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Details about this week's Friday Night Concert can be found on page 4.



INSIDE:

The Fort Scott Community College track and baseball teams wrap up their seasons. See page 4.

SPORTS:

Fort Scott High School athletic teams are headed to state. See page 5.

Commissioners given short time to apply for grant to repair Elm Creek Lake dam

BY JASON E. SILVERS
The Fort Scott Tribune

Bourbon County and state officials are trying to work together to address ongoing issues with the dam at Elm Creek Lake.

On May 19, Bourbon County Commissioners allowed Kansas Department of Wildlife and Parks District Fisheries Biologist Don George to speak during public comments as the topic was not on the meeting agenda.

George said he talked to commissioners about two weeks ago regarding repairs to the dam at Elm Creek Lake. Officials are looking at grant funding to help pay for the project, and George said there is a short time-frame on the grant.

“We talked about trying to secure funds to match with grants from (KDWP)” George said. “We also talked about getting estimates of dam repair to apply for another grant. I told everyone then we’re on a really short time. I’m here for a progress report.”

Commissioner Mika Milburn-Kee said she thought it would take about 60 days for Agricultural Engineer-

ing Associates of Uniontown to complete an inspection of the dam. She said the commission approved \$3,000 for a study on the dam.

“I don’t know that anybody here is going to move forward until that inspection is done,” she said.

“So we’re not going to apply for a grant now?” George said.

Commissioner David Beerbower said he thought George was moving forward with a grant application at the same time the county was proceeding with the dam inspection.

“My grant window is now,” George said.

Commission Chairman Brandon Whisenhunt said commissioners approved an extension of the current \$40,000 KDWP grant and are seeking to apply for a separate grant. On Tuesday, Whisenhunt told the Tribune he was not sure of the exact amount of that grant, but thought it was also \$40,000. He said the current grant was extended until “sometime in June.”

SEE DAM REPAIR ON PAGE 8

Memorial Day weekend



Marti Wells-Smith/Special to the Tribune

On a cool, drizzly day Monday, Memorial Day, friends and family gather to place flowers at their loved ones’ gravesites at the U.S. National Cemetery in Fort Scott. The weather forced the American Legion Post 25 organizers to move the annual Memorial Day Service to Memorial Hall.



Marti Wells-Smith/Special to the Tribune

Dr. Michelle M. Martin presents “Sisters in Sorrow: Kansas Women’s Sacrifices for Freedom” Saturday, May 24, at the Fort Scott National Historic Site. The presentation centered on the struggles and sacrifices of Kansas frontier women during the formative period from 1843 to 1861 and was part of the fort’s Memorial Day Weekend observance.

Judge grants partial dismissal in case against county, solar companies

BY JASON E. SILVERS
The Fort Scott Tribune

The judge in a civil lawsuit involving Bourbon County Commissioners and solar energy companies granted a motion for partial dismissal of the plaintiffs in the case during a hearing May 19 in Bourbon County District Court.

District Court Judge Richard Fisher heard oral arguments from attorneys in the case, which included defense attorney Jacob Bielenberg and attorneys representing Hinton Creek Solar LLC, Kingbird Solar Energy LLC and Tennyson Creek Solar II LLC.

The motion states the plaintiffs filed their petition Nov. 20.

Whisenhunt was an appointed commissioner at the time of filing and Beerbower had been elected, but not seated. They are currently serving as county commissioners.

On Jan. 30, Jennifer Hill, defense attorney for the Board of County Commissioners of Bourbon County, “filed a motion to withdraw as counsel and an order permitting her withdrawal was entered” Feb. 28.

Bielenberg, new counsel for the county commission entered an appearance March 26, filed answers and cross-claims and also withdrew the commission’s motion to dismiss, the motion states.

“The BOCC’s answer and cross-claims assert essentially the same positions as the plaintiff’s claims,” the motion states. “Plaintiffs are no longer necessary parties to this action and request their claims against Defendants be dismissed, as those claims are now being pursued by the BOCC.

“Plaintiffs are not requesting that any claims by the BOCC be dismissed, notwithstanding that named plaintiffs include individuals who are members of that Board.”

The motion also states plaintiffs request the court to enter an order dismissing their claims against defendants, “with any appropriate reconfiguration of the caption to place the BOCC as plaintiff.”

Bielenberg told the Tribune Thursday the motion “dismisses the plaintiff’s original claims,” and there has been a realignment in the case.

“Theoretically, it realigns the parties and effectively resolves any conflict of interest that may have been there prior to my involvement,” he said. “The county has adopted the original plaintiffs’ position.”

“Effectively, what it does is it removes the commissioners as individual plaintiffs,” Bielenberg said. “Those commissioners were just individuals when the suit was filed, and not sitting on any commission. Now there are no original plaintiffs and the suit is effectively a dispute between the developers in the county over the validity of the contracts and its moratoriums.”

Bielenberg said he could not speak to a potential resolution but parties hope to reach an “amicable solution without the need for the court to rule.” He said the case involves several solar developers or projects.

During the May 19 hearing, Bielenberg said the case is in a “hold and wait mode.” He told the Tribune he did not anticipate any hearings being scheduled, but a hearing could take place if there is an “inability to resolve the dispute between the two parties.”

There was also discussion on a Motion for Leave to Withdraw filed Jan. 30 by Hill and a partial objection to Hill’s motion filed by Hughes Feb. 18 in district court. Hill said there was a conflict of interest to represent the board of county commissioners who are individually named as plaintiffs.

According to the petition filed Nov. 20, the plaintiffs sought judgement setting aside agreements with solar companies approved in October, “declaring them to be unenforceable; establishing that the powers of the Board of Commissioners of Bourbon County as it will be constituted after January 20, 2025, to regulate the activities of the Corporate Defendants companies will be unimpaired by any agreement with any of those defendants; declaring that Resolution 14-24 was not adopted and is of no force and effect; and for such further relief as may be just and equitable.”

Also in February, county commissioners approved the hiring of Bielenberg, an attorney with Fisher Paterson Sayler & Smith in Overland Park, to represent the commission in the civil case and all negotiations with solar companies.

In January, county commissioners adopted a resolution for a new moratorium on solar energy developments within the county.

The following motions and other records have been filed since the February hearing: a Motion for Discovery; Answer of Board of County Commissioners in Tennyson Cross-Claim; Cross-Claim of Board of County Commissioners of Bourbon County; Withdrawal of Board of County Commissioners Motion to Dismiss; Defendant Hinton Creek Solar LLC’s Consent Motion to Extend Time to File Responsive Pleading; Defendant Tennyson Creek Solar Motion to Extend Time to File Responsive Pleading to Cross; Motion for Order of Partial Dismissal; Defendant Second Consent Motion to Extend Time to File Responsive Pleading to Cross-Claim; and Defendant Tennyson Creek Second Motion to Extend Time to File Responsive Pleading to Cross-Claim of Board.

WEATHER

Patchy fog before 8am. Otherwise, partly sunny, with a high near 72. North wind 3 to 7 mph.



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