

BOARD OF COMMISSIONERS MINUTES

November 14, 2023

The Cherry County Board of Commissioners convened in regular session on November 14, 2023 in the Commissioners Meeting Room of the Cherry County Courthouse, as per notice in the Valentine Midland News every week, with the agenda being on file in the office of the County Clerk. The meeting was called to order at 10:02 a.m. by Chairman DeNaeyer. Roll call was taken. Present for the meeting were Cherry County Commissioners Martin DeNaeyer, Nina Nelson, Mike McConaughy, and Cherry County Clerk Brittny Longcor. The Open Meetings Act Poster was acknowledged by Chairman DeNaeyer and the Pledge of Allegiance was recited.

The Board of Commissioner regular meeting minutes from October 31, 2023 were read. McConaughy moved and Nelson seconded to approve the minutes as amended. Roll call vote: Aye – Nelson, DeNaeyer, McConaughy. The motion carried.

The Board of Equalization meeting minutes from October 31, 2023 were read. DeNaeyer moved and Nelson seconded to approve the minutes as read. Roll call vote: Aye – DeNaeyer, McConaughy, Nelson. The motion carried.

The Board of Corrections meeting minutes from October 31, 2023 were read. McConaughy moved and Nelson seconded to approve the minutes as read. Roll call vote: Aye – McConaughy, Nelson, DeNaeyer. The motion carried.

The Board reviewed a memo from NIRMA regarding the annual membership meeting, a dividend distribution in the amount of \$8,941, and a recommitment agreement to extend participation in the Nebraska Intergovernmental Risk Management Association through June 30, 2027. Nelson moved and McConaughy seconded to adopt Resolution #2023-14 For Amendment and Addendum to NIRMA/NIRMA II Intergovernmental/Interlocal Agreements. Roll call vote: Aye – Nelson, DeNaeyer, McConaughy. The motion carried.

Road Supervisor Doug Boyer updated the Board regarding an opportunity for CDL testing, reimbursement for said testing, advertising for bids for a mid-sized excavator, and that he will work with the foremen to upgrade and update signing. The Board discussed the excavators in each district and Commissioner McConaughy stated that he would like to check with District #3 Foreman prior to declaring any as surplus. There was no Board action taken on the agenda item regarding Surplus Road Department Equipment.

Highway Superintendent Lloyd Smith spoke with the Board regarding the upcoming One- and Six-Year Plan. The Board confirmed that they would like Superintendent Smith to work with Supervisor Boyer and the foremen to create said plan for 2024.

Emergency Management Director Matt Sandoz and Deputy Emergency Manager Jessica Coyle updated the Board regarding Hazard Mitigation Plan progress, coordination with the schools on their safety planning, an ongoing issue with the microwave for the Motorola dispatch consoles project, road repair necessary to get propane to the tower north of town, tower checks, and that a burn ban may be put in place soon.

Zoning Administrator Jessica Coyle informed the Board that, after holding a public hearing, the Planning Commission had voted 6-2 to recommend approval of CUP #004/23 – Bow & Arrow Ranch LLC Conservation Easement. Potential dates for a public hearing were discussed and Administrator Coyle stated that the CUP application was the same as the one applied for in 2021 with less acres included. DeNaeyer moved and McConaughy seconded to set the public hearing re: CUP #004/23 – Bow & Arrow Ranch LLC Conservation Easement to be on December 12, 2023 at 2:00 p.m. in the Commissioners' Meeting Room. Roll call vote: Aye – DeNaeyer, McConaughy, Nelson. The motion carried.

The Board reviewed the Clerk of District Court fee report for October 2023, Treasurer's fund balance listing for October 31, 2023, and Operating Statement report of budget v. actual spending for October 31, 2023.

Claim #23112588 payable to Eric Scott from the General Fund was adjusted from \$749.64 to \$656.65. McConaughey moved and DeNaeyer seconded to approve claims. Roll call vote: Aye – McConaughey, Nelson, DeNaeyer. The motion carried.

November 14, 2023
CHERRY COUNTY CLAIMS LISTING

Claims were presented in the amount of	\$	60,301.91	.
and disallowed in the amount of	\$	-	.
A warrant was ordered drawn on the General Fund in the amount of			\$ 60,301.91
GENERAL			
Allen Monument Company	Services		\$95.00
Andrea Andre	Reimbursement		\$88.74
Andy's Glass Shop	Services		\$55.00
Applied Connective Technologies	Services		\$6,447.13
Arrow Hotel	Lodging		\$594.73
Daniel Bauer	Reimbursement		\$662.37
Black Hills Chemical	Services		\$528.25
Bob Barker Company	Services		\$618.58
Bomgaars	Supplies		\$134.99
Buckles Fuel Service	Services		\$65.66
Centurylink	Telephone Service		\$199.83
Centurylink	Telephone Service		\$1,800.21
Cherry County Clinic	Services		\$134.00
Cherry County Court	Services		\$806.00
Cherry County District Court	Services		\$36.00
Cherry County Implement	Services		\$103.45
Cherry County Sheriff	Services		\$159.49
Cherry County Treasurer	Bank Fees		\$5.00
Cidnet	Services		\$300.00
Clearly Communications	Telephone Service		\$318.25
Comfort Inn Kearney	Lodging		\$284.60
Country Fabric & Craft	Supplies		\$4.25
Crowne Plaza/IGH Hotel	Lodging		\$243.90
Cummins Sales and Service	Supplies		\$1,381.37
DAS State Accounting 6506	Services		\$537.60
DAS State Accounting 6507	Services		\$220.55
Daugherty Construction	Services		\$1,500.00
Firstnet/AT&T	Services		\$652.13
Galls, LLC	Supplies		\$824.19
Galls Parent Holdings, LLC	Supplies		\$69.61
Michelle Garwood	Reimbursement		\$49.78
Dustina Goodrich	Reimbursement		\$109.73
Government Forms and Supplies	Supplies		\$210.68
Pat Greenough	Reimbursement		\$100.00
Timothy Hanson	Equipment		\$2,636.75
Heart City Plumbing	Services		\$250.00
Henderson's IGA	Supplies		\$310.20
Holiday Inn Kearney	Lodging		\$229.90
Interstate All Battery Center	Services		\$131.25
Johnson Law Office	Clerical Salary/Rent/Telephone/Equipment		\$6,767.34
Journal Entry	Refund		-\$53.92
K Lawn	Services		\$177.00

L&B Johnson PC	Services	\$601.75
Legal and Liability Risk Management	Services	\$150.00
Dave Leonard	Reimbursement	\$220.00
Samantha Leonard	Reimbursement	\$269.86
Lincoln County Detention Center	Services	\$1,950.00
Brittney Longcor	Reimbursement	\$273.61
Madison's Great Western	Supplies	\$38.53
Marco Technologies	Services	\$194.69
William Marshall	Services	\$50.00
Microfilm Imaging Systems	Services	\$40.00
MIPS	Services	\$3,177.62
Jackie Moreland	Reimbursement	\$289.35
NACO	Dues/Fees/Trainings	\$2,090.39
NACVSO	Services	\$50.00
NE APCO/NENA	Dues/Fees/Trainings	\$165.00
Nebraska Sheriff's Association	Dues/Fees/Trainings	\$350.00
Nebraska State Fire Marshal Agency	Services	\$180.00
NENA: The 9-1-1 Association	Services	\$598.00
NK Waste Management	Services	\$184.00
Office Products	Supplies	\$1,337.49
Paper Tiger Shredding	Services	\$50.00
Petty Cash	Reimbursement	\$90.55
Presto-X	Services	\$103.73
Pronto Parts Company	Supplies	\$126.46
Quadient Leasing USA	Services	\$1,304.15
Quadient Finance USA	Services	\$350.00
R Kruger Extinguishers	Services	\$308.00
Region IV Inc	Services	\$2,626.00
Sandhill Oil Co	Supplies	\$140.11
Andrea Schadel	Reimbursement	\$255.84
Eric Scott	Reimbursement	\$656.65
Scotty's Ranchland Foods	Supplies	\$341.73
Cardmember Service	Supplies	\$220.62
Sennett, Duncan, Jenkins & Wickham	Services	\$2,385.90
Samuel Spain	Services	\$50.00
True Value	Supplies	\$80.18
UNL Panhandle Research & Extension	Services	\$515.77
US Cellular	Services	\$88.75
Valentine Midland News	Services	\$1,136.63
City of Valentine	Utilities	\$4,949.58
Western Oil/Conoco	Fuel/Car Wash	\$48.41
Westfield Pharmacy	Supplies	\$111.67
Wex Bank	Fuel	\$2,244.50
Wrenched Tire & Auto LLC	Services	\$116.80
	Total	\$60,301.91

Claims were presented in the amount of	\$	224,451.54	.
and disallowed in the amount of	\$	-	.
A warrant was ordered drawn on the Road Fund in the amount of			\$
ROAD			\$224,451.54
Allard Precast	Supplies	\$3,900.00	
Andersen & Sons NAPA Auto Parts	Supplies	\$8.99	

Bacon Repair	Services	\$133.17
Barco Municipal Products	Supplies	\$1,743.83
Bill's Garage	Services	\$300.00
Earl Blizzard	Reimbursement	\$50.45
Bomgaars	Supplies	\$1,432.04
Brad White Equipment	Services	\$545.22
Breinig Truck & Trailer LLC	Services	\$31,199.89
Buckles Fuel Service	Services	\$6,411.95
Cherry County Clinic	Services	\$28.00
Cherry County Implement	Services	\$1,207.11
Circle K Motor Company	Services	\$268.70
Cody Oil	Services	\$4,166.92
Village of Cody	Services	\$155.80
Brent Collier	Reimbursement	\$70.58
Consolidated Telephone	Services	\$304.24
Contractor Services	Services	\$4,320.00
Croell Inc	Services	\$10,454.27
Custer Public Power District	Services	\$141.23
D&L Sand & Gravel	Services	\$2,700.00
Daly Enterprises	Services	\$68.85
Danielski Farms	Services	\$6,090.56
DAS State Accounting Central Finance	Services	\$27.70
Dooley Oil	Services	\$8,397.27
Galaway Field Repair LLC	Services	\$6,199.86
Great Plains Communications	Services	\$316.11
Henderson's IGA	Supplies	\$79.15
Hoefs Skidloader Works LLC	Services	\$9,798.00
Hometown Lumber & Construction Inc	Services	\$83.70
Inland Truck Parts Company	Supplies	\$2,949.39
Interstate Battery System	Services	\$730.80
Iowa Trailer Manufacturing	Services	\$0.00
JEBRO	Services	\$280.00
Josh Whipple Trucking	Services	\$36,442.50
KBR Rural Public Power District	Services	\$241.77
Kimball Midwest	Services	\$2,438.23
MARC/Mid American Research Chemical	Services	\$275.11
Medical Enterprises	Services	\$145.00
Village of Merriman	Services	\$61.14
Mid Nebraska Welding & Lineboring	Services	\$1,500.00
Mips Inc	Services	\$180.00
Motor Carrier Services Division	Services	\$18.00
Neal Oil & Auto Center	Services	\$568.92
Nebraska Machinery Company	Services	\$3,478.81
Nebraska Public Power District	Services	\$45.00
Nebraska Truck Center	Services	\$541.67
Newman Signs Inc/Traffic Signs	Services	\$7,552.06
Niobrara Valley Consultants	Services	\$9,861.77
Northern Safety Co	Services	\$1,007.34
Office Products Center	Supplies	\$38.50
Outback Screenprinting & Embroidery	Services	\$269.38
The Parts Company	Supplies	\$545.11
Perrett Construction	Services	\$1,127.97
Petty Cash	Reimbursement	\$40.00
Pit Stall	Services	\$871.48

Platte Valley Communications	Services	\$73.45
Pomp's Tire Service	Services	\$7,536.16
Powerplan	Services	\$17,990.91
Prairie Fabrication LLC	Services	\$12,896.00
Prema	Services	\$53.71
Quadient Finance	Postage	\$50.00
R Kruger Extinguishers	Services	\$2,700.00
Reese Inc	Services	\$449.30
Kay Reese	Reimbursement	\$60.00
Roll Rite LLC	Services	\$407.01
Sandhill Oil Company	Services	\$5,337.39
Sandhills Family Medicine	Services	\$56.00
SMS Powertrain & Hardware	Supplies	\$900.45
Leroy Songer	Reimbursement	\$224.65
Surplus Center	Supplies	\$3,524.70
Tehrani Motor	Services	\$30.30
Tony's Tire & Auto Repair	Services	\$20.00
US Cellular	Services	\$106.43
City of Valentine	Services	\$191.54
Western Oil	Services	\$30.00
	TOTAL	\$224,451.54

Claims were presented in the amount of \$ 46,446.77 .
and disallowed in the amount of \$ - .
A warrant was ordered drawn on the Visitor Promotion Fund in the amount of \$ 46,446.77

VISITOR PROMOTION

Cherry County Visitors Promo Board	Reimbursement	\$498.00
Great Plains Communication	Services	\$180.15
Hand's Lawn Service	Services	\$758.00
Harmony Inn & Suites	Lodging	\$98.00
Hollman Media LLC	Services	\$360.00
Kelo TV	Services	\$33,930.00
KVSH	Services	\$600.00
Little Outlaw Canoe & Tube Rental	Services	\$148.00
The Nebraska Star Party	Grant	\$4,000.00
NK Waste Management	Services	\$89.00
NRG Media, LLC	Services	\$5,114.00
Regina Osburn	Reimbursement	\$288.20
Peppermill Restaurant	Services	\$47.20
Valentine Rotary Club	Dues/Fees	\$102.00
City of Valentine	Services	\$234.22
	TOTAL	\$46,446.77

Claims were presented in the amount of \$ 1,187.50 .
and disallowed in the amount of \$ - .
A warrant was ordered drawn on the Register of Deeds P&M Fund in the amount of \$ 1,187.50

REGISTER OF DEEDS P&M

Spectra Associates	Supplies	\$ 1,187.50
	TOTAL	\$1,187.50

Claims were presented in the amount of \$ 18,940.43 .
and disallowed in the amount of \$ - .
A warrant was ordered drawn on the Health Insurance Claims Fund in the amount of \$ 18,940.43

EMPLOYEE HEALTH INSURANCE CLAIMS

Cherry County Clerk		Health Insurance Claims	\$18,940.43
		TOTAL	\$18,940.43

Claims were presented in the amount of	\$	10,650.70	.
and disallowed in the amount of	\$	-	.
A warrant was ordered drawn on the Bookmobile Fund in the amount of			\$
			10,650.70

BOOKMOBILE

Thomas County Library	Bookmobile	\$	658.00
Valentine Public Library	Bookmobile		\$9,992.70
	TOTAL	\$	10,650.70

Claims were presented in the amount of	\$	99,600.00	.
and disallowed in the amount of	\$	-	.
A warrant was ordered drawn on the Grant Fund in the amount of			\$
			99,600.00

GRANT FUND

Iowa Trailer Manufacturing LLC	Supplies		\$99,600.00
	TOTAL		\$99,600.00

Claims were presented in the amount of	\$	521,848.75	.
and disallowed in the amount of	\$	-	.
A warrant was ordered drawn on the Disaster Fund in the amount of			\$
			521,848.75

DISASTER FUND

BOKF,NA	Principal & Interest Payment		\$521,848.75
	TOTAL		\$521,848.75

Claims were presented in the amount of	\$	450.15	.
and disallowed in the amount of	\$	-	.
A warrant was ordered drawn on the Emergency Management Fund in the amount of			\$
			450.15

EMERGENCY MANAGEMENT

Century Link	Services		\$221.92
Henderson's IGA	Supplies		\$46.59
KBR Rural Public Power	Services		\$92.52
Prema	Services		\$89.12
	TOTAL		\$450.15

Claims were presented in the amount of	\$	20,979.06	.
and disallowed in the amount of	\$	-	.
A warrant was ordered drawn on the Inheritance Tax Fund in the amount of			\$
			20,979.06

INHERITANCE TAX

Arrow Hotel	Lodging		\$561.00
Houghton Bradford Whitted PC, LLO	Services		\$1,375.00
Mainelli Wagner & Associates Inc	Services		\$19,043.06
	TOTAL		\$20,979.06

Claims were presented in the amount of	\$	212.78	.
and disallowed in the amount of	\$	-	.
A warrant was ordered drawn on the 911 Emergency Services Fund in the amount of			\$
			212.78

911 EMERGENCY SERVICES (2910)

CenturyLink	Services		\$30.40
Great Plains Communications Inc	Services		\$25.96
OPTK Networks	Services		\$156.42

	TOTAL	\$212.78
Claims were presented in the amount of	\$	1,140.56
and disallowed in the amount of	\$	-
A warrant was ordered drawn on the 911 Wireless Service Fund in the amount of	\$	1,140.56
911 WIRELESS SERVICE (2013)		
CenturyLink	Services	\$172.26
Great Plains Communications Inc	Services	\$147.12
OPTK Networks	Services	\$821.18
	TOTAL	\$1,140.56

The Board recessed for lunch from 12:17 p.m. to 1:01 p.m.

Comments from the public were received during the allotted time.

County Attorney Eric Scott met with the Board to discuss issues with the old Courthouse building. Costs and timeline of repairing the boiler, roof repairs needed after a recent large rain, and foundation/structural issues were discussed. Statutory and moral obligations of providing office spaces for Veterans Service, Department of Health and Human Services, Cherry County Extension, and Niobrara Council were also discussed. The old Courthouse is listed on the National Register of Historic Places and Mr. Scott reviewed some of the first steps that would need to be taken if it were to be removed from the Register. Mr. Scott stated that the utility or economic life of the building is gone and that it is not unique since the Sheridan County Courthouse is the same building. The possibility of obtaining estimates from architects & engineers and involving the public in the process were discussed. Winterization of the building, finding alternative spaces for the offices contained in the building, and information gathering concerning the building will continue. No Board action was taken.

At 1:35 p.m. the meeting moved to the Courtroom. Chairman DeNaeyer acknowledged the Open Meetings Act located on the back wall of the room. TK Angus Co owners, Tim & Rick Marlatt, were asked if they had any additional information to add regarding their Conditional Use Permit application and they had none.

Commissioner McConaughy expressed concerns regarding the foundation of the tank and if there was a crack in the foundation in the future. Dean Settje, Settje Agri-Services and Engineering President stated that the proposed facility is designed and located in an area to ensure there aren't issues with the freeze-thaw cycle and/or settling. Design elements highlighted were the placement of rebar in the concrete to prevent gaps, use of Waterstop at the cold joint between the floor and the wall if there is a separation, and manure level monitoring. Mr. Settje stated that the placement of groundwater monitoring wells would be determined under the jurisdiction of the Nebraska Department of Environment and Energy.

Commissioner Nelson expressed concerns with the location of the facility, including the soil, proximity to groundwater, and proximity to the Niobrara River. Concerns were also raised by Commissioner Nelson that if/when something goes wrong that there a lot of people whose lives would be affected and that there would be contamination of the groundwater and river water.

Administrator Coyle stated that the Planning Commission had voted 4-1 to recommend approval of the CUP. The public hearing was properly advertised and held, the property is located in the cattle country ag district, and the compatibility issues are outlined in the management plan.

Commissioner DeNaeyer submitted the following Statement of Finding of Facts for approval of CUP #001/23:

1. Tk Angus filed an application for a Conditional Use Permit (CUP) to construct a swine finishing facility for 4999 head over 55 lbs. on their property as legally described as SW1/4 SE1/4 Section 13, Township 33N, Range 27W Cherry County Nebraska.
2. All adjoining landowners within a set distance of the project were properly notified.

3. The Cherry County Planning Commission held a public hearing on the CUP application on June 6, 2023, which was properly advertised as required and decided to recommend approval on August 15, 2023, with findings of fact.
4. The Cherry County Commissioners held a properly advertised public hearing on October 10, 2023.
5. The CUP application is consistent with the current Cherry County Comprehensive Plan and Zoning Regulations as adopted on December 30, 2008.
6. Testimony was received from the applicant and witnesses in support of the CUP.
7. Testimony was received from witnesses in opposition to the CUP.
8. The property is not located in a wetland, subject to flooding or a location in the Niobrara River Corridor.
9. The property is located within the Cattle Country Agricultural District whose intent is to "implement the policies and objectives of the Cherry County Nebraska Comprehensive Plan by maintaining agricultural crop and livestock production which is compatible with the natural environment and promote other and new forms of agricultural production which is compatible with existing ranch and farm uses and the environment."
10. Compatibility issues of traffic generation, noise, odor, dust, water or soil pollution, radiation, or explosion hazards were outlined in the accompanied management plan prepared for TK Angus by Settje Agri-Services & Engineering, Inc.
11. Testimony, information, and studies received by the Commissioners from the public contained no verifiable facts to support the belief CUP application doesn't meet the Zoning Regulations of Cherry County, Nebraska as adopted December 30, 2008, and will result in harm to the county.

With the following provisions: Granting of the Conditional Use Permit is contingent upon the construction and operation permit being approved by the Nebraska Department of Environment and Energy (NDEE). It is the function and responsibility of the Nebraska Department of Environment and Energy and other agencies to oversee and protect the health of our environment.

DeNaeyer moved to adopt Zoning Resolution #Z-92 to approve the application for Conditional Use Permit #001/23 - TK Angus Co. The motion died for lack of a second.

Mr. Scott stated that any motion or decision in this matter would need a Findings of Facts, regardless of the vote. Nelson stated that she had something prepared and requested that Mr. Scott approve it as to form. Mr. Scott recommended including the due process history and inquiring with Administrator Coyle if the application meets the Zoning Regulations. Administrator Coyle stated that the application does meet the Zoning Regulations and Comprehensive Plan. The number of Planning Commission members who voted on the application was discussed. Mr. Scott stated that as long as there is a quorum present the vote is valid and that the Planning Commission's vote is always only a recommendation to the Board. Zoning Regulation 303.06 was confirmed by Administrator Coyle to define the confined animal feeding use contained in the application as commercial use.

Commissioner Nelson submitted the following Statement of Finding of Facts for denial of CUP #001/23:

1. Tk Angus filed an application for a Conditional Use Permit (CUP) to construct a swine finishing facility for 4999 head over 55 lbs. on their property as legally described as SW1/4 SE1/4 Section 13, Township 33N, Range 27W Cherry County Nebraska.
2. All adjoining landowners within a set distance of the project were properly notified.
3. The Cherry County Planning Commission held a public hearing on the CUP application on June 6, 2023, which was properly advertised as required and decided to recommend approval on August 15, 2023, with findings of fact.
4. The Cherry County Commissioners held a properly advertised public hearing on October 10, 2023.
5. The CUP application is not consistent with the current Cherry County Comprehensive Plan and Zoning Regulations as adopted on December 30, 2008.
6. Testimony was received from the applicant and witnesses in support of the CUP.
7. Testimony was received from witnesses in opposition to the CUP.
8. The property is not located in a wetland, subject to flooding or a location in the Niobrara River Corridor.

9. Testimony, information, and studies received by the Commissioners from the public contained verifiable facts to support the belief CUP application doesn't meet the Zoning Regulations of Cherry County, Nebraska as adopted December 30, 2008, and will result in harm to the county.
10. As stated in the Cherry County Zoning Regulations, it is not aligned with the compatible use statement 303.19 nor with the conditional use statement 303.21
11. 303.19 Compatible Use Statement – A land use type that is suitable for direct association or location near a use of a different type because of its consistency with the intent statement of the zoning district in which said uses are located, because of similar or comparable buildings and use activities, and because neither use will diminish the use, value, and enjoyment of the other.
12. 303.21 Conditional Use Statement – The applicant did not provide sufficient assurance that the land use in its proposed application location would promote public health, safety, convenience, and general welfare. On the contrary, most evidence brought before the Board suggests that it does not promote public health, safety, convenience, and general welfare.
13. 303.06 – It is commercial use; not agricultural use.

Based on the public hearing, the review of evidence received, and the assessments gathered while personally visiting similar mass confinement barns, Nelson moved to adopt Zoning Resolution #Z-92 to deny the application for Conditional Use Permit #001/23 - TK Angus Co. McConaughy seconded the motion. Roll call vote: Aye – Nelson, No – DeNaeyer, Aye – McConaughy. The motion carried.

At 3:28 p.m., with no further business to come before the Board, Chairman DeNaeyer declared the meeting adjourned.

These minutes are not the official record and may be corrected. A copy of the approved, official minutes is available to the public in the Cherry County Clerk's Office.