

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 SECOND SUPPLEMENTAL SUBMISSION IN RESPONSE TO ORDER**

Defendant, Allen County,<sup>1</sup> by counsel, provides the following supplemental report.

**Procedural Status**

This Court issued an Opinion and Order on the Plaintiffs' Motion for Summary Judgment order on March 31, 2022 (Doc 60). On May 16, 2022, the Defendants provided their Report Notice of Defendants' Submission in Response to Order (Doc 62). Counsel for the parties appeared at a Status Conference on June 16, 2022. On July 14, 2022, the Sheriff of Allen County and Allen County filed additional submissions (Docs 74 and 75). Counsel for the parties appeared at a Status Conference on August 25, 2022. To comply with the Court's directive at the hearing on August 25, 2022, and the entry on August 25, 2022 (Doc 80), Allen County provides the following statement. To the extent that any issues of concern to the Court are not addressed in this Report but were provided in either Document 62 or Document 75, Allen County relies on those statements by reference.

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<sup>1</sup> 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.

1. The Court ordered that the Defendants file a plan 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”).

Excerpted directly from the Order (Doc 60), the Court identified the following:

- a. If the proposed long-term solution will involve construction of a new or expanded Allen County Jail, the plan must specify:
  - i. the general construction plan—*i.e.*, whether jail expansion or the construction of a new facility is contemplated;
  - ii. the anticipated benchmarks for expansion or construction leading up to the completion and occupancy dates. As appropriate, these benchmarks must include, without limitation, when the following events have occurred or will be occurring:

execution of a purchase agreement for the property on which the jail will be located, if a new facility will be constructed;

approval from zoning and planning authorities;

hiring of an architect and construction manager;

approval of final architectural and engineering documents;

initiation of construction of the new facility, or the beginning of the renovation of the existing facility if the latter option is chosen;

completion of construction of the new facility, or completion of the renovation of the existing facility if the latter option is chosen.
  - iii. the prisoner occupancy of the new facility or of the renovation of the existing facility.

Doc 60, pages 29-30. The Defendant, Allen County, will address each in turn.

2. “[T]he general construction plan—*i.e.*, whether jail expansion or the construction of a new facility is contemplated”

Construction of a new facility is contemplated for a new facility with approximately 1,100 beds.

3. “[W]hen the following events have occurred or will be occurring: execution of a purchase agreement for the property on which the jail will be located, if a new facility will be constructed”

After extended discussion about utilizing existing property owned by Allen County and investigating other suitable property to acquire for the proposed use as a jail location, Allen County has decided and announced that its preferred property is located at 2911 Meyer Road, Fort Wayne, Allen County, Indiana (hereinafter the “Property”). The Board of Commissioners has instructed counsel to negotiate a contract for the acquisition of this Property and said negotiations have begun.

4. “[W]hen the following events have occurred or will be occurring: approval from zoning and planning authorities”

The Property for the proposed site is located within the City of Fort Wayne. As such, Allen County must apply for approval from the Fort Wayne Board of Zoning Appeals (“FWBZA”) for a “contingent use” of the Property in order to build a jail facility on it. Per the existing calendar for the FWBZA, applications for contingent use are due on December 6, 2022, for the anticipated January 2023 hearing date. Meetings with the architects and engineers have taken place for the site design, although additional work may be required before the hearing with the FWBZA. Allen County is working with planning and zoning counsel and Elevatus Architecture to complete the required application and prepare for the FWBZA hearing. In the event that the FWBZA does approve the application for contingent

use, which is uncertain, it is likely that the approval will occur at or shortly after the January 2023 hearing date.

5. [W]hen the following events have occurred or will be occurring: hiring of an architect and construction manager”

- Allen County previously hired an Owner’s Representative, Construction Control, Inc., to assist with all aspects of the construction. Allen County has hired an additional Owner’s Representative, Witwer Construction, Inc., to assist with all aspects of the construction.
- Allen County hired Elevatus Architecture as the architect.
- After thoroughly researching available options, Allen County anticipates hiring a construction manager as a constructor (CMc). This is taking place in conjunction with the Design and Development phase in the following paragraph, and Allen County initiated the statutory process to do so.

6. [W]hen the following events have occurred or will be occurring: approval of final architectural and engineering documents;

Utilizing benchmarks provided in the bidding documents and information from Elevatus Architecture, Allen County understands the following calendar benchmarks for the presentation of and approval of architectural and engineering documents:

Programming/Concept	– September 30, 2022;
Schematic Design	– December 31, 2022;
Design Development	– April 30, 2023;
Construction Documents	– September 30, 2023.

7. [W]hen the following events have occurred or will be occurring: initiation of

construction of the new facility;

Utilizing benchmarks provided in the bidding documents and information from Elevatus Architecture, Allen County understands the following calendar benchmarks for the bidding and the initiation of construction are:

Bidding	– November 30, 2023
Construction Initiation	– April (Spring) 2024

8. [W]hen the following events have occurred or will be occurring: completion of construction of the new facility.

Utilizing benchmarks provided in the bidding documents and information from Elevatus Architecture, Allen County understands that construction will likely take 30-36 months:

Completion of Construction – April (Spring) 2027

9. The benchmarks set forth herein, and paragraphs 6-8 specifically, are contingent upon obtaining appropriate funding and appropriations for the costs of construction. The Defendants have already taken steps in regard to financing, which were detailed in prior reports, including a request to Allen County Council to implement appropriate taxation options. Bond Counsel, Barnes and Thornburg, has been selected as reported at the August 25, 2022, status conference. Discussions on funding, tax implementation, tax levies, bonding, and any potential public voting or referenda on the same continue, and the Board of Commissioners commits to taking all actions in its power to ensure that adequate funding is obtained.

10. Allen County anticipates that the proper offices will seek a staffing survey to determine the proper staffing levels for the new 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. The survey shall be performed at the earliest appropriate opportunity prior to the opening of the new facility.
11. Any new jail will not house any detainees until such time as an Indiana State Jail Commander tours the construction and approves the facility's readiness for occupancy.

Wherefore, Allen County respectfully requests that the Court review the prior Response (Doc 62), the Supplemental Notice (Doc 75), and approve them as being compliant with the Court's Order (Doc 60), and that the Court approves the same including the construction of a new jail to remedy the unconstitutional conditions as found in the Order and to provide acceptable conditions moving forward, and for all other appropriate relief.

Respectfully submitted,

**BEERS MALLERS, LLP**

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*Attorneys for Defendant, Board of  
Commissioners of the County of Allen,  
incorrectly named as Allen County*

**CERTIFICATE OF SERVICE**

I hereby certify that on the November 30, 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

J. Spencer Feighner  
John O. Feighner

Diana Bauer

*/s/ Theodore T. Storer*

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Theodore T. Storer