

MINUTES OF THE  
REGULAR MEETING  
OF THE  
ST. JOSEPH COUNTY COUNCIL  
October 13, 2009

The regular meeting of the St. Joseph County Council was called to order at 7:03 p.m., on October 13, 2009, by the President, Rafael Morton, in the Council Chambers, fourth floor, County-City Building, South Bend, Indiana.

Members in attendance were:

Mr. Mark Catanzarite	Mr. Corey D. Noland
Mr. Dale DeVon	Mr. W. Randall Przybysz
Mr. Michael J. Kruk	Mr. Mark Root
Mr. Rafael Morton	Mr. Dennis R. Schafer
	Mr. Heath O. Weaver - Absent

Present from the Auditor's office was Mr. Peter H. Mullen, Auditor and Cindy Bodle, Chief Deputy Auditor.

Council staff present were Mr. Michael A. Trippel, Attorney and Ms. Joan M. Pawlowski, Executive Secretary

**Petitions, Communications & Miscellaneous Matters:**

Mr. Przybysz nominated for reappointment to the Onsite Wastewater Advisory Board, Dale DeVon, John Creed, John Linn and Tim Murray. He also nominated Dean L. Strycker to the Mishawaka-Penn-Harris Library Board. This motion was seconded by Mr. DeVon. No other nominations were heard and the motion passed by a voice vote; 8-0.

Mr. Kruk moved to approve the minutes of September 8, 2009. The motion was seconded by Mr. Przybysz. The motion passed by a voice vote; 8-0. No negatives were heard.

Mr. Kruk moved to withdraw Bill No. 99-09 at the request of the petitioner. The motion was seconded by Mr. Noland and passed by a voice vote; 8-0. 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. 106-09:** AN ORDINANCE APPROPRIATING THE SUM OF \$67,671.00 OUT OF THE ST. JOSEPH COUNTY JUVENILE PROBATION FEES FUND - 056 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE YEAR 2009. (Dept. 025 - Juvenile & Probate Court) - Assigned to the Human Services/Criminal Justice Committee

**BILL NO. 107-09** AN ORDINANCE TRANSFERRING THE SUM OF \$33,400.00 FROM VARIOUS ACCOUNTS TO VARIOUS ACCOUNTS ALL BEING WITHIN THE 2009 BUDGET OF ST. JOSEPH COUNTY. (Dept. 005 - County Police) - Assigned to the Human Services/Criminal Justice Committee

**BILL NO. 108-09:** AN ORDINANCE APPROPRIATING THE SUM OF \$42,077.00 OUT OF THE ST. JOSEPH COUNTY LOCAL EMERGENCY PLANNING FUND - 063 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR, 2009. (Dept. 009 - Emergency Management Agency) - Assigned to the Human Services/Criminal Justice Committee

**BILL NO. 110-09:** AN ORDINANCE TRANSFERRING THE SUM OF \$100,000.00 FROM VARIOUS ACCOUNTS TO VARIOUS ACCOUNTS ALL BEING WITHIN THE 2009 BUDGET OF ST. JOSEPH COUNTY. (Dept. 002 - Auditor) - Assigned to the Budget and Administration Committee

**BILL NO. 111-09:** AN ORDINANCE APPROPRIATING THE SUM OF \$17,500.00 OUT OF THE ST. JOSEPH COUNTY C.E.D.I.T. FUND - 009 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR, 2009. (Commissioners/Auditor) - Assigned to the Budget and Administration Committee

**BILL NO. 113-09:** AN ORDINANCE TO AMEND TITLE 6 OF THE ST. JOSEPH COUNTY CODE ENTITLED "BUILDING AND CONSTRUCTION" - Assigned to the Land Use Planning Committee

**BILL NO. 114-09:** AN ORDINANCE APPROPRIATING THE SUM OF \$574.00 OUT OF THE ST. JOSEPH COUNTY 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. 115-09:** AN ORDINANCE APPROPRIATING THE SUM OF \$914.00 OUT OF THE ST. JOSEPH COUNTY GENERAL FUND - 001 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR, 2009. (Dept. 001 - Clerk) - Assigned to the Budget and Administration Committee

**BILL NO. 116-09:** AN ORDINANCE APPROPRIATING THE SUM OF \$100,000.00 OUT OF THE ST. JOSEPH COUNTY ADULT PROBATION FEES FUND - 057 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR - 2009. (Budget Transfer/adult probation fees) - Assigned to the Budget and Administration Committee

**BILL NO. 117-09:** AN ORDINANCE APPROPRIATING THE SUM OF \$456,012.00 OUT OF THE ST. JOSEPH COUNTY USER FEE FUND - 058 AND INTO VARIOUS ACCOUNTS FOR THE PURPOSES HEREIN SPECIFIED FOR THE CURRENT YEAR 2009. (Budget Transfer) - Assigned to the Budget and Administration Committee

**BILL NO. 118-09:** AN ORDINANCE TRANSFERRING THE SUM OF \$60,000.00 FROM VARIOUS ACCOUNTS TO VARIOUS ACCOUNTS ALL BEING WITHIN THE 2009 BUDGET OF ST. JOSEPH COUNTY. (Dept. 024 - Adult Probation) - Assigned to the Human Services/Criminal Justice Committee

**BILL NO. 119-09:** AN ORDINANCE AMENDING AND SUPPLEMENTING TITLE 26, ZONING, OF THE ST. JOSEPH COUNTY CODE, AS AMENDED, FOR THE PROPERTY LOCATED AT 16021 AND 16045 CLEVELAND ROAD, INCLUDING VACANT LAND LYING NORTH AND ADJACENT TO SAID PROPERTIES, FROM R SINGLE FAMILY DISTRICT AND C COMMERCIAL DISTRICT TO PUD PLANNED UNIT DEVELOPMENT DISTRICT. (Petitioner: B. Patrick Bauer) - Assigned to the Land Use Development Committee

**Resolutions:**

**BILL NO. 105-09:** A RESOLUTION OF THE ST. JOSEPH COUNTY COUNCIL CORRECTING THE FOLLOWING RESOLUTIONS DUE TO AN ERROR IN THE LEGAL DESCRIPTION AS PRESENTED BY THE PETITIONER, WABASH VALLEY POWER ASSOCIATION: BILL NO. 111-06 / RESOLUTION NO. R13-06 and BILL NO. 112-06 / RESOLUTION NO. R 14-06.

Jeremy Petty, 722 North High School Road, Indianapolis, IN, stated how the initial resolutions contained an incorrect legal description for this abatement. This proposed resolution contains the proper information per the Auditor's Office.

Motion to pass was made by Mr. DeVon and seconded by Mr. Kruk. Bill No. 105-09 passed to-wit by a voice vote; 8-0. No negatives were heard.

**BILL NO. 109-09:** A RESOLUTION OF THE ST. JOSEPH COUNTY COUNCIL OF ST. JOSEPH COUNTY, INDIANA ADOPTING THE 2010 BUDGET OF THE SOLID WASTE MANAGEMENT DISTRICT.

Peter Mullen, Auditor, stated that this is the 2010 Budget for the Solid Waste Management District. This budget has decreased the general budget by 6 percent; curb site has been decreased by 9 percent and the total budget has decreased by 8 percent. All wages have been frozen.

Mr. DeVon questioned if the bottom line was up or down? Mr. Mullen stated that it was down.

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

Mr. Przybysz asked to abstain from the vote due to the fact that he will be employed by the Solid Waste Management District by the time this budget is in place.

Bill No. 109-09 passed to-wit; 7-0 with 1 abstention.

Mr. Schafer asked if they were not supposed to vote on Mr. Przybysz's request to abstain? Mr. Trippel stated that he did not believe so. Mr. Schafer stated that it is in the County Council Rules.

Mr. Morton asked all in favor of Mr. Przybysz abstaining signify by a voice vote. No negatives were heard.

**BILL NO. 112-09:** A RESOLUTION OF THE ST. JOSEPH COUNTY COUNCIL APPROVING THE FIFTH AMENDMENT DATED AUGUST 11, 2009 TO THE ST. JOSEPH COUNTY POLICE RETIREMENT PLAN.

Howard Williams, Attorney for the Sheriff, stated that this is a requirement by the Internal Revenue Service. Pension Plans have to be restated to come into compliance with the Internal Revenue Code. This will have no affect on the funding.

Motion to pass was made by Mr. Catanzarite and seconded by Mr. Kruk. Bill No. 112-09 passed to-wit; 8-0. No negatives were heard.

**Public Hearings:**

**BILL NO. 96-09:** AN ORDINANCE TRANSFERRING THE SUM OF \$415.00 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. 96-09 comes with a favorable recommendation.

Patricia Evans, Superior Court Administrator, stated that this transfer will purchase transcription software.

Motion to pass was made by Mr. Catanzarite and seconded by Mr. Kruk. Bill No. 96-09 passed to-wit; 8-0.

**BILL NO. 98-09:** AN ORDINANCE OF THE ST. JOSEPH COUNTY COUNCIL ESTABLISHING THE "ST. JOSEPH COUNTY H1N1 FLU VIRUS FUND" AND SETTING FORTH THE TERMS AND CONDITIONS GOVERNING THE ST. JOSEPH COUNTY H1N1 FLU VIRUS FUND - FUND 705 (Petitioner - Health Department) - Assigned to the Human Services/Criminal Justice Committee

Mr. Przybysz reported that Bill No. 98-09 comes with a favorable recommendation.

Nick Molchan, Health Administrator, explain that this bill is necessary to establish the H1N1 Flu Virus Fund.

Motion to pass was made by Mr. Kruk and seconded by Mr. Catanzarite. Bill No. 98-09 passed to-wit; 8-0.

Mr. Schafer questioned if the regular flu shots would be in shortly? Mr. Molchan stated that the remaining order, 800 of 3,000 doses would be coming the 1<sup>st</sup> of November. Mr. Schafer asked if everyone was out? Mr. Molchan stated that pretty much everyone is out.

Mr. Catanzarite, commended the Health Department in handling the situation.

**BILL NO. 102-09:** AN ORDINANCE OF THE ST. JOSEPH COUNTY COUNCIL, ST. JOSEPH COUNTY, INDIANA, ESTABLISHING CONSUMER FIREWORKS RESTRICTIONS. - Assigned to the Land Use Planning Committee

Mr. DeVon reported that Bill No. 102-09 comes with a favorable recommendation.

Mr. DeVon stated that basically this ordinance will give control the County Sheriff for enforcement. It does allow for commercial fireworks to continue to do what they are doing under their normal permits and procedures. This is basically the State and City Ordinance combined. If you have five (5) acres or more you are exempt.

In Favor:

Angela Hoffman, 27582 New Road, North Liberty, stated that she is in favor of this because her neighbors continuously shoot off fireworks at all hours of the day. The police have told them that there is nothing they can do until 11:00 p.m. She was hoping the five (5) acres had nothing to do with it.

Mr. Kruk asked if she realized that if those folks have over five (5) acres that this ordinance will not apply to them? Ms. Hoffman stated that she was hoping that this portion could be changed.

Motion to pass was made by Mr. Przybysz and seconded by Mr. Kruk. Bill No. 102-09 passed to-wit; 8-0.

**BILL NO. 95-09:** AN ORDINANCE APPROVING THE PETITION FOR SPECIAL USE FILED BY MATT FILIPOWSKI, WALSH CONSTRUCTION COMPANY, LAPORTE, IN FOR THE PROPERTY LOCATED AT 19696 MILLER ROAD, SOUTH BEND, IN 46614 THE SAME BEING PETITION NO. 09-02-09-17 FILED WITH THE AREA BOARD OF ZONING APPEALS. - Assigned to the Land Use Planning Committee

Mr. DeVon reported that Bill No. 95-09 comes with a favorable recommendation.

Mark Lyons, Building Department, reported that this is a Special Use request for a borrow pit to be used with the construction of a overpass on Miller Road. The Area Board of Zoning Appeals sent with a favorable recommendation on September 2, 2009.

Mr. Schafer asked if they are responsible if they tear up Miller Road? Mr. Lyons said that he was not sure and would have to check with Engineering, but he would assume so.

Matt Filipowski, Walsh Construction, stated that they should not tear up the road. This property is adjacent to the construction site. They will be replacing about 3,000 feet of Miller Road with seven inch pavement section.

Motion to pass was made by Mr. Schafer and seconded by Mr. Kruk. Bill No. 95-09 passed to-wit; 8-0.

**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

Mr. DeVon reported that Bill No. 83-09 comes with a favorable recommendation.

The Clerk read the amendment stating that there was a new legal description.

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

Christa Nader, Area Plan Commission, stated that this request was to allow for a bank and drive thru. The Commission received a letter from the Juday Creek - Dugdale Neighborhood Association and after meeting with the developer, they spoke in favor of the rezoning. After the presentation she stated that the Area Plan Commission sends this with a favorable recommendation.

Mr. Catanzarite asked if this was going to be in the City of South Bend? Ms. Nader stated that eventually, yes. The city cannot annex any property until 1/2010 due to the census.

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

Chris Brayak, Wightman & Associates, 20303 Pipestone Road, Benton Harbor, MI, stated that this is a light use for a business and is a good transition between the neighborhood and business. The neighbors were concerned about the privacy and he stated that they will be planting trees between the two areas and will agree to replace any trees that die. There are three (3) entrances to the project, we only requested two (2) initially from the north and west but INDOT requires a right in only from the west. They will try to make the extra entrance on Elkins look more residential. They also will try to do something about the drainage problem. The water and sewer will come from the City of South Bend. They also stated that they plan to annex next year.

Mr. Przybysz asked if there will be fences? Mr. Brauak stated that there would be no fences. He stated that they were going to request that landscaping be placed across the street and using street landscaping.

Mr. Catanzarite questioned if they had any plans for addressing the lighting pollution? Mr. Brayak stated that their lighting will comply with the zoning ordinance. *Secretary's note: at this point Mr. Brayak could not be understood.*

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

Motion to pass was made by Mr. Noland and seconded by Mr. DeVon. Bill No. 83-09 passed as amended; 8-0.

**Unfinished Business:**

**BILL NO. 85-09:** AN ORDINANCE ESTABLISHING SALARIES AND FIXING THE NUMBERS OF EMPLOYEES OF ST. JOSEPH COUNTY, INDIANA FOR THE YEAR 2010.

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

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

Mr. Kruk motioned to continue these bills until the October 27, 2009 Special Meeting. The motion was seconded by Mr. Przybysz and passed by a voice vote; 8-0. No negatives were heard.

**New Business:**

**Privilege of the Floor:**

**Adjournment:**

The Council thanked Randy Przybysz for his service. He leaves the Council to take the position of Director of Solid Waste Management.

Mr. Morton stated that the meeting was adjourned at 7:45 p.m.