

May 11, 2009

County Commission Minutes

The Board of Ellis County Commissioners met in regular session at 8:45 a.m., Monday, May 11, 2009, in the Commission Room at the Courthouse, 1204 Fort Street, Hays, Kansas, with the following present: Perry S. Henman, Chairman, Glenn D. Diehl, Member, Vernon L. Berens, Member and Donna J. Maskus, Deputy County Clerk.

Chairman Henman called the meeting to order at 8:45 a.m.

County Treasurer, Mike Billinger, discussed the Investment Performance Report with \$16,448,708.49 total funds. Billinger noted that all financial deposits must have collateral of 102% of the uninsured deposits.

Billinger compared the \$36,543.46 interest earned as of March 31, 2009, which is a drop of 85% from one year ago. With the economic issues they are seeing little or no interest is being earned on investments currently.

Billinger is finding the longer investment periods have the better interest rates.

They are starting the three-year process in a future Sheriff's sale. Billinger is working with the people, they are doing what they can to pay their taxes.

Diehl moved to go into Executive Session for fifteen (15) minutes with County Counselor, Dennis Davidson, by telephone on an attorney-client privilege matter on the Davis vs. Ellis County case. Berens seconded the motion and the motion carried, three to zero.

The Executive Session began at 9:09 a.m.

The Open Meeting resumed at 9:19 a.m.

Diehl moved to approve the Memorandum of Settlement Agreement on the matter of Davis, etal. vs. Board of County Commissioners of Ellis County, etal., Ellis County District

Court, Case Number 08 CV 134. Berens seconded the motion and the motion carried, three to zero.

Chairman Henman stated that now this Memorandum of Settlement Agreement is a public record and will be made available at the County Clerk's Office.

Henman stated they will take any questions from those that are present at the meeting.

Taylor Bemis asked if all parties have approved this settlement agreement. Henman stated,

“Yes, all parties have approved this according to our attorney.”

All Board Members signed the approved settlement agreement, as follows:

MEMORANDUM OF SETTLEMENT

This Memorandum sets forth the terms and conditions of a Settlement Agreement between the parties entered into as a result of the mediation held on February 27, 2009. This Settlement Agreement is intended to resolve the appeal related to the granting of a Conditional Use Permit to Hays Wind, LLC, which is the subject matter of Davis, et al. v. Board of County Commissioners of Ellis County, et al., Ellis County District Court, Case No. 08 CV 134. This settlement is subject to the contingencies set forth herein.

1. **Parties.** The parties to this Settlement Agreement are the Board of County Commissioners of Ellis County (“Ellis County”), Kansas; Hays Wind, LLC (“Hays Wind”); Paul W. Faber; Jacinta Faber; Rod Bittel; Pat Bittel; James Kramer; Luanne Kramer; Jane Matlock; Anthony Eller; Deb Eller; Mike E. Butler; Sheryl Butler; J.P. Michaud; Timothy O. Davis; Penny J. Davis; Keith F. Pfannenstiel; Jody Pfannenstiel; Wilfred T. Barnes; Mary C. Barnes; A.J. Pfannenstiel; Linda Pfannenstiel; and Louis D. Bowman, d/b/a Bowman Oil Company. Final approval by Ellis County is subject to formal action by the County Commission.

2. **Dismissed Plaintiffs.** The following individuals have previously been identified as plaintiffs in this action: C.J. Pfannenstiel; Georganna G. Johnson; Sally E. Gager; Vernon F. Riedel; Jeanne M. Riedel; William T. Wierman; Agnes M. Wierman; Terrence J. Wierman; Gary M. Fagan; Doug Marrs; Maren K. Moody; Mary Barnes; John Barnes; Clara Kramer; Robert A. Kramer; Helen M. Miles; Marion Brown; Jerry Wiedeman; Dianne Wideman; Mary Meier; Linda Donlay; Wanda L. Pinkington; and Angela K. Grant; By agreement of those plaintiffs and the parties herein, those plaintiffs have been dismissed from this action with prejudice. It is agreed by the parties that the dismissal of those plaintiffs is final and complete and the dismissed plaintiffs may not refile their claims and the parties hereto agree not to allow any of the dismissed plaintiffs to rejoin as parties in this action.

3. **Release and Dismissal.** By this Settlement Agreement, the parties have resolved all differences and settled or resolved all claims which have been plead or might have been plead in Case No. 08-CV-134 either as claims, cross-claims, counterclaims or third-party claims. The parties agree to the dismissal of Case No. 08-CV-134, with prejudice, upon satisfaction of all contingencies set forth herein and any payment to plaintiffs due under the Settlement and

Release Agreement separately entered into between plaintiffs and Hays Wind.

4. **Validity of Conditional Use Permit.** The parties agree that the settlement of this action means that the Conditional Use Permit previously granted by defendant Ellis County to Hays Wind is lawful and enforceable, both as to its adoption and its terms and conditions.

5. **Relocation of Wind Turbines.** Hays Wind, its successors and assigns, agrees that it will not install any wind turbines within the three-mile zone established by the City of Hays, Kansas, and, accordingly, those wind turbines identified on Exhibit A as numbers 55, 58, 59, 60, 61, 93, 94, 95, 96 and 98 will be relocated. Hays Wind, its successors and assigns, agrees that it shall not install, now or in the future, wind turbines authorized by the Conditional Use Permit in the area located north of the green line shown on the map attached hereto as Exhibit B, and, accordingly, those wind turbines authorized by the Conditional Use Permit and identified in Exhibit B as wind turbines numbers 50, 51, 52, 53 and 54, will be relocated. Turbines, whether located pursuant to the C.U.P. or relocated pursuant to this Agreement, shall be set back at least 2,000 feet from any existing residence.

6. **Acknowledgement of Relocation of Wind Turbines.** Ellis County represents that it knows of no legal or factual reason that the project could not be expanded to accommodate the replacement locations for the 15 turbines to be moved as set forth in paragraph 4 of this Agreement, and that no justification is known that would require the imposition of terms and conditions for the granting of an additional conditional use permit to accommodate those replacement locations that would be different than the conditions imposed on similar conditional use permits granted in the future.

7. **Compensation to Ellis County – PILOT.** Hays Wind and Ellis County shall enter into an agreement for payment in lieu of taxes (PILOT). For the first and second years of the PILOT payments to Ellis County, the payments shall be \$3,000 per megawatt of installed nameplate capacity (/MW) and thereafter Hays Wind shall pay Ellis County the sum of \$4,000/MW constructed in the Hays Wind project including any wind turbines relocated pursuant to the terms of this Agreement and permitted in a subsequent Conditional Use Permit. The amount per megawatt shall increase annually by 1%. Additional details related to the PILOT payments shall be set out in a separate Payment In Lieu of Taxes Agreement. No payments shall be paid unless the project is constructed.

8. **Road Maintenance and Decommissioning Agreement.** Ellis County and Hays Wind shall enter into a separate Road Maintenance Agreement and a separate Decommissioning Agreement. Ellis County shall not require Hays Wind to construct or maintain Golf Course Road as an asphalt/concrete road in exchange for the payment set forth in paragraph 7 above.

9. **Settlement Contingencies.** This Agreement is subject to:

- a. The dismissal with prejudice of all plaintiffs not party to this settlement agreement.
- b. The written approval of all plaintiffs identified in paragraph 1 above.
- c. The final approval of a Conditional Use Permit related to the relocation of the 15 wind turbines identified in paragraph 4 above with the appeal time related to that approval having expired or a final order entered approving the Conditional Use Permit, if an appeal is filed. Hays Wind shall have a

good-faith obligation to obtain approval of the Conditional Use Permit for the relocation of the 15 wind turbines identified and the plaintiffs herein specifically agree to take no action to impede the final approval of the Conditional Use Permit related to those turbines.

10. **Stay of Proceedings.** The parties agree to stay or jointly request a stay of all proceedings subject to the completion of the provisions of paragraph 8 above and the payment by Hays Wind of compensation to plaintiffs pursuant to the separate Settlement and Release Agreement between plaintiffs and Hays Wind. The Stay Order shall be in the form of the proposed order attached as Exhibit C hereto.

11. **Cost of Mediation.** The mediation cost shall be paid by Hays Wind.

12. **Confidentiality.** This Memorandum of Settlement shall be strictly confidential until finally approved.

13. **Agreement Between Hays Wind and Plaintiffs.** As part of this Agreement, the plaintiffs and Hays Wind have separately entered into a Settlement and Release Agreement, which incorporates the terms of this Agreement and contains additional terms of settlement. With regard to Hays Wind and plaintiffs, the terms and conditions of that separate Settlement and Release Agreement shall be deemed to include the terms and conditions of this Agreement.

14. **Binding Settlement.** This Settlement Agreement shall bind the parties, heirs, executors, administrators, successors, and assigns.

15. **Counterpart Signatures.** This Agreement may be executed in counterparts. The parties agree that facsimile signatures are effective as originals.

PLAINTIFFS

Paul W. Faber
Jacinta Faber
Rod Bittel
Pat Bittel
James Kramer
Luanne Kramer
Jane Matlock
Anthony Eller
Deb Eller
Mike E. Butler
Sheryl Butler
J.P. Michaud
Timothy O. Davis
Penny J. Davis
Keith F. Pfannenstiel
Jody Pfannenstiel
Wilfred T. Barnes
Mary C. Barnes
A.J. Pfannenstiel
Linda Pfannenstiel
Louis D. Bowman

**BOARD OF COUNTY COMMISSIONERS
OF ELLIS COUNTY, KANSAS**

Perry S. Henman, Chairman /s/
Glenn D. Diehl, Member /s/
Vernon L. Berens, Member /s/

HAYS WIND, LLC

d/b/a Bowman Oil Company

Note that on the Memorandum of Settlement Agreement, Exhibit A and Exhibit B, aerial maps, are on file with the County Clerk's Office.

Berens stated the mediation started February 27th and it needs to be brought to closure. He feels this is in the best interest of Ellis County and will be a win-win situation.

Public Works Administrator, Mike Graf, gave an update on the Highway 40 Project, East of Hays. They are finishing the cement work on the north side, and they plan to start the asphalt process next week. Graf appreciates the cooperative efforts during this project by the property owners and businesses.

Graf reported the Eight Street Bridge Project is ahead of schedule. The County will reuse the concrete from this project, which contains no steel.

Some repair work has been completed to the deck on the Twelfth Street Bridge Project.

Graf reviewed materials on the bridge South of Walker, Project 26C-4228-01.

The Board selected the following six (6) consultants for consideration for the inspection process with Project 26C-4228-01: Bucher, Willis & Ratliff Corporation, Salina; Evans, Bierly, Hutchison & Associates, P.A., Great Bend; Kaw Valley Engineering, Incorporated, Junction City; Kirkham Michael & Associates, Incorporated, Ellsworth; MKEC Engineering Consultants, Incorporated, Wichita.

Graf presented a letter that was received from the City of Ellis asking for the County to take part in the restoration of 6th Street in Ellis from Monroe Street to St. Mary's Street; 515 linear feet. x 24 feet wide. They are asking for financial assistance with the estimated cost of \$45,160.

The Board felt they possibly could assist with the manpower and equipment but not with the financial support or materials since this project is located in the City of Ellis.

Rural Fire Director, Dick Klaus, presented his monthly report with 90 fire calls as of this date in 2009.

Klaus reported that he will not be including any truck replacements in his proposed 2010 Budget, but it is becoming harder to get parts for their older model trucks.

Klaus will be applying for an \$188,000 grant to purchase 40 air packs. They have stopped making parts on the current air packs that they are using. With this grant the county's cost for 40 air packs would be \$10,000.

Sheriff Harbin asked to purchase new recording equipment. This would upgrade from a VHS to a DVD recording type system. Sheriff Harbin had one bid, but the Board asked him to try to get two or three more bids on new recording equipment.

Henman will talk with Fair Board President, Loran Zimmerman, on a noise complaint in regards to the RPM Speedway at the Fairgrounds.

Henman reported that the High Plains Mental Health Center will be looking at six (6) factors when presenting their proposed 2010 Budget.

Diehl moved to recommend that Gerald Befort be reappointed to the City of Hays Board of Zoning Appeals. Berens seconded the motion and the motion carried, three to zero.

Befort would serve as the member residing within three miles of the corporate limits of the City of Hays. The City of Hays will be notified of this recommendation.

There were no additions or corrections noted to the May 4, 2009 Draft Minutes.

Chairman Henman asked for time on the agenda next week, May 18, 2009, for the Board to discuss the zoning regulations.

Northwest Kansas Juvenile Services Director, Peggy Pratt, presented an update on their services. Ellis County is one of their seventeen counties served. Pratt reported the following

activity in Ellis County during the second quarter with 19 Diversion Cases, 8 Case Management, 4 Intensive Supervision, 10 in the Thinking for a Change Program and 120 Juvenile Intake; kids in custody of the State.

Pratt stated all their programming focuses on reduction of re-offending, shows that bad behavior is not acceptable, reinforces the need to follow the law, and connects the offense to the crime.

The Thinking for a Change has been a twenty-two (22) week program, meeting two (2) hours a week, with school and parent referrals. Pratt reported that thirty (30) Ellis County kids have gone through this program in giving social and problem solving skills.

For Budget 2010, they are asking for \$1,000 to support the Diversion and First Time Offenders Program. This program would have matching dollars from the State of Kansas. Ellis County has had one hundred and fifty (150) kids on diversion this year.

Big Brothers Big Sisters Executive Director, Nancy Jeter, updated their programs. This is the fourth year for the Face Base Program, and funds are requested.

Berens moved to deny the request for funds to Big Brothers Big Sisters for the Face Base Program. The motion was seconded by Diehl and the motion carried, three to zero. The County Clerk will draft a letter on this action to Big Brothers Big Sisters.

Blue Cross and Blue Shield Representative, Charlie Krull, reviewed the current employee insurance policy plan. The renewal period is October 1, 2009. Blue Cross and Blue Shield has been the third party administrator on the self-funded plan since 1993.

The self-funded insurance plan has three costs involved, including Blue Cross and Blue Shield administrative cost, the insurance stop loss cost, and the largest expense – insurance claims.

Krull will have the insurance rates before the October 1, 2009, renewal date.

Environmental Director, Dale Wing, presented a Conditional Use Permit Number 909, filed March 17, 2009, by Robert D. and Bonita M. Philip, to establish a truck parking and in-transit load storage in a zoned area of Munjor; 878 280th Avenue. The Zoning Staff recommended adding the following conditions (1) no salvage operations and (2) no long-term storage.

Diehl felt that they need to add no fuel storage.

Diehl moved to approve Conditional Use Permit Number 909 for Robert D. and Bonita M. Philip with the following conditions added: (1) no salvage operations, (2) no long-term storage, and (3) no fuel storage. Berens seconded the motion and the motion carried, three to zero.

County Counselor, Bill Jeter, will prepare the resolution for signatures at next week's meeting.

County Counselor, Bill Jeter, clarified that if changes are made to the Zoning Regulations from the Board, then proposed changes are mailed back to the Zoning Board. The only time they would be required for a Public Hearing is when new provisions are added to the zoning regulations.

The Board reviewed and signed the Payroll Check Register dated May 8, 2009, deductions at \$124,417.22 and payroll at \$192,273.09.

Mid-month Voucher Claim Register dated May 11, 2009, at \$48,794.52, was reviewed and signed by the Board Members.

Blue Cross and Blue Shield wire transfer Claim Register dated May 7, 2009, was reviewed and signed by the Board Members at \$40,152.28.

The Board reviewed Tax Roll Adjustment Number 2008-366, dated May 6, 2009.

Chairman Henman signed the adjustment.

Payroll Check Register dated April 28, 2009, for \$118.57 payroll and \$20.21 payroll deductions, was reviewed and signed by the Board.

A Change of Employee Status on Dan D. Parks, Sheriff's Department, on resignation, effective May 29, 2009, was reviewed and signed.

A Change of Employee Status on Robert Lawson, Community Corrections, change of salary, Fund 37 from 70% to 80% and Fund 39 from 30% to 20%, pay from \$12.00 per hour to \$15.14 per hour, part-time to full-time, effective May 17, 2009, was reviewed and signed.

No further business appearing, Berens moved to adjourn the meeting. Diehl seconded the motion and the motion carried, three to zero.

The meeting adjourned at 12:09 p.m.

The next regular scheduled meeting is Monday, May 18, 2009, at 8:45 a.m. in the Commission Chambers, 1204 Fort Street, Hays, Kansas.