

Transfer of Funds-Cumulative Bridge
Additional Appropriations-Clock Tower Fund & General
Area Plan/Zoning
Health Insurance
Appointment to Area Plan Commission
Comp Time

Vermillion County Council Meeting Agenda & Minutes

Monday July 9, 2012

7:00 pm

Commissioners Courtroom, Courthouse, Newport, Indiana

Type of Meeting: Monthly Meeting

Invitees: Public Meeting

- I. Call to order. President Mike Carty called the meeting to order.
- II. Roll call. Present were Mike Carty, Brent Bush, Lavonna Mattick, Randy Dreher, Jim McLain, Mike Costello, Randy Padish, Attorney Don Darnell, Auditor Phyllis Orman and First Deputy Auditor Amy Tolbert.
- III. Approval of minutes from last meeting. Mattick made a motion to allow, seconded by Dreher. All were in favor.
- IV. Transfer of funds.

Cumulative Bridge \$24,000.00 from Bridge and Structural Materials to Bridge 112. Orman said that while she was gone some things were paid out of the wrong fund so she is asking for the transfer to get the funds back to where they should be. It's to replenish the account she said. Padish made a motion to allow, seconded by Bush. All were in favor.

- V. Additional Appropriations.

Clock Tower Fund \$1,500.00 Tolbert stated they had received some more donations and needed to appropriate the cash to be able to pay the invoice. Costello motion to allow, seconded by Mattick. All were in favor. Costello asked if the work would be completed by the Hillclimb and Orman said yes, they have already begun the renovation. Costello asked if they were replacing the chimes and Orman said no, that was an added expense.

General Fund \$25,000.00 in the Commissioners Court to purchase a new police car. Carty stated they had asked Spence to come back and ask for one new car. He had previously asked for two used cars. Costello asked the actual cost and Spence said \$22,933.00. They asked for extra to cover the cost of equipping the car. Dreher made a motion to allow, seconded by Padish. All were in favor.

- VI. Open issues
 - a) Other Area Plan Issue

Carty: We still have the Area Plan issue.

Nina Alexander: I have an issue.

Carty: It is related to an open issue because in April we had a request for an appropriation by the Area Plan, we had a motion, we rescinded it, so we still have the issue even though it's not on the agenda. It should be on as other business to come back and review. Alexander has asked to address the council related to this. I assume everyone had received the same packet from Alexander that I got.

Alexander: Yes.

Carty: Do we need a long dissertation? Nina would you like to summarize?

Alexander: Yes, I would be glad to summarize. If everyone has had a chance to read what I sent then you know exactly why I am here. I am representing Mr. Thomas and I am asking the council to reconsider your decision last time where you decided you were not going to approve an appropriation. When I read the article in the paper where it said council denies claim, I thought that couldn't be right because that's not what the Council does. It is the Commissioners job to approve claims. You would know if you have read the materials I have sent you that back on September 6th of last year the Commissioners passed an ordinance and they set in motion a series of events that has really lead to a real legal mess. It wasn't only that the ordinance they passed was determined to be unlawful but they took a series of steps following the passing of the ordinance, all of which were also declared to be unlawful. In fact, when I was going through Judge Swaim's decision I think I counted almost a dozen acts in which they have now taken in reliance of that unlawful ordinance and in reliance of a resolution they passed in December. All of which have been determined by a court of law to be unlawful. Those include revoking the ordinance, doing away with Area Plan-unlawful, doing away with the BZA-unlawful, removing members from the boards-unlawful, Commissioner Craig coming to budget hearings and submitting a budget for the zoning department-determined by the court to be unlawful. The resolution back on December 6th-unlawful. The transferring of attorney duties from Larry Thomas to Jon Spurr-unlawful, giving Penney Barton control of the zoning budget-unlawful. Commissioner Craig's claims that the committees were hiring and firing anyone on behalf of the Area Plan was unlawful and the hiring of Ms. Barton and the purported firing of Ms. Smith-all of which has been determined by the court to be unlawful and not only that, It is a decision for which the time to appeal has passed. Okay. It's not that those things are going to be changed. You are stuck with all of those unlawful findings. Now, eight days, eight days after Judge Swaim issued this order the Area Plan Commission which lo and behold had been told they were in fact a lawful commission, that the acts taken by the Commissioners did not take away their independence. They voted to ask for an appropriation from their discretionary fund. They didn't ask for taxpayers funds. They asked to use their discretionary funds. Now the letter I sent you I made a mistake. I said that all of those discretionary funds were from fines, that is incorrect. They are fines and fees that are collected but none of that is taxpayer money. When I was talking ...I...Mike (Costello) are you the one that has been here the longest?

Costello: Yes

Alexander: but you know I was here as a local government official for 12 years, actually 16 years. I can't recall ever a time when you were requested simply for an appropriation from a discretionary fund that you have ever turned it down and I bet that you can't name me one.

Costello: Not off the top of my head.

Carty: I don't think we actually said we weren't going to pay it. We said we were going to research it and find out where we stood because we had questions.

Alexander: That's fine and excuse me for interrupting, but Mike the council doesn't determine whether or not it's to be paid, You just determine the appropriation.

Carty: That is correct.

Alexander: Yes

Carty: I agree with that.

Alexander: and when Don said to you that it's discretionary, of course it's discretionary. All appropriations for you are discretionary, without a court mandate, a court order nobody can order you to make an appropriation but I'm just saying if in the memory of the longest sitting member of the council, you can't remember a time that you ever turned down an appropriation from discretionary funds then it makes me wonder what's going on here and of course I know that the Commissioners, Commissioner Craig and Commissioner Wilson, is he here anymore? I know that they've lobbied you because you know what, that puts you in the same boat as they are. They are the ones that are unlawful. You don't have to be drawn into that and I think you should reconsider it for several reasons. One it is absolutely the right thing to do. If they want to turn down this man's attorney fees then they can turn it down and they are the ones who will be sued and that is what I have to say and I would be glad to answer any questions that you might have. I told you that I would have the minutes for the other meeting and I do have those. Ms. Barton has provided those to me, which reflect a 6-0 vote to ask for the transfer of funds and you don't have any reason to deny it.

Carty: I thank you. I think the only difference that I would say is that actually we were not, not acting on or denying the appropriation. We still had questions in our mind. It had nothing to do with lobbying, in my mind anyway. I think several of us, that we were not sure. I do believe that the commissioners had intent to do the right thing and I think we were in a position where the ruling had just came out, most of us had not seen it. We said all along we just need to know who is the proper authorization of this document requesting the appropriation. We can't act if we don't know where the direction is. I think in light of what you've given us, okay, and you've all had chance to take a look at it. We had asked Don to research it. Don did, about the legality and everything and I think that the fact that they did have a meeting, which was in question last time, because nobody was sure. Matter of fact I thought I heard members of the Area Plan say they didn't have meetings but now we have seen the minutes, there was a meeting, unfortunately or fortunately, it doesn't make any difference, it was done after they had asked for the appropriation, which I have a little bit of a problem with from a timing standpoint but that is irrelevant. Also, the fact is where we stand now, the Area Plan has a legitimate, and we now know that the Area Plan is the legitimate planning entity at this point in time. If the Commissioners want to change it they have the right to try to change it but it has to be done legally and in the right way. Where we stand is that we have a legitimate request for an appropriation of funds which can be spent, according to our attorney. It can be spent appropriately for the funds that they want to use so...

Costello: Let me see if I can help, this has been a mess..

Carty: It's still a mess because all we are dealing with right now and it's our responsibility, is the appropriation.

Costello: The appropriation is the only thing we deal with.

Carty: The mess still deals with the salary ordinance, who is in charge, the Area Plan Committee still has to meet and determine how they are organized. Who is doing what and then submitting their request for a change in the salary ordinance then we can deal with that.

Costello: I guess we could approve the appropriation and then the Area Plan could decide they are not going to ask for a claim, they are not going to pay him or we could approve the appropriation, Area Plan says yes, we are going to pay him this \$5,000 and then they submit a claim to the Commissioners and then the Commissioners can decide whether or not to pay that claim or not, is that right?

Alexander: The only thing before you is the appropriation.

Carty: is the appropriation...

Costello: ok I am just trying to...

Carty: They have already done that, the Area Plan has already met and chose to pay the bill, in a 6-1 or 6-0 vote.

Alexander: That is why they are asking for the appropriation.

Carty: There is still a question on how the vote went but they did meet and agreed that they wanted to pay the bill so...

Alexander: May I say one thing in response.

Carty: Sure.

Alexander: I did not mean to impugn whatever motives the Commissioners...

Carty: No, I understand.

Alexander: but regardless of what their motives were, it resulted in a series of unlawful acts.

Carty: Right.

Alexander: and unlawful acts have consequences.

Carty: Right and we still have to deal with all of those.

Alexander: Absolutely.

Carty: The first thing is...we now have in front of us...our only responsibility at this point in time is to determine if we are going to do the additional appropriation out of a fund that they already have the money for.

Alexander: Yes.

Carty: and similar to what you said, it has never been rejected in the past. That is what is in front of us at this point in time. We didn't act on it because we had too many questions and in the last, well actually it was the April meeting that that came up but...

Dreher: Did we ever get an answer? I mean can one person file that in court without the board approving it? I mean does state statute allow that?

Alexander: Well...I'll be glad to answer that if you want...

Costello: that's a good question.

Alexander: When you opt in, when they opt into a zoning ordinance...in that 1970 ordinance, that brought them under a title 36, which is a long and complicated section on local government and the section on zoning is particularly long and particularly complicated. Now this is a procedure in there which says, when the Area Plan Commission sues and is sued they will be sued in the name of the Area Plan Commission. Okay. It says that secondly you have people making this argument who purported to dissolve the very agency that the statute gives them the right to sue. When Mr. Rogers, who was the head of the Area Plan, was in that September 6th meeting, he asked the Commissioners, is there an Area Plan Commission anymore and the Commissioners said no. Now in my letter to you, I said to you, if you want to know

about the doctrine of collateral estoppel you ask your attorney because these Commissioners cannot now go into court and claim they weren't properly sued because they are collaterally stopped because they did away with the entity that had the authority to sue them. So, I don't know if that makes any sense to you.

Carty: and really...

Dreher: Can Mr. Carty, as President file suit without confirming with us?

Carty: No. In my opinion, I don't know what the legal answer is to that but I'll tell you what I think because I think that is just as important. ..

Alexander: but what I am saying is that when you have attempted to destroy the legal entity that has the authority and right to sue, when you have told them they no longer exist, then you cannot claim that in a defense when they sue you. You are collaterally stopped from doing that. Am I making sense Don? But again that's not an issue...

Carty: It goes to...do we want to hire another lawyer to find an answer for it? Do we want to have Don spend...and the reality is...

Dreher: It's a shame it got to the point where it go to.

Carty: Exactly.

Alexander: That's absolutely true.

Dreher: It should have been resolved before ever got here this evening, long before we went to court.

Carty: but the point is and the reason I'm not too concerned whether the two people should have brought suit or not is that the board, finally, when they determined that the Judge said they do exist as a board, they did meet and they met and voted that they wanted to pay this bill. Now you can get attorneys and go and find out if it's done right or whatever, that's irrelevant because the board did meet, after the fact, but they did meet and a majority of the board said we want to pay this invoice.

Costello: It could have been stopped there if they didn't want to pay it.

Carty: Well, if they didn't want to pay it, it would have been stopped there.

Costello: Right.

Dreher: I just think if we are going to vote on this, we need to make sure that it's in the minutes, Eric gets it correct in the paper, that all we are approving is an appropriation. The Commissioners are going to have to decide whether this claim will be paid or not paid.

Alexander: Absolutely, that's a jurisdictional thing.

Costello: and also I think, not being public funds, being fines, forfeitures, and fee's, I mean it's up to them how they spend the money.

Alexander: Absolutely and this is not an expenditure of public funds and it's not an expenditures of taxpayer funds but this doesn't mean taxpayers funds haven't been spent in this morass. I mean, somebody paid Jon Spurr and he deserved to be paid, but that had to be paid out of taxpayer funds...

Costello: Did he submit an additional?

Alexander: Well I assume he doesn't do legal work for free anymore than Larry does.

Costello: Did he submit an additional?

Alexander: I am the only one here working for free.

Costello: Whether he has yet or not, that would be a whole...I mean the same issue. Now before, now maybe this isn't the time to ask this but...

Dreher: I just wanted to ask one more question...This 256 fund, this 0058 fund I believe, are those two different funds?

Tolbert: No, we had to create new fund numbers from the State.

Costello: Oh, that's what it is.

Dreher: See I was confused. I think I spoke to Mike about it. 256 is what we've always dealt with.

Costello: Yeah

Orman: The state changed the numbers.

Costello: Because we were always talking 1/3 out of this, 1/3 out of that, 1/3 from this okay.

Penney Barton: The only thing I would like to say since I am in the Area Plan Commission Office and I attend all the meetings and nobody up there has contacted me to ask, except Nina, for minutes. The Area Plan Commission did meet every month that there was business on the agenda from September 6th when I was hired. There has never been a month passed that the Area Plan Commission did not meet, that there was business.

Alexander: That's unusual because they had been told they did not exist.

Barton: No, Judge Stengel reversed that in November or October, end of October. Judge Stengel said that what the Commissioners did was not legal.

Alexander: Penney, that's incorrect.

Barton: What did Judge Stengel say in November or October?

(Dreher, Carty, Alexander all talking at once, couldn't make out what was said)

Alexander: he denied a motion for an injunction because...

Carty: It's irrelevant, lets don't, if you had meetings, I am glad. You should have had meetings.

Barton: I'm just saying they had the opportunity to talk about it and vote on it and they didn't do that.

Carty: Ok.

Barton: That is the only thing I'm saying.

Carty: Ok.

Alexander: I think that is an inaccurate statement but it's irrelevant.

Carty: Yes it is irrelevant.

Barton: I will provide the minutes, all of 2011.

Alexander: Penney, you haven't even been legally hired so...

Carty: That is another issue that we have to...

Barton: I show up every day and work.

Carty: That's a problem and frankly that has to be dealt with but that's not what we are here to talk about tonight. I think that the Area Plan Commission has to determine how they are going to be...who's in charge, who are their officers. They've determined who they are going to hire. They need to meet with...if they would like to meet with me I would be more than welcome to do it or they can meet with the whole council and submit a salary ordinance that we would have to act on. It's going to require action in another meeting from them before we can do anything. We're not here to determine who's hired and who is not hired, who is in charge and who is not in charge. That comes from the appointments which ultimately is the Area Plan. Different appointments have to decide how they are going to manage their responsibilities. Ours is strictly to deal with the money side of it and the only thing in front of us is the \$5,000.00 request for an appropriation.

Costello: Randy (Dreher), you and Lavonna have been here a long time. Do you remember...I don't remember ever denying...

Dreher: I don't recall that.

Costello: Ok that's...

Alexander: It's a tough pill for you to swallow. I understand that.

Costello: It is. I don't like the idea that we can sue ourselves.

Alexander: Yes, I don't understand that. What if the Commissioners got together next month and said...and passed an ordinance, again without publishing or any notice and said we're reducing the County Council from 7 members to 5 members and because we weren't sure which 2 were going to take off we decided to start with the 2 Mike's...right.

Dreher: Yes it is a very hard pill to swallow...from the get go there has been a lot of things that went on to me that looked a little shady, maybe they weren't but I don't expect anybody to work for nothing. I don't want to work for nothing, you don't work for nothing. We owe the man.

Carty: We do.

Dreher: Whether we agree or not, we need to pay it.

Costello: Yeah but we are not paying it...

Carty: All we are doing is appropriating the funds.

Costello: make it available to be paid.

Dreher: Yes and if someone else wants to make that decision fine but our decision here this evening is to vote on an appropriation.

Carty: That's it and the request was actually made...the question I do have for Don is...I assume because it was advertised in the meeting for April 26th, it was on the agenda for April 26, I assume it was advertised at that point in time. Does it need to be re-advertised?

Darnell: I don't think so.

Costello: We've never voted it down.

Carty: We never voted it down we just rescinded our motion to act on it. Quite frankly, we didn't act on it, so if we want to do it now we can. We can now act on it. We know now the facts. We now know what our responsibilities are.

Tolbert: If you tabled it before it doesn't have to be re-advertised.

Costello: Ok.

Carty: So what's your pleasure folks?

Mattick: I make a motion in favor.

Carty: There's a motion by Ms. Mattick in favor of the appropriation.

Dreher: As far as I have to bite my tongue I have to second it.

Carty: We have a second. I have a motion by Ms. Mattick and a second by Mr. Dreher. Are there any other questions? All those in favor signify by saying Aye. (All said Aye) opposed (none). Motion carried 7-0.

Alexander: Thank you kindly.

Carty: Thank you Nina. There is...well that is neither here nor there, let's go on.

VII. New business

- a) Health Insurance. Craig said there is a backfill on the insurance from a few months prior. He said they were going to have to make up the deficit in the insurance money, somewhere around \$25,000.00. Carty said because of the increase in the rate and Craig said yes. He said he didn't want to argue about it just wanted to open up a dialogue about the particular hit. He heard some council members stated they have already given \$100,000.00 and he said there is no question they did and they appreciate it but the council knows exactly where all that money went. He said it didn't go for timeshares or new grills for the garages or anything like that. It all went into areas that were needed. He said normally they would be asking for additional monies. He said if you look at the

20 people on the county highway that will be contributing back into it then you look at the other areas that pay their own insurance. You've got the Health Department that is a single person. You've got Economic Development that is a single person. You've got child welfare that is a single person. He said they can get enough to pay their increase without problem. He asking that the council reconsider paying that out of the normal because that money is money that they would maybe need at a later date for fuel. He said they have had a pretty ambitious pothole project in the county and that absorbed a lot of fuel and fuel costs are on the rise. He said it looks like they may come up short before year end. He said to also take into consideration the big project they have going on right now. He said they are burning a lot of fuel so there is a chance they might come and ask for additional monies. He said he is not going to argue the point and they will pay the bill but its kinds of like pay me now or pay me later. Carty said that is probably what they will end up doing, paying later. He said it's confusing talking about paying \$100,000.00 of their insurance. It is something that needs re-looked at, the way it's been done period. He said when they had the health insurance coming out of the highway department they did it because there was money going into the highway department. There was tax and gas money. He said the fact is that is no longer true. He suggested they just deal with what they need. He said if they are shot in gas money then we need to deal with the gas money. Craig agreed and said he just wanted it brought to their attention that it is something that might come up down the road. Dreher said there may be a day when they have to take over the whole insurance for the Highway. Carty said they will. Costello said he read in the paper that a lady made a statement that he state takes all of the wheeltax and he doesn't think that is true. Craig said he thought for trucks they did. Costello so they do for excise. Dreher said Marion County gets most of the excise. Orman confirmed we do keep our wheeltax and it is split between the highway and taxing units. Padish asked Craig how the spending and working was going on the roads and Craig said really well. He said he hadn't spoke with Crossley yet but he saw a lot of trucks moving up and down the highway. He said he thought the people that were lucky enough to get in on this particular go around would be very well pleased. Padish asked if he thought they would spend all of the \$575,000.00. Craig said he didn't know and that Crossley would have a better handle on it.

- b) Appointment to the Area Plan Commission. Carty said it was tabled from last month. Carty said he thought they had drafted Padish to serve as their appointment at one point. Monte Kern is the current appointment and his term expired at the end of 2011. He continues to serve until reappointed or replaced. Dreher asked if the position had been advertised and Orman said no. Carty said they talked about having Padish serve as their appointment so they have a council member on the board. He said he doesn't know Monte Kern and he thinks Dave Marietta is very qualified. Padish asked if Kern wanted to continue to serve on the board. Dreher said he hasn't mentioned anything about wanting off the board. Dreher suggested they table it until they talk to Kern and Dreher volunteered to contact him. Carty said he thinks the person appointed by the Council should be somebody the Council knows and feels comfortable with. Padish suggested someone attend their next meeting and ask questions. Dreher asked Padish if he was interested on serving on the board. Padish said he would go to a meeting and get more information, stating he would hate to jump in right in the middle of the mess going on. Craig said he didn't think Padish was eligible to be on the Area Plan Commission because he is an elected official. Barton said they cannot hold another elected position and serve on the board. She also stated that Kerns term expired on

December 31, 2011 and since the Council did not reappoint him he continues to serve until reappointed or replaced. Costello asked if the position was advertised and Tolbert said no. Carty asked if they wanted to advertise it. Dreher said it would be nice to get some people involved so they know what is going on. Barton invited the council to attend any meeting and stated there was one this Thursday at 7:30 pm. Carty said we need to do things the right way. He said it's aggravating with all these attorneys on retainer and we can't find somebody to tell us before we spend money that we shouldn't be doing it. He said if we table it let's get some action out of it next month and asked the council if they wanted the position advertised. Dreher said yes. Padish asked if Kern would need to reapply and Carty said yes and added that he would like to know a little of his background. Carty asked Orman to advertise and said he hopes the other appointing agencies take it seriously and review their appointments also. Dreher motion to table, seconded by Mattick. All were in favor.

- c) other Comp Time. Carty said only because he would like to see it recognized he would like to discuss the report that was given to them last month in regards to comp time. It shows how many hours everyone in the county has accumulated and what is the dollar amount associated with those hours. He said a new handbook would be coming out soon and it will identify some of these issues. Carty said they need to get some of the liability worked down.

VIII. Adjournment. Mattick made a motion to adjourn, seconded by Bush. All were in favor.

Read in full and approved by the Vermillion County Council on the 13th day of August 2012.

Michael Carty

Randy Padish

Randy Dreher

Michael Costello

Lavonna Mattick

William Brent Bush

Jim McLain

Attest: _____
Phyllis Orman, Auditor

