

MINUTES OF THE
REGULAR MEETING
OF THE
ST. JOSEPH COUNTY COUNCIL
August 11, 2015

The regular meeting of the St. Joseph County Council was called to order at 6:05 p.m., on August 14, 2015, by the President, Rafael Morton, in the Council Chambers, fourth floor, County-City Building, South Bend, Indiana.

Members in attendance were:

Mr. Robert L. Kruszynski
Mr. Corey Noland
Mr. James O'Brien
Ms. Diana Hess
Mr. Rafael Morton
Mr. Mark P. Telloyan
Mr. Mark A. Catanzarite
Mr. Robert McCahill
Mr. Mark Root

Present from the Auditor's office were Mr. Michael J. Hamann and Ms. Teresa Shuter, Chief Deputy Auditor. Council staff present was Mr. Michael A. Trippel, Attorney and Ms. Jennifer Prawat, Executive Secretary.

Petitions, Communications & Miscellaneous Matters:

Mr. Noland made a motion to approve the minutes of the July 14, 2015 public hearing was seconded by Ms. Hess, the motion was passed by a voice vote; 9-0.

No report from the County Auditor

A report from the Board of Commissioners: Andy Kostielney, St. Joseph County Commissioner, a very quick update today at our meeting, the Commissioners on a vote of two to one voted to enter into an agreement with We Care to begin to change our vendor for the employee clinic. We are in the process now in trying to identify a new location, we have two spots that are picked, both are within two or three blocks of the existing location, we are also reaching out to a couple of doctors to bring them on board as well. Offers were made to the existing doctor and staff and they chose to not take us up on those offers and the location as well, Beacon had identified another use for that location, that's why we are changing there. There are a couple of things I want to bring to your attention, I made sure I mentioned it at our meeting today, some concerns I heard from employees, in case you had heard those concerns, I wanted to address those. First being, there are a number of employees that have contacted us with concerns that we were changing vendors, I realize three or four years ago when we changed vendors, we had similar situation, we asked our employees to be patient and to trust our judgment as they did three or four years ago, that the intent is we will not sacrifice the quality of care that our employees and their families have come to expect. Our hope is that we are going to actually surpass the care they are currently being given. Another issue and most importantly is, I have heard some concerns, we have mentioned a lot about patient data and the clinic. The patient data we are looking to collect is at an aggregate level. It is not at a per employee level. I want to make sure, for all department heads and elected officials who might not be here tonight, they will also send out some information later on in the week. There is no expectation now, or ever by anyone in St. Joseph County government that we will have patient specific data, we are not trying to keep tabs on our individual employee's health or welfare to that extent. That is why the clinic is not on site and that is why we have third party group administering the clinic as well because we want to make sure we protect the integrity of the patient data, when we talk about patient data, we are looking at the aggregate levels so we can dictate and change our current health plans so we can be more aggressive and better serve our employees and also so we can take some things that we see that are currently being paid for out of our health plan, if we can do it more economically at the clinic that could save both employees money and the county money and that's what we are looking to do. So to bring you up to speed, we hope to have more information on a location on a doctor and more things in detail as we move forward. Thanks you.

Mr. Catanzarite: Mr. Kostielney, just to clarify, is this something you are planning to do at the start of the new calendar year or midyear?

Mr. Kostielney: Right now, the contract runs out the end of September, the plan is we may look to extend a month or two, we are still in those conversations to see how quick we can get a doctor and how quickly we can get the space to where it needs to be, when we choose that, the expectation is within the next two months, the transition will happen though.

Mr. Catanzarite: Just concerned that some employees might, midstream, when your plan only runs, at least for the employee, calendar year to calendar year, the change shop.

Mr. Kostielney: That has no impact at all from that stand point since there is no, from an employee standpoint, there is no cost to the employee so it will have no impact at all on their health plan because this outside of their deductibles and those things that would take place.

Mr. Catanzarite: I was not really referring to cost more than just patient confidence or relationships that might have been built up with the existing staff. That might be a hardship with the employees, I was just curious. Thanks.

No report from Special Committees.

First Readings:

BILL NO. 53-15: A RESOLUTION OF THE COUNTY COUNCIL OF THE COUNTY OF ST. JOSEPH, INDIANA, ESTABLISHING REASONABLE ACCOMMODATION POLICIES AND PROCEDURES IN ZONING AND LAND USE DECISIONS WITHIN THE COUNTY OF ST. JOSEPH, INDIANA
PETITIONER: MARK P. TELLOYAN Assigned to the Land Use Planning Committee

BILL NO. 55-15: 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 15580 STATE ROAD 23 FROM R SINGLE FAMILY DISTRICT, TO O/B OFFICE/BUFFER DISTRICT PETITIONER: ANDREW SMIALOWSKI
Assigned to the Land Use Planning Committee

BILL NO. 56-15: TAXPAYER PROTECTION AND TRANSPARENCY ORDINANCE PETITIONER: JAMES O'BRIEN Assigned to the Budget and Administration Committee

BILL NO. 57-15: AN ORDINANCE ESTABLISHING FEES TO BE COLLECTED BY THE AREA PLAN COMMISSION PETITIONER: AREA PLAN COMMISSION
Assigned to the Land Use Planning Committee

BILL NO. 58-15: AN ORDINANCE OF THE COUNTY COUNCIL OF ST. JOSEPH COUNTY, INDIANA, APPROVING THE FORM OF A DEVELOPMENT AGREEMENT AND AUTHORIZING ITS EXECUTION
PETITIONER: DEVELOPMENT PARTNERS Assigned to the Land Use Planning Committee

BILL NO. 59-15: AN ORDINANCE APPROVING THE PETITION FOR SPECIAL USE FILED BY JULIE DEWULF FOR THE PROPERTY LOCATED AT 18295 BRIGHTLINGSEA PLACE, SOUTH BEND, INDIANA THE SAME BEING PETITION NO. 08-05-15-13 FILED WITH THE AREA BOARD OF ZONING APPEALS
Assigned to the Land Use Planning Committee

BILL NO. 60-15: AN ORDINANCE APPROVING THE PETITION FOR SPECIAL USE FILED BY AMERICAN STRUCTUREPOINT ON BEHALF OF NAVISTAR FOR THE PROPERTY LOCATED AT 32104 STATE ROAD 2, NEW CARLISLE THE SAME BEING PETITION NO. 08-05-15-14 FILED WITH THE AREA BOARD OF ZONING APPEALS Assigned to the Land Use Planning Committee

SALARY AMENDMENT:

BILL NO. 47-15: AN ORDINANCE AMENDING ORDINANCE 50-14, THE SAME BEING AN ORDINANCE ESTABLISHING SALARIES AND FIXING THE NUMBER OF EMPLOYEES OF ST. JOSEPH COUNTY FOR THE FISCAL YEAR 2015-2016 DEPT. 0025 JUVENILE & PROBATE COURT

Mr. McCahill reported that Bill No. 47-15 comes with a favorable a recommendation.

Mr. Pete Morgan, Executive Director at the St. Joseph Probate Court and Juvenile Justice Center, this particular salary amendment is to coordinate our JDAI coordinator. Our former coordinator has moved to Connecticut so we are looking to reorganize how we are coordinating this initiative. This salary amendment we are asking to take ten thousand dollars or JDAI funds, transfer them to the salary line for IT and Data Manager who will be taking over the primary JDAI coordinator duties and several associated duties.

Mr. Morton: These changes on 47-15 affect 46-15?

Mr. Morgan: Are you referring to the third salary amendment?

Mr. Morton: The appropriation.

Mr. Morgan: Correct. The next salary amendment might be easier if I explain 48-15 and then go to 46-15 and explain the entire correction. In 48-15 we are seeking to transfer \$5,000.00 apply that to that to the salary of the training coordinator position. This person will be an assistant JDAI coordinator. As the Council recalls, we had a third salary amendment request at the last committee meeting, that salary amendment request is being held until the next committee meeting. In the transfer line, section B, tonight it asks for \$20,000.00 to be transferred from Contractual services, that amount should be \$15,000.00. The amount of \$10,000.00 for IT manager is correct and the amount of \$5,000.00 for the training officer is correct, we should take out for tonight, the \$5,000.00 that is allocated toward the probation officer. Teresa and Mike, I did not speak to you about this, those amounts of \$4,200.00 also apply to the third transfer request which is not being dealt with tonight. Those should also be removed from tonight's record.

Mr. Morton: So C is removed and under B changes to \$15,000.00, the IT stays at \$10,000.00 the probation is removed and the training officer stays at five and the \$4,200.00 comes out tonight.

Mr. Morgan: Correct. I understand that can be confusing, I am happy to answer any questions.

Motion to pass Bill No. 47-15 was made by Mr. Noland and seconded by Ms. Hess. Bill No. 47-15 was passed to-wit; 9-0.

BILL NO. 48-15: AN ORDINANCE AMENDING ORDINANCE 50-14, THE SAME BEING AN ORDINANCE ESTABLISHING SALARIES AND FIXING THE NUMBER OF EMPLOYEES OF ST. JOSEPH COUNTY FOR THE FISCAL YEAR 2015-2016 DEPT. 0025 JUVENILE & PROBATE COURT

Ms. Shuter: Is that the \$4,200.00?

Mr. Morton: That's the \$4,200.00?

Mr. Morgan: \$4,200.00 applies to the third salary amendment which should still remain in committee.

Mr. Morton: Ok.

A voice vote to send Bill No. 48-15 back to committee was held and passed by 9-0.

BILL NO. 50-15: AN ORDINANCE AMENDING ORDINANCE 50-14, THE SAME BEING AN ORDINANCE ESTABLISHING SALARIES AND FIXING THE NUMBER OF EMPLOYEES OF ST. JOSEPH COUNTY FOR THE FISCAL YEAR 2015-2016 DEPT. 0054 DOMESTIC RELATIONS

Mr. McCahill reported that Bill No. 50-15 comes with a favorable a recommendation.

Beth Kerns, Director of Domestic Relations, we have experienced much turnover since 2014 so we are asking that \$15,020.00 be transferred to the Family Court Specialist line.

Mr. O'Brien: So, presently are there any vacancies? Are you fully staffed presently?

Ms. Kerns: I was very fortunate; the two vacancies have been filled.

Motion to pass Bill No. 50-15 was made by Mr. Noland and seconded by Ms. Hess. Bill No. 50-15 was passed to-wit; 9-0.

BILL NO. 52-15: AN ORDINANCE AMENDING ORDINANCE 50-14, THE SAME BEING AN ORDINANCE ESTABLISHING SALARIES AND FIXING THE NUMBER OF EMPLOYEES OF ST. JOSEPH COUNTY FOR THE FISCAL YEAR 2015-2016 DEPT. 0019 CIRCUIT COURT

Mr. McCahill reported that Bill No. 52-15 comes with a favorable a recommendation.

Lisa Plencner, St. Joseph Circuit Court Administrator, this year the General Assembly made it possible for the Circuit Court to appoint an additional magistrate. This would require the County to pay a portion, its \$4,000.00 that the County pays, it's a state paid position, we pay a county supplement.

Motion to pass Bill No. 52-15 was made by Mr. Catanzarite and seconded by Mr. O'Brien. Bill No. 52-15 was passed to-wit; 9-0.

BILL NO. 51-15: AN ORDINANCE AMENDING ORDINANCE 50-14, THE SAME BEING AN ORDINANCE ESTABLISHING SALARIES AND FIXING THE NUMBER OF EMPLOYEES OF ST. JOSEPH COUNTY FOR THE FISCAL YEAR 2015-2016 DEPT. 0020 SUPERIOR COURT

Mr. McCahill reported that Bill No. 51-15 comes with a favorable a recommendation.

Judge Jenny Pitts Manier, as you have heard with the Circuit Court, the Superior Court has been given the authority to hire two additional magistrates.

Mr. Catanzarite: Will this cause an increase in support staff such as clerks or bailiffs?

Judge Manier: Yes, it will.

Motion to pass Bill No. 51-15 was made by Mr. O'Brien and seconded by Mr. Noland. Bill No. 51-15 was passed to-wit; 9-0.

Public Hearing/Public Comment:

BILL NO. 46-15: AN ORDINANCE APPROPRIATING AND TRANSFERRING MONEYS FOR THE PURPOSE HEREIN SPECIFIED FOR THE SEVERAL DEPARTMENTS HEREIN LISTED OF ST. JOSEPH COUNTY GOVERNMENT

TRANSFER:

A. Community Corrections
CBC Fund

| | | |
|---------------------------|------------|---------------------------|
| FROM: 9114-01412-015-0080 | Cash Rec. | \$ 35,319.21 |
| TO: 4922-65030-000-00795 | Inter Fund | 35,319.21 |
| | | <u>TOTAL: \$35,319.21</u> |

| | | |
|---------------------------|---------------------|---------------------------|
| FROM: 4922-65030-000-0795 | Inter Fund Transfer | \$ 35,319.21 |
| TO: 9127-06500-016-0795 | Non Ident. Rev. | 35,319.21 |
| | | <u>TOTAL: \$35,319.21</u> |

| | | |
|---------------------------|------------------|---------------------------|
| FROM: 9114-01412-015-0080 | Grant/Cash | \$ 36,197.23 |
| TO: 9127-06500-016-0795 | Non. Ident. Rev. | 36,197.23 |
| | | <u>TOTAL: \$36,197.23</u> |

B. Juvenile & Probate Court
Juvenile Detention Alternative

| | | |
|---------------------------|-------------------|--------------|
| FROM: 9112-36015-000-0025 | Contractual Svc. | \$ 20,000.00 |
| TO: 9112-11312-000-0025 | IT Manager | 10,000.00 |
| 9112-11385-000-0025 | Probation Officer | 5,000.00 |
| 9112-11335-000-0025 | Training Officer | 5,000.00 |

TOTAL: \$20,000.00

C. Juvenile & Probate Court
Juvenile Probation Fees

| | | |
|---------------------------|----------------------------|-------------|
| FROM: 2050-31070-000-0025 | Other Contractual Services | \$ 4,200.00 |
| TO: 1000-11385-000-0025 | Probation Officer I | 4,200.00 |

TOTAL: \$ 4,200.00

D. Domestic Relations
General Fund

| | | |
|--------------------------|-----------------------------------|--------------|
| FROM: 1000-1195-000-0054 | Part time Family Court Specialist | \$ 15,020.00 |
| TO: 1000-11375-000-0054 | Family Court Specialist | 15,020.00 |

TOTAL: \$15,020.00

E. Circuit Court
Drug Free Fund

| | | |
|---------------------|------------------|--------------|
| 1148-39205-000-0019 | Community Grants | \$ 16,075.00 |
|---------------------|------------------|--------------|

TOTAL: \$ 16,075.00

F. Circuit Court
ALT. Dispute Res. Fund

| | | |
|--------------------------|----------------------------|--------------|
| FROM: 4901-0000-000-0054 | | \$ 17,170.00 |
| TO: 4901-31070-000-0054 | Other Contractual Services | 17,170.00 |

TOTAL: \$ 17,170.00

APPROPRIATE

G. Superior Court
Court Interpreter Grant

| | | |
|---------------------|----------------------------|-------------|
| 9114-39404-000-0020 | Court Interpreter Services | \$ 7,758.74 |
|---------------------|----------------------------|-------------|

TOTAL: \$ 7,758.74

H. Superior Court
General Fund

| | | |
|---------------------|------------------|-------------|
| 1000-11065-000-0020 | Court Magistrate | \$ 4,000.00 |
|---------------------|------------------|-------------|

TOTAL: \$ 4,000.00

I. Emergency Management
Hazardous Materials Team Qualification Program

| | | |
|---------------------|-------------------------------|-------------|
| 8122-02709-000-0009 | Receipt Code for State Reimb | \$ 6,291.51 |
| 8120-02709-000-0009 | Receipt Code for State Reimb. | 8,408.42 |

TOTAL: \$ 14,699.93

J. Adult Probation
Problem Solving Grant

9104-31215-000-0056 Drug Testing Fees \$ 8,427.00

TOTAL: \$ 8,427.00

Motion to pass Bill No. 46-15 except portion B under Transfer and omit portion C under JJC as well was made by Mr. O'Brien and seconded by Mr. Noland. Bill No. 46-15 was passed to-wit; 9-0.

Land Use Planning:

BILL NO. 36-15: AN ORDINANCE OF THE ST. JOSEPH COUNTY COUNCIL AMENDING TITLE XV, LAND USAGE OF THE ST. JOSEPH COUNTY CODE BY REPEALING AND REPLACING SECTIONS 154.225 THROUGH 154.231 PLANNED UNIT DEVELOPMENT DISTRICT

Mr. Noland reported that Bill No. 36-15 comes with a favorable a recommendation.

Matthew Chappuies, Area Plan Commission, we have modified the language, the ordinance and the intent section to make the entire chapter more relevant. We made some changes to help ensure the PUD district is reserved for appropriate uses and not used by developers to circumvent district standards. One significant change is the requirement is submitting a concept plan at least two weeks prior to submitting of the actual rezoning petition.

Motion to pass Bill No. 36-15 was made by Mr. O'Brien and seconded by Mr. Noland. Bill No. 36-15 was passed to-wit; 9-0.

BILL NO. 45-15: PETITION TO VACATE PUBLIC WAYS AND PUBLIC PLACES WITHIN THE UNINCORPORATED PORTION OF ST. JOSEPH COUNTY, INDIANA PETITIONER: EDWARD W. HARDIG

Mr. Noland reported that Bill No. 45-15 comes with a favorable a recommendation.

Mike Danch, Danch Harner and Associates, 1643 Commerce Drive South Bend, as we had met with Council and the Land Use Planning Committee, we are asking to vacate Huron Street that runs between Mayflower Road on the east and Hollywood Boulevard on the west. We provided the Council with a development plan, this is all being done as part of a rezoning process that we are doing with the City of South Bend. The property in question is on the southwest corner of Mayflower and Western Ave. this will be the site of the new Martin's Supermarket. We are asking Council to vacate 590 feet of Huron street to allow that development to proceed. We have designed our particular site to have access off of Mayflower Road, Hollywood Blvd. and Western Avenue. We attempted to work with the property owner at the very southeast corner of the site which is Westwinds Tavern. We will end up doing, as part of our development plan; we will still allow access for that property to be able to go out to Mayflower Road on the east as well as Hollywood Blvd. on the west. When we were doing our development plan for the rezoning, we worked with the engineering departments, both the city and the county and also the Area Plan Commission staff. The Westwinds site is directly at our southeast corner, they right now have parking in the very north side of the building, there are parking spaces that encroach into the public ride-of-way, as part of the vacation process, if this goes through for our vacation procedure, as part of that, we are actually giving up an additional ten feet of that right-of-way to that property owner. What that will allow them to do is, the existing pavement that is on the north side of the building outside of their parking area, that will go with that property owner so they will still continue to be able to use that parking. Our main driveway will be north of that parking area, we will provide access off of Mayflower Road through our site to the tavern side as well. Any delivers that can come off of Mayflower Road can come in and go into the tavern site without a problem. The tavern site also has an additional access point at their southeast corner, which exists so in essence they will have two off of Mayflower Road. One of the other questions that may come up is whether the patrons for the Westwinds Tavern will be allowed to have access to Hollywood Blvd. which is to the west. As part of our site plan, there is a drive that runs all the way between Hollywood Blvd. to Mayflower Road and with that additional driveway we are giving to the tavern site, any patrons could come up Hollywood Blvd. come into our site, come through our main drive and turn and get to the Westwinds Tavern site without a problem and the reverse would also be true

obviously. I think what we have done with our petition, we are still allowing access for Westwinds to have access not only to their parking lot but also deliveries and we will be working with them. One of the other things that we had done as part of that process, we had requested from Area Plan Commission is part of the rezoning, a variance petition because the Westwinds Tavern site is still zoned residential, we would have been required to put two rows over evergreen screening which would have totally blocked their site of visibility from Mayflower Road, we are asking for a variance for that requirement to use only low shrubs so the Westwinds Tavern site will maintain complete visibility along Mayflower Road. What we would ask Council to do is grant us approval for the street vacation.

Mr. Kruszynski: Mr. Danch, there will still be access from Mayflower to Hollywood, for Westwinds and for Martins, correct?

Mr. Danch: That's correct. There will still be a main driveway that runs all the way between Mayflower Road to Hollywood Blvd, that's access by the public so that's no problem, we will also be having a driveway that, if you came in off of Mayflower Rd. you could turn south and go right to Westwinds property and to their parking lot.

Mr. Kruszynski: Has there been any discussion in regards to some sort of flashing light or something at Mayflower and Huron with the traffic coming in and out of the parking lot?

Mr. Danch: Because we are going to go through the annexation process, we will work with the city engineer on that, if they determine something is needed there because of the traffic patterns that occur, then that would be a part of the developmental process.

Mr. Catanzarite: So at our committee presentation, you did you were working with that property owner, we have since gotten a remonstrance from them. Have the talks stalled or are you still in discussions?

Mr. Danch: I think we have done everything we possibly could from a standpoint of developing our site plan. I read the letter that was submitted to Council, I believe there were four items that we have addressed fully to Council that they had a concern that somehow there was going to be access that would be blocked by the development that was going to occur to the north of them and by the site plan we have submitted to council and what I have just made representation, that is not correct. They will still have their own access as well at the southeast corner of their site. There will three ways to get to that property, two off of Mayflower and one off of Hollywood Blvd.

Mr. Catanzarite: Has your client studied that this will bring more people to this area, is it possible to spin off from you guys locating there, if this vacation goes through would create more business?

Mr. Danch: There could possibly be more business in that area due to Martin's Supermarket going in there, I think you are going to see increase in traffic. I would think that this potentially that's going to help that owner to the south because there is going to be more traffic.

Mr. Kruszynski: When I went out there today, I saw that the sewer was located, that's pretty far off the right of way, maybe ten-twelve foot, is that going to affect anything they are going to there?

Mr. Danch: No, when we go through a vacation process, there is an existing sanitary sewer line that was put in, I was going to say the city but I am not sure, it may have been done by the school corporation but there is an existing public sanitary sewer line that runs on the south side of the right of way for Huron Street. Once this is vacated, even though you vacate a right of way, the easement of the sewer line will still remain. What it will allow is that the existing parking that is now in the public right of way on the north side of the tavern site will become on private property and it will be that owners private property as well as the driveway that is there so that will be removed from a public situation where you have parking in a right of way. That owner will have complete control of that area.

James A. Masters, Law Firm Nemeth, Feeney, Masters & Campiti, 350 Columbia St. South Bend, I am here this evening on behalf of the remonstrators, Marom, LLC which owns Westwinds Restaurant, which is owned and operated by John Benhart and Mark Benhart. One business's growth should not be at the expense of another. This plan to close Huron Street puts all the burden of the development onto Westwinds Restaurant and it's owners, damages his business, devalues it's property and there is no benefit. As much as respect I have for Mr. Danch, those comments are completely with lacking in candor. There has been no discussion with these gentlemen about this plan that has been put before you tonight. What was said here tonight is a complete surprise to us. We don't know what those plans say. You were told about it in some meeting that we weren't invited to. There's been nothing put in writing to validate all these commitments you hear tonight. Who are they trying to fool? You know darn well that none of that means anything unless it's in writing and there's a commitment. How are we going to end up with ten

extra feet of land? Unless they agree to deed it. The only plans we saw were to block off Huron St. to put a big curb out there on the east side of Westwinds that would completely block off truck traffic and close off Huron St. between Mayflower and Hollywood. If there is something else out there, we have not seen it. I find this really amusing and amazing too that two months ago, I told Mr. Hardig that these gentlemen would remonstrate against closing Huron Street and there has not been a single word said to me since there.

Mr. Morton: You told who?

Mr. Masters: Mr. Hardig. There has not been a single word said to me since then about this. What am I to make of this other than we have no idea what they are telling you, what plans you've seen because we've not seen them and I think it's outrageous to suggest that you should buy this pig in a poke of all these representations that haven't been put into writing to any business owner. I ask you to deny this request and to grant the remonstrance.

John Benhart, owner of the property at the corner of Mayflower and Huron St., I heard something said tonight that you people reviewed these plans and our attorney said we have never seen anything yet of any proposal that they have. We need Huron St. Huron St. provides access for our service trucks, delivery trucks and most importantly, our customers. They are going to change a public right of way and make into a private entity and we are going to have to subscribe to their business and whatever happens on private property. We have a public right of way, we are very happy with it. St. Joseph County has just paved two years ago, they do an excellent job of snow removal. We operate from 7:00 a.m., we don't have a snow removal problem. The sanitary sewers in the street, underground communications line, overhead electric line and a gas line, it is truly a public right of way. We need a public right of way. They are going to put a fence all around us, we don't need a fence. We don't need shrubs, we need visibility. If they need parking, there is a development right on Western Ave. that has a roadway out in front of the businesses and if people have crosswalks to get to the businesses they can easily install crosswalks across Huron St., control it with fencing and we still have the public right of way. We really need Huron Street as a public right of way. We are not against the development but we are against making all the sacrifice, we are against doing everything at our expense to enhance their business development. I think there has to be a tradeoff.

Mark Benhart, 26147 Edison Rd. South Bend, 46628, I am the operations manager of the Westwinds Tavern, I get there at 6:00 a.m. and I handle all the deliveries, kitchen work and one of my biggest fears of what I hear is that and I have talked to my delivery people and they say they might be forced to be parking on Mayflower Rd. depending on where they say they are going to put an entrance in off of their private property onto ours. If it pushes most of my parking to the back parking lot, which I believe it probably will, it's going to block the traffic what would be the west side of my building. Parking on Mayflower Rd. so they can deliver products, Mayflower Rd. at 8:00 a.m. in the morning is jammed up, it is busy. I think it's a real endangerment for the truck drivers to work around that traffic. We would be subject to their maintenance in the winter time. If they don't decide to plow that drive, my deliver starts at 6:30 a.m. they go to 8:30 a.m., if they decide not to plow that drive, I plow our drive, I make sure that the trucks always have access to our building. I appreciate it if you turn this down.

Mr. Danch: The plan has been submitted, it's public information right now for rezoning processes. It's the same plan we have shown to Council. I think we have addressed everything the petitioner has mentioned that Huron St. there are actually using it for their parking and for truck deliveries and one of the things that I mentioned to Council, as part of this street vacation process, they are not going to be any less inconvenienced by a new driveway, what will actually happen is that the illegal parking that they now have on the north side of their building that's in the public right of way for Huron St. will be removed, it will actually become part of their property, it will be on private property, not in the public right of way, not causing a problem, deliveries will be able to come directly off of Mayflower Road, through our driveway and onto the west side of the site, exactly the way the owner has mentioned how the deliveries were handled. Deliveries would not be in Huron St. and the public right of way, they would be on private property. The ordinance I gave Council actually stipulates in section three that the additional right of way that I mentioned for the ten feet is given to that property owner, it's in the ordinance, if Council approves the ordinance, that will happen. They will actually get all the pavement on the north side of the building that they are presently using for both parking and deliveries, we will not have any of that. The other thing that Mr. Masters has mentioned is that there is nothing in writing. As part of the rezoning process that we will be doing, as a part of the approval process, there will be written commitments. One of the written commitments will be that the owner of that property shall be able to use our property and maintain direct access on Mayflower Road and also off of Hollywood Blvd. That's a commitment that get's recorded as part of the rezoning process, it's enforceable by the property owner, it's enforceable by every governmental agency and it's also enforceable by property owners within three hundred feet of the property. That's a recorded document that will allow access to that property over our property from Mayflower Road and also Hollywood Blvd. I think from that standpoint, we are actually granting them everything they are asking.

Mr. Kruszynski: Mike, the current right of way right now is sixty foot thirty foot on each side of Huron, correct?

Mr. Danch: That's correct.

Mr. Kruszynski: That put's that right of way to the south how close to that building?

Mr. Danch: The right of way is probably within about three feet of the building. If you have been out there, the parking that they have is basically perpendicular to the building so my guess is and this is approximate, seventeen feet of those parking spaces is in the public right of way, so potentially the county could go out there today and ask the owner to remove all those parking spaces that the patrons use on the north side of the building and put them on his property. In essence what we are trying to do is help him out from that stand point, make that parking legal, make a part of his property so that he has complete control over it. Right now, he does not have that.

Ed Hardig, Manager of County Development, LLC, my purpose here is to rebut some of the comments Mr. Masters gave. At the end of his comments, he slipped a little bit. He said, "when I talked to Mr. Hardig." And of course we talked to Mr. Masters. Here's the first, on the phone, and as a matter of fact, his clients were present. They were present at the time I talked to Mr. Masters, in his office. This is an email I sent to him on June 19, "Jim, attached is a revised agreement as to the street vacation; I previously emailed to you the revised design for your clients site. I can meet with you and your clients to discuss the design. You will note the design has to notes as to the boundary lines, landscaping and improvements as to your clients' site." I also, to give you an earlier email, June 19, 2015, "Jim, this is a follow up of our telephone conversation. Attached is a drawing of your clients lot and what it would expand on your clients consent to vacation of Huron St. I have provided for landscaping, a non open area for county development land boarding, what would be your clients new north property line. Also, landscaping just off the west side of your clients remaining west line, the opening is reconfigured to allow for truck turning radius." Something we talked about on the phone and he said they needed out there. "Your client would benefit from the newly created north parking area as their current north property line appears to be three to four feet from the current street line. I would be happy to meet with you in person to discuss the attachment or to discuss it with you and your clients. Please contact me." I never heard again from Mr. Masters. His parting shot to me was, we will see you there, we are remonstrating. I don't want to buy the tavern, didn't offer to buy the tavern, if anyone offered to buy the tavern and they thought they wanted to be bought out as part of the other project, it wasn't County Development and I told Jim that. So if his clients think that because County Development was buying other properties, they seek to buy theirs, I told Jim clearly, we don't want his property and we are not going to be blackmailed into buying his property and we don't want it. I think Huron Street and the improvement, which will be to their business, I represent a lot of businesses in town and I just am flabbergasted that when you have a Martin's coming in and you have a lot adjoining to that site and you are open at 6:00 a.m., I would think it would be a boom to their business. I have great respect for Jim. I just want to clear up things. I was the party on the other end and I want to clear up any misrepresentation.

Mr. Kruszynski: County LLC owns Top Notch also, am I correct?

Mr. Hardig: Yes.

Mr. Kruszynski: There are no plans for Top Notch.

Mr. Hardig: Do you mind if I pass this question to Mr. Bartels?

Robert Bartles, 760 W. Pattern, South Bend, we have not completed a site design for the store, we are hiring some outside consultants. Top Notch is running a business there now, they will continue to do so for some time, we don't have a complete site plan or business approach for that whole corner yet. There is some uncertainty with this.

Mr. Hardig: Top Notch has a lease with us at this point.

Mr. O'Brien: I drove by the property just once, it sounds to me like Mr. Kruszynski has been out there quite a bit, I guess I'd like to hear his overall thoughts, this is in the area he represents. Bobby, it sounds like you are supportive, if you could summarize why it would be helpful to me.

Mr. Kruszynski: Yes, I have been by the property numerous times and I have met with County LLC on a few occasions and had conversations with Mr. Freehoff and Mr. Danch and met with them personally a couple of times. Living on the west side of South Bend for 65 years, I am very familiar with that area. Martin's would be a great benefit to the west side of South Bend. We are looking in the neighborhood of a ten, twelve million dollar project. I sympathize with the owners of Westwinds but I agree also that this could benefit, could benefit, their business. The

improvements County LLC is planning on making to Huron St. would be favorable to Westwinds and to that area. I will be voting yes for this vacation. I look for members of the Council to do so also.

Mr. Telloyan: Can we actually hear from Mr. Masters regarding this June 19th email.

Mr. Masters: As I said earlier, two months ago, Mr. Hardig and I talked about this, June 19th was the last time he and I had any discussion about it. My clients have not seen these plans, I have not seen these plans, you would think, if faced with a remonstrance, knowing my clients were going to remonstrate and they were going to come here tonight and ask you to approve a plan they would've at least shown us the plan. Mr. Danch talks about making these commitments down the road, when he goes to zoning, don't you think it would be a nice idea to have those commitments in writing before you showed up here tonight so we wouldn't stand here and remonstrate? Nobody does this lightly. When I talked to Mr. Hardig two months, he wouldn't even tell me who is client is, I know who is client was, I know who County Development was buying the property for. He wouldn't even tell me that. This discussion about buying the property, apparently someone else had approached my client about buying their property, we knew it wasn't them. What they wanted two months ago was for my client to join in on this vacation. We told them no, we were not going to sign that agreement. Whatever plans they have before you tonight, we have not seen. The only thing my client saw was a site plan showing Huron St. being vacated and curbs being installed on Mayflower. This representation to you tonight that there is going to be a lane or some road opened between Mayflower and Hollywood is news to us. This fifteen feet being deeded over, that's news. You would think these things would be buttoned up and that's all we are asking for, I think that these commitments, it's nice to stand here in front of you and say this is what we are going to do, but none of this is put into writing to my client so don't make us look like we are the bad guys. A project like this, I would think you would tie it up a little more neatly, if you wanted us to not oppose it, you might have told us what all these representations were going to be before tonight.

Mr. Morton: I just want to make sure I am understanding how this correspondence went back and forth and how it was left. You are saying, it's been two months since you have had any contact or correspondence with the petitioner and am I correct to assume that during that last email, you did respond and let the petitioner know that you were going to be remonstrating and you were against the plan?

Mr. Masters: Yes.

Mr. Morton: You did say that?

Mr. Masters: Absolutely, as a matter of fact, I wrote Mr. Hardig a letter and said that.

Mr. Morton: Ok.

Mr. Masters: By the way, they had copies of this remonstrance that was filed last week. You would think somebody would say, gee Jim, why are you remonstrating if we are doing all these nice things for your client. This is what always amazes me is, you have all this information, you have had all this correspondence with the developer, but not a single person has talked to the business that is being affected by it?

Mr. Noland: It seems fairly often that these land use disagreements come up and it's mainly, the root cause of it is the property owners are not talking to each other. I am not taking sides, I don't know who emailed who and who didn't email somebody back but it's the sides not getting together and discussing these things because I believe the plan in front of us is going to take care of most of your concerns if not all because there is the driveway, there is a route, you get to park in a legal spot that is your own instead of the county's right of way, there is traffic, there is a rout to get over to Hollywood, is that the street to the west? The vast majority of your concerns are concerns but for whatever reason, that conversation has not happened and that's disappointing and I am not putting the blame on either side. It's a lack of communication between two parties. Maybe I am wrong, maybe you will see this and you won't like it but I am telling you, from everything I have head, it's pretty much addressed here.

Mr. Masters: Respectfully Mr. Noland, I can't agree with you because we have not seen those plans. My client has seen those plans. You would think if you wanted us to participate in this and support it, we would see the plans.

Mr. Telloyan: Mr. Masters, do you think there is a legal requirement that you'd be allowed to see the written commitments or the plans for your property?

Mr. Masters: I think the way the street vacation statute is written, I don't think there is a right to commitments but I would think if someone was going to come before you and represent that we are doing all these great things with the adjoining property owners to address the remonstrance that we would have seen it.

Mr. Kruszynski: Jim, what was mailed to you, Mr. Hardig indicated he emailed you a drawing or something?

Mr. Masters: The drawing we have is Huron St. being vacated.

Mr. Kruszynski: There is an access off of Mayflower for the Westwinds, am I correct?

Mr. Masters: Well, the drawing we have shows that being constructed by a large pavement that is being installed on the public right of way. I don't know if that's part of the plan you are seeing, what you have been provided.

Mr. Noland: What we have is the south entrance of the property off of Mayflower isn't impacted at all. The north entrance would have a curve so there would be no access from Mayflower, but if you come into the driveway at the very south end of Martin's property, within the client's property, they would be able turn into there.

Mr. Masters: Mr. Noland, the problem is the trucks coming on the south entrance can't get access to the building, how would they turn around.

Mr. Noland: I would assume they would go back out through the Martin's property but I'm not a truck driver.

Mr. Kruszynski: The parking area behind the Westwinds is pretty big. Are you pulling semi's in there?

Mr. Master: Some of that is not their property, I don't how big you consider big, I am looking at about 15 feet from the back of the building.

Mr. Kruszynski: So you are illegally parking on county property on Huron and now you're going to tell me you are using someone else's property.

Mr. Masters: I don't think anybody parks on the back side of the building.

Mr. Kruszynski: That's what I am asking, you are just telling me trucks drive back there.

Mr. Masters: Trucks come through there, sure. On their pavement, on their property.

Mr. Kruszynski: I don't think that's pavement back there, it's gravel.

Mr. Masters: Gravel. Alright. The point is, I don't think that's going to be accessible for trucks coming off of Mayflower and being able to exit back out.

Mr. Kruszynski: Why?

Mr. Masters: What I am being handed here is something showing a curb structure being put down Huron Street. So you are going to hope the trucks are going to make a turn out on that. I don't know how they are going to access that and get back out onto Mayflower.

Mr. Catanzarite: Mr. Masters, this has not been done behind anybody's, we are a very transparent group, it's a very public process when you vacate an alley, proper notifications are made and advertised is done. We did have a committee meeting two weeks ago where this was laid out to us that your client could have attended to, that would have been available to see this information.

Mr. Masters: Who gave us notice of that committee meeting?

Mr. Catanzarite: It's advertised like it is for every other vacation we do. Within the legal elements of what we are required to do, we have done that.

Mr. Masters: Mr. Catanzarite, nobody's faulting the Council on these things. Developer comes in, takes advantage that they can speak to you at a committee meeting, provides you with all the information but that's not the type of....I've been to your committee meetings, you don't have a debate there.

Mr. Catanzartie: We don't but you would have been more informed as to what their intentions were. I'm sure that would have caused this conversation to occur, hopefully, a lot sooner than tonight.

Mr. Masters: The problem is there is a different type of discussion being presented to you here tonight. The discussion is we have addressed all of the remonstrators concerns. We are giving them this access, we are doing this, we're doing that. Don't you think it would have been awfully nice if we had seen that before hearing that tonight? I am not suggesting the Council is doing anything wrong at all I just think there is a better way of going about this.

Mr. Catanzarite: You and your client could have attended our committee hearing to find out what they were reporting to do for you guys.....

Mr. Masters: I am sorry I didn't read the legal notices for that particular day. We didn't have any direct knowledge that there was a committee hearing. Although, I will tell you this, they knew we were going to remonstrate when they showed up two weeks ago at a committee meeting.

Mr. Morton: That is where I have a concern. I am sorry, I do. I have a concern because, correct me if I am wrong, if anyone disagrees with what I am about to say then please say it. I had no idea that the property owner had this serious level of remonstrance when it was presented to us at committee.

Mr. Noland: I would go back to what I said before, I believe that they could have done a better job of communicating with you as to what this is what our plan is now. I also believe that you could have actively, hey, what's going on, what are you guys doing? That works both ways. I think both people, both sides of this issue, as with many land use issues, just talk to one another. I think they could have had you not here doing this remonstrance had they had better conversations, I think that's on both sides.

Mr. Kruszynski: Jim, didn't you have conversations with Ed a few times though?

Mr. Masters: Six weeks, two months ago, yes. The first we knew about this remonstrance we got this letter, I saw it about a week and a half ago.

Mr. Kruszynski: Back in June?

Mr. Masters: No, the July 10th letter saying that there was going to be this hearing tonight. In fact, I first thought this was the committee meeting when I saw it because it was the first notice we had about it.

Mr. Morton: You thought tonight was committee?

Mr. Masters: Yeah, well when I first received this letter I did. Or when my client first received this letter. That was the first notice we had of any action on this.

Ms. Hess: I am supportive of the project and am pleased with what I heard in the committee meetings with what you were going to do with Westwinds and so forth but what I do hear that you were aware of a remonstrance that was going to happen and didn't share that with us, it does color my thinking because it might have changed how we looked at the situation back in committee meetings so I just think it would have been advisable to let us know that there was a remonstrance that we were unaware of until a week after the committee meeting.

Mr. Danch: Actually, we didn't know there was going to be a remonstrance until I saw the letter from Jim that was given to County Council.

Mr. Morton: Now I am confused again because I thought that, Mr. Hardig, maybe I misunderstood you, but I thought you did say that during your correspondence with Mr. Masters that he did let you know he would be remonstrating. I believe I heard you say that.

Mr. Hardig: Yes, not only remonstrating but also against the project, the key was, when I talked to him....

Mr. Morton: That's my point, that's exactly why I have a concern with it.

Mr. Hardig: When we talked, at the end of the conversation, it was like, we will just see you in court. I made it very clear, when I sent him the road design that took care of his issue, which was the trucks couldn't pull in and out, I sent that on June 17th and each time, every time I would contact him, like I read to you out loud in my June 17th, I'll be

happy to meet with you in person to discuss the attachment or to discuss it with you, please contact me. Remember, we don't want to buy their bar.....

Mr. Morton: I understand that sir, what I am saying is, you are saying that you knew the remonstrance was there from the property owner.

Mr. Hardig: I knew he was against it.

Mr. Morton: Remonstrance, against it, to me that's the same thing. What I am saying, what I have a concern with is that you knew, Mr. Danch is saying he didn't, we sure didn't. I have a concern with that.

Mr. Hardig: I understand that.

Mr. Morton: Thank you.

Mr. Telloyan: Mr. Masters, who sent you the letter on July 10, 2015?

Mr. Masters: It came on County Council stationary. Actually, it went to my clients then they brought it to me. All that has is a letter saying there is a petition filed, we have a vacation diagram that shows the street being vacated and the grounds for a remonstrance are.

Mr. Morton: When Mr. Danch is the person presenting to us at committee and he just stated that he didn't know of the remonstrance, I have a problem with that.

Mr. Bartels: At the risk of making this a circus, I apologize. Clearly, we have not communicated as well as we should have, number one. Number two, certainly using this as a method to negotiate and doing this here is not handy and is not easy. We run a bunch of stores, we have a ton of cross easements, we do a lot of development. We have worked through a lot of remonstrances, I will not pretend for a moment that we may end up agreeing on everything. We have gone through road vacations in the past, we have done it in Goshen where it directly affected other businesses, we do what we say we are going to do, we act in good faith, we want the right things for the right reasons and what that means for us a good store on the west side of South Bend, serving the customers well, getting along with our neighbors as best we can. I am not making promises but as we go through these things, we do make every effort to talk, clearly this got away from me and I apologize for that, we should have gone through some of this friction before hand, I can't say we'd be standing here agreeing but the fact that folks disagree, that happens and I just tell you that our job, my job is to provide the best store I possibly can for the community and our customers and we will do what we can to work through things and as I looked at these things over my desk, I certainly had information and I was aware of information going both ways. I was also aware of the fact that we had some disagreements but that's typical and normal so, if there is a question about what we will do as a business or what we will do as a company, I am happy to address that either now or later. If you have a question about our good faith effort to communicate and keep our heads down, it is no joke we do things through LLC's, we don't want to end up having property values escalate way out of control as things goes. That's how that happens, everybody knows it. We stay in the lines, we drive the speed limit and yes, occasionally we do get into disagreements.

Mr. Kruszynski: Mr. Bartels, what if we made a motion to send this back to our committee for one month, what would that do to the project?

Mr. Bartels: Time is of the essence with us. These things have a, we are working on a tight schedule now. The big issues for us is winter condition construction and we are trying to avoid those things so we are trying to move with all due speed, I think this has been pushed back yet one more month then it had originally, two months then it had originally been planned in our offices so we are already up against several deadlines.

Mr. Masters: Excuse me, I just received notice there is an Area Plan Commission hearing, I mean, my client showed me, next week and then after that there is city council hearings on variances and ordinances and annexations, so what's pushing it back a month, there certainly not going to get all those approvals from the city between now and next month.

Mr. Noland: Area Plan, they have to go through this anyway, we don't need to start this back from scratch, we can just table this, it already has a favorable recommendation, if you can work this out and get the proper communication then maybe this is going to be really easy next month. I believe that is what the result is going to be, we will be back

here in a month from now, this is not a big issue, not that you are going to agree with every single thing that's on their plan but I think the vast majority of their issues are addressed with what's here.

Mr. Catanzarite: Before Mr. Noland offers that up, as an alternative, is there any chance the two parties could meet, if we recess for ten minutes, come to some sort of agreement. Let them look over what's being handed over to them now and see if that would be beneficial.

Mr. Morton: Mr. Masters: Did you hear that alternative?

Mr. Masters: I am looking at the site plan for the very first time. I don't know that we are going to settle something in 15 minutes. I will be happy to try.

Mr. Catanzarite: It's an alternative idea. Take a short recess.

Mr. O'Brien: If time is of the essence, it might make sense to give it a shot.

Mr. Morton: I am not opposed to it.

Mr. Catanzarite made a motion to take a short recess, no longer than, reconvene by 7:45 and was seconded by Mr. O'Brien.

There was a 15 minute recess.

Mr. Danch: We would ask Council to table this for one month. Hopefully what that would do is allow us to get through the first step of the rezoning process to assure the remonstrator and his client that the conditions that we discussed this evening with written commitments for access will be a part of the public record and then we can come back to Council and say we have those written commitments as part of the process.

Mr. Kruszynski: Mike, Mr. Masters will be aware of Area Plan's meeting next week?

Mr. Danch: It's Tuesday, Jim at 3:30 and we are the only item up. Yes, he's aware of it.

Motion to table Bill No. 45-15 was made by Mr. Noland and seconded by Mr. Kruszynski. Bill No. 45-15 was tabled to-wit; 8-1. Against: Mr. Catanzarite

Unfinished Business:

New Business:

Privilege of the floor:

Adjournment: Mr. Morton stated that the meeting was adjourned 7:36 p.m.

Auditor, St. Joseph County

President, St. Joseph County Council

