

UNOFFICIAL MINUTES
DONIPHAN COUNTY COURTHOUSE, TROY, KANSAS, FEBRUARY 5, 2024

The Board of County Commissioners met in regular session in the office of the Doniphan County Commission, Troy, Kansas, at 8:30 A.M. with Second District County Commissioner Wayne Grable, Chairman, calling the meeting to order. First District County Commissioner Timothy D. Collins, Third District County Commissioner Bobby Hall and County Clerk Peggy Franken present. County Attorney Charles D. Baskins was present for a portion of the meeting.

The Kansas Chief Reporter Melanie Davis observed the entire meeting. Road Office Manager Lindsay Norris, Zoning Administrator Julie Meng, Register of Deeds Susan Shuster, Cody Miller, Rhonda Miller, Northeast Kansas Environmentalist Martha Smith, William Stan Ruhnke, Micheal Volker, Richard Lemke, Grant Foley, Tim Hegarty, Bill Huss, Stuart Scott, Trevor R. Schmille, Chris Gaither, Laurie Schmelzle, Peggy Nelson and Norm Sigrist were present for a portion of the meeting.

Commissioner Hall made a motion to approve meeting agenda as presented. Commissioner Collins seconded the motion. Motion carried 3-0.

Commissioner Collins made a motion to approve minutes of January 29, 2024, regular meeting, as written. Commissioner Hall seconded the motion. Motion carried 3-0.

The Jerry K. Dubach Doniphan County Law Enforcement Center currently houses eight local inmates.

County Department Inventory, pursuant to K.S.A. 19-2687, was presented to the County Commission for their review on behalf of all departments, with exception of the Sheriff's Department. The County Commission asked County Clerk Franken to contact the Sheriff for submittal of annual inventory. Sheriff Chad Clary said he would have it ready for review by the Board of County Commissioners during their February 12, 2024, board meeting.

County Clerk Peggy Franken presented the County Commissioners with 1% countywide sales tax receipts in the amount of \$56,134.94 and EMS sales tax collections in the amount of \$91,412.72.

Clerk Franken also reported a refund of \$6,464.00 from Kansas Workers Compensation for Counties (KWORCC) was forthcoming following 2023 annual audit. She explained premiums are based on payroll estimates with an audit performed at the end of each calendar year determining the exact workman's compensation costs.

County Government Day for government students in local high schools will be hosted Friday, February 9, 2024, in the District Court Courtroom.

Commissioner Grable made a motion to enter into an agreement with Shred-It/Stericycle for on-site shredding services of county documents for an approximate amount of \$1,350.00. Commissioner Collins seconded the motion. Motion carried 3-0.

Road Office Manager Lindsay Norris presented the County Commission with statements for replacement tires for the Road Department from Triple L in the amount of \$8,433.78 (#201 motor grader tires \$7,519.54 and #110 pickup truck tires \$914.24). The Board of County Commissioners previously agreed to replace tire inventory as stock is used.

A listing of bridges in need of immediate attention based on 2023 Kansas Department of Transportation interim bridge inspection was presented to the County Commission by Road Office Manager Lindsay Norris. The County Commissioners, with Road Foremen, will view each bridge listed to determine if the work can be performed by the Road and Bridge Department or is extensive enough to contract out. Commissioner Hall recommended getting all bridge deficiencies corrected, to start with a clean slate for future inspections.

Road Office Manager Lindsay Norris gave the Board of County Commissioners a draft copy of contractor bid letter for replacement of bridge structures T-538-1 and T-538-2 located on Oxide Road, south of Ottumwa Road approximately 1,800', Section 36 Township 2 Range 23E. Both structures will be replaced with two 84" x 40' metal tubes at each location. On-site contractors' meeting is scheduled for February 20, 2024, at 9:30 A.M. Contractors must be present at the on-site meeting to be eligible to bid on the project. Bids will be due in the office of the Doniphan County Clerk by 5:00 P.M. Friday, March 1, 2024, with bid letting to be held Monday, March 4, 2024, at 9:00 A.M.

The Board of County Commissioners agreed to check into extended protection plan and service agreement from Foley Equipment for 2021 Caterpillar skid loader.

A status update for abutment berm slope repair on bridge T-228-2 located 3.5 miles east and 1.9 miles south of Bendena, Kansas, on Larkinburg Road, south of 150th Road, Section 7 Township 4 Range 21E, was given by Road Office Manager Lindsay Norris. Contractor Wagner Excavating indicated due to weather and wet conditions they have not been able to move in equipment to start repair work. Norris will periodically check progress status.

Commissioner Grable told the County Commission he met with Chris Adelman, Husker Steel, to get an estimated cost to replace bridge T-228-3, located on Larkinburg Road, south of 150th Road, in Section 7 Township 4 Range 21E.

The Board of County Commissioners held discussions with Road Office Manager Lindsay Norris regarding requirements for obtaining commercial driver's license, both Class A and B. No action was taken.

Martha Smith, Solid Waste Coordinator with Northeast Kansas Environmental Services, Cody Miller and Rhonda Miller with Miller Trash Service, met with the Board of County Commissioners to discuss operations of the Doniphan County Transfer Station. Waste Management, doing business as Deffenbaugh Disposal, has notified Doniphan County, Kansas, they intend to end their contractual agreement for operation of the Transfer Station in October 2024. Cody Miller told the County Board Miller Trash would be interested in operating the transfer station to keep it locally run and from being outsourced. Discussion followed. Solid Waste Coordinator Martha Smith will contact the Bureau of Waste Management to determine permitting requirements. County Clerk Peggy Franken will contact representatives of Waste Management to schedule walk thru inspection of the current facility to determine the condition of the building and repairs needed prior to Waste Management/Deffenbaugh Disposal, Inc. turning the operation back over to Doniphan County, Kansas. County Attorney Baskins will review current agreements between Doniphan County, Kansas, and Waste Management/Deffenbaugh Disposal, Inc. to answer questions regarding liability insurance and facility maintenance.

At 9:16 A.M. the Board of County Commissioners recessed for a break, with the meeting being called back to order in the office of the Doniphan County Commission at 9:21 A.M.

At 9:30 A.M. Chairman Grable opened public hearing for consideration of zoning change on behalf of Harghe Farms, Inc., David Masters and Pat Masters, from A-1 Agriculture to RO Outer Residential to further develop Cottonwood Creek Estates Subdivision at the location of 939 Cottonwood Creek Drive, Troy, Kansas. Zoning Administrator Julie Meng told the Board of County Commissioners the Doniphan County Regional Planning Commission recommends the zoning change from A-1 to RO be approved. There being no public comment, Commissioner Collins made a motion to approve the zoning change request of Harghe Farms, Inc., David Masters and Pat Masters, from A-1 Agriculture to RO Outer Residential, to expand Cottonwood Creek Estates for property located at 939 Cottonwood Creek Drive, Troy, Kansas. Commissioner Hall seconded the motion. Motion carried 3-0. Chairman Grable closed the hearing.

At 9:35 A.M. Chairman Grable opened public hearing for consideration of zoning change on behalf of Harghe Farms, Inc., David Masters and Pat Masters, from A-1 Agriculture to RO Outer Residential to further develop Cottonwood Creek Estates Subdivision at the location of 942 Cottonwood Creek Drive, Troy, Kansas. Zoning Administrator Julie Meng told the Board of County Commissioners the Doniphan County Regional Planning Commission recommends the zoning change from A-1 to RO be approved. There being no public comment, Commissioner Collins made a motion to approve the zoning change request of Harghe Farms, Inc., David Masters and Pat Masters, from A-1 Agriculture to RO Outer Residential, to expand Cottonwood Creek Estates for property located at 942 Cottonwood Creek Drive, Troy, Kansas. Commissioner Hall seconded the motion. Motion carried 3-0. Chairman Grable closed the hearing.

At 9:40 A.M. Chairman Grable opened public hearing for consideration of zoning change on behalf of Nelson Land, LLC/Doniphan Electric Cooperative from A-1 Agriculture to A-1 Conditional Use, for location of four (4) acre solar electricity generating facility at 1438 180th Road, Troy, Kansas. Present were Zoning Administrator Julie Meng, Doniphan Electric General Manager Michael Volker, Doniphan Electric Board Chair Richard Lemke, Doniphan Electric Line Superintendent Trevor R. Schmille, William Stan Ruhnke, Grant Foley, Tim Hegarty, Bill Huss, Stuart Scott, Chris Gaither, Laurie Schmelzle, Landowner/Applicant Peggy Nelson and Norm Sigrist. Zoning Administrator Julie Meng told the County Commission the Doniphan County Regional Planning Commission recommends the conditional use be denied until further information on regulations can be gathered. Administrator Meng read the following testimony from David Masters into record:

“Julie, good morning! Please pass this message on to the Zoning Board and the Doniphan County Commissioners.

A few weeks back, I attended the zoning board review for the zoning change request to allow solar installations west of Blair and south of Troy.

That was the first time DEC had really provided much information to the community about the details of the project at each location. While many folks present were against the Blair site due to the proximity to their homes, there was no one objecting to the Troy site. I also made the comment to the zoning board that I thought they should consider going slow and putting in zoning guidelines before a solar farm was allowed in the county.

The zoning board elected to deny the requested change.

After the meeting I did some research and contacted Mr Volker with a number of questions and reached the following conclusions.

The Blair site should not be allowed due to the concerns of the neighbors.

The Troy site should be approved. Not a single person spoke in opposition to that site.

This is a very small installation that will allow DEC to generate some “home grown” local power for its customers in the county.

It should allow for a slight reduction in electricity costs.

It will allow the community to learn about solar on a 4 acre site before we have a solar zoning request for a 1,000 acre site. This also will help us with knowing what zoning regulations need to be in place.

The potential decommissioning cost to convert the land back to agricultural land at the end of 25 years is not significant.

It seems to me that the upside of what the folks in the county gains from the Troy installation is all good while the downside is very minimal.

I support the requested change to allow the solar installation on the site south of Troy. I also volunteer to assist with developing zoning guidelines for future solar installations

Thanks
David Masters”

Michael Volker, Doniphan Electric General Manager, then gave the following presentation:

“Good Morning. I am Michael Volker, General Manager at Doniphan Electric Cooperative. Thank you for letting us present this opportunity to you.

As you know, we would like a Conditional Use Permit for the property just south of Troy. The following is a description of that property and of its proposed use.

- The area of the property is described as follows: Four acres leased from Nelson Lands, by Doniphan Electric Cooperative within 136.06 acres in the parcel. The parcel of land is located approximately one-quarter of a mile east of the intersection of 180th Road and Last Chance Road on the north side of 180th Road.
- On this property, the Tenant will have built a small solar generating facility. The facility will consist of approximately 500 solar panels, 2 inverters, racks, a transformer and other equipment as necessary to integrate the generated energy to the Doniphan Electric distribution system. There will be 0 employees directly employed at the location and no buildings on the property. There will be minimal traffic at the facility once the solar farm becomes operational. The facility itself will only cover between two and three acres with extra room for set-back and optimum siting on the leased ground. There will be a single point of ingress and egress on 180th Road. The facility will be connected to Doniphan Electric's 3-phase lines running parallel to 180th Road slightly to the north of the property.

- The project will be setback from 180th Road. We have leased more than enough land to accommodate any reasonable setback requirements,
- The facility will provide wholesale power cost savings for the members of Doniphan Electric Cooperative — a not-for-profit electric cooperative who will be the sole off-taker of the energy generated at this location.
- The facility will be built, owned and operated by Today's Power, Inc (TPI) an electric cooperative that specializes in small, utility-scale solar generation projects. Today's Power has built 20 similar projects in Kansas alone, most of them in the eastern half of the state. Please see the attached map of Kansas, although it is on the list there isn't a yellow dot yet for Brown County. The Willis solar garden in Brown County will be 625 kW 2.5 times the size of the project we propose. That facility is under constructed and will be fully operational in May.
- TPI has been a good steward in Kansas which is why so many electric cooperatives have used them to build these projects.
- TPI has always met all FCC and FAA requirements.
- TPI will reclaim the project to its "original condition as the same existed" on the effective date of the land lease agreement. The reclamation will be completed within 180 days of the completion of the term which is 25 years.
- There will be a bonding requirement to ensure reclamation funding is available in the event of failure by TPI. That said the reclamation cost is not significant.
- This project is technically classified as a solar garden not a solar farm. It is called a garden because it is less than 10 acres in size and connects only to the distribution system and not the upstream transmission system.
- This facility will cover less than 3 acres total, a little over two acres in panels. The height of the panels from ground to tip is typically less than 10 feet at full tilt. This can vary depending on the topography of the site. TPI expects the maximum height of the panels to be closer to 6 feet at this Troy location. Personally, the ones I've seen are closer to 10 feet at their fullest tilt, but those sites were on ground that was more rolling than this site.
- The project will produce 250 kW of peak capacity at full power. It is expected to generate over 591,000 kWh per year. Doniphan Electric ONLY pays for power that is produced. There is no risk for Doniphan's members if the project does not produce.
- The project will not and cannot be expanded due to minimum loads at the Troy metering point. A study was completed by KSI, an engineering consulting firm in Topeka, to determine the minimum loading during sunlight hours at the Troy metering point and determined that anything larger than 250 kW would risk backing up onto the Evergy transmission grid. There are technical and regulatory reasons why that can't happen.

Doniphan Electric Cooperative will not and cannot expand the proposed Troy solar facility.

- The facilities are minimally invasive, save for a minor amount of dirt work done during initial construction, the land will be seeded with native grasses. We are open to allowing wildflowers to be included mixed with the grass to provide pollinator habitats if that is deemed beneficial.
- The solar facilities are quiet, clean, and well kept. The TPI facility near Emporia is 5 times the size of Troy and I could not hear any noise outside the fence. The only noise inside the fence is when standing near the inverters. They are not loud, just a hum very comparable to a transformer.
- All forms of electricity generation have drawbacks. From a safety standpoint, Solar Energy is widely considered the safest form of generation that exists. See chart from Oxford University's "Our World in Data".
- Solar energy is not the end-all for electricity generation. We need and have generation from many fuel sources including coal, nuclear, and natural gas from our Evergy purchased power contract. However, even an intermittent source like solar has its place in the mix of generation resources. Solar tends to be available at the time of peak demand more than not and reducing peak demand is exactly why this facility will save money.
- To be specific the project will save about \$600,000 over the 25-year term. That's not huge in any single year but it isn't insignificant either. More importantly, the project is a hedge on future price increases. Evergy has made clear that capacity for generation and transmission is constrained; meaning peak demand charges are going up for the foreseeable future. I believe them. This project is a hedge because the prices are fixed for the entire term. So, there will be immediate, modest cost savings, stronger savings in the future, and at least some hedge on future price increases. Those are pretty good reasons for us to be going down this path.
- We do not disagree with the Planning Board regarding creating standards for gigantic solar farms and even more for wind farms. We would be happy to be a part of that and help if we could. However, this project is not a thousand-acre solar farm. There are no 250 ft towers with flashing lights like a giant wind farm. We think it would be valuable to understand how a small version of solar power works. We see this as valuable feedback for the county on creating standards for future applications. That said, there are no current moratoriums in place on solar gardens, and no public opposition from anyone near the property. With all those things true it is hard to understand why we all wouldn't want to move forward.
- The only property within 1,000 feet of the project is owned either by Nelson Land or Stuart and Kami Scott.

That's all I have but I want to be as transparent as possible. I'm happy to answer any questions you have.”

Stuart Scott, adjacent landowner, told the County Commission he has solar panels personally and was not against Doniphan Electric placing a solar panel facility at 1438 180th Road, Troy, Kansas. He said it is a good site to develop on and made no objection.

Commissioner Grable said he heard from people around the community Doniphan Electric Cooperative would not allow them to sell back their electricity from personal solar panels and questioned why Doniphan Electric Cooperative would allow a third-party company (Today's Power, Inc. (TPI)) from Arkansas to do so. Mr. Volker said transfer of power from the solar panel facility back to Doniphan Electric from TPI is more equitable and beneficial to all 1,154 members: not a benefit to just one person. He continued that the solar panel facility would on average generate 53% of the power during peak demand, with the average being higher during summer months and much lower during winter months. Commissioner Grable then asked if Doniphan Electric Cooperative were to lose power if the solar panel facility could handle the load. Line Superintendent Trevor Schmille said it would not, the system could not back feed due to safety concerns.

Commissioner Hall asked Mr. Volker if the solar panel facility would lower peak demand through Evergy. Mr. Volker said it would in fact lower wholesale through Evergy and be passed on directly to consumers through a power cost adjustment, initially at 1% with increased percentages projected overtime.

Commissioner Grable asked about the lasting effects on ground after the 25-year reclamation term. Mr. Volker said the materials are inert, erosion would be minimal.

Richard Lemke, Doniphan Electric Board President, spoke in favor of the solar panel facility, telling the Commission the Doniphan Electric Board brought on Mr. Volker to try to keep rising energy costs down, this is one way to do so.

Tim Hegarty, Doniphan Electric Board Member and consumer said there is more reward than risk to the solar panel facility. Doniphan Electric Cooperative withdrew their application for placement of solar panel facility at 1810 190th Road, Wathena, Kansas, because they did not do their due diligence where it related to nearby residences. The location at 1438 180th Road is beneficial to all consumers, generating \$600,000 over a 25-year period. He told the County Commissioners he appreciated their willingness to work with the Doniphan Electric Board.

Line Superintendent Trevor Schmille told the County Commission the current substation is over 50 years old and will soon need to be recommissioned, which will be at least a half million-dollar cost.

Commissioner Grable voiced concerns with withdrawing the application for the 1810 190th Road location and moving forward with placement on four (4) acre tract at 1438 180th Road, Troy, Kansas. Saying Doniphan Electric was "moving it to someone else's back yard". Zoning Administrator Meng said only two property owners are within 1,000 feet of the property located at 1438 180th Road, Stuart and Kami Scott and Nelson Land, LLC. Commissioner Collins said originally Doniphan Electric had two sites, the one at 1810 190th Road was withdrawn due to proximity to homes. He said he did not form an opinion on either location until hearing both sides of the issue.

Peggy Nelson, landowner and applicant, said placement of the solar panel facility at 1438 180th Road doesn't directly affect anyone, it will help the electrical company and Doniphan County as a whole. She continued "we own all the land around it, it will be 6' off the ground and covered by corn on three sides when planted."

Bill Huss, member of Doniphan Electric, encouraged the Board of County Commissioners to think seriously about approving the zoning change request to help Doniphan Electric consumers, further saying everything needs to be updated, if not nothing gets done, depriving the county of future development. He said he understands the mentality of people who don't want it in their back yard, there needs to be a different mindset.

William Stan Ruhnke said the County needs to be progressive if they want to move forward.

Doniphan Electric Board Member Norm Sigrist said he was in favor of the zoning change for location of solar panel facility at 1438 180th Road, Troy, Kansas.

Commissioner Grable reminded those in attendance that the County Commission denied a zoning change for Verizon for location of cellular tower due to visual affects and the effect it has on landowners. Commissioner Collins said he believes the two are separate issues, cellular towers have blinking lights in a residential area that had several people upset. The proposed location for the solar panel facility at 1438 180th Road is in a location where landowners want it, it is a step forward and a practice field for future development. After 25 years the ground will be reclaimed, and panels recycled.

Commissioner Grable voiced concern with the County Commission approving the zoning change request without conditions for the Conditional Use Permit being known upfront. Zoning Administrator Julie Meng presented the County Commission with the following conditions:

Size: Cannot be enlarged from 4 acres currently proposed.

Height: Cannot exceed 15' (measured when oriented at maximum tilting).

Screening: Must use existing terrain, vegetation & fencing to screen the project, to the extent possible.

Soils: All grading & construction activities shall preserve existing soil.

Vegetation: Designed to accommodate concurrent use of land for livestock grazing, row crops, other agricultural uses, or contain a diverse array of native grasses for native habitat under and between the rows of solar panels.

Setbacks: 1) Must be 500' from property lines of non-participating landowner not included in the Conditional Use Permit; 2) Must be 1000' from an existing residence.

Battery Energy Storage System: 1) All mechanical equipment must be enclosed by an 8' fence with self-locking gate; 2) Area within 10' on each side shall be cleared of combustible vegetation and surfaced with gravel or other non-combustible surfacing; 3) Signage shall be in compliance with ANSI Z535 and include: (a) The type of technology associated with the storage system; (b) Any special hazards associated shall be listed; (c) Type of suppression system installed in battery storage area shall be identified; (d) 24 hour emergency contact number must be listed; (e) Shall not be located within 1000' of an existing residence.

Glare: 1) All structures shall be arranged to direct reflected sunlight away from adjacent roadways and adjacent properties; 2) Complaints of glare shall be mitigated by the applicant(s).

Lighting: 1) Security or safety lighting shall be limited to the minimum necessary to mitigate visual impacts; 2) No exterior lighting shall be installed that exceeds 15' in height; 3) No light source shall be directed off site. All external light shall be shielded and downcast to not encroach upon adjacent properties or the night sky; 4) If LED lights are used the color temperature shall be no more than 3000 K (Kelvin),

Noise: Shall not exceed a noise level of 60 decibels as measured at the property line or 1000' from an existing residence.

Electrical Interconnections: All electrical interconnections and distribution lines within the subject site shall be located underground.

Maintenance: All structures shall be maintained and kept in good condition by the owner/operator.

Extraordinary Events: Within 72 hours of an occurrence the Applicant shall provide written notice of the event to the Zoning Administrator noting the cause and degree of damage associated with the event.

Storage: No outdoor storage of equipment/materials,

Clean-up: 1) Applicant(s) shall remove all waste and scrap that is the product of construction, operation, restoration and maintenance from the site and properly dispose of it upon completion of each task; 2) Bottles, paper & other litter deposited by site personnel shall be removed on a daily basis; 3) No burying of trash or debris is allowed; a) Smaller debris & trash should be removed immediately. Larger debris, broken parts, shall be removed within 7 days or at the time of repair.

Liability Insurance: Applicants shall provide general liability insurance showing general liability insurance coverage for the lifespan of the project encompassing installation & operation through decommissioning. Evidence shall be provided annually in the form of a certificate of insurance.

Abandonment, Decommissioning & Reclamation Plan: a decommissioning/reclamation plan shall be required to ensure that facilities are properly removed after their useful life.

Conditional Use Permit: Effective for Doniphan Electric Cooperative only — NON-TRANSFERRABLE.

Commissioner Collins made a motion to approve zoning change from A-1 Agriculture to A-1 Conditional Use on behalf of applicant Nelson Land, LLC/Doniphan Electric Cooperative for location of four (4) acre solar electricity generating facility on property located at 1438 180th Road, Troy, Kansas, as set forth in the aforementioned conditions. Commissioner Hall seconded the motion. Commissioner Grable cast a nay vote. Motion carried 2-1 to change zoning from A-1 Agricultural to A-1 Conditional Use.

Chairman Grable closed public hearings for zoning changes at 10:14 A.M.

Bill Huss thanked the Board of County Commissioners and County Employees for the good job they did removing snow from county roadways during adverse weather conditions January 10-17, 2024.

Register of Deeds Susan Shuster announced her retirement at the end of the current term, January 2025. The Board accepted her retirement with regret and thanked her for what will be her 32nd year of service to Doniphan County as the Register of Deeds. Shuster previously worked for Doniphan County during reappraisal from 1987 until her election to office in 1993.

At 10:29 A.M. Commissioner Hall made a motion to recess into executive session for the purpose of discussing and protecting the interest of non-elect personnel in the Road Department, with the meeting to be called back to order in the office of the Doniphan County Commission at 10:39 A.M. Commissioner Grable seconded the motion. Motion carried 3-0. County Attorney, County Clerk and Road Office Manager remained.

The Board of County Commissioners discussed current road conditions following installation of fiber optic cable in County Rights-of-Way by contractors with Rainbow Communications. According to the request and petition signed by representatives of Rainbow Communications, roadways shall be restored to pre-construction condition. The Board of County Commissioners will meet with representatives of Rainbow Communications at their next board meeting on February 12, 2024.

Road Office Manager Lindsay Norris told the County Commission Bettis Asphalt will be making hot patch material at the Hamm Quarry, west of Troy, Kansas. She will secure a quote for the purchase of material from Bettis Asphalt for Commissioners consideration.

There being no further business before the Board, Commissioner Collins made a motion to adjourn at 10:48 A.M. Commissioner Hall seconded the motion. Motion carried 3-0.

DATED THIS 5TH DAY OF FEBRUARY 2024.

Attest: _____
Peggy Franken, County Clerk

Wayne Grable, Chairman