

Board of County Commissioners of Lincoln County  
Agenda for October 31, 2013

9:00 Call to order and Pledge of Allegiance

9:00 Public Health Director Sue Kelly to give the September and October reports

10:00 Work on the 2014 budget, including making a decision on funding for the Economic Development Director position

1:00 Dale Bode and Wilbur Schreiber to discuss closure of a trail

1:45 Amy and Theron Perry to discuss continuing the requirement for an annual water test as stipulated on the Winterberg development permit for a junk yard

1. Approve the minutes from the October 30, 2013 meeting
2. County Commissioners' reports
3. County Administrator's report
4. County Attorney's report
5. Old business
6. New business
7. Approve additional expense vouchers if necessary

The Board of Lincoln County Commissioners met at 9:00 a.m. on October 31, 2013. The following attended: Chairman Ted Lyons, Commissioners Greg King and Doug Stone, County Administrator Roxie Devers, and Clerk to the Board Corinne M. Lengel. County Attorney Stan Kimble and Will Bublitz with the Limon Leader and Eastern Colorado Plainsman attended in the afternoon.

Chairman Lyons called the meeting to order and led the Pledge of Allegiance, after which Public Health Director Sue Kelly gave her September and October reports. There was quite a bit of activity in September investigating and following up on communicable disease control reports; namely, one possibly rabid bat exposure of a non-county resident, outbreak of head lice in one school, an encounter between a local dog and a possibly rabid coyote (which ended up negative), one new TB investigation (also negative), and two cases of West Nile Virus. Immunizations of children picked up a bit, and preparations for the up-coming flu shot season were completed, and both the Medicaid and Medicare enrollment processes had to be repeated in early September and they are awaiting the decision. Tobacco time was spent finishing up vendor audits and an approach to one vendor about his decision to carry electronic cigarettes. School tobacco policies now need wording to include electronic nicotine-delivery systems. Several meetings were attended, including Child Protection Team, LCDC Policy Council, CKLECC, the IOG, and Resources Unlimited. Staff completed their in-person training to be Health Coverage Guides for Connect for Health Colorado in Denver and Burlington. As a result of the flooding in the state, a record number of HAN alerts were received and forwarded through Ms. Kelly's office to interested parties. They included flood water hazards, disinfection of contaminated goods, West Nile Virus/mosquito precautions, and safe drinking water. On September 17, Koral O'Brien and Gail Newell (State and Federal Regional MRC Coordinators) came to Hugo to finish orientation on the new Public Health MRC. Ms. Kelly said they are on track and should be able to start billing for their activities fairly soon.

For October, Ms. Kelly reported participating in the Rural Solutions board meeting on October 4 and the Resources Unlimited meeting in Limon on October 15. There were no new cases of West Nile Virus and two dog bites were investigated. The main activities for the month were the flu shot clinics; at least one held in each of the county's five communities, with multiple dates in Hugo and Limon. Approximately 250 doses have been administered. Ms. Kelly attended training for the new Child Fatality Review Team directive slated to begin in January of 2015. The law, passed in 2013, mandates local Public Health agencies to lead multi-disciplinary teams to review all child fatalities, with the aim of community prevention strategies. There will be some funding for the implementation and possible future annual funding as well. Lastly, Ms. Kelly said that two applications were accepted and two interviews completed for a full-time Public Health Nurse. Heike Adams was offered the position and will begin on November 1.

The Board worked briefly on the 2014 budget, Mr. Lyons stating that it worries him to lower the fund balances, even though the auditor has suggested it. Ms. Devers asked if they wanted to leave the additional .90 mills in the Road & Bridge budget or move it somewhere else, and Mr. Lyons commented that his district will need to address a couple of bridges. It was decided to leave the .90 mills in the Road & Bridge budget.

Troy McCue, Vickie Maxon, Patsie Smith, and Joe Kiely arrived at that time for the discussion regarding the decision on funding for the Economic Development director position, and Mr. Lyons said that he was happy to see Genoa and Arriba joining in but also likes the approach that Hugo is taking by only committing half their funding up front until results are obtained. He would prefer the county do the same; contribute \$25,000 up front and the remaining \$20,000 after six months and some possible results are shown. Mr. Stone agreed with Mr. Lyons, but Mr. King said that he was more in favor of committing the entire \$45,000 right away, as it may impede the group's ability to hire someone of quality if they cannot guarantee a full year's funding.

Patsie Smith spoke up to say that she felt the economic development board failed the county by not keeping a closer eye on the director and following up with results, or the lack thereof, but she promised that would not happen again, at least as long as she is on the board. Mr. McCue put in that they are logging the number of visits to existing businesses, but it's difficult to measure results in any given period of time. They can report the hours and dollars committed to a certain project, but the efforts may not be fruitful with the first business—it may take several attempts. However, the groundwork would be complete, so it would not have to be redone each time, which can be logged as progress.

Mr. Lyons asked how they came up with the salary they hope to offer, and Joe Kiely said that they did comparisons with other counties and comparable areas, adding that the salary needs to be high enough to entice the proper individual. He also stated that they now identify projects with specific project numbers and something they have realized that is not happening is contact with local businesses, which is the first thing they want to change.

Mr. King said that the Coleman Packing plant was a good example, as the preliminary, preparatory work has already been done, so the time saved to redo all of that is progress in itself.

Mr. Lyons said that \$20,000 is not going to make or break the county, but he wants to see something concrete in order to know that the money is producing an effect. Mr. Stone added that he wants to be able to tell residents what the money is going toward when they ask, and Mr. King put in that anyone making this type of investment would like to see results. He suggested that the new director meet with the commissioners on a monthly basis to update them on progress, and the others agreed. He also stated that he would prefer the director not be a local person, but someone with a fresh perspective, and Ms. Smith added that that person would have to live in Lincoln County or be willing to move to Lincoln County, however.

Mr. Lyons said he would be willing to commit the full amount if the group would guarantee at least some results within a year's time, and Mr. McCue said that both the towns of Genoa and Arriba had said the same thing or they will not renew the funding. Mr. Stone also changed his opinion and said he would agree with the \$45,000 up front, as they need to make every effort to save Lincoln County.

Vickie Maxon spoke up to say that the report she wrote is a prescriptive plan with a multi-step approach, and the most important thing to remember is that every step is essential and if one portion is omitted it can jeopardize the overall results. She stated that the business directory is almost finished and should be complete by March, and then added that the Savory Spoonful restaurant had closed in Limon the previous day. Mr. Kiely said that they are doing what they can to relocate the business. Ms. Maxon concluded that there is excitement within the businesses but LCEDC has to create a new expectation that the organization is not anything like it was in the past.

Mr. King asked Mr. Kiely if he'd received any other information on the Foreign Trade Zone, and was told that Cheyenne County is the only county that asked to opt out of the service area. They have received letters of support from Elbert, Crowley, and Baca counties.

Ms. Smith said that one of the problems where businesses are concerned is that they don't know how to sell themselves. Ms. Maxon asked the commissioners to try and get CDOT to specify the signage rules on I-70 or along 40/287, as businesses have asked how to advertise along the interstate and it is a huge lost opportunity if they cannot do so. She said if the Board could find out what the rules are from border to border, including on private land, it would be very beneficial. Mr. Lyons said they could check with Travis Miller.

Mr. Lyons asked Mr. Kiely if he had attended the Colorado Blueprint meeting and if he had understood the STEM project, if so. Mr. Kiely said that it's about the connection between education and economic development—the big businesses of the world are saying they need a better-trained workforce.

The group left and Mr. King made a motion to approve the minutes from the October 30, 2013, meeting, as submitted. Mr. Lyons seconded the motion, which carried unanimously.

Ms. Devers asked the commissioners if there was anything they wanted to discuss in particular at the eastern district portion of their winter conference and they agreed that they would like to find out how progress is coming regarding elected official salary increases.

There was no old or new business to discuss or expense vouchers to approve, so the Board decided to take an early lunch in order to be back for the 1:00 p.m. appointment.

At 1:00 p.m., the following arrived for the discussion regarding the closure of a trail: Dawn and Ralph Brent, Linda Ashmore and John Theisen, Dale Bode, Jason, Balyn, and Kimel Brent, Steve Monks, and Land Use Administrator John DeWitt. Wilbur Schreiber was unable to attend.

Mr. Bode stated he had come before the Board to ask about the two-track trail on the section line north of County Road 3X and County Road 40, adding that it is not on the county map. He farms it to the center of the road and would therefore like to close it to access, adding that Mr. Schreiber farms halfway to the center of the trail also. If the trail is closed, Mr. Bode wanted to know if the DA will prosecute anyone who drives across his crops.

Mr. Kimble again reiterated that if the road is not on the official county map then it is not considered to be a county road and it is really a civil matter to determine if it should remain open.

Mr. Bode said the DA has said that he needs to take the case to court, the sheriff won't write tickets for trespassing, and even if he did the DA wouldn't prosecute the cases. He added that it is very difficult to sue someone when you believe you are doing the right thing.

Mr. Lyons asked Ms. Devers to call the sheriff and ask him to come over to respond to Mr. Bode's statement that his department will not write tickets to trespassers, and Mr. Monks took the opportunity to state that Mr. Bode is asking the commissioners to settle something that is purely a civil matter.

Sheriff Tom Nestor and Undersheriff Gordon Nall arrived as Mr. Bode said that he has asked that tickets be issued and wanted to know how far off the trail a person can drive before it is considered to be trespassing. Mr. Monks responded that it is thirty feet each side of the section line, but Mr. Bode argued that it is not a road. Mr. Kimble said that a judge would most likely have to make that determination, and Sheriff Nestor said that the whole situation needs to be resolved through the courts.

Mr. Bode stated that it appeared that no one really had an answer, adding that he would obtain a copy of the minutes once they are approved, and left the meeting.

Mr. Lyons said that the only resolution is for the case to be taken before a civil judge, and Mr. Kimble said that the county would do whatever the judge determines.

Mr. Monks said that he has been speaking with the landowner and believes they can work something out without it going through the court process, and the sheriff said he, too, would prefer if they could all sit down and agree on something. Mr. Monks added that the original intent of the road order, which was to give access to property owners, was probably a good idea, adding that he was not suggesting the county open a road; merely that the road order does serve a function.

Mr. Kimble said the county is basically limited to what it can do in the matter. Undersheriff Nall added that if they charge someone with trespassing, the DA will most likely dismiss the case, as he sees the issue as a civil matter as well.

Mr. Monks' final comment was that it is not the county's place to solve the issue.

Mr. Kimble gave his report, stating that he had finally spoken to Jamie Prochno with the Colorado Water Conservation Board, who recommended that the county adopt the flood plain ordinance, as it actually is required.

Mr. Lyons said he didn't particularly like the idea of signing something they know nothing about and asked what the penalty is if the county doesn't adopt the ordinance. Mr. Kimble said that Ms. Prochno said it is illegal not to, but his main concern was that adopting the ordinance will cause property values to drop. Still, according to the ordinance itself, non-compliance would be a misdemeanor, which may result in fines or possible imprisonment. Mr. Kimble added that Ms. Prochno had said she would come and speak with them if necessary, adding that if an area is not in the national flood insurance program and this ordinance is not passed, the county would not be eligible for some grants, and county residents may be unable to obtain flood insurance.

Ms. Devers said that since the flood plain has never been mapped, it would be very expensive to do so, adding that a previous board of commissioners discussed it years ago and decided against it because it was cost prohibitive.

Mr. King said he would like to know what the consequences are if the county chooses not to adopt the ordinance and Mr. Kimble said he would see if he could find out.

At 1:45 p.m., Amy Perry and John and Rhonda Clay met with the Board to discuss continuing the requirement for an annual water test as stipulated on the Winterberg development permit for a junkyard. Land Use Administrator John DeWitt was also in attendance.

Mr. Kimble referred to the legal memorandum he had sent to the commissioners, which reflected history on the original development permit reviewed by the land use board on August 21, 2001. The permit was approved to allow a building and junkyard/vehicle salvage business on the subject property, with conditions; including, a screening fence built by the Winterbergs, repair to the existing barbed-wire fence including upgrading it to a four-strand wire fence with constant maintenance, an entire clean-up of the area, and the installation of Clays' water well at Winterbergs' expense, with the groundwater to be tested on an annual basis, also at Winterbergs' expense, to assure that no hazardous materials were leaching into the Clay groundwater. Both parties agreed to the stipulations and the development permit was approved by the county commissioners on August 31, 2001.

Mr. Kimble went on to say that Theron and Amy Perry have requested that the well monitoring process cease at this time for the following reasons: the testing was a requirement that should not have been considered initially; the testing for the past approximately twelve years has produced no results of contamination; and the property is no longer used for the same use that was sought in 2001 and the possibilities of contaminating the property are not present.

Finally, Mr. Kimble said that although Lincoln County zoning regulations may not prescribe a set procedure for amending the conditions on a development permit, or addressing a change in use, the law would appear to support an applicant's right to show changed conditions or circumstances which could reasonably be considered. He suggested that the request for modification of the conditions should start with it being presented to the Land Use Board for

public hearing, with recommendations being given to the commissioners; however, the final decision would be from the Board of Commissioners.

In light of Mr. Kimble's statement, Mr. Lyons felt that the Perrys should take the matter before the Land Use Board again, and Mr. Kimble said that it would benefit the interested parties to gather their own information before doing so, adding that there probably should be a time limit set for monitoring the well water.

Land Use Administrator John DeWitt put in that he had done some research and talked to quite a few people, all concerned with the fact that the groundwater has never tested positive for any contaminants. Another interesting aspect is that the water actually flows away from Clays well. He added that site testing would be the best option; however, it is cost prohibitive at a minimum of \$2,000 or \$3,000. Should the EPA become involved, it may cost closer to \$10,000 or more; payment to be determined by which party is found out to be in the wrong. Mr. DeWitt also said he'd heard there may have been serious allegations made by Mr. Clay; such as the fact that there were intentional releases and oil being dumped into open pits, which are serious crimes. Had those allegations ever occurred and been pursued on the criminal level, the issue never would have gone before the Land Use Board at all. He went on to say that Perrys could end up paying well up to \$100,000 or more if something is found, but if not, Clays would end up having to pay those costs. The well is a shallow, surface well, no more than fifty feet deep, and Mr. DeWitt said that if the EPA becomes involved, there will be far more problems than what they are facing right now. It would be best for the Perrys and Clays to settle the matter amicably.

Mr. Kimble asked if the county is required to do something if the commissioners or land use is made aware of a hazmat spill, and Mr. DeWitt responded that he would have to report it to the proper authorities and possibly isolate the area. He added that if he had been the land use administrator at that time, they would have done an immediate site inspection to determine how bad the situation was. Mr. DeWitt said that if he doesn't see anything he can't report it and when Mr. Kimble asked what he would do if he inspected the site now and determined there was nothing there, Mr. DeWitt said he would have to ask for evidence from the complainant.

Mr. Clay spoke up to say that he felt there was no need to go into costly proposals and asked if Mr. DeWitt would consider doing a site inspection of the entire property. If he doesn't find anything, and it is acceptable with Mrs. Perry, he said he and his wife would sign off on paper to discontinue the groundwater testing. He added that Perrys have done a much better job of keeping the place clean and they do still have to be neighbors, and Mr. Lyons stated it would be an excellent resolution and he respected Mr. Clay for making the offer.

Mr. DeWitt said he is certified to do the inspection and he will notify the parties and can hopefully get it done early next week. Mrs. Perry said she would check with her mother, since she is part owner of the property, but sees no reason why she would not be agreeable to Mr. Clay's suggestion.

After the Clays and Mrs. Perry left, Mr. DeWitt said that he had received a formal complaint from Dale Bode to investigate one of the Brents for running an illegal confined livestock operation, and he just wanted the commissioners to be aware of the complaint. He added that he wasn't sure which Brent it was, but he would check his notes.

Mr. Kimble asked the Board if they would like to call the Assessor and Treasurer over to discuss the CCI bankruptcy case, and when Mr. Higgins arrived, a brief discussion ensued regarding the official county road map; Mr. Kimble stating that they need to establish primary, secondary, or primitive roads. Mr. Higgins said he relies largely on the road foremen, as they are the ones who are most likely to change a road for any reason, and most often roads will go from a primitive to a secondary state more than anything else. Mr. Kimble said that the county simply needs a good map and a good policy to go along with it.

County Treasurer Jim Covington arrived at that time and Mr. Kimble said that a motion from the bankruptcy court was received from CCI asking permission to sell everything to Harris Systems, USA, but he and Mr. Covington and Mr. Higgins do not like the agreement that the company proposed. They are concerned that if the court allows the purchase and the county does not enter into the agreement, Harris Systems will come and take the equipment that the county is still using. Mr. Higgins said that they are getting a group of assessors together to discuss the issue to see if others agree that it is not a good idea to enter into the services agreement, which basically gives Harris Systems exclusive rights and means that the county would lease the equipment from them.

Mr. Kimble said he would still like to speak with a bankruptcy attorney, especially since a motion was filed by Harris Systems that they are the company that can purchase CCI assets. He added that it would be an option to contact CCI and let them know they are in default, but he is concerned that it may cause even more problems to do so. Mr. Higgins put in that if they do sign with Harris Systems, then all past agreements become null and void, but nothing is mentioned in the agreement about the hardware, so they are not sure what would become of it. His belief was that Harris Systems is attempting to get the agreements signed by all the counties involved so that they can take them to the court and say that they have the support of the counties for the purchase.

Mr. Covington stated that Harris Systems wants a year's payment up front, and Mr. Higgins said that the best case scenario is that they can get out whenever they want to, but as a last resort they may be able to negotiate the services agreement and try to stretch it out several months until the Tyler system is in place. He added that the court date is set for November 25, and he doesn't want to sign an agreement with someone who doesn't own the assets.

Mr. Lyons agreed that he was not in favor of signing anything either, and Mr. Kimble stated that if the county needs to get a restraining order to keep the company from taking the equipment, they may want to do it sooner rather than later. He added that it appears from the motion that CCI intends to sell their assets to Harris Systems, USA, and then dismiss the bankruptcy. He finished by saying that he felt it may take a long time to get the situation resolved and is

optimistic that it will work out; however, he will contact the bankruptcy attorney to discuss it, just to be safe.

With no further business to come before the Board, the meeting was adjourned until 9:00 a.m. on November 7, 2013.

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Corinne M. Lengel, Clerk to the Board

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Ted Lyons, Chairman