

**CHISAGO COUNTY  
BOARD OF COMMISSIONERS  
OFFICIAL PROCEEDINGS  
Wednesday, May 03, 2023**

The Chisago County Board of Commissioners met in regular session at 6:30 p.m. on Wednesday, May 03, 2023 at the Chisago County Government Center with the following Commissioners present: Swenson, Greene, Dunne, Montzka, Dahlberg. Also present: County Administrator Chase Burnham, Clerk of the Board Christina Vollrath, and County Attorney Janet Reiter.

Chair Montzka called the meeting to order and led the assembly in the Pledge of Allegiance.

Commissioner Greene offered a motion to approve the agenda. Motion seconded by Dunne, with Commission Montzka's request to add in a discussion about Resolution 060419-3 Donation Policy. The motion **carried** as follows: **IN FAVOR THEREOF:** Swenson, Greene, Dunne, Montzka, Dahlberg. **OPPOSED:** None.

On motion by Dunne, seconded by Greene, the board moved to open the Health and Human Services Committee of the Whole at 6:32 p.m. The motion **carried** as follows: **IN FAVOR THEREOF:** Swenson, Greene, Dunne, Montzka, Dahlberg **OPPOSED:** None.

Chair Montzka gave the gavel to Vice-Chair Dunne.

Health and Human Services Director Robert Benson provided the department updates. *No action was taken.*

On motion by Montzka, seconded by Swenson, the Board moved to accept the HHS Director's Report. The motion **carried** as follows: **IN FAVOR THEREOF:** Swenson, Greene, Dunne, Montzka, Dahlberg **OPPOSED:** None.

On motion by Dahlberg, seconded by Montzka, the Board moved to add items 1-4 to the Consent Agenda. The motion **carried** as follows: **IN FAVOR THEREOF:** Swenson, Greene, Dunne, Montzka, Dahlberg **OPPOSED:** None.

On motion by Greene, seconded by Dahlberg, the board moved to close the HHS Committee Board of the Whole at 6:44 p.m. The motion **carried** as follows: **IN FAVOR THEREOF:** Swenson, Greene, Dunne, Montzka, Dahlberg **OPPOSED:** None.

On motion by Greene, seconded by Dunne, the Board moved to approve the Consent Agenda. The motion **carried** as follows: **IN FAVOR THEREOF:** Swenson, Greene, Dunne, Montzka, Dahlberg. **OPPOSED:** None.

**Board of Commissioners' Consent Agenda:**

- 1.) HHS Committee Recommendation – Directors Update
- 2.) HHS Committee Recommendation – Payment of County’s Warrants for HHS
- 3.) HHS Committee Recommendation – SHIP 183-189 Grant Agreements
- 4.) HHS Committee Recommendation – Opioid Settlement Q1 Staff Expenses
- 5.) Payment of County’s Warrants and Miscellaneous Bills

Per Minnesota Statutes 375.1, proceedings of the County Board including a list of itemized accounts, claims or demands must be published in the official newspaper. The itemized list of claims is available for public review on the County website at <https://www.chisagocounty.us/1197/Claims-Paid>. Claims less than \$2,000 are listed as a total dollar amount and notes the number of claims included in the total.

- 6.) Minutes from the April 19, 2023 Regular Meeting
- 7.) New Liquor License Request – Rush Point Store
- 8.) Acceptance of Donation – K9

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**RESOLUTION NO: 23/0503-1  
ACCEPTANCE OF DONATIONS BY CHISAGO COUNTY**

**WHEREAS**, the Chisago County Board of Commissioners adopted Resolution No. 060419-3 on April 19, 2006 which established a policy regarding the acceptance of gifts by Chisago County; and

**WHEREAS**, the County has received a donation from a business or private individual in Chisago County and is requesting formal acceptance by the County Board of Commissioners;

**NOW, THEREFORE, BE IT RESOLVED**, that the Chisago County Board of Commissioners hereby accepts the following donations received by the Chisago County in 2023:

- Richard and Georgie Johnson \$600.00 for Chisago County Sheriff’s Office K9 Unit

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Discussion of Resolution 06/0419-3 Donation Policy

On motion by Greene, seconded by Dunne, the Board moved to authorize the DES Director issue any required P.O.’s and sign any associated paperwork to proceed with the PSC security fence project. The motion **carried** as follows: **IN FAVOR THEREOF:** Swenson, Greene, Dunne, Montzka, Dahlberg **OPPOSED:** None.

On motion by Dunne, seconded by Dahlberg, the Board moved to approve the acceptance of the

2023 Federal Boating Safety Supplemental Patrol Grant. The motion **carried** as follows: **IN FAVOR THEREOF:** Swenson, Greene, Dunne, Montzka, Dahlberg **OPPOSED:** None.

On motion by Swenson, seconded by Dunne, the Board moved to approve and accept the Body Worn Camera Biennial Audit Results completed by Lynn Lembcke Consulting. The motion **carried** as follows: **IN FAVOR THEREOF:** Swenson, Greene, Dunne, Montzka, Dahlberg **OPPOSED:** None.

**CITIZENS FORUM**

**TIME** – 7:03 p.m. **END TIME** – 7:05 p.m.

1 letter, # of **SPEAKERS** – 1

On motion by Greene, seconded by Dahlberg, the Board moved to close Citizen’s Forum at 7:05 p.m. The motion **carried** as follows: **IN FAVOR THEREOF:** Swenson, Greene, Dunne, Montzka, Dahlberg **OPPOSED:** None.

On motion by Greene, seconded by Dunne, the Board moved to approve Resolution No. 23/0503-3, a Resolution of the County Board of Commissioners of Chisago County, Minnesota, approving the Final Plat of Angry Dangers Paradise located at 34565 Wild Mountain Rd./CSAH 16 in Shafer Township, (PID #08.00130.10). The motion **carried** as follows: **IN FAVOR THEREOF:** Swenson, Greene, Dunne, Montzka, Dahlberg **OPPOSED:** None.

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**RESOLUTION NO. 23/0503-3**

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF CHISAGO COUNTY, MINNESOTA, APPROVING THE FINAL PLAT OF ANGRY DANGLERS PARADISE**

**WHEREAS**, property owners Darin Dills and Amy Dills submitted a request for the Final Plat of Angry Dangers Paradise on April 24, 2023; and

**WHEREAS**, the property owners desire to create three parcels from the 25-acre subject site; and

**WHEREAS**, the subject site is located at 34565 Wild Mountain Road / CSAH 16 in Shafer Township and is zoned Rural Residential II (RRII) District / Upper St. Croix Overlay (UO) District; and

**WHEREAS**, the subject site is legally described as:

PID 08.00130.10

**WHEREAS**, the Preliminary Plat of Angry Dangers Paradise was recommended for approval by the Planning Commission on November 3, 2022 and approved by the Board of Commissioners on November 16, 2022; and

That part of the Southwest Quarter of the Northeast Quarter and that part of the Southeast Quarter of the Northwest Quarter of Section 12, Township 34, Range 19, Chisago County, Minnesota, described as follows: Commencing at the southeast corner of the Northeast Quarter of said Section 12; thence North 88 degrees 46 minutes 29 seconds West along the South line of said Northeast Quarter, a distance of 1525.61 feet to a point distant 200.00 feet West of the southeast corner of said Southwest Quarter of the Northeast Quarter thereof and the Point of Beginning of the parcel to be described; thence North 28 degrees 58 minutes 22 seconds West, a distance of 1505.48 feet to a point on the North line of said Southwest Quarter of the Northeast Quarter distant 400.00 feet East of the northwest corner of said Southwest Quarter of the Northeast Quarter thereof; thence South 42 degrees 38 minutes 14 seconds West, a distance of 1245.86 feet to the centerline of County State Aid Highway No. 16, as established by CHISAGO COUNTY RIGHT OF WAY PLAT NO. 84; thence South 52 degrees 17 minutes 03 seconds East along said centerline, a distance of 616.82 feet to the South line of said Southwest Quarter of the Northeast Quarter; thence South 88 degrees 46 minutes 29 seconds East along said South line of the Southwest Quarter of the Northeast Quarter, a distance of 1085.45 feet to the Point of Beginning.

Subject to permanent highway easement in Parcel 7 as shown on CHISAGO COUNTY HIGHWAY RIGHT-OF-WAY PLAT NO. 84.

**WHEREAS**, the Final Plat submitted on April 24, 2023 generally conforms to the approved Preliminary Plat and meets all conditions of Preliminary Plat approval.

**NOW THEREFORE, BE IT RESOLVED** that the Board of Commissioners of Chisago County, Minnesota hereby approves the Final Plat of Angry Dangers Paradise, subject to the following conditions:

1. The Final Plat is approved as submitted on April 24, 2023. Any deviation from the approved plat drawing prior to recording shall require further review by the Planning Commission and approval by the County Board.
2. The subdivision will be allowed a maximum of two driveways / access points from Wild Mountain Road / CSAH 16, requiring that at least two of the three lots have a shared driveway.

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On motion by Greene, seconded by Dunne, the Board moved to approve the Certificate of Need Letter as Presented and Authorize Board Chair Signature and Delivery to the East Central Solid Waste Commission with the request to remove item #4 from the letter on the list of increase in actual tonnage over what was projected in the original 2016 SWMP factors. The motion **carried** as follows: **IN FAVOR THEREOF:** Swenson, Greene, Dunne, Montzka, Dahlberg **OPPOSED:** None.

On motion by Greene, seconded by Dahlberg, the Board moved to award and approve the CSAH 21 Reconstruction Project to Dresel Contracting of Chisago City, MN at tonight's meeting. The motion **carried** as follows: **IN FAVOR THEREOF:** Swenson, Greene, Dunne, Montzka, Dahlberg **OPPOSED:** None.

Discussion of Potential ARPA Funds “Claw Back.”

Consideration of Request for Defense and Indemnification. Based upon the information available and before the Board, it is the recommendation of the County Attorney that the Chisago County Board of Commissioners **Deny the Request for Defense and Deny Indemnification for Richard Duncan as to USDC MN 0:23-CV-00646-KMM-DJF.**

On motion by Dahlberg, seconded by Greene, the Board moved to open the Public Hearing at 8:09 p.m. in regards to the consideration of Defense of Richard Duncan as to *Darcey Duncan vs Richard Duncan and Chisago County* in US District Court; file 23-CV-000646. The motion **carried** as follows: **IN FAVOR THEREOF:** Swenson, Greene, Dunne, Montzka, Dahlberg **OPPOSED:** None.

County Attorney Janet Reiter provided historical background on this matter. There were no speakers for the Public Hearing.

On motion by Dahlberg, seconded by Greene, the Board moved to close the Public Hearing at 8:17 p.m. in regards to the consideration of Defense of Richard Duncan as to *Darcey Duncan vs Richard Duncan and Chisago County* in US District Court; file 23-CV-000646. The motion **carried** as follows: **IN FAVOR THEREOF:** Swenson, Greene, Dunne, Montzka, Dahlberg **OPPOSED:** None.

On motion by Greene, seconded by Dunne, the Board moved to approve the Resolution to **Deny** Defense and Indemnification for Richard Duncan, Resolution No. 23/0503-2. The motion **carried** as follows: **IN FAVOR THEREOF:** Swenson, Greene, Dunne, Montzka, Dahlberg **OPPOSED:** None.

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**RESOLUTION NO: 23/0503-2**

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF CHISAGO COUNTY,  
MINNESOTA, DENYING THE REQUEST FOR DEFENSE AND DENYING  
INDEMNIFIATION OF RICHARD DUNCAN**

**WHEREAS**, the matter of the Chisago County Board of Commissioners consideration of the tender of defense of Richard Duncan *re Duncan v. Duncan and County of Chisago*. File USDC MN 0:23-cv-00646, was held on May 3, 2023 came on for hearing.

**WHEREAS**, the materials submitted to the Board of Commissioner and made part of the record included:

- (1) Minnesota Statutes §466.07 (2022)
- (2) Minnesota Statutes § 387.03 (2023)
- (3) Criminal Complaint in Minnesota District Court, State v. Richard Leon Duncan, Court File No. 13-CR-22-805; October 18, 2022
- (4) Complaint: Darcey Duncan v. Richard Duncan in both individual and official capacities and Chisago County; USDC MN 0:23-cv-00646-IMM-DJF, filed March 16, 2023

- (5) March 30, 2023 Request for Defense from Attorney Christopher Wachter o/b/o Richard Duncan
- (6) April 11, 2023 Letter of Chisago County Attorney Janet Reiter, providing notice of hearing before the Chisago county Board of Commissioners on May 3, 2023.
- (7) May 2, 2023 Letter of Attorney Christopher Wachtler; and
- (8) Resolution of the Chisago County Board of Commissioners, dated October 3, 2018

**WHEREAS**, Richard Duncan was given notice of this hearing, and through the letter submitted by his attorney, Christopher Wachtler, he and his counsel declined to attend the hearing. In lieu of attending the hearing, the letter, dated May 2, 2023, was submitted for consideration.

County Attorney Janet Reiter provided a summary and argument for the consideration of the Board.

### **FINDINGS OF FACT**

1. The Chisago County Board of Commissioners has previously addressed a request for defense and indemnification by Richard Duncan. On October 3, 2018, a hearing was held by the Chisago County Board of Commissioners which resulted in the denial of defense and indemnification whereby the Board denied said defense and indemnification for conduct that was related to Richard Duncan’s harassment/stalking of a Chisago County employee. The October 2018 decision was appealed to the Court of Appeals and the decision of the Board was affirmed in Richard Duncan v. County of Chisago WL 2571711 (2019).
2. The request for defense of Richard Duncan, before this Board, is based upon a civil suit filed in U.S. District Court on March 16, 2023. The tender for defense was submitted to Chisago County Administrator Chase Burnham, by letter dated March 30, 2023. The Board of Commissioners is also asked to address this issue of indemnification of Duncan related to the same alleged conduct based upon the same information.
3. On May 17, 2021 the police department of the City of Wyoming, Minnesota began investigating a past action of sexual assault. The alleged conduct reportedly occurred in approximately April through June 2017. [Criminal Complaint; pgs. 1-2]
4. The alleged perpetrator of the conduct, Richard Duncan, held the elected position of Chisago County Sheriff during times relevant to the alleged conduct in 2017.
5. The Criminal Complaint filed with Chisago County District Court is based upon the investigation of the Wyoming Police Department. The matter is being prosecuted by an attorney from the Crow Wing County Attorney’s Office. After the Criminal Complaint had been signed and filed there was a “Finding of Probable Cause” by a District Court Judge, thus allowing the criminal matter to move forward. [Criminal Complaint; pg 7]

6. The investigation by the Wyoming Police Department produced information regarding the alleged conduct which is summarized in the Statement of Probable Cause in the Criminal Complaint and reflected in the Civil Complaint includes the following:
  - a. In the spring of 2017 the Plaintiff, a person with whom Duncan had a familial relationship, received a text message from Duncan. Duncan drove to the Plaintiff's home in an unmarked Chisago County Sheriff's Office squad. The Defendant stated they were being "black mailed."
  - b. Duncan stated to the Plaintiff that he was receiving letters, allegedly written by a third person, a "blackmailer". Duncan told the Plaintiff he had sent one of the letters to the Minneapolis Police Department to check for fingerprints but reported to the Plaintiff that no fingerprints were found. Duncan told the Plaintiff that if they did not follow demands of the "blackmailer", the "blackmailer" would kill the Plaintiff and members of her family. Duncan reported to the Plaintiff that the "blackmailer" had hacked into Duncan's iPad and could see everything that had been recorded on the device. Duncan told the Plaintiff that he would record himself and the Plaintiff while they would be complying with the demands of the "blackmailer." [Criminal Complaint pg 5]
  - c. Duncan contacted the Plaintiff on a later date and stated he had received a "demand letter" from the "blackmailer." Duncan went to the Plaintiff's home in April or May 2017 and Duncan showed the Plaintiff a "demand letter" directing the Plaintiff to comply with a directive from the "blackmailer" to commit acts of a sexual nature. The acts would be recorded on the iPad. On a later date, Duncan contacted the Plaintiff and indicated he had received a letter from the "blackmailer" that required the Plaintiff and Duncan to engage in certain acts pertaining to an undergarment; Duncan was to take the Plaintiff's undergarment to work and record himself smelling the garment. The Plaintiff gave an undergarment to Duncan and the Plaintiff and Duncan later watched a video of Duncan complying. [Complaint pg 7; Criminal Complaint pg. 5]
  - d. Duncan later informed the Plaintiff that he had received another letter from the "blackmailer" requiring Duncan and the Plaintiff attend a conference together at a central Minnesota resort. To comply with the demands of the latest letter from the "blackmailer," the Plaintiff met Duncan on June 4, 2017. They traveled together in Duncan's unmarked squad car and were required by the "demand letter" to stop at several locations enroute to the conference and engage in acts including kissing, fondling, and oral sex, recording some of the actions on the iPad. Once at the resort where the conference would take place, Duncan checked in while the Plaintiff remained in the car. The Plaintiff received a text to return

home. Duncan required the Plaintiff to send a text using the iPad to the “blackmailer” requesting permission to leave. The Plaintiff sent to the “blackmailer” using the iPad, as directed by Duncan after Duncan had left the room. The Plaintiff promptly received a return text on the iPad from the “blackmailer” authorizing the Plaintiff to leave. [Complaint pgs. 8-9;Criminal Complaint; pg. 4]

- e. The Plaintiff was informed of a final “demand letter” approximately a week later, in June 2017. The letter stated the Plaintiff would be required to engage in explicit sexual acts with Duncan and if she complied this would be the final demand. Duncan told the Plaintiff that if she chose not to comply he would still try to protect her. The Plaintiff allegedly complied with some of the requirements in the final “demand letter.” [Complaint; pg. 9-10; Criminal Complaint; pg 4]
  - f. The Plaintiff realized Duncan may have been the “blackmailer” after discovering he had been charged with a similar type of crime in Chisago County. The Plaintiff stated that when she read the information about that case. She knew Duncan had been blackmailing her. After this realization is when the Plaintiff made a decision to report the case to law enforcement. [Criminal Complaint; pg 5]
- 7. The allegations in the October 18, 2022 Criminal Complaint are alleged to support five (5) separate counts of Criminal Sexual Conduct, the specific counts relate to certain dates or ranges of dates between April 1 and June 11, 2017.
  - 8. In the prior similar matter referenced in the Criminal Complaint (above) Duncan was investigated for the harassment of a Chisago County employee. In that matter Duncan had written letters which he indicated had been written by a third person named “Control Freak,” setting forth demands that the employee to travel to a conference in northern Minnesota with Duncan. In the course of the initial investigation by an outside investigator, Attorney Hastings, Duncan replied to that assigned investigator in an e-mail, dated April 25, 2018, “I, and only I, am the source of the emails and texts in regard to the current inquiry.” [Resolution of the Chisago County Board; dated October 3, 20218]
  - 9. The current civil lawsuit against the former sheriff, Richard Duncan, which also names Chisago County as a defendant, was filed in U.S. District Court on March 16, 2023 and alleges two claims under 42 USC §1983, civil rights violations. The civil lawsuit based upon the same set of allegations set forth in the Criminal Complaint.
  - 10. The duties of a county sheriff in Minnesota are specifically defined by statute, Minnesota Stat. § 387.03. The duties of the sheriff require a sheriff to preserve and keep the peace of the county; pursue and apprehend felons; execute all processes, writs, precepts and orders; and perform all of the duties pertaining to the office including investigating certain accidents and searching for missing persons.



11. The Chisago County Board of Commissioners finds that the conduct of Duncan as to the allegations set forth in the civil lawsuit, if true, are not acts carried out in the performance of the position of a county sheriff. It is not the duty of a sheriff to lie, fabricate and create a situation to con, coerce or blackmail a person – a family member – to engage in sexual acts under the threat of death to the Plaintiff or the Plaintiff’s family.
12. Minnesota statutes, §466.07 provides the circumstances when a county is responsible for the defense and indemnification of an officer or employee. Chisago County is responsible for the defense and indemnification of an officer or employee so long as the officer or employee
  - (1) Was acting in the performance of the duties of the position; and
  - (2) Was not guilty of malfeasance in office, willful neglect of duty or bad faith.The Chisago County Board of Commissioners find that the conduct of Richard Duncan as it relates to the alleged facts set forth in the civil lawsuit (and for which Duncan has been criminally charged) were not acts in the “performance of the duties of the position” of sheriff and, further the conduct constitutes malfeasance and bad faith.

## **CONCLUSIONS**

1. A county is required by statute, Minn. Stat. §466.07, to defend and indemnify any of its officers and employees, whether elective or appointive, for damage, including punitive damages claimed or levied against the officer or employee provided that the officer or employee (1) was acting in the performance of the duties of the position; and (2) was not guilty of malfeasance, willful neglect of duty or bad faith.
2. The alleged conduct of Richard Duncan relative to the Plaintiff, a person with whom Duncan had a familial relationship, were not carried out in the performance of the duties of the elective position of Chisago County Sheriff.
3. The alleged conduct, including the alleged drafting or creation of letters in June 2017, to purportedly “blackmail” or coerce a Plaintiff to have sexual relations is not related to any statutory duty or charge of the Chisago County Sheriff, nor is it related to the business of any law enforcement agency. The alleged conduct of Sheriff Richard Duncan was not and cannot be construed as “keeping or preserving the peace;” is not consistent with investigating any criminal activity; and cannot be construed as the work or the function of the Chisago County Sheriff.
4. The acts of Richard Duncan constitute “malfeasance” and constitute “wrongful act(s).” The alleged drafting of the “demand letters” to deceive and allegedly coerce the Plaintiff into committing sexual act based upon fear that harm or death would come to her or her family is not within the duties of the Sheriff. Further, the acts of

Richard Duncan were carried out in bad faith. The acts, including the drafting the of the letters and implementing the demands of the alleged blackmailer, which is consistent with the prior conduct of Richard Duncan where he admitted an investigator that he was the source of e-mails and texts.

**NOW THEREFORE, BE IT RESOLVED** that based upon the foregoing Findings of Fact and Conclusions, the Chisago County Board of Commissioners of Chisago County, Minnesota hereby denies defense of Richard Duncan, based upon the April 11, 2023 tender. Further, the Chisago County Board of Commissioners is not obligated to indemnify Richard Duncan. Thus, Chisago County denies the tender for defense and additionally denies indemnification of Richard Duncan pursuant to the request and the civil lawsuit *Duncan v. Duncan and Chisago County*, USDC MN 0:23-cv-00646.

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County Administrator Chase Burnham provided administrator updates and correspondence. *No action was taken.*

Several Commissioners offered reports of their respective committee assignments. *No action was taken.*

On motion by Swenson, seconded by Dahlberg, the Board adjourned the meeting at 8:28 p.m. The motion **carried** as follows: **IN FAVOR THEREOF:** Swenson, Greene, Dunne, Montzka, Dahlberg **OPPOSED:** None.

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Ben Montzka, Chair

Attest: \_\_\_\_\_  
Christina Vollrath  
Clerk of the Board