

Board of County Commissioners of Lincoln County
Agenda for June 28, 2013

9:00 Call to order and Pledge of Allegiance

9:00 Human Services Director Colette Barksdale to give her monthly report

9:45 County Coroner Jennifer Nestor to answer questions about several expenditures for her office

1:15 Discuss setbacks from property lines for wind towers

1. Approve the minutes from the June 27, 2013 meeting
2. Review a request from Lincoln County Caseworker Lauren Lyons concerning raising awareness of children in foster care, recruiting mentors, and finding foster homes
3. Review and sign the paperwork for the lease/purchase of a 2014 Cat truck for Road District 1
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 June 28, 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 the meeting in the afternoon, and Will Bublitz with the Limon Leader and Eastern Colorado Plainsman attended for the discussion regarding setbacks from property lines.

Chairman Lyons called the meeting to order and Human Services Director Colette Barksdale led the Pledge of Allegiance.

While the Board reviewed the DHS time sheets and May financial and June caseload reports, Ms. Barksdale updated them on Project School Supply, stating that \$15,515 was spent at Osborne's Supermarket, \$15,929 was spent at Hoffman Drug, and \$1,000 worth of calculators were purchased from Hugo Lumber. They still intend to buy flash drives from Petersons.

Ms. Barksdale reported on the IV-E Waiver regional model, stating that the group decided to pull the Permanency Roundtable portion and let Elbert County take the lead on it. They will continue to work on obtaining funding for the other two portions, which are the Kinship Support and Family Engagement.

The Differential Response technology grant will be approved, but Ms. Barksdale said that James Martin will likely have to set up some of the IT.

Ms. Barksdale was contacted by the new director in Cheyenne County who cannot act as the supervisor of Child Welfare until she has completed the certification training. She has asked if Lincoln County DHS would be willing to perform the services in the interim, and Ms. Barksdale said that Mimi Lyons would be the one going to help out approximately one day each week, as well as be on call for them. Ms. Lyons will be required to use vacation time while she is covering in Cheyenne County, and Ms. Barksdale said if she ends up doing some of the work on Lincoln County time Ms. Barksdale will have to backfill her salary. She added that Cheyenne County will send them a contract for around \$7,500 for services from July through September.

Both Public Health Director Sue Kelly and Ms. Barksdale were contacted by Kindra Mulch in Kit Carson County to request that they apply for a Connect for Health grant through a private group; Healthcare Policy and Finance. Lincoln County was approved for \$33,182.86, which is to be used for outreach activities and mileage, in order to get people signed up for the Healthcare Marketplace, previously known as the Healthcare Exchange. They are required to complete forty hours of online training and hope to have a total of six staff members trained between the two departments. Ms. Barksdale said that a portion of her staff may have to work one weekend a month and they will have to be paid overtime. She anticipates they will get about \$1,700 per month to split between the two departments, as the grant begins July 1 and runs for eighteen months, but admitted she has not seen the deliverables yet so isn't sure of the specifics. She added that since it isn't a lot of money, the county may have to backfill salaries.

Ms. Barksdale stated that her department wishes to raise awareness of children in foster care, recruiting mentors, and finding foster homes, and would like to use budget funds to purchase shirts for staff members that can be worn at events such as the county fair, promoting the awareness. A letter from Lauren Lyons concerning further details of the shirts was read, and Mr. King said he did not like the slogan, "It takes a village to raise our Children" and asked that it be changed. The intention was to put the slogan on the back of the shirts and the commissioners decided they preferred the slogan, "Keep our Children Local," which the department was going to have put on the fronts of the shirts. According to Ms. Lyons' letter, Julie Witt will design the shirts which will cost approximately \$25 each. The commissioners allowed the shirts to be purchased using state funds.

Human Services is required to create a training plan for Differential Response so Ms. Barksdale said they will be holding a two-day workshop and have to invite people in from Minnesota to help. They will plan on inviting other counties and will charge them \$25 to help defer the costs of supplies, breaks and lunches, and will probably hold the training at the fairgrounds. Patricia Phillips will develop the plans.

Ms. Barksdale said the department has some items that they would like to auction off and wanted to know if they should go through the same company that the sheriff recently did. Ms. Devers suggested allowing other departments in the county to look at the items first to see if anyone wanted any of them.

Mr. King asked Ms. Barksdale to discuss the Human Services relationship with Centennial Mental Health the next time she is scheduled to meet with the commissioners and she said she would bring Patricia Phillips and Mimi Lyons with her when she does.

Mr. Stone asked for two corrections to be made to the minutes from the June 27 meeting; one changing "4-to-5" to "several" and the other changing "down by Karval" to "in Lincoln County." Mr. Stone made a motion to approve the minutes from the meeting held on June 27, as corrected. Mr. King seconded the motion, which carried unanimously.

The Board reviewed the paperwork for the lease/purchase of a 2014 CAT truck for Road District One. Since nothing was traded in, payments will be an initial \$30,000, four additional installments of \$23,982.92 each, and one final payment of \$1. Mr. King made a motion to adopt a resolution approving the lease/purchase of a 2014 CAT truck for Road District One for a total of \$125,932.68. 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 June 28, 2013, there were present:

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| 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
Roxie Devers, County Administrator

Present
Present

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

RESOLUTION #852 It was moved by Commissioner Stone and seconded by Commissioner King to adopt the following resolution:

WHEREAS, the laws of the State of Colorado (the "State"), authorize the County of Lincoln, Colorado, a duly organized political subdivision, municipal corporation or similar public entity of the State, to purchase, acquire and lease personal property for the benefit of Lincoln County and its inhabitants and to enter into any necessary contracts; and

WHEREAS, Lincoln County wants to lease, purchase and/or finance equipment ("Equipment") from Caterpillar Financial Services Corporation and/or an authorized Caterpillar dealer ("Caterpillar") by entering into that certain Governmental Equipment Lease-Purchase Agreement (the "Agreement") with Caterpillar; and

WHEREAS, the form of the Agreement has been presented to the governing body of Lincoln County at this meeting;

NOW, THEREFORE BE IT RESOLVED by the Board of County Commissioners of Lincoln County that:

1. The Agreement, including all schedules and exhibits attached to the Agreement, is approved in substantially the form presented at this meeting, with any Approved Changes (as defined below); and
2. Lincoln County enters into the Agreement with Caterpillar; and
3. The Agreement is adopted as a binding obligation of Lincoln County; and
4. Changes may later be made to the Agreement if the changes are approved by Lincoln County's counsel or members of the governing body of Lincoln County signing the Agreement (the "Approved Changes"), and that the signing of the Agreement and any related documents is conclusive evidence of the approval of the changes; and
5. The persons listed below, are the incumbent officers of Lincoln County (the "Authorized Persons"):

| Name | Title | Signature |
|------------------|---------------|-----------|
| Ted Lyons | Chairman | _____ |
| Greg King | Vice Chairman | _____ |
| Douglas D. Stone | Commissioners | _____ |

Each is, authorized, directed and empowered, on behalf of Lincoln County to (i) sign and deliver to Caterpillar and its successors and assigns the Agreement and any related documents, and (ii) take or cause to be taken all actions he deems necessary or advisable to acquire the Equipment, including the signing and delivery of the Agreement and related documents; and the Clerk of the Board of Lincoln County is authorized to attest to this resolution and affix the seal of the county; and

Nothing in this resolution, the Agreement or any other documents imposes a pecuniary liability or charge upon the general credit of Lincoln County or against its taxing power, except to the extent that the payments payable under the Agreement are special limited obligations of Lincoln County as provided in the Agreement; and

A breach of this Resolution, the Agreement, or any related document will not impose any pecuniary liability upon Lincoln County or any charge upon its general credit or against its taxing power, except to the extent that the payments payable under the Agreement are special limited obligations of Lincoln County as provided in the Agreement; and

The authority granted by this resolution will apply equally and with the same effect to the successors in office of the Authorized Persons.

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

I, Corinne M. Lengel, Clerk of the Board of the County of Lincoln, Colorado, certify that the resolution above is a full, true and correct copy of the resolution of the governing body of Lincoln County. I also certify that 1) the resolution was duly and regularly passed and adopted at a meeting of the governing body of Lincoln County; 2) such meeting was duly and regularly called and held in all respects as required by law at the office of the Lincoln County Commissioners; 3) at such meeting, a majority of the governing body of Lincoln County was present and voted in favor of this resolution.

I also certify that this resolution is still in full force and effect and has not been amended or revoked. Finally, I also certify that the signatures above are those of the officers authorized to sign for Lincoln County as a result of this resolution.

Corinne M. Lengel
Clerk of the Board

Mr. Stone reported attending the 51st state meeting in Akron on June 24, and checking on the roads that District Three is chipping and attending the oil and gas leasing meeting on June 25. He reported receiving a phone call concerning the 51st state from Wayne Rudder on June 26, and the other two commissioners reported getting the same call.

Mr. King reported attending the Colorado blueprint meeting for Elbert, Lincoln, Kit Carson, and Cheyenne counties on June 25. The Council of Governments presentation on food and Ag value was very informative, according to Mr. King. Also, he reported that there are many loans available for drought affected businesses; an applicant can get up to \$15,000 with a credit score of 650 and a five-year payback. Applicants need to go through the COG office in Stratton. On June 27, Mr. King stopped at the Genoa shop to speak with Mark McHone about the I-70 rebuild project. He delivered the e-Waste barrel yesterday and also reported that FSA will be working as an agency of INS now to help farmers who need migrant farm labor.

Mr. Lyons reported receiving a phone call from Jason Brent regarding property setbacks for wind towers on June 25, which prompted the discussion on the afternoon agenda. He checked roads on June 26, particularly County Road 2G and County Road 63, and on June 27 he checked on the progress made by K.C. Electric for their new power lines/poles on County Road 2W. He also did some checking on a particular road being used that is not on the official county map, and was told that someone had put a gate across a trail, which he also looked at. Mr. Lyons also attended the hospital board meeting on June 27.

Sheriff Tom Nestor stopped in to discuss changing over the reverse 911 company from Intrado to CodeRED. First, Mr. Lyons asked him if the county had a fire ban on. The sheriff said the fire chief in each particular fire district sets the ban-level for that area since the moisture levels are so different across the county. Mr. Lyons asked if the commissioners could automatically set out a truck for trash collection each time the ban reaches a Level 3, which is the worst level. Sheriff Nestor agreed that would be a good idea, but cautioned that Red Flag warning days are automatic no burning days, but many people don't know that. Mr. Lyons said that people should know enough to call and find out if the wind is blowing or there are extremely dry conditions.

Mr. King made a motion to adopt a resolution designating that county trucks be available for resident trash collection when fire bans reach Level 3 in particular areas of the 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 June 28, 2013, there were present:

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|------------------------------------|------------------|
| 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 #853 It was moved by Commissioner King and seconded by Commissioner Stone to adopt the following resolution:

WHEREAS, Ordinance #2012-01, adopted by the Board of County Commissioners of Lincoln County (Board) on July 18, 2012, designated the levels of fire restrictions within the unincorporated areas of the county and gave authority to the Board to restrict or ban open fires during times of high fire danger in these areas, with the level of fire restrictions changing without further resolution by the Board; and

WHEREAS, Ordinance #2012-01 allowed the Lincoln County Sheriff and the Fire Chief of each Fire Protection District to jointly have the authority to determine the level of fire danger and the restriction (Level 1, Level 2, Level 3) within the boundaries of any fire protection district; and

WHEREAS, when the fire danger is at the highest level (Level 3) in any given fire district and no open burning is allowed, the Board has provided county dump trucks at various locations throughout the county for the disposal of household trash and allowed county residents to dump their household trash at the county landfill at no charge;

NOW, THEREFORE BE IT RESOLVED by the Board of County Commissioners of Lincoln County that, due to the short period in which weather and moisture conditions can change and the time between their meetings, that the Commissioners can instruct their individual road foremen to place county dump trucks at various locations for household trash disposal and inform the landfill manager to allow county residents to dump their household trash at the county landfill at no charge.

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

Sheriff Nestor then discussed the reverse 911 system, stating that their current provider, Intrado, will be increasing their fees to \$15,000 per year as of August 1. CodeRED would cost

approximately \$3,000 per year if they can convince Kit Carson and Cheyenne counties to join with them. Since they are only used a few times each year, the sheriff felt \$15,000 would be a huge impact on the E911 budget. He said he would be attending a meeting later in the day with the 911 board and they will also be discussing changing companies then. He will let the commissioners know what the 911 board decides.

Ms. Devers reported that a gentleman by the name of Bill Johnson called and asked about using the arena and track at the fairgrounds so his son could practice his gymkhana events. She told him no, that he would have to provide liability insurance showing the county as additional insured and pay for the use. He didn't particularly like Ms. Devers' answer and told her he has done this same thing under other fairgrounds managers and that other people do it. He told Ms. Devers he'd left a message for Julie Joffe, but she hadn't returned his call. When Ms. Devers asked Ms. Joffe about it, she had not received a call from him and said that Kissels had used the arena a couple of times when deciding what would work best for teaching kids at the Horse Council Clinics. She asked the commissioners what they would like for her to tell Mr. Johnson and they agreed that she had answered him correctly and they do not want to allow him to use the arena and track.

Ms. Devers said she'd talked to Gene Amann about the paint on the grandstand steps and he told her that Sherwin Williams had convinced him to use it because it was supposed to do the job. He said he would come back and scrape it off and repaint using an oil base paint, but wanted to know if it would be acceptable to do after the fair. The Board agreed that he could.

Ms. Lengel had made some charges to her county credit card for the election training out-of-state, and ran into an issue at conference in Grand Junction that she would be over her limit without an increase. Ms. Devers said she'd called Mr. Lyons and asked if she could request an increase in the limit and he said to go ahead. Mr. King made a motion to increase the limit on the County Clerk's credit card by \$1,000. Mr. Stone seconded the motion, which carried unanimously.

Ms. Devers wanted to give the Board an FYI on the state leased land that ultimately was purchased by the lessees when The Nature Conservancy (TNC) bought the Smith Ranch. Jack Pfof bought 40 acres and his taxes for 2013 will be \$10.12. Horse Creek Grazing bought 960 acres and their taxes will be \$205.59. Norris bought 800 acres with taxes at \$248.70, for a total of \$464.41. County Treasurer Jim Covington told Ms. Devers that TNC was paying around \$10,000 a year, but that will not continue. Patrick Esch Farms tried to purchase 1,280 acres, but there were some issues that could not be resolved so that did not occur. If the State continues to pay the county \$10,000 for the weed spraying, the expectation is that the county will share those funds with the other taxing entities in the area to make up for their lost tax revenue.

Automatic Access, Inc. sent paperwork asking if the county wanted to extend the warranty on one of the automatic doors for an annual cost of \$300. Since the company has never sent a warranty extension on any of the other automatic doors, Ms. Devers saw no reason to start now. The commissioners agreed and told her the answer was no.

Ms. Devers had not found anything from CAPP concerning utility vehicle use at the fairgrounds, but stated that the fair book clearly says, "Only Fair Staff will be authorized to use utility vehicles on the grounds. Ex: ATV's, Golf Carts, Gators, etc." Ms. Devers said she would keep looking or ask again, but if the commissioners don't want the vehicles allowed at any time they will need to post signs to that effect.

Since the summer Eastern District meeting is on Friday, August 9, which is the Friday of the fair, Ms. Devers asked if any of the commissioners wanted to attend. The Board decided they would attend the fair and Ms. Devers can attend the Eastern District meeting.

Ms. Devers informed the Board that the county currently pays 21st Century \$171 per month for the reverse 911 system, which is shared by Kit Carson, Cheyenne, and Lincoln counties. If calls go out, the entity has to pay \$.25 per call and \$.15 per text. On August 1, the annual rate will go to \$15,000 a year or \$416.67 per county per month.

Ms. Devers informed the Board that rural electric companies are concerned with the onslaught of renewable energy requirements and the increased costs to consumers. She had received a response from the Governor's Office regarding SB252 and wanted to know if the commissioners would like her to forward the response on to Ben Orrell.

Finally, Ms. Devers said that Rob Handley had called and wanted clarification that the county's ambulance regulations allow an ALS ambulance to be staffed by an RN. She spoke with Kim Schallenberger and he believes it does, but Ms. Devers wanted to know if the commissioners wanted her to do further research. Mr. King asked that she find out for sure.

At 1:00 p.m., discussion ensued regarding setbacks from property lines for wind towers. Those attending the discussion were Shawn Smith, Jason and Joelle Brent, Wilbur Schreiber, Matthew Brent, Gary and Jodi Withington, Ralph Brent, Roger Hogan, and Paul Martin.

Mr. Lyons said that Jason Brent had told him he would like to see the setback requirement be at least a mile from his residence. Jodi Withington stated that the commissioners had done the noise study and Jeff Kwolkoski had said that a person would have to be six miles away from the wind towers not to hear them. She added that they had gone to the Land Use Board to request they have the setbacks changed or possibly ask that the towers be turned off between the hours of 7:00 p.m. and 7:00 a.m., as they have done in Fairhaven, Massachusetts. She complained not only of the noise issues, but the fact that shadow flicker also occurs at sunrise and sunset, which is also particularly disturbing. Ms. Withington went on to say that she had pleaded with the Land Use Board to do something for future developments so that other residents do not end up in their same situation.

Mr. Lyons said that the commissioners have not known the exact locations of where the towers would be until they were up, and Paul Martin stated that Land Use Administrator John DeWitt told him he had just gotten a map of the latest development last week.

Gary Withington commented that the companies need to approach adjacent landowners and get their opinions and approval prior to making their leases.

Shawn Smith put in that the Land Use Board members felt that none of them were qualified and recommended that someone with more experience be consulted for the legalities.

Mr. Kimble spoke up, stating that leases going forward have been revised on behalf of property owners and the distance is increasing, but it really should be addressed in the permitting process. There is a question of the county having any authority over public utilities and having the right to tell them they can't emit a certain amount of noise. Also, the county could make the setback distance a condition of the permit as long as it isn't arbitrary and capricious. He added that it may largely depend on what other counties do. For instance, Logan County does not address setbacks in their zoning regulations but in their development permits and they require that towers be a distance of 2,000 feet from a residence. He went on to say that the county needs to have a standard that will fit a reasonable person, in other words, what a reasonable person finds tolerable. His suggestion was to study other counties with wind towers, pick one with stricter setbacks, and use it as Lincoln County's basis. He added that if the rules become too strict, a different group of county residents will be in to meet with the commissioners about that.

Mr. Withington asked why the commissioners "sold our soul for the almighty dollar" and Mr. Lyons said he took exception to the remark, stating that it would be different if there were a long line of people complaining about the noise of the towers, but there aren't.

Shawn Smith asked where the line is drawn between government intervention and landowner rights, as he does not want his government telling him what he can or cannot do on, or with, his own property. He also stated that wind towers have to go through a special use review.

Mr. Kimble explained that both the special use review and the development agreement are needed to keep the proper decibel level below 60, which the Board is going to try to enforce, as well as keeping the setbacks at 2,000 feet. He added that he believes they are basically stuck with the "reasonable number of feet" and Mr. Lyons asked if that meant what other counties do. Mr. Kimble said unless Mr. Kwolkoski commits to something more definite, that is what they will have to go by.

Shawn Smith stated that since electric coops are mandated by the federal government to use so many kilowatts of green energy, it may be possible that the utility companies will then come before the boards if the county tries to regulate too much. Mr. Kimble agreed, stating that it may be beneficial to check other state court cases.

Mr. Stone commented that there are many types of nuisances that the county has to deal with; such as, blowing dirt, noxious weeds, and prairie dogs, and each case has to be looked at accordingly.

Roger Hogan made the comment that noise studies are usually based on urban areas, and Jason Brent asked if there have been any property value studies done to see how the towers affect them.

Mr. Kimble said that a person cannot sever their wind rights and added that he would assume that there would be a possibility the towers could lower the value of property if the owner tried to sell it, but he didn't know that for sure. He said that private nuisance becomes public nuisance when it really causes problems for the public, adding that they may have a good case for a private nuisance complaint.

Mr. Lyons said the only thing the commissioners can do is further research. They can look into increasing the setbacks even farther, but they also have to take into consideration that there are property owners that do want the towers.

Matthew Brent asked how long it would be before the next permit process, but Mr. Lyons said they had no idea. Shawn Smith commented that the Land Use Board worked on the last permit process for at least three months before the permit was complete and the company was allowed to begin construction.

Gary Withington wanted to know where the tax revenue is going; if it is helping the county roads, and Mr. Lyons said the commissioners had chosen to increase the property tax credit in 2013 to help all Lincoln County residents, as that seemed to be the most fair. Ms. Devers interjected that the Road and Bridge mill levy was indeed increased, and \$7 million went to the County General fund. Mr. Withington asked if that was all the county would get or if there would be more revenue coming in, and Ms. Devers said the state assesses the wind towers and calculates what the county will receive once the wind farm is operational. Mr. Lyons put in that it had a huge economic impact in the beginning, and Shawn said that it will hopefully help residents' taxes from increasing, because it has done that. He added that there is one phase left on the Limon III project, which has to be started by December. If it isn't, their permit will expire and they will have to start over again with the permitting process. He also said that Phase III of the project had to be started within one year of the completion of Phase II. Phase IV has not been approved yet.

Mr. Kimble repeated that the county has the right to change the development permitting process as long as it is not arbitrary and capricious. He asked the commissioners if they would like for him to contact Tony Ryan with NextEra and tell him they are considering changing the setbacks, and the Board asked that he do so.

The group dispersed and after everyone had gone, Land Use Administrator John DeWitt stopped in to discuss the decision made by the 911 board concerning changing reverse 911 suppliers.

Mr. Kimble filled him in on the previous discussion and Mr. DeWitt said that until the Prairie Minerals dispute is resolved, the next phase of the NextEra project is on hold. He agreed that

adding setback requirements to the zoning regulations would be a good idea, but wondered if they could just reach an agreement with NextEra for now to go from 1,200 feet to 2,000 feet. Mr. Kimble said he would find out what other counties are using and will also contact Tony Ryan.

Mr. DeWitt informed the Board that the 911 board had agreed to switch reverse 911 providers from 21st Century/Intrado to CodeRED. Joining with Kit Carson and Cheyenne counties will reduce the cost considerably. The first year will be \$3,736 and years two and three will cost \$4,393 each. Mr. DeWitt said that Kit Carson County signed the agreement yesterday and Ms. Devers asked if the contract includes the clause that annual renewal will be subject to appropriation from the county commissioners. Mr. DeWitt said he thought it did, but he would check to make sure. Mr. King made a motion to allow John DeWitt or Sheriff Tom Nestor to sign the agreement for reverse 911 services with CodeRED at an annual cost of approximately \$4,000, once the contract is received. Mr. Stone seconded the motion, which carried unanimously.

With no further business to come before the Board, the meeting was adjourned until 8:00 a.m. on July 8, 2013.

Corinne M. Lengel, Clerk to the Board

Ted Lyons, Chairman