

THE BENZIE COUNTY BOARD OF COMMISSIONERS
MAY 4, 2010

The Benzie County Board of Commissioners met in a regular meeting on Tuesday, May 4, 2010, at 9:00 a.m. in the Commissioners Room, Government Center, Beulah, Michigan, 49617.

Present were: Commissioners Damm, Hollenbeck, Kelley, Pitcher, Roper and Walterhouse

Absent: Excused: Tanner

The pledge of allegiance was given with invocation by Commissioner Kelley.

Motion by Pitcher, seconded by Roper, to approve the agenda as presented. Motion carried. Ayes: Damm, Hollenbeck, Kelley, Pitcher, Roper and Walterhouse Nays: None Exc: Tanner

Motion by Kelley, seconded by Hollenbeck, to approve the regular meeting minutes of April 20, 2010 as presented. Motion carried. Ayes: Damm, Hollenbeck, Kelley, Pitcher, Roper and Walterhouse Nays: None Exc: Tanner

Motion by Kelley, seconded by Pitcher, to approve the special meeting minutes of April 26, 2010 as presented. Motion carried. Ayes: Damm, Hollenbeck, Kelley, Pitcher, Roper and Walterhouse Nays: None Exc: Tanner

Motion by Pitcher, seconded by Damm, to approve the closed session minutes of April 26, 2010 as presented. Motion carried. Ayes: Damm, Hollenbeck, Kelley, Pitcher, Roper and Walterhouse Nays: None Exc: Tanner

9:04 a.m. PUBLIC INPUT

Thelma Rider-Novak, good to see you all again; congratulations for the work you have been doing – really pleased, particularly the Council on Aging; would like you to do the same as COA with the Maples – get it in order – May 25 meeting they will have you are all invited; there are some questionable judgments made by the administrator; they wanted to have Kris Hollenbeck removed due to her absence at a meeting; lapses in judgment on behalf of the board and administration – need to bring that facility back to the family facility it was under the direction of Vicki Burlew.

Marilyn Olsen a while back they asked for a meeting with the BOC, Maples Board and employees – did you ever have that meeting; the Maples board didn't want a meeting together – was that so; we took action not to meet with the employees and the Maples board.

9:08 a.m. PUBLIC INPUT CLOSED

ELECTED OFFICIALS & DEPT HEAD COMMENTS

John B. Daugherty, Prosecuting Attorney, has two items to address 1) status regarding Sears estate – motions have been set off until June to allow the parties the opportunity to get together and discuss the matters; has not received a copy of the attorney bills; will contact Don to set up a meeting with the board; 2) have exceeded the witness fees in the budget and is requesting to double his budget to \$6,000 – send to the budget committee for consideration.

Jamie Croel, ACO, May 11, 2010 is the next advisory committee meeting in the commissioners room; welcome to the new citizen at large member; they are working with the Treasurer on past due dog licenses.

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Linda Wilson, County Treasurer, presents the delinquent tax report; collections are down about 1% and that is not bad but had the highest amount ever been delinquent since she has been working for the county.

Kris Randall, Circuit Court Administrator, unaware of the letter from Kelly Robinson and David Thompson; the Clerk will get a copy of the information to her; asks about disposal of the old AS 400 computer that is at the Manistee County Courthouse and no longer in use.

Motion by Pitcher, seconded by Roper, to allow the court to properly dispose of the obsolete AS 400 computer which is being stored in Manistee County, as requested. Motion carried. Ayes: Damm, Hollenbeck, Kelley, Pitcher, Roper and Walterhouse Nays: None Exc: Tanner

Finance:

Motion by Roper, seconded by Damm, to approve payment of the bills in the total amount of \$147,007.05 as presented. Roll call. Motion carried. Ayes: Damm, Hollenbeck, Kelley, Pitcher, Roper Walterhouse Nays: None Exc: Tanner

Linda Wilson presents the cash fund summary report with two funds in a deficit – Point Betsie Lighthouse and Child Care Fund; will be using revenue sharing funds soon when you look at the balance in the general fund.

Telephone Lines: Motion by Pitcher, seconded by Kelley, to disconnect telephone lines as presented, effective May 5, 2010. Motion carried. Ayes: Damm, Hollenbeck, Kelley, Pitcher, Roper and Walterhouse Nays: None Exc: Tanner

Cell Phone Bills: Probate Judge and Probate Register requesting payment for cell phone bills; they chose not to use track phones as this board approved for departments; Comm Roper suggests we make a policy and stick to it.

Motion by Pitcher, seconded by Roper, to authorize payment of the cell phone bills for Probate Court Judge in the amount of \$41.32 and the Probate Register in the amount of \$45.70 as presented. Roll call. Motion carried. Ayes: Damm, Pitcher, Roper and Walterhouse Nays: Hollenbeck and Kelley Exc: Tanner

Community Mental Health: Motion by Kelley, seconded by Hollenbeck, to amend the 2009-2010 budget by decreasing the revenues and expenditures as follows:

Revenues:

| | | |
|----------------|--------------|------------|
| 101-253-402.00 | Property Tax | \$4,486.00 |
|----------------|--------------|------------|

Expenditures:

| | | |
|----------------|--------------------------------|------------|
| 101-649-836.00 | Appropriations – Mental Health | \$4,486.00 |
|----------------|--------------------------------|------------|

Ayes: Damm, Hollenbeck, Kelley, Pitcher, Roper, Tanner and Walterhouse Nays: None Exc: Tanner

MSU Secretary II: Budget committee recommendation to terminate the full time Secretary II in the MSU office effective July 1, 2010; Comm Roper recommends to invite them to a budget committee

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meeting to discuss the issue further; Comm Walterhouse says you have to make some hard decisions here – these are tough times.

Motion by Kelley, seconded by Pitcher to cut the Secretary II position in MSU effective July 1, 2010.

Motion by Pitcher, seconded by Roper, to table the motion until after the 11:30 a.m. appointment.

Motion carried. Ayes: Damm, Hollenbeck, Kelley, Pitcher, Roper and Walterhouse Nays: None
Exc: Tanner

Vehicle: Motion by Kelley, seconded by Hollenbeck, to sell the Ford Escape owned by the county through the Sheriff Office at the state auction. Motion carried. Ayes: Damm, Hollenbeck, Kelley, Pitcher, Roper and Walterhouse Nays: None Exc: Tanner

Motion by Roper, seconded by Pitcher, to authorize a minimum bid of \$8,835 and not fix the Ford Escape. Motion carried. Ayes: Damm, Kelley, Pitcher, Roper and Walterhouse Nays: Hollenbeck
Exc: Tanner

Motion by Roper, seconded by Kelley, that if vehicle sells the funds to go back into the General Fund: Ayes: Damm, Hollenbeck, Kelley, Pitcher, Roper and Walterhouse Nays: None Exc: Tanner

9:59 a.m. Break

10:04 a.m. Reconvene

10:00 a.m. Bruce Kilmer, SCAO and Judge Kida, Probate Judge

Judge Kida says thank you to hear us today regarding the payroll system; when Judge Kida first learned that the ADP payroll system would be implemented, she did meet with Linda Wilson and they discussed it and she agreed to – I told her at that time that I wanted by two employees to be paid on the same basis that she was going to be paid on as an elected official – she does not have to punch in or punch out, she was just going to be paid so I told her I wanted my employees to be paid on the same basis – I am the one that is accountable for their time and I continue to be the one responsible for that and she agreed to look into that to see if there was a way to utilize the system but in a different manner and when we met the second time she indicated that she had found out that if Judge Kida was responsible for turning in their hours every pay period they could be paid in that manner rather than the way that the rest of the government center employees are being involved in the system. So, she though felt that the commissioners need to approve any change or method that was different for her employees; we met yesterday – Linda, Judge Kida, Dawn, Mark and Don – to see if we could resolve this prior to the meeting today and we didn't reach a resolution so that is why she is here today. She has discussed this with Mr. Kilmer and he can confirm that my understanding is correct, that the courts are a separate branch of government and the court employees are employed by the courts and not by the county and the chief judge is the person who is responsible for their hours, for their accountability and any type of work schedules and supervising their performance and so on and so forth. That I have the authority to hire, fire, discharge and taking any other kind of action regarding my employees. Sometimes my employees do work after regular hours and I just prefer to use the system I have been on for quite some time where I indicate to the county what their hours are and then they are paid. Further indicated that my willingness to try and work within the ADP system

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is not really required, that I could simply ask that my employees be paid or use the previous system, the paper system where I sign for their hours each week and that my willingness to work within the ADP system is a compromise in terms of me trying to report their hours and use the computer system and make sure it is not causing any hardship with anybody – I know how hard people have worked to try and get this system implemented and I know that since we do not have a county administrator any longer it is difficult to get this all arranged. So I do appreciate that and just wanted to tell you a little history of how we got to this point maybe Mr. Kilmer has a few remarks.

Bruce Kilmer, work with courts in 27 counties – we supervise Judges. What Judge Kida said here today is correct; there is a very important principle here, the legislature enacted a statute that said court employees were joint employees of the county and the court – the Supreme Court found that unconstitutional. A very strongly worded opinion said that it is an important principal that the employees of a court answer to the judge of that court and to be supervised by them, to set their work hours, to set their schedules and to determine when they work, how they work. And to cross that line and have a legislative branch supervise them would violate the principals of separation of powers. Although this may seem like a simple thing like hours it is a very important principal that court employees answer to the Judge. But there are also some practical considerations here – and that is that a Probate Register, for example, is really a quasi judicial officer and if this person works more than 40 hours or after hours or extra hours and if they were an hourly employee they would have to be paid overtime. But because they are quasi judicial they are on a salary they judge can have them work extra – they are salaries and cannot work by punching a clock. If they work through their lunch hour they would need to be paid overtime. By being quasi judicial, they need to be flexible in their schedule and be able to adjust their schedule during the week. The way they work their schedule is up to the Judge – she is responsible for that. So they work and all she needs to do is notify the Treasurer to pay them. And again, she said she is willing to put their hours into the system – she doesn't really have to do that. All she really has to say is pay my employees, but she is willing to work within the system. I don't know why it has gotten this far and not recognized, it has been the practice in all of the courts he has worked with that the court employees answer to the Judge of that court.

Frank – one person is part time hourly – do we have the say with them? No – I was just saying that with a salaries person, it is more difficult to have them punch a clock. But whether they are a part time or full time employee, they are still under the Judge's supervision and she would just indicate to the treasurer that they worked their hours and then they would be paid. But the Judge said she is willing – or to have someone – put it into the system. But again, all of the employees – it is very clear by the Supreme Court – are under the Judge's jurisdiction and she sets their schedule. Not a legislative function.

Mark – we talked with the Judge and asked for a trial basis to see if this worked and if there was any inconvenience – Judge said no – if there is an additional cost to us for her to request us to do something special for her employees other than what we are doing for everyone else. It doesn't really matter the cost, she has said that she will put their hours into the system – so that wouldn't cost any more—if additional costs would not effect the supreme court order. They are encouraged, not required, to reduce budgets when requested.

Supreme Court says you are not co-employers with the Judge.

She is very willing to work with you to put into the system.

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Mark says we could see a problem if she misses a pay or something, she could be at a conference or gone somewhere.

Linda says it is to be fair and equitable too is why we went to this system; she has to have the time in by 12:00 noon on Mondays; we would like a letter of understanding from her that if she were to not get the time in that it is impossible for us to pay them; your employees should sign it too; they need to be aware of it; don't agree with it, but we will do what we have too.

Mary asks about other salaried people – all other salaried employees will be clocking in; accountability – we were trying to be more accountable to the public and fair and equitable across the board, so there is some principal on this end too.

Mr. Kilmer says that Judge Kida has been elected by the people to run her court and her employees in that branch of government.

Mark – you are saying that the employees are not Benzie county employees? Correct – paid by the county as the funding unit with all benefits of the county employees.

Tom – thought we had a separation of powers that were equal – they are not when one entity can tell the other what they are going to do.

Anne – vote for having Judge Kida enter the hours. Seems to take care of the solution and fit the law.

Linda – still recommend a letter of understanding.

Mary – why is this so important – the logistics of it?

Motion by Pitcher, seconded by Hollenbeck, to allow Judge Kida to enter employee data to the payroll system for her employees with a letter of understanding that time needs to be entered on a timely basis that employees will not be paid. Roll call. Motion carried. Ayes: Damm, Hollenbeck, Pitcher, Roper and Walterhouse Nays: Kelley Exc: Tanner

10:30 a.m. Rehman Robson Audit Report

John Coffman and Steve Peacock – presents the 2009 Benzie County Audit Report with an unqualified opinion – a clean report.

Motion by Kelley, seconded by Roper, to accept the 2009 Audit Report as presented. Motion carried. Ayes: Damm, Hollenbeck, Kelley, Pitcher, Roper and Walterhouse Nays: None Exc: Tanner

11:06 a.m. Break

11:13 a.m. Reconvene

Ross Childs, Grand Traverse County Interim Director of Public Works

Mr. Childs presents a power point of the septage treatment facility; he is not asking for a commitment regarding this issue, but their facility is available to Benzie County.

11:48 a.m. Pat Cudney, MSU Extension

Restructure of what MSU is going through directly reflects on the 4-H position; hands out power point slide information; 13 district coordinators of which Pat is one – July 1, 2010 is the start date and he will deal with nine counties; Steve Fouch will be moving into 100% education with no administrative duties; MSU is eliminating positions – not people; they are looking to standardize the memorandum of understanding throughout the state -- of which there are 82 of them; a new DRAFT Memo of Understanding should be available July 1; Patti Roth has resigned as the 4-H director; we

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have increased the hours of a part time position rather than replace Patti; still a part time position without benefits; and will absorb the entire cost of that about \$10,000 and will not bill Benzie County for any amount until October; regarding the Secretary II position he is asking that we hold off at least until October 1 and he will come back in July with a plan.

Comm Pitcher says we are out of time and money, willing to buy a little more time here. You need to understand that we are out of money.

Pat says he cannot come with a Letter of Understanding because he does not have a DRAFT copy yet; he will send a letter to the Clerk that they will absorb the cost and break it down.

Linda Wilson asks if the secretary could be a part time position effective July 1 – part time is better than no position.

Motion by Pitcher, seconded by Hollenbeck, to remove the motion regarding elimination of the Secretary II MSU position from the table. Motion carried. Ayes: Damm, Hollenbeck, Kelley, Pitcher, Roper and Walterhouse Nays: None Exc: Tanner

Roll call on original motion to eliminate position. Motion denied. Ayes: Hollenbeck and Kelley Nays: Damm, Pitcher, Roper and Walterhouse Exc: Tanner

Linda says they have already hired someone so you don't need a motion – just a letter of understanding from Pat Cudney that MSU Extension will fully fund the MSU the temporary 4-H Extension position for the remainder of the Benzie County 2009-2010 fiscal year with a cost savings of \$12,975.

12:29 p.m. Break

12:34 p.m. Reconvene

CORRESPONDENCE

- 911 Resolution: Motion by Roper, seconded by Picher, to adopt the resolution for 911 operating surcharge as presented. Roll call. Motion carried. Ayes: Damm, Hollenbeck, Kelley, Pitcher, Roper and Walterhouse Nays: None Exc: Tanner
- Benzie Transportation Authority minutes of April 27, 2010 annual meeting and regular meeting received.
- Letter received from Lake Township with a proposed Zoning Ordinance – referred to Planning Commission.
- Email received from James Ward regarding natural gas prices – referred to Comm Roper for a study.
- Point Betsie Lighthouse facility report for the Fresnel lens. Motion by Pitcher, seconded by Kelley, to approve the facility report for the Pointe Betsie Light Station, authorizing the chairman to sign. Motion carried. Ayes: Damm, Hollenbeck, Kelley, Pitcher, Roper and Walterhouse Nays: None Exc: Tanner
- Motion by Pitcher, seconded by Kelley, to authorize an insurance rider from MMRMA to be reimbursed by the Friends of Pointe Betsie insurance the lens for \$350,000. Motion carried. Ayes: Damm, Hollenbeck, Kelley, Pitcher, Roper and Walterhouse Nays: None Exc: Tanner
- Road Commission minutes of March 24 and April 8, 2010 received.

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PERSONNEL

Motion by Kelley, seconded by Roper, to appoint Beverly Holbrook to the Benzie Transportation Authority replacing Ann Noah for a three-year term ending April 30, 2013. Motion carried. Ayes: Damm, Hollenbeck, Kelley, Pitcher, Roper and Walterhouse Nays: None Exc: Tanner (Copies of the letter to be sent to Kelly Thayer and Sue Miller.)

EDC: Mary Carroll's term has expired but she is only to be serving on special projects; Kris Hollenbeck or Linda Wilson to mention it to the EDC board; she should not be a voting member; discuss further with Chairman Tanner; Comm Pitcher suggests to not do anything at this point.

Motion by Roper, seconded by Pitcher, to dissolve the Zoning Board of Appeals. Motion carried. Ayes: Damm, Hollenbeck, Kelley, Pitcher, Roper and Walterhouse Nays: None Exc: Tanner

1:00 p.m. Comm Pitcher excused.

Motion by Kelley, seconded by Hollenbeck, to adopt resolution 2010-021 CDBG Housing program in the amount of \$150,000. Roll call. Motion carried. Ayes: Damm, Hollenbeck, Kelley, Roper and Walterhouse Nays: None Exc: Pitcher and Tanner

Motion by Roper, seconded by Hollenbeck, to adopt the Grant Administration Agreement with Northwest Michigan Community Action Agency as presented. Roll call. Motion carried. Ayes: Damm, Hollenbeck, Kelley, Roper and Walterhouse Nays: None Exc: Pitcher and Tanner

Motion by Roper, seconded by Kelley, to adopt resolution 2010-022 Waiving Zoning Ordinance Review for Crystal Lake, Platte and Gilmore Townships as presented. Roll call. Motion carried. Ayes: Damm, Hollenbeck, Kelley, Roper and Walterhouse Nays: None Exc: Pitcher and Tanner

Motion by Kelley, seconded by Roper, to adopt resolution 2010-023 authorizing a millage election for August 3, 2010 for Ambulance and Advanced Life Support services as presented. Roll call. Motion carried. Ayes:

Motion by Kelley, seconded by Hollenbeck, to adopt resolution 2010-024 authorizing a millage election for August 3, 2010 for Conservation District as presented. Roll call. Motion carried. Ayes

CORRESPONDENCE CONTINUED

- Letter regarding Lake Ann Village Master Plan – send to Planning Commission.
- Letter regarding City of Frankfort Master Plan public hearing – information only.
- Letter from State of Michigan regarding regional EDC – information only.
- Letter from MAXIMUS regarding their services – information only.
- Letter from MGT of America, Inc. regarding their services – information only.
- Letter from ROARR requesting resolution – information only.
- Council on Aging financial statements received.
- Planning Commission minutes of April 8, 2010 received.

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- Betsie Valley District Library minutes of March 2, 2010 received.
- Parks and Recreation minutes of February 22, 2010 received.
- Resolution received from Midland County regarding Statutory Mandates – information only.
- Letter received from the Village of Thompsonville regarding MEDC funds.
- Letter received from Great Lakes Telecom – information only.
- Email received from Jeffrey Tamkin -- information only.
- Email from Kim Ireton regarding tree planting – referred to Buildings & Grounds to look at adopting a policy.
- Planning Office Organization information from April 27, 2010.
- Letter received from Mills Contracting regarding the Building Dept.
- NMSAS minutes from March 1, 2010 received.

COMMISSIONERS REPORTS

Comm Kelley provided a written report.

Comm Roper has nothing more to add.

Comm Damm discussed an article regarding bumping; talks about broadband.

Comm Hollenbeck states her reason for not attending the March meeting of the Maples (confusion on the meetings being the fourth or fifth week of each month) and a lot of misrepresentations in the minutes that she was not even there. She wants to move ahead and have things open.

Comm Walterhouse asks about a certificate for Bob Weaver. Motion by Roper, seconded by Kelley, to authorize preparation of a certificate of congratulations for Bob Weaver for his 38 years of service to the Benzie County Road Commission, authorizing all commissioners to sign. Motion carried.

Ayes: Damm, Hollenbeck, Kelley, Roper and Walterhouse Nays: None Exc: Pitcher and Tanner

Comm Roper asks if anyone is attending the hearing regarding mandates the state is sending down to us without funding.

1:35 p.m. PUBLIC INPUT

Rose Coleman, The Maples, states that every meeting is an open meeting true, but an employee can ask for it to be closed for their discipline – not understanding what you (Kris) are saying. She was following procedures – don't understand why you think I don't understand the procedures.

1:36 p.m. Public Input Closed

Motion by Roper, seconded by Hollenbeck, to adjourn until May 18, 2010, or the call of the chair.

Motion carried. Ayes: Damm, Hollenbeck, Kelley, Roper and Walterhouse Nays: None Exc: Pitcher and Tanner

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1. Approved the agenda as presented.
2. Approved the regular meeting minutes of April 20, 2010 as presented.
3. Approved the special meeting minutes of April 26, 2010 as presented.
4. Approved the closed session minutes of April 26, 2010 as presented.
5. Authorized to allow the court to properly dispose of the obsolete AS 400 computer which is being stored in Manistee County, as requested.
6. Approved payment of the bills in the total amount of \$147,007.05 as presented.
7. Authorized to disconnect telephone lines as presented, effective May 5, 2010.
8. Authorized payment of the cell phone bills for Probate Court Judge in the amount of \$41.32 and the Probate Register in the amount of \$45.70 as presented.
9. Amended the 2009-2010 budget by decreasing the revenues and expenditures as presented.
10. Motion denied to cut the Secretary II position in MSU effective July 1, 2010.
11. Authorized to sell the Ford Escape owned by the county through the Sheriff Office at the state auction.
12. Authorized a minimum bid of \$8,835 for the Ford Escape and to not fix it.
13. Authorized that if vehicle sells the funds to go back into the General Fund.
14. Authorized to allow Judge Kida to enter employee data to the payroll system for her employees with a letter of understanding that time needs to be entered on a timely basis that employees will not be paid.
15. Accepted the 2009 Audit Report as presented.
16. Removed the motion regarding elimination of the Secretary II MSU position from the table.
17. Adopted the resolution for 911 operating surcharge as presented.
18. Approved the facility report for the Pointe Betsie Light Station, authorizing the chairman to sign.
19. Authorized an insurance rider from MMRMA to be reimbursed by the Friends of Pointe Betsie insurance the lens for \$350,000.
20. Appointed Beverly Holbrook to the Transportation Authority replacing Ann Noah for a three-year term ending April 30, 2013.
21. Approved dissolution of the Zoning Board of Appeals.
22. Adopted resolution 2010-021 CDBG program in the amount of \$150,000.
23. Adopted the Grant Administration Agreement with Northwest Michigan Community Action Agency for administration of the CDBG grant as presented.
24. Adopted resolution 2010-022 Waiving Zoning Ordinance Review for Crystal Lake, Platte and Gilmore Townships as presented.
25. Adopted resolution 2010-023 authorizing a millage election for August 3, 2010 for Ambulance and Advanced Life Support services as presented.
26. Adopted resolution 2010-024 authorizing a millage election for August 3, 2010 for Conservation District as presented.
27. Authorized preparation of a certificate of congratulations for Bob Weaver for his 38 years of service to the Benzie County Road Commission, authorizing all commissioners to sign.