

## MINUTES OF SIOUX COUNTY BOARD OF SUPERVISORS

### MEETING HELD ON SEPTEMBER 29, 1997

The Board of Supervisors of Sioux County, Iowa, met pursuant to adjournment at 9:30 o'clock A.M. with Chairman Loren Bouma presiding. Members present were William Vander Maten, Vernon Beernink, Loren Bouma, Bernard L. Smith and Hubert Schuller.

The minutes of September 23, 1997, were read and on motion and vote stand approved as read.

Committee reports were given this date.

Dennis Lange, County Auditor, reported on the canvass of Merged Area IV School Election returns for the school election held on September 9, 1997.

Motion by Beernink and supported by Vander Maten to approve the following Merged Area IV School Election returns:

<u>Offices</u>	<u>Votes</u>	
Director District IV		
Susanne Weaver	421	Elected
Ronald Van't Hof	231	
Scattering	1	
Director District VI		
Ken Vande Brake	108	Elected
Scattering	1	

Carried, unanimous in favor.

Motion by Vander Maten and supported by Beernink to go into executive session upon the recommendation of Mark Schouten, County Attorney, according to Section 21.5(1c & 1g), 1997 Iowa Code, to discuss strategy with counsel in matters that are presently in litigation or where litigation is imminent where its disclosure would be likely to prejudice or disadvantage the position of the governmental body in that litigation, and to avoid disclosure of specific law enforcement, such as current or proposed investigations, inspection or auditing techniques or schedules, which if disclosed would enable law violators to avoid detection. Mark Schouten, County Attorney; Charles Thoman, Assistant Attorney General; and Jeff Peters, CPA for

Williams & Company, Le Mars, were present for the executive session. Roll Call on Vote: Vander Maten, Yes; Beernink, Yes; Bouma, Yes; Smith, Yes; and Schuller, Yes. Carried, unanimous in favor.

Motion by Vander Maten and supported by Beernink to go out of executive session according to Section 21.5(1c & 1g), 1997 Iowa Code. Roll Call on Vote: Vander Maten, Yes; Beernink, Yes; Bouma, Yes; Smith, Yes; and Schuller, Yes. Carried, unanimous in favor.

As this was the date and 10:30 o'clock A.M. the time set for hearing on the Second and Final Consideration on the proposed Sioux County Ordinance No. 11 prescribing hazardous waste and hazardous substance regulations, said hearing was held after the Board was informed that notice had been published according to law. No comments were received in writing or presented orally against said proposed County Ordinance No. 11.

Mark Dunlop, County Emergency Management Services Coordinator and Zoning Administrator, was present for the hearing.

Motion by Smith and supported by Schuller to approve the Second and Final Consideration of proposed Sioux County Ordinance No. 11 prescribing hazardous waste and hazardous substance regulations, and to instruct the County Auditor to proceed with the publication of said ordinance as follows:

**SIoux COUNTY HAZARDOUS WASTE AND HAZARDOUS SUBSTANCE ORDINANCE**

**ORDINANCE NO. 11**

**AN ORDINANCE REQUIRING THAT PERSONS HAVING CONTROL OVER A HAZARDOUS SUBSTANCE OR HAZARDOUS WASTE SHALL AT THEIR OWN COST CLEAN UP ANY HAZARDOUS CONDITIONS RESULTING FROM THEM AND PROVIDING REMEDIES FOR THE COUNTY TO CLEAN UP HAZARDOUS CONDITIONS IF THE PERSON HAVING CONTROL OVER A HAZARDOUS SUBSTANCE OR HAZARDOUS WASTE FAILS TO DO SO, AND TO RECOVER THE DAMAGES AND COSTS FOR THE COUNTY, AND ESTABLISHING CRIMINAL PENALTIES FOR CERTAIN VIOLATIONS.**

Be it ordered by the Sioux County Board of Supervisors of Sioux County, Iowa:

**SECTION 1. PURPOSE.** In order to reduce the danger to public health, safety and welfare from the leaks and spills and other hazardous conditions caused by hazardous substances or hazardous waste, these regulations are promulgated to establish responsibility for the treatment, removal and cleanup of leaks and spills and other hazardous conditions within the County limits, and provide criminal penalties for certain violations.

**SECTION 2. CONSTRUCTION.** The Ordinance shall be broadly construed to effectuate its purposes.

**SECTION 3. DEFINITIONS.** For purposes of this Ordinance these words have the following meanings:

1. **“Hazardous waste”** means waste or combination of wastes that, because of its quantity, concentration, biological degradation, leaching from precipitation, or physical, chemical or infectious characteristics, has either of the following effects:

(a) Causes, or significantly contributes to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

(b) Poses a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. **“Hazardous waste”** may include but is not limited to wastes that are toxic, corrosive or flammable or irritants, strong sensitizers or explosives, all as defined by Iowa Code Section 455B.411 (3) (1997) as hereinafter amended or as further defined by administrative rules promulgated thereunder.

2. **“Hazardous waste”** does not include:

(a) Agricultural wastes, including manures and crop residues that are returned to the soil as fertilizers or soil conditioners.

(b) Source, special nuclear, or by-product material as defined in the Atomic Energy Act of 1954, as amended to January 1, 1979.

3. **“Hazardous substance”** means any substance or mixture of substances that presents a danger to the public health or safety and includes, but is not limited to, a substance that is toxic, corrosive, or flammable, or that is an irritant or that generates pressure through decomposition, heat, or other means. **“Hazardous substance”** may include any hazardous waste identified or listed by the administrator of the United States Environmental Protection Agency under the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, or any toxic pollutant listed under section 307 of the federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous substance designated under Section 311 of the federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous material designated by the secretary of transportation under the

Hazardous Materials Transportation Act, all as defined by Iowa Code Section 455B.411 (2) as hereinafter amended or as further defined by administrative rules promulgated thereunder.

4. **“Hazardous condition”** means any situation involving the actual, imminent, or probable spillage, leakage, or release of a hazardous waste or hazardous substance into the land, into a water of the state, or into the air or atmosphere, which creates an immediate or potential danger to the public health or safety or to the environment. For purposes of this division, a site which is an abandoned or uncontrolled disposal site as defined in Section 455B.411, subsection 1, is a hazardous condition, all as defined by Iowa Code Section 455B.381 (4) as hereinafter amended or as further defined by administrative rules promulgated thereunder.

5. **“Person having control over a hazardous substance or hazardous waste”** means any person, corporation, partnership, firm, associate, cooperative or government agency of any kind who at any time produces, handles, stores, uses, transports, refines, or disposes of a hazardous substance or hazardous waste, the release of which creates a hazardous substance or hazardous waste, bailees, carriers, and any other person in control of a hazardous substance or hazardous waste when a hazardous condition occurs, whether the person owns the hazardous substance or hazardous waste or is operating under a lease, contract, or other agreement with the legal owner of the hazardous substance or hazardous waste, all as defined by Iowa Code Section 455B.381 (7) as hereinafter amended or as further defined by administrative rules promulgated thereunder.

6. **“Cleanup”** means actions necessary to contain, collect, control, identify, analyze, cleanup, treat, disperse, remove, or dispose of a hazardous substance or hazardous waste, all as defined by Iowa Code Section 455B.381 (1) as hereinafter amended or as further defined by administrative rules promulgated thereunder.

7. **“Treatment”** means a method, technique, or process, including neutralization, designed to change the physical, chemical, or hazardous waste so as to neutralize it or to render the substance nonhazardous, safer for transport, amenable for recovery, amenable for storage, or to reduce it in volume. Treatment includes any activity or processing designed to change the physical form or chemical composition of hazardous substance or hazardous waste render it nonhazardous, all as defined by Iowa State Section 455B.411 (10) as hereinafter amended or as further defined by administrative rules promulgated thereunder.

**SECTION 4. CLEAN UP REQUIRED.** Whenever a hazardous condition is created in Sioux County by the deposit, injection, or dumping, spilling, leaking or placing of a hazardous waste or hazardous substance, so that the hazardous substance or hazardous waste or a constituent of the hazardous waste or hazardous substance may enter the environment or be emitted into the air or discharged into any waters, including ground waters, the person having control over the hazardous substance or hazardous waste shall cause the condition to be remedied by a clean up, as defined in the preceding section, as rapidly as feasible to an acceptable, safe condition.

If that person does not cause the clean up to begin in a reasonable time in relation to the hazard and circumstances of the incident, the County may by an authorized officer give reasonable notice, based on the character of the hazardous condition, said notice setting a deadline for accomplishing the clean up, and stating that the county will proceed to procure clean up service and bill the person having control over a hazardous substance or hazardous waste. If the bill for those services is not paid within thirty (30) days the Board of Supervisors may authorize the County Attorney to proceed to obtain payment by all legal means. The authorized officer shall report the nonpayment to the Board of Supervisors and may immediately seek any state or Federal funds available for said clean up. The Board of Supervisors may at any time authorize the County Attorney to seek injunctive relief concerning the hazardous condition from a County or agency.

**SECTION 5. LIABILITY FOR CLEANUP COSTS.** The person having control over a hazardous substance or hazardous waste shall be strictly liable to the County for all of the following:

1. The reasonable cleanup costs incurred by the County either directly or through contract as a result of the failure of the person having control over a hazardous substance or hazardous waste to clean up pursuant to this Ordinance or any state or Federal law or regulation the hazardous substance or hazardous waste involved in a hazardous condition.
2. The reasonable costs incurred by the County to evacuate people from the area threatened by the hazardous substance or hazardous waste involved in the hazardous condition.
3. The reasonable damages to the County for the injury to, destruction of, or loss of any and all County property, including parks and roads, caused by the hazardous substance or hazardous waste involved in a hazardous condition. The reasonable damages may also include the costs of assessing the injury, destruction or loss.
4. All other reasonable costs or damages incurred by the County caused by the hazardous substance or hazardous waste involved in a hazardous condition or the cleanup of it.

All persons having control over a hazardous substance or hazardous waste shall be jointly and severally liable under this Ordinance.

**SECTION 6. NOTIFICATIONS.**

1. A person having control over a hazardous substance or hazardous waste shall notify the Sioux County Services Coordinator and the Sioux County Sheriff of the occurrence of a hazardous condition as soon as possible, but not later than six (6) hours after the onset of the hazardous condition or discovery of the hazardous condition. The Sioux County Disaster Services Coordinator shall notify the proper state office in the manner established by the State of Iowa.

2. Any County employee or any member of a law enforcement agency who discovers a hazardous condition shall notify the County Disaster Services Coordinator and the Sioux County Sheriff. The Sioux County Disaster Services Coordinator shall notify the appropriate County departments and the proper state office in the manner established by the state.

**SECTION 7. POLICE AUTHORITY.** If the circumstances reasonably so require, the Sioux County Sheriff or the Sioux County Disaster Services Coordinator or any other peace officer or law enforcement officer may:

1. Order the evacuation of persons from their homes to areas away from the site of the hazardous condition.

2. Order the establishment of perimeters or other boundaries at or near the site of a hazardous condition and limit access to cleanup personnel.

3. Issue any other reasonable order to ensure the safety of persons or property or the containment of the hazardous condition.

No person shall disobey a lawful oral or written order issued under this section by the Sioux County Disaster Services Coordinator, Sioux County Sheriff or any other peace officer or law enforcement officer issued under this section.

**SECTION 8.** Any person, corporation, partnership, firm, associate, cooperative or government agency of any kind who violates the provisions of sections 6 or 7 of this Ordinance shall be guilty of a simple misdemeanor. A simple misdemeanor violation under this Ordinance shall carry a maximum penalty of a fine of \$100, plus surcharge and costs, or a sentence not to exceed 30 days in the county jail.

**SECTION 9. LIABILITY.** The County shall not be liable to any person for claims of damages, injuries or losses resulting from any hazardous condition, over which it has no control is defined in Iowa Code Section 3 (5). Efforts by or on behalf of Sioux County to control, treat, or otherwise cleanup hazardous wastes or substances shall not be a basis to impose liability on the county.

**SECTION 10. REPEALER.** All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

**SECTION 11. SEVERABILITY CLAUSE.** If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole of any section, provision or part there of not adjudged invalid or unconstitutional.

**SECTION 12. WHEN EFFECTIVE.** This ordinance shall be in effect from and after its final passage, approval and publication as provided by law.

PASSED AND ADOPTED THIS 29TH DAY OF SEPTEMBER, 1997.  
BY THE BOARD OF SUPERVISORS OF SIOUX COUNTY, IOWA.

/s/ Loren Bouma  
Sioux County Board of Supervisors

ATTEST: /s/ Dennis Lange  
Sioux County Board of Supervisors

Roll Call on Vote: Vander Maten, Yes; Beernink, Yes; Bouma, Yes; Smith, Yes; and Schuller,  
Yes. Carried, unanimous in favor.

As this was the date and 11:00 o'clock A.M. the time set for letting on Secondary Road  
Project No. L-5-91--73-84-GR, said letting was held.

Doug Julius, County Engineer, opened the bids as follows:

<u>Company</u>	<u>Amount</u>
Petit Construction, Inc., South Sioux City, Nebraska	\$284,676.76
Anderson Construction Company, Mapleton	309,641.15
Mathers Construction Company, Correctionville	310,276.73
Syndergaard Excavating, Inc., Milford	367,187.08
Beck Excavating, Estherville	499,921.47

Motion by Smith and supported by Beernink to accept the low bid from Petit  
Construction, Inc., South Sioux City, Nebraska, in an amount of \$284,676.76 for Secondary  
Road Project No. L-5-91--73-84-GR. Carried, unanimous in favor.

The following persons were in attendance for the aforementioned Secondary Road  
Letting:

Clark Kipfer, representative for Syndergaard Excavating, Inc., Milford  
Marlin Kalin, representative for Petit Construction, Inc., South Sioux City, Nebraska  
Ken Beck, representative for Beck Excavating, Estherville  
Steve Anderson, representative for Anderson Construction Company, Mapleton  
Bill Adams, representative for Sibley Concrete Products

Doug Julius, County Engineer, reported on the following quotes that were received for the  
purchase of motor grader blades:

<u>Company</u>	<u>Amount</u>
Contractor's Supply, West Des Moines	\$16,620.60
Utility Equipment, Des Moines	16,661.50

Motion by Schuller and supported by Vander Maten to accept the low quote from Contractor's Supply, West Des Moines, for the purchase of motor grader blades in an amount of \$16,620.60. Carried, unanimous in favor.

Jim Schwiesow, County Sheriff, met with the Board this date to report on an incident involving a person ordered to be confined in the Sioux County Jail by an officer of the Iowa Department of Transportation. The inmate then hemorrhaged and went into convulsions. The inmate was then transported to a Sioux Falls hospital for treatment. He reported that current Iowa law mandates that counties must pay for all medical expenses incurred by any state inmate while being confined in any Iowa county jail.

The consensus of the Board was to instruct Jim Schwiesow, County Sheriff, to commence proceedings to have the hospitalized inmate in Sioux Falls transported to Iowa City Hospitals as part of Sioux County's quota.

The Board approved payment of claims as presented by the County Auditor from all departments this date.

The Chairman adjourned the meeting until Monday, October 6, 1997.

Loren Bouma, Chairman  
Sioux County Board of Supervisors

ATTEST: Dennis Lange  
Sioux County Auditor