

# Board of County Commissioners of Lincoln County

Agenda for November 19, 2012

9:00 Call to order and Pledge of Allegiance

9:00 Road Foremen Chris Monks and David Seymour to review the final draft of the 2013 Road & Bridge budget

9:45 County Coroner Jennifer Nestor to discuss storage of items for the Coroner's Office

10:00 Human Services Director Colette Barksdale and other employees in her office to discuss flex time

10:45 Rich Johnson to give an update on the Health Care Coalition that is being established in Lincoln County

11:00 Rick Scott with TG Mercer to discuss a storage location for the pipe to be used in the Front Range Pipeline project

1. Approve the minutes from the November 6, 2012 meeting
2. Review the October reports from the Assessor, County Clerk, Treasurer and Sheriff
3. Review and sign a Food Service Agreement with Consolidated Correctional Foodservice
4. County Commissioners reports
5. County Administrator's report
6. County Attorney's report
7. Old business
8. New business

The Board of Lincoln County Commissioners met at 9:00 a.m. on November 19, 2012. The following attended: Chairman Steve Burgess, Commissioners Gary Beedy and Ted Lyons, County Administrator Roxie Devers, Clerk to the Board Corinne M. Lengel, Commissioners-Elect Greg King and Doug Stone, and Will Bublitz with The Limon Leader and Eastern Colorado Plainsman.

Chairman Burgess led the Pledge of Allegiance and then discussion ensued regarding the changes made to the 2013 Road & Bridge budget with Road & Bridge foremen Chris Monks and David Seymour. Mr. Burgess said they'd reduced the mill levy from 17.5 mills to 14 mills. Greg King asked if there was enough in the Department Head line item for a road foreman in District Two, and Mr. Burgess told him that there is, since there is currently a road foreman there. The municipalities receive their share per state statute, so those amounts cannot be reduced. Ms. Devers asked if anyone had plans to lease any equipment, to which the answer was no, and also if all leases were currently paid off. There is one that comes due in 2013. Mr. Burgess commented that he'd spoken with Sheriff Nestor who said that in order to get the state bid on vehicles they would have to be ordered in January, or at least within the first quarter of the year. Mr. Beedy explained to the new commissioners that money left over at the end of the year rolls over to the next year and remains in the fund balance for that particular fund. Mr. King asked about reserves and Ms. Devers explained that the county does not have "reserves," but rather, they are considered fund balances.

Mr. Lyons asked Chris Monks if the issue had ever been resolved regarding the reflectivity of road signs and was told that any new signs that are ordered are up to the new standard; however, he hasn't ordered new road number signs for quite some time.

Mr. Lyons told the others that they may have an oil well/road issue such as he'd discussed at the October 31 meeting. Leroy Mosher has a fence along a section line and the oil company wants access onto a piece of state property that they have the lease on. He added that he wanted to ask County Attorney Stan Kimble about it, believing that he may say the issue will be between the landowner and the oil company, and the county should not be involved. Mr. Beedy said that, ideally, it would be best if the oil company built their own road on the leased property.

Mr. Lyons made a motion to approve the minutes from the meeting held on November 6, 2012, as submitted. Mr. Beedy seconded the motion, which carried unanimously.

The Board reviewed the October reports from the Assessor, County Clerk, Treasurer, and Sheriff, as well as a Food Service Agreement with Consolidated Correctional Foodservice. However, Ms. Devers commented that she found it odd that neither the agreement nor the proposal gave a cost for the service. She had contacted Jail Captain Clint Tweden to ask him about it, and was told that the contract includes a sliding scale based on number of inmates served and cost per meal. He also told her that the new company had come in at about \$9,000 less than CBM Food Service, but Ms. Devers still felt the contract should have at least the sliding scale attached. The Board agreed that they would not sign something that did not include a

cost and held the proposal and agreement back to have Mr. Kimble review it before acting on it.

Mr. Beedy reported attending the State Transportation Advisory Committee meeting on November 9, where they discussed the change in the planning regions. It is his impression that all of Lincoln County will be in Region 4, and asked that at least one of the new commissioners get involved with transportation, as the representation is greatly needed for smaller counties. He is particularly concerned that resource allocation may become based on population at some point. On November 13, he attended the EMS Council meeting. Mr. Beedy mentioned that he had received information regarding the District Attorney's budget, and what is being proposed is to keep the approximately reduced appropriation of \$1 million for the four counties in a contingency fund so that it would be available for expenditures if necessary. Mr. Beedy said the difference to Lincoln County would be an additional \$6,000, but advised they wait to see what happened before making an adjustment. On the Fifteenth, he and David Seymour picked up a desk and conference table in Colorado Springs for the new shop in Karval. Earlier this morning, he caught the last part of the Economic Development Board meeting and a brief discussion regarding the Lincoln Theatre. He added that they are also working with a group in Karval for a research facility associated with the Division of Wildlife.

Mr. Lyons reported checking County Roads 63 and 2W on November 12, as well as attending the fair board meeting. Travis Taylor had presented the information regarding the Master Plan that had been presented to the commissioners by the Vision Committee, but Mr. Lyons said that even though there was no cost to the county, there still seemed to be some ill feeling among some of the board members that the group had gone ahead without first notifying the fair board. He added that the fair board had also agreed not to allow the Rawhide and Dusty Show to participate in the 2013 county fair. On November 14, Mr. Lyons met with Gene Amann regarding the grandstands, and asked him to plan on attending the January fair board meeting to discuss what he felt needed to be done with them. Mr. Amann will put together a bid. On November 15, Mr. Lyons attended the hospital board meeting, and also checked roads again to the southwest. On the Seventeenth, he received the phone call from Leroy Mosher regarding the access to oil wells.

Mr. Burgess had attended a COG meeting in Stratton on November 7, commenting that Lincoln County is scheduled for a bus next year that will cost \$6,300. The county will be able to do whatever they like with the old one. On November 8, Mr. Burgess attended the Centennial Mental Health meeting and remarked that the budget is still the big issue and the question is what will happen with Medicare. He added that they are still insisting that they will build a new building in Fort Morgan. Gary Withington had called to let him know that he had purchased a noise meter himself, and Mr. Burgess said that NextEra representatives have been out working on the tower. Mr. Kimble had suggested that Mr. Withington hire his own attorney, as he would be more likely to benefit as a private landowner than trying to go through the county. Mr. Burgess said he had also stopped by the landfill and looked at the new power washer, which they are happy to have.

Ms. Devers informed the Board that County Coroner Jennifer Nestor would be unable to keep her appointment at 9:45 a.m., but that the question she had about storing particular items stemmed from the fact that she will be moving and did not have room at her new residence for them. Mr. Burgess said he'd spoken with Sheriff Nestor and apparently the coroner takes possession of all drugs in a residence when the office is notified of a death call, and Ms. Nestor needs some place to store them. The Board felt those items should be taken to the sheriff's office and stored there, especially when it may involve evidence, but the sheriff had said he does not have room for everything she wants to store. Ms. Devers had contacted Deputy Coroner Zane Nestor to ask what exactly they need to have stored, but she had not yet heard back from him. Mr. Burgess commented that there is an empty room at the Extension Office that might be available for some of the items.

Human Services Director Colette Barksdale and staff members Patricia Phillips, Mimi Lyons, Marissa Schier, and Lauren Lyons met with the Board to discuss flex time. Mr. Burgess said that when Ms. Schier had met with the commissioners on October 30, she had mentioned at that time that another employee got every Friday off, which the Board was unaware of. Ms. Barksdale said the employees in question are all considered to be masters level employees and are covered under the exempt employee sections in the personnel manual, according to Fair Labor Standards.

Mr. Burgess said that his interpretation of flex time is not that a person automatically gets a certain day of the week off, and it was his opinion that the particular employees are actually adjusting their schedules for personal reasons, not for work-related reasons.

Mr. Kimble explained that if the personnel policy states that it can be amended by the county commissioners, then they can do so at any time. Since the Human Services Director is actually appointed and not elected, that position tends to be more in the Board's control.

A call was placed to Cynthia Barnes with CTSI and Mr. Burgess asked her if the commissioners have the right to override DHS policy or dictate how the department is managed. Ms. Barnes responded that if the county policy does indeed contain a clause that the Board can amend the policy, then it is clearly within the commissioners' ability to change or interpret it as they see fit. She added that flex time is variously defined and that it becomes more of a management rights issue, as there is nothing within the policy that gives employees the right to determine their own schedules. She went on to say that if the Board has determined that it is a management issue and they want to change things, they certainly have that right. Ms. Barksdale said she was merely going by the Fair Labor Standards, but Ms. Barnes told her that the Management Rights Clause actually governs the entire policy and there is no Fair Labor Standards rule that requires flex time for employees. The obligation of employees on flex time is to work the hours necessary to perform the job duties, whereas hourly employees are required to work hour-for-hour and must take leave time if they don't.

The Board thanked Ms. Barnes for her time and Mr. Kimble said that from a legal standpoint, he looks at the management issue. Mr. Burgess repeated that he felt that Ms. Barksdale is

allowing employees to alter their schedules and using the term “flex time” to do so, and Mr. Beedy agreed that it seemed they were accommodating personal reasons, not maintaining job duties.

Patricia Phillips spoke up, stating that she understood the Board’s position, but wanted them to realize what difficult jobs DHS caseworkers have and how hard it is to keep employees, giving the statistic that the national rate for caseworker longevity is three years. She gave the indication that their department has little or no turnover due to the fact that some of those employees are allowed to flex their time, and maintaining flexibility keeps those employees in Lincoln County. Ms. Phillips said that the caseworkers have degrees and have gone to school a long time to learn their trade, and she is afraid they will lose good employees if they don’t continue to allow flexible schedules.

Mr. Burgess took exception to her comments and stated that the county has many professional employees who do not have degrees, and Mimi Lyons put in that DHS employees are taken away from their families on evenings and weekends on a regular basis. Lauren Lyons stated that daycare is her own personal problem and being allowed to use flex time is not about daycare, but about working her job and the hours she needs to complete her duties.

Mr. Burgess said that the commissioners were told that employees are taking every Friday off and Mr. Beedy added that it seems the entire conversation has morphed into something other than what it should be, as they were told that the flex time was being used strictly to take care of daycare issues.

Mr. Kimble felt it would help to define flex time better in the personnel policy, and Ms. Barksdale remarked that she has strictly felt she was following policy and that the employees have been writing letters to, or meeting with, the commissioners without her knowledge, and she has never been asked to participate in the conversations or been invited to the meetings.

Patricia Phillips asked if flex time would be acceptable with the commissioners if the employee has a busy week and needs to arrange their schedule to compensate for that, and the Board agreed that an excess in hours definitely dictated time off. Ms. Lengel asked how flex time is different from comp time, and Ms. Barksdale said that exempt employees have to be paid for comp time, which is not true. Exempt employees can take comp time off hour-for-hour, according to Ms. Devers.

Rich Johnson arrived to give an update on the Health Care Coalition that is being established in Lincoln County. Land Use Administrator John DeWitt also attended the discussion. Mr. Johnson said he merely wanted to inform the Board that the coalition is being formed by the hospital, public health, and mental and behavioral health, as well as EMS and other local medical facilities to help with emergency preparedness. The decision was made to form the coalition because they wanted something that would address the needs of the smaller counties and communities, rather than just the bigger areas. Mr. DeWitt put in that even though forming a new coalition helps address local issues, he did urge the group to also join the

northeast coalition, and Mr. Johnson said they would definitely work with other coalitions as well.

Once Mr. Johnson and Mr. DeWitt had gone, Ms. Devers said that they would need to call Rick Scott with TG Mercer to discuss a storage location for the pipe to be used in the Front Range Pipeline project, as he was unable to attend the meeting in person. Mr. Burgess asked Mr. Scott if he had spoken with Don Morrison about leasing his ten acres north of Limon for the purpose of storing the pipe, to which Mr. Scott said that he had. Mr. Burgess told him that the property has been approved before for special use and wanted to know what Mr. Scott's concerns were. He replied that he only wanted to make sure that he'd done everything correctly, adding that the pipe would be coming in by rail in late December and the project would continue through April or May. There will be twenty-five miles of quarter-inch thick pipe in eighty foot sections, stacked four or five pipes high, but it will not all be there at once. He assured the Board that they are professionals and will not just dump the pipe, but will keep it neatly piled. He added that they will not need water, power, or septic as there will be no permanent structures, and they will have no need for security of any kind.

Mr. Beedy made a motion to adopt a resolution allowing the storage of pipe to be used in the Front Range Pipeline project on a ten-acre plot in the SW4 of Section 9, Township 9 South, Range 56 West, 6<sup>th</sup> P.M. belonging to Don Morrison, owner of D-J Petroleum, upon agreement between TG Mercer and Don Morrison, and that the property is determined to be for commercial use. Mr. Lyons 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 November 19, 2012, there were present:

Steve Burgess, Chairman	Present
Gary A. Beedy, Vice Chairman	Present
Ted Lyons, Commissioner	Present
Stan Kimble, County Attorney	Present
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 #836** It was moved by Commissioner Beedy and seconded by Commissioner Lyons to adopt the following resolution:

**WHEREAS**, TG Mercer, the company that will complete the Front Range Pipeline project, has inquired as to the requirements to lease from D-J Petroleum 10 acres located in the SW1/4 of Section 9-T9S-R56W to use for temporary pipe storage; and

**WHEREAS**, the property in question was approved for an exemption from Subdivision Regulations on September 2, 1986, with the intended use to be the location for LP gas, gasoline

and diesel storage tanks for D-J Petroleum. This commercial use has been maintained since being approved in 1986; and

**WHEREAS**, Lincoln County did not have a zoning ordinance in place at that time to regulate such uses, but if the present use is described as commercial the use could stay attached to the land if it were assigned and the nonconforming use did not violate Section 4-100 of the Lincoln County Zoning Resolution. The County Zoning Resolution further states that a nonconforming use can remain as long as the use is not enlarged or expanded, which would then require a development permit; and

**WHEREAS**, the anticipated use meets the definition of a commercial use as used in the current zoning regulations and will not extend beyond the 10 acres approved for use by D-J Petroleum.

**NOW, THEREFORE BE IT RESOLVED** by the Board of County Commissioners of Lincoln County that, upon agreement between TG Mercer and Don Morrison, owner of D-J Petroleum, the use of any part of the 10 acre plot in the SW1/4 of Section 9-T9S-R56W is determined to be a commercial use and the temporary storage of pipe for the Front Range Pipeline project is approved;

**BE IT FURTHER RESOLVED** that said use must comply with the standards set forth in Section 4-100, Nonconforming Uses, of the Lincoln County Zoning Resolution.

Upon roll call the vote was:

Commissioner Lyons, Yes; Commissioner Beedy, Yes; Commissioner Burgess, Yes.

The Chairman declared the motion carried and so ordered.

Board of County Commissioners  
of Lincoln County

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ATTEST:

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Clerk of the Board

Mr. Lyons asked Mr. Kimble about Leroy Mosher's issue concerning oil company access to state property and Mr. Kimble told him it should be approached strictly between the landowner and the state, and the county should not be involved in any way. Mr. Lyons asked what would

happen if the property being accessed was not state property, and Mr. Kimble said there are usually stipulations in the lease with the landowner regarding access. He added that statute dictates what a county is required to do if a road is opened on a section line and, in that case, the road becomes a county road with public access.

Ms. Devers asked Mr. Kimble to look at a county gravel pit lease, particularly the section regarding access to the pit, as a landowner is concerned with the phrase “unlimited right of ingress and egress,” believing that means the county has the right to enter the property wherever they choose in order to access the pit. Mr. DeWitt said that if the county wanted to change the route a technical revision would have to be filed with the Division of Mining and Reclamation, and Mr. Kimble explained that the true meaning is that the county has the right to enter, but not anywhere. He added that it may be beneficial to add language to the lease stating that the permit dictates the terms of the access route. However, since Mr. DeWitt had just finished sending out updated leases to gravel pit owners, the commissioners did not make a decision to change the current wording.

Mr. DeWitt informed the Board that there are some new requirements being considered for gravel pits, such as the fact that crews will be required to “water down” as they are mining, as well as the stipulation for number of gallons used and where the water is obtained. He went on to say that if the mine is not operational for 180 consecutive days every year, the county will be required to file a cessation of use permit with the state, and would then have to file again to re-open the pit. Mr. Beedy stated that CCI needs to get involved to stop the progress of any legislation, and Mr. DeWitt said it is coming from the State Land Use Board. He added that he’d written a letter asking them to differentiate between commercial and county, and Ms. Devers thought it would be a good thing for him to get as much information as he could in writing for the commissioners to take to the Eastern District meeting at conference next week.

Mr. Burgess called for the Administrator’s report and Ms. Devers asked if the commissioners wanted to give each employee a ham again this year for Christmas, or if they had another suggestion. Mr. Burgess said to order hams, adding that the commissioners had also agreed to purchase the meat for the annual Christmas party, as long as it is done locally.

Ms. Devers asked if the current commissioners wanted to do the calling for various board appointments for 2013, or if they would prefer the new commissioners do so, and it was decided that Mr. Lyons, Mr. King, and Mr. Stone would take over calling individuals for board appointments. Mr. Burgess said that Russell Covington would like to be taken off the Land Use Board. Mr. Lyons stated that Lucas Hohl replaced Joni Chester on the hospital board, and that Del Beattie would need to be replaced as well, since he is currently on the Limon town board and cannot do both, according to statute. Mr. Burgess said that Jo Downey had asked him to be the one to replace Myron Sams on the COG board, and Mr. Burgess told her it would be up to the new commissioners, but that he would be willing to serve.

Ms. Devers passed around new pages for the 2013 budget, stating that the Assessor had brought new valuations and that everything had changed, and then let the Board know that

Greg Nahm with Mason-Dixon Energy, LLC had discovered that a date was missing on the Oil and Gas Lease signed on October 18. Mr Beedy made a motion to insert the date and to initial the change. Mr. Lyons seconded the motion, which carried unanimously.

The Board reviewed a letter from Mountain View Electric Association, Inc. concerning a land swap between Mountain View and Tri-State Generation and Transmission Association, Inc. at the Limon Substation. Mountain View is in the process of rebuilding its substation, and requires a portion of the Tri-State land to do so. In return, Mountain View will deed a portion of its land on the other side of the Tri-State substation for Tri-State's possible future expansion needs. Ms. Devers said they would need to request an exemption from subdivision regulations, so will be in at the end of the month to do so.

Ms. Devers asked the commissioners if they intended to meet on December 28 or if they still planned to meet only on December 31, which is their intention.

Mr. Kimble informed the Board that there would be someone at conference discussing Amendment 64; the marijuana amendment, and from what he has learned, there may be an opportunity for the county to do as they did when the moratorium was passed and prohibit at least the commercial portion. By July 1, 2013, the county will need to decide if it will prohibit retail marijuana establishments. In October of 2013, DOR will begin accepting license applications, and July 1, 2014, is the deadline for the legislature to enact legislation regarding industrial hemp. Municipalities will make their own opinions.

The Board reviewed the Public Health report for the month of October, and then Mr. Burgess asked Ms. Devers if she would compose a letter stating that he is authorized to sign documents for Lincoln County as an elected public official, which was being required by Mason Dixon.

With no further business to come before the Board, the meeting was adjourned until 9:00 a.m. on November 29, 2012.

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Corinne M. Lengel, Clerk to the Board

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Steve Burgess, Chairman