

MINUTES OF THE  
REGULAR MEETING  
OF THE  
ST. JOSEPH COUNTY COUNCIL  
March 10, 2009

The regular meeting of the St. Joseph County Council was called to order at 7:00 p.m., on March 10, 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. Rafael Morton
Mr. Dale DeVon	Mr. W. Randall Przybysz
Mr. Michael J. Kruk	Mr. Mark Root
Mr. Kevin J. Kubsch	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.

**Petitions, Communications & Miscellaneous Matters:**

Moved by Mr. Przybysz and seconded by Mr. Kubsch, the minutes of February 10, 2009 were approved 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. 16-09:** AN ORDINANCE TRANSFERRING THE SUM OF \$38,799.00 FROM VARIOUS ACCOUNTS TO VARIOUS ACCOUNTS ALL BEING WITHIN THE 2009 BUDGET OF ST. JOSEPH COUNTY. (Auditor)  
- Assigned to the Budget and Administration Committee

**BILL NO. 17-09:** AN ORDINANCE APPROVING THE PETITION FOR SPECIAL USE FILED BY DARRELL P. JR. & DAWN D. GILL & E.S. WAGNER CO. FOR THE PROPERTY LOCATED AT 20400 ROCKSTROH ROAD THE SAME BEING PETITION NO. 03-04-09-14 FILED WITH THE AREA BOARD OF ZONING APPEALS.  
- Assigned to the Land Use Planning Committee

**BILL NO. 18-09:** AN ORDINANCE APPROVING THE PETITION FOR SPECIAL USE FILED BY JOE BORKHOLDER FOR THE PROPERTY LOCATED AT 10522 PATTERSON ROAD, WAKARUSA, IN THE SAME BEING PETITION NO. 03-04-09-15 FILED WITH THE AREA BOARD OF ZONING APPEALS.  
- Assigned to the Land Use Planning Committee

**BILL NO. 19-09:** AN ORDINANCE AMENDING AND SUPPLEMENTING TITLE 26, ZONING, OF THE ST. JOSEPH COUNTY CODE, AS AMENDED, FOR PROPERTY LOCATED AT THE NORTHWEST CORNER OF WALNUT ROAD AND THE CONRAIL RAILROAD RIGHT-OF-WAY FROM A AGRICULTURAL DISTRICT TO M MANUFACTURING INDUSTRIAL DISTRICT. (Petitioner: APC Initiated) - Assigned to the Land Use Planning Committee

**BILL NO. 21-09:** AN ORDINANCE APPROPRIATING THE SUM OF \$750,000.00 OUT OF THE ST. JOSEPH COUNTY HEALTH PLAN RESERVE FUND - 050 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR, 2009. (Auditor/County Council) - Assigned to the Budget and Administration Committee

**BILL NO. 22-09:** AN ORDINANCE AMENDING AND SUPPLEMENTING TITLE 26, ZONING, OF THE ST. JOSEPH COUNTY CODE, AS AMENDED, FOR PROPERTY LOCATED IN THE 17600 BLOCK OF GENERATIONS DRIVE, SOUTH BEND, IN 46635 FROM "M" MANUFACTURING INDUSTRIAL DISTRICT TO "R-2" RESIDENTIAL DISTRICT AND "O" OFFICE DISTRICT. (Petitioner: North Central IN Medical Education Foundation) - Assigned to the Land Use Planning Committee

**BILL NO. 23-09:** AN ORDINANCE TO VACATE A PUBLIC WAY OR PUBLIC PLACE, LOCATED WHOLLY WITHIN THE UNINCORPORATED PORTION OF ST. JOSEPH COUNTY, TO-WIT: FIRST EAST-WEST ALLEY SOUTH OF BULLA ROAD RUNNING BETWEEN PALMER STREET AND BERNICE STREET. BERNICE STREET RUNNING SOUTH FROM BULLA ROAD FOR APPROXIMATELY 880 FEET TO ITS TERMINATION. (Petitioner: University of Notre Dame Du Lac) - Assigned to the Land Use Planning Committee

**BILL NO. 25-09:** AN ORDINANCE AMENDING AND SUPPLEMENTING TITLE 26, ZONING, OF THE ST. JOSEPH COUNTY CODE, AS AMENDED, FOR PROPERTY LOCATED AT VACANT LOT NORTH & ADJACENT TO 1500 E. MCKINLEY AVE., FROM R - SINGLE FAMILY DISTRICT TO C - COMMERCIAL DISTRICT. (Petitioner: Stoyan Stoyanov) - Assigned to the Land Use Planning Committee

**BILL NO. 26-09:** AN ORDINANCE AMENDING AND SUPPLEMENTING TITLE 26, ZONING, OF THE ST. JOSEPH COUNTY CODE, AS AMENDED, FOR THE PROPERTY LOCATED AT 15601 STATE ROAD 23, GRANGER, INDIANA, FROM "R" SINGLE FAMILY DISTRICT TO "O/B" OFFICE/BUFFER DISTRICT. (Petitioner: Scott Von Stetina) - Assigned to the Land Use Planning Committee

**Resolutions:**

**BILL NO. 20-09:** A RESOLUTION OF THE ST. JOSEPH COUNTY COUNCIL, INDIANA APPROVING OF AND PROCLAIMING SUPPORT AND PARTICIPATION IN THE DECENNIAL CENSUS 2010. (Area Plan Commission)

Larry Magliozzi, Assistant Director, Area Plan Commission, the Census Bureau will be conducting the ten (10) year census. He stated how a County Committee has been formed to support the Bureau to obtain an accurate count. This Committee is comprised of all the jurisdictions in the County; Cities of South Bend, Mishawaka; towns and villages. The response rate in 2000 was only 74 percent. He stated that they would like to improve this rate.

Motion to pass was made by Mr. Weaver and seconded by Mr. Catanzarite. Bill No. 20-09 passed to-wit; 9-0.

**BILL NO. 24-09:** RESOLUTION OF THE ST. JOSEPH COUNTY COUNCIL APPROVING THE ISSUANCE OF GENERAL OBLIGATION BONDS BY THE ST. JOSEPH COUNTY AIRPORT AUTHORITY.

John Schalliol, Executive Director of the South Bend Regional Airport, 4477 Progress Drive, stated that they were asking for support to allow the Airport Authority to sell a General Obligation Bond Issue for no more than \$6 million for the construction of a 45,000 square foot addition to the terminal. This will be paid solely from the proceeds of the passenger facility charge.

Motion to pass was made by Mr. Catanzarite and seconded by Mr. Przybysz. Bill No. 20-09 passed to-wit; 9-0.

**Public Hearings:**

**BILL NO. 10-09:** AN ORDINANCE APPROPRIATING THE SUM OF \$99,910.00 OUT OF THE ST. JOSEPH COUNTY HEALTH FUND - 005 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. 10-09 comes with a favorable recommendation.

Nick Molchan, Administrator, this is the 2009 Local Health Department Trust Fund grant. These funds come from the Indiana State Department of Health. These funds are part of the Tobacco Settlement used to supplement programs.

Motion to pass was made by Mr. Kubsch and seconded by Mr. Kruk. Bill No. 10-09 passed to-wit; 9-0.

**BILL NO. 12-09:** AN ORDINANCE APPROPRIATING THE SUM OF \$5,670.00 OUT OF THE ST. JOSEPH COUNTY VEHICLE INSPECTION FUND - 092 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. 12-09 comes with a favorable recommendation.

Tom Nowicki, Finance Manager, stated that these funds are generated from a \$5 fee that officers make on vin checks for vehicles.

Motion to pass was made by Mr. Kruk and seconded by Mr. Weaver. Bill No. 12-09 passed to-wit; 9-0.

**BILL NO. 11-09:** AN ORDINANCE TRANSFERRING THE SUM OF \$5,025.00 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. 11-09 comes with a favorable recommendation.

Nick Molchan, Administrator, explained how these transfers will help the use all the funds available prior to the end of the grant cycle.

Motion to pass was made by Mr. Kruk and seconded by Mr. DeVon. Bill No. 11-09 passed to-wit; 9-0.

Mr. Morton announced that there would be a combined public hearing on Bill No. 15-09 and 14-09 but would be voted on separately.

**BILL NO. 15-09:** AN ORDINANCE AMENDING ORDINANCE 99-08, THE SAME BEING AN ORDINANCE ESTABLISHING SALARIES AND FIXING THE NUMBERS OF EMPLOYEES OF ST. JOSEPH COUNTY FOR THE YEAR 2009. (Dept. 056 - Court Substance Abuse Program) - Assigned to the Human Services/Criminal Justice Committee

**BILL NO. 14-09:** AN ORDINANCE TRANSFERRING THE SUM OF \$4,438.00 FROM VARIOUS ACCOUNTS TO VARIOUS ACCOUNTS ALL BEING WITHIN THE 2009 BUDGET OF ST. JOSEPH COUNTY. (Dept. 056 - Court Substance Abuse Program) - Assigned to the Human Services/Criminal Justice Committee

Mr. Przybysz reported that Bill No. 15-09 and 14-09 come with a without recommendation.

Roland Chamblee, Judge, Superior Court, stated that he was the supervising Judge for the Court Substance Abuse Program. This is a recommendation made by the Indiana Judicial Center that Spanish speaking clients have certified translation. These monies have already been budgeted. The responsibilities of the position change, however, there is no impact on the budget.

Mr. Kruk asked why this wasn't done during the regular budget process? Judge Chamblee stated that the former Director of C.S.A.P. left and a new Director was placed. Efficiency goals were made that changed job positions. Mr. Kruk stated that there will be created a new position at a higher salary and taking the additional monies needed to fund it? Judge Chamblee stated that if Mr. Kruk was referring to the \$938.00, that is a new position. This would be a part-time person who is an interpreter and will be contractual. Mr. Kruk said that he was referring to the Compliance Officer. That salary is being increased, and taking the monies from Drug Testing.... The Judge said that part was a reduction in the salary for the Client Service Coordinator. It is essentially because of increased responsibilities. This does not change the overall budget of the Agency. Mr. Kruk said that his concern was, that if this approved and this salary is established, then going forward in the next few years, will there be the money for that additional salary? The Judge said that historically, every year, that particular item has had the budget exceeded the expenses. They don't know if that will continue and they would be faced with a decision as is every other county department. *Secretary's Note: At times these comments were hard to follow and understand.*

Motion to pass was made by Mr. Catanzarite and seconded by Mr. Kubsch. Bill No. 15-09 passed to-wit; 8-1 (Kruk).  
Motion to pass was made by Mr. Kubsch and seconded by Mr. DeVon. Bill No. 14-09 passed to-wit; 8-1 (Kruk).

**BILL NO. 159-08:** AN ORDINANCE APPROVING THE PETITION FOR SPECIAL USE FILED BY POINT OF LIGHT MINISTRIES FOR THE PROPERTY LOCATED AT 16323 ROOSEVELT ROAD THE SAME BEING PETITION NO. 01-07-09-07 FILED WITH THE AREA BOARD OF ZONING APPEALS. - Assigned to the Land Use Planning Committee

Mr. DeVon reported that Bill No. 159-08 comes with a favorable recommendation.

Mark Lyons, Building Department, this Special Use is for a recreational use and a retreat with a bed & breakfast and the accessory building for community and recreational clubhouse. At the February 4, 2009 meeting of the Area Board of Zoning Appeals, this came with a favorable recommendation.

Brian Nafrady, 16323 Roosevelt Road, Mishawaka, spoke on behalf of Point of Light Ministry. He stated that in the thirty (30) years of working with college age and young adults the common complaint that has surfaced that there is nothing to do on the South End of town. There community felt that it would be good to provide a safe environment where wholesome activities could take place. The purpose of the ministry is to developing purposeful well-balanced citizens through education, recreation and counseling activities. This facility can accommodate a recreational use for soccer, volleyball, basketball, tennis and ice skating for families and individuals. It can also be utilized by church groups to have group outings or day retreats. The facility could provide life skills training in car maintenance, home repair, gardening, exercise, nutrition, tutoring, music and crafts. There could be financial planning, support care groups for senior care, vocational training, marriage and family counseling, budgeting, etc. They could then have a cup of coffee to draw support from one another. He stated that they have met with the neighbors to address their concerns and have tried to come up with the solutions that will be acceptable to them. There will be controlled hours and supervision at all times. This building is an isolated structure and should have no distractions to the neighbors.

Mr. Catanzarite asked if this was a non-denominational group and could anyone contract with you to use the facilities?

Mr. Nafrady stated yes.

In Favor:

John Ferguson, 61770 Miami Road  
Jeff Moser, 14650 Patterson Road  
Wynn Laidig, 14450 Madison Road

This environment was conducive to our students and were asking when could they come back. By obtaining this property we are in hopes of connecting with other churches in the community. There are many of us that are in favor of this kind of facility.

In Opposition:

Rita Kopala, 66559 Ivy Road

She was against this property becoming a non-for-profit and that there would be no money on the tax roll to help keep the County running. *Secretary's note: Mrs. Kopala was hard to understand.*

Motion to pass was made by Mr. Schafer and seconded by Mr. Root. Bill No. 159-08 passed to-wit; 9-0.

**BILL NO. 134-08:** AN ORDINANCE AMENDING AND SUPPLEMENTING TITLE 26, ZONING, OF THE ST. JOSEPH COUNTY CODE, AS AMENDED, FOR PROPERTY LOCATED AT 17490 S.R. #23, FROM "O/B" OFFICE/BUFFER DISTRICT TO "O/B" OFFICE BUFFER DISTRICT. (Petitioners: Dr. Jeffery Mader) - Assigned to the Land Use Planning Committee

Mr. DeVon reported that Bill No. 134-08 comes with a without recommendation.

Christa Nader, Area Plan Commission, stated that there is a current 2,790 square foot structure with a 1200 square proposed addition. This would cover 6.2 percent of the site. The paved area that includes 26 parking spaces, covers 17.5 percent of the site. There are two access sites. This entire lot is in the flood plains. The existing building and proposed addition are in the flood way. Back in 1991 the original petition was given an unfavorable recommendation. In 1993 a petition was filed and received an unfavorable recommendation. In 2007 a petition was filed to expand the parking lot and this petition was withdrawn. On December 3, 2008 a letter was received from the Juday Creek

Dougdale Acres Neighborhood Association opposing the rezoning along with a petition of 66 signatures. On January 20, 2009, the Area Plan Commission sent this with an unfavorable recommendation and that this site has been built to its capacity.

Stephen Studer, Esq., 520 Park Place Court, Mishawaka representing the petitioner. He stated that this addition will be used as a new reception area and the present reception area will be converted to a storage area for medical records and supplies. This structure will not be any closer to Juday Creek. The residential character of the house will be retained. Dr. Mader and his staff occupy approximately 12 parking spaces and there are two handicapped spaces. There are college students that come to the office on a regular basis. They operate between 8:00 - 5:00 with no evening or weekend hours. During the summer they are only open three days a week and three and a half during the winter. Dr. Mader is not changing the land use of the property. Area Plan suggests that the best use is Residential, which it has not been for nearly 20 years or low density office. O/B permits 5,000 square foot office building and with this addition, the site will be 3,097 square feet. The lot is seven times larger than the minimum lot size. With the new addition and parking less than 25 percent of the site will be occupied. Mr. Studer stated that he has had discussions with the Surveyor's Office and they determined that their major concern was that with the addition of Brown Mackie College that this addition will be an accumulative affect on Juday Creek. He stated that they hired JF New Associates and their report, addressing the proposal of Mike Danch, that the stream water adequately protects the creek. Dr. Mader has brought city sewer and water to this site and did offer the service to the neighbors. He stated that the concerns expressed by the Area Plan Commission with respect to the storm water issue are non-existent.

Mr. Kubsch stated that 1200 feet is not a large amount but his concern still was are these offices going to expand? Mr. Kubsch also had concerns with the traffic on S.R. 23. Mr. Studer stated that Dr. Mader does not plan to expand. There also will be a 25 foot buffer between the edge of the parking and the property line. There will be extra landscaping.

Mr. Catanzarite had a question for Mr. Danch regarding the French Drain System.

Mike Danch, DANCH HARNER & ASSOCIATES, 1643 Commerce Drive, stated that they would be adding additional evergreen screening and large Maple and Oak trees. These will go around the entire parking lot. The report on the drainage is that there is a culvert pipe that runs under the street and they are going to maintain the open swale. This was a report from the task force and Jessica Clark, County Engineer. He stated that what they are going to do with the parking lot is that they will improve the lot which will prevent any water that hits that surface from that parking area on to the grass area and into Juday Creek. They will also be using the French Drain System and in this particular case because of the high water table, there will be soil boring done to determine the exact rate - the depth of the system. That may require that the lot may have to be raised. JF New Associates has come up with a structure that is placed in parking areas to separate any kind of oils or by products to be filtered out to a sediment control area that gets pumped out. The owner would maintain this on a yearly or bi-yearly basis. Since the building is in the flood way area, they would still need to go to the DNR and the Army Corp of Engineers for approval of the addition. There will have to be a final plan to the Juday Creek Task Force for their approval all well.

*Secretary's note: the tape was turned during Mr. Kruk's question.*

Mr. Catanzarite asked what the cost of the project? Mr. Danch stated that the parking area is about \$6 a square foot, about \$30,000, landscaping \$10,000 and the building, approximately \$300,000 for the entire projects.

In Favor:

Jeff Mader, 17490 S.R. 23

Barbara A. Pasionek-Wieczorek, 1005 Bowdoin Dr. - South Bend Community School Corporation

Jennifer Klein - 1700 Mishawaka Avenue - IUSB

Robin Aranowski - 51242 Enchanted Oak Court

The residential appearance of the property has been maintained. The office weathered the 100 year rain last year without any water in the structure. The Dr. introduced his staff and students. His reception area has no area for the children to play. With the additional parking, patrons can park on pavement rather than gravel. He stated that he would be able to offer better parking to the disabled and elderly. He stated that he has enjoyed a cordial relationship with the neighbors up the street and several are currently patients. Students are allowed to observe three days a week to see what goes on, on the job. Dr. Mader is one of the few dentists who are participating in the High School

Program. Indiana University at South Bend is pleased to be associated with Dr. Mader. He has helped the students observe a dental office prior to beginning the Dental Hygienists Program. Dr. Mader takes extreme pride in his facility and is constantly improving and maintaining the office. The additional parking will provide adequate space for all. The waiting room is very small and the records have to be kept in an outside storage shed.

In Opposition:

Wanda Shock - 17346 McErlain Street  
Dave Shock - 17346 McErlain Street  
April Kwiatkowski, 17150 McErlain Street  
April Natynka - representing Lila Sarges 17220 McErlain Street

This street has a diverse population. In 1991 he told the Council that he would not change the building and parking lot. The Council, at that time, approved this by one vote. In 1994 he wanted to expand the building and parking lot again and the Council brought the compromise. The compromise was attach a garage and make that an examination rooms and don't expand the parking lot. The variance was approved by the BZA for Dr. Mader to expand his examination rooms. This was agreed to. This is not on S.R. 23, it is in our neighborhood. The neighbors do wish him well, but he wants it all. The offer for the neighbors to join the septic system was far too expensive. Please protect a small neighborhood.

Mr. Schafer asked if the neighborhood was on septic? Mrs. Shock replied yes. Mr. Schafer asked how the water from the subdivision is taken care of from going into Juday Creek? Mrs. Shock said that in 1993 she asked the city to annex them. They were not interested in doing this. Mr. Schafer asked if there was a pond or anything to collect the water? Mrs. Shock stated no.

When this business started there was an access on McErlain Street. There is no access or curb cut on S.R. 23. This is really at Elkin and S.R. 23. By changing the address of the business, they are showing that this area is developing a lot more than it really is. The neighbors do not want Dr. Mader to leave, but, we do not want him to expand his practice. If he would expand his days of practice, there would be no parking problem. If the additional parking and curb cut are added this will go approximately 26 more feet into the street. There is so much traffic now and I have almost been hit. Dr. Mader promised not to expand when this was first approved.

Rebuttal:

Mr. Studer stated that they are not encroaching anymore into the neighborhood and they are not expanding beyond their property boundary. In 1991 Dr. Mader said that he wasn't going to expand the building. In the last twenty years there have been many changes and a lot of new buildings. The change in dentistry is that there are a lot of disposables. Things were cleaned and used again and again. There is a lot of need for storage now. Some of the people have moved in during the last 10-15 years and they knew the dentist office was there. The practice is not being expanded. They are only adding a 1200 foot extension and nine parking places. The septic was offered to the residents at a cost of \$10,000. Mr. Studer read from a petition against Brown Mackie stating how they were not opposed to redevelopment. But they oppose everything. The land use is not being changed. This is still only 80 percent of what could be under Office/Business. There will only be one dentist and no other will be added.

Mr. DeVon questioned Mr. Danch if the current parking lots runoff goes into the creek currently? Mr. Danch stated that it runs into the grass area. This was rezoned in 1991 the old drainage standards were in affect. Now, we are under a 5.6 inch rainfall, which is about a thousand percent increase. So, what they have to do is bring it all up to today's standards. Mr. DeVon stated that hopefully this will be less pollution. Mr. Danch agreed that it would be the end result here. The Army Corp of Engineers must approve how the building is laid out.

Mr. Kruk asked if the existing lot was asphalt and accommodates 26 spaces? Mr. Studer stated that they are going to 26 spaces. Mr. Kruk asked if he understood Dr. Mader to say that there is some additional space of gravel for parking? Mr. Studer stated that there is and that would be removed and go back into grass. Mr. Kruk stated that it sounds like the traffic is already there and just taking the gravel area and making it asphalt. Mr. Studer stated that the handicapped spaces are hard to get to and they will be widened. Mr. Kruk questioned what days of the week is the practice open? Dr. Mader stated they work Monday, Tuesday, Wednesday 8:00 to 5:00 and during the winter Thursday from 7:30 - 2:00 and are not open on weekends. The practice is closed for eight weeks of vacation.

Motion to pass was made by Mr. Przybysz and seconded by Mr. Root. Bill No. 134-08 passed to-wit; 8-1 (Kubsch).

**Unfinished Business:**

**New Business:**

**Privilege of the Floor:**

**Adjournment:**

Mr. Morton stated that the meeting was adjourned at 8:30 p.m.

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Auditor, St. Joseph County

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President, St. Joseph County Council