

August 18, 2009

The Board of Supervisors of Shelby County, Iowa, met pursuant to law and rules of said board in regular session at 9:00 a.m. in the Supervisors Chambers of the Shelby County Courthouse with the following members present: Roger Schmitz, Chairman; Delbert Hull, Vice-Chairman; James Burmeister; and Marsha Carter, Clerk.

It was moved by Burmeister, seconded by Hull, to approve the agenda with the addition of SWIPCO-Hazardous Mitigation Plan Update AND the following items contained in the Consent Agenda:

- A. Minutes of August 4 & 7, 2009
- B. Office Reports – None
- C. Committee Reports

AYES: Schmitz, Hull, Burmeister

NAYES: None

It was moved by Hull, seconded by Burmeister, to approve the Claims of August 18, 2009, and place the listing on file in the Auditor's Office. AYES: Schmitz, Hull, Burmeister NAYES: None

Jeremy Middents, SWIPCO, appeared before the Board to explain the updating of the Comprehensive Plan and the cost of \$10,000. Questions were raised by the Board on the necessity and the legal requirements. No action was taken.

Mike Albin, SWIPCO, appeared before the Board to discuss the updating of the Hazardous Mitigation Plan. Suggestions were made for possible projects for the future plan.

Now being the time for the public hearing on the First Reading of the HAZMAT Cost Recovery Ordinance, the Chairman did open the hearing. There were no oral or written comments. It was moved by Hull, seconded by Burmeister, to close the hearing, to suspend any future readings, and to approve the SHELBY COUNTY ORDINANCE 2009-1.

SHELBY COUNTY ORDINANCE NO. 2009-1 HAZARDOUS MATERIALS COST RECOVERY ORDINANCE

Be it enacted by the Board of Supervisors of Shelby County, Iowa:

SECTION 1. Purpose.

In order to reduce the danger to public health, safety and welfare from the spills of hazardous substances, these regulations are promulgated to establish responsibility for the removal and cleanup of spills within Shelby County.

SECTION 2. Definitions.

For the purpose of this chapter, these words have the following meanings:

- (1) "Cleanup" means action necessary to contain, collect, control, identify, analyze, clean up, treat, disperse, remove, or dispose of a hazardous substance or hazardous waste.
- (2) "Hazardous condition" means any situation involving the actual, imminent or probable spillage, leakage, or release of a hazardous substance or hazardous waste onto the land, into the water, or into the atmosphere which creates an immediate or potential danger to the public health or safety.
- (3) "Hazardous substance" means any substance or mixture of substances that presents a danger to the public health or safety and includes, but is not limited to, a substance that is toxic, corrosive, or flammable, or that is an irritant or that generates pressure through decomposition, heat, or other means. "Hazardous substance" may include any hazardous waste identified or listed by the administrator of the United States Environmental Protection Agency under the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, or any toxic pollutant listed under Section 307 of the Federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous substance designated under Section 311 of the Federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous material designed by the secretary of transportation under the Hazardous Materials Transportation Act.

(4) "Hazardous waste" means a waste or combination of wastes that, because of its quantity, concentration, biological degradation, leaching from precipitation, or physical, chemical, or infectious characteristics, has either of the following effects:

- (a) Causes or significantly contributes to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or
- (b) Poses a substantial danger to human health or the environment.

"Hazardous waste" may include, but is not limited to, wastes that are toxic, corrosive, or flammable or irritants, strong sensitizers or explosives.

(5) "Hazardous waste" does not include:

- (a) Agricultural wastes, including manures and crop residues that are returned to the soil as fertilizers or soil conditioners;
- (b) Source, special nuclear, or by-product material as defined in the Atomic Energy Act of 1954, as amended to January 1, 1979.

(6) "Person" means individual, corporation, firm, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(7) "Responsible person" means a person who at any time produces, handles, stores, uses, transports, refines, or disposes of a hazardous substance or hazardous waste, the release of which creates a hazardous condition, including bailees, carriers, and any other person in control of a hazardous substance or hazardous waste when a hazardous condition occurs, whether the person owns the hazardous substance or waste or is operating under a lease, contract, or other agreement with the legal owner of the hazardous substance or waste.

SECTION 3. Cleanup required.

(1) Whenever a hazardous condition is created so that a hazardous substance may enter the environment or be emitted into the air or discharged into any waters, including ground waters, the responsible person shall cause the condition to be remedied by a cleanup as defined by Section 10.01.02, as rapidly as feasible to an acceptable safe condition, and restore the affected area to its state prior to the hazardous condition as far as practicable. The cost of cleanup shall be borne by the responsible person.

(2) If the responsible person does not cause the cleanup to begin in a reasonable time in relation to the hazard and circumstances of the incident, Shelby County may, by authorization of the Chairman of the Shelby County Board of Supervisors or his/her designee, give reasonable notice based on the character of the hazardous condition, setting a deadline for commencing and accomplishing the cleanup, or Shelby County may proceed to procure cleanup services. If the cost of the cleanup is beyond the capacity of Shelby County to finance, the Chairman or his/her designee may report to the Board of Supervisors and immediately seek any state or federal funds available for such cleanup.

SECTION 4. Liability for cleanup costs.

The responsible person shall be strictly liable to Shelby County for all of the following:

- (1) The reasonable costs incurred by Shelby County in containing and/or controlling a hazardous condition;
- (2) The reasonable cleanup costs incurred by Shelby County as a result of the failure of the person to clean up a hazardous substance or waste involved in a hazardous condition caused by that person;
- (3) The reasonable costs incurred by Shelby County to evacuate people from the area threatened by a hazardous condition caused by the person;
- (4) The reasonable damages to Shelby County for the injury to, destruction of, or loss of county property, including parks and roads, resulting from a hazardous condition caused by that person, including the costs of assessing the injury, destruction, or loss.
- (5) The costs referenced above shall be as determined by Shelby County Emergency Management and/or Shelby County Sheriff's Department for: manpower, apparatus, ambulance/rescue squad, command vehicle or utility truck, supplies and outside services, mileage, and decontamination, repairs, replacement, maintenance of equipment, apparatus or supplies, plus a reasonable administrative fee. It is unlawful for any responsible person to fail to pay a billing for such services within thirty (30) days of receipt therefor.

SECTION 5. Notifications.

(1) A person manufacturing, storing, handling, transporting, or disposing of a hazardous substance or waste shall notify Shelby County Emergency Management and/or the Shelby County Sheriff's Department of the occurrence of a hazardous condition as soon as possible, but no later than one hour after the onset of the hazardous condition or discovery of the

hazardous condition. The Shelby County Emergency Management and/or Shelby County Sheriff's Department shall notify the proper state office in the manner established by the state.
(2) Any Shelby County employee who discovers a hazardous condition shall notify Shelby County Emergency Management and/or Shelby County Sheriff's Department, which shall notify the proper state office in the manner established by the state.

SECTION 6. Police authority.

If the circumstances reasonably so require, the Shelby County Sheriff's Department, or their representative(s), may:

- (1) Evacuate persons, even from their homes, to areas away from the site of a hazardous condition; and
- (2) Establish perimeters or other boundaries at or near the site of a hazardous condition and limit access to cleanup personnel.

No person shall disobey an order of the Shelby County Sheriff's Department or any other deputy or peace officer/law enforcement officer issued under this section.

SECTION 7. County liability.

Shelby County shall not be liable to any person for claims of damages, injuries, or losses resulting from any hazardous condition, except if Shelby County is the responsible person as defined in Section 2(7).

SECTION 8. Penalty.

Any person found guilty of a violation of the provisions of this chapter shall, upon conviction, be subject to the penalty provisions, as applicable under State and Federal law.

SECTION 9. Repealer.

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 10. Severability Clause.

If any section, provision, or other part of this ordinance shall be adjudged invalid or unconstitutional, said adjudication shall not affect the validity of the ordinance as a whole or any section, provision, or other part thereof not adjudged invalid or unconstitutional.

SECTION 11. Effective Date.

This ordinance shall become effective upon publication.

Passed and adopted this 18th day of August, 2009.

AYES: Schmitz, Hull, Burmeister NAYES: None

Lonnie Maguire, Community Services Director, reported to the Board that she had appeared before the State Mental Health Risk Pool Board, along with Marsha Carter, Auditor, who attended telephonically. She presented a request to the Risk Pool Board for \$225,000 to cover the shortage in funding for the MH/MR/DD Fund. After her presentation, the Risk Pool Board agreed to fund Shelby County in the amount of \$203,000. Shelby County should receive this funding in January or February 2010.

It was moved by Burmeister, seconded by Hull, to authorize the Auditor to transfer the \$23,943.00 in Jail-Room and Board revenue from the General Basic Fund to the Capital Fund-Jail Room and Board Account. AYES: Schmitz, Hull, Burmeister NAYES: None

It was moved by Hull, seconded by Burmeister, to authorize the Chairman to sign the 28E Agreement with Pottawattamie County – Joint Exercise of Intercounty Law Enforcement to allow Pott County to employ Shelby County Deputy Sheriffs when needed. AYES: Schmitz, Hull, Burmeister NAYES: None

It was moved by Hull, seconded by Burmeister, to abate the taxes on Parcel No. 833102004061 in the amount of \$2.00. AYES: Schmitz, Hull, Burmeister NAYES: None

Dan Ahart, the County Engineer, updated the Board on activities of the county road crews and the status of current maintenance and construction projects.

It was moved by Burmeister, seconded by Hull, to approve the EWP Project Plans and the Project Agreement with the NRCS for L-EWP08(3) – 73-83 and authorize the Chairman to sign the Assurance Relating to Real Property Acquisition. AYES: Schmitz, Hull, Burmeister NAYES: None

The Board and the County Engineer left the Supervisors Chambers to drive to a potential bridge replacement site.

There being no further business appearing, the Chairman declared the meeting adjourned at 12:25 p.m.

ATTEST:_____

Marsha J. Carter
Clerk to the Board of Supervisors

Roger Schmitz, Chairman

NOTE: These minutes are as recorded by the Clerk to the Board of Supervisors and are subject to Board approval at the next regular meeting.