

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

9:00 Call to order and Pledge of Allegiance

9:00 Land Use Administrator John DeWitt to give the Land Use Board's decision on the development permit application for a single family dwelling submitted by Damien Duran and the results on their discussion concerning setbacks for wind farms and oil wells

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

1:00 Ralph Brent to discuss a property access issue

1. Approve the minutes from the May 30, 2013 meeting
2. Review a letter from CDOT concerning the County Clerk's Office waiving fees for copies of recorded documents that are needed to perform accurate highway surveys and develop right-of-way plans
3. Review a letter from Centennial Mental Health concerning attendance at their monthly meetings
4. County Commissioners' reports
5. County Administrator's report
6. County Attorney's report
7. Old business
8. New business
9. Approve additional expense vouchers if necessary

The Board of Lincoln County Commissioners met at 9:00 a.m. on May 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 attended in the afternoon.

Chairman Lyons called the meeting to order and asked Land Use Administrator John DeWitt to lead the Pledge of Allegiance.

Mr. DeWitt then informed the Board that the Land Use board approved Development Permit Application #13-02 submitted by Damien Duran for a single-family dwelling. Also discussed at the Land Use board meeting were setbacks in relation to oil wells and wind farms. The state setback for oil wells is currently 150' and will be going to 200', while the company standard for wind towers is actually 1,000'. Mr. DeWitt stated that the board had agreed that they are not qualified to make decisions regarding changes in the setbacks and mentioned that they thought the commissioners had received an expert opinion when the subdivision regulations were formed.

Ms. Devers said that the commissioners had an attorney help them when the zoning regulations were revised and Mr. DeWitt thought that must have been what they were referring to. He added that the Land Use board had recommended involving someone who specializes in the industry.

Mr. DeWitt said that he had been approached by the town of Hugo to do inspections for stick built homes as he is the closest certified inspector that can do them. Both the town of Hugo and the town of Limon would also like for him to perform manufactured home inspections. Dave Stang, who previously did manufactured home inspections for the town of Limon, dropped his certification several years ago as it was too expensive to maintain for the number of inspections he performed. Mr. DeWitt said that his ICC certification transfers over to HUD, and since he has to keep his certification active for the county anyway, he saw no reason why he could not take on the additional inspections.

Mr. King wanted to know if the county would then charge the municipalities for Mr. DeWitt's time, but Ms. Devers suggested having him perform the inspections during his normal business hours so that he would continue to be covered by the county's insurance, especially since there were not a great number of them to be done. Mr. DeWitt added that Hugo mayor Patsie Smith would like for the town to adopt the codes as she hopes to make the area a more desirable place to live.

Ms. Devers suggested that Mr. DeWitt have the town of Hugo make their request in writing so that there is record of exactly what they expect him to do. Mr. Lyons said they could speak with Mr. Kimble about it later in the day. Mr. DeWitt also said that Limon Wind III has until December 15 to begin construction on the final phase.

Mr. King made a motion to approve the minutes from the meeting held on May 30, 2013, as submitted. Mr. Stone seconded the motion, which carried unanimously.

The Board reviewed a letter from CDOT concerning the County Clerk's office waiving fees for copies of recorded documents that are needed to perform accurate highway surveys and develop right-of-way plans. Ms. Lengel said that state statute dictates that she charge \$.25 per copy for documents recorded in her office. Other clerks in the region had been passing emails around regarding the subject, and the Kit Carson County Clerk had stated that taking the time to copy, scan, and email the documents would cost the county money in staff time, and the least they could ask was to receive the \$.25 per copy. Ms. Devers said she would send a letter to that effect to Mr. Olson with CDOT.

The Board also reviewed a letter from Centennial Mental Health concerning attendance at their monthly meetings. Mr. King said that he would make a better attempt to attend the meetings so, for the time being, he will remain the commissioner liaison to that board.

Mr. Stone reported checking roads on May 29 where he ran across some state bridge inspectors west of the pipeline they are putting in east of the county line on Highway 94. He said they are getting ready to bore about eight feet under Highway 94 and County Road Y to lay the gas pipeline. Mr. Stone also reported that they have a bridge on County Road G northeast of Paul Jenkins' place that they would like to put some "narrow bridge" signs up on, so he spoke with Chris Monks, who will order them.

Mr. King reported dropping off budget reports at the county shop after the commissioner meeting on May 20, and attending the Resources Unlimited meeting on May 21. On May 22, he stopped by the fairgrounds to check on the work on the grandstands and, while he was there, Julie Joffe showed him around the grounds and they discussed work that needs to be done. On May 23, he attended the District Attorney Forfeiture Board meeting at Centennial, and on the Twenty-seventh, he checked roads north of Limon and Genoa, stating that County Road 109 has a lot of issues from the oil traffic.

Mr. Lyons reported stopping by the landfill on May 21 to speak with Mick Jaques about space to store recycled electronics. On May 24, he attended the hospital board meeting where the main concern was cost of insurance, and on May 29 he checked on the Monks oil well. Earlier this morning, he spoke with Al Smith about an article in The Denver Post.

Ms. Devers reported receiving a phone call from Julie Joffe about a pipe in the men's restroom under the grandstands needing replaced because it had broken. She also spoke to a representative with Southwick Rodeo who told her they do not care if the trick rider does her show during the rodeos this year, and Nell Richie with CPRA who said the same, but to let them know if they do decide to schedule her. Ms. Devers said she'd tried to contact the young lady about providing her proof of liability insurance, but so far had not heard back from her. Kathy Schull with Progressive 15 asked if one of the commissioners would like to serve as a panel member at the energy summit meeting in Fort Morgan on June 26. Mr. Lyons will do so, and

the other board members also plan to attend. Ms. Devers said she had also finished updating the Bookmobile Supervisor job description.

At 10:00 a.m., Human Services Director Colette Barksdale met with the Board to give her monthly report. Robert Kraxberger attended as well. While the commissioners looked over the time sheets and financial reports, Ms. Barksdale stated that they have applied for a Regional Model IV-E Waiver for the permanency roundtable, but have not heard anything back yet. She also stated that Differential Response has requested a technology grant for smart boards, iPads, etc. Ms. Barksdale then updated the Board on Project School Supply, stating that they would like to purchase five hundred flash drives, as they are not ordering water bottles this year. She would like to keep the project around \$40,000 and explained how she intends to do so, adding that she hopes to keep Project School Supply closer to \$37,000.

The department has received TANF grant requests and Ms. Barksdale said they hope to give Gordon Clinic \$1,500 and Plains Medical Center \$500 through the grants. If there is enough left over, they want to give \$1,500 to the Karval Food Pantry and \$1,500 to the Hugo Food Pantry so that they do not have to return funds to the state. She went on to say that since they are community grants rather than contracts, she would need permission to follow the plan and the board gave their approval.

Ms. Barksdale said that they will be over budget in administration at the close of the fiscal year, as usual, but they will be under budget in Child Welfare by approximately \$50,000, so it will be distributed among some of the smaller counties. She added that since it is an allocation, it will go through mitigation and around four percent will go to the smaller counties.

Ms. Barksdale brought three regional annual contracts for commissioner approval; the first, the Regional Signal Contract for substance abuse in the amount of \$12,150. Although Lincoln County is not the fiscal agent, Ms. Barksdale explained that signatures were required, nonetheless. She also stated that it will probably be the last year for flat rate contracts, as fee-for-service contracts will help them to negotiate some of the fees, adding that they have had the same amounts on the contracts since 1999.

Mr. King made a motion to sign the Signal Behavioral Health Substance Abuse Treatment Service Agreement in the amount of \$12,150. Mr. Stone seconded the motion, which carried unanimously.

Mr. King also made a motion to sign the Regional CMCH Contract for Mental Health in the amount of \$43,670, for the period of June 1, 2013, through May 31, 2014. Mr. Stone seconded the motion, which carried unanimously.

Next, Ms. Barksdale presented the NE Colorado Child Care Resource and Referral Memorandum of Understanding in the amount of \$18,000. Mr. Stone made a motion to sign the MOU, Mr. King seconded the motion, and it carried unanimously.

Ms. Barksdale had been to a CWAC meeting at CCI where directors were told they would need to speak with their boards of commissioners to find out what their role is when they are representing the commissioners at CCI. She explained that she holds the proxy for CWAC and WAC meetings, but CCI wants the commissioners to be more involved in the decision-making process. She wanted to know what the Board's expectations are; if she is supposed to make decisions on behalf of the county since she is there and holds the proxy, if she is supposed to vote on bills, or simply give recommendations. Apparently, the perception is that many directors are driving legislative issues instead of the commissioners; hence, the request to get Board input. Mr. King said he didn't feel that he was qualified yet to make those decisions, and Mr. Stone voiced the same. Mr. Lyons stated that if she is attending the meeting and knows what it is about, she should make the decision. Ms. Barksdale stated that if there was a controversial topic she would definitely contact one of the commissioners and let them make the decision, adding that she has voted several times against unfunded mandates.

Finally, Ms. Barksdale stated that they intend to start a paid mentoring program for youth that will hopefully keep them at home more. Paid mentors will come to them rather than having to send the kids away for treatment, which is in conjunction with the department philosophy of keeping kids at home.

Mr. Stone said he had received a Colorado Department of Health Policy and Management survey via email and wanted to know what Ms. Barksdale thought of it. She stated that she had already responded to it, choosing options that she felt best suited Lincoln County.

There was no old business to discuss, but Ms. Lengel said she would like to speak to the Board about the new election legislation, the Secretary of State's objective for a Uniform Voting System, and attending The Election Center national conference. Recent legislation was passed designating all future elections as mail ballot elections, and while it will be difficult to get used to not going to the polls to vote, such elections will actually save the county money for several different reasons. Mail ballot elections will no longer require opening of polling places and election judges to work the elections, the use of several pieces of currently outdated election equipment, and the time involved to prepare the equipment for Election Day. Ms. Lengel stated that there are new requirements to the bill that may make things more challenging; such as same day registration, fifteen days of "early voting" as opposed to ten days, and the requirement that the office will need to be open the two Saturdays prior to Election Day, but she also felt that, in Lincoln County, mail ballot elections bring about better voter turnout and will actually be easier since over 60% of the voters already request mail-in ballots. Since the election equipment will be seven years old in August, Ms. Lengel said that it is close to its shelf life, but that the Secretary of State has said that if the state does convert to a uniform voting system, counties will be able to continue to use the equipment they currently use until it is no longer functional. Ms. Lengel and her election deputy attended a demonstration of the Dominion Voting System in Sterling on May 22, and both felt the system was much less cumbersome than the Hart system, as well as more in line with what Ms. Lengel believes the Secretary to be leaning toward. Ms. Lengel also wanted the Board to know that Wayne Munster, Director of Elections at the Secretary of State's office, had quit recently, which was

quite concerning. She added that he will be working for Arapahoe County elections, but a great asset at the state department had been lost. Lastly, Ms. Lengel stated that she would like for her and her election deputy to attend the week-long Election Center national conference in August, due to the number of changes that have occurred legislatively and those that will be coming from the state. Ms. Lengel said it would be very expensive, but she felt it would be well worth the money to learn elections on a federal level as well as how the U.S. Postal Service will handle election mail with no Saturday delivery and rural closures, voting system standards, federal laws, serving voters with disabilities, pending federal voter registration and elections legislation, voting system sustainability, and election history. Mr. King asked Ms. Lengel if she had the money in her budget, to which she replied she had not budgeted for this particular conference, but believed she would be fine overall at the end of the year. The Board approved attendance to The Election Center conference for Ms. Lengel and her election deputy, Shawnee Dobbs.

At 1:00 p.m., Ralph Brent met with the Board to discuss a property access issue. Also in attendance were Matthew Brent, Kimel Brent, Dale Bode, Sheriff Tom Nestor, and County Assessor Jeremiah Higgins.

Mr. Brent explained that his family has approximately 900 acres west of County Road 41 and County Road 3Z that they need access to and have been accessing for years, but Mr. Bode has now said they can no longer do so. Some of the property is in CRP and some is grassland, and if they cannot use the route that they have been using, they will have to go out of their way by about eight miles. He added that when the owner of the property, Ray Walden, was alive, he had no problems allowing them to use the access trail, but they have not spoken with his wife about it.

Mr. Bode spoke up to say that he has been farming the land for many years and Mr. Walden had told him that no one should be going back in to that property. When asked if he owns or leases the ground, Mr. Bode said that he is a tenant farmer and wanted to know who would pay for his crop loss if the commissioners plan on opening the section line. He stated that Brents have driven on his crops and the ruts continue to get wider and further into his field rather than staying on the original trail. He added that the ruts tear up his equipment and no one bothers to call and let him know that they have been in there and caused problems.

Sheriff Nestor said that the department's maps show the trail as a section line and he had explained to the parties that it means the commissioners can reserve the right to open a road on that line if they so choose.

Mr. Kimble asked to speak, stating that the commissioners' interest is pretty narrow and the main question is whether or not the road exists on the official Lincoln County road map. If the road is there, it is to be considered an open road but if not, then it cannot be used by the public. He stated that his main concern is what is considered to be the "official Lincoln County road map", as that is the real question. The road map in the commissioner meeting room has been used in the past to determine other road issues, but Mr. Kimble said he wasn't exactly

sure if it is the official map or not. Ms. Devers commented that the map was created after the roads were numbered, approximately in 1991 or 1992, but since she has worked for the county she does not remember the commissioners ever adopting an “official” county road map.

Mr. Kimble stated that Colorado Revised Statutes 43-2-108 through roughly 43-2-112 explain the issue and what the county’s involvement should be, and he spoke a bit about adverse possession, adding that a judge would need to make the determination in a civil case. If the road is on the official county road map it cannot be closed.

Ms. Devers said she could check into past commissioner meeting minutes and see if a resolution was ever passed, and Mr. Kimble went on to say that the county can open the road but would have to pay for it and would have to prove that there is a public interest in doing so; meaning all public could use the road. He added that it would be best if the two could agree on something, but Mr. Bode said he had tried and no longer wanted to “play nice.”

County Assessor Jeremiah Higgins said he had looked for an official road map and had been unable to find anything, but he intended to continue looking further, and the sheriff wanted to know if Mr. Kimble could advise him what to tell his deputies, as they need to enforce it one way or the other if they continue to receive complaints.

Mr. Kimble again stated that *if* the map in the commissioner room is the official county road map, the road is not there and therefore is not considered to be a county road. However, who could say if that was the official map or not? He briefly discussed adverse possession versus prescriptive easement, and then Mr. Lyons stated that it seemed there have been more road disputes in the past three years than ever before.

Mr. Kimble suggested creating an official county road policy as well as determining the official county road map, adding that if they decided to do so, they would need to hold a hearing.

Mr. Lyons asked what would happen if an old map were found and it was determined that many of the roads the county now considers to be roads do not exist on it, and Mr. Kimble said that they could clean it up with a resolution and the county would have to abandon all of them. Mr. Lyons said he felt that would open up another big problem and asked if Brents could or could not use the trail to access their property at this time.

Mr. Kimble stated that if they were going by the map in the commissioner meeting room, Brents could not use the property, adding that as a tenant farmer Mr. Bode has a possessory interest; however, the landowner should be contacted. He also stated that it would not be a waste of time for the two to find a good mediator, but Mr. Bode said he was following the advice of his legal counsel.

Mr. Lyons wanted to know if the property had ever been surveyed and Mr. Bode said he found two posts on the property and did some measuring from a power line, but an official survey has not been done. After a brief argument with Mr. Brent, Mr. Bode left the meeting.

Mr. Brent said he is certain there are a lot of roads in the county that have never been recognized as roads or designated on a map, and Mr. Kimble stated that primary roads were given a road number and secondary roads include all primitive trails and unmaintained roads. He added that if an official county map is not discovered, the county will have to create one, and then hold a hearing and possibly redo everything.

Mr. Lyons asked if that would mean re-addressing all of the other decisions made in the past where county road issues are concerned, and Mr. Kimble said they would most likely have to bring in the road foremen and ask them what map they use, and then adopt a resolution. Mr. Lyons said he would assume that when the commissioners decided to number the roads they used the official map, adding that he felt the one in the meeting room should be designated as such.

Mr. Brent wanted to know what it would take for the county to make the trail an unmaintained county road, and Mr. Kimble said it would be quite costly as it would have to be certified to the transportation committee, a map filed with the County Clerk, and each owner would have to be paid for their portion of the property, as the county would not own the property, just the right-of-way. He added that if two landowners came to the commissioners and asked them to put in a road and agreed to pay for, he assumed the county would do so. Mr. Kimble also told the Brents that if they wanted to they could take the matter to civil court and get an injunction to use the property until the county determines what the official county road map is. He added that they could go to court and prove that it is a county road but would have to get a decree from the courts stating such. If they can obtain such a decree, the county has to accept it as a county road.

Mr. King wanted to know if the county has set precedence by using the map in the commissioner meeting room to make decisions in the past, and Mr. Brent said that there are numerous farmers and ranchers at the north end of the county using trails just like the one in question to access their land or CRP, and he wanted to know how the commissioners would handle all of those.

Mr. Lyons complimented the Brents on their demeanor during the meeting and asked what would happen if someone from the state came to check the CRP land and found out someone was farming it. Mr. King responded that they would be fined, as the property is the contract holder's responsibility. The contract holder could then take the farmer to court, but not before being fined by the state.

Mr. Lyons told the Brents to either get a court order or a letter from the property owner giving them access to their property, but until they had one or the other, they were not allowed access until the commissioners meet again and can determine if there is an official county road map somewhere.

After the group had gone, Mr. Lyons called for the attorney's report. Mr. Kimble said that he would be at the county attorney's conference the following week so would miss the June 6

meeting, but otherwise had nothing else to report. Mr. Lyons said he would also miss the same meeting, and both Mr. Higgins and Sheriff Nestor will also be unavailable. Ms. Devers said she would contact the Brents and Mr. Bode and let them know there would not be a decision made until at least June 18.

Mr. Lyons said he was going to ask Mr. Kimble about the county designing a standard Oil and Gas Lease document such as the state has, but then said he'd thought better of it and decided there probably weren't enough county-owned mineral rights to make it worth doing.

As for the fairgrounds, Mr. Lyons said he'd done some thinking about RV hookups and parking and wondered if it would be legal for the county to "sell" camping spots to people who could then front the money to the Enterprise Zone for the funding of the RV park. He asked Mr. Kimble if such a thing would be legal and if so, could the "owner" of the spot then "transfer ownership" of the spot to another family member when they no longer wanted to use it. Ms. Devers asked if he was thinking of something like a time share and, if so, if the spot would be available to someone else during a different event, such as the Ranch Rodeo if the "owner" didn't want to use it. Mr. Kimble said he would have to look into it and see if such a thing could be done with county property.

Ms. Devers asked Mr. Kimble about Mr. DeWitt inspecting mobile homes in the towns and Mr. Kimble responded that he had received an email from Mr. DeWitt but had not had a chance to get back to him yet. When Ms. Devers explained that Mr. DeWitt would most likely perform the inspections during his regular working hours, Mr. Kimble said it would be fine as long as Mr. DeWitt would be covered by the county's insurance. Ms. Devers also let Mr. Kimble know what Mr. DeWitt had said about the Land Use board's decision regarding setbacks.

Mr. King made a motion to allow the county offices to close at noon on August 9, 2013, in order for county employees to attend the county fair, and then County Treasurer Jim Covington stopped by the meeting to ask if the commissioners would be willing to assign county-owned tax lien sale certificates on minerals to Kirk Crossland with Dennis Oliver & Associates. The commissioners agreed that they did not want to assign county-owned tax sale certificates to anyone.

With no further business to come before the Board, the meeting was adjourned until 9:00 a.m. on June 6, 2013.

Corinne M. Lengel, Clerk to the Board

Ted Lyons, Chairman