

MINUTES OF SPECIAL MEETING
DAVISON COUNTY COMMISSIONERS

The Davison County Board of Commissioners met in a Special Meeting on February 16th, 2010 at 7:00 p.m. at the Davison County Fairgrounds, Mitchell, South Dakota.

Due legal notice of these proceedings had been published in the legal paper of Davison County.

The Board of Commissioners meeting was called to order with the following persons present: Commissioners David Weitala, John Claggett, Jerry Fischer and Denny Kiner. Also present were Auditor Susan Kiepke, States Attorney Patrick Smith and Deputy States Attorney James Taylor. Absent was Commissioner Gerald Weiss.

Thereupon, the Board conducted a public hearing as required by South Dakota law relative to the reestablishment of township government in unorganized territory.

Commission Chair Weitala started out by giving a brief history of how Davison County got to the point it is, concerning the unorganized territory and what will happen if the territory is reestablished. This general, historical information can also be found on the Davison County website, which is www.davisoncounty.org, or on permanent file in the Davison County Auditor's office.

The following generally represents the testimony heard during public hearing. These minutes are intended to provide a general "sense of the comments" made by particular individuals. The identity of some persons making statements may be incorrect or may be omitted. The County Auditor has endeavored to give an accurate summary of commentary. These minutes should not be considered a verbatim record or transcript of the proceedings.

Mark Schilling started out by saying certain residents of unorganized territory within his acquaintance decided to hold a meeting after they realized they couldn't have funding to belong to the Mitchell Rural Fire Association. He felt it would be better if they could have their own levy. He stated that the 2005 expenditures for Secondary Road Maintenance was just under \$50,000.

Les Hildebrandt stated that former Mitchell Township was dissolved because there was not enough money to run Mitchell Township because the levies weren't high enough to generate adequate funding. He feels the County Commissioners won't foot the bill for the fire truck. He also wondered what would be gained by reestablishment.

Commissioner Fischer read an excerpt from the agreement between the Mitchell Fire Department and the Mitchell Rural Fire Association. The excerpt stated that the Association will process a grant for the purchase of a Grass Rig. Upon receipt of the funds from the grant for a grass rig the Association will immediately purchase the grass rig. In the event that the grass rig is not in place and delivered on or before December

31st, 2009, then and in that event the contract with the Association will terminate on December 31st, 2009.

Earl Bechen, former Treasurer of the former Mitchell Township, stated that he felt when they were organized their decisions pertaining to road maintenance were overridden by the county highway superintendent and/or the commissioners. He felt it was a waste of taxpayer money to pay supervisors of the township for seemingly having no authority.

Mike Hoffman feels the mil levy would not have to be raised more than what the current secondary road levy is now if Mitchell Township is reestablished. He feels there would be sufficient funds to perform necessary tasks, including fire protection, and the people in the territory would gain back local control.

Mr. Schilling agreed with Mr. Hoffman's statements.

Jerry Buchholz, of Beulah Township, estimated they spend about \$28,000 - \$30,000 per year. They give the Mitchell Rural Fire Association approximately \$1,600 per year. Beulah Township maintains twenty-three (23) miles of road.

Jack Docken and several others questioned why the County had a balance of over \$499,000 in the Secondary Road Fund and why that money couldn't be used for fire protection for the unorganized territory.

Chairman Weitala explained that the money is not ill gotten gain for the County, as has been a common misunderstanding. If a bridge or culvert would need to be replaced, that money could be used in one swoop. \$499,000 is not a large amount to have in reserve, considering the cost of road maintenance.

By statute, the \$499,000 can only be used for road maintenance in the unorganized territory of the County. It cannot be used for any other purpose, including fire protection. So, if Mitchell Township is reestablished, the County will still only use the money in the Secondary Road Fund for the maintenance of roads in Mitchell Township.

Chairman Weitala further stated that if there was any fair way to give \$17,000 to the Mitchell Rural Fire Association, the County would do so. However, there is not. The levy for fire protection is frozen at approximately \$3,500. The levy can only be raised by growth plus CPI (Consumer Price Index). Therefore, \$3,500 is the maximum the County can give the Mitchell Rural Fire Association for the year 2009 pay 2010.

Steve Thiesse posed the following questions. Didn't we already go through a reset? Are we organizing to adjust our finances?

Dennis Kunkel questioned the hidden costs that may be associated with reestablishing. He was concerned that the County may delay projects for the unorganized territory that would then fall under the responsibility of the Township. He was told, nobody can anticipate what might happen to a road or bridge from day to day.

Pam Miedema wondered if there was a “higher power” that would determine which projects had to be done and which projects didn’t. She was told, the higher powers are the constituents of the township and that township board actions are subject to review in the courts just like county commission actions.

Dean Strand spoke about the Mitchell Rural Fire Association. He stated that the MRFA pays the City of Mitchell \$5,000 per year to man equipment, keep equipment maintained and garaged. He also stated that the other townships are contributing to the purchase of a grass rig.

He read a letter that was given to the Davison County Commissioners which was dated September 15, 2009. The letter states that the Mitchell Rural Fire Association is informing the Davison County Commissioners, who are acting as governing body for the former Mitchell Township (also known as Mitchell Secondary Roads), that as of January 1, 2010, the Fire Association will no longer be able to provide fire protection to the former Mitchell Township area.

This action will be taken due to the inability to obtain the amount of \$17,260.80. This is the Mitchell Township share of 2009 expenses for the grass rig firefighting equipment and operating expenses.

It was noted by States Attorney Pat Smith that, under the contract between the City and the MRFA, the City is obligated to provide fire protection for all areas which are stated in the contract. There must be a six month notice in order for the contract to cease. If the contract were to cease, a complete new contract would need to be negotiated in order for anybody currently covered under the MRFA contract.

It was also stated the County, unlike townships, has no “general levy” for unorganized territory. A township can levy for its general fund and use those funds for any legal purpose. The County, however, does not have that ability as taxes formerly levied by a township are levied by the county for unorganized territory as special levies for roads or fire protection and can only be used for those purposes. There is no “general fund” raised from levies on unorganized territory that can be used to supplement, or be shifted to, roads or fire protection.

Maynard Hieb brought up the fact that a fire district could be formed to provide fire protection. A fire district is its own taxing entity. A fire district is accountable to the taxpayers as a fire district has to provide a budget and a financial statement to the County Auditor each year. This differs from a fire association as a fire association is not required to provide financial records to anyone and is not a public body politic nor a tax levying entity.

Mr. Strand stated that there were once plans to form a fire district but it would cost between \$8,000 and \$10,000 and take two years to get organized.

Karen Pooley asked about the bridge inspections she had seen approved in the paper. She was wondering if there was a problem with the bridges.

It was explained that the bridges have to be inspected at regular intervals as per SDCL 31-14-32. The inspections do not cost the townships anything.

SDCL 31-14-27 states that if a township board of supervisors or county highway superintendent within this state requests of its board of county commissioners a construction or replacing in its entirety of any bridge or the placing or replacing of any culvert with an opening of sixteen square feet or more including material upon the secondary roads within such township, the board of county commissioners may cause the same to be done and the township shall reimburse the county up to and including five hundred dollars, and any cost in excess of five hundred dollars shall be paid by the county. After the placing or replacing of any culvert as provided in this section, it shall be maintained and kept clean at the expense of the township. The construction or replacing of any bridge or the placing or replacing of any culvert with an opening of less than sixteen square feet upon a secondary road within a township shall be at the total expense of the township, and it shall be maintained and kept clean at the expense of the township.

There are four (4) bridges within the proposed Mitchell Township that the County is required to place or replace for a \$500 township contribution. At this time, the number of culverts is unknown. They are being inventoried with a GIS system.

When Mitchell Township voted to dissolve on June 7, 2002, there were twenty-eight (28) citizens that participated in the election. There were twenty-one (21) votes to dissolve and seven (7) votes not to dissolve.

Sheriff Dave Miles stated that everybody in attendance needs to talk to their neighbors and encourage them to vote on April 8, 2010.

There are approximately 650 registered voters in the unorganized territory of Davison County.

Harold Bietz added that the County was not “jumping up and down for joy” when the township dissolved. He feels the people of the unorganized territory should take care of their own area.

Relative to the county highway superintendent and/or commission “over riding” the wishes of the township board of supervisors relative to roads, it was noted that townships may contract with anyone they wish to maintain roads, do snow removal, *etc.* They do not have to use the Davison County Highway department.

There is some concern about the City continuing to annex property from the area. Even with continued annexations, the taxable valuation of unorganized territory has essentially doubled in the past eight years from around \$40 million to around \$80 million.

There being no further comments, Commissioners and Chairman Weitala thanked everyone for their attendance and the public hearing was adjourned.

Chairman of the Board of County Commissioners

ATTEST:

County Auditor