

May 22, 2023

The Wabash County Board of Commissioners met in regular session in the Wabash County Courthouse on Monday, May 22, 2023. Chairman Brian K. Hauptert called the meeting to order at 9:00 a.m. with all commissioners present: Hauptert, Barry J. Eppley and Jeff D. Dawes. The proceedings were recorded by Wabash County Auditor Marcie Shepherd. The minutes of the May 15, 2023 meeting were reviewed. Dawes made a motion to approve the minutes as written. Eppley seconded the motion; it passed by a 3-0 vote.

Cole Wyatt, Wabash County Highway Superintendent, presented the Wabash County Highway Annual Operational report. Eppley made a motion to approve the report. Dawes seconded the motion; it passed by a 3-0 vote.

Marcie Shepherd, for the Wabash County Sheriff, reported the jail currently has 77 inmates, with 6 additional being housed in the Miami County Jail, 1 in the Fulton County Jail and 38 in the Tipton County Jail. Last week there were 27 book-ins and 5 transports to other facilities. The peak population was 80. The total prisoner count was 125.

Steve Downs, Wabash County Attorney, reported:

1. He is still working on the contract with TrueRoll.
2. The tower repair project bids received were compliant. Eppley made a motion to accept and award the project to low bidder E. Lee Construction, Inc. at \$696,960. Dawes seconded the motion; it passed by a 3-0 vote.
3. The Johnson Controls contract has been reviewed to upgrade the building access system at the Wabash County Judicial Center. There are currently two options. (A) Purchase the equipment for \$6,251 with an annual maintenance fee of \$603 for five years; the total cost would be \$9,266 or (B) Lease the equipment with a commercial service agreement for five years at an annual cost at \$2,156 with no maintenance fees. Hauptert stated they had purchased the equipment previously and it had lasted 20 years. Eppley made a motion to purchase the equipment and pay the annual maintenance fee for the total cost of \$9,266. Dawes seconded the motion; it passed by a 3-0 vote.

Marcie Shepherd, Wabash County Auditor, presented:

1. An amended copy of the minutes from 05/08/2023; the minutes incorrectly listed a vote taken as 3-0 and should have said the vote passed by a 2-0 with Eppley abstaining. Dawes made a motion to approve the change. Eppley seconded the motion; it passed by a 3-0 vote.
2. Accounts payable claims and allowances for docket ending 05/22/2023. Eppley made a motion to approve the claims and allowances as presented. Dawes seconded the motion; it passed by a 3-0 vote.
3. Payroll claims and allowances for pay period ending 5/13/2023. Dawes made a motion to approve the claims and allowances with withholdings as presented. Eppley seconded the motion; it passed by a 3-0 vote.

Hauptert asked if there were any ADA or Title VI concerns. None were heard.

Request for a moratorium on solar projects:

County attorney Downs reported that in his opinion, the commissioners have the authority to impose a moratorium to halt the issuance of improvement location permits for commercial solar projects in an A-1 District to allow BOC and the plan commission to address an immediate problem (defect) in the zoning ordinance. Downs supported his opinion as follows:

The zoning ordinance, as presently adopted, permits a developer to apply for a variance to develop and operate a commercial solar energy system in an A-Zoning District. The ordinance, however, is silent on the setbacks for a commercial solar energy system in an A-1 Zoning District. This omission would support adoption of a moratorium on improvement location permits for

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commercial solar energy systems in an A-1 District while the plan commission and BOC give consideration to amending the ordinance to correct that defect.

For a moratorium to be able to withstand a legal challenge, it must be adopted to address a specific situation or problem that the BOC is convinced needs to be addressed while the moratorium is in effect. To defend successfully a challenge to a moratorium on commercial solar energy systems requires a showing that circumstances have developed since the ordinance was adopted identifying an immediate problem (defect) with the ordinance that needs to be addressed.

Indiana law holds that it is not enough to support a moratorium to simply say that a problem exists, that some residents are complaining about the ordinance and/or that there may be some unspecified problems with the ordinance that may need further consideration.

A moratorium imposed pending issuance of the IDEM report due under Senate Enrolled Act No. 33 cannot withstand a legal challenge because the moratorium would not be based on an immediate problem or defect with the zoning ordinance.

Likewise, a moratorium imposed until all provisions of the zoning ordinance related to solar projects are redrafted cannot withstand a legal challenge for the same reason.

Finally, a moratorium cannot be supported solely on differences of opinion as to what constitute appropriate set-backs. A difference of opinion over set-backs does not constitute a problem or defect with the ordinance.

The lack of a provision in the ordinance establishing setbacks for a commercial solar energy system in an A-1 District is a defect identified subsequent to adoption of the ordinance that would justify the imposition of a moratorium until the ordinance is amended.

Downs concluded by advising that the proper procedure for imposing a moratorium is to first refer the ordinance to the plan commission for its consideration and recommendation.

After some discussion, Dawes made a motion for Downs to compose an ordinance as suggested to impose a temporary moratorium on the issuance of improvement location permits for commercial solar energy systems in an A-1 District pending amendment of the zoning ordinance to include setbacks for such systems in an A-1 District, and to refer the same to the plan commission for its consideration and recommendation. Hauptert seconded the motion; it passed by a 2-0-1 vote. Eppley abstained.


Cheryl Ross spoke in favor of the moratorium and asked if anyone had applied to the county as of right now for any solar projects. Downs said none were known to him at this time. Ross asked the steps for solar; is it lease the land and then approach the county or the other way around? Downs replied usually the company would have a lease before approaching the county for approval. Gary Knable spoke in favor of the moratorium. Dave Cotton and Chris Renn would like the advertisements in the local free paper to get to more people. Hauptert responded we have followed the State's rules regarding advertisements. Cheryl Ridgeway stated she had been reading the minutes from the plan commission meetings and recommended others do the same. Ridgeway and Cotton stated they would like no solar in the county at all.

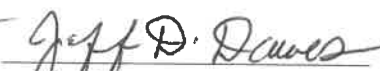
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With no other public comment or other business to come before the Board of Commissioners the meeting was adjourned. The commissioners will next meet on Tuesday, May 30, 2023.

Also present: *In person*: Shelly Bauccho, Jim Dils, Dave Nelson, Cynthia Donovan, Louella Krom, Nicky & Bill Burnsworth, Marcella Palmer, Jonathan Ridenour, Dennis Parzych, Lisa Downs, Jacob Everett, Suzanne Peebles, Pam Hawkins, Phyllis Hawkins, Michael Hawkins, J. T. Malott, Rachel Conner and Gary Ridenour; *Via Zoom*: Amanda, Chris, Geoff Schortgen, iphone, Kandy Barker, Jade Hall, Melanie Penn, Connie, owner, Pete and Don Jervis.

WABASH COUNTY BOARD OF COMMISSIONERS


Brian K. Haupt
Chairman


Jeff D. Dawes
Vice-Chairman


Barry J. Eppley

Attest: 
Marcie Shepherd, Wabash County Auditor