BENTON COUNTY BOARD OF COMMISSIONERS
REGULAR MEETING MINUTES
April 5, 2016

The Benton County Board of Commissioners met in regular session on April 5, 2016 in the Benton County Board Room in Foley, MN with Commissioners Ed Popp, Spencer Buerkle, Warren Peschl, Jim McMahon and Jake Bauerly present. Call to order by Chair Buerkle was at 9:00 AM followed by the Pledge of Allegiance to the flag.

Peschl/Bauerly unanimous to approve the agenda as written.

A number of individuals addressed the Board under Open Forum with concerns about the condition of County Road 78 (the northerly portion): Keith Hackett (1853 – 155th St NE, Rice), Larry Hackett (15850 – 15th Ave NE, Rice), Randy Hackett (17190 – 15th Ave NE, Rice), Cory Vannurden (15585 – 15th Ave NE, Rice), Dennis Vannurden (15695 – 15th Ave NE, Rice), Melvin Hackett (17010 Aspen Rd NE, Rice), David Nielsen (1234 Pine Rd NE, Rice), Allan Wollak (14757 – 15th Ave NE, Rice), Tony Scheel (1577 Pine Rd NE, Rice), Dan Schlichting (1435 – 125th St NW, Rice), and Kelly Nelson (14377 – 15th Ave NE, Rice). Comments included requests to improve and widen the northerly portion of the road (5 miles), similar to the improvements made to the southerly portion of CR 78; this portion of the road contains sinkholes and is too narrow for today's agricultural equipment; traffic counts "aren't there" because the road is falling apart and vehicles are choosing to use alternate routes; widening of the road could lead to improvements to the highline poles as well (address concern with stray voltage); our children can't safely walk or bike on this road; need to spend the money now "to make this road suitable" or you will be spending more money in a few years—"if you can't afford the overlay, widen the shoulder and give us a gravel road for a couple years…" Commissioner Popp stated his agreement that justification exists to improve and widen this portion of CR 78 as well; the "problem" is the funding. Chair Buerkle indicated that the County Board will view this roadway as part of their spring road tour (this portion of CR 78 is identified as a reclaim in the five-year road plan in year 2017).

Popp/McMahon unanimous to approve the Consent Agenda: 1) approve the Regular Meeting Minutes of March 15, 2016 as written; 2) accept and file Management Team Meeting Minutes of January 14, 2016 as written; 3) approve 3.2 Beer License for *St. Elizabeth Church*—June 26, 2016—for the annual church bazaar; 4) approve Tax Abatement for Parcel 08.00454.00; 5) approve 2016 SCORE Grant Applications Round I; 6) approve 2016 Solid Waste Newspaper Contract/Post Card Advertisement, and authorize the Chair to sign; 7) approve 2016 In-Squad Computer Grant with the State of Minnesota, and authorize the Chair to sign; 8) approve agreement between Benton County and the City of Foley for 4th Street Reconstruction Project, and authorize the Chair to sign; and 9) approve Final Pay Voucher for Project SAP 005-603-026 (CSAH 3 "Roundabout Project") to *Landwehr Construction*, and authorize the Chair to sign.

McMahon/Bauerly unanimous to approve a proclamation for National Telecommunicator's Week in Benton County (April 10-16, 2016), recognizing the talented and dedicated men and women of the Benton County Dispatch Center, who are the first point of contact for people seeking help from fire, EMS, or law enforcement.

Sheriff Troy Heck provided a first quarter 2016 report: issued over 300 permits to purchase and carry firearms; top five crimes continue to be fraud, theft, harassment, DUI, and domestic. He stated his intent to report on drug task force activity over the past year at the next Board meeting.

Gerry Maciej, District Manager, Benton Soil & Water Conservation District, reported on the 2015 accomplishments of Benton SWCD. He explained that Benton SWCD finances its day to day operations through a variety of revenue sources, which include federal, state, county, self-generated and other miscellaneous sources; Benton SWCD generated almost $1.4 million in direct financial assistance for conservation activities in Benton County in 2015. Commissioner Popp thanked Maciej and his staff for the good work they do. Popp noted that he is a member of the Little Rock Creek Sustainable Groundwater Use Planning Advisory Team; he asked that Benton SWCD also provide input to this advisory team.

The Regular County Board meeting was recessed at 9:42 AM to conduct a Human Services Board meeting.

The Regular County Board meeting was reconvened at 10:37 AM.

A public hearing to consider Ordinance #457, amending the Benton County Development Code Ordinance, to allow for Alternative Local Septic Systems, clarifications, and additional septic regulations, was opened at 10:38 AM. Joe Janish, Department of Development Director, explained that his department issued 210 septic permits from January 1, 2011 until June 30, 2013; staff is aware of two cases where soil borings were provided that did not meet the 12 inches of separation requirement (there are currently about six cases). Janish pointed out that the current ordinance requires two Type I septic sites (12" of separation) for new construction/lot splits; the proposed ordinance amendment allowing for alternative systems would not apply within shoreland, well head protection areas, and food, beverage or lodging facilities. He clarified that Benton County does not have a rule that every system that is installed must be a mound; the site itself determines the type of system to be installed. Janish noted that both St. Louis County and Mille Lacs County allow for alternative septic systems; the cost of constructing and operating an alternative system will likely be greater than a typical mound or typical septic system (depending on location) and a potential lower "life expectancy". He noted that staff is not recommending that a soil scientist report be required in conjunction with the alternative system; however, a wetland delineation report would be required, as well as a septic designer and an operating permit (with review by county staff yearly, or every two or three years). Janish reported on a concern of staff/Planning Commission—what if Benton County's soils do not allow systems to work? He stated that the "exit strategy" would be either holding tanks or advanced systems. Janish spoke of a need for some way of notifying future interested buyers that these properties contain a unique type of septic system. Janish referenced the potential for increased liability on the part of the county; if the concept of "alternative local standards" becomes a "hot subject", there's a potential for need of additional staffing (more follow-up and compliance monitoring). He referenced MPCA's comment that the alternative septic ordinance include a minimum separation of 6 inches; anything under 6 inches would require approval through the variance process. Janish clarified that the proposed ordinance would apply to new construction only (when only one Type 1 site is found or no Type I sites are found). He pointed out that if the alternative ordinance is not adopted, the individual would need to pursue a variance or not build on that particular piece of property. Janish reviewed other changes as proposed under Ordinance #457; the Planning Commission has provided a positive recommendation related to this ordinance. Speaking in favor of the proposed ordinance was Gary Meyer, licensed designer/inspector since 1990. Meyer stated he did not foresee these systems failing under typical conditions. He pointed out that the State, under MN Rules 7080 allows "other systems" to be placed on a lot created prior to January 23, 1996, regardless if it is new construction or not; Benton County is more restrictive in terms of new construction and does not permit "other systems" for new construction regardless of when the lot was

created. Meyer would like to see the county remove this more restrictive standard as it makes many sites ineligible. Pat Corrigan, Land Care Environmental Services, stated he is not in favor of the "time dosing" requirement (this is an MPCA requirement). His main concern with the proposed ordinance is related to the operating permit, specifically the annual requirement for the home owner to submit information; he would like to keep this provision "as light as possible so as not to restrict and overburden the home owner with an additional expense…" Corrigan inquired if a variance application will still be allowed for sites where two Type I sites can be found, but are not located where the home owner desires to build. No one was present to speak in opposition; the public hearing was closed at 11:07 AM. Janish responded to two of the questions previously raised, stating that, if desired by the County Board, he could pursue an ordinance amendment to remove the more restrictive standard (and allow "other systems" on lots created prior to January 23, 1996). In answer to Corrigan's question, Janish stated that the applicant could apply for a variance to not use those two Type I sites; that would be a decision of the Board of Adjustment. Janish stated that it would be difficult to quantify how many individuals would be interested in an alternative system. Bauerly asked the question—if the county has the final say, why does the home owner have to hire someone to verify the soil borings? Janish explained that the State requires two individuals to verify. McMahon inquired as to potential liability for the county in deviating from the state standards. Michelle Meyer, Assistant County Attorney, explained that if a failing system were approved by the county, and environmental concerns arise, the county could be partially liable in those situations. Bauerly inquired of including a "hold harmless" clause when dealing with alternative systems. Meyer agreed with including this clause, but noted that it may not protect the county if related to an environmental concern. Buerkle asked how MCIT coverage may or may not apply. Bauerly asked how many counties allow "other systems" on lots created prior to January 23, 1996 (as allowed under State rules). Janish stated that, from what he is seeing, most of the issues are arising from lots created after that date. Popp inquired if a wetland delineation is required for an alternative septic system regardless of where the site is located; he pointed out that wetlands can be determined from maps at the Farm Service Center and this is an added expense if it is obvious that wetlands are not present at or near the site. Janish pointed out that a wetland delineation and a wetland determination are two different things; having a third party perform the wetland delineation keeps that process "at arm's length" from county staff (staff provides the verification). Buerkle inquired about a way to notify future potential owners of the presence of an alternative septic system. Meyer stated that a requirement could be added that the home owner record this information against their title; she also stated the need for county enforcement of the operating permits and ensuring that the home owner is in compliance with those permits. Peschl noted that this ordinance is needed to allow some type of option for those properties that can't meet the 12" inches of separation. Motion by Peschl to adopt proposed Ordinance #457, with clarifications (i.e. recording documentation, wetland delineations, and pre-1996 lots of record). Second by Bauerly. Janish suggested that the Board table this item to the next County Board meeting, and direct staff to draft additional language to address issues discussed at this meeting. Peschl withdrew his motion and Bauerly withdrew his second. McMahon/Popp unanimous to table further discussion of Ordinance #457 to the next meeting.

No action was taken on the next item (consider summary publication of Ordinance #457).

Chris Byrd, County Engineer, reported that a plan/design is in place for road safety improvements for the Quiet Zone project at CR 55 (NE River Road); a component needed to make the crossing a quiet zone was that all three tracks need to be Constant Warning Time signal notification (the third track that leads into the old mill site does not have this signal notification). Byrd explained that BNSF recently provided a detailed estimate of what it would cost to complete this work and it totaled about $93,000 which triples the cost of the project (the cost to do the road work was $55,000). He stated options of: 1)

BNSF does the work and the county pays the $93,000; 2) County applies to the Federal Railroad Authority to have a Constant Warning Time determination (citing reasons why Constant Warning Time would not be needed at that track); Federal guidance states that this should be a joint application between BNSF and Benton County, however it is not required (no response has been received back from BNSF at this point regarding their interest in a joint application). Byrd pointed out that the county has a contract with a contractor to complete the road work—do we move forward with the road work knowing that it will not be a quiet zone for some time, or do we put the road work "on hold" knowing that the railroad right-of-way permit obtained by the contractor may expire and that the county could potentially be liable for costs of an additional permit? Byrd noted the possibility that the Federal Railroad Authority, after considering the application, may still require Constant Warning Time at that third track ($93,000); the risk is completing the road work now (at a cost of $55,000) and then not being able to complete the signal notification because of the cost. He clarified that the planned road work currently meets the requirements for a quiet zone; if the signal work were to be delayed due to funding issues, the rules could change whereby the completed road work no longer meets the guidelines for quiet zone. McMahon suggested moving ahead with a joint application with BNSF to the Federal Railroad Authority; if not acceptable to BNSF, the county would apply on their own. Noting that the road work funds were raised by Sauk Rapids Township, the City of Sartell, and a "citizens group", Bauerly suggested that those groups decide whether or not they desire to take the risk of moving ahead with the road work. Buerkle stated the need for consistency, as far as county involvement, with what was done with other crossings. McMahon/Bauerly unanimous to approve expenditures for the road work, contingent upon approval of the expenditures by Sauk Rapids Township, the City of Sartell, and the "citizens group".

Byrd explained that, due to the variance request to deviate from State Aid standards (a variance from 20' to 18' in parking stall width as part of the reconstruction of 4th street in downtown Foley), the County had to adopt a resolution indemnifying the State from any claims arising from deviating from State Aid Standards. Byrd noted that the resolution being proposed at this time would indemnify the County and have the City of Foley hold Benton County harmless from any claims arising from the variance request. Bauerly/Popp unanimous to adopt Resolution 2016-#7, whereby the City of Foley "indemnifies, saves and holds harmless" the County of Benton and its employees, from any claims or actions arising as a result of the granting of this variance (4th Street/CSAH 20), and authorize the Chair to sign.

Engineer's Report: 1) Seasonal bituminous patching/CSAH 8 reclaim project will be advertised this week (April 29th bid opening); 2) CSAH 3 "Up the Hill" project will be advertised next week (May 9th bid opening); and 3) Update on Engineering Technician recruitment.

Board members reported on recent meetings they attended on behalf of the county.

Under Commissioner Concerns, the Board discussed the concerns with CR 78 that were brought up during Open Forum; this portion of CR 78 is identified as a reclaim project in the five-year plan, scheduled for 2017 (could add 2' paved shoulders resulting in a 28' paved top). Byrd noted that this project is budgeted for $1.5 million next year; a rough cost estimate for reconstruction of that northerly portion of CR 78 would be $800,000/mile. Upon questioning by Bauerly, Byrd stated an estimate of $3.25 million in grading costs for five miles; construction would be at least two years out with design, right-of-way acquisition, and environmental permitting—other considerations would include utility relocation and widening of the bridge. Board members agreed to visit this site as part of their spring road tour.

Peschl/Popp unanimous to set Committees of the Whole: April 8, Transportation Roundtable Discussion Hosted by the St. Cloud Downtown Council; April 13, Little Rock Creek Sustainable Groundwater Use Planning Advisory Team; April 22, Public Works Spring Road Tour; April 28, Greater St. Cloud Development Corporation Annual Meeting; and June 14, Benton SWCD/NRCS Annual Conservation Tour of Practices.

McMahon/Peschl unanimous to adjourn at 12:12 PM.

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Spencer C. Buerkle, Chair
Benton County Board of Commissioners

ATTEST:

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Montgomery Headley
Benton County Administrator