

MINUTES OF BOARD OF COUNTY COMMISSIONERS  
MILLARD COUNTY THE 4th DAY OF APRIL 2017  
AT THE COURTHOUSE, FILLMORE, UTAH

PRESENT: James I. Withers . . . . . Chairperson  
Dean Draper . . . . . Commissioner  
Wayne Jackson . . . . . Commissioner

Pat Finlinson . . . . . County Attorney  
Marki Rowley . . . . . County Clerk  
Lesli Shields . . . . . Deputy County Clerk

ALSO PRESENT: Devan Shields . . . . . Sunrise Engineering  
Bart Whatcott . . . . . East Millard Swimming Pool  
Carl Camp . . . . . Utah State Parks  
Casey Fowles . . . . . Sunset View Golf Course  
Nathan Porter . . . . . East Millard Recreation  
Angie McPhail . . . . . Deputy County Auditor  
Dana Jordan . . . . . Chronicle Progress  
Josh Case . . . . . Energy Capital Group (ECG)  
Lynn Wall, Mike & Joyce Barney . . . . . Citizens  
Klint Penney . . . . . East Millard Maintenance  
Scott Barney . . . . . MEDA Coordinator  
Dale Josse & Kristine Camp . . . . . East Millard Soccer  
Randall Cloward . . . . . Randall Cloward Builders  
Mike Holt & Kevin Orton . . . . . Fillmore City  
Bonnie Gehre . . . . . County Auditor  
Sheri Dearden . . . . . County Treasurer

Note: Not all agenda items were followed in order.

PURSUANT TO AN AGENDA WHICH HERETOFORE HAD BEEN PROVIDED TO each member of the governing body, posted at the principal office of the Millard County Commission, posted on the Utah Public Notice Website, and provided to the Millard County Chronicle Progress, a newspaper of general circulation within Millard County, Utah, as required by law, the following proceedings were had:

**PUBLIC WAS WELCOMED**

The meeting began at 10:00 a.m. after a brief welcome by Commissioner Withers to the public and Commission members.

**OPENING STATEMENTS**

Commissioner Withers asked if anyone had an opening statement to give. Commissioner Withers said the invocation. Everyone stood and said the Pledge of Allegiance to the Flag.

#### APPROVAL OF MARCH 28, 2017, COMMISSION MINUTES

The proposed minutes of a regular County Commission meeting held March 28, 2017, were presented for consideration and approval. Following review and consideration of minor corrections, Commissioner Draper made a motion to approve the minutes of March 28, 2017, as corrected.

Commissioner Jackson SECONDED the motion. The voting was unanimous and the motion carried.

#### FOLLOW UP ACTION ITEMS FROM MARCH 28, 2017

There were none.

#### AWARD OF CONTRACT FOR ROAD OIL - COUNTY ROAD DEPARTMENT

Commissioner Withers said that Brandon Winget, Road Supervisor, has reviewed the bid and said that it meets the required specifications.

Commissioner Jackson made a motion to award the contract for road oil to Western Emulsions, in the amount of \$349.00 per ton for LMCRS-2 Oil (\$304.00 per ton, plus \$45.00 per ton for delivery).

Commissioner Draper SECONDED the motion. The voting was unanimous and the motion carried.

#### DISCUSSION AND POSSIBLE APPROVAL OF THE 2017/2018 STATE COURT CONTRACT

Clerk Rowley said that this is the annual renewal of the State Court Contract; the terms are all the same and there is an increase in the County's favor.

Commissioner Jackson made a motion to approve the 2017/2018 State Court contract, in the amount of \$185,655.86.

Commissioner Draper SECONDED the motion. The voting was unanimous and the motion carried.

#### DISCUSSION AND POSSIBLE APPROVAL OF A LETTER OF AGREEMENT REGARDING THE ANNUAL INDEPENDENT AUDIT - LARSON & COMPANY

Auditor Gehre said that this is an annual engagement letter; it states the audit objectives, audit procedures and management responsibilities.

Commissioner Draper made a motion to approve a letter of agreement regarding the annual

Independent Audit with Larson & Company.

Commissioner Jackson SECONDED the motion. The voting was unanimous and the motion carried.

DISCUSSION AND POSSIBLE APPROVAL OF RESOLUTION 17-04-04, A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF MILLARD COUNTY, UTAH, AMENDING RESOLUTION 13-01-22 (ADOPTING MILLARD COUNTY'S STEP & GRADE POLICY), BY ADDING OR AMENDING COMPENSATION GRADES TO THE EXISTING STEP & GRADE SCHEDULE AND BY CHANGING THE GRADE DESIGNATIONS FOR CERTAIN POSITIONS WITHIN THE MILLARD COUNTY PLANNING & ZONING DEPARTMENT

Commissioner Draper said that in order to attract persons with the appropriate qualifications for the combined Planner/Building Inspector position, it has become clear that the compensation rate may need to be reconsidered. He said that the current grade designation for this position is 20, which is approximately \$50,000.00 per year; he recommended that a grade 25 be created for this position. He said that monetary values have not been assigned to grade 25, however, the two positions separate would have been approximately \$90,000.00 per year, so there is money budgeted to consider a higher grade designation.

Commissioner Withers said that there should be a formula to figure out where grade 25 would be.

Auditor Gehre said that she does not have a formula, but she can look into it. She asked if the commissioners only want to create grade 25, or if her office is to create grades 21, 22, 23 and 24 as well.

Commissioner Draper clarified that only grade 25 is to be created.

Attorney Finlinson said that in looking at the Step & Grade Schedule, there does seem to be ratios and formulas that can be used to figure out the monetary values for this grade designation.

Commissioner Draper made a motion to approve Resolution 17-04-04, a resolution of the Board of County Commissioners of Millard County, Utah, amending Resolution 13-01-22 (adopting Millard County's Step & Grade Policy), by adding grades to the full time Step & Grade Schedule and by changing the grade designation for the position of County Planner/Zoning Administrator/Building Official to Grade 25.

Commissioner Jackson SECONDED the motion. Clerk Rowley called for a roll call vote. Commissioner Jackson voted YES. Commissioner Draper voted YES. Commissioner Withers voted YES. The voting was unanimous and the motion carried.

DISCUSSION AND POSSIBLE APPROVAL REGARDING PARTICIPATION IN THE FILLMORE CITY AIRPORT PROJECT - FILLMORE CITY

Commissioner Draper made a motion to table this agenda item, until more information is provided from Fillmore City.

Commissioner Jackson SECONDED the motion. The voting was unanimous and the motion carried.

## DISCUSSION AND POSSIBLE APPROVAL REGARDING PARTICIPATION IN THE FLOOD MITIGATION ON CENTER STREET - FILLMORE CITY

Devan Shields, Sunrise Engineering, said that he is the project engineer for the Center Street Flood Mitigation Project. He said that there have been previous discussions regarding County participation on this project, including excavation and hauling. He said that the project is moving forward and asked for commitment from the County.

Commissioner Withers said that Brandon Winget, County Road Supervisor, has approved providing labor and equipment, if Fillmore City will reimburse fuel used for the project. He said that it is his understanding that this will be a one day project, which would require a few dump trucks and possibly a loader.

Commissioner Draper asked what would happen if there is damage to County equipment.

Commissioner Withers said that this has not been addressed.

Commissioner Jackson said that it would be County employees operating the equipment, so it should be no different than any other project.

Commissioner Jackson made a motion to approve participation in the Center Street Flood Mitigation Project in Fillmore City, with Fillmore City reimbursing fuel expenses.

Commissioner Draper SECONDED the motion. The voting was unanimous and the motion carried.

## BID OPENING FOR THE SUNSET VIEW GOLF COURSE CLUBHOUSE CONSTRUCTION

Auditor Gehre opened the following bids:

- Mike Barney Construction, Inc.: \$991,848.00
- Randall Cloward Builders: \$876,748.00 (base bid), \$43,900.00 (bid guarantee)
- Valley Builders, Inc.: \$1,077,000.00 (base bid), \$53,850.00 (bid guarantee)
- Broderick & Henderson Construction, LC: \$1,124,000.00 (base bid), \$56,200.00 (bid guarantee)
- 3CR Builders, LLC \$810,750.00

Commissioner Draper made a motion to receive the bids, as presented, and review the specifications of the bids, before making a decision.

Commissioner Jackson SECONDED the motion. The voting was unanimous and the motion carried.

## DISCUSSION REGARDING ADDRESSING POLICY ISSUES BETWEEN EAST MILLARD RECREATION, EAST MILLARD SWIMMING POOL AND THE EAST MILLARD HORSE ARENA

Commissioner Jackson briefly discussed issues at the East Millard Horse Arena. He said that

there have been horses on the track while soccer is being played on the field. He stated that horses will not be allowed on the track while soccer is being played. The North gate will be closed off for emergency use only and the South gate will be open for car traffic during soccer games and practice; the elderly and handicapped can not walk across the track safely, and have been driving across it to park and watch the games from their cars. He said that it would be a good idea to figure out something that can be rolled out across the track for foot traffic. He said that a sign stating the rules should be placed at the track. Use of the track is required to be scheduled through Jer'E Brinkerhoff or Nate Porter for both horses and soccer.

Commissioner Withers stated that this same issue arises every spring and needs to be fixed so it doesn't keep coming up every year.

Nate Porter, East Millard Recreation, clarified that horses are allotted time on the track between 6:00 a.m. to 10:00 a.m., all other times need to be scheduled. He said that the soccer coaches have been scheduling the fields, people riding horses should be scheduling time as well.

Commissioner Withers asked if there is flexibility with the allotted time frame for horses, when there is a soccer tournament or something that needs to start earlier than 10:00 a.m..

Mr. Porter said that he hopes that having a sign placed at the track and better communication will make flexibility possible. He said that he would also like a sign placed that prohibits buses and heavy equipment from going across the track. He said he would like to have conveyor belt material placed on the track, to give pedestrians easier access during the soccer season.

Commissioner Jackson asked Attorney Finlinson if the County can issue a fine to those who have horses on the track outside of the scheduled time.

Attorney Finlinson said that a policy should be in place to support that.

Commissioner Draper said that if signs are to be placed at the track, there should be a policy in place to enforce the rules.

Attorney Finlinson said that this arrangement goes back several years, but there is not much written documentation regarding the agreements made. He said that a comprehensive policy should be in place, similar to the Indoor Arena Policy that was approved last year.

Commissioner Draper said that if a walkway is to be placed for foot traffic, it would need to have traction control. A conveyor belt walkway would have no traction when wet and does not seem to be the proper solution.

Klint Penney, East Millard Maintenance, said that there is no reason for a walkway to be placed, as there are roads that can be driven on to get to the soccer field. He said that he does not think he could spray anything on conveyor belt material to give it traction.

Commissioner Draper asked if building a wooden pathway would be feasible, as the surface would not be slick when wet.

Commissioner Jackson said that whatever solution is decided for the pathway, it would not be able to stay there permanently, it would have to be rolled out for soccer games and stored while horses are on the track.

Commissioner Withers said that there are materials out there that could address all concerns with the pathway.

Commissioner Draper said that he believes all scheduling should solely go through Mr. Porter, to avoid possible conflicts.

Mr. Porter said that he has a master schedule and it would not be a problem for all scheduling to go through him.

Commissioner Jackson asked Mr. Penney if a drain of some sort could be placed at the track to alleviate some of the water issues there.

Commissioner Withers asked if the field would still be used once the new soccer fields are completed.

Mr. Porter said that the field would still be used for youth recreation and tournaments.

Dale Josse, East Millard Soccer, said that putting up a sign will not do anything, consequences need to be applied. He said that the only person who is breaking the rules and complaining about issues is Jer'E Brinkerhoff. He said that the soccer teams are following and respecting the rules. He said that there are horses running around during soccer games and he fears that a child is going to get killed.

Commissioner Withers said that every facility used for soccer in West Millard is on County School District property. He said that several years ago, the commissioners asked for East Millard to be the same, but certain principals in East Millard will not allow their grass to be used for soccer. He said that the County budgeted to build a new soccer field in hopes to resolve this issue. He said that he does not understand why all of the adults involved can not work this issue out.

Bart Whatcott, East Millard Swimming Pool, said that kids come across from the trailer park to play and practice on the grass without scheduling. He said that there seems to be conflict no matter who is on the field.

Mr. Josse said that there was no reason to build a new soccer field, there is nothing wrong with the field being used currently. He said that other schools choose to come here, it is a central location and is a good field. He said that the new field is actually downsizing from the current field.

Commissioner Withers said that it was presented to the Commission that the people of Fillmore wanted a new soccer field. He said that it is his understanding that there will be two full size fields at the new soccer facility.

Mr. Josse said that it may be two full size fields when completed, but right now it is smaller than the current field that is being used. He briefly discussed regulation of soccer field sizes.

Attorney Finlinson said that regarding the issues on the horse track, rules need to be formalized and reduced to a policy that could be enforced. He believes this could resolve most of the issues brought forward today. He will work with Commissioner Jackson and Mr. Porter to start the framework for a policy.

## DISCUSSION REGARDING PROCEDURE FOR HANDLING APPEALS UNDER THE PURCHASING POLICY

Attorney Finlinson said that this agenda item has both specific and general application. He reminded the commissioners that the Procurement Code is not in effect, therefore, the County is operating under the old Purchasing Policy. He said that the provisions in the purchasing policy in regards to appeals is not very clear.

Attorney Finlinson said that the County Resource Management Plan (RMP), contract was appealed, vacated and re-awarded, but has since been appealed again. He said that Auditor Gehre responded to the appeal as per the first step of the Purchasing Policy, denying the appeal. The next step in the process is for a response from the County governing body. He reminded the commissioners that the appellant, Todd Macfarlane, has asked for an independent hearing officer to hear the appeal, based on the argument that it is a due process issue to have the appeal heard by the

same body who granted the contract in the first place.

Attorney Finlinson asked for direction from the commissioners as to how to proceed with the appeal. He said that in his opinion, the options are to respond to the written appeal, which would require formal discussion; schedule a hearing and invite Mr. Macfarlane to explain the basis for his appeal in an open meeting, then make a decision; or appoint an administrative law judge/specialist to hear both sides and make a recommendation as to how to proceed.

Commissioner Withers said that his preference is to respond to the written appeal.

Commissioner Draper said that the County can not rely on previous statements for this situation. He said that his preference is to respond to the written appeal. He is opposed to the third option.

Attorney Finlinson said that a formal agenda item will need to be placed on the next commission meeting agenda for discussion and possible action.

## DISCUSSION AND APPROVAL OF PROPERTY TAX AGREEMENTS, SETTLEMENTS OR DEFERRALS - TREASURER DEARDEN

Treasurer Dearden said that when the tax sale process began, there were 50 parcels. She said that she inadvertently added the \$250.00 search fee to all 50 parcels, instead of just the 22 parcels that still remain on the tax sale list. She will be making the adjustment on the 28 parcels that are no longer on the tax sale.

Treasurer Dearden said that Mr. Millwee followed through on his agreement made at a previous commission meeting. He expressed his appreciation to the County for agreeing to the extension.

Auditor Gehre said that there are four homes and two commercial properties that are on the tax sale, some of which have had agreements in the past. She briefly described the history of each parcel:

- Owner: Steven Bowes & Justin Quinlin, 295 N 500 W, Delta, Parcel #D-4172-2. It is unknown if the house is occupied. There have not been any agreements made in the past.
- Owner: Marc & Leslie Caldwell, 340 W 100 S, Fillmore, Parcel #F-303. It is unknown if the house is currently occupied. This parcel was removed from the tax sale in 2011. They have paid some of the past year's taxes, but all of 2016, all of 2013 and most of 2012 remain delinquent.
- Owner: Tyle & Callie Peterson, 2663 W 2000 W, Hinckley, Parcel #HD-4290-G-1. This home is not a primary residence. There was an agreement last year to remove it from the tax sale, however, no payments were ever made, making the parcel 6 years delinquent.
- Owner: Tammy Rhodes, 303 S Main Street, Meadow, Parcel #M-1583-1. It is unknown if anyone is currently living in the home. The property next to this parcel was sold at the 2012 Tax Sale. A title search may show liens.
- Owner: Sandy Crossing Enterprises, Scipio Motel, Parcel #S-1280. This is commercial property and several agreements have been made in the past. The owner

- was supposed to get a copy of a contract to the County. He sent \$5,000.00 that was applied to the 2016 taxes, but he has yet to provide a copy of the promised contract. Owner: Billie Van De Vanter, Parcel #D-827. This is commercial property. There was an agreement made previously, however, only the 2013 & 2014 taxes were paid.

The commissioners briefly discussed these parcels. It was decided to move forward in the tax sale process with all 6 parcels.

Auditor Gehre said that she was contacted by Kim Taylor regarding a parcel in Hinckley. He claims he is landlocked by this parcel and there are no access roads. She said she did not verify access, but it does not look like he is landlocked. She asked if bidding can be limited in these circumstances.

Attorney Finlinson briefly discussed the policy regarding the bidding process for a parcel with limited or no access.

#### DISCUSSION AND POSSIBLE APPROVAL TO AMEND THE CONTRACT BETWEEN ECG UTAH SOLAR 1, LLC, AND MILLARD COUNTY, FOR REIMBURSEMENT OF CDA CONSULTATION WORK PERFORMED BY LEWIS, YOUNG, ROBERTSON & BURNINGHAM

Scott Barney, MEDA Coordinator, said that this amended contract is not quite ready and asked for it to be tabled until the next commission meeting. He said that costs have exceeded the original estimate and ECG has agreed to cover the extra cost.

Commissioner Jackson made a motion table this agenda item.

Commissioner Draper SECONDED the motion. The voting was unanimous and the motion carried.

#### DISCUSSION AND POSSIBLE APPROVAL FOR OUT OF STATE TRAVEL TO ATTEND THE NATIONAL ASSOCIATION OF COUNTIES (NACO)/NATIONAL ASSOCIATION OF DEVELOPMENT ORGANIZATIONS (NADO), REGIONAL FORUM IN DENVER, CO, FOR COMMUNITIES IMPACTED BY COAL, APRIL 19-21, 2017 - SCOTT BARNEY - MEDA COORDINATOR

Mr. Barney briefly discussed the NACo/NADO workshop in Denver, CO, April 19 through April 21, 2017. He said that he may only be able to attend April 20 & 21, due to a conflicting schedule.

Commissioner Draper made a motion to approve out of state travel for Mr. Barney to attend the NACo/NADO workshop in Denver, CO.

Commissioner Jackson SECONDED the motion. The voting was unanimous and the motion carried.

#### DISCUSSION AND POSSIBLE APPROVAL REGARDING THE UTAH MINING



## ASSOCIATION'S REQUEST FOR A LETTER OF SUPPORT, ASKING UTAH TO SEEK LITIGATION REGARDING CALIFORNIA'S CARBON TAX

Mr. Barney suggested this agenda item be discussed in a closed meeting, since it is pending litigation.

## DISCUSSION AND POSSIBLE APPROVAL REGARDING PARTICIPATION IN THE FILLMORE CITY AIRPORT PROJECT - FILLMORE CITY CONTINUED

Mike Holt, Fillmore City, said that the project funds will be used to repair the apron area, re-fueling area, hangar area and to provide tie downs at the Fillmore City Airport. It will be built up to the required specifications for the small engine aircraft used by the BLM. He said the airplanes will only be on site during fire season at this time, however, storage may be built in the future to house the airplanes. He stated that Millard County would be priority if the planes are housed here in Fillmore.

Commissioner Withers said that there is funding available that may be used for unseen projects like this.

Commissioner Draper made a motion to approve participation in the Fillmore City Airport Project, in the amount of \$22,500.00.

Commissioner Jackson SECONDED the motion. The voting was unanimous and the motion carried.

## PUBLIC INPUT

There was none.

## OTHER BUSINESS

Mr. Barney said that the Leadership Summit is tomorrow in Richfield.

Mr. Barney said that the Governor Rural Partnership Board meets April 25, 2017, in Eureka.

## DISCUSSIONS FROM EACH COMMISSIONER, COUNTY ATTORNEY, ELECTED OFFICIAL AND SECRETARY

Attorney Finlinson said that there may be an issue with the Conflict Indigent Defense Counsel. He said that Larry Hunt has been the County conflict counsel, but with new legislation in Juvenile Court, he has had to be here every Juvenile Court calendar all day long. He briefly discussed the new legislation.

Attorney Finlinson said that Mr. Hunt has indicated that his pay will either need to be increased, or he will need to discontinue his conflict counsel contract.

Attorney Finlinson said that this contract will more than likely need to be re-bid, and the amount will probably be 3 times higher than the current amount.

Commissioner Draper said that he was contacted by Juab County regarding an unpaid invoice in the amount of \$104.00, for a water hearing that took place in Nevada, January 2015. He said that he will address this issue.

Commissioner Draper said that he attended a meeting with Congressman Stewart and Congressman King from New York, in Salt Lake City.

Commissioner Withers said that he received an email yesterday from the Great Basin Water Network, who is requesting a response to a bill in Nevada. He asked Commissioner Draper to send a letter in response.

Commissioner Jackson said that the truck wash is complete, and asked when the road will be complete.

Commissioner Withers said that when the State re-chips the Main Street road in Fillmore, the surface will be used to complete the truck wash road project.

Commissioner Draper mentioned that two base jumpers jumped illegally off the tower at Scipio Summit on Sunday.

#### POSSIBLE REVIEW OF COUNTY POLICIES AND CONTRACTS

There was none.

#### POSSIBLE CLOSED MEETING PURSUANT TO UTAH CODE ANNOTATED SECTION 52-4-4&5

Commissioner Draper made a motion to go into a closed executive session for the purpose of discussing pending and/or threatened litigation.

Commissioner Jackson **SECONDED** the motion. All three commissioners voted unanimously and the motion carried. Present in the closed session were Commissioner Withers, Commissioner Draper, Commissioner Jackson, Attorney Finlinson and Scott Barney.

Mr. Barney was only in attendance for one discussion and was then excused.

After the closed executive session the regular meeting reconvened at 12:18 p.m..

#### DISCUSSIONS FROM EACH COMMISSIONER, COUNTY ATTORNEY, ELECTED OFFICIAL AND SECRETARY CONTINUED

Commissioner Draper said that he has a document to present to the Central Utah Public Health Board when they meet again.

Commissioner Withers said that he thinks that the next meeting will be held April 23, 2017.

#### WHERE UPON THE MEETING ADJOURNED

Commissioner Withers adjourned the meeting at 12:19 p.m..

Attest: \_\_\_\_\_

Approved: \_\_\_\_\_