

## MORTON COUNTY COMMISSION REGULAR MEETING

October 13, 2022

The Morton County Commission Regular Meeting was called to order on October 13, 2022 at 5:30 PM by Chairman Boehm at the Morton County Courthouse, 210 Second Avenue NW, Mandan, North Dakota. Others present were Commissioners Zachmeier, Leingang, Buckley, Morrell and Auditor Rhone. Also present was States Attorney Koppy and Sheriff Kirchmeier.

Buckley moved and Leingang seconded to approve the agenda as amended. All voting aye, motion carried.

Leingang moved and Morrell seconded to approve the minutes of the September 27, 2022 regular meeting. All voting aye, motion carried.

Buckley moved and Morrell seconded to approve bills and payroll. All voting aye, motion carried.

Buckley moved and Leingang seconded to approve the name change of Custer Health to Western Plains Public Health. All voting aye, motion carried.

Buckley moved and Leingang seconded to approve out of state travel for employees of the Highway Department to attend the 37<sup>th</sup> Annual Local Roads Conference in Rapid City, SD on October 18-20. All voting aye, motion carried.

Leingang moved and Buckley seconded to approve the final plat of the short-form subdivision known as Brandys First Subdivision and a zoning map amendment from Agricultural to Residential district, as the subdivision conforms to the regulations established in Article 7 of the Morton County Land Use Code and is not in violation of policy 1.1.2 of the 2045 Morton County Comprehensive Plan. All voting aye, motion carried.

Morrell moved and Buckley seconded to approve the preliminary plat of a short-form subdivision known as Shaw Subdivision, as the subdivision conforms to the regulations established in Article 7 of the Morton County Land Use Code, and facilitates the orderly arrangement of agricultural lots for transfer. Motion Carried.

Leingang moved and Buckley seconded to approve the preliminary plat of a long-form subdivision known as Homestead 1883 Subdivision and a zoning map amendment from Agricultural to Residential district on lots 1 thru 3 only, as proposal conforms to policy 1.1.2 of the Comprehensive Plan. All voting aye, motion carried.

Buckley moved and Morrell seconded to approve the final plat of the short-form subdivision known as CBM 2 Subdivision and a zoning map amendment from Agricultural to Industrial district, as the subdivision conforms to the regulations established in Article 7 of the Morton County Land Use Code and is compatible with surrounding land users. All voting aye, motion carried.

Morrell moved and Leingang seconded to approve a special use permit for a telecommunications tower, not to exceed 250' in height, and equipment compound in the SW ¼ of the SW ¼ of Section 20, Township 137N, Range 84W, as the proposed site is in a remote location and compatible with surrounding agricultural land uses, provided that the tower location meets all the specific use standards established in Section 5-190 of the Morton County Land Use Code and as further detailed in the staff

report. All voting aye, motion carried.

Chair Boehm opened a public hearing at 6:00pm on the Petition to move land from the New Salem Rural Fire District into the Almont Rural Fire District.

Chair Boehm closed the public hearing at 6:01pm.

Morrell moved and Leingang seconded to approve the petition to move land from the New Salem First District into the Almont Rural Fire District as presented. All voting aye, motion carried.

Commissioner Zachmeier was recused for the Special Assessment District item due to conflict of interest.

Morrell moved and Leingang seconded to certify the special assessments for Special Assessment Districts #2187, 2188 & 2189 as certified by the Special Assessment Commission on August 30, 2022. All voting aye, motion carried.

Leingang moved and Morrell seconded to enter into executive session as allowed by NDCC 44-04-19.1 for attorney consultation regarding the legal claims alleged against the County by Gabrielle Goter and her Attorney. All voting aye, motion carried.

The executive session began at 6:50PM and was attended by Commissioners Zachmeier, Leingang, Buckley, Boehm and Morrell. Also in attendance were Auditor Rhone and Attorney Heifort.

The Executive Session adjourned at 7:06PM and the Morton County Commission reconvened with all members present.

Zachmeier moved and Morrell seconded to **deny the appeal and grievance of employment termination filed by Gabrielle Goter against the Morton County States Attorney's Office due to the following: The Morton County States Attorney is separately elected by the citizens of Morton County as required by NDCC 11-10-02. The Morton County States Attorney has the authority to assign an Assistant States Attorney as he sees appropriate as allowed by NDCC 11-16-02. The Morton County States Attorney authorized the Morton County Auditor's Office and thereby the Morton County Human Resource Director to retain Pemberton Law Office from Fergus Falls, Minnesota to conduct an Independent Fact-Finding Investigative Report regarding the Morton County States Attorney's Office and Gabrielle Goter's employment as required or allowed by NDCC 11-16-08. That Independent Investigative Report was completed to standard. The Morton County States Attorney as separately elected has the authority to discipline employees within the Morton County States Attorney's Office and the Morton County Commission may not restrict or remove a States Attorney's authority to terminate an employee hired by the States Attorney except through personnel policies that do not usurp or significantly interfere with the States Attorney's authority. The Morton County Commission has approved an employee handbook. The employee handbook states employment with Morton County is an "at-will" basis and may be terminated at any time with or without cause and with or without notice. The employee handbook includes provisions dealing with harassment and protection against retaliation and reprisal and says an employee who is found to have knowingly engaged in or knowingly condoned, encouraged, or perpetuated harassment, retaliation, or reprisal shall be subject to disciplinary suspension, demotion, and termination. The employee handbook also includes a provision for disciplinary action and states discipline in the form of a verbal warning may be imposed**

**by the “Department Head/supervisor,”. A States Attorney’s failure to take disciplinary action against an employee in the States Attorney’s Office may impose potential financial liability on our county; however, there is no authority permitting the County Commission to take disciplinary action up to and including termination against an Assistant Attorney in the States Attorney’s Office. The Morton County Commission personnel polices do not give the County Commission authority to impose disciplinary action up to and including termination of an Assistant Attorney in the Morton County States Attorney’s Office. The authority for that discipline lies with States Attorney Alan Koppy and not the Morton County Commission. See North Dakota Supreme Court Decision *Schwartzberger v. McKenzie County Board of Commissioners* (2017 ND 211 and 901 NW 2<sup>nd</sup> 64). Voting aye: Zachmeier, Morrell; voting nay: Leingang, Buckley, Boehm. Motion failed.**

Morell moved and Leingang seconded to hold a special meeting to on October 19, 2022 at 6:00PM with the agenda item being the Goter grievance. All voting aye, motion carried.

The total of all county funds expended from September 28, 2022 through October 13, 2022 equals \$1,217,985.64.

A detailed list of funds expended by check is available for public inspection anytime during regular business hours at the Morton County Auditor’s Office.

Leingang moved and Morrell seconded to adjourn at 7:20PM. All voting aye, motion carried.

Nathan Boehm, Chairman, Morton County Commission \_\_\_\_\_

Dawn R Rhone, County Auditor \_\_\_\_\_