

MINUTES OF BOARD OF COUNTY COMMISSIONERS
MILLARD COUNTY THE 20th DAY OF OCTOBER 2020
AT THE COURTHOUSE, FILLMORE, UTAH

PRESENT: Evelyn Warnick. Chairperson
Dean Draper. Commissioner
Pat Finlinson. County Attorney
Jamie Hair Deputy Clerk

EXCUSED: Wayne Jackson. Commissioner
Marki Rowley. County Clerk

ALSO PRESENT: Richard Beckstrand. IT Supervisor
Brandon Winget. Road Supervisor
John Higgins. Landfill Supervisor
Bonnie Smith and Lynette Madsen. Auditors Office
Bryant Anderson. Commercial Business Radio
Heather Williams Young. Children’s Justice Center
Adam Richins. County Planner
Connie Hanson and Sierra Dickens. Recorder’s Office
Sheri Dearden. County Treasurer
Richard Jacobson. County Sheriff

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 Warnick to the public and Commission members. Commissioner Warnick excused Commissioner Jackson and Clerk Rowley.

OPENING STATEMENTS

Commissioner Warnick asked if anyone had an opening statement to give. Commissioner Draper quoted Richard Lloyd Anderson who defines sin as where an individual personally benefits at the expense of another person. He said that a lot of things are said in the heat of campaigns that a person hopes to benefit from at the expense of another. Commissioner Draper said that the three Millard County commissioners have not done anything to further their own benefit at the expense

of another person; however, they are human. Commissioner Draper said the invocation. Everyone stood and said the Pledge of Allegiance to the Flag.

APPROVAL OF OCTOBER 6, 2020 COMMISSION MINUTES

The proposed minutes of a regular County Commission meeting held October 6, 2020 were presented for consideration and approval. Following review and consideration of minor corrections, Commissioner Draper made a motion to approve the minutes of October 6, 2020, as presented.

Commissioner Warnick stepped from the chair and SECONDED the motion. The voting was unanimous and the motion carried.

FOLLOW UP ACTION ITEMS FROM OCTOBER 6, 2020

Commissioner Draper said that the person who was appointed to the Cemetery Board at the last meeting has since contacted him to say that he cannot serve on the board at this time. He said that another person will need to be considered and appointed.

RATIFY THE APPROVAL OF A BOBCAT TRADE IN FOR WEST MAINTENANCE

Commissioner Draper made a motion to ratify the approval of a bobcat trade in for the West Maintenance Department.

Commissioner Warnick stepped from the chair and SECONDED the motion. The voting was unanimous and the motion carried.

DISCUSSION AND POSSIBLE APPROVAL OF A BUSINESS LICENSE FOR A-ONE STORAGE, OWNER - LOIS KUNZ

A business license application was presented for A-One Storage, Owner - Lois Kunz, a self storage unit business. After review of the application and finding all signatures in order, Commissioner Draper made a motion to approve a business license for A-One Storage, Owner - Lois Kunz.

Commissioner Warnick stepped from the chair and SECONDED the motion. The voting was unanimous and the motion carried.

UPDATE ON THE CHILDREN'S JUSTICE CENTER- HEATHER WILLIAMS YOUNG

Heather Williams Young said that she is here to give an update on the Children's Justice Program. She said that they have handled a total of 22 cases in Millard County in the last year and served approximately 73 people in the community. She said that they primarily serve child victims and their families. Ms. Young went over some statistical information and explained the services that they provide in Millard County.

Attorney Finlinson said that the Children's Justice Center provides a lot of valuable services. He said that they conduct and provide interviews that can be used in court and are constantly

working with detectives and other officers to make sure their child interviewing skills are adequate. Attorney Finlinson gave a brief history of the Children's Justice Center with Millard and Juab counties and said that he hopes that the County is willing to continue to provide funds which comes from the Sheriff's Office budget.

Commissioner Warnick thanked Ms. Young for the valuable work that Children's Justice Center provides.

DISCUSSION AND POSSIBLE APPROVAL OF A PROPOSED CONTRACT RENEWAL BETWEEN MILLARD COUNTY AND COMMERCIAL BUSINESS RADIO, LC - BRYANT ANDERSON

Mr. Anderson presented the proposed contract and said that he is grateful for the opportunity to work with the County. He gave an overview of upcoming possible equipment upgrades and changes. He said that last year the contract total was approximately \$25,930.00 and the proposed budget this year is \$26,518.00.

Sheriff Jacobson said that communication systems are evolving over time and he thinks that it will take years for the State to implement significant changes.

Commissioner Draper made a motion to approve of the renewal contract between Millard County and Commercial Business Radio, LC in the amount of \$26,518.00.

Commissioner Warnick stepped from the chair and SECONDED the motion. The voting was unanimous and the motion carried.

DISCUSSION AND POSSIBLE APPROVAL OF THE COUNTY BECOMING A CO-SPONSOR ON THE C-CANAL LINER PL-566 GRANT WITH NRCS - JASON DODD, NRCS

Commissioner Draper made a motion to approve the County becoming a Co-Sponsor on the C-Canal Liner PL-566 Grant with NRCS.

Commissioner Warnick stepped from the chair and SECONDED the motion. The voting was unanimous and the motion carried.

DISCUSSION AND POSSIBLE ADOPTION OF MILLARD COUNTY'S 2021 TENTATIVE BUDGET

Auditor Smith presented the tentative budget and said the total amount is \$26,043,879.00. She went over some changes that were made to the Ambulance, Strike Force, and Landfill budgets.

Auditor Smith said that the tentative budget will be posted for inspection and went over the budget meeting dates and times. She said that the public hearing will be held on December 1, 2020 at 6:00 p.m..

Commissioner Draper made a motion to adopt the Millard County 2021 Tentative Budget. Commissioner Warnick stepped from the chair and SECONDED the motion. The voting

was unanimous and the motion carried.

MONTHLY FINANCIAL REVIEW

Treasurer Dearden presented monthly financial reports ending in September 2020. She said that motor vehicles receipts went down 15% compared to the same month in 2019. Treasurer Dearden said that she is attributing the decrease to the fact that the State is not sending out reminder cards. She said that her office received notice from the State to hold funds for Kanosh Town, Millard County, the Water Conservancy District, Oak City, the Mosquito Abatement District, and Drainage District #4.

Treasurer Dearden said that the State Auditor goes through things with a very fine tooth comb, and the notices are often issued for minor discrepancies like reports that need to be signed and funds are held until those small things are rectified. She said that the County has requested to come off that list and should be removed soon.

AWARDING THE BID FOR RECORD'S FACILITY SHELVING

Recorder Hansen said that the only bid received is from Space Saver Intermountain in the amount of \$97,126.04. She said that the project will take approximately nine weeks.

Commissioner Draper made a motion to award the bid for the Record's Facility shelving to Space Saver Intermountain in the amount of \$97,126.40.

Commissioner Warnick stepped from the chair and **SECONDED** the motion. The voting was unanimous and the motion carried.

DISCUSSION AND POSSIBLE APPROVAL OF AN AMENDED JANITORIAL CONTRACT - TAMARA BARTHOLOMEW

Attorney Finlinson said that he made the contract revisions requested by Commissioner Jackson and Supervisor Penney. He said that the only revisions specify what items are provided by the County verses what is provided by the janitor. He said that if the total contract amount was increased, it would be subject to the County's bid process.

Commissioner Draper made a motion to approve an amended janitorial contract with Tamara Bartholomew.

Commissioner Warnick stepped from the chair and **SECONDED** the motion. The voting was unanimous and the motion carried.

DISCUSSION AND POSSIBLE AWARDING OF ROAD DEPARTMENT BUILDING BIDS

Attorney Finlinson said that the proposed changes to the building will impact costs substantially and he advises that new invitations for bids that are specific to the roof redesign be sent out.

Planner Richins said that one of the bidders said that costs could be reduced by changing the roof system design and they put together a proposal and approximate cost. He said that the original building designer will need to review the changes and the possible savings could be between \$100,000.00-\$200,000.00. A brief discussion was had on insulation, the location of the posts, and the bid process.

Attorney Finlinson said that both roof bidders need to be invited to meet to discuss the proposed changes so that one doesn't have any advantage over the other.

Commissioner Draper said that when the modification from metal to brick was made, the Road Supervisor and Commissioner over the Road Department had the authority to make that change because the cost still fell within the Road Department's Budget. He said that some bid items came in at a much larger cost than anticipated which has curtailed the process. Commissioner Draper said that there hasn't been any effort to hide anything. Commissioner Draper went over the following funds which may be available for consideration in order to complete the building:

- The Road Department Budget - approximately \$284,000.00 of appropriated funds.
- The Landfill - \$160,000.00 that was budgeted on behalf of the Landfill from Capital.
- B&C Road Funds - \$340,000.00 of unappropriated funds. He said that these funds would require a public hearing and would have to be approved by the Commission in order to utilize it. He said that the amount of B&C Road Funds may fluctuate a little.

Commissioner Draper said that the funds he listed totalled close to \$800,000.00 which is possibly available to complete the building. He said that time should be another factor and went over a brief time line if a new roof redesign is considered and/or chosen.

Commissioner Warnick said that finding out the cost is the most important factor right now so the County knows where it stands financially and can make an informed decision. Commissioner Draper said that information can be made available by the next commission meeting.

Commissioner Draper said that the expenditure on the building needs to be protected. He said that there was not an attempt to be non transparent with this project, but there were a few surprises.

Auditor Smith said that she can appreciate what Commissioner Draper is saying; however, the building is now different than what was described at the 2019 budget work meetings. She said that the size of the building was compared to Supervisor Winget's personal shop at those meetings and when the size changed, it was not disclosed to her office.

Auditor Smith said that she has been blamed by a commission candidate because her office did not stop this and reiterated that her office was not notified of the size change. She said that the \$160,000.00 from the Landfill is actually coming from Capital because the landfill does not have that available in their enterprise fund. She said that regarding the \$340,000.00, the Commission should consider that the tentative budget is pulling approximately \$250,000.00 from fund balance to cover requests and approximately \$550,000.00 was included in those requests for this building.

Auditor Smith said that the Commission can be more transparent and hold more public hearings; not just the minimum amount required.

Supervisor Winget said that he has heard many individuals comment on the large size of the building and explained how large and how many items of equipment the Road Department handles.

He said that the size of the equipment necessitates a building of this size. He said that the Road Department Shop in Delta is not big enough and was built in the 1980's. Supervisor Winget said that this will help employees, and help prolong the life of the equipment. He said that a house can't be built for \$400,000.00 so if the County can build a building this size for \$800,000.00, it is a good deal. He said that he can only apologize so many times because it was budgeted incorrectly and he is sorry the cost went so far above what was estimated; however, this building is a benefit and there is money currently available to finish this building. He said that the attacks on the Auditor and himself are not right.

Commissioner Warnick said that this issue needs to be faced and the County needs to learn from it and move forward the right way. She said that proper checks are going to be put in place to prevent this from happening again.

Commissioner Draper said that Attorney Finlinson issued an opinion regarding this situation. He said it addresses the delegation of authority to different department heads and amending the budget. He said that the expenditures on the road building project had not exceeded the available funds within budget nor did it facilitate any changes within the Road Department budget that would require notifying the Auditor's Office. Commissioner Draper read a portion of that opinion which states:

“The budget may be amended as needs arise throughout the budget year. State statute prescribes different mechanisms for amending the budget depending on which budget layer is being amended. Moving money from one fund to another fund or increasing a fund appropriation using unappropriated fund balance is a legislative function that requires a public hearing and the opening of the budget. Moving money from one budget department to another budget department within the same fund is a legislative function of the Commission but this does not require the opening of the budget or a public hearing.”

Commissioner Draper said that the following situation described in the opinion is what the road department was in at the time the size change decision was made: “Moving money from one expenditure account to another expenditure account within the same budget department is purely an executive function and may be done without the consent or the approval of the Commission. This is an example of an executive function that is delegated by statute. Section 17-36-22 of Utah code annotated states as follows:

- (1) After review by the budget officer and in accordance with budgetary and fiscal policies or ordinances adopted by the county legislative body, any department may:
 - (a) transfer any unencumbered or unexpended appropriation balance or any part from one expenditure account to another within the department during the budget year; or
 - (b) incur an excess expenditure of one or more line items.
- (2) A transfer or expenditure under Subsection (1) may not occur if the transfer or expenditure would cause the total of all excess expenditures or encumbrances to exceed the total unused appropriation within the department at the close of the budget period.”

Commissioner Draper said that there was no expenditure that exceeded the appropriated moneys within the Road Department budget at any point up to now and it still has not been exceeded. He said that the presentation of the desire to move money within the appropriated budget to the Auditor is required, but the Auditor does not have veto power. Commissioner Draper said that

any changes outside of the budget would have gone through public hearings. He said that the size change was not well known and is a lack of communication and coordination where everyone perhaps did not do their due diligence to make this more transparent.

Commissioner Draper continued to quote from the five page opinion, “The Road Supervisor and the Commissioner with the administrative assignment over the Road Department assumed that the increased cost of the building could be absorbed by the Road Department’s budget appropriation requiring one or more transfers between expenditure accounts within the budget department. Whether that assumption was correct is a question that is still being asked. As of the date of this opinion, the County does not know how much the building will cost to complete due to the fact that no bids were received for various components of construction. Nevertheless, to the extent it can be done by moving funds between expenditure accounts within the Road Department’s budget without exceeding the total appropriation for that budget department, completing the building would be a permissible exercise of delegated executive authority and would not require the approval of the Commission. The transfer of money from the unappropriated fund balance in fund 21 into the Road Departments Budget appropriated, on the other hand, would be a legislative function and would require public notice and legislative action.”

Commissioner Draper went to the conclusion portion of the opinion which states, “There is a difference between a political or fiscal miscalculation and a deliberate misuse of legislative or executive authority. The Road Supervisor and the Commissioner with the administrative assignment over the Road Department knew that altering the design of the road shed would result in increased costs. It is apparent that they dramatically underestimated the magnitude of these cost increases. This amounts to a miscalculation; however, not misconduct.”

Commissioner Draper said that the Commission is aware of the problems and actions are being taken to protect the investment and funds already expended, comply with statute requirements to fix this problem, and to find the most economic and valuable way to resolve the issue.

Commissioner Warnick said that they will await more information at the next commission meeting.

DISCUSSION AND POSSIBLE APPROVAL OF CARES ACT GRANT APPLICATIONS

Auditor Smith presented an application from the Kids Depot who is requesting \$10,000.00

Commissioner Draper made a motion to approve the application for The Kids Depot in the amount of \$10,000.00.

Commissioner Warnick stepped from the chair and **SECONDED** the motion. The voting was unanimous and the motion carried.

Auditor Smith presented an application from Dancers Edge who is requesting \$5,000.00.

Commissioner Draper made a motion to approve the application for Dancers Edge in the amount of \$5,000.00 under the condition that the application be amended to only specify requirements..

Commissioner Warnick stepped from the chair and SECONDED the motion. The voting was unanimous and the motion carried

Auditor Smith presented an application from T&T Twin Theaters who is requesting \$10,000.00.

Commissioner Draper made a motion to approve the application for T&T Twin Theaters in the amount of \$10,000.00.

Commissioner Warnick stepped from the chair and SECONDED the motion. The voting was unanimous and the motion carried

Auditor Smith gave an update on the CARES Act funding status and said that approximately \$125,408.00 has been spent of the total \$985,600.00 received by the County. She said that the \$25,000.00 approved today will be added to the total spent. She said that the pending projects costs total approximately \$262,390.57.

Commissioner Warnick said that there has been requests to change the water fountains to add bottle fillers in the County. Auditor Smith said that she will add it to the pending list.

DISCUSSION AND POSSIBLE APPROVAL OF SIGNING A MEMORANDUM OF UNDERSTANDING (MOU) AND AGREEMENT WITH UTAH ASSOCIATION OF COUNTIES AND A MEMORANDUM OF UNDERSTANDING (MOU) WITH THE STATE OF UTAH DIVISION OF FINANCE, FOR PARTICIPATION IN THE UTAH TAX REFUND EXCHANGE AND COMPLIANCE SYSTEM (U-TRECS)

Attorney Finlinson said that he reviewed the contract. Treasurer Dearden explained the program which allows local governments to receive debt offsets.

Commissioner Draper made a motion to approve a memorandum of understanding (MOU) and agreement with Utah Association of Counties and a memorandum of understanding (MOU) with the State of Utah Division of Finance, for participation in the Utah Tax Refund Exchange and Compliance System (U-TRECS).

Commissioner Warnick stepped from the chair and SECONDED the motion. The voting was unanimous and the motion carried.

PUBLIC INPUT

There was none.

OTHER BUSINESS

Commissioner Warnick said that the bleachers at the rodeo arena are not up to code and this situation is being looked into further.

Commissioner Draper said that a virtual open house will be held tomorrow regarding the

pumped water project above Full Creek and Oak City.

Commissioner Draper said that the County received a notification from Kern River Gas who is going to build a lateral gasline from Holden to the Intermountain Power Plant. He said that open houses will be held in Holden and Delta on October 27, 2020 and October 28, 2020.

Attorney Finlinson said that he is working with Tom Hall, who has discovered that the Whiskey Creek Road is not where it has been described on records. He said that there is a question about the easement and his opinion is that the easement is where the road is. He said that he will submit that opinion to them in writing.

Commissioner Draper said that current county code doesn't allow for gas lines to go through that area so Kern River have requested an amendment and this will be heard by the Planning and Zoning Commission on November 4, 2020.

Commissioner Draper said that there has been a spike in COVID-19 cases in Millard County, however, the virus seems to be less virulent than it was in the Spring.

Commissioner Warnick encouraged everyone to continue to do their part to stop the spread of the virus.

Sheriff Jacobson said that two county ambulances are currently under repair.

DISCUSSION AND POSSIBLE APPOINTMENTS TO VARIOUS COUNTY BOARDS

There were none.

POSSIBLE APPROVAL OF APPLICATION(S) FOR SETTLEMENT OR DEFERRAL OF DELINQUENT PROPERTY TAX

There were none.

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

There were none.

AUDITOR REPORT

Deputy Auditor Madsen presented the following reports:

A/P Check Registers:

10/09/2020 - \$450,230.32

10/16/2020 - \$162,799.21

Payroll Liabilities - \$170,104.64

Deputy Madsen explained the 2021 per diem rates which are:

- Mileage: \$0.575
- Breakfast: \$13.00
- Lunch \$15.00
- Dinner \$23.00

POSSIBLE BOARD OF EQUALIZATION (BOE) DISCUSSION AND/OR ACTION

There was none.

POSSIBLE REVIEW OF COUNTY POLICIES AND CONTRACTS

There was none.

POSSIBLE CLOSED MEETING PURSUANT TO UTAH CODE ANNOTATED SECTION 52-4-204 & 205

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

Commissioner Warnick stepped from the chair and SECONDED the motion. Both commissioners present voted unanimously and the motion carried. Present in the closed session were Commissioner Warnick, Commissioner Draper, Attorney Finlinson, Sheriff Jacobson, and Auditor Smith.

After the closed executive session the regular meeting reconvened at 12:06 p.m..

WHERE UPON THE MEETING ADJOURNED

Commissioner Warnick adjourned the meeting at 12:07 p.m..

Attest: _____

Approved: _____