

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

KELLY SHAW, BRAD ROSS, SHIRLEY  
CLARK, STEPHANIE ERICKSON,  
STEVE ARMSTRONG, CHRISTINA  
BEACH, ERICA SUPINGER, AND  
DEBRA WHITE,

Petitioners,

v.

IOWA STATE APPEAL BOARD,  
Respondent.

No. \_\_\_\_\_

ORIGINAL NOTICE

TO THE ABOVE-NAMED DEFENDANT:

You are notified that a petition has been filed in the office of the clerk of this court naming you as the defendant in this action. A copy of the petition (and any documents filed with it) is attached to this notice. The attorney for the plaintiff is ALAN R. OSTERGREN, whose address is 500 Locust Street, Suite 199, Des Moines, Iowa 50309. That attorney's telephone number is (515) 207-0134.

You must serve a motion or answer within 20 days after service of this original notice upon you and, within a reasonable time thereafter, file your motion or answer with the Clerk of Court for Polk County, at the county courthouse in Des Moines, Iowa. If you do not, judgment by default may be rendered against you for the relief demanded in the petition.

Note: This case has been filed electronically. You should refer to Chapter 16 of the Iowa Court Rules for general rules and information of electronic filing and to Division VI of Chapter 16 for the rules regarding the protection of personal or confidential information in court filings.

If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at (515) 286-3394. (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942).

IMPORTANT

YOU ARE ADVISED TO SEEK LEGAL ADVICE AT ONCE  
TO PROTECT YOUR INTERESTS

**Iowa Judicial Branch**

Case No. **CVCV062042**  
County **Polk**

Case Title **KELLY SHAW ET AL VS IOWA STATE APPEAL BOARD**

You must file your Appearance and Answer on the Iowa Judicial Branch eFile System, unless the attached Petition and Original Notice contains a hearing date for your appearance, or unless the court has excused you from filing electronically (see Iowa Court Rule 16.302).

Register for the eFile System at [www.iowacourts.state.ia.us/Efile](http://www.iowacourts.state.ia.us/Efile) to file and view documents in your case and to receive notices from the court.

For general rules and information on electronic filing, refer to the Iowa Rules of Electronic Procedure in chapter 16 of the Iowa Court Rules at [www.legis.iowa.gov/docs/ACO/CourtRulesChapter/16.pdf](http://www.legis.iowa.gov/docs/ACO/CourtRulesChapter/16.pdf).

Court filings are public documents and may contain personal information that should always be kept confidential. For the rules on protecting personal information, refer to Division VI of chapter 16 of the Iowa Court Rules and to the Iowa Judicial Branch website at [www.iowacourts.gov/for-the-public/representing-yourself/protect-personal-information/](http://www.iowacourts.gov/for-the-public/representing-yourself/protect-personal-information/).

*Scheduled Hearing:*

If you need assistance to participate in court due to a disability, call the disability access coordinator at **(515) 286-3394** . Persons who are hearing or speech impaired may call Relay Iowa TTY (1-800-735-2942). For more information, see [www.iowacourts.gov/for-the-public/ada/](http://www.iowacourts.gov/for-the-public/ada/). **Disability access coordinators cannot provide legal advice.**

Date Issued **06/22/2021 01:47:18 PM**



District Clerk of Polk  
Is/ Jennifer Ewers

County

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

KELLY SHAW, BRAD ROSS, SHIRLEY CLARK, STEPHANIE ERICKSON, STEVE ARMSTRONG, CHRISTINA BEACH, ERICA SUPINGER, AND DEBRA WHITE,

Petitioners,

v.

IOWA STATE APPEAL BOARD,  
Respondent.

No. \_\_\_\_\_

PETITION FOR JUDICIAL REVIEW OF AGENCY ACTION

**Parties, Jurisdiction, and Venue**

1. Petitioners Kelly Shaw, Brad Ross, Shirley Clark, Stephanie Erickson, Steve Armstrong, Christina Beach, Erica Supinger, and Debra White are residents of the City of Indianola, Iowa.

2. Respondent Iowa State Appeal Board (Board) is a board created by Iowa Code § 24.26. Its members are the director of the Iowa Department of Management, the Treasurer of Iowa and the State Auditor of Iowa. The Board is an agency for purposes of the Iowa Administrative Procedure Act. Iowa Code § 17A.2(1). One of the Board's powers is to review protests to "any proposed budget, expenditure or tax levy, or by any item thereof" for a city, county, or school district. Iowa Code § 24.27(1).

3. The district court has the jurisdiction to review actions by agencies as set forth in the Iowa APA. Iowa Code § 17A.19.

4. Venue in an action for judicial review is always proper in the Iowa District Court for Polk County. Iowa Code § 17A.19(2).

### **Administrative Proceedings Before the Board**

5. Petitioners, and approximately 225 other residents of Indianola, filed a protest of an expenditure of the City of Indianola under the provisions of Iowa Code § 24.27.

6. The protest generally alleged that the expenditure in question was illegal because it called for the expenditure of approximately \$2 million in local option sales tax proceeds for a purpose other than what was authorized by voters when they approved the local option sales tax referendum. The protest sought intervention from the Board to prevent the unlawful expenditure of the sales tax proceeds.

7. The protest was filed within 10 days of the expenditure decision by the City of Indianola.

8. The protest was made by more than the required number of Indianola residents.

9. The protest documents were properly lodged with the Warren County Auditor.

10. The Warren County Auditor transmitted the protest documents to the Board as required by law.

11. Iowa Code § 24.28 requires that the Board “within a reasonable time, shall fix a date for an initial hearing on the protest and may designate a deputy to hold the hearing, which shall be held in the county or in one of the counties in which the municipality is located.”

12. The Board is also required to give notice of the time and place of the hearing “to the first ten property owners whose names appear upon the protest, at least five days before the date fixed for the hearing.” Iowa Code § 24.28.

13. The Board did not fix a date for an initial hearing. Because it did not comply with this duty it did not comply with its duty to designate a deputy to hold the hearing nor did it provide notice as specified by statute.

14. Instead, the Board considered the protest at its meeting scheduled for June 7, 2021.

15. The only notice of the June 7, 2021, meeting was the agenda posted on the Board’s website approximately one week before the meeting.

16. At the June 7, 2021, meeting the Board voted 3-0 to dismiss the petition as untimely filed.

17. The basis for the Board’s decision was set forth in a written order. The order states that the petition was untimely because it was not filed within 10 days after

the last date for a budget to be certified by the city, or March 31, 2021. A true copy of the Board's order from which judicial review is sought is attached to this petition.

### **Grounds for Relief in Judicial Review**

18. The Board's decision to find the protest untimely was based upon erroneous, irrational, illogical, and wholly unjustifiable interpretation of a provision of law. Iowa Code § 24.26 authorizes the Board to consider challenges to "any proposed budget, **expenditure** or tax levy, **or by any item thereof...**" (emphasis added). The Board's order ignored the language following the word "budget" in this statute. The protest was to an expenditure of the city and an "item" of that expenditure. The Board's order improperly narrowed its jurisdiction and thereby deprived the petitioners of their right to a hearing before the Board.

19. The Board's order was based on a determination of fact that was not supported by substantial evidence in the record when viewed as a whole. The certified budget of the City of Indianola for the fiscal year beginning July 1, 2021, contains no budgeted amount for the project challenged by the petition. Petitioners could not have timely challenged a budget that did not contemplate the project that will illegally use the local option sales tax proceeds.

20. The Board failed to follow its own rules for the consideration of the protest:

- A. The Board's rules do not contemplate the Board passing on the sufficiency of the petition before a hearing and factfinding process. In fact, the rules contemplate that procedural questions will be considered at a hearing, not a Board meeting. I.A.C. 543—5.7(11) (“At the outset of each hearing, the presiding appeal board officer shall indicate disposition of rulings on procedural questions and outline ground rules and time limitations to seek to give equal opportunity to both parties...”)
- B. The rules further contemplate an informal process for consideration of the protest where the protestors are not limited to the general statement on the notice of protest. The Board, by denying a hearing, did not permit the protestors to engage in this process to determine the merits of the matter. I.A.C. 543—5.5(11)(c).
- C. The Board did not give the protestors an opportunity to be heard before dismissal of their petition. I.A.C. 543—5.7(3).
- D. The Board did not permit the petitioners to appear by counsel. I.A.C. 543—5.7(6).
- E. The Board did not “listen to testimony and arguments from all concerned, take the matters under advisement, and make a decision setting out the findings of fact and conclusions of law on which the decision is based.” I.A.C. 543—5.7(13).

- F. The Board did not permit the protestors to file a written brief at the conclusion of arguments at the hearing. I.A.C. 543—5.7(20).

**Relief Sought in Judicial Review**

21. Petitioners request the court order the Board to conduct a hearing of their protest as required by Iowa Code §§ 24.27 and .28 and the rules of the Board.

/s/ Alan R. Ostergren

**Alan R. Ostergren**

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**STATE APPEAL BOARD**

<b>In Re:</b>	<b>City of Indianola</b>	)	<b>Report and</b>
	<b>Petition to Appeal</b>	)	<b>Recommendation</b>
	<b>Streetscape Project</b>	)	<b>June 7, 2021</b>

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A petition from the citizens of the City of Indianola protesting the use of Local Option State Sales Tax (LOSST) for a streetscape project was submitted to the Warren County Auditor on April 27, 2021. The petition was received by the State Appeal Board from the Warren County Auditor on May 3, 2021. The petitioners' objections and their reasons listed on the petition document are summarized as follows:

Objection #1 – The City Council of Indianola approved funding part of the City Square Reconstruction Project with Local Option State Sales Tax (LOSST) revenues. The voter-approved allowable purposes only allow the LOSST revenues to be spent on construction and/or rehabilitation of public safety facilities, public works, and street maintenance. The City Square Reconstruction Project is not allowable under those categories.

Objection #2 – The use of LOSST for the City Square Reconstruction Project diverts funding from an ongoing wastewater treatment facility improperly.

**FINDINGS OF FACT**

The FY2021/2022 Indianola city budget was approved on March 15, 2021, and was submitted to Warren County prior to the March 31st deadline. For protesting an original budget submitted by the March 31st deadline, this would mean that a city budget protest petition must be received by April 10th. The petition submission date of April 27th falls outside of the April 10th deadline to protest the FY 2021/2022 city budget. City budget amendments are also subject to protest, but the petition does not cite any amendment to be protested. It can be assumed that they are not objecting to a specific budget amendment. Also, the City of Indianola completed four amendments to the FY 2020/2021 city budget, but none of these amendments would have been available for protest on April 27th. City budget amendments were completed on 07/06/2020, 11/16/2020, 02/16/2021, and 05/17/2021. The first three amendments would have been past their 10 day protest periods, and the fourth amendment would not have yet been published at the time of the petition signing. The notice of public hearing for the fourth amendment was published on April 28<sup>th</sup>.

The petition did not reference a specific budget or amendment to be protested, but instead referenced an April 19th action by the City Council approving use of Local Option State Sales Tax (LOSST) revenues to fund a city square streetscape project. The use of LOSST as a funding source for this type of project is governed by the allowable purpose statement approved by vote of the citizens when the LOSST referendum was approved. The petition did not state an objection to the project expenditure, but only the source of payment.

The City appears to have completed a valid bid letting and approval process. The City requested bids on March 23rd, with bid opening to occur on April 14th. A public hearing was held on April

19th, at which arguments for and against the project and bid were heard. The bid was approved unanimously by the Indianola City Council after the hearing on April 19th.

**RECOMMENDATION**

**Dismiss the Petition as untimely.** Iowa Code Chapter 384.19 governs protests related to City budgets and provides that written protests may be filed within a period of 10 days after the last day a budget or amended budget may be certified – in this case March 31. As noted above, the Indianola Petition was filed with the County Auditor on April 27<sup>th</sup> seventeen days after the statutory deadline of April. The role of the State Appeal Board in reviewing city budgets is set forth in Iowa Code Chapters 384.19(3)(the SAB shall proceed to consider the protest in accordance with the provisions of Chapter 24), 24.27 (no later than April 10 persons affected by any proposed budget, expenditure, or tax levy in a city budget may appeal by filing a written protest) and 24.30 (the SAB shall review and finally pass upon all proposed budget expenditures, tax levies and tax assessments from which appeal is taken). The State Appeal Board has no power to review and finally pass upon a proposed expenditure in the City of Indianola’s budget absent a timely filed appeal of a proposed budget or amended budget. Thus, the Petition should be dismissed.

**ORDER**

Recommendation adopted.

**STATE APPEAL BOARD**

APPROVED VIA PHONE  
Michael L. Fitzgerald  
Chairperson *ON RECORD*

APPROVED VIA PHONE  
Rob Sand  
Vice Chairperson *ON RECORD*

Michael Boussetot  
Michael Boussetot  
Member

7 JUNE 2021  
Date