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TOPICAL WATCHDOG ENTERPRISE SPECIAL REPORT TOP STORY

Walworth County Commission votes to close beleaguered jail in Selby

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Walworth County Sheriff Josh Boll, left, and Chief Deputy Justin Jungwirth at an employees' meal inside to the county jail attached to the courthouse.

Walworth County photo

The Walworth County Commission in Selby on Tuesday voted unanimously to close the jail immediately after years of concerns about its lack of safety and security and a federal lawsuit filed by inmates a month ago.

It likely will mean prisoners taken now to in the Hughes County Jail in Pierre instead of the Selby jail. And it quiet the lawsuit filed Sept. 7 against the commissioners and the county, said Jim Leach, the Rapid City attorney who filed it on behalf of four women and three men who were in the jail a month ago.

Selby is 90 miles north of Pierre and 20 miles east of Mobridge and Lake Oahe.

It happened quickly on Tuesday.

Walworth County Commissioner Marion Schlomer first moved to add an emergency item to the commission's agenda.

The commissioners clearly all knew what it was about without mentioning it and all five quickly voted aye without any discussion.

Schlomer and Commissioner Davis Martin and Commission Chairman Scott Schilling voted in the commission room, video-recorded and livestreamed and posted to Youtube. Commissioners James Houck and Kevin Holgard took part in the meeting by phone, in part because of COVID-19 concerns about keeping some social distance at the not-so-large commission room table.

Once Schlomer got the 5-0 procedural vote, he quickly moved "to permanently close this facility as a county jail effective immediately and the total removal of all inmates within 30 days."

Again, the vote was quick and unanimous and with no discussion for what might seem a pretty momentous decision for the county: for the first time in at least 111 years it won't have a jail.

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But this seemingly quick vote really is the result of years of problems pointed out by expert after expert, according to commission meeting minutes, news reports and Leach's lawsuit complaint. One federal prisons official told the commission several years ago that in his 25 years as a national consultant, it was the worst local jail he had ever seen.

For years, the county commission has been told by experts it should close its 111-year-old jail but it has kept it open, taking in prisoners not only from Walworth County but surrounding counties and from the U.S. Marshals Service, Leach argues in the new lawsuit.

The county commission can say it tried: in 2018 county voters rejected a \$11 million bond project to build a new jail.

Prisoners have filed federal lawsuits in recent years.

A month ago, Leach filed a class action lawsuit in federal court in Aberdeen on behalf of seven clients who spent time in the jail, suing the five county commissioners and the county itself.

Leach argued in the complaint that the county commissioners and other county officials were violating the constitutional rights of prisoners and "repeatedly have been told, by their own experts, in great detail, why the jail, built in 1909, is outdated, grossly inadequate, and dangerous."

Leach begins his complaint with a quote from retired Walworth County Sheriff Duane Mohr who told the county commission in April 2014: "It doesn't take a rocket scientist to go to the jail and see that it needs to be replaced."

Sheriff Josh Boll succeeded Mohr in 2014.

Boll told the Capital Journal that on Tuesday he was at the commission meeting to hear and see the vote, off-camera in the doorway, again because of COVID-19 concerns about spacing people.

(On Aug. 18, in fact, Boll announced a COVID-19 case was detected in the sheriff's office, but not in the jail, according to the Mobridge Tribune.)

His jail has 32 beds and when he was receiving "federal holds," he would have 28-30 inmates often, Boll told the Capital Journal.

But the U.S. Marshals Service told him two months ago they no longer would bring him federal "holds," - people awaiting the disposition of their cases in federal courts in Aberdeen or Pierre - to the jail in Selby, Boll said.

With inmates from Walworth County and neighboring counties, Boll said he often would have up to 21 inmates a day.

His jail functions as a sort of regional jail, so Tuesday's vote means other counties around him will have to find another jail, too, Boll said.

He had six inmates on Monday, but it was down to three on Tuesday, Boll said.

Attorney Leach said he was told Walworth County has a contract to send inmates to jails in Hughes County in Pierre and Faulk County in Faulkton, South Dakota.

Leach argues in his complaint that the Walworth County Commissioners "have chosen to allow the jail to continue to operate, despite being told by their own experts that it does not meet minimum constitutional standards."

Leach said its especially egregious when people are held without being convicted of a crime; following an arrest and not making bail, for example, or awaiting trial.

The jail's conditions led to three previous federal civil rights lawsuits against the jail brought by individual inmates, Leach says: one in 2016 and one in 2018, each of them settled; and one filed in 2019 which still is pending.

The county has housed juveniles in the jail as recently as the "fall of 2019 or later and unless restrained will continue to do so," Leach argued.

The county has regularly housed juveniles in the jail, too, Leach says.

Leach lays out several pages in the lawsuit documenting how long he says the county commission has known the jail shouldn't be used and how even its own lawyer warned the commission it faced dire liability, personally and as a local government.

Because they have known for years about the problems, Leach argues.

In 2018 in an attempt to convince county voters to support building a new \$11 million jail, the county's jail committee - two commissioners and Sheriff Boll - wrote in a brochure the jail "is no longer a safe option for the community, staff or inmates. Unless replaced, there is an overwhelming amount of liability that may cost the county taxpayers millions of dollars due to potential lawsuits," Leach says in the lawsuit.

The Walworth County State's Attorney James Hare was at the meeting on Tuesday, Oct. 6. Leach in his complaint said Hare told the Commission at a meeting Aug. 21, 2018, they should not invite their insurer to "come look a the jail."

In 2018, Hare "advises them - not once but twice - 'You don't want that,'" when commissioners suggested they invite their insurance company to check out the jail, Leach says in his complaint.

Hare also advised the commission at that 2018 meeting of the possibility "of you commissioners being personally liable for it for knowledge of problems in that jail that was in that report and something happens, because of it, you can all be held personally liable. Just FYI."

Leach says Hare went on: "That's the problem with that report, it points out the problems which now you're aware of. I'm saying if we don't cure we're going to be on the hook and you can personally be on the hook for failure to act within a reasonable manner. . . Honestly, you're all on the hook right now. . . My position is, if I were the

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attorney, you guys would all be sued right now if something happened since it's been disclosed in that report you're all going to be on the hook. For being sued. . . I'm just telling you, you have a ton of liability right now."

For example, Leach says one expert told the Commission the jail's layout requiring "inmates to strip in front of a camera that is recorded and visible to staff is not only not consistent with today's correctional practices but it is contrary to the Prison Rape Elimination Act Requirements."

On June 7, 2017, Brad Hompe of the National Institute of Corrections - part of the federal Bureau of Prisons - assessed the jail and told commissioners "that he was shocked with the condition of the facility and the working conditions of employees."

The way the jail operates is dangerous to employees as well as inmates, Hompe said. "When escorting inmates to and from these (high-risk) cells staff must pass in front of a group of inmates in the dorm area creating a vulnerable situation. This also creates a potential scenario for inmates to set up staff for an assault or hostage situation," Hompe said in his report, according to Leach.

Hompe's report said fire exits "are blocked or not fully functional."

"The jail lacks any space for health care and currently does not provide any onsite medical services from qualified health professionals," Hompe said in his report. "This is not consistent with today's correctional practices."

The jail exposes inmates and employees to "pests or vermin" and "mold" and other dangerous unsanitary conditions, Hompe said in his 2017 report.

According to a video of the 2017 meeting, Hompe told the county commission: "I am shocked, to say the least, about the condition of the facility and more so the working conditions of the employees . . . Your liability is through the roof. I cannot believe that you haven't had significant litigation already. It's actually horrible for your staff. . . I've

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never seen anything like it, to be honest with you. It's - it's beyond anything you can do structurally-wise or remodeling. . . Anybody that's in the middle of a fire, they're not going to be able to last long in there."

That already was old news in 2017 to the county commission, according to attorney Leach.

In January 2014, the fire chief in Selby "came to the (commission) meeting to make the board aware of the fire hazards at the jail. He stated that the Selby Fire Department is putting the commissioners on notice that (the fire department) will not be held liable for any problems concerning usability and accessibility of the fire escapes," Leach said in his complaint.

In 2015, the commission heard from two engineering or architectural firms who told them renovation wasn't possible of the old structure and "doing nothing is not an option."

In August 2013, the county commission "met with their invited expert guest, Jim Rowenhorst," a National Institute of Corrections consultant who has worked on 150 projects in 42 states. According to meeting minutes, Rowenhorst told the county commission in 2013 "we do not have enough bed space. He also says the current jail is not secure. He feels we should have a secure control room and he also feels that we are currently understaffed." Rowenhorst told them in 2013 "federal case law concerning jail facilities and operations makes it very clear that the lack of funds is not a defense for poor facilities and inadequate staff. Those small counties that choose to operate a jail and ignore minimum requirements do so at their own risk."

In October 2017, the county commissioners also heard from Mike Kelly, a former guard in the Minnesota state prison in St. Cloud. He told them "overall it is an unsafe environment," according to Leach.

"Despite everything above, . . . in December 2017 and January 2018 the commissioners approved seventeen two-year contracts with South Dakota counties to house their prisoners for \$95 a day," Leach says in his complaint. —

At the time he filed his federal lawsuit a month ago, Leach said the Walworth County Jail continued to house prisoners from other counties “pursuant to similar contracts.”

The revenue from such contracts could add up to \$1,000 to \$2,000 a day or more, based on the number of inmates Sheriff Boll reports.

That's a lot of money for a small county.

In fact, in its own efforts to convince voters in 2018 to pass a bond issue to build a new jail, the commission said a new jail could be paid for by the revenue from taking in prisoners from other counties and from the U.S. Marshals Service.

Leach said his seven clients demand judgment as part of a class action to give them relief and remedy of the “unconstitutional conditions,” of the jail; and for “reasonable attorneys fees and costs,” and “(f)or such other and further relief as the court deems just.”

On Tuesday, Leach told the Capital Journal he didn't know about the Commission vote until after it happened just before noon, Oct. 6.

“I was pleasantly surprised,” Leach said. “What does it mean? Once they follow through on it, the case will be dismissed, because that will have given us exactly what we asked.”

His clients did not seek specific damages, Leach said. Proving any damages to any specific inmate could be a difficult row to hoe, for one thing.

“What my clients wanted was not to be held in that really dangerous, awful jail anymore.”

Sheriff Boll said Tuesday's vote will mean lots of transportation now of people arrested in Walworth County to other jails in the region 70 miles or more away. Not to mention what other counties who have been using the jail in Selby will do.

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It may be much longer trips, Boll said. In this year of the COVID-19 pandemic, jail beds are even harder to find as every facility has tried to reduce its population to allow for manage quarantines and social distancing for inmates and employees.

Boll said he plans to re-train his dozen jail employees so they can become prisoner transport officers, he said.

But Boll said it's important for Walworth County to have its own jail. He won't have even a holding facility to keep someone overnight, he said.

"I'm going to do my best to work with the situation right now and hopefully get some kind of project going . . . and possibly have a jail here at some point."

(To watch the Walworth County Commission meeting of Tuesday, Oct. 6, go online at <https://www.youtube.com/watch?v=7e3BwU7v0V8>)