

**Feb. 20, 2012**

Pursuant to adjournment comes now the Starke County Council and meet in regular session at 6:00pm in the Annex meeting room, Knox Indiana and the following proceedings were held to wit:

The meeting was called to order by Council President, Dave Pearman.

Councilman Semans stated KIRPC is requiring a Certificate of Appointment for his appointment to the KIRPC Board.

**IN RE: OD SCHOOL TAX REFERENDUM**

OD Superintendent, Dr. Steve Disney, appeared before the Council and gave a presentation in regard to the tax referendum that will be appearing on the ballot for the voters of Oregon and Davis Townships. He advised if the tax is approved that will increase the taxes for the taxpayers in Oregon and Davis Townships by 19 cents. The Council stressed their concern the tax increase would affect the county's circuit breaker. Superintendent Disney stated this was part of the criteria from the DLGF, was the presentation to the Council. He stated it was for informational only, and if the tax is approved, will go into effect in 2013. Councilman Smith stated he would like to hear a report from Umbaugh Financial as to the effect this proposed tax increase would have on the rest of the county.

**IN RE: MINUTES**

Councilman Smith made a motion to approve the minutes of the Jan. 3, 2012 meeting, seconded by Councilman Semans. The motion passed with all ayes.

**IN RE: APPROPRIATION REQUEST OF THE CEDIT FUND**

Charlie Weaver, Director of the Starke County Economic Development Board, appeared before the Council to request the 2012 appropriations for the CEDIT Fund. He advised he had reconciled the balance of the fund as of Dec. 31, 2011, with the County Auditor and verified that the 2011 carryover appropriation requests are the exact balance that was in the fund at the end of 2011. He advised, according to the agreement between the Starke County Board of Commissioners, and Starke County Council, and the Starke County Economic Development Foundation, 100% of the CEDIT is appropriated and allocated as follows: 37.5% into the Economic Development Fund; 50% to maintain the County's bridges; and 12.5% for use by the County Commissioners. The balance of the CEDIT Fund on Dec. 31, 2011 is \$1,498,404.95 and that is the amount requested in 2011 carryover appropriations. The amount of CEDIT to be received in 2012 is \$1,022,710.00, and that is the amount requested in the 2012 CEDIT appropriations. Director Weaver advised any claims that have been paid since the first of the year will be subtracted from these appropriations. Councilman Semans made a motion to approve the appropriations, as requested, seconded by Councilman Radkiewicz. The motion passed with all ayes. A copy of the Appropriations Listing, with the Fund and Account numbers, is on file in the County Auditor's Office.

**RE: INNKEEPERS TAX**

Before the Council began a discussion of the issue of the county's innkeeper's tax, Debbie Mix, of the Tourism Board asked to make a statement. She advised she had distributed brochures showing the good work that is done by the Tourism Board to promote Starke County Tourism, with the use of the funding they receive from the CVC Board, through the Innkeepers' Tax. Ms. Mix also stressed the Tourism Board had acted quickly in response to the issue of financial improprieties.

Councilman Smith inquired if the Council was familiar with the issue at hand, the Innkeeper's Tax. He stated the tax was first passed and went into effect in 2007 at the request of the Tourism Board. A discussion followed in regard to the different boards and the tendency to have the same people populating the three boards in issue: the Tourism Board, the Convention and Visitor's Commission (CVC), and the Drug and Tobacco Starke County Board (DTFSC), and the lack of oversight of these boards. Councilman Smith stated he was against the creation of the Innkeepers Tax just to pay for the salary of the Tourism/Chamber Secretary. He also expressed concern over the collection of tax money which ultimately goes to a nonprofit organization that the county cannot hold accountable. Ms. Mix noted the innkeeper's tax is from visitors to the County, but Councilman Smith replied that it was still a tax. Attorney Lucas advised the ordinance that created the CVC Board was recreated last summer so that it was created in compliance, and no grants have been made to his knowledge, since last summer. Councilman Smith advised the Council has never received any financial accounting records of the CVC Board since it was first created in 2007.

Commissioner Norem reviewed the recent actions taken by the Board of Commissioners at their last meeting, and also advised that Jennie Carter, who is a member of all three Boards, and the Coordinator of the Drug and Tobacco Free Starke County Board, was

asked to submit the financial records of the DTFSC to the Starke County Auditor for review. Auditor Chaffins advised she just received the records late this afternoon, and has not reviewed them as of the start of the Council meeting. President Norem suggested the Council hold the Innkeeper's Tax that is received from the State Auditor, until grants are processed, and then the Auditor's Office disburse the monies directly to the grantee, instead of disbursing all of the tax revenue to the CVC Board which is the procedure that is in place at this time. Councilman Smith made a motion to suspend sending the innkeeper tax money to the CVC until the financial situation is resolved, checks and balances are in place, and the Board of Commissioners are comfortable with the situation. The motion was seconded by Councilman Sims, and passed with all ayes. Attorney Lucas stated he was uncomfortable when a statement was made last summer which stated that no innkeepers wanted to be on the CVC Board, and no one had inquired if he was interested in serving on the board, as he is an innkeeper in Starke County. Councilman Smith then made a motion to suspend the spending of the Drug and Tobacco Free Starke County funds until the financial records are reviewed, and all issues are resolved. Councilman Semans seconded the motion, and it passed with six ayes, and one nay. (Councilman McLaughlin was nay). Councilman McLaughlin was concerned that the DTFSC Board should be allowed their appropriations that had already been approved.

## **RE: COUNTY SHERIFF AND THE SHERIFF'S MERIT BOARD**

Ken Arnett, the President of the Merit Board, appeared before the Council and advised last Thursday he received notice that the Merit Board is being sued by the Sheriff, and now he is requesting the County appropriate funds to hire an attorney and pay the attorney fees. Sheriff, Oscar Cowen, appeared before the Council and advised what he had filed in Circuit Court was a petition to reconstruct the Merit Board. He stated the Merit Board was established in the early seventies. He advised the purpose of the Merit Board is to maintain all Sheriff's deputies are handled fairly by the Sheriff. The Sheriff advised Attorney, Howard Williams, has offered to reconstruct the Merit Board, at not financial gain to the attorney, and at no cost to the County. President Pearman stated the IC code that applies to the composition of the Merit Board which states 3 appointments are done by the Sheriff and two appointments to the Merit Board are by the Sheriff's Department. Sheriff Cowen advised the problem they are having is that the four year terms are to be on a staggered basis and all board members should not all be on the same term; and it is unknown at this time where each board member is in their four year term. But, he advised, one person is fighting the reconstruction of the board, and that was Ken Arnett, and since one person is objecting to the reconstruction, that is why it has to go through this channel. The Sheriff stressed it is not a lawsuit, just a petition to reconstruct. Attorney Lucas, noting that was the first he has seen these papers, cited the IC code in regard to the Merit Board and states the statute for the removal of a member of that board needs to be through court. He also stated the Merit Board has the right to Counsel, but stated it does not clearly state in the IC code about providing the costs. Attorney Lucas stated the purpose of the Merit Board was to allow tenured officers protection in their employment. Ken Arnett advised, according to IC 36-8-10, the Merit Board provides the checks and balances on the Sheriff. In 1988 the IC code was established to state the county is to pay the expenses of the Merit Board. In reference to the argument between the Sheriff and the Merit Board, he advised an incident that occurred on Sept. 13, is what has predicated the whole thing. The Sheriff stated a lawsuit was filed against himself by an officer on his department. Then the officer filed a complaint against the Sheriff with the Merit Board and the Board held meetings to hear the complaint. The Sheriff stated the incident should have been handled in court and not by the Merit Board, and noted there have been problems between the Merit Board and himself ever since. Councilman McLaughlin inquired as to why the process couldn't be mediated instead of a lawsuit. The Sheriff stated Howard Williams is the legal advisor to the Sheriff's Department, and would be to the Merit Board also. Ken Arnett stated he has refused to resign. Attorney Lucas stated there are two issues: who selects the attorney for the Merit Board, and who pays the attorney fees. Auditor Chaffins inquired, of the Sheriff, if he was in possession of the original ordinance from the early seventies that had first created the Merit Board. The Sheriff stated that was part of the problem, it is yet to be established where the ordinance is. Attorney Lucas stated the only remedy to remove a Merit Board member is through the court and only the Judge could decide on the removal. He added, there is no case law on this situation. Ken Arnett stressed the importance of getting the Council's response because of the time limit to respond to the paperwork, which, he stated, is twenty three days. Councilman McLaughlin volunteered to mediate the process. Councilman Sims stated he would rather it be mediated with the Merit Board, the Sheriff, Howard Williams and a mediator. Ken Arnett stated he will participate in a mediation if Judge McLaughlin was the mediator. He then asked for the attorney costs in case they don't go to mediation. Councilman McLaughlin stated either pay for the attorney for the Merit Board or both sides agree to dismiss the lawsuit and it is mediated. Sheriff Cowen stated he will discuss it with Howard Williams, the next morning. Councilman Smith inquired as to who pays for the salary of Mr. Williams. The Sheriff responded that Mr. Williams is on an annual retainer. Smith again inquired as to who pays for his salary. The Sheriff responded that actually your Commissary does. Councilman Radkiewicz made a motion to table the request for the county to cover the cost of an attorney to represent the Merit Board, and mediate the situation until they can get more information; seconded by Councilman Semans. Mr. Arnett then questioned the motion, before a vote was taken. Smith advised if the issue is tabled at tonight's meeting the deadline to respond to the court paperwork will be past. At that time Councilman Radkiewicz withdrew his motion, and Councilman Semans withdrew his second. Councilman McLaughlin stated they either need a commitment from the Sheriff to mediate or they need to file a petition for an extension of thirty days. At that time the Sheriff advised he will attempt to reach his attorney by telephone, and he left the meeting to make the call.

## **IN OTHER BUSINESS:**

### **RAINY DAY FUND:**

Councilman McLaughlin brought up the subject of the balance that was unexpended from the 2011 budget, in the County General Fund. He requested the unexpended portion be moved from the County General Fund, and put in the County's Rainy Day Fund. Both President Pearman and Councilman Smith advised that transfer should have been done prior to the end of the year. They stressed the transfer needs to be completed in the same calendar year as the budget. President Pearman advised he would like to see budget workshops be held prior to the beginning of the 2013 budget process.

### **A STATEMENT FROM JUDY BENNINGHOFF:**

Councilwoman Benninghoff advised she has been researching the transaction that took place last August of 2011, and she has issues in regard to the transactions. She stated she has concerns with the Treasurer's removal and she has spoken with Doug Wiese of the SBOA. She inquired why the Treasurer was not invited to the meeting with the SBOA that was held of Aug. 24<sup>th</sup>. She also inquired why or how the check that was voided from the Treasurer ended up in the Commissioner's budget, and not the Treasurer's budget. She stated the county officials have been less than truthful, and less than honest. . She advised she has more, plenty more to present.

**BACK TO ATTORNEY FOR THE MERIT BOARD:**

Sheriff, Oscar Cowen returned to the meeting and announced he was not able to contact his attorney, but he advised, he will contact him in the morning. Councilman Semans made a motion to table this issue until the Sheriff talks to his attorney about an extension and then call a special meeting, allowing for a 48 hour notice. Councilman Smith seconded the motion, and added County Attorney Lucas should have been advised of this lawsuit/petition filing prior to that night's meeting. The motion passed with all ayes. Councilman Smith asked of all of the Merit Board, to give them something to work with, in regard to the cost of an attorney. He also added he was surprised you can take Commissary Funds to pay for an attorney. Councilman Sims advised the Sheriff pays that every year. It provides training and legal advice, but any special litigation was an extra expense.

With there being no further business, Councilman Semans made a motion to adjourn the meeting, seconded by Councilman Smith. The motion passed with all ayes, and the meeting was adjourned at 8:30PM.

**FEBRUARY 20, 2012**

\_\_\_\_\_  
Dave Pearman, President

\_\_\_\_\_  
Mitch Semans, Vice President

\_\_\_\_\_  
Judy Benninghoff

\_\_\_\_\_  
Marvin McLaughlin

\_\_\_\_\_  
Mark Smith

\_\_\_\_\_  
Tony Radkiewicz

\_\_\_\_\_  
Robert Sims

\_\_\_\_\_  
Katherine Chaffins, Starke Co. Auditor & Council Secretary