

**BOARD OF EQUALIZATION**

Madison, Nebraska

August 19, 2008

The Board of Equalization of Madison County, Nebraska met at 9:00 A.M.

Advance notice of meeting was published in the Thursday, August 14, 2008 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 Rick Uhlir 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 Jerry McCallum, Rick Uhlir, and Lee Klein, County Treasurer Donna Primrose, and County Clerk Nancy Scheer.

Motion made by Klein and seconded by McCallum to approve the agenda for the meeting. Roll call vote: Ayes, McCallum, Uhlir, and Klein. Nays, none. Motion carried.

Motion made by Klein and seconded by McCallum to approve the minutes of the August 5, 2008 meeting. Roll call vote: Ayes, McCallum, Uhlir, and Klein. Nays, none. Motion carried.

Chairman Uhlir opened a public hearing at 9:04 A.M. to consider the following motor vehicle exemption applications presented by County Treasurer Donna Primrose:

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| Community Concern of Norfolk, Inc., P.O. Box 302, Norfolk    | 1996 Ford Van, 2004 Chevrolet Sports Van  |
| Faith Regional Health Services, P.O. Box 869, Norfolk        | 2001 Plymouth Neon (2), 2001 Dodge Neon (6), 1997 Dodge Ram Van (2), 2005 Chevrolet Van, 2000 Dodge Stratus, 2000 Plymouth Neon, 2003 Dodge Stratus, 1998 Chevrolet Pickup, 2001 Chevrolet Pickup, 1996 Ford Pickup, 2003 Chevrolet Venture Van, 2001 Pontiac Montana Van, 1997 Chevrolet Tilt Cab, 2005 Chevrolet Venture Van, 2007 Chevrolet Uplander (3), 2004 Chevrolet Pickup, 1994 Dodge Ram Van, 1998 Dodge Caravan, 2007 Chevrolet Malibu, 2006 Chevrolet Uplander, 2006 Circle D Flatbed Trailer |
| Heartland Independent Baptist Church, P.O. Box 2235, Norfolk | 1995 Dodge Ram Wagon  |
| Lutheran High Northeast, P.O. Box 2454, Norfolk              | 1986 Chevrolet Cavalier, 1999 Chevrolet Cavalier, 1996 Bluebird Bus, 1998 Dodge Van, 1999 Chevrolet Van, 2006 Honda Accord  |
| Mosaic, 105 East Norfolk Avenue, Suite 200, Norfolk          | 2006 Chevrolet Van (2), 1992 Chevrolet Van, 1998 Chevrolet 4 Door Sedan (2), 1999 Dodge Van (2), 2004 Ford Bus, 1994 Ford Van, 2007 Toyota 4 Door Sedan, 2000 Chevrolet Van, 2001 Chevrolet Van (2), 2004 Chevrolet Van, 2006 Chevrolet Van   |
| Norfolk Rescue Mission, 111 North 9th Street, Norfolk        | 1993 GMC Safari Mini Van, 2000 Chevrolet Pickup   |
| Orphan Grain Train, Inc., 601 Phillip Avenue, Norfolk        | 1999 Excel 5th Wheel Travel Trailer   |
| The Salvation Army, 112 North 7th Street, Norfolk            | 1998 Ford Truck, 1984 Mono Trailer, 2006 GMC Savana, 2001 Dodge Sport Van, 2003 GMC Canteen   |

County Treasurer Donna Primrose reported that the County Board previously approved exemption applications for these organizations. No one appeared at the hearing to offer verbal testimony. Chairman Uhlir closed the hearing at 9:06 A.M.

After discussion, it was moved by McCallum and seconded by Klein to approve the motor vehicle exemption applications as submitted. Roll call vote: Ayes, McCallum, Uhlir, and Klein. Nays, none. Motion carried.

The Board of Equalization adjourned at 9:07 A.M.

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County Clerk

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Chairman

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**COMMISSIONERS PROCEEDINGS**

Madison, Nebraska

August 19, 2008

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, August 14, 2008 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 Jerry McCallum 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 Jerry McCallum, Rick Uhlir, and Lee Klein, County Highway Superintendent Richard Johnson, and County Clerk Nancy Scheer. Planning and Zoning Administrator John Johnson was present from 9:56 A.M. to 12:19 P.M.

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

- 1) Approval of minutes of the August 5, 2008 meeting
- 2) Approval of Virgil Preister's Lot Split located in Section 25-21-3
- 3) Approval of program agreements with the Nebraska Department of Roads for Project Nos. STP-RUR-BR-2482(1) and STP-2482(3) [Nucor Road]
- 4) Authorization for County Board Chairman to execute a letter to the Elkhorn Valley Economic Development Council regarding funding for 2008-2009 fiscal year
- 5) Approval of 2008 inventory statements

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

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

The County Board reviewed the following reports:

- 1) County Clerk July fee report
- 2) County Treasurer fund balance report
- 3) Register of Deeds July fee report
- 4) Clerk of the District Court July fee report
- 5) County Sheriff July fee report
- 6) June and 2nd quarter building permit reports
- 7) Minutes of the July 15, 2008 meeting of PrairieLand RC&D and August newsletter

Pursuant to published legal notice in the Thursday, July 31, August 7, and August 14, 2008 editions of The Norfolk Daily News, sealed proposals for the construction and lease of a building for the District Two Probation office in Norfolk were received. District Two Probation Director Kathryn Liebers and Marlin Meisinger, representing Crafts, Inc., were present during the opening of the proposals. Proposals submitted by the following firms were opened and read aloud:

Crafts, Inc., P.O. Box 671, Norfolk - Three proposals including site locations of 609 Norfolk Avenue, 1203 South 8th Street, and 222 North 4th Street

Zodiac Properties, LLC, 214 North 7th Street, Suite 8, Norfolk - One proposal for site location of 602 Iron Horse Drive or 601 Prospect Avenue

After discussion, motion was made by Klein and seconded by Uhlir to interview representatives from Crafts, Inc. and Zodiac Properties LLC during a special meeting scheduled for Tuesday, August 26, 2008. Roll call vote: Ayes, McCallum, Uhlir, and Klein. Nays, none. Motion carried.

Pursuant to published legal notice in the Saturday, August 9, 2008 edition of The Norfolk Daily News, Chairman McCallum opened a public hearing at 10:35 A.M. regarding the conditional use permit application of Henn House Dairy Inc. to renew and expand a dairy operation located in Sections 19-24-2 and 24-24-3.

Planning and Zoning Administrator John Johnson reported that Planning Commission members Richard Grant and Brent Nygren did not participate in any phase of the Planning Commission's public hearing on this application. He stated that Allan Belina also declared a conflict of interest and did not vote on this application. Mr. Johnson read the Finding of Facts and the proposed conditions of the permit and reported that the Planning Commission approved the permit. He also reported that he completed water samplings in the area of the Henn Dairy, across the road to the south where wetlands are located, by Ken Palmer's Lake, and on the Orin Rinkel property and the test results reflect no significant findings for nitrates.

Mike Henn stated that he is the owner/operator of Henn House Dairy Inc, that he is a second-generation dairy farmer, and that he grew up at the current dairy location. He stated that his son is interested in running the dairy operation. He explained that the primary reason for the expansion is to stay economically viable in the future. He explained that he started the dairy expansion process eight or nine years ago when he secured an economic development loan that was a grant given to Madison County and in turn given to him as loan in the amount of \$500,000. He reported that he has repaid \$340,000 of principal and interest payments. He stated that during the last nine years, the dairy operation has exported \$23 million of products. Mr. Henn stated that the average monthly payroll is between \$42,000 and \$52,000 and the dairy currently employs 22 people and these employees are part of the community and part of the operation. He explained that the dairy purchases a majority of the feed locally, including hay and the by-products of the ethanol plants. He reported that he works with the surrounding neighbors to apply manure on their lands and in return he buys corn silage from them. He stated that, in his opinion, he has been very responsible in the community to the fire department, school system, and to people who have held benefits in the community. In addition, he explained that he has purchased computers for the school and most of the time when someone from the community comes to the door he helps them out. Mr. Henn explained that he plans to complete the new expansion in phases. He reported that he has already spoken to engineers regarding the expansion project and they are looking at a methane processing system and some type of bio-processing system to recapture the energy and generate some electricity. He reported that he may apply for rural development grants in these areas. He stated that the structures that will be installed to contain the manure will be lined, either by concrete or synthetic. He stated that the current system is 85% concrete and the other pit has a clay liner. Mr. Henn stated that the total overall cost of the expansion project will be between \$4 and \$5 million. He explained that he plans to construct additional barns and install a new milking facility. He stated that the thing that people don't understand is the off-farm benefits of people that he does business with by buying between \$150,000 and \$200,000 of alfalfa hay in the area. He stated that he tries to promote and encourage people to raise crops for the dairy operation and that he tries to keep his neighbors happy. Mr. Henn explained that his DEQ permit requires him to notify any neighbor if he is hauling manure within 600 feet of their house. He stated that it is in his best interest to practice best management procedures by incorporating the manure; but, sometimes they are far enough away from facilities that they don't need to incorporate the manure. He explained that he wants the opportunity to keep growing and he can't do it without the required permits and looking out for the future. He stated that he could give the Board a lot of numbers about where he started; but, in his opinion, the key thing is that he is local, he lives here, and he plans to live on the site and eventually, his son or one of his daughters will be on the current site for years to come. He requested the Board to focus on the positive impacts that the dairy operation has had in the community and with the relationships with the neighbors. He concluded by stating that he has one letter that he submitted at the previous hearing that he requested to resubmit.

Ken Amen stated that he lives next door to the Henn House dairy and he has known Mike Henn ever since he was a small boy. He stated that he has observed Henn's dairy operation many times and, in his opinion, Mr. Henn does a good job. He stated that the Board needs to look at the dairy operation, not only as a benefit to an individual, but as a benefit to the whole community. He stated that the more that we can keep products produced locally, the better we are. He stated that the way things are going, many products are being produced in other places. Mr. Amen stated that dairy products are something that everyone uses and it isn't a product that you can simply go to any industry and plug in a machine and make these products. He stated that they must be produced and the more that they can be produced locally as Mr. Henn plans to do, the better we are as a community. He stated that the dairy serves a benefit to the community and it gives our children, grandchildren and great-grandchildren an opportunity to know where these products come from. Mr. Amen explained that he has a sister-in-law that lived in Colorado for 20 years and she was in the grocery store one day several years ago when milk prices were going up dramatically and when she was speaking to the produce manager in the store she told him that she doesn't mind paying higher prices for milk if the farmer that produces the milk gets that raise. He explained that the produce manager asked what the farmer

had to do with it, which is terrible that he didn't know the connection. Mr. Amen stated that if we don't produce these products locally, our children wouldn't even know where they come from. He highly recommended that the permit be approved and that Mr. Henn be given the opportunity to expand. He stated that he knows there are people that disapprove this expansion and it is great that there is system where people can do that; but, the people that are opposing the expansion will simply make Mr. Henn a better operator. He explained that he knows that Mr. Henn wants to satisfy his neighbors.

Merlin Schlote, CEO of Progressive Nutrition in Norfolk and Holdrege, stated that his business supplies animal nutrition products for the beef, dairy, swine, and specialty animal segments. He stated that his business is proud to supply Henn House Dairy with their nutrition products and he greatly appreciates Mr. Henn's desire to do business locally. He stated that Progressive Nutrition employs 234 full-time positions in Norfolk and this represents an annual payroll of nearly \$1.5 million and the business spends an additional \$1 million in operating supplies. He explained that most of these products are purchased in Madison County. Mr. Schlote stated that in today's economic environment, with the high energy costs, it is important for Progressive Nutrition to conduct business close to the manufacturing facilities. He stated that Madison County's willingness to encourage growth of existing and new animal agricultural operations is imperative to the success of Progressive Nutrition. He requested the Board to vote yes for economic development in Madison County and grant the request for expansion to Henn House Dairy.

Ken Bierman stated that he is one of the closest neighbors to the Henn House Dairy and that Mr. Henn tries extra hard to please everybody. He stated that Mr. Henn's comments are true about letting people know when he is hauling manure. He stated that he knows manure hauling has been an issue; however, Mr. Henn really strives to not have any manure on the roads, and if some does fall, they are out cleaning it up. Mr. Bierman stated that occasionally there is some mud on the road, but that hasn't occurred lately. He reported that Mr. Henn is trying his best to please everybody.

Bill Chapman from Lincoln, Nebraska explained that he does nutrition consulting for Henn House Dairy. He reported that he grew up on a small dairy consisting of approximately 50 cows in rural Nebraska and that they were at the point of getting out of the business or getting bigger. He stated that his family chose to get out of the business; therefore, he didn't have the opportunity to do what Mr. Henn's children potentially can do. He reported that Mr. Henn grew up on a farm similar to one that he grew up on; however, the Henn dairy operation has expanded through the years. He explained that both were similar situations; however, the operations went two different directions. Mr. Chapman explained that we live in rural Nebraska and he questioned what we can have if we can't have animal agricultural. He stated that a dairy farm will generate about \$14 per day per cow to the community, and for an operation the size of Mike Henn's, this transitions into \$11,000 to \$12,000 per day that is poured back into the community either through feed, electricity, equipment, employees, repair services, and taxes. He stated that all these things trickle back into the community, either directly or indirectly. He stated that if you look at the situation from a corn standpoint, it takes about 900 acres of corn to equal a 100 cow dairy herd; so, it takes a lot of acres of corn to have the same impact on the community based on the current market price. Mr. Chapman explained that dairy is a good thing for rural Nebraska. He stated that communities are going to continue to get smaller if we don't have something to use the by-products from the corn farmers.

Bob Pollock, an agronomist employed by Battle Creek Coop, stated that he works closely with Mr. Henn on his nutrient management plans and his manure management. He stated that every year Mr. Henn is required to take soil samples on every 40-acre tract that he farms. He explained that they check nitrate levels down to three feet and, using these results, they determine how much manure can be applied to meet the nitrogen needs. He stated that prior to any application of manure, they also complete a phosphorus index that is required by the Nebraska Department of Environmental Quality. Mr. Pollock reported that this process is completed on all the ground that manure is spread onto and every 40 acres that manure is applied to scores less than two. He explained that two is in the very low category for risk of phosphorus run-off. He reported that the phosphorus index estimates the erosion factor and how much of these nutrients will erode into lakes and streams; so, currently every acre of ground that Mr. Henn spreads manure onto scores in the very low category. He further explained that soil samples and manure samples that Mr. Henn is required to take are used to determine how many gallons of manure can be applied to meet the nitrogen needs. Mr. Pollock reported that Mr. Henn meets all of his fertilizer needs with manure and commercial fertilizer is seldom used to supplement. He explained that the manure that is applied improves the soil structure. He explained that he has been working with Mr. Henn for over ten years and does consulting in multiple states, including Kansas and New Mexico. Mr. Pollock stated that he sees a lot of operations and when you look at how Mr. Henn takes care of his operation, it is second to none. He stated that Mr. Henn's cows come first and from a standpoint of manure on the road, he has seen Mr. Henn out picking up manure himself with a shovel and taking care of it. He stated that from a person who wants to keep things the right way, there is no one better at that than Mr. Henn. In addition, he stated that from a cow standpoint, Mr. Henn takes care of the cows as well as anyone that he deals with.

Chris Lutt, a veterinarian at Heartland Vet Clinic, reported that he supplies Henn House Dairy with its drugs and veterinarian service. He stated that in 2003 Mr. Henn approached him shortly after he purchased the vet clinic and told him that he wanted his clinic to furnish all the drugs and vet services for his dairy because he wanted to do his business locally. He stated that he told Mr. Henn that he didn't know if he could compete very well with the distributor trucks, but Mr. Henn told him that if he could keep his price close to the distributors he would do all his business with his vet clinic. He stated that ever since that time Heartland Vet Clinic has supplied Henn House Dairy with drugs and veterinarian services and this has made a significant impact on his vet business. Mr. Lutt reported that Mr. Henn's dairy has allowed his clinic to maintain a third veterinarian because they are constantly losing producers all the time. He stated that small dairies are not feasible to maintain and where there is an opportunity to bring a young family member into the community and keep the operation functioning it should be supported.

Chairman McCallum requested Mr. Lutt to give a statement regarding the type of operator that Mr. Henn is and Mr. Lutt responded that Mr. Henn has designated people that do a very good job. He stated that his staff members are always inquiring what can be done to treat the cows better, how to improve the health of the animals, and what vaccinations can be given to produce a healthier adult animal. He stated that they do a lot of vaccinations and post dead animals to learn. He stated that the impact that Henn House Dairy makes on his vet business is tenfold. He explained that every one of Henn's cows that brings income into his clinic is equal to 10 to 12 animals in a feedlot. Chairman McCallum inquired if Mr. Henn was concerned about the welfare of his herd and Mr. Lutt responded affirmative and stated that Mr. Henn is very aggressive about that.

Roy Swoboda explained that he mailed a letter to the Commissioners because he thought he would be unable to attend the hearing; however, since it was delayed two weeks he is able to attend. The letter was marked as Exhibit 2 and entered into the record. He stated that he has known Mike Henn his entire life and he also knew Mr. Henn's parents and they are outstanding people and they will do what they can to take care of business and take care of the community. He stated that other people's testimony regarding the economic impact to our area is 100% true; but, in his opinion, none of the people that gave testimony are going to fold up if Mr. Henn doesn't expand his dairy. He stated that as far as Mr. Henn taking care of his dairy, in his opinion, he believes that he does take care of it and he is a fool if he doesn't. He explained that Mr. Henn is in the dairy business to make money just like everyone else and if he doesn't take care of things he is operating the dairy for the wrong reason. He stated that with the review and expansion plans of Henn House Dairy, he thought the Board would like the perspective of a neighbor on what they feel toward the expansion. He reported that he and his wife are against the expansion because, in his opinion, more than doubling what he is doing now could be catastrophic. Mr. Swoboda presented several

pictures, including an aerial photo that shows a field that he is aware of where Mr. Henn currently top spreads manure. He showed the location of the dairy, the lagoon, and where he lives, which is one mile from the Henn dairy farm. He presented a colored photo that showed a view of all the fields that he is talking about. He stated that at one time or another the fields were all used for manure disposal and most fields are used every year. Mr. Swoboda reported that aerial photos #1 through #4 contain close-ups of the dairy and specific fields that he is talking about. He explained that they are dated 1999 and were taken off a USGS website and were the most recent photos that he could obtain. He stated that the sewage lagoon is not even on the photo and he pointed out where it was located on a more recent photo. He explained that some of the fields that are on the photos are immediately adjacent to the Elkhorn River and others are adjacent to wetlands that have standing water in them 365 days a year. He reported that every field that he is aware of is within one-half mile of the Elkhorn River and all of the fields drain directly into the Elkhorn River basin. He stated that the dairy itself sits within 300 feet of an existing wetland directly across the road and this can be seen in reference photo #1. He reported that there is a scale printed at the bottom that shows how many feet and also shows the dairy, standing water, and the wetland. He explained that anyone can see that this entire area drains directly into the Elkhorn River. Mr. Swoboda explained that in photo #2, field #2 from the cover page sits immediately adjacent to the Elkhorn River and has in years past been left fallow and was basically used for an entire year for nothing other than disposal of liquid manure. He reported that Mr. Henn may have raised oats or wheat on it, harvested that in June or July, then sprayed it with liquid manure throughout the rest of the summer, fall, and even over the top of snow in the winter. He stated that this piece of ground had been painted with manure to the point of where the stubble on it was unrecognizable. He reported that this field has nothing other than a dirt access road between itself and the Elkhorn River to the north. Mr. Swoboda pointed out the location of this field on the photos and also the edge of the field and the close proximity of the Elkhorn River flowing by it. He also pointed out an existing wetland and another field that has been allowed to go back into wetland because it is so wet that it can't be farmed. He explained that this piece of property was tilled 30 years ago and it was all trees and wetlands and then was subsequently dozed out and made into a field. He stated that there is perhaps 30 feet separating this field from the 6 or 8 foot embankment of the river and no further than 50 or 60 feet to the actual flowing water. He reported that this field is surrounded on three sides by river or wetlands. He stated that there may be EPA guidelines that state how far they can be from flowing water and what it travels through to get to the river, but he is doubtful that EPA would have approved of the huge amount of manure deposited on this field. He explained that he has been told that if you top spread manure, the nitrogen evaporates, so the field would not get sour from having too much manure on it, but he can tell how much manure was put on it because he couldn't recognize the ground. Mr. Swoboda reported that field #3 sits immediately across from the Henn dairy and it has also been commonly used after harvest to top spread liquid manure and again it sits directly adjacent to wetlands that drain into the Elkhorn River. He stated that in photo #3, fields #4 and #5 have been regularly used for manure disposal and he watched this year as field #4 was top spread with manure only to have it wash away over the road and into the river a day or two later. He stated that as the Board could see from the color photo it is clear to see the debris and cornstalks on the road and how bad it washed. He reported that it had to be coming over the road in a torrent of 50 to 75 yards wide, and based on the fence posts being 16 feet apart, it appears to be 218 feet from one end to the other that the water ran across. Mr. Swoboda stated that there have been several people that stated that the ground water has been tested and standing water in the wetlands; however, he has lived in this area for 11 years and he has yet to see anyone standing in a torrent coming off the fields taking samples of what is actually washing into the river. He reported that when it washes into the river, it's gone in 10 seconds. He stated that, to his knowledge, no one has ever tested extreme runoff from any of the fields. He stated that field #6 is the only field that he personally knows of where the manure is knifed into the ground. He explained that this same field is also top spread. Mr. Swoboda stated that he does not have any personal sort of vendetta against Mr. Henn, but his concerns are directly related to what he has seen in the past. He explained that he bought his property and put up his house 11 years ago knowing that "he lived in the country". He stated that during these 11 years he has traveled the roads that lead him directly past the dairy and to his house, which sits directly one mile west of the dairy, usually at least twice a day. Mr. Swoboda stated that several years ago, when Henn House dairy applied for their first permit to raise their milk herd to 1,000 head, things in the dairy industry had not been so good, and even though he had some concerns then as well, he thought that Mr. Henn has a right to earn a living and it is their family farm. He stated that, in his opinion, what Mr. Henn is trying to do now is change a family farm to a corporate farm. He explained that Mr. Henn currently has a sewage lagoon that he understands holds upwards to one million gallons of manure. He stated that we have all seen what flooding can do to dikes and he has personally seen when the Elkhorn River was flooding, the little wetland that sits right across from Henn's dairy became an arm of the Elkhorn River. He stated that if the banks of the road would start to erode in a flood there are mere yards of dirt that would have to be removed before the whole sewage lagoon could be washed into the river. Mr. Swoboda explained that it is interesting to note that the State of Nebraska is currently investigating and suing an area dairy for alleged misconduct. He stated that within a week or so, the same paper has a report of how the City of Norfolk is doing all it can to identify and remove all areas of possible contamination from its domestic water well fields and these well fields sit only seven or eight miles downstream from Henn's lagoon. He stated that unless something drastic changes, Henn House Dairy has been, and will continue to, dump raw liquefied sewage onto fields that are immediately next to the same river that flows past these well fields. He stated that he cannot support this enlargement of Henn House Dairy due to its proximity to the areas watershed. He explained that he sees nothing wrong with Mr. Henn having 2,000 head of cows other than he sits directly across the road and this is his biggest beef. He reported that he has seen how Mr. Henn disposes of his manure and he has experienced the drastic increase in flies and odor due to his last expansion. He explained that his son rented the farm place immediately across the road to the west from the dairy and the flies that would congregate up under the eaves of his house were absolutely terrible to the point where he did not want to use his front door. Mr. Swoboda stated that he can attest that at his house, one mile west, they are not a lot better. He stated that if he would have kept records he could have filled three ring binders with photos of sloppy access roads from Henn's dairy and fields, hundreds of thousands of notes and/or pictures of manure as it was being spread on fields, and dozens and dozens of the same fields nearly completely submerged as rivers rose, rain fell, gully washers created torrents in fields where this manure was spread, all of it washing downstream into the river. He explained that had he known that this type of expansion was planned he could have started years ago compiling records, as Mr. Henn is required to do, toward what he thought would back up his case. In addition, he stated that never once has he called Mr. Henn to complain... because he lives in the country. Mr. Swoboda stated that others around him have livestock too and he has some concerns because occasionally the blacktop going by his dairy is a touch sloppy from manure hauling and he slows down and tries to miss the debris on the road because... he lives in the country. He stated that sometimes he gets stuck behind Mr. Henn's guys hauling manure and he passes and usually gives them a courteous wave and he always will because he knows that they have a job to do... because he lives in the country. He stated that he moved to the country just to be part of such things, some good, and some not so good. He explained that he did not move into the country to be part of, or blindly turn his eyes to what he would consider a corporate type dairy farm. Mr. Swoboda stated that he could express at length his personal inconvenience from odor, flies, etc. and the possible devaluation of his property but he doesn't think he needs to. He explained that his entire life he has been involved in the outdoors. He reported that is currently president of a local wildlife conservation and hunting group and he also sits on the Nebraska State Board for this same organization. He reported that he has worked for the Nebraska Game and Parks Commission and with their biologists promoting outdoor activities, enhancing wildlife habitat, trapping and releasing wildlife into new areas, and getting youngsters involved with and more aware of our natural resources. He stated that he lives and breaths for clean air, clean water, and outdoor recreation, and he thinks most people do. He stated

that, in his opinion, the Board must consider his last few lines. He stated that the rewards of an expansion of upwards of 5,000 cows will be shared by a few; but, the risks of having this many cows, sewage lagoons and top dressed fields close to a watershed such as the Elkhorn River could be felt by thousands or tens of thousands. He stated that there is an interesting quote that an outdoor company uses to enlighten its viewers and it holds true for us all and the quote is "We All Live Downstream": Mr. Swoboda stated that he knows that there have been water tests taken in the area; but, he has never seen anybody testing runoff from the fields and he has seen how much manure is on these fields and he knows that 30 feet required by the EPA or DEQ is not slowing down this much water. He stated that he knows that the manure is going through there because it stinks terribly when he took the picture. He explained that when Mr. Henn does his expansion he likes to hear the fact that he is thinking of putting in a methane re-claimer, and if he gets that done, that would be wonderful. In addition, he stated that if he needs to endure the consequences of the additional fields that Mr. Henn is going to need he won't be particularly happy about that. Mr. Swoboda explained that he did not know that he can't spread manure within 600 feet of an occupancy without notifying the land owner' but, in his opinion, 600 feet is way too close. He explained that if anyone has ever been 600 feet downwind from a liquid manure spreading operation, you wouldn't want to be that close. He also reported that his mother owned an acreage about one-third mile south and a quarter mile west of Battle Creek and Mr. Henn approached his mother about buying her house when she wanted to sell it four years ago even though he stated that he plans to live on the site of the dairy operation. Mr. Swoboda stated that he won't make a big deal of what his property is going to do as far as value because he doesn't own a "farming operation", but he does know that it will devalue his property. He reported that he has a nursery license and he is currently growing about 8,000 trees on his property, which will be sold wholesale and hopefully someday retail. He stated that if Mr. Henn is spreading manure 600 feet from his residence and he has someone come out to buy look at buying his trees, they won't even get out of their car. He explained that he has known Mike Henn and his family his whole life and they are upstanding people, but he still can't get away from the fact that Mr. Henn is going to have 2,000 cows sitting in his dairy and 3,000 cows close to the dairy that will be dropping manure on the ground and all of it is within one-half mile of a major watershed. Mr. Swoboda stated that once the manure hits the river it is gone and he is unsure of the amount of pollutant in it. He stated that he can tell the Board members that the manure came across the road and it ends up in the river and he questioned how much must be accepted as far as allowing it to run into the river. He stated that, in his opinion, this is unacceptable, and to have more than double that amount is ridiculous and it shouldn't even be considered. Mr. Swoboda again pointed out on the pictures where the water was standing and where the wetlands were located. He also pointed out where the water was running off one field, hitting a ditch, and dumping directly into the Elkhorn River. He stated that the pictures are cut and dry. In addition, he reiterated that he has lived in this area for 11 years and he has seen the rains come and go and for the most part, he thinks Mr. Henn does a good job with his dairy operation. He again stated that he does not have a vendetta against Mr. Henn, other than that he sees the manure being washed in to the river and he doesn't like it.

Chairman McCallum questioned if Mr. Swoboda has any technological evidence that proves that Mr. Henn is contaminating the river or the fields. He explained that a proponent testified that every 40 acres of ground is tested and the water has been tested. He stated that the County Board is working with a man's operation and there needs to be very firm evidence that the dairy is actually contaminating. In addition, he stated that he is not denying the information presented by Mr. Swoboda, but it needs to be proved. He questioned if Mr. Henn is actually contaminating the Elkhorn River. Mr. Swoboda responded that the Board must ask Mr. Henn if he has ever had anyone standing in this water. In addition, he stated that he explained that if he had known that Mr. Henn was planning an expansion he could have tested the runoff. He explained that the Board could see the evidence that all of the waste is running across the road and directly into the river. He reiterated that he has photographs of it and he questioned what was on the road in the pictures he presented.

Chairman McCallum questioned if there were problems reported from the DEQ and Planning and Zoning Administrator John Johnson responded no. Roy Swoboda questioned if the DEQ requires Mr. Henn to test the runoff during a rainstorm and Chairman McCallum responded that he did not know the answer to this question.

Deb Praeuner stated that she is not so much in opposition of Mr. Henn's expansion as that there should be controls. She stated that it is her understanding that the DEQ and the county's matrix covers Mr. Henn's home place; but, it is also her understanding that there are places where the manure is hauled and where the cows are hauled and where the calves stay that have no controls. She explained that there is absolutely nothing to make sure that everything at the other locations is in compliance with whatever regulations Mr. Henn's own dairy farm must follow. She stated that as long as the locations where the cows and manure are going have the same standards, and the same treatments, and the same tests to protect the surrounding area so these problems don't happen, she doesn't have a problem with Mr. Henn being issued his permit. Ms. Praeuner requested that the regulations be expanded to the other farms where the cows are housed so that adjoining farmers and landowners would be protected. She stated that it doesn't matter if these other areas are flat land, next to the river, or highly erodible, there is absolutely no control and no testing completed.

Chairman McCallum questioned if the maximum number of livestock on other locations is 300 head. He stated that there are many farmers that can have 300 head of livestock next to the river and they don't need a permit, so he questioned if there was a cap on the number of head that could be housed in any other location. Planning and Zoning Administrator John Johnson responded that farmers can rent out their land as long as they stay below 300 head equivalent, either calves or cows. Chairman McCallum clarified that testimony presented earlier reflected that Mr. Henn is testing every acre for nitrates and phosphates.

Mary Tiedgen submitted a letter signed by Ward and Theresa Tucker that was marked as Exhibit 3 and accepted into the record. Mrs. Tiedgen read the letter that expressed opposition to the expansion of Mike Henn's dairy operation for the following reasons:

- 1) The pumping of manure across the Elkhorn River. The manure is being pumped across the river by means of some type of collapseable pipe. What if this tubing was to spring a leak and spill into the river? What and who would suffer from this spillage contamination?
- 2) The continuous spreading of manure over the same piece of land. How much manure can be spread before a toxicity level is reached? Too much manure spread on the same piece of ground can impair soil productivity but also degrades surface and groundwater quality. How much of this manure has leached into our groundwater already?
- 3) Manure that is hauled on frozen and snow covered fields directly affects our surface water during spring snow melts. Even after heavy rains how much is run off into the river?
- 4) The manure is not integrated into the land after it is applied. When manure is integrated into the soil after application, it not only benefits the soil but also decreases the odor.
- 5) Do we really have to wait to see dead fish, animals, or even people getting sick before we realize we have gone too far? Now is the time that we need to be taking care of our natural resources and taking care of our planet.

Mary Tiedgen submitted a letter signed by Vicki Flanagan that was marked as Exhibit 4 and accepted into the record. Mrs. Tiedgen read the letter as follows: "In the matter of Mike Henn, Henn House Dairy: It has been brought to my attention that Mike Henn wants to increase his dairy herd. The way he disposes of the manure from his cattle has been terrible. The manure from his wagons pours out on the highway and on vehicles. The large tractors and wagons take up three-fourths of the highway so you can't pass, and if you honk at them to let them know you are behind them they slow even more. Our pickups and cars smell like a feed yard from just driving through the manure on the road. You can't have a clean pickup when you go to town, they smell. We haven't had a fly problem in the past but we sure have one now, and it's only going to get worse. It's against the law

for a semi-trailer pulling a cattle trailer to leave its clean out traps open while going down the highway and spilling manure, this is the same thing. He has no easy way now to get rid of the manure, so what will it be like when he gets more cows? Why should we have to smell like a dairy barn? I don't milk cows."

Mary Tiedgen submitted a letter signed by her daughter Karen Reed, her husband Alan and their children, which was marked as Exhibit 5 and accepted into the record. Mrs. Tiedgen explained that her daughter is under the impression that only so much manure can be on the land per year and odor and flies go hand in hand. She stated that her daughter doesn't believe odor control has been done and questioned if it would be done in the future. In addition, the letter stated that a land owner to the west of their land got manure from Mike Henn and hauled it himself, stockpiled it, and it made a potential problem. Mrs. Tiedgen interjected that their pit is a couple blocks from this stockpiled manure and when it rains standing water has to go into the pit. In addition, the letter stated that this is a problem where people receive manure and incorrectly use it. In addition, the letter stated that the county should notify people not just a quarter of mile from the dairy, but also neighbors where cattle and manure are being taken two or three miles away.

Mary Tiedgen submitted pictures that were marked as Exhibit 6 and accepted into the record. She explained that most of the pictures were taken right after Memorial Day weekend when there was a big rain and, when you look at some of the standing water, you've got to think that it is going south down into the river. She stated that John Johnson testified that he took samples; but, she questioned if he took samples when it was wet and damp and rainy. Planning and Zoning Administrator John Johnson responded that he took samples the day after a one inch rain. Mary Tiedgen explained that the pictures were taken after a four-inch rain and the last three pictures were taken in June after a big rain.

Mary Tiedgen also submitted a letter signed by her husband, Bob and herself, which was marked as Exhibit 7 and accepted into the record. She stated that they are against the proposed plan to expand Henn dairy. She stated that they own 138 acres of river bottom farm one mile west of the dairy, which consists mainly of water and sand with 52 acres of farm ground. She reported that they have small cabin located on it that they share with five kids, nineteen grandkids, and approximately 21 great-grandchildren. Mary Tiedgen stated that she was born and raised here and she has lived here for 79 some years and she wants to keep this lake in the family. She explained that the lake has been in the family for 134 years. She reported that they also share the property with duck hunters that have been hunting there for over 60 years, Boy Scouts who have camp outs, and that class reunions, wedding receptions, neighborhood gatherings, and other activities are also held at the lake. She reported that they get the manure hauling on all four sides and they don't need the smell of manure. She explained that they don't feel that the present operation of the dairy has been monitored closely enough and they were surprised that was built in the present location on such low ground next to the swamp and Elkhorn River. Mrs. Tiedgen reported that the dairy hauls manure constantly in large oversized, overweight, and overwidth machines down the center of county roads breaking the roads up and slopping and spilling manure on the road. She reported that the half-mile road past Amens hasn't gotten back to normal since it was so wet this spring when they were hauling manure over it and she doesn't think it ever will because there is such heavy traffic on it. She reported that the manure is hauled with very little courtesy to motorists following making it impossible to pass and at a very low speed. She stated that the mirrors and windows on the tractors are covered with mud and manure and the vehicles drive through the manure that is scattered on the road. Mrs. Tiedgen stated that they heard that some people received a notice of the meeting with the Zoning Board on the matter of expansion of the dairy herd and they did not receive a notice. She stated that they don't live there, but it would have been nice to have a notice. She reported that they have been friends and neighbors of the Biermans long before Mike Henn was born and they understand the high cost of fertilizing and how it would save the Biermans lots of money on fertilizer by having manure spread on their fields. Mrs. Tiedgen stated that they don't care if they put manure on their own ground around their own home, but they do care when they spread it on neighbors' land next to their property and drop manure on the roads as they drive over. She stated that the heavy rains this spring washed the manure into the swampy ground and then down the Elkhorn River, which seems like a big concern. She explained that when the runoff goes down the river it is gone, but if it goes into their lake, it stays put.

Commissioner Klein stated that a lot of the issues that were raised are not anything that the county controls, but are controlled by DEQ. Planning and Zoning Administrator John Johnson responded that for the most part the issues presented are controlled by DEQ. He reported that the county has setback requirements for manure application and if it is knifed in or disced in the setbacks are a lot closer. He explained that in most cases the setback is 600 feet from a river when manure is not knifed into the ground. Commissioner Klein questioned if the issues of over application are regulated by DEQ and Planning and Zoning Administrator John Johnson responded that DEQ monitors this. Mr. Johnson further explained that the reports that were submitted at the Planning Commission meeting were Mr. Henn's reports to DEQ and DEQ's responses and, as noted in the Finding of Facts, they were all consistent with Mr. Henn's manure management plan.

Chairman McCallum questioned if the agronomy tests show the over spreading of phosphates, sulphur, and nitrogen. Bob Pollock responded that they are required to test these items on every 40 acres. He explained that DEQ is concerned with the phosphorus runoff from the field and not so much concerned with how much phosphorus is on the field. He reported that the phosphorus does not leach, but stays put, so DEQ is not concerned with how much is on the field. He reported that the phosphorus testing is completed to determine how much erosion is coming off the fields. He reported that every field that manure is currently spread on has the lowest rate. Mr. Pollock stated that the soil tests are completed every year right after harvest and before manure is applied, so the results aren't skewed. He stated that the phosphorus testing is required every five years.

Commissioner Uhler questioned if more land would be acquired for manure application with the expansion. Mike Henn responded that they currently have two acres for every cow.

Chairman McCallum thanked those in attendance for their testimony and closed the public hearing at 11:48 A.M.

Commissioner Uhler questioned when the first expansion phase would start and how many years the entire project would take to complete. Mike Henn responded that the engineering plans are already started for the first phase and within six months he is hopeful to have all permits approved for construction. He reported that he hopes to complete the entire expansion project within four to five years; however, it would depend upon the economy. He explained that they plan to grow as they can afford to do it.

Commissioner Klein questioned if there would be much manure to haul if a methane processor is installed. Mike Henn responded that the phosphorus must be hauled away. He stated that the technology still must be improved.

Commissioner Klein stated that he understands the concerns of the people; but, the situation comes down to the fact that most of the things that were pointed out that aren't right are not things that fall under the county's regulations. He stated that after the court case that the county previously had with denying a permit, when the applicant meets the zoning criteria, the Board doesn't have much choice but to approve the application.

Commissioner Uhler stated that he also has concerns about the run off; however, until he knows more facts about whether it is condemning anything, he also needs to support the application. He stated that there is no proof from the tests conducted that anything harmful is going into the river.

Chairman McCallum commented that this has been one of the best hearings with both sides presenting their information very orderly. He agrees that there has been no evidence proving that Mr. Henn is contaminating anything and that must be proved. He stated that anyone can say anything and the opposition proved that there is drainage, but there must be prove that there is damage from the drainage.

After discussion, the following resolution was introduced:

RESOLUTION #2008-50

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT FOR CERTAIN LAND LOCATED IN THE COUNTY OF MADISON, NEBRASKA UNDER AUTHORITY GRANTED BY THE MADISON COUNTY ZONING AND SUBDIVISION RESOLUTION AND LEGISLATIVE BILL 186 (1978)

WHEREAS, the Madison County Joint Planning Commission and the Madison County Board of Commissioners, having given proper notice and holding public hearings as provided by law and under the authority of and subject to the provision the Madison County Zoning and Subdivision Resolution and Legislative Bill 186 (1978).

WHEREAS, the Madison County Planning Commission and the Madison County Board of Commissioners have established the following Statement of Finding of Facts for the Conditional Use Permit application of Henn House Dairy, Inc.:

1. Planning Commission members Richard Grant and Brent Nygren declared a Conflict of Interest and did not participate in any phase of the Planning Commission's public hearing on this application.
2. The application is consistent with the Madison County Comprehensive Plan.
3. The application is consistent with the Madison County Zoning and Subdivision Regulations.
4. The applicants passed the Madison County Livestock Feeding Siting Matrix.
5. This meets the setback requirements.
6. The operation has a Conditional Use Permit issued under the previous Madison County Zoning Regulations.
7. The facility currently will expand to 2,000 dairy cattle and 1,700 feeder cattle and 1,000 heifers less than 550 lbs.
8. Mike Henn has partnered with his adjoining neighbors for this expansion project.
9. That utilizing a 25 year storm as a basis, surface water runoff or other drainage from the facilities of such use shall not flow directly or indirectly into any river, stream or other drainage way which would allow any untreated waste to contaminate surface waters. Further, the facility will not be located in areas subject to a 100-year flood.
10. The Zoning District in which the proposed use is to be located is zoned AG2.
11. A Public Hearing was held before this Planning Commission on June 26, 2008.
12. That Notice of Hearing was published at least 10 days prior to the hearing, said date or publication being June 14, 2008. Said publication was in the Norfolk Daily News and as affidavit of publication is on file at the Madison County Joint Planning Department Office.
13. That the design of manure collection, digestion and handling facilities and the methods of disposal of manure, dead animals and related waste and the methods of dust control are such that the use shall not generate odor or dust which will impact abutting or neighboring property more than occasionally.
14. That the applicants have not yet obtained any permits required to be issued by the Nebraska Department of Environmental Quality (NDEQ) for the expansion.
15. That this Board has considered all the aspects required to be considered in the Zoning Regulations, including the property, size and location of the requested improvement, the use of the improvement, location of access to public roadways, adequate access to water and sewage supply, parking considerations, nearby residences and other non-agricultural uses within one mile of the property in question, water surface drainage and any issues regarding wet land and the set back requirements.
16. Neighbors gave testimony on Mr. Henn's farming practices at off site locations.
17. Annual reports to the NDEQ and its responses were submitted by Mr. Henn. These reports and related correspondence from NDEQ showed Mr. Henn is operating according to his NDEQ permit and is in compliance with his Manure Management Plan.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Commissioners of Madison County, Nebraska, hereby grants a Conditional Use Permit to Henn House Dairy, Inc. to operate a Confined Animal Feeding Operation under Section 403, Subsection A Part 27, "AG2" Primary Agricultural District, Madison County Zoning and Subdivision Resolution, on the following described land:

South½ of the NW¼ and the N½ of the NW¼ of Section 19, Township 24 North, Range 2 West of the 6<sup>th</sup> P.M. Madison County, Nebraska and the NE¼ Section 24, Township 24 North, Range 3 West of the 6<sup>th</sup> P.M. Madison County, Nebraska

This Conditional Use Permit shall be subject to the following conditions in addition to those established with the Madison County Zoning and Subdivision regulations:

1. This is a Large Livestock Feeding Operation Conditional Use Permit after implementation of both phases for an operation of up to 2,000 dairy cattle and 1,700 feeder cattle and 1,000 heifers less than 550 lbs in addition to any farm animals not cattle, currently housed, raised, bred or in outdoor confine or pastured on the property.
2. This conditional use permit shall be for an unlimited amount of time subject to successfully passing an annual review of the Madison County Livestock Feeding Operation Siting Matrix and will become effective with adoption of a resolution by the Madison County Board of Commissioners.
3. This permit is subject to the Madison County Zoning and Subdivision Regulations, the laws of the State of Nebraska and the United States Government and shall be operated to comply with all of these entities.
4. Any new owner/operator of this operation must give notice to the Madison County Zoning Administrator 30 days prior to the closing date of the sale.
5. This Conditional Use Permit shall become null and void if an application for the new waste handling facilities is not submitted to the Nebraska Department of Environmental Quality within two years of adoption of this Resolution.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that upon taking effect of this Resolution, the above Conditional Use Permit shall be entered and shown on the Official Zoning Map of Madison County, previously adopted by reference, and said zoning map is hereby reincorporated as a part of the Madison County, Nebraska Zoning and Subdivision Resolution as amended.

Motion was made by Klein and seconded by Uhlir that the foregoing resolution be adopted. Roll call vote: Ayes, McCallum, Uhlir, and Klein. Nays, none. Motion carried.

County Attorney Joseph Smith stated that he prepared a resolution for consideration by the Board regarding the request submitted by Orin Rinkel for Madison County to provide public access to property located in Section 29-24-2. He explained that state statute provides that if the Board makes a finding that there is sufficient usage by a number of people, the Board can make a public road instead of an access road. He stated that he anticipates that the Board would find that there is not sufficient evidence to make a public road, but just an access road.

Chairman McCallum questioned what the requirements were for maintaining an access road. County Highway Superintendent Richard Johnson responded that the county would need to maintain an access road; he requested an opportunity to conduct further research on this matter. He explained that the statutes provide that the road can't be any more than two rods wide, which is 33 feet. Chairman McCallum stated that any minimum maintenance road or access road must be safe for those traveling on it.

Chairman McCallum questioned who would pay for the cost of acquiring the land and County Attorney Joseph Smith responded that the statute provides that the landowners would pay for the cost of the acquisition of the land and associated costs.

County Clerk Nancy Scheer read the following proposed resolution:

RESOLUTION #2008-51

WHEREAS, the Board of Commissioners of Madison County received an affidavit from Orin and Marjorie Rinkel, husband and wife, pursuant to Section 39-1713 et. seq., Nebraska Revised Statutes stating that certain land they owned was isolated and requesting the Board of Commissioners to provide access to said land; and

WHEREAS, after giving notice as required by law, the Board of Commissioners held a public hearing on December 11, 2007 at which time evidence was received; and

WHEREAS, it is the obligation of the Board of Commissioners to make a factual finding pursuant to Sections 39-1713 and 39-1716, Nebraska Revised Statutes; and

WHEREAS, Section 39-1713, et. seq., Nebraska Revised Statutes requires, if the Board finds that the subject land is isolated through no fault or knowledge of the owner, the Board of Commissioners is obligated to provide access to the property by acquiring the necessary right-of-way and constructing a road;

NOW, THEREFORE BE IT RESOLVED, that the Board of Commissioners makes the following findings of fact:

1. That Orin Rinkel and Marjorie Rinkel, husband and wife, are the owners of the subject property legally described as that part of the SW 1/4 of Section 29, Township 24 North, Range 2 West of the 6th P.M., Madison County, Nebraska lying North of the Elkhorn River.
2. That the above described real estate has no public access, other than by waterway, as it is surrounded on all sides by real estate belonging to other persons or by water.
3. That Orin and Marjorie Rinkel have attempted to purchase right-of-way over, across, or through surrounding lands from persons owning said surrounding lands and have been unable to do so except at an exorbitant price.
4. That the subject land was acquired by Orin Rinkel and Marjorie Rinkel, husband and wife in 1975.
5. That the subject land was not isolated at the time it was purchased by Orin and Marjorie Rinkel. The Board of Commissioners notes a controversy in evidence with respect to this finding. The Board received an affidavit by Donald Bauermeister, owner of one of the adjacent parcels of land, stating that the subject property was isolated at the time of purchase by Orin and Marjorie Rinkel; however, the Board of Commissioners notes that the testimony of Donald Bauermeister indicates that there was a written easement for access to the subject property at the time of purchase by Orin and Marjorie Rinkel. The Board of Commissioners also notes the testimony of Deb Prauner, daughter of Orin and Marjorie Rinkel, stating that, at the time of purchase, there was an oral agreement for access to the subject property across one or more of the adjoining properties. In the opinion of the Board of Commissioners, whether or not the agreement was oral or written, the result would have been that the land was not landlocked in 1975. The Board of Commissioners has been advised of, and taken into consideration, Young v. Dodge County Board of Supervisors, 242 Neb.1.
6. Having considered the testimony and evidence presented at the public hearing by interested parties, the Board of Commissioners finds that the isolation of the subject land was not caused by Orin Rinkel and Marjorie Rinkel, husband and wife, or by any other person with their knowledge or consent. The Board of Commissioners is cognizant of long standing acrimony between some of the parties involved in this proceeding and realizes that said acrimony may have contributed to the situation; however, the acrimony is not sufficient or appropriate to support a finding that the subject property is not isolated.
7. The Board of Commissioners finds that the appropriate use of the subject is agricultural and that access to the property is necessary for the owners to utilize the land for that purpose.
8. The Board of Commissioners finds that the amount of use and number of persons served does not warrant laying out a public road pursuant to Section 39-1716(1) and that an access road only will be laid out as defined in Section 38-1713(2)(a).

NOW, THEREFORE BE IT FURTHER RESOLVED, that the Board of Commissioners finds that the subject land is isolated and that Madison County is obligated to acquire the necessary right-of-way and construct an access road pursuant to Sections 39-1713, Nebraska Revised Statutes; and

BE IT FURTHER RESOLVED that Madison County Attorney Joseph Smith and Madison County Highway Superintendent Richard Johnson are hereby directed to proceed with the acquisition of right-of-way of said access road and that Orin Rinkel and Marjorie Rinkel, husband and wife, will pay all costs associated with said acquisition, including, but not limited to, attorney fees, engineering fees, court costs, land costs, recording costs, and removal and replacement of fence lines as necessary.

Motion was made by Uhlir and seconded by Klein that the foregoing resolution be adopted. Roll call vote: Ayes, McCallum, Uhlir, and Klein. Nays, none. Motion carried.

Budget committee members Richard Johnson and Nancy Scheer presented a summary of the budget for the 2008-2009 fiscal year. They submitted a report listing the office functions in the General Fund and explained that the first draft of this report was reviewed at the August 5, 2008 meeting; however, the County Jail, County Relief, Miscellaneous General and Capital Acquisitions office functions were not submitted or incomplete at the earlier meeting. They explained that the Board directed all offices to limit budget increases to 2% and the report reflects the percentage of change for each office function from the prior year. In addition, committee members submitted a report detailing each line item budgeted in the Miscellaneous General office function and answered questions regarding increases and decreases in various line items. They also reported that the Capital Acquisitions budget is being reduced because \$250,000 was included in this budget during the prior fiscal year for replacement of the jail roof. Committee members advised that the roof replacement costs were budgeted as a lid exception and since the roof was repaired for a much lower cost than replacement of the entire roof, the lid exception created restricted funds for this fiscal year in the amount of \$221,528.

Mr. Johnson reviewed the Road/Bridge Fund budget and reported that the first draft reflects a 4.97% increase from the prior year. He reported that \$700,000 was budgeted for asphalt overlay projects with these costs to be paid with bond proceeds. In addition, he reviewed the Federal Aid Secondary budget and reported that major projects included final costs for completion of the Lindsay Road and costs for the Ethanol plant drainage project and Victory Road.

Budget committee members reviewed the expenditures from the other county funds with Board members. They also submitted a fund balance report reflecting the balance in each fund on July 1, 2008 compared to the balance on July 1, 2007. They reported that the fund balances reflected an increase of \$2,579,369 of available cash on hand on July 1, 2008 compared to the prior fiscal year. In addition, they explained that the report reflects the cash on hand in the Inheritance Tax Fund for the last nine years and the annual amount spent each year. They reported that the revenue received into the Inheritance Tax Fund during the 2007-2008 fiscal year was \$680,262 and that \$32,000 was given to the county libraries and \$679,464 was used for property tax relief to lower the levy.

Budget committee members reviewed the lid exception worksheet, the LC-3 supporting schedule for calculation of restricted funds, and the lid computation form. They reported that a reduction of \$694,588 is required to comply with the statutory lid requirements. They reported that they would prepare recommendations for compliance with the lid and submit these at the special meeting on August 26, 2008.

No action was taken by the County Board.

The following claims were audited:

GENERAL FUND		
Total Net Payroll		106,813.31
Shelly Acuna	Rent, County Relief	250.00
Albracht Disposal Service	Garbage Service, Public Defender	41.00
Albracht Disposal Service	Garbage Service, Courthouse	94.00
Albracht Disposal Service	Garbage Service, County Jail	155.00
Alltel	Telephone Services, Planning and Zoning	58.85
American Express	Meals, Uniforms, County Sheriff	495.51
American Family Life Assurance Co.	Insurance Premiums	546.17
Ameritas Life Insurance Corporation	Employee Share Retirement	6,766.50
Ameritas Life Insurance Corporation	Employer Share Retirement	9,940.25
Ameritas Life Insurance Corporation	Insurance Premiums	298.70
Appera	Mat Service, Public Defender	30.00
Appera	Mat Service, Courthouse	271.41
Aquila	Gas Service, Courthouse	45.54
Aquila	Gas Service, County Jail	65.18
AT & T	Telephone Service, Public Defender	222.40
Kate Bamsey	Copies, Supplies, Probation	45.63
Bankers United Life Assurance Company	Insurance Premiums	9.00
Bel-Air Properties LLC	Rent, County Relief	200.00
Bessie Bove	Prior Service Benefits	12.00
Brandl Electric	Services, County Jail	2,294.46
Broadwing Communications	Telephone Services, Probation	.58
Joanie Brugger	Mileage, Victim Witness	129.87
Buck's Specialty	Uniforms, County Jail	63.21
Cabela's Marketing and Brand Management Inc.	Equipment, County Jail	155.44
Cableone	Internet Services, Public Defender	95.00
Carney Law PC	Legal Services, County Court	1,976.38
Central United Life Insurance Company	Insurance Premiums	56.70
Champlain Planning Press Inc.	Subscription, Planning and Zoning	20.00
City of Madison	Utilities, Public Defender	385.92
City of Madison	Utilities, Courthouse	1,595.96
City of Madison	Utilities, County Jail	3,263.77
City of Norfolk	Supplies, County Sheriff	3,000.00
City of Norfolk	Utilities, Veterans' Service Office	26.09
Colonial Life and Accident Insurance	Insurance Premiums	99.66
Columbus Community Hospital	Medical Services, County Jail	1,630.00
Complete Pest Elimination, Inc.	Services, County Jail	125.00
Connecting Point	Equipment, Register of Deeds	42.50
Connecting Point	Internet Services, Probation	18.95
Connecting Point	Internet Services, Veterans' Service Office	50.85
Connecting Point	Internet Services, Contract Services, Courthouse	1,273.90
Constellation NewEnergy Gas Division	Utilities, Courthouse	122.77
Constellation NewEnergy Gas Division	Utilities, County Jail	286.45
Cople, Rockey & McKeever, P.C., L.L.O.	Legal Services, County Court	4,096.13
County Assessors Association of Nebraska	Dues, County Assessor	50.00
Credit Management Services, Inc.	Garnish of Wages	102.61
Crown Point Apartments	Rent, County Relief	200.00

Dakota Business Systems	Equipment Lease, Probation	72.00
DDSS Inc.	Services, County Attorney	80.00
DDSS Inc.	Services, Courthouse	351.52
Don's Auto Repair Inc.	Repairs, County Sheriff	28.78
Eakes Office Products Center	Supplies, County Treasurer	115.26
Eakes Office Products Center	Supplies, Election Commissioner	5.95
Eakes Office Products Center	Supplies, County Court	85.03
Eakes Office Products Center	Supplies, County Sheriff	24.07
Eakes Office Products Center	Supplies, County Attorney	520.89
Eakes Office Products Center	Supplies, County Jail	194.64
Electric Fixture & Supply Co.	Supplies, Courthouse	102.97
Elkhorn Logan Valley Public Health Department	Medical Clinic Funding, County Relief	90,000.00
Enviromaster Inc.	Supplies, County Jail	42.00
Faith Regional Health Services	Medical Services, County Jail	189.00
Faith Regional Health Services	Medical Services, County Relief	10,472.32
John Filippi	Forensic Services, Law Enforcement	850.00
First Concord Benefits Group	Flexible Benefit Plan	1,847.60
Fitzgerald, Vetter & Temple	Legal Services, District Court	410.23
Fleet Services	Fuel, County Sheriff	1,581.26
Floor Maintenance & Paper Supply	Supplies, County Jail	208.94
Francotyp-Postalia, Inc.	Postage, County Sheriff	7.75
Gall's Inc.	Uniforms, County Jail	1,412.08
Gordy's Towing & Repair	Repairs, County Sheriff	32.84
Hartford Life Insurance Company	Deferred Compensation	280.00
Hauge Associates Inc.	Garnish of Wages	128.50
Jerry's Standard	Fuel, Repairs, County Sheriff	464.67
Jewell, Collins, DeLay & Flood	Legal Services, County Court	1,655.63
John's Disposal	Garbage Service, Probation	44.00
John Johnson	Supplies, Planning and Zoning	5.32
J.W. Jones, M.D.	Forensic Services, Law Enforcement	955.00
Lancaster County Court	Copies, Law Enforcement	4.75
Lawssoft, Inc.	Computer Software, District Judge	200.00
Leisure Lodge	Rent, County Relief	125.00
Louderback Drug	Prescriptions, County Jail	2,393.60
Louderback Drug	Prescriptions, Juvenile Diversion	16.82
Madison Ampride Inc.	Fuel, Courthouse	370.30
Madison Ampride Inc.	Fuel, County Sheriff	742.77
Madison County Clerk	Tax Deposit	39,140.27
Madison County Clerk of District Court	Filing Fees, District Court	1,096.00
Madison County Court	Court Costs, County Court	1,131.00
Madison County Sheriff	Supplies, County Jail	12.78
Madison County Sheriff	Court Costs, Mental Health	225.28
Madison County Sheriff	Court Costs, County Court	1,219.35
Madison County Sheriff	Court Costs, District Court	460.91
Madison County Sheriff	Repairs, County Sheriff	14.00
Madison County Treasurer	Insurance Reimbursement	500.00
Madison County Veterinary Clinic	Supplies, County Sheriff	132.20
Major Refrigeration Co. Inc.	Repairs, County Jail	541.53
Mead Lumber & Rental	Repairs, Courthouse	40.38
Mead Lumber & Rental	Equipment Rental, County Jail	47.88
Medtox Diagnostics Inc.	Drug Testing, Juvenile Diversion	127.94
Menards	Supplies, County Sheriff	15.96
Microfilm Imaging Systems Inc.	Supplies, Register of Deeds	104.50
Midtown Holiday Inn	Lodging, Meals, County Sheriff	85.87
Midwest Plumbing & Heating	Repairs, County Jail	217.23
MIPS	Computer Support, County Treasurer	855.13
Pradip Mistry	Medical Services, County Relief	81.26
Morrissey Motor Company	Repairs, County Sheriff	48.15
Moyer, Egley, & Fullner	Legal Services, County Court	521.25
Nebraska Association of County Officials	Registration, County Assessor	90.00
Nebraska Child Support Payment Center	Garnish of Wages	505.84
Nebraska Health & Human Services	State Institutions Funding	864.00
Nebraska Floodplain & Stormwater Managers Association	Registration, Planning and Zoning	25.00
Norfolk Daily News	Publication Costs, Courthouse	266.65
Norfolk Office Equipment	Supplies, Copier Maintenance	363.83
Norfolk Printing Company	Shipping, County Clerk	10.89
North Central Radiology	Medical Services, County Jail	215.00
Norm Nykodym	Lawn Services, Public Defender	124.00
Office Products Center	Supplies, Probation	92.00
Rita Olberding	Transcript, Law Enforcement	128.00
Sherry Peterson	Mileage, Juvenile Diversion	191.30
Platte County Sheriff	Service Fees, District Court	72.34
Charlotte Poncelow	Prior Service Benefits	69.24
Puppy Love	Impound Fees, County Sheriff	75.00
Qwest	Telephone Service, County Jail	17.66
Qwest	Telephone Service, Probation	562.74
Radio Shack Corporation	Supplies, County Sheriff	3.39
Rath Sprinkler Systems	Services, Courthouse	95.00
Redfield & Company Inc.	Supplies, County Jail	337.78
Reigle Implement Co. Inc.	Repairs, Courthouse	9.50

Reynoldson's Inc.	Fuel, County Sheriff	807.05
Marjorie Schaffer	Mileage, District Court	175.50
Schroeder Land Surveying	Services, County Surveyor	1,664.00
Secretary of State	Publication, Law Enforcement	20.00
Shell Fleet Plus	Fuel, Reappraisal	110.55
Shell Fleet Plus	Fuel, County Sheriff	3,139.05
Shoppers Express	Supplies, County Relief	70.84
Short Stop	Fuel, County Sheriff	721.03
Joseph Smith	Mileage, Law Enforcement	352.17
Square Tire Norfolk	Repairs, County Sheriff	27.00
Stanton County Sheriff	Service Fees, District Court	63.88
T.O. Haas Tire	Repairs, County Sheriff	9.87
Taser International	Repairs, County Jail	75.00
Dale Taylor	Interpreting Services, Public Defender	67.50
The Farner Company, Inc.	Supplies, County Jail	188.00
Thurston County Sheriff	Service Fees, County Court	39.60
Tilly's	Fuel, County Sheriff	40.00
Trane US Inc.	Service Agreement, Courthouse	435.78
Urgent Care Center of Norfolk	Medical Services, County Jail	153.00
Voigt Locksmith	Repairs, County Jail	120.00
Walgreens Pharmacy	Prescriptions, County Relief	46.49
Wayne County Treasurer	District Judge Costs, District Judge	17,250.69
Melissa Wentling	Publications, Public Defender	49.00
West Payment Center	Publications, County Attorney	756.50
West Payment Center	Publications, District Court	749.00
Western Office Products Plus	Supplies, County Clerk	12.31
Western Office Products Plus	Copier Maintenance, County Treasurer	233.66
Western Office Products Plus	Supplies, Public Defender	41.28
Western Office Products Plus	Supplies, County Sheriff	285.71
Western Office Products Plus	Copier Maintenance, County Attorney	74.02
White Star Oil Co.	Fuel, Repairs, County Sheriff	794.36
Vlasta Whyte	Prior Service Benefits	16.00
Zippy Lube	Repairs, County Sheriff	68.98

#### ROAD/BRIDGE FUND

Total Net Payroll		24,351.91
Albracht Disposal Service Inc.	Garbage Service, District #1	40.00
Alltel	Telephone Services, District #2	59.30
American Family Life Assurance Company	Insurance Premiums	302.06
Ameritas Life Insurance Corporation	Employee Share Retirement	1,483.03
Ameritas Life Insurance Corporation	Employer Share Retirement	2,224.59
Ameritas Life Insurance Corporation	Insurance Premiums	81.92
Appeara	Towel Service, District #1, #2	187.18
Aquila	Gas Service, District #1	39.63
Asphalt and Concrete Materials Company	Asphaltic Materials, District #2	9,773.68
B & A Welding	Repairs, District #2	195.70
Bankers United Life Assurance Company	Insurance Premiums	44.57
Bankfirst	Repairs, District #3	9.71
Battle Creek Farmers Coop	Fuel, District #1, #3	13,708.83
Bauer Built Inc.	Repairs, District #2, #3	2,477.47
Beck's Equipment	Repairs, District #3	104.47
Brody Chemical	Supplies, District #1, #2	1,669.98
Cal-Pacific Products	Repairs, District #1	174.93
Carquest Auto of Norfolk	Supplies, District #1, #2	304.84
Central Sand & Gravel Company	Gravel, District #1	379.23
Colonial Life and Accident Insurance	Insurance Premiums	107.11
Constellation Energy	Gas Service, District #1	23.83
Corvette Restorations	Repairs, District #1	1,153.45
D & M Machinery	Parts, District #3	139.27
Elkhorn Valley Sand & Gravel	Gravel, District #2	7,446.24
Fastenal Company	Repairs, District #2	238.45
Filter Care of Nebraska LTD	Services, District #1, #2	133.00
First Concord Benefits Group	Flexible Benefits Plan	477.27
Flint Hills Resources LP	Asphaltic Materials, District #1, #2, #3	255,519.05
Green Line Equipment	Equipment Rental, District #2	4,352.00
Hartford Life Insurance Company	Deferred Compensation	40.00
Hartington Concrete Inc.	Rock, District #2	81.00
Hegemann Sunflower Sales & Service	Repairs, District #1	35.36
Kayton International, Inc.	Repairs, District #1, #2	93.72
Kimball Midwest	Repairs, District #3	164.78
Ervin Klentz	Prior Service Benefits, District #2	13.00
L & M Steel Company	Trailer, District #1	4,500.00
Linweld Inc.	Supplies, District #1, #3	106.07
Loup Power District	Utilities, District #1	100.65
M & M Farm Supply	Parts, District #1	35.95
Madison Ampride Inc.	Fuel, District #1, #2	1,471.25
Madison County Clerk	Tax Deposit	8,291.85
Matteo Sand & Gravel Co. Inc.	Gravel, District #1, #2, #3	35,903.67
Mead Lumber & Rental	Repairs, District #1, #2	139.68

Meisinger Oil Co. Inc.	Fuel, District #1	8,044.59
Menards	Repairs, District #3	50.38
Nebraska Child Support Payment Center	Garnish of Wages	230.77
Nebraska Machinery Company	Repairs, District #2, #3	198.58
Norfolk Auto Supply	Parts, District #3	40.69
Norfolk Implement Inc.	Repairs, District #2, #3	741.87
Omaha Standard Truck Equipment	Repairs, District #1	1,455.50
David Pinnt	Repairs, District #1	900.00
Powerplan	Parts, District #2	14.86
Progas LLC	Fuel, District #3	974.72
Quick Serve Oil Company Inc.	Repairs, District #3	122.70
Red Bud Inc.	Supplies, District #3	90.46
Scheer's Ace Hardware	Supplies, District #2	53.83
Ronnie Steiff	Commercial Drivers License, District #1	78.60
The Grove	Fuel, District #1	216.62
Weldon Industries Inc.	Repairs, District #1, #2	102.36

#### FEDERAL AID SECONDARY FUND

Flint Hills Resources LP	Asphaltic Materials	343,086.77
Matteo Sand & Gravel Company Inc.	Armor Coat	4,063.54

#### VISITORS PROMOTION FUND

Divots Concert Series	Advertising	1,000.00
Norfolk Area Chamber of Commerce	Administrative Expense, Grant	9,812.15

#### VISITORS IMPROVEMENT FUND

Certified Folder Display	Advertising	4,066.98
Great American Comedy Festival	Grant	3,000.00
Norfolk Area Chamber of Commerce	Grant	3,202.65

#### LAW ENFORCEMENT OPERATING FUND

Custom Heating & Air Conditioning	Services	3,787.00
Madison County Sheriff	Supplies, Postage, Subscription	216.54

#### DRUG COURT FUND

Jerry's Standard Inc.	Fuel	200.00
Redwood Toxicology Laboratory	Drug Testing	138.15

#### NOXIOUS WEED FUND

Total Net Payroll		1,847.12
Ameritas Life Insurance Corporation	Employee Share Retirement	68.63
Ameritas Life Insurance Corporation	Employer Share Retirement	102.97
Bomgaars	Supplies, Repairs	93.43
Cableone	Internet Services	49.00
DAS Central Finance	Telephone Services	43.83
Eudell Feldman	Mileage	23.40
John's Disposal	Garbage Service	26.00
August Klug	Mileage	7.02
Madison County Clerk	Tax Deposit	551.50
Nebraska Public Power District	Utilities	46.99
Norfolk Daily News	Publication Costs	7.20
Earl Reeves	Mileage	5.85
Orin Rinkel	Mileage	11.70
Target Bank	Supplies	3.89
Van Diest Supply Company	Chemicals	4,561.20

#### 911 EMERGENCY FUND

Geocomm Inc.	Services, Training	683.32
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Motion was made by Uhlir and seconded by Klein to approve the claims as audited and to authorize that checks be drawn for payment. Roll call vote: Ayes, McCallum, Klein and Uhlir. Nays, none. Motion carried.

The Board adjourned at 12:45 A.M. to Tuesday, August 26, 2008 at 9:00 A.M. for a special meeting to interview selected firms for construction of a building for District Two Probation Office, review the 2008-2009 fiscal year county budget, and consider final levy allocations.

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County Clerk

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Chairman