



**MINUTES OF THE ARAPAHOE COUNTY
BOARD OF COUNTY COMMISSIONERS
TUESDAY, NOVEMBER 23, 2010**

At a public hearing of the Board of County Commissioners for Arapahoe County, State of Colorado, held at 5334 South Prince Street, Littleton, Colorado 80166 there were:

Rod Bockenfeld, Chair	Present
Pat Noonan, Chair Pro-Tem	Present
Frank Weddig	Present
Susan Beckman	Present
Jim Dyer	Present
Kathryn Schroeder, County Attorney	Present
John E. Bush, Jr., Deputy County Attorney	Present
Nancy A. Doty, Clerk to the Board	Absent and 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

ADOPTION OF THE AGENDA

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

The motion passed 5-0.

ADOPTION OF THE MINUTES

There were no minutes to adopt on this date.

CEREMONIES

There were no ceremonies on this date.

CITIZEN COMMENTS

There were no citizen comments on this date.

CONSENT AGENDA

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

The motion passed 5-0.

GENERAL BUSINESS ITEMS

Item A – Resolution No. 100947 – Request for Waiver of Fees Associated with Board of Adjustment Applications

Tom McNish, Assistant County Attorney, joined the dais as legal counsel on the matter. He announced that the agenda item was considered an administrative matter and there were no notice or publication requirements.

Tammy King, Zoning Administrator, reported applicants Roger and Stephanie Olson were requesting a waiver of the Board of Adjustment (BOA) fees associated with their proposed Large Child Care Home, located at 5388 S. Rome Circle in the Trailridge 3rd Filing subdivision. She said they are requesting a total fee waiver of \$920.00, \$450.00 of which is the Board of Adjustment fee for Special Use, plus \$11.00 for the posting sign and \$450.00 of which is the Board of Adjustment fee for a Variance plus \$9.00 for the posting sign. She stated the applicants had already been established as a licensed, in-home day care provider and were hoping to expand. However, the start-up costs and loss of income during the first half of 2010, had posed a financial hardship and they are asking the BOCC to waive the fees.

Commissioner Beckman asked for clarification regarding the variance. She asked staff if the variance had come before the BOCC because of the fence and request to have additional children.

Ms. King responded in the affirmative. She stated both would be heard at the same hearing.

Commissioner Weddig stated the BOCC does not normally waive these fees and asked staff if the BOCC had any history of waiving these fees in the past.

Ms. King said the BOCC waived these fees for the Historical Society and Strasburg.

Commissioner Weddig commented on work required of staff. He further stated while the fence height requirements are out of the applicant's control, the decision to expand the daycare is under their control. He feels the BOCC could consider giving the applicant some relief on the fees associated to the fence height requirements.

Commissioner Dyer said since the day care was within Commissioner Bockenfeld's District, he would follow his lead on this issue.

Commissioner Bockenfeld acknowledged Commissioner Weddig's suggestion to waive only those fees directly associated to the cost of the fence. He asked staff if they had a recommendation for an amount.

Ms. King suggested the BOCC waive one of the fees, in the amount of \$450.00.

The motion was made by Commissioner Weddig and duly seconded by Commissioner Dyer to waive \$450.00 of the Board of Adjustment Application fees associated with the proposed Large Child Care Home as requested by Roger and Stephanie Olson, applicants.

The motion passed 5-0.

Item B – Resolution No. 100948 – Amendment to Fairgrounds Location and Extent (L&E) – Request for Waiver of Fees Associated with Location and Extent application.

Mr. McNish joined the dais as legal counsel on this matter.

Mr. Hovland, Planning Manager, reported the Arapahoe County (AC) Sheriff's Office and the Arapahoe County Open Space Division are requesting a waiver for all of the Planning and Engineering development fees for a Location and Extent Application associated with their proposed Amendment to the Location and Extent for the Arapahoe County Fairgrounds located near Quincy Road and east of E-470. He said the fees involved for the L&E would be approximately \$12,500 to \$25,000 for Planning fees and an additional \$10,250 for Engineering fees. He said staff does not support the waiver request due to the work and time the Public Works and Development staff and Planning Commission will dedicate to the project. Further, Mr. Hovland stated there will be public hearing costs to consider, as well.

Commissioner Weddig asked who was representing the Sheriff's Office and/or the Open Space Division.

Scott Wiggs, Engineer III, acknowledged he was there on behalf of the Sheriff's Office and the Open Space Division.

Commissioner Weddig stated, in the past, the BOCC asked Open Space to pay for the full costs. He asked if there was something special about this project.

Mr. Wiggs said when staff first ran through the Location and Extent process on the fairgrounds, the fees were waived. He reported, at that time, Open Space was just getting started as the tax had just gone into effect. He was directed by Shannon Carter, Special Assistant to the BOCC and the Sheriff, to request the waiver of fees on the basis that this is a County project.

Commissioner Weddig asked staff if they were aware of any other County projects in which fees had been waived in the past.

Mr. Wiggs said the Eastern Service Center, which was a Public Works project, had fees waived. He reported, at that time, Open Space was still part of Public Works and Development, so it was Public Works doing work for Public Works.

Commissioner Beckman said other government entities have asked for a waiver of fees, simply because they were government entities. She thought the BOCC had made it pretty clear that the Open Space Program had to pay their own fees for work because those dollars came from different funds. She stated the BOCC were no longer going to pull money from the General Fund (GF) to subsidize the Open Space Fund who has sales tax revenue. Further, Commissioner Beckman stated the BOCC needs to be consistent.

Commissioner Bockenfeld said he concurs with the general comments of Commissioners Weddig and Beckman. He said the other times the BOCC waived fees was in support of all the citizens of AC. He said this particular request, from Open Space and the Sheriff's Office, is supported by the LEA fund. He does not believe it would be fair or equitable for all the other citizens of the County to support this project when there are funds available. He stated reluctance to waive the fees at this time.

Mr. Hovland said the BOCC adopted the 2002 fee schedule so Public Works and Development could be self-supportive. He said they're nowhere close to being self-supportive, despite the fee schedule. Collection of these fees will enable Public Works and Development to appear more balanced on the cash side of business. Mr. Hovland agreed with Commissioners, stating this project is supported by taxes and they should be charged the same fees that we would charge any large land owner.

Commissioner Beckman asked if this item required a public hearing.

Mr. McNish said the item is considered general business and is not a public hearing.

The motion was made by Commissioner Weddig and duly seconded by Commissioner Beckman to deny the Arapahoe County Sheriff's Office and Arapahoe County Open Space Division's request for waiver of all Planning and Engineering development fees for a Location and Extent Application associated with their proposed Amendment to the Location and Extent for the Arapahoe County Fairgrounds.

The motion passed 5-0.

Item C – Resolution No. 100949 – Authorization to sign a Purchase and Sale Agreement, execute an Agricultural Lease Agreement, and authorize Shannon Carter, Special Assistant to the BOCC, to sign all documents related to the said Agreements and any documents necessary for the closing of the transactions of the Bradbury Bijou Creek Ranch property purchase.

Kathryn Schroeder, County Attorney, joined the dais as legal counsel in the matter. She announced that the agenda item was considered general business and there were no notice or publication requirements.

Dan Einarsen, Natural Resources Coordinator, reported the request, today, is three-part. He said staff is seeking authorization from the BOCC to: 1) execute a Purchase and Lease Agreement between Arapahoe County and Thomas H. & Margaret E. Bradbury and Last Partners, LLC for \$2,690,000 in Arapahoe County Open Space Funds for the acquisition of approximately 2,854 acres of land known as the Bradbury Bijou Creek Ranch near Byers for open space purposes; 2) execute an Agricultural Lease Agreement between Arapahoe County and Bradbury Land & Cattle Company, subject to due diligence and approval as to form of the Agreements by the County Attorney's Office; and 3) authorize Shannon Carter, Special Assistant to the BOCC, to execute all documentation related to the said Agreements, and any documents necessary for the closing of the transactions on the property. Mr. Einarsen provided the history of the purchase and stated the property was bought under appraised value. He stated the location of the land is strategic in the Open Space Master Plan. He referred to a map of area. He reported the purchase is a signature-type acquisition for the County. He stated the Open Space and Trails Advisory Board (OSTAB) considered the project in 2009 and again in 2010. Mr. Einarsen said OSTAB and staff recommend the County's participation in this open space land acquisition, as it will complement the County's Open Space Master Plan and further the purposes of the County's Open Space Resolution No. 030381. He reminded the BOCC of the October 26, 2010 Study Session where the acquisition was reviewed. He said the acquisition would close by the end of December if the BOCC is in agreement.

Commissioner Dyer said he had the opportunity to drive the property and look at it in some detail. He said it really is a prize and is a great property to have in our open space portfolio. He commended staff on a great job. He pointed out, with the current price of wheat on 550 acres; the County will gross \$136,000 this year. He said the BOCC should welcome the fact there will be cash from the property to help offset maintenance costs. Commissioner Dyer stated this acquisition is a terrific purchase and will vote for it.

Commissioner Weddig asked about the appraisal on the property. He specifically asked if Arapahoe County's Open Space Program was mentioned as supportive of the value placed on this property. He said the County has purchased several parcels in Eastern Arapahoe County. He expressed concern that the County may be setting the market in this area. He asked Mr. Einarsen if he received any comments.

Mr. Einarsen said staff hired an independent Master Farm Ranch Appraiser to look at the fair market value of the property. He asked the appraiser to consider the Conservation Easement that is already on the land. Further, staff chose an appraiser who has performed many different types of appraisals, including water, minerals, conservation easements, and raw land and asked them to provide an independent appraisal of the property. Mr. Einarsen said the RFP was distributed to seven (7) different appraisers and staff selected the appraiser who gave the best value for the work. He said the selection was shared with OSTAB and they feel it was a fair, independent look at the land.

Commissioner Weddig spoke about comparable properties purchased in the past and asked if there were any examples to compare purchase prices.

Mr. Einarsen said there were a number of comparables performed. However, there was not a lot of land nearby to compare so the appraiser had to go back a few years. He has heard comments

that the County may be trying to set prices. However, he said staff is purposefully trying not to do that. He said, in every case, Arapahoe County has purchased land at fair market value or under appraised value. He said staff has tried to be good stewards of the funds.

Commissioner Dyer added that we were able to obtain all of the mineral rights on this property, which is an added value. He said the acquisition of the mineral rights did not affect the price of the land. He said the owner wanted to retain 50% of the mineral rights; however, the County asked for all of the mineral rights.

Mr. Einarsen confirmed Commissioner Dyer's understanding of the agreement. He said the County has all water and mineral rights available. He stated Union Pacific has some reserved rights, which is out of our control.

Commissioner Dyer said, while we do not want to be a market-maker in the rural areas of Colorado, there is simply an abundance of riparian area. He said this state is relatively dry. It's almost a desert in places. He said to be able to pick up riparian areas, which in many cases are not suitable to build on or develop because they're in flood plains, for the purpose of Open Space is extremely valuable.

The motion was made by Commissioner Bockenfeld and duly seconded by Commissioner Dyer to authorize the Chair of the Board of County Commissioners to sign a Purchase and Sale Agreement between Arapahoe County and Thomas H. & Margaret E. Bradbury and Last Partners, LLC for \$2,690,00 in Arapahoe County Open Space Funds, relating to the purchase of approximately 2,854 acres of land known as the Bradbury Bijou Creek Ranch near Byers, Colorado, for open space purposes; to execute an Agricultural Lease Agreement between Arapahoe County and Bradbury Land & Cattle Company, subject to due diligence and approval as to the form of the Agreements by the County Attorney's Office; and to authorize Shannon Carter, Special Assistant to the Board of County Commissioners, to sign all documentation related to the said Agreements, and any documents necessary for the closing of the transactions on the property.

The motion passed 5-0.

Commissioner Beckman said she always feels nervous when purchasing parcels of land. She said the Open Space Program was created to buy conservation easements; however, she understands the issue of public access. She said it's very important, as we move forward, to have a philosophical discussion with the Open Space Division staff. She feels it would be good to review the Master Plan and our philosophy. She said we have acquired a considerable amount of land. She thinks it's time to take a step back and consider the future.

Mr. Einarsen said he agreed with Commissioner Beckman. He stated the goal is not to buy up all the land out there, but to be very strategic. He would appreciate as much direction from the BOCC as possible, as Arapahoe County moves into the future. In terms of this acquisition, Mr. Einarsen stated he grew up farming/ranching on land that is now open space owned by Larimer County and the City of Ft. Collins. He believes this property is a jewel. He traversed the property and found fossilized wood, arrowheads, flora, fauna, native habitat, song birds such as the lark bunting, and a big buck. He said as we develop a long term plan for public access and as

people visit the site, they will find a premier site. He feels this acquisition will become something all of us can be proud of.

Commissioner Beckman thanked Mr. Einarsen for speaking about the property. She asked about the trail methodology. She feels there needs to be more vision regarding the trail system.

Mr. Einarsen said there is a Master Plan for the original ranch, which was Open Space's first fee simple purchase back in 2007. He said it is nearly completed and staff plans on taking the plan to the Town of Deer Trail for feedback before opening it to the public. He said there is a trail plan, including trail layout, in place and staff will get feedback from the community. Mr. Einarsen said staff is in the process of similar steps with Kiowa Creek North. He said Arapahoe County recently purchased the Kiowa Creek South property and staff will add this property to the plan. He stated the Bradbury purchase will follow soon after. Staff will welcome the BOCC's input on the trail plan.

Commissioner Weddig asked about hunting on County open space properties. He asked how hunting will be controlled and how people will be notified that the land is an open space property.

Mr. Einarsen said none of our properties are open for hunting and are posted that way. He said if there is any desire to work with the Division of Wildlife, to allow public access for hunting, it would be at the discretion of the BOCC to develop policy. He gave sincere thanks to Commissioner Noonan and Commissioner Dyer for their work over the past few years. He further thanked the BOCC for their support of the Open Space Division. He said the BOCC asked the hard questions, held staff's feet to the fire, and provided leadership.

Item D – Resolution No. 100950 – Consideration of a continuation of the temporary suspension of the Regional Transportation Improvement Fee (RTIF)

Mr. McNish joined the dais as legal counsel in the matter. He announced that the agenda item was considered an administrative matter and there were no notice or publication requirements.

Chuck Haskins, Manager of Engineering Services Division, provided a history of the Temporary Suspension to the RTIF for single family residential homes, as detailed in the Board Summary Report. He stated, in May, 2009, the BOCC approved a temporary suspension of the RTIF based, in part, on the unprecedented economic conditions in the home building community. He reported the RTIF suspension has been in place for 18 months now and it is estimated \$300,000 in revenue has been lost. He said staff is recommending re-establishing the fee at pre-temporary suspension rates. Mr. Haskins reported building permit activity is picking up a bit. He said, as of October 31, 2010 there were 123 single-family building permits to date.

Commissioner Weddig commented on the list of transportation improvement projects. He asked staff what the total cost of those improvements is.

Mr. Haskins said, in 2004, a consultant updated the list and there was approximately \$31 million in needed transportation improvements. He stated some of the projects have been completed since the creation of the 2004 list. Mr. Haskins said the RTIF fee would pay for half of these

expenses and the County pledged to match every dollar out of their transportation funds to pay the rest.

Commissioner Weddig asked how staff plans to make needed transportation improvements if the moratorium is continued.

Mr. Haskins said that is the challenge. He said the fee was originally designed to bear the market. In 2004, staff provided four options for fee increases, which the BOCC approved. He said it will be difficult to meet all of the project needs. Staff will have to either cancel projects or the County will have to pick up the costs of the projects. He said options have yet to be determined.

Commissioner Weddig said the list of improvements is growth-related. He asked what other jurisdictions are doing regarding the RTIF.

Mr. Haskins said he couldn't answer the question with any accuracy. He knows jurisdictions are lowering fees or waiving fees during these economic times; however, he doesn't have any statistical data regarding lowering or waiving of impact fees. He said that would require additional research.

Commissioner Weddig directed the BOCC to the Board Summary Report. He noted the year-to-date permits for single family is up to 123. He said it appears we are in an up trend currently.

Commissioner Dyer said the development of single family properties is on life support and is still that way. He said the underlying reason the BOCC suspended the fees, knowing there was a trade-off, was to provide incentive to encourage building and sales. He doesn't see 123 permits being much of an improvement and those numbers are still down from 2007 and only slightly elevated from 2008 numbers. He said this is not a black and white issue. He is going to ask for a no vote on this request because we need to encourage home builders to develop in the County.

Commissioner Dyer motioned to continue the temporary suspension of the Regional Transportation Improvement Fee (RTIF) to December, 2011.

Commissioner Bockenfeld said he would support Commissioner Dyer's motion if he would extend it for 6 months.

Commissioner Dyer amended his motion to continue the temporary suspension of the Regional Transportation Improvement Fee (RTIF) for an additional six (6) months.

The motion was made by Commissioner Dyer and duly seconded by Commissioner Bockenfeld to continue the temporary suspension of the Regional Transportation Improvement Fee (RTIF) for an additional six (6) months.

Commissioner Bockenfeld said he concurred with Commissioner Dyer. He reported that prior to the recession Arapahoe County had 199 building permits. While 123 is a marked improvement, we're still struggling. Further, these fees were incorporated before the County had Funding Advancement for Surface Transportation and Economic Recovery (FASTER) revenues. He said

the voters of Colorado just confirmed keeping FASTER revenues in place. He said the FASTER revenues have been a substantial. Commissioner Bockenfeld reminded everyone that this affects Unincorporated Arapahoe County. He said Arapahoe County has a Road and Bridge mill levy and Unincorporated Arapahoe County gets half of that. He said the future revenues generated from this growth will support another extension for at least six months to give the economic situation a bit of a boost. He stated his support of another extension.

Commissioner Beckman said she will support Commissioner Dyer's motion. However, she feels it's a slippery slope to talk about FASTER dollars. It is her understanding that FASTER dollars are used for maintenance. She said one of the reasons the RTIF was created was to stop the General Fund (GF) from subsidizing capital projects that would result in growth in the Eastern plains. These projects needed to pay for themselves instead of having the incorporated areas of the County subsidizing it. She feels the fees are appropriate. She wants it clarified that once the market starts booming again that the County will consider paying half of the capital projects and that the County's GF will pay for all of the growth out east. She said there are some developers who are hanging on by a thread. This is the reason she supports a continuation of the suspension of the RTIF for an additional six (6) months. She does not support the premise that FASTER backs this or subsidizing the transportation projects on the list.

Commissioner Weddig said the Comprehensive Plan and policy of the County is *growth pays its own way*. He said one area that doesn't pay its own way is residential. He said commercial growth results from residential growth and feels we should be giving a break to the commercial enterprises and encouraging them to develop. He stated disappointment because there were no representatives from the Home Builders Association present. He has seen no evidence that indicates buyers of the 123 homes permitted in 2010 received any savings. Commissioner Weddig reported a competitive market which sets the prices. He stated there are a lot of other factors, besides the RTIF, that determine where people buy homes. He would like to amend the motion to extend the temporary suspension of the RTIF until January 1, 2011 and have it expire at that time. He feels another couple months of this suspension is enough and should give staff and builders time to prepare. Commissioner Weddig said the County has already lost \$600,000 towards \$21 million worth of projects.

Commissioner Dyer did not accept the amendment to his motion. He said every time a house is built, the County gets tax dollars. While there's a trade-off, he feels the gain is worth the gamble for another six months.

The motion was made by Commissioner Weddig and duly seconded by Commissioner Noonan to continue the temporary suspension of the Regional Transportation Improvement Fee (RTIF) until January 1, 2011.

Commissioner Bockenfeld explained that Robert Rules of Order states the BOCC should vote on the substitute motion first and called for a vote on the motion made by Commissioner Weddig.

The motion failed 2-3; Commissioner Beckman, Nay; Commissioner Bockenfeld, Nay; and Commissioner Dyer, Nay.

Commissioner Bockenfeld announced that the BOCC would now vote on Commissioner Dyer's original motion.

Commissioner Noonan asked if the BOCC would consider allowing the suspension of the RTIF to expire after six (6) months.

Commissioner Bockenfeld said it would be up to the BOCC, at that time, to determine whether to extend or expire the RTIF suspension.

Commissioner Noonan asked Commissioner Dyer if he would amend his original motion to have the continuation of the temporary suspension of the RTIF expire at the end of six (6) months.

Commissioner Dyer determined not to amend his original motion.

The motion was made by Commissioner Noonan and duly seconded by Commissioner Weddig to continue the temporary suspension of the Regional Transportation Improvement Fee (RTIF) until May 23, 2010, at which time the suspension would automatically expire.

Mr. McNish stated the new BOCC will have the ability to extend the suspension or reinstate the fees, as desired. He said it is moot to discuss what a future board may or may not do.

Commissioner Noonan withdrew her motion.

Commissioner Bockenfeld recalled Commissioner Dyer's original motion, for a vote of the BOCC.

The motion was made by Commissioner Dyer and duly seconded by Commissioner Bockenfeld to continue the temporary suspension of the Regional Transportation Improvement Fee (RTIF) for an additional six (6) months.

The motion passed 3-2; Commissioner Noonan, Nay; Commissioner Weddig, Nay.

Commissioner Beckman said this conversation requires an extensive study session with the new BOCC. She said the BOCC needs to figure out where the money to fund these projects will come from.

Commissioner Bockenfeld said when this topic comes before the BOCC again in six (6) months, he would like staff to prepare an in-depth analysis of the projects since 2004 because Commissioner Beckman was the only official still on the BOCC. He wants to know what impact FASTER has on the projects and a complete review to determine if the growth is paying its own way. He directed staff to provide the science behind it.

Commissioner Beckman said in 2004 the homebuilders supported the RTIF because the County matched the dollars.

Commissioner Bockenfeld said, historically, fees were paid up front. Currently, builders are paying over time. He stated the future BOCC needs to decide these things.

Mr. Haskins reported the FASTER money has been used for maintenance but that was the County's decision. He said the funds could be used for other purposes. He stated the RTIF fees were last adjusted in 2007 and agrees it would be a good idea to revisit this issue with the new BOCC.

COMMISSIONER COMMENTS

There were no commissioner comments on this date.

There being no other business before the Board, the Chair adjourned the public hearing at 10:35 a.m.

ARAPAHOE COUNTY BOARD OF COUNTY COMMISSIONERS

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