

MINUTES OF
BOARD OF HARVEY COUNTY COMMISSIONERS

September 10, 2007

The Board of Harvey County Commissioners met in regular session on September 10, 2007 with all three Commissioners present. Chairman Westfall called the meeting to order at 3:06 p.m.

ITEMS ADDED TO AGENDA:

There were no items added to the agenda.

CALENDAR:

1. All three Commissioners and their spouses will attend the annual Chamber banquet to be held on September 27th at the VFW.
2. The area Partnership meeting will be held September 14 at 7:00 a.m. at Charlie's Restaurant. Craig Simons will attend to represent Harvey County.
3. Commissioners Krehbiel & Roberson will work in the booth sponsored by the Newton Area Chamber of Commerce at the Kansas State Fair on September 14.
4. A trip is being planned to go to Lyons, Kansas on September 20 to tour the horse barn and event center. The tour will begin at 2:30.
5. Doug King, owner of Quality Recycling, is planning to be here from September 25 thru September 29. There will be a meeting with the EPA during that time regarding the proposed Waste-To-Energy Plant.
6. The Quad County meeting will be held Monday, September 17 at the Dyck Arboretum in Hesston. The closing of the Job Service Center will be discussed.
7. The regular Aviation Meeting will be held September 17.

Minutes of the August 20 Commission meeting were approved upon a motion by Commissioner Roberson, seconded by Commissioner Krehbiel. Passed unanimously.

ADMINISTRATIVE ITEMS:

1. Craig Simons has received complaints about Oak and Brown Streets near Halstead not being maintained as required by agreement with Halstead Township. The Commission will send a letter to the Township to request that the agreed upon road work be completed.
2. Commissioner Roberson made a motion to sign the certification of real property acquisition procedures and utility arrangements and authorize the Chairman and Commissioners to sign. This property acquisition is in regards to Bridge Project Number 40C-4150-01. Commissioner Krehbiel seconded the motion and it was passed unanimously.
3. Greg Nye, Harvey County Counselor, briefed the Commission on how the public hearing will proceed this evening at 7:00 p.m. Scott Davies, Planning & Zoning Director, will present the plan for a conditional use permit regarding the proposed ethanol plant and then representatives from both sides of the issue will state their positions.

CITIZEN'S FORUM:

There were no citizens present for Citizen's Forum.

Warrant checks from 8/30/07 and 9/6/07 were approved upon a motion by Commissioner Krehbiel,

seconded by Commissioner Roberson. Passed unanimously.

Sheriff A. J. Wuthnow presented information about the acquisition of a police dog for the Harvey County Sheriff's Department. The Funding for the dog program has come from donations from the community. Tom Brenneman, former Harvey County resident, has donated training time for the dog who is a three year old German Shepherd. Sheriff's Deputy, Gary Littlejohn, will be the handler for the dog. The Sheriff's Department will keep a ledger of expenses for the dog and report back to the Commission after the program has been in place for a while.

Terry Bourlard, Preston Goering, and Rita Flickinger, representatives from the Harvey County Health Department, presented a proposal for the Early Childhood Realignment and Coordination Program. Preston Goering explained the program to the Commissioners. Mr. Goering also presented a new fee schedule for the Health Department. The fees are based on how Medicare and Medicaid allow the Health Department to bill the patients. Commissioner Krehbiel made a motion to adopt the new September 10, 2007 fee schedule for the Harvey County Health Department. Commissioner Roberson seconded the motion and it was passed unanimously.

Terry Bourlard reported that flu clinics will begin next month. According to the supplier, all 3,200 doses ordered for Harvey County should be shipped by the end of September. There should be no shortage of vaccine this year.

Lonnie Buller, Director of Emergency Management, presented information about upcoming training that will be held in Wichita on October 13-21, 2007. The training will consist of a mass casualty disaster simulation that will deal with preparedness and response.

Craig Simons gave the Commission information regarding the appointment of the voting delegate for the Kansas Association of Counties and KCAMP and KWORC. The Board will appoint delegates next week.

The Board recessed for dinner at 5:15 p.m.

Chairman Westfall reconvened the meeting at 7:00 p.m. in the Community Room of the Harvey County Courthouse. The agenda item to be discussed is the request for a conditional use permit for a proposed ethanol plant in the A-1 Agricultural District west of the Harvey County Landfill. Chairman Westfall instructed the audience that this is not a public hearing but a continuation of the Commission meeting. Scott Davies, Director of Planning & Zoning, gave an overview of the proposed site for the ethanol plant. Ed Roberts, representative from Real Estate Resources, has submitted a request on behalf of Emerald City Ethanol, LLC for a Conditional Use Permit to construct a grain alcohol production plant (Ethanol) in the A-1 Agricultural Zoning District. The proposed location is in the SE 1/4 of Section 26 of Macon Township located just west of SW Road on the north side of SW 24th. The Planning and Zoning Commission met on July 10 and again on August 14 to consider the request. At the August 14 meeting the Commission recommended the approval of the permit with a vote of 9 in favor and 3 opposed, with the Chairman abstaining. The Planning & Zoning Commission has recommended the following conditions:

1. The most current technology is to be installed for the reduction of odor and noise. There is to be a cover installed on the wet distiller grain pad.
2. Lights should have shields to direct light pollution.
3. Every effort should be made to access to the plant from Cow Palace Road, however if the entrance is from SW 24th, it should be paved from where the current paving ends west of the Transfer Station to the entrance to the plant.
4. All interior roads and parking are to be paved.

5. Groundwater for normal industrial use shall not be permitted.
6. Every effort is to be made to use gray water from the City of Newton's wastewater treatment facility for normal industrial use and to use potable water only for backup and emergency purposes.
7. If the facility is permanently closed then Emerald City Ethanol would be responsible to disassemble and remove the facility within one year after closure. This agreement would be attached as an affidavit to the deed.
8. The City of Newton and Harvey County request the Kansas Department of Transportation conduct a traffic study of Highway 50 from West Road to Cow Palace Road in Harvey County.

Harvey County zoning regulations stipulate that if 20% or more of the land area within 1,000 feet of the applicant's property is owned by persons who submit letters protesting the issuance of a conditional use permit then it would require a unanimous vote of the Commission to grant the request. If petitions of adjacent landowners are less than 20% of the land area, then it requires a majority vote of the Commission to approve the permit. There were eight landowners comprising approximately 52% of the land within 1,000 of the proposed site that petitioned the change of use which in turn would require a unanimous decision of the Commission.

Mr. Davies showed an aerial view of the proposed site for the ethanol plant and views of the property from different directions.

Greg Nye, Harvey County Counselor, instructed the Commission that in consideration of the recommendation of the Planning and Zoning Commission to approve the permit, the Commission can adopt and override the protest petition by a unanimous vote, adopt the recommendations of the Planning Commission, or adopt it with additional changes by a unanimous vote. The final decision must be based on fairness and what is in the best interest of the County.

Craig Simons, Harvey County Administrator, presented a proposed list of changes to the conditions recommended by the Planning Commission. They are as follows:

1. The most current technology is to be installed to minimize odor and noise to the least possible amount. The most current technology to minimize odor includes but is not limited to the following three items which have been specifically offered by Emerald City Ethanol:
 - a. Cover and aspirate the wet cake pad to a regenerative thermal oxidizer and include such in the air permit application submitted to the Kansas Department of Health and Environment.
 - b. Direct the fermentation of carbon dioxide scrubber exhaust to a regenerative thermal oxidizer and include such in the air permit application submitted to the Kansas Department of Health and Environment.
 - c. An odor action plan will be attached to the conditional use permit. The odor action plan will be followed to investigate and correct any valid off-site odor complaints.
2. The fifth condition recommended by the Planning Commission that ground water usage not be permitted should be deleted. The company should have other options such as the use of the equus beds if they can obtain water rights, or the use of Newton City water.
3. The wording of item six of the Planning Commission's recommendations should be changed to "The preference is to use gray water for the normal operations of the plant and efforts should be made to use gray water from the City of Newton's Wastewater Plant. The use of groundwater at the plant site property will be restricted to domestic use or backup for emergencies only, and should not draw down the adjacent landowner's groundwater.

At 7:20 p.m. the public forum was opened. John Caffrey, representative for Emerald City Ethanol, along with Roni Caffrey and Carl and Renee Dalrymple thanked the Commission for their time and consideration and requested that the application for a conditional use permit be granted. Emerald City Ethanol is committed to being a good neighbor to the Community and to the surrounding neighbors of the proposed plant. Mr. Caffrey thanked Mickey Fornaro-Dean and Shari Esau at the Economic Development Council for their work to bring this new industry to Harvey County. The design of the Ethanol Plant is a very green design and will implement new technology for the ethanol fuel industry. The plant, which will produce about 40,000,000 gallons of ethanol per year, will be a showcase facility globally and in North America.

Tracy Taylor, President and CEO of the Kansas Technology Enterprise Corporation, spoke about the state bio-science initiative and its impact. In 2003 the Kansas Economic Growth Act was written and it was presented to the Legislature in 2004 and was passed and signed by the governor. They believe the biosciences make sense and have the potential to create 20,000 jobs in the State of Kansas. This plant will normally employ 35 to 40 full-time employees, with 400 to 500 employees during the construction phase.

Jeff Couchman, who resides at 4019 SW 24th, thanked Commissioner Roberson for the card she sent after he spoke to the Commissioners at a prior meeting. Mr. Couchman outlined the following issues and recommended that the Board of Commissioners deny the permit application.

1. The traffic problem that will be created by the plant is not resolvable. The estimate is that there will be one truck every four minutes.
2. The ethanol plant will pollute the air.
3. Industrial chemical plants create noise and have large lights, which are a form of pollution.
4. The water issue is one of the main concerns. Ethanol plants use a tremendous amount of water.
5. Health, safety, and quality of life of Harvey County citizens are at stake.

Mr. Couchman asked if there will be tax abatements granted to the ethanol plant. He stated that the predicted economic impact is not based on real examples. The economic impact in Anderson County from the ethanol plant at Garnett is a negative 7%. Although the impact of the plant would be felt regardless of the location, he has great concern about the location that has been chosen. The proposed site was considered by another ethanol plant developer and rejected because of the proximity to residential areas. There is no certainty that the planned waste-to-energy plant that is to be a possible source of energy for the ethanol plant will not be built by the time the ethanol plant begins production. Water will have to be pumped to the site. There is not a good estimate on what volume of water will be used.

Ron Harder, developer of residential areas Stratford Place and Spring Lakes, is convinced that the ethanol plant would be a good neighbor and will someday become an acceptable part of the landscape. No matter where we put the plant there would be some negative impact. This is a good way to use the land next to the landfill that has limited use, and a good way to use the gray water that is currently going to waste. We must reduce our dependence on foreign oil and reduce our dependence on Wichita jobs.

Dr. Shelby Evans who shares a property line with the proposed site, stated that the question is not whether we should we have an ethanol plant, but whether it should it be built at this location. We have an existing industrial area that would accommodate the plant and not remove 116 acres of farm ground.

Allen Schrag, lifelong resident of Harvey County, and former owner of Sunglo Feeds, asked the Commission to vote in favor of the ethanol plant. After watching the industry evolve, he believes this is a

huge opportunity for Harvey County, where agriculture is the base of everything. This is the best company to build an ethanol plant and believes they will build a top-notch facility. Dana Shifflett, resident of Richland Township, believes that the plant will provide needed jobs. He has owned a farm for 10 years and uses ethanol in his farm machinery.

Roger Ahrens, General Manager of Full Vision, is a strong supporter of the ethanol plant. Full Vision is ¼ mile from the proposed site of the plant. Our community should feel honored to chosen to have a state of the art ethanol facility. It will have a huge economic impact. Harvey County is a rural county with a lot of industrial support for the agricultural equipment industry. In the years to come we will be very proud to have this ethanol plant in our county.

Tim Swiegert is the owner of Kansas Electric, which employs about 80 people. Kansas Electric has done multiple tasks for the ICM Corporation. They base their business on strong relationships and the ICM Corporation has a great deal of integrity. The company itself has invested multiple dollars in looking for ways to improve the process to produce ethanol. They are constantly looking for ways to be more “green.” They would provide jobs both long range and short range. He fully supports the proposed facility.

Jim Schrag asked the Commission to consider what form of economic expansion is best for Newton. Housing construction is one of the best economic industries that a community has. He believes the ethanol plant will cause people to choose not come to Newton. Are we going to trade jobs in the housing industry for a few jobs in a polluting industry? The Newton Chamber of Commerce is split over this issue. Will there be 10 year tax abatement? The ethanol industry takes its profits from tax breaks from the federal government. The plant will lower property values and discourage new business from locating here.

Kathryn Mick is a landowner who owns land adjacent to the property. They farm their land and buy and use ethanol. However, she encouraged the Commission to please think about the remarks that have been made. No one is against the ethanol plant, but they are against the location. She is concerned about the traffic on Hoover Road which is a sand road. She thanked everyone for their time in putting together the information gathered for the residents who are against the plant locating at that site. They have a special use permit for their farm and could build a home there. There are several people who have bought land near the proposed site with the intent to build there. However, they will not build there if the plant goes in. There were people who went on the trip to Phillipsburg to view the ethanol plant who stated that there was an odor to the plant. The plant owners said that they obtained their crop from wherever it was cheapest. Will this really support local agriculture?

Daryl Wedel, a longtime Harvey County resident, lives ¾ mile north of the proposed site. Odor is his main concern. He talked to the EPA in the Kansas City office and found that the odor comes from the wet-pack area. They don't like to ship this feed byproduct more than 50 miles. He is also concerned about the water issue. The demand for water for ethanol plants is so high that the water to grow crops is diminishing. Who determines what would be classified as an emergency resulting in the use of groundwater?

Christopher Mick is an adjacent landowner. He felt the trip to Phillipsburg was not a fair representation because it was paid for by the ICM Corporation. He does not feel that this company is a good company to build an ethanol plant in Harvey County.

Keith Smith, resident of Newton, doesn't begrudge any business who is trying to make money. The

Smiths moved here 3 years ago and own property in Lazy Creek. He does not feel that the location that has been chosen is the best location in consideration of Lazy Creek, Royer West, and the golf course community. It will affect property values in those locations, and it would be better to locate it in the Industrial Park.

Diane Wilkes, Lazy Creek landowner, represented 32 people who signed the letter in opposition to the proposed plant. Their concerns include traffic, odor, health issues, and decreasing property valuations. In May of 2002 the Minnesota Department of Health & Environment stated that the odor from ethanol plants can cause headaches, nausea, and cough. Thermal oxidizers reduce but do not completely eliminate the odors. Because the plant would be located southwest of the city the prevailing winds would carry the pollution over the city. There would be increased traffic, increased rail noise, and decreased property values. Ms. Wilkes questioned how many of the promised jobs would really come from within the city.

Gearhard Neufeld, hidden meadows resident, said that he is a former ethanol user. He calculated that although he paid less at the pump, his gas mileage was reduced. Consumer Reports confirmed that gas mileage suffers and has a lower energy rating. His real concern is the residents in an Agricultural zoned area. Their quality of life will never be the same and he does not feel they are getting a fair deal.

In conclusion, Jeff Couchman, speaking for the opposition, does not feel that they have heard any decent argument for locating the plant at the proposed site.

John Caffrey, speaking for Emerald City Ethanol, wants to make sure that the Commissioners focus on the facts. He sees how seriously concerned they are about traffic safety surrounding the plant. He also stated that they did not sponsor the trip to the Ethanol Plant in Phillipsburg. He stated that this is the best location for the ethanol plant because there is rail access, highway access, and future potential use of methane gas from the landfill. The ICM Company is focused on people. The owner made a commitment that 25 % of the profits would be shared with the employees of the company and another 25% of the profits would be shared with the community. He thanked the Commissioner for their time and consideration.

The public information time was closed at 8:33 p.m. and the meeting took a break until 8:45 p.m.

After reconvening, Commissioner Roberson asked Mr. Caffrey about the agreement with Ritchie Development Company. She also asked how the problem report would be used. She suggested that they be very specific on how to identify and how to make sure how hold a company accountable for off-site odor. Citizens could call either the company or the County to report any problems.

Chairman Westfall asked about how the plant would be designed. Mr. Caffrey stated that it will be much like the one in Phillipsburg. They will be looking for ways to improve the processes and the first couple of years they will work to get a standard operation in the ground.

Commissioner Krehbiel asked Mr. Caffrey to elaborate on the water usage. Three gallons of water are used to refine one gallon of ethanol. Gasoline takes 10 gallons of water to refine one gallon of gasoline. The runoff water would be captured in a holding pond and they would probably install a septic system with laterals for sewage.

Commissioner Roberson asked who regulated the fire protection. The local jurisdiction has the ultimate authority over fire suppression, foam supply, etc. This is a requirement of any ethanol plant.

Chairman Westfall asked how other states and local authorities regulate and do site inspections. There

are approximately 100 ethanol plants in the United States and they are inspected similar to an OSHA audit and it is driven by how well things are going. If things are in order, there are fewer inspections. Commissioner Westfall stated that KDHE authorizes 100 tons of volatile organic compounds. One car produces 6 tons per year, so in comparison, this is a very clean industry. We have agencies that very strictly monitor this. Mr. Caffrey explained that the thermal oxidizer is an emissions incinerator. At 1450 degrees, carbon monoxide burns like natural gas. Particulate matter is consumed and incinerated. ICM builds a recuperative thermal oxidizer, which is in essence, a gigantic muffler for the ethanol plant.

Commissioner Roberson asked about the expressed concerns about odor, light, and noise created by the plant. The plant will use the dark sky initiative which is to make sure that you don't have excess light. The noise level is 80 decibels. Highway 50 is much louder in comparison than the ethanol plant. The plant will be 1/2 mile from any edge of the property. Neighbors will hear more of the rail and truck traffic than the noise from the plant.

Chairman Westfall reiterated the final seven conditions for the conditional use permit as recommended by Administration:

1. The most current technology is to be installed to minimize odor and noise to the least possible amount. The most current technology to minimize odor includes but is not limited to the following three items:
 - a) Cover and aspirate the wet cake pad to a regenerative thermal oxidizer and include such in the air permit application submitted to the Kansas Department of Health and Environment.
 - b) Direct the fermentation carbon dioxide scrubber exhaust to a regenerative thermal oxidizer and include such in the air permit application submitted to the Kansas Department of Health and Environment.
 - c) An odor action plan will be attached to the conditional use permit. The odor action plan will be followed to investigate and correct any valid off-site odor complaints. The call list will be updated every year.
2. Install shields on lights and flares to direct light downwards to reduce light pollution.
3. Every effort should be made to access to the plant from Cow Palace Road, and if the entrance is from SW 24th, that it should be paved from where the paving ends to the entrance to the plant.
4. All interior roads and parking are to be paved.
5. The preference is to use gray water for the normal operations of the plant, and efforts should be made to use gray water for normal operations. The use of groundwater at the plant site property shall be restricted to domestic use, backup, or emergencies only, and shall not draw down adjacent landowner's groundwater.
6. An agreement is to be written with the understanding that if the facility is permanently closed then Emerald City Ethanol would be responsible to disassemble and remove the facility within one year after closure. This agreement would be attached as an affidavit to the deed and remain with the ownership of the property.
7. The City of Newton and Harvey County request the Kansas Department of Transportation conduct a traffic study of Highway 50 from West Road to Cow Palace Road in Harvey County.

Commissioner Krehbiel expressed appreciation for all the correspondence and calls he has received regarding this issue. He believes this has been one of the most difficult decisions the board has had to make. Royer West and Lazy Creek were built within one mile of the Landfill and we haven't experienced any problems from that proximity to date.

Commissioner Roberson stated that this has been one of the most difficult issues to sort through. She expressed gratitude for the contact with the community, but she knows that not everyone is going to walk away tonight happy. She is forced to take a broad look of the overall picture on what is best for Harvey County. Quoting from the brochure provided by the Economic Development Council, there are over 400 jobs in Harvey County that are related to ethanol production. The plant itself will create at least 33 full-time jobs. She visited the addresses of the concerned citizens and looked around with the questions of "What will I see, hear, or smell?" She knows it will change the way some of the citizens live and the traffic problem is always a concern, especially on Highway 50. She hopes that all of those who expressed concerns know that the concerns were heard and that the Commission listened to what everyone had to say.

Commissioner Westfall stated that the issue of land value is a valid concern and the housing industry has hit a glitch. The Commission has talked to outside engineers and believes that if an equitable price for gray water from the City of Newton can be negotiated, that would eliminate the concern about water. Harvey County has recently joined a coalition whose goal is to improve Highway 50, so the concern about traffic on that road is important to the Commission. With regards to safety issues, the grain mill in the center of Newton is 10 times more dangerous than the ethanol plant by OSHA standards.

Commissioner Krehbiel made a motion to approve the conditional use permit as recommended by the Planning & Zoning Commission with the addition of the seven amendments put forth by Administration. Commissioner Roberson seconded the motion and it was passed unanimously.

Commissioner Roberson made a motion to adjourn the meeting at 9:35 p.m. Commissioner Krehbiel seconded the motion and it was passed unanimously.

BOARD OF HARVEY COUNTY COMMISSIONERS

Chairman

ATTEST:

Member

County Clerk

Member