

MINUTES OF THE
REGULAR MEETING
OF THE
ST. JOSEPH COUNTY COUNCIL
July 14, 2009 - July 15, 2009

The regular meeting of the St. Joseph County Council was called to order at 7:04 p.m., on July 14, 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 - Arrived at 7:05 p.m.	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:

Moved by Mr. DeVon and seconded by Mr. Weaver, the minutes of June 9, 2009 were approved by a voice vote; 9-0. No negatives were heard.

Mr. Przybysz made a motion to withdraw Bill Nos. 156-08, 157-08 and 27-09 at the request of the petitioner. The motion was seconded by Mr. Kruk 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. 71-09: AN ORDINANCE APPROVING THE PETITION FOR SPECIAL USE FILED BY SCHOOL CITY OF MISHAWAKA, FOR THE PROPERTY LOCATED AT: 14590 JACKSON RD. MISHAWAKA, IN 46544 THE SAME BEING PETITION NO. 07-01-09-20 FILED WITH THE AREA BOARD OF ZONING APPEALS. - Assigned to the Land Use Planning Committee

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

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

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

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

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

BILL NO. 77-09: AN ORDINANCE AMENDING ORDINANCE 98-08, THE SAME BEING AN ORDINANCE ESTABLISHING SALARIES AND FIXING THE NUMBERS OF EMPLOYEES OF ST. JOSEPH COUNTY FOR THE YEAR 2009. (Dept. 001 - Clerk) - Assigned to the Budget and Administration Committee

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

BILL NO. 83-09: AN ORDINANCE AMENDING AND SUPPLEMENTING TITLE 26, ZONING OF THE ST. JOSEPH COUNTY CODE, AS AMENDED, FOR PROPERTIES LOCATED AT 1) 17410 SR 23, SOUTH BEND, INDIANA; 2) 17396 SR 23, SOUTH BEND, INDIANA; 3) 17382 SR 23, SOUTH BEND, INDIANA, FROM R - RESIDENTIAL DISTRICT TO B - BUSINESS DISTRICT. (Petitioner: Lilia V. Periquet, Douglas Road Land Partners South LP and C & E Development LLC) - Assigned to the Land Use Planning Committee

Resolutions

Mr. Morton announced that there would be a combined public hearing on Bill Nos. 78-09, 79-09 and 80-09 but would be voted on separately.

BILL NO. 78-09: A RESOLUTION OF THE COUNTY COUNCIL OF ST. JOSEPH COUNTY, INDIANA, PROPOSING AND VOTING IN FAVOR OF AN ORDINANCE OF THE ST. JOSEPH COUNTY INCOME TAX COUNCIL IMPOSING A PROPERTY TAX RELIEF LOCAL OPTION INCOME TAX.

BILL NO. 79-09: A RESOLUTION OF THE COUNTY COUNCIL OF ST. JOSEPH COUNTY, INDIANA, PROPOSING AND VOTING IN FAVOR OF AN ORDINANCE OF THE ST. JOSEPH COUNTY INCOME TAX COUNCIL INCREASING THE COUNTY ECONOMIC DEVELOPMENT INCOME TAX (CEDIT).

BILL NO. 80-09: A RESOLUTION OF THE COUNTY COUNCIL OF ST. JOSEPH COUNTY, INDIANA, PROPOSING AND VOTING IN FAVOR OF AN ORDINANCE OF THE ST. JOSEPH COUNTY INCOME TAX COUNCIL IMPOSING A PUBLIC SAFETY LOCAL OPTION INCOME TAX.

Peter Mullen, Auditor, stated do we raise revenues or deplete the reserves or make more cuts? Doing nothing is not an option. Estimates from the state and consultants, Crowe Horwath, project an unfunded Circuit Breaker liability of \$6,023,000 for 2010. To balance the 2009 budget \$4 million was transferred from reserves in the Insurance Fund, CEDIT Fund and Rainy Day Fund.

This deficit combined with the \$6 million Circuit Breaker credit will be the deficit for 2010, \$10 million.

The Resolutions tonight have projections of .25 percent - Public Safety - approximately \$5,865,000; .20 percent - CREDIT - approximately \$4,692,000 and .50 percent - LOIT - approximately \$23,209,000. The 23,209,000 from the .50 LOIT will be applied back to all property taxpayers with the County as follows: Agricultural - \$320,000, Industrial - \$1,803,000, Residential - \$3,465,000, Commercial - \$6,102,000 and Homestead - \$11,517,000.

The Public Safety LOIT will generate \$5,865,000. This is replacement money for the Circuit Breaker loss. Over all, this Public Safety LOIT will generate \$11,604,000 for all units of government.

The State Auditor is consistently informing the Auditor's Office and the Department of Local Government Finance of a reduction in anticipated funds with 2011 and 2012 being the worse years to come. The County's General Fund is not only affected. The Park, Health and Highway Departments are also affected. The needs for the next three to ten years include, by law, a combined communication system. This system alone could cost \$13 million and must be implemented by 2012.

Revenue sustainability is needed and vigilant spending practices with a solid spending plan behind it.

Leaf pickup has been discontinued, the cleaning contract for County Offices was cancelled and the County staff has not had a raise in six (6) years. The costs of Highway salt, fuel, health insurances, road projects, morgue, Jackson etc. all need to be funded and CREDIT Funds and Rainy Day Funds have been used. These are not the intent of these funds. CREDIT should go to fund bond payments for road projects, Jackson Road Landfill, storm/sewer mandated upgrades, etc.

The Legislature has given this tool to raise revenue and this is the tool that has to be worked with. There are 92 counties in Indiana and 81 of them has a Local Option Income Tax that is higher than St. Joseph County. Thirty-two states have a Circuit Breaker and all but Indiana had a provision that an Income Tax would automatically kick in if local government had a loss in revenue.

The elderly, living on Social Security would pay no Local Income Tax, nor State Income Tax. But, they will have their property tax reduced through this resolution that gives an estimated \$23,200,000 to homeowners in St. Joseph County.

There is still a need for budget cuts as overall State revenues are falling and there is not a sufficient reserve. State sale tax fall 35 percent in April. Mr. Mullen explained how Fitch Ratings stated that without the proper reserves our Bond Rating could be affected. They said that this is not a local problem but a Circuit Breaker and statewide problem.

In Favor:

Donald J. Napoli, St. Joseph County Public Libraries
Roger Birdsell, 341 W. North Shore Drive, SB
Marty Wolfson, 809 Park Avenue, SB
Keith W. Branham, Ivy Tech Community College
Steve Francis, Sierra Club
Bethy Williams, 724 W. Washington Street, SB
Ann R. Power, 117 Napoleon Street, SB
Richard Williams, 724 W. Washington Street, SB
Anthony Allison, 330 E. Jefferson Boulevard, SB
Sean Coleman, County Treasurer
Dale Gibson, 220 Wakawa Avenue, SB
Conrad Damian, 718 E. Broadway, SB
Larry Catanzarite, Park Board President
Evi Kirkwood, Director of County Parks
Charlotte Pfeifer, 1013 W. Washington Street, SB
Bob Heiderman, 51889 E. Gate House Drive, SB
Jim Kapsa, South Bend Schools Superintendent
April Lidinsky, 536 S. Sunnyside Avenue, SB
Barbara Wade, 1122 S. 23rd Street, SB
Deborah Marr, 901 E. Woodside Street, SB
Jim McLister, 901 E. Woodside Street, SB
John Roos, 1730 Oak Park Drive, SB
Gladys Muhammod, 808 N. Ironwood, SB

Laura Sue Fuderer, Audubon Society
Catherine Pittman, 2628 Summit Ridge, SB
Aaron Bulger, 61600 Bremen HWY, M
Michelle Beatty, 1251 Oak Ridge Drive, SB
Tedd Skwarcan, 2401 S. Gertrude Street, SB
Rosalinda Leyra, 1148 W. Jefferson Boulevard, SB
Ivan Blount, 1148 W. Jefferson Boulevard, SB
Steve Luecke, Mayor
Mike Dvorak, Prosecutor
Derek Dieter, City Council President

Libraries have suffered from losses in Property Tax revenues and they cannot provide the same level of service as in the past. This fall the Libraries will have more reductions. This is an issue of a county and a city (South Bend) fighting to be able to survive.

Mr. Catanzarite asked about the reduction in staff that was mentioned since 2008 and the reduction of hours. He asked if there has been any direct link to increase in illiteracy or complaints lodged about access to the system to apply for jobs? Mr. Napoli stated that they have tried to cut the hours that are least used and now they have to go deeper. He stated that they have to cut a day some place and Saturdays and Sundays are the days that they have chosen.

The ordinance needs to be passed in order for us to receive the services for public safety. We cannot afford to devastate our local community by closing parks, libraries, reducing police and fire protection. Should not be fighting among ourselves over two bad options. Indiana's Circuit Breaker is quiet unusual by capping personal and business property taxes. The only alternative that was given to the county to make up for the loss of property tax revenue was to raise local income tax. This tax is necessary to encourage economic development and enhance the prosperity of the community, maintain the infra structure and necessary services and provide the recreational and cultural opportunities to enrich all of our lives. In order to maintain a great quality of life it goes beyond a bear bones budget. This is not a popular thing to do. This is an unfunded tax mandate forced on you by the State Government and the Governor. This is a replacement tax. Teens need safe places to attend such as Howard Park and the swimming pools. The schools cannot afford to be impacted without the necessary funds. More students will fall into the black hole without the funds needed for the schools. We should be "All for one and one for all." Without this tax we will lose our competitive position in attracting new industry and qualified professionals. We can become like other counties who rely on Income Tax and not have to rely on Property Tax. Local government has not been widely irresponsible. Only Lake County has lower per capita taxes. The elected officials, at the county level, have the lowest salaries of all the top seven counties. The only county that has a lower number of jail personnel per capita is Allen County. In order to recruit and attract people from all over the country, it is necessary to have a vibrant community with all the services and amenities. As a former City Council Member and now the Treasurer spoke of reductions that have taken place in his office since 2005. His budget has been reduced by 25 percent. If further cuts take place, this office will be severely hampered in being able to provide services to the community. People in Delaware County pay a Sales Tax of 8 percent, Marian County pays 10 percent and as of this spring we can no longer add to our Sales Tax in this County. In Delaware and Marian Counties they have a higher Option Tax than we have. This is an opportunity to build a better community. We should all remember that we are all part of one community. If there is a city who does not want these taxes, they should give them to the county. Structures have been built and donated by individual families and businesses to the parks because they know the value of having parks. The Parks Budget is now below what it was in 2000. Staff has been eliminated and have dropped programs. The Parks are doing more with less and the attendance is higher in 2009 than it was in 2008. People need to be reminded that the County and the City are not independent entities. Fourteen years ago the residents at DuComb Center were making more money than the County employees who worked there. Would like to see that the pools stay open for the kids in the summertime. Also, the East Race Way is an asset to the community. If there are cuts the South Bend Schools will affect the entire school community. The community needs to attract new businesses and the quality of schools play an important part of that. If police and fire services are decreased, this will have a negative impact on our schools. A healthier South Bend is a healthier county. It costs to maintain the judicial system and maintain the roads. Living in the country is not the same as it was ten years ago or even five years ago. You are trying to keep the sky from falling. The library system is essential for the use of computers when it comes to job searches. The closing of libraries on the weekend is a hardship for many. Every educational program that is cut from the parks impacts students K-12 and not preparing them for the sciences. The Potawatomi Zoo is a wonderful resource for students. It is not popular to vote for taxes, but it is not politically popular to reside over the decline of the safety and desirability of the community. This burden has been placed on your shoulders unfairly. You need to decide on the whole package. In 2011 all units of government will lose \$45 million. You have the burden to decide how to make up this loss that affects all the cities, airport, libraries, etc. The passage of

HB1001 put this in motion. St. Joe, Lake and Delaware counties are the hardest hit at 11 percent because they are the most reliant on property taxes. The money that will be raised from this tax will not match the \$45 million. The tax would generate about \$33 million. Without this tax we would never recover. When I dial 911 I want the fire and paramedics to arrive when I need them. "Where there is no struggle, there is no progress." This will have adverse effects on the County parks and bird watching. There is no one who wants to pay additional taxes but we all know that the services in the community are not free. Parks are very important part of a college education and was helped with his project on environment. Only five youth in Indiana are invited and he had the people from the parks to thank. California passed Proposition 13 (property taxes) and the services that were taken for granted have been devastated do to lack of funds. Please learn from California's mistakes and vote for this tax to assure our quality of life. There has been a collaborative effort between the City of South Bend and the County whereby paramedic/ambulance coverage is provided for the unincorporated areas of St. Joseph County. This coverage could be in jeopardy. Children need to be able to play outside in the parks. This community needs to stand together and you are the last straw. The question is, how do we sustainably fund local government services to residences and businesses that they deserve and require. All has been said with regard to sustaining, improving and maintaining local services. The importance of economic development and quality of life of this community if of great importance. In the year 2010 the City of South Bend will have a \$22 million shortfall because of property tax caps. The City is serious about cutting the budgets. This year so far cut \$3 million and in 2008, through good management, department heads were able to save over \$4 million. If these taxes are enacted, South Bend will still face a \$6-8 million deficit for 2010. A true Circuit Breaker bill would have automatically done what you are now having to do. Even in the Special Session was CIB (Capital Improvement Board) on the table. Indianapolis and the surrounding area got these tools. They secured a Local Entertainment Tax. We do not have this capability. The support staff in the Prosecutor's office is critical. If we don't succeed in the court room then we are not holding the offenders accountable. We need the police to do their job and to do it well. Property Tax relief will also assist the libraries and the South Bend School Corporation. The City Council took the stand last night and now we ask you to follow and take the pebble.

A recess was taken from 8:50 p.m. and reconvened at 9:15 p.m.

In Opposition:

S. J. Szabo, SB

Greg Burkowski, 20155 Roosevelt, SB

Tom Zmyslo, 51042 Prairie View Way, SB

Jeff Kepschelon, 21050 Quiet Ridge Court, SB

John Kuhn, 402 S. Grand, L

Myer Blatt, 813 Berlin, M

Jeff Broadwick, 51575 Steeplechase Court, G

Steve Leykauf, 52396 Liberty Knolls Court, G

Joseph Wilfing, 2405 Erskin Boulevard, SB

Jim Szucs, 55211 Filbert Road, M

Tom Doyle, 1063 Hunters Crossing Drive, G

Bob Kiefer, 19567 Hildebrand

Jesse Davis, 1333 E. Calvert, SB

Terry Provo, 67927 Lake Trail, L

Kelly Havens, 12032 Timberline Trace North, G

Dean Barnes, 2006 Milburn Boulevard, M

Paul Kusbach, 54497 Longwood Drive, SB

Sandra Hockstetler, 51785 Portage Road, SB

Mark Lantz, 11076 Gorden Setter Drive, O

J. M. Kata, 2024 Johnson Street, SB

Scott Wolfing, 25572 Shorwood Drive, SB

Thomas Burnett, 18907 Cleveland Road, SB

Tim Janowiak, 16930 Adams Road, G

Brandyn Baumbaugh, 12032 Timberline Trace North, G

Barry Baumbaugh, 12032 Timberline Trace North, G

Henry Carlson, 925 Deepwood Drive, M

Jan Duttlinger, 1813 E. Ewing Avenue, SB

Mark Vignearlt, 2909 Erskine Boulevard, SB

Rita Kopala, 66559 Ivy Road, L

Kenneth Drapinski, 1922 Randolph Street, SB
Charles Winkham, 10272 Jefferson Road, O

We are here today because Daniels' and the Circuit Breaker that slashed business property taxes by 50 percent. This gives a huge break to out of state big businesses. There is an all or nothing approach to this issue on how to make up the shortfall. You need to stop building luxury highways to Granger, round-a-bouts and cut administrative costs. Why the maximum? You will never come back and reduce it. Delaware, Lake and St. Joseph Counties are the ones with the biggest problems and the reason is that none of these three counties over the past fifty years have done much in economic development because they had thriving industries back in that time. You need to balance this budget for one more year without this tax. The public safety portion of this is necessary. You need to ask the folks down state why they did not give us the tools needed to balance the budget after they took the feet from under us. All these legislators need to be held accountable. Why do you keep voting these people in office when they are not representing you? Over the years the County Council has given us the County Option Income Tax, County Economic Development Tax, Recycle Tax, Wheel Tax and Pet Tax. There is no incentive to work anymore. The more you tax the less folks want to work. Good jobs, low taxes and good schools bring people to a city. We are failing on all three aspects. You need to look at the TIF Funds. You need to spend money on the workers and not the fancy buildings. Taxes did not make us great, individual people did. There is a 42 percent tax burden in this country. A mission dollar facade on WNIT is not the answer along with the Hall of Fame. The last three recessions came out with a tax cut not increases. The State expects the reduction in tax revenues to be replaced by the State taking over some expenses which was funded by a 17 percent increase in the Sales Tax and by local government reducing expenses. The proposed tax would wipe out property tax relief. Now is not the time to be overspending. Why should the residents of this community bail out South Bend because of their poor practices. In March the County received unexpected funds \$8.6 million for Tax Replacement Credits in 2008 along with \$4.6 million in Local Option Income Tax that was unexpected. \$750,000 was used to pay bonuses for County employees. Citizens are receiving pay freezes or cuts, not bonuses. People have lost jobs and are sacrificing to make ends meet. Expenses must be cut by the government. Do not be misled by what is a South Bend problem. The Mayor stated that they are trying to find efficiencies and service cuts and let the city do that. Will urge people to not do any business in the City of South Bend. You were elected by the people who live outside of South Bend and it is your job to represent the people who live outside the city. The county is not nearly in as bad a spot as the city. Defer this until next year and come up quickly. A negative example can be as powerful as a positive example. Last night was a negative example (City Council Meeting). The ordinance that was passed stated that this was beneficial to all St. Joseph County citizens who will overall have reduced Property Taxes. This is not true. The Mayor stated that the population was not decreasing. The population of South Bend is, and has been, continuing to decrease. The City is dying. Councilman Rouse stated that the city is carrying the county. You represent us... the county. Rouse stated that the county is riding on the back of the city. This is false. The truth is the other way around. One out of six people are living below the poverty limit. The City Council and the Mayor have failed with Economic Development. You are being asked to subsidize their failure. Asking the entire populous to subsidize a few is not economically feasible in today's economy. From an ad in December, all the real estate was added for abated properties. That figure comes to \$152,691,000.00. These abatements should be rescinded across the board. Also, over 51 percent of St. Joseph County is tax exempt and the rest is carrying the tax load. Somebody is asleep at the switch in the County. The department people say that they are laying off and not replacing people and every day in the Tribune is a large ad for St. Joseph County Human Resources. This ad costs \$5,000 a year. Why is it in there if you are not hiring anybody? The court system has no fiscal responsibility at all. The courts, they want it, they mandate it. Nemeth can mandate that his people get raises. The judges need to be responsible to the taxpayers. The police and fire are the pawns being thrown out there. Nobody, for or against this tax, wants to see police or fire laid off or city services rendered useless to us. The Hall of Fame, Coveleski, Morris are businesses and should be able to sustain themselves and taxes should not have to be part of their operating funds. My small business lost \$80,000 last year and I bet that I cannot get the City or County Council or anyone to support my business in order to keep my doors open. I was offended by the comments last night that the County and Mishawaka has ridden on the back of the City of South Bend. A lot of the problems are self inflicted. This is about leadership. This tax is about bailing out when the work was not done in advance. The Mayor should have had some kind of learning curve to prepare should hard times come. Is the leadership that didn't do well when things were good, going to be able to do well in bad times? Are you going to do better with less when you didn't do well with more. You have been given ten (10) days to process this proposal and you are being pushed by "political." Over the weekend, people are sending you e mails, but you can't get those e mails because no one has seen fit to give you your own personal county e mail addresses. You have not heard the full weight of public comment. No one is giving you the complete story. Mishawaka has balanced its budget and you (the County) have an alternative plan to balance your budget without this tax. It is only the City of South Bend that is refusing to step up to the plate. There are four things that the city could be doing to bring lost revenues back, releasing TIF Funds, shutting down residential Tax Abatements, suspending business Tax Abatements, stopping the unnecessary

Capital Projects like the Jumbo-tron, Sears Building and the Auten Road Connection. The city could file a Stressed Unit Appeal and phase in the Property Tax loss. That is part of HB1001. This will create a political backlash the likes that you have never seen. As a resident of Mishawaka, I resent being asked to bail out the City of South Bend as much as the car companies and banks. Money does not keep kids in school. Parents keep kids in school. If the City can't run the School Board properly how can you trust them to run tax dollars? We are being faced with a challenge that is as great as the Great Depression. The hard working people will be affected by this tax raise. Six companies were near my company and they are now gone. Taxing is not going to develop the area. Do not sacrifice the parks and recreation. I was told that the Mayor was on the radio this morning talking about new projects. Where will this stop? When will you be back again for more? This is not about increasing taxes, it's about budgeting. You have to budget at home. These offices must be better money managers. Congratulations to Councilman Varner and Davis, Jr. on the City Council for voting the right way. This tax will hurt the citizens who can afford it the least. A single mother making \$13,000 a year will pay an additional \$96.00 in income tax. Someone who makes \$13,000 a year does not own any property. The city and county needs to know the difference between wants and needs. There is no need for four (4) Assistant Mayors. We spend more per pupil than other counties and have the lowest test scores in our schools. You need to slow down on this decision since this tax will last a long time. This would be filibustered in the Senate for a long time if this was a Federal Tax increase. This is a 1 percent increase. It is a large chunk. Charles Hayes is leasing a tower for only \$1.00 a year. He will see a \$6 million profit and local government will see \$40. Maybe there are other leases out there where the County could be making more money. Maybe some research could be done on this issue. Maybe there are other options out there.

Mr. Catanzarite stated that the lease in question was negotiated by the Clay Township Trustee and this body had nothing to do with that. Mr. Janowiak stated that before the last contract he was told that the County Council attorney was consulted. Rob Thomas said this. Mr. Morton asked when? Mr. Janowiak stated that it was before December 28. Mr. Morton said that our attorney has had no contact with Rob Thomas. Mr. Catanzarite stated that it may have been a County attorney.

There is a reason that the State insisted that a cap be put on property tax. They did it because there was a call for it. Our Property Taxes are and were too high in accordance with the rest of the state. There is a trend in government that we have to shift or supplement, substitute all taxes. If we lose some of it, we have to find somewhere else to take it out of. As constituents we are your employers. If we are not making any more money right now, why are we being asked to raise the salary of our employee. If we can't afford it, we shouldn't be doing it.

Mr. Kruk questioned if he was asking about raising salaries of County employees? Mr. Baumbaugh stated that he did not mean salaries of individuals only of government overall to raise the budget. Mr. Kruk stated that the County employees have not had a raise for years. The Council has cut their salary twice in the last seven (7) years.

Greed is when you ask someone else to pay for pet projects. You don't have a shooting range or hunting that I can go to. People want to know where this 1 percent is going to go. Do they love knowing that it is going to the Football Hall of Fame, a Jumbo-tron. I don't think so. The city has a history of buying up land and giving it away. The county and the City of Mishawaka will be OK with a few cuts. This is about the City of South Bend and the schools. Busing should be cut and the kids should go back to neighborhood schools and walk. Living in the City of South Bend has been the highest taxed place that I have ever lived in. All the services do not need to continue. You need to look at different options and take your time. The management of funds need to be looked at. Please consider some kind of sunset clause so that you would have to vote on it every year if you want to keep it. Sometimes the people who are against something should be allowed to speak first so that the others might learn from what they have to say. There was a revolution because of taxes. It is your job to represent the people. Churchill said that South Bend would become a ghost town. Unhappy about the roads and how they were fixed and how the leaves were no longer being picked up. Blackthorn Golf Course lost \$74,000 last year. It should be sold and put on the tax roles.

Motion to pass Bill No. 78-09 was made by Mr. Catanzarite and seconded by Mr. Kruk.

Mr. Schafer stated that there were 33 people for the bills and seven lived outside the City of South Bend There were 32 against and seven living in the city.

Mr. DeVon stated that we are living in tough times. However, he cannot commend the Fire Department after he recently lost his home to a fire. He has had builder friends who have filed bankruptcy and one has taken his own life. A lot of these council members and the mayor have top characters. The better days are ahead of us and yet to come. But at this point I don't think that we should tax our people more.

Mr. Weaver commented that the County faces a \$10 million deficit and South Bend faces \$22 million or there about. Yes, we could close all the parks, zoo, community centers and create a ghost town. There would be no after school programs. Along with all these closing the libraries could also be closed. The only option we have is to raise the L.O.I.T. Tax. We cannot exclude certain people of certain income levels. We can't do a food & beverage or entertainment tax by the State.

Mr. Kruk stated that they do not want to be here tonight and credited Pete Mullen with the excellent presentation. This is a regressive tax that hits poor people harder than it hits more well to do people. In the seven (7) years that I have been on the Council, no taxes have been raised and we have always been looking for ways to cut the budgets. The Council has cut its salary twice. We are now at a point where we need some kind of sustainable income.

Mr. Przybysz stated how he agreed with the comments that have been made so far and he also agreed with the folks who spoke in option this evening. He stated that his family has had their income reduced this year in order to keep jobs and benefits. There have even been pension contributions eliminated in order to keep jobs. This has not just been thrown at us. It has been going on for close to a year. He stated that if there would have been a vote in December, he would have voted against it. No one wants to pay these taxes even if they spoke in favor of them.

Mr. Catanzarite stated how the Council represents every person in the entire county. This is not just a South Bend or County issue. We are looking at what is best for the entire community. South Bend and Mishawaka are economic drivers of the community.

Mr. Schafer stated that when the County was redistricted the last time the County Council had it stuck to them. Twenty-three (23) years ago, when I was elected, I represented people outside the city limits and within the city limits. The people who represented people in the city also had some people outside of the city limits. During the last redistricting he lost all the people in the city. There are four (4) councilman who only represent people within the city limits. In 2010 you people should make sure that the districts are put back the way they should be.

Mr. Root stated that things have moved so fast that the Auditor is having a hard time presenting a straight proposal. He was presenting faulty figures so fast that I could not write them down. He stated that the per capita were 20 percent under, according to the latest county government statistical book we are 5 percent under. He mentioned that we have not had leaf service for three (3) years. This is actually year five (5). I agree with Steve Francis this evening. We are spending our surplus. The Auditor calls it a reserve. We have laid out a plan that takes money from C.E.D.I.T., the Child Levy, 2 percent additional cuts, the parks' idea and tried to come up with an alternative solution. C.E.D.I.T. Funds are taxes that you already pay. They were never designed to be a surplus. They were never designed to be used for the General Fund. About two (2) or three (3) years ago the State released those funds. The plan that was thought of over the weekend did not touch the County's Rainy Day Reserve Fund. This is the absolute worst time to raise taxes.

Mr. Morton stated that the plan that was discussed over the weekend just came down to a basic difference in fiscal responsibility. This doesn't mean that one plan is right and the other wrong. It comes to looking at the situation in the short term or moving forward with the overall deficit. It is very unfair that the State has put us in this position. They put us in this predicament and give us what they call a tool. He stated that he does not see raising taxes as a tool.

Bill No. 78-09 passed by a vote of; 5-4 (Noland, DeVon, Schafer, Root).

Motion to pass Bill No. 79-09 was made by Mr. Catanzarite and seconded by Mr. Kruk.

Mr. Catanzarite stated that no one wants to raise taxes but have been forced by the State. He stated that other options were explored including a Food & Beverage Tax. He said that they have gone to the State Legislators and State Government asking for those options. The response was that you haven't used all the options that you already have and that is correct. With regard to police protection the people out in the county are more at a disadvantage when it comes to response times. With this tax we can maintain the service we have now and hopefully improve it.

Bill No. 79-09 passed by a vote of; 5-4 (Noland, DeVon, Schafer, Root).

Motion to pass Bill No. 80-09 was made by Mr. Catanzarite and seconded by Mr. Kruk. Bill No. 80-09 passed by a vote of; 5-4 (Noland, DeVon, Schafer, Root).

A recess was taken from 11:15 p.m. and reconvened at 11:25 p.m.

BILL NO. 81-09: A RESOLUTION OF THE COUNTY COUNCIL OF ST. JOSEPH COUNTY, INDIANA SUPPORTING THE SAFE AND HEALTHY HOMES & HOUSING ALLIANCE OF ST. JOSEPH COUNTY.

Marc Nelson, Health Department, conditions in the home are now the greatest environmental threat to children and elderly. There is a gap in the services that are provided and a lack of coordination between agencies. This organization will facilitate the integration and coordination of the activities to address these issues.

Motion to pass was made by Mr. Przybysz and seconded by Mr. Noland.

Mr. Catanzarite commended the Health Department and Marc Nelson for working on this project. He stated how difficult and life threatening it can be for anyone with asthma.

Bill No. 81-09 passed by a voice vote of; 9-0. No negatives were heard.

Public Hearings:

BILL NO. 57-09: AN ORDINANCE APPROPRIATING THE SUM OF \$50,000.00 OUT OF THE ST. JOSEPH COUNTY ENHANCED ACCESS FEE FUND - 036 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR 2009. (Dept. 002 - Auditor) - Assigned to the Budget and Administration Committee

Mr. Kruk reported that Bill No. 57-09 comes with a favorable recommendation.

Peter Mullen, Auditor, explained that these funds will pay for the dedicated connection between this building and the County Services Building in Mishawaka. This will be a backup unit for the Metro-net.

Motion to pass was made by Mr. Kruk and seconded by Mr. Weaver. Bill No. 57-09 passed to-wit; 9-0.

BILL NO. 58-09: AN ORDINANCE APPROPRIATING THE SUM OF \$5,052.00 OUT OF THE ST. JOSEPH COUNTY USER FEES FUND - 058 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR, 2009. (Dept. 005 - Sheriff/Auditor) - Assigned to the Human Services/Criminal Justice Committee

Mr. Przybysz reported that Bill No. 58-09 comes with a favorable recommendation.

Tom Nowicki, Finance Manager, stated that these funds were from User Fees Fund that are generated from traffic citations.

Motion to pass was made by Mr. Schafer and seconded by Mr. Przybysz. Bill No. 58-09 passed to-wit; 9-0.

BILL NO. 60-09: AN ORDINANCE APPROPRIATING THE SUM OF \$30,000.00 OUT OF THE ST. JOSEPH COUNTY 2006 SWIFT WATER RESCUE GRANT FUND - 106 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

Mr. Przybysz reported that Bill No. 60-09 comes with a favorable recommendation.

Luther Taylor, Director, stated that this is a grant for the swift water rescue team. This grant comes from the Indiana Department of Homeland Security and is 100 percent reimbursable.

Mr. Catanzarite asked if this money for the South Bend Fire Department was the team that responds anywhere in District 2 of the State of Indiana? Mr. Luther responded that was correct and that they have responded beyond District 2. Mr. Catanzarite asked how many counties were within that region? Mr. Taylor stated that there were seven.

Motion to pass was made by Mr. Weaver and seconded by Mr. DeVon. Bill No. 60-09 passed to-wit; 9-0.

BILL NO. 65-09: AN ORDINANCE APPROPRIATING THE SUM OF \$74,532.00 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, 2009. (Dept. 055 - Health) - Assigned to the Human Services/Criminal Justice Committee

Mr. Przybysz reported that Bill No. 65-09 comes with a favorable recommendation.

Nick Molchan, Administrator, explained that these were funds that were received from the State Department of Health and the CDC. These funds are used to do Lead Risk Assessments and healthy home activities.

Motion to pass was made by Mr. Kruk and seconded by Mr. Catanzarite. Bill No. 65-09 passed to-wit; 9-0.

BILL NO. 67-09: AN ORDINANCE APPROPRIATING THE SUM OF \$31,700.00 OUT OF THE ST. JOSEPH COUNTY L.E.T.P.P./HAZMAT SPCL EQUIP FUND - 031 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

Mr. Przybysz reported that Bill No. 67-09 comes with a favorable recommendation.

Luther Taylor, Director, explained that this was a grant that supports St. Joseph, Elkhart and Kosciusko who work together. These three (3) teams will split this money. These funds are also 100 percent reimbursement.

Motion to pass was made by Mr. Kruk and seconded by Mr. Noland. Bill No. 67-09 passed to-wit; 9-0.

BILL NO. 56-09: AN ORDINANCE TRANSFERRING THE SUM OF \$885.00 FROM VARIOUS ACCOUNTS TO VARIOUS ACCOUNTS ALL BEING WITHIN THE 2009 BUDGET OF ST. JOSEPH COUNTY. (Dept. 020 - Superior Court) - Assigned to the Human Services/Criminal Justice Committee

Mr. Przybysz reported that Bill No. 56-09 comes with a favorable recommendation.

Patricia Evens, Court Administrator, stated that these funds were needed to replace dictation equipment with digital equipment.

Motion to pass was made by Mr. Noland and seconded by Mr. Weaver. Bill No. 56-09 passed to-wit; 9-0.

BILL NO. 66-09: AN ORDINANCE TRANSFERRING THE SUM OF \$18,000.00 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

Mr. Przybysz reported that Bill No. 66-09 comes with a favorable recommendation.

Nick Molchan, Administrator, stated that the transfer was for advertising to warn of the danger of children who are in contact with lead based paint. If these funds are not spent, they get returned to HUD. There is a need to spend these funds in order to receive future grants.

Motion to pass was made by Mr. Weaver and seconded by Mr. Kruk. Bill No. 66-09 passed to-wit; 9-0.

BILL NO. 68-09: AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED, IN THE AGGREGATE, FOUR HUNDRED MILLION DOLLARS (\$400,000,000) OF ST. JOSEPH COUNTY, INDIANA EDUCATIONAL FACILITIES REFUNDING REVENUE BONDS (UNIVERSITY OF NOTRE DAME DU LAC PROJECT), IN ONE OR MORE SERIES, AND APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF ONE OR MORE TRUST INDENTURES, LOAN AGREEMENTS AND OTHER DOCUMENTS RELATED TO THE ISSUANCE AND SALE OF SUCH BONDS; DESIGNATING SUCH BONDS AS LIMITED OBLIGATIONS OF THE COUNTY; AND AUTHORIZING PROPER OFFICERS TO DO ALL OTHER THINGS DEEMED NECESSARY OR ADVISABLE IN CONNECTION THEREWITH AND APPROVING AND AUTHORIZING OTHER ACTIONS IN RESPECT THERETO. (Petitioner: University of Notre Dame Du Lac Project) - Assigned to the Budget and Administration Committee

Mr. Kruk reported that Bill No. 68-09 comes with a favorable recommendation.

Phil Faccenda, Barnes & Thornburg, 100 N. Michigan Street, representing the University of Notre Dame in the matter of refunding bonds that were issued in 1996, 1998, 2003, 2005 and 2008 all through the county. The goal of the University is to seek to refinance to fixed rates. There is no new money or construction that is part of this project. He also wanted to make a correction that there is no connection with the County's Bond Rating and these bonds of the University. There is no obligation of the County with the University bonds.

Motion to pass was made by Mr. Przybysz and seconded by Mr. Noland. Bill No. 68-09 passed to-wit; 9-0.

Mr. Morton announced that there would be a combined public hearing on Bill No. 69-09 and 70-09 but would be voted on separately.

BILL NO. 69-09: ORDINANCE OF THE ST. JOSEPH COUNTY COUNCIL AUTHORIZING ISSUANCE OF BONDS FOR THE PURPOSE OF PROVIDING FUNDS TO BE APPLIED TO PAY FOR CAPITAL AND ECONOMIC DEVELOPMENT PROJECTS AND INCIDENTAL EXPENSES IN CONNECTION THEREWITH AND ON ACCOUNT OF THE ISSUANCE OF THE BONDS, SAID BONDS TO BE PAYABLE SOLELY FROM ECONOMIC DEVELOPMENT INCOME TAX REVENUES. - Assigned to the Budget and Administration Committee

BILL NO. 70-09: ORDINANCE OF THE ST. JOSEPH COUNTY COUNCIL APPROPRIATING THE PROCEEDS OF THE ST. JOSEPH COUNTY ECONOMIC DEVELOPMENT INCOME TAX REVENUE BONDS OF 2009. - Assigned to the Budget and Administration Committee

Mr. Kruk reported that Bill No. 69-09 and 70-09 come with a favorable recommendation.

The Clerk stated that Bill No. 69-09 is to be amended by replacing the entire bill with the version that was filed on July 6, 2009.

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

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

Peter Mullen, Auditor, explained that this was a C.E.D.I.T. bond for the Jackson Road Landfill. This is a 80/20 match and the 20 percent for St. Joseph County will be \$4.8 million. This is in agreement with IDEM and will be up for bid in August. The second bill is the appropriation of the proceeds of the bond.

Mr. Root stated that enlighth of the vote tonight and also the fact that there are surplus funds in the C.E.D.I.T. Fund, what is the rational for bonding this rather than just outright paying it off? Mr. Faccenda stated that it was \$4.8 million bond and the County is only appropriating a portion for this project and they need the dollars now. It is the desire to repay this in five (5) years or less. There is only one outstanding C.E.D.I.T. bond and it comes off the rolls in December of 2010. This would be the only outstanding bond.

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. Catanzarite. Bill No. 69-09 passed as amended; 9-0.

Motion to pass was made by Mr. Catanzarite and seconded by Mr. Noland. Bill No. 70-09 passed to-wit; 9-0.

July 15, 2009 12:01 a.m.

BILL NO. 59-09: AN ORDINANCE APPROVING THE PETITION TO AMEND SPECIAL USE FILED BY RIETH-RILEY CONSTRUCTION CO., INC. FOR THE PROPERTY LOCATED AT 25200 STATE ROAD 23, GREENE TOWNSHIP, SOUTH BEND, INDIANA THE SAME BEING PETITION NO. 06-03-09-08 FILED WITH THE AREA BOARD OF ZONING APPEALS. - Assigned to the Land Use Planning Committee

Mr. DeVon reported that Bill No. 59-09 comes with a favorable recommendation.

Chuck Bulot, Building Commissioner, at the June 4, 2009 meeting the Area Board of Zoning Appeals was sent with no recommendation.

Steven Studer, Krieg, DeVult, 4101 Edison Lakes Parkway, stated that this Special Use Permit was for the Asphalt Facility only. This permit would extend the use for an indefinite time period. The Arrogate Facility received this indefinite time period in 1986. This is an employee owned company with 100 years of service to the community and employees 150, of which 125 are union. Over the last fifteen (15) years they have paid over \$1.5 million of County Income Taxes, etc. The 1967 Special Use permit was for twenty-five (25) years. The asphalt plant was not built until 1986. The reason that the BZA sent this with no recommendation is that the Health Department, at that time, had not had an adequate opportunity to view the site. The Health Department has since given this request a favorable recommendation. This site has been updated facility. They have passed IDEM's requirements in the last ten (10) years and in February of 2009 they allowed an extension of the air permit for a ten (10) year period. The water quality has been tested and passed. The water runs down slope away from the site and is captured in those two (2) wells. There were three tests that were run for noise. When the plant was not operating the noise level was 53.3 decibels, with the plant not operating and it was raining 62.9 decibels and without the rain and the plant in operation the decibels were 60.5. The rain falling was louder than the plant in operation.

Mr. Studer stated that he could not answer Mr. Kruk's questions from the Committee regarding setbacks. He stated that the petitioner will address the setback issue. There will be a survey done and a meeting with the neighbors. If there is a problem it will be fixed.

Mr. Kruk stated that there some other issues raised other than setbacks. Will you address all of these issues as part of your commitment? Mr. Studer stated, absolutely. He said that they would look at every issue back in 1986 and make sure that they comply with that.

In Opposition:

Lisa Pietrzak, 24891 Kern Road, SB
Joe Pietrzak, 24891 Kern Road, SB

They are unwilling to comply with local ordinances regarding the noise. Wanted to know if any data was available from the testing of the wells. Are those wells active or not? They are not conforming to the setback requirements. The reclamation promises don't seem too likely ever occur because of the over excavation in that site. Part of their plan in the reclamation drawings were to develop a subdivision in that area. Not suggesting that the plan should stop operating. Suggests short term renewal with government agencies monitoring for the company to become a good neighbor. A presentation was given using a handout presented to the Council. This area is zoned residential and when the original variances were granted to Rieth-Riley they put forth a proposal with many promises. They did not adhere to the ordinance with regard to hours of operation, noise and combustion engines. They run from 5:00 a.m. until 1:00 a.m. There needs to be a time limit of five (5) or ten (10) years. This would give everyone time to see if they comply.

Mr. Kruk asked if they are still running the operations during the hours mentioned on a regular basis? Mr. Pietrzak stated that the 1:00 a.m. has been much better. They have been stopping around 10:00 p.m. They do start up around 5:00 a.m.

Mr. Schafer stated that was the mining operation not the asphalt operation, correct? Mr. Pietrzak stated that he was not sure. They like to separate the operations, but they are not.

Mr. Studer wanted to point out that the asphalt plant is only open 165 days. We have provided a copy of the water tests to the Health Department and would gladly provide anyone that report.

Mr. Kruk asked if Mr. Studer saw some of the concerns that Mr. Pietrzak put together and if he hadn't, he wanted to make sure that he received a copy of them.

Motion to pass was made by Mr. Schafer and seconded by Mr. Przybysz.

Mr. Weaver and Mr. Kruk shared concerns with granting this for an indefinite period of time.

Bill No. 59-09 passed to-wit; 7-2 (Weaver, Kruk).

BILL NO. 63-09: 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 a paper road - Butternut Road. (Petitioner: James Japa & Catherine Martin) - Assigned to the Land Use Planning Committee

Mr. DeVon reported that Bill No. 63-09 comes with a favorable recommendation.

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

James Japa, 23791 Vine Road, requesting the vacation.

Motion to pass was made by Mr. Schafer and seconded by Mr. Noland. Bill No. 63-09 passed to-wit; 9-0.

BILL NO. 42-09: AN ORDINANCE AMENDING AND SUPPLEMENTING TITLE 26, ZONING, OF THE ST. JOSEPH COUNTY CODE, AS AMENDED, FOR PROPERTY LOCATED IN THE 54100 BLOCK OF IRONWOOD DRIVE, SOUTH BEND, INDIANA 46637 FROM PUD PLANNED UNIT DEVELOPMENT TO THE PUD PLANNED UNIT DEVELOPMENT DISTRICT. (Petitioner: RWD Campus Development LLC) - Assigned to the Land Use Planning Committee

Mr. DeVon reported that Bill No. 42-09 comes with a favorable recommendation.

The Clerk read the amendment stating that there was a new legal description and under Section 2 add subject to final site plan showing access to the property on McErlain and Ironwood Drive.

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

Christa Nader, Area Plan, reported that in 2008 this development was approved as a PUD for Group Residences. She spoke to the petition that was brought to the Area Plan Commission. The recommendation of the Commission was that the primary access on Ironwood Road and an emergency access on McErlain and George. It was just the reverse as passed. The other change was that the height of the fence on the South be reduced from eight (8) feet to five (5) feet. This petition comes with a favorable recommendation subject to an eight (8) foot opaque fence with the primary access on Ironwood Road.

Steven Studer, Krieg, DeVult, 4101 Edison Lakes Parkway, stated that respect to the change to the entrances, we have asked for both entrances to be open. He stated that they have received objections from owners on Ironwood and McErlain. He stated that they did not want to put up an eight (8) foot fence because this would only provide for about four (4) or five (5) feet of privacy. After speaking to the church we are suggesting a retaining wall with a six (6) foot fence which would actually give them about nine and one half feet (9 1/2) of privacy.

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

Mr. DeVon asked Jessica Clark, Engineer, if she was in favor of this arrangement? Her response was yes and that the petitioner will be required to do improvements on McErlain and George.

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

Motion to pass was made by Mr. Noland and seconded by Mr. Przybysz. Bill No. 42-09 passed as amended; 9-0.

BILL NO. 43-09: AN ORDINANCE AMENDING AND SUPPLEMENTING TITLE 26, ZONING, OF THE ST. JOSEPH COUNTY CODE, AS AMENDED, FOR PROPERTY LOCATED IN THE 54600 BLOCK OF BURDETTE STREET, 54600 BLOCK OF WILLIS AVE., 54600 BLOCK OF IRISH CROSSINGS DRIVE EAST, 54600 BLOCK OF IRISH CROSSINGS DRIVE WEST AND THE 18300 BLOCK OF IRISH CROSSINGS DRIVE NORTH, SOUTH BEND, INDIANA 46635 FROM PUD PLANNED UNIT DEVELOPMENT DISTRICT TO PUB PLANNED UNIT DEVELOPMENT DISTRICT. (Petitioners: Irish Crossings Developers, LLC, Et Al.) - Assigned to the Land Use Planning Committee

Mr. DeVon reported that Bill No. 43-09 comes with a favorable recommendation.

Christa Nader, Area Plan Commission, stated that the purpose of this petition was to make changes to a previously approved PUD. This unit was approved in 2008 to allow for attached single family residences. The change is to allow up to four (4) unrelated persons per dwelling unit. The Area Plan Commission has given this a favorable recommendation.

Mr. Weaver asked what the units per acre were? Mr. Catanzarite stated thirty-one (31). Ms Nader stated just under ten (10). She stated that there are a total of 79 units.

Steven Studer, Krieg, DeVult, 4101 Edison Lakes Parkway, reported that there will be no parking on the streets, no parties after 9:00 p.m. except for football weekends. These units range between 2,200 and 2,700 square feet. Some of these units will be rented to students and some by parents. The owners have a multitude of rules and regulations. He noted that South Bend has recently gone to three (3) unrelated parties.

Mr. Catanzarite questioned if there was anything the developer could do to make this more pedestrian friendly? Mr. Studer questioned, within the units themselves? Mr. Catanzarite said yes. S.R. 23 is a commercial corridor and people are walking in the street. Mike Danch, Danch Harner and Associates stated that there are sidewalks along Burdette and they are working with Jessica Clark, County Engineer. We are trying to make this pedestrian friendly.

Secretary's Note: Someone was heard from the audience asking questions. Mr. Studer's response was that there were covenants and restrictions and will be evicted if they do not comply with the regulations and bi-laws.

In Favor:

Jeff Koller, North Whales, PA

As an owner since March of 2007 he purchased for a long term investment, property rental opportunity and for personal use. He stated that he rented the townhouse last year and this year plans to use it for his own use. He has been pleased with the quality of the workmanship and the Homeowners Association. All the other owners are in support of this petition. This does not resemble typical university living. There is a mix of non students, grad students married with children, etc.

Against:

James Masters, Nemeth, Feeney, Masters & Campiti, 211 W. Washington, Ste 1800 here on behalf of a number of clients who are investors who own rental properties in St. Joseph County. They are concerned in the law and make their investment knowing what the Zoning Code is. The issue is that Zoning Code required both in St. Joseph County and the City of South Bend, limits the number of unrelated people who can live in any dwelling unit to two (2) unrelated persons. His clients bought their properties knowing what the Zoning Code is and these people bought these properties knowing what the Zoning Code is. The Zoning Code has a purpose and that is to limit the density. In 2004 that is why this language of family was changed specifically in the South Bend Ordinance and the County Ordinance. This was done to address the impact of large numbers of students living in communities near the campus. These units were constructed in violation of the Zoning Code and they know that they are in violation of the Code and now they are asking you to change the rules. If you approve this, you are allowing the zoning to be changed to suit the property owners needs rather than the interest of the community. If you allow this, there will be a number of places that are going to want to do the exact thing. The Area Plan needs to reconsider this and the South Bend Common Council needs to address the issue since they have a greater concentration of students. He requested that this be tabled until the South Bend Common Council and the Area Plan has a chance to review this.

Dianne Shawed, agreed with Mr. Masters. *Secretary's Note:* The petitioner could not be heard clearly.

Mr. Studer stated that South Bend has addressed this issue they have approved Ivy Row from two (2) to three (3) unrelated people. This type of project takes the pressure off illegal zoning. *Secretary's Note:* Mr. Studer could not be heard clearly. By doing this through a public hearing we are asking everyone to agree so that we can come into compliance. This is a good mixed use and good for the County.

Motion to pass was made by Mr. Noland and seconded by Mr. Schafer. Bill No. 43-09 passed to-wit; 9-0.

BILL NO. 54-09: AN ORDINANCE AMENDING AND SUPPLEMENTING TITLE 26, ZONING, OF THE ST. JOSEPH COUNTY CODE, AS AMENDED, FOR PROPERTY LOCATED AT 17963 CLEVELAND ROAD SOUTH BEND, IN 46635 FROM B BUSINESS TO B BUSINESS DISTRICT. (Petitioner: Bhola Singh)

Mr. DeVon reported that Bill No. 54-09 comes without a recommendation.

Christa Nader, Area Plan Commission, the petitioner is requesting to go from B Business, subject to a Site Plan to B Business without a Site Plan to allow for a convenience store. The history of the property since 1975 followed:

- a) Zoned to C Commercial for a bank.
- b) In December 1975 the County Council zoned to B Business in order to limit the types of business. This was subject to existing use and Site Plan.
- c) In 1978 the site before you today was rezoned to B Business for a change of use and Site Plan to allow for a real estate office.
- d) In 1985 a revised Site Plan was approved.
- e) The O Office District was not established until 1992, therefore it was not a option in 1985,
- d) In 2005 when the new Ordinance took effect, final Site Plans were no longer required for rezonings. However, anything that was already existing remained active.

Earlier this year, a building permit was issued for this property. After the permit was issued, it was discovered that this was one of the properties that a Site Plan tied to it. This is the reason why we are here today.

Ms. Nader gave her presentation and reported that the Area Plan Commission sends this request with an unfavorable recommendation. The Cleveland Road Plan that was adopted by the County Council in 1989, discourages commercial development between SR 933 and SR 23. This petition is an inappropriate buffer to residential properties to the east.

Robert Mysliwec, Law Offices at 704 W. Washington, representing the petitioner stated that there are two (2) reasons to approve this petition. First, a convenience store in this location makes sense. He read a letter from the Castle Point Manager in favor. These residents have to drive at least two (2) miles to get groceries. Secondly, Mr. Singh was assured by the Area Plan Commission and the Building Department that it was OK for him to buy this property and operate a convenience store at this location. Nobody saw the 1978 Site Plan restrictions before he had obtained a beer and wine license at a public hearing. No body showed up at the public hearing after the sign was posted. He received permits for lottery for sale. He has spent \$162,000.00 so far. He has a lease for the next thirteen and a half (13 ½) years that will cost him another \$162,000.00. If you are not going to approve the Ordinance, then you should at least give him his money back.

Phil Panzica, Architects, 422 E. Monroe, stated that they are not the Architect of record he was here to respond to zoning questions. The site is currently zones B Business and convenience stores falls under this district. The definition was read. This intersection is a small business node within the block. This structure was build in 1978 and has been vacant for at least three (3), is small and low to the ground and the building colors are consistent to the neighborhood. Additionally, this building sits down in a hole, five (5) feet below the adjacent residence and the back of the building is toward the neighborhood. This is only a 2,900 square foot building. Per MACOG the traffic on Cleveland is 17,600 vehicles on average each day. On Ironwood is about 12,400 running North and South. Cleveland Road has recently been updated. In the 50's and 60's zoning decided to separate businesses from the community. Now the reverse is needed due to going green.

Mr. Catanzarite asked Mr. Mysliwec if there were any sidewalks that connect the store to the corner? The church across the street talks about advertising the sale of alcohol and tobacco. *Secretary's Note:* Mr. Catanzarite could not be understood. Mr. Mysliwec stated that before the public hearing for the beer and wine license you are required to post a notice. This is not the place to come for a cold beer. Mr. Catanzarite asked if signage could be kept off the building? Mr. Singh answered from the audience and could not be understood. Mr. Mysliwec stated that there were no windows facing the neighborhood.

In Favor:

Betty Frame, Broker with At Home Realty Group, she told Mr. Singh that she needed to check the property zoning. She said that whenever she spoke to Don Fozo she got an answer and was able to move forward. This time the wrong answer given. I would use this store and Mr. Singh would be an asset to this community.

Jessica Zyto, 2406 Coachman Trail, SB, lives at Castle Point Apartments and thinks this would be a great asset.

In Opposition:

Ann Carol Nash, 59725 Lee Road, SB
Larry Galguta, 55596 County Club Road, SB
Andrew Kostielney, Commissioner
Thomas Burnett, 18907 Cleveland Road, SB
Jessica Clark, Engineer
Diane Schaut, 18810 Cherokee
Lloyd Loring, 19025 Oakmont S Drive, SB

As a member of the church across the street from this location. She stated that she has presented a petition signed by members of the church and neighbors and a letter from the Pastor. This is an extremely busy intersection and she felt that most of the residents at Castle Point would not walk across Ironwood to this store. This is not a walkable community. This crossing would be dangerous for children to cross to go get candy bars, etc. This is a bad situation for Mr. Singh. This is a heavy residential area. There are no crosswalks at this location. This is not a pedestrian area. Mr. Kostielney received over 20 phone calls and emails against and none in favor. Developers have told him that if this were to pass, every vacant piece of property along this corridor will be bought for development. This would change the landscape of Cleveland Road forever. The bank is difficult to get in and out of now. You can't turn left when leaving the bank. This is not a five-lane highway. Jessica Clark, Engineer, explained that since this is not tied to a new Site Plan, the Department of Public Works does not review or comment on it. However, they are charged with supporting safe transportation for vehicles and pedestrians too. This type of use is obvious to lend itself to encourage pedestrian use. This is a concern for her. This intersection does not have pedestrian signals or sidewalks west on Cleveland or north on Ironwood. If you plan to pass this, she would ask for commitments that require her office to study this use site for transportation impact. She could not support this request also do to the fact that there are no handicapped facilities. This will adversely affect the neighborhood. We are the property tax payers, the people at Castle Point are not. The future is in your hands. Please protect the Comprehensive Plan.

Robert Mysliwicz, with regard to the objections of the church, clearly there would be no beer or wine sales on Sunday. With regard to traffic concerns, this is a busy road. This should not make the road any busier. If someone walks across the street from Castle Point, there would be one fewer car. As for zoning, this is already zoned B Business. The Site Plan does show shrubs, trees and a fence that would further separate from the neighborhood.

The clerk read the amendment stating that the Petitioner is now Isadore Mirkin Revocable Trust.

Mr. Mysliwicz could be heard from the audience but could not be understood. These folks own the land.

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

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

The motion passed by a voice vote of 9-0. No negatives were heard.

Mr. Noland wanted to apologize to Mr. Singh for any misinformation that he had received. He stated how he has spoken to people in the area and therefore made the following motion.

Motion to deny was made by Mr. Noland and seconded by Mr. Weaver.

Mr. DeVon spoke but could not be understood. He did say how he has talked to contractors and they would have done this years ago. He also received many, many calls to deny this.

Bill No. 54-09, as amended, was denied; 8-1 (Kruk).

Unfinished Business:

New Business:

Privilege of the Floor:

Marty Bland, 813 Berlin, M stated how he was disappointed to see how people run out of a meeting when their part was over. He felt that his civil rights were being abridged by coming into the building without his legally carried firearm. There are no provisions for storage. He would like to see the Council consider a locker system where a weapon could be checked.

Adjournment:

Mr. Morton stated that the meeting was adjourned at 1:35 a.m. on July 15, 2009.

Auditor, St. Joseph County

President, St. Joseph County Council