

**THE MINUTES OF THE REGULAR MEETING
OF THE BOARD OF COMMISSIONERS
OF MIAMI COUNTY, KANSAS**

The Board of Miami County Commissioners met in regular session, in the Commissioners' Meeting Room, Miami County Administration Building, Paola, Kansas, on January 15th, 2020. Those present were:

Rob Roberts, Chairman	Phil Dixon, Commissioner
Danny Gallagher, Pro-Tem	David Heger, County Counselor
George Pretz, Commissioner	Janet White, County Clerk
Tyler Vaughan, Commissioner	Casey d'Augereau, Executive Secretary

Visitors:

Bill Osborn, Spring Hill, KS	Doug Carder, Republic News
Josh Cindrell, Lawrence, KS	Victoria Loveall, Spring Hill, KS
Gonz Garcia, Gardner, KS	Jeff LeMire, Gardner, KS
Jerry Lawson, Paola, KS	Mary Carson, Wichita, KS

CALL TO ORDER

Chairman Roberts called the meeting to order at 1:00 p.m.

CONSENT AGENDA

Commissioner Gallagher moved to approve the Consent Agenda, as follows:

- Minutes of the County Commission meeting of January 8th, 2020
- Approval of payment vouchers

ADD-ON

- Under New Business: Resolution for PBC Series 2020A and 2020B Convertible Refunding Revenue Bonds.

Commissioner Pretz seconded; the vote was unanimous.

NEW BUSINESS

David Heger, Miami County Counselor, requested the Commissioners to consider a resolution ordering the county counselor to institute legal action for a judicial foreclosure sale of real estate for delinquent taxes. Commissioner Pretz moved to approve a resolution for judicial foreclosure sale of real estate for delinquent taxes. Commissioner Dixon seconded, the vote was unanimous. (R20-01-001)

Holly Ray, Human Resource Director, requested the Commissioners to consider approving the closing of all Miami County non-essential offices on Columbus Day, October 12th, 2020, to the public for a county wide training day. Commissioner Gallagher moved to approve the Miami County non-essential offices be closed to the public for county wide training. Commissioner Dixon seconded. Chairman Roberts asked that once a final agenda for the training is completed to please provide a copy to the commissioners. Commissioner Dixon asked if there will be a premium provided by the insurance for the training. Ms. Ray said there are two different

insurances involved and believes we receive a premium from one and an awarded amount from the other based on training. The vote was unanimous.

Matt Oehlert, Road and Bridge Project Manager, would like consideration of awarding survey and design for Evening Star Culvert Project 19-01-SB (668) located on Evening Star Road 0.28 mile south of 169 Hwy. The staff would like to recommend Pfefferkorn Engineering & Environmental for \$28,000.00 from the bids received. Commissioner Pretz moved to approve Pfefferkorn Engineering & Environmental for \$28,000.00 for the survey and design for Evening Star Culvert Project 19-01-SB (668). Commissioner Vaughan seconded, the vote was unanimous. Chairman Roberts asked that Mr. Oehlert please provide the commissioners with a list of all projects in the works within the next few weeks.

Matt Oehlert, Road and Bridge Project Manager, would like for the County Commissioners to consider signing the KDOT Form 1302 for Metcalf 2.0 Project 18-15-CO-ST (665). This form will give KDOT authorization to allocate the 80/20 cost differential split between KDOT and Miami County for the Metcalf 2.0 Project 18-15-CO-ST (665). KDOT's portion at 80% of the construction is \$3,340,000.00, this project sets within the city limits of Louisburg which means Miami County and the City of Louisburg share the remaining 20% portion of \$1,326,500.00. Mr. Oehlert stated they are currently under the budget for this project around \$27,000.00. Commissioner Dixon moved to approve the signing of the agreement allowing KDOT to start allocating the money. Commissioner Gallagher seconded, the vote was unanimous.

JR McMahon, Road and Bridge Director, handed out a snow route map to the commissioners. Mr. McMahon would like the County Commissioners to consider approving the adoption of an updated Miami County Winter Operations Policy and Procedures. A portion of the updated policy and procedures will allow Road and Bridge to work in levels for clearing the roads. They will start clearing level 1 roads and will continue to work on level 1 roads until they are drivable then move on to level 2 roads and continue until they have all the roads cleared. Mr. McMahon stated that he has reduced the previous policy from 15 pages to 4 pages, he received a lot of feedback from his staff and believes this is going to make a big difference. Commissioner Gallagher complimented JR and the Road and Bridge department on a great job staying ahead of the last ice and snow storm that moved in. Chairman Roberts echoed what Commissioner Gallagher. Commissioner Gallagher moved to approve the Miami County Winter Operations Policy and Procedures as presented today. Commissioner Vaughan seconded. Commissioner Pretz said he is against this policy, he doesn't believe one road is more important than another. There was a 4 to 1 vote with Commissioner Pretz voting against the new policy. (R20-01-002)

Chairman Roberts presented to the Board of County Commissioners the petition for the City of Gardner to have an Island Annexation on the property known as 22705 Moonlight Road. Chairman Roberts stated this process was started in October 2019. He stated at this time they have not come to a final conclusion and each of the Commissioners will be allowed to speak about why they should or should not allow the annexation after which time there will be a vote. Per State law if a vote of no is given then a reason for that vote must be given. Chairman Roberts said David Heger, County Counselor, drafted a resolution that shows the process the Board of County Commissioners followed. Chairman Roberts wrote up a statement and said he would like to give a summary of the written statement which is based on his opinion and it is not intended to represent anyone else. He asked the Commissioners to allow the written statement be entered in whole, but he is only going to summarize it. In February 2019 the City of Gardner staff explained to the Miami County Commission the concerns for the water plant project needing to expand. Miami County was prepared to work with the City of Gardner on the CUP

already in place from 1996. From February to October 2019 really no action was taken by the City of Gardner. The Miami County planning staff determined that the cumulative expansions from both 2005 and the current proposed expansion was substantial enough that the CUP did need to go through the public hearing to update the CUP. It was agreed by the City of Gardner that the current CUP needed amended. The City of Gardner quickly submitted an application to Miami County Planning for an amendment to the original CUP which is now scheduled to be heard by the Miami County Planning Commission on February 4th, 2020. The process could have been started in Feb 2019 and it would have been completed long before the city needed to start construction. Commissioner Roberts stated he found the reasons given at the public hearing held on December 27th, 2019 just a poor excuse. We were told that it was because our staff was not qualified or we wouldn't have enough time, some of the City of Gardner's concerns regarding delays is due to the CUP needing amended. Chairman Roberts questioned will the City of Gardner be harmed if the annexation is not approved, then answered "it might" but if the City of Gardner had started this a year ago when they first knew about the issue this could have been handled then without causing much if any delay to the water plant expansion. The only point the City of Gardner made was the cost involved in the project. Chairman Roberts said when he is doing a project or when the county is doing a project part of the costs that he considers is the cost of permits for the project. The City of Gardner could have come to the County and asked to waive the cost of the permits, no request, to my knowledge, was made. Chairman Roberts asked the City of Gardner if they intend on keeping the same conditions as in place today. Gonzalo Garcia, Utility Director for the City of Gardner, responded yes. The City of Gardner needs to remember there are CUPs on this property and should the annexation go through the City of Gardner will have to honor the CUPs affiliated with this property. The citizens in that area will still be allowed to attend any public hearings on CUPs for this property, if the annexation is approved. The citizens will be allowed to speak, but it is Chairman Robert's opinion that the citizens won't have how much weight with the City of Gardner as they do with Miami County. Chairman Roberts said he is concerned about what is driving the City of Gardner to push through this annexation. Chairman Roberts questioned the City of Gardner about any complaints or problems they have had while operating under the CUP that started in 1996. Mr. Garcia said they have not had any issues to his knowledge. Chairman Roberts said he finds the request baseless however according to the law the City of Gardner has the right to make the request. Chairman Roberts read the following law: The action of the board of county commissioners shall be quasi-judicial in nature. The board of county commissioners shall consider the impact of approving or disapproving the annexation on the entire community involved, including the city and the land proposed to be annexed, in order to insure the orderly growth and development of the community. The board shall make specific written findings of fact and conclusions determining whether such annexation or the annexation of a lesser amount of such area causes manifest injury to the owners of any land proposed to be annexed, or to the owners of land in areas near or adjacent to the land proposed to be annexed or to the city if the annexation is disapproved. Findings and conclusions shall be based upon the preponderance of evidence presented to the board. In determining whether manifest injury would result from the annexation, the board's considerations shall include, but not be limited to, the extent to which the following criteria may affect the city, the area to be annexed, the residents of the city and the area to be annexed, other governmental units providing services to the area to be annexed, the utilities providing services to the area to be annexed, and any other public or private person, firm or corporation. Chairman Roberts said he will not cover all the criteria since not all of the criteria has a purpose in this annexation but will go over the ones he does believe has a bearing on this issue. Number 13 is an interesting part of the law and I'll read it to you: Likelihood of significant growth in the area and in adjacent areas during the next five years. Chairman Roberts reminded everyone that this water plant has been owned and operated by the City of

Gardner for the past 20 years. Chairman Roberts said that the City of Gardner only addressed the part of number 13. The City of Gardner stated there is no possibility of any population growth in the area of the proposed annexation site since it is reserved in its entirety for the city's water treatment plant. The City of Gardner did not show the effect of the annexation of the property around it. The citizens in that area gave testimony focused on quality of life, property values, county oversight vs city, potential loss of revenue from the fees that are associated with plan review/permit process, lack of any value added services or explicit benefits the city would bring to the area and implications of future intrusions by the city of Gardner including continued annexation demands. Chairman Roberts said these are my thoughts and conclusions and only mine. Chairman Roberts did compare a 2004 and 2018 map of the area to verify changes, in fact the area is significantly the same. Then Chairman Roberts looked at the property value and found the property selling at 125% to 150% above market value. There is no evidence the area has been harmed with this water plant. The county will lose out on the fees for this area, and that will hurt the county but that is the fact. Chairman Roberts' conclusion is the City of Gardner has presented their case for the annexation and it is his opinion they have made the case to do so. Commissioner Vaughan stated he would like to discuss the County's relationships with the cities of Miami County. Commissioner Vaughan stated "our cities come before us in study sessions and work with us closely, they don't start work without permits, they don't try to do things that are not part of the process of the statutes, and they work closely with us to come to a positive solution." Commissioner Vaughan stated he found it very unfortunate that the first time Miami County heard from the City of Gardner was their lawyer saying Miami County can't do their jobs. Commissioner Vaughan said "not a good choice and not a good setting to start this process". Commissioner Vaughan stated that he cannot find a proper intent from Gardner for the annexation. Commissioner Vaughan said the City of Gardner gave the points for annexation as cost and lack of ability to permit. The Commissioners have dismantled these reasons through the process of the hearings. Commissioner Vaughan says the CUP has worked fine in the past years and he is not willing to give up control in that northwest part of the county. Commissioner Vaughan says a city not inside of our county and has not shown proof that they can be trusted in a partnership with the county from the evidence I have seen over the last year of work. Commissioner Vaughan says he is against this annexation and he believes the City of Gardner's attorney attempted to blur the issue of the water plant expansion and the annexation issues. Commissioner Vaughan does not see any proof from the City of Gardner that they need this annexation in order for the water plant expansion to take place. Commissioner Vaughan says he plans to vote no for the annexation. Commissioner Gallagher stated he has given these hearings a lot of thought and has written a statement that he will summarize. Commissioner Gallagher has studied the Kansas Statutes that pertain to this particular parcel of ground. Commissioner Gallagher reviewed the City of Gardner's reasons and the landowners' reasons for being against the annexation. Commissioner Gallagher referenced Kansas State Statute 12-520c and 12-521. Kansas Statute 12-520c clearly states that only land within the county of said city can be annexed. By this statute, Gardner can only annex within Johnson County. Then Kansas Statute 12-521 says that if a city cannot annex using statute 12-520c then it might be possible to use statute 12-521. Under 2c "The board of county commissioners shall consider the impact of approving or disapproving the annexation on the entire community involved, including the city and the land proposed to be annexed. The board shall make specific findings of fact and determine if such annexation causes clear injury to the owners of the land to be annexed. In determining whether clear injury would result from said annexation, the board's consideration shall include, but not limited to, the criteria of 1 - 14 of Statute 12-521. Commissioner Gallagher said he will be focusing on the words "but not limited to". Commissioner Gallagher stated the following are the facts as he says them: Rights of area landowners; if the annexation is approved the current CUP is then sent to Gardner and they

would be able to change the CUP without the area residents having any power to have any say on what the new CUP says. Gardner does not need to annex this property to enlarge their operation. And finally the expansion is being built in rural Miami County so it only makes sense that as the expansion is being built of this water plant, that it is to the betterment of Miami County to know how and what is being built. Commission Gallagher believes the more expert eyes looking at a project, the better. For these facts, Commissioner Gallagher plans to vote no to the annexation by the City of Gardner. Commissioner Dixon stated Gardner has to agree that Gardner has handled this very poorly, starting construction without permits, and so on and so forth. Commissioner Dixon stated he didn't want to repeat everything previously mentioned by the Chairman and Commissioners ahead of him. Commissioner Dixon says after studying everything presented he cannot find a reason to deny the annexation. Commissioner Dixon stated he plans on voting yes for the annexation. Commissioner Pretz stated that he has visited with staff members and read over the State Statutes. Commissioner Pretz says he is looking at the big picture and the future. Commissioner Pretz states he wants Gardner to have water and will work with them to get the water, he plans on voting no to the annexation. Chairman Roberts said he will read the resolution presented on the agenda. Consider adopting a resolution accepting the final determination of the Board of County Commissioners determining the annexation of a tract of land by Gardner, Kansas commonly known as 22705 South Moonlight Road. Chairman Roberts moved to accept City of Gardner annexation as proposed. Commissioner Dixon seconded:

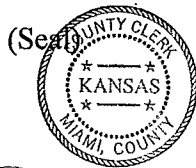
Chairman Rob Roberts – voted yes	Commissioner Gallagher – voted no
Commissioner Phil Dixon – voted yes	Commissioner Pretz – voted no
	Commissioner Vaughan – voted no

Commissioner Vaughan stated that we do look to partner with cities, we welcome growth. That is my district that I represent and I am compassionate with the citizens that we have there. I know this has been a little harsh and it's been an undertaking. We do welcome partnerships with cities, I encourage you to work with us. Chairman Roberts declared the motion dead and the annexation rejected. He encourages the City of Gardner to stay in partnership with the Planning Dept. David Heger, County Counselor, said we will need the resolution in writing and this can be presented at the next week's Commissioners Meeting. (R20-01-003)

Commissioner Gallagher moved to consider approving issuance of resolution for PBC Series 2020A and 2020B Convertible Refunding Revenue Bonds. Commissioner Dixon seconded. Commissioner Gallagher stated this will be for the possible refinancing of the jail. The vote was unanimous. (R20-01-004)

ADJOURNMENT

The meeting was adjourned at 2:01 p.m.



Rob Roberts

Rob Roberts, Chairman

ATTEST:

Janet White

Janet White, County Clerk