

Board of County Commissioners of Lincoln County
Agenda for March 31, 2016

9:00 Call to order and Pledge of Allegiance

10:00 Patricia Phillips, Human Services Interim Director, to present the Department of Human Services monthly report

11:00 George Brauchler, District Attorney for the 18th Judicial District, to discuss the district attorney's office and respond to questions

1:30 Public hearing concerning Resolution Number 921; a resolution to amend the zoning resolution providing for standards for regulation of the construction and operation of wind energy facilities

1. Approve the minutes from the March 30, 2016, meeting
2. County Commissioner 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, 2016. The following attended: Chairman Greg King, Commissioners Doug Stone and Ed Schiffers, County Administrator Gary Ensign, and Clerk to the Board Corinne M. Lengel. County Attorney Stan Kimble attended in the afternoon.

Chairman King called the meeting to order and asked Mr. Schiffers to lead the Pledge of Allegiance.

Mr. Stone made a motion to approve the minutes from the meeting held on March 30, 2016, as submitted. Mr. Schiffers seconded the motion, which carried unanimously.

Mr. Stone reported attending the Republican County Assembly on March 18. He stopped by the county shop on March 21 to speak with Rick Ashcraft about ordering a new road grader. They also discussed the ad for a job opening. Mr. Stone also checked roads that day. On March 22, he signed the contract with Wagner Equipment for the new road grader. They will trade in the two they have now. He spoke with Rick Ashcraft on March 23 regarding sending some of the road crew home to take care of their cattle during the blizzard, since the power was out and they couldn't do much until the storm ended anyway. Some of the crew did go home, others stayed. He received a phone call from Jim Mattson, a gentleman from Nebraska who is planting a tree farm in the LDS subdivision, on March 25. Mr. Mattson asked for a load of gravel and when Mr. Stone told him that is not a common practice, he asked if a load could be dumped somewhere off of County Road 11 and he could haul it himself to where he needs it. Mr. Stone said that Mr. Mattson does have all of his permits and has done things legally so he felt it wouldn't hurt to help him if they could. However, he said he felt he wanted the opinion of the other board members. Don Seymour had also called with a request for a load of gravel in his driveway as they couldn't get out after the storm, and the road crew had complied when in the area. Mr. Stone reported more snow on March 26, so he checked roads but there was nothing to plow. Mr. King called Mr. Stone on March 28 to ask if he had been contacted by Paul Esch regarding the county cleaning out some cattle guards for him. Mr. Stone had not spoken with him, but Mr. Esch did contact Rick Ashcraft later. Mr. Stone said that although it is generally the landowner's responsibility, Mr. Esch was concerned he would not be able to get the cattle guards back in properly and offered to pay the county to do it for him. They agreed to charge him \$30 per hour, per operator, and an additional \$80 for the use of the backhoe. Lastly, Mr. Stone reported speaking with Rick Ashcraft on March 29 about oil projects for the summer. Rick and Wayne Shade had also looked at the Savage Pit and Wayne will spray weeds that are coming up in the area again.

Mr. Schiffers reported attending the Republican County Assembly on March 18. He spoke with Chris Monks on the Twenty-second and learned that between March 19 and 20, a few road signs were cut off with a chainsaw between the county shop and the landfill. Chris has ordered new signs. Mr. Schiffers received a phone call from Mr. King on March 23 regarding allowing county road crew members to leave early, due to the storm. He also received a phone call from a resident concerned with a family member being able to get out of their driveway, so Mr. Schiffers had road crewmen check into it. The hospital board meeting scheduled for

March 24 was postponed to this evening, and Mr. Schifferns reported speaking with Chris Monks on March 25 about activities and jobs that were being done in the district. They finished plowing snow and were working on widening roads. He, too, reported receiving some snow on March 26 but not enough to cause problems.

Mr. King also reported attending the Republican County Assembly on March 18. He checked roads north of Arriba and Genoa on March 22 and also received a call from a resident regarding a problem at County Road 3X east of County Road 28. Mr. King and Mark McHone checked on the issue on March 28 and they hope to put in a new culvert this week. Mr. King had also received a phone call from Gary Withington regarding a damaged wind tower blade in his area. Mr. King said the blade must have been hit by lightning. Mr. Withington was concerned with how far the blade might fly if it broke loose from the tower. Mr. King spoke with John Higgins about it as well. District Two is considering closing the Brent Pit since they no longer use it and it is basically pure clay. Mr. King said they hope to reseed it. Mr. King reported speaking with Steve Beedy earlier this morning regarding a bad corner at County Road 39 and County Road 3P. He will contact Mark McHone during a break and report it to him. Lastly, Mr. King wanted to mention Charles Hoffman's editorial in the Limon Leader in which thanks was given to the County Road & Bridge crew out of Genoa. He read, "Our roads are better than they have been for a long time, and you guys were up and rolling before the sun to make sure the routes were passable!"

Mr. Ensign reported that Land Use Administrator John DeWitt had left a letter from Invenergy, LLC, concerning the afternoon's hearing regarding the proposed wind tower regulations. The Board reviewed the letter.

Mr. Ensign also asked the commissioners to begin thinking about replacing the courthouse/commissioner van with a different vehicle and possibly giving the current van to the Public Health Department. The Public Health van has over 160,000 miles on it and Chris Monks has said that it is beginning to show its wear. There will be a department head meeting the first week of April and Mr. Ensign said that they would discuss it as a group since the clerk's office, treasurer's office, and county administrator also use the vehicle at times.

There was no old business but Mr. Stone asked what the others thought about the load of gravel that Jim Mattson had asked about for his tree farm. He stated he certainly doesn't want to set precedence but also felt he should be helpful if he could, and had told Mr. Mattson that they wouldn't make a special trip with the gravel if they did agree to deliver it. Mr. King commented that his business may increase the county's valuation so he would be willing to allow it, and Mr. Schifferns agreed.

At 10:00 a.m., Human Services Director Patricia Phillips met with the Board to give her monthly report. Mr. King asked her to explain a couple of the vouchers that were submitted for approval the previous day; specifically for PRT snacks and gift cards. PRT is the acronym for Permanency Review Team, which is a required team that meets quarterly to review and discuss permanent living arrangements for children that have been in DHS care for at least a year. In

order to provide incentives to attend, they offer gift cards to the teenagers and snacks or small toys to the younger kids. Ms. Phillips said they are reimbursed through IV-E funds.

The Board reviewed the February financials, and March time sheets and Child Welfare report, as well as the Income Maintenance report and the director's report for March in regard to meetings attended. Mr. King commented that he appreciated the number of meetings Ms. Phillips attends by phone.

Ms. Phillips handed out a client alert regarding the Department of Labor overtime regulation change due to be implemented in late spring or summer. Although there is currently opposition from House and Senate Republicans, Ms. Phillips felt the DOL would implement it anyway. The new rule would expand overtime eligibility and Ms. Phillips commented that from what she has seen, it would definitely mean an increase in Lincoln County DHS overtime. Employees who make less than \$23,000 annually are currently exempt from overtime, but the new rule would increase that annual salary to \$50,000. Except for the three supervisors, everyone in Human Services currently makes less than \$50,000 per year. Although she felt that it wouldn't be difficult to keep overtime to a minimum with the technicians in the department, it would be much harder to control the overtime for caseworkers. She asked Chad at Y-Time for the overtime hours in her department, based on 2015 figures, and commented that some counties are actually increasing the wages of their employees to \$50,000 in order to save the overtime. While she was certainly not suggesting that avenue, Ms. Phillips said it was something she wanted the Board to be aware of. Overtime can be given as comp time instead of paid out, but Ms. Phillips said that employees do have the option to receive the monetary compensation. She felt the caseworkers would most likely choose the money as they have a hard enough time as it is taking time off. Ms. Phillips went on to say that they can, and do, use flex time when possible to avoid excessive overtime. She provided a list of employees and the projected yearly overtime cost based on 2015 figures, which would be approximately \$3,000. The cost to increase caseworker salaries to \$50,000 would be over \$35,000.

Ms. Phillips discussed the Reality Care Baby Program her department offers to the area schools, stating that the babies are wearing out and are in need of replacement. While Limon and Karval are currently the only schools in the county that use the program, she stated that counselors and personnel of those schools have found the program invaluable. She provided a quote from Realityworks for ten babies with a five-year warranty, and accessories. There is a chance they will not need the accessories unless the new units are incompatible with old accessories. They will also receive a discount of \$50 for returning the "old" babies. She went on to say that the quote of \$9,002.50 could be less without the accessories, but added that they can use TANF funds to pay for the babies, as it is considered to be a prevention program. The Board felt the program worthwhile.

Ms. Phillips stated that Mary Solze, who has been working part time on quality control for assistance program payments, would like to add more hours but is having trouble finding daycare for her young son. Ms. Phillips would like to allow her to work from home, provided she has a locking, secure filing cabinet to keep department files in. Ms. Solze would pick up files

from the office, take them home and work on them, and then return them the next day. Ms. Phillips did speak with Ms. Solze about keeping track of her time and how important it would be to be concise, if the commissioners agreed to allow the practice. Mr. King felt that the security of the files would be an issue and said he really did not like the idea of having files leave the building, particularly with HIPAA regulations and the personal information the files would contain. Ms. Phillips said she certainly didn't want to do anything the Board is uncomfortable with, so she will brainstorm with Ms. Solze some more and see if they can find another way to put in more hours. Mr. Schifferns commented that they will not let Ms. Solze bring her son to work with her, as they had not allowed Mr. Covington's employee to do that. Ms. Phillips said she was aware that it is not permissible.

Lastly, Ms. Phillips said that the state department and Kit Carson County have reached out to her and other surrounding counties to provide supervisory assistance to the new director who has no Child Welfare experience. She explained that Lincoln County will help as time allows but will expect compensation for time and mileage. She added that hopefully quite a bit can be done via computer or phone.

At 11:00 a.m., 18th Judicial District Attorney George Brauchler met with the Board to discuss the DA's office and answer questions. While he has not been able to visit Lincoln and Elbert counties as much as he would like, Mr. Brauchler said he wanted to come out today to see if he could get a better sense of what he can be doing for the community. They have hired a human trafficking prosecutor and investigator for Operation Cross Country, the FBI's nationwide effort to recover victims of child sex trafficking, and obtained the funding for those positions through Arapahoe and Douglas counties. They are also working to implement a Family Justice Center, which provides free services for domestic violence victims and their children through a collaborative effort with several partner agencies, all located at one secured location, where victims can get the services they need to safely escape abuse. The goal is to find enough funding that the center would not be government funded, as well as enough non-profit funding to keep it self-sustaining.

Mr. King commented that most of the programs seem to be aimed at the metro areas and asked how Lincoln County can take advantage of them. Mr. Brauchler responded that if the facility were to be located in Aurora, it would still be close enough for someone coming from Lincoln County, particularly since those victims would most likely have to travel to the metro area for all of the services anyway. At least with the center, they would only have to go to one location rather than several.

Mr. Brauchler commended deputy district attorney Jim Bartkus, stating that local law enforcement in the county, including DOC, have reported excellent communication with him.

Mr. King asked about the Judicial Forfeiture Board funds and Mr. Brauchler said there is currently around \$200,000 available for counties in the district, so if the commissioners learn of something in the way of law enforcement that needs funding, they could definitely contact him and bring the idea forward.

Mr. Kimble asked about the problems the DA's office faces with death penalty cases, such as the Holmes case. Mr. Brauchler stated that when a jury agrees that aggravating factors outweigh the mitigating factors, a third and final phase of sentencing occurs to determine whether the accused is sentenced to death or life in prison without the possibility of parole. He added that in the Holmes case, the Public Defender's office forced the DA's office to spend an excessive amount to hire additional mental health experts, even though the first two evaluations determined him to be sane. Mr. Brauchler said that the Public Defender's office does not have to disclose their spending like the DA's office does, and although he is proud of the transparency in his department, he finds it frustrating that the public does not see how much money is wasted by the PD's office. He added that there have been two legislative efforts this session to change the law; however, they have so far been unsuccessful. A ballot issue could also remove Colorado's third and final phase of sentencing but of course the question would be who would pay for it.

The group briefly discussed plea bargaining on the local level and then the Board thanked Mr. Brauchler for his time and broke for lunch.

Mr. King called the meeting back to order at 1:30 p.m. for the purposes of conducting a public hearing concerning Resolution #921; a resolution to amend the zoning resolution providing for standards for regulation of the construction and operation of wind energy facilities. Others attending the hearing were Krista Mann and Erin Kirton with Invenergy, LLC, and Land Use Administrator John DeWitt. No other members of the public were in attendance. Mr. Ensign said he had received an email from John Reid with a question that he referred to Mr. DeWitt, as well as an email from Limon Town Administrator Dave Stone who had requested a copy of the resolution, but he had no other correspondence regarding the hearing.

Mr. Kimble explained that the regulations in front of the group were obtained by Mr. DeWitt as a model, and Mr. DeWitt added that he had adapted them from lessons learned to meet the needs of Lincoln County. For example, the regulations do not address shadow flicker, as it has not been a concern in the areas where wind energy was developed due to the fact that residences are located so far apart. Mr. Kimble added that the regulations are the least constrictive that they are likely to find but that the commissioners certainly aren't opposed to amending them again if necessary.

Ms. Mann asked that the commissioners consider three comments that were listed on their letter, adding that they do not necessarily find the items deficient, only that they need clarification. First, paragraphs D and E in Section 4 require that the specific location of each proposed wind turbine be disclosed at the time of the Use by Special Review application. Mr. DeWitt responded that the resolution specifically states "planned" location, which simply means preliminary locations. He added that it is understood that it isn't possible to know the exact location of each tower in the beginning stages; however, it is critical to have access roads mapped out due to 911 addresses being assigned. Since accidents can occur during the construction phase, Mr. DeWitt said that emergency personnel must be able to reach injured

parties and they can only do that if they know where to find them. The group agreed that adding the word “preliminary” to both items D and E would be sufficient.

Ms. Mann asked for clarification on the term “non-occupied structure” regarding setbacks in Section 6, paragraph B. Mr. DeWitt responded that setbacks of 1,000 feet are required from any residence and no less than 500 feet from any non-occupied structure; specifically property lines, roads, and fences. Ms. Mann stated that there will be several different landowners with fences on their property in the proposed site area, and that Invenergy will be responsible for fixing any fence that is damaged during construction. It was agreed to add wording to indicate that the setbacks would not apply to internal division fences to non-participatory landowners.

Next, Ms. Mann addressed Section 7 pertaining to noise, asking if a noise study would be required for each wind turbine. If there is ever a complaint, Invenergy is required to address it by first conducting a study to determine if there is a problem and then fixing the problem if they discover there is one. Mr. DeWitt suggested adding that Lincoln County recommends but does not require a noise study for the development permit application, which was acceptable to Ms. Mann.

Lastly, Ms. Mann stated that Section 10 concerning building permit fees was her final request for reconsideration. While two percent doesn’t sound like much, Ms. Mann said that elsewhere in the state they have been charged \$5,000 per turbine. Two percent of the estimated turbines to be placed in Lincoln County would come closer to \$40,000 per turbine. Mr. DeWitt said that the rate was definitely negotiable for a project of this magnitude, adding that the two percent does relate only to the material cost of the turbines and nothing else associated with the project, such as the liners, foundations, or the management and operations building. He went on to say that the commissioners lowered the percentage rate to one percent with the first wind energy project and could possibly do the same for Invenergy. Mr. Schiffers commented that they need to be consistent with what has been done in the past. Mr. Kimble asked if it would help if the county dropped the building permit fee to one percent of the material cost of the turbines only. Ms. Mann said it would help considerably but suggested changing the resolution to read 1% since that has been consistently what was done. Mr. King said he would prefer to leave it at 2% since that is the county’s sales tax rate, and Mr. Kimble agreed.

Ms. Mann wanted to know if the negotiated rate should be handled during the Use by Special Review permit process or during the building permit process, and Mr. Kimble said it would be best to do it early on.

Mr. King stated that all of the turbines currently in Lincoln County have been constructed in District Two, adding that the building and maintenance of the roads have constantly been an issue. He cautioned Ms. Mann and the commissioner of whichever district the new towers would be located in to make sure that they built the roads with the appropriate road base and proper surface treatment. He added that they need compaction on the fill and need to screen the cover material for rocks that cause damage to county equipment.

When asked about mineral owners, Ms. Mann stated they are working on identifying severed mineral owners at this time. Mr. Ensign asked about a transmission line and Ms. Mann replied that they will make a second request for the building permit of the transmission line at a later date. Mr. DeWitt let her know that although separating the two projects has been allowed in the past, the Land Use board will most likely disagree with that approach.

Mr. Kimble asked for a timeline and was told that they are investing heavily now and hope to submit the permit application this spring. They want to begin construction by the end of 2016 in order to take advantage of the federal production tax credit. The project will most likely not be resumed and completed until 2017 and 2018; however, they cannot capture the full value of the PTC unless they begin in 2016. The IRS has to issue guidelines on what "starting construction" actually means but Ms. Mann said that in the past, it has referred to building roads or excavating the construction site.

Ms. Mann had no further items to discuss, and Mr. Ensign asked if the resolution would be revised and then adopted at a later date, or what the specific procedure was. Mr. Kimble said the Board could adopt the resolution with the additional amendments or could wait until their next meeting once the revisions were made. The commissioners agreed to adopt the resolution at their meeting on April 6.

With no further business to come before the Board, the meeting was adjourned until 9:00 a.m. on April 6, 2016.

Corinne M. Lengel, Clerk to the Board

Greg King, Chairman