

Tentative Meeting Agenda: McPherson County Board of Commissioners
Meeting Location: McPherson County Courthouse in Commissioners Chambers
706 Main Street, Leola, SD 57456
August 2nd, 2022 at 9:00 AM

- 9:00AM Agenda, Conflicts of Interest, Approve the July 5th minutes
- 9:01AM Demkota 5-Mile Manure Variance (Tab #1)
- 9:10AM Spring Creek Colony Byproduct reassessment (Tab #1)
- 9:30AM Wachter Township- Quick Claim Deed for Land to County
- 10:30AM Drainage Board
- 10:45AM Public Concerns/Questions
- 11:00AM Carbon Pipeline (Tab #4)– Resolution 22-14; Zoning Ordinance 22-1 review draft, proposed timeline
- Executive Session 1-25-2.1 or 2.3
- Highway Department
- Road Maintenance Request – Stanley Spitzer
- 2023 Provisional Budget
- Plat Approval – Volzke First Addition Resolution 22-12 (Tab #1)
- Director of Equalization – Zillow Addendum to the GIS License Agreement, Resolution 22-13 Updated GIS Fees (Tab #1), Motion to name Brooke Graves, Director of Equalization as the authorized agent to sign the GIS Shapefile purchase contract on the county’s behalf.
- Approve updated Copy Charge and Public Record Request Form (Tab #2)
- Sheriff’s Office – E911 Board, Surplus 4 tires (40K miles)
- Emergency Management – Approve the updated HazMat and Emergency Operations Plans
- Motion to increase coroner pay to \$200/call.
- Partial Abatement 22-14: #7932 PAY 2022, county portion abated \$11.26
- Courthouse hours original request to shorten the hour lunch period to a half hour.
- Bills, Reports, Minutes Signing, meeting authorizations

Please contact the Auditor’s Office at least 24 hours in Advance to be placed on the agenda

Next Meetings

September 6th – 9 am

September 20th – 9am

Meeting Authorizations

SDACO Fall Convention Pierre Ramkota September 12th and 13th - Tiffany, Lindley, Vicki, Glenn, Commissioners?

Zoning Ordinance Pipeline Timeline (no special meetings)

- Commission reviews draft August 2nd
- Austin/zoning board makes any changes by August 12th
- publish hearing notice August 25th and September 1st (has to be to the papers by August 19th and draft published online and available in office by hearing publication date)
- First reading September 6th
- Second reading and adoption September 20th
- Full ordinance to the papers on September 23rd for publication on September 29th
- Ordinance in effect 20 days after publication (October 19th)

Zoning Ordinance Pipeline Timeline (Fastest possible)

- Commission reviews draft August 2nd
- Austin/zoning board makes any changes by August 4th
- publish hearing notice August 11th and August 18th (has to be to the papers by August 5th and draft published online and available in office by hearing publication date)
- First reading special meeting August 23rd in person
- Second reading and adoption could be via conference call August 30th (could push 2nd reading to Sept 6th it would change the rest of the timeline by 7 day later)
- Full ordinance to the papers on September 2nd for publication on September 8th
- Ordinance in effect 20 days after publication (September 28th)

Demkota Permit (from February 2022)

Feickert moved to amend Resolution 22-2 reducing the 5-Mile Manure (from out of county) permit fee from \$200/load to \$50/load. Motion died to due to lack of a second.

Neuharth moved and Beilke seconded to amend Resolution 22-2 reducing the 5-Mile Manure (from out of county) permit fee from \$200/load to \$100/load effective March 1st, 2022 with the rate to be revisited on August 2022.

_____ moved and _____ seconded to extend the 5-mile manure variance permit that was granted to DemKota Beef Plant at the February 2022 meeting until _____ (currently September 1st, 2022) the following conditions will continue: (1) To lessen road wear DemKota will travel the original route - hwy 10, north on C23, west on C2 and south on C21 to location for approximately 50% of the loads, the other 50% of the load will be hauled on the alternative route - enter McPherson County going west on C2, south on C21 to location, (2) approval must be obtained from Wachter and Weber Townships in McPherson County and also from Brown County and Dickey County if the approved route and/or alternate route includes any of their county roads.

Spring Creek Colony – by product discussion (from June 2022)

Spring Creek Colony is considering using a byproduct from a sunflower plant in Fargo as fertilizer, approximately 3 tankers per week. Reports were submitted to labs by the county and the material is non-hazardous. At this time no county permits are required, the commission will reassess at the August meeting.

RESOLUTION 22-12 – “PLAT APPROVAL”

“Be it resolved by the board of county commissioners of McPherson County, South Dakota, that the plat showing ‘Volzke First Addition in the NE ¼ of Section 30-T125N-R73W of the 5th P.M., McPherson County, South Dakota’, having been examined, is hereby approved in accordance with the provisions of SDCL 11-3, and any amendments thereof.”

RESOLUTION 22-13 - “ESTABLISHING FEES FOR GEOGRAPHIC INFORMATION SYSTEM (GIS) PUBLIC INFORMATION ACCESS AND PRICING SCHEDULE FOR DIRECTOR OF EQUALIZATION’S OFFICE”

WHEREAS, requests for computer generated copies of public information in the McPherson County Director of Equalization office has prompted the need for establishing office policy and fees;

WHEREAS, there is an inherent cost not only to generate records but to maintain records;

WHEREAS, the Board of County Commissioners have hereby elected to establish said GIS fees by resolution to be reviewed annually in January of each calendar year;

NOW THEREFORE BE IT BE RESOLVED that the following fee schedule be established:

| Product | Date Developed | Source | Format | Unit Size | Total Price |
|--|----------------|------------------|--------------------------|---------------------------|-------------|
| Tax Parcels with Parcel ID (Rural & City) with ownership, address, legal | Ongoing | McPherson County | Shapefile or Geodatabase | Approx. 8,500 | \$2,500 |
| Excel File with Ownership, address and legal | Ongoing | McPherson County | Shapefile or Geodatabase | Approx. 8,500 | \$2,500 |
| Rural Only | Ongoing | McPherson County | Shapefile or Geodatabase | Approx. 6,900 | \$2,000 |
| Eureka Only | Ongoing | McPherson County | Shapefile or Geodatabase | Approx. 900 | \$300 |
| Leola Only | Ongoing | McPherson County | Shapefile or Geodatabase | Approx. 500 | \$150 |
| Other Towns | Ongoing | McPherson County | Shapefile or Geodatabase | Approx. 235 | \$100 |
| Annual Update | Ongoing | McPherson County | Shapefile or Geodatabase | Purchase tax parcels Only | \$1,250 |

| | |
|---|---------|
| Excel File with ownership, address, legal | \$2,500 |
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BE IT FURTHER RESOLVED, that a request for computer-generated public records form must be filed & approved, a completed product license agreement must be filed and full payment must be received before release of records. McPherson County reserves the right to share data with other governmental/public entities.

RESOLUTION 22-14 - "A RESOLUTION IN OPPOSITION OF THE USE OF EMINENT DOMAIN"

Be it Resolved that the McPherson County Board of County Commissioners hereby are in opposition to the use of Eminent Domain by Summit Carbon Solutions for a proposed CO2 Pipeline Project in McPherson County South Dakota.

At the inception of eminent domain, found in the Fifth Amendment to the United States Constitution, it is stated that "Nor shall private property be taken for public use, without just compensation." *U.S. Const. Amend. V*. Constitutional scholars have opined that this clause limits the use of eminent domain in two ways. First, the taking of any private property must be for public use, and second, the government must pay for it. In its first review of eminent domain in 1876, the Supreme Court of the United States stated "The proper view of the right of eminent domain seems to be, that it is a right belonging to a sovereignty to take private property for its own public uses, and not for those of another. Beyond that, there exists no necessity; which alone is the foundation of the right." *Kohl v. U. S., 91 U.S. 367, 373-74, 1875 WL 17549, at *5 (U.S)*. In Kohl, the Court clearly stated that the right of eminent domain is one of only the government and shall be for a public use.

Since the Kohl decision, the use of eminent domain has become vastly expanded. In a more recent case, the Court stated "our jurisprudence has recognized that the needs of society have varied between different parts of the Nation, just as they have evolved over time in response to changed circumstances." *Kelo v. City of New London, Conn., 125 S.Ct. 2655, 2664, 545 U.S. 469, 482 (U.S.Conn.,2005)*. However, in finding that a private company's maximization of profit did not contribute the health of the economy, and was not a public use, the Michigan Supreme Court stated they do not believe "that these constellations required the exercise of eminent domain or any other form of collective public action for their formation." 471 Mich. 477 (Mich. 2004).

In South Dakota, the power of eminent domain also stems from our State Constitution. "Private property shall not be taken for *public use*, or damaged, without just compensation[.]" *SD CONST Art. 6, § 13 (emphasis added)*. The South Dakota Supreme Court has found that in order for something to be a public use, is whether or not the public, or a portion thereof, has a right to use it. *Illinois Cent. R. Co. v. East Sioux Falls Quarry Co., 144 N.W. 724, 728-731 (S.D. 1913)*.

It is this Board's view that the proposed Summit Carbon CO2 pipeline is for a private company's maximization of profit, does not require the use of eminent domain for the construction of its CO2 pipeline, and the public does not have a right to use the pipeline. For these reasons, the McPherson County Board of County Commissioners is in opposition to the use of eminent domain by Summit Carbon for its proposed CO2 pipeline in McPherson County.

Dated this 2nd day of August, 2022 at Leola, SD

_____ moved for the adoption of Resolution Number _____, _____ seconded the foregoing motion. Upon roll call vote: _____ voted "AYE". Motion carried and Resolution Number _____ was declared duly adopted.