



# BOARD OF COMMISSIONERS LAPORTE COUNTY

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Barbara Huston,  
President

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Vice President

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Member

### LAPORTE COUNTY BOARD OF COMMISSIONERS

TUESDAY, August 21, 2007

The LaPorte County Board of Commissioners met in a regular session on Tuesday, August 21, 2007 at 10:00 a.m. in the LaPorte County Complex Meeting room #3.

Present at the meeting were Commission President Barbara Huston, Commission Vice President William Hager and Commission Member Michael Bohacek. Also present were LaPorte County Auditor Teresa Shuter, LaPorte County Attorney Robert Szilagyi and Executive Secretary Linda Arnett.

#### PLEDGE OF ALLEGIANCE

Ms. Laurie Wink led the Pledge of Allegiance.

#### APPROVAL OF AGENDA

Mrs. Huston, under new business remove number "C" Attorney Robert Szilagyi Ordinance Compensatory Time, and in "C" we are adding Wally Pritz, General Business Zoning South Side of lots 11 & 12 off of Highway 20.

Mr. Bohacek, made a motion to approve as amended, second by Mr. Hager. Motion carried with a voice vote 3-0.

#### WEEKLY REPORTS

The Commissioners review and sign the weekly reports during the meeting.

#### CLAIMS

#### PAYROLL

Mr. Hager, made a motion to approve Payroll Ending- August 24, 2007, second by Mr. Bohacek. Motion carried with a roll-call vote 3-0.

#### MISCELLANEOUS CLAIMS

Mr. Bohacek made a motion to approve Miscellaneous Claims in the amount of \$284,265.16, second by Mr. Hager. Motion carried with a roll-call vote 3-0.

#### REGULAR CLAIMS

Mr. Hager made a motion to approve Regular Claims in the amount of \$1,712,163.44, second by Mr. Bohacek. Motion carried with a roll-call vote 3-0.

#### OLD BUSINESS

##### Attorney Robert Szilagyi/ Confined Feeding Operations Ordinance

Attorney Szilagyi, you have a copy of the Ordinance that the Plan Commission approved and you have a letter certifying that regarding the placement of confined feeding operations. There were only a few issues that have the issues that come about and it was also voted as presented. The issues have to do with test wells, originally they confined feeding operations are allowed in flood plain areas, they have to have test wells in flood plain areas. The other option would be to prevent them from being in a flood plain area and let them come in for a variance and pending the variance process if it is necessary the BZA would then be part of any test well. The concern is if or not a test well is permissible because the Health Department, the state does regulate test wells, so

this is your choice. This ordinance you can send it back or adopt it as it is, send it back to the Plan Commission with your recommendations or reject it entirely.

Mr. Hager, Mr. Wolff called me last night and they drafted the ordinance and requested that we pass it as is. I make a motion that we pass the ordinance on first reading by title only.

Mrs. Huston, we have an Ordinance before us, the Ordinance for Regulation of Concentrated Animal Feeding Operations.

Mr. Hager, motion to approve on first reading.

Mr. Bohacek, I have a couple of questions. My question is that we have some activity happening down in the south part of the county, is this going to permit that CAFO to go in there?

Mr. Szilagyi, it would allow it would be placed there, with the conditions of having test wells.

Mr. Bohacek, so if they have a test well, they can go in without special exceptions.

Mr. Szilagyi, correct, another way would be to say they are not allowed. There was a lady from Farm Bureau, she indicated that in other counties, in the flood plain areas they required them to come in by special variance, in other words they are not permitted in a flood plain area and then the BZA can decide if or not based on the circumstances.

Mr. Bohacek, I am still not good with allowing these structures in a flood plain area.

Mr. Szilagyi, based on that you would have to send it back to the Plan Commission with that recommendation and ask for those changes.

Mrs. Huston, in your letter, Attorney Szilagyi it says that the ordinance was approved by a citizens group that reviewed all the aspects of the Confined Feeding Operations, the only issues that would develop before the Plan Commission was whether the Confined Feeding Operations should be allowed in a flood plain area and whether or not there is a necessity of ground water test wells for operations in flood plain areas. It was ultimately determined by a 7-1 vote this ordinance be adopted as presented.

Mr. Szilagyi, the citizens committee had approved everything that was in the ordinance, the only thing that was in contention was the test well and that group believed under state statute it was preempted thru the ordinance that the state would control the location of the test wells. The Health Department would test under this ordinance and send it in. The question is test well in the first place, this ordinance does not encompass test wells and they have never had test wells. That was the contention of the of the citizens group they did not put that in there, that was put in by the Health Department not the citizens group. The only way I see getting around it, is to put a variance for CAFO'S in flood plain areas and have the BZA address it on a case by case basis. That is up to you to make that decision.

Mr. Bohacek, I am concerned about these in a flood hazard area, the Kankakee River and other water ways, without making sure we give this some good thought.

Mr. Smoker, I am here representing the live stock group and we started on this in September and hopefully we have helped to guide what is happening here. We have learned a lot about the laws and I have to deal with the laws all the time but still learned a lot. One of the things dealing with federal and state we have to adhere with these flood plains. One thing we allowed in the ordinance notification to local officials first in the preapplication permit, so the local people are aware before we even try for a state or federal permit. IDEM does allow public comment down state on a national level for anything that they deem necessary on these facilities. If IDEM deem test wells are a necessity which some times they do they are in there already are contention is, I did not bring my paper work but there are a lot of state laws that water pollution control board laws. That say the state is the only jurisdiction over water quality, the local level can't. We tried to keep it away from the BZA but yet allow other comment from other local official at the IDEM level ahead of time. We can accept this as it is written, there are points that we don't like but we can accept it.

Mr. Bohacek, I have no problem with the ordinance, my only concern is the flood plain, I am concerned. I know we don't control water quality as a Board of Commissioners but mistakes we make now carry over to the future. What ever we do it will impact the future.

Mr. Smoker, I was like you a year ago, I had concerns and reviewing state and federal laws.

Mrs. Huston, how many confined feeding operations are there in the county?

Mr. Bishop, LaPorte County Planner, there are twenty operations and there three in a flood plain which are already established and I don't believe they have test wells. This only applies to new CAFO Operations that is located in a flood plain to have a test well the others are safe guarded.

To have CAFO in a flood plain you have to have test wells, liners and certain things.

Mrs. Huston, how long have the CAFO'S been in the flood plain?

Mr. Bishop, since the early 70's.

Mrs. Huston, you have added features to this ordinance over and above the state requirements.

Mr. Bohacek, my feeling is that if a new CAFO comes in that we bring those issues to the surface and that they don't slip in.

Mrs. Huston, we have an ordinance before us on first reading by title only, the chair will second the motion. Motion carried with a roll-call vote 2-1 with Mr. Bohacek voting nay.

Mr. Hager made a motion to suspend the rules and move this on for a second and final reading by title only, the chair will second the motion.

Mr. Szilagyi, you have to have a unanimous vote for this.

Mrs. Huston, we will carry this over to the next meeting.

Attorney Robert Szilagyi/ Smoking Ordinance

Mr. Szilagyi, I gave you the ordinance and I think you may want to make some changes.

Mr. Hager, one reason is we send out a message and asked them to please go out the west door out of the public eye, with no avail they kept right on doing it, so I am going to make the motion that we make this ordinance into effect a smoke free environment for the two courthouses and the complexes.

Mrs. Huston, there should be some amendments to this, number three.

Mr. Bohacek, so we are going to allow smoking in county vehicles?

Mrs. Huston, this ordinance the way it is written would take in County Highway vehicles and Sheriff's Department.

Mr. Hager, I say we leave that.

Mr. Bohacek, so we are going to let them smoke in county vehicles?

Mrs. Huston, now wait a minute.

Mr. Hager, that's up to you two.

Mrs. Huston, I think we need to table this ordinance because I think we need to revise this, they are not allowed to smoke in ambulances. If you are not going to allow it in county vehicles then you have to do County Highway, Sheriff and ambulances.

Mr. Hager, we could scratch the vehicles out.

Mrs. Huston, I don't want to totally want to remove it.

Mrs. Huston, Mr. Szilagyi said we can pass it on the first reading by title only and amend it later.

Mr. Bohacek, employees are still going to smoke they will just move to the sidewalk. I guess my question is, is our goal to stop our employees from smoking or is the goal that they go somewhere else to do it. If it is to go somewhere else to do it, I guess I understand it.

Mrs. Huston, it is the fact that they were always at the entrance of the building and we have moved the ashtrays away from the buildings and we still can't seem get them away from the doors. We have asked them to go to different area and also smoke.

Mr. Bohacek, we are going to have sheriff deputies issue citations.

Mr. Hager, have no smoking signs up.

Mr. Bohacek, I guess my concern is you have employees and you have told the employees thru a memo that you cannot smoke in this area and you have a designated smoking are, then you have a disciplinary problem. That means as a commissioner or a department head, you see somebody smoking there, you say okay here is a letter of instructions and if you do it again you get a warning letter, you do it again you getting a final, you do it again your fired. It is a violation of a work rule.

Mr. Hager, I want to see no smoking in buildings and around buildings.

Mr. Bohacek, it becomes a work rule infraction and is dealt with accordingly and that is the goal to keep the courthouse smoke free.

Mr. Hager, I want to keep the people that come to the courthouse from being in the middle too.

Mr. Bohacek, we can designate that a no smoking area and that can be enforced.

Mrs. Huston, when we put in the commissary down stairs the goal was that it would be the smoking area, but that has not happened.

Mr. Bohacek, I will support it if you are going to go with the disciplinary action because then you are going to put it back on the department heads. I make a motion to make the down stairs area the designated smoking area for county employees, employees caught smoking not in that area will be dealt with accordingly.

Mrs. Huston, there is a motion on the floor to adopt the ordinance by title only on first reading by title only as follows: **ORDINANCE TO CREATE A SMOKE FREE ENVIORNMENT ON COUNTY OWNED PROPERTY.** to be amended at a later date, second by Mrs. Huston. Motion carried with a voice vote 2-1 with Mr. Bohacek voting nay.

Attorney Robert Szilagyi/ Ordinance to Amend Sick Leave Policy

Mr. Szilagyi, this ordinance was basically drawn up for those that work twenty-four hour shifts.

Mrs. Huston this is an Ordinance to Amend Our Sick Leave Policy, Ordinance #2007-12 and this is the Ordinance to amend that to amend that policy to include EMS personnel. Do we have a motion to amend the policy and waive the rules and amend this policy by title only?

Mr. Hager, made the motion to amend the Ordinance on Sick Leave Policy by title only, second by Mr. Bohacek but I have a question.

Mr. Bohacek, now in our current policy, if an employee calls off sick three days in a roll we can request that they have a doctors slip. If we have a habitual abuser of sick days do we have the ability to modify that and say you have used your sick days, you have had ten occurrences in the last six months although you have days left over, we would now like you to bring in a doctors note after one or two days. If the goal is to curb the attendance violation or misuse of this time and if you have a sick child at home is that a use of a sick day.

Mrs. Huston, yes any thing under FMLA Policy applies.

Mr. Bohacek seconds the motion to approve. Motion carried with a voice vote 3-0. This will be known as Ordinance #2007-14.

Mrs. Huston, I would like to waive the rules and approve on second and final reading.

Mr. Bohacek, made a motion to waive the rules and approve on second and final reading by title only, second by Mr. Hager.

ORDINANCE TO AMEND SICK LEAVE POLICY

Motion carried with a voice vote 3-0.

NEW BUSINESS

Rick McVay, LaPorte County Highway Engineer/ Approval of Stone Hedge Estates Phase

Mr. McVay, this is a re-plat and the developer wants to sell smaller lots than what was originally platted.

Mr. Bohacek, Mr. McVay how many homes that are already built on a one acre lot?

Mr. McVay, I believe they have two homes back there and I looked it over and it will not affect the drainage.

Mrs. Huston, we are going from one acre to half acre lots.

Mr. McVay, I believe so.

Mr. Bohacek, do the homes have drainage easements between them, so when they cut the lots for the homes there is a natural way to have the water drain off of them.

Mr. McVay, I don't know if there is an easement for each lot but there are enough easements get the water to shed.

Mr. Hager made a motion to approve Stone Hedge Estates Phase I, second by Mr. Bohacek. Motion carried with a voice vote 3-0.

Attorney Robert Szilagyi/ Ordinance GIS Fees

Mr. Szilagyi, I have adopted this according to Melissa's request for coping fees, it does provide for the fees to go into a non reverting fund.

Ms. Huston, these funds will be fare and go back into for your paper.

Ms. Mischke, it will go back into supplies that produced the maps in the first place. The paper can be very expensive.

Mr. Bohacek, made a motion to approve the Ordinance by title only, second by Mr. Hager. Motion carried with a voice vote 3-0.

ORDINANCE TO ESTABLISH COPYING FEES FOR GIS

Mr. Bohacek, made a motion to waive the rules and read the Ordinance on second and final reading by title only, second by Mr. Hager. Motion carried with a voice vote 3-0.

ORDINANCE TO ESTABLISH COPYING FEES FOR GIS

Mrs. Huston, this will be known as Ordinance 2007-15

Wally Pritz General Business Zoning South Side of Lots 11 & 12 Highway 20

Jim Masters, representing Pritz Family, LLC, I sent the Board of Commission a letter August 6<sup>th</sup> and a revised plat in that letter is shows the revisions. The area we sought to rezone was 35 acres which was just north of Pahs Road and in the amendment to our petition what we are seeking to do is rezone which is about 20 acres. The remaining acreage that runs south of Pahs Road we are not rezoning we will leave that as residential which is about 15 acres. We propose to leave that 15 acres as it is R-2 and in the future should we have a proposed use that would require rezoning we would come to you at that time.

Mr. Bohacek, what is the plan to start the development of the parcel?

Mr. Pritz, it would be next spring.

Mr. Bohacek, the main concern at the Plan Commission was the residence on Pahs Road.

Mrs. Huston, we have a letter dated June 20, 2007 from the Plan Commission voted no Recommendation for the rezone but that was for 86.04 acres, since that time you have revised this to 20 acres.

Mr. Hager, made a motion to approve the rezone in the amount of 20.50 acres from Residential-2 to General Business, Mr. Bohacek I am going to second it but I don't feel comfortable with having modifications after it has already been voted no by the Plan Commission, my feeling is that it should go back to the Plan Commission but I am going to second it because there is a lack of remonstrations.

Mr. Hager, it really want not a no vote we did not have a quorum.

Motion carried with a voice vote 3-0.

Mr. Masters, I will bring back the form of Ordinance for the next meeting and will send it to Mr. Szilagyi for review.

#### PUBLIC COMMENTS

Bryan Potratz, representing dh2w Architecture the firm for the 911 Center. I am just here to give you an update for the Commission and the public. We are seven weeks into the project and another six and a half weeks to go; we are a little ahead of schedule.

Mr. Bohacek, any conclusion on the generator?

Mr. Potratz, we will be discussing that.

Mr. Cooley, your smoking ordinance you don't need to sugar coat it, either you have an ordinance or you don't. If you are going to make rules that certain people can and certain people can't, people will be suing you because you are not being fair, make it across the board all county property and you will be done with it. If you are going to do it do it if your not don't.

#### COMMISSIONER'S COMMENTS

None

LAPORTE COUNTY BOARD OF COMMISSIONERS

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BARBARA HUSTON, COMMISSION PRESIDENT

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WILLIAM HAGER, COMMISSION VICE PRESIDENT

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MICHAEL BOHACEK, MEMBER

ATTEST: \_\_\_\_\_  
TERESA SHUTER, LAPORTE COUNTY AUDITOR