



**MINUTES OF THE ARAPAHOE COUNTY
BOARD OF COUNTY COMMISSIONERS
TUESDAY, DECEMBER 15, 2009**

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:

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

Kathryn Schroeder reported that there were numerous changes to today's agenda. She recommended that Item 7 of the Consent Agenda be amended to reflect a correction of address from 5702 S. Yakima Way, Aurora, CO 80015 to 5602 S. Yakima Way, Aurora, CO 80015.

Mr. Bush announced a change to Consent Agenda Item 8. He explained that the grant amount stated on the agenda should be \$38,308, not \$9,570. He said the actual grant amount is reflected correctly in the back-up information.

Ms. Schroeder requested an addition of Item 16 to the Consent Agenda regarding the Court Security Grant for the Sheriff's Office. She also requested an addition of Item 17 to the Consent Agenda which is an authorization to sign a settlement agreement and release in the Lamoreaux case. She stated further that there is an addition to the agenda for consideration of a temporary moratorium on use of medical marijuana land uses until January 5, 2010. She asked the Board if they would prefer to add consideration of this item under the Consent Agenda or under General Business Items.

Commissioner Weddig asked that the addition of the consideration of the temporary moratorium on use of medical marijuana land uses be put on the agenda as General Business Item G for further discussion.

Mr. Bush provided clarification regarding Consent Agenda Item 16, the Court Security Grant. He said the total amount of the grant is \$66,500 for security equipment and training. He said there is no additional staff required nor are matching funds required. He said the training amount of \$6,500 will pay for ten (10) deputies to attend training for courtroom security purposes.

Commissioner Beckman confirmed that the grant had been discussed during a study session. She stated that once the grant runs out there is no Arapahoe County commitment and no matching of funds.

Mr. Bush confirmed Commissioner Beckman's understanding of the Court Security Grant.

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

The motion passed 5-0.

ADOPTION OF THE MINUTES

The motion was made by Commissioner Bockenfeld and duly seconded by Commissioner Noonan to adopt the minutes of the October 13, 2009 Public hearing as presented.

The motion passed 5-0.

CEREMONIES

Commissioner Beckman announced that there would be a ceremony today. She said there is a request to adopt a retirement resolution honoring Vicki S. Hicks for 25 years of service in the Arapahoe County Clerk and Recorder's Office. Ms. Hicks and Nancy Doty were called to the podium.

Ms. Doty, Clerk and Recorder, read the full text of the resolution as submitted in the back-up material. She congratulated Ms. Hicks on 25 years with the County Clerk and Recorder's Office. She wished Ms. Hicks the best in going forward.

Donna Larson presented a flower arrangement to Ms. Hicks.

The motion was made by Commissioner Weddig and duly seconded by Commissioner Dyer to adopt Resolution No. 090918 to officially recognize Vicki S. Hicks for 25 years of dedicated service with Arapahoe County.

The motion passed 5-0.

Commissioner Beckman thanked Ms. Hicks for all her hard work and dedication. She said a copy of the resolution will be framed and delivered to Ms. Hicks soon.

Ms. Hicks thanked the Board for their support.

CITIZEN COMMENTS

There were no citizen comments on this date.

CONSENT AGENDA

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

The motion passed 5-0.

Commissioner Beckman made note of Item 13 on the Consent Agenda. She said the Board adopted a resolution to amend the Open Space resolution creating a sales tax exemption for parent/teacher organizations. She said the Board received input from the community after legislation was passed at the state level. She said this is a very positive move for those in the community who are selling cupcakes to raise money for schools. She stated the sales tax exemption should help reduce bookkeeping.

GENERAL BUSINESS AGENDA

Item A – Resolution Nos. 090938 through 090954 - Adoption of the 2010 Budgets and Certification of Mill Levies

Jack Bush said the budgets were submitted, as required by statute, on October 13, 2009 when the Board adopted a resolution acknowledging receipt of them. He said the Board also established a public hearing date of October 27, 2009 for all four (4) budgets. He stated further that a public hearing was held to allow for citizen comments and that hearing was continued to today. Mr. Bush said the budgets have been available for public inspection, as required. He stated there were additional study sessions regarding the budgets. He said the Board has jurisdiction to consider all four of the budgets before them today. Mr. Bush said the Arapahoe County Budget, the Arapahoe Law Enforcement Authority Budget, the Arapahoe County Recreation District Budget, and the Arapahoe County Water and Wastewater Public Improvement District Budget will be considered today in stated order. Mr. Bush said the Arapahoe County Budget includes a total of seven (7) resolutions. He said the first resolution would be to adopt the 2010 budget. He stated the next five (5) resolutions would be to establish mill levies for the General Fund, Capital Fund, Road and Bridge Fund, Social Services Fund, and the Developmental Disabilities Fund. The seventh (7th) resolution is an appropriation resolution for all funds, for expenditure by departments.

Mr. Weaver summarized the 2010 budget as requested by the Board. He said the budget before the Board for all funds, county-wide, is \$324.4 million. He said the budget shows a 7.5% decrease from the 2009 budget. He explained that each fund varies in decrease or increase based

on continuing capital projects and other items. He reported total revenues for the 2010 budget at \$319.3 million and said this number is flat from 2009. Mr. Weaver said the General Fund is \$157.6 million and the operating expenses total \$153.8 million. This is a 0.6% increase over 2009. He said that staffing for 2010, county-wide, will be 1, 970.75 Full-Time Equivalents. He said the assessed value for 2010 is \$7.882 billion and that is up 1.9% from 2009. He stated the total county mill levy, not including the Developmental Disability Fund, will be 14.672 for the fiscal year 2010. That is up from 14.609 in 2009. Mr. Weaver reported the capital budget will be \$6.3 million and includes a number of projects. The Arapahoe Law Enforcement Authority fund budget will be \$6.2 million. He stated the budget for the Arapahoe County Water and Wastewater Public Improvement District will be \$6.1 million. The budget for the Arapahoe County Recreation District will be \$1.3 million.

Commissioner Bockenfeld asked if the General Fund Operating Budget was structurally balanced.

Mr. Weaver said the General Fund Operating Budget is structurally balanced with an operating budget surplus of \$230,000. He said the revenues are \$154.1 million and the operating expenses are \$153.8 million. He said there is about \$4 million in one-time uses including a transfer for capital projects, monies for the 2010 General Election, and employee compensation.

Commissioner Beckman opened the public hearing.

There were no public comments.

The public hearing was closed.

Mr. Weaver said that all the funds are in compliance with Colorado legal requirements for revenues in and meet the constitutional limitations on revenues.

Mr. Bush said the first action before the Board, at this time, would be a motion for the adoption of a resolution to approve the 2010 Arapahoe County Budget.

The motion was made by Commissioner Bockenfeld and duly seconded by Commissioner Weddig to approve General Business Agenda Item A – Resolution No. 090938 to adopt the 2010 Arapahoe County Budget.

The motion passed 3-2, Commissioner Dyer, No; Commissioner Beckman, No.

Mr. Bush said the next Board action would be to motion to approve the resolutions establishing five (5) mill levies associated with the County's Budget.

The motion was made by Commissioner Weddig and duly seconded by Commissioner Dyer to approve General Business Agenda Item A – Resolution Nos. 090939 through 090943 to establish the mill levies for the General Fund, Capital Fund, Road and Bridge Fund, Social Services Fund, and Developmental Disabilities Fund.

The motion passed 5-0.

Mr. Bush said that the final consideration, regarding the 2010 Arapahoe County Budget, would be for the Board to adopt the appropriation resolution.

The motion was made by Commissioner Bockenfeld and duly seconded by Commissioner Weddig to approve General Business Agenda Item A – Resolution No. 090944 to adopt the appropriation resolution for the 2010 Arapahoe County Budget.

The motion passed 5-0.

Commissioner Weddig commended the Finance Department, Mr. Weaver, and staff for a great job. He said it's good to see another balanced budget. He further stated that it was a trying year but it could be a lot worse. He said that Arapahoe County is lucky to be in the financial position we are in.

Mr. Bush said the next set of resolutions, for Board consideration, involve the Arapahoe Law Enforcement Authority Budget. He reported that the Board of County Commissioners is the governing Board for the Arapahoe Law Enforcement Authority. He stated there is a voter-approved mill levy from the mid 1990's. He said the budget is balanced and Mr. Weaver could make a formal presentation if needed.

The Board determined not to have Mr. Weaver make a presentation at this time.

Mr. Bush explained that there will be three motions. He said the first motion would be to adopt the 2010 Arapahoe Law Enforcement Authority Budget. He said the second motion would be to certify the mill levy. Mr. Bush said the final motion would be to authorize appropriation of funds. He stated that the three (3) resolutions could be approved individually or as a group.

The motion was made by Commissioner Weddig and duly seconded by Commissioner Noonan to approve General Business Agenda Item A – Resolution Nos. 090945 through 090947 to adopt the 2010 Arapahoe Law Enforcement Authority Budget, certify a mill levy, and appropriate funds.

The motion passed 5-0.

Mr. Bush said the next Board consideration is approval of the 2010 Arapahoe County Recreation District Budget. He stated there are three (3) items which require approval and those include the adoption of the budget, certification of the mill levy, and the appropriation of funds. He stated the three (3) resolutions could be approved individually or as a group.

The motion was made by Commissioner Dyer and duly seconded by Commissioner Weddig to approve General Business Agenda Item A – Resolution Nos. 090948 through 090950 to adopt the 2010 Arapahoe County Recreation District Budget, certify a mill levy, and appropriate funds.

The motion passed 5-0.

Mr. Bush stated the Board will be acting as the *ex officio* Board of Directors of the Arapahoe County Water and Wastewater Public Improvement District (PID) with regard to its 2010

budget. He said there are three (3) resolutions to consider. The resolutions will formally adopt the budget, certify a mill levy, and appropriate funds. He said the mill levy is a debt service mill levy for a variety of debt issues. He explained that the mill levy was for debt obligations previously issued and voter-approved in 2001.

The motion was made by Commissioner Dyer and duly seconded by Commissioner Bockenfeld to approve General Business Agenda Item A – Resolution Nos. 090951 through 090953 to adopt the 2010 Arapahoe County Water and Wastewater Public Improvement District Budget, certify a mill levy, and appropriate funds.

The motion passed 5-0.

Mr. Bush explained that the last item, for consideration under this section of the agenda, is a resolution authorizing the Chair to sign the certification of tax levy forms for submission to the State. He said only one resolution is needed.

The motion was made by Commissioner Dyer and duly seconded by Commissioner Weddig to approve General Business Agenda Item A – Resolution No. 090954 authorizing the Chair of the Board of County Commissioners to sign the certification of tax levy forms for submission to the State of Colorado.

The motion passed 5-0.

Commissioner Beckman said that Arapahoe County has the best staff in the State of Colorado. She feels staff is really involved and are amazing people. She stated it has been a tough year and everyone is holding out to see what the future holds. Commissioner Beckman said the County Commissioners understand this budget. She stated further that the Commissioners know what the conditions are and know where we're heading. She gave special thanks to Todd, Janet, Steve, Sara, Chad, and Lisa. The department has suffered a real loss with the death of Sue Wieland's husband. She thanked Finance for their commitment and service to the county.

Commissioner Dyer said Arapahoe County continues to distinguish itself as the best-run county in the state, possibly in the nation. He said this is *in thanks* to staff. He said he has voted against a number of state budgets because of certain things he didn't agree with conscientiously. He stated his vote against approval of the budget does not reflect adversely either on the work performed or of the work product. He said Arapahoe County continues to sit on the hill as compared to the state. He thinks the state should come and take notes from the county. He complimented the Finance staff, and all who worked on the budget, because year-in and year-out they do an excellent job.

Commissioner Beckman said that comments, regarding the 2010 budget, have been reflected in the numerous study sessions held.

Item B – Resolution Nos. 090955 through 090957 - Certification of Mill Levies for Municipalities, School Districts, and Special Districts for 2010.

Mr. Bush explained that all cities, towns, school districts, and special districts are required, pursuant to statute, to certify their mill levies to the Board of County Commissioners (BOCC). The BOCC must then adopt resolutions certifying those mill levies for collection by the County

Treasurer. He said the County Treasurer is the collector for all taxing entities in Arapahoe County. He explained that there are currently three (3) resolutions before the Board. He said the first resolution relates to the certification of the mill levies for all of the cities and towns within Arapahoe County for 2010 collections. He said the second resolution is a resolution for the certification of the mill levies for all of the school districts within Arapahoe County and for collection by the County Treasurer in 2010. Mr. Bush said the third resolution is for collection of all taxes certified by all special districts within the county for collection in 2010. He said the Board may consider the three (3) resolutions separately or as a group. He stated this is more of an administrative act because the county relies on each taxing entity to properly follow budget laws, including TABOR.

Commissioner Beckman asked if all of the political subdivisions have provided the information the county needs.

Mr. Weaver said, as of this morning, they have received 239 certifications of mill levies out of a potential 330. He said the legal deadline to certify is December 15, 2009.

Commissioner Beckman asked what would happen if an entity fails to submit their mill levy certification.

Mr. Weaver explained that if a political subdivision fails to turn in its mill levy certification, the county certifies the same levy as the prior fiscal year.

Commissioner Beckman opened the Public hearing.

There were no citizen comments.

The Public hearing was closed.

The motion was made by Commissioner Dyer and duly seconded by Commissioner Weddig to approve General Business Agenda Item B – Resolution Nos. 090955 through 090957 to adopt resolutions certifying the tax levy for cities and towns, school districts, and special districts pursuant to Section 39-1-111, C.R.S.

The motion passed 5-0.

Item C – Resolution No. 090958 - Case No. W09-007, Section 1-4800 (Areas to be Landscaped) providing clarification regarding drainage easements and facilities and their contribution to required open space.

Tom McNish established the Board's jurisdiction to hear this case and reported that proper notification was posted and published.

Ron Hovland said that on November 17, 2009 the Planning Commission held a spirited discussion regarding the landscape area that could become usable as open space. He said there was one member of the audience who spoke against it. Staff believed they had taken all necessary steps to get approval. However, the Planning Commission voted 4-1 against approval. He reported that after looking at all the remarks that were made, staff believes the best course of action would be to remand this to the Planning Commission. Staff is committed to do greater in-

depth research, work diligently with the Engineering Service Division and Flood Plan Administrator, and come up with something that will be a better product. Mr. Hovland said once staff gets it right they will take it back to the Planning Commission, hold another public hearing, and bring that matter back to the Board. Staff believes changes will be acceptable and that the Board will actually approve them. He said that the original Planning Commission staff report, from November 17, 2009, has been included in the Board packet for review.

Commissioner Beckman opened the Public hearing.

There were no public comments.

The Public hearing was closed.

Commissioner Weddig asked what changes needed to be made as compared to what was previously submitted.

Mr. Hovland said there was some confusion regarding commercial developments. He said the Planning Commission wanted to provide more protection and more real open space for residential developments in the county.

Commissioner Weddig said it appears staff was heading in the right direction. He wished them luck and said he looks forward to seeing the additional work.

The motion was made by Commissioner Weddig and duly seconded by Commissioner Dyer to reschedule the public hearing to a later date and remand Case No. W09-007, Section 1-4800 (Areas to be Landscaped) providing clarification regarding drainage easements and facilities and their contribution to required open space, back to the Planning Commission and staff for additional work.

The motion passed 5-0.

Commissioner Beckman asked when the Board should expect to see this case again.

Mr. Hovland reported that it will most likely be March, 2010 before the Board sees this case again. He explained that staff is working on changes to the current code, as well as Phase I of the new Land Development Code, which will be coming before the Board at that time.

Item D – Resolution No. 090959 – Case No. W09-010 - Parking Regulations and Resolution No. 090960 - Case No. W09-011 - Required Parking for Day Care Centers.

Tom McNish established jurisdiction.

Mr. Hovland said he has combined two items for the Board's consideration today, although there are two separate resolutions. He reported that the first item, Case No. W09-010, grew out of a study session with the Board of County Commissioners (BOCC) relating to the use of tandem parking in multi-family developments. He stated staff followed the direction of the BOCC regarding compact parking spaces and recommended to the Planning Commission, that compact parking spaces be prohibited. Mr. Hovland reported that tandem parking applies only to multi-family developments and tandem parking may not count towards parking unless the applicant

has already met the minimum parking requirements. He stated further that there were various items in the code which required clarification, i.e. calculation of gross floor area in commercial industrial developments and the parking code, where changes were made to specify an and/or scenario. Mr. Hovland reported that Case No. W09-011 relates to daycare centers and revisions grew out of the final development plan application the Board approved previously. Staff discovered during their research and comparison to other jurisdictions that Arapahoe County's parking requirements for day care centers was too high. He said staff changed the requirement to reflect what surrounding jurisdictions call for, as well as what the International Transportation Engineers (ITE) calls for. The Planning Division does not want to force businesses to provide extra parking areas when it is not necessary. It allows businesses to do more onsite landscaping and a larger play area for the children. He said there will continue to be adequate parking with the changes. Mr. Hovland reported that at the conclusion of their public hearing on November 17, 2009, the Planning Commission voted unanimously to recommend approval to the amendments to the parking regulations to eliminate the use of compact parking spaces, to eliminate the use of tandem parking to meet minimum parking requirements in multi-family developments, to determine the amount of parking required when based on floor area, to clarify how landscape islands in parking lots apply to the minimum amount of landscaping required, and to change the amount of required parking to be based on gross floor area.

Commissioner Weddig had one question regarding the industrial manufacturing assembly parking requirements and additional landscaping. He said buildings are sometimes recycled and in some cases there may be a low employee count and in others, a high employee count. He asked Mr. Hovland how the Planning Commission plans to handle these various users. He said there is concern that there may not be adequate parking depending upon the tenant.

Mr. Hovland said that in most of the industrial use buildings there is not a lot of change once the user has moved in. He said this is not an occurrence that the Planning Commission sees on a regular basis. However, the word "OR" was added to the language because there was confusion in the text of the code that said there must be one parking space per employee per shift, AND one space per 333 square feet. He stated that 333 square feet is the norm, government-wide, for industrial spaces. Staff didn't want applicants to have to provide both parking requirements; therefore, it's now an either/or situation. He said the change is very minimal.

Commissioner Weddig asked for assurances that the Planning Division will honor the building owner's request with regards to parking, as long as the minimum requirements are met. He believes additional parking can be a real asset when marketing a building to future users.

Commissioner Beckman opened the Public hearing.

There were no public comments.

The Public hearing was closed.

The motion was made by Commissioner Dyer and duly seconded by Commissioner Weddig to approve General Business Agenda Item D – Resolution No. 090959 (Case No. W09-010 Parking Regulations) and Resolution No. 090960 (Case No. W09-011 Required Parking for Day Care Centers) Land Development Code revisions, that the Board of County Commissioners finds themselves in agreement with the recommendation of the Planning

Commission and staff findings one (1) through four (4) including all attachments as set forth in the staff report dated December 1, 2009 and approve the amendments to Section 1-4600 (Parking Regulations) with the following condition:

- **All minor modifications to the text are required prior to incorporation into the original documents.**

Commissioner Beckman commented that she is glad to see these changes.

Mr. McNish noted that the Board approved (2) two resolutions in one motion.

The Board said they understood.

The motion passed 5-0.

Item E (a) – Resolution No. 090961 – Case No. W09-005, Addition of Section 1-5300A, Technical Amendment to the Land Development Code.

Bill Skinner, Planner II, Public Works and Development, reported that the proposed addition of Section 1-5300A, Technical Amendment to the Land Development Code, will increase consistency and provide clarification by placing the criteria and standards that have been guiding the use of the Technical Amendment process in the Land Development Code. He said the changes proposed do not alter the approval authority currently held by the Planning Division Manager. Mr. Skinner stated further that the Technical Amendment process is a low cost rapid review process employed when the proposed changes to an approved plan are minor. He said the staff has been using the Technical Review process since late 2003 when the Minor Amendment process was renamed the Technical Amendment process to reduce confusion apparent amongst applicants, by policy. He said the addition of Section 1-5300A to the Land Development Code will codify the current Technical Amendment process.

Mr. McNish established the Board's jurisdiction to hear this case.

Commissioner Beckman opened the Public hearing.

There were no public comments.

The Public hearing was closed.

Commissioner Dyer said that he thinks this is a great idea.

The motion was made by Commissioner Dyer and duly seconded by Commissioner Weddig to approve General Business Agenda Item E(a) – Resolution No. 090961 - Case No. W09-005, Land Development Code Revision, Addition of Section 1-5300A, that the Board of County Commissioners finds themselves in agreement with the recommendation of the Planning Commission and staff findings one (1) through three (3) including all attachments as set forth in the staff report dated December 1, 2009 and approve this application subject to the following condition:

- **The Public Works and Development Department staff will make all minor modifications to the text as required prior to incorporation into the Land Development Code.**

The motion passed 5-0.

Item E (b) – Resolution No. 090962 – Case No. W09-005, Adoption of an Engineering Services Division Review Fee as part of the technical Amendment process.

Mr. Skinner reported that staff proposes the adoption of a fee up to \$500 to be determined at the time of application. The fee amount will be based on the amount of time required by the Engineering Services Division for review of Technical Amendment cases as noted in the concurrent proposal to add Section 1-5300A (Technical Amendment) to the Land Development Code. He stated this is a minimal fee and intended to support the Planning staff's activity during a rapid review process for minor changes to a plan. He stated that there are times when the Engineering Division must get involved in the application process and, in the past, Engineering has been working for free.

Commissioner Beckman asked if this is a new fee.

Commissioner Beckman opened the public hearing.

There were no public comments.

The public hearing was closed.

The motion was made by Commissioner Dyer and duly seconded by Commissioner Weddig to approve General Business Agenda Item E(b) – Resolution No. 090962 - Case No. W09-005, Land Development Code Revision, Technical Amendment Section 1-5300A, that the Board of County Commissioners finds themselves in agreement with the recommendation of the Planning Commission and staff findings one (1) through three (3) including all attachments as set forth in the staff report dated December 1, 2009 and approve this application subject to the following condition:

- **The Public Works and Development Department staff will make all minor modifications to the text as required prior to incorporation into the Land Development Code.**

Commissioner Bockenfeld stated he would not be voting in support of this amendment because he does not believe this is the right environment to be increasing fees.

The motion passed 3-2, Commissioner Bockenfeld, No; Commissioner Beckman, No.

Item F – Resolution No. 090963 – Case No. W09-006, Revision of Section 1-5300, Administrative Amendment to the Land Development Code.

Tom McNish established the Board's jurisdiction to hear this case.

Mr. Skinner reported that the Planning Division staff, in conjunction with the Engineering Services Division staff, has determined that inconsistencies in terminology exist in Section 1-

5300, Administrative Amendment of the Land Development Code. He said it was also determined that the existing text does not address the role of the Engineering Services Division Manager in determining the extent of potential engineering-related issues that may arise during the review of an Administrative Amendment case. He stated further that the thirty day period, currently allowed for an appeal of a Planning Manager's decision to deny an Administration Amendment process based on the stated criteria, is excessive. Staff recommends reducing this period to ten days.

Commissioner Weddig commented on the shortened time period for an applicant to communicate their desire to appeal a decision.

Mr. Skinner clarified that the changes do not alter the processes aside from changing the thirty-day appeal period to ten days. He stated that most of the revisions to the code relate to text and grammar clean up.

Commissioner Beckman opened the public hearing.

There were no public comments.

The public hearing was closed.

The motion was made by Commissioner Weddig and duly seconded by Commissioner Noonan to approve General Business Agenda Item F – Resolution No. 090963 - Case No. W09-006, Land Development Code Revision, Administrative Amendment of Section 1-5300, that the Board of County Commissioners finds themselves in agreement with the recommendation of the Planning Commission and staff findings one (1) through three (3) including all attachments as set forth in the staff report dated December 1, 2009 and approve this application subject to the following condition:

- **The Public Works and Development Department staff will make all minor modifications to the text as required prior to incorporation into the Land Development Code.**

The motion passed 5-0.

Commissioner Beckman thanked Mr. Skinner and commented on the good work staff has done on the Land Development Code revisions.

Item G – Resolution No. 090964 – Temporary Moratorium for Medical Marijuana Land Uses

Kathryn Schroeder stated that specific members of the Board asked to have this item brought forward on today's agenda. She said that a couple of the Board members are unfamiliar with the background; therefore, she called upon County Attorney, Ron Carl, to explain.

Mr. Carl said staff is proposing a temporary moratorium on medical marijuana uses which includes dispensing and growing of medical marijuana. He explained the reason this item is before the Board is due to a recent flood of interest in establishing dispensaries and growing operations within the county. He stated that Tammy King, Zoning Administrator, reported that

she had received five (5) calls just this morning expressing interest in the subject. She also said that at least eight (8) dispensaries already operate within unincorporated Arapahoe County, probably more. Mr. Carl said that other local jurisdictions such as Littleton, Centennial, and Aurora have responded to the situation by adopting moratoriums. He said these moratoriums have caused the interest in unincorporated areas of the county to increase. Mr. Carl reported that our current zoning code does not specifically address medical marijuana uses or their potential secondary effects. He said the purpose of the moratorium would be to give the County time to decide how to address medical marijuana uses that include location restrictions as well as distance restrictions from things such as schools, liquor stores, etc. He stated further that a moratorium would give the county time to see how the state plans to address medical marijuana. He reported that there has been discussion about legislation in the upcoming session. He said the moratorium would last until January 5, 2010 at which time the Board could consider extending the moratorium, if desired. Mr. Carl said already-established medical dispensaries would be exempt as long as they are in compliance with the zoning code.

Commissioner Beckman said there is a list of jurisdictions who have banned medical marijuana or who have established temporary moratoriums. She said the list is quite comprehensive.

Commissioner Weddig asked if these types of dispensaries must be located in the commercial zone and disallowed in any residential zones.

Ms. Schroeder said dispensaries are not allowed in residential zones.

Commissioner Weddig asked if Mr. Carl could highlight what interaction a person would have, with the county, in order to set up a dispensary here. He asked for clarification of what exactly is involved.

Mr. Carl said the only thing involved, from a county perspective, is that dispensaries would have to have a building permit. However, a number of these establishments have been able to get up and running without obtaining a building permit.

Ms. Schroeder said there are no county application processes and no county licensing requirements. She said if a person wants to open a dispensary and does so in a business zoned district then they may do so.

Mr. Carl reported that if everything is already the way the dispensary needs it to be, within the building they are renting or buying, then they will not need a building permit. He said a permit would only be required if they are modifying the premises or are building a new building.

Commissioner Weddig asked what control the County has should someone come in for a permit.

Mr. Carl said that currently they would be treated as any other business. However, if the moratorium is adopted they would not be able to get a permit to modify or build. He said the resolution for a moratorium would make marijuana dispensaries illegal in unincorporated Arapahoe County. The moratorium would exempt those dispensaries that already exist.

Commissioner Weddig asked how we would determine if a new medical dispensary is opening up shop.

Mr. Carl said we would have to physically observe it occurring.

Ms. Schroeder reminded Commissioner Weddig that the moratorium is only valid only through January 5, 2010. At that time the Board will consider whether or not they will extend it.

Mr. Carl said that on January 5, 2010 the Board can consider further exceptions if it appears those will be warranted. He said there's no way of knowing if there are existing contracts.

Commissioner Weddig said legalization of medical marijuana dispensaries was passed by the voters in 2000. He asked why we are addressing this issue nearly nine years later.

Mr. Carl said, for various reasons, there has only recently been a flood of interest throughout the state.

Commissioner Weddig said the zoning aspects of this issue are behind the curve.

Mr. Carl said as is everyone else.

Commissioner Dyer asked if the sale of medical marijuana violates federal law.

Mr. Carl said that it is his understanding that the sale of medical marijuana violates federal law.

Commissioner Dyer said that staff and the Board are considering ways to circumvent federal law. He said the Attorney General of the United States should not compel the county to approve the sale of medical marijuana anywhere in the county, whether the county has moratoriums or not. He does not believe the people will stand for it. He wants go on record and say that this is egregious prostitution of a law by trying to get it onto the books by those who believe drugs are harmless to people in society, particularly the children. He stated that by allowing medical marijuana dispensaries in the county we will be encouraging an increase in use. Commissioner Dyer said that he is taking the position that it is a violation of federal statute and the county should never approve the sale of medical marijuana. He said its terrible public policy.

Commissioner Weddig said this is federal rights versus state rights. He asked if the January 5th deadline is enough time to gather adequate information.

Mr. Carl said the January 5, 2010 deadline will be for consideration of extending the term of the moratorium. He said it was enough time to consider extending the moratorium.

The motion was made by Commissioner Bockenfeld and duly seconded by Commissioner Noonan to approve General Business Agenda Item G – Resolution No. 090964 - A Temporary Moratorium for Medical Marijuana Land Uses until January 5, 2010, at which time the Board will hold further discussions and determine whether to extend the moratorium or cancel it.

The motion passed 4-1, Commissioner Dyer, No.

COMMISSIONER COMMENTS

There were no commissioner comments on this date.

Mr. Bush said that this is the last meeting of the year and wished the Board a Happy Holiday.

Commissioner Beckman reminded the Board that they were needed upstairs to perform staff evaluations.

There being no other business before the Board, the Chair adjourned the public hearing at 10:20 a.m.

ARAPAHOE COUNTY BOARD OF COUNTY COMMISSIONERS

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