



**MINUTES OF THE ARAPAHOE COUNTY
BOARD OF COUNTY COMMISSIONERS
AUGUST 25, 2009**

State of Colorado, County of Arapahoe. At a public hearing of the Board of County Commissioners for Arapahoe County, Colorado held at 5334 S Prince St. Littleton CO 80166 there were:

Susan Beckman, Chair	Absent & Excused
Rod Bockenfeld, Commissioner	Present
Pat Noonan, Commissioner	Present
Jim Dyer, Commissioner	Present
Frank Weddig, Commissioner	Present
Kathryn Schroeder, County Attorney	Present
Nancy A. Doty, Clerk to the Board	Absent & Excused
Terri L. Maulik, Assistant Clerk to the Board	Present

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

CALL TO ORDER

PLEDGE OF ALLEGIANCE

COMMISSIONER COMMENTS

Commissioner Dyer welcomed Terri Maulik who is replacing Joleen Sanchez as the new Assistant Clerk to the Board.

ADOPTION OF THE AGENDA

The motion was made by Commissioner Bockenfeld and duly seconded by Commissioner Noonan to adopt the Agenda as amended.

The motion passed 3-0, Commissioners Beckman and Weddig absent and excused.

Commissioner Weddig arrived at 9:35 a.m.

ADOPTION OF THE MINUTES

The motion was made by Commissioner Noonan and duly seconded by Commissioner Weddig to adopt the minutes of the August 4, 2009 Public Hearing.

The motion passed 3-0, Commissioner Bockenfeld abstained, Commissioner Beckman absent and excused.

The motion was made by Commissioner Noonan and duly seconded by Commissioner Weddig to adopt the minutes of the August 5, 2009 Public Hearing.

The motion passed 3-0, Commissioner Bockenfeld abstained, Commissioner Beckman absent and excused.

The motion was made by Commissioner Bockenfeld and duly seconded by Commissioner Noonan to adopt the minutes of the August 11, 2009 Public Hearing.

The motion passed 3-0, Commissioner Weddig abstained, Commissioner Beckman absent and excused.

CEREMONIES

There were no ceremonies.

CITIZEN COMMENTS

There were no citizen comments.

CONSENT AGENDA

The motion was made by Commissioner Bockenfeld and duly seconded by Commissioner Noonan to approve the Consent Agenda as presented.

The motion passed 4-0, Commissioner Beckman absent and excused.

GENERAL BUSINESS AGENDA

Item A – Resolution Nos. 090649 through 090663 - Public Hearing: Adoption of Supplemental Budget for Second Quarter, 2009

Deputy County Attorney Jack Bush explained to the Board that this matter involves fifteen (15) modifications to the 2009 Budget. He explained that once the Board adopts a Budget it is necessary that any changes to the Budget be published. Mr. Bush said the required legal notices were published in the August 20, 2009 edition of the Villager newspaper; therefore, the Board does have jurisdiction to consider all fifteen (15) items that will be presented by Todd Weaver.

Todd Weaver presented a PowerPoint with the contents of the fifteen (15) resolutions. A copy of the Power Point presentation has been retained for the record. He said the resolutions were reviewed by the Executive Budget Committee and recommended to the Board for approval at the August 11, 2009 study session.

Mr. Weaver reported that among the fifteen resolutions for the 2nd quarter of 2009, the most significant was a \$4.2 million dollar appropriation out of the General Fund to transfer to the Infrastructure Fund to provide the County match for the Arapahoe/Parker Interchange project; federal funding was available so the County could move forward in this fiscal year from subsequent fiscal years. Mr. Weaver further reported that due to the economic climate and reduced workload, there was a reduction in 4.0 Full Time Equivalents (FTEs) and approximately \$181,040 from the Public Works & Development Department. He explained that in the Human Resources Department there is an ongoing reorganization and there is a request for additional funding in the amount of \$160,240 and 2.00 FTEs. Mr. Weaver stated that another large supplemental for the 2nd quarter is the transfer of \$2.8 million in excess fund balance from Social Services fund to the General Fund. He explained that there are numerous other supplemental appropriations, for example the Kaiser Health Insurance credit for 2009. Mr. Weaver said that another significant request is the addition of nine (9) FTEs at \$1.8 million dollars to Arapahoe/Douglas Works! (A/D Works!) Program as a result of some of the American Recovery Reinvestment Act (ARRA) money and Wagner Peyser grant funds from the federal government. He further explained that due to declining revenue collections there is a reduction of \$3.1 million from the Open Space Sales and Use Tax Fund.

Mr. Bush clarified that the additional FTEs in the Community Resources Department for A/D Works! are grant-funded positions and are contingent upon grant funds continuing to be received.

Commissioner Bockenfeld requested additional clarification on the \$4.2 million appropriation from the General Fund to the Infrastructure Fund. He explained that this appropriation was planned to be appropriated in the future. However, Commissioner Bockenfeld said that the County had a unique opportunity in working with the Colorado Department of Transportation (CDOT) and the Denver Regional Council of Governments to accelerate the project at Parker and Arapahoe Road by finding that money within the County's budget and making the local match contribution sooner than later. Commissioner Bockenfeld stated that this is why the funds were not originally budgeted for the 2009 Budget year. He thought it was important to point out that this was an unplanned and unique opportunity.

Commissioner Dyer stated that the Board had heard that the County was able to match funds and should take advantage of the opportunity.

There were no public comments.

The hearing was closed.

The motion was made by Commissioner Bockenfeld to adopt proposed Supplemental Budget Resolution Nos. 090649 through 090663 for Second Quarter, 2009, as presented.

Duly seconded by Commissioner Weddig.

The motion passed 4-0, Director Beckman absent and excused.

Item C-Resolution No. 090666 - Request to Waive Planning and Engineering Fees for Lottman Rezone and Minor Subdivision

Sean Lottman, 484 S County Road 181, Byers, Colorado, explained that the original bank owner in 1989 had a full section of land that was subdivided into 40 acre parcels. Mr. Lottman explained that when the previous owner got to the end of his parcel there was a railroad right-away and, therefore, Mr. Lottman only has 21 acres of land. He further explained that the land is currently zoned as a 40-acre parcel. Mr. Lottman stated that he didn't realize there were zoning issues and reported that the land purchase has gone through numerous title companies and the error was never caught. Mr. Lottman further explained that he wants to build a new dry storage building and a new house over the next 1.5 years. He said that due to the incorrect zoning of the land, he is unable to move forward with his plans. Mr. Lottman asked the Board to waive the fees on the rezoning of the minor subdivision. He explained that his goal is not to subdivide the property to make money. Mr. Lottman stated that he only wants to correct the zoning issues so he can proceed with building his house and dry storage building.

Commissioner Weddig suggested the title company might be liable to some extent. He asked Mr. Lottman if he had explored that possibility.

Mr. Lottman replied that he had not considered the title company as liable for the incorrect zoning. He explained that they wanted to research this route first. He has talked to other, more knowledgeable persons that have stated that the title companies are supposed to carry an insurance policy for something like this.

Commissioner Weddig stated that the initial permit application was for a large storage building.

Mr. Lottman stated that the permit was for a 4,000 sq ft dry storage building to house vehicles and his camper. As of now, since discovering that the land was zoned incorrectly, he applied for a temporary permit because they had already purchased the building and pulled an agricultural permit so they could have the building erected. He explained that now he is trying to go through the process to get everything corrected where it can be used as full storage not just for agricultural use.

Commissioner Dyer asked Assistant County Attorney Tom McNish if there is any recourse the applicant or the County would have in a case like this where things have been allowed to get this far and the necessity to do this may well be granted to the detriment of the County without being to the detriment of the applicant.

Mr. McNish explained that it would take some additional research to gather all the facts, but it is an illegal subdivision from what Sherman Feher stated in his staff report. He said the way the County enforces against an illegal subdivision is by withholding building permits and not permitting the property to be developed as the other legal lots in that subdivision. He stated the other lots are unplatted 40-acre parcels because they are greater than 35 acres. Mr. McNish continued to say that the Lottman parcel is less than 35 acres it must be platted in order to receive a building permit and eliminate the non-conforming lot issue.

Mr. Lottman stated that all possible options to remedy the situation were considered. He was told that the easiest remedy would be to buy an adjoining property and increase his acreage to 35 acres or greater. Mr. Lottman explained that with the railroad right-of-way on one side and a neighbor on the other, purchasing more acreage was not an option.

Commissioner Dyer asked Mr. Feher for a recommendation.

Mr. Feher said this is a difficult situation. He agrees that there are extenuating circumstances and it is the Board's prerogative to waive fees.

Commissioner Bockenfeld stated that he prefers the first option of working through the title companies to see if there is title insurance coverage for fee recovery to make it happen the way it should have happened. He requested a continuance to give staff and the applicant time to research and work with the title companies. He said it would also give the County additional opportunity to check the area for other similar problems.

Commissioner Weddig stated that current policy allows the Public Works director to waive 50% of the subdivision application fees. He stated that the drainage fees would have to be waived by the Board. Commissioner Weddig clarified that the 50% waiver of application fees has already been calculated in the figures that the Board has seen today.

Mr. McNish agreed with Commissioner Weddig's explanation of the calculations.

Commissioner Weddig agreed that somebody should have caught this problem long ago but does not believe the County should be stuck for this when the Board is already reducing fees with the 50% reduction of the subdivision fees. He believes that is all the Board can do at this point. Commissioner Weddig stated that there are real costs that the County incurs with regards to rezoning, master plan, etc. He stated that the County would like to recover at least the actual cost of work. In fact, he stated that the County's fees are set based on actual costs but they are set as general actual costs so in some cases the Board can see fit to reduce 50% because a particular property might not entail as much work as an average property.

Mr. Lottman asked if it is the Board's recommendation that he approach the title company. He stated that he wasn't sure which title company to approach and explained that his parents were the original owners of his property.

Commissioner Weddig recommended Mr. Lottman start with his title company and the title company can determine whether or not to involve the previous title company in the claim.

Commissioner Bockenfeld requested a continuation of this matter and he asked Mr. Lottman how much time he needed to work through the title company issue.

Mr. Lottman responded that he would like to start with 30 days and then asked the Board what would happen if things weren't resolved by then.

Commissioner Dyer responded by saying the matter could be continued again if necessary. He stated that if the applicant needs more time, the Board would give it to him.

Mr. Lottman stated that he believed 30 days would be enough time.

Commissioner Bockenfeld suggested the Board give Mr. Lottman 60 days to work with the title company and if the matter can be handled in 30 days Mr. Lottman can attempt to get the hearing rescheduled for sooner. Commissioner Bockenfeld stated that by scheduling this way there will not have to be two hearings.

Commissioner Dyer recognized Commissioner Bockenfeld's recommendation of a 60 day continuance and stated no motion was required. The matter was continued for 60 days.

Commissioner Weddig asked that the Board make a motion on the continuance so that it would be on record.

Commissioner Dyer stated that the Chair of the meeting can continue without a motion and a vote. He stated that if anyone wanted to speak against this action they were welcome to do so. Commissioner Dyer exercised Chair prerogative to continue the Request to Waive Planning and Engineering Fees for Lottman Rezone and Minor Subdivision for 60 days (the next public hearing following the 60 day continuance will be Tuesday, November 3, 2009).

Item B - Resolution Nos. 090664 and 090665 - Use by Special Review for St. Isidore Church – Third Amendment, Case No. U07-003

Bill Skinner stated that St. Isidore Church (Church) originally came through as Use-by-Special Review (USR) in 1998 to put a church on an A-1 zoned lot. He said the Board has discretion to review and approve these special cases for a handful of different uses, the Church being one. Mr. Skinner stated that the Church exists on a 20.6 acre lot and the Church would like to start educating the children of the congregation on the property. He reported that the Church has been running a school for the congregation's children for some time and now they would like to construct a dedicated structure. Mr. Skinner reported that staff has been on the site and has worked with the Church extensively on this project. He stated further that there were some details to wrap up as they went through the process and it took longer than normal. The end result conforms not only with the underlying USR it also conforms with the Arapahoe County Land Development Code. Mr. Skinner further stated that the people who put this project together are very proud of it and would like to address to the Board.

Assistant County Attorney Tom McNish stated that the Board has jurisdiction to proceed and proper notice has been provided.

Commissioner Dyer noted for the record that nobody signed up to speak on this Agenda item or for any other item on today's Agenda. He stated that jurisdiction goes without saying because nobody is here on behalf of the applicant. Commissioner Dyer asked for comments from the Board.

Mr. Skinner restated that the applicant was in fact present and has asked to speak to the Board.

David Addor, member of the Church and chief estimator of preconstruction services for the general contractors, stated that he has been working on this project for a little more than a year trying to help get all the requirements met. Mr. Addor added that it is a small school that houses less than 100 students.

Commissioner Weddig commented that the landscaping looks great but he wasn't sure about the aesthetics of the building.

Mr. Addor said that the building will eventually be converted to another type of facility. The Church's long term goals are to build a larger and more architecturally pleasing building, that is more in-line with the Church itself. He stated that the Church is currently trying to mitigate expenses and that the current building will suffice as a school for a few years.

Commissioner Weddig stated that there is very little detail provided on the exterior of the building in the drawings submitted. Commissioner Weddig stated that the Church is beautiful and does not know how much jurisdiction the Board has over the actual aesthetics of the building. He encouraged the Church to find some funds to improve the appearance of the school building to include shutters, paint, etc.

Mr. Addor agreed with Commissioner Weddig regarding the aesthetics of the building and reported that there have been discussions regarding funding for some of these provisions. Further discussion was had concerning possible ideas to improve the appearance.

Commissioner Noonan stated that she noticed Tri-County Health had several questions regarding the septic tank and absorption area. She confirmed with staff and the applicant that those items have been corrected or will be corrected.

Mr. Addor responded that the issues brought up by Tri County Health have been addressed and corrections have been made.

Mr. Skinner reported that the staff is aware that the building is an interim measure for the Church. He said the original plans showed an extremely conceptual take on a much larger building. He stated, for Commissioner Weddig's comfort, that the building is full masonry. Mr. Skinner remarked on the Tri-County Health concerns and stated there were staff concerns early on that were generated from the conceptual building, not a hard final design from utilities for that building. He further stated that with the scaling-down of the job size, issues have been addressed and Tri-County Health is pleased with the changes. Mr. Skinner said that staff has one condition they would like to add to the approval that states the applicant will successfully complete the drainage easement in Case No. V09-001 before the County finalizes the plans for this USR Amendment.

Commissioner Dyer asked Mr. Skinner if staff has prepared the motion in writing.

Mr. Skinner replied that this condition is a last-minute change and said that the motion is really brief. He would be willing to restate the motion for the Board.

Commissioner Dyer asked Mr. McNish to make a note of the motion so when it comes forth for approval the Board can incorporate the condition.

Mr. McNish explained that the condition would be called an Easement Vacation and that it is a vacation of an existing drainage easement.

Mr. Skinner reported that staff recommendation is for approval of case number U07-003.

Commissioner Dyer thanked Mr. Skinner and called for a motion.

Commissioner Dyer then opened the hearing for public comments.

There were no public comments.

The public hearing was closed.

The motion was made by Commissioner Bockenfeld in the case of U07-003-Use by Special Review for St. Isidore Church-Third Amendment, that the Board of County Commissioners has read the staff report dated August 17, 2009, received testimony at the public hearing, and finds itself in agreement with staff findings 1 through 3 and move to approve this case with the following conditions of approval:

- 1. Prior to signature of the final copy of these plans, all minor modifications shall be made as required by the Arapahoe County Public Works & Development Department.**
- 2. Prior to signature of the final copy of these plans, the applicant agrees to address the Division of Engineering's comments and concerns as identified within the engineering staff report.**
- 3. The County receives a vacation of the existing drainage easement as defined by Mr. Skinner in today's presentation.**

Duly seconded by Commissioner Noonan.

The motion passed 4-0, Director Beckman absent and excused.

COMMISSIONER COMMENTS

Commissioner Weddig asked Commissioner Bockenfeld about the need to clarify the vacation as a separate motion and resolution.

Mr. Skinner explained that Public Works is currently working with the County Attorneys on a procedure that permits the Board to make a motion that has two parts resulting and results in two resolutions. He stated that allowing a two-part motion will enable the engineering staff from having to appear twice before the Board to obtain approval. Mr. Skinner explained that the draft motion was read into the record by Commissioner Bockenfeld and there is a second part under the same motion. He reported that this two-part motion has been reviewed and approved by County legal staff and we are within our bounds to do this.

Commissioner Bockenfeld asked staff if the preference is that he makes two separate motions.

Mr. McNish stated that in this case Commissioner Bockenfeld only addressed the first part of the motion. He advised the Board to move forward with making a second motion with each motion being assigned its own resolution number.

The motion was made by Commissioner Bockenfeld in the case of U07-003-Use by Special Review for St. Isidore Church-Third Amendment, that the Board of County Commissioners approve and accept the Uniform Easement Deed and Revocable Storm Drainage License Agreements for Drainage Easement within Linnerbur#1 St. Isidore Church and authorize David M. Schmit, Director, Department of Public Works and Development to execute this specific easement on behalf of the Board.

Duly seconded by Commissioner Weddig.

The motion passed 4-0, Director Beckman absent and excused.

There being no other business before the Board, the Chair adjourned the hearing at 10:02 a.m.

ARAPAHOE COUNTY BOARD OF COUNTY COMMISSIONERS

**NANCY A. DOTY, CLERK TO THE BOARD
BY TERRI L. MAULIK, ASSISTANT CLERK TO THE BOARD**