

## STATE APPEAL BOARD

In Re:	Lacona, Iowa	)	
	Budget Appeal	)	Order
		)	
	FY 2011	)	May 3, 2010

---

**BEFORE STATE THE DIRECTOR OF THE DEPARTMENT OF MANAGEMENT, RICHARD OSHLO, Jr.; TREASURER, MICHAEL L. FITZGERALD; AND STATE AUDITOR, DAVID A. VAUDT:**

A hearing on the above captioned matter was held pursuant to the provisions of Chapters 24 and 384 of the Code of Iowa on April 12, 2010. The hearing was before a panel consisting of Stephen Ford, City Budget Director and presiding officer, Department of Management; Luke Donahue, Investment Officer, Office of the State Treasurer; and Susan Battani, Director, Financial Audit Division, Office of the State Auditor.

Mayor William E. Ballard, Council Member Michael Coop, City Clerk Doris Loy and the City of Chariton City Clerk, Ruth Ryun, represented the City of Lacona, and spokespersons for the petitioners were Mike Oxenreider and Teresa Curnes.

Upon consideration of the specific objections raised by the petitioners, the testimony presented to the hearing panel at the public hearing, the additional information submitted subsequent to the hearing and after a public meeting to consider the matter, the State Appeal Board has voted to modify, in part, the City of Lacona's fiscal year (FY) 2011 budget as described herein.

### PROCEDURAL HISTORY

The FY 2011 City of Lacona proposed budget summary was published on February 18, 2010 in the Chariton Herald-Patriot. The required public hearing was held and the budget was adopted on March 1, 2010.

A petition protesting the certified FY 2011 City of Lacona budget was filed with the Warren County Auditor on March 18, 2010, and was received by the State Appeal Board on March 19, 2010.

The petition documents did not contain specific objections. The petition states: "The property owners of Lacona Iowa have the right to protest to the Warren Co Auditor under the State Code 384.19 in regards to Taxes and the City Budget."

### DISCUSSION

The petitioners and representatives of the City provided various written summaries, exhibits, and verbal commentary in support of their positions. A summary of the public hearing and information provided on this matter is as follows:

## PETITIONERS

At the budget appeal public hearing, petitioner Mike Oxenreider represented the petitioners and was assisted by Teresa Curnes. In their presentation, they provided certain comments with regard to the City of Lacona, summarized, in part, as follows:

1. We the budget petitioners believe the City budget can be reduced by two dollars per thousand and perhaps even more.
2. The City says their insurance has raised \$20,000. How is that divided among the fire department, ambulance service, City Hall, and library?
3. How much money do we have in the bank in the General Fund and any other funds including CDs which are held by the fire department?
4. We believe the City Clerk's hours could be cut back to 32 hours or less and we question how her time is kept when she is working for other cities during the time she is working for Lacona 40 hours per week. Will she be working 40 hours per week in 2010-2011 and if not, how does that affect the health care allotment?
5. Council Member Mike Coop said the ambulance service does not take any money from the City, however there is money allocated to the ambulance service. We think money could be cut from the fire department allotment also.
6. The Council approved a rate hike in water and sewer taxes but the suppliers of water did not raise rates. There is a substantial profit on water, sewer, and garbage.
7. The Council approved \$3,900 plus the present lawn mower to be traded for a new mower. We believe this could be put off until the fire truck is paid off. The lawn mower we have is less than 5 years old.
8. Water supplier's bills have not been paid on a consistent basis and garbage pickup bills have not been paid in a timely manner.
9. In conclusion, the petitioners believe the City can reduce their budget by two dollars per thousand and perhaps even more.

## CITY OF LACONA RESPONSE

Mayor William E. Ballard was the primary spokesperson for the City of Lacona. In the presentation, he provided certain comments with regard to the Lacona budget, summarized, in part, as follows:

1. The Lacona City Council using the information from our City Clerk and making careful projections of the services needed in the new fiscal year developed, held a hearing on the fiscal year 2011 budget and adopted the budget as submitted. In the process, we discovered that our tax base had been lowered and the cost of many products and services either had increased or were expected to increase. This resulted in an increase in our tax rate for the 2011 fiscal year.
2. Our insurance cost has increased for the new fiscal year and we are still in the process of obtaining needed bonding insurance for the mayor and Council.
3. Our fire and rescue department does have CDs that they hold to use in purchase of new rescue vehicle when the cost of the project has been raised.
4. The hours of the City Clerk are set to be up to forty hours which has been needed in the process of setting up a new office without records from the past and working through the process of building a new building. The few records that were salvaged from the fire that burned the library, City hall, and fire and rescue department are currently held in evidence at the Warren County Court House and may or may not be available to us once the pending arson/embezzlement case has been tried. This continues to be a tedious process. The hours needed from the City Clerk will be evaluated prior to July 1 when the Clerk's contract is up for renewal.
5. The City does cover the fire and rescue department under their insurance. The City does not fund the rescue department.
6. The City Council has proposed water and sewer rate increases which may take effect once the work on the new City code is complete, reviewed, presented for a public hearing and adopted. Currently the City does not receive sufficient income from water and sewer to cover the cost of product, repairs, new meters, time spent by City employees for these departments and meeting the requirements of DNR.
7. All City bills are paid on time. We did have an incident in February when checks written on February 2 and 3 were not post marked by the postal service until March 9 and arrived at several businesses on March 10. The Lacona Post Office is now hand canceling all of the City's outgoing mail the day it is mailed.
8. In conclusion, the City regrets that it has been necessary to raise taxes. However, in order to maintain services for at least the 2011 fiscal year it is in our best judgment necessary.

## FINDINGS OF FACT

1. Iowa Code Section 384.16(2) states, in part, "Not less than twenty days before the date that a budget must be certified to the county auditor and not less than ten days before the date set for the hearing, the clerk shall make available a sufficient number of copies of the detailed budget to meet the requests of taxpayers and organizations, and have them available for distribution at the offices of the mayor and clerk and at the city library..."
2. The City of Lacona, subject to various state laws and administrative rules, shall prepare and adopt a budget, certify taxes and propose budgeted expenditures. The City has not met the requirements of 384.16(2).
3. Iowa Code Section 384.19 provides persons who are affected by a City budget, expenditure, or levy, or by any item thereof, may appeal by filing a written protest with the county auditor "specifying their objections to the budget or any part of it." The protest must be signed by registered voters equal in number to one-fourth of one percent of the votes for governor in the last general election. The petitioners met this requirement.
4. Iowa Code Section 384.19 "Written Protest" states: "The state appeal board shall proceed to consider the protest in accordance with the same provision that protests to budgets of municipalities are considered under Chapter 24". Pursuant to Iowa Code Sections 24.28 and 24.29, a hearing was scheduled and conducted by designees of the State Appeal Board.
5. Iowa Code Section 24.28 states "At all hearings, the burden shall be upon the objectors with reference to any proposed item in the budget which was included in the budget of the previous year and which the objectors propose should be reduced or excluded; but the burden shall be upon the certifying board or the levying board, as the case may be, to show that any new item in the budget, or any increase in any item in the budget, is necessary, reasonable, and in the interest of the public welfare".
6. Iowa Administrative Code Section 543-5.7 (8), "Hearing", provides "The appeal board shall exclude evidence which is irrelevant, immaterial or unduly repetitious."
7. Iowa Code Section 24.30 states in part "It shall be the duty of the state board to review and finally pass upon all proposed budget expenditures, tax levies and tax assessments from which appeal is taken and it shall have power and authority to approve, disapprove, or reduce all such proposed budgets, expenditures, and tax levies so submitted..."
8. The Marion County Rural Water District has not raised water rates for a number of years. The City stores the water in a City tower but is not responsible for any processes other than delivery to residents, general maintenance of infrastructure,

and billing. The City's water rates varied depending upon usage during the period Jan 2009 to Feb 2010 from a low of \$3.18 to high of \$3.80 per 1,000 gallons.

9. The FY 2011 estimated Proprietary Fund balance of \$195,553 is an increase from the FY 2010 budgeted estimate of \$167,992, subsequently re-estimated upward to \$182,917. The FY 2009 actual Proprietary Fund balance was \$125,833.
10. The FY 2011 budget includes total property valuations, with gas and electric of \$5,797,897. The FY 2010 property valuations were \$6,130,343 and FY 2009 property valuations were \$5,952,553
11. The budgeted FY 2011 line item expenditure for "Clerk, Treasurer, Finance Administrator" was \$13,900, a decrease from the FY 2010 budgeted estimate of \$26,000 in governmental. The Clerk's wages are not clearly identified by fund or function and appear to be split between governmental and business type expenditures. The 2009 Probationary City Clerk Contract stipulates the clerk's pay is split as follows: Clerk 30%, Water 35% and Sewer 35%.
12. The budgeted FY 2011 expenditure for the Fire Department and Ambulance service are \$12,000 and \$2,500, respectively. The budgeted expenditure for these services in FY 2010 was \$10,000 for fire and \$0 for ambulance. The actual year FY 2009 expenditure amount for these services was \$5,409 and \$0, respectively.
13. The budgeted FY 2011 expenditure for the water utility is \$64,000 and \$57,000 for the sewer utility. Those utility expenditures in FY 2010 were originally budgeted at \$30,000 and \$27,700, respectively, but re-estimated upward to \$62,000 and \$55,584, respectively. The actual FY 2009 expenditure was \$52,116 for the water utility and \$18,951 for the sewer utility. The City intends to perform the DNR mandated improvements itself, at an estimated cost of \$5,000 to \$6,000.
14. The budgeted FY 2011 expenditure for Debt Service on the purchase of a new fire truck is \$21,978. The Debt Service expenditure is paid with the Debt Service levy. The FY 2011 levy and expenditure are the same as for FY 2010 and are reduced from the FY 2009 level of \$24,156.
15. The City projects a FY 2011 General Fund budgeted ending balance of (\$23,234). The FY 2010 General Fund original budgeted balance of \$46,241 was re-estimated to \$(51,033). The actual FY 2009 General Fund balance was \$(46,357). The budgeted FY 2011 Special Revenue Fund balance is \$(11,613) and the original FY 2010 budgeted balance of \$(47,518) was re-estimated to \$(4,920). The actual FY 2009 Special Revenue Fund balance was \$21,372. The Debt Service Fund budgeted balance for FY 2011 is \$531, the FY 2010 budgeted balance of \$(30,154) was re-estimated to \$531. The actual FY 2009 Debt Service Fund balance was \$634.
16. The FY 2011 General Fund budgeted revenues of \$160,768 increased from budgeted FY 2010 General Fund revenues of \$120,510. The FY 2010 revenues

were not re-estimated in the FY2011 budget. The FY 2009 General Fund revenues were \$97,302.

17. The FY 2011 budgeted property tax revenues, with utility tax replacement, of \$94,718 and a rate of \$16.81267 per \$1,000 of taxable value increased from FY 2010 budgeted property tax revenues of \$82,641 and a rate of \$13.90111 per \$1,000 of taxable value. The FY 2009 property tax revenues were \$61,422 and the levy rate was \$10.31859 per \$1,000 of taxable value.

18. In *State v. City of Altoona*, 274 N.W.2d 366, 368 (Iowa 1979), the Court held that in enacting the utility rate provisions of Iowa Code Section 386.84, the Legislature not only empowered the municipality to fix rates, but also provided the procedures set forth in Iowa Code Section 386.84 should control, with the right of judicial review. The language suggests an appeal from a municipal utility rate would occur in the form of a judicial review action in district court.

19. In *State v. City of Iowa City*, 490 N.W.2d 825, 829 (Iowa 1992), the Court further expanded on the power of municipal utilities to set rates, noting the Iowa Code only codifies one limitation, namely, that the rates may not be discriminatory under Iowa Code Section 388.6. The Court held other common law limitations and rules apply and approvingly quoted the following:

“The rate charged by a municipal utility must be fair, reasonable, just, uniform, and nondiscriminatory, and the same rules in regard to the reasonableness of private utility companies apply. Judicial review may usually be had as to the reasonableness of the rates, but the court may not engage in ratemaking since this is a legislative function.”

20. The City is levying taxes of \$20,589 under Iowa Code Section 384.12(18) for “tort liability insurance, property insurance, and any other insurance that may be necessary in the operation of the city” in the FY 2011 budget. The City’s insurance premium for the period 7-10-2009 through anniversary date 7-1-2010 was \$14,977. The \$14,977 premium includes insurance costs for coverage of proprietary operations.

### **CONCLUSIONS OF LAW**

The State Appeal Board has jurisdiction over the parties and the subject matter of this appeal, pursuant to Iowa Code sections 24.28 and 384.19.

### **BASIS FOR DECISION**

The budget appeal process established under state law provides for the State Appeal Board to review and rule upon proposed budgets, expenditures, and tax levies. A portion of the petitioners’ concerns involved their disagreement with specific decisions, alleged errors, or mistakes made by the City and not with identifiable budgetary effects of those decisions, errors, or mistakes.

The City's insurance levy of \$20,589 is in excess of the current year's premium of \$14,977 coming due on or about 7-1-2010 covering the governmental activities and enterprise activities that are not tax supported.

The City admitted failing to have copies of the proposed budget available before the hearing and of charging petitioner Mike Oxenreider \$4.50 for a copy of the proposed budget at the hearing. The City refunded the \$4.50 to Mr. Oxenreider prior to the State Appeal Board hearing.

The State Appeal Board lacks the authority to adjudicate complaints regarding a municipal utility's rates. Further, challenges to utility rates should be made in district court or with the Iowa Utilities Board.

The City has a General Fund ending balance of \$(23,234) excluding any Fire and Rescue checking accounts, plus two CDs totaling over \$31,000.

The City did not provide requested reconciled financial reports to the State Appeal Board. The financial reports requested by the hearing panel and provided by the City Clerk reported the total checking account balance for the City's business checking account and did not report reconciled balances by individual fund. The business cash-management bank account was reported separately. In addition, the City Clerk confirmed the checking and CD balances held by the City Fire and Rescue department were not included in the City's financial reports as required by Iowa Code Section 384.20.

It is unclear how or what basis the City Clerk used to report individual fund balances in the City's Fiscal 2009 Annual Financial Report. Accordingly, we were unable to determine the City's actual financial position by individual fund.

The City acknowledged the City Council did not have financial statements when preparing or approving the FY 2011 budget.

The City failed to demonstrate the increase in levy rate is necessary, reasonable and in the interest of the public welfare.

The petitioners failed to demonstrate the expenditures for the City Clerk were not necessary, reasonable and in the interest of the public welfare. The City Clerk is also City Clerk for the Cities of Patterson and Grand River. The City Clerk represented work for these two cities is performed on her own time at night and weekends.

The petitioners failed to demonstrate the expenditure for a new lawn mower was not necessary, reasonable and in the interest of the public welfare.

ORDER

Due, in part, to the failure of the City of Lacona to comply with Iowa Code Sections 384.16(2) and 384.20 and to provide reliable financial information and the failure to demonstrate the increase in the levy rate is necessary, reasonable and in the interest of the public welfare, the Appeal Board orders the following:

The FY 2011 budget hearing and adoption violated Iowa Code Section 384.16(2) because copies of the proposed budget were not available at the library and offices of the Mayor and Clerk at no charge to the public. However, since the budget was formally protested, the City will not be required to republish, hold another hearing, and adopt the budget.

The City is directed to refund any taxpayer for the cost paid for copies of the budget.

The City is directed to separate the premium costs for the enterprise operations from the governmental activities and use the levy provided for in Iowa Code Section 384.16(18) to pay insurance premium costs for governmental activities only.

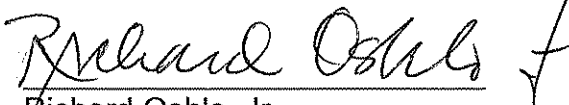
The City is ordered to reduce the levy rate by \$2.78626 per \$1,000 of taxable value for a FY 2011 total property tax rate of \$14.02641 per \$1,000 of taxable value. The specific levies reduced to accomplish the order are as follows:

The levy provided in Iowa Code Section 384.16(18) "tort liability insurance, property insurance, and any other insurance that may be necessary in the operation of the city" is reduced to a rate of \$1.03486 per \$1,000 of taxable value.

The levy provided in Iowa Code Section 384.8 "Emergency fund" is eliminated.

The Department of Management will carry out the order to reduce the levy rates.

STATE APPEAL BOARD



Richard Oshlo, Jr.  
Chairperson



David A. Vaudt  
Vice Chairperson



Michael L. Fitzgerald  
Member

May 3, 2010  
Date