

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 October 13, 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	Casey d'Augereau, Clerk Support Assistant
George Pretz, Commissioner	

News: Doug Carder, Miami Republic News; Lynne Hermansen, Gardner News; Sydnie Holzfast, Fox 4 News (WDAF)

Visitors: Marla England, Mike Martin, Terry Dell, Terri Buffington, Bob Swanson, Tim Dye, Lee Dye, Beau Campbell, Shelly Miller, Brian & Jennifer Williams, Charlie Koch, Kathy Henehan, Bo Gerken, Paul Loar, John DeGrande, Sheila M Schultz, Carl Peer

CALL TO ORDER

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

PUBLIC COMMENTS

Shelly Miller, 26608 W. 337th Ter, Paola, stated she has a few questions she would like the Commissioners to think about and reply to via email if they choose to:

- Regarding last week's discussion with Miami County Health Department (MCHD), it was brought up there would be new notification letters and questioned the status of the letters? Chairman Roberts stated there will be a meeting with the Health Director and Medical Director tomorrow (October 14, 2021). It is completely up to the Medical Director as to any changes to that document. The notification concept was just an idea from last week's meeting. At this moment that is where it stands.
- Does the Health Department make recommendations to school boards or are they making directives?
- Potentially: will this notification letter contain any compulsory, mandatory or forced exclusion language in it? And if so, is there going to be due process with those forces mandatory like there is for a quarantine?

Ms. Miller thanked the Commissioners for listening.

CONSENT AGENDA

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

- Approval of minutes of the County Commission meeting on October 6, 2021
- Approval of AP payment vouchers and payroll
- Final Plat of Club Estates No. 4 | 21002-SUB(F)
- Final Plat Mottesheard | 21006-SUB(F)

Commissioner Gallagher seconded; the vote was unanimous.

NEW BUSINESS

JR McMahon, Road & Bridge Director, and Mark Hays, Road & Bridge, requested the Commissioners to consider approving a bid from Louisburg Ford for Bid #2021-019 a 1-ton cab and chassis 4X4 in the amount of \$32,252 to be used by Road & Bridge. The original bid was put out in January/February and there was not one response to the bid request. When the bid was put out there a second time one bid was received from Louisburg Ford. Mr. Hays stated this is a four-wheel drive base model. Commissioner Pretz moved to approve the bid in the amount of \$32,252, Commissioner Dixon seconded; the vote was unanimous.

JR McMahon, Road & Bridge Director, requested the Commissioners to consider approving a bid from Louisburg Ford for Bid #2021-202 a 1-ton cab and chassis 4X2 in the amount of \$34,410 to be used by the Sign division of Road & Bridge. Commissioner Gallagher questioned if this was budgeted. Mr. McMahon stated it was budgeted, however, there was a dump truck that had to be replaced that was not budgeted. If the dump truck wasn't ordered now, then it was going to be 2023 before we would be able to get the dump truck. The 2 1-ton trucks on the agenda today are kind of the same thing, if we don't move forward with them now, it will be 2023 before they can get them. Making this line item in the red approximately \$127,000. Commissioner Pretz moved to approve the bid in the amount of \$34,410, Commissioner Gallagher seconded; the vote was unanimous.

October 13, 2021

Page 2

Chairman Roberts requested the Commissioners to consider approving a 6-month extension lease with Jim Sutherland starting January 1, 2022. Monthly amount will be \$3,800 beginning the first day of each successive month until termination, a total payable amount of \$22,800. This space is used for storage of emergency protector equipment. Commissioner Pretz questioned if notice will be required or if this lease will end at the 6 months. Shane Krull, Administrator, stated that written notice of ending or extending the lease must be done in April 2022. Commissioner Vaughan moved to approve the 6-month lease extension to begin January 1, 2022, Commissioner Gallagher seconded; the vote was unanimous. (A21-10-059)

Chairman Roberts stated on April 9, 2021, roughly 6 months and 4 days ago, Miami County received a petition. It was legally signed and presented to the County Clerk, for the county to consider creating a new city called the City of Golden. There were adequate signatures, and it was deemed a legal and appropriate petition. During these last 6 months and 4 days we've been on a journey to consider that petition utilizing the 14-factors that are in statute overseeing how to create a new city. Chairman Roberts invited Jim Kaup, Miami County's Special Counselor, to the podium.

Commissioner Gallagher recused himself from the proposed City of Golden process and stepped out of the meeting at 1:13 p.m.

Mr. Kaup stated he has a couple of housekeeping issues he would like to address. Mr. Kaup commended the Commissioners, and everyone involved during the process. Mr. Kaup stated the Commissioners have gathered a great deal of good information during the process. Mr. Kaup stated he doesn't know how this will turn out, but the Commissioners have been studious and taking this matter very seriously and glad he doesn't have to make the decision. During the Study Session this morning, Mr. Kaup passed out a memo with updated version of the record materials organized by the 17-factors. There were a few changes made to that this morning with a few additions to it. Mr. Kaup will make the changes to the document and will send to Janet White, County Clerk, to post to the website by the end of this week. Mr. Kaup would like to get a motion and a vote from the Commissioners to adopt the memo with the changes set out this morning as the official public record for the proceedings in this matter. Stating everything has been encompassed from the petition for incorporation, comments of opposition, the testimony for the public hearing, emails prior to and after the public hearing, and all the materials presented over the last few months. Commissioner Pretz moved to approve the Kaup Law Office updated version of this document known as Categorization of Public Record Materials, by 17 Factors, Commissioner Dixon seconded. Mr. Kaup stated the document he sends to Janet White will show "Final" on it. The vote was unanimous.

Mr. Kaup stated what the Commissioners are taking on here is called the "Legislative Decision" by the County Commission. It's important to distinguish because the Commissioners are not bound by the weight of the evidence, you make your own determination as to what factors are most important to you and critical to your decision. The legal standard that you're held to in the event of a challenge, is whether or not your decision is legal and that amounts primarily whether or not proper procedures under State law have been complied with. You are also charged with not making an arbitrary or capricious decision, that's making a decision on a whim. Mr. Kaup continued by emphasizing it is a "Legislative Decision" and your judgement and discretion is recognized in the law. There are two exceptions where State law states you shall deny a petition for incorporation. The first is K.S.A. 15-123 says the petition for incorporation shall be denied if it is determined that any present or future annexation to an adjacent city or the creation of an authorized special service district would better serve the interest of the area. The second circumstance for denial is that the proposed petition would otherwise be contrary to the public interest. Those are broad terms there, but by Statute the State has taken away your decision by issuing a denial upon either of those 2 conditions. The record that Miami County has of this issue is quite extensive, and it is loaded with substantial evidence. As long as you can relate your decision back to substantial evidence that's in the record you will have fulfilled your duty in making a Legislative Decision. Mr. Kaup stated at the public hearing on June 23, 2021 Mr. Kaup asked each Commissioner if they would be making a decision without bias and prejudgment and so forth. Mr. Kaup stated he would like to do a similar exercise again and get a response from each one of you.

- Commissioners have you made an objective determination as to the advisability of incorporation based on your study and understanding of the materials of the record and free of any personal interest without prejudice, bias, or prejudgment?
 - Chairman Roberts answered yes
 - Commissioner Vaughan answered yes
 - Commissioner Dixon answered yes
 - Commissioner Pretz answered yes
- Commissioners for the record: Have you examined the materials in the record and listen to the verbal

October 13, 2021
Page 3

testimony and given careful consideration to those materials and testimony as they relate to the 17-factors which the Board of County Commissioners has committed itself to basing its decision on?

- Chairman Roberts answered yes
- Commissioner Vaughan answered yes
- Commissioner Dixon answered yes
- Commissioner Pretz answered yes

Commissioner Vaughan moved to approve a new 3rd Class City named Golden in NW Miami County. Chairman Roberts repeated the motion and questioned if there is a second. No response. Chairman Roberts questioned a second time for a second to the motion, hearing none the motion dies.

Commissioner Pretz moved for a denial for the petition of Golden, Commissioner Dixon seconded. Commissioner Vaughan stated this has been a long process and respect everybody for their participation. Through this we as the Commission has learned a lot, through the entire process we have remained transparent.

- Commissioner Vaughan believes based on the 17 guiding directives that we had; the petition met those 17 directives.
- Commissioner Vaughan believes the petition was clear, defined, and thorough.
- Commissioner Vaughan believes it was evident that through the prework and comp plan. Through the comp plan and the preliminary results that this was in the interest of the county to have the City of Golden incorporated in that area.
- Commissioner Vaughan goes back to what he said in the Study Session we define progress. I think we, with this decision to deny the incorporation, have limited our ability as a Commission to define what progress. I'm not saying I want to stop progress; I think we've limited our progress and we have become at the whim of somebody who is not in our county, which I think is unfortunate.
- I think the expert witness that we have had through the process was very much appreciated. We as a Commission learned a lot and I think will help guide future decisions. This was a tough decision for all of us, it was for me personally, and I appreciate everyone's involvement.

Chairman Roberts stated he appreciates Commissioner Vaughan's input and thought he has put into this process. Chairman Roberts stated this Commission intentionally and deliberately walked through each of the factors that we've been considering as we approached this decision. Chairman Roberts stated he made a special emphasis this morning, especially on factors 14 & 15. Factor 14 has to do with the development of the area, the orderly and unreasonable multiplicity of the multiple governments, and it is Chairman Roberts opinion that adding another government in the north part of Miami County would just add more complex issues to the development of the area as well as the negotiations that need to happen. Any time a county is growing, there are already enough voices there. What is tragic is that the voices that need to be heard on the Johnson County side are not being heard. Our Commissioners have absolutely heard the voices of any and every person in the county that had any opinion regarding this situation. Chairman Roberts stated the second thing that troubles him, cities are created to provide a different level of service than the level of service they are receiving. And when you think about the level of service they are receiving as a county resident I recognize that it is rather minimal. We recognize the role the Sheriff plays in that area, we clearly identified the role each department plays in providing services in the rural part of Miami County. In the general sense you create a city so that you can expand that level of service and provide a different level than what the county would or could or should provide. Chairman Roberts stated his interpretation is that there is really no intention of providing any deeper services than what are provided today. For those reasons Chairman Roberts does not support this.

Commissioner Dixon stated after several months of studying the proposal of the City of Golden and consideration of all 17-factors the factor that had the most impact on him was the factor involving Hillsdale Lake. It is one of the factors added but it is also part of factor 14. The general affect on the entire community is factor 14, and after hearing testimony from expert witnesses on the subject, Commissioner Dixon does not believe there will be a negative affect to the lake area if they were to be built. Not restricting warehouses might bring in industrial development and that is also considered in factor 4. For these reasons I would vote against the incorporation of the City of Golden.

Commissioner Pretz stated he has reviewed and considered the voluminous amount of comments, written, and verbal testimony in it's entirety and weighed both proponents and opponents considerations. I concur with Chairman Roberts and Commissioner Dixon. Commissioner Pretz state the proposed city consists of 9 square miles roughly over 3,400 acres of the 5,400 acres and maybe even more than that, there is roughly 1,000 acres that is plotted, leaving up to 4,000 acres what is called open area. There are no houses; it's either farm ground, pasture, etc. Commissioner Pretz believes a proposed incorporation would be contrary to the public interest. The sparse rural nature of the proposed city boundaries would be ill served by the governmental burdens that a city requires. Formation of a city would create an additional level of many things, just to mention a few; additional level of property tax, and many

regulations. Commissioner Pretz stated he considered all 17-factors and there was a lot of deliberation this morning in the Study Session. Commissioner Pretz stated again that he agrees with both Chairman Roberts and Commissioner Dixon's points and believes they have exhausted their study and research in this matter.

Chairman Roberts stated for the record this is the first time he has heard the opinions of the other Commissioners.

Mr. Kaup requested when the roll call vote is made that the Commissioners state their reason for their vote when they are called on.

Chairman Roberts requested Janet White, County Clerk, to do a roll call vote:

- Commissioner Vaughan voted no to the motion to deny the City of Golden. Commissioner Vaughan stated he believes the petitioners meet the 17 points defined by our attorney. The process was followed to a T, defined comprehensive plan by our constituents had already stated the use for rural, residential, and agricultural which Commissioner Vaughan believes would be able to be maintained. Commissioner Vaughan believes if it's not this city it will be another city, so anybody not prepared to be in a city you're going to be. Our ability to define that progress was better placed with our own citizens. Our expert witnesses were detailed, valuable, and gave us all adequate information for a new formed government to make adequate decisions on what would be there to create a governing body to make those decisions.
- Chairman Roberts voted yes to deny the City of Golden. Chairman Roberts stated his decision was based on factors 14 & 15, stating it would create an unreasonable other city that would create more dysfunctional economic development of the region. Based on number 15, I believe Cities are created to provide services and I don't see any services being offered in this plan. Therefore, I vote yes to deny the incorporation of the City of Golden.
- Commissioner Dixon voted yes to the motion to deny. Commissioner Dixon stated the reasons he believes the warehousing is a development that could possibly help if they come. Commissioner Dixon stated it was proven to him that Hillsdale Lake would not be affected in a negative way with the development of a warehouse. With that Commissioner Dixon votes yes to support the motion to deny the incorporation.
- Commissioner Pretz voted yes to the denial of the petition. Commissioner Pretz stated he believes his statements earlier clarify his decision, mainly in reference of factor 14. Commissioner Pretz stated he can go through all 17 and give an answer: we know the population is roughly 776, we know the natural boundaries of 9 square miles, and we provided all the facts on the assessed value of the ground. In reference to number 3, the proponents may have more numbers of bodies then the opponents but when looking at it in surface area opponents far outweigh. As far as, there is very little if any commercial in the area in reference to number 4, number 5 in past expansion and in terms of population and construction there has been roughly 20 house-build permits in 10-years. Yes, there's likely to be significant growth in reference to 6 in the next 10-years. The Commissioners have had a lot of discussion about the government and that varies greatly depending on who the elected officials would be, Commissioner Pretz stated he wouldn't put a price on that. Commissioner Pretz stated referencing number 8 effect the proposed action to the adjacent and on the local government structure of the entire urban community, that's kind of undecided but probably affects Edgerton quite a bit. Getting into the surrounding cities, all cities are growing and anyone of those cities may grow into this area. Finally, on the Hillsdale Lake, nobody can call that one and the impact to Hillsdale Lake.

Chairman Roberts stated this is a legal binding decision and questioned if any of the Commissioners would like to change their vote after hearing the comments from the other Commissioners. None responded. Chairman Roberts stated the motion was to deny the petition to incorporate the City of Golden; the vote was 3 yes to 1 no; the motion passes. That concludes the conversation of the City of Golden and will take one comment from Miami County's Attorney, Jim Kaup. Mr. Kaup stated State law provides at the meeting following the vote the Commissioners will consider an order and put findings that are consistent with the views of the majority of the County Commission. There's no meeting next week, so at the meeting 2 weeks (October 27, 2021) from today Mr. Kaup will submit to the Commissioners an order under a resolution which that order will be adopted. Mr. Kaup stated Commissioner Vaughan was not on the prevailing side and questioned if Commissioner Vaughan would like his views on the resolution. Commissioner Vaughan stated yes.

Commissioner Gallagher rejoined the meeting at 1:42.

STAFF COMMENTS

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

- There are 68 new cases

October 13, 2021
Page 5

- 75 – 80 active cases
- 9.11% positivity rage
- 3 new hospitalizations

COMMISSION COMMENTS

Commissioner Pretz stated there may be a 2 or more County Commissioners at the Republican Party Convention meeting to nominate a Treasurer for Miami County tonight at 5:00 p.m. at the Sr. Citizen Center in Louisburg, KS.

Janet White, County Clerk, apologized for missing the queue for Staff Comments. Ms. White reminded everyone that advanced voting began today and if they have time and would like to, please stop by and vote.

Chairman Roberts requested the Commissioners to limit their comments about the petition for the City of Golden. We made our statements, we made them very public, and they'll be a part of the public record. There might be people that wish to talk to you or interview you and you've already made your statements; I wouldn't want to add anything to the record that wasn't a part of the record.

EXECUTIVE SESSION

Commissioner Pretz moved to have a Land Acquisition Executive Session, subject to be discussed is potential property acquisition for 10 minutes beginning at 1:48 P.M., Commissioner Gallagher seconded. Chairman Roberts stated the Executive Session is to include: Commissioners; Shane Krull, County Administrator; and Shelley Woodard, County Counselor. The vote was unanimous. Regular meeting reconvened at 1:58, no action to be taken.

ADJOURNMENT

The meeting was adjourned at 1:58 p.m.

(Seal)



Rob Roberts
Rob Roberts, Chairman

ATTEST:

Janet White
Janet White, County Clerk