

NOTICE OF REGULAR MEETING

BOARD OF COUNTY COMMISSIONER'S FOR ROGERS COUNTY, OKLAHOMA

PLACE: Rogers County Courthouse, 219 South Missouri, Room 1-109, Claremore, Oklahoma

DATE & TIME: Monday, August 3, 2009, at 9:00 O'clock A.M.

MINUTES

ITEM 1: CALL TO ORDER:

Chairman Mike Helm called the meeting to order at 9:06 A.M.

ITEM 2: ROLL CALL TO ESTABLISH QUORUM:

Determine that Notice of Meeting and Agenda were properly posted in accordance with the Oklahoma Open Meeting Act.

Chairman Mike Helm, Commissioner Kirt Thacker and Commissioner Dan DeLozier were present and quorum established.

ITEM 3: FLAG SALUTE:

Commissioner DeLozier led the salute and Pledge of Allegiance to the American Flag.

ITEM 4: PRAYER:

Commissioner Thacker said a prayer.

ITEM 5: APPROVAL OF MINUTES: July 27, 2009

Commissioner DeLozier made a motion to approve the minutes from July 27, 2009, as presented with Commissioner Thacker seconding the motion. Roll Call: Helm-aye, Thacker-aye, DeLozier-aye. Motion carried.

ITEM 6: UNFINISHED BUSINESS: None presented.

ITEM 7: ZONING: None presented.

ITEM 8: PLATS:

1. Discussion with possible action on Approval of Final Plat of River Port Ranch V, being located in the W/2 of Section 19, Township 20 North, Range 16 East of the I.B.&M., Rogers County – Mary Dupree, Developer - ***Note***this item was tabled from July 20, 2009, meeting***

Applicant Mary Dupree was present with counsel John Crockett of 226 East Graham in Pryor, Oklahoma. Mr. Crockett represented Mr. Dale Marlar who could not be present today due to health issues.

Chairman Helm stated the Board had received a letter from Kellogg Engineering, Inc., and County Clerk, Peggy Armstrong, read the letter for public record. Mr. Crockett disagreed with the letter from Kellogg Engineering, Inc., and letter was presented that was sent to Assistant District Attorney, Barry Farbro, by Dale R. Marlar, PLLC.

Mr. Farbro commented that the letter received from Mr. Marlar had a copy of Article VIII from the subdivision regulations and he reviewed both letters and disagreed with Mr. Kellogg's letter as far as paragraphs 3 thru 6 with respect to the streets being privately maintained. My understanding is they will be publicly dedicated, but they are not accepted for maintenance by the Board of County Commissioners.

Mr. Farbro continued, the real point of the matter is whether or not the developer is still within the time limit with which in to have this plat approved. In reviewing the subdivision regulations that apply to this particular situation, Mr. Crockett referred to Article II, Section 2, talks about recording a final approved plat within one (1) year. Section 4 does require before a final plat is recorded, it must be submitted to the Board of County Commissioners for approval; and the key word is submitted. This plat was submitted to the Board of County Commissioners within one (1) year of July 17th, and the Board's specific provisions of the regulations, and when there is a conflict between general and specific regulations, courts tend to look toward the more specific provisions. Article VIII Time of Approval of Final Plat reads "the final plat shall be filed in the office of the County Recorder within one (1) year after approval by the Planning Commission, City Council, and Board of County Commissioners, whichever is later" and there has been no approval by the Board of County Commissioners, although there has been Planning Commission approval. Reading of this indicates to me that they are still within the one (1) year period. The plat was submitted within the one (1) year period.

Mr. Crockett stated it was his understanding the only thing lacking was to correct the plat and we have done that. All that is left for us to do is to fill the dirt and seed it around the roads. Chairman Helm inquired of the four (4) items the county asked for earlier, they have been completed and done according to our legal aspect? Farbro replied that he did not know that. The real issue he was considering was if they still have time to have the plat approved by the Board.

Chairman Helm inquired of Mr. Crockett if the roads were to be private? Mr. Crockett replied, no, they will be county dedicated roads, but privately maintained; and they will remain so until the owners, developers or homeowners association bring the roads up to the standards

of the county to where they will be accepted. Commissioner DeLozier asked for clarification on county dedicated roads, the easements will show to the public? Mr. Crockett replied that is correct. Chairman Helm stated, so the maintenance of the roads are private and when the roads go bad it is the responsibility of the homeowners to repair. Mr. Crockett replied that is correct. Chairman Helm expressed real concerns about having homeowners decide about county roads as they deteriorate and the county is blamed for the problem by the people and the county spends the money to fix them when there were private to begin with. Farbro stated the burden is on the developer to bring those roads up to county specifications and then the Board of County Commissioners have the option to whether to accept those roads for maintenance. The roads are dedicated to the public, they will be public roads to travel, but they will not be maintained by the county, unless until the Board accepts those roads into the county road maintenance system. Farbro stated that has been done in the past and it is still the county's option as to whether to accept those roads.

Chairman Helm made a motion to table this item for one (1) week (August 10th) to visit with legal counsel about our options with Commissioner DeLozier seconding the motion. Roll Call: Helm-aye, Thacker-aye, DeLozier-aye. Motion carried.

Mr. Crockett asked for direction from the Board that during this week if his client chooses to go ahead and put the soil in and seed it; that the road foreman in District #2 see it is done to his specifications? Chairman Helm replied have it completed, then call us and we'll come out there and have the plat with all the changes done on them and we will look at it at that time.

ITEM 9: ROADS AND BRIDGES:

1. Discussion with possible action on Approval/Disapproval of Official Statement whereas, Rogers County will pay its portion of the engineering fees with Wingfield Engineering on Project Number: ERSTP-166C(243)ER; Job Piece Number: 25524(06) for engineering services on the Rehabilitation and Repair of the Winganon Causeways in Lake Oologah, to be paid from the CBRI 250C Fund -

Commissioner DeLozier stated the federal highway pays 80% of this and the county's part is 20% to be paid from CBRI funds for engineering fees and made a motion to approve with Commissioner Thacker seconding the motion. Roll Call: Helm-aye, Thacker-aye, DeLozier-aye. Motion carried.

ITEM 10: CASH FUND ESTIMATE OF NEEDS AND REQUEST FOR APPROPRIATIONS:
None presented.

ITEM 11: TRANSFER OF FUNDS: None presented.

ITEM 12: UTILITY PERMITS:

1. Discussion with possible action on Approval/Disapproval of Utility Permit from A T & T to erect, construct, and maintain a copper cable along, upon or across county road for the purpose of transporting, selling, and using communication information starting at the southeast corner of the SW/4 of the S/2 of Section 34, Township 20 North, Range 14 East; place buried copper cable under North 153rd East Avenue, approximately 400 feet North of East Skelly Drive, with method of placement will be a combination of trench/bore, most of the installation being bore; and under North 153rd East Avenue, a 3.5" iron pipe will be placed, with the new copper being contained within; and all buried placements in right-of-way will be at a minimum of 36" below current grades and 48" bore depth will be performed in District #2 –

Chairman Helm stated we have an agreement with A T & T and they are complying with what we have asked for in the way of utility permitting and made a motion to approve with Commissioner Thacker seconding the motion. Roll Call: Helm-aye, Thacker-aye, DeLozier-aye. Motion carried.

2. Chelsea Gas Authority – boring county road South 4220 approximately 2480 feet South of Highway 28A lying between Sections 33 & 34 of Township 23 North, Range 17 East of the I.B.&M., Rogers County, in District #1 –

Commissioner DeLozier made a motion to approve with Chairman Helm seconding the motion. Roll Call: Helm-aye, Thacker-aye, DeLozier-aye. Motion carried.

ITEM 13: CLAIMS:

1. Salaries – None presented.
2. Attendant Care – None presented.

ITEM 14: BLANKET PURCHASE ORDERS:

1. Materials, Supplies, Parts, Groceries & Prescriptions –
District #1: R & S Auto Parts, \$600.00; Sheriff's jail account Board of Prisoners: Warehouse Market, \$300.00; Farmer Bros. Coffee, \$500.00; Sysco Foods, \$3000.00; Sysco Foods, \$7100.00; Sheriff's jail account medical: PHS Mobile X-Ray, \$600.00; Correctional Dental Services, \$2000.00; Bimbo Bakeries, \$1350.00; Diamond Medical Supply, \$500.00; Diamond Drugs, Inc., \$6000.00; St. Francis Lab, \$600.00; Dr. David Moon, \$500.00; Sheriff's general fund vehicle maintenance: District #1 Warehouse, \$3000.00; District #3 Warehouse, \$3000.00; Froman Oil Company, \$2000.00; Emergency Management: Froman Oil Company, \$300.00 and 911 Addressing: Froman Oil Company, \$300.00 – Commissioner DeLozier made a motion to approve the blanket purchase orders as presented with Chairman Helm seconding the motion. Roll Call: Helm-aye,

Thacker-aye, DeLozier-aye. Motion carried.

2. Orders Exceeding Amount of Issuance – None presented.

ITEM 15: AGENDA ITEMS:

1. Discussion with possible action on Approval/Disapproval of hiring Environmental Hazard Control Inc., for NESHAP Asbestos Survey for the Rogers County Courthouse, 3-story structure with basement with lump sum not to exceed cost \$1500 –

Commissioner Thacker explained the 11-person committee has recommended to hire Environmental Hazard Control, Inc. to do a complete survey of the courthouse for not only asbestos, including mold and environmental problems the courthouse may have. Commissioner Thacker made a motion to approve with Commissioner DeLozier seconding the motion. Roll Call: Helm-aye, Thacker-aye, DeLozier-aye. Motion carried.

2. Discussion with possible action on Payroll for Rogers County Employees –

Chairman Helm explained as the county goes forward and keeps growing, try to get the employees to do mandatory direct deposit, which will take pressure off the County Clerk's Office and the Treasurer's Office to meet the deadline and is open for discussion.

Cathy Baker, Rogers County Treasurer, stated her office is already doing mandatory direct deposit. Commissioner Thacker asked about the people that do not have a checking or savings account? Ms. Baker stated RCB Bank offers them a savings account to open for free and the only requirement is to leave \$5.00 in the account from the day of withdrawal from their payroll check. And if they choose to bank somewhere else, that is also an option, they do not have to bank at RCB Bank. Baker continued she checked her account personally and the money was there at 12:01 A.M. and you do not have to worry about producing a paper check or whether it might be lost, it's easy and helps the county go green. The computer still prints out the paperwork with the information just like it does for a payroll check.

Chairman Helm made a motion for the County Clerk's Office to send a memo to all elected officials and department heads to inform them of what is going on and take feed back from them and bring it back before the Board next Monday, August 10th, with Commissioner DeLozier seconding the motion. Roll Call: Helm-aye, Thacker-aye, DeLozier-aye. Motion carried.

3. Approve/disapprove Independent Contractor Agreement by and between Rogers County Health Department and Celene Windle for fiscal year 2009-2010 –

Commissioner DeLozier made a motion to approve with Commissioner Thacker seconding the motion. Roll Call: Helm-aye, Thacker-aye, DeLozier-aye. Motion carried.

4. Approve/disapprove Resolutions for Disposing of Equipment from the County

Commissioner's Office as follows: Toshiba E25 Copier, sn#CFA210221; Fax Machine, sn#01090582; and Canon Image Runner Printer, sn#LST A000407; all traded in on Canon IRC2550 Copier –

Chairman Helm made a motion to approve with Commissioner DeLozier seconding the motion. Roll Call: Helm-aye, Thacker-aye, DeLozier-aye. Motion carried.

5. Approve/disapprove County Clerk's Cash Book & Summary Report to the Board of County Commissioners for July 2009 –

Chairman Helm made a motion to approve with Commissioner DeLozier seconding the motion. Roll Call: Helm-aye, Thacker-aye, DeLozier-aye. Motion carried.

6. Discussion and possible action to enter Executive Session for the purpose of

confidential communication between the Board and its attorney concerning a pending action in the United States District Court for the Northern District of Oklahoma, Case No. 09-cv-242-CVE, LAFARGE BUILDING MATERIALS, INC., Plaintiff, vs. BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ROGERS, OKLAHOMA, Defendant, if the board, with the advice of its attorney, determines that disclosure will seriously impair the ability to the Board to discuss or conduct the pending litigation in the public interest, as authorized by Title 25 O.S. § 307(4).

Chairman Helm made a motion to enter Executive Session and leave regular session at 9:40 A.M. with advice of counsel Assistant District Attorney, Barry Farbro and Commissioner DeLozier seconded the motion. Roll Call: Helm-aye, Thacker-aye, DeLozier-aye. Motion carried and the Board entered Executive Session at 9:40 A.M. with legal counsel.

7. Motion and vote to adjourn Executive Session and enter Regular session –

Chairman Helm made a motion to adjourn Executive Session and enter Regular Session with Commissioner DeLozier seconding the motion. Roll Call: Helm-aye, Thacker-aye, DeLozier-aye. Motion carried and the Board entered Regular Session at 10:01 A.M.

Chairman Helm made a motion to recess for a 5-minute break with Commissioner DeLozier seconding the motion. Roll Call: Helm-aye, Thacker-aye, DeLozier-aye. Motion carried and the Board recessed at 10:02 A.M.

Chairman Helm called the recessed meeting back to order with Commissioner Thacker and Commissioner DeLozier and quorum established at 10:07 A.M.

8. Discussion and possible action with respect to Case No. 90-cv-242-CVE,

LAFARGE BUILDING MATERIALS, INC. Plaintiff, vs. BOARD OF COUNTY COMMISSIONERS OF THE COUNTY ROGERS, OKLAHOMA, Defendant.

Assistant District Attorney, Barry Farbro, stated based upon the presentation and discussion in Executive Session, the District Attorney's office is requesting authority to sign and approve the proposed Declaratory Judgment to be filed in the pending action in U.S. District Court in Tulsa. The declaratory judgment basically will state that the Rogers County zoning ordinance at Section 1529.C.4 that regards industrial waste recycling disposal treatment is pre-empted by state and

federal laws, policies and regulations, such as Oklahoma Department of Environmental Quality, U.S. States Environmental Agency; Resource Conservation and Recovery Act; Clean Air Act; Comprehensive Environmental Response Compensation and Liability Act; Federal Water Pollution Control Act and Emergency Planning and Community Right to Know Act; and several other laws that are referred to in the declaratory judgment which relates to land use restrictions only and does not relate whatsoever to the permitting process that LaFarge is required to undergo in order to burn fuel quality waste and it merely says that Rogers County zoning ordinance, only insofar as LaFarge is concerned, that ordinance is pre-empted by state and federal law. We are seeking authority by the Board of County to approve and sign the journal entry.

Chairman Helm made a motion approve with Commissioner Thacker seconding the motion. Roll Call: Helm-aye, Thacker-aye, DeLozier-aye. Motion carried.

ITEM 16: PUBLIC COMMENTS AND RESPONSES FROM BOARD MEMBERS: Limited to specific items on the Agenda that are listed and discussed at this meeting and limited in duration at the discretion of the Chairman –

Cara Cowan Watts with the Cherokee Nation commented and expressed the concerns of the Cherokee Nation and pointed out that the Cherokee Nation has not been contacted or involved in this matter.

Bob Ronseveldt, President of the Carrie Dickerson Foundation, also commented on concerns and issues the foundation had.

ITEM 17: PAYMENT OF PURCHASE ORDERS FROM ALL DEPARTMENTS:
(Materials, Supplies, Parts, Groceries & Prescriptions)***NOTE***see attached list of all claims that were approved for payment on Monday, August 3, 2009***Commissioner Thacker made a motion to approve payment of all purchase orders from all departments as presented with the exception of purchase order #755 to Burrows Agency in the amount of \$2312.00 to be cancelled with Commissioner DeLozier seconding the motion. Roll Call: Helm-aye, Thacker-aye, DeLozier-aye. Motion carried.

ITEM 18: NEW BUSINESS:

1. Consideration and possible action with respect to any other matters not known about or which could not have been reasonably foreseen prior to posting the agenda –
None presented.

ITEM 19: RECESS OR ADJOURNMENT:

Commissioner DeLozier made a motion to adjourn the meeting with Commissioner Thacker seconding the motion. Roll Call: Helm-aye, Thacker-aye, DeLozier-aye. Motion carried and the meeting was adjourned at 11:22 A.M.

BOARD OF COUNTY COMMISSIONERS
ROGERS COUNTY, OKLAHOMA

By: _____
Peggy Armstrong, Rogers County Clerk

(SEAL)

Notice of said meeting was filed in the Office of the County Clerk on Thursday, July 30, 2009, at 3:01 P.M. and posted on the Courthouse Bulletin Board; Outside the Commissioner's Meeting Room; on the Exterior Window at the Southeast Entrance and Front Door Entrances to the Courthouse; on the wheelchair ramp door; and on the county web site.