

## MINUTES OF MEETING

OF

### SANITARY AND IMPROVEMENT DISTRICT NO. 1 OF CASS COUNTY, NEBRASKA

A meeting of the Board of Trustees of Sanitary and Improvement District No. 1 of Cass County, Nebraska, was convened in open and public session at 8:00 a.m. on the 27th day of July, 2021, and to be held at 10250 Regency Circle, Suite 300, Omaha, Nebraska.

Present: Peggy L. Lawton, Jon Meyers, Wayne Breyfogle, Matt Burnham and Scott Pekarek. Also, in attendance were Mark J. LaPuzza, attorney for the District, Ed Hobza of Thompson, Dreessen & Dorner, Inc., Kraig Thelen, John Kuehl of D.A. Davidson & Co., and Jim Noerrlinger.

Absent: None.

Notice of the meeting was given in advance thereof by publication in The Plattsmouth Journal on July 22, 2021, a copy of the proof of publication being attached to these minutes. Notice of this meeting was simultaneously given to all members of the Board of Trustees, and a copy of their acknowledgment of receipt of notice is attached to these minutes. Availability of the agenda was communicated in the published notice and in the notice to the Trustees of this meeting. All proceedings of the Board were taken while the convened meeting was open to the attendance of the public. The agenda was at all times available at the office for the District at Regency Center, Suite 300, 10250 Regency Circle, Omaha, Nebraska 68114.

It was first publicly stated to all in attendance that a current copy of the Nebraska Open Meetings Act was available for review and indicated the location of such copy in the room where the meeting was being held.

The Board was next presented with consideration of its outstanding bills and invoices.

There was next presented a statement Thompson, Dreessen & Dorner, Inc., engineers for the District, presenting and recommending payment in favor of Kerns Excavating Co., Inc., for services rendered in connection with the project entitled Bullfrog Bay Water Main Relocation (Lake Wa-Con-Da), Payment Recommendation No. 1, in the amount of Fifty-Six Thousand Six Hundred Eighteen and no/100 Dollars (\$56,618.00).

There were next presented statements from Thompson, Dreessen & Dorner, Inc., engineers for the District, for services performed, as follows: (i) Invoice #144949, for March 2019 Flood Fight, in the amount of Two Thousand Four Hundred Sixty and no/100 Dollars (\$2,460.00), and (ii) Invoice #144950, for USACE Levy Project, in the amount of Seven Thousand Six Hundred Twenty-Three and 81/100 Dollars (\$7,623.81); said statements being in the aggregate amount of Ten Thousand Eighty-Three and 81/100 Dollars (\$10,083.81).

The Clerk next directed the attention of the Board of Trustees to the fact that D.A. Davidson & Co. will purchase Sixty-Six Thousand Seven Hundred One and 81/100 Dollars (\$66,701.81) in warrants at this time and that the contracted charge for such purchase of warrants is two percent (2%) or One Thousand Three Hundred Thirty-Four and 04/100 Dollars (\$1,334.04) in accordance with the financing agreement previously adopted by the Board. The Chairman recommended the issuance of a warrant for such amount to D.A. Davidson & Co.

There was next presented a statement from Nebraska Public Health Environmental Lab, for water testing, Invoice #541258, **having a credit balance. No payment was issued at this time.**

There was next presented a statement from Thompson, Dreessen & Dorner, Inc., engineers for the District, for services rendered in miscellaneous District matters, Invoice #144948, in the amount of One Thousand One Hundred Four and 40/100 Dollars (\$1,104.40).

There was next presented correspondence from Jim Noerrlinger, presenting and requesting payment in favor of Agrivision Equipment Group, LLC, for a purchase of a 5100E tractor with duals and front-end loader and an E15 rotary cutter for the District's use, in the amount of Eighty-Six Thousand Seven Hundred Seventy-Three and 75/100 Dollars (\$86,773.75).

The previously described bills, invoices, recommendations and statements having been presented for the Board's consideration and after review and discussion of such items, the following resolution was duly moved and passed on a **5-0** vote.

RESOLVED, by the Board of Trustees of Sanitary and Improvement District No. 1 of Cass County, Nebraska, that the Chairman and Clerk be and they hereby authorized and directed to execute and deliver Warrant Nos. 5943 through 5958, of the District, dated the date of this meeting, to the following payees and in the following amount, said Warrants to be drawn on the **BOND** Fund of the District and to draw interest at the rate of five percent (5%) per annum (interest to be payable on February 10 of each year) and to be redeemed no later than July 27, 2026, subject to extension of said maturity date by order of the District Court of Cass County, Nebraska, after notice is given as required by law, to-wit:

Warrant Nos. 5943 through 5953, each for the amount of Five Thousand and no/100 Dollars (\$5,000.00), and Warrant No. 5954, for the amount of One Thousand Six Hundred Eighteen and no/100 Dollars (\$1,618.00), payable to Kerns Excavating Co., Inc.

Warrant No. 5955 and 5956, each for the amount of Five Thousand and no/100 Dollars (\$5,000.00), and Warrant No. 5957, for the amount of Eighty-Three and 81/100 Dollars (\$83.81), payable to Thompson, Dreessen & Dorner, Inc.

Warrant No. 5958, for the amount of One Thousand Three Hundred Thirty-Four and 04/100 Dollars (\$1,334.04), payable to D.A. Davidson & Co.

FURTHER RESOLVED, by the Board of Trustees of Sanitary and Improvement District No. 1 of Cass County, Nebraska, that the Chairman and Clerk be and they hereby authorized and directed to execute and deliver Warrant Nos. 5959 and 5960, of the District, dated the date of this meeting, to the following payees and in the following amounts, said Warrants to be drawn on the General Fund of the District and to draw interest at the rate of six percent (6%) per annum and to be redeemed no later than July 27, 2024, subject to extension of said maturity date by order of the District Court of Cass County, Nebraska, after notice is given as required by law, to-wit:

Warrant No. 5959, for the amount of One Thousand One Hundred Four and 40/100 Dollars (\$1,104.40), payable to Thompson, Dreessen & Dorner, Inc.

Warrant No. 5960, for the amount of Eighty-Six Thousand Seven Hundred Seventy-Three and 75/100 Dollars (\$86,773.75), payable to Agrivision Equipment Group, LLC.

FURTHER RESOLVED by the Board of Trustees of Sanitary and Improvement District No. 1 of Cass County, Nebraska, that both they and the district hereby find and determine and covenant, warrant and agree as follows: the improvements and/or facilities being financed or refinanced by the above Warrants are for essential governmental functions and are designed to serve members of the general public on an equal basis; all said improvements have from the time of their first acquisition and construction been owned, are owned and are to be owned by the District or another political subdivision; to the extent special assessments have been or are to be levied for any of said improvements, such special assessments have been or are to be levied under Nebraska law as a matter of general application to all property specially benefited by said improvements in the District; the development of the land in the District is for residential or commercial use and the development of the land in the District for sale and occupation by the general public has proceeded and is proceeding with reasonable speed; other than any incidental use of said improvements by a developer during the initial period of development of said improvements, there have been, are and will be no persons with rights to use such improvements other than as members of the general public; none of the proceeds of said Bonds or any refinanced indebtedness have been or will be loaned to any private person or entity; the District hereby authorizes and directs the Chairperson or Clerk to file or cause to be filed, when due, an information reporting form pursuant to Section 149(e) of the Internal Revenue Code of 1986, as amended, pertaining to the above Warrants; and the District does not reasonably expect to sell or otherwise dispose of said improvements and/or facilities, in whole or in part, prior to the last maturity of the above Warrants.

FURTHER RESOLVED by the Board of Trustees of Sanitary and Improvement District No. 1 of Cass County, Nebraska, that the District hereby covenants, warrants and agrees as follows: (a) to take all actions necessary under current federal law to maintain the tax exempt status (as to taxpayers generally) of interest on the above Warrants; and (b) to the extent that it may lawfully do so, the District hereby designates the above Warrants as its "qualified tax exempt obligations" under Section 265(b)(3)(B)(i)(III) of the Internal Revenue Code of 1986, as amended, and covenants and warrants that the District does not reasonably expect to issue warrants or bonds or other obligations aggregating in the principal amount of more than \$10,000,000 during the calendar year in which the above Warrants are to be issued.

FURTHER RESOLVED, by the Board of Trustees of Sanitary and Improvement District No. 1 of Cass County, Nebraska, that this and the preceding Resolutions are hereby adopted as the Certificate With Respect to Arbitrage of the District pertaining to the above Warrants and the District and the Chairman and Clerk of the District hereby further certify, as of the date of the registration of the above Warrants with the County Treasurer of Cass County, Nebraska, as follows:

1. No separate reserve or replacement fund has been or will be established with respect to the above Warrants. The District reasonably anticipates that monies in its Bond Fund reasonably attributable to the above Warrants in excess of the lesser of: (a) ten percent (10%) of the net principal proceeds of the above Warrants, (b) the maximum annual debt service due on the above Warrants, or (c) one hundred twenty-five percent (125%) of average annual debt service due on the above Warrants will be expended for payment of principal of and interest on the above Warrants within thirteen (13) months after receipt of such monies. That amount which is currently held in the District's Bond Fund which exceeds the amount which is to be expended for payment of principal and interest on the above Warrants within thirteen (13) months after receipt of such monies, plus that amount arrived at pursuant to the immediately preceding sentence, will not be invested in any securities or any other investment obligations which bear a yield, as computed in accordance with the actuarial method, in excess of the yield on the above Warrants.

2. To the best of their knowledge, information and belief, the above expectations are reasonable.

3. The District has not been notified of any listing of it by the Internal Revenue Service as an issuer that may not certify its bonds.

4. This Certificate is being passed, executed and delivered pursuant to Section 1.148-2(b)(2) of the Income Tax regulations under the Internal Revenue Code of 1986, as amended.

The next order of business was discussion regarding the tractor purchase. The Trustees were reminded that the District has approved a contract to purchase a tractor and certain accessories. Jim Noerrlinger noted that it would perhaps be beneficial to have a grapple attachment, which was not a part of the current purchase. He estimated the cost of a grapple to be \$4,000.00-\$5,000.00.

The next order of business was discussion regarding the Corp of Engineers levy project. Ed Hobza of Thomson Dreessen & Dorner, Inc., noted that efforts were nearly complete to cause the subdivision of the house and lot owned by the District so that the lot could be sold to Dana Altman under the Purchase Agreement. Ed noted that once the District had gotten the Noerrlinger Farms property under contract, he believed that the Corp would begin moving forward more aggressively in its preparations for the levy improvement project. Ed also discussed that, although it is anticipated that some or all of the fill material can be taken from the immediate vicinity of little to no cost, the total commercial cost of all fill material required for the levy project could be approximately \$750,000.00.

The next order of business was discussion regarding the recently received determination on the District's appeal for road repairs with FEMA. The formal denial of the appeal had been provided to all Trustees in advance of the meeting and the Trustees had all reviewed the determination. It was noted that FEMA had denied the appeal on three independent grounds, any of which would provide a basis for denial. Kraig Thelen noted FEMA claimed the appeal was untimely because it had calculated the 60-day appeal period running from when the original denial was first opened via FEMA's electronic portal. Kraig noted, as he had been unaware that Jon Myers had opened the file, calculations for deadlines had been off by at least one day. Secondly, the appeal was denied based upon the claim that the road was not a "public road" available for public assistance because it was not used by the "general public". Third, the appeal was denied based upon a stated lack of evidence as to proof of pre-flood road conditions and sufficient evidence of maintenance.

Kraig presented that three possible actions existed for the District. First, the District could simply end the process, not submit any kind of appeal and move forward with repairs. Secondly, the District could file a second-tier appeal in a process very similar to the original appeal. Third, the District could request a civilian arbitration paneling.

The Trustees discussed that there would be some benefit to ending the appeal process, allowing the District to make its road repairs and discontinue appeal expenditures on this project. The second-tier appeal was noted to be similar in process and substance to the first-tier appeal based upon appeals submitted for the 2011 flooding. Mark LaPuzza noted that the legal cost would not be great, as it would involve essentially resubmission of prior evidence and arguments and other forms. Mark LaPuzza and Kraig Thelen noted that they had not fully researched all details and requirements of the civilian arbitration panel. Mark LaPuzza noted that the cost would likely be significant in preparing for a trial-like process and was likely to involve significant legal expense and preparation as well as potential expenses in document review and discovery. However, it was also noted that the process of pursuing a different system of adjudication was more likely to produce a different result. Kraig Thelen and Mark LaPuzza were asked to investigate information regarding the arbitration process and provide further guidance of the Trustees at subsequent meetings.

The next order of business was discussion regarding the purchase of the Noerrlinger Farms property. The Trustees were presented with a copy of an appraisal provided by Appraisal One of Plattsmouth, Nebraska related to the property owned by Noerrlinger Farms. Matt Burnham presented that the appraisal had been prepared with careful analysis of the property begin purchase, the quality of that property and the effect of taking on surrounding properties owned by Noerrlinger Farms. The Trustees discussed that the appraisal and conclusion contained therein had been shared with Noerrlinger Farms in advance of the meeting.

The Trustees discussed that, after presenting the appraisal to Noerrlinger Farms, Noerrlinger Farms had provided a rebuttal of the appraisal, requesting payment in the \$85,000.000-\$90,000.00 range for the property and all impacts. The basis for the counter proposal, as stated by Noerrlinger Farms, noted that several of the comparable sales were significantly aged. Additionally, the appraisal provided a low value to certain parts of the property, including the levy property. The Noerrlinger Farms representatives noted that when they had purchased property previously, the purchase was considered based upon an overall price per acre as opposed to an individual-type analysis.

The Trustees were reminded by Ed Hobza and Jim Noerrlinger, Lake Facility Caretaker, that the levy property was subject to an existing easement. There was also discussion as to the necessity of the property to the Corp of Engineers project, as well as discussion regarding the condemnation process.

At 8:40 a.m. a motion was made for the Board of Trustees to enter into executive session for the purpose of discussing price, terms and negotiations with respect to the purchase of the Noerrlinger Farms property. Upon a motion duly made and seconded and unanimously approved, the Board of Trustees was placed into closed session.

At 8:56 a.m. the Trustees convened the public meeting of the Board of Trustees of the District. It was noted that a copy of the Nebraska Opening Meetings Act was available for inspection and that the meeting would be conducted in accordance therewith as a public meeting from such point forward.

Upon exiting from the Executive Session, a motion was made to authorize terms of purchase of the Noerrlinger Farms property. After a full and complete discussion and upon a motion duly made and seconded, and upon a roll call vote, the Trustees, Peggy L. Lawton, Jon Meyers, Wayne Breyfogle, Matt Burnham and Scott Pekarek voted "Aye" with none voting "Nay" with the following resolution being thereby adopted and approved:

RESOLVED that the District shall offer to purchase real estate that includes Part of the NW1/4 16-10-14 (Parcel ID 130232343) approximately 19 acres more or less, and Part of the NE ¼ 17-10-14 (Parcel ID 130232521) approximately 5 acres more or less, for the amount of \$189,000.00. Such sale will be identified as contingent upon a timely, traditional home inspection by the Buyer, with the transaction to close upon the later of 30 days following execution of the Purchase Agreement and the re-platting of the real estate to remove the portion of the property necessary for the District levy improvement project.

RESOLVED FURTHER that Jon Meyer, Matt Burnham and Peggy Lawton are hereby authorized and directed to communicate the terms of such offer to the Purchaser and to execute any documents and agreements reasonably necessary to effectuate such transaction, including, without limitation, a Purchase Agreement.

RESOLVED FURTHER, following the execution of the Purchase Agreement, Purchaser and Purchaser's family members, under an appropriate agreement, will be permitted to occupy the property prior to closing and shall be reasonable for utilities, insurance, and maintenance of the grounds of the real estate during such occupancy.

The next order of business was water management relocation project. The Trustees were reminded by Ed Hobza of Thompson, Dreessen & Dorner, Inc., as to the status of ongoing work.

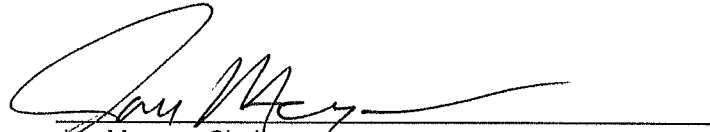
The next order of business was discussion regarding the scheduled meeting of the District. It was requested the District schedule consecutive meetings as soon as possible to allow for approval of any projects related to the Corp project and other matters of the District.

The Trustees were reminded that the finalization of the purchase of the Noerrlinger Farms property would require certain obligations to be met, including approval by Cass County of the underlying projects. The County had previously been very cooperative in offering informal approval. However, given that the property has now been identified and the project is nearing its start date, the Trustees were advised it is appropriate for the District to obtain written approval from the County, and for legal counsel and the District engineer to work together in that regard.

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SIGNATURES APPEAR ON THE FOLLOWING PAGE]**

There was next reviewed the Agenda which had been available for public inspection in accordance with the law prior to this meeting of the Board of Trustees and reported that all matters considered by the Board at this meeting appeared on the Agenda.

Jon Meyers, as Clerk for Sanitary and Improvement District No. 1 of Cass County, Nebraska (the "District") does hereby certify that the above proceedings are a true and accurate statement of the proceedings had by the District at its July 27, 2021, meeting.



Jon Meyers, Clerk