

MAY 13, 2024

The Jay County Commissioners met in regular session on Monday, May 13, 2024, at 9:00 a.m. in the auditorium in the courthouse. Attending was Rex Journey, Brian McGalliard, auditor Emily Franks, and Chad Aker, president, presiding. Rex Journey made motion to approve the minutes from April 22, 2024, the joint session from April 10th and the Administrative meeting on May 2nd. Brian McGalliard seconded the motion and the motion passed by unanimous vote.

COURTHOUSE

Bruce Sutton, courthouse superintendent, came to the commissioners to discuss two issues. The first is a large population of bees located in and around the location. He has reached out to a person in Union City who can come and safely remove and relocate the bees. The second issue is with a pipe located in the Circuit Court hallway leading to their restroom. Laux Plumbing will come and see what they can do to address the problem, but the pipe is too small to run their camera through. He believes they will have to investigate the problem by removing a section of wall. Lastly, he reported the concrete work has been completed.

ROSE GOLD

Andrew Buroker, attorney representing Leeward Energy for the Rose Gold Solar Project, along with Sam Brooks, project manager came to the commissioners to discuss approval of an amended economic development agreement (EDA) for the project. The company had previously sent a force majeure letter in December 2023 pursuant to the EDA and timeline. The new start date for the construction would be June 30 2027 with a completion date of December 31, 2028. At the May 8th council meeting, the amended EDA agreement with updated SB-1 for Personal Property, Real Estate and State Utilities was approved by the board.

Mr. Journey questioned how confident the company felt in regards to the new timeline. Mr. Buroker felt like decisions in January with PJM made them confident enough to issue a new timeline to the county. Mr. Brooks briefly explained the cause for the delay resulted from issues due to interconnection and liability with the regional provider, PJM. The provider has made changes to their process for connecting to the grid to fall in line with other regional providers. He added the project might start sooner, but wanted to allow for any issues in the process. Mr. Journey asked if delays in materials were still a concern. Mr. Brooks felt like the material delay no longer was an issue. Rex Journey made a motion to approve the amended EDA Amendment and SB-1. Brian McGalliard seconded the motion and the motion passed by unanimous vote.

OWNER OCCUPIED REHAB

Nate Kimball, ECI Regional Planning Assistant Director, came to the commissioners to discuss the OOR (Owner Occupied Rehab) program through OCRA. He reiterated the program can include roofing, HVAC, Electrical, ADA compliance, and water heater repair and replacement. The qualifications for the program include income requirements as previously discussed. The applicant will also be required to submit the name of their mortgage lender, a copy of their deed, homeowner's insurance policy number, and be up to date on their taxes. The county will be accepting applications from May 28th to June 28th, 2024. The applications will be available in the Auditor's Office of the Jay County Courthouse, The Community Resource Center at 118 Meridian St. Ste D in Portland, Dunkirk town hall, Redkey Town Hall and the county website jaycounty.net. They will not accept any electronic submissions due to cybersecurity reasons. However, applications can be returned to any one of the pickup destinations. Applications will be looked at on a first come, first serve basis, with all applications date and time stamped at the location. The applications will then be collected by Mr. Kimball and will go to him and Kleinpeter consulting for review. Once they review the applications for completeness, they will be forwarded to the commissioners for their review and next steps. Mr. Kimball confirmed they will be getting an intern in to assist him in the process.

LIFESTREAM

Kevin DeCamp, project manager, came for the commissioner's approval for the 2025 operating and capital budget at an estimated \$1.2 million for operations and \$100,000 for capital. He indicated the only difference was a suggestion made through the compliance review in 2023 to hold the other county's more accountable to Jay County. Those counties have already approved and signed the additional documents. Mr. Aker explained that the county is used as a pass through for the INDOT funding to Lifestream. Rex Journey made a motion to approve the pass through of the 2025 budget for Lifestream. Brian McGalliard seconded the motion and the motion passed by unanimous vote. Mr. DeCamp informed those present that the budget included covering the region of Randolph, Henry, Blackford and Jay County.

HIGHWAY

Bob Howell, superintendent, came to the commissioners to discuss monthly operations. They have been patching roads and repairing soft spots in anticipation of chip and seal. The truck #224 and new

mower max has been delivered. They have received training on the mower max, but the air conditioner is not working. The department has reached out to them and a servicer for repair. The first aid kits have been delivered and are in vehicles with basic first aid training being provided on Tuesday May 14th.

Mr. Howell discussed two quotes for repair to the old salt barn. The first quote came from B&D which is Ben Schwartz at \$4,856 with the second quote from Jake Eicher through Fort Recovery Lumber coming in at \$5,380. Fort Recovery indicated they would strip 2 by 4s and put white metal on top of it. B&D Construction stated they would repair the sheeting first, then strip it back out and put white metal on top. The timeline to repair would be about 2-4 weeks after engaging services. Mr. Aker questioned if there were any issues either company saw with metal as the building is holding salt. Mr. Howell stated both companies saw no issue as the metal would be laying over the top of shingles. The companies also did not recommend shingles as the building received wind straight out of the west, which would most likely result in lost shingles. The commissioners questioned if they had enough money in the highway budget to cover the cost of the repairs. Mr. Howell was unsure without doing more figuring. Mr. Journey requested he return to the commissioners if the money became a problem. Mr. Journey then made a motion to approve the use of Ben Schwartz, B&D Construction to repair the salt building for \$4,856. Brian McGalliard seconded the motion and the motion passed by unanimous vote.

A landowner had approached the highway to request how much the department would charge to use the MowerMax around a railroad on private property. Mr. Schemenaur stated concerns regarding liability issues on private property. He also advised it would be setting a precedence for further requests to the county. The commissioners agreed it would not be a good practice to start and advised Mr. Howell to tell the landowner they would be unable to fulfill the request on private property. Stephanie Klarer, Administrative Assistant, provided the 2023 operational report for the commissioners to review before submission to the state on June 1, 2024.

Dan Stocker, Stoops Automotive Group, came to speak to the commissioners regarding information related to the Western Star Dump Trucks. He added the Western Star and Powertrain covers 75-80% of the market in Northeast Indiana. The EPA is expected to set higher standards and new requirements for diesel emissions in 2026 or 2027. According to unpublished information, manufacturers are going to create a dual heating element in addition to the current system. While they have not published any pricing, he estimates a \$10,000-\$20,000 increase for 2026 or 2027. Cummins has announced that they will make the change in 2026 and Allison is no longer manufacturing or shipping their 4,000 transmissions.

Mr. Stocker reminded the commissioners it currently takes six months to a year to get a truck and they continue to have a challenge getting enough dump trucks to meet the demand. He would not recommend buying the first generation of anything and not to buy a 2026. Stoops is offering the county an opportunity to go ahead and order for 2025, build it in 2024 and deliver it in 2025. They have agreed to hold the price recently awarded by the county of \$131,940 for a Western Star Truck and the additional \$2,570 for the Cummins 5-year warranty with roadside and support. The county is utilizing a 3,000 transmission now, but there is likely to be a shortage since they are no longer manufacturing 4,000.

Mr. Aker was in support of the idea to make sure the county would be able to purchase a Western Star truck in 2025. Mr. Journey received confirmation the department normally purchases a new truck annually and this would just ensure they would be able to obtain one. Mr. McGalliard questioned if the county was allowed to award another truck without going through the bid process. Mr. Schemenaur believed it to be allowed as the price remained the same from the original bid and there were not other bidders for the truck. Rex Journey made a motion to approve the ordering of a second Western Star Truck for 2025 from Stoops at \$134,510. Brian McGalliard seconded the motion and the motion passed by unanimous vote.

4TH OF JULY COMMITTEE

George Patterson, 4th of July Committee, came to the commissioners for approval of the \$5,000 claim for the Jay County 4th of July Committee. Rex Journey made a motion to approve the claim. Brian McGalliard seconded the motion and the motion passed by unanimous vote.

ECONOMIC GROWTH REGION 6 (EGR6)

Gus Linde, CEO Eastern Works as part of the Economic Growth Region 6, came to the commissioners for discussion ahead of them signing a new agreement. EGR6 is a regional Indiana workforce board with 12 regions across the state determined by the governor. They have been around in different forms over the last thirty years. Our region includes the counties of Blackford, Jay, Delaware, Randolph, Henry, Wayne, Rush, Fayette and Union. Any city over 50,000 in population is required to be a member and therefore also includes the City of Muncie. The cities and towns who have opted in include: City of Connersville, City of Dunkirk, City of Hartford City, City of

Montpelier, City of New Castle, City of Portland, City of Richmond, City of Rushville, City of Union City, City of Winchester, Town of Liberty and Town of Yorktown.

The group restructured from a president/CEO to split the responsibilities between a CEO and CAO after the president's retirement last April. Mr. Linde is the point of contact for Chief Local Elected Officials "Cleó". He deals primarily with operations and strategy. Lyndsey Hellemis is their Chief Administrative Officer and is the point of contact for the board of directors and handles communication to the counties as well as fiscal and administrative work.

Mr. Linde discussed various programs in the community. They did close down the Work One office in Jay County around 2017 and now have 4 offices in the 8 counties. Currently, they have a pod kiosk located in the John Jay Center for Learning and have delivered services through the Dunkirk and Portland Libraries since COVID. They now serve clients upon request. On the business service side, they have brought in \$750,000 to \$1,000,000 over the last few years to local businesses through the Next Level Job program. He added Tyson and FCC had both previously taken advantage of the program.

Mr. McGalliard questioned when the last time Jay County had approved an agreement with EGR6. Mr. Linde stated the current agreement was from 2020-2025, however their new policy requires approval after every election change. Mr. McGalliard asked a copy of the most recent agreement be provided for commissioner review and to note any difference with the updated contract. Mr. Linde stated he could provide a copy after the meeting and added the changes included a restructuring to establish and define CEO and CAO duties. Mr. Journey asked if and how they provided job training. Mr. Linde explained they can provide resume review and occupational skills training, including CNA, IT, or Truck Driving certifications. The programs they create to provide assistance are based on a hot list of occupations provided by Indiana.

Mr. Linde explained that they partner with other programs such as FSSA with their training dollars. Mr. Journey questioned the process for a company to have employees trained and John Jay Center for Learning and if there is money to help pay for it. Mr. Linde confirmed if there was money available it could be used towards the training. Mr. Journey asked what help was the most common. Mr. Linde explained Tyson has requested Leadership training, along with training for CNA, CCMA, truck driving, and entry level manufacturing training. They utilized programs available through Indiana Wesleyan, Ivy Tech, and Ball State. Mr. Journey asked how the process would work for someone who wanted to get a CDL. Mr. Linde explained they would go to a kiosk and that would set you up with a counselor to see what training is available with current funding.

Mr. Aker questioned if the organization was fully funded by the state. Mr. Linde believed about \$1.7 million was funded by federal dollars with about \$1 million coming from the state. The group is also a 501c3 and can raise funds that way too. Their biggest funding comes from the Workforce Opportunities Innovation Act. Mr. Aker explained when the contract was sent out the current commissioners had never heard of or worked with the group before. The contract itself had a few legal red flags with potential liabilities to county. Mr. Schemenaur wanted the commissioners to be aware of some of the strings attached when grants are given. If the funds are spent on things outside of the terms of the grant, they could come back to the county for help in reimbursement. While the occurrence might be rare, it is a possibility. The reimbursement would be prorated based on the percentage of funding received by the grant.

Mr. Linde explained the organization has maintained \$200,000 in unrestricted funds to help mitigate any such incident, but they have had a clean audit for 20 years. He added the state has asked the regions to clarify these concerns for each county. Mr. Aker questioned how much has been spent on Jay County versus other counties in the region. Mr. Linde said a very general projection would be \$40,000-\$50,000 over the last couple of years between the kiosk and training grants. Mr. McGalliard felt hesitant for the county to take responsibility for the financial decisions of a non-profit. Brian McGalliard made a motion to table the decision until they were able to review the prior agreement. Rex Journey seconded the motion and the motion passed by unanimous vote.

BUILDING & PLANNING

John Hemmelgarn, director, came to the commissioners to give an update on operations. There have been 50 permits issued this year including fences, roof additions, and a few new homes and commercial projects. He believed the current interest rates have impacted their numbers.

JAY COUNTY COUNTRY LIVING

Cindy Bracy, JCCL, Advisory Board of Directors President, came to the commissioners to discuss current operations. She first thanked the highway department for their help on repairing mowers and a tractor for the facility for a total of \$313. The topic of the RCAP funding was discussed in relation to the flooring. A new floor has been picked out and includes a 20-year warranty. The new flooring choice is warm amber cherry, traditional oak was choice two for an additional \$3,300 for the flooring

and \$900 for the special glue. Mr. Aker asked for and received confirmation the change are still within the range of the grant. Mrs. Bracy explained it will take 10 days to get the material after placing the order with Mr. Hilty asking for \$17,000 up front for materials. Ms. Franks recommended the payment be made as progress payments after completing various steps. He could receive his first payment after the purchasing of materials. Mr. Aker also suggesting the county could pay for the materials directly from the supplier.

A discussion about the request for Certificate of Insurance (COI) needed prior of any work completed was questioned. Mr. Schemenaur expressed his concerns about the county using an uninsured company and what ramifications there might be down the road. He would not want this to cause insurance to otherwise deny a claim. Ms. Franks will check with the county's liability insurance for answers on what would be covered. A discussion ensued about the best way to move forward with the project. A possibility of scheduling a special session for the approval was discussed. Mr. Journey suggesting an extension be discussed with the state due to the short timeframe. Rex Journey made a motion to approve, subject to the county's insurance approving the contractor's lack of insurance. Brian McGalliard wanted verification the flooring was water resistant and seconded the motion pending the information.

Mrs. Bracy discussed a potential agreement for pest control services. The company currently utilized by Adams County is Bug Free Pest Control. Their walk through found one mouse and 2 rooms with bed bugs. The initial service cost will be \$3,250, with a charge of \$250 a month. There is the option to add rodent protection for \$40 a month. The commissioners questioned if there was enough money in their budget to pay for the services. Mrs. Bracy asked where the money for the current treating was being paid. Mrs. Franks stated they had been purchasing treatment supplies out of building materials and supplies with a remaining budget balance of \$11,000. Brian McGalliard made a motion to approve the agreement with Bug Free Pest Control.

Lastly, Mrs. Bracy reported there were 22 residents and the resident that has not been paying rent moved to the homeless shelter. They will have two employees take Safe Serv in June as the May class was already full. An update on the washer/dryer situation, Adams County commissioners are working on transferring 1 commercial dryer and 1 commercial washer to the facility. They did purchase a washer from Strohl's Appliance and what they have is keeping the job going for now.

JCDC

Angela Paxson, JCDC executive board member, came to the commissioners to acknowledge the receipt of their 13 discussion points for their contract. They will have their executive committee meet to review and discuss the proposed changes. Mr. Aker explained the points were part of negotiations and realizes not everyone will get their way 100%. There are some points the commissioners will stand firm on and some they are more lenient. He would like to bury the hatchet and have both boards come together for an agreement.

LIFEWORKS

A contract with Lifeworks Counseling and Wellness for first responders was presented for commissioner approval. The agreement is similar to the city of Portland and only requires payment if services are being utilized. The contract was changed to remove the automatic renewal per the county attorney's request. Who would be responsible for the payment was briefly discussed between the commissioners or each department. It was decided it would be hard for each department to know how to budget for the service. Rex Journey made a motion to approve the contract with the funding coming from the commissioners' budget. Brian McGalliard seconded the motion and the motion was approved by unanimous vote.

INSURANCE- PHP REFUND

Emily Franks, auditor, reported the county recently received a check per the 40% refund agreement with PHP of \$42,884.99. She presented three different options for the use of the funds. The first option presented was to refund the money to county general and not spend it. The second option was to allow employees to have a 4 month "holiday" from their premiums. The third and recommended option was to consistently give a decrease in premiums to the employees from June-November. Employees would only be required to pay 42-43% of their current rate or a savings 57-58%. She hoped this would be a way to determine if recruitment would increase due to lower health insurance rates. The commissioners agreed the savings would be best passed along to the employees as a consistent decrease in employee premiums. Rex Journey made a motion to approve the refund to go towards employee premiums for June-November. Brian McGalliard seconded the motion and the motion passed by unanimous vote.

RESPONSE TO THE COMMERCIAL REVIEW

Mr. Schemenaur, county attorney, responded to the request submitted by The Commercial Review on May 10, 2024. He asked the following response also be accepted by The Commercial Review as a letter to the editor along with the approval of the commissioners.

Rex Journey made a motion to approve the request to submit as a letter to the editor. Brian McGalliard seconded the motion and the motion passed by unanimous vote.

To the editor:

Indiana Code 5-14-1.5-5(f) permits the county executive to meet without 48 hours' notice if the meeting is held solely to receive information or recommendations in order to carry out administrative functions related to the county's executive powers. "Administrative functions" are routine activities that are reasonably related to the everyday internal management of the county, including conferring with, receiving information from and making recommendations to staff members and other county officials or employees.

Indiana Code 36-2-3.5-4(a) provides that all powers and duties of the county that are executive or administrative in nature shall be exercised or performed by its executive (the county commissioner(s), except to the extent that these powers and duties are expressly assigned to other elected officials. Further, IC 36-2-3.5-4(b)(9) provides that the county commissioners shall negotiate contracts for the county. This statute expressly makes the negotiation of contracts on behalf of the county an executive or administrative function.

Municipalities enter into numerous contracts each year related to the internal management of the county. These contracts range from contracts for services provided to the county, such as phone and internet, to contracts for the purchase of equipment and supplies, and contracts with engineers and consultants to carry out the everyday functions of government. One permissible contract that a county, city or town may enter into is a contract with a nonprofit corporation whose primary purpose is to assist government in planning and implementing economic development projects. See I.C. 6-3-6-10-2(7).

The municipal executive routinely negotiates and discusses the terms of contracts prior to them being brought forward for a public vote. The negotiation process itself is inherent within the executive or administrative power of the county executive. This process often involves conferring with legal counsel and/or other county employees or officials. Often there are proposals or items contained in contracts that are amended, deleted or rewritten numerous times with suggestions or counter-proposals from both parties before a final version of the agreement is ripe for public vote.

The Open Door Law only expressly prohibits the awarding or entering into contracts creating a binding obligation on the county in an administrative meeting. By expressly prohibiting the awarding of a contract in such a session, the legislature clearly contemplated that contracts with the county would necessarily be discussed, otherwise there would be no need to include the express prohibition on voting in the statute. Likewise, if the legislature intended to prohibit the discussion of contracts in the statute, it could have clearly done so. Contrary to commissioner Journey's email, no vote was taken on May 3 to award or deny a contract. The discussions were held to confer with the county attorney regarding a counter-proposal to a potential county contractor, the Jay County Development Corporation, well within their executive and administrative function.

The county commissioners when acting in their executive or administrative function are analogous to the mayor of a city. Mayors routinely, often weekly, negotiate contracts on behalf of the city prior to bringing a contract to a vote before the appropriate body. They routinely seek advice from legal counsel, employees and staff on such matters during the negotiation process. Should the mayors of Portland and Dunkirk invite Ray Cooney to every such conversation? That would be absurd. The county commissioners are no different just because there are three executives instead of one.

Finally, I take issue with the ultimatum that Mr. Cooney has presented. If Mr. Cooney believed an ODL violation occurred, he should have filed his complaint as outlined in Indiana law. That did not happen here. The public access counselor's job is to issue opinions on a violation of the law after an investigation. However, Mr. Cooney has already tainted this process by seeking an opinion from the public access counselor outside of the formal complaint process which allows for a response to a complaint by the county prior to the issuance of an opinion. Mr. Cooney contacted the public access counselor directly, gave the counselor one side of the story and quoted the counselor in his newspaper article. He even quotes the public access counselor in his demand letter. If this were a judicial proceeding, this type of communication with the finder of fact would be considered an ex parte communication and is absolutely prohibited. The county commissioners were not given an opportunity to respond to the counselor directly. Now Mr. Cooney threatens to file a "formal complaint." Hasn't he already made his complaint and received an answer? How can the county commissioners now expect to receive a fair opportunity to respond to a "formal complaint" where the ruling authority has already given his opinion based solely on Mr. Cooney's one-sided account?

A formal complaint is often a precursor to a lawsuit. A court cannot impose a penalty for a violation unless the public access counselor has first found a violation. The public access counselor has already determined that there was a violation based solely on Mr. Cooney's one-sided account. The county can have no confidence that the public access counselor can impartially judge these facts even if given a chance to respond to a "formal complaint." Under Indiana law, the court may impose a \$100 fine and under certain circumstances award attorneys' fees to the prevailing party. It is a defense to the imposition of a civil penalty that the commissioners relied on an opinion of their legal counsel. Mr. Cooney has already gotten his tainted answer from the unelected public access counselor and his preferred result in the election as a result. As the county's legal counsel, I stand firm in the opinion that they did not violate the ODL and that the meeting was not illegal. If legal action is taken against the county, the county will vigorously defend such a suit and seek all appropriate remedies.

Because of the threat of litigation presented in Mr. Cooney's demand letter, the county will have no further comment on this matter.

MISCELLANEOUS BUSINESS

The payroll docket was presented for commissioner approval. Rex Journey made a motion to approve the payroll docket. Brian McGalliard seconded the motion and the motion passed by unanimous vote.

The Jay County Country Living Report for April 2024 was presented for commissioners' approval. Brian McGalliard made a motion to approve the report. Rex Journey seconded the motion and the motion passed by unanimous vote.

The annual common school report was presented for commissioners' approval. The form is in relation to congressional interest held in trust and requires approval by both the treasurer and auditor. Rex Journey made a motion to approve the annual report. Brian McGalliard seconded the motion and the motion passed by unanimous vote.

The commissioners were presented a claim to Portland Rockets for \$3,500. The council approved the additional appropriation at their meeting on May 8th after being approved by the commissioners March 25th. Rex Journey made a motion to approve the claim. Brian McGalliard seconded the motion and the motion passed by unanimous vote.

There were two claims from the sheriff's department brought forward for approval as they were higher than initially approved by commissioners. The first was to Municipal Emergency Services Inc for new firearm equipment totaling \$17,747.21. Rex Journey made a motion to approve the claim for \$17,747.21. Brian McGalliard seconded the motion and the motion passed by unanimous vote. The second was to Dell Technologies for two new laptops for their vehicles at \$2,483.98. Rex Journey made a motion to approve the second claim. Brian McGalliard seconded the motion and the motion passed by unanimous vote.

A claim to Skymax Containers for the three containers at the highway department of \$7,844 was presented for commissioner approval. Two of the containers will be used for sand bagging operations and one will be used for tire storage for the Highway Department. Rex Journey made a motion to approve the claim to Skymax Containers. Brian McGalliard seconded the motion and the motion passed by unanimous vote.

A claim to First Financial Bank of \$85 for a safety deposit box. Brian McGalliard made a motion to approve the claim. Rex Journey seconded the motion and the motion passed by unanimous vote.

There were two additional county vehicles that were added to the auction for the evening of May 13th, A 2005 Chevrolet Venture Van from the Retirement Center, which was no longer in running condition and the Surveyor's 1999 International Dump Truck. Rex Journey made a motion to approve the signing of the titles for the two vehicles. Brian McGalliard seconded the motion and the motion passed by unanimous vote.

With no further business, Rex Journey made a motion to adjourn at 11:08 a.m.; Brian McGalliard seconded the motion and the motion passed by unanimous vote.

JAY COUNTY COMMISSIONERS

Brian McGalliard
Brian McGalliard

Rex Journey
Rex Journey

Attest: *Shirley Strahl*
Jay County Auditor