

CLAY COUNTY BOARD OF COMMISSIONERS

Thursday, December 27, 2012

8:30 a.m.

County Board Room – 3rd Floor – Courthouse

M I N U T E S

The Clay County Board of Commissioners met in regular session with all Commissioners present: Campbell, Evert, Ingersoll, Waller and Weyland. County Administrator Brian C. Berg, Chief Assistant County Attorney Jenny Samarzja, and Senior Administrative Assistant Vicki Reek were also present.

APPROVAL OF AGENDA

On motion by Evert, seconded by Campbell, and unanimously carried, the agenda was approved with the addition of approval to replace a Financial Worker in Social Services due to resignation.

APPROVAL OF OFFICE SPACE LEASE FOR PRODUCTIVE ALTERNATIVES

By consent agenda, the Board approved renewal of a lease in the Family Service Center for Productive Alternatives, 2328 sq.ft., 1/1/13-12/31/14, \$12.25 sq.ft.

APPROVAL OF 2013 CONTRACTS/AGREEMENTS FOR HOME & COMMUNITY BASED SERVICE PROVIDERS

By consent agenda, the Board approved the 2013 contracts and agreements for Home & Community Based service providers, as included in Attachment "A".

APPROVAL TO RENEW A'VIANDS FOOD CONTRACT FOR JAIL, DETOX AND JUVENILE CENTER FOR 2013

By consent agenda, the Board approved an amendment to the contract with A'viands for food service for the Jail, Detox and Juvenile Detention for 2013 at a rate of \$2.084/meal.

APPROVAL OF INTERFUND TRANSFERS

By consent agenda, the Board approved an interfund transfer of up to \$250,000 from the Revenue Fund to the Family Service Center Fund, and \$22,000 to the County Projects Debt Retirement Fund.

CITIZENS TO BE HEARD

There were no citizens present who wished to address the Board.

PUBLIC HEARING REGARDING:

ENACTING AN ORDINANCE REPEALING AND READOPTING CERTAIN SECTIONS WITHIN TITLE 8 PERTAINING TO DEVELOPMENT CODE CHAPTERS 1, 3, 5, 7, AND 8; AND FURTHER ESTABLISHING ACCESS CONTROL/MANAGEMENT PROVISIONS WITHIN CHAPTER 3, SECTION 8.3.6

On motion by Ingersoll, seconded by Evert, and unanimously carried, the Board opened the Public Hearing to consider Enacting an Ordinance Repealing and Readopting certain sections within Title 8 pertaining to Development Code Chapters 1, 3, 5, 7, and 8; and Further establishing Access Control/Management provisions within Chapter 3, Section 8.3.6 (Ordinance 2012-4).

Planning and Environmental Programs Director Tim Magnusson, County Engineer David Overbo, and Joe Nigg, FM Council of Governments, were present to explain the request to enact an ordinance setting forth an access (driveway) permitting process and establish standards to minimize and control the number of conflict points on roadways with the intent of preserving the functional integrity of the facility. Background material for this proposed request is included in Attachment "B". Prior to the meeting, all local jurisdictions were notified of the proposed ordinances which are to be considered by the County Board.

There were no comments from the audience for or against the proposed ordinance.

On motion by Campbell, seconded by Waller, and unanimously carried, the Public Hearing was closed.

On motion by Evert, seconded by Ingersoll and unanimously carried, the Board adopted Ordinance No. 2012-4 as included in Attachment "C".

PUBLIC HEARING:

ENACTING AN ORDINANCE ADOPTING AN UPDATED EXISTING FUNCTIONAL CLASSIFICATION NETWORK TO THE CLAY COUNTY COMPREHENSIVE PLAN TO COORDINATE WITH ACCESS CONTROL AND ACCESS MANAGEMENT STANDARDS

On motion by Waller, seconded by Evert, and unanimously carried, the Board opened the Public Hearing to consider enacting an ordinance adopting an updated Existing Functional Classification Network to the Clay County Comprehensive Plan to coordinate with access (driveway) control and access management standards. Planning and Environmental Programs Director Tim Magnusson, County Engineer David Overbo, and Joe Nigg, FM Council of Governments, were present to explain the request and displayed a map depicting the updated Functional Classification Network. There were no comments from the audience for or against the proposed ordinance.

On motion by Ingersoll, seconded by Campbell, and unanimously carried, the Public Hearing was closed.

On motion by Waller seconded by Campbell and unanimously carried, the Board adopted Ordinance No. 2012-5 as included in Attachment "D".

AMEND CLAY COUNTY DRIVEWAY PERMIT TO BE NAMED 'CLAY COUNTY ACCESS PERMIT'

On motion by Evert, seconded by Waller, and unanimously carried, the Board approved an amended permit form and specifications as it relates to driveway installations, and renamed the permit "Clay County Access Permit".

2013 SOCIAL SERVICES STAFF REQUESTS

Social Services Director Rhonda Porter reminded the Board of the need for new staff in Social Services, said positions having been included in the 2013 Social Services budget request: Office Support Specialist, Income Maintenance Supervisor, and Social Worker.

On motion by Ingersoll, seconded by Waller, and unanimously carried, the Board approved filling the above mentioned positions as described by Ms. Porter and included in the New Requests in the 2013 budget. On motion by Campbell, seconded by Evert, and unanimously carried, the Board approved backfilling the above mentioned positions if they are filled from within the department.

APPROVAL TO FILL FINANCIAL WORKER POSITION

On motion by Evert, seconded by Campbell, and unanimously carried, the Board approved filling a Financial Worker position which is vacant due to resignation, and to backfill the position if internal movement occurs.

APPROVAL OF BILLS AND VOUCHERS

On motion by Ingersoll, seconded by Waller and unanimously carried, the bills and vouchers were approved for payment.

COMMISSIONER WALLER'S LAST MEETING

The Board thanked Commissioner Waller for his 16 years of dedicated service to Clay County.

COMMITTEE REPORTS/COUNTY ADMINISTRATOR UPDATE

Commissioner Waller attended meetings of the Extension Committee and Economic Development Committee.

Commissioner Ingersoll attended meetings of the Children's Mental Health and Lake Agassiz Regional Library.

Commissioner Campbell attended the County Economic Development Committee meeting.

Commissioner Evert attended the Family Economic Success event at West Central Initiative, the Historical and Cultural Society meeting, and a meeting of the Red River Basin Commission.

Commissioner Weyland attended the Greater FM Economic Development Corporation meeting.

County Administrator Brian Berg updated the Board regarding the Business Subsidy Committee, Personnel issues, and issues relating to the annual appointment of the legal newspapers.

A brief discussion took place regarding the County Board meeting times for 2013, with the general consensus that all meetings should take place at 8:30 a.m. More discussion on this topic will take place at the January 2nd County Board meeting. In the meantime, due to conflicts with the January 22nd meeting time of 4:00 p.m., the Board agreed to meet at 8:30 a.m.

ADJOURN

The meeting adjourned at 9:30 a.m.

Grant Weyland, Chair
Clay County Board of Commissioners

Brian C. Berg, County Administrator

CONTRACTS AND AGREEMENTS 2013

FOR AC/EW/CAC/CADI/TBI/DD HOME & COMMUNITY BASED SERVICES (12/14/12-PB)

****There are no Do Not Exceed Amounts listed as each contract/agreement is determined by the number of clients each provider serves throughout the year; some service rates are individualized to the client need.**

NAME OF PROVIDER OR PROVIDER AGENCY	TYPE OF SERVICE PROVIDED
Accra Care Home Health, Inc. 1011- 1 ST ST S, #315, Hopkins, MN 55343-Local address: 725 Center Ave, Moorhead, MN 56560	Customized Living & 24 Hour Customized Living@Houge Estates, Home Health Care Services, Nursing, Respite Care, Family-Caregiver Training & Education, Personal Care Assistance, Home Health Aide, Homemaker, Respite Care
ActiveStyle, 3100 Pacific ST N, Minneapolis, MN 55411	Supplies & Equipment
Ahmed, Selwa, 2940 17 TH ST S, #207, MOORHEAD, MN 56560	Foster Care
Amedi, Dilheen, 3401 10 th ST S, Moorhead, MN 56560	Foster Care
Arbor Park Living Center, 2921 & 2901 6 th Ave N, 520 28 th ST N Moorhead, MN 56560	24 Hour Customized Living, Respite Care, Adult Day Care, Transportation
Bernhardt, James, 104 S 16 th ST, Moorhead, MN 56560	Foster Care
Bethsida Homes, 3314 Village Green DR, Moorhead, MN 56560	Foster Care, Respite Care
Bjorem, Joanne, 25712 15 th Ave N, Hawley, MN 56549	Foster Care
Brifki, Newzad, 1816 34 th Ave S, Moorhead, MN 56560	Foster Care
Brock, Lynn, 3805 43 rd Ave S, Moorhead, MN 56560	Foster Care, Respite Care, Family Adult Day Services
Brundage, Doris, 2022 3 rd Ave S, Barnesville, MN 56514	Foster Care, Respite Care
Burnside, Beth, 205 Cottage Ave, Ulen, MN 56585	Foster Care
Care Medical Supply, Benton Business Park, 1000 S Benton Dr, STE 418, Sauk Rapids, MN 56379	Supplies & Equipment
Chwialkowski, Blossom, 262 Turtle Lake Road, Hawley, MN 56549	Foster Care
CK Home Health Care, Inc., 106 4 th Ave N, Fergus Falls, MN 56537	Home Healthcare Services, including Private Duty Nursing, Personal Care Assistance, Respite Care, Caregiver Training & Education, Homemaking
CompassionCare Services, 100 3 rd ST N, Moorhead, MN 56560	Customized Living, 24 Hour Customized Living, Home Delivered Meals, Homemaker Services, Transportation
Cook, Kathleen, 1102 14 th ST N, Moorhead, MN 56560	Foster Care
Dauner, Jeff & Ginger, 19452 90 th Ave N, Hawley, MN 56549	Foster Care, Respite Care, Family Adult Day Services
Doan, My-Thanh, 1708 33 rd ST S, Moorhead, MN 56560	Foster Care
Ellingson, Amaryllis, 412 11 th ST N, Moorhead, MN 56560	Foster Care
Eventide: The Fairmont, 801 2nd Ave. N, Moorhead, MN 56560	24 Hour Customized Living, Respite Care, Adult Day Care

NAME OF PROVIDER OR PROVIDER AGENCY	TYPE OF SERVICE PROVIDED
Evergreens of Moorhead, 512-3rd Ave S, Moorhead, MN 56560	24 Hour Customized Living, Respite Care
Friese, Cheryl, 702 19 th ST N, Moorhead, MN 56560	Foster Care
Golden Living Community-Moorhead, 2800 Highway 10 E, Moorhead, MN 56560	24 Hour Customized Living
Golden Manor of Barnesville, 1102-4th Ave NE, Barnesville, MN 56554	24 Hour Customized Living
Good Samaritan Home Care, 501 E Front ST, PO Box 637, Larimore, ND 58251-0637	Care Giver Training & Ed, Home Health Aide, Homemaker, PCA, Respite Care, Transitional Services, Supplies & Equipment, Home Care Extended, Professional Nursing
Grafsgaard, Stan & Gayle, 1016 10 th Ave S, Moorhead, MN 56560	Foster Care
Habilitative Services, Inc., 810 4 th Ave S, STE 128, Moorhead, MN 56560	Corporate Adult Foster Care, Respite Care, Independent Living Skills
Harmony Home Health, LLC, 103 E Lincoln Ave, Fergus Falls, MN 56537	Home Healthcare Services, including Private Duty Nursing, Personal Care Assistance, Respite Care, Caregiver Training & Education, Homemaking, Chore
Hawley Senior Living, 923-5th ST S, Hawley, MN 56560	24 Hour Customized Living, Out of Home Respite Care, Homemaking
Home Instead Sr. Care, 320 N 5 th ST, STE 202, Fargo, ND 58102	Homemaking
Ishkenov, Ravil, 1121 2 nd Ave S, #29, Moorhead, MN 56560	Foster Care
Kalk, Pamela, 322 12 th ST N, Moorhead, MN 56560	Foster Care
Kern, Kathryn, 1104 18 ½ ST N, Moorhead, MN 56560	Foster Care
Kringler, Karen, 10 9 th ST SE, Glyndon, MN 56547	Foster Care, Respite Care, Family Adult Day Services
LaDuke, Lorrie, 14205 30 th Ave S, Glyndon, MN 56547	Foster Care
Le, Brenda, 1505 13 th ST S, Moorhead, MN 56560	Foster Care
Lilac Homes Assisted Living Memory Care, 2615 Parkview Drive, Moorhead, MN 56560	24 Hour Customized Living, Out of Home Respite Care
Lutheran Social Services of MN, 715 N 11 th ST STE 401, Moorhead, MN 56560	Respite Care, Companion Services, Caregiver Training & Education
Lutheran Social Services of MN, 715 N 11 th ST STE 401, Moorhead, MN 56560	Family Counseling & Training, Independent Living Skills, Respite Care, Corporate Child Foster Care
Ly, Hein, 807 35 th ST S, Moorhead, MN 56560	Foster Care
Mariya Home Care, 1506 Main Ave, STE 103, Moorhead, MN 56560	Home Healthcare Services, including Private Duty Nursing, Personal Care Assistance, Respite Care, Caregiver Training & Education, Homemaking
Martinez, Deana, 3364 10 th ST S, Moorhead, MN 56560	Foster Care
MAT-Paratransit, 500 Center Ave, Moorhead, MN 56560	Transportation

NAME OF PROVIDER OR PROVIDER AGENCY	TYPE OF SERVICE PROVIDED
Medical Pharmacy Moorhead, 101 11 th ST S, Moorhead, MN 56560	Supplies & Equipment
Meridian Services, Inc, 9400 Golden Valley Rd, Golden Valley, MN 55427	Case Management
Metro Bus, 665 Franklin Ave NE, St. Cloud, MN 56304	Transportation
Mom's Meals, 718 SE Shurfine Drive , Ankeny, IA, 50021	Home Delivered Meals
Moorhead Drug, Moorhead Center Mall, Moorhead, MN 56560	Supplies & Equipment, Modifications & Adaptations
Moorhead Manor, 1710 13th Ave N, Moorhead, MN 56560	Customized Living & 24 Hour Customized Living
Muhammed, Geehan, 1713 3 rd Ave NW, Dilworth, MN 56529	Foster Care
New Dimensions Home Health Care, PO Box 415, Fergus Falls, MN 56537	Home Health Care Services, Personal Care Assistant, Respite Care, Homemaker
Nguyen, Sarah, 483 30 TH ST N, Moorhead, MN 56560	Foster Care
North Star Nursing Temp. Associates, Inc., 22119 480 th Ave, PO Box 306, Osage, MN 56510	PCA(Personal Care Assistant) Choice
Northern Lights Assisted Living, 317 1st St. NW, P.O. Box 279, Ulen, MN 56585	Customized Living, Adult Day Care, Respite Care
Northern Safety & Security, 4111 Technology Dr NW #203, Bemidji, MN 56601-5105	Supplies & Equipment(Lifeline & Related Safety Equipment)
Nutrition Services, Inc., 812 4th Ave. NE, P.O. Box369, Waseca, MN 56093	Home Delivered Meals
Okke, Kathleen, 17507 Hwy 10, Hawley, MN 56549	Transportation
Otoo, Peter, 3401 10 th ST S, #107, Moorhead, MN 56560	Foster Care, Respite Care
Pearson, Steven, 1220 16 th ST N, Moorhead, MN 56560	Foster Care
REM North Star, Inc., 721 S Minnesota, PO Box 707, Crookston, MN 56716-0707	Foster Care, Respite Care, Independent Living Skills
Rice, Mary, 1605 5 th Ave S, Moorhead, MN 56560	Foster Care
River Pointe of Moorhead, 2401 S 11 th ST, Moorhead, MN 56560	Customized Living, 24 Hour Customized Living, Respite Care
Schroeder, Rene, 201, 6 th Ave NE, Dilworth, MN 56529	Foster Care, Respite Care
Serenity Assisted Living, 1125 Oakview Dr, PO Box 683, Dilworth, MN 56529	24 Hour Customized Living
Soland, Debra & David, 1721 4 th Ave S, Moorhead, MN 56560	Foster Care, Respite Care
Spectrum Home Care, Inc., 2108 S University Drive, STE 106B, Fargo, ND 58103	Homemaker, Transportation, Companion
Stenerson, Shirley, 1111 25 TH Ave S, Moorhead, MN 56560	Foster Care
St. Michel, Jann, 604 4 th ST NE, Dilworth, MN 56529	Transportation

NAME OF PROVIDER OR PROVIDER AGENCY	TYPE OF SERVICE PROVIDED
Tawfiq, Maqbola, 1210 27 th Ave S, #406, Moorhead, MN 56560	Foster Care
Thi, Phot, 137 Lancaster Dr, Moorhead, MN 56560	Foster Care
TRANSEM(Transitional Supported Employment of MN) 810-4th AVE S #206, Moorhead, MN 56560	Supported Employment & Chore
Tri-Valley Opportunity Council, PO Box 607, Crookston, MN 56716	Companion, Homemaker
Tungseth, David, 1002 19 th Ave S, Moorhead, MN 56560	Foster Care, Respite Care, Family Adult Day Services
Tursunovic, Senada, 1304 19 ½ ST S, #14, Moorhead, MN 56560	Foster Care
Universal Pediatric Services, Inc., 115 N Warrior Lane, Waukee, IA 50263	Professional Nursing Services(LPN, PDN, RN) Home Care
Zekic, Neda, 3302 12 th ST S, #103, Moorhead, MN 56560	Foster Care

Clay County MN Access Management Policy

October 2012

prepared by: Fargo-Moorhead Metropolitan Council of Governments

Index.

Background.....1	draft Ordinance.....see attached
Comprehensive Plan Goals/Policies.....1	draft Access Management Policy.....see attached
Statute Applicability.....2	Other Recommendations.....5

Background. At the request of Clay County this project was included within Metro COG's 2012 Unified Planning Work Program (UPWP). Under the project scope as approved by the County Commission on December 8, 2011; Metro COG will provide technical assistance regarding development and adoption of a county-wide access management policy. Clay County has an adopted *Development Code*, however, there are only a few non-descript regulations and guidelines pertaining to access management which are interpreted by the County to only apply to 'new' development.

What is Access Management? *Access Management* is a pro-active corridor management tool(s) which refers to a set of techniques which are utilized to minimize/control the number of conflict points on a corridor to preserve the functional integrity of the corridor. Access management policies are intended to ensure effective and reliable mobility by reducing crashes, traffic delays and congestion; while maximizing corridor capacity and functionality.

Why is an Access Management Policy Important? An effective, local access management policy/program or strategy can play an important role in preserving highway capacity, reducing crashes, minimizing costly remedial roadway improvements and establishing consistency on corridors in fringe areas which are likely to urbanize at some point in the future (key point for Clay County; ie. 12th Ave S corridor, etc.). Further, this type of policy provides a consistent framework and metric under which the roadway authority or local government body can analyze requests and issue defensible decisions respective to development or improvements on any type of property; irregardless of whether it is new "development" on platted or unplatted acreage or a non-development activity on platted or unplatted acreage (ie. access request).

Applicable County Comprehensive Plan Goals, Policies and Strategies. The Clay County Comprehensive Plan was adopted in July of 2002 and includes the following relevant goal and policy statements:

1. Transportation Goal No. 1 – Provide and maintain a safe, convenient and efficient County transportation system for the movement of people and goods.
 - a. Policy 1. Continue to cooperate with Mn/DOT, Clay County cities, Townships, Metro COG and other agencies involved in transportation planning to provide the most effective system for Clay County.
 - b. Policy 2. Adopt and support Metro COG and Mn/DOT Access Management Guidelines. *These Metropolitan Access Management 'Guidelines' were established in 2001 as part of the Minnesota Extraterritorial Corridor Preservation Planning Study (Ulteig Engineers, Inc.). The current Clay County Development Code does reference these 'metro' guidelines and the Mn/DOT Access Management Guidelines in a few specific locations, again, applicable only to new development (for further details and analysis see below) and which are probably somewhat questionable from an enforcement perspective. Not only should these guidelines be tailored to the needs of Clay County, the policy should also be inclusive and robust from a process, permitting, standards and penalty perspective; and adopted directly into the County's Development Code.*

Applicability. Pursuant to Minnesota State Statute §160.02, §160.08 and §160.18 the County Board under the auspices of the statutorily defined ‘road authority’ has the ability to designate, locate, improve and maintain controlled-access highways for public use as deemed appropriate. Further, the road authority has the ability to design, regulate, restrict or prohibit access pursuant to terms and conditions as specified by the County. As noted in §160.02, this authorization applies to all “highways” under the County’s purview; inclusive of County Highways, County state-aid highways and township roads.

Applicable Statutory Definitions. These definitions are recited verbatim per MN Statute §160.02 and are important as they set forth the framework under which this policy and any subsequent ordinance is developed.

Controlled Access Highway. “Controlled-access highway” means any highway, street, or road including streets within cities, over, from, or to which owners or occupants of abutting land or other persons have or are to have no right of access, or only a controlled right of the easement of access, light, air, or view.

Road or Highway. “Road” or “highway” includes, unless otherwise specified, the several kinds of highways as defined in this section [ie. County Roads, CSAH, town roads, Trunk Highways, etc.], including roads designated as minimum-maintenance roads, and also cartways, together with all bridges or other structures thereon which form a part of the same.

Road Authority. “Road authority” means the commissioner, as to trunk highways; the county board, as to county state-aid highways or county highways; the town board, as to town roads; and the governing bodies of cities when the governing bodies or city streets are specifically mentioned.

Review of Current Definitions, Standards and Practices. Outlined below is a brief summary and discussion relative to existing (applicable) sections of the Clay County *Development Code*.

Definitions.

1. *Development* [§ 8.1.6(A)]– The performance of any building or mining operations, the making of any material change in the use of any structure or land, the parceling of land into one or more lots, tracts or parcels and the creation or termination of rights of access or riparian rights. *Activities considered “development” include: change in use, re-construction/ alteration, increase in use intensity, mining/ excavation, alteration of shore or floodplain, re-establishment of use, subdivision or departure from normal use.*
 - The “development” definition per existing County Code addresses a majority of the activities that would prompt a potential access request. However, a few gaps exist that need to be accommodated within the overarching definition to align the access policy and standards with any type of access request (see proposed revisions to §8.1.6(A) of the draft Policy). For example, if a property owner requested access onto a County roadway, whether it was platted or unplatted property, whether structures were present or not (as long as the use, intensity, etc. was not changed) the County would have no oversight.
2. *Street* [§1.3.2] – Shall include alleys, lanes, courts, boulevards, public ways, public squares, public places and sidewalks.
3. *Street Classification* [§8.8.2] - All streets are to be considered classified under the following categories in the County Comprehensive Plan:

Arterial Street and Highways: Those which are used primarily for fast or heavy traffic.

Collector Street: Those which carry traffic from minor streets to the major system of arterial streets and highways, including principal entrance streets of a residential development and streets for circulation within such a development.

Minor Streets: Those which are used primarily for access to and adjacent to arterial streets and highways and which provide access to abutting properties and protection from through traffic.

- These definitions and the network classifications become important as they establish the framework under which the access standards and guidelines are applied. The *street* definition and association to the *street classification* definition is a little strange given the references to public squares, public places and sidewalks; and may merit some additional clarification. More importantly, the *street classification* definition makes reference to designations and classifications pursuant to the County Comprehensive Plan. It appears this reference relates to Figure 2-18a and Figure 2-18b which are the Metro Functional Classification and Rural Functional Classification maps, respectively. These maps were prepared in 2002 by Comprehensive Plan consultant DSU, Inc. and probably have not been reviewed or updated since. These maps are important because they represent the formal link between the access management policy and the applied classifications; therefore it is critical to ensure the accuracy of these maps and the intentions of the County relative to access management standards/guidelines.

Standards. Chapter 3 of the County *Development Code* comprises dimensional standards and general provisions which apply to all zoning districts, inclusive of minimum lot size, setbacks, parking, signage and the following standards related to traffic control and access management:

Traffic Control / Access Management [§8.3.6]: The following access management provisions apply to development in all zoning districts.

- A. *Approval of Access:* Location of and specifications for points of ingress and egress shall be approved by the district highway engineer or the county highway engineer.
- B. *Maximum Width:* Points of ingress to and egress from state and county roads, streets or highways shall be controlled and limited to a width of not more than thirty five feet (35').
- C. *Access Standards:* Access design and internal subdivision roadway design shall conform to the Metropolitan Access Standards adopted by Clay County and Minnesota Department of Transportation access management requirements. Standards are available in the Clay County Planning Office.
 - A couple of analysis points: These references essentially state that in all zoning districts where an activity falls within the terms of the “definition” any approvals or applied standards or criteria for approval is at the sole discretion of the county engineer. This type of regulatory approach is very difficult to apply and enforce from a consistency standpoint; much less defend if challenged, and is less than desirable from a developer or investors perspective due to the level of subjectivity and uncertainty in the development entitlement process. Secondly, the “development” definition loop hole for certain actions (see pg. 2 explanation) remains intact and the provisions as drafted under this section would seemingly not apply nor would the provision for approval at the county engineer’s discretion.

Chapter 5, Zoning Districts. The Clay County *Development Code* delineates nine (9) zoning districts; two of which are identified as ‘overlay’ districts (Resource Protection Overlay District and Land Field Overlay District). Of these 9 zones, four (4) have prescribed standards for access separation or driveway separation by functional classification:

Local – 100 feet;
Collector - 300 feet;
Principal - 500 feet; and
Intersections - 100' feet.

The 4 zoning districts with applied standards include the Resource Protection Overlay Zone (RP), Agricultural General District (AG), Limited Highway Commercial District (LHC) and the Highway Commercial District (HC). The remaining districts inclusive of: Flood Hazard Zone District, Shoreland Zone Land Use Districts, Urban Expansion District (UED) and Landing Field Overlay District, do not accommodate any such standards. Further, both the LHC and HC districts include a provision which prohibits direct access from a parcel to highways designated as principal arterials.

In addition, use specific standards within Chapter 6 establish the following:

Standards for All Commercial and Industrial Uses [§8.6.10]:

- A. *Access Management*: Proposed commercial and industrial uses where any portion of the boundary of the proposed parcel is adjacent to Highways 10, 336, 9, 32, 34 or Interstate 94 shall submit an access management plan with any conditional use, rezoning, platting or subdivision request. The access management plan shall conform to the access management requirements of the Clay County engineer and the Minnesota Department of Transportation. The access management plan shall include the following:
1. Locations and widths of proposed vehicular access drives;
 2. Locations and widths of any internal roads;
 3. Locations and dimensions of parking and loading areas.
- The application of this standard to only certain highways, certain development activities and specific uses is an issue that needs to be addressed in the access management policy. This section could probably remain within Chapter 6, but needs to be expanded, clarified, more inclusive and harmonious to standards set forth in the access management policy.

Chapter 7, Subdivision Provisions. The subdivision chapter of the County *Development Code* includes discussion on street connectivity and alignment (§8.7.14 E.2), block length, lot design, monumentation and references adopted Metropolitan Access Management Standards and Mn/DOT guidelines as well as the following:

Vehicular Access: There shall be no direct vehicular access from residential lots to an arterial street and residential lots shall be separated from major arterial streets and railroad rights-of-way by a twenty five foot (25") buffer strip.....

- As currently written, this provision would only apply to new subdivision requests and any other request that did not fit within the context of the "development" definition per the existing code would be free to establish an access at their own prerogative, even if a safety concern or more feasible/appropriate alternative was available.

Practices. As indicated by the Clay County Highway Department through early stages of this policy development process, current access permitting practices are limited. As new developments, subdivisions or uses are changed through platting or other official County permitting mechanisms (ie. conditional use permits, variances, subdivisions, development permits, etc.) the Highway Department and county engineer have the ability to be involved and discretionary approvals are utilized, as applicable, for access creation/termination. For any other activity, the only reason (and for that matter incentive) for a property owner to notify and/or ask the County for permission for a new access or access modification is to receive a free culvert. The County follows a policy statement from February of 1997 which states the County will provide a culvert for new or modified access and this does, to some degree, serve the needs of the County. To note, under MN Statute §160.18 the County has the authority upon adoption of a locally approved resolution to provide a culvert(s) to enable access onto a highway for an abutting landowner, upon issuance of a permit. Granted however, if the County issued a permit there would be no standards or requirements that would apply relative to spacing, width, location, number of access points, etc.

Other Recommendations. In the process of drafting this Access Management Policy, Metro COG has identified a few aspects that the County should consider updating and/or addressing; as outlined below:

- 1. Street Classification.** Pursuant to §8.8.2 of the County *Development Code*, all county roadway facilities are classified under three (3) categories: Arterial Street/Highways, Collector and Minor; pursuant to maps and applied designations within the County Comprehensive Plan. It appears that this reference in the County Code directly correlates to Figure 2-18a (Metro Functional Classification) and Figure 2-18b (Rural Functional Classification) which were prepared in 2002 by the Comprehensive Plan consultant and do not appear to have been reviewed or updated since. As previously noted, these maps are important because they represent the formal link between the access management policy (ie. Access Spacing and Access Connection Requirements, see pg. 9 of this document) and the applied classifications; therefore it is critical to ensure the accuracy of these maps and the intentions of the County relative to access management standards/guidelines. The County should closely review and consider whether these maps need to be updated or whether a more updated map could be referenced within the *Street Classification* definition as set forth within §8.8.2. ***As part of this project, County staff has directed Metro COG to prepare an updated Existing Functional Classification Map, to be amended into the County Comprehensive Plan. Metro COG has prepared the ordinance and the map which will need to be adopted concurrently with the Access Management Policy ordinance. This updated Existing Functional Classification Map will effectively replace Map 2.18a and 2.18b as they currently exist within the 2002 County Comprehensive Plan. See corresponding ordinance and the updated map for further details.***
- 2. Access and Culverts.** As discussed in detail on page 4 of this document, as developments, subdivisions or uses are changed through platting or other official County permitting mechanisms (ie. conditional use permits, subdivision, development permits, etc.) the county highway engineer has the ability to be involved and discretionary approvals are utilized, as applicable, for access creation/termination. For any other activity, the only reason (and for that matter incentive) for a property owner to notify and/or ask the County for permission for a new access or access modification is to receive a free culvert. The County follows a Policy Statement (approved February 4, 1997) which establishes the mechanism whereby the County may provide a culvert for a new or modified access; and this does, to some degree, serve the needs of the County. To note, under MN Statute §160.18 the County has the authority upon adoption of a locally approved resolution to provide the necessary culvert(s) for access onto a highway for an abutting landowner, upon issuance of an Access Permit. It appears that the existing (1997) policy meets the minimum requirements set forth in MN Statute §160.18; however, this policy needs to be updated and language adjusted to meet current practices of the County Highway Department. The Access Management Policy, as drafted (see pg. 10), includes language which would continue this practice for any issued Access Permit.

Public Input. On August 24, 2012 Metro COG and Clay County issued a notice which accompanied a packet containing the draft ordinances (Access Policy & Comprehensive Plan Amendment) and associated attachments. This information was sent to all cities, townships, watershed districts and joint power boards within the County. In addition, a copy was also sent to the Minnesota Department of Transportation. Comments and feedback was requested by September 21st, 2012.

Comments were received from the City of Moorhead on September 21st and are attached to this memorandum. A majority of these comments have been addressed and/or incorporated into the draft Access Management ordinance.

All other public or stakeholder input will be requested as part of the public hearings associated with these ordinances.

CLAY COUNTY, MINNESOTA

ORDINANCE NO. 2012-4

AN ORDINANCE OF THE COUNTY OF CLAY, MINNESOTA REPEALING AND READOPTING CERTAIN SECTIONS WITHIN TITLE 8 PERTAINING TO DEVELOPMENT CODE CHAPTERS 1, 3, 5, 7 AND 8; AND FURTHER ESTABLISHING ACCESS CONTROL/MANAGEMENT PROVISIONS WITHIN CHAPTER 3, SECTION 8.3.6.

WHEREAS, the County of Clay, Minnesota ("County") is a statutory County duly organized and existing under Article XII of the Minnesota Constitution; and

WHEREAS, pursuant to Minnesota Statute Chapter 394 and specifically §394.21, the County has the power and authority to conduct and implement planning activities;

WHEREAS, the County has, by ordinance, and pursuant to Minnesota Statute Chapter 394, adopted Title 8 of the Clay County Code regarding land use, zoning and development ("Development Code");

WHEREAS, the County has undertaken a process to establish and draft Development Code provisions related to access control and access management, consistent with authority granted under Minnesota Statutes §160.08; and to further amend and repeal certain sections of the Development Code to ensure continuity and consistency with aforementioned access control/management provisions; and

WHEREAS, the County, in cooperation with the Fargo-Moorhead Metropolitan Council of Governments ("Metro COG"), has conducted a public hearing per Minnesota Statute §375.51 on the proposed Development Code amendments on December 27th, 2012, thereby allowing all interested parties an opportunity to review, comment and provide feedback regarding the proposed amendments; and

WHEREAS, the County hereby finds and determines that the proposed Development Code amendments are appropriate and necessary to the function and efficient operation of the County and to ensure the health, safety, morals, and general welfare of the County.

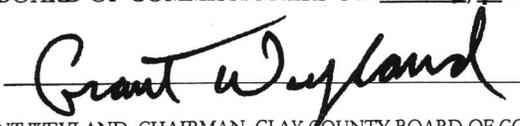
NOW, THEREFORE, THE BOARD OF COMMISSIONERS OF THE COUNTY OF CLAY, MINNESOTA HEREBY ORDAINS AS FOLLOWS:

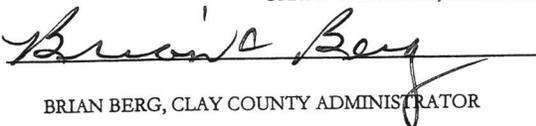
Section 1. Adopt Development Code Amendments set forth within Exhibit A to Title 8 of the Clay County Code. The County hereby adopts the proposed amendments, attached hereto and incorporated herein as Exhibit A.

Section 2. Severability. If any portion of this Ordinance is found to be void or ineffective, it shall be deemed severed from this Ordinance and the remaining provisions shall remain valid and in full force and effect.

Section 3. Effective Date. This ordinance shall become effective and be in force immediately upon final passage, consistent with Minnesota Statute §375.51.

ADOPTED BY THE CLAY COUNTY BOARD OF COMMISSIONERS ON 12-27 2012.


GRANT WEYLAND, CHAIRMAN, CLAY COUNTY BOARD OF COMMISSIONERS

ATTEST: 

BRIAN BERG, CLAY COUNTY ADMINISTRATOR

Title 8, Chapter 1, Section 8.1.6 (A)

Repeal and Re-Adopt Section 8.1.6(A) as follows:

- A. Definition. Development Defined.** Except as otherwise provided, “development” means the commencement of any building or mining operation, the making of a change in the use or appearance of any structure or land, the parceling of land into one or more lots, the creation or termination of rights or access in any form and under all conditions and the creation or termination of riparian rights. Development includes all other activities customarily associated with it unless otherwise specified. Reference to any specific operation as not involving development is not intended to mean that the operation or activity when part of other operations or activities is not development. Reference to particular operations is not intended to limit the generality of subsection 1, below.

- 1. Activities or Uses Considered Development:** The following activities or uses shall be considered “development” as defined in this Section:

- a. Change in Use:** A change in the use of a structure or land;
- b. Reconstruction or Alteration of a Structure:** Reconstruction or alteration of a structure, including, but not limited to alteration of the size of the structure;
- c. Increase in Intensity of Use:** An increase in the intensity of use of land such as an increase in the number of businesses, manufacturing establishments, office or dwelling units in a structure or on a parcel of land, or expansion of the area of a structure or a parcel of land that is dedicated to a land use;
- d. Mining or Excavation:** Commencement or expansion of mining or excavation on a parcel of land;
- e. Fill:** Deposit of refuse, soils or other materials to fill a parcel of land;
- f. Alteration of Shore, Bank or Flood Plain:** Alteration of a shore, bank or flood plain of a river, stream, lake, pond or artificial bodies of water;
- g. Reestablishment of Use:** Reestablishment of a use which has been abandoned for one year;
- h. Subdivision:** Residential, commercial or industrial subdivisions;
- i. Departure From Normal Use:** Departure from the normal use for which development permission has been granted or failure to comply with the conditions of this Ordinance or order granting the development permission under which the development was commenced or is continued;
- j. Access:** Any request for an Access Connection (new, changed, modified, altered, re-constructed, etc.) onto a County highway or public right-of-way which includes any field entrance, driveway or public/private roadway (see Section 8.3.6 for further details). This includes any type of access such as permanent, temporary or field access/opening.

Title 8, Chapter 3, Section 8.3.6

Repeal and Re-Adopt Section 8.3.6 as follows:

8.3.6: Traffic Control and Access Management.

- A. Intent and Purpose.** The County recognizes the primary function of a highway is to accommodate traffic mobility with a secondary and subservient function to provide access to abutting property. The County, through its police powers as established under Minnesota law, can utilize access control/management techniques to promote public safety while preserving the functional integrity of highways. The intent of this section is to permit reasonable, convenient and suitable access to property(ies) as contemplated within state statutes and applicable case law; under the context of access control standards and access management policies established to: (a) preserve highway capacity, (b) minimize the frequency and severity of vehicular conflicts, (c) maintain effective and reliable mobility of the traveling public, (d) reduce or eliminate opportunities for traffic delays and congestion, and (e) protect the substantial public investment in the existing transportation system and reduce the need for expensive remedial measures.
- B. Statutory Authorization.** Pursuant to Minnesota State Statute §160.02, §160.08 and §160.18 the County Board under the auspices of the statutorily defined road authority has the ability to designate, locate, improve and maintain controlled-access highways for public use as deemed appropriate. Further, the road authority has the ability to design, regulate, restrict or prohibit access pursuant to terms and conditions as specified by the

County. As noted in §160.02, this authorization applies to all highways under the County's purview; inclusive of County Highways, County state-aid highways and township roads (as applicable).

C. Scope, Interpretation and Applicability. The provisions of this section shall apply to any development activity per this Code, which shall include the location and design of public or private roadways and access, in any form (ie. new, changed, modified, altered, re-constructed, etc.), to the county road system. Access legally established as of the effective date of the implementing ordinance may remain until an activity is contemplated as set forth in this sub-section. In addition, access legally established as of the effective date of the implementing ordinance but not in conformance with standards in this ordinance are considered non-conforming and may continue in existence subject to the regulations as set forth in sub-section (G)(10) of this Section.

1. As set forth in 8.5F.3, any plat or Access Permit request filed within the Urban Expansion District (UED) which lies within any city's adopted growth area plan shall conform to the growth area plan and all applicable policies and ordinances of the city; unless the County ordinance is determined (by the County) to be more restrictive. In addition, any other development activity within the UED shall comply with the provisions as established in this Section.

2. For municipalities and/or townships with adopted land development codes, zoning ordinances or access management policies; this section of the County Development Code shall supersede and apply to any development activity contemplated per this Code which requires an Access Permit or Access Plan relative to the County road system; unless the municipality or township standard or regulation is more restrictive as interpreted by the County, or as otherwise specified in this Code. If the municipality or township standard is applied an Access Permit is still required under the provisions of this Code, with issuance prior and/or concurrent with any city/township development application.

a. Pursuant to Ordinance No. 2000-3 any development activity contemplated under the Barnesville Area Joint Powers Agreement and Zoning Ordinance is not subject to the provisions of this section. However, similar to 8.3.6(C)(2) an Access Permit is still required for any Access Connection onto the County road system to ensure coordination and communication with the County Highway Department. The Access Permit shall be issued prior and/or concurrent with the joint powers development application process.

D. Violations. Any Access Connection to a county roadway or highway constructed or established after the effective date of the implementing ordinance (December 27th, 2012) without an approved Access Permit or in violation of an approved access permit shall be considered illegal. The county highway engineer may order discontinuance of its use and may order its removal. The property owner responsible for installing an illegal access shall be responsible for all costs, including any borne by Clay County, associated with: (a) closure of the access; (b) removal of the access; and/or (c) restoration of the ditch or boulevard area to its previous condition.

1. Any person who fails to comply with an order to close and/or remove an illegal Access Connection shall be guilty of a misdemeanor and, upon conviction thereof, may be punished to the maximum extent allowed by law. For each day the violation continues, a separate offense shall be declared. See County Code §1.4.2 for additional information on violations and general penalties.

E. Access Permit Required. A permit issued by the County Highway Department is required for any Access Connection within a county right-of-way, as further defined in 8.3.6(C), above.

1. **Reconstruction.** Reconstruction of an existing conforming access shall not require payment of any permit fee; however, an updated permit shall be issued.

2. **Application for an Access Permit.** Applications for an Access Permit must be made in writing on a form provided by the Clay County Highway Department. A fee, as established by the Clay County Board of Commissioners, shall accompany the Access Permit application. Where a proposed Access Connection has been approved as part of an Access Plan, no permit fee shall apply.

3. **Review of Access Permits.** An initial determination shall be made on whether the application is complete within three (3) working days of receipt of the completed application form. A final decision on the Access Permit shall be rendered within thirty (30) calendar days following acceptance of a complete application; and upon determination of consistency with provisions set forth in this Code. At the discretion of the county highway engineer, conditions of approval may be attached to the Access Permit. Receipt of an Access Permit from the Clay County Highway Department under this ordinance does not preclude any other permits that may be necessary (ie. watershed district, township, municipality, etc.) prior to access construction or implementation.
4. **Access Plan.** Submittal of an Access Plan is required with any application for a subdivision (§8.7), conditional use permit (§8.4.7) or development permit (§8.4.8) as follows: (a) with frontage on a county road; (b) any request for an Access Connection onto a County highway or public right-of-way; or (c) any request for access to a roadway under the jurisdiction of another governmental unit within one-eighth (1/8) mile of an intersection with a county roadway. The Access Plan shall be processed concurrently with the application with a final recommendation submitted by the county highway engineer at the appropriate time for consideration by the governing Board(s) during the review process. The recommendation shall indicate whether the Access Plan is consistent with all provisions and criteria of the County Code or whether modifications or conditions are necessary to establish compliance.
5. **Access Permit and Access Plan Submittal Requirements.** An application for an Access Permit or submittal of an Access Plan shall include the following, at minimum:
 - a. General site plan showing the surrounding area, inclusive of the following:
 - i. Dimensions of the property (and abutting properties if applicable) and the location of public rights-of-way. At the county highway engineer's discretion, this may require detailed survey accurate data or other title/property research that shall be the applicant's responsibility;
 - ii. The type and intensity of existing and/or any proposed land uses; and proposed lot boundaries for any subdivision of property;
 - iii. The location of existing and/or proposed streets, driveways, parking areas, field access points, etc.;
 - iv. The location of, and distance to, public or private access serving adjacent parcels;
 - v. A phasing plan if the property is planned to be developed in phases;
 - vi. A traffic impact study, if requested and determined necessary by the county highway engineer; and
 - vii. A signal justification report or warrant analysis, if a traffic signal is proposed or anticipated as a need as part of any application.
 - b. Proof of the appropriate watershed permit for culvert sizing.
6. **Approval Guidelines and Criteria.** In reviewing an Access Permit request and/or an Access Plan the county highway engineer shall consider the following to determine whether the permit shall be approved:
 - a. Consistency with provisions and guidelines pursuant to Section 8.3.6 of this Code and any other applicable requirements as set forth within the County Code;
 - b. Provides adequate capacity to accommodate the conveyance of drainage within the public right-of-way;
 - c. Adequate intersection sight distance is provided;

- d. Adequate space is provided between access points to accommodate turn lanes under present or future conditions;
- e. Design details such as turning radii, driveway slope, angle of entry, width and other specifics are consistent with good engineering design practice.

F. Construction. All work completed on an Access Connection shall be consistent with the approved Access Permit and/or Access Plan. Completed work shall be inspected and approved by the county highway engineer, or a designated representative, in order to finalize the Access Connection and permit. Requests for final inspections shall be submitted to the County Highway department in writing.

1. **Construction Responsibilities.** The applicant shall be responsible for all costs associated with the construction of an Access Connection, including any improvements required to meet any conditions of approval. Improvements may include, but not limited to, the construction of the driveway or intersection, turn lanes, raised medians, traffic control devices (ie. signs, pavement markings, signals, etc.) or other access control measures, connections to other roadways, drainage structures, grading/site restoration and the acquisition or dedication of necessary right-of-way (as identified and determined by the County).
2. **Duration of Permit.** If the Access Connection has not been constructed within two (2) years after approval of the Access Permit or Access Plan, the permit shall become null and void unless a request for a time extension to complete the Access Connection has been granted by the County.
3. **Performance Guarantee.** An (irrevocable) letter of credit, certified check or bond may be required in an amount to be determined by the county highway engineer to insure compliance with the requirements and conditions of an Access Permit and/or Access Plan.

G. Standards for Access Connections. The following sub-section defines the key principles and provisions that shall be used to guide decisions relative to Access Connection permitting.

1. **Access.** As contemplated in MN Statute §160.08 and established under Minnesota case law, [*Hendrickson v. State*, 267 Minn. 436, 446, 127 N.W.2d 165, 173 (1964)] property owners have a right of “reasonably convenient and suitable access” to a public street or highway that abuts their property. Property(ies) are not entitled by right to approval of an Access Connection onto a County roadway or highway as consideration shall be given to access via connections to local streets or via joint or shared access with a parcel that has conforming access.
2. **Minimum Spacing (Roadways, Driveways and Intersections) and Access Connection Requirements.** The following table defines minimum spacing requirements for *full* and *limited* Access Connections. A *full* Access Connection is considered as an access that allows all through and turning movements whereas a *limited* Access Connection does not allow all movements. Generally, although not all inclusive, *limited* access will include right-in/ right-out configurations and/or the elimination of some or all left turn movements.

In addition, the table outlines minimum spacing requirements for driveways (see Driveway definition per §8.8.2). Minimum spacing between an intersection and any Access Connection shall be 500 feet; however, the county engineer may issue a permit, at his/her discretion, which allows spacing less than the 500 feet if requested and supported by the city and deemed appropriate based on existing and anticipated future conditions.

Road Classification	Spacing Between Roadways		Spacing Between Driveways		
	Full Access	Limited Access	Posted Speed Limit		
			< 35 MPH	35 – 45 MPH	> 45 MPH
Major Arterial *	n/a	n/a	Not Permitted*	Not Permitted*	Not Permitted*
Minor Arterial *	1320	660	330	660	660
Collector	660	330	160	330	330
Local Road	330	120	50	160	160

* To note, pursuant to Figure 2-18 (County Comprehensive Plan – Clay County Existing Functional Classification) all *Major Arterials* and a majority of the *Minor Arterials* are state facilities and are thereby subject to regulations and guidelines as set forth and administered by the Minnesota Department of Transportation.

- a. For sites or property(ies) with inadequate roadway or ROW frontage to meet the minimum spacing requirements the county highway engineer shall work with the applicant to determine the most appropriate access point; which may require, consistent with §8.3.6(G)(1), access via connections to local streets or developed service roads or via joint/shared access with a parcel that has conforming access.
 - b. The county highway engineer may grant access approval for a permanent use not meeting the spacing requirements, on an interim basis, if an Access Plan demonstrating how spacing requirements will ultimately be met and appropriate assurances in the form of a recordable and enforceable easement or access agreement insuring future provision of a conforming access are submitted.
3. **Alignment with Existing Access.** On undivided highways, Access Connections on opposing sides of the roadway should be aligned with one another or offset an adequate distance to minimize or eliminate overlapping left turns and other issues that may result in roadway operational problems.
 4. **Auxiliary Lanes.** The county highway engineer may require auxiliary lanes (ie. left or right turn bays, bypass lane, acceleration/deceleration lanes, etc.) where deemed necessary due to traffic volumes or other operational issues.
 5. **Access adjacent to Turn Lanes or Bypass Lanes.** Access Connections shall not be approved within any auxiliary lane; inclusive of turn lanes, acceleration lanes, deceleration lanes or taper sections. The county highway engineer shall have the authority to waive this requirement if no other reasonable or suitable access is available.
 6. **Restricted Turn Movements and Limited Access.** In certain circumstances, turning or through movements may be restricted in which only *limited* access is permitted. Outlined below are scenarios which typically warrant consideration to *limited* access:
 - a. Where numerous low volume access points exist and the spacing between them does not permit adequate left turn tapers and storage bays for inbound vehicles without blocking adjacent access points;
 - b. At access points close to an intersection where left turn bays would conflict with inbound or outbound left turn movements for an existing or proposed access;
 - c. Where other conditions, such as sight distance, prevent left turn movements from being made safely;
 - d. Where a particular parcel is provided with more than one (1) access point and volumes do not justify left turn access into and/or from both access points;
 - e. When a parcel has access provided by both a signalized access point and an un-signalized access point, left turns may be prohibited at the un-signalized intersection;
 - f. When the median opening for left turn movements would be too close to another median opening;
 - g. When other capacity, delay, operational or safety conditions make specific left turns detrimental to the health, safety and welfare of the public.

Turning movement restrictions shall be enforced with barrier median channelization or driveway channelization, as determined appropriate by the county highway engineer.

7. **Indirect Access.** Access to a County roadway may be prohibited when a property abutting a County roadway has frontage on one or more streets and reasonable access can be accommodated on these

facilities. The County Engineer shall determine, on a site-specific basis, whether access will be permitted to the County roadway.

When property abutting a County roadway is to be subdivided or developed, direct access to a County roadway shall not be used in lieu of an adequate internal traffic circulation system. Indirect access to individual lots shall be required from an internal traffic circulation system which itself provides access to the County roadway or another facility. The County Engineer shall determine, on a site-specific basis, which lots abutting the County roadway may have direct access (if any) and which lots shall have indirect access.

8. **Field Access.** Field access or openings that are inconsistent with spacing standards may be permitted by the county highway engineer if the field has no other reasonable access. Typically, one (1) field opening to a property under the same ownership or controlling interest may be granted and additional openings shall only be granted if topographical or agricultural activities necessitate. An Access Permit issued for a field opening shall specifically cite any conditions attached to the permit; inclusive of the condition that the opening shall only be granted and valid for specific use, intensity and access purposes. See Field Access/Opening definition within §8.8.2 for additional information.
 9. **Discontinuance of Existing Access Connections.** When a Development activity is pursued which requires an Access Permit and results in the relocation of an existing Access Connection; any existing Access Connection(s) not approved for continuance shall be removed and the land graded and landscaped to conform with adjacent land. In addition, if curb/gutter is present, these improvements shall be installed by the applicant per the standards of the county highway engineer.
 10. **Culverts.** Pursuant to MN Statute §160.18, and as acknowledged by Clay County Policy Statement adopted by the County Board on November 20th, 2012 (as may be amended from time to time) the County may provide the necessary culvert(s) for access onto a highway for an abutting landowner, upon issuance of an Access Permit consistent with the provisions of this ordinance.
 11. **Dedications and Plats.** Any subdivision plat approved and filed after the effective date of this implementing ordinance shall include dedication language granting access control rights and rights to any access opening(s) to Clay County; as determined appropriate and applicable by the county highway engineer.
 12. **Nonconforming Access.** The purpose of this section is to recognize the existence of Access Connections which were lawfully established but do not meet the requirements of this ordinance and to discourage the expansion and/or intensification of such access; and to encourage the elimination of non-conforming accesses or reduce their negative impact on the County roadway system as opportunities arise.
 - a. **Continuation:** Access Connections in place as of the effective date of this ordinance that do not conform with the standards shall be allowed to continue as long as there is no physical change in the access, change in the land use served by the access, intensification of the land use served by the access or any activity contemplated as *development* under this code as set forth in §8.1.6(A)(j). Normal maintenance and repair of the access shall not be considered to be a physical change in the access.
 - b. **Discontinuation.** If the use of a nonconforming access is discontinued for more than one (1) year the access shall not be re-established unless approval of an Access Permit is issued pursuant to this code. If a non-conforming access serves a non-conforming use or structure, the use of which has been discontinued for more than one (1) year, or if a non-conforming use is damaged to an extent exceeding fifty (50) percent of its market value or replacement cost, whichever is less, any subsequent access serving the property shall conform to the provisions of this ordinance. For additional information on non-conforming uses and structures, see §8.2.2 of the County *Development Code*.
- H. **Modifications and Deviations from Access Standards.** Deviations up to fifteen (15) percent of the minimum spacing standard or 200 feet, whichever is less, may be authorized by the county highway engineer

where a property is unable to meet the minimum Access Connection standards and where the deviation will not create any safety concerns. The county highway engineer shall have the authority to require the applicant to complete a traffic impact study or similar document (as appropriate) to analyze whether the deviation would negatively impact the roadway under existing or future conditions.

I. Appeal Procedures. An applicant whose Access Permit, Access Plan or proposed Access Connection is not approved, or is approved with conditions which are not agreeable to the applicant, shall have ten (10) days to appeal the decision in writing, specifically citing the reasons for which an appeal should be approved.

1. Process. Appeals on decisions regarding an Access Permit, Access Plan or proposed Access Connection shall be handled by the Board of Adjustment pursuant to §8.4.4 of this Code and MN Statute §394.27. Any appeal shall be filed by the applicant within ten (10) days of the date of any denial.

2. Criteria for Appeal Approval. Appeals shall be considered under the criteria set forth within §8.4.4 of this Code and MN Statute §394.27.

J. County Highway Engineer and Use of the Highway Tracking Committee. The county highway engineer reserves the right to forward any Access Permit or Access Plan to the Highway Tracking Committee for discussion, direction or interpretations relative to this ordinance; although the county highway engineer shall still retain final decision making authority. If a permit is forwarded to the Highway Tracking Committee a 'final decision' on the permit as contemplated in §8.3.6(E)(3) shall be extended by thirty (30) calendar days.

Title 8, Chapter 4

Repeal and Re-Adopt Section 8.4.4(5) as follows:

5. Appeals of Administrative Decisions. The Board of Adjustment shall have the authority to hear and decide on appeals of final administrative decisions of the Planning Director/Zoning Administrator or the County Highway Engineer that are not reviewed by the Planning Commission, County Board or Board of Adjustment. Such final administrative decisions may be appealed to the Board of Adjustment by the applicant within ten (10) days of the date of any denial by filing with the Board of Adjustment a notice of appeal specifying the grounds of the appeal.

Title 8, Chapter 5

Repeal as follows:

8.5C.6(B)4

8.5D.4(A)4 & 8.5D.4(B)4

8.5G.3(E)

8.5H.3(E)

Title 8, Chapter 6, Section 8.6.10

Repeal and Re-Adopt Section 8.6.10 as follows:

8.6.10: Standards for All Commercial and Industrial Uses.

A. Access Management / Access Plan: Proposed commercial and industrial uses where any portion of the boundary of the proposed parcel is adjacent to Highways 10, 336, 9, 32, 34 or Interstate 94 shall submit an access management plan with any conditional use, rezoning, platting or subdivision request. The access management plan shall conform to the access management submittal requirements, provisions and criteria as set forth in §8.3.6 of the County Development Code.

Title 8, Chapter 7, Section 8.7.14(E)(2)(b)

Repeal and Re-Adopt Section 8.6.10 as follows:

Access Standards. Access design and permitting shall comply with sub-section 8.3.6 of this Code and as applicable, any requirements or guidelines as set forth by the Minnesota Department of Transportation.

Title 8, Chapter 8, Section 8.8.2

Repeal and Re-Adopt Section 8.8.2 to include the following definitions:

ACCESS: A means of providing vehicular entrance or exit to a property or parcel from an abutting property, public road or right-of-way. Access types include permanent, temporary or field openings.

ACCESS CONNECTION: Any field opening, Driveway, public or private street/roadway that provides reasonable access for the movement of vehicles between the county road system and an abutting property.

ACCESS PERMIT: A permit issued by the county highway engineer or his/her designee(s) authorizing an Access Connection within a county right-of-way or onto the county roadway system; in accordance with provisions set forth within the County Code.

ACCESS, PRIVATE: An Access Connection that is privately owned and maintained and which provides the principal means of access to an abutting property.

ACCESS, PUBLIC: An Access Connection under the jurisdiction of a public authority that provides the principal means of access to an abutting property.

ACCESS PLAN: A plan reviewed by the County Planning Commission and approved by the Board of Commissioners upon recommendation of the county highway engineer establishing a coordinated plan for Access Connections to the county roadway system as part of an application for subdivision, conditional use permit or a development permit.

DRIVEWAY: A roadway or opening constructed for vehicular travel and which is privately owned and maintained; and provides the principal means of access to three (3) or fewer abutting parcels or residences.

FIELD ACCESS/OPENING: An Access Connection to an agricultural field used for the movement of farm vehicles and equipment. Access to a farmstead, feedlot, farm-related structures or uses contemplated under the AGRICULTURAL USE definition, exclusive of any uses that fall within this definition, are not considered a field access or opening.

NON-CONFORMITY: Any legal use, structure, access or parcel of land already in existence, recorded, or authorized before the adoption of official controls or amendments thereto that would not have been permitted to become established under the terms of the official controls as now written, if the official controls had been in effect prior to the date it was established, recorded or authorized.

NON-CONFORMING ACCESS: An Access Connection to a property or parcel that existed prior to the effective date of this ordinance that does not conform with the requirements of this ordinance.

RIGHT-OF-WAY: Land in which the county has an interest, [including, but not limited to, by fee title, easement or plat dedication], which is primarily intended, directly or indirectly, to be used for a highway, street, road, alley or drainage facility.

CLAY COUNTY, MINNESOTA

ORDINANCE NO. 2012-5

AN ORDINANCE OF THE COUNTY OF CLAY, MINNESOTA REPEALING, READOPTING AND RE-ESTABLISHING A FUNCTIONAL CLASSIFICATION NETWORK WITHIN THE COUNTY COMPREHENSIVE PLAN

WHEREAS, the County of Clay, Minnesota ("County") is a statutory County duly organized and existing under Article XII of the Minnesota Constitution; and

WHEREAS, pursuant to Minnesota Statute Chapter 394 and specifically §394.21, the County has the power and authority to conduct and implement planning activities;

WHEREAS, the County has, by ordinance, and pursuant to Minnesota Statute Chapter 394.23, adopted the Clay County Comprehensive Plan (July, 2002);

WHEREAS, the County has the ability to amend the Comprehensive Plan pursuant to Minnesota Statute §394.30 following completion of notice and publication protocols as set forth within Minnesota Statute §375.51;

WHEREAS, the County has undertaken a process to establish and draft Development Code provisions related to access control and access management, consistent with authority granted under Minnesota Statutes §160.08; and to further amend and repeal certain sections of the Development Code to ensure continuity and consistency with aforementioned access control/management provisions; and

WHEREAS, the aforementioned access control and access management standards specifically reference functional classification maps within the County Comprehensive Plan which have been updated as part of this process to accurately reflect the intent of the County and appropriately coordinate with the access control and access management standards; and

WHEREAS, the County, in cooperation with the Fargo-Moorhead Metropolitan Council of Governments ("Metro COG"), has conducted a public hearing per Minnesota Statute §375.51 on the proposed Comprehensive Plan amendment on December 27th, 2012, thereby allowing all interested parties an opportunity to review, comment and provide feedback regarding the proposed amendment; and

WHEREAS, the County hereby finds and determines that the proposed Comprehensive Plan amendment is appropriate and necessary to the function and efficient operation of the County and to ensure the health, safety, morals, and general welfare of the County.

NOW, THEREFORE, THE BOARD OF COMMISSIONERS OF THE COUNTY OF CLAY, MINNESOTA HEREBY ORDAINS AS FOLLOWS:

Section 1. Adopt the updated Existing Functional Classification Network as set forth within Exhibit A to the Clay County Comprehensive Plan, to be referenced as Map 2.18. The County hereby adopts the proposed amendment, attached hereto and incorporated herein as Exhibit A.

Section 2. Severability. If any portion of this Ordinance is found to be void or ineffective, it shall be deemed severed from this Ordinance and the remaining provisions shall remain valid and in full force and effect.

Section 3. Effective Date. This ordinance shall become effective and be in force immediately upon final passage, consistent with Minnesota Statute §375.51.

ADOPTED BY THE CLAY COUNTY BOARD OF COMMISSIONERS ON 12-27, 2012.



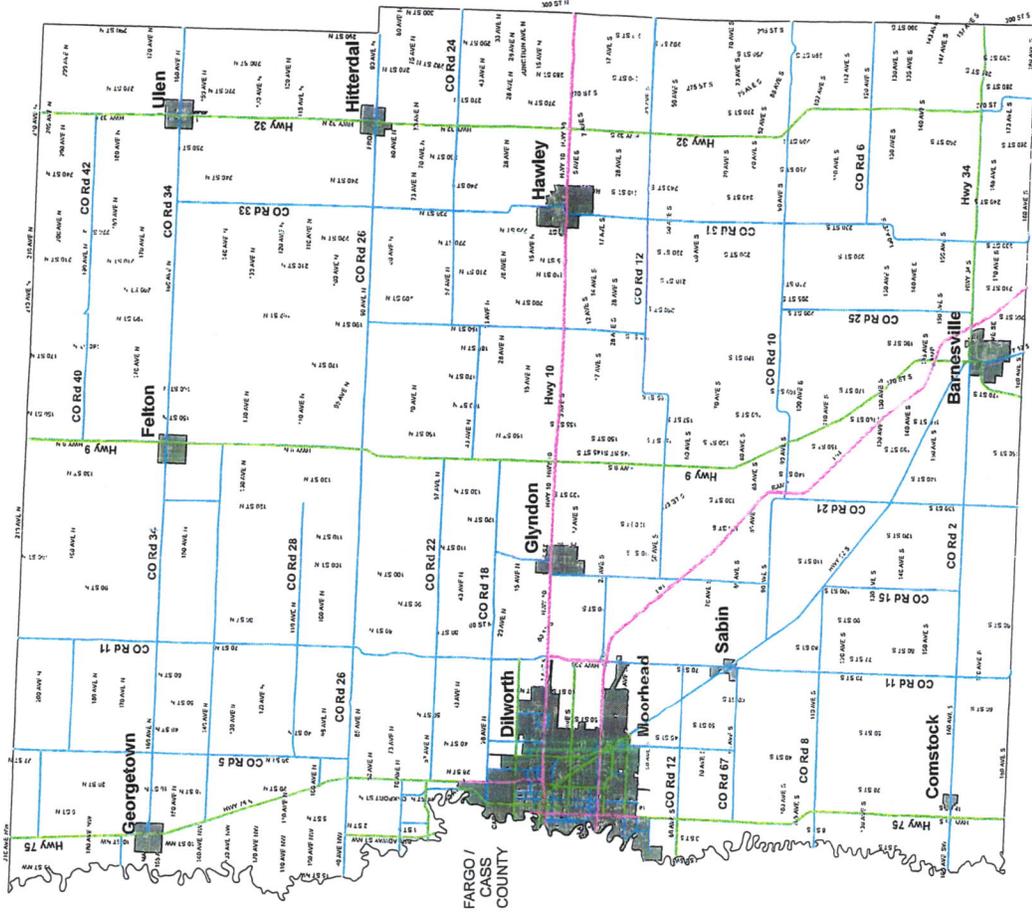
GRANT WEYLAND, CHAIRMAN, CLAY COUNTY BOARD OF COMMISSIONERS

ATTEST: 

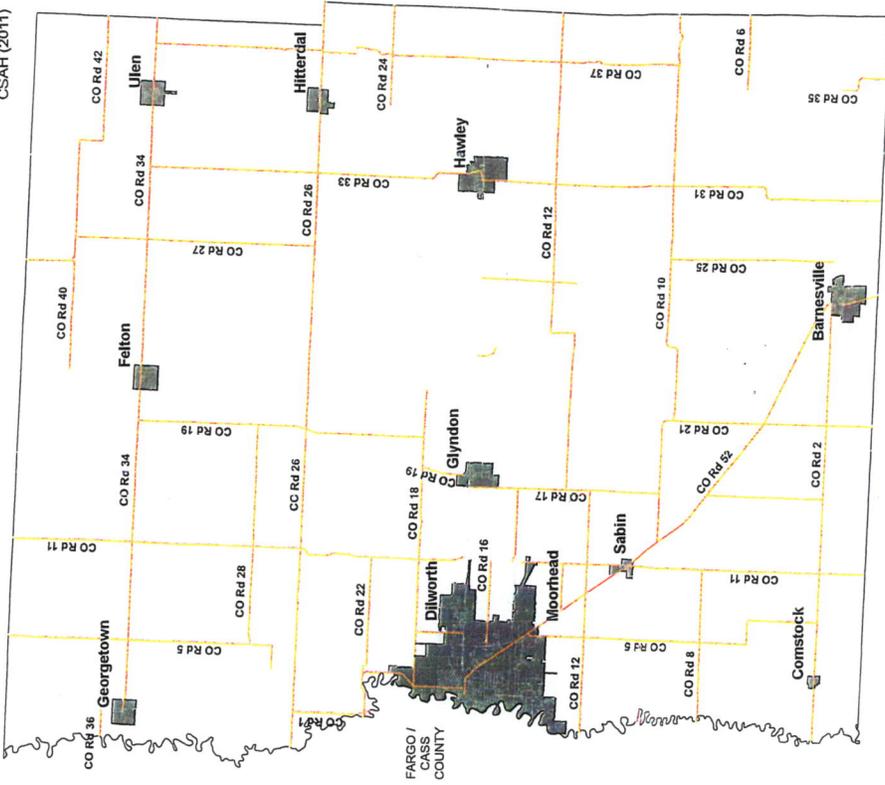
BRIAN BERG, CLAY COUNTY ADMINISTRATOR

Clay County - Existing Functional Classification Network

Existing Functional Classification



County State Aid Highway Designations
CSAH (2011)



References

- Major Arterial
- Minor Arterial
- Collector
- Local
- County State Aid Highway (CSAH)
- Regionally Significant Transportation Infrastructure (RSTI) per Traffic Operations Incident Management Strategy (March 2012)
- Clay County, City Boundaries



DECEMBER 2012

Fargo-Moorhead Metropolitan Council of Governments