BOARD OF COUNTY COMMISSIONERS AGENDA
MIAMI COUNTY, KANSAS
Wednesday, January 22, 2020 | 1:00 p.m.

CALL TO ORDER AND OPEN CEREMONIES
- PLEDGE OF ALLEGIANCE
- ROLL CALL

PUBLIC COMMENT
The Board of County Commissioners encourages citizen participation in local governance processes. Making every effort to be in compliance with the Kansas Open Meetings Act (KSA 75-4317), you are invited to participate in today’s meeting. Speakers are requested to state their full name, address, and group affiliation, if any, before delivering any remarks. Speakers should limit their comments as to not exceed five minutes. Always speak from the podium, using the microphone. If documentation or material is presented to the Board of County Commissioners, please provide them to the Clerk for distribution and filing with the official record of the meeting.

CONSENT AGENDA
The CONSENT AGENDA is a single agenda item that can include multiple items previously reviewed and determined to be of a routine business nature. Items that are included as part of the CONSENT AGENDA will be voted upon under a single motion unless a separate discussion on any single item is requested by a Member of the Board of County Commissioners or a member of the public. If a separate discussion on any item is requested, it will be set aside for further consideration as part of the ACTION AGENDA.

1. Approval of minutes of the county commission meeting on January 15, 2019.
2. Approval of payment vouchers and payroll.

PROCLAMATIONS & PRESENTATIONS

ACTION AGENDA

1. LEASE—Consider signing a lease agreement for 100 acres at thirty-two dollars and sixty cents per acre for each tillable acre for a total of $3,260.00 annually for the production of hay.

2. 2020 ROAD REHABILITATION PROJECT AUTHORIZATION—Consider authorizing Project 20-02-CO (671) 2020 Road Rehabilitation projects.

3. RESOLUTION—Consider approving a resolution awarding the tax abstract services for years 2020 and prior to Security 1st Title of Paola, Kansas at the rate of $125 per parcel.

4. RESOLUTION—Consider approving a resolution rendering a decision to deny the annexation petition by City of Gardner, Kansas containing the city’s water treatment plant.

APPLICATIONS

REPORTS FROM STAFF, COMMITTEES, OFFICERS

COMMISSION COMMENTS
EXECUTIVE SESSION

ADJOURNMENT

Miami County does not discriminate on the basis of race, color, national origin, gender, religion, age disability, genetic information, or other circumstance prohibited by federal, state, or local law, rule, or regulation, including Title II of the Americans with Disabilities Act. A request for accommodation for a disability; or other assistance, should be made, if possible, at least 3 days in advance to County Counselor, David Heger @ 913-294-3914.
# MIAMI COUNTY

## STAFF REQUEST FOR COMMISSION ACTION

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<tr>
<th>SUBMITTED BY:</th>
<th>REQUESTED MEETING DATE:</th>
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<tbody>
<tr>
<td>David Heger</td>
<td>January 22, 2020</td>
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<td>× REGULAR MEETING</td>
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<tr>
<th>CONTACT INFORMATION:</th>
<th>PROJECT / REFERENCE NUMBER:</th>
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</thead>
<tbody>
<tr>
<td><a href="mailto:dheger@miamicountyks.org">dheger@miamicountyks.org</a></td>
<td></td>
</tr>
</tbody>
</table>

## AGENDA SUBJECT:
Lease Miami County Airport Land

## AGENDA SUBJECT BACKGROUND / DESCRIPTION:
Leasing approximately 100 acres at thirty-two dollars and sixty cents per acre for each tillable acre for a total of $3,260.00 annually. The agreement is for the production of hay. Farming equipment, machinery, supplies and bales of hay are not to be stored in the proximity of the runways or taxiways. Any damage to runways or taxiways by the tenant, his agents, servants, or employees, shall be promptly repaired by the tenant.

## REQUESTED ACTION / STAFF RECOMMENDATION:
Sign agreement for one year beginning November 1, 2019 and terminating October 31, 2020 with the right of automatic renewal for each succeeding year through October 2022 by tenant notify county of his intention to exercise his automatic renewal for following years.

## BUDGET IMPACT:

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<th>BUDGET REMAINING FOR THIS ITEM:</th>
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<tbody>
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<th>ITEM BUDGETED?:</th>
<th>CAPITAL PROJECT?:</th>
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<tr>
<td>#(#-###-###)</td>
<td>YES</td>
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<td>FISCAL REVIEW</td>
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<td>1/14/2020</td>
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<td>NPG Account Number:</td>
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<td>Mailed By:</td>
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<tr>
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AGREEMENT TO LEASE MIAMI COUNTY AIRPORT LAND

This Lease Agreement made this _____ day of January, 2020, between the Lessor, BOARD OF COUNTY COMMISSIONERS, MIAMI COUNTY, KANSAS, hereinafter called “COUNTY” and the Lessee, JEROD RYCKERT, hereinafter called “TENANT”.

RECITALS

I. The County is the owner of real property, as shown in Exhibit "A" attached hereto, located at the Miami County Airport, rural Miami County, Kansas.

II. Tenant desires to lease the land for the purpose of haying said land.

III. The parties intend that this agreement shall serve as the lease agreement, which defines their respective rights and obligations during the term of the lease.

SECTION ONE: TERM AND CONDITIONS OF LEASE

The County shall lease all acreage described in Exhibit 1 for a period of one year, beginning November 1, 2019 and terminating October 31, 2020, (with the right of automatic renewal for each succeeding year through October 2022) with said acreage (approximately 100 acres) being shown in detail in Exhibit 1, attached hereto and made an integral part of this agreement.

SECTION TWO: CLARIFYING STATEMENT

The primary purpose of the property described in Exhibit 1 is for use as a public airport, to-wit: Miami County Airport. Said airport is subject to numerous regulations and directives established through the years by various federal, state and local governmental agencies to protect the safety and welfare of the public. County makes no guarantee that it will protect lessee against any federal, state or county rules that presently or may be made during the life of this agreement.

It is understood by Tenant that the purpose of the land described in Exhibit 1 is primarily as a public airport/economic development site. All other uses are to take a position of lesser use, inferior and secondary to the primary purpose of the Airport/economic development site. The tenant must not and
shall not do anything while engaging in farming operations that will create a hazard to aviation, airplanes or aircraft owners or occupants. Farming equipment, machinery, supplies and bales of hay are not to be stored in the proximity of the runways or taxiways so as to constitute a hazard. Any damage to runways or taxiways by the tenant, his agents, servants, or employees, shall be promptly repaired by the tenant, and, if not so done, said work may be done by County and charged to tenant.

SECTION THREE: RENT AND PAYMENTS

THE UNDERSIGNED TENANT agrees to pay thirty-two dollars and sixty cents ($32.60) per acre for each tillable acre, with a total of 100 acres of land being leased for a total of $3,260.00. Any FSA base payments will accrue to tenant and not to County.

Rental payments shall be paid as follows during the term of this lease: annual rent shall be paid in full on or before April 30, 2020. Failure to pay the rent in full by April 30, 2020, 2021 and 2022 (if lease is renewed for 2021 and 2022) shall be cause for immediately terminating this lease.

SECTION FOUR: RIGHT TO POSSESSION

IT IS AGREED that the tenant shall have possession of all the acreage described in Exhibit 1 upon the signing of the agreement for the production of hay. Tenant shall bear all costs for farming above described land, including seeds, fertilizer, herbicides, noxious weed control and other associated agricultural costs. It is understood that the tenant will limit the use of said acreage to brome and the harvesting of hay.

SECTION FIVE: OPTION TO RENEW

IT IS AGREED that the tenant shall have the automatic option to renew this lease for two additional one year periods, provided that by September 15 of each year, tenant will notify County in writing of his intention to exercise his automatic renewal for the following year. If such notice is not given by said date, then the rights of the tenant shall terminate and all rights of the tenant under this agreement shall end. Tenant further agrees that if the renewal option is not exercised for the following
year, the County or successor tenant shall be entitled to immediate possession of the ground, subject only to tenant’s right to timely remove any remaining hay within thirty days.

SECTION SIX: RESTRICTIONS

IT IS AGREED that the property covered by this lease shall be used only for hay land and there shall be no pasturing on said tracts. No crops shall be planted other than hay. No hay bales shall be on the ground for a period of 30 days or more. No farming equipment shall be allowed upon the runways or taxiway at any time, not even for crossing purposes. Violation will fully terminate this agreement without recourse. Any damage done or caused by tenant, his agents, servants, or employees shall be the responsibility and obligations of tenant and at tenant’s own risk.

SECTION SEVEN: EARLY TERMINATION

IT IS FURTHER AGREED by the parties hereto that the County, prior to December, 2019, may have need for portions of the land being leased to tenant for economic development and/or airport expansion. In such cases, the acreage and rent thereof shall be reduced from the amounts owed by tenant to County.

SECTION EIGHT: ASSIGNMENTS/SUBLEASES

IT IS FINALLY AGREED that tenant shall not sublease/assign his rights hereunder without County’s written consent.

LESSOR:

BOARD OF COUNTY COMMISSIONERS
MIAMI COUNTY, KANSAS

LESSEE:

JEROD RYCKERT

______________________________
ROB ROBERTS, Chairman

______________________________
JEROD RYCKERT
MIAMI COUNTY
STAFF REQUEST FOR COMMISSION ACTION

SUBMITTED BY: Matthew Oehlert
REQUESTED MEETING DATE: Wednesday, January 22, 2020

DEPARTMENT: Road and Bridge
REQUESTED MEETING:
☒ STUDY SESSION ☒ REGULAR MEETING

CONTACT INFORMATION: moehlert@miamicountyks.org
PROJECT / REFERENCE NUMBER: 20-02-CO (671)

AGENDA SUBJECT:
Project Authorization for Project 20-02-CO (671) 2020 Road Rehabilitation

AGENDA SUBJECT BACKGROUND / DESCRIPTION:
Request Project Authorization for Project 20-02-CO (671) Road Rehabilitation at the following locations: Pressonville Road 327th to 287th-3" overlay 255th Street from Old KC Road to US 169 Hwy-patching, mill and 2" overlay, Old KC Road from 295th to K-68 Hwy-patching, mill and 2" overlay, Ringer Overpass west of bridge, FAS 490 west of bridge, and FAS 135 west of bridge.

REQUESTED ACTION / STAFF RECOMMENDATION:
Commission to authorize Project 20-02-CO (671) 2020 Road Rehabilitation projects.

BUDGET IMPACT:
$1,914,100

BUDGET AVAILABLE FOR THIS ITEM: $ BUDGET REMAINING FOR THIS ITEM: $

FUND / LINE ITEM TO BE CHARGED:
450-203-671

ITEM BUDGETED?: ☒ YES ☐ NO CAPITAL PROJECT?: ☒ YES ☐ NO

Matthew Oehlert
Digitally signed by Matthew Oehlert
Date: 2020.01.16 09:37:52 -06'00'

SUBMITTER'S SIGNATURE: 1/16/2020
DATE:
Miami County
Project Authorization Form

Department
Road & Bridge

Project Number
20-02-CO (671)

Project Type
Road Rehabilitation

Project Location
Various

Project Length
Various

Project Description:
Road rehabilitation for Project 20-02-CO (671) at the following locations: 3" overlay on Pressonville Road from 327th-287th; Patching, mill and 2" overlay on 255th Street from Old KC Road-US 169 Hwy; Patching, mill and 2" overlay on Old KC Road from 295th-K-68 Hwy; Ringer Overpass West of Bridge; FAS 400 located on Peoria Street 0.26 mile East of Lone Star Road west of bridge; FAS 135 located on 327th Street 0.1 mile East of Plum Creek west of bridge.

Project Schedule
Estimated Start Date
Summer 2020

Estimated Bid Letting
May 2020

Estimated Completion Date
Fall 2020

Consultant Selection
Project Completion

Project Budget Summary

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<th>Total Project Budget</th>
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<td>Road and Bridge</td>
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<td>$1,914,100.00</td>
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Attachments

- Project Budget
- Project Request for Proposals
- Project Scope Memorandum
- Project Map

- Project Aerial Photo

Approvals:

- Director of Road and Bridge (date)
- Finance Director (date)
- County Administrator (date)

Project Authorization:
Board of County Commissioners

Attest, County Clerk

Project Authorized this ______ day of ____________, 20____.
INTEROFFICE MEMORANDUM

TO: SHANE KRULL, MIAMI COUNTY ADMINISTRATOR
FROM: MATTHEW OEHLERT, PROJECT MANAGER
SUBJECT: 20-02-CO (671) 2020 ROAD REHABILITATION AND MAINTENANCE
DATE: 1/22/2020
CC: J.R. MCMAHON

Project Information: Asphalt road rehabilitation and maintenance at various locations for approximately 10 miles.

Project Scope: Locations and scope of work

- Pressonville Road between 327th Street and 287th Street – 3" SR-12.5 A surface coarse
- 255th Street between Old KC Road and US 169 Highway – Full depth patching / 2" milling / 2" overlay
- Old KC Road between 295th Street and K-68 Highway – Full depth patching / 2" milling / 2" overlay
- 327th Street west of Bridge FAS 586 (Ringer Overpass) – Concrete pavement extension @ 30’ / under drains
- 303rd Street west of Bridge FAS 490 (West of Paola) – Full depth patching / under drains / 2" milling @ 30’ / 2" overlay @ 30’
- 327th Street west of Bridge FAS 135 (east of Plum Creek) – Full depth patching / under drains / 2" milling @ 500’ / 2" overlay @ 500’

Utilities: N/A
## Miami County
### Project Authorization Form

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<td>Project Location</td>
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<td>Project Length</td>
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Total: 1,914,100
**BID ESTIMATE**

**Miami County, KS 2020 Road Rehabilitation Projects**

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**Notes:**
- Miami County forces to complete shoulder work after overlay completion
- 1" per feet (24") at bridge transitions
- Joints milled in at 3/16" per 10'
- 50' HMA transitions or "offsets" at road intersections

**TOTAL OF BID ESTIMATE FOR 2019 Asphalt Overlays....$ 1,839,100**
Staff Request for Commission Action

Request to be placed on the BOCC agenda meeting scheduled for: January 22, 2020

Item / Subject: Resolution awarding abstract services to Security 1st Title for delinquent real estate properties eligible for 2020 tax foreclosure action.

Submitted by: David Heger Date submitted: January 16, 2020

Contact Information:

Project Number: __________________________ Is this a Capital Project? □ Yes ☑ No

Item Description: A resolution awarding tax abstract services to Security 1st Title of Paola, Kansas for abstracting work on properties with delinquent real estate taxes for years 2020 and prior at the rate of $125 per parcel.

Action Requested: Approve the resolution.

Staff Recommendation: Approve the resolution.

Budget Impact:

Amount budgeted for item / project: $9,000

Fund / Line Item allocated: 90-80-2010

Budget allocation remaining for item / project: $9,000

Additional budget information / comments:
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<td>Signature of Reviewer:</td>
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<td>Signature of Reviewer:  Shane Bell</td>
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<td>Administrator's Recommendation:</td>
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<th>Action taken by BOCC on:</th>
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<tr>
<td>□ Accept      □ Deny     □ Acknowledge Receipt / Presentation □ Postpone</td>
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| Schedule for follow up / formal action on: |

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<th>Publication in Official County Newspaper required:</th>
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| If yes, item to be submitted for publication by: |

<table>
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<tr>
<th>Is Mail Distribution / submission required:</th>
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<tr>
<td>□ Yes □ No</td>
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| If yes, to be mailed by:                   |
RESOLUTION NO. R20-01-00

A RESOLUTION AWARDING ABSTRACT SERVICES FOR THE 2020 TAX SALE.

WHEREAS, the County Commission in Resolution No. R20-01-001 ordered the County Counselor to institute an action for a tax foreclosure sale on delinquent real estate within Miami County; and

WHEREAS, a bid was requested from Security 1st Title for the purpose of conducting title searches on those tracts of land for which delinquent taxes remain unpaid for tax year 2015 and all prior years for real properties within Miami County; and

WHEREAS, one bid was received January 14, 2020 from Security 1st Title - $125.00 per tract.

THEREFORE, IT IS RESOLVED BY THE MIAMI COUNTY COMMISSION that the bid of $125.00 per tract from Security 1st Title for abstract services for the 2020 tax foreclosure sale is accepted and that said abstract and title search shall be submitted to the County Counselor within thirty days of said title company being provided with a list of delinquent tax properties.

RESOLVED THIS 22ND DAY OF JANUARY 2020.

BOARD OF COUNTY COMMISSIONERS
MIAMI COUNTY, KANSAS

______________________________
ROB ROBERTS, Chairman

ATTEST:

______________________________
JANET WHITE, County Clerk

______________________________
DANIEL GALLAGHER, Chairman Pro-tem

______________________________
PHIL DIXON, Commissioner

______________________________
GEORGE PRETZ, Commissioner

______________________________
TYLER VAUGHAN, Commissioner

APPROVED AS TO FCRM:

______________________________
DAVID R. HEGE, County Counselor
Staff Request for Commission Action

Request to be placed on the BOCC agenda meeting scheduled for: January 22, 2020

Item / Subject: Resolution Rendering Decision on Gardner Annexation Petition

Submitted by: David Heger Date submitted: January 66, 2020
Contact Information: David Heger

Project Number: Is this a Capital Project? Yes No

Item Description: A resolution rendering a decision not granting the annexation petition from the City of Gardner to annex 20 acres containing the City’s water treatment plant.

Action Requested: Approve the resolution.

Staff Recommendation: Approve the resolution.

Budget Impact:
Amount budgeted for item / project:

Fund / Line Item allocated:

Budget allocation remaining for item / project:

Additional budget information / comments:
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RESOLUTION NO. ____________

A RESOLUTION RENDERING A DECISION TO DENY THE ANNEXATION REQUEST BY THE CITY OF GARDNER, KANSAS.

WHEREAS, Miami County, Kansas is a county government, the County Commission is the governing body of said County, and

WHEREAS, pursuant to K.S.A. 12-521(a), a petition for annexation of the following described tract of land was filed with the Miami County Clerk the 25th day of October, 2019, by the City of Gardner, Kansas, with the petition including a service plan, an aerial photo of said tract of land, a map of the current boundaries of Gardner, maps showing land use patterns and zoning for the tract of land and current appraisal information:

The North 20 acres of the West ½ of the Southwest ¼ of Section 30, Township 15, Range 23, Miami County, Kansas, except that part in roads, commonly known as 22705 South Moonlight Road, Miami County, Kansas.

WHEREAS, Resolution # 19-11-042 was adopted November 27, 2019, scheduling a hearing within 60 to 70 days of receipt of the petition pursuant to K.S.A. 12-521(b), before the County Commission on said petition for December 27, 2019 and notice of the hearing date was provided to the City of Gardner through the City Attorney and public notice of the public hearing was published in the Miami County Republic on December 18, 2019; and

WHEREAS, the public hearing was heard on December 27, 2019, with the City of Gardner providing a history of the proposed annexation site, a memo regarding the 14 factors to be considered by the Commission pursuant to K.S.A. 12-521(e) and documentation of 9 comparable island annexations by cities within Miami County; and

WHEREAS, witnesses in behalf of Gardner including Gonzalo Garcia, Utilities Director for Gardner, John Mitchell, Project Expansion Manager for Burns & McDonnell and Ryan Denk, City Attorney spoke in behalf of the annexation request and answered questions from members of the Commission; and

WHEREAS, three members of the public Tom Bach, Bill Osborn and Fred Fraley, all from rural Spring Hill, Kansas, spoke against the proposed annexation, and

WHEREAS, the hearing and public comment session was continued to January 8, 2020, so as to allow any additional documents or comments to be addressed to the Commission, prior to the Commission closing the public hearing; and

WHEREAS, on January 8, 2020, the public hearing was reopened and Chairman Roberts noted that the County Clerk’s Office had received additional documents since December 27, 2019, including letters of support from Rural Water District # 2, Miami County and Water District # 7, Johnson County, written report and exhibits from Mr. Garcia, Gardner Utilities Director, providing additional information regarding comments and questions from the December 27, 2019 public hearing; a memo from Shane Krull, County Administrator addressing 12 additional island annexations in the County that were not cited by Gardner’s report from the previous meeting, and letters from William Osborn and Jan Pringle opposing the annexation; and
WHEREAS, Mr. Osbom reviewed his letter to the Commission and noted that the 12 people who had signed the letter opposing the annexation were opposed to the annexation request and not to Gardner’s proposed expansion of the water plant at the proposed site; Larry Medlin voiced disapproval of the annexation request; Mr. Denk and Mr. Garcia answered questions from the previous hearing and from the Commission as well as providing reasons why the annexation should be approved; and

WHEREAS, at the end of the public hearing, the hearing was adjourned sine die with the Commission to render a decision to grant or deny the annexation petition on January 15, 2020 and make written findings thereon;

WHEREAS, at the regularly scheduled Commission meeting, of January 15, 2020, the Commission proceeded to consider Gardner’s annexation request and noted that they had the opportunity to review all documents and letters presented to the Commission at the two public hearings and to review the minutes and the comments by both Gardner and public representatives at the two meetings; and

WHEREAS, Commissioner Roberts informed the Commission that he had a number of comments to make and that after he had finished, each of the other Commissioners would have an opportunity to comment and state reasons why the annexation petition should be either granted or denied; and

WHEREAS, the following findings of fact are derived from written documents and letters and oral comments from both advocates and opponents of Gardner’s annexation request.

1. The City of Gardner, Kansas is the owner of the North 20 acres of the West ½ of the Southwest ¼ of Section 30, Township 15, Range 23, Miami County, Kansas, except that part in roads, with an address of 22705 South Moonlight Road and the City maintains a water treatment facility at said site and has done so since 1996 pursuant to a Conditional Use Permit granted by Miami County to Gardner in 1996 that allows solely for water treatment facilities at the site.

2. The facility was expanded in 2005 with County approval, increasing the facility’s capacity to 4.0 MGD, with said treated water being transported to Gardner via an 18” transmission line and Gardner filed a request with the Miami County Planning Department on December 23, 2019 to amend the CUP to allow expansion to allow for an additional 3 MGD to be treated at the facility. A public hearing on said request will be heard by the Miami County Planning Commission on February 4, 2020. The site plan submitted by the City indicates that the entire 20 acre tract, which is platted, will be utilized for water treatment facilities and ponds.

3. While there is no agricultural use at the site, the zoning and uses for surrounding properties on Moonlight Road are agricultural and rural residential. There are no public utilities or transportation links on the 20 acre site and the common interest to the City of Gardner is that the water treatment facility currently provides potable water to the 21,000 plus residents of Gardner and with expansion will meet ever increasing demands for water for Gardner and surrounding areas.

4. There are no residents on the 20 acre site and none are anticipated in the next five years.

5. There are no businesses, commercial or industrial developments at the site or in the immediate surrounding area.

6. The City of Gardner is responsible for the costs for maintaining the water treatment facility and for additional and future costs of expanding and maintaining the facility. There are no
plans to extend additional government services to the site other than the water facility extension.

7. As the land is owned by City of Gardner, there will be no tax impact on the City of Gardner or in the surrounding area requested to be annexed.

8. Residents of the surrounding area are not dependent on Gardner for governmental services.

9. Whether or not the site is annexed will not have effects on other cities, sewer and water districts, improvement or industrial districts or fire districts.

10. There are no existing petitions for incorporation as a new city or creation of a special district.

11. There is no likelihood for significant growth in the area requested to be annexed but the likelihood for significant growth in adjacent areas within the next five years is unknown at this time.

12. No utility services to the area are provided by Gardner and water utility services to the City of Gardner will not be effected as long as the City maintains it CUP.

13. Comments from adjoining or neighboring landowners that were received in either spoken or written form by the Commission at the two public hearing on December 27, 2019 and January 8, 2020 expressed opposition to annexation of the 20 acre site by the City of Gardner, but not to the water plant, due to a lack of oversight and regulation of activities on the proposed 20 acre site by the County, intrusion by the City of Gardner into a long established rural area and lack of any services or benefits that would be afforded by the City to the surrounding area.

WHEREAS, all commissioners commented upon the annexation issue and their comments are reflected in the minutes of the January 8, 2020 Commission meeting and the minutes are attached hereto; and

WHEREAS, Commissioners Roberts, Vaughan, Gallagher provided written notes as to whether they supported or opposed annexation of the aforesaid 20 acres of land and said written comments are attached; and

WHEREAS, a motion was made by Commissioner Roberts to grant Gardner’s petition because he believed that Gardner had met the statutory requirements pursuant to K.S.A. 12-521 for annexation; and

WHEREAS, the motion to grant was second by Commissioner Dixon; and

WHEREAS, Chairman Roberts ask for an oral vote on the motion to grant the petition and Commissioners Roberts and Dixon voted in favor of the resolution and Commissioners Pretz, Gallagher and Vaughan voted no;

WHEREAS, the motion to grant Gardner’s petition to annex aforesaid tract of land, having failed to obtain 2/3 support of the Commission, it is the judgment and order of the County Commission that the annexation petition of the City of Gardner, Kansas is hereby denied.

IT IS HEREBY RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI COUNTY, KANSAS that the City of Gardner’s annexation request having failed to obtain approval by two-thirds of the County Commission as required by K.S.A. 12-521 (d), it is the judgment and order of the County Commission that Gardner’s annexation request is denied.
IT IS FURTHER RESOLVED BY AFORESAID BOARD that the County Clerk shall send by certified first class mail a copy of this resolution to the City of Gardner, Kansas.

RESOLVED THIS 22ND DAY OF JANUARY, 2020.

BOARD OF COUNTY COMMISSIONERS
MIAMI COUNTY, KANSAS

ATTEST:

BONNIE "ROB" ROBERTS, Chairman

JANET WHITE, County Clerk

DANIEL GALLAGHER, Chairman Pro-tem

APPROVED AS TO FORM:

PHIL DIXON, Commissioner

DAVID R. HEGER, County Counselor

GEORGE PRETZ, Commissioner

TYLER VAUGHAN, Commissioner
Gardner Annexation

The City of Gardner’s petition to annex its water treatment facility located at 22705 Moonlight Road came as quite a surprise. The city met with the county’s professional staff in February 2019 to determine what would be needed to expand the facility. At that time, the county’s planning staff did not believe the expansion was significant enough to require an update and modification to the existing conditional use permit #96011-CUP (issued in 1996) other than to update the site plan and provide an updated stormwater plan.

The city, at that time, had planned to move forward with building plans to submit to the county building department. However between Feb 2019 and October 2019 the city never submitted any request to the county planning dept. In October, the City of Gardner submitted a petition to annex the water treatment facility. In late November/ early December county staff learned, from complaints by several local citizens at a county commission meeting, that construction was already taking place at the treatment facility without permits, thus a Stop Work Order was issued. City utilities staff contacted the Building Codes Director and questioned the Stop Work Order. It was at that time that these city staff members learned the annexation was still pending approval by the Miami County Commission.

In December, Gardner’s planning staff requested certification from Miami County planning staff that the existing water treatment facility was in compliance with the 1996 CUP. After further review by Miami county planning staff it was determined that the cumulative expansions from both 2005 and the current proposed expansion, was substantial enough that the CUP “did” need to go through the public hearing to update the CUP. Miami County Staff contacted Gardner planning and building officials to inform them of the change in plans, and the City staff agreed that the CUP did indeed need to be amended, and the city staff quickly submitted an application to Miami County Planning for an Amendment to the original CUP which is now scheduled to be heard by the Miami County Planning Commission on February 4, 2020. This process could have been started in Feb 2019 and it would have been completed long before the city needed to start construction.

The city stated at a public meeting on Dec. 27 2019 their request for annex was primary based “foreseeable delays in the CUP PROCESS and cost associated with permitting and that their belief that Miami County did not have the capacity or staffing qualified to fulfill the needed inspection or plan review process. In fact Miami County does have the staff needed to perform these tasks. However the city had 8 + months to start and complete this process THE DELAY IS OF THERE OWN MAKING. At no point known to myself did the city request the county commission to consider waiving any fees associated with this project. Miami County has already issued building permits for the work that was stopped in Nov/Dec. Miami county staff is currently reviewing another set of plans for another section of building project so the city is not delayed in construction.

Should the BOCC grant this request for annex then the current C U P and all of the conditions Miami County has in place would be transferred to the city of Gardner planning dept. for oversight and administration. This property was approved in 1996 for the city of Gardner’s water treatment plant, it is currently operated and managed by the city staff and regardless of the outcome of this request it will continue be operated by the Gardner, all of its day by day operations will controlled by the city.

Choosing to petition the county for an approval for an island annex some 6 + miles away from the city limits and in another county has caused our elected officials to ask if this type of out of county annexation has been done anc where? It is still an unanswered question.

Burns & MacDonald and CAS Construction are well known firms and are very well respected industry leaders. Most likely, Burns & MacDonald and CAS Construction have completed thousands of projects similar to the Gardner’s expansion. With their vast experience, any concerns raised by Miami County’s plan review process would be easily resolved. As a point of clarification the Gardner water treatment because it is owned by the city does NOT pay any property taxes.
The action of the board of county commissioners shall be quasi-judicial in nature. The board of county commissioners shall consider the impact of approving or disapproving the annexation on the entire community involved, including the city and the land proposed to be annexed, in order to insure the orderly growth and development of the community. The board shall make specific written findings of fact and conclusions determining whether such annexation or the annexation of a lesser amount of such area causes manifest injury to the owners of any land proposed to be annexed, or to the owners of land in areas near or adjacent to the land proposed to be annexed or to the city if the annexation is disapproved. The findings and conclusions shall be based upon the preponderance of evidence presented to the board. In determining whether manifest injury would result from the annexation, the board's considerations shall include, but not be limited to, the extent to which the following criteria may affect the city, the area to be annexed, the residents of the city and the area to be annexed, other governmental units providing services to the area to be annexed, the utilities providing services to the area to be annexed, and any other public or private person, firm or corporation which may be affected thereby:

(1) Extent to which any of the area is land devoted to agricultural use;

None of the land is Ag, currently it’s a water treatment plant

(2) Area of platted land relative to unplatted land;

The entire parcel is platted

(3) topography, natural boundaries, storm and sanitary sewers, drainage basins, transportation links or any other physical characteristics which may be an indication of the existence or absence of common interest or the city and the area proposed to be annexed;

The city currently has an existing 6.5 miles of water line from this site to the city
Water distribution system and a 2 miles of intake raw water line from Hillsdale lake to the Treatment plant

(4) Extent and age of residential development in the area to be annexed and adjacent land within the city’s boundaries;

There is no residence on this parcel

(5) Present population in the area to be annexed and the projected population growth during the next five years in the area proposed to be annexed;

There is no one living on this property. This property is dedicated entirely as a water treatment plant NO development NO GROWTH ON THIS PROPERTY

(6) The extent of business, commercial and industrial development in the area;

There is no business, commercial or industrial on this parcel and none is planned

(7) The present cost, methods and adequacy of governmental services and regulatory controls in the area;

The property is currently under an approved CUP with Miami County, should the property be approved for annexation it will be placed under a CUP with the city and the current conditions Miami County has on the property will transfer to the city
The city has testified there is NO additional costs to them because it’s been in operation under the city as a water treatment plant for years. In addition the city stated they are working with rural water districts 7 and 2 to install
interconnects to improve water availability to the entire region during high demand period of time. Letters were received from both water districts that verified the ongoing conversations

(8) the proposed cost, extent and the necessity of governmental services to be provided by the city proposing annexation and the plan and schedule to extend such services;

Since this property is owned and operated by the city as a water treatment plant there is no need for extension of services. The surrounding properties is in Johnson county rural water district #7 distribution territory. The entire area is has fire protection provided by Johnson fire district #1 out of Springhill KS

(9) Tax impact upon property in the city and the area

There is no property taxes collected from this property it is tax exempt

(10) Extent to which the residents of the area are directly or indirectly dependent upon the city for governmental services and for social, economic, employment, cultural and recreational opportunities and resources;

Since no residential property is being proposed thus this issue is not applicable

(11) effect of the proposed annexation on the city and other adjacent areas, including, but not limited to, other cities, sewer and water districts, improvement districts, townships or industrial districts and, subject to the provisions of K.S.A. 12-521a, and amendments thereto, fire districts;

The approved annexation in Gardner’s opinion allows them to expedite the approval process and save their citizens the cost of the Miami County permit processing. No other city is effected either way. Other regional water producers will have access to an improved supply of water though system interconnects during high demand periods or in the event of a regional water emergency. Gardner stated there is no known impact on any other city, fire district industrial district or township

(12) Existing petitions for incorporation of the area as a new city or for the creation of a special district;

There is NO known petitions for incorporation for a new city

(13) Likelihood of significant growth in the area and in adjacent areas during the next five years; and

Gardner stated there is no possibility of any population growth in area of the proposed annexation site since it is reserved in its entirety for the city’s water treatment plant.

Miami County received written and verbal testimony from citizens who live in and around the area the city has requested to annex. There written testimony focused on quality of life, property values, county oversight vs city, potential loss of revenue from the fees that are associated with plan review/permit process, lack of any value added services or explicit benefits the city would be bring to the area and implications of future intrusions by the city of Gardner including continued annexation demands.

Some comments regarding these concerns.

Rob Roberts
The city has operated this plant for twenty years we know of no known impact on any individual’s life styles or how this plant has changed the way of life in the region.

Yes if the annexation if approved the oversight for the construction and C U P process will be handed over to the city planning staff, if that is done the county will provide the city with the list of current conditions applied to this property by Miami County planning commission and the Miami County commissioners some 20 years ago with the understanding that the city will continue the same level of enforcement Miami County has Provided.

The city has addressed the required service expectations to the property to be annexed there are no service requirements defined in the annexation state law for any of the property that surrounds the annexation property.

Yes Miami County would lose out on fees that would normally be collected on a project like this.

This is the first time the city of Gardner has applied for annexation of property in Miami County. From evidence presented to the county from the city we find nothing that would indicate any further demands for annexation. The testimony by city stated this is a 40 year plan, beyond that I am confident the entire region will look different in 40 years.

In an effort to come to, some conclusion regarding the adjacent areas let’s examine what impact a water treatment plant operated by the city of Gardner has had on the adjacent areas over the last 20 years

Question has Miami County received any complaints from any local resident about the operation of this plant ....

1. On occasion the city will need to dredge the water settlement ponds and the departing trucks have left significant mud and debris on moonlight road. The county has plans to chip seal a portion of moonlight and the city of Gardner is paying for it. The money has been received by the county

2.

Question has the adjacent property increased or decreased in value during the time Gardner has operated this plant...

(14) Effect of annexation upon the utilities providing services to the area and the ability of those utilities to provide those services shown in the detailed plan.

Water is already provided to this site by the city of Gardner. The plant has its own Miami county approved wastewater treatment system exclusively for this site. Electricity is provided by Evergy. No other utilities are needed

How does annexation request impact fire protection for this property?

The property is served by fire district # 1 Johnson out of Springhill and no changes are planned. The city of Gardner is served by the same fire district # 1 of Johnson.
Debbie Oehlert

From: Tyler Vaughan
Sent: Wednesday, January 15, 2020 9:21 AM
To: Debbie Oehlert
Subject: FW: Gardner Annexation talking points

Please print

From: Tyler Vaughan
Sent: Wednesday, January 15, 2020 5:58 AM
To: Tyler Vaughan <tvaughan@miamicountyks.org>
Subject: Gardner Annexation talking points

1. From the beginning of the process Gardner ignored the process for island annexation and made no attempt to work with the BOCC. No spirit of cooperation nor did Gardner show a willingness to partner

2. Gardner started work without a permit based on the assumption they didn't need one to move forward

3. several land owning citizens oppose Gardners annexation

4. as a county we need to listen to our citizens and do what is best for Miami County.

5. The current CUP is not flawed and has worked fine for over 20 years.

6. there is no material evidence of hardship to the City with the current arrangement.

7. Points from Kansas Statute 12-521

   a. based on point (5) "Present Population in the area to be annexed and the projected population growth during the next five years in the area proposed to be annexed". This specific area is one of the areas in discussion in our comp plan review. The next five years will bring change in the NW and NC part of the county and we have not yet defined what that will look like.

   b. based on point (13) "likelihood of significant growth in the area and adjacent areas during the next five years". Again this area of the county is under consideration for "whats next" int he near and long term and I don't feel it is

The preponderance of evidence from the neighboring residents and the actions leading up to this public hearing reflects all the reasons why I will not approve an island annexation.
From Miami County Commissioner Danny Gallagher

In consideration of the proposed annexation of the Gardner water plant by Gardner, the following is what I have thought much about. I have studied the Kansas statutes that pertain to this particular parcel of ground, studied why Gardner is asking for the annexation and also why most of the landowners are against this annexation.

Kansas Statute 12-520c clearly states that only land within the county of said city can be annexed. By this statute, Gardner can only annex within Johnson County.

Then Kansas Statute 12-521 says that if a city cannot annex using the previous statute - Kansas Statute 12-520c, then it might be possible to use this next statute – 12-521. It says under 2c:
"The board of county commissioners shall consider the impact of approving or disapproving the annexation on the entire community involved, including the city and the land proposed to be annexed. The board shall make specific findings of fact and determine if such annexation causes clear injury to the owners of the land to be annexed – which is Gardner - or to the owners of land near or adjacent to the proposed land to be annexed. The findings and conclusions shall be based upon the greater evidence presented to the board. In determining whether clear injury would result from said annexation, the board’s consideration shall include, but not limited to, the criteria of 1 – 14 of Statute 12-521. I want to focus on the words “but not limited to”. The following are the facts that I have concluded to be true:

1. Rights of area Landowners - If annexation is granted to Gardner, the current CUP or Conditional Use Permit that Miami County has on this property is then sent to Gardner. Gardner can then change this CUP without the area residents having any power to have any say on what the new CUP says. The area landowners lack any representation during this possible process.

2. Gardner does not need to annex this property to enlarge their operation. Gardner representatives have said many times that they have had no issues with Miami County planning and zoning department. We, Miami County Commissioners, have also said many times that we encourage and support the expansion of this water plant.

3. The expansion is being built in rural Miami County so it only makes sense that as the expansion is being built of this water plant, that it is to the betterment of Miami County to know how and what is being built. I can’t say this strong enough that the more expert eyes looking at a project, the better.

So considering these facts, I can say that Miami County and it’s residence would bear more burden because of the proposed Gardner annexation. I will vote NO on this annexation by Gardner.