



# BOARD OF COMMISSIONERS

1 S. Main St., 9<sup>th</sup> Floor  
Mount Clemens, Michigan 48043  
586.469.5125 ~ Fax: 586.469.5993  
www.macombBOC.com

## NOTICE OF MEETING

There will be a meeting of the **BOARD OF COMMISSIONERS** on Wednesday, August 20, 2014, at **7 p.m.**, on the 9<sup>th</sup> Floor of the County Administration Building, in the Commissioners' Board Room, Mount Clemens.

(Invocation this month is by Commissioner Fred Miller)

## PRELIMINARY AGENDA

1. Correspondence from Executive
2. **COMMITTEE REPORTS:**
  - a) Government Operations, August 11 (page 1) (attached)
  - b) Finance, August 20 (to be provided)
3. **PROCLAMATIONS:**
  - a) Proclaiming September as National Recovery Month in Macomb County (offered by Mocerì; recommended by Health and Human Services Committee on 8-12-14) (page 3) (attached)
4. Board Chair's Report (to be provided)
5. New Business
6. Public Participation (five minutes maximum per speaker or longer at the discretion of the Chairperson)
7. Executive Session to Discuss Pending Litigation Re: Martha T. Berry (page 4) (attached)

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**Corinne Bedard**  
**Committee Reporter**

## MACOMB COUNTY BOARD OF COMMISSIONERS

David J. Flynn – Board Chair  
District 4

Kathy Tocco – Vice Chair  
District 11

Mike Boyle – Sergeant-At-Arms  
District 10

Toni Mocerì – District 1  
Don Brown – District 7

Marvin Sauger – District 2  
Kathy Vosburg – District 8

Veronica Klinefelt – District 3  
Fred Miller – District 9

Robert Mijac - District 5  
Bob Smith – District 12

James Carabelli – District 6  
Joe Sabatini – District 13



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**August 11, 2014**

**TO: BOARD OF COMMISSIONERS**  
**FROM: KATHY TOCCO, CHAIR**  
**GOVERNMENT OPERATIONS COMMITTEE**  
**RE: RECOMMENDATION FROM GOVERNMENT OPERATIONS**  
**COMMITTEE MEETING OF AUGUST 11, 2014**

At a meeting of the Government Operations Committee, held Monday, August 11, 2014, the following recommendation was made and is being forwarded to the August 20, 2014 Full Board meeting for approval:

**1. COMMITTEE RECOMMENDATION – MOTION (SEE ATTACHED)**

A motion was made by Brown, supported by Carabelli, to recommend that the Board of Commissioners approve the appointments of professional surveyors: Christopher Asiala, P.S. #49376, Mike DeDecker, P.S. #44282, Robert Drouillard, P.S. #52517, John Fenn, P.S. #23505, Huston Kennedy, P.S. #17623, Derek Kosicki, P.S. #43058, and Roger Stecker, P.S. #30103, as Peer Review Group members for the Macomb County Remonumentation Program; further, a copy of this Board of Commissioners’ action is directed to be delivered forthwith to the Office of the County Executive. **THE MOTION CARRIED.**

**A MOTION TO ADOPT THE COMMITTEE REPORT WAS MADE BY CHAIR TOCCO, SUPPORTED BY VICE-CHAIR FLYNN.**

## MACOMB COUNTY BOARD OF COMMISSIONERS

- |  |   |  |                           |                              |
|--|---|--|---------------------------|------------------------------|
| David J. Flynn – Board Chair<br>District 4 | Kathy Tocco – Vice Chair<br>District 11 | Mike Boyle – Sergeant-At-Arms<br>District 10 |                           |                              |
| Toni Mocerì – District 1                   | Marvin Sauger – District 2              | Veronica Klinefelt – District 3              | Robert Mijac - District 5 | James Carabelli – District 6 |
| Don Brown – District 7                     | Kathy Vosburg – District 8              | Fred Miller – District 9                     | Bob Smith – District 12   | Joe Sabatini – District 13   |



## MACOMB COUNTY, MICHIGAN

**Resolution Number:**

**Full Board Meeting Date:**

### RESOLUTION

**Resolution to:**

Approve the appointments of professional surveyors; Christopher Asiala, P.S. #49376, Mike DeDecker, P.S. #44282, Robert Drouillard, P.S. #52517, John Fenn, P.S. #23505, Huston Kennedy, P.S. #17623, Derek Kosicki, P.S. #43058 and Roger Stecker, P.S. #30103 as Peer Review Group members for the Macomb County Remonumentation Program.

**Introduced By:**

Commissioner Tocco, Government Operations committee chair

**Additional Background Information (If Needed):**

The Peer Review Group member appointments shall be done in accordance with Michigan Public Act 345 of 1990 as amended, Michigan Public Act 166 of 2014, MCL 54.269b requiring that Peer Review Group members be appointed by the County Board of Commissioners. Memorandum from the State of Michigan dated July 1, 2014 is attached.

The seven (7) professional surveyors were selected by Martin C. Dunn, P.S. #30081, Macomb County Surveyor Representative. Remonumentation experience letters are attached.

The members will review for approval, the research of public, private claim and property controlling corners in Macomb County. The corner research is provided by surveying companies contracted with Macomb County. The professional expertise of the Peer Review Group assists in the program's goal of restoring, recording and maintaining the monuments used to determine property line boundaries, road alignments, subdivision layouts, as well as, the location of commercial and industrial property.

There is no impact on the Macomb County General Fund. The Remonumentation Program is grant funded and is subsidized 100 percent by the State of Michigan, Office of Land Survey and Remonumentation. The appointments will be funded by the Remonumentation budget; 27023601-80198.

Committee

Meeting Date

Government Operations

08/11/2014

Full Board

8-20-14

Official Proclamation  
Of the Board of Commissioners  
Macomb County, Michigan

**A Proclamation Proclaiming September as National  
Recovery Month in Macomb County**

Commissioner Toni Mocerri, on Behalf of the Board of Commissioners,  
Offers the Following Proclamation:

**Whereas**, mental and substance use disorders affect all communities nationwide, but with commitment and support, people with these disorders can achieve healthy lifestyles and lead rewarding lives in recovery. In 2012, 2.5 million people aged 12 or older received specialty treatment for a substance use disorder and 34.1 million adults aged 18 or older received mental health services, according to the *2012 National Survey on Drug Use and Health*. Given the serious nature of this public health problem, we must continue to reach the millions more who need help. By seeking help, people who experience mental and/or substance use disorders can embark on a new path toward improved health and overall wellness; and

**Whereas**, National Recovery Month promotes the societal benefits of prevention, treatment and recovery for mental and substance use disorders. This year's theme is "Join the Voices for Recovery; Speak Up, Reach Out." The focus is to encourage people to openly speak up about mental and substance use disorders and the reality of recovery and to promote ways that individuals can recognize behavioral health issues and where to turn for help. Recovery Month spreads the positive message that behavioral health is essential to overall health, that prevention works, treatment is effective and people do recover; and

**Whereas**, this is a message which needs to be widely communicated. The impact of mental and substance use disorders is apparent in our local community, and an estimated thousands of people in Macomb County are affected by these conditions. Untreated behavioral health conditions have widespread, adverse effects. Similarly, substance use disorders contribute to costly social, physical, mental, and public health problems. Through Recovery Month, people become more aware and able to recognize the signs of mental and/or substance use disorders, which can lead more people into needed treatment. Managing the effects of these conditions can help people achieve healthy lifestyles, both physically and emotionally; and.

**Whereas**, now in its 25<sup>th</sup> year, Recovery Month has worked to improve the lives of those affected by mental and/or substance use disorders by raising awareness of these diseases and educating communities about the prevention, treatment, and recovery resources that are available. For the above reasons, we are asking the citizens of Macomb County to join us in celebrating September 2014 as National Recovery Month.

**Now, Therefore**, Be It Resolved By The Board Of Commissioners, Speaking For And On Behalf Of All County Citizens As Follows:

I

**That By These Presents**, the Macomb County Board of Commissioners publicly acknowledges and proclaims the month of September 2014 as **National Recovery Month In Macomb County**.

II

**Be It Further Resolved** that the Macomb County Board of Commissioners urges entities throughout the county, state and nation to observe this month by encouraging increased communication about behavioral health issues, highlighting recovery and treatment programs, and promoting activities in support of the pursuit of a healthy lifestyle.



Mark A. Hackel  
County Executive

Martha T. Berry  
Medical Care Facility

43533 Elizabeth Road ♦ Mount Clemens, Michigan 48043

Phone: 586-469-5265 Fax: 586-466-7418

www.macombcountymi.gov/marthatberry

July 26, 2013

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David Flynn, Chairman  
Macomb County Board of Commissioners  
One South Main 9<sup>th</sup> Floor  
Mt. Clemens, MI 48043

Governing Board  
Roger Facione  
Penny Hader  
Janice Nearon

Director/Administrator  
Jennifer Morgan

RE: Martha T. Berry Medicaid Cost Appeal

Dear Mr. Flynn,

As directed by the Human Services Board, I am writing this correspondence to update you and to request the Board of Commissioners' future assistance on a matter of mutual importance to the Commission and to the Human Services Board. On February 18, 2014, Brian Kaser, an attorney with the Firm of Rolf, Goffman, Martin, Lang LLP, filed an appeal in Macomb County Circuit Court on behalf of the Human Services Board and Martha T. Berry. The appeal stems from an issue relating back to 2003, when the County undertook a substantial remodeling of the Martha T. Berry (MTB) facility.

Under the current Medicaid program, MTB is reimbursed for its costs up to certain limits. Before starting the construction project, MTB was reimbursed by Medicaid up to a plant cost limit of \$5.41 per Medicaid day. Between 2005 and 2008, the additional plant assets as a result of the renovation should have resulted in a plant cost limit of \$12.06, with incremental increases thereafter as the renovations were accomplished and old structures demolished. However, the Michigan Department of Community Health (MDCH), which administers the State Medicaid program, has not recognized the increased plant costs beyond \$6.45 per day. This is because the County untimely filed with the State a single plant cost report associated with the remodeling of the facility back in 2003.

The total amount spent on the building was \$20 million. According to Plant & Moran, the Facility could expect to be reimbursed for about \$7 to \$10 million of this over the life of the building. As noted above, the Facility plant cost component is about \$6.00 a day lower than it would be if the HSB prevails on the appeal (MTB has roughly 65,000 Medicaid bed days per year).

MTB appealed the State's decision through the administrative procedures of the MDCH. A hearing was held before an administrative law judge (ALJ). THE ALJ RULED IN MTB'S FAVOR AND GRANTED THE APPEAL. The State appealed the ALJ's decision to the Department Director, James Haveman. On January 28, 2014, Director Haveman reversed the ALJ's Decision and attempted to send the issue back to a new ALJ for reconsideration. As provided for under the state Administrative Procedures Act, the next appeal is to Circuit Court, either in Ingham County, or the County where the Facility is located which is involved in the appeal. On February 18, 2014, the HSB, through its attorneys, filed an appeal in Macomb County Circuit Court.

On Monday, July 28, 2014 MTB received the written Decision of Judge Servitto. He upheld the ALJ's original findings in most respects, but remanded the case back to an ALJ to rule on limited issues related to Director Haveman's concerns. After the re-hearing, the ALJ and Mr. Haveman will again decide the issue. Because the ALJ who issued the previous decision has retired, a new ALJ will hear the remand. If Mr. Haveman follows his previous course, he will likely rule against MTB and we will be back in Macomb County Circuit Court.

I think the Commissioners would agree that this appeal should be given its best opportunity for success. The HSB believes that the likelihood of success would be improved if Corporation Counsel for the County filed an appearance and participated in the appeal on MTB's behalf. On February 16, 2014, our legal counsel from Clark Hill wrote Mr. Schapka and requested his assistance in the matter (copy attached). Neither Clark Hill nor Mr. Kaser was contacted by Mr. Schapka and he apparently declined to be involved to the matter. If it is a matter of cost, I should point out that MTB paid an allocation of \$53,920.00 for Corporation Counsel Services, according to the most recent Maximus report.

If this matter again ends up in Macomb Circuit Court, the Board would like to formally request that the Board of Commissioners request Corporation Counsel to file an appearance on behalf of MTB and work with Mr. Kaser to the extent Corporation Counsel and Mr. Kaser agree is necessary and appropriate. Thank you, and please advise if you have any questions or need additional information.

Sincerely,



Roger Facione, Chairperson  
Macomb County Human Services Board

Cc: Penny Hader, Vice Chairperson  
Macomb County Human Services Board

Janice Nearon, Member  
Macomb County Human Services Board

John Schapka,  
Corporation Counsel

Mark Hackel,  
Office of Macomb County Executive

Jennifer Morgan, Administrator  
Martha T. Berry Medical Care Facility

**Girard, Steven K.**

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**From:** Girard, Steven K.  
**Sent:** Sunday, February 16, 2014 4:41 PM  
**To:** john.schapka@macombgov.org  
**Subject:** FW: Martha T. Berry -Medicaid Appeal  
**Attachments:** MTB Final Order and Rec Decision - for Appeal Package.pdf

Good afternoon John,

Below is an e-mail I sent to George Brumbaugh in August, 2011. I indicated at that time I thought this would turn into a piece of litigation "in the near future." I was right about the litigation, but far off in my estimate of time.

Jennifer Morgan called me this week to advise me that she received an e-mail from Brian Kaser, the attorney handling the Medicaid appeal, that Jim Haveman, the Department Director, overturned the ALJ's decision (which had been in favor of the Facility). I spoke with Brian at length this week and he intends to file an appeal in Macomb County Circuit Court on Monday (under the APA, the appeal could be filed in Macomb County or Ingham County).

The genesis of the dispute involves the untimely filing with the State of a single plant cost report associated with the remodeling of the facility back in 2003. I spoke with Eric Conway today from Plante-Moran. He was working with the facility at the time and was a witness in the ALJ hearing on behalf of the facility. Eric said that the report was filed late because the county either refused or was unable to provide the cost information necessary for the facility to file the report timely. He himself said he was very frustrated at the time and tried unsuccessfully to pry the information from the county.

The total amount spent on the building was \$20 million. In reality, the Facility could expect to be reimbursed for about \$7 to \$10 million of this over the life of the building. They are already being reimbursed for some of the costs, but their plant cost component is about \$6.00 a day lower than it would be if the facility prevails on the appeal (MTB has roughly 65,000 Medicaid bed days per year). There would still be some questions about whether the remedy would be applied retroactively or prospectively and for what time periods.

I think you would agree this appeal should be given its best opportunity for success. Roger Facione, the Human Services Board Chair, would welcome your office making an appearance on behalf of the County. Since the County owns the building, it would seem your office would have enough dog in the hunt to justify your office's assistance. My concern is that while Brian Kaser is very knowledgeable on the substance of the law, he does not have the political savvy or knowledge of the Macomb County judges and courts. Certainly you or Jill could help in that regard.

Could you review this matter please and feel free to call me or Brian Kaser directly with any questions.

I asked Brian Kaser to e-mail me a copy of Jim Haveman's decision. It is attached. Thank you. Steve

Brian's contact information is as follows:

Rolf Goffman Martin Lang LLP  
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