

# March 5, 2024

## Seward County Board of Commissioners

State of Nebraska)  
County of Seward) ss.

A regular meeting of the Seward County Board of Commissioners was convened in open and public session at 8:30 a.m. on March 5, 2024 in the Commissioner's room at the Seward County Courthouse. Notice of the meeting was posted on the Courthouse bulletin board and on the Commissioner's Room door. The agenda for all meetings is kept continually current and is available for public inspection at the County Clerk's Office during normal business hours. The agenda is held open until one business day prior to the meeting for appearance before the Board. The Board of Commissioners has the right to modify the agenda to include items of an emergency nature only at such public meeting.

The Seward County Board of Commissioners convened on March 5, 2024 at 8:30 a.m.

Present: Chairperson: Misty Ahmic

Members: John Culver, Ken Schmieding, Darrell Zabrocki

County Clerk: Sherry Schweitzer

Absent: Member: Raegan Hain

The Chairperson noted that the public meeting information is posted as required by law and available for public distribution if requested.

The Pledge of Allegiance was recited.

Jonathan Jank, Executive Director of Seward County Chamber & Development Partnership (SCCDP), updated the Commissioners on activities of his organization.

Those officials updating the Commissioners on activities of their office/department were Allison Rook, Jon Regnier, and Sherry Schweitzer.

Moved by Zabrocki and seconded by Schmieding to approve the minutes of February 27, 2024.

Affirmative Vote: Zabrocki, Schmieding, Culver, Ahmic

Motion Carried

### **Commissioners Reports:**

Commissioner Culver reported he attended the Seward/Saline Solid Waste meeting, checked roads/projects that are on the 1- & 6-Year Road Plan and checked into legislation pertaining to counties.

Commissioner Ahmic reviewed the roads/projects on the 1- & 6-Year Road plan, met with Mainelli & Wagner Engineers, met with Jeanne Wiemer in regard to designating a "Creative District", talked via phone with Senator Fischer and her staff about grant funds, attended a meeting with the Public Service Commission about broadband, worked on the BIP grant, had a Community Safety Action Plan (CSAP) meeting and attended the audit exit meeting with our county auditors.

Commissioner Schmieding reported he met with an official in which he is liaison to, will have a Region V meeting in Lincoln and a Visitors Committee meeting in the near future. He was also in contact with the Upper Big Blue NRD in regard to Arbor Day festivities.

Commissioner Zabrocki reported he attended a "Night at the Museum" event at the National Guard Museum, attended the audit exit meeting, the SouthEast Nebraska Development District (SEND) Board meeting, a Nebraska Intergovernmental Risk Management Association (NIRMA) Claims Committee meeting, the Utica Village Board meeting, went to County Tax Sale, met with the E911 Director, and will be at the Seward City Council meeting this evening.

The Commissioners recessed at 8:57 a.m.  
The Commissioners re-convened at 9:05 a.m.

At 9:05 a.m. Commissioner Ahmic led discussion about the item on the agenda to rescind Resolution # 3797 where the Board of Adjustment made a decision on a zoning action in regard to a tract of land in the SE ¼ of Section 29 Township 12 North, Range 3 East of the 6th p.m. She stated the information on the subject to rescind the resolution was gathered from the Nebraska Planning Handbook, the Nebraska Association of County Officials (NACO) Planning and Zoning information and an opinion from Andrew Willis of the Cline Williams attorney firm. Commissioners Culver, Zabrocki and Schmieding stated they weren't sure about making the decision on Resolution # 3797 because it ratified a decision made by a board that was not elected but rather appointed. Ahmic stated the Board of Adjustment is very valuable to Seward County, but that in this instance, an appeal should not have gone to that Board, but rather District Court.

Andrew Willis of the Cline Williams attorney firm was present and gave information about zoning regulations, the Planning Commission and Board of Adjustment authority. He also stated the process for the appeal was not handled procedurally correctly.

Denise Kaup, an attorney representing the landowner, made comments about the process of the Planning Commission, the Board of Commissioners, and the Board of Adjustment. She felt that in this instance, appealing to the Board of Adjustment was correct.

Mindy Clark, the landowner, spoke and said she followed procedure for the request to re-zone according to the Zoning Administrator's directions and felt the decision to appeal to the Board of Adjustment was proper. The Board of Adjustment changed the decision of the zoning request. She said she feels that the Commissioners are deciding differently now because of outside concerns. She stated she felt that the Commissioners have chosen not to abide by the regulations. She stated she was told by the Zoning Administrator's Office to appeal to the Board of Adjustment. She also requested that if the Board of Adjustment was not the correct appeal procedure, that she be given her \$600 back which was the fee for applying for the Board of Adjustment. Ahmic stated that could be done.

Josh Delcamp stated he felt the Commissioners do not know the procedures of Seward County zoning regulations.

There was lengthy discussion about the actions of the Planning Commission, Board of Commissioners and the Board of Adjustment and authority of each Board.

Moved by Zabrocki to adopt Resolution # 3801, which repeals a previously adopted resolution # 3797, rezoning a tract of land located in Seward County from A-1 Agricultural to TA-1 Transitional Agricultural and that the fees previously paid by the applicant be refunded.

Zabrocki withdrew the motion.

Moved by Zabrocki and seconded by Culver to adopt Resolution # 3801, which reconsiders Resolution #3797 in regard to a Board of Adjustment decision to rezone a tract of land in the SE ¼ of Section 29 Township 12 North, Range 3 East of the 6th p.m. with fees paid by the applicant to be refunded.

**COUNTY BOARD OF COMMISSIONERS  
OF SEWARD COUNTY, NEBRASKA**

**RESOLUTION # 3801**

**A RESOLUTION OF THE COUNTY BOARD OF  
COMMISSIONERS OF SEWARD COUNTY, NEBRASKA, REPEALING  
PREVIOUSLY ADOPTED RESOLUTION REZONING A TRACT OF  
LAND LOCATED IN SEWARD COUNTY FROM A-1 AGRICULTURAL  
TO TA-1 TRANSITIONAL AGRICULTURAL.**

**RECITALS**

A. Application was made by Nathan Merritt, Jessee Roberts, and Melinda Clarke (the "Applicants") for a change of zoning from A-1 Agricultural to TA-1 Transitional Agricultural on a tract of land located in the Southwest Quarter (SW ¼) of the Southeast Quarter (SE ¼) of Section 29, Township 12 North, Range 3 East of the 6th P.M., Seward County, Nebraska (the "Rezoning Application").

B. On October 23, 2023, the Seward County Planning Commission (the "Planning Commission") held a public hearing on the question of whether to recommend approval of the Rezoning Application to the Seward County Board of Commissioners (the "County Board"). The Planning Commission voted unanimously in favor of recommending denial of the Rezoning Application to the County Board.

C. On November 21, 2023, County Board held a public hearing on the question of whether to approve or deny the Rezoning Application. Based on the recommendation of the Planning Commission, the County Board voted to adopt Resolution #3787 denying the Rezoning Application.

D. The Applicants appealed to the Seward County Board of Adjustment ("Board of Adjustment") requesting review of the County Board's denial of the Rezoning Application.

E. The Board of Adjustment determined that the Rezoning Application should have been granted by the County Board and directed the County Board to adopt a resolution approving the same.

F. On January 23, 2024, the County Board adopted Resolution #3797 rezoning the tract of land requested in the Rezoning Application, as directed by the Board of Adjustment.

G. Pursuant to NEB. REV. STAT. § 23-168.03, the Board of Adjustment lacked jurisdiction to hear the appeal of the County Board's decision to adopt Resolution #3787, denying the Rezoning Application.

H. Due to the Board of Adjustment's lack of jurisdiction to hear the appeal, the County Board's subsequent adoption of Resolution # 3797 approving the Rezoning Application was *ultra vires* and unenforceable.

I. For the foregoing reasons, the County Board now desires to repeal and rescind Resolution # 3797.

NOW THEREFORE, BE IT RESOLVED, by the County Board, that Resolution # 3797 is hereby repealed and shall be hereinafter void and of no further force or effect.

BE IT FURTHER RESOLVED, that any other resolutions or actions that are contradictory or incompatible with the provisions of this Resolution are hereby rescinded.

Dated this 5<sup>th</sup> day of March 2024.

Moved by: Zabrocki                                      Seconded by: Culver  
Ayes: John K. Culver, Darrell J. Zabrocki, Ken Schmieding,  
Misty Ahmic, Chair of the Board  
Attest: Sherry Schweitzer, Seward County Clerk

Affirmative Vote: Zabrocki, Culver, Schmieding, Ahmic                                      Motion Carried

Moved by Zabrocki and seconded by Culver to open the public hearing on the proposed 1- & 6-Year Seward County Highway Dept. Program.

Affirmative Vote: Zabrocki, Culver, Schmieding, Ahmic                                      Motion Carried

Commissioner Culver led discussion and stated that he would like to add the hard surfacing of 154<sup>th</sup> Road from I-80 to Highway 34 to the 6-year plan.

Those who spoke at the hearing were:

Nyla Helge who made a comment and supported the addition of the road mentioned by Commissioner Culver on the 6-year road plan.

Brock Henderson also spoke in favor of adding that road to the 6-year road plan.

Martin Schildt also spoke in favor of the addition of the road to the 6-year plan also.

The Commissioners had several questions for Highway Supt., Jon Regnier.

Moved by Zabrocki and seconded by Culver to close the public hearing at 10:27 a.m.

Affirmative Vote: Zabrocki, Culver, Schmieding, Ahmic                                      Motion Carried

Martin Schildt of GBE CPA spoke about the Seward County Audit for 2022-2023. He stated there were a few findings about documentation. Zabrocki thanked him for their work for the audit.

Moved by Zabrocki and seconded by Schmieding to accept the Seward County Audit for 2022-2023 Fiscal Year.

Affirmative Vote: Zabrocki, Schmieding, Culver, Ahmic                                      Motion Carried

Marilyn Hladky, County Assessor, was present to ask the Board to send a letter to gWorks, notifying them that Seward County is discontinuing their contract for GIS services.

Moved by Culver and seconded by Zabrocki to authorize the Chairperson to sign a letter notifying gWorks of discontinuing their contract as of June 30, 2024.

Affirmative Vote: Culver, Zabrocki, Schmieding, Ahmic                                      Motion Carried

Maria' Scamehorn, E911 Director, was present to discuss the return of vacation hours for an employee. The department had a staff shortage, and the employee was training a new employee, so she was unable to take any time off and lost some vacation hours.

Moved by Zabrocki and seconded by Culver to return 14.65 hours for Employee #0022319.

Affirmative Vote: Zabrocki, Culver, Schmieding, Ahmic                                      Motion Carried

Moved by Schmieding and seconded by Zabrocki to authorize the County Clerk to advertise for bids for the mowing of abandoned cemeteries in Seward County.

Affirmative Vote: Schmieding, Zabrocki, Culver, Ahmic                                      Motion Carried

Commissioner Ahmic led discussion on having Marvin Planning Consultants assist the completion of the Zoning Regulation Updates. The Attorney's Office will look over the agreement and the item will be considered at a later date.

During the Legislative Update item on the agenda, Commissioner Culver stated he was specifically watching a Homestead Exemption bill and the Inheritance bill and County Veterans Service Committee 869. Commissioners Schmieding and Zabrocki were both keeping up on the Inheritance bill. Commissioner Ahmic stated she was watching the Inheritance bill and was grateful to Senators Raybold and Hughes for their help in opposition to it.

Commissioner Ahmic said she has been working on the Safe Street and Roads grant which is due in April. She commented that she has talked with several people about facts needed for the various grants she is applying for. She stated she has been advised that \$3 million will be awarded for 420<sup>th</sup> Rd, a/k/a Beaver Road hard surfacing project for their Community Projects Fund (CPF). She also gave information about Bridge Investment Project (BIP) grants. Zabrocki stated he had been to the Village of Utica Board meeting and gave information about their discussion of a grant writer. Seward County is considering employing a grant writer position with thoughts of having other entities, such as villages, join in the quest. Broadband information was also mentioned.

**Known items on the agenda for Board of Equalization on March 12, 2024 are as follows:**

8:30 a.m.

1. Convene and announce Open Meetings Law
2. Pledge of Allegiance
3. Discuss/Action - Approve minutes of February 27, 2024
4. Discuss/Action – Assessor Information Update

**Known items on the agenda for Board of Commissioners on March 12, 2024 are as follows:**

9:00 a.m.

5. Convene and announce Open Meetings Law
6. Pledge of Allegiance
7. Discuss/Action - Approve minutes of March 5, 2024
8. Discuss/Action – Claims for the period through March 1, 2024

**Other Business Matters to Address When Time Allows**

9. Discuss/Action - Public/Officials/Boards
10. Commissioners Reports
11. Discuss/Action – Legislative Update
12. Discuss/Action – Grant Funds being Sought by Seward County
13. Discuss/Action – Agenda for March 19, 2024

9:30 a.m. Discuss/Action – Res. – Adopt Seward County 1- & 6-Year Road Program

Moved by Zabrocki and seconded by Culver to adjourn at 11:09 a.m.

Affirmative Vote: Zabrocki, Culver, Schmieding, Ahmic

Motion Carried

State of Nebraska)

County of Seward) ss.

I, Sherry Schweitzer, the undersigned County Clerk of Seward County, Nebraska do hereby certify the foregoing minutes are true and are part of the official records of this office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 12<sup>th</sup> day of March 2024.

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County Clerk

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Chairperson