

May 18, 2021

The Grant County Commission met at 8 AM with Commissioners Buttke, Mach, Stengel, Street and Tostenson present. Chairman Tostenson called the meeting to order with a quorum present and asked for a motion to approve the minutes. Motion by Buttke and seconded by Street to approve the minutes of the May 4, 2021 meeting. Chairman Tostenson called for a roll call vote. Buttke aye, Street aye, Stengel aye, Mach aye and Tostenson aye. Motion carried 5-0. Minutes filed. Motion by Mach and seconded by Buttke to approve the agenda as presented. Chairman Tostenson called for a roll call vote. Buttke aye, Street aye, Stengel aye, Mach aye and Tostenson aye. Motion carried 5-0.

Members of the public present were Paul Nelson and Daryl Liebe. Staff member present was States Attorney Schwandt.

Auditor's Account with the Treasurer for the month of April was noted.

**AUDITOR'S ACCOUNT WITH THE COUNTY TREASURER**

To the Honorable Board of County Commissioners,  
Grant County:

I hereby submit the following report of my examination of the cash and cash items in the hands of the County Treasurer of the County of Grant as of the last day of April, 2021

Cash on Hand	\$7,567.78
Checks in Treasurer's possession less than 3 days	\$648,754.93
Cash Items	\$0.00
<b>TOTAL CASH ASSETS ON HAND</b>	<b>\$656,322.71</b>
RECONCILED CHECKING	
First Bank & Trust	\$4,184.22
Interest	\$0.00
Credit Card Transactions/TIF Fee	\$23,328.73
First Bank & Trust (Svgs)	\$10,488,914.00
CERTIFICATES OF DEPOSIT	
First Bank & Trust	\$0.00
First Bank & Trust (TIF)	\$0.00
<b>TOTAL CASH ASSETS</b>	<b>\$11,172,749.66</b>
GENERAL LEDGER CASH BALANCES:	
General	\$3,758,586.79
General restricted cash	\$2,250,000.00

Cash Accounts for Offices General Fund	\$605.00
Sp. Revenue	\$754,057.69
Sp. Revenue restricted cash	\$0.00
Henze Road District	\$5,194.39
TIF Apportioning Northern Lights	\$0.00
TIF Milbank	\$1,886.17
TIF Northern Lights	\$0.00
Special assessment Land Rent	\$0.00
Trust & Agency	\$4,402,419.62
(schools 3,276,550.40, twps 251,260.99, city/town 409,820.75)	
<b>TOTAL GENERAL LEDGER CASH</b>	<b>\$11,172,749.66</b>

Dated this 13<sup>th</sup> day of May, 2021  
Karen M. Layher  
County Auditor

The Register of Deeds fees for the month of April were \$13,894.00. The Clerk of Courts fees for the month of April were \$9,434.39 and the Sheriff fees for the month of April were \$5,075.15 with \$2,441.15 receipted into the General Fund.

Chairman Tostenson called for public comment for any items not listed on the agenda. There was none.

**Drainage:** Chairman Tostenson adjourned the Board of Commissioners and convened the Commission acting as the Drainage Board.

Permit DR 2021-13 for Paul Nelson, for property owned by Neiland Nelson Trust, located in the NE1/4 FRL in 2-118-48 and for property located in the SE1/4 EX LOT 1 OF NEILAND AND BONITA NELSON ADDITION in 35-119-48 (Vernon West Township). The request, if granted, would control erosion. The Drainage Officer reported the certified letters to the downstream landowners had been sent out 14 days in advance. The tile will cross a township road and two township supervisors have signed the application for approval to cross the township road. The wetland determination is on file. Applicant Paul Nelson explained there are two small changes to the permit. The first is on the SW corner, a couple of tile lines will be extended into the Bill Schaffer property and the second tile extension is south of the building site. Paul stated he does have verbal permission. Written permission must be obtained. Commissioner Street reported he had met with the applicant to review the project and with the downstream landowner approval received, he moved to approve, and the motion was seconded by Buttke. Discussion was called. Commissioner Mach questioned if a hydrology study should be requested by the applicants today as the two projects being considered today go into the Whetstone and the Yellow Bank streams. He commented on the concerns downstream landowners have

expressed to him about the volume of water being added to the streams. Commissioner Street stated there is a time for requesting those studies, but today's permits go into a big stream and the downstream landowners have been notified. Chairman Tostenson noted the comments were well noted but this may not be the time to follow the criteria of the ordinance, maybe at a specified time. Applicant Nelson stated tiling reduces the watershed as it acts like a sponge. It puts the drizzle underground and releases the flow of water at a slower rate. Chairman Tostenson commented he understands the principles of drainage, but the discussion today resolves around the drainage ordinance and if the drainage board is following the steps in the ordinance. He assured the applicants the discussion does not reflect on their permit applications; the board wants a landowner to manage their land unencumbered by government interference. Chairman Tostenson reiterated Commissioner Mach comments that it is not the intention of the board to stop tiling, but the fact that the board is not following the ordinance as it is written.

Commissioner Stengel commented as long as the Board is not changing the water flow from one watershed to another, is the same amount of water in that area. Projects involving pumps need to be looked at carefully as pumping water over a hill would affect another watershed. Chairman Tostenson commented on tiling making a pathway for the water to travel. Commissioner Stengel spoke on tiling tempering overland flooding. Commissioner Street stated the new ordinance requires a final tile pattern be given to the drainage officer and believes that is required in the current ordinance also.

Chairman Tostenson called for the roll call vote. Buttke aye, Street aye, Stengel aye, Mach aye and Tostenson stated before he voted he wanted to make a statement. Chairman Tostenson stated we are charged as a drainage board to evaluate the permit. This has nothing to do with the current applicants. This is about the Board. Section 101 lists six items the Board is to consider. Some members have a different interpretation of how to manage those items. He referred to section 313 and read: in evaluating a drainage permit application, the board or the designated official shall consider the following criteria. He questioned if the Board has done all six criterion and how the Board will do these six items in the future if the drainage ordinance stays in effect. The six items are:

1. Whether the flow or quantity of water to be drained will overburden the watercourse into which the water will be drained. He asked, have we done that? We think we have, and we assume we have. I don't know.
2. Whether the drainage will flood or adversely affect the land of lower proprietors. We do not know.
3. Whether easements are required.
4. Whether consideration was given to sound water resource management policy, including the following:

- a. Whether it is shown that there will be a significant decrease in water quality resulting from the proposed drainage project.
- b. Whether, in evaluation the entire watershed, the resultant drainage will significantly increase flooding problems in the watershed.
- c. Whether the permanent storage of water on parcels in the application area is beneficial.
- d. Whether the area's erosion potential will be increased significantly due to the drainage of the water and the subsequent lack of wetlands to retard erosion.
- e. Whether the agricultural productivity was considered.
- f. Whether the drainage project will decrease local flooding problems.
- g. Whether fish and wildlife values were considered.

Chairman Tostenson stated he would not read those except item f. On this item he stated we assume; we have no study.

5. Whether the land receiving the drainage is to remain rural in character. He stated we do not know that. Someone could build in the flood plain area.

6. Any other factors deemed important.

Chairman Tostenson continued with reading Section 317. The Board or its designated official shall be guided by the following criteria:

1. Uncontrolled drainage into receiving watercourses which do not have sufficient capacity to handle the additional flow and quantity of water shall be considered to have an adverse effect. Chairman Tostenson stated we do not know that. In fact, we have not talked about this or if the Drainage Officer has researched this.

2. Whether drainage is accomplished by reasonably improving and aiding the normal and natural system of drainage according to its reasonable carrying capacity, or in the absence of a practical natural drain, a reasonable artificial drain system is adopted. He stated what the Board has is the landowner's testimony in the hearing. What we have is: I think so. Commissioner Street stated he disagrees. Chairman Tostenson stated this is not for rebuttal as this is his opportunity to explain his vote.

3. That amount of water proposed to be drained. Chairman Tostenson states we know we are draining water, but we do not know how much water we are draining.

4. The design and other physical aspects of the drain. He continues, this is well explained by the applicant.

5. The impact of sustained flows. Chairman Tostenson states he is sure the taxpayers of the county would rather have the Commission invest in services and

infrastructure that benefits the entire County than to take those resources to spend and develop a plan; or spend the funds on a study from a hydrologist as well as the time we invest in these permits.

In conclusion, having stated these issues, my vote for DR 2021-13 is nay. Motion carried 4-1 with Tostenson voting nay.

Permit DR 2021-16 for Jason Liebe for property owned by Daryl Liebe in the W1/2SW 1/4; SW1/4 NW1/4 EX RTY in 16-121-48 (Melrose Twp). The request, if granted, would control erosion. This permit is for nine acres to be tiled. Commissioner Stengel recused himself from discussion and vote due to this project connects to a tile on his land. Chairman Tostenson called for a motion. Motion by Mach and seconded by Street to approve DR 2021-16. Discussion was called and hearing none, Chairman Tostenson called for a roll call vote. Buttke aye, Street aye, Stengel recused from vote, Mach aye, and Tostenson voted nay as stated in the last permit. Motion carried 3-1 with Tostenson voting nay and Stengel recused.

Commissioner Stengel asked to address the Board and commented on how the Board talks about drainage and if a hydrology study needs to be done. He continues that a lot of this depends on the watershed. If ditches are twenty feet wide and six feet deep, then this does affect drainage. Ditches are courses with high flooding surges, whereas tiling is also drainage, but is tempered with a constant flow. He continued by saying as long as the watershed area is not changed, the tiling or underground drainage does not cause flooding whereas the ditches can cause flooding. The issue with downstream flooding is the increase in rainfall over the last few years, and the ditching done over the last 50 years as well as road structures acting as dams and when water breaches the road, flooding happens. Individuals who want to build next to a creek, take the risk when a rain event occurs.

Commissioner Mach questioned if these reasons are good enough to hold up in court. Commissioner Buttke stated there is the issue of blaming someone for the flooding. States Attorney Schwandt stated the issue of drainage comes down to an issue of liability for the County and if the County is named in a suit, the person who claims injury will look at the permits issued and claims the County did not follow the ordinance.

Commissioner Street commented the discussion being held claims that the Board has no idea what the tiling will be doing to downstream landowners. He continues that in most cases that is true, but if you consider all the hydrologists who have studied tiling, they will say that tiling decreases the water flow as it creates a sponge effect.

This concluded the business for the Drainage Board. Chairman Tostenson adjourned the Drainage Board and reconvened the Board of Commissioners.

**Highway:** Supt Schultz presented the documentation from Yankton County’s bid letting for equipment and personnel costs for bridge reconstruction. Supt Schultz is planning to use Hollaway Bridge and Culvert for reconstruction and repair of the larger bridge structures. Motion by Mach and seconded by Stengel to accept the bid of Hollaway Bridge and Culvert as accepted by the Yankton County Commission as allowed per SDCL 5-18A-22(3). Chairman Tostenson called for a roll call vote. Buttke aye, Street aye, Stengel aye, Mach aye and Tostenson aye. Motion carried 5-0.

**Excavator:** Supt Schultz discussed the need to purchase a mini excavator for bridge and culvert work. Quotes are being obtained. He stated he has budget authority within the 2021 budget for the purchase.

**County Road 18 and 34:** The Commission continued to discuss repair options for the two roads. At the prior meeting, a motion was made to submit an application for an agri-business grant by the July 15 deadline for an asphalt overlay on the two miles into LaBolt from Hwy 15 ( CR 18). Banner Engineering had prepared three cost proposals for County Road 34. They are a 3” overlay at \$449,755, a rebuild with Geogrid for a cost of \$2,195,240 and reclaim (grinding) asphalt service for \$1,052,907. The funding sources and time schedule for all these projects were discussed. Motion by Stengel and seconded by Mach to add County 34 by the Ethanol Plant for an agri-business grant application; to move this project up on the priority list on the 5-Year Plan and to send a letter to the businesses in these locations explaining the need for funding of these projects. Chairman Tostenson called for a roll call vote. Buttke aye, Street aye, Stengel aye, Mach aye and Tostenson aye. Motion carried 5-0. Motion by Buttke and seconded by Stengel to budget in the 2022 budget \$449,755 for the asphalt overlay on County Road 34. Chairman Tostenson called for a roll call vote. Buttke aye, Street aye, Stengel aye, Mach aye and Tostenson aye. Motion carried 5-0.

BIDS FOR FUEL				
DATE	BIDDER	ETHANOL	DIESEL #1	DIESEL #2
4/02	UPI	2.399		
	Cenex	2.42		

UPI was the low bidder for ethanol at 2.399.

04/14	UPI		2.21	
	Cenex		2.27	

UPI was the low bidder for Diesel 1 at 2.21.

04/21	UPI	2.49	2.24
	Cenex	2.46	2.29
Cenex was the low bidder for ethanol at 2.46 and UPI was the low bidder for Diesel 2 at 2.24.			
04/29	UPI		2.29
	Cenex		2.35
UPI was the low bidder for Diesel 2 at 2.29.			

**EM:** Manager Kevin Schuelke reported he had checked with Harvey at Milbank Communications and he is unable to continue with the text paging after the store closes because of equipment upgrades that are needed. After researching other options of providing text paging to the first responders, EM Manager Schuelke recommended the company called I Am Responding to provide this service. The cost is \$285 per agency (yearly) plus an initial set up fee of \$50 per agency with the notification to the ambulance at \$600 per year due to the volume of calls. Motion by Mach and seconded by Buttke to approve contracting with I Am Responding for text paging. Chairman Tostenson called for a roll call vote. Buttke aye, Street aye, Stengel aye, Mach aye and Tostenson aye. Motion carried 5-0.

**Detention Center:** Corey Johnson with G. A. Johnson Construction and Shawn Harding with HMN Architects presented a facility/operations assessment of the Detention Center and a spec drawing of an addition to the jail with a remodel of the present building. The present building was built in the 1970's. Mr. Harding explained over the decades, the environmental systems, detention technologies and design concepts have changed for jails. The report indicated the issues with the facility are more related to its function rather than construction. The proposed design has an administrative addition to the north of the present facility with the public entrance changed to this location, the addition of a sally port for secure entry of prisoners, an exercise yard, a remodel of the present facility and cells to meet the ADA standards. The work release area would be remodeled. A second-floor mezzanine area would be an addition for storage and built for adding ten beds for prisoners in the future, if needed. The first-floor remodel would be an eighteen-bed facility. G.A. Johnson Construction would provide an estimate of cost if the Commission would decide to move forward. Chairman Tostenson appointed a Committee of the States Attorney Schwandt, Sheriff Owen, Auditor Layher, Commissioners Tostenson and Mach as a core committee to study the building proposal. Also present were Sheriff Owen and Deputy Steffensen.

**Cash Transfers:** Motion by Street and seconded by Stengel to approve the cash transfer as per the 2021 budget. Chairman Tostenson called for a roll call vote. Buttke aye, Street aye, Stengel aye, Mach aye and Tostenson aye. Motion carried 5-0.

FROM	TO	AMOUNT
101 General Fund	226 EM Fund	40,000

**Malt Beverage Licenses:** Auditor Layher reported the renewals for the 2021 package off-sale Malt Beverage and SD Farm Wine licenses were complete. The state law was changed effective 7-1-2011 to remove the public hearing requirement for renewals of licenses. Motion by Mach and seconded by Buttke to approve the renewal of the licenses as presented for the period of July 1, 2021 through June 30, 2022. Chairman Tostenson called for a roll call vote. Buttke aye, Street aye, Stengel aye, Mach aye and Tostenson aye. Motion carried 5-0.

1. Bitter Sweet Lodge located at 15196 455<sup>th</sup> Ave., in Lura Township with a legal description of S 200' of West 300' PT Gov't 4 in the SW 1/4, 7-120-51, Grant County for Retail (off-sale) Package Malt Beverage
2. Gertje Van Lith Post 229 American Legion Club, located in Lot A NE1/4 NE1/4 (4.82A) Section 24, Township 121, Range 47, in Grant County, South Dakota for Retail (off-sale) Package Malt Beverage
3. Whetstone Creek Golf Course with the legal description of NW1/4 EX Lot 1, 2<sup>nd</sup> Country Club Addn., EX W 550' of OL A EX PT Platted and Sold and EX Road; Lt 1 Third Country Club Addn in NE1/4 & Lt 1, 4<sup>th</sup> Country Club Addn, Gov't Lot 4 (141.54 A) for Retail (off-sale) Package Malt Beverage
4. The Abbey of the Hills Inn and Retreat Center located in Lot 1 and Lot 2, Gilbert Hess Subdivision in the NE1/4 and in E1/2 NW 1/4 in Section 35, Township 121 North, Range 50 West of the 5<sup>th</sup> P.M in Grant County, South Dakota, for Retail (on-off sale) Malt Beverage and SD Farm Wine

**Parking Spaces:** Commissioner Buttke presented two quotes for installing parking spaces on the west side of library. Motion by Buttke and seconded by Stengel to postpone the acceptance of a bid for the parking space until itemized bids are submitted by the contractors. Tostenson called for a roll call vote. Buttke aye, Street aye, Stengel aye, Mach aye and Tostenson aye. Motion carried 5-0.

**Consent:** Motion by Stengel and seconded by Mach to approve the consent agenda. Chairman Tostenson called for a roll call vote. Buttke aye, Street aye, Stengel aye, Mach aye and Tostenson aye. Motion carried 5-0.

1. Approve request from Weed Supervisor to apply for the West Nile Prevention grant for approximately \$5,000 in grant funds



2. Declare surplus (2) Cole steel card index file cabinets, asset #01156 and #00313

**Unfinished Business:** Commissioner Buttke reported he had contacted management at Wells Fargo to ask if the corporation would be interested in leasing or selling their parking lot across the street north of the Courthouse. He will report additional information at a future meeting.

**New Business:** Motion by Mach and seconded by Buttke to hold a joint hearing on June 1, 2021 at 8 AM with the Planning Commission on proposed ordinance 2021-02 to consider a temporary ordinance regarding the issuance of medical marijuana permits. Chairman Tostenson called for a roll call vote. Buttke aye, Street aye, Stengel aye, Mach aye and Tostenson aye. Motion carried 5-0. The Commission will hold the first reading of 2021-02 by title only after the joint hearing.

**Correspondence:** None

**Claims:** Motion by Stengel and seconded by Mach to approve the claims. Chairman Tostenson called for a roll call vote. Buttke aye, Street aye, Stengel aye, Mach aye and Tostenson aye. Motion carried 5-0. A-OX WELDING, supplies 16.49; BANNER ASSOCIATES, hwy proj 1,969.50; BORNS GROUP, mailing expense 1,485.18; CENGAGE LEARNING, books 31.99; CENTER POINT, books 389.78; CENTURYLINK, phone 151.26; CITY OF WATERTOWN, 911 surcharge 6,242.87; CLIMATE AIR, maint 2,354.77; CONSOLIDATED READY MIX, gravel 29,306.25; CRAIG DEBOER, car wash usage 104.56; CREATIVE CO, books 155.84; GOVERNORS INN, motel 154.00; GRANT CO REVIEW, publishing 1,179.58; GRANT-ROBERTS RURAL WATER, water usage 40.60; HARTMAN'S, supplies 38.41; INGRAM, books & a/v 633.86; ITC, phone & internet 1,490.05; JEFFREY SIKORA, prof services 600.00; JEREMY WIESE, supplies 112.82; LARRY HOLTON, prof services 17,000.00; LEWIS, supplies 407.65; MARKVE INSURANCE SOLUTIONS, notary bond 60.00; MICROFILM IMAGING, scanner rent 642.00; MICROMARKETING, audio/visuals 112.77; MIDWEST TRUCK & PARTS, repairs 76.28; NOVAK SANITARY, shredding service 41.00; OTTER TAIL, electricity 3,022.94; QUILL, supplies 235.95; R.D. OFFUTT, supplies 1,110.12; REGENCY MIDWEST VENTURE, motel 202.00; RELX, online charges 725.00; RIVER STREET PETROLEUM, diesel fuel, propane 10,231.57; ROBERT HENNRICH, minor equip 244.00; RUNNINGS, supplies 332.94; SANDRA FONDER, prof services 50.00; SCANTRON, prof services 5,016.55; SD SECRETARY OF STATE, notary bond 30.00; STAR LAUNDRY, prof services 83.21; TECTA AMERICA, repairs & maint 801.02;

PENWORTHY COMP, books 104.16; TRAPP PLUMBING, repair & maint 323.34; TWIN VALLEY TIRE, supplies 584.00; UNZEN MOTORS, repairs 711.59; VALLEY OFFICE PRODUCTS, supplies 1,453.60; VALLEY SHOPPER, publishing 26.58; VERIZON WIRELESS, hotspot 38.52; VISA, books, gas, supplies, motel 1,464.09; WASTE MANAGEMENT, garbage service 227.50; WHETSTONE HOME CENTER, supplies 65.98; WHETSTONE VALLEY ELECTRIC, electricity & maint 1,252.43; XEROX, copier rent 545.00. TOTAL: \$93,679.60.

MONTHLY FEES: SD DEPT OF HEALTH, county health nurse 3,814.50; SDACO, ROD modernization fee 414.00; SD DEPT OF REVENUE, monthly fees 208,678.98; SD DEPT OF REVENUE, sales & use tax 1,447.24. TOTAL: \$214,354.72.

Payroll for the following departments and offices for the May 14, 2021 payroll are as follows: COMMISSIONERS 3,223.90; AUDITOR 7,936.60; ELECTION 26.93; TREASURER 5,227.80; STATES ATTORNEY 6,051.42; CUSTODIANS 3,014.30; DIR. OF EQUALIZATION 3,974.57; REG. OF DEEDS 4,480.51; VET. SERV. OFFICER 1,171.50; SHERIFF 13,032.67; COMMUNICATION CTR 6,360.00; PUBLIC HEALTH NURSE 792.00; ICAP 107.53; VISITING NEIGHBOR 1,828.00; LIBRARY 7,522.26; 4-H 3,513.20; WEED CONTROL 2,001.00; P&Z 750.50; DRAINAGE 931.00; ROAD & BRIDGE 32,159.09; EMERGENCY MANAGEMENT 2,587.00. TOTAL: \$106,691.78.

Payroll Claims: FIRST BANK & TRUST, Fed WH 8,335.79; FIRST BANK & TRUST, FICA WH & Match 12,976.12; FIRST BANK & TRUST, Medicare WH & Match 3,034.66; AAA COLLECTIONS, deduction 33.42; ACCOUNTS MANAGEMENT, deduction 96.43; AMERICAN FAMILY LIFE, AFLAC ins. 1,527.88; WELLMARK-BLUE CROSS OF SD, Employee health ins. 985.12; OFFICE OF CHILD SUPPORT ENFORCEMENT, child support 210.00; SDRS SUPPLEMENTAL, deduction 1,195.83; SDRS, retire 12,071.93. TOTAL: \$40,467.18.

It is the policy of Grant County, South Dakota, not to discriminate against the handicapped in employment or the provision of service.

The next scheduled meeting dates will be June 1 and 15 and July 6 and 16 (Friday), 2021, at 8 AM. July 7 and 8 budget meetings with various departments. Motion by Stengel and seconded by Street to adjourn the meeting. Chairman Tostenson called

for a roll call vote. Buttke aye, Street aye, Stengel aye, Mach aye and Tostenson aye. Motion carried 5-0. Meeting adjourned.

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Karen M. Layher, Grant County Auditor

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William J. Tostenson, Chairman, Grant County Commission