

**MINUTES FOR APRIL 11, 2011**  
**COLUMBUS, KANSAS, CHEROKEE COUNTY**  
**OFFICE OF THE COUNTY CLERK**  
**CRYSTAL L. GATEWOOD**

The Cherokee County Commissioners met April 11, 2011. Commissioners Collins, Garner, and Hilderbrand were present. The Pledge of Allegiance was said by all present. Commissioner Collins made a motion to approve the Commission Meeting minutes as presented by the Cherokee County Clerk Crystal Gatewood, with no changes for April 4, 2011 and April 8, 2011; his motion was seconded by Commissioner Hilderbrand with Commissioners Hilderbrand, Collins, and Garner voting in favor. Commissioners Hilderbrand, Collins, and Garner, and County Clerk Gatewood signed off on the minutes.

**MOTIONS MADE BY COMMISSION**

Commissioner Collins made a motion to approve and pay April 2011 Mid-Month Accounts Payables; his motion was seconded by Commissioner Hilderbrand with Commissioners Hilderbrand, Collins, and Garner voting in favor. Commissioners Garner, Collins, Hilderbrand, and County Clerk Gatewood signed off on the documentation. It is duly noted that County Counselor Kevin Cure was not present at that time therefore did not sign off.

Commissioner Collins made a motion to certify and approve the Election Results as presented by County Election Officer Crystal Gatewood after the Board of Commissioners canvass results were added for the April 2011 Election held on April 5, 2011; his motion was seconded by Commissioner Hilderbrand with Commissioners Garner, Collins, and Hilderbrand voting in favor. Signing off on the official documentation were Commissioners Garner, Hilderbrand, Collins, County Counselor Kevin Cure, County Election Officer Crystal Gatewood, and Deputy County Clerk Paula Cheney. It is noted that the documentation is attached to these minutes.

Commissioner Collins made a motion to approve the fence viewing documentation, as presented by County Counselor Kevin Cure, involving John Gaither and Robert Lucian; his motion was seconded by Commissioner Hilderbrand with Commissioners Garner, Collins, and Hilderbrand voting in favor. Commissioners Garner, Hilderbrand, Collins, County Counselor Kevin Cure, and County Clerk Gatewood signed off on the documentation. It is duly noted the findings of the fence viewing documentation is attached to these minutes.

RH

## **OTHER BUSINESS**

Leonard Vanatta discussed that general county and road maintenance was being done by his department and everything was going well. Jim Burton of the City of Columbus also attended and asked about the T-Work project submitted by the county for the city's projects and asked what the decision was on the funding. The commission agreed to help the city with the hauling if the city proceeds with the projects, but no monetary funds would be distributed to the city. The county had also submitted a project for the third district commission area and they are going to continue their project with the money from the Special Bridge Fund in the county budget. The concern was that for this T-Work Project all monies would first come out of county funds and there was no guarantee the state would reimburse the funds once they were paid out. Mr. Burton had misunderstood that the specific T-Work Project funds were a grant and after further inquiries with the state the commission let him know it was not grant money. The commission thanked him for coming in.

State Representative Doug Gatewood was in attendance and discussed some current issues at the state level. The commissioners asked questions and Gatewood discussed several areas that effect the local area as well as employees in the KPERS retirement fund.


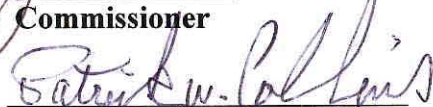
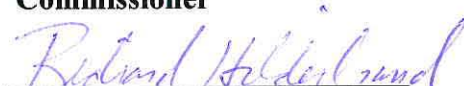
County Counselor Kevin Cure, County Treasurer Juanita Hodgson, and the commission discussed the tax sale for list number 2 and the sale will take place sometime in May of 2011. Mr. Cure is setting up and preparing the legals and the date, time, and where it will take place. It was agreed he would work around the Treasurer's time table and get back with her and the commission about the details.

## **ADJOURNMENT**

Commissioner Garner made a motion to adjourn the meeting at 12:10 PM: his motion was seconded by Commissioner Hilderbrand with Commissioners Hilderbrand, Garner, and Collins voting in favor. The next Cherokee County Commission meeting will be held April 18, 2011 at 9:00 AM in the Cherokee County Courthouse in Columbus, Kansas.

**Resolved and ordered this day, April 18, 2011**

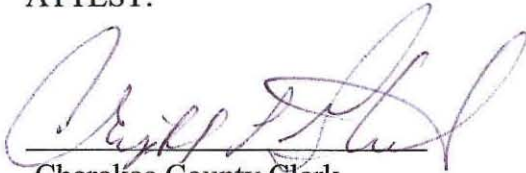
  
Cherokee County Clerk

  
Commissioner  
  
Commissioner  
  
Commissioner

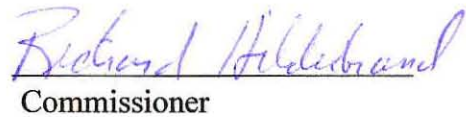
The results of the general election held April 5, 2011 are certified as accurate and true after the canvassing of the results. The Board of Cherokee County Commissioners consisted of Commissioners Jack Garner, Pat Collins, Richard Hilderbrand, and under the consultation with County Counselor Kevin Cure have determined that 96 Provisional Ballots were deemed reviewed. The final results were; of the provisional's, 85 ballots counted and 11 ballots were not deemed qualified after further review.

The approved provisional's by the Canvassing Board were added to the vote count in their respective precinct in Cherokee County by Cherokee County Election Officer Crystal Gatewood on April 8, 2011. The document containing the final results was then submitted to the Commission on Monday, April 11, 2011 for signatures by the Cherokee County Board of Commissioners and County Counselor Kevin Cure.

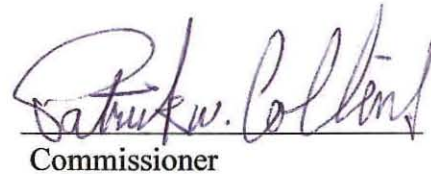
ATTEST:



Cherokee County Clerk  
And Cherokee County  
Election Officer



Commissioner




Commissioner



Deputy County Clerk



Commissioner



County Counselor 4/11/11  
Kevin Cure

April 11, 2011  
Date

On March 21, 2011, the County Commission met and made the following findings:

On March 7, 2011, the Board of County commissioners of Cherokee County Kansas, met at a location approximately 3 to 4 miles west of the intersection of Highway 7 and Highway 160 in Cherokee County, Kansas. Present were Commissioners Collins, Hilderbrand, and Garner. Also present were John Gaither, who appeared with his counsel Larry Prauser, and Jim Lucian, brother of Robert Lucian, speaking on behalf of the interest of Robert Lucian.

The property is more specifically described as all of the North and South common boundary between land owned by John Gaither adjoining the common boundary on its West side and Robert Lucian who owns the land adjoining the common boundary on its East side, with Mr. Lucian's land being legally described as the SE Quarter of Section 9, Township 33, Range 23 East, Cherokee County, Kansas, and Mr. Gaither's land being described as the East half of the Southwest Quarter of Section 9, Township 33, Range 23 East, Cherokee County, Kansas. The deeds of record that have conveyed the lands described herein to their respective owners shall be attached to these findings and incorporated by reference as though fully set forth herein.

The County Commissioners in performing its duties as fence viewers under the Kansas statutes then reviewed the entire fence line described above. It also solicited at length the input of Jim Lucian and John Gaither.

The parties present stipulated to the following:

1. There is no oral agreement, nor written agreement, recorded in the Register of Deeds Office, that describes the duties of the respective landowners to maintain the subject fence.
2. The South half of the fence runs along the common boundary of the parties and has been recently installed and paid for solely by John Gaither without contribution from Robert Lucian.
3. That farming operations are performed by Robert Lucian, or his lessee, on his property.
4. That farming operations are performed by John Gaither on his property.
5. The land of John Gaither and Robert Lucian is not used in common between them.

6. The parties cannot come to an agreement as to how to handle the sharing of responsibilities with respect to the fence that John Gaither has proposed to build.

7. The fence traces, for the most part, the common boundary of Robert Lucian and John Gaither at the above described location.

The County Commissioners observed and found the following additional conditions to exist:

1. The South half of the fence along the common boundary is a sufficient fence meeting at least the minimum requirements of Kansas law.

2. The North half of the fence along the common boundary is not a sufficient fence meeting at least the minimum requirements of Kansas law. This fence is built along a hedgerow, has insufficient height, insufficient strands of fencing, does not exist in some places, and does not always trace the North half of the aforesaid common boundary without significant variation.

3. Jim Lucian stated that he hunts on his property, is concerned about erosion if the hedgerow along the common boundary is removed, conducts farming operations on this property, and has Walnut trees that would lose protection from strong winds if the hedgerow is removed to construct the fence, and the trees along the fence row have their own value.

4. John Gaither announced that he wishes to conduct cattle operations in his subject property and that enclosure with a sufficient fence is needed.

5. There is a need to remove the hedgerow along the common boundary so that a sufficient fence can be constructed on the North half of the common boundary. The current fence is not kept in good repair, and the parties have not otherwise agreed to not keep it in good repair.

6. Robert Lucian's land sharing the common boundary is not otherwise fenced on its other boundaries that are not the common fence of Robert Lucian and John Gaither.

7. John Gaither's land sharing the common boundary is otherwise fenced on its other boundaries that are not the common boundary of Robert Lucian and John Gaither.

8. K.S.A. 29-309 requires Robert Lucian to contribute to the partition fence as he uses his land otherwise than in common. Robert Lucian conducts farming operations on his property herein.

9. That John Gaither's proposal for a new fence to be constructed upon the common boundary is as stated in a letter written by Kevin Cure, legal counsel to the Board of County Commissioners, dated January 10, 2011, that was previously provided to Robert Lucian and to which Robert Lucian rejected the proposal. This letter is incorporated into these findings as though fully set forth herein.

10. That John Gaither shall be responsible for the maintenance of the recently constructed fence along the South half of the aforesaid common boundary. That such fence is sufficient in its current state.

11. That Robert Lucian shall be responsible for the maintenance of a sufficient fence along the North half of the aforesaid common boundary as such fence is not sufficient in its current state.

12. It is unlikely that Robert Lucian would promptly commence and complete the maintenance of the portion of the fence along the common boundary assigned to him as aforesaid based upon previous history of dealings concerning this controversy between adjoining landowners.

13. That John Gaither shall commence and perform with due diligence the removal of the hedgerow along the common boundary, and replace the remnants of the existing partition fence, with a new fence of the quality as stated in the aforementioned January 10, 2011, letter. Mr. Gaither shall also place one-half of the trees removed on each side of the common boundary.

14. The actual costs to be assigned to Robert Lucian of such removal of the hedgerow and construction of the new fence shall not exceed the following: bulldozing costs of \$600.00, material of \$900.00, and labor to construct the fence of \$600.00. Any excess costs shall be paid for by John Gaither over the said sums. The actual cost to be assigned to Robert Lucian, as aforesaid, shall become a lien against the property on the West side of the aforementioned common boundary until satisfied.

15. Thereafter, any owner of the East half of the land along the common boundary shall be responsible for the maintenance of the North half of the aforesaid fence.

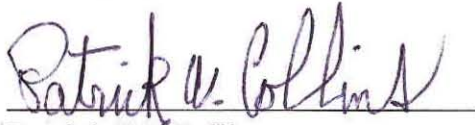
16. Thereafter, any owner of the West half of the land along the common boundary shall be responsible for the maintenance of the South half of the aforesaid fence.

On April 11, 2011, the Board met in regular session, and after considering all the information provided to it, approves the above findings, provided that the following exception and modification thereto is made to accurately reflect the intended conclusion

of the Board, and to assure a fair and just result. Paragraph 14 above is modified to read "east" rather than "west", as follows:

"14. The actual costs to be assigned to Robert Lucian of such removal of the hedgerow and construction of the new fence shall not exceed the following: bulldozing costs of \$600.00, material of \$900.00, and labor to construct the fence of \$600.00. Any excess costs shall be paid for by John Gaither over the said sums. The actual cost to be assigned to Robert Lucian, as aforesaid, shall become a lien against the property on the East side of the aforementioned common boundary until satisfied."

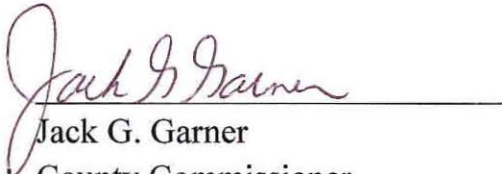
The above findings are incorporated by reference and made the final order of the Board. These findings shall become official minutes of the Board. Such findings shall be recorded in the Office of the Register of Deeds of Cherokee County, Kansas, and be binding upon all successors in interest to the parties hereto.



Patrick W. Collins  
County Commissioner

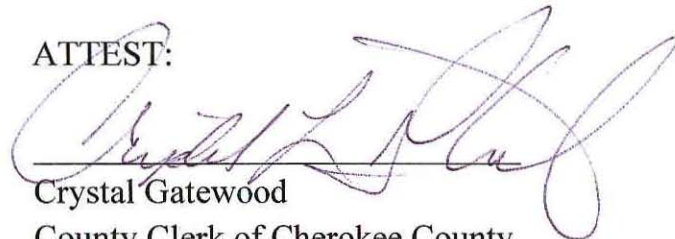


Richard J. Hilderbrand  
County Commissioner



Jack G. Garner  
County Commissioner

ATTEST:



Crystal Gatewood  
County Clerk of Cherokee County,  
Kansas  
Minutes of Fence Viewing for  
Gaither / Lucian

Prepared by:  
Kevin Cure, Attorney


IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be signed by their duly authorized officers on the day and year first above written.

ATTEST:

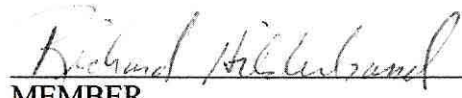
  
\_\_\_\_\_  
COUNTY CLERK (Date)

(SEAL)

COUNTY OF CHEROKEE, KANSAS

  
\_\_\_\_\_  
CHAIRMAN

  
\_\_\_\_\_  
MEMBER

  
\_\_\_\_\_  
MEMBER

Kansas Department of Transportation  
Debra L. Miller, Secretary of Transportation

By: \_\_\_\_\_  
Jerome T. Younger, P.E. (Date)  
Deputy Secretary for Engineering and  
State Transportation Engineer