

LIVINGSTON COUNTY BOARD
MINUTES OF September 11, 2014 MEETING OF THE COUNTY BOARD
(Revised)

OPENING

Chairman Fannin) called the meeting to order at 6:00p.m., in the County Board Room of the Historic Courthouse, 112 W. Madison, Pontiac, Illinois.

Bob Young asked that a moment of silence be held in remembrance of the people who lost their lives; and for the expert work that the emergency responders provided, on this thirteenth anniversary of the 911 tragedy in New York City.

John Yoder led the Pledge of Allegiance.

The clerk called roll with the following **present:** Joan Bullard, Tim Shafer, Kathy Arbogast, Robert F. Weller, Paul A. Ritter, Kelly Cochran Cohlman, Joseph D. Steichen, Carl Borngasser, G. Michael Ingles, Daryl N. Holt, Stanley R. Weber, Earl A. Rients, Judy Campbell, William Mays, Bob Young, John L. Yoder, Carolyn Gerwin, William G. Flott, Mark Runyon, Marty Fannin, Ronald L. Kestner and William H. Peterson **Absent:** John “Jack” Vietti and Vicki Allen

Also Present: County Clerk Kristy Masching, Administrative Resource Specialist-Alina Hartley, State’s Attorney Seth Uphoff, Attorney Tom Blakeman, Zoning Administrator Chuck Schopp, Assistant Count Highway Engineer-Clay Metcalf, Treasurer Barbara Sear and Public Health Administrator-MaLinda Hillman

AGENDA

Chairman Fannin asked that item #12. Discussion on previous August 21st Special Board meeting” be added to the agenda. *Motion by Steichen, second by Borngasser to approve the agenda as amended.* **MOTION CARRIED ON UNANIMOUS VOICE VOTE.**

APPROVAL OF MINUTES

Chair Fannin called for approval of the August 14 and 21, 2014 minutes. *Motion by Holt, second by Ritter to approve the August 14 and 21st, 2014 minutes.* **MOTION CARRIED UNANIMOUSLY ON VOICE VOTE.**

PRESENTATION

None

APPEARANCES

None

CONSENT AGENDA

- A. Approval of Bills
- B. Classification Change: Facilities Services Manager M2

Motion to approve the consent agenda by Holt, second by Ritter. **MOTION CARRIED ON ROLL CALL VOTE.** **Ayes:** Bullard, Shafer, Arbogast, Weller, Ritter, Cohlman, Steichen, Borngasser, Ingles, Holt, Weber, Rients, Campbell, Mays, Young, Yoder, Flott, Runyon, Fannin, Kestner and Peterson **Nays:** Gerwin **Absent:** Vietti and Allen

AG & ZONING

Chair Young stated that four people had been appointed to assist the A& Zoning Committee with the review of the Wind Energy Ordinance. The public may submit their suggestions and views, referencing a specific ordinance, up to the next meeting.

Professional Services Agreement: Patrick Engineering – Attorney Blakeman stated that Patrick Engineering was recommended by A&Z to make an evaluation of the Invenergy Pleasant Ridge Wind Energy Center Wind Farm application and see that it complies with the terms and conditions of the present ordinance. The analysis would be completed within thirty days. The proposed fee of \$28,900., would be paid from the application fee that’s been filed by Invenergy. The county has used this firm in the past. Zoning Administrator Chuck Schopp noted that he is proposing that three noise studies, rather than two, be performed in areas congested with homes and towers, which would increase the fee by approximately \$2,000. Discussion highlights follow: the process used to validate the accuracy of information provided by applicant; exact location of turbines is provided by Invenergy; if information is missing from applicant’s map, contact Chuck; past practice indicates that Patrick Engineering will submit their summary report to the Zoning Board of Appeals, and become part of the public record at the ZBA special use permit hearings; results of report can be questioned at hearing; and the county could retain other experts to evaluate the report using the same funding source. *Motion to approve the Professional Services Agreement with Patrick Engineering by Ingles, second by Flott.* **MOTION CARRIED ON ROLL CALL VOTE.** **Ayes:** Bullard, Shafer, Arbogast, Weller, Ritter, Cohlman, Borngasser, Ingles, Holt, Weber, Rients, Campbell, Mays, Young, Yoder, Flott, Fannin, Kestner and Peterson **Nays:** Steichen, Gerwin and Runyon **Absent:** Vietti and Allen

Agreement: Schain, Banks, Kenny & Schwartz – Attorney Blakeman reviewed the consultant agreement noting that the recommendation of A&Z was to retain an attorney with expertise in the area of wind farms. This firm was selected approximately six years ago to represent the county with the Cayuga South and Deer Run projects. Some comments by board members follow: he was the lead attorney in two suits challenging wind energy; performance issue of attorney in prior hearing; felt that any land use attorney versed in zoning could have advised ZBA on prior wind farm projects as well as the current one; take issue with him being a member on an executive committee for a group promoting wind energy when the County Board is to be looking at both sides; *there was significant concern expressed about Mr. Griffin’s alliances or affiliations with the American Wind Association and the Illinois Wind Working Group among other issues;* haven’t contacted any other attorneys since we had a prior relationship with this firm; need an attorney with expertise in wind energy; and could invite Mr. Griffin to the October meeting to address questions raised here. Discussion ensued between State’s Attorney Seth Uphoff and board members on Mr. Griffin’s role in the process. Seth noted that a board member commented that there would be two sides during the hearing. He reminded the members that the Board is not to advocate one side or another. He also stated that whoever the county retains would not be advocating a position either. They are to be an overseer of the process and make sure that we are not running afoul of the goals. They will not be presiding over the hearing. The ZBA would make a decision and refer their recommendation on to the County Board for the final determination. Mr. Griffin came recommended as an individual familiar with the county, has been down this road before, is in land use law and specializes in wind farms, which is why Seth recommended him to the board. A board member stated that the board is trying to show how neutral they are, but this is one person who doesn’t feel neutral to many people and he is the only one being considered. The A&Z committee’s feeling is that they don’t want to do anything to jeopardize or violate either side of the issue of wind farms coming to the county. *Motion to approve the Agreement with Schain Banks Kenny & Schwartz, Ltd by Ingles, second by Ritter.* Discussion followed. **MOTION CARRIED ON ROLL CALL VOTE.** **Ayes:** Bullard, Shafer, Arbogast, Weller, Ritter, Cohlman, Steichen, Borngasser, Ingles, Holt, Mays, Young, Yoder, Flott, Fannin, Kestner and Peterson **Nays:** Weber, Rients, Campbell, Gerwin and Runyon **Absent:** Vietti and Allen

HIGHWAY

Chair Weber introduced David Winters-County Highway Engineer, who reviewed **Action Agenda** items as follows:

1. **BRIDGE PETITION:**
 - a. **Sunbury & Esmen Road District** - replace existing 8’ x 3’x20’ box culvert with 2-42” ERS x 44’ long pre-coated CMP’s @ 1448E, 2700N, Sections 14-28000-00-AB & 14-09000-00-AB. Estimated Cost = \$15,000.00
2. **Quarterly Report:**

a. 3rd Quarter FY 14

Motion by Weller, second by Steichen to approve the Highway Action items #1 & #2, with one roll call vote.

MOTION CARRIED ON ROLL CALL VOTE. Ayes: Bullard, Shafer, Arbogast, Weller, Ritter, Cohlman, Steichen, Borngasser, Ingles, Holt, Weber, Rients, Campbell, Mays, Young, Yoder, Gerwin, Flott, Runyon, Fannin, Kestner and Peterson **Nays:** None **Absent:** Vietti and Allen

FINANCE

Master Agreement for Professional Services: Thomson Reuters – Treasurer Sear presented information on a project to scan four hundred collector books located in the County Clerk’s vault basement. She was asking for approval of the contract with Thomson Reuters at an estimated cost of \$29,000. The final price will be determined by the actual number of pages scanned. She hopes to have the project started by the middle of November. *Motion by Shafer, second by Rients to approve the contract with Thomson Reuters for the Treasurer’s collector book scanning project.* **MOTION CARRIED ON ROLL CALL VOTE. Ayes:** Bullard, Shafer, Arbogast, Weller, Ritter, Cohlman, Steichen, Borngasser, Ingles, Holt, Weber, Rients, Campbell, Mays, Young, Yoder, Gerwin, Flott, Runyon, Fannin, Kestner and Peterson **Nays:** None **Absent:** Vietti and Allen

Resolution (#2014-09-24): Livingston County Community Healthcare Program - Public Health
Administrator MaLinda Hillman was present to request annual approval for continuation of the Livingston County Community Health Care Program. This program provides home nursing and home services to eligible Livingston County residents who cannot access services through any other program. In order to qualify, individuals must meet set criteria, with payment determined by a sliding scale fee. Income eligibility is set at 185% of poverty for one, with 95% of the users falling into the free full county subsidy category. *Motion by Shafer, second by Steichen to approve the continuation of the Livingston County Community Healthcare Program.* Discussion followed. The program serves about 120 individuals, has a budget of \$335,000., with receipts expected from co-pays around \$13,000. Funding for the program comes from the Nursing Home Construction Fund. **MOTION CARRIED ON ROLL CALL VOTE. Ayes:** Bullard, Shafer, Arbogast, Weller, Ritter, Cohlman, Steichen, Borngasser, Ingles, Holt, Weber, Rients, Campbell, Mays, Young, Yoder, Flott, Runyon, Fannin, Kestner and Peterson **Nays:** Gerwin **Absent:** Vietti and Allen

Public Defender Extension Agreement: William Bertram – Chair Shafer explained that this is a one-year extension of an existing agreement, with no changes to the conditions. *Motion by Shafer, second by Borngasser to approve the one year extension agreement with William Bertram .* **MOTION CARRIED ON ROLL CALL VOTE. Ayes:** Bullard, Shafer, Arbogast, Weller, Ritter, Cohlman, Steichen, Borngasser, Ingles, Holt, Weber, Rients, Campbell, Mays, Young, Yoder, Flott, Runyon, Kestner and Peterson **Nays:** Gerwin and Fannin **Absent:** Vietti and Allen

PUBLIC PROPERTY

Livingston County Cash Farm Lease: Don Siegel – Chair Runyon reported that the lease for the county farm ground is up. The committee had offered the current tenant the option to renew at the current rate, but he declined. Therefore, it was put out for bids with five bids returned. The highest bid was \$301.51 per acre and was submitted by Don Siegel. *Motion by Runyon, second by Weber for approval of the two year farm ground lease with Don Siegel.* **MOTION CARRIED ON ROLL CALL VOTE. Ayes:** Bullard, Shafer, Arbogast, Weller, Ritter, Cohlman, Steichen, Borngasser, Ingles, Holt, Weber, Rients, Campbell, Mays, Young, Yoder, Gerwin, Flott, Runyon, Fannin, Kestner and Peterson **Nays:** None **Absent:** Vietti and Allen

PERSONNEL

Chair Holt reported that at a joint committee meeting with Finance, discussion was held on the classification change from M1 to M2 for the Facilities Services Manager. Jeff Gilmore-BPA our employee insurance representative, presented information on the medical, dental and vision plans.

ELECTION, RULES & LEGISLATION

No report

SHERIFF, JAIL & LICENSE

No report

INFORMATION & TECHNOLOGY

No report

VETERANS

No report

ADMINISTRATIVE

No report

RECREATION AD-HOC

Judy Campbell informed attendees that the committee would meet on Wednesday, October 15th at 4:00 p.m., in the committee room.

DISCUSSION ON AUGUST 21, 2014 COUNTY BOARD MTG

Chairman Fannin commented that he would read the memorandum from the State's Attorney's Office and would deliver a brief synopsis. He noted that there was a typographical error on the memorandum under the "Opinion" section; it should say "I do believe". The document, regarding the vote to close debate at the special meeting, follows.

Memorandum from State's Attorney Uphoff

Issue Presented - At the last meeting of the County Board, a special meeting that was called and held, there was an issue regarding the necessary vote (simple majority or 2/3 majority) to end debate on the issue of amending the agenda. It has been alleged that according to Robert's Rules of order, a 2/3 majority vote should have been required to close debate, and that the proper procedure was not followed.

Opinion

Based on the following analysis, I do believe that a simple majority vote was the proper standard and procedure was not violated.

Analysis

The County Board's Standing Rules, amended in May of 2013, establish the requirements for voting and the voting totals required for taking action. The pertinent section is Chapter 1, Paragraph 3, subsection (a) which states:

"... all questions which shall arise at meeting shall be determined by votes of the majority of those present, except in such cases as otherwise provided."

Thus, unless the Standing Rules specifically call for something other than a simple majority vote, then all votes are decided by a simple majority.

A review of the Standing Rules shows that there is no specific exception to the simple majority rule for a vote to close debate. Thus, the simple majority rule applies.

Additionally, Chapter 1, Paragraph 18 provides for "Rule of Order", indicates that the Standing Rules have priority. Specifically it states:

"The Board, in its proceedings, shall be governed by Robert's Rules of Order, except as otherwise provided by the rules of this Board, and the Illinois Open Meetings Act."

The language of this section makes clear that the County Board's standing rules trump Robert's Rules if there is a conflict between the two. If the Standing Rules are completely silent on an issue that is covered by Robert's Rules, then Robert's Rules would apply.

Conclusion

Even if Robert's Rules calls for a 2/3 majority vote to close debate, that rule is superseded by the Standing Rules requirement that all questions be decided by a simple majority vote unless otherwise provided.

Chairman Fannin's Synopsis- He stated that at the last meeting of the County Board, a special meeting that was called and held, there was an issue regarding the necessary vote (simple majority or 2/3 majority) to end debate on the issue of amending the agenda. It has been alleged that according to Robert's Rules of order, a 2/3 majority vote should have been required to close debate, and that the proper procedure was not followed.

In speaking with the State's Attorney, that question was answered by our Standing Rules, which call for all questions to be handled by a simple majority vote unless otherwise provided. There is no other section which contradicts that rule. Thus, under the Standing Rules approved by this board in May of 2013, a simple majority vote was the proper standard.

Moratorium Issue – Chairman Fannin addressed the moratorium issue by commenting that the Ag & Zoning Committee will address this as part of their process in amending and changing the wind energy zoning ordinance.

Conflict of Interest Issue – Chairman Fannin read the following excerpt from the “Standing Rules of the County Board”: “When any member of the Board has a legal conflict of interest as defined by statute (50 ILCS 105/3 (2011) “Prohibited Interest in Contracts”, or similar or subsequent statute) or common law, the member shall, before the item is brought before the body for discussion or consideration, announce to the Chair the nature of the conflict and request to be excused from the discussion and any vote to be taken. The Chair will excuse the member as requested and the name of the member will not be called upon the taking of a vote.”

Attorney Blakeman stated that statute 50 ILCS 105/3, is a description of contractual situations, of what is and isn't allowed. He reviewed some of the prohibited interests where board members would need to excuse themselves from voting. Blakeman's recommendation for members, who could have a potential conflict, is to consult with either him or State's Attorney Uphoff.

Some discussion items and comments follow: events that happened at the August 21 special meeting; well written memo from the State's Attorney regarding the vote to close debate; moratorium issue; Board rules versus Robert's Rules of Order; better to err on side of discussion rather than cutting it off; main point was to get to public comment; procedure closing debate isn't to deny someone the right to speak, but eliminates redundant debate (filibustering); and consider setting time limits for speakers.

PUBLIC COMMENT

Comments and concerns were heard from many attendees regarding the wind energy development in District #3. Some comments follow: concern about the retention of an attorney who is a member of an association lobbying for wind development; there are attorneys with wind experience on both sides of the debate who are familiar with Livingston County; five of seven member ZBA constitutes a quorum; clarification of public comment at committee meetings; public can speak to board members, but the board members are to remain neutral; negative impact of wind farms on the environment with respect to wildlife; health issues of school children located in wind farm grids; attorney fees and the number of attorneys interviewed for the job; wanted an explanation of hearing process; and concern that one of the four people appointed to assist the A& Zoning Committee with the review of the Wind Energy Ordinance isn't a Livingston County resident and is an employee of Eberdrola renewable Wind Farm.

Chairman Fannin encouraged all Board members to go to the ZBA Hearings. Many members commented that they have been investigating some of the issues presented by the public. Blakeman stated that as a Board, the members should consider the evidence presented at the hearing. He encouraged all those in attendance to attend the hearings and testify, so that their voices are heard, making it a part of a record that the Board can consider.

Zoning Administrator Chuck Schopp stated that a time line for the ZBA hearings hasn't been set yet but would take place after harvest, sometime the end of October or the first part of November. He also commented that the text amendment concerning property value guarantees is being evaluated at this time to see if it was properly filed.

EXECUTIVE SESSION

Motion by Kestner, second by Steichen to move into executive session pursuant to: 5 ILCS 120/2 (c) (2) Collective Negotiating Matters. MOTION CARRIED ON ROLL CALL VOTE. Ayes: Bullard, Shafer, Arbogast, Weller, Ritter, Cohlman, Steichen, Borngasser, Ingles, Holt, Weber, Rients, Campbell, Mays, Young, Yoder, Gerwin, Flott, Runyon, Fannin, Kestner and Peterson **Nays:** None **Absent:** Vietti and Allen

There was a break from 8:15p.m. to 8:25p.m. Executive Session commenced at 8:25p.m., open session resumed at 8:30 p.m.

ACTION RESULTING FROM EXECUTIVE SESSION

Motion by Ingles, second by Mays to approve the proposed collective bargaining agreement for the (Highway Employees) Local Union #150 and authorize the board chairman and secretary to sign the agreement on behalf of the county board. MOTION CARRIED ON ROLL CALL VOTE. Ayes: Bullard, Shafer, Arbogast, Weller, Ritter, Cohlman, Borngasser, Ingles, Holt, Weber, Rients, Mays, Yoder, Flott, Fannin, Kestner and Peterson **Nays:** Campbell, Gerwin and Runyon **Absent:** Vietti, Young and Allen **Present:** Steichen (Represents Local #150)

COMMUNICATIONS/ANNOUNCEMENTS

None

ADJOURNMENT

The meeting adjourned at 8:35p.m., on motion by Weller, second by Yoder. MOTION CARRIED WITH ALL AYES ON VOICE VOTE.

The next meeting is scheduled for Thursday, October 16, 2014 at 6:00 p.m., at the Historic Courthouse Board Room.

Marty Fannin, Chairman

Attest:

Kristy A. Masching
County Clerk

October 16, 2014

Approved