

# Brule, Spink Townships receive no help from Commissioners regarding roads

At the March 11 Union County Commissioners meeting, Brule and Spink Township members discussed the situation regarding roads near the proposed Hyperion Refining LLC's oil refinery site.

The bottom line for the township boards was they were told they need their own attorney. They are responsible for maintaining any of their roads, including 315th Street, which was the only township road included in the Joint Powers Road Improvement & Maintenance Agreement between the Commission and South Dakota Department of Transportation.

"There could be modifications that they don't even use township roads," said Commission Chairman Doyle Karpen, "but as of now it's identified as 315th (Street)."

"Will township residents and their respective boards have any power to give input at any time about what roads will be used," asked Brule Township spokesperson Wayne Heckathorn as States Attorney Jerry Miller handed out a revised road agreement.

"That's a good question," said Karpen.

"The (agreement) says we're responsible for snow removal on 315th," said Heckathorn, adding with Hyperion officials saying their oil refinery will run around the clock, "logistically, that's a problem for us."

Heckathorn explained that during major snowstorms, they pull their maintainer equipment off the roads for safety reasons.

"We assume the residents are staying off the road," said Heckathorn. "With a plant like this with perhaps 500 to 600 people working there, people are going to have to get home or get there."

"We'd like to not be responsible for snow removal for the 1.25 mile on 315th, specifically," said Heckathorn.

"Do you know what your mill levy is right now for your township?" asked Karpen. "I guess where I'm going is if you're levying \$1 million assessed valuation, and this is estimated to have an assessed valuation at \$2 billion, that will leave you guys a check (of about) \$2 million."

"That wouldn't help Spink Township," said Spink Township spokesperson Dave Larsen, explaining they share the road with Brule Township but will not get any tax revenue from Hyperion's plant because it doesn't lie in their township.

"Maybe you could get your nice neighbors to the south that are going to have \$2 million a year coming in to take the whole thing," said Karpen.

"We share the road and divide (up the expenses)," said Larsen.

"(This road) is a township boundary road," said Heckathorn. "We need clarification of the tax revenues, and where we stand on that given our increased responsibilities we have."

The township boards were also concerned for the farmers who drive combines, tractors and other farm equipment, especially during Hyperion's heavy traffic times.

"Wouldn't it be appropriate that employees be required to stay on specific access roads, 315th and 473rd," said Heckathorn. "That they'd follow them and wouldn't be putting heavy traffic loads (on other area roads)."

Heckathorn suggested that the

Commission add that requirement to the agreement. This would free up the other roads for residents and farmers.

"I think you can understand the traffic problems we could have," said Heckathorn.

"I think the county realizes that," said Karpen. "I think we have that issue on several areas now. One on McCook Lake as a matter of fact. I know farmers who farm on one side of the interstate and have to travel to the other. It makes it difficult."

Commissioner Milton Ustad noted the Commission's agreement covers just Hyperion's construction period. Brule Township is not going to get any tax revenues from Hyperion's project during the construction phase.

However, Heckathorn said they were only concerned about the "after construction" period because the Commission's agreement states the state will be responsible for 315th during the construction phase.

"Snow and ice removal will still remain the responsibilities of the townships," said Karpen.

Since the townships don't provide snow removal around the clock, who does, asked Larsen.

"Hyperion has indicated they will probably take over snow removal from the townships and county," said Miller adding he had met with Union County Public Works Director Raymond Roggow and Hyperion officials on this. Hyperion will have snow removal equipment because of their large parking areas. "I anticipate that that will be addressed in the developer's plan between Hyperion, the county and the townships."

"Is that what they are offering, is that their intentions?" asked Linda Scarmon, a Spink Township board member.

"Hyperion plans to have dormitories," said Miller. "So there won't be a lot of traffic."

"There will be a lot more traffic than there is now," said Scarmon. "We're not equipped to do that at this point in time."

Miller noted it was the township's responsibility.

Heckathorn also questioned the county's authority to just close roads. He told the board that this will have to be addressed according to township bylaws and state law in a timely manner.

"That just can't be overlooked," said Heckathorn. "Quite frankly the guidelines don't really allow it. People of the township vote on whether or not to close the roads."

When Heckathorn said they'd need some legal help on that, Miller said the townships have their own legal counsel.

"Something like that we'll have to review," said Karpen. "We'll need to investigate."

"We don't want to throw anybody to the wolves," he added. "Nobody wants to do that. We will be discussing things with the state also on these issues."

Another township concern was who was going to maintain the north two miles of 475th Avenue.

"Basically it's two miles of road and almost a dead-end," said Ustad. "I see no need for 475th to be included (in the agreement)."

Miller noted that 475th Avenue had been deleted from the original agreement.

Miller told the townships' members the agreement between the

state and county could be renegotiated if other roads developed problems. However, current revisions had included changing language because counties cannot bind the townships into the agreement.

"(315th Street) is your road," said Miller. "You can join in this agreement. You can negotiate with the county and state yourself and have your own attorney to do so unless you want to come to this board by resolution and enter into agreement."

"The fact being we don't have extra tax dollars and our budget is going up steadily and the bank account's going down, we have a problem," said Eugene Swanson, chairman of Spink Township.

Miller said they'd probably just need a few loads of gravel, and the state's money was interest free but it would have to be paid back. If the county does it without using state funds, the townships can ask the county if they have to pay it back.

"The county's intention was to have the state be our safety net," said Miller. "The less we use the state, the less we have to pay them back."

"I think our intent is to do as much as we can ourselves," said Swanson, "but we're not seeing a revenue stream yet either, and percentage-wise, I bet our cash flows are a lot lower than yours."

"Is the county froze (in its tax limitations)? No, you can opt out," said Swanson.

"Will you sign a petition to that?" asked Karpen.

"I think I would," said Swanson. "It would help us out."

"That's another whole deal," said Karpen, backing out of that discussion. "Sorry, I brought it up."

"If you're looking where we'd end up, it could be disastrous," said Swanson.

"You can talk to us," said Karpen. "It just looks like we are mean but we're not really that bad of people. If you wish to come back and visit, or have concerns, contact the board."

Karpen said the agreement hadn't been signed yet.

"What if you sign this and we don't agree with it?" asked Swanson.

"You don't have to sign anything," said Karpen.

"I know but what are we held liable for?" asked Swanson.

"The responsibility of the townships (is) you have jurisdiction over the road," said Karpen, asking for Miller's help.

Miller noted in the agreement's Section 5, nothing binds the townships.

"That language invites you guys to the table," said Miller. "That language invites Hyperion to the table to talk about if we can find additional solutions for snow and ice removal and some of the things the board's talked to us."

"We want as much control over where (Hyperion) comes in," said Miller. "We don't want extra roads going up. We've also tossed around an ordinance of violations of the agreement."

"We're open guys," said Karpen. "Three heads are better than one. We're only individuals until we call the board to order."

Miller told the township members present that he was the county's legal counsel and suggested they get their own attorneys.