

TERM OF COMMISSION: August Session of the August Adjourned Term

PLACE OF MEETING: Roger B. Wilson Boone County Government Center  
Commission Chambers

PRESENT WERE: Presiding Commissioner Don Stamper  
District I Commissioner Karen M. Miller  
District II Commissioner Skip Elkin  
Deputy County Clerk Shawna Victor

The meeting was called to order at 9:33 a.m.

**Subject: Health Department – Update on West Nile Virus**

Stephanie Browning, Health Department Director, was present on behalf of this item.

Stephanie Browning stated nine birds from Boone County have tested positive for the West Nile Virus. Kansas City has now had positive test results from birds, so it is spreading across the State. The State Health Department has limited the number of birds to be tested if a County already has sent birds to the lab and have a positive test result because of limited funding. Due to this, Boone County is no longer able to submit any additional birds to be tested.

There was an enormous response from the public when the first positive test results came back about other dead birds and other questions. Within 48 hours of the first positive test result, the Health Department could have had one person fielding telephone calls regarding West Nile Virus. Even today, the Department receives approximately 20 telephone calls per day. These are calls just to Environmental Health.

Mrs. Browning did compose two letters, one to all Veterinarians and one to all Physicians in Boone County regarding the presence of West Nile Virus in Boone County. These letters were advisory and asking the doctors to be alert of the situation.

The Health Department has given approximately 35 interviews since July 27 on the West Nile Virus. These interviews were given to all different media outlets around the area. The Department has just completed Public Services Announcements (PSA) that they are sending to all radio sources discussing how to protect oneself and eliminate standing stagnant water.

When the West Nile Virus was first detected in St. Louis last October, the Health Department began training of staff members. In a previous discussion with the Commission, the Health Department believed this past winter would be the winter to prepare because they were certain that the West Nile Virus would be in Boone County this summer.

The Department has also done a lot of public education. They have gone to all the Senior Centers, Mrs. Browning stated she has spoken with many community groups throughout the County, trying to target people who could be most at risk and give them information on West Nile Virus.

The Department continues to work with their doctors. The Department has had their surveillance program for human surveillance and this is the third summer for this program. The Department was lucky to have this program in place when this issue did become present.

The latest information Mrs. Browning has from the State Lab is Boone County Physicians are sending human samples for testing at a higher rate than any other County. The doctors have responded and are looking closely when people come in with symptoms. To date, there are no human positive cases in Boone County.

Commissioner Stamper wanted to know the approximate number of human samples that have been tested. Mrs. Browning stated about a week ago, the State Lab had done around 30 tests of human samples and she believes 20 of those have come from Boone County but she has not received an update within the last week.

Commissioner Miller asked if there have been any horses from Boone County test positive. Mrs. Browning stated there are none that have tested positive, to her knowledge, in Boone County. She believes there has been an equine death in Cole and Pettis Counties.

Mrs. Browning stated the Department is continuing to do some mosquito trapping. This has been done in the City and in some areas of the County. There have been concerns expressed by people in Rocheport about mosquitoes. The Department has been working in the Crestvale area where there is standing water.

She believes the best thing to do is educate people and work to eliminate the sources of standing water and protect themselves. She believes if the Department is going to take further steps in the future to control mosquito population, the Department will have to look at the cost of all resources. This portion of the program requires a large amount of staff time.

Commissioner Stamper asked at what point and what criteria will be used to determine whether eradication, or spraying, is needed. Mrs. Browning stated when there is a human case; this will have to be evaluated. She noted larva sightings are the most cost effective way to control the mosquito problem, to eliminate the larva before they hatch. When spraying begins, the adult population is being killed. She has spoken with the staff at the Health Department about this issue.

When she lived in Arizona, there was aggressive mosquito control. They did both larva sightings and sprayings. In Arizona, this was more a targeted control, whereas in Missouri, there are numerous ponds and lakes. She believes that spraying in Missouri would be a monumental effort. The late 1970's was the last time that spraying was done in Missouri.

The Department has been working on what it will cost if spraying has to be done. If there is a positive human case or even a death, the Department will have to quickly go to the City Council and County Commission to ask for funding. The Department does not have the chemicals, vehicles, or foggers to do any of the spraying.

Commissioner Miller asked if the private sector was preparing for possible spraying knowing the West Nile Virus is coming across the State. Mrs. Browning stated she believes the public understands. There are some entities where the spraying work has been contracted with private companies. The problem with this is at times this is not always done in the best public health manner or done in the high risk areas. She believes the companies that provide the chemicals and other equipment are prepared for the current situation.

Commissioner Stamper stated the idea of eradicating or getting rid of the standing water is an overwhelming idea. He agrees with Mrs. Browning to wait until there is either an increase in the number of animal deaths or the presence in humans. He noted there was a fatality in St. Louis this past week. Mrs. Browning stated there have also been several positive human cases in the St. Louis area.

Mrs. Browning stated the Department would not begin spraying everywhere; it would look closely at the most populated areas and also areas where there is a lot of activity, for example, during the Boone County Fair and spraying at the fairgrounds.

Commissioner Stamper requested Mrs. Browning to write a cover letter on behalf of the Commission including the two letters that were written to all Veterinarians and Physicians, addressed to the mayors of Boone County towns regarding what is going on and how the Department is handling the West Nile Virus.

He requested the Commission to think about where funding would come from if spraying is needed.

Mrs. Browning stated the Department could prepare documents to detail the equipment needed, if spraying were required.

There was no further discussion and no public comment on this issue.

The Commission thanked Mrs. Browning for coming to the meeting and discussing this issue.

**Subject: Public Works**

**A. Second Reading and Approval of Consultant Services Agreement (Maupin Lane Bridge)**

Commissioner Miller moved to approve the Proposal for Consultant Services with Harrington and Cortelyou, Inc. for the Maupin Lane Bridge over Cedar Creek project.

Commissioner Elkin seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0. **Order 366-2002**

**B. Second Reading and Approval of Consultant Services Agreement (Brushwood Lake Road Bridge)**

Commissioner Miller moved to approve the Proposal for Consultant Services with Harrington and Cortelyou, Inc. for the Brushwood Lake Road Bridge over Mill Creek project.

Commissioner Elkin seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0. **Order 367-2002**

**C. Second Reading and Approval of Right Of Use Permit (Lake Chaparral Homeowner's Association)**

Commissioner Elkin moved to accept the Right Of Use Permit from the Lake Chaparral Landowners' Association to Boone County.

Commissioner Miller seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0. **Order 368-2002**

**D. First Reading to Accept Road (A Portion of Crownview Drive – Hight's Chaparral)**

Commissioner Elkin stated this is for the County to take over the maintenance of the

roadway over the dam. The County will not be taking over the maintenance of the dam structure itself.

Commissioner Stamper stated this is a first reading and requested the Deputy County Clerk to schedule this item for a second reading at the next available meeting with an appropriate order for approval.

**E. First Reading of Dee Woods Road Speed Limit Change**

David Nichols, Design and Construction Manager, and Allison Anderson, Project Engineer, were present on behalf of this item.

David Nichols stated Allison Anderson was requested to do a speed study on Dee Woods Road. This road has recently been improved and the Department wanted to bring the results of this study forward. The Department used the standard 85<sup>th</sup> percentile, which the Department is trying to do more of to set speed limits.

Allison Anderson stated this road was recently paved and the Department did a speed study on the road. The 85<sup>th</sup> percentile speed in the westbound lane was 44.06 mph and in the eastbound lane was 40.07 mph. The Department is recommending the speed limit be posted as 40 mph on the road, which is also the Department's default speed for paved roads.

Mr. Nichols stated he believes the speed limit was previously posted as 25 mph before the road was paved. Because of the differential, the Department felt the need to bring this issue forward to the Commission for consideration of the Department's recommendation.

Commissioner Stamper stated today marks a milestone in Commissioner Miller's life, it is her 50<sup>th</sup> birthday.

Commissioner Miller and Elkin both believe this recommendation from the Department is reasonable.

Commissioner Stamper stated this is a first reading and requested the Deputy County Clerk to schedule this item for a second reading at the next available meeting with an appropriate order for approval.

**F. First Reading of Right-of-Way Policy**

John Watkins, Project Development Manager, was present on behalf of this item.

John Watkins stated the Department is presenting the Right-of-Way Policy to the Commission for a first reading. The Department believes they have made all the changes that have been required from the last meeting and there has been no response since that

meeting. He noted John Patton, Boone County Counselor, is working on other issues with the Water Districts. As far as the Public Works Department knows, this is the best policy that they have to present at this time.

Mr. Watkins noted the second reading for this policy is tentatively scheduled for September 5, 2002.

Commissioner Miller stated she appreciates all the work the Department has done with the utilities. She knows the first draft was somewhat controversial because it brought up many issues that the Commission had not thought about or issues that were viewed differently than the utilities. By working with the utilities on an individual and collective basis, the County was able to address all the issues. She believes this document addresses issues relating to the ditch lines, the roadway, and other things they are trying to protect. She believes the County has listened, worked hard to find solutions, and this will serve Boone County for a long time.

Dan Simon, Legal Counsel for Water Districts No. 1, 4, and 9, was present on behalf of this item.

Dan Simon stated there have been comments made about the Water Districts trying to obstruct about this issue and this is not the case. The Water Districts, like the County, are public entities and they serve the public. They feel they have an obligation to raise issues, not just for the benefit of the people that are present at this meeting but also for the people they serve. They do have an issue with a substantial part of the concept of this policy. One of the difficulties is the way the fee schedule is now established is it is almost impossible for the Water Districts to budget, project, or estimate what the impact of this policy will be on the Water Districts from an economic point of view. The reason for this is when a permit is obtained; one does not know until the work is completed what the cost of that may ultimately be. If there was a fixed price, this issue would not be as bad. Maybe this issue could be discussed.

Mr. Simon noted the Water District and the County were involved in a lawsuit over a period of several years. The Water Districts believe that if something is not done about the fee schedule issue, then the Water District and the County will be in court again.

When the cooperative agreement was negotiated, one of the primary concerns of the Water Districts was protecting their rights of their private easements. There was a lot of discussion about these private easements and when the Water Districts should and should not locate within a right-of-way. One issue that was negotiated that was calculated to encourage the Water Districts to remain in private easements and negotiated to protect the rights of the Water Districts in their private easement was a provision in the cooperative agreement, which was approved by the Circuit Court in July, 2001, that provides that the County's Roadway Regulations would be amended in Section 2.9 as specified by Appendix C of the Cooperative Agreement. Mr. Simon read the following:

“Provided, however, that construction work within private easements located within or adjacent to County maintained road right-of-way, which does not alter or damage road surface, road drainage ditches, or structures, signage, or other road improvements, and which will not interfere with road traffic, shall not be subject to permit requirements contained herein.”

Mr. Simon stated this Cooperative Agreement, in the court’s judgment that was entered by consent of the parties provides that this Cooperative Agreement will not be modified without amendment of the court. The Agreement does provide for face to face conversations between the County and the Water Districts to consider modifications of this agreement. It also provides, under certain circumstances, upon petition or motion of the court, the court can modify the agreement. This has not been done and this language appears in the County Road Regulations. He believes this provision not only applies to the Water Districts but to all utilities in Boone County.

Mr. Simon believes that if the Water Districts do work within a private easement, that is overlapped by County Road Right-of-Way, that they cannot, under this agreement, be subjected to permit requirements, requirements for obtaining a permit, or the fees associated with the permit unless the work that is done follows the language of the provision that he just read, which means the work the Water Districts do alters or damages the road surface, road drainage ditches or structures, signage or other improvements or interferes with traffic flow. The language does not say that permits can be required of Water Districts when the work might damage the road surface or ditch or when it is such that it could be reasonably be expected to damage the road or ditch. What it says is that the permit requirements shall not be applied to the Districts unless the work they do alters or damages the road surface, the road drainage ditch, or other structures.

As to roads where there are no easements, the Water Districts do not have a position on this. As to roads where the Water Districts have existing or acquired private water line easements, it is the Water Districts position that the County cannot change this agreement or modify this agreement without approval of the Circuit Court, which the County could seek, impose permit fees and requirements on the Water Districts.

The Water Districts main concern is not with the concept of having a permit or inspections, their main concern is paying fees, as they analyze the fee schedule, under certain circumstances where 50% of the work is to be inspected, could be substantial. The Water Districts are also concerned with the provision under the General Work Permit which would allow for the General Work Permit to be revoked at the discretion of the Public Works Director without any appeal or hearing process or action by the Commission.

Mr. Simon noted this is not directed at the Public Works Director. He believes without this director, this Cooperative Agreement would have never been settled.

Mr. Simon stated the Water Districts do not intend to pay the fees. They do not intend to pay the charges for inspections unless the work that is done is in the right-of-way, without an easement, or within the right-of-way and an easement and it fulfills the requirements of the Agreement, which means that it damages the road surface, if the road surface is cut or alter the ditch. This will put the Water District and the County in a position that they do not want to be in, which could end up in a confrontational mode that no one wants to be in. One of several things could happen, one, this agreement provides for resolution of disputes by binding arbitration, which he assumes, if the County is confident of their position and the Water Districts are confident of their position, then this could go through arbitration. The Water Districts and the County could sit down, face to face, which is an opportunity the Water Districts do not believe they have been given even though this agreement for that and see if this issue could be resolved. Or the Water Districts could reject the bills, the County can try to revoke their permits and the Water Districts can go ahead with their work, which will lead to a situation no one wants to be in.

The Water Districts would like to resolve this issue, if they can. They regret the fact that it appears the Water Districts appear to be obstructionist and have been called such and they appear to be unreasonable. This agreement was negotiated at a great expense. This provision was incorporated into the agreement for a specific reason. The Water Districts believe that the agreement should be honored, by both parties.

Mr. Simon noted under the Special Work Permit section of the proposed policy, it states utilities will be required to obtain Special Permits for curb and guttered streets that are planned to be maintained by the County. To his understanding, plats are not recorded until the improvements are done. The Water Districts and other utilities are going to be out while a subdivision is being developed, streets are being built, and installing water lines and other utilities. As the Water Districts interpret this condition for a Special Work Permit, all utilities would be required, even though there is no street, no curb and gutter, no street that can be damaged, the work that would be done would be in what will eventually be County Right-of-Way, to have this permit and they do not believe this is necessary. They request this requirement be reviewed.

Commissioner Miller stated the bottom line is, the Water Districts have an issue with the private easement within the County's Right-of-Way. Mr. Simon stated that is correct. He has heard comments from all the Water Districts and their board member, this policy is set up in a way that the private easements worked for in their Cooperative Agreement, would no longer effective. If it can be avoided, the Water Districts will not stay in the County's Right-of-Way under these conditions. The costs are too unpredictable and the Water Districts cannot budget for this. Many times, the Water Districts feel they are being charged for inspections that are minimal, that provide no services, and simply not submit to the conditions of the proposed policy.

Commissioner Miller stated the Water Districts are assuming they will be charged for

inspections that are minimal and this is an assumption because this policy does not affect those projects. When the Cooperative Agreement was negotiated there was no Senate Bill 369. Things do change. She understands Mr. Simon's comments about private easements but the County has had the necessity to manage the Right-of-Way for a long time and have just gotten the right to do this in the last year. She stated the County does want to work with the Water Districts. There will be discussions today with David Mink, Public Works Director, and John Patton, County Counselor, about the standing of this policy. Mr. Simon stated the Water Districts would be happy to sit down with the County to discuss these issues. He agrees things do change and there are mechanisms in place to allow for change but those mechanisms have not been used.

Commissioner Miller stated part of the issue is Senate Bill 369 requires every utility to be treated the same. It does not matter that the Water Districts have extraordinary circumstances, all utilities have to financially be treated the same. That is part of the statute and it was very clear that this was their intention that not one utility was going to be treated differently than another. Mr. Simon stated in that light, since the agreement provided the Roadway Regulations would be amended in accordance with Appendix C and this cannot be altered without the approval of the Circuit Court. He believes the statement he just made applies to every utility in Boone County, not just the Water Districts. This is in the regulations and is provided that those will not be changed without the court's approval. He believes the County will have to deal with this issue.

Commissioner Elkin asked Mr. Simon if the Right-of-Way policy is implemented as written then it is the Water District's to install water lines outside the County's Right-of-Way and seek their own private easements. Mr. Simon stated he has been told many times that the Water District's believes as this policy is currently written, this would force the District's to go back to the policy they had before the Cooperative Agreement was negotiated, which is to stay out of the public Right-of-Way.

Commissioner Elkin stated from his understanding, the main sticking point here is the fees associated with the policy. Mr. Simon stated he believes this is correct.

David Mink, Public Works Director, stated some of the issues brought forward by Mr. Simon should be addressed by legal counsel. As far as inspecting work that did not create any alteration of the road, he does not believe this would generate any inspection and therefore would not generate a cost.

Mr. Watkins stated the issue of inspections was to cover problems that occurred in the past like reseeded or putting down straw.

Mr. Mink stated if there is no alteration of the road then there would be no inspection and no cost associated with that. Regarding the cost of the inspection being unpredictable, the Department began with trying to establish flat fees. They realized the Department does not have enough experience to come up with a flat fee that would be fair. The general

consensus as a result of three public hearings and a hearing before the Commission was the fairest way to do this was charge for actual costs. If the Department gains experience with the fee schedule, then there is a possibility that this could be changed.

Regarding moving out of the Right-of-Way, Mr. Mink stated he cannot imagine relocating water lines to avoid a minor inspection cost could be cost effective. This would cause them to change their approach in how they do their work but this is their decision to make. It is expensive to move water lines and he cannot imagine this inspection process equaling the cost of relocating water lines.

Mr. Mink stated some of the other issues brought up by Mr. Simon, like administratively how this is to be handled, be the Department will revisit before the second reading.

Commissioner Stamper stated Mr. Simon has brought forward many issues and would reiterate his agreement that the Water Districts would be willing to sit down, face to face, and encourages the Department to make sure this is done. He has also raised concerns about the compliance with the Cooperative Agreement that will be referred to Mr. Patton. These issues will be sorted through before the second reading.

Gary Woody, Water District No. 1 representative, stated moving the water lines was brought up because the roads were overlapping areas where the Water District had private easements. The County wanted to encourage the Water Districts to stay in the private easements so the County would not have to acquire private easements for the Water District outside the road Right-of-Way, in some cases. Any time the Water Districts would stay in the Right-of-Way, with the easements and the Districts are incurring costs for the permits, if the Water Districts move outside of the Right-of-Way, they will not have to obtain or pay for a permit. If the Water Districts do stay in the Right-of-Way then the County will be charging for permits. He believes this is an infringement on the rights the Water Districts had in their easement before the road was built and put in the Right-of-Way. The policy is asking the Water Districts to incur costs but the County does not want the Water Districts to have private easements.

Commissioner Stamper stated since he has been in office, he has never known a Water District to want to be in a public Right-of-Way versus a private easement, as all utilities would prefer to be in a private easement.

The reason this policy was developed is because one day when the Commissioners were driving through a subdivision and there was a subcontractor for a cable company laying a cable within one foot of the roadway with no regard for the after effects it might have. Situations like this have to be eliminated and the County has to have some sort of control over the Right-of-Way. The Commission believes there is certain authority with Right-of-Ways and believe there should be a policy that adequately addresses everyone standing and authority. The Commission receives a lot of criticism from neighbors when the County tries to acquire a Right-of-Way. The neighbors tell the County that after they have

acquired their Right-of-Way then utility companies will come along and ask for their own easements. It has been the Commission's goal to put as many utilities as possible in a common Right-of-Way.

The points that have been raised by the Water Districts will be addressed and in the end, the County will do what they believe is best for all positions. The County will do the best they can to honor the Cooperative Agreement in the spirit of the new regulation of Right-of-Ways. Everyone involved has had successes and mistakes in this area. The idea that there would be a regulatory format for this and everyone can understand is what the County is striving for.

Mr. Simon stated he believes this can be resolved if all parties sit down, face to face, to discuss the issues. If the policy stated there would be no inspection if the roads were not damaged in any way, this would give people a lot more comfort.

Commissioner Stamper stated the courts are not the place to settle these issues.

Commission Miller stated under the General Work Permit, it states in the policy that 50% of the places will be inspected and she wanted to know if 100% of the work does no damage to the roadways then will 50% still be inspected. Mr. Mink stated he believes there has to be a need for an inspection, such as a job where excavation or ditching has been done.

Commissioner Miller asked if the inspections would be 50% of the work that involves excavation or ditching. Mr. Mink stated that was correct.

Commissioner Stamper stated the issues are beginning to be debated and he would prefer not to do that during the meeting. Mr. Mink agreed.

Commissioner Stamper stated he has requested the Department to review the issues brought forward by Mr. Simon and accept the Water Districts offer to meet face to face before this issue is brought back to the Commission.

Mr. Mink noted the Department is trying to put together a meeting with the Water Districts on August 28 at 9:00 a.m. He will be sending a letter regarding general operations issues and other issues that have occurred in the context of the agreement.

Dan Bernskuetter, Sprint Telephone Representative, stated the impact on Sprint will be less than some other utilities because they only have lines in Southern Boone County. They are also concerned with the fees because of the unpredictable costs. Mr. Bernskuetter is an engineer and when he does the job plans, he also includes any fees that are necessary. They are also concerned with possible intents of the Department that are not on paper but have been discussed in meetings.

Fred Luetkemeier, AmerenUE Representative, stated in previous meetings there was discussions about new subdivisions and the fact that until the County accepted the roadway, the utilities did not have to apply for permits.

There was no further public comment on this issue.

Commissioner Stamper requested the Department to continue to work on this issue and have all these issues resolved to the satisfaction of the Commission before it is brought back for a second reading.

**Subject: Second Reading and Approval of Boone County Government Credit Card Policy**

Commissioner Stamper moved to adopt the Boone County Government Credit Card Use Policy.

Commissioner Elkin seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0. **Order 369-2002**

**Subject: Personnel Advisory Committee – Second Reading and Approval of Revision to Section 5.2 of Personnel Policy Manual (Bereavement Leave)**

Commissioner Elkin moved to approve the recommendation from the Personnel Advisory Committee to revise Section 5.2 Bereavement Leave of the Boone County Personnel Policy Manual to include the word “Grandparents” in the definition of immediate family.

Commissioner Miller seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0. **Order 370-2002**

**Subject: Second Reading and Approval of Child Advocacy Grant Contract**

Commissioner Stamper moved to approve Contract Amendment #7 for the Child Assessment Center.

Commissioner Elkin seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0. **Order 371-2002**

**Commissioner Reports**

*Commissioner Stamper*

None to report at this time.

*Commissioner Miller*

None to report at this time.

*Commissioner Elkin*

*Missouri Association of Counties*

Commissioner Elkin stated he attended the Missouri Association of Counties Board of Directors meeting in Branson last week. The main discussion was about getting information to the newly elected legislators. They will be putting together an information sheet for these new legislators. It is also up to the individual members of MAC to set up meetings with the new legislators to discuss any issues. There was also discussion about Worker's Compensation which does not affect Boone County.

There was no public comment.

The meeting was adjourned at 10:28 a.m.

Attest:

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Wendy S. Noren  
Clerk of the County Commission

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Don Stamper  
Presiding Commissioner

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Karen M. Miller  
District I Commissioner

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Skip Elkin  
District II Commissioner