned to the Land Use Planning Committee

Mr. DeVon reported that Bill No. 82-09 comes with a favorable recommendation.

Christa Nader, Area Plan Commission, stated that this petition comes with a favorable recommendation.

Bernard Feeney, Lang, Feeney and Associates, 715 S. Michigan Street, explained that the vacation is for a paper street that has never been improved. All four (4) neighbors do support this vacation.

Motion to pass was made by Mr. Przybysz and seconded by Mr. Schafer. Bill No. 82-09 passed to-wit; 9-0.

BILL NO. 64-09: AN ORDINANCE AMENDING AND SUPPLEMENTING TITLE 26, ZONING, OF THE ST. JOSEPH COUNTY CODE, AS AMENDED, FOR PROPERTY LOCATED AT U.S. 20 AND WALNUT ROAD, NEW CARLISLE, INDIANA FROM "A" AGRICULTURAL DISTRICT, TO "L" LIGHT INDUSTRIAL DISTRICT. (Petitioner: Patricia A. McAllister, Trustee, Madgel C. McAllister Trust) - Assigned to the Land Use Planning Committee

Mr. DeVon reported that Bill No. 64-09 comes with a favorable recommendation.

Christ Nader, Area Plan Commission, reported that this petition was for a grain processing facility. There are buildings for grain and fertilizer storage, office and maintenance for a total of 161,360 square feet of buildings on 30 acres. The Area Plan Commission sends this with a favorable recommendation. This is adjacent to an Industrial area.

The Clerk read the amendment stating that the petitioner was now DeBruce Grain, Inc.

Motion to amend was made by Mr. DeVon and seconded by Mr. Schafer.

John Lloyd, Krieg, DeVault, 4101 Edison Lakes Parkway, Suite 100, stated that this is part of the Land Use Plan and in the Spring the Area Plan Commission rezoned some property in this area and offered the property owners the opportunity to rezone. They decided not to do that at that time and now are moving forward. Seventy-four percent of

the property will remain open space. There may be some crops grown for testing.

The amendment passed by a voice vote; 9-0. No negatives were heard.

Motion to pass was made by Mr. Schafer and seconded by Mr. Root. Bill No. 64-09 passed to-wit; 9-0.

Unfinished Business:

New Business:

Mr. Morton read:

Pursuant to I.C. 6-1.1-17-3.5; (09), the St. Joseph County Council shall review any proposed or estimated tax rate or tax levy or proposed budget filed by a civil taxing unit with the county fiscal body under this section; and issue a nonbinding recommendation to a civil taxing unit regarding the civil taxing unit's proposed or estimated tax rate or tax levy or proposed budget.

He stated that at this time we are receiving these budgets and we will act on them on August 25, 2009 and as they continue to come in.

Privilege of the Floor:

Elmer F. Joseph, 56149 Oak Road, he and his neighbors were here to complain about wet basements and flooding. He has lived in the house for 49 years and this problem first started in March. He has contacted the Commissioners, Health Department, Surveyor, Portage Township Fire Department and have had no results. He read a letter from John McNamara, Surveyor stating how he has looked at the site and on the old maps that go back to 1865 and there is no indication of any lake. Mr. McNamara stated that he understood the problem; but, had no solution. Mr. Joseph stated that they are doing a lot of construction by the EPA. He stated that it has taken six (6) months to dry his basement out but has lost a lot of things. His neighbor, who has lived there for 85 years, said there was a spring in that area. We need some help.

Bruce Bindmen, 124 Chestnut Street, area contractor. He stated that the water table out there is high. The water comes up from the floor. There definitely is a drainage problem and will get to the septic systems.

Resident at 56133 Oak Road, this property has been passed on from family member to family member without any water problem. They has a Michigan basement and had to put in a sub-pump, replace a water heater. If you travel North there is large holes and a big pond. Seeking help.

Mr. Przybysz stated that this was the first that he was hearing of this and would be glad to stay and discuss this problem with the folks that were present.

Resident at 56150 Oak Road has lived in this home for 58 years. Explained the water in her basement. Their water pump could not keep up. Their homeowners insurance has gone up. Can still hear water running. *Secretary's note: she was very hard to hear and understand.*

This resident lives in the lower section. He has over three (3) feet of water in his basement on March 13th. They lost the water heater, furnace, humidifier, water softener and now the daughter is allergic to mold and has to have an inhaler.

Joan Korpala, 56205 Oak Road, lost power, basement floor is now cracked and now has mold. The water pump is constantly running. Her electric bill has gone up \$50.00 a month since March. She talked to the Army Corp of Engineers in Detroit, they came out and looked and said that they could not help them.

Mr. Schafer asked if there was a new sub division or anything like that? The response heard was no.

George Spanous, 56226 N. Oak Road, he stated that he is lucky since he is on high ground. What is going to happen in the winter when this water is pumped out into the yards and onto the streets.

Resident at 56133 Oak Road, stated that over the last two months their water smells and tastes funny. After taking a

bath in this water you itch.

Mr. Morton thanked the folks for bringing this to their attention.

Mr. Catanzarite stated that he has coworkers who live North of these folks and they are having the same problems.

Adjournment:

Mr. Morton stated that the meeting was adjourned at 8:20 p.m.

Auditor, St. Joseph County

President, St. Joseph County Council