



COLLIN COUNTY

Public Works Department
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Date: July 5, 2012
To: Judge Self and Commissioner's Court
From: Jon Kleinheksel, Director of Public Works 
Re: Mutual Boundary Situation Report

Public Works has updated the Mutual Boundary quick reference spreadsheet developed to apprise Commissioners' Court concerning the status of our Mutual Boundary program in May 2012.

PW staff continues to coordinate and converse with city leaders to encourage participation in the County's mutual boundary program. Significant progress has been accomplished with many cities. However, some cities have proven reluctant and will require more discussions.

In addition, please find the attachment outlining our attorney's legal opinion regarding the County's authority to recover funds associated with the MB program.

If you have any questions, please do not hesitate to contact me and I will respond accordingly.

CC Mutual Boundary Situation Report

City	City's Shared Cost	Funding Mechanism	Status	Comments
St. Paul	\$18,000	Self Financed	Complete	Paid with City funds
Anna	\$1,500,000	Bond Reduction	Complete - Adopted by Court	
Lucas	\$27,000	2 yr payback	Complete - Adopted by Court	
Wylie	\$500,000	Bond Reduction	Complete - Adopted by Court	
Weston	\$203,000	10 yr payback	Adopted by Court	Seeks to renegotiate scope of previous commitment adopted by CC on 3/12/12
Melissa	\$286,000	10 yr payback request	Pending	County attorney is drafting new ILA
Lowry Crossing	\$165,000	10 yr payback request	Pending	County attorney is drafting new ILA. \$165,000 is earmarked for MB roadwork. The remaining \$623,000 is for City work
	\$788,000			
Celina	\$2,087,000	Bond Reduction or Municipal Bond	In Progress	Celina is contemplating either a Bond Reduction or revenue from G.O. Bonds to finance MB roads
McKinney	\$670,000	Bond Reduction	In Progress	
Princeton	\$333,000	Bond Reduction	Filed on Court - 7/9/12	
Farmersville	\$98,000	Municipal Bonds	In Progress	May Bond Election was successful. Project planning is proceeding on CR557. Orange St. still in negotiations
Frisco		<i>Being Developed</i>		
Lavon	\$11,000	Considering Payment		
Nevada	\$17,000			Has requested city work to be performed while City Council considers options regarding the MB program. Their enthusiasm for the MB program appears to be minimal
New Hope	\$10,000	Self Financed		Will pay County Treasury upon completion of work w/ city funds

Royce City	\$37,000/\$6,500	Self Financed	1 road approved, 1 road uncertain	City Council authorized CR588 participation with 2 payments, 1 each in FY'12 and FY'13; hoping for private development and improvements to CR677
Josephine	\$55,000	None		No Funding
Van Alstyne	\$24,000	None		No Funding
Garland	\$19,000	None		Chose not to participate

Jon Kleinheksel

From: Greg Hudson <ghudson@holaw.net>
Sent: Thursday, June 28, 2012 6:15 PM
To: Jon Kleinheksel
Subject: ltr to Kleinheksel regarding municipal obligation for shared access road upgrade costs 6-28-12
Attachments: ltr to Kleinheksel regarding municipal obligation for shared access road upgrade costs 6-28-12.docx

Jon, please review this draft letter regarding the lack of statutory authority for the County to recoup its costs should it pave a Mutual Boundary Road and seek partial repayment from a municipality in the absence of an interlocal agreement. I suspect you know this to be the answer, but here it is in writing. Let's discuss tomorrow and I will revise and finalize.

I will finish the template interlocal agreement revisions, and address the City of Weston issues in the morning.

Thanks
Greg

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CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGE

June 28, 2012

Mr. Jon Kleinheksel,
Director, Collin County Public Works
700-A Wilmeth Road
McKinney, Texas 75069

Re: County authority regarding recoupment of repair and maintenance of
shared County Roads

Dear Jon:

This letter is in response to your question concerning the County's authority to recoup amounts spent by the County to repair and/or maintain Mutual Boundary roads, that is roads that are partially owned by the County and a municipality whose municipal boundaries extend onto the road.

For example, in 1966 the City of Van Alstyne strip annexed a two-foot strip in the middle of a county roadway. Later, the City of Anna attempted to strip annex a five-foot strip along the centerline but drew a court challenge from Van Alstyne as it overlapped with Van Alstyne's earlier annexation. So, as a result of the lawsuit settlement Anna is left with a strip one and one-half feet wide on the south side of Van Alstyne's two-foot strip in the center of the road, with the County owning the remainder. Technically, three and one-half feet of the roadway are in the municipal boundaries of the cities of Van Alstyne and Anna.

The County now proposes to pave the Mutual Boundary roads pursuant to its Commissioners Court order of November 2011, as a continuation its 2005 commitment to pave all County roads so as to recognize economic, safety and environmental benefits.

Given portions of the Mutual Boundary roads are owned by municipalities, it is logical that such municipalities share proportionally in the costs of the roadway upgrades. The County has offered the participating municipalities a menu of remuneration options for city staff to consider, along with a template interlocal agreement. The County Public Works Department has circulated a letter to the affected municipalities offering to perform the paving work with no labor and equipment charge and further offering upon completion to invoice the municipality for only one-half of the cost of materials, thereby affording the municipality a substantial savings in total project cost as compared to an outside contractor. The County has prepared a template interlocal agreement to

Mr. Jon Kleinheksel
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memorialize these understandings, including the amounts to be paid by the participating municipalities.

Several of the targeted municipalities have indicated to the County that due to budget constraints they do not have the funding to pay their respective share of the road upgrades. The County Commissioners have asked whether the work can be performed by the County Public Works Department with the affected municipalities having a legal duty under the law to repay the County.

I have researched Texas law on this issue and can find no provisions which would grant the County a lien, or other repayment right against a municipality, should the County proceed with the road upgrades without a valid contract with the affected municipality. While there exist provisions in Chapter 251 of the Transportation Code (namely section 251.012, copy attached) which allow Counties to spend County money for the improvement or repair of a street in a municipality located in the County, these provisions do not grant the County lien rights or other reimbursement guarantees.

For this reason, I urge the County to seek to enter into interlocal agreements with the affected municipalities with such agreements providing for ultimate recoupment by the County of the City's share of such costs as a matter of contractual agreement, which would be generally enforceable in a court of law, such there occur a breach of contract through nonpayment.

I am happy to discuss this matter with you further.

Sincerely,

J. Greg Hudson

Sec. 251.012. COUNTY AUTHORITY IN MUNICIPALITY. (a)
With the approval of the governing body of a municipality,
the commissioners court of a county may spend county money
to finance the construction, improvement, maintenance, or
repair of a street or alley in the county that is located
in the municipality, including the provision of:

- (1) necessary roadbed preparation or material;
- (2) paving or other hard covering of the street
or alley;
- (3) curbs, gutters, bridges, or drainage
facilities; or
- (4) any construction, improvement, maintenance,
or repair allowed under Section 791.032, Government Code,
if the commissioners court finds that the county will
receive benefits as a result of the work on the street or
alley.

(b) County work authorized by this section may be
done or financed:

- (1) by the county through the use of county
equipment;
- (2) by an independent contractor with whom the
county has contracted;
- (3) by the county as an independent contractor

with the municipality; or

(4) by the municipality, with the municipality to be reimbursed by the county.

(c) A county acting under this section has, to the extent practicable, the same powers and duties relating to imposing assessments for the construction, improvement, maintenance, or repair as the municipality would have if the municipality were to finance and undertake that activity.

(d) A county acting under Subsection (b) may not spend bond proceeds for the construction of a new road in a municipality unless the construction is specifically authorized in the election approving the issuance of the bonds, regardless of the source of the money used to acquire the equipment used to construct the road.

(e) The authority granted by this section is in addition to the authority of a county provided by a local road law.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1999, 76th Leg., ch. 671, Sec. 2, eff. Sept. 1, 1999