

August 29, 2017

The Board of County Commissioners met in regular session Tuesday, August 29, 2017 at 9:00 a.m. Members present: Travis Mockler, Phyllis Packard, Leo Powell, Micheal Manning, and Richard Hammond.

Packard moved, seconded by Powell and carried to approve the agenda.

Minutes of the August 8, 2017 meeting were amended to reflect that Manning was absent and approved with a motion by Hammond, seconded by Packard and carried.

Brad Wilson, SDML Workers Compensation Fund, met with the Board during Visitors to be Heard to present a plaque for Clay County's 25-year membership anniversary.

Rod Polley, Highway Superintendent, and Brian Olson, Hollaway Construction, met with the Board to discuss cost and details regarding bridges to be replaced on 457 Ave. north of Meckling and 306 St. east of Bethel Hall. Powell moved, seconded by Hammond and carried to authorize Polley to proceed with the project.

Manning moved, seconded by Packard and carried to accept the low bid of \$1.7645/gallon from Jerry's Service for #2 dyed diesel.

Manning moved, seconded by Pakcard and carried to accept the low bid of \$2.02/gallon from Brunick Service for ethanol blend fuel.

Powell moved, seconded by Packard and carried to declare surplus and authorize the sale of the County's CAT 416B Backhoe at auction.

Keith Meiers was scheduled to meet with the Board regarding an animal abuse complaint. However, he was not present at the meeting.

Bruce Plate, Clay County Gun Club, met with the Board regarding the use of tires at the club's shooting range. There were environmental concerns brought to the Board by the SD Dept. of Environment and Natural Resources regarding usage of the tires. Plate discussed the details with the Board and also updated the Board regarding signage, fencing and a gate to be installed around the club.

Personnel from Executive Technologies met with the Board regarding installation of a new phone system in the Courthouse. They discussed that they have an issue regarding wiring in the building, and they proposed utilizing another method to install the phones. Alexis Tracy, State's Attorney, advised the Board that the contract amount would not change, but the phones will change somewhat.

Powell moved, seconded by Packard and carried to authorize the following claims for payment. August Bills: Commissioners \$8,032.07, Auditor's Office \$9,536.49, Treasurer's Office \$15,961.33, States Attorney's Office \$18,059.82, Courthouse \$2,685.67, DOE's Office \$11,279.94, ROD's Office \$6,980.66, Veteran's Office \$1,747.50, Sheriff's Office \$35,786.31, County Jail \$23,937.81, 24/7 Sobriety Project \$1,676.64, LEPC and Emerg. Mgmt. Office \$4,047.17, Highway Department

\$43,063.37, County Nurse \$2,511.00, Extension Office \$2,904.00, Weed Department \$6,153.17, and Zoning Office \$2,384.71; (Due to Other Government) SD Dept of Labor Division \$986.16; State of SD Game Fish \$172.00, Thomson Reuters – West \$390.06 and Reliance Telephone \$500.00; (Payroll Withholdings) Aflac \$808.09, Clay Co Treasurer \$47,951.26, Colonial Life \$546.46, Conseco/Washington \$24.45, Dearborn National \$208.95, New York Life Insurance \$244.02, Optilegra Inc. \$17.92, Performant Recovery \$344.67, SD Retirement System \$21,578.68, SD Supplemental Retirement \$1,875.00, SDRS Roth Plan \$400.00, United Way of Vermillion \$154.00, Vermillion Federal Credit \$1,496.00 and Wellmark Blue Cross \$47,695.05; (Professional Services and Fees) Brevik Law Office LLC \$276.73; Custom Sales LLC Towing \$150.00; Davis Pharmacy \$246.00; Gapp, Debra \$2,220.00; Great Plains LLC \$4,300.00; Ilchuk Enterprises LLC \$65.00; Johnson Engineering Co \$3,711.89; Lincoln County Auditor \$358.16; Netsys Plus, Inc. \$50.00; Sanford Health Clinic \$110.00; SD Dept of Health Lab \$420.00; Vermillion/Clay Ems \$31.21; Yankton Co Sheriff \$50.00 and Yankton Medical Clinic \$580.37; (Law Office) Fox & Youngberg P.C. \$195.32; Peterson Stuart Rumpca \$8,462.32 and Thomson, Craig K \$2,394.58; (Mental Health) Sese Activity Cntr \$360.00; (Publishing) Star Publishing \$90.00; (Repairs and Maintenance) Aden, John \$270.00; Butler Machinery Co. \$1,669.80; Century Business Products \$29.12; Dakota Alignment \$159.00; I-State Truck Center \$31.57; Interstate Power Sys \$557.70; James Heating & Cooling \$196.50; Louie's Carpet Cleaning \$346.36; Midwest Striping \$500.00; Olson's Pest Technician \$75.00 and Stone, Jim \$58.91; (Data Processing/Clay Creek) Bureau of Administration \$27.00; Mastel, Bruce \$35.00 and Thomson Reuters – West \$1,440.00; (Supplies & Materials) Aden, Cynthia \$26.71; Appera \$51.30; Black Hills Ammunition \$936.50; Blue Tarp Financial \$32.97; Boyer Trucks SF Inc. \$1,126.90; Brunick Service, Inc. \$350.00; Butler Machinery Co. \$1,435.26; Campbell Supply Co. \$82.91; Concrete Materials \$61,741.84; D-P Tools, Inc. \$224.98; Davis Pharmacy \$5.58; FedEx \$144.99; Francotyp-Postalia Inc. \$99.73; Graham Tire S.F. North \$1,300.00; Hy-Vee, Inc. \$189.45; I-State Truck Center \$4.24; Jamar Tech, Inc. \$816.98; Lund Truck Parts \$60.00; Print Source \$611.00; Redwood Toxicology Lab \$114.87; SD Dept of Trans \$33,937.44; Torco Remfg. \$68.50; Truenorth Steel \$31,430.45; Union County Hwy Dept \$3,762.00; Vermillion Ace Hardware \$45.94; Warne Chemical & Equip \$114.26; One Office Solution \$132.29 and Wheelco Brake and Supply \$999.99; (Travel and Conference) Aden, Cynthia \$305.48; Best Western Ramkota \$216.00; Hollenbeck, Lauren \$58.00; Howe, Andy \$124.00; ND Sheriffs & Deputies \$85.00; Pederson, Paul \$177.00; Peterson, Ina \$121.92 and SD Counties \$700.00; (Utilities) Centurylink \$440.80; City of Vermillion \$3,551.41; MidAmerican Energy \$51.37; Midco Business \$295.00; Verizon Wireless \$422.75; Verizon Wireless Emg \$40.01 and Vermillion Garbage Svc \$156.00; (Payment) Brunick Service, Inc. \$233.90; Crop Production Service \$1,722.66; Freeman, Grace \$675.00; Hy-Vee Inc. \$808.11; JoAnn Paulson \$1,657.08; Sanford Health-Vermillion \$180.00; The Soap Guys \$40.00; Walmart Community/Gecr \$249.42; Durham, Paige \$40.00; Bertram, Jolynne \$100.00; Gehm, Peter \$50.00; Gray, Jolinda \$100.00; Jacobsen, Pamela \$100.00; Knodel, Bryant \$79.40; Logue, Tom \$131.92; Peltier, Andrew \$100.00; Ramakrishnan, Michele \$56.72; Dennison, Janet \$40.00; Mohr, Kristin \$110.40; Mohr, Madison \$40.00; Zwart, Brad \$20.00 and Zwart, Erica \$20.00; (JDC/Special Eq.) Minnehaha County JDC \$220.00; (Buildings and Structure) Brunick Furniture \$3,066.46; (Books) Blue Tarp Financial \$1,999.99; Murphy Tractor and Supply \$106,724.00; and Murphy Tractor and Supply \$9,661.00; (Furniture and Minor Equipment) Microfilm Imaging System \$90.00.

At 10:00 a.m., a Public Hearing and First Reading was held for Ordinance #2017-01, an amendment to the 2013 Revised Zoning Ordinance for Clay County. Specifically, the Board of County Commissioners will be considering adoption of amendments to Section 2.02, Definitions; Section 3.07, Concentrated Animal Feeding Operations (CAFO); Section 4.05.01, NRC: Natural Resource Conservation District;

Section 4.05.02, A-1: Agricultural District; and 4.0508, APO: Aquifer Protection Overlay District, which were recommended by the Clay County Planning Commission.

Meghann Jarchow said she is against the ordinance and thinks the County should keep what it has.

Jim Petrik said the Commissioners have been working on this for a long, long, long time; something has to be done. He pointed out that the current ordinance looks very similar to the past ordinance, but Clay County was never overrun in the past with CAFO applications.

Cindy Kirkeby said she is disappointed in having to be at the hearing; the Commissioners are supposed to protect land and water, and it seems like the ordinance is being written for special interests.

Don Lyso said he thinks it's disrespectful to farmers that the audience is always against any changes; somewhere along the line both sides have to compromise. He stated the Commissioners are trying to make it so his children and grandchildren can keep farming. He said he thinks the Commissioners are trying to compromise, but the group is not letting it happen.

Kirkeby said she wants the small farmers in Clay County. D. Lyso asked what she considers a small farmer. Kirkeby referred to the ordinance's animal number table, and Justin Orr said those numbers are equivalent to a non-existing farmer.

D. Lyso said there are a lot less farmers than there were in the past; he and his family alone have taken over about nine. He said allowing more livestock is one way of keeping people here without them having to buy more land. He also stated setbacks are getting encroached with new homes being built. He asked the crowd how much money it takes to retire, or to keep your family going? He stated everybody is different. He told the crowd to look at the Heines; their operation has expanded out but there is a need to be able to do it without buying more land. He stated if all of the family wants to farm, there isn't enough jobs. Kirkeby asked what about the old ordinance prevented him from doing what he wants to do. D. Lyso said the old ordinance automatically puts people out of compliance.

Orr said it is trying to put red tape on someone who is trying to the best they can with the land. He said they are not out to pollute the water. Tyler Johnson said farmers are more regulated on fertilizers than people in town; farmers have to know how many pounds of fertilizer is applied per acre. He said farmers are not trying to hurt anyone, and if they do not take care of the land then they are the ones hurting. Johnson said they are trying to produce the best crop to feed America.

Kirkeby said permits have been in the regulations for years for a certain number of animals, but the problem is that it does not allow for very small animal numbers.

Jim Petrik said the SD Dept. of Environment and Natural Resources (DENR) has engineers. He said he would like everyone to think about something: the current regulations are terrific for companies like Stewart Oil. Everything leaves Clay County, and it means burnt oil and truck tires for the environment in order to transport everything. He said there are ten times more people and livestock in Lincoln and Minnehaha, and everyone can get along. Petrik said the group is disrespectful to Commissioners that have worked so hard on the proposed ordinance. It has never been his worry that the big investors will overrun Clay County with livestock operations.

Jerry Wilson said he and Petrik were involved in writing the present ordinance and that Johnson and Petrick are both good young farmers and his neighbors. He said the ordinance should be designed for them to continue without interference. Wilson said the current ordinance allows family farms to fly below the radar; the proposed changes are about reducing setbacks from waterways, lakes, and streams, and also about increasing numbers of dairy to point it would be beyond the reach of anyone in Clay County. Wilson said he thinks what many are concerned about is that instead of cleaning up the process as to who is regulated and in what way, for two years some have pushed for corporate mentality so money from China and California can flood into Clay County. Petrik asked, if someone from California wanted to spend \$50 million to add value and taxes to Clay County, would Wilson fight it. Wilson said Hyperion is an example. Petrik said everyone has potential to pollute, there is nothing without risk in life, and if someone was willing to put that amount of money into Clay County it's a risk he would be willing to live with.

Suzanne Skyrn said everyone has to drink water. Petrik said there is a risk with applying manure, but farmers monitor rainfall to minimize risk. He said he is not concerned about manure storage because the biggest risk is the application process, and there is already a state permit in place. Clarence Pederson asked why the manure application setback changed from 300 feet to 200 feet from lakes, rivers, and streams and asked why that would be necessary to change. Aden said it was always 300 feet, never 500, and that it's in line with the State because the County does not administer manure application. The table is simply an advisory table. Aden said the County is following the State.

Kirkeby pointed out the amount of red in the document with marked changes. Aden reminded people that the changes were necessary to make sure that everything was in alignment throughout the entire zoning ordinance. She said the County cannot change just one section; all sections need to be reviewed and/or modified to keep them consistent throughout. Aden said her current problem is that Section 3.07 does not match the rest of the regulations, and the majority of changes have to do with the process.

Wilson asked why the county needs to cut in half the manure setbacks from 500 feet down to 200-300 feet. Aden said there is a different interpretation between individuals as to what is appropriate and important. Wilson said he believes farmers are not interested in polluting water, so why reduce setbacks. Mockler said waters of the state encompasses ditches and tile lines in the current ordinance, so that may put people out of compliance if setbacks are not lowered. Petrik said larger setbacks mean only the wealthiest can afford to farm. Tim Heine said Vermillion's earthen lagoons are within 60 feet from the river, and there are six lagoons. Janice Lyso said she previously worked for Clay Rural Water and stated it is very difficult to meet water regulations, and much testing is required. Packard pointed out that the Planning & Zoning Commission may adjust setbacks on a site-by-site basis, so if there is a site that needs increased setbacks it can be done in public hearings. Wilson stated the current ordinance says the applicant may ask for an exception, and the Planning & Zoning Commission can allow it. Mockler said it does require a waiver from neighbors. Aden clarified that the waters of the state setback is 300 feet for large and medium operations and 200 feet for small. Aden said the state does not have setbacks for waters of the state, just for manure. Hammond said the regulating is done on a complaint basis at the state level, it is easy to file a complaint, and it is confidential during the process. Mockler said people can complain directly to the Commission, and they have to turn it in to DENR. Petrik said if the DENR investigates a complaint the operator has to spend at least \$15,000, regardless of the size of the operation, to obtain permits, testing, etc. Hammond discussed complaints he has been involved with in the past.

Struckman-Johnson said she has heard in Gregory County there is a CAFO breaking all the regulations and no one can get it into compliance. She stated the Commissioners were elected for all people in Clay County, not just farmers. She also said Clay County has a resource that few people in the state have, and a higher standard with the rivers here; water is a priority. Aden said the regulations still have the Aquifer Protection Overlay (APO) District and the Natural Resource Conservation (NRC) District, and those have strong prohibitions in the river areas for livestock in order to protect the water. Section 3.07 is in addition to the other protections. Aden said everyone is focused on the few regulations being changed and not looking at the larger scope of protections the County has already put in place for citizens and water.

Wilson and Mockler debated the number of people involved in drafting the current ordinance. Wilson said the intent of Small B was to exempt small family farms. Aden said that change made using the regulations worse because AFOs were left out. Most of the changes in the proposed regulations involve adding AFOs back in, and that needs to be fixed. Aden said the biggest problems folks have are the setbacks and the dairy numbers. She reiterated that waters of the state are not the rivers, Clay Creek, etc.; they are the smaller systems in the county. The rivers, Clay Creek, etc. are protected by the APO and NRC districts. Aden said protections have been increased in conditional use requirements, so focusing on the tables will not present the entire set of protections the county has in place. Struckman-Johnson said she wants evidence.

Kirkeby asked why the public hearing was held at 10:00 a.m. Mockler said there have been approximately 35 meetings on the topic, and this was only the third meeting that has been in the morning. Farmers in the group asked, if the crowd wants evening meetings to accommodate them, then why should the Commissioners have them in the fall or the spring when farmers are planting as they should accommodate the farmers as well. Powell said at one time the Commissioners had meetings in the evening, and no one showed up. Wilson said a regular meeting and a hearing are two different things.

Kirkeby said there is a big expansion from small to medium in the proposed regulations, and requesting the Natural Resource Conservation Service (NRCS) Office is a change. Jim Heisinger said for two years the board has struggled to determine the difference between AFO and CAFO, and NRCS does not determine AFO and CAFO. Mockler said the DENR advised the County to contact the NRCS. Wilson said the current person, Jeff Loof at NRCS told him it was “news to him,” and it was “not his job.” Mockler said Kent Woodmansey advised him that the NRCS is responsible for the small operations if it is requested. Mockler said he went through the process personally on his farm. Petrik pointed out if the County didn’t have regulations more restrictive than the state, then it would be regulated by the DENR. Aden said getting a letter from the DENR is a way to get someone objective involved in the process. Manning pointed out a paragraph regarding conditional use permits that requires state approval for a CAFO. Craig Nelson said he has dealt with NRCS, and in his experience if they do not have an answer, they will go to someone who does have an answer; they will not drop the ball. Hammond said the NRCS does have resources to determine the difference between a CAFO and an AFO; he makes the phone call, and the right person shows up.

Heisinger said farmers need to realize the people against the ordinance do not want to take their farms away. They are trying to protect the farmers’ property values, too, by limiting expansion. D. Lyso said

the regulations say expansion can be allowed, not that it will be allowed; there are gray areas. Aden clarified that it refers to existing operations and said it would be the kind of thing that affects the Heine farm. Petrik said it is almost prejudicial that farmers have 15 pages regulating their livestock operations, when anyone in Clay County can present risks. He stated the bar has been set higher for livestock producers, and that is fine because they are in the business of producing safe, healthy food, but others have not had the same scrutiny. Sandy Pederson asked why raise the upper limit if no one is close to the limit.

S. Pederson asked whether it is true that a 4-H kid could not have one animal under the current regulations. Aden said it is true and has been fixed in the proposed regulations. S. Peterson asked about the difference between Small A and Small B and asked who decides who might pollute. Aden said the County would refer to the DENR, and the determination is site-specific. Petrik said the proposal allows the County to go above and beyond and gives the County the freedom to be overprotective. Aden said the County has tried to build the regulations in such a way that there can be protections and still allow producers to have their operations. Skyrn asked for clarification on Small A & B as to which is AFO/CAFO. Aden said Small A is AFO and Small B is CAFO due to the site's potential for pollution hazards.

Skyrn said this county is different from others because there is a lot of water, and because Clay County does have a lot of water she thinks it is not a good idea to make setbacks smaller.

S. Pederson said there are a lot of rural residences, and it makes sense tax-wise to allow people to build in rural areas. Aden said it was pointed out by someone else earlier that people who are building in the country have to expect farming.

Kirkeby asked why the definition of agriculture was changed to include CAFOs. Aden said it is permitted in the agriculture section of the regulations, so the definition was changed accordingly. Mockler clarified that the definition was changed back to the 2005 regulations for the current proposal. Aden said it is a difference in a person's perception between small farms and industrial farms; farming has changed since the 50's and 60's. She said the regulations have to speak to current events, to what farming is like today. Petrik said an acreage in Sioux County will cost twice what it does here due to land values.

John Davidson said the effect of setbacks on residential Real Estate property values should be considered. He said he has presented documents published by the Real Estate appraisal industry regarding property values. He said wants Commissioners who live in town to guarantee him that the setbacks would be ok with them if it were near their properties and will take into account the information he has given. Heine responded that Clay County has some of the lowest land values in the area, and that farm land is a couple thousand dollars lower per acre than surrounding counties. Heine said people in the agriculture industry do not want to be in Clay County because of the regulations here.

Heisinger said Clay County is unique because it is bisected by the river and has the bluffs with views that encourage people to build homes in the country. He is worried that the Commissioners do not consider the County's investments by making it a great place for quality of life with the beautiful views. He said the County should encourage people to move to the country.

Powell asked Heisinger if he was involved in drafting the Comprehensive Plan, and it says the County will discourage construction in the rural areas. Powell said in the plan rural areas are set aside for agriculture and not for septic tanks that leach into the Vermillion River. Aden said that almost all of the bluff land is in the NRC district and already has more protections along those vistas.

Manning moved, seconded by Packard and carried to set September 26, 2017 at 10:00 a.m. as the date and time for the Second Reading of Ordinance #2017-01, an amendment to the 2013 Revised Zoning Ordinance for Clay County. Specifically, the Board of County Commissioners will be considering adoption of amendments to Section 2.02, Definitions; Section 3.07, Concentrated Animal Feeding Operations (CAFO); Section 4.05.01, NRC: Natural Resource Conservation District; Section 4.05.02, A-1: Agricultural District; and 4.0508, APO: Aquifer Protection Overlay District, which were recommended by the Clay County Planning Commission.

At 11:45 a.m., Powell moved, seconded by Hammond and carried to enter an Executive Session for legal and contractual matters per SDCL 1-25-2.

At 12:40 p.m., Manning moved, seconded by Packard and carried to exit the Executive Session.

At 12:41 p.m. Powell moved, seconded by Hammond and carried to adjourn and reconvene Tuesday, September 5, 2017 at 9:00 a.m.

ATTEST:

---

Travis Mockler, Chairman  
Board of County Commissioners

---

Carri R. Crum, County Auditor

---