

Floyd County Board of Supervisors Meeting
January 3, 2023, 9:00 AM

The Floyd County Board of Supervisors met for the annual organizational meeting in the EOC/Training Room of the Floyd County Courthouse with the following in attendance: Supv. Mark Kuhn, Supv Dennis Keifer, and Supv Jim Jorgensen.

Auditor Gloria Carr opened the meeting and asked for a motion to appoint a chairperson for the board.

Keifer/Jorgensen moved to appoint Supv Mark Kuhn as chairperson for the Board of Supervisors for 2023. Motion carried 3-0. Supv Kuhn continued with the meeting.

Keifer/Jorgensen moved to approve the agenda as presented. Motion carried 3-0.

Public comment: none

Kuhn/Jorgensen moved to appoint Supv Keifer as the vice chair of the Board of Supervisors to conduct meetings in the absence of the Chair. Motion carried 3-0.

Keifer/Jorgensen moved to approve the Board Meetings Policy. Motion carried 3-0.

Jorgensen/Keifer moved to hold regular board meetings on Mondays at 9:00 a.m. with the option to hold special or workshop meetings as deemed necessary. Motion carried 3-0.

Keifer/Jorgensen moved to table authoring the Auditor and other department heads to destroy certain useless documents over ten years old until hearing from department heads. Kuhn made a point of procedure clarifying tabling an agenda item is to do so to address an agenda item later in the same meeting and postponing is intended to postpone an item until another date. Keifer/Jorgensen moved to amend his motion to postpone authoring the Auditor and other department heads to destroy certain useless documents over ten years old until January 9. Motion carried 3-0.

Jorgensen/Keifer moved to approve Res #01-23* Recurring Claims. Discussion included whether or not there should be a roll call vote on resolutions. Jorgensen/Keifer moved to table approval Res #01-23* Recurring Claims until there is confirmation if resolutions needs to have a roll call vote. Motion carried 3-0. Auditor Carr was directed to ask for clarification from the county attorney's office.

Keifer/Jorgensen moved to approve Supervisor appointments. Motion carried 3-0. Appointments are as follows: All Board Members: Assessor's Conference Board and

Mark Kuhn	Dennis Keifer	Jim Jorgensen
CC Area Development Corp	CC ADC Jobs Potential Review Committee	Ambulance Commission
CC ADC Asset Management Committee	CC Chamber of Commerce (liaison)	Cedar Valley Transportation Center (liaison)
Comm/Marketing Partnership Board	CC Business Improvement Committee	Central Iowa Juvenile Detention Ctr
County Social Services Board	CC Cultural Entertainment Dist. Grant Comm	County Social Services Board (Alt)
County/St - Courthouse Security Committee	CC Hotel/Motel Tax Commission (non-voting)	County – Conservation (liaison)
County - Dept Head Mtg/BOS Rep	CC Joint Entity Committee	E911 Board (Alt.)
County - IT/Website Committee	CC Main St Charles City	Emergency Food and Shelter Program
County - Risk Management Committee	Central Iowa Juvenile Detention Ctr (Alt)	Emergency Management Commission
Emergency Management Comm (Alt)	E911 Board	FMC Early Childhood Iowa
FMC Governance (Alt)	FC Communications Advisory Board	FMC Governance (Decat) Board
NE IA Workforce-Chief Elected Officials	FMC Landfill	FMC Landfill (Alt.)
NIACOG-North IA Council of Govt	NIACOG (Alt)	FOCUS
NIACOG-North Central Regional Emergency Response Commission (Alt)	NIACOG-North Central Regional Emergency Response Commission	Foster Grandparents
NIACOG-No. Central Regional Emergency Planning District Committee (Alt)	NIACOG-No. Central Regional Emergency Planning District Committee	NIACOG Housing Trust Fund Board
NIACOG-Transportation Policy Bd (Alt)	NIACOG-Transportation Policy Bd	NI Long Term Disaster Recovery Comm
Second Judicial District	N. Cedar Regional Aviation Auth (liaison)	Second Judicial District (Alt.)
Shell Rock River Watershed Coalition	SW Bypass TIF Board (Alt)	Shell Rock River Watershed Coalition (Alt?)
SW Bypass TIF Board	County - Health Board (liaison)	Upper Cedar Watershed Management Improvement Authority (Alt)
Upper Cedar Watershed Management Improvement Authority	County - LEC/Courthouse Core Team	
	County - Veteran Affairs (liaison)	

Kuhn introduced Timothy Whipple, Ahlers & Cooney, PC attorney, who has been working with counties on issues regarding representation on strategies pertaining to hazardous carbon pipelines matters. Whipple presented two main options: 1) adopting local ordinances, mostly related to zoning, and 2) intervening as a party in the Iowa Utilities Board (IUB) proceedings to ask the state to include permit conditions on the state permit to require the pipeline companies to comply with local ordinances. The two together present a complimentary strategy to stand up for local priorities for land use, economic development, and protecting tax base. Whipple's position is that there are clear reasons to manage land use through zoning to protect the health, welfare and safety of the community but also to consider property values and future development which can be done through intervening with the IUB process allowing the county to protect their own interest and legislative priorities.

Whipple mentioned through the state process, the legislature has given the IUB the power to grant eminent domain to a private company as long as there is a public use or benefit. Arguing the pipeline does not have this type of use would be difficult given that in 2014-2015 the Dakota Access pipeline was litigated and courts found there was a public benefit. A secondary process through the IUB proceedings allows for an individualized determination, parcel by parcel, regarding eminent domain. A landowner who does not sign a voluntary easement provides for an opportunity to stand up for local land use. For example, a local government may want to petition to intervene on the IUB docket and provide evidence supporting the negative impact of a pipeline going through an industrial park area, such as job creation or tax base, as reasons for the line to be relocated.

Whipple reported that the IUB will set deadlines for the permitting process which Summit has been pressing for a quick process and has asked for a schedule to be set in a short order. At a December 13 meeting, Whipple requested the date be set as late as possible. One deadline will be an intervention date where a petitioner can offer an expert witness. In order to do so, you need to become a party to the proceedings prior to the deadline. The expectation is that the hearing will be in 2023, likely between July and November.

Ahlers & Cooney is offering joint representation for the IUB hearings which allows spreading the cost among several entities, possibly four or five. Whipple would engage one expert witness on county zoning, one legal brief, one cross examination, rather than multiple. Each county will have their unique issues that the one expert witness could address but if there was something specific, Ahlers & Cooney could work under a separate contract with the county.

Story and Shelby counties were sued by Summit almost immediately after adopting ordinances, stating the ordinances are safety-related which is dictated by the federal government and claiming the county cannot adopt ordinances because the federal government or state government prevents it. The Iowa Supreme Court and the Federal Circuit have not ruled an answer yet but there will likely be an answer now that two counties have been sued. Whipple commented he believes zoning ordinances are not preemptive if they are done properly.

Ahlers & Cooney's cost of developing an ordinance would likely be \$10,000 each. The cost of participating in the IUB proceedings is difficult to predict and depends on variables such as how long proceedings go on, how many motions, arguments and legal briefs have to be written which is dependent on the fight of the pipeline companies or others on what the county is arguing, or other parties might give advice that require legal briefs. Whipple has been telling other counties that he thinks \$100,000 of legal expenses will get to the end of the proceedings. The costs would be split among the counties involved. Should the county be sued for the ordinance, generally the county's insurance would cover the county with a cost share. If sued in federal court, the insurer would probably cover the cost of litigation.

The Fenestration Self Assessment Scheme (FENSA) announced in May that they will be researching carbon pipelines and will determine if it is necessary to develop new regulations. Congress said only the federal government can adopt safety standard regulations for hazardous liquid pipelines and only states and local government can determine the siting and routing of the pipes. Whipple's interpretation is a local ordinance cannot determine items like the thickness of the pipe, how it's welded, the diameter, operational requirements or characteristics of the pipeline company; the local ordinance must stick to the realm of siting and routing.

In response to the lifespan of pipelines, Whipple mentioned he is not sure if anyone has answers to this question. If the federal tax credits are repealed, a good question would be "what is the future of the infrastructure in the ground." The state statute gives landowners and counties options to decommission the pipe and get it out of the ground which is what some counties are looking at for local ordinances.

Kuhn mentioned he represents all the townships the Summit and Navigator pipelines go through, except Rockford Township which is Jorgensen's district. He believes this is an issue regarding our future that needs to be

addressed soon and would like to have the letter of engagement with Ahlers & Cooney addressed at the January 9 meeting. Whipple commented there would be an additional cost if the county would like to include a right of way control ordinance; Kuhn suggested to include that in the documents for discussion on January 9.

Keifer/Jorgensen moved to appoint Keifer and Jorgensen to independently assess and provide recommendations for supplemental heat as needed in the courthouse. Motion carried 3-0.

Jorgensen/Keifer moved to name the Charles City Press and Nora Springs-Rockford Register as the official county newspapers. Motion carried 3-0.

Jorgensen/Keifer moved to approve/affirm the appointments to the various departments. Motion carried 3-0. Appointments are as follows:

Conservation Director: Adam Sears

County Engineer: Jacob Page.

Public Health/Home Health Care Director: Gail Arjes

General Assistance Director: Raina Kellogg, County Social Services

Environmental Specialist (Board of Health)/Zoning/E911 Addressing (E911 Commission): Jeff Sherman

Emergency Management/Safety Coordinator: Jason Webster

Information Technology Director: Bernie Solomon

Medical Examiner: Dr. Royer, Primary; Alternates: Drs. Schweizer, Schrodt, Tull

Kuhn/Keifer moved to appoint Sharon Enabnit as a City representative to the NIACOG Board and appoint the NIACOG non-elected representative at the January 9 meeting. Discussion included the non-elected representative is now titled as an economic development representative. Kuhn/Keifer amended the motion to appoint Sharon Enabnit as a City representative to the NIACOG Board and to appoint the economic development representative at the January 9 meeting. Motion carried 3-0.

Jorgensen/Keifer moved to appoint Patrick Gebel to the NIACOG Revolving Loan Fund Committee. Motion carried 3-0.

Kuhn/Keifer moved to appoint Conservation Director Adam Sears to the Map21 Enhancement Board and the County Engineer Jacob Page and assistant county engineers as alternates to the Map21 Tech Board. Motion carried 3-0.

Jorgensen/Keifer moved to appoint County Auditor Gloria Carr as a non-board of supervisor member to the SW Bypass TIF District Board and County Treasurer Jessie Holm as an alternate. Motion carried 3-0.

Keifer/Jorgensen moved to appoint County Engineer Jacob Page and the assistant county engineers as alternates to the Cedar Valley Transportation Center Joint Board. Motion carried 3-0.

Kuhn/Keifer moved to appoint Trevis O'Connell, Kathy Carter, and Paul Rottinghaus to the Area Development Corporation Board to a two year term. Discussion included: 1) why Randy Heitz and Tammy Elthon were not being reappointed to the board after Keifer reported last month that they were willing to serve; 2) Heitz's subsequent role on the Asset Management committee and recommendation to the ADC board to approve the Summit Carbon pipeline easement; 3) seeking broader and new representation on the ADC board; 4) as a member of the ADC executive board, Kuhn's pledge to Elthon to get her back on the board; 5) concerns of distribution of ADC board meeting notices and minutes for public knowledge and whether they are required to follow Iowa Code Chapter 21; 6) the ADC's letter to the IUB dated October 26 in opposition to the pipeline going through the certified site property and at a December ADC meeting the executive director said he cannot support the easement; 7) the board's application process. Kuhn/Keifer moved to appoint Paul Rottinghaus to a two year term on the Area Development Corp Board and to defer action on the other two appointments until January 9. Motion carried 3-0.

Jorgensen/Keifer moved to approve Supv Kuhn to act as power of attorney for Floyd County business with Farm Service Agency for 2023. Motion carried 3-0.

The board recessed at 1:05 p.m. and returned at 1:20 p.m.

Keifer/Jorgensen moved to approve the Floyd County Investment Policy dated January 3, 2012. Motion carried 3-0.

Jorgensen/Keifer moved to approve Res #02-23* Naming Depositories for 2023 for the Treasurer, Sheriff, and Recorder: Be it resolved that the Floyd County Board of Supervisors of Floyd County, Iowa, approves the

following list of financial institutions to be the depositories of Floyd County funds in conformance with the provisions of the Iowa Code. County officials are hereby authorized to deposit Floyd County funds in amounts not to exceed the maximum approved for each respective financial institution: County Treasurer - First Security Bank & Trust, Charles City-\$36,000,000, Bank of America, Des Moines-\$1,500,000, and World Insurance Associates (formerly Two Rivers Bank & Trust), Burlington-\$75,000; County Sheriff - First Security Bank & Trust, Charles City-\$500,000; County Recorder - First Security Bank & Trust, Charles City-\$80,000. Roll call vote – Ayes: Jorgensen, Keifer, Kuhn, motion carried 3-0.

Keifer/Jorgensen moved to remove from the table agenda item #9 review/action regarding Res #01-23 from the table. Motion carried 3-0. Auditor Carr reported on Assistant County Attorney Randy Tilton’s response to roll call voting on resolutions per Iowa Code 331.302(7): “Passage of an ordinance, amendment, or resolution requires an affirmative vote of not less than a majority of the supervisors. Each supervisor’s vote on an ordinance, amendment, or resolution shall be recorded.” which he interprets the second sentence would require a roll call vote for resolutions. Jorgensen/Keifer moved to approve Res #01-23* Recurring Claims: Be it resolved by the Board that the County Auditor is hereby authorized to pay claims that are normal and recurring in nature, and to do so without usual action of the Board. Roll call vote – Ayes Jorgensen, Keifer, Kuhn, motion carried 3-0.

Jorgensen/Keifer moved to publish gross wages for all county employees for calendar year 2022 as part of these minutes. Motion carried 3-0.

Jorgensen/Keifer moved to approve Res #03-23* allowing certain Secondary Roads Employees to take county vehicles and equipment home and be available on a 24-hour basis. Jacob Page, County Engineer, informed the board that three foremen and the superintendent take vehicles home and how they are used. Discussion included how frequently staff are called out, if vehicles are equipped with tools and materials are in all vehicles if called out, and if the process could be streamlined. Jorgensen withdrew his motion for Res #03-23. Keifer/Jorgensen moved to postpone Res #03-23 to the January 9 meeting. Motion carried 3-0.

Jorgensen/Keifer moved to approve Res #04-23* Construction Evaluation Resolution (Master Matrix): Iowa Code sets out the procedure if a board wishes to adopt a resolution relating to the construction of a confinement feeding operation structure; only counties who have adopted and submitted a resolution: 1) can submit to the Dept of Natural Resources an adopted recommendation to approve or disapprove a construction permit application regarding a proposed confinement feeding operation structure; 2) may contest the DNR’s decision regarding a specific application; 3) agrees to evaluate every construction permit application for a proposed confinement feeding operation structure received by the board between February 1, 2023 and January 31, 2024 and submit an adopted recommendation regarding that application to the DNR; 4) must conduct an evaluation of every construction permit application using the master matrix created in Iowa Code section 459.305, but the board’s recommendation to the DNR may be based on the final score on the master matrix or may be based on reasons other than the final score on the master matrix. Be it resolved that the Board hereby adopts this construction evaluation resolution pursuant to Iowa Code section 459.304(3). Roll call vote – Ayes Jorgensen, Keifer, Kuhn, motion carried 3-0.

Jorgensen/Keifer moved to approve the following holidays for 2023 including: New Year’s Day-January 2, Martin Luther King, Jr-January 16, President’s Day-February 20, Memorial Day-May 29, Independence Day-July 4, Labor Day-September 4, Veteran’s Day-November 10, Thanksgiving Day-November 23, Friday after Thanksgiving-November 24, Christmas-December 25. Motion carried 3-0.

The Board conducted FY24 budget revenues for the following departments: Communications-Dispatch, Sheriff, Attorney, Safety, Emergency Management.

Future agenda items: letter of engagement for representation on pipeline matters, audit of the county, Doug Johnson’s report on Charles City watershed, postponed resolutions from today’s meeting.

Jorgensen/Keifer moved to adjourn. Motion carried 3-0.

**This is a summary of the resolution; full text of resolutions may be inspected during normal business hours in the Floyd County Auditor’s office and at www.floydcoia.org.*

ATTEST: _____

Gloria A. Carr
Floyd County Auditor

Mark A. Kuhn, Chair
Floyd County Board of Supervisors