

**STAFF MEETING MINUTES  
LANCASTER COUNTY BOARD OF COMMISSIONERS  
COUNTY-CITY BUILDING, ROOM 113  
THURSDAY, AUGUST 26, 2010  
8:30 A.M.**

Commissioners Present: Ray Stevens, Vice Chair  
Larry Hudkins  
Bob Workman  
Deb Schorr

Commissioners Absent: Bernie Heier, Chair

Others Present: Kerry Eagan, Chief Administrative Officer  
Gwen Thorpe, Deputy Chief Administrative Officer  
Dan Nolte, County Clerk  
Cori Beattie, Deputy County Clerk  
Ann Taylor, County Clerk's Office

The Vice Chair opened the meeting at 8:30 a.m.

**AGENDA ITEM**

**1 APPROVAL OF THE MINUTES OF THE THURSDAY, AUGUST 19, 2010 STAFF MEETING**

**MOTION:** Workman moved and Hudkins seconded approval of the August 19, 2010 Staff Meeting minutes.

Stevens said his report on the Parks & Recreation Advisory Board Meeting (see Page 8) should be corrected to reflect that the greenspace along Sheridan Boulevard that will be named for Jan Pitsch is west, rather than east, of 33<sup>rd</sup> Street.

**ROLL CALL:** Hudkins, Workman, Schorr and Stevens voted aye. Motion carried 4-0.

**2 ADDITIONS TO THE AGENDA**

- A. Correspondence from Eric McMasters, Diversion Services, Regarding Fee Increase for Bad Check Restitution Program (Exhibit A)
- B. Nebraska Association of County Officials (NACO) Legislative Conference (October 14, 2010 in Kearney, Nebraska)

**MOTION:** Workman moved and Hudkins seconded approval of the additions to the agenda. Schorr, Workman, Hudkins and Stevens voted aye. Motion carried 4-0.

**3 MODIFICATION OF APPLICANT CERTIFICATION LIST** - Mark Koller, Personnel Director; Pat Kant, Personnel Coordinator; Barb Boggs and Doug Thorpe, Employment Technicians; Tom Fox, Deputy County Attorney

Mark Koller, Personnel Director, noted a question had been raised as to whether the process of providing departments with certified applicant lists could be improved. He explained that his department is charged with providing a department with a ranked list of the best candidates for a position. He said they typically provide the top five candidates, based on a scoring system, and rarely have been asked to provide the next five. Koller said the supplemental questionnaire is key in determining ranking and can be amended to fit the skill sets a department is seeking. He said departments can submit a requisition immediately upon learning a position is opening up which will help to speed up the process. Koller said if the County moves to ten candidates on the certified applicant list it will require a rules change and will increase costs and the length of time it takes to score the candidates.

Barb Boggs, Employment Technician, said 39 personnel requisitions were posted to the public since January 2009 (does not include openings for positions at Lancaster Manor, continuous recruitment or on-call positions). She said there were an average of 84 applicants per job opening. An average of 7.67 names, per opening, were sent to departments for interviews. Boggs said additional names were requested in four instances and one of those four positions was cancelled for budgetary reasons without interviewing the second group.

Pat Kant, Personnel Coordinator, explained that the average of 7.67 names reflects ties in the scoring. She said the Personnel Department performs criminal history checks on the top applicants and driver license checks on top applicants for positions that require driving. She added if the list were expanded, the verification process would take more time. Kant stressed that they are trying to assist departments in hiring the most qualified person for each position.

Hudkins said the department directors have indicated they do not have enough applicants or the latitude to find that person. He said he believes a minimum of ten candidates would more appropriate.

Kant said the number was picked based on what the City was doing.

Koller said there appears to be two solutions: 1) Expand the certified applicant list that is provided to the department; and 2) Make department heads aware that they can amend the supplemental questionnaire to find the right person.

Tom Fox, Deputy County Attorney, said the department heads will still be required to interview each candidate on the list.

Terry Wagner, Lancaster County Sheriff, appeared and said his department was forwarded applications for individuals that had lengthy criminal records. He said, in addition to education and experience, good character is crucial and questioned the need to interview someone he has no intention of hiring.

Kant said the department head can voice an objection and would not have to interview an individual that does not fit their criteria.

**MOTION:** Schorr moved and Hudkins seconded to begin the process to increase the number of applicants on the certified applicant list from five to ten and to review the process in six months with input from the department heads.

Hudkins said department heads also need to receive education about the supplemental questionnaire.

Doug Thorpe, Employment Technician, said department heads can come to the Personnel Department and view the second group of applications for comparison before rejecting the first group.

**ROLL CALL:** Hudkins, Workman and Schorr voted aye. Stevens voted nay. Motion carried 3-0.

**4 ATTENDANCE AS ESSENTIAL JOB DUTY** - Tom Fox, Deputy County Attorney; Mark Koller, Personnel Director; Kari Wiegert, Risk Management Specialist

It was noted Sue Eckley, County Risk Manager, sent the Board an email on August 19<sup>th</sup> indicating the Lincoln Public Schools (LPS) list attendance as an essential function in their job descriptions (see agenda packet).

Tom Fox, Deputy County Attorney, said the Eighth Circuit Court of Appeals has repeatedly held that attendance is an essential function of a job. He noted there is a provision in the Lancaster County Personnel Rules (Rule 11 - Disciplinary Actions) that provides for disciplinary action if the employee fails to maintain a satisfactory attendance record. Fox said it won't hurt to include it in the job description but said there are other factors that must be taken into account in the evaluation, such as the

Family Medical Leave Act (FMLA), Americans with Disabilities Act (ADA) or workers compensation situations. He noted the County lost one case in District Court in which the employee was evaluated on attendance and did not receive a merit increase. The Court said the County could not discipline the employee for use of a benefit the County had given them. Fox said there is generally no issue with grading an employee on attendance in their yearly evaluation.

Mark Koller, Personnel Director, said the labor contracts also address appropriate use of sick leave.

Kari Wiegert, Risk Management Specialist, said it won't have an impact on workers compensation claims.

**MOTION:** Workman moved and Hudkins seconded to include the statement that attendance is an essential function of the job in the job descriptions.

Koller said it will need to be included in the class descriptions and would likely have to go before the Personnel Policy Board.

Schorr suggested the need for input from the Management Team.

The maker of the motion and the seconder withdrew their motion.

Koller was asked to check whether the issue would need to go before the Personnel Policy Board and to report back at the September 2<sup>nd</sup> Staff Meeting.

**5 PAYCHECK INSERT ON DIRECT DEPOSIT** - Tim Genuchi, Accounting Operations Manager, County Clerk's Office

Tim Genuchi, Accounting Operations Manager, County Clerk's Office, presented a draft of a payroll insert on paycheck direct deposit (see agenda packet).

Schorr said she believes the Board needs to make direct deposit mandatory.

Terry Wagner, Lancaster County Sheriff, noted that some employees may not have a bank account.

Bill Jarrett, Chief Deputy Sheriff, added that some employees probably cash their paychecks at the County Treasurer's Office.

Dennis Meyer, Budget and Fiscal Officer, said he believes that is a poor policy.

**MOTION:** Workman moved and Schorr seconded to include a statement that the County Board is researching the possibility of making direct deposit mandatory. Schorr and Workman voted aye. Stevens and Hudkins voted nay. Vote tied on a 2-2 vote. Motion failed due to the lack of a majority.

**MOTION:** Hudkins moved and Workman seconded to approve the paycheck insert with the following changes:

- Change the second sentence of the first paragraph to read: *Now your net pay can be direct deposited in up to three different accounts.*
- Change the first sentence of the fourth paragraph to read: *For those employees who are still receiving an actual paycheck, the Lancaster County Board of Commissioners strongly encourages you to move to direct deposit.* Make the entire sentence bold and in larger type.

Hudkins, Workman, Stevens and Schorr voted aye. Motion carried 4-0.

Dennis Meyer, Budget & Fiscal Officer, appeared and said the State requires direct deposit. He said any employee that does not have a bank account receives a debit card that can be utilized through U.S. Bank.

Hudkins said it is his understanding that employees may request a waiver and that their paychecks must be honored by any bank in Nebraska. He asked Meyer to request clarification of the State's policy.

**6 FINAL BUDGET UPDATE: A) 15 CENT LEVY; AND B) KENO FUND -**  
Dennis Meyer, Budget & Fiscal Officer

Dennis Meyer, Budget & Fiscal Officer, noted public hearings on the budget will be held on August 31<sup>st</sup> at 7:00 p.m. He said total budgeted expenditures have changed slightly since the budget was filed with the County Clerk's Office on July 30<sup>th</sup>. Meyer said the notice that was published and posted on the County's website reflects those changes. **NOTE:** Expenditures and revenues were increased by \$3,475.00 because the Malcolm Public School District notified the County that it will hold a special bond election.

Meyer said the proposed budget reflected a 0% increase in valuation but final valuation numbers show a 0.85% increase. He said the delinquent tax amount asking was reduced to 0.5% and recommended that the valuation increase be included in the delinquent tax asking to increase that fund balance.

**MOTION:** Hudkins moved and Schorr seconded to leave the property tax levy at the current rate and apply the valuation increase against the delinquent tax asking. Hudkins, Workman, Schorr and Stevens voted aye. Motion carried 4-0.

## **A) 15 Cent Levy**

Meyer presented information regarding allocation of the 15 cent levy authorized for certain political subdivisions and the rural fire districts' fund balances (Exhibits B and C). He said the funding request submitted by the Malcolm Rural Fire District is \$4,300 over what the maximum levy will give them and said he has notified their budget preparer.

Hudkins said the Malcolm and Raymond Rural Fire Districts are unique in that much of their land is in the Branched Oak and Pawnee Recreational Areas, which do not pay property taxes. He said they also have a lot of calls for service in those areas. Hudkins said the Raymond Rural Fire District is in "good shape" this year because it went for a bond for a new fire station. He said the Malcolm Rural Fire District found mold in its fire hall and may be forced to go for a bond to address the problem.

Workman questioned why the Raymond Rural Fire District requested so much more than the Waverly Rural Fire District (see Exhibit B).

Hudkins said the Raymond Rural Fire District covers almost a fourth of the County. He asked Meyer whether the increase in valuation would provide any leeway.

Meyer said the new valuations have been taken into account. He said most of the rural fire districts had a slight amount of growth.

Hudkins said it appears the Board will have to ask the Malcolm Rural Fire District to take a reduction.

Stevens said the Board could give the Malcolm Rural Fire District an additional \$1,000 by reducing the Lancaster County Agricultural Society's capital request.

Meyer also noted the Al Larson Paving District will be levying this year to finalize their bonds but said it will not affect the 15 cent levy.

## **B) Keno Fund**

Meyer said a public hearing will be held on the Keno Fund projects on August 31<sup>st</sup> at 7:00 p.m. He said most involved road projects. **NOTE:** \$280,000 is not allocated.

Schorr said she would still like to allocate some funds towards the Lincoln City Libraries' new Bookmobile as it directly affects rural residents.

**7 EXECUTIVE SESSION (POTENTIAL LITIGATION) - Terry Wagner, Lancaster County Sheriff; Doug Cyr, Chief Administrative Deputy County Attorney**

**MOTION:** Schorr moved and Hudkins seconded to enter Executive Session at 9:49 a.m. for the purpose of protecting the public interest with regards to potential litigation. Hudkins, Workman, Schorr and Stevens voted aye. Motion carried 4-0.

**MOTION:** Workman moved and Schorr seconded to exit Executive Session at 10:23 a.m. Schorr, Stevens, Workman and Hudkins voted aye. Motion carried 4-0.

**8 A) STATE EMPLOYEE CLASSIFICATION ACT; AND B) FEDERAL GRANT REQUIREMENTS - Vince Mejer, Purchasing Agent; Bob Walla, Assistant Purchasing Agent; Tom Fox, Deputy County Attorney**

**A) State Employee Classification Act**

Tom Fox, Deputy County Attorney, said Nebraska has enacted the Employee Classification Act to clarify when a person working on a construction project is an "employee" and not an "independent contractor." He said the City put out an Executive Order specifying what it will require in bidding documents. Fox said he is concerned with their inclusion of language which states "failure to comply with all of the legal obligations shall be considered a breach of contract and grounds for rescission of the subcontract by the contractor." He said he is concerned that the Purchasing Department may receive calls from employees involved in labor disputes.

Vince Mejer, Purchasing Agent, said they will refer those individuals to the law department.

Fox said it would be more appropriate to refer them to the Nebraska Department of Labor.

In response to a question from Stevens, Mejer said it will be more difficult to administer if the City and County adopt different instructions and requirements.

Board consensus was to go with the City's language.

Schorr asked that the Public Building Commission (PBC) also be briefed on this matter.

## **B) Federal Grant Requirements**

Bob Walla, Assistant Purchasing Agent, noted the Board approved a sub-grant award agreement with Nebraska Emergency Management Agency (NEMA), on behalf of Lancaster County Emergency Management, on August 24<sup>th</sup> that will provide funding for the replacement of outdoor warning sirens. He said it included a stipulation that local procurement standards conform to applicable State and Federal law and the standards identified in the 44 CFR (Code of Federal Regulations). Walla said it is a very complicated process that will involve any bid that relates to the grant.

Fox said grants that involve federal funding need to be scrutinized. He said they have more stringent provisions, including compliance with the Davis-Bacon Act which requires paying the locally prevailing wages and benefits on construction projects.

**NOTE:** The Davis-Bacon Act was adopted in 1931 to create a "prevailing wage," usually the union rate, for any construction contract over \$2,000 funded in whole, or in part, by the federal government.

Mejer said failure to comply could result in loss of funding or require the County to return the grant funds.

Gwen Thorpe, Deputy Chief Administrative Officer, said the Board needs to "fine tune" its grant policy. She said employees that deal with grants also need to be briefed.

Stevens suggested it might be beneficial to invite representatives of Senator Johanns and Congressman Fortenberry to sit in on that meeting.

Schorr asked that this topic also be scheduled for discussion on a Management Team Meeting agenda.

### **9 ACTION ITEMS**

There were no action items.

### **10 CONSENT ITEMS**

There were no consent items.

## 11 ADMINISTRATIVE OFFICER REPORT

### A. Management Team Meeting (September 9, 2010)

Board consensus was to reschedule the meeting to September 16<sup>th</sup> to allow for attendance at the United Way/Community Health Charities Campaign Kick-Off. There was also consensus to start the Staff Meeting on September 9<sup>th</sup> at 9:00 a.m.

### B. United Way/Community Health Charities Campaign Kick-Off (September 9, 2010)

See Item A.

### C. Tri-County Meeting Date

Kerry Eagan, Chief Administrative Officer, said Douglas County will host the meeting this year and has suggested November 12<sup>th</sup> and 19<sup>th</sup> as possible dates.

Board members indicated a preference for November 12<sup>th</sup>.

### D. Amendment of Visitors Promotion Committee (VPC) Bylaws (City Council Designee)

Copies of the proposed amendment were disseminated (Exhibit D).

### E. Request for Road Vacation Study (West Waggoner Drive)

Eagan distributed copies of Nebraska Revised Statute §39-1722 which addresses a road vacation or abandonment (Exhibit E).

**MOTION:** Hudkins moved and Workman seconded to ask that a resolution directing the County Engineer to conduct a study of the use of West Waggoner Drive and make a recommendation as to whether the road should be vacated and declared surplus be placed on the August 31, 2010 Board of Commissioners Meeting agenda. Hudkins, Workman, Schorr and Stevens voted aye. Motion carried 4-0.

## 12 PENDING

There were no pending items.

## 13 DISCUSSION OF BOARD MEMBER MEETINGS

### A. Waverly Projects - Workman

Workman said he attended a community meeting in Waverly that was held to discuss whether to proceed with a quiet zone (a railroad grade crossing at which trains are prohibited from sounding their horns in order to decrease the noise level for nearby residential communities) or an overpass on 148<sup>th</sup> Street. **NOTE:** The quiet zone and overpass are estimated to cost \$900,000 and \$14,000,000 respectively. A related issue is a proposal for a pedestrian walkway on the Cannongate Overpass that spans Highway 6 (estimated cost is \$1,400,000). Fifteen citizens spoke in opposition to the 148<sup>th</sup> Street overpass proposal. Only one individual spoke in opposition to the quiet zone proposal (a farmer who accesses his property off Highway 6 and believes that eliminating that access will have a negative impact on his property value). Workman said he had a follow-up meeting with Roger Figard, City Engineer, and Mark Lutjeharms, Schemmer Associates (an architectural, engineering and planning firm). He said Figard is agreeable to having the Railroad Transportation Safety District (RTSD) fund the quiet zone project but said Waverly would need to: 1) Submit a letter asking the RTSD to fund the project; and 2) Enter into an interlocal agreement with the RTSD for the project.

Stevens asked why the Waverly quiet zone will be more expensive than Lincoln's quiet zone projects.

Workman explained said \$230,000 of the cost is related to installation of switching for the Burlington Northern/Santa Fe Railway (BNSF) which was already in place in Lincoln.

### B. Downtown Lincoln Association (DLA) Board of Directors - Stevens

Stevens said the DLA received an update on the West Haymarket Arena Project. A resolution supporting a 2:00 a.m. closing time for bars was also passed.

### C. Keno Fund Review - Schorr

Schorr said 22 agencies requested a total of \$134,500 but funding was limited to \$43,000. Agencies receiving funding were the Boys & Girls Clubs of Lincoln/Lancaster County, Indian Center, Lincoln Literacy Council, MilkWorks, Malone Center, Community Action Partnership, YWCA, and People's Health Center.

D. Nebraska Association of County Officials (NACO) 2020 Task Force Meeting - Schorr

Schorr said they discussed consolidation and efficiencies of duties within county government and whether some offices should be appointed, rather than elected.

**ADDITIONS TO THE AGENDA**

A. Correspondence from Eric McMasters, Diversion Services, Regarding Fee Increase for Bad Check Restitution Program (Exhibit A)

Eagan noted the contract with Diversion Services to operate the Lancaster County Attorney's bad check restitution program and pre-trial diversion program will need to be amended.

B. Nebraska Association of County Officials (NACO) Legislative Conference (October 14, 2010 in Kearney, Nebraska)

Schorr said the next meeting of the NACO 2020 Task Force will be held in conjunction with the Legislative Conference, so both she and Commissioner Heier will be absent at the October 14<sup>th</sup> Staff Meeting. The other members of the Board indicated they will be present on that date so there will still be a quorum.

**14 EMERGENCY ITEMS AND OTHER BUSINESS**

Eagan said Steven Henderson, the new Information Services (IS) Manager, would like to meet with members of the County Board on an individual basis.

**15 ADJOURNMENT**

**MOTION:** Schorr moved and Workman seconded to adjourn the meeting at 11:21 a.m. Schorr, Stevens, Workman and Hudkins voted aye. Motion carried 4-0.

/s/Dan Nolte

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Dan Nolte  
Lancaster County Clerk