

MINUTES OF THE
REGULAR MEETING
OF THE
ST. JOSEPH COUNTY COUNCIL
June 14, 2011

The regular meeting of the St. Joseph County Council was called to order at 7:04 p.m., on June 14, 2011, by the President, Rafael Morton, in the Council Chambers, fourth floor, County-City Building, South Bend, Indiana.

Members in attendance were:

Mr. Mark Catanzarite - Absent
Mr. Dale DeVon
Mr. Michael J. Hamann
Mr. Daniel G. Herbster
Mr. Michael J. Kruk
Mr. Robert J. McCahill
Mr. Rafael Morton
Mr. Corey D. Noland
Mr. Mark Root

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. Noland moved to appoint Belinda Gillespie to the PTABOA (Property Tax Appeals Board of Appeals) and Rafael Morton to the Solid Waste Management Board (Mr. Hamann resigned) and to reappoint Ann Connors to the PTABOA and Dorothy Wayne to the St. Joseph County Economic Development Commission. Being no other nominations, his motion was seconded by Mr. Hamann. The motion passed by a voice vote 8-0. There were no negatives heard.

Mr. Herbster moved to nominate Gene Reese to the Walkerton Economic Development Commission. There were no other nominations. His motion was seconded by Mr. Noland. The motion passed by a voice vote; 8-0. No negatives were heard.

Mr. Kruk moved and was seconded by Mr. McCahill to approve the minutes of May 10, 2011. The motion passed by a voice vote; 8-0. No negatives were heard.

Mr. Kruk moved to have Rules Waived for First Reading and Public Hearing this evening for Bill No. 73-11 and 74-11. His motion was seconded by Mr. DeVon. The motion passed by a voice vote; 8-0. No negatives were heard.

Mr. Herbster moved to withdraw the following bills that have already been withdrawn by the Area Plan Commission: Bill Nos. 134-76, 118-92, 52-93, 77-93, 13-95 and 43-97. His motion was seconded by Mr. Hamann. The motion passed by a voice vote; 8-0. No negatives were heard.

No report from the County Auditor.

No report from the Board of Commissioners.

No report from any Special Committees.

First Readings:

BILL NO. 67-11: AN ORDINANCE AMENDING ORDINANCE 101-10, THE SAME BEING AN ORDINANCE ESTABLISHING SALARIES AND FIXING THE NUMBERS OF EMPLOYEES OF ST. JOSEPH COUNTY FOR THE YEAR 2011. (Dept. 0025 - Juvenile & Probate Court) - Assigned to the Human Services/Criminal Justice Committee

BILL NO. 68-11: AN ORDINANCE FORMALLY RECOGNIZING LONGEVITY PAY FOR THE CORRECTIONS OFFICERS OF THE ST. JOSEPH COUNTY JAIL, ST. JOSEPH COUNTY, INDIANA. (Dept. 0005 - County Police) - Assigned to the Human Services/Criminal Justice Committee

BILL NO. 69-11: AN ORDINANCE APPROPRIATING THE SUM OF \$55,000.00 OUT OF THE ST. JOSEPH COUNTY HEALTH LEAD ELIMINATION GRANT FUND - 0515 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR, 2011. (Dept. 0055 - Health) - Assigned to the Human Services/Criminal Justice Committee

BILL NO. 70-11: AN ORDINANCE TRANSFERRING THE SUM OF \$5,444.00 FROM VARIOUS ACCOUNTS TO VARIOUS ACCOUNTS ALL BEING WITHIN THE 2011 BUDGET OF ST. JOSEPH COUNTY. (Dept. 0055 - Health) - Assigned to the Human Services/Criminal Justice Committee

BILL NO. 71-11: AN ORDINANCE TO VACATE A PUBLIC WAY OR PUBLIC PLACE, LOCATED WHOLLY WITHIN THE UNINCORPORATED PORTION OF ST. JOSEPH COUNTY, TO-WIT: TWO PORTIONS OF ORIGINAL LINCOLN WAY WEST RUNNING SOUTHEAST AND NORTHWEST AND MEADOWVIEW AVENUE RUNNING NORTH AND SOUTH FROM ORIGINAL LINCOLN WAY WEST TO NEW LINCOLN WAY WEST. (Petitioner: St. Joseph County Airport Authority) - Assigned to the Land Use Planning Committee

BILL NO. 73-11: AN ORDINANCE OF THE ST. JOSEPH COUNTY COUNCIL AMENDING TITLE III, CHAPTER 34 ADDRESSING "FINANCES" OF THE ST. JOSEPH COUNTY CODE BY ADDING AND ESTABLISHING NEW SECTION 34.34 "COUNTY ELECTED OFFICIALS TRAINING FUND". (Petitioner: Recorder) - *For Public Hearing this Evening*

BILL NO. 74-11: AN ORDINANCE OF THE ST. JOSEPH COUNTY COUNCIL AMENDING TITLE III, CHAPTER 34 ADDRESSING "FINANCES" OF THE ST. JOSEPH COUNTY CODE BY ADDING AND ESTABLISHING NEW SECTION 34.35 "PROSECUTOR IV-D INCENTIVE FUND"; NEW SECTION 34.36 "PROSECUTOR IV-D ARRA FUND"; NEW SECTION 34.37 "CLERK IV-D INCENTIVE FUND"; NEW SECTION 34.38 "CLERK IV-D ARRA FUND"; NEW SECTION 34.39 "COUNTY GENERAL IV-D INCENTIVE FUND"; AND NEW SECTION 34.40 "COUNTY GENERAL IV-D ARRA FUND". (Petitioner: Auditor) - *For Public Hearing this Evening*

BILL NO. 75-11: AN ORDINANCE APPROPRIATING THE SUM OF \$100,000.00 OUT OF THE ST. JOSEPH COUNTY PORTAGE MANOR FUND- 0015 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR, 2011. (Dept. 0030 - Portage Manor) - Assigned to the Human Services/Criminal Justice Committee

BILL NO. 76-11: AN ORDINANCE APPROPRIATING THE SUM OF \$20,000.00 OUT OF THE ST. JOSEPH COUNTY SURVEYOR SECTION CORNER PERPETUATION FUND - 0081 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR, 2011. (Surveyor Section Corner Perpetuation Fund - Dept. 0002 - Auditor) - Assigned to the Engineering and Transportation Committee

BILL NO. 77-11: AN ORDINANCE AMENDING AND SUPPLEMENTING TITLE XV, LAND USAGE, CHAPTER 154, PLANNING AND ZONING, OF THE ST. JOSEPH COUNTY CODE, AS AMENDED, FOR PROPERTY LOCATED AT 20531 DARDEN ROAD, SOUTH BEND, INDIANA 46637 FROM A AGRICULTURAL DISTRICT TO R SINGLE FAMILY DISTRICT. (Petitioners: St. Joseph County, Indiana) - Assigned to the Land Use Planning Committee

Resolutions:

BILL NO. 72-11: A RESOLUTION TRANSFERRING THE SUM OF \$10,817.93 FROM VARIOUS FUNDS INTO VARIOUS FUNDS WITHIN THE 2011 ST. JOSEPH COUNTY BUDGET. (Dept. 0002 - Auditor)

Peter Mullen, Auditor, explained that this Resolution has been requested by the State Board of Accounts during the annual audit to move excess money from Federal Withholding, PERF, Indiana Gross Withholding in the County General Fund.

Mr. Kruk asked if this doesn't normally happen at the end of the year anyway? Mr. Mullen stated that they have asked the Auditor's Office to do the current amounts.

Mr. Morton thought that it happened automatically, but it doesn't.

Motion to pass Bill No. 72-11 was made by Mr. DeVon and seconded by Mr. McCahill. Bill No. 72 -11 passed to-wit; 8-0.

Public Hearings:

BILL NO. 59-11: AN ORDINANCE APPROPRIATING THE SUM OF \$100,000.00 OUT OF THE ST. JOSEPH COUNTY INELIGIBLE DEDUCTION FUND - 061 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR 2011. (Dept. 002 - Auditor) - Assigned to the Budget and Administration Committee

Mr. Kruk reported that Bill No. 59-11 comes with a favorable recommendation.

Mr. Mullen, Auditor, stated that these funds were for contractual services for the company who is helping recover double Homestead Credit property owners. They are sending out letters that will hope fully collect over \$350,000.00. If this is all collected, it will be on top of the already \$200,000.00 that has been already collected. They plan on collecting almost \$1M.

Mr. Morton asked if the majority of these are honest mistakes? Mr. Mullen stated that he did not say either way. They could be mistakes. Mr. Morton asked about the ones that have already been collected. Mr. Mullen stated that yes, there were some who stated that they should have been paying the proper tax amount.

Mr. Herbster stated that he recalled that it is a lot harder to prove their intent. Mr. Mullen stated that if they could prove it, they could go back ten (10) years instead of three (3).

Mr. No land asked if the \$100,000.00 was 20 percent of what we have collected up to date? Mr. Mullen stated that this is going forward toward the end of the year, it could be more.

Motion to pass Bill No. 59-11 was made by Mr. Kruk and seconded by Mr. No land. Bill No. 59-11 passed to-wit; 8-0.

BILL NO. 60-11: AN ORDINANCE TRANSFERRING THE SUM OF \$21,000.00 FROM VARIOUS ACCOUNTS TO VARIOUS ACCOUNTS ALL BEING WITHIN THE 2011 BUDGET OF ST. JOSEPH COUNTY. (Dept. 795 - C.B.C. - User Fees) - Assigned to the Human Services/Criminal Justice Committee

Mr. Hamann reported that Bill No. 60-11 comes with a favorable recommendation.

Amy Cassidy, Financial Coordinator - Community Corrections, explained that the transfers will help them utilize the funds better.

Motion to pass Bill No. 60-11 was made by Mr. Kruk and seconded by Mr. Hamann. Bill No. 60-11 passed to-wit; 8-0.

Mr. Morton announced that there would be a combined Public Hearing on Bill Nos. 61-11 and 62-11 but would be voted on separately.

BILL NO. 61-11: AN ORDINANCE AMENDING ORDINANCE 101-10 THE SAME BEING AN ORDINANCE ESTABLISHING SALARIES AND FIXING THE NUMBERS OF EMPLOYEES OF ST. JOSEPH COUNTY FOR THE YEAR 2011. (Dept. 062 - Highway Maintenance and Dept. 064 - Highway Gen Exp) - Assigned to the Engineering and Transportation Committee

BILL NO. 62-11: AN ORDINANCE APPROPRIATING THE SUM OF \$12,600.00 OUT OF THE ST. JOSEPH COUNTY - COUNTY HIGHWAY FUND - 002 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR, 2011. (Highway) {increase/decrease appropriation} - Assigned to the Engineering and Transportation Committee

Mr. Kruk reported that Bill No. 61-11 and 62-11 come with a favorable recommendation.

Roger Mathia, Highway Commissioner, stated that they are planning on redistributing some of their manpower. He stated that they will decrease Group 2 Truck Driver positions by 5 permanently. Then they will restructure the Mechanic Positions to Class C. This will install a Mechanic Helper in each garage. We will also be taking some funds from the Highway Engineer's Fund and into the same account to cover for the rest of the year.

Mr. McCahill asked if these positions will need more schooling - certification? Mr. Mathia stated no, they are just going to be more like assistants. This will then keep us from having to pay for employees to work out of their classification.

Motion to pass Bill No. 61-11 was made by Mr. Kruk and seconded by Mr. Noland. Bill No. 61-11 passed to-wit; 8-0. Motion to pass Bill No. 62-11 was made by Mr. Kruk and seconded by Mr. McCahill.

Mr. Trippel stated that an amendment was needed. The amount of the bill has changed.

The motion was withdrawn by a voice vote; 8-0. No negatives were heard.

Mr. Hamann moved to amend Bill No. 62-11 and was seconded by Mr. Kruk.

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

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

Motion to pass Bill No. 62-11 was made by Mr. Hamann and seconded by Mr. Noland. Bill No. 62-11 passed as amended; 8-0.

BILL NO. 64-11: AN ORDINANCE OF THE ST. JOSEPH COUNTY COUNCIL AMENDING TITLE III, ADMINISTRATION, CHAPTER 32.06, COUNTY ORGANIZATIONS - HIGHWAY DEPARTMENT OF THE ST. JOSEPH COUNTY, INDIANA CODE. (Engineer) - Assigned to the Engineering and Transportation Committee

Mr. Kruk reported that Bill No. 64-11 comes with a favorable recommendation.

Jessica Clark, Engineer, explained that this bill will amend the language in the County Code to be consistent with the Indiana Code that address the Assistant County Engineer and Engineer. Our Code reads that they have to be residents of St. Joseph County and the Indiana Code only states that they have to be a resident of the State. These positions work with surrounding counties.

Motion to pass Bill No. 64-11 was made by Mr. Herbster and seconded by Mr. Kruk. Bill No. 64-11 passed to-wit; 8-0.

Mr. Morton announced that there would be a combined Public Hearing on Bill Nos. 73-11 and 74-11 but would be voted on separately.

BILL NO. 73-11: AN ORDINANCE OF THE ST. JOSEPH COUNTY COUNCIL AMENDING TITLE III, CHAPTER 34 ADDRESSING "FINANCES" OF THE ST. JOSEPH COUNTY CODE BY ADDING AND ESTABLISHING NEW SECTION 34.34 "COUNTY ELECTED OFFICIALS TRAINING FUND". (Petitioner: Recorder) - Rules Waived for 1st Reading and Public Hearing this evening - no Committee report

BILL NO. 74-11: AN ORDINANCE OF THE ST. JOSEPH COUNTY COUNCIL AMENDING TITLE III, CHAPTER 34 ADDRESSING "FINANCES" OF THE ST. JOSEPH COUNTY CODE BY ADDING AND ESTABLISHING NEW SECTION 34.35 "PROSECUTOR IV-D INCENTIVE FUND"; NEW SECTION 34.36 "PROSECUTOR IV-D ARRA FUND"; NEW SECTION 34.37 "CLERK IV-D INCENTIVE FUND"; NEW SECTION 34.38 "CLERK IV-D ARRA FUND"; NEW SECTION 34.39 "COUNTY GENERAL IV-D INCENTIVE FUND"; AND NEW SECTION 34.40 "COUNTY GENERAL IV-D ARRA FUND". (Petitioner: Auditor) - Rules Waived for 1st Reading and Public Hearing this evening - no Committee report.

Peter Mullen, Auditor, stated that Bill No. 73-11 was following the State Statute requires the Recorder to collect a

recording fee and \$.50 of this fee is dedicated to the newly created fund "County Elected Officials Training Fund" to be established. These funds will need to be appropriated by the Council. Bill No. 74-11 is needed at the request of the Indiana Department of Child Services, who was audited by the State Board of Accounts as having less than good tracking for monies that were collected. Therefore, all counties have to establish six (6) funds to track these various funds as monies are disbursed by the Indiana Department of Child Services. These funds can only be spent through an appropriation through the Council.

Mr. Kruk asked, regarding Bill No. 73-11, those are funds we already have on the books? Mr. Mullen stated yes they were. Mr. Kruk asked what the total cost to record a document was? Mr. Mullen stated that he did not know.

Mr. Herbster said that previously the IV-D was a fund that was all together? Mr. Mullen stated that there were three (3) funds and now there will be six (6).

Motion to pass Bill No. 73-11 was made by Mr. Kruk and seconded by Mr. Herbster. Bill No. 73-11 passed to-wit; 8-0. Motion to pass Bill No. 74-11 was made by Mr. DeVon and seconded by Mr. Kruk. Bill No. 74-11 passed to-wit; 8-0.

BILL NO. 57-11: AN ORDINANCE APPROVING THE PETITION FOR SPECIAL USE FILED BY ELDON & SUSAN HEATWOLE FOR THE PROPERTY LOCATED AT 67719 IRONWOOD ROAD THE SAME BEING PETITION NO. 05-04-11-10 FILED WITH THE AREA BOARD OF ZONING APPEALS. - Assigned to the Land Use Planning Committee

Mr. DeVon reported that Bill No. 57-11 comes with a favorable recommendation.

Mark Lyons, Building Department, stated that the Board of Zoning Appeals sent this petition for a home based business (carpentering/word working shop)with a favorable recommendation at the May 4, 2011 meeting. Note: the facility does not require a dust collecting system per Code.

Bernard Feeney, Lang, Feeney and Associates, 715 S. Michigan Street, representing the petitioner stated that this is a furniture and cabinet making business. He operates this facility with a commercial grade dust collector already in place.

Motion to pass Bill No. 57-11 was made by Mr. Herbster and seconded by Mr. McCahill. Bill No. 57-11 passed to-wit; 8-0.

BILL NO. 58-11: AN ORDINANCE APPROVING THE PETITION FOR SPECIAL USE FILED BY CARLOS & MONICA DELAGADO FOR THE PROPERTY LOCATED AT 26977 JACKSON ROAD, SOUTH BEND, IN 46619 THE SAME BEING PETITION NO. 05-04-11-11 FILED WITH THE AREA BOARD OF ZONING APPEALS. - Assigned to the Land Use Planning Committee

Mr. DeVon reported that Bill No. 58-11 comes with a favorable recommendation.

Mark Lyons, Building Department, stated that the Board of Zoning Appeals sent this petition for an indoor riding facility and with a favorable recommendation at the May 4, 2011 meeting.

Mike Danch, Danch, Harner and Associates, 1643 Commerce Drive, representing the petitioner. He stated that they are attaching the stable building to the existing stable. It just made sense to connect these facilities. There will be approximately six (6) horses kept and have four (4) of their own.

Motion to pass Bill No. 58-11 was made by Mr. Herbster and seconded by Mr. McCahill. Bill No. 58-11 passed to-wit; 8-0.

BILL NO. 55-11: AN ORDINANCE AMENDING AND SUPPLEMENTING TITLE XV, LAND USAGE, CHAPTER 154, PLANNING AND ZONING, OF THE ST. JOSEPH COUNTY CODE, AS AMENDED, FOR THE PROPERTY LOCATED AT 64009 STATE ROAD 331, SOUTH BEND, IN 46614 FROM A-AGRICULTURAL DISTRICT TO PUD-PLANNED UNIT DEVELOPMENT. (Petitioner: Gerald A. Reed)

Mr. DeVon reported that Bill No. 55-11 comes with a favorable recommendation.

Derek Spier, Area Plan Commission, stated that the zone change was needed to allow all uses permitted in the PUD District. The Area Plan Commission sent this petition with a favorable recommendation on May 17, 2011. Additional landscaping is proposed along the north side of the building, lighting and signage will be in accordance with the B Business District. According to the Health Department, this site has a straight discharge sewage pipe - which is illegal. In 1999 an application for a permit to install a compliance system was received but there is no record of it being installed. The petitioner is aware that a septic permit is required for a new compliance system. They have entered into an agreement with the Health Department that a new system will be installed within 120 days.

Bernard Feeney, Lang, Feeney and Associates, 715 S. Michigan Street, representing the petitioner stated that he purchased the property to restore it to its previous use, corner grocery store, convenience store type of operation. Originally, Area Plan had suggested rezoning to B Business and checking that with the Building Department they suggested PUD, based on the combined use of B Business in the front of the building and residential in the rear. The issue with the Health Department is being addressed. Mr. Reed has indicated that planting some trees from interacting with the horses.

Mr. Herbster did state the concern about the horses and parking. Mr. Feeney has suggested the Mr. Reed that he look at planting arborvitae and the parking lot will be striped. Mr. Herbster commented on the dangerous intersection and how people have been parking along the road. Mr. Feeney stated that Mr. Reed is familiar with the area and the neighborhood.

Mr. Noland stated that having the shrubs to the east will keep them from parking there. Mr. Herbster stated that his concern was on S.R. 331. Mr. Noland asked if there was any conversation with the neighbors? Mr. Feeney stated that he recommended that to Mr. Reed but was not aware if he followed up on that or not.

Motion to pass Bill No. 55-11 was made by Mr. Herbster and seconded by Mr. Hamann. Bill No. 55-11 passed to-wit; 8-0.

Unfinished Business:

New Business:

Privilege of the floor:

George Lane, 2405 Division Street, M, commented on the Mayor's spending plan for \$99M, how he would be attending the Council Committee meeting to discuss funds for Public Access TV and complemented the Council for the efficient way they run the Council business.

Doug Dunham, 52473 Swanson Drive, SB, spoke with regard for the need of a more comprehensive Leaf Burning Ordinance for the health of the community, economic and environmental reasons.

Adjournment:

Mr. Morton stated that the meeting was adjourned at 8:03 p.m.

Auditor, St. Joseph County

President, St. Joseph County Council