



BOARD OF COMMISSIONERS LAPORTE COUNTY

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Ken Layton
President

Barbara Huston
Vice President

Willie Milsap
Member

LAPORTE COUNTY COMMISSIONERS

Tuesday, October 2, 2012

The LaPorte County Board of Commissioners met in a regular meeting on Tuesday, October 2, 2012, at 6:00 p.m. in the LaPorte County Complex Meeting Room #3.

CALL MEETING TO ORDER

Mr. Layton, President, called the meeting to order at 6:00 p.m.

PLEDGE OF ALLEGIANCE

Mr. Earl Cunningham led the Pledge of Allegiance.

ROLL CALL

Present: Mr. Layton, Mr. Milsap

Absent: Mrs. Huston

APPROVAL OF AGENDA

Mr. Milsap made a motion to approve the agenda, seconded by the chair, motion carried by voice vote 2-0.

APPROVAL OF MINUTES

September 18, 2012, Mr. Milsap made a motion to approve, seconded by the chair, motion carried by voice vote 2-0.

WEEKLY REPORTS

Commissioners review and sign the weekly reports during the meeting.

CLAIMS

Payroll Ending October 12, 2012, Mr. Milsap made a motion to approve, seconded by the chair, motion carried by voice vote 2-0.

Miscellaneous Claims—\$1,811,827.37, Mr. Milsap made a motion to approve in the amount stipulated, seconded by the chair, motion carried by roll call vote 2-0.

PUBLIC COMMENTS

Mr. Michael Hollcraft, I would like to give a brief presentation on the Enbridge Line 6B Phase 2 Pipeline Construction Project. I will just walk you through the documents so you are familiar with them. You have a memo from me asking that these documents be entered into the October 2, 2012 LaPorte County Board of Commissioners Meeting Minutes. The prior document is a September 6, 2012 letter from the Hoosier Environmental Council which was drafted by Kim Ferraro, who is here tonight. This letter is regarding the Line 6B project. The question is, does this project require a building permit? What we are asking is that the Board of Commissioners decide on that issue. There are three different construction diagrams that relate to the project and they are Enbridge documents. The second document is an excerpt from me to Annemarie Polan who is the Building Commissioner and it recaps a conversation I had with her and the County Planner, Mitch Bishop. Enbridge has been telling folks in our neighborhood that they are planning on starting construction October 4, 2012.

They did submit permit documentation to the MS4 Coordinator as well as the LaPorte County Drainage Board. But they did not submit an application to the Building Commissioner. I can only assume at this point that they believe they don't need a building permit. Pages 3 and 4 are from the Enbridge application that was submitted to the MS4 office, this is their environmental mitigation plan. On page 4, this is very specific, "Unless otherwise noted within the EMP, Enbridge will obtain the necessary permits for the installation of the pipeline. Permit requirements may be more stringent than the requirements of this EMP. In all cases, the more restrictive requirements will apply." They recognize that there will be other permits that may be more restrictive than their own plan. The last document is from the U.S. Fish and Wildlife Service which is specific to the environmental concerns about this project. This memo and this whole project, we are only focused on LaPorte County, this project spans three counties. It enters at Enbridge milepost 495.1 and exits at 518.9 and you will need to know this when reading the documents so you will know where it is relevant to LaPorte County. There is one other issue that came up and it relates to the accuracy of maps that were presented as part of their documentation. There are two sets of dates on those maps. It is for the same area. The important point here is that there are two pipe lines within that 60 foot wide right of way. Line 6B is the active line and carried heavy crude oil and then the loop line which Enbridge believes is actually inactive right now. In the first set of documentation we noticed that the active line was portrayed as being outside of the right of way easement by some 50'. The loop line itself was omitted completely from the first set of maps which we thought was a big concern. When it was requested that there be a second set of maps provided we noticed that both of the pipelines were not within the easement. The loop line was portrayed as being parallel to Line B about 9 feet apart. This is not the case in some locations. For basic due diligence we need accurate maps for this project to be able to evaluate it properly. To date, Barr Engineering has not provided accurate maps to this point. I find this a real concern. It has been requested by the MS4 office that they provide accurate maps.

Ms. Kim Ferraro, attorney with the Hoosier Environmental Council. I wanted to raise a clarifying point that the issue before you is not only whether this pipeline would require a building permit from the county but also whether or not you have enforcement ability over your own ordinance as to the setback requirements. It would be my legal interpretation that under your statute you do have that enforcement capability. Just to put that before you in your consideration on this project.

Mr. Milsap, Mr. Hollcraft, you talked to Annemarie and Mitch, what were their findings?

Mr. Hollcraft, they needed to consult with others about this matter. A few months back I made inquiries with Mitch Bishop and he consulted with Mr. Biege.

Mr. Braje, I was not brought in on those conversations but I am aware of the situation. I have talked with Mr. Hollcraft about this issue. What I understand to be the issue is that the building commissioner must make a determination as to whether or not a permit needs to be issued. If they do not seek or grant a permit, whether or not the plan commission or building department should take action to stop them from construction until a permit is granted. Essentially, from what I know, if our zoning ordinance is applicable and we have ultimate authority in this issue that they would have to seek a variance in order to get this done which would mean they would have to go before the board of zoning appeals. This issue rests now with the plan commission and the board of zoning appeals. It is outside the commissioner's authority at this stage.

Mr. Milsap, that is why I am wondering why you are approaching us.

Mr. Hollcraft, because Enbridge claimed they are going to begin soon. The permits started in the summer time. Through discussions with Mitch Bishop, we learned what their position was. No action was taken by them about this. Enbridge did not submit an application for them to review. My impression from meeting with Mitch and Annemarie a few weeks back was, "we have not received an application so therefore we haven't reviewed it". But if you look at the documentation on the IDEM web site the real issue here is entering into wet lands because of that 50 foot setback. Enbridge wants to use an open cut, trenching and topsoil stripping procedure to go through those wetlands. That would be in direct violation of this new ordinance, 2012-02. We are not saying no to the project we are saying the project as presented to IDEM won't comply with the ordinance. We wanted to come before the commissioners because I was under the impression that the commissioners made decisions like this in unincorporated areas. I was given a recommendation to come before you. We thought things were happening that should be brought to your attention in a very professional way.

Mr. Braje, if someone was going to build a house in the county and they did not apply for a building permit it would then be the responsibility of the building commissioner to go to red tag that project and say until you get a permit you can't start your construction. As the chief executive what these commissioners can do is direct their employee, which is the building commissioner, to say, "watch this project and if someone starts construction without a permit then you should take those actions that you should take if someone does something without a permit". If the building commissioner would elect not to do that then you as their employer would then make a decision on how that impacts you and what you think about it. Right now the commissioners do not act on building permits. What I would expect to happen is if there is no permit granted the building commissioner would go out there and shut the job down.

Mr. Hollcraft, this is a massive project and effects a lot of land owners. A little clarity from the board of commissioners would really help alleviate some of the questions that we have about this project.

Mr. Layton, so that you know, your pleadings have not fallen on deaf ears, I took your email and phone call and contacted Mr. Bishop and met with him yesterday. I contacted Mrs. Polan and I met with her this morning. I know they have a meeting Thursday with the attorney for the Plan Commission, Mr. Beige. We should have some kind of direction from those offices at that time.

Ms. Elizabeth McKlosky, U.S. Fish and Wildlife Service, I came to present you with a copy of our letter about the Enbridge Pipeline. I wasn't aware that Mr. Hollcraft was going to make a presentation.

Mr. Gene Abraham, Fluid Video, 604 Jefferson Ave., LaPorte, IN. As you know we have provided many video and management services to ALCO in the past from 2006 to 2011. We would like to put in a business plan proposal for your meeting coverage. We are all familiar with the continuing problems at ALCO and we are still getting poor video and poor audio & etc. Michigan City owns the channel space for the two channels that you use and Comcast has a contract to provide that channel space to Michigan City. The mayor said he will go with a new vendor if the county wants to.

Mr. Layton, when did he say that?

Mr. Abraham, it was this summer.

Mr. Layton, was it at a public meeting?

Mr. Abraham, no, just in conversation.

Mr. Layton, I wouldn't be using words out of the mayor's mouth unless I could verify that.

Mr. Abraham, now is a good time to take a look at this because the current contract ends December 31.

Mr. Layton, no sir, it does not.

Mr. Abraham, it can be cancelled at any time.

Mr. Milsap, why would we cancel it?

Mr. Abraham, there is many reasons. We would like to put in a proposal. We can provide coverage for all council meetings and all commission meetings and twelve....

Mr. Layton, this is the same thing you told us about three months ago. Would you please put it in writing so we can review it prior to your presentation?

Mr. Abraham, Okay.

Mr. Earl Cunningham 6311 W. Shiva Dr., LaPorte, IN. I would like to thank you for your meeting of two weeks ago where you deliberated on an issue. Apparently following that meeting, Mr. Layton, in working with officials from the sheriff's department, you contacted the State Board of Accounts and were able to get information that the purchase of a vehicle from the Misdemeanant Fund was improper. In checking the records it is my belief that a check was cut immediately from the Commissary Fund of the sheriff's department and transferred back in to the Misdemeanant Fund. I want to bring to your attention that prior to your meeting, in the council meeting, Councilman

Yagelski brought up the same issue that he didn't think it was permissible to pay for the vehicle from the Misdemeanant Fund. He was told by the sheriff that he was wrong. That is why the check was written in the first place. I think it is only fair that you be now aware that the Misdemeanant Fund from January 1, 2007 through the 20th of last month has dispersed over \$440,000.00 without council approval. There has been 128 checks written and at least on one occasion vehicles were purchased on 5-20-08, two vans were purchased for \$39,990.00. Again, my question would be, can you find in record where the commissioners gave the sheriff permission to trade in county owned vehicles? If those vehicles were traded in, that is again a violation of county owned property. Secondly, I would request as a taxpayer that the Pontiac that was a matter of much discussion yearly this year be considered for sale. We now have this Pontiac that is now worth a little more than it was before but it is sitting somewhere decreasing in value. I would encourage the commissioners to put that car up for sale before it is down to scrap value again. Lastly, several months ago I asked you to pick a date and consolidate all of the appointments for the ethics committee. It is my understanding that they met today for the first time. It seems to me that October 1st would be an appropriate date since they are on one year and two year cycles. I don't believe it was the intention of the ethics board to have the appointment cycles spread out throughout the year.

Mr. Cunningham, this is the second time in the last three or four months that this has happened. When I walk up here to speak ALCO cut away from this meeting. That happened to me two months ago, the same thing happened. I think it is only fair that the public be aware that Mr. Milsap is on the ALCO board. We had an incident at ALCO and Mr. Milsap was present for that. Twice now in the last three or four months when I come to the microphone and speak ALCO goes to something else. I wanted to call that to your attention.

Mr. Milsap, Mr. Cunningham, I don't have any buttons.

Mr. Cunningham, it is my understanding that they switched over to the Michigan City meeting. Maybe we will be played back. It is just ironic, the last time I was here and spoke, the screen went blank and they were showing a picture of the courthouse. In light of what I already know about ALCO, and in light of what happened in a public meeting, I think I should raise that question.

DEPARTMENT HEAD COMMENTS

Sheriff Mollenhauer, on October 18th when I came before the commissioners you questioned me about the Misdemeanant Fund. At that time, Connie Trojanowski was in the back, who has been an employee of the sheriff's department for 30-35 years, and she verified that she has never known the sheriff to get approval from the Misdemeanant Fund.

Sheriff Mollenhauer, I have a letter here to read from the LaPorte City Police expressing gratitude of Sgt. Dallas Smyth and thanking him for his assistance. (Sheriff reads a detailed letter)

Mr. Milsap, can you give us a status report on the jail?

Sheriff Mollenhauer, we are holding our own. Captain Bell and Sgt. Vance have been doing well. The 5th floor is still closed. We have been filling in with road officers. We are running around 350-340 which isn't too bad. We are doing our best.

Mr. Layton, Mr. Cunningham, Commissioner Milsap gave me a note that when you were preempted, they switched to a Michigan City council meeting. They come on at 6:30 p.m. and preempt us.

Mr. Cunningham, when Mr. Bernacchi said that the sheriff made that decision...he did make that decision and is responsible for it, had he come to the council and ask to spend money out of the commissary fund or misdemeanor fund to cover the overtime, maybe he wouldn't have had to do these things. As of yesterday, there is \$104,000 left in the misdemeanor fund. I don't know exactly what is left in the commissary fund. He can argue that Tammy White said he can't spend it out of the Commissary Fund but you were at the AIC Conference and she told us that as long as the council approved it he can spend it out of the commissary fund. Is that not what she said?

Mr. Layton, that is true.

Mr. Cunningham, the council has been through this with him. All he has to do is come before us and ask permission to spend the money out of the commissary fund. When you have at least five

discretionary funds, one of which you have spent \$440,000.00 and still has a balance of \$104,000.00, the other one you have spent a half a million dollars and it has to have some balance, the three others we haven't even got the figures yet. I think it is appropriate when Mr. Milsap is asking about the status of the jail that it is his responsibility to run the jail. Whether he can pay the overtime or not because we didn't approve the money it is still his responsibility. He had money in other funds that he could have gotten approval from the council. He chose not to do that and asked the taxpayers to go back to the well again when the general fund is \$16,000,000.00 in the red and spend taxpayer dollars for overtime. Just to clarify that issue, five years and nine months, in 2007 he spent \$75,600 in overtime, in 2008 \$83,600, in 2009 \$100,287, in 2010 \$140,000. From 2010 to 2011 the overtime, remember we didn't give any employees raises, the overtime spent went from \$140,000 to \$216,000, over a 50% increase in one account. At this point in time, they have spent \$196,000 already and they are \$27,000 in the red in that account. We still have three months to go.

Sheriff Mollenhauer, Mr. Cunningham is welcome to come to my office if he has these questions instead of grandstanding in front of the camera. There have been some real remarks made by the councilmen in the last few days. Beginning with the Tahoe, we paid more for marked Tahoes that we did for that one, but that was okay because the reason was because the sheriff wanted it. It is 4 wheel drive, I patrol with these officers, these officers use that car during snow storms. They keep saying \$51,000, \$41,000 and only \$23,000 was paid and that was out of the commissary fund. The inmates bought that, that is not tax dollars. He said something about \$400,000, I wonder if he is referring to all the recording equipment we put in the jail to save taxpayers money from lawsuits and to keep us all safe. We are paying \$31,000 for radios in that jail. When Mr. Garner says I should come to the table, I have been to the table twice. The first time they took my clothing allowance and the second time they cut my wages by salary and benefits. I think I would be a fool to go back to the table. Also, with Mr. Ford's comment in the paper about the electric car...does he know LaPorte County is the second largest county in area? I probably couldn't make it to LaCrosse and back. I think they need to stop micro managing me and do their own job and let me do mine.

CORRESPONDENCE

None

REQUESTS

None

OLD BUSINESS

None

NEW BUSINESS

Lynne Spevak, LaPorte County Clerk/Approval Of Polling Places For General Election 2012

Ms. Spevak, the polling places are going to be the same as the primary. We have a total of 84 precincts but we have 60 polling places. During these financial difficulties we do try to combine polling places to save the county money. It just has to be approved by you 29 days prior to the election. The poll workers pay will be the same as the primary. The council gave us a budget and we are still within budget. We won't need any additional funding from them. Our testing for the election machines will be this Friday at 3:00 in the absentee room in the courthouse. The last day to register is next Tuesday at 5:00. We will be sending the traveling board out the end of October. We will do a training session at the end of October. November 3 and October 27 are the two Saturdays for voting early.

Mr. Milsap made a motion to approve, chair seconded the motion, motion carried by voice vote 2-0.

COMMISSIONERS COMMENTS

Mr. Milsap, in the spirit of economic development and job creation DeLau Landscaping located at 127 Indiana Highway 212, Michigan City, will be holding a job fair starting at 8:00 a.m. on October 13, 2012, they have numerous positions open. Veterans and retirees are welcome to apply. Also, the first presidential debate is tomorrow night. Be sure to tune in. This coming Saturday, October 6th is

the annual Circle City Classic in Lucas Stadium, starting at 2:30 with North Carolina vs South Carolina University.

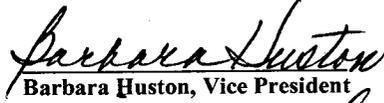
ADJOURN

Mr. Layton, President, adjourned the meeting at 6:59 p.m.

LAPORTE COUNTY BOARD OF COMMISSIONERS



Ken Layton, President



Barbara Huston, Vice President



Willie Milsap, Member

ATTEST:



Craig Hinchman, LaPorte
County Auditor