

PROCEEDINGS OF THE MURRAY COUNTY BOARD OF COMMISSIONERS
MURRAY COUNTY GOVERNMENT CENTER – SLAYTON, MINNESOTA
February 15, 2022, 8:30 a.m.

Pursuant to notice, the Murray County Board of Commissioners convened with the following members present in person: Commissioners; Molly Malone, Lori Gunnink, James Kluis, and Dennis Welgraven. Commissioner David Thiner, via Zoom, with no voting privileges. Also present in person was General Assistant, Samantha McClellan. County Attorney, Travis Smith, via Zoom.

The Chairman asked if there were any additions to the agenda, several were added.

It was moved by Gunnink, seconded by Welgraven and passed to approve the agenda with additions.

No conflicts of interest were identified.

It was moved by Welgraven, seconded by Kluis and passed to approve the minutes from the February 1, 2022, meeting.

OPEN FORUM / PUBLIC COMMENT

There was no one present for open forum.

COMMISSIONER WARRANTS

It was moved by Welgraven, seconded by Kluis and passed that all claims as presented were approved for payment. The Chairman was authorized to sign the Audit List dated February 15, 2022 with fund totals as follows and warrants numbered 167435 through 167495

County Revenue Fund	45,985.86
County Road & Bridge Fund	43,335.59
EDA	324.00
Ditch	404.07
Self-Insurance	392.93
Sunrise Terrace	1,418.02
SAWS	159.00
Total	92,019.47

DITCH BILLS

It was moved by Kluis, seconded by Gunnink and passed to approve the report of bills for payment of the Murray County Drainage Authority as follows:

<u>Bolton & Menk</u>		
21-674-6260	CD 22	3,112.00
21-807-6260	JD 3	9,105.00
	Subtotal	<u>12,217.00</u>

Total Ditch Bills 12,217.00

HVAC PAY AP. 9

It was moved by Gunnink, seconded by Welgraven and passed to approve HVAC Upgrade Pay Request No. 9 (Final) to Roadside Developers, Inc (d/b/a/ Bisbee Plumbing & Heating) for \$60,331.21.

SUBORDINATION REQUEST

It was moved by Gunnink, seconded by Welgraven and passed to approve a subordination agreement for Murray County Tax Parcel ID# 04-004-0030 and #03-029-0031 for Murray County Septic Liens (Recorded Document #251730 and #245082), further moving to authorize the Auditor-Treasurer to sign the agreement on behalf of the County.

RESOLUTION FOR 2022 HELP AMERICA VOTE ACT (HAVA) GRANT PROGRAM

Commissioner Gunnink presented the following resolution and moved for its adoption.

Resolution 2022-02-15-01

A Resolution Approving Application to the
2022 Help America Vote Act (HAVA) Grant Program

WHEREAS, during its 2021 1st Special Session, the Minnesota Legislature, via Chapter 12, Article 1, Sec. 41, directed the distribution of \$3 million from federal Help America Vote Act (HAVA) appropriations as grants to political subdivisions, and

WHEREAS, per statute, these funds must be used to improve accessibility to, implement security improvements for elections systems for, and/or fund other activities to improve the security of, federal elections. Regularly scheduled state elections in Minnesota are also federal elections, and

WHEREAS, Murray County is eligible for a maximum grant of \$21,837.09 and has identified eligible expenses estimated at \$10,810.

NOW THEREFORE BE IT RESOLVED, that the Murray County Board of Commissioners approves application to the 2022 Help America Vote Act (HAVA) Grant Program.

BE IT FURTHER RESOLVED, that Heidi E. Winter, Murray County Auditor-Treasurer and Jason Lohrenz, County IT Director are authorized to sign the grant application on behalf of Murray County.

The forgoing resolution was second by Commissioner Welgraven and there upon being put to a vote all members of the Board voted for its adoption.

2021 LICENSE CENTER UPDATE

License Center Supervisor, Dawn Butler, gave a yearend review of 2021, and provided a License Center Update.

PORTABLE RADIO'S

It was moved by Kluis, seconded by Welgraven and passed to approve purchasing 3 new Motorola APX 6000 radios from West Central Communications for the date contract price of \$4,295.00, with a total purchase price of \$12,885.00.

SAWS BOARD

Commission Gunnink relayed a message from the Shetek Area Water and Sewer Commission. They wanted to thank the Commissioners for loaning them the \$250,000 during the flooding. They repaid the loan with FEMA reimbursement, and really appreciated the help.

COMMITTEE UPDATES FOR PERIOD OF JANUARY 23 – FEBRUARY 5, 2022

Lori Gunnink: The Historical Society is doing a trivia night, March 5th, at the Hadley Community Center. To get on a team call or email the Museum. Commissioner Gunnink also reported the following from Minnesota River Basin (Area 2)/Redwood-Cottonwood Rivers Control Area: Holly 9 Sediment Pond, Murray County Design work is completed for this small basin which qualifies for funding through the Plum Creek Clean Water Fund grant. The structure is located just upstream of a larger dam and the intent is to create a small ponding area to remove sediment before it flows into the dam pond. Holly 10 Small Dam, Murray County Design work is underway on this dam located just off Plum Creek. The site appears to have good storage capacity. Funding will likely be available through the Plum Creek Clean Water Fund Grant.

Molly Malone: Casey Jones Trail is working with legislators to try to get funding for the trail from Westbrook towards Slayton.

Dennis Welgraven: The Energy Board talked about the carbon pipeline. This will not affect Murray County; and they don't foresee it affecting Murray County in the future.

SWENSON COUNTY PARK CAMPGROUND EXPANSION

It was moved by Gunnink, seconded by Welgraven and passed to approve the Swenson County Park Campground Expansion Project on Current Lake as recommended by the Murray Parks Advisory Commission, and to authorize County Board Chair Malone to sign the Conditional Use Permit Application for the project, and further, to waive the conditional use permit application fee.

EXTENSION ADMINISTRATIVE ASSISTANT OR EXTENSION COUNTY SUPPORT STAFF

It was moved by Welgraven, seconded by Gunnink and passed to approve the updated Extension job description, and getting the job description reprinted by David Brown & Associates.

COUNTY DITCH 22 IMPROVEMENT – CONSTRUCTION BID AWARD

It was moved by Malone, seconded by Gunnink and passed to approve the Office Memorandum from John C. Kolb, Regarding CD 22 Improvement Award of Contract, be made available to the public.

Heidi Winter reviewed the bid information from the February 1, 2022 meeting and outlined the following:

- Three bids were received and verified by Bolton & Menk. They recommended awarding the contract to the apparent low bidder, Noomen Excavating, LLC for \$377,521.52. A motion was

made and seconded (on 2-1-2022) to award to the low bidder but the motion failed. The Board did not reject the bids.

- On 2/7/2022 the Board received a letter from Dean Zimmerli, attorney for the Meyer Family, reminding the Board of its duty under the law to award the contract or the Meyers would seek a court order compelling the Drainage Authority Board to do so.
- On 2/09/2022 the Board received a memo from John Kolb, attorney for the Drainage Authority, outlining the court order establishing the project and reminding the Board of its responsibilities under the law. He recommended they award the contract to the low bidder or articulate a reasonable basis for the rejecting the low bid.
- On 2/14/2022 the Board received a letter from Lyle Noomen, Noomen Excavating, LLC indicating that he is comfortable with the bid he submitted and assured the Board that the dollar amounts he included are adequate.

County Attorney Travis Smith added that for the motion to be brought back, the motion should be made by someone on the prevailing side of the vote from 2/1/2022 (someone who voted against moving ahead).

Commissioner Welgraven asked who pays for the damages if the new tile is not able to take on the water in a large rain event and crops are flooded out. Attorney Smith reminded the Board that it has a professional engineers report that shows this will not happen, but in the event it would it would be reasonable to rely on that information, but that potential situation is far enough in the future that it is not relevant to the action the Board needs to take today. Attorney John Kolb joined the meeting and addressed the question about liability for damages. There is always a risk that a system will not work the way it was engineered. In the case of this improvement the Board specifically asked the Engineer to address the issue of damages as a result of the improvement. The engineer reported that any adverse effect would come back on the petitioners and not other landowners on the system. If in the event that damages occur in the future there is a mechanism under the law that parties can make a claim of the damages. If the damages are a direct result of the improvement, they can be awarded as part of the improvement cost, which would go back to the improvement beneficiaries.

Commissioner Kluis asked who pays for sediment removal in other parts of the drainage system as a result of the improvement. Kolb indicated that the removal of sediment is typically a maintenance cost which is a cost to the entire system. If the sediment removal is directly related to the improvement, those costs can be awarded as damages to the improvement; however, the engineer was not overly concerned about sediment removal with the project.

Commissioner Malone asked if the other drainage systems in the county would be put into jeopardy if Drainage Authority went against the judge's order in this case. Kolb did not feel it would have a significant impact on the other systems, but felt it could have a very significant impact on the County Ditch 22 system and landowners.

Commissioner Kluis suggested taking advantage of the 61 days the Board has to consider this award and wait until a full board is present. Kolb recommended that if they choose to wait, that the Board continue the discussion to a time certain. The Board did not feel they should wait.

Landowner concerns were raised by Swede Campbell, Chuck Ankrum, and Claudette Ankrum.

John Kolb reiterated his advice to the Board that they have a court order establishing the project and that he feels they should award the contract to Noomen Excavating, LLC unless they can find a reasonable basis to reject. The following points were outlined:

- The Board has received a bid that is compliant with the specifications and less than the engineer's estimate,
- The bidder is qualified to do the work and has specifically expressed that he is comfortable with the amount of his bid,
- The Board has a court order directing the Drainage Authority to award the contract,
- There is a statute that says the Drainage Authority shall award the contract unless there is a basis on which the Board does not award that is not an abuse of discretion,
- If the Drainage Authority chooses not to award, they could be unnecessarily subjecting both Murray County and the County Ditch No. 22 drainage system to unnecessary risk of further litigation that might ultimately result in awarding the contract.

Matt Berger, Gislason and Hunter, representing the Meyers reiterated what Mr. Kolb outlined. He reminded the Board that the court has already established the project and the Board's responsibility is to award the contract.

It was moved by Commissioner Welgraven, seconded by Commissioner Gunnink and passed to award the contract for the 2022 Construction for the Improvement to Murray County Ditch No. 22 to Noomen Excavating, LLC for the bid price \$377,521.52, further moving to reserve the option to make cash advances from other funds for the project and if determined necessary, reimburse those funds with future bond proceeds.

CLOSED SESSION

It was moved by Gunnink, seconded by Welgraven and passed to move into closed session pursuant to Minn. Stat. 13D.05, subd. 2(b) for preliminary consideration of allegations against an employee.

It was moved to come out of closed session. No board action was taken.

The meeting adjourned 11:58 a.m.

ATTEST:

Samantha McClellan, General Assistant

Molly Malone, Chairman of the Board