

MINUTES OF THE  
REGULAR MEETING  
OF THE  
ST. JOSEPH COUNTY COUNCIL  
March 8, 2011

The regular meeting of the St. Joseph County Council was called to order at 7:07 p.m., on March 8, 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  
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. Catanzarite moved and was seconded by Mr. Noland to approve the minutes of February 8, 2011 and March 1, 2011. The motion passed by a voice vote; 9-0. No negatives were heard.

Mr. Hamann moved to return to Committee Bill No. 12-11 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.

Mr. Hamann moved to Suspend the Rules and First and Second Reading this evening on Bill No. 25-11, 25-11 & 26-11. His motion was seconded by Mr. Kruk. The motion passed by a voice vote; 9-0. No negatives were heard.

No report from the County Auditor.

No report from the Board of Commissioners.

No report from any Special Committees.

**First Readings:**

**BILL NO. 17-11:** AN ORDINANCE TRANSFERRING THE SUM OF \$574.00 FROM VARIOUS ACCOUNTS TO VARIOUS ACCOUNTS ALL BEING WITHIN THE 2011 BUDGET OF ST. JOSEPH COUNTY. (Dept. 150 - Penn Assessor) - Assigned to the Budget and Administration Committee

**BILL NO. 18-11:** AN ORDINANCE APPROPRIATING THE SUM OF \$10,000.00 OUT OF THE ST. JOSEPH COUNTY GENERAL FUND - 001 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR 2011. (Dept. 020 - Superior Court) - Assigned to the Human Services/Criminal Justice Committee

**BILL NO. 19-11:** AN ORDINANCE APPROPRIATING THE SUM OF \$765.00 OUT OF THE ST. JOSEPH COUNTY GENERAL FUND - 001 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR 2011. (Dept. 002 - Auditor) - Assigned to the Budget and Administration Committee

**BILL NO. 21-11:** AN ORDINANCE OF THE ST. JOSEPH COUNTY COUNCIL AMENDING TITLE III ADDRESSING "FINANCES" OF THE ST. JOSEPH COUNTY CODE BY ADDING AND ESTABLISHING NEW SECTION 34.33 "COUNTY AUDITOR'S INELIGIBLE DEDUCTIONS FUND" (Petitioner: St. Joseph County Auditor) - Assigned to the Budget and Administration Committee

**BILL NO. 22-11:** AN ORDINANCE APPROPRIATING THE SUM OF \$25,000.00 OUT OF THE ST. JOSEPH COUNTY SURVEYOR SECTION CORNER PERPETUATION FUND - 081 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR, 2011. (Surveyor Section Corner Perpetuation Fund) - Assigned to the Engineering and Transportation Committee

**BILL NO. 23-11:** AN ORDINANCE APPROPRIATING THE SUM OF \$10,000.00 OUT OF THE ST. JOSEPH COUNTY FAMILY COURT GRANT FUND - 115 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR, 2011. (Dept. 054 - Domestic Relations) - Assigned to Human Services/Criminal Justice Committee

**BILL NO. 24-11:** AN ORDINANCE AMENDING ORDINANCE 101-10 THE SAME BEING AN ORDINANCE ESTABLISHING SALARIES AND FIXING THE NUMBER OF EMPLOYEES OF ST. JOSEPH COUNTY FOR THE YEAR 2011. (Dept. 005 - County Police) - *For Public Hearing this evening*

**BILL NO. 25-11:** AN ORDINANCE APPROPRIATING THE SUM OF \$45,160.00 OUT OF THE ST. JOSEPH COUNTY GENERAL FUND - 001 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR, 2011. (Dept. 005 - County Police & Dept. 034 - Commissioners) {increase/decrease appropriation} - *For Public Hearing this evening*

**BILL NO. 26-11:** AN ORDINANCE TRANSFERRING THE SUM OF \$8,892.00 FROM VARIOUS ACCOUNTS TO VARIOUS ACCOUNTS ALL BEING WITHIN THE 2011 BUDGET OF ST. JOSEPH COUNTY. (Dept. 034 - Commissioners) - *For Public Hearing this evening*

**BILL NO. 27-11:** AN ORDINANCE APPROPRIATING THE SUM OF \$24,000.00 OUT OF THE ST. JOSEPH COUNTY SEX/VIOLENT OFFENDER FEE FUND - 135 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR, 2011. (Dept. 005 - County Police) - Assigned to the Human Services/Criminal Justice Committee

**BILL NO. 28-11:** AN ORDINANCE OF THE ST. JOSEPH COUNTY COUNCIL AMENDING TITLE III, ADMINISTRATION, CHAPTER 34.20, PARK AND RECREATION OPERATING FUND AND APPENDIX OF THE ST. JOSEPH COUNTY, INDIANA CODE. - Assigned to the Land Use Planning Committee

**BILL NO. 29-11:** AN ORDINANCE TO REDUCE THE 2011 ST. JOSEPH COUNTY - COUNTY GENERAL FUND - 001 - 2011 BUDGET. (Budget Reduction) - Assigned to the Budget and Administration Committee

**BILL NO. 30-11:** AN ORDINANCE TO REDUCE THE 2011 ST. JOSEPH COUNTY - COUNTY HIGHWAY FUND 002 - 2011 BUDGET. (Budget Reduction) - Assigned to the Budget and Administration Committee

**BILL NO. 31-11:** AN ORDINANCE TO REDUCE THE 2011 ST. JOSEPH COUNTY MAJOR CUMULATIVE BRIDGE FUND - 023 AND CUMULATIVE BRIDGE FUND - 025 - 2011 BUDGET. (Budget Reduction) - Assigned to the Budget and Administration Committee

**BILL NO. 32-11:** AN ORDINANCE APPROPRIATING THE SUM OF \$3,905,033.00 OUT OF THE PUBLIC SAFETY L.O.I.T. FUND - 215 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR 2011 BUDGET. (Dept. 005 - County Police/ Dept. 006 - County Jail) - Assigned to the Budget and Administration Committee

**BILL NO. 33-11:** AN ORDINANCE APPROPRIATING THE SUM OF \$10,194,963.00 OUT OF THE ST. JOSEPH COUNTY C.E.D.I.T. FUND - 009 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR, 2011. (Commissioners/Auditor/Highway) - Assigned to the Budget and Administration Committee

**BILL NO. 34-11:** AN ORDINANCE APPROVING THE PETITION FOR SPECIAL USE FILED BY LAKEVILLE FOLK AND BLUES FEST, LLC AND LARRY MOORE FOR THE PROPERTY LOCATED AT 64491 MANGUS DRIVE, LAKEVILLE, IN 46536 THE SAME BEING PETITION NO. 04-06-11-1 FILED WITH THE AREA BOARD OF ZONING APPEALS. - Assigned to the Land Use Planning Committee

**Public Hearings:**

**BILL NO. 6-11:** AN ORDINANCE APPROPRIATING THE SUM OF \$30,932.00 OUT OF THE ST. JOSEPH COUNTY PLAT BOOK MAINTENANCE FUND - 037 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR 2011. (Dept. 002 - Auditor) - Assigned to the Budget & Administration Committee

Mr. Kruk reported that Bill No. 6-11 comes with a favorable recommendation.

Peter Mullen, Auditor, stated that this is an annual appropriation. These funds come from fees that are collected by the Plat Room. These funds are then appropriated to the Auditor's Office to pay expenses of the Plat Room.

In Opposition:

Rita Kopala, 66559 Ivy Road, Lakeville, talked about the Section Perpetuation Fund and that it was not going to be collected any longer? (Drainage Board in the Surveyor's Office) Mr. Mullen explained that this fund had nothing to do with the Surveyor and that there were many Perpetuation Funds.

Motion to pass Bill No. 6-11 was made by Mr. Kruk and seconded by Mr. De Von. Bill No. 6-11 passed to-wit; 9-0.

**BILL NO. 10-11:** AN ORDINANCE APPROPRIATING THE SUM OF \$11,099.00 OUT OF THE FAMILY COURT GRANT FUND - 115 AND \$15,720.00 OUT OF THE D.R.C.B. FEE FUND - 117 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR, 2011. (Dept. 054 - Domestic Relations) - Assigned to the Human Services/Criminal Justice Committee

Mr. Hamann reported that Bill No. 10-11 comes with a favorable recommendation.

Beth Kerns, Director, explained that these funds are coming from the Family Court Grant for travel, etc. The second appropriation is from the user fee fund and is going to be set up in line items. These user fees are not County funds, they are funds that are generated from programs that they offer. Setting these funds up in a line item budget has not been done in the past.

Motion to pass Bill No. 10-11 was made by Mr. Kruk and seconded by Mr. Hamann. Bill No. 10-11 passed to-wit; 9-0.

**BILL NO. 11-11:** AN ORDINANCE APPROPRIATING THE SUM OF \$47,000.00 OUT OF THE ST. JOSEPH COUNTY CLERK RECORD PERPETUATION FUND - 083 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR, 2011. (Dept. 001 - Clerk) - Assigned to the Budget and Administration Committee

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

Terri Rethlake, Clerk, stated that the appropriation is needed in the Clerk's budget.

Motion to pass Bill No. 11-11 was made by Mr. Hamann and seconded by Mr. Noland. Bill No. 11-11 passed to-wit; 9-0.

**BILL NO. 14-11:** AN ORDINANCE APPROPRIATING THE SUM OF \$600,000.00 OUT OF THE ST. JOSEPH COUNTY COMMUNITY BASED CORRECTIONS FUND - 800 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR 2011. (Dept. 795 - Adult Monitoring - Community Based Corrections) {inter fund transfer} - Assigned to the Human Services/Criminal Justice Committee

Mr. Hamann reported that Bill No. 14-11 comes with a favorable recommendation.

Sharon McBride, Executive Director, asked for a transfer of funds into their Building Fund.

Motion to pass Bill No. 14-11 was made by Mr. Kruk and seconded by Mr. Catanzarite. Bill No. 14-11 passed to-wit; 9-0.

**BILL NO. 16-11:** AN ORDINANCE APPROPRIATING THE SUM OF \$180,200.00 OUT OF THE ST. JOSEPH COUNTY JUVENILE PROBATION FEES FUND - 056 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE YEAR 2011. (Dept. 025 - Juvenile & Probate Court) - Assigned to the Human Services/Criminal Justice Committee

Mr. Hamann reported that Bill No. 16-11 comes with a favorable recommendation.

Dr. Bill Bruinsma, Executive Director, requested these funds to establish a Juvenile Mentoring Program for children who are leaving the detention facility.

In Favor:

Bill Anderson, Companions of a Journey - mentoring programs establish five (5) basic objectives. The main one being to reduce recidivism rate, enhance the support of effectiveness of peoples lives, including their family, peers and community. Included in the program is increasing G.P.A. and increase self esteem, awareness and self worth because they have a support person and decrease misbehavior.

Steven Kohler, Pastoral Board of JJC Outreach Program, if we can mentor them now, then we might have to deal with them later. It is ideal that a mentor send a year with the child.

Jesse Davis, 1333 E. Calvert, SB, juveniles go back through the system more than adults do. Mentoring will help them better their lives. If we let them get worse, then we have to support them in the prison system for live.

Terry Huff, speaking from both sides of the fence, we need to make sure that the young people get the help to become better sons, daughters, employees, employers and American Citizens.

Dr. Kenyoo, Chaplain at JJC, the children have high hopes and this system will help a lot of young people as well as their family members.

Motion to pass Bill No. 16-11 was made by Mr. Kruk and seconded by Mr. Herbster. Bill No. 16-11 passed to-wit; 9-0.

Mr. DeVon stated that he pledged a while back to do whatever he could to help kids in this community. This bill may not take care of all these issues but it is a start. Dr. Bruinsma has done so much for these kids. If each one of the people in this room would step up and mentor a kid coming out - because they need good people and maybe the Juvenile Justice Center could be put out of business.

Mr. Morton announced that there would be a combined Public Hearing on Bill Nos. 24-11, 25-11 and 26-11 but would be voted on separately. He also stated that since Rules were Waived for First Reading and Public Hearing this evening, there would be no Committee Report.

**BILL NO. 24-11:** AN ORDINANCE AMENDING ORDINANCE 101-10 THE SAME BEING AN ORDINANCE ESTABLISHING SALARIES AND FIXING THE NUMBER OF EMPLOYEES OF ST. JOSEPH COUNTY FOR THE YEAR 2011. (Dept. 005 - County Police)

**BILL NO. 25-11:** AN ORDINANCE APPROPRIATING THE SUM OF \$45,160.00 OUT OF THE ST. JOSEPH COUNTY GENERAL FUND - 001 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR, 2011. (Dept. 005 - County Police & Dept. 034 - Commissioners)  
{increase/decrease appropriation}

**BILL NO. 26-11:** AN ORDINANCE TRANSFERRING THE SUM OF \$8,892.00 FROM VARIOUS ACCOUNTS TO VARIOUS ACCOUNTS ALL BEING WITHIN THE 2011 BUDGET OF ST. JOSEPH COUNTY. (Dept. 034 - Commissioners)

Michael D. Grezegorek, Sheriff, stated that Bill No. 24-11 changes the position of legal advisor from a part time to full time position at \$64,000.00. Bill No. 25-11 and 26-11 are companion bills to 24-11 that fund the position and cover FICA, PERF and insurance.

Mr. Herbster asked if this position is full time, will billable hours be cut down for other attorneys? The Sheriff stated that yes it will. They could be cut down by as much as \$150.00 per hour. This job will come along with expanded responsibilities and duties. This attorney will also be a grant writer, assist and train officers on legal issues and respond to major cases to assist the officers with legal advice and to help build stronger cases. This position will also be re-instituting the High Tech Crimes Unit (internet based crimes).

Mr. Morton asked if he had any feedback from the Commissioners on this change? The Sheriff said yes. He stated that the first person he went to was Commissioner Kovach and have since spoken to the other two (2) Commissioners and they all agree that this is a position that would be of value to the County Police Department.

Motion to pass Bill No. 24-11 was made by Mr. Hamann and seconded by Mr. Noland. Bill No. 24-11 passed to-wit; 9-0.

Motion to pass Bill No. 25-11 was made by Mr. Hamann and seconded by Mr. Noland. Bill No. 25-11 passed to-wit; 9-0.

Motion to pass Bill No. 26-11 was made by Mr. Kruk and seconded by Mr. DeVon. Bill No. 26-11 passed to-wit; 9-0.

**BILL NO. 15-11: AN ORDINANCE OF THE ST. JOSEPH COUNTY COUNCIL AMENDING TITLE IX, GENERAL REGULATIONS BY APPEALING IN ITS ENTIRETY AND REPLACING WITH A NEW SMOKING REGULATIONS CHAPTER 96.01 THROUGH 96.19 OF THE ST. JOSEPH COUNTY, INDIANA CODE. - Assigned to the Human Services/Criminal Justice Committee**

Mr. Hamann reported that Bill No. 15-11 comes without a recommendation.

The Clerk read the amendment stating that on page 9, under Enforcement, Section 96.12 (B) new words are Health R Regulated License and adding at the end of the sentence, when applicable. Letter (D) on the same page the word shall changed to may and on page 11, (G) Resolution R-08-06.

Mr. Catanzarite offered another amendment on page 4 (M) under definitions Retail Tobacco Store is unnecessary due to the fact that there is no mention of a Retail Tobacco Store anywhere in the body of the bill. There (M) should be stricken and the order lettering changed.

A motion to amend was made by Mr. Kruk and seconded by Mr. Catanzarite.

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

Jill Sabo, Project Coordinator for Tobacco Free of St. Joseph County, 420 W. 4<sup>th</sup> Street, Mishawaka, stated how they believe that all workers should have clean air to breath. She stated that she would hope that the Council would listen and make your decision based on the facts that will be provided. Since the first Surgeon General Report in 1964, things have changed "Smoke Free Laws and Ordinances" have been passed banning smoking in certain areas. This bill is not to discriminate against smokers, this is just to resolve more and more dangers of secondhand smoke and then making corrections to laws and policies that are important to that.

In Favor:

Dr. Margo DeMont, Executive Director of Community Health, Memorial Hospital  
Dr. Jason Marker, 63060 Dogwood Road, Mishawaka  
Dr. Jose A. Bufill, 100 Navare Place, South Bend  
Jetta A. Cruse, 2409 Erskine Boulevard, SB  
Barbara Jones, 1120 N. Lawrence Street, SB  
Noel Yarger, 17180 McErlain, SB  
Jeff Leslie, Vice-President of Hacienda, 55790 Jefferson Knolls Drive, Osceola  
Conor Blanco, 825 East Washington Street, SB  
Mary Schetz, 1914 Walnut Canyon Court, M

Jacqueline Davis, 2409 Flint Court, SB  
Kellirae Boann, 1076 Woodward Avenue, SB  
Miranda Spitznagle, 6933 Munsee Lane, Indianapolis  
Don Keeler, 58250 Windsor Avenue, SB  
Craig Schroeder, 1320 Oak Ridge Drive, SB  
Julie Seller, 1219 S. 26<sup>th</sup> Street, SB  
Mark Putuck, 810 S. 7<sup>th</sup> Street, Goshen  
Tracy Burchett, 29079 May Street, Niles, MI  
LaTonya M. Griffin, 818 Ridgedale Road, SB  
Kathy Deka, 926 E. Victoria, SB  
Luis A. Borrero, 18335 Donegal Drive, SB  
Dan Scarsella, 11560 Split Oak Drive, Granger  
Michelle Peters, 1025 Deepwood Drive, M

A letter was read from three (3) healthcare providers encouraging the passage of this bill (Memorial Hospital - St. Joseph Regional Medical Center and South Bend Clinic). Smoking in any restaurant, bar or private club should be banned. According to the Indiana University School of Medicine, Bowen Research Center study 1,200 Hoosiers die every year due to secondhand smoke. Smoke interacts to many other medical diseases. Dr. Marker stated that 80 percent of the patients he sees are in his office because of something directly or indirectly due to a smoking or secondhand smoking problem. Passing this will help with lower insurance premiums. Over the past thirty (30) years or so we have learned that smoking affects non-smokers as well as smokers. This is based on a large body of research. This research has prompted a variety of public and professional groups to issue statements to that affect and to make recommendations to local and state governments regarding what needs to be done regarding what to do with this public health problem. In communities where strict smoking regulations are in place, certain types of hospitalizations go down.

Mr. Catanzarite asked Dr. Bufill if he was an Oncologist? His response was yes. Mr. Catanzarite asked him how long he was in practice. Dr. Bufill stated since 1989 - about twenty-two (22) years. Mr. Catanzarite asked if he had treated a victim of cancer who was a worker in an environment who was exposed to secondhand smoke and was a non-smoker? Dr. Bufill stated that from the clinical point of view, a lot of times it is difficult to tease out because they will identify themselves as non-smokers. So you have to ask the question, what type of work did you do? A lot of times it is restaurant workers or in places where a lot of people smoke. Dr. Bufill stated that he has treated patients with cancer that are likely related to secondhand smoke. Mr. Catanzarite asked if there were specific cancers related to smoking when you treat someone? Dr. Bufill stated that there are many cancers that can be linked to tobacco. Mr. Catanzarite asked if some of the patients that he treated were exposed to secondhand smoke and contracted cancer because of that and have died because of that? Dr. Bufill, oh yea.

Mr. Morton commented that this is a very passionate issue for both sides and a complex issue. Mr. Morton stated that at one point Dr. Bufill stated that it (cancer) was likely related to secondhand smoke. Dr. Bufill's response was that in science in general they kinda have a very standard of proof. It is difficult to apply a lot of these things to specific individuals. You can only make an educated guess for a specific individual.

As a regional musician, was hospitalized with Asthma and felt it was due to playing in bars that have smoking in the bars. Smoke contributed to making her bad situation worse. This meeting place is smoke free. Why is your health more important than anyone else who has to work in bars and restaurant. Change is hard at first but within time everything will return to status quo. Everyone has the right to work in a smoke free environment. A growing number of states, cities and counties are enacting laws that require all work places to be non-smoking. Father died at 49 and doctors stated that his arteries were very stiff from smoking. Think about the people you serve. The families suffer when there is a loss of life. County being smoke free is good for business stated by the Vice-President of Hacienda restaurant. These establishments are smoke free and the business has increased. There are more non smokers in this county than there are smokers. The money they spent to comply with the current law is gone and they are concerned with today and the future. The best way to do the volume of business that they want to do is to have a level playing field in the this county. Saying the people have a choice where they work is not true.

Mr. Catanzarite asked Mr. Leslie what his title was? He stated that he was Vice President of Sales and Marketing at Hacienda. Mr. Catanzarite continued by asking if they have done any studies to affirm that you can directly correlate your non-smoking status to an increase in sales? Mr. Leslie stated that they have many numbers that they don't make public. They can take a look at the areas where they had smoking, for instance inter canteens, and divide those bills up from the dining room. He said that they can then show that they have not had a decrease in sales, they have increased.

Bars in New York are smoke free and the majority of students at Notre Dame are smoke free and would prefer the bars in South Bend to be smoke free. The bars in New York are not suffering from a smoking ban. Attended a local non-smoking bar and the atmosphere was awesome and it was packed. You can go outside to have a cigarette. Testimony was given from a woman who had to watch family members die from lung cancer. 70 percent of mothers who smoke have had babies that are still born and premature. Every cigarette has over 4,000 chemicals. Smokers have a right to smoke. Their rights to smoke end where my rights begin to be smoke free. You need to start looking out for the people who don't smoke. When performing in a smoke filled bar, we can see smoke coming from our mouths as we exhale. Myself and my band do not smoke. In many of the private clubs, children are present. She stated that her singing voice was compromised. This band had to stop doing their job since there were so very smoke free places to play. There is an unmistakable sound in this room tonight, a smokers cough. The only scientific way to protect all workers and residents from the dangers of secondhand smoke is to adopt a smoke free policy that prohibits smoking in all indoor facilities. This will level the playing field and alleviate concern of potential loss of business. It will send a clear message; 1) that St. Joseph County represents workers by supporting healthy work place practices, 2) that this County will join this crucial health issue, 3) that the County Council recognizes the value of every employee in this County. Those who will speak against this are fear based, not fact based. A measure of public support for smoke free policies came from a research center IU/Purdue in Indianapolis who conducted a public opinion survey in St. Joseph County. The survey was done 1/3/11 thru 1/20/11 with 606 people participating. The chief finding was in the question that was asked, "If a law was proposed in St. Joseph County making all work places, including restaurants, bars and membership clubs smoke free, would you support or oppose the law?" 68 percent of St. Joseph County residents said they would support an ordinance. *Secretary's note: Statistics were given in support from this public opinion survey.*

Mr. Catanzarite asked Ms. Spitznagle to review some of the statistics. Ms. Spitznagle stated that 42 percent said that they wouldn't change and go out just as much as they are now. Another 42 percent said that they would be going out more and 16 percent stated that they would be going out less.

Tired of going to funerals for father and best friends who have died from lung cancer. A lot of musician friends have had to stop playing in places that allow smoking. There doctors have told them that they will be at risk if they continue. You should not have to choose between your health and your livelihood. Most of the employees who work in restaurants do not have health insurance. I can choose not to eat in places with smoking, employees do not have that choice. They need their jobs. As parents, years ago, we decided to go smoke free to protect our children. Now these same children are looking for jobs. Jobs that might put them at risk because they will be working in a smoking environment. When going back home to New York, it is nice not to have to worry about where we go since everywhere is smoke free. Father died from cancer in the throat. His father lived in bars for many years. Contaminants can be higher in secondhand smoke. Feels fortunate to have an education and not having to work in smoking environment. Young people and less educated people should not have to pay with their health in order to earn a living. Business in Michigan, where it is smoke free, seem to not have suffered from this law. Smokers who have said that they never would come back, have come back. The debate is over and secondhand smoke is more than a nuisance. It kills people. There is no safe level of exposure to secondhand smoke. In reality there is only a smoking section and a secondhand smoking section. Employers should have to protect their employees from known cancer causing hazards by making their building smoke free. Creating smoke free work places just make sense. *Secretary's note: Two (2) gentlemen told the story of their fathers and how he died just before Acts were passed to protect workers in the field that he worked. One stated that a doctor told his father that the cancer he had came from being at the VFW and calling bingo in a smoke filled hall for years. They asked the Council to do the right thing and pass this ordinance. 498 of the same letter was presented to the Council representing people who could not be in attendance.*

The Council took a short recess.

In Opposition:

Larry Wolfe, 2812 Normandy Drive, Mishawaka  
John Burggraf, 52187 Fir Road, Granger

Matthew Zultanski, 1615 Arcadia, South Bend  
Dominic Mikel, 806 E. Colfax Avenue, M  
Lawrence Chodzinski, 10026 Shadwood Drive, G  
Dan Hardman, 213 David Street, SB  
David Kriegel, 54716 Merrifield Drive, M  
Richard Mulhaupt, 5149 Outer Drive, SB  
Jesse Davis, 1333 Clavert Street, SB  
Lisa Doan, 505 Oak Street, North Liberty  
Chris Glassburn, 517 S. 30<sup>th</sup> Street, SB  
Charles Affeld, 632 W. Agnola Boulevard, SB  
Chrissy Turczynski, 424 W. 7<sup>th</sup> Street, M  
Louis Sandock, 3121 W. Lane, SB  
Jenny Thornburgh, 518 W. 7<sup>th</sup> Street, M  
Michael Jones, 802 Meridian Street, M  
Mitch Zultanski, 1632 N. 29<sup>th</sup> Street, SB  
Patrick Michael Mulligan, 1705 South Bend Avenue, SB  
Don Dzvenor, 2428 Greenlawn Avenue, M  
James Ford, 2206 S. Main, SB  
Terry Huff, 62882 Oak Road, SB  
Chris Maetzel, 5021 Sample Street, SB  
Mike McNeff, 710 S. 31<sup>st</sup> Street, SB  
Rita Kopala, 66559 Ivy Road, Lakeville  
Carol Davis, 1631 LWE, SB

Was here five (5) years ago and thought that everything was handled. This is about choice. The State is talking about doing something like it is in Marian County and like it is already here in St. Joe County. They may be making money in the restaurant but are losing money in the bar. Put a sign on the front door and you decide to come in or not. People will be laid off. A lot of Mom and Pop shops got put out of business. Leave it like it is. Secretary/Treasurer of IOBA, Indiana License Beverage Association, stated that at the State Meeting in Indianapolis in October they discussed an effort to reduce the scope and level of extensive local government. This ordinance will adversely effect hard working men and women where the public has a choice to frequent or not. A article in the Tribune, by a nurse, stated that the burning of leaves effect more people. With the leaf burning there is no choice. Since 2006 all smokers know that when they go to any public place they cannot smoke. You enacted this law and it has been working. Nobody in St. Joe County is subject to secondhand smoke now, unless they choose to. When you talk about bars, taverns and private clubs, you choose to go to these places or you can choose not to go to these places. This is a win, win situation now for everybody. This law has already cost some businesses 20 percent of their business. In Michigan, 300 bars and taverns have closed their doors and have had to lay off people. The State of Michigan says that their revenue has not gone down. This is because small taverns and bars cannot compete. The following jobs have become available recently for those who feel stuck in a smoke environment: waitress, bartenders & cooks - 70+ Kildare's , 85+ Celtic Kilt, 26 Flattop Grill positions. These over 180 jobs have become available in the last six (6) months in a non-smoking establishment. As a distributor of alcohol and a employee as a bartender stated that he has worked in smoking and non-smoking establishments. The economic impact for him in income at the non-smoking establishment is less than at a smoking establishment. We are asking you to allow the people to make the choice. On the Grape-Main-McKinley-Granger corridor over 75 percent of business that have alcohol are non-smoking. Half of the rest of them are dedicated to 21 and above years of age to enter. Ban the cigarette not the person who chooses to light that cigarette.

Letter was read by a person who supplies bars with legalized pull tabs (gaming items). This letter was from Richard Lugar, U.S. Senate to a local bar owner in Elkhart. In brief... it stated that even though Senator Lugar does not smoke, he supports the right of those people who want to use legal tobacco products.

The next speaker stated that his lung cancer is from exposure to Agent Orange in Viet Nam. Choice is the issue here. Clay Civic Democratic Club is a members only private club has 1100 members of which 75-80 percent are smokers. We disagree with the part with regard to private clubs. The members pay dues in order to afford the privacy of the club. Our rules are made by the members. Representative of 880 members of VFW Post 360 who ordered his attendance. He stated that the 880 members of the VFW trumps the 460 letters. The life span of a veteran is shorter than those who have not served. Two-thirds of the veterans of Viet Nam are already deceased. This is due to Post Traumatic Stress and Agent Orange which is more dangerous than cigarette smoking. Many of the veterans self medicate with both drinking and smoking in moderation. This is how they cope. This post donate their building to

many charitable causes, ex. Boy Scout Troupe #525 and Pet Refuge. They barely have enough money now to keep the doors open. A private business is a public business, the VFW is not. You must be a combat veteran to join. Please keep the American Legion and the Veterans of Foreign Wars operational. Does not dispute everything the people who spoke in favor of this ordinance. The only thing that they have wrong is the fact that I am not forcing anyone to come into my place to play bingo. Chose a profession where I clean a sewer everyday. This puts me in more harms way than smoking. Office is run out of his home, smokes and nobody is going to tell him that he can't smoke in his office. Government already has too much control of our lives.

Mr. Catanzarite pointed out that his business in his residence would not be regulated by this ordinance.

Representative of American Legion Post 365 stated that they have been watching and keeping track of the smoking. At any given time approximately 50-75 percent of the members are smokers. These people pay to belong to this private club. We would have to have a vote to change our rules. I have no health issues that the U.S. Army hasn't given me. There are more important issues than stopping smoking in bars in St. Joe County. With the current ordinance we, it is really hard to find a lot of smoking venues anymore. The vast majority of everything in this county is non-smoking. Therefore, the number of people who put themselves in a smoking environment is by their own choice. We need to leave well enough alone and give a few choices for a legal product. Presented a petition with 220 signatures of employees who choose to work in a smoking establishment. We have a right also. Hebrew Church spoke in favor of supporting their continuing of bingo and how without smoking they would not be raising the funds for their organization. They have put in air filtration equipment to take the smoke out of their hall and also have a glass enclosed area on a separate heating and cooling unit for people who do not smoke. People are smoking in casinos and you do not see smoke. There are system to take care of this air filtration. This ordinance will drive our bingo players to other establishments. As an American feels that she is losing some choices and freedom. This was a difficult decision for you to make before and I admire that you did it. In his little establishment, all of his employees smoke. No one who ever came for a job ever asked if his establishment was smoking or non-smoking. Within one block there are nine (9) establishments. Of those six (6) do not allow smoking. There is a choice within walking distance. Jobs in the hospitality industry in the last ten to twenty years has one of the highest turnover rates. The stats in 2003-04 in New York, the smoke free laws state 75 percent of Wall Street was still working in New Jersey because of 911. I would like to find where the opposition got their numbers regarding the questionnaire. A stat from Michigan, as of January, 2011, said that Michigan will lose \$33 million because of the smoke free ban. Jill Sabo stated in the Committee Meeting that if this was asbestos it would be a no brainer - asbestos is not legal, smoking is. Has every dollar he has invested in his bar and asks that this law is not passed. The small Mom and Pop owners are loyal to each other and this community. Member of VFW Post 360 spoke how he served to defend civil liberties including people rights to chose. Clubs should have the right to membership requirements and rules. This should not be an attack of our civil liberties. Watched a lot of small restaurants go out of business when the last ban was implemented. In his bar about 95 percent of the people who come in smoke as do all the employees. Past Commander for the Sons of the American Legion and Chaplain stated how in the last eight (8) years he has laid to rest over 360 veterans. He spoke for himself and them by saying that these men and women chose to grab a weapon and stand a post. Everyone here has been able to speak because of what they have done. The bottom line is that this is about health issues. If this Council decides to legislate on health issues, where will this stop? If someone is 50 pounds overweight are we going to ban cookies, ice cream, cakes, etc. Parents left Poland because they did not have a choice of anything under Communism. Please don't take away our freedoms. Manager of the Blarney Stone spoke with regards to how women's rights were fought for along with members of the gay community and African Americans. These individual rights have all be fought for. Please don't rush your decision. New Carlisle is going to have a shredder build over an aquifer with the go ahead from the Health Department. The people living there protested against this. You (the Council) took away the choice from the people of New Carlisle. Don't chose to do people in and tell them it is for their own good. Quit making cigarettes if you're serious about health. There are a lot of different things that cause cancer such as in gasoline when you pump it. Are you going to quit driving? The steel mills have Chromium 6 and this may happen in the Shredder too. There is paper dust and coal dust that we breath in the air. Bottom line, you are going to cut your throats on taxes.

Jill Sabo, there has been a lot said. We are not against smokers. We believe smokers have rights. This is about workers and not about patrons. It is the responsibility of government to protect the health and welfare of its citizens. In a lot of what was said there seems to be a lot of soft economic impact information and that information comes directly from the Tobacco Industry, a platinum sponsor for the ILBA is RJ Reynolds. It just kinda boils down to personal liberties are not personal when they infringe on other people's rights.

Regarding the VFW, the Commander states that they are a democratic organization that is letting 20 percent of the population tell us that the Post will fail if people cannot smoke inside. That's bunk. For the people say that we should ban tobacco, that's against the law, you cannot ban tobacco.

As far as letting the State pass something, the State Legislature has said that they are not going to pass anything until more counties pass smoke free laws. So this is being handed back and forth from one to another. Somebody has got to make a decision and she hoped it was with the County.

OSHA has stated that there is no safe level of secondhand smoke. We need to consider the economic impact of what we're trying to do. What we're trying to do is grow in this county and be more progressive and in protecting the rights of all workers. Ms. Sabo stated that she believed that new businesses will relocate here just because it causes \$3,391 extra for every worker that smokes. Businesses will not locate here until we take a stand on this issue. There is no smoking allowed in any U.S. Military Base in the world and on submarines. There is no manufacturer that can guarantee release of secondhand smoke. You might not see the smoke but the particulate matter is still in the air.

The motion to amend passed by a voice vote; 9-0. No negatives were heard.

Mr. Kruk stated that five (5) years ago our council took a bold first step and adopted the first smoking ban in this area. I say bold, but we in fact were joining many of the communities across the country and throughout the world that had come to the realization that places frequented by the public, places where people go to work every day to make a living should be places where people can feel secure in knowing that their health will not be jeopardized just by their mere presence there.

Before we took that first step, we began by making our county owned buildings & vehicles smoke free because we wanted our workers to be able to come to work every day in a smoke free environment. We value our workers and the work that they do. I, and all these gentlemen up here with me, can come to work in this building and know that our health is not being compromised by breathing in secondhand smoke.

But not everyone in the county is as fortunate as us because five (5) years ago we left out those workers who make their living in establishments that serve alcohol or cater to a clientele over 18 years of age. Many on the council who were comfortable with a smoking ban were not comfortable including those types of establishments because of the perception that smoking just goes with consuming alcohol.

Well let me tell you something. I used to smoke. And when you smoke, when you are addicted to tobacco, it goes with everything. It goes with getting up in the morning, going to the bathroom, eating breakfast, driving to work, working at your job, eating lunch, driving home, watching TV, eating dinner, going bowling, shooting pool, playing bingo, eating out, and yes, going somewhere to have a drink. It goes with everything. You take that addiction with you wherever you go, whatever you do. Now, unlike some people here tonight, I am not here to get anyone to quit smoking. I'll repeat that. I am not here to get anyone to quit smoking. What I am here tonight for is to try and get our county to take another step forward to begin to develop that awareness that as much as we desire a healthy place to work, so do those men and women working to make a living, working to support a family in those places still left unprotected by our current ordinance.

It shouldn't be that hard this time. Since we passed our ordinance five (5) years ago, our neighbor to the east, the City of Elkhart has adopted an ordinance that is more inclusive than the ordinance in St. Joseph County. Our neighbor to the north, the entire State of Michigan has adopted a statute that is more inclusive than the ordinance in St. Joseph County. By passing this ordinance here tonight, we would merely be bringing St. Joseph County more in line with what some of our surrounding communities have adopted, and to begin to develop a region with a consistent smoking policy.

We are evolving as a society and as a county. The types of people we attracted in the past to fill our factories will not be the types of people we hope to attract in the future as we continue to expand on our health industry in this county, our education industry and now our emerging high tech industry. These potential workers, generally college educated, will come into this community interviewing for jobs and seeing what makes this community attractive to them. These higher educated individuals are more likely to be concerned about their health, are more likely not to smoke and are more likely to look at the quality of life that a community has to offer. They will walk away from communities that they feel are not looking out for their best interest.

I've heard some say that we should wait until our legislatures down state pass something that would apply equally to all the counties in Indiana. To those people I say, how long are you willing to wait? It's your health, how long are you willing to wait? It's been five (5) years since we passed our county ordinance and the State of Indiana is no further along in passing something than they were five (5) years ago. When it comes to my health and the health of my neighbors, I'm not willing to wait.

Tonight we can finish the task we started five (5) years ago. We can say to those people we left out of our current ordinance that we value your health as much as we value our own. We can say to them, that there is honor and dignity in the work that they do, that we are grateful that they are there to serve us, and while they are trying to do that which is necessary to provide for themselves and their family, we will respect their health and do no injury to them. It isn't that hard to be conscientious of others. When we in fact are, we as a community will be all the better for it.

I ask all of you on this council tonight to take the opportunity that is here before you. To treat all of our workers the way we wish to be treated. To let all of our workers know that we do care about their health. To let all of our future workers know that we do want them to choose our community to live and grow. I ask all of you on this council tonight to do what's right by your fellow workers of St. Joseph County and to pass this comprehensive smoke free ordinance.

Motion to pass Bill No. 15-11 was made by Mr. Kruk and seconded by Mr. Catanzarite.

Mr. Catanzarite stated how they have heard a lot of testimony tonight from persons on both sides of the issue. He does not think that as a Council they can go away from this meeting tonight and ignore the fact that secondhand smoke has a negative health impact on people who are exposed to it. The new information that has come out since the last ordinance was passed in 2006, it really has changed the dynamic of things. There is more information out there, more evidence based, scientific data, things that we cannot ignore. He stated that there were physicians testifying tonight and people who are employees who work in that environment, entertainers. Personally he stated that he can relate and told the story of his Grandmother playing in secondhand smoke and died a terrible death. He sympathized with those folks who work in that industry. Places like North American Sign, Town Air Freight, progressive companies that have taken a stand to support their employees to help them with cessation programs know the benefits of not having a smoking environment and the cost relating to them. He stated that they did not want to step on anybody's rights and certainly respects everyone in the room who is a veteran. He stated that he is in the minority in his family. He has siblings who are smokers and co-workers who support this. He stated that he belonged to a couple of clubs that will probably ostracize him for even considering this ordinance. In fact, he thought he saw his father's signature on one of those petitions passed around. He stated that he would patronize that family club if it wasn't a smoking environment as well as other local establishments. He stated how he like to play bingo and so does his mother. His mother was driven out of the bingo halls because of the smoking. He felt that bingo halls might do better if it were smoke free. He agreed with Mr. Kruk and stated that with this new energy of technology employees, healthcare industry will make St. Joe County stronger. Smoking is detrimental to computers and technology equipment. Hospitals no longer allow smoking in or on their campuses and asked his fellow Council Members to do the same thing.

Mr. Herbster stated that he definitely believed that health is a legitimate concern for the Council. There is always a matter of degree in these types of issues and we can't use concerns of Public Health as legitimate as that is, for being too intrusive as a local government. He felt that Public Health is an important concern but he felt that the current Ordinance satisfies the vast majority of situations that people would be subjective to whatever the dangers are from secondhand smoke. He stated that he was not comfortable in going any further at this point.

Bill No. 15-11 failed, as amended; 2-7. (Against: Hamann, Noland, DeVon, Herbster, McCahill, Root, Morton)

**BILL NO. 1-11: 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 THE NORTHWEST CORNER OF US 20 AND QUINCE ROAD, FROM "R" SINGLE-FAMILY DISTRICT, TO "C" COMMERCIAL DISTRICT. (Petitioner: Fairway, LLC) - Assigned to the Land Use Planning Committee**

Mr. DeVon reported that Bill No. 1-11 comes with a favorable recommendation.

Derek Spier, Area Plan Commission, stated that this petition was to allow any permitted use in C Commercial District. After his presentation he stated that at the Area Plan Commission meeting on February 15, 2011 this petition was sent with a favorable recommendation. He stated that additional parking spaces might be needed for higher intensity uses, such as a restaurant. Accesses proposal on both Quince Road and U.S. 20 are subject to the approval of a commercial driveway permit by INDOT. The required landscaping, especially along the north and west side of the property will adequately buffer the residential.

Brad Mosness, Abonmarche Consultants, 750 LWE, SB and John Piraccini with Coldwell Banking to entertain any questions.

Motion to pass Bill No. 1-11 was made by Mr. Hamann and seconded by Mr. Herbster. Bill No. 1-11 passed to-wit; 9-0.

**Unfinished Business:**

**New Business:**

**Privilege of the floor:**

Rita Kopala, 66559 Ivy Road, Lakeville, stated that she wanted someone to know that there were people over by her house during the last two (2) weeks checking out the railroad. She wanted to know where she would have to go to find out what was going on. She asked her Councilman to do something on this.

Carl Nickels, 1530 College Street, thanked them for listening to the hearing this evening on smoking and stated that they will re-submit and will be back.

**Adjournment:**

Mr. Morton stated that the meeting was adjourned at 10:46 p.m.

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Auditor, St. Joseph County

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President, St. Joseph County Council