

PROCEEDINGS OF THE DODGE COUNTY BOARD OF SUPERVISORS

Regular meeting of the Dodge County Board of Supervisors was called to order by Chairman Missel at 9:00 A.M. on Wednesday, April 20, 2022 in the Board Room of the Courthouse, Fremont, Nebraska with the following members present: Beam, Weddle, Strand, Backens, Missel, and Bendig. Absent: Tawney. Prior to roll call Chairman Missel announced the meeting to be an open public meeting and that the current open meeting laws are posted on the wall and available for anyone's review.

The Board unanimously declared the meeting legally convened.

The Board unanimously approved the agenda as printed and received and placed on file county officials' reports, Correspondence from Nebraska State Probation, Sixth Probation District, Patty Lyon, Chief Probation Officer, regarding Probation – Quarterly County Billings 2021/2022 and reimbursement of expenses to Dodge County for the period January 1, 2022 to March 31, 2022, 1st Quarter Project and Expenditure Report for American Rescue Plan Act funds due April 30, 2022 filed with the US Treasury, Certificates of Insurance for Cuming and Everett Townships, Certificates of Insurance for Dick's Electric Company Inc. and Eriksen Construction Co., Inc., Notice of Public Hearing for the City Council of the City of Fremont on April 12, 2022 at 7:00 P.M. for Brian Wiese for a change to the Future Land Use Map and to make a change of zone from GC, General Commercial to LI, Light Industrial and also a request for Copperhead Subdivision Preliminary Plat on property located at the northwest corner of W. Military Ave. and Business Park Drive, Notice of Public Hearings for the City of Fremont Planning Commission: Gerald Kelly to request a Conditional Use Permit for a multi-family development consisting of 60 units on property located at the Southwest corner of Morningside Road and South Howard St.: a request by Paul Gifford for a Change of Zone from PD, Planned Unit Development to SC, Suburban Commercial on property located at the Southeast Corner of Lauren Lane and Morningside Road; a request by Jamey Jaeger for a Change of Zone from R. Rural to LI, Light Industrial on property located at 3327 N. Yager Road and described as Tax Lot 36 in Section 11, Township 17 North, Range 8 East also a request for a Conditional Use Permit to develop a self-storage facility on property located at 3327 N. Yager Road and a request by Jamey Jaeger for a change to the Future Land Use Map of the City's Comprehensive Plan from Commercial to Industrial located at 3327 N. Yager Road; and a request by Rol Horeis for a Conditional Use Permit to allow Small Animal Veterinary Services on property located at 1044 W. 23rd St. These public hearings will be held on April 18, 2022 at 5:00 P.M., Utility Installation Agreement for Great Plains Communications to install fiber optic cable in Sections 22 & 27, 19 North Township and 2 moving permits for Barnhart Crane to move oversized trucks and trailers over county roads to Wholystone Foods and return between April 12 and 16th, 2022.

The Board, with Supervisor Backens abstaining since he was not present at the April 6, 2022 meeting, unanimously approved the minutes of the April 6, 2022 meeting as printed.

At 9:05 A.M., the Board recessed as a Board of Supervisors and convened as a Board of Corrections. Chairman Missel dispensed with roll all members being present except Supervisor Tawney.

Under any items of discussion, Supervisor Beam reported that the average daily inmate count is 54. Currently there are 54 inmates in custody with 50 being held in Saunders County, 1 at the regional center, 1 in Butler County, and 2 under house arrest.

At 9:06 A.M., Chairman Missel adjourned the Board as a Board of Corrections until Wednesday, May 4, 2022 at 9:05 A.M.

Immediately thereafter, the Board reconvened as a Board of Supervisors. Chairman Missel dispensed with roll all members being present.

The Board unanimously approved the wage & hour claims as submitted in the amount of \$244,790.60.

The Board unanimously approved the financial claims as submitted in the amount of \$2,107,881.00. Included in the large claims was a payment made on the final line of credit that was taken out to pay for 2019 flood related expenses.

The Board unanimously approved authorizing County Clerk Mytty to write checks for vehicles for the sheriff's department as those payables come into his office. At the April 6, 2022 meeting of the Dodge County Board of Supervisors, the Board approved funding for four patrol vehicles and one investigator's vehicle. Sergeant Dustin Weitzel was present for the sheriff's department and said General Motors will be coming out with their new 2023 pricing at the end of April or first part of May. May 5, 2022 is the scheduled day for Dodge County to order new vehicles.

The Board unanimously accepted the recommendation of the Dodge County Convention and Visitors Bureau Committee and approved a \$25,000 donation to Mainstreet of Fremont for a Downtown (Fremont) Speaker System. This approval is contingent on the approval of the request by the Fremont City Council.

The Board unanimously approved the request from Mary Loftis, University of Nebraska Extension, for \$2,416.00 in funding for Medicare Education Support in Dodge County. Ms. Loftis was present and told the Board that this Medicare education includes helping individuals compare drug and health plans as well as counseling regarding health plan enrollments. This education support is part of the State Health Insurance Assistance Program (SHIP) and Ms. Loftis has been administering this program since 2006 in Burt, Dodge & Washington Counties. In the same motion, the Board referred this request to the finance committee to be included in the 2022-2023 budget year.

At 9:25 A.M., a public hearing was held to consider the request of Robert A. Johnson and Sharon G. Johnson, Husband and Wife for an access road to their land under the "Isolated Landowners" statutes, 39-1713 through 39-1719. The land is located at SE Quarter of the SE Quarter and Tax Lot 22, the west 30 acres of the NW Quarter of the SE Quarter, all in Section 32, Township 30 North, Range 7 East of the 6th P.M., Cuming Township, Dodge County, Nebraska, consisting of 70 acres more or less. The Board unanimously received correspondence from Don Clarke, 3313 South 90th Ave., Omaha, NE 68124 presenting his testimony against the request. **Spencer Wilson**, attorney with Yost, Lamme, Hillis, Mitchell, Schulz, Hartmann and Wilson P.C., Fremont, NE, was present representing his clients, Robert A. Johnson and Sharon G. Johnson.

He offered printed supporting documentation to the Board, which the Board unanimously received. Mr. Wilson then summarized how the current landlocked property situation came to be for the Johnson property. He noted that when the landowners prior to the Clarkes were present, there was no need for the Johnsons to obtain easements because all of the landowners involved granted permission to the Johnsons to access their land. In 2011, the Johnsons hired an attorney and negotiated an easement with the Clarkes which was rescinded 2 weeks later. Mediation resulted in the Clarkes agreeing to grant Johnsons an ingress/egress easement, which they ultimately refused to sign. In November of 2020, the Johnsons hired Yost Law to file the first petition for an access road with the Dodge County Board of Supervisors. Again, an agreement was reached, which prompted the Johnsons to dismiss the petition. The easement, which was agreed upon by both sides, was drafted and then the Clarkes ceased communications with Yost Law. Yost Law was negotiating with the other affected landowners at the same time they were negotiating with the Clarkes. They drafted an easement agreement, of which all parties agreed, but this easement was essentially "an easement to nowhere" without the Clarkes being in agreement. Mr. Wilson then pointed out that there is an existing private gravel road that is being used and is maintained by four of the existing landowners. There are recorded easements to this road, which could be used by the Johnsons to access their property. Mr. Wilson then went on to say that the conditions are met for the Board to grant an access road to the Johnsons. Those conditions are that the isolated land was not isolated at the time it was purchased by the owner, the isolation of the land was not caused by the owner or any other person with the knowledge and consent of the owner, that access is necessary for existing utilization of the isolated land, that there is proof of ownership of the land, that such real estate is shut out from all public access, other than a waterway and that the owner is unable to purchase from any of such persons the right-of-way over or through the same to a public road or that it cannot be purchased except at an exorbitant price, stating the lowest price for which the same can be purchased by him or her. Mr. Wilson said they have asked the Clarkes for a sale price for the right-of way, but have gotten no answer. There was also mention of a land swap, but the swap offered by the Clarkes would result in less land and land that is covered with sand from the flood of 2019. Mr. Wilson also addressed a point that the Clarkes raised about the cost an access road would place on the Dodge County taxpayers. He said the Johnsons are asking the county to declare a private access road to their property; this would not put the burden on Dodge County taxpayers.

Don Clarke (3313 S. 90th Ave., Omaha, NE), part owner of the property surrounding the Johnsons' property, addressed the Board along with his son, **Terry Clarke** (5359 N. 27th Ave., Omaha, NE). Don Clarke began his testimony by refuting several points in the Affidavit of Robert A. Johnson. In point #3 he claimed that in 1991, before the Johnson's purchased the parcel in question from Mrs. Johnson's parents, the parcel was land and waterlocked. He also claimed that the Johnsons knew this when they made the purchase. Don Clarke also refuted point #6 saying that the permitted ingress and egress to the Johnson's property is a temporary arrangement and the Johnsons have offered no proof to back up the claim of having permission. Don Clarke then pointed out that in point #12, Mr. Johnson changes his language to using the word easement instead of permission, inferring that Mr. Johnson knows the difference between permission and easement. Don Clarke said in point #6 and #7 there is reference to an "established access road". His assumption is that this reference is to a single lane, private drive to the BK Farms property, which he said is not a road. He said his family and the Widhalm's access their property on ATV or by foot using trails cut through thick woods

and these trails are constantly changing due to storms and flooding. Don Clarke said the map cited in point #7 is at least 10 years old and cannot be used as a current map showing all existing trails. He also mentioned that he has offered a land swap, but the Johnsons won't negotiate. In summation, Don Clarke asked the Board not to grant an access road to the Johnsons. Supervisor Beam asked Don Clarke why he is not allowing the Johnsons access to their land. In response, Don Clarke said during deer hunting season his family and the Widhalm Family hunt with high powered rifles and they have to limit the number of people on their property for safety reasons.

Terry Clarke added that they are also concerned about the heavy equipment that would be needed to build this access road that could potentially compromise the dike. The City of Scribner previously identified the weight limit on the easement over the dike. In order to build up this access road, the United States Army Corp of Engineers would also have to get involved. Terry Clarke said they are not unreasonable people and he feels a land swap with the Johnsons would be the best option to resolve this issue. He also said there have been family members of the Johnsons that have hunted on Clarke property and he said they are "not the kind of people we want on our property".

Steve Widhalm (22303 Edgewater Road, Elkhorn, NE), one of the affected property owners, asked to see the handout that the Johnson's attorney presented today. He wanted to verify the access route the Johnsons are requesting.

Terry Clarke said if there is an access road built, it should go along property lines; the road requested by the Johnsons goes through the Clarke property. Supervisor Strand interjected that the county would not build a public road, it would be a private road. Neither would be built or maintained by the county.

Elmer Armstrong, City Administrator for the City of Scribner, clarified that the easements over the dike allow recreational and passenger vehicles only at this time. Allowing heavier vehicles or additional grading would require changes to be made to the easement, which would involve the United States Army Corp of Engineers, a flood plain development application and a no-rise certification.

David Mitchell, attorney with Yost, Lamme, Hillis, Mitchell, Schulz, Hartmann and Wilson P.C., Fremont, NE, responded to some of the points Don Clarke made in his rebuttal. Mr. Mitchell said the record is clear that the Johnsons had permission from neighboring land owners to access their property when they acquired it in 1992. He then referenced the Young vs. Dodge County case in which the Youngs were granted permission to access their land by the Ames Diking District. The diking district then decided that they did not want people driving over the dike so they terminated the permission for the Youngs to access their property by driving over the dike. At this point, the Youngs property became isolated (landlocked). The same situation exists for the Johnsons today; they had permission to access their land until the Clarkes terminated that permission, thus making the Johnson's property isolated. The statutes say if an access road were to be granted it would be at the expense of the Johnsons and it would be a private road. The access road that was previously utilized was approximately 11' wide. To avoid any trespass issues, the access road the Johnsons could potentially be granted should be wide enough for two ATV's or regular vehicles to pass. The Johnsons are willing to work with the county engineer to determine what would be needed to create a simple road that would have minimal impact to the Clarkes. Supervisor Bendig asked how long this access road would be. There was no clear answer to this question, but Mr. Mitchell said the maps show the access road that has been used in the past. Supervisor Strand said in Statute 39-1716, item B it states that the petitioner is entitled to relief if the isolated land was not isolated at the time it was purchased by the owner or that the owner acquired the land from the State of Nebraska. He asked if the property

was landlocked at the time it was purchased by the Johnsons. Mr. Mitchell said all of the deeds for the properties involved were included with the Affidavit of Robert A. Johnson. This information supports that the property was not landlocked at the time the Johnsons purchased it from Sharon G. Johnson's parents. As was previously pointed out by Mr. Wilson, at this time there was permission granted by the neighboring property owners. The Young vs. Dodge County case determined that permission is tantamount to an easement, therefore, the Johnsons are entitled to relief in this case.

Terry Clarke offered a plat map from 1986 which, in his opinion, shows that the Johnson's parcel of land was landlocked at that time. He went on to say that the Johnsons knew it was landlocked when they bought the property in 1992. The attorneys with Yost Law Firm said the property was surrounded by other land, but it was not isolated until the Clarkes withdrew their permission for the Johnsons to access it. Deputy County Attorney Tom Grosse said the question is whether permission to access the Johnson property is sufficient for the property to not be deemed landlocked. He said they will study the information filed in this case and offer an opinion.

Robert A. Johnson, petitioner, said he has used his ground for years and there were trails on it. He went on to say the Clarkes have cut trees and hunted on his property. He has tried talking to the game warden, the sheriff's department and the City of Scribner and can't get anything done to resolve the issues. He also had a nursery worker come out to look at the trees that were removed. The worker said the replacement cost of the trees would be very high. Mr. Johnson said the Clarkes have taken over his property and he can't do anything about it.

Don Clarke made a final comment saying the property that I own on his side of the river is more valuable than the property that he claims on my side of the river; he doesn't think there has ever been a survey done on it.

At 10:26 A.M., Chairman Missel closed the public hearing. The Board unanimously approved referring this matter to the Dodge County Attorney's Office who will render an opinion at the May 18, 2022 meeting of the Dodge County Board of Supervisors.

Under any business brought by the public or discussion from the public, Rod Bade of Lincoln, NE addressed the Board. Mr. Bade said he is a property owner in Winslow and has been doing remodeling work on the gas station in Winslow. There have been sewer issues and the village board has told him it's his problem to get it fixed. He said he is getting nowhere with the village board and he wanted to inform the Dodge County Board that this was going on and find out what recourse he has. Supervisor Strand told him the county has no authority over village issues. Zoning Administrator Jean Andrews suggested that Mr. Bade call the Nebraska Department of Environment and Energy as it is their responsibility to address such issues.

Committee Reports – Chairman Missel informed the Board of the Nebraska Association of County Officials (NACO) County Board Workshops to be held in Kearney in June and encouraged all to attend. He also said he attended the Joint Water Management Advisory Board meeting last week. He said attendance was good and Dodge County Emergency Manager, Tom Smith, did a good job of summarizing the status of current projects.

The Board unanimously approved the request of Highway Superintendent Scott Huppert to purchase a new 320 Track Cat Excavator and authorized the necessary signatures on the purchase agreement. The warranty on the excavator they are trading

in is expiring and it has a high amount of hours on it. This new excavator is like the one being traded in.

Highway Superintendent Scott Huppert updated the Board on projects going on in the roads department. One new employee has been hired. Employees are working on the Foothill Road project and are hoping to have it completed in the next month. They have been installing culverts for farmers. On the By-pass 275 around Scriber, County Road 14 is closed so construction workers are using County Road 15 between County Roads G and H. It is the state's responsibility to maintain these roads that the heavy truck traffic is utilizing. On the By-pass 30, there are road closures; right now County Road 13 is closed and County Road 18 is open. June 1 is when the concrete paving for the By-pass 30 project will begin. The advertisement for the Sterling truck has garnered some interest; bids will be opened for it on April 29. The new John Deere tractor is being used and working great. The Titan Case IH tractor and John Deere grader are both in. Superintendent Huppert is planning to attend the Cyber Security Seminar on Friday, April 22. Supervisor Backens asked about the dust and holes on County Road Q between County Roads 21 and 22. Superintendent Huppert said Sawyer Construction is supposed to be helping the county maintain this road and he has been in contact with them. Supervisor Bendig asked how the new By-pass 30 will connect with the existing Highway 30. Superintendent Huppert said he thinks some amendments should be made to the plans for this and he has been talking to the Nebraska Department of Transportation about it. There will be an agenda item addressing this in more detail at the May 4, 2022 meeting of the Dodge County Board of Supervisors.

The Board unanimously received the Eastern Nebraska Human Services Agency 2022-2023 budget requests in the amount of \$88,508.00 for Duet (Formerly ENCOR) & \$101,547.00 for ENOA – total \$190,055.00.

The Board unanimously received the April 25, 2022, 7:30 P.M. Dodge County Local Emergency Planning Committee (LEPC) Annual Meeting Agenda. The meeting will be held at the Winslow Volunteer Fire Department.

At 10:57 A.M., Chairman Missel adjourned the Board as a Board of Supervisors until Wednesday, May 4, 2022 at 9:00 A.M.

Immediately thereafter, the Board convened as a Board of Equalization. Chairman Missel dispensed with roll all members being present except Supervisor Tawney.

The Board unanimously approved tax roll corrections #5428 through #5440.

The Board unanimously received notice of the availability of the 2022 Reports and Opinions of the Property Tax Administrator. Chairman Missel urged the Board to look at this report because it has a lot of information that pertains to the upcoming protest season.

The Board unanimously approved the Referee Agreement and letter used to solicit protest referees including a change to the hourly rate of pay to \$90. County Clerk Mytty said since it's getting harder to attract referees as licensed appraisers, he wanted the Board to consider increasing the hourly rate. County Assessor Churchill agreed that

the hourly rate should be increased to secure those referees that are willing to consider helping this year. Supervisor Strand said he thinks it's in the county's best interest to hire referees because of their expertise. The alternative is for the county board to hear the protests, which would be time consuming and difficult for them to make informed decisions.

The Board unanimously received the Protest Cover Sheet to be used during the upcoming property valuation protest season.

The Board unanimously received a letter from Lifegate Church, situs address 2407 N. Colorado Ave., Fremont, NE asking the Board to waive the denial of their Form 451A, Statement of Reaffirmation of Tax Exemption, which was filed after the filing deadline of December 31, 2021, waived the \$100 late fee and instructed County Assessor Churchill to process the application. Assessor Churchill said this is the first time they have been late filing their Form 451A. She added that state statute requires her to assess the late fee and the Board has the authority to waive that fee.

At 11:02 A.M., Chairman Missel adjourned the Board as a Board of Equalization until Wednesday, May 4, 2022 at 10:00 A.M.

Fred Mytty
Dodge County Clerk