

Board of County Commissioners of Lincoln County
Agenda for March 31, 2014

9:00 Call to order and Pledge of Allegiance

9:00 Mark Anderson to request an exemption from Subdivision Regulations on a parcel of property for the Edison Fire Protection District to construct a fire house on

10:00 Human Services Director Colette Barksdale to give her monthly report

11:00 County Assessor Jeremiah Higgins to present the requests for revisions to the official county road map

1:00 Tony Ryan and Tricia Hale with NextEra Energy to present and discuss the Development Agreement and the Master Road Use Agreement for the Limon Wind III project

1. Approve the minutes from the March 28, 2014 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 March 31, 2014. The following attended: Chairman Ted Lyons, Commissioners Greg King and Doug Stone, County Administrator Roxie Devers, Clerk to the Board Corinne M. Lengel, and commissioner candidate Gene Vick. County Attorney Stan Kimble attended in the afternoon, as did commissioner candidate Ed Schiffers.

Chairman Lyons called the meeting to order and asked Mark Anderson to lead the Pledge of Allegiance. Mr. Anderson then provided a copy of a letter to Fred Kunau, who has agreed to donate two-to-three acres to the Edison Fire Protection District for the purposes of building a firehouse, and a copy of the survey done by Scott Kimble. Mr. Anderson asked the commissioners to allow an exemption from subdivision regulations on a parcel in the South Half of Section Seventeen, Township 16, Range 59 West in order for the firehouse to be built just north of the Kendrick Bible Church. He added that there will be an entrance on both County Road K and County Road 3, and no one affiliated with the church has a problem with it. When Mr. Stone asked how big the building will be, Mr. Anderson responded that it will be a five-bay firehouse; 40' x 100'. Mr. King asked where their current firehouse is located and was told it is in the Edison school yard, and they plan on keeping it. Mr. Lyons asked how large of an area the fire protection district covers and Mr. Anderson said they have a three hundred and forty-seven square mile area that covers Lincoln, El Paso, and Pueblo counties.

Mr. King made a motion to adopt a resolution allowing an exemption of subdivision regulations to Edison Fire Protection District on a parcel of property in the South Half of Section 17, Township 16 South, Range 59 West, for the purposes of building a firehouse. Mr. Stone seconded the motion, which carried unanimously.

At a regular meeting of the Board of County Commissioners of Lincoln County, Colorado held in Hugo, Colorado on March 31, 2014, there were present:

Ted Lyons, Chairman	Present
Greg King, Vice Chairman	Present
Douglas D. Stone, Commissioner	Present
Stan Kimble, County Attorney	Absent & Excused
Corinne Lengel, Clerk of the Board	Present
Roxie Devers, County Administrator	Present

when the following proceedings, among others, were had and done, to-wit:

RESOLUTION #878 It was moved by Commissioner King and seconded by Commissioner Stone to adopt the following resolution:

WHEREAS, application has been made by the Edison Fire Protection District for exemption from the Lincoln County Subdivision Regulations on a parcel of land in Lincoln County to construct a fire house. Said parcel is described as follows:

A parcel of land situated in the Southeast Quarter of Section 17, Township 16 South, Range 59 West of the 6th Principal Meridian, Lincoln County, Colorado, more particularly described as follows:

Commencing at the southeast corner of Section 17, Township 16 South, Range 59 West of the 6th Principal Meridian, and considering the south line of said Section 17 to bear south 90° 00' 00" west; thence south 90° 00' 00" west along the south line of said Section 17, a distance of 420.00 feet to the point of beginning;

Thence south 90° 00' 00" west along the south line of said Section 17, a distance of 75.37 feet; thence north 01° 37' 21" east, a distance of 620.00 feet; thence north 90° 00' 00" east, a distance of 495.37 feet to a point on the east line of said Section 17; thence south 01° 37' 21" west along the east line of said Section 17, a distance of 200 feet; thence south 90° 00' 00" west, a distance of 420.00 feet; thence south 01° 37' 21" west, a distance of 420 feet to a point on the south line of said Section 17, and point of beginning; said parcel containing 3.00 acres, more or less.

Said parcel of land is subject to any rights-of-way or other easements as granted or reserved by instruments of record or as now existing on said tract of land; and

WHEREAS, under Section II-27-D-Subdivision, the Board of County Commissioners may exempt from this definition of the terms "subdivision" and "subdivided land" any division of land if the Board of County Commissioners determines such division is not within the purposes of this article;

NOW, THEREFORE BE IT RESOLVED by the Board of County Commissioners of Lincoln County that the parcel as described in the application be excluded from the provisions of the Lincoln County Subdivision Regulations so long as there is not a change in the present use of the property;

BE IT FURTHER RESOLVED that this exemption from the provisions of the Lincoln County Subdivision Regulations excludes any future division of the property without subsequent approval by the Board of County Commissioners.

Upon roll call the vote was:

Commissioner King, Yes; Commissioner Stone, Yes; Commissioner Lyons, Yes.

The Chairman declared the motion carried and so ordered.

Board of County Commissioners
of Lincoln County

ATTEST:

Clerk of the Board

Mr. Stone made a motion to approve the minutes from the meeting held on March 28, 2014, as submitted. Mr. King seconded the motion, which carried unanimously.

Mr. King reported attending a meeting in Limon on March 18 where Senator Michael Bennett spoke. On the Twentieth, he received a complaint from a landowner regarding the way farm trucks were driving on one of the county roads. Mr. King stopped and spoke with Sheriff Nestor about the issues they are having on County Road 109 with the oil trucks. They discussed the fact that they could have the Port of Entry set up on the road, but Mr. King said he did not want to do that at this point; he just wants them to follow the law. He also visited with a tourism board member who has concerns with the representatives from Arriba and Genoa and would like representation from residents who actually live in the towns, if possible. Ms. Devers said she would see if the number of board members is specifically designated or if more members can be added. He also reminded the other commissioners of the open house for the new executive director of the Lincoln County Economic Development Corporation, which is on April 1.

Mr. Stone attended the same meeting as Mr. King on March 18, and also checked roads on March 25.

Mr. Lyons said he'd already reported everything he needed to and mentioned power being extended on County Road 25 at Forristalls.

Ms. Devers reported on the roundhouse door and window project, stating that she met with Dave Wittman and Merrill Wilson via phone conference and they discussed what could be taken out of the Scope of Work to fit their budget, since both bids had come in so much higher than what they actually have funding for. They had a phone conference with the bidders and Mr. Wittman sent out the bid packets, but in the meantime, Ms. Devers found out that the amendment to the Scope of Work must be approved by the State Historical Fund, so she will need to send them the paperwork for approval. She had also received an email from Matt Jagow with CDOT but she had no idea what he was asking for, so she sent him a response asking for clarification. Spectrum Contractors called and said they had not bid according to the

specs that were given to them, adding that they will not rebid the project because Waddle & Daub know what their bid was. Waddle & Daub did bid the project according to the specs, so Ms. Devers said she will do the paperwork for the State Historical Fund and also find out what CDOT is requesting, but at this point they are at a stalemate.

The Board signed the letters to Brian Johnson with NRCS and to the High Plains Soil Conservation District regarding the blowing soil complaint by Kenneth and Virginia Becker, and then Mr. Stone said he heard there had been an issue with one of the breakers in the Ellis Allen building after the Republican county assembly on Friday night. Zane Nestor told Ms. Devers that he had to keep flipping the breaker because the outside lights kept going off. Mr. Stone said they should have an electrician check it out.

At 9:30 a.m., Sheriff Tom Nestor stopped in to discuss the DTRS and microwave equipment procured by Lincoln County through the CWIN program in 2007. He wasn't even aware that the county actually owned the equipment, but stated it will cost approximately \$250,000 per year to maintain it once the grant is up if the county chooses to retain ownership. Chris Brown, the state telecom tech that services the state telecom assets, suggested that the county may want to relinquish the responsibility for the DTRS and microwave equipment back to the state. The sheriff had received an email from the program manager with Public Safety Communications Network asking if he would like for her to provide a draft Memorandum of Understanding to begin that process. Sheriff Nestor told the Board he would like to have their approval to do so, and Mr. King made a motion to authorize Sheriff Nestor to sign the MOU relinquishing the responsibility for the DTRS and microwave equipment to the state, allowing them to maintain it. Mr. Stone seconded the motion, which carried unanimously.

Human Services Director Colette Barksdale was asked to come down early for her appointment with the Board, so she and Robert Kraxberger arrived at approximately 9:50 a.m. As the commissioners approved the time sheets and reviewed the financial reports, Ms. Barksdale gave an update on the smart board installation, which was completed on March 26 in both locations. They still need training on how to use the boards, and since Ms. Barksdale was concerned with their security, she had Travis Nall build some locking cabinets around them. Speaking of security, Ms. Barksdale informed the Board that she and Public Health Director Sue Kelly had some issues with someone using their Limon office so they had the locks changed. Ms. Barksdale said that a couple of keys were missing and someone had used the facility without permission, so they had Kenny Mills come and replace the locks for them.

Ms. Barksdale also explained that the wrecked Impala was replaced with a van, which they had budgeted for anyway. They also bought a Suzuki for \$9,960, which was the low end of the amount they had planned for a replacement vehicle. One of the older vehicles, most likely the 2006 Chrysler van, will be given to a family in need.

With the retirement of Beverly Newbanks, Ms. Barksdale said that she had to rearrange some of the staff to take over her duties. Kelly Johnson, who was the receptionist, will do some case aid and adult protection resource work, and the adult abuse/neglect portion will be split

between Andy Lorenson and Melissa Gossett. They will also train Kelly to take care of the expedited food stamps since they are behind in that area.

Ms. Barksdale produced a C-State report, a performance report that they will be getting on a monthly basis from now on, which reflects their performance and statistics in the various programs and where they are strong or where they may need improvement. The Medicaid caseload has increased considerably, and they are receiving an additional \$18,000, so Ms. Barksdale would like to hire a part time person for Medicaid cases. Mary Solze has been doing the Medicaid-only cases, but has decided to quit working. Ms. Barksdale would like to increase her position to a full time position and possibly add LEAP to it as well, since Julie Witt no longer wants to do that next year. Ms. Barksdale said she won't do anything until June, but will put together a proposal for the Board. She assumes the salary amount of the new full time person may actually be less than the current budget amount, since they will be able to add the \$18,000 to it. Ms. Solze also does the Quality Assurance and has said she will come back a couple of times a month to take care of it.

The state is anticipating giving half of the \$3 million savings in the IV-E Waiver programs back to the counties and is trying to decide how to distribute the funds. Ms. Barksdale said it appears that Lincoln County's allocation may be around \$35,000 to be used in Medicaid and services. She added that collaborative management programs in Child Welfare need continuous funding.

As for the new Child Welfare hotline, Ms. Barksdale will be attending a meeting on April 25 concerning funding amounts. She commented that the department is expected to immediately enter the calls into the call system, which would mean having someone in the office 24-7 or somehow using the sheriff's dispatch. She added that she is not sure how their phone system will handle the new requirements so ESRTA and Gary Higgins with Frontier Telephone will most likely need to be part of their conversations, but it could possibly mean a new phone system for Human Services.

Ms. Barksdale said that CCAP legislation will happen and they will need to change their funding levels. Currently, the county is at 135% of poverty level, but will have to raise it to 165%, which should not be a problem as they have plenty of money.

Project School Supply could be a challenge this year, according to Ms. Barksdale, due to new school construction. She asked if the supply pallets could be placed under the awning area north of the commissioners' meeting room, but Mr. King said the county plans to replace part of the parking lot sometime this summer and it may not be easily accessible when they need it to be. Ms. Barksdale said a barn or some type of storage like that would be perfect and asked if there may be something at the Karval School. Mr. Lyons suggested the Conex container at the landfill where the recycled electronics are being kept, and Mr. Kraxberger thought the old rabbit barn at the fairgrounds might work also. He will contact both Julie Joffe and Mick Jaques to ask if they would have the space available.

At 1:00 p.m., Tony Ryan and Tricia Hale with NextEra Energy met with the Board to present and discuss the Development Agreement and Master Road Use Agreement for the Limon Wind III project. Others in attendance for that portion of the meeting were Land Use Administrator John DeWitt, Ed and Jody Schiffers, Mark McHone, and Jim Covington. Ms. Hale stated the agreements are basically the same as those used for the Limon Wind I and Limon Wind II projects, with a few minor changes. They plan on taking approximately nine months for construction of the 118 towers, which they estimate will cost \$17,687.17 per tower, for a total development fee of \$2,087,086.59.

Mr. Kimble explained to the two commissioners who were not involved in the previous process that they had worked from Logan County regulations and negotiated a fee based on what items were taxable. He added that they want to be consistent and the sales and use tax and permit fees are all one fee.

Ms. Hale asked that the commissioners approve the road use agreement first and Mr. Kimble asked about the mineral agreements, stating that it appeared that NextEra exercised “commercially reasonable efforts” to enter into those agreements with mineral owners. Mr. Ryan said that with the previous development they only had two objections, but this time there were nine, and they have done what they could with those nine parties. He named the parties: CoBank, who requested “reasonable accommodations under Colorado law” so they added it; Nighthawk, who they had reasonable discussions with and have not heard back from since February 22; Hutchens and Patterson, who never signed the agreements sent to them; Pine Ridge Oil & Gas, who are agreeable to everything except the seismic numbers (but they are working on that); Prairie Minerals, who requested several drafts and finally executed an agreement; Albert James and Ferris Scott, who have no turbines on their property and have not responded to several attempts at contact; Robert Kraxberger, who they reached an agreement with last week which has not yet been signed; Anadarco, whose requirements NextEra satisfied last week; Jack Dillon who does not want to sign an agreement; and Cascade Petroleum, who agreed to the final form of the document last Thursday, but has not yet signed. Mr. Ryan stated that those who wish to enter into an agreement with NextEra can do so at any time, adding that he believes they are miles above where they were with the last project in regard to reaching out to mineral owners.

Mr. Kimble commented that it appeared they have contacted everyone who filed an objection which proves they’ve made the “commercially reasonable efforts” to enter into agreements with them, and Mr. Ryan responded that they will continue to work with anyone who wants to do so.

Mr. Ryan said there is a blank on the road use document because he did not want to assume that the commissioners would require a million dollar bond as they had for the prior projects, and Ms. Hale said that they had met with Commissioner King and Mark McHone and discussed plans for the haul routes, as well as speed limits, hours of use of roadways, and pre and post inspections of the roads, as well as dust control. She added that they will make sure the roads are put back into their previous condition when they are finished with the project, and Mr. King

commented that one of his main concerns is large rocks. County Road 36 and County Road 3H will be their primary haul routes.

Mr. Kimble asked if the million dollar surety bond was acceptable and all agreed that it would be.

Mr. Schifferns asked Mark McHone if he was happy with the way NextEra has handled the roads with the past projects, as the commissioners seem to take a lot of grief where county roads are concerned, but Mr. McHone said that NextEra maintains the roads, gravels them, and even fixes soft spots if they find them, so he has had no complaints with their work ethics.

Mr. Kimble asked if there were complaints about the roads with the first two projects and Ms. Devers said there were a few, but they were taken care of by the road foremen who contacted NextEra, who took care of any problems. Mr. Kimble added that there is an indemnity clause in the agreement that favors the county.

Mr. King made a motion to sign the Master Road Use Agreement with NextEra Energy for the Limon Wind III project, upon addition of a million dollar surety bond requirement. Mr. Stone seconded the motion, which carried unanimously.

Ms. Hale produced the check in the amount of \$2,087,086.59, but Mr. Covington stated it was not a certified check and went to make a phone call. Ms. Hale said that they would be happy to agree that the building permits not be issued until the check clears if that is better for the county, and Mr. Ryan said they would immediately be in default if something were to occur and the check didn't clear, which they definitely don't want to happen.

Mr. Stone made a motion to sign the Development Agreement with NextEra for the Limon Wind III project. Mr. King seconded the motion, which carried unanimously.

Once everyone had gone, Mr. Kimble gave his report, stating that a prisoner has filed a complaint and the sheriff turned it over to Mr. Kimble; however, it hasn't been filed in any court, so he will just wait and see what transpires.

In the matter of the landowner plowing up the county roads last fall, Mr. Kimble said that he has retained Justin Heinlein as his attorney, who has filed a response in the case. Mr. Kimble said that the landowner does not believe he plowed up the county road, yet Deputy Michael Yowell's pictures show that it was plowed at least two-to-three feet into the county roadway for about 100 feet. Initial proceedings would be to take depositions, possibly of Mr. McHone and Deputy Yowell, but Mr. Kimble is still hoping for a reasonable settlement prior to that happening.

Mr. Kimble addressed the blowing soil complaint, stating that the county cannot move on to the next step, which is issuing a citation, until the experts make their determination. Mr. Lyons asked if the county would have to bid the project out if it comes to that point, but Mr. Kimble

said statute does not dictate such, and they must keep in mind that they can only charge \$15 per acre. Mr. Lyons asked if the landowner could get their own experts after the county's people make their determination, and Mr. Kimble responded that anyone who believes an administrative agency has made a wrong opinion can file a Rule 106 appeal in District Court. He added that he will speak with the experts once they have made their finding and see how the county wants to proceed.

With no further business to come before the Board, the meeting was adjourned until 9:00 a.m. on April 7, 2014.

Corinne M. Lengel, Clerk to the Board

Ted Lyons, Chairman