

November 1, 2016
Antelope County Board
Neligh, Nebraska

The Antelope County Board of Supervisors convened in regular extra session on Tuesday, November 1, 2016 at 9:04 AM in the County Supervisor's Room, Antelope County Courthouse Annex, Neligh, Nebraska. Meeting was called to order by Chairman Schwager, with the following board members responding to roll call: Kerkman, Schindler, Bolling, Koinzan, Henery, Williby and Schwager. Chairman Schwager stated that the open meeting laws are posted on the east wall of the Supervisors' 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 Supervisors.

Board Preapproval Report from October 11, 2016 was presented for signatures. Sympathy card was signed for former clerk's mother.

County Clerk reported 2015-2016 Audit was completed last week, October 24th – October 27th, 2016. It appears all went well. During the audit the current payroll procedures were discussed. The Auditor suggested all payroll claims should be figured and signed by the employee and immediate supervisor before they are approved for payment by supervisors. Claims should not be approved by supervisors until calculations and a final claim total is available. This procedure will be discussed and streamlined in the next couple of months.

Correspondence was reviewed: NIRMA November Safety Shorts; Union Bank & Trust Antelope Memorial Hospital Revenue Refunding Bonds; NIRMA letter denying payment of a claim regarding rock chips from an August 31st, 2016 incident; Annual NACO Conference Flyer; Email from TERC regarding pending appeals (VanEgmond); Letter from Mary Anne Block regarding old Highway 14 (cemetery road) (shortly after receiving letter-road was re-graded as was the plan); Letter from State of Nebraska Jail Standards, stating Jail met and was in full compliance; NDOR Bridge Inspection Reminder;

Receipts reviewed: Fund transfers \$400,000.00 from General to Road and Bridge; \$500.00 from General to Juvenile Diversion; \$198.00 from Key Sanitation-refund of prior bills paid; \$1,320.00 Big Iron sale of Chevy Dump Truck; NIRMA Dividend Distribution \$15,261.00 General-4,578.30 and Road & Bridge \$10,682.70;

Letter from County Treasurer, Deb Branstiter regarding Distress Warrants was distributed. 2015 Personal Property Distress Warrants have been issued and turned over to the County Sheriff. Thirty-two delinquent personal property and mobile home distress warrants were issued for a total of \$17,304.08 as of October 25, 2016. No further action.

Approval of September 6th, and 13th, 2016, October 4th, and 11th, 2016 and Board of Equalization October 4th, 2016 minutes was tabled until November 7, 2016 meeting. Because of the timing of the availability of the minutes, it was decided to move the approving of minutes to the next meeting. No further action.

Payroll claims were reviewed. Motion to approve payroll claims was made by Supervisor Henery, seconded by Supervisor Koinzan. Voting aye: Henery, Koinzan, Williby, Bolling, Kerkman, Schindler, and Schwager. Nays none. Motion carried.

Board of Equalization 9:27 to 9:29 AM. Supervisor Bolling left the meeting from 9:27 AM to 9:31 AM.

Motion by Supervisor Schindler, seconded by Supervisor Williby to approve transfer of \$400,000.00 of funds from County General to Road and Bridge. Voting aye: Schindler, Williby, Koinzan, Bolling, Kerkman, Henery and Schwager. Nays none. Motion carried.

Motion by Supervisor Schindler, seconded by Supervisor Williby to approve transfer of \$500.00 of funds from County General to Juvenile Diversion Fund. Voting aye: Schindler, Williby, Koinzan, Bolling, Kerkman, Henery and Schwager. Nays none. Motion carried.

Underground permits for 3 road crossings and along approximately 2 miles of road were submitted by Morrison Farms. Discussion held. Casey Dittrich, Antelope County Road Boss, relayed these underground permits were placed last week. The condition of the road was not satisfactory after this placing. Supervisor Bolling spoke with the tenant and had given verbal approval to the land owner after the permits were on file with the County Clerk and prior to the public meeting for approval. Motion was made by Supervisor Williby, seconded by Supervisor Henery to approve the six (6) permits from Morrison Farms to place a permanent Internet Access under 519th Avenue; and 857th Road. In all six (6) permits were submitted however they are only crossing 3 roads. (\$60.00 was collected.) Sections 33, 34, 4, 3, 9 in Township 27, Range 7 west of the 6th PM, Antelope County, Nebraska. All work to be done according to all state and county specs. Voting aye: Williby, Henery, Bolling, Koinzan, Kerkman, Schindler, and Schwager. Nays none. Motion carried.

A motion was made by Supervisor Bolling seconded by Supervisor Kerkman to approve the underground permit submitted by Tyler Kester to place a permanent electric line beneath a road in the NW¼ north of Highway 275 of Section 5, Township 25, Range 7, West of the 6th PM, Antelope County, Nebraska. The work will be done by Kerkman Electric of Clearwater and will be done according to state and county specs. The purpose of the electric line placement is for agricultural use. Voting aye: Bolling, Kerkman, Koinzan, Williby, Henery, Schindler, and Schwager. Nays none. Motion carried.

Veteran Service Officer, Ron Marshall and the Veteran Service Board met with the supervisors regarding Mr. Marshall's upcoming retirement and the need to find and hire the right replacement for the office. Veteran Board President, Keith Heithoff spoke on behalf of the board. Currently, there are 588 veterans living in Antelope County. The board is requesting the position to stay full-time, with full benefits. At the very least the part-time/full time (30 hours) as it is now. They do not feel a job share with another county would be in the best interest of Antelope County Veterans. Mr. Marshall plans to retire at the end of the current fiscal year, June 30, 2016. The Veteran's Board is trying to be proactive in the search for a replacement. They requested a 30-day grace pay for Mr. Marshall to train the replacement.

A permit to move structure was filed by WardCraft Homes. The structure is planned to be moved the week of November 14, 2016 pending weather, etc. The structure is moving to Tilden from Minden, Nebraska. Road Boss, Casey Dittrich was informed and has spoken with WardCraft all appears well. No questions/comments. No action needed/taken.

Duane Kerkman met with the Supervisors regarding the condition of a 524th Avenue between 839th and 840th Road. Part of this road was improved and maintained by Invenergy. The stretch Mr. Kerkman talked with the Board about is in disrepair and needing attention. He was requesting an obligation to fix. The bridge was destroyed a number of years ago. This area is damp, and in recent past is a little dryer because of the current farming practices. The upgrade Invenergy has completed on "their road" is like the interstate. The supervisors asked Brian McDonald to look at this stretch and make a recommendation to the board.

Tyler Kester, the permit approved earlier asked for a future plan on a road east of Clearwater. This road has not been maintained in recent past, and he was building a fence and wanted to make sure the county would not be taking adverse action to the building of the fence. Discussion continued. It was mentioned to petition to close the road, however, Brian McDonald mention the “No Maintenance in Ten (10) Years” may qualify it as a different abandonment type. Mr. McDonald will check on the statutes regarding closing of the road in question. It was recommended to have a survey of the property in question. No further action.

Brian McDonald, Antelope County Highway Superintendent met with the supervisors regarding various items. The first item was Classifications and Standards stating projects were built to standards and in accordance with the regulations. We have to report contract projects in excess of \$10,000.00. motion by Supervisor Williby, seconded by Supervisor Henery to authorize the Chairman and Highway Superintendent to sign certification and Form 1F for reporting. Voting aye: Williby, Henery, Koinzan, Kerkman, Schindler and Schwager. Nays none. Bolling absent. Motion carried.

Change order on **Elgin Northeast Site**, (site 3). This is the authorization for A&R Construction to add the third site as a box culvert. This is an additional \$64,000.62. The total contract price of \$202,410.86 for all three (3) bridges. This would be additional cost to the county. \$168,000.00 was collected from Insurance and Invenergy. Antelope County is responsible for dirt work etc. **Three (3) Bridge Damage** Brian McDonald explained the estimate of damage, the insurance settlement and the difference. 3 bridges damaged-one complete and 2 damaged. The bridges damage was reported the insurance carrier agreed to pay an amount, at 168,000.00. Antelope County decided to upgrade and change some of the repairs on these two (2) bridges – sites 1 and 3, thus the difference in the estimate payment. Mr. McDonald address this issue after county constituent, Dean Smith expressed the issue of the “county” paying for damage incurred due to Invenergy and the wind towers. As agreed the upgrade to the bridges should and did fall on the county. The \$40,680.74 being paid by Invenergy is the difference of the insurance payment and the original damage estimate, excluding any changes/updates made by the county. 3 new box culverts were placed to replace the old bridges, with no weight limit, and a lifetime usefulness. The change order is needed to complete bridge/culvert work at site. Motion by Supervisor Kerkman, seconded Supervisor Koinzan to authorize change order on 3 bridges per Mr. McDonalds recommendations. Voting aye: Kerkman, Koinzan, Henery, Williby, Schindler and Schwager. Bolling absent. Nays none. Motion carried.

Bridge Inspections: In the past JEO has contracted with Antelope County to complete bridge inspections for 135.00/each. Currently, Antelope County has 38 structures that need to be inspected, total \$5130.00. He was requesting authorization to complete bridge inspections. All structures are county bridges, there are no municipality bridges. Motion by Supervisor Kerkman, seconded by Supervisor Kansan to authorize Brian McDonald to complete bridge inspection. Voting aye: Kerkman, Koinzan, Henery, Williby, Schindler and Schwager. Bolling absent. Nays none. Motion carried.

County Bridge Match Program - Brian McDonald also discussed the recent program introduced by Governor Pete Ricketts regarding structurally deficient bridges. Funding available for structurally deficient bridges. To qualify the bridges, have to be structurally deficient, over 20-foot-long, local road or above classification, and not previously advertised for construction bid. Currently, we have 27 structures that qualify, one has been replaced, and one is a municipality bridge so the total is 25 structures. The state is requesting proposals at this time – the state will match on a 55/45 percent. The county paying the total costs up front and the state reimbursing the 55 percent. The idea is to maximize the number of structures reduced from the system with the least number of dollars. So, smaller projects on a bigger basis would be a good way to do it. Bridge up by north county line would be a good place to start. Keeping the repairs in box culvert structures would be the best way to go. Brian recommended the supervisor authorize Casey Dittrich to compile the bridges meeting the criteria and benefiting the project. No motion was made. Brian and Casey will work together, and follow up with supervisors next meeting.

Schuchardt corner. Novak’s have verbally accepted \$1.00 a yard for dirt. Brian McDonald is planning on meeting with the land owners on Friday. This corner has been in question for a year or so. The plan is to correct this intersection and dip. Brian McDonald will be completing study on this area, 523rd Avenue & 841.5 Road.

Total Fire Protection bill for the Dry Valve System was discussed. It was requested of Eddie Schindler, maintenance supervisor, to explore other options. No further action.

Mullen Transport’s Crane damaged three (3) bridges in Antelope County last spring. Their Insurance settlement is \$127,319.26, and Invenergy has agreed to make a payment of \$40,680.74 to settle the difference between the total cost and the estimated damage. Mullen Transport has lowered their payment as wear/tear on the bridge. Before they send the \$127,319.26 check they are requesting Antelope County sign a General Release of All Claims. Motion by Supervisor Henery, seconded by Supervisor Williby to have Chairman Schwager sign to accept settlement once the \$40,680.74 is received from Invenergy. This check was mailed last week, and should be on its way to Antelope County. Voting aye: Henery, Williby, Bolling, Koinzan, Kerkman, Schindler and Schwager.

GENERAL RELEASE OF ALL CLAIMS

Claim No. 4340096277

In consideration of the sum of One Hundred Twenty-seven Thousand Three Hundred Nineteen Dollars and Twenty-six Cents (\$127,319.26), the undersigned claimant(s), Antelope County hereby release(s) and discharge(s) Arnold Lattea, Denver Baker, Steve Collins, Bill Corrigan, Michael Mead, Mullen Crane and Transport, Inc., and Zurich American Insurance Company, and their employees, agents, successors, heirs, executors, administrators, and representatives from any and all claims and causes of action of any nature arising from an accident which occurred on or about the 17th day of March, 2016, at or near Elgin, Nebraska.

The undersigned claimant(s) acknowledge(s) receipt of the above consideration. The undersigned claimant(s) intend(s) by this Release to release and discharge all claims which have been asserted, and those claims which could have been asserted as a result of the accident. The undersigned claimant(s) releases all claims whether direct, indirect, or derivative, including but not limited to claims for personal injury and property damage, medical expenses, lost income, pain and suffering, disability, and loss of society and companionship and consortium arising from the above accident. This Release is intended to release and discharge all claims resulting from the accident, whether known or unknown, incurred or accrued, and those which may be incurred or which may accrue in the future; the possibility of unknown, future, remote, or contingent claims is anticipated in the consideration accepted for this Release.

This payment and Release is made in compromise and settlement of disputed claims. Payment of consideration by the released parties does not constitute an admission of liability by them, nor is this settlement to be construed as such an admission. The parties released have paid the above consideration, and the undersigned claimant(s) have accepted it to avoid costs, expenses, fees, risks, inconvenience, and other consequences of this dispute.

If any legal action, arbitration, mediation, or other proceeding has been initiated, the undersigned claimant(s) consent(s) to the dismissal of such proceeding(s) with prejudice. Each party is to pay their own costs, expenses, and attorney fees.

There are or may be claims of subrogation or liens by attorneys, health care providers, or third parties claiming a right to the proceeds of this settlement. The undersigned agree(s) to and will satisfy all such claims from the proceeds of this settlement or by other means. The undersigned agree(s) to indemnify and hold harmless the parties released against such claims, and indemnify any costs, expenses, and attorney fees incurred in defending or satisfying such claims, if any.

This Release contains the entire agreement between the claimant(s) and the parties released. No other statement or representation has been made by the parties released to induce this settlement, other than as set forth in this Release, and no other statements or representations shall be competent or admissible to establish the inducement of this settlement.

This Release expressly reserves to the parties released and to all persons in privity or connected with them, their right to pursue their other legal remedies, if any, including but not limited to claims for indemnity, contribution, or subrogation, against any other party and that party's insurer if any.

INSURANCE FRAUD: Any person who knowingly and with intent to defraud, deceive, or injure any insurance company, files a statement of claim containing any false, incomplete or misleading information or who conceals material information for the purpose of misleading any insurance company, has committed criminal insurance fraud.

I HAVE READ AND UNDERSTAND THE TERMS AND CONDITIONS OF THIS RELEASE. I UNDERSTAND THAT I MAY HAVE THIS RELEASE REVIEWED BY MY ATTORNEY, AND EITHER HAVE DONE SO OR WAIVE THAT RIGHT.

/s/ Jerald Schwager

Antelope County Representative

STATE OF NEBRASKA)

) S.S.

COUNTY OF ANTELOPE)

On this 15th day of November, 2016, before me personally appeared claimant(s) Jerald Schwager, who subscribed before me the above General Release of Claims and acknowledged to me that this settlement and Release was made voluntarily, without threat or coercion, of his or her or their free will and desire.

/s/ Lisa Payne (Seal)

County Clerk

Motion by Supervisor Williby, seconded by Supervisor Henery to approve the Klabenes Contractors Pay Application for Brunswick Northeast Bridge Project for \$30,360.00. This was paid last month. Brian's authorization came after the fact. The process needs to be approved by Brian McDonald and then presented to the board for payment. Discussion followed. Voting aye: Williby, Henery, Koinzan, Kerkman, Schindler and Schwager. Bolling absent. Nays none. Motion carried.

Antelope **County Road Boss**, Casey Dittrich met with the supervisors for his regular meeting report. The Road and Bridge Employee hours was discussed. Casey discussed the possible need to go to five (5) eight-hour days during the winter months. This was discussed and is part of the resolution passed to utilize the four (4) 10-hour day schedule. Discussion. No opposition was voiced. The Road and Bridge hours will return to eight (8) hour days starting Monday, November 14, 2016; 8:00 AM to 4:30 PM. Compensatory time will continue to be awarded to hours after 40.

TOPKOTE: Antelope County has worked with Topkote placing of armor coating on various roads and two (2) times. Casey reported he met with their employees both times the first day that they were here, and Eli Jacob, Jerry Finkral or I were with them every day that they worked in Antelope County, and he had no issues with them. They sent an invoice that said they showed up on the second round of roads with 7,125 gallons of oil they brought in on their own, and did not tell me that that morning. They are taking fault for it, but they also are invoicing us for it, at \$13,466.00. Three (3) Jebro oil tankers is about all they could use in a day. Casey has crunched the numbers over and over and there is really no way to justify the figure. With seven thousand gallons, it upped their rate more than 560 gallons per mile. He apologized for the numbers he knows it should have been done differently, however he sent the invoice after Casey talked to him. They agreed to transport gravel from Mitties to Ashfall Road, seven miles straight at \$3.00 a yard. On the \$91,000.00 invoice, Casey is asked the Board not to pay \$17,955.45. Oil was purchased from Jebro, and billed to us directly. The board agreed to pay the invoice submitted less the \$17,955.45, claim will be submitted with next week's claims.

Liz Doerr, **Antelope County Zoning Administrator** presented her report. The **Monthly Permit Report** was presented for October 2016. 14 Upstream Wind Energy LLC reports were filed. **Meteorological Towers:** Liz reported 2 meteorological towers were erected in Grant Township. She does not believe a building permit was filed for the construction. She is currently investigating what needs to happen. They may be facing a fine if the towers were constructed without a permit. She was told they were temporary. She continues to look for a conditional use permit, and is unable to find them. It is still under investigation. **Members:** There are three (3) current Planning Commission Members and a Board of Adjustment Member whose terms are to expire in December. She will be presenting names for reappointment in December. There is a Planning Commission Board Meeting on November 9th, 2016 at 7:00 PM, they will be discussing the changes to the regulations, with particular attention to Wind Regulations, Solar Energy, etc. Mr. Marvin of Marvin Planning was contracted to help review and rewrite the Zoning Regulations. After the November meeting, there are no contracted meetings left. Currently, the rewrite is not complete and Mr. Marvin is predicting 3 or 4 more meetings. Per the agreement, it is \$750.00 a meeting over and above the contracted meetings. The rewrite needs to be completed, and it was agreed three (3) more meetings could be needed. Supervisor took no action, and asked Zoning Administrator Doerr to keep them informed. Additional meetings are necessary and should not be a problem. The regulation update, wind regulations are on the agenda, hopefully we make some progress on these areas. **Rand Acoustics** has filed their peer review of Hankard Environmental Data Collection. The report was not favorable regarding Hankard reported results. ANSI standards are in discussion/discrepancy. Both the study and review state they are following these standards. Because the two (2) reports are not congruent, Antelope County needs to figure out how to handle the reports. The question was raised at to how determine which is the correct study? Do we hire another acoustics study? Antelope County could choose to accept one or the other, and just go with-it. It was suggested to table this item until 10:00 AM on December 6, 2016 meeting to discuss and review Rand Acoustics peer review. No further action taken. Liz Doerr asked the supervisors for a plan of action if the reports find the definitive of non-compliance. Are the turbines, turned down, shut down or what is the plan of attack.

The Payroll Procedures were again discussed with the County Attorney. The supervisor will conduct a review of the Road Boss's performance in executive session on November 7, 2016 and determine any increase at that time. Further discussion of review of the time clocks/paper work regarding payroll and the timing of the complete issue for approval during the first Supervisor Meeting. Discussion of keeping weekly reports approved by employee and supervisors. Discussion from changing board meeting dates/times to variation in the dates paid, to changing to a bi-monthly payroll. More discussion in future meetings.

New Federal Labor Regulations were discussed. According to new regulations, all "salaried" employees have to meet criteria, and be paid a minimum of \$913.00 a week/42,476.00 a year; excluding elected officials. Currently, Antelope County has three (3) salaried employees. Casey Dittrich, Road Boss; Bruce Ofe, Weed Superintendent and Ron Marshall – part-time/fulltime. Per the regulations, this salary requirement has to be standard as of December 1, 2016. It was agreed to have evaluations for Casey Dittrich (Road Boss) and evaluate for pay increase and change to hourly verses salary. Requested to put this on the agenda for next week (11-07-2016).

Dean Smith met with the board regarding the last Zoning Meeting which was held two (2) weeks ago Monday night there was a motion made and passed by the zoning board that the Zoning Board present to the supervisors at this meeting a request to extend the moratorium past the 1st of December. This item was not on the agenda, and Liz did not report it. It was voted on by the Zoning Board to bring it to this board. The request was to extend the moratorium until the zoning regulations completed. He also inquired about the

wind tower conference being attended by Liz, who was paying her way. The meeting is sponsored by the wind industry. The sponsor of this meeting is the Farmers Union and John Hanson, the largest supporter of wind industry in Nebraska. Liz continue to report on the time line, and yes it was discussed to have the moratorium extended, however, she thought the Chairman, Mark Smith, was going to put the item on the agenda and discuss it. The moratorium is current through the 5th day of January 2017, per the six (6) month timing on the resolution passed on July 5, 2016. Liz stated the Planning Commission will met next week and will decide if they want to temporarily change this, or if they want to wait to make a change to the regulations during the rewrite. The Planning Commission will make a recommendation to the board, at which time it will go to a public hearing. The Supervisor will have to vote on the adoption of the Zoning Regulations either way. Mr. Mark Smith will be contacting the office to put the moratorium extension on the agenda

Motion was made by Supervisor Williby, seconded by Supervisor Henery to adjourn. Voting aye: Williby, Henery, Kerkman, Schindler, Koinzan and Schwager. Bolling absent. Nays none. Motion passed.

Meeting adjourned at 12:15 PM.

ANTELOPE COUNTY BOARD OF SUPERVISORS

By: _____
Chairman of the Board, Jerald Schwager

Attest: _____
County Clerk, Lisa Payne