

BUTLER COUNTY BOARD OF COMMISSIONERS
Tuesday, May 7, 2019

CALL TO ORDER

Commission Chairman Marc Murphy called the Butler County Board of Commissioners to order at 9:01 a.m. Present were Commissioner Jeff Masterson, Commissioner Ed Myers, Commissioner Dan Woydziak, Commissioner Mike Wheeler, County Administrator Will Johnson, and Clerk Recorder Chelsea Noel.

INVOCATION

Reverend Christine Gilson, Trinity Episcopal Church, El Dorado, presented the invocation.

APPROVAL OF MINUTES

Commissioner Woydziak motioned to approve the minutes of the Butler County Commission meeting from Tuesday, April 23, 2019 as written. Commissioner Masterson seconded the motion. Motion carried 5-0.

(00:01:48)

PUBLIC COMMENTS

Leon Leachman, El Dorado Main Street Board Member, invited the Commissioners to attend the pipeline forum on May 15th at the El Dorado Civic Center.

(00:03:00)

ITEM #1 – IPS CUP REVOCATION

David Alfaro, Community Development Director, came before the Board to review and discuss clean-up efforts undertaken by IPS and consider approval of additional clean-up time or initiation of a cease and desist order by legal counsel. On March 19, 2019 the Board of County Commissioners made a motion allowing IPS until May 1, 2019 to clean up the property or face a potential motion to cease and desist operations. Through bi-weekly updates representatives of IPS have come before the Commission keeping the Commissioners well-informed of their progress. Mr. Alfaro felt IPS should be granted another thirty days to continue clean-up. Commissioner Woydziak inquired about the timeline of a cease and desist order and if Mr. Riley would be able to continue working until the order goes into effect. Commissioner Myers noted the weather has not been ideal to move materials but also had reservations about extending the CUP revocation again. Commissioner Masterson stated he is in favor of allowing IPS more time and would like more information on timelines and the process of a cease and desist order. Commissioner Woydziak stated he would like to move forward with a cease and desist order on June 1.

Brian Riley, IPS Owner, came before the Board and stated he is unsure of the exact tonnage that he has taken to the landfill year to date. Mr. Riley stated the landfill is now charging him \$300 per load and he can not afford that cost. Mr. Riley noted he has multiple containers loaded and ready to be dumped and requested to pay \$1/ton landfill fees. Commission Chairman Murphy stated he would not support \$1/ton landfill fees. Commissioner Woydziak stated he would be in favor of reducing the landfill fees until June 1 because it will be cheaper for the County in the long run. Commissioner Myers was concerned about precedence setting at the landfill because the landfill is a self-supporting enterprise operation and it is not a free service. Commissioner

Masterson stated he is less concerned about setting precedence because the cost of the County cleaning up the property is going to exceed the amount of waiving the landfill fees if they don't allow Mr. Riley to continue the clean-up himself. Commissioner Wheeler stated Mr. Riley has made empty promises to the County and he would not support an extension of any kind. Commissioner Myers stated he would support extending the CUP for another 30 days but would not support a \$1/ton landfill fee. Commissioner Masterson stated the Board would be giving Mr. Riley a disincentive to continue helping the County if they do not allow him an extension and reduced landfill fees. Mr. Riley stated he is willing to help the County and wanted to clean-up the property but he can not afford the landfill fees as they currently stand.

Commissioner Masterson motioned to approve a thirty day extension and to reduce the landfill fees to \$1/ton for the thirty day period. Commissioner Woydziak seconded the motion. Motion failed 2-3. Commission Chairman Murphy, Commissioner Myers and Commissioner Wheeler opposed.

Commissioner Woydziak motioned to initiate the cease and desist order for an estimated timeline to June 1st after consulting with an attorney and to reduce the landfill fees to \$5/ton. Commissioner Myers seconded the motion. Motion failed 2-3. Commission Chairman Murphy, Commissioner Masterson and Commissioner Wheeler opposed.

Commission Chairman Murphy motioned to table this item for one week to allow legal counsel to be present. Commissioner Masterson seconded the motion. Motion carried 3-2. Commissioner Wheeler and Commissioner Myers opposed.

(00:31:39)

ITEM #2 – TABLED MANN'S ATP & SKYWARD LAND SERVICES CUP

David Alfaro, Community Development Director, came before the Board for approval of a request for a Conditional Use Permit (CUP) for the placement of a Communication Tower on property located at 7865 NW 80th Street Potwin, Kansas. Mann's ATP, in conjunction with Skyward Land Services, are proposing to erect a 190' Self-Supporting Telecommunications Tower inside a 60' X 60' fenced compound with a total leased are of 100' X 100' for the placement of Communications equipment such as Antennas, Equipment Shelters and Cabinets. The proposed Wireless Infrastructure is critical to ensure that all citizens have true access to advanced technology and information which ultimately will have economic benefits to the area. The property is a cattle feed lot with another feed lot across the road to the North. There are several State and Federal Laws that govern the placement or non-placement of Communication Towers and to deny a request requires "substantial evidence" that will hold up in District or Federal Court. Mr. Alfaro stated he received a letter yesterday from ATP and they have requested to table this item for another two weeks. Mr. Alfaro stated there is a 150 day window for the application to be approved and they are currently 90 days into the process.

Ray Connell, Attorney Representing Edward Mann, came before the Board to speak in favor of the application and encouraged the Board to approve the tower request. Mr. Connell stated K.S.A. 66-2019 encourages as many cell towers as possible and believes it to be healthy for the general public. Mr. Connell stated any adjoining tower owners do not have the right to make an objection and stated tabling this for an addition two weeks would be inappropriate. Commissioner Woydziak stated he would not support another extension on this case.

Aaron Kite, American Tower Corporation Attorney, came before the Board requesting a two week extension on this case. Mr. Kite stated the reason for the requested delay is to allow the engineers at the company more time to present the Board with more information. Mr. Kite stated the two existing towers are less than 500 feet apart from each other, there is no gap in coverage and there is no public benefit by adding this tower and there is not proper justification to add another tower.

Commissioner Woydziak motioned to approve the request for a CUP for the placement of a Communication Tower on property located at 7865 NW 80th Street, Potwin, KS and directed the Chairman to sign Resolution #19-07. Commission Chairman Murphy seconded the motion. Motion carried 3-2. Commissioner Wheeler and Commissioner Masterson opposed.

Butler County Undersheriff Tony Wilhite noted National Police Week is May 12th – May 18th and invited the Commissioners to attend breakfast hosted by the Augusta Crime Stoppers on Wednesday, May 15th at the Augusta High School.

(00:48:08)

ITEM #3 – SHERIFF VEHICLE REPLACEMENT FOR 2019

Tony Wilhite, Butler County Undersheriff, came before the Board for approval of the purchase of sixteen patrol vehicles. The vehicles to be purchased are replacing vehicles that will be taken out of service and/or repurposed within the agency. Dodge Charger All Wheel Drive or Dodge Tradesman 1500 4X4 vehicles will replacing those vehicles with at least four years of service, with mileage greater than 100,000 miles, or mechanical issues requiring earlier replacement. The Dodge Charger patrol vehicles have been a reliable vehicle for use as patrol vehicles in Butler County provided they are replaced in a timely manner. There are no real other options available to use as patrol vehicles other than the trucks. The purchase of four-wheel drive trucks will afford greater clearance on roadways that are at times nearly impassable. The average of the two bidders on the trucks makes for a \$678.43 difference between a passenger car and a 4x4 truck. Undersheriff Wilhite stated he would like to purchase ten Dodge Chargers and six Dodge trucks. Undersheriff Wilhite noted the Sheriff's office's fleet size is staying the same. Commissioner Myers inquired about fuel consumption on Dodge trucks versus the Dodge Chargers.

Commissioner Woydziak motioned to approve the purchase of sixteen Dodge patrol vehicles in the amount of \$394,474 from Parks Motors, Augusta, KS and to allow the Sheriff's Department to determine how many trucks and cars they need. Commission Chairman Murphy seconded the motion. Motion carried 5-0.

Commissioner Wheeler commended the Sheriff's Department on their jail count and enforcing the speed limit on Highway 254. Sheriff Kelly Herzet stated in March and April combined the Sheriff's Department has written over 70 tickets on Highway 254. Sheriff Herzet stated he would like for rumble strips to be put back on south bound River Valley Road and also on Butler Road. Sheriff Kelly Herzet also stated he received notice that the Marshall Inmate count would be going up at the Detention Facility.

(01:09:02)

RECESS

Commission Chairman Murphy recessed the meeting of the Board at 10:10 a.m. for 8 minutes.

Commission Chairman Murphy reconvened the meeting at 10:18 a.m.

(01:09:07)

ITEM #4 – PARTIAL ROAD VACATION REQUEST ON SW 110TH STREET EAST OF SW INDIANOLA ROAD – PUBLIC HEARING

Darryl Lutz, Public Works Director, came before the Board to hold a public hearing related to a petition filed by the City of Augusta to consider vacating a portion of SW 110th Street, adjacent to the Augusta Municipal Airport east of SW Indianola Road in Bruno Township. The request from the City of Augusta is to vacate approximately 1,100' feet of SW 110th Street going east from SW Indianola Rd. All of the property owners were notified of the road viewing.

Commissioner Woydziak stated the road viewing was abbreviated this morning due to weather and there was a property owner present who is objected to the road closing. Commissioner Masterson stated the road is viable, open and used daily.

Commission Chairman Murphy opened the Public Hearing at 10:23 a.m.

Tim Byram, 12763 SW 110th Street Augusta, came before the Board in opposition to the request. Mr. Byram stated the road vacation would have multiple negative effects on his property. Mr. Byram stated it would ruin the scenery of the area and decrease his property value.

Commissioner Myers inquired about investments and improvements Mr. Byram has made to his property. Mr. Byram stated he has put up a barn, new fencing and completely remodeled his home. Mr. Byram stated he has not been notified by the FAA of any information or plans to vacate the road or to extend the runway. Mr. Byram also stated he was asked to speak on behalf of his neighbor, Jim Weaver, who is opposed to the road closing and could not be present at the Commission meeting.

Colin Ellse, 12128 SW 120th St, came before the Board and spoke in opposition to the road closing. Mr. Ellse stated closing the road would have a negative effect on all property owners who live on 120th traveling to and from work every day and there would be an increase in traffic on their road every day. Mr. Ellse also discussed the runway protection zone and the increase of noise that would come from bigger planes/jets on the runway.

Greg Keiter, 12718 SW 110th Augusta, came before the Board in opposition to the request. Mr. Keiter stated he completely agrees with everything Mr. Byram stated and also felt the FAA should pinpoint their business case in regards to how this would benefit Bruno Township, landowners and Butler County as a whole.

Josh Shaw, Augusta City Manager, came before the Board and provided the history and background related to the road closing and extending the runway protection zone. Mr. Shaw discussed why it is vital that the runway be extended and also stated the FAA requires the road to be closed in order to begin negotiations.

Commissioner Myers stated he thought it was disturbing that nearby property owners were not kept up to date and stated he does not agree with the FAA's process. Commissioner Wheeler stated he does not agree with the FAA dictating Butler County's road viewing process.

Commission Chairman Murphy closed the Public Hearing at 11:31 a.m.

(02:22:05)

ITEM #5 – PARTIAL ROAD VACATION REQUEST ON SW 110TH STREET EAST OF SW INDIANOLA ROAD – ACTION

Darryl Lutz, Public Works Director, came before the Board for approving action related to a petition filed by the City of Augusta to consider vacating a portion of SW 110th Street, adjacent

to the Augusta Municipal Airport east of SW Indianola Road in Bruno Township. The request from the City of Augusta is to vacate approximately 1,100' feet of SW 110th St going east from SW Indianola Rd. The County Commission is the authorized local public authority for opening, relocation or vacating public roads in the unincorporated area of the County. Commissioner Myers stated at this time he is not inclined to be in favor of the road vacation. Administrator Johnson suggested the Board not take any action on this item until legal counsel is present.

Commissioner Woydziak motioned to table the partial road vacation request on SW 110th Street east of SW Indianola Road for one week. Commission Chairman Murphy seconded the motion. Motion carried 4-1. Commissioner Myers opposed.

(02:38:00)

RECESS

Commission Chairman Murphy recessed the meeting of the Board at 11:46 a.m. for 6 minutes.

Commission Chairman Murphy reconvened the meeting at 11:52 a.m.

(02:38:05)

ITEM #12 – COMPREHENSIVE SOLID WASTE MANAGEMENT PLAN – 5 YEAR UPDATE HEARING AND ADOPTION

Darryl Lutz, Public Works Director, came before the Board to hold a Public Hearing on the proposed draft of the Updated Comprehensive Solid Waste Management Plan and consider adoption of the plan. Butler County adopted the current updated comprehensive solid waste management plan in December 2013 as required by state statute. The plan was approved by the state in March 2014. The plan is required to be reviewed annually and updated with a public hearing every five years. Butler County began the recent update process in June 2018.

Rebecca Chappelle, Engineering Solutions & Design Inc., came before the Board to present the Comprehensive Solid Waste Management Plan to the Board.

Commission Chairman Murphy opened the Public Hearing 12:22 p.m.

Sandy Koontz, Solid Waste Committee Chairman, thanked everyone for their support and time in putting together the Comprehensive Solid Waste Management Plan.

Commission Chairman Murphy closed the Public Hearing 12:23.

Commission Chairman Murphy motioned to adopt Resolution #19-09. Commissioner Masterson seconded the motion. Motion carried 5-0.

(03:11:25)

ITEM #6 – K.S.A. 79-1460 AND REQUESTING FEE APPRAISALS

Deb Studebaker, Butler County Appraiser, came before the Board for approval to grant the County appraiser permission to order independent fee appraisals to comply with K.S.A. 79-1460 and to maintain equitable fair market values. The cost to procure a fee appraisal will depend on the complexity of the property.

Commissioner Woydziak motioned to approve granting the Butler County Appraiser permission to request proposals for independent fee appraisals when necessary to comply with K.S.A. 79-146 and maintain equitable, fair market values. Commissioner Wheeler seconded the motion. Motion carried 4-1. Commissioner Myers opposed.

(03:27:58)

ITEM #13 – WORK SESSION: RURAL RECYCLING TRAILER DROP-OFF PROGRAM

Darryl Lutz, Public Works Director, came before the Board to discuss the status of Butler County’s rural recycling trailer drop-off program. Butler County has been operating a trailer drop-off residential recycling program in the rural areas of Butler County for many years. This program is provided in cooperation with most of the cities in the County. As part of the program, the City of El Dorado agreed to accept collected materials and to process and market them. Butler County in turn provided payment to the City based upon a proportionate share of costs less revenues received based upon tonnage of recyclables received. The cost of recycling residential waste now exceeds the cost of direct disposal of trash in the landfill. The City of El Dorado is considering options for the future of their recycling program and has recently asked Butler County to stop delivering recyclables to the City with the exception of cardboard. No action was taken.

(03:37:28)

ITEM #7 – WEST CENTRAL COMPLEX PARKING LOT CONTRACT APPROVAL AND SIGNING

Dan Ingalls, Facilities Management Director, came before the Board for approval of the contract between SPS Pavement Maintenance and Butler County for concrete paving at the new Community Corrections facility in an amount not-to-exceed \$179,672.00.

Commissioner Woydziak motioned to approve the contract between SPS Pavement Maintenance and Butler County for concrete paving at the new Community Corrections facility in an amount not-to-exceed \$179,672.00 and allowed the Chairman to sign the contract. Commissioner Masterson seconded the motion. Motion carried 5-0.

(03:39:02)

ITEM #8 – CATERPILLAR LANDFILL COMPACTOR REPAIR WORK

Darryl Lutz, Public Works Director, came before the Board for approval of the estimated cost of repairs to the Caterpillar 816F compactor operated at the landfill. The transmission has gone out on the Caterpillar 816F landfill compactor and needs to be removed and rebuilt. The estimate was provided by Foley Equipment Company in the amount of \$35,221.12. The compactor is to be sold on Purple Wave once repairs are completed. The expected value of the unit in good operating condition is \$75,000 - \$100,000.

Commissioner Masterson motioned to approve estimated cost of repair work by Foley Equipment Company on the transmission of the Caterpillar 816F landfill compactor in the not-to-exceed amount of \$35,221.12. Commissioner Woydziak seconded the motion. Motion carried 5-0.

(03:46:05)

ITEM #9 – NOTICE TO BRIDGE CONTRACTORS – LITTLE WALNUT RIVER BRIDGE ON SE CHELSEA ROAD – SOUTH OF LEON

Darryl Lutz, Public Works Director, came before the Board for approval of a Notice to Bridge Contractors for the letting of a construction project to replace the Little Walnut River Bridge on SE Chelsea Road located south of Leon.

Commissioner Wheeler motioned to approve the Notice to Bridge Contractors for Project #BR 28C2-27-6(18), the proposed bridge replacement project for the Little Walnut River Bridge on SE Chelsea Road, located south of Leon, setting the letting date for Tuesday, June 4, 2019 at 10:00 a.m. and authorized the Chair to sign the Notice. Commissioner Woydziak seconded the motion. Motion carried 5-0.

(03:48:38)

ITEM #10 – ROAD MAINTENANCE AGREEMENT REVIEW – TRANSCANADA KEYSTONE PIPELINE COMPANY PUMP STATION

Darryl Lutz, Public Works Director, came before the Board for approval of the road maintenance agreement with TransCanada Keystone Pipeline, LLC related to their proposed project to install pumps at the Potwin Pump Station. The agreement provides that TransCanada will be responsible for all costs related to repair, maintenance or upgrade of any approved routes used for any activities related to the construction of the proposed pump station at Potwin. TransCanada will be providing a required bond in the amount of \$1,000,000. This agreement has been approved by legal counsel.

Commissioner Woydziak motioned to approve the road maintenance agreement with TransCanada Keystone Pipeline, LLC related to their proposed project to install pumps at the Potwin Pump Station and to authorize the Chair to sign the agreement. Commissioner Myers seconded the motion. Motion carried 5-0.

(03:52:28)

ITEM #11 – PUBLIC WORKS EQUIPMENT PURCHASES

Darryl Lutz, Public Works Director, came before the Board for approval to obtain bids for major equipment replacement for 2019. The Department of Public Works develops and maintains an equipment replacement plan for all of its divisions. This plan is used as a tool to help budget for equipment replacement and is incorporated into the County's current CIP and adopted budgets. Mr. Lutz noted several pieces of equipment are ready for replacement or purchase in 2019 which will include some equipment carried over from 2018.

Commissioner Woydziak motioned to authorize the Director of Public Works to obtain sealed bids for the new equipment requested by the Public Works Department and pricing as appropriate for the purchase of used equipment as requested by the Public Works Department. Commissioner Masterson seconded the motion. Motion carried 5-0.

(04:01:20)

ITEM #14 – 2019-Q1 FINANCIAL MANAGEMENT REPORT

Ryan Adkison, Assistant County Administrator/Finance Director, came before the Board to receive and file the 2019-Q1 Financial/Management Report.

Commission Chairman Murphy motioned to receive and file the 2019-Q1 Financial/Management Report. Commissioner Myers seconded the motion. Motion carried 5-0.

(04:12:48)

ITEM #15 – 2019-2023 CIP APPROVAL

Ryan Adkison, Assistant County Administrator/Finance Director, came before the Board for approval of the proposed 2019-2023 CIP. The proposed CIP totals \$63,066,145 or \$10,992,615

more than the prior year amount of \$52,073,530. Primary funding is derived from operational transfers and the primary project categories are roads and bridges. Commissioner Myers questioned and discussed the future of the Butler County Fair Grounds as he opposed it listed in the CIP.

Commissioner Woydziak motioned to approve the proposed 2019-2023 CIP. Commission Chairman Murphy seconded the motion. Motion carried 4-1. Commissioner Myers opposed.

(04:35:49)

VOUCHERS

Commissioner Wheeler motioned to approve vouchers for April 30, 2019 in the amount of \$380,641.84. Commissioner Masterson seconded the motion. Motion carried 5-0.

Commissioner Wheeler motioned to approve vouchers for May 7, 2019 in the amount of \$135,769.63. Commissioner Murphy seconded the motion. Motion carried 5-0

(04:36:41)

COMMISSION ADDS & ABATES

Commissioner Woydziak motioned to approve Adds & Abates #2725 dated May 7, 2019; Adds in the amount of \$27,574.98 and Abates in the amount of \$30,765.12. Commissioner Masterson seconded the motion. Motion carried 5-0.

(04:37:00)

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

Commissioner Wheeler stated he spoke to Mr. Byram and he would like to be notified of any decision that is made about the road vacation on SW 110th Street.

Administrator Johnson stated the City of El Dorado has made the decision to stop utilizing inmates at the City of El Dorado.

Commissioner Wheeler stated he plans to attend the Butler Community College Commencement on Friday, May 17th.

Commission Chairman Murphy stated he plans to attend the Law Enforcement Breakfast at the Augusta High School on Wednesday, May 15th.

Administrator Johnson discussed hosting Butler County Government Day on October 15th or October 29th.

Administrator Johnson stated interviews for a new Human Resources Director will begin this week.

Administrator Johnson stated the new Computer Services Director beings May 20th.

(04:48:18)

ADJOURNMENT

Commissioner Woydziak motioned to adjourn the meeting of the Board at 2:03 p.m. Commissioner Masterson seconded the motion. Motion carried 5-0.