

**MINUTES OF**  
**BOARD OF HARVEY COUNTY COMMISSIONERS**

**May 4, 2009**

The Board of Harvey County Commissioners met in regular session on May 4, 2009 with all three commissioners present. Chairman Roberson called the meeting to order at 9:00 a.m.

**ITEMS ADDED TO AGENDA:**

There were no items added to the agenda.

**CALENDAR ITEMS:**

1. There will be a WRAPS meeting Thursday, May 7 at 7:00 a.m. in Moundridge. Commissioner Krehbiel will attend.

Minutes of the April 27, 2009 Commission meeting were approved upon a motion by Commissioner Westfall, seconded by Commissioner Krehbiel. Motion passed unanimously.

**ADMINISTRATIVE ITEMS:**

1. Craig Simons presented an agreement between Harvey County, BNSF Railroad, and KDOT to construct and maintain crossing signals where the tracks cross on Harvest Hill Road. The location is approximately 635 feet north of the southwest corner of Section 12, Township 22 South, and Range 2 East. The agreement states the only requirement of the County would be to install advance warning signs for the crossing. Commissioner Westfall made a motion to approve the agreement to place crossing signals at the tracks on Harvest Hill Road and authorize the Chairman to sign. Commissioner Krehbiel seconded the motion and it was passed unanimously.
2. Craig Simons presented a proposed amendment to the 1994 Agreement for the Development and Operation of a City/County Law Enforcement Center between the City of Newton and Harvey County. The original agreement was amended by the City of Newton on August 28, 2001 and by the County on September 4, 2001 to allow the City to use 10 spaces in the center parking lot south of the Courthouse on the south side of 7th Street. The City of Newton has now approved the new amendment to the contract to reserve the center parking lot south of the Courthouse for the Newton Police Department and Harvey County Sheriff's Department vehicles only. This would repeal the 2001 amendment. The Newton Police Department currently uses 20 spaces in the Cooper School parking lot across the street east of the Law Enforcement Center. However, USD 373 is terminating the allowance of this parking to allow for construction to begin on the building. Police Chief Jim Daily said the parking situation is becoming increasingly difficult. Sheriff T. Walton said that he thought that 10 spaces would be adequate for the Harvey County Sheriff's Department. Commissioner Roberson stated that with the possibility of the future expansion of the Newton Public Library, and the existing parking issues, the County and City will need to do some planning to make sure there is provision for adequate parking. Commissioner Krehbiel made a motion to approve the agreement with the City of

Newton for the use of the center parking lot. Commissioner Westfall seconded the motion and it was passed unanimously.

3. The annual Parks report scheduled at 11:30 a.m. will be postponed to a later date.

**CITIZEN'S FORUM:**

Byron Warta stated that the City of Newton will be meeting with Newton City Library representatives regarding the parking situation.

Warrant checks were approved upon a motion by Commissioner Westfall, seconded by Commissioner Krehbiel. Motion passed unanimously.

The meeting was moved from the Commission Chambers to the Courthouse Community Room in order to hold a public hearing concerning the application for a conditional use permit to expand the use of an existing sport shooting range to allow rifles, hand guns, and archery. The permit has been requested by Manuel Camacho, Jr. on behalf of Kansas Clays and Arrows. The property is located approximately 1 ½ miles south of Dutch Avenue on the east side of River Park Road. At 10:00 a.m. Chairman Roberson called the public hearing to order. Instructions were given to the audience on how to address the Commission and to make comments within a time limit to allow for all comments to be heard. Bob Caplan, Attorney for Mr. Camacho, requested that he be allowed rebuttal after comments in protest of the requested permit. Harvey County Counselor, Greg Nye, advised that permission be granted. Scott Davies, Director of Planning & Zoning presented the permit request to the Commission. Pictures of the existing ranges and aerial views of the property and surrounding farmsteads were shown. Mr. Davies stated that the request was considered by the Harvey County Regional Planning Commission at meetings on March 3rd and April 14th. The Planning Commission, by a vote of 9 in favor and 1 opposed, with the chairman abstaining, recommended denial of the request. The commission determined that it would endanger public safety and comfort of the area landowners, limit the uses of their property, and decrease their land values. There were 7 letters or petitions in protest of this permit which forces the County Commission to have a unanimous vote in order to approve it. The original permit for the shooting range was issued in 1991 to Mike and Barbara Stucky with the intent that it was to be used for shotguns only. Commissioner Roberson asked Mr. Davies when Mr. Camacho received information that the range was to be used for shotguns only. Mr. Davies replied that when he first talked with Mr. Camacho about the shooting range, it was not discussed. However, in a review of the recorded minutes of the approval that it was intended to be used for shotguns only when he checked the file of the original permit request. He then informed Mr. Camacho that he would need to apply for a conditional use permit.

The following comments were heard from proponents of approving the permit:

Bob Caplan stated that he was contacted by Mr. Camacho after the April 14<sup>th</sup> Planning Commission meeting. He stated that when Mr. Camacho entered into the contract and lease for this property, he was told that rifles and handguns would be permitted. Only after he had made the commitment to lease the range did he find out that rifles and handguns would require a conditional use permit. According to the 1991 code under which the original conditional use permit was approved, a gun club could be authorized; however Harvey County zoning regulations do not define a gun club. State statute 38-3221(d) gives the definition of a shooting

range as a range authorized for shotguns, rifles, and handguns. State law supersedes any county or local regulations. Mr. Caplan asked that the conditional use permit be approved because it is consistent with state law and consistent with the 1991 permit that was issued. There has never been a documented incident at the shooting range in the 18 years it has been in operation and Mr. Camacho is a certified firearms instructor, 4-H trainer, and sheriff reserve officer. It would be better to have a reputable owner who will follow all the rules and regulations of the NRA and National Association of Shooting Ranges than to have target shooters in unregulated areas.

Scott Davies stated that the County Code was changed in 1992 so the regulations Mr. Caplan quoted may be inappropriate. The minutes of the meeting where the original permit was granted stated that shotguns only were to be used at the range.

The following comments were heard from those who oppose the approval of the permit: Kenny Goering, who owns property located ¼ mile south of the shooting range stated that there has been pistol shooting occurring at the range in the last six months. This is a safety issue for the neighbors.

Katy Schrag, who has lived ½ mile north of the range for many years, presented a map of the area which showed the location of all the neighboring residences. She stated that the original permit was issued for three years and required that the range was to be inspected every year. There is a question as to whether the original permit is still valid since no inspections were performed. She stated that the website for the shooting range is advertising “concealed carry” classes. These are not shotguns. She is also concerned that Mr. Camacho wants to have night shoots and what the hours of the range will be. She also has concerns about liability insurance, if the gate will be kept locked when the range is not staffed, who will be staffing the range, what safety measures will be implemented, who will be performing the required inspections and what would happen if the business were sold.

Barbara Stucky, is the landowner who sold the shooting range to Ben Craft, who leases it to Mr. Camacho. She also owns most of the land that surrounds the range. She is in the process of a legal challenge as to whether she or Ben Craft is now the landowner because of a falsified claim. She and her husband were the original developers of the shooting range when a conditional use permit was issued in 1991. Their intentions were that the area would be used for shotguns only. This area is too populated for rifle and handgun use.

Kenneth Umholtz, who lives 1 ¾ mile from the range stated that he understands that Mr. Camacho wants to operate the range safely, however there are homes nearby that are within the range of a high powered rifle. This is not a good design for a shooting range.

Bob Schrag gave the Commissioners copies of an internet ad selling guns that can shoot a bullet that would travel five miles. The neighbors of this gun range are scared and frightened.

Joyce Kreutzinger, who lives about 2 miles from the range, said that animals are also frightened by the sounds of the guns.

Willis Kreutzinger has served in the military and knows what rifles can do. He has

grandchildren who enjoy riding on his tractor with him and he is fearful for their safety because of the proximity of the field to the gun range.

Royce Jantz, a realtor with Stucky Walker Realty, said that property in the area definitely sells for a lower value and also takes longer to sell because of the gun range. He encouraged the Commission to deny the request because it clearly violates the rights of the property owners.

Anita Buchanan, lives  $\frac{3}{4}$  mile east of the gun range. She is concerned about the effect on the surrounding properties. There is a bunker that will be aimed directly at her house. There is a lot of noise from the range and it goes on evenings, holidays, and weekends. She has serious concerns about the decrease in the value of their property. A public range is more dangerous than a private range because the shooters are not screened as well.

Kenny Goering asked by Mr. Camacho didn't communicate his plans for the range with any of the neighbors. He is also concerned about alcohol being served on the premises.

Tom Adrian, who is a landowner in the area, said the shooting range should not be there at all. He stated that Mr. Caplan should address the six criteria in the county code. Two of the criteria are that it depresses property values and is inherently dangerous. It also states that the rules of the Wildlife and Parks and NRA rules shall be followed. However, no one seems to know exactly what the rules are or where to find the rule books. The Commission is the protector of the land in the County. Mr. Adrian said the Commission needs to know what they are approving, as the range may be operating outside of the limitations.

Dorothy Thiessen, a member of the Planning and Zoning Board, lives 4  $\frac{1}{2}$  miles from the range. She is a strong backer of 4-H and her grandchildren all shoot high powered rifles. When the original permit was granted in 1991, the lifestyle of the rural community was much different. The range was never intended to be a commercial project. The County should have performed inspections every year as required. There are too many safety concerns especially with children and animals.

Mr. Caplan stated that they did consider all the criteria of the code and information was attached to the application that dealt with every one of the items. It is not right for the Commission to decide an issue by the number of people for or against. The issue is the propriety of the land use. The decision needs to be based on the code. There will be no alcohol allowed at the shooting range. He encouraged the Commission to inspect the range before it is opened to the public. It will comply with all the laws and regulations. He and Mr. Camacho are also willing to meet with the neighbors to try to make compromises and eliminate some of the concerns.

Mr. Camacho spoke and stated that there will be no rapid fire firearms allowed at the range and new shooters will be required to show proof of training. These items will be included in the range rules.

Chairman Roberson closed the public hearing at 11:17 a.m.

Commissioner Krehbiel asked Barbara Stucky if the range had ever been inspected while she

was the owner and she indicated that it had not. Commissioner Westfall asked about the contest of ownership of the property. Barbara Stucky stated that not all the requirements of the sale contract were met and if the land ownership is returned to her, she does not want the shooting range there. Commissioner Westfall also questioned Mr. Camacho about the height of the proposed safety berms. The NRA and NSRA recommend a 15 foot minimum, but the plans are to build a 20 foot berm. Mr. Camacho also said that wing berms will be installed and that the rifle backstop would have eyebrows. Commissioner Westfall asked Royce Jantz if there have been any other land sales in the area and Mr. Jantz said there was a sale in 2003 and 2007.

Commissioner Roberson is concerned about making a decision on this day. She wants both sides to have a fair decision based on all the facts. Counselor Greg Nye said there are several issues of concern including the question of the ownership of the land. He stated that the intent of the 1991 permit is relevant. He advised that the Commission table the decision on the conditional use permit for another week.

Craig Simons stated that he was the County Administrator when the original permit was granted and there was not supposed to be any kind of rifles or handguns out there. It was not the intent of the permit to allow anything else.

Commissioner Krehbiel said he has used the gun range as much as anybody else. Fear is a terrible thing, and regardless of what safety measures you take, accidents can happen. He thanked the audience for communicating their concerns by phone and mail.

Commissioner Westfall stated that he is concerned that the Commission is trying to take action on an issue that may be a moot point because the land ownership is not settled. He is also concerned about the issue of property devaluation.

Commissioner Westfall made a motion to table the issue until 2 weeks from today. Commissioner Krehbiel seconded the motion and said the issue needs to be resolved in 2 or 3 weeks. In the interim, only shotguns should be allowed at the range. The decision will be tabled until 10:00 a.m. on May 18. Motion passed unanimously.

Scott Eckert Susan Jackson, and Ann Religa, Extension Agents gave a report on the activities of the Extension Council in 2009. Scott Eckert said the Home and Garden show went very well. The master gardener's group did a lot of the work for the show which had a record attendance. There were 710 attendees and 377 people attended the lectures. The show was held at the armory and booth space was limited to 10 feet by 10 feet. The show brought in approximately \$1,000 which will be used to fund the master gardener program.

Susan Jackson reported on the "Making an Impact" program and said the Extension Office made 165 contacts of some type to assist elderly citizens in choosing their Medicare program. They have several volunteers with Schick who assist them with this. More volunteers are needed for next year. The FMP grant was turned in April 1<sup>st</sup>. There are nine schools participating in this grant program. The grant pays for three assistants that teach in the schools. There were 63

teams that participated in the Walk Kansas program this year.

Ann Religa said Jonie James has been going out and checking for freeze damage to the wheat crop. There is approximately 10 to 15% that has been damaged, but she thinks the wheat will be able to compensate. Ms. James was also a presenter for a statewide conference for women in agriculture and she taught a financial school for corn and soybean producers. A horse conference was held in January and was attended by 55 people.

Ann reported that she had a very good trip to Kenya. She was chosen as one of ten K-State faculty to go to Kenya with a focus of education. They did an evaluation of the Good Shepherd's Children's home while there and also worked with water issues. She also reported that the 4-H group had won both the quiz bowl and the hipology contest. They will return to Denver to compete nationally. 4-H Club Days were held in February and Earth Day celebrations went well this year.

Commissioner Westfall asked if they were receiving information from K-State on the Swine Flu threat. They get information from both the University and the USDA.

The meeting was recessed for lunch at 12:09 p.m.

The meeting was reconvened at 1:15 p.m. Commissioner Krehbiel made a motion to approve the State of Kansas Neighborhood Stabilization Program Grant Agreement NO. 09-NSP-008 and authorize the chairman to sign. Commissioner Westfall seconded the motion and it was passed unanimously.

Commissioner Westfall made a motion to go into executive session at 1:25 p.m. for a period of 20 minutes to discuss economic development. Commissioner Krehbiel seconded the motion and it was passed unanimously. Also in attendance for the session were John Waltner, Special Projects Director; and Greg Nye, County Counselor. Executive session ended at 1:45 p.m. with no action being taken.

Commissioner Westfall made a motion to pay half the fee requested for the Newton and Harvey County Highway 50 System Enhancements: Phase IV. Commissioner Krehbiel seconded the motion and it was passed unanimously.

The Commission left to view the new West Park Community Building at 1:50 p.m. The meeting was adjourned at 3:20 p.m.

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Marge Roberson, Chairman

ATTEST:

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George A. "Chip" Westfall, Member

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Joyce Truskett, County Clerk

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Ron Krehbiel, Member