

CLAY COUNTY BOARD OF COMMISSIONERS – WORK GROUP

1:00 PM, TUESDAY, FEBRUARY 4, 2025

Meeting Room A / B – 3rd Floor – Courthouse

MINUTES

The Clay County Board of Commissioners met in work group session with the following Commissioners present: Paul Krabbenhoft, Ezra Baer, Jenny Mongeau, Kevin Campbell, and David Ebinger. Others present: County Administrator Stephen Larson, County Attorney Brian Melton, Assistant County Administrator Darren Brooke, and Communications Coordinator Jacqueline Finck.

Call to Order

Commissioner Campbell called the meeting to order at 1:02 p.m. and reminded everyone that these meetings are for discussion and for the board to come to a consensus, but no actions will be taken.

Clay County Tobacco Ordinance

Commissioner Baer asked with regard to the copy of the ordinance that the Board has received, the changes in the ordinance were all state statute except the highlighted section. Public Health Grant Program Coordinator, Jason McCoy stated that was correct. Commissioner Baer confirmed with Mr. McCoy that the State of Minnesota does not allow Loosies to be sold anywhere. Commissioner Baer asked who completes the compliance checks and enforces the ordinance. Mr. McCoy stated that Public Health does compliance checks and sends out notices if there has been a violation.

Commissioner Campbell asked about the differences between pouches and chewing tobacco. Mr. McCoy stated loose leaf was what chewing tobacco was to begin with, and the average pinch was 1-2 mg of nicotine. The loose leaf had its own health concerns such as stomach cancer (from swallowing some of the tobacco) and different jaw and mouth issues. Approximately six years ago tobacco companies made snus which is loose leaf tobacco in a fine net mesh pouch the size of trident gum. They then moved on to nicotine pouches which are made from artificial nicotine that is lab created with various additives. The nicotine and chemicals are absorbed through the oral cavity similar to loose leaf tobacco. Commissioner Campbell asked about the potency compared to loose leaf and Mr. McCoy stated the Zyn brand has 3 mg or 6 mg of nicotine options and On brand has 4 mg or 8 mg of nicotine options. To put that into perspective, a cigarette is 1 mg of nicotine, so 3-6 mg or 4-8 mg of nicotine is a lot of nicotine to be introduced in a rapid amount of time. Commissioner Campbell stated he would like to see the comparison of cigarettes to the pouches in how much nicotine gets consumed per day. Mr. McCoy stated that they're still tracking that and that 8% of the school population uses the nicotine pouches and with chewing tobacco being 1% in the metro and around 3% in the rural areas. Commissioner Ebinger stated the document states a person puts in 8-12 pouches per day, which equates to about a pack of cigarettes a day for low potency and a little over 2 packs for high potency.

Commissioner Campbell asked what the enforcement of a violation looks like after the citation is sent. Mr. McCoy stated that it's in accordance with Public Health's fee schedule and stated he believes the first violation is \$250. The violations are based on a 3-year cycle, the second violation within the 3-years would be \$500, and \$750 for a third violation plus a 3-day suspension of sale. After the fourth, their license would be revoked. Commissioner Campbell confirmed with Mr. McCoy that it was state law. Commissioner Krabbenhoft corrected the fee amounts in the new ordinance, which is \$300 for first violation, \$600 for the second, and 3-day suspension and a fee of \$1,000 for the third violation. Commissioner Campbell stated that the state regulation goes businesses selling to individuals under 21 and confirmed with Mr. McCoy that there is no state law for selling to people that are over 21. Commissioner Baer asked if the same fee schedule that the state mandates would be used if someone were to sell Zyns. Mr. McCoy stated that is correct.

Commissioner Baer asked if Mr. McCoy has tracked if the use in public schools has decreased since the City of Moorhead passed their tobacco ordinance not allowing the selling of flavored tobacco. Mr. McCoy stated that they don't have the data currently but should be getting this information in the future since the Minnesota Student Survey will be given this year. They're predicting that they'll be seeing a decline but can't speak to it at this time. Mr. McCoy spoke to the arbitrary age of 21 and when brain development is complete. Cigarettes for example, if used as they're supposed to be, kill 50% of users. Currently, all companies have to do is prove that their product isn't worse than anything that's already on the market. Mr. McCoy stated that although the product is legal, the health effects this has on our adults should be considered as well. Further discussion ensued regarding the Boards role and where do they draw the line on what they should regulate.

Commissioner Campbell stated at the meeting when they decided to set the public hearing for the Tobacco Ordinance, there were other alternatives mentioned that could be tried. Mr. McCoy stated there are various ways when thinking about policy, one way is revoking tobacco couponing. Mr. McCoy stated that one of the reasons why tobacco use is dropping in Minnesota is because of how expensive tobacco is and how tobacco companies fight that is with coupons. Dilworth has banned the use of tobacco coupons. Mr. McCoy stated that the reason why public health went after flavored tobacco is because of the kids that use tobacco products, 95% of them use flavored tobacco. The nicotine is what keeps them there.

Commissioner Baer stated that he has a problem banning the selling of a product that is legal in Minnesota. Commissioner Ebinger stated that the County is the licensor in this case. Further discussion ensued regarding all that the county licenses, the products that are being sold that are geared towards attracting children, and people going to North Dakota to get the tobacco products. Mr. McCoy stated the vaping rate in high school is 18%, 26% in North Dakota, and stated that the difference is that North Dakota leads with education whereas Minnesota passes policies. Every major policy that gets passed at the state level starts locally. Senator Kupec is a cosigner of a bill at the state

level to make this happen, but there needs to be enough saturation of these policies at the local level for the state to see the need. Commissioner Mongeau raised the concern about the tax revenue from tobacco products which in turn helps fund the county through County Aid. Commissioner Ebinger stated the state and county will save money in the public health realm if people quit smoking. Further discussion ensued regarding the selling of flavored tobacco, the health risks to youth, and tobacco product use in schools and how it's regulated.

Commissioner Campbell stated his concern with the potential on what can go into the vapes and the fact that it's a new tobacco product. He stated he doesn't have a problem with not allowing businesses to sell vape products for those reasons. Mr. McCoy stated that it is a major concern with what can be put in vape cartridges and has heard of practitioners in the Fargo/Moorhead area that have seen meth, PCP, and cocaine in vape cartridges. There was a TikTok challenge to put cinnamon in their apple cartridges and kids were found passed out because cinnamon is horrible for your lungs. Further discussion ensued regarding the health concerns of vapes and potentially banning just vape products from being sold. Commissioner Baer asked what would happen if cannabis stores want to sell THC vapes. Mr. McCoy stated the tobacco ordinance covers just tobacco products, however there is one cannabis ordinance that the county still needs to adopt which is for the retail registration ordinance. Public Health would love to have the ordinances mirror each other, so banning the selling vapes could be put in the cannabis ordinance as well so they're consistent. If schools find Cannabis, it's typically in a vape. Mr. McCoy stated the reason why they brought forth flavored tobacco for the most recent tobacco ordinance that was passed is because in the subcommittee, public health was advised to go after the products that attract youth. Mr. McCoy stated that Zyn products are on the rise and are very bad for you. This may be something that may need to be addressed again if an amendment to the ordinance is passed to allow some of the flavored tobacco to be sold. If vapes continue to be banned from being sold, this still would address the number one problem. Health Promotion Director Rory Beil stated that it is highly likely that there will be cannabis versions of Zyn-like products in the future. It was discussed that this type of product already exists. Mr. Beil stated that you can expect that cannabis products to be parallel to the flavored tobacco products as a way to attract new users. Discussion ensued regarding how to word the ordinance so that it wouldn't ban other flavored cannabis products and looking into state statute on what the county can and cannot ban regarding cannabis products.

Further discussion ensued regarding the selling of flavored tobacco and the health risks to youth.

Public Health Administrator Kathy McKay discussed the role of Public Health in Clay County, with Chronic Diseases being one topic they address. Many chronic diseases stem from tobacco products and there is nothing good that comes from tobacco and nicotine. Commissioner Krabbenhoft thinks this is a really good ordinance but if this does come back to be amended, he asks the Board at least ban the selling of vape products. Commissioner Campbell stated he would support banning the selling of vape

products. Commissioner Ebinger echoed Commissioner Krabbenhoft statement, agreeing that the ordinance that was passed is a good ordinance and hoped the Board listens to the information regarding how bad the nicotine pouches are.

Clay County Land Development Ordinance

Planning Director Matthew Jacobson stated that Board received a binder with the Clay County Land Development Ordinance updates. Commissioner Campbell asked if the ordinance is ready to go before the Board for final adoption. Mr. Jacobson stated that there currently is a draft and that there are things that need State review such as the feedlot section and the shoreland & floodplain sections. So that process will be starting but wanted to give them the most up to date draft. The Planning Commission stated they wanted to hear the full draft Land Development Ordinance and chose to do it in two parts. In December they looked at Chapters 1-4 and last week they looked at chapters 5-8. They stated they would like to review through March, and then the next step would be to make a recommendation to the Board. The Board would have the ability to have as many public hearings regarding this as they see fit. Commissioner Campbell stated he thinks maybe having a two-part public hearing process may be best since going through all 8 chapters may be overwhelming. Maybe the agenda item could also not only state the chapters but the topics within them as well. Mr. Jacobson stated that he intended on putting a summary of the topics that would be covered for the public hearing in the notice. Mr. Jacobson showed the Board the webpage that has each chapter summarized and the topics covered that the public can review. Commissioner Krabbenhoft asked how we could advertise which chapter is about shoreline or ag land. Mr. Jacobson stated that we could elaborate more within the chapters. Discussion ensued regarding the breakdown and information to be provided for each public hearing and the process of changes that have been made.

Mr. Jacobson presented a high level of the changes that have been made to the Land Development Ordinance. There are two big changes with regards to development which is defining the placement of an accessory structure and the exemption from requiring a permit. For example, if you're putting in a chicken coop or a shed you bought from Menards, you don't need a permit. The other change is with regards to non-conformities. For example, if you have a house and it does not meet the Clay County's ordinance and something happens such as a fire, by state statute if it's residential or seasonal recreation, you are able to replace that. We did not have that in our ordinance, so that has been added. Commissioner Krabbenhoft discussed a situation in Cass County where a house burned down and it was in the floodplain. Mr. Jacobson stated that based on the proposed ordinance, you could rebuild but it would have to be at an elevation that meets the floodplain standards. The next chapter is base districts and is about rural and residential development and is mostly staying the same. The only difference is just changing the main subdivision and how it works and then better defining what a major subdivision is. Also moving to a model that allows a density of eight residential lots per quarter but if you're a developer that wants to preserve a natural feature or prime farmland, you can get bonus, which would be additional lots.

Chapter 3, the overlay districts, has two changes regarding the flood hazard and shoreland districts. The changes being updates to pair with the state of Minnesota model flood plain ordinance. Another change added that's part of the state ordinance is planned unit developments. If this wasn't added, then the DNR would be responsible for that in Clay County. After discussions were had during the Planning Commission and subcommittee meetings, it was said that local control would like to be retained. Urban Expansion District updates were made based on input from the cities of Moorhead and Dilworth. The landing field district was updated to reference the zoning ordinance updates from the joint zoning board with Hawley and Moorhead.

Chapter 4 is use regulations and is the biggest chapter in the land development ordinance. Uses that have been added are light industrial and adding to the highway commercial, shop condos, and overall uses that are becoming more common and trendy across the country. Use regulations for animal feedlots were updated to pair with the Minnesota rules, there was an exemption if you have 10 or fewer animal units. Agricultural tourism is a new use that was added. Specific requirements were added for site plans to help the Board understand what the development is for commercial and industrial uses. Information was added for cannabis and lower potency hemp. Solar energy systems and wind energy conversion systems were updated to meet the state model. Other changes were made to temporary second dwelling on a parcel and regulations for off-premise signs and billboards.

RasLaw, a firm that specializes in municipal government zoning & land uses, is reviewing the Subdivision regulation chapter because it's very complicated. It has also been reviewed by the Land Records Committee. The big change in the chapter is having the townships complete a preliminary review if there is going to be new roads for a plat before the process starts with the County. The Administration and Procedures chapter was drafted with the Attorney's Office and will also be reviewed by RasLaw firm. Information that has been added or changed is appeals, administrative penalties, and other ways to deal with use permit condition violations. Lastly, updating the definitions chapter.

Commissioner Baer asked if Chapter 5 has been changed yet regarding the size of lots for highway commercial based on discussions at the Planning Commission. Mr. Jacobson stated that it has not been added yet but will. Discussion ensued regarding setbacks.

Commissioner Campbell praised and thanked Mr. Jacobson for his knowledge and work on the Land Development Ordinance update.

Adjourn

The meeting was adjourned at 2:37 p.m.

Kevin Campbell, Chair
County Board of Commissioners

Stephen Larson, County Administrator