

CLAY COUNTY BOARD OF COMMISSIONERS
8:30 AM, TUESDAY, NOVEMBER 19, 2024
Meeting Room A / B – 3rd Floor – Courthouse
MINUTES

The Clay County Board of Commissioners met in regular session with the following Commissioners present: Paul Krabbenhoft, Frank Gross, Jenny Mongeau, Kevin Campbell, and David Ebinger. Others present: County Administrator Stephen Larson, County Attorney Brian Melton, HR Director/Asst. Administrator Darren Brooke, and Communications Coordinator Jacqueline Finck.

Call to Order

Commissioner Ebinger called the meeting to order at 8:30 a.m.

Approval of Agenda

On motion by Commissioner Mongeau, seconded by Commissioner Gross, and unanimously carried, the Board approved the agenda.

Citizens to be Heard

There were no citizens to be heard.

Approval of Payment of Bills and Vouchers

On motion by Commissioner Krabbenhoft, seconded by Commissioner Campbell, and unanimously carried, the Board approved the bills and vouchers totaling \$1,051,493 from 107 vendors. There were 76 warrants issued under \$2,000 (\$31,373) and the following 31 were over \$2,000.

Ledgestone Inc.	\$ 199,895	SHI International Corp	\$ 11,216
Northern Woodwork, inc.	\$ 134,914	Pomp's Tire Service, Inc.	\$ 10,029
Scott's Electric, Inc	\$ 114,534	Fargo Glass & Paint	\$ 9,500
Robert Gibb & Sons, Inc.	\$ 94,240	Code 4 Services, Inc	\$ 8,936
Specialty Systems	\$ 87,789	Elan Financial Services	\$ 7,998
Gehrtz Construction Services, Inc	\$ 68,488	ANJAAM HOLDINGS, LLC	\$ 5,226
E. Weinberg Supply Co., INC	\$ 38,425	Tony Eckert & Sons	\$ 4,712
DOW Acoustics, Inc.	\$ 34,689	STC Flooring	\$ 4,276
Network Center Inc	\$ 28,000	Johnson's Auto Repair LLC	\$ 4,218
Fidlar Technologies	\$ 26,343	Ramsey County Med Exam	\$ 2,991
Bytespeed, LLC	\$ 24,892	Fuchs Sanitation Inc	\$ 2,880
Enterprise FM Trust	\$ 23,342	Thomson Reuters - West 590031	\$ 2,783
Ellenson Caulking LLC	\$ 19,427	Mn Dept Of Revenue	\$ 2,496
Klein Mccarthy & Co Ltd	\$ 17,915	Green View Inc.	\$ 2,409
Forum Communications Printing	\$ 13,950	Office of MNIT Services	\$ 2,162
Turnkey Corrections	\$ 11,435		

Approval of Minutes from November 5, 2024

On motion by Commissioner Gross, seconded by Commissioner Campbell, and unanimously carried, the Board approved the minutes from November 5, 2024.

2023 Audit Report

Audit Director, Karen Stacken, presented and discussed the 2023 State Audit Report. The report included the Independent Auditor's Report, the Schedule of Findings and Questioned Costs, the Corrective Action Plan, and the Summary Schedule of Prior Audit Findings. Ms. Stacken further discussed the findings which included Segregation of Duties, and Eligibility. The criteria, condition, context, effect, cause and recommendation for both findings were included in the handout.

Ms. Stacken stated there was one finding from the previous audit that was resolved which was related to the State and Local Fiscal Recovery Fund Program, and the finding was related to Suspension and Debarment.

Request Approval of Changes to Benefit Elections for Elected Officials

HR Director/Assistant County Administrator, Darren Brooke, stated during the last insurance sub-committee, it was discussed to explore the possibility of allowing elected officials the option to opt out of the County health insurance so they can purchase their own health insurance. The elected officials must provide proof of other health insurance before a County contribution is paid. County elected officials will still be able to purchase County dental and other ancillary benefits if desired.

Commissioner Campbell discussed additional reason for this request, premiums to claims, and stated the goal behind this is to try and reduce the increase in premiums to everyone.

Commissioner Mongeau stated she raised some concerns about this item during the previous work session, therefore will be voting against this today.

On motion by Commissioner Krabbenhoft, seconded by Commissioner Campbell, with one descending vote (Commissioner Mongeau), the Board approved to allow Elected Officials the option to opt out of County Health Insurance Benefits to purchase health insurance on their own while continuing to receive the County contribution.

Request Approval of Change Order #7 for the Withdrawal Management/Detox Facility Project

County Administrator, Stephen Larson, requested approval of change order #7 for the Withdrawal Management/Detox Facility Project in the amount of \$8,209.90. This change order would be for fire alarm modifications necessary for the facility.

Commissioners Mongeau and Campbell discussed the open date of the new facility and asked for weekly updates.

On motion by Commissioner Campbell, seconded by Commissioner Mongeau, and unanimously carried, the Board approved Change Order #7 for the Withdrawal Management/Detox Facility Project in the amount of \$8,209.90.

Request Approval of Change Order #5 for the Department of Motor Vehicle (DMV) Project

Mr. Larson stated requested approval of change order #5 for the Department of Motor Vehicle (DMV) project. This change order consists of kiosk countertop addition, exterior canopy lighting, additional baffles and the following credits for accent band material substitution, allowance deduct, window sill product substitution. This would result in amount of \$1,086.42.

Discussion ensued regarding the baffles.

On motion by Commissioner Mongeau, seconded by Commissioner Campbell, and unanimously carried, the Board approved Change Order #5 for the DMV project in the amount of \$1,086.42.

Request Approval on How to Designate 2025 Funding for the FMWF Chamber and Greater FM EDC

Mr. Larson stated on November 12, 2024, the Clay County Board of Commissioners held a work session. One of the agenda items dealt with the clarification of how funding for the FMWF Chamber and the Greater Fargo Moorhead Economic Development Corporation (FM EDC) would be handled in the 2025 budget. The preliminary budget established funding of \$100,000 for the Chamber and \$85,000 for the EDC. The original Chamber and EDC combined request of \$250,000 was to go toward the new Innovate28 program. The Chamber and EDC have requested clarification about whether the lower amount can also be designated for that program.

Commissioner Campbell stated he supports what the FMWF Chamber and FM EDC are trying to do, however, from a technical standpoint, we can't make a motion to fund 'Innovate 28', because it's not an entity, there needs to be a fiscal host.

Commissioner Mongeau stated she is a fierce advocate for the efforts of the FMWF Chamber.

Commissioner Ebinger stated this in no way reflects a decision on this commissions part to not fund the FMWF Chamber, and transfer these funds to the EDC.

Discussion ensued regarding the amount and the budget.

On motion by Commissioner Campbell, seconded by Commissioner Krabbenhoft, and unanimously carried, the Board approved to authorize \$185,000 through the Greater Fargo Moorhead Economic Development Corporation as a recommendation by both the FMWF Chamber and the Greater Fargo Moorhead Economic Development Corporation to fund the new 'Innovate 28' program, for 2025.

PUBLIC HEARING: Request from the Metro Flood Diversion Authority to Acquire and Obstruct Road Right-of-Way; and Approval of Resolution 2024-33 to Take Over Road Right-of-Way and Authorizing the Permanent Obstruction Thereof

Commissioner Ebinger stated there is a public hearing for a request from the Metro Flood Diversion Authority (MFDA) to acquire and obstruct road Right-of-Way.

On motion by Commissioner Campbell, seconded by Commissioner Gross, and unanimously carried, the Board approved to open the Public Hearing at 9:05 a.m.

County Engineer, Justin Sorum stated purpose of the public hearing is the request that was received from the Metro Flood Diversion Authority to acquire and obstruct road Right-of-Way on 170th Avenue South that will be crossed by the Southern Embankment Reach 4 (SE-4) of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project.

Commissioner Campbell provided some background related to this and stated in throughout the process, there was several dialogs with Holy Cross Township and landowners in the area, and for the longest time the USACE wanted to close both 150th and 170th and the Township was opposed to that, and wanted both to remain open. The County stepped in on behalf of the Township to try and convince the USACE to keep both open. The USACE did agree to keep 150th open but did not agree to keep 107th open, due to alignment and other factors.

On motion by Commissioner Campbell, seconded by Commissioner Krabbenhoft, and unanimously carried, the Board approved the to close the hearing at 9:09.

On motion by Commissioner Campbell, seconded by Commissioner Krabbenhoft, and unanimously carried, the Board approved Resolution 2024-33 to take over road Right-of-Way and authorizing the permanent obstruction thereof.

RESOLUTION 2024-33

Commissioner Campbell introduced the following resolution and moved its adoption:

RESOLUTION TAKING OVER ROAD RIGHT-OF-WAY AND AUTHORIZING THE PERMANENT OBSTRUCTION THEREOF

November 19, 2024

WHEREAS, on or about October 8, 2024, the Clay County Commission received a request from the Metro Flood Diversion Authority (the "Authority") to take over and designate a certain road Right-of-Way identified on Exhibit A as part of the Clay County highway system; and

WHEREAS, the Authority additionally requested authorization from the Clay County Commission to permanently obstruct the road Right-of-Way with SE-4 of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project; and

WHEREAS, in conjunction with its requests, the Authority provided notice to property owners within 1,000 feet of the road Right-of-Way of such requests; and

WHEREAS, upon its receipt of the requests, the Clay County Commission scheduled a public hearing to consider the requests and provided notice to property owners within 1,000 feet of the road Right-of-Way of the date and time for the public hearing; and

WHEREAS, the Clay County Commission held a public hearing on the Authority's requests on November 19, 2024, at 9:00 a.m.; and

WHEREAS, the Clay County Commission now desires to grant the Authority's requests for Clay County to take over the road Right-of-Way and to permanently obstruct the road right-of- way.

NOW, THEREFORE, BE IT RESOLVED by the Clay County Board of Commissioners:

Section 1. Takeover of Road Right-of-Way. Pursuant to Minn. Stat. § 163.11, Clay County hereby deems it necessary to take over the following road Right-of-Way (the "ROW") as shown on Exhibit A:

That portion of the roadway commonly referred to as 170th Avenue South presently located upon Sections 29 and 32 of Township 137 North, Range 48 West, Clay County, Minnesota, LESS the westerly 4739.00' ALSO LESS the easterly 75' thereof.

Section 2. Permanent Obstruction. Clay County additionally grants the Authority's request to permanently obstruct the ROW with SE-4 of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project. The Authority will provide advanced notice to Clay County of the timing for when the permanent obstruction will commence. Until such time, the ROW will remain open for public travel unless otherwise temporarily obstructed by, or with authorization from, Clay County.

Section 3. Minnesota Law Applies. This resolution will be controlled by the laws of the State of Minnesota, and any claims arising out of or pertaining to this resolution will be filed, heard, and decided in the state district court of Clay County, Minnesota, which will have exclusive jurisdiction and venue.

Section 4. Effective Date. This resolution will take effect immediately upon adoption.

Section 5. Electronic Signatures. Electronic signatures to this resolution shall be valid as original signatures and shall be valid to bind Clay County. For purposes hereof: (i) "electronic signature" means a manually signed original signature that is then transmitted by electronic means; and (ii) "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a portable document format ("pdf") or other replicating image attached to an electronic mail or internet message.

The motion for adoption of the foregoing resolution was introduced by Commissioner Campbell and its adoption was duly seconded by Commissioner Krabbenhoft, and upon roll call vote, the following voted in favor thereof: Commissioner Mongeau, Commissioner Campbell, Commissioner Ebinger, Commissioner Gross, Commissioner Krabbenhoft. The following were absent and not voting: None. The following voted against the same: None.

The majority having voted aye, the resolution was declared duly passed and adopted.

PASSED: November 19, 2024, by the Clay County, Minnesota, Board of Commissioners.

Request Approval of the Clay County Board of Commissioners 2025 Legislative Priorities

Mr. Larson stated on November 12, 2024, the Clay County Board of Commissioners held a work session to identify specific legislative priorities for the upcoming 2025 Minnesota Legislative Session. After listening to presentations and discussion, the Clay County Board of Commissioners brought forward the following priorities for consideration;

1. Flood Diversion Funding
2. 911 Emergency Response Funds
3. Mental Health Acuity - Psychiatric Residential Treatment Facility (PRFT)

Commissioner Campbell wanted to clarify that these priorities are not listed in an ranking order as they are all equally important in their own way.

Discussion ensued regarding the legislative priorities.

On motion by Commissioner Campbell, seconded by Commissioner Gross, and unanimously carried, the Board approved Flood Diversion Funding, Mental Health Acuity - Psychiatric Residential Treatment Facility (PRFT) and 911 Emergency Response Funds as the Clay County Board of Commissioners 2025 Legislative Priorities.

BREAK

The Board took a break from 9:20 am - 9:33 a.m.

Request Approval to Hire Accounting Technician for the Auditor's Office Due to Resignation

Mr. Larson stated he is sitting in for County Auditor-Treasurer, Lori Johnson, and is requesting to hire an Accounting Technician position for the Auditor's Office due to a resignation. This position is included within the budget.

On motion by Commissioner Gross, seconded by Commissioner Campbell, and unanimously carried, the Board approved to hire an Accounting Technician Position for the Auditor's Office.

PUBLIC HEARING: SCOT AND KRIS MANTHE – PETITION FOR REZONING

Commissioner Ebinger stated there is a public hearing for a petition for rezoning.

On motion by Commissioner Campbell, seconded by Commissioner Mongeau, and unanimously carried, the Board approved to open the public hearing at 10:03 a.m.

Planning & Zoning Director Matthew Jacobson stated this is a public hearing is a petition for rezoning of a parcel from Agricultural General to Highway Commercial and is located east of Hawley, MN on the south side of Highway 10, the address is 24297 Hwy 10 Hawley, MN 56549.

Mr. Jacobson discussed the property information, the definition of Non-Conformities, the applicant request of wanting to continue to rent the property as a retail/commercial space, and Highway Commercial Standards. There hasn't been any public comments from Eglon Township or the City of Hawley, but a letter was received from MnDOT about the aspects of this business that are in the Right-of-Way. Testimonies from neighborhood residents were heard at the Planning Commission public hearing opposing the rezoning. Mr. Jacobson further discussed Rezoning Considerations, the 2045 Comprehensive & Transpiration Plan Goals & Objectives, and parking considerations.

Mr. Jacobson discussed the potential next steps and stated based on the state statute, the Board has 60 days (January 18, 2025) to make a determination. That could be to approve the rezoning, deny the rezoning, or require the property owner and business to remedy issues with outdoor displays, signage, provide detailed site plan including parking and narrative of all business activities occurring on the property, and hold another public hearing no later than Tuesday, January 14, 2025, to make a rezoning determination.

Commissioner Gross asked if MNDOT has the right to confiscate everything that is in their Right-of-Way. Mr. Jacobson stated from his understanding, they do have the right to, but have not taken action yet.

Commissioner Campbell asked about the history of the parcel and if there was ever permission to be used as Commercial Use. Mr. Jacobson stated the commercial use of this property predates County zoning. Commissioner Campbell asked if that zoning would continue to stand, as long as the business doesn't change, in terms of its original purpose. Mr. Jacobson confirmed that was correct and stated if the business continued to be an electrical contracting shop, it would still be able to continue as such. Commissioner Campbell asked if the business would need to meet all the new standards if the non-conforming piece were to go away. Mr. Jacobson stated that yes, after one year of not being the electrical contracting business, there would no longer be the non-conforming competent. You can change a non-conforming use to a different non-conforming use, it just cannot be of greater intensity or expansion.

Discussion ensued regarding the Planning Commission's recommendation.

Commissioner Campbell asked if this were to be approved would this then need to go back to the Planning Commission. Mr. Jacobson stated that if it were to remain this business, it would be his recommendation for it to go back to the Planning Commissioner for approval of a Conditional Use Permit (CUP).

Commissioner Campbell stated what makes this difficult is that this property is being taxed as commercial use. Mr. Jacobson stated he did speak with the County Assessor and received the assessment history and this property has always been assessed this way.

Property owner, Scott Manthe, believes that he has ownership of the land in front of the business, along with the stretch of land that sits in front of the houses that are west of the business. Mr. Manthe discussed the Right-of-Way not being accurate and stated that he was on the Eglon Township Board and from what they could find, that roadway was dedicated to the Township, but the Township never formally adopted it.

Commissioner Mongeau asked if there was any research regarding the dedication of the supposed Township road Right-of-Way. Mr. Jacobson stated as far as what has been recorded, the County sees this section as the Township Right-of-Way, therefore, Mr. Manthe would need to consult an Attorney or a Real Estate professional to determine true ownership. There is nothing in a deed that provides proof of this land being owned by Mr. Manthe. Mr. Jacobson pulled up the Clay County GIS software and further discussed Mr. Manthe's additional property to the west and stated that a deed was found that shows Mr. Manthe owning the property that lies in front of the houses, west of the business, however, Clay County Staff, the Board of Commissioner, and the Planning Commission are not Attorney's or Real Estate professionals, therefore, we cannot make that determination. Mr. Jacobson stated as far as this rezoning request is concerned, we're only here to discuss the rezoning as it pertains to the property located at 24297 Hwy 10 Hawley, MN 56549. Commissioner Mongeau stated that the Planning Commission did acknowledge the frontage road component to this property.

Mr. Manthe discussed leasing the building and the reason for having items out front is to attract business from the traffic that passes by on highway 10. Mr. Manthe stated he was not at the MNDOT meeting where this was discussed. Mr. Jacobson stated that at the MNDOT meeting, the outcome of that meeting is there can't be any commercial activity in the State Right-of-Way,

they will move to confiscate anything that is within the Right-of-Way. As far as the Township Right-of-Way, that is completely up to the Township. Basically anything that is happening outside of the property line, is prohibited. All business has to happen within the bounds of the property, it has to meet the setbacks and the standards for the zoning district that it's in. And if there is a CUP it would have to meet those as well.

Commissioner Krabbenhoft asked, as a landlord, if this is how Mr. Manthe expects the business to run long term. Mr. Manthe discussed because of the type of business that the tenant operates, it's to be expected that there will be vehicles on the premises.

Commissioner Mongeau asked if there were two businesses leasing the building. Mr. Manthe stated no, just the one business is currently leasing the building. Commissioner Mongeau asked if there was the availability to store the overflow of vehicles on the additional property to the west that Mr. Manthe owns. Mr. Jacobson stated he would need to conduct further research to know if that was allowable, and in the state of Minnesota a dealer's license to sell vehicles which needs to be location specific, and after checking with the state of Minnesota, there is no dealer license for this property. Mr. Manthe stated the tenant doesn't sell out of this location, he only conducts maintenance and repair.

Commissioner Campbell stated in this particular case there is a business operating in a completely different format than the business prior to. And when significant changes are made in the business model, the existing neighbors need to be taken into consideration as well.

Commissioner Ebinger asked if the issues that have been brought forward by other citizen be address with a CUP. Mr. Jacobson stated it could potentially address the outdoor storage of vehicles on the property, and also, between now and any CUP hearing, could work with Mr. Manthe, his tenant, and the Township regarding the Right-of-Way issues.

Commissioner Campbell asked if this rezoning is approved, what would require he applicant to go to the Planning Commission. Mr. Jacobson stated for this, it would be for any outdoor storage, that would be accessory to the commercial use. The primary use would be the auto/power sports sales, and in the Development Code we have standards for outdoor storage yards, materials, vehicles related to a commercial use, and the Highway Commercial Zoning District does require a CUP.

Commissioner Krabbenhoft asked for clarification on retail and sales taking place on the property. Mr. Jacobson stated auto sales would be allowed as a permitted use, however, the business would need to have a dealer's license from the state of Minnesota. Commissioner Krabbenhoft asked if the ATV sales are appropriate. Mr. Jacobson stated he would need to do more research and consult with the state to determine if that is appropriate.

Eglon Township Supervisor, Steve Rodke approached the Board and stated he was there to observe and to hear about the Right-of-Way. As the Township, we understand that we have the Right-of-Way to the south of the business off of Highway 10 south. To the understanding of the Eglon Township Board, they have no Right-of-Way to the west and have never adopted anything of the sort.

On motion by Commissioner Krabbenhoft, seconded by Commissioner Campbell, and unanimously carried, the Board approved to move out of public hearing at 10:55 a.m.

Commissioner Campbell asked if Mr. Jacobson thought it would be in the County's best interest to take the 60 days to review the materials and conduct another public hearing. Mr. Jacobson stated it would be his recommendation to wait the 60 days for the determination, which would allow him to work with the applicant and the business owner to get a better understanding of what they plan to do with the site. Which would allow for more details regarding how the business will get from where they're currently at to where they should be in terms of complying with the County Code. Otherwise, if the Board chooses to approve the rezoning, the Conditional Use Permit for the outdoor storage would be it would be acceptable.

Discussion ensued regarding the outdoor storage.

On motion by Commissioner Campbell, seconded by Commissioner Gross, and unanimously carried, the Board approved to rezone Lot 020 Block 001 of Auditors Subdivision CD 04050 Sublot D in Section 7, Township 139, Range 44W, Eglon Township from Agricultural General to Highway Commercial.

Committee Reports/County Administrator Update/Discussions

- Commissioner Krabbenhoft reported on meetings for Clay County Board of Commissioners Work Group Session; BRRWD; meeting with Commissioner Mongeau, Representative Keeler, and Stephen Larson regarding the PRTF; and Family Resource Center event.
- Commissioner Mongeau reported on meetings for Clay County Board of Commissioners Work Group Session; BRRWD; PRTF; FM Diversion Land Management; discussion with Curt Stubstad with BRRWD regarding ditch concerns with a couple of landowners; discussion with Cale Dunwoody regarding benefactor hotel stay issue; Association of Township Officers - Fall Meeting; tour of the Dakota Boys Ranch with regards to the PRTF; and Planning meeting for the PRTF.
- Commissioner Campbell reported on meetings for Clay County Board of Commissioners Work Group Session; discussion with Stephen Larson, Commissioner Krabbenhoft and staff regarding the Intergovernmental Retreat; MFDA Land Management; RRRDC; Lakes Country Service Co-op; tour of the Dakota Boys Ranch with regards to the PRTF; and PRTF planning meeting with.
- Commissioner Gross reported on meetings for the Clay County Board of Commissioners Work Group Session; Beyond the Yellow Ribbon; and Association of Township Officers - Fall Meeting.
- Commissioner Ebinger reported on meetings with Commissioner Krabbenhoft, Stephen Larson, and Quinn Jaeger regarding Churches United; meeting with Kathy McKay, Stephen Larson, and Commissioner Gross regarding Partnership4Health; Clay County Board of Commissioner Work Group Session; meeting for AMC Public Safety - Safe & Secure Court Advisory; Restorative Practices Advisory Committee; Beyond the Yellow Ribbon; RRRDC Board of Authority; and Association of Township Officers - Fall Meeting.
- County Administrator Stephen Larson reported on meetings for conversation with Dara Lee on shared issues with HRA; Clay County Management; MCCJPA Pre Meeting; AMC Futures; and reminder that the Board of Commissioners meeting next week will take place on Tuesday, November 26, 2024 at 5:00 p.m. with Truth in Taxation to follow at 6:00 p.m.
- Communications Coordinator Jacqueline Finck stated tomorrow, Wednesday November

20, 2024 is GIS Day and there will be an open house from 9:00 a.m. – 3:00 p.m.

Commissioner Mongeau mentioned that there will be a public meeting put on by Metro COG regarding the extension of the 15th Ave paving suggestion to HWY 336. The meeting is this evening from 5:30-7:30 and will be held at the Dilworth Elementary school.

Adjourn

The meeting was adjourned at 11:02 a.m.

David Ebinger, Chair
County Board of Commissioners

Stephen Larson, County Administrator