

**RECORD OF PROCEEDINGS
BOARD OF COMMISSIONERS
MARION COUNTY, KS**

March 20, 2020

Commission met in special session in Commission chambers at the Marion County Courthouse at 8:30 a.m. with Vice Chr. Randy Dallke, Comm. Kent Becker, Comm. Dave Crofoot, and Comm. Dianne R. Novak present in person and Chr. Jonah Gehring present by teleconference. Also present were Co. Clerk Tina Spencer, Co. Counselor Brad Jantz, members of the public, and members of the press.

DIAMOND VISTA ROAD MAINTENANCE AGREEMENT (RMA) – FINAL SETTLEMENT DISCUSSION:

Representatives from Enel Green Power (EGP) and the Diamond Vista (DV) Project were present by teleconference: Jeffery Pimer, Chuck Weaver, Steve Williams, Nick Coil, and Alex Rittershaus. Pimer requested that a discussion be held in executive session for contract negotiation. Dallke moved to recess into executive session for contract negotiation pursuant to K.S.A. 75-4319b (2) for attorney / client business with the Board, Jantz, and Pimer present for 30 minutes, with open session to resume at 9:20 a.m. Becker seconded and motion carried 4-1 with Novak opposed. Before entering the executive session, Pimer requested that the additional Enel Green Power and Diamond Vista representatives on the teleconference be included in the executive session. Dallke amended the motion recess into executive session for contract negotiation pursuant to K.S.A. 75-4319b (2) for attorney/client business with the Board, Jantz, Pimer, Weaver, Williams, Coil, and Rittershaus for 30 minutes with open session to resume at 9:20 a.m. Becker seconded. Discussion ensued. Novak was not comfortable with allowing so many individuals in the executive session for attorney/client business without the County having similar representation (Road & Bridge personnel and Kirkham Michael Engineering). Dallke withdrew his motion. The executive session was canceled. Session recessed until 9:20 a.m. to allow the public to re-join the teleconference meeting. Discussion occurred in open session regarding the final settlement of the RMA.

- An initial offer had been made by EGP to pay the PILOT payments in full plus \$150,000.00. The County had countered with asking for a total cash payment of \$300,000.00 in addition to the full PILOT amount. Pimer said the initial offer was contingent upon acceptance before the end of November, 2019. Pimer noted that the cost for the third-party engineering from Kirkham Michael was exorbitant, and EGP will adjust the County's PILOT payments accordingly. Pimer stated that the post construction report indicated \$471,000.00 in needed repairs. However, they disagree with portions of the document. Pimer noted that they agree only with about \$241,000.00 of the reported damages. They are no longer willing to pay the full PILOT without adjusting for Kirkham Michael charges.
- Novak stated that DV was aware at the time the RMA was signed that the engineering costs were estimated at over \$600,000.00 but that Nick Coil indicated that the cost was too high, but that they would pay. Novak noted that DV was fully aware right up front about the third-party consultant and the estimated cost. Nick Coil spoke in regard to his previous request for the County to monitor the expenses from Kirkham Michael. Coil also noted that DV is not obligated to pay any PILOT payments at all.
- Dallke requested a written proposal be sent back to the County. Pimer noted that they will send back their comments regarding the final inspection report from Kirkham Michael and their settlement offer. Left over rock had been offered, but it was the County's understanding that the rock was already given to the property owner of the lay down yard.
- Dallke left the meeting at 9:57 a.m. Jantz requested an executive session for 15 minutes for attorney/client business. Becker moved to recess into executive session to discuss pending litigation pursuant to K.S.A. 75-4319b (2) for attorney/client business until 10:18 a.m. with the Board and Jantz present. Novak seconded and motion carried 4-0. Open session resumed with no action.

COMMISSION DISCUSSION: Novak asked Jantz regarding incompatibility of office between township office and serving on the Planning Commission. Jantz considers that a conflict and will issue written guidance.

- Novak requested employee education be placed on the agenda for future discussion. Dallke rejoined the session.

COVID-19 POLICY DISCUSSION: It was noted that restricted access to County offices has been implemented. Telework and closing the Courthouse were discussed. Several supporting State agencies are closed, and District Court is closed. Gehring noted it would be wise to rotate staff to avoid total staff exposure, and encouraged the Board to take the issue seriously. Becker noted that several surrounding counties have locked their courthouses. Leave for employees was discussed. Gehring moved to lock down the Courthouse with essential services being handled remotely or through mail to the extent possible from 5:00 p.m. on March 20th through March 31st. Dallke seconded and motion carried 5-0. The building will be open for Commission meetings with health screenings.

- Dallke moved to adjourn. Becker seconded and motion carried 5-0. Meeting adjourned at 11:30 a.m.

Jonah Gehring, Chairman

ATTEST: _____
Tina D. Spencer, County Clerk