



Mahaska County Board of Supervisors

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supervisors@mahaskacounty.org

February 18, 2020

Dear Mike:

I am responding to your communication regarding the Cities of Oskaloosa and Pella's proposal regarding 220th Street. Given the ongoing litigation in two different cases regarding the parties' rights and obligations under the relevant Iowa Code Chapter 28E agreement, particularly with regard to road relocation, we have several concerns we would like to address.

As indicated in our recent Answer and Crossclaim in the Site A Landowners matter, the South Central Regional Airport Authority ("SCRAA") cannot legally compel the Mahaska County Board of Supervisors to exercise legislative discretion and authority with regard to property or roads under our jurisdiction, and any provision of the relevant 28E agreement purporting to do so is illegal and void. As such, and as a member of SCRAA, we believe it prudent to delay moving forward with the regional airport proposal until the two pending actions conclude to avoid potential liability. Should other members of SCRAA disagree, they do so at their own risk and the Supervisors ask that they accept the potential consequences for doing so.

If the cities choose to proceed with the 220th Street issues, and assuming the Court allows the activity, we proposed multiple reasonable mitigation plans, including renovating and rerouting to 235th Street, which you acknowledged as a reasonable alternative in the Federal Aviation Administration Environmental Assessment. We understand you rejected that proposal, but if you are still willing to discuss that potential mitigation plan, please let us know.

We do not agree with your assertion there was a binding agreement on construction and use of a service road as a mitigation plan for 220th Street. Nor do we believe any agreement requiring us to vacate and construct a road would be valid and enforceable. Further, the proposed service road or proposal to move traffic onto Highway 163 is not reasonable or acceptable mitigation for several reasons, including issues the County Engineering Department noted in work sessions. We do not believe re-routing farm traffic onto a busy highway is safe or prudent. Previously, you suggested consulting an engineer to find an agreeable plan. If this is still an option you are

considering, the County will not pay the engineer, as the County has no financial obligation under the relevant 28E agreement. Nor does the County promise it will agree to whatever plan the engineer you consult proposes. The County may not find the proposal reasonable or acceptable after public comments.

Additionally, as you recognized, you propose a complex and lengthy process while we all await the Courts' determinations of our obligations and with regard to proposals we find unacceptable and unreasonable. In light of that, we would appreciate understanding how you envision this process proceeding.

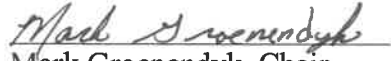
In particular, will your proposals require using the County's eminent domain authority? What hearings do you anticipate will be required, if any? Without any exceptions known to us, Iowa law requires the County to provide notice and substantive hearings for any use of eminent domain and/or if we were to vacate any portion of 220th Street. *See, e.g.*, Iowa Code § 6B.2A; Iowa Code §§ 306.11–306.13. We would also be required to allow any abutting landowner to claim damages or to negotiate consideration for any taking. Iowa Code § 6B.2B; Iowa Code § 306.14. Is it your belief those hearings would not been required? If not, why not? If they are required, is it your position an affirmative vote of the SCRAA board would require the County to vote in favor of whatever is proposed at such a hearing, regardless of the evidence and comments presented? If a challenge was made to the process, we would look to SCRAA members voting in favor of such actions to pay any resulting judgments. Further, do you anticipate the County paying for some or all construction and vacation required under your proposals? If so, under what authority?

As to the farm-to-market road designation, a request for the Farm-to-Market Review Board ("Review Board") to review any re-designation request requires an affirmative vote and resolution by the Board of Supervisors. Only the Board of Supervisors could request the Review Board re-designate the farm-to-market road under the Supervisors' jurisdiction. Iowa Code § 306.6A. Is it your belief an affirmative vote of the SCRAA board compels us (a) to pass a resolution approving your proposed re-delegation, and (b) submit the proposed re-designation to the Review Board? On what basis? Further, what is your position should the Review Board deny the request, including upon reapplication? Again although we do not believe you can compel us to exercise our legislative authority, even exercising good faith and best efforts leaves several issues to be addressed before anyone could move forward voluntarily.

Until there is a contrary ruling, and without waiving any argument for reconsideration or appeal, we will comply with the Court's directive to allow the County's SCRAA representative attend and participate in SCRAA meetings as required. However, it is incumbent on the City members of SCRAA, in good faith and in an effort to cooperate, to explain how the Mahaska County Board of Supervisors can avoid violating Iowa law by acting as SCRAA requests. Without such input, it is in the interest of all parties to allow the Courts to decide the pending actions.

We look forward to receiving your thoughts on how we might proceed.

Sincerely,


Mark Groenendyk, Chair


Steve Wanders, Vice Chair


Steve Parker, Supervisor