

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

February 24, 2020

Commission met in regular session in Commission chambers at the Marion County Courthouse at 9:00 a.m. with Chr. Jonah Gehring, Comm. Kent Becker, Comm. Randy Dallke, and Comm. Dianne R. Novak present. Comm. Dave Crofoot joined the session at 9:03 a.m. Also present were Co. Clerk Tina Spencer, members of the public and members of the press. Present for portions of the meeting was Co. Counselor Brad Jantz.

ADMINISTRATIVE: Novak expressed concern that there was Commission discussion after the pay plan work session on February 18th, which wasn't on the agenda. Novak moved to approve the minutes of February 18th as written. Becker seconded and motion carried 5-0.

- A change order affecting the 2019 tax roll was reviewed and signed by the Board.
- Salary sheets were signed for Joshua Housman – from \$2,658.00/mo. to \$3,200.00/mo. - promotion to Weed/HHW/Transfer Station Director effective 2/18/2020; Amanda McReynolds – new Transfer Station Equipment Operator I at \$2,267.00/mo. effective 2/10/2020.
- Spencer presented a Title VI Civil Rights Plan for Kansas Adjutant General's Department Federal Grant Sub-recipients for approval. Gehring moved to approve (the plan). Dallke seconded and motion carried 5-0.
- Spencer reported that the office of Catlin Township Clerk is vacant, and recommended that Ross VanCuren be appointed. Dallke moved to appoint Ross VanCuren to the Board. Crofoot seconded and motion carried 5-0.
- Spencer presented the Kansas Department of Health and Environment local aid grant application for July 1, 2020 through June 30, 2021 totaling \$25,966.00 to the Board for approval. Gehring moved to approve. Dallke seconded and motion carried 5-0.
- Spencer requested approval of a request for shared leave for an eligible employee. Gehring moved to approve a shared leave request for a qualified employee. Becker seconded and motion carried 5-0.

Lease Purchase Bids – 2019 Caterpillar Dozer: Bids for a fixed rate, five year lease purchase were reviewed:

| | <u>Interest Rate</u> | <u>Fees</u> |
|----------------------------------|----------------------|-------------|
| Central National Bank, Marion | 2.68% | \$595.00 |
| Community National Bank, Burns | 2.36% | \$100.00 |
| Cottonwood Valley Bank, Florence | 2.84% | none stated |
| Emprise Bank, Hillsboro | 2.96% | none stated |
| Marion National Bank, Marion | 2.33% | \$100.00 |

Becker moved to accept the bid from Marion National at 2.33% with \$100.00 fee for a five year fixed-rate lease. Gehring seconded and motion carried 5-0.

CONSTRUCTION/DEMOLITION (C&D) WASTE DISPOSAL PROGRAM: A possible C&D waste disposal program was discussed again. The Board suggested including commercial properties, requiring a letter of recommendation from the local jurisdiction if the property is within an incorporated city, and charging a \$15.00/ton rate instead of free disposal. The County Clerk was directed to prepare a draft resolution with those changes incorporated for further review.

ROAD & BRIDGE: Co. Engineer Brice Goebel presented a road crossing permit for Howard Collett to install a water line under 240th East of Alfalfa (at 2824 240th). Gehring moved to approve the permit with the requirement that the water line be encased in a pipe at least twice the size of the line. Dallke seconded and motion carried 5-0. It was noted that this requirement should be utilized for all future water line requests.

| | | | | |
|------------------------------------|--------------------|--------------------|--------------------|--------------|
| Transport fuel bids were reviewed: | <u>Tank #3</u> | <u>Tank #1</u> | <u>Unleaded</u> | |
| | <u>4,500 gals.</u> | <u>1,500 gals.</u> | <u>2,000 gals.</u> | <u>Total</u> |
| Cooperative Grain, Hillsboro | 1.9946 | 1.7386 | 1.9069 | \$15,397.40 |
| Epp's Service, Elbing | 2.0135 | 1.7500 | 1.9111 | \$15,507.95 |
| MFA Oil, Tampa | 2.1134 | 1.8490 | 1.8032 | \$15,890.20 |

Becker moved to accept the bid from Cooperative Grain in the amount of \$15,397.40. Crofoot seconded. Motion carried 5-0.

| | | | |
|-------------------------------|---------------------|---------------------|---------------------|
| Area fuel bids were reviewed: | <u>Area 1</u> | <u>Area 2</u> | <u>Area 3</u> |
| | <u>1,400 gals.</u> | <u>1,500 gals.</u> | <u>1,950 gals.</u> |
| Cooperative Grain, Hillsboro | 1.8286 = \$2,560.04 | 1.9386 = \$3,780.27 | 1.8286 = \$3,565.77 |
| Epp's Service, Elbing | 1.8670 = \$2,613.80 | 1.9800 = \$3,861.00 | 1.8470 = \$3,601.65 |
| MFA Oil, Tampa | 1.9650 = \$2,751.00 | 1.9650 = \$3,831.75 | 1.9950 = \$3,890.25 |

Gehring moved to accept the bid from Cooperative Grain for all three areas. Becker seconded and motion carried 5-0.

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February 24, 2020, Continued

ROAD & BRIDGE, CONTINUED: The Board had no objections to Goebel obtaining quotes for some potential blacktop projects (including 90th West of K-15 to McPherson County, and two bridge approaches south of Marion).

- Goebel provided a map of locations where hard rock will be spread for testing purposes per prior discussion.

Public Comments: Linda Peters provided a copy of K.S.A. 68-545 for reference regarding enforcement of road rights of way when individuals are farming ditches, etc.

PUBLIC HEARING – Road Closing/Vacation Request: Gehring opened a public hearing on a petitioned road closure/vacation of one mile of 360th between Chisholm Trail and Bison. Present for portions of the hearing were Dale Koop (petitioner), Yvonne Cushenbery, Warren Unruh, James Loewen, Randall Eitzen, Linda Peters, Van Peters, Planning/Zoning/Environmental Health Dir. Sharon Omstead, and Co. Engineer Brice Goebel.

Koop indicated that he had requested the closure. Signing the petition were Mona Koop, adjoining landowner Gordon Christiansen and Logan Township Clerk Larry Cushenbery.

- Warren Unruh asked the reason for the closure. Koop responded that it was to restrict unwanted traffic and also to allow him to irrigate across the road.
- Yvonne Cushenbery stated that she would prefer that the road not be closed.
- Unruh indicated that he farms at least two parcels in the area (Jantz and Zeitlow parcels). He indicated that he utilizes the road sometimes, but had no strong feeling either for closure or against.
- Koop indicated that there are several good wind turbine rock roads in the area now which provide alternate access for landowners and the public.
- Unruh noted that he lives at 340th and Diamond. He commented that he rocks a road to his cattle operation. He indicated that when the wind farm came in, an alternate route was rocked by the County, but his section of road was not re-rocked, but should have been. Unruh said that he would like that section closed as well if the County won't rock it. He recently re-rocked that section at his own expense.
- Novak noted that she had received an e-mail from Logan Township Treasurer Lane Dyck. The email said "To the Marion County Commission: Concerning the subject of closing 360th road between Chisholm Trail and Bison, I am strongly opposed along with several of my neighbors. I am sure a lot of residents and landowners in Logan township are unaware of what is trying to be pushed thru. Your consideration for those of us who live here will be greatly appreciated. Sincerely, Lane K. Dyck"
- Novak said that she was told that this is the only access road to Elm Springs. Koop and Unruh clarified that it is accessible from the South.
- Koop indicated that the next mile east has a natural spring under the road, which sometimes makes that section impassible.
- Yvonne Cushenbery said that she doesn't necessarily have a problem with closing that mile. In general, she prefers not to have roads closed.
- Unruh asked once you start closing roads, where do you stop? He expressed that more people might want to request closures of roads if the County allows it and it is beneficial to the property owners. Unruh asked whether the County would allow an irrigation system to cross the road. (It would not be allowed.)
- Linda Peters asked how much it costs for annual maintenance of the stretch of road requested for closure. Goebel said it is graded only a few times each year, and is considered minimum maintenance. The natural springs in the next mile were discussed.
- Unruh asked if Koop would also be in favor of closing the next mile to the east (the area with the springs). Koop didn't have an opinion for or against.
- Linda Peters said the landowners work together in that area (farming, burning, etc.). Peters said it would save the County cost for maintenance. Koop agreed that the County would save money, and the increase in taxes for irrigated acreage vs. non-irrigated acreage would also benefit the County.
- Koop asked that the Commission consider the request objectively, looking at the facts (economic benefit to the County, all adjoining landowners in agreement).
- Novak was concerned about the precedent set if the road is closed.
- Van Peters said that it might be in the County's best interest to close some other roads that have springs running under or down the road, and not have the continued maintenance cost.
- Unruh said that the wind turbine roads are outstanding, and he hopes that the County will continue to maintain them.
- Goebel had no objection to the road being closed.

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February 24, 2020, Continued

PUBLIC HEARING – Road Closing/Vacation Request, Continued:

- Dallke expressed concern for the future, if landowners change. Dallke noted that in the past the Commission allowed cattle guards to be installed in an effort to allow access and work with the landowner. Dallke noted that we don't know what future development might come into the County in the area, and he prefers that the County retain the right of way. He indicated that he isn't really in favor of vacating unless there is a known problem with a road or structures (bridges).
- Koop indicated that he was not opposed to the County retaining the right of way, and indicated that he would even sign some sort of easement.
- Becker suggested a perpetual easement.
- Koop indicated that if he can't irrigate across the road, he has no reason to close the road. If it is denied, he would like to see the County build up the road and put in drainage tubes.
- Gehring suggested a first right of refusal. Becker disagreed. Spencer noted that legal counsel should be consulted regarding any conditions regarding easements, etc.
- Randy Eitzen commented that we may be to the point in Marion County that we don't really need a road every single mile anymore. Often it is faster to go to the next mile anyway, than trying to get through on a minimum maintenance road.
- Dallke noted that we have a decision coming up soon for another road with a bridge issue. Unruh noted that he would hate to see that section closed because it is used often.
- Becker moved to, upon further review by County Counselor, that the County vacate 360th between Bison and Chisholm contingent upon retaining a perpetual easement on that road in perpetuity. Crofoot seconded. Novak asked if this is the County's new policy, and reiterated that personal gain is not a valid reason to close the road. Dallke said that this section is one of the most beautiful areas of the County, and he was not in favor of closing because of prior action taken to allow cattle guards to maintain access in the area. Motion carried 3-2 with Novak and Dallke opposed. (Legal Counsel to be consulted later in the session).
- Gehring closed the public hearing.

ROAD & BRIDGE, CONTINUED: Public Comment: Linda Peters read a prepared statement expressing continued dissatisfaction with road conditions and County personnel, and methods.

- Van Peters indicated that when citizens spend their own money to improve County roads, they would like a little better cooperation from the County.

HEALTH INSURANCE RENEWAL: Bruce Shultz, Blue Cross Blue Shield Representative presented the County's health insurance renewal, which reflected a 20.6% increase in premium. Other, lower cost, options were also presented. Those options would significantly change the County plan, through increased deductibles and potential additional up front out of pocket costs for employees. No decision was made.

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT ILLEGAL DUMPING PROGRAM: Toby Kuhn, Environmental Compliance / Regulatory Specialist with the Bureau of Waste Management presented information about an illegal dumping program that provides funding for municipalities with cleaning up sites where illegal accumulation of solid waste (trash) has occurred. The City of Lost Springs has requested assistance from the agency on three properties. Kuhn asked for County participation. The County would provide 25% funding on each project, which could include in-kind funding such as personnel, equipment, etc., and KDHE would provide 75% toward each project up to a total of \$10,000.00 per project. If the County wishes, they could negotiate with the City regarding a partial repayment of the 25% match portion. Planning/Zoning/Environmental Health Dir. Sharon Omstead was in favor of participation. Counselor Jantz was asked to review the information prior to an official decision. The topic will be scheduled for a decision at the next regular meeting.

Session recessed briefly.

COUNTY COUNSELOR: Co. Counselor Brad Jantz indicated that an in-person meeting with Enel Green Power personnel regarding the closeout of the Diamond Vista project is advisable at this point.

- Jantz clarified that any work that he performs for Fire Districts or other taxing entities is separate from his work that is performed on behalf of the County. Other agencies must agree under their own authority and retain him as legal Counsel independently. Jantz indicated that he is being retained by Marion County Fire District #4 (Peabody) to update bylaws.
- Jantz said he will draft a response to the Freedom from Religion group that sent several letters to the County.

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February 24, 2020, Continued

COUNTY COUNSELOR, CONTINUED: Road Closure/Vacation – 360th: Jantz was asked to verify whether the action taken earlier regarding the vacation of 360th between Bison and Chisholm was legally appropriate. Jantz indicated that when a road is vacated, the County cannot retain an easement / right-of-way for future use. (Any ingress/egress for utilities is maintained, however.) Jantz noted that it would be more appropriate to close the section of roadway, and if the County wishes to allow the irrigation to cross the section of road that a simple agreement (similar to a farm lease) could be prepared between the County and the landowner. Becker moved to close 360th between Bison and Chisholm with the provisions of the closure to be further negotiated with the requesting landowner. Crofoot seconded and motion carried 3-2 with Novak and Dallke opposed. Jantz indicated that he will review all of the information and draft the resolution and accompanying agreement.

- Jantz reported that multiple legal actions are all proceeding on course and there are no updates at this time.
- Novak asked whether there is an official answer regarding the terms for the two new Commission seats. Jantz indicated that he is advising the County to move forward with the two new Commission seats being placed on the 2020 ballot for an unexpired term (2 years) and then transitioning to a four-year term in the 2022 election cycle.
- Novak asked for further clarification regarding the difference between recusals / abstentions and how to count them. Jantz indicated that he will prepare some written guidance on that topic, but he prefers a motion to table not just an abstention for lack of information. Recusal should reflect a legal reason for non-participation. Abstentions can also be used for conflict of interest in a lesser instance. Jantz said elected officials should participate in the process as fully as possible as often as possible.

PARK & LAKE: Park & Lake Supt. Isaac Hett presented tree trimming bids for review:

| | |
|--|-------------|
| Dutton Tree & Handyman Service, Peabody | \$ 8,200.00 |
| Esthetic Tree Service, Peabody | \$ 4,400.00 |
| Huff's Tree Service, Wichita (includes mulching) | \$17,800.00 |

Gehring moved to accept the bid from Esthetic Tree Service for \$4,400.00. Dallke seconded. Motion carried 5-0.

PUBLIC COMMENTS: Mike Beneke commented on the disrespect he was shown. He took care of his section of road to make it more comfortable for driving his neighbor to cancer treatments. He stated that he spent money on rock for the road, and if some of it got pushed off he shouldn't be chastised. He also commented that the Co. Engineer missed a meeting with him.

Dallke stated that the County should back the Co. Engineer as he performs his duties.

Gehring asked that Commission Discussion / Comments section be added to the very end of each agenda.

Jantz also stated that he will be providing a policy for public comment, and any personnel performance discussion pertaining to individual employees should not be allowed in open session.

Dallke moved to adjourn. Gehring seconded and motion carried 5-0. Meeting adjourned at 1:49 p.m.

Jonah Gehring, Chairman

ATTEST: _____
Tina D. Spencer, County Clerk