



MACON COUNTY HIGHWAY DEPARTMENT

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MINUTES

October 24, 2012

The Macon County Transportation Committee meeting was held on Wednesday, October 24, 2012 at 5:30 p.m. located at the Macon County Office Building, 141 S. Main St., Decatur, IL.

Transportation Committee Members Present:

Bryan Smith

David Williams

Kevin Meachum

Don Westerman

Jay Dunn

Gary Minich

Patty Cox

Highway Department Support Staff Present:

Mark Funk, Road Supervisor

Amanda Askew, Office Assistant

Others Present:

Ryan Voyles, Herald & Review

Randy Waks, Assistant States Attorney

Mark Wicklund

Call to Order:

The meeting was called to order by Chair Bryan Smith at 5:30 p.m.

Roll Call:

Bryan Smith

David Williams

Kevin Meachum

Don Westerman

Jay Dunn

Gary Minich

Patty Cox

Approval of the Minutes:

Kevin Meachum made a motion to approve the minutes from September 26, 2012, seconded by David Williams. Motion Carried 6-0 Patty Cox voted present.

Approval of the Bills:

Patty Cox made a motion to accept the bills as presented, seconded by Gary Minich.

Motion Carried 7-0

No Public Comments

Old Business

Don Westerman stated my question is concerning the ability for the County Highway to grant easements to utilities. I believe that the adjacent land owner actually owns the road right-of-way, not the top of course but the ground under it. Whenever you buy a parcel you have to buy it clear out to the center of the road or more specifically to the quarter line which is not always the center of the road. It is always on our tax bill that we pay out to the center of the road. It seems like the County does not own the road right-of-way and the question is then if they don't own the right-of-way how do we give easements for utilities. I do not care for that because a lot of times the utilities come by to the landowner and offer them, for example, \$4.00 per foot to put this cable out in your field. If the landowner agrees that is fine,

if they do not the utility just goes to the County and get a permit and put it in the road ditch. I do not think the County has the right to do that. It takes away the negotiating powers from the landowner when the utility can just go ahead and put it in the road ditch. If I am wrong on those accounts and the County does have the right to do that, why doesn't the County get the money that the utility is going to pay to the adjacent landowner? Bruce Bird replied it will show up in your tax bill that it is recorded out to the center of the road. It depends on which parcel you are talking about, that is not always the case. Sometimes we do own the fee simple title a lot of the times on most of our roads we do not. It is all by permit dedication of easement or it is there by prescription. Which means even if it is not recorded, if it has been used as a public road way for 20 years it automatically becomes a public road way. In that case it isn't even recorded. I have asked the recorder this several times. You are not really paying taxes out to the center of the road because the value of a farm field is established based upon the yield, correct? Don Westerman answered it is a lot more complicated than that. Bruce replied that is part of it. David Williams added not all areas are farm field. Bruce agreed but it is easier if you are talking about just a residential area. Even if a residential house owns out to the center line you are only taxed based upon the value that you use for that ground. It is not like they come up with an amount and they just apply it times the acreage. Don Westerman stated one portion of it is but there are about 5 criteria for that and one of them is acreage so that goes clear out to the center of the road. Bruce stated as it was explained to me by the Recorder and maybe you can talk to Mary about this and she can explain it further, technically you are not being taxed on the portion that is being used for the roadway. On to the question about the utilities Randy had asked me about this and I know that the rule of thumb is that you are correct that the statutes give the road authority the authority to locate utilities on the road right-of-way. It basically gives them control of everything on the right-of-way. You also have to look at the statutes concerning utilities and what they are allowed to do. They break it down between the different utilities and the rules are different for each one. The way the State handles it is that, they have been trying to buy their own right-of-way to eliminate the issue of whether or not the underlying landowner has a right to get a fee from the utility company for being on the right-of-way. Don Westerman stated the State does own that right-of-way mostly in fee simple. What about the County and the Township. Bruce replied most of the County and 100% of the Township roads and probably 99% of the County roads are by easement either prescriptive or actually dedicated. Don Westerman stated I do not think there is any question about whether they have the right to use to road or not because even if they didn't have the right in the first place it has been there for so long that is there. So that is not an issue. The issue is just because you have the right to use the road and that ground for road purposes does that give the County the right to sublet, so to speak. Bruce replied for any of our projects since I have been here, whenever we acquire the right-of-way it shows where the new right-of-way line is, where the existing right-of-way line is the in the description they describe everything from the center line all the way out to the new right-of-way and subtract the part that is in the existing right-of-way and the remaining portion is the portion that we buy. We include a statement in there that gives us the right to control and put in utilizes, but for the most part this is where all of our new road projects have been. We have been pretty consistent about that. Anything older than that, I have read some statutes on it and under the utility section it states "no such company shall have the right to erect any poles, posts, piers, abutments, wires and other fixtures of their lines along or upon any public ground outside the corporate limits of a city, town, or village without the consent of the County Board of the County which such public ground is situated." That basically gives the County Board the authority and the right to permit what goes on, on their right-of-way. It also explains that consent must be in writing. I didn't find what the definition of public ground is. Don Westerman asked if this has ever been challenged or had everybody just been faked out here. Bruce Bird replied I do not think it has ever been challenged and part of it lies with, when the utilities were initially put in everybody wanted to have power and phone. Almost 100% of

those utilities were put out on right-of-way that was not even described as a dedication. It was just there by prescription. You are right now they are out there and they have to maintain them, how do you handle it. I am not aware of any cases where they have been challenged in that regard. Don Westerman stated bottom line is if I lose my case here then why the County can't get the same amount of money from utilities as the adjacent landowners. They are willing to pay the landowner \$4.00 per foot or whatever it is to use their land for an easement. If you don't like that then we will go out on the highway and put it down the County road ditch. Why doesn't the county get that money? Bruce replied we do have a permit fee. Don Westerman replied not very much. Bruce stated but it is not a per foot amount or anything like that. The fee for that particular permit is \$950.00. Dan Westerman stated that will not get you very far. Bruce replied not at \$5.00 a foot no. Don Westerman stated I do not think this is right and I am not convinced that we are doing the right thing. Bruce Bird stated I have never had anybody explain it to me the way you did, it basically took the negotiating ability out of the adjacent landowner's hand. The project that you are talking about, they reached agreement with every landowner out there except for one. They exhausted all opportunities with this landowner. Don Westerman replied no they didn't they could condemn it. It is a public utility they could take it to court and condemn it and go through a judge like everybody else has to do. Instead they took the easy way out. Bruce Bird stated one negative about having their utility on right-of-way is if we need to make it a four lane roadway for example, in those areas where it is on a private easement if the water line has to be moved it is all on us. If it is on public road and it has to be moved it is all on them, so they are accepting somewhat of a risk that we ever need to have that line moved in the future it is 100% at their expense. Don Westerman asked what if you dig into a line, it would be the Counties problem right. Bruce replied only if it was not marked correctly through Julie. If it is marked properly we would have to pay for it. Randy Waks stated I did find a case that seems to indicate that the County cannot grant an easement for utilities if they do not own it, if they just have a right-of-way. They cannot further encumber the easement. Don Westerman stated they do not even have an easement. They just have a right-of-way. They have a right-of-way for road use and easement is for specific use also. When you get an easement it does not say that I have the right to put in all my utilities and I have the right to sublet it to somebody else, correct. Randy Waks stated it depends upon what the easement says but the easements that the County and the Township would have would be right-of-easements. They are either an easement or a license or an ownership. The prescription that Bruce was talking about is a prescriptive easement. If you use it for 20 years and it is open that makes it an easement. It is for a limited purpose. It is for right-of-way. If the use that they are putting to is consistent with the public purpose of right-of-way then that is okay. When granting a utility the right to put their line or pipe is an additional burden on the land above and beyond the right-of-way that is something that they cannot do. I will do some further research on this and share it with Bruce and this committee next month. Don Westerman thanked everyone for their time on this and it seems to me that Mr. Waks has not come up with a hard thing he is going to think about some more. Could we have this on the agenda sometime?

New Business

Resolution to increase 2012 Budget Matching Fund line items:

Bruce explained that this is a direct result of the two earmark projects that we had, County Highway 30 and County Highway 26. When I set up the budget line items over a year ago, I had to take a guess at what fiscal year I think the projects will get done. Out on County Highway 30 they got done quicker than I had anticipated. It is not additional money it is just being moved up into the current budget year as opposed to the following budget year. That is the only reason for the change. Motion made by Gary Minich to approve, seconded by Kevin Meachum. Motion carried 7-0.

Resolution appropriating funds for additional engineering expenses on the Firehouse Road Bridge Rehabilitation Project:

Bruce Bird stated this is the project we cost shared with the Village of Long Creek. Once we got the deck off there, in order to make sure that we are making the right call on the existing piling that we are going to be reserving what we needed to reserve and not remove any more than what we had to and that it was going to be stable. We called out the design consultant to take a look at it while we were doing the testing in the field. The total amount is \$1,000.00 and it will be paid 50/50 with the Village. It is just meant to cover those items and take care of them. Motion made by Patty Cox, seconded by Don Westerman. Motion carried 7-0.

Resolution transferring jurisdiction of County Highway 9 to South Wheatland Township:

Bruce stated this is a little dead end street. You get down to the end of our existing County Highway and there is very short stretch of Township road we have redone the road to the satisfaction of the Road Commissioner. When it comes to winter time plowing and some of the basic maintenance he has been doing all of that for several years. He would like to get reimbursed for some of the work that he has been doing for the last several years. We are just trying to help him out. Motion made by Kevin Meachum, seconded by Gary Minich. Motion carried 6-1 Don Westerman.

Jay Dunn asked for an explanation of why we are appropriating \$750,000. Bruce Bird replied it is just expanding the existing budget line item. It is not an additional appropriation. The appropriation is already there. The project got done quicker. I had some of the expenses in next year's budget and they are done. Jay Dunn asked if you are going to amend next year's budget. Bruce replied I can but I cannot spend that budget unless it is appropriated on a project. Jay Dunn thanked Bruce for his explanation.

County Engineer's Report:

Bruce Bird stated County Highway 30 is completed and open. It is very smooth and fast I would like to warn everybody to watch their speed. The project turned out really well and the people that live on the project seem to like it as well.

On County Highway 26 we have got the pavement in from the south end up to the maintenance entrance to the Zoo. We have got sub grade ready to go from that part down to the Zoo entrance. We will defiantly get pavement in to there. The contractor is hoping to get all the way up to the Children's Museum before the weather gets them. They are at a good stopping point for the winter right now.

We finished the bridge on Firehouse Rd. we spent \$85,000 on rehabbing the bridge we will probably get another 25-30 years use out of that bridge in its current state. Replacing it at current values of a brand new bridge it would have been upwards of \$350,000. I think we made a really good choice on that. I am looking at doing it on a few other bridges we have coming up.

The bridge on County Highway 25 North of Argenta had the beams set two weeks ago and they are trying to get the earth work up and ready on that.

There is a Township bridge in Illini Township on Glasgow Rd. they set the beams on that today. They got most of the earth work shaped up on that. It is looking pretty good. With any luck we will have both of those bridges open by winter. A lot will depend on the weather. They are on dirt work right now and that is very weather dependent this time of year.

Our guys have been doing a lot of ditch cleaning with the ditching machine. They are also doing some final mowing. We got our letter from CMS where we buy our salt from. Last year we paid \$68/ton this year it is less than \$61/ton.

David Williams asked about the bridge on Washington Street Rd what the status on that is. Bruce replied the crew that is on County Highway 25 they will head over there when that is completed. We have had our pre-con and the contractor made some suggestions about a different way to do some things on the job. The bridge design engineer agreed to it. It is going to save us about 10 – 20 thousand dollars the way they want to do it. David Williams asked we will not have any delays from the State by changing things will we. Bruce replied no.

Miscellaneous Business:

Jay Dunn asked about an article he read in the paper about the Decatur Township citizens voting on whether to turn the Decatur Township Roads over to the County. I know that Bruce and I have had a couple of discussions about this off the record. I have not seen any discussion on this and I would like to hear about the ramifications if this passes and we inherit the roads in Decatur Township. Bryan Smith stated it is not going to happen even if it passes because it is just an advisory referendum. Did their Town Board do that or did their voters do that at their town meeting. Gary Minich replied I do not know how it got on the ballot; it is about 8 miles of road. I asked about it last time the committee met. Jay Dunn stated I do not think they have any money that is the problem. Bruce Bird stated that is part of the problem. There have been several bills that have been introduced over the State House and they are all bills I don't know if there is a little confusion there with people thinking that the bills got passed. They didn't get passed I do not think they made it past the first reading on any of them. The language on all those bills is getting to the point that it is consistent. It basically says that you cannot automatically just transfer those roads from Township to County ownership. There is a formal process you have to do and that is listed in the State statutes. That is one of the problems with this bill. There are about 40 other statutes that you would have to modify to make it happen. That is a big problem. That is one of the reasons why it just hasn't gone anywhere. We do not automatically get the roads and oh by the way you also have to pay for them. They are still Township roads. The way the language in those bills reads is that it is doing away with the Township Road Commissioner. The Town Board then becomes the decider of those roads and how they are handled. They do not automatically go to the County. The Town Board can choose the County, the City, they can choose and outside party to do it. It is entirely up to them. That is not what the referendum says. The referendum is misleading there is no doubt about that. Jay Dunn explained that he thinks Bruce is a little more optimistic than me. I have seen the State hand our lunch to us several times without providing us any money to pay for it. I sure do not want to inherit 8 miles of road that the Township has for years not funded enough money in that fund to redo the roads. As I understand they are in pretty bad shape. I do not want the County to inherit 8 miles of roads that we have to redo at our expense. I am just concerned about it. Bruce Bird stated some time ago that was one of the discussions we had with one of the previous Road Commissioners there. You can raise your levy if you struck a deal with the City where you wouldn't have to give half of it away to them. Say for 5 years it would cost the average homeowner \$2 - \$3 a year, it is a very small amount, but with the overall value of the Township that would provide enough money where you could reconstruct all of those roads to the current city standards. At least you have the ability to reconstruct those roads. Bryan Smith stated the referendum is pretty specific. It just addresses the position and current law says that if the mileage falls below 4 miles the position is automatically eliminated. Not the roads but the position. I do not know where it came from and why it came about. Jay Dunn replied yes but every year we go

through and look at all the bills that the State try's to pass, which they do not bother to check with us or the Townships or anybody else. A lot of them are an added cost to other public entities other than us. We have to be on guard for these things. They can change the statutes if there is 40 of them that need changed they can change them all. I just think it is something that we need to stay on top of. Bruce added that one of the consistent languages in all those bills that came up it said that the Township Road Commissioner position would be eliminated and those duties assumed by the County Engineer. The Township Road Commissioner sets the levies and the Township Road Commissioner has to be a resident of the Township. I only reside in one Township not 16. Do you really want somebody who is not a resident and not a tax payer of your Township setting your tax levy and deciding how you tax dollars are being spent. Don Westerman it seems to be an unwritten effort to do away with all the Township Road Commissioners. Bruce replied to some degree and being active in the statewide association occasionally these bills will come up. What is the genesis of it? In order to solve their local problem they want to change the State law. David Williams stated that the most of this seems to be the Districts up north, they are not looking at the impact down state and they do not care. Gary Minich stated when I went on that Board it was questionable whether we are watching the taxpayer's money while we are paying this guy a small salary to take care of 8 miles of road and he hires someone to do the work. It really seems like the taxpayers are getting ripped off because we are paying a guy this salary to watch that small of a number. That is a lot of overhead to watch 8 miles of road. Mark Funk stated that Gordon does have to deal with the citizens complaints. When I start getting a complaint I have them call him. He has had to deal with some drainage issues before as well.

Bruce stated we got a nice thank you note from the Conservation District in regards to their Prairie Pedal bike ride. They identify where their route is going to be. When it goes down our County Highways we always make sure we have the road broomed and things like that. In the note they said they said this was the first year they did not have any complaints from any of the riders. They have about 3 different routes. One of them is about 60 some miles that they ride. It is nice to get a note saying thank you and they appreciate the work we did for them.

David Williams stated I know the Coroner has had use of a vehicle from the Highway Department. Is that vehicle permanently assigned to him now? Bruce replied no he may be swapping into my old one when the new vehicle comes in. David Williams asked you say may, what do we need to do to make that happen. Bruce replied we are going to give him a choice of does he wants a pickup or a SUV whatever will work better for his needs.

No Closed Session

Adjourn:

Don Westerman made a motion to adjourn, seconded by David Williams. Motion Carried 7-0

Meeting adjourned at 6:05 p.m.

The next Transportation Meeting held at the Macon County Office Building will be Wednesday, November 28, 2012 at 5:30 p.m.

Minutes submitted by:
Kathy Gerhold & Amanda Askew
Macon County Highway Department