COUNTY AGENDA REQUEST

Department:	Commissioners	Presenter(s):	Chairman Steve Brown
Meeting Date:	Thursday, March 14, 2013	Type of Request:	New Business

Wording for the Agenda:

Consideration of administration of West Fayetteville Bypass related to handling the legal ramifications, existing rate of completion and current environmental issues.

Background/History/Details:

Chairman Brown has thoroughly studied the West Fayetteville Bypass since the day it was introduced as a county TSPLOST project back in 2003. After consulting with our county's attorney and road / engineering staff, Chairman Brown is offering a recommendation to the Board of Commissioners on how to proceed with the bypass project.

Please see the attached memorandum from Chairman Brown.

What action are you seeking from the Board of Commissioners?

Approval of recommendation on future administration of West Fayetteville Bypass related to handling the legal ramifications, existing rate of completion and current environmental issues.

If this item requires funding, please describe:

Funds for this request have been budgeted.

Has this request been considered within the past two years?	Yes	If so, when?	
Is Audio-Visual Equipment Required for this Request?*	No	Backup Provided with Request?	Yes

**** All audio-visual material must be submitted to the County Clerk's Office no later than 48 hours prior to the meeting. It is also your department's responsibility to ensure all third-party audio-visual material is submitted at least 48 hours in advance.***

Approved by Finance	Yes	Reviewed by Legal	
Approved by Purchasing	Not Applicable	County Clerk's Approval	Yes
Administrator's Approval			

Staff Notes:

March 14 Agenda Item

AGENDA ITEM:

Administration of West Fayetteville Bypass related to handling legal ramifications, existing rate of completion and current environmental issues.

MEMORANDUM

From: Chairman Steve Brown

To: Board of Commissioners

Date: March 5, 2013

Subject: Administration of West Fayetteville Bypass related to handling legal ramifications, existing rate of completion and current environmental issues

As someone who has thoroughly studied the West Fayetteville Bypass and opposed it since the day it was introduced as a county TSPLOST project back in 2003, I am forced to concede that former Commissioners Lee Hearn, Robert Horgan and former Chairman Herb Frady have achieved their objective of pushing Phase II of the bypass far enough along so that we are unable prevent its completion.

After consulting with our county's attorney, road and engineering staff, I offer the following thoughts.

Staff acknowledges there was an outright attempt to force Phase II of the bypass into an ultra-fast engineering and construction mode so as to push the project far enough along that completion would be imminent. I personally witnessed the constant prodding from then-County Administrator Jack Krakeel and then-Commissioner Lee Hearn on the TSPLOST committee to accelerate Phase II.

It is truly distressing that our new Interim County Attorney revealed that he discovered 10 properties that are still in condemnation along Phase II, either in the courts or other means, but the county took the land from the local property owners and began building Phase II of the bypass on those parcels anyway. I consider this careless methodology to be both inappropriate and unconscionable, opening the county up to considerable risk by not knowing the actual costs of land acquisitions and possible court-imposed damages.

For the record, I do not hold county staff accountable for any of the irresponsible and inappropriate actions to accelerate Phase II without officially acquiring the land and determining the total land costs in advance as that process was totally driven by the majority from the previous Board of Commissioners, Jack Krakeel and former-County Attorney Scott Bennett.

The southern section of Phase II (everything south of Eastin Road which accounts for 50% of the length of the entire project) was completed last year.

The section from Eastin Road to State Route 92 was substantially complete at the beginning of the year. Our new Board of Commissioners recently delayed material contract approvals for the bypass so that we could thoroughly evaluate our position.

I report that we are shackled by a contract approved by former-Chairman Frady and former-Commissioners Hearn and Horgan. Undeniably, the contractor, E.R. Snell, has completed a majority of the work from Eastin Road to State Route 92 with the contract calling for finish paving in May.

The contractor has to be paid in full or the county government is in breach of contract as we are locked into a binding agreement from the former majority on the Board of Commissioners. If we continue to halt the work, we lose a significant amount of taxpayer dollars with nothing to show for it. In addition, we are also experiencing erosion problems from the prepared road bed now in place, and it will cost even more taxpayer dollars, beyond the binding agreement for road construction, to contain that damage if the road bed is not paved.

We also have another contract where we are locked into a binding agreement from the former majority on the Board of Commissioners with contractor McCarthy Improvements related to the bridge at Whitewater Creek. As with the other contractor, the work is in progress and terminating the project would result in a breach of contract, meaning the taxpayers would pay for the total project without the work being performed.

The roundabout project at State Route 92 is in the design phase. Once our new County Administrator was officially employed with the county, I asked him to immediately work with staff on finding a less expensive and less harmful design on the homes and businesses in the area. I am pleased to announce that it appears the road and engineering staff have come up with a better, less expensive option.

The original roundabout plan cost $1.7 million and had a significant impact on the surrounding homes and businesses. An alternate plan, costing much less, avoiding a major utility relocation and greatly reduces the impact on the neighbors.

The majority on the previous Board of Commissioners moved forward on design for components on Phase III of the bypass. Staff had begun the preliminary planning process.

In looking for the best solution possible under the constrained circumstances, I offer the following motion to the Board of Commissioners:

I move that the Board of Commissioners, to avoid a lawsuit based on breach of contract related to binding agreements passed by the majority on the previous Board of Commissioners and to avoid paying the cost of resolving continued environmental damages from leaving the currently formed road bed unpaved, allow the completion of Phase II up to State Route 92. Likewise, I move that the roundabout previously approved by the majority on the previous Board of Commissioners be reconfigured to a normal four-way intersection with a reduced cost and a reduced impact on the neighbors. In addition, I further move that Phase III of the West Fayetteville Bypass be officially terminated as a planned project and removed from the Fayette County Transportation Plan as a new road segment project. Finally, I conclude this motion with an official apology from the county government to the landowners and taxpayers of Fayette County for the local government not being receptive on the issue of the West Fayetteville Bypass project and county's forcing the construction of Phase II, even before a substantial amount of the land was purchased just to handcuff the current Board of Commissioners to the completion of the phase because of the binding contracts of their predecessors. May we never see such thoughtlessness in this county ever again. So moved.