

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 Commission Chambers, Miami County Administration Building, Paola, Kansas, on September 29, 2021. Those present were:

Rob Roberts, Chairman	Shane Krull, County Administrator
Tyler Vaughan, Pro-Tem	Shelley Woodard, County Counselor
Danny Gallagher, Commissioner	Janet White, County Clerk
Phil Dixon, Commissioner	Wendy Newton, Clerk's Office Specialist
George Pretz, Commissioner	

News: Doug Carder, Miami Republic News

Visitors: Jacklyn Paletta, Jennifer Williams, Charlie Koch, Ron Fritts

CALL TO ORDER

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

PUBLIC COMMENT

Jacklyn Paletta, 31764 W 271st St, Paola, wanted to bring to the attention of the Commissioners the Paola School's test to play strategy for sports. The school is offering testing everyday for the students that are placed under a modified quarantine. She stated her son received such a letter on Wednesday the 22nd after football practice. She was confused with the letter so called the Health Department which directed her to the school. On Friday she sent her son to school wearing a mask with the understanding that he could attend football practice without playing because she was not going to let the school test him every single day. She believes schools are for educating and that she will take her son to a medical professional for health issues. Her son was not allowed to watch football practice but was allowed to march in the marching band. With an important football game coming up on Tuesday she took her son to get tested on Monday. She showed up at the Miami County Health Department on Monday and was turned away stating that it would take 72 hours for her to make an appointment. She went to Olathe to get a Covid/PCR (Polymerase Chain Reaction) test. She presented the negative rapid COVID-19 test to the school and they said she needed to get the PCR test for him to play. She was able to email that to the principal later that day but states that she believes this is a violation of FERPA (Family Educational Rights and Privacy Act) and HIPAA (Health Insurance Portability and Accountability Act) that her child's personal health information be distributed to the principal and put into his school records. She stated her point was to make sure the Commissioners knew that the Health Department was putting this burden on the school and that she cannot literally comply with the school unless she lets the school test her child. She wants her child to be treated by his pediatrician. Why is it not available at a health facility and only being done at the school? She questions why they are not following the CDC (Center for Disease Control and Prevention) or KDHE (Kansas Department of Health & Environment) guidelines that recommend weekly or twice weekly testing and why the school is allowed to test the students.

CONSENT AGENDA

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

- Approval of minutes of the County Commission meeting on September 22, 2021
- Approval of AP payment vouchers and payroll
- 21004-SUB (F) | Final Plat of Heartland Ridge

Commissioner Gallagher seconded; the vote was unanimous.

NEW BUSINESS

Chairman Roberts stated that this item was discussed at length in the Commissioners Study Session Meeting and requested the Commissioners to consider accepting and authorizing the asphalt runway crack sealing for the Miami County Airport with the amount not to exceed \$20,000. Chairman Roberts asked Shane Krull, County Administrator, if the funds were available through the Airport Fund and he answered yes. Commissioner Pretz moved to approve as presented, Commissioner Dixon seconded; the vote was unanimous.

Chairman Roberts requested the Commissioners consider authorizing and signing the engineering agreement with Olsson for the Airport Improvement Program (AIP) Project No. 3-20-0063-021. He stated this was discussed this

morning during the study session. Commissioner Pretz moved to approve as presented, Commissioner Dixon seconded; the vote was unanimous. (A21-09-054)

Teresa Reeves, Planning Director, presented the Living Proof Church Expansion Project which included a 7,200 square foot youth activity building and a future addition to the Living Proof kids church which was 2,400 square feet. The Planning Commission held a public hearing 7/6/2021 and closed the public hearing the same date but continued the meeting to 8/3/2021 to allow the applicant time to provide corrections to the site plan and to the narrative that was not complete at that time. It was then continued again to the 9/7/2021 meeting. At the September meeting the Planning Commission deliberated some time and ultimately decided to recommend approval of the proposal with the understanding that all the outstanding items would be completed and taken care of. Ms. Reeves stated a protest petition was filed by the neighboring property owners located within 1000 feet of the proposal site and represented 41% of the property owners but it was filed on 9/21/2021 which was after the 14-day window after the public hearing was held. Chairman Roberts asked for clarification if it was after the 14-day timeframe which is the statute so that means the protest is not valid? Ms. Reeves said that was correct. She continued to say that subsequent to the Planning Commission Meeting on 9/7/2021 staff members received a revised site plan from the applicant. She stated that she made a list of what was still outstanding and noticed there were two architects on the plan and had asked them to remove one of them. Ms. Reeves called the architect and he advised her that he did not authorize any changes to his plan, which Ms. Reeves had sent to him electronically as he requested. After seeing the changes to the plan, he advised staff to discard that site plan. Commissioner Gallagher asked who altered it. Ms. Reeves stated there is a seal stamped 9/9/2021 from Lloyd. Commissioner Vaughan asked if Lloyd is signing off on the current site plan, but the prior architect is not signing off on the changes? Ms. Reeves confirmed the prior architect is the one who did most of the work and did not sign off on any changes to his work. Commissioner Roberts asked if the first firm is the one who owns the plans and Ms. Reeves answered yes. He continued stating the second firm then made alterations which were not authorized by the first firm and then advised us to do what? Ms. Reeves stated they advised staff to discard the site plan. Chairman Roberts then asked if we discard the site plan do, we have a site plan? Ms. Reeves answer that we do not. Commissioner Vaughan asked with Lloyd's stamp on the new plans, he is architecturally confirming they are valid plans? I'm wanting to make sure that if we discard the site plans that the site plans with Lloyd's stamp are valid site plans. Ms. Reeves stated that would be a question for your County Counsel but from her understanding that without permission from the author of the plan it is not a valid site plan and is similar to a copyright infringement. Shelley Woodard, County Counselor, stated that she would need to see items that she has not seen yet but the original architect is the owner of those plans and any alterations to that specific set of plans would have to be approved by them versus getting a new site plan. Commissioner Vaughan stated so the new architect would have to redo the complete site plan altogether not make an alteration of the site plan from an existing architect that is now saying it is not valid. Did I make sense in my statement there? Ms. Woodard stated that was correct per her understanding but has some missing information so she could not 100% say that but yes. Commissioner Dixon asked Ms. Reeves if the original architect was the one who asked her to pull it. Ms. Reeves answered that is correct. Commissioner Dixon then stated so we do not have a site plan? Ms. Reeves confirmed they do not have a site plan. Ms. Reeves stated she did email a list of all the outstanding items to the applicant, and he refused to make any modifications or update the site plan. I sent another email confirming he was refusing to bring in another site plan and he again refused. Ms. Woodard wanted to clarify that it was subsequent to that recommendation, subject to those changes, that we found out the site plan wasn't valid. They did not know they didn't have a valid site plan when they made the recommendation. Chairman Roberts stated the Planning Commission passed it on to the County Commission having full confidence that there was a qualified site plan, the site plan had corrections, the County Commission should consider this with the understanding that all of things be taken care of before submitted to the County Commission. Ms. Reeves said that was correct. Commissioner Gallagher stated that throughout the (Planning Commission) Minutes the applicant stated he could have this all done by October 5th and he said he would work on as many items as he can. He wanted to know if they had to October 5th. Commissioner Vaughan stated that was when they thought they had a valid site plan and that he is not comfortable making a decision until the Planning Commission is able to evaluate a valid site plan. Commissioner Gallagher agreed. Chairman Roberts asked what is the recommendation of the Planning Commission? Ms. Reeves answered that without a valid site plan, and he refuses to provide a site plan, they don't have a complete application, so we recommend to deny the application. Commissioner Vaughan stated he is not comfortable making a decision until the County Counselor knows if there is a valid site plan or not. Chairman Roberts wanted to know what information she would need. Ms. Woodard stated she would need to see the contractual information with the original

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site planner and would have to check some statutes to see if it is a statutory thing or a contractual agreement. Ms. Reeves stated that it was an ethical issue probably through the Board of Professions. Ms. Woodard continued that a lot of times you would sign contracts and a lot of those contracts will outline what you can and cannot do with those products. Chairman Roberts stated the fact of the matter is the original contractor told you to pull the contract and not use it and secondly the applicant has made it very clear with his correspondence with the Planning Department he would not send another site plan. He said he would do it in person but was not here. So, you do not have a site plan and you do not have any corrections even if you accept the site plan. So, bottom line is they are telling you no they are not fixing it. So, I'd encourage the Commission to just deny the request and let them go back and fix their problems. Commissioner Pretz stated there are four things we could do. 1. No site plan so deny the request 2. Override the Planning Commissions recommendation by 2/3rd vote 3. Return the planning commission recommendation back to them with a statement saying the basis for the Board of County Commissions failure to approve or disapprove 4. Defer for further study – that is on page 68 of 134. Commissioner Vaughan asked if the site plan was denied could they get a revised or whole new site plan and apply again? Ms. Reeves stated not within a year. Ms. Woodard stated there is a waiting period. Ms. Reeves stated that according to the regulations that with any CUP where rezoning is denied they cannot submit anything, the same or anything similar, within a year. Commissioner Vaughan asked if there was any representative with the church here? Mr. Krull stated there didn't appear so. Chairman Roberts says his recommendation is to deny it and let them get their plans together. Commissioner Vaughan stated but that puts a year hold on them. Chairman Roberts stated this is what happens if you have a set of plans that have been manipulated and you submit it to the governing body and the governing body says okay you got to correct these and then find out the architect goes time out, they are utilizing my plans which is not our issue; it is their issues. If they are not prepared after July, August, September, 3 months, what is sending it back to Planning Commission going to do? I'm of the opinion we need to deny it, let them start over and get their valid site plan, figure out what they want to do, how they want to do it and submit it to the planning commission and let the process be corrected to go through properly. I will read one more quote from the applicant "The one that we have given you we feel is sufficient", which we find out is not, "if you don't think then we will disagree. It wouldn't matter if I gave you a new one today because you would find stuff wrong with it as well. So, quit wasting my time." That is what the County Commission should do today. Quit wasting our time. Submit a site plan that identifies what you want to do, in the locations you want to do it, you hire an architectural firm that understands the rules and regulations that have been in place in Miami County for over 20 years. Nothing changed because someone walked through the door and now, we have a new set of rules. Submit a site plan that actually does what it is supposed to do, and it will go through the Planning Commission like that (snaps fingers) and go through the Commission like that. They have a responsibility and I say it's time for them. Let's deny it and move on to something else. They told us to quit wasting their time and I would say the same for them, quit wasting our time. Any action Commission wants to take? Commissioner Vaughan said he did not like the year hold on it. I think we should kick it back and make them revise the site plan and go back through the process. That is the only thing I don't feel comfortable with. Chairman Roberts moved they deny the request and allow them to start over. Commissioner Dixon seconded. Commissioner Gallagher asked if they could work on this and put it together and one year from today, they could bring it back. Is that the first time you could look at it? Ms. Reeves answered they cannot make the application within the year from this date if it is denied. Commissioner Gallagher asked if there were issues from any other applicant site plans like this. Ms. Reeves answered no. The vote was unanimous. Commissioner Pretz asked if the Resolution would be passed next week. He did not have time to review it. Counsel? Ms. Woodard said that would give her a chance to look at it in more detail. Chairman Roberts said that was a fair request. **(R21-09-040)**

Jim Starling, Building & Ground Director requested the Commissioners to accept and authorize the proposal from G.K. Smith in the amount of \$30,245 to replace the HVAC systems 2,3 & 4 at the Health Department. He said he had 2 bids; 1 from ACS \$33,748 and G.K. Smith came up with \$30,245. He said there was one unit replaced approximately 5 years ago and these are the other units of the building. Chairman Roberts asked the County Finance Director how it would be paid for. Mr. Lyman said this will be an eligible expenditure from the ARPA (American Rescue Plan Act) grant since it is for Covid related. Commissioner Dixon moved to approve the G.K. Smith bid as presented using the ARPA funds, Commissioner Gallagher seconded; the vote was unanimous. **(A21-09-055)**

Chairman Roberts presented a resolution to the Commission to consider adopting to close the Administration Building on Monday, October 11th, 2021. He stated the County Administration would use that day as a training day for training that is required for all county employees. Commissioner Gallagher moved to approve the resolution as presented; Commissioner Vaughan seconded. The vote was unanimous. **(R21-09-038)**

Chairman Roberts presented a resolution to the commission to consider canceling the County Commission Meeting of October 20th, 2021. Chairman Roberts said this was due to Commissioners going to the KC Conference in Kansas City and will be gone most of that week. Commissioner Pretz moved to approve as presented; Commissioner Dixon seconded. The vote was unanimous. (R21-09-039)

STAFF COMMENTS

Mark Whelan, Emergency Management Coordinator, gave a Fire District 1 update. Had a fire at 359th & New Lancaster last Friday. Came in as a detached garage fire and when Louisburg Fire Department responded the garage was already on the ground and the fire had made its way into the attic. Burned about half the roof off the house, east half of the house fire got into the first floor and into the basement. Louisburg responded with 2 engines, 2 tenders, 1 brush rig with Chief Rittinghouse and 13 volunteers. Firefighters from Linn Valley, Paola, Osawatomie, Fontana, and Johnson County Fire District 2 also responded to assist. Had a total of 27 Firefighters along with Miami County EMS who responded with 2 ambulances and a Battalion Chief along with myself and a Sheriff's Deputy were on scene. So, we had 34 people on scene. What was left of the garage was knocked down and the firefighters made an aggressive interior attack on the fire to save the home; even beginning salvage operations before the fire was even out. Projected estimated loss is \$275,000 to the house, garage, and contents. Somewhat of good news is most of the contents in the basement can be salvaged and the two west bedrooms were completely untouched by the fire, smoke, or water damage which was due to the aggressive work on the fire. The Fire District 2 Engine that came in was covering the Louisburg Fire Station for second calls and was called in when the crews became exhausted to help with salvage and overhaul. The Fire Marshall office have come in to investigate. The 3000-gallon tender from Oz (Osawatomie) paid big dividends. 4 tenders carried a total of 8000 gallons to the closest hydrant which was 4 ½ miles away; 9-mile round trip with tenders and never became short of water. Commissioner Gallagher asked if anybody was hurt. Mr. Whelan answered that nobody was hurt. Commissioner Gallagher asked whose district that was. Mr. Whelan answered it was the Louisburg Fire District. Commissioner Gallagher asked if Drexel was notified. Mr. Whelan stated they were not notified.

Mark Whelan, Emergency Management Coordinator, gave a handout showing updates on COVID-19 with the following:

- Total Cases as of September 29th is 4,090; 111 new cases which is a decrease of 48 new cases since last Wednesday
- MCHD (Miami County Health Department) is showing 170-190 active cases
- Positivity rate is 9.90%
- Variants per KDHE – 1 resident with Delta
- Hospitalizations and new cases are going down throughout the metro.
 - KDHE shows 7 new hospitalizations; 3 are ICU - no under 17 cases
- Multiple active school related clusters and 2 businesses
- 60 deaths - 3 new since last week

Christena Beer, Health Department Assistant Director wanted to give some specifics on the update for the COVID-19:

- 110-120 new PCR tests in the last week
- KDHE is investigating a lot of the cases and has yet to be put into EpiTrax.
 - 1 – Lane, 16-Louisburg, 13-Osawatomie, 37-Paola and 1-Spring Hill
- 3 new deaths within the last week
 - 75 yr. – male, 59 yr. – female and 50 yr. – female; all of whom were unvaccinated
- CDC/KDHE say we should automatically assume that all positive active cases are the delta variant at this time.
- 4 total deaths in breakthrough cases.
- Breakthrough cases
 - 10 with Janssen, 48 with Moderna and 76 with Pfizer

Commissioner Gallagher asked how many have been vaccinated in Miami County. Ms. Beer stated it was at 37% to 38% but that had been a week or two since she had checked. Mr. Whelan stated KDHE was showing 45% of residents over 12 have completed their vaccination series and 49% have received at least 1 dose. Ms. Beer stated they are still allocating vaccines to the local pharmacies and just had a couple big requests of 15-20 vials each, so they know they

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are being used. Chairman Roberts stated we know the school districts are testing students correct? Ms. Beer stated Paola and Osawatomie are. Commissioner Roberts stated to answer this lady's question, where did they get the authority to do that? Ms. Beer said they applied for a CLIA certificate through KDHE, and they had to go out and apply for a specific program to make them eligible for testing within the schools. Commissioner Roberts stated So, KDHE authorized them to do so, got them the money, the equipment, and the testing supplies to accomplish that. If you leave your email with the clerk, I will make sure you get the document that KDHE put out on July 30th that told the school districts what they should be doing (to Ms. Palleta). Ultimately the School District Board makes the plan, they implement it and they oversee it. So, if they are testing, and they are, they got the authority to do so from KDHE. Does that answer your question? Mr. Palleta said thank you for that answer but my more narrow question is why the daily when I can't do that at a medical facility. Ms. Beer stated that was the specific strategy they chose when they chose to apply for the testing program. So that stay to play, test to play strategy was adopted by their board and that is a daily test for those who are currently undergoing a modified quarantine. Chairman Roberts asked if they could have applied for a different strategy. Ms. Beer stated there are multiple strategies that they could have applied for. Commissioner Tyler asked if that testing has to be done at the school or if we could do it at the health department as well? Ms. Beer stated if the school is allowing those on the modified quarantine to be tested daily, from my understanding, they will allow outside test with some oversight. Chairman Roberts said the lady came to the Health Department and was told no they don't do it. Is there a methodology we can put in place so if somebody comes to us, to our door, is it possible to do their tests? Ms. Beer stated we do all Covid tests by appointment only and Monday is our walk-in vaccine clinic though we do have some slots allotted. She then told Ms. Palleta that if you wanted to email, she would be happy to talk about the specifics of your situation. She also stated that Auburn and Vohs have been supplied with antigen testing cards along with PCR testing supplies.

J.R. McMahon, Road & Bridge Director, wanted to discuss the implication of the 45-mph speed limit. Typically, what happens is the Commissioners will pass that resolution, then it will be published in the paper for 1 or 2 weeks and that's because it's a regulatory sign, we monitor it and then give a date to put up the signs. We will contact the Sheriff Office and work with them. Our standard procedure is to put signs up every mile and then we will put flags on them. The Sheriff will then enforce the speed limit however he sees fit. He says he is working on getting a radar sign that says how fast you are going. Mr. McMahon stated that some good news is that they are finishing up the tremendous amount of work on the asphalt program they wanted to get done for the year and he requested the pavement marking people to refresh 223rd street especially to the west. He also stated that late Monday Road & Bridge was able to open up the Creamery Bridge. He also stated that they have to prioritize complaints with doing asphalt and other road maintenance and they will get to the complaints, but it may take a few weeks. He also stated they pay \$13.89 to CDL truck drivers. We can't compete up north, but we normally get our employees from Linn/Anderson County. He was just informed that Anderson County is now paying \$18 an hour. So, there is a supply and demand issue which is nationwide. He states we are okay for now; thank god you offer a very generous insurance program, but I would be remiss in my duties if I didn't let you know my ability to go to other counties to get stuff is slowly being removed from me.

COMMISSION COMMENTS

Commissioner Pretz stated that there could be two or more Commissioners in attendance at any Employee Appreciation Week activities next week October 4th through the 8th. The events are too numerous to state so just wants to cover the whole week.

Commissioner Dixon stated that tomorrow there is a meeting at Louisburg City Hall at 5:30 in regards to the Metcalf 2.0 project and there is a meeting on October 14th – K68 meeting at Louisburg High School from 5:30pm – 7:30pm in which there may be more than 2 commissioners there.

EXECUTIVE SESSION

Commissioner Pretz moved to have an Attorney-Client Privilege Exception: settlement negotiations session for 5 minutes beginning at 2:10 pm. Commissioner Dixon seconded; the vote was unanimous. In attendance will be the County Commissioners, County Administrator, County Counselor.

The regular meeting reconvened at 2:15 with County Counselor Woodard requesting that the Commission adopt the Settlement Agreement with Topeka FMComm Inc. in the refund amount of \$11,500. Commissioner Pretz moved to accept the agreement as presented; seconded by Commissioner Dixon. The vote was unanimous. (A21-09-056)

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Commissioner Pretz moved to have an Attorney-Client Privilege Exception: legal obligations session for 20 minutes beginning at 2:20 pm. Commissioner Vaughan seconded; the vote was unanimous. In attendance will be the County Commissioners, County Administrator, County Counselor, Rita McKoon – Health Department Director and Christena Beer, Health Department Assistant Director.

The regular meeting reconvened at 2:40 with no legal action taken.

Commissioner Dixon moved to extend the Attorney-Client Privilege Exception: legal obligations session for 20 minutes beginning at 2:41 pm. Commissioner Vaughan seconded; the vote was unanimous. In attendance will be the County Commissioners, County Administrator, County Counselor, Rita McKoon – Health Department Director and Christena Beer – Registered Nurse.

The regular meeting reconvened at 3:01 with no legal action taken.

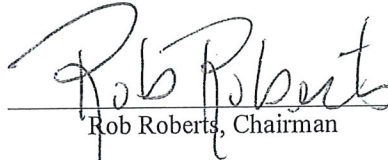
Commissioner Pretz moved to have an Attorney-Client Privilege Exception: Potential land acquisition session for 15 minutes beginning at 3:03 pm. Commissioner Gallagher seconded; the vote was unanimous. In attendance will be the County Commissioners, County Administrator, and County Counselor.

The regular meeting reconvened at 3:18 with no legal action taken

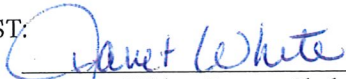
ADJOURNMENT

The meeting was adjourned at 3:19 p.m.




Rob Roberts, Chairman

ATTEST:


Janet White, County Clerk