

The Marquette County Board of Commissioners met as a Committee of the Whole on Wednesday, November 12, 2008, at 6:00 P.M., in Room 231 of the Henry A. Skewis Annex, 234 W. Baraga Avenue, Marquette, Michigan.

Chairperson Corkin called the meeting to order. Present: Comm. Arsenault, Comm. Bergdahl, Comm. Ciahak, Comm. Heikkila, Comm. Joseph, Comm. Pellow, Comm. Struck, Comm. Wallace and Chairperson Corkin. Absent and Excused: None.

It was moved by Comm. Wallace, seconded by Comm. Pellow, and unanimously carried by a voice vote that the minutes of the Committee of the Whole Meeting held on October 28, 2008 be approved.

It was moved by Comm. Arsenault, seconded by Comm. Joseph, and unanimously carried by voice vote that the Agenda be approved as presented.

Chairperson Corkin opened the meeting for public comment, none was forthcoming.

It was moved by Comm. Joseph, seconded by Comm. Bergdahl, and unanimously carried by voice vote that Claims and Accounts for the period October 31, 2008 through November 6, 2008 in the amount of \$336,113.41, Bi-Weekly Payroll for the period ending November 1, 2008 in the amount of \$601,746.12, be approved.

The County Board held a Public Hearing regarding the Proposed New County ORV Ordinance. Chairperson Corkin convened the Public Hearing by stating the purpose of the hearing and advised the public in attendance of the rules of procedures set forth.

Chairperson Corkin read the following memo from Harley Andrews, Chief Civil Counsel, regarding the Proposed New County ORV Ordinance:

As you all undoubtedly already know the State legislature recently enacted, and the Governor signed, Public Act No. 240 of 2008, which gives Counties in the northern Lower Peninsula and in the entire Upper Peninsula the authority (but not an obligation) to enact ordinances allowing the operation of ORVs "...on the maintained portions..." of County primary or local roads within the County. This significantly expanded the scope of the prior law, which had authorized ordinances allowing ORVs to operate on such roads only for the purpose of gaining access to areas or trails where ORV operation was otherwise permitted.

As you also know, the County did adopt an ORV Ordinance in 2004 in which we attempted to comply as closely as possible with the limitations of the then current State law. The enactment of this new legislation necessitates the repeal the existing County Ordinance and the adoption of a new Ordinance that complies with the new legislation, if the County wishes to continue to allow ORV operation on County roads.

The new law requires that the County hold a public hearing before adopting a new ORV Ordinance, and that it provide to the County Road Commission and to the DNR written notice of that public hearing at least 45 days in advance of the hearing date. That Notice has been provided. Although not required to do so we also provided notice of this hearing and a copy of the proposed Ordinance to each of the Townships and cities within the County.

Enclosed herewith is a copy of the proposed new County ORV Ordinance which will be the subject of the public hearing. You will note that it opens all County primary and local roads to ORV use, except for those roads which may be closed to such use by Township Ordinance or by the Road Commission, and except for the roads in Marquette, Chocolay and Sands Townships and the cities of Marquette, Negaunee and Ishpeming. The new legislation gives to each Township the authority to adopt an ordinance prohibiting ORV operation on roads within the Township, and it gives to the County Road Commission the authority to prohibit ORV operation on up to 30 % of the linear miles of roads where it can show that allowing such operation would pose a particular and demonstrable threat to public safety, or where such prohibition is necessary to protect the environment.

The 2004 County ORV Ordinance which allowed the operation of ORVs on County roads specifically excluded the roads in Marquette, Chocolay and Sands Townships, and the three cities, because they did not want to be covered by that Ordinance. This new Ordinance continues that exclusion, which means that ORV operation will not be permitted on any of the roads within those Townships or cities. If those Townships would prefer to allow ORV operation on some or all of their roads there are two options. They can either be included under the coverage of this new County Ordinance which would have the effect of immediately allowing ORV use on their roads; or, if they remain excluded from this new Ordinance they can, after July 18, 2009, adopt their own Ordinances allowing ORV use on some or all of the roads within their jurisdictions. None of the excluded townships or cities have indicated that they wish to be included in the coverage of this Ordinance, so their exclusion has been continued as it was in the prior Ordinance.

This proposed Ordinance is essentially the format issued by the Michigan Association of Counties, with some modifications in the Definitions section to make it consistent with certain statutory provisions. Because, however, the new statute was not particularly well written there is at least one significant uncertainty with regard to the statute and, consequently, with the Ordinance as well. Specifically, the new MCL 324.81131(2) authorizes Counties to adopt ordinances which will allow operation of ORVs "... on the maintained portion of..." County roads. The new MCL 324.81131(6) provides that if such a local ordinance is adopted, a person shall operate the ORV "... with the flow of traffic on the far right of the maintained portion of the road..." However, the phrase "maintained portion of the road" is not defined. Does it mean only that part of the road upon which vehicles travel? Or, does it also include the shoulder (if there is one)? Or, does it include the traveled portion, the shoulder and the rest of the road right of way, all of which are "maintained" to some degree? That is not clear, and therefore will present difficulty to law enforcement officials who will have the responsibility for enforcing this Ordinance.

Attached to this Memo is a copy of a letter dated August 1, 2008, from John D. Niemela, the Director of the County Road Association of Michigan (CRAM), directed to Timothy McGuire, the Executive Director of MAC. In that letter, Mr. Niemela indicates that CRAM's legal counsel has determined that the term "road" excludes the shoulder, and that "maintained" portion of the road means the same thing as "improved" portion of the road. In short, he concludes that by adopting this Ordinance using the statutory language, a County "...will be approving the use of the improved (vehicular traveled) portion of the roadway, not the use of the shoulder, or any other part of the right of way." He quite appropriately expresses concerns about the safety aspects of allowing individuals as young as 12 years of age to operate ORVs at a speed of not more than 25 mph on the same portions of County roads as are used by cars, trucks and other large vehicles, for which the speed limits may be much higher.

Additional safety concerns were noted in the analysis of this new statute prepared by the House Legislative Analysis Section. It noted that the statutory definition of ORV includes All Terrain Vehicles, or ATVs, which are defined as a "...3 or 4 wheeled vehicle designed for off-road use that has low pressure tires, has a seat

Minutes are Subject to Correction and Approval

designed to be straddled by the rider, and is powered by a 50 cc to 500 cc gasoline engine or an engine of comparable size using other fuels." The following language appears in that analysis:

"Most ORVs, including four-wheel ATVs (quads), are not manufactured for use on paved roads and have serious handling issues on paved roads. The Michigan Secretary of State's website says that three and four-wheel ATVs cannot be upgraded for on-road use because they are manufactured with a live axle, rather than a differential gear, which seriously affects their handling characteristics when operated on paved surfaces. Others note that the low-pressure tires typically found on ATVs are not made for paved road use and also cause ATVs to handle poorly on paved roads.

The Consumer Product Safety Commission, and the Specialty Vehicle Institute of America (a group representing ATV manufacturers), both recommend that ATVs be banned from use on paved roads. The CPSC maintains a website "atvsafety.gov" that lists not riding ATVs on paved roads or at night among its "essential life-saving tips" for ATV use. The bill would allow counties to permit both of these practices (riding on paved roads and night-time riding) strongly discouraged as dangerous by the CPSC."

If there is any other information you may need either prior to or at the public hearing, please let me know.

Chairperson Corkin opened the Hearing for comments from the public.

Cpt. David Lemire, Sheriff Lovelace, and Undersheriff Schneider, Marquette County Sheriff's Department, expressed traffic safety concerns about the provisions allowing the operation of ORVs on County roads.

Jim Iwanicki, Engr./Mgr., Marquette County Road Commission, stated that the County Road Commission is not going to close any roads. He explained that the Road Commission will maintain the traveled portions of their roads, the shoulders of their roads that have shoulders, and sometimes areas beyond the shoulders.

Tom Myers, a local ORV club member, stated that ORVs are unsafe for operation on paved surfaces. He feels that this section needs to be addressed

Discussion followed specifically with the new MCL 324.81131(2) which authorizes Counties to adopt ordinances which will allow operation of ORV's "...on the maintain portion of..." County roads." Commissioners are concerned with the language as written. They feel a safety issue with this section of the law. Commissioners strongly feel that the Proposed ORV Ordinance needs to be changed. They suggested a request to the Legislature to change the Ordinance as written.

After a lengthy discussion the ORV Ordinance was referred to the November 18, 2008 County Board Meeting no recommendation.

The County Board considered a Michigan Tobacco Reduction Resolution. Comm. Wallace explained the following resolution and stated that none of the money received from tobacco companies is received by Counties in Michigan for tobacco prevention programs. The Board of Health is recommending adoption of the resolution.

WHEREAS: Every year more than 18,000 Michigan children become addicted to tobacco, of whom a third will die prematurely because of this addiction. This year more than 14,000 Michigan residents will die from tobacco use and thousands more will suffer from illness and health problems caused by smoking and

secondhand smoke. Smoking-caused health problems cost Michigan a total of more than \$3.4 billion per year, including more than \$1.1 billion paid for by the state Medicaid program with taxpayer dollars;

WHEREAS: The U.S. Centers for Disease Control & Prevention and other experts have established that: 1) fully funding state tobacco prevention programs; 2) increasing taxes on tobacco; and 3) prohibiting smoking in workplaces, including restaurants and bars; substantially decrease smoking and other tobacco use, particularly among children, thereby reducing tobacco-caused harms and costs;

WHEREAS: Michigan's tobacco prevention efforts are effective and should be expanded to serve more Michigan residents. The efforts of the Michigan Tobacco Prevention Program and its many local partners has resulted in a 52.9% drop in Michigan high school smoking since 1997 and a 19.5% drop in adult smoking over the same time period.

WHEREAS: Michigan receives more than \$290 million in settlement payments each year from the tobacco companies, yet none of these settlement dollars are used to fund the Michigan Tobacco Prevention Program;

BE IT RESOLVED: That the undersigned endorses comprehensive and effective public policy measures to prevent and reduce smoking and other tobacco use in the state, particularly among children, and that foremost among those should be:

Funding for Michigan's Tobacco Prevention Program at a minimum of \$12/person annually, the level recommended for Michigan by the Centers for Disease Control and Prevention.

The Marquette County Board of Commissioners confirms its support for each and all the above statements and requests that members of the Michigan Legislature take effective action to promote and achieve the above funding resolution as quickly as possible. The undersigned also authorizes and encourages Tobacco-Free Michigan to use this signed Resolution to promote the above-stated funding objective.

Comm. Heikkila, Comm. Bergdahl, and Comm. Joseph stated they would not support the resolution as written. Comm. Heikkila questioned what programs would be cut from the \$290 million received in settlement payments each year from the tobacco companies to fund the Michigan Tobacco Prevention Program. Comm. Joseph questioned the minimum of \$12/person annually.

It was moved by Comm. Cihak, seconded by Comm. Pellow, and carried by voice vote 6 Ayes (Comm. Arsenault, Comm. Cihak, Comm. Pellow, Comm. Struck, Comm. Wallace, and Comm. Corkin) to 3 Nays (Comm. Bergdahl, Comm. Heikkila, Comm. Joseph) that the Committee of the Whole recommend the County Board confirm its support of the Michigan Tobacco Reduction Resolution and request that members of the Michigan Legislature take effective action to promote and achieve the above funding resolution as quickly as possible.

The Committee considered a Michigan Small Harbors Coalition (MSHC). Jim Kippola, Manager of Planning, explained that during the past months, staff has discussed the merits of joining the subject organization. Similar to the County's independent initiative last year, the Coalition is trying to solve the financial crisis for dredging Michigan's small harbors estimated at 5 million annually. At present, County Civil Counsel remains concerned over some of the language in the resolution which the coalition is asking participating communities to sign.

Mr. Kippola attended a meeting of the MSHC held in Bay City September 30, 2008. The Coalition has now further developed a strategy which is a promising first step toward solving the problem. The Coalition has

Minutes are Subject to Correction and Approval

received 48 resolutions of support from harbor communities and advocate organizations with the addition of Harbor Beach, Ferrysberg, Sault Ste. Marie, St. Ignace, Huron County Commissioners, and the Great Lakes and St. Lawrence Cities Initiative.

Mr. Kippola recommends the County Board of Commissioners strongly consider adopting the resolution and join the Coalition.

Harley Andrews, Civil Counsel, explained that his concerns were answered.

It was moved by Comm. Pellow, seconded by Comm. Cihak, and unanimously carried by voice vote that the Committee of the Whole recommend the County Board adopt the resolution supporting Michigan Small Harbors Coalition (MSHC).

The Committee considered Proposed Big Bay Harbor of Refuge Fees for 2009. Kim Bourgeois, Park Manager/Harbormaster, explained that in accordance with the State Waterways Commissions agreement, it is time for the County Board to consider the 2009 fee structure for the Big Bay Harbor of Refuge.

The State Waterways Commission sets transient and seasonal mooring rates at the harbor. The County normally accepts the State transient rates but, in the past, Marquette County has made a request to the State Waterways Commission for permission for a reduction in the fees for seasonal mooring at the Big Bay Harbor in order to attract seasonal boaters to the marina. It is staff's opinion that the distance to Big Bay and available amenities reduce demand for slips at the facility. The state rates have not changed for 2009 and will be the same as in 2008.

Staff recommends the County Board adopt the state transient rates and request to the state that our seasonal rates be set at the same rate as in 2008, which was \$20.30 per foot (about a 40% discount from the state for a 20' boat).

It was moved by Comm. Wallace, seconded by Comm. Arsenault, and unanimously carried by voice vote that the Committee of the Whole recommend the County Board adopt the Proposed Big Bay Harbor of Refuge Fees for 2009 for state transient rates, and request to the state that our seasonal rates be set at the same rate as in 2008.

The County Board considered the Employment Agreement of Dwight Sunday, Marquette County Equalization Director. Steve Powers, County Administrator, explained that Mr. Sunday has served as Marquette County's Equalization Director since 2001. Mr. Powers has discussed his performance and continued employment with Marquette County. Mr. Sunday's work performance has been very satisfactory. Retaining a qualified, competent, level-four certified appraiser is essential to Marquette County's ability to maintain equalized tax values.

The Equalization Director is a salaried, part-time position. Mr. Sunday will work the hours necessary to manage the equalization and tax administration programs and to perform the level-four appraiser responsibilities. The expected annual number of hours will be 730. The management and appraisal responsibilities of tax administration and equalization have been met and can continue to be met with a part time Equalization Director.

The Equalization Director is responsible for equalizing property values as required by statute and the Michigan Tax Commission. Marquette County is required by statute to have a level-four appraiser.

Minutes are Subject to Correction and Approval

Mr. Sunday's position as Equalization Director is budgeted. The salary of \$36,000.00 is the same as 2008 and will remain at \$36,000.00 during the term of the agreement. The position is part time and receives no benefits other than dental and optical insurance and group life and disability insurance.

Commissioners commended Mr. Sunday for his work and thanked him for his commitment.

It was moved by Comm. Joseph, seconded by Comm. Struck, and unanimously carried by voice vote that the Committee of the Whole recommend the County Board authorize the Employment Agreement with Dwight Sunday, Equalization Director, for January 1, 2009 through December 31, 2010.

Chairperson Corkin opened the meeting for public comment, none was forthcoming.

COMMISSIONERS COMMENTS, STAFF COMMENTS AND ANNOUNCEMENTS

Chairperson Corkin gave a brief report on the Committee of the Whole meeting held to discuss the K.I. Sawyer Master Plan.

Comm. Cihak and Comm. Joseph also commented on the Committee of the Whole meeting held to discuss the K.I. Sawyer Master Plan.

Comm. Cihak whether a tape of a meeting is available to the public. A brief discussion followed regarding the purchase of equipment to copy a tape.

Comm. Struck thanked citizens in his district for their support in the November General Election.

Comm. Wallace spoke regarding the defeat of the Iron Ore Heritage Recreation Authority Millage which was defeated. He also addressed the Pathways budget.

Comm. Cihak questioned the cost of the upcoming recount of the County Prosecutor race.

Steve Powers, County Administrator, explained those Commissioners who could not attend the Committee of the Whole meeting at Sawyer to discuss the Master Plan, a tour will be made available if interested.

There being no further business to come before the Committee of the Whole, the meeting adjourned at approximately 7:15 P.M.

Respectfully Submitted,

Connie M. Branam
Marquette County Clerk