

September 3<sup>rd</sup>, 2019  
Antelope County Board of Commissioners  
Neligh, Nebraska

The Antelope County Board of Commissioners convened in regular session on Tuesday, September 3<sup>rd</sup>, 2019 at 9:01 AM in the Commissioner Meeting Room, Antelope County Courthouse, Neligh, NE.

Notice of the meeting was given in advance thereof by publication in the two 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.

Chairman Borer opened the meeting at 9:01 AM. Responding to Roll Call: Commissioners Henery, Smith, Jacob, Bentley and Borer. Open Meetings poster is posted on the east wall of the Commissioner Meeting Room. Additional copies available in the County Clerk's Office.

Pledge of Allegiance was recited.

**Agenda:** Motion by Commissioner Bentley, seconded by Commissioner Henery to approve agenda as submitted. Voting aye: Jacob, Henery, Bentley, Smith and Borer. Nays none. Motion carried.

**Minutes of the August 13<sup>th</sup>, 2019 Board of Commissioner Meeting:** Motion by Commissioner Smith, seconded by Commissioner Bentley to approve minutes with a correction to the Thunderhead Road Use Agreement paragraph clarifying 'Invenergy confirms they have a mechanism in place for informing their subcontractors of Road Use Agreement and penalties.' Voting aye: Jacob, Henery, Bentley, Smith and Borer. Nays none. Motion carried.

**Minutes of the August 22<sup>nd</sup>, 2019 Board of Commissioner Meeting:** Motion by Commissioner Henery, seconded by Commissioner Jacob to approve minutes as presented. Voting aye: Jacob, Henery. Nays: Bentley, Smith and Borer. Motion did not carry. Commissioner Bentley stated he had not had time to listen to the minutes. Commissioner Borer stated he did not look at them. Commissioner Borer asked to have minutes put on next week's agenda.

**Minutes of the August 23<sup>rd</sup>, 2019 Board of Commissioner Meeting:** Motion by Commissioner Henery, seconded by Commissioner Borer to approve minutes as presented. Voting aye: Jacob, Henery, Smith and Borer. Nays none. Bentley abstained. Motion carried.

**Correspondence:** August Planning and Zoning Permit Report; One Room School House Dedication and Open House Invitation; NDOR Past Due Bridge Inspection Reminder; District 5 Inventory Sheet; Letter from Kim Elder regarding NACO Nomination; NNTC (Northeast Nebraska Telephone Company) Annual Report; 2019 Auditors Report regarding Antelope County; Planning Commissions Meeting Minutes from June 18<sup>th</sup>, 2019; Keystone XL Pipeline News Letter; Copy of Thunderhead Performance Bond for RUA; 2019 Fracture Critical Bridge Inspections Agreement from NDOT; NIRMA letter regarding Board Member Application; NIRMA letter regarding Membership luncheon and Meeting on October 4<sup>th</sup>, 2019; Thiesen Construction Bid; Email from TransCanada regarding PSC affirmation from Nebraska Supreme Court decision to grant permit.

**Receipts:** \$20,000.00 Transfer from General to Road & Bridge; \$230,000.00 transfer from General to Road & Bridge; \$200,000.00 transfer from General to Disaster; \$212.00 Duplicate Payment receipt from Treasurer; \$40.00 Merle Borer Bridge Stringers; \$45.00 NACO Reimbursement Budget Meeting.

#### **Road Superintendent Report:**

- **Access Permit:** Motion by Commissioner Henery, seconded by Commissioner Jacob to approve the application for access permit submitted by Ron Funk to place a permanent field entrance along 510<sup>th</sup> Avenue in the S½ of Section 18, Township 25, Range 8 West of the 6<sup>th</sup> P.M., Antelope County, Nebraska. Ron Funk – owner. Access is along a gravel road. Voting aye: Henery, Jacob, Bentley, Smith and Borer. Nays none. Motion carried. All work to be done according to County and State specs.
- **Underground permit:** Motion by Commissioner Smith, seconded by Commissioner Jacob to approve the application for placement of underground culvert, under 515<sup>th</sup> Avenue, Section 24 Township 25, Range 8 West and 848<sup>th</sup> Road West of the 6<sup>th</sup> P.M., Antelope County, Nebraska. For the purpose of affluent transfer by hose through culvert. This is along a gravel road. Thiele Dairy to pay for labor and material. Contractor must provide liability insurance proof. Voting aye: Henery, Jacob, Bentley, Borer and Smith. Nays none. Motion carried. All work to be done according to County and State specs.
- **Underground permit:** Motion by Commissioner Smith, seconded by Commissioner Henery to approve five (5) applications for underground fiber optic line submitted by Northeast Nebraska Telephone Company (NNTC), to furnish/finish a permanent fiber connection to Central Office (in Neligh) under Baker Road in SW¼ Section 17 Township 25, Range 6; NE¼ Section 18, Township 25, Range 6; SE¼ to SW¼ Section 7, Township 25, Range 6; SE¼ Section 7, Township 25, Range 7; and the SE¼ 12-25-7 all West of the 6<sup>th</sup> P.M., Antelope County, Nebraska. For the purpose of bringing fiber optic to rural customers. Access is along a gravel road. Road Superintendent asked – to bore all structures and intersections at a minimum of 5-foot depth. All work to be done according to County and State specs. Depth below road should be at least 48 inches. Voting aye: Henery, Jacob, Bentley, Borer and Smith. Nays none. Motion carried.
- **Underground permit:** Motion by Commissioner Smith, seconded by Commissioner Jacob to approve the application submitted by Calvin Heithoff for placement of underground water line, under 841<sup>st</sup> Road, between Sections 32 and 29, Township 24, Range 7, West of the 6<sup>th</sup> P.M., Antelope County, Nebraska. For the purpose of water line for cattle. This is along a gravel road. Voting aye: Henery, Jacob, Bentley, Borer and Smith. Nays none. Motion carried. All work to be done according to County and State specs.
- **Underground permit:** Motion by Commissioner Jacob, seconded by Commissioner Borer to approve the application for placement of underground permit to place electric line under 847<sup>th</sup> Road and 513<sup>th</sup> Avenue, Section 34 Township 25, Range 8 West of the 6<sup>th</sup> P.M., Antelope County, Nebraska. Permit was submitted by Dan Kerkman for Mueller. For the purpose of providing electricity to a new three phase sub well to feed addition to feed yard. This is along a gravel road. Voting aye: Henery, Jacob, Bentley, Smith and Borer. Nays none. Motion carried. All work to be done according to County and State specs.
- **Roscoe Patcher:** Casey looked at a number of web sites the only comparable he could find was 2005 RA300 in Delaware for \$39,900.00. Antelope County has an offer from Rose Equipment (\$17,250.00) from somebody on the east coast. Rose Equipment did not guarantee this entity is still interested. Discussion. The Commissioners agreed to have Casey list it on Auction Time with a minimum (opening-reserve) bid of \$17,250.00
- **Fee Resolution:** Motion by Commissioner Smith, seconded by Commissioner Henery to approve Billable Hour Resolution. Discussion of these fees during the August 13<sup>th</sup>, 2019 meeting with a motion to write a resolution. Voting aye: Henery, Jacob, Bentley, Smith, and Borer. Nays none. Motion carried.

Resolution # 2019-09-0001  
ANTELOPE COUNTY, NEBRASKA  
BOARD OF COMMISSIONERS

Establishing Billable Equipment/Employee Fees

WHEREAS, the Antelope County Board of Commissioners during its regular meetings on August 13<sup>th</sup>, 2019, heard discussions and concerns regarding safety and road maintenance in and around Antelope County. It is the intention of the Antelope County Board of Commissioners to establish a working policy to ensure fairness and equality in handling extra workloads put on the county road employees and equipment. Workloads, whether initiated by contract, agreement or other circumstances beyond Antelope County control i.e. Town/Village work.

WHEREAS, Antelope County is involved with various road repair and maintenance projects throughout the year, and wish to establish a policy to help recover costs of work for maintenance and repair sometimes required of the Road department, above and beyond normal workloads established, or as a result of damages and/or basic road maintenance done by third parties or entities, or through towns/villages.

WHEREAS, the Antelope County Board of Commissioners in order to maintain safe and reliable travel on county roads within the county, wishes to establish a policy in which additional maintenance and repair can be done by Antelope County road department and billable to any third party or entity taking responsibility, whether by admission, contract or by force.

WHEREAS, it is the intention of the Board of Commissioners to set and utilize fair and reasonable standardized methods of billing for this additional maintenance and or repairs. And it is their intention to establish fair and reasonable hourly rates for the same. The proposed rates as listed are per hour, per employee and/or machine:

Physical Human Labor: \$45.00 (any and all county road employee(s) utilized)

Road Maintainer: \$110.00

Bobcat/Skid Steer Loader: \$60.00

Straight Dump Truck: \$105.00

Truck Tractor with Side-dump Trailer: \$130.00

Payloader: \$110.00

Vibratory Packer \$80.00

Any other additional equipment not listed is to be billed as deemed appropriate, reasonable and fair by the Board of Commissioners

NOW THEREFORE BE IT RESOLVED, by the Board of Commissioners of Antelope County, Nebraska, shall hereby place into effect the hourly rates as stated above. These rates are effective as of this date and will remain in effect until otherwise changed or revoked, by action by the Board of Commissioners of Antelope County, Nebraska. Adopted this 3<sup>rd</sup> day of September, 2019 at Neligh, Antelope County, Nebraska, by the Board of Commissioners of Antelope County.

\_\_\_/s/ Tom Borer \_\_\_\_\_

Tom Borer, Chairman

Attest:

\_\_\_/s/ Lisa Payne \_\_\_\_\_

Lisa Payne, Antelope County Clerk

Commissioner Smith, moved to adopt said resolution.

Commissioner Henery, 2<sup>nd</sup> to the Motion to adopt said Resolution

Roll Call: \_5\_ Yes 0\_ Nay

Resolution adopted, signed and billed as adopted.

- **Thunderhead Road Use Agreement Bond:** This bond was presented by Invenergy for purpose of use during the Road Construction for the Thunderhead project. Discussion. Motion was made by Commissioner Henery, seconded by Commissioner Smith to accept and place on file with the Road Use Agreement. Voting aye: Henery, Jacob, Bentley, Smith, and Borer. Nays none. Motion carried.

**Township Claims:** Mitteis Gravel LLC -Bazile Township \$3,431.22  
Hinrichsen Sand & Gravel -Frenchtown Township \$1,621.29  
-Royal Township \$214.21  
-Verdigris Township \$780.98

Motion by Commissioner Henery, seconded by Commissioner Jacob to pay claims. Voting aye: Henery, Jacob, Bentley, Smith, and Borer. Nays none. Motion carried.

**Petty Cash for Veterans Service Officer:** Discussion during Budget to include the Veterans Service Officer banking account as a petty cash. Motion by Commissioner Smith, seconded by Commissioner Bentley to establish a resolution for a \$2,000.00 cap on petty cash checking account. Voting aye: Henery, Jacob, Bentley, Smith, and Borer. Nays none. Motion carried.

**Zoning Administrator Report:** Liz met with the Commissioners.

- Minutes of the June 18, 2019 Planning Commission Meeting were placed on file.
- Administrative Plat for George Hemenway Estate. This is a building site split of approximately 2.300 Acres in Section 3, Township 25, Range 8, west of the 6<sup>th</sup> P.M., Antelope County, Nebraska. Discussion of the less than 10 Acres, so the Commissioners need to approve. Motion by Commissioner Henery, seconded by Commissioner Jacob to approve and accept the Administrative Plat. Voting aye: Henery, Jacob, Bentley, Smith, and Borer. Nays none. Motion carried.
- **August Zoning Permit Report** was reviewed and put on file.

**Library Association:** Tilden, Clearwater, and Oakdale submitted their interlocal agreement annual renewal for fiscal year 2019-2020. Motion by Commissioner Bentley, seconded by Commissioner Smith to approve interlocal agreement as presented. Voting aye: Bentley, Smith, Henery, Jacob and Borer. Nays none. Motion carried. Brunswick's Agreement was held as the currently do not have a library location.

**INTERLOCAL AGREEMENT FOR ANTELOPE COUNTY  
AND**

**ANTELOPE COUNTY LIBRARY ASSOCIATION**

THIS AGREEMENT IS MADE AND ENTERED INTO BY AND BETWEEN Antelope County, Nebraska, a Political Subdivision, by and through its Antelope County Board of Commissioners, (hereinafter referred to as "County") and the Antelope County Library Association consisting of the public libraries of the City of Tilden, Villages of Clearwater and Oakdale, each being Municipal Corporations, by their respective Mayors, Chairpersons, and Trustees, respectively.

WHEREAS, Nebraska Revised Statute Section 13-801 Et. Seq., R.R.S. 1943 (reissued 1997), the "Nebraska Interlocal Cooperation Act" authorizes the parties hereto to unite their efforts and resources to accomplish the intent of this agreement; and

WHEREAS, the Antelope County Library Association, by and through their respective community libraries does agree to provide all services and materials to the residents of Antelope County, Nebraska, whom are not residents of the respective Municipal Corporations, under the same terms and conditions as provided to the residents of such Municipal Corporations;

WHEREAS, the Antelope County Library Association's mission statement is to serve the communities of Neligh, Elgin, Tilden, Brunswick, Royal, Orchard, Clearwater and Oakdale as well as all residents of rural Antelope County,

Nebraska, as a resource for information, entertainment, cultural opportunity, and educational development, thereby enhancing and enriching the lives of the users. That the libraries within said communities shall be active and progressive institutions providing materials that reflect the needs and interests of its patrons. That said Library Association shall seek equitable funding, share materials and solutions to problems, provide access to resources beyond each of their individual facilities by cooperative agreements with library organizations at the local, regional and state levels and to strive to make use of all possible resources and ideas to meet the needs of the patrons of each of the communities and of the residents of the entire county.

WHEREAS, Nebraska Revised Statute Section 77-3442 R.R.S. 1943 (reissue 1996) provides that \$.05 per \$100.00 of taxable valuation of property subject to the county levy may only be levied to provide financing for the county's share of revenue required under an agreement executed pursuant to the Interlocal Cooperation Act.

NOW THEREFORE, in consideration of the foregoing recitals and their mutual covenants here and after expressed, the parties agree as follows:

Each of the communities, Brunswick, Royal, Orchard, Clearwater, Neligh, Elgin, Oakdale and Tilden by and through their public libraries commonly referred to as the Antelope County Library Association shall provide all services and materials currently available through the public libraries, to non-residents of their community so long as such residents are residents of the county, under the same terms and conditions as such services and materials are provided to the resident of their respective communities.

That the County agrees to contribute financially to the Antelope County Library Association and agrees to implement a levy not to exceed \$.05 per \$100.00 of taxable valuation of property on an annual basis to the Antelope County Library Association, by paying to the respective libraries of the Cities of Neligh, Elgin and Tilden, and the Villages of Brunswick, Royal, Orchard, Clearwater and Oakdale the applicable amount as provided by this agreement. That a like amount shall be included in the County's budget, reviewable, on an annual basis. This funding to be supplemental funding and not replace other funding.

That this agreement shall have an effective date of July 1, 2019, and shall continue in full force and effect for a period of one year.

This agreement shall not be construed as to form an additional political subdivision. The parties hereto agree to comply with any and all laws, rules and regulations, whether same be local, state or federal, required in the administration and execution of the terms and provisions of this agreement. Further, that no party will assign any rights granted under this agreement.

This agreement shall be administered by the Antelope County Clerk, as directed by the respective board of the parties hereto.

IN WITNESS WHEREOF, the parties have executed the agreement on the dates appearing directly below their signatures.

Dated: August, 2019.

VILLAGE OF CLEARWATER, a Municipal Corporation, Steven Hankla, Chairman  
CITY OF TILDEN, a Municipal Corporation, Leo Botsford, Mayor  
VILLAGE OF OAKDALE, a Municipal Corporation, Angelique Janovec

ATTEST:

Tina Snider, Clerk, Village of Clearwater  
Shawna Moore, Clerk, City of Tilden  
Vicki Carstens, Clerk, Village of Oakdale

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Dated: September 3<sup>rd</sup>, 2019. ANTELOPE COUNTY NEBRASKA, BOARD OF COMMISSIONERS

BY: \_\_Tom Borer \_\_\_\_\_  
Chairman of County Board  
\_\_\_\_/s/ Eli Jacob \_\_\_\_\_  
Commissioner  
\_\_\_\_/s/ \_\_Charles Henery \_\_\_\_\_  
Commissioner  
\_\_\_\_/s/ Allan Bentley \_\_\_\_\_  
Commissioner  
\_\_\_\_/s/ Dean Smith \_\_\_\_\_  
Commissioner

ATTEST:  
\_\_\_\_/s/ Lisa Payne \_\_\_\_\_ (seal)  
Antelope County Clerk

**Promotional Grant**

- **Young and Lively, Elgin NE - \$100.00** Motion by Commissioner Bentley, seconded by Commissioner Henery to approve the \$100.00 to the Young and Lively. This request was approved by the Promotional Committee on August 16<sup>th</sup>, 2019, for Treasurers in the Park on September 8<sup>th</sup>, 2019. Voting aye: Henery, Jacob, Bentley, Borer and Smith. Nays none. Motion carried.
- **Neligh Rafts of Crafts \$300.00** Motion by Commissioner Henery, seconded by Commissioner Borer to approve the \$300.00 request from Neligh-Oakdale Teammates. This was approved by the Promotional Committee on August 27<sup>th</sup>, 2019. It is for the Rafts of Crafts on November 9<sup>th</sup>, 2019. Voting aye: Henery, Jacob, Bentley, Smith, and Borer. Nays none. Motion carried.

**Eleanor Brady Trust:** Motion by Commissioner Smith, seconded by Commissioner Henery to accept the Eleanor Brady Gift. Carolyn Pedersen the Executor of the estate is working with Jewell & Collins in getting this settled. Voting aye: Henery, Jacob, Bentley, Smith, and Borer. Nays none. Motion carried.

**Brian McDonald:**

- **Pay Application Knife River Midwest LLC** – This pay application is for some shouldering on the Royal Road. The County is considering more patching. The amount is \$13,250.82, with a retainage of \$34,501.60. Motion by Commissioner Smith, seconded by Commissioner Henery to accept and pay the application. Voting aye: Henery, Jacob, Bentley, Smith, and Borer. Nays none. Motion carried.
- **Quote from Thiesen Construction Inc** for Northwest Wing of the Clearwater Bridge, Project No 20905. Flood damage ruined the Northwest wing was completely damages, and the channel bank north about 30 feet. Northeast Wing is still in place. Thiessen was the only quote received. He broke it down:
  - Restoring the wing. \$31,600.00 - FEMA generally pays for what was damaged.
  - Compacting Material \$22,400.00 – FEMA generally pays for what was damaged.
  - Extending Existing northeast & west wind waters, wing pile, sheet pile - \$43,000.00 – Brian believes FEMA will look as mitigation and should pay up to a portion of it – possible 50% of it.
- Thiesen has stated they will move from the Poor Farm Bridge to this project if we authorize it today. Motion by Commissioner Henery, seconded by Commissioner Jacob to accept all three (3) projects and authorize Chairman to sign. Voting aye: Henery, Jacob, Bentley, Smith, and Borer. Nays none. Motion carried.

- **Change Order on Poor Farm Bridge.** Motion by Commissioner Henery, seconded by Commissioner Jacob to accept the Change Order on the Poor Farm Bridge. Voting aye: Henery, Jacob, Bentley, Smith, and Borer. Nays none. Motion carried.

#### 10:05 AM – 11: 08 AM Public Hearing – Closing Roads 847<sup>th</sup> & 848<sup>th</sup> Road

##### Public Hearing 10:05 AM 848<sup>th</sup> Road total One (1) mile – two (2) half mile stretches.

Motion by Commissioner Henery, seconded by Commissioner Jacob to open public hearing. Voting aye: Henery, Jacob, Smith, Bentley and Borer. Nays none. Motion carried.

Commissioner Borer opens the hearing by stating we will start with the proposed closing of an approximate one (1) mile stretch of 848<sup>th</sup> Road, starting ½ mile east of 529<sup>th</sup> Avenue and ending ½ mile east of 530<sup>th</sup> Avenue. He asks that all comments be limited to three (3) minutes.

Brian McDonald: I am presenting an aerial photo and map of what is showing. Essentially, this is ½ mile east of the closure – which was closed in 1996 by resolution. As far as use, it has been used as farm access a bunch of the right of way on the east half. It is the same landowner north and south. Essential use is farm access. I guess we are here for public testimony. Go ahead and open for public testimony, unless you guys have any specific questions.

Borer: Any questions?

Smith: Not at this time.

Borer: Ok. We will open it up for public testimony.

Henery: On this one are you closing a mile or a half mile?

McDonald: It is two (2) half miles.

Henery: I wondered if the map was true, right.

McDonald: The very east ½ mile past it is already closed.

Henery: The green one?

McDonald: Yeah.

Borer: So, is there anyone who wants to testify in favor of the request.

Andy Frey: I do.

Borer: Go Ahead. State your name.

Frey: I am Andy Frey. I am the landowner bordering both sides of the majority of the road. Basically, I would like to continue to be able to farm it and I would like to put a fence in to the center of the road on the west end, between me and Martensen. I prefer to put it on the center of the roadway. Currently, there is a section of fence on the west already in the center. Pretty close to the center it has been there for a long time. It is a liability issue for me, and to be able to fence it and utilize it the way that I want to.

Borer: Any one in favor? (No response.) If not, we will ask the people opposed to testify.

Jeremy Martensen: Jeremy Martensen: AS far as the fence in the middle of the road, no one knows where anything is in there because the other ½ of the fence has all been torn out. I really prefer not to close that road; it would be nice to have access to the far corner of the property. If we have any future development of any kind as far as selling a corner for someone to build on or something like that, I really would like to see this road stay open. Furthermore, for my access into that property.

Borer: Ok. Anyone else?

Deanna Martensen: Deanna Martensen. Gentleman, I do want this road to stay open. AS far as development in the future, 10 years ago, no one would have imagined that the land around there would all be irrigated with pivots. So, I do believe that we need to continue to have access there. Also, we have cattle up there. It isn't ours, we rent the pasture out and we need a good access for that renter to be able to move his cattle in and out of there. There have been times in the past that the only way to get them out was to drive them out. So, hopefully, we can look towards the future and leave this road open.

Borer: Any else wanting to comment? Questions from the Commissioners?

Henery: So Martensen's have 160 acres up there? Is it all farm ground? Or is there?

J Martensen: It is ½ and ½, the NE¼ of that is pasture, first part is farm ground.

Henery: Did you say something about pasture there too?

Bentley: The NE¼ corner of that is pasture?

Henery: It would be this darker portion?

J Martensen: Yes.

Henery: And this darker part too?

D Martensen: That is pasture too, Charlie.

Henery: Everything that is dark in there.

J Martensen: Yes, it is pasture.

Borer: So this road basically does not touch another road does it?

McDonald: Ahhh....

Borer: Just that green one is closed.

McDonald: The green one is closed from the .... Coming from the west to this point.

Smith: There is a road from 529<sup>th</sup> Avenue to go into this.

Borer: OK.

McDonald: to the ½ mile. Nobody is land locked.

Borer: Ok.

McDonald: They have got access up to the crop area.

Borer: It just don't show it on the plat book?

McDonald: Well, to get to it you have got 33 feet on either side. You've got access – you have access to the crop. (Dittrich and Doerr hooking computer up to screen.)

Bentley: Closing that road you will not have access to get to that pasture, right?

McDonald: You would have a 33 feet strip across were the road was – that could still be used for access.

J Martensen: On the west end of the we need to make it so it is a little more accessible to today's farm equipment. That is a straight up hill – running clear through or halfway into that \_\_\_\_\_ ground. And keeping that ½ mile stretch to get to the east end of that stretch, without going on my property to get there, so I don't think it is an issue.

Henery: Your property to the north you mean?

Frey: No, to the west. You cannot drive that ½ mile stretch to the east end of their property. I am not trying to stop anybody from getting to their property.

Henery: It is right in there?

Dittrich: We got it up on the screen now. So, this is LaVern Mitchell's driveway on the west side of the road. You can barely see it. Right where the hand is at. This part of the road is not part of the discussion today. This is where it starts. Andy owns this quarter here and this quarter here. Which this is not passable through here. This is part of the one (1) mile.

Henery and McDonald: Yes, it is.

Dittrich: That is the north quarter/south quarter. And this is Andy's here and this is the Martensen ground. When you come in right now, there is somewhat of a fence. Like Jeremy said we don't know where it is. I mean there is just a fence out there. It is not much of a fence, but it is there and there is also a fence along this and this is hay ground. Martensen's want to be able to have access over

there to their property. I mean, just because there is a fence there, I don't think it is for any of us to say it is not accessible. I don't see any reason why....

J Martensen: Not just for us. I mean, you can...wind mills, or any other kind of development, pipeline or anything like that. I don't know why we would want to. It is a two (2) mile by two (2) mile section and we are going to take another road out?

Dittrich: Just because there is a fence along this hay ground, I don't think that makes this quarter in accessible by any means for the Martensen's. I think they have the right to put their fence wherever the hell they want to go through it. So, I think an option for the Board, since we haven't done a lot of these closures with the new Board, is we can adjust this to however much of this road we want to close, or none.

Bentley: Would both parties be all right with that. The other half of that you know.

Dittrich: I will back this out so we can see it.

Henery: Closing the east half and leaving the west half open....

Bentley: Closing the east half. Would that kind of be an alternative for everybody?

Frey: Well, I think that part should be closed, because, quite frankly there is no reason for anybody to go back there. You cannot pass-get through the big raven – that creek. But, I still don't see any problem with closing the west half because right now we, we cannot agree on where a fence should be. And right now....

Martensen & Henery: Survey?

Frey: There is an electric fence around their pasture.

Dittrich: A survey. And the County will pay for that. We are on the hook for that survey.

Frey: The county survey the fence as long as there is on Martensen's die of the road way.

Dittrich: People would come in and request a survey. WE have to go through our approved surveyor, Lavern Schroeder. But they can come in and request and we have to establish the lines.

Frey: I propose closing the roadway – putting a new fence down the middle of it giving each property owner their property back and then there is access to both parties. And it shouldn't be an issue. I don't see an issue.

D. Martensen: Gentlemen, in this day and age of moving dirt, that raven which we are speaking of is not really an obstacle whatsoever, if you wanted to actually use that road. As Mr. Frey does. He has moved a great deal of dirt at this time to make ravens and such accessible to irrigation. So, I don't think that is the issue of not being able to use the road.

Frey: And I would agree, if Martensen's want to go through the proper permits to get the Army Corps of Engineers to allow them to close that section of the roadway or to fill it in, then they will have that option on their 33 feet or whatever they are allowed. Good Luck

J Martensen: How come we can't leave the road open and put a fence down the middle, and leave the County the option to take it back?

Henery: So, is this 66-foot section right now with nobody touching it?

J Martensen: No, he farms through the middle.

Frey: What was the middle of the old fence, which was not 656 foot so we need a survey so we know where it actually should be. Is is only like 44 foot until I took it over. There was like tow (2) fences, two (2) gates blocking it. And I couldn't get to it, on the first half mile without opening two (2) gates, so....

Bentley: Did I understand that you would be all right, as long as we don't close the road?

J Martensen: I want it open and the County owns it and we can put a fence down the middle – and if you guys ever decide to develop it later, we will move the fence. I would get my 33 feet.

Bentley: The last time we did this in Elgin, isn't that what we finally agreed and everybody....

Dittrich: County retained the right of way. We allowed it by resolution to be fenced.

Bentley: Yeah. Because there was some discrepancy.

Henery: I am fine with something like that on that ½ mile.

J Martensen: Not on the ½ mile. That is pasture. I need road going clear up that hill.

Henery: Oh, Yeah, ok.

J Martensen: You can't get a 53-foot semi in there to haul hay.

Dittrich: As far as the Martensen's stand point do you have any feeling on the east half mile, that the Frey's own north and south? Do you care one way or the other.

J Martensen: I would like you to leave it open and abandon places farming it.

Dittrich: Because, the Board can do whatever they want. Right? They can break this up and say on the west ½ mile that Martensen's border we can retain the right of way, we can allow by resolution to fence the road, and the east side could be handled separately.

J Martensen: I farm three (3) quarters a mile east from there – an I go six (6) miles around all the time. That got closed in 1996, by opposition of both landowners I farm for now.

Corey Furstenau: If there is an open road, and the County still has the right of way, does the adjoining landowners have the right to farm that area.

(Multiple yeses around the table.)

Dittrich: AS long as it is by resolution. The resolution allows them to go out and put the fence up. Because, you cannot just put a hotwire across the road right now to graze cattle. So, they would do that to all it. They could allow that for farming.

Furstenau: So, the east ½ mile is currently being farmed, is there a resolution that they can do that currently?

Dittrich: Not to my knowledge. I wouldn't know why there would be.

Furstenau: Is that legal?

McDonald: Not really, no.

Dittrich: It is not a traveled way. Could somebody go out there with a 66-foot wide blade and blade all the corn down? Absolutely. It is not a safety concern or a traveled way, the County doesn't get involved. But you have the right to take your fishing pole and walk down the middle of that thing.

Furstenau: So, it is not something the County controls, then? So, there is probably other areas like that?

Dittrich: There is plenty of areas like this, yeah. I mean, unless somebody comes and says I need to get there, it just kind of, you know, especially with this scenario where that raven is so deep. It really is not passable other than horseback probably. It is a public way you can go through it.

Borer: Kelly, do you have a comment?

Kelly Mueller: If the road is open and even if they are farming it, say the road is considered open. That area is not taxed. It is not taxed as long as there is a road there. But if the road is officially open, I have to cut that road out, so it is not assessed/taxed.

Dittrich: So that is the only thing the count gains by actually closing a roadway is the 33 or 66 feet however they decide to do it is thane assessed.

Borer: Raises the tax revenue.

Frey: If the County maintains the right of way, and allows the fence in the middle who is liable?

McDonald: This is one think I was going to point out. Your insurance company is going to recommend you close the road and turn the right of way back to the landowners. I can share you a lawsuit where Madison County closed a road and had to go through Pierce County to do it. They closed the road and maintained the right of way. Let's just say the people had no business being on this road, drunk. The road did not appear as a road. The had to put somebody's fence down to get down it. There was a tube that had washed out years ago. The farmer that had the land know to go around it. You had to go through tall grass to get to this point. They rolled their vehicle. It was between two (2) fields. There was a \$500,000.00 settlement. I think that was appealed. But I will guarantee your

insurance company is going to recommend you close the right of way, you close the road and you restore ownership back to the adjoining land owners.

Smith: Is that what we did in Elgin?

McDonald: You did not.

Terry Brookhouser: If you put up a road closed sign at the edge of that, will that put them as liable, because they went around the sign?

McDonald: I am not going to go into what attorneys will argue. Like I said, anybody who wants to sue can sue.

Bentley: Joe, do you got any thought on this?

Joe Abler: Yeah, you can put up a road closed sign, and you know what people do? They drive around them. As long as the County maintains the right of way, whether it is a road or not, there is a potential liability there.

Borer: We can still get sued.

Abler: We take the liability then. I agree with Brian, that the insurance company would rather you just close the road and release the right of way – give it back to the property owners.

Borer: Is there any other questions from the Commissioners?

Joe Cornett: I have a question.

Henery: State your name, Joe.

Cornett: Joe Cornett. Now the County gets funding for roads from the State from their taxes, right? Does anybody know how much we get for minimum maintenance roads? How much will we lose out on? Because, right here you are benefiting one (1) person out of a whole county. Even if it is pennies on the dollar, you are still losing out the pennies on the dollar on it.

McDonald: I bet money; I doubt this is even considered a road the way the look at a map. If it is not improved you are not going to get mileage for it. Just because it shows up as an open right of way, doesn't mean it is actually an open road. They will go through and look at the roadway itself. Um, you don't get very much per mile on the formula. Pennies on the dollar is probably about right. I want to say, at one point it was one hundred and some bucks a mile per year.

Cornett: But you look at the rest of the County. For what we put into them roads. We put nothing into them in a sense. So, even if you are making pennies on the dollar, this is pennies on the dollar you can put into other roads, gravel, anything. Are we really kicking ourselves by closing these roads?

McDonald: Like I said, I don't think you are getting anything out of this road anyway. It is not improved.

Cornett: Next thing I wanted to say. I know it was mentioned before. But if you go five miles north of these roads there were minimum maintenance roads up there – there was like three (3) miles up there. Not saying it is going to happen, but the wind towers came in and fixed those roads up. Excellent gravel roads. At what cost did it cost us as a County. Who is to say that isn't going to happen someday down the road on these? Who says they can't come in, something around itself? They want to put a wind tower up, they are going to come in and fix these roads. But if it is closed – how are they going to do it then? We could have another, potentially. It may not be the wind farm. It may be a pipeline; it may be who knows what. But if it is closed you took that option away.

Frey: I just want to state that the wind towers have built great roads, they have built some great private drives, they have had some roadways closed in order to get those private drives, so I don't see these as an issue. If they want a road, they are going to get a road.

J Martensen: So, they take an open road, that doesn't cost anybody anything and then they have to buy an easement to get back across it from someone else back?

Frey: It is not an open road.

Cornett: So, that five miles to the north up there was minimum maintenance, and we might have been getting nothing on it. If the state comes in and assess those roads not, like I said they are better than most of our gravel roads to be honest with you. They built them up, nice roads. Are we going to get back more in taxes back off of them roads now?

Frey: They benefit the landowners that put the wind towers on their property.

Borer: You guys, we are not getting anywhere arguing back and forth. Before I close the public portion, I want to mention that Verlene Furstenau Yates sent a letter in opposition of closing both of the roads. So, I want to make that known in public. Commissioners, any questions? If not, I would ask for a motion to close the public portion.

Smith: When we close the hearing, we can still ask Brian questions concerning this though?

Borer: Yes, He is part of the discussion.

Smith: Is that correct?

McDonald: Yes.

Abler: I would read that letter out loud.

Borer: Read it entirely?

Abler: Yes.

Borer: Do you want to read it?

Clerk: I received the same letter.

Letter: August 28, 2019; Dear Antelope County Commissioners; As a landowner in Elm Township in Antelope County I received a letter to inform me that there is a proposal to close some roads in that township. I would like to express my opinion of that proposal as a landowner as well as we are active farmers in Fillmore County so understand the importance of road availability.

I am opposed to closing the roads as this will impose hardships on the surrounding farmers and landowners. After visiting with several farmers in that area, they indicate the roads are still used for their farming as well as moving livestock. They indicated to me that they feel a great need to keep these roads open to not hinder their ability to do their jobs efficiently.

Closing these roads may affect the future progress in the area also. We do not know what the future holds for our farming communities but one thing we do know it is next to impossible to reopen a road if the need arises.

Please consider keeping these roads open as part of the county road system.

Sincerely, /s/ Verlene Yates, Verlene Furstenau Yates, Geneva, Ne.

Borer: I'll ask for a motion to close the public hearing.

Bentley: I'll make that motion, Lisa. (10:31 AM)

Jacob: I'll second it.

Borer: Discussion? ..... Charlie?, Dean?, Eli?, Allan?, (all respond 'Yes,) and I will vote yes. Nays none. Motion carried.

Discussion after closing the hearing. Commissioner Smith asked Brian his recommendations. Brian responds with recommending closing both ½ miles and returning the right of way to the landowners. He believes the County will never upgrade this stretch. It serves primarily local landowners and nobody is land locked. I would also limit liability of these roads. It is clarified the 33 foot is from the section line. In the Elgin situation, the County did retain the right of way, but closed the road, which does open the County up for liability. The liability is no different that as plenty of other stretches throughout the County. Typically, if there is opposition the County does not close the road. The ease ½ mile has same landowner north and south – the Commissioners saw no problems with this.

Motion by Commissioner Smith, seconded by Commissioner Borer to close the east ½ mile of this request, and allow the property to revert back to the property owner(s). Voting aye: Henery, Jacob, Smith, Bentley and Borer. Nays none. Motion carried.

Discussion on the west side ½ mile and what options were available. The middle ground and discussion about signage and west ½ mile options. Discussion continues. Jeremy Martensen suggests this is flat enough – no fence would be needed on 1/3 of that ½ mile.

Commissioner Henery makes a motion that fence is put along the center line of the pasture, and leave the fence open on the tillable ground. Commissioner Henery rescinds motion. Discussion on surveying property. Motion by Commissioner Henery, seconded by

Commissioner Bentley to table the decision on the west ½ mile until the mile is surveyed. Voting aye: Henery, Smith, Bentley and Borer. Nays none. Jacob out of room for vote. Motion carried. Casey Dittrich will notify Lavern Schroeder.

**Public Hearing ½ mile of 847<sup>th</sup> Road between 531<sup>st</sup> and 532<sup>nd</sup> Avenue. 10:49 AM**

Motion by Commissioner Smith, seconded by Commissioner Bentley to open the public hearing on ½ mile of 847<sup>th</sup> Road in Elm Township. Voting aye: Henery, Jacob, Smith, Bentley and Borer. Nays none. Motion carried.

Brian McDonald: Essentially, this entire section is farmed now. Same owner on north and south side. I recommend you close it and allow the corridor to return to the land owner.

Borer: Questions or Comments before we open up to the public? ..... Ok, I will ask for public comments from the people in favor of closing this, Andy?

Andy Frey: Um, similar situation. I farm both sides. I would like to have it closed so I can do so legally. I was under the impression years back that it was closed, but I found out it was not. So, uh, all said it is a weird thing. It is a situation we just need to get it taken care of. My preference would be that we open it all the way to the west. But I have talked to Casey and the cost that would incur would be more than the county would want to spend. So, for liability reasons I would like to put a gate across and keep people off. So, I propose we close it.

Dittrich: This road is pretty... I think Freys helped us maintain it at some point, because they have a grain bin down here at the end of this road. This road just kind of runs out. They just moved in this trailer. So, we had to do some repairs to this road to get those guys into this place. It is still not a spectacular road by any means, but it is accessible. This section is a little rougher yet, because it is just agriculture access.

McDonald: Casey this isn't the section we are closing.

Dittrich: No, I know. I am just giving some background. This is the section they want to close. You get to this and this canyon is far deeper than the last one. To build a road through there it is going to be ¼ mile wide.

Henery: So this really, I am kind of out of place here. That really doesn't land lock anybody, or anything. Since they own both sides or? Is that correct? I mean there is nobody that needs to go to the west and get in from the west?

Frey: No.

Clerk: Mentions Verlene Furstenau Yates letter and additional phone calls against closing the road.

Borer: Is there anybody else against? Go ahead, Corey?

Corey Furstenau: Is there anybody else for it? Are you closing that part of it?

Borer: Yeah, is there anybody else for it? I assume not?

Frey: Everybody that signed the petition.

Borer: Go ahead Corey.

Corey Furstenau: Corey Furstenau: I am against closing this section of road. I farm land on either side of this road. Casey, may I run your mouse? I farm this quarter right here. Right now, my only access is this road here. There is a bridge right here that I cannot pass with my planter. I have to go through someone's field to get to this quarter with my planter. My planter folded up. I cannot pass through this bridge. If I can come this way, I farm this ground here, Rudy Spulak. This road is open all the way to here. This road is open all the way across. Right Casey, that is all open?

Dittrich: Open as far as??

Furstenau: This ½ mile open right of way?

Dittrich: Yes, open right of way.

Furstenau: If this road is open, I can get in here with my equipment. With this road being closed I would have to go; I would have to go all the way around this way all the way down here to get in there. So, being how the west ½ mile of this mile is still open it still leaves access coming across. So, I see no reason to close this road because it is open on either end and it would give us a lot more access into the land. Also, with the two (2) new landowners, not landowners, I mean home owners on 427<sup>th</sup> Avenue and this also gives them access to their homes if this road is closed, they cannot get there from the west.

Borer: You mean 847<sup>th</sup> Road?

Furstenau: Yes. 847<sup>th</sup> has two (2) new homeowners on that road. So, I see closing this road as a real detriment to our operation there. Having this open really allows us better access to our fields.

McDonald: Do you cross that road now?

Furstenau: No, because it is planted across. An I didn't know the rules. I didn't know I could drive down the corn. But I guess I will now.

Henery: Will you be able to get through this canyon they describe?

Furstenau: Yes, you can drive through it.

Dittrich: With farm equipment. You can farm right through it. If we were going to make a road to today's standards the vertical curve on that thing, I mean you get on top of that thing it is like a roller coaster. To be able to build a passable road, for highway – not passable. Farm equipment is very passable.

Irene Spulak: Irene Spulak. I am part owner of the Timperely 5 land which is right there to the west of where he is closing. Down the road sometime we will sell that. If whoever is looking at buying it if they come from the east to farm it with that closed then they would have to go all the way around, if they wanted to drive cattle across there, they couldn't. If somebody wanted to buy a home up on there – because there is some beautiful hill up in there. We can go up there and sit and watch Norfolk's fireworks. Everybody wants to build on top of a hill. If you close to the east that cuts down on the options of getting out there. Because we do not know what is going to happen 10, 20, 50 years from now. I am opposed to having it closed.

Borer: Is there any more opposed?

Joe Cornett: Joe Cornett. If you look at where he is looking to close right at that bend where that ends. This is not, I am going to say, the greatest road, but it has got gravel on it, you can get up through it. So, you are going to close it. Basically, they can drive up to where the gravel ends and stop. I am not saying you have to fix this road up, but half the minimum maintenance roads we have in the County go through ravens and up and down hills they are still a road. I don't understand the purpose of it. I mean he has been farming through it. Just closing this road, I think we are losing out. Like I said before wind towers or pipeline or whatever come through there – you never know what they are going to do to that road. Look what the wind towers did to the ones five (5) miles north. They took minimum maintenance roads and it didn't cost us as taxpayers anything.

Frey: I just want to point out – up there for 11 years I used to farm some of the Timperly ground. On their property, I didn't look recently, this year, but in years past there was always gates going across the road. The fence between us is an actual fence, there is no gate in it. I have not been able to get to my property from the west. Oh, that would be great, I would love to be able to come from the west. I am all for that. You want to open it up. I would like an actual road, gravel, culverts the whole thing. But that is a pretty expensive road. As far as the mud trail, that is what you are goin to end up with. And I guarantee you if I wasn't farming it, those ravens would be ravens. YOU wouldn't be driving through it. So everybody can think what they want. Pretty soon it would just be hunters. Which, there is some in this room that that is what they want to do. But it is not a drivable road other than with farm equipment and when they do come through, they will be pushing in dirt once there isn't a crop on it. Once it is not no-till, and it is. Vehicles going out there mudding around. If they want to do that, that is fine. I will put a fence on each side and make sure went they hit my fence they total their vehicle out. Because I shouldn't have to put up with that either as a land owner. And I can see Corey's problem with the three (3) ton bridge – that is a problem for me. I have to drive through my brother's property to get around it – because I can't get over it with my equipment. But I also have an issue going up the road because the mailboxes are in the road way, and I cannot get some of my equipment around it reasonably. Last year I had to drive through my brother's field to get my combine back out.

Borer: Any more comments from the public? ..... If not, I'd ask for a motion to close the public hearing portion.

Bentley: I'll make that motion, Lisa. (11:02 AM)

Jacob: I'll second it.

Borer: Motion and a second to close the public hearing portion. Charlie?, Dean?, Eli?, Allan?, (all respond 'Yes,') and I will vote yes. Nays none. Motion carried.

Discussion on Roads in the area. Coming off of 531<sup>st</sup> is decent, traveling further east is questionable. The three (3) ton bridge will be replaced with culverts – hopefully, next year. Brian McDonald suggest if it is not closed, make sue it is passable. This is not in pipeline area. Commissioners requested additional time to study roads. Survey of road to be completed. Motion by Commissioner Bentley, seconded by Commissioner Borer to table decision until survey is complete and revisit when 848<sup>th</sup> Road closure is discussed. Voting aye: Henery, Jacob, Smith, Bentley and Borer. Nays none. Motion carried.

- Brian and Casey visited some sites with FEMA. Essentially, they are looking at bridges, and assessing damage to structures. The EWP projects on Poor Farm Bridge, FEMA is planning to look at this as a multiple loss. If we can show them the cost to fix this last time and again this time. Currently, we are working on an approval to see how much they will fund.
- The old 'singing' bridge has caused some debris to gather which causes some issue with water backing up. It causes ice jamming and flow issues. We will continue to monitor, and find a plan for the bridge in the future

**City of Neligh Dispatch Services:** This is a three (3) year renewable agreement. Antelope Counties Dispatch Center is the dispatch for the City of Neligh. Motion by Commissioner Henery, seconded by Commissioner Jacob to accept and sign the Dispatch Agreement. Voting aye: Henery, Jacob, Bentley, Smith, and Borer. Nays none. Motion carried.

City of Neligh-County of Antelope  
Agreement  
For Dispatch Services

This agreement is made and entered into by and between the City of Neligh, a Nebraska municipal corporation, hereafter referred to as "City," and Antelope County, a political subdivision of the State of Nebraska, hereafter referred to as "County." This agreement is entered into pursuant to the Nebraska Interlocal Cooperation Act, Neb. Rev. Stat. SS13-801 et seq.

WITNESS:

1. County presently provides 24-hour police dispatch services through the Antelope County Sheriff's Department and has agreed to provide such service to the City for the sum of \$900.00 per month. City has agreed to contract with County for such service and hereby agrees to pay said monthly amount.
2. It is agreed that County will provide said dispatch service at the above charge for a period of three years. Payment will be made on a monthly basis from the 1<sup>st</sup> day of September, 2019, and continuing to and through 31<sup>st</sup> day of August, 2022. Payment will be made by the City on the 1<sup>st</sup> day of each month during the term of this agreement.
3. For and in consideration of the payment by City as above stated, County will provide police dispatch services for all incoming calls to the City Police Department and all outgoing calls requested by the City Police Department on a 24-hour basis on each day of the year during the term of this agreement.
4. The Neligh Police Department will coordinate the dispatch service with the Antelope County Sheriff's department and will cooperate with the Sheriff's Department in implementation of this service.
5. In providing such service, County assumes no responsibility or liability in regard to the reporting of any incoming or outgoing calls and agrees only to faithfully relay any messages received by the Sheriff's Department and to transmit any messages requested by the City Police Department.
6. This agreement shall continue until terminated by either party upon 30 days written notice.
7. It is agreed and understood by the parties hereto that this agreement does not create a joint agency between City and County and the sole and only purpose of this agreement is to provide police dispatching services to City of Neligh.

Dated this 13<sup>th</sup> day of August 2019.

City of Neligh, Mayor  
\_\_\_\_\_/s/ Joe Hartz\_\_\_\_\_  
Mayor

Antelope County  
\_\_\_\_\_/s/ Tom Borer\_\_\_\_\_  
Board Chairman

**Antelope County Official Inventories:** Commissioners have not reviewed yet. Commissioner Borer stated to move to October agenda, since they do not have to be approved until November.

**Summerland Road regarding Summerland Proposed School.** Regina Krebs was not in attendance today; she had an emergency away from the meeting. She wanted to talk with the Commissioners regarding the proposed school and the flow of traffic in the area. She wanted to make the Commissioners aware that the traffic may increase in the area with construction and later student traffic. She will meet with the Commissioners latter. The proposed School Bond will be voted on later this fall. A short discussion ensued. It was decided to hold until Regina was in attendance.

**Budget Discussion:** The Clerk said she needed direction from the Board as to what numbers need to be published on the Public Hearing. The Public Hearing Notice must be published in next weeks paper if the Commissioners intend to hold a hearing the following week. She had presented some options by email to the Commissioners last week. These six (6) options ranged from the 'golden egg' to no levy increase in 2019. The latter option leaving no room for any Road and Bridge Projects, even some proposed projects agreed upon. Discussion today about the various levy increase and tax asking. Discussion of utilizing the Inheritance Fund – it was reminded the motion to utilize the Inheritance Fund was a loan and needs to be paid back. Discussion utilizing a couple of the options went back and forth. Commissioner Smith stated he thinks maybe a .025 cent increase to take advantage of the utilization of the natural disaster benefit. Because there was so much indecision it was agreed by the Commissioners to vote on their favored option. Commissioners Henry, Jacob and Smith voted for option 4, which would increase the levy to approximately .246157. Commissioners Bentley and Borer opted to leave the levy the same as 2018. Not increasing the levy, leaves no room for Road and Bridge projects, and maintaining only next spring. Clerk will work the budget to reference the levy @ .246157. Public hearing will be scheduled for September 17<sup>th</sup>, 2019 at 9:00 AM.

Joe Ablor, County Attorney, requested the item agenda "**Discussion of Do's and Don'ts regarding correspondence from Antelope County released to the press,**" be postponed until next week.

There being nothing else to discuss.

Motion made by Commissioner Bentley, seconded by Commissioner Jacob to **adjourn**. Voting aye: Henery, Jacob, Bentley, Smith, and Borer. Nays none. Motion carried.

Meeting adjourned at 12:17 PM.

ANTELOPE COUNTY BOARD OF COMMISSIONERS



By: \_\_\_\_\_  
Chairman of the Board, Tom Borer

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