

**BUFFALO COUNTY BOARD OF SUPERVISORS  
BUFFALO COUNTY BOARD OF EQUALIZATION  
TUESDAY, FEBRUARY 8, 2011  
9:00 A.M.**

The Buffalo County Board of Supervisors and the Buffalo County Board of Equalization met on Tuesday, February 8, 2011 at 9:00 A.M and 10:30 A.M. Chairman Pierce called the meeting to order and led those present in the Pledge of Allegiance. The following Board members responded to roll call: Joseph Brayton, Horace Dannehl, Kent Greder, Ivan Klein, William McMullen, Sherry Morrow and Richard Pierce. Chairman Pierce announced that in accordance with Section 84-1412 of the Nebraska Revised Statutes, a current copy of the Open Meetings Act is available for review and is posted at the back of the Board Room.

Posting and publishing gave notice of the meeting in advance, thereof. Notice of the meeting was simultaneously given to all Board members; and availability of the agenda was communicated in the advance notice and in the notice of this meeting. Said agenda was also furnished to all area news media. A copy of the acknowledgment and receipt of notice and agenda by the Board members is attached to these minutes. County Clerk Janice Giffin took all proceedings hereinafter shown while said meeting was open to the public. County Attorney Shawn Eatherton was present.

Chairman Pierce called for Citizen's forum. Doug Nutter and Marvion Reichert addressed the Board about the reinstatement or hiring of the Weed Superintendent. Doug Nutter also questioned the State Auditor's report for the fiscal year 2009-2010 and the lack of response to the Auditor's report.

**CONSENT AGENDA**

Chairman Pierce inquired if there was anything which needed to be removed from the Consent agenda. Moved by Dannehl and seconded by Morrow to approve the Consent Agenda as presented. Upon roll call vote, the following Board members voted "Aye" with the disclaimer of recusing themselves on any claim for themselves or for the benefit of any family member: Dannehl, Morrow, Brayton, Greder, Klein, McMullen and Pierce. None voted "Nay".

**GENERAL COUNTY BUSINESS**

1. Approve January 25, 2011 Board minutes
2. Accept reports
  - Buffalo County Treasurer January 2011 Fund Balance Report
  - Clerk of the District Court January 2011 Report
  - Community Action Partnerships of Mid-Nebraska RYDE December 2010 Report
3. Approve Early Claim

County Clerk Janice Giffin submitted the following claim for approval.

<b>GENERAL FUND</b>			
D & J ELECTRICAL SERVICES	R	REPAIRS	4,309.93

**JUSTICE CENTER PROJECT**

Bill Barritt from Beckenhauer Construction was present for updated reports on the Justice Center Project. Change Requests Number 40 through 46 of the Phase 2 Justice Center Project were sent to the Board prior to this meeting. Barritt presented Change Requests Numbers 47 through 49 at the meeting and reviewed all Change Requests before the following action was taken. Moved by Dannehl and seconded by Morrow to approve the following Phase 2 Change Requests and amounts: #40 credit amount \$1,085.00; #41 credit amount \$2,878.00; #42 install vapor barrier for \$1,761.00; #43 exhaust grill filter rack and filters for \$254.00; #44 hot water supply line check valve for \$388.00; #45 difference in rescinded contract on Bid Package #12B for \$3,431.00; #46 additional flooring in stairs for \$3,113.00; #47 digital space sensors for \$1,423.00; #48 added receptacles for \$1,183.00 and #49 caulking steel cell windows for \$2,292.00. Upon roll call vote, the following Board members voted "Aye": Dannehl, Morrow, Brayton, Greder, Klein, McMullen and Pierce. Motion declared carried.

Contract Change Order 5 of the Phase 2 Project was also presented for the Chairman's signature. This Change Order is a compilation of the previously approved Change Requests; therefore no formal action was necessary.

**REGULAR AGENDA**

Chairman Pierce reviewed the following correspondence with the Board. Newsletters were received from the USDA Rural Development and the Buffalo County Community Partners. Notification of the spring 2011 vehicle auction was received. Len Sand, Highway Environmental Program Manager, Nebraska Department of Roads sent information on the Kearney East Interchange and Bypass. Kearney Hub sent a thank you letter for designating the Hub as the legal newspaper for the County. City of Kearney sent notification of the Annexation of Brown Development Property located at 1616 30<sup>th</sup> Avenue. NACO E News and the NACO Legislative

Reports were also received. Chairman Pierce then called on each Board member for the various committee reports and recommendations.

Supervisor Morrow reported that the State Auditor's office has completed the 2009-2010 fiscal year examination and audit. Moved by Morrow and seconded by Greder to accept the 2009-2010 audit report and ask that such audit be on file with the County Clerk and available for public inspection during office hours. Upon roll call vote, the following Board members voted "Aye": Morrow, Greder, Dannehl, Klein, McMullen and Pierce. Abstain: Brayton. Motion declared carried.

Moved by Morrow and seconded by Brayton to reappoint County Attorney Shawn Eatherton and Deputy County Attorney Michael Mefferd to the Drug Court Board. Buffalo County can have three appointments to the Drug Court Board and only these two have been appointed. Upon roll call vote, the following Board members voted "Aye": Morrow, Brayton, Greder, Dannehl, Klein, McMullen and Pierce. Motion declared carried.

Moved by Dannehl and seconded by Klein to authorize Chairman Pierce to sign the Presto X agreement for Pest Management Services on the Buffalo County owned property located at 321 Central Avenue, Kearney, Nebraska. Upon roll call vote, the following Board members voted "Aye": Dannehl, Klein, Brayton, Greder, McMullen, Morrow and Pierce. Motion declared carried.

County Attorney Eatherton stated that the previously approved Affirmative Action Plan for Buffalo County has been reviewed and updated for the year 2011. Moved by Greder and seconded by Morrow to approve the changes made in the Affirmative Action Plan by the County Attorney's office. Upon roll call vote, the following Board members voted "Aye": Greder, Morrow, Brayton, Dannehl, Klein, McMullen and Pierce. Motion declared carried.

Roger Jasnoch, Visitor's Bureau Director was present for updated reports with the Board

County Attorney Eatherton discussed the State of Nebraska acquisition of part of County Road situated between Sections 8 and 9, Township 8 North, Range 15 West of the 6<sup>th</sup> p.m. Moved by Dannehl and seconded by McMullen to approve the following Resolution 2011-05 for the transfer of portion of Cherry Avenue to the State of Nebraska. Upon roll call vote, the following Board members voted "Aye": Dannehl, McMullen, Brayton, Greder, Klein, Morrow and Pierce. Motion declared carried.

#### **RESOLUTION 2011-05**

WHEREAS, the State of Nebraska has requested transfer of a portion of Cherry Avenue to be used for access to Interstate 80, and

WHEREAS, the State of Nebraska has additionally requested that Buffalo County consent to creation of a conservation easement in that part of Cherry Avenue transferred to the State, and

WHEREAS, Buffalo County is not the controlling jurisdiction for creation of a conservation easement because zoning jurisdiction for this part of Cherry Avenue is controlled by the City of Kearney, however nonetheless Buffalo County consents to the State's request for creation of a conservation easement in the parameters set forth in the State's proposed easement.

NOW THEREFORE BE IT RESOLVED BY THE BUFFALO COUNTY BOARD OF SUPERVISORS BY ADOPTION OF THIS RESOLUTION authorizes the Chairperson of this Board to sign necessary documents to transfer real estate described in the State's proposed Acquisition Contract transferring approximately 1635 feet of Cherry Avenue extended north from its intersection with the north line right-of-way of Interstate 80, more particularly described in the acquisition contract.

FURTHER RESOLVED that Buffalo County consents to the State's establishment of a conservation easement upon this land transferred to the State.

Chairman Pierce opened the public hearing for the One and Six Year Road and Bridge Plan at 10:00 A.M. Highway Superintendent Ron Sklenar was present. Marvion Reichert questioned the status of the 39<sup>th</sup> Street project. Reichert also questioned a culvert replacement near his property and the placement of more stop signs on east/west roads. Janine Schake questioned the status of 115<sup>th</sup> Road paving project. Chairman Pierce closed the public hearing at 10:15 A.M. Moved by McMullen and seconded by Klein to approve the 2011 One and Six Year Road and Bridge Plan as presented. Upon roll call vote, the following Board members voted "Aye": McMullen, Klein, Brayton, Dannehl, Greder, Morrow and Pierce. Motion declared carried.

Road Committee Chairman McMullen instructed County Clerk Giffin to open and read aloud the sealed bids for the Shelton South Platte River Deck Rehabilitation Project C10 (1407). Bids were submitted from the following companies: Simon Contractors, Herbst Construction Inc., Wilke Contracting Corporation and Diamond Engineering Company.

Road Committee Chairman McMullen instructed County Clerk Giffin to open and read aloud the sealed bids for the Asphalt Overlay Projects. Bids were submitted from the following companies: Werner Construction Inc., Western Engineering Company Inc. and Vontz Paving Inc.

Road Committee Chairman McMullen thanked the vendors present and stated that the bids will be reviewed and decisions will be made at the February 22, 2011 Board meeting.

Moved by McMullen and seconded by Dannehl to set the gravel bid date of February 22, 2011 at 10:00 A.M. Upon roll call vote, the following Board members voted "Aye": McMullen, Dannehl, Brayton, Greder, Klein, Morrow and Pierce. Motion declared carried.

Moved by McMullen and seconded by Brayton to approve Resolution 2011-06 for vacation of public road between Sections 13 and 24, Township 9 North, Range 13, West of the 6<sup>th</sup> p.m., Buffalo County, Nebraska. Upon roll call vote, the following Board members voted "Aye": McMullen, Brayton, Dannehl, Greder, Klein, Morrow and Pierce. Motion declared carried.

### **RESOLUTION 2011-06**

WHEREAS, a Petition to vacate a road, alley, or other public way has been properly filed for the following described road, alley, and/or public way:

All of the east to west section line road that lies in, within, and between Sections Thirteen (13) and Twenty-Four (24), Township Nine (9) North, Range Thirteen (13), West of the 6<sup>th</sup> P.M., Buffalo County, Nebraska.

And,

WHEREAS, the Buffalo County Highway Superintendent has made a study of the use being made of such public road and has submitted a written report to the Board recommending that said road be vacated; and

WHEREAS, on or about July 22, 2010, the Board offered to relinquish this public road by written notification to the Shelton Township and said Township did not response to such offer within four months after written offer was made to that township; and

WHEREAS, after receiving the written report from the Buffalo County Highway Superintendent and receiving no response from the Shelton Township, on December 14, 2010, this Board adopted Resolution 2010-069, which fixed January 25, 2011, at 10:00 a.m., in the Buffalo County Boardroom, Buffalo County Courthouse, 16<sup>th</sup> and Central, Kearney, Nebraska, as the time, date and place for public hearing for this Board to consider whether the above described road should be abandoned or vacated with notice as provided by law, and

WHEREAS, a copy of Resolution 2010-069 was published for three consecutive weeks and notice of the public hearing was also given no less than two weeks in advance of the hearing to owners of land adjoining the road to be vacated or abandoned by registered or certified mail, and

WHEREAS, on January 25, 2011, this Board conducted a public hearing to consider vacation or abandonment of the above described road. No one present objected to vacation or abandonment to this proposed vacation or abandonment.

WHEREAS, at conclusion of the public hearing held January 25, 2011, the Board set February 8, 2011, at 10:00 o'clock a.m., the first public hearing following the public hearing, as date and time for decision by this Board, as an agenda item, to consider and take action to vacate or abandon or refuse vacation or abandonment of the above described road as in the judgment of this board and the public good may require, and

WHEREAS, the Buffalo County Board of Supervisors finds that:

1. The Buffalo County Highway Superintendent has recommended vacation or abandonment of the above described road.
2. The Shelton Township Board when offered this portion of Turkey Creek Road refused to accept this road.
3. The above described road that is proposed to be vacated or abandoned is not within the zoning jurisdiction of the zoning jurisdiction of a city of the metropolitan, primary, or first class.
4. All necessary public publications and notices to adjoining landowners have been given.
5. If the above described road is vacated or abandoned, no real estate owner will be denied access to their land.
6. No conditions or reservations should be retained by the public as concerns this road if it is vacated or abandoned, other than the continued occupation of any public utilities that now occupy the public right-of-way.
7. No public purpose would be served to keep the above described road open.

NOW THEREFORE BE IT RESOLVED BY THE BUFFALO COUNTY BOARD OF SUPERVISORS BY ADOPTION OF THIS RESOLUTION BY A NO LESS THAN A TWO-THIRDS MAJORITY VOTE that the above described public road shall be and hereby is vacated and abandoned by the County of Buffalo, State of Nebraska, and the title or right-of-way to said vacated and abandoned section of road shall revert to private ownership to the owner(s) of the adjacent real estate, one-half on each side thereof, subject however to the continued occupation, if any, of any public utility now occupying the now abandoned and vacated road.

Moved by McMullen and seconded by Dannehl to recess the regular meeting of the Board of Supervisors at 10:30 A.M. and reconvene as a Board of Equalization. Upon voice vote all Board Members present voted "Aye". None voted "Nay". Motion declared carried.

### **BOARD OF EQUALIZATION**

Chairman Pierce called the Board of Equalization to order in open session. County Assessor Joe Woodward and County Treasurer Jean Sidwell were present. Moved by Greder and seconded by Dannehl to approve tax list corrections 3725 through 3731 as submitted by County Assessor Joe Woodward. Upon roll call vote, the following Board members voted "Aye": Greder, Dannehl, Brayton, Klein, McMullen, Morrow and Pierce. Motion declared carried.

Moved by McMullen and seconded by Morrow to approve Motor Vehicle Tax Exemption as indicated on the application by

County Treasurer Jean Sidwell for Community Action Partnership of Mid Nebraska on a 2011 Hyundai and a 2011 Chevrolet. Upon roll call vote, the following Board members voted "Aye": McMullen, Morrow, Brayton, Dannehl, Greder, Klein and Pierce. Motion declared carried.

Moved by Greder and seconded by McMullen to recess the Board of Equalization at 10:36 A.M. and to return to the regular meeting of the Board of Supervisors. Upon voice vote all Board Members present voted "Aye". None voted "Nay". Motion declared carried.

### **REGULAR AGENDA**

Moved by Klein and seconded by Greder to enter into Executive Session to discuss personnel issues at 10:33 A.M. Upon roll call vote, the following Board members voted "Aye": Klein, Greder, Brayton, Dannehl, McMullen, Morrow and Pierce. None voted "Nay". Motion declared carried.

Moved by Klein and seconded by Greder to move out of executive session at 10:42 A.M. and resume the regular open meeting. Upon roll call vote, the following Board members voted "Aye": Klein, Greder, Brayton, Dannehl, McMullen, Morrow and Pierce. None voted "Nay".

Weed Committee Chairman Klein reported that the majority decision of the Weed Committee was to hire Mitchell Huxoll. Seven of the Seventeen applicants for the position were interviewed by the Weed Committee. Moved by McMullen and seconded by Dannehl to hire Huxoll. Klein stated that another individual should have been considered and was not. Brayton stated that the individual should have been interviewed and reinstated. Upon roll call vote, the following Board members voted "Aye": McMullen, Dannehl, Greder, Morrow and Pierce. Voting "Nay": Brayton and Klein. Motion declared carried.

Chairman Pierce opened the public hearing at 10:49 A.M. for a Class D Liquor License for Farmers Cooperative Association, Ravenna, Nebraska. Farmers Cooperative Association Chief Executive Officer Don Patzer was present. Chairman Pierce closed the public hearing at 10:55 A.M. After review of the County Sheriff's office report, it was moved by McMullen and seconded by Klein to approve the request for a Class D Liquor License. Upon roll call vote, the following Board members voted "Aye": McMullen, Klein, Brayton, Dannehl, Greder, Morrow and Pierce. None voted "Nay". Motion declared carried.

### **ZONING**

Chairman Pierce opened the Zoning Agenda items at 11:03 A.M. Present were Deputy County Attorney Melodie Bellamy and Zoning Administrator LeAnn Klein.

Moved by Dannehl and seconded by Greder to refer the Perpetual Conservation Easement for Kearney East Bypass to Planning and Zoning Commission. Upon roll call vote, the following Board members voted "Aye": Dannehl, Greder, Brayton, Klein, McMullen, Morrow and Pierce. None voted "Nay". Motion declared carried.

At 11:06 A.M. Chairman Pierce opened the public hearing for the POC LLC request for a special use permit for part of the NE ¼ of the SW ¼ of Section 8, Township 9 North, Range 16 West of the 6<sup>th</sup> p.m., Buffalo County, Nebraska for an additional hangar for aircraft.

Waylon Woods, for the applicant Chris Hilliard and Paul Brungardt engineer of the potential project were present to address the Board. Speaking in opposition were the following: Stan Lundgren, Dale Rees, Bill Beins, Ed Uden, Doug Torrey, Pam Deterding, Arlys Torrey, Alana Muchmore, Doug Deterding and Janine Schake. Exhibits were submitted from the following: Dale Rees presented pictures at this hearing taken between June 24, 2009 and September 13, 2009 that are marked Exhibit 1 through 3; Ed Uden presented highlighted portions of Article 5 of the Zoning Regulations marked as Exhibit 4. Pam Deterding presented a letter dated January 31, 2011 and highlighted copies of October 16, 2008 and March 19, 2009 Zoning minutes marked as Exhibit 5.

Chairman Pierce closed the public hearing at 12:08 P.M.

Moved by Dannehl and seconded by Greder to deny the special use permit request with the following Resolution 2011-07. Upon roll call vote, the following Board members voted "Aye": Dannehl, Greder, McMullen, Morrow and Pierce. Nay: Klein. Abstain: Brayton. Motion declared carried.

### **RESOLUTION 2011-07**

WHEREAS, Chris Hilliard on behalf of POC LLC filed an application for special use permit with the Buffalo County Zoning Administrator on or about November 29, 2010, 2009, requesting a special use permit in AGR District for an aircraft hanger to be built on a tract of land being part of the northwest corner of the Northeast Quarter of the Southwest quarter (NE 1/4 SW 1/4) of Section Eight (8), Township Nine (9) North, Range Sixteen (16) West of the Sixth (6) Principal Meridian, Buffalo County, Nebraska, more particularly described as follows:

WHEREAS, on January 20, 2011 following public hearings on such special use permit application, the Buffalo County Planning and Zoning Commission recommended approval of such special use permit on a eight (8) to one (1) vote, with a recommendation:

- 1-One additional hangar to house no more than two aircraft
- 2-Hangar will be no larger than 80' x 100'
- 3-No additional housing

With such minutes being a part of the record for this Board's public hearing, and

WHEREAS, on February 8, 2011, the Buffalo County Board of Supervisors held a public hearing on such application for Special Use Permit,

WHEREAS, no protests were filed with the Clerk that would require a two-thirds majority of this Board to approve or deny the special permit and solely a simple majority is necessary to approve or deny such permit, and

WHEREAS, the Board after public hearing and review of the special use application finds:

1. This is an application for a special use permit filed by Chris Hilliard on behalf of POC LLC. Applicant presently owns a large lot that houses one 80' x 100' hanger to house no more than two planes pursuant to resolution 2007-08 as Amended. Applicant intends to sell approximately half of the subject property to Waylon Woods. Mr. Woods owns and operates Woods Aviation, a crop spraying service. Mr. Woods intends to build a 80' x 100' hanger to house up to two planes. Both the new hanger and the old hanger would utilize a private airstrip adjacent to the subject property. Such airstrip is owned by Dr. Mark and Jayne Meyer, who have their own hanger near the airstrip.
2. Mr. Woods currently rents hanger space from Mr. Hilliard. Mr. Woods would like to own his own building to house his planes.
3. The subject property is located in the Agricultural Residential zoning use district on the Buffalo County Zoning Map.
4. A private use airstrip is allowed in the Agricultural Residential District pursuant to Section 5.34(13).
5. State and federal regulations exist for the regulation of private use airstrips and fuels used on such airstrip.
6. This airstrip is used by a commercial agricultural crop sprayer. This use existed prior to the passage of county zoning in Buffalo County.
7. The findings and minutes of Planning and Zoning Commission and the Application for Special Use Permit together with attachments and exhibits as submitted should be and hereby are incorporated herein in their entirety as if set forth herein.
8. Previously this Board has reviewed various development requests concerning this private airstrip. In March 2007 in Resolution #2007-008, the Board by special permit, allowed an additional hanger at this airstrip. Two aircraft were allowed in this additional hanger. These two aircraft were in addition to up to two other aircraft that then existed on the property. The present application would in fact append that special use permit.

WHEREAS, the issuance of this special permit is found not to be in compliance with Section 6.2 of Buffalo County's Zoning Regulations now in effect, such Special Use Permit should be denied because the proposed use would:

1. Not be compatible with and similar to the use permitted in the district, as it would tend to increase commercial use in the district, and
2. Change the character of the district.

NOW THEREFORE, BE IT RESOLVED BY THE BUFFALO COUNTY BOARD OF SUPERVISORS by a majority vote of its members, this Board denies applicant's application for a Special Use Permit.

Chairman Pierce reminded the Board of the Welcome Reception hosted by the Board at the NACO County Board workshop on February 9<sup>th</sup> through February 11<sup>th</sup>. Chairman Pierce asked if there was anything else to come before the Board at 12:16 P.M. before he declared the meeting adjourned until the regular meeting on Tuesday, February 22, 2011 at 9:00 A.M.