

## **MEETING OF THE BOARD OF COUNTY COMMISSIONERS**

### **REGULAR MEETING**

**November 26<sup>th</sup>, 2008**

The Regular Meeting of the Board of the County Commissioners of Sedgwick County, Kansas, was called to order at 9:00 A.M., on Wednesday, November 26<sup>th</sup>, 2008 in the County Commission Meeting Room in the Courthouse in Wichita, Kansas, by Chairman Thomas G. Winters, with the following present: Chair Pro Tem Tim R. Norton; Commissioner David M. Unruh; Commissioner Kelly Parks; Commissioner Gwen Welshimer; Mr. William P. Buchanan, County Manager; Mr. Rich Euson, County Counselor; Mr. David Spears, Director, Bureau of Public Works; Mr. William P. Buchanan, County Manager; Ms. Catherine Young, EMSS Office of the Medical Director; Mr. Glen Wiltse, Director, Sedgwick County Department of Code Enforcement; Mr. John Schlegel, Planning Director; Mr. Chad VonAhnen, Director, CDDO; Ms. Marilyn Cook, LSCSW, Executive Director, COMCARE; Ms. Monica Cissell, Department on Aging; Ms. Kristi Zukovich, Director, Communications; and, Ms. Evelyn Good, Deputy County Clerk.

### **GUESTS**

Mr. Russ Ewy, Baughman Construction

Mr. Victor White, Director of Airports, City of Wichita Airport Authority

Mr. Devon McBride, USDA Wildlife Biologist, 1323 Nottingham Circle, Wichita, KS 67204

Mr. Kent Bush, Publisher, Derby Reporter

### **INVOCATION**

The Invocation was led by Pastor Rusty Westerfield, Countryside Christian Church, Wichita

### **FLAG SALUTE**

### **ROLL CALL**

The Clerk reported, after calling roll, that all Commissioners were present.

**Chairman Winters** said, "Next item, please."

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**PRESENTATION**

**A. PRESENTATION OF EMSS CREDENTIALING CERTIFICATES.**

**Dr. Catherine Young**, EMSS Office of the Medical Director, greeted the Commissioners and said, “And we are here today to honor these individuals who have completed the process for System Credentialing. System Credentialing demonstrates to the citizens of Sedgwick County and to the medical community an individual’s continued competency in the ability to deliver pre-hospital care. This process involves a background check, a written exam, and demonstration of patient assessment and treatment skills, and in the case of advanced providers, demonstration of advanced skills in a clinical setting. Successful completion of the credentialing process demonstrates these individuals commitment to excellence. And so Mr. Bob Lamkey and Major John Friesen are going to help me hand out certificates. Mr. Ricardo Bernal, EMT Basic. Congratulations.”

**Mr. Ricardo Bernal** said, “Thank you.”

**Ms. Young** said, “Mr. Mike Buchanan, Paramedic; Mr. Dustin Goetz, EMT Basic; Mr. Barry Guinn, Paramedic; Mr. Steve McDaniel, Basic; Mr. Randy Pike, EMT Basic; Miss Tracy Relph, EMT Paramedic; Mr. James Rogers, EMT Basic; Mr. Michael Sanchez, EMT Paramedic; Mr. Don Shauf, EMT Paramedic; Mr. Brent Smith, EMT; Mr. Caleb Yoder, EMT Paramedic.

Thank you very much. These individuals, this was a very long process and they really put a lot of work in to it and demonstrated a great deal of excellence. Everyone in our system will be going through this and will re-go through it every four years. We really intend to demonstrate competency and be accountable to the medical community and citizens of Sedgwick County. So thank you very much.”

**Chairman Winters** said, “Thank you, Dr. Young. We’ve got a couple of comments up here. I would just begin by thanking Dr. Young and John Friesen; I know that you both do a lot of training as a continuous part of your jobs. And also, certainly on behalf of the Board of County Commissioners, I want to say congratulations to all of you men and women who have taken this course in the past and just now completed, will be taking it again.

We are involved in so many different activities at Sedgwick County that it is sometimes amazing from roads and bridges to aging to mental health to physical disabilities, but I think one of the things that the Commissioners have continued to have a great deal of concern, pride, respect for are the men and women who keep our public citizens as safe as possible. And you all, who respond on the first responder units, have a critical job and we are very proud of the

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work that you do, and we are proud of the continuous training that you go through to make you more proficient in what you do.

Couple weeks ago we recognized a number of our staff who have completed various training functions in the management of their departments and in their management skills. Today we certainly want to thank you for your continued learning in how to keep people alive when they are in threatening conditions, so congratulations to all of you who received certificates this morning. Commissioner Parks?"

**Commissioner Parks** said, "I just wanted to add a little bit to what Commissioner Winters said here in that each EMT person that's out there that gets their continuing education, is so vital in a lot of departments, we have certain things that certainly not, like the accountants that has a new accounting practice or something like that, this is science, and these aren't just seat-warming courses that they go through, as I would call it when I was a department head, these are tested. These are tested and they are scientific and medical. I just can't thank the employees and administration enough. I know that's hard work and I know you'll continue to do that, but that's part of that lifesaving function out there in one of those essential functions that we provide. So thank you so much."

**Chairman Winters** said, "All right. Thank you. Again, thank you all for being here this morning. Commissioner Norton has a comment."

**Commissioner Norton** said, "I think we owe them a round of applause. We hadn't done that and I think we ought to give them... Just one comment. It wasn't too many years ago when we were having real consternation about EMS, and how that was performing and how the system worked. We came to some conclusions that certifications and taking it to the next level was going to be very important to creating a system that delivered the highest and best care to all of our citizens. And I really applaud this group for taking that on and understanding that increasing your skills and retesting and certificating is what makes this a great organization. I appreciate the hard work. That's all I have."

**Chairman Winters** said, "All right, thank you all again for your work, and thanks for being here this morning. Madam Clerk, would you call the next item?"

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**DEFERRED ITEM**

- B. A RESOLUTION TO THE SEDGWICK COUNTY CODES AMENDING CHAPTER 6, ARTICLE II AND ADDING ARTICLE X, PROVIDING FOR THE PERMITTING PROCESS AND LICENSING OF CONTRACTORS ENGAGED IN THE BUSINESS OF MOVING CONVENTIONALLY-BUILT STRUCTURES; ESTABLISHING DUTIES AND RESPONSIBILITIES FOR CONTRACTORS ENGAGED IN STRUCTURE MOVING; AND ESTABLISHING PENALTIES FOR VIOLATIONS OF SUCH DUTIES AND RESPONSIBILITIES.**

**Mr. Glen Wiltse**, Director, Sedgwick County Department of Code Enforcement, greeted the Commissioners and said, “What you have here is a new resolution that entails when people want to move a house what the procedures are. Currently the procedure is that they get a moving permit from the Clerk and the house, in many cases, will end up on the property prior to us even knowing about that house going there.

There is many things that have been to be looked at prior to that. Wastewater system, water well, locations, flood plain, let alone how they are going to get it from one location to another, will the roads and bridges support the move of this type of house. What we’ve done is put a lot of our existing regulations in one document that requires the house moving contractors to either send the house owner to us to have us do a pre-inspection on the home, or have an engineer do the pre-inspection and then there would be a list compiled of what it would take to bring it up to today’s codes and standards and to see if it was actually structurally sound to even move. Like I said, the majority of these rules are already in place, they are just not an easy place to find.

What we’ve done, we’ve met with the Home Builder Association, we’ve met with the, sent out notices to all the known house-moving companies. I’ve had conversations, we’ve actually modified what we originally had put together, and to the best of our knowledge, even though some people may not like to be regulated, they have agreed, I think, with what we have in place for you to look at and potentially to adopt today. If there are any questions, I would be more than welcome to try and answer those.”

**Chairman Winters** said, “All right, thank you, Glen. I think Glen did come around and visit with us a few weeks ago about, each one of us about this Resolution. Commissioner Welshimer?”

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**Commissioner Welshimer** said, “Well, I don’t remember if we talked about this, but is there a, what’s the fee, what is the extra cost...?”

**Mr. Wiltse** said “We require like a \$50 license fee, and we already have the pre-inspection fee in another Resolution, which it is like \$100, that covers the inspectors time to go look, there is a fee, if the home, if it is actually out of our county, we charge mileage plus an hourly rate.”

**Commissioner Welshimer** said, “So about \$150 more than...?”

**Mr. Wiltse** said, “It is actually \$50 a year for that license. All the other permits are already in place for building permits, wastewater permits, all that stuff is already in our current Resolution.”

**Commissioner Welshimer** said, “And this is the mover himself?”

**Mr. Wiltse** said, “Right.”

**Commissioner Welshimer** said, “Okay, thank you.”

**Chairman Winters** said, “Commissioner Norton?”

**Commissioner Norton** said, “How many licenses or permits would be pulled in a year right now?”

**Mr. Wiltse** said, “Honestly, I would think probably no more than three or four licensed contractors at the most. Just kind of depends. We have two that are, one local, one out of county that moves some homes right here. Occasionally there’s a company around the Kansas City area that comes in. They primarily move new homes, so those are already looked at in a different way as compared to the existing homes themselves.

As far as permits go, potentially homes, we probably don’t have three to five a year, but most of those end up being somewhat of an issue. They may have been moved prior to us knowing, or there is issues with the house when it gets there.”

**Commissioner Norton** said, “So we are not talking at a volume of incidents at all?”

**Mr. Wiltse** said, “No.”

**Commissioner Norton** said, “Okay. That’s all I have.”

**Chairman Winters** said, “Thank you. Commissioner Unruh?”

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**Commissioner Unruh** said, “Thank you, Mr. Chairman. Well, Glen, I think in your presentation you made one comment that reflects my personal perspective on this and that is, I don’t like to be regulated. However, I think that you’ve gone through the necessary steps to make sure that this is agreeable to most of the parties involved, and it is for the good of a public, public safety, and so I am going to be supportive of this whenever it is moved for a vote.”

**Chairman Winters** said, “Thank you. I guess I could have said too, early on, one of the reasons I think that Glen started thinking about this, we had an incidence of a contractor in the rural part of the county moved a house into a neighborhood that was out in the county, but there were a lot of houses in this neighborhood, moved the house in, and then made no real effort to dig the foundation, set the house on a foundation, and complete the project. So one of the things that this ordinance will do is make sure that before a house is moved in there’s preparation and the whole project will be completed, instead of leaving the house up on blocks, setting in a neighborhood. And this will prevent that, or at least help”

**Mr. Wiltse** said, “Yes.”

**Chairman Winters** said, “Okay. Are there any other questions or comments? Thank you, Glen, thank you Commissioners.”

**MOTION**

Commissioner Norton moved to approve the Resolution

Commissioner Unruh seconded the motion.

There was no discussion on the motion, the vote was called.

**VOTE**

Commissioner Unruh	Aye
Commissioner Norton	Aye
Commissioner Parks	Aye
Commissioner Welshimer	Aye
Chairman Winters	Aye

**Chairman Winters** said, “Thank you, Glen.”

**Mr. Wiltse** said, “Thank you commissioners.”

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Chairman Winters said, "Next item."

**PLANNING DEPARTMENT**

- C. **CON2008-00047 SEDGWICK COUNTY CONDITIONAL USE FOR MINING/QUARRYING (SOIL EXTRACTION); GENERALLY LOCATED SOUTH OF 55<sup>TH</sup> STREET SOUTH AND APPROXIMATELY ¼ MILE WEST OF TYLER ROAD (DISTRICT 2).**

**POWER POINT PRESENTATION**

**Mr. John Schlegel**, Planning Director, greeted the Commissioners and said, "In this particular case the applicant is seeking this conditional use to allow mining and quarrying with the ultimate objective of excavating fill material from this property and creating an excavation site or ponds totaling about 31 acres in size out of a 74 acre tract. The intent in doing this ultimately is to allow for the development of home sites around this site, around this excavation. You can see the zoning of the site is SF-20 currently, surrounded by similar zoning to the north and to the east, to the south and to the west of the site, it is rural residential zoning.

Going to the aerial photo, you can see the land use characteristics of the surrounding area, predominantly agricultural in nature with a scattering of farmsteads in the vicinity of this site. The site is within the urban growth area of the City of Wichita, and ultimately sometime out in the future we anticipate that this area will develop further.

You can see on the site plan that I put up in front of you now, the excavation area with the access coming off 55th Street, and the, least the preliminary design for home site development around the water feature.

What the major point of contention with this particular case has been the concern by the airport, the Mid-Continent Airport, oops, went too far. With this site being about three miles off the, this southern runway approaches to Mid-Continent, that they are concerned with the potential that this water feature would create for attracting water fowl and with the potential, then, that those water fowl would have for creating bird strikes as planes go in and out of Mid-Continent.

The applicant, MAPD staff and the applicant were supplied with a Federal Aviation Administration Office Advisory circular, having to do with hazardous wildlife attractants on or near airports, which spells out the FAA's standards or guidelines for these type of water features around airports.

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The MAPD's staff recommendation was for denial of this application based on the concerns raised by the airport. When this item went before the Metropolitan Area Planning Commission at its meeting on October 23rd, there were no citizens or neighbors that appeared to speak either for or against the case. However, there were representatives from the airport that appeared at that public hearing to voice the opposition of the airport to allowing this excavation to occur on this property. They voiced their concerns similar to what's pointed out in the FAA circular about the potential for this type of water feature to attract birds and to create bird strike potential for air craft.

There is a great deal of discussion band and forth back and forth between the planning commissioners and the airport representatives on various aspects of the airport's recommendations and the MAPD's staff recommendation, but ultimately the MAPC did vote 9 to 2 to recommend approval of this application subject to the conditions that were recommended by staff with the exception of one condition, which condition had to do with compliance with that FAA circular.

Since the MAPC action, the airport has sent us a letter asking to appeal the decision of the MAPC to this Board, that's why it's before you today. The airport staff that sent the letter did this at the direction of the Wichita Airport Advisory Board.

However, that particular appeal does not have an effect on your vote today, it does not require super majority for you to approve this based on that appeal, so an approval, if you are to uphold the Planning Commission recommendation, which would just require a simple majority vote. If, however, you choose today to deny the application, that will require a two thirds majority vote to do that.

There are representatives from the airport here today that have asked to speak with you briefly about some of their concerns on this. The applicant and his representatives are also here today. With that, I will be glad to take any questions you might have at this time."

**Chairman Winters** said, "All right, thank you John. Commissioners, we will ask for some comment, does any Commissioner have a question or comment before we start that process? Commissioner Norton?"

**Commissioner Norton** said, "John, on this map that you've got in front of us here, would you show us exactly where on this map where it is, maybe draw a circle or put an x or whatever? So from my perspective, it does not exactly line up with the runway, its offset to the east from the exact flight path?"

**Mr. Schlegel** said, "Correct. Just a tad off to the east."

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**Commissioner Norton** said, “That’s all I have for right now Mr. Chair.”

**Chairman Winters** said, “All right. Commissioner Parks?”

**Commissioner Parks** said “You said something about the when the Metropolitan Planning made their decision of 9 to 2, that this was part of the FAA condition to that vote, is that what you said earlier? That they approved it 9 to 2 with the condition of this overlay?”

**Mr. Schlegel** said, “No. They approved it with all the recommended staff conditions with the exception of one condition which we had recommended based on the airports recommendation that that condition would require compliance with that FAA circular regarding hazard mitigation around airports.”

**Commissioner Parks** said, “Okay.”

**Mr. Schlegel** said, “So that condition was left out of the MAPC action.”

**Commissioner Parks** said, “I think I am ready to hear from both parties.”

**Chairman Winters** said, “All right. It is the official public hearing for this takes place at Metropolitan Area Planning Commission, but it has always been this Commission’s tradition to listen to folks who want to address the Commissioner on this kind of cases. So we will do that this morning. We would like to limit comments to five minutes if we can, and I would ask if the applicant or someone supporting this application would like to make a comment, we’ll have those who want to support it go first if they choose to do that, if they want to make a comment, this would be the time they can do it. All right. Come forward Mr. Ewy.”

**Mr. Russ Ewy**, Baughman Construction, Agent for Applicant, greeted the Commissioners and said, “With me also is Earl Mies of Mies Construction, potential operator of the site. Really don’t have a lot of comment at this point. I think the representatives of the airport probably have a lot more to say than I do.

I would just like to point out and summarize a lot of the comments that we made in support of the application last month at the Planning Commission meeting, and that is, I think we all agreed that this advisory circular, that we’re going to hear so much about today, has a wonderful intent. It is obviously a public safety policy. It should not be necessarily overlooked, but I think what we found in looking at it, the longer we looked at it, the more we found it is simply overreaching and it has certain flaws as you apply it to certain land use cases such as this.

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I think one of the arguments that we made, one of the issues that we wanted to point out as we know this area is already inundated periodically with large surface water. This particular property, as I believe one of John's slides briefly showed, the site at the time the Planning Department took their pictures was already underwater, quite frankly, already an attraction to migratory birds. So we feel by adding this 30 acre pond, if you will, that we would not significantly attribute to the increased migration of birds to this area. We feel that the entire area is an attractant to birds in the first place.

Second and probably the most pertinent issue for us is that this is a broad reaching policy. As we found in discussions with the airport, as we found reading through this advisory circular, there really is no middle ground. There is no mitigation, there is no compromise position that we could reach. It is all or nothing. And we found that, if you look at this map, for example, this would impact any expansion of the Zoo or County Park to increase their water surface. Any new residential subdivision would be potentially opposed by the airport for its development. Any industrial or commercial development of a sufficient size to warrant onsite detention would, again, be opposed under this policy.

I think one of the things we found at the end of the Planning Commission meeting was that there was a need for further study, that there was a need in the future to sit down and craft out a policy that can be applied to these specific land use decisions. And we welcome that in the future. For this particular issue, we feel that the airport addressing our conditional use for this particular site is very arbitrary.

It wasn't long ago that I was standing before you getting approval of the exact same request within this halo. We didn't see that opposition at that point, so we feel that first off, we don't feel this request will have an appreciable impact. Second, we really feel that this may be an undue beginning point, I guess, for the airport to address this land use issue. With that, I'll stand for any questions that you may have at this point."

**Chairman Winters** said, "I do see a question. Commissioner Parks?"

**Commissioner Parks** said, "Russ, you said you've done everything that you could possibly do for the Airport Authority, did they have a request for some rip rap around the pond area to prevent nesting or something that had been requested?"

**Mr. Ewy** said, "Excuse me. We did address a few of those items and I think we did show willingness at that point to work with some of those minor site issues to ensure that we are not planting materials around the pond that would enhance its attractiveness to birds. There are certain things, mainly rip rap as you mentioned, that could potentially be a site designed feature that would help mitigate that.

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I think what we found, in discussing with the airport people, under friendly terms I might add, just that it doesn't limit the scope. We couldn't cut the pond size in half to get their blessing, it was an all or nothing proposition. So I think Mr. Mies would entertain looking at site improvements that would help try to go as far as possible to help mitigate that."

**Commissioner Parks** said, "Thank you."

**Chairman Winters** said, "All right. Thank you very much Russ, I don't see any other questions at this time."

**Mr. Ewy** said, "Thank you."

**Chairman Winters** said, "All right. Is there anybody here in opposition representing the Airport Authority? I see Victor White, yes, please come forward."

**Mr. Victor White**, Director of Airports, City of Wichita Airport Authority, greeted the Commissioners and said, "First I would like to apologize that I wasn't supposed to be the one to give this presentation, my Assistant Director, Brad, who just walked past, is our wildlife and bird expert, but he conveniently lost his voice this morning. So if you will forgive me, I will read to you what he was going to tell you, and I will do my best."

Also today we have following me, if you will allow me, we have Mr. Devon McBride, the USDA Wildlife Biologist assigned to the airport in this area to help us monitor and control the bird situation that we have.

I would like to thank the Commission and Planning Department staff for the opportunity to provide our comments this morning on the conditional use permit. After we speak, hopefully you will allow us to take some questions as well.

The decision of the MAPC to approve the permit was rendered in spite of the recommendation for denial by both the Planning Department's staff and the airport staff. Now, subsequent to that, the recommendation of the Wichita Advisory Board, the Wichita Airport Authority, who is also the Mayor and City Council, filed this appeal to you all on November 5th. We filed this appeal, the Airport Authority does, as the owner of land directly affected by this application, and then further as a policy rather than a legal matter, the Airport Authority represents almost 2 million passengers and pilots who fly over this particular property on an annual basis.

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The authority does not oppose soil extraction, per se, or any other future compatible development on the tract. However, as the applicant has stated, there would be approximately 31 acres of water retention that would create aboveground standing water associated with the project.

This tract is located beneath the extended center line of the runway, approximately 3.1 nautical miles from the approach end of the west runway, which is runway 1, sorry, the east runway, runway right, and slightly east of the center line about 2.6 miles from the approach end of runway 1 left.

Now, we have conservatively estimated that aircraft approaching to land on either of these runways will cross over the tract at approximately 1,000 feet above ground level. It is our determination that the project, if permitted to go forward as designed, would create a manmade wildlife habitat and an attractant that may create an undue hazard to aircraft approaching and departing Mid-Continent Airport.

For this reason the Airport Authority is opposed to the application as presently presented, and by the subsequent approval of MAPC, and the conditions recommended by the MAPC for the permit do not address the concerns of the Airport Authority.

Legally the Airport Authority is bound and compelled to comply with Title 14 of the Code of Federal Regulations Part 139, and Federal Grant Assurances under the airport in the way of Proven Act of 1982 and the federal government. The FAA has thus promulgated this advisory circular, that you heard mentioned earlier, to discuss issues of hazardous wildlife attractants on and near airports.

In the documents it states that airports that have received federal grant and aid assistance must use these standards. Therefore, the Airport Authority, as the owner and sponsor of Mid-Continent Airport, is obligated to the federal government to conduct planning and monitoring of land uses around the airport, and make recommendations to local government agencies, regarding compatibility of these land uses with the airport and air space.

Some of the possible consequences, where the Airport Authority's failure to adequately monitor and protect the safety of our surrounding air space, could be individually or collectively some of the following: potential for increased hazard aircraft crews and passengers and persons on the ground associated with an increase in wildlife activity around the airport; revocation or suspension by the federal government of the commercial operating certificate for Mid-Continent Airport; loss of some or all of our future federal grant and aids to the airport or repayment to the federal government of approximately \$139 million that we have received over the past 20 years in federal grants to the airport.

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So we ask the Board to consider the following documented and local statistics with respect to bird activity on and near airports. Since 1988, over 195 fatalities have resulted, and these are nationwide statistics, as a result of bird strikes at airports. Since 1990, 16 fatalities involving general aviation and 29 fatalities involving military aircraft and bird strikes. Since 1990, commercial aircraft have recorded over 1,300 incidents in which engine damage occurred as a result of bird strikes, and 60 of which involved damage to two engines or more.

Bird and other wildlife strikes cost U.S. Civil and military aviation..."

**Chairman Winters** said, "Excuse me, that has been five minutes, but I want to we want to hear what you have to say, so go ahead..."

**Mr. White** said, "There is just a little bit more."

**Chairman Winters** said, "Go ahead and finish."

**Mr. White** said, "Bird and wildlife strikes cause U.S. civil and military aircraft over \$700 million a year in this country, and from 1990 to 2007, there were 82,000 reported bird strikes on aircraft in the U.S. In 2007, there was 7,600 bird and wildlife strikes reported in the U.S. Seventy eight percent of those bird strikes have occurred below 1,000 feet above ground level.

Now, the North American non-migratory Canada goose population has increased from approximately 1 million in 1990, to 3.5 million in 2006, which is a 350 percent increase. At Mid-Continent Airport, we recorded 56 bird strikes in the five year period between 1999 and 2003, and 96 bird strikes between 2003 and June of this year.

So I am here today representing the Airport Advisory Board and the Airport Authority, both of whom have asked us to ask you to approve the appeal, but to deny the permit to the applicant, and we respectfully request that you adopt the findings that were originally recommended by the Planning Department staff in its staff report. And as I said, Devon McBride of the USDA is here as well to answer any questions, make a few comments too, if you will allow that."

**Chairman Winters** said, "Certainly. Are there any questions of Victor? Yes, Victor, we have a question here. Commissioner Parks?"

**Commissioner Parks** said, "I guess this would be as good a time as any for me to talk about my ex parte order before I ask Victor his question. My ex parte contact with was with an appointee, my appointee to the Airport Advisory Board, Tom Pryor, who I was asking some questions to, and hopefully this got back to you that, at this point, at 55th and Tyler, the air space that is used by general aviation and commercial aviation, what are those rules and how high are those planes coming in?"

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**Mr. White** said, “Brad, do you have the pointers you can show them on the map? What we’ve done, I think we’ve got the right one here. On the aerial photograph, Brad has marked the runways extended down this direction and then some reporting points for where aircraft are required to report in for final approach fix and the middle marker and outer marker, things of that nature, and as they are approaching the airport on either of those two runways, naturally when they are landing, they are lower and closer to the ground than they would be if they are taking off to the south.

Landings from the south to the north are the most critical in our view because the planes are closer to the ground and lower over this particular parcel. If they are flying an instrument approach, they would be following very specifically a straight line. However, during visual flight conditions or other tower or radar control, they may ask them to turn in closer so they’re not necessarily always following a straight line, depends on the particular circumstances going on at any given moment as far as the air traffic conditions. But we did figure that they are about a 1,000 feet above the ground, about a 3 degree slope from the runway going out towards the approach points. Does that answer your question, sir?”

**Commissioner Parks** said, “That answers the question on the aircraft, I guess I’ll wait for maybe the biologist to tell me how high geese can fly.”

**Mr. White** said, “Okay. Devon?”

**Commissioner Parks** said, “Thank you.”

**Chairman Winters** said, “All right. Please come forward and give your name and address for the record, please.”

**Mr. Devon McBride**, 1323 Nottingham Circle, Wichita, KS, 67204, greeted the Commissioners and said, “I have a few pictures of the site if you would like to submit those.”

**Chairman Winters** said, “Sure. Just bring them up, hand them to Commissioner Welshimer and she’ll pass them down the row.”

**Mr. McBride** said, “Those are taken in the past couple weeks. I am an airport wildlife biologist with the U.S. Department of Agriculture in the Kansas Wildlife Services Program, and through Memorandum of Understanding with the FAA, they ask us to assist airports with wildlife related issues and also clarify some of the different guidelines and compliances that they might have to deal with.

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I worked closely with the Mid-Continent Airport staff on wildlife related issues and they have asked me to comment on this case and I guess the mining and soil extraction that is associated with this case that has been approved with the 31 acre body of water that we were talking about, and in this area around the airport, that would be substantially large, one of the largest water bodies in the vicinity of the airport, and has the potential to attract large numbers of migratory water fowl, in particular Canada geese.

And I have, I guess, some population numbers and trends of what has been seen on Canada geese in this area. The population has continued to increase through the years and the study's done by the Kansas Department of Wildlife and Parks in collaboration with Friends University began in 1983 where they started looking at the wintering population of geese, they noticed that the population was increasing. There is two separate populations here, the resident geese that no longer migrate and stay in the area, and then the wintering population, that in turn, is growing because of this growing resident population, attracting additional birds.

The numbers have gone from 1,600 geese in Wichita with this January survey, that's been taking place ever since 1983, to a high count of 41,564 last year, and generally the count in the past 15 years is between 12,000 and 25,000 with this winter count, but this high number could be a sign of things to come, and part of this is attributed to the increase in resident goose population, where several of these displaced birds from the cities, there's still plenty of birds, Canada geese in the city, but a lot of those like to travel outside into the suburban landscape in search for large water bodies in that area.

But these birds have chosen, they have forgone their historical migration patterns and have chosen Wichita as their permanent home. They are a real problem because the hatched birds, Canada geese in general, when hatched, they have an affinity to the site they were hatched in, and they generally return to that area that they have been reared to mate on their own, so in turn you end up with a lot of extra geese in the same area if left unchecked.

But surveys done by KDWP, they started in 2003, in each June period surveyed to look at resident geese, and those numbers have gone from 1,106 to 2,899 in the past year, and they jumped 600 birds each of the past two years which is an increase of more than 25 percent in the resident population each of the past two years, and commonly the main species of Canada goose, sub species, is the maxima sub species, and they commonly weigh over 12 pounds. Most aircraft design standards require that an aircraft be able to withstand a strike with a four pound bird. Some of those standards have moved up to eight pound birds, either way you look at it, with a bird of this size, you are still looking at the potential for catastrophic strike if it were to occur.

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And with this project in the 31 acre water body, it is tough to predict the impact that it alone may have in the area. Water body this size definitely has the potential to increase the numbers of migratory and resident birds that may use the area and become a wildlife hazard risk for Mid-Continent Airport.

Also the cumulative effects of additional manmade water bodies in the area just continue to increase the possibility and the probability of wildlife strike potential in the Wichita area would increase. It is Mid-Continent Airport's responsibility to address and mitigate wildlife hazards when they arise, and I guess at some point our commitment to the air safety and the safety of the flying public has to be addressed. That's all, I guess, we would be ready for questions now."

**Chairman Winters** said, "All right. We do have questions. Commissioner Parks?"

**Commissioner Parks** said, "The rock that would go around the inside of the pond, how would that affect, is that basically for nesting or what is that for, and how would that impact this?"

**Mr. McBride** said, "That would mainly deter nesting and that would be a benefit in any situation or any pond that was developed or if it could be added later at other ponds. But, yes, that is generally a deterrent for nesting. They don't like to walk through the rocks to come back down to the water. On a body of water this size they'll just fly in, but they are not comfortable walking down the rock banks, that's why they are generally recommended around ponds."

**Commissioner Parks** said, "Thank you."

**Chairman Winters** said, "All right. Are there other questions of Mr. McBride? Commissioner Welshimer?"

**Commissioner Welshimer** said, "If they put rock around this pond, that would alleviate the problem or reduce it?"

**Mr. McBride** said, "It could reduce the nesting population, but as far as alleviating birds using the water body, it would have a minimal impact in that aspect."

**Commissioner Welshimer** said "Are there any other land uses that come second to the lake, I mean, come second to the water as far as wildlife is concerned?"

**Mr. McBride** said, "From a hazard standpoint?"

**Commissioner Welshimer** said, "Yeah, a hazard standpoint."

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**Mr. McBride** said, “Generally crop production in the vicinity of airports is a big concern that we have, as well as the large water bodies.”

**Commissioner Welshimer** said, “So if they planned at this site to wheat or soybeans, or something like that, that would create a hazard as well?”

**Mr. McBride** said, “It would create a feeding area. A lot of these areas, especially southwest Wichita, the water bodies, the geese will spend their time on the water, and then each morning they will head out to feed in the wheat fields, and cross the flight paths in this general vicinity and then spend their time feeding and loafing there, then return back to the water in the evening.”

**Commissioner Welshimer** said, “Okay, thank you.”

**Chairman Winters** said, “Commissioner Unruh?”

**Commissioner Unruh** said, “Thank you. Can you gauge which is a higher attractant, grain or water?”

**Mr. McBride** said, “Well, water would be the highest attractant.”

**Commissioner Unruh** said, “And why is that?”

**Mr. McBride** said, “Just by that being, I guess somewhat of a residence for the birds. They use the fields and cross the flight paths to feed, but they always come back to the water and that’s their general habitat that they spend the majority of their time.”

**Commissioner Unruh** said, “Okay, thank you.”

**Chairman Winters** said, “Is there anyone else from the Airport Authority that wants to speak on this issue? Well, I have a question, and Mr. McBride, I don’t know if it’s for you or perhaps Mr. White, but one of the things that, when I look at this GIS map that the County has, it’s behind your map, it looks like there’s an awful lot of water in the area, and I live about four miles west of the airport, so I think those 41,000 geese live in our neighborhood, I mean, there is a lot of geese in our neighborhood.”

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So I guess my question is, in the scheme of things, this doesn't seem like a very big project. In the amount of water that is in the big ditch, the amount of, all of the sand pit extractions that have gone on both the east side and the north end of the airport, it just seems like there is a lot of water out there now. And I don't know what kind of question that is, except it doesn't seem like this is a significant amount in comparison to what's already there."

**Mr. McBride** said, "You are right. There is a lot of water out there. It is tough to gauge how one more water body will affect the entire population. I guess I would expect to see goose populations continue to increase as additional water bodies and other habitats show up, and eventually the population will get to a point where it will have to be dealt with in some other manner.

The airport is required, I guess, to respond and work with land owners, work with neighboring land owners, and, especially on their own property, they do everything they can to alleviate the water and alleviate wildlife hazards. They have contracts with neighboring land owners to remove Canada geese and other birds from the area and push them further from the airport. You are right, there is plenty of water out there, and there are always going to be habitats, but I guess you just have to look at starting somewhere to begin reducing the threat of protecting air safety at the airport."

**Chairman Winters** said, "Thank you. Commissioner Welshimer?"

**Commissioner Welshimer** said, "But is there any regulation going on that prevents crops?"

**Mr. McBride** said, "Within the advisory circular, it advises against it. It reads as an advisory to the general public, but through grant assurances that Mid-Continent Airport receives, it becomes law to them, so they have to abide by that, and that's what asked them to comment on projects such as this, but, yes, there are recommendations to eliminate wildlife attractants, including crop production within five miles of the airport."

**Commissioner Welshimer** said, "It's reasonable to assume that if this, if we don't allow this to become a lake, from soil extraction, then it will be planted to crop."

**Mr. McBride** said, "As it is currently, I would guess that that would continue to occur, yes."

**Commissioner Welshimer** said "Thank you."

**Chairman Winters** said, "Commissioner Unruh, did you have another comment?"

**Commissioner Unruh** said, "No, you didn't turn it off."

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**Chairman Winters** said, "Commissioner Parks?"

**Commissioner Parks** said, "It appears that the pictures you provided today were wheat, and the geese don't normally get on the wheat during this time of year and other things, do they?"

**Mr. McBride** said, "Yes, they'll use that to feed. It would have to be up a little taller than where it is right now generally."

**Commissioner Parks** said, "Well, I guess that's the difference between restaurant preferences. I would think a goose would want to get into the uncut milo field."

**Mr. McBride** said, "With restaurant preferences, I guess, they generally tend to go back to the places they like."

**Commissioner Parks** said, "I have a question of Schlegel when we get to that point."

**Chairman Winters** said, "I think we are ready. John, would you come back up?"

**Mr. Schlegel** said, "Yes sir?"

**Commissioner Parks** said, "Mr. Schlegel, are there any other projects, that you know of, like this that have required the rock around the area to minimize the nesting of, particularly Canadian geese and other water fowl?"

**Mr. Schlegel** said, "I can't think of any other cases where we made that a condition approval, no."

**Commissioner Parks** said, "One thing that the biologist said here that, about a grant also, and I don't know who needs to answer this question, but they are looking at building a new or adding or doing some remodeling at the airport, and maybe Victor can address this, is this something that, he said the advisory becomes law, and I certainly don't want to be one to stand in the way of progress of building a new airport if we had some potential for some federal grants out here or something, can you kind of tell me a little bit about that?"

**Mr. White** said, "The point of that is that we have received in the past, almost \$140 million in grants for the airport over the last 20 years. Each time you take a new grant, you are obligating yourself for another 20 year period to follow all the FAA guidelines, federal rules, regulations and statutes and so forth."

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And so I think that's the point, is the FAA has the ultimate lever against us, if we fail to take any action on our part to advise you all of circumstances such as this, then the FAA can come back to us and say you did not do what you said you would do when you took your last grant. So we are here today to advise you that we have a concern, we've identified an issue and you may or may not be able to do anything about it, but I think we have the obligation to tell you that.

And it is not likely, I think in my opinion, in my 30 years plus experience in this business, that the FAA would come down on us that strictly on this particular case, if you fail to or if you go ahead and work the permit, but we have to tell you that, that there is a concern.

We do have a bird problem at Mid-Continent Airport today and we have had for some years. My Board wanted to make sure that you all understood that, yes, there is an awful lot of water in the vicinity of the airport and has been for quite some time and that in the past, for whatever reasons, before my time and even since I have gotten here, we have not come before you all before to protest. But the Board said, you know, how much is too much.

At some point we have to say, okay, we are aware there is a problem, it is not getting any better, and we want to present that fact to you, so that you are aware of that and start an educational process and hopefully future applicants will be aware that we are serious from now on about this kind of an issue and will work with the planning staff. And I think it was mentioned by the applicants representative earlier that one of the things we have committed to do is, from now on, we are going to start a study and do some real investigation of what can we do for the future, and some of that may go back to some existing land issues.

Other reports I have worked at, when we have had significant water problems, and some of you may know, I came up here from Florida, and at the last airport, there was an awful lot of water in Florida on airports, and it is a fact of life, because storm water management is a big deal in Florida, so the FAA was always conflicted with its own regulations and its own advisory circulars and guidance of saying on the one hand, you can't have water on or near airports within a five mile radius of runways, but yet, you have to comply with State law, which requires you to put ponds for storm water runoff and so forth. So, we down there had to come up with schemes and mechanisms to try to mitigate the situations, and it meant such things as having to put essentially fishing wire, a nylon string, across your ponds to keep the birds from actually landing on the water. Those are very expensive to put in and terribly difficult to maintain over time, but they do work.

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And there's such things as, that we already implement here. We have with Devon and our own crews, we scare birds, we chase birds, we shoot at birds. We even have federal permits for deprivation, to take certain species of birds under certain circumstances. So there is a number of different things that we can do and I think what we are committing to do, is to investigate further, we may have to bring in specialty consultant to look at the area, the environs around the airport and say, identify the other ponds that are already there and what things can we do. And we may not be able to do anything. I mean, the land is already developed. It's out there. But we have to try something.

The federal documents that exist for pilot information all have a statement in it that there are migratory birds on and in the vicinity of this airport. And so, it is a fact, it does exist. And we just try to do everything we can to minimize the further increase of bird populations."

**Commissioner Parks** said, "Victor, would it be safe to say that if they had agreed to put rock around this 31 acre pond that you wouldn't be here today?"

**Mr. White** said, "You know, I don't know if that is, in fact, I'm not the expert by any means on mitigation measures. Anything would help. We realize that 31 acres is a huge area to put rocks around. I sit on the Board of my homeowners association and we struggle with rock and rip rap issues all the time for little bitty ponds. It's expensive, so I'm not sure how you could practically do 31 acres of rip rap."

**Commissioner Parks** said, "That was the main concern of the Airport Advisory Board?"

**Mr. White** said, "Absolutely."

**Commissioner Parks** said, "This nesting and..."

**Mr. White** said, "Yes, sir."

**Commissioner Parks** said, "...imprint of the birds back there.

**Mr. White** said, "And that's why the Board felt so strongly, they voted 11 to 2, I think there were a couple of abstentions, for us to file this appeal. The Airport Authority agreed as well that now is the time, even though, shame on us for never having come before you previously to protest any of these, but this time we have. And we probably will the next time if it happens again."

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**Commissioner Parks** said, “Well, I guess I would, at this point say that I’m a property rights kind of guy and I believe that you should be able to do with your property what you want to. And my appointee to the Airport Board is also, but he’s also a pilot. And he felt strongly about this too, that there were some safety issues around that and he came away with the assumption that if there had been a little rock around there, that there might have been a different vote from the Airport Advisory Board.”

**Mr. White** said, “I think that, my observation is that most of our Board would probably agree with you in the sense that we hate to do anything that deprives someone of their property rights. But at the same time, they’re balancing that out against the public welfare of the millions of people who are flying in and out of the airport every year and the obligation that we all have in that particular arena to protect those folks as best we can.”

**Commissioner Parks** said, “Certainly. Thank you.”

**Chairman Winters** said, “Thank you. Commissioner Norton?”

**Commissioner Norton** said, “Victor, on the 56 and 96 bird strikes, what happened? How many of them were critical incidents that were close to bringing a plane down or just went through the...?”

**Mr. White** said, “I’ll ask Devon to answer that. He’s better equipped.”

**Mr. McBride** said, “With the bird strikes, they estimate 20 percent of actual bird strikes were reported, but with our Mid-Continent strikes, we’ve been lucky and haven’t had any significant damage at the airport. I mean, there’s been minor damage in several instances and the majority of the instances; it’s just bird remains or bird remains found on the aircraft or pilot reports. In Topeka last year they had a \$445,000 bird strike, or ingested a bird into an engine and lost the engine. And that’s happened in several surrounding airports, but we’ve been lucky to avoid any ingestions as to this point.”

**Commissioner Norton** said, “Okay. Wind shears and inclement weather compared to bird strikes, which is more threatening? That may not be your question, that may be Victor’s.”

**Mr. McBride** said, “I don’t have an idea.”

**Mr. White** said, “That’s a tough question. I don’t think I have an answer for it either. Bird strikes, I think, have historically, and the record would show, created more accidents than the wind shears and total numbers of fatalities, but don’t quote me on that. That’s just my recollection.”

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**Commissioner Norton** said, "Okay. On your runways, you have three different runways, is that correct?"

**Mr. White** said, "Yes, sir."

**Commissioner Norton** said, "And they're used going both ways depending on the prevailing winds?"

**Mr. White** said, "Yes, sir."

**Commissioner Norton** said, "Okay. How often do you land coming north on runway 1?"

**Mr. White** said, "That is a smaller percentage of the time than from north to south because our prevailing winds are southerly, except in the winter time, when you find that mostly we're taking off and landing from the south to the north. I think on a year round percentage... Brad, do you have any specific percentage on that... I'm going to say that the south to north is probably 40 percent of the time, it's less than half. And as I mentioned earlier, when they're landing, they're lower. Conversely, when they're taking off from north to south, they're climbing out as fast as they can and high as they can. If they were going straight, they might be at 4, 5, 6,000 feet above this particular parcel, if they're headed southbound. But landing from south to north is the most critical phase."

**Commissioner Norton** said, "Okay. I guess my concern is, if you look to the north along Spinnaker Cove and that whole corridor there, any time that you would land from the north in the winter, there's a huge amount of water that you're passing over. I mean huge. If you compare it to a 31 acre lake, that's a drop in the bucket compared to what's north of the runways, at least runway 1.

I'm also concerned that if you look along K-42 and Cessna properties, there are lakes in the Big Ditch that is a huge amount of water. I don't know which runway kind of runs across the two other runways, I don't know the numbers, but that one looks like it would create a flight path problem from all that water to the east there. Am I correct?"

**Mr. White** said, "You are correct. The Cessna ponds are kind of in the crotch between the runways. They're not directly underneath either of the runways at that part of the airport. However, Cessna has put rip rap and rock around all of their ponds and they have a very aggressive wildlife mitigation program in effect where they try to scare away the birds. But they do have a bird problem and Devon is working under contract with Cessna as well as our representative to find ways to minimize the problem. There's no denial, there is a lot of water around the airport."

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**Commissioner Norton** said, “Right. It looks like to me there’s a huge population of geese at those lakes along there. Yet, there’s no feeding so they would have to travel to an agricultural area to feed and come back and nest anyway. All the existing water seems to me more compelling problems than anything than we would put down south right now. Maybe that is just a layman’s look at this. But this seems like there’s a problem.

I guess the last thing I would ask is, if we’ve gone from 1,500 geese to 42,000 geese, I think there’s a bigger problem in our community than this one lake. I think we need to be figuring out like some places have with the deer population, how we thin this out. I don’t know if Wildlife’s and Parks and any kind of environmental group would let you do anything like that, but it seems like that there is becoming a compelling argument that we’re being overtaken by a population, a wildlife population, that’s creating a problem in our community. I think not only for safety of airspace but probably health and environment issues because anyplace you have large gatherings of geese, you’ve also got environmental problems, pollution of water, other things.”

**Mr. White** said, “I would hardly agree with you on that and I think Devon hinted at that earlier when he said something about the population is getting much bigger. I think that’s one of the things we will have to look at in our study that’s upcoming, is not just isolate the airport, but talk about the bigger picture holistically around this.”

**Commissioner Norton** said, “Okay. Of the bird strikes, of the 56 and 96, how many of them were geese?”

**Mr. White** said, “Do you know?”

**Mr. McBride** said, “I don’t know, I would guess about five.”

**Mr. White** said, “He said about five.”

**Commissioner Norton** said, “Okay. I guess it sounds like a lot of numbers but then if you get it down to, some of them are egrets, some are just regular birds and very few of them are geese that, I guess I’m trying to figure out the numbers on how important to control that in the south side is. Okay. That’s all I have right now Mr. Chair.”

**Chairman Winters** said, “All right. Commissioners, after 16 years, land use cases never get any easier. I think this is a good one. I agree with about everything everybody has said. Commissioners, my first reaction is that we would consider returning this to the MAPC for their reconsideration. I know that we seldom do that. I think in the 16 years I’ve been here, I can only recall one or two times when we have not made the decision at this level.

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But I'm still somewhat conflicted. On one hand, it appears to me that this body of water is not going to make a significant impact on the wildlife bird issue, on the other hand, I certainly want to pay attention to what our Airport Authority officials say. Commissioner Unruh?"

**Commissioner Unruh** said, "Thank you, Mr. Chairman. I seldom disagree with your wise leadership, but I think I heard the comment earlier that there had been discussion and there wasn't much room for compromise here. Is that testimony I heard from, I think, Mr. Ewy?"

**Mr. Schlegel** said, "He's saying yes."

**Commissioner Unruh** said, "Okay. That being the case, I guess, Mr. Chair, I don't know what we'd gain by that, I'm willing to be persuaded, but I don't know what we'd gain. My analysis is consistent with the way I understand most of the comments, that there's already significant water around this area and I'm not sure how much more of a detrimental effect this particular body would have compared to all the other water.

I also am, I can't get a good feel on how much more detrimental this body of water would be compared to just a grain field in the area. When that's already, we've had testimony that that's also a wildlife attractant. We've had testimony that landing from the south to the north is usually the low altitude for aircraft coming through there and maybe it's at a thousand feet and at that altitude, 78 percent of the strikes, statistics indicate, occur below a thousand feet.

I haven't asked a question of how many bird strikes occur below 800 feet or 700 feet. I'm, seems like I've heard some testimony and cases like this where the, like 60 percent of the bird strikes occur below 600 feet or some such number, that won't be exactly right. For those reasons, I'm inclined to be supportive of approving the MAPC recommendation. But those are part of my analysis of the testimony we have had. I guess I'll kind of wait to see how Commissioner Norton wants to handle this, it's in his district, but I'm inclined to be supportive."

**Chairman Winters** said, "All right. I would just then ask a question. In your opinion, then, the Airport Authority has, in a sense, met the requirements of the FAA circular by bringing it to our attention and that's what they were instructed to do?"

**Commissioner Unruh** said, "I think Victor made it very clear that he was here to make sure he complied with their regulation and that he was, put us on notice, and he was persuasive and clear and he's under the understanding that we can go ahead and make a determination that is adverse to his recommendation."

**Chairman Winters** said, "Thank you. Commissioner Parks?"

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**Commissioner Parks** said, “Well, I agree with your assessment on sending it back to MAPC. Because I think a little rock here might take care of the situation. There might not be a conflict if they can agree to a little rock or some other configuration or to prevent the nesting of particular waterfowl at this location. I think we’re in the unique position of being first to hear the case and, like the Airport Board alluded to, like Vic alluded to, when is enough enough? I think we’re on the edge of a new frontier here that we’re going to be hearing more of these cases. And that this issue, it’s time for it to be discussed. And if the rock around the pond can prevent the conflict between the two parties and that can be done at the MAPC level, I think that’s a good place to have that discussion.”

**Chairman Winters** said, “All right. Commissioner Unruh about talked me out of my thought there. And one of the reasons over the years that we have traditionally not sent these back, it’s because, again, it just puts folks in limbo. I mean, you go through another 60, 90 days, projects need to get started, it’s a time consuming effort. Commissioner Welshimer?”

**Commissioner Welshimer** said, “I agree that we should send it back. I think the significant thing about this particular property is it’s in line with the runway. There’s a lot of water out there, but it doesn’t necessarily mean that it’s in line with the runway. I think the problems larger than the decision we’re asked to make today and that we need to give some attention to the global problem.

I understand that there’s, you know, all types of attraction to birds in the area. We’re going to have to pay attention to that. Anyway, I’m going to support sending it back.”

**Chairman Winters** said, “Okay. Well, again, Commissioner Unruh, about convinced me that we ought to make a decision. Commissioner Norton?”

**Commissioner Norton** said, “If this was totally just a planned development, it was platted and they were going to put a lake in it, would this have to come before us in this manner? If it wasn’t a conditional use?”

**Mr. Schlegel** said, “They would need to have the conditional use in order to excavate the lake. If their intention was to put a water feature into that subdivision, they would need to, they would need the conditional use to excavate that.”

**Commissioner Norton** said, “Just the same as if it was just a land extraction?”

**Mr. Schlegel** said, “Correct. Now, if it was a detention facility within the subdivision, that would be different because that would not be a permanent water feature.”

**Commissioner Norton** said, “What’s the difference?”

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**Mr. Schlegel** said, “The one retain, the one would retain water permanently and create a water feature that would be there at all times. The other detention facility would simply have, detain water after the rain event until it was able to discharge downstream.”

**Commissioner Norton** said, “It looks like we have three votes to take it back to the MAPC. I guess I’m okay with that. I don’t want it to stretch out to a long period of time. I think Mr. Mies needs to know what he wants to do with his land, which is land use issue. He’s moved ahead with his plans.

You know, based on what I’ve heard, I don’t have a problem with moving ahead and granting the conditional use. I think there is a bigger problem. I agree with Commissioner Welshimer. I don’t know that this one little piece of water that we are working on today is going to make that much difference to solving the big picture problem. It looks like the goose population is the problem, not the amount of water. Whatever the will of the Board is, I guess I have to go along with that.”

**Mr. Schlegel** said, “Mr. Chairman, if I may be permitted to comment on the trying to solve the bigger picture problem here, I think that one of the outcomes of this case will be that its caught the attention of the airport that they need to be moving forward with developing standards that are appropriate for our area for land use around the airport. I think they’re committed to, based on what they said at the Planning Commission and other statements they’ve made to staff, they’re committing to moving forward and working with us and trying to develop some appropriate land use regulations within the vicinity of the airport. I think that’s a good outcome, if nothing else, from this case.”

**Chairman Winters** said, “And John, you’re saying that would probably move forward no matter what action we took today...”

**Mr. Schlegel** said, “That is correct.”

**Chairman Winters** said, “...if we approve this today, you and your staff would start some dialog with the Airport Authority on future activities, developments?”

**Mr. Schlegel** said, “That dialog has already started and will continue probably into 2009 with that.”

**Chairman Winters** said, “Okay. Thank you. Commissioner Unruh?”

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**Commissioner Unruh** said, “Thank you. I appreciate John’s comment, I think that’s very positive and progressive result of the discussion we’ve had. Sending this back to the MAPC, Commissioners, I don’t think is a good idea. It was voted 9 to 2 to advance it and approve it. We have a positive outcome relative to ongoing discussions about land use in the area. I can see the reason behind the statement that there’s not much room for compromise or change, it’s either going to be this 31acre pond lake or it’s not going to be, I mean, there’s no real in between ground there.

The MAPC heard nearly the identical discussion that we’ve had today according to their minutes. I would be in favor of this Board making a decision and I would be supporting the MAPC decision personally. That’s a restatement of my position. That’s all I have.”

**Chairman Winters** said, “Thank you. Commissioner Parks?”

**Commissioner Parks** said, “One thing that Mr. Schlegel said that kind of prompted me, I’d like to ask Russ another question if I could?”

**Chairman Winters** said, “Yes, you can. Russ, would you please come back to the podium?”

**Commissioner Parks** said, “What is the spirit and intent of this pond out here, is this going to be a constant pond or is this going to be a drainage facility or what’s this going to be?”

**Mr. Ewy** said, “Great question. This pond, if you noticed on John’s original presentation, that there’s a farmhouse just to the northeast, that’s the landowner, Mr. Tommy, I believe is his name. This is a pond that Mies Construction is going to dig on his behalf. Initially, it’s going to be an agricultural pond. Mr. Mies pointed out that this rip rap question wouldn’t be desired as long as it was an agricultural pond. But as John explained in his presentation, we had a plan in place for a suburban rural subdivision at some point in the future where we would install something like rip rap.

So the intent is that this would be a pond that would hold water. For initially agricultural reasons and then ultimately for residential water feature.”

**Commissioner Parks** said, “But there’s nothing, I guess, this may need to go back to Mr. Schlegel, thank you, Russ, for that, there’s nothing in writing that says when this goes to residential, there will have to be the rip rap in there?”

**Mr. Schlegel** said, “No. There’s no condition currently in the conditions recommended by the Planning Commission that would do that.”

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**Commissioner Parks** said, "I just think that's another reason to send it back across the street. Thank you."

**Chairman Winters** said, "Okay. Thank you. Commissioner Norton?"

**Commissioner Norton** said, "I think one of the questions is dealing with the bigger picture, but the other one is the applicant, the last guy in or the first guy denied. I tend to lean towards letting be the last person in and we deal with this and then we move forward on the bigger picture and that sends a message. Maybe there's got to be some public comment, there's got to be articles, there's got to be some meetings that will define what the movement is going to be in the future and that really sends a message to developers and people that are going to deal with land uses, that this is going to be a huge issue that the airport is going to weigh in on every one of these, and if you're going to try to put any kind of water feature in a five mile radius of the airport, then you're going to have to really do your due diligence at that point. At this point I'm going to make a motion that we approve the recommended action of the MAPC and approve the conditional use and see where it goes."

### **MOTION**

Commissioner Norton moved to approve the Conditional Use, subject to the conditions recommended by the Metropolitan Area Planning Commission (MAPC), adopt the findings of the MAPC and authorize the Chairman to sign.

Commissioner Unruh seconded the motion.

**Chairman Winters** said, "Commissioner Norton, I'm going to support your motion. I had originally thought about sending it back to MAPC, but John has, I guess, assured us all that the discussion is going to continue no matter what we do on these kinds of cases in the future and I believe that the airport director has done their responsibility of notifying us of the intent of the circular that has been referred to, and I would think that this area is in the 20-30 growth plan and not going to have significant road impacts, and that any opposition to it was not presented with substantial evidence. Commissioner Norton?"

**Commissioner Norton** said, "I guess the final thing for me is that I'm ready to move forward, but I think there's a huge issue in our community that's going to have to be addressed. I'd be willing to help out with any thought processes or any committees that need to be talking about this."

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The truth is, most of that, the airport and the southern part of it is in my district. I'll have a dog in the fight because impediments to development and even agricultural uses may become in question in the future. I need to be in those discussions as to what that looks like and how the south end develops. Whether it be for agricultural uses or for water uses or for landfills or anything else that we may have discussions about. So I'm a proponent of, this applicant is the last guy in and then we set some stringent boundaries for what's going to happen in that airport, five mile radius. That's all I have."

**Chairman Winters** said, "All right. Commissioner Parks?"

**Commissioner Parks** said, "I just believe that there's a significant public safety issue here and at this point I can't support it with the information that I have. Thanks."

**Chairman Winters** said, "All right. Thank you. Commissioner Norton, your motion was to approve the conditional use subject to the conditions that the MAPC had placed on it?"

**Commissioner Norton** said, "Right."

**Chairman Winters** said, "And adopt the MAPC's findings?"

**Commissioner Norton** said, "Right."

**Chairman Winters** said, "All right. Any other comments, questions, discussion? I see none. Madam Clerk, would you call the vote?"

**VOTE**

Commissioner Unruh	Aye
Commissioner Norton	Aye
Commissioner Parks	Nay
Commissioner Welshimer	Nay
Chairman Winters	Aye

**Chairman Winters** said, "Thank you all for being here and thanks for responding to our questions. Commissioners, we've been at it for about an hour and a half, let's take just about a ten minute recess."

**THE BOARD OF COUNTY COMMISSIONERS RECESSED AT 10:25 A.M. AND RETURNED AT 10:35 A.M.**

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**Chairman Winters** said, "I'll call back to order the meeting, Regular County Commission meeting of November 26<sup>th</sup>. Madam Clerk, would you call the next item?"

### **NEW BUSINESS**

#### **D. DIVISION OF HUMAN SERVICES.**

##### **1. SCDDO - CHALLENGING BEHAVIORS PROGRESS REPORT.**

**Mr. Chad VonAhnen**, Director, CDDO, greeted the Commissioners and said, "We have a few items on today's agenda related to challenging behaviors and the ad hoc task force report. So we would like to give you a brief you update on the progress that we've made prior to going into those items to give you a better understanding of how we've arrived at where we are at.

As you're aware, the task force, ad hoc task force on challenging behaviors, mental illness and developmental disabilities was created in March of 2006. There are 2,100 individuals eligible for developmental disability services in Sedgwick County. The research at that time showed up to 40 percent of those people have a coexisting mental illness and of those 2,100 individuals, we have up to 100 at any given time that compose serious challenging behaviors. The target population, as demonstrated on the slide, was those individuals with extremely dangerous and difficult behaviors.

The task force was charged with investigating whether or not these peoples support needs were met and recommended to the County Commission any actions that the County can initiate or influence to better serve this population.

The recommendations that came to you in December of 2006 really focused in four key areas. Partnering with specialized providers, expanding training opportunities for our agencies and the direct support staff that work with these individuals, creating a community outreach team and also working to develop a specialized crisis support setting.

Since that time, in terms of implementation, we've continued to have stakeholder discussions on how to implement these recommendations. The stakeholder group is not the same members of the task force, but the composition is pretty comparable.

I'd like to just identify some of the people that have the agencies that have been working with us throughout this time; our community service providers, we've had Arrowhead West, Bethesda Faith Village, Catholic Charities, Ketch, Rainbows United, ResCare, and Starkey.

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In terms of mental health collaboration on this effort, COMCARE has been an integral and key partner in what we're trying to achieve. We've had involvement on our stakeholder group from the Via-Christi Assessment Center. Dr. Vincent, the psychologist who we have been working with this year and who we have an agreement renewal coming up as another agenda item, has also been a key participant in this group.

We've also had involvement from the State of Kansas and both our local and central office of SRS, and law enforcement has been a key participant too, in terms of Wichita Police Department has been very helpful in what we're trying to work on here. Also were trying to tie in universities and WSU Center for Community Support and Research has helped facilitate some of our efforts here.

Earlier this year, we really began to research best practices around the country. One area that we found that's been doing really good work in this area was Dane County, Wisconsin, that's Madison, Wisconsin. They have a tie with Waysman Center through the University of Wisconsin. About 20 years ago, they started with one individual and really, with this same issue, with how can they better support individuals with developmental disabilities and mental illness in their communities. What we, after researching different areas, we really liked the way that they focused on positive behavior supports and focused on pre-crisis planning.

We, in terms of a couple members of the CDDO, Tom Fletcher from COMCARE, someone from our Central Office, Margaret Zillinger from the Central Office, SRS and Marcia Dill from Starkey attended a site visit to Madison to visit with them and talk about how their program works and how we can replicate that here. Again, what we really liked about this is the focus on the pre-crisis planning was what they were hoping to achieve. We were there a day and a half.

The first day they spent talking about how they can plan for crisis, support staff to better serve this population and better work with them. The second day we were there, half a day, they dealt more with the crisis response system they had in place, which did include a safe house for people that were unable to be cared for in their current setting. One thing that we also liked about their model is the connection to the University. That really helped them develop and grow capacity in their county.

Our progress that we've made this year, we started in May with an agreement with Dr. James Vincent from the Therapy Center to work with people with the most challenging behaviors and the way we've approached this is we have outlined an application process where individuals can go online, fill out the application or their case manager or agency can submit an application for them. From those applications, the people with the most significant needs are the priority, we don't prioritize based on the date of application.

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To date, Dr. Vincent has had 26 applications. He's currently working with eight individuals and has closed two cases. We have had overwhelmingly positive response. One hundred percent of the people that he's worked with to this point have shown behavior improvement. The only area where we have heard any concerns was the wait time on being able to access his services, which we're continuing to address and will address in the later a agenda item.

Earlier this year we released an RFP for management of a safe environment or safe house. We didn't receive any responses that we felt would appropriately meet our needs for that, so we had to go back and reassess where we wanted to go with a safe house. What's happened from that is, and in the Bid Board recommendations today you'll receive a recommendation for grant awards to agencies, we have kind of reshaped what our approach is and we're trying to better support the agencies in and of themselves as opposed to developing a safe house right now. We are looking internally how that could be feasible, but were not certain how we will approach that at this point.

Planning and coordinating training opportunities has been something that we feel is critical to the system. We have, the direct care staff that work with this population, need the tools to actively work with them and feel confident to support these individual's needs.

The CDDO has hosted a series of teleconferences through the National Association for the Dually Diagnosed. We have regular participation from COMCARE staff and also from individuals in the DD system and that participation continues to grow. We also recently held a two day training with Derek Dufresne, who talks about how to work with individuals with challenging behaviors in a compassionate way. The first day was focused on agency supervisors and administrators and policy makers. The second day was focused towards direct care staff and families. We had 70 people attend the first day and right around 100 the second day, so we had a great turnout for that. The reports from that, the feedback received was very positive.

Some of the unintended progress we've seen this year, the crisis intervention team, which you're all aware of that's been heavily involved with COMCARE and Mental Health, we've been able to have a developmental disability portion of that training begin to develop, but then again, that's one of the positive impacts of our work with COMCARE. So that's something that we see as an important piece of this, in training law enforcement on how to work with people with challenging behaviors.

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We've also seen an increase in access to our local mental health hospital. I'm not sure if that can be directly related to this, but I don't think our conversations with them could hurt this. We've increased about one person per month. We don't look at hospitalization as a way to, or someplace to just store people; we're looking at appropriate hospitalization and appropriate use of the hospital. We continue to have conversations with Good Shepherd and Via-Christi about this and I think that relationship is also growing as well.

For your consideration today, following this report, we have two items. One will create a crisis response team that will begin in 2009. We also are looking to renew our contract with Dr. Vincent for 2009 and then in the Bid Board items, there's an item for a grant awards for four agencies for five different program suggestions that they have made. I can talk more about the specifics of the crisis response team and Dr. Vincent on those items.

Future steps from here, we continue to look at how we can collaborate more with our other disciplines. We don't look at this as just a solely developmental disability issue. This crosses over into many different areas. Some of the key areas, mental health, law enforcement, as we try to work more with children's issues, the school district will be someone we need to partner more with. The other part of this is the universities and how we can start to grow capacity and mental health professionals to develop people that have mental health expertise but also expertise in working with people with developmental disabilities.

As you see, the Crisis Planning and Response for Children is another area that we plan to focus on in the near future. Our preferred future is to be able to safely serve people in the community without having to look at inappropriate placements in either hospitals or in the jail has been another issue that we've looked at and how we can serve people in the community through working with our other stakeholders to develop a system that really supports people in a compassionate and caring way. I'd be glad to answer any questions on this right now or I can answer more specific questions on the Crisis Response Team and the Dr. Vincent contract on the next two items following this one."

**Chairman Winters** said, "Thank you, Chad. We have a couple of questions. Commissioner Welshimer?"

**Commissioner Welshimer** said, "Chad, I think you've made some very significant progress with this. I know you pretty much started from square one, and I'm a little disappointed we don't have a safe house or a place to take someone when they need it. So you're dealing with some pretty serious episodes with no place to go but I think that will probably come. But I think you've done a great job. Thank you"

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**Mr. VonAhnen** said, “Thank you very much. In terms of the safe house, I do think that with the creation of the crisis response team, we’ll be able to better assess what the future needs for that will be. In terms of maybe, by adding staff support to a current situation, we may be able to achieve what we want in the person’s current setting. That’s something we’re going to be watching pretty closely here in the next six months or a year as we get this response team developed. Thank you.”

**Chairman Winters** said, “Thank you, Commissioner. Commissioner Parks?”

**Commissioner Parks** said, “Chad, with your law enforcement connection there, you said you had WPD and then alluded to a little bit of jail stuff, but the Wichita Police Department, are you either dual trained or cross training with the CIT program at Wichita?”

**Mr. VonAhnen** said, “Right. That’s beginning, we’ll be added into their next training as a component, we got in at the end of this last training session a couple months ago and then we’re working with them now to develop more of a DD component. There was a component on that training that focused on autism and a portion on DD related issues too, but we’re looking to expand that with them.”

**Commissioner Parks** said, “I know other jurisdictions have had great success with those CIT programs and Wichita’s has been up and running for almost a year now. So we’re looking for great things to come out of that and I’m glad to see that you’re starting to cross train on some of that. Thank you.”

**Chairman Winters** said, “All right. Commissioners, this is a receive and file action and the two action items will follow. Are there any other questions?”

**MOTION**

Commissioner Welshimer moved to receive and file.

Commissioner Parks seconded the motion.

There was no discussion on the motion, the vote was called.

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**VOTE**

Commissioner Unruh	Aye
Commissioner Norton	Aye
Commissioner Parks	Aye
Commissioner Welshimer	Aye
Chairman Winters	Aye

**Chairman Winters** said, "Next item please."

**2. SCDDO - PROFESSIONAL SERVICES AGREEMENT WITH DR. JAMES VINCENT.**

**Mr. VonAhnen** said, "Our next item is our contract with Dr. James Vincent of the Therapy Center. Again, we've worked with him throughout this year to assess how we can better work with these individuals with dual diagnosis.

One thing that I think is, I want to allude to in this contract, we've allowed for Dr. Vincent to hire a graduate student in psychology to work with him and that achieves two things for us. That expands the capacity for him to work with more individuals. As we mentioned before, there are about 14 people that are waiting to be seen at this time, but the bigger issue of adding this person, I think, is as we try to, again, grow capacity in the community to work with this population and bring in individuals that are going through their education and psychology to start to train them in working with people with developmental disabilities. So, this contract is for 2009, and we would recommend that you approve the agreement with Dr. Vincent."

**Chairman Winters** said, "All right. And Chad, the amount of this contract is \$20,000?"

**Mr. VonAhnen** said, "Correct."

**Chairman Winters** said, "All right. Commissioners, any questions on this?"

**MOTION**

Commissioner Welshimer moved to approve the Agreement.

Commissioner Unruh seconded the motion.

There was no discussion on the motion, the vote was called.

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**VOTE**

Commissioner Unruh	Aye
Commissioner Norton	Aye
Commissioner Parks	Aye
Commissioner Welshimer	Aye
Chairman Winters	Aye

**Chairman Winters** said, "Next item."

**3. AMENDMENT TO SCDDO AFFILIATE AGREEMENTS WITH KETCH, RESCARE, RAINBOWS UNITED, INC., STARKEY, INC.**

**Mr. VonAhnen** said, "This agenda item will create a Crisis Response Team. What we're asking is that an amendment to contracts with Ketch, ResCare, Rainbows United and Starkey. The way this will work is, we had some issues in trying to develop who would be the hiring, who would be the, who would employ this group of crisis response team members. One way we thought that we could do this, and the best way we thought we could do this, is to include it into our County finance plan and reimburse agencies at \$20 per hour for crisis response.

So what will happen is these four agencies will employ part-time a pool of a minimum of 15 people to create a Crisis Response Team. We will have that list of names. There's a minimum expectation that they have one year of experience, that they be trained in MANDT training, first aid and CPR. From there, we'll also use our agreement with Dr. Vincent to supply additional training, more specific training to what they'll be working with.

We'll have the crisis response phone line will come through the CDDO during normal CDDO business hours, but then another benefit of our relationship with COMCARE is, in our off hours, that phone number will roll over and COMCARE crisis will handle those calls. Essentially what we'll have is a roster of employees on the Crisis Response Team that we will, any time a crisis occurs, we will call them out to support the agency or the person in need.

The Crisis Response Team doesn't take the place or the responsibility of those agencies to work with the individuals, what we're trying to do is provide that specialized support to those situations. Again, were looking at \$20 per hour, which would, with the dollar amount we're looking at, a total of \$50,000, which would give us 2,500 hours for 2009. We think this will adequately support our needs.

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One thing that we have required of the agencies that participate in this is that we'll have a minimum of quarterly meetings to assess usage and determine where our heavy users are at and if the needs are met, what we can do to better support them so maybe a crisis response team member isn't needed in the future. I think the recommended action on the agenda says receive and file and that was my error, it should say we recommend you amend the agreements and authorize the Chairman to sign."

**Chairman Winters** said, "Chad, when we were preparing our 2009 budget, we anticipated that there was going to be an expenditure here that we did not know what it was at that time?"

**Mr. VonAhnen** said, "That's correct. And we've also worked with budget staff to develop a plan to split some of the cost between the general fund allocation that we receive for 2009 and some of the CDDO grant reserve fund to try to soften some of that usage of the general fund dollars."

**Chairman Winters** said, "So, we were prepared for our budget for 2009 and this falls in the perimeters of what we anticipated?"

**Mr. VonAhnen** said, "Yes."

**Chairman Winters** said, "Commissioners are there questions or is there a motion to amend these agreements?"

**MOTION**

Commissioner Welshimer moved to amend the Agreements and authorize the Chairman to sign.

Commissioner Unruh seconded the motion.

There was no discussion on the motion, the vote was called.

**VOTE**

Commissioner Unruh	Aye
Commissioner Norton	Aye
Commissioner Parks	Aye
Commissioner Welshimer	Aye
Chairman Winters	Aye

**Chairman Winters** said, "Thank you very much, Chad."

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**Mr. VonAhnen** said, "Thank you. Happy Thanksgiving."

**Chairman Winters** said, "We appreciate your work and all the task force that's worked on this project."

**Mr. VonAhnen** said, "Thank you."

**Chairman Winters** said, "Next item."

**4. POSITION ADDITIONS TO COMCARE'S STAFFING TABLE.**

**Ms. Marilyn Cook**, Executive Director, COMCARE, greeted the Commissioners and said, "I'm presenting a request to add three full-time and six part-time clinicians to COMCARE's staffing table."

Two of the those clinicians, Masters level clinicians, are needed to handle the growing number of assessments that are needed before individuals, who have Medicaid coverage, are hospitalized at the local hospital and at the state hospital and before adolescents enter what we call psychiatric residential treatment facilities. The number of these assessments are increasing and the time frames to do them that SRS is giving us, is decreasing. So we are needing additional help.

The third clinician, new clinician, would be assigned to the part of the multidisciplinary team of the newly formed Child Advocacy Center of Sedgwick County. In addition, we're requesting one full-time and four part-time advanced nurse practitioners. The full-time nurse practitioner will replace a position at our Community Support Services Program that was shifted to the inpatient unit last year hoping that would be a temporary solution, that's become a permanent one. We need that coverage at our Community Support Services Program.

The part-time ARNPs will better enable us to cover weekends and holidays in the inpatient unit. The addition of the staff will help COMCARE in meeting its mission and help provide residents of Sedgwick County timely services and quality services. We're recommending that you accept the additions to COMCARE's staffing table."

**Chairman Winters** said, "All right. Thank you. Commissioner Parks?"

**Commissioner Parks** said, "Some of this funding is kind of dovetailed in with some of the State grants that we've received over the years, isn't it?"

**Ms. Cook** said, "A lot of the funding for this activity is coming from Medicaid."

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**Commissioner Parks** said, “We don’t know the future of those programs or we have probably a year to look at that and see where some of those are going to go?”

**Ms. Cook** said, “Well, I know this, that when the Medicaid State Plan changed a year ago, COMCARE did much better under the new financial agreement to have a fee for service agreement with Medicaid than we did under the grant system. You know, and I know that Kansas Health Solutions, who is the company managing the Medicaid plan for the State of Kansas, is asking for some rate increases, whether or not those will be granted, I don’t know. I do know this, any time there is a budget cut that comes through SRS, our grant money is always high on that chopping block. So to me, the Medicaid funding source is a little bit more steady and predictable than our grants.”

**Commissioner Parks** said, “I appreciated talking with Tim Kauffman, staff member and I spoke with him for about 30 minutes the other day on this project proposal. The revenue and expenses here, I was going to ask him if they could bring back a report in November of 09, but it looks like we may need to bump that up to around budget time again. Expect a request from me anyway to look at that.”

**Ms. Cook** said, “Okay. To see how we’re doing with this?”

**Commissioner Parks** said, “Yes, to see how you’re doing with that and all those programs that might be out there, might be cut by the State or Federal. Thank you.”

**Chairman Winters** said, “All right. Are there any other questions?”

**MOTION**

Commissioner Welshimer moved to approve the recommended additions to the staffing table.

Commissioner Parks seconded the motion.

There was no discussion on the motion, the vote was called.

**VOTE**

Commissioner Unruh	Aye
Commissioner Norton	Aye
Commissioner Parks	Aye
Commissioner Welshimer	Aye
Chairman Winters	Aye

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**Ms. Cook** said, “Thank you.”

**Chairman Winters** said, “Thank you, Marilyn. Next item.”

**5. FY 2009 OLDER AMERICANS ACT TITLE III B VENDOR CONTRACTS.**

**Ms. Monica Cissell**, Department of Area on Aging, greeted the Commissioners and said, “I have nine 2009 Older Americans Act Title III B vendor contracts and these contracts are for home health agencies that provide Older Americans Act III B in home services, provided to eligible older adults 60 and up who are in need of attendant care, homemaker services and respite. The vendor contracts are included in the Central Plains Area Agency on Aging fiscal year 09 area plan. And these are fee for service contracts with set rates that are established by the Kansas Department on Aging. The recommended action is to approve the vendor contracts and authorize the Chairman to sign. Does anyone have any questions?”

**Chairman Winters** said, “All right. Thank you. Is there a motion to approve the vendor contracts?”

**MOTION**

Commissioner Parks moved to approve the FY 2009 Older Americans Act Title III B vendor contracts and authorize the Chairman to sign.

Commissioner Unruh seconded the motion.

There was no discussion on the motion, the vote was called.

**VOTE**

Commissioner Unruh	Aye
Commissioner Norton	Aye
Commissioner Parks	Aye
Commissioner Welshimer	Aye
Chairman Winters	Aye

**Chairman Winters** said, “Thank you, Monica. Next item.”

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**E. REPORT OF THE BOARD OF BIDS AND CONTRACTS' REGULAR MEETING ON NOVEMBER 20, 2008.**

**Ms. Iris Baker**, Director, Purchasing, greeted the Commissioners and said, "The meeting of November 20th results in six items for consideration today. First Item;

**1. PUBLICATION OF LEGAL NOTICES – DIVISION OF FINANCE AND VARIOUS COUNTY DEPARTMENTS  
FUNDING—PURCHASING**

Recommendation is to accept proposal number one from the Derby Reporter and establish contract pricing for five years. Item number Two;

**2. CHALLENGING BEHAVIORS GRANTS FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES-COMMUNITY DEVELOPMENTAL DISABILITY ORGANIZATION  
FUNDING—COMMUNITY DEVELOPMENTAL DISABILITY ORGANIZATION**

That recommendation is to accept proposals and execute contracts with Rainbows United in the amount of \$33,244 , Starkey for \$18,470 , Arrowhead West for \$10,800 dollars, and Ketch for \$12,451 and \$2,693. Item Three;

**3. SPACE NEEDS ASSESSMENT SERVICES FOR VARIOUS COUNTY DEPARTMENTS-FACILITIES DEPARTMENT  
FUNDING—FACILITIES DEPARTMENT**

Recommendation is to accept the low proposal from McCluggage Van Sickle & Perry in the amount of \$37,441. Item Four;

**4. ON-CALL AUCTIONEERING SERVICES-FACILITIES DEPARTMENT  
FUNDING—FACILITIES DEPARTMENT**

Recommendation is to accept the low proposal from McCurdy Auction and establish contract pricing for three years. Item Five;

**5. CUSTODIAL SERVICES FOR HEALTH DEPARTMENT-HEALTH DEPARTMENT  
FUNDING—HEALTH DEPARTMENT**

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Recommendation is to accept the proposal from EH Technical and to execute a two year contract with two one year options to renew. Item Six;

**6. NATIONAL CENTER FOR AVIATION TRAINING-PHASE II-FACILITIES DEPARTMENT  
DEPARTMENT  
FUNDING—FACILITIES DEPARTMENT**

Recommendation is to accept the low bid of National Contractors Incorporated in the amount of \$32,277,000 and establish unit pricing. Be happy to answer any questions and I recommend approval of these items.”

**Chairman Winters** said, “All right. Thank you very much. Commissioners, it would be my suggestion that Item One is a publication of legal notices that we take that item up separately. At this time is there questions about anything? Commissioner Parks?”

**Commissioner Parks** said, “On number three, I notice quite a difference in the bids between the recommended awardee and the others. Is there something we need to know about that, especially on group one, two, and three?”

**Ms. Baker** said, “No. We did not find anything unusual. The committee noticed that as well. We interviewed the three lowest responders. McCluggage Van Sickle & Perry has done work with the County before. During the interview process, we got clarifications. We were able to verify that they understood the work that’s to be done and the expectation or the result of the work that’s to be done. So were bringing what we feel is a good proposal to you.”

**Commissioner Parks** said, “Thank you for your work on that. That’s the only question I had on the rest of those.”

**Chairman Winters** said, “Okay. Commissioner Norton?”

**Commissioner Norton** said, “Mr. Chair, I’d like to have individual discussion on item number six too, that’s a huge contract, a lot of money and I’d like to do that separately, one and six.”

**MOTION**

Commissioner Norton moved to accept the recommendations of the Board and Bids of Contracts for items two through five and eliminate one and six for further discussion.

Commissioner Welshimer seconded the motion.

There was no discussion on the motion, the vote was called.

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**VOTE**

Commissioner Unruh	Aye
Commissioner Norton	Aye
Commissioner Parks	Aye
Commissioner Welshimer	Aye
Chairman Winters	Aye

**Chairman Winters** said, “Commissioner, that motion passes, Commissioner Welshimer?”

**Commissioner Welshimer** said, “Yes. I would like to make a motion that we delay action on number one, legal notices, until our third meeting in January. This is a financial issue that is going to impact us next year rather than now.”

**MOTION**

Commissioner Welshimer moved to delay action on Item Number One until the third meeting of January, 2009.

Commissioner Parks seconded the motion.

**Commissioner Welshimer** said, “I’d like to put that off until the new Commission is seated.”

**Chairman Winters** said, “Okay. We have a motion duly made and a second. Is there any additional discussion? I’m going to vote no on this motion. I think we’ve had this out in front of us for quite a while. I’m ready and prepared to move forward. Commissioner Unruh?”

**Commissioner Unruh** said, “I don’t need to add to your comment.”

**Chairman Winters** said, “All right. We have a motion to defer item number one until third week in January. Any other questions or comments? Seeing none, call the vote.

**VOTE**

Commissioner Unruh	Nay
Commissioner Norton	Nay
Commissioner Parks	Aye
Commissioner Welshimer	Aye
Chairman Winters	Nay

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**Chairman Winters** said, "That motion has failed. We need to discuss items number one and number six. Commissioner Norton, you brought up number six, you want to start on that?"

**Commissioner Norton** said, "I would. It's a huge contract for the National Center for Aviation Training. We got seven bids, is that correct, Iris?"

**Ms. Baker** said, "That is correct."

**Commissioner Norton** said, "And relatively close bids too, might I add. I think there was not much disparity between the high bid and the low bid compared to what we have seen in other large ones. A couple of my concerns were, all of the subcontractors have been checked out, we understand who they are. How many of them are local? Because one of the things we try to do with these large projects is ensure that local businesses get their share of the business that we've put out on the street as far as a government contract. Can you describe that, Iris?"

**Ms. Baker** said, "Yes. The electrical subcontractor that's proposed is out of Sedalia, Missouri. The rest of the subcontractors are local. The suppliers for the metal panel are not local. It's not unusual that suppliers aren't."

**Commissioner Norton** said, "Okay. The general contractor, National Contractors, is a local company?"

**Ms. Baker** said, "They are a local company, yes."

**Commissioner Norton** said, "The one agency or subcontractor that's not local, Pro Energy, are they licensed to do work in the City of Wichita?"

**Ms. Baker** said, "They are not licensed yet. My understanding is that they are meeting with the City, here in the near future. But the general contractor will be responsible to ensure that anyone working on the project has the appropriate licenses they need to do any work as well as other criteria, insurances, so forth."

**Commissioner Norton** said, "Is that typical that a company would have a subcontractor that's not licensed to do work as they bid the project?"

**Ms. Baker** said, "It's not unusual. The licensing requirements are that the business has to be licensed by the time they start the work."

**Commissioner Norton** said, "Okay. Do we have every indication that they have the ability, with the kinds of electricians you'd have to have both master electricians and journeymen, to do the work?"

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**Ms. Baker** said, "Yes."

**Commissioner Norton** said, "Is there every anticipation that that's going to be okay and they'll meet all State and Federal requirements for on the job usage of those entities?"

**Ms. Baker** said, "That's correct."

**Commissioner Norton** said, "Okay. I don't have any other questions right now, Mr. Chair."

**Chairman Winters** said, "All right. Commissioner Unruh?"

**Commissioner Unruh** said, "Thank you, Mr. Chair. I don't have a question as much as a comment. I'm excited that we get this approved and move forward. The National Center for Aviation Training is a huge part of, or a huge component of our focus on workforce development and job creation in South Central Kansas and I think there's been a little window of opportunity here where it appears that we can get some really favorable bids for this construction. So, that has worked out to the benefit of Sedgwick County citizens as we go forward and all these bids, as Commissioner Norton said, were very competitive and the subs that were, that each bidder specified, seems like that they were all using a combination of the same ones so I feel confident that we're going to get what we have asked for."

National Contractors is currently building Phase One of our National Center for Aviation Training, the Gateway Building. As near as I can understand from watching the progress, things are going well. So I'm looking forward that this will be very successful and satisfactory project. I'm just glad to see this on our agenda so that we can get moving and, know there's been a lot of activity to bring these numbers to us at this point. So I appreciate the effort of the Bid Board in getting this ready. I'm ready to be supportive and move forward."

**Chairman Winters** said, "All right. Thank you. Commissioner Norton?"

**Commissioner Norton** said, "One of the things that concern me is that when we bid the Arena that we had language in there that supported making sure that we wanted local, as many local subcontractors as we can. It seemed like we did pretty good on this one, but we didn't have that language in this bid document. Is that correct, Iris?"

**Ms. Baker** said, "That's correct. In the Arena project, we added the phrase 'Kansas vendors' to our paragraph that encourages participation and involvement of minorities and small businesses."

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**Commissioner Norton** said, "Okay. I want to be sure that we continue to define and tighten up that language in these large contracts to be sure that we keep as much business local as we possibly can. That's all I have."

**Chairman Winters** said, "All right. Commissioner Parks?"

**Commissioner Parks** said, "This would be a question for Iris or Legal Department. The ten percent out of state on the subcontractors, does that apply to this kind of a contract also? The ten percent disparity rule? Like we discussed with the out of state car dealer that had the bid that wasn't within the ten percent and so we had to use the local car dealer because of that ten percent state law?"

**Ms. Baker** said, "I don't recall the specific language. I think if I, I'd have to verify for you, Rich may be able to speak to it, but I think that particular statute was more related to commodity type items than construction. But I'd have to verify."

**Commissioner Parks** said, "I know this is a last minute question. But that was just a thought that I had that came up. Looks like maybe there's some of those that were close."

**Chairman Winters** said, "Commissioner Unruh?"

**Commissioner Unruh** said, "Thank you, Mr. Chairman. Just a clarification on Commissioner Parks' question. Our contracts has to be with the general contractor and it's his responsibility for the subs and so forth?"

**Ms. Baker** said, "Correct."

**Commissioner Unruh** said, "I was getting confused. All right. Thank you."

**Chairman Winters** said, "All right. I see no other discussion on Item 6. What's the will of the Board?"

### **MOTION**

Commissioner Unruh moved to accept the recommendation of the Board of Bids and Contracts on Item Six to regarding funding for the National Center for Aviation Training.

Commissioner Welshimer seconded the motion.

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**Chairman Winters** said, “Commissioner Welshimer, did you have another comment or did I forget to turn your light off? We have a motion and a second to accept the recommendation of the Board of Bids and Contracts, is there any other discussion? Seeing none, call the vote.”

**VOTE**

Commissioner Unruh	Aye
Commissioner Norton	Aye
Commissioner Parks	Aye
Commissioner Welshimer	Aye
Chairman Winters	Aye

**Chairman Winters** said, “That contract then will be awarded to National Contractors. Alright, Commissioners, that brings us back to Item One. There’s been much discussion about this. My thought is pretty simple. I think that the reason the State Legislature put in statutes that local governments publish legal publications is to make sure that as many citizens know about what’s going on in local government as possible.

And based on the number of subscription rates and circulations, I’m not going to be supportive of the Board of Bids and Contracts recommendation. I think they did what they were tasked to do and that’s to take the low price. But as I look on the internet about circulations and readerships, I see the Wichita Eagle, with a readership of 210,000 folks daily and a circulation of 88,000 newspapers daily as compared with the current vendor, the Derby Reporter with about 919 circulations. So I know that this has been an issue that sparked a lot of interest.

I see representatives from the Derby Reporter in the room today, if they’d like to address the Board of County Commissioners, I’d have no problem with giving them five minutes if that’s agreeable with the other Commissioners. I’m not sure they do, but if the Daily Reporter would like to address us, I’d be glad to take those comments.”

**Mr. Kent Bush**, Publisher, Derby Reporter, greeted the Commissioners and said, “We don’t have as much circulation as the Wichita Eagle, I think that’s true of every newspaper in Kansas. The interesting thing about that is we’ve also been the publisher of legal notices longer than any of you have been on this Board. We’ve provided the best price, 71 percent less in this last RFP, we’re 71 percent less than our competitor. Our competitor’s response to the RFP wasn’t even complete. They didn’t provide you with references. Twice in the RFP, those were requested.

We didn’t hire a lobbyist. When you have the best bid, when you have the cost savings, you don’t have to. We didn’t offer any political favors. This was originally set to be heard by the Board October 8<sup>th</sup>, due to delays, because some of the administration had items to tie up with

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the Wichita City Council or the Electorate, it has been delayed. We've been dealing with this about 100 days.

The same thing is true now that, was true before the contract was canceled prematurely; we're still the best bid. We're going to save the County about \$300,000 in the next five years. I think in today's economy, with the number of layoffs that have been announced, I can't see how it would be rational or very responsible to decide to publish in another newspaper that would cost you \$300,000 additional dollars in five years. That's really all I have. I thank you for your time. If you have any questions, I'd be glad to take them."

**Chairman Winters** said, "All right. Did you give your name and address for the record?"

**Mr. Bush** said, "I'm Kent Bush, Publisher of the Daily Reporter."

**Chairman Winters** said, "Thank you very much, Kent, I see no questions at this time. Commissioners, again, Kent is right. As long as I've been a Commissioner here, the Derby Reporter has been the County's legal publication.

But two things, two other local government entities made me take a different perspective and that was first, the City of Wichita, a little over a year ago, started their legal publications in the Wichita Eagle. I noticed those. I don't always read all of them. But I think it puts them clearly in front of citizens. And the City of Andover is using the Wichita Eagle as their publication. I believe if we want people to put their eyes on the notices that we put in our official newspaper, we need to get those notices in front of as many eyes as we can. Commissioner Welshimer?"

**Commissioner Welshimer** said, "Well, with 88,000 circulations for the Eagle, I don't think there's 88,000 eyes on legal notices. And those publications are online. Anyone who is in the business of watching legal notices is a subscriber to the Derby Reporter. This has not been an issue for something like 20 years, 25 years that we've been with the Derby Reporter. I don't think we've treated the Derby Reporter respectfully in canceling its contract right in the middle of that five year term. I think it is going to be difficult for the Derby Reporter and their 11 employees who work there. I think this is a situation that never should have come up and I certainly am not going to approve of moving the legal notices from the Reporter to the Eagle."

**Chairman Winters** said, "Thank you. Commissioner Parks?"

**Commissioner Parks** said, "I tend to agree with the Bid Board. Their savings of at least \$235,000 over the next five years and I think we owe it to our citizens and to our taxpayers to look at that. I think that is a significant number and let me share a story, since Chairman Winters brought this up about the number of eyes seeing the paper.

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In 1995, I addressed the Board of County Commissioners and I was upset because of a zoning change that I didn't know anything about. They said well it was published in the Derby paper. At that time I did not get the Wichita Eagle either. If it would have been published in the Wichita Eagle, I wouldn't have seen it either. Had it been in the Arc Valley News, I might have seen it. Those things that are out there that happen to the masses; I think that once I did realize that the Derby Reporter was the official paper, then I started paying attention to that.

I think they've done a good job of getting the internet connection. This is something that's a wave of the future for the internet. Derby has stepped up and in talking with Kent Bush when this first came up, when they were talking about doing away with the contract in midstream here that they currently have, he has some exciting things that he wants to do with the legal notices and the internet.

I just think that we're looking at a progressive little paper and that we're looking at a savings and I too, think it was disrespectful to, in the middle of this contract, to do this. But I guess we can do that, can we not, Counselor, cancel a contract as we can any contract with any paper?"

**Mr. Richard Euson**, County Counselor, greeted the Commissioners and said, "Yes, under the terms of the agreement that the Derby Daily Reporter is under, yes, you can take the action that was given in the letter."

**Commissioner Parks** said, "So that can happen in any event then? Thank you."

**Chairman Winters** said, "All right. Commissioner Welshimer?"

**Commissioner Welshimer** said, "Well, I think one thing we might not have thought about it is the transition. If we change this from the Derby Reporter to the Eagle and you don't let the community know, there's going to be a certain period of time in there where people who are taking the Derby Reporter because of the legal notices go to check those out and they're not going to be there. And they're going to miss the fact that they are being published in the Eagle and this is going to cause some problems with lawsuits and filings and everything else. So I think if we're going to do that, then we should be notifying everybody that's on the Derby Reporter mailing list, at our expense."

**Chairman Winters** said, "I'm sure we'll publish a notice in the Daily Reporter identifying who the official publication would be if we change it. Any other comments?"

**Commissioner Welshimer** said, "Well, I'm not sure that that would totally satisfy everything. But fine."

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**Chairman Winters** said, "Commissioner Unruh?"

**Commissioner Unruh** said, "Thank you, Mr. Chairman. I want to say, first of all, I also appreciate the work and due diligence by the Bid Board. I know they do what their charge is as they oversee these bids in reference to our request for proposal. However, I'm going to be supportive of the Eagle's, their proposal to us. We're a county of 450,000 people. It just doesn't seem rational that we should choose a publication that has a subscription of 900 to be the source of our legal publications. I think if you calculated this on the cost per impression, it would probably be much less expensive on that basis doing it in the Wichita Eagle.

It just seems like, we're going to put out a legal notice and we want people to have an opportunity to look at it, whether it's casually or whether it's intentionally, that it ought to be published in the largest paper in our area. I realize it costs more, but we're a big government, we serve 450,000 people and we need to be getting the legal notice out. I know they both have their advantages and arguments, but I'm pretty well (inaudible) with the fact that I'm going to support the proposal from the Wichita Eagle. That's all."

**Chairman Winters** said, "Thank you. Commissioner Norton?"

**Commissioner Norton** said, "Well, there's been some talk that this came about really fast. The truth is, I started questioning this my first day on the job eight years ago. I had conversations with Manager Buchanan at the time that it didn't make sense to me that we published our legal publications in a paper where you have to go out and seek to find information. I think there is, you're right, Commissioner Welshimer, that folks that are looking for foreclosures or whatever are going to seek that out. But the general public has the right to understand what we're legally publishing and what information were trying to put out. I'm not so sure that the intent of the law was not to find the lowest price thing that would put it out in the public.

In fact, we've had a lot of consternation at the state level about whether you can just put it online and that's good enough and not even putting it in a legal publication. They've had that conversation for, what, three or four sessions now, as to whether you even have to put it in a printed piece of material, that it couldn't just be online on Sedgwick County's website and that's good enough as a publication. So I worry about that.

I worry about three days, you know. The ability to have seven days of publication and readership gives us more flexibility. You know, I think if you ramp it up from three days to five days to seven days, it changes the conversation on what the money even looks like. So I'm going to be supportive. I have been for many years as we've had this conversation. I'm surprised it hasn't come to, this conversation, to a head years before now. Because I've certainly questioned it and advocated for looking at the largest publication in our regional area.

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I'm going to be supportive of something different than the recommendation of the Board of Bids and Contracts.”

**Chairman Winters** said, “All right. Commissioners, are there any other questions or comments?”

**MOTION**

Chairman Winters moved to accept the proposal from the Wichita Eagle for legal publication for Sedgwick County’s legal notices.

Commissioner Unruh seconded the motion.

There was no discussion on the motion, the vote was called.

**VOTE**

Commissioner Unruh	Aye
Commissioner Norton	Aye
Commissioner Parks	Nay
Commissioner Welshimer	Nay
Chairman Winters	Aye

**Chairman Winters** said, “That motion passes. Madam Clerk, would you call the next item?”

**Ms. Baker** said, “Thank you.”

**Chairman Winters** said, “Thank you, Iris.”

**CONSENT AGENDA**

**F. CONSENT AGENDA.**

- 1. Resolution stating findings made by the BoCC at the post-annexation hearing held on November 12, 2008.**
- 2. Request for wavier of personnel policy to hire a project manager, Band 324 at 20.8% above minimum for COMCARE’s Crisis Services.**

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- 3. General Bills Check Register for the week of November 12, 2008 - November 18, 2008.**
- 4. Payroll Check Register for November 12, 2008.**
- 5. Order dated November 19, 2008 to correct tax roll for change of assessment.**

**Mr. Ron Holt**, Assistant County Manager, greeted the Commissioners and said, "Commissioner, you have the Consent Agenda before you and I recommend you approve the agenda as presented."

**Chairman Winters** said, "Commissioners?"

**MOTION**

Commissioner Norton moved to approve the Consent Agenda as presented.

Chairman Winters seconded the motion.

There was no discussion on the motion, the vote was called.

**VOTE**

Commissioner Unruh	Aye
Commissioner Norton	Aye
Commissioner Parks	Nay
Commissioner Welshimer	Aye
Chairman Winters	Aye

**Chairman Winters** said, "Commissioners, that brings us to the conclusion of our regular meeting. It brings us to the portion of 'Other'. Does anybody have any other business they would like to discuss at this time? Commissioner Parks?"

**O. OTHER**

**Commissioner Parks** said, "The Trans Siberian Orchestra, who are not from Siberia by the way, they are from San Antonio, Texas, is coming to the Kansas Coliseum, the Britt Brown Arena on December 5th. If you don't have your tickets, I would suggest getting them right

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away. Although I don't personally subscribe to the Wichita Eagle, I can't wait to see the fallout that they're going to put the wrath on Commissioner Welshimer and I. Thank you."

**Chairman Winters** said, "Are there any other questions or comments? Commissioner Norton?"

**Commissioner Norton** said, "I have none other than to wish everyone in the listening area a Happy Thanksgiving and all the blessings of our community."

**Chairman Winters** said, "All right. Any other questions or comments? This meeting is now adjourned. Thank you very much."

**P. ADJOURNMENT**

There being no other business to come before the Board, the Meeting was adjourned at 11:28 a.m.

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**BOARD OF COUNTY COMMISSIONERS OF  
SEDGWICK COUNTY, KANSAS**

\_\_\_\_\_  
**THOMAS G. WINTERS**, Chairman  
Third District

\_\_\_\_\_  
**DAVID M. UNRUH**, Commissioner  
First District

\_\_\_\_\_  
**TIM R. NORTON**, Commissioner  
Second District

\_\_\_\_\_  
**KELLY PARKS**, Commissioner  
Fourth District

\_\_\_\_\_  
**GWEN WELSHIMER**, Commissioner,  
Fifth District

ATTEST:

\_\_\_\_\_  
**Don Brace**, County Clerk

APPROVED:

\_\_\_\_\_, 2008