

MINUTES OF BOARD OF COUNTY COMMISSIONERS
MILLARD COUNTY THE 2nd DAY OF MAY 2017
AT THE COURTHOUSE, FILLMORE, UTAH

PRESENT: James I. Withers Chairperson
Dean Draper Commissioner
Wayne Jackson Commissioner

Pat Finlinson County Attorney
Marki Rowley County Clerk
Lesli Shields Deputy County Clerk

ALSO PRESENT: Scott Barney MEDA Coordinator
Brian Hahn Smith Hartvigsen
Dana Jordan Chronicle Progress
Ronda Williams Hinckley Lion’s Club
Pat Manis County Assessor
Connie Hansen County Recorder
Sheri Dearden County Treasurer
Bonnie Gehre County Auditor
Steve Styler Styler-Daniels, P.C.
Jim Webb Smithfield Hog Productions
Deric Despain USU Extension
Adam Richins, Joshua Tolley & Todd Macfarlane Citizens

PURSUANT TO AN AGENDA WHICH HERETOFORE HAD BEEN PROVIDED TO each member of the governing body, posted at the principal office of the Millard County Commission, posted on the Utah Public Notice Website, and provided to the Millard County Chronicle Progress, a newspaper of general circulation within Millard County, Utah, as required by law, the following proceedings were had:

PUBLIC WAS WELCOMED

The meeting began at 10:00 a.m. after a brief welcome by Commissioner Withers to the public and Commission members.

OPENING STATEMENTS

Commissioner Withers asked if anyone had an opening statement to give. Commissioner Draper made a statement regarding certain Millard County roads that were mentioned in the Army of Exploration in the American West 1803-1863. He said that in regards to the upcoming RS2477 depositions, the map published in that book shows that those roads existed back to 1859. Attorney Finlinson said the invocation. Everyone stood and said the Pledge of Allegiance to the Flag.

APPROVAL OF APRIL 18, 2017, COMMISSION MINUTES

The proposed minutes of a regular County Commission meeting held April 18, 2017, were presented for consideration and approval. Following review, Commissioner Jackson made a motion to approve the minutes of April 18, 2017, as presented.

Commissioner Draper SECONDED the motion. The voting was unanimous and the motion carried.

FOLLOW UP ACTION ITEMS FROM APRIL 18, 2017

There were none.

DISCLOSURE STATEMENTS

Disclosure statements were submitted for the following employees:

Jer'E Brinkerhoff

Wayne Jackson

RATIFY THE APPROVAL REGARDING REPAIRS TO THE ROOF OF THE AMERICAN LEGION POST 61 BUILDING

Commissioner Draper made a motion to ratify the approval regarding repairs to the roof of the American Legion Post 61 Building, in the amount of \$10,000.00.

Commissioner Jackson SECONDED the motion. The voting was unanimous and the motion carried.

Commissioner Jackson said that the grant from the Historical Heritage Committee may not come through this year, so this may be on hold until next year.

Attorney Finlinson said that if the money is not used this year, it can be added as a part of the budget process next year.

DISCUSSION REGARDING THE CREATION OF A "DONATION REQUEST FORM"

Commissioner Draper said that various entities have requested funds from the County for several different projects and it has become apparent that a donation request form should be created for this purpose. He said that disclosure of the amount of donations from other entities requested should be a part of this form. He said that the County donated funds for a project recently, but it was found that the participants received funds from a different government entity for the full amount.

Commissioner Withers and Commissioner Jackson agreed that a donation request form should be created.

DISCUSSION AND POSSIBLE APPROVAL OF RELEASE OF PERFORMANCE BOND ON THE RECORDS BUILDING PROJECT

Commissioner Jackson said that the Records Building should be complete tomorrow. Brandon Bartholomew, Natural Impressions, has asked for the performance bond to be released.

Commissioner Withers said that the Records Building will be done in two phases, one for the structure and another for the brick. The County requires a 20% surety bond as per the contract.

Commissioner Jackson said that Mr. Bartholomew is planning to place a new bond for the brick phase. Mr. Bartholomew is unsure when the brick masons will be there and he is paying interest on the current bond.

Attorney Finlinson said that as per the contract, the bond should be released. A new contract will need to be signed for the brick phase, which will require a new bond be placed.

Commissioner Jackson made a motion to release the performance bond on the Records Building Project to Natural Impressions, based on the completion of the structural portion of the contract.

Commissioner Draper SECONDED the motion. The voting was unanimous and the motion carried.

DISCUSSION AND POSSIBLE APPROVAL REGARDING SELECTING A COUNTY DESIGNEE TO SERVE ON THE UAC CENTRALLY ASSESSED COMMITTEE

Commissioner Withers said that a designee needs to be selected to serve on the 29 person UAC Centrally Assessed Committee. This person would attend meetings and be a part of decisions regarding which parts of Centrally Assessed will be litigated. He stated that Millard County is the second highest county in the State for Centrally Assessed businesses.

Commissioner Draper said that this position should be an elected official, to include the County Treasurer or County Assessor.

Assessor Manis said that this committee is not going to review the individual cases, but they will be appointing the 10 person committee that will be reviewing the cases. He said that with his experience, he would rather be a part of the 10 person committee rather than the 29 person committee.

Attorney Finlinson said that the committee may have less than 29 people, it is based on how many counties sign up. There are a few counties who have little to no Centrally Assessed and therefore, have no reason to be on the committee. He said that the committee will be appointing the 10 person committee, but will also be a policy steering committee. There is a need for expertise on both committees. He said that Treasurer Dearden has developed a tremendous amount of expertise regarding Centrally Assessed and would be welcomed to the committee.

Treasurer Dearden said that the 10 person committee does not need to be an elected official. She agreed to serve if asked to do so.

Commissioner Draper made a motion to approve selecting Treasurer Dearden as the County designee to serve on the UAC Centrally Assessed Committee.

Commissioner Jackson SECONDED the motion. The voting was unanimous and the motion carried.

Commissioner Withers suggested that when Treasurer Dearden goes to the meetings, she take a commissioner with her for educational purposes.

Attorney Finlinson stated that this structural change to the process will likely increase the efficiency and value of services the County receives from the specialized law firms that do Centrally Assessed litigation.

DISCUSSION AND POSSIBLE APPROVAL REGARDING THE HINCKLEY LION'S CLUB DEMOLITION DERBY - RONDA WILLIAMS

Ms. Williams expressed appreciation to the County for its help at the demolition derby last year and asked for continued support this year. She said that the numbers and letters on the north and west bleachers are really faded and not very legible. She said that they do reserved seats in those two sections and requested for the numbers and letters be fixed so that they are legible. She said that this could be a beneficial volunteer service project.

Ms. Williams said that they pay \$1,300.00 for use of the portable bleachers every year, which is supposedly a reduced fee. She said that the Hinckley Lion's Club is a non-profit organization and it is difficult to come up with the funds for this. She said that this is an event held in Millard County that brings in people from all over. She said that it is beneficial to the County to have the portable bleachers, which allows more people to attend the event.

Commissioner Withers said that the \$1,300.00 is charged to recoup some of the cost when the bleachers were purchased.

Ms. Williams said that the Hinckley Lion's Club donated money for bleachers at one time, but she heard the money was used for a fence. She said that money has also been donated in the past for the sound system. She reiterated that the Hinckley Lion's Club is a non-profit organization whose money goes out to help people in the area, and it is difficult to come up with that kind of money.

Attorney Finlinson reminded Ms. Williams that a general commercial liability policy excludes motor sports and an endorsement or special events policy that will cover the risks should be provided. He asked if Lion's International would agree to be added to the contract to cover risks.

Ms. Williams said that Lion's International will not cover insurance. She said that the policy excludes the participants of the derby.

Attorney Finlinson said that the exclusion of the participants is fine since they sign a waiver.

Ms. Williams said that she will provide the insurance policy to Attorney Finlinson.

Ms. Williams said that the signs that are up at the arena are there for advertising purposes for the rodeo. She asked if they get their own advertisers for the derby, could they cover up the existing signs that are there.

Commissioner Withers verified that those advertisements are for endorsing the rodeo. He advised Ms. Williams to contact those advertisers to see if they would want to pay for their name to be announced during the derby. He advised Ms. Williams to contact Kevin Morris, West Millard Maintenance, regarding this issue.

Commissioner Withers said that he will talk to Mr. Morris regarding the fee for the portable bleachers and fixing the numbers and letters on the north and west bleachers.

Commissioner Jackson made a motion to participate with the 2017 Hinckley Lion's Club

Demolition Derby, as in previous years.

Commissioner Draper SECONDED the motion. The voting was unanimous and the motion carried.

REVIEW AND POSSIBLE APPROVAL OF APPLICATION #Z-2017-007, FOR A C-2 CONDITIONAL USE PERMIT (CUP), FOR PROPERTY LOCATED APPROXIMATELY ALONG THE MILLARD COUNTY AND BEAVER COUNTY LINE, MILLARD COUNTY, UTAH, DELTA GRID, FOR THE PURPOSE OF DEVELOPING A LEVEL 4 CONFINED ANIMAL FEEDING OPERATION (CAFO) - A HOG PRODUCTION FARM. PETITIONER - MURPHY-BROWN, LLC c/o STEVE STYLER. OWNER - MURPHY-BROWN, LLC. 2,280.32 ACRES.

Mr. Styler said that this application was approved by the Planning & Zoning Commission. He said that Smithfield Hog Productions has received positive support from the County for this project. He said that there is only one homeowner who is located approximately 7 miles away from the project. He said it has been found that there is another home in the area, however, it is not a permitted home.

Commissioner Draper said that this application received a favorable recommendation from the Planning Commission. He questioned Mr. Styler regarding the maintenance and upgrading of the road that the BLM claims jurisdiction on. He also questioned Mr. Styler regarding the CUP for the wind farm turbines and raptors, which he was told extended to the property in question.

Mr. Styler said that First Wind has turbines on both BLM property and property owned by Murphy-Brown, LLC. He said that in regards to the development of this property, they are under no obligation to monitor the wildlife. He said that there is only 1/4 mile of road that is on BLM property, the rest is on property owned by Murphy-Brown, LLC. With possible road improvements on their private property, they may not need to use that 1/4 mile of road and would, therefore, have no need for interaction with the BLM.

Commissioner Draper said that the road seemed to be covered under the CUP to comply with all State and Federal requirements. He said that in talking to the BLM District Manager, it seems there may be a possible issue with the raptors and the overlay with the wind farm. Condition A would be the ruling law in this situation.

Mr. Styler said that they have spoken to the BLM about wildlife surveying and monitoring. He said that they asked the BLM if they had to monitor wildlife on their property and the BLM said no. The BLM can regulate what First Wind does as they are on BLM property, but they can not regulate what Smithfield Hog Productions does on their own private property. It was suggested that they work with First Wind, which they intend to do.

Commissioner Draper stated that as the animals are confined indoors in this operation, it would likely not attract raptors.

Mr. Styler said that mice and roadkill predominantly attract raptors. This operation will increase truck traffic. He said that they will work with the BLM and First Wind as much as they can, but ultimately, it is their property and the BLM can not regulate what they do.

Commissioner Jackson made a motion to approve Application #Z-2017-007, for a C-2 CUP, for property located approximately along the Millard County and Beaver County line, Millard

County, Utah, Delta Grid, for the purpose of developing a Level 4 CAFO - a hog production farm. Petitioner - Murphy-Brown, LLC, c/o Steve Styler. Owner - Murphy-Brown, LLC. 2,280.32 acres.

Commissioner Draper SECONDED the motion, with the following comment: Smithfield is requesting a level 4 application , but as per the Millard County Code for the ordinance in place, it is the equivalent to a level 3 application. The voting was unanimous and the motion carried.

DISCUSSION AND POSSIBLE APPROVAL REGARDING THE CRYSTAL PEAK ROAD IMPROVEMENT

Mr. Styler said that several representatives from Crystal Peak came to a Commission meeting several months ago regarding a Memorandum of Understanding (MOU), for the Crystal Peak Road Improvement Project. He said that one item that Crystal Peak is working through on their project is air quality. Fugitive dust is an issue for air quality. The proposed non-binding MOU requests assistance from the County to trap fugitive dust on Crystal Peak Road. In return, Crystal Peak would compensate Millard County with either payment, or in exchange of materials. He said about 1 million tons of magnesium chloride will be produced each year from the deposit. He asked for consideration to approve and sign the MOU.

Mr. Styler said that it is a different permitting process with the BLM to chip seal the road. It has since been decided to possibly use lime chips and magnesium chloride to seal the road. It is an interim fix and may not be permanent, but from the BLM's standpoint, it will control the dust. He said that he has a letter between himself and Brandon Winget, County Road Supervisor, stating that for the 14 miles of road, it would cost approximately \$300,000.00 to use lime chips and magnesium chloride. He said that the BLM has requested a plan to be in place to control the fugitive dust.

Attorney Finlinson said that he has forwarded the MOU to the commissioners and he has reviewed it. He said that it is a non-binding MOU that is basically a statement of good faith that the project will move forward. He advised that the commissioners can make a decision today and sign the MOU at a later time.

Commissioner Draper made a motion to enter into an MOU with Crystal Peak Minerals, for improvements to the Crystal Peak Road.

Commissioner Jackson SECONDED the motion. The voting was unanimous and the motion carried.

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DISCUSSION AND POSSIBLE DECISION ON THE APPEAL OF THE COUNTY RESOURCE MANAGEMENT PLAN (RMP), CONTRACT AWARD

Commissioner Withers said that according to the current County Purchasing Policy, the County does not have the opportunity to provide an appeal officer for this appeal. He asked Todd Macfarlane if he would like to discuss any concerns with the appeal at this time.

Mr. Macfarlane said that he did not come prepared to address the appeal today, it was his understanding that the commissioners would be making a decision on whether to issue a written

decision regarding the appeal. He said that he has not received reasonable notice to address the appeal at this time. He reminded the commissioners that he has requested an independent tribunal for the appeal and that applicable law requires this.

Commissioner Withers said that a decision has not been made yet today, he was simply stating that the current County Purchasing Policy states that there is not an opportunity to provide an appeal officer. He stated that he was giving Mr. Macfarlane a chance to give his point of view before a decision is made.

Mr. Macfarlane said that the County Purchasing Policy does not say that the County can not provide an appeal officer, it does not address the issue at all. He reiterated that it is his position that under applicable law, the Commission is required to provide that opportunity. He said that it is not possible for the County Commission to review an appeal of its own decision. He will not address the merits of the appeal since he did not receive reasonable notice to do so.

Commissioner Withers stated that it is his opinion that from the three applications received for the RMP, the best value for the County was the Beehive Enterprises proposal.

Commissioner Draper said that he reviewed the three applications for the RMP; two of which gave a proposal, and the other one gave a proposal and a bid. He said that a bid was not requested, and it is his understanding that with a Request for Proposal (RFP), the County is allowed to go with the application that provides the best service, not the lowest bid. He stated in his opinion, the best service was presented in the proposal from Beehive Enterprises.

Commissioner Jackson agreed that Beehive Enterprises proposal gives the best service.

Attorney Finlinson suggested for the commissioners to first decide whether an independent hearing officer should be appointed, then address the actual appeal.

Commissioner Draper said that the County Purchasing Policy does not require an independent hearing officer be appointed and does not recommend that the Commission step outside of that policy.

Commissioner Draper made a motion to not appoint an independent hearing officer for the appeal of the County RMP contract.

Commissioner Jackson **SECONDED** the motion. The voting was unanimous and the motion carried.

Commissioner Draper made a motion to give Mr. Macfarlane the opportunity to address his appeal at the next Commission meeting May 16, 2017.

Commissioner Jackson **SECONDED** the motion. The voting was unanimous and the motion carried.

Mr. Macfarlane said that under Utah law and the applicable rules of civil procedure, there are 120 days to serve a lawsuit. He said that the 120th day is today. He said that he has given the County every opportunity to resolve this issue. He then served the County with a copy of the papers in that lawsuit. The papers say that the purchasing policy is constitutionally defective, and will be asking the Court to review it, including his issue with due process, a reasonable opportunity to be heard, actual notice required, and appointing an impartial tribunal. He said that a proposed amended complaint and supplemented complaint will be filed accordingly.

DISCUSSION AND POSSIBLE APPROVAL OF PROPERTY TAX AGREEMENTS, SETTLEMENTS OR DEFERRALS

Auditor Gehre said that she does not have any property tax agreements, settlements or deferrals to discuss today. However, another issue needs to be addressed. She said that the Sheriff's Office obtained three telephone bids for commercial washers and dryers, the lowest being \$27,369.00. She said that as per the policy, this process should have been done with sealed bids, since it is over \$25,000.00. She said that the washers/dryers have been installed and the old ones have been removed and put on surplus. She then asked for direction from the commissioners.

Commissioner Withers said that the County has an obligation to pay the vendor, as the product has been purchased and installed. He said that as a Commission, a visit to the Sheriff's Office may be warranted to discuss this issue and make sure it does not happen in the future.

Attorney Finlinson advised that the bill be paid and for the County to provide training on this issue.

Auditor Gehre said that the County may want to consider changing the \$25,000.00 sealed bid policy to a higher number.

Attorney Finlinson said that there are a few counties that have a lower limit and some who have gone significantly higher, up to \$75,000.00. He said that if this limit were to be changed, it would be a part of the new purchasing policy that he is working on.

Commissioner Withers advised Auditor Gehre to pay the invoice for the washers/dryers.

Treasurer Dearden said that she has received the tax payment from Sandy Crossing for the Scipio Motel, Parcel #S-1280. She said that as long as the check and credit card clears, this parcel will be removed from the 2017 Tax Sale.

Commissioner Draper briefly discussed Parcel #HD-4290-G-1, owners Tyle C. Peterson and Callie Ann Peterson, which is on the tax sale.

Treasurer Dearden said that she spoke with Ms. Peterson, who told her they may be closing on a different property this week, and would be sending payment in on the parcel that is on the tax sale. She has not received any payments yet. She said that it is her understanding that the house that is on the tax sale is condemned.

The Millard County Tax Sale will be held May 18, 2017, at 10:00 a.m..

DISCUSSION AND POSSIBLE APPROVAL REGARDING DRAFTING A LETTER RECOGNIZING AND COMMENDING GOVERNOR GARY HERBERT'S CHALLENGE TO CREATE 25,000 JOBS BY 2020, IN THE 25 COUNTIES OFF OF THE WASATCH FRONT

Scott Barney, MEDA Coordinator, asked for approval to draft a letter to Governor Herbert recognizing and commending him for challenging the Utah Legislature to create 25,000 jobs by 2020. He will draft the letter and send it to the commissioners for approval prior to sending it.

Commissioner Draper made a motion to approve Mr. Barney to draft said letter to Governor Herbert.

Commissioner Jackson SECONDED the motion. The voting was unanimous and the motion carried.

DISCUSSION AND POSSIBLE APPROVAL REGARDING DRAFTING A LETTER RECOGNIZING THE UTAH LEGISLATURE FOR DOING THEIR PART TO ANSWER THE GOVERNOR'S CHALLENGE, BY PASSING A JOINT RESOLUTION

Commissioner Draper made a motion to approve sending a letter drafted by Mr. Barney, recognizing the Utah Legislature for doing their part to answer the Governor's challenge to create 25,000 jobs by 2020, by passing a joint resolution, pending Commission approval.

Commissioner Jackson SECONDED the motion. The voting was unanimous and the motion carried.

DISCUSSION AND POSSIBLE APPROVAL REGARDING DRAFTING A LETTER OF SUPPORT FOR THE BUSINESS EXPANSION AND RETENTION (BEAR), PROGRAM IN MILLARD COUNTY

Commissioner Draper made a motion to approve sending a letter of support, drafted by Mr. Barney, for the BEAR Program in Millard County, pending Commission approval.

Commissioner Jackson SECONDED the motion. The voting was unanimous and the motion carried.

CONVENE AS MILLARD COUNTY REDEVELOPMENT AGENCY (RDA)

Commissioner Draper made a motion to convene as an RDA.

Commissioner Jackson SECONDED the motion. The voting was unanimous and the motion carried. The RDA meeting began at 11:18 a.m..

Mr. Barney said that because of additional meetings that were needed, the costs were higher than anticipated. He said that ECG Utah Solar 1, LLC, has agreed to reimburse Millard County for the extra charges. Millard County then pays the consultant, Lewis, Young, Robertson & Burningham, for the charges rendered.

Attorney Finlinson said that he has reviewed the contract and has found it satisfactory.

DISCUSSION AND POSSIBLE APPROVAL TO AMEND THE CONTRACT BETWEEN ECG UTAH SOLAR 1, LLC, AND MILLARD COUNTY, FOR REIMBURSEMENT OF CDA CONSULTATION WORK PERFORMED BY LEWIS, YOUNG, ROBERTSON & BURNINGHAM

Commissioner Draper made a motion to approve amending the contract between ECG Utah Solar 1, LLC, and Millard County, for reimbursement of CDA consultation work performed by Lewis, Young, Robertson & Burningham.

Commissioner Jackson SECONDED the motion. The voting was unanimous and the motion carried.

Commissioner Jackson made a motion to close the RDA meeting.

Commissioner Draper SECONDED the motion. The voting was unanimous and the motion carried. The RDA meeting ended at 11:23 a.m..

Attorney Finlinson stated that the County is named as a party to the contract, as well as the RDA. It will be signed both as the RDA and as the Commission.

Commissioner Draper made a motion to approve amending the contract between ECG Utah Solar 1, LLC, and Millard County, for reimbursement of CDA consultation work performed by Lewis, Young, Robertson & Burningham.

Commissioner Jackson SECONDED the motion. The voting was unanimous and the motion carried.

PUBLIC INPUT

There was none.

OTHER BUSINESS

Commissioner Draper announced that the County has offered the position of County Planner/Zoning Administrator/Building Inspector to Adam Richins, who has accepted the offer. The tentative start date for Mr. Richins will be May 11, 2017. Mr. Richins will be an exempt employee.

Attorney Finlinson said that as per the policy, action regarding the exempt position should be discussed at the next Commission meeting on May 16, 2017. He said that the hiring process can still continue as normal.

Commissioner Jackson said that a chain link fence was removed at the racetrack and was given to the landfill to use.

DISCUSSIONS FROM EACH COMMISSIONER, COUNTY ATTORNEY, ELECTED OFFICIAL AND SECRETARY

Clerk Rowley said that at the last Intergenerational Poverty (IGP), meeting, it was suggested to have the commissioners send a letter to the current IGP members formally inviting them to be on the IGP Committee. She said that after June 2, 2017, the committee will no longer have a facilitator. She said that she and Commissioner Jackson will work together to draft the letter.

Commissioner Draper said that he and Commissioner Withers met with a group of producers of livestock in the County, who are forming an association which would enable grazers to put up signs offering a \$20,000.00 award for the arrest/conviction of those who shoot or harass livestock. He said that there are a few organizations throughout the State that are similar to this and it has been found that once the signs went up, the harassment of livestock and vandalism dropped to almost nothing.

Commissioner Draper said that those who want to join the association must pledge \$0.30 per

head of cattle per year. The Department of Agriculture & Forestry has been included in these discussions. Contact information for the Inspector for the State will be included on the signs.

Commissioner Draper said that he, Commissioner Jackson and Scott Barney attended the Legislative Tour of Rural Utah. He said that the future of the County, including IPP, was discussed.

POSSIBLE REVIEW OF COUNTY POLICIES AND CONTRACTS

There was none.

POSSIBLE CLOSED MEETING PURSUANT TO UTAH CODE ANNOTATED SECTION 52-4-4&5

Commissioner Draper made a motion to go into a closed executive session to discuss the character, professional competence or physical or mental health of an individual and for the purpose of discussing pending litigation.

Commissioner Jackson **SECONDED** the motion. All three commissioners voted unanimously and the motion carried. Present in the closed session were Commissioner Withers, Commissioner Draper, Commissioner Jackson and Attorney Finlinson.

After the closed executive session the regular meeting reconvened at 11:51 a.m..

WHERE UPON THE MEETING ADJOURNED

Commissioner Withers adjourned the meeting at 11:52 a.m..

Attest: _____

Approved: _____