

**McPherson County Board of Commissioners**  
**Minutes of Proceedings**  
**August 2<sup>nd</sup>, 2022**

The McPherson County Board of Commissioners met in regular session on Tuesday, August 2<sup>nd</sup>, 2022, in the Commissioners chambers. Chairman Kunz called the meeting to order at 9:00AM. Members' present were Rick Beilke, Sid Feickert, Delmar Metzger and Jeff Neuharth. Also present Austin Hoffman and Mark Opp.

Neuharth moved and Beilke seconded to approve the agenda of the August meeting. All voted in favor. Motion carried. No conflicts of interest were declared.

Metzger moved and Neuharth seconded to approve the minutes of the July 5<sup>th</sup> commissioners and July 5<sup>th</sup> drainage commission meetings. All voted in favor. Motion carried.

**INCREASED SALARIES:**

Feickert moved and Beilke seconded to increase the coroner pay to \$200/call. Upon roll call vote, Feickert, Beilke and Neuharth voted AYE; Kunz and Metzger abstained from voting. Motion carried.

**SALARIES OF OFFICERS AND EMPLOYEES:**

Commissioners, \$3,368.65; Auditor, \$7,211.23; Treasurer, \$7,211.23; State's Attorney, \$6,136.48; Government Building, \$3,380.00; Director of Equalization, \$10,527.90; Register of Deeds, \$7,161.23; Veteran Service Officer, \$1,769.14; Sheriff, \$7,877.82; Extension, \$3,291.01; Weed, \$22.11; Road & Bridge/Secondary Roads, \$48,821.09; Emergency Management, \$166.67; Eureka Joint Law, \$3979.79; Leola Joint Law, \$4,066.46.

McPherson County's Share of the following:

Social Security and Medicare: CorTrust Bank: \$8,293.92

Insurance: American Family, \$471.11, Avera Health, \$12,897.92; Guardian Vision, \$142.94; MetLife, \$169.91; South Dakota Retirement System, \$6,551.58; Colonial Life Vision, \$76.25.

**CLAIMS APPROVED:**

Agtegra-Leola Shop, Hwy/Soil Dist/Courthouse Supplies, \$10,571.91; Amazon, Supplies, \$158.98; Aramark, Courthouse/Hwy Supplies, \$679.00; ATT, Cellphone Service, \$891.62; Auto Value, Hwy Supplies, \$169.00; Samantha Boshard, VSO Reimb., \$117.60; Boulder Redi-Mix, Concrete, \$1,290.00; Kristi Brandt, Court Reporting, \$175.70; Butler, Hwy Supplies/Rental, \$12,565.37; Century Business Products, Printer Contract, \$12.02; CHS River Plains, Weed Chemical, \$250.00; Cole Papers, Supplies, \$97.76; Crawford Trucks & Equip., Hwy Supplies, \$24.52; Dean Schaefer Court Reporting, Mental Health, \$36.00; Trisha Erdmann, File Totes, \$44.64; Eureka City, Utilities/Weed Supplies, \$75.70; Eureka Fire Department, Fire Tax, \$8,872.39; Eureka Comm. Health Services, 3<sup>rd</sup> Quarter, \$7,125.00; Ever Crafters, Achievement Days Supplies, \$62.50; FEM, Utilities, \$367.63; Flinthills Resources, Hwy Supplies, \$93,116.89; Vicki Geffre, Upper Missouri Miles, \$48.72; Gene's Oil, Fuel, \$9,021.50; Brooke Graves, Meals/Miles/Carwash, \$300.69; Sharon Guthmiller, Miles/Meals, \$129.60; Doug Hatlewick, LEPC Meeting Miles, \$6.72; Heartland Waste, Utilities, \$35.00; Hunter Heinrich, Meals, \$54.00; Wesley Hilgemann, LEPC Meeting Miles, \$29.40; Hosmer Fire Department, Fire Tax, \$1,140.35; Cletus Imberi, Clothing Reimbursement, \$112.30; Jensen Rock & Sand Inc, Hwy Supplies-Hot Mix, \$2,670.55; Ken's

Food Fair, Supplies, \$10.19; Kimball Midwest, Hwy Supplies, \$487.81; Lakeside Lumber, Weed Supplies, \$35.99; Leola Ambulance Services, Ambulance Miles, \$3,779.50; Leola City, Utilities, \$243.46; Leola Fire Department, Fire Tax, \$9,942.63; Lewis & Clark Behavioral, Mental Health, \$184.00; Light and Siren, Sheriff Replacement Equip., \$2,872.00; Linde Gas & Equipment INC, Hwy Supplies, \$109.34; Long Lake Fire Department, Fire Tax, \$2,106.70; LSQ Funding Group LLC, Inmate Transport, \$3,309.82; Thomas Wayne Mahlke, Oversized Rock, \$3,985.66; Rodney Malsam, Meals, \$40.00; Maxwell Electric, Generator Service, \$311.11; Greg McCulloch, Meals, \$40.00; McPherson County Herald, Publishing, \$623.31; MDU, Utilities, \$908.12; Travis Mehlhaff, LEPC Meeting Miles, \$29.40; Mid-American Research Chemical, Courthouse Supplies, \$373.24; North Central Regional E911, E911 May-July, \$6,237.87; Northeastern Mental Health, 2022 Allocation, \$3,500.00; Northwest Blade, Publishing, \$749.89; CRS, Inmate Insurance, \$101.20; Pomp's Tire Service, Hwy Supplies, \$174.44; Premium Quality Lighting, Light Bulbs, \$726.43; Premier Equipment, Hwy Supplies, \$2,607.02; Jackie Rau, Supplies/Miles, \$243.56; RDO Equipment, Hwy Supplies, \$572.88; Ron's Service Center, Oil Change, \$52.42; Runnings, Hwy Supplies-Blades, \$54.99; Safe Harbor, DIV/MARR Fee Remittance, \$160.00; Michael Schwingler, Meals, \$40.00; SDAAO, Assessor School, \$700.00; Kris Jacobsen-CLERP Admin, 3<sup>rd</sup> Quarter, \$260.00; SDSU State 4-H Office, State Fair Parking Pass, \$55.00; Glenn Spitzer, Fuel, \$43.07; True By Hilton Deadwood, DOE Conf Hotel, \$602.56; Valley Telco, Phone/Internet, \$886.68; Van Diest Supply, West Nile Supplies, \$3,636.00; Visa, Supplies, \$1,272.14; Jim Wolf, Weed Eater String, \$10.64; Yankton County Treasurer, Mental Health, \$167.40; Avera Health, Dependent Insurance, \$971.80; State Treasurer, Sales/Excise Tax, \$3.81; SDACC M&P, June Fees, \$106.00; State Treasurer, Money Due to State, \$60,634.93; June Amount Remitted to Cities/Schools/Townships/Fire Districts, \$192,943.16; CorTrust Bank, Deliq. Tax, \$421.82.

Neuharth moved and Beilke seconded to approve the forgoing claims. All voted in favor. Motion carried.

**RESOLUTIONS:**

**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 5<sup>th</sup> 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.”

Dated this 2<sup>nd</sup> day of August, 2022 at Leola, SD.

ATTEST:

Lindley Howard  
McPherson County Auditor

Anthony Kunz  
Chairman of the Board of Commissioners

Metzger moved for the adoption of Resolution Number 22-12, Neuharth seconded the foregoing motion. Beilke, Feickert, Kunz, Metzger and Neuharth voted “AYE”. Motion carried and Resolution Number 22-12 was declared duly adopted.

**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.

Dated this 2<sup>nd</sup> day of August, 2022 at Leola, SD.

ATTEST:

Lindley Howard  
McPherson County Auditor

Anthony Kunz  
Chairman of the Board of Commissioners

Metzger moved for the adoption of Resolution Number 22-13, Neuharth seconded the foregoing motion. Beilke, Feickert, Kunz, Metzger and Neuharth voted "AYE". Motion carried and Resolution Number 22-13 was declared duly adopted.

**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 2<sup>nd</sup> day of August, 2022 at Leola, SD

ATTEST:

Lindley Howard  
McPherson County Auditor

Anthony Kunz  
Chairman of the Board of Commissioners

Feickert moved for the adoption of Resolution Number 22-14, Beilke seconded the foregoing motion. Upon roll call vote: Beilke, Feickert, Kunz, Metzger and Neuharth voted “AYE”. Motion carried and Resolution Number 22-14 was declared duly adopted.

## **OTHER MATTERS DISCUSSED AND ACTION TAKEN:**

### Demkota Permit

Representatives from Demkota, Adam Bode, Scott Langner, and Dan Dehaan gave an update. No liquid manure loads have been hauled into McPherson County since beginning of July. Total loads have reduced, and secondary solid manure sites are secured.

Beilke moved to amend Resolution 22-2 reducing the 5-Mile Manure (from out of county) permit fee from \$100/load to \$50/loads for the first 0-30 loads per month and \$100/load for 31+ loads per month beginning September 1<sup>st</sup>, 2022. All voted in favor. Motion carried.

Beilke moved and Feickert seconded to extend the 5-mile manure variance permit that was granted to Demkota Beef Plant at the February 2022 meeting until March 1<sup>st</sup>, 2023 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. All voted in favor. Motion carried.

### Spring Creek Colony – by product

Sam Wipf, Spring Creek Colony and Dan Dehaan gave an update on the byproduct the colony has been using as a fertilizer. The material is non-hazardous, no complaints have been received and no county permits are required.

### Wachter Township – Herb Flakoll

Neuharth moved Feickert seconded to accept via quit claim deed, Lot H-1 and H-2 in the Northeast Quarter (NE1/4) of Section Twenty-one (21), Township One Hundred Twenty-eight (128) North, Range Sixty-six (66) West of the Fifth Principal Meridian, McPherson County, South Dakota, from Wachter Township. All voted in favor. Motion carried.

### Courthouse Hours

The board considered shortening the lunch period from an hour to a half hour and closing the courthouse at 4:30pm. No action taken.

### Highway Department

Neuharth moved and Feickert seconded to have Scepaniak crush 30,000 tons of gravel in the Duane Rodgers pit off the Sully County gravel crushing bid of \$2.63/ton plus royalty. All voted in favor. Motion carried. Installing a cattle gate at the Fink pit was discussed. Glenn Spitzer will follow-up with pricing. A follow up to the safety issue at the intersection of 354<sup>th</sup> ave and SD Hwy 10 was discussed. SDDOT is willing to cover the cost of culvert extensions. The county will fill out a Highway Access Permit with SDDOT and request to widen the intersection from the current 23 ft to the maximum 40 ft.

Costs of a new Motor Grader was discussed. Small structure funding through the Rural Access Infrastructure Fund was discussed. McPherson County was allocated 115,897.57 in FY2023 with an allocation of 85,218.80 to be received in FY2024 and FY2025. Discussion was held on budget for the 201 and 295 funds. More discussion will be held on the 5-year plan and application requirements when more information is available.

### Stanley Spitzer – Road Maintenance Request

Stanley Spitzer requested maintenance on a minimum maintenance road. The county hwy department will address the concerns.

### Director of Equalization

Beilke moved and Neuharth seconded to have the chairman sign the Zillow Addendum to the GIS License Agreement. All voted in favor. Motion carried.

Beilke moved and Feickert seconded to name Brooke Graves, Director of Equalization as the authorized agent to sign the GIS Shapefile purchase contracts on the county's behalf. All voted in favor. Motion carried.

Discussion was held on updated GIS fees, resolution 22-13 was presented to the board. An update was given on the City of Eureka reassessment.

### Drainage Board

At 10:30AM Beilke moved and Metzger seconded to forgo meeting as the McPherson County Drainage Commission for the month of August due to no new permits. All voted in favor. Motion carried.

### Copy Charges

Feickert moved and Beilke seconded to approve the public records request form including copy charges of electronic records \$1/page, print: \$1 per 8.5x11 black and white, \$2per 8.5x11 colored (if available); Postage paid by the requestor plus \$1 unless an envelope is provided, \$1/page for fax transmissions; Searches requiring more than a 15-minute block of office staff's time will be charged per hour at the office staff's current rate of pay plus county paid benefits. All voted in favor. Motion carried.

### Sheriff Department/Emergency Management

Sheriff Ackerman reported that the sheriff's pickup ordered in January has been assigned a VIN number. An update on the regional jail taskforce meeting in Brown County was given.

Neuharth moved and Beilke seconded to approve the updated McPherson County HazMat and McPherson County Emergency Operations (LEOP) Plans. All voted in favor. Motion carried.

Sharon Guthmiller attended the E911 district meeting. With an update to the bylaws of North Central Regional E911 center the county will be required to pass a future ordinance.

### Public Concerns/Comments

At 10:45AM Aaron Eldridge, project manager and Trevor Jones, regulatory affairs division with Summit Carbon Solutions introduced themselves to the board. 13 citizens joined the meeting. Concerns were voiced about the survey crews in the county right of way. Sheriff Ackerman and State's Attorney Hoffman urged all parties to remain peaceful and keep safety in mind.

### Carbon Pipeline

Discussion was held on eminent domain resolution 22-14 was presented to the board. Discussion was held on the zoning ordinance rewrite. The commission reviewed the Hazardous Material Pipeline draft section. Setbacks and pipe depth were discussed. The commission considered passing the Hazardous Material Pipeline section as stand-alone ordinance. Potential timelines for ordinance hearings were discussed. The commission opted to not proceed with a stand-alone Hazardous Material Pipeline zoning

ordinance at this time. The moratorium that is in place was briefly discussed. The next zoning meeting is August 4<sup>th</sup> at 9am.

#### Executive Session

Beilke moved and Metzger seconded to enter executive session at 12:35PM to discuss legal matters. All voted in favor. Motion carried. Neuharth moved and Feickert seconded to exit executive session at 12:50PM. All voted in favor. Motion carried. No action taken.

#### 2023 Provisional Budget

The commission went through the expenditure requests from each department. Changes to the provisional budget were made. A provisional budget hearing will be held at 9am on September 6<sup>th</sup>, 2022, with final 2023 budget adoption taking place on September 20<sup>th</sup>, 2022.

#### Meeting Authorizations

Metzger moved and Beilke seconded to authorize the following meetings: Lindley Howard, Tiffany Weiszhaar, Vicki Geffre, Glenn Spitzer, Jeff Neuharth and Delmar Metzger to attend SDACO Fall Convention in Pierre mid-September; Dawn Jenner to attend the Safety Conference in Pierre, early November; Austin Hoffman to attend the State's Attorney training early October. All voted in favor. Motion carried.

#### Miscellaneous Items and Reports

Beilke moved and Neuharth seconded to approve partial abatement 22-14: PAY 2022, county portion \$11.26. All voted in favor. Motion carried. The following miscellaneous items and reports were reviewed and approved: Veteran's Service Officer July 2022 hours, Register of Deeds statement of fees collected during the month of July 2022 for the amount of \$4,984.75, Register of Deed's Modernization and Preservation fees collected during month of July 2022 for the amount of \$320.00, Auditor's Account with the County Treasurer as of July 31<sup>st</sup>, 2022 as follows: total amount of deposits in Leola Bank, \$425,685.91; total amount of actual cash, \$1,166.40; total amount of checks and drafts in treasurer's possession not exceeding three days, \$6,363.91; Itemized list of all items, checks and drafts in the Treasurer's possession over three days, \$10.00; Miscellaneous cash, \$0.00; CD's, \$1,165,002.48; Super savings, \$1,788,954.27; total, \$3,387,182.97.

At 1:55PM Metzger moved and Feickert seconded to adjourn the meeting. All voted in favor. Motion carried. The next regular meeting will be held on Tuesday September 6<sup>th</sup> beginning at 9AM. The next zoning meeting will be held on August 4<sup>th</sup> at 9AM.

ATTEST:

Lindley Howard

McPherson County Auditor

Anthony Kunz

Chairman of Board of Commissioners