

**MINUTES OF A SPECIAL SESSION OF THE
BOARD OF COMMISSIONERS HELD SEPTEMBER 24, 2012**

Comes now the hour of 8:41 A.M. on the 24th day of September, 2012, in the Commissioners Court in the Noble County Courthouse, Albion, Indiana, being the time, date and place set for a special session of the Board of Commissioners of Noble County, Indiana.

Present were:

Joy Y. LeCount, President
David J. (Dave) Dolezal, Vice President
Jack W. Herendeen, Member

Also present were:

Marion S. Cavanaugh, Deputy Auditor
Dennis Graft, County Attorney
and Bob Braley & Scott Perry, News Media

EMA – EXPENSE OVER \$500.00

Mick Newton, EMA Director came before the Commissioners to ask permission to purchase a portable digital handheld radio. He said he had a quote from J & K in the amount of \$586.00. Mick said it would be for Teresa so he could communicate with her other than by phone if they have a situation where it is needed. Mick said they could be used even if we lose all of our electricity.

Jack moved to approve the purchase. Dave seconded the motion and it carried, 3-0.

**NORFOLK & SOUTHERN RAILROAD – CLAIM
FOR MARCH 27, 2012 TRAIN DERAILMENT**

Mick said he received a call from the railroad and they asked him if he would still settle by removing his \$1500.00 costs for EMA. Mick said he told them he would. He said they told him to send the bill again and they would cut a check. He said Dennis had sent them a letter and that is probably what made them come around.

**EMS DISPATCHING MOVING TO
PARKVIEW HUNTINGTON HOSPITAL**

Joy said she received a call from Tom Shoemaker, EMS Director on Thursday and he said all EMS dispatching in the area they serve was going to be moved to Huntington County by the end of the first quarter of next year. She said the dispatching station they have at the Sheriff's Department in dispatch will no longer be used. Joy said on Friday she received a letter from Mitch Fiandt, E-911 Director stating that he had been contacted by Tom about moving dispatch. Mitch said even though he understood their reason for consolidating he hated to see them leave. He said during the course of the last 10 years they had provided valuable assistance during high volume call times. Mitch said Tom had asked him to help during the transition period. He said

his main concern currently is transferring calls to Huntington. Mitch said we will have identical 911 systems in the near future. He said transferring the call will come with a price. Mitch said with the uncertainty surrounding the current funding formula Noble County can't afford the cost of transferring the calls. He said it would be more cost effective for him to retain the dispatchers in EMD and dispatch the ambulances ourselves. Mitch said he didn't want to put the extra burden on his dispatchers, and he had asked Tom and Parkview to work with the county to absorb the cost of transferring the calls. He said he thought it could be accomplished at a very minimal cost to Parkview. Mitch said the cost to transfer calls would be about \$1000.00 – \$1400.00 a month. He said all of the computers and radio equipment will remain and will be able to be utilized by Noble County when the need arises to have a third position in operation.

Jack asked why all of the calls would go to Huntington when Noble County is in the middle. Joy said it is because they built a brand new dispatch center at that hospital. There was discussion that if a call came into Noble County that is a medical call it would be sent on to Huntington.

Dave asked if there would be a delay in getting help to the people. Joy said a disadvantage that she could see is that the dispatchers in Huntington would not know the geographical areas of Noble County. There was discussion as to how the dispatching would work and who would dispatch what.

MINUTES APPROVED

After reviewing the following minutes and making corrections as needed the following actions were taken: *September 10, 2012* - Dave moved to approve the minutes as corrected. Jack seconded the motion and it carried 3-0; *September 17, 2012* - Dave moved to approve the minutes as corrected. Jack seconded the motion and it carried 3-0; *March 20, 2006* - Jack said the minutes were correct to the best of his knowledge. Joy moved to approve them. Dave seconded the motion and it carried 3-0.

EMS DISPATCHING MOVING TO PARKVIEW HUNTINGTON - CONTINUED

Mitch Fiandt, E-911 Director was present at this point. Joy asked if Parkview had one or two stations (in our dispatch area). Mitch said there is one, which we are keeping. He said some of the equipment is ours and some is Parkview's, but they are going to leave all of it. Mitch said they are scheduled for a 911 update in three weeks. Joy asked if there is going to be a regional update. Mitch said "Yes". He said they are up to 11 counties now in the regional partnership. Mitch said our update will be done by the week of October 15th, and he told when some of the updates in other counties would be. He said by this time next year all 11 counties will be on the same identical system.

Mitch said he is working to set it up on a transfer like we do now, and that is in the system and there is no cost for it. He said what he wants to avoid is a direct line between Albion and Huntington because there would be a cost associated with that. Mitch said funding is still up in the air, and he didn't think Noble County could afford to transfer those calls. He said he didn't think it was our obligation to do that.

Jack asked what this would do with the dispatcher at Kendallville. Mitch said they would be dispatching just fire and police. He said starting October 1st we will be taking over Ligonier's dispatching.

Mitch said he thinks Parkview thinks it is just a matter of saying that on Monday morning everything would be transferred. He said he doesn't think they understand what it will take to make the transition. Mitch said we need to figure out how to do transfer calls without it costing Noble County. He said if they can keep it all within the system, there would be no additional cost to us. Mitch said with the way the State is doing the 911 funding now, we have only been receiving about \$14,000.00 a month where we normally received about \$40,000.00.

HIGHWAY BUSINESS – MARK GOODRICH

LPA CLAIM VOUCHER – SIGN PROJECT

Mark presented an LPA Claim Voucher for the Sign Project in the amount of \$3,918.66 for R/W Construction Engineering which will be reimbursed @ 90% or \$3,526.79, (H.I.).

Jack moved to approve the voucher. Joy seconded the motion and it carried, 3-0.

LAOTTO DRAINAGE ISSUE

Mark gave an update on what had been done to alleviate the drainage issue at LaOtto. Mark said they will have to go back and put asphalt where they cut the road to get the pipes in and to access the catch basins and tile.

CSX RAILROAD CLOSURE – 1100 E

Mark said the railroad had closed 1100 E (Lemper Road) between Baseline and SR 8 for repairs to the crossing. He said it should be open by Friday September 28th.

BROOKSIDE ESTATES ROADS

Mark reported that he had been up to Brookside Estates and all of the concrete is poured and it looks real good. He said it would be sometime this week before they get the barricades off and then we will have to go up and start repairing holes.

UTILITY PERMITS

Mark presented some utility permits that are for fiber optics for the Commissioners to review. Joy said she thought there should be a charge for utility permits. There was discussion about the number of utility lines that are buried that are no longer being used and should be removed. There was also discussion that some companies are not putting the lines where they are supposed to and they get cut.

Mark said what would be nice is if we could charge enough for the permits to keep an extra person around that could drop in every day and inspect the work, because that is the only way they are really going to do it right. There was discussion about putting the permit information on a GIS layer.

Mark is going to get Dennis a blank permit form so he can review it. Dennis told Mark to start thinking about some kind of fee schedule for the permits.

The permits Mark presented are from Ligonier Telephone Company - #UP-049-12 is for work on all streets in Wawaka in Elkhart Township, and #UP-050-12 is for work on CR 700 W, North Street, and CR 825 N in Perry Township, (H.I.). Mark said LigTel has been real good to work with.

REPORT ON TRUCKS & EQUIPMENT

When asked Mark said truck #16 is getting the transmission put back in. Dave asked if the mowing is done yet. Mark said Perry Township is left to do. He said they had two mowers break down. Mark said one of them is back up and he thought they would have to put a new motor in the other one. Mark said truck #13 is in the shop because the transmission is acting up. He said they found an electrical problem with it and the parts are ordered.

DOOR REPLACEMENT

There was a brief discussion about the doors that need replaced, and when there might be time to get them replaced. Mark said that could possibly be a rainy day project.

PUG MATERIAL UPDATE

Jack asked where we are on the pug material. Mark said the pug is all used up and they are filling in with hot mix.

RECESSED AND RECONVENED

The Commissioners recessed their meeting at approximately 10:09 A.M. and reconvened at approximately 10:16 A.M.

SHERIFF - EXPENSE OVER \$500.00

Sheriff Doug Harp came before the Commissioners and informed them that the condenser had gone out of the chiller and needs replaced. He said the cost of the replacement parts would be \$1,499.80 and Kevin can do the work. Doug said he thought those kinds of expenditures had been paid out of the CCD fund previously.

Jack moved to approve the expense. Dave seconded the motion and it carried 3-0.

SICK DAYS USED TO SUPPLEMENT SHORT TERM DISABILITY

Sheriff Doug Harp said he has an employee that was told last week that he could not use his personal, vacation or comp time to supplement his pay during his short term disability. He asked if there was a reason that only sick days could be used. Doug said he didn't know if that is something that could be changed or not. He asked that the Commissioners check into it.

POND ORDINANCE COMPLAINT

Present for this portion of the meeting were: Scott Zeigler, Noble County Surveyor; Jim Federoff, attorney; Denise DeMuyt & Dana Childers (part owners of Weathered Oaks LLC); Ron Wallen; and Milford Terry.

The Commissioners received a packet of information with a copy of the complaint letter from Weathered Oaks LLC, a letter Scott had written to the Commissioners and some maps and other information, (H.I.). Scott said there was a complaint filed on a pond permit issue with Mr. Wallen. He said the adjoining neighbors filed a complaint. Scott said he met with the downstream landowners September 7th and he responded with a letter.

Scott said the biggest thing that he sees that needs addressed is that in the ordinance it mentions minimum standards (Section D - Item 4) that states that "The pond should be constructed as not to increase the volume of water that exits the tract under normal conditions". He asked the Commissioners what that means in the ordinance and what do they feel they are taking jurisdiction over under that condition.

Joy said it was her understanding that the ordinance came from the Surveyor's Office to begin with and then the Commissioners adopted it. Scott said it was requested from Mark Pankop when he was a Commissioner specifically to address or deal with safety issues.

Scott said right now the dam appears to be leaching onto adjoining properties and that is an issue. He said it appears that the water level of the pond is higher than the driveway. Scott said his question is if the Commissioners feel that is a violation of the ordinance and if we have jurisdiction to seek relief. There was discussion about whether there was an overflow outlet and if it had met the conditions stated in the pond ordinance. There were pictures from the complainant that were reviewed.

Joy asked when the photos were taken. Denise said they were taken a couple of days before the complaint was filed, so it would be around September 8th or 9th, and they weren't taken after a rain. Scott said there is a long area of the driveway that appears to be saturated and there appears to be water being pushed up from the sub-surface.

Jack asked when the pond was put in. Ron Wallen said in June he went down to get a little bit of dirt for a building he was going to build. He said four feet in the ground he hit a spring. Ron said he contacted people to see what to do with it. He said some of the excavators he contacted said if he closed it up it would create a swamp because you can't re-close an open spring, and they told him to contact the county. Ron said he asked the county what to do and he was told that maybe he could contain it by installing a pond. He said the hole was maybe 20' by 30'. Ron said he wanted to run a drainage tile from there at that time across into the west of their (Weathered Oaks) driveway which is a swamp that runs into their lake. He said he was told that they didn't want the water crossing the drive. Ron said the pond had actually been dug at three different times. He said it was dug at maybe 40' and then it was dug again and it gained ground. Ron said the last time it was dug 45-60 days ago and it hasn't gained any ground. There was discussion about how deep the pond is. Ron said he didn't know he was coming to do this. He said he didn't get the information until late Friday so he didn't have any photos of the pond. Ron said he had been in contact since day one with Dara's brother about what he could do about it. He said the only thing he got was that they didn't want the water coming to the swamp because it would make their lake (Barr Lake) dirty.

There was further discussion about what the problem could be, and if the water could be coming from the other property.

Ron said he didn't know what he did to create a problem. He said he didn't go down to dig a pond. He said all he did was to try to prevent having a swamp land below him (after he hit a spring).

Ron said he asked Daryl (Dara's brother) if they could get a mini excavator and fill in the side of their driveway with clay to see if it is their swamp that is coming in on their driveway. Ron said he put dye in his pond 60 days ago to see if he could find out if his pond was leaching onto their driveway. He said there was no colored water going across their driveway. Scott said sometimes the dye can get diluted, depending on how far it has to travel.

Jim Federoff, Attorney said he had been engaged by the DeMuyt family to represent them in connection with the hearing today. He said he had put together a brochure (none for file). Jim said he was at the site Thursday afternoon and took some photographs and he went through them and explained what they were. Jim said the driveway is pretty saturated. Dave asked how long the saturation is. Dara said she paced it off at 100 feet.

Dara said her understanding was that Ron was going to call T.J., a mutual friend who does excavating and have him put a culvert in under her road. She said she contacted the gas company to have them mark where their lines were, but Ron never put the culvert in. Dara said when she asked Ron about the culvert he said he had changed his mind because he didn't want the liability. Joy asked if that water would have gone into the lake. Dara said it wouldn't have. She said it would have gone into a wetland on the other side of the lane.

Ron said he contacted Eshelman's (Excavating) and he gave him a price to drain the pond. He said he told Eshelman's that the water from the pond couldn't leave his property. Ron said he never started this as a pond, but that is what it ended up being because he was trying to contain the water. Ron said there is no way to control the water from the field because it is a downhill drop. Ron said he thought he followed all of the set-backs and rules he was given when he started the pond. He gave more details about what he had done.

Jim said he thought the reason we are here today is because the pond ordinance says that ponds have to be constructed so as not to increase the volume of water that exits a tract under normal circumstances. He said we have to go back in time to before the excavation started on Mr. Wallen's property. Jim said he thought it was clear that he didn't intend for these problems to happen, and that he didn't even want a pond in the first place, but we have a pond. He said the condition didn't exist before the excavation occurred but there is a problem now and we need to find a solution to it. Jim said he thought Scott's question to the Commissioners is whether the pond ordinance covers this kind of situation and whether his office can pursue a resolution of the problem. He said from what he is hearing and seeing he thinks it does.

Jim said he thought the way to find out what is causing the problem is to drain the pond to see what is causing it. He said the DeMuyt family is willing to Give Mr. Wallen a temporary easement to allow the water to drain across to their land provided the area gets repaired after the draining occurs.

Scott said if the lake was causing the pressure to push the water from the lake over onto Ron's property, the only way to know that would be to make a trench along the side of the driveway. After further discussion Scott said the Commissioners need to decide if they have jurisdiction under this ordinance.

Joy asked Mr. Federoff if he was representing all of the family. Jim said he was.

Joy asked Scott when Mr. Wallen came to the Surveyor's Office if it was to get a permit or was it the Surveyor's Office that suggested a permit. Scott said he didn't know because he wasn't there when he came in. Mr. Wallen said he had been told to check with the Surveyor's Office and he talked to three people at the Surveyor's office and they thought a way to fix the problem would be to put in a pond.

After further discussion Mr. Federoff suggested that if Scott feels a civil engineer is needed to remedy the situation, that one be hired at Mr. Wallen's expense.

Joy asked Jack and Dave what they thought should be done. Jack said he wants to go out and look the situation over before he makes any decisions. Joy asked if the Commissioners had permission from the landowners to do that, and they were given the permission from those present. The Commissioners decided they would go look at the situation before they determine if there is a violation of the ordinance. They asked that Scott shoot some elevations for them. Scott said possibly the Highway Engineer could give some thoughts on the situation.

RE SUTTON & ASSOCIATES

The Commissioners received information from RE Sutton & Associates regarding public sector groups collaborating to purchase health insurance together, and sharing onsite clinic space, (H.I.).

WEIGHTS & MEASURES REPORT - 8/15/12 - 9/15/12

The Commissioners received the above referenced report, (H.I.).

IDEM - REQUEST FOR ADDITIONAL INFORMATION - DALTON CORPORATION IN KENDALLVILLE

The Commissioners received notice of the above referenced request from IDEM for more information re: the closure/post-closure plans for Dalton Corp. in Kendallville, (H.I.).

INDIANA CRIMINAL JUSTICE INSTITUTE - NOBLE COUNTY COMPREHENSIVE COMMUNITY PLAN APPROVED

The Commissioners received the Comprehensive Community Plan which has been approved by the Governor's Commission for a Drug Free Indiana, (H.I.).

LEACHATE TESTING RESULTS SENT TO TOWN OF ALBION & BRAD EBEEY

Joy read the letters she had prepared to accompany the leachate testing results to be sent to the Town of Albion and Brad Ebey, (H.I.). The testing was done at the landfill and on Brad Ebey's property.

Dave moved to approve both letters. Jack seconded the motion and it carried, 3-0.

UDO DISCUSSION

There was a brief discussion about the definitions in Ag 1, Ag 2, and Ag 3 in the Unified Development Ordinance (UDO), where confined feeding would be permitted, and if there is a need for an Ag 3 category.

There was discussion as to whether there could be any changes made to the UDO since the Commissioners had approved it already. Dennis said it shouldn't be changed now. He said the Plan Commission could deal with changes that would need to be made.

**SICK DAYS USED TO SUPPLEMENT
SHORT TERM DISABILITY**

Because of the discussion with Sheriff Harp earlier this morning, Dennis obtained a copy of a portion of the minutes from the November 9, 2009 Commissioners meeting where it was approved for employees to use sick days to supplement their Short Term Disability pay beginning January 01, 2010, (H.I.). There was discussion as to why vacation and personal days couldn't be used, and it was pointed out that employees can donate sick days to other employees if they need them.

RECESSED AND RECONVENED

The Commissioners recessed their meeting at approximately 12:05 P.M. and reconvened at approximately 3:00 P.M. at the site of the pond complaint heard earlier in the meeting.

POND ORDINANCE COMPLAINT

The Commissioners met at the site of the complaint about a pond allegedly causing water problems for a neighboring property to review the situation. No decisions were made.

ADJOURNMENT

This session of the Board of Commissioners of Noble County was at approximately 4:00 P.M. recessed from day to day until the 1st day of October 2012.

Joy Y. LeCount, President

David J. Dolezal, Vice President

Jack W. Herendeen, Member

ATTESTED: _____
Jacqueline L. Knafel, Auditor