

April 5, 2016

The Board of Supervisors of Shelby County, Iowa, met pursuant to law and rules of said board in regular session at 9:00 a.m. in the Supervisors Chambers of the Shelby County Courthouse with the following members present: Roger Schmitz, Chairman; Steve Kenkel, Vice-Chairman; Charles Parkhurst; and Marsha J. Carter, Clerk.

The Chair asked that any Conflict of Interest be stated concerning any item on the agenda. No conflicts were stated.

It was moved by Kenkel, seconded by Parkhurst, to approve the agenda. AYES: Schmitz, Kenkel, Parkhurst NAYES: None

It was moved by Parkhurst, seconded by Kenkel, to approve the Minutes of March 15, 2016, as presented AYES: Schmitz, Kenkel, Parkhurst NAYES: None

It was moved by Kenkel, seconded by Parkhurst, to approve the Claims of March 30, 2016, as listed in the Claims Register. AYES: Schmitz, Kenkel, Parkhurst NAYES: None

The Board has set aside time quarterly to meet with the Department Heads to discuss any issues pertaining to their departments. Those in attendance were Bob Seivert, EMA Coordinator; Terri Daringer, Environmental Health; Tony Bunan, Assessor; Geryln Greer, Recorder; Lonnie Maguire, Community Services; Dan Ahart, County Engineer; Marcus Gross, County Attorney; Nick Preston, Conservation Director; Mark Hervey, Sheriff; and Marsha Carter, Auditor.

Now being the time for the public hearing on the Third and Final Reading of Shelby County Ordinance No. 2016-2, Pertaining to the Use of the Road Right Of Way, the Chairman did open the hearing. The purpose of this Ordinance is to establish a policy, procedure and penalties for the improper use of County Road Right-of-Way. The Auditor and the County Engineer stated they had received no written or oral comments, and no one was present to comment for or against. It was moved by Kenkel, seconded by Parkhurst, to close the hearing and to adopt the following Ordinance:

SHELBY COUNTY ORDINANCE NO. 2016-2  
PERTAINING TO THE USE OF THE ROAD RIGHT-OF-WAY

SECTION 1: Purpose. The purpose of this ordinance is to establish a policy, procedure and penalties for the improper use of County Road Right-of-Way.

SECTION 2: Definitions. For use in this ordinance, certain terms or words used herein shall be interpreted or defined as follows:

1. "road right-of-way" shall mean the area in which the County holds an easement for roadway purposes on secondary roads within Shelby County.
2. "improper use of road right-of-way" shall mean those activities specified in Section 5 of this ordinance or any other use of the road Right-of-Way not specifically provided for by law.
3. "Board" shall mean the Board of Supervisors of Shelby County, Iowa.
4. "Engineer" shall mean the County Engineer of Shelby County, Iowa.
5. "County" shall mean Shelby County, Iowa or it authorized representative.

SECTION 3: Powers of the Board. All jurisdiction and control of the items provided for in this ordinance shall rest with the Board.

SECTION 4: Authority. The Board is empowered under the authority of Chapter 318 of the 2015 Code of Iowa to remove obstructions from the right-of-way, and this ordinance shall in no way limit the County's rights, powers and responsibilities as set forth in said Chapter. This ordinance shall not prevent the landowner from harvesting from July 15 to September 1, the grass grown on the road right-of-way along the landowners land as provided for in Chapter 317

of the 2015 Code of Iowa except for vegetation maintained for highway purposes as part of an integrated roadside management plan which is consistent with the objections in Section 314.22 of the 2015 Code of Iowa.

SECTION 5: Improper Uses of Right-of-Ways. It shall be unlawful for any person to use County road right-of-ways for:

1. Grazing of animals;
2. Row crop farming;
3. Storage of hay;
4. Spraying or mowing of posted areas;
5. Disposal of trash, litter or waste and/or burning of same;
6. Soil borrow area;
7. Storage/disposal of equipment;
8. Placement/storage or disposal of manure or waste material;
9. Placement/storage or disposal of mud or dirt, crops or crop residue;
10. Placement/storage or disposal of snow or ice;
11. Placement of a fence; and
12. Placement/storage or disposal of any other items.

SECTION 6: Removal and Cost.

1. An obstruction in of use of a right of way which constitutes an immediate and dangerous hazard shall, without notice or liability in damages, be removed by the Board or its designee with the costs thereof assessed to the party responsible for the obstruction.
2. An obstruction in or use of a right of way not constituting an immediate and dangerous hazard shall be removed by the Board or its designee without liability after forty-eight hour notice served in the same manner in which an original notice is served, or in writing by certified mail, or in any other manner reasonably calculated to apprise the person responsible for the obstruction that the obstruction will be removed at the person's expense. The removal costs shall be assessed.
3. Upon removal of the obstruction, the Board or its designee may immediately send a statement of the cost to the person responsible for the obstruction. If within ten days after sending the statement the cost is not paid, the Board or its designee may institute legal proceedings to collect the cost of removal. The removal costs shall be assessed against the following persons, as applicable:
  - a. The vehicle owner in the case of an abandoned vehicle;
  - b. The abutting property owner in the case of a fence, other than right of way fence, or other temporary obstruction placed within the right of way by the owner, tenant or contractor of the abutting property.
  - c. The owner or person responsible for placement of any other obstruction.
4. All removals shall be without liability on the part of any officer ordering or effecting such removal.

SECTION 7: Penalty. Violation of this ordinance shall constitute a simple misdemeanor punishable by a fine of \$100.00 for a first offense and a fine of \$250.00 for second and subsequent offenses. Additionally, if a person is found guilty of violating this ordinance, the Court may, in addition to any fine imposed, or judgment for damages or costs for which a separate execution may issue, order that the obstruction be abated or removed at the expense of the defendant with the costs of abatement or removal entered as a personal judgment against the defendant or assessed against the property where the obstruction occurred, or both.

SECTION 8: Notice of Public Hearing. The Board shall fix a time and place for a hearing on this ordinance and cause notice to be published as provided by law. The notice shall state that all persons interested may appear and be heard at such hearing.

SECTION 9: Hearing and Adoption. On the day fixed for the hearing or any day to which the hearing has been adjourned, upon proof to its satisfaction made by Affidavit of Due Publication

and posting of the Notice of Hearing, the Board shall consider any and all relevant evidence and if the Board finds this proposed ordinance practicable, it may establish it by proper resolution.

SECTION 10: Repealer. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 11: Severability Clause. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 12: Effective Date. The effective date of this ordinance shall be April 5, 2016.

PASSED AND ADOPTED THIS 5<sup>th</sup> DAY OF APRIL, 2016, BY THE SHELBY COUNTY BOARD OF SUPERVISORS.

AYES: Schmitz, Kenkel, Parkhurst NAYES: None

Chris Nelson, Gronewold & Co., appeared before the Board to present the FY2015 Shelby County Audit.

It was moved by Kenkel, seconded by Parkhurst, to approve the I.T. Support Agreement with ThinkSpace IT for FY2017 and FY2018 at a cost of \$48,720 per year.  
AYES: Schmitz, Kenkel, Parkhurst NAYES: None

It was moved by Parkhurst, seconded by Kenkel, to rescind the following motion, which was passed January 4, 2016:

“It was moved by Kenkel, seconded by Parkhurst, to once again offer a \$100 incentive payment to the employees on the County’s health insurance plan if 100% of them get a minimum of three points out the possible five points during the 2016 Wellness Programs. Motion carried.”

and to approve a \$100 incentive payment to the employees on the County’s health insurance plan if 100% of them qualify for all four points offered during the 2016 Wellness Programs, which also qualifies the County for a 5% premium reduction. In 2015, one employee failed to participate in any of the programs, but the Board still decided to reward the remaining employees with \$50. In 2016, there will be no exceptions. AYES: Schmitz, Kenkel, Parkhurst NAYES: None

It was moved by Parkhurst, seconded by Kenkel, to approve the Election Security and Terrorist Contingency Plan for the November 8 General Election, as presented by Marsha Carter, Auditor and Election Commissioner. AYES: Schmitz, Kenkel, Parkhurst NAYES: None

Dan Ahart, County Engineer, was available to update the Board on activities of the county road crews and the status of current maintenance and construction projects.

It was moved by Kenkel, seconded by Parkhurst, to approve the FY2017 DOT Five Year Secondary Roads Construction Program and FY2017 DOT Budget, as presented by the County Engineer. AYES: Schmitz, Kenkel, Parkhurst NAYES: None

It was moved by Parkhurst, seconded by Kenkel, to approve the Iowa Department of Transportation Federal Aid Agreement for County Highway Bridge Project No. BROS-CO83(63)—8J-83, Jay Nielsen Bridge on 1800<sup>th</sup> Street, Section 8, Douglas Township. AYES: Schmitz, Kenkel, Parkhurst NAYES: None

It was moved by Kenkel, seconded by Parkhurst, to approve the following resolution:

**Resolution to Revise Shelby County  
2016 Five Year Road Program**

**Resolution No. 0.2**

Unforeseen circumstances have arisen since adoption of the approved Secondary Road Construction Program, and previous revisions, requiring changes to the sequence, funding and timing of the proposed work plan,

The Board of Supervisors of Shelby County, Iowa, in accordance with Iowa Code section 309.22, initiates and recommends modification of the following project(s) in the accomplishment year (State Fiscal Year 2016), for approval by the Iowa Department of Transportation (Iowa DOT), per Iowa Code 309.23 and Iowa DOT Instructional Memorandum 2.050.

The following approved Priority Year projects shall be ADDED to the Program's Accomplishment year:

Project Number Local ID TPMS #	Project Location Description of work	AADT Length NBIS #	Type Work Fund basis	Accomplishment Year (\$1000's of dollars)	
				New amount	
FM-C0830--55-83 Adkins Corner Bridge TPMS ID: 35114	Replacement of 16' Diameter SSP Culvert with a 30'x100' Continuous Slab Concrete Bridge	80 0.1 MI	FM	\$585	
<b>Totals</b>				\$585	

Fund ID	Accomplishment year (\$1000's of dollars)		
	Previous Amount	New Amount	Net Change
Local Funds	\$571	\$571	\$0
Farm to Market Funds	\$608	\$1,193	\$585
Special Funds	\$0	\$0	\$0
Federal Aid Funds	\$1,046	\$1,046	\$0
Total construction cost (All funds)	\$2,225	\$2,810	\$585
Local 020 Construction cost totals (Local Funds + BRO-81 FA funds)	\$995	\$995	\$0

Passed and approved this 5<sup>th</sup> day of April, 2016.

AYES: Schmitz, Kenkel, Parkhurst

NAYES: None

At their March 15, 2016 meeting, the Board reviewed the bid from Schildberg Construction for Project FM-CO83(64)–55-83 Granular Surfacing on various Farm To Market Roads. In the bid documents, Schildberg stated that due to previous commitments, he would not be able to deliver the rock until mid-late summer. The Board tabled action until Ahart could follow up. After more discussion on possible alternatives, it was moved Parkhurst, seconded by Kenkel, to approve the bid from Schildberg Construction – 18,675 Ton @\$21.17 for a total of \$395,349.75, contingent on Ahart and Schildberg coming to an agreement on the contract terms within the next 48 hours, and to authorize the Chairman to sign all necessary contract documents. AYES: Schmitz, Kenkel, Parkhurst NAYES: None

There being no further business appearing, the Chairman declared the meeting adjourned at 11:38 a.m.

---

Roger Schmitz, Chairman

ATTEST:

---

Marsha J. Carter  
Clerk to the Board of Supervisors

NOTE: These minutes are as recorded by the Clerk to the Board of Supervisors and are subject to Board approval at the next regular meeting.