

RECORD OF PROCEEDINGS

MINUTES

BOARD OF COUNTY COMMISSIONERS WELD COUNTY, COLORADO WEDNESDAY, DECEMBER 2, 2020

The Board of County Commissioners of Weld County, Colorado, met in regular session in full conformity with the laws of the State of Colorado at the regular place of meeting in the Weld County Administration Building, Greeley, Colorado, December 2, 2020, at the hour of 9:00 a.m.

ROLL CALL: The meeting was called to order by the Chair and on roll call the following members were present, constituting a quorum of the members thereof:

Commissioner Mike Freeman, Chair
Commissioner Steve Moreno, Pro-Tem
Commissioner Scott K. James
Commissioner Barbara Kirkmeyer
Commissioner Kevin D. Ross

Also present:

County Attorney, Bruce Barker
Acting Clerk to the Board, Bri White
Controller, Barbara Connolly

MINUTES: Commissioner James moved to approve the minutes of the Board of County Commissioners meeting of November 30, 2020, as printed. Commissioner Ross seconded the motion, and it carried unanimously.

READ ORDINANCE BY AUDIO: Commissioner Kirkmeyer moved to read Code Ordinance #2020-20 by audio. The motion was seconded by Commissioner Ross, and it carried unanimously.

AMENDMENTS TO AGENDA: There were no amendments to the agenda.

CONSENT AGENDA: Commissioner Kirkmeyer moved to approve the Consent Agenda, as printed. Commissioner James seconded the motion, and it carried unanimously.

PUBLIC INPUT: No public input was given.

WARRANTS:

1) GENERAL WARRANTS – DECEMBER 1, 2020: Commissioner Moreno moved to approve the General Warrants, as printed. Commissioner James seconded the motion, and it carried unanimously.

NEW BUSINESS:

1) CONSIDER ESTABLISHING DISTRICT ATTORNEY'S SALARY FOR YEARS BEGINNING JANUARY 1, 2021, THROUGH DECEMBER 31, 2024: Commissioner Kirkmeyer moved to approve said Resolution. The motion was seconded by Commissioner Ross and it carried unanimously.

2) CONSIDER APPOINTMENT OF DIRECTOR OF THE WELD COUNTY DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT: The motion to approve the appointment of Mark Lawley as Director of

the Department of Public Health and Environment was made by Commissioner James, seconded by Commissioner Kirkmeyer, and it carried unanimously. Commissioner Kirkmeyer recognized Mr. Lawley's background with a Master's Degree in Public Administration, a degree in Allied Health, and experience as a Paramedic, as well as the Chief of the Mountain View Fire Protection District. Each of the Commissioners, in turn, commended Mr. Lawley for his demonstrated ability to improve staff morale and enhance the department's administrative functions during a very challenging time. Mr. Lawley thanked the Commissioners for the trust and confidence they have shown in him and shared his excitement to continue serving the County.

3) CONSIDER CONTRACT ID #4267 INTERGOVERNMENTAL AGREEMENT REGARDING ACCESS CONTROL PLAN FOR CR 74 BETWEEN SH 257 AND CR 39 AND AUTHORIZE CHAIR TO SIGN: Evan Pinkham, Department of Public Works, shared the County Road (CR) 74 Access Control Plan (ACP) includes the 11-mile segment between State Highway 257 and CR 39 and stated the participating local governments worked cooperatively to establish a vision, access regulations, and policies to guide future development of the corridor. Commissioner Ross and Chair Freeman commended staff and all of the participating municipalities for their contributions to the corridor project. Commissioner Ross moved to approve said agreement and authorize the Chair to sign. Commissioner Kirkmeyer seconded the motion and it carried unanimously.

4) CONSIDER DECLARING CERTAIN EQUIPMENT AS SURPLUS PROPERTY, AUTHORIZE SALE OF SAME TO LEADVILLE POLICE DEPARTMENT, AND DELEGATE AUTHORITY TO CONTROLLER TO SIGN ANY NECESSARY DOCUMENTS: Barbara Connolly, Controller, detailed the request of the Leadville Police Department to purchase two (2) 2016 Ford Taurus for a total amount of \$4,000.00 and she assured it would not be cost-effective to send the vehicles to auction. Commissioner Moreno moved to approve said Resolution and delegate authority to the Controller to sign any necessary documents. The motion, which was seconded by Commissioner James, carried unanimously.

5) CONSIDER DIRECTING CLERK TO THE BOARD TO HAVE PUBLISHED EMERGENCY ORDINANCE NO. 256-B SUPPLEMENTAL APPROPRIATION FOR 2020: Ms. Connolly summarized the publication of the ordinance to be heard on December 14, 2020. Commissioner Kirkmeyer moved to approve said Resolution. Seconded by Commissioner Ross, the motion carried unanimously.

6) FIRST READING OF CODE ORDINANCE #2020-20, IN THE MATTER OF REPEALING AND REENACTING, WITH AMENDMENTS, CHAPTER 23 ZONING, OF THE WELD COUNTY CODE (SOLAR): Tom Parko, Director of the Department of Planning Services, summarized the modified definitions which were originally established in 2016, sharing the amendments determine which Zone Districts are permitted to house Small Scale, Medium Scale, and Large Scale solar facilities, as well as the energy capacity and parcel size requirements for a Small Scale community solar facility in an effort to prevent evasion of the Code. He stated the Planning Commission unanimously recommended delaying approval to allow for a stakeholder process, to address concerns regarding the requirement for Medium Scale solar facilities to be located outside three (3) miles of existing city limits, clarify the definition of 'rangeland' and to further analyze the matter at the December 15, 2020, Planning Commission meeting. Responding to Commissioner Kirkmeyer, Mr. Parko confirmed he provided the same presentation to Planning Commission.

Alvan Shipps, Nunn resident, shared his family has owned farmland since 1902, and stated his property may not meet the definition of rangeland, as defined by the Natural Resources Conservation Service (NRCS), nor would it meet the requirements under the proposed Code changes. He argued the amendments are too restrictive for a private property owner to adhere to a solar company's standards and he would need to change his land from agricultural to industrial in order to acquire solar panels. In

response to Commissioner Moreno, Mr. Shipps clarified he owns 3,000 acres. Chair Freeman assured Mr. Shipps he will not need to rezone his land as industrial.

Scott Peterson, Platteville resident, presented the alterations to Xcel Energy's regulations for solar facilities to obtain a 5-megawatt array, rather than a 2-megawatt array, and stated the Code changes will prevent landowners from participating in the increase, as well as hinder private property rights. In response to Commissioner Kirkmeyer, he clarified Xcel Energy's rules now allow him to have a 5-megawatt array on 34 acres of land.

Abe Sauer, Johnstown resident, argued the proposed changes will create a less energy friendly County, as each property is different and requires unique considerations. He expressed federal and state government officials are gaining a stronger say in private property rights.

Jon Fitzpatrick, Pivot Energy representative, proposed staff receive additional direction to handle Small Scale to Medium Scale solar facility developments and stated Pivot Energy has multiple projects completed and underway which would be out of compliance with the proposed standards. He explained the company's investments contribute to the economic well-being of the County, and they also support the Bright Futures Program, noting a recent investment of \$90,000.00. Mr. Fitzpatrick stated Xcel Energy is currently administering a request for proposals as projects increase in size. Responding to Commissioner Moreno, he detailed some of the existing projects within Weld County, which service some who are outside Weld County, but all are within Colorado. In response to Commissioner Kirkmeyer, Mr. Fitzpatrick stated he assumed all of the energy produced within Weld County is utilized by residents, as the electrons never leave the area, and clarified the percentage of subscribers within the County is difficult to determine. In further discussion with Commissioner Kirkmeyer, he listed the various counties with Pivot Energy solar projects and stated the Adams County Code was recently altered to make community solar an allowed use in the A (Agricultural) Zone District and a Site Plan Review process for community solar, which previously required a Conditional Use Permit (CUP) allowed in the A (Agricultural) Zone District. Responding to Commissioner Ross, Mr. Fitzpatrick confirmed a landowner would need to create multiple 35-acre subdivisions, creating multiple parcels, in order to evade the proposed size requirements.

Troy Whitmore, United Power representative, shared United Power provides low-cost electric power and renewable energy to Weld County residents and argued the proposed zoning requirements will prove a detriment to the County's renewable resource accessibility. He detailed the company has five (5) Medium Scale solar facilities in Weld County, four (4) of which produce power to oil and gas substations and the electrons have a 99.9% chance of remaining in the County. Responding to Commissioner Moreno, Mr. Whitmore recommended decreasing the three (3)-mile distance requirement for solar facilities to be located outside of existing city limits and further analyzing the 200-foot distance requirement between solar facilities if it applies to Medium Scale solar facilities. He also shared the 1041 WOGLA Permit process is quite lengthy and expensive, especially for Medium Scale solar facilities, causing projects to prove less successful.

Joshua Noel, Poudre Valley REA, Inc. representative, recommended delaying the process for 30 to 60 days to allow adequate time for evaluation. In response to Commissioner Moreno, he echoed Mr. Whitmore's recommendations and added concerns regarding the definition of rangeland.

Rich Werner, Upstate Colorado Economic Development representative, stated energy users and companies have expressed great concerns and staff made changes on December 1, 2020, to address some of the concerns; however, he argued Large Scale solar facilities and the 1041 WOGLA Permit process may be able to work simultaneously once certain language is amended to specifically address

solar projects. In response to Commissioner Kirkmeyer, Mr. Werner clarified the 1041 WOGLA Permit is implemented for Industrial and oil and gas projects and it could prove beneficial for solar projects.

Barney Hammond, SunShare Community Solar representative, argued solar energy is beneficial to multiple landowners and projects by saving time and money and he hopes the Board can make the necessary revisions in the best interest of landowners. He commented that more regulations decrease the productivity and ease of access to residents.

Chair Freeman recessed the meeting until 10:45 a.m. to accommodate a scheduled Commissioner meeting commitment.

Upon reconvening, Haley Siltanen, Holland and Hart representative, cited concern with the lack of adequate 30-day notification and failure to clearly identify the proposed revisions related to the Solar regulations. In response to Commissioner Kirkmeyer, Ms. Siltanen expressed her firm's position that the County is placing extreme restrictions on solar energy by limiting Large Scale solar to the Industrial Zone, placing a three-mile radius from towns, restricting solar uses to rangeland, and requiring a 200-foot buffer between developments. Bruce Barker, County Attorney, explained C.R.S. §24-65.1-404 deals specifically with adopting new regulations, but does not speak to amendments requiring a 30-day notice. He recommended proceeding with the changes to Chapter 23, and if approved, then commence with a separate Ordinance to amend Chapter 21.

Mike Kruger, President of the Colorado Solar and Storage Association (COSSA), referenced a press release from Tri-State concerning an Electric Resource Plan to purchase a vast amount of solar, investing \$4 billion, which will need to be implemented within rural communities during the next four (4) years. He stated the proposed changes will make Weld County a less business friendly environment, while the 2016 definitions will maintain Weld County as the prime location for solar development.

Bruce Johnson, Greeley resident, stated the proposed revisions are an overreach by local government, much like the state overregulating the oil and gas industry. He acknowledged the Board's support of the agricultural industry, and recommended listening to the energy professionals for guidance on how to use solar in support of agricultural operations.

Wayne Howard, Terra West Real Estate Services, Inc. representative, stated he is a fourth-generation farmer who currently works in real estate on behalf of absentee owners of farmland. He submitted a letter expressing opposition to the overregulation of private property rights and argued landowners have the right to make best choices for their property.

Dave Iadarola, CORE Consultants, Inc. representative, expressed concerns with the apparent accelerated timeline, proposed three-mile buffer, and revised definitions of Small, Medium and Large Scale solar facilities.

Jennifer Berg-Ramsey, Ault resident, stated she learned about the proposed ordinance only six (6) days prior to the public hearing, which is not enough time for the public to adequately review and respond. She further expressed concern with restricting the use to rangeland, placing limitations on the ability of landowners to decide the best use of their private property, and discriminating against properties located more than three miles from a municipality.

Steve Teets, Greeley resident, agreed with improving policies which encourage solar energy, and stated he values regulations, although, not at the expense of the landowners.

Jeremy Call, Community Planner/Fort Collins resident, expressed appreciation for the Board's efforts and acknowledged the difficulty in implementing new regulations. He advised maintaining a positive legacy and leaving office on a positive note.

Ali Weaver, Silicon Ranch Corporation representative, stated her support of the existing 2016 definitions and regulations, and encouraged allowing additional time for all parties to further analyze the proposed revisions. She noted the three (3)-mile buffer is a detriment to operators of Medium and Large Scale facilities and suggested reducing the setback to one (1) mile. Lastly, she stated the full 1041 process is likely to be cost prohibitive for Medium Scale projects and proposed reviewing which aspects of the 1041 process could be implemented to address the concerns of the Board.

Gus Lindquist, Land surveyor, noted there has been no public input in support of the proposed changes and urged the Board to extend the review process.

Doug Carter, Energy developer, recommended the Board allow additional time to afford proper teamwork among the County staff, private property owners, and the energy industry to develop regulations that will benefit all parties involved.

Chair Freeman thanked the members of the public for the input provided, stated the importance of agriculture, addressed the conflict between oil and gas and renewable energy interests, and stated it is important to ensure Weld County isn't negatively impacted by excessive amounts of solar panels for the benefit of surrounding counties. Commissioner Kirkmeyer stated the County became aware of recent attempts to circumvent the County Subdivision Regulations in response to changes in Xcel's business model. The goal is to eliminate the evasion issue, clarify the requirements related to roof top solar panels, and address issues related to placement of solar facilities within the proper zone district to protect the intent of the A (Agricultural) Zone to restrict or balance urbanization of rural Weld County. She asserted the Commissioners are not taking away private property rights and clarified oil and gas mineral interests are a subsurface private property right, whereas, solar is a land use on the surface and the Board respects the need to implement balance with regard to solar uses. Commissioner Kirkmeyer also addressed the anticipated introduction of the Beneficial Electrification Bill during the next legislative session, which is intended to place the burden on Weld County residents to provide renewable energy for the benefit of the entire state, and the Board is committed to the harmonious, compatible growth within the County. She agreed there is more work to be done and expressed her support of a stakeholder meeting. Commissioner Moreno agreed with the previous statements, assured the Board supports all energy types and desires to bring all of the interested parties together at a future stakeholder meeting to gain further input. Commissioner Ross expressed his appreciation for all of the viewpoints shared during public input. He reiterated the need for revisions to prohibit further circumvention of the County Code and expressed concern with neighboring counties placing a disproportionate burden upon Weld County to meet their renewable energy needs. He concurred there is room for improvement to address the three-mile requirement, implementation of infrastructure, and the definition of rangeland. Commissioner James agreed with the previously stated concerns, recognized the impact that is being created based on the energy marketplace, and expressed the goal of keeping Weld County clean and efficient despite changes taking place in surrounding counties. He stated the Board must establish regulations which mitigate the impacts of an industrial-looking use, while ensuring compatibility with agricultural lands and providing potential revenue generating opportunities. He agreed that adequate public notice had been made to meet the statutory requirements; however, he would prefer to schedule a stakeholder meeting. Following discussion, Commissioner Kirkmeyer moved to approve Code Ordinance #2020-20 on First Reading, which was seconded by Commissioner Moreno, and the motion carried unanimously. The Board directed staff to schedule and facilitate a stakeholder meeting prior to the next reading.

RESOLUTIONS AND ORDINANCES: The resolutions were presented and signed as listed on the Consent Agenda. Code Ordinance #2020-20 was approved on First Reading.

Let the minutes reflect that the above and foregoing actions were attested to and respectfully submitted by the Clerk to the Board.

There being no further business, this meeting was adjourned at 11:45 a.m.

BOARD OF COUNTY COMMISSIONERS
WELD COUNTY, COLORADO

ATTEST:

Weld County Clerk to the Board

BY: _____
Deputy Clerk to the Board

Mike Freeman, Chair

Steve Moreno, Pro-Tem

Scott K. James

Barbara Kirkmeyer

Kevin D. Ross