

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

VINCENT MORRIS, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	No. 1:20-cv-00034-DRL-SLC
)	
SHERIFF OF ALLEN COUNTY, <i>et al.</i> ,)	
)	
Defendants.)	

NOTICE OF DEFENDANTS’ SUBMISSION IN RESPONSE TO ORDER

Defendants, Sheriff of Allen County and Allen County,¹ all by counsel, in compliance with the March 31, 2022 Opinion and Order on the Plaintiffs’ Motion for Summary Judgment (Doc 60), provide the following:

1. The Court ordered that the Defendants file a plan within 45 days of the date of the Order addressing the long-term solution and short-term steps to address the Constitutional deficiencies, as found and noted in the Order in the Allen County Jail (hereinafter the “Constitutional Deficiencies”).
2. The Defendants, the Board of Commissioners of the County of Allen and the Sheriff of Allen County, in their statutory roles, and in conjunction with other state and local office holders serving Allen County, have developed a tentative plan to address the issues raised in the Order. The proposals and parts of the long-term solution or the short-term steps contained herein continue to be subject to modification by new office holders and based on ongoing developments that may or may not be contemplated by the Defendants and

¹ The party name recognized by the Court is Allen County. As also recognized by the Court in prior pleadings and Orders, the Board of Commissioners of the County of Allen is acting as the county executive.

state and local officers. These developments include the recent passage of legislation by the Indiana General Assembly that will allow state court judges, for offenses including probation violations occurring after July 1, 2022, to sentence Class 6 Felons to the custody of the Indiana Department of Corrections and incarceration at state facilities instead of county jails.

I. Long Term Solution

3. The Defendants have concluded that new construction appears to be necessary to address the Constitutional Deficiencies. However, the scope of the construction has not yet been determined. At the current time, there are two potential proposals, both of which involve some new construction: (a) an entirely new jail for all incarcerated prisoners, with up to 1,500 beds; or (b) new construction for certain classifications of prisoners while maintaining some or all of the existing facility for other classifications, amounting to up to 1,500 beds in both facilities collectively.
4. Data and projections reviewed by Defendants suggest that up to 1,500 beds may be necessary based on expected countywide population growth. However, County trends and community concerns reveal a need to address mental health and chemical dependency/addiction issues facing the community and incarcerated individuals, which may alter both the number of jail beds necessary and the scope of any new construction. As a result, a potentially more realistic number of jail beds may be between 1,100 to 1,200 beds, while the total number of beds available for housing remains at 1,500 beds.
5. The Defendants have already taken steps in regard to financing and designing any new facility. Those steps include: (a) since October of 2021, the Commissioners have been working with an Owner's Representative, Construction Control, Inc., to assist them with all aspects of the construction; (b) on April 1, 2022, the Commissioners approved

- reimbursement of preliminary construction and related costs from future bond issuance proceeds for the construction of a new facility; and (c) the Commissioners agreed to soil boring tests on property currently owned by the Commissioners for suitability for construction.
6. The acquisition of land may be necessary or more advantageous for any construction. Any location would need to include a minimum of 60-70 acres of suitable land to allow for possible later expansion. The land would be subject to appropriate and typical commercial conditions, including but not limited to, zoning restrictions and approvals of any variance, grade and soil conditions to support construction, public transportation access, utility access and similar conditions. The Commissioners have investigated, and continue to investigate, the suitability of property currently owned by the Commissioners, the purchase of property owned by other political subdivisions, and property currently owned by non-public entities.
 7. At this time, the proposed and the anticipated benchmarks for the acquisition include: (a) entering into an agreement to purchase real estate within ninety (90) days; and (b) completing the standard commercial due diligence during a period of up to one hundred (180) days as part of the agreement, to confirm that any property is appropriate or suitable for the intended purpose.
 8. The acquisition of any property will be subject to certain requirements, including, but not limited to the following: (a) non-flood plain or floodway designations, and free of any required approval for construction from the Army Corp. of Engineers and Indiana Department of Natural Resources; (b) approval from zoning and planning authorities; (c) appropriate Phase I Environmental review and soil testing for bearing capacity, and if necessary a Phase II Environmental review; (d) an accurate and appropriate survey; (e) if

- private property is acquired, other site appraisals to conform with Indiana law; and (f) approval of the site and appropriations to fund the purchase from Allen County Council.
9. Concurrently with the process for acquisition and construction, the Commissioners have taken the following steps toward the new construction: (a) issued a Request for Qualifications for professional Architectural and Engineering services, which were originally due and received on or before April 19, 2022; (b) issued a Request for Fees for Architectural and Engineering services to those responding firms which are due on or before May 16, 2022; (c) issued a Request for Qualifications for Bond Counsel, which are also due on or about May 16, 2022; (d) held a Section 1263 hearing which is the first step in financing process; and (e) held sessions with County Council to discuss income tax implementation to fund project.
 10. The Court's order also asked for additional deadlines including: (a) the approval of final architectural and engineering documents, (b) the initiation of construction of the new facility; and (c) the completion of construction of the new facility or the completion of the renovation of the existing facility if the latter option is chosen. These deadlines are contingent upon the completion of tasks set forth in prior paragraphs. Subject to these contingencies, the Commissioners estimate the following date ranges for completion of certain benchmarks categories based on the proposals currently provided:
 - Schematic Design: up to September 2022;
 - Design Development: up to June 2023;
 - Construction Documents: up to August 2023;
 - Bidding of and Funding of Construction: up to December 2023;
 - Construction: up to June 2026.

11. The Defendants anticipate seeking a staffing survey to determine the proper staffing levels for the new facility and, if still in operation, the existing facility. This survey shall be done by a person or persons with the necessary expertise who uses acceptable correctional standards in his or her analysis. It shall be done at the earliest appropriate opportunity prior to the opening of the new or expanded facility. The Defendants shall file any survey with the Court with service to Plaintiffs' counsel within 14 days of its completion. Within 60 days of its completion the Defendants shall file a report with the Court outlining, in as much detail as possible, all steps that they plan to take to ensure that the staffing levels are met or why such efforts will not be made.
12. A new jail will not house any detainees until such time as an Indiana State Jail Inspector tours the construction and approves the facility's readiness for occupancy.
13. Based on current conditions, the long-term solution will necessarily involve construction as discussed above, and therefore no alternative plan to address the Constitutional Deficiencies is being proposed.

II. Short Term Steps

14. The following include some or all of the interim or short-term steps that the Defendants plan to take to address, to the greatest extent possible, the Constitutional Deficiencies noted above in the Allen County Jail pending the accomplishment of the long-term solution.
15. The Commissioners have taken two formal steps to provide alternatives to the Sheriff to remove or transport detainees from the Jail.
 - a. After prior attempts to terminate or to limit the number of federal prisoners being housed at the Jail, the Commissioners formally terminated the agreement with the

United States Marshals Service on April 29, 2022 effective June 15, 2022.²

- b. The Commissioners entered into an agreement with LaGrange County to house up to fifty (50) detainees.³
 - c. The Commissioners reached out to offices in Noble County to confirm interest in accepting overflow inmates from the Jail.
16. The Commissioners have requested that the Sheriff commence compliance with I.C. 36-2-13-12 and report the Jail population as described therein to all judges of the 38th Judicial District with criminal jurisdiction and to the Board of Commissioners. The prosecutorial charging and plea negotiation practices and the judicial sentencing policies and practices of the 38th Judicial District have a direct impact on the jail population of the Allen County Jail. Cooperation and the proper exercise of prosecutorial and judicial discretion by the Prosecutor for the 38th Judicial District and all judges of the 38th Judicial District with criminal jurisdiction will be important to achieving the proposed plan as described herein.
17. In an effort to maintain the existing Jail's population below 731, the Sheriff will, as necessary and acceptable to other County authorities, house detainees in alternate facilities, including but not limited to, transferring detainees to LaGrange County, Noble County, or other out-of-county facilities, pursuant to I.C. 35-33-11-3. This paragraph shall not require the Sheriff to disregard or violate orders issued by the judges of the 38th Judicial District.
18. When the population of the existing Jail reaches 731, the Sheriff or his designee shall have 24 hours to notify the following persons of that fact: (a) all judges of the 38th Judicial District with criminal jurisdiction; (b) the Prosecutor for the 38th Judicial District; (c) the

² See Letter

³ See Agreement

- president of the Board of Commissioners; (d) the president of the Allen County Council; and (e) class counsel. The parties agree that said notice may be provided electronically, such as by E-mail.
19. Together with the notice to the judges referenced in paragraph 18 above, the Sheriff or his designee shall also ask the judges to release a sufficient number of detainees to reduce the Jail's population to 731 or less, subject to attempts to transfer to other facilities. The parties understand that that the decision to release any detainee is solely within the discretion of the judiciary.
 20. The Sheriff will provide each prisoner the opportunity for at least 3 hours a week of recreation outside of their cell blocks as provided for in the Order. The Allen County Sheriff's Department is in the process of clearing out a space in the Allen County Jail that previously served as an indoor recreation area to allow the Department to utilize two separate spaces simultaneously to provide inmates with three hours of recreation opportunity outside of their cellblock per week.
 21. The indoor space in the process of being renovated has been used for inmate property overflow as well as storage, and is being restored to its original, designed use, and the space should be available for inmate recreation by June 1, 2022.
 22. As of April 30, 2022, the Allen County Sheriff's Department has one hundred forty-four (144) positions approved and funded by Allen County Council, with one hundred twenty-three (123) positions filled. The Allen County Sheriff's Department has experienced difficulty hiring additional staff in the current environment comparable to other private and public employers in northeast Indiana. The Department continues to take steps to actively recruit candidates for employment through local job fairs, community events and

local advertising as more fully discussed in the attached Department Recruiting Plan.⁴

23. The Sheriff has indicated that the number of persons currently employed to staff the Allen County Jail, one hundred twenty-three (123) is sufficient to provide appropriate recreational opportunities and effective supervision of inmates discussed above. As the Department fills the remaining twenty-one (21) positions funded by the Allen County Council, the Department will provide enhanced monitoring and supervision of inmates by staffing each jail block continuously.

Respectfully submitted,

BEERS MALLERS, LLP

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⁴ See Department Recruitment Plan

CERTIFICATE OF SERVICE

I hereby certify that on the May 16, 2022, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's CM/ECF system.

Kenneth Falk
Samuel L. Bolinger

/s/ Theodore T. Storer

Theodore T. Storer