

WOODBURY COUNTY BOARD OF SUPERVISORS AGENDA ITEM(S) REQ

#17a

Date: 8-1-16

Weekly Agenda Date: 8-2-16

ELECTED OFFICIAL / DEPARTMENT HEAD / CITIZEN: Supervisor Matthew Ung

WORDING FOR AGENDA ITEM:

Contrasting Sioux Rivers' informal "mediation committee" with formal mediation per the 28E Agreement

ACTION REQUIRED:

Approve Ordinance

Approve Resolution

Approve Motion

Give Direction

Other: Informational

Attachments

EXECUTIVE SUMMARY:

Woodbury County was placed in the untenable position of withdrawing from Sioux Rivers' informal "mediation committee" today because the meeting was not publicly posted as requested by Woodbury County six days ago. Less than 24 hours before the meeting, mediation committee members were provided by CEO Shane Walter with a "Resolution to hold meeting as closed session", per the advice of the regional attorney, to be signed by the members of the committee on the day of the meeting. I was confused how such a resolution could be properly voted upon if a public meeting (without public notice) was not already happening. Woodbury County's legal counsel advised us not to participate under such circumstances, and I attempted to notify the region reps.

I notified Chairman Taylor that despite Woodbury County's attempt to acquiesce to the region, the 28E notes that a quorum of the Sioux Rivers Governance Board is three members, so two is the maximum number that can meet without public notice. Because there was no meeting notice published, this conflicts with the four governance board members both parties assume to be on this committee. In order to avoid an open meetings law violation I planned to excuse myself before the meeting could begin, but the Sioux and Plymouth county supervisors did not show up so that step was not necessary.

Mediation per the 28E Agreement does not comport with what took place today. I am requesting further direction.

BACKGROUND:

According to Sioux Rivers Chairman Loutsch at the July 18th board meeting, the regional attorney provided him and CEO Shane Walter with an opinion letter listing options dealing with the disagreement with Woodbury County on rent of the Tri-View building, including "an injunction against Woodbury County, including a claim for declaratory judgment that the lease to the Veteran's Affairs Dept. approved June 28th is void", and "eventually a lawsuit against the [Woodbury] County."

Woodbury County/Sioux Rivers Service Coordinator Patty Erickson-Puttmann alleged unannounced entries into mental health areas of the building specifically by Woodbury County Building Services Director Kenny Schmitz and Veterans Affairs Dept. Director Danielle Dempster, saying "they just continue to encroach, and we don't know where we're going. So make a decision date time stop go whatever."

(Woodbury County holds the title deed to the Tri-View building.)

There was then a motion and a second for the following, which passed 2-1; Woodbury County opposed: "I'll make a motion that we ask Woodbury County to go to mediation with Denny and Jim as our representatives and that we give a deadline of two weeks and if not then this board should meet and if satisfactory compromises cannot be made then this board meet again in two weeks and proceed with judicial action."

If the Woodbury County Board is to participate in mediation, it should not be "informal," given the problems that has already created. Per the 28E, a mediation committee itself mediates disputes between two other parties. How can a mediation committee comprised of members already in disagreement mediate itself?

When the 28E calls for a "Dispute Resolution Committee" in Section 4.9, it states that committee "would be empowered to mediate the dispute between parties." This does not apply to disputes between board members or member counties, because two Woodbury County supervisors are unable to pledge actions on behalf of their full board. This is separately addressed in the 28E (see recommendation).

FINANCIAL IMPACT:

Unknown on the particular issue of rent, as Sioux Rivers has not yet asked for a specific amount of rent, nor qualified what "fair market value" should be.

IF THERE IS A CONTRACT INVOLVED IN THE AGENDA ITEM, HAS THE CONTRACT BEEN SUBMITTED AT LEAST ONE WEEK PRIOR AND ANSWERED WITH A REVIEW BY THE COUNTY ATTORNEY'S OFFICE?

Yes No

RECOMMENDATION:

If desiring mediation, Woodbury County and Sioux Rivers should properly follow the 28E, which states:

"In the event an internal dispute arises amongst or between the Governing Board, the Chief Executive Officer (CEO) or any of the member counties, which cannot be resolved, the following dispute resolution shall be used:

- a) Further mediation conducted pursuant to Chapter 679C of the Iowa Code;
- b) If after which the dispute remains unresolved, arbitration will be conducted pursuant to Chapter 679A of the Iowa Code."

A mediator in Chapter 679C is a third party, not a committee of existing members who already disagree.

ACTION REQUIRED / PROPOSED MOTION:

The good-faith effort of Woodbury County to mediate informally may not eliminate complications with the open meetings law if not properly posted by the region and if the region expects the Woodbury County representatives to promise rent any higher than the \$1 passed by their board. In my opinion, Woodbury County should decide to begin actual mediation following the 28E, or defer until that formal action is requested by Sioux Rivers, or defer until further counsel is received by Woodbury County.

FW: FW: Sioux Rivers Region

From: Cindy Moser <Cynthia.Moser@heidmanlaw.com>
To: mark@mudflap.com; MMONSON@woodburycountyiowa.gov; MATTHEWUNG@woodburycountyiowa.gov
Date: Monday - August 1, 2016 10:02 AM
Subject: FW: FW: Sioux Rivers Region
Attachments: TEXT.htm; ATT00001.png; image001.png; Mime.822

Please see Joshua's email below...additional information supporting the decision not to proceed today. C



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From: Joshua Widman [mailto:jwidman@woodburycountyiowa.gov]
Sent: Monday, August 01, 2016 8:57 AM
To: Cindy Moser
Cc: Allyson C. Dirksen
Subject: Re: FW: Sioux Rivers Region

Thanks Cindy. The other thing they haven't done up to this point is identify which exception under 21.5 they plan to go in to closed session under. Section 21.5(2) requires that the specific exemption be identified publicly at the open session prior to going in and that it also be entered in the minutes.

Joshua D. Widman
 Assistant Woodbury County Attorney
 620 Douglas Street #300
 Sioux City, IA 51101

Phone: 712-279-6516
 Fax: 712-279-6457

>>> Cindy Moser <Cynthia.Moser@heidmanlaw.com> 8/1/2016 8:17 AM >>>

Joshua – I'm forwarding the email below to you FYI. I will let you know when/if I receive a response from Paul Lundberg. Cindy



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From: Cindy Moser
Sent: Monday, August 01, 2016 8:03 AM
To: 'paul@lundberglawfirm.com'
Cc: Mark Monson; Mark (mark@mudflap.com); 'Matthew Ung'

Subject: Sioux Rivers Region

Paul – Woodbury County’s representatives on the Sioux Rivers Region Governance Board have provided us with a copy of the attached resolution which purports to authorize holding the scheduled meeting of the Dispute Resolution Committee on August 1st as a closed meeting. While we concur that a closed session is desirable, we do not believe the resolution meets the requirements of Iowa Code §21.4 (which requires 24 hours advance public notice of a meeting) or §21.5(1) (which imposes requires certain voting requirements to authorize a closed session).

Because the requirements of Iowa Code Chapter 21 have not been meet, we respectfully request that the meeting be postponed for at least 24 hours to allow the necessary posting and compliance with §21.5. If your client is not willing to comply with the Open Meetings law, we will advise our client not to participate in today’s meeting.

Please advise regarding your position as soon as possible. Thank you. Cindy