

PROCEEDINGS OF THE BOARD OF COUNTY COMMISSIONERS

Date: October 11, 2022

9:00 a.m.

Place: Commissioners Room, Courthouse, Caledonia, MN

Members Present:

Dewey Severson, Eric Johnson, Teresa Walter, and Greg Myhre

Others Present:

Auditor/Treasurer Donna Trehus, Reporter Rachel Stock, Reporter Charlene Selbee, Finance Director Carol Lapham, Board Clerk/EDA Director Allison Wagner, Human Resources Director Theresa Arrick-Kruger, County Engineer Brian Pogodzinski, Interim Recorder Mary Betz

Presiding: Chairperson Myhre

Call to order.

Pledge of Allegiance.

Prior to approving the agenda two items were added. On the Consent Agenda appointing Donise Becker to serve on the Water Planning Committee for a three (3) year term to expire 12/31/2024 was added. Under Action Items considering setting the date for the TNT meeting for December 13th 2022 was added. Motion was made by Commissioner Severson, seconded by Commissioner Walter motion unanimously carried to approve the agenda with the additions.

Motion was made by Commissioner Johnson, seconded by Commissioner Severson, motion unanimously carried to approve the meeting minutes from October 4, 2022.

Public Comment:

None.

APPOINTMENTS

None.

CONSENT AGENDA

- 1) Hire James Sweet as a probationary Highway Maintenance Specialist, B23, Step 1, effective October 24, 2022, conditioned on successful completion of background check.

- 2) Appoint Donise Becker to serve on the Water Planning Committee for a three (3) year term to expire 12/31/2024.

ACTION ITEMS

File No. 1 – Commissioner Walter moved, Commissioner Severson seconded, motion unanimously carried to approve out of state travel for Engineer Pogodzinski to attend the NACE conference.

File No. 2 - Commissioner Johnson moved, Commissioner Severson seconded, motion unanimously carried to approve the purchase of 2020 Chevy Tahoe from City of Spring Grove for \$42,000.00. (The Tahoe would be used in the City of Spring Grove and costs would be billed back to the City through the County/City contract.)

File No. 3 – Prior to any motions being made Commissioners discussed amending the Collaborative Design Group Facilities Utilization Study to include the County Justice Center, thereby increasing the utilization study cost by \$13,250.00 for a total cost of \$63,130.00. Commissioner Johnson said he did not initially realize that the Historic Jail that was not currently being used by the County was going to be included in the study. He said his understanding was that the study was only going to study the areas currently being used for office space by the County to see if the current space was being utilized to its full potential. Commissioner Johnson said he had assumed this would include the Justice Center but not the Historic Jail. Commissioner Myhre agreed with Commissioner Johnson. Commissioners Johnson and Myhre asked Human Resources Director Kruger why the Historic Jail was being studied since the space was not currently being used and since the Historic Jail space was not usable in its current condition. Commissioners Myhre and Johnson also said that the historic jail space had already been studied in a previous study. Human Resources Director Kruger said the previous study of the space had been different, and had explored different uses for the space. Commissioner Walter said it was always her understanding that the Historic Jail was going to be included in the study. She said she thought all the buildings that the County owned were going to be included. Commissioner Severson agreed. Commissioner Johnson said the previous study of the Historic Jail had estimated the cost of fixing the Historic Jail and turning it into office space to be 3.7 million dollars. He asked the board if this was their intent, and said he thought the study should focus on the current County Justice Center as well as current buildings being utilized by the County only, but not the Historic Jail. Commissioner Johnson moved, Commissioner Myhre seconded, to amend the contract with Collaborative Design Group for the Facilities Utilization Study to include the County Justice Center, but exclude the Historic Jail. The motion failed with Commissioners Walter and Severson voting no to the motion. Then, Commissioner Severson made a motion to amend the Collaborative Design Group Facilities Utilization Study to include the County Justice Center, thereby increasing the utilization study cost by \$13,250.00 for a total cost of \$63,130.00, and also keeping the Historic Jail in the study. The motion failed with Commissioners Johnson and Myhre voting no. (Commissioner Burns was absent from the meeting.) It was the general consensus of the board to meet with Collaborative Design Group at the next regular meeting on October 25th to further discuss options for the study since a majority decision had not been made.

File No. 4 - Commissioner Severson moved, Commissioner Myhre seconded, motion unanimously carried to set the TNT Meeting date for December 13th 2022 at 6:00 p.m. in the County Board Room 222 in the Historic Courthouse.

DISCUSSION ITEMS

Commissioners discussed recent meetings they had attended including an Extension meeting, and a Project Management Team (PMT) meeting for the Comprehensive Land Use Plan.

Closing Public Comment:

None.

Commissioner Johnson moved, Commissioner Severson seconded, motion unanimously carried to adjourn the meeting at 10:02 a.m. The next meeting would be a workgroup session on October 18, 2022.

BOARD OF COUNTY COMMISSIONERS

HOUSTON COUNTY, MINNESOTA

By: _____
Greg Myhre, Chairperson

Attest: _____
Donna Trehus, Auditor/Treasurer

PROCEEDINGS OF THE BOARD OF COUNTY COMMISSIONERS

Date: October 18, 2022

9:00 a.m.

Place: Commissioners Room, Courthouse, Caledonia, MN

Members Present:

Dewey Severson, Eric Johnson, Robert Burns, Teresa Walter, and Greg Myhre

Others Present:

Finance Director Carol Lapham, Auditor/Treasurer Donna Trehus, EDA Director/Board Clerk Allison Wagner, Accounting Supervisor Heidi Hankins, Public Health Supervisor Jordan Knoke, Public Health and Human Services Director John Pugleasa, Sheriff Mark Inglett, Chief Deputy Brian Swedberg, Engineer Brian Pogodzinski, Interim Recorder Mary Betz, STS Crew Leader Craig Welsh, and John Fuchsel

Board Workgroup Session

Call to order.

Public Health Supervisor Knoke, and Public Health and Human Services Director Pugleasa gave an overview of the public health division to the Commissioners. Knoke said public health focuses on the health needs of the population as a whole. The division oversaw numerous public health programs and did family home visiting. The public health division also worked with Fillmore County through the Community Health Board (CHB).

Engineer Pogodzinski discussed with the board what airport projects the County wanted to start in Federal Fiscal Year 2023. It was the general consensus of the board to fix the runway using FAA dollars and some County funds. The runway would be fixed up to the spot where potential hangers could be built if private individuals wanted to build hangers in the future.

Engineer Pogodzinski discussed with the board what Capital Improvement Projects the County wanted to do in Fiscal Years 2023-2027. Pogodzinski shared with the board that all District 6 County Engineers along with MnDot employees had sat down and discussed that funding would be down from State aid accounts in the near future. This was primarily due to less revenue coming into the State from new vehicle sales than original estimates had projected. Commissioners discussed future projects including a paving project on County 21 that went through Mound Prairie. Pogodzinski said a bike lane could possibly be added to the road project in the future if funding were secured for the lane. It was the general consensus of the Commissioners that this would be a good idea as the road was already being used by bikers currently.

The Commissioners discussed the Sentence to Serve (STS) program with STS Crew Leader Craig Welsh, Sheriff Inglett, and Chief Deputy Brian Swedberg. The total cost in 2022 for the program would be \$76,351.00. Welsh spoke in favor of the program to the Commissioners. He said he had been a Crew Leader for the program for 25 years and that numerous projects had been completed for various organizations and government entities including for the County, Department of Natural Resources, Houston County Townships, Historical Society, Houston County Fair, Cities in Houston County, local schools, and churches. One project in particular that was mentioned was the demolition and reconstruction of the Meyer furniture building that the County was currently using for County offices. Workers who participated in the program were not paid, but did learn valuable skills that Welsh said had sometimes turned into other job opportunities in the community. Welsh said he thought the current Judge was in favor of the program and Welsh expressed frustration that Attorney Jandt had not requested STS during sentencing more often. Welsh said the number of inmates and those on probation utilizing the program had fallen in recent years, and that the pandemic had decreased those numbers. Sheriff Inglett said he did not see the County having enough of a jail population in the future to justify the program. Commissioner Walter said STS was a good program. No final decisions on whether or not to continue the contract for the program were made at the meeting.

Commissioners discussed possible future allocations for ARPA dollars, and reviewed the current list of potential requested uses. It was the general consensus of the Commissioners to revisit the discussion at a later meeting, and that some ARPA dollars should be left unspent as they had until 2024 to allocate all the dollars and did not know what needs may come up in the future.

Commissioner Severson asked that a meeting be set up with Collaborative Design Group at the next regular meeting to further discuss options for the Space Utilization Study and to discuss what areas would be covered by the study. He said he had recently reviewed a previous study done by the firm in 2018. The Commissioners agreed another meeting with Collaborative Design Group should take place. Commissioner Johnson said the Historic Jail did not need to be studied again since it had been studied previously, and they could refer to the previous study for information on the Historic Jail. Chairperson Myhre said he would connect with Human Resources Director Kruger to set up the meeting.

The meeting ended at 11:53 a.m.

BOARD OF COUNTY COMMISSIONERS

HOUSTON COUNTY, MINNESOTA

By: _____
Greg Myhre, Chairperson

Attest: _____
Donna Trehus, Auditor/Treasurer

**HOUSTON COUNTY
AGENDA REQUEST FORM
October 25, 2022**

Date Submitted: October 20, 2022

By: Tess Kruger, HRD/Facilities Mgr.

ACTION

- None

APPOINTMENT REQUEST

- CDG, Craig Milkert & Johona Harris (virtual 9:15 AM)
regarding the space utilization study

HR CONSENT AGENDA REQUEST

Auditor/Treasurer

- Hire Eliana Babinski as a probationary Deputy Auditor/Treasurer (0.5 FTE), B22, Step 1, effective November 14, 2022, conditioned on successful completion of background check
- Hire Celeste Abbott as a 67 day temporary employee to assist with elections

Highway Department

- Hire Shane StJohn as a probationary Highway Mechanic (1.0 FTE), B24, Step 5, effective November 14, 2022, conditioned on successful completion of background check

Public Health & Human Services

- Confirm the resignation of Andrea Onstad, Social Worker, effective the end of the business day, October 31, 2022
- Initiate a competitive search for a 1.0 FTE Social Worker (Home & Community Based Services)

Sheriff's Office

- Hire Ethan Meyer as a probationary Sheriff's Deputy (1.0 FTE), C42, Step 4, effective November 21, 2022, conditioned on successful completion of psych/physical (note previous applicant withdrew prior to her start date)

Reviewed by:

<u> X </u>	HR Director	<u> X </u>	Sheriff
<u> X </u>	Finance Director	<u> X </u>	Engineer
		<u> X </u>	
<u> </u>	IS Director	<u> </u>	PHHS

	<input type="checkbox"/>		
	<input checked="" type="checkbox"/>	(indicate other dept)	<input type="checkbox"/>
<input type="checkbox"/> County Attorney	X		A/T
<input type="checkbox"/> Environmental Svcs			

Recommendation:

Decision:

Fwd: term renewal

Allison Wagner <allison.wagner@cedausa.com>

Tue 10/11/2022 10:22 AM

To: Houston County BOC <BOC@co.houston.mn.us>;

***** HOUSTON COUNTY SECURITY NOTICE *****

This email originated from an external sender. Exercise caution before clicking on any links or attachments and consider whether you know the sender. For more information please contact HelpDesk.

----- Forwarded message -----

From: **Bob Scanlan** <scanlancrew@gmail.com>

Date: Tue, Oct 11, 2022 at 10:01 AM

Subject: term renewal

To: Allison Wagner <allison.wagner@cedausa.com>

Hi Allison,

Paul Fruechte - Crooked Creek Watershed District Board member is up for term renewal on November 30, 2022. Can you take this to the County Board for action? Thanks!

Bob Scanlan

Root River SWCD

Crooked Creek Watershed District

805 N. Hwy 44/76, Suite 1

Caledonia, MN 55921

(507) 724-5261 ext. 3

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 www.cedausa.com
om

Allison Wagner
Director of Grants
Community and Economic Development Associates

o: [507-867-3164](tel:507-867-3164) || m: [507-458-2492](tel:507-458-2492)e: allison.wagner@cedausa.come: www.cedausa.com

w:

Houston County Agenda Request Form

Date Submitted: 10/20/2022

Person requesting appointment with County Board: John Pugleasa, Director Public Health & Human Services

Will you be doing a power point or video presentation: Yes X NO

Issue:

MDH has recently put out an RFP for equity related work. We are working with the Spring Grove School District and HVMHC to evaluate disparities in access to children's mental health services. The primary purpose for the grant will be to complete a Health Equity Data Analysis with Spring Grove. This data will better identify needs and inform our collaborative efforts going forward.

Attachments/Documentation for the Board's Review:

Justification:

No County Match required

Action Requested:

Approve submission of grant application.

For County Use Only			
Reviewed by:	<u> </u> County Auditor	<u> </u> County Attorney	<u> </u> Zoning/Environmental Service
	<u> </u> Finance Director	<u> </u> County Engineer	<u> </u> HR/Personnel
	<u> </u> IS Director	<u> </u> Other (indicate dept)	<u> </u>
<u>Recommendation:</u>			
<u>Decision:</u>			

All agenda request forms must be submitted to the County Auditor by 4:00 p.m. on Monday in order to be considered for inclusion on the following week's agenda. The Board will review all requests and schedule appointments as appropriate.

Houston County

Agenda Request Form

This form is not intended for the general public. It is intended for use by county department heads, representatives of other governmental units or vendors/agencies who contract with Houston County. Members of the public may address the Board during the Public Comment Period. (See Policy for Public Comment Period).

Date Submitted: October 20, 2022 for the October 25, 2022 Meeting

Person requesting appointment with County Board: Amelia Meiners

Issue:

Looking for BOC input on how to proceed with DNR denial on our No Wake Zone proposal.

Attachments/Documentation for the Board's Review:

DNR denial letter

Justification:

Action Requested:

Direction on whether to have RASLAW file writ of certiorari to challenge the DNR's decision. Note that this has to be done by October 28th.

For County Use Only

Reviewed by:

<u> </u> County Auditor	<u> </u> County Attorney	<u> </u> Zoning Administrator
<u> </u> Finance Director	<u> </u> County Engineer	<u> </u> Environmental Services
<u> </u> IS Director	<u> </u> Other (indicate dept)	<u> </u>

Recommendation:

Decision:

All agenda request forms must be submitted to the County Auditor by 4:00 p.m. on Monday in order to be considered for inclusion on the following week's agenda. The Board will review all requests and determine if the request will be heard at a County Board meeting.

August 30, 2022

Via U.S. Mail and Electronic Mail

Greg Myhre
Chairperson, Houston County Board of Commissioners
20456 Old 76 Road
Caledonia, MN 55921

Re: Houston County's Proposed "No-Wake" Ordinance

Dear Chairperson Myhre,

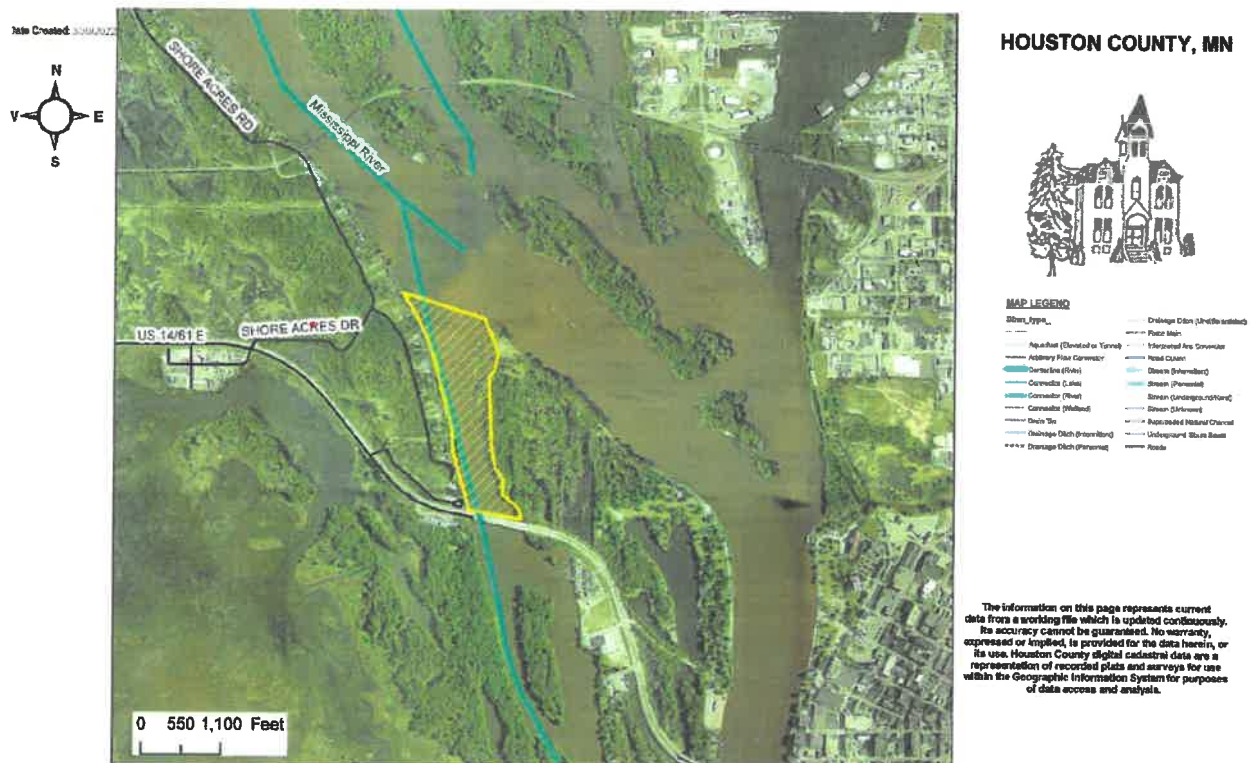
I am writing in response to Houston County's ("County") proposed "no-wake" ordinance (the "Ordinance"). Under Minn. Stat. § 86B.205, subd. 4, a proposed surface use zoning ordinance must be submitted to the Commissioner of Natural Resources (the "Commissioner") for review and approval before adoption. The Commissioner must approve or disapprove the proposed ordinance within 120 days. If the Commissioner disapproves the ordinance, she must return it to the local governmental unit with a written statement of the reasons for disapproval. As the Director of the Enforcement Division of the Department of Natural Resources ("DNR"), I have been delegated authority from the Commissioner to issue decisions on proposed surface use zoning ordinances.

The Ordinance was submitted to the Commissioner for review in accordance with statute. In addition to the draft Ordinance, the County submitted notes from a public hearing dated April 19, 2022, minutes from a board meeting dated April 26, 2022, and various email correspondences between board members and the public, as well as the county attorney. The Commissioner has reviewed and considered all these items as part of its review. **For the reasons discussed below, DNR cannot approve the Ordinance.**

I. Background.

The Ordinance proposes a "no-wake" zone in the west backwater channel of the Mississippi River between River Mile 698 and River Mile 699 (hereinafter referred to as the "West Channel"). In this area, the cities of La Crescent, Minnesota and La Crosse, Wisconsin

are located on either side of the Mississippi River. Barron Island sits within the river in the immediate area at issue, creating the West Channel on one side and the eastern channel on the other (hereinafter referred to as the “East Channel”). The territorial boundary between Minnesota and Wisconsin runs down the middle of the West Channel. These areas are depicted on the following map, which was included in the County’s submittal:



The Ordinance proposes a “no-wake” restriction for the entirety of the West Channel located between the “West Channel Bridge” near River Mile 698 and the main channel entrance near Mile 699. The proposed “no-wake” area is depicted in yellow above.

The Ordinance would authorize the Houston County Sheriff’s Office to post and install buoys in the entire West Channel area. The Ordinance makes it a misdemeanor for any person to travel in the area at a speed greater than planning speed whereby the wash or wake created is greater than minimal or at speed faster than five miles per hour.

Based on the information provided, it appears that the City of La Crosse, Wisconsin has instituted a similar “no-wake” zone in the East Channel. Members of the public testified at a public hearing that this has resulted in increased boat traffic within the West Channel, especially during fishing tournaments, where boaters presumably use the West Channel to avoid the East Channel’s “no-wake” zone.

II. Analysis.

As stated above, the territorial boundary between Minnesota and Wisconsin runs down the middle of the West Channel. This boundary is recognized in section 1 of the Enabling Act for the State of Minnesota (“That the inhabitants of that portion of the Territory of Minnesota which is embraced within the following limits, to-wit: Beginning at ... thence along the northern boundary of [Iowa] to the main channel of the Mississippi River; *thence up the main channel of said river*, and following the boundary line of the State of Wisconsin, until the same intersects with the St. Louis River....”) and has been further recognized by the United States Supreme Court in *State of Minnesota v. State of Wisconsin*, 252 U.S. 273, 282 (1920) (“Thus the jurisdiction of each state extends to the thread of the stream, that is, to the ‘mid-channel,’ and, if there be several channels, to the middle of the principal one, or, rather, the one usually followed.”).

Congress well understood, however, the impracticality of having to prove whether an act occurred on one side of the middle of the main channel or on the other side it. To avoid this potential loophole for states separated by navigable waterways, Congress would often grant concurrent jurisdiction to neighboring states for crimes committed on any part of the river, without regard to the actual boundary line. Such was the case in Minnesota, as described in section 2 of the Enabling Act for the State of Minnesota (“[T]he State of Minnesota shall have concurrent jurisdiction on the Mississippi and all other rivers and waters bordering on the said State of Minnesota, so far as the same shall form a common boundary to said state and any state or states now or hereafter to be formed or bounded by the same....”), as well as Article II, Section 2 of the Minnesota Constitution (“The state of Minnesota has concurrent jurisdiction on the Mississippi and on all other rivers and waters forming a common boundary with any other state or states.”). Thus, *in certain circumstances*, Minnesota has jurisdiction to punish violations of its own laws occurring on a part of the river within the territorial boundaries of a neighboring state.

A key distinction, however, to the grant of concurrent authority occurs when a defendant's conduct, although a crime by the laws of the prosecuting state, is not a crime by the laws of the neighboring state, and the conduct takes place on that part of the river within the neighbor's borders. This was the precise situation in the United States Supreme Court's decision in *Nielsen v. Oregon*, 212 U.S. 315 (1909). In *Nielsen*, the Court analyzed the limits of the concurrent jurisdiction of Oregon and Washington over the Columbia River, the boundary water between the two. *Id.* at 316. I note that the enabling acts of both Oregon and Washington contain similar language to Minnesota's enabling act with respect to concurrent authority. *Id.* Defendant Nielsen, a resident of Washington, was operating a purse net on the Washington side of the Columbia River. *Id.* Fishing with a purse net was legal in Washington, but illegal in Oregon. *Id.* Nevertheless, Nielsen was arrested and prosecuted in the courts of Oregon under a theory of concurrent jurisdiction. *Id.* The *Nielsen* Court reversed his conviction, clarifying that when an act is "prohibited and punishable by the laws of both states, the one first acquiring jurisdiction of the person may prosecute the offense," but where one state prohibits the act and the other authorizes it, the former cannot "punish a man for doing within the territorial limits of [the latter] an act which that state had specifically authorized him to do." *Id.* at 320-21. In reaching this conclusion, the Court noted the distinction between acts that are *malum in se* (acts that are so wrong in and of themselves that they would necessarily be crimes in both states) and acts that are *malum prohibitum* (acts which are wrong by virtue of statute or regulation only). *Id.*

The reasoning in *Nielsen* has been relied on in Wisconsin appellate courts in analyzing concurrent jurisdiction to prosecute game and fish violations occurring with the Mississippi River border.¹ In *State v. Nelson*, the defendant Nelson was found guilty snagging fish in violation of Wisconsin law. 285 N.W.2d 924, 925 (Wisc. Ct. App. 1979). The violation occurred while Nelson was fishing from a retaining wall of the Trempealeau Lock and Dam on the Minnesota side of the Mississippi River. *Id.* Nelson was observed by a Wisconsin game warden on the other side of the river and was cited and convicted. *Id.* Nelson appealed, arguing that Wisconsin had no jurisdiction over conduct that occurred wholly within Minnesota's boundaries. *Id.* The *Nelson* court examined the application of Wisconsin's and Minnesota's concurrent jurisdiction over the Mississippi River. In doing so, the court specifically observed the

¹ The Commissioner was unable to find any opinions from Minnesota courts discussing the applicability of concurrent jurisdiction when an act is prohibited by one state but not prohibited by its neighbor. However, the enabling acts of Wisconsin and Minnesota contain similar language surrounding concurrent jurisdiction. Therefore, the Commissioner finds the opinions from the Wisconsin courts to be useful.

distinction in *Nielsen* between when an act is punishable on both sides of a border river as opposed to just one, noting that concurrent jurisdiction “is not to be construed to mean that one state has authority to punish an act in violation of its laws beyond its territory where the act is not prohibited by the laws of the neighboring state.” *Id.* at 927. Ultimately, Nelson’s conviction was upheld because the laws of both Wisconsin and Minnesota prohibited snagging fish. *Id.* Thus, concurrent jurisdiction was applicable in that instance.²

Here, the Ordinance seeks to impose a no-wake zone within the entirety of the West Channel. This includes those areas wholly within the Wisconsin side. A similar “no-wake” zone already exists in East Channel by virtue of a La Crosse ordinance. Notably, however, it appears that La Crosse has not imposed a “no-wake” area within any portion of the West Channel, despite clearly knowing how to do so. Accordingly, if enacted the Ordinance would have the effect of criminalizing conduct within Wisconsin territory that Wisconsin itself does not prohibit. Boaters would face misdemeanor charges from Minnesota even when traveling exclusively on the Wisconsin side at speeds that are not prohibited by Wisconsin law. This appears to fall squarely within the exception to concurrent authority discussed in the authorities cited above. *See also United States v. State of N.D.*, 856 F.2d 1107, 1109 n.4 (8th Cir. 1988), *rev'd on other grounds North Dakota v. United States*, 495 U.S. 423 (1990) (“But in cases of dual sovereignty over the same territory, one sovereign may not normally prohibit what the other permits.”).³

² A similar analysis occurred in *State v. Beck*, in which a Wisconsin conviction for clamming was upheld on grounds of concurrent jurisdiction when the activity was done on the Iowa side of the Mississippi River and the activity was prohibited in both states. 555 N.W.2d 145, 147 (Wisc. Ct. App. 1996). The *Beck* court again signaled that a different analysis would apply if the act were not punishable on both sides; again, recognizing from *Nielsen* that “a state which prohibits an act cannot prosecute and punish for that act when it is committed within the territorial limits of a neighboring state that authorizes the act.”

³ The email correspondence submitted by the County includes a discussion by the county attorney that suggests that the Houston County border with Wisconsin does not terminate at the middle of the West Channel but rather extends to the shoreline on the Wisconsin side. This analysis relies largely on section 2 of the Enabling Act for the State of Minnesota, Minn. Stat. § 484.02, and *State v. George*, 60 Minn. 503 (1895). The Commissioner respectfully disagrees with this analysis. Section 2 of the Enabling Act and Minn. Stat. § 484.02 are codifications of the concept of concurrent jurisdiction. As discussed in the authorities above, the grant of concurrent jurisdiction does extend authority to punish acts for violations of Minnesota law when the act itself was done in Wisconsin territory and is not prohibited by Wisconsin law. The Commissioner further finds the reliance on *George* to be misplaced. *George* involved the Minnesota prosecution of larceny committed on the Wisconsin side of a bridge crossing the Mississippi River. But larceny is an act

III. Conclusion.

For the above stated reasons, the Commissioner respectfully disapproves the Ordinance.

Sincerely,

COL Rodmen Smith
Director of Enforcement
(651) 259-5042
rodmen.smith@state.mn.us

cc: WSU File
CAPT Jason Peterson - R3 Enforcement Manager
LT Adam Block – Boating Law Administrator

clearly prohibited in both Minnesota and Wisconsin (*malum in se*), so concurrent jurisdiction would logically apply. But that decision has little utility here. Under the Ordinance an act would be prohibited under Minnesota law but permitted under Wisconsin law (*malum prohibitum*). This distinction is precisely what lead to the United States Supreme Court's clarifying opinion in *Nielsen*, written 14 years after Minnesota Supreme Court's decision in *George*. Accordingly, the Commissioner instead relies on *Nielsen* and its progeny.

Houston County Agenda Request Form

Date Submitted: October 18, 2022

Board Date: October 25, 2022

Person requesting appointment with County Board: Brian Pogodzinski

Issue:

Interagency agreement between Houston County and Mound Prairie Township for snow plowing and signing services. This agreement will supercede the agreement made on October 26, 2021 to include snow plowing of South Ridge Road in addition to Evans Hill Road and Tschumper Road. This agreement also includes sign inspection and maintenance services.

Attachments/Documentation for the Board's Review:

Copy of the new Mound Prairie Township agreement.

Justification:

Written terms for assistance provided.

Action Requested:

Approve Agreement

For County Use Only			
Reviewed by:	<input type="checkbox"/> County Auditor	<input type="checkbox"/> County Attorney	<input type="checkbox"/> Zoning Administrator
	<input type="checkbox"/> Finance Director	<input type="checkbox"/> County Engineer	<input type="checkbox"/> Environmental Services
	<input type="checkbox"/> IS Director	<input type="checkbox"/> Other (indicate dept)	
<u>Recommendation:</u>			
<u>Decision:</u>			

All agenda request forms must be submitted to the County Auditor by 4:00 p.m. on Monday in order to be considered for inclusion on the following week's agenda. The Board will review all requests and determine if the request will be heard at a County Board meeting.



COUNTY OF HOUSTON
Inter-Agency Professional/Technical Services Agreement
Snow Removal and Signing Services Agreement

THIS CONTRACT, amendments and supplements thereto, is between the County of Houston, acting through its Board of Commissioners, (hereinafter **HOUSTON**), and Mound Prairie Township, acting through its Board of Supervisors, (hereinafter **TOWNSHIP**).

WHEREAS, **HOUSTON** pursuant to Minnesota Statutes Chapter 373, is empowered to make contracts in relation to concerns of the County, and

WHEREAS, **TOWNSHIP** pursuant to Minnesota Statutes Chapter 366, is empowered to procure professional and technical services, and

WHEREAS, **TOWNSHIP** is in need of snow removal and signing services on various township roadways.

NOW THEREFORE, it is agreed:

I. TERM OF CONTRACT

This **CONTRACT** shall be effective on October 1, 2022, or upon the date the final required signature is obtained by both parties, whichever **occurs later**, and shall remain in effect through May 1, 2030, unless cancelled pursuant to the provisions set forth in clause V. herein.

II. HOUSTON DUTIES

HOUSTON will deliver the requested services, in a timely manner, consistent with the requirements set forth in set forth in Houston's Scope of Work (Exhibit A).

III. CONSIDERATION AND TERMS OF PAYMENT

A. Consideration. All services performed by **HOUSTON** pursuant to this **CONTRACT** shall be paid by **TOWNSHIP** as follows:

Compensation. TOWNSHIP agrees to pay HOUSTON on a time, equipment and materials basis.

- Labor: The Houston County labor rate will be determined by the most recent labor agreement in place with a 60% markup for fringe benefits.
- Equipment: The Houston County equipment rates will be determined and approved by the Houston County Board of Commissioners.
- Materials: Cost of materials, such as signs, posts, mixed sand and rock, will be invoiced at Houston County's actual cost of material plus a 15% markup.

B. Payments. HOUSTON will provide TOWNSHIP invoices reflecting the labor, equipment and materials used to perform services. Invoices shall be promptly paid within thirty (30) days of the HOUSTON's invoice.

IV. AUTHORIZED REPRESENTATIVES

All official notifications, including but not limited to, cancellation of this CONTRACT must be sent to the other party's authorized representative.

A. HOUSTON's authorized representative for the purpose of administration of this CONTRACT is:

Name: Brian Pogodzinski
County Engineer
Address: 1124 East Washington Street
Caledonia, MN 55921
Telephone: O: (507) 725-3925
E-Mail: brian.pogodzinski@co.houston.mn.us

B. TOWNSHIP's authorized representative for the purpose of administration of this CONTRACT is:

Name: Dan Fuchsel, Supervisor Chair
Address: 7474 County Hwy 25
La Crescent, MN 55947
Telephone: (507) 895-8931
E-Mail: mptclerk@gmail.com

V. CANCELLATION AND TERMINATION

This CONTRACT may be canceled by either party at any time, with or without cause, upon thirty (30) days written notice to the other party. In the event of such a cancellation, HOUSTON shall be entitled to reimbursement for expenses as set forth above.

VI. ASSIGNMENT

Neither HOUSTON nor TOWNSHIP shall assign or transfer any rights or obligations under this CONTRACT without the prior written consent of the other party.

VII. LIABILITY

HOUSTON employees and agents at all time remain under the direction and supervision of HOUSTON. TOWNSHIP employees shall at all times remain under the direction and supervision of TOWNSHIP. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing a partnership or agency relationship.

Notwithstanding, each party shall be liable for its own acts to the extent provided by law and hereby agree to indemnify, hold harmless and defend the other, its officers and employees against any and all liability, loss, costs, damages, expenses, claims or actions, including attorney's fees which the other, its officers and employees may hereafter sustain, incur or be required to pay, arising out of or by reason of any act or omission of the other party, its agents, servants or employees, in the execution, performance, or failure to adequately perform its obligations pursuant to this CONTRACT.

VIII. INSURANCE REQUIREMENTS

HOUSTON and TOWNSHIP are subject to the same liability caps set forth in Minn. Stat. §466. Therefore, the parties agree to maintain General Liability, Commercial Auto, Professional liability, and Workers' Compensation coverage at the recommended levels set by the Minnesota Counties Intergovernmental Trust (MCIT) throughout the term of this agreement for HOUSTON and the . HOUSTON and TOWNSHIP agree that at all times during the term of this CONTRACT to maintain:

- Comprehensive General Liability - \$1.5 million minimum per occurrence
- Auto Liability: \$1.5 million combined single limit
- Workers Compensation as required by Minnesota Statutes

Each party agrees to immediately notify the other party should it cease to maintain the listed coverage through MCIT, the Minnesota Association of Townships Insurance Trust (MATIT) or other commercial insurance carrier.

IX. GOVERNMENT DATA PRACTICES

The parties agree to comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the parties in accordance with this contract. The civil remedies of Minnesota Statute §13.08 apply to the release of the data referred to in this clause by either TOWNSHIP or HOUSTON. Further, the parties will notify the other party within two business days of any request it receives to release data as a result of this CONTRACT.

X. AMENDMENTS

Any amendments to this CONTRACT shall be in writing and shall be executed by the same parties who executed the original CONTRACT, or their successors in office.

XI. JURISDICTION/VENUE

This Agreement shall be governed, construed and interpreted by, through and under the Laws of the State of Minnesota. All proceedings related to the CONTRACT shall be venued in Houston County, Minnesota.

XII. SURVIVAL OF TERMS

The following clauses survive the expiration, cancellation or termination of this CONTRACT: VII, Liability; VIII, Insurance; IX, Government Data Practices; and XI, Jurisdiction/Venue.

XIII. ENTIRE CONTRACT

This CONTRACT constitutes the entire agreement between the parties with respect to its subject matter and supersedes all past and contemporaneous agreements, promises, and understanding, whether oral or written, between the parties.

IN WITNESS WHEREOF, the parties have caused this CONTRACT to be duly executed intending to be bound thereby.

APPROVED:

HOUSTON COUNTY

By: (authorized signatory)



Name: Brian Pogodzinski

Title: County Engineer

Date: 10/17/2022

APPROVED:

MOUND PRAIRIE TOWNSHIP

By: (authorized signatory)



Name: Dan Fuchsel

Title: Supervisor Chair

Date:

HOUSTON COUNTY

By: (authorized signatory)

Name: Greg Myhre

Title: Houston County Board Chair

Date:

EXHIBIT A

SCOPE OF WORK

Snow Removal

HOUSTON will remove snow and apply sand, salt, or rock to Evans Hill Road, Tschumper Road, and South Ridge Road throughout the winter season. Snow removal services schedule will be determined by road conditions and HOUSTON staff availability. Material application rate will be determined by HOUSTON, based on road conditions and prior guidance provided by the TOWNSHIP.

Signing Services

HOUSTON will perform annual inspection and maintenance of TOWNSHIP signage as mutually agreed upon. New sign installation will be performed by HOUSTON at the request of the TOWNSHIP. Schedule of services to be performed will be based on Federal and State signing requirements and HOUSTON staff availability.