

MINUTES OF BOARD OF COUNTY COMMISSIONERS
MILLARD COUNTY THE 27th DAY OF MARCH 2006
AT THE COURTHOUSE, FILLMORE, UTAH

PRESENT: Kathy Y. Walker Chairman
Daron P. Smith..... Commissioner
John C. Cooper. Commissioner

LeRay Jackson County Attorney
Norma Brunson County Clerk
Janice Robins..... Deputy County Clerk

ALSO PRESENT: Dean Draper, Stephen Hansen, Jim Talbot, Brandon Bartholomew, Peter C. Vander Meide, Edward A. Klarich, Anthony Fuller, David Christensen, and Leon Smith

PURSUANT TO AN AGENDA WHICH HERETOFORE HAD BEEN PROVIDED TO each member of the governing body, the local news and located on the front and back doors of the County Courthouse as required by law the following proceedings were had.

COORDINATION SESSION

The Commissioners scheduled events for the month of April 2006.

PUBLIC WAS WELCOMED

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

OPENING STATEMENTS

Commissioner Walker asked if anyone had an opening statement to give? Commissioner Smith read two quotes from Thomas Jefferson and then said the invocation. Everyone stood and said the Pledge of Allegiance to the Flag.

FOLLOW UP ACTION ITEMS FROM MINUTES OF MARCH 13, 2006

There were none.

APPROVAL OF THE AMENDED MINUTES OF MARCH 13, 2006

Commissioner Cooper made a motion to approve the amended minutes of March 13, 2006 Commissioner Smith SECONDED. The voting was unanimous. The motion carried.

AUDITORS REPORT

Auditor Brandy Grace was excused.

Chief Deputy Auditor Bonnie Gehre gave the Commissioners various invoices to review and approve for payment through the Auditor's Office.

Commissioner Cooper had a bill from Commercial Radio for work over and above the contractual agreement with the Sheriff's Office. The bill had been coded and signed by Paulette Staples in the Sheriff's Office. The Commissioners thought the capital funds were exhausted and Commissioner Walker will find out some more information about the bill before payment is made.

The invoice to pay the bill to Western Counties Alliance for \$7,500.00 was signed by Commissioner Walker. The payment of the dues to Western Counties Alliance was agreed to by the Commissioners at a prior commission meeting.

A twelve thousand-dollar invoice had come in from Sound Unlimited for a controlled access security system in the courthouse on main street. The Commissioners questioned whether or not this project had been pre-approved but they were reassured it was needed.

Commissioner Smith made a motion to sign the \$64,708.00 invoice for Millard County Bookmobile services from January 1, 2006-June 30, 2006.

Commissioner Cooper SECONDED the motion. The voting was unanimous. The invoice was signed by Commissioner Walker.

Chief Deputy Gehre said that Marion Anderson is interested in purchasing a triangular shaped corner piece of property that is owned by Millard County. Mr. Anderson owns the property on two sides of the property. He is interested to use the property as a right of way for a gravel pit or he would like to purchase the property. After reviewing the plat map, the Commissioner recommended that the property be advertised for sale by the Auditor's Office.

Deputy Grace said the final tax sale will be held on May 25, 2006 at 10:00 a.m. The Commissioners were invited to attend.

Auditor Grace gave the Commissioners the Check Edit Report of March 17, 2006 that had already been signed by Auditor Grace and Commissioner Cooper so the checks could be released. The Check Edit Report of March 24, 2006 was given to the Commissioners to review and sign. The payroll report of March 17, 2006 was given to the Commissioners.

PRESENTATION - DIVISION OF WILDLIFE RESOURCES STEPHEN HANSEN

Stephen Hansen, Division of Wildlife Resources gave a presentation for a proposal for Instream Flow Acquisition at Bishop Springs, East of Gandy, Utah.

- The acquisition will take the form of trading the materials and construction of an efficient irrigation system for water. The owner of the irrigated lands endorses this proposal as a win-win scenario. The irrigation system is to include wheel lines, mainlines, pump and motor, and various items associated with these primary components.
- Two Utah Conservation Species, the Columbia spotted frog and the least chub fish, inhabit the Bishop Springs Marsh Complex. Both species have previously been proposed for federal listing under the Endangered Species Act. Through a multi-agency agreement sought by the State of Utah, wherein all signatories agreed to stabilize and improve the habitats and populations of these species, the petitions were withdrawn. Both species are currently being managed according to their respective conservation plans.
- The Bishop Springs Marsh Complex contains approximately 1/3 of all known wild least chub. Some least chub are being hatchery raised.
- This water acquisition will for the first time provide a designated instream flow in the Bishop Springs Marsh complex and should reduce the likelihood of either of these species being federally listed in the future. (Maps of the area will be on file in the Clerk's Office.)

The DWR is working out the details of the transaction out with the Gordon Young. The Young family supports this project. Mr. Hansen said Bishop Springs area is a very important location. They are interested in trading an efficient irrigation system for water rights. They are trading the pump, motor and one and 3/4 mile of main line and cement line to the Youngs. The pipeline will be laid in the ditch.

The Commissioners gave their approval of the trade. Mr. Hansen asked the Commissioners to send a letter to the Governor of their approval. The Commissioners would like a letter from the Young family to be attached to the Commissioners letter to the Governor. A copy of the letter will be sent to Mike Styler, Stephen Hansen and John Harja.

RATIFY THE SIGNING OF A BUSINESS LICENSE FOR COVE FORT SERVICE INC. - OWNER JIMMY HODGES

Commissioner Smith made a motion to ratify the signing of a business license for Cove Fort Service Inc. - Owner Jimmy Hodges.

Commissioner Cooper SECONDED the motion. The voting was unanimous. The motion carried.

POSSIBLE APPROVAL OF A BUSINESS LICENSE FOR DON'S AUTO - OWNER DONALD B. SMITH

Commissioner Cooper made a motion to approve the signing of the business for Don's Auto-Owner Donald B. Smith.

Commissioner Smith SECONDED the motion. The voting was unanimous. The motion carried.

POSSIBLE APPROVAL OF A BUSINESS LICENSE FOR DAVIES VAULT CO. - OWNER DANIEL D. DAVIES

This item was tabled until next week.

RATIFY THE MOTION TO SET A DATE OF A PUBLIC HEARING OF THE ANNUAL REPORT OF MILLARD COUNTY DRAINAGE DISTRICTS NOS. 1-4

Commissioner Smith made a motion to ratify the motion to set the date of a Public Hearing of the Annual Report of Millard County Drainage Districts No. 1-4 on April 10, 2006 at 11:00 a.m..

Commissioner Cooper SECONDED the motion. The voting was unanimous. The motion carried.

RATIFY THE SIGNING OF RESOLUTION NO. 06-03-13, A RESOLUTION BY THE MILLARD COUNTY COMMISSION AUTHORIZING THE APPLICATION TO TRANSPORTATION AND UTILITY SYSTEMS AND FACILITIES ON FEDERAL LANDS

Commissioner Smith made a motion to ratify the signing of the Resolution No. 06-03-13, A Resolution by the Millard County Commission Authorizing the Application to Transportation and Utility Systems and Facilities on Federal Lands. (Title V Application)

Commissioner Cooper SECONDED the motion. The voting was unanimous. The motion carried.

POSSIBLE APPROVAL OF APPOINTING ROB DROUBAY, LINDA GILLMORE, DAVID WOOD TO SERVE AS MEMBERS OF THE MEDA BOARD

Commissioner Cooper made a motion to appoint Rob Droubay, Linda Gillmore, Lori Roper and David Wood to serve as members of the Millard County Economic Development Association, MEDA Board.

Commissioner Smith SECONDED the motion. The voting was unanimous. The motion carried.

REQUESTS FOR COMMISSION WAIVERS BY IRETA SHURTZ, DAUGHTERS OF THE UTAH PIONEERS AND BY DEBRA WAGNER FOR DELTA CHAMBER OF COMMERCE

Commissioner Cooper made a motion waive up to 50 percent of the rental on the fair building and waive the fee for the sound system and dividers for Ireta Shurtz, Daughters of the Utah Pioneers.

Commissioner Smith SECONDED the motion. The voting was unanimous. The motion carried.

Commissioner Smith made a motion to waive 50 percent of the rental fee for the Delta Area Chamber of Commerce for their Chamber Summit banquet for local businesses and individuals.

Commissioner Cooper SECONDED the motion. The voting was unanimous. The motion carried.

Commissioner Cooper made a motion to waive the rental fees on the Recreation Conference Room for the Dairy Farmers of America. The cleaning deposit will not be waived.

Commissioner Smith SECONDED the motion. The voting was unanimous. The motion carried.

PUBLIC HEARING PURSUANT TO THE APPEAL FILED BY EDWARD A. KLARICH, AND ROBERT R. FOWLER, OF INTERWEST ENGINEERING CORPORATION

The public hearing began at 11:00 a.m. with Commissioner Walker conducting. Present were: Dean Draper, Peter C. Vander Meide, Edward A. Klarich, Anthony Fuller, David Christensen and Leon Smith.

Edward A. Klarich & Robert R. Fowler are appealing the Zone Change Application, Z-2005-005 and Conditional Use Permit approved by Millard County Planning & Zoning Board of Commissioners on February 1, 2006 for Tony and Don Fuller, ADF Holdings.

Tony Fuller said he and Don Fuller under the name of ADF Holdings L.C. had applied for a Conditional Use Permit that has been protested by Mr. Klarich. Their property is in Section 24 T 21 S R5W and consists of 70 acres. The south line of Mr. Fuller's property borders Mr. Klarich's property. (Mr. Fuller showed a copy of the plat maps of the property in the area). The property is zoned light industrial. Mr. Klarich's property on the west is zoned Range and Forest and on the east light industrial. Mr. Fuller said they have plans for 20 acres for the property to remove the slope of the land and use the area as a gravel pit. Before anything could be built, the land would need to be leveled anyway. They have use for some of the material for a road base. Mr. Fuller feels that as the smell from the Mushroom Farm would deter anyone from building homes on Mr. Klarich's property. He also feels that to secure a \$35,000 bond to be used for renovation would be a problem. He asked if the bond amount could be reduced or installment payments made until the bond is paid off?

Ed Klarich said he and Robert Fowler, of Interwest Engineering Corporation's major concern is reclamation of the land because most gravel pits end up as a mountain or hole, very few end up on level ground. They don't feel that this is a good place to have a gravel pit. The gravel pit would significantly reduce the value of surrounding properties and have a major environmental effect on the entire area. The only ones that will monetarily benefit from this rezoning will be Tony Fuller and ADF Holdings. The major reason Mr. Klarich and Mr. Fowler acquired the property was to develop as a residential area. Mr. Klarich said the planning and zoning had approved a conditional use permit and a \$35,000.00 bond requirement for ADF Holdings, which is not a realistic figure for rehabilitation on this gravel pit operation. The 20 foot drop that he wants to excavate is between 15-20 football fields in size and when the gravel operation is in full force and the whole parcel is used, it would be more like 40-50 football fields between 15-20 feet deep. He doesn't think there is enough over burden to help fill the land back in. If ADF Holdings can't afford the bond then they can't afford the rehabilitation of the land. If they walk away, will the county rehabilitate the land?

The cubic amount of material to be brought back in would approximately be 967,000 cubic yards.

Mr. Klarich said Mr. Fuller had offered to buy their property for about \$3,000 an acre for the commercial part and \$1,000 an acre for the range and forest. That was a fair price. He had indicated that property values were going up since people saw some activity in the area. He then removed the offer and said the property had gone way down. Mr. Klarich said the Commissioners need to base their decision on what is best for the majority people in the area. He said that Millard should be wanting something other than a gravel pit in the county.

Peter C. Vandermeide said he used to live in Section 24, T21, R4W for 5-6 years and the smell was not there more than 5-10 days during the year. He would like to help both Mr. Fuller and Mr. Klarich solve their differences. He suggested:

- that in order to meet the cost of the bond, the title to the gravel pit property be put up as the bond by the Fullers.
- If the gravel is removed, and if there are no funds to put the dirt back in, that there would be a buyer willing to do level the ground and fill it back in to obtain the property.
- If Mr. Klarich and Mr. Fowler decide to sell part of their property, a time period should be allowed for them to do so.
- He had suggested to Mr. Fuller to buy a buffer strip between the gravel pit and the Klarich property and this did not work out.
- If a buyer could be found to buy the buffer zone and a new buyer knew the gravel pit is to be built there and had no objection, would this be acceptable to Mr. Klarich? Could the issue be resolved that way? Mr. Fuller would get his gravel pit, the adjacent property would have no objection and Mr. Klarich would have some decent property to develop.
- Mr. Vander Meide asked for some consideration of his proposals.

Fillmore City Mayor Christensen said that it was his understanding that Fillmore City's information was not included from when this issue went to the Planning and Zoning meeting. There are some concerns about a gravel pit on the property now and in the future. If the property is ever annexed into the city, they would like those issues looked at now. If the city's concerns can be met then they have no problems.

Tony Fuller said at the first hearing for Planning and Zoning, Fillmore City had issued a letter from their attorney stating their concerns. After talking to Lisa Crosland at the city, it was his understanding that the issues had been met and the city had no concerns. Mr. Klarich didn't show his plans for homes to be built on the southwest portion of his property. He said that the \$3,000 offered for his property was Mr. Klarich asking price. It was a draft offer and most of it was in trade. Mr. Fuller has since then signed a contract with Mr. Granger for a 20 acre piece at \$1,000 an acre, which represents the value of the area, and that is why he withdrew all other offers to Mr. Klarich.

Mr. Fuller showed a plat map of the Mustang Mustangs Subdivision that was made in 1975. There were 391 proposed lots and only one lot has a home on it. He thinks he failed because of the Mushroom Farm that was built about that same time. He said in regards to Mr. Vander Meide's suggestion he would like them put in abeyance for now. Mr. Fuller said that Mr. Klarich is concerned about hauling dirt back in. Right now the yield from the pit is unknown and it is the intent

of the operators to screen off the top soil and use the fill from the other 20 acres they own.

Leon Smith was asked to respond to the restrictions including air quality imposed by state on the operation of gravel pits. Mr. Smith said there were some questions when a CUP was made for Carlings & Co. for a similar operation of a gravel pit and a case law quoted that indicated a gravel pit was not considered a mineral. Our county ordinance said it was permitted under the definition of minerals. Because of that the county had to approve it and then resolve the problem by rewording that gravel pits are a use that would be permitted in the light industrial and range and forest zones. According to legal council if an ordinance is in place that will correct the situation, then it is vested and to go ahead and use the ordinance. A gravel pit is legal in the county. The CUP requires that a gravel pit is operated under all state regulations.

Tony Fuller said that when he talked to the state about gravel pits. If you are one the Wasatch front you have to have a dust control plan, outside the Wasatch front you have to control fugitive dust. Mr. Fuller's contractor has a portal air quality permit that goes with his equipment wherever he goes and whatever dust he may create.

Ed Klarich said that on the gravel operation anything can be accomplished but will the CUP be enforced and after it is over, will the land be rehabilitated? Right now it looks like the county is signed up to buy gravel from him. (The Commissioners said that was not the case.) He asked that if the permit is approved by the county, will it be done right and filled back up and who will take care of it? The operation could go on for fifteen years. He asked that the Commissioners please take all these concerns into consideration. He said that \$35,000 is not enough to rehabilitate this property.

Commissioner Smith said that he read in Mr. Klarich's objections that the county was going to purchase the gravel. The county has not agreed to buy gravel but they could if they needed to.

Tony Fuller said that while they were making plans for the gravel pit they had asked people to come look at it as to the quality of the gravel, the county road department was invited to look at it too. No commitment has been made as there is no gravel pit permit yet.

Commissioner Cooper said the application for the CUP was approved by Planning & Zoning for a gravel pit use. Klarich is concerned about the reclamation and bonding and so is the county. He thinks the use for this property for a gravel pit is appropriate. The county could help monitor the situation so that it wouldn't be a problem in future. The county still needs to talk about the requirement of the bond and whether the county is willing to negotiate a payment plan.

Commissioner Walker asked Tony Fuller a question if she was correct in her understanding that he had about the 20 acres that could be used for reclamation of the land? (Mr. Fuller said that is correct and there is 70 acres total, not including the recent potential purchase).

Commissioner Cooper asked Attorney Jackson if a stipulation to the CUP could be made to state that reclamation has to be done?

LeRay Jackson said that the CUP could be amended to include the reclamation and a copy of the state regulations for fugitive admissions could be included as was done with Carlings. The job of the Commissioners today is to approve, reject or amend the Planning & Zoning decision.

Commissioner Smith asked if the other 20 acres could be restricted somehow to the reclamation of the other property being used as a gravel pit?

Attorney Jackson said that the application for light industrial on the 10 acres bordering the road had been filed.

Tony Fuller said that after the hearing on the eight lots for a subdivision was denied and the application has been withdrawn. He said we feel the future value of this land is in light industrial. Our intent is not to destroy the value of the property by leaving something valueless but by reclaiming it so that it is useable or saleable. He commented that there are not a lot of light industrial areas in the county.

Peter Vander Meide said his proposal for the gravel pit to become part of the bond is very valid. He recently received a cash offer for \$25,000 for 10 acres in section 24 that is owned by Resort Properties. The new owner would like to use the property for industrial development. The mortgage didn't work out, but it shows the value is there to create enough interest for a sale to reclaim the property.

Tony Fuller said that there is a prior mortgage on his property so the idea of using the property as the bond won't work.

Commissioner Walker asked for any other comments.

Commissioner Cooper said as far as the county goes, they don't want an eye sore in the county either. The verbiage in the CUP is good and he is confident that reclamation will be done as required by the county when this operation ceases. He said there are gravel pits along the freeway that are not creating problems with the freeway. If there are any problems, with this project, they can be reported and they can be made to spray water to control dust problems. He is in favor of the bond and is willing to accept increment payments. When the CUP is recorded, it is like a lien on the property.

Ed Klarich said he could tell that everyone means well, but land doesn't always get rehabilitated. Is there any time limit on the permit?

The permit says it must be operational with one year February 2007 also that the county is on notice and can inspect at any time.

Ed Klarich asked Mr. Fuller if he has a full-blown design for the gravel pit? How many cubic yards have they calculated?

Tony Fuller said that it will take approximately 323,000 to level the ground and if half of it are rejects, then they could fill it back up to level land.

Ed Klarich then you won't have a bid hole there.

Tony Fuller answered, no.

Commissioner Cooper made a motion to approve the CUP for a gravel pit for ADF Holding as approved by Planning & Zoning with a \$35,000 bond paid up front and construction must start within a year's time.

Commissioner Smith SECONDED the motion. County Clerk Norma Brunson called for a roll call vote. Commissioner Smith. YES. Commissioner Cooper. YES. Commissioner Walker. YES. The voting was unanimous. The motion carried.

Tony Fuller said that he understood at the Planning & Zoning hearing when it was approved, them to say that the surety could be done in more than one way, either cash, CD, a letter of credit, or in property. (He was told to work with Attorney LeRay Jackson and Leon Smith to see what is acceptable, subject to Commissioners approval).

Mr. Klarich was told he could appeal the Commissioners decision in court within 30 days. Mr. Klarich said that if it is all right with the county and they think they have the foresight, he will honor their decision, but he still has concerns.

The hearing ended 12:15 p.m.

CHIEF DEPUTY COUNTY ATTORNEY BRENT BERKLEY-PENDING LITIGATION ON RHOADES CASE

This item was tabled. Attorney LeRay Jackson said that Brent Berkley would like back on the agenda for next week's meeting.

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

Attorney LeRay Jackson reported he had received a copy of the ground lease from IHC and he would be reviewing it.

Commissioner Smith reported that all the Commissioners met with State Attorney General Shirliff to talk about the county involvement in how the State of Utah should be involved in the Nevada water issue. He suggested that the Commissioners get on the agenda and give a presentation to the Constitutional Defense Council along with all other counties involved.

The Commissioners attended an open house for the Cosmic Ray building and reflectors. There was a large crowd attending. Commissioner Smith thanked Gary Church, the University

of Utah, the communities, high school students and public. The money to buy the facility was donated by the Watson family.

Commissioner Smith said there was a highway meeting on March 24 but he didn't receive notice in time. The March 22nd land meeting agenda was the same as the RS 2477 strategy meeting on March 16th that he attended. At the strategy meeting the Campbell-Hodell case was discussed. The state has accepted the disclaimer of interest from the federal government in behalf of the counties on the RS 2477 roads. They discussed the process the counties will go through to get the County Class B roads recorded.

Commissioner Cooper said Senator Robert Bennett announced the Washington County Comprehensive Land Use Plan bill will go thru the Senate and the House. They are very optimistic that this will go well and the results will affect Millard County, Juab County, and Iron County's plans. Senator Orrin Hatch will take the leadership of Millard County's Comprehensive Land Use legislation.

All the Commissioners attended a meeting with Brian Cottom, Governor's Office Planning Budget for the Millard County Comprehensive Resource Management Plan on March 17, 2006. The plan is going well and is being updated with the help of the BLM, Forest Service, and School Trusts Lands. Millard County has been approved for funding from the state.

Commissioner Walker attended the Hinckley Fire meeting on March 13, 2006. The work of the firemen is greatly appreciated by the Millard County Commissioners.

Commissioner Smith and Commissioner Walker met with Delta City Mayor Bunker to discuss the law enforcement contract. They will be meeting again to work out the rest of the details before March 30, 2006.

On March 21, 2006, Commissioner Walker visited the Hinckley Cemetery to discuss future plans and improvements at the cemetery with the new sexton Neil Swenson. Commissioner Walker was able to locate some funding for flag poles for the cemetery.

On March 22, 2006 Commissioner Walker attended the Days of the Old West Rodeo meeting. They are looking for other events to go along with rodeo. The dates for the rodeo will be June 15, 16, 17, 2006.

The Millard County Economic Association, MEDA meeting was held on March 23, 2006. MEDA will be working on the social economic portion of the Millard County Comprehensive Resource Management Plan and they will be working to update an economic development segment of the Millard County General Plan.

The Six County Senior meeting was held at the Pahvant Senior Citizens in Fillmore, Utah.

All the Commissioners attended their local caucus meetings.

On March 24, 2006, Commissioner Walker spent the day planting trees and shrubs at the Hinckley Cemetery. The cemetery had received matching grant was used to purchase the trees and the shrubs.

Commissioner Cooper talked to Terry Lisonbee who notified the Commissioners that the Workforce Services Office in Fillmore will be closing. They have been open three days a week. The Commissioners, Mayor of Fillmore and surrounding towns are opposed to this decision and concerned because they were not given any notice prior to this decision. Without the office open the services will not be as available to all the citizens of Millard County. The money that would have gone to Millard County will be diverted somewhere else. The employees of Workforce services will not be cut back. Commissioner Cooper recommends the Commissioners get in contact with the State Director, Jim Whitaker and Jan Thompson the southern region director to discuss their concern over the closure of the office.

Millard County Clerk Norma Brunson told the Commissioners about some property to put a telescopic array sensor that Warren Peterson was interested in.

OTHER BUSINESS

Millard County Assessor Jim Talbot and Brandon Bartholomew asked the Commissioners what they recommend for the pay scale incremental raises for Mr. Bartholomew. Commissioner Cooper had said he had talked with Mr. Bartholomew and the scope of his work has increased and the requirements have increased since he left the Recorder's Office. After discussing any justification for a raise, the Commissioners asked Chief Deputy Auditor Bonnie Gehre what Mr. Bartholomew's pay scale. She answered stating that it is the same as the other deputies in the elected official's offices. The Commissioners determined that the wage was appropriate at this time while he was working on his license and then it was up to Assessor Talbot to make a recommendation to the Commissioners when his license has been earned.

PUBLIC INPUT

There were none.

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

There were none.

WHERE UPON THE MEETING ADJOURNED

Commissioner Cooper made a motion to adjourn the meeting.

Commissioner Smith SECONDED the motion. The voting was unanimous. The motion carried. The meeting adjourned at 12:30 p.m..

Attest: _____

Approved: _____