

**BUTLER COUNTY BOARD OF COMMISSIONERS**  
**Tuesday, June 14, 2011**

**CALL TO ORDER**

Commission Chairman Bruce Harris called the Butler County Board of Commissioners to order at 9:00 a.m. Present were Commissioner Jeff Masterson, Commissioner Peggy Palmer, Commissioner Dan Woydziak, County Administrator Will Johnson, Jr., and Clerk Recorder Paula Stoskopf. Commissioner Mike Wheeler was absent.

**APPROVAL OF MINUTES**

*Commissioner Woydziak motioned to approve the minutes of the Butler County Commission Meeting of Tuesday, June 7, 2011, as written. Commissioner Masterson seconded the motion. Motion carried 4-0.*

**PUBLIC COMMENTS**

There were no public comments.

**ITEM #1 – CONSIDER APPROVAL TO MAKE A RECOMMENDATION TO THE CITY OF EL DORADO REGARDING WHETHER THE APPLICATION BY GALEN MEARS ON BEHALF OF MEARS FERTILIZER, INC., FOR A SPECIAL USE PERMIT WOULD BE IN CONFORMANCE TO THE BUTLER COUNTY COMPREHENSIVE PLAN**

Will Johnson, Jr., County Administrator, came before the Board on behalf of Rod Compton, Planning & Zoning Director, for approval to make a recommendation to the City of El Dorado regarding whether the application by Galen Mears on behalf of Mears Fertilizer, Inc., for a special use permit, would be in conformance to the Butler County Comprehensive Plan. The applicant wants to expand his facilities, and the El Dorado City Planning Commission will consider this matter on June 23, 2011. Staff feels the use as proposed would conform to the County's Comprehensive Plan because the use of the property, including the proposed expansion, is consistent in character with the existing uses in the area.

*Commissioner Woydziak motioned to find that the aforesaid Special Use application would be in conformance with the Butler County Comprehensive Plan and authorize staff to send a letter to the El Dorado City Planning Commission signifying the same. Commissioner Masterson seconded the motion. Motion carried 4-0.*

**ITEM #2 – RECONSIDERATION OF CASE NO. CU-11-02, A REQUEST BY ROBERT AND KATHY HARRIS FOR A CONDITIONAL USE PERMIT FOR AN AGRITOURISM BUSINESS**

Will Johnson, Jr., County Administrator, came before the Board on behalf of Rod Compton, Planning & Zoning Director, for reconsideration of a request by Robert and Kathy Harris for a CUP to utilize property for an agri-tourism business. The Commissioners originally considered this matter on May 24, 2011. It was remanded back to the Planning Commission to see if they wanted to re-review the case and consider some of the activities proposed, but not all. The Planning Commission reconsidered this matter at its meeting on June 7, 2011. At that time, Staff explained that the applicants had expressed a willingness to scale back the proposed activities to any level recommended by the Planning Commission. The Planning Commission, by a 5-4 vote, decided to reconfirm their original recommendation of denial. It was a 4-4 tie vote, and the

Chairman broke the tie by casting his vote in favor of reconfirming the original recommendation of denial. He stated the reason for his vote was that he felt it was an infrastructure issue in that the road accessing the property was not suitable for the operation of an intense business.

Commissioner Harris invited Robert and Kathy Harris, 2900 SW 80<sup>th</sup>, Augusta, KS, to come before the Board to address their request for this CUP. Mr. Robert Harris stated that they have scaled back their request to include only riding stables, a pumpkin patch and a petting zoo. He stated that he has visited with the township board regarding the road issue and would agree to apply a yearly calcium chloride treatment on the road to extend the life of the road. Kathy Harris noted that due to the nature of their business and it being by reservation only, that when it is wet and muddy there would not be extra traffic on the road because they would not be open.

Commissioner Wheeler joined the meeting at 9:14 a.m.

Commissioner Palmer clarified with the Harris' that the cost of this road application would be at their expense. Mr. & Mrs. Harris acknowledged that it would be at their expense. Mr. Harris stated that through research he had done, the expense would be approximately \$1,500.00. County Engineer Darryl Lutz stated that from his experience, the cost would be approximately \$7,000.00 plus the preparation of the road the first year then drop to about half of that amount for the succeeding years. Mr. Harris stated that he would have to do further research on this matter.

The following neighbors came before the Board to speak in opposition of this CUP:

Randall Whittaker, 8757 SW Boyer Road, Augusta, KS

Earl (Roy) Wakefield, 8157 SW Haverhill Road, Augusta, KS

Commissioner Palmer requested clarification of the vote required to allow this CUP.

Administrator Johnson stated that it would require the  $\frac{3}{4}$  majority vote (4 of 5) to pass.

***Commissioner Harris motioned to find that the request is not compatible with nearby uses; that it is not consistent with the spirit and intent of the regulations; and that it would represent an undue burden to transportation and service facilities in the area; and move to deny the request by Robert and Kathy Harris for a Conditional Use Permit to establish an agri-tourism business. Commissioner Wheeler seconded the motion. Motion carried 2-3. Commissioners Masterson, Palmer and Woydziak voted no.***

***Commissioner Masterson motioned to approve the request by Robert and Kathy Harris for a Conditional Use Permit to establish an agri-tourism business contingent upon meeting the following conditions, primarily condition No. 2; (1) Amplified sound systems shall be allowed only within a fully enclosed building with sufficient insulation so as to prevent interior sounds from being heard on adjacent properties or from public rights of way; (2) Property owner or operator (if different) must enter into a road improvement and/or maintenance agreement with the Township that is agreeable to the Township; (3) Any lighting must be installed and located in such a manner that it does not present a nuisance to adjoining properties; (4) Animal enclosures and animals be kept in a condition that is acceptable to the Kansas Department of Animal Health, and proof of any applicable permits must be obtained and maintained and provided to the Planning & Development Department; (5) Animal waste must be disposed of in accordance with appropriate KDHE or County requirements; (6) Food service must be inspected and licensed by KDHE; and (7) No on-site burning of solid waste shall be allowed.***

*All solid waste must be disposed of in a KDHE approved solid waste facility. Commissioner Palmer seconded the motion. Motion carried 3-2. Commissioners Harris and Wheeler voted no.*

Since the action did not carry a super majority, the CUP died for lack of action.

**ITEM #3 – WORK SESSION – FLOODPLAIN VIOLATIONS**

Rod Compton, Planning & Zoning Director, was absent due to illness.

*Commissioner Woydziak motioned to table Agenda Item No. 3 to Tuesday, June 21, 2011. Commissioner Masterson seconded the motion. Motion carried 5-0.*

**RECESS**

Commissioner Harris recessed the Board meeting at 9:35 a.m. for 5 minutes.

**RECONVENE**

Commissioner Harris reconvened the Board meeting at 9:40 a.m.

**ITEM #4 – CONSIDER APPROVAL TO PURCHASE 24 ELECTRONIC POLL BOOKS AND RELATED ACCESSORIES AND PREPAY TWO POLL BOOK SETUP FEES FOR NEXT YEAR**

Ronald Roberts, County Clerk, came before the Board for approval to purchase 24 electronic poll books plus some spare parts and prepay two poll book setup fees for next year. The Kansas Secretary of State (SOS) did not use all of the funds he received for the HAVA implementation, and is now making that money available to purchase certain approved election items. The total cost is \$79,630 and will be split \$71,667 to the SOS and \$7,963 to Butler County Elections.

*Commissioner Woydziak motioned to approve purchasing 24 electronic Poll Books and related accessories from Election Systems and Software, through the Secretary of States HAVA Endowment Program, for \$7,963 to be paid from the Election Budget. Commissioner Harris seconded the motion. Motion carried 5-0.*

**ITEM #5 – RECEIVE AND OPEN BIDS FOR THE PURCHASE OF TIRES FOR THE BUTLER COUNTY DEPARTMENT OF PUBLIC WORKS**

Darryl C. Lutz, P.E., Director of Public Works, came before the Board to receive and open bids for purchase of tires for the Butler County Department of Public Works. Bids were received from Augusta Tire & Auto Supply, Augusta, KS; Becker Tire, El Dorado, KS; and JRS General Rental, El Dorado, KS.

*Commissioner Masterson motioned to receive the tire bids submitted by Augusta Tire & Auto Supply, Augusta, KS; Becker Tire, El Dorado, KS; and JRS General Rental, El Dorado, KS, and to direct the Director of Public Works to tabulate the bids, to review for conformance to specifications and to return at a later date with a recommendation for purchase. Commissioner Wheeler seconded the motion. Motion carried 5-0.*

**ITEM #6 – CONSIDER APPROVAL OF THE AUTHORITY TO AWARD CONTRACT TO THE SECRETARY OF TRANSPORTATION FOR THE BIRD CREEK BRIDGE REPLACEMENT PROJECT ON SE BLUESTEM ROAD EAST OF EL DORADO**

Darryl C. Lutz, P.E., Director of Public Works, came before the Board for approval of the Authority to Award Contract to the Secretary of Transportation for the Bird Creek Bridge replacement project on SE Bluestem Road east of El Dorado. The low bid received from L & M Contractors for the referenced bridge replacement project is below the engineer's estimate and below the project budget. This document gives the Secretary of Transportation the authority to award the contract upon approval by Butler County and commits the County's share of construction costs in the amount of \$106,000.00.

*Commissioner Wheeler motioned to approve the Authority to Award Contract/Commitment of County Funds for a construction contract with the low bidder, L & M Contractors, Inc., Great Bend, KS, in the amount of \$507,219.51 for KDOT Project No. 8 C-4548-01, the Bird Creek Bridge replacement project on SE Bluestem Road East of El Dorado and authorize the Chair to sign. Commissioner Harris seconded the motion. Motion carried 5-0.*

**ITEM #7 – RECEIVE A PETITION AND CONSIDER APPOINTING VIEWERS AND SETTING A VIEWING DATE FOR VACATING APPROXIMATELY ¾ MILE OF SE TURKEY CREEK ROAD NORTH OF SE 60<sup>TH</sup> STREET**

Darryl C. Lutz, P.E., Director of Public Works, came before the Board to receive a petition and consider appointing viewers and setting a viewing date for vacating approximately ¾ mile of SE Turkey Creek Road north of SE 60<sup>th</sup> Street. This road is on the boundary line between El Dorado Township and Prospect Township and is used very little. The property owners on both sides of the road have requested to vacate the road. The appointed viewers will meet at the site of the road to view the road and to receive comments for or against closing said road. The viewers will then prepare a report to present to the BOCC in favor of or against the petitioned request.

*Commissioner Masterson motioned to receive the petition to vacate approximately ¾ mile of SE Turkey Creek Road going north from SE 60<sup>th</sup> Street, to appoint Commissioners Wheeler, Harris and Woydziak as road viewers and to set a date of Tuesday, July 12, 2011, at 8:00 a.m. to view said road. Commissioner Palmer seconded the motion. Motion carried 5-0.*

**ITEM #8 – CONSIDER APPROVAL OF AUTHORIZATIONS FOR ENGINEERING SERVICES RELATED TO DEVELOPING A RFP FOR UTILIZATION OF LANDFILL GAS AND RELATED TO ON-CALL ENGINEERING SERVICES FOR 2011**

Darryl C. Lutz, P.E., Director of Public Works, came before the Board for approval of contracts for engineering services related to solicitation of proposals for landfill gas utilization and on-call engineering services. Mr. Lutz invited Scott Martin, Burns & McDonnell, to come before the Board and present an overview of the Scope of Work to be completed by his firm. Mr. Martin received and answered questions from the Board. Staff recommended contracting with Burns & McDonnell as they have provided solid waste related engineering services for several years to Butler County in a timely, professional and cost effective manner.

*Commissioner Woydziak motioned to approve engineering services to be provided by Burns & McDonnell Engineering Company under Authorization No. 50 in the not to exceed amount of \$17,900 for development of a landfill gas RFP and under Authorization No. 51 in the not to exceed amount of \$20,000 for 2011 miscellaneous on-call engineering services and authorize the Chair to sign said authorization. Commissioner Wheeler seconded the motion. Motion carried 5-0.*

**ITEM #9 – RECESS TO EXECUTIVE SESSION TO DISCUSS PERSONNEL MATTERS OF NON-ELECTED PERSONNEL**

*Commissioner Woydziak motioned to recess the Board to Executive Session at 10:25 a.m. for 20 minutes, with the public session resuming at 10:45 a.m., to discuss personnel matters of non-elected personnel to protect the privacy of an individual/employee who is non-elected.*

*Commissioner Masterson seconded the motion. Motion carried 5-0. Those in attendance were Commissioners Harris, Masterson, Palmer, Wheeler and Woydziak.*

**RECONVENE**

Commissioner Harris reconvened the Board meeting at 10:48 a.m. No action was taken as a result of Executive Session.

**ITEM #10 – WORK SESSION – ANIMAL CONTROL RESOLUTION**

Will Johnson, Jr., County Administrator, came before the Board to discuss the current resolution regarding animal control. Due to time constraints, Administrator Johnson recommended tabling this item to a later date.

*Commissioner Harris motioned to table the Work Session on the Animal Control Resolution to Tuesday, June 28, 2011. Commissioner Masterson seconded the motion. Motion carried 5-0.*

**APPROVAL OF VOUCHERS**

*Commissioner Woydziak motioned to approve the vouchers for June 14, 2011, in the amount of \$868,746.49. Commissioner Masterson seconded the motion. Motion carried 5-0.*

**COMMISSION ADDS & ABATES**

*Commissioner Wheeler motioned to approve Adds & Abates #2487 dated June 14, 2011; Adds in the amount of \$731.34 and Abates in the amount of \$12,581.37. Commissioner Harris seconded the motion. Motion carried 5-0.*

**OTHER ITEMS OF BUSINESS TO COME BEFORE THE BOARD OF COUNTY COMMISSIONERS**

Commissioner Masterson requested clarification of the lawsuit situation with the railroad. Administrator Johnson stated that the lawsuit is against the Department of Justice not Butler County. Administrator Johnson will be gathering additional information regarding this matter.

Commissioner Wheeler informed the Board that he could not attend the luncheon at the Augusta Senior Center today due to a previous commitment.

Administrator Johnson presented the Board with the schedule for the Budget Hearings next week.

Administrator Johnson acknowledged a thank you note received from Special Olympics of Kansas to the Butler County Sheriff's Office for helping with the Kansas Law Enforcement Torch Run.

Administrator Johnson reported that EMS received their annual inspection from the Board of EMS on their facilities and operations. He reported that they only had one finding in one truck against them. It was an outdated epinephrine and it was replaced while on site.

Administrator Johnson noted the new Tour Butler Kansas Visitors Guides; reminding the Board that they had participated in the publication of them at the cost of \$4,000.00.

Administrator Johnson recognized the loss of the nine year-old boy from Augusta due to an electrocution accident. Commissioner Wheeler complemented Sheriff Kelly Herzet and Dan Ingalls, Facilities Management Director, for their excellent handling of the matter with the media.

#### **ADJOURNMENT**

*Commissioner Harris motioned to adjourn the meeting of the Board at 11:00 a.m.*

*Commissioner Masterson seconded the motion. Motion carried 5-0.*

*\*\*\*Commissioners will be attending a luncheon at the Augusta Senior Center starting at 11:30 a.m.\*\*\**