

July 17, 2018  
Antelope County Board of Commissioners  
Neligh, Nebraska

The Antelope County Board of Commissioners convened in regular special session, following the Board of Equalization Protest Hearings, on Tuesday, July 17, 2018 at 10:09 AM in the County Commissioner's Room, Antelope County Courthouse Annex, Neligh, Nebraska. Meeting was called to order by Chairman Kerkman, with the following board members responding to roll call: Schindler, Jacob, Henery, Schwager, and Kerkman. Chairman Kerkman stated that the open meeting laws are posted on the east wall of the Commissioner's room with more copies available at the County Clerk's Office.

Notice of the meeting was given in advance thereof by publication in the four county newspapers, legal newspapers printed and in general circulation in Antelope County, Nebraska as shown by proof of publication filed in the County Clerk's office. Agenda for said meeting was sent to all members of the County Board of Commissioners.

Met as a **board of equalization** for approximately 69 minutes.

To balance the **Road and Bridge Fund** for July monies need to be transferred. Motion by Commissioner Schwager, seconded by Commissioner Henery to approve claim of \$200,000.00 from General to Road and Bridge. Voting aye: Schwager, Henery, Schindler, Jacob and Kerkman. Nays none. Motion carried. Warrant signed.

**Quarterly Jail Inspection.** Commissioners Jacob and Commissioner Schwager will complete the July 2018 Jail Inspection.

#### **Road Boss Report:**

In follow-up of Casey Dittrich favorable report to the Commissioners on the 10<sup>th</sup> about how much progress he believed Invenergy had made on the roads that were on the safety check list. He confirmed there were no known issues as of Tuesday (10<sup>th</sup>), although rain was anticipated for Friday. Today, he reports additional problems and multiple violations by the subcontractors working in and for the wind tower project.

On Tuesday afternoon (7/10/2018) road damage was reported on 519<sup>th</sup> Avenue south of 856<sup>th</sup> Road, by Bob Snodgrass' home. It appears a Telehandler lost its load on the oil road before it went onto the asphalt. (Shared photos.) The damage was flagged. On Wednesday, Casey, Marlin Conry, and the new Project Manager for IEA, Zach, met and looked at the tracts and tried to find a telehandler matching tracks in the wind tower construction area. They continued to drive the construction area west of HWY 14 looking for road safety issues. That evening Casey obtained footage from a GameCam that was placed one (1) mile west of the intersection, taking photos of 856<sup>th</sup> Road looking east towards Royal Road (that gravel leads to a T intersection on the Royal Road). Included was photos of a telehandler, used by Invenergy's subcontractor carrying Dead Man Cinder Blocks that caused the damage to the Road, with a couple photos of their fuel trucks utilizing the same roads, **not** on the road use agreement. The fuel truck pictures were dated July 6<sup>th</sup> & 7<sup>th</sup>, and the cinder blocks photos were dated July 10<sup>th</sup>. The first day the camera was placed it started taking photos of wind tower traffic utilizing roads not on the Road Use Agreement. Antelope County Employees temporarily fixed the road, so it is passable. Marlin Conry explained, all Invenergy traffic was called off, and the driver had no reason to be on the road in which he caused damage, except he was in a hurry. The driver tried to cover up the usage, because he knew his job would be in jeopardy. The driver has been relieved of his duties on the Invenergy work site.

On Thursday, about six (6) side dump trucks were lined up on Old Highway 14 at Gadeken Clay Pit; following the side-dump trucks they went out to the new O & M Building at the lay down yard. Marlin Conry was notified, the trucks continued to utilize that road, for approximately 100 yards of clay. Where the pushers turned the corner to get to Highway 14, a hole was scrubbed out of the asphalt on Old HWY 14. Part of Old Highway 14 had been overlaid last year, it is in rough repair at this time.

Today, two (2) new grievances are being filed against the CUP for Invenergy, one for damage to Old Highway 14 (aka 167 Spur), the second for damage to 519<sup>th</sup> Avenue south of 856<sup>th</sup> Road. They will be mailed after the meeting today. Casey is looking for direction on how to control this situation from its continual spiral. The construction type and loads are damaging the roads to beyond repair. Telehandler forks in asphalt is not a simple fix. It will be a hole until it is cut out and repaired from the bottom up.

The damage occurred, and it was **not** reported to Antelope County Road Department, Marlin Conry, or Antelope County Sheriff. Which is also a violation. The damage left by the cinder blocks was left and never reported. It was a huge travel hazard and could have been a very serious had the wrong vehicle encountered it. Further investigation showed this load was lost again on the gravel road going west. Invenergy subcontractors are showing no respect to the Road Use Agreement. Probably not rightfully, Invenergy is being blamed for everything that is going wrong with rural Antelope County Roads, because the subcontractors are blatant and disrespectful. It is dangerous, and something is needed to make the sub-contractors take notice. Marlin Conry, with Invenergy is working hard to honor RUA; however, no one else is respecting it.

On Wednesday, Casey observed two (2) concrete trucks going through a blind intersection on 528<sup>th</sup> Avenue. There was a STOP sign, but they made a radius turn to the left at 25 mph right through the intersection.

On Friday, after receiving 80/100 to 2 inches of rain, there was a roll-over accident on 852<sup>nd</sup> Road. When Casey arrived on scene, everything was cleaned up. The condition of that road was completely impassable, because it did not have pea gravel on it. Anyone, driving the road without knowledge would have ended up the same way. The section by the substation and the section going south by Dick Shraders was closed. A second vehicle ended up in the ditch during the investigation, that had to be wrenched out. Once 852<sup>nd</sup> Road dried they went out and bladed it and put red rock on it. Today, you would not believe there was a rollover accident the other day.

Antelope County does not have enough Road Closed signs to close every un-graveled road every time it rains.

Casey continues to compile and send his safety issues and road concerns, with a priority label. The Sinclair Gravel that Antelope County has been using is readily available, less expensive, less greasy alternative for the roads most effected by rains. Invenergy subcontractors do not want to use the pea gravel although that is what keeps these roads from being unsafe and greasy. Right now, there is a real safety concern.

Casey requested the board take some action today. There have been three (3) major offenses this week. If a cease and desist happens today, it will only delay the current problem/action, like a small bandage on a gaping wound. Hoping to put some teeth in the need to react to the damage to roads outside the RUA, Casey suggested a progressive 'fine,' starting at an amount and increasing per incident. Invenergy is getting a \$1,000.00 penalty per subcontractor offence. Antelope County is depleting the Road and Bridge budget to ensure roads damaged and or used by the RUA are passable. Commissioner Schindler suggested to force them to utilize pea gravel on these roads to keep them drivable during the wet times after a rain. Brian McDonald suggested action needed to be done, as there is a blatant misuse of the RUA. Discussion of the liability and verbiage in the RUA. Joe Abler, Antelope County Attorney, appeared via telephone. Joe stated this should be part of a contract, at which the commissioners agreed. Mr. Abler, did not want to utilize the word 'fine', and suggested to call it a damage clause; and suggested if the Road Use Agreement is being amended it is a good time to enter this into the Road Use Agreement. If we were to enact a progressive damage clause, Mr. Abler wants a clear and precise definition of the damages, and/or financial penalty. For example, what is the violation: overweight vehicles, equipment, etc., and the financial damage to correspond with the offence. Currently, regular vehicle traffic is included in RUA i.e. unloaded pickup, no trailers are exempt from RUA. However, anything off road, steel tracks, trailers or heavy trucks (heavy trucks being anything over one (1) ton).

Invenergy is requesting an amendment to ROA, by adding some additional stretches of roads that they have damaged.

It was agreed the commissioners would like to see pea gravel on every greasy road so the travel during wet times is still possible. The county in initiating the agreement acted in good faith that the contractors and subcontractors for Invenergy would not be utilizing county roads that were not on the RUA, and/or fixing roads that are NOT suitable to travel.

New violations, having violation notices going out today.

The original NOV regarding damage to 519<sup>th</sup> Avenue between 853<sup>rd</sup> and 855<sup>th</sup> Road violating Condition # 13 of Resolution #2016 060005. Casey stated he did not believe Invenergy had an agreement or plan on how to correct the situation and today there is additional damage in three (3) additional issues. Casey stated “the notice of violation has not been corrected.”

Marlin Conry stated they are on the agenda for an amendment to the RUA. Marlin passed out a map, and list of roads to add to the road use agreement. Invenergy is asking to amend the RUA by addition of some roads in particular, 519<sup>th</sup> Avenue. The proposed roads are:

- 856<sup>th</sup> Road between 518<sup>th</sup> and 519<sup>th</sup> Avenue
- 519<sup>th</sup> Avenue between 856<sup>th</sup> and proceeding approximately ½ mile south to join with section of 519<sup>th</sup> already in road use agreement
- 519<sup>th</sup> between 853<sup>rd</sup> and 855<sup>th</sup> Road
- 522<sup>nd</sup> between 855<sup>th</sup> Road and approximately 2000 feet north of 855<sup>th</sup> Road
- 527<sup>th</sup> between Highway 275 and 850<sup>th</sup> Road
- 528<sup>th</sup> between 855<sup>th</sup> and approximately 400’ south of 855<sup>th</sup> Road
- 849<sup>th</sup> approximately 500 feet either side of 529<sup>th</sup> Avenue
- Old Highway 14 north by the Highway 14 connection, 1500 feet

By adding these roads, the portion of 519<sup>th</sup> particularly called out in the Notice of Violation (6/26/2018) to the Road Use Agreement, that portion of the road will be left in as good or better than before construction after Invenergy project is complete. The stretches requested to be added to the RUA with a hot mix repair (in the end) in conjunction with the other 2 miles on 519<sup>th</sup> as agreed in previous discussion. (The north ½ mile and the two (2) miles between 853<sup>rd</sup> and 855<sup>th</sup> Road on the south.) Marlin agreed they will do a hot-mix repair on 849<sup>th</sup> Road, lowering the intersection on 529<sup>th</sup> Avenue. Per previous discussion, Marlin and Casey are in agreement that Invenergy did not need to contact Casey if crossing gravel roads, unless there is damage. Marlin reported these projects would be completed with the availability of a contractor, in late fall. The only hot mix contractor agreeable to the construction is Knife River as per contacts made by IEA contracting.

For now, the public has been notified of the condition of the 519<sup>th</sup> Avenue by signage placed by the County, advisory speed of 25 mph, lighted at night, barrels around slow spot.

The new damage on the north end 519<sup>th</sup> Avenue; there is a flag warning of a bump, and the county shaped it as best as possible without removing the asphalt and fixing it from the core (which would require major construction). It is drivable, it will be signed appropriately, it does have a warning flag/device. Invenergy did get a pallet of cold patch and will be out there to cold patch the fork gouging the road (hopefully this afternoon).

The first concern was the safety of the traveling public. The second concern is the permanent fixing of the issues; however, Invenergy needs to be diligent in monitoring the condition of the road now, and when it is added to the road agreement for the safety of the county.

Mr. Conry believes these will be the only other roads that will need to be added through the end of the project; they see no additional issues in the future. The county acted in good faith with Invenergy promising the use of only roads listed in the road use agreement and since then damage occurring on ‘other’ roads not in the RUA, going forward it is the county’s intention to protect the roads and finances in regards to damage to other roads. Damaging of county roads are violation of statutes, including weight limitations, in which Mr. Abler will be researching before the damaging clause of the amendment is enacted. The county is in agreement to add the roads they are requesting be added, and at the same time want to add the damage clause into the road agreement.

For now, and going forward, and with any violation Antelope County will contact the Zoning Administrator to issue a ‘Notice of Violation.’ The NOV issued on the 26<sup>th</sup> of June has been corrected because it is being added to the RUA. But utilizing roads not in the agreement is still occurring. Liz Doerr clarified as long as the road is in the RUA, it is addressed in the RUA and zoning regulations on how to deal with the damage. Casey Dittrich reported Brian McDonald, Highway Superintendent has no issues with adding the listed roads to the road use agreement.

The NOV grievance filed June 26<sup>th</sup>, 2018 called out Paragraph 2 “Developer and County agree that the county roadways and highways utilized by the developer during the performance of the work shall only by those attached on the map identified as Exhibit A” of the RUA, for damage to 519<sup>th</sup> Avenue (between 853<sup>rd</sup> and 855<sup>th</sup> Road), which at the time was not included in the RUA.

Marlin Conry stated that the financial penalty utilized in violation occurrences of the contractors and subcontractors by Invenergy was for a dissuasion, to keep the contractors inline. Antelope County’s only action available as a countenance to the violation is to impact the current RUA – by cease and desist. The violation (7-26-2018) was for Invenergy contractors and subcontractors using roads not approved in RUA. If the road with the damage is adopted by amendment into the RUA, any violation is null. There are two (2) violations on the table, they have not yet been delivered. The Board agreed the NOV issued June 26, 2018, has been sufficiently satisfied by maintenance and addition to RUA, Casey voiced an opposition to same.

Marlin Conry is in agreement. The current two (2) NOV being discussed is being addressed the same way. Invenergy’s contractor for the O & M Building did have some heavy trucks on Old Highway 14, Mr. Conry requested not to add it to the Road Use Agreement, but to let them repair the road as needed. Casey indicated this is a subpar repair request, and if this happens it will be nothing but a maintenance headache for the county and we will have no repercussion.

Liz was asked to send a NOV addendum regarding the June 26, 2018 NOV extending the time, until the RUA has time to be discussed and agreed upon, probably around August 7<sup>th</sup>, 2018 when the Board of Commissioners meet again. The commissioners addressed the issue of these roads being impassable when it rains. It has been a wet summer, and the wetness, creates very slick, slimy conditions. Public safety is not being insured and prioritized with the lack of pea gravel (for traction) on these roads. Sinclair Gravel is still being utilized but the end of the usage is near, at which time they will be utilizing Matteo Sand and Gravel (pea gravel). Mr. Abler requested a committee of the County Road Officials (2 Commissioners, himself and Casey Dittrich) to establish terms of the Road Use Agreement the county would like to bring to the negotiating table to amend the RUA to help Antelope County with the road work as a whole. They will meet to establish the grounds of the County’s countenance position on the RUA amendment.

‘Mark Smith, Antelope County land owner added thoughts: He feels nothing has been accomplished if nothing can be done to stop the violations. The Sinclair Rock being utilized by Invenergy is rough and hard on the farm trucks/tractors, it is rough and hard on farming equipment and vehicles. 852<sup>nd</sup> Road is normally a good, well-traveled road. Additionally, he added, 852<sup>nd</sup> Road has not been maintained since Invenergy took over the road. There are no shoulders on it, there is a crown in the center it is 10 feet wider than it used to be, and it is impassable after moisture. Antelope County has maintained the road forever, and there may have been issues, but it has never been this rough/impassable. Adding the road into the road agreement is not fixing the problem. The road issues need to be addressed and fixed. Minor inconvenience is not what Antelope County is dealing with at this time.’ **Motion by Commissioner Schwager, seconded by Commissioner Schindler to form a committee to establish county RUA amendment. Commissioner Henery and Commissioner Kerkman have agreed to serve on this committee.** Voting aye: Schwager, Schindler, Jacob, Henery and Kerkman. All yays. Nays none. Motion carried. Mr. Conry was in agreement for Antelope County to establish and enforce the progressive damage assessment. If it is the burden of the county to determine if the roads will be passable after a rain, it was ensured there would not be enough road closed signs. Commissioner Henery stated ‘The Roads needs to maintained on a regular basis by a maintainer. Get the roughness out, and they need to have some surface that is not muddy when it rains so the road can be used.’ All agree!! (Marlin, 5 Commissioners and the public.) Revision to attachment one map was verbally accepted as submitted. Old Highway 14 will be accepted in the RUA. No formal motion to be made, until the county and Invenergy can come to agreement in the RUA amendment meeting. Invenergy will have crane crossing roads in the areas that are proposed RUA amendment roads. Invenergy will like to proceed with the project in a good faith notion. Antelope County is wanting to amend the RUA by adding some kind of damage provision regarding continued damage to roads not in the RUA. The intersection of 529<sup>th</sup> Avenue and 849<sup>th</sup> Road is in the plan to lower by five (5) or so feet. The list and map will be added as Exhibit A, Revision 1 Dated July 17, 2018. **Motion by Commissioner Schindler, seconded by Commissioner Henery to allow the Revision 1 Dated July 17, 2018 of Exhibit A as part of the Road Use Agreement; believing in good faith of Invenergy being agreeable to the progressive damage assessment.** Voting aye: Schindler, Henery, Jacob, Schwager and Kerkman. Nays none. Motion carried. There are some guidelines in the agreement regarding what need to happen going forward on violation notices and going forward.

**Hot/Cold Mix:** Jamie Penne met with the commissioners regarding asphalt roads throughout Antelope County. The road going east of Elgin (839<sup>th</sup> Road) is narrow, worn thin with multiple potholes. The maintenance of the asphalt roads is too much for the county. The temporary fixes that are being completed is not working, and we are not gaining maintenance ground. For the last couple of years, Antelope County Commissioners have talked about deciding which rural roads need to be maintained as asphalt, which roads need to be grinded back to gravel, and who decides these fates. Over the past year Casey has grinded a couple of miles of roads and those roads have been about the easiest and maintainable roads. Currently Antelope County has 186 miles of asphalt roads. Last week (July 10, 2018) Casey presented a map showing priority roads. He has repeatedly asked the commissioners to give him direction as to what roads need to be maintained as asphalt, and what should be grinded. In effort to move this forward he presented a map showing highways (state maintained), Priority 1 roads (roads currently asphalt and will remain asphalt/hot mix), and Priority 2 roads (roads that will be priority roads next to the hot mix roads. This map contains approximately 75 miles of Priority 1 Roads, and approximately 54 miles of Priority 2 Roads, for a total of approximately 124 miles of asphalt/hot or cold mix roads. It was requested of the Commissioners to come up with a game plan to modify this map to make a work load map agreeable for the whole county. Today, there are two (2) or three constituents in agreement of grinding roads to make them more maintainable. Various discussion of roads that are in need of grinding. It was agreed by the commissioners to grind these miles:

527.5 Avenue between 837<sup>th</sup> and 838<sup>th</sup> Road (1 mile)  
839<sup>th</sup> Road from 527.5 Avenue to 529<sup>th</sup> Avenue (1.5 miles)  
837<sup>th</sup> Road from 523<sup>rd</sup> to Highway 14 (2 miles)  
858<sup>th</sup> Road from 529<sup>th</sup> Avenue to 531<sup>st</sup> Avenue (2 miles)

**Motion by Commissioner Schwager, seconded by Commissioner Henery to proceed with grinding of the above 6.5 (six and a half) miles.**

Commissioner Henery discussed the usage of the millings from the roads being ground, as a secondary plan of road maintenance utilizing these millings. are going. Voting aye: Schwager, Henery, Jacob, Schindler and Kerkman. Nays none. Motion carried. The map would be a comprehensive, long term plan with everybody (commissioners, road boss, road employees, the public). There needs to be a place to 'store' surplus millings, so it is stockpiled. The millings could be crushed. The end result would be a very useful product. As it is there will be huge chunks of unusable products, that will be hard to utilize and lay back on the road. The road from Clearwater to Orchard may not benefit as a hot mix road, but the priority should be The best part of Neligh-Pierce Road is the three (3) miles of gravel. Commissioner Henery made a motion to accept the map Casey presented as the Oil/Gravel road map. Discussion followed. Commissioner Henery rescinded motion.

Discussion of the Oakdale property purchase for storage of millings and or cement. Question of availability of room for crushing.

**Bridge, Street and Highway Buyout Funds:** In the 2016-2017 fiscal year Antelope County reported spending the total allotment of Highway Street Buyback funds and are allotted \$143,284.11 for the 2017-2018 funds. In addition, the Highway Bridge Buyback Program has a balance of \$334,546.52 in the carryover with an additional allotment of \$87,755.13 for a total of \$422,301.65. Road Boss Dittrich asked about the reporting of these funds. The commissioners are seeking to expense out the previous bridge funds for various projects completed in the 2017-2018 fiscal year. Road Boss Dittrich will reach out to Brian McDonald and will complete the Annual Certification for 2017-2018. It will be reviewed by the commissioners before submission.

Motion was made by Commissioner Schindler seconded by Commissioner Jacob to **adjourn**. Voting aye: Schindler, Jacob, Henery, Schwager, and Kerkman. Nays none. Motion passed.

Meeting adjourned at 12:22 PM

ANTELOPE COUNTY BOARD OF COMMISSIONERS

By: \_\_\_\_\_  
Chairman of the Board, LeRoy Kerkman

Attest: \_\_\_\_\_  
County Clerk, Lisa Payne