

MAY 12, 2009

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## NINETH MEETING

The Board of Commissioners of the County of Fremont, State of Colorado, met in Regular Session on, 615 Macon Avenue, Room LL3, Fremont County Administration Building, Cañon City, Colorado. Commissioner Chairman Michael J. Stiehl called the meeting to order at 9:30 A.M.

Michael J. Stiehl	Commissioner	Present
Edward H. Norden	Commissioner	Present
Larry Lasha	Commissioner	Present
Brenda Jackson	County Attorney	Present
Norma Hatfield	Clerk and Recorder	Present

Also present Bill Giordano, Planning and Zoning Director; George Sugars, County Manager, and Tina Taylor, Deputy Clerk.

Pastor Emily Neely from the First Baptist Church gave the Morning Prayer.

Those present recited the Pledge of Allegiance to the Flag of the United States of America.

### APPROVAL OF AGENDA

**Commissioner Norden** moved under New Business, Item #6; Resolution Rescinding ZC 08-006 to Item #9. He also stated that as part of the Staff /Elected Officials report there will be employee recognition. The June 9<sup>th</sup> BOCC Meeting will be moved to Monday, June 8<sup>th</sup> at 9:30 A.M. and will be Item #8.

**Commissioner Norden** moved to approve the Agenda with those Condition and adjustments. Commissioner Norden seconded the motion. Upon vote: Commissioner Norden, aye; Commissioner Lasha, aye; Commissioner Stiehl, aye. The motion carried.

### CONSENT AGENDA

**Commissioner Lasha** moved to approve the Consent Agenda. Commissioner Norden seconded the motion. Upon vote: Commissioner Lasha, aye; Commissioner Norden, aye; Commissioner Stiehl, aye. The motion carried.

1. Approval of Minutes April 22 and April 28, 2009,
2. Approval of Bills May 12, 2009 / \$1,139,924.75
3. SCHEDULE PUBLIC HEARINGS: 10:00 a.m. May 26, 2009  
Community Service Block Grant Supplemental Grant Application
4. LIQUOR LICENSE  
Bighorn Liquor LLC  
Bighorn Liquor  
493 Shannon Rd.  
Cotopaxi, CO 81223-9601  
Retail Liquor Store License Renewal - Malt, vinous and spirituous  
  
Bradford Jan M  
Bradford Handi-Mart  
1400 E Hwy 50  
Penrose, CO 81240  
Retail Liquor Store License Renewal - Malt, vinous and spirituous

**Commissioner Lasha** moved to approved to Consent Agenda. Commissioner Norden seconded the motion. Upon vote: Commissioner Lasha, aye; Commissioner Norden, aye; Commissioner Stiehl, aye. The motion carried.

### ADMINISTRATIVE/INFORMATIONAL

1. Administrative and Elected Officials  
Commissioner Lasha commented that the local bridge crews and Patch Construction Phantom Canyon did everything in timely manner

**Fremont County Clerk and Recorder Norma Hatfield** submitted the Clerk's Report for April, 2009. Total revenues earned for the Clerk's Office was \$628,473.66 which was down \$111,461.12 from a year ago. County Sales Tax was \$48,743.71 which was \$21,753.85 down. Monies turned over to the Clerk and Recorder's Office for distribution to the various entities in Fremont County was \$367,662.16 this was down \$63,517.08.

**Commissioner Norden** moved to approve the County Clerk's Report. Commissioner Lasha seconded the motion. Upon vote: Commissioner Norden, aye; Commissioner Lasha, aye; Commissioner Stiehl, aye. The motion carried.

**Commissioner Norden** stated that he has the honor to note the accomplishment of a 40 year employee with Fremont County with the Road and Bridge Department, Road Foreman Curtis Stone, who has worked in the District 3 Tallahassee Shop. Commissioner Norden presented Mr. Stone with a plaque that noted the six Commissioners that he has worked with for four decades beginning with Denzel Goodwin in 1969 to Commissioner Norden since 2005 to date. Mr. Stone stated that he has worked with good people and thanked everyone.

2. Citizen Not Scheduled – None

#### **NEW BUSINESS**

#### **APPOINTMENT OF DAN BRIXEY AND DAVE BODEN TO THE FREMONT COUNTY BOARD OF APPEALS**

**Commissioner Lasha** stated The Board of Appeals has only had one appeal come to the County in the last four (4) year. The position was advertised. There were two people that submitted letters Dan Brixey and Dave Boden.

**Commissioner Lasha** moved to approve the positions of Dan Brixey and Dave Boden to the Board of Appeal. Commissioner Norden seconded the motion and noted for the record that this Board of Appeals is for the Building Code Board of Appeals. Upon vote: Commissioner Lasha, aye; Commissioner Norden, aye; Commissioner Stiehl, aye. The motion carried.

#### **VIRGINIA PATTON – PRESENTATION**

**Virginia Patton** presented Larry Lasha and family on behalf of the Fremont County 4-H Foundation a plaque honoring him for becoming a life time member. Commissioner Lasha stated it was a surprise and thanked everyone very much.

#### **STACEY SEIFERT FREMONT COUNTY ASSESSOR / ABATEMENT**

**Fremont County Assessor Stacey Seifert** presented two Abatements. Public Service Company of Colorado for 1979, Schedule #995250 S for \$3,337.98. Dawson Ranch, LLC, 2008, Schedule #984-05-042 in the amount of \$2,574.61.

**Commissioner Norden** moved to approve **Resolution #24, Series 2009** for Public Service Company of Colorado and **Resolution #25, Series 2009** for Dawson Ranch, LLC. Commissioner Lasha seconded the motion. Upon vote: Commissioner Norden, aye; Commissioner Lasha, aye; Commissioner Stiehl, aye. The motion carried.

#### **RESOLUTION DETERMING THAT THE ODD-YEAR ELECTION TO BE HELD IN THE FALL OF 2009 SHALL BE A MAIL BALLOT ELECTION AND INSTRUCTING THE ELECTION OFICIAL FOR FREMONT COUNTY TO CONDUCT THE ELECTION BY MAIL**

**Clerk and Recorder Norma Hatfield** stated that they can request that the election be a mail ballot election. We can have the election for less money than the regular precinct polling places and the turn out is better for the mail out election. We are allowed to do this for off year elections but not general elections. **Commissioner Stiehl** commented that off year elections probably are the most important for local communities because that is where the local races are determined and typically the turnout for those is more than in a general election. One of the results of the mail ballot is that participation improves dramatically.

**Commissioner Norden** moved to approve **Resolution #26, Series 2009** to permit conduction of the mail ballot elections for all of 2009. Commissioner Lasha seconded the motion. Upon vote: Commissioner Norden, aye; Commissioner Lasha, aye; Commissioner Stiehl, aye.

**COUNTY MANAGER GEORGE SUGARS – AWARD BID FOR FREMONT COUNTY ENERGY AUDIT TO ENNOVATE CORPORATION IN THE AMOUNT OF \$23,677.00**

**County Manager Sugars** stated that over the last few months there have been discussions to conduct an energy audit on the county buildings to see if there can be more energy efficient. We have decided on fifteen (15) buildings to be looked at. In February five (5) proposals were received to conduct an audit. The notice of award is to Ennovate Corporation of Aurora CO in the amount of \$23,677.00. We anticipate the audit to be about four (4) month starting the first of June. Once Ennovate Corp. comes back with their recommendation it will be reviewed by the Commissioners and see what is feasible for the rate of return for the recommendations. Through our energy saving we hope to recoup the cost. Commissioner Lasha said the same company has gone through an evaluation with the City of Florence and is actually putting the findings into action.

**Commissioner Lasha** moved aware the bid for Fremont County Energy Audit to Ennovate Corporation for \$23,677.00. Commissioner Norden seconded the motion. Upon vote: Commissioner Lasha, aye; Commissioner Norden, aye; Commissioner Stiehl, aye. The motion carried.

**AUTHORIZATION FOR CHAIRMAN TO SIGN CONTRACT FOR TEXAS CREEK BRIDGE TESTING**

**Commissioner Norden** stated that it has been noted an announcement by the Commissioners and County Engineer we had posted a 3-1/2 ton load limit on the Texas Creek Bridge behind the Texas Creek Junction going over to the popular ATV area. CDOT increased concern they have had recommended a lower load limit to 3-1/2 tons from the existing 11 ton. The contract with Lamb-star Engineering out of Plano, TX have one of there employees from Castle Rock conduct three different types of test (grinding, ultra sonic test, magnetic particle test). This will determine if we have to do repairs.

**Commissioner Norden** moved to authorize the Chairman to sign the contract for bridge testing for \$4,800.00 with Lamb-star Engineering. Upon vote: Commissioner Lasha, aye; Commissioner Stiehl, aye. The motion carried.

**COUNTY BUDGETARY DISCUSSION**

**County Manager Sugars** stated Finance Manager Dana Angel and the Board of Commissioners have been deeply concerned going into the 2009 Budget ever since it was approved last fall. As indicated by the County Clerk's Report and the County Treasurer have also echoed the same warnings that our revenues just continue to fall particularly in Sales and Use Tax. Finance Director Angel reported that our Sales and Use Tax was down 8.2% from the first quarter a year ago of some \$93,000.00. Mr. Sugars put together a summary of where we are in certain departments, the shortfalls we see and are coordinating some recommendation. Commissioner Lasha stated that they are looking at all option on what we can do to prepare ourselves rather than wait until November and have to decided on an emergency basis. At this particular time we have had comments from department heads and elected official and before we go forward on any of the information we need to follow up with them and take care of the issues with our employees before we make any announcement on what we plan on doing. We are not in a crisis but we are troubled and concerned. There were several good ideas from the comments that were received. We will be consideration the information over the next few days. Commissioner Norden stated that we are seeing a hug jump in locate inmates in out county jail. We have revenues falling and cost escalating in our county jail. The citizens of Fremont County are going to have to be aware that the services that the County delivers are going to be effected. We can not have the kind of revenue shortfall that we are seeing without effecting delivery of services. There is forewarning on the horizon that we are going to have to take some steps and it will impact everybody not only here within our department but County wide to the citizens that look to us for services.

**RESCHEDULE BOARD MEETING FROM JUNE 9 TO JUNE 8, 2009**

**Commissioner Stiehl** stated the Tuesday, June 9<sup>th</sup> meeting will be rescheduled to Monday, June 8, 2009 at 9:30 A.M. due the CCI meeting.

**Commissioner Norden** moved to approve. Commissioner Lasha seconded the motion. Upon vote: Commissioner Norden, aye; Commissioner Lasha, aye; Commissioner Stiehl, aye. The motion carried.

**RESOLUTION RESCINDING ZC 08-006 RE & AM ZONE CHANGE**

Consideration of approval of a resolution rescinding Zone Change, file #ZC 08-006, RE & AM Zone Change.

**Commissioner Stiehl** stated at the BOCC Meeting of April 22nd it was moved to rescind #ZC 08-0006, RE & AM Zone Change which had taken place in December 9, 2008 and go to meeting with our legal counsel to discuss our finding. Commissioner Stiehl open the meeting for question there was no public comments because the hearing had been done on April 22, 2009.

**Jason Morin, Plant Manager for Holcim** inquired when they could receive a finalized map without the interior lot lines. Planning and Zoning Director Bill Giordano stated it was already completed. The drawings are recorded. The department works with GIS and they will ask them to have it completed as soon as possible.

Commissioner Norden stated he has an e-mail communication from Chris Jenkins this morning in reference that this particular resolution would not prevent the property from replying for a zone change. This has been discussed with counsel. The determination was that by declaring the action of December 9, 2008 null and void it basically cleans the slate that nothing happened. **Special Counsel John D. Havens** stated that the Commissioners decided to have a hearing regarding a possibility of rescinding the December 9<sup>th</sup> action, the zone change, we looked for legal authority for doing that. We are comfortable with the decision of the hearing was legally sound and the decision that the Commission found following the hearing is legally sound. But in part we rely upon an analogy to a District Court #60B which allows courts under certain circumstances, including when there has been fraud misrepresentation or other misconduct to reconsider its decision. That is what this Board did on April 22, 2009. That analogy is good but in some ways imperfect while the Board acts in a quasi judicial manner it is not an exact equivalent of trial. If this is the foundation on where the Board wants to go in terms of the rescission hearing, the rescission decision a court would allow under similar circumstance a new trial as part of the remedy. It would rescind its order and open the proceedings up and allow the party who obtained the judgment through an inappropriate means to put on a case a second time. This would allow those, in this case, that did not show up to participate in the proceeding. Rather than doing that and unnecessarily causing a hearing to occur that maybe nobody wants to have happen. It was choice of either setting another hearing that may or may not have been necessary or just reopening the process and if Holcim, the current owner, chooses to bring an application in an application for a zone change tomorrow or two years from now this decision won't preclude that from happening and all the normal process would be in place. So there was an analogy based on a court rule and a decision to bring closure to the current proceeding without prejudicing the rights of the current owner to try to have a day in this court to have a zone change application. This seemed to be the fairest way to deal with the issue.

Chris Jenkins stated that they were satisfied with the expedience of the decision. They accept the decision. He inquired why they did not include Resolution 71, 2008 in rescission. That was the original one on December 9, 2008 that included the lot line changes and vacations of streets and road. Commissioner Stiehl stated the actions that we are taking with the lot line adjustments increasing the size of AG Forestry is allowed by the County Regulation.

**Commissioner Norden** moved to approve **Resolution 27, Series 2009**. Commissioner Lasha seconded the motion. Upon vote: Commissioner Norden, aye; Commissioner Lasha, aye; Commissioner Stiehl, aye. The motion carried.

**Commissioner Stiehl** adjourned the meeting 10:27 A.M.