

**CLAY COUNTY BOARD OF COMMISSIONERS**  
**8:30 A.M., TUESDAY, SEPTEMBER 14, 2021**  
Rooms A/B, 3<sup>rd</sup> Floor, Courthouse  
**MINUTES**

The Clay County Board of Commissioners met in regular session with the following Commissioners present: Kevin Campbell, Jenny Mongeau, Frank Gross, Jenna Kahly, and David Ebinger. Others present: County Administrator Stephen Larson, County Attorney Brian Melton, Human Resource Director Darren Brooke, and Sr. Administrative Asst. Colleen Eck.

**CALL TO ORDER**

Chair Campbell called the meeting to order at 8:30 a.m.

**APPROVAL OF AGENDA**

On motion by Commissioner Gross, seconded by Commissioner Kahly, and unanimously carried, the Board approved the agenda.

**CITIZENS TO BE HEARD**

There were no citizens who wished to be heard.

**APPROVAL OF PAYMENT OF BILLS AND VOUCHERS**

On motion by Commissioner Kahly, seconded by Commissioner Ebinger, and unanimously carried, the Board approved payment of bills and vouchers totaling \$1,523,587 from 126 vendors. From that total, 93 warrants issued were under \$2,000 (\$48,955) and the following 33 were over \$2,000:

Construction Engineers, Inc.	\$811,304	Stellar Services, LLC	\$5,247
Clay Co Public Health	\$149,941	Psychlogics	\$5,160
Moorhead Public Service	\$ 76,939	NW MN Juvenile Detention	\$4,658
MN Counties Computer Co-op	\$ 67,986	Wilkin Co Public Health	\$4,529
MEnD Correctional Care, LLC	\$ 60,265	Braun Intertec Corp.	\$4,496
Otter Tail Co Public Health	\$ 45,500	Leighton Broadcasting	\$4,296
Trinity Services Group, Inc.	\$ 42,793	Anjaam Holdings, LLC	\$4,248
City of Fargo	\$ 39,671	Fidlar Technologies	\$4,150
Turner Sand & Gravel, Inc.	\$ 35,435	Sanford Health	\$3,861
Becker Co Public Health	\$ 24,984	Farmers Co-op Oil Co	\$3,038
Pro West & Asso., Inc.	\$ 14,453	Enterprise FM Trust	\$2,733
Crisis Prevention Institute, Inc.	\$ 11,097	Trane U.S., Inc.	\$2,578
Nitzkowski, Inc.	\$ 8,300	Dakota Plains Mechanical, Inc.	\$2,498
Pemberton Law, PLLP	\$ 7,995	WC Regional Juvenile Center	\$2,103
Petro Serve USA	\$ 7,402	Fuchs Sanitation, Inc.	\$2,032
Forum Communications Printing	\$ 6,981	TJV Trust	\$2,000
Marco Technologies LLC	\$ 5,959		

**APPROVAL OF MINUTES FROM AUGUST 24, 2021**

On motion by Commissioner Mongeau, seconded by Commissioner Ebinger, and unanimously carried, the Board approved the minutes from August 24, 2021, with the deletion of a statement on page two regarding past decisions on masks.

**ACKNOWLEDGEMENT OF DONATION TO SHERIFF'S K-9 PROGRAM FROM SABIN HARVEST DAYS**

The Board acknowledged Sabin Harvest Days for their \$150 donation to the Sheriff's K-9 Program.

**COVID-19 UPDATE**

Kathy McKay, Jamie Hennen, and Becky Schmidt from Public Health provided a weekly update on COVID-19. They reported that Clay County cases jumped from 165 to 291 in the past week. Cass County also showed an increase in cases. With the presence of the Delta variant the younger age groups have also had increased cases. Sanford Health Facilities provided their current data showing 38 cases in ICU, with 37 unvaccinated and one vaccinated. They have 26 cases on ventilators with 25 unvaccinated and one vaccinated. The upcoming vaccination opportunities were provided. The state-wide data shows that 71.3% of people have had at least one vaccine dose and 67.3% have completed the vaccine series. Breakthrough cases in the state following full vaccination are very low at 0.610%. Breakthrough hospitalizations are at 0.036% and breakthrough deaths are at 0.004%.

**REQUEST TO ADOPT RESOLUTION 2021-39 FOR CITY OF DILWORTH TO RECEIVE TAX FORFEIT PARCEL FOR AUTHORIZED PUBLIC USE**

City of Dilworth Administrator Peyton Mastera informed the Board that Dilworth would like to obtain a vacant lot which is in tax forfeiture to provide affordable housing. They are working with Habitat for Humanity for a new residence.

On motion by Commissioner Gross, seconded by Commissioner Mongeau, and unanimously carried, the Board adopted the following resolution for Dilworth to obtain a tax forfeit property:

**Resolution 2021-39**

**BE IT RESOLVED** on this 14th day of September 2021 that the Property owned by the State of Minnesota, County of Clay, and legally described as follows: Lots 4-6 Block 3 Beans 1<sup>st</sup> Addition to the City of Dilworth, has forfeited to the State of Minnesota for non-payment of taxes. The City of Dilworth has requested to receive this parcel free of charge and will utilize the property to Remove Blight and Create Affordable Housing as in Minn. Stat. 282.01, subd. 1a (d) and therefore, has a \$0 purchase price.

**BE IT FURTHER RESOLVED**, that the Chair of the Board, the Auditor and/or the County Administrator are hereby authorized to execute whatever documents are necessary to effectuate said transfer.

**BE IT FURTHER RESOLVED**, this Resolution shall be effective as of Sept 14, 2021, the date Board action was taken.

**REQUEST TO APPROVE RED RIVER REGIONAL DISPATCH CENTER AMENDED AND RECONSTITUTED JOINT POWERS AGREEMENT**

Sheriff Mark Empting noted that with the 2020 census data, Clay County's cost share for the Red River Regional Dispatch Center (RRRDC) will decrease from 10% to 8.3%.

On motion by Commissioner Ebinger, seconded by Commissioner Kahly, and unanimously carried, the Board approved the amended and reconstituted RRRDC Joint Powers Agreement with a decreased cost share for Clay County.

**REQUEST TO APPROVE RESOURCE RECOVERY FACILITY CONSTRUCTION CHANGE ORDER #1**

County Administrator Stephen Larson provided Change Order #1 for the Resource Recovery Facility Construction project. The change order consists of two items which are both credits. They are a revised sitework/roadway alignment and a revised waterline to the scale house building.

On motion by Commissioner Kahly, seconded by Commissioner Ebinger, and unanimously carried, the Board approved Construction Engineers' Change Order #1 with a \$653,961.86 decrease to the Guaranteed Maximum Price for the Resource Recovery Facility Construction project.

**REQUEST TO ADOPT RESOLUTION 2021-42 FOR MPCA CAPITAL ASSISTANCE GRANT PROGRAM FOR RESOURCE RECOVERY CAMPUS FUNDING**

Mr. Rosenberger brought forth Resolution 2021-42 for MPCA Capital Assistance Grant of \$7.5 million in funding for the Resource Recovery Campus.

On motion by Commissioner Mongeau, seconded by Commissioner Gross, and unanimously carried, the Board adopted the following resolution:

**RESOLUTION 2021-42**

**WHEREAS, Clay County is developing a Resource Recovery Campus Project with an estimated total cost of 21.8 Million Dollars, and;**

**WHEREAS, Clay County is applying for a Capitol Assistance Grant of 7.5 million dollars from the Minnesota Pollution Control Agency, and;**

**WHEREAS, Clay County passed a resolution dated August 10, 2021, authorizing the issuance of \$10,130,000 General Obligation Solid Waste Revenue Bonds, Series 2021B, the proceeds of which will be used to provide funds for the costs of construction of Resource Recovery Campus, and;**

**NOW, THEREFORE, BE IT RESOLVED, by Clay County's Board of Commissioners that the Solid Waste Department will pay the balance of the project cost of Three Million, Five Hundred Thousand Dollars (\$3,500,000) from the Solid Waste Reserves Fund #62.**

**PUBLIC HEARING – RED RIVER VALLEY ELECTRIC CO-OP'S PETITION FOR REZONING IN GLYNDON TOWNSHIP**

On motion by Commissioner Gross, seconded by Commissioner Ebinger, and unanimously carried, the Board opened the public hearing.

Planning Director Matt Jacobson stated the Planning Office received a petition for rezoning from Red River Valley Electric Co-op. That request came before the Planning Commission last month and their recommendation, with a 7 to 2 vote, was for approval of the rezoning request. The rezoning is for an approximate 8-acre tract of land, which is part of a 64-acre parcel, to be rezoned to Limited Highway Commercial. The current zoning is Urban Expansion Tier 1, and the overlay district is Resource Protection – Wellhead. The tract of land is also within City of Dilworth's two-mile extra-territorial jurisdiction. A preliminary plat has been approved by Dilworth Planning Commission. This site is situated above the Buffalo Aquifer and is approximately 8,000 feet from the Moorhead Public Service wellheads and approximately one-half mile from the north boundary of the Moorhead Drinking Water Supply Management Area. These boundaries will be updated in the near future and are subject to change.

The drinking water supply management area is managed through a Wellhead Protection Plan. The pollution sensitivity near the surface is ultra-low and the sensitivity ratings for the underlying aquifer vary with the depth between medium and ultra-high. The average depth to the aquifer ranges from 17 to 22 feet. The groundwater flows naturally to northwest. Mr. Jacobson provided his interpretation of the sensitivity maps.

Red River Co-op intends to utilize the site for an auxiliary service center. The facility would be designed to avoid or mitigate any groundwater impacts. They plan to have a septic system but do not expect to use much water on the site. No hazardous material would be stored in bulk onsite, and their vehicles would be serviced offsite. The entire parcel is considered prime farmland and is also in the Planned Urban Growth Area for the City of Dilworth. The Criteria and General Review Standards for zoning district amendments were read. The main item of conflict was the high risk for contamination in the area.

Two letters were received regarding this request. The letters came from Moorhead Public Service (MPS) and from Clay County Planning Commission Chair Bill Davis. The letters will be entered into the record. Mr. Davis stated this would be a good business to have in Clay County and any risks at the site could be mitigated. MPS is against the rezoning request.

The applicant, Rich Whitcomb, CEO of RRV Co-op Power, stated this is a not-for-profit company that serves co-op members in Polk, Norman, and Clay Counties. The headquarters is in Halstad. The company has shown growth, and this would be the best location for expansion with the paved road and electricity available. They plan to build at the site in 3-5 years or longer. Dilworth City Council and Planning Commission and Clay County Planning Commission have all approved the rezoning request. Verbal notice was given to Moorhead Public Service well in advance of the public hearings. There would be very little water use. They would have a heated shop on concrete for the linemen. They would be code-compliant and would put in a retention pond if needed.

Mark Pritchard introduced himself as the Water Plan Supervisor for Moorhead Public Service. He referred to Bill Davis's letter that stated there were multiple questions asked but not answered during the Planning Commission meeting. Mr. Pritchard believes the questions were all answered and noted that MPS *did* talk about types of businesses that would be suitable for this location. MPS is very concerned about bacterial contamination into this aquifer system. They are responsible for providing safe and economic drinking water for Moorhead and Dilworth. He provided an example from 2020 when the Moorhead Municipal Airport had a positive bacteria sample. MPS was needed to assist with more sampling and with disinfecting that well. He commented that this rezoning could lead to a burden on public services and that a private well used for commercial purposes provides unnecessary risks and more potential for contamination. He noted the risk would be lower if there were municipal services to the site, but it is a long way out.

Commissioner Gross noted that he was at the Planning Commission meeting and is very concerned about the water supply as he lives in Dilworth. He mentioned other risks on the property such as farming fertilizers and pesticides and the potential for some type of spill. He commented that there seems to be less risk of contaminants with the proposal. Commissioner Campbell noted that the application lists a mound septic system, but they have stated they would also be open to a holding tank system. Commissioner Mongeau stated that any septic system holding tank at the site would have an alarm system for any type of malfunction.

Mr. Jacobson informed the Board if the site is rezoned to Highway Commercial, it would open it up to other uses; however, a public hearing, at the Planning Commission level, would be needed and a Conditional or Interim Use Permit would be required. The consideration today is for the rezoning request and requires a 4/5's vote for approval.

Mr. Pritchard added that MPS is also concerned with the timeframe being 3 to 5 years out. The Wellhead Protection Plan get updated every ten years and the results of the upcoming update will be completed before the 3-to-5-year timeframe for the construction of this project. There could be changes to the model and the Drinking Water Supply Management Area (DWSMA) boundaries could change, the site could be less than suitable for commercial construction. The Wellhead Protection overlay would be removed if the property is rezoned. If it is rezoned, it would essentially make this tract an island surrounded by nonconforming use.

Mr. Whitcomb noted that everything said at the Planning Commission meeting and at the other jurisdictions' meetings is on the record.

Commissioner Ebinger stated there are a lot of unknowns and it is a difficult decision to make. He added there is a high probability that this building would be managed responsibly, but if there are consequences, they would be serious. This could open up the site to more businesses before the DWSMA is updated.

Travis Schmidt, General Manager for Moorhead Public Service, stated he was notified verbally in late July of the situation, but did not have the actual physical location and thought it was on 34th Street, west of Dilworth. He commented that it seems like unorderly growth, and it is imperative to protect this valuable water source for the citizens.

Chuck Hendrickson, Moorhead City Council, stated he is acting as the liaison for the City of Moorhead and the City Council, along with MPS, and is very uncomfortable with this request. He noted the City Council members all signed off on MPS's letter. He commented that it is an unnecessary risk.

On motion by Commissioner Kahly, seconded to Commissioner Ebinger, and unanimously carried, the Board closed the public hearing.

Commissioner Campbell referred to a document he has sent to his constituents in the past that states he helped write policies to protect the aquifer. He noted that Wellhead Protection overlay district was established for a reason. This was during a comprehensive plan update with a committee consisting of farmers, cities, other citizens, and agencies. He added the likelihood may be minimum but there is still a potential risk and the DWSMA update should come first.

Commissioner Kahly referred to water issues in West Fargo, noting that land and water are treasures and need to be protected. She felt that MPS is extraordinarily responsible with the aquifer. She agreed that this request seems rushed and could maybe be brought back at a later date or another location could be considered. Mr. Jacobson stated there was some discussion at the Planning Commission meeting about moving the building further to the west but that would put them on a gravel road.

Commissioner Gross commented that the risk factors seem very low, and the Board should not be holding up progress. There are already risk factors with farming, etc. The City of Dilworth and Clay County Planning Commission both approved it. Commissioner Kahly added that Moorhead City Council and MPS both oppose this plan.

Commissioner Mongeau mentioned the other businesses that are located within a half mile to a mile of the site. She noted that a half mile in the rural areas is not a great deal of distance. Mr. Jacobson stated there may be 5 to 10 businesses within a mile. When considering leapfrogging and spot-zoning, they have to go by the current comprehensive plan. The businesses were there before the overlay districts were established.

Commissioner Gross stated another site, on the east side of Hwy 336, has a gravel pit where Moorhead dumped soil that may have been contaminated. Mr. Pritchard noted that Moorhead's Engineering staff assured him that the soil dumped there was not contaminated. Each load was tested. He was informed that any contaminated soil was brought to another site.

Mr. Whitcomb added that everything being brought up is hypothetical. He commented that there are probably 50,000 touchpoints in Moorhead where water could contaminate an aquifer, and this is one touchpoint. Their business is a responsible cooperative that serves rural citizens. They were very thorough and thoughtful in finding this location.

Commissioner Mongeau commented that she is on the Planning Commission, and they are tasked with hearing requests for plans and addressing any issues that may come out from the plans. She noted that the Planning Commission believes that the issues with the well and septic system could be mitigated with placing conditions on the permit. She added that she fully understands the water concerns, but this is a corridor with a good road that could help bring opportunities to the County. She does not believe this would be a negative plan for the County, and electrical service is imperative in rural Clay County especially when it is -30 degrees.

A motion was made by Commissioner Gross and seconded by Commissioner Mongeau to approve the Planning Commission's recommendation for Red River Valley Co-op's Petition for Rezoning. Motion failed with a vote of two ayes (Commissioners Gross and Mongeau) and three nays (Commissioners Kahly, Campbell, and Ebinger).

**ACCEPT BOND OFFERS AND ADOPT RESOLUTION 2021-40 FOR GENERAL OBLIGATION CAPITAL IMPROVEMENT PROJECT BONDS; AND RESOLUTION 2021-41 FOR GENERAL OBLIGATION SOLID WASTE REVENUE BONDS**

Senior Municipal Advisor Shelley Eldridge from Ehlers, and County Administrator Larson were present with the offers and resolutions for Capital Improvement bond and Solid Waste bonds. The bonds recently went up for sale and Ehlers opened the bids yesterday.

Ms. Eldridge stated that County staff went through a bond rating call with Standards and Poor's (S&P), and she has a copy of that report. S&P has affirmed an AA rating for Clay County. Ms. Eldridge highlighted the items brought out during the bond rating. Both bonds received a premium bid. The County Auditor and Administrator have decided to keep those premiums as both bids came in within the budget. Five bids were received for the Capital Improvement Bonds.

On motion by Commissioner Kahly, seconded by Commissioner Ebinger, and unanimously carried, the Board adopted the Resolution 2021-40 for General Obligation Capital Improvement Project Bonds.

*Excerpt from:*

**RESOLUTION NO. 2021-40**

**RESOLUTION AUTHORIZING ISSUANCE, AWARDING SALE, PRESCRIBING THE FORM AND DETAILS AND PROVIDING FOR THE PAYMENT OF \$3,185,000 GENERAL OBLIGATION CAPITAL IMPROVEMENT PLAN BONDS, SERIES 2021A**

Ms. Eldridge stated the bids for the Solid Waste Revenue bonds came in very low. The annual payment amount is between \$648,00 and \$650,000. Ms. Johnson noted this is within the budget and the County will keep the premium.

On motion by Commissioner Mongeau, seconded by Commissioner Ebinger, and unanimously carried, the Board adopted Resolution 2021-41 for General Obligation Solid Waste Revenue Bonds.

*Excerpt from:*

**RESOLUTION NO. 2021-41**

**RESOLUTION RELATING TO \$10,130,000 GENERAL OBLIGATION SOLID WASTE REVENUE BONDS, SERIES 2021B; AUTHORIZING THE ISSUANCE, AWARDING THE SALE, PRESCRIBING THE FORM AND DETAILS AND PROVIDING FOR THE PAYMENT THEREOF**

**ESTABLISH SOLID WASTE SERVICE FEES AND LANDFILL TIPPING FEES FOR 2022**

Solid Waste Manager Kirk Rosenberger requested raising the Solid Waste Service Fees and Landfill Tipping Fees beginning January 1, 2022. The request for the increases has been vetted through the Solid Waste Advisory Committee. The increase for the Solid Waste Service Fee that is collected on property taxes would be 7% overall and \$3 annually for single family homes. Commissioner Campbell stated the increase should cover all the capital costs associated with Solid Waste including the new bond payments. This is an enterprise fund and advance notice is required.

On motion by Commissioner Kahly, seconded by Commissioner Ebinger, and unanimously carried, the Board approved the proposed increase in rates for Solid Waste Service Fees beginning in 2022.

The tipping fees are charged at the landfill and pay for the operational costs at the site. The proposed increase is from \$50/ton to \$53/ton for municipal solid waste. The new rates for other material accepted at the landfill were provided. The fee for tires will not be increased. Commissioner Mongeau noted they have had substantial conversations on these increases.

On motion by Commissioner Mongeau, seconded by Commissioner Ebinger, and unanimously carried, the Board approved the proposed increases in the landfill tipping fees with a \$3/ton increase in municipal solid waste.

**CONTINUED BUDGET DISCUSSION**

County Administrator Stephen Larson and Auditor – Treasurer Lori J. Johnson provided a couple of options for the budget moving forward. The Board noted that additional discussion will be needed on the three new

requests from last week. Detailed budget sheets will be brought to the next Board meeting for continued discussions.

**COMMITTEE REPORTS/COUNTY ADMINISTRATOR UPDATE/DISCUSSIONS**

- Commissioner Gross attended meetings for Homelessness; Building Committee; Public Health; and Beyond the Yellow Ribbon.
- Commissioner Mongeau attended meetings for Extension Committee; Cass-Clay Food Partners; Resource Recovery Facility Construction; Soil and Water Conservation District; local Pollinator Project; and CARES-2.
- Commissioner Ebinger attended meetings for NW Region Emergency Communication Board; MN/ND round table for Deadly Force Legislation; and had a phone meeting with Carley Stark from AMC.
- Commissioner Kahly attended a Cass-Clay Food Partners meeting and attended the Lakes & Prairies Community Action Partnership Ribbon Cutting Ceremony.
- Commissioner Campbell attended meetings for FM Diversion Authority Executive Committee; Resource Recovery Facility Construction; and CARES-2.
- County Administrator Larson attended meetings for County Management; Resource Recovery Facility Construction; County Budget; County Insurance; Federal Vaccination Mandate; Detox; CARES-2; and Opioid Lawsuit.

On motion by Commissioner Kahly, seconded by Commissioner Mongeau, and unanimously carried, the MN/ND Mutual Aid for Law Enforcement Committee was added to Commissioner Ebinger’s committee assignments and Commissioner Campbell was assigned as the alternate.

The meeting was adjourned at 12:01 p.m.

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Chair Kevin Campbell  
County Board of Commissioners

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Stephen Larson, County Administrator