

The Fillmore County Board of Supervisors convened in open and public session at 9:00 a.m., February 23, 2010, in the Courthouse Boardroom in Geneva, Nebraska with Chairman Capek presiding. Members present were Yates, Kimbrough, Simacek, Mueller, Galusha, and Cerny. The County Clerk was present to record the minutes of the meeting.

Notice of the meeting was given by publication. A copy of the publication is on file in the County Clerk's office. All proceedings hereinafter shown were taken while the convened meeting was open to the public. Agenda was approved as presented. The Chairman noted that the public meeting guidelines are posted as required by law and available for public distribution if requested. The meeting adjourned at 2:17 p.m.

MINUTES APPROVED

Chairman of the Board, Capek approved the minutes of the February 9, 2010 Board meeting.

DRIVEWAY PERMITS

Simacek moved and Yates seconded the motion to approve the following driveway permits application:

Donna Meyer – install a new 40 ft. driveway on the west side of the NW ¼, Section 11-5-1, Franklin Township;

Thomas Peed Trust – install a new 40 ft. driveway on the west side of the NW ¼, Section 11-8-2, Fairmont Township.

Upon roll call, the vote was as follows;

Ayes: Galusha, Capek, Yates, Simacek, Kimbrough, Cerny, and Mueller

Nays: None

The Chairman declared the motion carried.

CLEAN SILT & DRIVEWAY PERMIT

Mueller moved and Kimbrough seconded the motion to approve the following clean silt and driveway permit application:

Howard Reinsch & Jim Reinsch – clean silt from the south side of the SW ¼, Section 26-6-2 and to install a culvert in an existing driveway on the west side of the SW ¼, Section 26-6-2, Chelsea Township.

Upon roll call, the vote was as follows:

Ayes: Capek, Yates, Simacek, Kimbrough, Cerny, Mueller, and Galusha

Nays: None

The Chairman declared the motion carried.

SPEECE LEWIS ENGINEERS

Tim Farmer with Speece Lewis Engineers thanked the Board for the years of business. With all the new Federal and State regulations Speece Lewis Engineers will not be able be the Construction Engineer for Federal Aid projects. Tim also informed the Board of the status of the projects that are in progress.

SECTION 2-3 GRAFTON

After discussion, Mueller moved and Cerny seconded the motion to switch the Concrete Box Culvert between Sections 2-3, Grafton Township to a soft match project rather than a Federal Aid Project. Upon roll call, the vote was as follows:

Ayes: Yates, Simacek, Kimbrough, Cerny, Mueller, Galusha, and Capek

Nays: None

The Chairman declared the motion carried.

FAIRMONT PROJECTS

After discussion, Yates moved and Cerny seconded the motion to approve the following projects and engineering services to add a barrel to the concrete box between Sections 28 – 33, Fairmont Township and to possibly build a Colorado crossing between Sections 27 – 28, Fairmont Township with the approval of the township. Upon roll call, the vote was as follows:

Ayes: Simacek, Kimbrough, Cerny, Mueller, Galusha, Capek, and Yates

Nays: None

The Chairman declared the motion carried.

CRUSHED ROCK BIDS

Bids for crushed rock were opened at 9:49 a.m. The following bids were received:

Project #1 (1,400 tons):	<u>Type 1</u>	<u>Type 2</u>
Westover Rock & Sand, Inc.	\$21.45	\$22.50
Stanford Madlock Trucking, Inc.	\$24.95	\$25.45
Nebraska Salt & Grain Co.	No Bid	No Bid
DPL Enterprises, DBA Nichols Const. Co.	\$23.47	\$24.97
Gana Trucking & Excavating, Inc.	\$21.94	\$24.34
Project #2 (200 tons, Stockpile):	<u>Type 1</u>	<u>Type 2</u>
Westover Rock & Sand, Inc.	\$21.45	\$22.50
Stanford Madlock Trucking, Inc.	\$23.95	\$24.45
Nebraska Salt & Grain Co.	No Bid	No Bid
DPL Enterprises, DBA Nichols Const. Co.	\$23.47	\$24.97
Gana Trucking & Excavating, Inc.	\$21.48	\$23.86

CRUSHED ROCK LETTING

After discussion, Mueller moved and Simacek seconded the motion to accept all bids and to award the lowest bidder if available. Upon roll call, the vote was as follows:

Ayes: Kimbrough, Cerny, Mueller, Galusha, Capek, Yates, and Simacek
Nays: None

The Chairman declared the motion carried.

SURPLUS

After discussion, Yates moved and Kimbrough seconded the motion to declare the 10,000 gallon tank as surplus. Upon roll call, the vote was as follows:

Ayes: Cerny, Mueller, Galusha, Capek, Yates, Simacek, and Kimbrough
Nays: None

The Chairman declared the motion carried.

MIGRATORY BIRD ACT PLAN OF ACTION

After discussion, Mueller moved and Simacek seconded the motion to approve the following Migratory Bird Act Plan of Action:

Fillmore County has set a "Plan of Action" in effect to meet policies and laws that are required under the Migratory Bird Act.

The State of Nebraska Department of Roads will, to the extent practicable, schedule the letting of projects such that clearing and grubbing can occur outside of the primary nesting season in Nebraska which has been determined to generally occur between April 1 and September 1. Work on structures, such as but not limited to bridges and culverts, should occur outside the primary swallow nesting season, April 15 to September 30, unless approved methods of avoiding nesting have been taken on the structure. The nesting dates above are a guide only, nesting can occur outside of these dates. Work outside of these dates is not exempt from compliance with the Migratory Bird Treaty Act.

If Fillmore County has a road improvement construction project that will be constructed during the time periods listed above, the following procedures will be followed;

If a Contactor is under contract, the following guidance is provided for compliance with the Migratory Bird Treaty Act for construction of NDOR projects:

The Contractor shall, to the extent possible, schedule work on structures, such as but not limited to bridges and culverts, and clearing and grubbing activities to occur outside the primary nesting season in Nebraska. However, if circumstances dictate that project construction or demolition must be done when nesting migratory birds may be present, a survey of the number of active nests and species of birds shall be conducted by qualified personnel representing the Contractor, the LPA's Responsible Charge Person and assisted by the Project Manager (PM), NDOR Environmental Section staff, or the United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) - Wildlife Services Office.

1. The Contractor shall submit a plan to the NDOR through the LPA's Responsible Charge Person regarding how he/she intends to accomplish bridge demolition or clearing and grubbing of the project to avoid conflict with nesting migratory birds.

2. The Contractor must submit to the NDOR through the LPA's Responsible Charge Person a temporary erosion control plan tailored to fit the plan for clearing and grubbing.

3. If construction operations result in unavoidable conflict with nesting migratory bird's eggs or young, which will result in "taking" (destroying active bird nests) nests and their contents, the Contractor should notify the LPA's Responsible Charge Person and the LPA's Responsible Charge Person will then contact the NDOR Project Manager (PM). The PM shall notify the Environmental Section of Planning and Project Development by telephone at 402-479-4766.

4. The NDOR Environmental Section will then determine if assistance in conducting the survey will be provided by the NDOR Environmental Section (if available) or from the USDA APHIS - Wildlife Services Office and arrange for assistance with the survey of nest numbers, bird species, etc. Results of the survey shall be maintained by the NDOR until project completion.

5. If the nesting survey is required, and the project was awarded prior to the nesting season, and the Contractor did not accomplish clearing/grubbing outside the nesting season, the Contractor will reimburse the Department of Roads for each survey required at \$1,000 per survey. If the project was awarded during the nesting season, and construction activities are such that clearing/grubbing must be accomplished prior to any other activity on the project, then there will be no charge assessed for the initial survey. The Contractor is responsible for removing all trees surveyed, without active nests, within 5 days of the survey. Reimbursement for additional surveys may be charged if the Contractor fails to remove the trees within 5 days of the survey, and requires an additional survey. Survey reimbursement will be determined on a project specific basis, considering the project timeline and associated activities.

6. If an active nest is found during the survey, the Contractor should do everything possible to restructure his activities and leave the nest undisturbed until the young fledge (leave the nest and are no longer dependent on their parents or the nest). Fledging could occur within a week, or up to a month, after the survey depending on the species of bird and whether the nest contained eggs or young. Also depending on the species of bird and their sensitivity to disturbance, a buffer of up to 30 feet surrounding the tree with the active nest could be required by U.S. Fish & Wildlife Service.

7. If construction cannot be restructured to allow the birds to fledge, and it is determined as an unavoidable "take" circumstance, the NDOR Environmental Section and USDA APHIS Wildlife Services will document when the project let, when construction began, any circumstances that caused the project to be delayed, all efforts made by NDOR and the Contractor to avoid clearing during the nesting season, and impacts to NDOR, the Contractor and the traveling public if the project is delayed to allow fledging of the nest. This information will be presented to U.S. Fish & Wildlife Service's Law Enforcement Office in Nebraska for review and determination if "taking" the nest will be prosecuted under the Migratory Bird Treaty Act. If prosecution is avoided, then USDA APHIS Wildlife Services, NDOR Environmental Section, the LPA's Responsible Charge Person or the PM will need to be on site when the nest is removed to properly and humanely dispose of the contents of the nest, and document its destruction.

8. It is the Contractors' responsibility to schedule his work to accommodate the process of conducting a survey(s) and submitting the necessary documentation if avoidance is not practicable. The Contractor shall be responsible for using any legal and practical method to prevent the nesting of birds in order to prevent the need for any survey and prevent the need for additional surveys. It is understood and agreed that the Contractor has considered in the bid all of the pertinent requirements concerning migratory birds (including endangered species) and that no additional compensation, other than time extensions if warranted, will be allowed for any delays or inconvenience resulting in these requirements.

If a Contactor is not under contract, Fillmore County will use the following guidance for compliance with the Migratory Bird Treaty Act for construction of the NDOR project and will continue to do so until a Notice to Proceed is received from the State of Nebraska Department of Roads informing Fillmore County they can proceed with construction activities:

1. Prior to April 1st, Fillmore County will inspect all trees, bushes and drainage structures in the construction footprint area for active bird nest. If active nests are found, Fillmore County will notify the NDOR Project Manager (PM). The PM shall notify the Environmental Section of Planning and Project Development by telephone at 402-479-4766. All inactive nest will be removed from the construction site.

2. Prior to April 1st, if no active nests are found, Fillmore County will perform the cutting of trees 4 feet above ground level and removing brush from the project where birds may build nest. The remaining clearing and grubbing phase of the project can be finished by the Contractor after the Contractor has an executed Contract and Notice to Proceed from NDOR.

3. Prior to April 1st, if no active nests are located in the structures in the project foot print area, Fillmore County will remove all inactive nest. Fillmore County will place bird netting under any structure that is scheduled to be demolished and replaced.

4. Fillmore County will continue to monitor all structures in the construction foot print area for freshly built bird nest and remove them until the responsibilities of the Migratory Bird Act and the requirements by the State of Nebraska can be turned over to the contractor.

5. If a CE Consultant is not under contract, Fillmore County's RC Person will enter notes into the Site Manager Program in regards to the required record keeping and documentation of activities on the construction project during this phase of the project.

6. Fillmore County will work closely with the appointed State of Nebraska Project Manager for the project so all requirements and laws are met.

Upon roll call, the vote was as follows:

Ayes: Mueller, Galusha, Capek, Yates, Simacek, Kimbrough, and Cerny
Nays: None

The Chairman declared the motion carried.

Patt Lentfer with the Economic Development Corporation; Jerri Daniels, Zoning Administrator; Sharon Elznic, Morley Most, Merle Noel, Reg Noel and Mark Morgan with the Planning Commission attended the discussion.

After discussion it was decided that at the March 23rd Board meeting we would request that JEO and the Planning Commission attend to decide what options would be selected for the update to the Comprehensive Plan.

CLAIMS

The claims were presented for payment. The following abbreviations describe the expenditures: Equip – equipment, HDM's – home delivered meals, Insur – insurance, Main – maintenance, Mtgs – meetings, Mile – mileage, Misc – miscellaneous, Post – postage, Pro – proceedings, Rep – repairs, Ret – retirement, Ser – service, SS – social security, Sup – supplies, Uni – uniform allowance, Uti – utilities, Wksh – workshop expense.

GENERAL FUND:

All Around Lawn Care	Ser	30.00
Ameritas Life Insurance Corp.	Ret	2,617.98
Jon Anderson	Uni	35.00
Aramark Uniform Services, Inc.	Ser	515.41
Blue Cross Blue Shield of Nebraska	Insur	16,580.40
Mary Brinkman	Sup	21.26
William L. Burgess	Uni, Post	35.88
Daryl L. Callenius	Uni, Misc.	60.20
Helen Cellar	Spelling Contest	50.00
Marilyn Christiancy	Ret	25.00
City of Geneva	Rent	484.00
Corner Stop	Fuel	227.86
Erdkamp Motors	Main	36.00
First Concord Benefits Group, Inc.	Insur	3,247.21
Gall's Inc.	Sup	188.19
Gambles	Sup	210.20
The Garbage Company	Ser	27.35
Geneva State Bank	SS	2,743.03
Geneva Super Foods	Sup	440.25
Norma Gregory	Ret	25.00
Hasler Financial Services	Ser	152.37
Robert Hester	Uni	35.00
Holiday Inn	Lodging	365.00
Hometown Leasing	Ser	128.44
Steve Julich	Uni	35.00
Kalkwarf & Smith Law Offices, LLC	Ser, Post, Uti, Misc.	2,671.48
Kerry's Auto Repair & Service	Main	38.15
Lafayette Life Insurance Company	Insur	170.88
Lease Consultants Corp.	Ser	249.00
Ann H. McDonald	Ret	18.00
Rich Mueller/Thomas Biegert	Rent	650.00
Nebraska Public Power	Uti	870.32
Sherri Nun	Spelling Contest	100.00
Quartermaster	Sup	389.91
Steven G. Roemmich	Uni	35.00
Seward County Sheriff	Boarding Prisoner	195.00
Shell Fleet Plus	Fuel	1,657.81
State of Nebraska AS Central Services	Ser	48.25
Carol Strothkamp	Spelling Contest	50.00
Total Funds by Hasler	Post	700.00
Trailblazer RC & D	Dues	100.00
Verizon Wireless	Uti	633.67
Terri Volkmer	Ser, Mile	620.00
Weaver Pharmacy	Sup	19.52
West Payment Center	Sup	175.00
Williams Exterminating, Inc.	Ser	110.00
Windstream	Uti	1,111.49
York Medical Clinic	Ser	50.11
Payroll	Salaries	38,007.17

ROAD/BRIDGE FUND:

Ameritas Life Insurance Corp.	Ret	1,651.93
Blue Cross Blue Shield of Nebraska	Insur	11,606.28
Casey's General Store	Fuel	249.39
Dorchester Farmers Coop	Fuel, Parts, Sup	383.01
Gambles	Parts, Sup, Misc.	66.82
The Garbage Company	Ser	78.76
Geneva State Bank	SS	1,773.43
Ralph Gould	Ret	18.00
Grafton Mini Mart	Fuel	66.94
Donovan Jirkovsky	Ret	25.00
Lafayette Life Insurance Company	Insur	87.99
Lichti Oil	Fuel	6,697.69

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Medical Enterprises, Inc.	Sup	89.70
Midwest Service & Sales	Parts	115.00
NMC Exchange, LLC	Parts	1,939.92
Nebraska Public Power District	Uti	348.76
Office Depot Credit Plan	Sup	78.97
Speece Lewis Engineers	Ser	453.50
Verizon Wireless	Uti	87.10
Village of Grafton	Uti	21.07
Windstream	Uti	155.57
Yant Equipment, Inc.	Equip	3,324.72
Payroll	Salaries	24,473.09

INSTITUTIONS FUND:

State of Nebraska, Health & Human Serv.	Jan. Patient care	93.00
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SENIOR SERVICES FUND:

Ameritas Life Insurance Corp.	Ret	133.86
Blue Cross Blue Shield of Nebraska	Insur	1,105.36
Geneva State Bank	SS	169.34
Lafayette Life Insurance Company	Insur	9.00
Windstream	Uti	264.48
Payroll	Salaries	2,233.94

NOXIOUS WEED FUND:

Ameritas Life Insurance Corp.	Ret	76.68
Blue Cross Blue Shield of Nebraska	Insur	552.68
Merlin Ehmen	Ret	22.00
Geneva State Bank	SS	86.53
Lafayette Life Insurance Company	Insur	4.50
Verizon Wireless	Uti	43.55
Payroll	Salaries	1,136.00

E911 COMMUNICATIONS FUND:

Nebraska Public Power District	Uti	160.30
Windstream	Uti	1,014.83

CLAIMS APPROVED

Yates moved and Mueller seconded the motion to approve the claims as presented. Upon roll call, the vote was as follows:

Ayes: Galusha, Capek, Yates, Simacek, Kimbrough, Cerny, and Mueller
Nays: None

The Chairman declared the motion carried.

HORSE CASE

County Attorney, Jill Cunningham informed the Board that Norman Graves owner of the horses that the County made claim to due to malnutrition was filing bankruptcy.

After discussion, Mueller moved and Yates seconded the motion to file a claim with the bankruptcy court and hire Attorney Dana London with London Law Office, P.C., L.L.O. and to spend no more than a \$1,000.00. Upon roll call, the vote was as follows:

Ayes: Capek, Yates, Simacek, Cerny, and Mueller
Nays: Kimbrough and Galusha

The Chairman declared the motion carried.

EMPLOYEE BREAKS

Joan Ackland, Peggy Birky, Barb Trapp, Lynn Mussman, Gina Swartzendruber, Darlene Vodicka, and Carol Hoarty were present for the discussion regarding employee breaks.

After discussion, the Board decided to leave employee breaks as they are currently. Employees will receive a fifteen (15) minute break in the morning and afternoon. Employees are allowed to leave the courthouse if they choose.

FEDERAL EMPLOYEE BENEFITS

Mark Headrick with Federal Employee Benefits gave a presentation to the Board at the February 9th Board meeting.

After discussion, the Board decided to allow Federal Employee Benefits to put a payroll stuffer in employees pay checks. If the employee would like more information they may contact them directly.

ADJOURN

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Agenda items "Courthouse tower shingles & clock repair and Emergency Manager job description" were tabled until the next Board meeting. As there were no other business to come before the Board, Yates moved and Cerny seconded the motion to adjourn until 9:10 a.m., March 9, 2010. Upon roll call, the vote was as follows:

Ayes: Yates, Simacek, Kimbrough, Cerny, Mueller, Galusha, and Capek
Nays: None

The Chairman declared the motion carried.

Attest

Chairman