

# Cherry County Board Minutes



## BOARD OF COMMISSIONERS MINUTES

March 9, 2021

The Cherry County Board of Commissioners met in regular session on March 9, 2021 at 10:00 AM in the Cherry County Commissioners Meeting Room, as per notice in the Valentine Midland News every week and with the agenda being on file in the office of the County Clerk. The meeting was called to order at 10:00 AM by Chairman Storer. Roll call was taken. Present for the meeting were Cherry County Commissioners Tanya Storer, Martin DeNaeyer, James Ward, and Cherry County Deputy Clerk Elise Hamling. The Open Meetings Act Poster was acknowledged by Chairman Storer and the Pledge of Allegiance was recited.

The Board of Commissioners regular meeting minutes from February 23, 2021 were read. DeNaeyer moved and Ward seconded to approve the minutes as corrected. Roll call vote: Aye – DeNaeyer, Ward, Storer. The motion carried.

The Board of Corrections regular meeting minutes from February 23, 2021 were read. Ward moved and Storer seconded to approve the minutes as corrected. Roll call vote: Aye – Ward, Storer, DeNaeyer. The motion carried.

Zoning Administrator Jessica Coyle presented Zoning Resolution # Z-80 CUP 004/19 Extension request as received from Snake River Founders, LLC and indicated that the requirements have been met and it is eligible for the requested extension to be considered.

Ward Moved and DeNaeyer seconded to approve the extension for Zoning Resolution #Z-80 CUP 004/19 for Snake River Founders, LLC. Roll call vote: Aye – Storer, DeNaeyer, Ward. The motion carried.

The Board discussed the Vrenders Marsh & Eby Lake Renovation Project with Chad Christiansen from the US Fish & Wildlife Service. The Board shared and discussed some concerns regarding water outlet control and previous issues with similar structures, and the potential impact to the county road as well as to the landowners within the immediate watershed. Additional items discussed included the anticipated project timeline, the construction specifications for the proposed fish screen as designed by the USDA NRCS, as well as the importance of ensuring that both the Sandhills Task Force and the US Fish & Wildlife parties maintain thorough communication with both the County Road Department as well as the affected landowners and to not disrupt important access at an inopportune time.

Commissioner DeNaeyer moved and Ward seconded to authorize Chairman Storer to sign the Vrenders Marsh and Eby Lake Renovation Project Agreement, friendly amendment was proposed, Storer moved, Ward seconded, and unanimous vote carried, to amend the motion to add 'Subject to the Sandhills Task Force notifying the Cherry County Road Department and impacted landowners for coordination of implementation date'. Roll call vote on the amended motion: Aye – Ward, Storer, DeNaeyer. The motion carried.

The Board reviewed the Tax Sale Report Certification as presented by Treasurer Kathy Hammond. Treasurer Hammond notified the Board of an unfiled Sheriff's Deed following recent tax sale.

The Board reviewed the Clerk of the District Court fee report from February 2021, Treasurer's fund balance listing from February 28, 2021, Operating Statement report of budget vs actual spending for January 2021, Cherry County Hospital Balance Sheets from January 31, 2021 and hospital statistics reports.

Sawyer Memorial Library Board Member Sharon Moreland met with the Board to discuss some changes made to the Sawyer Memorial Library, revision of their bylaws and a change in process regarding material purchases which will still be provided to schools through financial reimbursement rather than purchase/dispersion system in the past. The Library intends to offer all materials on hand to the schools, homeschooling families, and the local community during designated times in the near future which will be advertised locally. The Library Board anticipates no longer being in the County building they currently occupy sometime in June 2021.

County Road Superintendent Kent Lopez provided an update to the Board regarding the NEMA/FEMA appeal process and communications with other Counties regarding road maintenance tracking practices.

Larry Burbach with Nebraska Machine inquired about any upcoming equipment needs and discussed good maintenance practices with the Board and Superintendent Lopez.

The Board recessed for lunch from 12:05PM to 1:00 PM.

The Board received comments from the public during the allotted time.

At 1:30 PM, as advertised, the Board moved the meeting temporarily into the Cherry County Courtroom.

The Board discussed their own findings regarding inquiries made at the February 11, 2021 public hearing regarding CUP 001/20 for Danielski Harvesting & Farming LLC/Valentine Feeders Swine Facility. Dean Settje, founder of Settje Agri-Services and representative of the applicant answered questions asked by the Board. The Board inquired about the NDEE Requirements for soil sampling, the frequency and which test for which nutrients.

The Board engaged in discussion with Mr. Settje about the regulations dictated by the NDEE such as nutrient application planning and timing (specifically prior to planting), crop rotation planning and accounting, well monitoring and the location of those monitoring wells, and facility abandonment requirements.

Commissioner Storer moved and Ward seconded to approve CUP 001/20 Danielski Harvesting & Farming LLC/Valentine Feeders Swine Facility whereas the Cherry County Board of Commissioners has established the following Statement of Finding of facts and Conditions for approval of CUP:

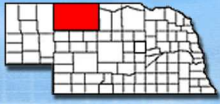
1. Danielski Harvesting & Farming LLC/Valentine Feeders Swine Facility filed an application for Conditional Use Permit to build a swine facility for 6896 Animal Units on property legally described as SE ¼, section 33, Township 34N, Range 30W, 6<sup>th</sup> P.M., Cherry County, Nebraska.
2. The Cherry County Planning Commission held a public hearing on the CUP on Nov. 12, 2020 and received testimony from witnesses.
3. The Cherry County Planning Commission met on Jan. 5 and presented a finding of facts and voted to recommend the CUP for approval.
4. The Cherry County Board of Commissioners held a public hearing on February 11 and received testimony from witnesses.
5. Cherry County zoning regulations state that “to minimize the potential for unreasonable odor impacts on abutting and neighboring properties and/or to minimize the extent of the number of properties which may be occasionally impacted through surface application of manure in any general location, the number of animal units in any confined animal feeding use shall not exceed 2,000 animal units per section of land. Authorization to exceed this limit may be approved by the County Board of Commissioners if the owner of the proposed confined feeding use can provide assurances, acceptable to the County Board of Commissioners that such larger numbers of animals will not result in more properties being subjected to unreasonable levels of odor for unreasonable durations periods.

The Board has been provided assurances.

The Board heard uncontroverted testimony from Settje Agri-Services and Engineering, Inc., at the Feb. 11 public hearing, based on the Nebraska Odor Footprint Tool, that illustrates that the proposed 6,896 animal unit facility will not cause more properties to be subjected to unreasonable levels of odor for unreasonable duration periods, at a 96% annoyance free standard.

The NOFT tool used by the Settje Agri-Services and Engineering Inc. group was recently upheld by the Nebraska Supreme Court case, Egan vs. Lancaster County, as a credible tool, in which the court deemed a 94% annoyance free standard acceptable.

We have received written testimony from purported experts hired by Ed Brown, an opponent to the project. Those experts have chosen to not appear before the Board but rather submit written opinions only. As such, this board has been deprived of the opportunity to observe and evaluate the credibility of these people. Additionally, this board has never been able to ask in person questions if these purported experts hired by Mr. Brown.



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In contrast, the applicants' expert, the Settje group, has appeared in person before both the Cherry County Board of Commissioners and the Cherry County Planning Commission to answer questions. This board has had an opportunity to observe and question them and deems them credible.

In addition, at the Feb. 11 public hearing opponent Ed Brown testified that he owns a feedlot in the state of Nebraska and employs the Settje Agri-Services and Engineering for odor management, compliance and consultation further illustrating the Settje groups' credibility.

6. In regard to air/water pollution control, waste management, runoff, facility engineering, disposal of dead animals, soil sampling, ground water test wells, fertilizer application/associated land requirements, and all other associated requirements, the permits/plans have been approved by the NDEE.

We have faith in the compliance requirements of the NDEE. For the county to do their job again would be duplicative and unduly burdensome to Cherry County taxpayers.

Certified well-driller Tonny Beck testified before the board. It is important to note Mr. Beck has testified both for and against projects of this type in the sandhills area. Of note, he does no business with the applicant. Mr. Beck testified that due to the caprock geological structure in this area that the chance of ground water pollution is minimal, even in the event of a catastrophe.

7. Cherry County is made up of primarily livestock producers. We reject any notion that people involved in livestock production have a greater propensity for criminal activity as suggested by Mr. Palmer, legal representation for opponent Ed Brown, in his testimony.
8. We reject any implicit or explicit notion, as brought up by Jessica Piskorski, legal representation for opponents, that the employment of any racial minority would have a negative effect on Cherry County. No evidence has been offered to suggest that this project will employ any illegal immigrant workers, as implied by the opponents.
9. The evidence presented to this board shows that this project will promote the public health safety and welfare of Cherry County.

Uncontroverted evidence has been offered that this facility will employ 80 people averaging \$48,000/year. No one disputes that this would have a significant positive economic effect for Cherry County.

One of opponent Ed Browns retained experts disputes the overall multiplier impact however he never appeared before the board leaving us unable to determine the credibility of his written statements.

Cherry County Board of Commissioners will require a Satisfactory Road Agreement for the construction phase of the project, including a requirement that all roads be returned to their prior condition, at the cost of the applicant.

Manure application shall be through injection and in the planting season.

Deep soil samples shall be taken and provided to the County Zoning Administrator every 3 years at the applicant's expense.

Site inspection shall be permitted unannounced, by the Cherry County Zoning Administrator or an appointee of the zoning administrator as needed.

Roll call vote: Aye – Ward, Storer, DeNaeyer. The motion carried.

The Board met with Margaret Byfield, Executive Director of American Stewards of Liberty regarding questions emanating from Conservation Easement CUP Application 003/20 by Bow & Arrow Ranch, LLC which was considered at the February 8, 2021 meeting. At that meeting the Board indicated a need for consulting a professional reference regarding the Endangered Species Act and Conservation Easements.

Ms. Byfield provided professional opinions to the Board regarding the listing and delisting processes for endangered species, status changes and the process by which those are reviewed. Ms. Byfield explained the process for endangered species identification, listing for protection, and planning for habitat recovery. Additionally, Ms. Byfield indicated the need for this wildlife management system to be more adaptive as once an animal is listed as endangered, it is then very closely monitored, knowledge about that species' adaptive abilities as well as increased understanding of its habitat and life cycles should be utilized in reevaluation of endangerment listing regularly, however the same funding is rarely available for this type of follow up work.

The Board inquired about the process of management of Endangered Species on private property and its implications on adjoining landowners concerning federal nexus compliance circumstances. Ms. Byfield shared opinions regarding potential effects of conservation easements to adjoining property owners, establishment of conservation corridors to connect different species populations and the unsavory processes by which those may occur, shift in the dominant purpose of land, tax deduction possibilities for landowners, difficulties terminating easements due to third party interest, and permanent change in primary land use.

The Board returned to their regular, advertised meeting room for the remainder of the meeting.

Ward moved and DeNaeyer seconded to adopt Zoning Resolution #Z-85 CUP 001/20 Danielski Harvesting & Farming LLC/Valentine Feeders Swine Facility and to authorize the Chairman Storer to sign. Roll call vote: Aye – Storer, DeNaeyer, Ward. The motion carried.

DeNaeyer moved and Storer seconded to approve claim # 21035781 to Heart City Lock & Key. Roll call vote: Aye – DeNaeyer, Storer. Abstain – Ward. The motion carried.

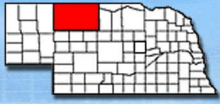
### March 9, 2021 CHERRY COUNTY CLAIMS LISTING

Claims were presented in the amount of	\$	4.20	
and disallowed in the amount of	\$	-	
A warrant was ordered drawn on the Road Fund in the amount of			\$ 4.20
<b>ROAD</b>			
Heart City Lock & Key/Charles Ward		Services	\$4.20
		<b>TOTAL</b>	<b>\$4.20</b>

Ward moved and DeNaeyer seconded to approve the remainder of claims. Roll call vote: Aye – Ward, Storer, DeNaeyer. The motion carried.

### March 9, 2021 CHERRY COUNTY CLAIMS LISTING

Claims were presented in the amount of	\$	78,441.02	
and disallowed in the amount of	\$	-	
A warrant was ordered drawn on the General Fund in the amount of			\$ 78,441.02
<b>GENERAL</b>			
Applied Connective Technologies		Services	\$409.00
Bacon Repair		Services	\$305.33
Black Hills Chemical		Supplies	\$385.12
Michael S. Borders		Services	\$281.00
Buckles Fuel Service, Inc		Supplies	\$39.62
Michael Burge		Services	\$75.00
Centurylink		Telephone Service	\$186.96
Centurlink		Telephone Service	\$1,734.38
Cherry County Court		Court Fees	\$153.00
Cherry County Sheriff		Services	\$90.00
Cherry County Treasurer		Bank Fees	\$5.00
Clearly Communications		Telephone Service	\$277.87
Consolidated Management Company		Services	\$355.59



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DVSOAN Treasurer, Tom Reimers		
DAS State Accounting 6506	Dues/Fees/Training	\$60.00
DAS State Accounting 6507	Services	\$448.00
Encartele Inc	Services	\$224.70
Equature/DSS Corporation	Services	\$600.00
Firstnet/AT&T Mobility	Services	\$4,500.00
Galls LLC	Telephone Service	\$605.03
Government Forms & Supplies	Services	\$665.84
Pat Greenough	Supplies	\$529.18
Henderson's IGA	Reimbursement	\$100.00
Johnson Law Office	Supplies	\$31.96
KBR Rural Public Power	Clerical Salary/Rent/Telephone/Equipment	\$4,003.00
Lindemeier Law Office	Services	\$91.49
Microfilm Imaging Systems	Services	\$20,403.34
Midwest Special Service	Services	\$232.00
MIPS	Services	\$910.50
Sally Monroe	Services	\$5,751.48
NACO Planning & Zoning	Services	\$169.64
National Association of Counties	Dues/Fees/Training	\$40.00
Nebraska ASSN Of County Treasurers	Dues/Fees/Training	\$450.00
Nebraska Safety & Fire Equip Inc	Dues/Fees/Training	\$50.00
Nebraska SOS Business Service	Services	\$275.00
Niobrara Valley Consultants	Services	\$20.00
Office Products	Services	\$1,773.10
Paper Tiger Shredding	Supplies	\$1,327.15
Peterson Beel, LLP	Services	\$50.00
Pit Stall	Services	\$1,300.00
Platte Valley Communications	Services	\$20.00
Prema	Services	\$1,521.29
Premier Parts & Paint	Services	\$209.04
Presto X	Services	\$666.25
Quadient Leasing	Services	\$81.00
Quigley Dill & Quigley	Services	\$850.00
RR Donnelley	Services	\$1,570.00
Sandhill Oil Company Inc	Services	\$85.16
Cynthia M Scott	Services	\$1,409.56
Eric Scott	Services	\$145.00
Scotty's Ranchland Foods, LLC	Clerical Salary/Rent/Telephone/Equipment	\$8,412.03
Cardmember Service	Supplies	\$73.70
Sennett, Duncan, Jenkins & Wickham, PC	Supplies	\$40.05
Elior Inc, Summit Food Service	Services	\$279.17
Sundance Enterprises	Services	\$5,510.59
Tony's Tire & Auto Repair	Services	\$46.00
True Value Hardware	Services	\$150.00
UNL Panhandle Research & Extension	Supplies	\$84.74
US Cellular	Services	\$290.00
Valentine Midland News	Services	\$70.17
City of Valentine	Publishing Services	\$2,167.17
Ward Plumbing & Heating LLC	Utilities	\$3,876.57
Wex Bank	Services	\$279.65
911 Custom	Fuel	\$1,255.30
	Services	\$439.30
	<b>TOTAL</b>	<b>\$78,441.02</b>

Claims were presented in the amount of

\$

152,350.80 .

and disallowed in the amount of

\$

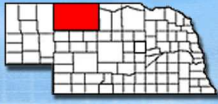
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A warrant was ordered drawn on the Road Fund in the amount of

\$

**152,350.80****ROAD**

Ashby Lumber Company	Services	\$13.96
Bacon Repair	Services	\$1,770.18
Bomgaars	Supplies	\$595.86
Boyd's Network Solutions	Services	\$2,361.76
Central Valley Ag Cooperative	Services	\$1,458.92
Cherry County Implement	Services	\$644.55
Cody Oil	Services	\$2,643.87
Village of Cody	Services	\$117.00
Consolidated Telephone	Telephone Service	\$188.72
Croell Inc	Services	\$204.19
Custer Public Power District	Services	\$163.11
Danielski Farms Inc	Services	\$8,362.95
DAS State Accounting 6507	Services	\$27.70
Dooley Oil Inc	Services	\$697.70
Galaway Field Repair, LLC	Services	\$1,317.50
Great Plains Communications	Telephone Service	\$213.90
Grimm's Pump & Industrial Supply	Services	\$74.83
Hometown Lumber & Construction LLC	Supplies	\$16.39
Inland Truck Parts Company	Services	\$1,606.92
J&J Trailer Sales	Services	\$94.00
KBR Rural Public Power District	Utilities	\$610.84
Kent Lopez	Reimbursement	\$50.12
Kimball Midwest	Services	\$1,672.70
Kohler Trailer Sales	Services	\$856.00
Kustom Rock Crushing	Services	\$18,600.00
Martin Auto Parts	Supplies	\$73.45
Martin Marietta Materials	Supplies	\$6,696.42
Menards	Supplies	\$888.99
Village of Merriman	Services	\$60.08
Mips Inc	Services	\$180.00
Mullen Auto & Diesel	Services	\$2,962.37
Neal Oil & Auto Center	Services	\$93.00
Nebraska Machinery Company/NMC Inc	Services	\$28,735.55
Nebraska Public Power District	Services	\$127.23
Office Products Center	Supplies	\$345.22
The Parts Company	Services	\$557.37
Perrett Construction LTD	Services	\$2,149.22
Pit Stall	Services	\$830.70
Platte Valley Communications	Services	\$115.28
Plus One Industries	Services	\$3,811.50
Powerplan	Services	\$40,765.47
Prema	Services	\$110.20
Quadient Finance USA	Supplies	\$150.00
Ron's Quik Lube	Services	\$106.10
Sandhill Fertilizer	Services	\$904.50
Sandhill Oil Company Inc	Fuel	\$11,194.53
Sandhills Ranch Supply	Services	\$892.71
Security First Bank	Services	\$3,985.21
Share Corporation	Services	\$437.88
Sundance Enterprises	Services	\$6.00
US Cellular	Services	\$69.23
Valentine Medical Clinic	Services	\$150.00
City of Valentine	Services	\$1,463.92
Wickett Construction	Services	\$125.00



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		<b>TOTAL</b>	<b>\$152,350.80</b>
Claims were presented in the amount of	\$	<b>3,380.06</b>	.
and disallowed in the amount of			.
A warrant was ordered drawn on the Visitor Promotion Fund in the amount of			<b>\$ 3,380.06</b>
<b>VISITOR PROMOTION</b>			
Borns Group, INC		Services	\$1,107.50
Centurylink		Services	\$229.36
Cherry County Visitors Promo Board		Reimbursement	\$633.29
Tony Hanson		Services	\$300.00
Henderson's IGA Inc		Supplies	\$37.70
L&J K Lawn		Services	\$130.00
Regina Osburn		Reimbursement	\$577.98
City of Valentine		Services	\$364.23
		<b>TOTAL</b>	<b>\$3,380.06</b>
Claims were presented in the amount of	\$	<b>1,240.00</b>	.
and disallowed in the amount of	\$	-	.
A warrant was ordered drawn on the Register of Deeds P&M Fund in the amount of			<b>\$ 1,240.00</b>
<b>REGISTER OF DEEDS P&amp;M</b>			
Spectra Associates, PC		Supplies	1240
		<b>TOTAL</b>	<b>\$1,240.00</b>
Claims were presented in the amount of	\$	<b>20,016.05</b>	.
and disallowed in the amount of	\$	-	.
A warrant was ordered drawn on the Health Insurance Claims Fund in the amount of			<b>\$ 20,016.05</b>
<b>EMPLOYEE HEALTH INSURANCE CLAIMS</b>			
Cherry County Clerk		Health Insurance Claims	\$ 20,016.05
		<b>TOTAL</b>	<b>\$ 20,016.05</b>
Claims were presented in the amount of	\$	<b>8,220.73</b>	.
and disallowed in the amount of	\$	-	.
A warrant was ordered drawn on the Bookmobile Fund in the amount of			<b>\$ 8,220.73</b>
<b>BOOKMOBILE</b>			
Valentine Public Library		Bookmobile	\$8,220.73
		<b>TOTAL</b>	<b>\$ 8,220.73</b>
Claims were presented in the amount of	\$	<b>3,628.70</b>	.
and disallowed in the amount of	\$	-	.
A warrant was ordered drawn on the Emergency Management Fund in the amount of			<b>\$ 3,628.70</b>
<b>EMERGENCY MANAGEMENT</b>			
Centurylink		Services	\$239.39
Niobrara Valley Consultants		Services	\$6.00
Office Products		Supplies	\$299.98
Region 24 Emergency Management		Services	\$3,083.33
		<b>TOTAL</b>	<b>\$3,628.70</b>
Claims were presented in the amount of	\$	<b>3,373.71</b>	.
and disallowed in the amount of	\$	-	.
A warrant was ordered drawn on the Inheritance Tax Fund in the amount of			<b>\$ 3,373.71</b>
<b>INHERITANCE TAX</b>			
Houghton Bradford Whitted PC		Services	\$3,350.00
Ronald F McCoy Estate		Reimbursement	\$23.71

		<b>TOTAL</b>		<b>\$3,373.71</b>
Claims were presented in the amount of	\$	3,995.00	.	
and disallowed in the amount of	\$	-		
A warrant was ordered drawn on the Courthouse (Special Building) Fund in the amount of			\$	<b>3,995.00</b>
<b>Courthouse (Special Building)</b>				
Power Protection Products Inc		Services		\$3,995.00
		<b>TOTAL</b>		<b>\$3,995.00</b>

At 4:05 PM, with no further business to come before the Board, Chairman Storer declared the meeting adjourned.

***These minutes are not the official record and may be corrected. A copy of the approved, official minutes is available to the public in the Cherry County Clerk's Office.***