BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS

WEDNESDAY, JULY 9, 2003

6:35 P.M.

-Convene

-Pledge of Allegiance

-Consider approval of minutes of May 21, 2003

-Recognition of volunteers who contributed to May 8th tornado response and recovery (Paula Phillips)

CONSENT AGENDA

(1) (a) Consider approval of Commission Orders

REGULAR AGENDA

(2) Discussion of Petition for Attachment of Land to Rural Water District #4

(3) Consider approval of conditions and restrictions for CUP-12-16-02 -- Conditional Use Permit for Eudora Quarry #68; northwest corner of N 1200 Road and E 2400 Road (Brian Pedrotti)

(4) Consider approval of resolution imposing regulations and criminal penalties on owning and possessing vicious dogs in Douglas County, Kansas

(5) Consider approval of KDOT Form 1030 authorizing KDOT to proceed to contract on Project No. 23 C-3688-01, improvements to Route 1029 from the Kansas Turnpike to 7th Street in Lecompton (Keith Browning)

(6) Consider approval of Douglas County Community Corrections FY04 Budget (Ron Stegall)

(7) Consider approval of publication of 2004 budget (Craig Weinaug)

(8) Other Business
- (a) Consider approval of Accounts Payable (if necessary)
- (b) Appointments
- (c) Miscellaneous
- (d) Public Comment

(9) Adjourn

MONDAY, JULY 14, 2003

-No Commission Meeting

WEDNESDAY, JULY 16, 2003

-No Commission Meeting

MONDAY, JULY 21, 2003

-No Commission Meeting

WEDNESDAY, JULY 23, 2003

-No Commission Meeting

MONDAY, JULY 28, 2003

-Light agenda

WEDNESDAY, JULY 30, 2003

-No Commission Meeting

MONDAY, AUGUST 4, 2003

-Light agenda or no meeting

WEDNESDAY, AUGUST 13, 2003

6:35 P.M.

-Public hearing on 2004 budget

-Presentation of new marketing brochures, update on Economic Development Strategic Plan, and update on Economic Development activities (Lynn Parman)

FRIDAY, AUGUST 29, 2003

9:00 A.M.

-Convene

-Canvass Special Election (Eudora)

MAY 21, 2003

Chairman Johnson called the meeting to order at 6:37 P.M. on Wednesday, May 21, 2003. All members were present. The Pledge of Allegiance was recited.

CONSENT AGENDA 05-21-03

Commissioner Jones made a motion to approve the following Consent Agenda:

Note receipt of fee reports for the month of April.

Motion was seconded by Commissioner McElhaney and carried 3-0.

PLANNING 05-21-03 -- CUP-12-16-02; CONDITIONAL USE PERMIT FOR EUDORA QUARRY #68; NORTHWEST CORNER OF N 1200 ROAD AND E 2400 ROAD

The Board reconvened the May 14, 2003 public hearing of Item No. 4 of the minutes of the Lawrence-Douglas County Metropolitan Planning Commission dated 2/26/03. This item is CUP-12-16-02: Conditional Use Permit request for Eudora Quarry #68. The property is generally described as being located at the northwest corner of N 1200 Road and E 2400 Road. Requested by N. R. Hamm Quarry, Inc., for Katherine L. Neis, property owner of record. This item was continued in order to determine if the protest petition was valid. Craig Weinaug, County Administrator, noted that a committee consisting of Patty Jaimes, Dan Watkins, and Adra Burks met and came to the unanimous conclusion that the protest petition was valid, which necessitates a unanimous decision by the County Commission.

Brian Pedrotti, staff member of the Lawrence-Douglas County Metropolitan Planning Department, introduced the item and noted that Staff recommended approval of the CUP, with conditions and restrictions as set forth in its February 26, 2003 Staff Report. Pedrotti stated that the Eudora Planning Commission and the Lawrence-Douglas County Planning Commission previously held a joint public hearing on the matter. The Eudora Planning Commission recommended denial of the CUP and that the Lawrence-Douglas County Planning Commission voted to recommended approval of the CUP, subject to conditions and restrictions set forth the minutes from its February 26, 2003 meeting, revised March 25, 2003.

Dan Watkins, attorney for the applicant, presented the following requests, as set forth in his letter to the Board dated May 12, 2003, to clarify or modify the conditions and restrictions of the Lawrence-Douglas County Planning Commission:

Watkins requested deletion of the prohibition of asphalt/concrete production at the site that the Planning Commission added to Section I. Watkins explained that omitted that prohibition would not allow Hamm Quarry to operate an asphalt/concrete plant as a matter of right, but rather would allow Hamm Quarry to request a temporary business permit at some time in the future. The temporary business use would be subject to whatever limitations or conditions the Board put on the permit at that time.

Watkins requested that the last sentence in Section II be deleted and utilities be added to Section VIII. Watkins explained that this was not a substantive revision, but that it was better placed under Section VIII rather than Section II.

Watkins requested that the terms "springs & wells" be deleted from pre-blast survey requirements in Section V because they vary so much from time to time that it is difficult to determine what might have caused a change. Building foundations is the most common type of pre-blast survey. Watkins went on to discuss pre-blast surveys.

Watkins requested deletion of the appeal to the Board contained in Article V if Hamm Quarry and neighbors cannot agree upon the extent of the pre-blast survey. Watkins stated that an appeal could place the Board in the position of having to hire its own expert. Watkins noted, however, that it was extremely unlikely that an appeal would ever be needed because Hamm Quarry would go to great lengths to satisfy neighbors. Watkins stated that the appeal process might provide a safeguard that protects residents from Hamm Quarry being arbitrary.

Watkins requested amendment to the fencing requirements in Section VI. First, he stated that clearing vegetation to erect a fence might be counterproductive on the east of the site. Katherine Neis owns additional property on the west of the site and, to the extent quarrying does not interfere, will continue to farm it in conjunction with the CUP site. A fence along the west edge of the site would interfere with her farming operation because it would place a fence line through the middle of a field. Watkins stated that an entire perimeter fence would not promote safety or security—in a lot of areas natural topography and set-backs would protect people. Watkins suggested adding a condition that the Board approve a fencing plan before commencement of operations.

Watkins requested "for blasting" be deleted from Section VIII because the discharge permit in that Section referred to discharge of water, not explosives.

Watkins requested that the performance bond requirement in Section IX be lowered from $1,000 to $600 because $600 was consistent with state law and

the bond was running to the Kansas State Conservation Commission. A representative of the State Conservation Commission couldn't explain the benefit of an additional bond.

Watkins requested deletion of the drainage study in Section IX because it is duplicative of similar requirements that Hamm Quarry would have with other regulatory agencies and the Planning Office does not have expertise in reviewing a drainage study.

Watkins requested changed Section XI(e)(iii) to require that the road improvements be completed before commencing rock extraction on the new site, rather than 24 months after the CUP is granted. Watkins stated that Hamm Quarry may not start rock extraction right away and tying the road improvements to rock extraction would make more sense.

Watkins requested revision to the strobe back-up light requirement in Section XII so that strobe lights are required one-half hour before sunset, not at 5:30 p.m., for the obvious reason that in summer months it does not get dark until much later.

Watkins requested that the periodic review be a 5 year intervals, not 3 year intervals. This is consistent with other County CUPs. Also, Watkins requested that the review be limited to whether Hamm Quarry is complying with the CUP and that each review not be a de-facto new CUP application.

Watkins requested that Condition 2.a, which would require the existing quarry to be subject to the CUP, be deleted because including the existing quarry would subject the rock extracted from the existing quarry to the $0.10/ton charge. Watkins suggested that requiring the existing quarry to be reclaimed could be added as a requirement, but it should not be included in the CUP.

A discussion took place regarding state law reclamation requirements and it was stated that the reclamation requirements in Hamm Quarry's lease are more stringent to than state law. Reclaiming the existing Petefish quarry would certainly be in Hamm Quarry's best economic interests and that it had every intention of doing so. Marvin Zielsdorf, Site Manager for Hamm Quarry, explained the reclamation process—as new cuts are made, old cuts are reclaimed to reduce costs. He stated that he estimates 3.5 million tons of rock that can be quarried from the new site and the property will be reclaimed. With respect to the Petefish quarry, state law requires reclamation for cuts made after 1994, but Hamm Quarry would agree to reclaim the entire quarry without regard to when the cut was made.

A discussion took place concerning truck routes. When rock is hauled to a project, the truck route is specified by the contracting agency, such as Douglas County or the City of Eudora. Also, it was noted that Hamm Quarry has other quarries that would likely be used for projects north of the Kansas River.

A brief discussion took place concerning blasting. Explosives are only kept on site during actual operations. During the last 10 years, explosives have been on site for 2 four-month periods. When on site, the explosives are kept in a bermed magazine and are subject to ATF requirements and audits.

Watkins stated that Hamm Quarry would agree to a requirement that it cooperate and coordinate with Eudora city and school officials regarding truck traffic on Route 1061 and would participate in solutions. Keith Browning, Director of Douglas County Public Works, discussed the on-going traffic studies along Route 1061. These issues exist regardless of Hamm Quarry truck traffic. Eudora has retained a consultant to make suggestions for revisions to Route 1061 as it enters the city. Browning stated that there are a are a number of things that can and will be done to enhance safety, such as making it more clear that the driver is entering a city such as "Welcome to Eudora" signs and streetlights. Watkins stated that Hamm Quarry has expressed willingness to work with the City of Eudora and the school district regarding coordination of school times.

Chairman Johnson then asked for public comment:

Dan Hoover stated that he had never been officially notified of any hearing having to do with the CUP. He purchased property for the serenity and nature in the area. He spoke in opposition of the quarry, raising concerns about the storage of explosives and encouraged the Commission to look at fencing. He is worried that kids might get into the explosives. Also, the expanded quarry might squelch additional building in the area and cause of loss of property tax revenues. He requested that the Board determine road issues now, not later; that he be listed on Hamm Quarry's insurance to make sure damage to his structure is covered by insurance; a requirement for a 1000 foot set-back from County line road and that foliage be retained; stricter restrictions on blasting hours; and a requirement to reclaim existing quarry before starting on new site.

Bob Miller note he had looked at other quarries run by Hamm Quarry and his observation is they are not well maintained and other quarries are better maintained.

Karen Rowland, a realtor in the area, expressed concerns about lower property valuations, traffic issues, and the effects that blasting would have on surrounding foundations.

Bernice Staus questioned whether the rock is available at another location and whether $0.10/ton is adequate for road maintenance. She stated that she does not believe that reclamation guidelines have been followed in the past and also expressed concerns about land values and that the quarry would hinder growth.

Adra Burks, attorney for Arthur Neis, spoke in opposition to the CUP. She stated that there are 600 residential homes or platted lots in the area and the that Eudora would continue to develop to the south. She noted that there is no fence along the northern boarder of the site, between her client's property and the subject site. She requested Hamm Quarry to pay for a survey to determine where the 150 foot set-backs would start from. She requested a requirement of similar set-backs around entire site, not just 800 feet from current residences. Also vegetation should be added between her client's property and the new quarry site, which is currently cropland. She requested a fence between the quarry site and Katherine Neis's other cropland to the west, which is currently being farmed on a contiguous basis.

Burks also discussed rock requirements and availability in the vicinity. Captains Creek or Stoner rock, grade 1 or 2, is considered "high grade" or "pavement quality" rock for highway paving projects. She questioned whether the high grade rock on the Petefish quarry exists in the new CUP area. She said Hamm Quarry has a lot of high grade Stoner in its Leavenworth quarry. Burks stated that when considering a CUP, the issue is not whether Hamm Quarry has the high grade rock, but whether the high grade rock is available to any paving contractor at all. Because high grade pavement rock is available to other contractors nearby, she does not see the public good of the new quarry.

Burks also questioned whether the $0.10/mile will adequately compensate the County for road maintenance. She provided estimates of receipts to the County assuming 100 trucks per day, year round. Commissioner Johnson asked Hamm Quarry whether the 100 trucks per day estimate was just from the new CUP site or from both the new quarry and the Petefish Quarry. Watkins stated that this number would be the total amount from both quarries, not 100 trucks from each quarry. This number of trucks would only apply during a large paving project and would not be continuous. It was noted that if Hamm Quarry took 100 trucks per day out of the new site six days a week, the new site would be totally mined in a few years.

Burks questioned that explosives would be kept on the site over night at times, which she though violated applicable explosives regulations. She also discussed brooks and springs in the area and possible loss of water source from the expanded quarry and that there should be a way to determine how it will happen

if springs run dry. She stated that the review period should be shorter than 5 years because of the expanding development in the area.

Burks concluded that the extension of the quarry is not appropriate. If the CUP is to be granted, stringent conditions must be imposed to protect health and welfare.

Marty Kobza, Superintendent of Eudora School District No. 491, expressed no position for or against the CUP. He did express traffic safety concerns. He stated that he is pleased with progress that has been made in working with Keith Browning concerning Route 1061. He asked that if the CUP is granted, the Board place guidelines for trucks using Route 1061. He requested that this not be left to work out later, but had no suggestion on how to do so.

Watkins address blasting issues and concerns that opponents had raised. Watkins noted that there is strict liability with regard to explosives and subject to strict regulations. Watkins asked David Russell, Dresler & Associates, to explain how the explosives were stored in a magazine, which is fire rated and weighs about 3 tons. The magazine is kept in an earthen berm. Russell stated that he knows of no past violations by Hamm Quarry. Russell also stated that in his 10 years as a explosives consultant, he had never done a pre-blast survey on a spring. Blasting vibrations do not affect acquifers or ground water table; the vibrations do not cause water to fluctuate. State and federal regulations restrict blast vibrations and he designs blasts to comply with the regulations. Russell stated that studies have shown that these regulations are sufficient to prevent damage to surrounding properties. Russell knows of other quarries that have high pressure gas pipelines running through them and blasts are designed to prevent damage to the pipelines.

Watkins also noted Section XI(e)(iv) of the restrictions require Hamm Quarry to supply rock and dust control along the township road during periods of quarry activity—this is in addition to the $.10/ton payment.

Watkins noted that the property value issue is raised every time a quarry tries to locate. Nevertheless, people continue to build homes near quarries. Watkins also stated that Eudora could double in population two times before reaching the CUP site. If that type of growth occurs, rock from the site will be needed.

Hamm Quarry is willing to cooperate with the Schools and Public Works on traffic control issues. Public Works and Eudora certainly have the authority to place speed and travel limits on Route 1061.

Watkins was asked of reclamation on the existing quarry and opponents claims that there had been no reclamation. Watkins stated that Hamm Quarry is willing

to be subject to a restriction that it reclaim the existing quarry within 3 years of completing operations on the Petefish quarry.

Martin Zielsdorf, Site Manager for Hamm Quarry, spoke on behalf of the applicant. He discussed operations on the current Petefish quarry. He expressed that opponents expressed a lot of fallicies concerning the quality of paving rocks. Additional discussion took place about reclaiming the Petefish quarry.

Commissioner Jones made a motion to close the public hearing. Commissioner McElhaney seconded and the motion carried 3-0.

Commissioner Jones stated that he was leaning towards granting the CUP with extensive conditions, but thought that they Board should determine whether there were three votes to grant the CUP before spending time on the conditions.

Chairman Johnson agreed and stated he was in favor of granting the CUP. He stated that approval would weigh heavily on his mind if there was not an existing quarry there. He stated he would have a difficult time supporting a new quarry, but would support the expansion of the existing quarry.

Commissioner Jones noted that if a residential subdivision were at the site, it would create more traffic, etc., which could increase safety risks. There are risks involved in all uses. Anytime there is change, people will protest. He did not see the quarry operation as being dramatically worse in terms of property values and safety than other possible uses. All uses have pluses and minuses. Agriculture is changing dramatically and there is no guarantee that the site will remain agriculture for 30 years. Something else is likely to happen to the property. A quarry with appropriate conditions is not as bad as other options.

Commissioner McElhaney also agreed with Commissioner Jones and Chairman Johnson. Commissioner McElhaney stated that state law for reclamation was satisfactory to him. He then suggested that some of the conditions placed on the CUP, such as fencing and screening, be finalized at a later date. With respect to fencing, he thought that the fencing at the northwest side, where the land is cleared would be fine, but fencing should not require clearing of vegetation or interfere with an ongoing farm operations. He is comfortable with safety of the explosives. He also noted it was in compliance with *Horizon 2020*, which encourages redevelopment and limited expansion of existing industrial sites.

The Board proceeded to give instructions to Planning Staff for revisions to the conditions and restrictions. The applicant and Burks would then have an opportunity to review and comment on the revised conditions before finalizing. In

addition to the revisions previously discussed, the Board requested the following revisions:

Condition 2.a. The granting of the CUP should not be tied to including the existing Petefish quarry in the CUP. However, Condition 2.a should contain a clear requirement that Hamm reclaim the existing Petefish quarry within 3 years of ending operations.

Section I. The reference to asphalt/concrete production in Section I should be deleted. This deletion would not allow Hamm to operate a temporary asphalt or concrete plant as a matter of right, but would enable Hamm to request permission of the Board to operate such a plant at some time in the future, subject to restrictions imposed by the Board at that time.

Section II. The last sentence in Section II should be deleted, but "utility companies" should be added to Section VIII.

Section V. Reference to "springs and wells" will remain in Section V. Perhaps the applicant can suggest a reasonable compromise. An appeals process should remain, but the appeal should probably not be to the Board. Staff and the applicant should come back with a proposal and bring it back to the Board.

Section VIII. Add reference that Hamm Quarries complies with regulations of utilities. Delete "for blasting" because that section deals with water discharge.

Add a provision to require that a fencing and screening plan should be submitted and approved by the Board prior to commencement of operations.

Add a provision to require notice to property owners within 1000 feet prior to first 5 year review, which would include Johnson County residents.

Section IX. The reclamation bond should be in an amount in accordance with state statute.

Section X. The applicant and Planning Staff should discuss the applicant's request to delete this Section, but the Board has a concern about removing it and is inclined to keep it.

Section XI. Delete 1st subsection (d). Subsection (d)(iii) should require road improvements prior to rock extraction from new site.

Section XII. Strobe lights for vehicles shall begin ½ hour before sunset, rather than 5:30 p.m. There is no need for a strobe light before dusk.

Restriction XIV. The review process will take place every 5 years, rather than every 3 years. Notice of the initial 5 year review should be given to all property owners within 1,000 feet, including Johnson County residents. Delete the sentence that would allow the Board to revoke the CUP if it wanted to add additional conditions in the future, but planning Staff and the applicant should discuss further.

Index the $0.10/ton for inflation in accordance with the Consumer Price Index. Planning Staff and the applicant should discuss and bring back something appropriate.

The revised conditions should be brought back to the Board and other persons should have an opportunity to review and comment on them before finalizing.

Commissioner Jones made a motion to approve CUP-12-16-02, contingent upon finalization of the conditions and restrictions in accordance with the foregoing discussion, which would require a 3-0 vote. The CUP will not be issued until the conditions and restriction are resolved. Chairman Johnson seconded and the motion carried 3-0.

The Board instructed Staff to revise the conditions in accordance with the foregoing discussion and bring it back to the Board for a Wednesday evening meeting.

The Board thanked those in attendance for their input.

PUBLIC WORKS & CONTRACTS 05-21-03

Commissioner McElhaney made a motion to approve Contract(s) for Right-of-way Easement Acquisitions on Tract Nos. 1, 2, 3, 9, 17, 24, 33 and 36 for Project No. 23C-3688-01, Route 1029 improvements, in the aggregate amount of $87,535. Motion was seconded by Commissioner Jones and carried unanimously.

MISCELLANEOUS 05-21-03

Chairman Johnson reported that he had met with the three (3) superintendents of schools regarding Jones' proposal to fund the nursing programs. He suggested appointing a committee consisting of recommendations from each superintendent, Kay Kent, Director of the Lawrence-Douglas County Health Department, and one (1) member of the Health Board, a Douglas County Resident, and appointments by the commissioners, maybe 12-13 people. No action was taken.

Commissioner Jones moved for adjournment. Commissioner McElhaney seconded and the motion carried.

Bob Johnson, Chairman

Jere McElhaney, Member

ATTEST:

Patty Jaimes, County Clerk

Charles Jones, Member

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS

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-Pledge of Allegiance

-Consider approval of minutes of May 21, 2003

-Recognition of volunteers who contributed to May 8th tornado response and recovery (Paula Phillips)

CONSENT AGENDA

(1) (a) Consider approval of Commission Orders

REGULAR AGENDA

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(4) Consider approval of resolution imposing regulations and criminal penalties on owning and possessing vicious dogs in Douglas County, Kansas

(5) Other Business
- (a) Consider approval of Accounts Payable (if necessary)
- (b) Appointments
- (c) Miscellaneous
- (d) Public Comment

(6) Adjourn

MONDAY, JULY 14, 2003

-Light agenda

-Consider approval of Douglas County Community Corrections FY04 Budget (Ron Stegall)

WEDNESDAY, JULY 16, 2003

-Light agenda or no meeting

MONDAY, JULY 21, 2003

-No Commission Meeting

WEDNESDAY, JULY 23, 2003

-No Commission Meeting

MONDAY, JULY 28, 2003

-Light agenda

-Consider approval of publication of 2004 budget

WEDNESDAY, JULY 30, 2003

-Light agenda or no meeting

MONDAY, AUGUST 4, 2003

-Light agenda or no meeting

WEDNESDAY, AUGUST 13, 2003

6:35 P.M.

-Public hearing on 2004 budget

-Presentation of new marketing brochures, update on Economic Development Strategic Plan, and update on Economic Development activities (Lynn Parman)

FRIDAY, AUGUST 29, 2003

9:00 A.M.

-Convene

-Canvass Special Election (Eudora)

Lawrence ◦ Douglas County Planning Department

Memorandum

To: Board of County Commissioners

From: Lawrence/Douglas County Planning Commission

Date: June 2, 2003

Re: Comments on Proposed Amendment of Lands to the RWD #4 boundaries

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The Rural Water District has given a presentation to the Planning Commission to explain why the annexation of individual parcels is needed to bring properties into the district that currently and historically have received water from the RWD #4, although they lie outside the RWD#4 Service Boundary. Patrons in this out-of-bounds service area are not given equal status Water District matters and are not allowed to vote in RWD #4 elections. Annexation would equalize all existing patrons rights.

At the Planning Commission's mid-month meeting on May 14th, Staff presented pros and cons regarding the proposed annexation. After much discussion, the Commission has agreed on the following recommendation and forwards it to the Douglas County Commission for their consideration.

Recommended action:

A binding agreement or conditions between the Rural Water District and the Governing Body is needed to protect the interests of all current RWD patrons as the incorporated cities in Douglas County (Lawrence, Baldwin, Eudora) expand into their individual planning boundaries.

This binding agreement or conditions would allow for the expansion of the Rural Water District with island annexations of properties that lay within the three-mile planning boundaries of incorporated cities. The binding agreement or conditions should include the following points of understanding:

1. Undeveloped properties in the enlargement area and within the 3-mile planning boundaries of Lawrence, Eudora and Baldwin must be platted before receiving new water meters or service lines from RWD #4.

2. RWD #4 waives their statutory right to compensation for infrastructure and meters located on lands within the 'island annexations' and annexed by the City that meet all of the following conditions:

    a. The lands are within the 3-mile planning boundary of an incorporated city of Douglas County;

b. Properties **not** provided water service by RWD #4 as of the date of the district service area adjustment; and

c. Meters and/or other infrastructure are not reusable by the City upon annexation.

3. RWD #4 will not waive compensation rights for any properties currently receiving service from RWD #4, regardless of the property's location within or outside the 3-mile planning boundary of any incorporated city.

4. RWD#4 and the City will negotiate a fair market price for compensation to be paid to RWD #4 for meters and/or other infrastructure that is reusable by the City when upon annexation.

PC recommended 5-4

ITEM NO. 10: EXPANSION OF RURAL WATER DISTRICT #4 PROPERTY (LMF)

Respond to County Commission on request of Rural Water District #4 to annex lands. Referred to the Planning Commission by the Board of County Commissioners on April 16, 2003.

STAFF PRESENTATION

Ms. Finger explained that the memo before the Commission was a drafted based on mid-month discussion and revised per Study Session comments. The Commission was asked to approve the memo and forward it to the County Commission as the Planning Commission's formal comment on the proposed expansion of the Rural Water District #4's service boundary.

It was noted that the Item was listed incorrectly on the agenda as a public hearing Item - the Planning Commission did not have the authority to hold a public hearing on this issue. It was established that no member of the public was present intending to speak on this item.

Staff briefly outlined the conditions proposed in the memo, and the Commission held lengthy discussion to clarify these conditions. There was also extensive discussion on whether the Commission's primary concern should be for fairness and equality among all water district patrons, as those concepts necessarily clashed in some instances. It was also noted that conditioning in different ways appeared to favor the water district, the City, or the individual patrons

John Nitcher, speaking on behalf of the water district, said that the RWD had requested the term "binding agreement" or "conditions" be used in place of "interlocal agreement" to imply that these were standards enforced by the Governing Body, not terms to be negotiated.

Mr. Nitcher also indicated the RWD's preference for a 5-year limitation deadline. This was a prime example of conditioning that favored the water district (5-year limit) or the City (7-or 10-year limit). It was also noted that water lines must necessarily run through unplatted areas to reach platted service areas and Staff said the Commission could include the comment that all new water lines should be placed within utility easements.

Mr. Nitcher said that easements were generally obtained from the owner of the property the line crossed. These easements were obtained by/given to the City upon annexation.

Rewording of conditions was discussed, with Comm. Schachter suggesting that platting be required prior to obtaining water service for all undeveloped properties that lay within both the expanded service boundary and the 3-mile planning boundary of any incorporated city of Douglas County.

The Commission discussed if this was disproportionately unfair to out-of-bounds patrons currently getting RWD #4 service. Mr. Nitcher responded to questioning that those patrons had requested inclusion in the Water District with the knowledge that they would become subject to all the same rules and regulations as other patrons. They (the patrons) should understand that, if requesting annexation at a later date, negotiations would be needed to determine who paid compensation to the RWD. In similar situations, Mr. Nitcher said, these negotiations were handled as part of the annexation process and litigation was avoided if at all possible.

Comm. Durflinger said it was not his intent to make a harder or easier situation for the individual property owners. His main goal was to avoid encouraging the RWD to place lines and equipment in such a manner that it would maximize their compensation profit when annexation took place.

Comm. Haase asked to go on record stating his belief that the Planning Commission was "ill-equipped" to determine how to best protect the interests of all those involved.

Comm. Bateman asked if the RWD would be amenable to the conditions of the memo being discussed, provided the word "interlocal" were replaced with "binding", the time limit was a definable period and the platting situation were clarified. Mr. Nitcher said this would be the case.

ACTION TAKEN

Motioned by Comm. Schachter and seconded to approve the memo presented by Staff and forward it to the Douglas County Commission as the Planning Commission's formal comment on the proposed expansion of the RWD #4 service boundary in island annexations, with the recommended inclusion of the following revised conditions:

1. Undeveloped properties in the enlargements area and within the 3-mile planning boundaries of Lawrence, Eudora and Baldwin shall be platted before receiving new water meters or service lines from RWD #4;
2. RWD #4 waives their statutory right to compensation for infrastructure and meters located on lands within the island annexations and annexed by the City that meet all of the following conditions:
    a. The lands are within the 3-mile planning boundary of an incorporated city of Douglas County
    b. Properties **not** provided water service by RWD #4 as of the date of the district service area adjustment; and
    c. Meters and/or other infrastructure are not reusable by the City upon annexation.
3. RWD #4 will not waive compensation rights for any properties currently receiving service from RWD #4, regardless of the property's location within or outside the 3-mile planning boundary of any incorporated city; and
4. RWD#4 and the City will negotiate a fair market price for compensation to be paid to RWD #4 for meters and/or other infrastructure that is reusable by the City when upon annexation.

Motioned by Comm. Burress to remove conditions 2c and 3.

Motion died for lack of a second.

DISCUSSION ON THE MOTION

The Commission further discussed the compensation issue. Comm. Durflinger reiterated that his main point was to dissuade the RWD from expanding in ways that would return maximum compensation at a later date. Comm. Pine to stated that the water district provided a needed service to the rural residents of Douglas County – financial gain was not the their primary motivation and they should not be penalized for providing such service.

Comm. Haase asked the Commission to consider if the County Commission would grant the enlargement request if the RWD had followed the correct service provision process from the beginning. If this answer was "yes", then the request should be granted now without conditions. If the answer was "no", then it must be determined what harm was done.

If no harm was done, the request should be granted with conditions. If harm was done, thus creating future financial problems for cities annexing lands in the future, that harm must be

measured to evaluate an appropriate action.

Comm. Haase thought restricting new service in unplatted areas was a good trade-off for allowing the requested enlargement.

Comm. Schachter said the concern would change from a rural to an urban issue as development occurred and felt that setting a time limit encouraged rural development to happen in the near future.

ACTIONS TAKEN
Motioned by Comm. Schachter and seconded to call the question.

Motion carried 6-3, with Comm.'s Pine, Angino and Burress voting in opposition and Student Comm. Bittenbender in the affirmative.

Motion on the floor was to approve the memo presented by Staff and forward it to the Douglas County Commission as the Planning Commission's formal comment on the proposed expansion of the RWD #4 service boundary in island annexations, with the recommended inclusion of the following revised conditions:

1. Undeveloped properties in the enlargement area and within the 3-mile planning boundaries of Lawrence, Eudora and Baldwin shall be platted before receiving new water meters or service lines from RWD #4;
2. RWD #4 waives their statutory right to compensation for infrastructure and meters located on lands within the island annexations and annexed by the City that meet all of the following conditions:
    a. The lands are within the 3-mile planning boundary of an incorporated city of Douglas County
    b. Annexation of the land occurs within (5,7 or 10) years after the date of the district service area adjustment;
    c. Properties not provided water service by RWD #4 as of the date of the district service area adjustment; and
    d. Meters and/or other infrastructure are not reusable by the City upon annexation.
3. RWD #4 will not waive compensation rights for any properties currently receiving service from RWD #4, regardless of the property's location within or outside the 3-mile planning boundary of any incorporated city; and
4. RWD#4 and the City will negotiate a fair market price for compensation to be paid to RWD #4 for meters and/or other infrastructure that is reusable by the City when upon annexation.

Motion carried 5-4, with Comm.'s Bateman, Pine, Haase and Angino voting in opposition. Student Comm. Bittenbender voted in the affirmative.

Comm. Bateman said she was in favor of the proposal except for the exclusion of a time limit.

Comm. Burress said he would have voted in opposition based on the belief that taking no action, merely recognizing the rights of existing RWD #4 patrons, would have been appropriate. He had voted in the affirmative (he was the final voice in roll call vote) to avoid sending forward a negative recommendation.
Chairman Jennings called a 10-minutes recess. Meeting reconvened at 9:05 p.m.

RESOLUTION NO. HR-_____

A Resolution of the
Board of County Commissioners of Douglas County, Kansas (the "Board"),
Imposing Regulations and Criminal Penalties
on Owning and Possessing Vicious Dogs in Douglas County, Kansas

WHEREAS, K.S.A. 19-101a, *et seq.* provides the Board with home rule authority to transact all County business and perform all powers of local legislation and administration it deems appropriate; and

WHEREAS, consistent with its home rule authority, the Board has previously adopted certain regulations concerning animal control, which regulations are codified in Chapter II of the Code of Douglas County, Kansas; and

WHEREAS, the Board has the authority and desires to adopt additional animal control regulations, with such additional regulations applying within the city limits of any incorporated city within Douglas County, Kansas that consents thereto.

NOW THEREFORE, be it resolved by the Board that:

1. Adoption. The following is hereby enacted and adopted, to be added to the Code of Douglas County, Kansas as Article 5 of Chapter II (Animal Control):

ARTICLE 5. VICIOUS DOGS

2-501 FINDINGS. The Board of County Commissioners hereby finds that certain dogs, because of a combination of their physical attributes and disposition or training for aggression, fighting, or intimidation pose a clear and present threat to public safety in Douglas County, Kansas. Although relatively few in number, such dogs represent a threat to all persons of Douglas County, particularly those persons who can not protect and defend themselves such as children and elderly. Regardless of the procedures taken to confine such dogs, their mere presence in Douglas County creates an unacceptable risk to the public because such dogs may escape or be released at any time. Because of the clear and present threat to public safety, such dogs are found to be a public nuisance. As a result, the Board of County Commissioners hereby prohibits the ownership and possession of these dogs within Douglas County, Kansas and imposes related regulations, as set forth in this Article.

2-502 DEFINITIONS. As used in this Article, unless the context clearly indicates otherwise, the following words and terms have the following meanings:

(a) County Animal Control Director means the person employed by Douglas County and appointed by the Douglas County Sheriff to supervise and administer animal control rules and regulations.

(b) Court means the Kansas District Court and any county court that Douglas County may establish from time to time or, if the context requires, a judge, whether a District Judge, a District Magistrate Judge, Judge Pro Tem, a judge of any county court, acting in the judge's official capacity for the such Court, or any other judge authorized to hear cases arising under this Article.

(c) Law Enforcement Officer means any sworn law enforcement officer, whether of Douglas County or any city within Douglas County, or other person authorized, employed or elected to preserve peace, make arrests or enforce the law within the jurisdiction to which this Article applies.

(d) Own or Possess means a property interest in an animal, actual or claimed, or the exercise of dominion or control over an animal, or the intent to exercise dominion or control over an animal with the present ability to do so. Any person who keeps, harbors, controls, acts as a custodian of, or knowingly permits an animal to remain on or about any premises shall be deemed to Own or Possess the animal.

(e) Owner or Possessor means a person who Owns or Possesses an animal.

(f) Vicious Dog means any dog which,

(1) Kills a human being; or

(2) Inflicts Severe Injury to a human being through a sustained and vicious attack; or

(3) Has been trained to fight and possess physical attributes such as size, build, or bite strength to inflict Serious Injury to a human being; for this purpose, the following shall be presumed to have been trained to fight: (i) any dog involved in a staged fight, (ii) any dog exhibiting wounds or bodily disfigurements commonly associated with dog fighting, (iii) any dog found or kept on premises at which equipment is located that is commonly associated with training dogs to fight, and (iv) any dog found or kept with other dogs that (a) have been trained to fight or (b) are presumed to have been trained to fight; or

(4) Because of its disposition and physical attributes, such as size, build, or bite strength, poses a substantial threat to the life and safety of public safety and emergency response personnel (such as law enforcement officers, fire fighters and paramedics) who are seeking or may seek lawful access to any property in order to perform their duties; or

(5) Has the propensity, tendency or disposition to attack a human being without provocation and possesses physical attributes such as size, build, or bite strength to inflict Severe Injury to a human being.

Exceptions. Provided, however, that no dog shall be deemed or declared a Vicious Dog:

(6) Solely because it inflicted Severe Injury on a human being if the human being was, at the time the Severe injury was sustained, (i) assaulting the Owner of Possessor of the dog, provided the Owner or Possessor of the dog was not the aggressor, (ii) committing a willful trespass upon the premises of the Owner or Possessor of the dog, or (iii) provoking, tormenting abusing, or assaulting the dog, or can be shown to have repeatedly provoked, tormented, abused, or assaulted the dog at other times; or

(7) Solely because it inflicted Severe Injury on a human being if the dog was, at the time the Substantial Injury was sustained, (i) responding to pain or injury, (ii)

protecting itself, its kennel, its offspring, or its Owner's or Possessor's property, or (iii) protecting or defending another human being within the immediate vicinity of the dog from an unjustified attack or assault; or

(8) Is Owned or Possessed by a federal, state, or local law enforcement agency.

(g) Severe Injury means serious bodily injury, such as muscle tears, broken bones, serious disfigurement requiring corrective or cosmetic surgery, or serious impairment of any bodily function.

2-503 UNLAWFUL ACTS CONCERNING VICIOUS DOGS.

(a) Vicious Dogs as Public Nuisance. Vicious Dogs are declared to be a public nuisance and are hereby prohibited in Douglas County, Kansas.

(b) Ownership or Possession of Vicious Dog. It shall be unlawful to Own or Possess a Vicious Dog in Douglas County, Kansas. An Owner or Possessor of a dog that falls within the definition of "Vicious Dog" shall be strictly liable under this Section and a conviction shall not require proof of (i) any criminal intent, or (ii) the Owner's or Possessor's knowledge of any particular propensity, tendency or disposition of the dog. Each Vicious Dog Owned or Possessed in violation of this Section shall constitute a separate offense.

(c) Ownership or Possession of Dog following Conviction. It shall be unlawful for any person convicted of Owning or Possessing a Vicious Dog in violation of Section 5-102(a) to Own or Possess any dog, whether or not found to be a Vicious Dog, for a period of 3 years following the date of such conviction.

2-504. EUTHANIZATION OF VICIOUS DOG. If the Court finds, after hearing evidence, that any dog is a Vicious Dog, the Court shall, in addition to any other applicable penalties or remedies, order the County Animal Control Director cause the dog to be euthanized in accordance with applicable state euthanization laws. The Court may enter such an order as part of a criminal proceeding brought pursuant to Section 2-506 or in a separate civil proceeding brought for such purpose. Regardless of whether part of a criminal proceeding or civil proceeding, the standard of proof to determine whether the dog is a Vicious Dog shall be by a preponderance of the evidence. The Owner or Possessor shall be notified (at the Owner or Possessor's last known address) at least 5 days in advance of the date and time of any evidentiary hearing pursuant to this Section and may present contrary evidence at such hearing. The failure of the Owner or Possessor to attend or participate in the hearing, however, shall not prevent the Court from making an appropriate determination concerning the dog.

2-505 IMPOUNDMENT OF VICIOUS DOGS.

(a) Impoundment. When the County Animal Control Director or any other Law Enforcement Officer has probable cause to believe that any dog is a Vicious Dog, such officer may, in his or her discretion, take custody of the dog and impound it until such time as evidence shall be heard and a determination made as to whether the dog is a Vicious Dog; provided that if the Owner of Possessor of the dog is not known, the dog may be disposed of pursuant to other applicable law. The dog may be impounded at any incorporated humane society or other location that the County Animal Control Director permits and which is consistent with applicable state impoundment laws. A warrant may be obtained to allow the County Animal Control Director or

any other Law Enforcement Officer to go onto any property and take custody of any dog for which there is probable cause to believe is a Vicious Dog. In addition, the Court may, through its contempt power, compel the Owner or Possessor of any dog to produce it to the County Animal Control Director or any other Law Enforcement Officer. In the event any dog is found to be a Vicious Dog, the Owner or Possessor of such dog shall be responsible for payment of any expenses of impounding and keeping the dog pending disposition of the case.

(b) Discretionary Testing of Suspected Vicious Dog. Whenever any dog is impounded pursuant to this Section based upon probable cause to believe that the dog is a Vicious Dog under Section 2-502(f)(3) (dogs trained to fight with physical attributes to inflict Serious Injury), under Section 2-502(f)(4) (dogs with physical attributes to pose a substantial threat to the life and safety of public safety and emergency response personnel), or Section 2-502(e)(5) (dog's with the propensity, tendency or disposition to attack without provocation with physical attributes to inflict Serious Injury), the County Animal Control Director or any other Law Enforcement Officer may, in its discretion, cause any person who is knowledgeable in identifying dogs trained to fight, or who is trained or certified at evaluating animal temperament, including appropriate representatives of the Lawrence Humane Society, to examine the dog and render an opinion as to whether the dog is a Vicious Dog under Section 2-502(f)(3), Section 2-502(f)(4), or Section 2-502(f)(5).

(c) Unauthorized Removal of Impounded Dogs: Actual or Attempted. No person shall remove or attempt to remove a dog from the custody of the County Animal Control Director, any Law Enforcement Officer, or any animal shelter at which the dog is impounded, whether by force, threat, deceit or otherwise, when such dog has been impounded under the provisions of this Section or any other law, unless the County Animal Control Director or a court of appropriate jurisdiction expressly authorizes the release of the dog.

(d) Post-Impoundment Review. Within 10 days of impounding a dog pursuant to this Section without a warrant, the Court shall review documentary evidence substantiating the County Animal Control Director's or Law Enforcement Officer's probable cause to determine that the dog is a Vicious Dog. If the Court determines that the evidence is not sufficient to establish probable cause that the dog is a Vicious Dog and the dog's Owner or Possessor is known, the dog shall be released to its Owner or Possessor as soon as practical.

2-506 CRIMINAL PENALTIES. In addition to any applicable restitution, any person who violates the provisions of this Article shall be subject to the following penalties:

(a) Violation of Vicious Dog Provisions. Any person who Owns or Possesses a Vicious Dog in violation of Section 2-503(b) shall be guilty of a misdemeanor, punishable as follows:

(1) First offense, a fine, which shall be set at $500. The fine shall be mandatory and the Court shall have no authority to suspend the fine or any portion thereof. In addition, the Court shall have the authority to sentence the defendant to confinement in the county jail for a maximum of 90 days.

(2) Second offense committed within 5 years of a prior offense, a fine, which shall be set at $1,000. The fine shall be mandatory and the Court shall have no authority to suspend the fine or any portion thereof. In addition, the Court shall have the authority to sentence the defendant to confinement in the county jail for a maximum of 6 months.

(3) Third offense committed within 5 years of 2 prior offenses, a fine, which shall be set at $1,000. The fine shall be mandatory and the Court shall have no authority to suspend the fine or any portion thereof. In addition, the Court shall sentence the defendant to confinement in the county jail for a minimum of 30 days and a maximum of 6 months. The defendant shall be required to serve the minimum 30 day jail sentence and the Court shall have no authority to suspend the first 30 days of such sentence.

(b) Violation of Provisions Regarding Unauthorized Removal of Impounded Dogs. Any person who removes or attempts to remove a dog from the custody of the County Animal Control Director, any Law Enforcement Officer, or any animal shelter at which the dog is impounded, in violation of Section 2-505(c), shall be guilty of a misdemeanor, punishable by a fine in the amount of $1,000. The Court shall have no authority to suspend the fine or any portion thereof. In addition, the Court shall have the authority to sentence the defendant to confinement in the county jail for a maximum of 6 months.

(c) Violation of Other Provisions. Any person who Owns or Possesses a dog in violation of Section 2-503(c) or violates any other provision of this Article, shall be guilty of a misdemeanor, punishable by a fine in the amount of $250. The Court shall have no authority to suspend the fine or any portion thereof. In addition, the Court shall have the authority to sentence the defendant to confinement in the county jail for a maximum of 30 days.

2-507 PARTIAL INVALIDITY. If any provision of this Article or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are severable.

2-508 JURISDICTION. The provisions of this Article shall apply to the unincorporated areas within Douglas County, Kansas and, in addition, shall apply within the city boundaries of any incorporated city located within Douglas County, Kansas that adopts an ordinance or resolution or takes other formal action consenting to have this Article apply within such city's boundaries; provided, however, that any city's election to have this Article apply within such city's boundaries shall not, by implication, serve to repeal or invalidate any other animal control regulations otherwise applicable within such city.

2-509 SUPPLEMENTAL REGULATIONS. This Article is supplemental to other existing regulations concerning animal control and the adoption of this Article shall not serve to repeal or invalidate any such regulation.

2. Effective Date. This Resolution shall take effect and be in force from and after its adoption and publication once in the official County newspaper.

IN WITNESS WHEREOF, the foregoing Resolution was adopted this _____ day of _____, 2003.

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS:

_____
Bob Johnson, Chair

_____
Charles Jones, Member

_____
Jere McElhaney, Member

ATTEST:

_____
Patty Jaimes, County Clerk

ORDINANCE NO. _____

AN ORDINANCE PERMITTING THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS TO APPLY AND ENFORCE DOUGLAS COUNTY RESOLUTION NO. HR-____-____ WITHIN THE CITY LIMITS OF THE CITY OF _____

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF _____, KANSAS:

Section 1. Pursuant to K.S.A. 19-101a(a)(5), the City of _____ (hereinafter the "City") hereby consents that Resolution No. HR-____-_____ (relating to the regulation of vicious dogs within Douglas County, Kansas and imposing criminal penalties for the violation thereof) (hereinafter the "Resolution"), as adopted by the Board of County Commissioners of Douglas County, Kansas on _____, 2003, shall apply within the city limits of the City.

Section 2. The Sheriff of Douglas County, Kansas and said Sheriff's deputies and other agents are hereby expressly granted permission and jurisdiction to investigate and enforce violations or suspected violations of the Resolution within the city limits of the City.

Section 3. It is hereby declared the policy of the City that the City's law enforcement officers, animal control officers, and other agents shall jointly cooperate with the Sheriff of Douglas County, Kansas and said Sheriff's deputies and other agents in sharing intelligence, investigating, and enforcing violations or suspected violations of the Resolution.

Section 4. The provisions of the Resolution shall apply within the City in addition to all other City ordinances or regulations. Nothing in this Ordinance shall, by implication or otherwise, serve to repeal or invalidate any other animal control regulations otherwise applicable within the City.

Section 5. This ordinance shall take effect and be in force from and after its adoption and publication as provided by law.

ADOPTED by the governing body this _____ day of _____, 2003.

PASSED:

_____

_____**, Mayor**

ATTEST:

_____

_____**, City Clerk**