

Board of County Commissioners of Lincoln County
Agenda for October 24, 2016

9:00 Call to order and Pledge of Allegiance

9:00 Public Hearing on Invenergy (Rush Creek II Wind Farm) Development Permit #16-02 and Xcel Energy Transmission Line for Rush Creek II Wind Farm Development Permit #16-03

1. Approve the minutes from the October 6, 2016, meeting
2. Review and act upon a further revised Revocable Nonexclusive License Agreement for Placement and Maintenance of Energy Pipelines within Lincoln County Right of Way
3. Further review of a letter from the Colorado Department of Public Health & Environment regarding a draft compliance order on consent for the Lincoln County Landfill
4. Review proposed dates for an initial meeting to discuss fairgrounds improvements
5. Review and act upon a plan service center authorization form from Great-West Financial
6. Review and act upon proposed Resolution #931; a resolution to authorize Tri-County Fire Protection District to provide basic life support ambulance services in Lincoln County
7. County Commissioner reports
8. County Attorney's report
9. County Administrator's report
10. Old business
11. New business

The Board of Lincoln County Commissioners met at 9:00 a.m. on October 24, 2016. The following attended: Chairman Greg King, Commissioners Doug Stone and Ed Schifferns, County Administrator Gary Ensign, County Attorney Stan Kimble, and Clerk to the Board Corinne M. Lengel.

Chairman King called the meeting to order in the jury assembly room at 9:00 a.m. for the purposes of conducting a public hearing on Invenergy (Rush Creek II Wind Farm) Development Permit #16-02 and Xcel Energy Transmission Line for Rush Creek II Wind Farm Development Permit #16-03.

Chairman King led the Pledge of Allegiance and informed the group that the hearing would be audio-recorded and transcribed by a professional transcriptionist. See commissioner record for full transcription.

Krista Mann, representative for Rush Creek Wind Energy II, LLC, provided a PowerPoint presentation similar to that given at the land use hearing on September 29, 2016. She stated that the counties of Kit Carson, Cheyenne, Lincoln, Elbert, and Arapahoe will be affected by the new development, should the county commissioners approve the project. Vestas will manufacture the majority of the wind turbine components and although some components may be imported, the work will be completed in Colorado. The project will generate roughly \$2-to-\$3 million in use tax for Lincoln County and encompasses approximately 40,000 acres; 24,000 in Lincoln County, which is all private land. The figures Ms. Mann submitted were calculated based on 25 years of life for the project. Most of their environmental studies are complete, although some are still ongoing, and they have met or exceeded county requirements for setbacks. Ms. Mann stated that they do have current leases for all of the sites where turbines will be located, and they have provided a preliminary decommission plan in the permit application. They will submit a final decommission plan prior to the building permit application approval, should the commissioners choose to approve the project.

Xcel Program Director James Dominick spoke to how money is set aside for decommissioning purposes; stating that they self-fund their decommissioning funds. Mike Mellott asked if the county commissioners could require the wind power company to put up a bond for decommissioning the towers, such as is required of oil companies. Ms. Mann stated that Xcel is a publicly regulated company overseen by the PUC, so they have different regulations than oil and gas. Mr. Kimble put in that if the commissioners approve the permit they can do so with conditions, if they feel there is sufficient reason to do so.

Linda Orrell wanted to know if anything prevented Rush Creek from selling the wind farm to another party. Ms. Mann answered that although there is nothing preventing it from happening, the new buyer would inherit the obligations, which would most likely include decommissioning. James Dominick added that the probability of Xcel selling such a huge investment is extremely low. Nadia El Mallakh put in that by law the Public Service Company of Colorado (PSCo) is required to have the Public Utilities Commission's blessing, so it is very unlikely that they would be automatically released from their obligations. She added that PSCo

is owned by Xcel Energy; whereas, the PUC is an independent state agency that is not controlled by any energy company.

Further discussion included the road use agreement, possible job opportunities available in the county, and the use of water for construction and after the project is complete.

Members of the public either expressed their opposition to or support of the project, and John Lupo with Xcel clarified that no taxpayer money would fund the project because it is 100% funded by Xcel Energy.

The group took a ten minute break in order for the commissioners to read letters in support of or in opposition to the project. When the recess was over, Chairman King asked for comments from the other commissioners. Mr. Schiffers stated the conditions he felt should be put in place were that the wildlife issues and road conditions needed to be addressed, the historical sites needed to be protected, and all land leases would need to be signed prior to construction. Land Use Administrator John DeWitt commented that all leases have been secured for the Invenergy project.

Ms. Mann commented that they could certainly comply with the Road Use Agreement being executed prior to commencement of construction. The lease agreements are all in place, wildlife surveys have been completed, Colorado Parks & Wildlife setback requirements for all avian species have been voluntarily complied with, and they have agreed to post speed limits on roads where deer and antelope may cross. As for historical preservation, she agreed to provide the results of their pre-construction survey.

Mr. King called for a motion to approve or deny the permit application and Mr. Stone made a motion to approve Development Permit #16-02, with conditions, for the Rush Creek II Wind Farm. Mr. Schiffers seconded the motion, which carried unanimously.

Carolynne White, counsel to Xcel Energy, spoke regarding the Use by Special Review application and Development Permit #16-03 for the Rush Creek II wind farm transmission line. Susan Innis with Xcel Energy then gave a PowerPoint presentation regarding the project, after which Mr. King asked what they intended to do about crossing the sand hills. Danny Pierson answered the question by stating that they have learned over the years that bringing in manure is not a viable option, due to possible noxious weed invasion. They now place rock or crushed truck or tractor tire material around the poles, but generally rock.

When asked about landowner agreements and if all had been obtained, John Lupo commented that they have reached agreements with seventeen of the twenty-one landowners and are still actively negotiating with the other four. When the topic came up, Stan Kimble put in that the county cannot ignore the statutory right of eminent domain; however, the commissioners can make it a condition of the permit that prior to commencement of construction, PSCo would be required to provide executed easement agreements, option agreements, or court orders for all landowners involved. He added that eminent domain must be used for general public good,

and Xcel representatives assured those present that they will do everything in their power to obtain landowner agreements without exercising imminent domain.

Mike Mellott felt that the county needs to establish better regulations regarding transmission lines and solar energy and Land Use Administrator John DeWitt agreed. Carolynne White submitted that Xcel has met all criteria in the current county code for Use by Special Review, particularly Sections 3-2-10 and 3-2-20.

Mr. Kimble informed the Board that conditions for approval of the development permit could include a separate road use agreement, and that the reclamation and restoration would be performed in accordance with state agencies by agreement with the various landowners. He added that Xcel seems to have met all the criteria in the county code, plus additional criteria.

Mr. Schifferns made a motion to approve Xcel Energy Transmission Line for Rush Creek Wind II Wind Farm Development Permit #16-03, with conditions outlined by County Attorney Stan Kimble. Mr. Stone seconded the motion, which carried unanimously.

The hearing was then concluded and the Board broke for lunch at 12:55 p.m.

When the meeting reconvened in the commissioner meeting room at 2:00 p.m., Mr. King called for a motion to approve the minutes from the meeting held on October 6, 2016. After a question concerning one of the county salary claims was answered, Mr. Stone made a motion to approve the referenced minutes, as submitted. Mr. Schifferns seconded the motion, which carried unanimously.

The Board reviewed a further revised Revocable Nonexclusive License Agreement for Placement and Maintenance of Energy Pipelines with Lincoln County Right-of-Way between Lincoln County and Nighthawk Production, LLC. Mr. Schifferns made a motion to approve the agreement, Mr. Stone seconded the motion, and it carried unanimously.

After reviewing a letter from the Colorado Department of Public Health & Environment regarding a draft compliance order on consent for the Lincoln County Landfill, Mr. Ensign asked the commissioners if they would like to schedule the conference call to discuss the order at a regular board meeting. They agreed that November 7 would work for them.

The group reviewed proposed dates for an initial meeting to discuss fairgrounds improvements; namely, the new extension building, and Mr. Ensign stated that Travis Taylor would be available on October 27 or 28, or November 7. Since Mr. Schifferns will not be attending the regular meetings on October 28 or October 31, the commissioner agreed on the afternoon of October 27 for a work session.

Mr. Ensign said that the county is the fiscal agent for the CCOERA accounts, which have Roxie Devers' name listed as the employee with access to the accounts. Mr. Stone made a motion to complete the plan service center authorization form from Great West Financial, replacing Ms.

Devers with Gary Ensign as the employee authorized to access the accounts. Mr. Schifferns seconded the motion, which carried unanimously.

Mr. Schifferns made a motion to adopt a resolution authorizing Tri-County Fire Protection District to provide basic life support ambulance services in Lincoln County. 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 October 24, 2016, there were present:

Greg King, Chairman	Present
Douglas D. Stone, Vice Chairman	Present
Ed E. Schifferns, Commissioner	Present
Stan Kimble, County Attorney	Present
Corinne Lengel, Clerk of the Board	Present
Gary Ensign, County Administrator	Present

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

RESOLUTION #931 It was moved by Commissioner Schifferns and seconded by Commissioner Stone to adopt the following resolution:

WHEREAS, pursuant to the Colorado Emergency Medical Services Act, Section 25-315.101, et seq., C.R.S., the Board of County Commissioners has the authority to establish requirements for the inspection, licensure, and operation of ambulance services, ambulance personnel, and ambulance vehicles operating in the county; and

WHEREAS, the Lincoln County Commissioners adopted Resolution #651 and thereby established rules and regulations governing the licensure of ambulance services operating within Lincoln County; and

WHEREAS, the Tri-County Fire Protection District has presented the Board of County Commissioners with an application to license the ambulance service and to permit their ambulance as a basic life support vehicle; and

WHEREAS, upon review the Board of County Commissioners determined that the documentation presented met the rules and regulations established under Resolution #651;

NOW, THEREFORE BE IT RESOLVED by the Board of County Commissioners of Lincoln County that the Tri-County Fire Protection District is hereby authorized to provide ambulance service in Lincoln County with a basic life support ambulance.

Upon roll call the vote was:

Commissioner Stone, Yes; Commissioner Schifferns, Yes; Commissioner King, Yes.

The Chairman declared the motion carried and so ordered.

Board of County Commissioners
of Lincoln County

ATTEST:

Clerk of the Board

Mr. King called for commissioner reports, and Mr. Schifferns reported attending the Arriba town board meeting on October 10, where they discussed the budget, issues at their park, retirement for their employees, and the need for a municipal judge. He checked roads on October 17 and attended the Southeast and East Central Recycling meeting in Las Animas on October 19.

Mr. Stone reported several fires caused by lightning in his district on October 11. His road crew helped out with supplying some maintainers. On October 12, Mr. Stone received a phone call from Gary Frick regarding County Road G, which is an unmaintained county road. He also reported that Rick Ashcraft spoke with Jim McCormack about crushing some rock for overlay on October 13. Mr. Stone attended the CCI legislative business meeting on October 14 and reported that they will attempt to push forward with nine issues in the next session. On October 17, he received another call from Gary Frick because the resident he was in dispute with had placed posts in the trail and he (Mr. Frick) had pulled them out. Mr. Stone said a sheriff's deputy had responded but he didn't yet know the outcome. Mr. Ensign stated that Sheriff Nestor would like to speak with the Board about the situation when they had time. Mr. Stone went on to report that he checked roads south of Karval on October 18, and checked on the overlay project on the west end of County Road S on October 19. On October 20, they put overlay on four-tenths of County Road S east of Karval. He also attended the Mountain View Electric Association dinner that evening. On October 21, he received a report of a cow that had been shot at a county resident's place, which was investigated by the sheriff's department. Lastly, Mr. Stone reported attending the Farm Bureau dinner on October 22.

Mr. King reported receiving a call from Dale Bode on October 20 about the ongoing road issues up north. Mr. Schifferns commented that Mr. Bode called him as well.

County Attorney Stan Kimble provided a map from CCI regarding county regulatory status on recreational marijuana, per county, stating that only seven counties have put caps in place regarding number of plants allowed. He spoke with the sheriff again, who still feels they should wait and see if any lawsuits are filed or if legislation is passed that may somehow help the situation.

Mr. Kimble also commented that he is monitoring the state requirement that each county have an agreement in place with Colorado Parks and Wildlife prior to January 1, 2017, regarding wildfires. Mr. Ensign had forwarded him an email received from Ion Cotsapas on behalf of CPW, regarding the wild land fires mitigation statutory requirements contained in 24-33.5-1221I C.R.S. The statute was enacted in order to encourage cooperation in addressing certain aspects of wildfires between CPW and each county in which CPW owns or maintains land. Mr. Kimble added that the mountain counties have collaborated efforts and drafted what they deem a more suitable agreement, so he believes a new agreement will be established before the state's deadline; however, he will continue to keep an eye on the issue.

On October 20, Mr. Kimble, John DeWitt, and Jeff Coonts met with the Xcel Energy group at Mr. Kimble's office. John Lupo told them at that juncture that if the commissioners approved the Rush Creek transmission line project, they would not negotiate the sales/use tax and would simply pay the full two percent. Mr. Kimble added that the county would need to obtain the development agreement as soon as possible and that what the company has done so far actually qualifies as breaking ground, according to the federal government.

Mr. Stone asked Mr. Kimble if cities can annex property without approval from the county and Mr. Kimble's response was that a city cannot unilaterally annex unless the property is fully surrounded by the city itself; otherwise, they must have landowner approval.

Mr. Ensign placed a call to Sheriff Tom Nestor to let him know the Board was available to speak with him and when he arrived, he stated that there seems to be a dispute between Gary Frick and Shelby Britten over an unmaintained county road; one half mile east of County Road 44 on County Road G. He stated it's difficult to tell where the edge of the road is and wondered if someone with the road crew would be able to tell him. Mr. Ensign asked Mr. Kimble who is obligated to determine the right-of-way and was told that it's typically historical. The sheriff said he would most likely tell Mr. Britten to pull the posts as he is concerned that pretty soon they will be driving on the adjoining property instead of the road itself. The sheriff was also concerned about farm equipment being moved down the trail with the posts there, but Mr. Stone said the only thing Mr. Frick drives on the trail is a water truck when he hauls water to David Ansley's cattle.

With no further business to come before the Board, the meeting was adjourned until 9:00 a.m. on October 28, 2016.

Corinne M. Lengel, Clerk to the Board

Greg King, Chairman