

COMMISSIONERS PROCEEDINGS

Madison, Nebraska

January 15, 2013

The Board of County Commissioners of Madison County, Nebraska met in regular session at 9:30 A.M.

Advance notice of meeting was published in the Thursday, January 10, 2013 edition of The Norfolk Daily News. A copy of said notice was mailed to each Board member. An affidavit of acknowledgment of receipt of notice of meeting as published was executed. Chairman Lee Klein called the meeting to order and notified the public of the location of the information regarding the Open Meeting Act posted in the meeting room.

Present: Commissioners Lee Klein and Christian Ohl, County Highway Superintendent Richard Johnson, County Attorney Joseph Smith, and County Clerk Nancy Scheer. Also in attendance were Norfolk Daily News reporter Jerry Guenther and US92 reporter Brian Masters.

Chairman Klein read the following consent agenda items into the record:

- 1) Approval of minutes of the January 2, 2013 and January 3, 2013 meetings
- 2) Acknowledge receipt of the Official Bond of Paula Biehle as Treasurer of the City of Madison
- 3) Authorization for County Board Chairman to execute the program income report for CDBG Grant #09-ED-008 for the period ending December 31, 2012
- 4) Appoint Commissioner Jerry McCallum to serve as an ex-officio member of Norfolk Area Visitors Bureau Advisory Board for 2013
- 5) Approval of right-of-way acquisition contract with Elkhorn Valley Ethanol, Limited Liability Company, for Northeast Industrial Highway, Phase 3 (Tract 20)
- 6) Approval of right-of-way acquisition contract with Elkhorn Valley Ethanol, Limited Liability Company, for Northeast Industrial Highway, Phase 3 (Tract 22)
- 7) Approval of temporary easement contract with Elkhorn Valley Ethanol, Limited Liability Company, for Northeast Industrial Highway, Phase 3 (Tract 22)
- 8) RESOLUTION #2013-2

WHEREAS, the County of Madison, Nebraska is a member of the Northeast Nebraska Solid Waste Coalition; and
WHEREAS, as a member of the Northeast Nebraska Solid Waste Coalition the County of Madison, Nebraska is authorized to name a representative to the Board of Directors of the Northeast Nebraska Solid Waste Coalition; and
WHEREAS, the County Board of Commissioners of the County of Madison, Nebraska previously adopted Resolution #2011-34 appointing Martin Griffith as the representative and Lee Klein as the alternate representative of the County of Madison, Nebraska to the Northeast Nebraska Solid Waste Coalition Board of Directors;

NOW, THEREFORE, in consideration of the foregoing recitals, the County Board of Commissioners of the County of Madison, Nebraska hereby adopts the following resolution:

BE IT RESOLVED by the County Board of Commissioners of the County of Madison, Nebraska that:

- 1) Christian Ohl is hereby appointed as the representative of the County of Madison, Nebraska to the Northeast Nebraska Solid Waste Coalition Board of Directors, and in the event of the absence of Christian Ohl, then Lee Klein shall be declared as the alternate representative to the Board and shall act and vote on behalf of the County of Madison, Nebraska.
- 2) That Christian Ohl shall serve as Madison County's representative to the Northeast Nebraska Solid Waste Coalition Board of Directors until his or her resignation from the Board of Directors or until his or her successor is appointed by resolution of the County Board of Commissioners, whichever shall occur first.

- 9) RESOLUTION #2013-3

WHEREAS, Check No. 12120252, dated December 18, 2012, and drawn on the General Fund in the amount of twenty six dollars and seventy nine cents (\$26.79), was made payable to Buffalo County Sheriff, P.O. Box 2228, Kearney, Nebraska 68848-2228, and

WHEREAS, said check was not tendered, but remains in the possession of the Madison County Clerk,

NOW, THEREFORE, BE IT RESOLVED that Check No. 12120252, dated December 18, 2012, and drawn on the General Fund in the amount of twenty six dollars and seventy nine cents (\$26.79), is hereby cancelled.

- 10) RESOLUTION #2013-4

WHEREAS, pursuant to §2-954 and §2-955 Nebraska Revised Statutes, each county weed authority is authorized to serve individual notices to landowners to secure more prompt or definite control of noxious weeds, and

WHEREAS, the Madison County Board of Commissioners serves at the Madison County Noxious Weed Authority, and

WHEREAS, Donald Svitak has been appointed to serve as Madison County Noxious Weed Superintendent for the 2013 calendar year,

NOW, THEREFORE, BE IT RESOLVED, that the Board of Commissioners of Madison County, Nebraska, in its role as the Madison County Noxious Weed Authority, hereby authorizes Donald G. Svitak, as the duly appointed Madison County Noxious Weed Superintendent to make the findings described in the statutes and to issue and deliver notices pursuant to the Noxious Weed Control Act.

Motion was made by Ohl and seconded by Klein to approve the consent agenda. Roll call vote: Ayes, Klein and Ohl. Absent, McCallum. Nays, none. Motion carried.

Motion was made by Ohl and seconded by Klein to approve the regular agenda. Roll call vote: Ayes, Klein and Ohl. Absent, McCallum. Nays, none. Motion carried.

County Attorney Joseph Smith reported that the most recent litigation is a Class Action lawsuit filed by Sanitary and Improvement District #1 in Butler County against various Nebraska County Treasurers. He explained that the complaint alleges that various County Treasurers improperly assessed fees of 2% for special assessments rather than 1.5%. He reported that Madison County has very little exposure because there may be only one Sanitary and Improvement District in Madison County that had special assessments. He explained that the County's insurance carrier, NIRMA, has hired attorney Charles Campbell to provide defense for all counties. Mr. Smith reported that under the terms of the insurance policy, the County may need to pay some fees for the defense provided. He recommended that the County allow attorney Charles Campbell to provide defense for the lawsuit. He stated that he could provide defense because it won't be difficult; however, other counties involved in the Class Action lawsuit would be obligated to pay more in defense fees. He explained that if any SIDs in Madison County don't want to be involved in the Class Action lawsuit, then the County could be removed from the lawsuit.

County Highway Superintendent Richard Johnson inquired if the lawsuit was retroactive and County Attorney Joseph Smith responded affirmative. Chairman Klein stated that the one-half percent fee difference is a rather insignificant amount. County Highway Superintendent Richard Johnson stated that the two SIDs who had special assessments are long past the assessment stage. County Clerk Nancy Scheer questioned if the County Treasurer's fees are charged at the time the special assessments are collected and if all the SID special assessments in Madison County are paid in full.

County Attorney Joseph Smith stated that the County has very limited liability, so it may not be involved in the lawsuit. Chairman Klein stated that if the exposure to Madison County is only several hundred dollars, it would make sense to refund the money and forget the lawsuit. County Attorney Joseph Smith stated that if Madison County refunds fees to the SIDs, it may create issues for the other counties.

No action was taken.

County Attorney Joseph Smith updated the Board on the lawsuit filed by Leroy and Lawrence Verschuur who are requesting the County to re-establish 844th Road so they can access their property. He explained that 844th Road is located south of the Elkhorn River by Tilden and approximately one-fourth mile of 844th Road was washed out when the river moved south during a flood in June 2010. He explained that several land owners are involved in the lawsuit, including Dittrich, Easland, and the Verschuur families. He explained that the river actually took out a portion of 844th Road and if you walk where the road was located prior to the flood you go down an 8 foot embankment, then proceed across sand and water, and go up another 8 foot embankment before you return to another portion of the original road. He stated that Verschuurs sued the County under a statute that says that the County cannot isolate any piece of property. He explained that the County's defense is that the County is not required to build a road because the County did not destroy it. He explained that Brad Easland did not join the lawsuit; however his property is affected. He explained that he spoke to Verschuurs' lawyer about having the land provided so the County could rebuild the road. He stated that it would not be a simple task to re-build the road because the riverbank is fragile requiring the riverbanks to be stabilized. Mr. Smith stated that the County may have an opportunity to obtain Federal Emergency Management Agency funds to assist with 75% of the project costs and also Nebraska Emergency Management Agency funds to assist with 12.5% of the costs.

Chairman Klein inquired what the time limit was to obtain FEMA funds and County Highway Superintendent Richard Johnson responded that all construction must be completed by June 2014. County Attorney Joseph Smith explained that he received a call from Verschuur's lawyer who stated that his clients would not be able to furnish the necessary land to rebuild the road. He stated that the current issue is how the County should proceed. He reported that County Highway Superintendent Richard Johnson has completed some surveying and paperwork on the project. He explained that several motions have been filed, both by himself and Verschuurs' attorney. In addition, he stated that he would like to advise the County Board members in executive session about the status of the case, defense motions that he has filed, and also give some advice regarding the case.

Motion was made by Ohl and seconded by Klein to recess into executive session to discuss negotiations on the Verschuur lawsuit. Roll call vote: Ayes, Klein and Ohl. Absent, McCallum. Nays, none. Motion carried. The Board recessed into executive session at 9:42 A.M. with County Attorney Joseph Smith, County Highway Superintendent Richard Johnson, and County Clerk Nancy Scheer present.

Motion was made by Ohl and seconded by Klein to recess from executive session. Roll call vote: Ayes, Klein and Ohl. Absent, McCallum. Nays, none. Motion carried. The Board recessed from executive session at 9:58 A.M.

After recessing from executive session, Chairman Klein stated that the County Board will continue with efforts to work with the landowners to get them access to their property. He stated that the Board is disappointed that the landowners told the County that they would get the property for the County to build a shoofly type road around the area where the river moved and now the landowners are advising that they cannot provide the property. He stated that this puts the County in jeopardy; however, the County will continue with efforts to determine if the County is eligible to receive FEMA and NEMA funds to shore up the river so it does not move any further. He explained that, if no federal or state funds are available, the County cannot afford to reconstruct a road. Chairman Klein stated that unless some jetties are put into the river for bank stabilization, it is unlikely that the river will stay within its banks and it is about a two year process to obtain necessary permits. He explained that the landowners received a property valuation reduction from the County Board of Equalization because their land was isolated.

County Attorney Joseph Smith stated that he will consider other options and continue with litigation. He stated that they have worked with everyone in good faith and will continue to do so.

The following written reports and correspondence were reviewed:

- 1) County Clerk December fee report
- 2) Fund balance report
- 3) Register of Deeds December fee report
- 4) Clerk of the District December fee report
- 5) County Sheriff December fee report
- 6) Sale of surplus property report

During the public comments portion of the meeting, Attorney Matthew Headley introduced himself to the County Commissioners and stated that he plans to campaign for the Madison County Public Defender position in 2014.

The following claims were audited:

GENERAL FUND		
Total Net Payroll		118,433.00
Mark Albin	Legal Services, County Court	595.75
American Educational Telecommunications	Medical Services, County Jail	1,200.00
American Family Life Assurance Company	Insurance Premiums	546.38
Ameritas Life Insurance Corporation	Employee Share Retirement	7,988.26
Ameritas Life Insurance Corporation	Employer Share Retirement	11,687.53
Ameritas Life Insurance Corporation	Insurance Premiums	381.44
Antelope County Court	Supplies, County Court	65.38
Appera	Mat Service, Public Defender	51.40
Appera	Mat Service, Courthouse	167.94
Aramark Correctional Services	Meals, County Jail	21,336.57
AS Central Services	Telephone Services, Veterans' Service Office	58.68
Authier Miller Pape Eyecare	Optometry Services, County Jail	134.00
Black Hills Energy	Gas Service, Courthouse	522.61
Black Hills Energy	Gas Service, County Jail	593.68
Blue Cross Blue Shield of Nebraska	Insurance Premiums	1,000.41
Brady & Amy's Inc.	Fuel, Courthouse	85.38
Brady & Amy's Inc.	Fuel, County Sheriff	1,386.27
Brogan & Gray, P.C., L.L.O.	Legal Services, County Court	923.98
Cableone	Internet Services, Public Defender	132.18
Cableone	Internet Services, Courthouse	116.50
Checker Cab Company	Transportation Costs, Juvenile Diversion	36.90
City of Madison	Utilities, Public Defender	238.41
City of Madison	Utilities, Courthouse	1,841.04
City of Madison	Utilities, County Jail	4,434.33
City of Norfolk	Parking, Veterans' Service Office	22.50
Colonial Life and Accident Insurance	Insurance Premiums	252.41
Complete Floor Maintenance Co.	Services, Probation	158.00
Complete Pest Elimination, Inc.	Services, County Jail	125.00
Connecting Point	Equipment, Data Processing	69.00
Connecting Point	Equipment, County Sheriff	583.50
Connecting Point	Supplies, Juvenile Diversion	58.00
Connecting Point	Equipment, County Jail	585.00
Connecting Point	Equipment, Probation	240.00
Connecting Point	Internet Services, Veterans' Service Office	38.95
Connecting Point	Internet Services, Planning and Zoning	16.00
Connecting Point	Services, Website Costs, Courthouse	1,922.85
Constellation Newenergy Gas Division, L.L.C.	Gas Service, Veterans' Service Office	98.77
Continental Research Corporation	Supplies, Courthouse	262.12
Credit Management Services	Garnish of Wages	15.23
Creighton University Medical Center	Forensic Services, Law Enforcement	511.94
Culligan of Norfolk	Drinking Water Service, County Jail	119.55
Dick Day	Telephone Services, Data Processing	90.00
Discount Dent Supply.com	Supplies, County Jail	1,014.10
Eakes Office Plus	Supplies, County Treasurer	221.96
Eakes Office Plus	Supplies, District Judge	134.82
Eakes Office Plus	Supplies, County Attorney	628.55
Eakes Office Plus	Supplies, Probation	359.48
ECMC	Garnish of Wages	142.34
Environmaster	Supplies, County Jail	42.00
First Concord Benefits Group	Flexible Benefit Plan, Deductible Buy Down	9,783.69
Frontier	Telephone Services, Public Defender	344.19
Gall's Inc.	Uniforms, County Sheriff	62.89
Robert Garrod	Registration, Noxious Weed	60.00
Gordy's Towing & Repair	Repairs, County Sheriff	152.46
Great America Financial Services	Copier Maintenance, Public Defender	145.26
Chelsey Hartner	Mileage, Postage, Public Defender	64.45
Leo Hegr	Equipment Rental, Courthouse	75.00
Douglas Herman	Repairs, Courthouse	115.00
Jeffrey Hrouda	Legal Services, District Court	1,147.30
HyVee West Pharmacy	Prescriptions, County Jail	112.52
Jerry's Sinclair	Repairs, County Sheriff	36.00
John's Disposal Inc.	Garbage Service, Probation	55.00
Johnson's Inc.	Repairs, Noxious Weed	107.50
Louderback Drug	Prescriptions, County Jail	4,506.07
Madison County Clerk	Tax Deposit	44,737.25
Madison County Clerk of District Court	Fees, District Court	693.00
Madison County Court	Court Costs, County Court	1,366.85
Madison County Sheriff Inmate Fund	Supplies, County Jail	29.86

Madison County Sheriff	Fees, County Court	700.69
Madison County Sheriff	Fees, District Court	634.50
Madison County Sheriff	Fees, Mental Health	56.06
Madison County Treasurer	Insurance Reimbursement	107.72
Madison County Veterinary Clinic	Impound Fee, County Sheriff	35.00
Madison National Life	Insurance Premiums	115.94
Mead Lumber	Supplies, County Court	151.96
Medtox Diagnostics, Inc.	Testing, Juvenile Diversion	110.55
Kyle Melia	Supplies, Public Defender	12.50
Microfilm Imaging Systems Inc.	Equipment Rental, County Clerk	45.00
Microfilm Imaging Systems Inc.	Services, Register of Deeds	45.20
Microfilm Imaging Systems Inc.	Equipment Rental, County Court	218.00
Microfilm Imaging Systems Inc.	Equipment Rental, Law Enforcement	60.00
Microfilm Imaging Systems Inc.	Equipment Rental, County Surveyor	45.00
Midwest Health Partners	Medical Services, County Jail	198.00
MIPS	Computer Support, County Clerk	559.23
MIPS	Computer Support, County Treasurer	3,483.92
MIPS	Computer Support, County Assessor	1,498.36
MOCIC	Dues, County Sheriff	150.00
Morrissey Motor Company	Repairs, County Sheriff	33.70
NACO	Registrations, County Board	160.00
Pamela Nathan	Registration, County Court	70.00
Nationwide Retirement Solutions	Deferred Compensation	855.00
Nebraska Association of County Officials	Publication, County Board	25.00
Nebraska Association of County Treasurers	Dues, County Treasurer	75.00
Nebraska Child Support Payment Center	Garnish of Wages	276.92
Nebraska Department of Revenue	Sales Tax	146.33
Norfolk Auto Center	Repairs, County Sheriff	90.96
Norfolk Daily News	Publication Costs, County Treasurer	99.05
Norfolk Daily News	Publication Costs, Courthouse	168.29
Mike O'Brien	Mileage, Juvenile Diversion	30.53
Rita Olberding	Transcripts, District Court	45.50
Sherry Peterson	Training, Fuel, Juvenile Diversion	212.53
Marvin Pfeifer	Snow Removal, Public Defender	95.00
Pierce County Sheriff	Service Fees, County Court	18.50
Polk County District Court	Copies, Law Enforcement	24.50
Postmaster	Postage, Noxious Weed	90.00
Postmaster	Postage, Planning and Zoning	90.00
Region 4 Behavioral Health System	Quarterly Contribution	13,610.75
Region IV, Inc.	Quarterly Contribution	9,147.75
Schroeder Land Surveying	Services, County Surveyor	1,232.00
Short Stop	Fuel, County Sheriff	385.52
Theresa Stange	Supplies, District Court	9.95
Michelle Sullivan	Training, Juvenile Diversion	140.00
Donald Svitak	Supplies, Noxious Weed	40.83
The Farner Company, Inc.	Supplies, County Jail	64.70
The UPS Store	Copies, Noxious Weed	44.26
David Uher	Legal Services, County Court	3,590.69
UPS	Shipping, Courthouse	28.97
US Bank Corporate Payment System	Fuel, County Sheriff	248.50
US Bank Corporate Payment System	Postage, Fuel, Supplies, Juvenile Diversion	350.76
Kirk Van Pelt	Services, Juvenile Diversion	91.00
Verizon Wireless	Telephone Service, Planning and Zoning	62.97
Verizon Wireless	Telephone Service, Noxious Weed	62.97
Verizon Wireless	Telephone Service, Juvenile Diversion	112.51
Voigt Locksmith Inc.	Repairs, Planning and Zoning	114.00
Voigt Locksmith Inc.	Supplies, County Sheriff	29.50
Wayne County Sheriff	Service Fees, District Court	43.50
West Payment Center	Subscription, Public Defender	228.50
Western Office Technologies	Supplies, Register of Deeds	242.36
Western Office Technologies	Supplies, Planning and Zoning	80.39
Western Office Technologies	Supplies, Noxious Weed	13.98
Western Office Technologies	Supplies, Public Defender	130.57
Western Office Technologies	Supplies, Copier Maintenance, Reappraisal	107.41
Western Office Technologies	Supplies, County Sheriff	11.50
Western Office Technologies	Supplies, Copier Maintenance, County Attorney	1,602.72
Western Office Technologies	Supplies, Veterans' Service Office	6.08
Wex Bank	Fuel, County Sheriff	862.31
Zee Medical Service	Supplies, County Sheriff	57.80
Zodiac Properties, L.L.C.	Rent, Probation	7,930.67

ROAD/BRIDGE FUND

Total Net Payroll		27,363.57
American Family Life Assurance Company	Insurance Premiums	251.81
Ameritas Life Insurance Corporation	Employee Share Retirement	1,677.50
Ameritas Life Insurance Corporation	Employer Share Retirement	2,516.07

Ameritas Life Insurance Corporation	Insurance Premiums	113.06
Appera	Towel Service	227.42
B's Enterprises Inc.	Signs	540.00
Battle Creek Farmers Coop	Fuel, Parts	1,347.07
Bauer Built Tire	Repairs	1,544.50
Black Hills Energy	Gas Service	278.46
Blue Cross Blue Shield of Nebraska	Insurance Premiums	67.09
Bluetarp Financial	Parts	80.68
Brady & Amy's Inc.	Fuel	901.06
City of Madison	Utilities	500.12
City of Newman Grove	Utilities	33.00
Colonial Life and Accident Insurance	Insurance Premiums	121.80
Connecting Point	Internet Services, Repairs, Equipment	2,462.00
D.W. Kohlhof Truck Repair	Repairs	749.91
Eastern Nebraska Telephone	Telephone Services	49.73
Fastenal Company	Shop Supplies	37.30
First Concord Benefits Group	Flexible Benefit Plan, Deductible Buy Down	948.89
Henkel Oil Company	Shop Supplies	76.30
K & S Door Company	Repairs	83.00
Kelly Supply Company	Shop Supplies	33.57
Kimball Midwest	Shop Supplies	94.63
M & M Farm Supply	Shop Supplies	61.05
Madison County Clerk	Tax Deposit	9,688.62
Madison County Treasurer	Insurance Reimbursement	41.80
Madison National Life	Insurance Premiums	41.03
Matheson Tri-Gas Inc.	Shop Supplies	244.93
Matteo Sand & Gravel Company Inc.	Gravel	1,207.65
Mead Lumber & Rental	Repairs, Supplies	311.23
Meisinger Oil Company	Fuel	8,719.41
Nebraska Child Support Payment Center	Garnish of Wages	218.24
NMC Exchange LLC	Repairs	3,360.72
Norfolk Auto Supply	Parts	94.94
Norfolk Transmission & Exhaust	Parts	59.88
Northeast Machine & Manufacturing Inc.	Parts	1,217.75
Quick Serve Oil Company Inc.	Supplies	246.00
Radio.comm	Repairs	26.15
Red Bud Hardware	Shop Supplies	102.19
Reigle Implement Co. Inc.	Shop Supplies, Repairs	28.00
Scheer's Ace Hardware	Shop Supplies	60.98
Telebeep Wireless	Internet Services	119.85
The Pit Stop	Fuel	780.85
Truck Center of Norfolk	Parts	77.81
Weldon Parts Inc.	Parts	1,062.49
White Star Oil Company	Fuel	136.10

FEDERAL AID SECONDARY FUND

Elkhorn Valley Ethanol, L.L.C.	Right of Way	23,856.00
Mainelli, Wagner & Associates, Inc.	Engineering Services	108,075.81

VISITORS PROMOTION FUND

Norfolk Area Visitors Bureau	Telephone Services	7.45
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VISITORS IMPROVEMENT FUND

Norfolk Area Visitors Bureau	Administrative Costs	19,495.93
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911 EMERGENCY FUND

Eastern Nebraska Telephone	Telephone Service	127.86
NESCA	Dues	45.00

LAW ENFORCEMENT OPERATING FUND

Eakes Office Plus	Supplies	185.67
Madison County Sheriff Inmate Fund	Supplies	106.61

DRUG COURT FUND

A Small Affair	Supplies	30.00
Janessa Finley	Supplies	13.90
On Call Employee Health	Testing	70.00
Putters	Supplies	61.00
Verizon Wireless	Internet Services	78.74

Motion was made by Ohl and seconded by Klein to approve the claims as audited and authorize the County Clerk to issue checks for payment of said claims. Roll call vote: Ayes, Klein and Ohl. Absent, McCallum. Nays, none. Motion carried.

The Board adjourned at 11:02 A.M. to Tuesday, January 29, 2013 at 9:30 A.M.

County Clerk Nancy Scheer

Board of Commissioners Chairman Lee Klein