

Floyd County Board of Supervisors Meeting
April 13, 2021, 1:00 PM

UNAPPROVED MINUTES

The Floyd County Board of Supervisors met at NIACC-Charles City Center with the following in attendance: Supv Linda Tjaden, Supv Doug Kamm and Supv Roy Schwickerath.

Kamm/Schwickerath moved to approve the agenda as presented. Motion carried 3-0.

Public comment: none.

Schwickerath/Kamm moved to approve the March 22, 23, 29, and April 5, 2021 meeting minutes as presented. Motion carried 3-0.

Kamm/Schwickerath moved to approve the claims presented: County #2218-2412 and Secondary Roads #21409-21454. Motion carried 3-0.

Law Enforcement Center/Courthouse Project: Schwickerath/Kamm moved to approve PCO #18 Clerestory EIFS Modifications for \$20,425.17. Motion carried 3-0. Kamm/Schwickerath moved to approve PCO #64 Fire Marshal Clarifications for \$16,060.72. Motion carried 3-0. Kamm/Schwickerath moved to approve PCO #66 Security Ceiling Access Panels for \$14,676.97. Motion carried 3-0. Schwickerath/Kamm moved to approve PCO #67 Delete Security Fencing for a credit for \$7,625. Motion carried 3-0. Schwickerath/Kamm moved to not approve PCO #68 Added Bollards for \$3,017.60. Motion carried 3-0. Kamm/Schwickerath moved to approve PCO #69 Lobby Bulkhead Deduct with a credit of \$959.50. Motion carried 3-0. Schwickerath/Kamm moved to not approve PCO #70 Exterior Aluminum Signage for \$5,488.87. Motion carried 3-0. Kamm/Schwickerath moved to approve Pay AP #17 for \$149,348.35. Motion carried 3-0.

Two bids were opened for bridge replacement on 170th St/T38 project from Minnowa Construction for \$89,530 and Peterson Contractors for \$81,005. Kamm/Schwickerath moved to approve the bid from Peterson Contractors, Inc for \$81,005 for 170th St/T38 project #L-FY@@-01--73-34. Motion carried 3-0. Two bids were opened for culvert replacement on Jersey Ave/120th St project from Minnowa Construction for \$93,375 and Peterson Contractors for \$84,025. Schwickerath/Kamm moved to accept the bid for contract with Peterson Contractors, Inc for \$84,025 for project LFM-FY22-02-7X-34. Motion carried 3-0. Two bids were received for bridge replacement on Windfall Ave/B28 from Minnowa Construction for \$77,110 and Peterson Contractors for \$66,720. Kamm/Schwickerath moved to approve the bid for \$66,720 with Peterson Contractors, Inc for \$66,720 for project M-FY22-01. Motion carried 3-0. Dusten Rolando, County Engineer, will verify paperwork is in order.

At 1:38 p.m. the hearing regarding Annexation to Drainage District #1 opened. Kent Rode, Bolton & Menk P.E., presented information to determine the annexation of three additional parcels proposed to be added to the district. Maps representing the facilities with flow paths were viewed. With no comments at the hearing, the hearing closed at 1:40 p.m. Kamm/Schwickerath moved to approve the Engineer's Report: Annexation/Drainage District #1 and the annexation of the additional parcels. Motion carried 3-0.

At 1:42 p.m. the hearing regarding Reclassification of Benefits/Drainage District #1 opened. Rode provided information on the process for determining the amount to assess property owners through reclassification, including the appointment of commissioners to review 21 schedules and the factors considered for benefit on each parcel. Rode and Tyler Conley, Bolton and Menk, provided details of applying factors of reclassification including benefited acres, wetness, proximity to outlet, facility use and runoff factor (land use factor) for the catchment land, length, and flow path of drainage for each facility based on units, percentage, and acres. Daniel Schmitt questioned and provided a letter regarding if he could assume the ownership and maintenance of LB #1 on Sub-Mail #2 since this is 100% of his benefit; Conley commented that there are legal actions and proceedings to abandon a facility but is hesitant to do so because in the future it could affect different owners; Rode commented that there are two parcels that happen to be owned by Schmitt now but that could change in the future. Adan and Ana Blickendorfer wrote that they feel there is little to no benefit to being in the district, they are not objecting to the reclassification, and would like landowners to be proactive and not retroactive land and tree management which affects others on the main. Auditor Carr reported that some landowners have provided tile maps and Louie Blickendorfer questioned an area where his tiles are going a different direction away from a facility where his is listed as a benefit; Rode commented that tile maps do not dispute any of the work Bolton and Menk has prepared. Supv Kamm commented on a conversation with Chuck Thorson but he is ok with the plans. Mary Hoeft questioned the current project and if the tiles will be taken care of; Rode mentioned the failing 100-year old tiles, the current repair

project with two of the 21 schedules affected, and a preconstruction meeting next week. The hearing closed at 2:18 p.m. Schwickerath/Kamm moved to accept the Commissioners' Report: Reclassification of Benefits for Drainage District #1 and approve the reclassification schedule as presented. Motion carried 3-0.

Kamm/Schwickerath moved to set a public hearing on April 27 at 1:15 p.m. in the assembly room for the FY21 county budget amendment. Motion carried 3-0.

Kamm/Schwickerath moved to approve Informal Resolution 20FC:0128 Mark Kuhn/Floyd County Board of Supervisors. The document reads as follows: On December 16, 2020, Mark Kuhn filed formal complaint 20FC:0128, alleging that the Floyd County Board of Supervisors (Board) violated Iowa Code chapter 21 on December 8, 2020. Mr. Kuhn stated that on December 7, 2020, the Board held a work session with an agenda item entitled "Review/Action coronavirus (COVID-19) issues as applicable." On December 8, 2020, the Board held an open meeting with this same agenda item. He alleged that this agenda item was legally insufficient as used on December 8, 2020. During this meeting, the Board discussed whether to initiate a mask mandate as part of this agenda item. Mr. Kuhn alleged that the Board did not discuss the concerns Mr. Kuhn had raised the day before on this issue. He was not allowed to present his comments during the meeting. A motion was made to implement a mask mandate, but died for lack of a second. The Board then proceeded to discuss and adopt two motions concerning the modification of signage displaying public safety measures in place concerning COVID-19. Mr. Kuhn stated that the Board announced that an assistant county attorney had been consulted and had opined that the agenda item allowed the Board to consider the signage issues, but was not sufficient to deliberate or take action on the mask mandate. Mr. Kuhn provided documentation to substantiate his allegations: 1) An FAQ published by the IPIB on the issue of proper drafting of an agenda; 2) Seven months of prior agendas and minutes of meetings when the same agenda item was listed; 3) The minutes of the December 7, 2020, meeting; 4) The agenda and minutes of the December 8, 2020, meeting; 5) The December 14, 2020, meeting minutes; 6) Seven pages of emails between Floyd County officials, Mr. Kuhn, and others concerning the issue of the mask mandate and the insufficiency of the agenda wording at issue; 7) The COVID-19 screening sign and checklist; 8) The text from a newspaper article by Bob Steenson of the Charles City Press; 9) The agenda for the December 14, 2020, meeting. The Board filed a response to the complaint through legal counsel. Legal counsel stated that the Board had reviewed this issue prior to the filing of this complaint and determined that the agenda item was sufficiently descriptive. Counsel quoted from an Iowa Supreme Court decision: *Thus, the issue to be resolved is not whether the notice given by the governmental body could have been improved, but whether the notice sufficiently apprised the public and gave full opportunity for public knowledge and participation. In determining whether the public was sufficiently apprised, we may consider the public's knowledge of an issue and actual participation in events in light of the history and background of that issue.* Although not noted in the Board's response, in *KCOB/KLVN*, the Iowa Supreme Court then considered that the "sufficiency of the detail on the tentative agenda must be viewed in the context of surrounding events," including the fact that the same agenda item had been on a previous agenda and previously discussed. (At 173). The Supreme Court then determined that an agenda item listed as "Industries Council - Mr. Jack Lipovac" was sufficiently detailed to encompass a discussion of the firing of the named individual. In this matter, an agenda item entitled "Review/Action coronavirus (COVID-19) issues as applicable" had been used over the last seven months to deliberate and take action upon various issues. The agenda item became a 'catch-all' phrase to encompass anything that could be related to coronavirus protection. If this was the first time this agenda item had appeared on an agenda, it might have been sufficient to address all aspects of coronavirus issues. However, in this instance, an assistant county attorney advised the Board that the agenda item had been consistently used to address signage at the courthouse and considering a mask mandate went beyond the scope of the agenda item. Additional description was needed to be compliant with Iowa Code chapter 21. As used on the December 8, 2020, Board agenda, the agenda topic did not sufficiently advise the public that a mask mandate would be considered. The Iowa Public Information Board (IPIB) accepted the formal complaint on February 18, 2021, as to the violation of Iowa Code section 21 and specifically 21.4(1)(a), violation of the requirements to reasonably apprise the public of agenda items to be considered at an open meeting. Pursuant to Iowa Code 23.9, the parties negotiated and reached an informal resolution. The parties agree to the following terms: 1) The Board will acknowledge during an open meeting that the requirements for posting an agenda that provides adequate notice was not met, and this acknowledgement be recorded in the minutes of said meeting. Specifically, making a motion on the mask mandate should have included a more specific agenda description, and been posted 24 hours in advance of the meeting; 2) The Board will work with the Auditor to develop a procedure for drafting detailed agendas in compliance with Iowa law. A copy of the procedure will be provided to the IPIB; 3) The Board shall conduct training during an open meeting for all Board members and, the Auditor on Iowa Code chapters 21 and 22 (Sunshine Laws). Other county officials are encouraged to attend the training. The Board may utilize the

PowerPoint training available on the IPIB website. The Board shall work with their attorney or the Iowa State Association of Counties to provide the training to the Board and any other county officials; 4) ‘Catch-all’ agenda items, such as “Review/Action regarding coronavirus (COVID-19) issues as applicable”; “Review/Action regarding Law Enforcement Center/Courthouse contracts and change orders as applicable”; and, “Update/Review/Action regarding Law Enforcement Center/Courthouse project” need to comply with Iowa Code section 21.4(1)(a) to reasonably apprise the public of agenda items to be considered at an open meeting. To the extent the Board is aware of specific action items to be considered, such agenda items should be modified or a separate agenda item added to reasonably apprise the public of the issues to be discussed; 5) The Board shall approve this resolution during an open meeting and include the full text in the minutes of said meeting, and publish said resolution according to Iowa law. Said minutes with the inclusion of the text of the resolution shall be provided to the IPIB. The terms of this informal resolution will be completed within 60 days of acceptance by all parties. Upon showing proof of compliance, the IPIB shall dismiss this complaint as successfully resolved. Motion carried 3-0. Supv Tjaden made a statement that the board acknowledges that the requirements for posting an agenda that provides adequate notice was not met, specifically, making a motion on the mask mandate should have included a more specific agenda description, and posted 24 hours in advance of the meeting.

Kamm/Schwickerath moved to approve the FY22 IDOT Secondary Road 5-year Construction Program. Motion carried 3-0.

Schwickerath/Kamm moved to approve the FY22 IDOT Secondary Road Budget. Motion carried 3-0.

Engineer’s Report: Rolando provided Foreman’s notes. Floyd County will be receiving \$266,069.48 of \$121.9 million in additional funds from a Coronavirus Response and Relief Supplemental Appropriations Act for loss of revenues from the gas tax. Rolando provided historical information on labor expenditures, revenues, rock-use and price/budgeted from 2000 to 2020. Crews are working on work orders, permits for driveways, ditch cleaning, making 3x5 box culverts, spot rocking and will have MSHA training at the end of the month. The 180th Street bridge project will start in June. Day labor projects will kick off after July 1.

Schwickerath/Kamm moved to adjourn. Motion carried 3-0.

ATTEST: _____
Gloria A. Carr
Floyd County Auditor

Linda Tjaden, Chair
Floyd County Board of Supervisors