May 21, 2024

The Bremer County Board of Supervisors as Drainage District Trustees in Bremer County, IA, met in session on Tuesday, May 21, 2024 in the Courthouse, Waverly, Iowa, at 8:30 a.m. Minutes recorded by Shelley Wolf, Auditor.

The Bremer County Board of Supervisors met in session on Tuesday, May 21, 2024 in the Courthouse, Waverly, Iowa, at 9:00 a.m. Cerwinske, Kammeyer, Hildebrandt present. Kassandra Johansen, Finance Director, also present. Unless otherwise noted all actions were approved unanimously. Some Resolutions and Ordinances herein are summary descriptions, full text is available for viewing online at: https://www.bremercounty.iowa.gov/government/resolutions_and_ordinances.php and also available M – F 8:00 AM to 4:30 PM in the Bremer County Auditor's office.

Following the Pledge of Allegiance, the meeting was called to order by Chairman Cerwinske. Hildebrandt moved/Kammeyer second to approve the agenda. Kip Ladage, EMA, Aaron Goodenbour, EMA, Bob Brunkhorst present.

Chairman Cerwinske introduced Aaron Goodenbour as the new Bremer County Emergency Management Director. Board welcomed Goodenbour and thanked/praised retiring Kip Ladage.

Hildebrandt moved/Kammeyer second to approve the 5/14/24 minutes.

Board met with Tim Meeker, Customer Convenience Center Mgr., for a department update and to discuss Meeker's request to hire additional part-time employee(s) to cover hours current staff are unable to work. Consensus of the board is to hire to the extent to fill the budgeted hours.

Hildebrandt moved/Kammeyer second to approve payroll additions for Aaron Goodenbour, Emergency Management Director, full time, $62,000/yr. effective 5/20/24; Maureen Elsamiller, CBS Direct Care Staff, full time, $17/hr./$10.30/hr. sleep time effective 5/21/24; Brady Weepie, Conservation, seasonal, $13.50/hr. effective 5/27/24; and payroll changes for Christopher Hamilton, Conservation, part time, from $12/hr. to $14/hr., annual budget increase effective 5/27/24; Deannalyn Leistikow, Jailer, part time, from $25.46/hr. to $25.96/hr., merit increase effective 6/16/24; Jason Ellison, Sheriff's Office Investigator Deputy, from $83,563/yr. to $85,652/yr. step increase effective 6/2/24; Keona Leroux, Dispatcher, part time, from $23.72/hr. to $25.36/hr., orientation complete 5/19/24.

Kammeyer moved/Hildebrandt second to adopt RESOLUTION NO. 24-36 BREMER COUNTY BOARD OF SUPERVISORS OBJECTING TO THE IOWA UTILITIES BOARD'S AUTHORITY TO ENACT EMINENT DOMAIN AUTHORITY WITHIN BREMER COUNTY FOR PRIVATELY OWNED AND OPERATED CARBON DIOXIDE PIPELINES.
WHEREAS, Pursuant to Iowa Code § 479B.7 and Iowa Administrative Code rule 199-13.5, any person, including a governmental entity, whose rights or interests may be affected by a proposed pipeline may file a written objection with the Board not less than five days prior to the hearing scheduled on the pipeline company's application for a permit.
WHEREAS, Bremer County submitted a brief objecting to the Summit proceedings and requested that the IUB deny the use of eminent domain for carbon dioxide pipelines.

WHEREAS, "The power of eminent domain has ancient origins... From early times to the present, property owners have argued that this power should be exercised only in limited circumstances."[1] The philosopher John Locke argued that the "great and chief end, therefore, of men's uniting into commonwealths, and putting themselves under government, is the preservation of their property."[2]

WHEREAS, for this reason, the framers of the Constitution sought to limit the government's use of the power of eminent domain in two important ways.[3]. First, they included in the Fifth Amendment a requirement for the payment of "just compensation."[4] Second, they required that any taking of private property must be for a "public use."[5] WHEREAS, the United States Supreme Court has considered the issue of eminent domain many times. In the landmark case of Kelo v. City of New London, the Court discussed the federal constitutional requirements for determining "public use." The Court noted that there are two opposing rules involved in making the determination. On the one hand, the Court said, it is clear that the government may not take one person's property for the "sole purpose" of transferring it to another person. On the other hand, the Court also said it is "equally clear" that the government may transfer property from one person to another if future "use by the public" is the purpose of the taking. WHEREAS, if the "public use" requirement of the Fifth Amendment means anything, it means that the government should not arbitrarily take one person's private property and transfer it to another person simply for private economic gain. In this docket, Summit is seeking eminent domain over 1,035 parcels. Through this process, Summit is seeking private gain through a taking of private property that doesn't provide public use. WHEREAS, the reason is that this pipeline is fundamentally different from a road or a highway project that the general public can use. It's fundamentally different from a railroad that carries the general public as passengers. And it's fundamentally different from an electric or gas line that a utility uses to serve retail or wholesale customers. Essentially, Summit is justifying the use of eminent domain because it claims the project will create economic benefits for Iowans, but whatever ancillary benefits will accrue from construction of the project, it's clear they are not the primary purpose of the project and are in fact subjective at best. The primary purpose is clearly private economic gain. WHEREAS, the driving force behind this project is climate change policy. Since 2008, Federal tax law has provided tax credits for the sequestration of carbon. Known as "45Q Credits" after the relevant tax provision, these tax credits were created to encourage the private sector to reduce the amount of carbon released into the atmosphere. In the recently passed Inflation Reduction Act, Congress significantly increased the value of these 45Q Credits. These credits represent a substantial public subsidy for private profit as it is. Taking yet more private property for Summit's private gain only compounds the problem. WHEREAS, The *Kelo* case turned on the question of whether the City's economic development plan served a "public purpose." And the Court explained that its prior eminent domain cases had defined that concept broadly due to a longstanding policy of deferring to

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[1] See generally Mary Massaron Ross, The Debate Over the Meaning of "Public Use", Eminent Domain Use & Abuse: Kelo in Context at s 1.I.

[2] See id.

[3] See U.S. CONST. Amend. V ("nor shall private property be taken for public use, without just compensation").

[4] See generally William Michael Treanor, "The Origins and Original Significance of the Just Compensation Clause of the Fifth Amendment," 94 Yale L.J. 694 (1985).

[5] See Lauren A. Wiggins and Timothy Sandefur, A Bibliography of Sources on Public Use in Eminent Domain, 10 Chap. L. Rev. 235 (2006). See also David Schultz, What's Yours Can be Mine: Are There Any Private Takings After Kelo v. City of New London?, 24 UCLA J. Envtl. L. & Pol'y 195 (2006).

"legislative judgments" in the area of public use. WHEREAS, "Viewed as a whole," the Court said, "our jurisprudence has recognized that the needs of society have varied between different parts of the Nation, just as they have evolved over time in response to changed circumstances. Our earliest cases in particular embodied a strong theme of federalism, emphasizing the 'great respect' that we owe to state legislatures and state courts in discerning local public needs."[6] WHEREAS, In other words, the Supreme Court was unwilling to place obstacles in front of state legislatures in the form of rigid judicial interpretations of the Constitution, and it instead preferred to allow a broad range of purposes to meet the "public use" test. WHEREAS, However, after announcing that it wouldn't adopt a strict federal standard, the Court in *Kelo* went on to state that "nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power."[7] WHEREAS, even before the *Kelo* case was decided, many states had imposed "public use" requirements that were stricter than the more flexible federal minimum standard, and many states since then have imposed additional restrictions in the wake of the *Kelo* decision. These additional restrictions on the use of eminent domain can take the form of either state constitutional requirements or state statutory requirements. Iowa has adopted additional restrictions. WHEREAS, Like the Fifth Amendment to the United States Constitution, Article I, section 18 of the Iowa Constitution also contains a "takings" clause, and like the Fifth Amendment, it also requires that private property not be taken "for public use" without "just compensation." WHEREAS, The Iowa Supreme Court is the final authority on the interpretation of the Iowa Constitution, and while it generally considers Federal interpretations of the Takings Clause to be persuasive, it is not required to interpret the Iowa Takings Clause in the same flexible way as the Supreme Court interprets the Federal Takings Clause. WHEREAS, The Iowa Supreme Court recently considered the issue of constitutional authority for eminent domain in the case of *Puntenney v. Iowa Utilities Board*, which involved an oil pipeline being built by Dakota Access, LLC. In considering the issue, the Iowa Supreme Court thoroughly reviewed the Kelo case and decided not to follow the majority opinion, which had found economic development to be a valid public purpose. Instead, the Iowa court announced that Justice O'Connor's dissenting opinion, which a number of other states follow, was the better interpretation for purposes of the Iowa Constitution because it provides stronger protection against the abuse of eminent domain.[8] THEREFORE, BE IT RESOLVED, that the Board of Supervisors of Bremer County, under the authority of IA Code 331.301(1), shall *"exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges, and property of the county and its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents."* Based on the findings of the Iowa Supreme Court in *Puntenney v. Iowa Utilities Board*, the Bremer County Board of Supervisors finds in fact they are not limited by IA Code 331.301(1), to be *"inconsistent with the laws of the general assembly"* in protecting and preserving private property takings utilizing eminent domain due to the lack of public purpose where in this case the sole purpose is private economic gain by Summit Carbon Solutions and affiliates. Therefore, the Bremer County Board of Supervisors objects to the use of eminent domain for private economic gain and urges the Iowa Utilities Board not to grant Summit the use of eminent domain for this project. Resolved this 21st day of May, 2024

[6] Kelo v. City of New London, 545 U.S. 469 (2005)
[7] Kelo v. City of New London, 545 U.S. 469 (2005)
[8] *Puntenney v. Iowa Utilities Board*, 928 N.W.2d 829 (2019).

Kammeyer moved/Hildebrandt second to adopt RESOLUTION NO. 24-37. WHEREAS Cedar Valley Friends of the Family's mission is to provide safe shelter, confidential services, and housing assistance to individuals in crisis due to homelessness, domestic violence, sexual assault, and human trafficking. Cedar Valley Friends of the Family envisions a future where everyone has a home. WHEREAS Bremer County wishes to assist Cedar Valley Friends of the Family in providing client assistance and case management services to assist individuals, families, and survivors of violence from Bremer County that are experiencing homelessness through a funding commitment of $8,000 for FY25. NOW, THEREFORE, BE IT RESOLVED that Bremer County approves and authorizes the Chair to sign the attached Letter of Agreement between Bremer County, Iowa, and Cedar Valley Friends of the Family to provide rental assistance and case management services to assist individuals, families, and survivors of violence from Bremer County that are experiencing homelessness. Passed and approved this 21st day of May, 2024.

Hildebrandt moved/Kammeyer second to authorize Board Chair to sign a FY25 General Service Agreement between Bremer County and Helping Services for Youth & Families.

Board/Committee updates: Kammeyer attended INRCOG Economic Development Board; Hildebrandt attended INRCOG Executive Board & RTA Board meetings.

Cerwinske reported that the plaque with the name discrepancies on the Vietnam memorial in front of the courthouse, will be corrected or replaced in response to the concern brought by Carl Benning in the May 7th board meeting.

Board met with Andy Hockenson, Conservation Director, for a department update. Brunkhorst exited.

Board met with Landon Moore, County Engineer, for a weekly department update. Hildebrandt moved/Kammeyer second to authorize Board Chair to sign the final pay estimate for C50 paving project STP-S-CO09(92)—5E-09.
Hildebrandt moved/Kammeyer second to approve a public/private partnership for Secondary Roads to apply dust control on Midway Ave east of the City of Denver. Meeker & Moore exited.

Board met with David Lehman, Roadside Vegetation Mgr., for a department update.

Board met with Lindsey Koehler, Building & Zoning Admin.
Kammeyer moved/Hildebrandt second to open a Public Hearing for the First Reading of Ordinance #24-03, an ordinance providing for a change in zoning for Phyllis A. Lane & Phyllis A. Lane Lf Est from A-1 to A-2 on Proposed Parcel E in the E½ of the SW¼ of Sec 25, T91N, R14W of the 5th P.M., Bremer County, IA. Aaron Johnson, Phyllis Lane, Rochelle Nielsen, Nick Nielsen present. Lambert presented the Planning & Zoning Commission's recommendation for denial based on the CSR of the soil. Johnson, whose residence is across the road and had to follow the zoning process when relocated by the highway, asked for the same rules that he had to abide to, be applied in this case and suggested a location with lower CSR that is closer to other housing rather than on productive ag land. Hildebrandt stated that productivity is more enhanced nowadays and that one acre isn't going to have that large of an affect but rather encouraged new housing construction in an effort to grow the tax base. Lane responded with the cost of taking land out of the CRP program being the reason for not re-zoning in the lower CSR area. Rochelle

Nielsen, Lane's niece, pleaded for the opportunity for her son Nick to be allowed to build a house and raise his family in a rural setting. Rochelle stated the location was selected because it's away from the cell tower, in a corner and suggested by the farm tenant as being ideal from his perspective. Lambert inquired whether the county's comprehensive land use plan should be reviewed and revisions considered. Cerwinske expressed a desire to take some time to research and reflect conflicting opinions including the struggle to differ from Planning & Zoning Commission's recommendation. Hildebrandt moved/Kammeyer second to close the Public Hearing.

Hildebrandt moved/Kammeyer second to approve the First Reading and set the Second Reading for 9:15 a.m., June 4, 2024. Discussion: Cerwinske informed the board he will vote NAY on the first reading then reflect and research before the next reading. Hildebrandt expressed his desire to vote AYE for the reasons stated in the hearing also adding that long time owners of property should be able to do what they want with their land, and that the county's comprehensive land use plan should be re-assessed. Ayes: Hildebrandt/Kammeyer. Nay: Cerwinske.

Koehler presented a department update.

Kammeyer moved/Hildebrandt second to adjourn at 11:40 a.m.

The above and foregoing is a true and correct copy of the minutes and proceedings of a regular session of the Tuesday, May 21 2024 meeting of the Bremer County Board of Supervisors.

_____ Attest: _____

Corey Cerwinske, Chairman Shelley Wolf, Auditor