

CLAY COUNTY BOARD OF COMMISSIONERS

Tuesday, June 22, 2004

8:30 a.m.

County Board Room - 3<sup>rd</sup> Floor - Courthouse

MINUTES

The Clay County Board of Commissioners met in regular session on Tuesday, June 22, 2004, with all commissioners present: Brunsvold, Campbell, Evert, McCarthy and Waller.

APPROVAL OF AGENDA

On motion by Evert, seconded by Campbell, and unanimously carried, the agenda was approved with the following additions:

- Addition to Clay County Social Services List of Contracts for 2004
- Approval to pay Capital One Visa invoice by Auditor's Warrant
- Miscellaneous fee: Recorder's Office

CITIZENS TO BE HEARD

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

SWAC RECOMMENDATION FOR PURCHASE OF BUDGETED ITEM: ALTERNATIVE DAILY LANDFILL COVER APPLICATOR

By consent agenda, and as recommended by the Solid Waste Advisory Committee, the Board approved the purchase of an alternative daily cover applicator for the Landfill per the bid of New Waste Concepts in the amount of \$41,300. Of the three bids that were received, only New Waste Concepts was capable of supplying a "landfill equipped" carriage.

APPROVAL OF ABATEMENT REQUESTS AS RECOMMENDED BY COUNTY ASSESSOR

By consent agenda, the Board approved abatements as recommended by the County Assessor, as follows:

- Robert Brudevold, M52.978.2092, tax reduction of \$26 (mobile home destroyed by fire)
- Roberto Lopez, M52.998.0013, tax reduction of \$46 (mobile home destroyed by fire)

APPROVAL OF OFF-HIGHWAY VEHICLE ENFORCEMENT GRANT APPLICATION IN THE AMOUNT OF \$3028

By consent agenda, the Board authorized execution of a grant agreement with the State of Minnesota for the Sheriff's Department for Off Highway Vehicle Enforcement in the amount of \$3028.00 for the period June 1, 2004 to June 30, 2005.

PRESENTATION BY LAKELAND MENTAL HEALTH

Mr. Clair Prody, Lakeland Mental Health Director, and Ms. Donna Baker, Moorhead site manager, were present to update the Board regarding the numerous services provided by Lakeland in an effort to prevent hospitalization or out of home placement. These services include psychiatry,

psychological testing, employee assistance programs, domestic violence treatment, court services evaluations, pet therapy, play therapy, emergency services, outpatient services, children's therapeutic services, day treatment sites in schools, etc.

Mr. Prody added that Lakeland is in the planning stages to build their own facility, which will decrease the amount of space leased in the Family Service Center of Clay County.

#### PLANNING COMMISSION RECOMMENDATION RE: BRENDEMUEHL SUBDIVISION

Planning & Environmental Programs Director Tim Magnusson informed the Board that in May the Planning Commission had been presented with a request from Curt & Dave Brendemuhl for a twelve lot platted subdivision to be located in the NE 1/4 Section 3, Oakport Township. The subdivision would be comprised of 10 lots (approximately 2.8 acres each) that front on County Road 95 and 2 large back lots (one 35 acres and one 65 acres). The Planning Commission has denied the plat request as proposed due to the fact that this is prime ag land, it does not comply with the Comprehensive Plan for orderly/efficient growth, and exceeds the non-ag residence density guidelines of four homes per quarter quarter. The Planning Commission also had concerns regarding the number of driveways that would front on County Road 95 and potential flooding issues at the site. County Engineer Jack Cousins stated that he would be opposed to 10 driveways at the site, but could accept 5 driveways (2 existing).

Commissioner Waller commented that the existing water table will ensure that mound systems will be required for the septic system.

Commissioner Brunsvold felt the County Engineer's objection to 10 driveways at the site was understandable.

Commissioner Campbell stated that the developer is willing to amend the driveway situation to two residences sharing one driveway. He added that he has received a call from a lifelong area resident, commenting that this particular piece has been dry in high water times. Another neighboring property owner has expressed concerns about his ability to have animals on his property, which will now be close to the proposed subdivision.

Curt Brendemuhl commented that there are several culverts under County Road 26. He added that with this proposed development, there will be no water affecting other existing property owners.

Commissioner McCarthy stated that Ag Preservation is part of the Comprehensive Plan and the Comprehensive Plan is being amended to allow more development of subdivisions such as this. He questioned if the developer would consider just one egress to County Road 95. Mr. Brendemuhl stated that that option would be very costly, and would require the Township/County to maintain it. He added that a storm water retention pond would be required as well.

Mr. Brendemuhl stated that he would be amenable to just developing the 10 lots that front on CR 95 at this time, dropping the back two larger lots from the plan. He added that the properties are not in the flood plain, and that other area residents are not building dikes around their properties, but are improving their homes. He did not feel the 1997 flood should dictate what is done in the area. Mr. Magnusson stated that the 1997 flood is considered close to a 100 year event, and that it is not outrageous to think it will happen again.

Commissioner Campbell commented that if the developer is willing to eliminate the two back lots, then an Environmental Assessment Worksheet would not have to be completed.

Commissioner Evert commented that if the new owners of the properties were required to

build 2' above the flood elevation, that would take care of the concerns regarding flooding. Discussion took place regarding this requirement being part of the covenants for the property, but Mr. Magnusson stated that covenants are not a County responsibility.

Commissioner Waller stated that no one wants to build and have their property flood, so they will likely take all reasonable precautions.

A brief discussion took place regarding the “exchange” of this prime ag land for other land the Brendemuhl’s own (transferring development rights). Mr. Brendemuhl expressed his opinion that houses are being built all over South Moorhead on prime ag land, and there seems to be no problem with that. It was stated that that development is in the City of Moorhead’s jurisdiction and not the County’s.

Commissioner Campbell suggested that the Brendemuhl’s implement a Developers Agreement, requiring buyers to build 2' above the 100-year flood level. Mr. Brendemuhl was agreeable to that suggestion, but felt that people would naturally do that anyway.

Commissioner Campbell stated that in the best interest of the County and the direction it needs to go in terms of rural residential housing, he moved to grant preliminary approval to a 10-lot subdivision as described above, with final approval by the County Board to include a surveyors plat and developers agreement specifying construction at 2' above the 100' flood level, one driveway per two lots, etc. Commissioner McCarthy seconded the motion.

Discussion took place regarding the need for proof that well water would be found at the sites as well as suitability for sewer systems. It was suggested that the County Attorney’s office be involved in creating the Developers Agreement.

The motion carried with Commissioner Evert opposed, as representing the Planning Commission.

Commissioner Waller commented that future subdivision requests will be looked at case by case until the Development Code update has been completed.

Commissioner Brunsvold commented on the legal effect of granting ‘preliminary’ approval, questioning if that limits the Board. Assistant County Attorney Michelle Winkis stated that if the developer meets everything that has been discussed and there are no major changes, the Board would likely be bound to granting approval.

#### RECOMMENDATION CONCERNING LEGAL REPRESENTATION IN MATTER OF AMERICAN CRYSTAL SUGAR TAX COURT ISSUE

Assistant County Attorney Michelle Winkis presented a request that Clay County hire Mr. Mark Mandersheid to represent Clay County in the matter of the American Crystal Sugar tax court appeal, contingent upon the City of Moorhead agreeing to split the cost of his services with them. She stated that meetings have been held with City of Moorhead officials regarding this matter, and they are supportive of the joint representation, and in fact, have retained Mr. Mandersheid in the past. Mr. Mandersheid is actively working with Pope County regarding a similar appeal from American Crystal. The City of Moorhead is not interested in contracting with any other law firms for representation in this matter. She added that in tax court appeals, the legal defense obligation statutorily starts with the County.

County Assessor Loren Johnson was present to inform the Board that Clay County would incur a loss of \$150,000 for each year American Crystal has filed an appeal if they were successful. The City of Moorhead and the School District would also incur large losses.

On motion by Evert, seconded by McCarthy, and unanimously carried, the Board accepted the recommendation from the County Attorney's office to contract with Mr. Mark Mandersheid for the American Crystal tax court appeal, contingent upon the City of Moorhead sharing the cost.

Commissioner Campbell stated that he had visited with an attorney from the Vogel firm who felt it is appropriate to contract with Mr. Mandersheid in this particular case. Commissioner Brunsvold stated he had visited with two members of the Vogel firm and they had wondered why the case wasn't being handled by a local attorney.

The motion carried with Commissioner Brunsvold opposed.

Ms. Winkis stated she would contact Minnesota Counties Insurance Trust (MCIT) to see how local law firms could be added to MCIT's 'approved list' for representation of various matters.

WHISKY CREEK TRIBUTARIES WATER RESOURCE MANAGEMENT - CO. RD. 56  
AGREEMENT BETWEEN BUFFALO-RED RIVER WATERSHED DISTRICT  
AND CLAY COUNTY

On motion by Brunsvold, seconded by Campbell, and unanimously carried, the Board authorized execution of an agreement between the Buffalo Red River Watershed District and Clay County pertaining to Whisky Creek Tributaries Water Resource Management's construction of a flood damage reduction and natural resource enhancement project in Section 14 Barnesville Township, adjacent to County Road 56. A portion of County Road 56 would be used as an embankment levee to retain waters and act as an emergency spillway relating to the impoundment reservoir.

ADDITION TO CLAY COUNTY SOCIAL SERVICES LIST OF CONTRACTS FOR 2004

On motion by McCarthy, seconded by Evert, and unanimously carried, the Board approved the addition of Sister's Path/ShareHouse, Inc., to the list of Social Services contracts for 2004.

APPROVAL TO PAY CAPITAL ONE VISA INVOICE BY AUDITOR'S WARRANT

On motion by Evert, seconded by McCarthy, and unanimously carried, the Board approved payment by Auditor's Warrant of the Capital One Visa invoice in the amount of \$2892.90 (County Attorney equipment - \$69; County Attorney murder trial expenses - \$2141.55; Commissioner lodging - \$107.35; and Child Support Conference lodging - \$575.00).

MISCELLANEOUS FEE: RECORDER'S OFFICE

On motion by McCarthy, seconded by Evert, and unanimously carried, the Board approved a Miscellaneous service fee for the Recorder's Office to receipt in any overpayment of \$10.00 or less, to provide efficiency in recording documents timely, as recommended by the County Recorder and Recorder's Association.

COMMITTEE REPORTS/COUNTY ADMINISTRATOR UPDATE

Commissioner McCarthy informed the Board that the West Central Area Agency on Aging continues to discuss consolidation of regional offices.

Commissioner Brunsvold commented that individuals from the Collaborative's focus groups have met and productively discussed differences, and will meet again.

The Historical Society is concerned regarding the need to supplant funds which were cut by

the County.

The Metropolitan Council of Governments has developed its work plan for the next few years. Included in the work plan is a study for a recreational trail between Moorhead and the Buffalo River State Park.

County Engineer Jack Cousins mentioned that progress is being made with the Anda's property (adjacent to the County Road 22/Red River Bridge construction project), in that the Anda's seem to be leaning towards replatting their property in Riverside Subdivision. Commissioner Brunsvold cautioned that legal access to the property must be secured.

The Board agreed to meet to develop Goals & Objectives for the County Board. The Goals & Objectives from all departments will be reviewed at a retreat this Fall.

“AT YOUR SERVICE” EMPLOYEE TRAINING

On motion by Evert, seconded by McCarthy, and unanimously carried, the Board approved an employee training program entitled “At Your Service”, which deals with employees treating customers and each other with respect. The training program will be offered as a community initiative and the \$3000 cost will be shared with the City of Moorhead (and possibly other Joint Powers entities).

ADJOURN

The meeting adjourned at 11:30 a.m.

Respectfully submitted,

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Jerry Waller, Chair  
Clay County Board of Commissioners

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Vijay Sethi  
County Administrator